No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A Corporation, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Intervenors and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

IN SEVENTEEN VOLUMES

VOLUME I

PAGES 1-540

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

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IN EQUITY No. 3340

Be it remembered, that on the 25th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

APRIL TERM, 1908

[BILL OF COMPLAINT]

In the Circuit Court of the United States
For the District of Oregon

NINTH JUDICIAL CIRCUIT.

UNITED STATES OF AMERICA,

Complainant,

vs.

OREGON AND CALIFORNIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, STEPHEN T. GAGE (individually and as trustee), UNION TRUST COMPANY (individually and as trustee), JOHN L. SNYDER, JULIUS F. PRAHL, ALBERT E. THOMPSON, JAMES BARR, FRED WITTE, W. A. ANDERSON, W. H. ANDERSON, O. M. ANDERSON, F. E. WILLIAMS, PAUL BIRKENFELD, J. H. LEWIS, FRANCIS S. WISER, W. E. AN-

DERSON, ALBERT ARMS, JOSEPH A. MAXWELL, ISAAC McKAY, J. R. PETERSON, D. MacLAFFERTY, EDGAR MacLAFFERTY, V.V. McABOY, GEORGE C. MacLAFFERTY, GEORGE EDGAR MacLAFFERTY, E. L. MacLAFFERTY, B. N. MacLAFFERTY, ENOS M. FLUHRER, F. W. FLOETER, S. SHRYOCK, SIDNEY BEN SMITH, ORRIN J. LAWRENCE, ROBERT G. BALDERREE, OSCAR E. SMITH, EGBERT C. LAKE, C. W. SLOAT, JESSE F. HOLBROOK, A. E. HAUDENSCHIELD, S. H. MONTGOMERY, W. A. NOLAND, JOHN H. HAGGETT, CHARLES W. MEAD, WILLIAM OTTERSTROM, ANGUS MacDONALD, JOHN T. MOAN, JOSEPH D. HADLEY, HENRY C. OTT, FRED L. FREEBING, WILLIAM CAIN, R. T. ALDRICH, JAMES C. O'NEILL, ALEXANDER FAUSKE, FRANCIS WIEST, CORDELIA MICHAEL, JOHN B. WIEST, CYRUS WIEST, JOHN WIEST, THOMAS MANLEY HILL, OTTO NELSON, JASPER L. HEWITT, B. L. PORTER, FRANK WELLS, C. P. WELLS, I. H. INGRAM, L. G. REEVES, W. W. WELLS, F. M. RHOADES, MARVIN MARTIN, and ROY W. MINKLER,

Defendants,

To the Judges of the Circuit Court of the United States for the District of Oregon:

THE UNITED STATES OF AMERICA, by Charles J. Bonaparte, its Attorney General, presents this its Bill of Equity against Oregon and California Railroad Company, a citizen of the State of Oregon, Southern Pacific Company, a citizen of the State of Kentucky, Stephen T. Gage, a citizen of the State of California, and Union Trust Company, a citizen of the State of New York, and John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, all citizens of the State of Oregon, and Roy W.

Minkler, a citizen of the State of Washington.

Thereupon your Orator complains and says:

I.

The defendant Oregon and California Railroad Company, now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State.

The defendant Southern Pacific Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of said last named State.

The defendant Stephen T. Gage is a resident and citizen of the City of San Francisco, in the State of California, and is sued in his own right, and also as sole surviving trustee under a certain deed of trust hereinafter described.

The defendant Union Trust Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of New York, and a resident and citizen of said last named State, and is sued in its own right, and also as trustee under a certain mortgage deed hereinafter described.

Each of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis

S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, is a resident and citizen of the County of Columbia in the State of Oregon.

Each of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery and W. A. Noland, is a resident and citizen of the County of Lane in the State of Oregon.

Each of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich and James C. O'Neill is a resident and citizen of the County of Multnomah in the State of Oregon.

Each of the defendants Alexander Fauske, Francis Wiest, Sordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter and Frank Wells is a resident and citizen of the County of Clackamas in the State of Oregon.

Each of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves and W. W. Wells is a resident and citizen of the County of Polk in the State of Oregon.

The defendant F. M. Rhoades is a resident and

citizen of the County of Douglas in the State of Oregon.

The defendant Marvin Martin is a resident and citizen of the County of Linn in the State of Oregon.

The defendant Roy W. Minkler is a resident and citizen of the County of Clarke in the State of Washington.

Certain of said defendants above named are described otherwise than by Christian name for the reason that the Christian name of each of said defendants is to your Orator unknown.

II.

On or about the twenty-fifth day of July, A. D. 1866, the Congress of the United States passed an Act entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,"

which said Act was approved and became operative upon said twenty-fifth day of July, A. D. 1866, and which said Act is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the 'California and Oregon Railroad Company,' organized under an act of the State of California, to protect certain parties in and to a railroad survey, 'to connect Portland, in Oregon, with Marysville, in California,' approved April 6, 1863, and such company organized under the laws of Oregon as the Legislature of said state shall hereafter designate, be, and they are hereby, authorized and empowered to lay

out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon, and the Central Pacific Railroad in California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta valleys, to the northern boundary of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first-named company: *Provided,* That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

SEC. 2. *And be it further enacted,* That there be,

and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when

sold: *Provided,* That bona-fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation: *And provided also,* That settlers under the provisions of the homestead act, who comply with the terms and requirements of said act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That the right of way through the public lands be, and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 4. *And be it further enacted,* That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad

and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time, whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the

rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

SEC. 6. *And be it further enacted,* That the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith.

SEC. 7. *And be it further enacted,* That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on

account of such discrimination, to be sued for and recovered in any court of the United States, or of any State, of competent jurisdiction.

SEC. 8. *And be it further enacted,* That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this act.

SEC. 9. *And be it further enacted,* That the said 'California and Oregon Railroad Company,' and the said 'Oregon Company' shall be governed by the provisions of the general railroad and telegraph laws of their respective States, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this act. Wherever the word 'company' or 'companies' is used in this act it shall be construed to embrace the words

'their associates, successors and assigns,' the same as if the words had been inserted, or thereto annexed.

SEC. 10. *And be it further enacted,* That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies; *Provided,* That the term 'mineral lands' shall not include lands containing coal and iron.

SEC. 11. *And be it further enacted,* That the said companies named in this act shall obtain the consent of the legislatures of their respective States, and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

SEC. 12. *And be it further enacted,* That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this act."

Said last described Act of Congress was amended by an Act of Congress approved June twenty-fifth, A. D. 1868, entitled, "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' " which said amendatory act is in terms as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress*

assembled, That section six of an act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, eighteen hundred and sixty-six, be so amended as to provide that instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this act, and at least twenty miles in each two years thereafter, and the whole on or before the first day of July Anno Domini eighteen hundred and eighty."

III.

No right, title or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July twenty-fifth, A. D, 1866, was ever acquired by any corporation or person, or otherwise, except at the time, in the manner, and upon the terms and conditions as hereinafter set forth.

On or about the sixth day of October, A. D. 1866, certain proceedings were had by which certain persons attempted to organize, under the general incorporation law of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office at the city of Portland, in said State of Oregon.

Said Oregon Central Railroad Company projected its railroad line from said city of Portland in a westerly direction to the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on

the *westerly side* of the Willamette River, from which circumstance said company and its line of railroad became known, and therefore will herein be referred to and mentioned, as the "West Side Company" and the "West Side Line" respectively, to distinguish the same from a certain other line of railroad projected at about the same time on the *easterly side* of said river by another railroad company bearing the same corporate name, as hereinafter set forth.

On the tenth day of October, A. D. 1866, the legislature of the State of Oregon adopted a joint resolution, which on the last aforesaid day was approved by the governor of said State, and which is in terms as follows:

"*Whereas,* The Congress of the United States, at its last session, passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly of the State of Oregon to designate the company, organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon; therefore be it

Resolved by the House, the Senate concurring, That the 'Oregon Central Railroad Company,' a company organized under the general incorporation laws of this State, be and the same is hereby designated as the company which shall be entitled to receive the land granted and all the benefits of an Act of Congress approved July 25, 1866, entitled, 'An Act granting land to aid

in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon,' so far as the said grant applies to the State of Oregon."

Assuming in the premises to have been lawfully designated therefor, said West Side Company, on or about the twenty-fifth day of May, A. D. 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of said Act of Congress approved July twenty-fifth, A. D. 1866, and, on or about the sixth day of July, A. D. 1867, filed in the office of the Secretary of the Interior of the United States an authenticated copy of the last aforesaid resolution, together with a certified copy of its articles of incorporation, and a certified copy of the aforesaid joint resolution of the legislature of the State of Oregon; and, on or about the twentieth day of August, A. D. 1868, filed in the last aforesaid office a general map of survey of its projected line of railroad.

In the meantime, and on or about the twenty-second day of April, A, D. 1867, certain persons, residents of the State of Oregon, then and thereafter contending that said West Side Company was never lawfully incorporated or organized, and designing to secure the several grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, in that behalf caused certain proceedings to be had intended to organize, under the general incorporation law of the State of Oregon, a corporation bearing the same corporate name, to-wit, "Oregon Central Railroad Com-

pany," having its principal place of business at the city of Salem, in said State of Oregon.

Said last mentioned Oregon Central Railroad Company projected its line of railroad on the easterly side of the Willamette River, and, for the reasons hereinbefore explained, said last mentioned company and its line of railroad became known as the "East Side Company" and the "East Side Line," respectively, and therefore will herein be so referred to and mentioned.

Said East Side Company, in furtherance of its aforesaid design, on the twentieth day of October, A. D. 1868, procured a joint resolution to be adopted by the Legislature of the State of Oregon, and approved by the governor of said State, which said resolution is in terms as follows:

"*Whereas,* The Congress of the United States, by an Act approved July 25, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the Legislature of said State should thereafter designate; and

"*Whereas,* The Legislative Assembly of Oregon, at its fourth regular session, did adopt a joint resolution known as 'House Joint Resolution No. 13,' designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted

by, and all the benefits and privileges of, the said Act of Congress; and

"*Whereas,* At the time of the adoption of the said joint resolution as aforesaid, no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such company; and

"*Whereas,* The designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by, the said Act of Congress, yet remains to be made;

"*Be it resolved by the Senate, the House concurring,* That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second (22d) day of April, in the year one thousand eight hundred and sixty-seven (1867), under and pursuant to the laws of the State of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress."

Thereupon a controversy arose between said West Side Company and said East Side Company, as to which of said companies was entitled to the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866; which controversy continued until on or about the month of January, A. D. 1870, as hereinafter set forth.

Said Act of Congress approved July twenty-fifth,

A. D. 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the company designated by the Legislature of the State of Oregon should, within one year from said twenty-fifth day of July, A. D. 1866, file in the Department of the Interior its assent to said Act and the terms and conditions thereof.

The time within which to file an assent as aforesaid had expired long prior to the designation of said East Side Company by the Legislature of the State of Oregon on October twentieth, A. D. 1868 as aforesaid. Because of the premises, said East Side Company did apply to the Congress of the United States, during the session thereof commencing in the month of December, A. D. 1868, for an extension of the time within which to file its assent as aforesaid; and, in that behalf, did lay before Congress said joint resolution of the Legislature of the State of Oregon last herein described, and did represent that all of the recitals thereof were true, and that because of the premises, the several grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, had lapsed, and the benefits thereof would be wholly lost to the State of Oregon unless revived by Congress in manner aforesaid.

During the consideration by Congress of said application of said East Side Company, said West Side Company likewise appeared before Congress and opposed said application, and in that behalf contended that the several grants, franchises and privileges of said Act

of Congress approved July twenty-fifth, A. D. 1866, had theretofore become, and then were, vested in said West Side Company.

Thereafter, and by Act of Congress approved April tenth, A. D. 1869, entitled, "An Act to amend an Act entitled, 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July twenty-five, eighteen hundred and sixty-six," Congress did grant the said application of said East Side Company, but upon the express condition that the lands granted as aforesaid should be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre.

Said Act of Congress approved April tenth, A. D. 1869, is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said Act, to file its assent to such Act in the Department of the Interior within one year from the date of the passage of this Act; and such filing of its assent, if done

within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said Act; *Provided,* That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act, nor shall said Act or this amendment be construed to entitle more than one company to a grant of land; *And Provided, Further,* That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre."

On or about the eighth day of June, A. D. 1869, said East Side Company, through its Board of Directors, adopted a resolution in the following terms:

"*Whereas,* The Congress of the United States, on the 25th day of July, 1866, passed an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and

"*Whereas,* Such Act provided that such company thereafter organized under the laws of Oregon, and designated by the Legislature of such State, should be entitled to receive and manage the said grant in Oregon, said Act further requiring that the company so organized and designated should, within one year from the date of its passage, (to-wit: July 25, 1866), file its assent in the Department of the Interior, and

"*Whereas,* No company was designated by such

Legislature within the year within which such an assent was required to be filed, and

"*Whereas,* The Legislature of the State of Oregon did, at its regular session in October, A. D. 1868, pass the following joint resolution, designating this company, (to-wit: 'The Oregon Central Railroad Company' of Salem, Oregon, a company duly incorporated and organized under the laws of the State of Oregon) as the company to take and manage such grant, and receive all the benefits of the same, in the State of Oregon;"

(Quoting in full said joint resolution, and which is hereinbefore set forth).

"*And Whereas,* The Congress of the United States did, in April, A. D. 1869, pass an Act amendatory of the said Act of July 25, 1866, extending the time in which the company designated might file its said assent, which Act was approved by the President of the United States, April 10, 1869, and is entitled 'An Act to amend an Act entitled an Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July 25th, 1866';

"*Therefore, Resolved,* That this company, the Oregon Central Railroad Company, of Salem, Oregon, incorporated at Salem, Oregon, April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said Act of July 25, A. D. 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in

California, to Portland, in Oregon,' and of all Acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent and the assent of such company thereto, and the Secretary of this company is hereby instructed to prepare a true copy of this resolution, certified to under the seal of the corporation, signed by himself as Secretary, and by the President of this company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City, D. C."

On or about the thirtieth day of June, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a certified copy of said resolution last herein set forth.

On or about the twenty-ninth day of October, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a map of survey and location of the first sixty miles of its projected line of railroad.

On the twenty-fourth day of December, A. D. 1869, said East Side Company completed the construction of the first twenty miles of its aforesaid line of railroad, commencing at the City of Portland, and on the thirty-first day of December, A. D. 1869, the same was examined and approved by commissioners appointed therefor pursuant to the provisions of section four of said Act of Congress approved July twenty-fifth, A. D. 1866.

Said West Side Company wholly failed to complete the construction of any part of its said line of railroad

pursuant to the terms and conditions of the aforesaid Acts of Congress; and on or about the month of January, A. D. 1870, said West Side Company acquiesced in the aforesaid substitution of said East Side Company as the recipient of the aforesaid grants, privileges and franchises, and abandoned and waived all claim thereto, and in lieu thereof, applied for, obtained and accepted a separate and similar grant of lands, franchises and other benefits, pertaining to its line of railroad projected as aforesaid, by Act of Congress approved May fourth, A. D. 1870, as hereinafter more particularly set forth.

By reason of the premises, no right, title or interest in or to any of the grants, franchises or other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by said West Side Company, or by, through or under it; or by said East Side Company, or by, through or under it, except by virtue of, and expressly subject to, all of the terms and conditions of said Act of Congress approved April tenth A. D. 1869.

In the meantime said East Side Company had become involved in litigation questioning the validity of its incorporation and organization and its right to use said corporate name. Because of the premises, the promoters, officers and stockholders of said East Side Company did, on or about the seventeenth day of March, A. D. 1870, organize the defendant *Oregon and California Railroad Company* under the general incorporation law of the State of Oregon. In that behalf certain articles of incorporation were, on said last mentioned date, exe-

cuted in triplicate and filed, one in the ofice of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon, (being the county in which the principal office of said corporation was located), and one in the office of the Secretary of said corporation, at the city of Portland, in said County of Multnomah.

The principal object of said corporation, as stated in its aforesaid articles of incorporation, was to become the successor of said East Side Company, and as such, to receive and exercise the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said articles of incorporation is hereto attached marked "Exhibit A" and made a part of this bill.

Pursuant to the premises, on or about the twenty-ninth day of March, A. D. 1870, said East Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said East Side Company, including the right, title and interest of said East Side Company in and to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, a copy of which said instrument is hereto attached, marked "Exhibit B," and made a part of this bill. Thereafter, and during the months of March and

April, A. D. 1870, said instrument last described was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts of Congress, but to constitute said defendant *Oregon and California Railroad Company* the sucessor of said East Side Company to construct, complete and equip the line of railroad aforesaid, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On said twenty-ninth day of March, A. D. 1870, said East Side Company, by action of its Board of Directors and its stockholders, became and was dissolved and since said last mentioned date, no corporate powers or franchises have ever been exercised by, or in the name of, said East Side Company.

On the fourth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company,* through its Board of Directors, adopted a resolution in terms as follows:

Whereas, This company has purchased and taken an assignment from the Oregon Central Railroad Com-

pany, of Salem, Oregon, incorporated April 22, 1867, of all the railroad franchises and other property of such corporation, including all the right, title, interest and claim, both legal and equitable, absolute and contingent, of such corporation, of, in and to the lands and all other benefits granted to the Oregon Company by an Act of Congress entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approvel July 25, 1866, and amendments thereto, therefore,

Resolved, That this company do accept the grant conferred by such Act of Congress, and all the benefits and emoluments therein or thereof granted, and upon the terms and conditions therein specified, and

Resolved, That the President and Secretary of this company be and they are hereby authorized and directed to file the assent of this company to such Act of Congress and amendments thereto, as aforesaid, in the office of the Secretary of the Interior, which shall be done by filing a copy of these resolutions in such office, certified to under seal of this company, and signed by the President and Secretary respectively.

Resolved Further, That a copy of the deed of assignment from said Oregon Central Railroad Company, certified to by the President and Secretary under the seal of this company, be also filed in such office of the Secretary of the Interior, and accompanying these resolutions."

On or about the twenty-eighth day of April, A. D.

1870, the defendant *Oregon and California Railroad Company* filed in the office of the Secretary of the Interior of the United States an authenticated copy of said last described resolution, and a certified copy of said instrument dated March twenty-ninth, A. D. 1870; and at all times thereafter said defendant *Oregon and California Railroad Company* has assumed and still assumes, to be the successor of said East Side Company and of all of its rights under said Acts of Congress, as aforesaid.

IV.

Having abandoned and waived all claim to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, as hereinbefore set forth, said West Side Company did importune the Congress of the United States to extend to it, in lieu thereof, a similar grant of lands, franchises and other benefits pertaining to its aforesaid projected line of railroad, known as the "West Side Line;" and thereafter, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, A. D. 1870, Congress in that behalf provided as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river, near McMinnville, in the State of Oregon, there is hereby granted

to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necesary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

SEC. 2. *And be it further enacted,* That the Commissioner of the General Land Office shall cause the lands along the line of said railroad to be surveyed with all convenient speed. And wherever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with

such located sections of road to be segregated from the public lands; and thereafter the remaining public lands subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands: *And provided, also,* That settlers under the provisions of the homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminous with the said completed sections.

SEC. 4. *And be it further enacted,* That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres

or a quarter section to any one settler, and at prices not exceeding Two Dollars and Fifty Cents per acre.

SEC. 5. *And be it further enacted,* That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side tracks, and wood yards, not exceeding Thirty Thousand Dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section.

SEC. 6. *And be it further enacted,* That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or

more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date."

By said words "Oregon Central Railroad Company," in said last mentioned Act of Congress, the Congress of the United States intended to, and did, refer to said West Side Company. The line of railroad prescribed in said last mentioned Act, extending from the city of Portland to McMinnville, by way of Forest Grove, is the identical line of railroad theretofore projected by said West Side Company, as aforesaid.

On or about the second day of July, A. D. 1870, said West Side Company, through its Board of Directors, adopted a resolution in terms assenting to, and accepting, all of the aforesaid provisions of said last mentioned Act of Congress, and on or about the twentieth day of July, A. D. 1870, an authenticated copy of said last described resolution was, by said West Side Company, filed in the office of the Secretary of the Interior of the United States.

On or about the fifteenth day of August, A. D. 1870, all of the so-called capital stock of said West Side Company was acquired by the then owners of the so-called capital stock of said defendant *Oregon and California Railroad Company,* and thereafter all of the so-called capital stock of both of said companies was held by a single interest, and the affairs of said two companies were conducted virtually as a single enterprise until the dissolution of said West Side Company, as hereinafter stated.

V.

All of the original capital stock of the defendant *Oregon and California Railroad Company,* and substantially all of the capital stock of said West Side Company, was issued without consideration, and, by reason of the premises, neither of said companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

By the issuance and negotiation or pledge of mortgage bonds and otherwise, approximately Eight Million Dollars was, during the year 1870, procured by said defendant *Oregon and California Railroad Company,* and approximately One Million Dollars was, during the year 1871, procured by said West Side Company; and, with the funds thus provided, the work of constructing the aforesaid lines of railroad respectively, was prosecuted until on or about the month of January, A. D. 1873. During said period of construction, said East Side Line was constructed and extended from said city of Portland to a point near Roseburg, a distance of approximately one hundred and ninety-seven (197) miles, (including said first section of twenty miles theretofore constructed), and said West Side Line was constructed and completed from said city of Portland to said McMinnville, by way of said Forest Grove, a distance of approximately forty-seven (47) miles.

On or about the said month of January, A. D. 1873, said funds became exhausted and both of said companies became bankrupt and insolvent, and because thereof, the

construction of both of said lines of railroad was abandoned; and, as to said East Side Line, was not resumed until the month of June, A. D. 1881, as hereinafter set forth; and, as to said West Side Line, was never resumed.

Because of the premises, on or about the twenty-fourth day of July, A. D. 1874, the direction and control of the financial affairs of said two companies were assumed and thereafter exercised by the then creditors thereof, organized under the name "Bondholders Committee." On or about the twenty-ninth day of February, A. D. 1876, all of the so-called capital stock of both of said companies was, for virtually a nominal consideration, acquired by said Bondholders Committee, and thereafter all of the affairs of said two companies were conducted by, and under the direction and control of, said Bondholders Committee.

On or about the sixth day October, A. D. 1880, for the purpose of merging said West Side Company into said defendant *Oregon and California Railroad Company*, and under the direction and influence of said Bondholders Committee, said West Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument, in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said West Side Company, including the right, title and interest of said West Side Company in and to the grants, franchises and other benefits of said Act of Congress approved May fourth, A. D.

1870; a copy of which said instrument is hereto attached marked "Exhibit C" and made a part of this bill.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by said Act of Congress approved May fourth, A. D. 1870, but to constitute said defendant *Oregon and California Railroad Company* the successor of said West Side Company to construct, complete and equip the line of railroad aforesaid, and particularly that part thereof extending from Forest Grove to Astoria, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On or about said sixth day of October A. D. 1880, said West Side Company, by action of its Board of Directors and its stockholders, became and was dissolved; and at all times thereafter said defendant *Oregon and California Railroad Company,* has assumed, and still assumes, to be the successor of said West Side Company, as aforesaid.

Substantially all transactions subsequent to said last mentioned date relate to and affect both of the aforesaid grants of land. Hereafter in this bill of complaint, for convenience, said grant of land created by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, will be described by the words "East Side Grant;" said grant of land created by said Act of Congress approved May fourth,

A. D. 1870, will be described by the words "West Side Grant;" and both of said grants will be described by the words "said land grants."

VI.

On or about the seventh day of May, A. D. 1881, the financial affairs of the defendant *Oregon and California Railroad Company* were adjusted in manner following: All of its former capital stock was, by action of its Board of Directors and its stockholders, canceled, for the reasons hereinbefore set forth; the amount of its capital stock was then established, and at all times since has remained, and still is, in the total sum of Nineteen Million Dollars ($19,000,000), composed of Twelve Million Dollars so-called preferred stock and Seven Million Dollars so-called common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of said new capital stock was then issued, and ever since has been, and still is, outstanding. By the issuance of said new capital stock, and by the use of a part of the proceeds of a new bond issue hereinafter referred to all of its then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same, were canceled and satisfied.

On or about the second day of June, A. D. 1881, the defendant *Oregon and California Railroad Company* executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of said preferred stock so-

called, a certain instrument, in writing, purporting to convey to said Trustees all of the lands of both of said land grants, in trust to secure to the owners of said preferred stock so-called, some pretended right or interest in or to said lands, and for certain other purposes, as more particularly appears in said instrument, a copy of which is hereto attached, marked "Exhibit D" and made a part of this bill.

Said deed of trust last described purports to convey, and purports to authorize said Trustees and their successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because thereof, and otherwise, said deed of trust was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

On or about the twenty-eighth day of June, A. D. 1881, said deed of trust was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 27 of Mortgages, at page 179; and thereafter, and at about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Thereafter such proceedings were had and action taken under the terms of said deed of trust, and by and with the consent and co-operation of the defendant

Oregon and California Railroad Company, that the defendant *Stephen T. Gage* became, and he now is, the sole surviving Trustee thereunder; and said defendant *Stephen T. Gage,* individually, and as Trustee as aforesaid, and the defendant *Southern Pacific Company* as the present owner of all of said preferred stock so-called, claim and assert some right, title, interest or lien in, to or upon said lands or some part thereof, under and by virtue of said deed of trust; but because of the premises, neither of said defendants has any right, title, interest or lien in, to or upon any part of said lands.

By the issuance and negotiation of two separate issues of its corporate bonds, bearing date June first, A. D. 1881, and May twenty-sixth, A. D. 1883, respectively (known and described as "First Mortgage Bonds" and "Second Mortgage Bonds" respectively), the defendant *Oregon and California Railroad Company* did provide further construction funds aggregating approximately Five Million Dollars, and on or about the month of June, A. D. 1881, the work of constructing said East Side Line was resumed, and thereafter was continued until on or about the month of January, A. D. 1884. During said last mentioned period of construction, said East Side Line was constructed and extended from said Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately one hundred and forty-five (145) miles.

On or about the said month of January, A. D. 1884, said last mentioned construction funds became exhausted,

the defendant *Oregon and California Railroad Company* again became bankrupt and insolvent, and the work of construction was again abandoned, and was not resumed until the month of April, A. D. 1887, as hereinafter set forth.

On or about the nineteenth day of January, A. D. 1885, said First and Second Mortgage Bonds being still outstanding, in a suit then instituted and pending in the Circuit Court of the United States for the District of Oregon, wherein certain of the holders of said First Mortgage Bonds were plaintiffs, and said defendant *Oregon and California Railroad Company* and others were defendants, the railroad lines and other property of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver then and there appointed therefor by said Court.

On or about the twelfth day of May, A. D. 1887, and during the pendency of said receivership, the defendant *Southern Pacific Company* acquired, and thereafter exercised ownership and control of said defendant Oregon *and California Railroad Company,* as hereinafter more specifically set forth; and, subsequently, under the direction and influence of said defendant *Southern Pacific Company,* certain breaches and violations of the terms and conditions of said land grants respectively hereinafter complained of were committed.

And to the end that Your Honors may be further advised in the premises, and particularly concerning the nature and purpose of the several negotiations and transactions pertaining to, and resulting in, the absorption

of the defendant *Oregon and California Railroad Company* by the defendant *Southern Pacific Company* (in paragraph VII hereof, set forth), your Orator says, that on and prior to said twelfth day of May, A. D. 1887, the general status of said land grants was as follows, to wit:

Under said East Side grant, during the years 1871 to 1877 inclusive, patents for approximately 323,000 acres of land (being lands contiguous to the first 125 miles of said East Side Line), were applied for by, and issued to, the defendant *Oregon and California Railroad Company* as the successor of said East Side Company; except as aforesaid, no patents under said East Side grant were issued until the year 1893.

Under said West Side grant, no patents were ever issued prior to the year 1895.

The total length of said East Side Line is approximately 367 miles; with the exception of the northerly 197 miles thereof, no part of said East Side Line was constructed within the times prescribed by the terms of said East Side grant; and on said twelfth day of May, A. D. 1887, the southerly portion thereof, extending from Ashland to the southern boundary line of the State of Oregon, still remained unconstructed. Of the West Side Line, that part thereof extending from Forest Grove to Astoria, was never constructed, and because of the premises, the aforesaid granted lands contiguous to said unconstructed portion, were, by Act of Congress approved January thirty-first, A. D. 1885, entitled, "An Act to declare forfeiture of certain lands granted to aid

in the construction of a railroad in Oregon," forfeited to, and the ownership thereof resumed by, the United States of America.

Of the aforesaid granted lands, approximately 250,000 acres had been sold prior to said twelfth day of May, A. D. 1887; and your Orator is informed and believes, and therefore states, that nearly all of the lands so disposed of were sold to actual settlers, and in small quantities, although in many instances in quantities and for prices slightly in excess of the aforesaid limitations prescribed by said land grants respectively.

VII.

On or about the month of January, A. D. 1885, a certain railroad syndicate known as the "Southern Pacific System," controlling substantially all railroad lines in the southwestern part of the United States, and particularly on the Pacific Coast south of the State of Oregon, including the Central Pacific Railroad Company (which had theretofore become the successor to the grants, franchises and other benefits in the *State of California,* under said Act of Congress approved July twenty-fifth, A. D. 1866), organized, under the general incorporation law of the State of Kentucky, the defendant *Southern Pacific Company,* as a general holding company for said syndicate; and, on or about the month of March, A. D. 1885, said defendant *Southern Pacific Company* acquired, and ever since has exercised, a controlling interest in each of the corporations constituting said Southern Pacific System; and, at about the same

time, became, and ever since has been, the lessee of each of said corporations, whereby it came into possession of, and at all times thereafter has operated, all of said railroad lines.

Several of the constituent companies of said Southern Pacific System held lands granted by the United States in aid of the construction of their respective lines of railroad, aggregating many millions of acres. Shortly after its organization, the defendant *Southern Pacific Company* established a general land department, with offices at the city of San Francisco, in the State of California, under the charge of a certain officer known as its land agent, and thereupon assumed, and thereafter exercised, through its said land agent, control over the handling and disposing of all of the lands of its constituent companies.

Shortly after the affairs of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver, as hereinbefore set forth, said defendant *Southern Pacific Company,* designing to extend its aforesaid railroad system and its aforesaid land holdings by acquiring ownership and control of the defendant *Oregon and California Railroad Company,* in that behalf entered into negotiations with said defendant *Oregon and California Railroad Company* and the bondholders and stockholders thereof and certain other parties hereinafter named; and, for the purpose thereof, the stockholders of said defendant *Oregon and California Railroad Company* became and were organized under the name "Stockholders Committee," certain of

the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee," and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee," said Bondholders Committees representing the owners of substantially all of the aforesaid First and Second Mortgage Bonds of said company.

On or about the twenty-eighth day of March, A. D. 1887, a certain contract in writing was entered into by and between said defendant *Southern Pacific Company,* said defendant *Oregon and California Railroad Company,* the defendant *Union Trust Company,* said Stockholders Committee, said London Bondholders Committee, said Frankfort Bondholders Committee, and the Pacific Improvement Company (a corporation organized as hereinafter set forth), a copy of all of the terms of which contract is hereto attached marked "Exhibit E" and made a part of this bill.

By virtue of said last described contract, all of the corporate securities of the defendant *Oregon and California Railroad Company* were acquired by the defendant *Southern Pacific Company,* as hereinafter set forth; and the general purpose and effect of said contract were such that said defendant *Oregon and California Railroad Company* (together with its said lines of railroad), was absorbed by, and merged into, said Southern Pacific System, and the independent corporate existence thereof virtually ceased. But it manifestly appears from the subsequent conduct of said defendant *Southern Pacific*

Company, and your Orator charges and states, that at the time of the negotiation and execution of said last described contract, it was the purpose and design of said defendant *Southern Pacific Company* to secure control of the aforesaid land grants, and to divert the same from the aforesaid lawful uses and purposes thereof, to the exclusive use, benefit and enrichment of said defendant *Southern Pacific Company*; and to that end, said last described contract was, by the parties thereto, so conditioned, and the conditions, options and provisions thereof were so exercised and performed, that said defendant *Southern Pacific Company* did thereafter maintain said defendant *Oregon and California Railroad Company* a corporation in name and form only, as a mere instrumentality and device, to accomplish, and at the same time to conceal its aforesaid purpose and design, and in that behalf to obtain and dispose of said lands in the name of, and under the guise and pretense of the administration and exercise of the aforesaid land grants by, the defendant *Oregon and California Railroad Company*; and to that end, certain proceedings were had and transactions entered into, including that certain contract of lease and that certain mortgage deed hereinafter set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the twelfth day of May, A. D. 1887, all of the capital stock and all of said Second Mortgage Bonds of said defendant *Oregon and California Railroad Company* were transferred, assigned and delivered to said Pacific Improvement

Company; and all of said First Mortgage Bonds were transferred, assigned and delivered to the defendant *Southern Pacific Company.*

During all the times mentioned in this bill as to it, said Pacific Improvement Company was a corporation organized and existing under the laws of the State of California, and wholly owned, controlled and directed by the owners of a majority of the capital stock of the defendant *Southern Pacific Company.* The defendant *Southern Pacific Company* was the actual purchaser of said capital stock and said Second Mortgage Bonds, and paid all the purchase price therefor, and said Pacific Improvement Company never had any beneficial interest therein; but, under the direction and influence of said defendant *Southern Pacific Company,* said Pacific Improvement Company was made a nominal party to said contract of March twenty-eighth, A. D. 1887, for the purpose of concealing the true facts in the premises.

Said Pacific Improvement Company held said capital stock of the defendant *Oregon and California Railroad Company* for the use and benefit of the defendant *Southern Pacific Company,* until on or about the ninth day of April, A. D. 1901, and on or about said last mentioned date, all of said capital stock was transferred to the defendant *Southern Pacific Company,* which, at all times thereafter, has been, and still is, the owner and holder thereof. At all times since said twelfth day of May, A. D. 1887, the defendant *Southern Pacific Company* has controlled and directed the election of directors and officers of said defendant *Oregon and Cali-*

fornia Railroad Company, and has directed and controlled the management and conduct and all of the corporate acts of said defendant *Oregon and California Railroad Company*, including all transactions and proceedings in this bill set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the third day of January, A. D. 1888, the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a certain contract of lease in writing, bearing date the first day of July, A. D. 1887, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of forty years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit F," and made a part of this bill; which said contract of lease remained in full force and effect until on or about the first day of August, A. D. 1893, upon which last named date the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a further contract of lease in writing, bearing date the first day of August, A. D. 1893, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of thirty-four years, upon certain terms and conditions, all of which more specifically

appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit G," and made a part of this bill; which said last described contract of lease at all times since said first day of August, A. D. 1893, has been, and still is, in full force and effect. Pursuant to said contracts of lease, the defendant *Southern Pacific Company* did, on or about the sixth day of June, A. D. 1888, enter into possession of all of the property leased as aforesaid, and at all times thereafter has been, and still is, in full possession thereof, and engaged in the operation of said lines of railroad, and during all of said times has enjoyed, and still is enjoying, all of the benefits and profits thereof.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, and under the direction and influence of the defendant *Southern Pacific Company,* on or about the third day of January, A. D. 1888, the defendant *Oregon and California Railroad Company* executed and delivered to the defendant *Union Trust Company* a certain instrument in writing, bearing date of July first, A. D. 1887, purporting to mortgage and convey in trust to the defendant *Union Trust Company, certain* of the property of the defendant *Oregon and California Railroad Company,* for certain purposes, and upon certain terms and conditions therein expressed, and, among others, to secure the payment of certain bonds thereafter to be issued and negotiated in the name of said defendant *Oregon and California Railroad Company,* a copy of which said instrument is hereto attached, marked "Exhibit H," and made a part of this

bill.

By that certain provision of said instrument last described, to wit:

"And all the property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon and California Railroad Company,"

reference was had, and intended to be had, to a certain deed of trust, executed by said defendant *Oregon and California Railroad Company* to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, bearing date June first, A. D. 1881, a copy of which is hereto attached, marked "Exhibit I," and made a part of this bill.

On or about the eighteenth day of January, A. D. 1888, said mortgage deed bearing date July first, A. D. 1887, was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 63 of Mortgages, at page 437; and thereafter, and about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Pursuant to the premises, the defendant *Oregon and California Railroad Company* did execute, and the defendants *Southern Pacific Company* and *Union Trust Company* did negotiate and deliver, certain of the bonds provided for by said mortgage deed bearing date July first, A. D. 1887, said bonds bearing even date there-

with, of which approximately Seventeen Million, Five Hundred Thousand Dollars ($17,500,000) in amount are still outstanding, the exact amount whereof is to your Orator unknown. All of said bonds inured to the exclusive benefit of the defendant *Southern Pacific Company* and were used by the defendant *Southern Pacific Company* to purchase the securities of the defendant *Oregon and California Railroad Company,* as aforesaid, and to complete the construction of, and improve, the lines of railroad leased by it as aforesaid. By reason of the premises, said bonds in fact represent and constitute the indebtedness of the defendant *Southern Pacific Company*; and the payment of all of said bonds, both as to principal and interest, was and is, by endorsement thereon in writing, guaranteed by the defendant *Southern Pacific Company.*

In so far as said mortgage deed bearing date July first, A. D. 1887, relates to any of said granted lands, if at all, it purports to convey, and purports to authorize the defendant *Union Trust Company* and its successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because of the premises in this bill set forth, said mortgage deed was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

The defendant *Union Trust Company,* individually,

and as Trustee for the holders and owners of said bonds, claims some right, title, interest or lien, in, to or upon some of said granted lands, under and by virtue of said mortgage deed bearing date July first, A. D. 1887; but because of the premises, the defendant Union Trust Company has no right, title, interest or lien, in, to or upon any of said lands, either in its own behalf, or as Trustee as aforesaid.

In the meantime and during the year 1887 (commencing in the month of April and ending in the month of December), the last section of said East Side Line, extending from Ashland aforesaid to the southern boundary line of the State of Oregon, was constructed by said Pacific Improvement Company, under some form of contract with the defendant *Southern Pacific Company*, the particulars whereof are to your Orator unknown; but, in furtherance of its aforesaid purpose and design, on or about the sixth day of June, A. D. 1887, the defendant *Southern Pacific Company* did instigate and cause the defendant *Oregon and California Railroad Company* and said Pacific Improvement Company to enter into a certain contract, by the terms of which the defendant *Oregon and California Railroad Company* agreed to pay for said work of construction in its said bonds thereafter to be issued and guaranteed by the defendant *Southern Pacific Company*, as hereinbefore set forth. And your Orator says that in truth and in fact, at the time of the execution of said contract of June sixth, A. D. 1887, a large part of said work of construction had been performed under some prior

contract, as hereinbefore set forth.

On or about the sixth day of June, A. D. 1888, the aforesaid receivership proceedings were dismissed and said Receiver was discharged; all of said First Mortgage Bonds and said Second Mortgage Bonds (not including said issue of bonds dated July 1st, A. D. 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; and thereupon the defendant *Southern Pacific Company* entered into possession of all of the property of the defendant *Oregon and California Railroad Company* pursuant to the terms of said contract of lease, as hereinbefore set forth.

VIII.

Immediately after said sixth day of June, A. D. 1888, the defendant *Southern Pacific Company,* through its aforesaid land department, assumed, and at all times thereafter has exercised, absolute control over the disposition and sale of the aforesaid granted lands of the defendant *Oregon and California Railroad Company*; conducting all business, however, in the name of the latter company.

Until about the year 1893, there was no marked change in the manner of the disposition of said lands, but, in the meantime, and under the direction and influence of the defendant *Southern Pacific Company,* preparations were made for the future exploitation of said land grants, to wit:

On or about the month of June, A. D. 1888, a large force of timber cruisers and land examiners was organ-

ized and thereafter was kept employed until all of said lands had been examined and appraised and prices fixed thereon without regard to the aforesaid limitations prescribed by said land grants; and your Orator says, that as to at least eighty per cent (80%) of all of said granted lands, the first sale price fixed thereon and the lowest price for which the same were ever offered for sale was greatly in excess of the sum of Two Dollars and Fifty Cents per acre.

During the years 1891 and 1892, anticipating and seeking to evade responsibility for the contemplated violations of the terms and conditions of said grants, and under the direction and influence of the defendant *Southern Pacific Company,* the defendant *Oregon and California Railroad Company* and the defendant *Union Trust Company* adopted quit-claim form of contracts and conveyances for use in making sales of said lands, and thereafter refused to contract for, or give, any other form of conveyance, except in cases where, by prior contracts, the defendant *Oregon and California Railroad Company* had obligated itself to do otherwise.

Commencing with about the year 1891, patents were rapidly applied for and obtained, the amount patented under said East Side grant, commencing with the year 1893, aggregating approximately 2,450,000 acres, and the amount patented under said West Side grant, commencing with about the year 1895, aggregating approximately 128,000 acres, being the only patents ever applied for or issued under said West Side grant. No patents have been issued since the year 1906, under either

of said land grants, for reasons hereinafter explained.

In the meantime, the defendant *Southern Pacific Company* was engaged in developing a market and demand for said lands among wealthy land speculators and timber men, aided in that behalf by its well-equipped organization therefor, and by an extensive acquaintance previously established by said land department in the sale and disposition of its other land holdings hereinbefore mentioned. A sudden and rapidly increasing demand for said lands in large quantities and at rapidly increasing prices, was developed, commencing with about the year 1894.

Taking advantage of the opportunity to violate the terms and conditions of said land grants, promoted and developed as aforesaid, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company,* from about the year 1894 until about January first, A. D. 1903, sold and disposed of said granted lands in manner and upon terms in violation and breach of the aforesaid terms and conditions of said land grants respectively, and with the sole object of securing the greatest possible financial benefit therefrom; and in that behalf a large quantity of said lands was sold to speculators and others than actual settlers, and for speculation and purposes other than actual settlement, and in quantities greatly in excess of one-quarter section to one purchaser, to wit: in quantities from one thousand to forty-five thousand acres to a single purchaser, and for prices greatly in excess of $2.50 per acre, to wit: for prices from $5 to

$40 per acre.

Of said granted lands the defendant *Oregon and California Railroad Company* (in manner aforesaid) has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres, that is to say:

	Sales.	*Acres.*
Sales in quantities not exceeding one-quarter section	4930	296,000
Sales in quantities exceeding one-quarter section	376	524,000

Substantially all of said 524,000 acres sold in quantities exceeding a quarter section to one purchaser as aforesaid (and a considerable portion of said other lands sold as aforesaid), were sold to speculators and others than actual settlers and for the purpose of speculation and not for the purpose of settlement and for prices greatly in excess of two dollars and fifty cents per acre. And of said 524,000 acres sold in quantities exceeding one-quarter section to one purchaser as aforesaid, approximately 478,000 acres (or about 90 per cent thereof) were sold or conveyed since the year 1897; and of said 478,000 acres, approximately 370,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

Nearly all sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment. And although sales were suspended on or about January first, A. D. 1903, as hereinafter stated, many contracts of sale were then pending, as to which

the installments falling due have been collected and conveyances executed from time to time down to and including the present, and many of such contracts are still pending.

Of the total sales made as aforesaid, approximately 4,476 have been fully executed and conveyances given aggregating approximately 646,000 acres; and approximately 880 executory contracts are still pending, aggregating approximately 174,000 acres.

For the more specific information of Your Honors, your Orator has prepared a schedule setting forth all said conveyances heretofore made and all said pending contracts, stated separately as to each of said land grants, which schedule is hereto attached, marked "Exhibit J," and made a part of this bill. In said schedule, conveyances are appropriately classified by years, and also according to quantity of land conveyed and purchase price; pending contracts are classified according to quantity of land sold. Your Orator is not informed as to the exact time said pending contracts were negotiated or executed or as to the exact purchase price thereof; but your Orator is informed and believes and therefore states, that all of said pending contracts were negotiated and entered into since the first day of January, A. D. 1898, and prior to the first day of January, A. D. 1908, and that the average purchase price thereof is approximately Ten Dollars per acre. Said schedule (Exhibit J) was compiled on the first day of July, A. D. 1908, but no subsequent transactions affect the matters therein stated, except that a few of said pending contracts have

since said compilation matured and merged into final conveyances.

As to the statements contained herein (including said Exhibit J) concerning the number of sales, quantity of land sold, and the purchase price thereof, transactions consisting of executory contracts of sale, which were rescinded or cancelled for any reason, and which therefore neither merged into deeds nor constitute pending contracts at the present time, are not included in any of said computations. Transactions relating to that part of said West Side grant which was forfeited to your Orator, as aforesaid, are not included in said computations.

Except as otherwise specifically stated, all statements in this bill concerning the manner of selling and disposing of said lands, apply to each of said land grants.

As between the parties thereto, said mortgage deed bearing date July first, A. D. 1887, to the defendant *Union Trust Company,* has been treated as a lien upon all of said granted lands which remained unsold on the twelfth day of May, A. D. 1887. As to all lands of the last described class which have been sold since said twelfth day of May, A. D. 1887, the defendant *Union Trust Company* has received substantially all of the purchase price, and has joined in the execution of all conveyances. The exact amount thus received by the defendant *Union Trust Company,* and the specific application thereof, are to your Orator unknown; but your Orator says that the proceeds of all sales made since said twelfth

day of May, A. D. 1887, have inured to the exclusive benefit of the defendant *Southern Pacific Company,* by application in payment of the aforesaid bonds guaranteed by the defendant *Southern Pacific Company,* or otherwise.

IX.

In the month of October, A. D. 1901, the defendant *Southern Pacific Company,* with all of its constituent lines, became merged into that certain railroad system known as the "Harriman Lines," which said railroad system at all times thereafter has held a monopoly of railroad transportation affecting a large part of the United States, and particularly in the State of Oregon, south of Portland.

Thereupon a land department was organized and established at the city of San Francisco, to handle, exploit and manipulate all of the lands of the constituent companies of said Harriman Lines, including the aforesaid land grants of the defendant *Oregon and California Railroad Company.* All transactions concerning the last named land grants were conducted as before in the name of the defendant *Oregon and California Railroad Company.* Sales were continued as before until on or about January first, A. D. 1903.

On said first day of January, A. D. 1903, there remained unsold of said granted lands approximately 2,373,000 acres, consisting of approximately 2,080,000 acres which have been heretofore patented under said land grants, and approximately 293,000 acres of unpat-

ented lands which are now claimed by the defendant *Oregon and California Railroad Company* under and by virtue of said land grants. Said lands remaining unsold as aforesaid will hereinafter be described by the words "said unsold lands."

Approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute nearly one-half, in alternate sections, of all lands within approximately forty miles of said line of railroad from Eugene to the southerly boundary line of the State of Oregon, only a small portion of said granted lands in that part of the East Side grant having ever been sold. The territory in which said unsold lands are situated was and is wholly dependent for railroad transportation on the railroad lines of the defendant *Oregon and California Railroad Company,* now operated by the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines as aforesaid.

Since said first day of January, A. D. 1903, and particularly during the last preceding two years, certain persons exceeding one thousand in number have severally applied to the defendant *Oregon and California Railroad Company* to purchase certain of said unsold lands in quantities not exceeding one hundred and sixty acres, or a quarter section to each one of them, said applicants to purchase intending and desiring to purchase said lands so applied for by them respectively for the purpose of actually settling thereupon and making a permanent home thereof, and several of said applicants to purchase having actually settled and established a permanent

home upon the land so applied for by them respectively; and at the time of said applications to purchase each of said applicants did tender to the defendant *Oregon and California Railroad Company* the sum of Two Dollars and Fifty Cents for each acre of the lands so applied for as the purchase price thereof.

And in addition to the said applicants to purchase, a large number of persons are ready and willing to settle upon said lands, and to purchase the same for the purpose of actual settlement thereupon and of making a permanent home thereof, in quantities, for the price, and upon terms as prescribed by said land grants respectively, but are deterred therefrom by the defendant *Oregon and California Railroad Company,* as hereinafter stated.

Notwithstanding the premises, and in violation and breach of the aforesaid terms and conditions of said land grants respectively, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines, on or about the first day of January, A. D. 1903, withdrew from sale all of said unsold lands, and at all times thereafter has refused, and still refuses, to sell any part thereof to actual settlers or for purposes of actual settlement, or in quantities or for prices as prescribed by the terms of said land grants respectively, or at all; and particularly has at all times refused, and still does refuse, to entertain any of the aforesaid applications to purchase, or to sell any of the lands applied for as aforesaid, to the persons aforesaid, upon the terms aforesaid, or upon any

terms whatsoever. And ever since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has not only failed and neglected to encourage or promote the settlement of said lands, or the purchase thereof by actual settlers, or for the purpose of actual settlement, but by divers means and methods has at all times discouraged, obstructed, forbidden and prevented the settlement of said lands or any part thereof, and the purchase thereof or any part thereof, upon the terms prescribed by said land grants, or otherwise, by actual settlers or for the purpose of actual settlement.

Since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and has attempted, and still does attempt, to convert its aforesaid conditional estate into an unconditional estate, in violation and breach of the aforesaid terms and conditions of said land grants. And by reason of the aforesaid nominal corporate character of the defendant *Oregon and California Railroad Company*, and the further premises herein set forth, the unconditional estate so asserted in its name has inured to the benefit of, and has been exercised by, the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines. The practical effect of the premises is the same as if all of said unsold lands had been conveyed to the defendant *Southern Pacific Company* for the use and benefit of said railroad syndicate.

By reason of the premises, and in violation of the express terms and conditions as well as the plain intendment of said land grants respectively, all of said unsold lands, and the full value thereof, have been converted to the use and benefit of the defendant *Southern Pacific Company,* as one of the constituent companies of the said Harriman Lines; and a virtual land monopoly has been created, and ever since said first day of January, A. D. 1903, has been maintained, and hereafter will be maintained, for the selfish uses and purposes of the defendant *Southern Pacific Company* and said railroad syndicate, enabling said railroad syndicate, among other things, to control and restrict commercial and industrial development of the territory tributary to said line of railroad, and thereby prevent the construction and establishment of competing railroad lines, which would naturally be attracted by the increase in production that would attend a normal and unrestricted development of industrial and commercial resources, if said granted lands should be sold to actual settlers and for the purpose of actual settlement pursuant to the terms and conditions of said land grants.

And your Orator says, that because of the premises, the industrial and commercial development of those portions of the State of Oregon wherein are situated said unsold lands, has been, and will continue to be, seriously retarded if not completely checked.

Except as otherwise specifically stated, all statements herein contained concerning the withdrawal of said lands from sale, the circumstances, purposes and

effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purpose of actual settlement, and the conduct of the defendant *Oregon and California Railroad Company* in relation thereto, apply to each of said land grants.

A schedule of all of said unsold lands which have heretofore been patented, described by governmental subdivision, tabulated by counties, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit K," and made a part of this bill. Said schedule has been prepared from the annual return of said lands for purposes of taxation, made by the defendant *Oregon and California Railroad Company* to the County Assessors of the several counties in which said lands are situated; said annual tax returns purport to contain all of said granted lands which have been heretofore patented and which remain unsold, and your Orator is informed and believes, and therefore states, that the same is correct, but concerning which a full discovery is desired herein. Your Orator is unable to set forth with particularity the unpatented lands claimed as aforesaid, as to which, therefore, a full discovery is desired.

None of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, and seeking to purchase the same, as hereinbefore, and hereinafter stated. The reasonable present value of said unsold lands exceeds the sum of $40,000,000.

None of said unsold lands now are, or ever were,

necessary to reserve for depots, stations, side tracks, wood sheds, standing ground, or any other needful uses in operating any of said railroad lines or any part thereof, and no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes.

X.

In addition to the purchase price received from the aforesaid sales of said lands, the defendant *Oregon and California Railroad Company* has received and enjoyed certain other benefits on account of said granted lands, to wit:

A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments falling due thereon, and the installments previously paid have been retained. Your Orator is not advised as to the exact amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of One Hundred Thousand Dollars ($100,000). A full discovery in the premises is hereby sought.

A considerable portion of said lands has, from time to time, been leased for certain rentals paid therefor to the defendant *Oregon and California Railroad Company*. Your Orator is not advised as to the amount realized in this manner and a full discovery in the premises is hereby sought.

The defendant *Oregon and California Railroad Company* has cut and used large quantities of timber grow-

ing upon said lands, and has also sold large quantities of said timber, receiving the consideration therefor. Your Orator is not advised as to the amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of Two Hundred Thousand Dollars ($200,000). A full discovery in the premises is hereby sought.

And in divers other ways the defendant *Oregon and California Railroad Company* has received and enjoyed financial benefits on account of said granted lands, the particulars concerning which are unknown to your Orator, and a full discovery in the premises is hereby sought.

XI.

The defendant *Oregon and California Railroad Company* has repeatedly threatened, and still threatens to, and will, unless restrained therefrom, sell, contract for sale, convey, or in some manner encumber or impair the title of, said unsold lands or some part thereof, in violation of the terms and conditions of said land grants respectively; and the defendant *Oregon and California Railroad Company* has heretofore cut large quantities of the timber growing upon said unsold lands and has otherwise committed waste thereupon, and by contract and otherwise, has permitted and invited others so to do; and the defendant *Oregon and California Railroad Company* threatens to, and will, unless restrained therefrom by this Court, continue to commit waste upon said unsold lands and particularly as to the timber and other natural products thereof, and will continue to permit, contract

for and invite others so to do, to the great and irreparable injury of your Orator in the premises.

XII.

Until the year 1894 there was substantially no demand for said granted lands, except for the purpose of settlement and by persons of limited means able to purchase said lands only in small quantities and at reasonable prices, and nearly all sales were of that character. During a large part of said period, the defendant *Oregon and California Railroad Company* maintained an immigration bureau, engaged in inducing immigration and settlement upon said lands, and ostensibly was not otherwise engaged in soliciting or promoting sales. By reason of the premises, the occasional violations of the terms and conditions of said land grants occurring during said period, were concealed and were generally unknown, until ascertained by your Orator as hereinafter stated.

As hereinbefore set forth, a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators and timber men, promoted and developed as aforesaid; and the greater part of the substantial wrongs and violations herein complained of were committed subsequent to that time. But your Orator says that nearly all of the sales consummated after that time were made by executory contracts of sale, which were not placed of record, and which did not merge into deeds for many years thereafter, and a considerable portion of which are still pending. Many of the conveyan-

ces for excessive quantities of said lands were not placed of record until recently, and many are still unrecorded. In many instances of sales in excessive quantities, the lands were attempterd to be conveyed by several deeds, each of which was for a small quantity of land, whereby the true facts were concealed.

On or about the first day of January, A. D. 1903, all of said unsold lands were withdrawn from sale, and thereafter converted to certain wrongful and unlawful uses and purposes, as hereinbefore set forth. But, designing to conceal the premises from your Orator and the general public, the defendant *Oregon and California Railroad Company* has, from time to time, falsely and deceitfully represented that said lands were withdrawn from sale for divers temporary reasons, and with the intention of resuming the sale thereof. An alleged confusion of the records of said land department, the alleged destruction of said records during the San Francisco fire, and other similar excuses were successively used to conceal the true character of said transaction.

XIII.

By reason of the premises, the several wrongful and unlawful transactions in this bill complained of, were concealed from, and wholly unknown to, your Orator, until ascertained as hereinafter stated. On or about the 14th day of February, A. D. 1907, because of the great injury inflicted upon commercial and industrial conditions as aforesaid, and it having become manifest that the several aforesaid representations concerning the

withdrawal of said lands from sale were false, the Legislature of the State of Oregon adopted and communicated to your Orator a certain memorial charging in general terms, the true facts in the premises (a copy of which memorial is hereto attached, marked "Exhibit L," and made a part of this bill); whereupon the further issuance of patents was suspended, and an investigation of the subject was instituted by your Orator, through its Attorney General, which investigation was concluded on or about the month of January, A. D. 1908. Thereupon the subject was presented to the Congress of the United States, and thereafter, by Joint Resolution, approved April thirtieth, A. D. 1908, Congress did provide as follows:

"That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, Eighteen Hundred and Sixty-Six, as amended by the Acts approved June twenty-fifth, Eighteen Hundred and Sixty-Eight, and April tenth, Eighteen Hundred and Sixty-Nine; * * * * *' Also 'An Act granting lands to aid in the construction of a

railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

Pursuant to the provisions of said last mentioned Joint Resolution of Congress, this suit is instituted.

XIV.

By reason of the several aforesaid breaches and violations of the aforesaid terms, conditions and provisions of said land grants respectively, certain of said granted lands and certain estates in certain of said granted lands have been, and are, forfeited to your Orator, the United States of America, free from any and all right, title, interest, lien or claim of the defendants herein, or either or any of them or any one claiming by, through or under them or either or any of them. Among the lands and estates in lands so forfeited to your Orator, are to wit:

(1) All of said unsold lands;

(2) Any and all right, title and interest of any kind or nature whatsoever, vested, contingent or expectant, if any, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either of said land grants respectively.

Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your Orator does hereby assert title to, and does hereby resume the title of, all of said lands and estates in lands forfeited to your Orator as aforesaid.

In addition to the lands and estates in lands above specified, certain of said granted lands which have been heretofore sold in violation of the terms and conditions of said land grants, and certain estates therein, likewise have been and are forfeited to your Orator, but are not included in this suit, for reasons following, to wit:

The lands disposed of in violation of the terms and

conditions of said land grants respectively, as aforesaid, were sold, contracted for sale, or conveyed to a large number of purchasers. Including alleged rights of succession by purchase, conveyance, mortgage, descent, devise and otherwise, more than three thousand (3,000) persons, firms and corporations residing in divers parts of the United States and other parts of the world, now assert some right, title, interest or lien in, to or upon the lands sold, contracted for sale and conveyed in violation of the terms and conditions of said land grants respectively, as aforesaid. The names and places of residence of only a few of said persons, firms and corporations are as yet known to your Orator, and because of the multiplicity and complexity of said transactions, your Orator will be unable to ascertain them in time to include said parties in this suit. Said lands were sold and purchased as aforesaid, and alleged subsequent rights have been acquired therein, under greatly varying circumstances and conditions, and because of the premises, it would be inequitable to attempt to secure an adjudication of the rights of all of said parties by making only a few of them parties defendant as representatives of all thereof. To require the making of all of said persons, firms and corporations parties to this suit, or to otherwise require an adjudication herein of their respective rights in the premises, would indefinitely postpone and ultimately defeat the rights, equities and remedies of your Orator pertaining to said unsold lands, as to which the public interests require a speedy and complete adjudication and enforcement.

Therefore, to the end that justice and equity may be suitably administered in the premises, your Orator institutes this suit for the purpose of obtaining without unnecessary delay, an adjudication and enforcement of the rights, equities and remedies of your Orator against the defendants herein, pertaining to said unsold lands, and otherwise, as more specifically appears in the prayer of this bill; and hereafter, and as soon as your Orator shall be sufficiently advised in the premises, separate and further suits will be instituted for the purpose of asserting and enforcing the rights, equities and remedies now or at any time hereafter existing in favor of your Orator (and not adjudicated or enforced herein) pertaining to any of said granted lands sold or conveyed as aforesaid, or any part thereof, or in any manner arising or growing out of any and all sales and conveyances of said granted lands in violation of any of the terms or conditions of said land grants respectively.

XV.

The property described in said mortgage deed bearing date July first, A. D. 1887 (not including any of said granted lands), is of a value largely in excess of the amount of all of said bonded indebtedness purported to be secured by said mortgage deed, and is ample security therefor; your Orator, however, expressly denies that any of said granted lands are included in the property described in said mortgage deed, or that the defendant *Union Trust Company,* as trustee or otherwise, or any other person, firm, association or corporation has any

right, title, interest or lien in, to or upon any of said lands by virtue of said mortgage deed.

XVI.

Pursuant to the rules and regulations of the Department of the Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant *Oregon and California Railroad Company*, as the successor of said East Side Company and said West Side Company respectively, which said applications contained descriptive lists of the lands so claimed and for which patents were so applied for; and each of which said applications was accompanied and supported by a certain affidavit in writing signed and sworn to by a certain agent of the defendant *Oregon and California Railroad Company* thereto duly authorized, to the effect, among other things, that all of the lands so claimed and for which patents were so applied for, were of the character contemplated by the grant under which they were claimed and for which patents were applied for as aforesaid; and believing and relying upon the statements contained in said applications and said affidavits, your Orator issued said patents.

XVII.

In making sales of said lands as aforesaid, the defendant *Oregon and California Railroad Company* has, in and by its contracts and conveyances relating thereto,

and particularly prior to the sixth day of June, A. D. 1898, made certain valuable reservations unto itself, as follows:

"Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon & California Railroad Company for right of way and other purposes, when the railroad of said Oregon & California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises, so much and such parts thereof as may be mineral lands, other than coal and iron."

All of which said reservations, being in effect the creation of permanent estates in its own favor in and to a large part of said granted lands in violation and breach of the aforesaid terms and conditions of said land grants respectively, were and are null and void. But, notwithstanding the premises, the defendant *Oregon and California Railroad Company* and each of the other defendants herein, claims some inchoate right, title or interest, in and to the lands sold as last aforesaid, under and by virtue of said reservations, concerning which a full discovery is hereby sought; and such right, title and interest, if any (which is denied), were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XVIII.

In addition to the several claims of the defendants in this bill specifically mentioned, the defendants and each of them claim some right, title, interest or lien in, to or upon some or all of said granted lands, the particulars whereof are to your Orator unknown, concerning which a full discovery is hereby sought; and any and all such rights, titles, interests or liens, if any, were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XIX.

A schedule, accurately setting forth all maps of survey and location filed in the office of the Secretary of the Interior of the United States pursuant to the provisions of said land grants respectively, separately stated as to each of said land grants, is hereto attached marked "Exhibit M" and made a part of this bill.

A schedule, accurately setting forth the time of the construction and completion of the several sections of said railroad and telegraph lines, together with the examination, approval and acceptance thereof, separately stated as to each of said railroad and telegraph lines, is hereto attached marked "Exhibit N," and made a part of this bill.

A schedule, accurately setting forth the quantity of lands patented from time to time under each of said land grants, compiled by years, and separately stated as to

each of said land grants, is hereto attached marked "Exhibit O" and made a part of this bill. All of said patents were applied for by and issued to the defendant *Oregon and California Railroad Company,* as the successor of said East Side Company and said West Side Company respectively.

XX.

Each of the defendants (other than the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company) asserts some right, title, or interest in or to certain of said unsold lands; the general nature and basis of the claims of said last described defendants are identical, and are as follows, to wit:

Each of said last described defendants alleges to have in good faith actually settled upon certain of said unsold lands, not exceeding one-quarter section or 160 acres in quantity, with the intention of making a permanent home thereof, and to have applied to the defendant *Oregon and California Railroad Company* to purchase the lands alleged to have been settled upon as aforesaid, and to have tendered to said defendant *Oregon and California Railroad Company* the sum of $2.50 for each acre applied for as aforesaid, as the purchase price thereof, and that the defendant *Oregon and California Railroad Company* has at all times refused, and still refuses, to entertain said applications to purchase, or to sell or convey to said last described defendants respectively the lands so applied for by them respectively, upon the

aforesaid terms, or otherwise.

And by reason of the premises alleged by said last described defendants respectively as aforesaid (the truth whereof is to your Orator unknown) said last described defendants severally assert some right, title or interest in or to the lands so applied for by them respectively as aforesaid; and each of said last described defendants has instituted a suit in equity against the defendants *Oregon and California Railroad Company, Stephen T. Gage,* and *Union Trust Company,* the general purpose and nature of which is to compel a sale and conveyance of the lands so applied for to said parties applying to purchase the same respectively, as aforesaid; all of which said suits are still pending, and none of which have proceeded to any issue other than exceptions to certain portions of the several bills in said suits.

The said suit instituted by the defendant *Roy W. Minkler* is pending in the Circuit Court of the United States for the Western District of the State of Washington; all of the other of said suits are pending in the Circuit Court of the United States for the District of Oregon.

A schedule accurately setting forth, as to each of said suits, the court number thereof, the names of the parties thereto, the date of the institution thereof, and a description of the land involved therein, separately stated as to each of said land grants, is hereto attached marked "Exhibit P" and made a part of this bill.

Your Orator leaves said defendants to more specific-

ally set forth herein their respective alleged rights in the premises, as they may be advised.

Unless enjoined therefrom as hereinafter prayed, said defendants instituting said suits as aforesaid will proceed, or attempt to proceed, therein to some form of final judgment or decree. Each of said suits relates to and materially affects the rights and equities of your Orator in the premises. The rights and equities of your Orator in this bill set forth, and the relief hereinafter prayed for, relate to and affect all of the aforesaid alleged rights of said defendants respectively. If said suits shall proceed further, the rights and remedies of your Orator in the premises will be hindered, obstructed and delayed, if not substantially prejudiced. And because of the multiplicity of said suits, your Orator has made said persons parties defendant in this suit, to the end that further proceedings in each of said suits instituted and pending as aforesaid may be enjoined, and, if the Court shall so order, said parties be permitted to set forth herein their respective claims, for adjudication.

Wherefore your Orator prays the judgment and decree of this Court,

FIRST.

(1) Adjudging and decreeing that those certain lands, to wit: all of said lands granted by said Act of Congress approved July 25, A. D. 1866, and the aforesaid acts amendatory thereof, and all of said lands granted by said Act of Congress approved May 4, A. D. 1870, whether patented or unpatented, now remaining

unsold as aforesaid, said lands being hereinbefore described as "said unsold lands," together with those certain lands and estates in lands, to wit: any and all right, title and interest, of any kind or nature whatsoever, vested, contingent or expectant, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either or any of said Acts of Congress, have been and are forfeited to, and the title of all of said lands and estates in lands has been and is reverted to and reinvested in, and all of said lands and estates in lands now are the property of, your Orator, the United States of America; and quieting and confirming the title of your Orator in and to all of said lands and estates in lands, and particularly against any claim of any right, title, interest or lien, in, to or upon the same or any part thereof, by or on behalf of the defendants herein or either or any of them, or any person claiming or to claim under them or either or any of them, and requiring said defendants and each and all of them to forthwith surrender to your Orator, the United States of America, full possession and control of said lands and estates in lands, and every part thereof;

Or, if the foregoing relief shall be denied,

(2) Adjudging and decreeing that all of said lands hereinbefore described as "said unsold lands" are subject to purchase by, and sale and conveyance to, actual settlers, in quantities not exceeding one hundred and sixty acres, or one quarter section to any one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre, pursuant to the aforesaid terms and conditions

of said land grants respectively; and that in that behalf a receiver or receivers be appointed, and be invested with the title and possession of all of said unsold lands, and be authorized and directed, by such method as the Court shall prescribe, to offer for sale, and sell and convey, said lands, to persons of the character, in the quantities, and for the price, as aforesaid, until all of said lands shall have been sold and disposed of in manner aforesaid; and providing that during the continuance of said receivership, said receiver or receivers be authorized and directed, out of any moneys derived from the sale of any of said lands as aforesaid, to pay any and all proper costs, charges and expenses necessary for the care and protection of said lands, and the sale and disposition thereof as aforesaid, including any and all taxes and assessments, if any, which from time to time are properly chargeable against any of said unsold lands which may from time to time remain unsold and undisposed of; and providing for accountings from time to time, in such manner as the Court shall prescribe, and the application and disposition of all moneys and funds which may come into the hands of said receiver or receivers from the sale or disposition of said lands as aforesaid, after the payment of all costs, charges and expenses incurred in the premises as aforesaid, rendering final accounting and final application and disposition of said moneys and funds in such manner, and to such parties, as the Court shall direct;

Or, if the foregoing relief shall be denied,

(3) That a mandatory injunction shall issue out

of and under the seal of this Court, commanding and requiring the said defendant *Oregon and California Railroad Company* to offer for sale, and sell and convey, said unsold lands to any *bona fide* actual settler who may apply to purchase the same in good faith, in quantities not exceeding one hundred and sixty acres, or one quarter section, for the price of Two Dollars and Fifty Cents per acre, under such restrictions, in such manner and by such method as the Court shall deem adequate and expedient; and providing that any and all persons who may be in any way aggrieved by the refusal or neglect of said defendant *Oregon and California Railroad Company* to sell or convey said lands to him or them in conformity with the terms hereof, or who may be in any other manner aggrieved in the premises, may hereafter apply to the Court, at the foot of said judgment and decree, for the enforcement thereof in his or their behalf.

SECOND.

That (unless, and except in so far as, said judgment and decree shall otherwise provide), each and all of the defendants herein, their officers and agents, be,

Forever enjoined and restrained from in any manner claiming or asserting any right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof;

And forever enjoined and restrained from in any manner selling, or offering for sale, or conveying, or in any other manner disposing of, any of said lands or estates in lands, or from negotiating, executing or record-

ing any document or instrument, or doing any other act or thing, which shall in any manner affect the use or the title of any of said lands or estates in lands;

And forever enjoined and restrained from going upon any of said lands, and from cutting, removing, or in any other manner using any of the timber, trees or other natural products thereof, and from in any other manner committing waste thereupon, and from in any manner using or interfering with any of said lands or estates in lands, or any part thereof.

THIRD.

That the defendants Oregon and California Railroad Company, Southern Pacific Company, and Union Trust Company, and any other of the defendants who may have received the same, or any part thereof, do forthwith account for and pay over to your Orator, the United States of America, any and all sums of money which they or either of them may have realized or in any manner received or obtained from or by virtue of the sale or conveyance of any of the lands granted by either or any of said acts of Congress, or of any interest in any of said lands, to others than actual settlers, or in quantities exceeding one hundred and sixty acres or one quarter section to any one purchaser, or for a price exceeding the sum of two dollars and fifty cents per acre, together with lawful interest thereon from the time of the receipt thereof; that said last named defendants do forthwith account for and pay over to your Orator any and all sums of money and profits of every name and nature

whatsoever, which they or any of them may have realized or obtained from cutting down or in any other manner using the trees, timber or other natural products of any of said lands granted by either or any of said Acts of Congress, or in any other manner from the use, occupation, rents, issues, profits, accretions or increments of said lands, or any part thereof, and growing out of or from the possession thereof, or any interest or use therein, together with interest thereon from the time of the receipt thereof.

FOURTH.

That during the pendency of this suit, each of the defendants John L. Snyder, Julius F. Frahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, John H. Haggert, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest,

Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler, and their respective attorneys, be enjoined and restrained from in any manner proceeding further in the suits instituted by them respectively as aforesaid, and particularly described in Exhibit P (which is hereby made a part of this prayer the same as if set forth in full herein) and that upon the final judgment and decree herein said last named defendants and each of them, and their attorneys, be permanently enjoined and restrained as aforesaid.

FIFTH.

That during the pendency of this suit, each of the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, their officers and agents, and all persons, firms and corporations claiming or to claim by, through or under said last named defendants, or either or any of them, be enjoined and restrained from using, occupying, leasing, or in any manner exercising dominion, use, ownership or occupation of, or in any manner whatsoever interfering with, any of said unsold lands, or any part thereof;

And be further enjoined and restrained from cutting, removing, selling, or in any manner whatsoever using, interfering with, or impairing the value of, any

of the trees or timber upon, or any other natural products of, said unsold lands, or any part thereof, and from in any manner committing waste upon any of said unsold lands, and particularly as to the timber and other natural products thereof;

And be further enjoined and restrained from selling, conveying, or offering for sale, and from leasing, or offering to lease, or in any other manner disposing of, any of said lands or estates in lands herein alleged to be forfeited to your Orator as aforesaid, or from negotiating, executing or recording any document or instrument, or doing any other act or thing, which shall in any manner affect the use or the title of any of said lands or estates in lands;

And be further enjoined and restrained from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid.

SIXTH.

That your Orator have such other and further relief as the equity of this case may require and to your Honors may seem meet and proper, together with the costs of this suit.

SEVENTH.

And your Orator prays that the defendants, and each of them, be required to make full disclosure and discovery of all the matters aforesaid; and according to the utmost and best of their knowledge, information

and belief, full, true, direct and perfect answer make (but not under oath, an answer under oath being hereby waived) to the matters and things hereinbefore stated and charged.

May it please Your Honors to grant unto your Orator a writ of subpoena directed to the said defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Union Trust Company, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler, and each of them,

commanding them on a day certain therein to be name to appear and answer this bill, (but not under oath, a answer under oath being hereby waived) and to perfor such order and decree in the premises as to the cou may seem meet and as may be required by the principl of equity and good conscience.

CHARLES J. BONAPARTE,
Attorney General of the United States.
JOHN McCOURT,
United States Attorney for District of Oregon.

TRACY C. BECKER,
B. D. TOWNSEND,
Of counsel for complainant.

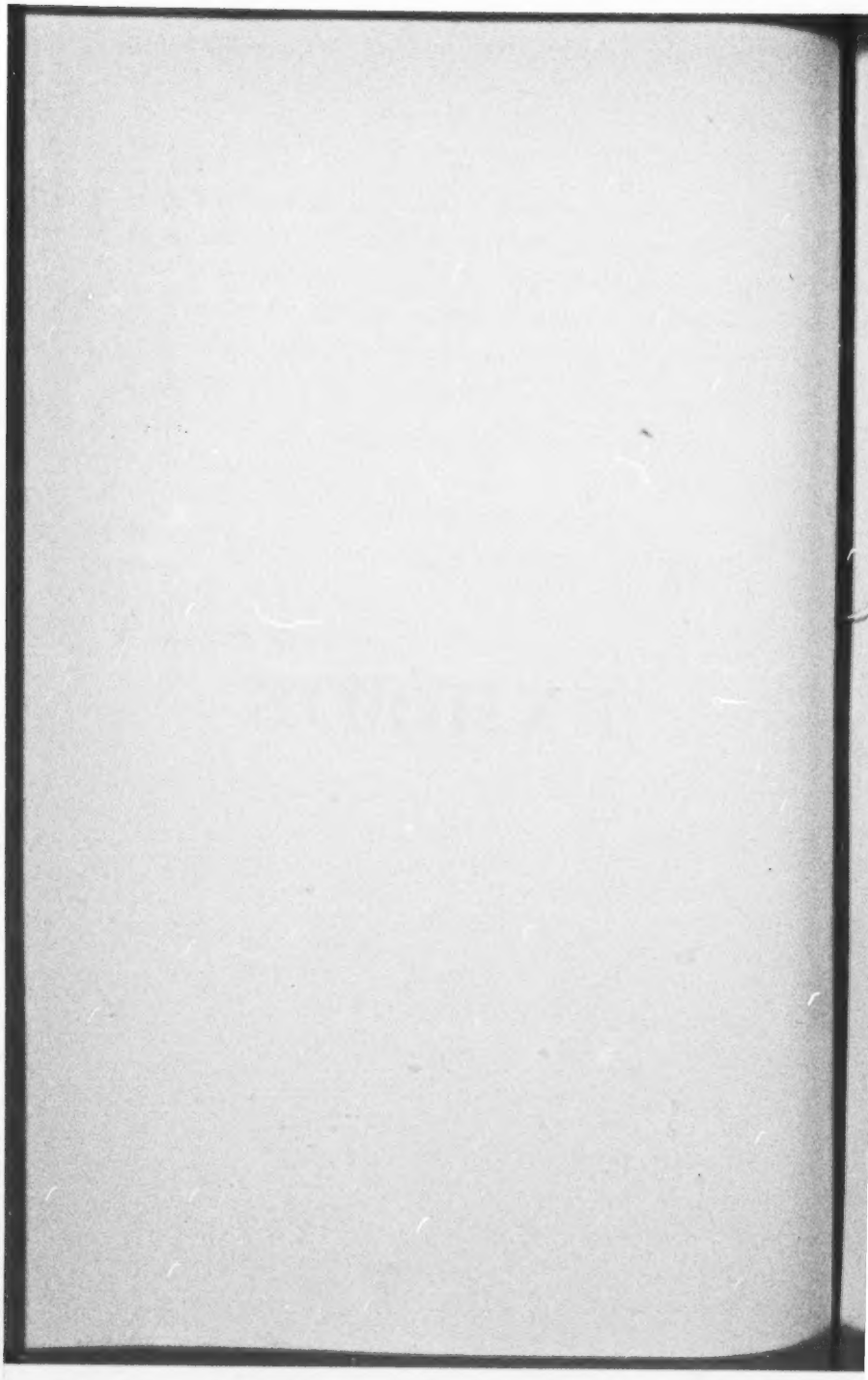

Exhibit A

Articles of Incorporation of the Oregon and California Railroad Company.

Know All Men by These Presents, That we, the undersigned corporators, Ben Holladay of New York, and Cicero H. Lewis, I. R. Moores, J. C. Hawthorne, and Medorem Crawford, of the State of Oregon, do, by these presents, associate ourselves together as a corporation and body politic, under and by virtue of the general incorporation law of the State of Oregon, approved October 14, A. D. 1862, and amendments thereto, and for such purpose we do, jointly and severally, hereby agree to and with each other to the following articles:

ARTICLE I.

The name assumed by this corporation, and by which it shall be known, is the "Oregon and California Railroad Company."

ARTICLE II.

The duration of this corporation shall be ninety-nine (99) years.

ARTICLE III.

The enterprise, business, pursuit and occupation in which this corporation proposes to engage is to construct a railroad and telegraph line, with all the necessary branches, sidetracks, fixtures, buildings, depots, stations and appurtenances, from Portland, in the State of Ore-

gon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the California line on the southern boundary line of Oregon to connect with the railroad and telegraph line now being constructed northerly through the State of California by the California and Oregon Railroad Company toward the southern boundary of Oregon; and to purchase, own, construct, hold, equip, operate and use all necessary ferries on the line of such road over the Willamette and other rivers, and over any river or rivers on either side of the line of such railroad which may be necessary or proper in crossing freight and passengers to and from the said railroad; to maintain the said railroad and telegraph line in good order, condition and repair, and to operate the said railroad and employ the same and the said telegraph line in the business of transporting passengers and freight and the United States mails, and for the purposes aforesaid, to purchase, take and receive of and from the "Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22, A. D. 1867, that portion of its railroad and telegraph line now completed, together with all the property, real, personal and mixed, and the right-of-way of such last named corporation of whatsoever name and nature, and all its rights and franchises of every name and nature, both legal and equitable, which the said last named corporation now has or owned, or to which it is in any way or manner entitled, or hereafter may be entitled to—whether the same is absolute or contingent, and particularly and especially all the right, title, interest, franchise, claim and demand

which the said Oregon Central Railroad Company, of Salem, Oregon, aforesaid, now has or is entitled to, and to which it may hereafter be entitled under and by virtue of an Act of Congress entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July 25, 1866, and of all amendments thereto. The purpose of this incorporation being to make such portion of the railroad and telegraph line of said "Oregon Central Railroad Company" which is now completed, a part of the line of railroad and telegraph which this corporation proposes to construct, as aforesaid, from Portland, Oregon, to the California line, and to construct and establish the whole thereof from Portland, in Oregon, to said California line in all respects in accordance with the Act of Congress hereinbefore referred to, and the amendments thereto, and for the purpose of receiving all the benefits of such Act of Congress and amendments thereto, and intended to be conferred thereby on the Oregon Company, and for the purpose of complying with all the provisions of such Act.

ARTICLE IV.

The principal office for the transaction of the business of this corporation shall be kept at the city of Portland, Multnomah County, State of Oregon.

ARTICLE V.

The amount of the capital stock of this corporation is hereby fixed at Twenty Million ($20,000,000) Dollars.

ARTICLE VI.

The amount of each share of such capital stock is hereby placed at One Hundred ($100) Dollars.

In Testimony Whereof, And of our adoption of the foregoing articles of incorporation, we, the undersigned corporators, have hereunto set our hands and seals this 16th day of March, A. D. 1870, in triplicate.

BEN HOLLADAY
CICERO H. LEWIS
I. R. MOORES,
J. C. HAWTHORNE
(Corporate Seal) MEDOREM CRAWFORD

STATE OF OREGON, }
County of Multnomah, } *ss.*

Be it remembered, that on this 16th day of March, A. D. 1870, personally appeared before me, the undersigned, a Notary Public in and for the county aforesaid, the above named corporators, Ben Holladay, Cicero H. Lewis, I. R. Moores, J. C. Hawthorne and Medorem Crawford, all to me personally known as being the persons named in, and who, as corporators, made and subscribed the foregoing articles of incorporation and severally acknowledged to me that they, and each of them, executed the foregoing articles of incorporation freely and voluntarily, and for the uses and purposes therein specified.

Witness my hand and official seal the day and year in this certificate first above written.

GEO. W. MURRAY,
(Seal) Notary Public.

Exhibit B

This indenture, made and entered into at Salem, in the County of Marion, and State of Oregon, this twenty-ninth (29th) day of March, A. D. One Thousand Eight Hundred and Seventy (1870), between the Oregon Central Railroad Company, a body corporate incorporated and organized at the city of Salem, in the County of Marion and State of Oregon, on the twenty-second (22d) day of April, A. D. One Thousand Eight Hundred and Sixty-Seven (1867), under and by virtue of the general incorporation law of the State of Oregon, approved October, A. D. One Thousand Eight Hundred and Sixty-Two, entitled, "An Act providing for private incorporation, and the appropriation of private property therefor," and amendments thereto, party of the first part, and the "Oregon and California Railroad Company" a body corporate incorporated and organized at the city of Portland in the County of Multnomah, and State of Oregon, on the seventeenth (17th) day of March, A. D. One Thousand Eight Hundred and Seventy (1870), under and by virtue of the general incorporation law of the State of Oregon aforesaid, and amendments aforesaid, party of the second part, witnesseth:

Whereas, The "Oregon Central Railroad Company," party of the first part herein, was on the 20th day of October, A. D. One Thousand Eight Hundred and Sixty-Eight (1868), duly designated by the Legislature of the State of Oregon, by a joint resolution thereof, as

the corporation to take, manage and receive the benefits of an Act of Congress making a grant of lands to aid in the construction of a railroad and telegraph line from Portland, in Oregon, to the Central Pacific Railroad in California, entitled, "An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July 25th, A. D. One Thousand Eight Hundred and Sixty-Six (1866), and

Whereas, the said "Oregon Central Railroad Company," party of the first part herein, did afterwards and in pursuance of the Act of Congress aforesaid, and of Acts amendatory thereof and supplemental thereto, duly file its assent in writing to the said Act of Congress, and all the provisions thereof, in the office of and with the Secretary of the Interior of the United States of America, at Washington City, District of Columbia; and the said corporation, "Oregon Central Railroad Company," of Salem, Oregon, party of the first part herein, was recognized by the Department of the Interior as the corporation in Oregon entitled to take and manage the congressional grant hereinbefore referred to, and receive the benefits thereof; and whereas, the said Orgon Central Railroad Company, party of the first part herein, did afterwards proceed to locate the line of said railroad and did locate the same for a long distance, and did prepare and file its maps in the office of the Secretary of the Interior, in strict accordance with all requirements of said Act of Congress of July 25th, 1866, and amendments thereto aforesaid, making such grant of lands and did, prior to the twenty-fifth (25th)

day of December, A. D. One Thousand Eight Hundred and Sixty-Nine (1869), fully and in all respects, as required by said Act of Congress and Acts amendatory thereof and supplemental thereto, complete the construction of twenty miles of its railroad and telegraph, to-wit:

Commencing at East Portland, in Multnomah County, in the State of Oregon, and running thence in a southerly direction twenty miles and over, and did stock and equip the same in all respects as required by said Act of Congress; and

Whereas, subsequently to December 24th, A. D. 1869, the Commissioners appointed by the President of the United States, under the power vested in him by said Act of Congress of July 25, 1866, aforesaid, to examine and report upon the railroad and telegraph line aforesaid, being built by said "Oregon Central Railroad Company," party of the first part herein, namely, E. R. Geary, Thos. A. Savier and James H. Fisk, did examine the said twenty miles of railroad and telegraph line, and did make their report thereon to the Government of the United States, as required by said Act of Congress aforesaid, approved July 25th, 1866, making such land grant, and the Acts amendatory thereof and supplemental thereto, which report was favorable, and the same was received and accepted by the Government of the United States; and the said twenty miles of railroad and telegraph line so completed and equipped, as aforesaid, were accepted by the Secretary of the Interior of the United States, and the lands granted by the Acts aforesaid, and to which the "Oregon Central Railroad

Company," party of the first part herein, was entitled by virtue of the Acts of Congress aforesaid, and the completion and acceptance of twenty miles of its road, were by an order of the Secretary of the Interior withdrawn from sale and private entry, and for the benefit of said "Oregon Central Railroad Company," party of the first part herein, its successors and assigns, as in and by said Acts of Congress aforesaid is provided; and

Whereas, said "Oregon Central Railroad Company," of the first part herein, have done large amounts of work toward the construction of its said road, and in addition to said twenty miles so completed, as aforesaid, in locating and grading the track of the same, and has acquired divers personal property, rights-of-way, franchises, privileges, credits and interests, real, personal and mixed, both legal and equitable, absolute and contingent, and

Whereas, the "Oregon and California Railroad Company," party of the second part herein, was incorporated and organized solely with a view of becoming the assignee of all the property, rights and franchises and privileges of the "Oregon Central Railroad Company," for reasons appearing in the subsequent recitals of this conveyance, and for the purpose of carrying out to successful completion the railroad and telegraph line commenced and partly completed as aforesaid, which "Oregon and California Railroad Company" is incorporated and organized in strict accordance with, and with special reference to, a full and complete compliance with said Act of Congress aforesaid, approved July 25th,

1866, and Acts amendatory thereof and supplemental thereto, as will more fully appear, reference being had to the articles of incorporation of such "Oregon and California Railroad Company," party of the second part herein, filed in the office of the Secretary of State of the State of Oregon on the seventeenth (17th) day of March, A. D. 1870, and there remaining of record, and made a part of this conveyance, and

Whereas, the Board of Directors of the "Oregon Central Railroad Company," party of the first part herein, did on the 28th day of March, A. D. One Thousand Eight Hundred and Seventy, (1870), at their office in the city of Salem, State of Oregon, at a meeting of such Board duly and legally called, unanimously adopt the following resolution, that is to say:

"Whereas, the following communication has this day been received by this company from the "Oregon and California Railroad Company," a corporation incorporated and organized at Portland, Oregon, March 17, 1870, for the purpose of constructing a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys, to the south boundary of Oregon, in accordance with an act of Congress approved July 25th, A. D. 1866, granting land for such purpose, and amendments thereto, to-wit:

" 'Office of Oregon and California Railroad Company, Portland, Oregon, March 28th, 1970, to the President and Board of Directors of the Oregon Central Railroad Company, of Salem, Oregon,

" 'Gentlemen: I respectfully beg leave to submit for your consideration the following proposition from the "Oregon and California Railroad Company," which I do in the form of the following resolution of the Board of Directors of that corporation passed March 26th, A. D. 1870, at the office of their company in Portland, to-wit:

" 'Resolved, That the President of this company be and he is hereby authorized and instructed to enter into negotiations with the "Oregon Central Railroad Company" of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the railroad of such corporation now partly completed, and in progress of construction, including all the rolling stock and other property connected therewith, and including also all the property, real, personal and mixed, now owned by such "Oregon Central Railroad Company," or to which it may in anywise be entitled, and including also all franchises of the said corporation which it now owns or to which it is or may be entitled, by virtue of any act or resolution of Congress, or of the Legislature of the state of Oregon, or in any way or manner; and for such purpose the President of this company is further authorized to agree in writing in the name of this corporation, and under its seal for such purchase by and transfer to, this Company of all such property, rights and franchises upon the following terms, to-wit:

" 'That in consideration of such conveyance, transfer and delivery to this company, it shall agree to and with its directors and stockholders to assume and shall assume and agree to pay all the debts and liabilities of such "Oregon Central Railroad Company" as the same mature

and become due and payable, of whatever name and nature, and this company shall indemnify and forever keep harmless the said "Oregon Central Railroad Company," from any and all such payments, and from all liabilities whatever of every name and nature, for which said "Oregon Central Railroad Company" may be liable at the date of the acceptance of these propositions. To the propositions contained in the foregoing resolution, an early answer is desired.

" 'Very respectfully,

" 'BEN HOLLADAY,

" 'President of Oregon and California Railroad Company.'

And Whereas, this Company is today indebted in a large amount, to-wit: in a sum not less than Eight Hundred Thousand ($800,000) Dollars, nor more than One Million ($1,000,000) Dollars in gold coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property and franchises owned or possessed by this Company, or to which it is in any wise entitled;

"And whereas, there has heretofore existed divers controversies in the courts and there is one suit still pending of a similar nature, wherein the right of this company to use its corporate name, has been and is questioned by another company, and by reason whereof the securities of this company have been weakened and rendered comparatively valueless; and which have prevented this company and its contractors from negotiating the same;

and from proceeding with the construction of its railroad, and which have resulted in this company being driven to a cancellation of its contracts for the construction thereof;

"Therefore, Resolved, that it is the judgment of this Board that it is for the best interest of this company, and all its stockholders, to accept the proposition embodied in the foregoing communication.

"Resolved, that this company do, (subject, however, to approval by a majority vote of the stock of this corporation) accept the foregoing proposition of the 'Oregon and California Railroad Company.'

"Resolved, that the President and Secretary of this company be and they are hereby authorized and directed to enter into an agreement in writing in the name of this company, with said 'Oregon and California Railroad Company,' for a sale of all the property and franchises of this corporation upon the terms embodied in the foregoing proposition, which agreement shall, however, be subject to the approval, or disapproval of a vote of a majority of the stock in this company at a stockholders meeting hereafter to be held."

And Whereas, in pursuance of such last named resolution of the Board of Directors of the "Oregon Central Railroad Company, party of the first part herein, an agreement in writing was entered into between the "Oregon Central Railroad Company," party of the first part herein, and the "Oregon and California Railroad Company," party of the second part herein, which agreement

bears date March 28th, A. D. One Thousand Eight Hundred and Seventy, (1870), and of which the following is a literal copy, to-wit:

"Articles of Agreement made and entered into this 28th day of March, A. D. 1870, between the 'Oregon Central Railroad Company,' a corporation incorporated at Salem, on the 22nd day of April, A. D. 1867, under the general incorporation law of the State of Oregon, and amendments thereto, party of the first part, and the 'Oregon and California Railroad Company,' a corporation incorporated at Portland, Oregon, on the 17th day of March, A. D. 1870, under the laws of Oregon aforesaid, party of the second part,

"Whereas, the party of the first part herein is the owner of the 'Oregon Central Railroad,' partly completed and in course of construction, and rolling stock and other valuable property and franchises, including all the rights, privileges, benefits, franchises and immunities granted and conferred on the Oregon Company by an Act approved July 25th, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon,' approved July 25th, A. D. 1866, and amendments thereto, and,

"Whereas, said 'Oregon Central Railroad Company,' party of the first part herein, is largely indebted to divers persons but principally to Ben Holladay and company in an amount not less than Eight Hundred Thousand ($800,000) Dollars, nor more than One Million ($1,000,-

000) Dollars, the exact amount of which is to be hereafter ascertained, and,

"Whereas, it has been agreed, as will more fully appear by the following communication and propositions presented to the 'Oregon Central Railroad Company,' party of the first part herein, by the 'Oregon and California Railroad Company,' party of the second part herein and the resolution of the Board of Directors of the said Oregon Central Railroad Company, party of the first part, in answer thereto, that the said 'Oregon Central Railroad Company,' party of the first part, shall sell and convey unto said 'Oregon and California Railroad Company,' party of the second part, all of the railroad and other property, both real and personal, and all the rights, franchises, privileges and property whatsoever of every name, nature and character, in consideration of an agreement upon the part of the 'Oregon and California Railroad Company' to assume and pay, as they may mature and become due, all the debts and liabilities of every name and nature of the said 'Oregon Central Railroad Company,' and the further agreement to forever save, indemnify and keep harmless the said 'Oregon Central Railroad Company' and its stockholders and directors from all such debts and liabilities; which communication and proposition so made, as aforesaid, are as follows:

" 'Office of Oregon and California Railroad Company, Portland, Oregon, March 28th, 1870. To the President and Board of Directors of the Oregon Central Railroad Company, of Salem, Oregon.

" 'Gentlemen: I respectfully beg leave to submit for your consideration the following proposition from the 'Oregon and California Railroad Company,' which I do in the form of the following resolution of the Board of Directors of that corporation passed March 26th, A. D. 1870, at the office of their company in Portland, Oregon, to-wit:

" 'Resolved, that the President of this Company be and he is hereby authorized and instructed to enter into negotiations with the "Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the railroad of such corporation, now partly completed and in progress of construction, including all its rolling stock and other property connected therewith and including also all the property, real, personal and mixed, now owned by such "Oregon Central Railroad Company," or to which it may in anywise be entitled and including also all franchises of the said corporation, which it now owns or to which it is or may be entitled by virtue of any act or resolution of Congress or of the Legislature of the State of Oregon; or in any other way or manner; and for such purpose the President of this company is further authorized to agree in writing in the name of this corporation and under its seal for such purchase by and transfer to this company of all such property, rights and franchises upon the following terms, to-wit:

" 'That in consideration of such conveyance, transfer and delivery to this company, it shall agree to with said "Oregon Central Railroad Company," and to and with

its directors and stockholders, to assume and agree to pay all the debts and liabilities of such "Oregon Central Railroad Company," as the same mature and become due and payable, of whatsoever name and nature, and this company shall also indemnify, save and keep harmless the said "Oregon Central Railroad Company," from any and all such payments and from all liabilities whatever, of every name and nature, for which said "Oregon Central Railroad Company" may be liable at the date of the acceptance of these propositions'; and

"Whereas, in response to the foregoing communication the said 'Oregon Central Railroad Company' did, on the 28th day of March, A. D. 1870, by the Board of Directors, adopt the following resolution, to-wit:

" 'Whereas, the following communication has this day been received by this company from the "Oregon and California Railroad Company," a corporation incorporated and organized at Portland, Oregon, March 17th, 1870, for the purpose of constructing a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys to the south boundary of Oregon, in accordance with an Act of Congress approved July 25th, A. D. 1866, granting lands for such purpose and amendments thereto, to-wit:

" 'Office of Oregon and California Railroad Company, Portland, Oregon, March 28th, 1870. To the President and Board of Directors of the Oregon Central Railroad Company—Gentlemen: I respectfully beg leave to submit to your consideration the following prop-

osition from the "Oregon and California Railroad Company," which I do in the form of the following resolution of the Board of Directors of that corporation, passed March 26th, A. D. 1870, at the office of their company in Portland, to-wit:

" 'Resolved, that the President of this company be and he is hereby authorized and instructed to enter into negotiations with the "Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the railroad of such corporation now partly completed and in progress of construction, including all the rolling stock and other property connected therewith and including also all the property, real, personal and mixed, now owned by such "Oregon Central Railroad Company," or to which it may in any wise be entitled, and including also all franchises of said corporation which it now owns or to which it is or may be entitled by virtue of any Act or Resolution of Congress or of the Legislature of the State of Oregon, or in any way or manner; and for such purpose the President of this company is further authorized to agree in writing in the name of this corporation and under its seal for such purchase by and transfer to this company of all such property, rights and franchises, upon the following terms, to-wit:

" 'That in consideration of such conveyance, transfer and delivery to this company, it shall agree to and with said "Oregon Central Railroad Company," and with its directors and stockholders to assume and shall

assume and agree to pay all the debts and liabilities of such "Oregon Central Railroad Company" as they mature and become due and payable, of whatever name and nature, and this company shall also indemnify and forever keep harmless the said "Oregon Central Railroad Company" from any and all such payments, and from all liabilities whatever of every name and nature, for which said "Oregon Central Railroad Company" may be liable at the date of the acceptance of these propositions. To the proposition contained in the foregoing resolution, an early answer is desired. Very respectfully, (Signed) Ben Holladay, President of Oregon and California Railroad Company; and

" 'Whereas, this company is today indebted in a large amount, to-wit: a sum not less than Eight Hundred Thousand ($800,000) Dollars, nor more than One Million ($1,000,000) Dollars in gold coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property and franchises owned or possessed by this company, or to which it is anywise entitled; and

" 'Whereas, there has heretofore existed divers controversies in the courts, and there is one suit still pending of a similar nature wherein the right of this company to use its corporate name has been and is questioned by another company, and by reason whereof the securities of this company have been weakened and rendered comparatively valueless, and which have prevented this company and its contractors from negotiating the same and from proceeding with the construction of its

railroad, and which have resulted in this company being driven to a cancelation of its contracts for the construction thereof;

" 'Therefore, Resolved, that it is the judgment of this Board that it is for the best interest of this company and all of its stockholders to accept the proposition embodied in the foregoing communication.

" 'Resolved, that this company do (subject, however, to approval by a majority vote of the stock of this corporation) accept the foregoing proposition of the "Oregon and California Railroad Company."

" 'Resolved, that the President and Secretary of this company be and they are hereby authorized and directed to enter into an agreement in writing in the name of this company with said "Oregon and California Railroad Company" for a sale of all the property and franchises of this corporation upon the terms embodied in the foregoing propositions, which agreement shall, however, be subject to the approval or disapproval of a vote of a majority of the stock in this company at a stockholders' meeting hereafter to be held.'

"Therefore, in consideration of the premises and of the valuable considerations moving from one to the other, as hereinbefore stated, the said 'Oregon Central Railroad Company,' party of the first part, does hereby sell and agree to convey within one week from this date, to the 'Oregon and California Railroad Company,' party of the second part herein, the whole of the Oregon Central Railroad and telegraph line and all the rolling stock

of such road, and also all property both real, personal and mixed, now owned by the 'Oregon Central Railroad Company,' of whatever name and nature, and all the rights of way, privileges, franchises and interests whatever, both legal and equitable, which the said corporation, party of the first part herein, now has or owns, and especially all the lands, rights, franchises, privileges, emoluments and benefits whatever which the 'Oregon Central Railroad Company,' party of the first part herein, now has or owns, or to which it is or may be entitled either legally or equitably, by virtue of the Acts of Congress aforesaid, or either or any of them, or of any other acts of Congress, or of any act or resolution of the Legislature of the State of Oregon, or of the decision of any of the federal or state departments, or of the federal or state courts.

"In consideration whereof, the said 'Oregon and California Railroad Company' party of the second part herein, hereby covenants and agrees to and with said 'Oregon Central Railroad Company,' party of the first part, to assume and agree to pay, and it does hereby assume and agree to pay to whomsoever owing, or may hereafter be due or owing, whenever the same becomes due and payable, all of the debts, obligations and liabilities whatsoever of the said 'Oregon Central Railroad Company,' of whatsoever name, nature or amount, and in the gold coin of the United States, and the 'Oregon and California Railroad Company' does further hereby covenant and agree to and with the 'Oregon Central Railroad Company,' party of the first part, to indemnify

and forever save and keep harmless the said 'Oregon Central Railroad Company' against the payment at any time hereafter of any claims, demand or demands that now exist, or which may at any time hereafter arise or come against such last named corporation, and against all loss, expenses, costs, disbursements and damages whatsoever which the party of the first part may at any time hereafter be called upon to incur or pay by reason of any such claim or demand.

"In Testimony Whereof, the parties hereto, the 'Oregon Central Railroad Company,' party of the first part, by and through its President, I. R. Moores, and George E. Cole, its Secretary, and the 'Oregon and California Railroad Company,' party of the second part, by and through its President, Ben Holladay, and its Secretary, A. G. Cunningham, all of such officers being hereunto duly authorized and empowered as aforesaid, have each caused their names, together with the signatures of the said officers respectively, to be hereto subscribed and their corporate seals attached, this 28th day of March, A. D. 1870.

"Oregon Central Railroad Company,
"(Sd.) by I. R. Moores, President.

(Seal) "Oregon Central Railroad Company,
"O.C.R.R.Co. "(Sd.) by Geo. E. Cole, Secretary.

"Oregon and California Railroad Company,
"(Sd.) Ben Holladay, President.

(Seal) "Oregon and California Railroad Company.
O.&C.R.R.Co. "(Sd.) by A. G. Cunningham,
"Secretary."

And, Whereas, in pursuance of such resolution aforesaid, of the Board of Directors of the "Oregon Central Railroad Company," party of the first part herein, and of the said contract and agreement aforesaid entered into between the said Oregon Central Railroad Company, party of the first part herein, and the said "Oregon and California Railroad Company," party of the second part herein, and in affirmance of such resolution and such contract, the stockholders of the "Oregon Central Railroad Company," party of the first part herein, did by a vote of over two-thirds of the whole capital stock of such corporation, at a meeting of such stockholders, duly and legally called for such purpose, and held at the office of such company in Salem, State of Oregon, on Monday, March 28th, A. D. 1870, at 7 o'clock P. M., unanimously adopt the following resolutions, to-wit:

"Whereas, the directors of this corporation did, at a meeting of their Board, regularly called for such purpose, and held at the office of the company in Salem, Oregon, on the 14th day of March, A. D. 1870, by a unanimous vote adopt the following resolutions:

"Resolved that a meeting of the stockholders of the Oregon Central Railroad Company of Salem, Oregon, be and the same is hereby called to be held at the office of the company in Salem, Oregon, on Monday, the 28th day of March A. D. 1870, at seven (7) o'clock P. M., for the purpose of considering the propriety of, and authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its capital stock;

"Resolved, that the Secretary of this company be and he is hereby authorized and directed to give notice of such meeting and of the purpose thereof by publication of the same ten days in the following daily newspapers, to-wit: the Daily Oregonian and the daily Herald, published at Portland, Oregon, and the Daily Statesman, published at Salem, Oregon;"

And, Whereas, in pursuance of such order of the Board of Directors, the following notice was duly published as prescribed by such Board of Directors by the Secretary of this corporation for the period of ten days, in each of the following named newspapers, to-wit: the Daily Oregonian and the daily Herald of Portland, Oregon, and the daily Statesman, of Salem, Oregon:

"Notice to the Stockholders of the 'Oregon Central Railroad Company' of Salem, Oregon:

"At a regular meeting of the Board of Directors of the 'Oregon Central Railroad Company' of Salem, Oregon, on the 14th day of March, A. D. 1870, the following resolution was unanimously adopted, to-wit:

"Resolved, that a meeting of the stockholders of the 'Oregon Central Railroad Company' of Salem, Oregon, be, and the same is hereby called to be held at the office of the company in Salem, Oregon, on Monday, the 28th day of March, A. D. 1870, at seven (7) o'clock P. M., for the purpose of determining the propriety of and authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its capital stock.

"Therefore, all stockholders in the 'Oregon Central Railroad Company' of Salem, Oregon, are hereby notified and requested to appear at the office of such company in Salem, Oregon, on Monday, the 28th day of March, A. D. 1870, at seven (7) o'clock P. M., for the purpose of attending to the transaction of the business specified in the foregoing resolution. By order of the Board of Directors.

"(Signed) I. R. Moores, President, O. C. R. R. Co.

"George E. Cole, Secretary, O. C. R. R. Co."

And, Whereas, in pursuance of such call of the Board of Directors and such notice, there are now here present the following named stockholders in this corporation, each holding, owning and representing the number of shares of stock in this corporation, as hereinafter specified, and constituting in all more than two-thirds of the whole capital stock of this corporation, to-wit: Ben Holladay and company, the owners and holders of sixty-four thousand six hundred and sixty-one (64,661) shares of such stock—that is to say, fourteen thousand five hundred (14,500) shares of the preferred interest bearing stock and 50,161 shares of the common; and J. H. Dothitt, the owner and holder of one share, and each of the following named stockholders, each of whom owns and represents one share; that is to say: J. H. Moores, I. R. Moores, E. N. Cooke, A. L. Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidler, A. Bush, J. C. Hawthorne, George S. Cole, Jacob Conser, J. H. Foster.

And, Whereas, a corporation has been duly incorpo-

rated and organized under the general incorporation law of this State, and the amendments thereto, for the purpose of constructing and operating a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River valleys, to the California line on the southern boundary of Oregon; which corporation has been organized by stockholders herein, representing and controlling over two-thirds of the whole capital stock hereof, and for the sole purpose of carrying out to successful completion the enterprise for which this corporation was originally formed; the reason for the formation of such new corporation being to avoid the embarrassments and impediments constantly being thrown in the way of this enterprise by certain persons who claim falsely to be a corporation under the laws of Oregon under the name of the Oregon Central Railroad Company, and who have heretofore disputed, and still are disputing the right of this corporation to the use of such name; and although such claim upon the part of such alleged corporation is and ever has been illegal, inequitable, unjust and based upon a gross fraud; and although such alleged corporation has heretofore uniformly failed in its attempts in court to restrain by legal process our use of such name, and while we believe that all future attempts will be met by like results, yet we are conscious of the fact that such persons who claim to be such corporation have not only the disposition, but the power, by vexatious actions and suits in divers courts, wherein the right to use our corporate name may be questioned, to annoy and harrass this corporation and embarrass its operations, impede the

construction of its enterprise, weaken and cloud its securities, and injure its credit;

And, Whereas, in consideration of the premises, it is deemed advisable by the stockholders hereinbefore mentioned, and all now present, to dissolve this corporation and settle up its business, and sell, dispose of, assign, transfer and convey unto the said "Oregon and California Railroad Company," such being the name of the corporation so formed, as aforesaid, all the property, real, personal and mixed, and all the franchises, rights credits, privileges and emoluments of whatsoever name and nature, owned by or in anywise belonging to this corporation, as per terms of a written agreement between the two corporations for such purchase, dated the 28th day of March, A. D. 1870. Therefore:

Resolved, That the "Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22nd, 1867, be and the same is hereby dissolved, to take effect upon the settlement of its business and the sale, transfer and conveyance of its property and franchises as hereinafter specified.

Resolved, That the President and Secretary of this corporation be and they are hereby authorized, empowered and directed to immediately, and as soon as practicable, settle all the business of this corporation, and

Whereas, this corporation has, in and for the consideration of the written covenants and agreements upon the part of the "Oregon and California Railroad Com-

pany," to pay all the debts, demands and liabilities of this company, of every name and nature, as the same mature or become due, and in and for the further consideration of the covenants of such corporation to forever save, indemnify and keep harmless this company from all claims and demands whatsoever, bargained and sold to such "Oregon and California Railroad Company," all the property, real and personal, rights and franchises, credits and interests, legal and equitable, determined, absolute and contingent, of every name and nature, now owned by or belonging to this corporation; therefore,

Resolved, Further, That the written contract heretofore entered into between this company and the said "Oregon and California Railroad Company," for the sale and transfer of all the property of this company to such corporation, be and the same is hereby ratified and confirmed; and that I. R. Moores, present President of this corporation, and George E. Cole, present Secretary thereof, in consideration of the covenants and agreements aforesaid on the part of said "Oregon and California Railroad Company," to pay all the debts and liabilities of this company of every name and nature, be and they are hereby authorized, empowered and directed for this corporation and in its corporate name, and as its President and Secretary, and under its corporate seal, and for the use and benefit of its stockholders, to sell, assign, transfer, set over, convey and deliver to the said "Oregon and California Railroad Company," of Portland, Oregon, all the property, real, personal and

mixed, of whatever name and nature, both legal and equitable, absolute and contingent, and all donations, rights, credits, accounts and interests whatever, now owned by or in any wise belonging to this corporation, and all franchises and interests whatever by it possessed or owned; and especially to sell, assign, transfer, set over and convey, in the name of this corporation, to-wit: "Oregon Central Railroad Company," and under its corporate seal, unto the said "Oregon and California Railroad Company," of Portland, Oregon, its successors and assigns, all the lands, rights, titles, franchises, interests, claims, property and demand whatsoever, both legal, equitable, present and prospective, absolute and contingent, which this corporation, the "Oregon Central Railroad Company," of Salem, Oregon, now has, owns or possesses or to which it is now of right entitled, either legally or equitably, or to which it may at any time hereafter become entitled, in and to the franchise and grant of lands made by the Congress of the United States to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," approved July 25th, A. D. 1866, and amendments thereto; this corporation having been duly designated by the Legislature of Oregon, in pursuance of the requirements of such Act of Congress, with full power and authority to include in such sale, assignment, transfer and conveyance all right,

title and interest of every name and nature, which this corporation now has, or to which it is either legally or equitably entitled, or at any time hereafter may be, either in whole or in part, to the ownership, management and control of the lands, franchises and benefits granted or conferred by such act of Congress and amendments thereto; and

Whereas, the present indebtedness of this company exceeds the sum of Eight Hundred Thousand ($800,000) Dollars in U. S. gold coin, the whole of which amount said "Oregon and California Railroad Company" have assumed and agreed to pay, and to forever save, indemnify and keep harmless this company against all liability and damages by reason thereof, in consideration of this transfer and sale to said corporation, of all the property and corporate franchises of this corporation, and

Whereas, it is the judgment of this meeting that the assumption of such indebtedness is a full, complete and adequate consideration for all the property and corporate rights and franchises of this company hereby directed to be transferred and conveyed, and that the best interests of all the stockholders herein are subserved by the cancellation of the said indebtedness; and

Whereas, there being no money or property to apportion among the several stockholders of this company after the disposal of its property and the payment of its liabilities, as aforesaid, and the business of this company being about to suspend; therefore,

Resolved, That the whole capital stock of this corporation, both preferred interest bearing and common stock, be and the same is hereby canceled, and the holders thereof are hereby directed to surrender the certificate thereof to the Secrtary of this corporation; and such Secretary is hereby directed to cancel each certificate by writing in red ink across the face of each thereof these words: "Surrendered and cancelled by order of a resolution of the stockholders;" adding thereto the date and his name and title of his office; and

Resolved, That from and after the date of the delivery of such conveyance, assignment and transfer to the said "Oregon and California Railroad Company," this corporation, to-wit, the "Oregon Central Railroad Company," of Salem, Oregon, shall be dissolved; and

Whereas, the Board of Directors of the "Oregon Central Railroad Company," party of the first part, did, at a meeting of such Board, legally called at their office in Salem, Oregon, on the 29th day of March, A. D. 1870, unanimously adopt the following resolution:

"Resolved, that I. R. Moores, President, and Geo. E. Cole, Secretary of this company, be and they are hereby authorized and directed to make, execute and deliver to the 'Oregon and California Railroad Company' of Portland, Oregon, in the name of this corporation and under its corporate seal and under their signatures as such President and Secretary, a good and sufficient deed of conveyance of all the property and franchises of this company, of whatever name and nature, real, personal

and mixed, and of all its rights, credits and interests whatsoever, in accordance with the contract heretofore entered into with such corporation for such sale, assignment, transfer and conveyance, and in accordance with the resolution of the stockholders of this corporation adopted this 28th day of March, A. D. 1870, affirming such sale and directing such conveyance."

Therefore, in consideration of the premises and of the assumption on the part of the "Oregon and California Railroad Company," party of the second part herein, of all the debts and liabilities of the "Oregon Central Railroad Company," party of the first part herein, of whatsoever name or nature, and of the covenant and agreement upon the part of such "Oregon and California Railroad Company," to pay all debts, liabilities, claims, damages and demands whatsoever, of every name and nature, for which the "Oregon Central Railroad Company," party of the first part herein, is now or at any time hereafter may be made liable; and the further covenant to forever save, indemnify and hold harmless the said "Oregon Central Railroad Company," party of the first part herein, and its directors and stockholders, against all loss, damages, costs, expenses and disbursements by reason of any such claim, liabilities or demands, all which agreements and covenants are, by the acceptance of this deed of conveyance by said "Oregon and California Railroad Company," party of the second part herein, by such corporation recognized and agreed, and in and for the further consideration of the mutual covenants and agreements of the parties hereto, as aforesaid;

and of the further consideration of the sum of One Dollar in hand paid by the said "Oregon and California Railroad Company," party of the second part herein, to the said "Oregon Central Railroad Company," party of the first part, and the receipt whereof is hereby acknowledged, the said "Oregon Central Railroad Company," party of the first part herein, by I. R. Moores, its President, and George E. Cole, its Secretary, both being thereto duly authorized and empowered, as aforesaid, for itself, the said "Oregon Central Railroad Company," corporation aforesaid, and party of the first part herein, and for its successors, has granted, bargained, sold, aliened, assigned, transferred, set over, enfeoffed, conveyed, delivered and confirmed, and by these presents it does hereby grant, bargain, sell, alien, assign, transfer, set over, enfeoff, convey, deliver and confirm to the "Oregon and California Railroad Company," party of the second part herein, and to its successors and assigns, all and singular, the railroad and telegraph line of the said "Oregon Central Railroad Company," party of the first part herein, now constructed from a point in the town of East Portland, in Multnomah County, State of Oregon, opposite the city of Portland, a distance of over twenty miles, running southerly to a point in Clackamas County, State of Oregon, together with all and singular the extensions of such railroad of the said party of the first part, now in progress of construction north and south from the termini of the said twenty miles completed, as aforesaid, to-wit: The whole line of the said railroad and right and

franchises of the said party of the first part to construct a railroad and telegraph line from Portland, in Oregon, southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon on the California line; together with all its lands, tenements and hereditaments acquired and appropriated, whether acquired by purchase, gift, by voluntary conveyance, or the judgment or decree of any court, or which shall hereafter be acquired or appropriated for the purpose of right-of-way for a single or double track railroad, and all the appurtenances thereunto belonging; and also all its lands acquired, or which hereafter shall be acquired, for depots, engine houses, machine shops, superstructures, erections and fixtures, and also all and singular the whole of the property of every name and nature, real, personal and mixed, now owned by the party of the first part herein, or to which it has any right, either legal or equitable, absolute or contingent; and also all and singular the franchises, rights and privileges now owned, possessed or acquired, or to which the said party of the first part has any right or title, either legal or equitable, absolute or contingent; and also all the rails, bridges, ways, piers, depots, engine houses, car houses, station houses, warehouse, machine shops, work shops, mills, machinery, engines, tackle, tools, erections, superstructures, fixtures, privileges, franchises and rights of said party of the first part, and all the lands, tenements, hereditaments and real estate wheresoever and whatsoever now owned by said party of the first part, or to which it has any right, legal or equitable, absolute or contingent, and

all and singular the locomotives, passenger cars, freight cars, and all other cars, carriages, tools, machinery and equipments for said railroad, and now owned by said "Oregon Central Railroad Company," party of the first part herein; and also all goods and chattels, horses, mules, carts, drays, oxen, all live stock, and all implements of every name and nature, heretofore or now used in and about the construction of such railroad and telegraph line, and all rolling stock of every kind and description now owned by said party of the first part, together with all rents, issues, income, profits, money, rights, benefits and advantages derived or to be derived, had or received, therefrom by said party of the first part; also all donations and agreements to give, pay or transfer to the party of the first part, any moneys, lands, tenements or other property with full power and authority to enforce the collection and transfer of the same. And also and especially all the lands, rights, title, franchise, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the "Oregon Central Railroad Company," party of the first part herein, now has, owns or possesses, or to which it is now of right entitled legally or equitably, or to which it may at any time hereafter become entitled, in and to the franchise and grant of lands made by the Congress of the United States to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the

Central Pacific Railroad in California to Portland, in Oregon," approved July 25, A. D. One Thousand Eight Hundred and Sixty-six (1866) and amendments thereto; and also all the lands included in such grant and all the right, title and interest which the party of the first part now has to the same, hereby giving, granting and assigning unto said party of the second part all the right, title, interest and claim which the party of the first part now has in or to the lands, franchises, property, benefits and emoluments granted or intended to be granted by virtue of the Act of Congress aforesaid, and the acts amendatory thereof, or supplemental thereto; also all the right, title and franchise which the party of the first part has for any purpose whatever by virtue of any act or resolution of the Legislature of the State of Oregon, or the judgment or decree of any court, either state or federal.

To have and to hold the said premises, franchises and property, and every part thereof, unto the said "Oregon and California Railroad Company," party of the second part herein, its successors and assigns forever.

In Witness Whereof the said "Oregon Central Railroad Company," party of the first part herein, has caused its corporate seal to be affixed to these presents, and the same to be signed by its President and Secretary by resolution of the Board of Directors thereof, and also by resolution of the stockholders thereof at Salem, Marion County, state of Oregon, this twenty-ninth (29th) day of March in the year of our Lord, One Thousand Eight Hundred and Seventy (1870).

Signed, Sealed and Delivered
in presence of us
J. H. Mitchell
Memory N. Chapman.

Oregon Central Railroad Company,
By I. R. Moores, President.
Oregon Central Railroad Company,
By Geo. E. Cole, Secretary.

(Seal, O. C. R. R. Co.)

STATE OF OREGON }
County of Marion, } *ss.*

Be it remembered that on this twenty-ninth (29th) day of March, A. D. One Thousand Eight Hundred and Seventy (1870), before me, M. N. Chapman, a Notary Public in and for the State of Oregon for the County of Marion, duly commissioned and qualified, personally appeared the above named I. R. Moores, President of the "Oregon Central Railroad Company," and Geo. E. Cole, Secretary of the "Oregon Central Railroad Company," named in the foregoing indenture, and whose names are subscribed to the foregoing instrument, both personally known to me to be the individuals described in and who executed the said instrument, and they severally acknowledged to me that he, the said I. R. Moores, as President of the "Oregon Central Railroad Company," and he, the said Geo. E. Cole, as Secretary of the said "Oregon Central Railroad Company," executed the foregoing conveyance as and for the act and deed of

the said "Oregon Central Railroad Company," freely and voluntarily and for the uses and purposes therein mentioned. And the said Geo. E. Cole, being duly sworn, did depose and say, that he is the Secretary of the "Oregon Central Railroad Company," and resides at Portland, Oregon; that he is acquainted with the corporate seal of said company; that the said seal affixed to the foregoing conveyance is such genuine corporate seal; that he affixed the same as Secretary of said company on the twenty-ninth day of March, A. D. 1870, by order of the Board of Directors of said company, ratified, and affirmed by an order of the stockholders thereof, and that he signed his name as Secretary to said conveyance by like orders.

In Witness Whereof, I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above written.

(Notarial Seal.) MEMORY N. CHAPMAN,
Notary Public.

(U. S. R. S. 5c canceled M. N. C., March 29, 1870.)

Exhibit C

This indenture made and entered into this sixth day of October, in the year of our Lord, One Thousand Eight Hundred and Eighty, between the Oregon Central Railroad Company, of Portland, Oregon, a corporation duly incorporated and organized under the laws of the State of Oregon, party of the first part, and the Oregon and California Railroad Company, of Portland, Oregon, a like corporation duly incorporated and organized under the laws of the State of Oregon, party of the second part,

Witnesseth, That said party of the first part, the said Oregon Central Railroad Company, under, pursuant to and by virtue of the power and authority conferred upon it and invested in it by the laws of the State of Oregon, and pursuant to and by authority of resolutions duly passed at a meeting of its stockholders duly called and held at its offices in Portland, Oregon, on the 6th day of October, A. D. 1880, and of resolution of its Board of Directors duly passed at a meeting of said Board, duly held at the office of said Company, the 6th day of October, A. D. 1880, among other things authorizing the sale and conveyance of the property hereinafter described to the party of the second part,

And in consideration of the covenants and agreements of the party of the second part, hereinafter contained, and the sum of Ten Dollars in U. S. gold coin to it in hand paid by the party of the second part at and

before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred, set over, enfeoffed, conveyed and confirmed, and doth hereby grant, bargain, sell, assign, transfer, set over, enfeoff, convey and confirm unto the party of the second part and its successors and assigns forever, all the railroad of the said party of the first part heretofore constructed, extending from Portland, Oregon, to St. Joseph, in Yamhill County, in the State of Oregon, a distance of forty-eight miles, together with all its lands, tenements, and hereditaments acquired and appropriated for the purpose of a right-of-way for its railroad and for stations, depots, turntables and other railroad purposes, and all the appurtenances thereunto belonging.

And also all its lands not heretofore conveyed, by it acquired and which it shall hereafter acquire or to which it is entitled under and pursuant to the provisions of the Act of Congress of the United States of America entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, One Thousand Eight Hundred and Seventy.

And also all its depots, engine houses, car houses, station houses, warehouses, machine shops, work shops, superstructures, erections and fixtures.

And also all and singular the franchises, rights and privileges now owned or possessed by it the party of the

first part.

And all lands, tenements and hereditaments acquired, appropriated or now owned by the party of the first part, wheresoever situated.

And also all and singular the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery and equipments for said railroad now owned by the party of the first part.

And also all goods and chattels, materials and supplies, now owned by the party of the first part, whether in any way relating or pertaining or belonging to or connected with said railroad, or running or operating the same, or otherwise, together with all rents, issues, incomes, profits, moneys, rights, benefits and advantages derived or to be derived, had or received therefrom by said party of the first part in any way whatever.

And all the premises, rights, franchises, and property, real, personal or mixed, whether hereinbefore described, specified, or enumerated, or not, now owned by the said party of the first part, or to which it has any right, title or interest, legal or equitable, absolute or contingent.

To Have and to Hold all and singular the premises, rights, franchises and property, real, personal and mixed, hereby conveyed or intended to be conveyed, and every part and parcel thereof, with all the appurtenances unto the same belonging, or in any wise appertaining, unto the said party of the second part, its successors and assigns forever, and said party of the first part for itself,

its successors and assigns, covenants and agrees to and with said party of the second part, its successors and assigns, that it, the said party of the first part, and its successors and assigns, will and shall upon the reasonable request and at the cost of said party of the second part, its successors and assigns, make, execute, or cause to be done and executed, all and every such further and other lawful acts, conveyances and assurances in law for the better and more effectual vesting and conferring the premises, rights and franchises, hereby granted, or so intended to be, in and to the said party of the second part, its successors and assigns forever, as by the said party of the second part, its successors and assigns, or its or their counsel learned in the law shall be reasonably advised or deemed necessary.

And this Indenture Further Witnesseth, That the said party of the second part, the said Oregon and California Railroad Company, in consideration of the grant and conveyance aforesaid, hereby covenants and agrees to and with said party of the first part, said Oregon Central Railroad Company, its successors and assigns, that it, said Oregon and California Railroad Company, and its successors and assigns, will and shall pay and discharge, or cause to be paid and discharged, all the lawful indebtedness of the said Oregon Central Railroad Company, and will forever indemnify and save and keep harmless said Oregon Central Railroad Company, its directors and stockholders against said indebtedness and from all costs, expenses and damages on account thereof.

In Witness Whereof, Said party of the first part by virtue of said resolution of said meetings of its stock-

holders and Board of Directors, and said party of the second part, by virtue of resolutions of its Board of Directors, duly passed, have caused this indenture to be signed by their respective Presidents and Secretaries, and their respective corporate seals to be affixed the day and year above written.

In presence of J. N. Dolph, Chas. E. Bretherton.

THE OREGON CENTRAL RAILROAD COMPANY,

By T. R. Cornelius, President.

THE OREGON CENTRAL RAILROAD COMPANY,

By A. G. Cunningham, Secretary.

(Seal)

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By R. Koehler, President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By A. G. Cunningham, Secretary.

(Seal)

STATE OF OREGON, }
County of Multnomah, } *ss.*

Be it remembered that on sixth day of October, A. D. 1880, before me, the undersigned, a Notary Public in and for the said County of Multnomah, and State of Oregon, duly commissioned and qualified, personally came T. R. Cornelius, President of the Oregon Central Railroad Company, and A. G. Cunningham, Secretary of the Oregon Central Railroad Company, whose

names are subscribed to the foregoing instrument as parties thereto, and as President and Secretary of said Oregon Central Railroad Company, both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, said T. R. Cornelius, as President, and he, the said A. G. Cunningham, as Secretary of the Oregon Central Railroad Company, executed the foregoing instrument as and for the acts and deeds of said Oregon Central Railroad Company freely and voluntarily, and for the uses and purposes therein mentioned, and he, the said A. G. Cunningham, being by me duly sworn, did depose and say that he is the Secretary of the Oregon Central Railroad Company, and resides at East Portland, in Multnomah County, Oregon, and he is the legal custodian of and is acquainted with, and has in his possession the corporate seal of the Oregon Central Railroad Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as Secretary of said Company, on the sixth day of October, A. D. 1880, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the city of Portland, Oregon, the date first above written.

I. R. MOORES,

(Notarial Seal). Notary Public in and for Oregon.

STATE OF OREGON, }
County of Multnomah, } *ss.*

Be it remembered that on this sixth day of October, A. D. 1880, before me, the Notary Public in and for the said County of Multnomah, and the State of Oregon, duly commissioned and qualified, personally came R. Koehler, President of the Oregon and California Railroad Company, and A. G. Cunningham, Secretary of the Oregon and California Railroad Company, whose names are subscribed to the foregoing instrument as parties thereto, and as President and Secretary of the said Oregon and California Railroad Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me that he, said R. Koehler, as President, and he, the said A. G. Cunningham, as Secretary, of the Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said Oregon and California Railroad Company freely and voluntarily, and for the uses and purpose therein mentioned, and he, the said A. G. Cunningham, being by me duly sworn, did depose and say that he is the Secretary of the Oregon and California Railroad Company, and resides at East Portland, Multnomah County, Oregon; that he is the legal custodian of and is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by

him as Secretary of said Company on the sixth day of October, A. D. 1880, by order of the Board of Directors of said Company; that he signed his name thereto by the like order of the Board of Directors of said Company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the city of Portland, Oregon, the date first above written.

I. R. MOORES,

(Notarial Seal.) Notary Public in and for Oregon.

Exhibit D

This indenture, made the second day of June, in the year One Thousand Eight Hundred and Eighty-One. Between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon, and hereinafter called the Company), of the first part, and Henry Villard, of the City and State of New York, Robert Davie Pebbles, of London, in England, and Charles Edward Bretherton, of the City and State of New York, (hereinafter called the Trustees), of the second part.

Whereas, by an Act of Congress, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," and approved July 25th, 1866, it was, amongst other things, enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the 'California and Oregon Railroad Company,' organized under an Act of the State of California, to protect certain parties in and to a railroad survey "to connect Portland, in Oregon, with Marysville, in California," approved April 6th, 1863, and such Company, organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad in

California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento valley, in the State of California and running thence northerly, through the Sacramento and Shasta valleys, to the northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company, *Provided,* that the Company completing its respective part of the said railroad and telegraph line from either of the termini herein named to the line between California and Oregon before the other Company shall have likewise arrived at the same line shall have the right, and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this Act, until the said parts shall meet and connect and the whole line of the said railroad and telegraph shall be completed.

"Sec. 2. And be it further enacted, that there be and hereby is, granted to the said Companies, their successors and assigns, for the purpose of aiding in the

construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid shall be selected by said Companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, designated by odd numbers as aforesaid nearest to, and not more than ten miles beyond the limits of the said first named alternate sections; and as soon as the said Companies, or either of them shall file in the office of the Secretary of the Interior a map of the survey of said railroad or any portion thereof not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States respectively wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of public lands when sold, *Provided,* That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of set-

tlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. *And provided, also,* That settlers under the provision of the Homestead Act, who comply with the terms and requirements of said Act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this Act to the contrary notwithstanding."

"Sec. 3. And be it further enacted, That the right-of-way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said Companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water and other materials for the construction thereof. Said right-of-way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, work shops, depots, machine shops, switches, sidetracks, turntables, water stations, or any other structures required in the construction and operating of said road."

And Whereas, by another Act of Congress, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," and approved May 4, 1870, it was, amongst other things, enacted as

follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right-of-way through the public lands of the width of one hundred feet on each side of said road and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side-tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of the public lands not mineral, excepting coal or iron lands, designated by odd numbers, nearest to the said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved, or held by valid pre-emption or homestead right at the time of the passage of this Act, and in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

And, Whereas, said Oregon and California Railroad

Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, rights, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore entitled Act of Congress, and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore recited Act of Congress, and there has been already accepted and approved by the United States, as duly constructed under the provisions of the said firstly recited Act, the part of the railroad of said Oregon and California Railroad Company, situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited Act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph, 47 miles in length, and the Company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph authorized by and specified in said Acts of Congress.

And, Whereas, said Oregon and California Railroad Company, by an indenture dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, mortgaged to Faxon D. Atherton and Milton S. Latham, all its railroad from Portland to the boundary line of the State of Oregon and California then constructed and thereafter to be constructed, with its equipments and appurtenances, and all its property except its Congressional land grant, upon the terms and conditions therein mentioned, to secure

an issue of eighteen thousand four hundred and fifty mortgage bonds of the said Company, amounting to the sum of Ten Millions Nine Hundred and Fifty Thousand Dollars and interest thereon as evidenced by interest warrants or coupons thereto annexed, all which bonds were duly negotiated and issued.

And, Whereas, by another indenture also dated the fifteenth day of April, in the year of our Lord One Thousand Eight Hundred and Seventy, said Company granted and conveyed to the said Milton S. Latham, Faxon D. Atherton and William Norris all the lands granted, and to be granted by the United States, to aid in the construction of said railroad upon trusts as therein provided for the sale of such lands, and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of said issue of Ten Millions Nine Hundred and Fifty Thousand Dollars, in amount of the first mortgage bonds of said Company.

And Whereas, said Company having made default in payment of the interest upon said bonds, the holders thereof formed and organized themselves into an association called the "Association of Holders of the Oregon and California Railroad Seven Per Cent First Mortgage Bonds," having its office and legal domicile at Frankfort-on-the-Main, in Germany, and such association became the holder of all of said bonds.

And, Whereas, by a plan of reorganization of said Oregon and California Railroad Company, adopted by an extraordinary general meeting of said association on

the 5th day of May, 1881, and adopted and ratified by a special meeting of the stockholders of said Company on the 7th day of May, 1881, it was resolved and agreed that the holders of said bonds should receive payment thereof in a new issue of preferred stock of said Company of the amount and of the character and under and subject to the conditions hereinafter specified, and that the performance of the conditions upon which said preferred stock should be subscribed and issued should be secured by a deed of trust or security to said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, in the manner provided and effected by these presents.

And, Whereas, in pursuance of further provisions of said plan of reorganization by a deed of mortgage and trust dated the first day of June, 1881, the Company mortgaged its railroads, lands, and all other property, present and future, to Henry Villard, Horace White and Charles Edward Bretherton to secure an immediate issue of 6,000 first mortgage bonds, for the aggregate amount of Six Million Dollars in gold coin, bearing interest at the rate of six per cent per annum, payable half yearly, on the first days of January and July, and redeemable at 110 per cent of the par value thereof, in manner in said bonds and mortgage specified, all of which 6,000 bonds have been issued and are now outstanding, and also to secure such further issues of first mortgage bonds not exceeding in whole the rate of $20,000 for each mile of road now or hereafter constructed by said Company as should be thereafter made under

the provisions and on the security of said deed of mortgage and trust.

And, Whereas, the said Company in pursuance of its articles of incorporation and by-laws and of said plan of reorganization of the Company approved and ratified by the special meeting of its stockholders held on the 7th day of May, 1881, has made an isue of preferred stock, Twelve Million Dollars in amount in twelve thousand shares of One Hundred Dollars each, all of which stock has been subscribed, and issued upon the following conditions, namely:

I. The preferred stock is entitled to a preferential dividend, not cumulative, of seven per cent per annum, payable out of the net earnings of the Company, and, after the first mortgage bonds hereinafter specified have been paid off out of the gross proceeds of the land grants.

II. Net earnings mean the surplus of the gross earnings of the railroad, after the deduction only of all operating and management expenses, repairs, necessary increase of rolling stock and equipment, taxes and the interest and sinking fund payments upon the first mortgage bonds secured by, and now or hereafter issued under the provisions of the deed of mortgage and trust, dated June 1st, 1881, and made by the Company to Henry Villard, Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned, the preferred stock shall rank equally with the common stock for additional dividends in each year,

after the common stock has received seven per cent in such year.

IV. The entire gross proceeds of the lands, remaining after payment of the first mortgage bonds above specified, shall be distributed exclusively among the preferred stockholders.

V. The dividend on the preferred stock, realized from the proceeds of the lands as above defined, shall diminish, pro tanto, the preferential right of the preferred stock to dividends out of the net earnings of the road, as against the common stock, but in no case shall any part of the land proceeds, as above defined, be distributed among the common stock.

VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st of December, and the dividend shall be declared at or before the annual meeting in the following April.

VII. On any dissolution of the Company, the preferred stock shall be refunded in full, before anything is refunded to the common stock.

VIII. No sale, disposition, incumbrance or lease of the railroad or any part of it, nor any mortgage or issue of bonds, except the first mortgage bonds at the rate of $20,000 a mile hereinbefore specified, nor any operating traffic or running contract in the nature of a lease, or which shall transfer the management or operation of the road, or any part of it, to another company, nor any consolidation with another company, nor any

lease of the railroad of another company, nor any guarantee or assumption of the liabilities of any other company for bonds, coupons, dividends, or otherwise, nor any supplementary articles of incorporation of the Company, nor any increase of the preferred or common stock, shall be made, or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding, nor shall the Pacific Extension be undertaken without such consent.

IX. The dividends on the preferred stock for the years 1881 and 1882, not exceeding eight per cent in all may be paid in scrip, convertible into preferred stock instead of cash.

And Whereas, in further pursuance of said plan of reorganization, it has been resolved and agreed between the said Company and the said Trustees, that the ownership of all the shares of said preferred stock so issued and entitled to the security of these presents, shall be evidenced by certificates issued by said Company, and referring to these presents and upon which certificates the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth shall be endorsed, and otherwise in such form as said Company and said Trustees shall from time to time determine, but which certificates shall only be valid when countersigned by, and registered with some respectable bank or trust company in New York, London and Frankfort-on-the-Main, from time to time agreed upon and appointed in writing by said Trustees and said Company, as Registrars of said preferred stock.

And, Whereas, the Farmers Loan and Trust Company in New York, the London and San Francisco Bank, limited, in London, and the Deutsche Vereinsbank, in Frankfort-on-the-Main, have been so agreed upon and appointed as Registrars of said preferred stock.

Now, this Indenture Witnesseth, That in pursuance of said resolution and agreements and of said plan of reorganization, and to secure the performance of the conditions upon which said preferred stock has been subscribed and issued, as aforesaid, said Oregon and California Railroad Company, doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg, and between Portland and Corvallis, and Albany and Lebanon, in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon railroad, in all about three hundred and six and one-half (306½) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk and Benton in said State of Oregon together with the ferry, ferry-boats and landings connecting said railroads at Portland and East Portland, and also all the railroads of said Oregon and California Railroad Company to be hereafter constructed, that is to say the Pacific Exten-

sion thereof, from Forest Grove to Astoria, in accordance with the act of Congress of May 4, 1870, hereinbefore recited, and the line from Corvallis to Junction and the Southern Extension thereof from Roseburg to California, to a junction with the Central Pacific Railroad in accordance with the Act of Congress of July 25, 1866, hereinbefore recited, and also all land rights of way, easement and premises now acquired or appropriated for the purpose of the right of way of said railroads, or for grounds, side tracks, depots, warehouses, tanks, round houses, stock yards, or any other railroad purposes and also all lands granted by the United States in aid of the construction of the said railroads already completed between the termini aforesaid and not yet sold, estimated to be in amount about one million nine hundred thousand acres, and all other lands now or which may be hereafter granted to said company by the United States, and which lands are intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and also together with all rails, spikes, ties, timber, iron, switches, frogs, depots, warehouses, round houses, machine shops, bridges, trestle work, and all other buildings or structures now or hereafter belonging to, or used for, the maintenance or operation of said railroads respectively, including all the offices, docks and warehouses of the company, in Portland and East Portland, or elsewhere, and all locomotives, cars and other rolling stock, railroad supplies, fuel, tools and machinery now used, or which may hereafter be used in, or provided for the maintenance or operation of said

railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate same, and all the income, earnings, and profits of said railroads, lands and premises and all other present and future property of every description, of said Oregon and California Railroad Company.

To have and to hold the said railroads, lands, rolling stock, equipment, premises and property unto the use of said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors as trustees of these presents as joint tenant, and not as tenants in common free from all prior liens and encumbrances whatever (except the prior lien created by the said deed of mortgage and trust to Henry Villard, Horace White and Charles Edward Bretherton, in favor of the first mortgage bonds now issued or which may be hereafter issued, upon security of said deed of Mortgage and Trust as hereinbefore specified), in trust nevertheless for the equal benefit and security, pro rata, of every holder of the preferred stock of said company duly registered as aforesaid, with one of the registrars of said preferred stock and now issued, or which may be hereafter issued, in pursuance of the provisions of these presents, and intended to be secured hereby, without any priority of any holder over another, by reason of earlier issue, or otherwise, and for the uses and purposes, and with the rights and powers and subject to the provisions, agreements, covenants and stipulations contained in the following articles, that is to say:

Article 1. The said Oregon and California Railroad

Company hereby covenants with the said Trustees that it will forever duly and faithfully perform each and all the conditions upon which said preferred stock has been subscribed and issued as hereinbefore recited.

Article 2. And further, that if any such condition shall be violated or broken and such breach or violation shall continue for six calendar months then said Trustees shall by notice in writing left at the office of the company in Portland, cancel the subscription of all the preferred stock, and thereupon the said company shall and will forthwith pay, on demand, at the office of the company in Portland, to every holder of preferred stock, upon presentation of this certificate, the sum of one hundred dollars for each share held by him.

Article 3. Until the breach of some condition hereby covenanted to be performed as aforesaid, said company shall freely possess the said railroads, lands and premises and the income, earnings and profits thereof, and may contract to sell and sell and dispose of the lands granted by the United States and of all other lands owned by the company not required for the maintenance and operation of its railroads; but when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, no such sale, nor any conveyance or release of said lands, or any of them shall be valid and effectual unless such sale be at a price approved by said trustees and received by them, and such conveyance or release shall be executed by said trustees, or one of them, or by their attorney or attorneys in fact thereunto lawfully

authorized. And for the purpose of facilitating such sales, when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, said trustees may from time to time, either concur with said company in appointing an agent to make such sales and execute such releases and conveyances as their attorney in fact, join in such sales, and to execute such releases and conveyances as their attorney in fact, and they may delegate to any such agent all their powers and duties in respect to the sale of lands, except the custody of the proceeds thereof.

Article 4. Said trustees shall hold the said proceeds of all lands sold, after all such first mortgage bonds hereinbefore referred to shall have been paid off, upon trust, to distribute the same as dividend upon the preferred stock in conformity with the conditions thereof.

Article 5. In case said company shall fail to perform and keep any condition upon which said preferred stock is subscribed and issued, as hereinbefore set forth, it shall be lawful for said trustees to take possesison personally or by their agent or agents, of said railroad, rolling stock and equipment, and the lands and other premises, hereby conveyed or which may be then subject to the lien of these presents and to operate the said railroads and manage the same, and collect and receive the income earnings and tolls thereof, and the proceeds of lands contracted to be sold; and said company covenants and agrees that it will, on demand surrender such possession and permit said trustees to use and possess said railroads,

rolling stocks, lands and premises, without interruption or disturbance, and will permit and suffer said trustees to collect and get in all freight moneys, ticket balances or other earnings, and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary, or may be deemed advisable by said trustee, to take legal proceedings for dissolution of said company or for cancellation of the subscription of the preferred stock, or enforcement of the covenants, stipulations or trusts of these presents or to obtain possession of said premises in pursuance of the provisions of this article, they shall be entitled to the appointment, by the court in which such legal proceedings are instituted, of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

Article 6. Said trustees, when in possession of said railroads, lands and premises shall have the right as irrevocable attorney or attorneys of said company to bring or defend in the name of the said company any action for the collection of income, freight moneys, ticket balances or other earnings or unpaid purchase money for lands sold, or for obtaining or defending the possession of any property subject to the lien or trustes of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

Article 7. Said trustees are hereby authorized, in their discretion to accept possession of said railroads,

with the rolling stock, lands and appurtenances herein comprised although no such default as aforesaid shall have been made if said company shall offer to give up possession to them and thereupon to manage and operate the same, and collect the income and earnings thereof, as hereinbefore provided.

Article 8. It shall be the duty of said trustees to take possession of said railroads, lands and premises, after any such breach as aforesaid upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said preferred stock.

Article 9. Said trustees shall have full power, from time to time for the purpose of enforcing and administering the trusts and powers of these presents, and for operating and managing or keeing in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants as they shall deem necessary or useful, and to defray all expenses of such employment and of otherwise executing the trusts of these presents, and to pay any taxes assessed upon the trust premises or any part thereof or any other prior charges thereon, out of any moneys coming to their hands, and in case said trustees shall have no funds in their hands, and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said trustee shall be in possession of the same or not), the

amount so paid, together with interest thereon at the rate of ten (10) per centum per annum, shall be a first charge on the trust premises, and the earnings, income and proceeds thereof; and in case said company shall fail, on demand to repay said trustees any amount paid by them as aforesaid, with interest at the rate aforesaid they may enter upon and take possession of said railroads, lands and premises, and retain possession and receive the income, earnings and proceeds thereof until they shall have recouped themselves the amount so paid, with interest as aforesaid.

Article 10. In case the company shall, after cancellation of the subscription of the preferred stock in manner provided in Article 2 of these presents, make default in payment to any holder of preferred stock of the sum payable to him under the provisions of said article, it shall be the duty of said trustees to forthwith proceed to enforce this security, and to sell said railroads, rolling stock, equipment and appurtenances, and the land and premises comprised herein, or then subject to the lien of these presents, in one lot, or in more than one lot or parcel, and at one time, or at different times, and for cash, or on reasonable credit, payment therefor being secured on the property sold, and otherwise, upon such terms and in such manner as said trustees may in their discretion, think best.

Article 11. Such sale or sales may be made either without suit by said trustees, or their duly authorized agent by public auction, at the door of the Court House

of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald, or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York and selected by said trustees; and in case said sale shall be adjourned, the like four weeks' notice shall be given of the adjourned sale; or at the option of said trustees such sale may be made judicially by action or suit brought by said trustees for the enforcement of the lien and powers of sale hereby created and granted, or the enforcement, performance or administration of the covenants, powers, stipulations and trusts of these presents, as said trustees may deem most expedient.

Article 12. The moneys received from the net earnings of said railroads or the purchase moneys received on any such sale thereof, as hereinbefore provided, or the purchase moneys received for lands sold, when in possession of said trustees, shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts of these presents, and the management and operation of said railroad, and in the protection and preservation of the trust premises, including a reasonable compensation to said trustees (in addition to the ordinary compensation herein provided for) and the fees of counsel and attorneys; and, in the next place, in payment of debts and liabilities incurred by said company otherwise than by or in or through the breach of any of the conditions upon which said preferred stock is subscribed and issued

as hereinbefore set forth; and lastly in payment to every holder of said preferred stock of the sum of one hundred dollars for each share of preferred stock held by him, or a proportionate part thereof in case such moneys shall be insufficient to pay the full amount; and the surplus, if any, of such moneys shall be refunded to said company.

Article 13. On any sale by virtue of these presents the receipt of the said trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him, and any conveyance or assignment made by said trustees shall vest in said purchaser all the title and interest of said company as fully and effectually as if the company were party thereto.

Article 14. The company hereby covenants and agrees with the said trustees on behalf and for the benefit of the holders of said preferred stock that it will, from time to time, and at all times hereafter upon reasonable request, make, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said trustees and their legal successors, from time to time as trustee of these presents upon the trusts and for the purposes herein expressed, the said railroads, rolling stocks, equipment, lands and premises herein comprised, free from all prior liens and encumbrances except as herein specified and all other present and future property of said company of every kind and description as by the said trustees or their counsel learned in the law shall be reasonably

devised, advised or required, and will, from time to time, as the said lands now or hereafter granted by the United States are patented to said company, execute proper deeds of further assurance thereof to said trustees so as to fully identify the lands intended to be comprised in or subjected to the lien of these presents.

Article 15. All rights or powers by these presents given to, or covenants, stipulations or agreements made with said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton shall survive and enure to the benefit of the trustee or trustees for the time being of these presents, in the same manner as if said trustee or trustees had been named herein.

Article 16. In these presents the word "trustees" shall be held to mean the said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton while continuing to be trustees hereof, and the trustees for the time being of these presents, whether all or any be original trustees or new trustees.

Article 17. No trustee shall be in any manner responsible for any act, default or misconduct of his co-trustee, nor for that of any agent, bank, banker, broker, or other persons employed by him or by his co-trustee, unless he shall be chargeable with culpable negligence in their selection or in the continuance of their employment; nor otherwise except for his own willful default, misconduct or gross negligence. But except as herein specially authorized, no trustee shall have power to delegate his powers or authority to his co-trustees or

co-trustee, or to any other person whatever.

Article 18. The trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust, and said trustees shall be paid by said company or, in default out of the trust money, the sum of five hundred dollars per annum each, and in addition a further reasonable compensation for such services as they may be called upon to render in taking possession of and managing the premises or selling the same, or bringing suit for the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by or becoming payable by virtue of these presents.

Article 19. The case of the death, resignation or refusal or incapacity to act of any Trustee the surviving or continuing Trustees or Trustee shall by deed appoint a suitable person as Trustee, in the place or stead of the Trustee so dying, resigning, refusing or becoming incapable; and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee shall fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co-Trustee to appoint a new Trustee, the said company, or any holder of said preferred stock, may apply to any Judge in the Circuit Court of the United States for the District of Oregon, to make such appointment and any such Judge may ap-

point a new Trustee by instrument under his hand and seal, without suit or other legal proceedings therefor; but in no case shall a citizen of the State of Oregon be appointed, or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such courts shall have jurisdiction of such action or suit, and not in the Courts of the State.

Article 20. A majority in amount of the holders of the said preferred stock shall have full power at any time without suit, and whether there be any vacancy or not to remove all or any of the then existing Trustees and to appoint other Trustees, or another Trustee, in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the Trustees or as sole Trustee; and any such act of the majority in the amount of the holders of preferred stock shall be deemed to be sufficiently made, executed, evidenced and proved by a written instrument or instruments purporting to be signed by the actual holders of the certificates for such preferred stock, whether they shall be registered in the names of such persons on the books of the company or not, provided that each such certificate shall be either in the name of such holder or transferable by him as attorney of the holder named in the certificate, and stating the identifying numbers of the certificates of the shares of such stock and the amount

of such shares held by each signatary, and the respective signatures to which, and the production to a Notary Public at the time of signature of the certificates specified, shall be acknowledged before and certified by such Notary Public and his certificate attached and authenticated by his Notarial Seal. No proof shall be necessary of the qualications of any such Notary so purporting to act in the United States, the British Dominions, Holland, France or the German Empire.

Article 21. Any appointment of a new Trustee made by the surviving or continuing Trustees or Trustee, or the majority of the holders of preferred stock, or a Judge, as hereinbefore provided, shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee party to these presents without any new deed or conveyance; but nevertheless the said company hereby covenants in any and every such case to make, upon request of the new Trustees or Trustee, all such deeds, conveyances and assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties and every resigning Trustee shall, on like request, make and execute such deeds, conveyances and assurances to his successors or successor.

Article 22. A majority in amount of the holders of the preferred stock at any time secured by these presents may, by written instrument, to be executed and

proved as provided in Article 28, at any time before the cancellation of the subscription for the preferred stock, as hereinbefore provided waive any breach of any condition upon which said preferred stock is subscribed and issued, but such waiver shall be of no effect unless such breach shall have consisted in some act or omission which a majority in amount of the holders of said preferred stock might have previously authorized, or unless such breach shall have consisted in the non-payment of any dividend, and the Company shall, together with such instrument or instruments of waiver, hand to the Trustees a sum of money sufficient to pay all such dividend then in arrear, and in the case last mentioned said Trustee shall proceed to pay said dividend as nearly as possible in the manner provided by these presents.

Article 23. The said company, for itself, its successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay, appraisement or redemption laws, or laws requiring liens or deeds of trust to be foreclosed or enforced by action or suit, and of all other laws now existing, or hereafter passed, which, but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by a Trustee without suit; and on any such sale said company, for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser.

Article 24. In case of any sale of said premises, whether by the Trustees or by a Court, any purchasers

shall be entitled to deliver, in part payment of the purchase money, any of the certificates for preferred stock secured by these presents; and such certificates shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previously by the Trustees or the Court as the case may be and announced in the advertisement of sale.

Article 25. The Trustees shall, whenever requested by the company, release from the lien of these presents any land, rolling stock, or other property become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise.

Article 26. On any sale, whether by the Trustees or a Court, of the property hereby conveyed, or any part thereof, the Trustees shall have the right to buy in the same, and a majority in amount of the holders of the preferred stock shall have the right, by written instrument, evidenced and proved as hereinbefore provided by Article 28, to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold, on behalf and for the benefit of such holders of preferred stock, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the Court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents, and of the proportion of such sum payable to the holders of preferred stock not concurring in such request.

Article 27. On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the holders of preferred stock, who had required the Trustees to buy in the property on their behalf, as the absolute property of said holders of preferred stock, without any right of redemption or resale in favor of said Company or any other holders of preferred stock.

Article 28. The Trustees shall deposit all trust funds which may from time to time come to their hands in their joint names, in the London and San Francisco Bank Limited, or such other respectable bank or banks, trust company or trust companies, in London, New York, Frankfort, San Francisco or Portland, as they may, from time to time agree upon, and may from time to time invest the same, until required, in the purchase of United States stocks or bonds at their market value, or in the first mortgage bonds of the company at any price not exceeding the par value thereof or on loans secured on such stocks or bonds.

Article 29. In computing the majority in amount of the holders of preferred stock hereinbefore referred to, only the stock actually issued and outstanding shall count, and not any stock belonging to the company, or reserved for the conversion of the issue of income bonds in said plans of reorganization mentioned.

Article 30. And, Whereas, by reason of distance, lapse of time, or other accident, the dates of the actual execution of this Indenture of Trust, by the various

parties thereto, may be previous or subsequent to the day of which it bears date. Now it is hereby expressly agreed and declared that this Indenture of Trust shall be dated the second day of June, 1881, and shall be valid and effectual as if executed on the day and date thereof, and that this Indenture of Trust is the indenture referred to in the certificates for preferred stock hereinbefore mentioned, and is made and executed by and between the parties hereto as and for the Indenture or Deed of Trust securing and intended to secure, the performance of the conditions on which said preferred stock is subscribed and issued.

In Witness Whereof, the said Oregon and California Railroad Company, pursuant to a resolution of its Board of Directors duly authorizing the same, has caused these presents and nineteen duplicates hereof to be sealed with the corporate seal, signed by its President, and attested by its Assistant Secretary, and the said Trustees respectively have hereunto and unto the said nineteen duplicates hereof set their hands and seals the day and year above written.

OREGON AND CALIFORNIA RAILROAD COMPANY,

By H. Villard, President.

Attest: H. H. Tyndale, Assistant Secretary.

O. & C. R. R. Corporate Seal.

H. VILLARD,
R. D. PEEBLES,
C. E. BRETHERTON,
Trustees.

Signed, Sealed and Delivered in Presence of Geo. A. Saxer, as to Sidney Starbuck, H. Villard, C. E. Bretherton.

Signed, Sealed and Delivered by Robert Davie Peebles in the Presence of James Davis, S. Jackson, 22 Old Broad Street, London.

STATE OF NEW YORK, }
City and County of New York, } *ss.*

Be it remembered that on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a Commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard, the President of the Oregon and California Railroad Company, and Hector H. Tyndale, the Assistant Secretary of the same company, to me respectively personally known to be such, who being by me severally duly sworn did depose and say, that he, said Henry Villard, resides in the City and State of New York; that he, said Hector H. Tyndale, also resides in said City of New York; that he, said Henry Villard, is the President, and he, said Hector H. Tyndale, is the Assistant Secretary of said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed hereto by order of the Board of Directors of said company; and that they, the said Henry Villard and Hector H. Tyndale, signed their names thereto by the like order, as President and Assistant Secretary of said company,

respectively, and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed, and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(Commissioner's Seal.)

City and County of New York,
STATE OF NEW YORK, } *ss.*

Be it remembered, that on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a Commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard and Charles Edward Bretherton, Trustees in the foregoing Deed of Trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as Trustees, and they severally acknowledged to me that they executed the same freely and voluntarily, as their act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(Commissioner's Seal.)

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA
For Great Britain and Ireland, London. } *ss.*

On this 17th day of August, 1881, before me, Adam Badeau, Consul General and ex-officio a Notary Public of the United States of America, at London, England, personally appeared Robert Davie Peebles, to me known to be the person of that name described in and who has executed the foregoing Deed of Mortgage and Trust, and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein contained.

In Testimony Whereof, I have hereunto set my hand and affixed my official notarial seal, at London, aforesaid, the day and year above written.

ADAM BADEAU,
Consul General, U. S. A., London.

(U. S. Consulate Seal.)

Exhibit E

This Agreement made and entered into this ——— day of ——— One Thousand Eight Hundred and Eighty-Seven, by and between George Henry Hopkinson, Robert Davie Peebles, Patrick Buchan and Charles Edward Bretherton, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, and who are hereinafter called the Stockholders' Committee, of the first part, the Pacific Improvement Company, a corporation created, organized and existing under the laws of the State of California, of the second part, Lawrence Harrison, Andrew Haes, Henry Hopkinson, George Henry Kearton and Lawrence James Baker, a Committee sitting in London, England, and representing the British holders of the First Mortgage Bonds of said Oregon and California Railroad Company, hereinafter called the London Bondholders' Committee, of the third part, Heinrich Hohenemser, Hermann Koehler, Karl Pollitz, Adolph Otto, Phillip Bonn, Heinrich Oswalt, Siegmund Lion and Emil Kalb, a Committee sitting in Frankfort, Germany, and representing the German holders of the First Mortgage Bonds of said Company, hereinafter called the Frankfort Bondholders' Committee, of the fourth part, the Southern Pacific Company, a corporation created, organized and existing under and by virtue of the laws of the State of Kentucky, of the fifth part, the said Oregon and California Railroad Company, of the sixth part, and the Union Trust Company of New York, a corporation

created, organized and existing under and by virtue of the laws of the State of New York, party of the seventh part, *witnesseth* as follows:

First: The Stockholders' Committee agrees to sell to the Pacific Improvement Company, One Hundred and Seventeen Thousand, Two Hundred and Ninety (117,290) shares of the Preferred Capital Stock of the Oregon and California Railroad Company, out of the total issue of One Hundred and Twenty Thousand (120,000) shares thereof, and Sixty-Seven Thousand, Seven Hundred and Eighty-Five (67,785) shares of the Common Capital Stock of said Oregon and California Railroad Company, out of the total issue of Seventy Thousand (70,000) shares thereof, and Second Mortgage Bonds of said Oregon and California Railroad Company, to the amount at their part value of Two Millions, Six Hundred and Ten Thousand Dollars ($2,610,000), being the total issue of such Second Mortgage Bonds, and will deliver the same to the said Pacific Improvement Company, in the City of New York, on or before the first day of April, One Thousand Eight Hundred and Eighty-Seven; and the said Pacific Improvement Company, in consideration thereof, and in payment therefor, will, simultaneously with such delivery and with the deposit with the Union Trust Company of New York, by the London and Frankfort Bondholders' Committees, of bonds to the amount of at least Eight Millions, Four Hundred Thousand Dollars ($8,400,000), par value, as hereinafter provided, deliver in the City of New York, to the Stockholders' Committee or

its nominee in said city, one share of the Capital Stock of the Central Pacific Railroad Company (out of a total Capital Stock thereof not exceeding six hundred and eighty thousand [680,000] shares) against every two shares of Oregon and California Preferred Stock sold and delivered as aforesaid, and one share of Central Pacific Stock against every four shares of Oregon and California Common Stock sold and delivered as aforesaid, and will also pay the sum of Four Shillings sterling for every share of Oregon and California Preferred Stock, and of Three Shillings sterling for every share of Oregon and California Common Stock so sold and delivered. Such payments to be made by first-class bankers' sight draft on London.

The Pacific Improvement Company also agrees to pay the cost of transportation and insurance of said stock and bonds to the City of New York, and of the stock of the Central Pacific Railroad, to be received in payment therefor, from the City of New York to the City of London. It also agrees to pay to the nominee, in the City of New York, of the Stockholders' Committee, the sum of Two Thousand, Five Hundred Dollars as a remuneration for such nominee's services in the premises, and that the Central Pacific Railroad Company, upon the surrender to it of the certificate or certificates representing the stock so to be delivered by the Pacific Improvement Company, shall issue ten-share certificates for said stock in the name or names of such parties as may be designated by the Stockholders' Committee or its nominee in New York.

Second: In case the Stockholders' Committee, shall on or before the first day of April, One Thousand Eight Hundred and Eighty-Seven, acquire the ownership or control of any additional amount of the Preferred or Common Stock of the Oregon and California Railroad Company, beyond and in excess of the amount mentioned and described in the foregoing article hereof, then and in that event the Stockholders' Committee agrees to sell and deliver the same to the Pacific Improvement Company, in the City of New York, on or before the said first day of April, One Thousand Eight Hundred and Eighty-Seven, and the Pacific Improvement Company shall pay for the same in cash and stock, at the respective rates and in the manner specified in the previous article.

Third: The Bondholders' Committees have agreed to sell to and exchange with the Southern Pacific Company, upon the terms hereinafter stated, and upon compliance with the same by the Southern Pacific Company and the Oregon and California Railroad Company or its successors, First Mortgage Bonds of said Oregon and California Railroad Company (out of the total amount outstanding of Eight Millions, Six Hundred and Six Thousand Dollars [$8,606,000] par value) issued under and secured by the mortgage of said Company to Henry Villard, Horace White and Charles Edward Bretherton, as trustee, dated first day of June, One Thousand Eight Hundred and Eighty-One, but of which the Farmers' Loan and Trust Company of New York is now sole Trustee to the amount at their par

value of Eight Million, Four Hundred Thousand Dollars, ($8,400,000), bearing all unpaid coupons appertaining thereto. For that purpose they are to deposit the said Eight Million, Four Hundred Thousand Dollars ($8,400,000) bonds, within forty days after the execution of this agreement, with the Union Trust Company of New York. The Southern Pacific Company, in consideration thereof, and in payment and exchange therefor, is to deliver to the said Trust Company, to be delivered by it to the Bondholders' Committees, or their nominee in the City of New York, Nine Million, Two Hundred and Forty Thousand Dollars ($9,240,000) par value of new bonds of the Oregon and California Railroad Company or its successors (being at the rate of One Hundred and Ten (110) per cent new bonds upon the amount of old bonds exchanged as aforesaid) carrying interest at the rate of five per centum per annum from the first day of July, One Thousand Eight Hundred and Eighty-Six (except so far as such interest may have been theretofore paid in cash as hereafter provided) and guaranteed, both principal and interest, by the Southern Pacific Company, and secured as hereinafter stated; and also to pay the sum in cash of Four Pounds (£4) sterling for each now existing bond of One Thousand Dollars ($1,000) received in exchange as aforesaid; such new bonds so to be delivered by the Southern Pacific Company in payment and exchange as aforesaid shall be payable, principal and interest, in gold, forty years after date, and bear interest at the rate of five per cent per annum, payable half-yearly, and shall be guaraneeed,

both as to principal and interest by the Southern Pacific Company, and shall be secured by a mortgage to be made by the said Railroad Company or its successors to the Union Trust Company of New York (or such other company as shall be agreed upon by the parties) upon all the property which, at the time of such deposit of existing bonds, shall be covered by the mortgage securing such First Mortgage Bonds of the Oregon and California Railroad Company, except the amounts due for lands sold previous to the date of such deposit, and except the cash in the hands of the mortgage Trustee, and upon all extensions thereof and future acquired property in Oregon of the company making such new bonds. The net proceeds of lands sold subsequent to the date of such deposit, and of the lands included in such mortgage securing such new bonds, shall be applied to the redemption and cancellation of the new bonds by annual drawings at par, unless purchasable at a lower price, as prescribed in the mortgage. Such new mortgage is to be equivalent, in point of lien and priority, to the aforesaid existing mortgage securing the said First Mortgage Bonds, except as to such of the latter as are not now or hereafter may not be deposited by the London and Frankfort Bondholders' Committee under this agreement. The amount of the bonds to be issued under such new mortgage shall be as follows: Thirty Thousand Dollars ($30,000) per mile for every mile of standard gauge road now or hereafter constructed or acquired and comprised in the mortgage, and Ten Thousand Dollars ($10,000) for every mile of narrow gauge road now or

at any time hereafter constructed or acquired and comprised in the mortgage. The mortgage deed shall provide for the immediate issue and delivery by the mortgage Trustee to the Mortgagor Company of Ten Million, Five Hundred Thousand Dollars ($10,500,000) of the new bonds in nominal amount; and that thereafter the Trustee of the mortgage shall further issue One Hundred Thousand Dollars ($100,000) par value of such bonds for each mile of road constructed between the present terminus, near Ashland, and the California State line, and Fifty Thousand Dollars ($50,000) par value of such bonds for each ten miles of steel rails laid down on the present lines of the Oregon and California Railroad Company, after such deposit of existing bonds, and on the completion of a rail connection between the present line of the Oregon and California Railroad Company and the line of the Central Pacific Railroad Company any unissued bonds for which the mileage shall then be constructed shall be delivered.

Provided, however, that such aggregate issue, including the amount to be delivered to the Bondholders' Committee hereunder, shall not exceed the limits of Thirty Thousand Dollars ($30,000) and Ten Thousand Dollars ($10,000) for each constructed mile of standard and narrow gauge line respectively, nor Twenty Million Dollars ($20,000,000) in all. For any additional mileage constructed or acquired either between Junction and Corvallis or elsewhere in Oregon, the Mortgage Trustee shall deliver the sum of Thirty Thousand Dollars ($30,-

000) par value for each mile of standard gauge road, and the sum of Ten Thousand Dollars ($10,000) par value for each mile of narrow gauge road; the mortgage Trustee, however, not to be compelled to accept less than ten miles of road at any one time, except in case of terminal sections. Deliveries of bonds under such mortgage are to be made by the Trustee from time to time upon presentation to it of affidavits, of the President and Chief Engineer of the Railway Company making such mortgage, to the facts authorizing delivery of such bonds under this Article, and without other evidence or proof thereof. In no event, however, is the total issue of bonds secured by said new mortgage, to exceed for all the purposes in this Article mentioned, the aggregate of the sum of Twenty Million Dollars ($20,000,000). The form of such new bond, which is to be of One Thousand Dollars ($1,000) denomination, and of the mortgage securing the same, and of the guaranty, are to be approved by the counsel of the Bondholders' Committees.

Fourth: Notwithstanding the provisions to be inserted in the mortgage deed restricting the future issue of bonds to the mileage rates above specified, the mortgage deed shall permit the Railway Company making the mortgage to require the Trustee, at any one time, or from time to time, to issue and permit the sale of such amount or amounts of bonds as the Railway Company may think fit, *Provided, however,* that the proceeds of such bonds shall be received by the mortgage

Trustee, and not by the Railway Company or its appointees, and shall be disbursed by the mortgage Trustee to the Railway Company or its appointees, only pro rata, as and when the Railway Company would have been entitled to receive such bonds thereunder, under the foregoing Articles hereof.

Fifth: In case, on or before the first day of April, One Thousand Eight Hundred and Eighty-Seven, the Bondholders' Committee shall acquire the ownership or control of any additional amount of the said First Mortgage Bonds of the Oregon and California Railroad Company, beyond and in excess of those mentioned in the third Article hereof, then and in that event said Bondholders' Committees agree to sell and exchange the same with the Southern Pacific Company, upon the like terms and in consideration thereof, and in payment and exchange therefor, the Southern Pacific Company shall deliver and pay to the Bondholders' Committees, Eleven Hundred Dollars of bonds guaranteed by the Southern Pacific Company, of the character hereinabove described, and the sum of Four Pounds (£4) sterling in cash for every One Thousand Dollars of such additional now existing First Mortgage Bonds of the Oregon and California Railroad Company, above mentioned, with all unpaid coupons appertaining thereto, so delivered to it for exchange, due adjustment of fractions to be made by issue of fractional certificates therefor.

Sixth: Within three months from the deposit of the bonds now belonging to or controlled by the Bondhold-

ers' Committees, with the Union Trust Company, as hereinbefore provided, the Southern Pacific Company, by notice in writing to the Union Trust Company of New York, shall declare its election, either to cause to be created new bonds by act of the present Oregon and California Railroad Company, without foreclosure, or to require the Union Trust Company, as holders of the present mortgage bonds, to obtain a decree in the pending foreclosure suit or to foreclose the mortgage in some other suit caused to be brought by it, and to purchase the property or cause it to be purchased, by its nominee or nominees, at the foreclosure sale. In case said Southern Pacific Company shall give notice of its election to cause to be created new bonds of the present Oregon and California Railroad Company, then such new bonds, duly guaranteed by the said Southern Pacific Company, shall be delivered to the said Union Trust Company, of New York, within six months from the date of such notice, to be by said Trust Company forthwith delivered to the Bondholders' Committees or their nominees in New York. If within said period of three months from the deposit of the bonds by the Bondholders' Committees as aforesaid, the Southern Pacific Company shall fail to signify its election as aforesaid, or if within said period of six months from signifying an election to cause to be created new bonds of the present Oregon and California Railroad Company, it shall fail to deliver such new bonds, so guaranteed as aforesaid to the Union Trust Company of New York, then and in either of such events this agreement shall become void and determined,

and the said Trust Company shall forthwith return to the Bondholders' Committees or their nominees, the bonds deposited by them respectively, and all payments as aforesaid, made by the Southern Pacific Company to the Bondholders' Committees, shall be forfeited and be retained absolutely by the said Bondholders' Committees.

Seventh: Simultaneously with such deposit of bonds to the amount of at least Eight Million Four Hundred Thousand Dollars ($8,400,000) the Southern Pacific Company agrees to pay to the Bondholders' Committees or their nominees in New York, by first-class bankers' sight draft on London, the sum of Thirty-Three Thousand Six Hundred Pounds (£33,600) sterling, being at the rate of Four Pounds (£4) per bond in respect of the bonds so to be deposited. If the Southern Pacific Company shall not elect, as hereinbefore mentioned, to have the existing first mortgage foreclosed, then upon the delivery to the said Union Trust Company, of New York, of the new bonds of the character hereinbefore described, to the amount at their par or face value of Nine Million Two Hundred and Forty Thousand Dollars ($9,240,000), the Union Trust Company, of New York, shall deliver to the Trustee of the new mortgage the Eight Million Four Hundred Thousand Dollars ($8,400,000) par value of now existing First Mortgage Bonds, so deposited with it, together with all coupons deposited therewith. In case the Southern Pacific Company shall elect to have such now existing first mort-

gage foreclosed, the Union Trust Company, of New York, shall under and pursuant to the directions of the Southern Pacific Company, use such deposited bonds and coupons to bring about such foreclosure, and for the purchase of the property by the said Union Trust Company, of New York, or its nominee or nominees, at any sale or sales thereunder, and the said Union Trust Company of New York, shall retain control of the property acquired therewith, until such new bonds to be delivered in exchange therefor under the third Article hereof, shall be prepared by the corporation issuing the same, duly guaranteed by the Southern Pacific Company, and shall have been deposited with the said Union Trust Company of New York; and thereupon the property acquired shall be conveyed and turned over to the corporation issuing the new bonds, which corporation the Southern Pacific Company agrees to cause to be formed. In case of such foreclosure proceedings, the Southern Pacific Company is to cause a decree to be obtained, and a sale thereunder had and confirmed, within twelve months from the date of the execution and delivery of this instrument, or within such further time as may be fixed upon as reasonable by the counsel of the Bondholders' Committees, and of the Southern Pacific Company, or in case of their disagreement, by Benjamin H. Bristow, Esq., whose decision shall be final. In case the Southern Pacific Company fails to obtain a decree of foreclosure, and to purchase the said property within the times aforesaid, or, in case of such purchase, it fails within six months thereafter to deliver such new bonds

by such new corporation, duly guaranteed by the Southern Pacific Company, to the said Union Trust Company, of the City of New York, then, and in either of such events, the said Union Trust Company, of the City of New York, shall hold said property upon trust for the Bondholders' Committees without any claim thereupon or interest therein, by the Southern Pacific Company, under or by virtue of this agreement, or otherwise, and shall, when thereunto required by the Bondholders' Committees, convey such property to such persons or corporation as said Bondholders' Committees may in writing direct, and all payments by the Southern Pacific Company to the Bondholders' Committees, in pursuance of any of the Articles of this agreement, shall be forfeited and be retained absolutely by the said Bondholders' Committees. At any time after April first, One Thousand Eight Hundred and Eighty-Seven, any additional amounts of such First Mortgage Bonds acquired by the Bondholders' Committees, or either of them, shall be forthwith deposited by them in like manner with the said Union Trust Company of New York, subject to the like provisions in respect of their exchange and use in the meantime, as hereinbefore provided, in respect to the Eight Million Four Hundred Thousand Dollars ($8,400,000) bonds deposited as aforesaid, and simultaneously with each and every such additional deposit of any amount of bonds, the Southern Pacific Company will pay to the Bondholders' Committees making the deposit, the sum of Four Pounds (£4) sterling in respect of each One Thousand Dollars ($1,000) of such additional bonds.

Eighth: On the deposit of such Eight Million Four Hundred Thousand Dollars ($8,400,000) of now existing First Mortgage Bonds, and on the first day of July, One Thousand Eight Hundred and Eighty-Seven, and each six months thereafter, until the delivery to said Union Trust Company, of the new bonds hereinbefore referred to, the said Southern Pacific Company shall pay in London to the said Bondholders' Committees, interest at the rate of Two and One-Half (2½) per cent upon an amount equal to One Hundred and Ten (110) per cent upon the now existing First Mortgage Bonds of the Oregon and California Railroad Company, which shall have been theretofore deposited (with all now unpaid coupons appertaining thereto) with the said Union Trust Company, under the terms of this agreement, and the new bonds to be delivered by the Southern Pacific Company, as hereinbefore prescribed, shall bear interest at the rate of Five (5) per cent per annum, only from the last date at which the Southern Pacific Company shall have made such payment.

Ninth: It is understood and agreed that there shall not at any time between the execution of this agreement and the delivery to the Pacific Improvement Company and the Southern Pacific Company respectively of the stocks and securities to be delivered to them as hereinabove provided, be any increase of the amount of the outstanding bonds or capital stock or indebtedness of the said Oregon and California Railroad Company, or

any issue of Receivers' Certificates affecting its property, or increase of the Receivers' indebtedness, or dividend, or other distribution or diminution of assets, except so far as the same may necessarily result from the operation of the road or maintenance of the offices of the corporation.

Tenth: The Pacific Improvement Company and the Southern Pacific Company will pay to the Stockholders' and Bondholders' Committees respectively, and as part of the consideration for the sales of shares and bonds hereinbefore specified, such stock of the Central Pacific Railroad Company and such sums in cash as may be necessary to pay and provide for the fees, remuneration and liabilities of said Committees, including counsel fees and office expenses incurred by said Committees, and the services of the employees of said committees, but not exceeding in the aggregate Two Thousand Five Hundred (2,500) shares of such stock and the sum of One Hundred and Fifty Thousand Dollars ($150,000) in cash. The audit of the London Bondholders' Committee of such accounts shall be necessary, and shall be final and conclusive as against the Southern Pacific Company and the Pacific Improvement Company. Such Twenty-Five Hundred shares are to be delivered to the Bondholders' Committees simultaneously with the deposit of bonds and exchange of stock as hereinbefore provided, and the cash payment of One Hundred and Fifty Thousand Dollars ($150,000), or so much thereof

as may be required as aforesaid, shall be made simultaneously with the declaration in writing by the Southern Pacific Company of its election or non-election to cause the existing first mortgage to be foreclosed.

Eleventh: When this agreement shall have been fully performed by the Pacific Improvement Company and the Southern Pacific Company respectively, then all sums of money and assets remaining in the hands of the said Committees, or any of them, out of the proceeds of assessments or derived from other sources, excepting from the aforesaid payment of Four Pounds (£4) per bond and Four (4) Shillings and Three (3) Shillings in respect of preferred and common stock respectively, shall be paid over to the Pacific Improvement Company.

Twelfth: The Southern Pacific Company further agrees to and with the Bondholders' Committees to pay all Receivers' indebtedness, as well as all costs and counsel fees, in the now pending foreclosure suit or in any foreclosure suit which it may hereafter elect to or cause to be instituted. It also agrees to pay all the charges and expenses of every description of the Union Trust Company of New York, or of its nominee or nominees for any matter or service to be done or performed by it under and in pursuance of any or either of the Articles of this Contract.

Thirteenth: The Southern Pacific Company further agrees with the Bondholders' Committee to pay the cost

of transportation and insurance on the aforementioned bonds both from London to New York and from New York to London, and in addition thereto, one-half of a commission of Fifteen Thousand Dollars ($15,000) which the Bondholders' Committees are to pay to their agents in New York for receiving and delivering the said bonds to the Union Trust Company of New York, and for receiving in return therefor from the said Trust Company the new bonds so to be issued as aforesaid.

Fourteenth: The Southern Pacific Company further agrees to and with the Bondholders' Committees to cause to be stamped the certificates heretofore issued by either of such Committees, with a statement that the holder of such certificates is entitled to the benefit of this agreement, and has assented thereto. The Southern Pacific Company further agrees to designate a person in London and a person in Frankfort, who shall be authorized to so stamp such certificates, as and when they are presented by the holders thereof, without expense to such holders.

Fifteenth: The Southern Pacific Company agrees to execute a lease of the railroad of the Oregon and California Railroad Company or of its successors, for a period of at least forty years from the date of issue of the new bonds, and such railroad company agrees to execute such lease, and such lease is to form part of the consideration of the guaranty by the Southern Pacific Company of the new bonds as aforesaid. Any infirmity or invalidity of or in said lease shall not be deemed a

breach of this agreement by the Southern Pacific Company or the Oregon and California Railroad Company or its successors, nor shall it in any wise affect the validity, legality or sufficiency of the guaranty of such new bonds by the Southern Pacific Company.

Sixteenth: The Pacific Improvement Company and the Southern Pacific Company further agree that, upon issue of the new bonds, hereinbefore provided, the Second Mortgage Bonds of the said Oregon and California Railroad Company, which shall have heretofore been delivered by the Stockholders' Committee to the Pacific Improvement Company, as hereinbefore prescribed, shall be canceled, and thereupon, unless the counsel of the Southern Pacific Company and the Bondholders' Committees should otherwise determine, the First Mortgage Bonds, which shall have been deposited by the Bondholders' Committees hereunder, shall also be canceled. Upon the cancellation of such Second Mortgage Bonds, the Pacific Improvement Company shall thereupon take all proper proceedings to have the mortgage securing the same, satisfied of record. As soon as all outstanding bonds not deposited by the Bondholders' Committees with the Union Trust Company, as hereinbefore provided, shall have been paid, or otherwise satisfied, all proper proceedings shall be taken to have the mortgage securing such now existing First Mortgage Bonds of said Oregon and California Railroad Company, satisfied of record, unless, in the joint judgment of the counsel for the Southern Pacific Company and the Bond-

holders' Committees, it should be deemed more expedient not then to have said mortgage so satisfied.

Seventeenth: The Union Trust Company of New York, has executed this agreement as evidence of its acceptance of the trusts thereby assumed and undertaken by it, and the Oregon and California Railroad Company has executed this agreement as an evidence of its acquiescence and approval of the same, and of its obligation to assist in carrying out the provisions thereof.

In Witness Whereof, the parties of the first, third and fourth parts have hereunto set their hands and seals, and the parties of the second, fifth and sixth, and seventh parts have caused their corporate names to be hereunto subscribed, and their corporate seals to be hereunto affixed by their Presidents or Vice-Presidents respectively, the day and year first above written.

Exhibit F

This Agreement, Made this first day of July, 1887, between the Oregon and California Railroad Company, a corporation duly organized and existing under the laws of the State of Oregon, and the Southern Pacific Company, a corporation duly organized under the laws of the State of Kentucky.

Witnesseth, That the said Oregon and California Railroad Company hereby leases to the Southern Pacific Company for the term of forty (40) years from the date hereof all of its railroad situated in the State of Oregon known as the Oregon and California Railroad, with all its branches, together with the rolling stock, telegraph lines, tools and property of every kind and nature whatsoever in use upon or in connection with the said railroad, and together with all the appurtenances thereunto belonging, with the right to possess, maintain and operate the said property and to receive the rents, issues and profits thereof.

In consideration thereof the Southern Pacific Company agrees to and with the said Oregon and California Railroad Company that during the continuance of this lease it will keep the said leased property in good order, condition and repair, operate, maintain, add to and better the same at its own expense, pay all taxes legally assessed against the same, or levied thereon, and pay the interest as it shall mature, on such First Mortgage Bonds of said Oregon and California Railroad Company, secured by

indenture or Deed of Trust to the Union Trust Company of New York, dated July 1st, 1887, as may be issued in respect of its now existing lines or the extension now under construction of its main line to the boundary between Oregon and California as may be hereafter guaranteed by said Southern Pacific Company, and that it will on the first day of May in each year during the continuance of this lease, pay to the said Oregon and California Railroad Company such balance, if any, of the net earnings or income received by said Southern Pacific Company from the said leased premises with the appurtenances for the year ending on the thirty-first day of December then next preceding as shall remain in its hands after all charges and expenses incurred by it and all the payment for taxes and interest hereinbefore provided or agreed or directed to be made and all current fixed charges of the said Oregon and California Railroad Company and all indebtedness of said Railroad Company to said Southern Pacific Company, are paid. *Provided,* that if such balance of net earnings or income received by the Southern Pacific Company from the said leased premises with the appurtenances for any year, which by the foregoing provisions hereof would be and become payable by said Southern Pacific Company to said Oregon and California Railroad Company, shall exceed the amount of seven (7) per centum upon the par value of the then existing Preferred Stock of the Oregon and California Railroad Company, and six (6) per centum per annum upon the then existing Common Stock of the Oregon and California Railroad Company,

said Southern Pacific Company shall be entitled to and shall retain to itself for its own use any and all excess of such balance of net earnings and income over and above the amounts of seven (7) per centum per annum upon the par value of the Preferred Stock and six (6) per centum per annum upon the par value of the Common Stock of said Oregon and California Railroad Company, and said Southern Pacific Company further agrees to and with the said Oregon and California Railroad Company that it will upon the termination of this lease, return the said premises to the said Oregon and California Railroad Company or its successors, with its additions and betterments, in as good condition and repair as the same were at the date thereof; and in further consideration of this lease it has agreed to execute and will execute a guaranty of the payment of the principal and interest of each of the bonds of the issue above mentioned as may be issued in respect of its now existing lines or the extension now under construction of its main line to the boundary between Oregon and California, and of such further bonds of said issue as the said Oregon and California Railroad Company may during the existence of this lease, request it to guarantee.

It is understood and agreed that the mortgage from the Oregon and California Railroad Company to the Union Trust Company of New York, bearing date July 1, 1887, and the bonds issued thereunder, have and shall have priority of the lien upon the mortgaged property over the lien and claim of the Southern Pacific Company as lessee hereunder.

In Testimony Whereof, the parties hereto have caused these presents to be signed by their respective Presidents and their respective corporate seals affixed and attested by their respective Secretaries the day and year first above written.

Exhibit G

This Indenture, Made and entered into this first day of August, Eighteen Hundred and Ninety-Three, by and between the *Oregon and California Railroad Company,* a corporation existing under the laws of the State of Oregon, party of the first part, and the *Southern Pacific Company,* a corporation, existing under the laws of the State of Kentucky, party of the second part, *Witnesseth*:

First: The party of the first part hereby leases to the party of the second part, for the period of thirty-four years, from and including the date hereof, the railroads of the party of the first part in the State of Oregon, and also the equipments and appurtenances of every kind and nature whatsoever thereto respectively belonging or appertaining.

Second: The party of the second part will pay to the party of the first part a yearly rental for the premises so leased, amounting to the sum of Five Thousand Dollars per annum, which rental shall be paid in four installments of Twelve Hundred and Fifty Dollars each on the first days of February, May, August and November of each year during the pendency of this lease, (commencing on the first day of November, Eighteen Hundred and Ninety-Three), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expense of maintaining and keeping up

its corporate organization under the laws of the State of Oregon.

Third: The party of the second part is to operate the said leased railroads belonging to the party of the first part and shall, in the first place, out of the earnings and income derived therefrom, pay the cost of operating such railroads and the incidental expenses connected therewith, and likewise pay the taxes and assessments on the said demised premises, the cost of insurance thereof if and so far as effected, such amounts as it may become necessary to pay for damages to persons and property incurred in the course of operating the said leased railroads, or on account of land purchases heretofore made by or on behalf of said party of the first part, and the expense of repairing, maintaining, improving, adding to and keeping up the said leased railroads, with all their appurtenances, and of maintaining, providing and keeping up in suitable condition and repair rolling stock and equipment for carrying on as economically and profitably as may be the transportation business of said leased railroads, and, so far as the same shall not be paid from the rentals or income or proceeds of sale of lands, the expenses of and connected with the lands of said party of the first part, and perfecting the title thereto, and payment of taxes and assessments thereon, and the expenses of and connected with its land department; and after the payments and deductions aforesaid, the said lessee shall apply the residue of the amount of the net income and earnings of said railroads, to such extent as

shall be required for the purpose, to the payment of the interest and any sinking fund contributions from time to time becoming due and payable during the existence of this lease upon the now existing bonded indebtedness of the party of the first part and such other bonded indebtedness of said party of the first part as may be created by said party of the first part with the assent of the party of the second part hereto.

And it is Further Provided and Agreed, by and between the parties hereto, that on the first day of May in each year during the continuance of this lease, the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments, expenses, deductions and advances and all the payments for interest and sinking fund contributions heretofore provided for or agreed or directed to be made, are paid. *Provided However,* that if at the time, viz: such 1st day of May when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part, for or in respect of advances or payments theretofore made by the party of the second part, or for new additions or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization

of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expense of its business affairs, or for or in respect of any other sums which may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon. And *Provided further,* that if such balance of net earnings or income received by the party of the second part from the leased premises, with the appurtenances, for any year, and which by the foregoing provisions hereof would be and become payable by said party of the second part to said party of the first part, shall exceed the amount of seven per cent per annum upon the par value of the then existing preferred stock of the party of the first part and six per cent upon the par value of the then existing common stock of said party of the first part, then and in that event the said party of the second part shall be entitled to and shall retain to itself for its own use any and all excess of such balance of net earnings and income over and above the amount of seven per cent per annum upon the par value of the then existing preferred stock, and six per cent per annum upon the par value of such then existing common stock of the party of the first part.

Fourth: It is further understood and agreed be-

tween the parties hereto that at the time when this lease shall go into operation, the party of the second part shall receive and be entitled to use and apply in the operations of the said demised premises, all fuel, rails, and materials and supplies which shall then be on hand belonging to the party of the first part; and likewise to collect and receive all sums which may be at that time due and owing to the party of the first part for freights and passage money, including all sums in the hands of agents or employees, or due from connecting roads, and likewise that the sums that may at such time be due or owing by the party of the first part for back wages of employees, and for fuel, rails and other materials and supplies for the business of said demised premises, or to connecting roads, or damages to persons or property in the operation of the road, or for other incidental expenses of the party of the first part, shall be paid by the party of the second part, and all the receipts and payments for and on account of such back freights and passage money and moneys in the hands of agents, employees or connecting roads and for such back wages and debts for fuel, rails and other materials and supplies, and to connecting roads, and for damage to persons and property, and incidental expenses as aforesaid, shall be brought into and form part of the accounts of the party of the first part with the party of the second part hereunder for the year ending December 31st, 1898, in like manner and with like effect in all respects as if the same had accrued during that year.

Fifth: In case the amount of net earnings or income of the said demised premises applicable under the preceding provisions hereof to the payment of the current interest upon the bonded indebtedness of the party of the first part shall be insufficient in any year to pay in full such current interest for the year, it shall be optional with the party of the second part whether or not to advance or pay for account of the party of the first part the amount of such deficiency, and if the party of the second part shall advance or pay for account of the party of the first part such deficiency, or any part thereof, it shall be entitled to interest at the rate of six per cent per annum upon such advances or payments until reimbursed therefor, and shall be entitled to repay itself for such advances or payments and interest at any time, or from time to time, out of the subsequent earnings or income of said demised premises in the manner provided by the third article hereof in that behalf, and shall have a lien therefor upon the demised premises, and the income thereof, until such advances, or payments, with interest thereon, shall be reimbursed; and in case the party of the second part shall at any time, or from time to time, make any advances to or for the party of the first part, for new additions or improvements of the demised premises, or any part thereof, or for the necessary expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for transfer of its stock and bonds, or for other incidental expenses not paid by the party of the second part under the lease, or for any other object or purpose, the party of the second

part shall be entitled to receive interest upon all such advances at the rate of six per cent per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, upon the said demised premises and the income thereof until such advances are reimbursed, with interest, and the party of the second part shall be entitled at any time, and from time to time, to refund to itself such advances and interest out of any earnings or income of the demised premises which may be in its hands unless it shall have been expressly agreed between the parties hereto to the contrary in writing at or before the making of such advances.

Sixth: The party of the second part will, when thereunto requested so to do by the party of the first part, guarantee the payment of the principal and interest of all bonds of the party of the first part which may have been or may hereafter be issued under mortgage from the party of the first part to the Union Trust Company of New York, dated July 1, 1887, such guaranty to be substantially in the form following, viz:

"For value received the Southern Pacific Company hereby guarantees the punctual payment of the principal of and interest upon this bond as therein provided, and agrees that the mortgage given to secure its payment shall have priority of lien upon the mortgaged property over its lien and claims thereon as lessee of the Oregon and California Railroad.

In Witness Whereof, the corporate seal of the said Southern Pacific Company is hereunto affixed and attested by its treasurer by order of the Board of Directors this thirty-first day of December, 1887.

Attest: Treasurer."

Seventh: This indenture may be at any time modified in any of its terms or provisions or cancelled by agreement of the parties hereto.

Exhibit H

An Indenture made the first day of July, in the year of our Lord One Thousand Eight Hundred and Eighty Seven, by and between the Oregon and California Railroad Company, a corporation created, organized and existing under the laws of the State of Oregon, party of the first part, and the Union Trust Company of New York, a corporation created, organized and existing under the laws of the State of New York, party of the second part.

Whereas the party of the first part is the owner of lines of railway already constructed from East Portland to Ashland, from Albany Junction to Lebanon, and from Portland to Corvallis, all in the State of Oregon, and of lands granted under the acts of Congress respectively entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July 25, 1866, and "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" approved May 4, 1870, and is about extending to the California State line such railway now constructed from East Portland to Ashland; and

Whereas, the party of the first part and its successors are about to execute and issue from time to time (but with the limitations hereinafter prescribed in respect

to the aggregate amount thereof which may at any time be outstanding, which amount is not in any case to exceed, at the par or face value of such bonds, the sum of Twenty Million Dollars,) first mortgage bonds for One Thousand Dollars each of the general form and tenor following, to-wit:

UNITED STATES OF AMERICA

Oregon and California Railroad Company.

No. First Mortgage Gold Bond. No.

The Oregon and California Railroad Company, for value received, promises (unless this bond should be sooner redeemed as hereinafter provided) to pay to the bearer hereof, or, if registered, to the registered holder hereof, the sum of One Thousand Dollars forty years after date, and, on presentation and surrender at or after maturity of the respective interest warrants hereunto annexed, to pay to the person presenting the same, or if this bond is registered and the interest warrants appertaining thereto cancelled, to pay to the registered holder hereof, interest on such principal sum at the rate of five per centum per annum, semi-annually, on the first day of January and July in each year, such payments of principal and interest to be made at the office or agency of said Company in the City of New York in United States gold coin. This is one of the first mortgage bonds of said Railroad Company, the total issue of which is limited to twenty million dollars par value, secured by a deed of trust to the Union Trust

Company of New York, Trustee, dated July 1, 1887. The net proceeds of lands sold subsequently to May 12, 1887, and of the lands included in said deed of trust securing such first mortgage bonds, are to be applied to the redemption and cancellation of such bonds by annual drawings at par, unless purchasable at a lower price, as prescribed in said deed of trust. The principal of this bond may, by reason of one year's default in the payment of any interest, become and be due and payable as provided in said deed of trust. None of said Bonds are to be in any wise binding or obligatory unless authenticated by the certificate endorsed thereon, signed by said Trustee or its successor or successors in said trust. This bond may at any time, upon production thereof to said Railroad Company and proper endorsement being made thereon and either with or without the surrender to said Railroad Company for cancellation of all unpaid interest warrants appertaining thereto, be registered upon the books of the Company in the name of the holder thereof and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon such books.

In Witness Whereof, the said Railroad Company has caused these presents to be signed by its President and its corporate seal to be affixed thereto and attested by its Secretary, this first day of July, One Thousand Eight Hundred and Eighty Seven.

Oregon and California Railroad Company,

(Seal) By . President.

Attest: Secretary.

And Whereas, the General form of the several interest warrants to be annexed to such bonds (each of which interest warrants is to bear the engraved signature of the Treasurer of the Railroad Company) is to be as follows, viz:

(Form of Interest Warrant)

Interest warrant for twenty-five dollars gold, being for semi-annual interest maturing on the first day of .....upon the Oregon and California Railroad Company's first mortgage bond No.
$25. (not due if bond previously redeemed)

Treasurer.

And Whereas, the form of the certificate to be endorsed on the bonds, and signed by said Trustee, is to be as follows, viz:

(Form of Trustee's Certificate.)

The Union Trust Company of New York hereby certifies that the within bond is one of the bonds described in the deed of trust within mentioned and secured thereby.

Trustee.

And Whereas, all of the said bonds are to be equally secured by this mortgage and hypothecation of the railways and railway lines of the party of the first part, and its successors constructed and to be constructed or acquired and of all their appurtenances and the franchises relating or pertaining thereto;

And Whereas, such issue of bonds, and the execu-

tion of this mortgage or deed of trust to secure the same, has been assented to by the holders of upwards of a majority of the preferred stock and by the holders of upwards of a majority of the common stock of the party of the first part.

Now, Therefore, This Indenture Witnesseth: That the party of the first part, in consideration of the premises, and of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged and for the purpose of securing the payment of such bonds, with the interest to accrue thereon, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and its successors and assigns forever. All the railways and railway lines of the party of the first part, and its successors, whether constructed or to be constructed or acquired and all their appurtenances, including therein all rights of way, superstructure, rails, tracks, side tracks or sidings, bridges, buildings, fences, depots, station houses, shops, warehouses, offices, docks, ferries, ferry boats and landings, telegraph lines, car houses, engine houses, machine shops, repair shops, buildings, erections and structures necessary to the operation of said railways or said railway lines, and all and singular the locomotives, rolling stock, equipment and machinery appertaining thereto, whether now owned or hereafter to be acquired; and also all the rents, issues, tolls, incomes, earnings and profits of such

railways and railway lines; and also all the rights, privileges, immunities and franchises relating or pertaining to such railways or railway lines which the said party of the first part now possesses, owns or is entitled unto, or it or its successors may hereafter become possessed of or entitled unto, and all the property real, personal or mixed, which on the 12th day of May, 1887, was covered by the mortgage securing the then existing first mortgage bonds of the Oregon and California Railroad Company except the amounts due for lands sold previous to such last mentioned date, and except the cash in the hands of the trustee under the mortgage last referred to, and all extensions thereof and future acquired property in the State of Oregon, of the said party of the first part; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and its successors, of, in and to the premises and every part and parcel thereof, with the appurtenances.

To Have and to Hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and its successors and assigns forever, in trust, nevertheless, for the securing and benefit of all and every the persons or bodies corporate who or which shall be or at any time become the holder or holders of any such bonds or the interest warrants appertaining thereto, without preference to the holder of any of the said bonds or interest warrant over any of the others, by reason of priority, in the date thereof or the time of the issuing or negotiat-

ing of the same. Provided, Always, and these presents are upon the express condition, that if the party of the first part, or its successors or assigns, shall well and truly pay or cause to be paid to the holders of the said bonds and interest warrants, when and as the same shall become due and payable, the principal and interest moneys secured hereby according to the terms, provisions and conditions, tenor and effect of the said bonds, then these presents and the estate hereby granted shall cease, determine and be null and void. And it is covenated and agreed by and between the parties hereto that until default shall be made by the said party of the first part, its successors and assigns in the payment of the principal or interest of the said bonds or some of them or some part thereof, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances, and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the trustee or trustees hereunder shall have full power, in its or their discretion upon written request of the party of the first part, its successors or assigns, assented to in writing by the Southern Pacific Company, the guarantor of both the principal and interest of bonds secured by this deed of trust, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any property of any description (except lands granted by the United States) which in its or their judgment shall not be necessary for or for use in connection with said

railways and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any property which may be acquired for permanent use in substitution for any so released or conveyed shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents. But if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, according to the tenor and effect of said bonds, or either of them, and if such default shall continue for the period of one year, then, and in that case, the party of the second part or its successors in the trust are hereby authorized and empowered and at the written request of the holders of one fourth part of the said bonds then outstanding in respect of which such default shall have been made, it shall be it and their duty to enter into and upon, and take and hold possession of, all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed or intended so to be and in person or by one or more agents, to operate the said railways, to make from time to time all such repairs and replacements as it or they may deem judicious, and all such useful alterations, additions and improvements as the income coming into its or their hands shall be adequate to pay for, and to take, collect and receive

all fares, freights, tolls, earnings, issues, profits and income of said railways and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding, operating and managing the said railways and other premises, and conducting the business thereof, to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necesary and proper repairs, replacements, alterations, additions, and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of said party of the second part, or its successors in the trust and a reasonable compensation for its or their services, and next to the payment of the interest and principal of the said bonds, according to the tenor and effect thereof, as the same may be or become due and payable, and in case the principal moneys secured by such bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest warrants remaining in default in the order of their maturity; in case the said principal moneys shall have become due, the moneys applicable to the payment of the principal and interest on such bonds shall be applied to such principal and interest pro rata without any preference or priority whatsoever. And further, if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, and if such default in the payment of such interest moneys shall continue for a period of one year; then and in either of such cases the said party of the second part or its successors in the

said trust, may, and in the later case at the written request of holders of one-fourth of the said bonds then outstanding in respect of which such default shall have been made, must, and it and they are hereby authorized and empowered and directed to cause the whole of the said premises, estates, franchises, rights, privileges and property hereby granted and conveyed or intended so to be, with their appurtenances, and all benefit and equity of redemption of the said party of the first part, and its successors and assigns therein or thereto, to be sold at public auction in the City of New York, in the State of New York, or the City of Portland, in the State of Oregon, giving at least three months' previous notice of the time and place of such sale by publishing the same at least once in each week during such period of three months, in two newspapers published in said City of New York, and two newspapers published in said City of Portland, and one newspaper published in the City of London, England, and one newspaper published in the City of Frankfort-on-the-Main, Germany, and giving such other notice of such sale as may be required by law, if any other notice be so required. And it shall be lawful for the said party of the second part or its successors making such sale, and it and they are hereby authorized and empowered as the attorney or attorneys of the party of the first part, and its successors by these presents duly constituted and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers on such sale, all such deeds and conveyances as shall be necessary or proper to convey, and assure to,

and vest in, him or them, the said premises, estates, franchises, rights, privileges and property and every part and parcel thereof and all of the estate, right, title and interest of the said party of the first part, and its successors and assigns therein or thereto, and such sale and the deeds and conveyances so to be thereupon executed, shall be valid and effectual forever, and shall be a perpetual bar both in law and equity, against the said party of the first part and its successors and assigns and against all persons claiming or to claim by, from or under it or them, or any of them. And it is further declared and agreed that the receipt of the Trustee or Trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives shall not, after paying such purchase money and receiving such receipt of such Trustee or Trustees therefor, be obliged to see to the application of such purchase money, upon or for the trusts or purposes of these presents, or be in any wise answerable for any loss, misapplication or non-application of such purchase money by the Trustee or Trustees. And it is hereby declared and agreed, that the said party of the second part, or its successors in the said trust, shall out of the proceeds of such sale, or of any sale which shall, under judicial proceedings or otherwise, be made of the said premises in enforcement of the security afforded by these presents, in the first place, pay and retain the costs and expenses attending

such sale, and all counsel fees and other expenses incurred by it or them in reference to the same, and a reasonable compensation for its or their own services in the premises; and also any balance which may be due to it or them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by it or them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management and shall apply the residue of the proceeds of such sale, or so much thereof as may be necessary to the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the bonds secured hereby or any of them, whether the said principal by the tenor of the said bonds be then due or yet to become due. And in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively and without discrimination as between principal and interest and without preference of the holder of any one bond or interest warrant over any of the others, and any surplus which may remain after the full payment of the principal and interest of all of the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor. And it is hereby further provided, covenanted, declared and agreed that if default shall be made in the payment of the interest moneys mentioned in the said bonds or

any or either of them or any part thereof, and if such default shall continue for the period of one year, then and in that event the party of the second part, or its successors in the trust, may, and upon the written request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, must declare the entire principal of all of said outstanding bonds to be immediately due and payable; and thereupon the said entire principal shall become and be immediately due and payable, anything contained in said bonds to the contrary thereof notwithstanding. And it is hereby further provided, covenanted, declared and agreed that a majority in amount of the holders of the outstanding bonds at any time secured by these presents, may by written instrument at any time before the actual sale of the premises, waive any default in payment of interest, but so far only that the principal of the bonds shall cease to be payable forthwith, in case the said principal shall have become so payable by reason of such default; but such waiver shall be of no effect, unless assented to in writing by the Southern Pacific Company, the guarantors of both the principal and interest of the bonds secured by this deed of trust and unless the party of the first part, its successors or assigns shall, together with said waiver and assent hand to the said party of the second part or its successors in the trust, a sum of money to pay all the interest then in arrear, and the said party of the second part or its successors in the trust, shall then proceed to pay said interest. And it is hereby further provided, declared,

granted and agreed that upon the happening of such event or events as is or are hereinbefore declared, agreed or provided to authorize or direct the said party of the second part, or its successors, to sell the said premises, estates, franchises, rights, privileges and property, or to take the requisite proceedings to that end, the said party of the second part, or its successors, shall be entitled in its or their discretion instead of taking proceedings for and making sale of said premises, estates, franchises, rights, privileges and property under and in virtue of the power of sale hereinbefore contained, to proceed by bill in equity or other appropriate proceedings in any court or courts of competent jurisdiction, to foreclose this mortgage or enforce the rights, liens and securities of the Trustee or Trustees and the bondholders thereunder, and in such suit or proceedings to obtain the appointment of a receiver or receivers to be nominated by it or its successors in the trust, and thereupon said Trustee or Trustees shall be entitled to have the said premises, estates, franchises, rights, privileges and property hereby granted or conveyed or intended so to be, sold by judicial sale under the order or decree of such court or courts, for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds issued under or entitled to the benefit of the security of this mortgage and for the enforcement of the rights, liens and securities of the Trustee or Trustees and the bond holders and in case of such judicial sale, the net proceeds thereof shall be applicable and distributable in like manner as hereinbefore provided in re-

spect of the net proceeds of sale of such mortgagd premises and properties, rights and franchises under and in virtue of the power of sale hereinbefore contained; and all the stipulations and provisions in this indenture contained with reference to or consequent upon a sale of such mortgaged premises and properties, rights, immunities and franchises when or if sold under said power of sale, shall be applicable and applied as far and as nearly as may be, in case of such judicial sale being made under the order or decree of the courts. And it is hereby further provided, covenanted, declared and agreed that on any sale, whether by the said party of the second part, its successors in the trust, or a court, of the property hereby conveyed, or any part thereof, the said party of the second part or its successors in the trust, shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument to fix a sum which it shall be the duty of the said party of the second part, or its successors in the trust to bid for the property to be sold on behalf and for the benefit of such bond holders, but only on condition that due provision is made by such majority to the satisfaction of the said party of the second part, or its successors in the trust or the Court as the case may be, for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholders not concurring in such request. And on any such purchase the said party of the second part, or its successors in the trust, shall hold the property so

purchased for the equal benefit of the bond holders who had required the said party of the second part, or its successors in the trust, to buy in the property on their behalf, as the absolute property of said bond holders, without any right of redemption or resale in favor of the party of the first part, its successors and assigns. And it is hereby further provided, declared and agreed that in case of such sale as is hereinbefore authorized being made by the party of the second part or its successors in said trust, or in case of any judicial sale being made of the said premises, properties, rights and franchises hereby mortgaged, or any part thereof in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled in making settlement for and payment of the purchase money bidden at such sale, to turn in or use towards the payment of such purchase money the bonds held by such purchaser or purchasers to or towards the payment whereof the net proceeds of such sale shall be legally applicable reckoning such bonds, or the amount so turned in or used of the same, for such purpose, at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers as holder or holders of such bonds, for his or their just share or proportion of such net proceeds of sale, upon due apportionment of and concerning such net proceeds. And it is hereby further provided, covenanted, agreed and declared that any request or instrument by these presents authorized to be executed by any number of bond holders shall prima facie be deemed to be sufficiently made, executed, evi-

denced and proved by a written instrument or instruments purporting to be signed by such bond holders and stating the identifying numbers and the amount of the bonds held by each signatary and the respective signatures to which, and the production to a notary public at the time of signature of the bonds specified, shall be acknowledged before and certified to by such notary public, and his certificate attached and authenticated, by his notarial seal. No proof shall be necessary of the qualifications or identity of any such notary, so purporting to act in the United States, the British Dominions, Holland, France or the German Empire. And the said party of the first part, for itself, its successors and assigns, doth hereby covenant, grant and agree to and with the said party of the second part, and its successors in the trust and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured, or any of them, that the said party of the first part, its successors and assigns shall and will at any time and from time to time hereafter, upon request make, do, execute, and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to assure and confirm to the said party of the second part, or its successors, all and singular the property and estate, real and personal, hereinbefore described, and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be hereafter acquired by the said party of the first part, or its successors available

for the security and satisfaction of the said bonds according to the intent and purposes herein expressed. And it is hereby further provided, covenanted, declared and agreed that the party of the first part, its successors and assigns, will and hereby doth absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisement or redemption laws, or laws requiring liens on mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed, which, but for this provision, would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by a trustee without suit and on any such sale the party of the first part, for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser. And it is hereby further provided, covenanted, declared and agreed that the mileage rate of issue of bonds hereunder is to be Thirty Thousand Dollars par value of bonds for each mile of standard gauge road now or hereafter constructed or acquired and comprised in this mortgage, and Ten Thousand Dollars par value of such bonds for every mile of narrow gauge road now or at any time hereafter constructed or acquired and comprised in this mortgage; that the party of the second part and its successors in the trust hereby created are forthwith upon the request of the party of the first part, its successors or assigns to authenticate and certify as issued hereunder and to deliver to the party of the first part, its successors or assigns, bonds of said party of the first part or its successors of the general form and tenor above set

forth, to the amount of Ten Million Five Hundred Thousand Dollars, and thereafter from time to time to further authenticate and certify as issued hereunder and deliver to the party of the first part, its successors or assigns, such bonds to amounts which shall aggregate One Hundred Thousand Dollars par value of such bonds for each mile of road constructed between the terminus of said road, near Ashland, as existing on the 28th day of March, 1887, and the California State line and Fifty Thousand Dollars par value of such bonds for each ten miles of steel rails laid down after the 12th day of May, 1887, on the lines of the Oregor and California Railroad Company, as such lines existed on the 28th day of March, 1887, and on the completion of a rail connection between the line of the Oregon and California Railroad Company, as existing at the last mentioned date and the line of the Central Pacific Railroad Company, any unissued bonds for which the mileage shall then be constructed, shall be authenticated and certified by the Trustee and delivered, provided, however, that such aggregate issue, including the amount to be forthwith authenticated, certified and delivered hereunder shall not exceed the limits of Thirty Thousand Dollars and Ten Thousand Dollars for each constructed mile of standard and narrow gauge lines respectively, or Twenty Million Dollars in all. For any additional mileage constructed or acquired either between Junction and Corvallis or elsewhere in Oregon, the said party of the second part or its successors in the trust shall authenticate and certify as issued hereunder and deliver Thirty

Thousand Dollars par value of such bonds for each mile of standard gauge road and Ten Thousand Dollars par value of such bonds for each mile of narrow gauge road; the said party of the second part or its successors in the trust, however, not to be compelled to accept less than ten miles of road at any one time, except in case of terminal sections. Authenticating certificates to such bonds are to be signed and deliveries thereof to be made by the Trustee under this mortgage from time to time, upon presentation to it of certificates in writing, executed by the President and Chief Engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder; such certificates to be personally acknowledged by such officers to be true before a Notary Public of either of the States of New York, California or Oregon and without other evidence or proof of such facts. *Provided,* however, that notwithstanding anything herein contained the party of the first part or its successors, may at any one time or from time to time, require the party of the second part and its successors to authenticate, certify and deliver to said party of the first part, its successors or assigns and permit the sale of such amount or amounts of bonds as the party of the first part or its successors may think fit, provided that the proceeds of any such bonds issued in excess of the limits hereinabove prescribed shall be received by the Trustee or Trustees hereunder and not by the party of the first part or its successors or appointees, and shall be disbursed by said Trustee or Trustees to the party of the first part, or its successors or appointees

only pro rata as and when the party of the first part or its successors would have been entitled to receive such bonds under the foregoing provisions hereof, but the total issue of bonds secured by this deed of trust is not in any event to exceed for all purposes herein mentioned the aggregate sum of Twenty Million Dollars. In case the party of the first part, or its successors shall contract to sell and dispose of any of the lands granted by the United States and covered by this mortgage at prices which are assented to by the party of the second part, or its successors in this trust or its or their agent or agents on that behalf, then and in that event the party of the second part, or its successors in the trust, or any agent or agents on its or their behalf authorized so to do, shall execute such releases and conveyances as may fully discharge the lands so contracted to be sold from the lien of these presents. *Provided,* however, that in all cases the purchase money or price be paid to and received by the party of the second part or its successors in the trusts, or its or their duly authorized agent. For the purpose of facilitating such sales the Trustee hereunder may, from time to time either concur with the party of the first part or its successors in appointing an agent to make such sales and execute such releases as its attorney in fact, or may appoint an agent of its own to execute such releases and conveyances as its attorney in fact, and it may delegate to any such agent all its powers and duties in respect to the sale of lands. The proceeds of lands so sold shall be applied by the said party of the second part or its successors in the

trust to the redemption and cancellation of the bonds to be issued hereunder in the following manner, viz: If the market price of such bonds should be below par, then and in that event such proceeds of lands may be used in purchasing the same at their market price at the discretion of the said party of the second part, or its successors in the trust. But in case in the opinion of the said party of the second part, or its successors in the trust, such bonds cannot be purchased at less than par, then in that event, as soon as the sum of Fifty Thouhand Dollars shall have accumulated from such proceeds of lands, the Trustee shall cause to be drawn at its office in the City of New York in the presence of a Notary Public out of the numbers of the bonds then outstanding, the numbers of such amount of said bonds as said land moneys will suffice to redeem at par with accrued interest, and such land moneys shall, on the first day of January or July next ensuing such drawing, be applied to the payment of such bonds so drawn at par with accrued interest to such date. The party of the second part, or its successors in the trust, shall, upon the said drawing being made, without delay send notice of the numbers so drawn to the Secretaries of the Stock Exchange at New York, London and Frankfort, and the party of the first part shall upon the said drawing being made without delay, cause notice of the numbers so drawn to be advertised once a week for at least four weeks in a daily newspaper in New York, London, and Frankfort. If the said party of the first part shall fail to make all or any of the said advertisements, the party

of the second part, or its successors in the trust, shall cause them to be made, and the party of the first part shall repay to the party of the second part, or its successors in the trust, the cost thereof. But until such repayment the party of the second part, or its successors in the trust shall defray the cost thereof out of the funds in its or their hands under these presents. Bonds so drawn and advertised shall bear no interest after the next ensuing first day of January or first day of July unless on presentation thereof at the office of the said party of the second part, or its successors in the trust, in New York, payment of the said bonds, or the accrued interest thereon shall be refused. All bonds purchased or redeemed as hereinbefore provided shall be forthwith cancelled. And it is hereby further provided, declared and agreed, that any vacancy in the office of Trustee hereunder may be permanently filled by the appointment of a new Trustee or new Trustees, by an instrument or concurrent instruments in writing, executed under the hands of the holders of a majority in interest of the then outstanding bonds secured hereby, or their attorneys in fact thereunto authorized, but that the Board of Directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above prescribed. And it is hereby covenanted and agreed that any new Trustee or new Trustees appointed as aforesaid, whether by a permanent or temporary appointment, shall immediately upon its, his or their appointment, and without any further act, deed or convey-

ance, become and be vested with all the estates, trusts, rights, powers and duties of the Trustee or Trustees in whose place it, he, or they shall have been appointed; but, nevertheless the respective parties hereto and their respective successors and assigns, shall and will, upon request, make, execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new Trustee or new Trustees, such estates, trusts, rights, powers and duties according to the intent above expressed. And the said party of the second part does hereby accept the trust conferred upon it by these presents, but with the understanding and it is hereby expressly provided and agreed that it shall not be liable or accountable for the acts, defaults or neglect of any agent or agents who may in good faith and with reasonable discretion be appointed under and by virtue of or for the purposes of these presents to do any of the matters or things herein provided for and that no other liability or responsibility shall under any circumstances be borne by or attached to it than for the exercise of reasonable diligence only in the performance of the said trusts when action on its part for that purpose shall become necessary. The party of the second part is to be entitled to compensation for services in the execution of this trust.

In Witness Whereof, The parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective Secretaries and these presents to be signed by their respective Presidents the day and year first above written.

OREGON & CALIFORNIA RAILROAD COMPANY,

By E. H. Pardee, President.

Attest: F. H. Davis, Secretary.

In presence of Charles H. Tweed, Edwin F. Corey.

(Seal of O. & C. R. R. Co.)

UNION TRUST COMPANY OF NEW YORK,

By Edward King, President.

Attest: A. O. Ronaldson, Secretary.

(Seal of U. T. Co., of New York.)

STATE OF NEW YORK, }
City and County of New York. } *ss.*

Be It Remembered, That on this third day of January, in the year of our Lord One Thousand Eight Hundred and Eighty-Eight before me, Edwin F. Corey, a duly appointed Notary Public in and for the City and County of New York, State of New York, and Commissioner for the State of Oregon, in and for the State of New York, residing in said City and County of New York, personally appeared Edward H. Pardee, President of the Oregon and California Railroad Company, and Frank H. Davis, Secretary of the same Company, to me respectively personally known and known to me to be such officers of the said Company, and to be the same persons described in and who executed the foregoing instrument, who being by me severally duly sworn, did depose and say: That he, said Edward H. Pardee, resides in the City of New York, in the State of New

York, and that he, said Frank H. Davis, resides in the City of Elizabeth, in the State of New Jersey; that he, said Edward H. Pardee, is the President, and he, said Frank H. Davis, is the Secretary of the said Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal and that it was so affixed thereto by order of the Board of Directors of the Said Company, and that they, the said Edward H. Pardee and Frank H. Davis, signed their names thereto by the like order as President and Secretary of said Company, respectively.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this third day of January, One Thousand Eight Hundred and Eighty-Eight.

EDWIN F. COREY,

Notary Public, City of New York, and Commissioner for the State of Oregon. Office 60 Wall Street, N. Y.

(Commissioner's Seal.)

(Notarial Seal.)

City and County of New York. } *ss.*
STATE OF NEW YORK, }

Be It Remembered, That on this third day of January, in the year of our Lord One Thousand Eight Hundred and Eighty-Eight, before me, Edwin F. Corey, a duly appointed Notary Public in and for the City and County of New York, State of New York, and Com-

missioner for the State of Oregon, in and for the State of New York, residing in said City and County of New York, personally appeared Edward King, President of the Union Trust Company, of New York, and Archibald O. Ronaldson, Secretary of said Company, to me personally known, and known to me to be such officers of said Company, and to be the same persons described in and who executed the foregoing instrument, who being by me duly sworn, did depose and say: That he, said Edward King, resides in the City of New York, in the State of New York, and is the President of the said Company; that he, said Archibald O. Ronaldson, resides in Passaic, in the State of New Jersey, and is the Secretary of the same Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the Board of Trustees of the said Company and that they signed their names thereto by the like authority as President and Secretary of said Company.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this third day of January, One Thousand Eight Hundred and Eighty-Eight.

EDWIN F. COREY,

Notary Public, City of New York, and Commissioner for the State of Oregon. Office, 60 Wall Street, New York.

(Commissioner's Seal.)

(Notarial Seal.)

Exhibit I

This Indenture, Made this first day of June, in the year One Thousand Eight Hundred and Eighty-One, between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon, and hereinafter called the Company), of the first part; and Henry Villard, Horace White and Charles Edward Bretherton, all of the City and State of New York, (hereinafter called Trustees), of the second part;

Whereas, By an Act of Congress entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," and approved July 25th, 1866, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the California and Oregon Railroad Company, organized under an Act of the State of California, to protect certain parties in and to a railroad survey to connect Portland, in Oregon, with Marysville, in California, approved April 6th, 1863, and such Company organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the City of Portland, in Oregon, and the Central Pacific Railroad in California, in the manner following, to-wit: The said California and Oregon Rail-

road Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad, in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta Valleys, to the northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named company. *Provided,* That the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other Company shall have likewise arrived at the same line, shall have the right and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this Act, until the said parts shall meet and connect, and the whole line of the said railroad and telegraph shall be completed."

SECTION 2. And be it further enacted, That there be and hereby is, granted to the said Companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails,

troops, munitions of war and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands designated as aforesaid, shall be selected by said Companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to, and not more than ten miles beyond the limits of the said first named alternate sections; and as soon as the said Companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad or any portion thereof, not less than sixty continuous miles from either terminous, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States respectively wherein they are situated. And the sections and parts of sections of land which shall remain in the United States, within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of public lands when sold. *Provided,* That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same

at the price fixed for said lands at the date of such settlement, improvement and occupation. *And Provided, Also,* That settlers under the provisions of the Homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this Act to the contrary notwithstanding."

SECTION 3. And be it further enacted, That the right of way through the public lands be and the same is hereby granted to said Companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said Companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road."

And Whereas By another Act of Congress, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," and approved May 4th, 1870, it was, amongst other things, enacted as follows: "Be it enacted by the Senate and House of

Representatives of the United States of America in Congress assembled. That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of public lands, not mineral, excepting coal or iron lands, designated by odd numbers, nearest to the said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior, on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

And Whereas, Said Oregon and California Railroad

Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, rights, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited Act of Congress, and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore recited Act of Congress, and there has been already accepted and approved by the United States, as duly constructed under the provisions of the said firstly recited Act, the part of the railroad of said Oregon and California Railroad Company situate between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon & California Railroad Company, situated between Portland and St. Joseph, 47 miles in length, and the Company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph authorized by and specified in said Acts of Congress;

And Whereas, By a deed of mortgage and trust dated the first day of January, 1881, the Company mortgaged its railroads and other property therein described to Klass Van Oterendorp and Philip Lilienthal, to secure an issue of 2,500 new first mortgage bonds, for the aggregate amount of Two Million Dollars in American gold coin or Eight Million Five Hundred Thousand Marks in German money, bearing interest at the rate of six per cent per annum, payable half-yearly on the first days of January and July, and redeemable at par at

the option of the Company, all of which bonds have been issued and are now outstanding.

And Whereas, The Company, in pursuance of its articles of incorporation and by-laws, and of a plan of reorganization of the Company approved and ratified by special meeting of its stockholders, held on the 7th day of May, 1881, has resolved to make an issue of first mortgage bonds as hereinafter described, which shall be limited to the rate of Twenty Thousand Dollars for each mile of railroad now or hereafter constructed by the Company as hereinafter specified, and actually constructed at the time of issue, and of which bonds Six Million Dollars in amount shall be now issued, and to secure the payment of said bonds and the interest thereon in the manner herein provided.

And Whereas, Six thousand (6,000) in number, Six Million Dollars in amount of said bonds intended to be secured by these presents, together with the coupons annexed thereto, and the certificate of the Trustees thereon have been prepared, and are numbered consecutively from 1 to 6,000, both inclusive, and bear even date herewith, and are in the form following, that is to say:

"UNITED STATES OF AMERICA,
STATE OF OREGON.

OREGON AND CALIFORNIA RAILROAD COMPANY, of Portland, Oregon.

First mortgage six per cent gold bonds. Amount limited to $20,000 per mile of constructed road. Prin-

cipal redeemable at 110, by a cumulative sinking fund of one per cent per annum, commencing in 1886.

$1,000 No. 0000 $1,000

The Oregon and California Railroad Company, for value received, hereby binds itself to pay to the bearer, at the office of the Company in the City of New York, on the first day of July, A. D. 1921, (unless this bond shall be sooner redeemed as hereinafter mentioned), the sum of One Thousand Dollars in United States gold coin of the present standard, and to pay in the meantime interest thereon, in like gold coin, at the rate of six per centum per annum, half yearly, on the first days of January and July in each year, free of tax, upon presentation and surrender at such office, as they respectively mature, of the eighty coupons annexed.

This bond is one of the first mortgage six per cent gold bonds of the Oregon and California Railroad Company, issued and to be issued only at the rate of $20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue, all being of the same amount, form and tenor, and payable in the same manner, and differing only in the identifying numbers, dates, and the number of coupons annexed, and all of which bonds issued and to be issued are equally secured by a first mortgage, dated June 1, 1881, of all the railroads of said Company, constructed and to be constructed, that is to say, from Portland to Astoria, in accordance with the Act of Congress of May 4th, 1870, and to Junction, and from East Portland to California,

in accordance with the Act of Congress of July 25, 1866, and of all its lands, rolling stock, and all other property, present and future, of said Company, of every description, to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, subject, however, to a redeemable prior lien, Two Million Dollars in amount, to be discharged as hereinafter mentioned, and which mortgage is recorded in the office of the County Clerk, in Portland, in Oregon, and in all other counties in which any part of the railroads and lands of said Company are situated; and the said mortgage provides that the proceeds of all bonds sold shall be received by the said Trustees and shall be applied by them in discharging the said prior lien for Two Millions of Dollars, and the balance of such proceeds, after discharging said prior lien, shall be applied only for the construction of the road, first, to California, and when such road is completed, then to Astoria and Junction; and that, for the purpose of securing such application, said Trustees shall pay over the proceeds only under the advice, and upon the certificate, of a supervising engineer, appointed by them.

The Company binds itself to the bearer to constitute a cumulative sinking fund, for redemption, at 110 per cent of the par value thereof, of all said bonds, such sinking fund, including the gross proceeds of all lands now or hereafter granted by the United States to said Company, together with such an addtional sum, to be paid annually by said Company to said Trustees, on the first day of July of each year, commencing July 1, 1886,

as will make up the total annual sinking fund to one per centum, from July 1, 1886, upon the aggregate amount of bonds issued, together with, and in addition to, the amount of the interest upon the bonds previously redeemed.

The bonds to be redeemed by said sinking fund shall be drawn by lot, by said Trustees, at the office of the Company in New York, on the first day of April in each year, and the numbers of the bonds so drawn advertised in daily newspapers, of general circulation, published in New York, London and Frankfort-on-the-Main.

In case this bond shall be so drawn and advertised, the amount thereof shall become payable, together with the additional sum of One Hundred Dollars, in United States gold coin, on the first day of July then next, at the office of the Company in New York, and it shall bear no interest after such date, unless, upon presentation, payment thereof shall be refused.

Said Company further agrees to receive this bond, at par, in payment for any lands offered for sale by said Company.

Said Company further binds itself to pay forthwith, upon demand, the amount of this bond, as aforesaid, in case said Company shall fail, for six calendar months, to pay any coupon annexed to this bond, when the same becomes due, or shall fail for six calendar months to pay any sum which may be payable to the said Trustees on account of the sinking fund hereinbefore mentioned, and

such default in payment of interest, or of the sum payable on account of said sinking fund shall not have been waived by a majority in amount of the holders of said bonds then outstanding in the manner provided in said mortgage. Said Company further binds itself to maintain and keep, during the continuance of this mortgage, financial agencies in London and Frankfort-on-the-Main, and to cash, on presentation at such agencies, all said bonds, and the coupons thereof, as the same become payable, at the fixed rate of exchange of four shillings and two pence sterling per dollar in London, and four marks twenty-five pfennigs in Frankfort-on-the-Main. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustees.

In Witness Whereof, Said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Assistant Secretary, this first day of June, 1881.

President.

Attest:

Assistant Secretary.

(*Seal.*)

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of July, 1921, Thirty Dollars in United States gold coin, free of tax, at the office of the Company in New York, being six months interest on First Mortgage Bonds of Said Company, No. , unless said bond shall have been previously redeemed.

Treasurer.

(Trustees' Certificate.)

We hereby certify that the within bond is one of the First Mortgage Six per cent gold Bonds of the Oregon and California Railroad Company, secured by the within mentioned mortgage dated June 1st, 1881, and made by said Company to us as Trustees, and that the total amount of said bonds certified by us does not exceed the rate of $20,000 for each mile of actually constructed railroad.

Trustees.

Now this Indenture Witnesseth, That in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued, and all such bonds as shall be hereafter issued on the security of these presents, but not exceeding in all Twenty Thousand Dollars for each mile of road actually constructed at the time of issue and the interest thereon, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland, and Roseburg, and between Portland and Corvallis, and Albany and Lebanon, in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad, in all about three hun-

dred and six and one-half (306½) miles in length, running through the counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk and Benton, in said State of Oregon, together with the ferry, ferry-boats and landings connecting the said railroads at Portland and East Portland, and also all the railroads of said Oregon and California Railroad Company, to be hereafter constructed, that is to say, from Forest Grove to Astoria in accordance with the Act of Congress of May 4th, 1870, hereinbefore recited, and from Corvallis to Junction, and from Roseburg to California, to a junction within the Central Pacific Railroad, in accordance with the Act of Congress of July 25th, 1866, hereinbefore recited, and all lands, rights of way, easements and premises now acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of the right of way of said railroad or for grounds, side tracks, depots, warehouses, tanks, roundhouses, stock yards, or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroads already completed between the termini aforesaid and not yet sold, estimated to be in amount about one million nine hundred thousand acres, and all lands which may be hereafter granted to said Company by the United States, and which lands are intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided, and together with all rails, spikes, ties, timber, iron, switches, frogs, depots, warehouses, roundhouses, machine shops, bridges, trestle work, and all

other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively, including all the offices, docks and warehouses of the Company in Portland and East Portland, or elsewhere, and all locomotives, cars and other rolling stock, railroad supplies, fuel, tools and machinery now used or which may hereafter be used in or provided for the maintenance or operation of said railroads, and all telegraph lines and other appurtenances of said railroads, and the franchise to operate the same, and all the income, earnings and profits of said railroads, lands and premises and all other present and future property of every description, of said Oregon and California Railroad Company.

To Have and to Hold the said railroads, lands, rolling stock, equipment, premises and property unto the use of said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents, as joint tenants and not as tenants in common, free from all prior liens and encumbrances whatever, except the prior lien for Two Millions of Dollars created by the said deed of mortgage and trust to Klaas van Oterendorp and Philip Lilienthal, hereinbefore referred to, and which lien is to be discharged as hereinafter mentioned, in trust nevertheless for the equal benefit and security, pro rata, of every holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby, without any priority of any one

bond over another, by reason of earlier issue or negotiation, and for the uses and purposes, and with the rights and powers, and subject to the provisions, agreements, covenants and stipulations contained in the following articles, that is to say:

ARTICLE 1. The said Oregon and California Railroad Company hereby covenants with said Trustees that it will proceed with all reasonable despatch to complete its said railroad to California, so that cars can run through from Portland to San Francisco, and will keep all the railroads from time to time constructed, and rolling stock and other property of said Company in good order and repair, and will reconstruct, replace and restore all such, or so much, and such parts thereof, as may be worn out, wrecked, destroyed or displaced, and will pay all taxes assessed against said railroads, lands and premises, and will pay the principal moneys secured by all bonds to be issued on the security of these presents, and all interest due thereon, at the times and places, and in the manner in said bonds and the coupons annexed thereto respectively specified, and perform all the conditions and stipulations in said bonds expressed and contained.

ARTICLE 2. And further, that if any coupon on any of said bonds shall not be paid on presentation, as therein provided, and shall remain unpaid for six calendar months, and such default shall not be waived in manner hereinafter specified, then the said Company will forthwith pay on demand, at the place and in the manner

in said bonds specified, the principal of all such bonds.

ARTICLE 3. And further, that said Oregon and California Railroad Company will create and maintain a cumulative sinking fund for the redemption of all said bonds at the rate of 110 per cent of the par value thereof, and will for such purpose, on the first day of July, 1886, and on every first day of July thereafter, pay at the office of the Company in New York, to said Trustees, such a sum as will, in addition to the gross proceeds of all lands now or hereafter granted by the United States to said Company, make up a total amount of one per cent per annum in gold coin, computed from the first day of July, 1886, upon the aggregate amount of bonds issued.

ARTICLE 4. And further, that in case default shall be made in any annual payment to be made for such sinking fund specified in the last article, or any part thereof, for six calendar months, and such default shall not be waived as hereinafter provided, then said Company will forthwith pay on demand at the place and in the manner in said bonds specified, the principal of each and all of the said bonds then remaining due, at the rate of 110 per cent of the par value thereof.

ARTICLE 5. Until default in any payment required by the previous articles, said Company shall freely possess the said railroads, lands and premises, and the income, earnings and profits thereof, and may contract to sell and dispose of the lands granted by the United

States and of all other lands owned by the Company not required for the maintenance and operation of its railroads; but no such sale nor any conveyance or release of said lands, or any of them, shall be valid and effectual unless such sale be at a price approved by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees, or one of them, or by their attorney or attorneys in fact, thereunto lawfully authorized. And for the purpose of facilitating such sales, said Trustees may from time to time either concur with said Company in appointing an agent to make such sales and execute such releases and conveyances as their attorney in fact, or may appoint an agent of their own to supervise and join in such sales, and to execute such releases and conveyances as their attorney in fact, and they may delegate to any such agent all their powers and duties in respect to the sale of lands, except the custody of the proceeds thereof.

ARTICLE 6. Said Trustees shall hold the said proceeds of all lands sold and the payments to be made to them by said Company as above mentioned, as well as all interest received upon bonds redeemed, as a cumulative sinking fund, to discharge and extinguish the whole of said bonds by annual redemption at the rate of 110 per cent of the par value thereof, in the following manner: on the 1st day of April, 1886, and on the 1st day of April in every succeeding year, or as soon thereafter as may be, said Trustees shall cause to be drawn at the office of the Company in New York, in the

presence of a Notary Public, out of the whole number of bonds then outstanding such a number of bonds as said sinking fund will, on the 1st day of July then next ensuing, suffice to redeem as hereinbefore mentioned.

ARTICLE 7. Said Trustees shall publish by notice, conspicuously posted up on or before the 30th day of April next ensuing after each such drawing, in the office of the Company in New York and at the financial agencies of the Company in London and Frankfort-on-the-Main, and so remaining until the 1st day of July then next ensuing, and by advertisement in daily newspapers of general circulation, published respectively in New York, London and Frankfort, the numbers of the bonds so drawn for redemption, and shall pay and redeem such bonds at the rate of 110 per cent of the par value thereof, at the office of the Company in New York, on the said first day of July, or so soon thereafter as the said Company shall pay over the sums hereby stipulated to be paid for the purpose.

ARTICLE 8. When any bonds shall have been drawn as aforesaid, and notice given of the numbers of the bonds so drawn for redemption, then each bond so drawn shall become payable on the first day of July then next ensuing, together with the additional sum of One Hundred Dollars in gold coin of the United States, making in all 110 per cent of the par value thereof, payable at the office of the Company in New York, and shall bear no interest after that day, unless, on presentation thereof at the office of the Company in New York,

payment of said bond at the rate aforesaid, or any interest due thereon, shall be refused.

ARTICLE 9. The bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them, but the coupons shall remain in full force and shall be regularly presented by the Trustees, and the amount thereof collected, for the benefit of the sinking fund.

ARTICLE 10. All bonds which from any cause remain unredeemed on the first day of July, 1921, shall be then paid off at the rate of 110 per cent of the par value thereof.

ARTICLE 11. When all of said bonds shall be redeemed by said sinking fund, or acquired and cancelled by said Company, and handed to said Trustees, so cancelled, they shall enter satisfaction of record of these presents.

ARTICLE 12. In case said Company shall fail to keep the said railroads, rolling stock, equipment and premises herein comprised, or at any time hereafter subject to the lien of these presents, in good order and repair, or in case default shall be made in payment of any coupon on any of said bonds, or of the said sums to be paid for the sinking fund as aforesaid, or any part thereof, and such default shall continue for six calendar months, or in payment of any taxes assessed against said railroads, lands and premises, it shall be lawful for said Trustees to take possession personally, or by their agent, or agents, of said railroads, rolling stock and equipment,

and the lands and other premises hereby conveyed, or which may be then subject to the lien of these presents, and to operate the said railroads and manage the same, and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold; and said Company covenants and agrees that it will, on demand, surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, land and premises, without interruption or disturbance, and will permit and suffer said Trustees to collect and get in all freight moneys, ticket balances or other earnings, and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary, or may be deemed advisable, by said Trustees, to take legal proceedings for foreclosure of this mortgage, or to obtain possession of said premises, in pursuance of the provisions of this article, they shall be entitled to the appointment of a Receiver, or Receivers, to be nominated by them, or to be themselves nominated and appointed Receivers, as they may think most expedient.

ARTICLE 13. Said Trustees, when in possession of said railroads, lands and premises, shall have the right as irrevocable attorney or attorneys of said Company, to bring or defend, in the name of the said Company, any actions for the collection of income, freight moneys, ticket balances or other earnings or unpaid purchase money for lands sold, or for obtaining or defending the possession of any property subject to the lien or trusts

of these presents, or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

ARTICLE 14. Said Trustees are hereby authorized in their discretion, to accept possession of said railroads, with the rolling stock, lands and appurtenances herein comprised, although no such default as aforesaid shall have been made, if said Company shall offer to give up possession to them, and thereupon to manage and operate the same, and collect the income and earnings thereof, as hereinbefore provided.

ARTICLE 15. It shall be the duty of said Trustees to take possession of said railroads, lands and premises, after any such default as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one-quarter in amount of said bonds then outstanding.

ARTICLE 16. Said Trustees shall have full power, from time to time, for the purpose of enforcing and administering the trusts and powers of these presents, and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants, as they shall deem necessary or useful, and to defray all expenses of such employment, and of otherwise executing the trusts of these presents, and to pay any taxes assessed upon

the trust premises or any part thereof, or any other prior charge thereon, out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands, and shall make any payments either for such purposes, or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not), the amount so paid, together with interest thereon, at the rate of ten (10) per centum per annum, shall be a first charge on the trust premises, and the earnings, income, and proceeds thereof; and in case said Company shall fail, on demand, to repay said Trustees any amount paid by them as aforesaid, with interest at the rate aforesaid, they may enter upon and take possession of said railroads, lands and premises, in the same manner as if said Company had made default in payment of interest on the bonds hereby secured, and retain possession and receive the income, earnings and proceeds thereof, until they shall have recouped themselves the amount so paid with interest as aforesaid.

ARTICLE 17. After any such default, as aforesaid, in payment of interest or sinking fund payments, or any part thereof, and such default shall have continued for one year, and shall not have been waived as hereinafter provided, or in case the principal of any of said bonds shall not be paid on the first day of July, 1921, together with the additional sum hereinbefore specified, it shall be the duty of said Trustees to forthwith proceed to enforce this security, and to sell said railroads,

rolling stock, equipment and appurtenances, and the lands and premises comprised herein, or then subject to the lien of these presents, in one lot or in more than one lot or parcel, and at one time, or at different times, and for cash, or on reasonable credit, payment therefor being secured on the property sold, and otherwise, upon such terms and in such manner as said Trustees may, in their discretion, think best.

ARTICLE 18. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent, by public auction, at the door of the Court House of Multnomah County, in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York, and selected by said Trustees); and in case said sale shall be adjourned, the like four weeks' notice shall be given of the adjourned sale; or, at the option of said Trustees such sale may be made judicially by action or suit, brought by said Trustees for the foreclosure of this mortgage or enforcement of the liens hereby created, or administration of the trusts of these presents, as said Trustees may deem most expedient.

ARTICLE 19. The moneys received from the net earnings of said railroads or purchase money on any such sale thereof, as hereinbefore provided, or from lands sold, when in possession of said Trustees, shall be applied in the following order: In the first place, in the

payment of the cost and expenses of the execution of the trusts of these presents, and the management and operation of said railroads, and the protection and preservation of the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation salary herein provided for), and the fees of counsel and attorneys; and in the next place, in payment of all coupons then overdue (excluding those on bonds belonging to the sinking fund), in the order in which they shall have become due, those of earlier date having priority over those of later date; and lastly, in payment of the principal of any of said bonds then outstanding, together with the same additional sum as would have become payable if they had been drawn for redemption as hereinbefore provided.

ARTICLE 20. On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him, and any conveyance or assignment made by said Trustees shall vest in said purchaser all the title and interest of said Company as fully and effectully as if the Company were party thereto.

ARTICLE 21. The Company hereby covenants and agrees with the said Trustees, on behalf and for the benefit of the holders of the bonds intended to be secured by these presents, that it will from time to time, and at all times hereafter, upon reasonable request made, execute, acknowledge and deliver, all such further acts, deeds, conveyances and assurances in the law for the

better assuring unto the said Trustees and their legal successors from time to time as Trustees of these presents upon the trusts, and for the purposes herein expressed, the said railroads, rolling stock, equipment, lands and premises herein comprised, free from all prior liens and encumbrances, and all other present and future property of said Company of every kind and description as by the said Trustees or their counsel learned in the law shall be reasonably devised, advised or required, and will from time to time, as the said lands granted by the United States are patented to said Company, execute proper deeds of further assurance thereof to said Trustees, so as to fully identify the lands intended to be comprised in or subjected to the lien of these presents.

ARTICLE 22. On payment and cancellation of all of said bonds and the coupons thereto attached, and payment of all expenses incurred by the Trustees in the execution of the trusts of these presents, this indenture shall become void, and all the estate and interest of the Trustees in the premises conveyed hereby, and the lien created thereon by these presents shall absolutely cease and determine.

ARTICLE 23. All rights or powers by these presents given to or covenants, stipulations or agreements made with said Henry Villard, Horace White and Charles Edward Bretherton, shall survive and inure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee

or Trustees had been named herein.

ARTICLE 24. In these presents the word "Trustees" shall be held to mean the said Henry Villard, Horace White and Charles Edward Bretherton while continuing to be Trustees hereof, and the Trustees for the time being of these presents, whether all or any be original Trustees or new Trustees.

ARTICLE 25. No Trustee shall be in any manner responsible for any act, default or misconduct of his co-Trustee, nor for that of any agent, bank, banker, broker, or other person employed by him or by his co-Trustee, unless he shall be chargeable with culpable negligence in the selection or in the continuance of their employment, nor otherwise, except for his own willful default, misconduct or gross negligence. But except as herein specially authorized, no Trustee shall have power to delegate his powers or authority to his co-Trustee or co-Trustees, or any other person whatever.

ARTICLE 26. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust, and said Trustees shall be paid by said Company, or, in default, out of the trust moneys the sum of fifty cents for each bond certified by them, and one-eighth per cent on all moneys passing through their hands and disbursed by them, for their entire service in the execution of the trusts herein contained until

default, and in addition, in case of default, a further reasonable compensation for such additional services as they may be called upon to render in taking possession of and managing the premises, or selling the same, or bringing suit for the foreclosure of these presents, the enforcement of the liens or trusts hereby created, or the collection of the moneys secured or to be secured by these presents.

ARTICLE 27. In case of the death, resignation or refusal or incapacity to act of any Trustee, the surviving or continuing Trustee or Trustees shall by deed appoint a suitable person as Trustee, in the place or stead of the Trustee so dying, resigning, refusing or becoming incapable; and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee shall fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co-Trustee to appoint a new Trustee, then said Company, or the holder of any bond secured by these presents, may apply to any Judge in the Circuit Court of the United States for the District of Oregon, to make such appointment, and any such Judge may appoint a new Trustee by instrument under his hand and seal, without suit or other legal proceedings therefor; but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these

presents in the Courts of the United States, whenever such Courts shall have jurisdiction of such action or suit, and not in the Courts of the State.

ARTICLE 28. A majority in amount of the holders of the outstanding bonds, at any time secured by these presents, shall have full power at any time, without suit, and whether there be any vacancy or not, to remove all or any of the then existing Trustees, and to appoint other Trustees or another Trustee in their or his place, and to increase or diminish the number of Trustees, or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the Trustees, or as sole Trustee; and any such act of the majority in amount of the bondholders shall be deemed to be sufficiently made, executed, evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders, and stating the identifying numbers and the amount of the bonds held by each signatary, and the respective signatures to which, and the production to a Notary at the time of signature of the bonds specified, shall be acknowledged before, and certified by, a Notary Public, and his certificate attached, and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such Notary, so purporting to act in the United States, the British Dominions, Holland, France or the German Empire.

ARTICLE 29. Any appointment of a new Trustee, made by the surviving or continuing Trustees or Trustee, or the majority of the bondholders, or a Judge, as

hereinbefore provided, shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties, as fully as if they or he were Trustees or a Trustee party to these presents, without any new deed or conveyance; but, nevertheless, the Company hereby covenants, in any and every such case, to make, upon request of the new Trustees or Trustee, all such deeds, conveyances and assurances as may be appropriated for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties, and every resigning Trustee shall, on like request, make and execute such deeds, conveyances and assurances to his successors or successor.

ARTICLE 30. A majority in amount of the holders of the outstanding bonds, at any time secured by these presents, may, by written instrument, to be executed and proved as provided in Article 28, at any time before the actual sale of the premises, waive any default in payment of interest, or of the annual payment to the sinking fund, yet so far only that the principal of the bonds shall cease to be payable forthwith, in case said principal shall have become so payable by reason of such default; but such waiver shall be of no effect unless the Company shall, together with such instrument or instruments of waiver, hand to the Trustees a sum of money sufficient to pay all coupons and sinking fund payments then in arrears, and said Trustees shall then proceed to pay said coupons and redeem the bonds so pro-

vided for as nearly as possible in the manner provided by these presents. And such a majority may, in like manner, at any time, direct and authorize the funding of any coupons secured by these premises, whether overdue or not, into bonds secured by these presents, provided, however, that the aggregate amount of all bonds secured by these presents shall never exceed the rate of Twenty Thousand Dollars for each mile of constructed road, as hereinbefore provided. Any such funding of coupons into bonds shall be binding upon the minority of said bondholders, and shall be carried out by said Trustees, who shall have power to do all things necessary or proper for the purpose.

ARTICLE 31. The Company for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay, appraisement or redemption laws, or laws requiring liens or mortgages to be foreclosed by action or suit, and of all other laws now existing, or hereafter passed, which, but for this provision, would prevent the absolute and unconditional sale of the premises hereby conveyed by Court or by a Trustee without suit; and on any such sale said Company for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser.

ARTICLE 32. In case of any sale of said premises, whether by the Trustee or by a Court, any purchaser shall be entitled to deliver, in part payment of the purchase money, any of the outstanding coupons or bonds

secured by these presents; and such coupons or bonds shall be reckoned as equivalent to the sum which would be their portion of the net proceeds of the sale, after the deduction of all expenses, all such bonds being reckoned at 110 per cent of their par value. The payment to be made in cash, to cover such expenses, shall be fixed previously by the Trustees, or the Court, as the case may be, and announced in the advertisement of sale.

ARTICLE 33. The Trustees shall have power to release from the lien of these presents any land, rolling stock or other property, become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise; but only on condition that the property so sold be forthwith replaced by other property of equal value, and subjected to the lien of these presents.

ARTICLE 34. On any sale, whether by the Trustees or a Court of the property hereby conveyed, or any part thereof, the Trustees shall have the right to buy in the same, and a majority in amount of the holders of the outstanding bonds shall have the right, by written instrument, evidenced and proved as hereinbefore provided by Article 28, to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold on behalf and for the benefit of such bondholders, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the Court, as the case may be, for the payment in cash of all expenses incurred in the execution of the trusts of these

presents, and of the proportion of such sum payable to the bondholders not concurring in such request.

ARTICLE 35. On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf, as the absolute property of said bondholders, without any right of redemption or resale, in favor of said Company, or any bondholder.

ARTICLE 36. The Trustees shall deposit all trust funds, which may, from time to time, come to their hands, in their joint names, in the London and San Francisco Bank, Limited, or such other respectable bank or banks, trust company or companies, in London, New York, Frankford, San Francisco or Portland, as they may from time to time agree upon, and may from time to time invest the same, until required, in the purchase of United States stocks or bonds, at their market value, or in bonds secured by these presents, at any price not exceeding the par value thereof, or on loans secured on such stocks or bonds.

ARTICLE 37. The six thousand bonds intended to be now issued and secured by these presents, and all other bonds which may at any time hereafter be created and intended to be secured by these presents, shall, after the execution thereof by the Company, be delivered to said Trustees, to be certified by them as herein provided, and shall not be delivered back when certified to said Company, but shall be retained and held by said Trustees,

who shall only deliver them to the Company, or to the purchasers of such bonds, upon the payment to said Trustees of the price thereof.

ARTICLE 38. The bonds to be issued on the security of these presents (except the first issue of 6,000 bonds) shall only be sold or disposed of upon terms and at a price approved of by said Trustees.

ARTICLE 39. The proceeds of all bonds sold or disposed of shall be applied by said Trustees first in paying off and discharging the said prior lien of Two Millions of Dollars hereinbefore referred to, and the residue shall be held by them as a construction fund, and shall be exclusively disbursed for the completion of the railroads of the said Company, first to California, in accordance with said Act of Congress of July 25, 1866, or with any amendments thereof which may be hereafter made by Congress and accepted by said Company, and when the railroad to California is completed so that cars can run through from Portland to San Francisco then to Astoria and Junction, in accordance with said Act of Congress of May 4th, 1870.

ARTICLE 40. For the purpose of securing the due application of the proceeds of bonds to the construction of said railroads as aforesaid, the Trustees shall disburse such proceeds only under the advice and upon the certificate of a competent engineer, from time to time agreed upon and nominated in writing by them for the purpose; and all purchases of rails, rolling stock, ties

or other material shall be made on account of said construction fund, and in the name of said Trustees, so that such material shall upon the purchase thereof become and continue subject to the lien of these presents.

ARTICLE 41. The payment of coupons upon bonds now or hereafter to be issued on the security of these presents not exceeding four coupons upon any one bond after its issue shall be considered as part of the expense of, and chargeable to, the construction of the railroad to California until through connection is made with the system of the California railroads so that cars can run between Portland and San Francisco, and of the railroad to Astoria until the railroad is opened from Portland to tide water at Astoria; and the construction of a railroad bridge across the Willamette at Portland, so as to connect the railroads of said Company on each side of that river, and any necessary or proper increases of depot and dock accommodation in or near Portland, shall be considered part of the expenses of the railroad to California.

ARTICLE 42. At any time after, but not before the first day of January, 1888, whenever said Company shall have constructed any additional railroad beyond the 306½ miles hereinbefore described, said Company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole, including the bonds for Six Millions of Dollars to be now issued, the rate of $20,000 for each mile of constructed road, and shall deliver said bonds

to such Trustees, who shall cause the constructed road to be carefully examined and measured by their supervising engineer, and if they shall receive from such engineer a certificate that the additional road is duly constructed and completed to the length of miles claimed, with all proper depots and equipment in proportion to the rest of the constructed road, they shall certify said bonds, and hold the same as hereinbefore provided until sold by said Company and then deliver the same to the purchasers thereof, upon receipt of the purchase money, provided, however, that said Trustees shall not be required to examine and certify bonds for less than ten miles of railroad at one time.

ARTICLE 43. All bonds to be hereafter issued as aforesaid shall be in the same form and payable in the same manner as the bonds now to be issued, except that they shall bear the date when actually certified by said Trustees, and shall have all coupons of earlier date cut off, so as to bear interest only from the date when certified, and shall all be consecutively numbered from 6,001 onwards; and all such bonds when certified by said Trustees shall be in all respects equally secured by these presents, with the 6,000 bonds to be now issued.

ARTICLE 44. And whereas, by reason of distance, lapse of time, or other accident, the dates of the actual execution of this indenture of mortgage and trust by the various parties thereto may be previous or subsequent to the date of which it bears date, now it is hereby expressly agreed and declared that this indenture of mort-

gage and trust shall be dated the first day of June, 1881, and shall be valid and effectual as if executed on the day of the date thereof, and that this indenture of mortgage and trust is the indenture of mortgage referred to in the bonds hereinbefore mentioned, the form whereof is hereinbefore set forth, and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

In Witness Whereof, The Oregon and California Railroad Company, pursuant to a resolution of its Board of Directors authorizing the same, has caused these presents and nineteen duplicates thereof to be sealed with its corporate seal, signed by its President, and attested by its Assistant Secretary; and the said Trustees respectively have hereunto and unto the said nineteen duplicates thereof set their hands and seals the day and year above written.

OREGON & CALIFORNIA RAILROAD COMPANY,

By (Signed) H. Villard, President.

Attest: (Signed) H. H. Tyndale, Assistant Secretary.

(Corporate Seal.)

(Signed) H. VILLARD,

(Signed) HORACE WHITE,

(Signed) C. E. BRETHERTON,

Trustees.

Signed, sealed and delivered in presence of

(Signed) Geo. A. Saxer,

(Signed) C. A. Spofford,

20 Nassau St., New York.

Exhibit J

Schedule of all sales of said granted lands, including conveyances and pending contracts, separately stated as to each of said land grants.

The general source from which the information contained in the following schedule has been obtained is as follows: As to conveyances executed prior to June 11, A. D. 1879, the records in the office of the Recorder or Clerk (as the case may be) of each of the counties in which any of said granted lands were or are situated; as to conveyances executed on and after said June 11, A. D., 1879, the records of the minutes of the proceedings of the Board of Directors of the Oregon and California Railroad Company, which purport to contain descriptive lists of all conveyances executed on and after said date; as to pending contracts, the annual returns of the Oregon and California Railroad Company to the Assessors of the several counties in which any of said granted lands were or are situated, which returns purport to contain all of said pending contracts.

In the following schedule sales (whether conveyances or pending contracts) are classified according to the quantity of land sold, and the purchase price per acre. For the purpose of compactness, each class is designated by a capital letter, to-wit:

"A." Designating sales each in a quantity not exceeding one quarter section and for a price not exceeding $2.50 per acre;

"B." Designating sales each in a quantity not exceeding one quarter section, but for a price exceeding $2.50 per acre;

"C." Designating sales each in a quantity exceeding one quarter section but not exceeding 640 acres;

"D." Designating sales each in a quantity exceeding 640 acres but not exceeding 2,000 acres;

"E." Designating sales each in a quantity exceeding 2,000 acres.

East Side Grant, Act approved July 25, A. D. 1866, as amended.

CONVEYANCES.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
1872	"A"	12	783.06	$1,674.28
	"B"	21	635.38	2,364.45
1874	"A"	21	798.81	1,874.11
	"B"	11	250.30	1,057.81
	"D"	4	3,689.21	15,480.53
1875	"A"	8	494.72	682.25
	"B"	6	240.57	1,037.75
	"C"	3	602.31	878.00
1876	"A"	22	1,438.87	2,789.61
	"B"	16	746.47	2,753.07
1878	"A"	33	2,153.44	4,174.83
	"B"	33	1,953.00	6,855.92
	"C"	4	973.44	1,851.12

CONVEYANCES—Continued.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
1879	"A"	50	3,263.45	6,437.99
	"B"	21	811.88	3,458.61
	"C"	2	820.37	1,109.36
1880	"A"	34	2,037.85	4,028.72
	"B"	15	467.50	1,744.62
	"C"	5	2,150.09	3,425.04
	"D"	1	720.91	1,360.46
1881	"A"	25	1,455.52	3,001.10
	"B"	11	626.85	2,011.69
	"C"	1	188.54	212.12
1885	"A"	310	20,736.21	42,909.78
	"B"	110	6,160.80	21,618.77
	"C"	28	7,281.19	14,008.66
	"D"	2	2,502.80	6,456.89
1886	"A"	83	6,173.15	12,703.73
	"B"	33	1,765.09	6,231.54
	"C"	9	2,404.31	5,678.87
1887	"A"	98	6,890.28	15,025.62
	"B"	37	2,296.88	7,486.11
	"C"	6	1,400.71	3,252.60
1889	"A"	3	56.93	135.30
	"B"	31	1,607.26	5,973.83
1891	"A"	371	25,539.97	55,529.59
	"B"	171	10,099.84	35,124.58
	"C"	19	5,681.27	10,626.40
1892	"A"	84	5,556.86	12,004.23

CONVEYANCES—Continued.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
	"B"	159	8,722.32	35,841.55
	"C"	5	976.68	3,480.07
1893	"A"	73	5,088.27	11,704.45
	"B"	61	3,598.28	12,799.76
	"C"	10	3,265.94	6,935.63
	"D"	3	3,003.99	7,437.33
	"E"	1	2,234.70	4,579.40
1894	"A"	49	3,490.09	8,122.56
	"B"	51	3,149.16	10,690.87
	"C"	6	1,781.44	5,397.19
1895	"A"	57	3,918.32	9,352.26
	"B"	40	2,470.74	8,693.07
	"C"	1	240.00	1,020.00
1896	"A"	22	1,202.81	2,871.28
	"B"	34	1,740.22	7,467.16
	"C"	2	411.63	1,024.70
1897	"A"	40	2,031.31	5,041.44
	"B"	70	3,677.77	13,960.75
	"C"	6	1,857.84	8,125.68
	"D"	1	840.00	6,300.00
1898	"A"	31	1,753.48	4,311.64
	"B"	74	4,259.60	17,060.99
	"C"	4	1,721.58	9,501.00
	"D"	2	1,840.00	10,440.00
1899	"A"	73	3,537.24	8,698.19
	"B"	104	5,234.43	21,808.92

CONVEYANCES—Continued.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
	"C"	10	3,700.75	14,384.17
	"D"	3	3,050.84	15,974.26
	"E"	9	51,392.77	218,939.27
1900	"A"	76	4,569.93	11,258.93
	"B"	156	9,161.68	40,647.80
	"C"	17	5,832.12	24,234.17
	"D"	3	3,603.31	14,594.58
	"E"	2	18,429.46	103,904.43
1901	"A"	69	3,748.17	9,263.91
	"B"	134	7,511.64	32,724.59
	"C"	12	5,061.09	20,752.48
	"D"	4	3,197.45	16,577.89
	"E"	2	17,059.75	122,930.27
1902	"A"	39	2,282.92	5,679.58
	"B"	153	8,284.21	37,291.58
	"C"	14	5,231.20	23,176.11
	"D"	2	1,852.96	13,057.07
	"E"	2	7,495.97	85,580.00
1903	"A"	58	3,888.94	9,260.00
	"B"	134	7,849.19	35,188.65
	"C"	14	5,012.85	19,435.92
	"D"	3	2,664.65	13,078.77
	"E"	2	5,382.41	32,197.05
1904	"A"	25	1,682.05	4,005.81
	"B"	120	6,917.98	32,684.09
	"C"	11	3,525.46	12,373.05

CONVEYANCES—Continued.

Year.	Character of Conveyances	Total Conveyances	Total Acres	Total Purchase Price
	"D"	3	4,338.99	13,806.96
	"E"	2	13,896.81	106,847.00
1905	"A"	29	2,181.84	5,454.61
	"B"	81	4,781.32	18,948.60
	"C"	12	4,694.89	22,217.38
	"D"	5	6,380.90	23,677.64
	"E"	2	43,718.69	288,964.95
1906	"A"	7	444.23	1,110.57
	"B"	29	1,454.93	5,490.10
	"C"	1	200.00	500.00
	"D"	4	5,306.11	81,184.43
	"E"	3	22,707.20	138,952.67
1907	"A"	37	2,711.61	6,778.62
	"B"	109	6,573.04	28,450.70
	"C"	14	4,194.28	18,858.52
	"D"	5	7,168.27	91,047.10
	"E"	5	51,717.04	504,426.48
1908	"A"	13	819.81	2,049.52
	"B"	43	2,367.91	9,407.25
	"C"	7	2,191.78	7,916.07
	"D"	6	4,945.54	27,731.61
	"E"	3	26,552.58	201,671.45

RECAPITULATION—CONVEYANCES—EAST SIDE GRANT.

Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
"A"	1852	120,730.14	$267,034.51
"B"	2068	115,416.24	466,875.18
"C"	223	71,401.76	240,374.31
"D"	51	55,105.93	358,155.52
"E"	33	260,587.38	1,808,992.97
Total,	4227	623,241.45	$3,141,432.49

East Side Grant—Act approved July 25, A. D. 1866, as amended.

PENDING CONTRACTS.

So far as your Orator is advised, all pending contracts are for prices exceeding $2.50 per acre; therefore contracts for not exceeding one quarter section of land are classified as "B." The exact purchase price as to pending contracts is unknown but is computed at $10.00 per acre.

Character of Contracts.	Total Contracts.	Total Acres.	Total Purchase Price
"B"	738	42,294.41	$422,944.10
"C"	40	14,412.01	144,120.10
"D"	5	5,260.36	52,603.60
"E"	5	63,408.10	634,081.00
Total,	788	125,374.88	1,253,748.80

TOTAL SALES EAST SIDE GRANT.

Including both Conveyances and Pending Contracts.

5015	748,616.33	$4,395,181.29

West Side Grant—Act approved May 4, A. D. 1870.

CONVEYANCES.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
1885	"A"	26	1,653.50	$3,834.64
	"B"	9	222.86	839.30
	"C"	2	680.00	1,260.00
1886	"A"	8	502.74	1,115.28
	"B"	1	26.80	80.40
	"C"	1	360.00	900.00
1887	"A"	11	924.60	1,971.50
	"B"	3	160.00	600.00
1891	"A"	49	3,498.40	7,914.49
	"B"	21	1,285.74	4,625.08
	"C"	4	1,374.67	4,106.91
1892	"A"	6	368.11	920.28
	"B"	5	324.68	1,813.94
	"C"	1	320.00	960.00
1893	"A"	1	80.00	200.00
	"B"	3	280.00	1,000.00
	"C"	2	760.00	3,040.00
1894	"A"	1	40.00	100.00
	"B"	9	640.00	2,860.00
1895	"A"	2	238.83	555.00
	"B"	9	600.00	2,560.00
1896	"A"	1	42.06	105.15
	"B"	3	280.00	1,760.00
1897	"B"	7	320.00	1,760.00
1898	"B"	16	977.93	5,860.36

CONVEYANCES—Continued.

Year.	Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
1899	"B"	9	537.85	2,896.00
	"C"	1	320.00	1,280.00
1900	"A"	2	80.00	200.00
	"B"	3	120.00	780.00
	"C"	1	320.00	960.00
1901	"A"	1	80.00	190.00
	"B"	2	160.00	760.00
	"C"	1	423.61	1,059.00
	"E"	1	2,431.55	19,452.40
1902	"B"	6	400.86	2,333.10
1903	"B"	2	80.00	360.00
1904	"B"	2	50.00	280.00
	"C"	1	321.99	804.97
1905	"B"	6	230.00	1,452.50
1906	"B"	1	40.00	220.00
1907	"B"	5	340.00	1,720.00
	"C"	1	240.00	960.00
1908	"A"	1	160.00	400.00
	"B"	1	20.00	400.00
	"C"	1	260.63	500.00

RECAPITULATION—CONVEYANCES—WEST SIDE GRANT.

Character of Conveyances.	Total Conveyances.	Total Acres.	Total Purchase Price
"A"	109	7,668.24	$17,506.34
"B"	123	7,096.72	34,960.68
"C"	16	5,380.90	15,830.88
"E"	1	2,431.55	19,452.40
Total	249	22,577.41	$87,750.30

West Side Grant, Act Approved May 4, 1870.

PENDING CONTRACTS.

So far as your Orator is advised, all pending contracts are for prices exceeding $2.50 per acre; therefore contracts for not exceeding one-quarter section of land are classified as "B." The exact purchase price as to pending contracts is unknown but is computed at $10.00 per acre.

Character of Contracts.	Total Contracts.	Total Acres.	Total Purchase Price
"B"	40	2,521.77	$25,217.70
"C"	1	240.00	2,400.00
"E"	1	45,972.43	459,724.30
Total	42	48,734.20	$487,342.00

TOTAL SALES WEST SIDE GRANT.

Including both Conveyances and Pending Contracts.

	291	71,311.61	$575,092.30

RECAPITULATION—TOTAL SALES—BOTH GRANTS.

The following statement covers both grants, and includes all sales,—both conveyances and pending contracts. The entire time during which sales have been made is divided into two periods, viz: 1872 to 1897 inclusive, and 1898 to 1908 inclusive. Pending contracts are included in the latter period. The exact purchase price as to pending contracts is unknown, but is computed at $10.00 per acre.

RECAPITULATION.

Years.	Total Sales	Total Acres	Total Purchase Price
Sales in Quantities not Exceeding 160 *Acres.*			
1872-1897	2501	155,618.55	$ 420,950.10
1898-1908	2429	140,108.97	813,588.41
	4930	295,727.52	$1,234,538.51
Sales in Quantities Exceeding 160 *Acres, But not Exceeding* 640 *Acres.*			
1872-1897	117	33,530.43	$ 77,292.35
1898-1908	163	57,904.24	325,432.94
	280	91,434.67	$402,725.29
Sales in Quantities Exceeding 640 *Acres But Not Exceeding* 2,000 *Acres.*			
1872-1897	11	10,756.91	36,985.21
1898-1908	45	45,609.38	373,773.91
	56	60,366.29	410,759.12
Sales in Quantities Exceeding 2,000 *Acres.*			
1872-1897	1	2,234.70	4,579.40
1898-1908	39	370,164.76	2,917,671.27
	40	372,399.46	2,922,250.67
Total Sales in Quantities Exceeding 160 *Acres.*			
1872-1897	129	46,522.04	118,856.96
1898-1908	247	477,678.38	3,616,878.12
	376	524,200.42	3,735,735.08

RECAPITULATION—Continued.

	Total Sales	Total Acres	Total Purchase Price
	Total Sales.		
In quantities not exceeding 160 acres	4930	295,727.52	1,234,538.51
In quantities exceeding 160 acres	376	524,200.42	3,735,735.08
Total,	5306	819,927.94	4,970,273.59

Exhibit K

Schedule of patented lands now remaining unsold, described by governmental subdivisions, tabulated by Counties, and separately stated as to each of said land grants.

Governmental subdivisions of sections are designated by the abbreviations "N," "S," "E," "W," "NE," "NW," "SE" and "SW," meaning, respectively, north, south, east, west, northeast, northwest, southeast and southwest.

EAST SIDE GRANT.

Act of July 25, A. D. 1866, as amended.

All of the lands of said East Side Grant are situated in the State of Oregon; the respective counties are indicated in the schedule.

The Counties are arranged in the order in which they occur in the grant from West to East, commencing at the North. Thus arranged, they appear in the following order. For convenience, the total number of acres in each County is here stated:

COUNTY.	ACRES.
Washington	2,452.18
Multnomah	8,120.00
Yamhill	27,120.20
Clackamas	89,162.07
Polk	37,017.79
Marion	30,256.00
Lincoln	15,906.00

EAST SIDE GRANT—Continued.

COUNTY	ACRES
Benton	53,626.99
Linn	61,966.23
Lane	299,606.00
Douglas	616,843.14
Coos	106,563.36
Curry	7,844.64
Josephine	167,480.98
Jackson	441,791.15
Klamath	43,015.00
Total East Side Grant	2,008,771.73

WASHINGTON COUNTY.

South of Base Line and West of Willamette Meridian.

Township 1, *Range* 1.

	Section	Acres
W ½ of SE ¼ of SW ¼,	19	20.00
Township 3, *Range* 1.		
NE ¼ of NW ¼,	3	41.00
Township 1, *Range* 2.		
Lot 1,	31	20.00
Township 2, *Range* 2.		
SW ¼ of SW ¼,	17	40.00
Township 1, *Range* 3.		
Lot 1,	7	.18
SW ¼ of SW ¼,	21	40.00
Lot 1,	25	11.00
Township 2, *Range* 3.		
S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	11	280.00
NW ¼ of SW ¼; E ½ of SW ¼; SW ¼ of SE ¼,	13	160.00
Township 1, *Range* 4.		
NW ¼ of NE ¼; NW ¼; SE ¼,	15	360.00
Township 1, *Range* 5.		
NE ¼ of NE ¼; E ½ of SE ¼,	1	120.00
NE ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	280.00
SW ¼ of SW ¼; SE ¼ of NW ¼,	11	80.00
E ½ of NE ¼; SE ¼,	15	240.00
All,	33	640.00
NW ¼ of SE ¼; S ½ of SE ¼,	35	120.00
Total Washington County,		2,452.18

MULTNOMAH COUNTY.

South of Base Line and East of Willamette Meridian.
Township 1, *Range* 4.

	Section	Acres
SE ¼ of SW ¼; N ½ of SW ¼,	11	120.00
SW ¼ of NE ¼,	13	40.00
W ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼,	15	160.00
S ½ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	23	320.00

Township 1, *Range* 5.

All,	1	646.00
All,	3	623.00
SE ¼ of NW ¼; NW ¼ of SW ¼; SE ¼ of SE ¼,	5	120.00
S ½ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	7	317.00
NE ¼ of NE ¼; S ½ of N ½; NW ¼ of NW ¼; S ½,	9	560.00
All,	11	640.00
All,	13	640.00
N ½; N ½ of SE ¼,	15	400.00
N ½ of NE ¼; SW ¼ of NE ¼,	17	120.00
S ½,	21	320.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; N ½ of SW ¼; NW ¼ of SE ¼,	23	400.00

MULTNOMAH COUNTY—Continued.

Township 1, *Range* 6.

	Section	Acres
NW ¼,	3	118.00
All,	5	664.00
All,	7	632.00
All,	9	640.00
All,	17	640.00
Total, Multnomah County,		8,120.00

YAMHILL COUNTY.

South of Base Line and West of Willamette Meridian.

Township 3, *Range* 2.

	Section	Acres
Lot 1,	19	.50

Township 2, *Range* 3.

NE ¼ of NW ¼; SE ¼ of NE ¼,	23	80.00

Township 5, *Range* 3.

Lots 10, 11, 12,	3	74.64
Lot 1,	9	3.90
Lot 1,	11	15.06
Lot 4,	13	15.82
Lot 6,	21	.97
NE ¼ of SE ¼,	23	40.00
Lots 7, 8,	25	72.70

Township 2, *Range* 4.

Lot 1,	31	1.30

Township 3, *Range* 4.

Lot 1,	9	1.48
Lot 4,	33	.11

Township 4, *Range* 4.

Lot 1,	13	2.94

Township 5, *Range* 4.

Lot 2,	9	.31
Lot 1,	27	13.00
Lot 1,	35	25.44

YAMHILL COUNTY—Continued.

Township 2, Range 5.

	Section	Acres
SW ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	1	160.00
N ½ of NE ¼; NE ¼ of NW ¼; SW ¼ of NW ¼; SW ¼; S ½ of SE ¼,	3	400.70
SE ¼ of NE ¼; S ½,	5	360.00
All,	7	645.60
NE ¼ of NE ¼; W ½ of E½; W ½; SE ¼ of SE ¼,	9	560.00
All,	17	640.00
W ½ of NE ¼; NE ¼ of NW ¼; SW ¼ of NW ¼; W ½ of SW ¼; NE ¼ of SE ¼,	19	283.60
NW ¼ of NE ¼; N ½ of NW ¼; NW ¼ of SW ¼; NW ¼ of SE ¼,	21	200.00
Lot 2; N ½ of N ½ of SW ¼,	27	57.05
NE ¼ of NE ¼,	29	40.00
SE ¼ of NW ¼; S ½,	31	363.97

Township 3, Range 5.

S ½ of SW ¼,	5	80.00
NE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; W ½ of SE ¼,	7	284.20
S ½ of N ½; S ½,	19	488.10
Lots 1, 2,	23	41.20
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; E ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	29	560.00

YAMHILL COUNTY—Continued.

Township 3, Range 5.

	Section	Acres
SW ¼; W ½ of SE ¼,	31	248.21
W ½ of NE ¼; E ½ of NW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	33	280.00
E ½ of NE ¼,	35	80.00

Township 4, Range 5.

N ½,	7	324.51
NW ¼; N ½ of SW ¼; NW ¼ of SE ¼,	19	285.70
Lot 4; SW ¼ of NW ¼,	21	79.06
S ½ of S ½ of SE ¼ of SE ¼,	31	10.40

Township 5, Range 5.

Lot 7 (or NW ¼ of NW ¼),	5	30.05
Lot 8,	15	12.00
Lot 8,	25	.10
Lots 1, 5, 6,	31	15.91
Lot 1,	35	8.00

Township 2, Range 6.

N ½; N ½ of S ½,	13	480.00
W ½ of NW ¼,	25	80.00
SW ¼; S ½ of SE ¼,	27	240.00
S ½; E ½ of NE ¼,	33	421.36
All,	35	640.00

Township 3, Range 6.

All,	1	641.84
N ½ of NW ¼; SW ¼ of NW ¼; SW ¼ of SW ¼; SE ¼ of SE ¼,	3	202.11
S ½,	5	320.00
W ½ of NW ¼; N ½ of SW ¼; S ½ of SE ¼,	9	240.00

YAMHILL COUNTY—Continued.

Township 3, Range 6—Continued.

	Section	Acres
N ½ of NE ¼; SW ¼ of NE ¼; NE ¼ of NW ¼; W ½ of NW ¼; SE ¼ of SW ¼; SE ¼,	11	440.00
All,	13	640.00
NW ¼ of NE ¼; NW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼; SE ¼,	15	360.00
All,	17	640.00
W ½ of E ½; W ½,	21	480.00
E ½; E ½ of NW ¼; SE ¼ of SW ¼,	23	440.00
All,	25	640.00
All,	27	640.00
All,	33	640.00
All,	35	640.00

Township 4, Range 6.

NE ¼; N½ of SE ¼,	1	239.85
N ½; N ½ of SW ¼; SE ¼,	3	560.62
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½,	5	605.47
All,	9	640.00
N ½ of NE ¼,	11	80.00
E ½ of NE ¼,	13	80.00
All,	17	640.00
All,	19	662.96
All,	21	640.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of SW ¼,	23	160.00
N ½; W ½ of SW ¼; N ½ of SE ¼,	29	480.00
E ½ of NE ¼; S W ¼of NE ¼; W ½ of		

YAMHILL COUNTY—Continued.

Township 4, *Range* 6—*Continued.*

	Section	Acres
NW 1/4; SE 1/4 of NW 1/4; N 1/2 of S 1/2,	31	415.78
NW 1/4 of NE 1/4; NW 1/4; N 1/2 of SW 1/4,	33	280.00
Lots 1, 2,	35	4.00
Township 5, *Range* 6.		
E 1/2 of NW 1/4,	3	78.23
Township 4, *Range* 7.		
SE 1/4 of NE 1/4; W 1/2 of NW 1/4; S 1/2,	21	440.00
All,	23	640.00
NE 1/4; E 1/2 of NW 1/4; S 1/2,	25	560.00
All,	27	640.00
E 1/2; N 1/2 of NW 1/4; S 1/2 of SW 1/4,	29	480.00
E 1/2,	31	320.00
S 1/2 of NE 1/4; N 1/2 of NW 1/4; S 1/2 of SW 1/4; SE 1/4,	33	400.00
W 1/2 of E 1/2; NW 1/4; N 1/2 of SW 1/4,	35	400.00
Township 5, *Range* 7.		
E 1/2 of NE 1/4; N 1/2 of NW 1/4; SE 1/4 of NW 1/4; NE 1/4 of SE 1/4,	3	243.40
N 1/2 of NW 1/4; SE 1/4,	9	240.00
SW 1/4; SW 1/4 of SE 1/4,	11	200.00
N 1/2; N 1/2 of SE 1/4; SW 1/4; SW 1/4 of SE 1/4,	15	600.00
SW 1/4; N 1/2 of SE 1/4,	21	240.00
NE 1/4 of NE 1/4; S 1/2 of NW 1/4; Lot 1,	27	121.20
SW 1/4,	33	160.00
Township 6, *Range* 7.		
NW 1/4,	3	156.85
Total, Yamhill County,		27,120.20

CLACKAMAS COUNTY.

South of Base Line and East of Willamette Meridian.

Township 3, *Range* 1.

	Section	Acres
Lot 1,	19	2.23
Township 4, *Range* 1.		
Lot 1,	21	.49
Township 6, *Range* 1.		
NE ¼ of NW ¼; S ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼,	13	240.00
Township 1, *Range* 2.		
Lot 4,	35	2.80
Township 3, *Range* 2.		
Lots 1, 2,	3	14.55
Lot 1,	7	.87
SE ¼ of SE ¼,	11	40.00
Township 4, *Range* 2.		
SE ¼ of NW ¼; E ½ of SW ¼,	3	120.00
NW ¼ of SW ¼,	5	40.00
SE ¼ of NE ¼; E ½ of SW ¼; NE ¼ of SE ¼,	11	160.00
NW ¼ of SE ¼,	13	40.00
SW ¼ of NE ¼; N ½ of SE ¼; SE ¼ of SE ¼,	15	160.00
NE ¼ of NW ¼,	21	40.00
SW ¼ of NW ¼,	23	40.00
Lots 1, 2,	33	1.80
Township 5, *Range* 2.		
Lots 1, 2,	3	42.66
Lot 2,	5	4.47

CLACKAMAS COUNTY—Continued.

Township 5, Range 2—Continued.

	Section	Acres
S ½ of NE ¼; Lot 2,	13	125.55
E ½ of NE ¼; NE ¼ of SE ¼; Lot 2,	25	147.50
S ½ of NE ¼; E ½ of W ½; SE ¼,	35	400.00

Township 6, Range 2.

NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	1	440.20
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; E ½ of SW ¼; SE ¼,	5	552.55
N ½; SW ¼ of SW ¼; W ½ of SE ¼; SE ¼ of SE ¼,	7	475.99
SW ¼ of NE ¼; NW ¼; NW ¼ of SE ¼,	9	240.00
SW ¼ of NE ¼,	11	40.00
E ½ of NE ¼; SW ¼ of NW ¼; SW ¼; W ½ of SE ¼,	13	360.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼,	15	280.00
NW ¼ of NE ¼; N ½ of NW ¼,	17	120.00
NW ¼ of NE ¼; E ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	19	315.36
W ½ of NW ¼,	21	80.00
S ½ of NW ¼,	23	80.00
W ½; NW ¼ of SE ¼; S ½ of SE ¼,	25	440.00
SW ¼ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼,	27	160.00

CLACKAMAS COUNTY—Continued.

Township 6, Range 2—Continued.

	Section	Acres
NE ¼; N ½ of NW ¼; SE ¼ of N W¼; N ½ of SE ¼; SE ¼ of SE ¼,	29	400.00
N ½; SE ¼,	33	480.00
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	35	600.00
Township 7, Range 2.		
All,	1	640.00
E ½; E ½ of W ½; NW ¼ of NW ¼,	3	516.38
NE ¼; NE ¼ of SE ¼,	5	198.65
SE ¼ of NE ¼; E ½ of SE ¼,	9	120.00
N ½; SW ¼; E ½ of SE ¼,	11	560.00
All,	13	640.00
E ½; E ½ of W ½; NW ¼ of NW ¼,	15	520.00
All,	23	640.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	25	600.00
Township 1, Range 3.		
NE ¼ of NE ¼,	29	40.00
Township 2, Range 3.		
Lot 5,	21	.55
Lots 5, 6, 8,	23	11.25
Township 3, Range 3.		
Lots 8, 11,	1	45.19
SW ¼ of NE ¼; NW ¼ of SW ¼; Lot 2,	7	99.51
Lot 5,	13	36.34
Lots 1, 2, 3, 6, 7, 8,	15	75.27

CLACKAMAS COUNTY—Continued.

Township 3, Range 3—Continued.

	Section	Acres
NW ¼ of NE ¼; NE ¼ of NW ¼,	19	80.00
Lots 3, 4, 5, 6, 7, 8,	25	71.26
SE ¼ of NE ¼; SW ¼ of SE ¼; Lots 1, 2, 3,	27	101.95
Lot 4; SE ¼ of SW ¼; W ½ of SE ¼,	29	146.65
NW ¼,	33	160.00
N ½,	35	320.00

Township 4, Range 3.

S ½ of NE ¼; NW ¼; N ½ of SW ¼; Lots 1, 2; SE ¼,	1	525.45
SW ¼ of SE ¼,	3	40.00
E ½ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	5	200.16
SW ¼ of NE ¼,	9	40.00
NE ¼ of NW ¼; S ½ of NW ¼; SW ¼,	13	280.00
SW ¼ of SW ¼,	19	47.31
E ½ of NE ¼; SW ¼ of NW ¼; N ½ of SW ¼,	21	200.00
NW ¼ of NW ¼; S ½ of NW ¼; SW ¼,	23	280.00
NW ¼ of NE ¼; S ½ of NE ¼; S ½ of NW ¼,	25	200.00
N ½ of NE ¼; SW ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; NW ¼ of SE ¼,	27	320.00
NE ¼ of NE ¼; S ½ of NE ¼,	29	120.00
S ½ of NE ¼; SE ¼,	31	240.00
N ½ of NE ¼; NW ¼ of SW ¼,	33	120.00

CLACKAMAS COUNTY—Continued.

Township 5, Range 3.

	Section	Acres
S ½ of NE ¼; E ½ of SE ¼,	1	160.00
SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	5	160.00
NE ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; Lot 3; N ½ of SE ¼; SE ¼ of SE ¼,	7	290.02
E ½; SE ¼ of NW ¼; E ½ of SW ¼,	11	440.00
N ½; N W¼ of SW ¼; S ½ of SW ¼; SE ¼,	13	600.00
N ½ of NW ¼,	17	80.00
NE ¼; E ½ of NW ¼,	21	240.00
N ½; E ½ of SW ¼; SE ¼,	23	560.00

Township 6, Range 3.

S ½ of NW ¼; N ½ of SW ¼,	17	160.00

Township 7, Range 3.

N ½; SW ¼; N ½ of SE ¼,	1	559.12
All,	3	637.28
All,	5	638.00
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	7	455.60
All,	9	640.00
N ½; SW ¼; NW ¼ of SE ¼,	11	520.00
All,	13	640.00
NE ¼; S ½ of SW ¼; S W¼ of SE ¼,	15	280.00
N ½ of NE ¼; SW ¼ of NW ¼; SW ¼; S ½ of SE ¼,	17	360.00

CLACKAMAS COUNTY—Continued.

Township 7, Range 3—Continued.

	Section	Acres
All,	19	612.40
All,	21	640.00
All,	23	640.00
All,	25	640.00
N ½,	27	320.00

Township 1, Range 4.

NW ¼ of NE ¼; S ½ of NE ¼; NE ¼ of NW ¼,	25	160.00

Township 2, Range 4.

W ½ of NE ¼; NE ¼ of NW ¼; E ½ of SW ¼,	1	198.49
Lot 4,	19	18.67
S ½ of NE ¼; S ½ of S ½,	25	240.00
SW ¼ of NW ¼,	29	40.00
N ½ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	35	520.00

Township 3, Range 4.

S ½ of S ½,	1	160.00
E ½; E ½ of W ½; NW ¼ of NW ¼; SW ¼ of SW ¼,	11	560.00
N ½ of N ½; SE ¼ of NE ¼; SE ¼ of NW ¼,	13	240.00
SE ¼,	25	160.00
SE ¼ of SE ¼,	29	40.00
Lot 5; NW ¼ of NW ¼,	31	57.66
Lot 1,	33	16.00

CLACKAMAS COUNTY—Continued.

Township 4, Range 4.

	Section	Acres
NW ¼ of SW ¼; S ½ of SW ¼,	1	120.00
Lot 1; NW ¼ of NE ¼; E ½ of NW ¼,	7	145.30
Lots 7, 8, 10, 11,	9	60.11
SW ¼ of NE ¼,	11	40.00
E ½,	13	320.00
S ½ of NE ¼; Lot 4; SE ¼ of SW ¼, except two acres in SW corner,	15	153.42
Lots 1, 4, 5, 7, 8; SW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	17	364.16
SW ¼; SW ¼ of SE ¼,	21	200.00
NW ¼ of NE ¼; E ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	23	240.00
All,	25	640.00
All,	27	640.00
NE ¼ of NW ¼; NE ¼ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	29	160.00
NE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of SW ¼; E ½ of SE ¼,	31	241.83
All,	33	640.00
W ½,	35	320.00

Township 5, Range 4.

All,	1	626.12
All,	3	561.91
All,	5	634.88
All,	7	648.38

CLACKAMAS COUNTY—Continued.

Township 2, Range 6—Continued.

	Section	Acres
All,	15	640.00
N ½; E ½ of SW ¼; SE ¼,	17	560.00
S ½ of N ½; NW ¼ of SW ¼; N ½ of SE ¼,	19	282.99
S ½ of NE ¼; S ½ of SW ¼; SE ¼,	21	320.00
N ½; N ½ of S ½; SW ¼ of SW ¼,	23	520.00
N ½ of NE ¼; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	25	360.00
All,	27	640.00
All,	29	640.00
All,	31	642.82
All,	33	640.00
All,	35	640.00

Township 4, Range 6.

N ½; SW ¼,	1	480.00
All,	3	640.00
All,	5	644.21
All,	7	639.39
All,	9	640.00
All,	11	700.21
W ½,	13	320.00
All,	15	640.00
All,	17	640.00
All,	19	640.54
All,	21	640.00
NW ¼,	23	195.68

CLACKAMAS COUNTY—Continued.

Township 4, Range 6—Continued.

	Section	Acres
NW 1/4,	27	160.00
All,	29	621.83
Lots 3, 4, 5, 6, 7; NE 1/4 of SW 1/4; N 1/2 of SE 1/4,	31	327.52
Lots 1, 2; NW 1/4; N 1/2 of SW 1/4,	33	303.04

Township 2, Range 7.

All,	7	638.41
All,	19	638.42
All,	31	639.59

Township 3, Range 7.

W 1/2,	7	328.32
W 1/2,	19	321.78

South of Base Line and West of Willamette Meridian.

Township 3, Range 1.

NE 1/4 of SW 1/4,	19	40.00
Total, Clackamas County,		89,102.07

CLACKAMAS COUNTY—Continued.

Township 3, Range 5—Continued.

	Section	Acres
All,	11	640.00
All,	13	640.00
NE ¼ of NE ¼; S ½ of NE ¼; N ½ of SW ¼; SE ¼,	15	360.00
N ½ of NE ¼; SE ¼ of SE ¼,	17	120.00
NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	19	154.12
N ½ of NE ¼; SW ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	21	360.00
E ½; E ½ of W ½; NW ¼ of NW ¼; SW ¼ of SW ¼,	23	560.00
All,	25	640.00
All,	27	640.00
S ½ of N ½; NW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	29	400.00
N ½ of NW ¼; S W¼ of N W¼; SW ¼ of SW ¼; S ½ of SE ¼,	31	236.59
N ½; N ½ of SW ¼; SE ¼,	33	560.00
All,	35	640.00

Township 4, Range 5.

All,	1	640.22
NE ¼; N ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼,	3	319.84
E ½ of NE ¼; E ½ of NW ¼; S ½ of S ½,	5	321.69
All,	7	639.26

PAGES MIS

CLACKAMAS COUNTY—Continued.

Township 4, Range 5—Continued.

	Section	Acres
All,	9	640.00
W ½ of NE ¼; W ½ of NW ¼; SE ¼ of NW ¼; S ½,	11	520.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	637.98
All,	21	640.00
All,	23	640.00
NE ¼,	27	160.00
S ½ of N ½; NW ¼ of NW ¼,	29	200.00
All,	31	659.66
E ½,	35	322.98

Township 1, Range 6.

All,	29	640.00
All,	31	624.80
SW ¼,	33	160.00

Township 2, Range 6.

All,	1	640.00
All,	3	639.42
All,	5	638.22
N ½; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	7	597.22
All,	9	640.00
All,	11	640.00
All,	13	640.00

MISNUMBERED

CLACKAMAS COUNTY—Continued.

Township 5, Range 4—Continued.

	Section	Acres
All,	9	640.00
All,	11	640.00
All,	13	640.00
N ½; SW ¼; N ½ of SE ¼,	15	520.35
All,	17	629.76
All,	19	577.90
N ½,	21	320.00
All,	23	640.00
All,	25	640.00

Township 6, Range 4.

All,	1	750.36
All,	3	751.48
All,	9	640.00
All,	11	640.00
S ½,	33	320.00

Township 7, Range 4.

N ½; SW ¼; NW ¼ of SE ¼,	5	428.60
S ½ of N ½; S ½,	7	537.19
All,	9	640.00
N ½; N ½ of S ½,	15	480.00
All,	17	640.00
All,	19	714.52
N½; W ½ of SW ¼,	21	400.00
N ½; SW ¼,	29	480.00

Township 8, Range 4.

E ½; Lots 1, 2, 3, 4,	7	462.84

PAGES MIS

CLACKAMAS COUNTY—Continued.

	Section	Acres
***Township* 1, *Range* 5.**		
N ½ of NE ¼; NW ¼,	25	240.00
NW ¼ of NE ¼; NE ¼ of NW ¼; SW ¼ of SW ¼,	29	120.00
S ½ of SW ¼,	33	80.00
S ½ of NE ¼; S ½,	35	400.00
***Township* 2, *Range* 5.**		
NE ¼; SE ¼ of SW ¼; NE ¼ of S E¼; S ½ of SE ¼,	1	319.37
Lot 5,	7	38.52
NE ¼; E ½ of SE ¼,	13	240.00
NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	15	440.00
SW ¼ of NE ¼; E ½ of NW ¼,	19	120.00
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼,	23	160.00
N ½ of NE ¼; S ½ of SW ¼; SE ¼ of SE ¼,	27	200.00
NW ¼ of NW ¼; S ½ of NW ¼,	31	113.11
N ½ of NW ¼; SE ¼ of NW ¼; SE ¼,	33	280.00
***Township* 3, *Range* 5.**		
All,	1	641.73
All,	3	645.10
SE ¼ of NW ¼; S ½,	7	357.00
E ½; S ½ of NW ¼; N ½ of SW ¼,	9	480.00

UNNUMBERED

POLK COUNTY.

South of Base Line and West of Willamette Meridian.

Township 6, Range 8.

	Section	Acres
Lot 1,	5	2.00
Lot 4,	21	.63

Township 8, Range 4.

Lot 3,	3	4.00

Township 9, Range 4.

Lot 5,	1	4.00
Lot 5,	9	1.16

Township 9, Range 5.

Lot 9,	13	6.00

Township 6, Range 6.

Lot 1,	35	28.00

Township 7, Range 6.

Lots 1, 2, 3, 4,	3	94.00
SW ¼ of NE ¼; S ½; Lot 1,	5	405.00
All,	7	655.00
SE ¼ of NE ¼; S ½ of SW ¼; SE ¼; Lot 3,	9	318.00
E ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	17	360.00
E ½ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	21	160.00
SE ¼ of SE ¼,	27	40.00
All,	29	640.00
All,	31	662.00
N ½ of NE ¼; NW ¼; SE ¼,	33	400.00

PAGES MIS

POLK COUNTY—Continued.

Township 8, *Range* 6.

	Section	Acres
N ½,	5	324.00
NW ¼ of NW ¼; S ½ of N ½; N ½ of S ½; SE ¼ of SE ¼,	7	415.00
W ½ of NE ¼; S ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	9	280.00
NW ¼ of NE ¼; NW ¼,	17	200.00
NE ¼ of NE ¼; SW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; SW ¼; S ½ of SE ¼,	31	440.00
W ½ of NW ¼,	33	80.00

Township 9, *Range* 6.

N ½ of NE ¼; NW ¼,	5	246.00
N ½; N ½ of SE ¼,	7	407.00
SE ¼ of NW ¼,	9	40.00
SW ¼ of NE ¼,	17	40.00

Township 7, *Range* 7.

S ½ of NE ¼; NW ¼; S ½	1	610.00
All,	3	739.00
All,	5	736.00
All,	7	648.00
All,	9	640.00
N ½; N ½ of S ½; SW ¼ of SW ¼; SE ¼ of SE ¼,	11	560.00
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	13	600.00
All,	15	640.00

HISNUMBERED

MARION COUNTY—Continued.

Township 8, *Range* 1—*Continued.*

	Section	Acres
N ½; W ½ of SW ¼; NE ¼ of SE ¼,	11	440.00
NE ¼; NE¼ of SW¼; N ½ of SE¼,	12	280.00
NE ¼; E ½ of SE ¼,	13	240.00
E ½ of SW ¼; S ½ of SE ¼,	15	160.00
All,	25	640.00
SE ¼ of NW ¼; N ½ of SW ¼; SW ¼ of SE ¼,	27	160.00
N ½ of NE ¼; NW ¼ of NW ¼; S ½,	35	440.00

Township 9, *Range* 1.

Lot 1,	23	22.00

Township 6, *Range* 2.

SW ¼ of SW ¼,	29	40.00
E ½ of NE ¼; NW ¼; NE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	31	396.00

Township 7, *Range* 2.

W ½; NW ¼ of SE ¼; S ½ of SE ¼,	5	440.00
SW ¼ of NW ¼; NW ¼ of SW ¼; SE ¼ of SW ¼,	7	118.00
SW ¼ of NE ¼; W ½; W½ of SE ¼,	9	440.00
SW ¼ of NW ¼; W ½ of SW ¼,	15	120.00
NE ¼; S ½ of NW ¼,	17	240.00
SE ¼ of NW ¼; E ½ of SW ¼; SE ¼,	19	280.00
W ½ of W½; SE ¼ of NW ¼; SE ¼,	21	360.00
SW ¼ of SW ¼,	25	40.00
All,	27	640.00

PAGES MIS

MARION COUNTY—Continued.

Township 7, Range 2—Continued.

	Section	Acres
S ½ of NE ¼; NW ¼; E ½ of SW ¼; SE ¼,	33	480.00
All,	35	640.00

Township 8, Range 2.

All,	1	636.00
All,	3	636.00
All,	5	645.00
S ½ of NE ¼; NW ¼; S ½,	7	562.00
All,	9	630.00
All,	11	640.00
NW ¼ of NE ¼; N ½ of NW ¼,	13	120.00
E ½; NW ¼ of NW ¼; S ½ of NW ¼; SW ¼,	17	600.00
S ½ of NE ¼; SE ¼ of NW ¼; S ½,	19	441.00
W ½,	29	320.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	31	601.00

Township 9, Range 2.

All,	1	642.00
NE ¼; N ½ of NW ¼; N ½ of SE ¼,	3	328.00
NE ¼; N ½ of NW ¼; S ½,	5	575.00
NW ¼ of NE ¼; NE ¼ of NW ¼,	7	80.00
NW ¼ of SE ¼; North 23 acres of SW ¼ of SE ¼,	9	63.00
NE ¼; S ½ of NW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	11	364.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼;		

ISNUMBERED

POLK COUNTY—Continued.

Township 7, *Range* 8—*Continued.*

	Section	Acres
All,	25	640.00
All,	27	640.00
All,	35	640.00

Township 8, *Range* 8.

N ½; SW ¼,	1	479.00
E ½; E ½ of W ½,	3	458.00
N ½; SW ¼,	11	480.00
E ½ of E ½,	15	160.00
S ½,	23	320.00
All,	25	640.00
N ½,	35	320.00

Township 9, *Range* 8.

N ½ of NW ¼; SW ¼ of NW ¼; W ½ of SW ¼,	11	200.00
NE ¼,	15	160.00
S ½ of NE ¼; NW ¼; S ½,	27	560.00
All,	35	640.00
Total, Polk County,		37,017.79

PAGES MIS

MARION COUNTY.

South of Base Line and West of Willamette Meridian.

Township 9, *Range* 1.

	Section	Acres
Lot 9,	13	29.00

Township 9, *Range* 2.

Lot 3,	29	17.00

Township 6, *Range* 3.

Lot 2,	1	9.00
Lots 8, 9, 10,	21	58.00

Township 8, *Range* 4.

Lot 9,	1	7.00

South of Base Line and East of Willamette Meridian.

Township 6, *Range* 1.

NE ¼; N ½ of SE ¼; SE ¼ of SE ¼,	25	280.00

Township 7, *Range* 1.

SE ¼ of NW ¼; W ½ of SE ¼,	1	120.00
Lots 1, 5, 6,	7	86.00
S ½,	11	320.00
W ½ of NE ¼; W ½ of W ½; NE ¼ of SE ¼,	13	280.00
NE ¼ of NE ¼; E ½ of SE ¼,	23	120.00

Township 8, *Range* 1.

NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; NE ¼ of SW ¼; SE ¼,	1	481.00
N ½ of NE ¼; SW ¼ of NE ¼; W ½; S ½ of SE ¼,	3	524.00
Lots 1, 2,	7	17.00

ISNUMBERED

POLK COUNTY—Continued.

Township 7, Range 7—Continued.

	Section	Acres
All,	17	640.00
All,	19	642.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	640.00
All,	33	641.00
N ½,	35	320.00

Township 8, Range 7.

S ½ of NW ¼; SW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	1	320.00
W ½; NE ¼,	3	481.00
All,	5	641.00
N ½ of N ½; SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of S ½,	9	400.00
SE ¼ of SE ¼,	15	40.00
N ½ of NE ¼; NE ¼ of NW ¼,	17	120.00
SE¼ of NW ¼,	23	40.00
N ½ of NE ¼; SW ¼ of NE ¼; SE ¼ of SE ¼,	25	160.00
All,	31	641.00
N ½ of NE ¼; SW ¼ of NE ¼,	35	120.00

Township 9, Range 7.

NE ¼; E ½ of NW ¼; S ½,	1	561.00

PAGES MIS

POLK COUNTY—Continued.

Township 9, Range 7—Continued.

	Section	Acres
NW ¼; S ½,	3	480.00
Lots 3, 4; SW ¼ of NW ¼,	5	136.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	9	600.00
All,	11	640.00
All,	13	640.00
W ½ of NE ¼; W ½; NW ¼ of SE ¼,	15	440.00
Lots 9, 10, 11, 14, 15, 16,	17	245.00
NW ¼; NW ¼ of SW ¼,	21	200.00
E ½ of NE ¼; NE ¼ of SE ¼,	23	120.00
N ½; SW ¼,	29	480.00
All,	31	662.00
SE ¼ of NW ¼; S ½,	33	360.00
NE ¼ of NE ¼; W ½ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	35	280.00

Township 10, Range 7.

N ½ of N ½,	1	190.00
NW ¼; N ½ of SW ¼,	3	248.00
Lots 1, 2, 3, 4,	5	184.00

Township 7, Range 8.

All,	1	780.00
E ½; E ½ of W ½,	3	569.00
All,	11	640.00
All,	13	640.00
E ½; E ½ of W ½,	15	480.00
All,	23	640.00

ISNUMBERED

MARION COUNTY—Continued.

Township 9, *Range* 2—*Continued.*

	Section	Acres
S ½,	13	600.00
S ½ of NE ¼; SE ¼ of NW ¼; W ½ of SW ¼,	15	200.00
NE ¼; NE ¼ of NW ¼; E ½ of SE ¼,	23	280.00
E ½ of NE ¼; SW ¼ of NW ¼; E ½ of SW ¼,	25	200.00

Township 8, *Range* 3.

E ½ of NE ¼; SW ¼ of NW ¼; S ½; Lots 1, 2, 3, 4,	13	536.00
S ½ of SE ¼,	23	80.00
All,	25	640.00
NE ¼; E ½ of NW ¼; S ½,	27	560.00
S ½ of SW ¼; SE ¼,	29	240.00
All,	31	637.00
All,	33	640.00
All,	35	640.00

Township 9, *Range* 3.

E ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	1	360.00
All,	7	643.00
N ½; E ½ of SW ¼; NW ¼ of SW ¼; NW ¼ of SE ¼,	9	480.00
N ½ of NW ¼; NE ¼; S ½ of SE ¼,	11	320.00
All,	13	640.00
NE ¼; E ½ of NW ¼; S ½,	15	560.00
NE ¼; S ½ of NW ¼; N ½ of SW ¼,		

PAGES MIS

MARION COUNTY—Continued.

Township 9, *Range* 3—*Continued.*

	Section	Acres
SW ¼ of SW ¼,	17	360.00
N ½; N ½ of SW ¼; SE ¼,	21	560.00
SE ¼ of SW ¼,	23	40.00
Township 8, *Range* 4.		
W ½,	17	320.00
E ½; Lots 1, 2, 3, 4,	19	466.00
NW ¼; S ½,	29	473.00
NW ¼ of NE ¼; Lots 1, 2, 3, 4, 5, 6,	31	315.00
Township 9, *Range* 4.		
All,	5	642.00
All,	7	614.00
All,	17	640.00
All,	19	613.00
NW ¼,	29	160.00
Total, Marion County,		30,256.00

ISNUMBERED

LINCOLN COUNTY.

South of Base Line and West of Willamette Meridian.

Township 12, *Range* 8.

	Section	Acres
SW ¼; S½ of SE¼,	3	240.00
SW ¼; NE ¼ of SE¼; S ½ of SE¼,	5	280.00
NE¼; E ½ of NW¼,	7	240.00
N ½; E ½ of SW ¼; SE ¼	9	560.00
S ½ of NE ¼; NW ¼; S ½,	11	560.00
All,	13	640.00
W ½ of NE ¼; W ½	15	400.00
NE ¼ of NE ¼; S ½ of NE ¼; S ½	17	440.00
N ½ of NE¼; SW ¼ of NE ¼; W ½; W ½ of SE ¼	19	518.00
All	21	640.00
SE ¼ of NW ¼; S ½	23	360.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	639.00
All,	33	640.00
All,	35	640.00

Township 13, *Range* 8.

All,	1	678.00
All,	3	657.00
All,	5	658.00
All,	7	635.00
All,	9	640.00
All,	11	640.00

PAGES MISS

LINCOLN COUNTY—Continued.

Township 13, *Range* 8—*Continued.*

	Section	Acres
All,	13	640.00
All,	15	640.00
All,	17	640.00
Township 13, *Range* 9.		
E ½ of E ½,	13	160.00
E ½ of E ½,	25	160.00
Township 14, *Range* 9.		
E ½ of NE ¼; SE ¼,	1	240.00
NW ¼ of NE ¼; NE ¼ of NW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	13	200.00
NE ¼; E ½ of W ½; SE ¼,	25	480.00
Township 15, *Range* 9.		
E ½ of NW ¼; NE ¼ of SE ¼,	1	121.00
Total, Lincoln County,		15,906.00

ISNUMBERED

BENTON COUNTY.

South of Base Line and West of Willamette Meridian.

Township 10, *Range* 4.

	Section	Acres
Lot 6,	15	1.14
Lot 1,	21	.16

Township 13, *Range* 4.

Lot 5,	19	52.40

Township 10, *Range* 5.

NW ¼ of NE ¼; S ½ of NE ¼; W ½,	19	440.00
Lot 4,	23	.79
NE ¼ of NE ¼; SW ¼; N ½ of SE ¼,	29	280.00

Township 11, *Range* 5.

Lot 1,	1	2.76

Township 13, *Range* 5.

Lots 1, 2,	7	2.00
Lot 1,	29	.84

Township 14, *Range* 5.

Lot 1,	25	.26
Lots 1, 2, 3,	31	5.88

Township 13, *Range* 6.

S ½ of SW ¼,	5	80.00
All,	7	681.60
Lot 5,	18	11.34
S ½ of NE ¼; W ½; N ½ of SE ¼; SW ¼ of SE ¼,	17	520.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	19	651.89

BENTON COUNTY—Continued.

Township 18, *Range* 6—*Continued.*

	Section	Acres
S ½ of N ½; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	21	440.00
SE ¼ of NW ¼; W ½ of SW ¼,	23	120.00
N ½,	25	320.00
N ½ of NE ¼; NE ¼ of NW ¼; SW ¼ of NW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	27	240.00
NE ¼; S ½ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	29	520.00
All,	31	701.65
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW ¼; SE ¼ of NW ¼; SE ¼ of SW ¼; N ½ of SW ¼; W ½ of SE ¼,	33	400.00
NW ¼ of NE ¼; S ½ of NE ¼; N ½ of NW ¼; NW ¼ of SW ¼; E ½ of SE ¼,	35	320.00

Township 14, *Range* 6.

N ½; NE ¼ of SE ¼,	3	362.66
All,	5	642.82
All,	7	638.60
W ½	9	320.00
Lot 1,	11	43.35
All,	17	640.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	19	602.82
All,	29	640.00
All,	31	641.16

BENTON COUNTY—Continued.

Township 15, *Range* 6.

	Section	Acres
W ½ of SW ¼; SW ¼ of SE ¼.....	3	120.00
NW ¼; S ½	5	481.31
N ½ of N ½,	7	159.40
N ½ of NW ¼,	9	80.00

Township 12, *Range* 7.

S ½ of S ½,	7	158.87
NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	15	160.00
All,	17	640.00
All,	19	639.62
N ½; SE ¼,	21	480.00
SW ¼ of NW ¼; W ½ of SW ¼,	23	120.00
All,	27	640.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	29	600.00
All,	31	634.78
All,	33	640.00
All,	35	640.00

Township 13, *Range* 7.

All,	3	705.64
All,	5	680.38
All,	7	645.40
All,	9	640.00
All,	11	640.00
All,	13	640.00
E ½; N ½ of NW ¼; SW ¼ of NW ¼;		

BENTON COUNTY—Continued.

Township 13, *Range* 7—*Continued.*

	Section	Acres
SE ¼ of SW ¼,	15	480.00
All,	17	640.00
All,	19	644.88
W ½ of NE ¼; NW ¼,	21	240.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
Lots 7, 8,	29	1.88
W ½ of NE ¼; NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	31	318.49
All,	33	640.00
All,	35	640.00

Township 14, *Range* 7.

All,	1	635.34
All,	3	643.92
S ½ of NE ¼; W ½ of SW ¼; SE ¼,	5	320.00
Lot 4,	7	34.84
All,	9	663.68
All,	11	640.00
All,	13	631.12
NE¼; E ½ of NW ¼; S ½,	15	560.00
All,	17	649.99
All,	19	651.99
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00

BENTON COUNTY—Continued.

Township 14, *Range* 7—*Continued.*

	Section	Acres
All,	29	640.00
All,	31	665.60
All,	33	640.00
All,	35	640.00

Township 15, *Range* 7.

All,	1	596.62
All,	3	605.08
All,	5	595.60
N ½ of N ½,	7	157.69
N ½ of N ½,	9	160.00
N ½ of N ½,	11	160.00

Township 13, *Range* 8.

All,	19	637.68
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	637.19
All,	33	641.80
N ½; SW ¼; NW ¼ of SE ¼,	35	520.00

Township 14, *Range* 8.

N ½ of NE ¼; NW ¼,	3	244.36
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	5	607.68
NW ¼ of NE ¼; S ½ of NE ¼; N ½ of		

BENTON COUNTY—Continued.

Township 14, *Range* 8—*Continued.*

	Section	Acres
NW ¼; E ½ of SW ¼; SE ¼,	7	439.01
SE ¼ of SE ¼,	9	40.00
E ½; S ½ of SW ¼,	11	400.00
All,	15	640.00
SE ¼ of NE ¼; S ½ of NW ¼; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	19	394.81
All,	21	640.00
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼,	23	400.00
NE ¼; S ½ of SW ¼; E ½ of SE ¼,	25	320.00
All,	27	640.00
All,	29	640.00
N ½; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	31	590.00
NE ¼; E ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NE ¼ of SE ¼,	33	400.50
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	35	603.66
Township 15, *Range* 8.		
All,	1	774.06
Lots 1, 3, 4, 5, 6, 8, 9, 10, 11, 12; S ½,	3	659.00
N ½ of N ½; SW ¼ of NE ¼; SW ¼ of NW ¼; S ½ of SE ¼,	5	352.00
NE ¼ of NE ¼,	7	40.00
N ½ of N ½,	9	160.00
N ½ of N ½,	11	160.00
Total, Benton County,		58,626.99

LINN COUNTY.

South of Base Line and East of Wlilamette Meridian.

Township 9, *Range* 1.

	Section	Acres
Lot 4,	17	16.00

Township 10, *Range* 1.

NE ¼; NE ¼ of NW ¼; Lots 2, 5,	1	227.00
N ½ of N ½; SW ¼ of NE ¼; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	19	478.00
SW ¼,	21	160.00
S ½ of N ½; S ½,	23	480.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	25	600.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	27	600.00
W ½ of NE ¼; NW ¼; S ½,	29	560.00
N ½ of N ½; Lot 2,	31	198.00
All,	33	640.00
All,	35	640.00

Township 11, *Range* 1.

All,	1	641.00
Lots 1, 2, 3, 4; S ½ of NE ¼; SE ¼ of NW ¼; S ½,	3	601.00
N ½ of NE ¼; NE ¼ of SW ¼,	5	120.00
W ½,	9	320.00
All,	15	640.00
NE ¼; S ½ of NW ¼; S ½,	17	560.00
N ½ of N ½,	21	160.00
N ½; N ½ of S ½; SE ¼ of SE ¼,	23	520.00
E ½; E ½ of W ½; NW ¼ of SW ¼,	27	520.00

LINN COUNTY—Continued.

Township 11, *Range* 1—*Continued.*

	Section	Acres
SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	29	160.00
Lot 3,	31	4.00
All,	33	640.00
All,	35	640.00

Township 12, *Range* 1.

W ½ of NW ¼; SW ¼,	1	239.00
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	3	596.00
All,	5	643.00
N ½ of N ½,	9	160.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	21	640.00
NE ¼; S ½ of NW ¼; S ½,	23	560.00
All,	25	640.00
All,	27	640.00

Township 14, *Range* 1.

E ½ of SE ¼,	29	80.00
N ½ of SE ¼,	33	80.00
All,	35	640.00

Township 15, *Range* 1.

N ½; SW ¼ of SW ¼; N E¼ of SE ¼,	1	409.00

LINN COUNTY—Continued.

Township 9, *Range* 2.

	Section	Acres
SW ¼ of SW ¼,	25	40.00
Lot 1,	27	4.00
NW ¼ of SW ¼; S ½ of S ½,	29	200.00
S ½ of NW ¼; S ½,	31	409.00
NW ¼ of NE ¼; S ½ of NE ¼; E ½ of W ½; SE ¼,	35	440.00

Township 10, *Range* 2.

NW ¼; S ½,	1	479.00
N ½; NW ¼ of SW ¼; E ½ of SE ¼,	5	440.00
NE ¼,	7	160.00
E ½; NE ¼ of NW ¼; S ½ of NW ¼,	9	445.00
E ½ of NE ¼; SW ¼ of NW ¼; S ½,	11	440.00
E ½,	13	320.00
SE ¼ of NE ¼; W ½ of NW ¼; S ½,	15	440.00
S ½ of N ½; N ½ of SE ¼,	17	240.00
W ½,	19	348.00
N ½ of NW ¼,	21	80.00
NE ¼; S ½ of NW ¼; S ½,	23	560.00
NE ¼,	25	160.00
All,	31	658.00
SW ¼ of SW ¼,	33	40.00

Township 11, *Range* 2.

S ½,	3	320.00
All,	5	985.00
E ½,	7	320.00
All,	9	640.00
SE ¼,	13	160.00

LINN COUNTY—Continued.

Township 12, *Range* 2.

	Section	Acres
S ½,	1	320.00
SE ¼,	3	160.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
E ½; S ½ of SW ¼,	21	400.00
All,	23	640.00
All,	27	640.00
All,	29	640.00
Township 14, *Range* 2.		
All,	35	640.00
Township 15, *Range* 2.		
Lots 3, 4; SE ¼ of SW ¼; SW ¼ of SE ¼,	19	156.00
Township 10, *Range* 3.		
SW ¼ of SW ¼; SE ¼,	1	200.00
SE ¼ of NW ¼; S ½ of SE ¼,	3	120.00
SW ¼ of NE ¼; S ½ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; Lot 4,	5	277.00
N ½ of N ½,	7	163.00
N ½ of N ½,	11	160.00
S ½ of NW ¼; NE ¼ of SW ¼; SW ¼ of SW ¼; SE ¼ of SE ¼,	19	202.00
Township 11, *Range* 3.		
S ½,	1	320.00
All,	7	599.00
All,	9	640.00

LINN COUNTY—Continued.

Township 11, *Range* 3—*Continued.*

	Section	Acres
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	11	600.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	543.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	33	691.00
N ½; N ½ of SE ¼; SE ¼ of SE ¼,	35	440.00

Township 12, *Range* 3.

NW ¼,	1	160.00
All,	3	637.00
All,	5	628.00
All,	7	630.00
All,	9	640.00
W ½ of E ½; W ½,	11	480.00
All,	15	640.00
All,	17	640.00
All,	19	632.00
All,	21	640.00
W ½ of NW ¼,	27	80.00

LINN COUNTY—Continued.

Township 12, *Range* 3—*Continued.*

	Section	Acres
E ½; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	29	480.00
N ½ of NE ¼,	31	80.00
NW ¼,	33	160.00

Township 14, *Range* 3.

Lots 1, 2, 3, 4; E ½ of W ½,	31	310.00

Township 9, *Range* 4.

S ½ of NW ¼; N ½ of SW ¼; SE ¼,	31	306.00

Township 10, *Range* 4.

NE ¼ of NW ¼; S ½ of N W ¼; W ½ of SE ¼,	17	200.00
E ½ of E ½,	19	160.00
W ½ of E ½; W ½,	29	480.00

South of Base Line and West of Willamette Meridian.

Township 9, *Range* 1.

NW ¼ of NE ¼; Lot 6,	21	79.00

Township 10, *Range* 1.

NW ¼ of SE ¼; W ½ of SW ¼,	13	120.00
NE ¼ of SW ¼,	23	40.00
N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	25	280.00

Township 14, *Range* 1.

S ½ of S ½,	25	160.00
S ½ of S ½,	27	160.00
All,	31	646.00
S ½ of NE ¼; W ½ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	33	240.00
All,	35	640.00

LINN COUNTY—Continued.

Township 15, *Range* 1.

	Section	Acres
All that part situated in Linn County,	1	601.00
NE ¼ of NE ¼; S ½ of NE ¼; SW ¼ of NW ¼; S ½,	3	482.00
E ½; N ½ of NW ¼; SW ¼ of SW ¼,	5	441.00
All that part situated in Linn County,	7	160.00
N ½,	9	320.00
All that part of the NW ¼ of NW ¼ situated in Linn County,	11	15.00

Township 13, *Range* 2.

NE¼ of NW ¼,	19	40.00
NW ¼ of NE ¼,	21	40.00

Township 14, *Range* 2.

Lots 4, 5, 6, 7,	13	75.00
Lots 1, 2, 3, 4, 5,	15	103.00
NW ¼ of SE ¼	21	40.00
N ½ of NE ¼; SW ¼ of NE ¼; SE ¼,	25	280.00
N ½ of NE ¼,	29	80.00
E ½ of SE ¼,	33	80.00
S ½,	35	320.00

Township 15, *Range* 2.

All,	1	642.00
E ½,	3	320.00
SW ¼ of NW ¼; SW ¼; NE ¼ of SE¼; S ½ of SE ¼,	9	320.00
All,	11	640.00
All,	13	640.00

LINN COUNTY—Continued.

Township 15, *Range* 2—*Continued.*

	Section	Acres
All,	15	640.00
NE ¼ of NE ¼,	17	40.00
NE ¼; S ½,	21	480.00
All,	27	640.00
All,	29	640.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	31	621.00
All	33	640.00
Township 16, *Range* 2.		
All,	5	638.00
Township 14, *Range* 3.		
Lots 3, 4,	3	48.00
Township 16, *Range* 3.		
E ½; SE ¼ of NW ¼,	1	361.00
Township 15, *Range* 4.		
SW ¼ of SW ¼,	35	40.00
Township 12, *Range* 5.		
Lot 8,	1	.28
Township 14, *Range* 5.		
Lot 1,	28	10.00
Total, Linn County,		61,966.28

LANE COUNTY.

South of Base Line and East of Willamette Meridian.

Township 16, *Range* 1.

	Section	Acres
SW ¼ of SW ¼ (or Lot 4),	7	40.00
SE ¼ of SW ¼; SE ¼,	13	200.00
W ½ of NE ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	17	160.00
SW ¼; SW ¼ of SE ¼,	21	200.00
E ½ of NE ¼; S ½ of SW ¼; SE ¼,	23	320.00
All,	25	640.00
NW ¼ of NE ¼; N ½ of NW ¼,	29	120.00
W ½ of NW ¼,	31	76.00
All,	33	640.00
All,	35	640.00

Township 17, *Range* 1.

NW ¼,	3	159.00
NW ¼ of NE ¼; Lots 1, 2,	9	114.00
NE ¼,	13	160.00
SE ¼ of SW ¼,	15	40.00
Lots 10, 11; W ½ of SE ¼,	19	161.00
NW ¼ of NE ¼; NE ¼ of NW ¼,	21	80.00

Township 18, *Range* 1.

All,	7	634.00
S ½ of S ½,	13	160.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; N ½ of SW ¼; SE ¼,	19	522.00
NE ¼; S ½,	21	480.00
All,	23	640.00

LANE COUNTY—Continued.

Township 18, *Range* 1—*Continued.*

	Section	Acres
N ½; SE ¼,	25	480.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	29	600.00
S ½ of NE ¼; NW ¼; N ½ of S ½,	31	400.00

Township 19, *Range* 1.

All,	1	639.00
All,	3	642.00
All,	11	640.00
All,	13	640.00

Township 20, *Range* 1.

S ½ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; Lots 1, 2, 3, 4; SE ¼,	7	435.00
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	17	480.00
All,	19	552.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	21	600.00
SW ¼ of SW ¼,	23	40.00
All,	27	640.00
All,	29	640.00
All,	31	615.00
All,	33	670.00
NW ¼,	35	160.00

Township 22, *Range* 1.

All,	5	640.00
All,	7	579.00
NW ¼,	9	160.00

LANE COUNTY—Continued.

Township 22, *Range* 1—*Continued.*

	Section	Acres
N ½; SW ¼,	17	480.00
All,	19	578.00

Township 16, *Range* 2.

SW ¼; S ½ of SE ¼,	15	240.00
SW ¼ of NE ¼; NW ¼; S ½,	17	520.00
S ½ of NE ¼; NW ¼; S ½,	19	559.00
N ½ of NE ¼; SW ¼ of NE ¼; W ½; NW ¼ of SE ¼,	21	480.00
Lots 2 to 10, inclusive, 12, 13,	23	428.00
NE ¼; E ½ of NW ¼; S ½,	25	560.00
S ½ of SE ¼,	27	80.00
W ½ of NE ¼; NW ¼; NW ¼ of SW ¼; Lot 1,	29	315.00
NW ¼ of NE ¼; S ½ of N ½; S ½,	33	520.00
Lot 5,	35	27.00

Township 17, *Range* 2.

All,	1	643.00
All,	3	644.00
All,	5	636.00
NE ¼; NE ¼ of NW ¼,	7	200.00
N ½ of NW ¼,	9	80.00
All,	11	640.00

Township 15, *Range* 3.

SW ¼,	33	160.00

Township 16, *Range* 3.

Lots 1, 2, 3, 4, 5, 6; NE ¼; E ½ of NW ¼,	31	429.00

LANE COUNTY—Continued.

Township 17, *Range* 3.

	Section	Acres
W ½ of NW ¼; NE ¼ of SW ¼; Lots 1, 2,	3	181.00
S ½ of NW ¼; Lots 1, 4, 5; S ½,	5	507.00
All,	7	642.00
SW ¼ of NE ¼; S ½ of N W¼; S ½; Lots 3, 4, 5,	9	517.00
All,	17	640.00

South of Base Line and West of Willamette Meridian.

Township 15, *Range* 1.

All that part situated in Lane County,	1	40.00
All that part situated in Lane County,	7	497.00
N ½ of SW ¼; SE ¼,	9	240.00
SW ¼, and that part of NW ¼ of NW ¼ situated in Lane County,	11	185.00
N ½; N ½ of SW ¼; NW ¼ of SE ¼,	13	440.00
NE ¼; N ½ of NW ¼; S ½,	15	560.00
All,	17	640.00
All,	19	660.00
NW ¼ of NW ¼; S ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	21	320.00
NW ¼ of NE ¼; NW ¼,	23	200.00
SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	27	160.00
All,	29	640.00
All,	31	653.00

LANE COUNTY—Continued.

Township 16, *Range* 1.

	Section	Acres
All,	3	643.00
NW ¼ of NW ¼; Lots 7, 8,	5	39.00
N ½; N ½ of SW ¼,	9	400.00
NW ¼; SW ¼ of SW ¼; SE ¼ of SE ¼,	11	240.00
S ½ of SW ¼,	13	80.00
S ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; N ½ of S ½; SE ¼ of SE ¼,	15	400.00
Lots 3, 4; N ½ of SE ¼; SW ¼ of SE ¼,	17	181.00
Lots 5, 6, 7, 8; NE ¼ of SE ¼; S ½ of SE ¼,	19	241.00
S ½ of S ½,	25	160.00
S ½ of S ½,	27	160.00
All,	29	640.00
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; S ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	31	566.00
E ½; SE ¼ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	33	480.00
All,	35	640.00

Township 17, *Range* 1.

E ½,	1	320.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	3	602.00
N ½ of N ½; SW ¼ of NW ¼; Lots 1, 2, 3, 4, 5,	5	345.00
W ½ of NE ¼; NW ¼; Lots 1, 2, 4, 5,	7	339.00

LANE COUNTY—Continued.

Township 17, *Range* 1—*Continued.*

	Section	Acres
E ½; Lots 1, 2, 3, 4, 5; E ½ of SW ¼,	9	487.00
SW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	11	480.00
N ½; SW ¼; N ½ of SE ¼,	15	560.00
SE ¼ of NE ¼; S ½; Lot 1,	17	399.00
NW ¼ of NE ¼,	19	40.00
NW ¼ of NW ¼,	21	40.00
NW ¼ of SW ¼; Lots 3, 4,	25	110.00
S ½ of SW ¼; SW ¼ of SE ¼,	31	126.00
S ½ of N ½; S ½,	35	521.00
Township 18, *Range* 1.		
All,	1	682.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½ of SW ¼; SE ¼ of SE ¼,	3	454.00
N ½; N ½ of S ½; SW ¼ of SW ¼; SE ¼ of SE ¼,	5	627.00
NE ¼; E ½ of NW ¼; NW ¼ of SW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	7	361.00
N ½ of NE ¼; SW ¼ of NE ¼; E ½ of NW ¼; S ½,	9	520.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
N½; E ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	17	520.00
NE ¼ of SE ¼,	19	40.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼,	21	280.00

LANE COUNTY—Continued.

Township 18, *Range* 1—*Continued.*

	Section	Acres
All,	23	640.00
SE ¼ of SE ¼,	25	40.00

Township 19, *Range* 1.

S ½ of NE ¼; NW ¼; S ½,	31	567.00
S ½ of SW ¼,	33	80.00
SW ¼; S ½ of SE ¼,	35	240.00

Township 20, *Range* 1.

NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	1	600.00
NE ¼; NE ¼ of NW ¼; NE ¼ of SE ¼,	3	242.00
All,	5	618.00
All,	7	768.00
SE ¼ of NE ¼; SE ¼ of NW ¼; S ½,	9	400.00
NE¼; S ½,	11	480.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
Lots 7 to 12, inclusive; NW ¼ of SE ¼; S ½ of SE ¼,	31	353.00
N ½,	35	320.00

LANE COUNTY—Continued.

Township 21, *Range* 1.

	Section	Acres
Lots 2 to 7, inclusive, 11, 12, 13, 14,	5	348.00
Lots 1 to 10, inclusive, 15, 16,	7	470.00
W ½ of S W ¼,	9	80.00
Lots 1, 7, 9, 13,	17	156.00
NE ¼ of NE ¼; E ½ of SE ¼; Lot 6,	19	151.00
Lots 3, 4, 6, 7, 8, 10, 11, 12,	29	314.00
SW ¼ of NE ¼; NW ¼; S ½,	31	520.00
N ½ of NE ¼; NW ¼; SE ¼ of SE ¼,	33	280.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½ of SW¼; SE ¼,	35	520.00

Township 22, *Range* 1.

Lot 4,	1	47.00
NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼; N ½ of SE ¼,	5	320.00
Lots 1, 17,	7	55.00
NE ¼; NE ¼ of NW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	9	320.00
S ½ of NW ¼,	13	80.00
W ½ of NE ¼; SE ¼; Lots 1, 2, 3, 4, 6, 7, 8, 10, 11,	15	608.00
NW ¼ of NE ¼; SE ¼ of NE ¼; SW ¼ of SE ¼; Lots 1, 4,	17	201.00
SE ¼ of SE ¼,	19	40.00
Lots 1, 2, 7, 8, 9, 10, 11,	21	241.00
W ½ of NE ¼; NW ¼; S ½,	23	560.00
All,	25	640.00

LANE COUNTY—Continued.

Township 22, *Range* 1—*Continued*

	Section	Acres
E ½ of NE ¼; SW ¼ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	27	240.00
S ½ of SW ¼,	29	80.00
E ½; Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 20,	31	740.00
SE ¼ of SE ¼,	33	40.00
NW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	35	320.00

Township 23, *Range* 1.

N ½; SE ¼,	1	492.00
S ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; NW ¼ of SE ¼,	3	240.00
S ½ of NE ¼; SE ¼ of NW ¼; S ½,	5	440.00
NE ¼; E ½ of SE ¼; Lots 1, 2, 3, 4, 6, 9, 10, 11, 12, 15, 16,	7	635.00
All,	9	640.00
S ½ of SW ¼; E ½ of SE ¼,	11	160.00
All,	13	640.00
All,	17	640.00
Lots 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 19, 20,	19	463.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	1,065.00
All,	33	640.00
N ½; SE ¼,	35	480.00

LANE COUNTY—Continued.

Township 24, *Range* 1.

	Section	Acres
Lots 1, 2, 3, 4; SW ¼ of NW ¼,	1	198.00
N ½; SW ¼; NW ¼ of SE ¼,	5	518.00
NE ¼,	7	160.00

Township 15, *Range* 2.

All,	23	640.00
All,	25	640.00
N ½; N ½ of SE ¼,	35	400.00

Township 16, *Range* 2.

All,	7	659.00
All,	17	640.00
All,	19	659.00
All,	21	640.00
NW ¼ of SW ¼,	23	40.00
E ½ of NE ¼; Lots 5, 6; SE ¼,	25	268.00
NW ¼,	27	160.00
S ½ of NE ¼; NW ¼; S ½,	29	560.00
All,	31	655.00
W ½; Lots 1, 2, 3,	33	367.00

Township 17, *Range* 2.

N ½ of N ½,	5	171.00
NW ¼ of NE ¼; S ½ of NE ¼; W ½; N ½ of SE ¼; Lots 1, 2, 3,	7	618.00
Lots 1, 2, 3, 5, 9; NW ¼ of NW ¼; NW ¼ of SW ¼,	13	216.00
NE ¼; S ½ of NW ¼; Lots 1, 2,	15	316.00
NE ¼ of NE ¼,	23	40.00

LANE COUNTY—Continued.

Township 18, *Range* 2.

	Section	Acres
N ½ of N ½; S W ¼ of NW ¼,	1	271.00
Lot 9,	15	20.00

Township 19, *Range* 2.

S ½ of SW ¼; SW ¼ of SE ¼,	15	120.00
S ½ of SE ¼; Lot 4,	19	100.00
SE ¼ of NE ¼; Lots 3, 4,	21	67.00
SW ¼ of NE ¼; SE ¼ of NW ¼; S ½,	23	400.00
W ½ of E ½; W ½; SE ¼ of SE ¼,	25	520.00
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	27	320.00
S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	29	400.00
E ½ of NE ¼; W ½ of SW ¼; NE ¼ of SE ¼,	31	205.00
All,	33	640.00
All,	35	640.00

Township 20, *Range* 2.

All,	1	592.00
S ½ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; SE ¼; Lots 1, 2, 3, 4, 5,	3	526.00
N ½ of NE ¼; SE ¼ of NE ¼,	11	120.00
All,	13	628.00
S ½ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; SE ¼,	15	360.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	19	608.00

LANE COUNTY—Continued.

Township 20, *Range* 2—*Continued.*

	Section	Acres
S ½ of N ½; W ½ of SW ¼; E ½ of SE ¼,	21	320.00
NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; S ½,	23	600.00
W ½,	25	320.00
NW ¼ of NE ¼; SE ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; E ½ of SE ¼,	27	360.00
N ½; N ½ of S ½,	29	480.00
Lots 6, 7, 9; W ½ of SE ¼; E ½ of SW ¼,	31	198.00
NE ¼ of NE ¼,	33	40.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	35	600.00

Township 21, *Range* 2.

N ½; N ½ of SW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	1	561.00
SW ¼ of S W ¼,	3	40.00
Lots 1, 2, 3; SE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	5	211.00
SW ¼ of NW ¼; E ½ of SW ¼; S ½ of SE ¼,	7	202.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	9	600.00
E ½ of NE ¼; Lot 1,	13	103.00
All,	15	640.00
NE ¼; E ½ of NW ¼; NW ¼ of NW ¼;		

LANE COUNTY—Continued.

Township 21, *Range* 2—*Continued.*

	Section	Acres
N ½ of S ½; SW ¼ of SW ¼,	17	480.00
SE¼ of SE ¼,	19	40.00
All,	21	640.00
NW ¼ of SE ¼,	23	40.00
All,	25	640.00
All,	27	651.00
N ½; SW ¼; W ½ of SE ¼,	29	576.00
All,	33	640.00
All,	35	640.00

Township 22, *Range* 2.

All,	1	856.00
SE ¼; Lots 1 to 11, inclusive	3	631.00
Lots 1, 2, 4, 8,	5	166.00
SE ¼ of NE ¼; NE ¼ of NW ¼; NE ¼ of SE ¼,	7	120.00
W ½ of SE ¼; SE ¼ of SE ¼,	9	120.00
NE ¼; N ½ of NW ¼; S ½ of SW ¼; NW ¼ of SE ¼,	11	360.00
SW ¼ of NE ¼; SW ¼ of NW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	15	240.00
W ½ of NE ¼; NE ¼ of NW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	21	280.00
N ½ of NW ¼; SW ¼ of NW ¼,	23	120.00
S ½ of S ½,	29	160.00

LANE COUNTY—Continued.

Township 22, *Range* 2—*Continued.*

	Section	Acres
All,	31	641.00
All,	33	640.00
S ½ of SW ¼; SE ¼,	35	240.00

Township 23, *Range* 2.

S ½ of NW ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼; Lots 2, 3, 4,	1	388.00
All,	3	520.00
All,	5	525.00
All,	7	541.00
All,	9	640.00
All,	11	640.00
NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼; SE ¼,	13	400.00
All,	15	640.00
All,	17	640.00
All,	19	545.00
All,	21	640.00
All,	23	640.00
W ½ of NW ¼,	25	80.00
All,	27	640.00
All,	29	640.00
N ½,	33	320.00
N ½,	35	320.00

Township 16, *Range* 3.

Lots 3, 4, 5,	9	12.00
N ½; N½ of S ½; SW ¼ of SW ¼; SE ¼ of SE ¼,	13	560.00

LANE COUNTY—Continued.

Township 17, *Range* 3.

	Section	Acres
E ½ of SE ¼,	1	80.00
Lot 4,	5	18.00
W ½ of NW ¼,	11	80.00
NE ¼ of NE ¼,	13	40.00

Township 19, *Range* 3.

W ½; SW ¼ of SE ¼,	19	376.00
Lot 3,	35	3.00

Township 20, *Range* 3.

E ½ of NE ¼; NW ¼ of NW ¼; E ½ of SE ¼,	1	199.00
NW ¼ of NE ¼; NW ¼; W ½ of SW ¼,	7	292.00
SW ¼ of SW ¼,	9	40.00
Lot 4,	13	39.00
N ½; N ½ of SE ¼; E ½ of SW ¼,	17	480.00
Lot 1,	19	12.00
SW ¼ of NW ¼; S ½ of SW ¼,	31	117.00

Township 21, *Range* 3.

W ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of SE ¼; S ½ of SE ¼,	3	241.00
Lot 1,	9	20.00
S ½ of NW ¼; W ½ of SW ¼; S ½ of SE ¼,	11	240.00
SW ¼ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; W ½ of SW ¼; NW ¼ of SE ¼,	13	280.00

LANE COUNTY—Continued.

Township 21, *Range* 3—*Continued.*

	Section	Acres
NE ¼; E ½ of NW ¼; E ½ of SE ¼,	15	320.00
Lot 5; S½,	17	343.00
E ½; E ½ of W ½,	19	480.00
N ½; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	23	600.00
All,	25	640.00
E ½; NE ¼ of NW ¼; S ½ of NW¼; N ½ of SW¼; SE ¼ of SW ¼,	27	560.00
SW ¼ of NE¼; NW ¼; N ½ of SW ¼; Lot 2,	29	298.00
All,	31	654.00
Lot 1,	33	19.00
All,	35	640.00

Township 22, *Range* 3.

W ½,	1	333.00
All,	3	641.00
NE ¼; N ½ of NW ¼; S ½,	7	576.00
All,	9	640.00
All,	11	640.00
All,	15	640.00
NW ¼ of SE ¼; SE ¼ of SE ¼,	17	80.00
Lot 2; W ½,	19	383.00
All,	21	640.00
All,	23	640.00
NW ¼; S ½,	25	417.00
All,	27	640.00

LANE COUNTY—Continued.

Township 22, *Range* 3—*Continued.*

	Section	Acres
S ½ of NE ¼; N ½ of SE ¼,	29	160.00
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	31	502.00
All,	33	649.00
All,	35	650.00

Township 23, *Range* 3.

All,	1	645.00
NE ¼; NE ¼ of NW ¼; NW ¼ of SW ¼,	3	240.00
W ½ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	5	199.00
W ½ of NE ¼; NW ¼; N ½ of S ½,	9	403.00
SE ¼ of SW ¼; Lots 6, 7,	11	122.00
All,	13	640.00
All,	15	640.00
SE ¼ of NE ¼; W ½ of NW ¼; SW ¼,	17	280.00
All,	23	640.00

Township 18, *Range* 4.

Lot 5,	19	20.00
NE ¼ of SW ¼; S ½ of SW ¼,	27	120.00
E ½ of NE ¼; SW ¼ of NW ¼,	33	120.00
E ½ of NE ¼,	35	80.00

Township 19, *Range* 4.

NE ¼ of NE ¼; SE ¼ of NW ¼; SW ¼; SW ¼ of SE ¼,	3	282.00
S ½ of NE ¼; N ½ of SE¼,	5	160.00

LANE COUNTY—Continued.

Township 19, *Range* 4—*Continued.*

	Section	Acres
S ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	7	362.00
E ½ of NE ¼; W ½; NE ¼ of SE ¼; S ½ of SE ¼,	9	520.00
NW ¼ of NW ¼,	11	40.00
SE ¼ of SW ¼; S ½ of SE ¼,	13	120.00
NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	15	160.00
E ½ of E ½; W ½ of NW ¼; SE ¼ of SW ¼; SW ¼ of SE ¼,	17	320.00
SE ¼ of NE ¼; SE ¼,	19	200.00
All,	21	640.00
NE ¼ of NE ¼; SW ¼ of NE ¼; SE ¼ of NW ¼; N ½ of SE ¼,	23	200.00
NW ¼; S ½,	25	480.00
S ½ of NE ¼; NW ¼; S ½,	27	560.00
E ½; N ½ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	29	520.00
NE ¼ of NE ¼; N W ¼ of SW ¼,	31	81.00
All,	33	640.00
NW ¼,	35	160.00

Township 20, *Range* 4.

W ½ of E ½; SE ¼ of NE ¼; W ½; NE ¼ of SE ¼,	1	558.00
All,	3	637.00
N½ of NE ¼; SW ¼ of NE ¼; N ½ of		

LANE COUNTY—Continued.

Township 20, *Range* 4—*Continued.*

	Section	Acres
SE ¼; SW ¼ of SE ¼,	5	238.00
Lots 1, 2, 3,	7	11.00
NE ¼; S ½ of NW ¼; SW¼; W ½ of SE ¼,	9	480.00
NE ¼; N ½ of NW ¼,	11	240.00
SE ¼ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NE ¼ of SE¼,	15	320.00
S ½ of N ½; E ½ of SW¼; SE ¼,	17	400.00
NE ¼; E ½ of W ½; N ½ of SE ¼; Lot 2,	19	425.00
N ½; SW ¼; NE ¼ of SE ¼,	21	520.00
W ½ of NW ¼,	23	80.00
NW ¼; N ½ of SW ¼; NE ¼ of SE ¼,	27	280.00
N ½; SW ¼,	29	480.00
SW ¼ of NW ¼; SW ¼; Lot 2,	31	229.00
NE ¼; W ½ of NW¼; SW ¼ of SW¼; SE ¼ of SE ¼,	33	320.00
SE ¼ of NE ¼; S ½ of SW ¼; SE ¼,	35	280.00

Township 21, *Range* 4.

N ½ of NE ¼; N W ¼ of NW ¼,	1	120.00
N ½; N ½ of SW ¼,	3	365.00
NE ¼; N ½ of NW ¼,	5	236.00
W ½ of NE ¼; NW ¼; S ½,	23	560.00
All,	25	640.00
E ½; E ½ of SW ¼,	35	400.00

LANE COUNTY—Continued.

Township 22, *Range* 4.

	Section	Acres
NW ¼ of NW¼; S ½ of NW ¼; SW ¼ of NE ¼; S ½,	1	480.00
E ½; E ½ of W ½,	11	480.00
NE ¼; N ½ of NW ¼; SW¼ of NW¼; S ½,	13	600.00
SE ¼; W ½ of NE ¼,	23	240.00
N ½; SE ¼,	25	480.00

Township 23, *Range* 4.

NE ¼,	1	160.00
SE ¼ of SE ¼,	13	40.00

Township 16, *Range* 5.

NW ¼; W ½ of SW ¼,	7	268.00
Lots 4, 5, 6,	27	12.00
SW¼ of NW ¼; Lot 8,	29	65.00
NE ¼ of SW ¼,	31	40.00
Lot 2,	33	13.00

Township 17, *Range* 5.

Lots 2, 3,	27	1.00

Township 18, *Range* 5.

SW ¼ of SE ¼,	7	40.00
Lot 4,	13	11.00
NW ¼ of NW ¼,	15	40.00
SW ¼ of SE ¼,	17	40.00
SW ¼ of NW ¼; W ½ of SW ¼,	23	120.00

LANE COUNTY—Continued.

Township 18, *Range* 5—*Continued.*

	Section	Acres
SW ¼ of NW ¼,	25	40.00
NE ¼ of SE ¼,	27	40.00
SW ¼ of NW ¼,	29	40.00
E ½ of NE ¼,	33	80.00
NE¼ of SE¼; S½ of SE¼; Lots 4, 5, 6,	35	180.00

Township 19, *Range* 5.

N ½ of NE ¼; W ½; W ½ of SE ¼,	1	481.00
All,	5	630.00
All,	7	641.00
NW ¼ of NE ¼; NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼; S ½ of SE ¼,	9	360.00
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of SE ¼,	11	200.00
Lot 7,	13	2.00
W ½ of W ½; SE ¼ of SW ¼; SW ¼ of SE ¼,	15	240.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	17	600.00
All,	19	640.00
N ½; SW ¼; W ½ of SE ¼,	21	560.00
SW ¼ of NW ¼; SW ¼; W ½ of SE ¼,	27	280.00
All,	29	640.00
All,	31	645.00
All,	33	640.00

LANE COUNTY—Continued.

Township 20, *Range* 5.

	Section	Acres
All,	3	635.00
All,	5	644.00
E ½; N ½ of NW ¼; SE ¼ of NW ¼; S½ of SW ¼,	7	525.00
All,	9	640.00
W ½; Lots 2, 3, 4, 5,	11	412.00
Lots 1, 6; W ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	15	419.00
NE ¼; E ½ of NW ¼; S ½,	17	560.00
All,	19	648.00
N ½ of NE ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	21	360.00
W ½ of NW ¼; SE ¼ of NW ¼; SW ¼; S ½ of SE ¼,	23	360.00
N ½; SW ¼; N ½ of SE ¼,	27	560.00
NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; SW ¼; NE ¼ of SE ¼,	29	480.00
All,	31	647.00
All,	33	640.00
All,	35	640.00

Township 21, *Range* 5.

N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	1	600.00
Lots, 2, 3, 4,	3	122.00
Lot 1,	5	41.00

LANE COUNTY—Continued.

Township 15, *Range* 6.

	Section	Acres
S ½ of N ½; S ½,	7	481.00
S ½ of NW ¼; S ½,	9	400.00
NE ¼ of NE ¼; S ½ of NW ¼; SW ¼,	15	280.00
All,	17	640.00
All,	19	644.00
All,	21	640.00
W ½ of NW ¼,	23	80.00
All,	27	640.00
All,	29	640.00
All,	31	637.00
All,	33	640.00
N ½ of N ½; SE ¼ of SE ¼,	35	200.00

Township 16, *Range* 6.

NW ¼ of NE ¼; W ½,	1	366.00
NE ¼ of NE ¼; S ½ of N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	3	483.00
E ½; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼,	5	496.00
N ½; SW ¼; NW ¼ of SE ¼,	7	534.00
All,	9	640.00
NE ¼; E ½ of NW ¼; SW ¼ of SW ¼; NE ¼ of SW ¼; N ½ of SE ¼,	11	400.00
NE ¼; E ½ of NW ¼; SW ¼ of SW ¼; E ½ of SE ¼,	13	360.00
NW ¼ of NE ¼; S ½ of NE ¼; S ½,	15	440.00
E ½; N ½ of NW ¼; SW ¼ of SW ¼,	17	440.00

LANE COUNTY—Continued.

Township 16, *Range* 6—*Continued.*

	Section	Acres
All,	19	664.00
NW ¼; SE ¼ of SE ¼,	21	200.00
All,	23	640.00
E ½ of SE ¼,	25	80.00
N ½ of NE ¼; NW ¼; N ½ of SW ¼,	27	320.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	29	600.00
All,	31	654.00
SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of S ½,	33	240.00
All,	35	640.00

Township 17, *Range* 6.

N ½ of N ½; SW ¼ of NW ¼; N ½ of SW ¼; NW ¼ of SE ¼; Lots 2, 3, 4,	1	402.00
SW ¼,	3	160.00
N ½,	5	326.00
SE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NE ¼ of SE ¼,	7	202.00
SE ¼ of NE ¼; S ½,	9	360.00
N ½; N ½ of SW ¼; E ½ of SE ¼,	11	480.00
Lots 2, 3,	13	86.00
N ½,	15	320.00
NW ¼ of NE ¼; E ½ of W ½; NW ¼ of SE ¼; Lot 2,	17	278.00
Lots 2, 3; W ½; NW ¼ of SE ¼,	19	391.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of		

LANE COUNTY—Continued.

Township 17, *Range* 6—*Continued.*

	Section	Acres
SE ¼; S ½ of SE ¼,	21	240.00
E ½ of SE ¼; Lots 4, 5, 6,	23	106.00
NW ¼ of NE ¼; E ½ of NW ¼; NW ¼ of SW ¼; Lots 2, 3, 4, 5, 6, 7,	29	258.00
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; N ½ of SW ¼; S ½ of SE ¼; SW ¼ of SW ¼,	31	365.00
E ½ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	35	200.00

Township 18, *Range* 6.

W ½ of NW ¼; Lot 7,	1	115.00
N ½; N ½ of S ½; SE ¼ of SE ¼,	3	570.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	5	668.00
S ½ of NE ¼; NW ¼; S ½,	7	584.00
NW ¼ of SW ¼; S ½ of SW ¼; SE ¼,	9	280.00
E ½; SE ¼ of NW ¼; E ½ of SW ¼,	11	440.00
NW ¼ of NE ¼; S ½ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼,	13	280.00
N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼,	15	160.00
All,	17	640.00
All,	19	665.00
All,	21	640.00
Lots 3, 4; NE ¼ of SW ¼; S ½ of S ½,	23	248.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼;		

LANE COUNTY—Continued.

Township 18, *Range* 6—*Continued.*

	Section	Acres
SE ¼,	25	600.00
All,	27	640.00
All,	29	640.00
All,	31	665.00
All,	33	646.00
W ½ of E ½; W ½; SE ¼ of SE ¼,	35	525.00

Township 19, *Range* 6.

All,	1	639.00
All,	3	637.00
All,	5	644.00
All,	7	638.00
N ½; SW ¼; S ½ of SE ¼,	9	560.00
N ½; N ½ of SW¼; SW¼ of SW ¼; E ½ of SE ¼,	11	520.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	640.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	640.00
All,	33	640.00
All,	35	640.00

LANE COUNTY—Continued.

Township 20, *Range* 6.

	Section	Acres
N ½; N ½ of SW ¼; SE ¼,	1	564.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	3	607.00
All,	5	640.00
All,	7	636.00
All,	9	640.00
N ½ of NE ¼; SW ¼ of NE ¼; E ½ of W ½; SW ¼ of SW ¼; SE ¼,	11	480.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of SE ¼,	19	360.00
All,	21	640.00
All,	23	640.00
N ½,	25	320.00

Township 15, *Range* 7.

S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SE ¼; Lots 2, 3,	7	315.00
S ½ of N ½; S ½,	9	480.00
S ½ of N ½; S ½,	11	480.00
All,	13	612.00
All,	15	640.00
All,	17	640.00
All,	19	633.00
All,	21	640.00

LANE COUNTY—Continued.

Township 15, *Range* 7—*Continued.*

	Section	Acres
All,	23	640.00
All,	25	639.00
All,	27	640.00
All,	29	640.00
All,	31	758.00
NW ¼; Lots 1 to 12, inclusive,	33	549.00
NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; Lot 2,	35	366.00

Township 16, *Range* 7.

All,	1	614.00
S ½; Lots 1, 2, 3, 4,	3	513.00
SE ¼; N ½ of SW ¼; SE ¼ of SW ¼; Lots 1, 2, 3, 4,	5	388.00
N ½ of NW ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	7	377.00
NE ¼; SE ¼ of NW ¼; N ½ of SE ¼,	11	280.00
All,	13	640.00
Lots 1 to 12, inculsive,	15	562.00
S ½,	19	329.00
All,	21	774.00
All,	23	628.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
NE ¼; S ½,	31	489.00
All,	33	753.00
All,	35	627.00

LANE COUNTY—Continued.

Township 17, *Range* 7.

	Section	Acres
N ½; SW ¼,	1	480.00
All,	3	640.00
All,	5	617.00
All,	7	642.00
All,	9	640.00
All,	11	640.00
SW ¼ of NW ¼; S ½,	13	360.00
All,	15	640.00
All,	17	640.00
NW ¼ of NE ¼; NW ¼; S ½ of S ½,	19	362.00
All,	21	640.00
N ½ of N ½; SE ¼ of NE ¼; SW ¼ of NW ¼,	23	240.00
NE ¼; S ½,	25	480.00
NW ¼ of NW ¼; S ½ of SW ¼; SE ¼,	27	280.00
E ½ of NE ¼; W ½ of W ½; SE ¼,	29	400.00
NE ¼; W ½,	31	482.00
All,	33	640.00
All,	35	640.00

Township 18, *Range* 7.

All,	1	696.00
N ½; SE ¼,	3	533.00
N ½,	7	313.00
All,	9	640.00
NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	11	480.00
All,	13	640.00

LANE COUNTY—Continued.

Township 18, *Range* 7—*Continued.*

	Section	Acres
All,	15	640.00
All,	17	640.00
All,	19	633.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	638.00
All,	33	640.00
All,	35	640.00

Township 19, *Range* 7.

All,	1	641.00
All,	3	646.00
Lots 1, 4; SE ¼ of NE ¼; S ½,	5	402.00
E ½; Lots 1, 2, 3, 4,	7	391.00
All,	9	630.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
NE ¼; Lot 1,	19	182.00
Lots 1, 2, 6, 7, 8, 9, 10, 11, 12; 15; 16;	21	428.00
All,	23	640.00
N ½ of NE ¼; S ½ of SE ¼,	25	160.00
All,	27	640.00
All,	35	640.00

LANE COUNTY—Continued.

Township 20, *Range* 7.

	Section	Acres
All,	1	727.00
All,	3	746.00
All,	11	640.00
N ½,	13	320.00
N ½ of NE ¼,	15	80.00

Township 15; *Range* 8.

S ½ of N ½; S ½,	7	468.00
SW ¼ of NE ¼; S ½ of NW ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	9	400.00
S ½ of N ½; S ½,	11	480.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	622.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	627.00
All,	33	640.00
All,	35	640.00

Township 16, *Range* 8.

All,	1	656.00
All,	3	681.00
All,	5	729.00
E ½; SE ¼ of SW ¼; Lots 1, 2, 3, 4,	7	456.00

LANE COUNTY—Continued.

Township 16, *Range* 8—*Continued.*

	Section	Acres
All,	9	640.00
All,	11	640.00
All,	13	656.00
All,	15	651.00
All,	17	640.00
NE ¼ of NE ¼; NE ¼ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼; Lots 1, 2, 3,	19	303.00
All,	21	640.00
All,	23	640.00
All,	25	659.00
All,	27	656.00
NE ¼; NE ¼ of NW ¼; S½ of NW ¼; S ½,	29	600.00
E ½,	31	320.00
All,	33	640.00
N ½; NW ¼ of SE ¼,	35	360.00

Township 17, *Range* 8.

All,	1	644.00
N ½; NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	3	485.00
All,	5	646.00
E ½; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼,	9	480.00
All,	11	640.00
All,	13	640.00
N ½; SE ¼,	17	480.00
All,	21	640.00

LANE COUNTY—Continued.

Township 17, *Range* 8—*Continued.*

	Section	Acres
All,	23	640.00
All,	25	640.00
All,	27	640.00
E ½ of E ½,	33	160.00
All,	35	640.00

Township 18, *Range* 8.

NW ¼ of NE ¼; NW ¼; W ½ of SW ¼,	1	281.00
All,	3	642.00
All,	9	640.00
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	11	600.00
S ½ of NE ¼; W ½ of NW ¼; E ½ of SW ¼; SE ¼,	13	400.00
N ½; S ½ of SW ¼; NE¼ of SE¼,	15	440.00
W ½; NE ¼,	17	480.00
All,	19	636.00
NE ¼; W ½ of NW ¼; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	21	520.00
SE ¼ of NE ¼; SW ¼ of NW ¼; S ½,	23	400.00
All,	25	640.00
All,	27	640.00
W ½ of NE ¼; NW ¼; S ½,	29	560.00
All,	31	640.00
All,	33	640.00
N ½; SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	35	600.00

LANE COUNTY—Continued.

Township 19, *Range* 8.

	Section	Acres
All,	1	844.00
Lots 10, 11; W ½ of SE ¼,	3	160.00
All,	5	785.00
N ½ of N ½; SE ¼ of NE ¼; SE ¼ of SE ¼,	11	240.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SE ¼,	13	320.00

Township 15, *Range* 9.

E ½; SE ¼ of NW ¼; E ½ of SW ¼,	13	440.00
E ½; E ½ of W ½,	25	480.00

Township 18, *Range* 9.

SE ¼,	23	160.00
All,	25	640.00
S ½ of SE ¼,	33	80.00
All,	35	640.00

Township 19, *Range* 9.

	Section	Acres
SW ¼; Lots 1 to 11, inclusive,	1	585.00
Lots 1, 2, 3, 4; NE ¼ of SW ¼; SE ¼,	3	353.00
Total, Lane County,		299,606.00

DOUGLAS COUNTY.

South of Base Line and West of Willamette Meridian.

Township 23, Range 1.

	Section	Acres
SW ¼,	35	160.00

Township 24, Range 1.

S ½ of NE ¼; SE ¼ of NW ¼; S½,	1	440.00
All,	3	640.60
NE ¼ of SE ¼; S ½ of SE ¼,	5	120.00
Lots 1 to 20, inclusive; SE ¼,	7	913.08
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
Lots 1 to 20, inclusive; E ½,	19	1,144.45
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
Lots 1 to 20, inclusive; E ½,	31	1,198.15
All,	33	640.00
All,	35	640.00

Township 25, Range 1.

All,	1	641.84
All,	3	642.48
All,	5	643.68
Lots 1 to 20, inclusive; E ½,	7	1,085.04
All,	9	640.00

DOUGLAS COUNTY—Continued.

Township 25, *Range* 1—*Continued.*

	Section	Acres
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
Lots 11, 12, 13, 14, 16, 17, 18, 19, 20; SE ¼,	19	511.61
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
Lots 1 to 20, inclusive; E ½,	31	1,088.60
All,	33	640.00
All,	35	640.00

Township 30, *Range* 1.

All,	1	639.52
All,	7	639.58
NE ¼; SW ¼; N ½ of SE ¼,	9	400.00
All,	11	640.00
All,	13	640.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	15	600.00
All,	17	640.00
All,	19	641.12
All,	21	640.00
All,	27	640.00
All,	29	640.00
All,	31	640.26

DOUGLAS COUNTY—Continued.

Township 30, *Range* 1—*Continued.*

	Section	Acres
All,	33	640.00
All,	35	640.00
Township 31, *Range* 1.		
All,	5	633.62
N ½ of NE ¼; W ½ of NW ¼; SW ¼; N ½ of SE ¼,	7	392.48
SW ¼,	17	160.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	19	595.71
N ½; SE ¼,	21	480.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	29	.600.00
All,	31	640.00
NE ¼ of NE ¼; S ½ of NE ¼; S ½	33	440.00
Township 32, *Range* 1.		
Lots 1, 2, 3, 4, 5, 6, 12,	1	199.80
Lots 1 to 16, inclusive; S ½,	3	872.86
Lots 1 to 12, inclusive; S ½,	5	825.02
All,	7	616.64
All,	9	640.00
W ½,	11	320.00
All,	15	640.00
All,	17	640.00
N ½,	19	306.71
NE ¼ of NE ¼,	21	40.00
Township 23, *Range* 2.		
NW ¼ of SW ¼; SE ¼,	33	200.00
S ½,	35	320.00

DOUGLAS COUNTY—Continued.

Township 24, *Range* 2.

	Section	Acres
All,	1	638.40
All,	3	639.40
All,	11	640.00
All,	13	640.00
E ½,	15	320.00
All,	23	640.00
All,	25	640.00
All,	33	638.68
All,	35	640.00

Township 25, *Range* 2.

Lots 1 to 20, inclusive; S ½,	1	1,036.32
Lots 1 to 20 inclusive; S ½,	3	1,065.48
Lots 1 to 20, inclusive; S ½,	5	1,067.60
All,	7	510.56
All,	9	640.00
SW ¼,	11	160.00
NW ¼ of NW¼; SE ¼ of SW ¼; SW ¼ of SE ¼,	13	120.00
All,	15	640.00
All,	17	640.00
All,	19	533.12
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	612.37

DOUGLAS COUNTY—Continued.

Township 25, Range 2—Continued.

	Section	Acres
All,	33	617.48
All,	35	626.04

Township 26, Range 2.

All,	1	642.84
All,	3	638.84
All,	5	635.18
All,	7	636.80
All,	9	640.00
All,	11	640.00
All,	13	640.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½,	15	600.00
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼ of SE ¼,	17	440.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ½; S ½,	23	600.00
All,	25	640.00
SE ¼,	35	160.00

Township 27, Range 2.

All,	1	647.60
N ½; NW ¼ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	3	488.82
All,	5	649.34
NW ¼,	7	156.80

DOUGLAS COUNTY—Continued.

Township 30, *Range* 2.

	Section	Acres
All,	13	640.00
S ½,	15	320.00
E ½,	21	320.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
NE ¼ of NE ¼; S ½ of NE ¼; S ½ of NW ¼; S ½,	33	520.00
All,	35	640.00

Township 31, *Range* 2.

W ½ of SW ¼,	1	361.35
NE ¼ of NE ¼; NW ¼,	3	201.06
SW ¼,	9	160.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	11	520.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	13	520.00
SE ¼,	15	160.00
All,	23	640.00
E ½; N ½ of NW ¼; S ½ of SW ¼,	25	480.00

Township 24, *Range* 3.

W ½ of NE ¼; W ½,	5	408.34
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼;		

DOUGLAS COUNTY—Continued.

Township 24, *Range* 3—*Continued.*

	Section	Acres
All,	7	633.00
W ½ of W ½	9	160.00
E ½ of NE ¼; NW ¼ of SE ¼; S ½ of SE ¼,	15	200.00
E ½ of NE ¼; W ½ of SE ¼,	17	160.00
W ½,	19	317.28
SE ¼ of NW ¼; N ½ of SW ¼,	21	120.00
NW ¼ of NW ¼,	23	40.00
N ½ of N ½; SW ¼ of NE ¼; SE ¼ of NW ¼; S ½ of SE ¼,	31	321.23

Township 25, *Range* 3.

SW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼,	3	157.18
S ½ of SE ¼,	5	80.00
E ½; E ½ of W ½; SW ¼ of SW ¼,	7	510.52
NW ¼; SW ¼ of SW ¼,	9	200.00
All,	13	640.00
W ½,	17	320.00
All,	19	630.51
NE ¼; S ½,	23	480.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
SW ¼ of NE ¼; S ½ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	31	197.99
All,	33	640.00
All,	35	640.00

DOUGLAS COUNTY—Continued.

Township 26, *Range* 3.

	Section	Acres
E ½; N ½ of NW ¼; SE ¼ of NW ¼; S ½ of SW ¼,	1	521.54
N ½ of NE ¼; NW ¼,	3	233.98
SE ¼ of SW ¼; SE ¼,	9	200.00
S ½,	11	323.32
All,	13	643.60
All,	15	640.00
E ½ of NE ¼; NE ¼ of SE ¼,	21	120.00
All,	23	640.00
All,	25	640.00
N ½; NE ¼ of SW ¼; N ½ of SE ¼,	27	440.00
NE ¼ of SE ¼; S ½ of SE ¼,	33	120.00
All,	35	640.00

Township 27, *Range* 3.

N ½; E ½ of SW ¼; SE ¼,	1	554.44
W ½ of NE ¼; E ½ of NW ¼; S ½ of SW ¼; SE ¼,	3	401.42
NE ¼; E ½ of NW ¼; S ½,	7	561.90
All,	9	648.00
Lots 4, 5, 6, 9, 11, 12, 13, 14, 15, 16,	11	407.79
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	635.20
All,	21	640.00
E ½; W ½ of W ½,	23	480.00

DOUGLAS COUNTY—Continued.

Township 27, *Range* 3—*Continued.*

	Section	Acres
All,	25	640.00
W ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	27	520.00
All,	29	640.00
All,	31	637.99
E ½; SE ¼ of NW ¼; E ½ of SW ¼,	35	440.00

Township 28, *Range* 3.

	Section	Acres
NW ¼,	19	152.80
SW¼,	31	160.00

Township 29, *Range* 3.

All,	1	631.89
All,	3	591.12
All,	5	572.88
All,	7	606.56
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16,	9	616.11
All,	11	640.00
All,	13	640.00
Lots 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 15, 16,	15	492.08
N ½; NW ¼ of SE ¼; SE ¼ of SE ¼,	17	400.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; S ½,	21	480.00
All,	23	640.00
All,	25	640.00
All,	27	624.48

DOUGLAS COUNTY—Continued.

Township 29, Range 3—Continued.

	Section	Acres
All,	29	640.00
All,	31	634.23
Lots 1, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16,	33	490.22
All,	35	640.00

Township 30, Range 3.

Lots 1, 2, 3, 4; S ½,	1	398.72
Lots 1, 2, 3, 4; S ½,	3	401.00
Lots 1, 2, 5; NE ¼ of SE ¼; S ½ of S ½,	5	251.34
Lots 1, 2, 3, 4, 5, 6; E ½ of SW ¼; SE ¼,	7	449.54
All,	9	625.20
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	19	401.63
All,	21	640.00
All,	23	640.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; S ½,	25	480.00
N ½; N ½ of SW ¼,	27	400.00
N ½ of NE ¼; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9; S ½ of S ½,	29	343.88
All,	31	598.74
N ½ of NE ¼; NW ¼; S ½,	33	493.56
NE ¼; S ½ of NW ¼; S ½,	35	495.80

DOUGLAS COUNTY—Continued.

Township 31, *Range* 3.

	Section	Acres
All,	1	799.73
All,	3	806.20
All,	5	814.78
All,	7	654.84
All,	9	610.26
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	657.28
All,	21	609.09
All,	23	640.00
All,	25	640.00
All,	27	640.00
All	29	640.00
Lots 1, 2, 3,	31	128.40
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	33	600.00
All,	35	640.00

Township 32, *Range* 3.

All,	3	640.00
All,	5	640.00
All,	7	644.18
All,	9	640.00
All,	11	640.00
All,	15	640.00
All,	17	640.00

DOUGLAS COUNTY—Continued.

Township 21, *Range* 4.

	Section	Acres
S ½ of NW ¼; S ½,	5	400.00
All,	7	642.20
NE ¼ of NE ¼; NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	17	280.00
W½ of NE ¼; E ½ of NW ¼; NW ¼ of SE ¼,	19	200.00
SW ¼; N ½ of SE ¼,	21	240.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	27	600.00
N ½ of SW ¼,	29	80.00
N ½ of SW ¼; SW ¼ of SW ¼; S ½ of SE ¼,	31	204.04
E ½; S ½ of SW ¼,	33	400.00
NW ¼; W ½ of SW ¼,	35	240.00

Township 22, *Range* 4.

SW ¼,	3	160.00
NE ¼ of NE ¼; S ½ of N ½; W ½ of SW ¼; SE ¼ of SE ¼,	5	316.24
All,	7	677.44
E ½; N ½ of NW ¼; S ½ of SW ¼,	9	480.00
W ½ of W ½,	11	160.00
All,	15	640.00
NE ¼ of SW ¼; NW ¼ of SE ¼,	17	80.00
N ½; N ½ of SW ¼; SE ¼,	21	560.00
E ½ of SW ¼; E ½ of NE ¼; NW ¼,	23	320.00
S ½ of NW ¼; SW ¼,	27	240.00

DOUGLAS COUNTY—Continued.

Township 22, Range 4—Continued.

	Section	Acres
SE ¼ of NE ¼; N ½ of S ½,	29	200.00
W ½ of NW ¼,	31	99.60
S ½ of SE ¼,	33	80.00
N ½; N ½ of SW ¼; SE ¼,	35	560.00

Township 23, Range 4.

NW ¼; SE ¼; N ½ of SW ¼; SE ¼ of SW ¼,	1	440.62
N ½ of NW ¼; S ½ of SW ¼,	3	160.06
NE ¼ of NE ¼; S ½ of S ½; NW ¼ of SE ¼,	7	239.52
NW ¼ of NE ¼; S ½ of NE ¼; E ½ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	9	320.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of SE ¼,	11	160.00
NE ¼; S ½ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	13	520.00
SE ¼ of SE ¼,	15	40.00
All,	17	640.00
NE ¼; S ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	19	366.69
All,	23	640.00
All,	27	640.00
NE ¼ of SW ¼; SW ¼ of SW ¼; N ½ of NW ¼; SE ¼ of NW ¼,	29	200.00
S ½,	33	320.00
All,	35	647.75

DOUGLAS COUNTY—Continued.

Township 24, Range 4.

	Section	Acres
All,	1	651.91
All,	3	636.40
SW ¼ of NE ¼; W ½ of SE ¼; Lots 3, 4, 5, 6, 7,	5	307.53
N ½; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	9	600.00
All,	11	641.32
All,	13	636.52
E ½ of NE ¼; W ½ of NW ¼; Lots 4, 5,	15	198.00
S ½ of SE ¼; Lot 4,	23	94.50
N ½; NW ¼ of SW ¼; SE ¼,	25	520.00
NE ¼; S ½ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼,	29	360.00
SE ¼,	33	160.00
W ½ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; SW ¼,	35	360.00

Township 25, Range 4.

N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	3	366.26
SE ¼ of SW ¼,	11	40.00
S ½ of NE ¼; SE ¼,	13	240.00
NW ¼ of NW ¼; S ½ of NW ¼; SW ¼; Lots 3, 5,	17	329.34
NE ¼ of NE ¼; S ½ of NE ¼; S ½ of S ½; NE ¼ of SE ¼,	19	319.79
S ½ of SW ¼,	21	80.00

DOUGLAS COUNTY—Continued.

Township 25, Range 4—Continued.

	Section	Acres
All,	23	640.00
N ½; W ½ of SW ¼; E ½ of SE ¼,	25	480.00
All,	27	640.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW¼; NW ¼ of SW ¼; S ½ of SW ¼; SE ¼,	29	440.00
All,	35	640.00

Township 26, Range 4.

N ½ of NE ¼,	3	80.80
Lot 5,	7	46.88
Lots 9, 10,	17	11.56
SW ¼ of SW ¼,	23	40.00
NW ¼ of SE ¼,	35	40.00

Township 27, Range 4.

Lots 3, 4; W ½ of W ½,	1	217.42
NE ¼ of NE ¼; Lot 2,	7	48.96
E ½ of NE ¼; NW ¼ of NW ¼; SW ¼ of SW ¼; SW ¼ of SE ¼,	11	200.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of S ½; SW ¼ of SW ¼,	13	480.00
NE ¼ of NE ¼; SW ¼ of SE ¼,	21	80.00
NE ¼ of NE ¼; S ½ of NE ¼; E ½ of SE ¼,	23	200.00
All,	25	640.00
NW ¼ of NE ¼; SE ¼ of NE ¼; S ½ of NW ¼; N ½ of SW ¼; Lots 1, 2,	29	294.14

DOUGLAS COUNTY—Continued.

Township 27, Range 4—Continued.

	Section	Acres
NW ¼ of NW ¼; NE ¼ of SE ¼; Lot 8,	31	96.50
N ½ of NE ¼; SE ¼ of NE ¼,	33	120.00
SW ¼,	35	160.00

Township 28, Range 4.

All,	1	658.36
S ½ of N ½; S ½; Lot 1,	3	524.04
Lots 1, 2, 3, 4; SW ¼; E ½ of SE ¼,	5	286.52
NE ¼ of NE ¼; SE ¼ of NW ¼; Lots 1, 2; E ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	7	360.80
All,	9	640.00
All,	11	640.00
N ½ of NE ¼; SE ¼ of NE ¼; SW ¼ of SW ¼; NW ¼; NW ¼ of NW ¼ of SW ¼; S ½ of NW ¼ of SW ¼; SE ¼,	13	510.00
N ½; SW ¼; Lots 1, 2, 3, 4, 5,	15	602.20
NE ¼; S ½,	17	480.00
E ½; N ½ of NW ¼; S ½ of SW ¼,	19	481.18
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼; W ½ of SE ¼ of SE ¼,	21	620.00
S ½ of SW ¼ of SE ¼; SE ¼ of SE ¼,	23	60.00
All,	25	640.00
W ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼; SE ¼ of NW ¼ of SE ¼,	27	330.00
E ½ of NE ¼; NW ¼; W ½ of SW ¼,	29	320.00

DOUGLAS COUNTY—Continued.

Township 28, *Range* 4—*Continued.*

	Section	Acres
NW ¼; S ½,	31	480.32
W ½ of E ½; W ½,	33	480.00
All,	35	640.00

Township 29, *Range* 4.

S ½ of NW ¼; SW ¼; Lots 1, 2, 3, 4, 5, 6,	1	527.51
Lots 1 to 16, inclusive,	3	721.38
SW ¼ of NW ¼; E ½ of SE ¼; Lots 3, 4,	5	196.14
NW ¼ of NE ¼; NW ¼ of NW ¼; E ½ of W ½; W ½ of SE ¼,	7	319.12
Lots 1 to 16, inclusive,	9	612.64
All,	11	650.64
All,	13	640.00
N ½; SW ¼; N ½ of SE ¼,	15	560.00
SW ¼ of NE ¼; N ½ of SW ¼; NW ¼ of SE ¼; Lots 1 to 10, inclusive,	17	493.94
NE ¼; N ½ of NW ¼; E ½ of SE ¼; Lot 3,	19	358.60
SE ¼ of SW ¼; S ½ of SE ¼; Lots 1, 3, 4, 5, 6,	21	268.05
SW ¼ of SW ¼; SE ¼; Lot 4,	23	249.74
E ½ of E ½; NW ¼; W ½ of SW ¼,	25	400.00
All,	27	640.00
S ½ of SW ¼; SE ¼,	29	240.00
N ½ of NE ¼; SW ¼ of NW ¼; Fractional W ½ of NW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	31	248.80

DOUGLAS COUNTY—Continued.

Township 29, *Range* 4—*Continued*

	Section	Acres
All,	33	640.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	35	600.00

Township 30, *Range* 4.

Lots 1, 4, 9,	1	64.00
Lots 2, 3, 4, 5, 6, 7, 10, 11, 12, 14, 15,	3	510.41
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16,	5	635.58
Lots 1, 2, 7, 8,	7	113.19
Lots 2, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16,	11	433.49
Lots 1, 2, 3, 4, 5, 6,	13	223.20
Lots 1, 2, 7, 8, 9, 15, 16,	15	267.45
Lots 10, 11, 14, 15,	17	113.94
Lots 7, 8, 9, 10, 11, 14, 15, 16,	19	303.56
Lots 2, 3, 4, 6, 15,	21	199.08
Lots 13, 14, 15, 16,	23	161.95
Lots 1, 2, 4, 5, 7, 8,	25	143.05
All,	27	640.00
All,	29	625.27
NE ¼; E ½ of NW ¼; Lots 1, 2, 3, 4, 5, 6	31	369.36
N ½; Lots 1, 2, 3, 4,	33	368.20
W ½ of NE ¼; NW ¼; Lots 1, 2, 3, 4, 5, 6,	35	357.61

Township 31, *Range* 4.

All,	1	825.16
All,	3	824.08
All,	5	811.08

DOUGLAS COUNTY—Continued.

Township 31, *Range* 4—*Continued.*

	Section	Acres
All,	7	631.96
All,	9	622.88
All,	11	631.64
All,	13	640.00
All,	15	640.00
All,	17	620.00
All,	19	631.68
All,	21	627.56
All,	23	631.20
All,	25	640.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; SW ¼ of SW ¼; E ½ of SE ¼,	27	400.00
All,	29	613.55
All,	31	644.49
E ½ of NE ¼; W ½ of NW ¼; NW ¼ of SW ¼; NE ¼ of SE ¼,	33	240.00
All,	35	632.80

Township 32, *Range* 4.

E ½ of NE ¼; S ½,	1	400.00
N ½; Lots 1, 2, 3, 4, 5, 6, 7, 8,	3	636.08
N ½ of N ½; S ½ of S ½,	5	320.00
E ½ of E ½; SW ¼ of SE ¼; Lot 1,	7	239.40
All,	9	566.04
All,	11	638.92
All,	13	640.00
All,	15	640.00
E ½; E ½ of NW ¼; Lots 1, 2, 3,	17	442.39

DOUGLAS COUNTY—Continued.

Township 32, Range 4—Continued.

	Section	Acres
All,	19	475.30
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
E ½ of E ½; E ½ of W ½ of NE ¼; W ½ of E ½ of NW ¼; W ½ of NW ¼; SW ¼; E ½ of SW ¼ of SE ¼,	29	500.00
All,	31	692.93
E ½ of NE ¼; E ½ of NW ¼ of NE ¼; NW ¼ of NW ¼; Lots 3, 4, 6, 7, 9, 10, 11, 13, 17,	33	406.13

Township 33, Range 4.

S ½ of N ½; SW ¼; N ½ of SE ¼; Lots 1, 2, 3, 4,	5	515.68
All,	7	632.96

Township 21, Range 5.

Lot 1; S ½ of N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	480.54
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼,	5	281.96
All,	7	646.20
NW ¼ of NE ¼; SE ¼ of NE ¼; E ½ of NW ¼; W ½ of SE ¼; E ½ of SW ¼,	13	320.00
All,	19	650.20
NW ¼ of NW ¼,	21	40.00
S ½ of NE ¼; E ½ of NW ¼; NE ¼ of		

DOUGLAS COUNTY—Continued.

Township 21, *Range* 5—*Continued.*

	Section	Acres
SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	25	320.00
E ½ of NE ¼; NE ¼ of SW ¼,	27	120.00
E ½ of NW ¼; NE ¼ of SW ¼,	29	120.00
W ½ of NW ¼,	33	80.00

Township 22, *Range* 5.

All,	1	633.99
SW ¼ of NE ¼; Lots, 1, 2, 3; S ½ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	3	396.37
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼,	5	205.40
W ½ of NE ¼; NW ¼; W ½ of SW ¼,	7	338.31
All,	11	640.00
E ½ of NE ¼,	13	80.00
N ½; NE ¼ of SW ¼; N ½ of SE ¼,	15	440.00
SE ¼ of NE ¼,	19	40.00
E ½ of SE ¼,	23	80.00
NE ¼ of NE ¼; S ½ of N ½; S ½,	25	520.00
NW ¼ of NE ¼; S ½ of N ½; SE ¼; NE ¼ of SW ¼,	27	397.66
SE ¼ of SW ¼; SW ¼ of SE ¼,	29	80.00
NE ¼ of SE ¼,	31	40.00
W ½ of NE ¼; NW ¼,	33	240.00
N ½; Lot 1,	35	340.36

Township 23, *Range* 5.

N ½ of NE ¼; W ½; NW ¼ of SE ¼,	5	481.36

DOUGLAS COUNTY—Continued.

Township 23, Range 5—Continued.

	Section	Acres
W ½ of NE ¼; E ½ of NW ¼; W ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	7	353.75
E ½ of NE ¼; SE ¼,	13	240.00
W ½ of SW ¼,	17	80.00
N ½; SW ¼; N ½ of SE ¼,	19	546.70
SW ¼ of NW ¼,	21	40.00
S ½ of NW ¼; N ½ of SW ¼,	29	160.00
NW ¼ of NE ¼,	31	40.00

Township 24, Range 5.

SE ¼ of NW ¼; NE ¼ of SW ¼,	3	80.00
Lot 5,	29	28.41
SW ¼ of NW ¼; SW ¼; SW ¼ of SE ¼,	31	236.78
S ½ of SE ¼,	35	80.00

Township 25, Range 5.

NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	9	240.00
NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼,	17	160.00
NE ¼ of SW ¼; S ½ of SE ¼,	23	120.00
NE ¼; S ½,	25	480.00
N ½; N ½ of SW ¼; SE ¼,	27	560.00
S ½ of NE ¼,	29	80.00
N ½ of NE ¼; NW ¼ of NW ¼,	35	120.00

Township 27, Range 5.

S ½ of SE ¼,	25	80.00

DOUGLAS COUNTY—Continued.

Township 28, Range 5.

	Section	Acres
NE ¼; S ½,	13	480.00
N ½ of NE ¼; NW ¼; SE ¼ of NE ¼,	23	280.00
E ½; NE ¼ of NW ¼; SW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼,	25	520.00
N ½ of NE ¼,	27	80.00
E ½ of NE ¼,	29	80.00
N ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NE ¼ of SE ¼,	31	408.32
NW ¼ of SW ¼; S ½ of SW ¼,	33	120.00
NE ¼; E ½ of NW ¼; S ½,	35	560.00

Township 29, Range 5.

N ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	3	362.66
SE ¼ of NW ¼; N ½ of SW ¼,	5	120.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; SE ¼;	9	320.00
N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; W ½ of SE ¼,	11	240.00
E ½ of NE ¼; W ½ of NW ¼,	15	160.00
E ½ of NE ¼; SE ¼,	17	240.00
N ½; W ½ of SW ¼,	21	400.00
SE ¼ of NE ¼; SW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	25	360.00
E ½ of NE ¼; W ½ of SE ¼; Lot 1,	29	199.53
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	31	418.72
E ½ of E ½,	35	160.00

DOUGLAS COUNTY—Continued.

Township 30, *Range* 5.

	Section	Acres
All,	1	654.10
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	623.36
Lots 1, 2, 3, 4; SE ¼,	9	311.20
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	11	600.00
NW ¼ of NE ¼; NW ¼; N ½ of SW ¼; Lots 1, 3,	13	308.50
N ½; NW ¼ of SW ¼; N ½ of SE ¼,	15	440.00
N ½; Lots 4, 5,	17	370.63
NE ¼ of NW ¼; S ½ of NW ¼; Lots 1, 5, 6,	19	192.75
NE ¼ of NE ¼; Lot 1,	21	49.20
S ½ of SE ¼,	25	80.00
Lot 7,	27	.57
Lot 1; W ½ of NW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	29	217.32
SE ¼ of SE ¼,	31	40.00
S ½ of N ½; NE ¼ of NW ¼; S ½,	35	520.00

Township 31, *Range* 5.

All,	1	645.38
All,	3	715.22
E ½ of SE ¼ of SE ¼ of NE ¼; SW ¼ of NW ¼; NW ¼ of NE ¼ of SW ¼; S ½ of NE ¼ of SW ¼; NW ¼ of SW ¼; S ½ of SW ¼; S ½ of N ½ of SE		

DOUGLAS COUNTY—Continued.

Township 31, Range 5—Continued.

	Section	Acres
1/4; E 1/2 of NE 1/4 of NE 1/4 of SE 1/4; S 1/2 of SE 1/4,	5	320.00
All,	7	638.66
All,	9	640.00
NW 1/4 of NE 1/4; NW 1/4; S 1/2,	11	520.00
All,	13	640.00
All,	15	640.00
All,	17	664.32
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	35	640.00

Township 32, Range 5.

N 1/2; N 1/2 of SW 1/4; SE 1/4 of SW 1/4; SE 1/4,	1	600.00
E 1/2,	3	319.60
N 1/2; SW 1/4; N 1/2 of SE 1/4; SW 1/4 of SE 1/4,	9	600.00
NW 1/4; NW 1/4 of SW 1/4,	11	200.00
SW 1/4 of NE 1/4; SE 1/4 of NW 1/4; S1/2,	13	400.00
All,	17	640.00
N 1/2 of N 1/2,	19	165.86
E 1/2; N 1/2 of SW 1/4; SE 1/4 of SW 1/4,	23	440.00
N 1/2,	25	320.00
W 1/2 of NE 1/4; SE 1/4,	27	240.00
E 1/2 of SW 1/4; S 1/2 of SE 1/4,	29	160.00

DOUGLAS COUNTY—Continued.

Township 32, Range 5—Continued.

	Section	Acres
NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼ of SW ¼; E ½ of SE ¼ of SW ¼,	35	230.00

Township 33, Range 5.

E ½; NE ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	1	483.89
N ½; E ½ of SE ¼,	3	398.94
N ½; N ½ of S ½,	5	487.32
E ½ of E ½; N ½ of NW ¼; Lots 1, 2, 3,	11	332.43
N ½ of N ½; SW ¼ of NE ¼; SE ¼ of NW ¼,	13	240.00

Township 20, Range 6.

SW ¼ of NW ¼; SW ¼; S ½ of SE ¼,	19	282.58
S ½,	25	320.00
All,	27	640.00
All,	29	640.00
All,	31	643.01
N ½; E ½ of SW ¼; SE ¼,	33	560.00
N ½; N ½ of SW ¼; SE ¼,	35	560.00

Township 21, Range 6.

N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	1	606.40
All,	3	680.00
All,	5	729.02
All,	7	584.80
All,	9	640.00

DOUGLAS COUNTY—Continued.

Township 21, *Range* 6—*Continued.*

	Section	Acres
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	601.80
All,	21	640.00
All,	23	640.00
W ½,	25	316.64
All,	27	640.00
All,	29	640.00
All,	31	616.38
All,	33	640.00
NE ¼; N ½ of NW ¼,	35	240.00

Township 22, *Range* 6.

NW ¼ of NW ¼; S ½ of SW ¼; Lots 5, 6, 7,	1	167.74
All,	5	643.84
N ½ of NE ¼; NW ¼; NE ¼ of SW ¼,	7	265.04
N ½ of NE ¼,	11	80.00
Lots 3, 4; SE ¼ of SW ¼; SE ¼,	15	205.72
SE ¼ of NE ¼; S ½; Lot 3,	17	390.72
All,	19	633.25
All,	21	640.00
W ½ of NW ¼; SW ¼; S ½ of SE ¼,	23	320.00
W ½ of NE ¼,	25	80.00
All,	27	640.00

DOUGLAS COUNTY—Continued.

Township 22, *Range* 6—*Continued.*

	Section	Acres
All,	29	633.96
All,	31	664.80
All,	33	694.58
S ½ of NE ¼; S ½ of SW ¼; SE ¼,	35	320.00

Township 23, *Range* 6.

NW ¼ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; S ½ of SW ¼; SE ¼ of SE ¼,	1	280.83
All,	3	637.60
All,	5	655.56
All,	7	601.60
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	622.88
All,	21	640.00
N ½; W ½ of SW ¼; SE ¼,	23	560.00
N ½; SW ¼; NW ¼ of SE ¼,	25	520.00
All,	27	640.00
All,	29	640.00
All,	31	633.48
All,	33	640.00
All,	35	640.00

DOUGLAS COUNTY—Continued.

Township 24, Range 6.

	Section	Acres
NE ¼ of SW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	1	120.00
All,	3	640.80
All,	5	635.40
All,	7	654.72
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	9	600.00
N ½ of NW ¼; S ½ of SE ¼,	11	160.00
N ½ of NE ¼; NE ¼ of NW ¼,	13	120.00
E ½ of NW ¼,	15	80.00
All,	17	640.00
Lots 2, 3, 4; SE ¼ of SW ¼; NW ¼ of SE ¼; NE ¼,	19	370.44
S ½ of SW ¼; SW ¼ of SE ¼,	21	120.00
W ½; SW ¼ of SE ¼,	27	360.00
All,	31	653.26
E ½ of W ½; NW ¼ of NW ¼; SW ¼ of SW ¼; SE ¼,	33	400.00
S ½ of SE ¼; SW ¼,	35	240.00

Township 25, Range 6.

NE ¼; S ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NE ¼ of SE ¼,	3	404.65
NW ¼,	5	165.33
N ½; W ½ of SW ¼,	7	404.09
Lot 10,	15	2.00
SE ¼ of NW ¼; SW ¼ of SW ¼,	17	80.00

DOUGLAS COUNTY—Continued.

Township 25, Range 6—Continued.

	Section	Acres
Lots 2, 3,	21	1.20
Lots 1, 2, 3; S ½ of NE ¼; SE ¼ of NW ¼; SE ¼,	25	324.75
SE ¼ of SE ¼,	33	40.00

Township 26, Range 6.

N ½ of N ½; SE ¼ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; NE ¼ of SE ¼,	3	361.44
SE ¼ of SE ¼,	5	40.00
NW ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; Lots 3, 4, 5, 6,	7	267.20
W ½ of NE ¼; SE ¼ of NW ¼; SW ¼,	9	280.00
NE ¼; E ½ of W ½; N ½ of SE ¼; SW ¼ of SE ¼; Lot 2,	17	445.86

Township 27, Range 6.

Lots 3, 4; E ½ of SE ¼,	7	96.27
NE ¼ of NE ¼; NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼,	19	267.24

Township 28, Range 6.

S ½ of SE ¼; SW ¼,	25	240.00
NW ¼ of SE ¼; S ½ of SE ¼,	31	120.00
Lot 9,	33	21.50
Lot 4,	35	5.60

Township 29, Range 6.

N ½ of NE ¼; SW ¼ of NE ¼,	1	120.54
S ½ of NE ¼; N ½ of SE ¼; Lots 4, 5, 6, 7,	3	223.55
All,	5	645.80
E ½ of E ½; W ½ of W ½; SE ¼ of SW		

DOUGLAS COUNTY—Continued.

Township 29, *Range* 6—*Continued.*

	Section	Acres
¼; SW ¼ of SE ¼,	7	416.38
NE ¼ of NE ¼; W ½ of E ½; S ½ of SW ¼; Lots 1, 2, 3, 4, 5, 6, 7,	9	446.91
SW ¼; Lot 4,	11	195.32
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	13	600.00
NE ¼; SW ¼; Lot 3,	15	345.18
E ½ of E ½; NW ¼ of NW ¼; SW ¼ of SE ¼; Lots 1, 2, 3, 5,	17	309.80
NW ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; SW ¼ of SE ¼,	19	292.87
E ½; Lots 1, 2, 3, 4, 5, 6, 7, 8,	21	492.05
NE ¼ of NE ¼; S ½ of N ½; NW ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	23	520.00
NW ¼ of NE ¼; SE ¼ of NE ¼; NW ¼; N ½ of SW ¼; E ½ of SE ¼,	25	400.00
NE ¼; E ½ of NW ¼; S ½,	27	560.00
NE ¼,	29	160.00
E ½,	33	320.00
N ½ of NW ¼; N ½ of SW ¼; S ½ of SE ¼,	35	240.00

Township 30, *Range* 6.

E ½ of E ½; W ½,	1	464.55
NE ¼; S ½,	3	470.89

DOUGLAS COUNTY—Continued.

Township 30, *Range* 6—*Continued.*

	Section	Acres
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	5	476.67
NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	7	622.30
N ½; SE ¼,	9	480.00
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼,	11	400.00
NW ¼ of NW ¼; S ½ of SE ¼,	15	120.00
NW ¼ of NE ¼; SE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	19	495.20
NW ¼ of NE ¼; S ½ of NE ¼; NE ¼ of NW ¼; SW ¼ of NW ¼; W ½ of SW ¼; SE ¼,	21	440.00
SW ¼ of NW ¼,	23	40.00
SW ¼ of SW ¼; SE ¼ of SE ¼; Lot 5, N ½ of SE ¼; SW ¼ of NE ¼; NW ¼; NW ¼ of SW ¼,	25 29	111.82 320.00
W ½ of NW ¼; SW ¼ of SW ¼,	31	131.90
SE ¼ of NE ¼,	35	40.00

Township 31, *Range* 6.

All,	1	646.02
All,	3	651.62
E ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	5	526.24
All,	7	665.76
All,	9	640.00

DOUGLAS COUNTY—Continued.

Township 31, *Range* 6—*Continued.*

	Section	Acres
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	666.34
All,	21	640.00
All,	23	640.00
N ½; SW ¼; SW ¼ of SE ¼,	25	520.00
S ½,	27	320.00
SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼,	29	160.00
All,	31	664.00
S ½,	33	320.00

Township 32, *Range* 6.

N ½; N ½ of SE ¼,	3	394.14
All,	5	636.80
NW ¼,	13	160.00
NE ¼; NE ¼ of NW ¼; SW ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	15	360.00
E ½,	17	320.00
NE ¼ of NW ¼; Lots 1, 2, 3, 4,	19	244.48
All,	21	640.00
NW ¼; SE ¼ of SW ¼; SW ¼ of SE ¼,	23	240.00
N ½ of NW ¼,	25	80.00
SE ¼ of NE ¼; SE ¼,	27	200.00
All,	29	640.00
Lot 1,	35	15.42

DOUGLAS COUNTY—Continued.

Township 33, *Range* 6.

	Section	Acres
N ½,	1	321.20
SE ¼ of SW ¼; SE ¼,	3	200.00
S ½ of SE ¼,	5	80.00
NW ¼ of NE ¼; S ½ of NE ½; NW ¼; S ½,	7	605.84
NW ¼ of SW ¼,	9	40.00

Township 19, *Range* 7.

NE ¼ of SE ¼; S ½ of SE ¼; Lot 4,	19	143.02
Lots 3, 4, 5, 13, 14,	21	197.06
All,	29	640.00
E ½; Lots 1, 2, 3, 4,	31	418.82
All,	33	631.60

Township 20, *Range* 7.

All,	5	773.98
E ½; Lots 1, 2, 3, 4,	7	371.98
All,	9	640.00
S ½,	13	320.00
S ½ of NE ¼; NW ¼; S ½,	15	560.00
All,	17	640.00
E ½; Lots 1, 2, 3, 4,	19	395.20
All,	21	640.00
All,	23	640.00
All,	25	640.00
N ½; SW ¼,	27	480.00
All,	29	640.00
E ½; Lots 1, 2, 3, 4,	31	423.58
All,	33	640.00
NE ¼; S ½,	35	480.00

DOUGLAS COUNTY—Continued.

Township 21, *Range* 7.

	Section	Acres
All,	1	789.60
All,	3	785.83
S ½ of SW ¼; N ½ of SE ¼; Lots 1 to 12, inclusive,	5	630.81
All,	7	600.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	610.60
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	629.98
All,	33	640.00
All,	35	640.00

Township 22, *Range* 7.

All,	1	668.38
S ½ of NE ¼; N ½ of SE ¼; SW ¼ of SE ¼; SE ¼ of NW ¼; E ½ of SW ¼; Lots 1 to 7, inclusive,	3	661.32
All,	5	645.13
NE ¼; E ½ of NW ¼; NE ¼ of SW		

DOUGLAS COUNTY—Continued.

Township 22, *Range* 7—*Continued.*

	Section	Acres
¼; N ½ of SE ¼; SE ¼ of SE ¼; Lots 1, 3, 4,	7	470.67
All,	9	631.97
NE ¼; S ½,	11	480.00
NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	13	440.00
E ½; NE ¼ of SW ¼,	15	360.00
NE ¼ of NE ¼; W ½ of NW ¼,	17	120.00
Lots 8, 9,	19	29.93
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	23	600.00
All,	25	582.56
All,	27	640.00
Lots 1, 2, 3,	31	17.52
Lots 1, 2, 7, 8; E ½ of SW ¼; NE ¼ of SE ¼,	35	293.14

Township 23, *Range* 7.

S ½ of N ½; S ½; Lots 1, 2, 3,	1	656.40
S ½ of NE ¼; N ½ of NW ¼; N ½ of SW ¼; NW ¼ of SE ¼,	3	281.26
Lots 2, 3,	7	49.10
Lots 7, 8,	9	41.70
Lots 4, 16,	11	76.13
All,	13	640.00
Lots 4, 5, 6; NE ¼ of SE ¼,	15	137.00
W ½ of W ½; Lots 1, 2, 3, 4, 5, 6,	17	358.97

DOUGLAS COUNTY—Continued.

Township 23, Range 7—Continued.

	Section	Acres
Lots 6, 7, 8, 9; NE ¼ of NW ¼; SW ¼ ¼ of NW ¼; NW ¼ of SW ¼,	19	239.06
NW ¼ of NE ¼; NW ¼ of NW ¼; SE ¼ of NW ¼; W ½ of SE ¼; SE ¼ of SE ¼; Lots 1, 3, 4,	21	352.95
Lots 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,	23	526.07
All,	25	640.00
Lots 5, 6, 7, 8, 10, 11,	27	133.17
S ½,	31	320.00
Lot 3; S ½ of SW ¼,	33	118.20
Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16,	35	482.95

Township 24, Range 7.

Lots 1, 4; SE ¼ of NE ¼; SW ¼ of NW ¼; E ½ of SE ¼,	1	235.67
Lots 9, 10, 11, 12,	3	146.05
SW ¼ of NW ¼; SW ¼; W ½ of SE ¼,	5	280.00
All,	7	661.52
Lots 1 to 12, inclusive, 14, 15, 16,	9	608.91
Lots 3, 4, 9; S ½ of NW ¼; SW ¼; SW ¼ of SE ¼,	11	386.32
Lots 1, 2, 3, 6, 7, 8; S ½ of SE ¼,	13	206.76
Lots 4, 5, 6, 7, 8, 9, 10, 11, 12; W ½ of SW ¼,	15	390.59
Lots 1, 2, 3, 4, 5, 6; SE ¼ of NW ¼; E ½ of SW ¼; N ½ of SE ¼; NE ¼,	17	600.60

DOUGLAS COUNTY—Continued.

Township 24, Range 7—Continued.

	Section	Acres
W ½ of NE ¼; NW ¼; S ½,	19	566.76
SE ¼ of SE ¼; Lots 1, 4, 5, 7, 11,	21	188.88
All,	23	639.52
All,	25	640.00
All,	27	609.96
NE ¼; NE ¼ of NW ¼; E ½ of SE ¼; Lots 4, 5,	29	322.60
W ½ of NW ¼; S ½ of SW ¼,	31	162.03
N ½ of NE ¼; SE ¼ of NW ¼; N ½ of S ½; Lots 1, 3, 4, 5, 6, 7,	33	494.56
All,	35	640.00

Township 25, Range 7.

All,	1	659.68
All,	3	649.96
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; SE ¼ of SW ¼; SE ¼ of SE ¼,	5	355.40
N ½ of NE ¼; Lots 1, 2, 3, 4, 7, 8, 11,	7	384.54
NE ¼; Lots 1, 2, 3, 4,	9	238.40
NE ¼; S ½ of NW ¼; S ½,	11	560.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; SW ¼,	13	440.00
N ½ of NE ¼; SE ¼ of NE ¼; N ½ of SE ¼; Lot 3,	15	213.33
All,	17	625.36
All,	19	640.64
Lots 5, 6; NE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of S ½,	21	327.74

DOUGLAS COUNTY—Continued.

Township 25, Range 7—Continued.

	Section	Acres
E ½ of NE ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	23	160.00
SW ¼ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; Lot 6,	27	356.30
NE ¼ of NE ¼; S ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	29	400.00
E ½; E ½ of SW ¼,	31	400.00
Lots 1, 2, 3, 4, 5, 6, 7; SW ¼; NW ¼ of SE ¼,	33	491.74

Township 26, Range 7.

Lot 6,	3	4.90
All,	5	643.04
All,	7	646.02
NE ¼; S ½ of NW ¼; S ½,	9	560.00
S ½ of SW ¼; NE ¼ of SE ¼,	11	120.00
W ½ of NW ¼,	15	80.00
All,	17	640.00
All,	19	644.32
W ½ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	21	520.00
N ½ of NW ¼,	27	80.00
All,	29	640.00
All,	31	636.00
W ½,	33	320.00

Township 27, Range 7.

NE ¼; SE ¼ of SW ¼; W ½ of SE ¼,	5	278.72

DOUGLAS COUNTY—Continued.

Township 27, Range 7—Continued.

	Section	Acres
All,	7	633.60
SE ¼ of NW ¼; E ½ of SW ¼; SE ¼,	15	280.00
NE ¼; W ½,	17	480.00
All,	19	639.90
NE ¼; S ½,	23	480.00
NW ¼ of NE ¼; SW ¼ of NW ¼; N ½ of NW ¼,	25	160.00
N ½; SW ¼; W ½ of SE ¼,	27	560.00
N ½ of NW ¼,	31	82.48
NE ¼; E ½ of NW ¼; S ½ of SW ¼,	33	320.00

Township 29, Range 7.

All,	1	639.40
Lot 1; E ½ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	3	229.81
NE ¼ of NW ¼; S ½ of NW ¼; NW ¼ of SW ¼,	5	162.28
S ½ of NE ¼; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼; Lots 1, 4, 5,	9	458.67
All,	11	640.00
All,	13	640.00
All,	15	640.00
SE ¼ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	17	200.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	19	617.30
NE ¼; N ½ of SE ¼; SE ¼ of SE ¼,	21	280.00

DOUGLAS COUNTY—Continued.

Township 29, Range 7—Continued.

	Section	Acres
N ½; N ½ of SE ¼; SE ¼ of SE ¼; Lots 1, 2, 3, 4, 5, 6, 7,	27	598.68
NW ¼; N ½ of SW ¼,	29	240.00
All,	31	664.41
All,	33	640.00

Township 30, Range 7.

S ½ of NE ¼; N ½ of NW ¼; W ½ of SW¼; SE ¼ of SW ¼; SE ¼,	1	420.07
All,	3	643.08
Lots 1, 2, 4; S ½ of NE ¼; SW ¼ of NW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	5	339.11
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	7	521.99
All,	9	640.00
N ½ of NE ¼; SE ¼ of NE ¼; W ½,	11	440.00
N ½; SE ¼,	13	480.00
All,	15	688.23
All,	17	640.00
All,	19	630.71
All,	21	640.00
All,	25	640.00
W ½ of E ½; W ½; SE ¼ of SE ¼,	27	520.00
All,	29	640.00
All,	31	681.60
N ½; N ½ of SE ¼; SE ¼ of SE ¼,	33	440.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	35	600.00

DOUGLAS COUNTY—Continued.

Township 31, *Range* 7.

	Section	Acres
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	1	605.69
NW ¼ of NE ¼; S ½ of N ½; NE ¼ of NW ¼; S ½,	3	560.00
S ½ of N ½; N ½ of SW ¼; SE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	5	400.00
N ½; SW ¼; W ½ of SE ¼; W ½ of SE ¼ of SE ¼; N ½ of NE ¼ of SE ¼; SW ¼ of NE ¼ of SE ¼,	7	603.52
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼ of SW ¼; S ½ of S ½; NE ¼ of SE ¼,	9	369.20
All,	11	649.20
All,	13	640.00
All,	15	640.00
E ½; N ½ of NW ¼; W ½ of SW ¼ of NW ¼; NE ¼ of SW ¼ of NW ¼; E ½ of SE ¼ of NW ¼; NW ¼ of SE ¼ of NW ¼; S ½ of SW ¼; E ½ of NE ¼ of SW ¼; W ½ of NW ¼ of SW ¼,	17	580.00
All,	19	686.40
All,	21	640.00
All,	23	640.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼,	25	440.00
All,	27	640.00
NW ¼; S ½,	29	480.00

DOUGLAS COUNTY—Continued.

Township 31, *Range* 7—*Continued.*

	Section	Acres
All,	31	647.68
All,	33	640.00
W ½ of NE ¼; S ½,	35	400.00

Township 32, *Range* 7.

All,	1	653.76
All,	3	657.52
N ½,	5	328.48
NE ¼; SE ¼ of NW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	7	324.33
NE ¼; S ½,	9	480.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
NE ¼; NW ¼ of NE ¼ of NW ¼; SE ¼ of NW ¼; W ½ of NE ¼ of SW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; E ½ of NW ¼ of SE ¼; S ½ of SE ¼; Lots 2, 3, 4,	19	537.58
N ½; SW ¼; S ½ of SE ¼,	21	560.00
All,	23	640.00
N ½; SW ¼; W ½ of SE ¼,	25	560.00
E ½; E ½ of SW ¼,	27	400.00
S ½ of NE ¼; NW ¼ of NE ¼; NW ¼; S ½,	29	600.00
All,	31	642.40

DOUGLAS COUNTY—Continued.

Township 32, *Range* 7—*Continued.*

	Section	Acres
NW ¼ of NE ¼ of NW ¼; NW ¼ of NW ¼; S ½ of NW ¼; NW ¼ of NE ¼ of SW ¼; SW ¼ of NW ¼ of SW ¼; N ½ of NW ¼ of SW ¼; NW ¼ of SW ¼ of SW ¼; S ½ of NE ¼ of SE ¼; E ½ of SW ¼ of SE ¼; SE ¼ of SE ¼,	33	260.00
N ½; N ½ of S ½; SW ¼ of SE ¼; SW ¼ of SW ¼,	35	560.00

Township 33, *Range* 7.

Lots 3, 4; S ½ of N ½; S ½,	1	564.56
SW ¼ of NE ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	3	320.00
All,	11	640.00
N ½,	13	320.00

Township 19, *Range* 8.

All,	7	777.16
W ½,	9	320.00
SW ¼ of SW ¼,	11	40.00
All,	15	640.00
All,	17	640.00
All,	19	776.80
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00

DOUGLAS COUNTY—Continued.

Township 19, *Range* 8—*Continued.*

	Section	Acres
All,	29	640.00
All,	31	779.58
All,	33	640.00
All,	35	640.00

Township 20, *Range* 8.

All,	1	640.39
All,	3	639.20
All,	5	639.30
All,	7	788.39
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
NE ¼ of NW ¼; SE ¼ of SW ¼,	17	80.00
E ½; Lots 1, 6, 7, 8, 9, 10, 11, 12,	19	634.05
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	778.59
All,	33	640.00
All,	35	640.00

Township 21, *Range* 8.

All,	1	637.99
All,	3	634.60

DOUGLAS COUNTY—Continued.

Township 21, *Range* 8—*Continued.*

	Section	Acres
All,	5	685.76
All,	7	789.80
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	793.60
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	797.04
All,	33	640.00
All,	35	640.00

Township 22, *Range* 8.

All,	1	724.92
Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 15,	3	462.44
Lots 2, 3, 4, 5, 6, 9, 10; SW ¼ of NW ¼, N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼;	5	257.06
Lots 3, 6, 7, 8, 9, 10, 11, SW ¼ of NW ¼; NW ¼ of SW ¼;	7	301.60
Lots 9, 10, 11, 12, 16,	9	180.79
Lots 1, 2, 3, 7, 8, 9, 10, 11, 14, 15 16	11	463.50
Lots 9, 10,	15	25.30

DOUGLAS COUNTY—Continued.

Township 22, *Range* 8—*Continued.*

	Section	Acres
Lots 1, 2, 3; N ½ of NE ¼; SW ¼ of NE ¼; W ½; W ½ of SE ¼,	17	566.77
All,	19	679.45
Lots 7, 14,	21	2.42
Lots 8, 9, 10, 11,	23	11.00
NE ¼; W ½ of NW ¼,	25	240.00
Lots 2 to 12, inclusive,	27	459.65
W ½ of W ½; Lots 1, 2, 3,	29	206.89
All,	31	692.69
Lot 1; S ½ of NE ¼; NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	33	395.20

Township 23, *Range* 8.

Lots 7, 9,	1	5.30
Lots 1, 2, 3; S ½ of N ½; S ½,	3	613.67
All,	5	669.48
E ½; Lots 7, 10, 11, 12,	7	473.41
All,	9	640.00
Lots 1, 5, 7; W ½ of W ½; SE ¼ of SW ¼; S ½ of SE ¼,	11	376.36
Lots 2, 3, 4; S ½ of N ½; S ½,	13	604.39
All,	15	640.00
All,	17	640.00
All,	19	772.00
All,	21	640.00
N ½ of N ½; SE ¼ of NW ¼; S ½,	23	520.00
SE ¼ of NE ¼; NW ¼ of NW ¼; SW		

DOUGLAS COUNTY—Continued.

Township 23, *Range* 8—*Continued.*

	Section	Acres
¼; S ½ of SE ,	25	320.00
All,	27	640.00
All,	29	640.00
All,	31	775.98
All,	33	640.00
All,	35	640.20

Township 24, *Range* 8.

All,	1	653.74
All,	3	650.46
All,	5	644.94
Lots 1, 2, 3, 4; E ½,	7	484.38
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
Lots 1, 2, 3, 4; E ½,	19	490.40
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
Lots 1, 2, 3, 4; E ½,	31	493.18
All,	33	640.00
All,	35	641.92

Township 25, *Range* 8.

All,	1	636.80

DOUGLAS COUNTY—Continued.

Township 25, Range 8—Continued.

	Section	Acres
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	33	640.00
All,	35	640.00

Township 26, Range 8.

SE ¼ of NE ¼; S ½ of NW ¼; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼; Lots 3, 4,	1	477.75
All,	3	639.92
All,	5	642.40
All,	7	640.80
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	641.04
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	640.92

DOUGLAS COUNTY—Continued.

Township 26, Range 8—Continued.

	Section	Acres
All,	33	640.00
All,	35	640.00

Township 27, Range 8.

All,	1	633.84
All,	3	639.80
All,	5	639.68
All,	7	639.36
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	639.68
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	639.60
All,	33	640.00
All,	35	640.00

Township 29, Range 8.

E ½ of NE ¼; W ½ of NW ¼; NW ¼ ¼ of SW ¼; S ½ of SW ¼; SE ¼,	13	440.00
SE ¼,	15	160.00
SE ¼ of SE ¼,	17	40.00

DOUGLAS COUNTY—Continued.

Township 29, *Range* 8—*Continued.*

	Section	Acres
All	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
E ½; E ½ of SW ¼,	29	400.00
S ½ of N ½; S ½; Lots 1, 2, 3, 4,	31	607.73
All,	33	640.00
All,	35	640.00

Township 30, *Range* 8.

All,	1	606.20
All,	3	622.68
All,	5	644.72
All,	7	700.44
All,	9	640.00
All,	11	640.00
S ½ of N ½; S ½,	13	480.00
All,	15	640.00
All,	17	640.00
All,	19	704.00
All,	21	640.00
All,	23	640.00
E ½; N ½ of NW ¼; E ½ of SW ¼,	25	480.00
All,	27	640.00
All,	29	640.00
All,	31	707.74
All,	33	640.00
All,	35	640.00

DOUGLAS COUNTY—Continued.

Township 31, *Range* 8.

	Section	Acres
All,	1	639.96
All,	5	606.01
All,	7	744.84
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	751.84
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	743.20
All,	33	640.00
All,	35	640.00

Township 32, *Range* 8.

N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	1	600.80
All,	3	645.41
All,	5	653.08
All,	7	681.62
All,	9	640.00
All,	11	640.00
All,	13	640.00

DOUGLAS COUNTY—Continued.

Township 32, *Range* 8—*Continued.*

	Section	Acres
All,	15	640.00
All,	17	640.00
All,	19	637.79
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
N ½ of NE ¼,	31	80.00
All,	33	640.00
All,	35	640.00

Township 19, *Range* 9.

All,	9	640.00
All,	11	640.00
All,	13	800.80
All,	15	640.00
E ½; E ½ of W ½; SW ¼ of SW ¼,	17	520.00
E ½; E ½ of W ½,	19	480.00
All,	21	640.00
All,	23	640.00
All,	25	800.00
All,	27	640.00
All,	29	640.00
All,	31	640.00
All,	33	640.00
All,	35	640.00

DOUGLAS COUNTY—Continued.

Township 20, *Range* 9.

	Section	Acres
S ½ of NW ¼; W ½ of SW ¼; Lots 1 to 14, inclusive,	1	717.47
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; NE ¼ of SE ¼,	11	360.00
E ½ of NW ¼; SW ¼; Lots 1 to 12, inclusive	13	712.88
NW ¼ of NE ¼; NW ¼; N ½ of SW ¼; E ½ of SE ¼,	15	360.00
All,	17	640.00
All,	19	640.00
W ½; SE ¼ of SE ¼,	21	360.00
All,	23	640.00
NW ¼; Lots 1 to 12, inclusive,	25	628.92
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼,	27	280.00
N ½ of NW ¼,	29	80.00
S ½ of NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; Lot 2,	31	239.19
NE ¼ of NE ¼; SW ¼; SW ¼ of SE ¼,	33	240.00
NE ¼ of NE ¼; S ½ of N ½; S ½,	35	520.00

Township 21, *Range* 9.

All,	1	906.19
S ½ of SW ¼; NW ¼ of SE ¼; Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 15, 16,	3	472.08
E ½ of E ½; NE ¼ of SW ¼; SW ¼ of SW ¼,	5	240.00
All,	7	828.40

DOUGLAS COUNTY—Continued.

Township 21, *Range* 9—*Continued.*

	Section	Acres
All,	9	898.36
All,	11	640.00
All,	13	657.20
All,	15	640.00
All,	17	640.00
All,	19	645.88
All,	21	640.00
All,	23	640.00
All,	25	650.55
All,	27	640.00
All,	29	640.00
All,	31	642.78
All,	33	640.00
All,	35	640.00

Township 22, *Range* 9.

All,	1	626.33
All,	3	629.94
S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; Lots 1, 2, 3, 4, 5, 6, 9, 10,	5	468.86
Lots 6 to 16, inclusive,	7	525.88
S ½ of NE ¼; SE ¼ of NW ¼; SE ¼; Lots 3, 4, 5, 6, 7, 8, 9,	9	569.60
N ½; SW ¼; N ½ of SE ¼,	11	560.00
S ½ of SE ¼; Lots 5, 6,	13	149.00
N ½ of NE ¼; SW ¼ of SW ¼; Lots 8, 9,	15	160.31

DOUGLAS COUNTY—Continued.

Township 22, Range 9—Continued.

	Section	Acres
NW ¼ of SW ¼; SW ¼ of SE ¼; Lot 7,	17	112.20
NE ¼ of NE ¼; NE ¼ of SW ¼; E ½ of SE ¼; Lots 1, 2, 3,	19	328.25
SE ¼ of NE ¼; E ½ of SW ¼; W ½ of SE ¼; Lots 4, 5, 6,	21	328.44
N ½; SW ¼; W ½ of SE ¼,	23	560.00
All,	25	640.00
All,	27	610.56
All,	29	593.44
N ½; SW ¼,	31	481.76
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼ of SE ¼,	33	440.00
All,	35	678.38

Township 23, Range 9.

All,	1	640.60
Lot 4; S ½ of N ½; S ½,	5	520.40
NE ¼ of SW ¼; Lots 5, 6, 7, 10, 11, 12, 13, 14, 15, 17, 18,	7	492.51
SW ¼ of SW ¼,	9	40.00
SW ¼ of NE ¼,	11	40.00
SW ¼ of SE ¼; Lots 9, 10, 16, 17, 18,	13	233.02
SW ¼,	17	160.00
S ½,	19	317.55
E ½; Lots 1, 2, 3, 4,	21	320.52
NW ¼,	23	160.00

DOUGLAS COUNTY—Continued.

Township 28, *Range* 9—*Continued.*

	Section	Acres
All,	25	640.00
All,	27	640.00
NW ¼; N ½ of SW ¼; Lots 1, 2, 3, 4, 5, 6,	29	334.67
All,	31	633.56
All,	33	654.40
All,	35	643.84

Township 24, *Range* 9.

All,	1	635.88
All,	3	629.89
All,	5	638.96
All,	11	640.00
All,	13	640.00
All,	23	640.00
All,	25	640.00
All,	35	640.00

Township 26, *Range* 9.

All,	1	654.28
All,	3	653.20
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	35	640.00

DOUGLAS COUNTY—Continued.

Township 29, *Range* 9.

	Section	Acres
NW ¼ of SE ¼,	1	40.00
NE ¼; S ½ of NW ¼; W ½ of SW ¼,	13	320.00
N ½; SW ¼; NW ¼ of SE ¼,	23	520.00
All,	27	640.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	35	560.00

Township 30, *Range* 9.

All,	3	630.22
All,	5	626.32
All,	7	650.12
All,	9	640.00
All,	13	640.00
S ½ of N ½; S ½,	17	480.00
All,	19	652.78
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	655.64
All,	33	640.00
All,	35	640.00

Township 31, *Range* 9.

All,	1	561.84
All,	3	567.00

DOUGLAS COUNTY—Continued.

Township 31, *Range* 9—*Continued.*

	Section	Acres
N ½; SE ¼,	5	409.44
S ½ of NE ¼; E ½ of NW ¼; Lot 1,	7	200.33
All,	9	640.00
All,	11	640.00
E ½ of E ½; W ½,	13	480.00
All,	15	640.00
E ½; N ½ of NW ¼; SE ¼ of NW ¼; S ½ of SW ¼,	17	520.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
NE ¼; S ½,	29	480.00
All,	35	640.00

Township 19, *Range* 10.

SE ¼,	25	160.00

Township 20, *Range* 10.

All,	1	709.98
E ½ of NE ¼; S ½,	11	400.00
All,	13	640.00
N ½; NE ¼ of SW ¼; SE ¼,	23	520.00
N ½ of NW ¼; SW ¼ of NW ¼; W ½ of SW ¼,	25	200.00
N ½ of NE ¼; SW ¼ of NE ¼; E ½ of NW ¼; W ½ of SE ¼,	27	280.00
W ½ of NE ¼; N ½ of NW ¼; SE ¼ of NW¼; Lots 1, 2, 3, 4,	35	361.32

DOUGLAS COUNTY—Continued.

Township 21, *Range* 10.

	Section	Acres
E ½ of NE ¼; SE ¼ of SE ¼,	9	120.00
NE ¼; E ½ of NW ¼; S ½,	15	560.00
NE ¼,	21	160.00

Township 22, *Range* 10.

All,	1	745.76
S½; Lots 1 to 12, inclusive,	3	745.00
All,	9	640.00
All,	11	640.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; Lot 6,	13	356.66
SW ¼ of NE ¼; SE ¼ of NW ¼; NW ¼ of SW ¼; SE ¼ of SE ¼; Lots 1, 11, 12, 13, 14, 15,	15	401.07
All,	21	594.28
SW ¼ of NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; Lots 5 to 11, inclusive,	23	494.56
NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼,	25	240.00
All,	27	640.00
E ½; E ½ of W ½,	33	480.00
Lots 1, 2, 3, 4; S ½ of N ½; W ½ of SW ¼; N ½ of SE ¼,	35	479.20

Township 23, *Range* 10.

All,	1	952.09
Lot 1; SE ¼,	11	164.42

DOUGLAS COUNTY—Continued.

Township 23, *Range* 10—*Continued.*

	Section	Acres
NE ¼,	13	160.00
All,	23	640.00
All,	35	640.00
Total, Douglas County,		616,843.14

COOS COUNTY.

South of Base Line and West of Willamette Meridian.

Township 26, *Range* 9.

	Section	Acres
All,	5	647.00
All,	7	612.00
All,	9	640.00
All,	17	640.00
All,	19	614.00
All,	21	640.00
All,	29	640.00
N ½; SE ¼ of SW ¼; SE ¼,	31	507.00
All,	33	640.00

Township 27, *Range* 9.

All,	1	664.00
All,	3	672.00
All,	5	684.00
N ½,	7	322.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	641.36
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00

COOS COUNTY—Continued.

Township 27, *Range* 9—*Continued.*

	Section	Acres
All,	31	641.00
All,	33	640.00
All,	35	640.00

Township 24, *Range* 10.

All,	1	623.00
All,	3	587.00
Lot 1; SE ¼ of NE ¼; E ½ of SE ¼,	5	145.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
E ½,	17	320.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
E ½,	29	320.00
All,	33	640.00
All,	35	640.00

Township 25, *Range* 10.

All,	1	637.00
All,	3	634.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	5	597.00
E ½,	7	320.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of		

COOS COUNTY—Continued.

Township 25, *Range* 10—*Continued.*

	Section	Acres
SW ¼; S ½ of SW ¼; SE ¼,	9	400.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
E ½; NE ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	17	480.00
All,	19	821.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
NE ¼ of NE ¼; W ½ of E ½; W ½,	27	520.00
All,	29	640.00
All,	31	834.00
All,	33	640.00
All,	35	640.00

Township 26, *Range* 10.

All,	1	681.00
All,	3	683.00
All,	5	678.00
All,	7	690.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	687.00
N ½,	21	320.00

COOS COUNTY—Continued.

Township 26, *Range* 10—*Continued.*

	Section	Acres
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	692.00
All,	33	640.00
N ½; SW ¼,	35	480.00

Township 27, *Range* 10.

E ½ of NE ¼; SE ¼,	1	240.00
All,	3	644.00
All,	5	640.00
All,	7	717.00
N ½,	9	320.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	744.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	777.00
All,	33	640.00
All,	35	640.00

COOS COUNTY—Continued.

Township 29, *Range* 10.

	Section	Acres
Lots 6, 7, 10, 11,	7	160.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	21	640.00
N ½,	23	320.00
NE ¼,	25	160.00
NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	27	280.00
All,	29	640.00
All,	31	781.00
NW ¼ of SW ¼; S ½ of S ½,	33	200.00
SW ¼,	35	160.00

Township 30, *Range* 10.

All,	1	625.00
Lots 1, 2; NW ¼ of SW ¼; NE ¼ of SE ¼; S ½ of S ½,	3	313.00
All,	5	621.00
All,	7	798.00
N ½; SW ¼; E ½ of SE ¼,	9	560.00
N ½ of N ½; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	11	440.00
N½ of N½; NE¼ of SE¼,	13	200.00
S ½ of SW ¼; SW ¼ of SE ¼,	15	120.00
All,	17	640.00
All,	19	801.00
SE¼ of SW¼; E½,	21	360.00

COOS COUNTY—Continued.

Township 30, *Range* 10—*Continued.*

	Section	Acres
SE ¼ of SW ¼; SW ¼ of SE ¼,	23	80.00
N ½ of NE ¼; SE ¼ of NE ¼; SE ¼ of SE ¼,	25	160.00
E ½; S ½ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	27	520.00
NW ¼ of SW ¼; S ½ of SW ¼; NW ¼ of NE ¼; SE ¼ of NE ¼; E ½ of SE ¼; NW ¼,	29	440.00
NE ¼ of N E¼; S ½ of NE ¼; S E¼; Lots 1, 2, 3, 4, 6, 7,	31	519.00
NE ¼; E ½ of NW ¼; S ½,	33	560.00
NW¼ of NE¼; S½ of N½; S½,	35	520.00

Township 31, *Range* 10.

SE ¼ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	1	160.00
Lots 1, 2; N ½ of SE ¼; SE ¼ of SE ¼,	3	165.00
SE ¼ of SW ¼,	5	40.00
NE ¼; W ½ of SE ¼; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 12,	7	651.00
SE ¼ of NE ¼; NE ¼ of SE ¼,	9	80.00
SE ¼ of NE ¼; S ½ of SW ¼; W ½ of SE ¼,	13	200.00
SE ¼ of SW ¼,	17	40.00
Lots 4, 5, 7, 8, 9,	19	206.00
NW ¼ of NE ¼; NE ¼ of NW ¼; SW ¼ of SW ¼; NE ¼ of SE ¼; S ½ of		

COOS COUNTY—Continued.

Township 31, *Range* 10—*Continued.*

	Section	Acres
SE ¼,	21	240.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼,	23	160.00
E ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	27	360.00
S ½ of NE ¼,	29	80.00
Lots 8, 11,	31	80.00
E ½; N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼,	33	560.00
E ½ of NE ¼,	35	80.00

Township 26, *Range* 11.

Lots 1, 2; S ½ of NE ¼,	1	123.00
SE ¼,	23	160.00
All,	25	640.00
All,	35	640.00

Township 27, *Range* 11.

All,	13	672.00
Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16,	15	483.00
All,	23	616.00
All,	25	651.00
Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14,	27	452.00
All,	35	625.00

Township 29, *Range* 11.

All,	7	644.00
All,	9	645.00
Lots 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,	13	536.00

COOS COUNTY—Continued.

Township 29, *Range* 11—*Continued.*

	Section	Acres
All,	15	640.00
All,	17	640.00
N ½; SW ¼ of SW ¼ (or Lot 4); NE ¼ of SE ¼; SW ¼ of SE ¼,	19	444.00
All,	21	640.00
E ½ of NE ¼; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	23	360.00
Lots 1, 2, 5, 8, 9, 15, 16,	25	292.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; N½ of SE¼; SW¼ of SE¼,	27	400.00
S ½,	29	320.00
All,	31	633.00
NW ¼ of SW ¼; NE ¼ of S E¼; S ½ of S ½; W ½ of NW ¼,	33	320.00
NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	35	240.00

Township 30, *Range* 11:

E ½ of SW ¼; SE ¼,	3	240.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,,	5	600.00
N ½; SW ¼; N ½ of SE ¼,	7	554.00
W ½; NE ¼ of SE ¼; SW ¼ of SE ¼,	9	400.00
NW ¼ of SW ¼,	11	40.00
SE ¼ of NW ¼; S ½; NE ¼ of NE ¼,	15	400.00
S ½ of NE ¼; SE ¼ of NW ¼; NE ¼		

COOS COUNTY—Continued.

Township 30, *Range* 11—*Continued.*

	Section	Acres
of NE ¼,	17	160.00
SE ¼ of SW¼; SE ¼,	19	200.00
NE¼ of NE¼; S½ of NE¼; SE¼ of SW ¼; SE ¼,	21	320.00
N ½ of N ½; SE ¼ of NE ¼; SW ¼ of NW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	27	400.00
S ½ of N ½; S ½,	29	480.00
N ½; SE ¼,	31	479.00
NW ¼,	33	160.00

Township 31, *Range* 11.

SW ¼ of NE ¼; W ½,	1	359.00
All,	3	641.00
Lot 1,	5	40.00
SW ¼ of NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	7	200.00
E ½; SE ¼ of SW ¼,	9	360.00
All,	11	640.00
N ½ of N ½,	13	160.00
NE ¼; N ½ of NW ¼; S ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	15	440.00
NW ¼ of NE ¼; S ½ of NE ¼; SE ¼,	19	280.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; S ½ of S ½,	21	320.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	23	600.00

COOS COUNTY—Continued.

Township 31, *Range* 11—*Continued.*

	Section	Acres
NW ¼ of NE ¼; NW ¼; NW ¼ of SW ¼,	25	240.00
SE¼ of NW¼; NE¼ of SW¼; S½ of SW¼,	27	160.00
NE¼ of NE¼; S½ of NE¼; NW¼; SE ¼ of SW ¼; W ½ of SE ¼,	29	400.00
N ½ of NW ¼; SW ¼ of NW ¼,	33	120.00
NE ¼ of NE ¼; W ½ of SW ¼,	35	120.00

Township 28, *Range* 12.

NW ¼; N ½ of S ½; SE ¼ of SW ¼; SW ¼ of SE ¼,	35	400.00

Township 29, *Range* 12.

SE ¼ of SE ¼,	1	40.00
SE ¼ of SW ¼; SE ¼ of SE ¼,	11	80.00
NE ¼; NW ¼ of NW ¼; NW ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	13	360.00
E ½ of SE ¼,	15	80.00
E ½; E ½ of SW ¼,	23	400.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	25	240.00
NW ¼ of SE ¼; SE ¼ of SE ¼,	27	80.00
NW ¼ of SW ¼,	29	40.00
NW ¼ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; S ½ of SE ¼,	35	240.00

COOS COUNTY—Continued.

Township 30, *Range* 12.

	Section	Acres
All,	1	652.00
E ½ of SW ¼; SE ¼,	3	240.00
Lot 6,	5	2.00
NW ¼,	7	160.00
NE ¼ of NE ¼,	9	40.00
E ½; N ½ of NW ¼,	11	400.00
N ½,	13	320.00
SE ¼ of SE ¼,	19	40.00
SW¼ of NE¼; N½ of SW¼; SW¼ of SW ¼; NW ¼ of SE ¼,	25	200.00
W ½ of E ½; W ½,	29	480.00
Lots 2, 3, 4; NE ¼ of SE ¼; S ½ of SE ¼,	31	243.00
E ½ of NW ¼,	35	80.00

Township 31, *Range* 12.

Lots 1, 2, 5; S ½ of NW ¼,	3	146.00
SE ¼ of NE ¼; NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	5	439.00
S ½ of NE ¼; SW ¼ of NW ¼; SW ¼; N ½ of SE ¼,	7	356.00
SW ¼ of N W¼; NW ¼ of SW ¼,	9	80.00
Lots 2, 3,	11	52.00
SE ¼ of NE ¼; Lots 10, 11, 12, 14, 15, 16, 17, 18, 19,	13	110.00
NE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	15	320.00

COOS COUNTY—Continued.

Township 31, *Range* 12—*Continued.*

	Section	Acres
E ½; N ½ of SW ¼; SE ¼ of SW ¼,	17	440.00
All,	21	640.00
Lots 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16,	23	485.00
Lots 4, 5, 12,	25	126.00
All,	27	640.00
N ½ of NE ¼; N E¼ of NW ¼,	33	120.00
N ½ of NE ¼; SE ¼ of NE ¼; W ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	35	400.00

Township 30, *Range* 13.

N ½ of NW ¼; SW ¼; SW ¼ of SE ¼,	25	280.00
SW ¼ of NE ¼; NW ¼ of SE ¼; S ½ of SE ¼,	35	160.00

Township 31, *Range* 13.

Lots 1, 2, 3, 4; SE ¼,	1	318.00
Total, Coos County,		106,563.36

CURRY COUNTY.

South of Base Line and West of Willamette Meridian.

Township 34, *Range* 11.

	Section	Acres
All,	3	618.05
N ½; SW ¼; NE ¼ of SE ¼,	7	518.40
All,	9	540.77
All,	11	640.00
All,	15	640.00
SE ¼ of N E¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼; Lots 1, 4, 5, 7,	17	384.07
All,	19	571.38
All,	31	607.81

Township 35, *Range* 11.

SE ¼ of NE ¼; NE ¼ of NW ¼; E ½ of SE¼; Lots 1, 2, 3, 7, 8, 9, 10, 11, 12, 13,	7	455.78
All,	17	640.00
NE ¼ of NW ¼; NE ¼ of SW ¼; Lots 1, 2,	19	147.07
NE ¼; E ½ of SE ¼; Lot 5,	29	268.70

Township 31, *Range* 12.

N ½ of NW ¼; SW ¼ of NW ¼; SW ¼; W ½ of SE ¼,	19	356.00
SE ¼ of NW ¼; E ½ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	29	240.00

Township 35, *Range* 12.

E ½ of SE ¼; Lots 4, 5, 6,	13	136.61

CURRY COUNTY—Continued.

Township 31, *Range* 13.

	Section	Acres
N ½ of NE ¼; SW ¼ of NE ¼,	11	120.00
NE ¼ of NE ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	13	280.00
W ½ of NE ¼; NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	23	520.00
SE ¼ of NE ¼; S ½ of SW ¼; SW ¼ of SE ¼,	25	160.00
Total, Curry County,		7,844.64

JOSEPHINE COUNTY.

South of Base Line and West of Willamette Meridian.

Township 33, Range 5.

	Section	Acres
W ½ of SE ¼; SW ¼,	3	240.00
S ½ of S ½,	5	160.00
N ½ of NE ¼; NW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	7	338.68
N ½ of NE ¼; N ½ of SW ¼ of NE ¼; N½ of S½ of SW¼ of NE¼; NW ¼; N½ of SE¼ of NE¼; W½ of SW¼; S½ of SE¼; S½ of NE¼ of SE¼; S½ of N½ of NE¼ of SE¼; S½ of NW¼ of SE¼,	9	500.00
SW ¼ of NW ¼; SW ¼ of SW ¼; SW ¼ of SE ¼; Lots 4, 5,	11	140.15
SE ¼ of NE ¼; SW ¼ of NW ¼; S ½,	13	400.00
E ½ of SE ¼; E ½ of SW ¼ of NE ¼; W ½ of SW ¼; N W¼ of NE ¼ of NW ¼; E ½ of NE ¼ of NW ¼; S ½ of S ½ of SW ¼ of NW ¼; SW ¼ of SE ¼ of NW ¼; E ½ of SE ¼ of NW ¼; SE ¼ of NE ¼; E ½ of NE ¼ of NE ¼,	15	310.00
All,	17	640.00
N ½ of NE ¼; SE ¼ of NE ¼; E ½ of NW ¼; N ½ of SE ¼; Lots 1, 2, 8,	19	352.81
SE ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; Lots 1, 3,	21	314.13

JOSEPHINE COUNTY—Continued.

Township 33, Range 5—Continued.

	Section	Acres
All,	23	640.00
N ½; SW ¼; W ½ of NE ¼ of SE ¼; NW ¼ of SE ¼; S ½ of SE ¼,	25	620.00
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; S ½,	27	596.09
All,	31	593.82
All,	35	640.00

Township 34, Range 5.

N ½; N ½ of SE ¼,	3	407.20
N ½ of NW ¼; SW ¼ of NW ¼,	5	126.38
S ½ of NE ¼; SE ¼,	9	240.00
N ½ of NE ¼; SW ¼ of NE ¼; S ½ of SE ¼ of NW ¼; NE ¼ of SW ¼; SE ¼,	17	340.00
All,	19	612.00
All,	21	640.00
NE ¼; NW ¼ of NW ¼; W ½ of SW ¼; N ½ of SE ¼; E ½ of SE ¼ of NW ¼,	29	380.00
SW ¼; S ½ of SE ¼,	31	224.76
E ½; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼,	33	480.00
W ½ of NE ¼; NW ¼; S ½,	35	560.00

Township 35, Range 5.

NW ¼ of NE ¼; S ½ of NE ¼; W ½; SE ¼,	1	622.50

JOSEPHINE COUNTY—Continued.

Township 35, Range 5—Continued.

	Section	Acres
NE ¼ of NE ¼; S ½ of N ½; N ½ of SE¼; N½ of S½ of SE¼; SW¼	3	479.98
W ½ of NE ¼; W ½; NW ¼ of SE ¼,	5	439.52
All,	7	651.81
All,	9	640.00
All,	11	666.76
All,	13	640.00
All,	15	664.20
All,	17	645.61
NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; W ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	19	481.39
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; N ½ of SW ¼; N ½ of SW ¼ of SW ¼; SE ¼ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼; N ½ of SE ¼ of SE ¼,	21	580.34
All,	23	640.00
All,	25	640.00
N ½ of NE ¼; N ½ of SW ¼ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; SW ¼; N ½ of SE ¼ of NW ¼; SW ¼ of SE ¼,	27	400.00
S ½ of NE ¼ of NE ¼; S ½ of NE ¼; W ½ of E ½ of NE ¼ of NW ¼; W ½ of NE ¼ of NW ¼; NW ¼ of		

JOSEPHINE COUNTY—Continued.

Township 35, Range 5—Continued.

	Section	Acres
NW 1/4; S 1/2 of NW 1/4; S 1/2,	29	570.00
SE 1/4 of NW 1/4; SW 1/4; W 1/2 of SE 1/4; SE 1/4 of NE 1/4; SE 1/4 of SE 1/4,	31	360.20
N1/2; SE1/4; N1/2 of SW1/4; SE1/4 of SW 1/4,	33	624.36
NE1/4; E1/2 of NW1/4; S1/2,	35	560.00

Township 36, Range 5.

All,	1	638.40
All,	3	637.92
SE 1/4 of NE 1/4; N 1/2 of SE 1/4; SW 1/4 of NE 1/4,	5	160.00
NW 1/4 of NE 1/4; SW 1/4 of SW 1/4; NW 1/4 of SE 1/4,	7	122.00
W 1/2 of E 1/2; W 1/2,	9	480.00
NW 1/4 of NE 1/4; SE 1/4 of SW 1/4; NE 1/4 of SE 1/4; S 1/2 of SE 1/4,	11	200.00
All,	13	640.00
N 1/2 of SE 1/4 of NE 1/4,	15	20.00
S 1/2 of SE 1/4,	19	80.00
Lot 8; SE 1/4 of SE 1/4; N 1/2 of NE 1/4,	21	150.80
Lot 8; SE 1/4 of SW 1/4,	23	78.58
S 1/2 of SW 1/4; NW 1/4 of SE 1/4,	29	120.00
NE1/4; N1/2 of NW1/4; SE1/4 of NW1/4; N 1/2 of SE 1/4; SE 1/4 of SE 1/4,	31	404.14
SW 1/4 of NE 1/4; NE 1/4 of SE 1/4,	33	80.00

JOSEPHINE COUNTY—Continued.

Township 37, *Range* 5.

	Section	Acres
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	1	598.23
SE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; S ½,	5	477.63
NE ¼; W ½,	7	500.74
N ½; SW ¼; E ½ of SE ¼; E ½ of NW ¼ of SE ¼,	9	580.00
All,	13	640.00
N ½; SW ¼; N ½ of NE ¼ of SE ¼; SW ¼ of NE ¼ of SE ¼; W ½ of SE ¼; W ½ of SE ¼ of SE ¼,	15	610.00
All,	17	640.00
N ½ of SW ¼; SW ¼ of SW ¼,	19	129.84
NW ¼ of NE ¼; NE ¼ of NW ¼,	21	80.00
All,	23	640.00
SW ¼ of NE ¼; E ½ of NE ¼ of NW ¼; NW ¼ of NW ¼; NE ¼ of SW ¼ of NW ¼; W ½ of W ½ of SW ¼,	25	150.00
E ½ of NE ¼,	27	80.00
E ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	29	480.00
All,	31	657.20
N ½ of NE ¼; S ½ of SW ¼,	33	160.00

Township 38, *Range* 5.

All,	3	647.40

JOSEPHINE COUNTY—Continued.

Township 38, Range 5—Continued.

	Section	Acres
All,	9	640.00
N ½ of NE ¼; NW ¼ of NW ¼; NE ¼ of SW ¼; SW ¼ of SW ¼,	11	200.00
E ½ of NW ¼; NE ¼ of SW ¼; SE ¼,	13	280.00
SE ¼ of NE ¼; N½ of NW¼; SE¼ of NW ¼; E ½ of SW ¼ of SW ¼; E ½ of SE ¼ of SW ¼; NE ¼ of SE ¼; NW ¼ of SW ¼,	15	280.00
NW ¼ of NE ¼ of NE ¼; S ½ of NE ¼ of NE ¼; NW ¼ of NE ¼; S ½ of NE ¼; SW ¼ of SW ¼; W ½ of NW ¼ of SW ¼; W ½ of E ½ of NW ¼ of SW ¼; NE ¼ of SE ¼,	21	260.00
NE ¼ of NE ¼; S ½ of SW ¼; SE ¼ of SE ¼,	25	160.00
All,	29	640.00
All,	31	658.60
N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	33	280.00
E ½,	35	320.00

Township 39, Range 5.

All,	1	640.00
NW ¼ of NE ¼; W ½; SE ¼ of SE ¼,	7	412.38
All,	9	640.00
S ½ of NE ¼; SE ¼ of NW ¼; E ½ of		

JOSEPHINE COUNTY—Continued.

Township 39, *Range* 5—*Continued.*

	Section	Acres
SW ¼; SE ¼,	11	360.00
All,	13	640.00
SE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	15	480.00
All,	17	640.00
All,	19	654.12
All,	21	640.00
N ½; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	23	600.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	634.64
All,	33	615.62
All,	35	618.02

Township 33, *Range* 6.

SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	1	280.00
S ½ of S ½,	9	160.00
N ½ of NW ¼; W ½ of SE ¼,	11	160.00
S ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	13	360.00
N ½; NW ¼ of SW ¼,	15	360.00
All,	17	640.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	19	593.48
S ½ of NE ¼; NW ¼ of NW ¼; S ½ of		

JOSEPHINE COUNTY—Continued.

Township 33, *Range* 6—*Continued.*

	Section	Acres
SW ¼; SE ¼,	21	360.00
NE ¼; S ½ of NW ¼; S ½ of SE ¼,	23	320.00
SE ¼ of NW ¼; NE ¼ of SW ¼; SE ¼ of SW ¼; W ½ of SE ¼,	25	200.00
W ½ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	27	522.92
All,	29	640.00
N ½ of NE ¼; NE ¼ of NW ¼,	31	120.00
N ½; N ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	33	520.00
E ½ of NE ¼; SW ¼ of NW ¼; W ½ of SW ¼; E ½ of SE ¼,	35	280.00

Township 34, *Range* 6.

N ½; N ½ of SE ¼,	1	402.64
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; N ½ of SW ¼,	3	364.65
S ½ of NE ¼; W ½,	7	394.04
SE ¼ of SE ¼,	9	40.00
SE ¼ of SW ¼; SE ¼,	11	200.00
W ½ of E ½; SE ¼ of SE ¼; W ½,	13	521.71
E ½; E ½ of SW ¼,	15	400.00
NW ¼ of NE ¼; W ½,	17	360.00
All,	19	634.60
NE ¼ of NE ¼; S ½ of N ½; NW ¼ of SW ¼; N ½ of SE ¼,	21	320.00
E ½; S ½ of SW ¼,	23	400.00

JOSEPHINE COUNTY—Continued.

Township 34, *Range* 6—*Continued.*

	Section	Acres
All,	25	640.00
SE ¼ of NE ¼; N ½ of SE ¼; SW ¼ of SE ¼,	27	160.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; SW ¼ of SW ¼; NE ¼ of SW ¼,	29	360.00
All,	31	636.40
E ½ of NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	33	360.00
Lots 1, 2, 5,	35	95.47

Township 35, *Range* 6.

E ½; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	1	573.98
SW ¼ of NE ¼; NW ¼; E ½ of SW ¼; SW ¼ of SW ¼; SW ¼ of SE ¼,	3	371.10
S ½ of NE ¼; NW ¼ of SW ¼; SE ¼ of SW ¼; SE ¼,	5	320.00
N ½; N ½ of S ½; SW ¼ of SW ¼,	7	517.22
N ½; NW ¼ of SE ¼; SE ¼ of SE ¼,	9	400.00
NE ¼; NE ¼ of SW ¼; S ½ of SW ¼; NE ¼ of SE ¼,	11	320.00
E ½; N ½ of NW ¼; SE ¼ of NW ¼; E ½ of SW ¼,	13	520.00
NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of N ½; SE ¼,	15	400.00
NW ¼ of NW ¼; SE ¼ of SE ¼,	17	80.00
E ½; N ½ of NW ¼; NE ¼ of SW ¼,	19	439.94

JOSEPHINE COUNTY—Continued.

Township 35, Range 6—Continued.

	Section	Acres
NE ¼ of NE ¼; NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	21	200.00
S ½ of NE ¼,	23	80.00
NE ¼ of NE ¼; SE ¼ of NW ¼; SE ¼ of SW ¼,	25	120.00
SW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	27	480.00
N ½; SE ¼,	29	480.00
NE ¼ of NE ¼; SW ¼ of NE ¼; W ½; NW ¼ of SE ¼,	31	443.96
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; SE ¼ of SW ¼; SE ¼,	33	480.00

Township 36, Range 6.

N ½; N ½ of SW ¼; SE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	1	560.14
N ½; SW ¼; S ½ of SE ¼,	3	561.88
S ½ of N ½; NE ¼ of NW ¼; S ½,	5	521.08
N ½ of NE ¼; W ½ of NW ¼; W ½ of SW ¼; S ½ of SE ¼,	7	310.90
N ½; W ½ of SW ¼; E ½ of SE ¼,	9	480.00
NW ¼ of NE ¼; NW ¼,	11	200.00
N ½ of NE ¼; NW ¼,	17	240.00
N ½ of SW ¼; SE ¼; Lots 5, 10, 11,	21	277.07
SW ¼ of NE ¼; W ½; SW ¼ of SE ¼,	23	400.00
W ½ of NE ¼; W ½ of NW ¼; SE ¼ of NW ¼; S ½,	25	520.00

JOSEPHINE COUNTY—Continued.

Township 36, Range 6—Continued.

	Section	Acres
NW ¼ of NE ¼; SE ¼ of NE ¼; W ½ of NW ¼; S ½,	27	480.00
NW ¼ of NE ¼; S ½ of NE ¼; NE ¼ of NW ¼; E ½ of SE ¼,	29	240.00
NW ¼ of NW ¼; S ½ of NW ¼,	31	114.64
NE ¼; N ½ of NW ¼; NE ¼ of SE ¼,	33	280.00
E ½ of NE ¼,	35	80.00

Township 37, Range 6.

E ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; W ½ of SW ¼; NE ¼ of SE ¼,	1	319.16
E ½; S ½ of SW ¼,	3	398.30
SW ¼ of NW ¼; E ½ of SW ¼; SW ¼ of SE ¼,	5	160.00
NW ¼ of NW ¼; S ½ of NW ¼; SW ¼; SW ¼ of SE ¼,	7	301.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	9	600.00
N ½ of NW ¼; S ½ of SW ¼; E ½ of SE ¼; NW ¼ of SW ¼,	11	280.00
NE ¼ of SE ¼; S ½ of SE ¼; NW ¼ of NE ¼; SW ¼ of NW ¼,	13	200.00
N ½; SE ¼,	15	480.00
NW ¼ of NW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	17	120.00
NW ¼; S ½,	21	480.00

JOSEPHINE COUNTY—Continued.

Township 37, Range 6—Continued.

	Section	Acres
W ½ of NE ¼; W ½; N ½ of SE ¼; SW ¼ of SE ¼,	23	520.00
NE ¼; NW ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	25	440.00
All,	35	640.00

Township 38, Range 6.

All,	1	742.40
All,	3	732.48
All,	5	732.44
All,	7	644.92
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	643.08
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	645.36
All,	33	640.00
All,	35	640.00

JOSEPHINE COUNTY—Continued.

Township 39, *Range* 6.

	Section	Acres
All,	1	656.00
All,	3	679.40
Lots 1, 2, 3, 4,	5	197.60
S ½ of S ½,	7	181.15
All,	9	640.00
All,	11	640.00
All,	13	686.72
All,	15	640.00
All,	17	640.00
All,	19	726.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	729.28
All,	33	640.00
All,	35	640.00

Township 33, *Range* 7.

S ½,	13	320.00
All,	15	640.00
All,	21	640.00
All,	23	640.00
NE ¼; W ½; N ½ of SE ¼; SW ¼ of SE ¼,	25	600.00
NE ¼ of NE ¼; S ½ of NE ¼; E ½ of		

JOSEPHINE COUNTY—Continued.

Township 33, Range 7—Continued.

	Section	Acres
SW ¼; SE ¼,	27	360.00
All,	29	640.00
NE ¼; W ½ of W ½; E ½ of SE ¼,	31	399.20
NE ¼ of NE ¼; W ½ of NW ¼; N ½ of SW ¼; SE ¼,	33	360.00
S ½ of NE ¼; W ½; N ½ of SE ¼; SE ¼ of SE ¼,	35	520.00

Township 34, Range 7.

N ½ of N ½ of NE ¼ of NE ¼; W ½ of E ½; W ½,	1	493.05
All,	3	648.80
W ½ of NE ¼; NW ¼; S ½,	5	568.10
All,	7	652.92
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
E ½; NE ¼ of NW ¼; S ½ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	19	561.33
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	632.60

JOSEPHINE COUNTY—Continued.

Township 34, Range 7—Continued.

	Section	Acres
All,	33	640.00
All,	35	640.00

Township 35, Range 7.

All,	1	666.68
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	621.88
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; Lots 7, 9; N ½ of Lot 8,	5	422.36
SE ¼ of NE ¼; NW ¼; S ½,	7	519.20
All,	9	632.24
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	11	400.00
N ½,	13	320.00
All,	15	640.00
All,	17	640.00
All,	19	640.28
All,	21	640.00
W ½ of NE ¼; SE ¼ of SE ¼; Lot 8,	25	188.80
NE ¼ of NE ¼; W ½ of E ½; SE ¼ of SE ¼; W ½,	27	560.00
All,	29	640.00
All,	31	641.99
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	33	600.00
NW ¼ of NE ¼; NW ¼; Lots 1, 8, 9,	35	283.27

JOSEPHINE COUNTY—Continued.

Township 36, Range 7.

	Section	Acres
N ½ of NE ¼; S ½ of NW ¼; SE ¼; N ½ of SW ¼; SE ¼ of NE ¼,	1	439.99
Lots 3, 6, 7, 8; W ½ of NW ¼ of NW ¼; NE ¼ of SW ¼,	11	153.12
Lots 11, 12,	13	4.72
SW ¼ of NW ¼; SW ¼,	23	200.00
SW ¼ of NW ¼; S ½,	25	360.00

Township 37, Range 7.

NW ¼ of NE ¼; N ½ of NW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	1	240.10
All,	3	640.72
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	5	607.04
N ½; N ½ of SW ¼; SE ¼,	7	561.41
N ½; N ½ of S ½; SE ¼ of SW ¼; SE ¼ of SE ¼,	9	560.00
NE ¼; SE ¼ of NW ¼; SW ¼; W ½ of SE ¼,	11	440.00
All,	13	660.48
W ½ of NE ¼; NW ¼; S ½,	15	568.92
E ½ of NE ¼; NW ¼ of NW ¼; E ½ of SW ¼; SE ¼,	17	360.00
S ½ of NE ¼; W ½; SE ¼,	19	561.16
All,	21	640.40
All,	23	640.00
All,	27	640.00

JOSEPHINE COUNTY—Continued.

Township 37, Range 7—Continued.

	Section	Acres
All,	29	640.00
E ½; NE ¼ of SW ¼; S ½ of SW ¼,	31	439.54
N ½; SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	33	600.00
All,	35	640.00

Township 38, Range 7.

All,	3	641.56
All,	5	643.92
N ½ of N ½; SE ¼ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼; Lot 4,	7	313.48
W ½ of NW ¼; Lots 1, 2, 3, 4, 5,	9	241.13
All,	11	640.00
E ½ of NE ¼; Lots 2, 3, 4; S ½,	13	482.86
N ½ of NE ¼; S ½,	15	400.00
Lots 1, 2, 5; SW ¼; E ½ of SE ¼,	17	298.41
W ½; Lots 1, 2, 3, 4, 5, 6, 7, 8,	19	443.23
NE ¼; NE ¼ of NW ¼; W ½ of SW ¼; E ½ of SE ¼,	21	360.00
All,	27	640.00
N ½ of SW ¼; SE ¼ of SW ¼,	29	120.00
All,	31	649.26

Township 39, Range 7.

NW ¼,	19	166.83
NE ¼ of NE ¼; S ½ of NE ¼; W ½ of NW ¼; NW ¼ of SW ¼; N ½ of SE ¼,	21	320.00

JOSEPHINE COUNTY—Continued.

Township 39, Range 7—Continued.

	Section	Acres
E ½; E ½ of W ½,	27	480.00
N ½ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼,	29	200.00

Township 40, Range 7.

N ½,	3	319.01
N ½ of SW ¼; SW ¼ of SW ¼; N ½ of SE ¼ of SW ¼; SW ¼ of SE ¼ of SW ¼,	5	150.00
W ½ of NW ¼; N ½ of SW ¼; NW ¼ of SE ¼; Lots 1, 2,	7	245.91
NE ¼; S ½,	11	480.00

Township 32, Range 8.

S ½ of NE ¼; NW ¼; S ½,	31	560.42

Township 37, Range 8.

All,	1	681.64
All,	3	677.00
NE ¼; N ½ of NW ¼; N ½ of SE ¼,	5	351.80
All,	7	630.40
All,	9	640.00
All,	11	640.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	13	600.00
All,	15	640.00
All,	17	640.00
All,	19	633.20
All,	21	640.00

JOSEPHINE COUNTY—Continued.

Township 37, Range 8—Continued.

	Section	Acres
All,	23	640.00
E ½ of NE ¼; W ½ of NW ¼; E ½ of SW ¼; W ½ of SE ¼,	25	320.00
All,	27	629.64
All,	29	640.00
All,	31	630.41
All,	33	640.00
W ½ of NW ¼; E ½ of SE ¼,	35	160.00

Township 38, Range 8.

S ½ of SE ¼,	1	80.00
W ½ of NE ¼; W ½,	3	403.73
NW ¼ of NE ¼; NW ¼; SW ¼; W ½ of SE ¼,	9	440.00
S ½ of N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	13	440.00
W ½ of W ½; E ½ of SE ¼,	15	240.00
W ½ of NE ¼; S ½ of SW ¼; SE ¼,	23	320.00
All,	25	640.00
E ½; E ½ of NW ¼; SW ¼,	27	560.00
Lot 1,	33	29.72
All,	35	640.00

Township 39, Range 8.

All,	1	641.52
All,	3	645.28
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼ of SE ¼; W ½,	5	486.20

JOSEPHINE COUNTY—Continued.

Township 39, *Range* 8—*Continued.*

	Section	Acres
All,	7	614.84
NE ¼ of SW ¼; Lots 5, 6,	9	80.02
All,	11	640.00
All,	13	640.00
SE ¼ of N E¼; NW ¼ of NW ¼; NE ¼ of SE ¼; N ½ of NE ¼,	15	200.00
N ½ of NE ¼; SE ¼ of NE ¼; SW ¼ of SE ¼; W ½,	17	480.00
All,	19	618.02
N ½ of NE ¼; SW ¼ of NE ¼; SW ¼ of NW ¼; SW ¼; E ½ of SE ¼,	21	400.00
N ½; S ½ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	23	480.00
NW ¼ of NE ¼; N ½ of NW ¼,	25	120.00
N ½ of NW ¼; SW ¼ of NW ¼; NE ¼ of SE ¼; NW ¼ of NE ¼; SE ¼ of NE ¼,	27	240.00
All,	29	640.00
NE ¼ of NE ¼; W ½ of E ½; W ½,	31	502.26
E ½; E ½ of W ½,	33	480.00
SW ¼ of SW ¼; Lots 6, 7, 8, 9, 10,	35	148.68

Township 40, *Range* 8.

SE ¼ of SW ¼; SW ¼ of SE ¼; Lots 1, 7, 8, 9,	1	131.25
All,	3	640.70
NE ¼; E ½ of SE ¼; Lots 1, 2, 3, 4, 5, 6,		

JOSEPHINE COUNTY—Continued.

Township 40, *Range* 8—*Continued.*

	Section	Acres
7,	5	338.03
E ½ of NE ¼; SW ¼ of NW ¼; S ½; Lots 1, 2, 3, 4, 5,	7	536.12
N ½; SW ¼; W ½ of NE ¼ of SE ¼; W ½ of SE ¼; W ½ of SE ¼ of SE ¼,	9	600.00
E ½ of E ½; SW ¼ of NW ¼; W ½ of SW ¼,	11	280.00
Lot 3; NW ¼ of SE ¼; S ½ of SE ¼,	13	129.77
NE ¼; E ½ of NW ¼; E ½ of W ½ of NW ¼; E ½ of SE ¼,	15	360.00
W ½ of E ½; SE ¼ of NE ¼; W ½,	17	520.00
NW ¼ of NE ¼; W ½ of SW ¼; E ½ of SE ¼ of SE ¼,	21	140.00
S ½ of SE ¼ of NE ¼; W ½ of W ½; Lots 1, 7,	23	221.64

Township 40, *Range* 9.

N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼; Lot 1,	1	630.76
NE ¼,	13	160.00
Total, Josephine County,		167,480.98

JACKSON COUNTY.

South of Base Line and East of Willamette Meridian.

Township 32, *Range* 1.

	Section	Acres
All,	3	641.80
All,	5	637.88
All,	7	675.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	674.28
All,	21	640.00
E ½ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; SE ¼,	23	360.00
All,	25	640.00
E ½ of NE ¼; NW ¼ of NW ¼; SE ¼ of NW ¼; E ½ of SW ¼; SE ¼,	27	400.00
All,	29	640.00
N ½ of NE ¼; NW ¼ of SW ¼; NE ¼ of NW ¼,	31	168.17
NW ¼; W ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	33	360.00
All,	35	640.00

Township 33, *Range* 1.

All,	1	639.40
All,	3	641.28
SW ¼ of NE ¼; W ½; NW ¼ of SE		

JACKSON COUNTY—Continued.

Township 33, Range 1—Continued.

	Section	Acres
1/4; S 1/2 of SE 1/4,	5	477.42
E 1/2 of NE 1/4; S 1/2 of NW 1/4; NE 1/4 of SW 1/4; S 1/2 of SW 1/4; SE 1/4,	7	446.68
NE 1/4; E 1/2 of NW 1/4; S 1/2,	9	560.00
All,	11	640.00
N 1/2 of N 1/2; SE 1/4 of NE 1/4; SW 1/4 of NW 1/4; NW 1/4 of SW 1/4; S 1/2 of S 1/2	13	440.00
All,	15	640.00
SW 1/4 of NE 1/4; NW 1/4; N 1/2 of SW 1/4; SW 1/4 of SW 1/4; NW 1/4 of SE 1/4	17	360.00
NE 1/4; W 1/2; N 1/2 of SE 1/4; SW 1/4 of SE 1/4,	19	607.58
All,	21	640.00
W 1/2 of E 1/2; SE 1/4 of SE 1/4; W 1/2,	23	520.00
NE 1/4; W 1/2; N 1/2 of SE 1/4,	27	560.00
All,	29	640.00
NE 1/4; S 1/2 of NW 1/4; S 1/2,	31	561.47
E 1/2; N 1/2 of NW 1/4; S 1/2 of SW 1/4,	33	480.00
All,	35	640.00

Township 34, Range 1.

E1/2 of NE1/4; W1/2 of NW1/4; S1/2,	3	479.35
All,	5	636.54
All,	7	637.48
All,	9	640.00
E 1/2; N 1/2 of NW 1/4; S 1/2 of SW 1/4,	11	480.00
N 1/2 of NE 1/4; NW 1/4; W 1/2 of SW 1/4,	13	320.00

JACKSON COUNTY—Continued.

Township 34, *Range* 1—*Continued.*

	Section	Acres
All,	15	640.00
All,	17	640.00
All,	19	636.20
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; SE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	21	440.00
NE ¼ of NE ¼; S ½ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	23	520.00
E ½; E ½ of NW ¼; SW ¼ of SW ¼,	25	440.00
N ½; E ½ of SW ¼; SW ¼ of SE ¼,	27	440.00
W ½ of E ½; NE ¼ of SE ¼; W ½,	29	520.00
All,	31	640.44
NE ¼; SE ¼ of NW ¼; SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	33	480.00
All,	35	640.00

Township 35, *Range* 1.

N ½ of N ½; SE ¼ of NE ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SW ¼; E ½ of SE ¼,	1	440.04
All,	3	643.60
All,	5	642.86
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	7	565.80
All,	9	640.00
NE ¼ of NW ¼; W ½ of W ½; NE ¼		

JACKSON COUNTY—Continued.

Township 35, Range 1—Continued.

	Section	Acres
of SW ¼; S ½ of SE ¼,	11	320.00
N ½; SW ¼; E ½ of SE ¼,	13	560.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; SW ¼,	15	440.00
All,	17	640.00
N ½; NE ¼ of SE ¼,	19	363.20
All,	21	640.00
SW ¼ of NE ¼; W ½; SW ¼ of SE ¼,	23	400.00
All,	25	640.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	27	600.00
NE ¼,	29	160.00
SW ¼ of NW ¼; Lot 2,	31	77.74
E ½ of NE ¼; W ½ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	33	440.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	35	600.00

Township 36, Range 1.

E ½; NW ¼ of NW ¼; SE ¼ of SW ¼,	1	399.94
NE ¼; N ½ of SE ¼,	3	240.69
N ½ of NE ¼,	5	79.44
E ½ of NE ¼; Lot 3,	7	102.08
W ½ of NE ¼; S ½ of NW ¼; SW ¼,	9	320.00
E ½ of NE ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	11	160.00

JACKSON COUNTY—Continued.

Township 36, *Range* 1—*Continued.*

	Section	Acres
S ½ of SW ¼,	13	80.00
NW ¼ of NE ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of SE ¼,	15	200.00
E ½; E ½ of NW ¼; NE ¼ of SW ¼; SW ¼ of SW ¼,	17	480.00
E ½ of E ½; SW ¼ of SE ¼; NW ¼ of NE¼; W½,	21	560.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	23	600.00
NE ¼; W ½ of NW ¼; S ½,	25	560.00
NW ¼ of NW ¼; S ½ of N ½; N ½ of S ½; SW ¼ of SW ¼; SE ¼ of SE ¼,	27	440.00
SW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; S ½ of SE ¼,	29	240.00
N ½; W ½ of SW ¼; NE ¼ of SE ¼,	33	440.00
All,	35	640.00

Township 37, *Range* 1.

N ½ of NE ¼; NW ¼; SE ¼ of SW ¼; W ½ of SE ¼,	1	359.26
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; SW ¼ of NW ¼; SW ¼,	3	359.31
N ½ of NE ¼; SW ¼ of NW ¼; SW ¼; SW ¼ of SE ¼,	5	320.19
NE ¼; NE ¼ of NW ¼; NE ¼ of SW ¼,	7	240.00
E ½ of NE ¼; W ½ of NW ¼; NW ¼		

JACKSON COUNTY—Continued.

Township 37, Range 1—Continued.

	Section	Acres
of SW ¼; S ½ of SW ¼; NE ¼ of SE ¼,	9	320.00
All,	11	640.00
All,	13	640.00
SE ¼ of NW ¼; NE ¼ of SE ¼,	15	80.00
E ½; E ½ of W ½,	17	480.00
SW ¼ of NE ¼; NW ¼; W ½ of SW ¼,	19	288.06
E ½; NW ¼ of SW ¼; S ½ of SW ¼,	21	440.00
NE ¼; SW ¼ of NW ¼; SW ¼; NE ¼ of SE ¼,	23	400.00
NE ¼ of NE ¼; NW ¼; N ½ of SW ¼; NW ¼ of SE ¼	25	320.00
N ½ of NE ¼; NW ¼; SE ¼ of SW ¼; SE ¼ of SE ¼,	27	320.00
SW¼ of NE¼; NW¼ of SW¼; S½ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	31	246.19
W ½ of NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; W ½ of SE ¼,	33	280.00
NE ¼; E ½ of NW ¼; W ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	35	440.00

Township 38, Range 1.

NW ¼; S ½ of SW ¼; W ½ of SE ¼,	1	319.11
NE ¼ of NW ¼; SW ¼ of NW ¼,	3	79.08
NW ¼ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; N ½ of SW		

JACKSON COUNTY—Continued.

Township 38, *Range* 1—*Continued.*

	Section	Acres
¼; SW ¼ of SW ¼,	5	318.83
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼,	11	280.00
E ½; E ½ of W ½,	13	480.00
SW ¼ of NE ¼; NW ¼ of SE ¼,	15	80.00
SW ¼ of NW ¼,	31	43.32

Township 39, *Range* 1.

W ½ of NE ¼,	7	80.00
W ½ of NW ¼; NW ¼ of SW ¼,	17	120.63
All,	19	642.40
NE ¼; E ½ of NW ¼; E ½ of SW ¼; N ½ of SE ¼; SW ¼ of SE ¼; W ½ of SE ¼ of SE ¼,	21	460.00
SW ¼ of SW ¼,	25	40.00
NE ¼,	27	160.00

Township 40, *Range* 1.

Lot 3,	1	37.27
All,	19	682.12
All,	21	640.00
All,	27	640.00
All,	29	640.00
All,	31	687.20

Township 41, *Range* 1.

All,	1	640.76
Lot 1,	13	38.20

JACKSON COUNTY—Continued.

Township 32, *Range* 2.

	Section	Acres
All,	19	633.38
E ½ of NE ¼; W ½ of NW ¼; S ½,	29	480.00
All,	31	629.44
SW ¼ of NE ¼; W ½ of SE ¼; W ½,	33	440.00

Township 33, *Range* 2.

SW ¼ of SW ¼,	1	40.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	3	602.68
All,	5	644.70
NW ¼ of NW ¼; S ½ of NW ¼; SW ¼; SW ¼ of SE ¼,	7	314.40
N ½; NE ¼ of SW ¼; S ½ of SW ¼; NW ¼ of SE ¼,	9	480.00
S ½; S ½ of NE ¼,	11	400.00
All,	13	640.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	15	600.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	17	280.00
NW ¼ of NE ¼; S ½ of NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; SE ¼ of SW ¼; SW ¼ of SE ¼,	19	320.28
NE ¼; N ½ of S ½; SE ¼ of SE ¼,	21	360.00
All,	23	640.00
All,	25	640.00

JACKSON COUNTY—Continued.

Township 33, Range 2—Continued.

	Section	Acres
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	27	600.00
SE ¼ of NW ¼; NE ¼,	29	200.00
NW ¼ of NE ¼; S ½ of NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼; Lots 3, 4, 5, 6, 7,	31	531.07
E ½ of NE ¼; SE ¼,	33	236.07
All,	35	625.00

Township 34, Range 2.

N ½ of NE ¼; SE ¼ of NE ¼; NW ¼; N ½ of SW ¼,	5	364.22
S ½ of SW ¼; SW ¼ of SE ¼,	7	121.10
All,	9	640.00
N ½ of NE ¼; SE ¼ of NE ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; S ½ of S ½; NE ¼ of SE ¼,	17	400.00
All,	19	640.58
All,	21	640.00
NE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; N ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	29	360.00
SW ¼,	31	159.78
N ½ of NE ¼; SE ¼ of NE ¼; E ½ of SW ¼,	33	200.00
All,	35	640.00

JACKSON COUNTY—Continued.

Township 35, Range 2.

	Section	Acres
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	1	584.35
N ½; N ½ of S ½,	3	469.74
SW ¼ of NE ¼; W ½; NW ¼ of SE ¼; S ½ of SE ¼,	7	477.60
SE ¼ of NW ¼; W ½ of SW ¼,	9	120.00
NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	13	600.00
NE ¼ of NE ¼; S ½ of N ½; S ½,	15	520.00
All,	17	640.00
N ½; SE ¼,	19	475.09
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
SE ¼ of NE ¼; NW ¼; S ½,	29	520.00
All,	31	621.92
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; S ½,	33	600.00
All,	35	640.00

Township 36, Range 2.

All,	1	640.96
All,	3	642.52
N ½ of NE ¼; SW ¼ of NE ¼; E ½ of NW ¼; S ½ of SE ¼,	5	280.89
W½ of NE¼; NW¼; N½ of SW¼,	7	319.50

JACKSON COUNTY—Continued.

Township 36, Range 2—Continued.

	Section	Acres
N ½; SW ¼; S ½ of SE ¼,	9	560.00
All,	11	640.00
All,	13	640.00
E ½ of NE ¼; SE ¼; W ½ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼,	15	440.00
N ½ of N ½,	17	160.00
S ½ of SW ¼,; SW ¼ of SE ¼,	19	120.05
NW ¼ of NW ¼,	21	40.00
N ½; NE ¼ of SW ¼; NW ¼ of SE ¼,	23	400.00
All,	25	640.00
S ½ of NW ¼; SW ¼,	29	240.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	31	601.26
All,	35	641.24

Township 37, Range 2.

All,	1	640.48
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of SE ¼,	3	165.57
All,	5	658.92
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; S ½,	7	479.41
NW ¼ of NW ¼; S ½ of NW ¼; S ½,	9	440.00
N ½ of NE ¼; NE ¼ of NW ¼; SW ¼ of SW ¼; SE ¼ of NE ¼,	11	200.00
S ½,	13	320.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of		

JACKSON COUNTY—Continued.

Township 37, Range 2—Continued.

	Section	Acres
NW ¼; SE ¼ of SW ¼; SE ¼,	15	360.00
All,	17	640.00
E ½; E ½ of W ½; Lot 4,	19	521.06
E ½ of NE ¼; W ½ of NW ¼; S ½,	21	480.00
All,	23	640.00
All,	25	640.00
N ½; SE ¼ of SW ¼; SE ¼,	27	520.00
All,	29	640.00
E ½; NE ¼ of NW ¼,	31	360.00
NE ¼ of NE ¼; S ½ of N ½; S ½,	33	520.00
All,	35	640.00

Township 38, Range 2.

NW ¼; S ½,	1	479.28
All,	3	639.92
N ½; SW ¼ of SW ¼; SE ¼ of SE ¼,	5	403.84
All,	7	641.03
All,	9	640.00
N ½ of NE ¼; SW ¼ of NE ¼; W ½; S ½ of SE ¼,	11	520.00
All,	13	640.00
All,	15	640.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	17	600.00
SW ¼,	19	161.28
NW ¼ of NE ¼; SW ¼ of SW ¼; W ½ of SE ¼,	21	160.00

JACKSON COUNTY—Continued.

Township 38, *Range* 2—*Continued.*

	Section	Acres
E ½ of NE ¼; N ½ of NW ¼,	23	160.00
NW ¼ of NE ¼; S ½ of N ½; N ½ of SE ¼; SE ¼ of SE ¼,	25	320.00
NW ¼ of NE ¼; NW ¼; SE ¼ of SW ¼,	27	240.00
SW ¼,	29	160.00
SE ¼ of NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	31	120.00
E ½ of W ½; NW ¼ of SW ¼; SW ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	33	360.00
E ½ of SW ¼,	35	80.00

Township 39, *Range* 2.

W ½ of E ½; S ½ of NW ¼; SW ¼,	1	400.50
All,	3	641.86
SW ¼ of NW ¼,	5	40.00
Lot 8,	7	3.00
NE ¼ of NE ¼; S ½ of NE ¼; NE ¼ of SE ¼,	9	160.00
NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of N ½; N ½ of SW ¼; SE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	11	480.00
NW ¼ of NE ¼; S ½ of NE ¼; W ½; NE ¼ of SE ¼; S ½ of SE ¼,	18	560.00
NE ¼ of NE ¼; S ½ of NE ¼; N ½ of		

JACKSON COUNTY—Continued.

Township 39, Range 2—Continued.

	Section	Acres
NW ¼; SE ¼ of NW ¼; W ½ of SW ¼,	15	320.00
W ½ of SE ¼; SE ¼ of SW ¼,	21	120.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of SW ¼; SW ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	25	320.00
N ½ of NE ¼; NW ¼; NE ¼ of SE ¼,	27	280.00
Lot 1,	31	9.58
E ½ of SW ¼; SE ¼; NE ¼ of NW ¼,	33	280.00
N ½ of N ½; SE ¼ of NE ¼; NE ¼ of SE ¼,	35	240.00

Township 40, Range 2.

SW ¼ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; SE ¼,	1	320.00
SE ¼ of NE ¼; NE ¼ ofSE ¼,	7	80.00
NE ¼; NE ¼ of NW ¼; NE ¼ of SW ¼; W ½ of W ½; N ½ of SE ¼; SE ¼ of SE ¼,	18	520.00
NE ¼; NE ¼ of NW ¼; E ½ of SE ¼,	17	297.12
S ½,	19	318.20
E ½ of NE ¼,	28	80.00
All,	25	640.00
E ½ of E ½; SW ¼ of SE ¼; Lots 2, 3,	31	249.92

Township 41, Range 2.

All,	1	648.56
All,	3	642.52

JACKSON COUNTY—Continued.

Township 41, *Range* 2—*Continued.*

	Section	Acres
All,	5	645.12
All,	7	648.00
All,	9	640.00
All,	11	640.00
N ½ of N ½,	13	85.86
N ½,	15	181.70
N ½,	17	248.26

Township 33, *Range* 3.

Lots 3, 4,	7	117.31
All,	19	715.52
W ½ of NE ¼; NW ¼; S ½,	29	560.00
All,	31	721.28
NW ¼ of NW ¼; S ½ of N ½; S ½,	33	520.00

Township 34, *Range* 3.

W ½ of SE ¼; SW ¼,	3	240.00
All,	5	562.79
All,	7	733.48
N ½,	9	320.00
S ½ of NW ¼; SW ¼,	11	240.00
W ½ of SW ¼,	13	80.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; N ½ of S ½; SW ¼ of SW ¼,	15	480.00
All,	19	734.58
N ½ of N ½; SW ¼ of NW ¼; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	21	480.00
All,	23	640.00

JACKSON COUNTY—Continued.

Township 34, *Range* 3—*Continued.*

	Section	Acres
All,	25	640.00
All,	27	640.00
All,	29	640.00
SE ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of SE ¼; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9	31	631.06
All,	33	640.00
All,	35	640.00

Township 35, *Range* 3.

All,	1	628.92
N ½ of N E ¼; NW ¼,	3	236.06
All,	5	631.26
SW ¼,	7	162.15
E ½; N ½ of NW ¼,	11	400.00
All,	13	640.00
NE ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	15	240.00
SW ¼ of NW ¼; W ½ of SW ¼; SE ¼,	17	280.00
N ½ of NE ¼; SE ¼ of NE ¼; W ½ of W ½; SE ¼ of SW ¼; S ½ of SE ¼,	19	403.36
W ½ of NE ¼; E ½ of NW ¼; N ½ of SE ¼,	21	240.00
E ½ of NE ¼; W ½ of NW ¼; SW ¼; NW ¼ of SE ¼,	23	360.00
W ½ of NW ¼; SW ¼,	25	240.00
S ½,	27	320.00
SE ¼,	29	160.00
All,	31	637.28

JACKSON COUNTY—Continued.

Township 35, Range 3—Continued.

	Section	Acres
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½,	33	600.00
All,	35	640.00

Township 36, Range 3.

All,	1	572.36
S ½ of NE ¼; W ½ of W ½; SE ¼ of SW ¼; SE ¼,	3	422.49
All,	5	596.20
All,	7	629.40
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	626.96
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of SW ¼; SE ¼,	31	396.00
All,	33	640.00
N ½; NE ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	35	480.00

JACKSON COUNTY—Continued.

Township 37, Range 8.

	Section	Acres
All,	1	689.20
N ½; E ½ of SW ¼; SE ¼,	3	559.20
All,	5	636.21
All,	7	634.83
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	633.76
E ½ of NE ¼; W ½ of NW ¼; S ½,	21	480.00
All,	23	640.00
All,	25	640.00
N ½ of N ½; SE ¼ of NE ¼; SW ¼ of NW ¼; S ½,	27	560.00
All,	29	640.00
All,	31	631.20
NE ¼; NW ¼ of NW ¼; S ½,	33	520.00
All,	35	640.00

Township 38, Range 8.

All,	1	640.38
N ½; N ½ of SW ¼; SE ¼,	3	561.88
N ½ of NE ¼; NW ¼; S ½,	5	563.50
N ½; NE ¼ of SW ¼; S ½ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	7	556.31
N ½; SW ¼,	9	480.00

JACKSON COUNTY—Continued.

Township 38, *Range* 3—*Continued.*

	Section	Acres
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	11	600.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	13	600.00
N ½ of NE ¼; NW ¼,	15	240.00
All,	17	640.00
N ½; NE ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	19	479.33
W ½ of E ½; SE ¼ of SE ¼; W ½,	21	520.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	23	600.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
E ½; E ½ of NW ¼; NW ¼ of SW ¼,	31	441.22
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	33	600.00
All,	35	640.00

Township 39, *Range* 3.

All,	1	640.16
All,	3	639.12
All,	5	646.50
All,	7	636.00
All,	9	640.00
All,	11	640.00
All,	13	640.00

JACKSON COUNTY—Continued.

Township 39, Range 3—Continued.

	Section	Acres
S ½ of N E ¼; W ½ of NW ¼; E ½ of SW ¼; SE ¼,	15	400.00
All,	17	640.00
All,	19	645.18
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	21	600.00
All,	23	640.00
All,	25	640.00
NW ¼,	27	160.00
SE ¼ of NE ¼; NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼,	29	360.00
All,	31	648.80
N ½; SE ¼,	33	480.00
SE ¼,	35	160.00

Township 40, Range 3.

N ½; N ½ of SW ¼; SE ¼,	1	560.52
All,	3	641.98
NE ¼ of NW ¼; W ½ of W ½; SE ¼ of SE ¼,	5	241.53
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	7	596.38
All,	9	653.56
NW ¼; S ½,	11	480.00
NE ¼; SE ¼ of NW ¼; S ½,	13	520.00
All,	15	640.00

JACKSON COUNTY—Continued.

Township 40, *Range* 3—*Continued.*

	Section	Acres
NW ¼ of NW ¼; S ½ of N W ¼; Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12,	17	565.73
All,	19	707.22
All,	21	640.00
All,	23	640.00
All,	25	682.88
All,	27	640.00
All,	29	640.00
All,	31	686.81
All,	33	640.00
All,	35	640.00

Township 41, *Range* 3.

All,	1	643.60
All,	3	650.00
All,	11	640.00
Lots 1, 2, 3, 4,	13	53.84
Lots 1, 2, 3, 4,	15	66.38
Lots 1, 2, 3, 4,	17	69.66

Township 37, *Range* 4.

All,	7	617.20
All,	17	640.00
All,	19	619.24
All,	21	640.00
N½,	29	320.00

Township 38, *Range* 4.

N½ of N½; S½,	1	480.66

JACKSON COUNTY—Continued.

Township 38, *Range* 4.—Continued.

	Section	Acres
All,	3	638.40
NE¼; N½ of NW¼; SW¼ of SW¼; N½ of SE¼; SE¼ of SE¼,	5	402.34
N½ of N½; SE¼ of NE¼; SW¼ of NW¼; SW¼; NE¼ of SE¼; S½ of SE¼,	7	516.62
All,	9	640.00
All,	11	640.00
All,	15	640.00
All,	17	640.00
SW¼ of NE¼; S½ of NW¼; SW¼; W½ of SE¼,	19	358.47
All,	21	640.00
All,	27	640.00
All,	29	640.00
E½ of NE¼; SW¼ of NW¼; N½ of SW¼; SW¼ of SW¼; SE ¼of SE ¼,	31	279.31
All,	33	640.00
All,	35	640.00

Township 39, *Range* 4.

E½ of SE¼; NE¼,	1	240.40
All,	3	632.04
All,	5	640.61
All,	7	638.98
All,	9	640.00

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JACKSON COUNTY—Continued.

Township 39, *Range* 4—*Continued.*

	Section	Acres
E½ of SW¼,	11	80.00
SW¼ of NE¼; N½ of SE¼,	13	120.00
All,	15	640.00
All,	17	645.40
All,	19	641.60
All,	21	640.00
All,	23	640.00
NW¼ of NE¼; W½,	27	360.00
All,	29	643.24
NW¼ of NE¼; E½ of E½; NW¼ of SW¼; S½ of SW¼,	31	320.52
N½; N½ of SW¼; SE¼ of SW¼; SE¼,	33	600.00

Township 40, *Range* 4.

NE¼; SE¼ of NW¼; S½,	5	532.96
All,	7	562.62
NW¼; N½ of SW¼; SE¼ of SW¼,	9	280.00
All,	17	639.92
All,	19	566.04
All,	21	640.00
S½,	25	320.00
NE¼ of NW¼; E½ of SW¼,	27	120.00
All,	29	640.00
All,	31	565.82
N½; SW¼; SW¼ of SE¼,	33	520.00
All,	35	640.00

JACKSON COUNTY—Continued.

Township 41, *Range* 4.

	Section	Acres
All,	1	638.64
N½; SW¼; N½ of SE¼; SE¼ of SE¼,	3	595.42
All,	5	637.12
NE¼ of NE¼; W½ of E½; W½,	7	521.28
All,	9	640.00
NE¼; W½ of W½; SE¼ of SW¼; NE¼ of SE¼; S½ of SE¼,	11	480.00
Lots 1, 2, 3, 4,	13	59.46
Lots 1, 2, 3, 4,	15	35.80
Lots 1, 2, 3, 4,	17	22.56

South of Base Line and West of Willamette Meridian.

Township 32, *Range* 1.

Lots 7, 8, 9, 10, 11, 13, 14, 15, 16; S½,	1	680.00
E½,	11	320.00
All,	13	640.00
S½,	19	306.21
NW¼ of NE¼; S ½of NE¼; NW¼; S½,	21	600.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	615.80
All,	33	640.00
All,	35	640.00

JACKSON COUNTY—Continued.

Township 33, *Range* 1.

	Section	Acres
All,	5	639.31
All,	7	644.16
All,	9	640.00
All,	17	640.00
NE¼; NE¼ of NW¼; S½ of NW¼; S½,	19	599.67
N½; SW¼; N½ of SE¼,	21	560.00
All,	23	640.00
N½; NE¼ of SW¼; N½ of SE¼; SE ¼ of SE¼,	25	480.00
All,	27	640.00
All,	29	640.00
All,	31	639.20
NE¼; S½ of NW¼; SW¼; W½ of SE¼,	33	480.00
N½ of NE¼; SW¼ of NE¼; NW¼; W½ of SW¼; SE¼ of SE¼; NE¼ of SW¼,	35	440.00

Township 34, *Range* 1.

All,	1	638.86
E½ of SE¼; Lots 1, 2, 7, 8, 9; W½ of NW¼,	3	320.23
W½ of NE¼; E½ of NW¼,	5	158.54
NE¼; N½ of NW¼; SE¼ of NW¼; NE¼ of SW¼; N½ of SE¼,	7	402.15
N½; SW¼; NW¼ of SE¼; S½ of SE		

JACKSON COUNTY—Continued.

Township 34, Range 1—Continued.

	Section	Acres
¼,	9	600.00
All,	11	640.00
All,	13	640.00
SE¼ of NE¼; SE¼; Lots 1, 8,	15	274.88
N½; SE¼; N½ of SW¼; SW¼ of SW ¼,	17	600.00
All,	19	650.60
W½; Lot 8,	21	356.37
All,	23	640.00
All,	25	640.00
E½; E½ of W½; NW¼ of NW¼,	27	520.00
N½ of NE¼; SW¼ of NE¼; W½; W½ of SE¼,	29	520.00
NE¼ of NW¼; SW¼; S½ of SE¼,	31	284.20
All,	33	640.00

Township 35, Range 1.

NW ¼ of SE ¼; S ½ of SE ¼,	1	120.00
SW ¼ of SW ¼,	3	40.00
NE ¼ of NE ¼,	5	40.02
SE ¼ of SW ¼; SW ¼ of SE ¼,	7	80.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; E ½ of SW ¼; SE ¼,	9	520.00
E ½ of SW ¼,	11	80.00
E ½ of NE ¼; S ½,	13	400.00
NW ¼ of NE ¼; S ½ of NE¼; E ½ of NW ¼; NE ¼ of SW ¼; N ½ of SE		

JACKSON COUNTY—Continued.

Township 35, *Range* 1—*Continued.*

	Section	Acres
1/4; SE 1/4 of SE1/4,	15	360.00
W 1/2 of NE 1/4; NW 1/4 of SE 1/4,	19	120.00
NW 1/4 of NW 1/4,	21	40.00
SE 1/4 of SW 1/4,	23	40.00
SW 1/4 of SW 1/4,	25	40.00

Township 36, *Range* 1.

Lots 4, 5,	9	29.61
SW 1/4 of NE 1/4; SE 1/4 of NW 1/4,	11	80.00
NW 1/4 of NW 1/4,	15	40.00
NW 1/4 of NE 1/4,	25	40.00
NE 1/4 of SE 1/4,	27	40.00
NW 1/4 of NE 1/4; N 1/2 of NW 1/4,	35	120.00

Township 37, *Range* 1.

SW 1/4 of SE 1/4,	1	40.00
NE 1/4; NE 1/4 of NW 1/4; S 1/2 of NW 1/4; S 1/2,	11	600.00
NW 1/4 of NE 1/4; S 1/2 of NE 1/4; NW 1/4; S 1/2,	13	600.00
NE 1/4; NW 1/4 of SE 1/4; SE 1/4 of SE 1/4,	15	240.00

Township 38, Range 1.

NW 1/4 of SW 1/4,	17	40.00
NE 1/4 of SW 1/4; S 1/2 of SW 1/4; Lot 1,	21	147.04
E 1/2 of NE 1/4; NE 1/4 of SE 1/4; S 1/2 of SE 1/4; SE 1/4 of SW 1/4,	29	240.00
SW 1/4 of NE 1/4; NE 1/4 of NW 1/4; S 1/2 of NW 1/4; SW 1/4; NW 1/4 of SE 1/4;		

JACKSON COUNTY—Continued.

Township 38, *Range* 1—*Continued.*

	Section	Acres
S ½ of SE ¼,	31	452.09
NW ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼,	33	160.00
SE ¼ of NE ¼; E ½ of SE ¼,	35	120.00

Township 39, *Range* 1.

NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; E ½ of SW ¼,	1	240.46
E ½ of SE ¼,	3	80.00
N ½ of SE ¼; SE ¼ of SE ¼,	5	120.00
W ½ of NE ¼; NW ¼; S ½,	7	638.48
N ½; SW ¼; NW ¼ of SE ¼,	9	520.00
NW ¼ of NW ¼; S ½ of NW¼; SW ¼; SW ¼ of SE ¼,	11	320.00
NE ¼ of SE ¼,	13	40.00
All,	17	640.00
N ½; SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	19	682.68
All,	21	640.00
NW ¼ of SE ¼; S ½ of SE ¼; SW ¼ of SW ¼; Lots 1, 2, 3, 4, 5, 6, 7, 11, 12, 13,	23	415.01
NE ¼ of NE ¼; W ½ of E ½; W ½,	27	520.00
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	29	600.00
All,	31	722.68

JACKSON COUNTY—Continued.

Township 39, *Range* 1—*Continued.*

	Section	Acres
NE ¼; S ½ of NW ¼; S ½,	33	560.00
All,	35	640.00

Township 40, *Range* 1.

All,	3	623.68
All,	5	635.60
All,	7	704.56
All,	11	640.00
All,	15	640.00
All,	17	640.00
All,	19	705.76
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	707.28
All,	33	640.00
All,	35	640.00

Township 33, *Range* 2.

Lots 3, 4, 5, 6, 11, 12, 13, 14, 15, 16,	1	420.95
All,	3	636.80
All,	5	634.64
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	7	633.16
All,	9	640.00
All,	15	640.00

JACKSON COUNTY—Continued.

Township 33, *Range* 2—*Continued.*

	Section	Acres
All,	17	640.00
All,	19	675.16
S ½ of SW ¼; NW ¼ of NE ¼,	21	120.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	23	600.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	672.28
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼; NW ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	33	440.00
All,	35	640.00

Township 34, *Range* 2.

All,	1	636.76
NE ¼ of NE ¼; SE ¼ of SE ¼; W ½ of E ½; W ½,	3	551.88
W ½ of NE ¼; NW ¼; S ½,	5	560.79
All,	7	646.40
E ½; W ½ of NW ¼,	9	400.00
NE ¼; NE ¼ of NW ¼; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	11	480.00
NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	13	600.00
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; S ½,	15	600.00

JACKSON COUNTY—Continued.

Township 34, Range 2—Continued.

	Section	Acres
NW 1/4; S 1/2,	17	480.00
NE 1/4; S 1/2 of NW 1/4; S 1/2,	19	561.24
N 1/2 of NE 1/4; SE 1/4 of NE 1/4; SE 1/4 of NW 1/4; W 1/2 of SW 1/4; NE 1/4 of SE 1/4,	21	280.00
All,	23	640.00
NE 1/4; NE 1/4 of NW 1/4; W 1/2 of SW 1/4; NE 1/4 of SE 1/4; W 1/2 of NW 1/4,	25	400.00
NE 1/4 of NE 1/4; S 1/2 of NE 1/4; E 1/2 of W 1/2; SW 1/4 of SW 1/4; SE 1/4,	27	480.00
N 1/2 of SE 1/4,	29	80.00
NW 1/4 of NE 1/4; S 1/2 of NE 1/4; E 1/2 of SE 1/4; W 1/2 of NW 1/4; E 1/2 of SW 1/4,	31	360.00
NE 1/4; S 1/2 of NW 1/4; S 1/2 of SW 1/4; N 1/2 of SE 1/4; SE 1/4 of SE 1/4,	33	440.00
NE 1/4; N 1/2 of NW 1/4; SW 1/4 of NW 1/4; N 1/2 of SE 1/4,	35	360.00

Township 35, Range 2.

NE 1/4; NE 1/4 of NW 1/4,	1	199.64
NW 1/4 of NE 1/4; N 1/2 of NW 1/4; SW 1/4 of NW 1/4; SW 1/4; W 1/2 of SE 1/4,	3	398.77
S 1/2 of NE 1/4; NW 1/4 of SE 1/4,	5	120.00
E 1/2,	7	320.00
NE 1/4 of NE 1/4; SW 1/4 of NE 1/4; S 1/2 of NW 1/4; SW 1/4; N 1/2 of S E 1/4,	9	400.00
SW 1/4 of NW 1/4; NE 1/4 of SW 1/4,	15	80.00

JACKSON COUNTY—Continued.

Township 35, Range 2—Continued.

	Section	Acres
S ½ of N ½; S ½,	17	480.00
N ½ of NE ¼; SW ¼ of NE ¼,	19	120.00
NW ¼ of NE ¼; SE ¼ of NE ¼; SW ¼ of SW ¼; E ½ of SE ¼,	21	200.00
SE ¼ of SE ¼,	23	40.00
SE ¼ of NE ¼,	25	40.00
NE ¼ of SE ¼; S ½ of SE ¼,	29	120.00
S ½ of NE ¼; NW ¼; S ½,	35	560.00

Township 36, Range 2.

NE ¼ of NE ¼; S ½ of NW ¼; SW ¼; W ½ of SE ¼,	1	359.92
E ½,	3	320.78
SW ¼ of NE ¼; SE ¼ of NW ¼; NE ¼ of S W¼; S ½ of SW ¼; SE ¼,	5	360.00
N ½ of NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; SE ¼,	7	360.51
W ½,	9	320.00
NW ¼ of NE ¼; Lot 4,	11	79.26
Lot 7,	13	23.39
Lots 9, 10,	15	22.88
NW ¼ of NW ¼; SW ¼; S ½ of NE ¼ of NW ¼,	19	224.51
Lots 4, 5, 6, 7,	21	123.29
NW ¼ of SE ¼,	29	40.00

Township 37, Range 2.

Lot 5; S ½ of SW ¼,	5	81.97

JACKSON COUNTY—Continued.

Township 37, Range 2—Continued.

	Section	Acres
E ½ of E ½; S ½ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of NW ¼,	7	413.06
W ½ of NE ¼; E ½ of NW ¼; NW ¼ of SW ¼,	17	200.00
N ½ of SW ¼ of NE ¼; NE ¼ of SW ¼,	31	60.00

Township 38, Range 2.

Lot 6; SW ¼ of SW ¼,	3	47.52
NE ¼ of NW ¼; E ½ of NW ¼ of NW ¼; S ½ of SW ¼,	7	144.26
SE ¼,	17	160.00
NE ¼ of NE ¼; SW ¼; W ½ of SE ¼; SE ¼ of SE ¼,	19	326.23
W ½ of NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	21	240.00
NW ¼ of SE ¼; NE ¼ of SW ¼,	23	80.00
N ½ of N ½; S ½ of S ½,	27	320.00
E ½; NW ¼ of NW ¼; W ½ of SW ¼,	29	440.00
All,	31	660.16
N ½ of NW ¼; SE ¼ of NW ¼; E ½ of SE ¼; NW ¼ of SW ¼,	33	240.00

Township 39, Range 2.

N ½ of NE ¼; SE ¼ of NE ¼; NW ¼ of SE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	5	446.84
NE ¼ of NE ¼; S ½ of NE ¼; NW ¼;		

JACKSON COUNTY—Continued.

Township 39, *Range* 2—*Continued.*

	Section	Acres
S ½,	7	630.94
NE ¼; E ½ of NW ¼; S ½ of S ½; NE ¼ of SE ¼,	9	440.00
NE ¼ of NE ¼; S ½ of NE ¼; SW ¼ of NW ¼ of NE ¼; E ½ of NW ¼, of NE ¼; SW ¼ of NE ¼ of NW ¼; E ½ of NE ¼ of NW ¼; S ½ of NW ¼; S ½,	17	580.00
E ½ of NE ¼; NE ¼ of NW ¼; S ½ of SW ¼; NE ¼ of SE ¼,	19	246.54
All,	21	640.00
W ½ of NE ¼; NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	23	480.00
S ½ of NE ¼; SE ¼ of NW ¼; S ½,	27	440.00
S ½ of NW ¼; SW ¼; SE ¼ of SE ¼,	29	280.00
All,	31	668.42
All,	33	640.00

Township 40, *Range* 2.

All,	1	638.84
All,	3	640.99
All,	5	640.58
All,	7	647.42
All,	9	640.00
All,	11	640.00
All,	13	640.00

JACKSON COUNTY—Continued.

Township 40, *Range* 2—*Continued.*

	Section	Acres
All,	15	640.00
N ½; SW ¼; W ½ of SE ¼,	17	560.00
All,	19	640.93
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	639.01
All,	33	640.00
All,	35	640.00

Township 33, *Range* 3.

All,	1	630.40
All,	3	627.68
All,	5	625.39
All,	7	624.64
All,	9	640.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	626.35
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00

JACKSON COUNTY—Continued.

Township 33, *Range* 3—*Continued.*

	Section	Acres
All,	29	640.00
All,	31	627.20
N ½; N ½ of SW ¼; SW ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	33	560.00
All,	35	640.00

Township 34, *Range* 3.

All,	1	641.80
All,	3	643.50
All,	5	644.42
All,	7	610.48
All,	9	640.00
All,	11	640.00
All,	13	640.00
N ½; SW ¼; N ½ of SE ¼; S E¼ of SE ¼,	15	600.00
All,	17	640.00
All,	19	608.00
All,	21	640.00
N ½ of NW ¼; SW ¼ of NW ¼; SW ¼; W ½ of SE ¼; NE ¼,	23	520.00
NE ¼; E ½ of NW ¼; S ½,	25	560.00
All,	27	640.00
NE ¼; E ½ of NW ¼; NE ¼ of SW ¼; SW ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	29	440.00
All,	31	615.00

JACKSON COUNTY—Continued.

Township 34, Range 3—Continued.

	Section	Acres
N ½; N ½ of S ½; SE ¼ of SE ¼,	33	520.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	35	600.00

Township 35, Range 3.

N ½; SW ¼; N½ of SE ¼; SW ¼ of SE ¼,	1	600.20
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	3	597.51
SE ¼ of SW ¼; S ½ of SE ¼,	5	120.00
NE ¼ of SW ¼; S ½ of SW ¼; SE ¼,	7	275.40
All,	9	640.00
W ½ of NE ¼ of NE ¼; SE ¼ of NE ¼ of NE ¼; NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	11	680.00
NE ¼ of NW ¼; W ½ of NW ¼; N ½ of SW ¼; E ½ of SE ¼,	13	280.00
All,	15	640.00
N ½; N ½ of SE ¼; SW ¼ of SE ¼; N ½ of SW ¼; SE ¼ of SW ¼; E ½ of SW ¼ of SW ¼,	17	580.00
All,	19	631.74
N ½ of NE ¼; SW ¼ of NE ¼; NW ¼; W ½ of E ½ of SW ¼; W ½ of SW ¼; E ½ of W ½ of SE ¼,	21	440.00
N ½; SW ¼; W ½ of SE ¼,	23	560.00
All,	27	640.00

JACKSON COUNTY—Continued.

Township 35, Range 3—Continued.

	Section	Acres
NE ¼; W ½ of E ½ of SW ¼; W ½ of SW ¼; N ½ of SE ¼; E ½ of SW ¼ of SE ¼; SE ¼ of SE ¼,	29	420.00
N ½ of NE ¼; NW ¼; S ½,	31	557.02
E ½; NW ¼ of NW ¼; S ½ of NW ¼; NE ¼ of SW ¼,	33	480.00
W ½ of E ½; SE ¼ of SE ¼; W ½,	35	520.00

Township 36, Range 3.

W ½ of NW ¼,	1	78.97
N ½ of NE ¼; SW ¼ of NE ¼; W ½ of SE ¼ of NE ¼; N ½ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼; SW ¼ of SE ¼; W ½ of NW ¼ of SE ¼; Lots 1, 2, 3, 4, 5,	3	438.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; NW ¼ of SE ¼,	5	314.76
N ½; N ½ of SW ¼; SE ¼,	7	564.97
All,	9	640.00
NW ¼ of NW ¼; N ½ of SE ¼; SE ¼ of SE ¼; Lot 3,	11	188.73
Lot 7,	13	48.75
W ½ of NW ¼,	15	80.00
N ½ of NW ¼; SE ¼ of NW ¼; Lot 3,	17	127.05
SW ¼; W ½ of SE ¼,	19	245.40
Lot 5; NE ¼ of SW ¼,	21	58.87
SE ¼ of NE ¼,	23	40.00

JACKSON COUNTY—Continued.

Township 36, Range 3—Continued.

	Section	Acres
NE ¼; S½ of NW ¼; SW ¼; N ½ of SE ¼,	29	480.00
All,	31	656.42
Lots 2, 3; SW ¼ of SW ¼,	33	102.78
NE ¼ of NE ¼; SW ¼ of SW ¼; W ½ of SE ¼ of SE ¼,	35	100.00

Township 37, Range 3.

SW ¼; W ½ of SE ¼,	1	284.84
N ½; E ½ of SW ¼; SE ¼,	3	561.30
N ½ of NE ¼ of NE ¼; S ½ of N ½ of SE ¼ of NE ¼; S ½ of SE ¼ of NE ¼; NW ¼ of SW ¼; S ½ of SW ¼; SE ¼; S ½ of SW ¼ of SW ¼ of NE ¼; Lot 1; South 10 acres of Lot 5,	5	360.23
E ½; SE ¼ of NW ¼; NE ¼ of SW ¼,	7	400.00
W ½ of NE ¼; W ½; E ½ of SE ¼,	9	480.00
W ½ of E ½; SW ¼,	11	320.00
N ½ of NE ¼; NW ¼,	13	240.00
All,	15	640.00
All,	17	640.00
All,	21	640.00
S ½ of NW ¼; SW ¼; NW ¼ of SE ¼,	23	280.00
S ½ of NE ¼,	25	80.00
S ½ of NE ¼; NW ¼; SE ¼,	27	400.00
NE ¼ of NE ¼; NW ¼ of NW ¼; S ½ of N ½; S ½,	31	555.10

JACKSON COUNTY—Continued.

Township 37, Range 3—Continued.

	Section	Acres
All,	33	640.00
SW ¼ of SW ¼; NE ¼ of NE ¼ of SE ¼; NW ¼ of SE ¼ of SE ¼; N ½ of SW ¼ of SE ¼; N ½ of S ½ of SW ¼ of SE ¼,	35	90.00

Township 38, Range 3.

NW ¼ of NE ¼; SE ¼ of NE ¼; E ½ of SW ¼,	1	159.96
N ½; E ½ of SE ¼,	3	400.76
E ½ of SW ¼; SE ¼,	5	240.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼; N ½ of SE ¼ of SW ¼; SW ¼ of SE ¼ of SW ¼; N ½ of N ½ of SE ¼; N ½ of S ½ of NE ¼ of SE ¼; SE ¼ of SW ¼ of SE ¼; S ½ of SE ¼ of SE ¼,	11	550.00
SW ¼,	13	160.00
W ½ of NW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	21	200.00
NE ¼ of NE ¼; W ½ of W½ of NW ¼; SE¼ of SE¼; Lots 4, 5,	23	160.67
NW ¼ of NW ¼,	29	40.00
All,	31	637.76
SW ¼ of NW ¼; W ½ of SW ¼; Lots 1, 7,	33	168.58
W ½,	35	320.00

JACKSON COUNTY—Continued.

Township 39, *Range* 3.

	Section	Acres
E ½; E ½ of W ½; NW ¼ of NW ¼; SW ¼ of SW ¼,	1	562.00
NE ¼; SW ¼ of SW ¼,	3	201.49
N ½ of NE ¼; SE ¼ of NW ¼; SW ¼; S ½ of SE ¼,	9	360.00
NE ¼; E ½ of NW ¼; Lot 1,	11	254.42
N ½ of NE ¼; SE ¼ of NE ¼; NE ¼ of NW ¼; SW ¼,	13	320.00
E ½,	15	320.00
All,	21	640.00
N ½,	23	320.00
NE ¼,	25	160.00
NE ¼; S ½; SE ¼ of SW ¼ of NW ¼; NE ¼ of SE ¼ of NW ¼; S ½ of SE ¼ of NW ¼,	27	520.00
E ½; SW ¼ of NW ¼; N ½ of SW ¼; SE ¼ of SW ¼,	33	480.00

Township 40, *Range* 3.

All,	1	639.33
All,	3	640.36
S ½ of N ½; Lots 1, 3, 4; S ½,	5	597.90
E ½; N ½ of NE ¼ of NW ¼; N ½ of NW ¼ of NW ¼; SW ¼ of NW ¼; SW ¼; S ½ of SE ¼ of NW ¼,	7	582.83
All,	9	640.00
All,	11	640.00

JACKSON COUNTY—Continued.

Township 40, *Range* 3—*Continued.*

	Section	Acres
All,	13	640.00
All,	15	640.00
All,	17	640.00
E ½; E ½ of E ½ of SE ¼ of SW ¼,	19	330.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	640.84
All,	33	640.00
N ½; SW ¼; N ½ of SE ¼,	35	560.00

Township 41, *Range* 3.

N ½; S ½ of S ½,	1	480.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	600.00
All,	5	640.00
All,	7	643.64
All,	9	640.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	11	600.00
N ½ of N ½; Lots 1, 2, 3, 4,	13	273.25
N ½ of N ½; Lots 1, 2, 3, 4,	15	274.67
N ½ of N ½; Lots 1, 2, 3, 4,	17	268.58

Township 32, *Range* 4.

Lots 5, 12,	33	78.19
All,	35	791.92

JACKSON COUNTY—Continued.

Township 33, *Range* 4.

	Section	Acres
All,	1	639.68
All,	3	599.20
S ½ of SE ¼,	5	80.00
All,	9	640.00
All,	11	640.00
All,	13	659.76
NE ¼; E ½ of NW ¼; S ½,	15	560.00
All,	17	640.00
All,	19	629.18
N ½; N ½ of SW ¼; NW ¼ of SE ¼; SE ¼ of SE ¼,	21	480.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
NW ¼; N ½ of SW ¼; SW ¼ of SW ¼,	29	280.00
All,	31	626.84
All,	33	640.00
All,	35	640.00

Township 34, *Range* 4.

All,	1	648.44
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	3	615.32
NE ¼ of SW ¼; S ½ of SW ¼; E ½,	5	448.10
All,	7	623.44
All,	9	640.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼;		

JACKSON COUNTY—Continued.

Township 34, Range 4—Continued.

	Section	Acres
S ½,	11	600.00
All,	13	640.00
NW ¼ of NE ¼; W ½ of SW ¼; W ½ of E ½ of SE ¼ of SW ¼; W ½ of SE ¼ of SW ¼; NE ¼ of SE ¼,	15	190.00
All,	17	640.00
All,	19	624.80
NE ¼; W½,	21	480.00
All,	23	640.00
All,	25	640.00
NE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of N ½; S ½,	27	560.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	29	600.00
E ½; E ½ of W ½,	31	480.00
NE ¼ of NW ¼; SW ¼ of SW ¼; SW ¼ of SE ¼,	33	120.00
NE ¼ of NE ¼; S ½ of NE ¼; N ½ of NW ¼; E ½ of SW ¼ of NW ¼; SW ¼; SE ¼ of NW ¼; NE ¼ of SE ¼; SW ¼ of SE ¼; NE ¼ of SE ¼ of SE ¼,	35	510.00

Township 35, Range 4.

NE ¼ of NE ¼; SW ¼ of NW ¼; W ½ of SW ¼,	1	160.02
N ½ of NE ¼; SE ¼,	3	241.76

JACKSON COUNTY—Continued.

Township 35, Range 4—Continued.

	Section	Acres
N ½; NW ¼ of SW ¼; S ½ of SW ¼; NW ¼ of SE ¼,	5	493.56
All,	7	640.08
NE ¼ of NE ¼; N ½ of NW ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	11	280.00
All,	13	640.00
SE ¼,	15	160.00
N ½ of NE ¼; SE ¼ of NE ¼; W ½; SE ¼,	17	600.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	19	598.20
SW ¼ of SW ¼,	21	40.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	23	600.00
N ½ of NE ¼,	27	80.00
All,	29	640.00
All,	31	638.56
NE ¼ of NE ¼; W ½ of E ½; SE ¼ of SE ¼; W ½,	33	560.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	35	600.00

Township 36, Range 4.

N ½; N ½ of SW ¼; N ½ of SW ¼ of SW ¼; SE ¼ of SW ¼; E ½ of SE ¼,	1	539.16
S ½ of NE ¼; E ½ of SW ¼; SE ¼,	3	320.00
NE ¼; S ½ of NW ¼; S ½,	5	539.52
All,	7	653.22

JACKSON COUNTY—Continued.

Township 36, Range 4—Continued.

	Section	Acres
NW ¼; N ½ of SW ¼; W ½ of SE ¼; SE ¼ of SW ¼,	9	360.00
NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	11	600.00
NE ¼ of NE ¼; S ½ of NE ¼; SE ¼ of NW ¼; SW ¼; W ½ of SE ¼,	13	400.00
NE ¼; NE ¼ of NW ¼,	15	200.00
W ½ of NE ¼; S ½ of SE ¼ of NE ¼; NW ¼; S ½,	17	580.00
N ½; N ½ of S ½; Lots 3, 4,	19	598.52
SW ¼ of NE ¼; S ½ of S ½; NW ¼ of SE ¼; Lots 3, 7, 8, 9, 10,	21	376.63
N ½ of NE ¼; SE ¼ of NE ¼; W ½,	23	440.00
E ½ of NE ¼; SE ¼ of SW ¼; NE ¼ of SE ¼; Lots 1, 7, 9, 10,	25	225.88
NE ¼ of NE ¼; S ½ of SW ¼; Lots 9, 12, 14,	27	177.16
NE ¼ of NE ¼; NE ¼ of NW ¼; S ½ of N ½; S ½,	29	560.00
E ½; NW ¼ of NW ¼; S ½ of SW ¼; SE ¼ of NW ¼,	31	489.50
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	33	600.00
SE ¼ of NE ¼; W ½ of SW ¼; Lots 1, 5,	35	166.70

Township 37, Range 4.

N ½ of N ½; SE ¼ of NE ¼; SW ¼ of

JACKSON COUNTY—Continued.

Township 37, Range 4—Continued.

	Section	Acres
NW 1/4; SE 1/4 of SE 1/4,	1	277.32
SE 1/4 of NE 1/4; S 1/2,	3	360.00
All,	5	642.34
All,	7	654.40
All,	9	640.00
W 1/2 of NE 1/4 of NE 1/4; S 1/2 of NE 1/4; E 1/2 of SE 1/4,	11	180.00
W 1/2 of NW 1/4,	13	80.00
W 1/2,	15	320.00
All,	17	640.00
E 1/2 of NE 1/4; E 1/2 of NW 1/4 of NE 1/4; E 1/2 of E 1/2 of SW 1/4 of NE 1/4; SE 1/4; S 1/2 of NE 1/4 of NW 1/4; W 1/2 of NW 1/4; W 1/2 of SE 1/4 of NW 1/4; NW 1/4 of SW 1/4; W 1/2 of SW 1/4 of SW 1/4,	19	458.86
N 1/2; SW 1/4; N 1/2 of SE 1/4; SW 1/4 of SE 1/4,	21	600.00
W 1/2 of E 1/2; N 1/2 of NW 1/4; SE 1/4 of NW 1/4; SW 1/4,	23	440.00
NE 1/4 of NE 1/4; S 1/2 of N 1/2; S 1/2,	27	520.00
NE 1/4; NE 1/4 of NW 1/4; S 1/2 of NW 1/4; S 1/2,	29	600.00
E 1/2 of W 1/2 of NE 1/4 of NE 1/4; E 1/2 of NE 1/4 of NE 1/4; W 1/2 of NW 1/4 of NE 1/4; W 1/2 of E 1/2 of NW 1/4 of NE 1/4; S 1/2 of NE 1/4; NE 1/4 of NW 1/4; NE 1/4 of SE 1/4; Lots 1, 3, 4, 5,	31	281.33

JACKSON COUNTY—Continued.

Township 37, Range 4—Continued.

	Section	Acres
N ½; N ½ of SW ¼; SE ¼; SE ¼ of SW ¼,	33	600.00
N ½; SW ¼; W ½ of SE ¼,	35	560.00

Township 38, Range 4.

All,	1	638.40
All,	3	638.64
S ½ of NW ¼; S ½,	5	400.00
NE ¼ of NE ¼; SW ¼ of NE ¼,	7	80.00
All,	9	640.00
E ½ of E ½; SW ¼ of SE ¼; SW ¼,	11	360.00
N ½; E ½ of SW ¼; SE ¼,	13	580.92
N ½; SE ¼,	15	480.00
NE ¼ of NE ¼,	17	40.00
N ½ of NE ¼; SW ¼ of N E¼; W ½; W ½ of SE ¼; Lot 3,	19	535.79
NW ¼ of SW ¼; S ½ of SW ¼; SW ¼ of SE ¼,	21	160.00
NE ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	23	380.00
W ½ of SW ¼; Lots 1, 2, 5,	25	116.56
All,	27	640.00
N ½; SW ¼; NW ¼ of SE ¼,	29	520.00
N ½; SW ¼; NW ¼ of SE ¼; S ½ of SE ¼,	31	603.92
N ½ of NE ¼; SE ¼ of NE ¼; E ½ of		

JACKSON COUNTY—Continued.

Township 38, *Range* 4—*Continued.*

	Section	Acres
NW ¼; S ½,	33	520.00
All,	35	646.00

Township 39, *Range* 4.

All,	1	697.40
All,	3	639.77
S ½ of NW ¼; W ½ of SW ¼; E ½ of SE ¼; Lots 1, 3, 4.	5	358.95
N ½ of NE ¼; SE ¼ of NW ¼; SE ¼ of SE ¼; Lots 2, 4,	7	240.06
All,	9	640.00
All,	11	640.00
All,	13	697.96
All,	15	640.00
All,	17	640.00
NE ¼; S ½ of NW ¼; S ½,	19	559.36
All,	21	640.00
All,	23	640.00
All,	25	699.64
All,	27	640.00
All,	29	640.00
All,	31	662.42
All,	33	665.94
All,	35	671.66

Township 40, *Range* 4.

N ½; N ½ of SW ¼; S ½ of S ½ of SW ¼; SE ¼,	1	602.02

JACKSON COUNTY—Continued.

Township 40, *Range* 4—*Continued.*

	Section	Acres
NE ¼,	3	159.36
SW ¼,	7	162.84
All,	11	640.00
All,	13	640.00
SE ¼,	15	160.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	17	600.00
All,	19	641.04
N ½; N ½ of SW ¼,	21	400.00
All,	23	640.00
All,	25	640.00
E ½; W ½ of SW ¼,	27	400.00
All,	29	640.00
All,	31	642.04
All,	33	640.00
N ½; SW ¼; N ½ of SE ¼; SW ¼ of SE ¼,	35	600.00

Township 41, *Range* 4.

SW ¼ of NE ¼; SE ¼ of NW ¼; S ½,	1	400.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	3	600.00
All,	5	640.00
All,	7	644.86
All,	9	640.00
NE ¼; E ½ of NW ¼; S ½,	11	560.00

JACKSON COUNTY—Continued.

Township 41, *Range* 4—*Continued.*

	Section	Acres
N ½ of N ½; Lots 1, 2, 3, 4,	13	263.72
N ½ of N ½; Lots 1, 2, 3, 4,	15	259.88
N ½ of N ½; Lots 1, 2, 3, 4,	17	256.12
Total, Jackson County,		441,791.15

KLAMATH COUNTY.

South of Base Line and East of Willamette Meridian.

Township 38, *Range* 5.

	Section	Acres
All,	1	643.00
All,	3	655.00
All,	9	640.00
N ½; W ½ of SW ¼; Lots 1, 2, 3, 4,	11	485.00
Lots 1, 2,	13	31.00
All,	15	640.00
All,	21	640.00
SW ¼ of NE ¼; S ½ of NW ¼; S ½; Lots 1, 2, 3, 4,	23	542.00
All,	25	640.00

Township 39, *Range* 5.

All,	1	641.00
All,	3	645.00
All,	11	640.00
All,	13	640.00
NE ¼ of NW ¼; SW ¼ of NW ¼; NW ¼ of SW ¼,	17	120.00
SW ¼ of SW ¼,	21	40.00
NW ¼,	29	160.00
N ½,	31	322.00
W ½ of SW ¼,	33	80.00

Township 40, *Range* 5.

W ½,	7	322.00
S ½,	23	320.00
All,	25	640.00

KLAMATH COUNTY—Continued.

Township 40, *Range* 5—*Continued.*

	Section	Acres
NE ¼ of N W¼; SE ¼ of SW ¼; S ½ of SE ¼; Lots 1, 2, 3, 4,	31	319.00
All,	35	640.00

Township 41, *Range* 5.

All,	1	641.00
All,	3	639.00
All,	5	642.00
All,	7	632.00
E ½,	11	320.00
Lots 1, 2,	13	31.00
Lots 1, 2, 3, 4,	15	93.00
Lots 1, 2, 3, 4,	17	87.00

Township 38, *Range* 6.

All,	5	642.00
All,	7	646.00
All,	9	640.00
All,	17	640.00
All,	19	641.00
W ½; W ½ of SE ¼,	21	400.00
S ½ of SW ¼,	27	80.00
All,	29	640.00
All,	33	640.00
NE ¼ of NE ¼; SE ¼ of NW ¼; S ½ of SW ¼; SE ¼,	35	320.00

KLAMATH COUNTY—Continued.

Township 39, *Range* 6.

	Section	Acres
All,	5	627.00
All,	7	647.00
W ½,	9	320.00
Lots 1 to 12, inclusive,	15	485.00
All,	17	646.00
E ½; E ½ of W ½; Lots 1, 2, 3, 4,	19	643.00
W ½,	21	320.00

Township 40, *Range* 6.

SW ¼; NW ¼ of SE ¼; Lots 3, 4, 5, 6, 7, 8,	1	385.00
S ½ of NW ¼; Lots 2, 3, 4,	3	187.00
SE ¼ of NE ¼; SW ¼ of NW ¼; Lots 3, 4,	5	152.00
All,	11	640.00
All,	13	606.00
All,	23	618.00
All,	27	639.00
All,	31	746.00
SE ¼ of NE ¼; E ½ of SE ¼,	33	120.00
All,	35	633.00

Township 41, *Range* 6.

All,	1	640.00
N ½ of NE ¼; SE ¼ of NE ¼; NW ¼; W ½ of SW ¼; NE ¼ of SE ¼; S ½ of SE ¼,	3	480.00
N ½; SW ¼; N ½ of SE ¼; SE ¼ of		

KLAMATH COUNTY—Continued.

Township 41, *Range* 6—*Continued.*

	Section	Acres
SE ¼,	5	600.00
NE ¼; N ½ of SE ¼; SW ¼ of SE ¼; Lots 2, 3, 4, 9, 10, 11, 12,	7	513.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; SE ¼,	9	440.00
W ½ of NE ¼; NW ¼; N ½ of SW ¼; NW ¼ of SE ¼; SW ¼ of SW ¼; S ½ of SE ¼,	11	480.00
Lots 1, 2, 3, 4,	13	194.00
Lots 1, 2, 3, 4,	15	181.00
Lots 1, 2, 3,	17	123.00

Township 40, *Range* 7.

All,	3	639.00
All,	5	634.00
N ½; NE ¼ of SW ¼; N ½ of SE ¼; SE ¼ of SE ¼,	7	476.00
All,	9	660.00
All,	11	641.00
NW ¼; S ½,	15	480.00
All,	17	644.00
All,	19	632.00
All,	21	642.00
W ½ of E ½; W ½,	23	480.00
All,	27	640.00
All,	29	640.00
All,	31	633.00

KLAMATH COUNTY—Continued.

Township 40, *Range* 7—*Continued.*

	Section	Acres
All,	33	640.00
W ½ of NE ¼; W ¼; NW ¼ of SE ¼,	35	443.00

Township 41, *Range* 7.

All,	3	642.00
All,	5	641.00
All,	7	643.00
N ½; E ½ of SW ¼; SE ¼,	9	560.00
NW ¼; N ½ of SW ¼,	11	240.00
N ½ of N ½; Lots 1, 2, 3, 4,	15	257.00
N ½ of N ½; Lots 1, 2, 3, 4,	17	224.00
Total, Klamath County,		43,015.00

WEST SIDE GRANT.

Act of May 4, A. D. 1870.

Of the Lands of said West Side Grant, 292.50 acres are situated in the State of Washington; with this exception all of said lands are situated in the State of Oregon.

The counties are arranged in the same order as in the case of the East Side Grant. Thus arranged, they appear in the following order. For convenience, the total number of acres in each county is here stated:

County	State	Acres
Clarke,	Washington,	292.50
Columbia,	Oregon,	17,678.83
Tillamook,	Oregon,	29,741.00
Washington,	Oregon,	15,480.00
Multnomah,	Oregon,	927.00
Yamhill,	Oregon,	1,563.11
	Total, West Side Grant,	65,682.44

CLARKE COUNTY, WASHINGTON.

North of Base Line and West of Willamette Meridian.

Township 2, *Range* 1.

	Section	Acres
Lot 1,	1	7.00

North of Base Line and East of Willamette Meridian.

Township 3, *Range* 1.

W ½ of SW ¼,	3	80.00
E ½ of NE ¼; NW ¼ of NE ¼,	21	120.00
Lot 1,	31	5.50
N ½ of SE ¼,	33	80.00
Total, Clarke County,		292.50

COLUMBIA COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township 3, *Range* 1.

	Section	Acres
Lot 2,	21	12.98

Township 4, *Range* 1.

Lots 6, 7,	17	54.90
Lot 8,	19	22.96

Township 3, *Range* 2.

N ½ of N ½; SW ¼ of NW ¼; N ½ of SW ¼; SW ¼ of SW ¼; NW ¼ of SE ¼,	3	362.58
All,	5	635.90
N ½; W ½ of SW ¼,	7	400.20
NE ¼; N ½ of NW ¼; SE ¼ of NW ¼; NE ¼ of SW ¼; N ½ of SE ¼,	9	400.00
NW ¼ of NE ¼; NE ¼ of NW ¼,	11	80.00
W ½ of S W¼,	15	80.00
E ½ of S W¼; NE ¼ of SE ¼,	17	120.00

Township 4, *Range* 2.

All,	7	612.96
N ½ of SE ¼; SE ¼ of NE ¼,	27	120.00
All,	29	640.00
All,	31	621.42
SE ¼ of NW ¼; NE ¼ of SW ¼; S ½ of SW ¼,	33	160.00

Township 5, *Range* 2.

All,	31	636.90

COLUMBIA COUNTY—Continued.

Township 3, *Range* 3.

	Section	Acres
All,	1	637.86
All,	11	640.00

Township 4, *Range* 3.

Lots 1, 2, 3, 4; S ½,	1	512.36
All,	3	660.81
All,	5	667.00
E ½,	7	320.00
All,	9	640.00
All,	11	640.00
All,	15	640.00
All,	17	640.00
E ½,	19	320.00
All,	21	640.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
E ½,	31	320.00
All,	33	640.00
All,	35	640.00

Township 5, *Range* 3.

E ½,	31	320.00
All,	33	640.00
All,	35	640.00

Total, Columbia County, 17,678.83

TILLAMOOK COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

	Section	Acres
Township 1, Range 6.		
NE ¼; S E¼ of NW ¼; S ½,	19	531.00
Township 2, Range 6.		
N ½ of SW ¼; SE ¼ of SW ¼; W ½ of SE ¼,	19	200.00
Township 3, Range 6.		
All,	7	667.00
All,	19	666.00
All,	31	665.00
Township 4, Range 6.		
All,	7	662.00
Township 1, Range 7.		
S ½ of SW ¼,	23	80.00
NE ¼; SE ¼ of NW ¼; N ½ of SE ¼,	25	280.00
E ½,	27	320.00
S ½ of SW ¼,	31	70.00
Township 3, Range 7.		
S ½,	5	320.00
All,	7	646.00
All,	9	682.00
All,	11	640.00
All,	13	640.00
All,	15	640.00
All,	17	640.00
All,	19	645.00

TILLAMOOK COUNTY—Continued.

Township 3, *Range* 7—*Continued.*

	Section	Acres
All,	21	660.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	29	640.00
All,	31	644.00
All,	33	640.00
All,	35	640.00

Township 4, *Range* 7.

All,	1	642.00
All,	3	644.00
All,	5	642.00
All,	7	641.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
N ½; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼,	15	600.00
N ½ of N ½,	17	160.00

Township 1, *Range* 8.

Lot 3,	1	24.00
W ½ of W ½,	23	160.00
W ½ of NE ¼; SW ¼ of SW ¼; NW ¼ of SE ¼,	25	160.00
SW ¼ of NE ¼; SE ¼ of NW ¼; E ½ of SW ¼; W ½ of SE ¼,	27	240.00

TILLAMOOK COUNTY—Continued.

Township 2, *Range* 8.

	Section	Acres
W ½ of NW ¼,	13	80.00
E ½ of SW ¼; S ½ of SE ¼,	21	160.00
W ½ of W ½,	27	160.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	33	600.00

Township 3, *Range* 8.

SW ¼; S ½ of SE ¼,	1	240.00
All,	3	650.00
All,	9	640.00
All,	11	640.00
All,	13	640.00
S ½ of NE ¼; NW ¼; S ½,	21	560.00
All,	23	640.00
All,	25	640.00
All,	27	640.00
All,	33	640.00
All,	35	640.00

Township 4, *Range* 8.

N ½ of N ½; SE ¼ of NE ¼; SW ¼ of SW ¼; SE ¼,	1	400.00
N ½ of N ½; NE ¼ of SW ¼; S ½ of S ½,	3	360.00
E ½; E ½ of W ½,	9	480.00
All,	11	640.00
N ½ of N ½,	13	160.00
N ½ of N ½,	15	160.00
Total, Tillamook County,		**29,741.00**

WASHINGTON COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township 2, *Range* 2.

	Section	Acres
SE ¼ of SE ¼,	5	40.00
N ½ of NW ¼; SW ¼ of N W¼,	7	123.00
N ½ of SW ¼,	9	80.00
N ½ of NE ¼; NE ¼ of NW ¼,	19	120.00
SE ¼ of NE ¼; N ½ of SW ¼,	21	120.00
SW ¼ of NE ¼,	29	40.00

Township 3, *Range* 2.

E ½ of NE ¼; NW ¼ of NW ¼; S ½ of NW ¼; S ½,	19	520.00
All,	21	640.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼; SE ¼,	29	600.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	31	601.00
SE ¼ of SE ¼,	33	40.00

Township 2, *Range* 3.

W ½ of NE ¼; NW ¼; N ½ of SW ¼; SE ¼ of SW ¼; SE ¼;	1	523.00
SW ¼ of NE ¼; NW ¼; NE ¼ of SW ¼; NW ¼ of SE ¼,	3	284.00
All,	5	662.00
W ½ of SW ¼,	9	80.00
NE ¼ of NE ¼; SW ¼ of NW ¼; SW ¼ of SW ¼,	11	120.00

WASHINGTON COUNTY—Continued.

Township 2, Range 3—Continued.

	Section	Acres
NE ¼ of NE ¼; NE ¼ of NW ¼; SE ¼ of SW ¼,	13	120.00
W ½ of NE ¼; SE ¼,	17	240.00
S ½ of NE ¼; N ½ of SE ¼,	21	160.00
SE ¼ of SE ¼,	23	40.00

Township 3, Range 3.

All,	3	639.00
All,	5	640.00
E ½,	7	320.00
All,	9	640.00
N ½; SW ¼; N ½ of SE ¼,	13	560.00
E ½ of NE ¼; N ½ of SW ¼,	15	160.00
NW ¼ of NE ¼; S ½ of NE ¼; NW ¼; S ½,	17	600.00
E ½,	19	320.00
E ½; N ½ of NW ¼; SW ¼ of NW ¼; E ½ of SW ¼,	21	520.00
N ½; N ½ of SW ¼; SW ¼ of SW ¼,	23	440.00
W ½; E ½ of SE ¼,	25	400.00
All,	27	640.00
E ½ of NE ¼; NW ¼; W ½ of SW ¼,	29	320.00
E ½,	31	320.00
NE ¼ of NE ¼; S ½ of NE ¼,	33	120.00
NE ¼; NE ¼ of NW ¼; S ½ of NW ¼; S ½,	35	600.00

WASHINGTON COUNTY—Continued.

South of Base Line and West of Willamette Meridian.

Township 1, *Range* 5.

	Section	Acres
W ½,	3	320.00
S ½ of NE ¼; N ½ of SE ¼,	5	160.00
E ½ of E ½; N ½ of SW ¼,	9	240.00
N ½ of NW ¼,	15	80.00
NE ¼; S ½,	19	482.00
All,	29	640.00
N ½ of NE ¼; W ½,	31	406.00
Township 1, *Range* 6.		
E ½ of NE ¼; NE ¼ of SE ¼,	25	120.00
All,	29	640.00
Total, Washington County,		15,480.00

(None of the above described lands in Township 1 South, Range 5 West, have ever been patented, with the exception of those described as situated in Section 15; but all of said lands are listed in the annual tax return made by the defendant Oregon and California Railroad Company, and are therefore included in this schedule).

MULTNOMAH COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township 2, *Range* 2.

	Section	Acres
N ½ of NE ¼; W ½ of NW ¼,	3	167.00
SE ¼ of SW ¼,	15	40.00

Township 3, *Range* 2.

S ½ of NE ¼; N ½ of NW ¼; S ½ of SW ¼; SE ¼,	27	400.00
N ½,	35	320.00
Total, Multnomah County,		927.00

YAMHILL COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township 2, *Range* 6.

	Section	Acres
All,	21	642.47
E ½; NE ¼ of NW ¼,	29	360.00
NW ¼; W ½ of NE ¼,	33	240.00
Township 3, *Range* 6.		
N ½,	5	320.64
Total, Yamhill County,		1,563.11

Exhibit L

To his Excellency, the President, and Honorable Senate and House of Representatives of the United States of America:

Your memoralist, the legislative assembly of the State of Oregon, most respectfully represents:

That vast tracts of public lands within Oregon are claimed and held by the Oregon & California Railroad Company, as grantee in succession, under the acts of Congress of the United States of July 25, 1866, and April 10, 1869;

That said tracts are withdrawn from sale, whereby the development and material prosperity of the State is retarded;

That said railroad company, so claiming said lands, has not complied with the terms of said act of April 10, 1869, as to the terms of sale and the quantities of land to be sold;

That said conditions are claimed to inure only to the United States as grantor to the predecessor in alleged interest of said Oregon & California Railroad Company, and have not been complied with; therefore,

Your memorialist most respectfully asks that the Congress of the United States be and hereby is requested to enact such laws and take such steps by resolution, or otherwise, as may be necessary to compel said railroad

company to comply with the conditions of said grant, and to enact and declare some sufficient penalty for noncompliance therewith by way of forfeiture of the grant, or otherwise, as in the wisdom of Congress may seem best.

That the Senators and Representatives in Congress from the State of Oregon and all other land grant states be and they hereby are requested to use their utmost endeavor to procure the needed legislation in the above matter.

That this memorial be forwarded to the President and to Oregon Senators and Representatives in Congress.

Exhibit M

Schedule showing maps of survey and location filed in the office of the Secretary of the Interior of the United States.

East Side Line,—Act of July 25, 1866, *as amended*:

From East Portland via Salem, to Jefferson on the Santiam River, in Township 10 South, Range 3 West; filed October twenty-ninth, A. D. 1869.

From Jefferson on the Santiam River to the South line of Township 27 South, Range 6 West; filed March twenty-ninth, A. D. 1870.

From the South line of Township 27 South, Range 6 West, to a point in Section 30, Township 30 South, Range 5 West, filed March second, A. D. 1871.

From a point in Section 19, Township 27 South, Range 5 West, to the North line of Section 33, Township 34 South, Range 6 West; filed 1882, amending *pro tanto* prior maps filed.

From the North line of Section 33, Township 34 South, Range 6 West to the North line of Section 30, Township 40 South, Range 2 East; filed 1883.

From the North line of Section 30, Township 40 South, Range 2 East, to the Southern boundary line of the State of Oregon, in Section 13, Township 41 South, Range 1 East, connecting with the line of the California and Oregon Railroad Company; filed August twentieth, A. D. 1884.

West Side Line,—Act of May 4, 1870.

From Portland to Forest Grove, a distance of approximately twenty miles, and thence southerly a distance of approximately twenty-seven and one-half miles to a point on the Yamhill River near McMinnville; filed May twenty-ninth, A. D. 1871.

Exhibit N

Schedule showing construction of the several sections of the railroad and telegraph lines.

East Side Line,—Act of July 25, 1866, *as amended*:

The first section of twenty miles commencing at East Portland and extending to the mouth of Parrot Creek, constructed prior to the twenty-fourth day of December, A. D. 1869; examined by Commissioners appointed therefor and favorably reported on January nineteenth, A. D. 1870, and report approved and accepted January twenty-ninth, A. D. 1870;

The second, third and fourth sections commencing at the twentieth mile post and extending to the eightieth mile post constructed A. D. 1870, examined by commissioners appointed therefor and favorably reported, and report approved and accepted February twenty-eighth, A. D. 1871;

The fifth and sixth sections commencing at the eightieth mile post and extending to the one hundred and twentieth mile post, constructed A. D. 1871, examined by Commissioners appointed therefor and favorably reported, and report approved and accepted March eleventh, A. D. 1872;

The seventh, eighth and ninth sections beginning at a point in the northwest quarter of Section 23, Township 17 South, Range 4 West, and extending to a point near Roseburg in the southeast quarter of Section 24, Township 27 South, Range 6 West, a distance of 77.3668

miles, constructed A. D. 1872, examined by Commissioners appointed therefor and favorably reported July tenth, A. D. 1878, and report approved and accepted July eleventh, A. D. 1878;

The tenth section beginning at said point in the southeast quarter of Section 24, Township 27 South, Range 6 West, and extending to a point in Section 19, Township 31 South, Range 7 West, a distance of 45 miles, constructed A. D. 1881 and 1882, examined by Commissioners appointed therefor and favorably reported and report approved and accepted August twenty-ninth, A. D. 1883;

The eleventh section commencing at said point 45 miles southerly from Roseburg, and extending to a point one and one-quarter miles southerly from Ashland, a distance of 100 miles, constructed A. D. 1883, examined by Commissioners appointed therefor and favorably reported, and report approved and accepted January twenty-ninth, A. D. 1887;

The twelfth section commencing at said point one and one-quarter miles southerly from Ashland, and extending thence southerly a distance of 24.135 miles, and terminating on the boundary line between the States of Oregon and California, at a point in the south line of fractional Section 14, Township 41 South, Range 1 East, constructed A. D. 1887, examined by Commissioners appointed therefor and favorably reported, and report approved and accepted November eighth, A. D. 1889;

West Side Line,—Act of May 4, 1870:

The first section of twenty miles extending from the City of Portland to a point near the village of Forest Grove, constructed and completed A. D. 1871, examined by Commissioners appointed therefor and favorably reported during the month of January, A. D. 1872, and report approved and accepted February sixteenth, A. D. 1872;

The second section extending from the terminus of the section last described, southerly to a point on the Yamhill River near the village of McMinnville, a distance of approximately twenty-seven and one-half miles, constructed A. D. 1872, examined by Commissioners appointed therefor and favorably reported, and report approved and accepted June twenty-third, A. D. 1876.

Exhibit O

Schedule showing amount of land patented, compiled by years, separately stated as to each land grant.

East Side Grant, Act of July 25, A. D. 1866, as amended;

Year.	Acres.
1871	152,834.67
1872	69,061.63
1876	14,629.67
1877	86,622.71
1893	292,486.90
1894	382,352.95
1895	558,718.40
1896	709,769.99
1897	37,231.93
1898	70,014.02
1899	150,944.30
1900	42,841.33
1901	60,466.60
1902	36,166.20
1903	36,438.08
1904	39,239.08
1905	25,758.67
1906	20.00
Total,	2,765,597.13

West Side Grant, Act of May 4, 1870:

Year.	Acres.
1895	93,079.00
1896	32,288.24
1897	2,388.00
1898	72.75
1899	520.00
1903	270.14
Total,	128,618.13

East Side Grant,	2,765,597.13
West Side Grant,	128,618.13
Total both grants,	2,894,215.26

Exhibit P

Schedule of suits involving certain of said unsold lands, referred to in paragraph XX hereof.

The defendants in each of said suits are identical, to-wit: Oregon and California Railroad Company, Stephen T. Gage, and Union Trust Company, being also defendants herein. All of said suits are pending in The Circuit Court of the United States for the District of Oregon, and involve lands situated in the State of Oregon, excepting in the case of the suit of Roy W. Minkler, which last named suit is pending in The Circuit Court of the United States for the Western District of the State of Washington, and involves lands situated in the State of Washington. Townships and Ranges are designated with reference to the Willamette meridian and the base line thereof.

Suits affecting lands of the East Side Grant, Act of July 25, A. D. 1866, as amended:

Court No.	Complainant.	Instituted.	Lands Involved.
3289	Sidney Ben Smith,	April 7, 1908,	NE ¼ Section 27, Township 20 South, Range 1 West.
3290	Orrin J. Lawrence,	April 7, 1908,	NE ¼ Section 17, Township 20 South, Range 1 West.
3294	Robert G. Balderree,	April 10, 1908,	NW ¼ Section 35, Township 20 South, Range 1 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3296	Oscar E. Smith,	April 16, 1908,	SE ¼ Section 27, Township 20 South, Range 1 West.
3298	Egbert C. Lake,	April 21, 1908,	NE ¼ Section 35, Township 20 South, Range 1 West.
3307	C. W. Sloat,	May 11, 1908,	SW ¼ Section 27, Township 20 South, Range 1 West.
3310	John H. Haggett,	May 13, 1908,	NW ¼ Section 11, Township 1 South, Range 5 East.
3311	Chas. W. Mead,	May 13, 1908,	SE ¼ Section 3, Township 1 South, Range 5 East.
3315	William Otterstrom,	May 22, 1908,	SW ¼ Section 11, Township 1 South, Range 5 East.
3316	Angus MacDonald,	May 22, 1908,	NE ¼ Section 15, Township 1 South, Range 5 East.
3317	John T. Moan,	May 22, 1908,	NW ¼ Section 15, Township 1 South, Range 5 East.
3321	Jesse F. Holbrook,	May 27, 1908,	SE ¼ Section 17, Township 20 South, Range 1 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3327	Janes C. O'Neill,	June 12, 1908,	SE ¼ Section 5, Township 1 South, Range 6 East.
3331	Joseph D. Hadley,	June 18, 1908,	NE ¼ Section 7, Township 1 South, Range 6 East.
3332	Henry C. Ott,	June 18, 1908,	NW ¼ (or Lots 1 and 2, and E ½ of NW ¼) Section 7, Township 1 South, Range 6 East.
3333	Fred L. Freebing,	June 18, 1908,	NW ¼ (or Lots 3 and 4, and S ½ of NW ¼) Section 1, Township 1 South, Range 5 East.
3335	A. E. Haudenschield,	June 22, 1908,	SW ¼ Section 23, Township 20 South, Range 1 West.
3336	William Cain,	June 29, 1908,	NE ¼ (or fractional NE ¼, or Lots 1 and 2, and S ½ of NE ¼) Section 1, Township 1 South, Range 5 East.
3337	R. T. Aldrich,	July 3, 1908,	NE ¼ Section 13, Township 1 South, Range 5 East.

Court No.	Complainant.	Instituted.	Lands Involved.
3346	Alexander Fauske,	July 28, 1908,	W½ of NW¼ Section 21, Township 6 South, Range 2 East.
3347	S. H. Montgomery,	July 31, 1908,	SW ¼ Section 25, Township 20 South, Range 1 West.
3348	W. A. Noland,	July 31, 1908,	NW ¼ Section 25, Township 20 South, Range 1 West.
3349	F. M. Rhoades,	August 13, 1908,	W ½ of SE ¼ and E ½ of SW ¼ Section 27, Township 22 South, Range 6 West.
3350	Francis Wiest,	August 14, 1908,	SE ¼ Section 23, Township 4 South, Range 5 East.
3353	Cordelia Michael,	August 18, 1908,	NW ¼ Section 21, Township 4 South, Range 5 East.
3354	John B. Wiest,	August 18, 1908,	SW ¼ Section 23, Township 4 South, Range 5 East.
3355	Cyrus Wiest,	August 18, 1908,	NE ¼ Section 35, Township 4 South, Range 5 East.

Court No.	Complainant.	Instituted.	Lands Involved.
3356	John Wiest,	August 18, 1908,	NW ¼ Section 23, Township 4 South, Range 5 East.
3357	Thomas Manley Hill,	Aug 18, 1908,	SW ¼ Section 21, Township 4 South, Range 5 East.
3358	C. P. Wells,	August 18, 1908,	NE ¼ Section 31, Township 7 South, Range 7 West.
3359	I. H. Ingram,	August 18, 1908,	NW ¼ of SW ¼; S ½ of S W¼; and SW ¼ of SE ¼, Section 31, Township 7 South, Range 7 West.
3360	Otto Nelson,	August 18, 1908,	SE ¼ Section 21, Township 4 South, Range 5 East.
3361	L. G. Reeves,	August 18, 1908,	NE ¼ of SW ¼; N ½ of SE ¼; and SE ¼ of SE ¼, Section 31, Township 7 South, Range 7 West.
3362	W. W. Wells,	August 18, 1908,	NW ¼ Section 31, Township 7 South, Range 7 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3363	Marvin Martin,	August 19, 1908,	NE ¼ Section 8, Township 15 South, Range 2 West.
3364	Jasper L. Hewitt,	August 21, 1908,	E ½ of NW ¼, Section 25, Township 3 South, Range 4 East.
3366	B. L. Porter,	August 22, 1908,	NE ¼ Section 27, Township 4 South, Range 5 East.
3367	Frank Wells,	August 22, 1908,	W ½ of SE ¼ and E ½ of SW ¼ Section 17, Township 4 South, Range 5 East.

Suits Affecting Lands of the West Side Grant, Act of May 4, 1870.

Court No.	Complainant.	Instituted.	Lands Involved.
3184	John L. Snyder,	September 16, 1907,	SE ¼ Section 17, Township 4 North, Range 3 West.
3215	Julius F. Prahl,	November 14, 1907,	SW ¼ Section 17, Township 4 North, Range 3 West.
3221	Albert E. Thompson,	November 27, 1907,	SE ¼ Section 27, Township 4 North, Range 3 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3222	James Barr,	November 27, 1907,	E ½ of NE ¼ and E ½ of SE ¼, Section 9, Township 4 North, Range 3 West.
3223	Fred Witte,	December 2, 1907,	SW ¼ Section 25, Township 4 North, Range 3 West.
3243	W. A. Anderson,	January 21, 1908,	SW ¼ Section 5, Township 4 North, Range 3 West.
3244	W. H. Anderson,	January 21, 1908,	NE ¼ Section 5, Township 4 North, Range 3 West.
3245	O. M. Anderson,	January 21, 1908,	NW ¼ Section 5, Township 4 North, Range 3 West.
3254	F. E. Williams,	January 30, 1908,	NW ¼ Section 21, Township 4 North, Range 3 West.
3255	Paul Birkenfeld,	January 30, 1908,	SE ¼ Section 15, Township 4 North, Range 3 West.
3257	J. H. Lewis,	February 6, 1908,	W ½ of NE ¼ and W ½ of SE ¼ Section 9, Township 4 North, Range 3 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3273	Francis S. Wiser,	March 23, 1908,	NW ¼ Section 27, Township 4 North, Range 3 West.
3261	W. E. Anderson,	March 4, 1908,	SE ¼ Section 5, Township 4 North, Range 3 West.
3274	Albert Arms,	March 23, 1908,	NE ¼ Section 35, Township 4 North, Range 3 West.
3275	Joseph A. Maxwell,	March 23, 1908,	NE ¼ Section 27, Township 4 North, Range 3 West.
3282	Isaac McKay,	March 30, 1908,	SE ¼ Section 21, Township 4 North, Range 3 West.
3306	J. R. Peterson,	May 7, 1908,	NE ¼ Section 21, Township 4 North, Range 3 West.
3312	D. MacLafferty,	May 18, 1908,	NE ¼ Section 25, Township 4 North, Range 3 West.
3313	Edgar MacLafferty,	May 18, 1908,	SE ¼ Section 25, Township 4 North, Range 3 West.
3322	V. V. McAboy,	June 1, 1908,	NE ¼ Section 7, Township 4 North, Range 3 West.

Court No.	Complainant.	Instituted.	Lands Involved.
3323	George C. MacLafferty,	June 2, 1908,	NW ¼ Section 25, Township 4 North, Range 3 West.
3326	George Edgar MacLafferty,	June 8, 1908,	NE ¼ Section 1, Township 3 North, Range 3 West.
3329	E. L. MacLafferty,	June 17, 1908,	NW ¼ Section 1, Township 3 North, Range 3 West.
3330	B. N. MacLafferty,	June 17, 1908,	SE ¼ Section 1, Township 3 North, Range 3 West.
3338	Enos M. Fluhrer,	July 15, 1908,	SE ¼ Section 31, Township 5 North, Range 2 West.
3351	F. W. Floeter,	August 17, 1908,	NE ¼ Section 19, Township 4 North, Range 3 West.
3369	S. Shryock,	August 24, 1908,	SW ¼ Section 21, Township 4 North, Range 3 West.

WASHINGTON (WESTERN DISTRICT).

1370	Roy W. Minkler,	May 14, 1908,	N ½ of SE ¼ Section 33, Township 3 North, Range 1 East.

UNITED STATES OF AMERICA,
District of Oregon, } ss.

On this fourth day of September, A. D. 1908, before me personally appeared the above named B. D. Townsend, who, being duly sworn, deposes and says that for more than one year last past he has been, and now is, the duly appointed, qualified and acting Special Assistant United States Attorney for the District of Oregon; that as such Special Assistant United States Attorney, and under the direction and authority of the Attorney-General of the United States, he personally conducted the investigation of the subject of the foregoing bill of complaint, mentioned in paragraph XIII thereof, and subscribed the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

B. D. TOWNSEND.

Subscribed and sworn to before me this fourth day of September, A. D. 1908.

J. W. MARSH,

(Seal). Deputy Clerk United States Circuit Court.

(Endorsed)

BILL OF COMPLAINT

Filed Sept. 4, 1908

G. H. MARSH, Clerk

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME II

PAGES 541-1161

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME II

PAGES 541-1161

And afterwards, to wit, on the 2nd day of March, 1909, there was duly filed in said Court a

[PETITION IN INTERVENTION]

in words and figures as follows, to wit:

To the Honorable Judges of the Circuit Court of the United States for the District of Oregon

Come now your petitioners, B. W. Nunnally, John Weist, Geo. E. Walling, Edward E. Stucker, William Weist, Francis Weist, W. D. Sappington, and O. N. Cranor, and respectfully show unto Your Honors that, each of your petitioners is a citizen and resident of the United States; and that, by reason of the facts hereinafter stated, your petitioners have, and each of them has an interest in the subject matter of this suit, and of the things set forth in Complainant's bill of complaint filed herein; and especially has each of your petitioners an interest in, and claim upon a certain portion or parcel of the lands mentioned and described in Complainant's said bill of complaint; such parcel of land so claimed by each of your petitioners being particularly described and the character of claim asserted thereto being fully set forth by each of your petitioners hereinafter. To the end that your petitioners may have their several rights adjudicated, established and enforced without a multiplicity of suits, and that such multiplicity of suits may be avoided, your petitioners pray that they be permitted to intervene herein and be made parties to this suit; and, with this their petition, your petitioners, now and at all

times hereafter reserving to themselves all advantages and benefits of exception which can or may be had or taken to any and all errors, imperfections or uncertainties in Complainant's bill contained; for answer thereunto, or to so much, and to such part thereof as your petitioners are advised are material and it is necessary for them to make answer unto, present this their petition, answer and cross-bill by way of asking the affirmative relief to which, as they are advised, the facts alleged entitle them severally to demand:

I.

Your petitioners and intervenors admit, and allege as true the allegations of paragraph One (1) of Complainant's bill of complaint, and make the same a part of this, their answer and cross-bill, the same being as follows:

The defendant Oregon and California Railroad Company, now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State.

The defendant Southern Pacific Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of said last named State.

The defendant Stephen T. Gage is a resident and citizen of the City of San Francisco, in the State of California, and is sued in his own right, and also as sole

surviving trustee under a certain deed of trust hereinafter described.

The defendant Union Trust Company now is, and at all the times hereinafter mentioned as to it was, a corporation organized under the laws of the State of New York, and a resident and citizen of said last named State, and is sued in its own right, and also as trustee under a certain mortgage deed hereinafter described.

Each of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, is a resident and citizen of the County of Columbia in the State of Oregon.

Each of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, H. S. Montgomery, and W. A. Noland, is a resident and citizen of the County of Lane in the State of Oregon.

Each of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich and James

C. O'Neill is a resident and citizen of the County of Multnomah in the State of Oregon.

Each of the defendants Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter and Frank Wells is a resident and citizen of the County of Clackamas in the State of Oregon.

Each of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves and W. W. Wells is a resident and citizen of the County of Polk in the State of Oregon.

The defendant F. M. Rhoades is a resident and citizen of the County of Douglas in the State of Oregon.

The defendant Marvin Martin is a resident and citizen of the County of Linn in the State of Oregon.

The defendant Roy W. Minkler is a resident and citizen of the County of Clarke in the State of Washington.

Certain of said defendants above named are described otherwise than by Christian name for the reason that the Christian name of each of said defendants is to your Orator unknown.

II.

These, your petitioners and intervenors, admit, and allege as true the allegations of paragraph Two (2) of Complainant's said bill, and make the same a part of this, their answer and cross-bill; the same being as follows:

On or about the twenty-fifth day of July, A. D. 1866, the Congress of the United States passed an Act entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,"

which said Act was approved and became operative upon said twenty-fifth day of July, A. D. 1866, and which said Act is in terms as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the 'California and Oregon Railroad Company,' organized under an act of the State of California, to protect certain parties in and to a railroad survey, 'to connect Portland, in Oregon, with Marysville, in California,' approved April 6, 1868, and such company organized under the laws of Oregon as the Legislature of said state shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon, and the Central Pacific Railroad in California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta

valleys, to the northern boundary of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first-named company; *Provided,* That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

SEC. 2. *And be it further enacted,* That there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said

alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the States, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold: *Provided,* That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation: *And provided also,* That settlers under the provisions of the homestead act, who comply with the terms and requirements of said act,

shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That the right of way through the public lands be, and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side tracks, turn-tables, water stations, or any other structures required in the construction and operating of said road.

SEC. 4. *And be it further enacted,* That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three commissioners, whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commis-

sioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminous with the completed section of said railroad and telegraph line as aforesaid; and from time to time, whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported

over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

SEC. 6. *And be it further enacted,* That the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith.

SEC. 7. *And be it further enacted,* That the said companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel, and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damages sustained on account of such dsicrimination, to be sued for and recovered in any court of the United States, or of any State, of competent jurisdiction.

SEC. 8. *And be it further enacted,* That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this act.

SEC. 9. *And be it further enacted,* That the said 'California and Oregon Railroad Company,' and the said 'Oregon Company' shall be governed by the provisions of the general railroad and telegraph laws of their respective States, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this act. Wherever the word 'company' or 'companies' is used in this act it shall be construed to embrace the words 'their associates, successors and assigns,' the same as if the words had been inserted, or thereto annexed.

SEC. 10. *And be it further enacted,* That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies; *Provided,* That the term 'mineral lands' shall not include lands containing coal and iron.

SEC. 11. *And be it further enacted,* That the said companies named in this act shall obtain the consent of the legislatures of their respective States, and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

SEC. 12. *And be it further enacted,* That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this act."

Said last described Act of Congress was amended by an Act of Congress approved June twenty-fifth, A. D. 1868, entitled, "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,'" which said amendatory act is in terms as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That section six of an act entitled, 'An Act

granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-fifth, eighteen hundred and sixty-six, be so amended as to provide that instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this act, and at least twenty miles in each two years thereafter, and the whole on or before the first day of July, Anno Domini eighteen hundred and eighty."

III.

These, your petitioners and intervenors, admit, and allege as true, paragraph Three (III) of Complainant's bill, and make the same a part of this, their answer and cross-bill; the same being as follows:

No right, title, or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by any corporation or person, or otherwise, except at the time, in the manner, and upon the terms and conditions as hereinafter set forth.

On or about the sixth day of October, A. D. 1866, certain proceedings were had by which certain persons attempted to organize, under the general incorporation law of the State of Oregon, a corporation bearing the

corporate name "Oregon Central Railroad Company," having its principal office at the city of Portland, in said State of Oregon.

Said Oregon Central Railroad Comapny projected its railroad line from said city of Portland in a westerly direction to the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the *westerly side* of the Willamette River, from which circumstance said company and its line of railroad became known, and therefore will herein be referred to and mentioned, as the "West Side Company" and the "West Side Line" respectively, to distinguish the same from a certain other line of railroad projected at about the same time on the *easterly side* of said river by another railroad company bearing the same corporate name, as hereinafter set forth.

On the tenth day of October, A. D. 1866, the Legislature of the State of Oregon adopted a joint resolution, which on the last aforesaid day was approved by the governor of said State, and which is in terms as follows:

"*Whereas,* The Congress of the United States, at its last session, passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly of the State of Oregon to designate the company, organized under the laws of Oregon, which shall

receive that part of said land grant lying within the State of Oregon; therefore be it

"Resolved by the House, the Senate concurring, That the 'Oregon Central Railroad Company,' a company organized under the general incorporation laws of this State, be and the same is hereby designated as the company which shall be entitled to receive the land granted and all the benefits of an Act of Congress approved July 25, 1866, entitled 'An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon,' so far as the said grant applies to the State of Oregon."

Assuming in the premises to have been lawfully designated therefor, said West Side Company, on or about the twenty-fifth day of May, A. D. 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of said Act of Congress approved July twenty-fifth, A. D. 1866, and, on or about the sixth day of July, A. D. 1867, filed in the office of the Secretary of the Interior of the United States an authenticated copy of the last aforesaid resolution, together with a certified copy of its articles of incorporation, and a certified copy of the aforesaid joint resolution of the legislature of the State of Oregon; and, on or about the twentieth day of August, A. D. 1868, filed in the last aforesaid office a general map of survey of its projected line of railroad.

In the meantime, and on or about the twenty-second

day of April, A. D. 1867, certain persons, residents of the State of Oregon, then and thereafter contending that said West Side Company was never lawfully incorporated or organized, and designing to secure the several grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, in that behalf caused certain proceedings to be had intended to organize, under the general incorporation law of the State of Oregon, a corporation bearing the same corporate name, to wit: "Oregon Central Railroad Company," having its principal place of business at the city of Salem, in said State of Oregon.

Said last mentioned Oregon Central Railroad Company projected its line of railroad on the easterly side of the Willamette River, and, for the reasons hereinbefore explained, said last mentioned company and its line of railroad became known as the "East Side Company" and the "East Side Line," respectively, and therefore will herein be so referred to and mentioned.

Said East Side Company, in furtherance of its aforesaid design, on the twentieth day of October, A. D. 1868, procured a joint resolution to be adopted by the Legislature of the State of Oregon, and approved by the governor of said State, which said resolution is in terms as follows:

"*Whereas,* The Congress of the United States, by an Act approved July 25, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and

telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the Legislature of said State should thereafter designate; and

"*Whereas,* The Legislative Assembly of Oregon, at its fourth regular session, did adopt a joint, resolution known as 'House Joint Resolution No. 18, designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of, the said Act of Congress; and

"*Whereas,* At the time of the adoption of the said joint resolution as aforesaid no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such company; and

"*Whereas,* The designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by, the said Act of Congress, yet remains to be made;

"*Be it resolved by the Senate, the House concurring,* That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second (22d) day of April, in the year one thousand eight hundred and sixty-seven (1867), under and pursuant to the

laws of the State of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress."

Thereupon a controversy arose between said West Side Company and said East Side Company, as to which of said companies was entitled to the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866; which controversy continued until on or about the month of January, A. D. 1870, as hereinafter set forth.

Said Act of Congress approved July twenty-fifth, A. D. 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the company designated by the Legislature of the State of Oregon should within one year from said twenty-fifth day of July, A. D. 1866, file in the Department of the Interior its assent to said Act and the terms and conditions thereof.

The time within which to file an assent as aforesaid had expired long prior to the designation of said East Side Company by the Legislature of the State of Oregon on October twentieth, A. D. 1868, as aforesaid. Because of the premises, said East Side Company did apply to the Congress of the United States, during the session thereof commencing in the month of December, A. D. 1868, for an extension of the time within which to file its assent as aforesaid; and, in that behalf, did

lay before Congress said joint resolution of the Legislature of the State of Oregon last herein described, and did represent that all of the recitals thereof were true, and that because of the premises, the several grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, has lapsed and the benefits thereof would be wholly lost to the State of Oregon unless revived by Congress in manner aforesaid.

During the consideration by Congress of said application of said East Side Company, said West Side Company likewise appeared before Congress and opposed said application, and in that behalf contended that the several grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, had heretofore become, and then were, vested in said West Side Company.

Thereafter, and by Act of Congress approved April tenth, A. D. 1869, entitled, "An Act to amend an Act entitled, 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six," Congress did grant the said application of said East Side Company, but upon the express condition that the lands granted as aforesaid should be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre.

Said Act of Congress approved April tenth, A. D. 1869, is in terms as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section six of an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' approved July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said Act, to file its assent to such Act in the Department of the Interior within one year from the date of the passage of this Act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said act: *Provided,* That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act, nor shall said Act or this amendment be construed to entitle more than one company to a grant of land; *And Provided, Further,* That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding Two Dollars and Fifty Cents per acre."

On or about the eighth day of June, A. D. 1869,

said East Side Company, through its Board of Directors, adopted a resolution in the following terms:

"*Whereas,* The Congress of the United States, on the 25th day of July, 1866, passed an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and

"*Whereas,* Such Act provided that such company thereafter organized under the laws of Oregon, and designated by the Legislature of such State, should be entitled to receive and manage the said grant in Oregon, said Act further requiring that the company so organized and designated should, within one year from the date of its passage (to wit: July 25, 1866), file its assent in the Department of the Interior, and

"*Whereas,* No company was designated by such Legislature within the year within which such an assent was required to be filed, and

"*Whereas,* The Legislature of the State of Oregon did, at its regular session in October, A. D. 1868, pass the following joint resolution, designating this company (to wit: 'The Oregon Central Railroad Company' of Salem, Oregon, a company duly incorporated and organized under the laws of the State of Oregon), as the company to take and manage such grant, and receive all the benefits of the same, in the State of Oregon";

(Quoting in full said joint resolution, and which is hereinbefore set forth.)

"*And Whereas,* The Congress of the United States did, in April, A. D. 1869, pass an Act amnedatory of the said Act of July 25, 1866, extending the time in which the company designated might file its said assent, which Act was approved by the President of the United States, April 10, 1869, and is entitled 'An Act to amend an Act entitled an Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July 25th, 1866';

"*Therefore, Resolved,* That this company, the Oregon Central Railroad Company, of Salem, Oregon, incorporated at Salem, Oregon, April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said Act of July 25, A. D. 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' and of all Acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent and the assent of such company thereto, and the Secretary of this Company is hereby instructed to prepare a true copy of this resolution, certified to under the seal of the corporation, signed by himself as Secretary, and by the President of this company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City, D. C."

On or about the thirtieth day of June, A. D. 1869, said East Side Company filed in the office of the Secre-

tary of the Interior of the United States a certified copy of said resolution last herein set forth.

On or about the twenty-ninth day of October, A. D. 1869, said East Side Company filed in the office of the Secretary of the Interior of the United States a map of survey and location of the first sixty miles of its projected line of railroad.

On the twenty-fourth day of December, A. D. 1869, said East Side Company completed the construction of the first twenty miles of its aforesaid line of railroad, commencing at the City of Portland, and on the thirty-first day of December, A. D. 1869, the same was examined and approved by commissioners appointed therefor pursuant to the provisions of section four of said Act of Congress approved July twenty-fifth, A. D. 1866.

Said West Side Company wholly failed to complete the construction of any part of its said line of railroad pursuant to the terms and conditions of the aforesaid Acts of Congress; and on or about the month of January, A. D. 1870, said West Side Company acquiesced in the aforesaid substitution of said East Side Company as the recipient of the aforesaid grants, privileges and franchises, and abandoned and waived all claim thereto, and in lieu thereof, applied for, obtained and accepted a separate and similar grant of lands, franchises and other benefits, pertaining to its line of railroad projected as aforesaid, by Act of Congress approved May

fourth, A. D. 1870, as hereinafter more particularly set forth.

By reason of the premises, no right, title or interest in or to any of the grants, franchises or other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, was ever acquired by said West Side Company, or by, through or under it; or by said East Side Company, or by, through or under it, except by virtue of, and expressly subject to, all of the terms and conditions of said Act of Congress approved April tenth, A. D. 1869.

In the meantime said East Side Company had become involved in litigation questioning the validity of its incorporation and organization and its right to use said corporate name. Because of the premises, promoters, officers and stockholders of said East Side Company did, on or about the seventeenth day of March, A. D. 1870, organize the defendant *Oregon and California Railroad Company* under the general incorporation law of the State of Oregon. In that behalf certain articles of incorporation were, on said last mentioned date, executed in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon, (being the county in which the principal office of said corporation was located), and one in the office of the Secretary of said corporation, at the city of Portland, in said County of Multnomah.

The principal object of said corporation, as stated in its aforesaid articles of incorporation, was to become

the successor of said East Side Company, and as such, to receive and exercise the grants, franchises and privileges of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said articles of incorporation is hereto attached marked "Exhibit A" and made a part of this bill.

Pursuant to the premises, on or about the twenty-ninth day of March, A. D. 1870, said East Side Company did execute and deliver to said defendant *Oregon and California Railroad Company* a certain instrument in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said East Side Company, including the right, title and interest of said East Side Company in and to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof; a copy of which said instrument is hereto attached, marked "Exhibit B," and made a part of this bill. Thereafter, and during the months of March and April, A. D. 1870, said instrument last described was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or con-

veyance of any of the lands granted by the aforesaid Acts of Congress, but to constitute said defendant *Oregon and California Railroad Company* the successor of said East Side Company, to construct, complete and equip the line of railroad aforesaid, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On said twenty-ninth day of March, A. D. 1870, said East Side Company, by action of its Board of Directors and its stockholders, became and was dissolved and since last mentioned date, no corporate powers or franchises have ever been exercised by, or in the name of, said East Side Company.

On the fourth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company,* through its Board of Directors, adopted a resolution in terms as follows:

"*Whereas,* This company has purchased and taken an assignment from the Oregon Central Railroad Company, of Salem, Oregon, incorporated April 22, 1867, of all the railroad franchises and other property of such corporation, including all the right, title, interest and claim, both legal and equitable, absolute and contingent, of such corporation, of, in and to the lands and all other benefits granted to the Oregon Company by an Act of Congress entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific

Railroad in California, to Portland, in Oregon,' approved July 25, 1866, and amendments thereto, therefore,

Resolved, That this company do accept the grant conferred by such Act of Congress, and all the benefits and emoluments therein or thereof granted, and upon the terms and conditions therein specified, and

Resolved, That the President and Secretary of this Company be and they are hereby authorized and directed to file the assent of this Company to such Act of Congress and amendments thereto, as aforesaid, in the office of the Secretary of the Interior, which shall be done by filing a copy of these resolutions in such office, certified to under seal of this Company, and signed by the President and Secretary respectively.

Resolved Further, That a copy of the deed of assignment from said Oregon Central Railroad Company, certified to by the President and Secretary under the seal of this Company, be also filed in such office of the Secretary of the Interior, and accompanying these resolutions."

On or about the twenty-eighth day of April, A. D. 1870, the defendant *Oregon and California Railroad Company* filed in the office of the Secretary of the Interior of the United States an authenticated copy of said last described resolution, and a certified copy of said instrument dated March twenty-ninth, A. D. 1870; and at all times thereafter said defendant *Oregon and Cali-*

fornia Railroad Company has assumed, and still assumes, to be the successor of said East Side Company and of all its rights under said Acts of Congress, as aforesaid.

IV.

These, your petitioners, admit, and allege as true, paragraph Four (IV) of Complainant's bill; the same being as follows:

Having abandoned and waived all claim to the grants, franchises and other benefits of said Act of Congress approved July twenty-fifth, A. D. 1866, as hereinbefore set forth, said West Side Company did importune the Congress of the United States to extend to it, in lieu thereof, a similar grant of lands, franchises and other benefits pertaining to its aforesaid projected line of railroad, known as the "West Side Line"; and thereafter, by an Act entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, A. D. 1870, Congress in that behalf provided as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged

in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

SEC. 2. *And be it further enacted,* That the Commissioner of the General Land Office shall cause the lands along the line of said railroad to be surveyed with all convenient speed. And wherever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to be segregated from the public lands; and thereafter the remaining public

lands subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands; *And provided, also,* That settlers under the provisions of the homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminous with the said completed sections.

SEC. 4. *And be it further enacted,* That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices

not exceeding Two Dollars and Fifty Cents per acre.

SEC. 5. *And be it further enacted,* That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side tracks, and wood yards, not exceeding Thirty Thousand Dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section.

SEC. 6. *And be it further enacted,* That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon con-

dition that said company shall complete a section twenty or more miles of said railroad and telegr within two years, and the entire railroad and telegr within six years, from the same date."

By said words "Oregon Central Railroad Co pany," in said last mentioned Act of Congress, the C gress of the United States intended to, and did, refe said West Side Company. The line of railroad scribed in said last mentioned Act, extending from city of Portland to McMinnville, by way of Fo Grove, is the identical line of railroad theretofore jected by said West Side Company, as aforesaid.

On or about the second day of July, A. D. 1 said West Side Company, through its Board of Dir ors, adopted a resolution in terms assenting to, and cepting, all of the aforesaid provisions of said last m tioned Act of Congress, and on or about the twent day of July, A. D. 1870, an authenticated copy of last described resolution was, by said West Side C pany, filed in the office of the Secretary of the Inte of the United States.

On or about the fifteenth day of August, A. 1870, all of the so-called capital stock of said W Side Company was acquired by the then owners of so-called capital stock of said defendant *Oregon California Railroad Company*, and thereafter all of so-called capital stock of both of said companies was by a single interest, and the affairs of said two c panies were conducted virtually as a single enterp

until the dissolution of said West Side Company, as hereinafter stated.

V.

These, your petitioners and intervenors, admit, and allege as true, paragraph Five (V) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

All of the original capital stock of the defendant *Oregon and California Railroad Company,* and substantially all of the capital stock of said West Side Company, was issued without consideration, and, by reason of the premises, neither of said companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

By the issuance and negotiation or pledge of mortgage bonds and otherwise, approximately Eight Million Dollars was, during the year 1870, procured by said defendant *Oregon and California Railroad Company,* and approximately One Million Dollars was, during the year 1871, procured by said West Side Company; and, with the funds thus provided, the work of constructing the aforesaid lines of railroad respectively, was prosecuted until on or about the month of January, A. D. 1873. During said period of construction, said East Side Line was constructed and extended from said city of Portland to a point near Roseburg, a distance of approximately one hundred and ninety-seven (197) miles (including said first section of twenty miles theretofore constructed), and said West Side Line was con-

structed and completed from said city of Portland to said McMinnville, by way of said Forest Grove, a distance of approximately forty-seven (47) miles.

On or about the said month of January, A. D. 1873, said funds became exhausted and both of said companies became bankrupt and insolvent, and becaue theresof, the construction of both of said lines of railroad was abandoned; and, as to said East Side Line, was not resumed until the month of June, A. D. 1881, as hereinafter set forth; and, as to said West Side Line, was never resumed.

Because of the premises, on or about the twenty-fourth day of July, A. D. 1874, the direction and control of the financial affairs of said two companies were assumed and thereafter exercised by the then creditors thereof, organized under the name "Bondholders Committee." On or about the twenty-ninth day of February, A. D. 1876, all of the so-called capital stock of both of said companies was, for virtually a nominal consideration, acquired by said Bondholders Committee, and thereafter all of the affairs of said two companies were conducted by, and under the direction and control of, said Bondholders Committee.

On or about the sixth day of October, A. D. 1880, for the purpose of merging said West Side Company into said defendant *Oregon and California Railroad Company,* and under the direction and influence of said Bondholders Committee, the said West Side Company did execute and deliver to said defendant *Oregon and*

California Railroad Company a certain instrument, in writing, purporting to assign, transfer and convey to said defendant *Oregon and California Railroad Company* all of the property of said West Side Company, including the right, title and interest of said West Side Company in and to the grants, franchises and other benefits of said Act of Congress approved May fourth, A. D. 1870; a copy of which said instrument is hereto attached, marked "Exhibit C" and made a part of this bill.

The purpose, intent and effect of said last described instrument was and is not to operate as a sale or conveyance of any of the lands granted by said Act of Congress approved May fourth, A. D. 1870, but to constitute said defendant *Oregon and California Railroad Company* the successor of said West Side Company to construct, complete and equip the line of railroad aforesaid, and particularly that part thereof extending from Forest Grove to Astoria, and, in aid thereof, to receive and exercise the grants, franchises and other benefits in that behalf extended by Congress as aforesaid, and upon all of the terms and conditions aforesaid, and not otherwise.

On or about said sixth day of October, A. D. 1880, said West Side Company, by action of its Board of Directors and its stockholders, became and was dissolved; and at all times thereafter said defendant *Oregon and California Railroad Company,* has assumed, and still assumes, to be the successor of said West Side Company, as aforesaid.

Substantially all transactions subsequent to said last mentioned date relate to and affect both of the aforesaid grants of land. Hereafter in this bill of complaint, for convenience, said grant of land created by said Act of Congress approved July twenty-fifth, A. D. 1866, and the aforesaid Acts amendatory thereof, will be described by the words "East Side Grant"; said grant of land created by said Act of Congress approved May fourth, A. D. 1870, will be described by the words "West Side Grant"; and both of said grants will be described by the words "said land grants."

VI.

Your petitioners and intervenors admit, and allege as true, paragraph Six (VI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

On or about the seventh day of May, A. D. 1881, the financial affairs of the defendant *Oregon and California Railroad Company* were adjusted in manner following: All of its former capital stock was, by action of its Board of Directors and its stockholders, canceled, for the reasons hereinbefore set forth; the amount of its capital stock was then established, and at all times since has remained, and still is, in the total sum of Nineteen Million Dollars ($19,000,000) composed of Twelve Million Dollars so-called preferred stock and Seven Million Dollars so-called common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of said new capital stock was then

issued, and ever since has been, and still is, outstanding. By the issuance of said new capital stock, and by the use of a part of the proceeds of a new bond issue hereinafter referred to all of its then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same, were canceled and satisfied.

On or about the second day of June, A. D. 1881, the defendant *Oregon and California Railroad Company* executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of said preferred stock so-called, a certain instrument, in writing, purporting to convey to said Trustees all of the lands of both said land grants, in trust to secure to the owners of said preferred stock so-called, some pretended right or interest in or to said lands, and for certain other purposes, as more particularly appears in said instrument, a copy of which is hereto attached, marked "Exhibit D" and made a part of this bill.

Said deed of trust last described purports to convey, and purports to authorize said Trustees and their successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those described in and by said land grants respectively; and because thereof, and otherwise, said deed of trust was and is in violation and breach

of the aforesaid terms, conditions and provisions of each of said land grants respectively.

On or about the twenty-eighth day of June, A. D. 1881, said deed of trust was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 27 of Mortgages, at page 179; and thereafter, and at about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Thereafter such proceedings were had and action taken under the terms of said deed of trust, and by and with the consent and co-operation of the defendant *Oregon and California Railroad Company*, that the defendant *Stephen T. Gage* became, and he now is, the sole surviving Trustee thereunder; and said defendant *Stephen T. Gage*, individually, and as Trustee as aforesaid, and the defendant *Southern Pacific Company* as the present owner of all of said preferred stock so-called, claim and assert some right, title, interest or lien in, to or upon said lands or some part thereof, under and by virtue of said deed of trust; but because of the premises, neither of said defendants has any right, title, interest or lien in, to or upon any part of said lands.

By the issuance and negotiation of two separate issues of its corporate bonds, bearing date June first, A. D. 1881, and May twenty-sixth, A. D. 1883, respectively, (known and described as "First Mortgage Bonds" and "Second Mortgage Bonds" respectively),

the defendant *Oregon and California Railroad Company* did provide further construction funds aggregating approximately Five Million Dollars, and on or about the month of June, A. D. 1881, the work of constructing said East Side Line was resumed, and thereafter was continued until on or about the month of January, A. D. 1884. During said last mentioned period of construction, said East Side Line was constructed and extended from said Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately one hundred and forty-five (145) miles.

On or about said month of January, A. D. 1884, said last mentioned construction funds became exhausted, the defendant *Oregon and California Railroad Company* again became bankrupt and insolvent, and the work of construction was again abandoned, and was not resumed until the month of April, A. D. 1887, as hereinafter set forth.

On or about the nineteenth day of January, A. D. 1885, said First and Second Mortgage Bonds being still outstanding, in a suit then instituted and pending in the Circuit Court of the United States for the District of Oregon, wherein certain of the holders of said First Mortgage Bonds were plaintiffs, and said defendant *Oregon and California Railroad Company* and others were defendants, the railroad lines and other property of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver then and there appointed therefor by said Court.

On or about the twelfth day of May, A. D. 1887, and during the pendency of said receivership, the defendant *Southern Pacific Company* acquired, and thereafter exercised ownership and control of said defendant *Oregon and California Railroad Company,* as hereinafter more specifically set forth; and, subsequently, under the direction and influence of said defendant *Southern Pacific Company,* certain breaches and violations of the terms and conditions of said land grants respectively hereinafter complained of were committed.

And to the end that Your Honors may be further advised in the premises, and particularly concerning the nature and purpose of the several negotiations and transactions pertaining to, and resulting in, the absorption of the defendant *Oregon and California Railroad Company* by the defendant *Southern Pacific Company,* (in paragraph VII hereof, set forth), your Orator says, that on and prior to said twelfth day of May, A. D. 1887, the general status of said land grants was as follows, to wit:

Under said East Side grant, during the years 1871 to 1877 inclusive, patents for approximately 328,000 acres of land (being lands contiguous to the first 125 miles of said East Side Line), were applied for by, and issued to, the defendant *Oregon and California Railroad Company* as the successor of said East Side Company; except as aforesaid, no patents under said East Side grant were issued until the year 1893.

Under said West Side grant, no patents were ever issued prior to the year 1895.

The total length of said East Side Line is approximately 367 miles; with the exception of the northerly 197 miles thereof, no part of said East Side Line was constructed within the times prescribed by the terms of said East Side grant; and on said twelfth day of May, A. D. 1887, the southerly portion thereof, extending from Ashland to the southern boundary line of the State of Oregon, still remained unconstructed. Of the West Side Line, that part thereof extending from Forest Grove to Astoria was never constructed, and because of the premises, the aforesaid granted lands contiguous to said unconstructed portion, were, by Act of Congress approved January thirty-first, A. D. 1885, entitled, "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," forfeited to, and the ownership thereof assumed by, the United States of America.

Of the aforesaid granted lands, approximately 250,000 acres had been sold prior to said twelfth day of May, A. D. 1887; and your Orator is informed and believes, and therefore states, that nearly all of the lands so disposed of were sold to actual settlers, and in small quantities, although in many instances in quantities and for prices slightly in excess of the aforesaid limitations prescribed by said land grants respectively.

VII.

Your petitioners and intervenors admit, and allege as true, paragraph Seven (VII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

On or about the month of January, A. D. 1885, a certain railroad syndicate known as the "Southern Pacific System," controlling substantially all railroad lines in the southwestern part of the United States, and particularly on the Pacific Coast south of the State of Oregon, including the Central Pacific Railroad Company, (which had theretofore become the successor to the grants, franchises and other benefits in the *State of California,* under said Act of Congress approved July twenty-fifth, A. D. 1866), organized, under the general incorporation law of the State of Kentucky, the defendant *Southern Pacific Company,* as a general holding company for said syndicate; and, on or about the month of March, A. D. 1885, said defendant *Southern Pacific Company* acquired, and ever since has exercised, a controlling interest in each of the corporations constituting said Southern Pacific System; and, at about the same time, became, and ever since has been, the lessee of each of said corporations, whereby it came into possession of, and at all times thereafter has operated, all of said railroad lines.

Several of the constituent companies of said Southern Pacific System held lands granted by the United States in aid of the construction of their respective lines of railroad, aggregating many millions of acres. Shortly after its organization, the defendant *Southern Pacific Company* established a general land department, with offices at the city of San Francisco, in the State of California, under the charge of a certain officer known as its land agent, and thereupon assumed, and thereafter

exercised, through its said land agent, control over the handling and disposing of all of the lands of its constituent companies.

Shortly after the affairs of said defendant *Oregon and California Railroad Company* were placed in the hands of a Receiver, as hereinbefore set forth, said defendant *Southern Pacific Company,* designing to extend its aforesaid railroad system and its aforesaid land holdings by acquiring ownership and control of the defendant *Oregon and California Railroad Company,* in that behalf entered into negotiations with said defendant *Oregon and California Railroad Company* and the bondholders and stockholders thereof and certain other parties hereinafter named; and, for the purpose thereof, the stockholders of said defendant *Oregon and California Railroad Company* became and were organized under the name "Stockholders Committee," certain of the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee," and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee," said Bondholders Committees representing the owners of substantially all of the aforesaid First and Second Mortgage Bonds of said company.

On or about the twenty-eighth day of March, A. D. 1887, a certain contract in writing was entered into by and between said defendant *Southern Pacific Company,* said defendant *Oregon and California Railroad Com-*

pany, the defendant *Union Trust Company,* said Stockholders Committee, said London Bondholders Committee, said Frankfort Bondholders Committee, and the Pacific Improvement Company, (a corporation organized as hereinafter set forth) a copy of all of the terms of which contract is hereto attached, marked "Exhibit E" and made a part of this bill.

By virtue of said last described contract, all of the corporate securities of the defendant *Oregon and California Railroad Company* were acquired by the defendant *Southern Pacific Company,* as hereinafter set forth; and the general purpose and effect of said contract were such that said defendant *Oregon and California Railroad Company,* (together with its said lines of railroad) was absorbed by, and merged into, said Southern Pacific System, and the independent corporate existence thereof virtually ceased. But it manifestly appears from the subsequent conduct of said defendant *Southern Pacific Company,* and your Orator charges and states, that at the time of the negotiation and execution of said last described contract, it was the purpose and design of said defendant *Southern Pacific Company* to secure control of the aforesaid land grants, and to divert the same from the aforesaid lawful uses and purposes thereof, to the exclusive use, benefit and enrichment of said defendant *Southern Pacific Company;* and to that end, said last described contract was, by the parties thereto, so conditioned, and the conditions, options and provisions thereof were so exercised and performed, that said defendant *Southern Pacific Company* did thereafter

maintain said defendant *Oregon and California Railroad Company* a corporation in name and form only, as a mere instrumentality and device, to accomplish, and at the same time to conceal its aforesaid purpose and design, and in that behalf to obtain and dispose of said lands in the name of, and under the guise and pretense of the administration and exercise of the aforesaid land grants by, the defendant *Oregon and California Railroad Company;* and to that end, certain proceedings were had and transactions entered into, including that certain contract of lease and that certain mortgage deed hereinafter set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the twelfth day of May, A. D. 1887, all of the capital stock and all of said Second Mortgage Bonds of said defendant *Oregon and California Railroad Company* were transferred, assigned and delivered to said Pacific Improvement Company; and all of said First Mortgage Bonds were transferred, assigned and delivered to the defendant *Southern Pacific Company.*

. .

During all the times mentioned in this bill as to it, said Pacific Improvement Company was a corporation organized and existing under the laws of the State of California, and wholly owned, controlled and directed by the owners of a majority of the capital stock of the defendant *Southern Pacific Company.* The defendant *Southern Pacific Company* was the actual purchaser of said capital stock and said Second Mortgage Bonds, and

paid all the purchase price therefor, and said Pacific Improvement Company never had any beneficial interest therein; but, under the direction and influence of said defendant *Southern Pacific Company,* said Pacific Improvement Company was made a nominal party to said contract of March twenty-eighth, A. D. 1887, for the purpose of concealing the true facts in the premises.

Said Pacific Improvement Company held said capital stock of the defendant *Oregon and California Railroad Company* for the use and benefit of the defendant *Southern Pacific Company,* until on or about the ninth day of April, A. D. 1901, and on or about said last mentioned date, all of said capital stock was transferred to the defendant *Southern Pacific Company,* which, at all times thereafter, has been, and still is, the owner and holder thereof. At all times since said twelfth day of May, A. D. 1887, the defendant *Southern Pacific Company* has controlled and directed the election of directors and officers of said defendant *Oregon and California Railroad Company,* and has directed and controlled the management and conduct and all of the corporate acts of said defendant *Oregon and California Railroad Company,* including all transactions and proceedings in this bill set forth.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, on or about the third day of January, A. D. 1888, the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a certain contract of

lease in writing, bearing date the first day of July, A. D. 1887, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of forty years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit F," and made a part of this bill; which said contract of lease remained in full force and effect until on or about the first day of August, A. D. 1893, upon which last named date the defendant *Southern Pacific Company* and the defendant *Oregon and California Railroad Company* entered into a further contract of lease in writing, bearing date the first day of August, A. D. 1893, whereby all of the railroad and telegraph lines and other property of the defendant *Oregon and California Railroad Company* were leased to the defendant *Southern Pacific Company* for the term of thirty-four years, upon certain terms and conditions, all of which more specifically appear in said instrument, a copy of all of the terms of which is hereto attached, marked "Exhibit G," and made a part of this bill; which said last described contract of lease at all times since said first day of August, A. D. 1893, has been, and still is, in full force and effect. Pursuant to said contracts of lease, the defendant *Southern Pacific Company* did, on or about the sixth day of June, A. D. 1888, enter into possesison of all of the property leased as aforesaid, and at all times thereafter has been, and still is, in full possession thereof, and engaged in

the operation of said lines of railroad, and during all of said times has enjoyed, and still is enjoying, all of the benefits and profits thereof.

Pursuant to the terms of said contract of March twenty-eighth, A. D. 1887, and under the direction and influence of the defendant *Southern Pacific Company*, on or about the third day of January, A. D. 1888, the defendant *Oregon and California Railroad Company* executed and delivered to the defendant *Union Trust Company* a certain instrument in writing, bearing date of July first, A. D. 1887, purporting to mortgage and convey in trust to the defendant *Union Trust Company*, certain of the property of the defendant *Oregon and California Railroad Company*, for certain purposes, and upon certain terms and conditions therein expressed, and, among others, to secure the payment of certain bonds thereafter to be issued and negotiated in the name of said defendant *Oregon and California Railroad Company*, a copy of which said instrument is hereto attached, marked "Exhibit H," and made a part of this bill.

By that certain provision of said instrument last described, to-wit:

"And all property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon and California Railroad Company,"

reference was had, and intended to be had, to a certain deed of trust, executed by said defendant *Oregon and California Railroad Company* to Henry Villard, Horace

White and Charles Edward Bretherton, as Trustees, bearing date June first, A. D. 1881, a copy of which is hereto attached, marked "Exhibit I," and made a part of this bill.

On or about the eighteenth day of January, A. D. 1888, said mortgage deed bearing date July first, A. D. 1887, was recorded in the office of the County Recorder of Multnomah County, in the State of Oregon, in Book 63 of Mortgages, at page 287; and thereafter, and about the same time, was recorded in the office of the County Recorder of the several counties in which was situated any part of the lands granted by either of said land grants.

Pursuant to the premises, the defendant *Oregon and California Railroad Company* did execute, and the defendants *Southern Pacific Company* and *Union Trust Company* did negotiate and deliver, certain of the bonds provided for by said mortgage deed bearing date July first, A. D. 1887, said bonds bearing even date therewtih, of which approximately Seventeen Million, Five Hundred Thousand Dollars ($17,500,000) in amount are still outstanding, the exact amount whereof is to your Orator unknown. All of said bonds inured to the exclusive benefit of the defendant *Southern Pacific Company* and were used by the defendant *Southern Pacific Company* to purchase the securities of the defendant *Oregon and California Railroad Company*, as aforesaid, and to complete the construction of, and improve, the lines of railroad leased by it as aforesaid. By reason of the premises, said bonds in fact represent and consti-

tute the indebtedness of the defendant *Southern Pacific Company;* and the payment of all of said bonds, both as to principal and interest was and is, by endorsement thereon in writing, guaranteed by the defendant *Southern Pacific Company.*

In so far as said mortgage deed bearing date July first, A. D. 1887, relates to any of said granted lands, if at all, it purports to convey, and purports to authorize the defendant *Union Trust Company* and its successors to sell and convey, said lands to persons other than actual settlers, and in quantities greater than one-quarter section to one purchaser, and for a price exceeding Two Dollars and Fifty Cents per acre, and for purposes other than those prescribed in and by said land grants respectively; and because of the premises in this bill set forth, said mortgage deed was and is in violation and breach of the aforesaid terms, conditions and provisions of each of said land grants respectively.

The defendant *Union Trust Company,* individually, and as Trustee for the holders and owners of said bonds, claims some right, title, interest or lien, in, to or upon some of said granted lands, under and by virtue of said mortgage deed bearing date July first, A. D. 1887; but because of the premises, the defendant *Union Trust Company* has no right, title, interest or lien, in, to or upon any of said lands, either in its own behalf, or as Trustee as aforesaid.

In the meantime and during the year 1887, (commencing in the month of April and ending in the month

of December), the last section of said East Side Line, extending from Ashland aforesaid to the southern boundary line of the State of Oregon, was constructed by said Pacific Improvement Company, under some form of contract with the defendant *Southern Pacific Company,* the particulars whereof are to your Orator unknown; but, in furtherance of its aforesaid purpose and design, on or about the sixth day of June, A. D. 1887, the defendant *Southern Pacific Company* did instigate and cause the defendant *Oregon and California Railroad Company* and said Pacific Improvement Company to enter into a certain contract, by the terms of which the defendant *Oregon and California Railroad Company* agreed to pay for said work of construction in its said bonds thereafter to be issued and guaranteed by the defendant *Southern Pacific Company,* as hereinbefore set forth. And your Orator says that in truth and in fact, at the time of the execution of said contract of June sixth, A. D. 1887, a large part of said work of construction had been performed under some prior contract, as hereinbefore set forth.

On or about the sixth day of June, A. D. 1888, the aforesaid receivership proceedings were dismissed and said Receiver was discharged; all of said First Mortgage Bonds and said Second Mortgage Bonds, (not including said issue of bonds dated July 1st, A. D. 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; and thereupon the defendant *Southern Pacific Company* entered into possession of all the property of the defendant

Oregon and California Railroad Company pursuant to the terms of said contract or lease, as hereinbefore set forth.

VIII.

Your petitioners and intervenors admit, and allege as true, paragraph Eight (VIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Immediately after said sixth day of June, A. D. 1888, the defendant *Southren Pacific Company,* through its aforesaid land department, assumed, and at all times thereafter has exercised, absolute control over the disposition and sale of the aforesaid granted lands of the defendant *Oregon and California Railroad Company,* conducting all business, however, in the name of the latter company.

Until about the year 1893, there was no marked change in the manner of the disposition of said lands, but, in the meantime, and under the direction and influence of the defendant *Southern Pacific Company,* preparations were made for the future exploitation of said land grants, to-wit:

On or about the month of June, A. D. 1888, a large force of timber cruisers and land examiners was organized and thereafter was kept employed until all of said lands had been examined and appraised and prices fixed thereon without regard to the aforesaid limitations prescribed by said land grants; and your Orator says, that

as to at least eighty per cent (80%) of all of said granted lands, the first sale price fixed thereon and the lowset price for which the same were ever offered for sale was greatly in excess of the sum of Two Dollars and Fifty Cents per acre.

During the years 1891 and 1892, anticipating and seeking to evade responsibility for the contemplated violations of the terms and conditions of said grants, and under the direction and influence of the defendant *Southern Pacific Company,* the defendant *Oregon and California Railroad Company* and the defendant *Union Trust Company* adopted quit-claim form of contracts and conveyances for use in making sales of said lands, and thereafter refused to contract for, or give, any other form of conveyance, except in case where, by prior contracts, the defendant *Oregon and California Railroad Company* had obligated itself to do otherwise.

Commencing with about the year 1891, patents were rapidly applied for and obtained, the amount patented under said East Side grant, commencing with the year 1893, aggregating approximately 2,450,000 acres, and the amount patented under said West Side grant, commencing with about the year 1895, aggregating approximately 128,000 acres, being the only patents ever applied for or issued under said West Side grant. No patents have been issued since the year 1906, under either of said land grants, for reasons hereinafter explained.

In the meantime, the defendant *Southern Pacific Company* was engaged in developing a market and de-

mand for said lands among wealthy land speculators and timber men, aided in that behalf by its well-equipped organization therefor, and by an extensive acquaintance previously established by said land department in the sale and disposition of its other land holdings hereinbefore mentioned. A sudden and rapidly increasing demand for said lands in large quantities and at rapidly increasing prices, was developed, commencing with about the year 1894.

Taking advantage of the opportunity to violate the terms and conditions of said land grants, promoted and developed as aforesaid, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company,* from about the year 1894 until about January first, A. D. 1908, sold and disposed of said granted lands in a manner and upon terms in violation and breach of the aforesaid terms and conditions of said land grants respectively, and with the sole object of securing the greatest possible financial benefit therefrom; and in that behalf a large quantity of said lands was sold to speculators and others than actual settlers, and for speculation and purposes other than actual settlement, and in quantities greatly in excess of one-quarter section to one purchaser, to-wit: in quantities from one thousand to forty-five thousand acres to a single purchaser, and for prices greatly in excess of $2.50 per acre, to-wit: for prices from $5 to $40 per acre.

Of said granted lands the defendant *Oregon and California Railroad Company* (in manner aforesaid)

has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres, that is to say:

	Sales.	Acres.
Sales in quantities not exceeding one-quarter section	4930	296,000
Sales in quantities exceeding one-quarter section	376	524,000

Substantially all of said 524,000 acres sold in quantities exceeding a quarter section to one purchaser as aforesaid (and a considerable portion of said other lands sold as aforesaid), were sold to speculators and others than actual settlers and for the purpose of speculation and not for the purpose of settlement and for prices greatly in excess of two dollars and fifty cents per acre. And of said 524,000 acres sold in quantities exceeding one quarter section to one purchaser as aforesaid, approximately 478,000 acres (or about 90 per cent thereof) were sold or conveyed since the year 1897; and of said 478,000 acres, approximately 370,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

Nearly all sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment. And although sales were suspended on or about January first, A. D. 1903, as hereinafter stated, many contracts of sale were then pending, as to which the installments falling due have been collected and conveyances executed from time to time down to and in-

cluding the present, and many of such contracts are still pending.

Of the total sales made as aforesaid, approximately 4,476 have been fully executed and conveyances given aggregating approximately 646,000 acres; and approximately 830 executory contracts are still pending, aggregating approximately 174,000 acres.

For the more specific information of Your Honors, your Orator has prepared a schedule setting forth all said conveyances heretofore made and all said pending contracts, stated separately as to each of said land grants, which schedule is hereto attached, marked "Exhibit J," and made a part of this bill. In said schedule, conveyances are appropriately classified by years, and also according to quantity of land conveyed and purchase price; pending contracts are classified according to quantity of land sold. Your Orator is not informed as to the exact time said pending contracts were negotiated or executed or as to the exact purchase price thereof; but your Orator is informed and believes and therefore states, that all of said pending contracts were negotiated and entered into since the first day of January, A. D. 1898, and prior to the first day of January, A. D. 1903, and that the average purchase price thereof is approximately Ten Dollars per acre. Said schedule (Exhibit J) was compiled on the first day of July, A. D. 1908, but no subsequent transactions affect the matters therein stated, except that a few of said pending contracts have since said compilation matured and merged into final conveyances.

As to the statements contained herein (including said Exhibit J) concerning the number of sales, quantity of land sold, and the purchase price thereof, transactions consisting of executory contracts of sale, which were rescinded or canceled for any reason, and which therefore neither merged into deeds nor constitute pending contracts at the present time, are not included in any of said computations. Transactions relating to the part of said West Side grant which was forfeited to your Orator, as aforesaid, are not included in said computations.

Except as otherwise specifically stated, all statements in this bill concerning the manner of selling and disposing of said lands, apply to each of said land grants.

As between the parties thereto, said mortgage deed bearing date July first, A. D. 1887, to the defendant *Union Trust Company,* has been treated as a lien upon all of said granted lands which remained unsold on the twelfth day of May, A. D. 1887. As to all lands of the last described class which have been sold since said twelfth day of May, A. D. 1887, the defendant *Union Trust Company* has received substantially all of the purchase price, and has joined in the execution of all conveyances. The exact amount thus received by the defendant *Union Trust Company,* and the specific application thereof, are to your Orator unknown; but your Orator says that the proceeds of all sales made since said twelfth day of May, A. D. 1887, have inured to the

exclusive benefit of the defendant *Southern Pacific Company,* by application in payment of the aforesaid bonds guaranteed by the defendant *Southern Pacific Company,* or otherwise.

IX.

Your petitioners and intervenors admit, and allege as true, paragraph Nine (IX) of Complianant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

In the month of October, A. D. 1901, the defendant *Southern Pacific Company,* with all of its constituent lines, became merged into that certain railroad system known as the "Harriman Lines," which said railroad system at all times thereafter has held a monopoly of railroad transportation affecting a large part of the United States, and particularly in the State of Oregon, south of Portland.

Thereupon a land department was organized and established at the city of San Francisco, to handle, exploit and manipulate all of the lands of the constituent companies of said Harriman Lines, including the aforesaid land grants of the defendant *Oregon and California Railroad Company.* All transactions concerning the last named land grants were conducted as before in the name of the defendant *Oregon and California Railroad Company.* Sales were continued as before until on or about January first, A. D. 1903.

On said first day of January, A. D. 1903, there remained unsold of said granted lands approximately

2,373,000 acres consisting of approximately 2,080,000 acres which have been heretofore patented under said land grants, and approximately 293,000 acres of unpatented lands which are now claimed by the defendant *Oregon and California Railroad Company* under and by virtue of said land grants. Said lands remaining unsold as aforesaid will hereinafter be described by the words "said unsold lands."

Approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute nearly one-half, in alternate sections, of all lands within approximately forty miles of said line of railroad from Eugene to the southerly boundary line of the State of Oregon, only a small portion of said granted lands in that part of the East Side grant having ever been sold. The territory in which said unsold lands are situated was and is wholly dependent for railroad transportation on the railroad lines of the defendant *Oregon and California Railroad Company,* now operated by the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman Lines as aforesaid.

Since said first day of January, A. D. 1903, and particularly during the last preceding two years, certain persons exceeding one thousand in number have severally applied to the defendant *Oregon and California Railroad Company* to purchase certain of said unsold lands in quantities not exceeding one hundred and sixty acres, or a quarter section to each one of them, said applicants to purchase intending and desiring to purchase said lands so applied for by them respectively for the

purpose of actually settling thereupon and making a permanent home thereof, and several of said applicants to purchase having actually settled and established a permanent home upon the land so applied for by them respectively; and at the time of said applications to purchase each of said applicants did tender to the defendant *Oregon and California Railroad Company* the sum of Two Dollars and Fifty Cents for each of the lands so applied for as the purchase price thereof.

And in addition to the said applicants to purchase, a large number of persons are ready and willing to settle upon said lands, and to purchase the same for the purpose of actual settlement thereupon and of making a permanent home thereof, in quantities, for the price, and upon terms as prescribed by said land grants respectively, but are deterred therefrom by the defendant *Oregon and California Railroad Company,* as hereinafter stated.

Notwithstanding the premises, and in violation and breach of the aforesaid terms and conditions of said land grants respectively, the defendant *Oregon and California Railroad Company,* under the direction and influence of the defendant *Southern Pacific Company* as one of the constituent companies of said Harriman lines, on or about the first day of January, A. D. 1908, withdrew from sale all of said unsold lands, and at all times thereafter has refused, and still refuses, to sell any part thereof to actual settlers or for purposes of actual settlement, or in quantities or for prices as prescribed by the terms of said land grants respectively, or at all;

and particularly has at all times refused, and still does refuse, to entertain any of the aforseaid applications to purchase, or to sell any of the lands applied for as aforesaid, to the persons aforesaid, upon the terms aforesaid, or upon any terms whatsoever. And ever since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has not only failed and neglected to encourage or promote the settlement of said lands, or the purchase thereof by actual settlers, or for the purpose of actual settlement, but by divers means and methods has at all times discouraged, obstructed, forbidden and prevented the settlement of said lands or any part thereof, and the purchase thereof or any part thereof, upon the terms prescribed by said land grants, or otherwise, by actual settlers or for the purpose of actual settlement.

Since said first day of January, A. D. 1903, the defendant *Oregon and California Railroad Company* has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and has attempted, and still does attempt, to convert its aforesaid conditional estate into an unconditional estate, in violation and breach of the aforesaid terms and conditions of said land grants. And by reason of the aforesaid nominal corporate character of the defendant *Oregon and California Railroad Company,* and the further premises herein set forth, the unconditional estate so asserted in its name has inured to the benefit of, and has been exercised by, the defendant *Southern Pacific Company* as one of the constituent companies of said

Harriman Lines. The practical effect of the premises is the same as if all of said unsold lands had been conveyed to the defendant *Southern Pacific Company* for the use and benefit of said railroad syndicate.

By reason of the premises, and in violation of the express terms and conditions as well as the plain intendment of said land grants respectively, all of said unsold lands, and the full value thereof, have been converted to the use and benefit of the defendant *Southern Pacific Company,* as one of the constituent companies of the said Harriman Lines; and a virtual land monopoly has been created, and ever since said first day of January, A. D. 1903, has been maintained, and hereafter will be maintained, for the selfish uses and purposes of the defendant *Southern Pacific Company* and said railroad syndicate, enabling said railroad syndicate, among other things, to control and restrict commercial and industrial development of the territory tributary to said line of railroad, and thereby prevent the construction and establishment of competing railroad lines, which would naturally be attracted by the increase in production that would attend a normal and unrestricted development of industrial and commercial resources, if said granted lands should be sold to actual settlers and for the purpose of actual settlement pursuant to the terms and conditions of said land grants.

And your Orator says, that because of the premises, the industrial and commercial development of those portions of the State of Oregon wherein are situated said unsold lands, has been, and will continue to be, seri-

ously retarded if not completely checked.

Except as otherwise specifically stated, all statements herein contained concerning the withdrawal of said lands from sale, the circumstances, purposes and effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purpose of actual settlement, and the conduct of the defendant *Oregon and California Railroad Company* in relation thereto, apply to each of said land grants.

A schedule of all of said unsold lands which have heretofore been patented, described by governmental subdivision, tabulated by counties, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit K," and made a part of this bill. Said schedule has been prepared from the annual return of said lands for purpose of taxation, made by the defendant *Oregon and California Railroad Company* to the County Assessors of the several counties in which said lands are situated; said annual tax returns purport to contain all of said granted lands which have been heretofore patented and which remain unsold, and your Orator is informed and believes, and therefore states, that the same is correct, but concerning which a full discovery is desired herein. Your Orator is unable to set forth with particularity the unpatented lands claimed as aforesaid, as to which, therefore, a full discovery is desired.

None of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, and seeking to purchase the same, as hereinbefore, and hereinafter

stated. The reasonable present value of said unsold lands exceeds the sum of $40,000,000.

None of said unsold lands now are, or ever were, necessary to reserve for depots, stations, side tracks, wood sheds, standing ground, or any other needful uses in operating any of said railroad lines or any part thereof, and no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes.

X.

Your petitioners and intervenors admit, and allege as true, paragraph Ten (X) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

In addition to the purchase price received from the aforesaid sales of said lands, the defendant *Oregon and California Railroad Company* has received and enjoyed certain other benefits on account of said granted lands, to-wit:

A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments falling due thereon, and the installments previously paid have been retained. Your Orator is not advised as to the exact amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of One Hundred Thousand Dollars ($100,000). A full discovery in the premises is hereby sought.

A considerable portion of said lands has, from time to time, been leased for certain rentals paid therefor to the defendant *Oregon and California Railroad Company*. Your Orator is not advised as to the amount realized in this manner, and a full discovery in the premises is hereby sought.

The defendant *Oregon and California Railroad Company* has cut and used large quantities of timber growing upon said lands, and has also sold large quantities of said timber, receiving the consideration therefor. Your Orator is not advised as to the amount realized in this manner, but is informed and believes, and therefore states, that it exceeds the sum of Two Hundred Thousand Dollars ($200,000). A full discovery in the premises is hereby sought.

And in divers other ways the defendant *Oregon and California Railroad Company* has received and enjoyed financial benefits on account of said granted lands, the particulars concerning which are unknown to your Orator, and a full discovery in the premises is hereby sought.

XI.

Your petitioners and intervenors admit, and allege as true, paragraph Eleven (XI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

The defendant *Oregon and California Railroad Company* has repeatedly threatened, and still threatens to, and will, unless restrained therefrom, sell, contract

for sale, convey, or in some manner encumber or impair the title of, said unsold lands or some part thereof, in violation of the terms and conditions of said land grants respectively; and the defendant *Oregon and California Railroad Company* has heretofore cut large quantities of the timber growing upon said unsold lands and has otherwise committed waste thereupon, and by contract and otherwise, has permitted and invited others so to do; and the defendant *Oregon and California Railroad Company* threatens to, and will, unless restrained therefrom by this Court, continue to commit waste upon said unsold lands and particularly as to the timber and other natural products thereof, and will continue to permit, contract for and invite others so to do, to the great and irreparable injury of your Orator in the premises.

XII.

Your petitioners and intervenors admit, and allege as true, paragraph Twelve (XII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Until the year 1894 there was substantially no demand for said granted lands, except for the purpose of settlement and by persons of limited means able to purchase said lands only in small quantities and at reasonable prices, and nearly all sales were of that character. During a large part of said period, the defendant *Oregon and California Railroad Company* maintained an immigration bureau, engaged in inducing immigration

and settlement upon said lands, and ostensibly was not otherwise engaged in soliciting or promoting sales. By reason of the premises, the occasional violations of the terms and conditions of said land grants occurring during said period, were concealed and were generally unknown, until ascertained by your Orator as hereinafter stated.

As hereinbefore set forth, a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators and timber men, promoted and developed as aforesaid; and the greater part of the substantial wrongs and violations herein complained of were committed subsequent to that time. But your Orator says that nearly all of the sales consummated after that time were made by executory contracts of sale, which were not placed of record, and which did not merge into deeds for many years thereafter, and a considerable portion of which are still pending. Many of the conveyances for excessive quantities of said lands were not placed of record until recently, and many are still unrecorded. In many instances of sales in excessive quantities, the lands were attempted to be conveyed by several deeds, each of which was for a small quantity of land, whereby the true facts were concealed.

On or about the first day of January, A. D. 1903, all of said unsold lands were withdrawn from sale, and thereafter converted to certain wrongful and unlawful uses and purposes, as hereinbefore set forth. But, designing to conceal the premises from your Orator and the general public, the defendant *Oregon and California*

Railroad Company has, from time to time, falsely and deceitfully represented that said lands were withdrawn from sale for divers temporary reasons, and with the intention of resuming the sale thereof. An alleged confusion of the records of said land department, the alleged destruction of said records during the San Francisco fire, and other similar excuses were successively used to conceal the true character of said transaction.

XIII.

Your petitioners and intervenors admit, and allege as true, paragraph Thirteen (XIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

By reason of the premises, the several wrongful and unlawful transactions in this bill complained of, were concealed from, and wholly unknown to, your Orator, until ascertained as hereinafter stated. On or about the 14th day of February, A. D. 1907, because of the great injury inflicted upon commercial and industrial conditions as aforesaid, and it having become manifest that the several aforesaid representations concerning the withdrawal of said lands from sale were false, the Legislature of the State of Oregon adopted and communicated to your Orator a certain memorial charging in general terms the true facts in the premises (a copy of which memorial is hereto attached, marked "Exhibit L," and made a part of this bill); whereupon the further issuance of patents was suspended, and an investigation of the subject was instituted by your Orator, through its

Attorney General, which investigation was concluded on or about the month of January, A. D. 1908. Thereupon the subject was presented to the Congress of the United States, and thereafter, by Joint Resolution, approved April thirtieth, A. D. 1908, Congress did provide as follows:

"That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon, approved July twenty-fifth, Eighteen Hundred and Sixty-Six, as amended by the Acts approved June twenty-fifth, Eighteen Hundred and Sixty-Eight, and April tenth, Eighteen Hundred and Sixty-Nine. * * Also 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and

remedies existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

Pursuant to the provisions of said last mentioned Joint Resolution of Congress, this suit is instituted.

XIV.

For convenience of reference, and without making the same a part of their answer and cross-bill, your intervenors insert paragraph XIV of Complainant's bill, as follows:

By reason of the several aforesaid breaches and violations of the aforesaid terms, conditions and provisions of said land grants respectively, certain of said granted lands and certain estates in certain of said granted lands

have been, and are, forfeited to your Orator, the United States of America, free from any and all right, title, interest, lien or claim of the defendants herein, or either or any of them, or any one claiming by, through or under them or either or any of them. Among the lands and estates in lands so forfeited to your Orator, are, to-wit:

(1) All of said unsold lands;

(2) Any and all right, title and interest of any kind or nature whatsoever, vested, contingent or expectant, of any, of the defendants herein, or either or any of them, in, to or concerning any of the lands granted under, or by, either of said land grants respectively.

Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your Orator does hereby assert title to, and does hereby resume the title of, all of said lands and estates in lands forfeited to your Orator as aforesaid.

In addition to the lands and estates in lands above specified, certain of said granted lands which have been heretofore sold in violation of the terms and conditions of said land grants, and certain estates therein, likewise have been and are forfeited to your Orator, but are not included in this suit, for reasons following, to-wit:

The lands disposed of in violation of the terms and conditions of said land grants respectively, as aforesaid, were sold, contracted for sale, or conveyed to a large number of purchasers. Including alleged rights of succession by purchase, conveyance, mortgage, descent, de-

vise and otherwise, more than three thousand (3,000) persons, firms and corporations residing in divers parts of the United States and other parts of the world, now assert some right, title, interest or lien in, to or upon the lands sold, contracted for sale and conveyed in violation of the terms and conditions of said land grants respectively, as aforesaid. The names and places of residence of only a few of said persons, firms and corporations are as yet known to your Orator, and because of the multiplicity and complexity of said transactions, your Orator will be unable to ascertain them in time to include said parties in this suit. Said lands were sold and purchased as aforesaid, and alleged subsequent rights have been acquired therein, under greatly varying circumstances and conditions, and because of the premises, it would be inequitable to attempt to secure an adjudication of the rights of all of said parties by making only a few of them parties defendant as representatives of all thereof. To require the making of all of said persons, firms and corporations parties to this suit, or to otherwise require an adjudication herein of the respective rights in the premises, would indefinitely postpone and ultimately defeat the rights, equities and remedies of your Orator pertaining to said unsold lands, as to which the public interests require a speedy and complete adjudication and enforcement.

Therefore, to the end that justice and equity may be suitably administered in the premises, your Orator institutes this suit for the purpose of obtaining without unnecessary delay, an adjudication and enforcement of the

rights, equities and remedies of your Orator against the defendants herein, pertaining to said unsold lands, and otherwise, as more specifically appears in the prayer of this bill; and hereafter, and as soon as your Orator shall be sufficiently advised in the premises, separate and further suits will be instituted for the purpose of asserting and enforcing the rights, equities and remedies now or at any time hereafter existing in favor of your Orator (and not adjudicated or enforced herein) pertaining to any of said granted lands sold or conveyed as aforesaid, or any part thereof, or in any manner arising or growing out of any and all sales and conveyances of said granted lands in violation of any of the terms and conditions of said land grants respectively.

Your intervenors admit that the resolution set forth in said paragraph was adopted by the Congress of the United States, as alleged by Complainant, but they deny that under authority, or by virtue of said resolution, or otherwise, Complainant has the right to ask, or the Court to grant a decree of forfeiture of said grant as to the lands applied for thereunder by these, your intervenors; or that Complainant has the right to assert title thereto, or resume possession of any of said lands so applied for by your intervenors.

Your intervenors further deny that, by reason of any of the several alleged breaches or violations of the terms, conditions or provisions of said grant, or otherwise, by any of parties complained of in Complainant's bill, or by reason of anything done or suffered by any of said defendants, certain, or any of said lands, or certain, or

any estates in any of said granted lands, have been, or are forfeited to Complainant, free from all or any right, title or interest, lien or claim of the defendants or either or any of them, or any one claiming by, through or under them or either of them, as alleged in Complainant's bill or otherwise; and your intervenors show that each of them has a valid and subsisting claim upon the title to and possession of a certain part or parcel of said granted lands, and that such right, title and possession should be established through defendant Oregon & California Railroad Company under and by virtue of the terms of said grants, as set forth and alleged by Complainant in its bill filed herein. The particulars of claim of title, and the lands applied for by each of your intervenors are specifically alleged and shown hereinafter, each intervenor showing separately the nature of his claim, and the particular lands claimed by each.

XV.

Your intervenors admit, and allege as true, paragraph Fifteen (XV) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

The property described in said mortgage deed bearing date July first, A. D. 1887, (not including any of said granted lands), is of a value largely in excess of the amount of all of said bonded indebtedness purported to be secured by said mortgage deed, and is amply security therefor; your Orator, however, expressly denies that any of said granted lands are included in the prop-

erty described in said mortgage deed, or that the defendant *Union Trust Company,* as trustee or otherwise, or any other person, firm, association or corporation, has any right, title, interest or lien in, to or upon any of said lands by virtue of said mortgage deed.

XVI.

These intervenors admit, and allege as true, paragraph Sixteen (XVI) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Pursuant to the rules and regulations of the Department of the Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant *Oregon and California Railroad Company,* as the successor of said East Side Company and said West Side Company respectively, which said applications contained descriptive lists of the lands so claimed and for which patents were so applied for; and each of which said applications was accompanied and supported by a certain affidavit in writing signed and sworn to by a certain agent of the defendant *Oregon and California Railroad Company* thereto duly authorized, to the effect, among other things, that all of the lands so claimed and for which patents were so applied for, were of the character contemplated by the grant under which they were claimed and for which patents were applied for as aforesaid; and believing and relying upon the statements con-

tained in said applications and said affidavits, your Orator issued said patents.

XVII.

Your intervenors admit and allege as true paragraph Seventeen (XVII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, as follows:

In making sales of said lands as aforesaid, the defendant *Oregon and California Railroad Company* has, in and by its contracts and conveyances relating thereto, and particularly prior to the sixth day of June, A. D. 1898, made certain valuable reservations unto itself, as follows:

"Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon & California Railroad Company for right of way and other purposes, when the railroad of said Oregon & California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises, so much and such parts thereof as may be mineral lands, other than coal and iron."

All of which said reservations, being in effect the creation of permanent estates in its own favor in and to a large part of said granted lands in violation and breach of the aforesaid terms and conditions of said land grants respectively, were and are null and void. But notwithstanding the premises, the defendant *Oregon and Cali-*

fornia Railroad Company and each of the other defendants herein, claims some inchoate right, title or interest, in and to the lands sold as last aforesaid, under and by virtue of said reservations, concerning which a full discovery is hereby sought; and such right, title and interest, if any, (which is denied), were and are subject to the right of forfeiture and to the several other rights, equities and remedies of your Orator in the premises, asserted herein.

XVIII.

Your intervenors admit, and allege as true, all of paragraph Eighteen (XVIII) of Complainant's bill, and make the same a part of this, their answer and cross-bill, *excepting* the clause therein reading "and any and all such rights, title, interests or liens, if any, were and are subject to the right "of forfeiture . . . asserted herein." Which said clause and allegation your intervenors deny in so far as the same may or might affect the claim or right of any of your intervenors in any of the lands claimed by them or either of them. Said paragraph is as follows:

In addition to the several claims of the defendants in this bill specifically mentioned, the defendants and each of them claim some right, title, interest or lien in, to or upon some or all of said granted lands, the particulars whereof are to your Orator unknown, concerning which a full discovery is hereby sought; and any and all such rights, titles, interests or liens, if any, were and are subject to the right of forfeiture and to the several other

rights, equities and remedies of your Orator in the premises, asserted herein.

XIX.

Your intervenors admit, and allege as true, paragraph Nineteen (XIX) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

A schedule, accurately setting forth all maps of survey and location filed in the office of the Secretary of the Interior of the United States pursuant to the provisions of said land grants respectively, separately stated as to each of said land grants, is hereto attached, marked "Exhibit M" and made a part of this bill.

A schedule, accurately setting forth the time of the construction and completion of the several sections of said railroad and telegraph lines, together with the examination, approval and acceptance thereof, separately stated as to each of said railroad and telegraph lines, is hereto attached, marked "Exhibit N" and made a part of this bill.

A schedule, accurately setting forth the quantity of lands patented from time to time under each of said land grants, compiled by years, and separately stated as to each of said land grants, is hereto attached, marked "Exhibit O" and made a part of this bill. All of said patents were applied for by and issued to the defendant *Oregon and California Railroad Company,* as the successor of said East Side Company and said West Side Company respectively.

XX.

Your intervenors admit, and allege as true, paragraph Twenty (XX) of Complainant's bill, and make the same a part of this, their answer and cross-bill, the same being as follows:

Each of the defendants (other than the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company) asserts some right, title or interest in or to certain of said unsold lands; the general nature and basis of the claims of said last described defendants are identical, and are as follows, to-wit:

Each of said last described defendants alleges to have in good faith actually settled upon certain of said unsold lands, not exceeding one-quarter section or 160 acres in quantity, with the intention of making a permanent home thereof, and to have applied to the defendant *Oregon and California Railroad Company* to purchase the lands alleged to have been settled upon as aforesaid, and to have tendered to said defendant *Oregon and California Railroad Company* the sum of $2.50 for each acre applied for as aforesaid, as the purchase price thereof, and that the defendant *Oregon and California Railroad Company* has at all times refused, and still refuses, to entertain said applications to purchase, or to sell or convey to said last described defendants respectively the lands so applied for by them respectively, upon the aforesaid terms, or otherwise.

And by reason of the premises alleged by said last described defendants respectively as aforesaid (the truth

whereof is to your Orator unknown) said last described defendants severally assert some right, title or interest in or to the lands so applied for by them respectively as aforesaid; and each of said last described defendants has instituted a suit in equity against the defendants *Oregon and California Railroad Company, Stephen T. Gage,* and *Union Trust Company,* the general purpose and nature of which is to compel a sale and conveyance of the lands so applied for to said parties applying to purchase the same respectively, as aforesaid; all of which said suits are still pending and none of which have proceeded to any issue other than exceptions to certain portions of the several bills in said suits.

The said suit instituted by the defendant *Roy W. Minkler* is pending in the Circuit Court of the United States for the Western District of the State of Washington; all of the other said suits are pending in the Circuit Court of the United States for the District of Oregon.

A schedule accurately setting forth, as to each of said suits, the court number thereof, the names of the parties thereto, the date of the institution thereof, and a description of the land involved therein, separately stated as to each of said land grants, is hereto attached, marked "Exhibit P" and made a part of this bill.

Your Orator leaves said defendants to more specifically set forth herein their respective alleged rights in the premises, as they may be advised.

Unless enjoined therefrom as hereinafter prayed,

said defendants instituting said suits as aforesaid will proceed, or attempt to proceed, therein to some form of final judgment or decree. Each of said suits relates to and materially affects the rights and equities of your Orator in the premises. The rights and equities of your Orator in this bill set forth, and the relief hereinafter prayed for, relate to and affect all of the aforesaid alleged rights of said defendants respectively. If said suits shall proceed further, the rights and remedies of your Orator in the premises will be hindered, obstructed and delayed, if not substantially prejudiced. And because of the multiplicity of said suits, your Orator has made said persons parties defendant in this suit, to the end that further proceedings in each of said suits instituted and pending as aforesaid may be enjoined, and, if the Court shall so order, said parties be permitted to set forth herein their respective claims, for adjudication.

XXI.

Your intervenors hereby re-affirm and re-allege all the parts of Complainant's bill hereinbefore admitted to be true, and they rely upon said parts of said bill so set out herein and admitted and alleged to be true, together with the allegations hereinafter set forth, as the basis of their several claims, and the grounds for the relief so sought by them and by each of them in this suit.

Your intervenors, for the purpose of presenting and showing Your Honors the particular and special interest which each of them has asserted, and now claims in the lands, and the subject matter of this suit; and for the purpose of showing that they are, and each of them

is entitled to affirmative relief, and to the end that their particular and respective interests in the subject matter of this suit may be protected, established and enforced by decree of Your Honors' Court herein, allege:

That your intervenors are some of the persons mentioned and referred to in paragraph Nine (IX) of Complainant's bill, as having heretofore applied to the defendant Oregon and California Railroad Company to purchase certain of said unsold lands embraced in said grants, in quantities not exceeding one hundred and sixty acres, or one quarter section to each of said persons, for the purpose of actually settling thereon, and at the time of making such application, made tender to said defendant, Oregon and California Railroad Company of the sum of two dollars and fifty cents per acre for each acre of land so applied for by each of said persons as the purchase price thereof:

That during all the times herein alleged as to them, each of your intervenors was, and now is, a citizen of the United States, and a resident thereof; and, at the time of making such application to purchase, each of your intervenors was, and now is legally qualified and entitled to purchase and acquire the particular land applied for, each having done every act required by the terms of the Acts of Congress making said grants of lands as hereinbefore set out:

That said intervenor, B. W. Nunnally, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Com-

pany, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 23 in Township 4 North, of Range 3 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the

Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, William Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Com-

pany, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, John Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The N. W. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready,

able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Francis Weist, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. E. quarter of Section 23 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the de-

fendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to

said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Geo. E. Walling, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The N. E. quarter of Section 35 in Township 4 South, of Range 5 E. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Com-

pany; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, W. D. Sappington, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 31 in Township 8 South, of Range 6 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the

bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execu-

tion and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, Edward E. Stucker, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. ½ and N. W. ¼ of N. W. quarter of Section 31 in Township 8 South, of Range 6 W. of the Willamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands described in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and

offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

That said intervenor, O. N. Craner, did, a long time prior to the commencement of this suit, apply to the defendant, the Oregon and California Railroad Company, to purchase the following described lands and real property, to-wit: The S. W. quarter of Section 11 in Township 5 South, of Range 4 E. of the Williamette Meridian.

That said lands and real property consist of one quarter section of land and are a part of the lands de-

scribed in the Acts of Congress referred to in Complainant's bill of complaint and herein, and described in the bill of complaint as being unsold lands, and in fact are lands which have not been disposed of or sold by the defendant, the Oregon and California Railroad Company; that your intervenor at said time duly applied to said defendant, the Oregon and California Railroad Company, to purchase said land and offered to pay said company the sum of Two Dollars and Fifty Cents per acre, or Four Hundred Dollars for said quarter section of land, and at the time said application to purchase was made your intervenor duly tendered in lawful money of the United States the said Two Dollars and Fifty Cents per acre or Four Hundred Dollars for said land, and demanded a deed of conveyance therefor under the terms and conditions of said grant, which said tender and offer of your intervenor was refused and denied by said defendant, the Oregon and California Railroad Company; that at the time your intervenor made said offer to purchase said quarter section of land and ever since said time he intended to and was and is qualified, ready, able and willing and now intends to make an actual settlement upon said lands and occupy and use the same as an actual settler, and so informed the defendant, the Oregon and California Railroad Company, at the time said application for purchase and tender was so made to said company. And he herewith offers to tender into Court the said sum of Four Hundred Dollars, lawful money of the United States, to be paid and delivered to the Oregon and California Railroad Company, or to

the person, persons, corporation or corporations qualified and authorized to receive the same, upon the execution and delivery to your intervenor of a good and sufficient deed of conveyance conveying to him the title to said 160 acres, or quarter section of land hereinbefore described, or upon such terms as to Your Honors may seem to be equitable and just.

Your intervenors allege that, by reason of the premises, and as hereinbefore specifically set out, each of them has an interest in the subject matter of this suit, to the extent of the parcel of land applied for by them respectively, and that under the terms of the said Acts of Congress making said grants of lands, and the conditions imposed thereby upon intending purchasers of said lands, as set out in Complainant's bill, and reaffirmed herein as being true, it was the legal duty of the Oregon and California Railroad Company to convey to your intervenors, and to each of them, the lands so applied for upon the application so made with the tender of the purchase price therefor as alleged herein; and that, as to these intervenors, and as to the lands so applied for by them, Complainant has no right to claim, nor has the Court authority to decree a forfeiture; but that it is the duty of the Complainant and the Court to enforce the terms of said grants in favor of these your intervenors.

These intervenors further allege that, each parcel, or quarter section of land so applied for by them severally, was at the date of their several applications, and now is of greater value than the sum of two thousand dollars.

XXII.

For further answer and cross-bill, your intervenors allege that, by the several Act of the Congress set out at length in Complainant's bill and admitted to be true, and re-alleged herein, it was intended by the Congress of the United States to create a trust in said land for the use and benefit of such citizens of the United States as should become actual settlers thereon and should desire and offer to purchase the same in accordance with the terms, and under the restrictions imposed by said Acts of Congress making said grants; and that, by transferring said lands to the said Oregon and California Railroad Company,—said company having accepted the terms of said grants, as shown in Complainant's bill, and herein,—Complainant constituted said Oregon and California Railroad Company the trustee of said trust, and thereafter said trustee held, and its co-defendants who claim a joint interest with, or an interest adverse thereto,—other than your intervenors and others of their class,—have held, and they and said Oregon and California Railroad Company now hold said lands, so granted, *in trust,* for the benefit of these intervenors and others of their class who, like your intervenors, are qualified under the provisions of said Acts of Congress to take said lands, and who have settled thereon and offered to purchase the same in accordance with the terms of said grants so made as aforesaid.

And your intervenors allege that, as to themselves, and others of their class, said trust is active and opera-

tive, and the terms thereof should be enforced in their favor by decree of this Honorable Court.

Wherefore, having fully answered the allegations of Complainant's bill, in so far as they are advised the same should be answered; and having fully set forth their several claims to the end that the Court may be fully advised in the premises, your intervenors pray that their several rights may be established and enforced by decree of this Honorable Court; that, defendant Oregon and California Railroad Company, by such decree, be directed and required to convey to each of your intervenors the tract of land so applied for by each as hereinbefore set forth, upon payment of the price thereof in accordance with the terms of said grants; that all such orders and decrees as the equity of their cause demands be entered in their behalf, and that each be awarded his costs and disbursements herein expended.

B. W. NUNNALLY

And Others, Intervenors.

Lewis C. Garrigus,

Solicitor for Intervenors.

STATE OF OREGON,
District of Oregon, } ss.

I, B. W. Nunnally, being first duly sworn, upon my oath say that, I am one of the petitioners and intervenors in the foregoing petition of intervention, answer and cross-bill; that the facts therein alleged by me of my own knowledge are true; and all other allegations of said petition, answer and cross-bill not stated upon my own personal knowledge, I believe to be true.

B. W. NUNNALLY.

Subscribed and sworn to by B. W. Nunnally before me this 31st day of October, 1908.

LEWIS C. GARRIGUS,
Notary Public for Oregon.

(Endorsed) Petition, Answer and Cross-Bill of B. W. Nunnally, et al. Filed Nov. 2, 1909.

G. H. MARSH, Clerk.

And Afterwards, to wit, on the 1st day of March, 1909, there was duly filed in said Court, an order in words and figures as follows, to wit:

[ORDER PERMITTING INTERVENTION OF B. W. NUNNALLY, et al.]

[TITLE]

This case coming on to be heard upon the petition of intervention of B. W. Nunnally, and seven others, to be made parties to this suit, and to be permitted to file their answer and cross-bill therein, and, the Court having duly considered said petition of intervention, it is now ordered that the said petition, answer and cross-bill of said B. W. Nunnally, and seven other be filed, and said petitioners are permitted to intervene and become parties to this suit, and to have their alleged rights litigated and determined herein, and they are made such parties accordingly.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order Allowing Intervention of Nunnally, et al. Filed Mar. 1, 1909.

G. H. MARSH, Clerk.
By J. W. Marsh, Deputy.

And afterwards, to wit, on the 15th day of January, 1909, there was duly filed in said Court, a Cross-Complaint in words and figures as follows, to wit:

[CROSS COMPLAINT OF JNO. L. SNYDER, et al.]

IN EQUITY No. 3340

[TITLE]

In the Circuit Court of the United States
For the District of Oregon

UNITED STATES OF AMERICA,

Complainant,

vs.

Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, (individually and as trustee), Union Trust Company (individually and as trustee), John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. Mac-

Lafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Marvin Martin, and Roy W. Minkler,

Defendants.

CROSS-COMPLAINT OF JOHN L. SNYDER, ET AL.

To the Honorable, the Judges of the Circuit Court of the United States, for the District of Oregon:

John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, S. Shryock, each being citizens of the State of Oregon, and residing in Columbia County, in the District of Oregon, bring this their cross-complaint against the Oregon and California Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon; the Union Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and S. T. Gage, a citizen of the State of California, residing in the city of San Francisco, in said State, defendants in this cause, and thereupon cross-complainants for their cause of suit state;

I.

That John L. Snyder long prior to the institution of the present suit by the United States of America; to wit, on September 16, 1907, did in his own behalf, as com-

plainant, duly institute in this Court suit No. 3184, against the Oregon and California Railroad Company, the Union Trust Company and S. T. Gage, defendants herein, in which said suit the said John L. Snyder among other things truthfully alleged that he had prior to the institution thereof, actually settled upon the Southeast quarter Section Seventeen (17), Township Four (4) North, Range three (3) West, for the bona fide purpose of making the said land his home and for the purpose of purchasing the said land from the Oregon and California Railroad Company at the price of $2.50 per acre under the Act of Congress of May 4, 1870, due tender of the purchase price being alleged in said complaint, in which said suit complainant asked for a decree against the said Oregon and California Railroad Company to compel the latter to convey said quarter section of land to him under said Act of Congress, upon the terms stipulated in said Act, and that said suit was duly prosecuted by said John L. Snyder until December 23, 1908, when this Court upon the motion of said Oregon and California Railroad Company and over the protest of said John L. Snyder by order duly entered of record stayed further proceedings in said individual suit of John L. Snyder and consolidated the same with this suit, No. 3340, granting leave to said John L. Snyder to file his joint or several cross-complaint in said suit No. 3340 on or before January 4, 1909, on which said last mentioned date by order of this Court duly entered of record, said John L. Snyder was permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Julius F. Prahl under circumstances in all respects identical on November 14, 1907, filed his individual suit in this Court No. 3215, against the same defendants for the Southwest quarter Section seventeen (17), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Albert E. Thompson under circumstances in all respects identical on November 27, 1907, filed his individual suit in this Court, No. 3221, against the same defendants for the Southeast quarter Section twenty-seven (27) Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That James Barr under circumstances in all respects identical on November 27, 1907, filed his individual suit in this Court, No. 3222, against the same defendants for the East one-half of the North-east quarter and East one-half of the Southeast quarter, Section nine (9) Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several

cross-complaint herein on or before January 18, 1909.

That Fred Witte under circumstances in all respects identical on December 2, 1907, filed his individual suit in this Court, No. 3223, against the same defendants for the Southwest quarter Section twenty-five (25), Township four (4) North, Range three (3) west, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That W. A. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3243, against the same defendants for the Southwest quarter Section five (5), Township four North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That W. H. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3244, against the same defendants for the Northeast quarter Section five (5), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That O. M. Anderson under circumstances in all respects identical on January 21, 1908, filed his individual suit in this Court, No. 3245, against the same defendants for the Northwest quarter Section five (5), Township four (4) North Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That F. E. Williams under circumstances in all respects identical on January 30, 1908, filed his individual suit in this Court, No. 3254, against the same defendants for the Northwest quarter Section Twenty-one (21), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Paul Birkenfeld under circumstances in all respects identical on January 30, 1908, filed his individual suit in this Court, No. 3255, against the same defendants for the Southeast quarter Section fifteen (15), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant being in like manner permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That J. H. Lewis under circumstances in all respects identical on February 6, 1908, filed his individual suit

in this Court, No. 3257, against the same defendants for the West one-half of the Northeast quarter and West one-half of the Southeast quarter, Section nine (9), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, and complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Francis S. Wiser under circumstances in all respects identical on March 23, 1908, filed his individual suit in this Court, No. 3273, against the same defendants for the Northwest quarter Section twenty-seven (27), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, and complainant in like manner being permitted to file his joint or several cross-complaint herein on on before January 18, 1909.

That W. E. Anderson under circumstances in all respects identical on March 4, 1908, filed his individual suit in this Court, No. 3261, against the same defendants for the Southeast quarter Section five (5), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Albert Arms under circumstances in all respects identical on March 23, 1908, filed his individual suit in

this Court, No. 3274, against the same defendants for the Northeast quarter Section thirty-five (35), Township four (4) North, Range three (3) West, and that said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Joseph A. Maxwell under circumstances in all respects identical on March 23, 1908, filed his individual suit in this Court, No. 3275, against the same defendants for the Northeast quarter Section twenty-seven (27), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Isaac McKay under circumstances in all respects identical on March 30, 1908, filed his individual suit in this Court, No. 3282, against the same defendants for the Southeast quarter Section twenty-one (21), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That J. R. Peterson under circumstances in all respects identical on May 7, 1908, filed his individual suit in this Court, No. 3306, against the same defendants for the Northeast quarter Section twenty-one (21),

Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That D. MacLafferty under circumstances in all respects identical on May 18, 1908, filed his individual suit in this Court, No. 3312, against the same defendants for the Northeast quarter Section twenty-five (25), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Edgar MacLafferty under circumstances in all respects identical on May 18, 1908, filed his individual suit in this Court, No. 3313, against the same defendants for the Southeast quarter Section twenty-five (25), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That V. V. McAboy under circumstances in all respects identical on June 1, 1908, filed his individual suit in this Court, No. 3322, against the same defendants for the Northeast quarter Section seven (7) Township four (4) North, Range three (3) West, and the said indi-

vidual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That George C. MacLafferty under circumstances in all respects identical on June 2, 1908, filed his individual suit in this Court, No. 3323, against the same defendants for the Northwest quarter Section twenty-five (25), Township four (4) North, range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That George Edgar MacLafferty under circumstances in all respects identical on June 8, 1908, filed his individual suit in this Court, No. 3326, against the same defendants for the Northeast quarter Section 1, Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That E. L. MacLafferty under circumstances in all respects identical on June 17, 1908, filed his individual suit in this Court, No. 3329, against the same defendants for the Northwest quarter Section one (1), Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the

cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That B. N. MacLafferty under circumstances in all respects identical on June 17, 1908, filed his individual suit in this Court, No. 3330, against the same defendants for the Southeast quarter Section one (1), Township three (3) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That Enos M. Fluhrer under circumstances in all respects identical on July 15, 1908, filed his individual suit in this Court, No. 3338, against the same defendants for the Southeast quarter Section thirty-one (31), Township five (5) North, Range two (2) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

That F. W. Floeter under circumstances in all respects identical on August 17, 1908, filed his individual suit in this Court, No. 3351, against the same defendants for the Northeast quarter Section nineteen (19), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several

cross-complaint herein on or before January 18, 1909.

That S. Shryock under circumstances in all respects identical on August 24, 1908, filed his individual suit in this Court, No. 3369, against the same defendants for the Southwest quarter Section twenty-one (21), Township four (4) North, Range three (3) West, and the said individual suit was in like manner stayed, the cause being consolidated with this suit, the complainant in like manner being permitted to file his joint or several cross-complaint herein on or before January 18, 1909.

II.

As a continuation of said causes aforementioned in the manner permitted by the aforesaid orders of this Court, the cross-complainants herein named in obedience to said order of Court, requiring these cross-complainants to plead over in this suit, now jointly state their cause of suit, as follows:

III.

That there was heretofore passed by the Congress of the United States, and approved by the President of the United States on May 4, 1870, an Act, duly published at pages 94 and 95 of the 16th Volume of the Statutes at Large of the United States, which said Act is a Public Law of the United States, and is entitled, and is in words and figures as follows, to wit:

"CHAP. LXIX.—An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side tracks, and other needful uses in operating the road, not exceeding forty acres at any one place, and also each alternate section of the public lands not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

SEC. 2. And be it further enacted, That the Com-

missioner of the General Land Office shall cause the lands along the line of the said railroad to be conveyed with all convenient speed, and whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the Secretary shall cause the said granted lands adjacent to and coterminus with such located sections of road to be segregated from the public lands, and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands. And provided also, That settlers under the provisions of the homestead act who comply with the provisions of the terms of said act shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

SEC. 3. And be it further enacted, That whenever and as often as the said company shall complete and equip twenty or more miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminus with the said completed sections.

SEC. 4. And be it further enacted, That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at a price not exceeding two dollars and fifty cents per acre.

SEC. 5. And be it further enacted, That the said company shall, by mortgage or deed of trust or two or more trustees, appropriate and set apart all the net proceeds of the sales of said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of the first mortgage construction bonds of the company, on the road, depots, stations, side tracks and wood yards, not exceeding thirty thousand dollars per mile, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the pricipal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to

appeal and writ of error, to enforce the provisions of this section.

SEC. 6. And be it further enacted, That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage, and the foregoing grant is upon the condition that the said company shall complete a section of twenty or more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years from the same date."

IV.

That thereafter, to wit, on July 12, 1870, the Oregon Central Railroad Company, designated as grantee in the foregoing Act, duly filed its assent thereto with the Secretary of the Interior, and the said Oregon Central Railroad Company, for itself and its successors, did thereby and in that manner expressly contract and agree with the United States, among other things, that said Oregon Central Railroad Company would sell all of the lands granted by said Act in quantities as great as and not exceeding one hundred and sixty acres, or a quarter section, to any one settler, and at a price not exceeding two dollars and fifty cents per acre, excepting only such portions of said lands as said Oregon Central Railroad Company should necessarily require for depots, stations, side tracks, wood yards, standing ground and other needful uses in operating the road, and that said contract was entered into by and between the United States and said Oregon Central Railroad Company and its successors

for the benefit of any and all citizens of the United States who should thereafter actually settle upon said lands.

V.

That immediately thereafter, and within the time limited by the terms of said Act of Congress, said Oregon Central Railroad Company did build, construct, complete and equip the railroad and telegraph line mentioned in the aforesaid Act of Congress, from Portland in a westerly direction through the Counties of Multnomah and Washington to Forest Grove, and from Forest Grove in a southwesterly direction through the Counties of Washington and Yamhill to a point on the Yamhill River at McMinnville, and thereby said Oregon Central Railroad Company and its successors did become entitled to receive, subject to the provisions of the aforesaid Act of Congress and its aforesaid contract with the United States all the lands granted by said Act of Congress lying coterminous with the line of railroad and telegraph so built, constructed, completed and equipped, and said Oregon Central Railroad Company and its successors did thereby become entitled to receive patents from the United States to said lands, subject to the provisions of said Act of Congress and said contract aforementioned.

VI.

That on October 6, 1880, and before said Oregon Central Railroad Company had received patent for any of the lands granted by said Act of Congress, defend-

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ant, the Oregon & California Railroad Company, became the successor of said Oregon Central Railroad Company, and that said defendant, the Oregon and California Railroad Company, is now the owner and holder of the legal title to all of the lands granted by the Act of Congress aforesaid, and subject to the provisions of the Act of Congress and the contract aforesaid, excepting such portions of said lands as said defendant the Oregon & California Railroad Company has sold and conveyed away. That on October 6, 1880, said Oregon Central Railroad Company, by its deed of conveyance, by it duly made, executed and delivered on said date to defendant, the Oregon & California Railroad Company, did grant, bargain and sell, transfer, convey and confirm to said defendant, the Oregon & California Railroad Company, its successors and assigns, the right of way and franchise of said Oregon Central Railroad Company, and the railroad and telegraph line of said Oregon Central Railroad Company aforesaid, from Portland to Forest Grove and from Forest Grove to McMinnville, together with the depots, stations and side tracks of said Oregon Central Railroad Company, and all the property and assets of said Oregon Central Railroad Company of every kind and character, and particularly all the lands granted to said Oregon Central Railroad Company by the Act of March 4, 1870, which said Oregon Central Railroad Company was on the date of said deed, entitled to receive, or might thereafter become entitled to receive under said Act of Congress, and that said defendant, the Oregon & California Railroad Company,

received and accepted said deed of conveyance, and entered into the immediate possession of said railroad and telegraph line from Portland to Forest Grove and McMinnville, under said deed, as the successor of said Oregon Central Railroad Company, and has ever since claimed to the United States and the public at large that it is the successor of the Oregon Central Railroad Company.

VII.

That thereafter defendant the Oregon & California Railroad Company, as successors to the Oregon Central Railroad Company, and under authority of and pursuant to said Act of Congress of May 4, 1870, did file with the Commissioner of the General Land Office its various applications and selection lists at divers times for patents to the lands granted by said Act of Congress, and upon such application and selection lists, and under authority of and pursuant to said Act of Congress, the President of the United States has heretofore conveyed by patents to said defendant, the Oregon & California Railroad Company, about five hundred thousand acres of land granted by said Act of Congress under authority of and pursuant to said Act of Congress, and subject to the provisions of said Act, and among the lands granted by patent to said defendant, the Oregon & California Railroad Company upon its applications and selection lists aforesaid, under and subject to the provisions of the Act of Congress aforesaid, were the lands heretofore described in Paragraph I of this cross-complaint, which said lands are involved in

this suit, and were conveyed to said defendant, the Oregon & California Railroad Company by the United States by patents upon the selection lists of said defendant company, and under and pursuant to said Act of Congress of May 4, 1870, and subject to all the terms and provisions of said Act. That said defendant, the Oregon & California Railroad Company, has not heretofore sold nor conveyed away said lands heretofore described in Paragraph I of this cross-complaint, but is now the owner and holder of the legal title thereto, subject to the aforesaid Act of Congress.

VIII.

That Congress, by said Act of May 4, 1870, intended to and did grant to said Oregon Central Railroad Company, its successors and assigns, the right of way for said railroad and telegraph line through the public lands of the width of one hundred feet on each side of said road, and also the necessary lands for depots, stations, side tracks and other needful uses in operating said road, not exceeding forty acres in any one place, and also each alternate section of the public non-mineral lands, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead rights at the date of the passage of said Act, and the right, in case the quantity of ten full sections per mile could not be found on each side of said road within the said limits of twenty miles, to select and receive other lands designated as aforesaid under the direc-

tion of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road, to make up such deficiency, and subject to the provisions hereinafter stated. That Congress intended to and did, by said Act of May 4, 1870, provide that the said alternate sections of land granted by said Act, excepting only such as were necessary for said company to reserve for depots, stations, side tracks, wood yards, standing ground and other needful uses in operating said road, should be sold by said company only to actual settlers, in quantities as great as and not exceeding one hundred sixty acres or a quarter section to any one settler, and at a price not exceeding two dollars and fifty cents per acre, and that said company should file with the Secretary of the Interior its assent to said Act within one year from the time of its passage.

IX.

That Congress, by said Act of May 4, 1870, intended to and did grant to said Oregon Central Railroad Company, and to its successors and assigns, and to its successor, defendant, the Oregon & California Railroad Company, a limited beneficial interest in the lands designated in said Act, and that Congress by said Act intended to and did stipulate and provide that the right of citizens of the United States to enter and settle upon said lands, to the extent of one hundred and sixty acres or a quarter section to each citizen so desiring to enter and settle upon said lands, and to purchase the same from

the railroad company at a price not to exceed two dollars and fifty cents per acre, should be reserved to the citizens of the United States. That Congress, by said Act of May 4, 1870, intended to and did provide and stipulate that the odd numbered sections granted by said Act to said railroad company should continue open to entry and settlement by citizens of the United States without let or hindrance from said railroad company, in quantities as great as and not exceeding one hundred sixty acres or a quarter section to any one citizen, as freely as though said Act had not been passed at all, but that Congress, by said Act, did stipulate that the sale price of the lands within the limits of said grant, both even and odd numbered sections, should thereafter be two dollars and fifty cents per acre, that is, that the sale price of the even numbered sections retained by the Government should thereafter be two dollars and fifty cents per acre, and that the sale price of the odd numbered sections granted to said railroad company should thereafter not exceed two dollars and fifty cents per acre. That Congress, by said Act of May 4, 1870, intended to and did make and constitute said Oregon Central Railroad Company, and its successor, defendant, the Oregon & California Railroad Company, a mere intermediary trustee, through which Congress intended to and did by said Act provide for the conveyance of the legal title to the odd numbered sections of lands granted by said Act from the United States Government to such citizens of the United States as might thereafter settle upon such lands. That

Congress by said Act did not intend to grant to said railroad company any possessory right to any of said lands, except those particular portions designated for a right of way, depots, stations, side tracks, wood yards, standing ground, and other needful uses in operating the road, but that Congress by said Act reserved the right to citizens of the United States to enter upon and take possession of all said lands with the exceptions last aforementioned, and to purchase the same from said railroad company upon becoming actual settlers upon said land, and that Congress intended to and did, by said Act of May 4, 1870, accomplish a double purpose, to wit: First, Congress intended to and did, by said Act, provide financial aid to said railroad company in the construction of said railroad and telegraph line, by providing that the odd numbered sections aforementioned should be conveyed by the United States to said railroad company in trust, for the sole purpose of being hereafter conveyed by said railroad company to actual settlers, and for no other purpose, with the provisions that said railroad company should have the right to receive the proceeds of the disposition of all of said lands, and that said lands should be disposed of at not exceeding two dollars and fifty cents per acre; Second, Congress intended to and did by said Act provide that its then declared policy of disposing of the public lands to citizens of the United States in small tracts, and at prices not exceeding two dollars and fifty cents per acre, should not be interfered with or abridged by the grant of such aid to said railroad company, but that such policy of

the Government should continue as free and uninterrupted as though such aid had not been granted by said Act to said railroad company, and this latter purpose was the paramount object of the grant. That Congress, by said Act of May 4, 1870, reposed a special trust and confidence in said Oregon Central Railroad Company and its successors to carry out the expressed and declared policy and theory of said Act, and to convey said lands at a price not exceeding two dollars and fifty cents per acre, to all such citizens of the United States as might thereafter settle upon the same, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and that therefore, defendant, the Oregon & California Railroad Company, successor to said Oregon Central Railroad Company, as to all lands now held by it under said Act of Congress, except such as are necessary for right of way, side tracks, stations, depots, standing ground, wood yards, and other needful uses in operating the road, is a trustee for the United States, and for all such citizens of the United States as may be now actually settled upon any of the lands, under and pursuant to said Act of Congress, who have tendered to said railroad company the maximum sum per acre which it is entitled to receive, to wit: Two dollars and fifty cents per acre, and that it is now the legal duty of defendant, the Oregon and California Railroad Company, to convey by good and sufficient deeds to all such settlers the lands by them settled upon.

X.

That cross-complainant, John L. Snyder, prior to September 16, 1907, entered into possession of and settled upon the SE¼ Section 17, Township 4 North, Range 3 West, containing 160 acres; and Julius F. Prahl, cross-complainant herein, prior to November 14, 1907, entered into possession of and settled upon the SW¼ Section 17, Township 4 North, Range 3 West, containing 160 acres; and Albert E. Thompson, cross-complainant herein, prior to November 27, 1907, entered into possession of and settled upon the SE¼ Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, James Barr, prior to November 27, 1907, entered into possession of and settled upon the E½ of NE¼ and E½ of SE¼, Section 9, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Fred Witte, prior to December 2, 1907, entered into possession of and settled upon the SW¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant W. A. Anderson, prior to January 21, 1908, entered into possession of and settled upon the SW¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, W. H. Anderson, prior to January 21, 1908, entered into possession and settled upon the NE ¼ Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, O. M. Anderson, prior to January 21, 1908, entered into possession of and settled upon the NW ¼ Section 5, Township 4 North, Range 3 West,

containing 160 acres; and cross-complainant, F. E. Williams, prior to January 30, 1908, entered into possession of and settled upon the NW1/4 Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Paul Birkenfeld, prior to January 30, 1908, entered into possession of and settled upon the SE1/4 Section 15, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, J. H. Lewis, prior to February 6, 1908, entered into possession of and settled upon the W1/2 of NE1/4 and W1/2 of SE1/4, Section 9, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Francis S. Wiser, prior to March 23, 1908, entered into possession and settled upon the NW1/4 Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, W. E. Anderson, prior to March 4, 1908, entered into possession of and settled upon the SE1/4 Section 5, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Albert Arms, prior to March 23, 1908, entered into possession of and settled upon the NE1/4 Section 35, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Joseph A. Maxwell, prior to March 23, 1908, entered into possession of and setted upon the NE1/4 Section 27, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Isaac McKay, prior to March 30, 1908, entered into possession of and settled upon the SE1/4 Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, J. R. Peterson, prior to May 7, 1908, entered

into possession of and settled upon the NE¼ Section 21, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, D. MacLafferty, prior to May 18, 1908, entered into possession of and settled upon the NE¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, Edgar MacLafferty, prior to May 18, 1908, entered into possession of and settled upon the SE¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, V. V. McAboy, prior to June 1, 1908, entered into possession of and settled upon the NE¼ Section 7, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, George C. MacLafferty, prior to June 2, 1908, entered into possession of and settled upon the NW¼ Section 25, Township 4 North, Range 3 West, containing 160 acres; and cross-complainant, George Edgar MacLafferty, prior to June 8, 1908, entered into possession of and settled upon the NE¼ Section 1 Township 3 North, range 3 West containing 160 acres; and cross-complainant, E. L. MacLafferty, prior to June 17, 1908, entered into possession of and settled upon the NW¼ Section 1, Township 3 North, Range 3 West, containing 160 acres; and cross-complainant, B. N. MacLafferty, prior to June 17, 1908, entered into possession of and settled upon the SE¼ Section 1, Township 3 North, Range 3 West, containing 160 acres; and cross-complainant, Enos M. Fluhrer, prior to July 15, 1908, entered into possession of and settled upon the SE¼ Section 21, Township 5 North, Range 2 West, containing 160 acres;

and cross-complainant, F. W. Floeter, prior to August 17, 1908, entered into possession of and settled upon the NE¼ Section 19, Township 4 North, Range 3 West, containing 160 acres; and cross complainant, S. Shryock, prior to August 24, 1908, entered into possession of and settled upon the SW ¼ Section 21, Township 4 North, Range 3 West, containing 160 acres, and all of the above mentioned entries made by said cross-complainants are on lands in Columbia County, Oregon, and said entries and settlements thereon were made under and pursuant to said Act of Congress of May 4, 1870, and by virtue of the right given to cross-complainants so to do by said Act of Congress. That from the date of said settlements down to the present time cross-complainants have remained in possession of and occupied and inhabited the said lands above described as their homes, to the exclusion of homes elsewhere, and that it is their bona fide purpose and intention to make said quarter sections of land their homes for the future, and to improve, clear, husband and cultivate the same. That immediately after settling upon said quarter sections of land as aforesaid, cross-complainants erected their dwelling houses thereon, in which they have resided at all times since and are now residing. That prior to the filing of cross-complainants individual suits, heretofore mentioned in Paragraph I of this cross-complaint, cross-complainants each offered to defendant, the Oregon and California Railroad Company, their applications to purchase said quarter sections of land, and each tendered the sum of four hundred dollars in United States gold coin, and each tendered and

offered to reimburse defendant for all taxes and disbursements paid out by defendant on account of said lands, in payment for said quarter sections of land, that being two dollars and fifty cents per acre therefor, which said applications the defendant, the Oregon and California Railroad Company, then and there denied and refused, and continues to deny and refuse, and which said tender and offer of four hundred dollars in United States gold coin, for each quarter section, and taxes and disbursements, in payment for said lands, the defendant, the Oregon and California Railroad Company, then and there rejected and refused, and still refuses. That these cross-complainants are, and were at the time of filing their individual suits, heretofore mentioned in Paragraph I of this cross-complaint, citizens of the United States.

XI.

That said quarter sections of land above described are situated in Columbia County, Oregon, about fifteen miles from the railroad and telegraph line that was constructed by the aforesaid Oregon Central Railroad Company, under and pursuant to said Act of Congress of May 4, 1870, that the same are non-mineral, and that none of said quarter sections of land or any part thereof were or are necessary for depots, stations, side tracks, wood yards, or other needful uses in operating the road.

XII.

That defendant, the Oregon & California Railroad Company, denies that it holds said quarter sections of land last described as a trustee for cross-complainants, or that it is bound or obliged by said Act of May 4, 1870, and by the facts pleaded in this cross-complaint, to convey said quarter sections of land to these cross-complainants. That said defendant has repudiated the trust created and reposed in it by said Act of Congress of May 4, 1870, and now denies that it holds said quarter sections of land last described in trust for the United States and for these cross-complainants, and in disregard of its plain duty and obligation and as trustee under said Act of Congress, and under the facts pleaded herein, refuses to accept from cross-complainants herein the sum of two dollars and fifty cents per acre for said lands, or to convey said lands to said cross-complainants, but that said defendant, the Oregon & California Railroad Company, on the contrary, in violation of the trust aforesaid, now asserts a claim of ownership of the absolute fee-simple title to said lands.

XIII.

That said defendant, the Oregon & California Railroad Company, does not deny that its source of title to all of the lands herein referred to as being granted to it, is the Act of May 4, 1870, but that said defendant attempts to justify its present assertion of the absolute ownership of said lands by the claim that it has now held said lands for thirty-seven years and that it has paid

large sums in taxes on said lands, and that it at one time was willing and anxious to sell said lands for the prices limited by said Act of Congress, and that no persons then applied to buy. Said defendant therefore claims that it would be unjust and inequitable to now require it to sell said lands to actual settlers for the price and sum of two dollars and fifty cents per acre, and said defendant further asserts that cross-complainants are barred from a recovery by reason of their alleged laches in not sooner asserting their claim, and by reason of the alleged thirty-seven years' adverse possession of said defendant and its grantors. But your cross-complainants state that in truth and in fact all of the land received by said defendant under said Act of Congress has been patented to defendant during the past twelve years, and that the first patent ever issued to said defendant under said act of Congress for any of said land is dated October 9, 1895. Your cross-complainants further state that in truth and in fact said defendant has not paid taxes on said lands to an amount in excess of fifty cents per acre, and that said defendant has never made any improvements on said lands. Your cross-complainants further state that said defendant has never at any time been willing to comply with the terms of said Act of Congress of May 4, 1870, by conveying said lands to actual settlers in quantities not exceeding one hundred and sixty acres at prices not exceeding two dollars and fifty cents per acre. Your cross-complainants further state that said defendant has received by patent up to this time under said Act of Congress a total of 128,616.13

acres, of which it has sold to the firm of Hammond & Winton, the Olean Land Company, and others, approximately 49,358.26 acres for the average price of approximately $7.00 per acre, and in tracts of thousands of acres to single purchasers, and that from such sales said defendant has received a sum far in excess of two dollars and fifty cents per acre for the entire lands patented to it, and all taxes and disbursements paid out by said defendant on account of said lands. Your cross-complainants therefore allege that said defendant has already received, for the sold portions of said lands patented to it, a sum far in excess of the total amount it was entitled to receive for all of the lands so patented to it and that it would not be unjust or inequitable to require said defendant to now comply with the terms of said law by disposing of all of the balance of said lands as required by said Act of May 4, 1870.

XIV.

Your cross-complainants state that they are each now willing to pay in Court for defendant, and hereby each tenders into Court for defendant, the Oregon and California Railroad Company, the sum of four hundred dollars, in United States gold coin, for each quarter section of the lands above described, as the purchase price for said quarter sections of land so settled upon, and now occupied by your cross-complainants as aforesaid, and your cross-complainants also stand ready and willing to pay into Court for defendant all disbursements heretofore expended by defendant in connection with said

lands for taxes or otherwise, if the same shall be claimed by defendant and ascertained and deemed a just and equitable charge in favor of defendant by this Honorable Court.

XV.

Your cross-complainants further allege that defendant, the Oregon & California Railroad Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon; and that defendant, the Union Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of New York.

XVI.

WHEREFORE, Your cross-complainants pray that the said defendant, Oregon & California Railroad Company be declared and adjudged by decree of this Court to hold the legal title to the following quarter sections of land, which your cross-complainants respectively entered into possession of and settled upon prior to the filing of their individual suits hereinbefore mentioned:

John L. Snyder, SE¼ Sec. 17, Tp. 4 North, Range 3 West; Julius F. Prahl, SW¼ Sec. 17, Tp. 4 North, Range 3 West; Albert E. Thompson, SE¼ Sec. 27, Tp. 4 North, Range 3 West; James Barr, E½ of NE¼ and E ½ of SE ¼, Sec. 9, Tp. 4 North, Range 3 West; Fred Witte, SW¼ Sec. 25, Tp. 4 North, Range 3 West; W. A. Anderson, SW¼ Sec. 5, Tp. 4 North, Range 3 West; W. H. Anderson, SW¼ Sec. 5, Tp.

4 North, Range 3 West; O. M. Anderson, NW¼ Sec. 5, Tp. 4 North, Range 3 West; F. E. Williams, NW¼ Sec. 21, Tp. 4 North, Range 3 West; Paul Birkenfeld, SE¼ Sec. 15, Tp. 4 North, Range 3 West; J. H. Lewis, W½ or NE¼ and W½ of SE ¼, Sec. 9, Tp. 4 North, Range 3 West; Francis S. Wiser, NW¼ Sec. 27, Tp. 4 North, Range 3 West; W. E. Anderson, SE¼ Sec. 5, Tp. 4 North, Range 3 West; Albert Arms, NE¼ Sec. 35, Tp. 4 North, Range 3 West; Joseph A. Maxwell, NE¼ Sec. 27, Tp. 4 North, Range 3 West; Isaac McKay, SE¼ Sec. 21, Tp. 4 North, Range 3 West; J. R. Peterson, NE¼ Sec. 21, Tp. 4 North, Range 3 West, D. MacLafferty, NE¼ Sec. 25, Tp. 4 North, Range 3 West; Edgar MacLafferty, SE¼ Sec. 25, Tp. 4 North, Range 3 West; V. V. McAboy, NE¼ Sec. 7, Tp. 4 North, Range 3 West; George C. MacLafferty, NW¼ Sec. 25. Tp. 4 North, Range 3 West; George Edgar MacLafferty, NE¼ Sec. 1, Tp. 3 North, Range 3 West; E. L. MacLafferty, NW¼, Sec. 1, Tp. 3 North, Range 3 West; B. N. MacLafferty, SE¼ Sec. 1, Tp. 3 North, Range 3 West; Enoch M. Fluhrer, SE¼ Sec. 31, Tp. 5 North, Range 2 West; F. W. Floeter, NE¼ Sec. 19, Tp. 4 North, Range 3 West; S. Shryock, SW¼ Sec. 21, Tp. 4 North, Range 3 West.

And your cross-complainants further pray that defendant, the Oregon & California Railroad Company, be declared and adjudged by decree of this Court to hold the legal title to said above described lands, with power in trust to convey said lands to your cross-com-

plainants, and that said defendant be compelled by decree and order of this Court to accept the said sums of money above named as the purchase price for the said above described quarter sections of land and to execute said power in trust, and to convey, make and execute to your cross-complainants good and sufficient deeds to said quarter sections of land above described, or that such decree stand in place and stead of such conveyance, and for such other and further orders, judgments and decrees as may be just and proper.

XVII.

Cross-complainants further allege that they are informed and verily believe that defendant, the Union Trust Company, and defendant S. T. Gage, claim some interest in the lands involved in this suit, the nature and extent of which is unknown to your cross-complainants, and cross-complainants therefore ask that said Union Trust Company and S. T. Gage be required to answer this cros-complaint, setting up their interest, if any they have.

XVIII.

Cross-complainants having been made defendants by the United States of America in its Bill of Complaint in this suit No. 3340, state that they admit each and every allegation of fact in said Bill of Complaint of the United States of America contained except the claim of the United States of America, that the lands sued for by these cross-complainants are, or ever, can be forfeited to said United States of America, and there being

no issue of fact between the United States of America and these cross-complainants, the latter for the sake of convenience and brevity of the record, pray that this paragraph of their cross-complaint shall be deemed and accepted a sufficient answer by them to the Bill of Complaint of the United States of America herein.

A. W. LAFFERTY,
Solicitor for Cross-Complainants.

(Endorsed) Cross-Complaint of Jno. L. Snyder et al.

Filed Jan. 15, 1909.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 7th day of December, 1908, there was duly filed in said Court, a Demurrer in words and figures as follows, to wit:

[DEMURRER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

The Joint and Several Demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the complainant's bill of complaint herein.

These defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage individually and as trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer to said bill, and the whole thereof, show:

First.—As against these defendants, and each of them, the said bill is

(*a*) Without equity, and cannot be maintained, as to the "East Side Grant," so-called in said bill, and subject thereof; and is

(*b*) Without equity, and cannot be maintained, as to the "West Side Grant," so-called in said bill, and subject thereof; and is

(*c*) Without any equity whatsoever.

Second.—As against these defendants, and each of them, the said bill does not set forth or show any matter, equity, or cause, entitling complainant to

(*a*) Any discovery as to the "East Side Grant," so-called in said bill, and subject thereof, nor as to any facts, particulars, transactions, matters or things about, relating to, or concerning the said "East Side Grant"; nor to

(*b*) Any discovery as to the "West Side Grant," so-called in said bill, and subject thereof, nor as to any facts, particulars, transactions, matters or things about, openly relating to, or concerning the said "West Side Grant"; nor to

(*c*) Any discovery whatsoever.

Third.—As against these defendants, and each of them, the said bill does not set forth or show any matter, equity or cause, entitling complainant to

(*a*) Any relief as to the "East Side Grant," so-called in said bill, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill set forth or shown about, relating to, or concerning the said "East Side Grant," nor to

(*b*) Any relief as to the "West Side Grant," so-called in said bill, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill set forth or shown about, relating to, or concerning the said "West Side Grant"; nor to

(*c*) The decree asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, declaring or adjudging forfeiture of all or any of the lands or estates in lands in said paragraph described or referred to; nor to

(*d*) The decree quieting title asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, as to all or any of the lands or estates in lands in said paragraph described or referred to; nor to

(*e*) The decree or order asked for in the "First" subdivision, paragraph "(1)" of the prayer to said bill, requiring these defendants or any of them to surrender unto complainant possession, or control, of any lands or estates in lands in said paragraph described or referred to; nor to

(*f*) The decree or order asked for in the "First" subdivision, paragraph "(2)" of the prayer to said bill, appointing a receiver or receivers, or investing such or any receiver or receivers with title or possession of all or any lands described or referred to in said subdivision "(2)," or authorizing or directing such or any receiver or receivers to do or perform any of the acts or things in said subdivision "(2)" set forth or suggested; nor to

(*g*) The, or any, injunction asked for in the "First" subdivision, paragraph "(3)" of the prayer to said bill, requiring these defendants or any of them, to do or perform any of the acts or things in said subdivision "(3)" set forth or suggested; nor to

(*h*) The, or any, injunction or restraining order or decree asked for in the "Second" subdivision of the prayer to said bill; nor to

(*i*) The, or any, decree or order asked for in the "Third" subdivision of the prayer to said bill, directing or requiring these defendants, or any of them, to account, pay over, or do or perform any of the acts or things set forth or suggested in the said "Third" subdivision; nor to

(*j*) The, or any, injunction or restraining order asked for or suggested in the "Fifth" subdivision of the prayer to said bill; nor to

(*k*) Any relief whatsoever.

Wherefore these defendants, jointly and severally pray the judgment of this Honorable Court whether they, or either of them, shall be compelled to make any further or other answer to the said bill, or to any of the matters and things therein contained, and pray to be hence dismissed, with their and each of their reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON, and
WM. SINGER, Jr.,
Attorneys for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON, }
County of Multnomah, } ss.

J. P. O'Brien makes solemn oath and says: That he is Vice-President of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

J. P. O'BRIEN.

Subscribed and sworn to before me on December 4th, 1908.

W. H. GUILD,
Notary Public in and for the County of Multnomah, State of Oregon.

(Seal)

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON, and
WM. SINGER, Jr.,
Counsel and Attorneys for said Defendants.

(Endorsed)

Joint and Several Demurrer of Defendants O. & C. R. R. et al., to Bill of Complaint.

Filed Dec. 7, 1908.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 1st day of March, 1909, there was duly filed in said Court, a Demurrer in words and figures as follows, to wit:

[DEMURRER OF UNION TRUST COMPANY TO CROSS-BILL OF JNO. L. SNYDER, et al.]

The demurrer of the defendant Union Trust Company to the document filed herein on January 15th, 1909, under the heading of and purporting to be the "Cross-Complaint of John L. Snyder, et al."

This defendant, Union Trust Company, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

I.

First.—That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, or either or any of them, exceeds exclusive of interest and costs the sum or value of two thousand dollars.

Second.—That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, or either of said defendants above named, or any of them to file or maintain the same.

Third.—That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, or either of said defendants above named, or any of them, to any discovery whatsoever.

Fourth.—That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, or either of the defendants above named, or any of them, to any relief whatsoever.

II.

And this defendant demurs to so much of said document as precedes, and is exclusive of, subdivision "XVIII" thereof, for each and all the causes of demurrer to the whole document hereinbefore set forth, in the same words and figures as hereinbefore separately, and respectively, stated.

III.

And this defendant demurs to subdivision "XVIII" of the said document, for each and all of the causes of demurrer hereinbefore set forth to the whole document, in the same words and figures as hereinbefore separately, and respectively, stated.

Wherefore this defendant prays the judgment of this Honorable Court whether it shall make any further or other answer to the said document, or to any part thereof,

or to any matters and things therein contained; and pray to be hence dismissed with its reasonable costs in this behalf sustained.

DOLPH, MALLORY, SIMON AND GEARIN,
Attorneys for said Defendant.

JOHN GEARIN,
Counsel for the said Defendant.

STATE OF OREGON, }
County of Multnomah. } ss.

John M. Gearin makes solemn oath and says: That he is the attorney for the Union Trust Company, one of the defendants in the above entitled suit; that the foregoing demurrer is not interposed for delay, and is true in point of fact. That he makes this verification because said Union Trust Company is a resident of the State of New York and no officer of said Company is now present or residing in the State of Oregon.

JNO. M. GEARIN.

Subscribed and sworn to before me this 27th day of February, A. D. 1909.

B. B. McCARTHY,
(Seal) Notary Public for Oregon.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

DOLPH, MALLORY, SIMON & GEARIN,
Counsel for the said Defendant.

(Endorsed) Demurrer to Bill of Intervention of Jno. L. Snyder et al.

Filed March 1, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 7th day of April, 1909, there was duly filed in said Court, a demurrer in words and figures as follows, to-wit:

[DEMURRER OF O. & C. R. R. et al., TO PETITION OF B. W. NUNNALLY, et al.]

[TITLE]

The joint and several demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the document filed herein on or about March 1st, 1909, purporting to be the Petition, Answer and Cross-Bill of B. W. Nunnally and seven other persons.

These defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

1st. That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, exceeds exclusive of interest and costs the sum or value of two thousand dollars.

2nd. That the said document fails to show any matter, equity or cause entitling the said B. W. Nunnally,

or any person or persons therein named as an intervenor or as intervenors, to file or maintain the same.

3rd. That the said document fails to show any matter ,equity or cause entitling the said B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, to any discovery whatsoever.

4th. That the said document fails to show any matter, equity, or cause entitling the said B. W. Nunnally, or any person or persons therein named as an intervenor or as intervenors, to any relief whatsoever.

Wherefore, these defendants, jointly and severally, pray the judgment of this Honorable Court whether they, or either of them, shall make any further or other answer to the said document, or to any part thereof, or to any matters and things therein contained, and pray to be hence dismissed with their, and each of their, reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Attorneys for said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON, }
County of Multnomah, } ss.

W. W. Cotton makes solemn oath and says: That he is Secretary of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

Subscribed and sworn to before me on April 6th, 1909.
BLANCHE LUCKEY,
Notary Public in and for the County of Multnomah, State of Oregon.
(SEAL)

W. W. Cotton

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorneys for said Defendants.

(Endorsed) Demurrer of defendants O. & C. R. R. et al., to petition of B. W. Nunnally, et al.

Filed April 7, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 13th day of February, 1909, there was duly filed in said Court, a demurrer in words and figures as follows, to-wit:

[DEMURRER OF O. & C. R. R. et al., TO CROSS COMPLAINT OF JNO. L. SNYDER, et al.]

[TITLE]

The joint and several demurrer of the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage individually and as Trustee, to the document filed herein on January 15th, 1909, under heading of and purporting to be the "Cross-Complaint of John L. Snyder, et al."

These defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, jointly and severally, by protestation, not confessing or acknowledging all or any of the matters and things in the said document to be true in such manner or form as the same are therein set forth and alleged, demur thereto and to the whole thereof; and for cause of demurrer show:

I.

1st. That the said document fails to show that the matter in dispute therein sought, purporting or intended to be presented on behalf of the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witt, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H.

Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Loeter and S. Shryock, or either or any of them, exceeds exclusive of interest and cost the sum or value of two thousand dollars.

2nd. That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to file or maintain the same.

3rd. That the said document fails to show any matter, equity or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar Mac-

Lafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to any discovery whatsoever.

4th. That the said document fails to show any matter, equity, or cause entitling the said John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock, or either or any of them, to any relief whatsoever.

II.

And these defendants, jointly and severally, demur to so much of the said document as precedes, and is exclusive of, subdivision "XVIII" thereof, for each and all of the causes of demurrer to the whole document hereinbefore set forth, in the same words and figures as hereinbefore separately, and respectively, stated.

III.

And these defendants, jointly and severally, demur to subdivision "XVIII" of the said document, for each and all of the causes of demurrer hereinbefore set forth to the whole document, in the same words and figures as hereinbefore separately, and respectively, stated.

Wherefore these defendants, jointly and severally,

pray the judgment of this Honorable Court whether they, or either of them, shall make any further or other answer to the said document, or to any part thereof, or to any matters and things therein contained; and pray to be hence dismissed with their, and each of their, reasonable costs in this behalf sustained.

PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Attorneys for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

STATE OF OREGON, }
County of Multnomah, } ss.

W. W. Cotton makes solemn oath and says: That he is Secretary of the Oregon & California Railroad Company, named as one of the defendants in the foregoing joint and several demurrer; and that the said demurrer is not interposed for delay.

W. W. COTTON.

Subscribed and sworn to before me on February 12th, 1909.

BLANCHE LUCKEY,
Notary Public in and for the County of Multnomah, State of Oregon.

(Seal)

We hereby certify that in our opinion the foregoing

demurrer is well founded in point of law.

WM. F. HERRIN,
PETER F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorney for said Defendants.

(Endorsed) Demurrer of Defendants O. & C. R. R. et al. to Cross Complaint of Jno. L. Snyder, et al. Filed February 13, 1909.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on Saturday, the 13th day of March, 1909, the same being the 136th judicial day of the regular October, 1908, term of said Court; present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER SUBMITTING ALL DEMURRERS]

[TITLE]

Now, at this day, come the parties hereto by their counsel as of yesterday; whereupon, this cause comes on to be further heard upon the demurrers of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage to the Bill of Complaint and the several cross-bills and interventions herein; Whereupon, the Court having heard the arguments of Mr. B. D. Townsend and Mr. Tracy C. Becker, Special Assistants to the Attorney-General of the United States, for the plaintiff, of Mr. William D. Fenton and Mr. Peter F. Dunne, of counsel for the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, and of Mr. A. W. Lafferty and Mr. William H. Flett, of counsel for the cross-complainants and intervenors herein, will advise thereof.

And afterwards, to-wit, on Monday, the 24th day of April, 1911, the same being the 13th judicial day of the regular April, 1911, term of said Court; present: the Honorable Chas. E. Wolverton, United States District

Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER OVERRULING DEMURRER TO BILL OF COMPLAINT AND SUSTAINING DEMURRERS TO BILLS OF INTERVENTION]

[TITLE]

This cause was heard upon the demurrer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage to the Bill of Complaint herein, and upon the demurrers of the said defendants to the several cross bills and interventions filed herein, and was argued by Mr. Tracey C. Becker and Mr. B. D. Townsend, Special Assistants to the Attorney-General of the United States, for the plaintiff, and by Mr. William Singer, Jr., Mr. Peter F. Dunne and Mr. William D. Fenton, of counsel for the said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, and by Mr. A. W. Lafferty, Mr. William H. Flett and Mr. John Mills Day, of counsel for the said cross-complainants and intervenors.

On consideration whereof, it is now ordered and adjudged that the said demurrer to the Bill of Complaint herein be, and the same is hereby, overruled; that each of the demurrers filed by said defendants to the cross-bills and interventions herein be, and the same is hereby, sustained.

Whereupon, on motion of said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, appearing by Mr. William D. Fenton, of counsel, it is ordered that said defendants be, and there are hereby, allowed ninety days from this date within which to take further proceedings herein.

And on motion of the defendant, Union Trust Company, appearing by Mr. John M. Gearin, of counsel, it is ordered that said defendant Union Trust Company be, and it is hereby, allowed thirty days after the expiration of the time allowed said defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, within which to take further proceedings herein.

And on motion of the said cross-complainants and intervenors, appearing by Mr. Arthur I. Moulton, Mr. John M. Day and Mr. Lewis C. Garrigus, of counsel, it is ordered that cross-complainants and intervenors herein be, and they are each hereby, allowed ninety days from this date within which to take further proceedings herein.

CHAS. E. WOLVERTON,
Judge.

And afterwards, to-wit, on the 24th day of April, 1911, there was duly filed in said Court, an opinion on demurrers in words and figures as follows, to-wit:

[OPINION ON DEMURRERS]

In the Circuit Court of the United States
For the District of Oregon

UNITED STATES OF AMERICA, *vs.* OREGON AND CALIFORNIA RAILROAD COMPANY, ET AL., *Defendants.*	No. 3330
JOHN L. SNYDER, ET AL., *Cross-Complainants.*	
FRANK TERRACE, ET AL., *Interveners.*	

JOHN MCCOURT, United States Attorney,
B. D. TOWNSEND and TRACEY C. BECKER,
Special Counsel for the Government.

P. F. DUNNE, WM. D. FENTON and WM SINGER, JR.,
For Defendants.

A. W. LAFFERTY and ARTHUR I. MOULTON,
For Cross-Complainants.

C. I. LEAVENGOOD, CHARLES E. SHEPARD,
WM. H. FLETT, JNO. MILLS DAY,
and M. E. BREWER,
For Interveners.

After setting out the citizenship and residence of the respective parties, the bill of complaint states, in effect:

On July 25, 1866, Congress passed an act granting lands in aid of the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon. By its first section the act authorizes and empowers the California and Oregon Railroad Company, and such company organized under the laws of the State of Oregon as the Legislature thereof shall thereafter designate, to construct and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad, in California:

Thereafter it is provided as follows:

> Sec. 2. "That there be, and hereby is, granted to the said companies. their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops. munitions of war, and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under

the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named, alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified. The lands herein granted shall be applied to the building of said road within the states, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold: Provided, That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement, and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided, also, That settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said Act, shall be entitled, within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this Act to the contrary notwithstanding."

Sec. 3. "That the right of way through the public lands be, and the same is hereby, granted to said companies for the construction of said railroad and telegraph line; and the right, power, and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of sail railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine-shops, switches, side-tracks, turntables, water stations, or any other structures required in the construction and operating of said road."

Sec. 4. That, whenever twenty or more consecutive miles of the road shall have been completed and ready for use, the same shall be examined by three commissioners appointed by the President, who are required to report to the President; and if it shall appear that the line of road and telegraph has been constructed and equipped in accordance with the terms of the Act, then that patents shall issue to the company entitled to the same for the lands granted to the extent and coterminous with the completed section, and thus from time to time, whenever other sections of the road shall be completed, until the entire line shall have been constructed.

Sec. 5. "That the grants aforesaid are made upon the condition that the said companies shall keep

said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the Government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States."

Sec. 6. "That the said companies shall file their assent to this Act in the Department of the Interior within one year after the passage hereof, and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gauge as the 'Central Pacific Railroad' of California, and be connected therewith."

Sec. 7. "That the said companies named in this Act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this Act for all purposes of transportation, travel, and communication, so far as the Government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time, and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on account of such discrimination, to be sued for and recovered in any Court of the United States, or of any State, of competent jurisdiction."

Sec. 8. "That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto as provided in section six of this Act, or by not completing the same as provided in said section, this Act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said road and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures caused by the default and neglect of said companies

or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding the value of the lands granted by this Act."

Sec. 9. That the companies concerned shall be governed by the general laws of the respective states as to the construction and management of said railroad and telegraph line in all matters not provided for in the Act.

Sec. 10. That all mineral lands, except such as shall contain coal and iron, shall be excepted from the operation of the grant; but that, where such lands contain timber, so much of the timber as shall be required to construct the road over the lands is hereby granted.

Sec. 11. That said companies shall be governed by the statutory regulations of the States concerned in all matters pertaining to the right of way wherever said road shall not pass through public lands of the general Government.

Sec. 12. "That Congress may at any time, having due regard for the rights of said California and Oregon railroad companies, add to, alter, amend, or repeal this Act."

This Act was amended June 25, 1868, whereby section six thereof was made to provide that "Instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this Act, and at least twenty miles in each two years thereafter, and the whole on or before the first day

of July, anno Domini eighteen hundred and eighty."

About October 6, 1866, certain persons attempted to organize a corporation bearing the name "Oregon Central Railroad Company," having its principal office at Portland, Oregon. This company projected its line of road from Portland to Forest Grove, thence to McMinnville, on the westerly side of the Willamette River. For convenience, it will be hereafter referred to as the "West Side Company," and its line as the "West Side Line."

On October 10, 1866, the Legislative Assembly of the State of Oregon by joint resolution, designated the Oregon Central Railroad Company as the organization entitled to receive the grant and benefits accorded by the Act of Congress of July 25, 1866. This company, on May 25, 1867, assented to the provisions of said Act of Congress, and thereafter, about July 6, 1867, filed an authenticated copy of its resolution, together with a certified copy of its articles of incorporation and of the joint resolution of the Legislative Assembly of Oregon, with the Secretary of the Interior, and on about the 20th of August, 1868, filed with such officer a general map of survey of its projected line of railroad.

In the meantime, namely, about April 22, 1867, certain persons, contending that said West Side Company was not regularly and lawfully incorporated, and designing to secure the grant and privileges accorded by said Act of Congress of July 25, 1866, organized another corporation bearing the name "Oregon Central Railroad

Company," having its principal place of business at the city of Salem, Oregon. This company projected its line of road on the easterly side of the Willamette River, and for convenience will be designated the "East Side Company," and its line the "East Side Line."

On October 20, 1868, the East Side Company procured a joint resolution to be adopted by the Legislative Assembly of the State of Oregon, whereby, after setting out, among other things, the adoption of the Act of Congress of July 25, 1866, the adoption by the Legislature of the State of House Joint Resolution No. 13, designating the Oregon Central Railroad Company as the organization entitled to the benefits of the grant and privileges accorded by said Act of Congress, that at the time of the adoption of such resolution no such company as the Oregon Central Railroad Company was organized or in existence, that the resolution was adopted under a misapprehension of the facts, and that the proper designation yet remained to be made, it was resolved that the Oregon Central Railroad Company, a corporation organized at Salem on April 22, 1867, "be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said Act of Congress." Thereupon a controversy arose between the West Side Company and the East Side Company as to which was entitled to the benefits of the said Act of Congress, and, the time within which to file an assent having expired long prior to the designation of the East Side Company by the Legislative Assembly of Oregon, the said East Side Company

applied to Congress for an extension of time for filing its assent; following which the respective contentions of the East and the West Side Companies relative to the right to receive the benefits of the Act of July 25, 1866, were placed before Congress, and that body, on April 10, 1869, passed an act amendatory of section six of the Act of July 25, 1866, in language following:

> "That section six * * * * be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said Act, to file its assent to such Act in the Department of the Interior within one year from the date of the passage of this Act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said Act: Provided, That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act, nor shall said Act or this amendment be construed to entitle more than one company to a grant of land; And provided further, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

On June 8, 1869, the East Side Company adopted

a resolution assenting to the terms of the Act of July 25, 1866, an authenticated copy of which was filed in the office of the Secretary of the Interior on June 13, 1869. This resolution by its preamble set forth, among other things, that no company was designated within the year within which an assent was required to be filed to the Act of July 25, 1866, and that Congress did, on April 10, 1869, pass an act extending the time in which assent might be filed. About October 29, 1869, the East Side Company filed in the office of the Secretary of the Interior a map of survey and location of the first sixty miles of its projected line of railroad; and on December 24th of the same year completed the construction of the first twenty miles of road, from Portland south, which was approved December 31st by commissioners duly appointed.

The West Side Company wholly failed to construct any part of its projected line of road, and abandoned and waived all claim to the benefits to accrue under said Acts of Congress, and in lieu thereof applied for and obtained and accepted a similar grant of lands, franchises, and other benefits pertaining to its projected line of road by Act of Congress approved May 4, 1870.

The East Side Company having become involved in litigation questioning the validity of its organization, also its rights to use the corporate name adopted, on March 17, 1870, its officers, stockholders, and promoters organized the Oregon and California Railroad Company, the principal purpose of this organization being to be-

come the successor to said East Side Company, and to receive, hold, and exercise the grants, franchises, and privileges accorded by said Act of Congress of July 25, 1866, and acts amendatory thereto. Pursuant to such purpose, the East Side Company, on March 29, 1870, executed and delivered to the Oregon and California Railroad Company a certain instrument of writing purporting to assign, transfer and convey to the latter company all the property of the former, including all its right, title, and interest in and to the grants, franchises, and benefits under the act of July 25, 1866.

On April 4, 1870, the Oregon and California Railroad Company adopted a resolution, whereby the company accepted the grant conferred by the Act of Congress of July 25, 1866, and acts amendatory thereof, and authorized its president and secretary to file such assent in the office of the Secretary of the Interior, together with an authenticated copy of the deed of assignment from the Oregon Central Railroad Company. A copy of the resolution and deed of assignment was filed with the Secretary of the Interior April 28, 1870; and from that time on the Oregon and California Railroad Company assumed and continued to act as the successor to the Oregon Central Railroad Company, being the said East Side Company.

On May 4, 1870, Congress passed an act granting certain lands to the Oregon Central Railroad Company —the West Side Company—to aid in the constrnction of a railroad and telegraph line from Portland to Astoria and McMinnville, in Oregon, which provides as follows:

"That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of junction near Forest Grove to the Yamhill River, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side-tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

Sec. 2. "That the commissioner of the general

land office shall cause the lands along the line of the said railroad to be surveyed with all convenient speed. And whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with such located sections of road to be segregated from the public lands; and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers, at double the minimum price for such lands; And provided also, That settlers under the provisions of the Homestead Act who comply with the terms and requirements of said Act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding."

Sec. 3. "That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands

as shall be adjacent to and coterminous with the said completed sections."

Sec. 4. "That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side-tracks, wood-yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices not exceeding two dollars and fifty cents per acre."

Sec. 5. "That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side-tracks, and wood-yards, not exceeding thirty thousand dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and canceled; and each of the said frist mortgage bonds shall bear the certificate of the trustees, setting forth the manner

in which the same is secured and its payment provided for. And the District Court of the United States, concurrently with the State courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section."

Sec. 6. "That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date."

About July 2, 1870, the West Side Company, through its board of directors, adopted a resolution assenting to and accepting all the provisions of said Act, and thereafter, on July 20th, filed an authenticated copy of such resolution in the office of the Secretary of the Interior. About August 15, 1870, all the capital stock of the West Side Company was acquired by the owners of the capital stock of the Oregon and California Railroad Company, and thereafter the capital stock of both companes was held as a single interest, and the affairs of the two companies were conducted as a single enterprise within the dissolution of the West Side Company.

With funds derived from mortgage bonds and otherwise, the East Side Line, up to the month of January,

1873, was constructed as far south as Roseburg, a distance of 197 miles from Portland, and said West Side Line to McMinnville, a distance of forty-seven miles. At that time the companies became insolvent, and the construction of the East Side Line was not resumed until in June, 1881, while the West Side Line was never resumed. Thereafter, from about July 24, 1874, the direction and control of the financial affairs of the two companies were assumed and exercised by the creditors thereof, organized under the name and designation "Bondholders' Committee," which committee subsequently acquired all the capital stock of said companies. About October 6, 1880, the Bondholders' Committee caused the West Side Company to execute and deliver to the Oregon and California Railroad Company a certain instrument in writing purporting to assign, transfer and convey to the latter company all the property of the former, including all its right, title and interest in and to the grant, franchises, and other benefits accruing in pursuance of the Act of Congress of May 4, 1870. Ever since said date the Oregon and California Railroad Company has assumed to be the rightful successor to the said West Side Company.

For convenience, the respective grants by Congress will be alluded to as the East Side Grant and the West Side Grant.

About May 7, 1881, through a readjustment of the capital stock of the Oregon and California Railroad Company by its board of directors and stockholders, all

the former capital stock of said company was canceled, and a reissue was had, consisting of $12,000,000, preferred stock, and $7,000,000 common stock, aggregating $19,000,000. Through the issuance of this stock, and the use in part of the proceeds of a new bond issue, all of the company's existing indebtedness was then fully paid and discharged.

About June 2, 1881, the Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, as trustees for the owners and holders of the said preferred stock, an instrument of writing purporting to convey to said trustees all lands comprised by both of said land grants, in trust, to secure to the owners of said preferred stock some asserted right or interest in or to said lands, and for certain other purposes more particularly specified in said instrument. Thereafter Stephen T. Gage succeeded to the trusteeship under said instrument, and is now the sole surviving trustee. He, by virtue thereof, and the Southern Pacific Company, by virtue of its ownership of the preferred stock, claim and assert some right, title and interest in, or lien upon, the granted lands.

In June, 1881, and May, 1883, the Oregon and California Railroad Company issued first and second mortgage bonds aggregating, approximately, $5,000,000, the work of construction was resumed, and the East Side Line was extended to a point one and one-quarter miles south of Ashland, a distance of approximately 145 miles.

This extension was completed about the month of January, 1884, and the work of extension was not again resumed until in April, 1887. In January, 1885, by reason of default in payment of said first and second mortgage bonds, the Oregon and California Railroad Company was placed in the hands of a receiver.

In connection with these facts, which are more fully set out in the bill of complaint, it is alleged that the West Side Company acquired no right or interest in or to the East Side Grant, and that the said East Side Company acquired no right or interest therein except subject to all the terms and conditions of the Act of Congress of April 10, 1869; that the principal purpose of the conveyance of date March 29, 1870, was not to operate as a sale or conveyance of any of the lands granted by said Act of Congress of July 25, 1866, but was to constitute the Oregon and California Railroad Company the successor to the said East Side Company, to construct and equip said line of railroad, and to receive the grant and exercise the franchises and other benefits accorded by said Act of Congress—the same allegation being made with reference to the conveyance by the West Side Company to the Oregon and California Railroad Company, of date Oct. 6, 1880, that the original capital stock of the Oregon and California Railroad Company, and substantially all the stock of the West Side Company, were issued without consideration; that neither of said companies had any funds for construction or other purposes, except such as were borrowed therefor; and that the deed of trust to Villard and other trustees purports to

convey and to authorize said trustees to sell and convey said lands comprised by the said East and West Side grants to other than actual settlers, in quantities greater than one quarter section to one person, and at a price greater than $2.50 per acre, and was therefore in violation and breach of the express terms of the grants.

It is further alleged, in effect, as follows: About January, 1885, a certain railroad syndicate, known as the "Southern Pacific System," controlling substantially all the railroad lines in the southwestern part of the United States, including the Central Pacific Railroad, organized the Southern Pacific Company as a general holding company for said syndicate, and on or about March, 1885, the Southern Pacific Company acquired, and has since exercised, a controlling interest in each of the corporations constituting said Southern Pacific System, and is the lessee of all of the railroad lines controlled by said system, exercising control thereof, as well as control over, and the handling and disposal of, all the lands of its constituent companies. Shortly after the organization of the Southern Pacific Company it established a land department in San Francisco, California, for the control, handling, and disposal of lands of its constituent companies held under grants from the Government; and after the Oregon and California Railroad Company passed into the hands of a receiver, the Southern Pacific Company, designing to acquire ownership and control of its holdings, entered into negotiations with said company, and the bondholders and stockholders thereof, which resulted in a contract, of date March 28, 1887,

the general effect being that the Oregon and California Railroad Company, together with its line of railroad, was absorbed by, and merged into, the said Southern Pacific System; and the complainant charges that it was further the purpose and design of the Southern Pacific Company to secure control of the Oregon and California Railroad Company's land grants, and to divert the same from the purposes for which such grants were made to the exclusive use and benefit of the Southern Pacific Company. Thereafter the Oregon and California Railroad Company was continued a corporation in name only, and as an instrumentality and device for the administration of these grants.

About May 12, 1887, in pursuance of the contract of March 28, 1887, all of the capital stock, and all of said second mortgage bonds of the Oregon and California Railroad Company were assigned and transferred to the Pacific Improvement Company, and all of said first mortgage bonds were assigned and transferred to the Southern Pacific Company. The Pacific Improvement Company was a corporation controlled and directed by the owners of a majority of the capital stock of the Southern Pacific Company, and held the capital stock of the Oregon and California Railroad Company in trust for the use and benefit of the Southern Pacific Company until about April 9, 1901, when all of such capital stock was transferred to the Southern Pacific Company, which company is now the owner and holder thereof.

Pursuant, further, to the contract of March 28,

1887, the Southern Pacific Company and the Oregon and California Railroad Company entered into a contract of lease, in writing, whereby the railroad and telegraph lines of the latter company were leased to the former for the term of forty years, which remained in full force and effect until about August 1, 1893, when the said companies entered into a further contract, whereby such properties were leased to the Southern Pacific Company for the term of thirty-four years, which latter contract is still in full force and effect, and by virtue whereof the Southern Pacific Company entered into, and is now in the full possession, management, and control of said properties.

In pursuance, also, of the contract of March 28, 1887, the Oregon and California Railroad Company, on about January 3, 1888, executed and delivered to the Union Trust Company its mortgage upon certain of its properties, to secure certain bonds, then issued and thereafter to be issued, of which approximately $17,500,000 in amount are still outstanding. Although executed by the Oregon and California Railroad Company, the bonds were guaranteed by the Southern Pacific Company, and were used by that Company to purchase the outstanding securities of the Oregon and California Railroad Company, and to complete the construction of and improve the lines of the said latter company. In this relation, it is averred that said mortgage deed, in so far as it relates to any of the granted lands, if at all, purports to convey, and to authorize the Union Trust Company to sell and convey said lands to persons other

than actual settlers, in quantities greater than one quarter section to one purchaser, and for a price exceeding $2.50 per acre, and for purposes other than those authorized by said grants.

During the year 1887, the last section of the East Side Line, extending from Ashland to the southern boundary of the State of Oregon, was completed, and on or about the 6th day of June, 1888, the receivership proceedings were wound up, and the receiver discharged. All of the first and second mortgage bonds (not including the issue of July, 1887), together with all mortgages and trust deeds securing the payment thereof, were canceled and discharged; whereupon the Southern Pacific Company entered into the possession and management of all of the properties of the Oregon and California Railroad Company, as aforesaid.

Under the East Side Grant, and during the years 1871 to 1877, inclusive, patents for approximately 323,000 acres of land were applied for by, and issued to, the Oregon and California Railroad Company, being lands contiguous to the first 125 miles of said East Side Line. No patents were applied for or issued within that time under the West Side Grant. Commencing about the year 1891, other patents were applied for, and from 1893 up to 1906, lands aggregating 2,450,000 acres were patented to the Oregon and California Railroad Company under the East Side Grant; and commencing about the year 1895, approximately 128,000 acres under the West Side Grant. Of the lands so granted the Oregon

and California Railroad Company has made approximately 5,306 sales, aggregating about 820,000 acres, as follows: Sales in quantities not exceeding one quarter section, 4930, covering 296,000 acres, and sales in quantities exceeding one quarter section, 376, covering 524,000 acres. In this connection, it is alleged that the Oregon and California Railroad Company, under the direction and domination of the Southern Pacific Company, from the year 1894 until about January 1, 1908, sold, and disposed of said granted lands in manner and upon terms in violation and breach of the terms and conditions of the grants; that is to say, said lands were sold to speculators and persons other than actual settlers, and in quantities greatly in excess of one quarter section to one purchaser, namely, in quantities ranging from 1,000 to 45,000 acres to a single purchaser, and for prices greatly in excess of $2.50 per acre, the same ranging from $5.00 to $40.00 per acre. That about 90 per cent of the said 524,000 acres was sold or conveyed since the year 1897, and of this approximately 370,000 acres were sold to thirty-eight purchasers, in quantities exceeding 2,000 acres to each purchaser. On January 1, 1908, there remained unsold of said granted lands approximately 2,373,000 acres, consisting of about 2,080,000 acres which have been patented, and 293,000 acres unpatented, now claimed by the defendant, Oregon and California Railroad Company, by virtue of said grants.

It is alleged that since January 1, 1908, many persons have applied to the Oregon and California Railroad Company to purchase the lands remaining unsold, in

quantities of 160 acres to each purchaser, the said applicants desiring and intending in good faith to settle thereupon, and to make permanent homes thereof, but that said applications have been refused and rejected, and the said Oregon and California Railroad Company and the Southern Pacific Company have, since January 1, 1903, withdrawn all of said unsold lands from sale, and have at all times thereafter refused, and do now refuse, to sell any part of said grants, to actual settlers or for purposes of actual settlement, in quantities or for prices as prescribed by the terms and conditions of such grants. In setting forth these facts, it is further alleged that since said January 1, 1903, the Oregon and California Railroad Company has assumed, and now asserts, an absolute and unconditional estate in and to all of said unsold lands, and that, by reason of the premises and the relationship which the Southern Pacific Company sustains to the Oregon and California Railroad Company, all of such unsold lands have been converted to the use and benefit of the said Southern Pacific Company; that the Oregon and California Railroad Company has derived benefits from said grants other than from sales of the lands, namely, from forfeiture of contracts of sale, from leases, and from timber cut from the grants; and in further detail, matters are alleged upon which to base injunctive process; and other matters designed to excuse delay in instituting this suit.

On February 14, 1907, a memorial was presented to Congress, praying that steps be taken to compel the Oregon and California Railroad Company to comply

with the terms of the said grants or to require a forfeiture of the lands granted. Later, on April 30, 1908, Congress adopted a joint resolution providing as follows:

> "That the Attorney General of the United States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described Acts of Congress, to wit: 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,' approved July twenty-fifth, Eighteen Hundred and Sixty-six, as amended by the acts approved June twenty-fifth, Eighteen Hundred and Sixty-eight, and April tenth, Eighteen Hundred and sixty-nine; * * Also 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' approved May fourth, Eighteen Hundred and Seventy, including all rights and remdies in any manner relating to the lands, or any part thereof, granted by either or any of said Acts; and in and by any and all such suits, actions or proceedings, the Attorney General shall, in such manner as he shall deem appropriate, assert all rights and remedies

existing in favor of the United States, relating to the subject of such suits, actions and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions or proceedings to assert on behalf of the United States and the Court or Courts before which such suits, actions or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

This suit is instituted in pursuance of said joint resolution, and it is further alleged that by reason of the premises all of said granted lands now unsold, and such as were sold in violation of the grants, are forfeited to the United States, and specifically that: "Pursuant to the authority and direction contained in said joint resolution of Congress approved April 30th, A. D. 1908, your orator does hereby assert title to, and does hereby resume the title of, all of said lands and estate in lands forfeited to your orator as aforesaid." The relief demanded is:

1. That the Court adjudge and decree all unsold lands comprised by said grants, whether patented or unpatented, to be forfeited to the United States, and the title thereof quieted; or, if such relief be denied,

2. That the Court adjudge and decree that all such unsold lands are subject to purchase by actual settlers, in quantities of 160 acres to one purchaser, and for a price not exceeding $2.50 per acre, and that a receiver be appointed to carry into effect the conditions of the grants in that respect; or, if this relief be denied,

3. That a mandatory injunction issue requiring the Oregon and California Railroad Company to sell such unsold lands in compliance with the terms of the grants.

An injunction is further sought, also, an accounting for moneys received for lands unlawfully sold, discovery, and general relief.

Prior to the filing of the bill of complaint, John L. Snyder and sixty-six others had instituted suits against the defendants the Oregon and California Railroad Company, the Union Trust Company, and S. T. Gage, to require such defendants to convey to said complainants each a tract of 160 acres of land included in the West Side Grant. These parties claim their right to such conveyances by reason of having settled upon lands designated, with a bona fide purpose of making said lands their homes, and of having tendered to the Oregon and California Railroad Company the sum of $2.50 per acre, or $400 for each quarter section so settled upon, in alleged pursuance of the act of May 4, 1870, making

such grant. When, however, the United States instituted its suit making the complainants in the Snyder suit parties thereto, the causes were consolidated, and Snyder and others have filed their cross-bill in the Government's case, setting up their alleged rights. The particular feature of this cross-bill, after setting out the history of the grant in purport much as it is narrated in the complaint, is voiced in its ninth paragraph, whereby it is alleged, in substance, that Congress, by the Act of May 4, 1870, intended to and did grant to the Oregon Central Railroad Company, and to its successor, the Oregon and California Railroad Company, a limited beneficial interest in the lands specified in the act, and to that end made and constituted the Oregon and California Railroad Company a mere intermediary trustee, through which to convey the legal title to the odd-numbered sections comprised by the grant to such citizens of the United States as might thereafter settle upon such lands; that Congress did not intend to grant to said railroad company any possessory title to any of said lands, except for depot grounds, stations, etc., but reserved the right to citizens of the United States to enter upon and take possession of all of said lands, and to purchase the same from the railroad company upon becoming actual settlers upon the respective tracts selected; in other words, in order to afford financial aid to the grantee, Congress constituted the railroad company a trustee, for the express purpose, and with power and authority to sell and convey the lands designated to actual settlers, and that thereby the railroad company became a trus-

tee as to such lands for the United States, and for all citizens of the United States who may now be actual settlers upon such lands. It is further asserted that the railroad company refused to accept the tender made by cross-complainants of the purchase price, and refused and still refuses to make conveyances of the lands selected and settled upon, and now claims and asserts ownership of the absolute fee simple title thereto.

Many persons, amounting to several thousand, through intervention permitted by order of the Court, have filed complaints against the defendant railroad companies, claiming the right to purchase from the Oregon and California Railroad Company certain lands comprised by the grants of Congress of July 25, 1866, and May 4, 1870. These complaints, in their narration of the history of the grants, follow very closely the allegations contained in the Government's bill. The particular claim, however, upon which the complainants therein found their alleged right is set forth, in substance, as follows: That since January 1, 1903, and prior to the commencement of the Government's suit, the interveners applied to the Oregon and California Railroad Company to purchase certain of the lands comprised by the aforesaid grants; that in so applying each of the said interveners made request to purchase 160 acres or one quarter section of land, and thereupon offered to pay to said company the sum of $2.50 per acre, or $400 per quarter section, and tendered the amount each for the parcel of land selected, and demanded a deed of conveyance, therefor, under the alleged terms

and conditions of the grants of Congress; that each of the interveners, ever since his application to purchase was made, has been and now is ready and willing to pay said money consideration, and offers to bring the same into Court to be used for such purpose, if the Court shall so order, and that each is a qualified purchaser under the terms of the grants, and at the time of the application intended, and now intends, to make actual settlement upon the tract of land so selected, and henceforth to use the same as an actual settler.

It is further alleged that the interveners have a prior right, estate, and vested interest in the property, to the extent of the amount of land which each has so applied to purchase; that under the terms and conditions of said Acts of Congress, it was the legal duty and obligation of the Oregon and California Railroad Company to issue its deed for the lands applied for upon payment of the purchase price as named, and that as to such interveners the Court is without jurisdiction to declare the lands forfeited to the Government.

Many other persons have also intervened, by permission of the Court, who have made applications to the Oregon and California Railroad Company to purchase since the commencement of the Government's suit, who base their alleged right and claim upon like application and tender as the prior interveners, the allegations of their complaints conforming very nearly to those of such prior interveners.

Demurrers to the Government's bill, to the cross-bill,

and to all bills of intervention, which are pertinent to raise the paramount questions involved by the controversy, have been interposed by the defendant railroad companies and Stephen T. Gage, and also by the Union Trust Company.

WOLVERTON, District Judge:

Counsel for the defendant railroad companies and S. T. Gage make the following points of contention in support of their demurrers to the bill of complaint, the cross-complaint, and the bills of intervention. I quote from their reply brief:

> "I. Rights acquired by the East Side Company under the Act of 1866, deprived Congress of the power, by amendatory Act of 1869, to impose new conditions on the estate; besides the amendatory Act expressly save 'rights acquired' under the Act of 1866.
>
> "II. The controlling purpose of Congress in making the land grants, here and by the Union Pacific Act, as expressly stated in each Act, is the same; hence, here as there, any policy of Congress to promote settlement of the lands 'was manifestly subordinated to the higher purpose of having the road constructed with the aid of the land grant.' (99 U. S. 48-67.)
>
> "III. The 'actual settler' proviso is not a con-

dition, because it does not (a) enure specially to the grantor, nor (b) indicate that forfeiture shall attend its breach, and (c) is not compulsory; but if a condition it is void for (d) repugnancy to the grant, and (e) restraint of alienation.

"IV. The 'actual settler' proviso is a personal covenant between grantor and grantee, only. Specific performance cannot be enforced because (a) it is not compulsory, (b) lacks mutuality of right and remedy, and (c) is the nature of a continuing contract. Besides, whether compulsory or prohibitive, it is (d) in restraint of alienation.

"V. As the 'actual settler' proviso is not compulsory withdrawal of the lands in suit from sale is not a breach; and the other alleged breaches would not operate forfeiture of these unsold lands, were the proviso a condition.

"VI. Were the 'actual settler' proviso a condition, broken as alleged, grantor has waived the breach by (a) apparent asquiesence in the many deeds of record made by the Railroad Company in violation of the proviso; (b) acceptance and use of the road; (c) annual issuance of land patents, from 1871 to 1906; and by (d) effect of the general forfeiture Acts of January 31st, 1885, and September 29th, 1890.

"VII. The land patents are conclusive. Were they void, the title which they purport to convey was confirmed by the force and effect of the Acts of

March 3rd, 1891, and March 2nd, 1896; which Acts also bar this suit as to all lands patented prior to October, 1902.

"VIII. All causes of action sought to be presented by the bill other than forfeiture and to quiet title, are also barred by laches and limitations; it appearing that as to those other causes of action complainant is not the real party in interest. Cross-complainants and interveners are also barred by laches and limitations.

"IX. Were the 'actual settler' proviso a condition, which has been broken, still this suit could not be maintained as one to enforce forfeiture, nor to quiet any title which complainant could acquire by such a judgment, because (a) grantor has not declared forfeiture, (b) the fact of forfeiture has not been adjudged at law, and (c) the defendant Railroad Company holds the legal title and possession."

These will be considered, though not in the order of their statement; but in the meanwhile it will be necessary to determine the contention of the cross-complainants and interveners.

It should be premised that the theory of the bill is not that the grants have not been fully earned so as to entitle the Oregon and California Railroad to have the patents issue, but that, being earned, and patents in large measure having issued, the company has failed to comply with certain terms attending the grants, which it is claimed are conditions subsequent qualifying the

estate granted, and that thereby the estate, whether now held under patent or as yet in pursuance of the acts making the grants, has been forfeited to the United States.

The several acts, namely, the Act of July 25, 1866, the Acts of June 25, 1868, and April 10, 1869, amendatory thereof, and the Act of May 4, 1870, contain all of the provisions of Congress relative to the granting of the public lands in question. Scarcely four years elapsed from the inception of the legislation until the last act was adopted, and, viewed as a whole, extending from the first to its final development and adaptation, it indicates a common purpose, and should be considered *in pari materia.*

A corporation bearing the name "Oregon Central Railroad Company" was organized October 6, 1866, with its principal offices at Portland, Oregon. This company, it is alleged, projected its line of road southward from Portland, on the westerly side of the Willamette River, and on October 10, 1866, the Legislative Assembly of the State of Oregon, by joint resolution, designated it as the company entitled to receive the grant under the Act of Congress of July 25, 1866. This company also adopted a resolution on May 25, 1867, assenting to the provisions of the grant, and filed a copy thereof with the Secretary of the Interior July 6, 1867. On August 20, 1868, the company filed with the Secretary of the Interior a map of survey of its projected line. On April 22, 1867, another corporation was or-

ganized, under the same name, with its principal place of business at Salem, Oregon. This company, claiming that the one previously organized was not lawfully incorporated, procured, on October 20, 1868, the adoption of a joint resolution by the Legislative Assembly of Oregon, designating it as the organization entitled to receive the grant. This resolution by preamble sets out that at the time of its adoption no such company as the Oregon Central Railroad Company, with its principal office at Portland, was organized or in existence, and that the previous joint resolution designating that company as the one entitled to receive the grant was adopted under a misapprehension of the facts. On June 8, 1869, the company last organized, with its principal office at Salem, being the East Side Company, adopted a resolution assenting to the provisions of the act of Congress of July 25, 1866, and specifically to the amendments thereto, which resolution was filed in the office of the Secretary of the Interior June 30, 1869. On October 29, 1869, this company filed its map of survey and location of the first sixty miles of its projected line of railroad on the East Side, and on December 24, 1869, completed the construction of its first twenty-mile section, the same being approved on the 31st of that month. The allegations of the bill do not show that the company was engaged in the work of construction prior to the time of filing its assent, namely, June 30, 1869; but for the purposes of this controversy it may be assumed that such was the case, as it is not at all probable that the section was built in so short a time as intervened be-

tween the date of such filing and that of the completion of the section.

On July 2, 1870, the company first organized—the West Side Company—by resolution assented to the grant of May 4, 1870, and filed a copy of such resolution with the Secretary of the Interior July 20, 1870. The Oregon and California Railroad Company was incorporated March 17, 1870, and on March 29, 1870, it took over, by assignment and transfer, all of the property, rights, and franchises of the East Side Company, including its grant of public lands by virtue of the Act of Congress of July 25, 1866, and the acts amendatory thereto. By resolution adopted April 4, 1870, this company accepted the grant upon the terms and conditions specified. A copy of the resolution was filed with the Secretary of the Interior April 28, 1870. Ever since such transfer, the latter company has exercised control in the construction of the East Side road and over the grant of Congress to the East Side Company; and the West Side Company has never, since filing its assent to the West Side Grant, claimed or assumed to exercise any control over the affairs, rights or privileges of the East Side Company.

Now, bearing in mind the various Acts of Congress touching these grants, the resolutions of the Legislature of the State, and the proceedings of these several corporations, we will consider the first contention of defendants' counsel, together with the incidental questions presented in support of the demurrer to the bill.

It is stoutly urged that these grants are *in praesenti*, and with reference to the East Side Grant that it became operative, by relation back to the date of the Act of Congress conferring the grant, upon the designation by the legislature of the State of the Oregon Central Railroad Company (East Side) as the one entitled thereto, October 20, 1868. That is to say that, upon that date, the grant became vested in the East Side Company, subject to the conditions imposed for construction, etc., and hence that the amendment of April 10, 1869, requiring the lands granted to be sold to actual settlers, in quantities not exceeding 160 acres to one purchaser, and at a price not exceeding $2.50 per acre, was beyond the power of Congress to enact.

It is undoubtedy true, as argued, that the grant could not become operative until there was a grantee in being, or existence, capable of taking; nor could it become operative until a company was designated by the Legislature of the State as the one entitled to the benefits thereof, as, under the provisions of the Act conferring the grant, it was to the company that should be so designated. The words "That there be, and hereby is, granted," standing alone, unquestionably import a transfer of present title. When read in connection with the terms of the grant, and in relation to the thing granted, they may or may not bear such signification. Where a grantee is actually in existence and qualified to take according to the terms of the law, the words alluded to operate as an immediate and present transfer. But it is otherwise if the grantee is not in existence, or

has not qualified himself in pursuance of the terms of the grant to entitle him to that which is offered. Instances of a present transfer are illustrated by the following cases:

Leavenworth, etc. R. R. Co. vs. *United States,* 92 U. S. 733, which related to a grant to the State to aid in the construction of certain railroads, the companies to be aided being named and designated in the Act making the grant; *Schulenberg* vs. *Harriman,* 21 Wall. 44, which was also on a transfer to the State "to aid in the construction of railroads," the holding being that the State acquired a present estate by the terms of the grant; *Lessieur* vs. *Price,* 12 How. 59,—a grant to the State of four sections of land, to be selected, for the purpose of fixing the seat of government thereon; *Railroad Company* vs. *Smith,* 9 Wall. 95—a grant of swamplands to the State; and *Michigan Land and Lumber Co.* vs. *Rust,* 168 U. S. 589, also a grant of like lands to the State.

In all such like cases, where identification of the lands in contemplation has been necessary, as by the definite location of the line of railroad which determines the particular sections comprised by the grant, or by the ascertainment of the quality of the land in determination of its swampy character, the grant is said to take effect at the time of the identification or ascertainment, but by relation back to the date of the grant, notwithstanding the grant is denominated as one *in praesenti* and vests a present estate. Where, however, the grantee is not in

existence, or is required to do something by which to qualify himself to take under the terms and conditions prescribed, then the grant does not vest a present estate, nor does it become operative except at the time the contemplated grantee comes into being or qualifies himself to receive the designated bounty. As is said by Mr. Chief Justice Waite, in *Hall* vs. *Russell,* 101 U. S. 503, 509:

> "There cannot be a grant unless there is a grantee, and consequently there cannot be a present grant unless there is a present grantee. If, then, the law making the grant indicates a future grantee and not a present one, the grant will take effect in the future and not presently."

In that case the grant, which was in pursuance of the Donation Act of September 27, 1850 (9 Stat. 496), was to a white settler or occupant of the public lands "who shall have resided upon and cultivated the same for four consecutive years," and the distinguished jurist further said:

> "Whenever a settler qualified himself to become a grantee, he took the grant and his right to a transfer of the legal title from the United States became vested. But until he was qualified to take, there was no actual grant of the soil."

It was concluded that there was no grant of land to the settler until he had qualified himself to take by completing his four years of residence and cultivation, and performed such other acts in the meantime as the statute

required in order to protect his claim and keep it alive, and that "Down to that time he was an authorized settler on the public lands, but not a grantee." In such a case, therefore, the grant is of the date the settler qualifies himself to take; the court making no declaration concerning the doctrine of relation. The doctrine of relation, while a fiction of law, is potent for subserving the purposes of justice, and is applied only for the security and protection of persons who stand in some privity with the party initiating proceedings for land, and who has acquired the equitable claim or right to the title. By it is meant "that principle by which an act done at one time is considered by a fiction of law to have been done at some antecedent period. It is usually applied where several proceedings are essential to complete a particular transaction, such as a conveyance or deed. The last proceeding which consummates the conveyance is held for certain purposes to take effect by relation as of the day when the first proceding was had." *Gibson* vs. *Chouteau*, 13 Wall. 92, 100. See also *Lynch* vs. *Bernal*, 9 Wall. 315, 325.

Applying this doctrine in a case involving rights acquired under the Timber Act of June 3, 1878, Mr. Justice Brewer, in *United States* vs. *Detroit Lumber Co.*, 200 U. S. 321, 334, says:

> "It is a doctrine of frequent application, designed to promote justice. * * * The ordinary railroad land grants have been grants *in praesenti*, and under them the title has been adjudged to pass,

not at the completion of the road, but at the date of the grant. (Citing authorities.) A patent from the United States operates to transfer the title, not merely from the date of the patent, but from the inception of the equitable right upon which it is based. *Shepley* vs. *Cowan,* 91 U. S. 330. Indeed, this is generally true in case of the merging of an equitable right into a legal title. Although the patents in this case were not issued until after the sales of the timber, yet when issued they became operative as of the date of the original entries."

If the doctrine of relation were applied in the case of *Hall* vs. *Russell, supra,* we should say that the grant was of the date the settler qualified himself to take with relation back to the date of the initiation of his claim, but not to the date of the enactment of the Donation law.

In the present case the grant was to a company to be organized, and to such a one as the Legislature of the State of Oregon should designate as entitled thereto. It is plain, under the authorities, that no title passed until the organization was perfected and the designation of the legislature made. Nor do I think that the grant became operative until the company filed its assent to the terms and conditions of the Act, as required by section six thereof, as amended April 10, 1869. It was one of the conditions of the Act that the assent be filed, and it was by the observance thereof that the grantee qualified itself to take. Indeed, it was the first act required to be done on the part of the grantee for the initiation of a

claim under the grant, and without such an assent no one could know that it purposed availing itself of the benefits of the act conferring the grant. Hence under the doctrine of the cases, the Act of July 25, 1866, could not operate to avert an interest in the grantee until the organization qualified itself by assenting to the terms of the Act in the manner prescribed; and whether the grant then took effect by relation back to the date of the Act or not, Congress was wholly authorized to add such amendments in the meantime as it saw fit. It disturbed no vested right of the grantee by so doing. But, however this may be, there is another reason rendering it competent for Congress to make the amendment. On October 10, 1866, the Legislature of Oregon designated the West Side Company as the organization entitled to the grant, and that company filed its assent to the provisions of the Act of July 25, 1866, with the Secretary of the Interior, July 6, 1867, within the year, and in these respects it would seem that the law had been complied with. But the East Side Company, organized April 22, 1867, set up a claim to the grant, which was evidently brought to the attention of the Legislature of the State, for that body, asuming that it had previously designated a company not in existence as entitled to the grant, designated the East Side Company as the one proper to receive the benefits thereof. This was on October 20, 1868, being more than one year subsequent to the passage of the Act of July 25, 1866. From this time, the West Side Company made no further claim to this particular grant, and later accepted a new grant.

So that the West Side Company was no longer entitled to the benefits of the Act of 1866, and whatever controversy existed between the two companies was thus ended. On June 13, 1869, the East Side Company filed its assent, whereby it accepted all the provisions, rights, privileges, and franchises of the Act of July 25, 1866, and of all acts amendatory thereof, and upon the conditions therein specified. Congress had amended the original act by extending the time for completion of the first and subsequent sections of twenty miles each of the road, and for the completion of the whole. This was prior to the date when the Legislature of the State designated the East Side Company as the one entitled to receive the grant, and had it not been for the amendment, the East Side Company would then have been in default in construction work, and under section eight, the Act would have been rendered null and void. Then followed the amendment of April 10, 1869, extending the time for filing assent, being the one containing the proviso that the lands granted should be sold to actual settlers. There was some reason for passing this amendment. Congress undoubtedly believed that it was necessary so that the Act might be complied with in that respect, and the East Side Company supposed that it was necessary to the acquirement and completion of its rights to the grant, for it soon thereafter signified its assent to the original Act by resolution adopted and duly filed with the Secretary of the Interior. The language of the resolution leaves no doubt as to the purpose of the company. Now, here was a legislative interpretation of the Act of

July 25, 1866, that it was necessary to the acquirement of the grant that the company seeking its benefits should file assent thereto, and for that purpose an extension of time was given. On the other hand, there was a complete assent to the interpretation on the part of the railroad company, thus ratifying, if need be, the Act of Congress in making the extension of time and requiring sale of the lands to actual settlers. This all under the reservation in the original Act, by section twelve, of the authority of Congress to alter, amend, or repeal the same.

The view thus entertained is not without authoritative support. In *St. Paul, etc., Railway Co.* vs. *Greenalgh,* 139 U. S. 19, Congress by an act extended time to the St. Paul and Pacific Railroad Company within which to complete its road, upon condition: "That all rights of actual settlers and their grantees who have heretofore in good faith entered upon and actually resided on any of said lands prior to the passage of this Act, or who otherwise have legal rights in any of such lands, shall be saved and secured to such settlers or other such persons in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad." In conjunction therewith the railroad company was required to file a formal acceptance of the conditions in the Department of the Interior for record. Notwithstanding it did not affirmatively appear that any acceptance was ever signed, it was considered, in the absence of such proof, that, as the company continued to assert and exercise ownership over the road, it had in fact accepted the conditions imposed. Hence it was ad-

judged that a settler upon the lands of the grant prior to the Act extending the time for completion of the road acquired a right superior to that of the railroad company. Thus in effect the amendment of the statute conferring the grant was acceded to by the grantee, and it thereby became bound by it. In this relation the Court says:

> "A mere breach of condition does not of itself work a forfeiture of a grant; some other proceeding must be taken by the grantor to indicate his dissatisfaction with the breach and his intention to exercise his rights to revoke the grant and take possession of the property in consequence thereof. While in this case no specific action was taken by Congress to work a forfeiture of the grant, or by the State, yet the continued possession and use of the property by the company were, in fact, subject to the condition that the rights of settlers upon the lands at the time should not be interfered with, where such settlements had been made in good faith, as was the case in the present instance. And it would be in the highest degree inequitable to allow the company to have all the benefits of the extension of time to complete its road, so as to avoid any forfeiture of its privileges and franchises, without at the same time holding it to the conditions affecting the rights of settlers upon the lands of the company, in consideration of which the extension was made."

So it is here, the railroad company acceded to the amendment by complying specificaly with its requirements, saying nothing of its alleged participation in securing the passage thereof.

It is insisted that the amendment extending the time for completing the road was a waiver on the part of Congress of the necessity for filing an assent, because it was adopted more than one year after the adoption of the main Act, and the amendment makes no mention of the time for filing assent. The answer to this is that Congress did not so treat it, and the railroad company evidently did not so regard it, for both proceeded upon the theory that the assent was yet essential to the earning of the grant. But it is said that at the time of the designation by the Legislature of the East Side Company as entitled to the grant, the company had already assented to the conditions of the Act conferring it, by implication, because it was organized especially for subserving the purposes of the Act, and had then been in the active construction of the road for some time, and therefore that the Act then became operative. It is not alleged in the bill that the company was then engaged in the construction of its road; but, conceding that it was, Congress had made express assent essential by direct terms, and the time of that assent was also made of the essence of the grant, for the grant was made dependent upon the observance of the provision.

Construing the Act as law, however, as it will presently appear it should be construed, which requires that

the intendment of Congress shall govern rather than that the law of specific performance of a contract shall be applied, the construction of the Act of Congress, together with its subsequent amendment and the acquiescence of the railroad company therein, again becomes paramount and controlling, and the express assent dominates the grant, so that it does not become operative until that assent is given. See *Rogers* v. *Port Huron & Lake Mich. R. R.*, 45 Mich. 460, 468. As was said in this case, which bears a close analogy to the case at bar as it pertains to the present question:

> "This acceptance was the only act whereby any of these companies was brought into contract relations with the State at all. The law did not assume to force the grant upon any company, and the contract could not bind either party until both assented to the same agreements and conditions."

The clause in the amendment of April 10, 1869, protecting any rights theretofore acquired by any railroad under the original Act, was intended, looking to the history of the legislation, to protect the West Side Company, as at that time there was a controversy between the East Side and West Side companies as to which was entitled to claim the grant. The West Side Company had previously been designated by the Legislature as entitled to the benefits of the Act, and it had furthermore filed its assent, so that, but for the fact that the East Side Company was now claiming the grant, the West Side Company was apparently entitled to it, and while

Congress did not assume to settle the differences between these companies, it did intend to preserve any rights of the West Side Company that it had then acquired. So it was further enacted that the amendment should not be construed as to entitle more than one company to the grant; thus leaving the companies to adjust the matter between themselves. The adjustment came when the West Side Company also obtained a grant. Nor is this case controlled by the case of the *United States* v. *Oregon and California Railroad Company,* 176 U. S. 28, 51, for the stipulation upon which that cause was determined shows a different state of facts from those here presented. That construction is preferred which will give meaning, force and operation to all the clauses of an act, rather than that that one clause should nullify another, unless it be that there is a clear and irreconcilable repugnance between them. It is hardly reasonable to suppose that the clause protecting any company against the impairment of rights accrued was designed in any way to nullify the provision requiring sales to be made to actual settlers, etc., seeing that the latter provision is a part of the same amendment, and follows immediately after the former clause.

The sixth and seventh points of contention will be considered together. It is strongly insisted that the Government has in several ways waived, or has precluded itself of the right at this time to insist upon, a forfeiture of the lands in question:

First, by the issuance of its patents to such of the

lands comprised by the grant as have been patented.

Second, by not sooner insisting upon the forfeiture, it being assumed that the Government was in possession of knowledge of certain breaches of the condition requiring the grantee railroad companies to sell to actual settlers.

Third, by the act of Congress of September 29, 1890 (26 Stat. 496), entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes;" and as to the West Side Grant by an Act approved January 31, 1885 (23 Stat. 296), entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon;" and

Fourth, by the Act of March 3, 1891 (26 Stat. 1099), fixing a time beyond which suits to annul and vacate patents issued by the United States may not be instituted, together with the Act of March 2, 1896 (29 Stat. 42), relating to suits by the United States for vacating any patent to lands theretofore erroneously issued under railroad or wagon-road grants, which is a re-enactment, or rather amendatory of the preceding Act.

First, as to the effect of the issuance of the patents. By reference to the bill of complaint it will be noted that patents were issued subsequent to 1871, running to 1906 inclusive, for approximately 2,765,597 acres of the East Side Grant, and of the West Side Grant 128,618 acres. The discussion must proceed with reference to the theory of the Government in seeking to maintain this

suit, which is, that the "Settlers' Clause" in the amendment of April 10, 1869, and in the act of May 4, 1870, is a condition subsequent to be observed on the part of the railroad companies; that, if not observed, a forfeiture of the lands would be incurred; and that such provision is a condition attending and upon which the grant was made. Whether the theory can be substantiated in law will be a subject for consideration later.

To recur to the Act of July 25, 1866, the first section relates to the authorization of the railroad company to construct the road; the second to the grant of the lands, the said lands to be applied to the building of the road; and the third section to the grant of the right of way. The fourth section relates to the issuance of the patents. These were required to be issued whenever any section of twenty miles of the road was completed, upon the report of the commissioners showing that the road had been constructed and equipped in all respects as required by the Act. The fifth section prescribes that the grants are made upon condition that the companies shall keep the road in repair and use. The sixth relates to the filing of the companies' assent and the time of the completion of the road, section by section, as specified; and the eighth section, besides providing for forfeiture for non-compliance with specific provisions, authorizes Congress, in case the road is not kept in repair or fit for use after completion, to pass an act to put the same in repair and use, and to appropriate the income for defraying the expense thereof. These comprise all the provisions of the Act which can have any bearing upon

the issuance of patents for lands earned under the provisions of the grant.

All public grants are administered by the Land Department, which is a part of the administrative and executive branch of the general Government, and was organized to supervise all the various proceedings by which title to public lands is acquired, from their commencement to their close. Before the issuance of any patent, the Land Department is charged with the duty of ascertaining and determining whether all the conditions of the law entitling it to issue have been complied with. It may be that the issuance depends upon the existence of certain facts, or the performance of certain obligations imposed, or the observance of specific regulations; and in all these the Land Department must ascertain and determine whether the law has been fulfilled so as to entitle the grantee to his final patent under the grant. Within its special jurisdiction, and wherein its function is to conduct inquiry into matters of fact, the Land Department acts judicially, and its findings and judgments, while proceeding within the scope of its powers, are as binding and conclusive as the findings, judgments and decrees of any other special tribunal, and they are unimpeachable and unassailable except by direct proceeding instituted for their correction or annulment. This much for the solemnity and integrity of the acts of the Land Department when in the exercise of its judicial functions. These functions are usually brought into requisition in the consideration and determination relative to the issuance of patents,

both under general laws for disposal of the public domain to private persons, and under specific grants for railroad and other purposes. In *Barden* v. *Northern Pacific Railroad,* 154 U. S. 288, 327, a case concerning a grant for railroad purposes, the Court declares that:

> "It is the established doctrine, expressed in numerous decisions of this Court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the Land Department to issue a patent for such land upon ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition, or mistake, its determination is conclusive against collateral attack."
>
> "The patent of the United States is," it is said, "the conveyance by which the nation passes its title to portions of the public domain."
>
> *Smelting Co.* v. *Kemp,* 104 U. S. 636, 640.

This under the general laws for disposition of the public lands. And it is further said that:

> "The execution and record of the patent are the final acts of the officers of the Government for the transfer of its title, and, as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned, and sealed, not merely operates to pass the title, but is

> in the nature of an official declaration by that branch of the Government to which the alienation of the public lands, under the law, is intrusted, that all the requirements preliminary to its issue have been complied with."

Ordinarily, the patent under a grant for railroad purposes does not operate to pass the title, for that is done by virtue of the grant itself, in which case the patent is rather in the nature of a confirmation of the grant, and in further assurance of title, bearing the force and effect of a solemn certificate that all things have been done and observed entitling the patentee to his grant at that particular juncture.

Says Mr. Justice Field, in *Langdeau* v. *Hanes,* 21 Wall. 521, 529:

> "In the legislation of Congress a patent has a double operation. It is a conveyance by the Government when the Government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the Government."

The eminent jurist in a later case concerning lands comprised by a railroad grant (*Wisconsin Railroad Co.*

v. *Price County,* 133 U. S. 496), after holding that the grant was *in praesenti,* says, at page 510:

> "The subsequent issue of the patents by the United States was not essential to the right of the company to those parcels, although in many respects they would have been of great service to it. They would have served to identify the lands as coterminous with the road completed; they would have been evidence that the grantee had complied with the conditions of the grant, and to that extent that the grant was relieved of possibility of forfeiture for breach of them: they would have obviated the necessity of any other evidence of the grantee's right to the lands; and they would have been evidence that the lands were subject to the disposal of the railroad company with the consent of the Government. They would have been in these respects deeds of further assurance of the patentee's title, and, therefore, a source of quiet and peace to it in its possessions."

This language was substantially repeated in *Deseret Salt Company* v. *Tarpey,* 142 U. S. 241, 251, where a question was suggested as to the necessity for patents where the title passed by the Act conferring the grant.

Let us ascertain now what the Land Department, in acting in its supervisory character in the administration of these grants, was required to ascertain and determine relative to the lands granted before issuing patents therefor. It must know that the railroad company was

duly incorporated, properly designated by the State Legislature as entitled to the benefits of the Act, and duly authorized to take the grant. It must know that the lands for which patents are sought are within the place or indemnity limits of the grant, and that they have not been reserved, sold, or otherwise disposed of. It must know that the section of twenty miles opposite which the lands are sought to be patented has been completed and equipped in all respects as required by the Act conferring the grant and the amendments thereto, section by section of twenty miles each in its order as the road progresses; and if the entire road was completed and equipped according to law, the Land Department must know that. In this respect the Land Department is aided by the commissioners appointed by the President for the express purpose of ascertaining and making report relative to the facts pertinent to the inquiry. When these facts have been ascertained and determined to exist, then it is incumbent upon the Land Department to issue the patents. The department is required to look no further, nor to concern itself with what the railroad company is bound to do in the future to preserve the integrity of the grant, or to prevent its forfeiture, if such a thing is within the purpose and intendment of Congress.

Now, recurring again to the theory of the bill of complaint that the Settlers' Clause imposes a condition subsequent upon the railroad company for the breach of which a forfeiture would be incurred, it is plain that the Land Department could have nothing to do with

any alleged breach of the condition, as by the very order of things such breach would come after the time when it would have passed judgment with relation to the issuance of the patents under the grant. The issuance of the patents, therefore, by the Land Department could be taken neither as a waiver on the part of the Government of the right to insist upon the condition subsequent, nor as adjudication conclusive against the Government's insistence upon the performance of such a condition.

The second ground upon which waiver is predicated is that the Government has not sooner insisted upon forfeiture, knowing that breach of the alleged condition subsequent has been committed. The infractions of the condition referred to consist in the assignment and transfer by the East Side Company of all its rights, privileges, franchises, and property, including the right, title, and interest of the company in and to the granted lands, East Side, to the Oregon and California Railroad Company March 29, 1870, and a like transfer of the West Side Grant October 6, 1880, the execution of certain mortgages noted in the bill of complaint, covering the granted lands, and other conveyances.

As to the transfers to the Oregon and California Railroad Company, these were not intended as a sale and disposition of the lands, but the transactions were designed to work a substitution of the latter company for its predecessors, so that the intention and purpose of Congress, voiced by the enactments conferring the

grants, might be carried into effect through its instrumentality, thus conceding to it the rights and benefits to accrue to the original companies, but nothing beyond. Such is the theory upon which the bill of complaint is drawn, and such is clearly the effect of the transfers. The Oregon and California Railroad Company has so treated them, and so has the Government. As it pertains to the East Side Grant, the Oregon and California Railroad Company specifically assented to the Act conferring it, and assented to the grant itself on April 4, 1870, within the extended time for filing assent by the amendment of April 10, 1869. The assent was, however, not filed with the Secretary of the Interior until April 28th. But no importance is attached to that. As to both grants, patents have been issued by the Government to the Oregon and California Railroad Company, and accepted by it as the grantee, and in all transactions since the transfer the Oregon and California Railroad Company has been treated, and it has so treated the relationship with the Government, as the grantee company.

As it relates to the mortgages, if considered as evidencing sales of the granted lands, and other conveyances in alleged violation of the stipulations of the Settlers' Clause, there is nothing stated in the bill from which it can be inferred that the Government assented to them in any way, and hence it can not be considered to have waived the condition.

"Mere indulgence or silent acquiescence is

never construed into a waiver unless some element of estoppel can be invoked." 29 A. & Eng. Enc. of Law, 1106.

So it is said in *Gray* v. *Blanchard,* 8 Pick. 284, 292:

"A mere indulgence is never to be construed into a waiver of a breach of condition; and so are the authorities."

See, also, *Trustees of Union College* v. *City of New York,* 173 N. Y., 38; *Howe* v. *Lowell,* 171 Mass. 575; *Carbon Block Coal Company* v. *Murphy et al.,* 101 Ind. 115.

There is certainly nothing contained in the bill of complaint that shows that the Government did more than to remain silent while the Oregon and California Railroad Company was disposing of the lands in violation of the condition prescribed by the Settlers' Clause, if it be a condition, and one of which the Government can avail itself. It did nothing affirmatively or actively by which to mislead the railroad company or cause it rightfully to presume upon the Government's acquiescence. So that the Government has neither waived, nor is it estopped to insist upon, forfeiture for condition broken, if forfeiture may be predicated upon the clause. This will be determined later. Furthermore, it is not believed that the executive officers of the Government can, without express authority from Congress, waive the conditions expressed in a grant emanating from Congress.

The acceptance and use of the road by the Govern-

ment was contemplated from the beginning, and could not operate as a waiver of a condition subsequent attending the grant.

If it be the purpose to ground the defense upon laches, that cannot be done, for laches is not imputable to the Government.

The other ground of waiver as assigned cannot be supported. The act of Congress of September 29, 1890, *supra,* declares:

> "That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain."

It has been held in *United States* v. *Tennessee & Coosa Railroad Co.,* 176 U. S. 242, that this act did not operate upon lands opposite completed road, and did not work a forfeiture as to them. It is urged that, under the rule *expressio unius est exclusio alterius,* the act operates as a declaration of waiver of forfeiture as to all lands opposite the completed portions of all railroads. This is equivalent to saying that the effect of the Act was to confirm to the railroad companies all lands opposite completed railroads, or portions thereof. The application sought is a novel one. To say that forfeit-

ure by Congress of lands opposite railroads not constructed is to confirm to the grantees the lands opposite roads constructed, against all contingencies and reserved conditions, whether precedent or subsequent, is carrying the doctrine beyond its purpose and effect. It could not be presumed that Congress, when adopting the general statute applying to all lands under grants lying opposite parts of railroads uncompleted, had in mind all conditions subsequent that might have been annexed to grants where the roads had been completed. The thing is so manifest that it requires no argument; it is sufficient to state the proposition. So Congress could not have intended, by the Act under discussion, to confirm the grants here concerned against any condition subsequent that might have been annexed to them, and, if not intending so to do, the Act could not operate as a waiver or forfeiture of conditions subsequent, if broken. The same is true of the Act of January 31, 1885 (23 Stat. 296), forfeiting the unearned land grant to the West Side Company, although its operation was not general, but related to the forfeiture of a portion of one grant only.

The fourth ground upon which waiver is predicated relates to the statutes of limitation for bringing suits for the annulment of patents, and is rather an objection going to the remedy or the right to institute the suit. The statutes invoked are Section 8 of the Act of March 3, 1891 (26 Stat. 1099), and Section 1 of the Act of March 2, 1896 (29. Stat. 42). The former statute provides:

> "That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

The provision is contained in "An Act to repeal timber-culture laws, and for other purposes," but, being general in its terms, would seem to include patents to railroad companies under grants thereto, as well as other patents issued by the Government. The later statute declares:

> "That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to."

The two statutes, read together, put all patents, whether issued in pursuance of railroad grants or otherwise, in the same category, and suits by the Government to cancel cannot be maintained except as thereby provided. But the plain answer to the objection is that

this is not a suit to annul the patents issued under these grants. It reaches back of the patents—the purpose being to forfeit the entire grants, so far as the lands are now held by the railroad company, for failure to observe the condition requiring the company to sell to actual settlers. The patents are only evidentiary of the grant; it is the grant that confers title. If the grant is rendered subject to forfeiture for want of the observance of a condition subsequent, the breach whereof may have occurred later than the issuance of many patents, it does not appeal to reason that the forfeiture should be defeated because suits were not instituted to annul the patents within the time fixed by the statute. Should the grant be annulled, the annulment would carry with it, it is true, the avoidance of the patents. But the conditions of the grant must be read into the patents, so the patents cannot stand in the way of the enforcement of such conditions.

The cause which forms the basis of this suit arises out of none of the facts adjudicated by the Land Department, or with which that department had anything to do in issuing the patents; but it arises from the alleged want of the observance of the terms of the grant, whereby the grant itself, it is alleged, has been forfeited. The patents add nothing to the terms of the grant, nor take aught from them.

So I conclude that the Government has not waived its right to maintain this suit for any of the reasons assigned. Nor is it barred of its remedy by virtue of

the statutes of limitation relied upon by counsel.

The crucial controversy attending this cause relates to the true intendment of Congress as expressed by the clause contained in the amendment of April 10, 1869, referred to as the "Actual Settlers" proviso, as follows:

> "And provided further, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

The Government contends that this is a condition subsequent, subjoined to the original Act, the offset of which is to entail a forfeiture of the lands granted for non-observance of the condition. The defendants, the railroad companies and Stephen T. Gage, contend that it is neither a condition subsequent, an enforceable covenant, nor a trust obligation, it being urged that it is an "unenforceable regulative, directive covenant," leaving it wholly to the good faith and discretion of the grantee whether to observe its terms or not.

Reference to some of the plain rules of statutory interpretation will aid in the solution of the problem. It is axiomatic that the intent of Congress, as a first principle, should be ascertained and enforced.

These grants, says the Supreme Court,

> "are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance."

Winona & St. Peter R. R. Co. v. *Barney,* 113 U. S. 618, 625.

"There is a presumption," says the same Court, "against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience."

Bird v. *United States,* 187 U. S. 118, 124.

"The first and most elementary rule of construction is, that it is to be assumed that the words and phrases are used in their technical meaning if they have acquired one, and in their popular meaning if they have not, and that the phrases and sentences are to be construed according to the rules of grammar; and from this presumption it is not allowable to depart, unless adequate grounds are found, either in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature."

Endlich on the Interpretation of Statutes, p. 4, sec. 2.

In application of this rule the Court says, in *McCluskey* v. *Cromwell,* 11 N. Y., 601:

"If the words are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no

need of interpretation."

And so in *United States* v. *Goldenberg,* 168 U. S. 95, 102, Mr. Justice Brewer says:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specially provided for, justify any judicial addition to the language of the statute."

In further elucidation, "The province of construction," says the Court in *Hamilton* v. *Rathbone,* 175 U. S. 414, 421, "lies wholly within the domain of ambiguity." And in another case, *Kohlsaat* v. *Murphy,* 96 U. S. 153, 160, that:

> "The controlling rule of decision in applying the statute in any particular case is, whenever the intention of the Legislature can be discovered from the words employed, in view of the subject-matter and the surrounding circumstances, it ought to pre-

vail, unless it lead to absurd and irrational conclusions, which would never be imputed to the Legislature, except when the language employed will admit of no other signification."

Another plain rule of interpretation is that the purposes of the Act must be gathered from the context and a survey of all its provisions, so that if possible it may stand as a harmonious and consistent whole, every word and sentence bearing an appropriate meaning and signification, rejecting none, unless leading to a manifest absurdity, which it must be presumed that the Legislature never intended.

Rice v. *Railroad Company,* 1 Black 358, 378;

United States v. *Winn,* 3 Sumner 209, 211;

United States v. *Bitty,* 208 U. S. 393, 402.

Furthermore, interpretation must be had in the light of the conditions prevailing at the time of the enactment, and thus by standing in the place of the legislative body its intendment may be gathered by looking through its visions at the things as they then existed, and the probable exigencies that give rise to the measure.

In *Platt* v. *Union Pacific R. R. Co.,* 99 *U. S.* 48, 60, construing the Union Pacific Land Grant by Act of 1862, the Court says:

"All will concede * * * we are to look at the state of things then existing, and in the light then appearing seek for the purposes and objects of Congress in using the language it did. And we

> are to give such construction to that language, if possible, as will carry out the Congressional intentions."

As stated by Mr. Justice Jackson, in *Mobile & Ohio Railroad* v. *Tennessee,* 153 U. S. 486, 502:

> "Legislative contracts, especially, should be read in the light of the public policy entertained and the purposes sought to be accomplished at the time they were made, rather than at a later period when different ideas and theories may prevail."

Other citations to this purpose are unnecessary. I shall later point out some of the attendant and inducing conditions, including the policy and purposes of the Government pertaining to railway grants and donations and sale of the public domain to private settlers, leading in all probability to the legislation in controversy.

In the case of legislative grants, imposing conditions along therewith upon the grantee in relation to the thing granted, the Acts conferring them are to be construed as laws, and the technical rules governing the interpretation of contracts are inapplicable; the single inquiry being as to the intent of the one party—the legislative intendment in promulgating the law.

Says the Court in *Schulenberg* v. *Harriman,* 21 Wall. 44, 62:

> "A legislative grant operates as a law as well as a transfer of the property, and has such force as the intent of the Legislature requires."

So in *Missouri, etc., Ry. Co.* v. *Kan. Pac. Ry. Co.*, 97 U. S. 491, 497:

> "It is always to be borne in mind in construing a Congressional grant, that the Act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties."

Mr. Justice Brewer, sitting in the Circuit Court, states the rule concisely, yet comprehensively, thus:

> "All legislative land grants are to be regarded, not merely as contracts, but also as laws. As such, they are subject to the same rules of interpretation that govern other laws, and a primary rule is that the intent of the legislator is to be sought, and, when ascertained, controls. The technical rules which govern the interpretation of private contracts must always yield to the single inquiry of the intent of the one party—the Legislature."
>
> *St. Paul, M. & M. R. Co.* v. *Greenhalgh*, 26 Fed. 563, 568.

See, also:

Platt v. *Union Pacific R. R. Co.*, 99 U. S. 48;

Hall v. Russell, 101 U. S. 503, 509;

Johnson v. *Ballou*, 28 *Mich.*, 378.

And still another rule of construction as it pertains

to grants of the public domain to private individuals or corporations is that they should, where there is ambiguity or uncertainty, be construed most favorably to the Government, thus devolving upon the grantee, in whatsoever claim he seeks to maintain against the Government relative to the grant, to show a right clearly defined and about which there can be no controversy or contention. Mr. Justice Harlan, in *Sioux City, etc. Railroad* v. *United States,* 159 U. S. 349, 360, states the principle thus:

> "If the terms of an Act of Congress, granting public lands, 'admit of different meanings, one of extension and the other of limitation, they must be acepted in a sense favorable to the grantor. And if rights claimed under the Government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them.' *Leavenworth &c. Railroad* v. *United States,* 92 U. S. 733, 740."

Mr. Justice Field earlier stated the same principle in *Slidell* v. *Grandjean,* 111 U. S. 412, 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms, or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the

State."

Mr. Justice Harlan makes use of this explicit and significant language in *Water Company* v. *Knoxville*, 200 U. S. 22, 33:

> "The universal rule in doubtful cases—this Court said in *Oregon Railway Co.* v. *Oregonian Ry. Co.*, 130 U. S. 1, 26—is that 'the construction shall be against the grantee and in favor of the Government.' As late as *Coosaw Mining Co.* v. *South Carolina*, 144 U. S. 550, 562, this Court said: 'The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property, franchises or privileges in which the Government or the public use has an interest. Statutory grants of that character are to be construed strictly in favor of the public, and whatever is not unequivocally granted is withheld; nothing passes by mere implication.' "

And so it was held in that case.

See, further:

Hannibal &c. Railroad Co. v. *Packet Co.*, 125 U. S. 260, 271;

Barden v. *Northern Pacific Railroad*, 154 U. S. 288, 325;

United States v. *Oregon &c. Railroad*, 164 U. S. 526, 539;

Northern Pacific Railway v. *Soderberg*, 188 U. S. 526, 534;

Some inquiry now relative to the conditions existing the time these grants were made, and the history, licy, and purposes of the general Government in its ntrol, administration, and disposition of the public do-ain.

In the early annals of the United States the public nds were regarded largely as an asset out of which to rive revenue for the needs of the Government. At e time the domain was pledged to the payment of the blic debt. The earlier policy was to dispose of these nds to private purchasers, both at public and private le, but for as much as could be had, and thus to in-ease the revenues of the Government. Such was the ntral thought. It may have contemplated that pur-asers of large tracts would themselves subdivide their ldings, by disposition to persons desiring to establish mes, and that the lands would eventually be devoted the needs of the settler. But that was subordinate the main purpose. Lands once offered at public auc-n, when no purchaser was secured, became what was own as "offered lands," or lands subject to private try. These offered lands could thereafter be pur-ased at the minimum price, being the price fixed be-v which the Government would not consent that they ould be bid in at auction. Through this regulation, rchasers at private entry were enabled to acquire such cts of land as they were able to pay for, for home

or other purposes. They could acquire no other lands from the Government except those that had been previously offered at public auction and failed of a purchaser at a price equal to the minimum or above. Even settlement upon the public domain was discouraged, Congress believing that satisfactory disposition thereof might otherwise be more readily and expeditiously accomplished. Notwithstanding, there was constant and increasing encroachment upon the public domain, and many persons made settlement upon tracts of land of their own selection, cultivating and improving them, and thus fitting and designing them for homes and permanent residence. Based upon such settlement, cultivation and improvement, and by virtue of being the first appropriators, the settlers began to put forth claims to the first right to purchase the tracts involved from the Government, that they might acquire the ultimate title thereto. Later, Congress recognized these claims of right; first in a small way, that is, confining its recognition to settlers in certain localities, and limiting its relief in matter of time. The idea grew, however, until Congress was induced to adopt a general pre-emption law authorizing the entry of lands surveyed, but not open to private entry, as well as of lands which could be bought at private sale. In illustration of the development of the policy, it was enacted May 29, 1830 (4 Stat. 420, 421):

> "That every settler or occupant of the public lands, prior to the passage of this Act, who is now in possession, and cultivated any part thereof in the

> year 1829, shall be, and he is hereby, authorized to enter * * * any number of acres, not more than one hundred and sixty or a quarter-section, to include his improvement, upon paying to the United States the then minimum price of said land."

On April 5, 1832, another statute was passed (4 Stat. 503), declaring:

> "That all actual settlers, being house-keepers upon the public lands, shall have the right of pre-emption to enter, within six months after the passage of this Act, not exceeding the quantity of one half-quarter section."

Where, by reason of the public surveys not having been made, the settlers were unable to describe their entries, the privileges thus granted were extended by acts of July 14, 1832 (4 Stat. 603), and March 2, 1833 (4 Stat. 663), for a priod of one year after the surveys should be made. These pre-emption acts were revived by Act of June 19, 1834 (4 Stat. 678), and again by Act of June 22, 1838 (5 Stat. 251), and later still by Act of June 1, 1840 (5 Stat. 382). But on September 4, 1841 (5 Stat. 455), a general pre-emption statute was enacted extending the benefits of settlement without restriction as to time, and providing that, from and after the passage of the Act, every person as therein designated, being the head of a family, etc., who since the first day of June, 1840, had made or should thereafter make settlement in person on the

public lands, which had been surveyed prior thereto, and who should inhabit and improve the same and erect a dwelling thereon, was authorized to enter, in the proper land office, any number of acres of such land, to include the residence of the claimant, not exceeding 160 acres, by payment to the United States of the minimum price of such land. This statute expressly authorized any person possessing the qualifications designated to make settlement upon any lands of the Government domain that had theretofore been surveyed. Prior thereto the Government had been adopting legislation designed to legalize what was treated rather as a trespass upon the Government's domain than as an entry and occupation by right, license or privilege. Now the entry is directly permitted, and not only this, but settlement is invited, by throwing open the surveyed portions of the public domain for that express purpose. Says the Court in *Clements* v. *Warner,* 24 How. 394, 397:

> "Later statutes enlarged the privilege (of preemption), so as to embrace lands not subject to sale or entry, and clearly evince that the actual settler is the most favored of the entire class of purchasers."

This case was decided in 1860. In the meanwhile the trend of public thought was toward even greater liberality as it concerned the settler. The public domain was fast coming to be regarded, not as a property—a mere asset from which to derive revenue for the Government's current needs, or with which to discharge its

obligations—but as a vast domain, which in large measure shoud be devoted to the settlement and habitation of its citizens, and that those willing to venture out into the frontier and there provide homes for themselves, and thus establish communities and build up the country, were primarily deserving of the Nation's bounty. So the sentiment grew favorable to donating outright small tracts of the public lands to such of the citizens, present and prospective, of the Government as would be willing to make settlement thereon, and show good faith in their purpose to make of such lands their permanent homes by living thereon and improving the same. Ultimately—May 20, 1862 (12 Stat. 392), Congress adopted the Homestead Law, which donates to those who desire to take advantage of its provisions 160 acres of public land, without cost except the fees attending the filings and proofs in the land office, on condition only that they reside upon and cultivate the same for a period of five years. This law grew rapidly in favor, and soon became firmly established in public confidence and esteem as wise and justly beneficient.

It was not until early in the 19th century that Congress began the appropriation of public lands in aid of internal improvements. First the appropriations were of a certain proportion of the proceeds arising from sales of the land, but later they were of the land itself, which in the earlier stages was devoted to the construction of canals, river improvements and wagon roads. This was followed by appropriations to aid in the construction of railroads. The grants were made first to the states, to

be by them devoted to the ultimate purposes designed, but following a considerable time later grants were made to railroad corporations incorporated by Act of Congress, and then to a few private corporations. During the fifties, and up to within the year 1866, numerous grants were made to states, covering many millions of acres, in aid of the construction of railroads. Most of these were similar in the manner of disposing of the lands, the states being made the intermediary through which the title was to pass, to insure good faith on the part of the railroad companies ultimately to receive the benefits. Generally the grants were of lands not sold, reserved, or otherwise disposed of. Later acts excluded lands also to which a pre-emption claim or right of homestead settlement had attached, and such as were in the occupancy of bona fide settlers. On July 1, 1862, Congress made a departure by granting lands to a company of its own incorporation, as well as to privately incorporated concerns under general State laws. I refer to the Act creating the Union Pacific Railroad Company and the grant of lands thereto in aid of the construction of its road, including grants to some private corporations. Other grants were made to Federal corporations, namely, one in 1864, another in 1866, and still another in 1871, being the last of all the grants made by Congress in aid of the construction of railroads. Some other grants to private corporations followed those provided for along with the Union Pacific Grant, and among them the grants of lands under consideration here.

The earlier grants were attended with a doubling of

the minimum price of lands within the railroad limits; that is, within the exterior boundaries of the grant not covered by it, but required that such lands be offered at public sale before they were subjected to private entry even at that price. But beginning with the Northern Pacific Grant of July 1, 1864, the minimum price was doubled, and private entry was permitted upon such lands whether previously offered or not. Commencing with 1866 the provision was again readjusted, permitting the settler to make entry under the preemption Act, at the price existing at the time of settlement, and of eighty acres under the regulations of the Homestead Act. The grants of 1869, as will be seen by the Acts now under consideration, annexed provisions requiring the lands granted to be disposed of to actual settlers, in quantities not greater than one quarter-section and at a price not above $2.50 per acre. This policy was subsequently adhered to. This latter class of provisions was the outgrowth of a widepsread and persistent agitation among the people of the nation against the further granting of large areas in aid of railroad construction, it being urged that what remained of the public domain should be set apart for occupancy and acquirement by actual settlers and home-seekers, with the privilege and right of acquiring small quantities of land in their own right. The appeal was made as a "measure of justice to the whole American people, as a rich legacy in trust" to the generation then existing and for those to come after, "never to be alienated." The legislation that followed was largely indicative of the reflex of public opin-

ion pertaining to the subject.

Some allusion to the discussions in Congress immediately prior to and at the time these provisions were incorporated with the legislation making grants of public lands to railroad corporations, will not, I think, prove uninstructive; not that what members may have said while the bills were under consideration should be taken as characterizing the legislative intendment in adopting them, but as shedding light upon the conditions, historically, then attending the trend of public thought, and the vital need of such legislation to meet the public exigencies.

The idea was first advanced that, whenever it could be done, the lands proposed to be granted for railroad purposes should be set apart to the states in which they were situated, to be held in trust by them, to be disposed of to actual settlers only, with limitations as to acreage and a maximum price. Then it was urged that such granted lands should be administered by the Secretary of the Interior. This later idea came from Mr. Lawrence, of the House, by way of an amendment to the Denver Pacific bill, as follows:

> "And be it further enacted, That all lands which may be granted or conveyed under or by virtue of this Act or the Acts relating to said railroad company, shall be sold only to actual settlers in quantities not exceeding one quarter-section to any one person, and at a price not exceeding $2.50 an acre; and the Secretary of the Interior shall have power

to prescribe rules and regulations for carrying this section into effect."

This was defeated. The discussion drifted to another plan, embodied in an amendment offered by Mr. Julian, also of the House, as follows:

"Provided, That the lands granted * * * shall be sold to actual settlers only, in quantities not greater than one hundred and sixty acres to one purchaser, and for a price not exceeding $2.50 per acre."

Speaking to the amendment, Mr. Julian had this to say:

"Under proper restrictions I would grant them public lands, and this House has already decided that these restrictions shall be such as I have proposed in the amendment I offered to this bill the other day, namely, that the lands shall be granted on the express condition that they shall be sold to actual settlers only, in quantities not greater than one quarter-section to one purchaser, and for a price not exceeding $2.50 per acre. This will avoid the complete monopoly of the lands, as sanctioned by the old system of land grants, and at the same time devote to settlement and tillage the odd-numbered sections granted, while creating in this way established communities and a local business along the line of the road. This, sir, is the true policy, and the whole land-grant system of our country will be repudiated by the people, and ought

to be repudiated, unless it shall be made to conform to the conditions I have stated."

Another plan was proposed by Mr. Logan, namely that all lands theretofore granted to aid in the construction of railroads along that portion then unfinished should be subject to entry at the Government Land Office at $2.50 per acre, the money to be deposited in the Treasury of the United States as a sinking fund for the redemption or purchase of the bonds of the company, so far as it might be sufficient therefor. Mr. Lawrence's plan was, in effect, to make the railroad company the trustee of the lands, with administration by the Secretary of the Interior. Mr. Logan's plan was to make the Government trustee, as well as to subject the corpus of the estate to administration through its proper Land Department. Mr. Julian's amendment prevailed finally, and such in effect, by later enactment became the law attending the grants in question. Other grants took this form of legislation in the main. I speak specifically of the Coos Bay Wagon Road Grant of March 3, 1869 (15 Stat. 340); a revival of grant to the State of Alabama in aid of the construction of railroads (16 Stat. 45) and an Act extending the time for the construction of a railroad under grant to the state of Missouri and Arkansas. As to this latter grant the amendment was subsequently repealed.

The discussion along the line was varied, and the opinions of members of the two Houses of Congress did not agree as to the effect of the clause. Senator

Vickers was of the view that the grant was made "expressly on condition that the lands are to be sold to actual settlers"; that "If the lands are sold to actual settlers there is no forfeiture. If a portion of the land is sold to actual settlers, the portion unsold will be forfeited to the Government, if that condition is violated." Senator Thurman was doubtful whether the provision would be effective, and suggested, as it then occurred to him, that Congress could not engraft upon the grant a condition or a trust or a covenant of that kind in that indefinite and general way. Senator Williams, of Oregon, said:

> "The lands granted are as open, under the provisions of this bill, to actual settlers as they are under the pre-emption laws of the country. It simply provides that when settlers go upon these lands they may buy them of the company, and the proceeds shall be applied to assist in the construction of the road."

Senators Stewart and Casserly agreed with him in this view.

With this abbreviated review of the conditions and of the policy of the Government with reference to the public domain obtaining prior to and at the time of the adoption of the measures in question, we may proceed to the further discussion of the legislative intendment, considered from a legal standpoint, under the authorities.

There can be no two opinions about the literal mean-

ing of the proviso. The language is so plain and explicit that it bears absolute impress upon the understanding. It constitutes a declaration that the granted lands shall be sold to actual settlers only, in quantities not greater than one quarter-section, etc., which is easily comprehensible, and it would seem that a simple duty or obligation was imposed, so simple that anyone could, without taking further thought, readily discharge it. But the real question is, Are those provisions couched in such legal terms as to render them enforceable according to their letter and spirit? In other words, can the grantee be required to do what the language plainly directs shall be done; and what penalty, if any, is entailed by a failure or refusal to observe the plain wording of the provisos?

An estate upon condition is defined as "one which has a qualification annexed, by which, on the happening of a particular event, it may be created, enlarged or destroyed. If set forth, the condition is express; and if it allows the estate to vest, and then to be defeated in consequence of non-observance of the requirement, it is a condition subsequent."

Blanchard v. *The D. L. & M. R. Co.*, 31 Mich. 42, 48.

Some general observations concerning conditions subsequent may be made in passing. They are not favored in law, and ordinarily are amenable to strict construction, for the reason that, if not observed according to their tenor, they entail forfeiture and a destruction of the estate. A mere declaration touching the

particular purposes for which the grant it made, or that the grantee is to do or not to do certain things, will not evidence a condition. And, generally speaking, a condition in a grant should be created by apt and appropriate words—words which *ex proprio vigore* import a condition. Furthermore, if there be doubt as to whether the words create a condition subsequent, or a covenant, the breach of which may be compensated in damages, courts will construe them favorably to the latter.

Instances are not wanting, however, where words and terms appropriate to create a condition when read in connection with the context of the grant and the intention of the parties, have been disregarded in their technical sense, and construed as in harmony with a covenant, and conversely, the decision depending upon the real purpose and intent of the parties to the grant, as gathered from the manner and purpose of the conveyance and from the instrument itself, read in its entirety. And it has been held that, although a deed or conveyance contain a clause declaring the purpose for which it is intended the granted premises shall be used, if such purpose will not inure specially to the benefit of the grantor, but is in its nature general and public, and if there are no words in the grant indicating an intent that the grant is to be void if the declared purpose is not fulfilled, such a clause is not a condition subsequent.

11 Cyc. 1050;

Raley v. *Umatilla County,* 15 Or. 172;

Gilbert v. *Peteler,* 38 N. Y. 165;

Rawson v. *Inhabitants of School District No. 5 in Uxbridge,* 89 Mass. 125.

Recurring to the old law, which comes down to us as sound today as it was then, Sheppard's Touchstone (8 Ed. 121) has this upon the subject:

> "Conditions annexed to estates are sometimes so placed and confounded amongst covenants, sometimes so ambiguously drawn, and at all times have in their drawing so much affinity with limitations, that it is hard to discern and distinguish them. Know therefore that for the most part conditions have conditional words in their frontispiece, and do begin therewith; and that amongst these words there are three words that are most proper, which in and of their own nature and efficacy, without any addition of other words of re-entry in the conclusion of the condition, do make the estate conditional, as proviso, *ita quod,* and *sub conditione.* And therefore if A. grant lands to B. to have and to hold to him and his heirs, provided that, or so as, or under this condition, that B. do pay to A. ten pounds at Easter next; this is a good condition, and the estate is conditional without any more words. But there are other words, as *Si, si contingat,* and the like, that will make an estate conditional also, but then they must have other words joined with them, and added to them in the close of the condition, as that then the grantor shall re-

enter, or that then the estate shall be void, or the like. And therefore if A. grants lands to B. to have and to hold to him and his heirs, and if, or but if it happen, the said B. do not pay to A. ten pound at Easter, without more words, this is no good condition; but if these or such like words be added, that then it shall be lawful for A. to re-enter, then it will be a good condition.

"But here note that these words proviso, *ita quod* and *sub conditione*, albeit they be the most proper words to make conditions, yet do they not always make the estate by the deed to be conditional, but sometimes do serve for other purposes; for the word proviso hath divers operations besides; for sometimes it doth serve for and work a qualification, or limitation, and sometimes it doth serve to make and work a covenant only. And then only (being inserted amongst the covenants of the deed) it doth make the estate conditional, when there are these things in the case:

"1. When the clause wherein it is hath no dependence upon any other sentence in the deed, nor doth participate with it, but stands originally by and of itself; 2. When it is compulsory to the *feoffee, donee*, &c. 3. When it comes on the part, and by the words of the *feoffer*, donor, lessor, &c. 4. When it is applied to the estate, and not to some other matter."

A few modern cases will illustrate the significance

given technical words appropriate to the creation of a condition, and when their technical sense will be disregarded; also when a condition will be declared even where no technical words adapted to its creation attend it.

In *Gray* v. *Blanchard,* 8 Pickering 283, a deed contained the following provision: "Provided, however, this conveyance is upon the condition, that no windows shall be placed in the north wall of the house aforesaid, or of any house to be erected on the premises, within thirty years from the date hereof." It was objected to this conveyance that the words quoted did not constitute a condition, but evidenced a covenant only. Answering this objection, the Court, speaking through Parker, Chief Justice, says:

> "The words are apt to create a condition; there is no ambiguity, no room for construction; and they cannot be distorted so as to convey a different sense from that which was palpably the intent of the parties. The word 'provided' alone may constitute a condition, but here the very term is used which is often implied from the use of other terms. 'This conveyance is upon the condition,' can mean nothing more nor less than their natural import; and we can not help the folly of parties who consent to take estates upon onerous conditions, by converting conditions into covenants. It would be quite as well to say that the words mean nothing, and so ought to be rejected altogether. No authority has been cited which bears out this suggestion; indeed

the authorities are all against it."

It was further insisted that, because there was no clause of re-entry for breach of condition in the deed, the provision was not strictly a condition going to the forfeiture of the estate, but the Court here also held to the contrary, saying:

> "The law seems to be clear the other way. A clause of re-entry is not necessary to make a condition. Proviso, *ita quod, sub conditione,* make the estate conditional. Com. Dig. Condition, A 2. Other words, such as *si, si contingat,* do not make a condition, which will work a forfeiture, without clause of re-entry. Lit. §331; Shep. Touch. 121."

In the case of *Hooper* v. *Cummings,* 45 Maine, 359, it appears that one Jonathan Cummings conveyed to Nathan Woodbury and others, a committee appointed to build a meeting-house in the town, certain acreage, and that in the deed, succeeding the covenants, were these words: "Providing the said committee and proprietors fence the said land and keep the same in repair." Deciding as to the effect of these words, the Court says:

> "We may assume that the proviso in the deed created a condition subsequent, and in this we are sustained by most, if not all, the authorities, ancient and modern; notwithstanding it is to be construed strictly and most strongly against the grantor to prevent, if possible, a forfeiture of the estate. 'If the word proviso be the speaking of the grantor, *feoffer,* donor, &c., and obliges the grantee, &c.,

to any act, it makes a condition, in whatever part of the deed it stands; and, though there be covenants before or after, is not material.' 3 Com. Dig. 84 (Condition)."

Sharon Iron Co. v. *City of Erie,* 41 Pa. St. 341, is a case where the City of Erie conveyed by deed a piece of realty to the Sharon Iron Company, subject to the conditions, provisions, and stipulations of certain resolutions. These resolutions provided, first, "That the alienees shall, 'within one year, erect a breakwater in front of each of said lots, under the direction of the city councils.' Second, That they shall 'within two years, erect a good and substantial bloomery thereon, or within the limits of the city.'" It being alleged that the iron company had failed to comply with these provisions, the city brought ejectment to recover the lots. The bloomery was not constructed as required by the resolutions, and the question came up as to whether the grantees had not forfeited the property by reason of the non-observance of the condition. Speaking to that subject, the Court says:

"The clause in the original resolution incorporated into the deed was a condition, not a covenant, and 'where the language imports a condition merely, and there are no words importing an agreement, it cannot be enforced as a covenant, but the only remedy is through a forfeiture of the estate.'" Quoting from Selden J., in *Palmer* v. *Fort Plain and Cooperstown Plank Road Co.,* 1 Keenan 389.

In *Wilson et ux.* v. *Wilson,* 86 Ind. 472, a deed was executed by father to son upon the consideration of a certain covenant contained in a separate instrument executed by the son. Upon these facts it was held that the deed was upon condition, the Court saying:

> "There was no other valuable consideration for the deed, and, unless the instrument can operate as a defeasance, it is difficult to see how, in respect to some, at least, of its terms, it could be enforced, or be made effective in any way. It may be said that the covenants contained in the writing are personal covenants merely, but that cannot affect the conclusion that the deed was made on condition that they be faithfully kept and performed."

In *Oliver Hayden et al.* v. *The Inhabitants of Stoughton,* 5 Pick. 528, a devise of real estate to a town for the purpose of building a schoolhouse, "provided it is built within 100 rods of the place where the meeting-house now stands," was held to be upon a condition subsequent.

Says Lyon, Judge, in *Horner* v. *Chicago, Milwaukee & St. Paul R'y Co. et al.,* 38 Wis. 165, 173:

> "Although there are technical words which, if used in a conveyance, unmistakably create a condition, yet the use thereof is not absolutely essential to that end, and a valid condition may be expressed without employing these words."

And again:

> "It is not essential to a valid condition that, in case of a breach thereof, a right of re-entry be expressly reserved in the deed, or that it be expressed therein that the estate of the grantee shall terminate with a breach of the condition."

This was a case where the deed conveyed two parcels of land. After the description of the first parcel, and referring to it by the words "The aforesaid piece or parcel of land hereby conveyed to the party of the second part only for depot and other railroad purposes," and after description of the other parcel, which in terms is granted for a railway, the deed contains these words: "Both of said pieces or parcels being granted solely for said road purposes." The Court, speaking with reference to these clauses, says:

> "The words 'only' and 'solely' are words of restriction or exclusion. As used in this deed, their effect clearly is to prohibit the grantee from using the lands for any other than the specified purposes."

So it was said by Page, J., in *Kilpatrick* v. *Mayor of Baltimore,* 48 Am. St. 509, 511:

> "Technical words are not absolutely essential to create a condition, nor, on the other hand, does their use necessarily raise one; such words may be controlled by the context of the instrument in which they are used, so that sometimes they work a limitation and condition, and sometimes a covenant or a trust only."

In this case the deed was to the "Mayor and City

Council of Baltimore and its successors," with *habendum* "To have and to hold * * * unto the Mayor," etc., "forever, as and for a street to be kept as a public highway." And it was held not to have been made upon condition.

Lurton, Circuit Judge, now a Justice of the Supreme Court of the United States, gave utterance to the principle in *Board of Commissioners* v. *Young*, 59 Fed. 96, 104. The deed under consideration contained neither technical words importing a conditional estate, nor any clause of re-entry. "Yet," says the distinguished jurist, "a condition subsequent may be so strongly and clearly implied from the whole tenor of the deed as to demand recognition, though not expressed in technical language." The deed in that case, however, was ultimately held not to have been executed upon condition.

In *Stanley* v. *Colt*, 5 Wall. 119, 166, the Court says:

> "It is true that the word 'proviso' is an appropriate one to constitute a common-law condition in a deed or will, but this is not the fixed and invariable meaning attached to it by the law in these instruments. On the contrary, it gives way to the intent of the parties as gathered from an examination of the whole instrument, and has frequently been thus explained and applied as expressing simply a covenant or limitation in trust."

Again, in *Atlantic & Pacific Railroad* v. *Mingus*, 165 U. S. 413, 428, Mr. Justice Brown says:

> "It cannot be supposed that Congress intended

to vest a title in the railway company to this enormous grant of lands without contemplating that the Government might in some way reacquire it in case of a failure of the company to comply with the conditions of the grant. No express provision for a forfeiture was required to fix the rights of the Government. If an estate be granted upon a condition subsequent, no express words of forfeiture or reinvestiture of title are necessary to authorize the grantor to re-enter in case of a breach of such conditions."

It is not unusual for the Crown or the Government to annex conditions subsequent to grants, and such grants are subject to forfeiture for failure to observe the conditions imposed, as private grants may be forfeited unless the breach is subsequently waived by Act of the grantor.

United States v. *Arredondo*, 6 Pet. 691;
United States v. *Wiggins*, 14 Pet. 334;
United States v. *Repentigny*, 5 Wall. 211.

Indeed, it is a thing quite common in some form attending grants in aid of railroads and other internal improvements.

Two authorities may now be noted which have discussed conditions, one of similar import and the other identical with these under consideration. The first is *Nichols* v. *Southern Oregon Co.*, 135 Fed. 232, a case decided in this Court. By Act of March 3, 1869 (15 Stat. 340), a grant of lands was made to the State of

Oregon in aid of the construction of a military wagon road, containing the following provision:

> "Provided, further, that the grant of land hereby made shall be upon the condition that the lands shall be sold to any one person only in quantities not greater than one quarter-section, and at a price not exceeding $2.50 per acre."

The defendant company succeeded to a portion of these lands, and the plaintiff sued to require it to convey to him a tract of 160 acres, after tendering the price thereof at the rate of $2.50 per acre, claiming that under the clause above quoted he was so entitled to purchase the land, and that the defendant was obligated to convey to him. Judge Bellinger, in disposing of the controversy, says:

> "The grant was not a law for the sale of the granted lands. It did not offer them for sale. That was left to the State, subject to restrictions as to the price at which they should be sold and the quantity that should be sold to any one person. These restrictions were mere incidents of the grant, mere regulations that the State was required to observe in selling the granted lands, at such time after they were earned as the State should conclude to sell them. The object to be accomplished in no wise depended upon them. Whatever rights existed in respect to these restrictions belong to the United States. No interest was created in the complainant. He is not a beneficiary in the grant, and he has

no standing to complain that the State has violated its conditions in the manner in which it has disposed of the granted lands. That is a matter that can only be taken advantage of by the United States. Furthermore, above 30 years ago Congress authorized patents to issue to the State or to any corporation or corporations to which it had transferred its interest, and patents have been issued to the State's grantees in pursuance of that law. It is not necessary to consider whether this Act was a waiver by Congress of the conditions subsequent in the grant."

Three things seem to have been decided, namely, that the restrictions imposed by the clause quoted were mere incidents or regulations that the State was required to obey; that whatever rights vested in respect to such restrictions belonged to the United States; and that a third or outside party was not a beneficiary to the grant; and, incidentally, the conditions are spoken of as "conditions subsequent."

The other case is *Warrior River Coal & Land Company* v. *Alabama State Land Company,* 154 Ala. 185. The action was in ejectment, and involved a tract of land included in a grant by Congress to the State to aid in the construction of railroads. The grant, which was made by Act of June 3, 1856 (11 St. 17), seems to have lapsed in part, and a revival was accorded by Act of April 10, 1869 (16 St. 45), containing a clause identical with the one here under consideration amenda-

tory of the Act of July 25, 1866. Speaking with reference to the clause, the Court says:

> "The legal title to the granted lands having vested in the State, and the beneficial interest in the railroad company having become individualized as to the land and the companies, respectively, the land here in controversy included, by the performance of all conditions precedent erected by the National Grant, the limitation quoted from the Act was, at most, a condition subsequent, a violation of which rendered the estate in the particular instance amenable to forfeiture by the appropriate action of the granting government, and by that only."

There is here the intimation that the clause might create a condition subsequent, but that if it did, the Court was of the view that the forfeiture could be insisted upon only by the general Government.

Without for the present concluding whether the provisions in question constitute a condition subsequent, the logical order requires that we first determine the contentions of cross-complainants and interveners.

The position of cross-complainants is that these provisions—the Settlers Clause—devolved upon the grantee an executory trust to be administered by it, and that when any citizen, qualified to take and hold lands in his own right, became an actual settler upon the land selected by him, he then became qualified as a *cestui que* trust, to whom the grantee was bound to sell at the rate of $2.50 per acre, and in due time to convey, and that

equity will interpose its jurisdiction to enforce the trust. Under this theory, it is further asserted that it makes no difference that a *cestui que* trust was not in being and qualified as such at the time of the grant, but that the Act has in contemplation any such qualified person, who may at any time make settlement and, with a tender of the purchase price, demand a deed.

A word as to the signification of the term "covenant," before proceeding to the inquiry thus suggested. It is "An agreement between two or more persons, entered into by deed, whereby one of the parties promises the performance or non-performance of certain acts, or that a given state of things does or shall, or does or shall not, exist." Bouvier's Law Dictionary.

"In common parlance, however, the term is applied to any agreement whether under seal or not." 11 Cyc. 1043.

No specific or technical words are necessary to the creation of a covenant, nor is any particular or set form of expression, it being sufficient if, from the whole agreement, there appears upon any part of it an obligation or undertaking to do or not to do a particular thing or things. As stated in Sheppard's Touchstone, 161:

> "And there needs not in this case formal and orderly words, as covenant, promise, and the like, to make a covenant on which to ground an action of covenant; for a covenant may be had by any other words; and upon any part of an agreement in writing, in what words soever it be set down, for any-

thing to be or not to be done, the party to or with whom the promise or agreement is made may have this action upon the breach of the agreement."

The case of *Hale* v. *Finch,* 104 U. S. 261, is instructive upon the subject. The controversy was relative to the proper construction of a bill of sale of a boat which recited that the sale was upon express condition, etc., it being claimed that there was liability in covenant. The bill of sale was not signed by the vendee, nor was it necessary in the form in which it was drawn for him to sign it. The Court, after observing that "Words of proviso and condition will be construed into words of covenant, when such is the apparent intention and meaning of the parties," quoting from 2 Parsons, Contracts, 23; and that "There are cases in which the instrument to be construed was held to contain both a condition and a covenant; as, 'If a man by indenture letteth lands for years, provided always, and it is covenanted and agreed between the said parties, that the lessee should not alien,' " which was adjudged to be " 'a condition by force of the proviso, and a covenant by force of the other words,' " citing Co. Litt. 203 b; and after further observing that there was in terms a covenant to defend the title of the boat, which was immediately followed by language implying an agreement that the sale was upon the express condition that neither the boat nor the machinery should be used within a prescribed time upon certain waters, held that, the vendor having expressly and the vendee impliedly agreed that the sale was upon an express condition stated in such

form as to preclude the idea of personal responsibility upon the part of the vendee, effect should be given the intention thus distinctly declared, and hence that the writing created a condition and not a covenant.

In general a trust is "an obligation arising out of a confidence reposed in one who has the legal title to property conveyed to him, that he will faithfully apply and deal with such property according to the confidence reposed."

28 Am. & Eng. Enc. of Law, 858.

So, "For the creation of a valid trust, three circumstances must concur; first, a definite subject-matter within the disposal of the settlor; second, a lawful definite object to which the subject-matter is to be devoted; third, clear and unequivocal words or acts, devoting the subject matter to the object of the trust."

28 Am. & Eng. Enc. of Law (2 Ed.) 865, 866.

But "The declaration of trust, whether written or oral, must be reasonably certain in its material terms; and this requisite of certainty includes the subject-matter or property embraced within the trust, the beneficiaries or persons in whose behalf it is created, the nature and quantity of interests which they are to have, and the manner in which the trust is to be performed. If the language is so vague, general, or equivocal, that any of these necessary elements of the trust is left in real uncertainty, then the trust must fail." 2 Pomeroy's Eq. Jr. §1009.

As it is with a covenant or condition subsequent, no

particular form of words is essential whereby to create a trust. It depends wholly upon the intention of the person who it is avowed has made the settlement, and the intention is to be ascertained also, as in the other forms of obligation or condition, from all the words attending the instrument by which the relationship is claimed to have been established. So the inclination of construction, where it is doubtful whether a trust has been created or a condition subsequent has been imposed, is toward the trust relationship.

As to the Settlers' Clause, there is absolute certainty as it respects the subject-matter. It consists of the lands granted. But what is to be said of the beneficiaries, and of the nature and quality of interest each or any of them is to have?

It should be borne in mind that in most jurisdictions a marked and vital difference is maintained between ordinary and charitable trusts, as it pertains to the essentiality of the element of identity and certainty of the *cestui que* trust. Those jurisdictions which do not recognize the distinction hold that charitable trusts are governed, as it respects this element, by the same rules as are applicable to ordinary trusts. In the ordinary trust the *cestuis que* trust must not only be definitely and specifically designated so that there can ordinarily be no uncertainty as to their identity, but they must be capable of taking the estate or property which is the subject of the trust. They may not be in *esse* at the time of the creation of the trust, but there must not

be uncertanty as to who is the beneficiary, whoever it may or shall be, whether he is in existence, or is to come into being at some future time. If there be a valuable consideration to support the trust, the Courts are solicitous to enforce it, to subserve the interest of the parties; but if the *cestui que* trust is not named, or so designated that he cannot be identified, the Courts are powerless to give effect to the trust, however clearly it may be created in other respects. Says the Court in *Levy* v. *Levy*, 33 N. Y. 97, 107:

> "If there be a single postulate of the common law, established by an unbroken line of decisions, it is, that a trust without a certain beneficiary who can claim its enforcement, is void, whether good or bad, wise or unwise."

On the other hand, it is not at all essential either that the beneficiaries of a charitable trust or use be ascertained, or any definite number thereof, for indefiniteness is said to be a characteristic of a legal charity (*Russell* v. *Allen*, 107 U. S. 163), or capable of taking the legal title to the estate bestowed in trust. Says Mr. Beach:

> "In a private trust, if the beneficiary or beneficiaries are not definitely and positively named, the trust fails on account of indefiniteness. But in a charitable trust, the beneficiaries need not be definitely named, and even where there is no adequate designation of a *cestue que* trust, the trust will be enforced in equity if the intention of the settlor can be ascertained beyond a reasonable doubt."

Beach on Trusts and Trustees, §322.

See, further, §55 same work, and §§66, 95, Perry on Trusts.

For emphasis of the essentiality respecting certainty as to the beneficiary, I will make further reference to the authorities, and in doing so will cite from some of the jurisdictions which do not recognize the distinction noted between the two classes of trusts. The force of the authorities is not weakened because the distinction is not observed. In *Weaver* v. *Spurr,* 56 West Va. 95, 105, it is said:

> "There cannot be a trust without a *cestui que* trust; and if it cannot be ascertained who the *cestui que* trust is, it is the same thing as if there were none."

In an earlier case from the same State (*Brown* v. *Caldwell,* 23 W. Va. 187) a grant of land, upon trust that the trustee "shall at all times permit all the white religious societies of Christians and the members of such societies to use the land as a common burying-ground and for no other purpose," was held to be void for want of certainty as to the beneficiaries. Speaking of this alleged trust, the Court said:

> "It is difficult to conceive of anything more vague, indefinite and general in its character. The societies here designated are neither local nor fixed. They in fact embrace the whole Christian world, and are not only indefinite but unascertainable."

In *Stonestreet* v. *Doyle,* 75 Va. 356, a devise of land "to build a schoolhouse for the purpose of a free school, and further extending the education of poor children," was held inoperatvie and void for uncertainty as to the beneficiaries.

So it was held in *Heiss, Executor, etc.,* v. *Murphey et al.,* 40 Wis. 276, 292, that a devise "to the Roman Catholic oprhans," and empowering the Roman Catholic Bishop to sell the property and "use the proceeds for the benefit of the Roman Catholic orphans," was void for uncertainty in the description of the beneficiaries; the Court saying:

> "There are no ascertainable beneficiaries, either as a class or individuals, and therefore the trust cannot be effectually carried out."

A bequest as follows: "I leave the whole of said fund in the hands of my executor, to be by him applied to the support of missionaries in India," was held void in *Board of Foreign Missions* v. *Mc-Master,* Fed. Cas. No. 1586, because of uncertainty as to beneficiaries, the Court saying:

> "But whether there be a competent trustee or not, if the *cestui que* trusts are not clearly ascertained by the will, the devise or bequest is void."

So a bequest "to some disposition thereof which my executors may consider as promising most to benefit the town and trade of Alexandria, leaving the same entirely to their disposition of it, in such manner as appears to them promises to yield the greatest good," was

held void in *Wheeler* v. *Smith,* 9 Howard, 55, the Court remarking, in the course of the opinion, that:

> "A trust is vested in the executors, but the beneficiaries of the trust are uncertain, and the mode of applying the bounty is indefinite."

Authorities are cited by counsel for interveners which are apparently oposed to the holding of these cases, but when examined with discrimination it will be found that they are not. *Perin et al.* v. *Carey et al.,* 65 U. S. 465, and *Jones* v. *Habersham,* 107 U. S. 174, are fair illustrations of all. These two cases are based upon devises or bequests to charity, and it is a well-established principle of law that their validity is dependent upon the laws and the judicial interpretation thereof within the State; where the lands lie if real property be the subject, or where the testator had his domicile if personal property. And the Federal courts are controlled as well thereby. It was explicitly so held in the case last cited. That case arose in Georgia, and was declared to be subject to the laws of that State touching charitable uses, which are similar in purpose to the statute of 43 Elizabeth upon the subject. It is declared by such laws that "A Court of Chancery may, by approximation, effectuate the purpose (of the testator) in a manner most similar to that indicated by the testator." In a sense the *cy pres* doctrine is made to apply in such a case. The trust to charity was therefore sustained by reason of the controlling force of the local law. But in the case of *Wheeler* v. *Smith, supra,* coming from Virginia, where neither the statute of 43 Elizabeth nor any similar statute ob-

tains, the *cy pres* doctrine was not applied, the Court saying that:

> "In Virginia, charitable bequests stand upon the same footing as other trusts, and consequently, require the same certainty as to the objects of the trust and the mode of its administration."

While in the case of *Perin et al.* v. *Carey et al., supra,* the State of Ohio being without a statute of charities, it was held that the courts of equity in that State had adopted the doctrine founded upon the statute of 43 Elizabeth, and that the doctrine was controlling, both locally and in the Federal courts. Such was the principle announced in the case of *Vidal* v. *Girard's Executors,* 2 How. 127.

It is a principle that in equity the absolute interest is vested in the *cestui que trust,* and the trustee is but an instrument for effectuating the trust, and, where executory, for carrying it into effect. Equity will not allow the trust to fail for want of a trustee. But if there is no *cestui que* trust susceptible of identification, the trust, other than for charity, is void absolutely, and equity is powerless to aid it in any way.

There is also a distinction between executed and executory trusts, but it does not consist in the fact that one is completely wound out and the other is in process of being carried into effect. It depends rather upon the manner in which the trust is declared. An executed trust is one wherein the limitations and conditions attending it are fully and perfectly declared. An ex-

ecutory trust is one where the limitations are imperfectly declared, the intent of the creator being expressed in general terms, leaving the manner in which his intent is to be carried into effect substantially in the discretion of the trustee. The distinction has been illustrated by the act of a testator, as follows: "Has the testator been what is called, and very properly called, his own conveyancer? Has he left it to the Court to make out from general expressions what his intention is, or has he so defined that intention that you have nothing to do but to take the limitations he has given to you and convert that into the legal estate?"

Beach on Trusts and Trustees, §59.

See further

Nicoll v. *Ogden et al,* 29 Ill. 323, 385;

Neves v. *Scott,* 9 How. 196, 211.

When, therefore, counsel for cross-complainants urge that Congress has created an executory trust, with the railroad company as trustee, they must mean that there was left, through the want of precisely defined limitations, something of discretion in the trustee as to the manner in which the trust was to be carried into effect. If not this, it is perfectly plain that the actual settler is not vested with the equitable estate simply by the terms of the Act. If he were so vested, there would be nothing left for the trustee to do but to convey, on receipt of the $2.50 per acre, and that would be an executed trust. But even upon the theory of cross-complainants that the settler becomes a *cestui que* trust upon

making settlement upon a tract of 160 acres of land and the tender of the price, there would be nothing left for the trustee to do but to convey the land. The trust would then be an executed one, and not executory. The question as to the nature of the trust, if one exists, is not material, but the discussion of it will serve to illumine the primary question touching the intendment of the Settlers' Clause. If there is nothing of a discretionary character for the railroad company to do in the disposal of these lands, nothing to settle as to when it shall convey, or when or in what manner it will convey, or for what price, the Act or grant executes itself, and the company is but an automaton, with nothing to do but to convey to actual settlers, whoever they may be, which would constitute a mere passive or dry trust, were it not that the trustee has a beneficial interest in the property.

Now, there is in this case no semblance of a charitable trust—not the remotest purpose manifest of bestowing any charitable gift or devise. Indeed the "actual settlers" designated can claim nothing, nor any particular tract of the grant, as a charity. Nor do I understand that they found their demand upon any such claim. They are standing on the law as creating a trust, with themselves as beneficiaries. Could it be more uncertain who it was intended the beneficiaries were to be, pursuing the theory that the grant created a trust? True, actual settlers may be termed a class of individuals who have set up and established homes upon specific tracts of land; but this is a very large class, and the term is very broad. The bounty, however, is not to the class as a whole, but

to such actual settlers as may establish themselves upon some tract of this grant not exceeding 160 acres in area. There could be no actual settler until an actual habitation was established upon some specific parcel of this land. Logically, no one is a *cestui que* trust under the theory until and unless he becomes such a settler. This is a palpable demonstration of the uncertainty as to the beneficiary, for who, of the vast concourse of humanity, is going to come and claim the right and privilege of settling upon the land? Beyond this, the nature and quantity of interest is not specific or definite. The declaration of the law is—I call it a law because it is to be construed as a law as well as a grant or contract—that the grantee shall sell in quantities not greater than one quarter-section to one person. If this be a maximum limitation, it is surely not a minimum limitation, and the grantee might sell to one purchaser less than one quarter-section and be within the law; and so there is palpable uncertainty as to the amount of land each settler is entitled to demand under the supposed trust, he being the *cestui que* trust. It is clear to my mind that the theory of a trust must fail, because of uncertainty in these particulars, namely, as to the *cestui que* trust, and as to the quantity of interest he is entitled to receive.

Looking at the matter in all its phases, the Act lacks the elements of a trust whereby the railroad company is constituted a trustee for the administration of the granted lands, in any specific quantities, for the benefit or use of any definite or certain beneficiaries.

In arriving at this conclusion, I have not overlooked

the cases, such as *Rice* v. *Railroad Company*, 1 Black 358; *Mills County* v. *Railroad Companies*, 107 U. S. 557; *United States* v. *Des Moines, etc., Co.*, 142 U. S. 527, and *Ashuelot Nat. Bank* v. *City of Keene*, 9 L. R. A. (N. S.), 758, cited and relied upon by counsel for cross-complainants.

The Rice case was concerning a grant of land to the Territory of Minnesota to aid in the construction of a railroad, and it was held that the territory took the land in trust, without any beneficial interest therein, for disposal, and application of the proceeds to a specified public improvement. There was no *cestui que trust*, and none could enforce the trust except the general Government, being the grantor.

The Mills County case involved the construction of the proviso to the second section of the Swamp Land Act of September 28, 1850, requiring that the proceeds of the lands shall be applied exclusively, as far as necessary, to the purpose of reclaiming the same by levees and drains, and it was held that it imposed an obligation resting upon the good faith of the states. The State of Iowa granted its swamp-lands to the respective counties in which they were situated. A conflicting claim arose between Mills County and the B. & M. R. R. Co. In the litigation Mills County insisted that the lands in suit had been disposed of by the State contrary to the proviso above alluded to, and it was not only considered that the State was accorded a discretion as to the manner of disposal of such lands, but it was further determined that

as to whether the State had faithfully performed its duty under the Act of Congress in the disposal of its swamp-lands to the counties was a question between the United States and the State and that the obligation imposed constituted neither a trust following the lands, nor a duty which private parties could enforce as against the State.

In the case of *United States* v. *Des Moines, etc., Co.*, there was a grant to the Territory of Iowa, to aid in the improvement of the Des Moines River, and while the grant was not declared by the Court to be a trust, it was so treated; the territory, afterward the State of Iowa, becoming the trustee to see that the purposes of the grant were properly executed. No *cestui que* trust was intended, but the grant was to the territory, to be appropriated by it to the promotion of a specific improvement.

In *Ashuelot Nat. Bank* v. *City of Keene,* the Court construed the deed, with its accompanying contract, as a grant in trust rather than upon condition, considering all the terms of both instruments, in view of the circumstances under which they were executed. The transaction was, in effect, a conveyance for a charitable use. The city took no beneficial interest in the property, but took it upon trust, to devote the same to public use. The action was not by one claiming as a *cestui que* trust, but by the heirs of the grantor.

So it would seem that these authorities do not support the contention claimed for them.

This brings us to the contention made on the part of the intervenors, which is, that the grant is both a law and a contract—a contract as well as a law; that being such, there is a standing and continuing offer, to which the grantee is a party, to whomsoever may desire to become an actual settler and to purchase a tract of the granted lands not exceeding 160 acres; and that any such person, by a declaration of his purpose and a tender of the purchase price, namely $2.50 per acre, brings himself into relation to the contract, thus making himself a party thereto, and is entitled to the rights of a contracting party to enforce a conveyance to him from the grantee.

In this connection, it is strenuously urged that, by declaring his purpose to become an actual settler and tendering the purchase price, the intending purchaser acquires a vested right in the property, which not only the grantee but the Government also is bound to regard, and of which he can not be divested without his consent, thus entitling him in due course to a proper conveyance. This position is based upon a supposed analogy to the acquirement of vested rights against the Government by pursuing the acts and regulations established for the acquirement of pre-emption and homestead claims to tracts of the public domain. It is therefore well to determine first whether the analogy exists, and, second, whether a vested right can be acquired in some other way.

It is well settled, by a uniform line of decisions, that a settler under the pre-emption statutes of Congress does not acquire a vested right as against the general

Government to appropriate the lands for other purposes, until he has done all that the law requires him to do, including the payment of the purchase money, to entitle him to a patent. When he has performed all these acts, observed all the requirements of the law, and nothing remains to perfect his title but the issuance of a patent, he becomes the equitable owner of the land settled upon, and, being the equitable owner, he is said to have acquired a vested right, of which he can not be divested even by the Government, much less by private parties in any capacity. One of the earlier cases upon the subject is *Frisbie* v. *Whitney,* 9 Wall. 187. It arose in the following manner: Certain supposed grants by the Mexican Government to one Vallejo, comprising a large tract of land in the State of California, were declared void by the Supreme Court. The land thereupon became public domain of the United States. Many persons were at the time occupants of the land, claiming right and title through Vallejo. In order to protect these occupants, Congress, on March 3, 1863, passed an Act for their benefit. Frisbie was an occupant and claimant under this Act. Whitney attempted to enter upon the same land, and claimed settlement thereon. This was prior to the Act of 1863. After his settlement he tendered to the land officers his declaration of intention to occupy and cultivate the land as a pre-emptioner, but was refused. The judgment of the Court followed on these facts, Whitney claiming that he had thus acquired such a right or interest in the land as could not be divested by the Government. After reference to the re-

quirements of the pre-emption acts for acquiring public lands, the Court said:

> "When all these prerequisites are complied with, and the claimant has paid the price of the land, he is entitled to a certificate of entry from the register and receiver; and after a reasonable time, to enable the land officer to ascertain if there are superior claims, and if in other respects the claimant has made out his case, he is entitled to receive a patent, which for the first time invests him with the legal title to the land."

The Court quotes as authoritative, and with approval, the opinion of Attorney General Bates on the subject, as follows:

> "A mere entry upon land, with continued occupancy and improvement thereof, gives no vested interest in it. It may, however, give, under our National land system, a privilege of pre-emption. But this is only a privilege conferred on the settler to purchase land in preference to others. * * * His settlement protects him from intrusion or purchase by others, but confers no right against the Government."
>
> 10 Opinions of the Attorney General, 57.

The next case following *Frisbie* v. *Whitney* is The Yosemite Valley case, 15 Wall. 77. Mr. Justice Field, speaking of the requirements necessary to the acquirement of title under the pre-emption laws, at page 87, says:

> "When these prerequisites (including the payment of the purchase price) have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he can not be subsequently deprived. * * * The United States by those acts enter into no contract with the settler, and incur no obligation to any one that the land occupied by him shall ever be put up for sale. They simply declare that in case any of their lands are thrown open for sale the privilege to purchase them in limited quantities, at fixed prices, shall be first given to parties who have settled upon and improved them. The legislation thus adopted for the benefit of settlers was not intended to deprive Congress of the power to make any other disposition of the lands before they are offered for sale, or to appropriate them to any public use."

Without following the line of authorities further, it is sufficient to say that the doctrine has since been several times reaffirmed.

> *Shepley* v. *Cowan,* 91 U. S. 330;
> *Atherton* v. *Fowler,* 96 U. S. 513;
> *Wirth* v. *Branson,* 98 U. S. 118.

This as between the settler and the Government.

As it relates to grants in aid of railroads and for internal improvements, there are numerous decisions determining when a pre-emption or homestead claim attaches, or at what period of time in the acquirement of

such a claim the land has become appropriated, having in view the language of each particular Act, denoting the exceptions from the grants. Thus in *Kansas Pacific Railway Co.* v. *Dunmeyer,* 113 U. S. 629, it was held that the claim of homestead had attached when a homestead entry was made upon the land, and, having been made prior to the filing on the part of the railway company of its map of definite location, the land covered was excepted from the grant by the words "Not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached."

A like ruling was had in *Hastings, etc., Railroad Co.* v. *Whitney,* 132 U. S. 357, where the exception was of lands to which "the right of pre-emption or homestead settlement has attached." What is meant by a homestead entry is there explained. It is not a simple entering into possession or occupation of the land, but three things must concur to constitute an entry on public lands: First, the applicant must make an affidavit setting forth the facts which entitle him to make such an entry; second, he must make a formal application; and, third, he must make payment of the money required. "When," says the Court, "these three requisites are complied with, and the certificate of entry is executed and delivered to him, the entry is made—the land is entered." (12 St. 392.)

In *Maddox* v. *Burnham,* 156 U. S. 544, it was held that the mere occupation of public land, with a purpose

at some subsequent time of entering it for a homestead, gave the party so occupying no rights against the railway company.

It is true that a man refused his right of entry by the officers of the local land office will not be deprived thereby of his priority in right. *Ard* v. *Brandon,* 156 U. S. 537. But the principle has no bearing upon the question as to what constitutes a valid homestead entry.

In *Northern Pacific Railroad* v. *Colburn,* 164 U. S. 383, 386, the Court says:

> "But frequent decisions of this Court have been to the effect that no pre-emption or homestead claim attaches to a tract until an entry in the local land office."

And further, quoting from *Lansdale V. Daniels,* 100 U. S. 113, 116:

> "Such a notice of claim or declaratory statement is indispensably necessary to give the claimant any standing as a pre-emptor, the rule being that his settlement alone is not sufficient for that purpose."

In *Tarpey* v. *Madsen,* 178 U. S. 215, 225, it was added:

> "And the acceptance of such declaratory statement, and noting the same on the books of the local land office, is the official recognition of the pre-emption claim."

So that it was finally adjudged that the question

whether a homestead or pre-emption had attached as it respects the filing of a map of definite location must depend upon the record in the land office.

In line with the foregoing decisions, this Court has held (*Eastern Oregon Land Co.* v. *Brosnan*, 147 Fed. 807), that a mere settler, who had made no filing on the land under the land laws, was not an appropriator within the exception of the grant, but that where such a settler was in occupancy under a pre-emption or homestead claim duly filed, there was an "appropriation."

These authorities illustrate and determine the point of time when rights are acquired by settlers, that give them superiority over grants made in aid of railroads and internal improvements, under the usual exceptions from the grants. Whenever it occurs that there has been an entry of a homestead, or a proper notation in the land office of a pre-emption application, so that there appears a record of the initiatory steps to obtain such a claim, then it may properly be said that the claimant acquires a vested right as against the person or corporation claiming under such grants, but not until then.

So much for vested rights in this relation.

As between contesting claimants of homestead or pre-emption rights, a still different rule obtains. The first in occupancy of the land, with a bona fide intention or purpose of appropriating the same under the laws and regulations providing therefor, has the better and superior right. As was said in *Atherton* v. *Fowler*, *supra*:

> "During this preliminary period he had no vested right to the land; but, as we have elsewhere decided, he did thus acquire the right of preference in the purchase. That is to say, if he made the necessary settlement and improvement, and the necessary declaration in writing, no other person could buy the land until the period elapsed which the law gave him to pay the purchase-money."

And again in *Tarpey* v. *Madsen, supra*:

> "So that any controversy between two occupants of a tract open to pre-emption and homestead entry is not determined by the mere time of the filing of the respective claims in the land office, but by the fact of prior occupancy."

In a sense the prior occupant has a vested right, but only as against another claiming under the same statutes. And so "vested right" is a relative term, depending for its acquirement upon the particular claim that is put forth.

I have thus developed the subject for present application, but before coming to that, it will be instructive to examine another case confidently relied upon by counsel for interveners. It is *Jumbo Cattle Co.* v. *Bacon*, 17 S. W. 136. A statute of Texas, with its amendment, provided for the sale of State lands at fifty cents per acre to any responsible person who would make application therefor and survey the same. In pursuance thereof, parties made regular application to purchase certain State lands, caused survey to be made, paid the

fees therefor, together with the fees for recording, and tendered the purchase price. Under this state of facts, it was determined that the applicants acquired a vested right in the land, and that their interest thus acquired was not affected by a subsequent act repealing the statute under which the applicants proceeded. In the course of the decision the Court said:

> "When there is an offer made by the Act of the Legislature, which is accepted by an individual, there is a contract which it is not within the power of the State to impair. * * * The expenses of the surveys, in connection with the price to be paid to perfect the title, are sufficient consideration to support the contract."

This case is truly illustrative. There must be an offer to sell on some terms, and there must be an acceptance of the offer on the terms proposed, before there can be a meeting of minds, or any contractual relations can arise. The Government has granted certain lands to the railroad company under a provision that the grantee shall sell to "actual settlers." The grant, however, is not accompanied by an offer to sell. Surely the Government makes no such offer. Being a law as well as a grant, the act directs that the grantee shall sell. But suppose the grantee refuses to obey the law, is there, notwithstanding, an offer on its part to sell? Does the law make the offer for it? There might perhaps have been some grounds for so holding if the railroad company had been accorded no discretion in the

matter, and was simply required to perform a mere ministerial service in executing deeds to such actual settlers as should come and pay it the maximum price of $2.50 per acre. But it has a discretion. It may sell in less than 160 acre tracts and for less than $2.50 per acre. So who shall say that, by reason of the law alone, it has offered to sell in tracts of 160 acres, and for $2.50 per acre, so that any actual settler may purchase upon those terms. It has the right to sell upon those terms, but the law does not make any such offer for it. While the Act is a law unto the grantee, it binds no one else. It is not an offer to sell to actual settlers. The general Government withdrew these lands from the public domain, and from sale and settlement, under its administration, when it made the grant. Prior thereto the Government's offer of sale was through the pre-emption, homestead, and other acts providing for the disposal of the public domain. No party could acquire any vested right as against the Government, or as against railroad or other grantees, under exceptions favoring the settler, or as against adverse claimants, without a compliance with the acts and under the rules and regulations of the Land Department. The acts for the disposal of the public domain constitute standing offers of sale upon the terms designated, to any who are disposed to accept them and qualify themselves to become purchasers. But the acceptance consists in acceding to the terms of the offer, and no vested right can arise except by a compliance with the terms laid down.

For the due and orderly administration of the dis-

posal of the public lands, through the pre-emption, homestead, and other acts according the privilege and right of purchase, regulations are established by the Land Department, and a code of rules adopted under authority of Congress, until a complete and thorough system of administration and judicatory has been established, by which to serve the demands of purchasers and claimants, and to determine and settle adverse interests as they arise. Experience has demonstrated the necessity for such a system of administration to subserve and preserve the interests and rights of purchasers. By the grant in question Congress has withdrawn a considerable body of the public domain from sale and disposal by the Government, so that those lands are no longer offered under the pre-emption, homestead, or any other law of Congress unless it be under the Act making the grant. But the grant, as we shall presently see, is one conveying title, so that the Government is without further right or power of disposal. Congress has not attempted to regulate the sale of this large body of land in any way, but has simply declared that the grantee shall sell to "actual settlers." Having thus withdrawn these lands from the public domain, and from sale and disposal through the Land Department, and having granted them to the railroad company with a bare declaration that the grantee shall so sell the lands, without attempting in any way to prescribe the manner of sale, or to provide rules or regulations for the administration of the disposition of the grant, seems to me plainly to evidence an intendment that the grantee should itself

administer the disposal of the grant, and should proceed about it in its own way and manner. As previously observed, a command to the company that it shall sell, or even an agreement to sell by the company with the Government, cannot be construed in any way as an offer to third parties to sell. A breach of the law or obligation would entail its penalties as per the intendment of the law or contract, but the grantee would incur no liability to a person not a party to the compact.

It has been held that, where one party has paid money to another for the benefit of a third, or has paid a consideration for which a third party was to receive some benefit, the third party has a right of action directly against the party receiving the money or consideration. That rule can have no application here, because, if for no other reason, it is not known who the third party is. The land is to be disposed of to no specific person, but to actual settlers, in quantities not greater than 160 acres to each person—a great class of persons —and it was not intended that the bounty should be distributed among the entire class; no single third party can come forward and demand any specific tract of land from the company. This demonstrates the difficulty of selling to actual settlers without the adoption of some rule or regulation for determining who are actual settlers, and to test their good faith. In fact, in the administration of the sale of this grant, the grantee is given considerable discretion. It may require actual settlement upon the tract selected, it may require reasonable improvements; and it may require residence

for a reasonable time to insure good faith. It might regulate the payments, requiring cash in hand, or deferred payments; it might regulate the quantity of land to be sold to each person, not exceeding 160 acres to any one person; and it might regulate the price, not to exceed $2.50 per acre. Indeed, it has a reasonable discretion as to when it shall open up the lands to occupancy and settlement, so that the lands may be disposed of to its advantage, as well as to the advantage of the settlers. How can it be said, then, that Congress has made the offer of sale, to which the grantee has acceded, and therefore that any one, coming forward asserting himself as intending actual settlement, and tendering the price, concludes a bargain with the grantee for the purchase of 160 acres of land? Such was not the intendment or purpose of Congress, and such is not the effect of the grant. Nor is the person claiming to be a settler, who has gone upon the land and is in occupancy of the tract selected, in any better position. There can be no purchase, either by right of settlement or otherwise, until the grantee or its successor has offered the lands for settlement and sale.

It is hardly to be questioned that the Act of 1866 in its original cast contemplated a granting to the railroad company designated by the Legislature of the State of Oregon, of the entire fee to these lands, accompanied with only two conditions, namely, that assent to the act should be filed with the Secretary of the Interior within one year from its passage, and that the road should be completed within the time designated in section six.

There were to be no other limitations of the estate in any way, and if the conditions mentioned were complied with, the railroad company would be vested absolutely with an unconditional title. This it could sell or dispose of as it saw fit, and in any way or manner that might seem best for its individual purposes. As the clause limiting sales to 160 acres to one person, etc., was not then in the minds of Congress, the intendment of the original act, of course, could not have been the same as with the amendment added. Amendments change intendment. That is the very purpose for which they are made—to give new or modified expression to the will and purpose of the Legislature. Amendments are not only effective for adding a new purpose to the old Act, but they may reach back and give new cast and intendment as well. The amendments becoming part of the Act itself, the whole must be construed together, as the original Act would have been construed as one, harmonizing any seeming repugnance or incongruity, if possible, and so expounding as to give effect to every part. Logically, therefore, the intendment of the entire Act as amended would differ from the original just so much as it was the legislative purpose to change it.

It is earnestly and stoutly urged that, as the lands were granted avowedly for the purpose of aiding in the construction of the railroad, and to secure the safe and speedy transportation of the mails, munitions of war, etc., and it being specifically directed that such lands should be applied to the building of the road, the primary and paramount purpose of the grant was the con-

struction of the road and telegraph line, and that th
sale of the lands to settlers was meant to be secondary
subordinate and subservient thereto. The lands them
selves could not well aid in the construction, or be ap
plied to the building, unless they could be disposed of o
mortgaged, and the proceeds arising therefrom put t
use in meeting the expense incident to such constructio
or building. Therefore, it is argued that there was con
ferred along with the grant the implied authority to se
the granted lands, or any portion thereof, and the righ
to mortgage the fee thereof for the purpose of obtai
ing the means with which to carry on the work, and tha
the provision relating to the sale of the lands to settler
being subservient to the paramount purpose, was in
tended as a directive regulation only, and not bindin
upon the company either as a covenant or a conditio
Reliance is placed upon *Platt* v. *Union Pacific R. R. Co*
99 U. S. 48, in support of this position. This case wa
concerning the Union Pacific grant, made by Act o
Congress of July 1, 1862, as amended by Act of July
1864. The grant there, as here, was for the purpose o
aiding in the construction of a railroad, etc., but it con
tained a provision that "All such lands so granted *
* which shall not be sold or disposed of by said com
pany within three years after the entire road shall ha
been completed, shall be subject to settlement and pr
emption like other lands, at a price not exceeding $1.2
per acre to be paid to said company." The seventh se
tion of the Act required the road to be completed b
the first day of July, 1874. The road was so complete

and patents to all the lands granted were directed to be issued to the company in November of that year. Long prior thereto, however, to wit, on April 16, 1867, the company executed a mortgage hypothecating all the lands granted to secure the payment of certain coupon bonds amounting to $10,400,000. The plaintiff in said cause filed his declaratory statement upon a quarter-section of the land as a pre-emptor, September 21, 1878, more than three years after the completion of the entire road, made proper proofs and tendered the purchase money, and the question presented for consideration was, whether he was entitled to such quarter-section as against the railroad company. The question turned upon the single inquiry whether the execution of the mortgage was a disposal of the land, and it was decided that it was, so that the quarter-section in question was not subject to pre-emption at the time of filing plaintiff's declaration thereon. On the argument, it seems to have been urged that the interpretation given by the Court to the words "sold and disposed of" was repugnant to the governmental policy of guarding against monopolies of public lands by single holdings. Answering this, it was conceded by the Court that Congress even then had that policy in view, when it declared that the lands not sold or disposed of within three years after the road was completed should be subject to settlement, but it was said that such policy "was manifestly subordinated to the higher object of having the road constructed, and constructed with the aid of the land grant." All this in support of the Court's position that a mort-

gaging of the lands was tantamount to a disposal thereof, and that this particular quarter-section had been disposed of within the intendment of the grant at the time it was attempted to pre-empt it. That is to say, the paramount object of Congress being to secure a construction of the road, it was rather to be assumed that it intended to permit the granted lands to be disposed of by mortgage, thereby providing the necessary funds for construction. There was no intimation that the clause providing for settlement and pre-emption was inoperative in any way as to any lands that might remain unsold or undisposed of for three years after the road was completed. Quite contrary was the conviction of the Court, for it declares that:

> "The construction gives full effect alike to the paramount and the subordinate purposes of the Act."

The grant, without words of restriction or limitation of title, would unquestionably authorize the grantee to sell, mortgage, or otherwise dispose of lands comprised thereby, as it might see fit, for a person is entitled to do as he pleases with his own, so that he does no wanton injury to another. But if the grant does carry with it a restriction or limitation, then it must needs be given effect accordingly. Such must have been the view of the Court in the Platt case, for it says, in further argument in support of its position as to the significance of the words "disposed of":

> "No limitation was set to the quantity of land

which the company might sell to single associations, or single persons. It was left at liberty to sell, if it could, to any land association or private purchaser, the entire body of the lands or any lesser quantity, regardless of the general legislative policy. * * * With that power no pre-emptor was authorized to interfere." That is, if sold at any time within three years after the entire road was completed.

It is quite probable that the paramount purpose of Congress in making the grant in question was to secure the construction of the road, and we might well let it be so conceded. It by no means follows, however, that that purpose has rendered inoperative and nugatory for any effective use any succeeding clause in the Act, or that it renders any the less effective any limitation that may have been reserved as to title, or any restriction that may have been imposed as to sale of the lands. That the grant was in aid of the road, and to be applied to the construction thereof, does not argue that the lands were to pass in absolute fee simple, with no restriction or limitation. If Congress had so desired, it could have granted but half the amount of lands that it did, or could have granted the even sections instead of the odd, or could have withheld any indemnity for lands previously settled upon, or otherwise disposed of. It might have granted an estate for years only in the lands, or the timber thereon, reserving the lands, as it did in fact reserve the mineral lands. And so, without question, it might have made the grant upon any valid condition that it desired to annex, be it precedent or subsequent, and

yet the estate, whatsoever it was that was in reality granted, would go in aid of construction, and the grantee would be bound so to apply it. It would simply have to deal with the estate, whatever its quality or quantity, that it had been given for raising funds with which to meet the expenses of building. So the fact that lands were granted in aid of construction, and were required to be applied in building the road, is not antagonistic to the idea of a condition subsequent attending the grant, if such was the purpose of Congress. Manifestly the fee simple absolute would have been a more valuable and available asset, but if Congress did not choose to grant such a bounty, believing that the lesser estate would be adequate for the purpose, that would end the controversy, and it is sufficient to find out the intendment of Congress in that relation.

In this connection, it should be noted that Congress fixed the price of Government lands lying within the limits of the grant, being the even numbered sections, at double the minimum price of public lands outside, and reduced the quantity of land to which the homestead settler was entitled to eighty acres. The Act of thus regulating the price of Government lands within the railroad limits was an incentive and inducement to the company to dispose of its lands to settlers also, and was in harmony with the provision later annexed by amendment requiring it to sell to actual settlers only, at a price not to exceed double the minimum namely, $2.50 per acre, while it was left at liberty to sell for less if at any time it so desired. Without the amendment, how-

ever, and whatever may be its effect, the company was not restricted in any way as to the manner of its disposal of the grant. But the intendment of an amended Act may be very different, as I have previously observed, from that which signalized the original.

It is worthy of remark in passing that the Government not only granted the lands, but gave the right of way over such of the public lands as the road might pass through, together with all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, etc., and so much of the timber on mineral lands as should be required to construct the road over said lands—not an inconsiderable bounty—and all in aid as well of the construction of the road and telegraph line.

The Government was to receive a consideration for its grant, namely the transportation of its mails, troops, munitions of war, etc. This in a purely private grant, where technical words appropriate to the creation of a condition subsequent are wanting, would evidence an intendment not to create such a condition. But where technical words are in fact employed, and the grant is by the Government, being public in nature, other considerations apply, and these facts should be taken into account, along with all other matters attending the adoption of the Act, in endeavoring to ascertain the intendment of Congress.

Patents were to be issued as the road was completed, section by section of twenty miles each, for the lands

granted to the extent of and coterminous with the completed sections. This was another incident of the grant. The patents became simply evidentiary of title, while they operated as further assurances thereof. The grant, that is, the Act of Congress making it, yet remained the railroad company's primary and essential muniment of title, to which reference should always be had for the quantity and quality of the estate granted and the terms and conditions attending it. The provisions for patenting the grant are usual to most grants in aid of railroad construction, and throw no particular light upon the purpose of Congress in limiting the sale to settlers only.

Congress reserved the right and authority to enter into possession of the road in case the railroad company should fail at any time to keep the same in repair and fit for use, and, after assuming control, to repair it as needed. To meet the expenses thereof, it was empowered to devote the income of the road thereto, or it might fix pecuniary responsibility not to exceed the value of the lands granted. The purpose of this provision is plain. It was to insure the up-keep of the road, so that its use would be at all times available to the United States for the transportation of mails and troops, munitions of war, etc. This enhances the consideration which the Government received, and is continuously to receive for its bounty, and speaks favorably of an intendment to grant an absolute title, for the larger the consideration the greater one would assume would be the value of the thing given for it.

The requirement to operate the road throughout its

two divisions without discrimination as to rates and time of service was simply meant to afford compensation, either to the Government or to the public for any damages sustained in this relation, and has no particular bearing upon the question in hand.

It was further required that the company should file its assent within one year, and complete the first section of twenty miles within two years (extended by the amendment of June 25, 1868, to eighteen months after the passage of that Act), completing the entire road on or before July 1, 1875 (extended by the amendment to July 1, 1880). These were conditions subsequent, rendering the Act null and void in case of failure to comply with the requirements, and subjecting the grant to reversion to the Government.

It is argued with much force that, having made such specific provisions for a forfeiture of the lands for non-observance of these provisions, Congress, if intending to annex a condition subsequent by the provisions of the amendment of April 10, 1869, under consideration, would have been equally specific in language, so that there would be no doubt as to its real purpose. To this argument, there are reasons contra. The amendment was adopted at another and a later session of Congress, when Congress was addressing itself specifically to the one object, while reviving the grant, that of devoting the lands ultimately to use and acquirement by actual settlers.

The provision contained in the amendment of April

10, 1869, that nothing therein should impair any rights previously acquired by any railroad company under the original Act, has been commented upon sufficiently heretofore, and its purpose expounded.

This epitome of the provisions of the Act of 1866, with its amendments, will suffice for inference and deduction as it respects the intendment of Congress in annexing the Actual Settlers' Clause.

At the time of the adoption of the Actual Settlers' Clause as an amendment, it was, as we have seen, the firm policy of Congress to dispose of its public lands to settlers, while as yet it had not entirely abandoned the policy of making donations in the way of grants to railroads. The purpose of Congress in requiring railroad grants as well as the public domain to be disposed of to actual settlers, is aptly and strongly emphasized by the clause under consideration; and can any one doubt that it designed to make its edict in that behalf effective? The debates in Congress while a like proviso was earlier under consideration show unmistakably what the individual members thought of it, and the course the legislation took, to my mind, indicates quite as clearly the intendment of Congress itself. It will be recalled that Mr. Lawrence, in moving an amendment to the Denver-Pacific Railroad bill, which is in effect the same as the one under consideration, in connection therewith proposed further that the Secretary of the Interior be authorized to prescribe rules for carrying the enactment into effect, while Mr. Logan purposed making the lands

subject to entry at the Government Land Office, the price thereof at the rate of $2.50 per acre, to be deposited in the Treasury of the United States as a sinking fund for the redemption or purchase of the bonds of the company, so far as it was adequate. Congress, however, declined to incorporate either of these ideas into its legislation, but did adopt the Julian amendment in their stead; and this identical amendment was later incorporated in the Act of July 25, 1866. The result was that the grantee company was liberated of all governmental control over the administration of the grant, and was left free to dispose of the lands in its own way, in pursuance of the terms of the amendment. This fact rather emphasizes than detracts from the obligation of the company to observe the letter of the law, and is in disparagement of the idea that it was to exercise a discretion only in the premises. It may have been, and presumably Congress was influenced by the thought, that the company had the discretion to dispose of these lands in less quantities than 160 acres, and at a price less than $2.50 per acre, if it should so desire. However this may be, the effect was to give such a discretion in that way. This was an advantage to the company, for it operated to enable it to dispose of the grant more expeditiously. Along with this idea was another operating to the benefit of the railroad company. Congress, while pursuing its policy of disposing of the public domain to settlers, increased the price under pre-emption, and decreased the amount by half that the homesteader was entitled to take, thus conceding to the company equal advantage

with the Government, and even the privilege of underselling it. The legislation was, however, not without benefit to the Government also, for it was assumed that the construction of the road would open up the lands to settlement and occupation along its course, through the increased facilities for transportation that would thus be afforded. It is quite contrary to the purpose of both Congress and the company itself to say that actual settlement was not in contemplation of the parties. While a considerable portion of the Willamette Valley was then occupied by early settlers under the old Donation Act, yet it was with keenest anticipation of the settlement and upbuilding of the territory along the line that the road was authorized and constructed. Mr. Julian's words were strongly expressive of the purpose of the amendment, as well as of the expectation of those concerned, when he said:

> "This will avoid complete monopoly of the lands, as sanctioned by the old system of land grants, and at the same time devote to settlement and tillage the odd numbered sections granted, while creating in this way established communities and a local business along the line of the road."

The amendment was in its nature a revival of the grant, Congress and the promoters of the company both believing that the grant had lapsed; and as the original grant was of the fee, the revival was effective to restore it in fee, but with the provisions in question subjoined. This argues with conclusive force against the idea of a trust. Congress did not take the lands back and regrant

them, but in effect revived the old grant with limitations. So that, taking into consideration the course of the legislation resulting in the adoption of this amendment, and viewing it in the light of contemporaneous conditions, it would seem that it was the firm purpose of Congress to impose upon the grantee a positive and mandatory obligation and duty to observe the behests of the amendment.

The amendment contains apt words of a condition subsequent, namely, "Provided that" and "only." It does not contain a clause of re-entry. It is quite sufficient, as we have seen, if it contains the one without the other, if from the entire Act the intendment to create a condition subsequent nevertheless appears. Indeed, neither words of condition nor a clause of re-entry is indispensable to the creation of a condition subsequent. It is yet sufficient if it otherwise appears that such was the purpose of Congress. In this relation, the Act is to be construed as a law, which is the voice of command, not of privilege or discretion, and the grant itself is to be construed most strongly against the grantee and in favor of the Government. The grant is a private one, and not by nature general and public, and the limitation placed upon the sale of the lands is in no way repugnant to the grant. These matters are to be considered along with all the provisions of the original act, as well as of the amendments, the analysis of which as it relates to the question in hand I have given. And upon the whole, giving efficacy to all the provisions of the grant, I conclude that the amendment in question imposed

thereon a condition subsequent, for a breach of which on the part of the grantee company the lands would be subject to forfeiture to the United States. See *Nicholas* v. *Southern Oregon Co., supra,* and *Warrior River Coal & Land Co.* v. *Alabama State Land Co., supra.*

Further than this, either this provision is purely a covenant, or, as is contended by defendants' counsel, a mere directive regulative covenant carrying with it no duty or obligation on the part of the grantee to do what the terms of the grant or the law, or the contract if so termed, plainly declares it shall do, depending entirely upon its own volition, and discretion, or it is something more. As a covenant purely, the Government has no such interest therein as will afford it any relief whatsoever, as it could lose nothing by maladministration of the grant. Was such the intendment of Congress, that the Government should thus be left remediless, no matter how flagrant might be the violation of the terms of the provision? If so, the proviso might just as well have been omitted *in toto,* as it is thus rendered a dead letter, without force or effect, and with scarcely a purpose or design. It means nothing, and requires or compels nothing. In the case of *Mills County* v. *Railroad Companies, supra,* it is true the Supreme Court held, with relation to the swamp-land grant as extended to the State of Iowa, that it imposed an obligation and discretion, resting in the good faith of the State, as respects the application of such lands for the purposes designated in the grant. That, however, was a grant to the State, which had a purely public interest to subserve. I have

been referred to no case where a purely private grant has been so construed, although in aid of the construction and maintenance of a public utility.

It is highly reasonable that Congress intended no such idle ceremony. Rather should we suppose that the proviso, annexed by specific amendment as it was, was designated to be a positive, efficient, and living condition, to be faithfully and punctiliously observed, with substantial and remedial consequences to follow a deliberate and wilful infraction thereof. This could only be, as the provision does not create a trust, by entailing forfeiture for the infraction. I am not making this deduction *ab inconvenienti,* but because it is impossible to believe that Congress intended anything else. Leaving itself remediless upon the hypothesis of a covenant, it must have intended that the general Government should have right of enforcement for non-compliance with the law by forfeiture of the grant.

It was the intendment of Congress that the railroad company should administer the grant in its own way, but that it should sell to actual settlers in quantities not greater than 160 acres to any one purchaser, and at a price not exceeding $2.50 per acre. It could sell in less quantities, and for a less price. The mandate of the law is that the "lands granted * * * shall be sold." This imposed upon the grantee the obligation to dispose of the lands, for it was the purpose that all the lands along the line of the road, both the granted lands and the public domain, should be opened to occupancy and set-

tlement. Senator Williams and others were of the view, as it respects the West Side, that "The lands granted are as open under the provisions of this bill to actual settlers as they are under the pre-emption laws of the country." While Senator Vickers maintained that the grant "was expressly upon the condition that the lands are to be sold to actual settlers."

I am of the opinion, however, while it was designed that the lands covered by the grant should be opened to settlement, and this was made incumbent and compulsory upon the railroad company, that until it was done and the company offered the lands for sale, no one could acquire any vested right therein, because, as I believe, the administration of the grant in disposing of it to settlers was reposed wholly in the railroad company. No time is named when the lands shall be sold, but this does not detract from the obligation to sell—to put the land upon the market. The company was required to enter upon its administration of the grant under the Act within a reasonable time, taking into consideration the attending circumstances and conditions, and for a violation of duty in this regard the grant would be subject to forfeiture. Possibly the company could mortgage the grant in its entirety, but it would necessarily be subject to the condition subsequent attending it, and the mortgagee could acquire no greater interest.

These considerations render it unnecessary to consider further the defendants' eighth point of contention.

As it pertains to the West Side grant, or that of

May 4, 1870, while the provision relating to actual settlers does not contain the same words indicative of a condition subsequent as the amendment to the East Side Grant, the provisions of section five show very clearly the purpose of Congress. A sinking fund was there provided for, to consist of the net proceeds of the sales of the granted lands, which were to be set apart and appropriated, through a mortgage or deed of trust to two or more trustees, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road, depots, stations, side-tracks, and wood-yards, not exceeding $30,000 per mile of road, payable in gold coin not longer than thirty years from date; and it was declared that no part of such fund should be applied to any other use until all of such bonds were purchased or redeemed and canceled. Thus it was contemplated that the lands were not to be hypothecated, with the road and its equipment, for raising funds generally, but were to be disposed of under the provisions of the Settlers' Clause, the proceeds thereof going into the sinking fund, to be disposed of as above indicated. In this way, and in this way only, the lands were to be used in aid of the construction of the railroad and telegraph line. As Senator Williams said in the Senate: "The entire object of this section is to make the grant insure the purpose contemplated by the bill, that is, to aid in the construction of the road, providing that the net proceeds of the land granted shall be invested and set apart to secure the bondholders who may advance money for its construction." This does not

comport with the idea that the grant was of the entire fee, without condition, entitling the company to sell at any price, and to receive the proceeds to its own use, whether above or below the price fixed by the Act. It does not, therefore, seem reasonable that Congress designed that these provisions should be merely directive and regulative, to be observed or not within the discretion of the grantee.

Under the theory of counsel for defendants that the Settlers' Clause constitutes "a mere directive covenant," the Government would logically, and quite naturally, possess a nominal interest only in the grant, and hence could not enforce the obligation. The argument, while unsound, in my opinion, affords the most cogent reason for inducing the belief that Congress had no such purpose in view. Upon the other hand, it intended that the legislation should be effective, and in view of the rules of construction, which have been previously discussed, the known policy of Congress relative to the disposition of the public domain, and the attending conditions, I am firmly impressed that it was the intendment of Congress to impose a condition subsequent by the adoption of the Actual Settlers' Clause in this Act, as well as by the April 10, 1869, amendment to the Act of July 25, 1866.

We next come to the question urged that the suit cannot be maintained as one to enforce forfeiture nor to quiet title, because (1) the Government has not declared forfeiture; (2) the fact of forfeiture has not been adjudicated by a court of law; and (3) the defendant

ilroad company holds the legal title and possession.

It is not, nor can it be, claimed that the Government as not the same rights and remedies accorded to a pri-ate person for a forfeiture of a grant for good cause xisting. *Atlantic and Pacific Railroad* v. *Mingus,* 165 . S. 413. The essential and particular contention of ounsel for defendants is, that they are entitled to a ommon law proceeding in the determination as to for-eiture, and that this contemplates a trial by jury and ot a proceeding in equity. Further, that equity is ithout jurisdiction to enforce a forfeiture, nor would exercise such jurisdiction.

It is wholly unnecessary that I trace the history of ffice found and determine with nicety its common law urposes, as the decisions of the Supreme Court have ealt with the subject by no uncertain deduction, and ut slight reference need be made to authorities beyond hese decisions. One thing is certain, that the jury there ummoned, and before whom the issues were ascertained nd determined, was not the common law jury before hom a citizen has right in law and under Magna harta, and under the Constitution of this Government, o demand trial where his liberties or his rights, whether f person or property, are drawn in question. It has o relation to the great and long revered right of trial y jury. Blackstone's definition of inquisition or office ound proves this. It is "an inquiry made by the king's fficer, his sheriff, coroner, or *escheator, virtute officii,* r by writ to them sent for that purpose, or by commis-ioners specially appointed, concerning any matter that

entitles the king to the possession of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve or less, or more. * * * These inquests of office were devised by law, as an authentic means to give the king his right by solemn matter of record; without which he, in general, can neither take nor part from anything. For," continues the author, "it is a part of the liberties of England, and greatly for the safety of the subject, that the king may not enter upon or seize any man's possessions upon bare surmises without the intervention of a jury."

3 Blackstone, 258, 259.

It was a procedure peculiarly adapted for the king's use, and the important thing about it was that a record might be made and entered whereon the king could base his right to possess himself of the lands, goods, and chattels of his subject; and as it respects lands, the office found put him into immediate possession, without the necessity of a formal re-entry. Although its frequent use was for the determination of attainder, escheats, and breaches of conditions annexed to grants, and the like, the record was not conclusive, and the subject was yet entitled to a trial suitable at common law for the final determination of his rights. A good illustration is found in escheats, and the procedure is thus stated by Mr. Justice Gray, in *Hamilton* v. *Brown,* 161 U. S. 256, 263:

"The usual form of proceeding for this purpose was by an inquisition or inquest of office before a

> jury, which was had upon a commission out of the Court of Chancery, but was really a proceeding at common law; and, if it resulted in favor of the King, then, by virtue of ancient statutes, any one claiming title in the lands might, by leave of that Court, file a traverse, in the nature of a plea or defense to the King's claim, and not in the nature of an original suit. * * * The inquest of office was a proceeding *in rem;* when there was a proper office found for the King, that was notice to all persons who had claims to come in and assert them; and, until so traversed, it was conclusive in the king's favor."

In this country, however, while the Government may invoke the proceeding by nature of inquisition or office found for declaring forfeiture and establishing re-entry, it is not necessary to do so. The same object may be as adequately accomplished by legislative declaration. In one of the earlier adjudications upon the subject of forfeiture in this country (*United States* v. *Repentigny,* 5 Wall. 211, 267), the Court says:

> "We agree that before a forfeiture or reunion with the public domain could take place, a judicial inquiry should be instituted, or, in the technical language of the common law, office found, or its legal equivalent. A legislative Act, directing the possession and appropriation of the land, is equivalent to office found. The mode of asserting or of assuming the forfeited grant is subject to the legislative authority of the Government. It may be

after judicial investigation, or by taking possession directly, under the authority of the Government without these preliminary proceedings."

In a subsequent case it was declared that "Actual entry or office found is not necessary to enable the Government to take advantage of a condition broken."

McMicken v. *United States,* 97 U. S. 204, 217.

If a condition subsequent be broken, the circumstance does not, *ipso facto,* produce a reverter. The estate continues, notwithstanding, until proper and adequate steps be taken to consummate the forfeiture. Where, however, the grant is a public one, "the remedy," says Mr. Justice Brown, in *Atlantic and Pacific Railroad* v. *Mingus,* 165 U. S. 413, 431, "is by an inquest of office or office found, a judicial proceeding but little used in this country, or by a legislative act directing the posesssion and appropriation of the land." After a discussion of the authorities in substantiation of the position, he concludes as follows:

"These cases are not put upon the ground that the United States reserved the right to declare a forfeiture, or even provided expressly for a reversion of title in case of a breach, but upon the general ground that the Government was vested with the same right as a private grantor, upon breach of a condition subsequent, though such right was, from the necessities of the case, to be exercised in a somewhat different manner, viz., by legislative act instead of re-entry."

"But while we think the practice of forfeiting by legislative act is too well settled to be now disturbed, we do not wish to be understood as saying that this power may be arbitrarily exercised, or that the grantee may not set up in defense any facts which he might lay before a jury in a judicial inquisition. It would comport neither with the dignity of the Government nor with the constitutional rights of the grantee, to hold that the Government by an arbitrary act might divest the latter of his title when there had been no breach of the conditions subsequent, or when the Government itself had been manifestly in default in the performance of its stipulations. The inquiry in each case is a judicial one, whether there has been, upon either side, a failure to perform, and it makes but little practical difference whether such inquiry precedes or follows the re-entry or act of forfeiture."

In a later case—*New York Indians* v. *United States*, 170 U. S. 1, 24, the same eminent jurist says:

"A distinction is drawn by the authorities between the case of a private grantor, who may reenter in the case of the breach of a condition subsequent, and the Government, which can only repossess itself of lands by legislative or judicial action."

In *Columbia Valley R. Co.* v. *Portland & S. Ry. Co.*, 162 Fed. 603, 606, the Circuit Court of Appeals for the Ninth Circuit, speaking through Gilbert, Circuit Judge,

of the purpose of legislative action, says:

> "It is the 'legislative assertion of ownership of the property for breach of condition.' It is itself the entry of the grantor for condition broken."

See further:

Schulenberg v. *Harriman,* 21 Wall. 44, 63;

Farnsworth et al, v. *Minn. & Pac. R. R. Co.,* 92 U. S. 49, 66;

McMicken v. *United States,* 97 U. S. 204, 217;

Van Wyck v. *Knevals,* 106 U. S. 360, 368;

Bybee v. *Oregon & California R'd Co.,* 139 U. S. 663, 674;

United States v. *Tennessee & Coosa R'd,* 176 U. S. 242, 256;

United States v. *Northern Pacific Ry. Co.,* 177 U. S. 435, 441.

Office found for the King put him into immediate possession, without the necessity of a formal entry. So it seems in case of a legislative declaration of forfeiture for breach of condition subsequent, "It is itself the entry of the grantor." But, notwithstanding the entry, whether through office found or by legislative edict, the grantee is by no means precluded. It may be that it has the effect to change the manner of further procedure by putting the grantor into possession, so that it would have to proceed in equity to quiet title, rather than by action in ejectment; but the grantee resisting, it needs yet the adjudication of a Court of competent

jurisdiction to terminate the controversy as to the right of forfeiture. The legislative edict determines no fact, except that it is an assertion of an election to re-enter for breach, and adjudicates nothing.

Now, the Government not having re-entered for breach of condition subsequent, it is urged that the defendants are entitled to a jury trial as to the fact of breach and forfeiture, and that equity will not entertain cognizance to enforce a forfeiture. Further than this, that equity is without jurisdiction to determine the cause, because the Government has an adequate remedy at law, by ejectment, for possession.

Answering the first proposition, it is quite true that the right to have controverted questions of fact, in common law causes, decided by a jury remains, but it is none the less true that matters cognizable in equity may be and generally are tried without the interposition of a jury.

> *North Pa. Coal Co.* v. *Snowden*, 42 Pa. St. 488, 492.

And I see no reason why, if equitable jurisdiction is called into requisition upon some well established equitable ground, the Court may not try the fact of breach and forfeiture as well as any other fact in the case. We have seen that the jury trial incident to inquisition or office found is not the common law jury trial preserved by Magna Charta and the Constitution of this Government. If equity has jurisdiction to entertain the suit at bar, it has jurisdiction as well to determine

whether breach has been suffered which entails the forfeiture by election of the Government.

There can be no quarrel as to the proposition that the distinction between actions at law and suits in equity is rigidly miantained in the Federal courts. *Anglo-American Land, M. & A. Co.* v. *Lombard,* 132 Fed. 721, 731.

It is quite strongly stated by many of the authorities that equity will not interpose its jurisdiction to enforce either a penalty or a forfeiture, and such may be said to be the general rule. Some of the expressions to be found are as follows:

> "It is a universal rule in equity never to enforce either a penalty or a forfeiture. Therefore Courts of Equity will never aid in the devesting of an estate for a breach of a covenant on a condition subsequent, although they will often interfere to prevent the devesting of an estate for a breach of a covenant or condition."
>
> Story's Eq. Jur. (13 Ed.) Sec. 1319.
>
> "It is a well-settled and familiar doctrine that a Court of Equity will not interfere on behalf of the party entitled thereto, and enforce a forfeiture, but will leave him to his legal remedies, if any, even though the case might be one in which no equitable relief would be given to the defaulting party against the forfeiture."
>
> Pomeroy's Eq. Jur. (3 Ed.) Sec. 459.
>
> "Equity never, under any circumstances, lends

its aid to enforce a forfeiture or penalty, or anything in the nature of either."

Marshall v. *Vicksburg*, 15 Wall. 146, 149.

"Equity abhors forfeitures, and will not lend its aid to enforce them."

Jones v. *Guaranty & Indemnity Co.*, 101 U. S. 622, 628.

See also:

Craig v. Hukill, 37 West Va. 520;
M. & C. R. R. Co. v. *Neighbors*, 51 Miss. 412.

In the last case cited it is further said:

"Nor will the Court be induced to depart from its uniform course, and take cognizance of that question because the jurisdiction is sought on the ground of removal of clouds from the title for the right of the complainants to a dispersion of the cloud is dependent upon a favorable adjudication of the estate, by reason of a breach of the condition."

Yet, notwithstanding these strong statements, there is in the rule a flexibility which the Supreme Court has recognized, for it says, in *Henderson* v. *Carbondale Coal & Coke Co.*, 140 U. S. 25, 33:

"Equity always leans against them (forfeitures), and only decrees in their favor when there is full, clear and strict proof of a legal right thereto."

In the case of *Brewster* v. *Lanyon Zinc Co.*, 140

Fed. 801, determined in the Court of Appeals Eighth Circuit, which was a suit in equity to establish as matter of record the forfeiture of an oil and gas lease, and to cancel the same as a cloud upon complainant's title, in an exhaustive and very able opinion rendered by Mr. Justice Van Devanter, it was declared that:

> "The better view is that the rule is not absolute or inflexible, any more than is every forfeiture harsh and oppressive; that its influence and operation do not extend beyond the reasons which underlie it; and that in cases, otherwise properly cognizable in equity, there is no insuperable objection to the enforcement of a forfeiture when that is more consonant with the principles of right, justice, and morality than to withhold equitable relief."

In *Westbrook* v. *Schmaus,* 51 Kan. 558 (33 Pac. 306), the Court entertained a suit to quiet title, where forfeiture was declared proper; and in *Edwards* v. *Iola Gas Co.*, 65 Kan. 362 (69 Pac. 350), the Court recognized the principle. So in *Brown* v. *Vandergrift,* 80 Pa. 142, 148, which was for the forfeiture of an oil lease, the Court said:

> "In a case like this equity follows the law, and will enforce the covenant of forfeiture, as essential to do justice. It is true as a general statement that equity abhors a forfeiture; but this is when it works a loss that is contrary to equity, not when it works equity and protects the landowner against the indifference and laches of the lessee and prevents a

great mischief."

See also

Glocke v. *Glocke,* 113 Wis. 303

As said by Story, Eq. Jur., Sec. 439:

> "The beautiful character or pervading excellence, if one may so say, of equity jurisprudence is that it varies its adjustments and proportions so as to meet the very form and pressure of each particular case in all its complex habitudes."

The Supreme Court has announced practically the same rule. In *Farnsworth et al.* v. *Minn. & Pac. R. R. Co.,* 92 U. S. 49, 68, that Court says:

> "But it is said that provisions for forfeiture are regarded with disfavor and construed with strictness, and that Courts of Equity will lean against their enforcement. This, as a general rule, is true when applied to cases of contract, and the forfeiture relates to a matter of admitting of compensation or restoration; but there can be no leaning of the Court against a forfeiture which is intended to secure the construction of a work, in which the public is interested, where compensation cannot be made for the default of the party, nor where the forfeiture is imposed by positive law."

A little later the Court quotes from Lord Macles-field, in *Peachy* v. *The Duke of Somerset,* 1st Strange, as follows:

> "Cases of agreement and conditions of the party

and of the laws are certainly to be distinguished. You can never say that the law has determined hardly; but you may say that the party has made a hard bargain."

See also:

Chandler v. *Crawford,* 7 Ala. 506;

Lafayette County v. *Hall,* 70 Miss. 678.

Beyond this, the Federal courts have entertained jurisdiction in equity to forfeit land grants.

United States v. *Dalles Military Road Co.,* 140 U. S. 599;

United States v. *California &c. Land Co.,* 148 U. S. 31;

United States v. *Oregon &c. Railroad,* 164 U. S. 526;

United States v. *Tennessee & Coosa R'd.,* 176 U. S. 242.

In the case cited next to the last the statement shows that it was instituted by bill to quiet title to about 90,000 acres of land in Oregon; and in the last cited that the suit was brought "to forfeit a land grant made to the State of Alabama in aid of the construction of the railroad."

If it be said as to these cases that the Government, by legislative declaration through acts of Congress, had forfeited the grant to all lands lying opposite the unconstructed portions of the roads, whether wagon roads

or railroads, and therefore had resumed title and with it possession, so that the Government was in a position, by being in possession, to interpose its relief by quieting title or removing a cloud, it may be anwered that the grantee's possession was scarcely more than fiction of law, if indeed the Government was not in possession prior to the declaration of forfeiture.

But without this, and conceding that the Government is not in possession of the lands in controversy here, it is scarcely to be argued that the railroad company has possession other than such as may follow any grant. The company is not in absolute or actual possession. It has not planted its feet upon the soil in what is termed *pedis possessio*. The lands in the main are wild and unoccupied, and are such that with reference to them the Government may maintain a suit to quiet the title thereto, or to remove a cloud affecting them injuriously to the Government. The bill of complaint shows quite sufficient for this.

Section 516 of the statutes of Oregon, B. & C. Comp., provides as follows:

> "Any person claiming an interest or estate in real estate not in the actual possession of another may maintain a suit in equity against another who claims an interest or estate therein adverse to him, for the purpose of determining such conflicting or adverse claims, interests or estates."

Under the construction given to the statute by the State Supreme Court, if the plaintiff be not himself in

possession, he must allege and prove that the property is not in the possession of another; otherwise he will be relegated to a court of law, where he has an adequate remedy by action in ejectment. *Moore* v. *Shofner,* 40 Or. 488, 492. And the possession that another holds, to deprive the plaintiff of his suit must be actual as distinguished from constructive possession, the latter being such as follows the delivery of a deed merely. *O'Hara* v. *Parker,* 27 Or. 156, 167.

The equitable relief afforded by State statutes of this nature might be availed of in the Federal courts if they do not go to the extent of depriving the defendant of his right of trial by jury. If, however, plaintiff has an adequate remedy at law, he is compelled to resort to the law forum for his relief. Without a statute, bills *quia timet,* or to remove cloud from a legal title, cannot be brought by one not in possession, because the law provides a remedy by ejectment, which is plain, adequate, and complete. *United States* v. *Wilson,* 118 U. S. 86, 89.

In *Holland* v. *Challen,* 110 U. S. 15, the Supreme Court sustained a suit to quiet title under a statute that permitted the same to be instituted by any person, "whether in actual possession or not," the subject of the suit being "unoccupied, wild and uncultivated land."

In a later case, *Wehrman* v. *Conklin,* 155 U. S. 314, the Court, having under consideration an Iowa statute which purported to enlarge the jurisdiction of equity to quiet title, held that such enlarged jurisdiction, if

sought to be availed of in a Federal Court sitting within the State, could only be exercised subject to the constitutional provision entitling parties to trial by jury, and to the provision in R. S. Sec. 723, prohibiting suits in equity when a plain, complete, and adequate remedy at law exists. But the principle announced in the case of *Holland* v. *Challen* was not disturbed, where neither party was in possession, the subject of the suit being wild and uninhabited land. So that the Oregon statute does not go beyond the principle adhered to in the Federal courts, that the suit will not lie if the plaintiff has a complete and adequate remedy at law.

Further discussion of the subject will be found in *Frost* v. *Spitley*, 121 U. S. 552, and *Whitehead* v. *Shattuck*, 138 U. S. 146.

The remedy at law which will suffice to deprive a Court of Equity of jurisdiction must be as "certain, prompt, and efficient to the ends of justice as the remedy in equity."

Kilbourn v. *Sunderland*, 130 U. S. 505, 514;

Gormley v. *Clark*, 134 U. S. 338, 349;

Davis v. *Wakelee* 156 U. S. 680, 688.

The remedy sought here includes the cancellation of a number of patents, as well as the determination of the question of forfeiture by the railroad Company, and it must be conceded that the remedy at law is not as complete and adequate as in equity.

This brings us to the authority given by Congress for

the institution of this suit. The Attorney General was "authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to" the acts in question granting lands, etc., "and in and by any and all such suits, actions, or proceedings, * * * in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States relating to the subject of such suits, actions, and proceedings, including the claim on behalf of the United States that the lands granted by each of said Acts, respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said Acts which may be alleged and established in any such suits, actions, or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions, or proceedings to assert on behalf of the United States and the Court or Courts before which such suits, actions, or proceedings may be instituted or pending to entertain, consider and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same."

It is plain that Congress did not, by the resolution, declare any of the lands in suit forfeited. It disclaimed

any intention of so doing. But it is equally plain that it did authorize the Attorney General to institute such suit, action or proceeding, as he might deem appropriate to determine the vital question as to whether a forfeiture had been incurred. That is a question that necessarily would have to be litigated in an appropriate proceeding in any event, whether Congress declared a forfeiture in the first instance or not; the railroad company resisting. The declaration of forfeiture does not make it so in fact; and if made contrary to the fact of forfeiture, it could not stand. Otherwise, it would be the most objectionable kind of taking of property without due process of law. The declaration might be effective as a resumption of the grant, and therefore tantamount to a re-entry, so that a suit must recognize the relative positions of the parties as it respects possession; that is to say, that the Government is in possession and the railroad company out. But this rests upon fiction; no such transportation of possession has taken place in fact. However, an election on the part of the Government to forfeit, and thus to resume its grant, may be signified by the bringing of an action or suit for the purpose. The language of Mr. Justice Harlan, in *Schlesinger* v. *Kansas City &c Railway Co.*, 152 U. S. 444, 452, is pertinent.

> "In the case of a public grant, the right of the Government to repossess itself of the estate granted may be asserted through judicial proceedings, or by some Legislative Act showing an assertion of ownership on account of the breach of the condition upon which the original grant was made."

In *Ruch* v. *Rock Island,* 97 U. S. 693, 697, it is said:

> "Bringing suit for the premises by the proper party is sufficient to authorize a recovery, without actual entry or a previous demand of possession."

See, also, *Colwell* v. *Springs Company,* 100 U. S. 55; *Union Pacific Ry. Co.* v. *Cook,* 98 Fed. 281, 284; *Cornelius* v. *Ivins,* 26 N. J. L. 376.

True, these cases arise in ejectment, and were between private parties. But suppose ejectment had been brought here, the parties being so situated as to possession that it was proper, could there be any question that the institution of the action was sufficient as an election to forfeit the grant and to resume possession on that ground? So it is that, the plaintiff having its remedy in equity, the bringing of the suit is tantamount to an election to forfeit, and to resume possession on account thereof.

The real question, as has been previously indicated, is whether any forfeiture has been incurred for breach of condition subsequent, and that is for judicial cognizance, and for judicial inquiry and determination. As said by Mr. Justice Brown in *Atlantic and Pacific Railroad* v. *Mingus, supra*:

> "The inquiry in each case is a judicial one, whether there has been upon either side, a failure to perform, and it makes but little practical difference whether such inquiry precedes or follows the reentry or Act of forfeiture."

In the present case, the judicial inquiry simply precedes the act of re-entry or forfeiture, and its cardinal purpose is to determine the fact of forfeiture.

Further disposition of the property will follow the adjudication.

While Congress has not declared a forfeiture leaving the judicial inquiry to follow, it has clothed the Attorney General with ample authority to institute a suit for determining whether forfeiture has been incurred or not, and the facts being such that equity may entertain jurisdiction of the cause, there remains no reason why it should not be maintained.

In view of these considerations, the demurrer to the bill of complaint must be overruled, and the demurrers to the cross-complaint and bills of intervention will be sustained, and it is so ordered.

(Endorsed).

Opinion filed April 24, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 22nd day of August, 1911, the same being the.....Judicial day of the regular April, 1911, term of said Court; present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER EXTENDING TIME FOR DEFENDANTS TO ANSWER]

[TITLE]

Now, at this day, upon stipulation filed herein, it is Ordered that the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage be, and they are hereby, allowed fifteen days from August 24, 1911, within which to serve and file their answer herein.

CHAS. E. WOLVERTON,

Judge.

And afterwards, to wit, on the 8th day of December, 1911, there was duly filed in said Court, an Order in words and figures as follows, to-wit:

[ORDER ALLOWING AMENDMENT TO ANSWER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

Now, at this day, come the plaintiff by Mr. Burdette D. Townsend, of counsel, and the defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage by Mr. William D. Fenton, of counsel and the defendants Union Trust Company by Mr. John M. Gearin, of counsel; whereupon on motion of said defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, It is Ordered that they be and they are hereby, allowed to file an amendment to their answer filed herein; and thereupon said plaintiff moves the court for an order designating a special examiner to take the testimony to be adduced in this cause, whereupon it is Ordered that Miss M. A. Fleming, of Portland, Oregon, be, and she is hereby, appointed a special examiner of this court to take and report to this court the testimony of all of the parties hereto.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order allowing amendment to answer, filed December 8, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 28th day of April, 1913, there was duly filed in said Court, an Order in words and figures as follows, to-wit:

[ORDER ALLOWING SECOND AMENDMENT TO ANSWER OF O. & C. R. R. et al., TO BILL OF COMPLAINT]

[TITLE]

This cause came on regularly at this time for final hearing; Mr. B. D. Townsend, special Assistant to the Attorney General appearing as attorney for the United States and Messrs. W. D. Fenton, James E. Fenton and Peter Dunne appearing as attorneys for the defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage as Trustee, Mr. John M. Gearin appearing as attorney for the defendant Union Trust Company; whereupon upon motion of attorneys for respective defendants, attorney for the United States consenting thereto, it is Ordered that leave be and hereby is granted defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee, to file an amendment to their answer herein and it is further ordered that leave be and hereby is granted Union Trust Company to file an amendment to its answer herein and thereupon upon consent of attorneys for respective parties, it is Ordered that this cause be and the same hereby is submitted without argument and it is further ordered

that testimony taken and exhibits introduced before the examiner herein be received and filed.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Order allowing amendment filed April 28, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 5th day of September, 1911, there was duly filed in said Court, an Answer in words and figures as follows, to-wit:

[JOINT AND SEVERAL ANSWER OF DEFENDANTS O. & C. R. R., SOUTHERN PACIFIC COMPANY AND STEPHEN T. GAGE]

[TITLE]

JOINT AND SEVERAL ANSWER

Of Defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, to Bill of Complaint of the United States, in the Above-entitled Case, as Amended, September 8, 1911, and April 28, 1913.

The defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, respectively, now and at all times saving to themselves all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to

the many errors, uncertainties and imperfections in complainant's Bill of Complaint (hereinafter called "the Bill") contained, for answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them or any of them to make answer to, jointly and severally answering, say:

I.

These defendants say that the following allegations made in subdivision "1" of the Bill are true, and they admit that:

(a). The defendant Oregon & California Railroad Company now is, and at all the times mentioned in the Bill as to it was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of that State.

(b). The defendant Southern Pacific Company now is, and at all the times mentioned in the Bill as to it was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of that State.

(c). The defendant Stephen T. Gage is a resident and citizen of the City of Oakland (not of the City of San Francisco, as alleged in the Bill), and is sued in his own right, and also as sole surviving Trustee under a certain Deed of Trust described in the Bill.

(d). The defendant Union Trust Company now is, and at all the times mentioned in the Bill as to it was,

a corporation organized under the laws of the State of New York, and a resident and citizen of that State, and is sued in its own right, and also as Trustee under a certain Mortgage Deed described in the Bill.

These defendants say that they have no knowledge or information as to the truth of any of the allegations made in the said subdivision "1" of the Bill respecting the following matters and things, and on that ground deny each of the said allegations; that is to say:

(a). They deny that each, or any, of the defendants John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, S. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock is a resident or citizen of the County of Columbia, in the State of Oregon, or a resident or citizen of the State of Oregon.

(b). Deny that each, or any, of the defendants Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, and W. A. Noland is a resident or citizen of the County of Lane, in the State of Oregon, or a resident or citizen of the State of Oregon.

(c). Deny that each, or any, of the defendants John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and James C. O'Neill is a resident or citizen of the County of Multnomah, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(d). Deny that each, or any, of the defendants Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, and Frank Wells is a resident or citizen of the County of Clackamas, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(e). Deny that each, or any, of the defendants C. P. Wells, I. H. Ingram, L. G. Reeves, and W. W. Wells is a resident or citizen of the County of Polk, in the State of Oregon, or is a resident of the State of Oregon.

(f). Deny that the defendant F. M. Rhoades is a resident or citizen of the County of Douglas, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(g). Deny that the defendant Marvin Martin is a resident or citizen of the County of Linn, in the State of Oregon, or is a resident or citizen of the State of Oregon.

(h). Deny that the defendant Roy W. Minkler is a resident or citizen of the County of Clarke, in the State of Washington, or is a resident or citizen of the State of Washington; and

(i). Deny that certain of said defendants are described otherwise than by Christian name for the reason that the Christian name of each or any of said defendants is to complainant unknown.

II.

These defendants admit that Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon," which was approved and became operative on July 25th, 1866; and they admit that the copy of said Act setforth on pages 5 to 10 of the Bill is a correct copy thereof.

They admit that the said Act of July 25th, 1866, was amended by an Act of Congress approved June 25th, 1868, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon' "; and that the copy of said amendatory Act setforth on page 10 of the Bill, is a correct copy thereof.

III.

These defendants deny that no right, title or interest in or to any of the grants, franchises or other benefits in

the State of Oregon, provided for by said Act of Congress approved July 25th, 1866, was ever acquired by any corporation or person or otherwise, except at the time, in the manner, and upon the terms and condtiions setforth in the Bill; and in this behalf they say that, as will be hereinafter shown, certain rights, titles and interests in and to the grants, franchises and other benefits in the State of Oregon, provided for by the said Act, were acquired by these defendants and other persons and corporations, otherwise than at the times, in the manner or upon the terms or conditions setforth in the Bill.

They admit that on or about October 6th, 1866, proceedings were had by which certain persons attempted to organize, under the general incorporation laws of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office at the City of Portland, in the State of Oregon; (On September 8, 1911, by order of court the following words were added by way of amendment:

But in this behalf they say that the incorporation of said Railroad Company was not nor was its organization perfected until after October 10, 1866.)

They admit that the said Oregon Central Railroad Company projected its said railroad line from the City of Portland in a westerly direction through the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the westerly side of the Willamette River; and they admit that thereafter the said Company was known as the "West Side" Company and

the said railroad was known as the "West Side" Railroad.

They admit that on October 10th, 1866, the Legislature of the State of Oregon adopted, and the Governor of the State of Oregon approved, a Joint Resolution; and that the copy of said Joint Resolution setforth on pages 11 and 12 of the Bill, is a true copy thereof.

They admit that the said West Side Company, assuming itself to have been lawfully designated therefor, on or about May 25th, 1867, through its Board of Directors, adopted a resolution in terms assenting to the provisions of the said Act of Congress of July 25th, 1866, and on or about July 6th, 1867, filed an authenticated copy thereof, together with a certified copy of its Articles of Incorporation, and a certified copy of the said Joint Resolution of October 10th, 1866, in the office of the Secretary of Interior; and they admit and say that on or about August 20th, 1868, said West Side Company filed in the office of the Secretary of Interior a map of survey of its projected line of railroad under the said Act of July 25th, 1866, from Portland by way of Forest Grove and McMinnville, thence southerly through the Willamette, Umpqua and Rogue River Valleys for connection with the California & Oregon railroad on the southern boundary line of Oregon.

These defendants admit and say that on or about April 22nd, 1867, certain persons, residents of the State of Oregon, then and thereafter contending that the said West Side Company was never lawfully incorporated

or organized, and designing to secure the several grants, franchises and other benefits of the said Act of Congress approved July 25th, 1866, caused certain proceedings to be had and taken which were intended to incorporate and organize, under the general incorporation laws of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal place of business at the City of Salem, in Oregon; which last-named Company projected its railroad from Portland southerly, along the easterly side of the Willamette River, and was thereafter known as the "East Side Company" and its said railroad was thereafter known as the "East Side" railroad.

They admit that the East Side Company, in furtherance of its said design, on October 20th, 1868, procured to be adopted by the Legislature, and approved by the Governor, of Oregon, the Joint Resolution a correct copy of which is setforth on pages 13 and 14 of the Bill.

They admit that a controversy arose between the West Side Company and the East Side Company as to which Company was entitled to the grants, franchises and privileges made and provided by the said Act of July 25th, 1866, which controversy continued until about January, 1870; but these defendants say that said controversy arose at or about the time of the incorporation (on April 22nd, 1867) of the East Side Company, and did not first arise out of, nor at the time of the adoption of, the said Joint Resolution of October 20th, 1868.

These defendants deny that the said Act of July

25th, 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the Company designated by the Legislature of Oregon should file in the Interior Department, within one year thereafter, or at all, its assent to said Act or any terms or conditions thereof.

They deny that the time within which to file an assent as aforesaid, had expired prior to the designation of the East Side Company by the Legislature of Oregon on October 20th, 1868, or otherwise than as provided by the said Act of July 25th, 1866, to which reference is hereby made; and they deny that because of any premises setforth in the Bill, otherwise or at all, the East Side Company did apply to Congress during the session thereof commencing in December, 1868, or at any time, for an extension of the time within which to file its assent, as setforth in the Bill; they deny that in that behalf, or at all, the East Side Company did lay before Congress the said Joint Resolution of the Legislature of Oregon, or in that behalf, or at all, did represent that all or any of the recitals thereof were true; and they deny that because of any premises setforth in the Bill, otherwise or at all, the several or any of the grants, franchises or privileges of the said Act of July 25th, 1866, had lapsed, or the or any benefits thereof would be wholly, or at all, lost to the State of Oregon unless revived by Congress in the, or any manner, setforth in the Bill, otherwise or at all.

In this behalf they say, that the said Act of July

25th, 1866, authorized and empowered the California & Oregon Railroad Company and such Company (if any) organized under the laws of Oregon as the Legislature of that State should designate, or either of said Companies, to construct a continuous railroad from Portland in Oregon to connection, on the same track gauge, with the Ceneral Pacific railroad in California; that under and pursuant to the provisions of the said Act the said California & Oregon Railroad Company duly filed its assent to the said Act on or about October 8th, 1866, and duly completed the first 20-mile section of the said railroad from its connection with the Central Pacific railroad northerly through the Sacramento Valley to the town of Wheatland on or about October 28th, 1867; and thereafter, prior to December, 1887, the said California & Oregon Railroad Company and the Central Pacific Railroad Company, its successor by amalgamation and consolidation, completed construction of the railroad in California provided for by the said Act of Congress, and aided the defendant Oregon & California Railroad Company to complete its railroad from Ashland in Oregon to connection with the said California & Oregon railroad, at or near the Southern boundary line of Oregon. And these defendants say they are advised by counsel and believe, that the said filing of assent and construction, and subsequent acceptance by the United States of the said railroad as constructed, constituted such full and specific performance of the requirements of the said Act of 1866 as that none of the provisions of section 8 thereof were at any time opera-

tive, wholly or in part.

They deny that during consideration by Congress of any application of the East Side Company for further time, the West Side Company appeared before Congress or opposed said alleged or any application of said East Side Company, or in that behalf contended before Congress that the several or any grants, franchises or privileges of said Act of July 25th 1866 had theretofore become or then were vested in said West Side Company.

They admit that Congress had under consideration the Act of Congress approved April 10th 1869 entitled as in the Bill setforth, and did approve said Act on April 10th 1869; but deny that Congress by such Act or otherwise granted any application in respect thereto of said East Side Company, or granted any such application upon the express or any condition that the lands granted as alleged should be sold to actual settlers only in quantities not greater than one quarter-section to one purchaser and at a price not exceeding $2.50 per acre, or granted any application in that behalf of the said East Side Company upon any condition or at all. They admit that the said last-mentioned Act of Congress is correctly setforth in the Bill at pages 15 and 16 thereof.

They admit that on or about June 8th 1869 the Board of Directors of the East Side Company adopted the resolution copied on pages 16 and 17 of the Bill; and that on or about June 24th 1869 a certified copy of the said Resolution was filed in the office of the Secretary of Interior.

They admit that on or about October 29th 1869 the East Side Company filed in the Secretary of Interior's office a map of survey and location of the first sixty miles of its projected railroad; that on December 24th 1869 the said Company completed construction of the first twenty miles of the said railroad commencing at Portland; and that on December 31st 1869 the said twenty miles of constructed railroad was examined and approved by Commissioners appointed by the President of the United States pursuant to the provisions of section 4 of the said Act of July 25th 1866.

These defendants deny that the West Side Company did not complete the construction of any part of its line of railroad pursuant to the terms and conditions of said Acts of Congress, or that at any time said West Side Company acquiesced in the substitution of said East Side Company as alleged in the Bill, or that there was any substitution as alleged of said East Side Company. And they say that the West Side Company applied for, obtained and accepted a grant of lands, franchises and benefits pertaining to so much of its aforesaid projected railroad as extended from Portland by way of Forest Grove to McMinnville, and pertaining to a contemplated railroad from Forest Grove northerly to Astoria, conferred by the Act of Congress approved May 4th 1870, copied on pages 22 to 25 of the Bill. But they deny that said West Side Company ever abandoned or waived all or any claim to the said grants, privileges or franchises of which the said East Side Company became and was the recipient, or that the grant of lands or

franchises or any other benefits conferred on said West Side Company by the said Act of May 4th 1870 was applied for, obtained, accepted or made in lieu of any grant of lands or franchises or benefits provided by the Act of July 25th 1866.

They deny that no right, title or interest in or to any grants, franchises or other benefits provided by the said Act of July 25th 1866 was ever acquired by, through or under the West Side Company; and they deny that no right, title or interest in or to any grants, franchises or other benefits provided by the said Act of July 25th 1866, were ever acquired by, through or under the East Side Company except by virtue of or expressly subject to terms or conditions imposed by the said Act of April 10th 1869. In this behalf they say, that no condition or conditions was or were, expressly or otherwise, imposed by the said Act of April 10th 1869; and they say, further, that all the grants, franchises and other benefits in Oregon provided by the said Act of July 25th 1866 were acquired by the East Side Company and these defendants, and that they were so acquired otherwise than by virtue of or subject to any provisions of the said Act of April 10th 1869.

They admit that the East Side Company became involved in litigation questioning its right to use its corporate name, but deny that the said Company became involved in any litigation questioning the validity of its incorporation or organization; they admit that on or about March 17th 1870 the defendant Oregon & Cali-

fornia Railroad Company was organized under the general incorporation laws of Oregon, and that on the same day its Articles of Incorporation were executed in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the Clerk of Multnomah County, Oregon (being the County in which the principal office of said Company was located), and one in the office of the Secretary of the said Company, at Portland, Oregon; but these defendants deny that the Oregon & California Railroad Company was organized by the promoters, officers, or stockholders of the East Side Company.

They deny that the principal object of the defendant Oregon & California Railroad Company in fact or as stated in its aforesaid Articles of Incorporation, was to become the successor of the East Side Company, or as such to receive or exercise the grants, franchises or privileges of the said Act of July 25th 1866 or Acts amendatory thereof; and they say that the principal object of the Oregon & California Railroad, in fact and as stated in its said Articles of Incorporation, was to construct, operate and maintain a railroad and telegraph line from Portland, in Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys to connect on the southern boundary of Oregon with the railroad and telegraph line then being constructed northerly through California by the California & Oregon Railroad Company.

They admit that on or about March 29th 1870 the East Side Company executed and delivered to the de-

fendant Oregon & California Railroad Company a certain instrument in writing, copied as "Exhibit B" to the Bill on pages 74 to 97 thereof, purporting to and which did sell and convey unto the said defendant all property of the East Side Company, including the last-named Company's right, title and interest in and to the grants, franchises and other benefits provided by the said Act of July 25th 1866 and the Acts amendatory thereof; and that thereafter, during March and April 1870, the said instrument was recorded in the office of the County Recorder of the several Counties in which was situated any of the lands granted by the said Act of July 25th 1866.

These defendants say that the purpose, intent and effect of the said instrument was, as appears on the face thereof, to operate as a sale and conveyance of all property therein described; they admit and say that the said instrument did constitute the defendant Oregon and California Railroad Company the grantee, by purchase and deed of conveyance, of the East Side Company, of all property and rights of the East Side Company, including the right to construct, complete, equip and maintain the railroad provided for by the said Act of July 25th 1866, and in aid thereof to receive and exercise the grants, franchises and other benefits in that behalf offered and extended as aforesaid, upon all the terms and conditions provided in the said Act of July 25th 1866. These defendants deny that the purpose, intent or effect of the said instrument was not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts

of Congress; and deny that the purpose, intent, or effect thereof was to constitute the Oregon & California Railroad Company the successor of the East Side Company to construct, complete or equip the said line of railroad, otherwise than as grantee by purchase and under the said deed of conveyance; and they deny that by reason of the said instrument, or otherwise, the Oregon & California Railroad Company became or was in anywise obligated by the terms and provisions of the said Act of April 10th 1869.

They deny that the East Side Company became or was dissolved on or about March 29th 1870, or that said Company has not exercised any corporate powers or franchises since that date.

They admit that on or about April 4th 1870, the Board of Directors of the Oregon and California Railroad Company passed the resolution copied on pages 20 and 21 of the Bill; and they admit that on or about April 28th 1870, the Oregon and California Railroad Company filed an authenticated copy of the said resolution, together with a certified copy of the said deed of conveyance of March 29th 1870 ("Exhibit B" to the Bill) in the office of the Secretary of the Interior; and they admit and say that continuously since April 28th 1870, the Oregon and California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the East Side Company, of and to all the rights and property described in the said deed of March 29th 1870.

IV.

These defendants deny that the West Side Company at any time abandoned or waived all or any claim to any of the grants, franchises or other benefits of the said Act of July 25th 1866, or importuned Congress to extend to it in lieu thereof or otherwise or at all any grant of lands, or franchises, or other benefits pertaining to its said projected line of railroad known as the West Side Line or otherwise or at all, or that in such behalf Congress passed the Act approved May 4th 1870, copied on pages 22 to 25 of said Bill; but they admit that Congress did pass said Act.

They admit that by the words "Oregon Central Railroad Company," in the said Act of May 4th 1870, Congress intended to and did refer to and mean the West Side Company. They admit and say that the line of railroad specified in the Act of May 4th 1870, in so far as it extends from Portland to McMinnville by way of Forest Grove, is substantially the same as but deny that it is identical with the line of railroad theretofore projected by the West Side Company, between the said points; and they say that the line of railroad from Forest Grove to Astoria, described in and contemplated by the said Act of May 4th 1870, is not identical with nor along the course of any line of railroad theretofore projected by the West Side Company.

They admit that on or about July 2nd 1870, the Board of Directors of the West Side Company adopted a resolution assenting to the said Act of May 4th 1870;

and they admit that on or about July 20th 1870, the West Side Company filed an authenticated copy of that resolution in the office of the Secretary of Interior.

These defendants deny that on or about August 15th 1870, or at any time or at all, all or any of the capital stock of the West Side Company was acquired by the then or any owners of the capital stock of the defendant Oregon & California Railroad Company, or that thereafter or at any time or at all, all or any of the capital stock of both of said Companies was held by a single interest, or that the affairs of the two Companies were conducted virtually or at all as a single enterprise, until the dissolution of said West Side Company, otherwise or at all.

V.

These defendants deny that all of the original capital stock of the defendant Oregon & California Railroad Company, or that substantially all of the capital stock of the West Side Company, was issued without consideration, or that by reason of the premises or otherwise neither of said Companies had any original capital or other funds for construction or other purposes, except such as was borrowed therefor.

They admit and say that by the issuance or negotiation or pledge of mortgage bonds, but not otherwise, approximately $8,000,000 was, during the year 1870, procured by the Oregon and California Railroad Company, and approximately $1,000,000 was during the year 1871 procured by the West Side Company; and that with the funds thus procured the work of further

constructing the East Side railroad and West Side railroad was prosecuted continuously until about January 1873. They admit and say that prior to January 1873 (but not wholly "during said period of construction" as alleged on page 26 of the Bill), the East Side railroad was constructed and extended from Portland to a point near Roseburg distant approximately 197 miles from Portland and that prior to January 1873, and during said period of construction, the West Side railroad was completed from Portland to McMinnville, by way of Forest Grove, a distance of approximately 47 miles. In this behalf these defendants say, that construction of the East Side railroad was commenced during the month of April 1868, and the construction of the part thereof which begins at Portland and ends at a point distant 20 miles southerly therefrom, was completed in December 1869; that prior to the year 1870 a portion of the next 20-mile section of the East Side railroad, extending southerly from the last-mentioned point, was constructed; and that the remainder of said 197 miles of railroad was constructed during the years 1870, 1871 and 1872.

They admit that about January 1873, the funds of each of the said Companies became exhausted, and that because thereof further construction of both railroads was temporarily suspended; that the East Side Company did not resume construction of its railroad until about June 1881; and that the West Side Company never did resume construction of its railroad. But these defendants deny that further construction of either

railroad was abandoned at any time.

They admit that on or about July 24th 1874, direction and control of the financial affairs of each of said Companies were assumed and thereafter exercised by the creditors thereof, organized under the name "Bondholders' Committee"; and that on or about February 29th 1876, all of the capital stock of both Companies was acquired by said Bondholders' Committee and thereafter, for several years, the affairs of said two Companies were conducted by and under direction and control of the said Bondholders' Committee. But these defendants deny that all of the capital stock of both of said Companies was acquired by the Bondholders' Committee for virtually a nominal consideration.

They admit and say that on or about October 6th, 1880, the West Side Company executed and delivered unto the Oregon and California Railroad Company, an instrument in writing purporting to and which did grant, bargain, sell, assign, transfer and convey (not to merely "assign, transfer and convey," as stated on page 27 of the Bill) unto the Oregon and California Railroad Company, all franchises, rights, privileges and property then owned or possessed by the West Side Company, including the right, title and interest of the West Side Company in and to the grants, franchises and other benefits of the said Act of Congress approved May 4th 1870—as more fully appears by reference to the said instrument, a copy of which is attached to the Bill as "Exhibit C"—a duly authenticated copy of which

deed of conveyance was filed in the Department of Interior on or about October 20th 1880. But these defendants deny that the said instrument was executed or delivered for the purpose of merging the West Side Company into the Oregon and California Railroad Company, or for any purpose other than that therein stated and apparent on the face thereof.

These defendants say that the said instrument was and is a sincere and bona fide deed of sale and conveyance, the true meaning, purpose and intent of which is set forth and stated therein. They deny that the purpose, intent or effect thereof was or is not to operate as a sale or conveyance of any of the lands granted by the said Act of Congress approved May 4th 1870, but to constitute the Oregon and California Railroad Company the successor of the West Side Company to construct, complete and equip the line of railroad aforesaid, and particularly that part thereof extending from Forest Grove to Astoria, or in aid thereof to receive or exercise the grants, franchises or other benefits in that behalf extended by Congress as aforesaid, or upon all of the terms aforesaid, and not otherwise; but in this behalf they say that the said instrument did constitute the Oregon and California Railroad Company the grantee of the West Side Company by sale and deed of conveyance as aforesaid, of all the rights and property therein described.

They deny that on or about October 6th 1880, the West Side Company became and was dissolved; but

they admit and say that at all times since the execution and delivery of the said deed of conveyance, the Oregon and California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the West Side Company, of, in and to all franchises, rights and property described in the said deed.

They admit that some, but deny that all, transactions set forth in the Bill as of date subsequent to October 6th 1880, relate to or affect both of said grants of land.

VI.

These defendants admit and say that on or about May 7th 1881, the financial affairs of the Oregon and California Railroad Company were adjusted, substantially but not wholly, as follows: All of the capital stock was by action of its Board of Directors and its Stockholders canceled; but they deny that said stock was so canceled for reasons set forth in the Bill. They admit that the amount of capital stock of the Oregon and California Railroad Company was then established at, has ever since remained and still is of, the total par value of $19,000,000, consisting of $12,000,000 preferred stock and $7,000,000 common stock; and that in payment of its then existing indebtedness, with accrued interest thereon, all of the said new capital stock was then issued, and ever since has been and still is outstanding. They admit and say that by the issuance of the

new capital stock, and use of a part of the proceeds of the new bond issue referred to on page 30 of the Bill all of the then existing indebtedness of the Oregon and California Railroad Company was fully paid and discharged, and the several mortgages and instruments purporting to secure the same were canceled and satisfied.

They admit that on June 2nd 1881, the defendant Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of the said preferred stock, an instrument in writing which purported to and did convey to said Trustees all of the lands of both of the said land grants, in trust to secure to the owners of the said preferred stock a right and interest (not merely "some pretended right or interest," as is alleged on page 29 of this Bill) in and to the lands of the said land-grants, as more particularly appears in the said instrument, a copy of which is attached to the Bill (pages 104 to 129) as "Exhibit D" and made part thereof. In this behalf these defendants say, that the said "Exhibit D" was made, executed and delivered subject to the prior Trust Mortgage of June 1st, 1881, referred to and described in the first paragraph on page 110 of the Bill, as is expressly stated by the said Trust Mortgage ("Exhibit D" to the Bill) in the second paragraph on page 114 of the Bill.

They admit and say, that "Exhibit D" purports to convey by way of mortgage, and purports to authorize

said Trustees and their successors, in case of grantor's failure to make the payments therein provided for, to sell and convey the mortgaged lands to persons other than actual settlers, and in quantities greater than one quarter-section to one purchaser, and for a price exceeding $2.50 per acre. But these defendants deny that the said instrument purports to convey or that it purports to authorize the Trustees to convey, the said lands for purposes other than those prescribed in or by the said land-grants, respectively; and they deny that the said instrument was or is in violation or breach of any terms or conditions of each or either of the said land-grants.

They admit that on or about June 28th 1881, said trust mortgage was recorded in the office of the County Recorder of Multnomah County, Oregon, in Book 27 of Mortgages at page 179; and that thereafter, and about the same time, was recorded in the office of the County Recorder of the several Counties in which was situated any part of the lands granted by either of said land-grants.

They admit that thereafter such proceedings were had and taken under the provisions of the said instrument "Exhibit D" to the Bill, by and with the consent and co-operation of the Oregon and California Railroad Company, that the defendant Stephen T. Gage became the sole surviving Trustee thereunder; and they admit and say that the said Stephen T. Gage as such Trustee (but not individually), and that the defendant South-

ern Pacific Company as present owner of the said preferred stock, claim and assert a lien upon the said lands, under and by virtue of the said Trust Mortgage, in accordance with the terms and provisions thereof; and deny that neither of said defendants have any right, title, interest or lien in, to or upon all or any part of the said lands.

They admit that by the issuance and negotiations of its corporate bonds, bearing date June 1st 1881, and May 26th, 1883, respectively, known and designated as "First Mortgage Bonds" and "Second Mortgage Bonds," respectively, the defendant Oregon and California Railroad Company provided approximately $5,000,000 further construction funds; and admit that on or about June 1st 1881, the work of constructing the East Side railroad was resumed and thereafter continued until about January 1884; and they admit that between June 1st 1881, and January 1884, the East Side railroad was constructed and extended from Roseburg to a point about 1½ miles southerly from Ashland, in the State of Oregon, a distance of approximately 145 miles.

These defendants admit that about January 1884, the last-mentioned construction funds became exhausted, and the work of construction was discontinued until about April 1887, when it was resumed; but they deny that the work of construction was at any time abandoned.

They admit and say that on or about January 19th

1885, default having been made in the payment of interest on the said First Mortgage Bonds and Second Mortgage Bonds, a suit was brought in the United States Circuit Court for the District of Oregon, by holders of said Bonds, against the Oregon & California Railroad Company and others as defendants; in which suit, and on or about January 19th 1885, the railroads and other property of the Oregon and California Railroad Company were, by order of the said Court, placed in the hands of a Receiver appointed for that purpose.

They deny that on or about May 12th 1887, or during the pendency of said receivership, the defendant Southern Pacific Company acquired, or thereafter exercised, ownership or control of the defendant Oregon & California Railroad Company, except that about the year 1901 the defendant Southern Pacific Company acquired certain capital stock of the Oregon & California Railroad Company and thereafter exercised the ordinary rights and privileges as such stockholder; and they deny that during the pendency of said receivership, or at any time, any breach or violation of any condition or conditions of the said land-grants or either of them was or were committeed under the direction or influence of the said Southern Pacific Company, or at all.

These defendants admit and say, that on May 12th 1887, the general status of the said land-grants was as follows:

Under the East Side grant, during the years 1871 to 1877, inclusive, patents for 323,078.68 acres of land

(being land contiguous to the first 125 miles of the East Side railroad) were applied for by and issued to the defendant Oregon and California Railroad Company as owner of the East Side grant under and by virtue of the said Deed of March 29th 1870 ("Exhibit B" to Bill); and admit that no patents were issued for lands of the East Side grant prior to the year 1898, except the said patents issued during the years 1871 to 1877, inclusive; but they deny that the said patents were applied for by or issued to the Oregon & California Railroad Company as the successor of the East Side Company (as alleged in the Bill), except as owner of the East Side grant by and under the said deed from the East Side Company.

No patents under the West Side grant were issued prior to the year 1895.

The total length of the East Side railroad is, approximately, 367 miles; with the exception of the northerly 197 miles thereof no part of the East Side railroad was constructed within the times prescribed by the terms of the said East Side grant; and on May 12th 1887, the portion thereof extending from Ashland to the southern boundary line of the State of Oregon, remained unconstructed. That part of the West Side railroad extending from Forest Grove to Astoria was never constructed, and because thereof the granted lands contiguous to said unconstructed railroad were, by Act of Congress approved January 31st 1885 and entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon.", for-

feited to and the ownership thereof resumed by the United States.

Of the aforesaid granted lands, 164,992.48 acres (not "approximately 250,000 acres" as stated in the Bill) were sold by the Oregon and California Railroad Company prior to May 12th 1887. Nearly all of said lands were sold to actual settlers, and in small quantities, although in a few instances in quantities exceeding 160 acres to a single person and for prices slightly in excess of $2.50 per acre; but such sales were so made for the reasons hereinafter setforth, and not because of any provisions in the said Joint Resolution of April 10th 1869, or section 4 of the said Act of May 4th 1870.

VII.

These defendants deny that about the month of January 1885, or at any time, a certain railroad syndicate known as the "Southern Pacific System," controlling substantially all railroad lines in the southwestern part of the United States and particularly on the Pacific Coast south of the State of Oregon, including the Central Pacific Railroad Company, organized under the general incorporation laws of the State of Kentucky, or otherwise, the defendant Southern Pacific Company, as a general holding Company for the said or any syndicate; and they deny that about the month of March, 1885, or at any time, the defendant Southern Pacific Company acquired or ever since has exercised a controlling or any interest in each of the corporations constituting said "Southern Pacific System"; and deny

that at about the same, or at any, time the Southern Pacific Company became or ever since has been the lessee of each of said corporations, whereby it came into possession of, or at all or any times has operated all of said railroad lines.

They deny that several of the constituent Companies of the said "Southern Pacific System" held lands granted by the United States in aid of the construction of their respective lines of railroad, aggregating many millions of acres of land, or that there is or ever was such organization or syndicate as "Southern Pacific System"; and they deny that shortly after its organization, or at any time, the defendant Southern Pacific Company, established a general, or any, Land Department, with offices at the City of San Francisco, in the State of California, or elsewhere, under the charge of a person known as its Land Agent, or otherwise, or that thereupon or thereafter the Southern Pacific Company assumed or exercised through such Land Agent, control over the handling or disposing of all or any lands of its constituent Companies.

They deny that shortly after the affairs of the defendant Oregon & California Railroad Company were placed in the hands of a Receiver as aforesaid, the defendant Southern Pacific Company, designing to extend its aforesaid or any railroad system or its aforesaid or any land holdings by acquiring ownership or control of the defendant Oregon & California Railroad Company, in that behalf, or otherwise entered into negotia-

tions with the Oregon & California Railroad Company or the Bondholders or Stockholders thereof or other parties named in the Bill; but admit and say that the Stockholders of the Oregon and California Railroad Company became and were organized under the name "Stockholders' Committee," and that certain of the owners of the aforesaid Morgtage Bonds became and were organized under the name "Frankfort Bondholders' Committee," and that certain other of the owners of said bonds became and were organized under the name "London Bondholders' Committee"—said Bondholders' Committees representing the owners of substantially all of the aforesaid First Mortgage Bonds and Second Mortgage Bonds; but they deny that any of the said Committees was or were organized for any of the purposes setforth in the Bill.

These defendants admit that on or about March 28th 1887, a certain contract in writing was made and entered into by and between the parties therein named, a copy of which contract, marked "Exhibit E," is attached to the Bill.

They deny that by virtue of the said contract or otherwise, all or any corporate securities of the defendant Oregon and California Railroad Company was or were acquired by the defendant Southern Pacific Company; and deny that the general or any purpose or effect of the said contract was such that the defendant Oregon & California Railroad Company or its said lines of railroad, were absorbed by, or merged into, said Southern Pacific System, or that the independent corporate exist-

ence of the Oregon & California Railroad Company ceased, virtually or at all. They deny that it appears from the subsequent conduct of the Southern Pacific Company, or otherwise, or that it is in anywise true, that at the time of the negotiation and execution of the said contract, or at any time, it was the purpose or design of the defendant Southern Pacific Company to secure control of the aforesaid land grants, or either of them, or to divert the same from the aforesaid or any lawful uses or purposes thereof, to the exclusive or any use, benefit or enrichment of the Southern Pacific Company, or at all; and they deny that the said contract was by the parties thereto so conditioned, or the conditions, options or provisions thereof were so exercised or performed, that the Southern Pacific Company did thereafter, or at any time, maintain the Oregon and California Railroad Company, a corporation in name or form only, as a mere instrumentality or device, to accomplish or at the same time to conceal its aforesaid, or any, purpose or design, or in that behalf, or otherwise, to obtain or dispose of said lands in the name of or under the guise or pretense of administration or exercise of the aforesaid land-grants, or either of them, by the defendant Oregon & California Railroad Company; and they deny that to that end certain or any proceedings were had or transactions entered into, including that certain contract or lease, or that certain mortgage deed, hereinafter setforth.

These defendants admit that on or about May 12th 1887, all of the capital stock and all of the Second

Mortgage Bonds of the defendant Oregon & California Railroad Company, were transferred, assigned and delivered unto the said Pacific Improvement Company; and all of the said First Mortgage Bonds were transferred, assigned and delivered unto the defendant Southern Pacific Company; but deny that such or any of such transfers, assignments or delivery were made wholly pursuant to the said contract. In this behalf they say that the said contract of March 28th 1887, was made and entered into pursuant to the provisions of, and for the reasons set forth in, the Agreement dated October 11th 1886, between the Central Pacific Railroad Company, Pacific Improvement Company, and Southern Pacific Company, a copy of which is attached to this Answer, marked "Exhibit No. 1," and made part hereof.

They admit that during all times mentioned in the Bill as to it, the Pacific Improvement Company was a corporation organized and existing under the laws of the State of California; but they deny that the said Company was wholly owned, controlled or directed by the owners of a majority of the capital stock of the defendant Southern Pacific Company. They deny that the defendant Southern Pacific Company was the actual purchaser of the said capital stock or Second Mortgage Bonds or any thereof, or paid the purchase price therefor, or any thereof; and deny that the Pacific Improvement Company never had any beneficial interest therein. They deny that under the direction or influence of the defendant Southern Pacific Company, the Pacific Improvement Company was made a nominal party to

the said contract of March 28th 1887, for the purpose of concealing the true facts in the premises; and say that the Pacific Improvement Company was a real, and not in anywise a nominal, party to the said contract.

These defendants deny that the Pacific Improvement Company held the said capital stock of the Oregon & California Railroad Company, or any thereof, for the use or benefit of the Southern Pacific Company until on or about April 9th 1901, or at any time; but admit that on or about April 9th 1901, all of the said capital stock then held by the Pacific Improvement Company was sold and transferred to the Southern Pacific Company, which last-named Company has ever since remained the owner and holder thereof. They deny that at all, or any, times since May 12th 1887, the defendant Southern Pacific Company has controlled or directed the election of directors or officers of the defendant Oregon & California Railroad Company, or has directed or controlled the management or conduct or corporate acts of the defendant Oregon & California Railroad Company, including all or any of the transactions or proceedings setforth in the Bill.

They admit and say that on or about January 3rd 1888, the defendants Oregon & California Railroad Company and Southern Pacific Company made and entered into the Lease a copy of which is attached to the Bill as "Exhibit F," whereby all of the railroads and other property of the Oregon and California Railroad Company used in connection with and for the operating purposes of said railroads (but not including any lands

of either of said land-grants) were leased to the Southern Pacific Company for the term of forty years; and they admit that the said lease remained in full force and effect until on or about August 1st 1893, when the same defendants entered into a similar Lease of the same property for the term of thirty-four years, a copy of which last-mentioned lease is attached to the Bill as "Exhibit G"; and they admit that the Southern Pacific Company entered into possession of the leased property on or about June 6th 1888, under the first-mentioned lease, and at all times since has been, and still is, in possession thereof, operating the said railroads and enjoying all benefits and profits to which it is entitled, as such lessee.

These defendants say, that on or about February 17th 1885, the Central Pacific Railroad Company duly leased unto the defendant Southern Pacific Company, its railroad from Ogden to San Francisco and from Roseville Junction to Delta, for the consideration and according to the provisions of said Lease, a copy of which, marked "Exhibit No. 2," is hereto attached, and made part of this Answer; and on or about January 1st 1888, the said Central Pacific Railroad Company duly leased unto the said Southern Pacific Company, its railroad from Delta to connection with the Oregon & California Railroad Company at the southern boundary line of Oregon, a copy of which, marked "Exhibit No. 3," is hereto attached, and made part of this Answer; and under and in virtue of which Leases, "Exhibit F" and "Exhibit G" to the Bill, "Exhibit No. 2" and "Exhibit No.

3" to this Answer, the defendant Southern Pacific Company has continuously since on or about January 3rd 1888, maintained and operated the said railroad from Portland to Roseville Junction as one continuous connected railroad, in conjunction with the said railroad from Ogden to San Francisco.

They admit and say that on or about January 3rd 1888, the defendant Oregon & California Railroad Company executed and delivered unto the defendant Union Trust Company, that certain instrument in writing dated July 1st 1887, a copy of which is attached to the Bill as "Exhibit H," purporting to and which did mortgage and convey in trust unto the Union Trust Company, lands and property of the Oregon & California Railroad Company therein described, for the uses and purposes therein setforth, and among other things to secure the payment of certain bonds to be issued and sold by and in the name of the defendant Oregon & California Railroad Company; but they deny that the said instrument was executed under the direction or influence of the defendant Southern Pacific Company.

These defendants admit that by the provision in the last-mentioned instrument "And all the property, real, personal or mixed, which on the 12th day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon & California Railroad Company", reference was had and intended to be had to a certain deed of trust executed by the defendant Oregon & California Railroad Company to Henry Villard, Horace White and Charles Edward Brether-

ton, as Trustees, dated June 1st 1881, a copy of which is attached to the Bill as "Exhibit I"; and they admit that on January 18th 1888, the said Mortgage Deed of July 1st 1887, was recorded in the office of the County Recorder of Multnomah County, in Book 63 of Mortgages, at page 287 (not page 437, as stated in the Bill), and about the same time was recorded in the office of the County Recorder of each of the several Counties in which was situated any of the lands granted by either of said land-grants.

They admit and say that the defendant Oregon & California Railroad Company executed and delivered, and that the said defendant (but not the Southern Pacific Company, or Union Trust Company, as stated in the Bill) sold and delivered certain of the bonds provided for by the said Mortgage Deed of July 1st 1887, of which approximately $17,500,000 in amount are still outstanding; and they admit that the proceeds of said bonds were used to pay the cost of constructing, completing and improving the said Oregon and California Railroad Company's railroads; and they admit that payment of the said bonds, both as to principal and interest, was and is guaranteed by the defendant Southern Pacific Company's endorsement. But they deny that any proceeds from the sale of the said bonds were used by the defendant Southern Pacific Company to purchase securities of the Oregon & California Railroad Company; or that the said bonds inured to the exclusive or any benefit of the defendant Southern Pacific Company; or that the outstanding bonds in fact,

or at all, represent or constitute the or any indebtedness of defendant Southern Pacific Company. They admit that the said Mortgage Deed of July 1st 1887, purports to convey by way of mortgage to secure payment of the said bonds, and in case of default in payment thereof authorizes the defendant Union Trust Company to convey at public auction to satisfy the amount due by reason of such default, the said lands, without express limitations or restriction on such sales as to persons, quantity of land or price; but they deny that the said Mortgage Deed purports to convey or authorize the defendant Union Trust Company to convey the said land, or any thereof, for any purpose or purposes other than those prescribed in and intended by the said land-grants, respectively; and they also deny that the said Mortgage Deed was or is in violation or breach of any terms or conditions of each or either of the said land-grants.

They admit and say that the defendant Union Trust Company, as Trustee for the owners and holders of the said bonds, claims and has a lien in, to and upon said granted lands, under and by virtue of said Mortgage Deed of July 1st 1887, according to the terms thereof; and deny that the defendant Union Trust Company has no right, title, interest or lien in, to or upon any of said lands either in its own behalf or as such Trustee.

They admit and say, that during the year 1887 the last section of the East Side railroad, extending from a point near Ashland to the southern boundary line of

Oregon, was constructed by the said Pacific Improvement Company, under a contract with the Oregon & California Railroad Company, executed on or about June 6th 1887, by the terms of which the last-named Company agreed to pay for the said work of construction in its bonds thereafter to be issued and guaranteed by the defendant Southern Pacific Company; and they admit and say that a small part, but deny that a large part of the said section of railroad was constructed prior to execution of the said contract. And they deny that the said construction or any part thereof was under some or any form of contract with the defendant Southern Pacific Company, other than the said Agreement of October 11th 1886, a copy of which is hereto attached as "Exhibit No. 1"; or that in furtherance of any purpose or design setforth in the Bill, otherwise or at all, the Southern Pacific Company, on or about June 6th 1887 or at any time, instigated or caused the defendant Oregon & California Railroad Company or the Pacific Improvement Company to enter into the said contract, except as setforth in said Exhibit No. 1."

They admit that on or about June 6th 1888, the aforesaid receivership proceedings were dismissed and the Receiver was discharged, and all of the said First Mortgage Bonds and Second Mortgage Bonds (not including the bonds issued under the Mortgage Deed of July 1st 1887), together with all Mortgages and Trust Deeds securing payment thereof, were canceled and discharged; and they admit and say that thereupon and ever since the defendant Southern Pacific Company has

continued in possession, pursuant to the hereinbefore mentioned Lease ("Exhibit F" to the Bill), of all property of the Oregon & California Railroad Company described in the said Lease.

VIII.

These defendants deny that immediately after June 6th 1888, or at any time, the defendant Southern Pacific Company, through its aforesaid Land Department, or otherwise, assumed or at all or any times thereafter exercised, absolute or any control over the disposition or sale of the aforesaid granted lands of the defendant Oregon & California Railroad Company, or any thereof, conducting all or any business, however, in the name of the latter Company, or otherwise; and in this behalf they say that the Southern Pacific Company has not now nor did it at any time have, a Land Department.

They admit that until the year 1893, and say that continuously thereafter, there was no marked change in the manner of the disposition of said lands; and deny that in the meantime, or at any time, under the direction or influence of the defendant Southern Pacific Company, or at all, preparations were made for future exploitation of the said land-grants or for any examination or administration thereof otherwise than by the Oregon & California Railroad Company in the same but not in any different manner or way than the said lands had been theretofore exploited, examined and administered by the said Company.

They admit and say that long prior to but not about

the month of June 1888, a sufficient but not a large force of land examiners and timber cruisers were employed by the defendant Oregon & California Railroad Company, and that such force was kept employed for many years before and after June 1888, and until considerable but not all of the said lands had been examined and prices fixed thereon; but they deny that as to at least eighty per cent of all of said granted lands the first or any sale price as fixed thereon, or that the lowest price for which the same were ever offered for sale, was greatly or at all, in excess of the sum of $2.50 per acre.

They deny that during the years 1891 and 1892, or at any time, anticipating or seeking to evade responsibility for contemplated violations of any terms or conditions of said grants, or under the direction or influence of the Southern Pacific Company, the defendants Oregon & California Railroad Company or Union Trust Company adopted quit-claim form of contracts or conveyances for use in making sales of said lands, or thereafter refused to contract for or give any other form of conveyance, except in execution of former contracts providing for a different conveyance.

In this behalf these defendants say, that during the years 1891 and 1892 the Land Department of the Central Pacific Railroad Company (owner of the land-grant in California made by the Act of July 25th 1866), and Oregon & California Railroad Company standardized their forms of contracts and deeds for the sale and conveyance of their land-grant lands, so as to establish a

uniform system, and in that way the Oregon & California Railroad Company adopted certain forms of contracts and deeds then and for a long time theretofore in use by the Central Pacific Railroad Company, including a quit-claim form of contract and deed for use only in the sale of such right, title or interest as the Railroad Company had in such unpatented lands as were unsurveyed, interdicted mineral, or covered by pretended adverse claims; and that on or about the same time, and for the same reason, the defendant Oregon & California Railroad Company adopted and thereafter used the other forms of contracts and deeds in use by the Central Pacific Railroad Company, including the form generally known as "grant, bargain and sale" form, of contracts and deeds for the sale of patented lands.

These defendants admit and say, that lands of the East Side grant to the amount of 2,442,708.42 acres were patented to the defendant Oregon & California Railroad Company between the years 1893 and 1906, both years inclusive; and that lands of the West Side grant to the amount of 128,618.13 acres were patented to the said Company between the years 1895 and 1903, both years inclusive. But they say that the said patents were issued from time to time between said dates pursuant to applications therefor made from time to time, as the lands were surveyed and became susceptible of such applications, between the years 1876 and 1906; but they deny that no patent has been issued under either of said land-grants since the year 1906.

They deny that, in the meantime the defendant

Southern Pacific Company was engaged in developing a market or demand for said lands among wealthy land speculators or timber men, or at all, aided by the said Company's well-equipped organization therefor, or otherwise, or by an extensive or other acquaintance previously established by its, or any, Land Department, in the sale or disposition of other holdings in the Bill mentioned, or otherwise; but they admit and say that an increasing, but not a sudden, demand for the lands of the defendant Oregon & California Railroad Company, arising out of and caused by the completion of its East Side road and connection thereof with the Central Pacific railroad, commenced about 1889 or 1890, and has continued ever since.

These defendants deny that, taking advantage of the opportunity to violate the terms or conditions of said land-grants, or either thereof, promoted or developed as alleged in the Bill, the defendant Oregon & California Railroad Company, under the direction or influence of the defendant Southern Pacific Company, or otherwise, from about the year 1894 until about January 1st 1903, or at any time, sold or disposed of said granted lands, or any thereof, in manner or upon terms in violation or breach of the aforesaid terms or conditions of the said land-grants, or either thereof, or with the sole object of securing the greatest possible financial benefit therefrom, otherwise, or at all; and they deny in that behalf a large quantity of said land was sold to speculators or others for speculation. They admit that some of said land was sold to persons who were not

actual settlers thereon and did not purchase the same for purposes of actual settlement, in quantities exceeding one quarter-section to one purchaser, and at prices exceeding $2.50 per acre. They say it is not true, as alleged in the Bill, that the said lands were sold generally in quantities of 1,000 to 45,000 acres to single purchasers at prices from $5.00 to $40.00 per acre; but they admit that in several instances lands in quantities of from 1,000 to 20,000 acres were sold to one purchaser at prices ranging from $5.00 to $20.00 per acre, in one instance at $35.00 per acre, and in one instance at $40.00 per acre, and in one instance a sale in excess of 20,000 acres and of 45,000 acres at $7.00 per acre, was made to a single purchaser; but in this behalf they say, as will be hereinafter more fully shown, that the average quantity sold to one purchaser of said lands is (approximately) 150 acres, the average gross price received therefor is (approximately) $5.00 per acre, and the average net price (after deducting taxes, costs of survey, patenting and administration)is (approximately) $1.50 per acre.

They admit that the defendant Oregon & California Railroad Company has heretofore made approximately 5,306 sales, aggregating approximately 820,000 acres (being approximately 150 acres to each purchaser) ; and they admit that approximately 4,930 of said sales were for quantities not exceeding one quarter-section to one purchaser, aggregating 296,000 acres; and that approximately 376 of said sales were for quantities exceeding one quarter-section to one purchaser, aggregating ap-

proximately 524,000 acres.

They admit and say that, substantially, all of the said 524,000 acres (but deny that a considerable portion of the said 296,000 acres) were sold to persons other than actual settlers, who purchased the land for timber growing and not for settlement thereon, and at gross (but not at net) prices in excess of $2.50 per acre; and they admit that approximately, 478,000 acres of the said 524,000 acres were sold since the year 1897; and they also admit that approximately 370,000 acres thereof were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

They admit that many, but deny that "nearly all," of the said sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment; and they admit that in some instances, but deny that in many instances, conveyances under said contracts were executed after January 1st, 1903; and they admit that a few, but deny that many, of said contracts were still pending at the time this suit was brought.

They admit and say, that of the total sales made as aforesaid, 4,508 have been fully executed and conveyances given, aggregating 740,002.45 acres; and that 571 executory contracts are still pending, aggregating 81,684.31 acres.

These defendants say, that the true facts and particulars respecting the matters and things setforth in the first three paragraphs on page 44 of the Bill, are

as follows: Many of the said sales by executed conveyances, were made in pursuance of two or more executory contracts issued to one or several persons and assigned by such person or persons to the person to whom the executed conveyances were given; hence, while as setforth in the next preceding paragraph of this Answer, 4,508 executory sales aggregating 740,002.45 acres of land, have been made, the records and files of the defendant Oregon & California Railroad Company do not show, nor can it now be ascertained, how many executed conveyances were issued in pursuance of such executory contracts, or to how many individuals such conveyances were made. In this behalf they say, for the reasons given, "Exhibit J" attached to the Bill is erroneous and misleading; and that "Exhibit No. 4" attached to and made part of this Answer as a substitute for and in correction of the said "Exhibit J," is true and correct according to the information and belief of these defendants.

They admit and say that as betwen the parties thereto, and in fact and law, the said Mortgage Deed bearing date July 1st 1887, to the defendant Union Trust Company, has been treated as and is a lien upon all of said granted lands which remained unsold on May 12th 1887. They admit and say that all proceeds from the sale of the lands of the last described class which have been sold since May 12th 1887, have been paid over to and received by the Union Trust Company, and that the Union Trust Company, has joined in the execution of all of such executed conveyances; and they deny that

the proceeds of all or any sales made since May 12th 1887, or at any time, inured to the exclusive or any benefit of the defendant Southern Pacific Company, by application in payment of the aforesaid bonds or otherwise, except in so far as that by the payment of said bonds the Southern Pacific Company was to that extent released of liability as a guarantor.

IX.

These defendants deny that in the month of October 1901, or at any time, the defendant Southern Pacific Company, with all or any of its constituent lines, became merged into that certain railroad system known as the "Harriman Lines"; and they deny that a railroad system known as the "Harriman Lines," at all times thereafter or at any time held a monopoly of railroad transportation affecting a large or any part of the United States, or particularly or otherwise in the State of Oregon south of Portland.

They deny that thereupon or at any time, a Land Department was organized or established at the City of San Francisco, or elsewhere, to handle, exploit or manipulate all or any lands of the constituent or any Companies of said "Harriman Lines," including the aforesaid, or either, land-grants of the defendant Oregon & California Railroad Company; but they admit and say that all transactions concerning the last-named grants were conducted as before in the name of the defendant Oregon & California Railroad Company; and they admit that sales were continued as before until on or about January 1st 1903.

These defendants say that on April 30th 1911, there remained unsold of said granted lands 2,361,152.41 acres, of which 2,076,326.05 acres were theretofore patented, and 284,826.36 acres thereof at that time remained unpatented; all of which lands are now claimed by the defendant Oregon & California Railroad Company under and by virtue of the said land-grants. But they say that owing to the loss of certain original records by the April 1906, fire in San Francisco, withdrawn during the years 1904 or 1905 from the Land Department of the Oregon & California Railroad Company in Portland for the purpose of investigations then pending, these defendants are unable to say what quantity of said unsold lands, patented or unpatented, remained unsold on January 1st 1903; and, having no knowledge or information on the subject except as above stated, they deny that on January 1st 1903, there remained unsold of said granted lands aproximately 2,373,000 acres, consisting of approximately 2,080,000 acres which had been theretofore patented under said land-grants, and approximately 293,000 acres of unpatented lands which are now claimed by the defendant Oregon & California Railroad Company under and by virtue of the said land-grants.

They admit and say that approximately 1,800,000 acres of said unsold lands are situated southerly from Eugene, and constitute approximately one-third (but not "nearly one-half," as stated in the Bill) of the lands lying within twenty miles on each side of said line of railroad from Eugene to the southern boundary line of

Oregon; and admit that only a small portion of the granted lands in that portion of the East Side grant have ever been sold; but deny that the territory in which said unsold lands are situated was or is wholly dependent on the railroad lines of the defendant Oregon & California Railroad Company now operated by the defendant Southern Pacific Company. They admit and say, that since January 1st 1903, and principally since the passage. on or about February 14th 1907, by the Legislature of the State of Oregon, of the Memorial a copy of which is attached as "Exhibit L" to the Bill, communications have been received by the defendant Oregon & California Railroad Company, purporting to be the several applications of persons exceeding 1,000 in number, to purchase certain of said unsold lands, generally designated and described in such communications as a single 160-acre tract or quarter-section subdivision to each person named; but they deny that said applicants intended or desired to purchase the lands so applied for by them or in their names, respectively, for the purpose of actually settling thereupon or making a permanent or any home thereon; and they deny that several of said applicants had actually settled or established a permanent or any home upon the land so applied for by them or in their names, respectively; and they deny that at the time of said applications to purchase each of said applicants did actually tender to the defendant Oregon & California Railroad Company the sum of $2.50 for each acre so applied for, as the purchase price thereof.

They deny that in addition to the said applicants to purchase, a large or any number of persons are ready or willing to settle upon said lands or to purchase the same for the purpose of actually settling thereupon or of making a permanent or any home thereon, in quantities not exceeding 160 acres to each person, or for the price of $2.50 per acre, or upon any terms prescribed by the said land-grants, or are deterred therefrom by the defendant Oregon & California Railroad Company, as stated in the Bill, or at all; and in this behalf they say that the said lands, generally, are essentially timber-lands, not susceptible of actual settlement, or the establishment of permanent or any homes upon; and they say, further, that all lands of the said land-grants now or at any time susceptible or capable of actual settlement or the establishment of homes upon at no time exceeded (approxmately) 300,000 acres, consisting of small and widely separated tracts, all or nearly all of which were sold to actual settlers or persons claiming to be such during construction and prior to completion, respectively, of said railroads, in quantities of 160 acres or less to a single purchaser, at prices not exceeding $2.50 per acre.

These defendants further say that the said applications to purchase said lands, referred to in the two next preceding paragraphs hereof, were made by persons desiring to obtain title to said respective quarter-sections on account of the timber thereon and not otherwise, and for the purpose of speculation only and not in good faith as actual or any settlers; and that the said

lands were chiefly, and in most instances solely, of value because of the timber thereon and were not arable, fit for, susceptible or capable of, actual settlement.

They admit and say, that on or about January 1st 1903, pending examination into the records and affairs of its Land Department, the defendant Oregon & California Railroad Company withdrew from sale all of the said unsold lands; but deny that in violation or breach of any terms or conditions of said land-grants, or either of them, respectively, the Oregon & California Railroad Company, under the direction or influence of the defendant Southern Pacific Company as one of the constituent Companies of said "Harriman Lines," or otherwise, on or about January 1st 1903, or at any time, withdrew from sale all or any of said unsold lands; and they deny that at all the times thereafter the defendant Oregon & California Railroad Company has refused or still refuses to sell any part of said unsold lands to actual settlers, or for purposes of actual settlement, or in quantities or for prices as prescribed by any terms of the said land-grants, or either of them, or at all. They admit that the defendant Oregon & California Railroad Company has at all times refused, and still, refuses to entertain any of the aforesaid pretended applications to purchase, or to sell any of the timber-lands applied for as aforesaid, to the persons who made or in whose names were made the said pretended applications, upon any terms offered or made under or pursuant to the said pretended applications; but they deny that ever since January 1st 1903, or at any time, the defendant

Oregon & California Railroad Company has failed or neglected to encourage or promote the settlement of any of the said lands which are susceptible to settlement for the establishment of homes upon, or the purchase thereof by actual settlers for the purpose of actual settlement; and they deny that by divers, or any, means or methods the Oregon & California Railroad Company has at all or any times discouraged, obstructed, forbidden or prevented the settlement of any of said lands which are susceptible of settlement, or the purchase thereof, or any part thereof, upon terms prescribed by the said land-grants, or either thereof, by actual settlers, or for the purpose of actual settlement.

They admit and say that since January 1st 1903, and at all times theretofore, the defendant Oregon & California Railroad Company assumed and asserted and has assumed and asserted an absolute and unconditional estate in and to all of said unsold lands; but deny that it at any time attempted, or is attempting, to convert any conditional estate into an unconditional estate, in violation or breach of any terms or conditions of the said land-grants, or at all. And they deny that by reason of any nominal character of the defendant Oregon & California Railroad Company, or of any other premises setforth in the Bill, or at all, the unconditional estate in the said lands so asserted and claimed by and in the name of the defendant Oregon & California Railroad Company, has inured to the benefit of or has been exercised by the defendant Southern Pacific Company as one of the constituent Companies of the said "Harri-

man Lines," or otherwise; and they deny that the practical, or any, effect of the premises is the same as if all or any part of said unsold lands had been conveyed to the defendant Southern Pacific Company for the use or benefit of said (so-called) "Railroad Syndicate," or otherwise.

These defendants deny that by virtue of the premises or in violation of the express terms or conditions as well as the plain or any intendment of the said land-grants, respectively, or otherwise, all or any of the said unsold lands or the full or any value thereof has or have been converted to the use or benefit of the defendant Southern Pacific Company, as one of the constituent Companies of the (so-called) "Harriman Lines," or otherwise; and deny that a virtual, or any, land monopoly has been created, or ever since January 1st 1903, or at any time, has been maintained, or hereafter will be maintained, for the selfish or any uses or purposes of the defendant Southern Pacific Company or said (so-called) "Railroad Syndicate," or otherwise, enabling said (so-called) "Railroad Syndicate," among other things, or at all, to control or restrict commercial or industrial development of the territory tributary to said line of railroad, or otherwise, or thereby prevent the construction or establishment of competing railroad lines which would naturally or otherwise, be attracted by the increase in production that would attend a normal or unrestricted development of industrial or commercial resources, if said granted land should be sold to actual settlers or for the purpose of actual settlement, pursuant to any terms or con-

ditions of said land-grants, or otherwise.

They deny that because of the premises, or otherwise, the industrial or commercial or any development of those portions of the State of Oregon wherein are situated the said unsold lands, or any part thereof, has been or will continue to be seriously, or at all, retarded or completely, or otherwise, checked.

They admit that except as otherwise specifically stated, all statements contained in the Bill concerning the withdrawal of said lands from sale, the circumstances, purposes and effects thereof, together with the subsequent opportunities to sell said lands to actual settlers and for the purposes of actual settlement, and the conduct of the defendant Oregon & California Railroad Company in relation thereto, are by the Bill said to, but these defendants deny that they do, apply to each or either of said land-grants.

These defendants have no knowledge or information as to how, or from what sources, "Exhibit K" to the Bill was made or prepared, but to speed the cause admit that it was prepared and made from the returns and in the manner alleged in the third paragraph on page 49 of the Bill; and they admit that the said "Exhibit K" to the Bill contains a full and correct description of all unsold patented lands of the said grant, excepting as to the errors thereof and omissions therefrom particularly setforth in "Exhibit No. 5" attached to and made part of this Answer. For answer to the discovery asked by the last sentence of the said para-

graph on page 49 of the Bill, a full and correct statement is hereto attached, marked "Exhibit No. 6," of all unsold, unpatented primary lands, and of all unsold selected but unpatented indemnity lands, claimed by the defendant Oregon & California Railroad Company under said land-grants.

They deny that none of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, or seeking to purchase the same, as in the Bill stated; and deny that the reasonable present value of said unsold lands exceeds the sum of $40,000,000.

These defendants say, that the defendant Oregon & California Railroad Company has at all times since the year 1870, been and still is in open and notorious possession of and dominion over the said lands, as follows: The said Company has at all said times openly and notoriously claimed, and prior to about the time of the commencement of this suit was recognized as and admitted by all to be such owner thereof; has, at all times, openly and publicly mortgaged, leased and offered for sale, the said lands; has at all times, caused the said lands to be protected by field-agents who traveled over and protected the same against depredation and waste; has, at all times paid the taxes levied and assessed upon and against the said lands—which payments amount, in all, to $1,827,234.10; and in divers other ways has openly and notoriously proclaimed and asserted, and been in, possession of, the said lands. Besides, large and different portions of said lands have been reduced to

possession and improved, from year to year, by persons holding leases thereof for grazing and other purposes, from the defendant Oregon & California Railroad Company; and other large portions of the said lands have been reduced to possession as right of way, station-grounds, depot-grounds, and the like for the railroad purposes of the defendant Oregon & California Railroad Company, as is hereinafter more particularly shown.

These defendants deny that none of said unsold lands now are, or ever were, necessary to reserve for depots, stations, side-tracks, wood-sheds, standing-ground, or any other needful uses in operating any of said railroad lines or any part thereof; and deny that no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes. And in this behalf these defendants say that all the lands described in "Exhibit No. 7," hereto attached and made part of this Answer, are and at the time this suit was brought were necessary to reserve and were reserved for depots, stations, side-tracks, wood-sheds, standing-ground, and other needful uses in operating the said railroads; and they say that all the lands described in "Exhibit No. 8," attached to and made part of this Answer, now are and at the time this suit was brought were necesary to reserve and were reserved for the other needful uses in operating the said railroads particularly setforth in the said "Exhibit No. 8."

X.

Answering the allegations made, and giving the discovery sought, by subdivision "X" on pages 50 and 51 of the Bill, these defendants say: That the following is a full and correct statement of the total amounts received by the defendant Oregon & California Railroad Company, and disbursed by the said Company, from and in the sale and disposition of the lands of the East Side and West Side grants, from April 1st 1870, to April 30th 1911:

Received, from the sale of lands, ...		$4,338,822.53
Received, from the sale of timber on lands, ...		18,850.25
Received, from timber depredation settlements, ..		10,687.92
Disbursed, for advertising,	$34,784.85	
Disbursed, for Law expenses, ...	218,415.25	
Disbursed, for Grading lands, ...	142,651.40	
Disbursed by U. S., surveying, &c.	145,977.26	
Disbursed, salaries and office expenses, ...	624,344.19	
Disbursed, stationery and printing, ...	18,369.89	
Disbursed, taxes on lands,	1,827,234.10	
Bal. net amount received.	1,356,583.76	
Totals, ...	$4,368,360.70	$4,368,360.70

In addition to the said amounts, the defendant Oregon & California Railroad Company received the following amounts between April 1st 1870, and April 30th 1911, for which no land nor interest in land was disposed of or parted with; and in most instances such receipts were related to and arose out of the same lands accounted for above as disposed of:

Received, from forfeitures under contracts,	$ 88,205.06
Received, for interest on contracts,	1,025,922.89
Received, for land leases,	5,532.07
Total,	$1,119,660.02

They deny that in divers, or in any other ways, the defendant Oregon & California Railroad Company has received or enjoyed financial benefits on account of said granted lands, the particulars concerning which are known or unknown to the complainant.

These defendants deny that any allegation or statement made in the said subdivision "X" of the Bill, contrary to or contradictory of the foregoing statement, is true wholly or in part; and in this behalf they say, that all moneys received, as aforesaid, from the sale or disposition of the said lands, were applied to cost of construction as the work thereof progressed, or to repay moneys procured under the mortgages hereinbefore setforth and used for the construction of, the East Side and West Side railroads.

XI.

These defendants deny that the defendant Oregon & California Railroad Company has repeatedly threatened, or threatened at all, or still threatens, to or will unless restrained therefrom, sell, contract for sale, or in any manner encumber or impair the title of said unsold lands, or any part thereof, in violation of any terms or conditions of the said land-grants, or either of them; and they deny that the said defendant has heretofore cut large or any quantities of timber growing on said unsold lands or has otherwise committed waste thereon, or by contract or otherwise has permitted or invited others so to do, except as accounted for in subdivision "X" hereof; and they deny that the said Company threatens to, or will unless restrained therefrom by this Court, continue to commit waste upon said unsold lands, or any thereof, or particularly as to the timber or other natural products thereof, or will continue to permit, contract for or invite others so to do, to the great or irreparable or any injury of complainant in the premises.

XII.

These defendants admit and say, that prior to the completion of the construction of the Oregon & California Railroad and its connection with the California & Oregon Railroad at the Oregon-California boundary line, and thereafter until about the year 1890 (but not until the year 1894, as stated in the Bill) there was substantially no demand for said granted lands, except for the purpose of settlement or by persons of limited

means able to purchase said lands only in small quantities and at reasonable prices; and they admit that nearly all sales made prior to the year1894 were of that character, to persons who purchased lands subject of settlement, and upon or adjacent to which they had established homes; and herein they admit and say that prior to the completion of the said railroad, timber lands, not being susceptible of settlement or the establishing of homes upon, had but little, if any, market value, and could not be sold at any price to any person. They admit that during a large part of said period the defendant Oregon & California Railroad Company maintained an immigration bureau, engaged in inducing immigration and settlement upon such of said lands as were susceptible of actual settlement in good faith, but deny that said Company was not otherwise engaged in soliciting or promoting sales; and they deny that by reason of the premises, or otherwise, the occasional or any violations of terms or conditions of said land-grants or either of them during the said period were concealed or generally unknown, until ascertained by complainant as stated in the Bill; and in this behalf they say that the Oregon & California Railroad Company at all times, openly and to the actual knowledge of all persons concerned, including complainant, disposed of its said lands at the best price obtainable, in quantities desired by applicants to purchase; giving preference to actual settlers in quantities claimed and applied for by them, in the interest of railroad transportation and traffic—but not because of any provision in the said Joint Resolu-

tion of April 10th 1869, or Act of May 4th 1870.

They deny that a sudden demand arose for said lands commencing about the year 1894, among wealthy speculators or timber-men; but admit that the greater part of the so-called wrongs and violations complained of in the Bill transpired subsequent to that date. In this behalf they say, that nearly all of the said lands remaining unsold at the time of the completion of the construction of the East Side railroad and its connection with the Central Pacific railroad as aforesaid, were timber-lands, having small market value, and for which there was substantially no demand by purchasers at that time; but soon after transportation for lumber was opened by the completion and connection of the said railroads, the intermediate even-numbered Sections were entered by persons under the Timber-land Act and the commutation provisions of the Homestead Acts, who thereupon conveyed the lands so entered to single holders of many such adjoining tracts; and the increase in value of the Oregon & California Railroad Company's intermediate odd-sections of timber-land, arose out of the said completion and connection of railroads, and the demand therefor at increased and gradually increasing prices arose out of the need of ownership of the odd-sections by the owners of the intermediate even sections, who desired or sought to procure sufficiently large single timber-land holdings to justify the establishment and equipment of lumber mills and factories, to mill and market the timber product of said lands.

They deny that nearly all or that any except a few

of the sales consummated after that time were made by executory contracts of sale which were not placed of record or which did not merge into deeds for many years thereafter, or otherwise than shortly thereafter, or that a considerable or other than a small portion thereof are still pending, or that any conveyances for excessive quantities of said lands were not placed of record until recently except as to a few or that many are still unrecorded except a few thereof. And in this behalf, they say that the conveyances relating to the transfer of the said lands both before and after the year 1894 and from the beginning were in the main and in substantial entirety made matters of open, public and continuing record and were matter of general and public knowledge and notoriety, at and about the time of the several and successive conveyances in which the transactions and dealings in respect to the said lands from the beginning were embodied, and continuously ever since, and were well known at all of such times to the Government and Land Department of the United States, and many and most of the contracts of sale, said contracts of sale being followed by such conveyances, were likewise made and continued to be matter of public record and knowledge and within the knowledge of the Government and Land Department of the United States; and they deny that in any instances of sales in excessive quantities (that term being understood herein to mean quantities in excess of 160 acres) the lands were conveyed or attempted to be conveyed by several deeds, each for a small quantity of land, or that thereby the true facts were

concealed or that any such or any device of concealment was resorted to; and they say that, on the contrary, while no deed was issued for a lesser quantity than the sale in execution of which it was made, many deeds were issued to assignees of several contracts, in execution by a single deed of several or many executory contracts by apparently one transaction.

They admit and say that on or about January 1st 1903, all of said unsold lands were withdrawn from sale, pending investigation of Land Department transactions of the Oregon & California Railroad Company; but they deny that the said lands, or any thereof, were thereafter converted to certain or any wrongful or unlawful uses or purposes setforth in the Bill, or at all. They deny that, designing to conceal the premises from complainant or the general public, or at all, the defendant Oregon & California Railroad Company, from time to time, or at all, falsely or deceitfully represented that said lands were withdrawn from sale for divers or other temporary reasons, or with the intention of resuming the sale thereof; and they deny that the alleged confusion of the records of said Land Department, or that the alleged destruction of the said records during the San Francisco fire, or other similar or any excuses were used successively, or at all, to conceal the true character of said transaction.

XIII.

These defendants deny that by reason of the premises, otherwise or at all, the several, or any, transactions

characterized in the Bill as, or in fact, wrongful or unlawful, were concealed from or unknown to complainant until ascertained as stated in the Bill; and in this behalf they say that all of said transactions were open and notorious, and many if not all thereof actually known to complainant at the times thereof, respectively, or, soon thereafter, and complainant also had constructive notice of all or substantially all of the said transactions at or about the times thereof, respectively, commencing as early as March 1870, and continuously thereafter to the present time. They say that complainant at all times acquiesced in all, and in many instances expressly approved and ratified certain, of the said transactions; a few of the many instances of such acquiescence, approval and ratification, other than those hereinbefore and hereinafter setforth, are shown by "Exhibit No. 9" and "Exhibit No. 10," hereto attached and made part of this Answer. (On September 8, 1911, by order of court the following words were added by way of amendment: And by "Exhibit A" attached to and made a part of this amendment.

Exhibit A

Reference to Reports of Oregon & California Railroad Company to Auditor of Railroad Accounts of the Interior Department, and official Report thereof by Secretary of Interior to Congress as printed in the Annual Report of "Executive Documents" and "House Documents," showing the average and maximum price received from the sale, and asked for the unsold lands, of the said Railroad Company's land-grant lands, during each year from 1879 to 1903, inclusive:

Year	Lands Sold — Average Price Received Per Acre	Lands Sold — Maximum Price Received Per Acre	Lands Un-sold — Average Price Asked Per Acre	Lands Un-sold — Maximum Price Asked Per Acre	Executive Documents Vol.	Executive Documents Page
2nd ½ 1879..	$2.39	$15.00	$2.50	$7.00		
1st ½ 1880..	2.28	5.00	2.00	7.00		
2nd ½ 1880..	2.12	5.00	2.50	5.00	10	320
1st ½ 1881..	2.24	10.00	2.00	5.00		
2nd ½ 1881..	2.25	5.00	2.00	10.00		
1st ½ 1882..	2.24	3.50	2.00	15.00	11	471
2nd ½ 1882..	2.25	15.00	2.00	7.00		
1883	2.75	15.00	2.50	7.00		
1884	2.73	15.00	2.50	7.00		
1st ½ 1885..	2.56	15.00	2.50	7.00		
2nd ½ 1885..	2.65	15.00	3.50	7.00		
1885	2.73	15.00	2.50	7.00		

Year	Lands Sold — Average Price Received Per Acre	Lands Sold — Maximum Price Received Per Acre	Lands Un-sold — Average Price Asked Per Acre	Lands Un-sold — Maximum Price Asked Per Acre	House Documents Vol.	House Documents Page
1st ½ 1886..	$2.99	$15.00	$3.50	$ 7.00		
2nd ½ 1886..	2.99	15.00	3.50	7.00		
1886	2.99	15.00	3.50	7.00	9	596
1st ½ 1887..	3.19	15.00	3.50	7.00		
2nd ½ 1887..	3.40	15.00	3.50	7.00		
1887	3.24	15.00	3.50	7.00	11	1173
1888	3.74	15.00	3.50	10.00	12	454
1889	4.96	15.00	3.50	15.00		
1890	6.32	15.00	3.00	15.00	13	174
1891					16	192
1892	5.61	30.00	3.00	25.00	14	188
1893	4.51	30.00	3.00	25.00	15	130
1894	2.83	30.00	3.00	25.00	16	143
1895	3.49	30.00	3.00	15.00	16	156
1896	3.57	30.00	3.00	15.00	14	166
1897					14	137
1898	3.95	30.00	3.00	15.00	16	152
1899	2.62	30.00	3.00	15.00	20	181
1900	5.02	30.00	3.00	15.00	29	185
1901	5.35	30.00	3.50	15.00	25	218
1902	7.85	30.00	3.50	20.00		
1903	4.22	30.00			21	159]

They admit that "Exhibit L" to the Bill is a correct copy of the original Memorial passed by the Legislature of Oregon on or about February 14th 1907; but say that it does not purport to, and does not, disclose any concealments made or said to have been made

by the defendant Oregon & California Railroad Company, and did not and could not have given complainant notice of any of the transactions characterized in the first paragraph on page 53 of the Bill as "concealed from and wholly unknown to" complainant; and in this behalf they say that all such transactions were conducted and made in the usual manner of conducting and making transactions of such character, and no concealment whatever was made or attempted to be made of any thereof. They deny that the said Memorial was made because of any injury inflicted upon the commercial or industrial conditions of the State of Oregon, or because of its having become manifest or of its being in anywise true that any representations made by the defendant Oregon & California Railroad Company, were false; and in this behalf they say that the said Memorial was imposed and procured to be passed by the Oregon Legislature by a few influential politicians for interests personal to themselves and other persons, the facts respecting which are not disclosed therein, nor by the Bill.

They admit that on April 30th 1908, Congress passed the Joint Resolution, a copy of which is setforth on pages 53 and 54 of the Bill, in pursuance of and influenced by the said Memorial; and they admit that this suit was instituted pursuant to the said Joint Resolution; but in making this admission they do not concede, or admit, but on the contrary deny, that this is a suit brought in accordance with the provisions of the said Joint Resolution, or intent of Congress in adopt-

ing said Joint Resolution, or is one that the Attorney General has authority to bring in this Court under or in pursuance of the said Joint Resolution, or at all; and they deny that the Bill presents or shows any cause of suit or action which may be properly considered by a Court of Equity.

XIV.

These defendants deny that, because of the several, or any, breaches or violations of any terms, conditions or provisions of the said land-grants, respectively, either of them, or at all, certain or any of the said granted lands or estates therein, have been or are forfeited to the United States, free from any or all right, title, interest, lien or claim of these defendants or of the defendant Union Trust Company, or persons claiming by, through or under them or any of them, otherwise or at all; and in this behalf they say that they (these defendants), and all persons claiming through and under them, have an absolute and indefeasible right and title to all of the said lands and interests in lands described in the said Acts of July 25th 1866, and May 4th, 1870, as granted, or intended to be granted, by them, respectively.

They admit that the Attorney General, but deny that the United States, does by the Bill in this case assert title to lands and estates in lands described on page 55 of the Bill, by reason of alleged forfeiture thereof unto the United States; but they say that the assertion so made has no foundation in fact, nor au-

thority in law; and they deny that the United States has resumed, or has lawful authority to resume, title to all or any of the said lands or interest in lands, pursuant to the said Joint Resolution of April 30th 1908, by the filing of said Bill, or otherwise. They say, upon advice of counsel which they believe to be correct, that were it in anywise true in fact or law, that the said lands or any thereof, or any interest therein, had or have become forfeited unto the United States for breach or violation of some or any condition in grant, the United States has a speedy, adequate and complete remedy at law respecting the same, and no question of fact as to such forfeiture can be enquired into or found, nor can such forfeiture be in anywise enforced, by this Court. Wherefore these defendants, reasserting their demurrer for no equity shown by the Bill, and denying especially the jurisdiction of this Court to hear or determine this cause in so far as it is, or purports to be, a suit to ascertain, determine, or enforce a forfeiture, file this Answer upon protest, and protesting against this Court's jurisdiction submit to trial because they must, under this Court's ruling on demurrer.

They deny that any estates or interests in lands other than the said unsold lands, described or referred to on page 55 of the Bill, have been sold in violation of any term or condition of the said land grants, or either of them; and they deny that any estate or interest therein which has or have been forfeited to the United States is not included in this suit because sold, contracted for sale, or disposed of in violation of any terms or con-

ditions of said land-grants, otherwise or at all, to a large or any number of persons, or because such transactions, or any thereof, include alleged or any rights of succession by purchase, conveyance, mortgage, descent, devise or otherwise, or more than 3,000 or any number of persons, firms or corporations residing in divers or any parts of the United States or other parts of the World, who or which now assert or have some right, title, interest or lien in, to or upon any lands sold, contracted for sale or conveyed in violation of the or any terms or conditions of the said land-grants, or either of them. They say that they have no knowledge or information on the subject, and on that ground deny that the names or places of residence of only a few of the persons, firms or corporations referred to in the Bill are or were known to complainant; and on the same ground they deny that because of multiciplicity or complexity of said or any transactions, complainant was unable to ascertain them, any or all of them, in time to include said parties and all of them in this suit; and they deny that the said lands were sold or purchased, or that alleged subesquent rights have been acquired therein, as alleged in the Bill, or at all; and they deny that because of the premises, or at all, it would be inequitable to secure an adjudication of the rights of all or any of said parties by making only a few of them parties defendant as representatives of all or any thereof; and they deny that, to require the making of all of said persons, firms or corporations parties to this suit, or to otherwise require an adjudication herein of their

or any of their respective rights in the premises, would indefinitely postpone or ultimately defeat the or any rights, equities or remedies of complainant pertaining to said unsold lands, or any lands; and they deny that the, or any, public interests require a speedy, or complete, or any, adjudication or enforcement, of any relief prayed, asked or suggested by the Bill; and they deny that this suit was brought in a sincere belief or expectation that complainant was entitled to, or could or would obtain the, or any, relief prayed for.

They deny that to the end that justice or equity may be suitably administered in the premises, or at all, this suit was instituted for the purpose of obtaining without unnecessary delay, or at all, an adjudication or enforcement of any rights, equities or remedies of complainant against these defendants, or any of them, pertaining to the said unsold lands, or at all; but say that since the bringing of this suit forty-five separate and further suits have been instituted in this Court by complainant against these defendants and others, for the pretended purpose of asserting and enforcing pretended rights, equities or remedies pertaining to certain of said granted lands duly sold or conveyed by the defendant Oregon & California Railroad Company to such other defendants, in alleged violation of some terms or conditions of the said land-grants, respectively.

XV.

These defendants admit and say, that the property described in the said mortgage deed of July 1st 1887,

from the Oregon & California Railroad Company to the Union Trust Company, covered and included all lands granted by the said land-grants which remained unsold on May 12th 1887; and that the property described in said mortgage deed, including the said lands, exceeds in value the amount of bonded indebtedness secured thereby; but they deny that the said property exclusive of the said lands, exceeded in value the amount of said bonded debt, or was ample security therefor, at the time the said mortgage deed was given, or at any time prior thereto.

XVI.

These defendants admit and say, that pursuant to the rules and regulations of the Department of Interior in that behalf duly adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the proper land offices of the United States by the defendant Oregon & California Railroad Company, as the assignee (but not as the "successor" otherwise than assignee by deeds of conveyance) of the East Side Company and West Side Company, respectively, by the aforesaid deeds of conveyance; and they admit that each of the said applications contained descriptive lists of the lands so applied for, and an affidavit of the duly authorized Land Agent of the said Company, sworn to by him, alleging that all of the lands so applied for were of the character contemplated by the grant under which they were claimed, and for which patents were applied for as aforesaid; and they admit that the patenting officers

of the United States believed the statements made in the said applications and affidavits to be true. But they deny that the said patents, or any of them, were issued solely because of such statements, or affidavits, or belief of any officers of the United States therein; and say that the said patents, and all thereof, were duly issued pursuant to the records of the local and general land offices of the United States, and pursuant to due and diligent inquiry, investigation, report and determination by the proper officers of the United States, as to the true facts and particulars in that behalf which authorized and made it the duty of the said officers to issue the said patents, under and pursuant to the provisions of the said Acts of July 25th 1866, and May 4th 1870, respectively.

XVII.

These defendants say, that the true facts and particulars respecting the matters and things set forth in subdivision "XVII" of the Bill, are as follows:

For the purpose of reserving the right of way, and incidental grants, made by section 3 of the said Act of Congress of July 25th, 1866, and by the first section of the said Act of Congress of May 4th, 1870, and to protect the Oregon & California Railroad Company against such, if any, reservation as was made by the United States by inserting a clause in patents issued to said Company containing a clause "excepting and excluding all mineral land should any be found in the tracts aforesaid," the contracts and conveyances issued by the said

Company prior to about the year 1894, contained (substantially) the following reservation:

> "Reserving, however, a strip of land 100 feet wide, to be used by the Oregon and California Railroad Company for right of way or other railroad purposes, when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises, and the right to use all water needed for the operating and repair of said railroad, and also reserving all claim of the United States to the same as mineral land."

By the case of *Davis' Adm'r* vs. *Weibold,* reported in 139 U. S. 507 *et seq.*, the United States Supreme Court held (in effect) the said clause in patent "excepting and reserving all mineral lands" to be void and of no effect; and the same Court, on May 26th 1894, in *Barden* vs. *Nor. Pac.,* reported in 154 U. S. 288 *et seq.,* held (in effect) that minerals discovered in railroad land-grant lands after the issuance of patent therefor inured to the benefit of the Railroad Company under and by virtue of such patent. Thereupon the last clause of the above-quoted reservation, in contracts and conveyances issued by said Company, was changed by striking out the words "and also reserving all claim of the United States to the same as mineral land," and thereafter, but not until about the year 1902, the words: "and also reserving and excepting from said described premises so much thereof as may be mineral lands" was substituted for the said stricken out words.

They deny that said reservation, or any thereof, create a permanent estate or permanent estates in favor of the Oregon & California Railroad Company or these defendants in or to a large or any part of said granted lands in violation or breach of any terms or conditions of the said land-grants, or either of them, or that they or either or any of them are in anywise null or void. They admit and say that the Oregon & California Railroad Company claims absolute and indefeasible ownership (but not merely "some inchoate right, title or interest") in and to the premises so reserved; and deny that such ownership, or any right, title, or interest therein, is subject to the or any right of forfeiture or right, equity or remedy of complainant set forth in the bill, or which complainant has or at any time since the making of said grants, respectively, had.

XVIII.

These defendants admit and say that the defendant Oregon & California Railroad Company is, and claims to be, the owner of all of the said granted lands, patented and unpatented, not heretofore sold and transferred by its deeds of conveyance, together with all right of way and other rights and property granted by Section 3 of the said Act of July 25th 1866 and the first section of the said Act of May 4th 1870, and all rights and property reserved as aforesaid for any and all railroad purposes, and the improvements upon all of the said lands and property; and they admit and say that all of the said land and property is subject to the lien of the

aforesaid Union Trust Company mortgage deed of July 1st 1887. They deny that any or all of such rights, titles, interests or liens were, or are, subject to any right of forfeiture, or to any other rights, equities or remedies of complainant, asserted or attempted to be asserted by the Bill herein, or which complainant has or at any time since the making of said grants, respectively, had.

XIX.

These defendants admit that "Exhibit M" attached to the Bill is, substantially, correct, in a general way, except that (a) the map of definite location from Jefferson to the south line of Township 27 South, Range 6 West, was filed on March 26th 1870, instead of March 29th 1870, as therein stated; (b) the map of definite location from the last-mentioned point to a point in Township 30 South, Range 5 West was filed on January 7th 1871, instead of March 2nd 1871, as therein stated; and (c) the map of definite location from the last-mentioned point to connection with the California & Oregon railroad was filed on August 18th 1884, instead of August 20th 1884, as therein stated.

They admit and say that "Exhibit N" attached to the Bill is, substantially, correct, in a general way, except that (a) the Commissioners' favorable report on the 7th, 8th and 9th sections of the East Side railroad was made on December 27th 1876, instead of July 10th 1878, as stated therein; (b) that the Commissioners' favorable report on the 10th section of the said railroad was made on August 6th 1883, instead of August 29th

1883 as stated therein; (c) that the Commissioners' report on the 11th section of said railroad was approved on January 3rd 1887, instead of January 29th 1887, as stated therein; and (d) that the Commissioners' report on the last section of said railroad was approved on April 18th 1889, instead of November 8th 1889, as therein stated.

They say that "Exhibit O" attached to the Bill is incorrect in so many particulars that "Exhibit No. 11" is hereto attached, and made part hereof, in correction thereof; and in this behalf they say that all the facts and figures given in "Exhibit No. 11" to this Answer are true and correct, according to the records of the Land Department of the defendant Oregon & California Railroad Company, and information and belief of these defendants.

XX.

These defendants admit that "Exhibit P" attached to the Bill gives a correct list of the suits referred to, and that in so far as relevant or material to the purposes or requirements of this Answer subdivision "XX" of the Bill sufficiently states with reasonable accuracy the allegations and substance of the complainants filed in those suits. In this behalf they say that on or about December ———— 1908, all of the said suits other than the one brought by Roy W. Minkler were consolidated with this suit No. 3340; that thereafter, on or about January 15th 1909, all the persons other than the said Roy W. Minkler named as complainants in "Exhibit P" to the Bill, filed herein their cross-complaints, each and all

of which was and were dismissed by the order of this Court made and entered on April 24th, 1911; and that on or about June 9th 1910, the said suit brought by Roy W. Minkler was duly dismissed by mutual consent of the parties thereto.

XXI.

These defendants say, that from the time of the making of said grants of land to the East Side Company and West Side Company, owned by the defendant Oregon & California Railroad Company since 1870 as to the East Side grant and since 1880 as to the West Side grant, about forty years has elapsed during which the United States has had actual and constructive notice, as hereinbefore set forth, of sales of lands thereof in quantities in excess of 160 acres to one purchaser other than an actual settler, at prices in excess of $2.50 per acre; during all of which time the United States, as hereinbefore stated, remained silent and apparently acquiesced in such sales.

During all of said time the United States has accepted and approved the said railroads as constructed, and has demanded and accepted (since as well as at all times before commencement of this suit) the free use and benefit of the said railroads in the transportation of troops and munitions of war, of the approximate total value of $1,000,000.

Because of the said acceptance, approval and use of the said railroads, and relying on the acquiscence of the United States in such sales, the defendant Oregon &

California has paid taxes on the said unsold lands to the amount of $1,827,234.10 as aforesaid, and the other costs and expenses set forth in subdivision "X" hereof, including the payment of $145,977.26 unto the United States for the costs of surveying and patenting of the said lands; no part of any of which sums has been paid, repaid or tendered to these defendants, or any of them.

And because of the said acceptance, approval and use of the said railroads, and reliance on the said acquiescence of the United States, the defendant Southern Pacific Company guaranteed the payment of (approximately) $17,500,000 in bonds still outstanding, issued and sold under the Trust Mortgage of July 1st, 1887, covering the said lands, as hereinbefore set forth.

XXII.

These defendants say that any and all causes of suit or action setforth in the Bill, are barred as follows:

(a). By section 391 of Lord's Oregon Laws.

(b). By section 8 of the Act of Congress approved March 3rd 1891, entitled "An Act to amend section 8 of an Act approved March 3rd 1891, entitled 'An Act to repeal Timber-culture laws, and for other purposes.'" published in Vol. 26, U. S. Statutes at Large, page 1093.

(c). By the first section of the Act of Congress approved March 2nd 1896, entitled "An Act to provide for the extension of time within which suits may be

brought to vacate and annul land patents, and for other purposes," published in Vol. 29, U. S. Statutes at Large, page 42.

(d). By acquiescence, and laches, of complainant.

(Amendment allowed by leave of court, April 28, 1913, as follows:

That during all the times mentioned in the Bill of Complaint, and particularly from and after the 20th day of May, 1872, down to April 30, 1908, the United States well knew that the Oregon and California Railroad Company, and its predecessors in interest, had continuously and uniformly claimed to own said land grants in fee simple without any condition as to the sale of said lands, and as earned by construction of said roads, and had sold, mortgaged and conveyed the same to secure funds for the construction of said roads, and to refund said indebtedness for said construction funds, by the execution of certain of the mortgages described in said Bill of Complaint, and other mortgages, and the negotiation and sale of bonds issued thereunder, and that the said present outstanding stock of the said Oregon and California Railroad Company was issued and delivered to the owners and holders of the mortgage bonds issued and sold under said mortgage of April 15, 1870, and in satisfaction of said mortgage, and that the proceeds of said bonds were used in the construction of the first 198 miles of the East Side road and of said 47½ miles of said West Side road, and the United States during all said time from May 20, 1872, down to April 30, 1908, well knew the way and manner in which

said Oregon and California Railroad Company continuously and uniformly was administering and had administered said land grants, and was selling and had sold said land granted by said Acts of Congress, and during all said times well knew that said company was selling and had sold said lands so sold by it without any particular regard to the alleged limitations or restrictions of said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, except insofar as the same may be construed to apply to actual settlers upon any of said lands prior to completion of the separate sections of said roads and the acceptance thereof by the United States, as provided by said Act of July 25, 1866, and said act of May 4, 1870, and the direction of the President to issue patents for the lands so earned, and that notwithstanding such knowledge during all said time between May 20, 1872, and April 30, 1908, of all said matters. and of all the matters and things alleged in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, and notwithstanding such knowledge during all said time of all the matters and things alleged in the Joint and Several Answer of the defendants, as heretofore filed and amended, the United States, from said May 20, 1872, to April 30, 1908, asserted no claim of any breach, made no objection to the execution of said deeds, mortgages or conveyances, or to any action of the company in respect to the administration of said grants, or either of them, or the sale of any lands thereby granted, and in no wise asserted any claim that

the company was at any time misconstruing said acts, or either thereof, or in any way was violating or had violated said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, but on the contrary the United States permitted and allowed the company to mortgage said lands to secure said construction funds so borrowed and used, as aforesaid, and permitted and allowed the company to expend large sums of money in surveying fees and other fees paid to the United States, and to expend large sums of money in taxes upon said lands, and in advertising said lands for sale, and in examining, cruising and grading said lands as timber lands, and also large sums of money in completing said railroad in the first instance from Portland to Roseburg, Oregon, and next in extending the same from Roseburg to Ashland, Oregon, and finally in completing the same to the Oregon and California State line, and also in completing said railroad from Portland to McMinnville, Oregon, and during all said times the United States exacted from said company, and said company furnished, the free transportation of the troops and property of the United States, as required by said Act of July 25, 1866, at the cost and expense of said company, aggregating a sum in excess of $600,000.00; that relying upon the acquiescence and action of the United States, as aforesaid, the Oregon and California Railroad Company expended all said sums, as aforesaid, incurred all said liabilities, and so mortgaged, sold and conveyed said lands, claiming to own the same in fee simple without any condition; applied for, accepted and placed of record all the pat-

ents issued by the United States for such lands, and so sold and conveyed to purchasers such portions of said granted lands as alleged in said Bill of Complaint, and has applied the proceeds of said sales, and of all sales of said lands, to the redemption of said bonds so issued to secure said construction funds:

That on the 31st day of July, 1885, the Oregon and California Railroad Company and Central Pacific Railroad Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit No. 9 to the Stipulation as to the Facts on file herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on October 11, 1886, said Central Pacific Railroad Company, the Pacific Improvement Company, and the Southern Pacific Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit No. 1 to the Joint and Several Answer of the defendants herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on March 28, 1887, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, the London Bondholders' Committee, the Frankfort Bondholders' Committee, the Southern Pacific Company and the Union Trust Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered

the agreement of that date, identified as Exhibit "E" to the Bill of Complaint, and which is made a part hereof, and to which reference is made as if the same were fully written herein, and thereafter the parties to all said agreements, relying upon the said acquiescence and action of the United States, as aforesaid, consummated, carried out and performed said several agreements, and in pursuance thereof, and in reliance upon said acquiescence and action of the United States, as aforesaid, the said Oregon and California Railroad Company executed and delivered, on January 3, 1888, its said mortgage and trust deed of date July 1, 1887, to the Union Trust Company, and issued and delivered its bonds thereunder to the amount of $20,000,000.00, and said Southern Pacific Company, being the owner of all the stock of the Central Pacific Railroad Company, caused said Pacific Improvement Company and the Central Pacific Railroad Company to purchase the said stock of the Oregon and California Railroad Company for its benefit, and otherwise carried out said agreements, and then and there guaranteed to pay the principal and interest of all said bonds so issued and to be issued by said Oregon and California Railroad Company; that in reliance upon said acquiescence and action of the United States, as aforesaid, the Southern Pacific Company thereby purchased and became the owner of all said stock of the Oregon and California Railroad Company and assumed the debts and liabilities of the Oregon and California Railroad Company and caused said railroad to be constructed to the Oregon and California state line, and

thereby guaranteed to pay all said bonds, principal and interest, and became the beneficial owner of all said granted lands then unsold, and but for said acquiescence and action of the United States, as aforesaid, said Southern Pacific Company would not have purchased said stock nor assumed said debts and liabilities nor caused said road to be constructed to completion nor guaranteed said bonds, principal or interest, and the Oregon and California Railroad Company would have been unable to sell or dispose of its railroad or said land grants, or either of them, or completed said railroad, as required by said Act of Congress, and its creditors would have been compelled to foreclose said existing mortgage securing the then outstanding bonds and sell all said property, to the great injury and loss of said company and its creditors, and to the great injury and loss of the United States. That the United States, from July 31, 1885, up to April 30, 1908, and during all said time, well knew of the existence of all of said agreements, including the said mortgage of date July 1, 1887, and of the purpose and intention of all the parties thereto, and of all the matters and things hereinbefore set out, and notwithstanding such knowledge during all of said time from July 31, 1885, to April 30, 1908, and of all the matters and things alleged in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, asserted no claim of any breach, made no objection to the execution or performance of either of said contracts or of the execution of

said mortgage of date July 1, 1887, or to any action of the Oregon and California Railroad Company in respect to the administration of said grants, or either of them, or the sale of the lands thereby granted, and in no wise asserted any claim that the company was at any time misconstruing said acts, or either of them, or was in any way violating or had violated said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870.

That from time to time the United States caused to be enacted divers and various statutes affecting said Act of July 25, 1866, as amended April 10, 1869, and said Act of May 4, 1870, some of which are the Act of May 3, 1879, (20 Stat. 472) by which homestead settlers on the even sections within the limits of said grant, could enter 160 acres instead of 80 acres; the Timber and Stone Act of June 3, 1878, (20 Stat. 89) by which the lands of the United States in the even sections within the limits of the grant, could be purchased at $2.50 per acre, in quantities of 160 acres, without any settlement, by any citizens, or any person who had declared his intention to become a citizen of the United States; and the Act of March 3, 1891, (26 Stat. 1097) by which the pre-emption laws were repealed; and the act of June 4, 1897, (30 Stat. 1136) by which lands owned by any one within forest reserves of the United States, could be reconveyed to the United States, and thereby exchanged for the even sections within the limits of said grants, without any settlement thereon; and the Act of February 10, 1909, (35 Stat. 639); and the Act of June 17, 1910, (36 Stat. 531); and the Act of June 6, 1912, (37

Stat. 123), all amending the Homestead Act of May 20, 1862, (12 Stat. 392); that said statutes and the due administration of the same, as applied to the character and class of lands involved in this suit, which are chiefly valuable for timber and are unfit for settlement, and all lands belonging to the company now unsold, have prevented the company from further compliance with the provisions of said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, than as alleged in the Bill of Complaint.

That on August 20, 1912, Congress passed an Act, Public No. 278, H. R. 22002, approved that date, entitled, "An Act supplementing the Joint Resolution of Congress, approved April 30, 1908, entitled, 'Joint Resolution instructing the Attorney General to institute certain proceedings, etc.,'" whereby the United States, in substance and effect, waived the alleged breaches of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, as to all the lands described in the Bill of Complaint and now owned by the Oregon and California Railroad Company, and particularly as to all said lands sold to persons other than actual settlers, in quantities of 1000 acres or more, and aggregating about 400,000 acres, and particularly described in forty-five suits brought by the United States against said purchasers and these defendants in this court, to which said suits and the proceedings therein, reference is here made as if the same were fully written herein and made a part hereof, and whereby the United States has agreed to convey by patent all said lands to said so-called innocent

purchasers in said suits for $2.50 per acre, and whereby the United States has so waived said alleged breaches and so agreed to sell and convey said lands because said lands are and were at the time of such sales so made by the company, unfit for settlement or cultivation and not adapted to entry or settlement under the settlement laws of the United States or under said Act of April 10, 1869, or Section 4 of said Act of May 4, 1870, and because said lands are and were at the time of such sales, chiefly valuable for timber.

That but for the said acquiescence and action of the United States, as aforesaid, said Oregon and California Railroad Company would not have expended said sums, as aforesaid, or otherwise done as it has done, as aforesaid.

And the defendants therefore say and allege that by reason of all the matters, things and acts hereinafter set out, and by reason of the matters and things in the premises, alleged in their said Joint and Several Answer, as heretofore amended and now herein amended, the United States has fully, effectually and finally exercised and waived any and all right it may have had at any time to claim or assert forfeiture of any lands of the said grants, and is and of right ought to be estopped from having or asserting any such or any claim of forfeiture.)

XXIII.

These defendants further say, that by reason of the matters, things and premises aforesaid, and by reason of the passage by Congress of the Act approved January

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31st, 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," made part of this Answer by reference to it as published in Vol. 23, U. S. Statutes at Large, page 296, and the passage by Congress of the Act approved September 29th, 1890, entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," made part of this Answer by reference to it as published in Vol. 26, U. S. Statutes at Large, page 496 and following, the United States fully and finally exercised and waived any and all right it may have had to claim or assert forfeiture of any lands of the said East Side grant or West Side grant, and is thereby estopped from having or asserting any such claim or forfeiture.

Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the material matters in said Bill according to their best knowledge, information and belief, pray that they may be hence dismissed, with their reasonable costs and charges so unjustly sustained.

OREGON & CALIFORNIA RAILROAD COMPANY,
By W. W. Cotton, its Secretary.

SOUTHERN PACIFIC COMPANY,
By W. F. Ingram, its Assistant Secretary.

STEPHEN T. GAGE, as Trustee.
STEPHEN T. GAGE, Individually.
P. F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,

Attorneys for the Defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage.

WM. F. HERRIN,
Counsel for said Defendants.

(Corporate Seal.)

State of Oregon, }
County of Multnomah. } ss.

W. W. Cotton, being duly sworn deposes and says: That he is Secretary of the Oregon & California Railroad Company, the principal defendant to the foregoing Answer; that he has read and knows the contents of the foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

W. W. COTTON.

Subscribed and sworn to before me on September 5th, 1911.

KENNETH L. FENTON,
Notary Public in and for Multnomah County, Oregon.

State of California, }
City and County of San Francisco. } ss.

W. F. Ingram, being duly sworn deposes and says: That he is Assistant Secretary of the Southern Pacific Company, one of the defendants to the foregoing Answer; that he has read and knows the contents of the

foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

W. F. INGRAM.

Subscribed and sworn to before me on September 2nd, 1911,

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

State of California, }
City and County of San Francisco. } ss.

Stephen T. Gage, being duly sworn, deposes and says: That he is one of the defendants to the foregoing Answer; that he knows the contents of the foregoing Answer; that the allegations thereof, in so far as they relate to his own acts and deeds, are true; and in so far as they relate to the acts and deeds of others, he has been informed that they are and believes them to be true.

STEPHEN T. GAGE.

Subscribed and sworn to before me on September 2nd, 1911,

HUGH. T. SIME,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

Exhibit No. 1

This Agreement, made and entered into on the eleventh day of October, 1886, between the Central Pacific Railroad Company, party of the first part, the Pacific Improvement Company, party of the second part, and the Southern Pacific Company, party of the third part, Witnesseth:

That Whereas: The Central Pacific Railroad Company is the succesor in interest of the California and Oregon Railroad Company, mentioned in the act of Congress of July 25, 1866, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California to Portland, in Oregon"; and

W*hereas,* the said Central Pacific Railroad Company has constructed a portion of the line contemplated by said Act of Congress, to-wit, that portion between Roseville Junction on the Central Pacific Railroad, and the town of Delta; and

Whereas, about one hundred and four miles of the line between Roseville Junction and the Southern boundary line of Oregon, as contemplated in said Act of Congress has not been constructed; and

Whereas, the Oregon and California Railroad Company, charged by said Act of Congress with the construction of that portion of the said line of railroad between Portland in Oregon, and the Northern boundary

line of California, has been in an embarrassed condition, and has been unable to complete its road to said boundary line; and

Whereas, until the whole of said line is completed making a through connection between Portland in Oregon and the City of San Francisco in California, no part of said line can be advantageously or profitably operated, nor the Act of Congress in relation thereto be carried into effect according to the spirit and intent thereof, to wit, the construction and maintenance of a continuous Railroad between the said Cities, which the Government of the United States may use for the transportation of its property, troops and munitions of war when necessary, and to aid in the construction of which has granted quantities of the Public lands; and

Whereas, the completion by the said Central Pacific Railroad Company of its own road to the Southern boundary line of Oregon without assurance of the completion of that portion of the road from Portland to said boundary line would be a waste of money, the road having to be constructed through a rugged and mountainous country at great expense and without sustaining local traffic; and

Whereas, it is of the greatest importance to the Central Pacific Railroad Company, that it should have an opening into Oregon both for local traffic and the through business of the two Cities and also to furnish business for its entire line from Ogden. *Now Therefore:*

for the purpose of completing its said road, and of securing the completion of the road between the California State Line and Portland, Oregon, thus making a through line between said Cities of Portland and San Francisco, and a connection with the Union Pacific Railroad at Ogden, and in order to secure the business of the Northern portion of the State of California and as much as possible of the business of the State of Oregon and to bring such business to its line from Ogden, and for the purpose and with the intent of carrying into effect the provisions of said Act of Congress, the said Central Pacific Railroad Company, hereby covenants and agrees with the said Pacific Improvement Company;

First: That the said Pacific Improvement Company shall in a good workmanlike manner construct, finish, furnish and complete the Railroad and Telegraph Line of the said Central Pacific Railroad Company, commencing at a point near the said town of Delta and running thence in a general Northerly direction by the most practicable route to a point on the Southern boundary line of Oregon, there to connect with the road of the said Oregon and California Company a distance of one hundred and four miles, as near as may be together with the rolling stock, buildings, instruments, and fixtures thereof; that is to say, to construct, finish and complete all the clearing, grading, excavations, embankments, ditches, drains, masonry, culverts, bridges, trestling and necessary fencing, and furnish all the ties, tim-

ber, rails, all the chairs, fish-plates, spikes, frogs and switches, lay and complete all the main line of track and all side tracks, spur-tracks, and turnout necessary, usual and proper for a single track railroad; also all necessary and proper buildings and erections for stations, freight and passenger depots, water-tanks, turntables, engine houses, section houses, work and repair shops, with all the tools, furniture and implements necessary and proper therefor, also to furnish and place on said railroad all necessary and proper rolling stock instruments and equipments, including locomotives, passenger, box, freight, baggage, platform, dump and hand cars, for the proper and successful working and repairing of said Railroad and Telegraph Line, said rolling stock to be furnished and delivered, as the same may be required by the said Central Pacific Railroad Company not to exceed the following quantity and proportion, namely, one locomotive for every eight miles of road constructed under the contract; one passenger car for every five miles of road, three box and flat cars for every mile of road; the proportion of each to be determined by the said Central Pacific Railroad Company, one hand car for every six miles of road; such number of dump cars as may be required for maintaining the line, said railroad to be constructed and complete to a point at or near Klamath River within twelve months from the date hereof, and to the Southern boundary line of Oregon as soon as the said Oregon and California Railroad is completed to said line.

Second: That the said Pacific Improvement Com-

pany, shall furnish and pay for all the engineer service necessary or requisite for the location and construction of said railroad and its appurtenances, such location and construction to be subject to the approval of the President or Chief Engineer of said Central Pacific Railroad Company, who may direct such changes to be made as they may deem proper; But, the salary of the Chief Engineer shall be paid by the said Central Pacific Railroad Company.

Third: That the said Pacific Improvement Company, will pay all the costs, damages and other expenses incurred in obtaining right of way for the construction of said road and to that end the Central Pacific Railroad Company agrees that it may use the name of the said Company in any legal steps found necessary to be taken in securing such right of way.

Fourth: That the said Pacific Improvement Company will within a reasonable time and as soon as it can be done to the best advantage purchase, obtain possession and control of the said Oregon and California Railroad, or, that it will within a reasonable time purchase the whole of, or a majority of the shares of the Capital Stock of said Oregon and California Railroad Company, and in either event will within a reasonable time complete or cause to be completed, the said Oregon and California Railroad, to a connection with the Central Pacific Railroad at a point on the boundary line between California and Oregon, and as the case may be will enter into or will cause the said Oregon and Califor-

nia Railroad Company to enter into a contract perpetual with the said Central Pacific Railroad Company, its successors or assigns, that the said Oregon and California Railroad shall be operated in harmony with the said Central Pacific Ralroad, prorating for services and covenanting therein never to give to any other railroad company any better terms for through traffic and for the interchange of business than it gives to the Central Pacific Railroad Company, its successors or assigns.

Fifth: That the said Pacific Improvement Company shall and will repay to the said Central Pacific Railroad Company within one hundred and twenty days from the date hereof all sums of money with interest thereon, at the rate of six per cent per annum heretofore by the said railroad company expended upon that portion of its aforesaid line of Railroad and Telegraph Line lying north of Delta, and that if said railroad company has not fully paid all the costs and expenses incurred as aforesaid, the said improvement company will assume the whole thereof and will upon demand pay off and discharge the same, or that if the said railroad company is compelled to pay the same or any part thereof the said Improvement Company will within one hundred and twenty days after notice thereof, repay to the said railroad company the full amount of any such payment or payments, with interest at the rate aforesaid; and

The said Southern Pacific Company lessee of the said Central Pacific Railroad Company hereby cove-

nants and agrees with the other parties to this contract that in consideration of the advantages to be derived by it from the bringing of business to the main lines of the Central Pacific Railroad, it will when said through line is completed, finished and ready for operation enter into an agreement in writing with the said Central Pacific Railroad Company whereby it shall lease from said Company that portion of said line between Roseville Junction and the State Line not now included within its lease and will increase the consideration of twelve hundred thousand dollars, guaranteed rental mentioned in the existing lease as much in proportion as eighty thousand shares of the Capital Stock of said Central Pacific Road shall bear to the whole amount of capital of said company now issued, and will also increase the limit of the maximum rental of thirty-six hundred thousand dollars therein provided for in like proportion, and that it will transport and convey free of charge over the lines operated by it in California north of San Francisco all agents, laborers and employes and all provisions, tools, iron and other materials and all other property employed or used, or to be employed or used in and about the construction of said Railroad and Telegraph Line, and their appurtenances by or for said Pacific Improvement Company; and

The said Central Pacific Railroad Company hereby covenants and agrees to and with the said Pacific Improvement Company that in consideration of the premises and of the faithful performance of the covenants herein contained to be kept, observed and performed by

said Pacific Improvement Company, it will upon the execution of this agreement issue and deliver to said company eighty thousand shares of its capital stock and in addition thereto it will pay to said Pacific Improvement Company four million five hundred thousand dollars, in mortgage bonds as follows: when one-half of the work on said road between Delta and the Oregon Line is completed, it will pay and deliver to said Pacific Improvement Company all of its first mortgage bonds now un-issued part of an issue by it heretofore provided for, to be used toward the construction of its railroad between Roseville Junction and said Oregon Line, and that it will pay to said Pacific Improvement Company the balance of said four million five hundred thousand dollars of bonds in its mortgage bonds, part of an issue by it provided for an Indenture of mortgage by it made to William E. Brown, and Frank S. Douty, bearing date October First, 1886, and that it will make said last mentioned payment as the work on said road progresses, and sections of not less than ten miles between Delta and the Oregon State Line are completed and in the proportion which the completed section shall bear to the whole length of the road between the points last aforesaid.

In Testimony Whereof, The parties hereto have caused these presents to be signed by the respective Presidents and Secretaries, and their corporate seals to be hereunto affixed. Done in triplicate the day and year first herein written.

Exhibit No. 2

This Agreement, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States, witnesseth:

That Whereas part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe railroads;

And Whereas the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line, and thereby secured an outlet to the Pacific, other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

And Whereas it now appears that the through business, hitherto done by the Central Pacific Railroad, will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic;

And Whereas the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years extending continuously from the Pacific Ocean to the Atlantic Ocean;

And Whereas the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

And Whereas the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company where its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

And Whereas by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

And Whereas both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous

to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

And Whereas it is intended that such shall never be the effect of this agrement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbitrators hereinafter named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit, that it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

Now, Therefore, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon, or in connection with, said railroad and telegraph lines, together with all the appurtenances

thereunto belonging, with the right to possess, maintain, use, operate and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the County of Tulare, with the right to take, hold, operate, maintain and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad Companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company, the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and

profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same, at its own expense; pay all taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company, or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt," and accept the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness," now outstanding and secured by mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the principal of all indebtedness the payment of which has heretofore

been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement, fully comply with the terms of, perform all the duties prescribed in, and discharge all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the "Thurman Act."

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad, and to transportation for said Government over the same, as fully and faithfuly as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to

and with the said Central Pacific Railroad Company that it will keep true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earnings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments and disbursements of every kind made by the said Southern Pacific Company in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interests, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: *Provided, however,* that any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific Railroad and other leased property for the year ending on the thirty-first day of De-

cember next preceding that date, the sum of one million two hundred thousand dollars ($1,200,000).

And the said Southern Pacific Company hereby further in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year, in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefitted at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation thereof, and if the parties hereto can not

agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agreement, or may submit to arbitrators, in the manner and with the effect hereinbefore provided for, changes and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company

that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased road north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of Goshen, it becomes necessary to use any of the rolling stock or other personal property of the Southern

Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

In Testimony Whereof, the said Southern Pacific Company and the said Central Pacific Railroad Company have caused these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first herein written.

In duplicate.

(S. P. Co. Corporate Seal.) W. E. BROWN,
President Southern Pacific Co.

H. C. NASH,
Secretary Southern Pacific Co.

LELAND STANFORD,
President Central Pacific Railroad Co.

(C. P. R. R. Co. Corporate Seal.)

E. H. MILLER, JR.,
Secretary Central Pacific Railroad Co.

Exhibit No. 3

This Agreement, made and entered into this first day of January, 1888, by and between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States:

Whereas heretofore and under date of February 17, 1885, an agreement of lease was made and executed by and between the parties hereto; and

Whereas since the date of the execution of such lease the lines of railroad of the Central Pacific Railroad Company have been extended from Delta, in the State of California, to the boundary line between the States of California and Oregon, forming at the last-mentioned point a connection with the line of railroad of the Oregon and California Railroad Company; and

Whereas since the execution of such lease, and in or about December, 1887, the said line of railroad to the boundary line between the States of California and Oregon, constituting part of the line from San Francisco, in California, to Portland, in Oregon, has been delivered by the Central Pacific Railroad Company to the Southern Pacific Company for operation, and the railroad properties operated by the Southern Pacific Company as lessee of the Central Pacific Railroad have been materially changed; and

Whereas by reason of the premises the Central Pacific Railroad Company has requested a modification of the terms and provisions of the agreement of lease above referred to;

Now, Therefore, This Agreement Witnesseth: That in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacific Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May, 1889, and on each first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars ($1,360,000) instead of the sum of one million two hundred thousand dollars ($1,200,000) which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31, 1887, and will pay to the Central Pacific Railroad Company on the first Monday of May in each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hun-

dred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and disbursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

In Witness Whereof the parties hereto have caused these presents to be signed by their respective second vice-presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and year first above written.

(S. P. Co. Corporate Seal.)

CHAS. CROCKER,
Second Vice-President Southern Pacific Company.

G. L. LANSING,
Secretary Southern Pacific Company.

(C. P. R. R. Co. Corporate Seal.)

CHAS. CROCKER,
Second Vice-President Central Pacific Company.

E. H. MILLER, JR.,
Secretary Central Pacific Co.

Exhibit No. 4

SCHEDULE OF SALES OF GRANTED LANDS INCLUDING THOSE FULFILLED BY CONVEYANCES, AND THOSE YET OUTSTANDING ON UNCOMPLETED CONTRACTS.

Classification:

1. Designates sales not exceeding one quarter section, or 160 acres, to one person, at a price not exceeding $2.50 per acre.

2. Designates sales in excess of one quarter section, or 160 acres, to one person, but at a price not exceeding $2.50 per acre.

3. Designates sales not exceeding one quarter section, or 160 acres, to one person, but at a price exceeding $2.50 per acre.

4. Designates sales in excess of one quarter section, or 160 acres, to one person, at a price exceeding $2.50 per acre.

5. Designates acres sold as to which, owing to destruction of land department records, no information is at hand to show the price for which sold.

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East Side Grant.

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1871	1	1	187.70	254.62			
	2	1	181.46	433.77			
*1871 to *1874	1	33	1,886.50	4,259.20			
	2	1	189.83	400.			
	3	39	1,311.63	5,468.71			
	4	5	2,936.51	10,732.08			
	5	7	256.68				
1874	1	22	2,040.28	4,005.68			
	2	2	385.45	610.20			
	3	10	621.61	2,127.05			
1875	1	59	4,839.39	9,355.57			
	2	7	1,823.91	3,049.98			
	3	34	1,936.79	7,674.19			
	4	1	360.	1,720.			
	5	1	22.65				

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East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1876	1	54	4,398.82	9,351.68			
	2	4	1,193.16	2,482.90			
	3	27	1,791.35	6,397.03			
*Sales made by European and Oregon Land Co., but contracts fulfilled subsequent to 1874 by Oregon and California R. R. Co.							
1876	5	1	40.				
1877	1	62	4,900.17	10,576.46			
	2	8	2,415.36	5,200.72			
	3	20	1,130.83	3,986.17			
	5	1	40.		1	40.	
1878	1	98	7,362.60	15,474.84			
	2	4	1,303.72	1,750.97			
	3	35	1,945.53	6,768.08			
1879	1	105	7,141.22	15,359.03			

East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1879	2	5	991.25	2,139.54			
	3	42	2,139.49	7,249.33			
	4	1	292.21	761.67			
	5	1	1.				
1880	1	92	5,730.07	11,962.05			
	2	5	2,416.30	3,957.18			
	3	28	1,719.12	5,423.89			
1881	1	129	8,297.82	17,537.31			
	2	5	2,711.14	5,629.60			
1881	3	24	1,127.47	3,719.33			
	4	1	843.40	2,557.30			
1882	1	149	9,580.78	19,619.56			
	2	9	4,074.49	8,114.54			
	3	42	2,307.50	7,487.96			
	4	1	200.	580.			

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East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1883	1	155	10,965.53	23,941.25			
	2	18	6,186.54	12,938.03			
	3	108	6,887.83	22,827.98			
	4	10	4,229.53	14,074.40			
	5	1	200.		1	200.	
1884	1	120	7,324.30	17,449.05			
	2	3	1,044.14	2,410.35			
	3	50	3,074.21	10,179.43			
	4						
	5	1	160.		1	160.	
1885	1	66	4,276.36	10,258.01			
	2	3	572.82	917.17			
1885	3	45	2,382.91	7,622.27			
	5	4	200.		4	200.	
1886	1	29	1,330.43	3,288.66			

East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1886	2	1	200.	270.			
	3	45	2,853.96	9,278.83			
	4	3	1,000.	3,130.			
	5	5	240.		5	240.	
1887	1	25	1,346.41	3,339.45	1	38.55	96.37
	2	1	260.	650			
	3	53	3,061.02	10,801.68	9	412.14	1,725.53
	4	2	442.30	1,399.05	1	242.30	848.05
	5	2	240.		2	240.	
1888	1	9	534.88	1,335.57			
	3	98	5,961.91	20,841.47	7	362.90	1,569.45
	5	1	80.		1	80.	
1889	1	5	323.40	803.10			
	3	144	7,764.27	35,539.28	31	1,813.91	7,552.96
	4	6	2,561.48	10,020.73	1	201.48	705.18

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East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1889	5	4	160.24		4	160.24	
1890	1	6	405.70	1,014.25			
	3	169	10,394.97	48,612.57	46	2,985.20	14,005.40
	4	8	2,412.61	10,930.66	6	1,932.61	8,830.66
	5	9	661.57		9	661.57	
1891	1	8	486.15	1,210.38	2	160.00	400.
	3	169	10,189.10	51,052.54	68	3,924.83	22,026.43
	4	4	10,612.66	67,359.32			
	5	16	840.35		15	640.35	
1892	1	4	200.	495			
	3	129	6,871.63	29,779.86	51	2,870.15	12,657.49
	4	5	7,093.41	32,722.05			
	5	7	302.75		7	302.75	
1893	1	10	920.	2,300	1	80.	200.
	2	2	981.17	2,452.92	1	480.	1,200.

East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1893	3	79	4,014.57	16,164.20	25	1,390.06	5,866.48
1894	1	7	322.98	807.45	4	199.50	498.75
	3	58	2,945.80	10,949.03	9	358.27	1,473.60
1894	4	2	600.	2,100.	2	600.	2,100.
	5	1	40.		1	40.	
1895	1	31	1,736.97	4,318.44	4	318.42	796.03
	2	1	170.	425.			
	3	74	3,386.79	13,775.30	11	435.32	1,918.95
	4	3	1,441.58	6,388.70			
1896	1	36	2,030.53	5,061.95	1	40.	100.
	2	2	836.20	2,085.37			
	3	78	3,534.75	13,237.55	10	450.37	1,710.53
	5	1	40.		1	40.	
1897	1	56	3,102.21	7,719.72	4	200.	500.
	2	2	452.67	1,131.67	1	252.67	631.67

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East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1897	3	63	2,943.92	10,939.75	13	749.61	2,628.49
	4	1	960.	6,240.			
1898	1	98	5,260.37	13,084.25	3	197.88	494.70
	2	7	2,582.85	6,457.12			
	3	85	4,342.60	16,421.38	7	291.58	1,177.54
	4	7	3,009.33	14.878.23			
1898	5	2	80.		2	80.	
1899	1	86	4,679.60	11,614.05	6	317.96	794.90
	2	2	877.60	2,164.30			
	3	126	6,761.59	26,145.88	7	303.73	1,061.83
	4	25	94,582.43	487,529.25			
	5	1	40.		1	40.	
1900	1	136	8,996.24	22,348.69	8	520.11	1,300.27
	2	16	21,658.96	53,840.51			
	3	189	10,549.11	42,676.71	13	600.	1,886.

East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1900	4	39	129,197.32	789,556.99	1	4,966.50	22,139.80
	5	2	80.		1	40.	
1901	1	109	6,208.27	15,406.42	11	628.51	1,571.26
	2	7	5,310.21	13,275.52	1	2,360.	5,900.
	3	214	12,151.74	49,654.32	33	2,124.92	8,448.97
	4	42	72,716.74	601,254.24	4	21,176.13	198,987.46
	5	2	125.81		2	125.81	
1902	1	40	2,929.45	7,301.12	9	801.22	2,003.05
	2	3	920.	2,000.	2	680.	1,700.
1902	3	216	13,304.07	61,411.38	46	2,769.23	12,411.76
	4	51	65,858.51	545,029.55	14	17,115.76	143,495.04
1903	1	1	80.	200.	1	80.	200.
	2	1	320.	800.			
	3	24	1,560.02	7,204.59	1	80.	240.
	4	2	720.	2,680.			

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EAST SIDE GRANT—Continued

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1903	5	1	40.		1	40.	
1905	3	1	40.	116.75			
1906	3	1	34.33	171.65			
	4	1	840.	46,622.			
1907	3	1	80.	3,270.			
	4	3	5,543.72	198,234.86			
1908	1	2	160.	400.			
	3	2	82.41	612.05			
1910	3	1	3.20	50.			
Total		4,780	733,597.18	3,839,179.44	535	78,842.54	493,855.60

East Side Grant—Continued

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
Summary, East Side Grant.							
	1	1,843	119,985.13	271,452.81	55	3,582.15	8,955.33
	2	120	60,059.23	135,587.36	5	3,772.67	9,431.67
	3	2,523	141,208.03	575,638.19	387	21,922.22	98,362.41
	4	223	408,453.74	2,856,501.08	29	46,234.78	377,106.19
	5	71	3,891.05		59	3,330.72	
Total		4,780	733,597.18	3,839,179.44	535	78,842.54	493,855.60

West Side Grant.

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1877	1	14	756.67	1,713.75			
	2	1	360.	620.			
1877	3	2	51.	190.			

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WEST SIDE GRANT—Continued.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1878	1	8	640.	1,460.			
1879	1	15	976.24	2,224.17			
	3	2	43.60	115.			
1880	1	10	964.60	1,980.35			
	2	1	320.	560.			
1881	1	28	2,030.37	4,513.48			
	2	2	598.03	1,495.07			
1882	1	7	408.11	1,020.28			
	2	2	360.	740			
	3	5	268.10	884.30			
	4	1	760.	3,040.			
1883	1	14	920.	2,271.12			
	3	17	1,194.86	4,480.70			
	4	5	2,016.64	7,411.84			
1884	1	2	240.	600.			

WEST SIDE GRANT—Continued.

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1884	3	13	804.68	2,727.94			
1885	2	1	320.	800.			
1885	3	8	640.	2,020.			
	5	2	161.77		2	161.77	
1886	1	1	42.06	105.15			
	3	4	240.	1,160.			
1887	3	12	640.	2,780.	2	200.	820.
1888	3	27	20,107.61	14,538.28	6	680.	4,680.
1889	3	24	1,739.88	10,036.95	7	520.	2,600.
	4	2	660.	2,400.	1	240.	1,120.
1890	3	7	360.	1,820.	3	120.	620.
	5	1	40.		1	40.	
1891	3	7	320.	3,240.	6	280.	3,000.
	5	1	40.		1	40.	
1892	1	1	40.	100.	1	40.	100.

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WEST SIDE GRANT—Continued.

Sales Made		No. of			No. of	Contracts Outstanding	
Year	Class	Sales	Acres	Consideration	Sales	Acres	Consideration
1892	3	6	240.	960.			
1894	3	2	80.32	522.08	1	40.	260.
1895	3	3	200.	840.	1	80.	320.
	5	1	40.		1	40.	
1896	3	2	160.	600	1	120.	420.
1897	3	2	80.	380.			
1899	3	8	250.	1,668.50			
1900	3	9	280.	1,980.			
	4	2	480.	1,368.			
1901	1	3	400.	990.	1	160.	400.
	2	3	1,065.60	2,663.97			
	3	2	122.09	600.			
	4	3	45,086.49	316,846.98			
1902	3	3	250.86	1,008.10	1	80.	440.
	4	1	240.	1,200.			

WEST SIDE GRANT—Continued.

Sales Made — Year	Class	No. of Sales	Acres	Consideration	No. of Sales	Contracts Outstanding — Acres	Consideration
1903	3	1	20.	400.			
1910	3	1	80.	1,800.			
Total		299	88,089.58	410,876.01	36	2,841.77	14,780.

SUMMARY, WEST SIDE GRANT.

1	103	7,418.05	16,978.30	2	200.	500.
2	10	3,023.63	6,879.04			
3	167	28,173.	54,751.85	28	2,120.00	13,160.
4	14	49,193.13	332,266.82	1	240.	1,120.
5	5	281.77		5	281.77	
Total	299	88,089.58	410,876.01	36	2,841.77	$14,780.

Exhibit No. 5

The Patented Lands Remaining Unsold in the East Side Grant, as of date April 30th, 1911, are in total, as to counties, as follows:

Washington	County.....	2,452.18	acres
Multnomah	"	8,120.	"
Yamhill	"	27,029.50	"
Clackamas	"	89,764.41	"
Polk	"	37,015.47	"
Marion	"	30,307.16	"
Lincoln	"	15,906.	"
Benton	"	53,706.99	"
Linn	"	61,880.20	"
Lane	"	299,891.23	"
Douglas	"	617,554.94	"
Coos	"	106,563.36	"
Curry	"	7,844.64	"
Josephine	"	167,525.19	"
Jackson	"	441,951.15	"
Klamath	"	43,011.19	"
Tillamook	"	7,037.	"

Total East Side Grant.....2,017,560.61 acres

The following corrections shoud be made in the list of lands in Exhibit "K" to the Bill:

Yamhill County—Township 2 South, Range 5 West:

The 160 acres described in Section 1 should be elim-

inated from the list, the tract having been conveyed by deeds Nos. 295-E and 32-U, dated May 8, 1909, to Franklin Martin, in settlement of litigation instituted by Mr. Martin against Oregon and California Railroad Company prior to the institution of suit No. 3340.

There should be added to the tract described in Section 19 in the same township, the E½ of NE¼—80 acres, the same having been covered by contract No. 3271, which was canceled for default July 23, 1910.

In Township 3 *South, Range* 5 *West,* there should be added the NE¼ of SW¼ Sec. 7—40 acres, the same having been covered by contract No. 5858, which was canceled for default July 28th, 1910.

In Township 4 *South, Range* 5 *West,* the tract described as "S½ of S½ of SE¼ of SE¼ Sec. 31," 10.40 acres should be eliminated.

In Township 2 *South, Range* 6 *West,* the E½ of NE¼ and SW¼ Sec. 33, are correctly listed as East Side grant lands. They are situated within the indemnity limits of the East Side grant, and also within the primary limits of the West Side grant, and were erroneously patented as West Side lands.

In Township 4 *South, Range* 6 *West,* there should be eliminated from the list the SW¼ of SE¼ Sec 17—40 acres. This tract was condemned by the City of Sheridan for water supply purposes, pursuant to proceedings instituted prior to the institution of suit No. 3340, and payment was made by the city and accepted by the railroad company for the tract on October 12, 1908.

In the same township, the tract described in Sec. 31, the acreage is overstated—it should be 415.48; therefore 0.30 acre should be deducted.

To the total acres for Yamhill County should be added, in consequence of the foregoing corrections, 120 acres, and there should be deducted 210.70, making the true total of acres 27,029.50.

Clackamas County—Township 4 *South, Range* 1 *East*:

There should be added the NW¼ of NE¼ Sec 13—40 acres; the same having been covered by contract No. 3319, which was canceled for default July 30, 1910.

Township 6, *Range* 2—The acreage for the tract in Sec. 5 is overstated—it should be 522.55 acres; therefore 30 acres should be deducted.

Same township—There should be added the S½ of NE¼ Sec. 17—80 acres; the tract having been covered by contracts Nos. 3345 and 3385, which were canceled for default July 28th, 1910.

Township 4, *Range* 3—There should be added the N½ of NW¼ Sec. 33—80 acres; the same having been covered by contract No. 3530, which was canceled for default June 29th, 1909.

Township 5, *Range* 3—There should be added the NE¼ of NW¼ Sec. 11—40 acres; the same having been covered by contract No. 3198, which was canceled for default July 30th, 1910.

Same township—There should be added Lot 1 in Sec. 31—53.32 acres; the same having been covered by

contract No. 2907, which was canceled for default July 30, 1910.

Township 6, *Range* 3—There should be added the NE¼ of NE¼ Sec. 7—40 acres; the same having been covered by contract No. 5761, which was canceled for default July 28, 1910.

Same township—There should be added the E½ of NE¼ Sec. 19—80 acres; the same having been covered by contract No. 5761, which was canceled for default July 28, 1910.

Township 3, *Range* 4—There should be added the E½ of SE¼ Sec. 27—80 acres; the same having been covered by contract No. 3128, which was canceled for default July 3, 1909.

Township 4, *Range* 4—There should be added the SE¼ of SE¼ and Lot 9 of Sec. 9—59.02 acres; the same having been covered by contract No. 3591, which was canceled for default June 29th, 1909.

Same township—There should be added the SW¼ of NE¼ and NW¼ of SE¼ Sec. 29—80 acres; the same having been covered by contract No. 3528, which was canceled for default June 8, 1910.

In consequence of these changes, there should be added to the total acreage of Clackamas County, as stated in the exhibit, 632.34 acres, and there should be deducted 30 acres, making the true total for the county 89,764.41 acres.

Polk County—Township 7 *South, Range* 6 *West*:

The acreage for the tracts in Section 9 should read 316.70, a deduction of 1.30 acres.

In Township 8 *South, Range* 8 *West*, the acreage for the tracts in Section 1 should read 477.98 acres, a deduction of 1.02 acres.

In consequence of these changes, there should be deducted from the total acres as stated in Polk County, 2.32 acres, making the true total for the county 37,-015.47 acres.

Marion County—Township 8 *South, Range* 4 *West*:

Lot 9, in Sec. 1—7 acres, has been lost by the railroad company by adverse possession, and should therefore be eliminated from the list of unsold lands.

Township 8 *South, Range* 1 *East*—There should be added the NE¼ of SE¼ Lots 7 and 8, Sec. 9—58.16 acres; the same having been covered by contract No. 3674, which was canceled for default July 30th, 1910.

Township 8 *South, Range* 4 *East*—The description "S½ Section 29" should be changed to read "SW¼; N½ of SE¼; SW¼ of SE¼, and Lot 1, Section 29."

In consequence of these changes, there should be added to the total acres in Marion County 58.16 acres, and there should be deducted 7 acres, making the true total for the county, 30,307.16 acres.

Benton County—Township 13 *South, Range* 7 *West*:

There should be added the N½ of SW¼ Sec. 21—80 acres; the same having been covered by contract No.

4853, which was canceled for default October 13, 1908. This increases the total acreage of Benton County to 53,706.99 acres.

Linn County—Township 9 *South, Range* 1 *East*:

There should be added the SE¼ of SW¼ Sec 23—40 acres; the same having been covered by contract No. 5502, which was canceled for default July 28th, 1910.

Township 15, *Range* 2—The description of part of Sec. 19 should be amended to read as follows:

> "That part in Linn County, of Lot 3, and of SW¼ of SE¼ Sec. 19—19 acres," the remainder of the tract—137 acres—being in Lane County.

Township 15 *South, Range* 1 *West*—The acreage of Sec. 1 should read 586.85 acres, a reduction of 14.15 acres.

Same township—The portion of Sec. 9 should be amended to read: "All that part situated in Linn County, Sec. 9—377.50 acres," an increase of 57.50 acres.

Same township—The portion of Sec. 7 should be amended to read: "All that part situated in Linn County, containing 102.62 acres, a deduction of 57.38 acres.

Same township—The description of part of Sec. 11 should be amended to read: "NW¼ of NW¼ Sec. 11—40 acres," an increase of 25 acres.

By reason of these changes there should be added to the printed total of acres in Linn County, 122.50 acres, and there should be deducted 208.53 acres, making the true total for the county 61,880.20 acres.

Lane County—Following the description of lands in *Township* 22 *South, Range* 1 East, there should be inserted the following:

Township 15 *South, Range* 2 *East*:

"Lot 4, SE¼ of SW¼, part of Lot 3, and part of SW¼ of SE¼, in Lane County, Section 19—137 acres."

Township 15 *South, Range* 1 *West*:

The acres in Sec. 1 should read 53.99, an increase of 13.99 acres.

Same township—The acreage in Sec. 7 should read 553.94 acres, an increase of 56.94 acres.

Same township—The description of land in Sec. 9 should read: "Part of E½ in Lane County, Sec. 9—182.50 acres," a decrease of 57.50 acres.

Same township—The description of land in Sec. 11 should be amended to read SW¼ Sec 11—160 acres, a decrease of 25 acres.

Township 21 *South, Range* 2 *West*:

There should be added the NE¼ of NE¼ Sec. 31—40 acres; the same having been covered by contract No. 6317, which was canceled for default July 29, 1909.

Township 21 *South, Range* 3 *West*:

There should be added the SE¼ of SW¼ Sec. 13—40 acres; the same having been covered by contract No. 6667, which was canceled for default July 28th, 1910.

Township 20 *South, Range* 4 *West*:

There should be added the NW¼ of SE¼ Sec. 27—40 acres; the same having been covered by contract No. 6596, which was canceled for default July 28th, 1910.

Township 21 *South, Range* 4 *West*:

The acreage of the tract in Sec. 3 should read 404.80, an increase of 39.80 acres.

Township 16 *South, Range* 5 *West,* Section 9, add "Lot 3."

Township 19 *South, Range* 5 *West,* Section 9, add "Lot 1."

In consequence of these changes, there should be added to the total acreage in Lane County 367.73 acres, and there should be deducted 82.50 acres, making the true total for the county 299,891.23 acres.

Douglas County—Township 30 *South, Range* 1 *West*:

The description "All Section 1" should be changed to read, "All (except Lots 1, 2, 3, 4,) Section 1."

There should be eliminated from the description of land in Sec. 9, the N½ of NE¼ and the N½ of SW¼—160 acres; the same being unpatented unselected indemnity land, in Forest Reserve, and therefore not at present subject to selection by the railroad company.

The description "All Section 13 should be changed to read, "All (except Lots 1, 2, 3, 4,) Section 13."

Township 31 *South, Range* 2 *West*—There should be added the SW¼ of Section 3, 160 acres; the SE¼

and N½ of Section 9, 480 acres; the NE¼ of NW¼ of Section 15, 40 acres; the SE¼ of SE¼ of Section 21, 40 acres.

Township 29, *Range* 3—There should be added the NW¼ of NE¼ Sec. 21—40 acres; the same having been covered by contract No. 6416, which was canceled for default July 28th, 1910.

Township 26, *Range* 4—The acreage of Lot 5 in Sec. 7 should read 42.57 acres, a decrease of 4.26 acres.

Township 29, *Range* 4—There should be added Lot 1 in Sec. 5—39.04 acres; the same having been covered by contract No. 6007, which was canceled for default July 28, 1910.

Township 22, *Range* 5—The description "S½ of N½ Section 27" should be changed to read "S½ of NE¼; SE¼ of NW¼; Lot 2, Section 27."

Township 28, *Range* 5—There should be added the SE¼ of NW¼ Sec. 25—40 acres; the same having been covered by contract No. 4765, which was canceled for default August 2nd, 1910.

Township 20, *Range* 9—The acreage of tracts in Sec. 1 should read 714.47 acres, a decrease of 8 acres.

Township 21, *Range* 6—The description "W½ Sec. 25" should be changed to read "NW¼; NE¼ of SW¼; W½ of SW¼; Lot 3; Section 25."

Same township—There should be added the SE¼ of NE¼ Sec. 11—40 acres; the same having been covered by contract No. 4439, which was canceled for de-

fault July 30, 1910.

There should be added 0.02 acre on account of error in footing in the exhibit.

Township 22, *Range* 10—The description "NW1/4 of SW1/4 Section 15" should be changed to read "Lot 16, Section 15."

By reason of these changes there should be added to the acreage of Douglas County 879.06 acres, and there should be deducted 167.26 acres, making the true total for the county 617,554.94 acres.

Josephine County—Township 36 *South, Range* 5 *West*:

There shoud be added the SW1/4 of NW1/4 Sec. 31 —44.23 acres; the same having been covered by contract 5825, which was canceled for default July 28, 1910.

There should be deducted on account of error in footing in the exhibit, 0.02 acre.

These changes make the true total of the county 167,525.19 acres.

Jackson County—Township 41 *South, Range* 2 *East*:

The description "N1/2 of N1/2, Section 13" should be changed to read "Lots 1, 2, 3, 4, Section 13". The description "N1/2 Section 15" should be changed to read "N1/2 of N1/2; Lots 1, 2, 3, 4, Section 15". The description "N1/2 Section 17" should be changed to read "N1/2 of N1/2; Lots 1, 2, 3, 4, Section 17."

Jackson County—Township 36 *South, Range* 3 *East.*

There should be added the NW1/4 of SW1/4 Sec 35 —40 acres; the same having been covered by contract

No. 6224, which was canceled for default July 28th, 1910.

Township 34 *South, Range* 1 *West*—All of Sec. 33 should read: "All Sec. 35."

Township 39 *South, Range* 2 *West*—There should be added the SW¼ of NE¼ Sec. 5—40 acres; the same having been covered by contract No. 6103, which was canceled for default July 28th, 1910.

Township 37 *South, Range* 3 *West.*—The description "SW¼ Section 1" should be changed to read "NE¼ of SW¼; S½ of SW¼; Lot 5; of Section 1."

Township 40 *South, Range* 4 *West.*—There should be added the SE¼ of SE¼ Sec. 17—40 acres; the same having been covered by contract No. 4913, which was canceled for default July 29th, 1910.

Same township—There should be added the NW¼ of SE¼ Sec. 21—40 acres; which was also covered by contract No. 4913, canceled for default July 29th, 1910.

In consequence of these changes, the total acreage of Jackson County should be increased by 160 acres, making the true total 441,951.15 acres.

Klamath County—The acreage of the tracts in Sec. 1, *Township* 40 *South, Range* 6 *East,* should read 381.19 acres, a decrease of 3.81 acres. This makes the total acres in the county 43,011.19 acres.

Tillamook County—There are certain tracts listed in Exhibit "K" as being patented unsold lands in the West Side grant in Tillamook County, which should in fact

be listed as being East Side grant lands. Certain of these lands are in the East Side indemnity limits, and were patented, and rightly so as East Side grant lands. Such lands are marked "A" in the following list; other lands are in the East Side indemnity limits, and were patented erroneously as West Side grant lands. Such lands are marked "B" in the following list:

"A" SE ¼ Sec. 7, T. 3 S., R. 6 W.....160 acres
"A" All Sec. 19, T. 3 S., R. 6 W.....666 acres
"A" All Sec. 31, T. 3 S., R. 6 W.....665 acres
"A" All Sec. 7, T. 4 S., R. 6 W.....662 acres
"B" SE ¼ Sec. 13, T. 3 S., R 7 W.....160 acres
"B" SE ¼ Sec. 23, T. 3 S., R. 7 W.....160 acres
"B" All Sec. 25, T. 3 S., R. 7 W.....640 acres
"B" All Sec. 35, T. 3 S., R. 7 W.....640 acres
"A" All Sec. 1, T. 4 S., R. 7 W.....642 acres
"A" NE ¼ and S ½ Sec. 3, T. 4 S., R. 7 W..482 acres
"A" E ½ of E ½, SW ¼ of SE ¼, S ½ of SW ¼ Sec. 9, T. 4 S., R. 7 W.....280 acres
"A" All Sec. 11, T. 4 S., R. 7 W.....640 acres
"A" N ½ of N ½ Sec. 13, T. 4 S., R. 7 W....160 acres
"A" N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼ Sec. 15, T. 4 S., R. 7 W....600 acres

Total .....7,037 acres

These various changes make the true total of patented unsold lands in the East Side grant 2,017,560.61 acres.

WEST SIDE GRANT

Act of May 4th, 1870.

Following is a correct statement of the patented unsold lands of the West Side grant:

Clarke County, Washington....	212.50 acres
Columbia County, Oregon	17,678.83 acres
Tillamook County, Oregon.....	22,704. acres
Washington County, Oregon....	15,680. acres
Multnomah County, Oregon....	927. acres
Yamhill County, Oregon.....	1,563.11 acres
Total West Side grant.....	58,765.44 acres

The following changes should be made in the schedule of lands in "Exhibit K" to the Bill:

Clarke County—Township 3 North, Range 1 East.

There should be eliminated the N½ of SE¼ Sec. 33—80 acres; the same having been conveyed by deed No. 412-E, dated July 7th, 1910, in settlement of the Roy W. Minkler suit, which was instituted prior to the institution of suit No. 3340. Deducting the 80 acres in this tract from the printed total, leaves a true total for the county of 212.50 acres.

Tillamook County—Township 3 South, Range 6 West:

The N½ and SW¼ Sec. 7—507 acres, is properly a part of the West Side grant, but was patented erroneously as being East Side lands.

Same township—The SE¼ Sec. 7—160 acres,

should be eliminated as it is East Side land and so patented.

Same township—All Sec. 19—666 acres, and all Sec. 31—665 acres, should be eliminated as they are East Side lands and so patented.

Township 4, *Range* 6—All Sec. 7—662 acres, should be eliminated as it is East Side land and so patented.

Township 3, *Range* 7—SE¼ Sec. 13—160 acres, should be eliminated as it is East Side land, but erroneously patented as West Side land.

Same township—SE¼ Sec. 23—160 acres; all Sec. 25—640 acres and all Sec. 35—640 acres, should be eliminated for the same reason.

Township 4 *South, Range* 7 *West*:

	Acres
All Sec. 1	642
NE ¼ and S ½ Sec. 3	482
E ½ of E ½, SW ¼ of SE ¼ and S ½ of SW ¼ Sec. 9	280
All Sec. 11	640
All Sec. 13	640
N ½, N ½ of S W¼, SE ¼ of SW ¼ and SE ¼ Sec. 15	600

These lands should be eliminated because they are East Side lands and so patented.

In consequence of the elimination of these lands, aggregating 7,037 acres, the true total of patented unsold West Side lands in Tillamook County is 22,704 acres.

Washington County—Township 2 *North, Range* 3 *West*:

There should be added the SE¼ of SW¼ and SW¼ of SE¼ Sec. 3—80 acres; the same having been covered by contract W.S.—421, which was canceled for default July 23rd, 1910.

Same township—There should be added the SE¼ of SE¼ Sec. 7—40 acres; the same having been covered by contract W.S.—521, which was canceled for default July 23rd, 1910.

Same township—There should be added the NW¼ of SW¼ and NE¼ of SE¼ Sec. 11—80 acres; the same having been covered by contracts W.S.—509 and W.S.—385, which were canceled for default, July 30th, 1910.

Township 1 *South, Range* 5 *West*—All of the lands in this township (except N½ of NW¼ Sec. 15) are West Side grant lands and not within the East Side grant limits, but they were erroneously patented as East Side grant lands.

The note at the bottom of page 348 is in error in stating that the lands therein referred to have not been patented.

As herein shown, 200 acres are added to the Washington County list, making the true total for that county 15,680 acres.

Yamhill County—Township 3 *South, Range* 6 *West*:

The N½ Sec. 5 is in fact West Side grant land, and not within the East Side grant limits, but was errone-

ously patented as East Side grant lands.

By reason of these changes the true total of unsold West Side patented land is 58,765.44 acres.

Exhibit No. 6

SCHEDULE OF UNPATENTED LANDS REMAINING UNSOLD APRIL 30, 1911.

Described by Governmental Subdivision, Tabulated by Counties, and showing whether Surveyed Primary Lands, or Unsurveyed Primary Lands, or Selected Indemnity Lands, and separately stated as to East Side and West Side land grants.

Governmental Subdivisions and Sections are designated by abbreviations "N," "S," "E," "W," "NE," "NW," "SE" and "SW," meaning, respectively, North, South, East, West, Northeast, Northwest, Southeast and Southwest.

EAST SIDE GRANT.

Act of July 25, 1866.

County	Primary Surveyed	Primary Unsurveyed	Indemnity Selected
Clackamas	5.24	12.	
Coos	14,483.43	8,120.	80.00
Benton	41.52	18.	
Curry	4,080.00	16,160.	5.00 est.
Marion	16.49	112.	
Polk		75.	
Yamhill	22.95	10.	

EAST SIDE GRANT—Continued.

County	Primary Surveyed	Primary Unsurveyed	Indemnity Selected
Linn	26.77	35.	200.73
Lane	127.22	120.	40.00
Klamath		5,400.	
Josephine	7,814.35	127,345.	679.04
Douglas	14,351.68	49,880.	
Jackson	4,324.68	31,000.	160.00
Primary-Surveyed		45,294.33	
Primary-Unsurveyed		238,287.00	
Indemnity-Selected		1,164.77	
Total		284,746.10	

CLACKMAS COUNTY.

Township 2 South, Range 2 East, W. M.

Part of Section	Sec.	Acres
Unpatented Primary.		
Lot 7,	9	.11
Lot 7,	31	3.44
Township 2 South, Range 3 East, W. M.		
Lot 7,	25	1.39
Lot 8,	25	.30
Total acres,		5.24
Unsurveyed Primary.		
Township 2 South, Range 2 East, W. M.		
Island,	15	12.
Total acres,		12.

EAST SIDE GRANT—Continued

COOS COUNTY.

Township 29 *South, Range* 9 *West, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
All,	17	638.64
All,	19	674.
All,	21	640.
All,	29	640.
All,	31	674.02
All,	33	640.

Township 31 *South, Range* 10 *West, W. M.*

N ½ of NE ¼, W ½ of NW ¼, NW ¼ of SW ¼, SW ¼ of SE ¼,	25	240.
W ½ of SW ¼, SE ¼ of SW ¼, SE ¼,	35	280.

Township 32 *South, Range* 10 *West, W. M.*

All,	1	630.
Lots 2, 3 and 4, S ½ of NW ¼, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼,	3	475.28
S ½ of NE ¼, Lot 4, S ½ of N W¼, N ½ of S ½, SE ¼ of SW ¼, SE ¼ of SE ¼,	5	439.21
NE ¼ of NE ¼, S ½ of NE ¼, Lot 3 and 4	7	188.87
N ½ of NE ¼, W ½,	9	400.
All,	11	640.
N ½, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼,	15	600.
All,	17	640.

EAST SIDE GRANT—Coos County—Continued.

Part of Section	Sec.	Acres
Township 32 South, Range 10 West, W. M.		
All,	19	621.
N ½, SW ¼, N ½ of S E¼, SW ¼ of SE ¼	21	600.
N ½ and SW ¼,	29	480.
All,	31	622.64
Township 32 South, Range 11 West, W. M.		
Lots 1, 2, 3 and 10, SW ¼ and NW ¼ of SE ¼,	1	326.25
Lots 1, 7, 8, 9, 10, 11, 15, 16, NE ¼ of SW ¼ and SE ¼,	3	513.52
SE ¼ of NE ¼, NW ¼ of NW ¼, NE ¼ of SE ¼, SW ¼ of SE ¼,	11	160.
All,	13	640.
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, NE ¼ of SW ¼ and SE ¼,	15	480.
SE ¼ of SE ¼,	21	40.
E ½ of NE ¼, NW ¼, W ½ of SW ¼, S ½ of SE ¼,	23	400.
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, W ½ of SW ¼, NW ¼ of SE ¼,	25	400.
NE ¼,	27	160.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	35	600.
Total acres,		14,483.43

EAST SIDE GRANT—Coos County—Continued.

Part of Section	Sec.	Acres
Unsurveyed Primary		
Township 27 *South, Range* 9 *West, W. M.*		
S ½,	7	320.
Township 29 *South, Range* 10 *West, W. M.*		
S ½,	23	320.
NW ¼ and S ½,	25	480.
E ½,	27	320.
N ½ and SE ¼,	35	480.
Township 30 *South, Range* 11 *West, W. M.*		
Unsurveyed Primary.		
NE ¼, S ½ of SW ¼, SE ¼,	1	400.
SE ¼,	11	160.
All,	13	640.
All,	23	640.
All,	25	640.
All,	35	640.
Township 31 *South, Range* 11 *West, W. M.*		
NW ¼ of NE ¼, W ½ of SW ¼,	33	120.
Township 33 *South, Range* 11 *West, W. M.*		
N ½, SW ¼,	1	480.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, SE ¼,	3	440.

EAST SIDE GRANT—Coos County—Continued.

Township 33 *South, Range* 11 *West, W. M.*

Part of Section	Sec.	Acres
N ½, SW ¼, N½ of SE ¼, SW ¼ of SE ¼,	11	600.
All,	13	640.
NE ¼, N ½ of SE ¼,	23	240.
N ½, N ½ of SW ¼, SE ¼,	25	560.
Total acres,		8,120.

Indemnity Selected

Township 29 *South, Range* 12 *West, W. M.*

SE ¼ of NE ¼, NE ¼ of SE ¼,	27	80.
Total acres.		80.

BENTON COUNTY.

Township 10 *South, Range* 4 *West, W. M.*

Unpatented Primary

Lot 5,	11	1.52

Township 10 *South, Range* 5 *West, W. M.*

S ½ of N ½ of NE ¼,	35	40.
Total acres,		41.52

Unsurveyed Primary

Township 12 *South, Range* 4 *West, W. M.*

Island,	31	3.

Township 14 *South, Range* 5 *West, W. M.*

Island,	25	15.
Total acres,		18.

EAST SIDE GRANT—Continued.

CURRY COUNTY.

Township 32 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary		
All,	13	640.
SE ¼ of SE ¼,	15	40.
SE ¼ of SE ¼,	21	40.
All,	23	640.
All,	25	640.
All,	27	640.
SE ¼,	29	160.
All,	33	640.
All,	35	640.
Total acres,		4,080.
Unsurveyed Primary		

Township 33 *South, Range* 10 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.

EAST SIDE GRANT—Curry County—Continued

Township 33 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 34 *South, Range* 10 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	9	640.
All,	11	640.
All,	15	640.
NE ¼,	17	160.
E ½ and N ½ of NW ¼,	21	400.

Township 33 *South, Range* 11 *West, W. M.*

SE ¼,	1	160.
NE ¼ of NE ¼,	3	40.
SE ¼ of SE ¼,	11	40.
Total acres,		16,160.

EAST SIDE GRANT—Curry County—Continued.

Part of Section	Sec.	Acres
Selected Indemnity		
Township 35 South, Range 11 West, W. M.		
That part of Lot 6 in SW ¼ of SE ¼,	29	3 est.
That part of Lot 8 in SW ¼ of NW ¼,	29	2 est.
Total acres,		5 est.

MARION COUNTY.

Township 5 South, Range 1 West, W. M.		
Unpatented Primary		
Lot 3,	21	16.49
Total acres,		16.49
Unsurveyed Primary		
Township 6 South, Range 3 West, W. M.		
Island,	21	50.
Township 8 South, Range 4 West, W. M.		
Part E. of River,	33	2.
Lots in S ½ of SE ¼ (Island in Willamette River),	35	60.
Total acres,		112.

EAST SIDE GRANT—Continued.

POLK COUNTY.

Township 9 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
Unsurveyed Primary.		
Island,	23	75.
Total acres,		75.

YAMHILL COUNTY.

Township 3 *South, Range* 3 *West, W. M.*

Unpatented Primary.		
Lot 6,	35	1.60

Township 5 *South, Range* 3 *West, W. M.*

Lot 13,	15	1.70

Township 5 *South, Range* 5 *West, W. M.*

Lot 3,	13	.05

Township 6 *South, Range* 5 *West, W. M.*

Lot 9,	3	19.60
Total acres,		22.95

Unsurveyed Primary.

Township 4 *South, Range* 3 *West, W. M.*

Island,	15	10.
Total acres,		10.

LINN COUNTY.

Township 12 *South, Range* 1 *West, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
Lot 11,	33	22.85

EAST SIDE GRANT—Linn County—Continued.

Township 13 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
Lot 1,	17	3.48

Township 15 *South, Range* 4 *West, W. M.*

Lot 1,	5	.44
Total acres,		26.77

Unsurveyed Primary.

Township 10 *South, Range* 2 *West.*

Islands,	9	30.

Township 11 *South, Range* 4 *West, W. M.*

Unsurveyed Primary.

Part of Island outside of D. L. C.,	29	5.
Total acres,		35.

Selected Indemnity.

Township 11 *South, Range* 3 *East, W. M.*

N ½ of SW ¼ and Lots 2, 3 and 4,	35	200.73
Total acres,		200.73

LANE COUNTY.

Township 17 *South, Range* 1 *West, W. M.*

Unpatented Primary.

Lot 6,	23	3.70

Township 18 *South, Range* 1 *West.*

NE ¼ of SW ¼,	7	40.

EAST SIDE GRANT—Lane County—Continued.

Township 16 *South—Range* 2 *West, W. M.*

Part of Section	Sec.	Acres
Lot 9,	25	.03

Township 20 *South—Range* 3 *West, W. M.*

Lot 2,	11	3.49

Township 22 *South, Range* 3 *West, W. M.*

S ½ of SW ¼,	5	80.
Total acres,		127.22

Unsurveyed Primary.

Township 22 *South, Range* 1 *East, W. M.*

W ½ of NW ¼, NW ¼ of SW ¼,	31	120.
Total acres,		120.

Indemnity Selected.

Township 17 *South, Range* 3 *East, W. M.*

SE ¼ of NE ¼,	9	40.
Total acres,		40.

KLAMATH COUNTY.

Township 38 *South, Range* 5 *East, W. M.*

Unsurveyed Primary.

SW ¼ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, SW ¼, W ½ of SE ¼,	5	400.
All,	7	640.
All,	17	640.
All,	19	640.

EAST SIDE GRANT—Klamath County—Continued

Township 38 *South, Range* 5 *East, W. M.*

Part of Section	Sec.	Acres
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
W ½ of NE ¼, W ½, NW ¼ of SE ¼, S ½ of SE ¼,	35	520.
Total acres,		5,400.

JOSEPHINE COUNTY.

Township 34 *South, Range* 5 *West, W. M.*

Unpatented Primary.

All,	1	645.40
All,	11	646.46
All,	15	640.
W ½,	23	320.
All,	27	640.

Township 36 *South, Range* 5 *West, W. M.*

All,	25	647.80
All,	27	609.93
All,	35	649.

Township 34 *South, Range* 6 *West, W. M.*

NW ¼ of NE ¼, NE ¼ of SE ¼, Lots 3 and 4,	35	146.46

EAST SIDE GRANT—Josephine County—Continued

Township 39 *South, Range* 6 *West, W. M.*

Part of Section	Sec.	Acres
SE ¼ of NE ¼, SE ¼ of SE ¼,	5	80.
SE ¼ of NW ¼, NE ¼ of SW ¼, NE ¼ of SE ¼, Lots 1, 2 and 3,	7	302.85

Township 33 *South, Range* 7 *West, W. M.*

Unpatented Primary.

S ½,	7	321.31
S ½,	9	320.
All,	17	640.
All,	19	642.84

Township 37 *South, Range* 7 *West, W. M.*

E ½ of SE ¼,	11	80.
NW ¼ of NE ¼, W ½, SW ¼ of SE ¼, Lots 1 and 4,	25	482.30
Total acres,		7,814.35

Township 37 *South, Range* 5 *West, W. M.*

Unsurveyed Primary.

All,	3	640.
All,	11	640.

Township 38 *South, Range* 5 *West, W. M.*

All,	5	640.
All,	7	640.
All,	17	640.
All,	19	640.

EAST SIDE GRANT—Josephine County—Continued

Unsurveyed Primary.

Township 37 *South, Range* 6 *West, W. M.*

Part of Section	Sec.	Acres
NW ¼,	19	160.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.

Township 35 *South, Range* 7 *West, W. M.*

3 Islands,	35	25.

Township 36 *South, Range* 7 *West, W. M.*

All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	35	600.

EAST SIDE GRANT—Josephine County—Continued

Township 38 *South, Range* 7 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	23	640.
All,	25	640.
N ½, SE ¼,	29	480.
All,	33	640.
All,	35	640.

Unsurveyed Primary.

Township 39 *South, Range* 7 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
N ½, E ½ of SW ¼, SE ¼,	9	560.
All,	11	640.
All,	13	640.
NE ¼, E ½ of NW ¼,	15	240.

Township 33 *South, Range* 8 *West, W. M.*

NW ¼, S ½,	5	480.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.

Unsurveyed Primary.

Township 33 *South—Range* 8 *West, W. M.*

All,	15	640.
All,	17	640.

EAST SIDE GRANT—Josephine County—Continued

Township 33 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Unsurveyed Primary.

Township 34 *South, Range* 8 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.

Township 34 *South, Range* 8 *West, W. M.*

All,	27	640.

EAST SIDE GRANT—Josephine County—Continued

Township 34 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 35 *South, Range* 8 *West, W. M.*

All,	1	640.
All,	3	640.

Unsurveyed Primary

Township 35 *South, Range* 8 *West, W. M.*

All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

EAST SIDE GRANT—Josephine County—Continued

Township 36 *South, Range* 8 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 38 *South, Range* 8 *West, W. M.*

All,	5	640.

Unsurveyed Primary.

Township 38 *South, Range* 8 *West, W. M.*

NE ¼,	7	160.
NE ¼, N ½ of NW ¼, N ½ of SE ¼,	17	320.
N ½, E ½ of SE ¼,	21	400.

EAST SIDE GRANT—Josephine County—Continued

Township 32 South, Range 9 West, W. M.

Part of Section.	Sec.	Acres
All,	7	640.
All,	9	640.
S ½ of S ½,	11	160.
W ½ of W ½,	13	160.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 33 South, Range 9 West, W. M.

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.

EAST SIDE GRANT—Josephine County—Continued

Township 33 *South, Range* 9 *West, W. M.*

Part of Section.	Sec.	Acres
All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.

Unsurveyed Primary.

Township 33 *South, Range* 9 *West, W. M.*

All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 34 *South, Range* 9 *West, W. M.*

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
All,	19	640.
All,	21	640.
All,	23	640.

EAST SIDE GRANT—Josephine County—Continued

Township 34 South, Range 9 West, W. M.

Part of Section	Sec.	Acres
All,	25	640.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
All,	35	640.

Township 35 South, Range 9 West, W. M.

All,	1	640.
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
All,	17	640.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, and E ½ of SW ¼,	19	520.
All,	21	640.

Unsurveyed Primary.

All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.

EAST SIDE GRANT—Josephine County—Continued

Part of Section	Sec.	Acres
Township 35 South, Range 9 West, W. M.		
E ½, E ½ of W ½,	31	480.
All,	33	640.
All,	35	640.
Township 36 South, Range 9 West, W. M.		
All,	1	640.
All,	3	640.
All,	5	640.
E ½ of E ½,	7	160.
All,	9	640.
All,	11	640.
All,	13	640.
All,	15	640.
N ½, E ½ of SW ¼, SE ¼,	17	560.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
E ½ of E ½,	29	160.
E ½, E ½ of W ½,	33	480.
All,	35	640.
Township 37 South, Range 9 West, W. M.		
All,	1	640.
All,	3	640.
All,	11	640.
All,	13	640.
E ½,	23	320.
All,	25	640.

EAST SIDE GRANT—Josephine County—Concluded.

Township 34 *South, Range* 10 *West, W. M.*

Part of Section	Sec.	Acres
All,	13	640.
All,	23	640.
All,	25	640.

Unsurveyed Primary.

Township 34 *South, Range* 10 *West, W. M.*

NE ¼, SE ¼,	27	480.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, E ½ of SW ¼,	35	520.

Township 35 *South, Range* 10 *West, W. M.*

All,	1	640.
N ½ of NE ¼, SE ¼ of NE ¼, NE ¼ of NW ¼, E ½ of SE ¼,	13	240.
Total acres,		127,845.00

Selected Indemnity.

Township 39 *South, Range* 7 *West, W. M.*

Lot 3 and SW ¼ of SE ¼,	23	81.41
N ½ of NE ¼, SW ¼ of NE ¼, W ½, NW ¼ of SE ¼, S ½ of SE ¼,	25	560.

Township 40 *South, Range* 8 *West, W. M.*

Lot 3,	23	37.63
Total acres,		679.04

EAST SIDE GRANT—Continued.

DOUGLAS COUNTY.

Township 27 South, Range 2 West, W. M.

Part of Section.	Sec.	Acres
Unpatented Primary.		
SE ¼ of NE ¼, E ½ of SW ¼, E ½ of SE ¼, Lots 3, 4, 5, 6, 7, 8 and 9,	7	467.64
S ½ of N ½, S ½, Lots 1, 2, 3 and 4,	9	640.24

Township 32 South, Range 2 West, W. M.

Lots 1, 2, 3, 4,	19	159.76

Township 32 South, Range 3 West, W. M.

Lot 5, SW ¼ of NW ¼, W ½ of SW ¼,	1	162.71
W ½, Lots 3, 4, 9 and 10,	13	480.

Township 22 South, Range 4 West, W. M.

SW ¼ of NE ¼, S ½ of NW ¼, W ½ of SE ¼, Lots 1, 2, 3, 4, 5, 6 and 7,	3	486.80
E ½,	27	320.

Township 28 South, Range 4 West, W. M.

NW ¼,	17	160.

Township 30 South, Range 4 West, W. M.

Unpatented Primary.		
Lot 2,	1	21.96

Township 30 South, Range 5 West, W. M.

NE ¼, E ½ of W ½,	9	320.
SW ¼ of SW ¼,	31	44.50

EAST SIDE GRANT—Douglas County—Continued.

Township 32 South, Range 5 West, W. M.

Part of Section.	Sec.	Acres
Lots 3 and 4, S ½ of NW ¼, SW ¼,	3	315.25
Lots 1 and 2, S ½ of NE ¼ and S ½,	5	471.02
Lots 1, 2, 3, 4, 5, 6, 7 and 8,	25	288.75
Lots 1, 2, 3, 4, 5, 6 and 7, NW ¼ of SW ¼,	27	356.97
All,	31	652.41
All,	33	651.41
Lots 1, 2, 3, 4, 5, E ½ of NE ¼, NE ¼ of SE ¼,	35	339.43

Township 24 South, Range 6 West, W. M.

Lot 6,	21	25.88

Township 29 South, Range 6 West, W. M.

E ½ of W ½, SE ¼, Lots 1, 2, 3 and 4,	29	464.
All,	31	704.63
NW ¼, N ½ of SW ¼, Lots 1 and 2,	33	323.75

Township 31 South, Range 7 West, W. M.

NE ¼,	29	160.

Township 33 South, Range 7 West, W. M.

Lot 1,	3	46.32
N ½,	7	322.17
N ½,	9	320.

Township 22 South, Range 8 West, W. M.

NW ¼ of SW ¼,	33	40.

EAST SIDE GRANT—Douglas County—Continued.

Township 25 *South, Range* 9 *West, W. M.*

Part of Section.	Sec.	Acres
All,	1	599.40
All,	13	640.
E ½, E ½ of W ½,	23	480.
All,	25	640.
All,	35	640.

Unpatented Primary.

Township 29 *South, Range* 9 *West, W. M.*

All,	15	647.16

Township 31 *South, Range* 9 *West, W. M.*

NE ¼, E ½ of NW ¼, E ½ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼, Lots 2 and 3,	19	519.92
NW ¼,	29	160.
All,	31	639.60
All,	33	640.
Total acres,		14,351.68

Unsurveyed Primary.

Township 26 *South, Range* 2 *West, W. M.*

All,	19	640.
All,	21	640.
All,	29	640.
All,	31	640.
All,	33	640.

EAST SIDE GRANT—Douglas County—Continued.

Township 27 South, Range 2 West, W. M.

Part of Section.	Sec.	Acres
All,	17	640.
All,	19	640.
All,	21	640.
N ½, SE ¼,	29	480.
S ½,	33	320.

Township 28 South, Range 2 West, W. M.

All,	5	640.
NE ¼,	7	160.
All,	9	640.
All,	17	640.
All,	19	640.
All,	21	640.
W ½,	27	320.
All,	29	640.
All,	31	640.
All,	33	640.

Unsurveyed Primary.

Township 29 South, Range 2 West, W. M.

All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
W ½ of W ½,	11	160.
All,	15	640.
All,	17	640.

EAST SIDE GRANT—Douglas County—Continued.

Part of Section.	Sec.	Acres
Township 29 South, Range 2 West, W. M.		
All,	19	640.
All,	21	640.
W ½ of W ½,	23	160.
All,	27	640.
All,	29	640.
All,	31	640.
All,	33	640.
W ½,	35	320.
Township 30 South, Range 2 West, W. M.		
All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
W ½ of W ½,	11	160.
N ½,	15	320.
All,	17	640.
All,	19	640.
W ½,	21	320.
All,	31	640.
Township 31 South, Range 2 West, W. M.		
All,	5	640.
All,	7	640.
W ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, NW ¼ of SE ¼,	17	400.
N½, SW ¼, W ½ of SE ¼,	19	560.

EAST SIDE GRANT—Douglas County—Continued.

Township 28 *South, Range* 3 *West, W. M.*

Part of Section	Sec.	Acres
All,	5	640.
All,	7	640.

Unsurveyed Primary.

Township 28 *South, Range* 3 *West, W. M.*

All,	17	640.
NE ¼, S ½,	19	480.
All,	21	640.
SW ¼ of NW ¼, S W ¼, S ½ of SE ¼,	23	280.
All,	25	640.
All,	27	640.
All,	29	640.
E ½, NW ¼,	31	480.
All,	33	640.
All,	35	640.

Township 32 *South, Range* 3 *West, W. M.*

All,	19	640.
All,	21	640.
All,	23	640.
All,	25	640.
All,	27	640.
All,	29	640.

Township 29 *South, Range* 7 *West, W. M.*

All,	23	640.
All,	25	640.
All,	35	640.

EAST SIDE GRANT—Douglas County—Continued.

Township 30 South, Range 7 West, W. M.

Part of Section	Sec.	Acres
SW ¼,	33	160.

Township 31 South, Range 7 West, W. M.

N ½ of N ½,	5	160.

Township 25 South, Range 8 West, W. M.

All,	3	640.
All,	5	640.
All,	7	640.
All,	9	640.
All,	17	640.
All,	19	640.
All,	29	640.
All,	31	640.

Unsurveyed Primary.

Township 33 South, Range 8 West, W. M.

All,	1	640.
All,	3	640.
NE ¼,	5	160.

Township 32 South, Range 9 West, W. M.

All,	1	640.
All,	3	640.
All,	5	640.
N ½, N ½ of S ½,	11	480.
E ½, E ½ of W ½,	13	480.
Total acres,		49,880.00

EAST SIDE GRANT—Continued.

JACKSON COUNTY.

Township 39 *South, Range* 1 *East, W. M.*

Part of Section	Sec.	Acres
Unpatented Primary.		
SE ¼ of SE ¼ of NW ¼,	27	10.
Lot 1,	29	40.46
Township 36 *South, Range* 2 *East, W. M.*		
SW ¼ of NE ¼,	29	40.
Township 37 *South, Range* 2 *East, W. M.*		
Lots 3 and 4,	31	85.19
Township 38 *South, Range* 2 *East, W. M.*		
W ½ of NE ¼,	33	80.
Township 39 *South, Range* 3 *East, W. M.*		
SW ¼,	33	160.
Township 38 *South, Range* 4 *East, W. M.*		
SE ¼ of NE ¼, E ½ of SE ¼,	19	120.
Township 38 *South, Range* 1 *West, W. M.*		
Unpatented Primary.		
SW ¼ of SE ¼,	35	40.
Township 39 *South, Range* 1 *West, W. M.*		
Lot 2, NW ¼ of SE ¼,	1	73.40
N ½ of NW ¼,	33	80.
Unpatented Primary.		
Township 41 *South, Range* 1 *West, W. M.*		
All,	1	640.

EAST SIDE GRANT—Jackson County—Continued.

Part of Section	Sec.	Acres
Township 32 South, Range 2 West, W. M.		
All,	31	640.
S ½ of N ½, S ½,	33	480.
Township 38 South, Range 2 West, W. M.		
NE ¼,	17	160.
S ½,	25	320.
All,	35	640.
Township 39 South, Range 2 West, W. M.		
SE ¼ of NW ¼ of NW ¼,	19	10.
Township 36 South, Range 3 West.		
NW ¼ of SE ¼ of SW ¼,	33	10.
Township 37 South, Range 3 West, W. M.		
NW ¼ of NW ¼, S ½ of NW ¼,	11	120.
SE ¼ of NE ¼,	35	40.
Township 38 South, Range 3 West, W. M.		
SE ¼,	13	160.
Township 40 South, Range 3 West, W. M.		
E ½ of Lot 2, SW ¼ of Lot 2,	5	29.63
Lots 1, 2, 3, 4 and 6,	19	196.
Township 36 South, Range 4 West, W. M.		
S ½ of SW ¼ of S W ¼,	1	20.
Township 37 South, Range 4 West, W. M.		
NE ¼ of SE ¼,	1	40.
E ½ of W ½ of E ½ of SW ¼ of NE ¼,		

EAST SIDE GRANT—Jackson County—Continued.

Township 37 *South, Range* 4 *West, W. M.*

Part of Section	Sec.	Acres
W ½ of W ½ of E ½ of SE ¼ of NW ¼,	19	10.
E ½ of NW ¼,	25	80.
Total acres,		4,324.68

Township 38 *South, Range* 2 *East, W. M.*

Unsurveyed Primary.

N ½,	19	320.

Unsurveyed Primary.

Township 39 *South, Range* 3 *East, W. M.*

NE ¼ and S½,	27	480.
N ½ and SW ¼,	35	480.

Township 41 *South, Range* 3 *East, W. M.*

All,	5	640.
All,	7	640.
All,	9	640.

Township 38 *South, Range* 4 *East, W. M.*

All,	13	640.
All,	23	640.
All,	25	640.

Township 33 *South, Range* 1 *West, W. M.*

NW ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½,	15	600.

Township 41 *South, Range* 1 *West, W. M.*

All,	3	640.

EAST SIDE GRANT—Jackson County—Continued.

Township 41 *South, Range* 1 *West, W. M.*

Part of Section.	Sec.	Acres
All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
N ½,	15	320.
N ½,	17	320.

Township 39 *South, Range* 2 *West, W. M.*

All,	1	640.
All,	3	640.
All,	11	640.
All,	13	640.
All,	15	640.

Township 39 *South, Range* 2 *West, W. M.*

All,	25	640.
All,	35	640.

Township 41 *South, Range* 2 *West, W. M.*

All,	1	640.
All,	3	640.

Unsurveyed Primary.

Township 41 *South, Range* 2 *West, W. M.*

All,	5	640.
All,	7	640.
All,	9	640.
All,	11	640.
N ½,	13	320.
N ½,	15	320.
N ½,	17	320.

EAST SIDE GRANT—Jackson County—Continued.

Township 32 *South, Range* 3 *West, W. M.*

Part of Section.	Sec.	Acres
All,	31	640.
All,	33	640.
All,	35	640.

Township 38 *South, Range* 3 *West, W. M.*

All,	7	640.
All,	9	640.
N ½,	13	320.
All,	15	640.
All,	17	640.
All,	19	640.
All,	25	640.
E ½,	35	320.

Township 39 *South, Range* 3 *West, W. M.*

All,	5	640.
All,	7	640.
All,	17	640.
All,	19	640.
S ½,	23	320.
W ½ and SE ¼,	25	480.
All,	29	640.
All,	31	640.
All,	35	640.

Township 40 *South, Range* 4 *West, W. M.*

NW ¼,	3	160.
N ½,	5	320.
Total acres,		31,000.

EAST SIDE GRANT—Jackson County—Continued.

— Selected Indemnity.

Township 40 South, Range 4 West, W. M.

Part of Section	Sec.	Acres
NW ¼,	27	160.
Total acres,		160.

WEST SIDE GRANT.

Act of May 4, 1870.

County	Primary Surveyed
Multnomah,	.26
Washington,	40.
Yamhill,	40.
Total,	80.26

WEST SIDE GRANT.

MULTNOMAH COUNTY.

Township 1 North, Range 1 East, W. M.

Part of Section	Sec.	Acres
Unpatented Primary.		
Lot 3,	19	.26
Total acres,		.26

YAMHILL COUNTY.

Township 4 South, Range 6 West, W. M.

NW ¼ of NE ¼,	18	40.
Total acres,		40.

WEST SIDE GRANT—Continued.

WASHINGTON COUNTY.

Township 2 North, Range 3 West, W. M.

Part of Section	Sec.	Acres
SW ¼ of SE ¼,	21	40.
Total acres,		40.

Exhibit No. 7

Statement showing right of way through unsold East Side Grant Lands required for Oregon and California Railroad. (Lands patented except otherwise noted.)

DOUGLAS COUNTY, OREGON.

Description Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved	
		W. M.			
Lot 5 in SE ¼ of SW ¼	29	24S	5W	100 ft. wide on each side of center line of main track	
W ½ of SW ¼	21	29S	5W	do	do
E ½ of SE ¼	1	30S	6W	100 ft. wide on west side	do
				150 ft. wide on east side	do
SW¼ of SW ¼	31	"	"	100 ft. wide on each side	do
SE ¼ of SE ¼	33	30S	7W	do	do
N ½	35	"	"	do	do
NE ¼ of SE ¼	35	"	"	do	do
NE ¼ of NW ¼	1	31S	7W	do	do

DOUGLAS COUNTY, OREGON—Continued.

Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved	
			W. M.		
NW 1/4 of SW 1/4	9	31S	7W	100 ft. wide on each side of center line of main track	
S 1/2 of SW 1/4	9	"	"	do	do
N 1/2 of NW 1/4	17	"	"	do	do
W 1/2 of SW 1/4 of NW 1/4	17	"	"	do	do
NW 1/4	19	"	"	do	do
SW 1/4 of SW 1/4	7	32S	7W	do	do
W 1/2 of NE 1/4	19	"	"	do	do
NW1/4 of NE1/4 of NW1/4	19	"	"	do	do
SE 1/4 of NW 1/4	19	"	"	do	do
NE 1/4 of SE 1/4	19	"	"	do	do
E 1/2 of NW 1/4 of SE 1/4	19	"	"	do	do
SE 1/4 of NE 1/4	29	"	"	do	do
Lot 1 or NE 1/4 of NE 1/4	3	33S	7W	(unpatented) do	do

DOUGLAS COUNTY, OREGON—Continued.

Subdivision	Sec.	Twp.	Rge.	Right of Way to be Reserved
			W. M.	
S ½ of SE ¼	23	31S	8W	100 ft. wide on each side of center line of main track
W ½ of W ½	35	"	"	do do
S ½ of SW ¼	1	32S	8W	100 ft. wide on north side do 150 ft. wide on south side do
E ½ of NE ¼	13	32S	8W	100 ft. wide on each side of center line of main track
NE ¼ of SE ¼	13	"	"	do do
			JOSEPHINE COUNTY, OREGON.	
NW ¼ of NE ¼	21	36S	5W	100 ft. wide on each side of center line of main track
W ½ of NE ¼	15	33S	6W	do do
NE ¼ of NW ¼	15	"	"	do do
W ½ of NE ¼; NE ¼ of NW ¼	15	"	"	Reserve for reconstruction of railroad on account of change of line.

JOSEPHINE COUNTY, OREGON—Continued.

Subdivision	Description Sec.	Twp.	Rge.	Right of Way to be Reserved	
		W. M.			
W ½ of NE ¼	29	34S	6W	100 ft. wide on west side of center line of main track 175 ft. wide on east side of center line	
E ½ of NW ¼	29	"	"	do	do
NE ¼ of SW ¼	29	"	"	do	do
E ½ of NE ¼	33	"	"	100 ft. wide on each side	do
NW ¼ of NW ¼	3	35S	6W	do	do
W ½ of NE ¼	9	"	"	do	do
E ½ of NW ¼	9	"	"	do	do
SW ¼ of NE ¼	27	"	"	do	do
NE ¼ of SE ¼	27	"	"	do	do
SW ¼ of NW ¼	1	36S	6W	do	do
NW ¼ of SW ¼	1	"	"	do	do
NE ¼ of SE ¼	25	33S	7W	do	do

JOSEPHINE COUNTY, OREGON—Continued.

Subdivision	Description Sec.	Twp.	Rge.	Right of Way to be Reserved	
		W. M.			
NW 1/4 of NE 1/4	1	34S	7W	100 ft. wide on each side of center line of main track	
				JACKSON COUNTY, OREGON.	
NW 1/4 of NE 1/4	1	41S	1E	100 ft. wide on each side of center line of main track	
NE 1/4	17	40S	2E	do	do
E 1/2 of SE 1/4	17	"	"	do	do
SE 1/2 of SE 1/4	19	"	"	do	do
Lot 2	31	"	"	do	do
W 1/2 of NW 1/4	7	41S	2E	do	do
Lot 3	11	36S	3W	do	do
Lot 7	13	"	"	do	do
Lots 3 and 4	19	36S	4W	do	do
NE 1/4 of NE 1/4	27	"	"	do	do

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Exhibit No. 8

Schedule of unsold lands of the East Side Oregon and California Railroad Company grant—which land are under reservation from sale on account of timber, iron, coal, or oil, which they are known or supposed to contain and which substances are necessary to the railroad company in the operation and maintenance of its railroad.

CLACKAMAS COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE 1/4, N 1/2 of NW 1/4	1	6S	2E	2				440.20
SE 1/4 of NW 1/4, SE 1/4 of SW 1/4, NE 1/4 of SE 1/4, S 1/2 of SE 1/4	1	"	"					
E 1/2 of NE 1/4, SW 1/4 of NW 1/4, SW1/4 & W1/2 of SE1/4	18	"	"	2				360.
N1/2 of NE1/4, SW1/4 of NE1/4								

CLACKAMAS COUNTY—Continued

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
and NW 1/4	15	6S	2E	2				280.
NW1/4 of NE1/4, E1/2 of NW 1/4, NE1/4 of SW1/4, Lots 3 and 4, NW1/4 of SE1/4 and SE1/4 of SE1/4	19	"	"	5				315.36
NE1/4, N1/2 of NW1/4	29	"	"	5				400.
SE1/4 of NW1/4, N1/2 of SE1/4, SE1/4 of SE 1/4	29	"	"					
N 1/2 and SE 1/4	33	"	"	5				480.
E 1/2, N 1/2 of N W1/4	3	7S	2E	2				516.38
SE1/4 of NW1/4, E1/2 of SW1/4	3	"	"					
NE 1/4, NE 1/4 of SE 1/4	5	"	"	2				198.65
SE1/4 of NE1/4 & E1/2 of SE1/4	9	"	"	2				120.
								3,110.59

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MARION COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE¼ of NW¼ & W½ of SE¼	1	7S	1E	5				120.
Lots 1, 5, 6	7	"	"	2				36.72
S ½	11	"	"	5				320.
W½ of NE¼, W½ of NW¼, W½ of SW¼, NE¼ of SE ¼	13	7S	1E	5				280.
NE ¼ of NE ¼ and E ½ of SE ¼	23	"	"	5				120.
SW ¼ of SW ¼	29	6S	2E	5				40.
W ½, W ½ of SE ¼ and SE ¼ of SE ¼	5	7S	2E	2				439.55
SW ¼ of NE ¼, W ½	9	"	"	2				440.
W ½ of SE ¼	9	"	"					
E ½ of SW ¼ and SE ¼	19	"	"	2 & 5				240.
								2,036.27

LINN COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½, SW ¼, NW ¼ of SE ¼ and S ½ of SE ¼	3	12S	1E	25				596.42
All	5	"	"	25				642.60
								1,239.02
All that part situate in Linn County	1	15S	1W	5	586.85			
Lot 1, S ½ of NE ¼	3	"	"	5	481.62			
SW ¼ of NW ¼, S ½	3	"	"					
E ½, N ½ of NW ¼ and SW ¼ of SW ¼	5	"	"	5	441.20			
All that part situate in Linn County	7	"	"	5	102.62			

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LINN COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All that part situate in Linn County	9	15S	1W	5	377.50			
All that part situate in Linn County	11	"	"	5	40.			
All that part situate in Linn County	21	"	"	3	40.			
All	1	15S	2W	5	641.98			
E ½	3	"	"	5	320.09			
SW ¼ of NW ¼, SW ¼ NE ¼ of SE ¼ and S ½ of SE ¼	9	15S	2W	5	320.			
All	11	"	"	5	640.			
All	13	"	"	5	640.			

LINN COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	15	15S	2W	5	640.			
NE ¼ of NE ¼	17	"	"	5	40.			
NE ¼ and S ½	21	"	"	5	480.			
All	27	"	"	5	640.			
All	29	"	"	5	640.			
NE ¼ of NE ¼, S ½ of NE ¼, NW ¼, S ½	31	"	"	5	620.80			
All	33	"	"	5	640.			
All	5	16S	2W	5	638.40			
E ½, SE ¼ of NW ¼	1	16S	3W	3 & 5	360.59			
					9,331.65			1,239.02

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LANE COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All that part situate in Lane County	1	15S	1W	5	53.99			
All that part situate in Lane County	7	"	"	5	553.94			
All that part situate in Lane County	9	"	"	5	182.50			
All that part situate in Lane County	11	"	"	5	160.00			
N ½, N ½ of SW ¼	13	"	"	5	440.			
NW ¼ of SE ¼	13	"	"					
E ½	15	"	"	5	560.			
N ½ of NW ¼ and SW ¼	15	"	"					
All	17	"	"	5	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	19	15S	1W	5	659.62			
All that part situate in Lane County	21	15S	1W	3	320.			
NW 1/4 of NE 1/4, NW 1/4	23	"	"	5	200.			
SE 1/4 of SW 1/4, NE 1/4 of SE 1/4, S1/2 of SE 1/4	27	"	"	5	160.			
All	29	"	"	5	640.			
All	31	"	"	5	653.41			
All	3	16S	1W	5	642.60			
Lots 7 & 8	5	"	"	3 & Supp. 3	39.20			
NW 1/4 of NW 1/4	5	"	"					
N 1/2, N 1/2 of SW 1/4	9	"	"	5	400.			
NW 1/4, SW 1/4 of SW 1/4 &								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE 1/4 of SE 1/4	11	16S	1W	5	240.			
S 1/2 of SW 1/4	13	"	"	5	80.			
NW 1/4 of NW 1/4, S 1/2 of N 1/2, N 1/2 of S 1/2 and SE 1/4 of SE 1/4	15	"	"	5	400.			
Lots 3 & 4, N 1/2 of SE 1/4, SW 1/4 of SE 1/4	17	16S	1W	3	180.76			
Lots 5, 6, 7, 8	19	"	"	3 & 25	241.24			
NE1/4 of SE1/4 & S1/2 of SE1/4	19	"	"					
S 1/2 of S 1/2	25	"	"	5	160.			
S 1/2 of S 1/2	27	"	"	5	160.			
All	29	"	"	5	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼	31	16S	1W	5	565.60			
NW ¼ of SW ¼, S ½ of SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	31	"	"					
NE ¼, SE ¼ of NW ¼	33	"	"	5	480.			
N ½ of SW ¼, SW ¼ of SW ¼ and SE ¼	33	"	"					
All	35	"	"	5	640.			
All	23	15S	2W	5	640.			
All	25	15S	2W	5	640.			
N ½, N ½ of SE ¼	35	"	"	5	400.			
All	7	16S	2W	5	658.82			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	17	16S	2W	5	640.			
All	19	"	"	5	658.78			
All	21	"	"	5	640.			
NW ¼ of SW ¼	23	"	"	3	40.			
E ½ of NE ¼, SE ¼	25	"	"	3	268.44			
Lots 5 and 6	25	"	"					
NW ¼	27	"	"	3	160.			
S ½ of NE ¼, NW ¼ & S ½	29	"	"	5	560.			
All	31	"	"	5	655.26			
Lots 1, 2, 3 & W ½	33	"	"	3	366.98			
N ½ of N ½	5	17S	2W	3	171.40			
NW ¼ of NE ¼, S ½ of NE ¼, W ½, Lots 1, 2, 3, N ½								

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
of SE 1/4	7	17S	2W	3 & 25	617.50			
Lots 1, 2, 3, 5, 9	13	"	"	3 & 139	215.61			
NW 1/4 of NW 1/4, NW 1/4 of SW 1/4	13	"	"					
NE 1/4, Lots 1 & 2	15	"	"	3	316.40			
S 1/2 of NW 1/4	15	"	"					
NE 1/4 of NE 1/4	23	"	"	3	40.			
SE 1/4 of NE 1/4, Lots 3 and 4	21	19S	2W	10				66.96
N 1/2 of N 1/2, SE 1/4 of NE 1/4, NE 1/4 of SE 1/4 & S 1/2 of SE 1/4	27	"	"	10				320.
N 1/2, N 1/2 of SW 1/4, SW 1/4 of SW 1/4, N 1/2 of SE 1/4,								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
SE ¼ of SE ¼	13	16S	3W	3	560.			
E ½ of SE ¼	1	17S	3W	3	80.			
Lot 4	5	"	"	3	17.59			
W ½ of NW ¼	11	"	"	3	80.			
NE ¼ of NE ¼	13	"	"	3	40.			
N ½ of NE ¼ & NW ¼ of NW ¼	1	21S	4W	10				119.66
N ½, N ½ of SW ¼	3	"	"	10				404.80
NE ¼, N ½ of NW ¼	5	"	"	10				235.54
W ½ of NE ¼, NW ¼ and S ½	23	"	"	10				560.
All	25	"	"	10				640.
E ½, E ½ of SW ¼	35	"	"	10				400.

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
SW 1/4 of NE 1/4, NW 1/4 of NW 1/4, S 1/2 of NW 1/4 and S 1/2	1	22S	4W	10				480.18
E 1/2, E 1/2 of W 1/2	11	"	"	10 & 25				480.
E 1/2, N 1/2 of NW 1/4, SW 1/4 of NW 1/4 & SW 1/4	13	"	"	10 & 25				600.
W 1/2 of NE 1/4, SE 1/4	23	"	"	25				240.
N 1/2, SE 1/4	25	"	"	25				480.
Lot 4	13	18S	5W	3				11.09
N 1/2 of NE 1/4, W 1/2	1	19S	5W	10	480.78			
W 1/2 of SE 1/4	1	"	"					
All	5	"	"	10	629.66			
All	7	"	"	10	641.48			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NW 1/4 of NE 1/4, N 1/2 of NW 1/4, SW 1/4 of NW 1/4, NW 1/4 of SW 1/4 and S 1/2 of S 1/2	9	19S	5W	10 & 25	360.			
N 1/2 of NE 1/4, SE 1/4 of NE 1/4, N 1/2 of SE 1/4	11	"	"	10	200.			
Lot 7	13	"	"	10	1.57			
W 1/2 of W 1/2, SE 1/4 of SW 1/4, SW 1/4 of S E1/4	15	"	"	10	240.			
N 1/2, SW 1/4, N 1/2 of SE 1/4, SW 1/4 of SE 1/4	17	"	"	10	600.			
All	19	"	"	10	640.22			
N 1/2, SW 1/4, W 1/2 of SE 1/4	21	"	"	10	560.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SW 1/4 of NW 1/4, SW 1/4 & W 1/2 of SE 1/4	27	19S	5W	10	280.			
All	29	"	"	10	640.			
All	31	"	"	10 & 25	645.			
All	33	"	"	10	640.			
All	3	20S	5W	10	635.08			
All	5	"	"	10	644.16			
E 1/2, N 1/2 of NW 1/4, SE 1/4 of NW 1/4 & S 1/2 of SW 1/4	7	"	"	10	524.99			
All	9	"	"	10	640.			
W 1/2, Lots 2, 3, 4, 5	11	"	"	10	412.21			
W 1/2 of NE 1/4, NW 1/4	15	"	"	10	419.33			
N 1/2 of SW 1/4, SW 1/4 of SW 1/4, Lots 1 & 6	15	"	"					

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
E ½, E ½ of NW ¼, SW ¼	17	20S	5W	10	560.			
All	19	"	"	10	647.80			
N ½ of NE ¼, SW ¼	21	"	"	10 & 25	360.			
W½ of SE¼, SE¼ of SE¼	21	"	"					
NW ¼ of NW ¼, S ½ of NW ¼, SW ¼, S ½ of SE ¼	23	"	"	10 & 88	360.			
N ½, SW ¼, N ½ of SE ¼	27	"	"	10	560.			
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, SW ¼ and NE ¼ of SE ¼	29	"	"	10	480.			
All	31	"	"	10	647.20			
All	33	"	"	10	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	35	20S	5W	10	640.			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ & SE ¼	1	21S	5W	10	600.			
Lots 2, 3, 4	3	"	"	25	122.06			
Lot 1	5	"	"	25	40.72			
Lot 7, W ½ of NW ¼	1	18S	6W	3	114.62			
N ½, N ½ of S ½, and SE ¼ of SE ¼	3	"	"	3 & 139	569.89			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼	5	"	"	24 & 11	668.20			
S ½ of NE ¼, NW ¼, S ½	7	"	"	11	584.41			
NW ¼ of SW ¼, S ½ of SW ¼ & SE ¼	9	"	"	3	280.			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE 1/4, SE 1/4 of NW 1/4, E 1/2 of SW 1/4 and SE 1/4	11	18S	6W	3	440.			
W 1/2 of NE 1/4, SE 1/4 of NE 1/4, N 1/2 of NW 1/4, SE 1/4 of NW 1/4, NE 1/4 of SW 1/4	13	"	"	3	280.			
N 1/2 of NW 1/4, SW 1/4 of NW 1/4, NW 1/4 of SW 1/4	15	"	"	3	160.			
All	17	"	"	11	640.			
All	19	"	"	11	664.60			
All	21	"	"	24	640.			
NE 1/4 of SW 1/4, S 1/2 of S 1/2, Lots 3 & 4	23	"	"	3	248.			
N 1/2, N 1/2 of SW 1/4, SW 1/4								

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
of SW 1/4 & SE 1/4	25	18S	6W	10	600.			
All	27	"	"	10	640.			
All	29	"	"	11	640.			
All	31	"	"	11 & 89	664.80			
All	33	"	"	24	646.40			
W 1/2 of NE 1/4, W 1/2, Lots 1 & 2, NW 1/4 of SE 1/4	35	"	"	10	524.88			
All	1	19S	6W	10	639.41			
All	3	"	"	10	637.48			
All	5	"	"	10	643.68			
All	7	"	"	10	638.			
N 1/2, SW 1/4, S 1/2 of SE 1/4	9	"	"	10	560.			
N 1/2, N 1/2 of SW 1/4, SW 1/4								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
of SW ¼, E ½ of SE ¼	11	19S	6W	10	520.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	19S	6W	10	640.			
All	19	"	"	10	640.30			
All	21	"	"	10	640.			
All	23	"	"	10	640.			
All	25	"	"	10	640.			
All	27	"	"	10	640.			
All	29	"	"	10	640.			
All	31	19S	6W	10	639.80			
All	33	"	"	10	640.			
All	35	"	"	10	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½, N ½ of SW ¼, SE ¼	1	20S	6W	10 & 88	563.68			
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼	3	"	"	10	606.62			
All	5	"	"	10	640.40			
All	7	"	"	10	635.68			
All	9	"	"	10	640.			
N ½ of NE ¼, SW ¼ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ and SE ¼	11	"	"	10	480.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	"	"	10	640.			
NE ¼, E ½ of NW ¼, Lot 1								

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
and N ½ of SE ¼	19	20S	6W	10	360.42			
All	21	"	"	10	640.			
All	23	"	"	10	640.			
N ½	25	"	"	10	320.			
N ½ and SW ¼	1	17S	7W	3 Ind. / 3 Prim	479.88			
All	3	17S	7W	3	639.84			
All	5	"	"	146	616.68			
All	7	"	"	146	642.20			
All	9	"	"	3	640.			
All	11	"	"	3	640.			
SW ¼ of NW ¼ & S ½	13	17S	7W	3	360.			
All	15	"	"	3	640.			
All	17	"	"	3	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
				146				
NW ¼ of NE ¼, NW ¼	19	17S	7W	146 & 156	362.56			
S ½ of S ½	19	"	"					
All	21	"	"	3	640.			
N ½ of NE ¼, SE ¼ of NE ¼, N ½ of NW ¼ and SW ¼ of NW ¼	23	"	"	3	240.			
NE ¼ and S ½	25	"	"	3	480.			
NW ½ of NW ¼, S ½ of SW ¼ and SE ¼	27	"	"	3	280.			
E ½ of NE ¼, W ½ of W ½ and SE ¼	29	"	"	3	400.			
N ½ and SW ¼	31	"	"	146	481.52			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	33	17S	7W	3	640.			
All	35	"	"	3	640.			
All	1	18S	7W	8	695.81			
N ½ and SE ¼	3	"	"	8	533.28			
N ½	7	"	"	8	313.32			
All	9	"	"	8	640.			
NE ¼ of NE ¼, NW ¼ of SW¼, S½ of NW¼, S½	11	"	"	8	480.			
All	13	"	"	8	640.			
All	15	"	"	8	640.			
All	17	"	"	8	640.			
All	19	"	"	8	633.18			
All	21	"	"	8	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	23	18S	7W	8	640.			
All	25	"	"	8	640.			
All	27	"	"		640.			
All	29	"	"	8	640.			
All	31	"	"	8	638.07			
All	33	18S	7W	8	640.			
All	35	18S	7W	8	640.			
All	1	19S	7W	6, 8 & 24	640.80			
All	3	"	"	6 & 8	646.22			
SE ¼ of NE ¼, Lots 1 & 4, S ½	5	"	"	11 & 73	402.			
All	7	"	"	11 & 73	390.99			
All	9	"	"	11	630.32			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	11	19S	7W	10	640.			
All	13	"	"	10	640.			
All	15	"	"	10	640.			
All	17	"	"	11	640.			
NE ¼ and Lot 1	19	"	"	11	181.97			
Lots 1, 2, 6, 7, 8, 9, 10, 11, 12 15, 16	21	"	"	24	428.42			
All	23	"	"	10	640.			
N ½ of NE ¼, S ½ of SE ¼	25	"	"	10	160.			
All	27	"	"	10	640.			
All	35	"	"	10	640.			
All	1	20S	7W	24	727.44			
All	3	"	"	24	746.20			
All	11	20S	7W	24	640.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
N ½	13	20S	7W	24	320.			
N ½ of NE ¼	15	"	"	24	80.			
All	1	17S	8W	8	644.44			
N ½, NW ¼ of SW ¼, S ½ of SW ¼, SW ¼ of SE ¼	3	"	"	8 & 22	485.39			
All	5	"	"	8	645.72			
E ½, N ½ of NW ¼, SE ¼ of NW¼, NE¼ of SW¼	9	"	"	8 & 22	480			
All	11	17S	8W	8	640.			
All	13	"	"	8	640.			
N ½ and SE ¼	17	"	"	8	480.			
All	21	"	"	8	640.			
All	23	"	"	8	640.			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	25	17S	8W	8	640.			
All	27	"	"	8	640.			
E ½ of E ½	33	"	"	8	160.			
All	35	"	"	8	640.			
NW ¼ of NE ¼, NW ¼, W ½ of SW ¼	1	18S	8W	8 & 22	280.66			
All	3	"	"	8	642.15			
All	9	18S	8W	8	640.			
N ½, SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	11	"	"	8	600.			
S ½ of NE ¼, W ½ of NW ¼, E ½ of SW ¼, and SE ¼	13	"	"	8	400.			

LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½, S ½ of SW ¼, NE ¼ of SE ¼	15	18S	8W	8	440.			
N ½ and SW ¼	17	"	"	8	480.			
All	19	"	"	8	635.58			
NE ¼, W ½ of NW ¼, SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	21	"	"	8 & 11	520.			
SE ¼ of NE ¼, SW ¼ of NW ¼ and S ½	23	"	"	8 & 22	400.			
All	25	"	"	8	640.			
All	27	"	"	8	640.			
W ½ of NE ¼, W ½ & SE ¼	29	"	"	8	560.			
All	31	"	"	8	639.68			

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LANE COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	33	18S	8W	8	640.			
N ½, SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	35	"	"	8	600.			
All	1	19S	8W	11	844.			
Lots 10, 11 & W ½ of SE ¼	3	19S	8W	73	160.			
All	5	"	"	11	785.18			
N ½ of N ½, SE ¼ of NE ¼ and SE ¼ of SE ¼	11	19S	8W	11 & 73	240.			
NE ¼, N ½ of N W¼, SE ¼ of NW¼, NE¼ of SE¼	13	"	"	73	320.			
					110,576.66			5,038.23

DOUGLAS COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	1	26S	2W	20				642.84
All	3	"	"	20				638.84
All	5	"	"	42				635.18
All	7	"	"	42				636.80
All	9	"	"	42				640.
All	11	"	"	20				640.
All	13	"	"	20				640.
N ½ of NE ¼, SW ¼ of NE ¼, NW ¼ & S ½	15	"	"	20				600.
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼ & SE ¼ of SE ¼	17	"	"	42				440.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	23	26S	2W	20 & 89				600.
All	25	"	"	20				640.
SE ¼	35	26S	2W	20				160.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, and S ½ of SW ¼	1	26S	3W	42				521.54
N ½ of NE ¼ and NW ¼	3	"	"	42				233.98
SE ¼ of SW ¼ and SE ¼	9	"	"	13 & 208				200.
S ½	11	26S	3W	42				323.32
All	13	"	"	42				643.60
All	15	"	"	13 & 42				640.
E½ of NE¼, NE¼ of SE¼	21	"	"	13				120.
All	23	"	"	42				640.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	25	26S	3W	42				640.
N ½, NE ¼ of SW ¼, N ½ of SE ¼	27	"	"	13				440.
NE¼ of SE¼, S½ of SE¼	33	"	"	13				120.
All	35	"	"	13				640.
N ½, E ½ of SW ¼, SE ¼	1	27S	3W	13, 42 & 157				554.44
W ½ of NE ¼, E ½ of NW ¼, S ½ of SW ¼, SE ¼	3	"	"	13 & 42				401.42
NE ¼, E ½ of NW ¼, S ½	7	"	"	13 & 42				561.90
All	9	"	"	42				648.
Lots 4, 5, 6, 9, 11, 12, 13, 14, 15, 16	11	"	"	13 & 42				407.79

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	13	27S	3W	42				640.
All	15	"	"	42				640.
All	17	"	"	13				640.
All	19	"	"	42				635.20
All	21	"	"	42				640.
E ½ and W ½ of W ½	23	"	"	13 & 42				480.
All	25	"	"	42				640.
W ½ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, SE ¼	27	"	"	13 & 42				520.
All	29	"	"	42 & 100				640.
All	31	"	"	42				637.99
E ½, SE ¼ of NW ¼ & E ½ of SW ¼	35	"	"	13 & 42				440.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
S ½ of NW ¼ & S ½	5	21S	4W	10				400.
All	7	"	"	10 & 25				642.20
NE ¼ of NE ¼, NW ¼, NE ¼ of SW ¼, NW ¼ of SE ¼	17	"	"	10				280.
W ½ of NE ¼, E ½ of NW ¼ and NW ¼ of SE ¼	19	"	"	10				200.
SW ¼, N ½ of SE ¼	21	"	"	10				240.
N ½, N ½ of SW ¼, SE ¼ of SW ¼ and SE ¼	27	21S	4W	10				600.
N ½ of SW ¼	29	"	"	10				80.
N ½ of SW ¼, SW ¼ of SW ¼, S ½ of SE ¼	31	"	"	10				204.04

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
E ½, SW ¼ of SW ¼	33	21S	4W	10				400.
NW ¼, W ½ of SW ¼	35	"	"	10				240.
SW ¼	3	22S	4W	44				160.
N ½ of SE ¼	3	"	"	Unpat.				486.80
Lot 1, S ½ of N ½, W ½ of SW ¼, SE ¼ of SE ¼	5	"	"	25				316.24
All	7	"	"	10				677.44
E ½, N ½ of NW ¼, S ½ of SW ¼	9	"	"	10				480.
W ½ of W ½	11	"	"	25				160.
All	15	"	"	10 & 25				640.
NE ¼ of SW ¼, NW ¼ of SE ¼	17	"	"	10				80.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½, N ½ of SW ¼ & SE ¼	21	22S	4W	10				560.
E ½ of NE ¼, NW ¼, E ½ of SW ¼	23	"	"	25				320.
E ½	27	"	"	Unpat.				320.
S ½ of NW ¼ & SW ¼	27	"	"	10				240.
SE ¼ of NE ¼, N ½ of S ½	29	"	"	10				200.
W ½ of NW ¼	31	22S	4W	10				99.60
S ½ of SE ¼	33	"	"	10				80.
N ½, N ½ of SW ¼ & SE ¼	35	22S	4W	10, 25, 101 & 142				560.
NE ¼ of NE ¼, SW ¼ of SE ¼	21	27S	4W	13				80.
E ½ of E ½, SW ¼ of NE ¼	23	"	"	13				200.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	25	27S	4W	13				640.
NW 1/4 of NE 1/4, SE 1/4 of NE 1/4, S 1/2 of NW 1/4, N 1/2 of SW1/4 and Lots 1 & 2	29	"	"	13 & 42				294.14
NW 1/4 of NW 1/4, NE 1/4 of SE 1/4 and Lot 8	31	"	"	13				96.50
N1/2 of NE1/4, SE1/4 of NE1/4	33	"	"	13 & 157				120.
SW 1/4	35	"	"	13				160.
All	1	29S	4W	38				527.51
All	3	"	"	38				721.38
Lots 1, 3, 4, SW 1/4 of NW 1/4, E 1/2 of SE 1/4	5	"	"	38				235.18
NW 1/4 of NE 1/4, N 1/2 of NW								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
¼, SE ¼ of NW ¼, E ½ of SW ¼ and W ½ of SE ¼	7	29S	4W	13				319.12
All	9	"	"	38				612.64
All	11	29S	4W	38				650.64
All	13	"	"	13				640.
N ½, SW ¼, N ½ of SE ¼	15	"	"	13				560.
SW ¼ of NE ¼, N ½ of SW ¼, NW ¼ of SE ¼, Lots 1 to 10, inc.	17	"	"	38 & 179				493.94
NE ¼, N ½ of NW ¼, E ½ of SE ¼ and Lot 3	19	"	"	13				358.60
SE ¼ of S W¼, S ½ of SE ¼,								

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
Lots 1, 3, 4, 5, 6	21	29S	4W	13 & 38				268.05
SW ¼ of SW ¼, Lot 4, and SE ¼	23	"	"	13				249.74
E ½ of E ½, NW ¼, W ½ of SW ¼	25	"	"	13				400.
All	27	"	"	13				640.
S ½ of SW ¼, SE ¼	29	29S	4W	13				240.
N ½ of N E¼, W ½ of NW ¼ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼ & S ½ of SW ¼	31	"	"	13				248.80
All	33	"	"	13				640.
N ½, SW ¼, N ½ of SE ¼, and SW ¼ of SE ¼	35	"	"	13				600.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
Lot 1, S ½ of N ½, SW ¼, N ½ of SE¼, SW¼ of SE¼	3	21S	5W	25	480.54			
NW ¼ of NE ¼, S ½ of NE ¼ & NW ¼	5	"	"	25	281.96			
All	7	"	"	25	646.20			
NW ¼ of NE ¼, SE ¼ of NE ¼, E ½ of NW ¼, E ½ of SW¼, W½ of SE¼	13	21S	5W	10	320.			
All	19	"	"	25	650.20			
NW ¼ of NW ¼	21	"	"	10	40.			
S ½ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼ & SW ¼ of SE ¼	25	"	"	10 & 25	320.			

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
E½ of NE¼, NE¼ of SW¼	27	21S	5W	10	120.			
E½ of NW¼, NE¼ of SW¼	29	"	"	10	120.			
W ½ of NW ¼	33	"	"	10	80.			
All	1	22S	5W	25				633.99
SW ¼ of NE ¼, S ½ of NW ¼, Lots 1, 2, 3, NE ¼ of SW ¼, N ½ of SE ¼, SE ¼ of SE ¼	3	"	"	10 & 25				396.37
NW ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼	5	"	"	10				205.40
W ½ of NE ¼, NW ¼, W ½ of SW ¼	7	"	"	10				338.31

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	11	22S	5W	10 & 25				640.
E ½ of NE ¼	13	"	"	25				80.
N ½, NE ¼ of SW ¼, N ½ of SE ¼	15	22S	5W	10				440.
SE ¼ of NE ¼	19	22S	5W	25				40.
E ¼ of SE ¼	23	"	"	10				80.
NE ¼ of NE ¼, S ½ of N ½, S ½	25	"	"	10				520.
NW ¼ of NE ¼, S ½ of NE ¼, S ½ of NW ¼, NE ¼ of SW ¼ and SE ¼	27	"	"	10				397.66
SE ¼ of SW ¼, SW ¼ of SE ¼	29	"	"	10				80.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE 1/4 of SE 1/4	31	22S	5W	10				40.
W 1/2 of NE 1/4 & NW 1/4	33	"	"	10				240.
N 1/2 and Lot 1	35	"	"	10				340.36
N 1/2 of NE 1/4, W 1/2 & NW 1/4 of SE 1/4	5	23S	5W	10 & 208				431.36
NW 1/4 of NE 1/4, E 1/2 of NW 1/4, W 1/2 of SW 1/4, N 1/2 of SE 1/4 & SE 1/4 of SE 1/4	7	"	"	10				313.75
E 1/2 of NE 1/4 and SE 1/4	13	"	"	10				240.
W 1/2 of SW 1/4	17	"	"	10				80.
N 1/2, SW 1/4, N 1/2 of SE 1/4	19	"	"	10				546.70
SW 1/4 of NW 1/4	21	"	"	10				40.
S1/2 of NW1/4, N1/2 of SW1/4	29	"	"	10				160.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NW 1/4 of NE 1/4	31	23S	5W	10				40.
NE 1/4 and S 1/2	13	28S	5W	13 & 42				480.
N 1/2 of NE 1/4, SE 1/4 of NE 1/4, and NW 1/4	23	"	"	13				280.
E 1/2, NE 1/4 of NW 1/4, S 1/2 of NW 1/4, N 1/2 of SW 1/4, SE 1/4 of SW 1/4	25	"	"	13 & 38				560.
N 1/2 of NE 1/4	27	"	"	13				80.
E 1/2 of NE 1/4	29	"	"	13				80.
N 1/2 of NE 1/4, NW 1/4, N 1/2 of SW 1/4, SW 1/4 of SW 1/4, and NE 1/4 of SE 1/4	31	"	"	13, 42 & 208				408.32

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NW¼ of SW¼, S½ of SW¼	33	28S	5W	13 & 42				120.
NE ¼, E ½ of NW ¼, & S ½	35	"	"	13 & 42				560.
N ½ of NE ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	3	29S	"	13 & 153				362.66
SE¼ of NW¼, N½ of SW¼	5	"	"	13 & 92				120.
NE ¼ of NE ¼, S ½ of NE ¼, SE¼ of NW¼, SE¼.	9	"	"	13				320.
N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, W ½ of SE ¼.....	11	"	"	13 & 179				240.
E½ of NE¼, W½ of NW¼.	15	"	"	13				160.
E ½ of NE ¼ & SE ¼.....	17	"	"	13 & 42				240.
N ½, W ½ of SW ¼.....	21	29S	5W	13 & 179				400.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
SE 1/4 of NE 1/4, SW 1/4 of NW 1/4 of N 1/2 of SW 1/4, SE 1/4 of SW 1/4 & SE 1/4	25	29S	5W	13				360.
E 1/2 of NE 1/4, Lot 1 & W1/2 of SE 1/4	29	"	"	13				199.53
NW 1/4 of NE 1/4, S 1/2 of NE 1/4, NW 1/4, N 1/2 of SW 1/4, SW 1/4 of SW 1/4	31	"	"	13 & 42				418.72
E 1/2 of E 1/2	35	"	"	13				160.
Lot 2, SW 1/4, S 1/2 of SE 1/4	19	20S	6W	10	282.58			
S 1/2	25	"	"	10	320.			
All	27	"	"	10	640.			
All	29	"	"	10	640.			

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	31	20S	6W	10	643.01			
N ½, E ½ of SW ¼, SE ¼	33	"	"	10	560.			
N ½, N ½ of SW ¼, SE ¼	35	"	"	10	560.			
Lot 3 & 4 and E ½ of SE ¼	7	27S	6W	27 & 90				96.27
NE ¼ of NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW¼ & S½ of SW¼	19	"	"	10				267.24
SW ¼, S ½ of SE ¼	25	28S	"	13				240.
NW¼ of SE¼, S½ of SE¼	31	28S	6W	13 & 143				120.
Lot 9	33	"	"	179				21.50
Lot 4	35	"	"	143				5.60
N½ of NE¼, SW¼ of NE¼	1	29S	6W	10				120.54
S ½ of NE ¼, N ½ of SE ¼,								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
& Lots 4, 5, 6 and 7	3	29S	6W	13				223.55
All	5	"	"	13				645.80
E ½ of NE ¼, W ½ of NW ¼, NW ¼ of SW ¼, S ½ of SW ¼, NE ¼ of SE ¼ & S ½ of SE ¼	7	"	"	13 & 142				416.38
N ½ of NE ¼, SW ¼ of NE ¼, S ½ of SW ¼, W ½ of SE ¼ & Lots 1, 2, 3, 4, 5, 6, 7	9	"	"	13				446.91
SW ¼ and Lot 4	11	"	"	13				195.32
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	13	"	"	13 & 42				600.
NE ¼, SW ¼, Lot 3	15	"	"	13				345.18

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
E ½ of NE ¼, NW ¼ of NW ¼, NE ¼ of SE ¼, S ½ of SE ¼ and Lots 1, 2, 3, 5	17	29S	6W	13, 96 & 157				309.80
NW ¼ of NE ¼, NW ¼, NW ¼ of SW ¼, SW ¼ of SE ¼	19	"	"	13				292.87
E½ & Lots 1, 2, 3, 4, 5, 6, 7&8	21	29S	6W	13				492.05
NE ¼ of NE ¼, S ½ of NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, NE ¼ of SW¼, S ½ of SW ¼, & SE ¼	28	"	"	13 & 42				520.
NW ¼ of NE ¼, SE ¼ of								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE ¼, NW ¼, N ½ of SW ¼ & E ½ of SE ¼	25	29S	6W	13				400.
NE ¼, E ½ of NW ¼, S ½	27	"	"	42				560.
NE ¼	29	"	"	13				160.
E ½	33	"	"	63				320.
N½ of NW¼, N½ of SW¼	35	"	"	13				160.
NE ¼ of SE ¼, S ½ of SE ¼ and Lot 4	19	19S	7W	11	143.02			
Lots 3, 4, 5, 13, 14	21	"	"	24	197.06			
All	29	"	"	24	640.			
All	31	"	"	24	418.82			
All	33	"	"	24	631.60			
All	5	20S	7W	24	773.98			

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	7	20S	7W	24	371.98			
All	9	"	"	24	640.			
S ½	13	"	"	24	320.			
S ½ of NE ¼, NW ¼ & S ½	15	20S	7W	24	560.			
All	17	"	"	24	640.			
All	19	"	"	24	395.20			
All	21	"	"	24	640.			
All	23	"	"	24	640.			
All	25	"	"	24	640.			
N ½ & SW ¼	27	"	"	24	480.			
All	29	"	"	24	640.			
All	31	"	"	24	423.58			
All	33	"	"	24	640.			

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE ¼ and S ½	35	20S	7W	24	480.			
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	1	23S	"	10 & 25				656.40
S ½ of NE ¼, N ½ of NW ¼, N ½ of SW ¼, NW ¼ of SE ¼	3	"	"	10				281.26
Lots 2 and 3	7	"	"	10				49.10
Lots 7 and 8	9	"	"	10				41.70
Lots 4 and 16	11	"	"	10				76.13
All	13	"	"	25				640.
Lots 4, 5, 6 and NE¼ of SE¼	15	23S	7W	10 & 135				137.
Lots 1, 2, 3, 4, 5, 6 & W ½ of W ½	17	"	"	10				358.97

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE ¼ of NW ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, Lots 6, 7, 8, 9	19	23S	7W	10				239.06
NW ¼ of NE ¼, NW ¼ of NW ¼, SE ¼ of NW ¼, W ½ of SE ¼, SE ¼ of SE ¼, Lots 1, 3, 4	21	23S	7W	10				352.95
Lots 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16	23	"	"	10 & 25				526.07
All	25	"	"	25				640.
Lots 5, 6, 7, 8, 10, 11	27	"	"	10				133.43
S ½	31	"	"	10				320.
Lot 3 & S ½ of SW ¼	33	"	"	10				118.20
Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 14,								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
15, 16	35	23S	7W	25				482.95
Lots 1 & 4, SE ¼ of NE ¼, SW ¼ of NW ¼, E ½ of SE ¼	1	24S	7W	10 & 25				235.67
Lots 9, 10, 11 & 12	3	"	"	99				146.05
SW ¼ of N W¼, SW ¼ & W ½ of SE ¼	5	"	"	10				280.
All	7	"	"	99				661.52
Lots 1 to 12, inc	9	"	"					
Lots 14, 15 & 16	9	24S	7W	99				608.91
Lots 3, 4, 9, S ½ of NW ¼, SW ¼ & SW ¼ of SE ¼	11	"	"	10 & 99				386.32
Lots 1, 2, 3, 6, 7, 8 & S ½ of								

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE 1/4	13	24S	7W	10				206.76
Lots 4, 5, 6, 7, 8, 9, 10, 11, 12 & W 1/2 of SW 1/4	15	"	"	10 & 99				390.59
Lots 1, 2, 3, 4, 5, 6, NE 1/4, SE 1/4 of NW 1/4, E 1/2 of SW 1/4 & N 1/2 of SE 1/4	17	"	"	10 & 99				600.60
W1/2 of NE1/4, NW1/4 & S1/2	19	"	"	99				566.76
Lots 1, 4, 5, 7, 11 & SE 1/4 of SE 1/4	21	"	"	10				188.88
All	23	"	"	99				639.52
All	25	"	"	99				640.
All	27	"	"	99				609.96
E 1/2 of SE 1/4, Lots 4 & 5, NE								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
¼, NE ¼ of N W¼	29	24S	7W	10				322.60
W½ of NW¼, S½ of SW¼	31	24S	7W	10				162.03
N ½ of NE ¼, SE ¼ of NW ¼, N ½ of S ½, Lots 1, 3, 4, 5, 6 and 7	33	"	"	10 & 99				494.56
All	35	"	"	99				640.
NE ¼, SE ¼ of SW ¼ & W ½ of SE ¼	5	27S	7W	10 & 27				278.72
All	7	"	"	27				633.60
SE ¼ of NW ¼, E ½ of SW ¼, and S E¼	15	27S	7W	10 & 135				280.
N ½ and SW ¼	17	"	"	27				480.
All	19	"	"	10 & 27				639.90

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE 1/4 and S 1/2	23	27S	7W	10 & 90				480.
NW 1/4 of NE 1/4, N 1/2 of NW 1/4, SW 1/4 of NW 1/4	25	"	"	10				160.
N 1/2, SW 1/4, W 1/2 of SE 1/4	27	"	"	10				560.
N 1/2 of NW 1/4	31	"	"	10				82.48
NE 1/4, E 1/2 of NW 1/4, S 1/2 of SW 1/4	33	"	"	10 & 169				320.
NE 1/4 of SE 1/4	33	30S	7W	42			40.	
NE 1/4 of NE 1/4	35	"	"	42			40.	
All	7	19S	8W	11	777.16			
W 1/2	9	"	"	11 & 73	320.			
SW 1/4 of SW 1/4	11	"	"	73	40.			
All	15	"	"	11	640.			

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	17	19S	8W	11	640.			
All	19	"	"	11	776.80			
All	21	"	"	11	640.			
All	23	"	"	11	640.			
All	25	19S	8W	11	640.			
All	27	"	"	11	640.			
All	29	"	"	11	640.			
All	31	"	"	11	779.58			
All	33	"	"	11	640.			
All	35	"	"	11	640.			
All	1	20S	8W	24	640.39			
All	3	"	"	8	639.20			
All	5	"	"	8	639.30			

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	7	20S	8W	8	788.39			
All	9	"	"	8	640.			
All	11	"	"	8 & 24	640.			
All	13	"	"	24	640.			
All	15	"	"	7, 8 & 24	640.			
NE ¼ of NW ¼, SE ¼ of SW ¼	17	"	"	8	80.			
E ½, Lots 1, 6, 7, 8, 9, 10, 11 and 12	19	"	"	8	634.05			
All	21	"	"	8 & 24	640.			
All	23	"	"	24	640.			
All	25	20S	8W	24	640.			
All	27	"	"	24	640.			

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	29	20S	8W	8	640.			
All	31	"	"	8	788.59			
All	33	"	"	24	640.			
All	35	"	"	24	640.			
All	1	21S	8W	24				637.99
All	3	"	"	24				634.60
All	5	"	"	7, 8 & 24				635.76
All	7	"	"	8				789.80
All	9	"	"	24				640.
All	11	"	"	24				640.
All	13	"	"	24				640.
All	15	"	"	24				640.
All	17	"	"	24				640.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	19	21S	8W	8 & 24				793.60
All	21	"	"	24				640.
All	23	21S	8W	24				640.
All	25	21S	8W	24				640.
All	27	"	"	24				640.
All	29	"	"	24				640.
All	31	"	"	8 & 24				797.04
All	33	"	"	24				640.
All	35	"	"	24				640.
All	1	22S	8W	25				724.92
Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 14 and 15	3	"	"	25 & 139				462.44
Lots 2, 3, 4, 5, 6, 9, 10 & SW ¼								

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
of NW 1/4	5	22S	8W	10 & 25				257.06
N 1/2 of NW 1/4, SW 1/4 of NW 1/4, NW 1/4 of SW 1/4, Lots 3, 6, 7, 8, 9, 10 & 11	7	"	"	8 & 25				301.60
SW 1/4 of NW 1/4, NW 1/4 of SW 1/4, Lots 9, 10, 11, 12, 16	9	"	"	10 & 78				180.79
Lots 1, 2, 3, 7, 8, 9, 10, 11, 14, 15 and 16	11	"	"	25				463.50
Lots 9 and 10	15	"	"	10				25.30
N1/2 of NE 1/4, SW 1/4 of NE 1/4, W 1/2, W 1/2 of SE 1/4, Lots 1, 2 and 3	17	"	"	10 & 32				566.78
All	19	"	"	6, 8 & 25				679.45

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
Lots 7 and 14	21	22S	8W	10 & 137				2.42
Lots 8, 9, 10 & 11	23	"	"	10				11.
NE ¼, W ½ of NW ¼	25	"	"	10, 90 & 169				240.
Lots 2 to 12, inc	27	"	"	10 & 88				485.65
Lots 1, 2, 3, W ½ of W ½	29	"	"	25				206.89
All	31	"	"	8 & 25				692.69
Lot 1, S ½ of NE ¼, NW ¼ NE ¼ of SW ¼, S ½ of SW ¼	33	"	"	10 & 25				395.20
NW ¼ of SW ¼	33	"	"	Unpat.				40.
Lots 7 and 9	1	23S	8W	25				5.30
Lots 1, 2, 3, S ½ of N ½, S ½	3	23S	8W	99				613.67

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	5	23S	8W	99				669.48
E ½, Lots 7, 10, 11, 12	7	"	"	99 & 174				473.41
All	9	"	"	99				640.
W ½ of NW ¼, NW ¼ of SW ¼, S ½ of S ½, Lots 1, 5, 7	11	"	"	25 & 99				376.36
Lots 2, 3, 4, S ½ of N ½ & S ½	13	"	"	99				604.39
All	15	23S	8W	99				640.
All	17	"	"	99				640.
All	19	"	"	99				772.
All	21	"	"	99				640.
N ½ of N ½, SE ¼ of NW ¼ and S ½	23	"	"	99				520.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
SE ¼ of NE ¼, NW ¼ of NW ¼, SW ¼, S ½ of SE ¼	25	23S	8W	10 & 25				320.
All	27	"	"	99				640.
All	29	"	"	99				640.
All	31	"	"	99				775.98
All	33	"	"	99				640.
All	35	"	"	99				640.20
SE ¼ of NE ¼, W ½, E ½ of SE ¼, SW ¼, SE ¼	1	26S	8W	27				477.75
All	3	"	"	145				639.52
All	5	"	"	145				642.40
All	7	"	"	145				640.80

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	9	26S	8W	145				640.
All	11	"	"	145				640.
All	13	"	"	145				640.
All	15	26S	8W	145				640.
All	17	"	"	145				640.
All	19	"	"	145				641.04
All	21	"	"	145				640.
All	23	"	"	145				640.
All	25	26S	8W	145				640.
All	27	"	"	145				640.
All	29	"	"	145				640.
All	31	"	"	145				640.92
All	33	"	"	145				640.

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	35	26S	8W	145				640.
S ½ of N ½, S ½ and Lots 1, 2, 3, 4	31	29S	8W	13				607.73
All	1	21S	9W	54				906.19
Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 15 and 16	3	"	"	54 & 58				472.08
S½ of SW¼, NW¼ of SE¼	3	"	"					
E ½ of NE ¼, NE ¼ of SW ¼, SW ¼ of SW ¼, E ½ SE ¼	5	"	"	6				240.
All	7	"	"	54				828.40
All	9	21S	9W	54				898.36
All	11	"	"	54 & 58				640.

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	13	21S	9W	54				657.20
All	15	"	"	54				640.
All	17	"	"	54				640.
All	19	"	"	54				645.88
All	21	"	"	54				640.
All	23	"	"	54				640.
All	25	"	"	54				650.55
All	27	"	"	58 & 54				640.
All	29	"	"	54				640.
All	31	"	"	54				642.78
All	33	"	"	54				640.
All	35	"	"	54				640.
All	1	22S	9W	111				626.33

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	3	22S	9W	111				629.94
S ½ of NE ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼, Lots 1, 2, 3, 4, 5, 6, 9 and 10	5	"	"	111				468.86
Lots 6 to 16, inc.	7	22S	9W	111				525.88
S ½ of NE ¼, SE ¼ of NW ¼, SE ¼, Lots 3, 4, 5, 6, 7 8 and 9	9	22S	9W	111				569.60
N ½, SW ¼, N ½ of SE ¼	11	"	"	8				560.
S ½ of SE ¼, Lots 5 and 6	13	"	"	8				149.
N ½ of NE ¼, SW ¼ of SW ¼, Lots 8 and 9	15	"	"	6 & 8				160.31

DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NW 1/4 of SW 1/4, SW 1/4 of SE 1/4, Lot 7	17	22S	9W	6 & 8				112.20
NE 1/4 of NE 1/4, NE 1/4 of SW 1/4, NE 1/4 of SE 1/4, Lots 1, 2, 3	19	"	"	6				288.25
SE 1/4 of NE 1/4, E 1/2 of SW 1/4, W 1/2 of SE 1/4, Lots, 4, 5, 6	21	"	"	111				328.44
N 1/2, SW 1/4, W 1/2 of SE 1/4	23	"	"	6				560.
All	25	"	"	111				640.
All	27	"	"	111				610.56
All	29	22S	9W	111				593.44
N 1/2 and SW 1/4	31	"	"	6				481.76

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DOUGLAS COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½ of NE ¼, SW ¼ of NE ¼, NW ¼, N ½ of SW ¼, SW ¼ of SW ¼, SE ¼ of SE ¼	33	22S	9W	6				440.
All	35	"	"	111				678.38
					36,723.19		80.	135,469.01
			COOS COUNTY.					
Lots 6, 7, 10, 11	7	29S	10W	174				160.
All	13	"	"	24				640.
All	15	"	"	24				640.
All	17	"	"	9 & 24				640.
All	21	"	"	24				640.

Coos County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½	23	29S	10W	24				320.
NE ¼	25	"	"	24				160.
NW ¼, NE ¼ of SW ¼ & S ½ of SW ¼	27	"	"	10 & 191				280.
All	29	29S	10W	24 & 27				640.
All	31	"	"	24				781.36
NW ¼ of SW ¼, S ½ of S ½	33	"	"	10				200.
SW ¼	35	"	"	24				160.
Lot 1 & S ½ of NW ¼	3	31S	12W	9				102.
SE ¼ of NE ¼, NW ¼, N ½ of SW ¼, SE ¼ of SW ¼, NE ¼ of SE ¼, and S ½ of SE ¼	5	"	"	9				438.76

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Coos County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
S ½ of NE ¼, SW ¼ of NW ¼, SW ¼ & N ½ of SE ¼	7	31S	12W	9 & 11				356.08
SW ¼ of NW ¼, NW ¼ of SW ¼	9	"	"	9				80.
Lots 2 and 3	11	"	"	9				51.90
SE ¼ of NE ¼, Lots 10, 11, 12, 14, 15, 16, 17, 18 and 19	13	31S	12W	7 & 9				109.54
NE ¼ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	15	"	"	9				320.
E ½, N ½ of SW ¼, SE ¼ of SW ¼	17	"	"	9				440.
All	21	"	"	9				640.

Coos County—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
Lots 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16	23	31S	12W	9				485.25
Lots 4, 5 and 12	25	"	"	9				126.27
All	27	"	"	9				640.
N ½ of NE ¼, NE ¼ of NW ¼	33	"	"	9				120.
N ½ of NE ¼, SE ¼ of NE ¼, W ½ of NW ¼, N ½ of SW ¼, SE ¼ of SW ¼ & S ½ of SE ¼	35	"	"	9				400.
Lots 1, 2, 3, 4 & SE ¼	1	31S	13W	9				318.02
								9,889.18

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CURRY COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE ¼ of NW ¼, Lots 1 & 2, SW ¼ & W ½ of SE ¼	19	31S	12W	9				356.
SE ¼ of NW ¼, E ½ of SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	29	"	"	9				240.
N½ of NE¼, SW¼ of NE¼	11	31S	13W	9				120.
NE ¼ of NE ¼, SW ¼ of NW ¼, NW ¼ of SW ¼, SE¼ of SW ¼, NE ¼ of SE ¼ and S ½ of SE ¼	13	"	"	9 & 174				280.
W ½ of NE ¼, NW ¼, NE ¼ of SW ¼, S ½ of SW ¼, SE ¼	23	31S	13W	9				520.

CURRY COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SE ¼ of NE ¼, S ½ of SW ¼, SW ¼ of SE ¼	25	31S	13W	9				160.
								1,676.

JOSEPHINE COUNTY.

All	17	35S	5W	63		645.61		
NE ¼, NW ¼ of NW ¼, S ½ of NW ¼, W ½ of SW ¼, N ½ of SE ¼ & SE ¼ of SE ¼	19	"	"	13 & 179		481.39		
E ½ of SW ¼ & SE ¼	13	35S	6W	38		240.		
						1,367.00		

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JACKSON COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	1	34S	1W	42				638.86
Lots 1, 2, 7, 8, 9, W ½ of NW ¼, E ½ of SE ¼	3	"	"	42				320.23
W½ of NE¼, E½ of NW¼	5	"	"	13 & 42				158.54
NE ¼, N ½ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, N ½ of SE ¼	7	"	"	42				402.15
N ½, SW ¼, NW ¼ of SE ¼, S ½ of SE ¼	9	"	"	42				600.
All	11	"	"	42				640.
All	13	"	"	42				640.
SE ¼ of NE ¼, Lots 1 and 3 and SE ¼	15	"	"	10, 42& 150				274.88

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½, N ½ of SW ¼, SW ¼ of SW ¼ and SE ¼	17	34S	1W	42 & 150				600.
All	19	"	"	42				650.60
Lot 8 and W ½	21	"	"	10 & 42				356.37
All	23	"	"	42				640.
All	25	"	"	42				640.
E ½, N ½ of NW ¼, SE ¼ of NW ¼, E ½ of SW ¼	27	"	"	42 & 168				520.
N ½ of NE ¼, SW ¼ of NE ¼, W ½ & W ½ of SE ¼	29	"	"	42				520.
NE ¼ of NW ¼, SW ¼ and S ½ of SE ¼	31	34S	1W	42, 150 & 168				284.20
All	35	34S	1W	42				640.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NW 1/4 of SW 1/4	17	38S	1W	179				40.
NE 1/4 of SW 1/4, S 1/2 of SW 1/4, and Lot 1	21	"	"	38				147.04
E 1/2 of E 1/2, SE 1/4 of SW 1/4 & SW 1/4 of SE 1/4	29	"	"	13 & 38				240.
SW 1/4 of NE 1/4, NE 1/4 of NW 1/4, S 1/2 of NW 1/4, SW 1/4, NW 1/4 of SE 1/4 & S 1/2 of SE 1/4	31	"	"	13 & 43				452.09
NW 1/4 of NE 1/4, NW 1/4 of NW 1/4, & S 1/2 of NW 1/4	33	"	"	43				160.
SE1/4 of NE1/4, E1/2 of SE1/4	35	"	"	43 & 152				120.
Lots 3, 4, 5, 6, 11, 12, 13, 14,								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
15 and 16	1	33S	2W	13 & 42				420.95
All	3	"	"	42 & 157				636.80
All	5	"	"	42				634.64
NW ¼ of NE ¼, S ½ of NE ¼, NW ¼ and S ½	7	"	"	42				633.16
All	9	"	"	42				640.
All	15	"	"	13 & 42				640.
All	17	"	"	42				640.
All	19	"	"	42				675.16
S ½ of SW ¼	21	"	"	42				80.
N ½, N ½ of SW ¼, SE ¼ of SW ¼ & SE ¼	23	"	"	42				600.
All	25	33S	2W	42				640.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	27	33S	2W	13 & 42				640.
All	29	"	"	42				640.
All	31	"	"	42				672.28
N ½ of NE ¼, SE ¼ of NE ¼, NW ¼, NW ¼ of SW ¼, NE ¼ of SE ¼ & S ½ of SE ¼	33	"	"	13				440.
All	35	33S	2W	42				640.
All	1	34S	2W	42				636.76
N ½ of NE ¼, SW ¼ of NE ¼, W ½, W ½ of SE ¼, SE ¼ of SE ¼	3	"	"	42				551.88
W ½ of NE ¼, NW ¼, S ½	5	"	"	42				560.79

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	7	34S	2W	42				646.40
E ½ & W ½ of NW ¼	9	"	"	13 & 42				400.
NE ¼, NE ¼ of NW ¼, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼	11	"	"	42 & 100				480.
E ½, NW ¼ of NW ¼, S ½ of NW ¼ and SW ¼	13	"	"	42				600.
NE ¼ of NE ¼, W ½ of NE ¼, NW ¼ and S ½	15	"	"	42				600.
NW ¼ and S ½	17	34S	2W	42 & 168				480.
E ½, S ½ of NW ¼, SW ¼	19	"	"	13 & 42				561.24
N ½ of NE ¼, SE ¼ of NE ¼, SE ¼ of NW ¼, W ½								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
of SW ¼, NE ¼ of SE ¼	21	34S	2W	13				280.
All	23	"	"	42 & 150				640.
NE ¼, N ½ of NW ¼, SW ¼ of NW ¼, W ½ of SW ¼, and NE ¼ of SE ¼	25	"	"	42				400.
NE ¼ of NE ¼, S ½ of NE ¼, E ½ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼ & SE ¼	27	"	"	42				480.
N ½ of SE ¼	29	34S	2W	42				80.
NW ¼ of NE ¼, S ½ of NE ¼, W ½ of NW ¼, E ½ of SW ¼, E ½ of SE ¼	31	"	"	42				360.

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
NE 1/4, S 1/2 of NW 1/4, S 1/2 of SW 1/4, N 1/2 of SE 1/4, SE 1/4 of SE 1/4	33	34S	2W	42				440.
NE 1/4, N 1/2 of NW 1/4, SW 1/4 of NW 1/4, N 1/2 of SE 1/4	35	"	"	42				360.
NE 1/4, NE 1/4 of NW 1/4	1	35S	2W	42				199.64
NW 1/4 of NE 1/4, SW 1/4 of NW 1/4, N 1/2 of NW 1/4, SW 1/4, W 1/2 of SE 1/4	3	"	"	42 & 150				398.77
S1/2 of NE1/4, NW1/4 of SE1/4	5	35S	2W	42 & 157				120.
E 1/2	7	"	"	42 & 150				320.
NE 1/4 of NE 1/4, SW 1/4 of NE 1/4, S 1/2 of NW 1/4, SW 1/4,								

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JACKSON COUNTY—Continued.

Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
N ½ of SE ¼	9	35S	2W	42				400.
SW ¼ of NW ¼, NE ¼ of SW ¼	15	"	"	42 & 44				80.
S ½ of N ½ and S ½	17	"	"	42 & 150				480.
N½ of NE¼, SW¼ of NE¼	19	"	"	42				120.
NW ¼ of NE ¼, SE ¼ of NE ¼, SW ¼ of SW ¼, E ½ of SE ¼	21	"	"	42				200.
SE ¼ of SE ¼	23	"	"	42				40.
SE ¼ of NE ¼	25	"	"	150				40.
NE¼ of SE¼, S½ of SE¼	29	35S	2W	150				120.
S ½ of NE ¼, NW ¼ & S ½	35	"	"	42				560.
NE ¼ of NE ¼, S ½ of NW								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼, SW¼ & W½ of SE¼.	1	36S	2W	13				359.92
E ½	3	"	"	38				320.78
SW ¼ of NE ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, S ½ of SW ¼, SE ¼	5	"	"	13				360.
N ½ of NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, and SE ¼	7	"	"	72 & 101				360.51
W ½	9	36S	2W	38				320.
NW ¼ of NE ¼ & Lot 4	11	"	"	13				79.26
Lot 7	13	"	"	38				23.39
Lots 9 and 10	15	"	"	38				22.88
S ½ of NE ¼ of NW ¼, NW								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
¼ of NW ¼ and SW ¼	19	36S	2W	126 & 143				224.51
Lots 4, 5, 6, 7	21	"	"	13 & 179				123.29
NW ¼ of SE ¼	29	"	"	80				40.
NW ¼, S ½ of SW ¼, W ½ of SE ¼	1	38S	1E	126				319.11
NE ¼ of NW ¼ SW ¼ of NW ¼	3	"	"	13				79.08
NW ¼ of NE ¼, SE ¼ of NE ¼, NE ¼ of NW ¼, S ½ of NW ¼, N ½ of SW ¼, SW ¼ of SW ¼	5	"	"	13 & 153				318.83
NE ¼ of NE ¼, S ½ of NE ¼, SE ¼ of NW ¼, NE								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
¼ of SW¼, N½ of SE¼	11	38S	1E	13 & 153				280.
E ½ and E ½ of W ½	13	"	"	39				480.
SW ¼ of NE ¼, NW ¼ of SE ¼	15	"	"	39				80.
SW ¼ of NW ¼	31	"	"	39				43.32
W ½ of NE ¼	7	39S	1E	90				80.
Lot 2, SW ¼ of NW ¼, NW ¼ of S W ¼	17	"	"	184				120.63
All	19	39S	1E	168				642.40
NE ¼, E ½ of W ½, N ½ of SE ¼, SW ¼ of SE ¼, W ½ of SE ¼ of SE ¼	21	"	"	& 168 88,136				460.
SW ¼ of SW ¼	25	39S	1E	13				40.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
NE 1/4	27	39S	1E	184				160.
SE 1/4 of SE 1/4 of NW 1/4	27	"	"	Unpat. Not listed				10.
Lot 1	29	"	"	Unpat. Not listed				40.46
NW 1/4 & S 1/2	1	38S	2E	10				479.23
All	3	"	"	39				639.92
N 1/2, SW 1/4 of SW 1/4, & SE 1/4 of SE 1/4	5	"	"	39 & 44				403.84
All	7	"	"	39				641.03
All	9	"	"	10 & 39				640.
N 1/2 of NE 1/4, SW 1/4 of NE 1/4, W 1/2, S 1/2 of SE 1/4	11	"	"	10 & 39				520.

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
All	13	38S	2E	39				640.
All	15	"	"	10				640.
N ½, SW ¼, N ½ of SE ¼, SW ¼ of SE ¼	17	38S	2E	39				600.
SW ¼	19	"	"	39				161.28
NW ¼ of NE ¼, SW ¼ of SW ¼, W ½ of SE ¼	21	"	"	39				160.
E½ of NE¼, N½ of NW¼	23	"	"	10 & 153				160.
NW ¼ of NE ¼, S ½ of N ½, N½ of SE ¼, SE ¼ of SE ¼	25	38S	2E	10				320.
NW ¼ of NE ¼, NW ¼, SE ¼ of SW ¼	27	"	"	39				240.

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
		W. M.						
SW 1/4	29	38S	2E	39				160.
SE 1/4 of NW 1/4, NE 1/4 of SW 1/4, NW 1/4 of SE 1/4	31	"	"	127 & 149				120.
NE 1/4 of NW 1/4, S 1/2 of NW 1/4, NW 1/4 of SW 1/4, SE 1/4 of SW 1/4, N 1/2 of SE 1/4, SE 1/4 of SE 1/4	33	"	"	39 & 153				320.
W 1/2 of NE 1/4	33	"	"	Not listed / Unpat.				80.
E 1/2 of SW 1/4	35	"	"	39				80.
W 1/2 of NE 1/4, S 1/2 of NW 1/4, SW 1/4, W 1/2 of SE 1/4	1	39S	2E	10, 39 & 179				400.50
All	3	"	"	10 & 39				641.86

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
SW 1/4 of NW 1/4	5	39S	2E	39				40.
Lot 8 of NW 1/4	7	"	"	179				3.
NE 1/4 of NE 1/4, S 1/2 of NE 1/4, NE 1/4 of S E1/4	9	39S	2E	39				160.
NE 1/4 of NE 1/4, S 1/2 of NE 1/4, NW 1/4 of NW 1/4, S 1/2 of NW 1/4, N 1/2 of SW 1/4, SE 1/4 of S W1/4, NW 1/4 of SE 1/4, S 1/2 of SE 1/4	11	"	"	10, 39, 127 & 179				480.
NW 1/4 of NE 1/4, S 1/2 of NE 1/4, W 1/2, NE 1/4 of SE 1/4, S 1/2 of SE 1/4	13	"	"	10				560.
NE 1/4 of NE 1/4, S 1/2 of NE								

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JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
¼, N ½ of NW ¼, SE ¼ of NW ¼, W ½ of SW ¼	15	39S	2E	39, 143 & 168				320.
SE¼ of SW¼, W½ of SE¼	21	"	"	39				120.
N ½ of NE ¼, SE ¼ of NE ¼, NE ¼ of SW ¼, SW ¼ of SW ¼, NE ¼ of SE ¼, S ½ of SE ¼	25	"	"	39				320.
N ½ of NE ¼, NW ¼, NE ¼ of SE ¼	27	"	"	39 & 100				280.
Lot 1	31	"	"	127				9.58
NE ¼ of NW ¼, E ½ of SW ¼, SE ¼	33	"	"	10 & 127				280.
N ½ of NE ¼, SE ¼ of NE								

JACKSON COUNTY—Continued.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
¼, N ½ of NW ¼, NE ¼ of SE ¼	35	39S	2E	39 & 143				240.
								46,842.04

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Schedule of unsold lands of the West Side Oregon and California Railroad Company grant —which lands are under reservation from sale on account of timber, iron, coal, or oil, which they are known or supposed to contain and which substances are necessary to the railroad company in the operation and maintenance of its railroad.

COLUMBIA COUNTY.

Description Subdivision	Sec.	Twp.	Rge.	Patent No.	Timber	Iron	Water	Coal or Oil
			W. M.					
All	5	4N	3W	16				667.
E ½	31	5N	3W	16				320.
All	33	"	"	16				640.
All	35	"	"	16				640.
								2,267.
			WASHINGTON COUNTY.					
W ½, E ½ of SE ¼	25	3N	3W	17				400.
NE ¼, NE ¼ of NW ¼, S ½ of NW ¼ & S ½	35	"	"	17				600.
								1,000.

WEST SIDE.

County	Timber	Iron	Water	Coal or Oil	
Columbia				2,267.	
Washington				1,000.	
Total				3,267.	Acres

EAST SIDE.

County	Timber	Iron	Water	Coal or Oil	
Clackamas				3,110.59	
Marion				2,036.27	
Linn	9,331.65			1,239.02	
Lane	110,576.66			5,038.23	
Douglas	36,723.19		80.	135,469.01	
Coos				9,889.18	
Curry				1,676.	
Josephine		1,367.			
Jackson				46,842.04	
Total	156,631.50	1,367.	80.	208,567.34	Acres
Grand Total				366,645.84	Acres

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Exhibit No. 9

A few instances of Deeds made by the Oregon and California Railroad Co., and expressly approved by the Interior Department of the United States, conveying more than 160 acres of land-grant Forest Reserve lands to a single purchaser, at price exceeding $2.50 per acre; such Deeds having been submitted by the direct or mesne grantee thereunder, as Lieu Bases for Lieu Selection of other lands, under the Act of Congress approved June 4th, 1897 (30 Stat. at Large 11-30). The Deeds from the Oregon and California Railroad Co., showing on the faces thereof the following true acreage and consideration price paid.

Contract No.		Acres	Consideration
5392	Dated June 24, '99. Deed dated June 26, '99 to A. B. Hammond Co. Land situated in Klamath Co., Oregon—Conveyed to U. S. by Deed of Marcus Daly (grantee of A. B. Hammond Co.) and Wife Sept. 14, '99, as Lieu Base for Lieu Selection of land in Montana. Lieu Base Deed and Lieu Selection approved by Int. Dep't Aug. 31, '03	5,042.96	$17,650.36

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
5393	Dated June 24 '99. Deed dated June 26 '99 to John Claflin. Land situated in Klamath Co., Oregon. Conveyed to U. S. by Deed of Marcus Daly (grantee of John Claflin) and Wife Sept. 14, '99 as Lieu Base for Lieu Selection of land in Montana, Lieu Base Deed and Lieu Selection approved by Int. Dep't May 2 '03	5,013.18	$17,546.13
5394	Dated June 24 '99. Deed dated June 26 '99 to Big Blackfoot Milling Co. Land situated in Klamath Co., Oregon. Conveyed to U. S. by Deed of Big Blackfoot Milling Co., dated Aug. 30 '99, as Lieu Base for Lieu Selections of land in Montana. Lieu Base Deed and Lieu Selections approved by Int. Dep't Oct. 28 '02, Feb. 5 '03, and July 12 '07	6,214.34	$21,750.18
5395	Dated June 24 '99. Deed dated June 26 '99 to Marcus Daly. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Marcus Daly and Wife, dated Sept. 14 '99, as Lieu		

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EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
	Base for Lieu Selection of land in Montana. Lieu Base Deed and Lieu Selection approved by Int. Dep't May 13 '03	3,760.00	$13,160.00
5400	Dated July 31 '99. Deed dated July 5 '99 to Nelson P. Wheeler. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Nelson P. Wheeler and Wife, dated July 18 '99, as Lieu Base for Lieu Selection of land in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't June 17 '03.....	1,000.00	$3,500.00
5401	Dated July 3 '99. Deed dated July 5 '99 to R. S. Moore. Land situated in Jackson Co., Oregon. Conveyed to U. S. by R. S. Moore, W. K. Flowerree and Wife, Mary E. Coffin and Husband, S. A. Parker and Wife, and Conrad Kuhrs, as Lieu Bases for Lieu Selections in Minnesota, Oregon and Montana. Lieu Base Deed and Lieu Selections approved by Int. Dep't April 7, 22 and 27 '03, January 17 '03, January 9 '04 and June 1 '07.....	9,044.35	$31,655.22
5402	Dated July 3 '99. Deed dated July 5 '99 to Wm. Marlatt. Land		

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
	situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of Wm. Marlatt, dated July 7 '99, as Lieu Base for Lieu Selection of land in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't July 31 '03.....	40.00	$140.00
5405	Dated July 5 '99. Deed dated July 5 '99 to H. A. Smith. Land situated in Jackson Co., Oregon. Conveyed to U. S. by Deed of John T. Murphy (assignee of H. A. Smith) dated Sept 1 '99, as Lieu Bases for Lieu Selections in Montana and Idaho. Lieu Base Deed and Lieu Selections approved by Int. Dep't Feb. 9 and March 10 '05	112.96	$395.36
5409	Dated July 14 '99. Deed dated July 14 '99 to A. L. Mills. Land in Lane and Jackson Cos. Oregon. Conveyed to U. S. by Deeds of A. L. Mills dated Oct. 27 '99 and April 18 1900, as Lieu Bases for Lieu Selections in Washington. Lieu Base Deed and Lieu Selections approved by Int. Dep't Dec. 13 '01 and July 9 '02.....	522.00	$1,827.00

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
5551	Dated Dec. 26 '99. Deed dated Dec. 26 '99 to Frank D. Nash. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of Frank D. Nash, dated Jan. 31 1900, as Lieu Basis for Lieu Selection in Washington. Lieu Base Deed and Lieu Selection approved by Int. Dep't Oct. 19 '07	640.00	$2,240.00
5598	Dated Feb 13 1900. Deed dated Feb. 13 1900 to W. I. Vawter. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. I. Vawter and wife, dated March 3 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't Dec. 20 '02	2,000.00	$7,500.00
5603	Dated Feb. 16 1900. Deed dated Feb. 16 1900 to W. I. Vawter. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. I. Vawter and Wife, dated March 8 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dep't March 28 and April 20 '03	59.90	$209.65

EXHIBIT 9—Continued.

Contract No.		Acres	Consideration
5606	Dated Feb. 16 1900. Deed dated Feb. 16 1900 to C. A. Cogswell. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of C. A. Cogswell and Wife, dated March 8 1900, as Lieu Basis for Lieu Selection in Oregon. Lieu Base Deed and Lieu Selection approved by Int. Dept. March 1 '03	40.00	$160.00
5626	Dated March 2 1900. Deed dated March 2 1900 to Wm. G. Gosslin. Land in Lane Co., Oregon. Conveyed to U. S. by Deed of W. W. Curtis (assignee of Wm. G. Gosslin) as Lieu Bases for Lieu Selections in California, Oregon, Washington, Idaho and South Dakota, Lieu Base Deed and Lieu Selections approved by Int. Dep't Aug. 26 '02, Oct. 20 '03, Oct. 23 '03, April 29 '04, Dec. 18 '06	8,579.13	$30,026.95

Exhibit No. 10

A few instances of suits brought by the United States against the Oregon and California Railroad Co., in the U. S. Circuit Court for the District of Oregon, to quiet title to or cancel patents for lands of the said Company's East Side land-grant, in which the pleadings or proofs showed sales by said Company of lands in suit in quantities exceeding 160 acres to single purchasers or at prices exceeding $2.50 per acre, without objection made by the United States to any such sale because of land quantity sold to one purchaser, or sale price:

Register No.	Bill Filed	Land Sales Shown	
1982	Feb. 3, 1892	SE ¼ and S ½ of NE ¼ of Sec. 3, T. 1 S., R. 4 E., 240 acres to John A. Hurlburt for	$720.00
2657	Feb. 19, 1901	W ½ of SE ¼ of Sec. 9, T. 5 S., R. 1 E.; 80 acres to S. O. Owen for	$240.00
		SW ¼ of NW ¼ of Sec. 3, T. 26 S., R. 2 E.; 40 acres to John Alfred for	$180.00
		SE ¼ of NE ¼ of Sec. 21, T. 4 S., R. 2 E.; 40 acres to E. L.	

EXHIBIT 10—Continued.

Register No.	Bill Filed	Land Sales Shown	
		Trullinger for	$112.00
		Lot 1 of Sec. 7, T. 5 S., R. 2 E.; 26 acres to O. W. Sturgess for	$ 84.00
		SE 1/4 of SE 1/4 of Sec. 35, T. 2 S., R. 3 E.; 40 acres of Ludwig Dane for	$212.00
		W 1/2 of NW 1/4 of Sec. 19, T. 2 S., R. 2 W.; 80 acres to E. L. McCormick for	$524.00
		W 1/2 of SW 1/4 of Sec. 35, T. 9 S., R. 3 W.; 80 acres to J. W. Fidler for	$573.00
		N. 1/2 of SW. 1/4 of Sec. 9, T. 18 S., R. 5 W.; 80 acres to Gust Petzold for	$620.00
		SW 1/4 of NE 1/4 and W 1/2 of SE 1/4 of Sec. 3, T. 10 S., R. 6 W.; 80 acres to T. O. Bevens for	$334.00
		40 acres to J. H. Watson for	$226.50
2658	Feb. 25, 1901	SE 1/4 of NE 1/4, SW 1/4 of NW 1/4, SE 1/4, NE 1/4 of SW 1/4	

EXHIBIT 10—Continued.

Register No.	Bill Filed	Land Sales Shown	
		of Sec. 35, T. 4 S., R. 3 E.; 280 acres to S. W. R. Jones for	$675.00
2663	Feb. 27, 1901	NE 1/4 of SW 1/4 and NW 1/4 of SE 1/4 of Sec. 21, T. 1 S., R. 3 E.; 80 acres to A. D. Gibbs for	$267.00
		SE 1/4 of SW 1/4 of Sec. 21, T. 1 S., R. 3 E.; 40 acres to Mrs. Kine for	$200.00
		SW 1/4 of SE 1/4 of Sec. 21, T. 1 S., R. 3 E.; 40 acres to A. W. Scott for	$200.00

Exhibit No. 11

Following is a correct schedule showing the amount of land patented, compiled by years, separately stated as East Side land grant, and showing the Acts of Congress which are recited in such patents:

EAST SIDE GRANT

None of the patents issued under the East Side grant recite the Oregon and California Railroad Company "as successor to" any other company.

Year	Acts of Congress Recited	Acres
1871	July 25, 1866—June 25, 1868	152,764.67
1872	Act 1866 and 1868 and April 10, 1869	69,061.63
1876	Acts 1866, 1868 and 1869	14,629.67
1877	Acts 1866, 1868 and 1869	86,622.71
1893	Acts 1866, 1868 and 1869	292,486.90
1894	Act 1866	382,352.95
1895	Act 1866	558,718.40
1896	Patent 31 recites Lieu Act of June 22nd, 1874, and Act of July 25th, 1866;	

EXHIBIT 11—(East Side Grant)—Continued

Year	Acts of Congress Recited	Acres
	all others recite Act of 1866	709.729.99
1897	Act of July 25th, 1866	37,231.90
1898	Act of July 25th, 1866	70,014.02
1899	Act of July 25th, 1866	151,064.80
1900	Act of July 25th, 1866	42,841.33
1901	Act of July 25th, 1866	60,466.60
1902	Patents 178 and 180, Lieu Act of June 22nd, 1874, and Act of July 25th, 1866; all other Acts of 1866	36,166.20
1903	Patent 189 recites Lieu Act of June 22, 1874, and Act of 1866; all others recite Act of July 25, 1866	36,438.08
1904	Act of July 25, 1866	39,839.08
1905	Act of July 25, 1866	25,838.67
1906	Act of July 25, 1866	20.
1909	Acts of 1866-1868 and 1869	161.75
	Total	2,765,948.85

EXHIBIT 11—Continued.

WEST SIDE GRANT

The following patents were made to the Oregon and California Railroad Company "as successor to the Oregon Central Railroad Company":

Year	Acts of Congress Recited	Acres
1895	Act of May 4th, 1870	93,079.
1896	" " "	32,288.24
1897	" " "	2,388.
1898	" " "	72.75
1899	" " "	520.
1903	" " "	270.14
	Total	128,618.13
	Total acres, both grants	2,894,566.98

Of the acres so patented as being West Side grant lands, 2,329.07 acres are in fact within the indemnity limits of the East Side grant, and should have been patented as East Side lands; furthermore, of the acreage patented as East Side lands, 6,523.23 acres are situated within the limits of the West Side grant and not within the limits of the East Side grant, and should have been patented as West Side grant lands.

(Endorsed.)

Joint and Several Answer of O. & C. R. R., Southern Pacific Company and Stephen T. Gage.

Filed Sept. 5, 1911.

G. H. MARSH,
Clerk.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME III

PAGES 1165-1550

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:

A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:

L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
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WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME III

PAGES 1165-1550

And afterwards, to-wit, on the 2nd day of January, 1912, there was duly FILED in said Court, an Amended Answer in words and figures as follows, to-wit:

[AMENDED ANSWER OF UNION TRUST COMPANY OF NEW YORK]

[TITLE]

No. 3340.

The amended answer of Union Trust Company of New York, individually and as Trustee under the mortgage of the Oregon and California Railroad Company to this defendant, dated July 1st, 1887, in the bill called "Union Trust Company (individually and as trustees)," one of the above named defendants, to the bill of complaint of United States of America, complainant.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefits or advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised that it is material or necessary for it to make answer unto, answering, says:

I.

Answering the allegations contained in the first subdivision of the bill of complaint herein, this defendant admits that the defendant Oregon and California Rail-

road Company now is, and at all times mentioned in the bill of complaint was, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said State.

This defendant also admits that the defendant Southern Pacific Company now is, and at all times mentioned in the bill as to it, was, a corporation organized under the laws of the State of Kentucky, and a resident and citizen of that State.

It also admits, upon information and belief, that the defendant, Stephen T. Gage, is a resident and citizen of the City of Oakland, State of California, and not of the City of San Francisco, as alleged in the bill, and is sued in his own right and also as sole surviving trustee under a certain deed of trust described in the bill.

It also admits that this defendant, Union Trust Company of New York, now is, and at all times mentioned in the bill of complaint as to it, was, a corporation organized under the laws of the State of New York, and a resident and citizen of said State.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said subdivision first of the bill, and therefore denies the same.

II.

Answering the allegations contained in the second subdivision of the bill of complaint, this defendant admits that Acts were passed by the Congress of the United States and approved on the 25th day of July,

1866, and on the 25th day of June, 1868, respectively, the provisions of which Acts are correctly set forth in said second subdivision of the bill.

III.

Answering the allegations contained in the third subdivision of the bill, this defendant denies, upon information and belief, that no right, title or interest in or to any of the grants, franchises or other benefits in the State of Oregon, provided for by said Act of Congress approved July 25th, 1866, was ever acquired by any corporation or person or otherwise, except at the time, in the manner and upon the terms and conditions set forth in said bill of complaint; and, on the contrary, avers that certain rights, titles and interests in and to the grants, franchises and other benefits in the State of Oregon, provided for by the said Act, were acquired by this defendant and other persons and corporations, as will hereinafter be shown, otherwise than at the times, in the manner, or upon the terms or conditions set forth in the bill.

Upon information and belief, this defendant admits that on or about October 6th, 1866, proceedings were had by which certain persons attempted to organize, under the general incorporation laws of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal office in the City of Portland, in the State of Oregon.

Upon information and belief, this defendant admits that the said Oregon Central Railroad Company pro-

jected its line of railroad from the City of Portland, in a westerly direction, through the village of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the westerly side of the Willamette River; and it admits that thereafter the said company was known as the "West Side" Company and the said railroad was known as the "West Side" Railroad.

This defendant admits that on October 10th, 1866, the Legislature of the State of Oregon adopted, and the Governor of the State of Oregon approved, a joint resolution, which is correctly set forth on pages 11 and 12 of the bill.

This defendant admits, upon information and belief, that the said West Side Company, assuming itself to have been lawfully designated by said joint resolution, under the first section of said Act of July 25th, 1866, as the corporation to construct the portion of said railroad in Oregon and to thereby earn the lands granted by said Act pertaining to the portion of said railroad to be constructed in the State of Oregon, through its Board of Directors, adopted a resolution in terms assenting to said Act of July 25th, 1866, and on or about July 6th, 1867, filed an authenticated copy thereof, together with a certified copy of its Articles of Incorporation, and a certified copy of the said joint resolution of October 10th, 1866, in the office of the Secretary of the Interior.

This defendant admits and avers, upon information and belief, that on or about August 20th, 1868, said West Side Company filed in the office of the Secretary

of the Interior, a map of survey of its projected line of railroad on the west side of said Willamette River, as hereinbefore set forth.

This defendant admits and avers, upon information and belief, that on or about April 22nd, 1867, certain persons, residents of the State of Oregon, then and thereafter contending that said West Side Company was never lawfully incorporated or organized, and designing to secure the several grants, franchises and other benefits of the said Act of Congress approved July 25th, 1866, caused certain proceedings to be had and taken which were intended to incorporate and organize, under the general incorporation laws of the State of Oregon, a corporation bearing the corporate name "Oregon Central Railroad Company," having its principal place of business at the City of Salem, in Oregon; which last named company projected its railroad from Portland southerly, along the easterly side of the Willamette River, and was thereafter known as the "East Side" Company, and its said railroad was thereafter known as the "East Side" railroad.

This defendant admits, upon information and belief, that the said East Side Company, in furtherance of its said design, on October 20th, 1868, procured to be adopted by the Legislature, and approved by the Governor, of Oregon, the joint resolution, a correct copy of which is set forth on pages 13 and 14 of the bill.

This defendant admits, upon information and belief, that a controversy arose between the West Side Company and the East Side Company as to which company

was entitled to the grants, franchises and privileges made and provided by the said Act of July 25th, 1866, which controversy continued until about January, 1870.

This defendant denies that the said Act of July 25th, 1866, prescribed as a condition precedent to the vesting of any of the grants contained therein, that the company designated by the Legislature of the State of Oregon should file in the Interior Department, within one year thereafter, or at all, its assent to said Act or any terms and conditions thereof, as alleged in the bill.

This defendant denies that the time within which to file an assent as aforesaid, had expired prior to the designation of the East Side Company by the Legislature of Oregon on October 20th, 1868, or otherwise than as provided by the said Act of July 25th, 1866; and this defendant denies, upon information and belief, that because of any premises set forth in the bill, the East Side Company did apply to Congress during the session thereof commencing in December, 1868, or at any time, for an extension of the time within which to file its assent, as set forth in the bill; and further denies that in that behalf, or at all, the East Side Company did lay before Congress the said joint resolution of the Legislature of Oregon, or in that behalf, or at all, did represent that all or any of the recitals thereof were true; and this defendant further denies that because of any premises set forth in the bill, or then, or subsequently existing, the several or any of the grants, franchises or privileges of the said Act of July 25th, 1866, had lapsed, or the or any benefits thereof would be wholly, or at all, lost to the State of

Oregon unless revived by Congress, in the manner set forth in the bill, or otherwise, or at all.

This defendant avers, upon information and belief, that the said Act of July 25th, 1866, authorized and empowered the California & Oregon Railroad Company, and such company, if any, organized, under the laws of Oregon as the Legislature of that State should designate, or either of said companies, to construct a continuous railroad from Portland, in Oregon, to connection, on the same track gauge, with the Central Pacific Railroad in California; that under and pursuant to the provisions of the said Act the said California & Oregon Railroad Company duly filed its assent to the said Act on or about October 8th, 1866, and duly completed the first twenty-mile section of the said railroad from its connection with the Central Pacific Railroad northerly through the Sacramento Valley to the Town of Wheatland on or about October 28th, 1867; and that thereafter, prior to December, 1887, the said California & Oregon Railroad Company and the Central Pacific Railroad Company, its successor by amalgamation and consolidation, completed construction of the railroad in California provided for by the said Act of Congress, and aided the defendant Oregon & California Railroad Company to complete its railroad from Ashland, in Oregon, to a connection with said California & Oregon railroad, at or near the southern boundary line of Oregon. And this defendant avers, upon information and belief, that the said filing of assent and construction, and subsequent acceptance by the United States of the said

railroad as constructed, constituted such full and specific performance of the requirements of the said Act of 1866 as that none of the provisions of Section 8 thereof were at any time operative, wholly or in part.

This defendant admits that Congress passed the Act approved April 10, 1869, and that the same is correctly set forth in the bill at pages 15 and 16 thereof; but it denies that by said Act the Congress expressly, or otherwise, imposed any condition that the lands granted by the said Act of July 25th, 1866, should be sold to actual settlers only, and in quantities not greater than one quarter-section to one purchaser and at a price not exceeding $2.50 per acre, as set forth in said bill.

This defendant admits, upon information and belief, that on or about June 8th, 1869, the Board of Directors of the East Side Company adopted the resolution correctly set forth on pages 16 and 17 of the bill; and that on or about June 24th, 1869, a certified copy of the said resolution was filed in the office of the Secretary of the Interior.

This defendant admits, upon information and belief, that on or about October 29th, 1869, the East Side Company filed in the Secretary of the Interior's office a map of survey and location of the first sixty miles of its projected railroad; that on December 24th, 1869, the said company completed construction of the first twenty miles of the said railroad commencing at Portland; and that on December 31st, 1869, the said twenty miles of constructed railroad was examined and approved by Commissioners appointed by the President of the United

States pursuant to the provisions of Section 4 of the said Act of July 25th, 1866.

This defendant denies, upon information and belief, that the said West Side Company did not complete the construction of any part of its line of railroad pursuant to the terms and conditions of said Acts of Congress, or that at any time did said West Side Company acquiesce in the substitution of the said East Side Company, as alleged in the bill, and denies that there was any substitution of said East Side Company, as alleged.

This defendant avers, upon information and belief, that said West Side Company obtained and accepted a grant of lands, franchises and benefits pertaining to so much of its aforesaid projected railroad as extended from Portland by way of Forest Grove to McMinnville, and pertaining to a contemplated railroad from Forest Grove northerly to Astoria, conferred by Act of Congress approved May 4th, 1870, correctly set forth on pages 22 to 25 of the bill.

This defendant denies, upon information and belief, that said West Side Company ever abandoned or waived all or any claim to the said grants, privileges or franchises of which the said East Side Company became and was the recipient, or that the grant of lands or franchises or any other benefits conferred on said Wset Side Company by the said Act of May 4th, 1870, was applied for, obtained, accepted or made in lieu of any grant of lands or franchises or benefits provided by the said Act of July 25th, 1866.

This defendant denies that no right, title or interest

in or to any grants, franchises or other benefits provided by the said Act of July 25th, 1866, was ever acquired by, through or under the West Side Company; and it denies that no right, title or interest in or to any grants, franchises or other benefits provided by the said Act of July 25th, 1866, were ever acquired by, through or under the East Side Company except by virtue of or expressly subject to terms or conditions imposed by the said Act of April 10th, 1869; and this defendant avers that no condition or conditions was or were, expressly or otherwise, imposed by the said Act of April 10th, 1869; and it avers, further, that all the grants, franchises and other benefits in Oregon provided by the said Act of July 25th, 1866, were acquired by the East Side Company, and were so acquired otherwise than by virtue of or subject to any provisions of the said Act of April 10th, 1869.

This defendant admits, upon information and belief, that the East Side Company became involved in litigation questioning its right to use its corporate name, but denies that the said company became involved in any litigation questioning the validity of its incorporation or organization.

This defendant admits, upon information and belief, that on or about March 17th, 1870, the defendant Oregon & California Railroad Company was organized under the general incorporation laws of Oregon, and that, on the same day, its Articles of Incorporation were executed in triplicate and filed, one in the office of the Secretary of State of the State of Oregon, one in the office of the Clerk of Multnomah County, Oregon (being the County

in which the principal office of said company was located), and one in the office of the Secretary of the said company, at Portland, Oregon.

This defendant admits that on or about March 29th, 1870, the East Side Company executed and delivered to the defendant Oregon & California Railroad Company a certain instrument in writing, copied as "Exhibit B" to the bill, on pages 74 to 97 thereof, purporting to convey unto said defendant all property of the East Side Company, including the last named company's right, title and interest in and to the grants, franchises and other benefits provided by the said Act of July 25th, 1866, and the Acts amendatory thereof; and that thereafter, during March and April, 1870, the said instrument was recorded in the offices of the County Recorders of the several counties in which was situated any of the lands granted by the said Act of July 25th, 1866.

This defendant avers that the purpose, intent and effect of the said instrument was, as appears on the face thereof, to operate as a sale and conveyance of all property therein described; and this defendant admits and avers that the said instrument did constitute the defendant Oregon & California Railroad Company the grantee, by purchase and deed of conveyance, of the East Side Company, of all property and rights of the East Side Company, including the right to construct, complete, equip, and maintain the railroad provided for by the said Act of July 25th, 1866, and in aid thereof to receive and exercise the grants, franchises and other benefits in that behalf offered and extended as aforesaid, upon all

the terms and conditions provided in the said Act of July 25th, 1866.

This defendant denies that the purpose, intent or effect of the said instrument was not to operate as a sale or conveyance of any of the lands granted by the aforesaid Acts of Congress; this defendant denies that the purpose, intent or effect thereof was to constitute the Oregon & California Railroad Company the successor of the East Side Company to construct, complete or equip the said line of railroad, otherwise than as grantee by purchase and under the said deed of conveyance; and this defendant further denies that by reason of the said instrument, or otherwise, the Oregon & California Railroad Company became or was in anywise obligated by the terms and provisions of the said Act of April 10, 1869.

This defendant admits, upon information and belief, that on or about April 4th, 1870, the Board of Directors of the Oregon & California Railroad Company passed the resolution copied on pages 20 and 21 of the bill; and that on or about April 28th, 1870, the Oregon & California Railroad Company filed an authenticated copy of the said resolution, together with a certified copy of the said deed of conveyance of March 29th, 1870 ("Exhibit B" to the bill), in the office of the Secretary of the Interior; and it admits and avers that continuously since April 28th, 1870, the Oregon & California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the East Side Com-

pany, of and to all the rights and property described in the said deed of March 29th, 1870.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in the said third subdivision of the bill, and therefore denies the same.

IV.

Answering the allegations contained in the fourth subdivision of the bill, this defendant admits that the Congress of the United States passed the Act set forth in said subdivision of the bill, approved May 4th, 1870, which said Act was entitled as, and was in the terms set forth, in said subdivision of the bill; but this defendant denies, on information and belief, that the West Side Company at any time abandoned or waived all or any claim to any of the grants, franchises or other benefits of the said Act of July 25th, 1866, or importuned Congress to extend to it in lieu thereof or otherwise or at all any grant of lands, or franchises or other benefits pertaining to its projected line of railroad known as the West Side Line, or otherwise, or at all, or that in such behalf Congress passed the Act approved May 4th, 1870.

This defendant admits, upon information and belief, that by the words "Oregon Central Railroad Company" in the said Act of May 4, 1870, Congress intended to, and did refer to and mean the West Side Company; it admits and avers that the line of railroad specified in the Act of May 4, 1870, in so far as it extends from Portland to McMinnville by way of Forest Grove, is substantially

the same (although not identical with) the line of railroad theretofore projected by the West Side Company between the said points.

This defendant admits, upon information and belief, that on or about July 2, 1870, the Board of Directors of the West Side Company adopted a resolution assenting to the said Act of May 4, 1870, and that on or about July 20, 1870, the West Side Company filed an authenticated copy of said resolution in the office of the Secretary of the Interior.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said fourth subdivision of the bill, and therefore denies the same.

V.

Answering the fifth subdivision of the bill, this defendant admits and avers, upon information and belief, that by the issuance or negotiation or pledge of mortgage bonds, but not otherwise, approximately $8,000,000 was, during the year 1870, procured by the Oregon & California Railroad Company, and approximately $1,000,000 was, during the year 1871, procured by the West Side Company; and that with the funds thus procured the work of further constructing the East Side railroad and West Side railroad was prosecuted until about January, 1873.

This defendant admits and avers, upon information and belief, that prior to January, 1873 (but not wholly during said "period of construction," as alleged on page

26 of the bill), the East Side railroad was constructed and extended from Portland to a point near Roseburg, distant approximately 197 miles from Portland and that prior to January, 1873, and during said "period of construction" the West Side railroad was completed from Portland to McMinnville by way of Forest Grove, a distance of approximately 47 miles.

This defendant avers, upon information and belief, that the construction of the East Side railroad was commenced during the month of April, 1868; that a section thereof, extending about 20 miles southerly therefrom, was completed on the 24th of December, 1869; that prior to the year 1870, a portion of the next 20-mile section of the East Side railroad, extending southerly from the said point, was constructed and that the remainder of the said 197 miles of railroad was constructed during the years 1870, 1871 and 1872.

This defendant admits, upon information and belief, that about January, 1873, the funds of each of the said companies became exhausted and that because thereof, further construction of both railroads was temporarily suspended; that the construction of the East Side railroad was not resumed until about June, 1881, and that the construction of the West Side railroad was never resumed; but this defendant denies, upon information and belief, that further construction of either railraod was abandoned at any time.

This defendant admits, upon information and belief, that on or about July 24th, 1874, direction and control of the financial affairs of each of said companies were as-

sumed and thereafter exercised by the creditors thereof organized under the name of "Bondholders Committee," and that on or about February 29, 1876, all of the capital stock of both companies was acquired by said Bondholders Committee, and for several years thereafter the affairs of said two companies were conducted by and under the direction and control of the said Bondholders Committee.

This defendant admits and avers, upon information and belief, that on or about October 6, 1880, the West Side Company executed and delivered unto the defendant Oregon & California Railroad Company, an instrument in writing purporting to grant, bargain, sell, assign, transfer and convey to the said Oregon & California Railroad Company all franchises, rights, privileges, and property of said West Side Company, including the right, title and interest of said West Side Company in and to the grants, franchises and other benefits of said Act of Congress, approved May 4, 1870, as more fully appears from the copy of said instrument attached to the bill as "Exhibit C." This defendant avers that the said instrument did grant, bargain, sell, assign, transfer and convey to the said defendant Oregon & California Railroad Company all of the property then owned or possessed by the West Side Company, including the right, title and interest of said Company in and to the grants, franchises and other benefits of the said Act of Congress, approved May 4, 1870, and that a duly authenticated copy of said deed of conveyance was filed in the Department of the Interior on or about

October 20, 1880, and this defendant denies, upon information and belief, that the said instrument was executed or delivered for the purpose of merging the West Side Company with the Oregon & California Railroad Company or for any purpose other than that therein stated and apparent on the face thereof.

This defendant avers, upon information and belief, that the said instrument was and is a *bona fide* deed of sale and conveyance, the true meaning, purpose and intent of which is set forth and stated therein; and upon information and belief it denies that the purpose, intent or effect thereof was or is, as stated in the bill, not to operate as a sale or conveyance of any of the lands granted by Act of Congress, approved May 4th, 1870, but to constitute the Oregon & California Railroad Company the successor of the West Side Company to construct, complete and equip the line of railroad aforesaid, particularly that part thereof extending from Forest Grove to Astoria; and it avers that the said instrument constituted the Oregon & California Railroad Company the grantee in law and in fact of the West Side Company by sale and deed of conveyance as aforesaid of all the rights and property therein described.

This defendant admits and avers, upon information and belief, that at all times since the execution and delivery of the said last mentioned deed of conveyance, the defendant Oregon & California Railroad Company has assumed to be, and the United States has recognized and treated it as, the successor in interest by purchase and deed of conveyance of the West Side Company of, in

and to all franchises, rights and property described in said deed of conveyance.

This defendant admits that some, but denies that all, of the transactions set forth in the bill as of date subsequent to October 6, 1880, relate to or affect both of said grants of land.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said fifth subdivision of the bill, and therefore denies the same.

VI.

This defendant, answering the allegations contained in the sixth subdivision of the bill, admits and avers, upon information and belief, that on or about May 7th, 1881, the financial affairs of the Oregon & California Railroad Company were adjusted substantially, but avers not wholly, as follows: All of the capital stock was, by action of its Board of Directors and its stockholders, cancelled; that the amount of the capital stock of the Oregon & California Railroad Company was then established at and has ever since remained and still is of the total par value of $19,000,000, consisting of $12,000,000 preferred stock and $7,000,000 common stock, and that in payment of its then existing indebtedness, with accrued interest thereon, all of the said new capital stock was then issued and ever since has been and still is outstanding; that by the issuance of said new capital stock and by part of the proceeds of the new bond issue, referred to on page 30 of the bill, all of the then existing

indebtedness of the Oregon & California Railroad Company was fully paid and discharged and the several mortgages and instruments purporting to secure the same were cancelled and satisfied.

This defendant admits that on June 2, 1881, the defendant Oregon & California Railroad Company executed and delivered to Henry Villard, Robert Peebles and Charles Edward Bretherton, as Trustees, for the owners and holders of the said preferred stock, an instrument in writing which purported to, and this defendant avers did, convey to said Trustees all of the lands of both of the said land grants in trust to secure to the owners of the said preferred stock a right and interest (not merely some pretended right or interest, as is alleged on page 29 of the bill) in and to the land of the said land grants, as more particularly appears by the said instrument, a copy of which is attached to the bill (pp. 104 to 129), as "Exhibit D," and made part thereof; and this defendant avers that the said instrument, "Exhibit D," was made, executed and delivered subject to the prior Trust Mortgage of June 1, 1881, referred to and described in the first paragraph on page 110 of the bill, as is expressly stated in the second paragraph, page 114 of the Trust Mortgage ("Exhibit D" attached to the bill).

This defendant admits that "Exhibit D" purports to authorize said Trustees and their successors, in case of grantor's failure to make the payments therein provided for, to sell and convey the mortgaged lands to persons other than actual settlers, and in quantities more than

one quarter-section to each purchaser and for a price exceeding $2.50 per acre; but this defendant denies that said instrument purports to convey or purports to authorize the said trustees to convey the said land for purposes other than those described in or by the said land grants respectively, and this defendant denies that the said instrument was or is in violation, or breach of, any of the terms or conditions of each or either of the said land grants.

This defendant admits, upon information and belief, that on or about June 28th, 1881, the said trust mortgage was recorded in the office of the County Recorder of Multnomah County, in Book 2700, page 179, and that about the same time it was recorded in the offices of the County Recorders of the several counties in which was situated any part of the lands granted by either of said land grant acts.

This defendant admits, upon information and belief, that thereafter such proceedings were had and taken under the provisions of the said instrument, "Exhibit D" attached to the bill, by and with the consent and cooperation of the Oregon & California Railroad Company, that the defendant, Stephen T. Gage, became the sole surviving trustee thereunder.

This defendant further admits, upon information and belief, that by the issuance and negotiation of its corporate bonds, bearing date June 1, 1881, and May 26, 1883, respectively, known and designated as "First Mortgage Bonds" and "Second Mortgage Bonds," respectively, the defendant Oregon & California Railroad

Company provided approximately $5,000,000 further construction funds; and that on or about June 1, 1881, the work of constructing the East Side Railroad was resumed and thereafter continued, until about January, 1884, and that between June 1, 1881, and January, 1884, the East Side railroad was constructed and extended from Roseburg to a point about one and one-half miles southerly from Ashland in the State of Oregon, a distance of approximately 145 miles. This defendant admits, upon information and belief, that about January, 1884, the last mentioned construction funds became exhausted and the work of construction was discontinued until about April, 1887, when it was resumed; but this defendant denies, upon information and belief, that the work of construction was at any time abandoned. This defendant admits and avers, upon information and belief, that on or about January 19, 1885, default having been made in the payment of interest on its First Mortgage Bonds and Second Mortgage Bonds, a suit was brought in the United States Circuit Court for the District of Oregon by the holders of said bonds against the Oregon & California Railroad Company and others; that on or about January 19, 1885, the railroad and other property of the defendant Oregon & California Railroad Company were, by order of said court, placed in the hands of a receiver appointed for that purpose.

This defendant admits, upon information and belief, that on May 12th, 1887, the general status of the said land grants was as follows: Under the East Side grant, during the years 1871 and 1877, inclusive, patents for

323,078.68 acres of land, being land contiguous to the first 125 miles of the East Side Railroad, were applied for by and issued to the defendant Oregon & California Railroad Company. This defendant avers, upon information and belief, that the said patents were issued to the said Oregon & California Railroad Company as owner of said East Side grant under and by virtue of the said deed of March 29, 1870 (Exhibit "B" to bill), and not otherwise; and this defendant admits, upon information and belief, that no patents were issued for lands of the East Side grant prior to the year 1893, except the said patents issued during the years 1871 to 1877, inclusive; that no patents under the West Side grant were issued prior to the year 1895; that the total length of the East Side railroad is approximately 367 miles; that with the exception of the northerly 197 miles thereof, no part of the East Side railroad was constructed within the times prescribed by the terms of said East Side grant; and that on May 12, 1887, the portion thereof extending from Ashland to the southern boundary line of the State of Oregon remained unconstructed; that that part of the West Side railroad, extending from Forest Grove to Astoria was never constructed, and that by reason thereof the granted lands appertaining to said unconstructed railroad were by Act of Congress, approved January 31, 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," forfeited to, and the ownership thereof resumed by, the United States.

This defendant admits, upon information and belief,

that of the aforesaid granted lands 163,430.28 acres (not "approximately 250,000 acres" as stated in the bill) were sold by the Oregon & California Railroad Company prior to May 12, 1887; that nearly all of said lands were sold to actual settlers and in small quantities, although it avers, upon information and belief, that in a few cases sales were made in quantities exceeding 160 acres to a single person and for prices slightly in excess of $2.50 per acre; that such sales were so made for the reasons hereinafter set forth and not because of any provisions in said Joint Resolution of April 10, 1869, or Section 4 of the said Act of May 4, 1870.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said sixth subdivision of the bill, and, therefore, denies the same.

VII.

This defendant, answering the seventh subdivision of the bill, admits, upon information and belief, that the stockholders of the Oregon & California Railroad Company became and were organized under the name of "Stockholders Committee" and that certain of the owners of the aforesaid mortgage bonds became and were organized under the name of "Frankfort Bondholders' Committee" and that certain others of the holders of said bonds became and were organized under the name of "London Bondholders' Committee," said Bondholders Committee representing the owners of substantially all of the aforesaid First Mortgage Bonds and Second

Mortgage Bonds.

This defendant admits that on or about the 28th day of March, 1887, a certain contract in writing was made and entered into by and between the parties therein named, a copy of which contract marked "Exhibit E" is attached to the bill; but this defendant denies that, by virtue of said contract or at all, the effect of the same was such that the defendant Oregon & California Railroad Company, together with its lines of railroad, was absorbed by and merged into any "system" or corporation and that the independent corporate existence of said Oregon & California Railroad Company ceased virtually or at all.

This defendant admits, upon information and belief, that on or about May 12, 1887, all of the capital stock and all of the Second Mortgage Bonds of the defendant Oregon & California Railroad Company were transferred, assigned and delivered unto said Pacific Improvement Company and that all of the said First Mortgage Bonds were assigned, transferred and delivered unto the said defendant the Southern Pacific Company, but denies on information and belief that such or any of such assignments, transfers and deliveries were made wholly pursuant to the said contract.

This defendant admits, upon information and belief, that, during all the times mentioned in the bill as to it, the Pacific Improvement Company was a corporation organized and existing under the laws of the State of California.

This defendant admits, upon information and belief,

that on or about January 3, 1888, the defendants Oregon & California Railroad Company and Southern Pacific Company made and entered into a lease a copy of which is attached to the bill as "Exhibit F," whereby all the railroads and other property of the Oregon & California Railroad Company used in connection with them for the operating purposes of said railroads were leased to the Southern Pacific Company for the term of forty years. This defendant admits, upon information and belief, that the said lease remained in full force and effect until on or about August 1st, 1893, when the same defendants entered into a similar lease for the same property for the term of thirty-four years, a copy of which last mentioned lease is attached to the bill as "Exhibit G"; that the Southern Pacific Company entered into possession of the leased property on or about June 6, 1888, under the first mentioned lease and at all times since has been and still is in possession thereof, operating the said railroads and enjoying all benefits and profits to which it is entitled as such lessee. This defendant avers that in said leases or either thereof there was not included any of the lands granted by said Acts of Congress of July 25, 1866, and March 4, 1870.

This defendant admits that on or about January 3, 1888, the defendant Oregon & California Railroad Company executed and delivered unto the defendant Union Trust Company a certain instrument in writing dated July 1, 1887, a copy of which is attached to the bill as "Exhibit H," and this defendant avers that he said instrument purported to and did mortgage and convey in

trust unto the Union Trust Company the railroad and lands and other property of the Oregon & California Railroad Company therein described for the uses and purposes therein set forth, and, among other things, to secure the payment of certain bonds to be issued and sold by and in the name of the defendant Oregon & California Railroad Company.

This defendant admits that, by the language contained in the said last mentioned instrument, "And all the property, real, personal or mixed, which on the 12th day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of the Oregon & California Railroad Company," reference was had and intended to be had to a certain deed of trust executed by the defendant Oregon & California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, dated June 1, 1881, a copy of which is attached to the bill as "Exhibit I"; and this defendant admits that on or about January 18, 1888, the said mortgage deed of July 1, 1887, was recorded in the office of the County Recorder of Multnomah County in Book 63 of Mortgages at page 287, as stated in the bill, and about the same time was recorded in the offices of the County Recorders of each of the several counties in Oregon in which was situated any of the lands granted by the said Acts of Congress of July 25, 1866, and March 4, 1870, or either thereof.

This defendant admits that the defendant Oregon & California Railroad Company executed certain bonds provided for by the said instrument bearing date July 1,

1887, and delivered the same to this defendant, but it avers that the said bonds were delivered to this defendant to be countersigned by it as Trustee named in said mortgage or trust deed and not otherwise, and that this defendant countersigned said bonds and delivered the same to the defendant Oregon & California Railroad Company or upon its order, but it denies that it negotiated the said bonds or any thereof. It admits that there are still outstanding of said bonds $17,745,000 in amount, and that the payment of the said bonds, both as to principal and interest, was by indorsement thereon in writing guaranteed by the defendant Southern Pacific Company.

This defendant further admits, upon information and belief, that the proceeds of said bonds were used to pay the cost of constructing, completing and improving the said Oregon & California Railroad Company's railroads, but it denies upon information and belief, that any proceeds from the sale of said bonds were used by the defendant Southern Pacific Company to purchase securities of the defendant Oregon & California Railroad Company or that the said bonds inured to the exclusive or any benefit of the defendant Southern Pacific Company or that the outstanding bonds in fact or at all represent or constitute any indebtedness of the defendant Southern Pacific Company or that it is liable for the payment of the same except under and by virtue of its said guarantee of the payment thereof.

This defendant admits that the said mortgage deed of July 1, 1887, purports to convey, and avers that it

does convey, by way of mortgage to secure payment of the said bonds, the property therein described, including the said lands granted by said Acts of Congress of July 25, 1866, and March 4, 1870; and it avers that said mortgage provides that in case of default in payment of the said bonds, this defendant may sell the property described in said mortgage, including said lands, at public auction, as therein provided, or procure a sale thereof by judicial decree; and it further avers that the said mortgage deed is without express limitation or restriction in respect of such sales as to persons, quantity of land to be sold to any one person or the price at which the same shall be sold; but this defendant denies that the said mortgage deed purports to convey or authorize the defendant the Union Trust Company to convey the said land or any thereof for any purpose or purposes other than those prescribed in and intended by the said land grants respectively; and it also denies that the said mortgage deed was or is in violation or breach of any of the terms or conditions of both or either of said land grants.

This defendant admits and avers that it has, as Trustee for the owners and holders of the bonds secured by the aforesaid instrument, and claims some right, title, interest or lien on, in, to or upon said lands under and by virtue of said instrument bearing date July 1, 1887, but it denies that it makes any claim individually, and it denies that, because of the alleged facts set forth in the bill of complaint, or otherwise, it, as trustee, as aforesaid, has no right, title, interest or lien in, to or upon said

lands.

This defendant admits and avers, upon information and belief, that during the year 1887, the last section of the East Side railroad, extending from a point near Ashland to the southern boundary line of Oregon, was constructed by the Pacific Improvement Company under a contract with the Oregon & California Railroad Company executed on or about June 6, 1887, by the terms of which the last named company agreed to pay for the said work of construction in its bonds thereafter to be issued and guaranteed by the defendant Southern Pacific Company; and it admits that a small part, but denies, upon information and belief, that a large part, of the said section of railroad was constructed prior to the execution of said contract; and it denies, upon information and belief, that the said construction thereof or any part thereof, was under some or any form of contract with the defendant Southern Pacific Company other than the agreement of October 11, 1886, a copy of which is attached to the joint and several answers of defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, as "Exhibit No. 1."

This defendant admits, upon information and belief, that on or about June 6, 1888, the aforesaid receivership proceedings were dismissed, and the receiver was discharged of all of the First Mortgage Bonds and Second Mortgage Bonds (not including the bonds issued under the mortgage deed of July 1, 1887), together with all mortgages and trust deeds securing payment thereof,

were canceled and discharged; and this defendant admits and avers, upon information and belief, that thereupon and ever since the Southern Pacific Company has continued in possession pursuant to the hereinbefore mentioned lease ("Exhibit F" to the bill) of all property of the Oregon & California Railroad Company described in said lease.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in the seventh subdivision of the bill, and therefore denies the same.

VIII.

This defendant, answering the eighth subdivision of the bill, denies, upon information and belief, the allegations contained in the first paragraph thereof.

This defendant admits and avers that during the years 1891 and 1892, the defendant Oregon & California Railroad Company adopted quit-claim forms of contracts and deeds for the sale and conveyance of the right, title or interest of the Railroad Company in such unpatented lands as were unsurveyed, interdicted mineral, or covered by pretended adverse claims, and that on or about the same time the defendant Oregon & California Railroad Company adopted, and thereafter used, other forms of contracts and deeds, including the form generally known as "Grant, Bargain and Sale" form, of contracts and deeds for the sale of patented lands.

This defendant admits and avers, upon information and belief, that lands of the East Side grant to the

amount of 2,442,708 acres were patented to the defendant Oregon & California Railroad Company between the years 1893 and 1906, both years inclusive; and that lands of the West Side grant to the amount of 128,618.13 acres were patented to the said company between the years 1895 and 1903, both years inclusive.

This defendant avers, upon information and belief, that the said patents were issued from time to time between the said dates, pursuant to applications therefor, made from time to time, as the lands were surveyed and became susceptible of such applications, between the years 1876 and 1906; and this defendant, on information and belief, denies that no patent has been issued under either of said land grants since the year 1906.

This defendant denies, upon information and belief, that the defendant Oregon & California Railroad Company on or about the year 1894, and until about January 1st, 1903, or at any time, sold or disposed of said granted lands, or any thereof, in manner or upon terms in violation or breach of the aforesaid terms or conditions of the said land grants, or either thereof.

This defendant admits, upon information and belief, that some of said land was sold to persons who were not actual settlers thereon, and did not purchase the same for purposes of actual settlement, in quantities exceeding one quarter-section to one purchaser, and at prices exceeding $2.50 per acre.

This defendant denies, upon information and belief, that the said lands were sold generally in quantities of 1,000 to 45,000 acres to single purchasers at prices from

$5.00 to $40.00 per acre; but admits, upon information and belief, that in several instances lands in quantities of from 1,000 to 20,000 acres were sold to one purchaser at prices ranging from $5.00 to $20.00 per acre, in one instance at $35.00 per acre, and in one instance at $40.00 per acre, and in one instance a sale in excess of 20,000 acres and of 45,000 acres at $7.00 per acre was made to a single purchaser.

This defendant has no knowledge or information sufficient to form a belief as to the number of sales and amount of land sold by the Oregon & California Railroad Company before the year 1887, or as to the number of sales and the total number of acres sold prior to the said year; but it admits, upon information and belief, that a large part of the land sold since the year 1887 has been sold in quantities exceeding in acreage one quarter-section to one purchaser and for prices in excess of $2.50 per acre, and that a large part of said land has been conveyed since the year 1897, and that of the lands sold since 1897 a large part has been sold in quantities exceeding two thousand acres to each purchaser.

This defendant admits, upon information and belief, that many, but denies that "nearly all" of the said sales were made by contracts providing for payment of purchase price in from five to ten equal annual installments, and execution of conveyance upon final payment; and it admits, upon information and belief, that in some instances, but denies that in many instances, conveyances under said contracts were executed after January 1st, 1903; and it admits that a few, but denies that many, of

said contracts, were still pending at the time this suit was brought.

Referring to the schedule marked "Exhibit J," attached to the bill of complaint, this defendant has no knowledge or information sufficient to form a belief as to the statement relating to sales and contracts for sale prior to the year 1887; and, upon information and belief, it denies the accuracy of the statements in reference to sales and contracts for sales since the year 1887.

This defendant admits and avers that as between the parties thereto, the said Mortgage Deed bearing date July 1st, 1887, to this defendant, Union Trust Company, has been treated as and is a lien upon all of said granted lands which remained unsold on the 12th day of May, 1887; and it admits and avers, upon information and belief, that of said lands sold since the 12th day of May, 1887, it has received the purchase price, although large sums have been deducted necessarily, for the expenses of maintaining and selling the said lands, and for the expenses of the Trustee; and it admits that it has joined in the execution of all conveyances, and it avers that nearly all of the net proceeds of the sales of said lands received by it as aforesaid have been applied by it in payment of the bonds secured by the aforesaid mortgage.

This defendant denies, upon information and belief, that the proceeds of all or any sales made since May 12th, 1887, have inured to the exclusive or any benefit of the defendant Southern Pacific Company by application in payment of the aforesaid bonds or otherwise, except in

so far as that by the payment of said bonds the Southern Pacific Company was to that extent released of liability upon its said guarantee of the payment of said bonds.

This defendant has no knowledge or information sufficient to form a belief, as to the remaining allegations contained in the eighth subdivision of the bill, and therefore denies the same.

IX.

This defendant, answering the ninth subdivision of the bill, admits, upon information and belief, that all transactions concerning the said last named land grants, were conducted subsequent to October, 1901, as before, in the name of the defendant Oregon & California Railroad Company; and it admits, on information and belief, that sales were continued, as before, until on or about January 1st, 1903.

Further answering the ninth subdivision of the bill, this defendant admits and avers, upon information and belief, that since January 1st, 1903, and principally since the passage, on or about February 14th, 1907, by the Legislature of the State of Oregon, of the Memorial, a copy of which is attached as "Exhibit L" to the bill, communications have been received by the defendant Oregon & California Railroad Company, purporting to be the several applications of persons, exceeding one thousand in number, to purchase certain of said unsold lands, generally designated and described in such communications as a single 160-acre tract or quarter-section subdivision to each person named; but, upon informa-

tion and belief, this defendant denies that said applicants intended or desired to purchase the lands so applied for to be purchased by them or in their names, respectively, for the purpose of actually settling thereupon or making a permanent or any home thereon; and it denies, upon information and belief, that several of said applicants had actually settled or established a permanent or any home upon the land so applied for by them, or in their names, respectively; and, upon information and belief, it denies that at the time of said applications to purchase each of said applicants did actually tender to the defendant Oregon & California Railroad Company the sum of $2.50 for each acre so applied for as the purchase price thereof.

This defendant further denies, upon information and belief, that in addition to the said applicants to purchase, a large or any number of persons are ready and willing to settle upon said lands or to purchase the same for the purpose of actually settling thereupon or of making a permanent or any home thereon, in quantities not exceeding 160 acres to each person, or for the price of $2.50 per acre, or upon any terms prescribed by the said land grants, or either thereof, or are deterred therefrom by the defendant Oregon & California Railroad Company, as stated in the bill, or at all; and this defendant, upon information and belief, avers that the said lands, generally, are essentially timber lands not susceptible of actual settlement, or the establishment of permanent or any homes thereon; and further, that all lands of the said land grants now or at any time susceptible of actual and

permanent settlement or the establishment of homes thereon, at no time exceeded, approximately, 300,000 acres, consisting of small and widely separated tracts, all or nearly all of which were sold to actual settlers, or persons claiming to be such, during construction and prior to completion of said railroads, respectively, in quantities of 160 acres or less to a single purchaser, at prices not exceeding $2.50 per acre; and this defendant avers, upon information and belief, that at the time the said grant of July 25th, 1866, was made by Congress, and the line of said railroads located, a large part of the lands susceptible of actual settlement and cultivation within the ten-mile or granted limits of said grant, had been occupied by homestead settlers, pre-empted or otherwise disposed of, and that the Railroad Company was obliged to take, and did take, in lieu thereof, under the direction of the Secretary of the Interior, in the indemnity limits of said grants, lands which were valuable chiefly, if not wholly, for the timber growing thereon and were not susceptible of actual settlement, residence and cultivation.

This defendant avers, upon information and belief, that the said applications to purchase said lands, set forth in the bill and referred to above, were made by persons desiring to obtain title to said respective quarter-sections because of the timber thereon, and not otherwise, and for the purpose of speculation only and not in good faith as actual or any settlers; and that the said lands were chiefly, and in most instances solely, of value because of the timber thereon and were not arable or sus-

ceptible of actual settlement and cultivation.

This defendant admits, upon information and belief, that on or about January 1st, 1903, pending examination into the records and affairs of its land department, the defendant Oregon & California Railroad Company withdrew from sale all of the said unsold lands; but this defendant, upon information and belief, denies that the said withdrawal of the said lands from sale, or any mortgage or sale thereof theretofore made by the Oregon & California Railroad Company was in violation or breach of any terms or conditions annexed to the said land grants, or concerning the same, or either of them, by any Acts of Congress.

This defendant denies, upon information and belief, that the defendant Oregon & California Railroad Company has at any time refused or still refuses to sell any part of said unsold lands, to actual settlers, or for purposes of actual settlement, or in quantities, or for prices as prescribed by any terms of the said land grant acts or either of them, or at all.

This defendant admits that the defendant Oregon & California Railroad Company has, at all times, refused and still refuses, to entertain the pretended applications to purchase, or to sell any of the timber lands applied for as set forth in the bill, to the persons who made or in whose names were made the said pretended applications, upon the terms offered therefor in said pretended applications, but, upon information and belief, this defendant denies that ever since January 1st, 1903, or at any time, the defendant Oregon & California Railroad

Company has failed or neglected to encourage or promote the settlement of any of the said lands which are susceptible of settlement and the establishment of homes thereon, or the purchase thereof by actual settlers, for the purpose of actual settlement.

This defendant denies, upon information and belief, that by divers, or any, means or methods the defendant Oregon & California Railroad Company has at all or any times discouraged, obstructed, forbidden or prevented the settlement of any of said lands which are susceptible of settlement, or the purchase thereof, or any part thereof, upon terms prescribed by the said land grants, or either thereof, either by actual settlers or for the purpose of actual settlement.

This defendant admits and avers, upon information and belief, that since January 1st, 1903, and at all times theretofore, the defendant Oregon & California Railroad Company assumed and asserted and has assumed and asserted an absolute and unconditional estate in and to all of said unsold lands; but this defendant, upon information and belief, denies that said defendant Oregon & California Railroad Company at any time attempted, or is attempting, to convert any conditional estate into an unconditional estate, in violation or breach of any of the terms or conditions of said land grants, or at all; and, on information and belief, this defendant denies that by reason of the premises set forth in said bill, or at all, or for any other reason, the defendant Oregon & California Railroad Company has violated any of the express terms or conditions of said land grants, respectively, or any

implication or plain intendment of said grants.

This defendant avers that the said lands granted by the Acts of July 25th, 1866, and May 4th, 1870, became, by the construction of said railroad, between the terminal of the Central Pacific Railroad, in California, and the City of Portland, in Oregon, and the acceptance thereof by the complainant, an unconditional and indefeasible estate.

This defendant has no knowledge or information sufficient to form a belief as to how or from what sources "Exhibit K" to the bill was made or prepared, or as to the accuracy thereof.

This defendant denies, upon information and belief, that none of said unsold lands have ever been reduced to possession, or in any way improved, unless it be by persons claiming to have settled thereupon, or seeking to purchase the same, as in the bill stated; and denies, upon information and belief, that the reasonable present value of said unsold lands exceeds the sum of $40,000,000.

This defendant, upon information and belief, avers that the defendant Oregon & California Railroad Company, has, at all times since the year 1870, been and still is in open and notorious possession of and dominion over the said lands, as follows: The said company has at all times openly and notoriously claimed, and prior to about the time of the commencement of this suit was recognized as and admitted by all to be, such owner thereof; has, at all times, openly and publicly mortgaged, leased and offered for sale, the said lands; has, at all times, caused the said lands to be protected by field agents who

traveled over and protected the same against depredation and waste; has, at all times since the same was patented to it, paid the taxes levied and assessed upon and against the said lands, which payments amount, in all, to $1,827,-234.10; and in divers other ways has openly and notoriously proclaimed and asserted, and been in possession of, the said lands; that large and different portions of said lands have been reduced to possession and improved from year to year, by persons holding leases thereof for grazing and other purposes, from the defendant Oregon & California Railroad Company; and other large portions of the said lands have been reduced to possession as right of way, station grounds, depot grounds, and the like for the railroad purposes of the defendant Oregon & California Railroad Company.

This defendant denies, upon information and belief, that none of said unsold lands now are, or ever were, necessary to reserve for depots, stations, side-tracks, wood-sheds, standing-ground, or any other needful uses in operating any of said railroad lines or any part thereof; and further denies, upon information and belief, that no part of said lands ever was reserved or used, or now is reserved or used, or is intended to be reserved or used, for any of said purposes.

This defendant avers, upon information and belief, that all the lands described in "Exhibit No. 7" annexed to and made part of the said joint and several answer of the Oregon & California Railroad Company, *et al,* are and at the time this suit was brought were necessary to reserve and were reserved for depots, stations, side-

tracks, wood-sheds, standing ground, and other needful uses in operating the said railroad, and that all the lands described in "Exhibit No. 8," attached to and made a part of said joint and several answer, now are and at the time this suit was brought were necessary to reserve and were reserved for still other needful uses in operating the said railroads particularly set forth in said "Exhibit No. 8."

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said subdivision ninth of the bill, and, therefore, denies the same.

X.

This defendant, answering the allegations contained in the tenth subdivision of the bill, admits, upon information and belief, that a number of contracts of sale have been forfeited because the defaults in the payment of annual installments falling due thereon, and the installments previously paid have been retained; and, as to the remaining allegations of said subdivision, this defendant has no knowledge or information sufficient to form a belief.

XI.

This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in the eleventh subdivision of the bill, and, therefore, denies the same.

XII.

This defendant, answering the twelfth subdivision of the bill, admits and avers, upon information and belief, that prior to the completion of the construction of the Oregon & California Railroad and its connection with the California & Oregon Railroad at the Oregon-California boundary line, and thereafter until about the year 1890—but not until the year 1894 as stated in the bill—there was substantially no demand for said granted lands, except for the purposes of settlement or by persons of limited means able to purchase said lands only in small quantities and at low prices; and it admits and avers, upon information and belief, that nearly all sales made prior to the year 1894 were of that character, to persons who purchased lands susceptible of settlement, and upon or adjacent to which they had established homes; and it admits and avers, upon information and belief, that prior to the completion of the said railroad, timber lands, not being susceptible of settlement or the establishing of homes thereon, had but little, if any, market value and could not be sold at any price to any person.

This defendant admits, upon information and belief, that during a large part of said period the defendant Oregon & California Railroad Company maintained an immigration bureau, engaging in inducing immigration and settlement upon such of said lands as were susceptible of actual settlement in good faith; but denies, upon information and belief, that said company was not otherwise engaged in soliciting or promoting sales.

This defendant denies, upon information and belief,

that by reason of the premises, or otherwise, the occasional or any violations of terms or conditions of said land grants or either of them, if any there were, during the said period were concealed or generally unknown, until ascertained by complainant as stated in the bill; and this defendant, upon information and belief, avers, that the defendant Oregon & California Railroad Company at all times, openly and to the actual knowledge of all persons concerned, including complainant, disposed of its said lands at the best price obtainable, in quantities desired by applicants to purchase, giving preference to actual settlers in quantities claimed and applied for by them, in the interest of railroad transportation and traffic —but not because of a provision in the said joint resolution of April 10th, 1869, or Act of May 4th, 1870.

This defendant denies, upon information and belief, that a sudden demand arose for said lands, commencing about the year 1894, among wealthy speculators or timber men, but admits, upon information and belief, that the greater part of the so-called wrongs and violations complained of in the bill transpired subsequent to that date.

This defendant, upon information and belief, avers that nearly all of the said lands remaining unsold at the time of the completion of the construction of the East Side railroad and its connection with the Central Pacific railroad, as aforesaid, were timber lands, having small market value, and for which there was substantially no demand by purchasers at the time, but it avers, upon information and belief, the fact to be that soon after

facilities for transportation of lumber were afforded by the completion and connection of the said railroads, the intermediate even-numbered sections were entered by persons under the Timber Land Act and the commutation provisions of the Homestead Act, who thereupon conveyed the lands so entered to single holders of many such adjoining tracts, and the increase in value of the Oregon & California Railroad Company's intermediate odd-sections of timber land arose out of the said completion and connection of railroads, and the demand for such lands at increased and gradually increasing prices arose out of the need of ownership of the odd-sections by the owners of the intermediate even-sections, who desired or sought to procure sufficiently large single timber land holdings to justify the establishment and equipment of lumber mills and factories, to mill and market the timber product of said lands.

This defendant denies, upon information and belief, that nearly all or that any, except a few, of the sales consummated after that time were made by executory contracts of sale which were not placed of record or which did not merge into deeds for many years thereafter, or otherwise than shortly thereafter, or that a considerable or other than a small portion thereof are still pending, or that any conveyances for excessive quantities of said lands were not placed of record until recently except as to a few or that many are still unrecorded except a few thereof.

This defendant, upon information and belief, avers that the conveyances relating to the transfer of the said

lands both before and after the year 1894 and from the beginning, were in the main and in substantial entirety made matters of open, public and continuing record and were matters of general and public knowledge and notoriety, at and about the time of the several and successive conveyances in which the transactions and dealings in respect to the said lands from the beginning were embodied, and continuously ever since, and were well known at all such times to the Government and Land Department of the United States, and many and most of the contracts of sale, said contracts of sale being followed by such conveyances, were likewise made and continued to be matter of public record and knowledge and within the knowledge of the Government and Land Department of the United States.

This defendant denies, upon information and belief, that in any instances of sales in excessive quantities (that term being understood herein to mean quantities in excess of 160 acres) the lands were conveyed or attempted to be conveyed by several deeds, each for a small quantity of land, or that thereby the true facts were concealed or that any such or any device of concealment was resorted to.

This defendant admits and avers, upon information and belief, that on or about January 1st, 1903, all of said unsold lands were withdrawn from sale, pending investigation of Land Department transactions of the Oregon & California Railroad Company. This defendant denies, upon information and belief, that thereafter all or any of the said unsold lands were converted to certain wrong-

ful and unlawful uses, as set forth in the bill.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in the twelfth subdivision of said bill, and, therefore, denies the same.

XIII.

This defendant, answering the allegations contained in the thirteenth subdivision of the bill, denies, upon information and belief, that the transactions complained of in the bill of complaint were wrongful or unlawful, or that they were concealed from or unknown to the complainant until discovered in the manner described in said bill.

This defendant avers, upon information and belief, that all of said transactions were open and notorious, and many, if not all thereof, actually known to the complainant at the times thereof, respectively, or soon thereafter, and complainant also had constructive notice of all or substantially all of the said transactions at or about the times thereof, respectively, commencing as early as March, 1870, and continuously thereafter to the present time; and this defendant further avers, upon information and belief, that complainant at all times acquiesced in all, and in many instances expressly approved and ratified certain, of said transactions and that a few of the many instances of such acquiescence, approval and ratification, other than those hereinbefore and hereinafter set forth, are shown by "Exhibit No. 9" and "Exhibit No. 10" attached to said Joint and Several Answer

of the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, *et al.*

This defendant admits that "Exhibit L" to the bill is a correct copy of the original memorial passed by the Legislature of Oregon on or about February 14, 1907, but it avers that it does not purport to and does not charge or disclose any concealments made or said to have been made by the defendant Oregon & California Railroad Company in respect to the sales of its lands, the amount thereof and grantees, either with respect to the selling prices of its lands or the quantity sold to a single purchaser or otherwise, and did not and could not have given complainant notice of any of the transactions characterized in the first paragraph on page 53 of the bill as "concealed from and wholly unknown to complainant," and that such transactions were conducted and made in the usual manner of conducting and making transactions of such character, and that no concealment whatever was made or attempted to be made of any thereof.

This defendant admits, upon information and belief, that on April 30, 1908, Congress passed the Joint Resolution, a copy of which is set forth on pages 53 and 54 of the bill, in pursuance of and influenced by the said memorial; and it admits and avers that this suit was instituted because of said joint resolution, but it does not concede or admit, but on the contrary denies, that this suit is a suit brought in accordance with the provisions of the said joint resolution, or intent of Congress

in adopting said joint Resolution, or is one that the Attorney-General has authority to bring in this court under or in pursuance of the said joint resolution, or at all.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said thirteenth subdivision of the bill, and, therefore, denies the same.

XIV.

This defendant, answering the allegations contained in the fourteenth subdivision of the bill, denies that there have been breaches or violations of any of the terms, conditions or provisions of the said land grants, respectively, and denies that, because of the several or any of the alleged breaches or violations of any of the terms, conditions or provisions of the said land grants respectively, or at all, certain or any of said granted lands or estates therein have been or are forfeited to the United States, free from any or all right, title, interest, lien or claim of this defendant or of the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, *et al,* or persons claiming by, through or under them or any of them, otherwise or at all.

This defendant denies, upon information and belief, that the United States does by the bill assert title to lands and estates in lands described on page 55 thereof, by reason of alleged forfeiture thereof unto the United States; but it avers that the assertion of such forfeiture in the bill has no foundation in fact, nor authority in law;

and this defendant denies that the United States has thereby resumed, or has lawful authority to resume, title to all or any of the said lands or interest in said lands, pursuant to the said joint resolution of April 30, 1908.

This defendant avers, upon information and belief, that even if the lands embraced in the aforesaid land grants, or any thereof, or any interest therein, have become forfeited to the United States for breach or violation of any condition or conditions of the said grants, or otherwise, the United States has a plain, speedy, adequate and complete remedy at law respecting the same, and cannot therefore maintain this action in equity; and further that no question of fact as to such forfeiture can be equipped into or found, nor can such forfeiture be in anywise enforced by this court.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations obtained in the fourteenth subdivision of the bill, and therefore denies the same.

XV.

This defendant, answering the allegations contained in the fifteenth subdivision of the bill, admits and avers, that the property described in the said mortgage deed of July 1, 1887, from the Oregon & California Railroad Company to the Union Trust Company, covered and included all lands granted by the said Acts of July 25, 1866, and March 4, 1870, which remained unsold on May 12, 1887; and it avers that as grantee of said mortgage deed and as Trustee thereunder, it has certain rights

and interests in and a lien upon all the said lands; but this defendant denies, upon information and belief, that the property described in said mortgage deed, and upon which the same is a lien, not including any of said granted lands, was at the time of the execution of said mortgage, or now is, of a value largely or at all in excess of the amount of said bonded indebtedness purporting to be secured by said mortgage deed, or that the same is ample security therefor; and it avers that it is impossible to foresee what the value of the said property will be in the year 1927, when the bonds secured by said mortgage deed will become due.

This defendant further avers that the said mortgage deed and the prior mortgage deeds in this answer heretofore referred to, covering said lands were severally executed to secure the issue of bonds, the proceeds of which were to be and were used by the defendant, Oregon & California Railroad Company and said West Side Company, in constructing the said railroads and performing the conditions of said Acts of July 25, 1866, and March 4, 1870, and that by the construction of said roads, the said Oregon & California Railroad Company did acquire an indefeasible title to said lands granted in aid of such construction. That the proceeds of the bonds secured by the said mortgage or deed of trust to this defendant were to be used and were used in completing the said railroad, which, when constructed to a point of connection on the southern boundary of Oregon, with the portion of said railroad constructed in California, accomplished the purpose for which said grant was made,

to-wit, the construction of a railroad which should connect the cities of San Francisco and Portland. And this defendant avers, upon information and belief, that without said land grants and the mortgage thereof in expectancy, the funds could not have been secured for the construction of said railroads, or either thereof, and that the pledge by way of mortgage deeds in expectancy of said lands constituted a valid application of said lands under the grant as required by the said Act of July 25th, 1866. And this defendant further avers that the said mortgage deed and the said prior mortgage deeds and liens upon said lands did not, in law or in fact, constitute a sale thereof within the meaning of the Acts of Congress referred to in the bill or of any Act of Congress.

This defendant further avers, upon information and belief, that the bonds secured by the said mortgage deed to it as Trustee were negotiated abroad, and principally in Germany, and that most, if not all, of the said bonds are now held by *bona fide* purchasers thereof in said last named country, and that, if any of said lands had been sold or shall be sold, as the bill avers they were required by said Acts of Congress to be sold, to actual settlers only in quantities not exceeding 160 acres to any one person at $2.50 per acre, the said bondholders would be entitled to the net proceeds of such sales; and this defendant avers that if it be true—which it denies—that said lands are held by the defendant railroad company upon condition of sale to actual settlers only as aforesaid, and if a relatively small proportion of said lands have been sold in breach of said condition, as the bill

alleges, it would be harsh and contrary to equity to deprive by forfeiture the bondholders under said mortgage deed of the security on the faith of which they purchased said bonds.

XVI.

The defendant, answering the allegations contained in the sixteenth subdivision of the bill, avers, upon information and belief, that the said patents and all thereof, were duly issued pursuant to the rules of the local and general land offices of the United States after due and diligent inquiry, report and determination by the proper officers of the United States, as to the facts and particulars in that behalf which authorized and made it the duty of the said officers to issue said patents under and pursuant to the provisions of said Acts of July 25th, 1866, and May 4th, 1870, respectively.

This defendant has no knowledge or information sufficient to form a belief as to the remaining allegations contained in said sixteenth subdivision of the bill.

XVII.

This defendant, answering the allegations contained in the seventeenth subdivision of the bill, admits that some of the conveyances by the Oregon & California Railroad Company of the said lands contained the reservation set forth in said subdivision of the bill, but it denies, upon information and belief, that such reservation was in violation or breach of the terms and conditions of said land grants respectively, or that they were null and void, and it denies upon information and belief

that the interests of this defendant in the lands thus reserved were or are subject to a right of forfeiture, or to any other rights, equities or remedies which complainant has asserted in said bill.

XVIII.

This defendant, answering the allegations contained in the eighteenth subdivision of the bill, admits and avers that the defendant Oregon & California Railroad Company is, and claims to be, the owner of all of the said granted lands, patented and unpatented, not heretofore sold and transferred by its deeds of conveyance, together with all rights of way and other rights and property granted by Section 3 of said Act of July 25th, 1866, and the first section of the said Act of May 4th, 1870, and all rights and property reserved as aforesaid for any and all railroad purposes, and the improvements upon all the said lands and property; and that all of the said land and property is subject to the lien aforesaid of the Union Trust Company mortgage deed of July 1, 1887. But this defendant denies that any or all of such rights, titles, interests or liens were, or are, subject to any right of forfeiture or to any other rights or equities or remedies of complainant, asserted or attempted to be asserted by the bill herein, or which complainant has or, at any time since the making of said grants respectively, had.

XIX.

This defendant, further answering the allegations contained in the nineteenth subdivision of the bill, has no

knowledge or information sufficient to form a belief as to the allegations contained therein.

XX.

This defendant, answering the allegations contained in the twentieth subdivision of the bill, admits, upon information and belief, that suits in equity against the defendants Oregon & California Railroad Company, Stephen T. Gage and Union Trust Company of New York, have been instituted by some of the other defendants herein, the general purpose and nature of which is to compel a sale and conveyance of the lands so applied for to them respectively, all of which said suits are still pending. This defendant avers that on or about December , 1908, all of the said suits other than the one brought by Roy W. Minkler were consolidated with this suit, No. 3340; that thereafter, and on or about January 15th, 1909, all the persons other than the said Roy W. Minkler, named as complainants in said "Exhibit P" to the bill, filed herein their cross complaints, each and all of which was and were dismissed by the order of this Court made and entered on April 24th, 1911, and avers, upon information and belief, that on or about June 9, 1910, the said suit brought by Roy W. Minkler in the Circuit Court of the United States for the Western District of the State of Washington, was duly dismissed by mutual consent of the parties thereto.

XXI.

This defendant, further answering the bill, alleges

that an Act was passed by the Congress of the United States entitled "An Act to Create an Auditor of Railroad Accounts and for other Purposes," which said Act was approved June 19, 1878, and by Section 2 of which said Act it was provided "that the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper, at an annual salary of two thousand four hundred dollars; one assistant bookkeeper, at an annual salary of two thousand dollars; one clerk, at an annual salary of one thousand four hundred dollars; and one copyist, at an annual salary of nine hundred dollars. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction. Incidental expenses for books, stationery and other material necessary for the use of said Bureau, are hereby allowed, not to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand

dollars is hereby appropriated for the uses and purposes of this Act for the fiscal year ending June thirtieth, A. D. eighteen hundred and seventy-nine."

That by Section 3 of said Act it was provided as follows:

> "The duties of the said Auditor, under and subject to the direction of the Secretary of the Interior, shall be to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the Government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several departments of the Government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the Government; and to make an annual report to the Secretary of the Interior on the first day of November, on the

condition of each of said railroad companies, their road, accounts and affairs, for the fiscal year ending June thirtieth immediately preceding."

That by Section 4 of said Act it was provided as follows:

"Each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said Auditor any and all such reports as he may require, from time to time, and shall submit its books and records to the inspection of said Auditor, or any person acting in his place and stead, at any time that the said Auditor may request, in the office where said books and records are usually kept; and the said Auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire."

That by Section 5 of said Act it was provided as follows:

"If any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in Section 4 of this Act, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum of not less

than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced."

That by Section 6 of said Act the said Act was made to apply to all persons or corporations into whose hands either of said railroads "may lawfully come," as well as to the original companies, and was to take effect on and after July first, A. D. eighteen hundred and seventy-eight.

This defendant further avers that thereafter the Congress of the United States, by an Act entitled "An Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, one thousand eight hundred and eighty-two, and for other purposes," approved March 3d, 1881, changed the title of said official from "AUDITOR OF RAILROAD ACCOUNTS" to "COMMISSIONER OF RAILROADS," and appropriated $17,100 for the support of said Bureau.

This defendant further avers that thereafter the Congress of the United States by an Act approved April 17, 1900, entitled "An Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, one

thousand nine hundred and one, and for other purposes," provided as follows:

"OFFICE OF COMMISSIONER OF RAILROADS:

"For Commissioner, four thousand five hundred dollars; bookkeeper, two thousand dollars; assistant bookkeeper, one thousand eight hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all, eleven thousand four hundred and twenty dollars:

"*Provided,* that the office of Commissioner of Railroads shall terminate on the thirtieth day of June, one thousand nine hundred and one."

This defendant further avers that thereafter, the Congress of the United States, by an Act approved March 3rd, 1901, entitled "An Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, one thousand nine hundred and two, and for other purposes," provided as follows:

"OFFICE OF COMMISSIONER OF RAILROADS:

"For Commissioner, four thousand five hundred dollars; bookkeeper, one thousand six hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all nine thousand two hundred and twenty dollars:

"*Provided,* that the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, one thousand nine hundred and two, when

the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior, together with the records and files of the office."

This defendant further avers that thereafter, the Congress of the United States by an Act approved June 28, 1902, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, one thousand nine hundred and three, and for other purposes," provided as follows:

"OFFICE OF COMMISSIONER OF RAILROADS:

"For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant messenger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars;

"*Provided,* that the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, one thousand nine hundred and three, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior, together with the records and files of the office."

This defendant further avers that thereafter the Congress of the United States by an Act approved March 3rd, 1903, entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, one thousand nine hundred and three, and for prior years, and for other purposes," Con-

gress, among other things, provided as follows:

> "OFFICE OF COMMISSIONER OF RAILROADS:
>
> "For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant messenger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars;
>
> *"Provided,* that the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, one thousand nine hundred and four, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior, together with the records and files of the office."

This defendant further avers that said Bureau was organized in the Department of the Interior, as required by said Acts of Congress, and was actively administered, under annual appropriations by Congress, until the termination of said office in 1904 and the transfer of the duties, files and records thereof to the Secretary of the Interior, as required by the Act of 1902, hereinbefore set forth; and that, pursuant to said Acts, the forms of reports to be made by the railroad companies covered thereby, including the said defendant Oregon & California Railroad Company, were prepared and adopted by the said Bureau, and transmitted to the said railroad companies, including said defendant Oregon & California Railroad Company, which said Oregon & California Railroad Company, and its predecessors in ownership of said railways and of said land grants, complied

continuously with said Act and with the demands of said Auditor and said Commissioner of Railroads, in making the said reports, as required.

This defendant further avers that beginning with the report for the half year ending December 31, 1879, down to and including the year 1903, reports were regularly made of the transactions of the Land Department of said defendant, Oregon & California Railroad Company, upon the blanks formulated and furnished by the Bureau of Railway Accounts, as follows:

For the *half year* ending December 31, 1879, the defendant Oregon & California Railroad Company reported in respect of said land grants, among other things, as follows:

Total cash receipts from all sales to date	$83,579.93
Average price per acre for all sales to date	2.23
Average price per acre for all sales *during half year*	2.39
Average price per acre for all purchases to date	2.48
Maximum price per acre from sales (not town lots)	15.00
Minimum price per acre from sales (not town lots)	.25
Maximum price per acre *now asked* (not town lots)	7.00
Minimum price per acre *now asked* (not town lots)	.25
Average price per acre *now asked* (not town	

lots) 2.50

For the *half year* ending June 30, 1880, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$95,873.99
Average price per acre for all sales to date	2.27
Average price per acre for all sales *during half year*	2.28
Average price per acre for all purchases to date	2.27
Maximum price per acre from sales (not town lots)	5.00
Minimum price per acre from sales (not town lots)	1.25
Maximum price per acre *now asked* (not town lots)	7.00
Minimum price per acre *now asked* (not town lots)	.25
Average price per acre *now asked* (not town lots)	2.00

For the *half year* ending December 31, 1880, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$106,621.86
Average price per acre for all sales to date	2.26
Average price per acre for all sales *during half year*	2.12
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not	

town lots)	5.
Minimum price per acre from sales (not town lots)	1.
Maximum price per acre *now asked* (not town lots	5.
Minimum price per acre *now asked* (not town lots	.25
Average price per acre *now asked* (not town lots)	2.

For the *half year* ending June 30, 1881, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$121,610.33
Average price per acre for all sales to date	2.26
Average price per acre for all sales *during half year*	2.24
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not town lots)	10.
Minimum price per acre from sales (not town lots)	1.25
Maximum price per acre *now asked* (not town lots)	3.
Minimum price per acre *now asked* (not town lots)	.25
Average price per acre *now asked* (not town lots)	2.

For the *half year* ending December 31, 1881, the defendant Railroad Company reported:

Total cash receipts from all sales to date...	$131,633.02
Average price per acre for all sales to date..	2.25
Average price per acre for all sales *during half year*	2.25
Average price per acre for all purchases to date	2.25
Maximum price per acre from sales (not town lots)	5.00
Minimum price per acre from sales (not town lots)	1.25
Maximum price per acre *now asked* (not town lots)	10.00
Minimum price per acre *now asked* (not town lots	.25
Average price per acre *now asked* (not town lots)	2.00

For the *half year* ending June 30, 1882, the defendant Railroad Company reported:

Total cash receipts from all sales to date...	$177,712.57
Average price per acre for all sales to date..	2.24
Average price per acre for all sales *during half year*	2.24
Average price per acre for all purchases to date	2.24
Maximum price per acre from sales (not town lots)	3.50
Minimum price per acre from sales (not town lots)	1.12
Maximum price per acre *now asked* (not town lots	15.

Minimum price per acre *now asked* (not town lots)	.25
Average price per acre *now asked* (not town lots)	2.

For the *half year* ending December 31, 1882, defendant Railroad Company reported:

Total cash receipts from all sales to date	$198,302.97
Average price per acre for all sales to date	2.25
Average price per acre for all sales *during half year*	2.25
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum price per acre from sales (not town lots)	1.10
Maximum price per acre *now asked* (not town lots)	7.00
Minimum price per acre *now asked* (not town lots)	.25
Average price per acre *now asked* (not town lots)	2.00

For the *half year* ending June 30, 1883, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$228,794.28
Average price per acre for all sales to date	2.39
Average price per acre for all sales *during half year*	2.75
Average price per acre for all purchases to	

date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.00
Minimum price per acre *now asked* (not town lots)	1.00
Average price per acre *now asked* (not town lots)	2.50

For the year ending June 30, 1884, the defendant Railroad Company reported:

Total cash receipts from all sales to date...	$268,317.92
Average price per acre for all sales to date..	2.4087
Average price per acre for all sales *during year*	2.7250
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	1.
Average price per acre *now asked* (not town lots)	2.50

For the year ending June 30, 1885, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$340,039.95
Average price per acre for all sales to date	2.4534
Average price per acre for all sales *during year*	2.5608
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	1.
Average price per acre *now asked* (not town lots)	2.50

For the *half year* ending December 31, 1885, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$361,559.86
Average price per acre for all sales to date	2.45
Average price per acre for all sales *during half year*	2.65
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not	

town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the year ending December 31, 1885, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$366,352.35
Average price per acre for all sales to date	2.48
Average price per acre for all sales *during year*	2.70
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	1.
Average price per acre *now asked* (not town lots)	2.50

For the *half year ending* June 30, 1886, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$384,889.72
Average price per acre for all sales to date	2.47

Average price per acre for all sales *during half year*	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the *half year* ending December 31, 1886, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$407,876.54
Average price per acre from all sales to date	2.44
Average price per acre for all sales *during half year*	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not	

town lots) 2.50
Average price per acre *now asked* (not
town lots) 3.50

For the year ending December 31, 1886, the defendant Railroad Company reported:

Total cash receipts from all sales to date...$407,876.54
Average price per acre for all sales to date 2.44
Average price per acre for all sales *during year* 2.99
Average price per acre for all purchases to date ....
Maximum price per acre from sales (not
town lots) ..... 15.
Minimum price per acre from sales (not
town lots) ..... .50
Maximum price per acre *now asked* (not
town lots) ..... 7.
Minimum price per acre *now asked* (not
town lots) 2.50
Average price per acre *now asked* (not
town lots) 3.50

For the *half year* ending June 30, 1887, the defendant Railroad Company reported:

Total cash receipts from all sales to date...$435,254.92
Average price per acre for all sales to date 2.49
Average price per acre for all sales *during half year* 3.19
Average price per acre for all purchases to

date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the *half year* ending December 31, 1887, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$458,836.01
Average price per acre for all sales to date	2.51
Average price per acre for all sales *during half year*	3.40
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the year ending December 31, 1887, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$458,836.01
Average price per acre for all sales to date	2.51
Average price per acre for all sales *during year*	3.24
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	7.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the year ending December 31, 1888, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$512,598.23
Average price per acre for all sales to date	2.58
Average price per acre for all sales *during year*	3.74
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50

Maximum price per acre *now asked* (not town lots) ..... 10.
Minimum price per acre *now asked* (not town lots) 2.50
Average price per acre *now asked* (not town lots) 3.50

For the year ending June 30, 1889, the defendant Railroad Company reported:

Total cash receipts from all sales to date..$541,650.33
Average price per acre for all sales to date 2.642
Average price per acre for all sales *during year* 4.96
Average price per acre for all purchases to date ....
Maximum price per acre from sales (not town lots) 15.00
Minimum price per acre from sales (not town lots) ..... .50
Maximum price per acre *now asked* (not town lots) 15.00
Minimum price per acre *now asked* (not town lots) 2.50
Average price per acre *now asked* (not town lots) ..... about 3.50

For the year ending June 30, 1890, the defendant Railroad Company reported:

Total cash receipts from all sales to date..$626,520.03
Average price per acre for all sales to date 3.146

Average price per acre for all sales *during year*	6.32
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1891, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$707,556.88
Average price per acre for all sales to date	3.33
Average price per acre for all sales *during year*	4.92
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	25.
Minimum price per acre *now asked* (not	

town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1892, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$785,536.79
Average price per acre for all sales to date	3.61
Average price per acre for all sales *during year*	5.61
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	25.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1893, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$859,477.34
Average price per acre for all sales to date	3.66
Average price per acre for all sales *during year*	4.51
Average price per acre for all purchases to date	.....

Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	25.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1894, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$909,008.59
Average price per acre for all sales to date	3.63
Average price per acre for all sales *during year*	2.83
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	25.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1895, the defendant

Railroad Company reported:

Total cash receipts from all sales to date	$946,952.81
Average price per acre for all sales to date	3.40
Average price per acre for all sales *during year*	3.49
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1896, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$986,605.69
Average price per acre for all sales to date	3.40
Average price per acre for all sales *during year*	3.57
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50

Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	8.

For the year ending June 30, 1897, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$1,020,329.75
Average price per acre for all sales to date	3.40
Average price per acre for all sales *during year*	3.35
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	8.

For the year ending June 30, 1898, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$1,069,513.25
Average price per acre for all sales to date	3.41

Average price per acre for all sales *during year*	3.95
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.

For the year ending June 30, 1899, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$1,234,225.97
Average price per acre for all sales to date	3.75
Average price per acre for all sales *during year*	2.62
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50

Average price per acre *now asked* (not town lots)	8.

For the year ending June 30, 1900, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$1,542,728.71
Average price per acre for all sales to date	3.77
Average price per acre for all sales *during year*	5.02
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	8.

For the year ending June 30, 1901, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$1,852,756.51
Average price per acre for all sales to date	4.076
Average price per acre for all sales *during year*	5.348
Average price per acre for all purchases to date	.....

Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	15.
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots)	3.50

For the year ending June 30, 1902, the defendant Railroad Company reported:

Total cash receipts from all sales to date	$2,298,061.25
Average price per acre for all sales to date	5.00
Average price per acre for all sales *during year*	7.85
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots	30.
Minimum price per acre from sales (not town lots	.50
Maximum price per acre *now asked* (not town lots	20.00
Minimum price per acre *now asked* (not town lots)	2.50
Average price per acre *now asked* (not town lots	3.50

For the year ending June 30, 1903, defendant Railroad Company reported:

Total cash receipts from all sales to date	$2,735,532.88
Average price per acre for all sales to date	4.73
Average price per acre for all sales *during year*	4.22
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.
Minimum price per acre from sales (not town lots)	.50
Maximum price per acre *now asked* (not town lots)	.....
Minimum price per acre *now asked* (not town lots)	.....
Average price per acre *now asked* (not town lots)	.....

This defendant further avers that the Chief of said Bureau complied, each year from the creation until the termination of said office, with the requirement that he should make an annual report to the Secretary of the Interior; that said reports were embodied in the annual report of the Secretary of the Interior, during each year from 1879 to the termination of said office, and by him transmitted to the President of the United States, and by the latter transmitted to the two Houses of the Congress, there referred to appropriate committees, and printed as executive documents. That in many, but not

all, of said reports by the said Commissioner of Railroads to the Secretary of the Interior, so transmitted by the latter to the President of the United States and laid before the Congress, as aforesaid, the said Commissioner of Railroads stated, among other things, the maximum price which the defendant Oregon & California Railroad Company was demanding per acre on sales of the land of said land grant. Thus, in the report of said Commissioner for the year 1883, Executive Documents, 2nd Sessions, 47th Congress, 1882-83, No. 1, Part 5, Vol. 2, at page 471, the said Commissioner reported:

> "Oregon & California Railroad Company chartered March 17, 1870, and opened for business December 1st, 1872. The Company is now successor, by consolidation, of the Oregon Central Railroad Company, purchased September 1st, 1880, chartered July 25, 1866, and owns the land grant of said Company; the Western Oregon Railroad Company, purchased October 9, 1880; and the Albany & Lebanon Railroad Company, leased December 5, 1880, at a rental of $1 for each period of six months, this Company to pay taxes and keep up repairs. The several lines are operated in two Divisions, that is:
>
> | *East Side Division*: | *Miles.* |
> |---|---|
> | Main Line. Portland to Roseburg | 198 |
> | Lebanon Branch, Albany Junction to Lebanon | 11.5 |

West Side Division:

Portland to Corvallis 97

Total, exclusive of side-tracks....306.5

"The estimated grant of land of these combined companies amounts to 3,940,000 acres, of which 322,062.40 acres have been patented to June 30, 1882. Of this latter amount, lands had been sold up to December 31, 1881—date of last report—for an amount aggregating $309,486.15, at an average price of $2.25 per acre. The minimum price now asked is 25 cents, the maximum $10 per acre."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1886, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 2nd Session, 49th Congress, 1886-87, Vol. 9, page 596, occurs the following, relating to the defendant, Oregon & California Railroad Company:

"The Company has received by patent from the Government 823,063.68 acres of land, of which 237,773.78 acres have been sold. It has received from sales $384,889.72, and there are outstanding on time sales $385,647.67."—

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $3.239 per

acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1887, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 1st Session, 50th Congress, 1887-88, Vol. 11, page 1173, occurs the following, relating to the defendant, Oregon & California Railroad Company:

> "The Company has received by patent from the Government 323,068.68 acres of land, of which 242,516.35 acres have been sold. It has received from sales $407,876.54, and there are outstanding on time sales $377,545.36,"

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $3.24 per acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1888, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 2nd Session, 50th Congress, 1888-89, Vol. 12, page 454, occurs the following, relating to the defendant Oregon & California Railroad Company:

> "The Company has received by patent from the Government 323,068.68 acres of land, of which 254,964.08 have been sold. It has received from sales $458,836.01, and there are outstanding on time

sales $363,638.55, of which $91,313.69 is interest."

showing that the average price per acre of the land so sold was in excess of $2.50 per acre, to wit, $2.868 per acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1889, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 1889-90, Vol. 11, pages 512-513, occurs the following, relating to the defendant Oregon & California Railroad Company:

> "The Company has received by patent from the Government 323,068.68 acres of land, of which 269,442.88 have been sold. It has received from sales of land $541,650.33, and there are outstanding on account of time sales $394,226.58, of which the sum of $98,992.42 is interest."
>
> "The average price per acre for all sales to date was $2.64, while the average price for sales made during the year was $3.96."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1890, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 2nd Session, 51st Congress, 1890-91, Vol. 13, page 174, occurs the following,

relating to the defendant Oregon & California Railroad Company:

> "The Company reports that to June 30, 1890, there had been patented to it by the United States, 323,068.68 acres of land, and that 225,170.57 acres had been sold, the total cash receipts from all sales amounting to $626,520.03. There remained outstanding on account of time sales the sum of $516,-287.66. Average price per acre for all sales during year was $6.32."

This defendant avers that the said defendant Oregon & California Railroad Company reported the total number of acres of land disposed of prior to and including the year 1889 as 269,442.88, and that in its report for the year 1890 it stated the total number of acres disposed of, to the date thereof, as 225,170.57, a less total than that reported for the previous year, which this defendant avers is explained by the fact that in the said Railroad Company's report for the year 1890 it deducted, from the total number of acres reported in 1889, 82,279.12 acres, which it had previously sold by contract, but which contracts had in the meantime been surrendered by the purchasers and cancelled by the said Railroad Company.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1891, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 1st Session, 52nd Congress, 1891-

92, Vol. 16, page 192, occurs the following, relating to the defendant Oregon & California Railroad Company:

> "The Company reports that to June 30, 1891, there had been patented to it by the United States 323,068.68 acres of land, and that there had been sold 298,261.45 acres, the total cash receipts from all sales amounting to $707,556.88. There remained outstanding on account of time sales $449,996.40 principal and $153,031.65 interest, making a total of $603,028.05."

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $3.88 per acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1892, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 2nd Session, 52nd Congress, 1892-93, Vol. 14, page 188, occurs the following, relating to the defendant Oregon & California Railroad Company:

> "The Company's report shows that to June 30, 1892, there had been patented to it by the United States 323,068.68 acres, and that there had been sold 340,475.85 acres, the total cash receipts from all sales amounting to the sum of $785,586.79. There remained outstanding on account of time sales

> $638,055.08 principal and $194,903.80 interest, making a total of $832,958.98 on this account,"

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $4.19 per acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1893, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 2nd Session, 53rd Congress, 1893-94, Vol. 15, page 180, occurs the following, relating to the defendant Oregon & California Railroad Company:

> "The report of the Company shows that to June 30, 1893, the total number of acres received by patent was 323,068.68; that the total cash receipts from all sales had amounted to $859,477.34; and that there remained outstanding on account of time sales the sum of $861,923.64, principal and interest.
>
> "The receipts of the land department for the year were $73,940.55, and the expenses $75,570.07."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year 1894, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Executive Documents, 3rd Session, 53rd Congress, 1894-95, Vol. 16, page 143, occurs the following,

relating to the defendant Oregon & California Railroad Company:

"The Company submits the following report on June 30, 1894, of the operations of its Land Department to date:

	Acres.	
Acquired by United States patent		615,555.58
	Acres.	
Disposed of for cash	201.93	
Disposed of on time contracts	17,299.27	
		17,501.20
Balance owned by Company		598,054.38

"The Company also reports that the total cash receipts from all sales to date amounted to $909,008.59, and that there remained outstanding on account of time sales the sum of $891,905.60, principal and interest. The receipts during the year were $49,525.25, and the expenses $55,449.08."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1895, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 16, Nov. 5, page 156, occurs the following, relating to the defendant Oregon & California Railroad Company:

"The records of the General Land Office show

that to June 30, 1895, there had been patented to the Company 1,162,067.28 acres. * * *

"The Company submitted the following report on June 30, 1895, of the operations of its Land Department to date:

	Acres.
Acquired by United States patent..	1,163,073.56
Disposed of for cash and on time contracts	381,402.78
Difference, unaccounted for	781,670.78

"The Company also reports that the total cash receipts from all sales to date had amounted to $946,952.81, and that there remained outstanding on account of time sales the sum of $700,064.64, principal and interest.

"The receipts during the year were $37,747.22, and the expenses $59,294.90.

"The average price per acre for all sales to date had been $3.40, and the average price now asked is $3.00."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1896, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 14, Misc. 1896, 54th Congress, 2nd Session, 1896-97, page 166, occurs the fol-

lowing, relating to the defendant Oregon & California Railroad Company:

"The records of the General Land Office show that to June 30, 1896, there had been patented to the Company 2,180,366.07 acres.

"The Company reports that to June 30, 1896, it had received by patent from the United States, 2,397,717.17 acres of land, and there had been disposed of for cash and on time contracts 387,119.43 acres, leaving the balance owned by the Company, 2,010,657.74 acres.

"The total cash receipts from all sales to date amounted to $986,605.69, and there remained outstanding on account of time sales, principal and interest, $875,146.35.

"The report of the operations of the Land Department during the year shows a deficit of $81,-770.68.

"Average price per acre received was $3.57.

"Average price per acre now asked, $3.00."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1897, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 14, 2nd Session, 55th Congress, 1897-98, page 137, occurs the following, relating to the defendant Oregon & California Railroad Company:

"The records of the General Land Office show that to June 30, 1897, there had been patented to the Company, 2,287,131.66 acres. * * *

"The Company reports that to June 30, 1897, it had received by United States patent 2,503,754.59 acres of land, and had disposed of for cash and on time contracts (not including cancelled contracts) 382,443.44 acres.

"The total cash receipts from all sales to date amounted to $1,020,329.75, and there were outstanding on account of time sales $775,881.34.

"The receipts for the year were $33,724.06, and the expenses $60,012.11.

"The average price per acre now asked for the land is $3.00."

The foregoing shows that the average price per acre on sales made prior to the said report was $4.696.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1898, transmitted by the latter to the President, and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 16, 55th Congress, 3rd Session, 1898-99, page 152, occurs the following, relating to the defendant Oregon & California Railroad Company:

"The Company reports that to June 30, 1898, it had received by United States patent 2,561,685.30 acres of land, and had disposed of, for cash and on

time contracts (not including cancelled contracts), 504,606.53 acres.

"The total cash receipts from all sales to date amounted to $1,069,513.25, and there were outstanding on account of time sales $792,990.88.

"The receipts for the year were $49,183.50, and the expenses $73,183.06.

"The average price per acre now asked for land is $3.00."

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $3.69 per acre.

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1899, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 20, 56th Congress, 1st Session, 1899-1900, page 181, occurs the following, relating to the defendant Oregon & California Railroad Company:

"The Company reports that to June 30, 1899, it had received by United States patent 2,659,800.56 acres of land.

"The total cash receipts from all sales to date amounted to $1,234,225.97, and there were outstanding on account of time sales $734,957.16.

"The receipts for the year were $164,712.72, and the expenses $77,138.22.

"The average price per acre now asked for land is $3.00."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1900, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 29, 56th Congress, 2nd Session, 1900-01, page 185, occurs the following, relating to the defendant Oregon & California Railroad Company:

"The Company reports that to June 30, 1900, it had received by United States patent 2,787,363.55 acres of land.

"The total cash receipts from all sales to date amounted to $1,542,728.71, and there were outstanding on account of time sales $1,189,918.71.

"The receipts for the year were $308,502.74, and the expenses $91,932.33.

"The average price per acre now asked for land is $3.00."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1901, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 25, 57th Congress, 1st Session, 1901-02, page 218, occurs the following, re-

lating to the defendant Oregon & California Railroad Company:

> "The Company reports that to June 30, 1901, it had received by United States patent 2,795,567.64 acres of land.
>
> "The total cash receipts from all sales to date amounted to $1,852,756.51, and there were outstanding on account of time sales, $1,808,935.66.
>
> "The receipts for the year were $310,027.80, and the expenses $72,713.77.
>
> "The average price per acre now asked for land is 3.50."

In the report of said Commissioner of Railroads to the Secretary of the Interior for the year ending June 30, 1893, transmitted by the latter to the President and by the President transmitted to the Congress, there referred to the appropriate Committee of each House, and printed in House Documents, Vol. 21, 58th Congress, 2nd Session, page 159, occurs the following relating to the defendant, Oregon & California Railroad Company:

> "The Company reports that to June 30, 1903, it had received by United States patent 2,928,809.55 acres of land, and had disposed of, for cash and on time contracts, 1,032,591.47 acres.
>
> "The total cash receipts from all sales to above date amounted to $2,735,532.88, and there were outstanding on account of time sales, principal and interest, $2,800,637.57.

"The receipts from this source for the year amounted to $437,471.63, and the expenses to $105,-936.96.

"The average price per acre now asked for land is $4.78."

showing that the average price per acre of the land so sold was in excess of $2.50 an acre, to wit, $4.79 per acre.

This defendant further avers that during the years beginning December 31, 1878, and ending December 31, 1903, the said Commissioner of Railroads appended to said reports from the defendant Oregon & California Railroad Company to the Secretary of the Interior, except the reports for the years 1886-87, 1896-97, 1897-98 and 1898-99, copies of the said Acts of July 25, 1866, and April 10, 1869, and during some of said years, in addition, appended, to his said reports a copy of the Act of August 25, 1868, and a copy of the Act of May 4, 1870, which said reports and appendices were transmitted, as aforesaid, by said Secretary of the Interior to the President, and by the latter transmitted to the two Houses of Congress, by each of which the same were printed and in each of which the same were referred to the appropriate Committee.

This defendant further avers that, notwithstanding the knowledge of the administrative officers of the Government and of the Congress of the action of the said defendant Oregon & California Railroad Company in selling, from the beginning, said lands in tracts larger than 160 acres and at a price higher than $2.50 per acre, as

hereinbefore set forth, the complainant continued to issue patents to said Company for said lands, as follows:

1871	152,764.67	acres
1872	69,061.63	"
1876	14,629.67	"
1877	86,622.71	"
1893	292,486.90	"
1894	382,352.95	"
1895	558,718.40	"
1896	709,729.99	"
1897	37,231.90	"
1898	70,014.02	"
1899	151,061.30	"
1900	42,841.33	"
1901	60,466.60	"
1902	36,166.20	"
1903	36,438.08	"
1904	39,339.08	"
1905	25,838.67	"
1906	20	"
1909	161.75	"
In all	2,765,948.85	"

All the foregoing being in the East Side Grant.
And in the West Side Grant as follows:

1895	93,079	acres
1896	32,288.24	"
1897	2,388	"
1898	72.75	"

1899.....	520	"
1903.....	270.14	"
Total	128,618.13	"

This defendant further avers that in the said patents conveying to said defendant, Oregon & California Railroad Company, 2,277,144.52 acres of land, no reference was made to said Act of April 10, 1869, and that only in the patents issued in 1872, 1876, 1877, 1893 and 1909, the latter being after the filing of the Bill herein and covering 161.75 acres only, was any reference made to the said Act of April 10, 1869.

This defendant further avers that, from the time of the acquisition thereof, the said defendant, Oregon & California Railroad Company, and its predecessor companies in ownership had mortgaged the said lands, in expectancy, to secure the money with which to construct the said railways; that the mortgage executed to this defendant, Union Trust Company of New York, by the defendant Oregon & California Railroad Company, in 1887, upon the said railways, constructed and to be constructed, and upon the said lands, earned and to be earned by the completion thereof, was executed in good faith and in reliance upon the title of said mortgagor to the property in said instrument described and conveyed; and the bonds secured thereby were purchased in good faith and in reliance upon the validity of said mortgage as a lien upon the property covered thereby; and that the proceeds thereof were used, and were necessary to be used, in the completion and equipment of the railways

covered thereby, as required by the said Acts of Congress; that of the lands which have been patented by the complainant to the defendant, Oregon & California Railroad Company, there had been sold prior to the filing of the Bill herein, in good faith and for valuable consideration, by said Railroad Company, over a million acres, in small tracts and in larger tracts, at prices averaging $4.73 per acre, to various purchasers to the number of several thousand, who bought and paid for the same in good faith; and that during the thirty years which preceded the filing of the Bill herein, notwithstanding that the Executive and Legislative Departments of the Government were fully advised, annually, that the defendant, Oregon & California Railroad Company, was selling said lands in quantities exceeding 160 acres and at prices exceeding $2.50 per acre, no question was ever raised by the complainant, or by any officer of the Government, until the filing of the Bill herein, in respect of or in anywise challenging the correctness of the contemporaneous and practical construction which had been placed upon said Act of Congress of April 10, 1869, by the defendant Oregon & California Railroad Company and the complainant itself, continuing, as aforesaid, from 1878 to the filing of the Bill herein in 1908.

XXII.

This defendant, further answering the bill, alleges upon information and belief, that it was a matter of great importance to the complainant to have the said railroads provided for by the said Act of July 25th,

1866, constructed, and that the said complainant expected to receive and has received great benefits as a result of such construction; that in order to raise funds with which to complete the building of said railroad, the said Oregon & California Railroad Company, by an instrument dated July 1st, 1887, a copy of which is annexed to the bill of complaint and marked "Exhibit H," conveyed to this defendant all the lands then unsold embraced in the grants of this complainant to it; that the said conveyance was made to this defendant as a trustee only for the benefit of the holders of the bonds secured by said instrument who advanced their money to aid in the construction of the said railroads for the benefit of the complainant.

This defendant further alleges, upon information and belief, that for many years prior to the making of the said conveyance or deed of trust the said railroad had been openly and habitually selling lands granted to it by the complainant whenever possible in amounts greater than one quarter-section and for more than $2.50 per acre; that conveyances of the said lands had been made from time to time purporting to convey the said lands without any such conditions as are now asserted by this complainant, and that said conveyances were of public record in many places; that the said mortgage deed made to this defendant as aforesaid purported to convey these lands for the benefit of bondholders and without reference to any conditions such as are now asserted by the complainant and that said conveyance was of public record in many places; that the said lands continued to

be sold by the defendant Oregon & California Railroad Company in quantities of more than one quarter-section and for prices of more than $2.50 per acre whenever possible, without any objection ever being made by the complainant, although the facts were to it well known; that the holders of the bonds secured by the said instrument have advanced their money to aid in the construction of the said Oregon & California Railroad and for the benefit of the complainant as aforesaid relying upon the grants of lands made by the complainant, without any knowledge of or any reason to believe that there was any possibility of, such claims as are now asserted by the complainant, but on the cotrary, having reason to believe from the conduct of the complainant for many years that there were no such claims to be asserted; and this defendant, as trustee under the said instrument for the benefit of the said bondholders, therefore, avers that under the said instrument it is entitled to a lien upon all the lands embraced in the said land grant which had not been sold prior to July 1, 1887, and the proceeds thereof to the extent of $20,000,000.

This defendant denies that its right, title, interest and lien are subject to forfeiture or to any other of the several rights, equities and remedies asserted by the complainant in its bill of complaint. On the contrary, it avers that the right of forfeiture now claimed by the complainant is unjust and inequitable and would result on the one hand in depriving these bondholders of an important part of the security upon which they have advanced money with the full knowledge of and for the

benefit of the complainant; and would result on the other hand in enabling this complainant to regain and to re-enjoy the lands which it granted long ago to the defendant Oregon & California Railroad Company in consideration of services and advantages which have already been rendered to, and procured for, the complainant.

This defendant further alleges that it has acted in accordance with the terms and trusts of said trust deed, dated July 1, 1887, and that the moneys received by it from the defendant Oregon & California Railroad Company upon the sale of lands embraced in the said land grants have been applied by it (after the deduction of the heavy expenses of maintaining and selling the said lands and other expenses of the trust) in the purchase of bonds secured by the said instrument; in other words, the moneys received from the borrower have been applied by the Trustee for the benefit of the lenders; and for this reason, among others, this defendant asserts that even if the complainant is entitled to an accounting from the defendant Oregon & California Railroad Company for the proceeds of the sales of said granted lands, it nevertheless is not entitled to call upon this defendant to account.

Amendment allowed by order of April 28, 1913.

XXIIA.

(And this defendant avers upon information and belief that during all the times mentioned in the Bill of

Complaint, and particularly from and after the 20th day of May, 1872, down to April 30, 1908, the United States well knew that the Oregon and California Railroad Company, and its predecessors in interest, had continuously and uniformly claimed to own said land grants in fee simple without any condition as to the sale of said lands, and as earned by construction of said roads, and had sold, mortgaged and conveyed the same to secure funds for the construction of said roads, and to refund said indebtedness for said construction funds, by the execution of certain of the mortgages described in said Bill of Complaint, and other mortgages, and the negotiation and sale of bonds issued thereunder, and that the said present outstanding stock of the said Oregon and California Railroad Company was issued and delivered to the owners and holders of the mortgage bonds issued and sold under said mortgage of April 15, 1870, and in satisfaction of said mortgages, and that the proceeds of said bonds were used in the construction of the first 198 miles of the East Side road and of said 47½ miles of said West Side road, and the United States during all said time from May 20, 1872, down to April 30, 1908, well knew the way and manner in which said Oregon and California Railroad Company continuously and uniformly was administering and had administered said land grants, and was selling and had sold said land granted by said Acts of Congress, and during all said times well knew that said company was selling and had sold said lands so sold by it without any particular regard to the alleged limitations or restrictions of said Act of April

10, 1869, or said Section 4 of said Act of May 4, 1870, except insofar as the same may be construed to apply to actual settlers upon any of said lands prior to completion of the separate sections of said roads and the acceptance thereof by the United States, as provided by said Act of July 25, 1866, and said Act of May 4, 1870, and the direction of the President to issue patents for the lands so earned, and that notwithstanding such knowledge during all said time between May 20, 1872, and April 30, 1908, of all said matters, and of all the matters and things allowed in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, and notwithstanding such knowledge during all said time of all the matters and things alleged in the amended answer of the defendant, as heretofore filed and amended, the United States, from said May 20, 1872, to April 30, 1908, asserted no claim of any breach, made no objection to the execution of said deeds, mortgages or conveyances, or to any action of the company in respect to the administration of said grants, or either of them, or the sale of any lands thereby granted, and in no wise asserted any claim that the company was at any time misconstruing said acts, or either thereof, or in any way was violating or had violated said Act of April 10, 1867, or said Section 4 of said Act of May 4, 1870, but on the contrary the United States permitted and allowed the company to mortgage said lands to secure said construction funds so borrowed and used, as aforesaid, and permitted and allowed the company to expend large sums

of money in surveying fees and other fees paid to the United States, and to expend large sums of money in taxes upon said lands, and in advertising said lands for sale, and in examining, cruising and grading said lands as timber lands, and also large sums of money in completing said railroad in the first instance from Portland to Roseburg, Oregon, and next in extending the same from Roseburg to Ashland, Oregon, and finally in completing the same to the Oregon and California state line, and also in completing said railroad from Portland to McMinnville, Oregon, and during all said times the United States exacted from said company, and said company furnished the free transportation of the troops and property of the United States, as required by said Act of July 25, 1866, at the cost and expense of said company, aggregating a sum in excess of $600,000.00; that relying upon the acquiesence and action of the United States, as aforesaid, the Oregon and California Railroad Company expended all said sums, as aforesaid, incurred all said liabilities, and so mortgaged, sold and conveyed said lands, claiming to own the same in fee simple without any condition; applied for, accepted and placed of record all the patents issued by the United States for such lands, and so sold and conveyed to purchasers such portions of said granted lands as alleged in said Bill of Complaint, and has applied the proceeds of said sales, and of all sales of said lands, to the redemption of said bonds so issued to secure said construction funds.

That on the 31st day of July, 1885, the Oregon and

California Railroad Company and Central Pacific Railroad Company, relying upon the said acquiesence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit No. 9 to the Stipulation as to the Facts on file herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on October 11, 1886, said Central Pacific Railroad Company, the Pacific Improvement Company, and the Southern Pacific Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as exhibit No. 1 to the Joint and Several Answer of the O. & C. R. R. Co. and Stephen T. Gage, defendants herein and which is made a part hereof, and to which reference is made as if the same were fully written herein; and on March 28, 1887, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, the London Bondholders' Committee, the Frankfort Bondholders' Committee, the Southern Pacific Company and the Union Trust Company, relying upon the said acquiescence and action of the United States, as aforesaid, executed and delivered the agreement of that date, identified as Exhibit "E" to the Bill of Complaint, and which is made a part hereof and to which reference is made as if the same were fully written herein, and thereafter the parties to all said agreements, relying upon the said acquiescence and action of the United States, as aforesaid, (consummated, carried out and performed said several agreements, and

in pursuance thereof, and in reliance upon said acquiescence and action of the United States, as aforesaid,) the said Oregon and California Railroad Company executed and delivered, on January 3, 1888, its said mortgage and trust deed of date July 1, 1887, to the Union Trust Company, and issued and delivered its bonds thereunder to the amount of $20,000,000.00, and said Southern Pacific Company, being the owner of all the stock of the Central Pacific Railroad Company, caused said Pacific Improvement Company and the Central Pacific Railroad Company to purchase the said stock of the Oregon and California Railroad Company for its benefit, and otherwise carried out said agreements, and then and there guaranteed to pay the principal and interest of all said bonds so issued and to be issued by said Oregon and California Railroad Company; that in reliance upon said acquiescence and action of the United States, as aforesaid, the Southern Pacific Company thereby purchased and became the owner of all said stock of the Oregon and California Railroad Company and assumed the debts and liabilities of the Oregon and California Railroad Company and caused said railroad to be constructed to the Oregon and California state line, and thereby guaranteed to pay all said bonds, principal and interest, and became the beneficial owner of all said granted lands then unsold, and but for said acquiescence and action of the United States, as aforesaid, said Southern Pacifc Company would not have purchased said stock nor assumed said debts and liabilities nor caused said road to be construct-

ed to completion nor guaranteed said bonds, principal or interest, and the Oregon and California Railroad Company would have been unable to sell or dispose of its railroad or said land grants, or either of them, or completed said railroad, as required by said Act of Congress, and its creditors would have been compelled to foreclose said existing mortage securing the then outstanding bonds and sell all said property, to the great injury and loss of said company and its creditors, and to the great injury and loss of the United States. That the United States, from July 31, 1885, up to April 30, 1908, and during all said time, well knew of the existence of all of said agreements, including the said mortgage of date July 1, 1887, and of the purpose and intention of all the parties thereto, and of all the matters and things hereinbefore set out, and notwithstanding such knowledge during all of said time from July 31, 1885, to April 30, 1908, and of all the matters and things alleged in the Bill of Complaint as pretended breaches of the provisions of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, asserted no claim of any breach, made no objection to the execution or performance of either of said contracts or of the execution of said mortgage of date July 1, 1887, or to any action of the Oregon and California Railroad Company in respect to the administration of said grants, or either of them, or the sale of the lands thereby granted, and in no wise asserted any claim that the company was at any time misconstruing said acts, or either of them, or was in any way violating or had violated said Act of

April 10, 1869, or said Section 4 of said Act of May 4, 1870.

That from time to time the United States caused to be enacted divers and various statutes affecting said Act of July 25, 1866, as amended April 10, 1869, and said Act of May 4, 1870, some of which are the Act of May 3, 1879 (20 Stat. 472) by which homestead settlers on the even sections within the limits of said grant, could enter 160 acres instead of 80 acres; the Timber and Stone Act of June 3, 1878 (20 Stat. 89) by which the lands of the United States in the even sections within the limits of the grant, could be purchased at $2.50 per acre, in quantities of 160 acres, without any settlement, by any citizens, or any person who had declared his intention to become a citizen of the United States; and the Act of March 3, 1891, (26 Stat. 1097) by which the pre-emption laws were repealed, and the Act of June 4, 1897, (30 Stat. 1136) by which lands owned by any one within forest reserves of the United States, could be reconveyed to the United States, and thereby exchanged for the even sections within the limits of said grants, without any settlement thereon; and the Act of February 10, 1909, (36 Stat. 639), and the Act of June 17, 1910, (36 Stat. 531), and the Act of June 6, 1912 (37 Stat. 123), all amending the Homestead Act of May 20, 1862, (12 Stat. 392); that said statutes and the due administration of the same, as applied to the character and class of lands involved in this suit, which are chiefly valuable for timber and are unfit for settlement, and all lands belonging to the company now unsold, have

prevented the company from further compliance with the provisions of said Act of April 10, 1869, or said Section 4 of said Act of May 4, 1870, than as alleged in the Bill of Complaint.

That on August 20, 1912, Congress passed an Act, Public No. 278, H. R. 22002, approved that date, entitled, "An Act supplementing the Joint Resolution of Congress, approved April 30, 1908, entitled, 'Joint Resolution instructing the Attorney General to institute certain proceedings, etc.,'" whereby the United States, in substance and effect, waived the alleged breaches of said Act of April 10, 1869, and Section 4 of said Act of May 4, 1870, as to all the lands described in the Bill of Complaint and now owned by the Oregon and California Railroad Company, and particularly as to all said lands sold to persons other than actual settlers, in quantities of 1000 acres or more, and aggregating about 400,000 acres, and particularly described in forty-five suits brought by the United States against said purchasers and these defendants in this court, to which said suits and the proceedings therein, reference is here made as if the same were fully written herein and made a part hereof, and whereby the United States has agreed to convey by patent all said lands to said so-called innocent purchasers in said suits for $2.50 per acre, and whereby the United States has so waived said alleged breaches and so agreed to sell and convey said lands because said lands are and were at the time of such sales so made by the company, unfit for settlement or cultivation and not adapted to entry or settlement under the settlement

laws of the United States or under said Act of April 10, 1869, or Section 4 of said Act of May 4, 1870, and because said lands are and were at the time of such sales, chiefly valuable for timber.

That but for the said acquiescence and action of the United States, as aforesaid, said Oregon and California Railroad Company would not have expended said sums, as aforesaid, or otherwise done as it has done, as aforesaid. And said bonds secured by said mortgage would not have been and could not have been sold, and said road could not have been completed.

And the defendant therefore says and alleges that by reason of all the matters, things and acts hereinbefore set out, and by reason of the matters and things in the premises, alleged in its Amended Answer, as heretofore amended and now herein amended, the United States has fully, effectually and finally exercised and waived any and all right it may have had at any time to claim or assert forfeiture of any lands of the said grants, and is and of right ought to be estopped from having or asserting any such or any claim of forfeiture.)

XXIII.

This defendant, further answering the bill, avers that all causes of action set forth in the bill are barred, as follows:

(a) By Section 3901 of Lord's Oregon Laws.

(b) By Section 8 of the Act of Congress approved March 3, 1891, entitled "An Act to amend Section 8 of an Act approved March 3, 1891, entitled 'An Act to

repeal Timber-culture laws, and for other purposes,'" published in Vol. XXVI, U. S. Statutes at Large, page 1093.

(c) By the first section of the Act of Congress approved March 2, 1896, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," published in Vol. XXIX, U. S. Statutes at Large, page 42.

(d) By acquiescence, and laches, of complainant.

XXIV.

This defendant, further answering the bill, avers that by reason of the matters, things and premises aforesaid, and by reason of the passage by Congress of the Act approved January 31, 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon," made part of this answer by reference to it as published in Vol. XXIII, U. S. Statutes at Large, page 296, and the passage by Congress of the Act approved September 29, 1890, entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," made part of this answer by reference to it as published in Vol. XXVI, U. S. Statutes at Large, page 46 and following, the United States fully and finally exercised and waived any and all right it may have had to claim or assert forfeiture of any lands of the said East Side grant or West Side grant, and is thereby estopped from having or asserting any such claim of forfeiture.

XXV.

This defendant, further answering said bill, avers that this Honorable Court, sitting as a court of equity, is without jurisdiction to enquire and determine herein whether the defendant Oregon & California Railroad Company or this defendant, or both of said defendants, have committed the alleged breach or breaches of condition subsequent, alleged by the bill to be annexed to said grants of land of July 25, 1866, and May 4, 1870, or either of them, and to decree, as prayed by said bill, the forfeiture to the United States of the said granted lands or any thereof, and, as incidental to any such decree of forfeiture, to require an accounting and payment to the complainant by the said Oregon & California Railroad Company, or by this defendant herein, or either of them, as prayed by said bill.

XXVI.

This defendant prays in all things the same benefit and advantage of this, its answer, as if it had pleaded or demurred to said bill of complaint.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the material matters in said bill according to its best knowledge, information and belief, prays that it may be hence dismissed, with its reasonable costs and charges most unjustly sustained.

UNION TRUST COMPANY OF NEW YORK,

By
J. B. V. THAYER,
Secretary.

JOHN M. GEARIN,
DOLPH, MALLORY, SIMON & GEARIN,
Attorneys for said defendant,
Union Trust Company.

JOHN C. SPOONER,
JOHN M. GEARIN,
Of Counsel for said defendant,
Union Trust Company.

(Endorsed) Amended Answer of Union Trust Co. of New York.
Filed January 2, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 1st day of November 1911 there was duly filed in said Court, a Replication to Answer of O. & C. R. R. Co., et al, in words and figures as follows, to wit:

[REPLICATION TO ANSWER OF O. & C. R. R. et al.]

[TITLE]

And now comes the United States of America, plaintiff in the above cause, and replying to the joint and several answer filed herein by the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, says that, saving and reserving all manner of exceptions to the insufficiency of the answer, for replication thereto doth say that its bill is true and sufficient as averred, and that it is ready to prove it, and that the answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage is untrue and insufficient.

Wherefore it prays relief as set forth in its original bill.

George W. Wickersham, Attorney General.
B. D. Townsend, of Counsel.

John McCourt
United States Attorney for the District of Oregon.

(Endorsed) Replication Filed November 1, 1911.
G. H. Marsh, Clerk.

And afterwards, to wit, on the 3rd day of November 1911 there was duly filed in said Court, a Replication to Answer of Union Trust Company, in words and figures as follows, to wit:

[REPLICATION TO ANSWER OF UNION TRUST COMPANY]

[TITLE]

And now comes the United States of America, plaintiff in the above cause, and replying to the answer filed herein by the defendant Union Trust Company, says that, saving and reserving all manner of exception to the insufficiency of the answer, for replication thereto doth say that its bill is true and sufficient as averred, and that it is ready to prove it, and that the answer of the defendant Union Trust Company is untrue and insufficient.

Wherefore it prays relief as set forth in its original bill.

George W. Wickersham, Attorney General,
B. D. Townsend, of Counsel.

John McCourt,
United States Attorney for the District of Oregon.

(Endorsed) Replication Filed November 3rd, 1911.
G. H. Marsh, Clerk.

And afterwards, to wit, on Thursday, the 8th day of February 1912, the same being the 80th judicial day of the regular November term of said Court; Present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER APPOINTING SPECIAL EXAMINER]

[TITLE]

On motion of B. D. Townsend, Special Assistant to the Attorney General, on behalf of the above named plaintiff, the defendants appearing by W. D. Fenton, one of their counsel, and consenting thereto, it is Ordered that the order appointing Margaret E. Fleming Special Examiner in the above entitled cause, be, and the same hereby is, extended and amended so as to include the taking and reporting of evidence at Washington, D. C., and at the City of San Francisco, California;

And afterwards, to wit, on Thursday, the 8th day of February 1912, the same being the 80th judicial day of the regular November term of said Court; Present, the Honorable Chas. E. Wolverton United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[ORDER ENLARGING TIME TO TAKE TESTIMONY]

[TITLE]

Now at this date this cause comes on to be heard by consent of parties;

It is ordered that the time of the plaintiff to take testimony herein be and the same is hereby enlarged to and including March 31, 1912, and the time of the defendants to take testimony herein be and the same is hereby enlarged to and including May 31, 1912, and that the time of the plaintiff to take testimony in rebuttal be and the same is hereby enlarged to and including June 30, 1912.

Chas. E. Wolverton, Judge.

And afterwards, to wit, on Monday, the 24th day of June, 1912, the same being the 95 judicial day of the regular March term of said Court; Present: the Honorable Chas. E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[ORDER ENLARGING TIME TO TAKE TESTIMONY]

[TITLE]

Now, at this day this cause comes on to be heard upon stipulation of parties to enlarge the time of the parties to take testimony herein, plaintiff appearing by John McCourt, United States Attorney, and the defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage appearing by Wm. D. Fenton, one of their attorneys, and the Union Trust Company appearing by John M. Gearing, one of its attorneys.

Whereupon it is Ordered that the time of the United States to take testimony herein be and the same is hereby enlarged to including July 31, 1912, and that the time of the said defendants be and the same is hereby enlarged to and including September 15, 1912, and that the time of the plaintiff to take testimony in rebuttal is hereby enlarged to and including October 1, 1912.

Chas. E. Wolverton, Judge.

And afterwards, to wit, on the 1st day of July 1913, there was duly filed in said Court, a Motion in words and figures as follows, to wit:

[MOTION TO DISMISS PETITION AND BILL IN INTERVENTION]

[TITLE]

Now comes the complainant, the United States of America, and moves that the petition and bill in intervention filed herein, by leave of Court, on March 1, 1909, by and on behalf of B. W. Nunnally, and certain other persons therein named, be dismissed, for the reason and upon the ground that said petition and bill in intervention do not state any cause or matter of equity entitling said B. W. Nunnally, or any other person or persons in whose behalf it purports to have been filed herein, to the relief therein prayed, or any relief whatsoever, against this complainant, or otherwise.

Dated June 9, 1913.

B. D. TOWNSEND,

Special Assistant to the Attorney General.

(Endorsed) Motion to Dismiss Bill in Intervention filed July 1, 1913.

A. M. Cannon, Clerk.

And afterwards, to wit, on the 1st day of July 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[ORDER SUSTAINING MOTION OF COMPLAINANT TO DISMISS BILL IN INTERVENTION]

[TITLE]

This cause having duly come on to be heard at this term, upon the complainant's motion that the petition and bill in intervention of B. W. Nunnally, et al, be dismissed, for want of equity, and the court being fully advised in the premises, upon consideration thereof;

It is Ordered, that said petition and bill in intervention be and the same hereby is dismisesd for want of equity.

Dated July 1, 1913.

Chas. E. Wolverton, District Judge.

(Endorsed) Order Dismissing Cross Complaint Filed July 1, 1913.

A. M. Cannon, Clerk.

And afterwards, to-wit, on the 1st day of July 1913, there was duly Filed in said Court, a Motion in words and figures as follows, to wit:

[MOTION TO DISMISS CROSS COMPLAINT]

[TITLE]

Now comes the complainant, the United States of America, and moves that the cross-complaint filed herein, by leave of Court on January 15, 1909, by and on behalf of John L. Snyder and certain other persons therein named, be dismissed, for the reason and upon the ground that said cross-complaint does not state any cause or matter of equity entitling said John L. Snyder, or any other person or persons in whose behalf it purports to have been filed herein, to the relief therein prayed, or any relief whatsoever, against this complainant, or otherwise.

Dated June 9, 1913.

B. D. TOWNSEND,
Special Assistant to the Attorney General.

(Endorsed) Motion to Dismiss Cross Complaint Filed July 1, 1913.

A. M. Cannon, Clerk.

And afterwards, to wit, on the 1st day of July 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[ORDER SUSTAINING COMPLAINANT'S MOTION TO DISMISS CROSS-COMPLAINT]

[TITLE]

This cause having duly come on to be heard at this term, upon the complainant's motion that the cross-complaint of John L. Snyder, et al., be dismissed, for want of equity, and the court being fully advised in the premises, upon consideration thereof;

It is hereby Ordered, that said cross-complaint be and the same hereby is dismissed for want of equity.

Dated July 1, 1913.

CHAS. E. WOLVERTON,
District Judge.

(Endorsed) Order Dismissing Cross-Complaint Filed July 1, 1913.
A. M. Cannon, Clerk.

And afterwards, to wit, on the 23rd day of June 1913, there was duly filed in said Court, a Motion in words and figures as follows, to wit:

[MOTION OF UNION TRUST CO. TO DISMISS BILL IN INTERVENTION]

[TITLE]

The motion of the defendant, Union Trust Company, individually and as trustee, to dismiss the bill in intervention filed herein on the 2nd day of March, 1909, purporting to be the bill in intervention of B. W. Nunally and about 7 others.

This defendant, Union Trust Company, individually and as trustee, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill in intervention to be true in such manner or form as the same are therein set forth and alleged, moves to dismiss the said bill in intervention and the whole thereof, and for grounds of said motion shows:

1st. That the said bill in intervention does not set forth or show any matter, equity or cause entitling the said B. W. Nunally or any person or person therein named as an intervenor or intervenors to

(a) The relief prayed for in the said bill in intervention, or

(b) Any relief whatsoever.

2nd. The said bill in intervention does not set forth or show any matter, equity or cause entitling the said B. W. Nunally or any person or persons therein named as an intervenor or as intervenors to

(a) The discovery prayed for in the said bill in intervention, or

(b) Any discovery whatsoever.

3rd. As against this defendant the subject matter of the said bill in intervention is without any equity whatsoever.

Wherefore this defendant prays the judgment of this honorable court whether it shall make any further or other answer to the said bill in intervention or to any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

Dolph Mallory Simon & Gearin,
Attorneys for the said Defendant.

United States of America,
District of Oregon, } ss.
County of Multnomah.

We do hereby certify that the foregoing motion is not interposed for delay and in our opinion the same is well founded in point of law.

Dolph Mallory Simon & Gearin,
Attorneys for the said Defendant.

(Endorsed) Motion of Union Trust Co. to Dismiss Bill in Intervention Filed June 23, 1913.

A. M. Cannon, Clerk.

And afterwards, to wit, on the 25 day of June 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[ORDER SUSTAINING MOTION OF UNION TRUST CO. TO DISMISS BILL IN INTERVENTION]

[TITLE]

This cause coming on regularly to be heard at this March 1913 term of the above entitled court, upon the motion of Union Trust Company, individually and as trustee, defendant above named, to dismiss the bill in intervention filed herein on the 2nd day of March, 1909, purporting to be the bill in intervention of B. W. Nunally and about 7 others; and the court being fully advised in the premises,

It is hereby Ordered that said motion to dismiss the said bill in intervention be and the same hereby is sustained for want of equity in said bill.

Done in open court this 25 day of June, 1913.

Chas. E. Wolverton, District Judge.

(Endorsed) Order sustaining motion of Union Trust Co. to Dismiss Bill in Intervention Filed June 25, 1913.

A. M. Cannon, Clerk.

And afterwards, to wit, on the 1st day of July 1918, there was duly filed in said Court, a Motion in words and figures as follows, to wit:

[MOTION OF O. & C. R. R. CO., et al., TO DISMISS CROSS-COMPLAINTS AND BILLS IN INTERVENTION]

[TITLE]

Come now Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, defendants above named, by their solicitors and attorneys; and Union Trust Company, individually and as trustee, defendant above named, by its solicitors and attorneys, and show to the court that heretofore the above named defendants and each of them filed in the above entitled court in the above entitled cause, their demurrers to, or motions to dismiss, each and all of the cross complaints and bills in intervention filed in the above entitled cause; and that heretofore each and all of the said demurrers and motions were sustained, and each and all of the cross complainants and intervenors have heretofore elected to stand upon their respective cross complaints and bills in intervention filed herein, and said complainants and intervenors and each of them have waived their right to and decline to plead further in the above entitled cause,

Wherefore, the said defendants, and each of them, move the above entitled court for a judgment and decree

in the above entitled cause, dismissing each of the said cross complainants and bills in intervention therein. This motion is based upon all of the records, pleadings and files in the above entitled cause.

PETER F. DUNNE,
WM. D. FENTON, and
JAMES E. FENTON,

Solicitors and Attorneys for Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee. Defendants.

JNO. M. GEARIN,

Of Solicitors and Attorneys for Union Trust Company, individually and as trustee. Defendant.

WM. F. HERRIN,
Of Counsel.

(Endorsed) Motion for a Judgment and Decree of Dismissal of Cross Complaints and Bills in Intervention. Filed July 1, 1913.

A. M. Cannon, Clerk.

And afterwards, to wit, on the 10th day of November 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[ORDER SUSTAINING MOTION OF O. & C. R. R. CO., et al., TO DISMISS CROSS COMPLAINTS AND BILLS IN INTERVENTION]

[TITLE]

This cause coming on to be heard upon motion of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, for an order and decree in the above entitled cause dismissing each of the said cross complaints and bills of intervention therein,

It is Ordered that the said motion be and the same is hereby sustained and that the cross complaints of John L. Snyder and others and the bills of intervention of William F. Slaughter and others, and each and all thereof, be and the same are and each is hereby dismissed, at the cost of the said defendants-cross complainants and the said intervenors.

And it appearing that this order has not been heretofore entered and should have been entered when made on July 1, 1913, it is Ordered that it be now entered as of July 1, 1913.

CHAS. E. WOLVERTON,
District Judge.

(Endorsed) Order Filed Nov. 1, 1913.
A. M. Cannon, Clerk,
By G. H. Marsh, Deputy.

And afterwards, to wit, on the 1st day of July, 1913, there was duly filed in said Court a Decree in words and figures as follows, to wit:

[DECREE]

[TITLE]

This cause, having come on to be heard at this term, upon the pleadings and the evidence, and having been argued and submitted to the court by counsel for the respective parties, and the court being fully advised in the premises; upon consideration thereof, it is hereby ordered, adjudged and decreed as follows, viz:

I.

That all of those certain lands and estates in lands hereinafter described have become, and now are, forfeited to, and the title to all of said lands and estates in lands has reverted to, and now is revested in the United States of America, and all of said lands and estates in lands now are the absolute property of the United States of America, free from any and all claim or claims of right, title, interest or lien, in, to or upon the same or any part thereof, by or in favor of the defendants, cross-complainants and intervenors herein or either or any of them, or any party or parties claiming under them or either or any of them.

II.

That the title of the United States of America to all of said lands and estates in lands be, and the same

hereby is, quieted and confirmed, and particularly as to any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross-complainants and intervenors herein, and each and every of them, and each and every party or parties claiming under them or either or any of them.

III.

That each and all of the defendants, cross-complainants and intervenors herein, and their respective officers and agents, be, and they and each of them hereby are, forever enjoined and restrained from in any manner claiming or asserting any right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof; and from in any manner selling, conveying, leasing or disposing of, any of said lands or estates in lands, or any interest therein; and from negotiating, executing or recording any document or instrument, and from doing any other act or thing, which shall in any manner affect or encumber the title to said lands or estates in lands, or any part thereof; and from going upon said lands or any part thereof; and from cutting, removing or in any manner using or injuring any of the timber or other natural products thereof; and from in any manner committing trespass upon said lands or any part thereof; and from in any manner using or interfering with said lands and estates in lands or any part thereof, or the title or possession thereof; and from contracting with, inviting, inducing,

or in any manner whatsoever permitting others to do any of the things aforesaid.

IV.

The lands and estates in lands affected hereby, and to which this judgment and decree shall apply and is intended to apply, consist of the following, viz.:

(a) All lands granted by that certain Act of Congress approved July 25, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," published in Volume 14 of the Statutes at Large of the United States, beginning at page 239, and the Acts of Congress amendatory thereof, or by that certain Act of Congress approved May 4, 1870, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon," published in Volume 16 of the Statutes at Large of the United States, beginning at page 94, which have been patented under said Acts of Congress respectively to the defendant Oregon and California Railroad Company, and which at the date of the institution of this suit were unsold lands then held and claimed by said defendant Oregon and California Railroad Company free from any right by purchase from said defendant Oregon and California Railroad Company, then existing in favor of any person or persons not a party to this suit. Schedule A of this judgment and decree contains a specific description, by governmental

sub-division according to the public survey, of all lands shown by the pleadings and evidence herein to be within the foregoing general description.

(It is not intended that the foregoing general description shall be limited by said specific description, or that the specific description set forth in said Schedule A shall be limited by said general description, but this judgment and decree shall apply, and is intended to apply, to each and all of the lands described in said Schedule A, and, in addition thereto, to any and all lands coming within the foregoing general description and not included in said Schdule A.)

(b) All of the lands granted to said defendant Oregon and California Railroad Company or its predecessor in interest by said Act of Congress approved July 25, 1866 (as amended), or by said Act of Congress approved May 4, 1870, and which have not heretofore been patented under said Acts of Congress, respectively, including all of said unpatented lands lying within the place or indemnity limits of said grants, respectively, whether surveyed or unsurveyed, and whether heretofore claimed or unclaimed by the filing of lists, selections, or otherwise, by the defendants, or either or any of them. And it appearing to the court that a large portion of the lands included and intended to be included within the foregoing general description are unsurveyed lands, a specific description of said lands is impracticable, and therefore no schedule describing said lands specifically is inserted in this judgment and de-

cree; but this judgment and decree shall have, and is intended to have, the same force and effect as if all of said unpatented lands were specifically described herein.

(c) All lands, easements, right, title, interest and estates in lands reserved or excepted in or by the terms of any and all contracts or deeds of conveyance executed by or on behalf of the defendant Oregon and California Railroad Company, in the sale of any lands granted by said Act of Congress approved July 25, 1866 (as amended), or by said Act of Congress approved May 4, 1870; including all such contracts and deeds of conveyance executed by the European and Oregon Land Company, or by Milton S. Latham, Faxon D. Atherton and William Norris, or by the trustees or trustees under any mortgage or deed of trust heretofore executed by the defendant Oregon and California Railroad Company, or either or any of said parties, either jointly with the defendant Oregon and California Railroad Company, or otherwise; it being intended hereby to include all reservations and exceptions made in or by the sale or conveyance of any of the lands granted by either of said Acts of Congress, respectively, and which at any time heretofore has accrued, or at any time hereafter shall accrue, in favor of the defendants herein or either or any of them. Provided, that this judgment and decree shall not apply, and is not intended to apply to reservations or exceptions of right-of-way for the main track of the railroad of the Oregon and California Railroad Company as actually constructed, established and in operation at the date of this decree; but this

judgment and decree shall apply and is intended to apply to all other exceptions and reservations described above, including reservations and exceptions of right-of-way other than the right-of-way incident to the main track of said railroad as actually constructed, established and in operation at the date of this decree as aforesaid.

(d) All lands granted by said Act of Congress approved July 25, 1866 (as amended) or by said Act of Congress approved May 4, 1870, which heretofore have been or now are subject to contracts of sale heretofore entered into by or on behalf of the defendant Oregon and California Railroad Company in the sale of any of said granted lands, and which (subject to the rights of the United States of America as adjudicated herein) heretofore have reverted or hereafter shall revert, to the defendants herein, or either or any of them, by reason of the forfeiture, cancellation or rescission of any of such contracts. All of the lands which have heretofore reverted as aforesaid to the defendants, or either or any of them, so far as disclosed by the pleadings and evidence herein, are included in Schedule A hereof. To the end that this decree may be certain and specific as to all lands which may hereafter revert as aforesaid to the defendants, or either or any of them, it is further ordered, adjudged and decreed that the defendants Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company, shall within sixty days from the date that any of said lands shall revert to said defendants, or either or any of them as aforesaid, execute and file with the clerk of this

court a deed of conveyance, in due and legal form, conveying and confirming unto the United States of America all of said lands, free from any and all claim or claims of right, title, interest or lien, in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them. And in the event that said defendants, or either or any of them, shall fail to execute and file any such deed or deeds of conveyance as aforesaid, this judgment and decree shall operate, and shall have the same force and effect, as such deed or deeds of conveyance.

(e) In addition to the lands and estates in lands hereinbefore described, this judgment and decree shall apply and is intended to apply to all right, title, interest, lien or estate in lands, vested or contingent, now asserted or which hereafter may be asserted by the defendants herein, or either or any of them, in or to any of the lands granted or intended to be granted to said defendant Oregon and California Railroad Company or its predecessor in interest by Section two of said Act of Congress approved July 25, 1866 (as amended) or by said Act of Congress approved May 4, 1870, and which is founded upon either of said grants or any patent issued thereunder, including all rights to patents by listing of lands situated within the place limits of either of said grants, or the selecting of lands situated within the indemnity limits of either of said grants, whether or not heretofore exercised or attempted to be exercised.

There is hereby excepted from the operation of this judgment and decree all right-of-way and station

grounds as established and in actual use at the date of this judgment and decree in the operation of the railroad of the Defendant Oregon and California Railroad Company. Schedule B of this judgment and decree contains a description of all lands included in the foregoing exception so far as said exception applies to any of the lands described in Schedule A of this judgment and decree.

V.

It appearing to the court that a portion of the lands affected and intended to be affected by this judgment and decree are situated in the State of Washington, and beyond the jurisdiction of this court, it is further ordered, adjudged and decreed that within sixty days from the date of this decree the defendants Oregon and California Railroad Company, Union Trust Company and Stephen T. Gage, shall execute and deliver to the Clerk of this Court a deed of conveyance, in due and legal form, conveying and confirming unto the United States of America all of said lands situated in the State of Washington, as aforesaid, free and clear from any and all claim or claims of right, title, interest or lien, in, to or upon the same, or any part thereof, in favor of the defendants herein, or either or any of them, which said lands are particularly described as follows, viz:

CLARKE COUNTY, WASHINGTON.

North of Base Line and West of Willamette Meridian.

Township Two, Range One.

Lot one of Section one.

North of Base Line and East of Willamette Meridian.

Township Three, Range One.

West half of southwest quarter of Section three; east half of northeast quarter, and northwest quarter of northeast quarter of Section twenty-one; lot one of Section thirty-one.

And in the event that said defendants, or either or any of them, shall fail to execute and file any such deed of conveyance as aforesaid, this judgment and decree shall operate, and shall have the same force and effect, as such deed of conveyance.

VI.

It appearing to the court that demurrers or motions to dismiss were heretofore interposed by the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, and that motions to dismiss were heretofore interposed by the complainant, the United States of America, as to each and all of the cross-complaints and bills and petitions in intervention heretofore filed herein, and that all of said demurrers and motions to dismiss have heretofore been sustained, and that each and all of said cross-complainants and intervenors have declined to further plead herein, it is further ordered, adjudged and decreed that each and all of said cross-complaints and bills and petitions in intervention be, and hereby are, dismissed for want of equity, with costs in favor of the prevailing parties, respectively, to be hereafter taxed.

VII.

The court being of the opinion that the complainant is not entitled to an accounting by any of the defendants in addition to the other relief granted to said complainant by the terms of this judgment and decree, it is further ordered, adjudged and decreed that the complainant's prayer for an accounting be, and the same hereby is, denied.

VIII.

It is further ordered, adjudged and decreed that the complainant, the United States of America, have and recover from the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, its lawful costs and disbursements herein, taxed at $....., and that execution issue therefor.

Schedule A and Schedule B, hereinbefore referred to, are as follows, viz:

SCHEDULE A

Schedule describing the lands granted by the Act of Congress approved July 25, 1866 (as amended) and by the Act of Congress approved May 4, 1870, which have heretofore been patented to the defendant Oregon and California Railroad Company, and which, at the date of the institution of this suit, were unsold lands still held and claimed by the defendant Oregon and California Railroad Company, being the lands hereinbefore referred to in Subdivision (a) of Paragraph IV of this judgment and decree.

In this schedule the lands are tabulated by counties, and are separately stated as to the grant under each of said Acts of Congress respectively.

LANDS GRANTED BY THE ACT OF JULY 25, 1866 (AS AMENDED).

TILLAMOOK COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Three, Range Six.

Southeast quarter of Section seven; all of Section nineteen; all of Section thirty-one.

Township Four, Range Six.

All of Section seven.

Township Three, Range Seven.

Southeast quarter of Section thirteen; southeast quarter of Section twenty-three; all of Section twenty-five; all of Section thirty-five.

(The patents for all of the foregoing lands described as situated in Township three South, Range seven West, recite that said lands were earned and patented under said Act of Congress approved May 4, 1870. The defendants contend, and it appears to the court, that all of said lands were earned, and should have been patented, under said Act of Congress approved July 25, 1866 (as amended). Therefore, for the purpose of accuracy, said lands are described in this schedule as lands granted by

said last named act. However, this judgment and decree shall apply, and is intended to apply, to all of said lands, whether earned under the former or the latter of said Acts of Congress.)

Township Four, Range Seven.

All of Section one; northeast quarter, and south half of Section three; east half of east half, southwest quarter of southeast quarter, and south half of southwest quarter of Section nine; all of Section eleven; all of Section thirteen; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section fifteen.

WASHINGTON COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township One, Range One.

West half of southeast quarter of southwest quarter of Section nineteen.

Township Three, Range One.

Northeast quarter of northwest quarter of Section three.

Township One, Range Two.

Lot one of Section thirty-one.

Township Two, Range Two.

Southwest quarter of southwest quarter of Section seventeen.

Township One, Range Three.

Lot one of Section seven; southwest quarter of southwest quarter of Section twenty-one; lot one of Section twenty-five.

Township Two, Range Three.

South half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section eleven; northwest quarter of southwest quarter, east half of southwest quarter, and southwest quarter of southeast quarter of Section thirteen.

Township One, Range Four.

Northwest quarter of northeast quarter, northwest quarter, and southeast quarter of Section fifteen.

Township One, Range Five.

Northeast quarter of northeast quarter, and east half of southeast quarter of Section one; northeast quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; southwest quarter of southwest quarter, and southeast quarter of northwest quarter of Section eleven; east half of northeast quarter, and southeast quarter of Section fifteen; all of Section thirty-three; northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-five.

MULTNOMAH COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township One, Range Four.

Southeast quarter of southwest quarter, and north half of southwest quarter of Section eleven; southwest quarter of northeast quarter of Section thirteen; west half of northeast quarter, southeast quarter of northeast quarter, and northeast quarter of northwest quarter of Section fifteen; south half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-three.

Township One, Range Five.

All of Section one; all of Section three; southeast quarter of northwest quarter, northwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section five; south half of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section seven; northeast quarter of northeast quarter, south half of north half, northwest quarter of northwest quarter, and south half of Section nine; all of Section eleven; all of Section thirteen; north half, and north half of southeast quarter of Section fifteen; north half of northeast quarter, and southwest quarter of northeast quarter of Section seventeen; south half of Section twenty-one; northeast quarter of northeast quarter, south half of northeast

quarter, northwest quarter, north half of southwest quarter, and northwest quarter of southeast quarter of Section twenty-three.

Township One, Range Six.

Northwest quarter of Section three; all of Section five; all of Section seven; all of Section nine; all of Section seventeen.

YAMHILL COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Three, Range Two.

Lot one of Section nineteen.

Township Two, Range Three.

Northeast quarter of northwest quarter, and southeast quarter of northeast quarter of Section twenty-three.

Township Five, Range Three.

Lots ten, eleven and twelve of Section three; lot one of Section nine; lot one of Section eleven; lot four of Section thirteen; lot six of Section twenty-one; northeast quarter of southeast quarter of Section twenty-three; lots seven and eight of Section twenty-five.

Township Two, Range Four.

Lot one of Section thirty-one.

Township Three, Range Four.

Lot one of Section nine; lot four of Section thirty-three.

Township Four, Range Four.

Lot one of Section thirteen.

Township Five, Range Four.

Lot two of Section nine; lot one of Section twenty-seven; lot one of Section thirty-five.

Township Two, Range Five.

North half of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section three; southeast quarter of northeast quarter, and south half of Section five; all of Section seven; northeast quarter of northeast quarter, west half of east half, west half, and southeast quarter of southeast quarter of Section nine; all of Section seventeen; northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, west half of southwest quarter, and northeast quarter of southeast quarter of Section nineteen; northwest quarter of northeast quarter, north half of northwest quarter, northwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-one; lot two, and north half of north half of southwest quarter of Section twenty-seven; northeast quarter of northeast quarter of Section twenty-nine; southeast quarter of northwest quarter, and south half of Section thirty-one.

Township Three, Range Five.

South half of southwest quarter of Section five;

northeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, and west half of southeast quarter of Section seven; south half of north half, and south half of Section nineteen; lots one and two of Section twenty-three; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section twenty-nine; southwest quarter, and west half of southeast quarter of Section thirty-one; west half of northeast quarter, east half of northwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-three; east half of northeast quarter of Section thirty-five.

Township Four, Range Five.

North half of Section seven; northwest quarter, north half of southwest quarter, and northwest quarter of southeast quarter of Section nineteen; lot four, and southwest quarter of northwest quarter of Section twenty-one.

Township Five, Range Five.

Lot seven (or northwest quarter of northwest quarter) of Section five; lot eight of Section fifteen; lot eight of Section twenty-five; lots one, five and six of Section thirty-one; lot one of Section thirty-five.

Township Two, Range Six.

North half, and north half of south half of Section thirteen; west half of northwest quarter of Section twen-

ty-five; southwest quarter and south half of southeast quarter of Section twenty-seven; south half, and east half of northeast quarter of Section thirty-three; all of Section thirty-five.

Township Three, Range Six.

All of Section one; north half of northwest quarter, southwest quarter of northwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section three; south half of Section five; west half of northwest quarter, north half of southwest quarter, and south half of southeast quarter of Section nine; north half of northeast quarter, southwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section eleven; all of Section thirteen; northwest quarter of northeast quarter, northwest quarter of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section fifteen; all of Section seventeen; west half of east half, and west half of Section twenty-one; east half, east half of northwest quarter, and southeast quarter of southwest quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-three; all of Section thirty-five.

Township Four, Range Six.

Northeast quarter, and north half of southeast quarter of Section one; north half, north half of southwest

quarter, and southeast quarter of Section three; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of Section five; all of Section nine; north half of northeast quarter of Section eleven; east half of northeast quarter of Section thirteen; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; northeast quarter of northeast quarter, south half of northeast quarter, and southeast quarter of southwest quarter of Section twenty-three; north half, west half of southwest quarter, and north half of southeast quarter of Section twenty-nine; east half of northeast quarter, southwest quarter of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and north half of south half of Section thirty-one; northwest quarter of northeast quarter, northwest quarter, and north half of southwest quarter of Section thirty-three; lots one and two of Section thirty-five.

Township Five, Range Six.

East half of northwest quarter of Section three.

Township Four, Range Seven.

Southeast quarter of northeast quarter, west half of northwest quarter, and south half of Section twenty-one; all of Section twenty-three; northeast quarter, east half of northwest quarter, and south half of Section twenty-five; all of Section twenty-seven; east half, north half of northwest quarter, and south half of southwest quarter

of Section twenty-nine; east half of Section thirty-one; south half of northeast quarter, north half of northwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-three; west half of east half, northwest quarter, and north half of southwest quarter of Section thirty-five.

Township Five, Range Seven.

East half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of Section three; north half of northwest quarter, and southeast quarter of Section nine; southwest quarter, and southwest quarter of southeast quarter of Section eleven; north half, north half of southeast quarter, southwest quarter, and southwest quarter of southeast quarter of Section fifteen; southwest quarter, and north half of southeast quarter of Section twenty-one; northeast quarter of northeast quarter, south half of northwest quarter, and lot one of Section twenty-seven; southwest quarter of Section thirty-three.

Township Six, Range Seven.

Northwest quarter of Section three.

CLACKAMAS COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township Three, Range One.

Lot one of Section nineteen.

Township Four, Range One.

Northwest quarter of northeast quarter of Section thirteen; Lot one of Section twenty-one.

Township Six, Range One.

Northeast quarter of northwest quarter, south half of northwest quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section thirteen.

Township One, Range Two.

Lot four of Section thirty-five.

Township Three, Range Two.

Lots one and two of Section three; lot one of Section seven; southeast quarter of southeast quarter of Section eleven.

Township Four, Range Two.

Southeast quarter of northwest quarter, and east half of southwest quarter of Section three; northwest quarter of southwest quarter of Section five; southeast quarter of northeast quarter, east half of southwest quarter, and northeast quarter of southeast quarter of Section eleven; northwest quarter of southeast quarter of Section thirteen; southwest quarter of northeast quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section fifteen; northeast quarter of northwest quarter of Section twenty-one; southwest quarter of northwest quarter of Section twenty-three; lots one and two of Section thirty-three.

Township Five, Range Two.

Lots one and two of Section three; lot two of Section five; south half of northeast quarter and lot two of Section thirteen; east half of northeast quarter, northeast quarter of southeast quarter, and lot two of Section twenty-five; south half of northeast quarter, east half of west half, and southeast quarter of Section thirty-five.

Township Six, Range Two.

Northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section one; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, east half of southwest quarter, and southeast quarter of Section five; north half, southwest quarter of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of Section seven; southwest quarter of northeast quarter, northwest quarter, and northwest quarter of southeast quarter of Section nine; southwest quarter of northeast quarter of Section eleven; east half of northeast quarter, southwest quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section thirteen; north half of northeast quarter, southwest quarter of northeast quarter, and northwest quarter of Section fifteen; northwest quarter of northeast quarter, north half of northwest quarter, and south half of northeast quarter of Section seventeen;

northwest quarter of northeast quarter, east half of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section nineteen; west half of northwest quarter of Section twenty-one; south half of northwest quarter of Section twenty-three; west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-five; southwest quarter of northeast quarter, northeast quarter of northwest quarter, and south half of northwest quarter of Section twenty-seven; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-nine; north half, and southeast quarter of Section thirty-three; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-five.

Township Seven, Range Two.

All of Section one; east half, east half of west half, and northwest quarter of northwest quarter of Section three; northeast quarter, and northeast quarter of southeast quarter of Section five; southeast quarter of northeast quarter, and east half of southeast quarter of Section nine; north half, southwest quarter, and east half of southeast quarter of Section eleven; all of Section thirteen; east half, east half of west half, and northwest quarter of northwest quarter of Section fifteen; all of Section twenty-three; north half, north half of southwest quar-

ter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-five.

Township One, Range Three.

Northeast quarter of northeast quarter of Section twenty-nine.

Township Two, Range Three.

Lot five of Section twenty-one; lots five, six and eight of Section twenty-three.

Township Three, Range Three.

Lots three and eleven of Section one; southwest quarter of northeast quarter, northwest quarter of southwest quarter, and lot two of Section seven; lot five of Section thirteen; lots one, two, three, six, seven and eight of Section fifteen; northwest quarter of northeast quarter, and northeast quarter of northwest quarter of Section nineteen; lots three, four, five, six, seven and eight of Section twenty-five; southeast quarter of northeast quarter, southwest quarter of southeast quarter, and lots one, two and three of Section twenty-seven; lot four, southeast quarter of southwest quarter, and west half of southeast quarter of Section twenty-nine; northwest quarter of Section thirty-three; north half of Section thirty-five.

Township Four, Range Three.

South half of northeast quarter, northwest quarter, north half of southwest quarter, lots one and two, and southeast quarter of Section one; southwest quarter of

southeast quarter of Section three; east half of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section five; southwest quarter of northeast quarter of Section nine; northeast quarter of northwest quarter, south half of northwest quarter, and southwest quarter of Section thirteen; southwest quarter of southwest quarter of Section nineteen; east half of northeast quarter, southwest quarter of northwest quarter, and north half of southwest quarter of Section twenty-one; northwest quarter of northwest quarter, south half of northwest quarter, and southwest quarter of Section twenty-three; northwest quarter of northeast quarter, south half of northeast quarter, and south half of northwest quarter of Section twenty-five; north half of northeast quarter, southwest quarter of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and northwest quarter of southeast quarter of Section twenty-seven; northeast quarter of northeast quarter, and south half of northeast quarter of Section twenty-nine; south half of northeast quarter, and southeast quarter of Section thirty-one; north half of northeast quarter, northwest quarter of southwest quarter, and north half of northwest quarter of Section thirty-three.

Township Five, Range Three.

South half of northeast quarter, and east half of southeast quarter of Section one; southwest quarter of northwest quarter, northwest quarter of southwest quar-

ter, and south half of southwest quarter of Section five; northeast quarter of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, lot three, north half of southeast quarter, and southeast quarter of southeast quarter of Section seven; east half, east half of northwest quarter, and east half of southwest quarter of Section eleven; north half, northwest quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section thirteen; north half of northwest quarter of Section seventeen; northeast quarter, and east half of northwest quarter of Section twenty-one; north half, east half of southwest quarter, and southeast quarter of Section twenty-three; lot one of Section thirty-one.

Township Six, Range Three.

Northeast quarter of northeast quarter of Section seven; south half of northwest quarter, and north half of southwest quarter of Section seventeen; east half of northeast quarter of Section nineteen.

Township Seven, Range Three.

North half, southwest quarter, and north half of southeast quarter of Section one; all of Section three; all of Section five; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section seven; all of Section nine; north half, southwest quarter, and northwest quarter of southeast quarter of Section eleven; all of Section thirteen; northeast quarter, south half of

southwest quarter, and southwest quarter of southeast quarter of Section fifteen; north half of northeast quarter, southwest quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half of Section twenty-seven.

Township One, Range Four.

Northwest quarter of northeast quarter, south half of northeast quarter, and northeast quarter of northwest quarter of Section twenty-five.

Township Two, Range Four.

West half of northeast quarter, northeast quarter of northwest quarter, and east half of southwest quarter of Section one; lot four of Section nineteen; south half of northeast quarter, and south half of south half of Section twenty-five; southwest quarter of northwest quarter of Section twenty-nine; north half of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-five.

Township Three, Range Four.

South half of south half of Section one; east half, east half of west half, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of Section eleven; north half of north half, southeast quarter of northeast quarter, and southeast quarter of northwest quarter of Section thirteen; southeast quarter of

Section twenty-five; east half of southeast quarter of Section twenty-seven; southeast quarter of southeast quarter of Section twenty-nine; lot five, and northwest quarter of northwest quarter of Section thirty-one; lot one of Section thirty-three.

Township Four, Range Four.

Northwest quarter of southwest quarter, south half of southwest quarter of Section one; lot one, northwest quarter of northeast quarter, and east half of northwest quarter of Section seven; lots seven, eight, nine, ten and eleven, and southeast quarter of southeast quarter of Section nine; southwest quarter of northeast quarter of Section eleven; east half of Section thirteen; south half of northeast quarter, lot four, and southeast quarter of southwest quarter (except two acres in southwest corner) of Section fifteen; lots one, four, five, seven and eight, southwest quarter of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section seventeen; southwest quarter, and southwest quarter of southeast quarter of Section twenty-one; northwest quarter of northeast quarter, east half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; southwest quarter of northeast quarter, northeast quarter of northwest quarter, northeast quarter of southwest quarter, northeast quarter of southeast quarter, and west half of southeast quarter of Section twenty-nine; northeast

quarter of northeast quarter, northeast quarter of northwest quarter, south half of southwest quarter, and east half of southeast quarter of Section thirty-one; all of Section thirty-three; west half of Section thirty-five.

Township Five, Range Four.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; north half, southwest quarter, and north half of southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; north half of Section twenty- one; all of Section twenty-three; all of Section twenty-five.

Township Six, Range Four.

All of Section one; all of Section three; all of Section nine; all of Section eleven; south half of Section thirty-three.

Township Seven, Range Four.

North half, southwest quarter, and northwest quarter of southeast quarter of Section five; south half of north half, and south half of Section seven; all of Section nine; north half, and north half of south half of Section fifteen; all of Section seventeen; all of Section nineteen; north half, and west half of southwest quarter of Section twenty-one; north half, and southwest quarter of Section twenty-nine.

Township Eight, Range Four.

East half, and lots one, two, three and four of Section seven.

Township One, Range Five.

North half of northeast quarter, and northwest quarter of Section twenty-five; northwest quarter of northeast quarter, northeast quarter of northwest quarter, and southwest quarter of southwest quarter of Section twenty-nine; south half of southwest quarter of Section thirty-three; south half of northeast quarter, and south half of Section thirty-five.

Township Two, Range Five.

Northeast quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section one; lot five of Section seven; northeast quarter, and east half of southeast quarter of Section thirteen; northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section fifteen; southwest quarter of northeast quarter, and east half of northwest quarter of Section nineteen; northwest quarter of northeast quarter, north half of northwest quarter, and southwest quarter of northwest quarter of Section twenty-three; north half of northeast quarter, south half of southwest quarter, and southeast quarter of southeast quarter of Section twenty-seven; northwest quarter of northwest quarter, and south half of northwest quarter of Section thirty-one; north half of northwest quarter, southeast quarter of northwest quarter, and southeast quarter of Section thirty-three.

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Township Three, Range Five.

All of Section one; all of Section three; southeast quarter of northwest quarter, and south half of Section seven; east half, south half of northwest quarter, and north half of southwest quarter of Section nine; all of Section eleven; all of Section thirteen; northeast quarter of northeast quarter, south half of northeast quarter, north half of southwest quarter, and southeast quarter of Section fifteen; north half of northeast quarter, and southeast quarter of southeast quarter of Section seventeen; northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section nineteen; north half of northeast quarter, southwest quarter of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; east half, east half of west half, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; south half of north half, northwest quarter of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section twenty-nine; north half of northwest quarter, southwest quarter of northwest quarter, southwest quarter of southwest quarter, and south half of southeast quarter of Section thirty-one; north half, north half of southwest quarter, and southeast quarter of Section thirty-three; all of Section thirty-five.

Township Four, Range Five.

All of Section one; northeast quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section three; east half of northeast quarter, east half of northwest quarter, and south half of south half of Section five; all of Section seven; all of Section nine; west half of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; northeast quarter of Section twenty-seven; south half of north half, and northwest quarter of northwest quarter of Section twenty-nine; all of Section thirty-one; east half of Section thirty-five.

Township One, Range Six.

All of Section twenty-nine; all of Section thirty-one; southwest quarter of Section thirty-three.

Township Two, Range Six.

All of Section one; all of Section three; all of Section five; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; north half, east half of southwest quarter, and southeast quarter of Section seventeen; south half of north half, northwest quarter of southwest quarter, and north half

of southeast quarter of Section nineteen; south half of northeast quarter, south half of southwest quarter, and southeast quarter of Section twenty-one; north half, north half of south half, and southwest quarter of southwest quarter of Section twenty-three; north half of northeast quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Four, Range Six.

North half, and southwest quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; west half of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; northwest quarter of Section twenty-three; northwest quarter of Section twenty-seven; all of Section twenty-nine; lots three, four, five, six and seven, northeast quarter of southwest quarter, and north half of southeast quarter of Section thirty-one; lots one and two, northwest quarter, and north half of southwest quarter of Section thirty-three.

Township Two, Range Seven.

All of Section seven; all of Section nineteen; all of Section thirty-one.

Township Three, Range Seven.

West half of Section seven; west half of Section nineteen.

South of Base Line and West of Willamette Meridian.

Township Three, Range One.

Northeast quarter of southwest quarter of Section nineteen.

POLK COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Six, Range Three.

Lot one of Section five; lot four of Section twenty-one.

Township Eight, Range Four.

Lot three of Section three.

Township Nine, Range Four.

Lot five of Section one; lot five of Section nine.

Township Nine, Range Five.

Lot nine of Section thirteen.

Township Six, Range Six.

Lot one of Section thirty-five.

Township Seven, Range Six.

Lots one, two, three and four of Section three; southwest quarter of northeast quarter, south half, and lot one of Section five; all of Section seven; southeast quarter of northeast quarter, south half of southwest quarter, southeast quarter, and lot three of Section nine; east half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast

quarter of Section seventeen; east half of southwest quarter, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section twenty-one; southeast quarter of southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half of northeast quarter, northwest quarter, and southeast quarter of Section thirty-three.

Township Eight, Range Six.

North half of Section five; northwest quarter of northwest quarter, south half of north half, north half of south half, and southeast quarter of southeast quarter of Section seven; west half of northeast quarter, south half of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section nine; northwest quarter of northeast quarter, and northwest quarter of Section seventeen; northeast quarter of northeast quarter, southwest quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, and south half of southeast quarter of Section thirty-one; west half of northwest quarter of Section thirty-three.

Township Nine, Range Six.

North half of northeast quarter, and northwest quarter of Section five; north half, and north half of southeast quarter of Section seven; southeast quarter of northwest quarter of Section nine; southwest quarter of northeast quarter of Section seventeen.

Township Seven, Range Seven.

South half of northeast quarter, northwest quarter, and south half of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; north half, north half of south half, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section eleven; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half of Section thirty-five.

Township Eight, Range Seven.

South half of northwest quarter, southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section one; west half, and northeast quarter of Section three; all of Section five; north half of north half, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of south half of Section nine; southeast quarter of southeast quarter of Section fifteen; north half of northeast quarter, and northeast quarter of northwest quarter of Section seventeen; southeast quarter of northwest quarter of Section twenty-three; north half of northeast quarter, southwest quarter of northeast quarter, and southeast quarter of southeast quarter of

Section twenty-five; all of Section thirty-one; north half of northeast quarter, and southwest quarter of northeast quarter of Section thirty-five.

Township Nine, Range Seven.

Northeast quarter, east half of northwest quarter, and south half of Section one; northwest quarter, and south half of Section three; lots three and four, and southwest quarter of northwest quarter of Section five; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; west half of northeast quarter, west half, and northwest quarter of southeast quarter of Section fifteen; lots nine, ten, eleven, fourteen, fifteen and sixteen of Section seventeen; northwest quarter, and northwest quarter of southwest quarter of Section twenty-one; east half of northeast quarter, and northeast quarter of southeast quarter of Section twenty-three; north half, and southwest quarter of Section twenty-nine; all of Section thirty-one; southeast quarter of northwest quarter, and south half of Section thirty-three; northeast quarter of northeast quarter, west half of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Ten, Range Seven.

North half of north half of Section one; northwest quarter, and north half of southwest quarter of Section three; lots one, two, three and four of Section five.

Township Seven, Range Eight.

All of Section one; east half, and east half of west half of Section three; all of Section eleven; all of Section thirteen; east half, and east half of west half of Section fifteen; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-five.

Township Eight, Range Eight.

North half, and southwest quarter of Section one; east half, and east half of west half of Section three; north half, and southwest quarter of Section eleven; east half of east half of Section fifteen; south half of Section twenty-three; all of Section twenty-five; north half of Section thirty-five.

Township Nine, Range Eight.

North half of northwest quarter, southwest quarter of northwest quarter, and west half of southwest quarter of Section eleven; northeast quarter of Section fifteen; south half of northeast quarter, northwest quarter, and south half of Section twenty-seven; all of Section thirty-five.

MARION COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Nine, Range One.

Lot nine of Section thirteen.

Township Nine, Range Two.

Lot three of Section twenty-nine.

Township Six, Range Three.

Lot two of Section one; lots eight, nine and ten of Section twenty-one.

South of Base Line and East of Willamette Meridian.

Township Six, Range One.

Northeast quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-five.

Township Seven, Range One.

Southeast quarter of northwest quarter, and west half of southeast quarter of Section one; lots one, five and six of Section seven; south half of Section eleven; west half of northeast quarter, west half of west half, and northeast quarter of southeast quarter of Section thirteen; northeast quarter of northeast quarter, and east half of southeast quarter of Section twenty-three.

Township Eight, Range One.

Northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, northeast quarter of southwest quarter, and southeast quarter of Section one; north half of northeast quarter, southwest quarter of northeast quarter, west half, and south half of southeast quarter of Section three; lots one and two of Section seven; northeast quarter of southeast quarter, and lots seven and eight of Section nine; north half, west half of southwest quarter, and northeast quarter of southeast quarter of Section eleven; northeast quarter, northeast

quarter of southwest quarter, and north half of southeast quarter of Section twelve; northeast quarter, and east half of southeast quarter of Section thirteen; east half of southwest quarter, and south half of southeast quarter of Section fifteen; all of Section twenty-five; southeast quarter of northwest quarter, north half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-seven; north half of northeast quarter, northwest quarter of northwest quarter, and south half of Section thirty-five.

Township Nine, Range One.

Lot one of Section twenty-three.

Township Six, Range Two.

Southwest quarter of southwest quarter of Section twenty-nine; east half of northeast quarter, northwest quarter, northeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-one.

Township Seven, Range Two.

West half, northwest quarter of southeast quarter, and south half of southeast quarter of Section five; southwest quarter of northwest quarter, northwest quarter of southwest quarter, and southeast quarter of southwest quarter of Section seven; southwest quarter of northeast quarter, west half, and west half of southeast quarter of Section nine; southwest quarter of northwest quarter, and west half of southwest quarter of Section

fifteen; northeast quarter, and south half of northwest quarter of Section seventeen; southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section nineteen; west half of west half, southeast quarter of northwest quarter, and southeast quarter of Section twenty-one; southwest quarter of southwest quarter of Section twenty-five; all of Section twenty-seven; south half of northeast quarter, northwest quarter, east half of southwest quarter, and southeast quarter of Section thirty-three; all of Section thirty-five.

Township Eight, Range Two.

All of Section one; all of Section three; all of Section five; south half of northeast quarter, northwest quarter, and south half of Section seven; all of Section nine; all of Section eleven; northwest quarter of northeast quarter, and north half of northwest quarter of Section thirteen; east half, northwest quarter of northwest quarter, south half of northwest quarter, and southwest quarter of Section seventeen; south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section nineteen; west half of Section twenty-nine; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-one.

Township Nine, Range Two.

All of Section one; northeast quarter, north half of northwest quarter, and north half of southeast quarter of Section three; northeast quarter, north half of north-

west quarter, and south half of Section five; northwest quarter of northeast quarter, and northeast quarter of northwest quarter of Section seven; northwest quarter of southeast quarter, and north twenty-three acres of southwest quarter of southeast quarter of Section nine; northeast quarter, south half of northwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section eleven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirteen; south half of northeast quarter, southeast quarter of northwest quarter, and west half of southwest quarter of Section fifteen; northeast quarter, northeast quarter of northwest quarter, and east half of southeast quarter of Section twenty-three; east half of northeast quarter, southwest quarter of northwest quarter, and east half of southwest quarter of Section twenty-five.

Township Eight, Range Three.

East half of northeast quarter, southwest quarter of northwest quarter, south half, and lots one, two, three and four of Section thirteen; south half of southeast quarter of Section twenty-three; all of Section twenty-five; northeast quarter, east half of northwest quarter, and south half of Section twenty-seven; south half of southwest quarter, and southeast quarter of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Nine, Range Three.

East half of northeast quarter, northeast quarter of

southwest quarter, south half of southwest quarter, and southeast quarter of Section one; all of Section seven; north half, east half of southwest quarter, northwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section nine; north half of northwest quarter, northeast quarter, and south half of southeast quarter of Section eleven; all of Section thirteen; northeast quarter, east half of northwest quarter, and south half of Section fifteen; northeast quarter, south half of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section seventeen; north half, north half of southwest quarter, and southeast quarter of Section twenty-one; southeast quarter of southwest quarter of Section twenty-three.

Township Eight, Range Four.

West half of Section seventeen; east half, and lots one, two, three and four of Section nineteen; west half, north half of southeast quarter, southwest quarter of southeast quarter, and lot one of Section twenty-nine; northwest quarter of northeast quarter, and lots one, two, three, four, five and six of Section thirty-one.

Township Nine, Range Four.

All of Section five; all of Section seven; all of Section seventeen; all of Section nineteen; northwest quarter of Section twenty-nine.

LINCOLN COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Twelve, Range Eight.

Southwest quarter, and south half of southeast quarter of Section three; southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section five; northeast quarter, and east half of northwest quarter of Section seven; north half, east half of southwest quarter, and southeast quarter of Section nine; south half of northeast quarter, northwest quarter, and south half of Section eleven; all of Section thirteen; west half of northeast quarter, and west half of Section fifteen; northeast quarter of northeast quarter, south half of northeast quarter, and south half of Section seventeen; north half of northeast quarter, southwest quarter of northeast quarter, west half, and west half of southeast quarter of Section nineteen; all of Section twenty-one; southeast quarter of northwest quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirteen, Range Eight.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen.

Township Thirteen, Range Nine.

East half of east half of Section thirteen; east half of east half of Section twenty-five.

Township Fourteen, Range Nine.

East half of northeast quarter, and southeast quarter of Section one; northwest quarter of northeast quarter, northeast quarter of northwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section thirteen; northeast quarter, east half of west half, and southeast quarter of Section twenty-five.

Township Fifeen, Range Nine.

East half of northwest quarter, and northeast quarter of southeast quarter of Section one.

BENTON COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Ten, Range Four.

Lot six of Section fifteen; lot one of Section twenty-one.

Township Thirteen, Range Four.

Lot five of Section nineteen.

Township Ten, Range Five.

Northwest quarter of northeast quarter, south half of northeast quarter, and west half of Section nineteen;

lot four of Section twenty-three; northeast quarter of northeast quarter, southwest quarter, and north half of southeast quarter of Section twenty-nine.

Township Eleven, Range Five.

Lot one of Section one.

Township Thirteen, Range Five.

Lots one and two of Section seven; lot one of Section twenty-nine.

Township Fourteen, Range Five.

Lot one of Section twenty-five; lots one, two and three of Section thirty-one.

Township Thirteen, Range Six.

South half of southwest quarter of Section five; all of Section seven; lot five of Section thirteen; south half of northeast quarter, west half, north half of southeast quarter, and southwest quarter of southeast quarter of Section seventeen; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nineteen; south half of north half, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; southeast quarter of northwest quarter, and west half of southwest quarter of Section twenty-three; north half of Section twenty-five; north half of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, northwest quar-

ter of southeast quarter, and southeast quarter of southeast quarter of Section twenty-seven; northeast quarter, south half of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, southeast quarter of southwest quarter, north half of southwest quarter, and west half of southeast quarter of Section thirty-three; northwest quarter of northeast quarter, south half of northeast quarter, north half of northwest quarter, northwest quarter of southwest quarter, and east half of southeast quarter of Section thirty-five.

Township Fourteen, Range Six.

North half, and northeast quarter of southeast quarter of Section three; all of Section five; all of Section seven; west half of Section nine; lot one of Section eleven; all of Section seventeen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section nineteen; all of Section twenty-nine; all of Section thirty-one.

Township Fifteen, Range Six.

West half of southwest quarter, and southwest quarter of southeast quarter of Section three; northwest quarter, and south half of Section five; north half of north half of Section seven; north half of northwest quarter of Section nine.

Township Twelve, Range Seven.

South half of south half of Section seven; northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; north half, and southeast quarter of Section twenty-one; southwest quarter of northwest quarter, and west half of southwest quarter of Section twenty-three; all of Section twenty-seven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirteen, Range Seven.

All of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; east half, north half of northwest quarter, southwest quarter of northwest quarter, and southeast quarter of southwest quarter of Section fifteen; all of Section seventeen; all of Section nineteen; west half of northeast quarter, northwest quarter, and north half of southwest quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; lots seven and eight of Section twenty-nine; west half of northeast quarter, northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Fourteen, Range Seven.

All of Section one; all of Section three; south half of northeast quarter, west half of southwest quarter, and southeast quarter of Section five; lot four of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; northeast quarter, east half of northwest quarter, and south half of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Fifteen, Range Seven.

All of Section one; all of Section three; all of Section five; north half of north half of Section seven; north half of north half of Section nine; north half of north half of Section eleven.

Township Thirteen, Range Eight.

All of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half, southwest quarter, and northwest quarter of southeast quarter of Section thirty-five.

Township Fourteen, Range Eight.

North half of northeast quarter, and northwest quarter of Section three; north half, southwest quar-

ter, north half of southeast quarter, and southwest quarter of southeast quarter of Section five; northwest quarter of northeast quarter, south half of northeast quarter, north half of northwest quarter, east half of southwest quarter, and southeast quarter of Section seven; southeast quarter of southeast quarter of Section nine; east half, and south half of southwest quarter of Section eleven; all of Section fifteen; southeast quarter of northeast quarter, south half of northwest quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section nineteen; all of Section twenty-one; southwest quarter of northeast quarter, west half, and northwest quarter of southeast quarter of Section twenty-three; northeast quarter, south half of southwest quarter, and east half of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; north half, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-one; northeast quarter, east half of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section thirty-three; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirty-five.

Township Fifteen, Range Eight.

All of Section one; lots one, three, four, five, six, eight, nine, ten, eleven and twelve, and south half of Section three; north half of north half, southwest

quarter of northeast quarter, southwest quarter of northwest quarter, and south half of southeast quarter of Section five; northeast quarter of northeast quarter of Section seven; north half of north half of Section nine; north half of north half of Section eleven.

LINN COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township Nine, Range One.

Lot four of Section seventeen; southeast quarter of southwest quarter of Section twenty-three.

Township Ten, Range One.

Northeast quarter, northeast quarter of northwest quarter, and lots two and five of Section one; north half of north half, southwest quarter of northeast quarter, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section nineteen; southwest quarter of Section twenty-one; south half of north half, and south half of Section twenty-three; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-five; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-seven; west half of northeast quarter, northwest quarter, and south half of Section twenty-nine; north half of north half, and lot two of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Eleven, Range One.

All of Section one; lots one, two, three and four, south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section three; north half of northeast quarter, and northeast quarter of southwest quarter of Section five; west half of Section nine; all of Section fifteen; northeast quarter, south half of northwest quarter, and south half of Section seventeen; north half of north half of Section twenty-one; north half, north half of south half, and southeast quarter of southeast quarter of Section twenty-three; east half, east half of west half, and northwest quarter of southwest quarter of Section twenty-seven; southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-nine; lot three of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twelve, Range One.

West half of northwest quarter, and southwest quarter of Section one; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section three; all of Section five; north half of north half of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section twenty-one; northeast quarter, south half of northwest quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven.

Township Fourteen, Range One.

East half of southeast quarter of Section twenty-nine; north half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Fifteen, Range One.

North half, southwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section one.

Township Nine, Range Two.

Southwest quarter of southwest quarter of Section twenty-five; lot one of Section twenty-seven; northwest quarter of southwest quarter, and south half of south half of Section twenty-nine; south half of northwest quarter, and south half of Section thirty-one; northwest quarter of northeast quarter, south half of northeast quarter, east half of west half, and southeast quarter of Section thirty-five.

Township Ten, Range Two.

Northwest quarter, and south half of Section one; north half, northwest quarter of southwest quarter, and east half of Southeast quarter of Section five; northeast quarter of Section seven; east half, northeast quarter of northwest quarter, and south half of northwest quarter of Section nine; east half of northeast quarter, southwest quarter of northwest quarter, and south half of Section eleven; east half of Section thirteen; southeast quarter of northeast quarter, west half of north-

west quarter, and south half of Section fifteen; south half of north half, and north half of southeast quarter of Section seventeen; west half of Section nineteen; north half of northwest quarter of Section twenty-one; northeast quarter, south half of northwest quarter, and south half of Section twenty-three; northeast quarter of Section twenty-five; all of Section thirty-one; southwest quarter of southwest quarter of Section thirty-three.

Township Eleven, Range Two.

South half of Section three; all of Section five; east half of Section seven; all of Section nine; southeast quarter of Section thirteen.

Township Twelve, Range Two.

South half of Section one; southeast quarter of Section three; all of Section eleven; all of Section thirteen; all of Section fifteen; east half, and south half of southwest quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine.

Township Fourteen, Range Two.

All of Section thirty-five.

Township Fifteen, Range Two.

All that part of lot three, and all that part of the southwest quarter of southeast quarter of Section nineteen, situated in Linn County.

Township Ten, Range Three.

Southwest quarter of southwest quarter, and southeast quarter of Section one; southeast quarter of northwest quarter, and south half of southeast quarter of Section three; southwest quarter of northeast quarter, south half of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and lot four of Section five; north half of north half of Section seven; north half of North half of Section eleven; south half of northwest quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section nineteen.

Township Eleven, Range Three.

South half of Section one; all of Section seven; all of Section nine; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-three; north half, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-five.

Township Twelve, Range Three.

Northwest quarter of Section one; all of Section three; all of Section five; all of Section seven; all of

Section nine; west half of east half, and west half of Section eleven; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; west half of northwest quarter of Section twenty-seven; east half, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-nine; north half of northeast quarter of Section thirty-one; northwest quarter of Section thirty-three.

Township Fourteen, Range Three.

Lots one, two, three and four, and east half of west half of Section thirty-one.

Township Nine, Range Four.

South half of northwest quarter, north half of southwest quarter, and southeast quarter of Section thirty-one.

Township Ten, Range Four.

Northeast quarter of northwest quarter, south half of northwest quarter, and west half of southeast quarter of Section seventeen; east half of east half of Section nineteen; west half of east half, and west half of Section twenty-nine.

South of Base Line and West of Willamette Meridian.

Township Nine, Range One.

Northwest quarter of northeast quarter, and lot six of Section twenty-one.

Township Ten, Range One.

Northwest quarter of southeast quarter, and west half of southwest quarter of Section thirteen; northeast quarter of southwest quarter of Section twenty-three; north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-five.

Township Fourteen, Range One.

South half of south half of Section twenty-five; south half of south half of Section twenty-seven; all of Section thirty-one; south half of northeast quarter, west half of southwest quarter, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Fifteen, Range One.

All that part of Section one situated in Linn County; northeast quarter of northeast quarter, south half of northeast quarter, southwest quarter of northwest quarter, and south half of Section three; east half, north half of northwest quarter, and southwest quarter of southwest quarter of Section five; all that part of Section seven situated in Linn County; all that part of Section nine situated in Linn County; northwest quarter of northwest quarter of Section eleven.

Township Thirteen, Range Two.

Northeast quarter of northwest quarter of Section nineteen; northwest quarter of northeast quarter of Section twenty-one.

Township Fourteen, Range Two.

Lots four, five, six and seven of Section thirteen; lots one, two, three, four and five of Section fifteen; northwest quarter of southeast quarter of Section twenty-one; north half of northeast quarter, southwest quarter of northeast quarter, and southeast quarter of Section twenty-five; north half of northeast quarter of Section twenty-nine; east half of southeast quarter of Section thirty-three; south half of Section thirty-five.

Township Fifteen, Range Two.

All of Section one; east half of Section three; southwest quarter of northwest quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; northeast quarter of northeast quarter of Section seventeen; northeast quarter, and south half of Section twenty-one; all of Section twenty-seven; all of Section twenty-nine; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirty-one; all of Section thirty-three.

Township Sixteen, Range Two.

All of Section five.

Township Fourteen, Range Three.

Lots three and four of Section three.

Township Sixteen, Range Three.

East half, and southeast quarter of northwest quarter of Section one.

Township Fifteen, Range Four.

Southwest quarter of southwest quarter of Section thirty-five.

Township Twelve, Range Five.

Lot three of Section one.

Township Fourteen, Range Five.

Lot one of Section-twenty-three.

LANE COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township Sixteen, Range One.

Southwest quarter of southwest quarter (or lot four) of Section seven; southeast quarter of southwest quarter, and southeast quarter of Section thirteen; west half of northeast quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; southwest quarter, and southwest quarter of southeast quarter of Section twenty-one; east half of northeast quarter, south half of southwest quarter, and southeast quarter of Section twenty-three; all of Section twenty-five; northwest quarter of northeast quarter, and north half of northwest quarter of Section twenty-nine; west half of northwest quarter of Section

thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Seventeen, Range One.

Northwest quarter of Section three; northwest quarter of northeast quarter, and lots one and two of Section nine; northeast quarter of Section thirteen; southeast quarter of southwest quarter of Section fifteen; lots ten and eleven, and west half of southeast quarter of Section nineteen; northwest quarter of northeast quarter, and northeast quarter of northwest quarter of Section twenty-one.

Township Eighteen, Range One.

All of Section seven; south half of south half of Section thirteen; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, and southeast quarter of Section nineteen; northeast quarter, and south half of Section twenty-one; all of Section twenty-three; north half, and southeast quarter of Section twenty-five; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; south half of northeast quarter, northwest quarter, and north half of south half of Section thirty-one.

Township Nineteen, Range One.

All of Section one; all of Section three; all of Section eleven; all of Section thirteen.

Township Twenty, Range One.

South half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, lots one, two, three and four, and southeast quarter of Section seven; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section seventeen; all of Section nineteen; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-one; southwest quarter of southwest quarter of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; northwest quarter of Section thirty-five.

Township Twenty-two, Range One.

All of Section five; all of Section seven; northwest quarter of Section nine; north half, and southwest quarter of Section seventeen; all of Section nineteen.

Township Fifteen, Range Two.

Lot four, southeast quarter of southwest quarter, all that part of lot three and all that part of southwest quarter of southeast quarter of Section nineteen situated in Lane County.

Township Sixteen, Range Two.

Southwest quarter, and south half of southeast quarter of Section fifteen; southwest quarter of northeast

quarter, northwest quarter, and south half of Section seventeen; south half of northeast quarter, northwest quarter, and south half of Section nineteen; north half of northeast quarter, southwest quarter of northeast quarter, west half, and northwest quarter of southeast quarter of Section twenty-one; lots two to ten, inclusive, and twelve and thirteen of Section twenty-three; northeast quarter, east half of northwest quarter, and south half of Section twenty-five; south half of southeast quarter of Section twenty-seven; west half of northeast quarter, northwest quarter of southwest quarter, and lot one of Section twenty-nine; northwest quarter of northeast quarter, south half of north half, and south half of Section thirty-three; lot five of Section thirty-five.

Township Seventeen, Range Two.

All of Section one; all of Section three; all of Section five; northeast quarter, and northeast quarter of northwest quarter of Section seven; north half of northwest quarter of Section nine; all of Section eleven.

Township Fifteen, Range Three.

Southwest quarter of Section thirty-three.

Township Sixteen, Range Three.

Lots one, two, three, four, five, and six, northeast quarter, and east half of northwest quarter of Section thirty-one.

Township Seventeen, Range Three.

West half of northwest quarter, northeast quarter of

southwest quarter, and lots one and two of Section three; south half of northwest quarter, lots one, four and five, and south half of Section five; all of Section seven; southwest quarter of northeast quarter, south half of northwest quarter, south half, and lots three, four and five of Section nine; all of Section seventeen.

South of Base Line and West of Willamette Meridian.

Township Fifteen, Range One.

All that part of Section one situated in Lane County; all that part of Section seven situated in Lane County; all that part of east half of Section nine situated in Lane County; southwest quarter of Section eleven; north half, north half of southwest quarter, and northwest quarter of southeast quarter of Section thirteen; northeast quarter, north half of northwest quarter, and south half of Section fifteen; all of Section seventeen; all of Section nineteen; northwest quarter of northwest quarter, south half of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section twenty-one; northwest quarter of northeast quarter, and northwest quarter of Section twenty-three; southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one.

Township Sixteen, Range One.

All of Section three; northwest quarter of northwest quarter, and lots seven and eight of Section five;

north half, and north half of southwest quarter of Section nine; northwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section eleven; south half of southwest quarter of Section thirteen; south half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, north half of south half, and southeast quarter of southeast quarter of Section fifteen; lots three and four, north half of southeast quarter, and southwest quarter of southeast quarter of Section seventeen; lots five, six, seven and eight, northeast quarter of southeast quarter, and south half of southeast quarter of Section nineteen; south half of south half of Section twenty-five; south half of south half of Section twenty-seven; all of Section twenty-nine; north half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; east half, southeast quarter of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section thirty-three; all of Section thirty-five.

Township Seventeen, Range One.

East half of Section one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section three; north half of north half, southwest quarter of northwest quarter, and lots one, two, three, four and five of Section five;

west half of northeast quarter, northwest quarter, and lots one, two, four and five of Section seven; east half, lots one, two, three, four and five, and east half of southwest quarter of Section nine; southwest quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; north half, southwest quarter, and north half of southeast quarter of Section fifteen; southeast quarter of northeast quarter, south half, and lot one of Section seventeen; northwest quarter of northeast quarter of Section nineteen; northwest quarter of northwest quarter of Section twenty-one; northwest quarter of southwest quarter, and lots three and four of Section twenty-five; south half of southwest quarter, and southwest quarter of southeast quarter of Section thirty-one; south half of north half, and south half of Section thirty-five.

Township Eighteen, Range One.

All of Section one; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, south half of southwest quarter, and southeast quarter of southeast quarter of Section three; north half, north half of south half, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section five; northeast quarter, east half of northwest quarter, northwest quarter of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section seven; north half of northeast quarter, southwest quarter of northeast quar-

ter, east half of northwest quarter, and south half of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; north half, east half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; northeast quarter of southeast quarter of Section nineteen; northeast quarter, north half of northwest quarter, and southeast quarter of northwest quarter of Section twenty-one; all of Section twenty-three; southeast quarter of southeast quarter of Section twenty-five.

Township Nineteen, Range One.

South half of northeast quarter, northwest quarter, and south half of Section thirty-one; south half of southwest quarter of Section thirty-three; southwest quarter, and south half of southeast quarter of Section thirty-five.

Township Twenty, Range One.

Northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section one; northeast quarter, northeast quarter of northwest quarter, and northeast quarter of southeast quarter of Section three; all of Section five; all of Section seven; southeast quarter of northeast quarter, southeast quarter of northwest quarter and south half of Section nine; northeast quarter and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; lots seven to twelve, inclusive,

northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; north half of Section thirty-five.

Township Twenty-one, Range One.

Lots two to seven, inclusive, and eleven, twelve, thirteen and fourteen of Section five; lots one to ten, inclusive, and fifteen and sixteen of Section seven; west half of southwest quarter of Section nine; lots one, seven, nine and thirteen of Section seventeen; northeast quarter of northeast quarter, east half of southeast quarter, and lot six of Section nineteen; lots three, four, six, seven, eight, ten, eleven and twelve of Section twenty-nine; southwest quarter of northeast quarter, northwest quarter, and south half of Section thirty-one; north half of northeast quarter, northwest quarter, and southeast quarter of southeast quarter of Section thirty-three; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-two, Range One.

Lot four of Section one; northeast quarter of northwest quarter, west half of west half, southeast quarter of southwest quarter, and north half of southeast quarter of Section five; lots one and seventeen of Section Seven; northeast quarter, northeast quarter of northwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nine; south half of northwest quarter of Section thirteen;

west half of northeast quarter, southeast quarter, and lots one, two, three, four, six, seven, eight, ten and eleven of Section fifteen; northwest quarter of northeast quarter, southeast quarter of northeast quarter, southwest quarter of southeast quarter, and lots one and four of Section seventeen; southeast quarter of southeast quarter of Section nineteen; lots one, two, seven, eight, nine, ten and eleven of Section twenty-one; west half of northeast quarter, northwest quarter, and south half of Section twenty-three; all of Section twenty-five; east half of northeast quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-seven; south half of southwest quarter of Section twenty-nine; east half, lots one, two, three, four, five, seven, eight, nine, ten, eleven and twenty of Section thirty-one; southeast quarter of southeast quarter of Section thirty-three; northwest quarter of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-three, Range One.

North half, and southeast quarter of Section one; south half of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section three; south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section five; northeast quarter, east half of southeast quarter, lots one, two, three, four, six, nine, ten, eleven, twelve, fif-

teen and sixteen of Section seven; all of Section nine; south half of southwest quarter, and east half of southeast quarter of Section eleven; all of Section thirteen; all of Section seventeen; lots three, four, five, six, seven, eight, nine, fourteen, fifteen, sixteen, seventeen, nineteen and twenty of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half, and southeast quarter of Section thirty-five.

Township Twenty-four, Range One.

Lots one, two, three and four, and southwest quarter of northwest quarter of Section one; north half, southwest quarter, and northwest quarter of southeast quarter of Section five; northeast quarter of Section seven.

Township Fifteen, Range Two.

All of Section twenty-three; all of Section twenty-five; north half, and north half of southeast quarter of Section thirty-five.

Township Sixteen, Range Two.

All of Section seven; all of Section seventeen; all of Section nineteen; all of Section twenty-one; northwest quarter of Southwest quarter of Section twenty-three; east half of northeast quarter, lots five and six, and southeast quarter of Section twenty-five; northwest

quarter of Section twenty-seven; south half of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; west half, and lots one, two and three of Section thirty-three.

Township Seventeen, Range Two.

North half of north half of Section five; northwest quarter of northeast quarter, south half of northeast quarter, west half, north half of southeast quarter, and lots one, two and three of Section seven; lots one, two, three, five and nine, northwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section thirteen; northeast quarter, south half of northwest quarter, and lots one and two of Section fifteen; northeast quarter of northeast quarter of Section twenty-three.

Township Eighteen, Range Two.

North half of north half, and southwest quarter of northwest quarter of Section one; lot nine of Section fifteen.

Township Nineteen, Range Two.

South half of southwest quarter, and southwest quarter of southeast quarter of Section fifteen; south half of southeast quarter, and lot four of Section nineteen; southeast quarter of northeast quarter, and lots three and four of Section twenty-one; southwest quarter of northeast quarter, southeast quarter of northwest quarter, and south half of Section twenty-three; west half

of east half, west half, and southeast quarter of southeast quarter of Section twenty-five; north half of northeast quarter, southeast quarter of northeast quarter, north half of northwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-seven; south half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-nine; east half of northeast quarter, west half of southwest quarter, and northeast quarter of southeast quarter of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty, Range Two.

All of Section one; south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, southeast quarter, and lots one, two, three, four and five of Section three; north half of northeast quarter, and southeast quarter of northeast quarter of Section eleven; all of Section thirteen; south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section fifteen; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section nineteen; south half of north half, west half of southwest quarter, and east half of southeast quarter of Section twenty-one; northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and south half

of Section twenty-three; west half of Section twenty-five; northwest quarter of northeast quarter, southeast quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, and east half of southeast quarter of Section twenty-seven; north half, and north half of south half of Section twenty-nine; lots six, seven and nine, west half of southeast quarter, and east half of southwest quarter of Section thirty-one; northeast quarter of northeast quarter of Section thirty-three; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-one, Range Two.

North half, north half of southwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section one; southwest quarter of southwest quarter of Section three; lots one, two and three, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section five; southwest quarter of northwest quarter, east half of southwest quarter, and south half of southeast quarter of Section seven; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section nine; east half of northeast quarter, and lot one of Section thirteen; all of Section fifteen; northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, north half of south half, and southwest quarter of southwest

quarter of Section seventeen; southeast quarter of southeast quarter of Section nineteen; all of Section twenty-one; northwest quarter of southeast quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; north half, southwest quarter, and west half of southeast quarter of Section twenty-nine; northeast quarter of northeast quarter of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-two, Range Two.

All of Section one; southeast quarter, and lots one to eleven, inclusive, of Section three; lots one, two, four and eight of Section five; southeast quarter of northeast quarter, northeast quarter of northwest quarter, and northeast quarter of southeast quarter of Section seven; west half of southeast quarter, and southeast quarter of southeast quarter of Section nine; northeast quarter, north half of northwest quarter, south half of southwest quarter, and northwest quarter of southeast quarter of Section eleven; southwest quarter of northeast quarter, southwest quarter of northwest quarter, southwest quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section fifteen; west half of northeast quarter, northeast quarter of northwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; north half of northwest quarter, and southwest quarter of northwest quarter of Section twenty-three; south half of south half of Section twenty-nine; all of Section

thirty-one; all of Section thirty-three; south half of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-three, Range Two.

South half of northwest quarter, southwest quarter, northwest quarter of southeast quarter, south half of southeast quarter, and lots two, three and four of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; northeast quarter of northwest quarter, west half of west half, southeast quarter of southwest quarter, and southeast quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; west half of northwest quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; north half of Section thirty-three; north half of Section thirty-five.

Township Sixteen, Range Three.

Lots three, four and five of Section nine; north half, north half of south half, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section thirteen.

Township Seventeen, Range Three.

East half of southeast quarter of Section one; lot four of Section five; west half of northwest quarter of Section eleven; northeast quarter of northeast quarter of Section thirteen.

Township Nineteen, Range Three.

West half, and southwest quarter of southeast quarter of Section nineteen; lot three of Section thirty-five.

Township Twenty, Range Three.

East half of northeast quarter, northwest quarter of northwest quarter, and east half of southeast quarter of Section one; northwest quarter of northeast quarter, northwest quarter, and west half of southwest quarter of Section seven; southwest quarter of southwest quarter of Section nine; lot four of Section thirteen; north half, north half of southeast quarter, and east half of southwest quarter of Section seventeen; lot one of Section nineteen; southwest quarter of northwest quarter, and south half of southwest quarter of Section thirty-one.

Township Twenty-one, Range Three.

West half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section three; lot one of Section nine; south half of northwest quarter, west half of southwest quarter, and south half of southeast quarter of Section eleven; southwest quarter of northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, west half of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southwest quarter of Section thirteen; northeast quarter, east half of northwest quarter, and east half of southeast quarter of Section

fifteen; lot five, and south half of Section seventeen; east half, and east half of west half of Section nineteen; north half, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-three; all of Section twenty-five; east half, northeast quarter of northwest quarter, south half of northwest quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section twenty-seven; southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, and lot two of Section twenty-nine; all of Section thirty-one; lot one of Section thirty-three; all of Section thirty-five.

Township Twenty-Two, Range Three.

West half of Section one; all of Section three; northeast quarter, north half of northwest quarter, and south half of Section seven; all of Section nine; all of Section eleven; all of Section fifteen; northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; lot two, and west half of Section nineteen; all of Section twenty-one; all of Section twenty-three; northwest quarter, and south half of Section twenty-five; all of Section twenty-seven; south half of northeast quarter, and north half of southeast quarter of Section twenty-nine; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-three, Range Three.

All of Section one; northeast quarter, northeast quarter of northwest quarter, and northwest quarter of southwest quarter of Section three; west half of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section five; west half of northeast quarter, northwest quarter, and north half of south half of Section nine; southeast quarter of southwest quarter, and lots six and seven of Section eleven; all of Section thirteen; all of Section fifteen; southeast quarter of northeast quarter, west half of northwest quarter, and southwest quarter of Section seventeen; all of Section twenty-three.

Township Eighteen, Range Four.

Lot five of Section nineteen; northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-seven; east half of northeast quarter, and southwest quarter of northwest quarter of Section thirty-three; east half of northeast quarter of Section thirty-five.

Township Nineteen, Range Four.

Northeast quarter of northeast quarter, southeast quarter of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section three; south half of northeast quarter, and north half of southeast quarter of Section five; south half of northeast quarter, northeast quarter of southwest quarter, south

half of southwest quarter, and southeast quarter of Section seven; east half of northeast quarter, west half, northeast quarter of southeast quarter, and south half of southeast quarter of Section nine; northwest quarter of northwest quarter of Section eleven; southeast quarter of southwest quarter, and south half of southeast quarter of Section thirteen; northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section fifteen; east half of east half, west half of northwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section seventeen; southeast quarter of northeast quarter, and southeast quarter of Section nineteen; all of Section twenty-one; northeast quarter of northeast quarter, southwest quarter of northeast quarter, southeast quarter of northwest quarter, and north half of southeast quarter of Section twenty-three; northwest quarter and south half of Section twenty-five; south half of northeast quarter, northwest quarter, and south half of Section twenty-seven; east half, north half of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-nine; northeast quarter of northeast quarter, and northwest quarter of southwest quarter of Section thirty-one; all of Section thirty-three; northwest quarter of Section thirty-five.

Township Twenty, Range Four.

West half of east half, southeast quarter of northeast quarter, west half, and northeast quarter of south-

east quarter of Section one; all of Section three; north half of northeast quarter, southwest quarter of northeast quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section five; lots one, two and three of Section seven; northeast quarter, south half of northwest quarter, southwest quarter, and west half of southeast quarter of Section nine; northeast quarter, and north half of northwest quarter of Section eleven; southeast quarter of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section fifteen; south half of north half, east half of southwest quarter, and southeast quarter of Section seventeen; northeast quarter, east half of west half, north half of southeast quarter, and lot two of Section nineteen; north half, southwest quarter, and northeast quarter of southeast quarter of Section twenty-one; west half of northwest quarter of Section twenty-three; northwest quarter, north half of southwest quarter, northeast quarter of southeast quarter, and northwest quarter of southeast quarter of Section twenty-seven; north half, and southwest quarter of Section twenty-nine; southwest quarter of northwest quarter, southwest quarter, and lot two of Section thirty-one; northeast quarter, west half of northwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section thirty-three; southeast quarter of northeast quarter, south half of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-one, Range Four.

North half of northeast quarter, and northwest quarter of northwest quarter of Section one; north half, and north half of southwest quarter of Section three; northeast quarter, and north half of northwest quarter of Section five; west half of northeast quarter, northwest quarter, and south half of Section twenty-three; all of Section twenty-five; east half, and east half of southwest quarter of Section thirty-five.

Township Twenty-two, Range Four.

Northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter of northeast quarter, and south half of Section one; east half, and east half of west half of Section eleven; northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and south half of Section thirteen; southeast quarter, and west half of northeast quarter of Section twenty-three; north half, and southeast quarter of Section twenty-five.

Township Twenty-three, Range Four.

Northeast quarter of Section one; southeast quarter of southeast quarter of Section thirteen.

Township Sixteen, Range Five.

Northwest quarter, and west half of southwest quarter of Section seven; lot three of Section nine; lots four, five and six of Section twenty-seven; southwest quarter of northwest quarter, and lot eight of Section twenty-

nine; northeast quarter of southwest quarter of Section thirty-one; lot two of Section thirty-three.

Township Seventeen, Range Five.

Lots two and three of Section twenty-seven.

Township Eighteen, Range Five.

Southwest quarter of southeast quarter of Section seven; lot four of Section thirteen; northwest quarter of northwest quarter of Section fifteen; southwest quarter of southeast quarter of Section seventeen; southwest quarter of northwest quarter, and west half of southwest quarter of Section twenty-three; southwest quarter of northwest quarter of Section twenty-five; northeast quarter of southeast quarter of Section twenty-seven; southwest quarter of northwest quarter of Section twenty-nine; east half of northeast quarter of Section thirty-three; northeast quarter of southeast quarter, south half of southeast quarter, and lots four, five, and six of Section thirty-five.

Township Nineteen, Range Five.

North half of northeast quarter, west half, and west half of southeast quarter of Section one; all of Section five; all of Section seven; lot one, northwest quarter of northeast quarter, northeast quarter of northwest quarter, west half of west half, southeast quarter of southwest quarter, and south half of southeast quarter of Section nine; north half of northeast quarter, southeast quarter of northeast quarter, and north half of south-

east quarter of Section eleven; lot seven of Section thirteen; west half of west half, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section fifteen; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section seventeen; all of Section nineteen; north half, southwest quarter, and west half of southeast quarter of Section twenty-one; southwest quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three.

Township Twenty, Range Five.

All of Section three; all of Section five; east half, north half of northwest quarter, southeast quarter of northwest quarter, and south half of southwest quarter of Section seven; all of Section nine; west half, and lots two, three, four and five of Section eleven; lots one and six, west half of northeast quarter, northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section fifteen; northeast quarter, east half of northwest quarter, and south half of Section seventeen; all of Section nineteen; north half of northeast quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; west half of northwest quarter, southeast quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section twenty-three; north half, southwest quarter, and

north half of southeast quarter of Section twenty-seven; northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and northeast quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-one, Range Five.

North half, north half of southwest quarter, southeast quarter of southwest quarter, and south east quarter of Section one; lots two, three and four of Section three; lot one of Section five.

Township Fifteen, Range Six.

South half of north half, and south half of Section seven; south half of northwest quarter and south half of Section nine; northeast quarter of northeast quarter, south half of northwest quarter, and southwest quarter of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; west half of northwest quarter of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half of north half, and southeast quarter of southeast quarter of Section thirty-five.

Township Sixteen, Range Six.

Northwest quarter of northeast quarter, and west half of Section one; northeast quarter of northeast quarter, south half of north half, north half of southwest

quarter, southeast quarter of southwest quarter, and southeast quarter of Section three; east half, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section five; north half, southwest quarter, and northwest quarter of southeast quarter of Section seven; all of Section nine; northeast quarter, east half of northwest quarter, southwest quarter of southwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section eleven; northeast quarter, east half of northwest quarter, southwest quarter of southwest quarter, and east half of southeast quarter of Section thirteen; northwest quarter of northeast quarter, south half of northeast quarter, and south half of Section fifteen; east half, north half of northwest quarter, and southwest quarter of southwest quarter of Section seventeen; all of Section nineteen; northwest quarter, and southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; east half of southeast quarter of Section twenty-five; north half of northeast quarter, northwest quarter, and north half of southwest quarter of Section twenty-seven; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; southwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of south half of Section thirty-three; all of Section thirty-five.

Township Seventeen, Range Six.

North half of north half, southwest quarter of north-

west quarter, north half of southwest quarter, northwest quarter of southeast quarter, and lots two, three and four of Section one; southwest quarter of Section three; north half of Section five; southeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and northeast quarter of southeast quarter of Section seven; southeast quarter of northeast quarter, and south half of Section nine; north half, north half of southwest quarter, and east half of southeast quarter of Section eleven; lots two and three of Section thirteen; north half of Section fifteen; northwest quarter of northeast quarter, east half of west half, northwest quarter of southeast quarter, and lot two of Section seventeen; lots two and three, west half, and northwest quarter of southeast quarter of Section nineteen; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; east half of southeast quarter, and lots four, five and six of Section twenty-three; northwest quarter of northeast quarter, east half of northwest quarter, northwest quarter of southwest quarter, and lots two, three, four, five, six and seven of Section twenty-nine; northwest quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, south half of southeast quarter, and southwest quarter of southwest quarter of Section thirty-one; east half of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-five.

Township Eighteen, Range Six.

West half of northwest quarter, and lot seven of Section one; north half, north half of south half, and southeast quarter of southeast quarter of Section three; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section five; south half of northeast quarter, northwest quarter, and south half of Section seven; northwest quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section nine; east half, southeast quarter of northwest quarter, and east half of southwest quarter of Section eleven; northwest quarter of northeast quarter, south half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section thirteen; north half of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; lots three and four, northeast quarter of southwest quarter, and south half of south half of Section twenty-three; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; west half of east half, west half, and southeast quarter of southeast quarter of Section thirty-five.

Township Nineteen, Range Six.

All of Section one; all of Section three; all of Section five; all of Section seven; north half, southwest quarter, and south half of southeast quarter of Section nine; north half, north half of southwest quarter, southwest quarter of southwest quarter, and east half of southeast quarter of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty, Range Six.

North half, north half of southwest quarter, and southeast quarter of Section one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section three; all of Section five; all of Section seven; all of Section nine; north half of northeast quarter, southwest quarter of northeast quarter, east half of west half, southwest quarter of southwest quarter, and southeast quarter of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and north half of southeast quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; north half of Section twenty-five.

Township Fifteen, Range Seven.

South half of northeast quarter, southeast quarter

of northwest quarter, northeast quarter of southwest quarter, south half of southeast quarter, and lots two and three of Section seven; south half of north half, and south half of Section nine; south half of north half, and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section tewnty-nine; all of Section thirty-one; northwest quarter, and lots one to twelve inclusive of Section thirty-three; northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and lot two of Section thirty-five.

Township Sixteen, Range Seven.

All of Section one; south half, lots one, two, three and four of Section three; southeast quarter, north half of southwest quarter, southeast quarter of southwest quarter, and lots one, two, three and four of Section five; north half of northwest quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section seven; northeast quarter, southeast quarter of northwest quarter, and north half of southeast quarter of Section eleven; all of Section thirteen; lots one to twelve, inclusive, of Section fifteen; south half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; northeast quarter, and south half of Section thirty-

one; all of Section thirty-three; all of Section thirty-five.

Township Seventeen, Range Seven.

North half, and southwest quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; southwest quarter of northwest quarter, and south half of Section thirteen; all of Section fifteen; all of Section seventeen; northwest quarter of northeast quarter, northwest quarter, and south half of south half of Section nineteen; all of Section twenty-one; north half of north half, southeast quarter of northeast quarter, and southwest quarter of northwest quarter of Section twenty-three; northeast quarter, and south half of Section twenty-five; northwest quarter of northwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-seven; east half of northeast quarter, west half of west half, and southeast quarter of Section twenty-nine; northeast quarter and west half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Eighteen, Range Seven.

All of Section one; north half, and southwest quarter of Section three; north half of Section seven; all of Section nine; northeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section

twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Nineteen, Range Seven.

All of Section one; all of Section three; lots one and four, southeast quarter of northeast quarter, and south half of Section five; east half, and lots one, two, three and four of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter, and lot one of Section nineteen; lots one, two, six, seven, eight, nine, ten, eleven, twelve, fifteen and sixteen of Section twenty-one; all of Section twenty-three; north half of northeast quarter, and south half of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section thirty-five.

Township Twenty, Range Seven.

All of Section one; all of Section three; all of Section eleven; north half of Section thirteen; north half of northeast quarter of Section fifteen.

Township Fifteen, Range Eight.

South half of north half, and south half of Section seven; southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section nine; south half of north half,

and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Sixteen, Range Eight.

All of Section one; all of Section three; all of Section five; east half, southeast quarter of southwest quarter, and lots one, two and four of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter of northeast quarter, northeast quarter of northwest quarter, northeast quarter of southeast quarter, south half of southeast quarter, and lots one, two and three of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-nine; east half of Section thirty-one; all of Section thirty-three; north half, and northwest quarter of southeast quarter of Section thirty-five.

Township Seventeen, Range Eight.

All of Section one; north half, northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section

three; all of Section five; east half, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section nine; all of Section eleven; all of Section thirteen; north half, and southeast quarter of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; east half of east half of Section thirty-three; all of Section thirty-five.

Township Eighteen, Range Eight.

Northwest quarter of northeast quarter, northwest quarter, and west half of southwest quarter of Section one; all of Section three; all of Section nine; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section eleven; south half of northeast quarter, west half of northwest quarter, east half of southwest quarter, and southeast quarter of Section thirteen; north half, south half of southwest quarter, and northeast quarter of southeast quarter of Section fifteen; west half, and northeast quarter of Section seventeen; all of Section nineteen; northeast quarter, west half of northwest quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; southeast quarter of northeast quarter, southwest quarter of northwest quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; west half of northeast quarter, northwest quarter, and south half of Section twenty-

nine; all of Section thirty-one; all of Section thirty-three; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-five.

Township Nineteen, Range Eight.

All of Section one; lots ten and eleven, and west half of Southeast quarter of Section three; all of Section five; north half of north half, southeast quarter of northeast quarter, and southeast quarter of southeast quarter of Section eleven; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of Section thirteen.

Township Fifteen, Range Nine.

East half, southeast quarter of northwest quarter, and east half of southwest quarter of Section thirteen; east half, and east half of west half of Section twenty-five.

Township Eighteen, Range Nine.

Southeast quarter of Section twenty-three; all of Section twenty-five; south half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Nineteen, Range Nine.

Southwest quarter, and lots one to eleven, inclusive, of Section one; lots one, two, three and four, northeast quarter of southwest quarter, and southeast quarter of Section three.

DOUGLAS COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Twenty-three, Range One.

Southwest quarter of Section thirty-five.

Township Twenty-four, Range One.

South half of northeast quarter, southeast quarter of northwest quarter, and south half of Section one; all of Section three; northeast quarter of southeast quarter, and south half of southeast quarter of Section five; lots one to twenty, inclusive, and southeast quarter of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; lots one to twenty, inclusive, and east half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; lots one to twenty, inclusive, and east half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-five, Range One.

All of Section one; all of Section three; all of Section five; lots one to twenty, inclusive, and east half of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; lots eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty, and southeast quarter of Section nineteen; all of Section

twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; lots one to twenty, inclusive, and east half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty, Range One.

All of Section one, except lots one, two, three and four; all of Section seven; south half of northeast quarter, south half of southwest quarter, and north half of southeast quarter of Section nine; all of Section eleven; all of Section thirteen, except lots one, two, three and four; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-one, Range One.

All of Section five; north half of northeast quarter, west half of northwest quarter, southwest quarter, and north half of southeast quarter of Section seven; southwest quarter of Section seventeen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section nineteen; north half, and southeast quarter of Section twenty-one; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; north-

east quarter of northeast quarter, south half of northeast quarter, and south half of Section thirty-three.

Township Thirty-two, Range One.

Lots one, two, three, four, five, six and twelve of Section one; lots one to sixteen, inclusive, and south half of Section three; lots one to twelve, inclusive, and south half of Section five; all of Section seven; all of Section nine; west half of Section eleven; all of Section fifteen; all of Section seventeen; north half of Section nineteen; northeast quarter of northeast quarter of Section twenty-one.

Township Twenty-three, Range Two.

Northwest quarter of southwest quarter, and southeast quarter of Section thirty-three; south half of Section thirty-five.

Township Twenty-four, Range Two.

All of Section one; all of Section three; all of Section eleven; all of Section thirteen; east half of Section fifteen; all of Section twenty-three; all of Section twenty-five; all of Section thirty-three; all of Section thirty-five.

Township Twenty-five, Range Two.

Lots one to twenty, inclusive, and south half of Section one; lots one to twenty, inclusive, and south half of Section three; lots one to twenty, inclusive, and south half of Section five; all of Section seven; all of Section nine; southwest quarter of Section eleven; northwest

quarter of northwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-six, Range Two.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of Section fifteen; north half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section seventeen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-three; all of Section twenty-five; southeast quarter of Section thirty-five.

Township Twenty-seven, Range Two.

All of Section one; north half, northwest quarter of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section three; all of Section five; northwest quarter of Section seven.

Township Thirty, Range Two.

All of Section thirteen; south half of Section fifteen; east half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; northeast quarter of northeast quarter, south half of northeast quarter, south half of northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-one, Range Two.

Northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and west half of southwest quarter of Section one; northeast quarter of northeast quarter, and west half of Section three; all of Section nine; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section eleven; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirteen; northeast quarter of northwest quarter, and southeast quarter of Section fifteen; southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; east half, north half of northwest quarter, and south half of southwest quarter of Section twenty-five.

Township Twenty-four, Range Three.

West half of northeast quarter, and west half of Section five; all of Section seven; west half of west half of Section nine; each half of northeast quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section fifteen; east half of northeast quarter, and west half of southeast quarter of Section seventeen; west half of Section nineteen; southeast quarter of northwest quarter, and north half of southwest quarter of Section twenty-one; northwest quarter of northwest quarter of Section twenty-three; north half of north half, southwest quarter of northeast quarter, southeast quarter of northwest quarter, and south half of southeast quarter of Section thirty-one.

Township Twenty-five, Range Three.

Southwest quarter of northeast quarter, northwest quarter of northwest quarter, and south half of northwest quarter of Section three; south half of southeast quarter of Section five; east half, east half of west half, and southwest quarter of southwest quarter of Section seven; northwest quarter, and southwest quarter of southwest quarter of Section nine; all of Section thirteen; west half of Section seventeen; all of Section nineteen; northeast quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; southwest quarter of northeast quarter, south half of northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section thirty-

one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-six, Range Three.

East half, north half of northwest quarter, southeast quarter of northwest quarter, and south half of southwest quarter of Section one; north half of northeast quarter, and northwest quarter of Section three; southeast quarter of southwest quarter, and southeast quarter of Section nine; south half of Section eleven; all of Section thirteen; all of Section fifteen; east half of northeast quarter, and northeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half, northeast quarter of southwest quarter, and north half of southeast quarter of Section twenty-seven; northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Twenty-seven, Range Three.

North half, east half of southwest quarter, and southeast quarter of Section one; west half of northeast quarter, east half of northwest quarter, south half of southwest quarter, and southeast quarter of Section three; northeast quarter, east half of northwest quarter, and south half of Section seven; all of Section nine; lots four, five, six, nine, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; east half, and west half of west half of Section twenty-three; all of Section twenty-five; west half of northeast quarter,

northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; east half, southeast quarter of northwest quarter, and east half of southwest quarter of Section thirty-five.

Township Twenty-eight, Range Three.

Northwest quarter of Section nineteen; southwest quarter of Section thirty-one.

Township Twenty-nine, Range Three.

All of Section one; all of Section three; all of Section five; all of Section seven; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen and sixteen of Section nine; all of Section eleven; all of Section thirteen; lots one, two, three, five, six, seven, nine, ten, eleven, thirteen, fifteen and sixteen of Section fifteen; north half, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; northeast quarter, southeast quarter of northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; lots one, three, four, five, six, seven, eight, nine, ten, fourteen, fifteen and sixteen of Section thirty-three; all of Section thirty-five.

Township Thirty, Range Three.

Lots one, two, three and four, and south half of

Section one; lots one, two, three and four, and south half of Section three; lots one, two and five, northeast quarter of southeast quarter, and south half of south half of Section five; lots one, two, three, four, five and six, east half of southwest quarter, and southeast quarter of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section twenty-five; north half, and north half of southwest quarter of Section twenty-seven; north half of northeast quarter, lots one, two, three, four, five, six, seven, eight and nine, and south half of south half of Section twenty-nine; all of Section thirty-one; north half of northeast quarter, northwest quarter, and south half of Section thirty-three; northeast quarter, south half of northwest quarter, and south half of Section thirty-five.

Township Thirty-one, Range Three.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twen-

ty-seven; all of Section twenty-nine; lots one, two and three of Section thirty-one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-two, Range Three.

All of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section fifteen; all of Section seventeen.

Township Twenty-one, Range Four.

South half of northwest quarter, and south half of Section five; all of Section seven; northeast quarter of northeast quarter, northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section seventeen; west half of northeast quarter, east half of northwest quarter, and northwest quarter of southeast quarter of Section nineteen; southwest quarter, and north half of southeast quarter of Section twenty-one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-seven; north half of southwest quarter of Section twenty-nine; north half of southwest quarter, southwest quarter of southwest quarter, and south half of southeast quarter of Section thirty-one; east half, and south half of southwest quarter of Section thirty-three; northwest quarter, and west half of southwest quarter of Section thirty-five.

Township Twenty-two, Range Four.

Southwest quarter of Section three; northeast quarter of northeast quarter, south half of north half, west half of southwest quarter, and southeast quarter of southeast quarter of Section five; all of Section seven; east half, north half of northwest quarter, and south half of southwest quarter of Section nine; west half of west half of Section eleven; all of Section fifteen; northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section seventeen; north half, north half of southwest quarter, and southeast quarter of Section twenty-one; east half of southwest quarter, east half of northeast quarter, and northwest quarter of Section twenty-three; south half of northwest quarter, and southwest quarter of Section twenty-seven; southeast quarter of northeast quarter, and north half of south half of Section twenty-nine; west half of northwest quarter of Section thirty-one; south half of southeast quarter of Section thirty-three; north half, north half of southwest quarter, and southeast quarter of Sectioin thirty-five.

Township Twenty-three, Range Four.

Northwest quarter, southeast quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section one; north half of northwest quarter, and south half of southwest quarter of Section three; northeast quarter of northeast quarter, south half of south half, and northwest quarter of southeast quarter of Section seven; northwest quarter of northeast quar-

ter, south half of northeast quarter, east half of northwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section nine; northeast quarter of northeast quarter, south half of northeast quarter, and northwest quarter of southeast quarter of Section eleven; northeast quarter, south half of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirteen; southeast quarter of southeast quarter of Section fifteen; all of Section seventeen; northeast quarter, south half of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section nineteen; all of Section twenty-three; all of Section twenty-seven; northeast quarter of southwest quarter, southwest quarter of southwest quarter, north half of northwest quarter, and southeast quarter of northwest quarter of Section twenty-nine; south half of Section thirty-three; all of Section thirty-five.

Township Twenty-four, Range Four.

All of Section one; all of Section three; southwest quarter of northeast quarter, west half of southeast quarter, and lots three, four, five, six and seven of Section five; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section nine; all of Section eleven; all of Section thirteen; east half of northeast quarter, west half of northwest quarter, and lots four and five of Section fifteen; south half of southeast quarter, and lot four of

Section twenty-three; north half, northwest quarter of southwest quarter, and southeast quarter of Section twenty-five; northeast quarter, south half of northwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section twenty-nine; southeast quarter of Section thirty-three; west half of northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and southwest quarter of Section thirty-five.

Township Twenty-five, Range Four.

North half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section three; southeast quarter of southwest quarter of Section eleven; south half of northeast quarter, and southeast quarter of Section thirteen; northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, and lots three and five of Section seventeen; northeast quarter of northeast quarter, south half of northeast quarter, south half of south half, and northeast quarter of southeast quarter of Section nineteen; south half of southwest quarter of Section twenty-one; all of Section twenty-three; north half, west half of southwest quarter, and east half of southeast quarter of Section twenty-five; all of Section twenty-seven; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and south-

east quarter of Section twenty-nine; all of Section thirty-five.

Township Twenty-six, Range Four.

North half of northeast quarter of Section three; lot five of Section seven; lots nine and ten of Section seventeen; southwest quarter of southwest quarter of Section twenty-three; northwest quarter of southeast quarter of Section thirty-five.

Township Twenty-seven, Range Four.

Lots three and four, and west half of west half of Section one; northeast quarter of northeast quarter, and lot two of Section seven; east half of northeast quarter, northwest quarter of northwest quarter, southwest quarter of southwest quarter, and southwest quarter of southeast quarter of Section eleven; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, north half of south half, and southwest quarter of southwest quarter of Section thirteen; northeast quarter of northeast quarter, and southwest quarter of southeast quarter of Section twenty-one; northeast quarter of northeast quarter, south half of northeast quarter, and east half of southeast quarter of Section twenty-three; all of Section twenty-five; northwest quarter of northeast quarter, southeast quarter of northeast quarter, south half of northwest quarter, north half of southwest quarter, and lots one and two of Section twenty-nine; northwest quarter of northwest quarter, northeast quarter of southeast quarter, and lot eight of Section thirty-one; north half of northeast quarter, and

southeast quarter of northeast quarter of Section thirty-three; southwest quarter of Section thirty-five.

Township Twenty-eight, Range Four.

All of Section one; south half of north half, south half, and lot one of Section three; lots one, two, three and four, southwest quarter, and east half of southeast quarter of Section five; northeast quarter of northeast quarter, southeast quarter of northwest quarter, lots one and two, east half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section seven; all of Section nine; all of Section eleven; north half of northeast quarter, southeast quarter of northeast quarter, southwest quarter of southwest quarter, northwest quarter, northwest quarter of northwest quarter of southwest quarter, south half of northwest quarter of southwest quarter, and southeast quarter of Section thirteen; north half, southwest quarter, and lots one, two, three, four and five of Section fifteen; northeast quarter, and south half of Section seventeen; east half, north half of northwest quarter, and south half of southwest quarter of Section nineteen; north half, southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and west half of southeast quarter of southeast quarter of Section twenty-one; south half of southwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section twenty-three; all of Section twenty-five; west half of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter,

northeast quarter of southeast quarter, south half of southeast quarter, and southeast quarter of northwest quarter of southeast quarter of Section twenty-seven; east half of northeast quarter, northwest quarter, and west half of southwest quarter of Section twenty-nine; northwest quarter and south half of Section thirty-one; west half of east half, and west half of Section thirty-three; all of Section thirty-five.

Township Twenty-nine, Range Four.

South half of northwest quarter, southwest quarter, and lots one, two, three, four, five and six of Section one; lots one to sixteen, inclusive, of Section three; southwest quarter of northwest quarter, east half of southeast quarter, and lots one, three and four of Section five; northwest quarter of northeast quarter, northwest quarter of northwest quarter, east half of west half, and west half of southeast quarter of Section seven; lots one to sixteen, inclusive, of Section nine; all of Section eleven; all of Section thirteen; north half, southwest quarter and north half of southeast quarter of Section fifteen; southwest quarter of northeast quarter, north half of southwest quarter, northwest quarter of southeast quarter, and lots one to ten, inclusive, of Section seventeen; northeast quarter, north half of northwest quarter, east half of southeast quarter, and lot three of Section nineteen; southeast quarter of southwest quarter, south half of southeast quarter, and lots one, three, four, five and six of Section twenty-one; southwest quarter of southwest quarter, southeast quarter, and lot

four of Section twenty-three; east half of east half, northwest quarter, and west half of southwest quarter of Section twenty-five; all of Section twenty-seven; south half of southwest quarter, and southeast quarter of Section twenty-nine; north half of northeast quarter, southwest quarter of northwest quarter, fractional west half of northwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section thirty-one; all of Section thirty-three; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Thirty, Range Four.

Lots one, four and nine of Section one; lots two, three, four, five, six, seven, ten, eleven, twelve, fourteen and fifteen of Section three; lots one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fifteen and sixteen of Section five; lots one, two, seven and eight of Section seven; lots two, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen and sixteen of Section eleven; lots one, two, three, four, five and six of Section thirteen; lots one, two, seven, eight, nine, fifteen and sixteen of Section fifteen; lots ten, eleven, fourteen and fifteen of Section seventeen; lots seven, eight, nine, ten, eleven, fourteen, fifteen and sixteen of Section nineteen; lots two, three, four, six and fifteen of Section twenty-one; lots thirteen, fourteen, fifteen and sixteen of Section twenty-three; lots one, two, four, five, seven and eight of Section twenty-

five; all of Section twenty-seven; all of Section twenty-nine; northeast quarter, east half of northwest quarter, and lots one, two, three, four, five and six of Section thirty-one; north half, and lots one, two, three and four of Section thirty-three; west half of northeast quarter, northwest quarter, and lots one, two, three, four, five and six of Section thirty-five.

Township Thirty-one, Range Four.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, southwest quarter of southwest quarter, and east half of southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; east half of northeast quarter, west half of northwest quarter, northwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-two, Range Four.

East half of northeast quarter, and south half of Section one; north half, and lots one, two, three, four, five, six, seven and eight of Section three; north half of north half, and south half of south half of Section five; east half of east half, southwest quarter of south-

east quarter, and lot one of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; east half, east half of northwest quarter, and lots one, two and three of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; east half of east half, east half of west half of northeast quarter, west half of east half of northwest quarter, west half of northwest quarter, southwest quarter, and east half of southwest quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; east half of northeast quarter, east half of northwest quarter of northeast quarter, northwest quarter of northwest quarter, and lots three, four, six, seven, nine, ten, eleven, thirteen and seventeen of Section thirty-three.

Township Thirty-three, Range Four.

South half of north half, southwest quarter, north half of southeast quarter, and lots one, two, three and four of Section five; all of Section seven.

Township Twenty-one, Range Five.

Lot one, south half of north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; northwest quarter of northeast quarter, south half of northeast quarter, and northwest quarter of Section five; all of Section seven; northwest quarter of northeast quarter, southeast quarter of northeast quarter, east half of

northwest quarter, west half of southeast quarter, and east half of southwest quarter of Section thirteen; all of Section nineteen; northwest quarter of northwest quarter of Section twenty-one; south half of northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-five; east half of northeast quarter, and northeast quarter of southwest quarter of Section twenty-seven; east half of northwest quarter, and northeast quarter of southwest quarter of Section twenty-nine; west half of northwest quarter of Section thirty-three.

Township Twenty-two, Range Five.

All of Section one; southwest quarter of northeast quarter, lots one, two and three, south half of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section three; northwest quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section five; west half of northeast quarter, northwest quarter, and west half of southwest quarter of Section seven; all of Section eleven; east half of northeast quarter of Section thirteen; north half, northeast quarter of southwest quarter, and north half of southeast quarter of Section fifteen; southeast quarter of northeast quarter of Section nineteen; east half of southeast quarter of Section twenty-three; northeast quarter of northeast quarter, south half

of north half, and south half of Section twenty-five; northwest quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, lot two, southeast quarter, and northeast quarter of southwest quarter of Section twenty-seven; southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section twenty-nine; northeast quarter of southeast quarter of Section thirty-one; west half of northeast quarter, and northwest quarter of Section thirty-three; north half, and lot one of Section thirty-five.

Township Twenty-three, Range Five.

North half of northeast quarter, west half, and northwest quarter of southeast quarter of Section five; west half of northeast quarter, east half of northwest quarter, west half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seven; east half of northeast quarter, and southeast quarter of Section thirteen; west half of southwest quarter of Section seventeen; north half, southwest quarter, and north half of southeast quarter of Section nineteen; southwest quarter of northwest quarter of Section twenty-one; south half of northwest quarter, and north half of southwest quarter of Section twenty-nine; northwest quarter of northeast quarter of Section thirty-one.

Township Twenty-four, Range Five.

Southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section three; lot

five of Section twenty-nine; southwest quarter of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section thirty-one; south half of southeast quarter of Section thirty-five.

Township Twenty-five, Range Five.

Northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nine; northeast quarter of northeast quarter, northwest quarter of northwest quarter, and south half of northwest quarter of Section seventeen; northeast quarter of southwest quarter, and south half of southeast quarter of Section twenty-three; northeast quarter, and south half of Section twenty-five; north half, north half of southwest quarter, and southeast quarter of Section twenty-seven; south half of northeast quarter of Section twenty-nine; north half of northeast quarter, and northwest quarter of northwest quarter of Section thirty-five.

Township Twenty-seven, Range Five.

South half of southeast quarter of Section twenty-five.

Township Twenty-eight, Range Five.

Northeast quarter, and south half of Section thirteen; north half of northeast quarter, northwest quarter, and southeast quarter of northeast quarter of Section twenty-three; east half, northeast quarter of northwest quarter, south half of northwest quarter, north half of

southwest quarter, and southeast quarter of southwest quarter of Section twenty-five; north half of northeast quarter of Section twenty-seven; east half of northeast quarter of Section twenty-nine; north half of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section thirty-one; northwest quarter of southwest quarter, and south half of southwest quarter of Section thirty-three; northeast quarter, east half of northwest quarter, and south half of Section thirty-five.

Township Twenty-nine, Range Five.

North half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section three; southeast quarter of northwest quarter, and north half of southwest quarter of Section five; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, and southeast quarter of Section nine; north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and west half of southeast quarter of Section eleven; east half of northeast quarter, and west half of northwest quarter of Section fifteen; east half of northeast quarter, and southeast quarter of Section seventeen; north half, and west half of southwest quarter of Section twenty-one; southeast quarter of northeast quarter, southwest quarter of northwest quarter, north half of southwest quarter, southeast quarter of

southwest quarter, and southeast quarter of Section twenty-five; east half of northeast quarter, west half of southeast quarter, and lot one of Section twenty-nine; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section thirty-one; east half of east half of Section thirty-five.

Township Thirty, Range Five.

All of Section one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; lots one, two, three and four, and southeast quarter of Section nine; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; northwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, and lots one and three of Section thirteen; north half, northwest quarter of southwest quarter, and north half of southeast quarter of Section fifteen; north half, and lots four and five of Section seventeen; northeast quarter of northwest quarter, south half of northwest quarter, and lots one, five and six of Section nineteen; northeast quarter of northeast quarter, and lot one of Section twenty-one; south half of southeast quarter of Section twenty-five; lot seven of Section twenty-seven; lot one, west half of northwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section twenty-nine; southeast quarter of southeast quarter of Section thirty-one; south half of north half,

northeast quarter of northwest quarter, and south half of Section thirty-five.

Township Thirty-one, Range Five.

All of Section one; all of Section three; east half of southeast quarter of southeast quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of northeast quarter of southwest quarter, south half of northeast quarter of southwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, south half of north half of southeast quarter, east half of northeast quarter of northeast quarter of southeast quarter, and south half of southeast quarter of Section five; all of Section seven; all of Section nine; northwest quarter of northeast quarter, northwest quarter, and south half of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-five.

Township Thirty-two, Range Five.

North half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section one; east half of Section three; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nine; northwest quarter, and northwest quarter of southwest quarter of Section eleven; southwest quarter of northeast quarter, southeast quarter of northwest quarter, and

south half of Section thirteen; all of Section seventeen; north half of north half of Section nineteen; east half, north half of southwest quarter, and southeast quarter of southwest quarter of Section twenty-three; north half of Section twenty-five; west half of northeast quarter, and southeast quarter of Section twenty-seven; east half of southwest quarter, and south half of southeast quarter of Section twenty-nine; northwest quarter, northeast quarter of southwest quarter, northwest quarter of southeast quarter of southwest quarter, and east half of southeast quarter of southwest quarter of Section thirty-five.

Township Thirty-three, Range Five.

East half, northeast quarter of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section one; north half, and east half of southeast quarter of Section three; north half, and north half of south half of Section five; east half of east half, north half of northwest quarter, and lots one, two and three of Section eleven; north half of north half, southwest quarter of northeast quarter, and southeast quarter of northwest quarter of Section thirteen.

Township Twenty, Range Six.

Southwest quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section nineteen; south half of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half, east half of southwest

quarter, and southeast quarter of Section thirty-three; north half, north half of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-one, Range Six.

North half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; northwest quarter, northeast quarter of southwest quarter, west half of southwest quarter, and lot three of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; northeast quarter, and north half of northwest quarter of Section thirty-five.

Township Twenty-two, Range Six.

Northwest quarter of northwest quarter, south half of southwest quarter, and lots five, six and seven of Section one; all of Section five; north half of northeast quarter, northwest quarter, and northeast quarter of southwest quarter of Section seven; north half of northeast quarter of Section eleven; lots three and four, southeast quarter of southwest quarter, and southeast quarter of Section fifteen; southeast quarter of northeast quarter, south half, and lot three of Section seventeen; all of Section nineteen; all of Section twenty-one; west half

of northwest quarter, southwest quarter, and south half of southeast quarter of Section twenty-three; west half of northeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; south half of northeast quarter, south half of southwest quarter, and southeast quarter of Section thirty-five.

Township Twenty-three, Range Six.

Northwest quarter of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, south half of southwest quarter, and southeast quarter of southeast quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; north half, west half of southwest quarter, and southeast quarter of Section twenty-three, north half, southwest quarter, and northwest quarter of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-four, Range Six.

Northeast quarter of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section one; all of Section three; all of Section five; all of Section seven; north half, southwest quarter, north half of southeast quarter, and south-

west quarter of southeast quarter of Section nine; north half of northwest quarter, and south half of southeast quarter of Section eleven; north half of northeast quarter, and northeast quarter of northwest quarter of Section thirteen; east half of northwest quarter of Section fifteen; all of Section seventeen; lots two, three and four, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and northeast quarter of Section nineteen; south half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-one; west half, and southwest quarter of southeast quarter of Section twenty-seven; all of Section thirty-one; east half of west half, northwest quarter of northwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section thirty-three; south half of southeast quarter, and southwest quarter of Section thirty-five.

Township Twenty-five, Range Six.

Northeast quarter, south half of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section three; northwest quarter of Section five; north half, and west half of southwest quarter of Section seven; lot ten of Section fifteen; southeast quarter of northwest quarter, and southwest quarter of southwest quarter of Section seventeen; lots two and three of Section twenty-one; lots one, two and three, south half of northeast quarter, southeast quarter of northwest quarter, and southeast quarter of Section twenty-five;

southeast quarter of southeast quarter of Section thirty-three.

Township Twenty-six, Range Six.

North half of north half, southeast quarter of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and northeast quarter of southeast quarter of Section three; southeast quarter of southeast quarter of Section five; northwest quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and lots three, four, five and six of Section seven; west half of northeast quarter, southeast quarter of northwest quarter, and southwest quarter of Section nine; northeast quarter, east half of west half, north half of southeast quarter, southwest quarter of southeast quarter, and lot two of Section seventeen.

Township Twenty-seven, Range Six.

Lots three and four, and east half of southeast quarter of Section seven; northeast quarter of northeast quarter, northeast quarter of northwest quarter, west half of west half, and southeast quarter of southwest quarter of Section nineteen.

Township Twenty-eight, Range Six.

South half of southeast quarter, and southwest quarter of Section twenty-five; northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; lot nine of Section thirty-three; lot four of Section thirty-five.

Township Twenty-nine, Range Six.

North half of northeast quarter, and southwest quarter of northeast quarter of Section one; south half of northeast quarter, north half of southeast quarter, and lots four, five, six and seven of Section three; all of Section five; east half of east half, west half of west half, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section seven; northeast quarter of northeast quarter, west half of east half, south half of southwest quarter, and lots one, two, three, four, five, six and seven of Section nine; southwest quarter, and lot four of Section eleven; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section thirteen; northeast quarter, southwest quarter, and lot three of Section fifteen; east half of east half, northwest quarter of northwest quarter, southwest quarter of southeast quarter, and lots one, two, three and five of Section seventeen; northwest quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, and southwest quarter of southeast quarter of Section nineteen; east half, and lots one, two, three, four, five, six, seven and eight of Section twenty-one; northeast quarter of northeast quarter, south half of north half, northwest quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-three; northwest quarter of northeast quarter, southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, and east half of southeast quarter

of Section twenty-five; northeast quarter, east half of northwest quarter, and south half of Section twenty-seven; northeast quarter of Section twenty-nine; east half of Section thirty-three; north half of northwest quarter, north half of southwest quarter, and south half of southeast quarter of Section thirty-five.

Township Thirty, Range Six.

East half of east half, and west half of Section one; northeast quarter, and south half of Section three; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section five; northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section seven; north half, and southeast quarter of Section nine; southwest quarter of northeast quarter, west half, and northwest quarter of southeast quarter of Section eleven; northwest quarter of northwest quarter, and south half of southeast quarter of Section fifteen; northwest quarter of northeast quarter, southeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section nineteen; northwest quarter of northeast quarter, south half of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, west half of southwest quarter, and

southeast quarter of Section twenty-one; southwest quarter of northwest quarter of Section twenty-three; southwest quarter of southwest quarter, southeast quarter of southeast quarter, and lot five of Section twenty-five; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and northwest quarter of southwest quarter of Section twenty-nine; west half of northwest quarter, and southwest quarter of southwest quarter of Section thirty-one; southeast quarter of northeast quarter of Section thirty-five.

Township Thirty-one, Range Six.

All of Section one; all of Section three; east half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; north half, southwest quarter, and southwest quarter of southeast quarter of Section twenty-five; south half of Section twenty-seven; southeast quarter of northwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section twenty-nine; all of Section thirty-one; south half of Section thirty-three.

Township Thirty-two, Range Six.

North half, and north half of southeast quarter of Section three; all of Section five; northwest quarter of

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Section thirteen; northeast quarter, northeast quarter of northwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section fifteen; east half of Section seventeen; northeast quarter of northwest quarter, and lots one, two, three and four of Section nineteen; all of Section twenty-one; northwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section twenty-three; north half of northwest quarter of Section twenty-five; southeast quarter of northeast quarter, and southeast quarter of Section twenty-seven; all of Section twenty-nine; lot one of Section thirty-five.

Township Thirty-three, Range Six.

North half of Section one; southeast quarter of southwest quarter, and southeast quarter of Section three; south half of southeast quarter of Section five; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section seven; northwest quarter of southwest quarter of Section nine.

Township Nineteen, Range Seven.

Northeast quarter of southeast quarter, south half of southeast quarter, and lot four of Section nineteen; lots three, four, five, thirteen and fourteen of Section twenty-one; all of Section twenty-nine; east half, and lots one, two, three and four of Section thirty-one; all of Section thirty-three.

Township Twenty, Range Seven.

All of Section five; east half, lots one, two, three and four of Section seven; all of Section nine; south half of Section thirteen; south half of northeast quarter, northwest quarter, and south half of Section fifteen; all of Section seventeen; east half, and lots one, two, three and four of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half, and southwest quarter of Section twenty-seven; all of Section twenty-nine; east half, and lots one, two, three and four of Section thirty-one; all of Section thirty-three; northeast quarter, and south half of Section thirty-five.

Township Twenty-one, Range Seven.

All of Section one; all of Section three; south half of southwest quarter, north half of southeast quarter, and lots one to twelve, inclusive, of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section ninteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-two, Range Seven.

All of Section one; south half of northeast quarter, north half of southeast quarter, southwest quarter of

southeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and lots one to seven, inclusive, of Section three; all of Section five; northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, southeast quarter of southeast quarter, and lots one, three and four of Section seven; all of Section nine; northeast quarter, and south half of Section eleven; northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirteen; east half, and northeast quarter of southwest quarter of Section fifteen; northeast quarter of northeast quarter, and west half of northwest quarter of Section seventeen; lots eight and nine of Section nineteen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; lots one, two and three of Section thirty-one; lots one, two, seven and eight, east half of southwest quarter, and northeast quarter of southeast quarter of Section thirty-five.

Township Twenty-three, Range Seven.

South half of north half, south half, and lots one, two and three of Section one; south half of northeast quarter, north half of northwest quarter, north half of southwest quarter, and northwest quarter of southeast quarter of Section three; lots two and three of Section

seven; lots seven and eight of Section nine; lots four and sixteen of Section eleven; all of Section thirteen; lots four, five and six, and northeast quarter of southeast quarter of Section fifteen; west half of west half, and lots one, two, three, four, five and six of Section seventeen; lots six, seven, eight and nine, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section nineteen; northwest quarter of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, west half of southeast quarter, southeast quarter of southeast quarter, and lots one, three and four of Section twenty-one; lots two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section twenty-three; all of Section twenty-five; lots five, six, seven, eight, ten and eleven of Section twenty-seven; south half of Section thirty-one; lot three, and south half of southwest quarter of Section thirty-three; lots one, two, three, four, seven, eight, nine, ten, eleven, fourteen, fifteen and sixteen of Section thirty-five.

Township Twenty-four, Range Seven.

Lots one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and east half of southeast quarter of Section one; lots nine, ten, eleven and twelve of Section three; southwest quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section five; all of Section seven; lots one to twelve, inclusive, fourteen, fifteen and

sixteen of Section nine; lots three, four and nine, south half of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section eleven; lots one, two, three, six, seven and eight, and south half of southeast quarter of Section thirteen; lots four, five, six, seven, eight, nine, ten, eleven and twelve, and west half of southwest quarter of Section fifteen; lots one, two, three, four, five and six, southeast quarter of northwest quarter, east half of southwest quarter, north half of southeast quarter, and northeast quarter of Section seventeen; west half of northeast quarter, northwest quarter, and south half of Section nineteen; southeast quarter of southeast quarter, lots one, four, five, seven and eleven of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; northeast quarter, northeast quarter of northwest quarter, east half of southeast quarter, and lots four and five of Section twenty-nine; west half of northwest quarter, and south half of southwest quarter of Section thirty-one; north half of northeast quarter, southeast quarter of northwest quarter, north half of south half, and lots one, three, four, five, six and seven of Section thirty-three; all of Section thirty-five.

Township Twenty-five, Range Seven.

All of Section one; all of Section three; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, southeast quarter of southwest quarter, and southeast quarter of southeast quarter of Section five; north half of northeast quarter, and

lots one, two, three, four, seven, eight and eleven of Section seven; northeast quarter, and lots one, two, three and four of Section nine; northeast quarter, south half of northwest quarter, and south half of Section eleven; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and southwest quarter of Section thirteen; north half of northeast quarter, southeast quarter of northeast quarter, north half of southeast quarter, and lot three of Section fifteen; all of Section seventeen; all of Section nineteen; lots five and six, northeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of south half of Section twenty-one; east half of northeast quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-three; southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and lot six of Section twenty-seven; northeast quarter of northeast quarter, south half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-nine; east half, and east half of southwest quarter of Section thirty-one; lots one, two, three, four, five, six, and seven, southwest quarter, and northwest quarter of southeast quarter of Section thirty-three.

Township Twenty-six, Range Seven.

Lot six of Section three; all of Section five; all of Section seven; northeast quarter, south half of northwest

quarter, and south half of Section nine; south half of southwest quarter, and northeast quarter of southeast quarter of Section eleven; west half of northwest quarter of Section fifteen; all of Section seventeen; all of Section nineteen; west half of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; north half of northwest quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; west half of Section thirty-three.

Township Twenty-seven, Range Seven.

Northeast quarter, southeast quarter of southwest quarter, and west half of southeast quarter of Section five; all of Section seven; southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section fifteen; northeast quarter, and west half of Section seventeen; all of Section nineteen; northeast quarter, and south half of Section twenty-three; northwest quarter of northeast quarter, southwest quarter of northwest quarter, and north half of northwest quarter of Section twenty-five; north half, southwest quarter, and west half of southeast quarter of Section twenty-seven; north half of northwest quarter of Section thirty-one; northeast quarter, east half of northwest quarter, and south half of southwest quarter of Section thirty-three.

Township Twenty-nine, Range Seven.

All of Section one; lot one, east half of southwest

quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section three; northeast quarter of northwest quarter, south half of northwest quarter, and northwest quarter of southwest quarter of Section five; south half of northeast quarter, north half of southwest quarter, southeast quarter of southwest quarter, southeast quarter, and lots one, four and five of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; southeast quarter of northwest quarter, northeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section seventeen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section nieteen; northeast quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-one; north half, north half of southeast quarter, southeast quarter of southeast quarter, and lots one, two, three, four, five, six and seven of Section twenty-seven; northwest quarter, and north half of southwest quarter of Section twenty-nine; all of Section thirty-one; all of Section thirty-three.

Township Thirty, Range Seven.

South half of northeast quarter, north half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section one; all of Section three; lots one, two and four, south half of northeast quarter, southwest quarter of northwest quarter, southeast quarter of southwest quar-

ter, and south half of southeast quarter of Section five; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section seven; all of Section nine; north half of northeast quarter, southeast quarter of northeast quarter, and west half of Section eleven; north half, and southeast quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-five; west half of east half, west half, and southeast quarter of southeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Thirty-one, Range Seven.

Northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section one; northwest quarter of northeast quarter, south half of north half, northeast quarter of northwest quarter, and south half of Section three; south half of north half, north half of southwest quarter, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section five; north half, southwest quarter, west half of southeast quarter, west half of southeast quarter of southeast quarter, north half of

northeast quarter of southeast quarter, and southwest quarter of northeast quarter of southeast quarter of Section seven; north half of northeast quarter, southeast quarter of northeast quarter, northwest quarter of southwest quarter, south half of south half, and northeast quarter of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; east half, north half of northwest quarter, west half of southwest quarter of northwest quarter, northeast quarter of southwest quarter of northwest quarter, east half of southeast quarter of northwest quarter, northwest quarter of southeast quarter of northwest quarter, south half of southwest quarter, east half of northeast quarter of southwest quarter, and west half of northwest quarter of southwest quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; north half, north half of southwest quarter, and southeast quarter of southwest quarter of Section twenty-five; all of Section twenty-seven; northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; west half of northeast quarter, and south half of Section thirty-five.

Township Thirty-two, Range Seven.

All of Section one; all of Section three; north half of Section five; northeast quarter, southeast quarter of northwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section seven; northeast quarter, and south half of Section nine; all

of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter, northwest quarter of northeast quarter of northwest quarter, southeast quarter of northwest quarter, west half of northeast quarter of southwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, east half of northwest quarter of southeast quarter, south half of southeast quarter, and lots two, three, and four of Section nineteen; north half, southwest quarter, and south half of southeast quarter of Section twenty-one; all of Section twenty-three; north half, southwest quarter, and west half of southeast quarter of Section twenty-five; east half, and east half of southwest quarter of Section twenty-seven; south half of northeast quarter, northwest quarter of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; northwest quarter of northeast quarter of northwest quarter, northwest quarter of northwest quarter, south half of northwest quarter, northwest quarter of northeast quarter of southwest quarter, southwest quarter of northwest quarter of southwest quarter, north half of northwest quarter of southwest quarter, northwest quarter of southwest quarter of southwest quarter, south half of northeast quarter of southeast quarter, east half of southwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; north half, north half of south half, southwest quarter of southeast quarter, and southwest quarter of southwest quarter of Section thirty-five.

Township Thirty-three, Range Seven.

Lots three and four, south half of north half, and south half of Section one; southwest quarter of northeast quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section three; all of Section eleven; north half of Section thirteen.

Township Nineteen, Range Eight.

All of Section seven; west half of Section nine; southwest quarter of southwest quarter of Section eleven; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty, Range Eight.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; northeast quarter of northwest quarter, and southeast quarter of southwest quarter of Section seventeen; east half, and lots one, six, seven, eight, nine, ten, eleven and twelve of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-one, Range Eight.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-two, Range Eight.

All of Section one; lots one, two, three, four, five, six, seven, ten, eleven, fourteen and fifteen of Section three; lots two, three, four, five, six, nine and ten, and southwest quarter of northwest quarter of Section five; north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and lots three, six, seven, eight, nine, ten and eleven of Section seven; southwest quarter of northwest quarter, northwest quarter of southwest quarter, and lots nine, ten, eleven, twelve and sixteen of Section nine; lots one, two, three, seven, eight, nine, ten, eleven, fourteen, fifteen and sixteen of Section eleven; lots nine and ten of Section fifteen; lots one, two and three, north half of northeast quarter, southwest quarter of northeast quarter, west half, and west half of southeast quarter of Section seventeen; all of Section nineteen; lots seven and fourteen of Section twenty-one; lots eight, nine, ten and eleven of Section twenty-three; northeast quarter, and west half

of northwest quarter of Section twenty-five; lots two to twelve, inclusive, of Section twenty-seven; west half of west half, and lots one, two and three of Section twenty-nine; all of Section thirty-one; lot one, south half of northeast quarter, northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section thirty-three.

Township Twenty-three, Range Eight.

Lots seven and nine of Section one; lots one, two and three, south half of north half, and south half of Section three; all of Section five; east half, and lots seven, ten, eleven and twelve of Section seven; all of Section nine; lots one, five and seven, west half of west half, southeast quarter of southwest quarter, and south half of southeast quarter of Section eleven; lots two, three and four, south half of north half, and south half of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; north half of north half, southeast quarter of northwest quarter, and south half of Section twenty-three; southeast quarter of northeast quarter, northwest quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-four, Range Eight.

All of Section one; all of Section three; all of

Section five; lots one, two, three and four, and east half of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; lots one, two, three and four, and east half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; lots one, two, three and four, and east half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-five, Range Eight.

All of Section one; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-three; all of Section thirty-five.

Township Twenty-six, Range Eight.

Southeast quarter of northeast quarter, south half of northwest quarter, southwest quarter, northeast quarter of southeast quarter, south half of southeast quarter, and lots three and four of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-seven, Range Eight.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-nine, Range Eight.

East half of northeast quarter, west half of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section thirteen; southeast quarter of Section fifteen; southeast quarter of southeast quarter of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; east half, and east half of southwest quarter of Section twenty-nine; south half of north half, south half, and lots one, two, three and four of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty, Range Eight.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; south half of north half, and south half of Section thirteen; all of Section fifteen; all of

Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; east half, north half of northwest quarter, and east half of southwest quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-one, Range Eight.

All of Section one; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-two, Range Eight.

North half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; north half of northeast quarter of Section thirty-one; all of Section thirty-there; all of Section thirty-five.

Township Ninteen, Range Nine.

All of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; east half, east half of west half, and southwest quarter of southwest quarter of Section seventeen; east half, and east half of west half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty, Range Nine.

South half of northwest quarter, west half of southwest quarter, and lots one to fourteen, inclusive, of Section one; north half, northwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section eleven; east half of northwest quarter, southwest quarter, and lots one to twelve, inclusive, of Section thirteen; northwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, and east half of southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; west half, and southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; northwest quarter, and lots one to twelve, inclusive, of Section twenty-five; northeast quarter, north half of northwest quarter, and southeast quarter of northwest quarter of Section twenty-seven; north half of northwest quarter of Section twenty-nine; south half of northeast quarter, east

half of northwest quarter, northeast quarter of southwest quarter, and lot two of Section thirty-one; northeast quarter of northeast quarter, southwest quarter, and southwest quarter of southeast quarter of Section thirty-three; northeast quarter of northeast quarter, south half of north half, and south half of Section thirty-five.

Township Twenty-one, Range Nine.

All of Section one; south half of southwest quarter, northwest quarter of southeast quarter, and lots one, two, three, four, six, seven, eight, nine, ten, fifteen and sixteen of Section three; east half of east half, northeast quarter of southwest quarter, and southwest quarter of southwest quarter of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-two, Range Nine.

All of Section one; all of Section three; south half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and lots one, two, three, four, five, six, nine and ten of Section five; lots six to sixteen, inclusive, of Section seven; south half of northeast quarter, southeast quarter of northwest quarter, southeast

quarter, and lots three, four, five, six, seven, eight and nine of Section nine; north half, southwest quarter, and north half of southeast quarter of Section eleven; south half of southeast quarter, and lots five and six of Section thirteen; north half of northeast quarter, southwest quarter of southwest quarter, and lots eight and nine of Section fifteen; northwest quarter of southwest quarter, southwest quarter of southeast quarter, and lot seven of Section seventeen; northeast quarter of northeast quarter, northeast quarter of southwest quarter, east half of southeast quarter, and lots one, two and three of Section nineteen; southeast quarter of northeast quarter, east half of southwest quarter, west half of southeast quarter, and lots four, five and six of Section twenty-one; north half, southwest quarter, and west half of southeast quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; north half and southwest quarter of Section thirty-one; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Twenty-three, Range Nine.

All of Section one; lot four, south half of north half, and south half of Section five; northeast quarter of southwest quarter, and lots five, six, seven, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, and eigh-

teen of Section seven; southwest quarter of southwest quarter of Section nine; southwest quarter of northeast quarter of Section eleven; southwest quarter of southeast quarter, and lots nine, ten, sixteen, seventeen and eighteen of Section thirteen; southwest quarter of Section seventeen; south half of Section nineteen; east half, and lots one, two, three and four of Section twenty-one; northwest quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; northwest quarter, north half of southwest quarter, and lots one, two, three, four, five and six of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-four, Range Nine.

All of Section one; all of Section three; all of Section five; all of Section eleven; all of Section thirteen; all of Section twenty-three; all of Section twenty-five; all of Section thirty-five.

Township Twenty-six, Range Nine.

All of Section one; all of Section three; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-five.

Township Twenty-nine, Range Nine.

Northwest quarter of southeast quarter of Section one; northeast quarter, south half of northwest quarter, and west half of southwest quarter of Section thirteen;

north half, southwest quarter, and northwest quarter of southeast quarter of Section twenty-three; all of Section twenty-seven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section thirty-five.

Township Thirty, Range Nine.

All of Section three; all of Section five; all of Section seven; all of Section nine; all of Section thirteen; south half of north half, and south half of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-one, Range Nine.

All of Section one; all of Section three; north half, and southeast quarter of Section five; south half of northeast quarter, east half of northwest quarter, and lot one of Section seven; all of Section nine; all of Section eleven; east half of east half, and west half of Section thirteen; all of Section fifteen; east half, north half of northwest quarter, southeast quarter of northwest quarter, and south half of southwest quarter of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; northeast quarter, and south half of Section twenty-nine; all of Section thirty-five.

Township Nineteen, Range Ten.

Southeast quarter of Section twenty-five.

Township Twenty, Range Ten.

All of Section one; east half of northeast quarter, and south half of Section eleven; all of Section thirteen; north half, northeast quarter of southwest quarter, and southeast quarter of Section twenty-three; north half of northwest quarter, southwest quarter of northwest quarter, and west half of southwest quarter of Section twenty-five; north half of northeast quarter, southwest quarter of northeast quarter, east half of northwest quarter, and west half of southeast quarter of Section twenty-seven; west half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and lots one, two, three and four of Section thirty-five.

Township Twenty-one, Range Ten.

East half of northeast quarter, and southeast quarter of southeast quarter of Section nine; northeast quarter, east half of northwest quarter, and south half of Section fifteen; northeast quarter of Section twenty-one.

Township Twenty-two, Range Ten.

All of Section one; south half, and lots one to twelve, inclusive, of Section three; all of Section nine; all of Section eleven; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, and lot six of Section thirteen; southwest quarter of north-

east quarter, southeast quarter of northwest quarter, southeast quarter of southeast quarter, and lots one, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section fifteen; all of Section twenty-one; southwest quarter of northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and lots five to eleven, inclusive, of Section twenty-three; northeast quarter of northwest quarter, west half of west half, and southeast quarter of southwest quarter of Section twenty-five; all of Section twenty-seven; east half, and east half of west half of Section thirty-three; lots one, two, three and four, south half of north half, west half of southwest quarter, and north half of southeast quarter of Section thirty-five.

Township Twenty-three, Range Ten.

All of Section one; lot one, and southeast quarter of Section eleven; northeast quarter of Section thirteen; all of Section twenty-three; all of Section thirty-five.

COOS COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Twenty-six, Range Nine.

All of Section five; all of Section seven; all of Section nine; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-nine; north half, southeast quarter of south-

west quarter, and southeast quarter of Section thirty-one; all of Section thirty-three.

Township Twenty-seven, Range Nine.

All of Section one; all of Section three; all of Section five; north half of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-four, Range Ten.

All of Section one; all of Section three; lot one, southeast quarter of northeast quarter, and east half of southeast quarter of Section five; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; east half of Section seventeen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; east half of Section twenty-nine; all of Section thirty-three; all of Section thirty-five.

Township Twenty-five, Range Ten.

All of Section one; all of Section three; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section five; east half of Section seven; north half

of northeast quarter, southeast quarter of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; east half, northeast quarter of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; northeast quarter of northeast quarter, west half of east half, and west half of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-six, Range Ten.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; north half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half, and southwest quarter of Section thirty-five.

Township Twenty-seven, Range Ten.

East half of northeast quarter, and southeast quarter of Section one; all of Section three; all of Section

five; all of Section seven; north half of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Twenty-nine, Range Ten.

Lots six, seven, ten and eleven of Section seven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section twenty-one; north half of Section twenty-three; northeast quarter of Section twenty-five; northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; northwest quarter of southwest quarter, and south half of south half of Section thirty-three; southwest quarter of Section thirty-five.

Township Thirty, Range Ten.

All of Section one; lots one and two, northwest quarter of southwest quarter, northeast quarter of southeast quarter, and south half of south half of Section three; all of Section five; all of Section seven; north half, southwest quarter, and east half of southeast quarter of Section nine; north half of north half, northeast quarter of southwest quarter, south half of

southwest quarter, and southeast quarter of Section eleven; north half of north half, and northeast quarter of southeast quarter of Section thirteen; south half of southwest quarter, and southwest quarter of southeast quarter of Section fifteen; all of Sectoin seventeen; all of Section nineteen; southeast quarter of southwest quarter, and east half of Section twenty-one; southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section twenty-three; north half of northeast quarter, southeast quarter of northeast quarter, and southeast quarter of southeast quarter of Section twenty-five; east half, south half of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-seven; northwest quarter of southwest quarter, south half of southwest quarter, northwest quarter of northeast quarter, southeast quarter of northeast quarter, east half of southeast quarter, and northwest quarter of Section twenty-nine; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter, and lots one, two, three, four, six and seven of Section thirty-one; northeast quarter, east half of northwest quarter, and south half of Section thirty-three; northwest quarter of northeast quarter, south half of north half, and south half of Section thirty-five.

Township Thirty-one, Range Ten.

Southeast quarter of northwest quarter, north-east quarter of southeast quarter, and south half of south-

east quarter of Section one; lots one and two, north half of southeast quarter, and southeast quarter of southeast quarter of Section three; southeast quarter of southwest quarter of Section five; northeast quarter, west half of southeast quarter, and lots one, two, three, four, five, six, seven, eight, nine and twelve of Section seven; southeast quarter of northeast quarter, and northeast quarter of southeast quarter of Section nine; southeast quarter of northeast quarter, south half of southwest quarter, and west half of southeast quarter of Section thirteen; southeast quarter of southwest quarter of Section seventeen; lots four, five, seven, eight and nine of Section nineteen; northwest quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; north half of northeast quarter, southeast quarter of northeast quarter, and northeast quarter of northwest quarter of Section twenty-three; east half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-seven; south half of northeast quarter of Section twenty-nine; lots eight and eleven of Section thirty-one; east half, north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of southwest quarter of Section thirty-three; east half of northeast quarter of Section thirty-five.

Township Twenty-six, Range Eleven.

Lots one and two, and south half of northeast quarter of Section one; southeast quarter of Section twenty-three; all of Section twenty-five; all of Section thirty-five.

Township Twenty-seven, Range Eleven.

All of Section thirteen; lots one, two, three, four, seven, eight, nine, ten, eleven, fourteen, fifteen and sixteen of Section fifteen; all of Section twenty-three; all of Section twenty-five; lots one, two, three, four, five, six, seven, ten, eleven, twelve, thirteen and fourteen of Section twenty-seven; all of Section thirty-five.

Township Twenty-nine, Range Eleven.

All of Section seven; all of Section nine; lots one, two, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section thirteen; all of Section fifteen; all of Section seventeen; north half, southwest quarter of southwest quarter (or lot four), northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section nineteen; all of Section twenty-one; east half of northeast quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-three; lots one, two, five, eight, nine, fifteen and sixteen of Section twenty-five; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter,

south half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-seven; south half of Section twenty-nine; all of Section thirty-one; northwest quarter of southwest quarter, northeast quarter of southeast quarter, south half of south half, and west half of northwest quarter of Section thirty-three; northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Thirty, Range Eleven.

East half of southwest quarter, and southeast quarter of Section three; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section five; north half, southwest quarter, and north half of southeast quarter of Section seven; west half, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section nine; northwest quarter of southwest quarter of Section eleven; southeast quarter of northwest quarter, south half, and northeast quarter of northeast quarter of Section fifteen; south half of northeast quarter, southeast quarter of northwest quarter, and northeast quarter of northeast quarter of Section seventeen; southeast quarter of southwest quarter, and southeast quarter of Section nineteen; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of southwest quarter, and

southeast quarter of Section twenty-one; north half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-seven; south half of north half, and south half of Section twenty-nine; north half, and southeast quarter of Section thirty-one; northwest quarter of Section thirty-three.

Township Thirty-one, Range Eleven.

Southwest quarter of northeast quarter, and west half of Section one; all of Section three; lot one of Section five; southwest quarter of northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section seven; east half, and southeast quarter of southwest quarter of Section nine; all of Section eleven; north half of north half of Section thirteen; northeast quarter, north half of northwest quarter, south half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section fifteen; northwest quarter of northeast quarter, south half of northeast quarter, and southeast quarter of Section nineteen; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, and south half of south half of Section twenty-one; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-three; northwest

quarter of northeast quarter, northwest quarter, and northwest quarter of southwest quarter of Section twenty-five; southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section twenty-seven; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, southeast quarter of southwest quarter, and west half of southeast quarter of Section twenty-nine; north half of northwest quarter, and southwest quarter of northwest quarter of Section thirty-three; northeast quarter of northeast quarter, and west half of southwest quarter of Section thirty-five.

Township Twenty-eight, Range Twelve.

Northwest quarter, north half of south half, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Twenty-nine, Range Twelve.

Southeast quarter of southeast quarter of Section one; southeast quarter of southwest quarter, and southeast quarter of southeast quarter of Section eleven; northeast quarter, northwest quarter of northwest quarter, northwest quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirteen; east half of southeast quarter of Section fifteen; east half, and east half of southwest quarter of Section twenty-three; northeast quar-

ter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-five; northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section twenty-seven; northwest quarter of southwest quarter of Section twenty-nine; northwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and south half of southeast quarter of Section thirty-five.

Township Thirty, Range Twelve.

All of Section one; east half of southwest quarter, and southeast quarter of Section three; lot six of Section five; northwest quarter of Section seven; northeast quarter of northeast quarter of Section nine; east half, and north half of northwest quarter of Section eleven; north half of Section thirteen; southeast quarter of southeast quarter of Section nineteen; southwest quarter of northeast quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-five; west half of east half, and west half of Section twenty-nine; lots two, three and four, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; east half of northwest quarter of Section thirty-five.

Township Thirty-one, Range Twelve.

Lots one, two and five, and south half of northwest

quarter of Section three; southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section five; south half of northeast quarter, southwest quarter of northwest quarter, southwest quarter, and north half of southeast quarter of Section seven; southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section nine; lots two and three of Section eleven; southeast quarter of northeast quarter, and lots ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen of Section thirteen; northeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section fifteen; east half, north half of southwest quarter, and southeast quarter of southwest quarter of Section seventeen; all of Section twenty-one; lots two, three, four, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section twenty-three; lots four, five and twelve of Section twenty-five; all of Section twenty-seven; north half of northeast quarter, and northeast quarter of northwest quarter of Section thirty-three; north half of northeast quarter, southeast quarter of northeast quarter, west half of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section thirty-five.

Township Thirty, Range Thirteen.

North half of northwest quarter, southwest quarter,

and southwest quarter of southeast quarter of Section twenty-five; southwest quarter of northeast quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-five.

Township Thirty-one, Range Thirteen.

Lots one, two, three and four, and southeast quarter of Section one.

CURRY COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Thirty-four, Range Eleven.

All of Section three; north half, southwest quarter, and northeast quarter of southeast quarter of Section seven; all of Section nine; all of Section eleven; all of Section fifteen; southeast quarter of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, southeast quarter, and lots one, four, five and seven of Section seventeen; all of Section nineteen; all of Section thirty-one.

Township Thirty-five, Range Eleven.

Southeast quarter of northeast quarter, northeast quarter of northwest quarter, east half of southeast quarter, and lots one, two, three, seven, eight, nine, ten, eleven, twelve and thirteen of Section seven; all of Section seventeen; northeast quarter of northwest quarter, northeast quarter of southwest quarter, and lots one and two of Section nineteen; northeast quarter, east half of southeast quarter, and lot five of Section twenty-nine.

Township Thirty-one, Range Twelve.

North half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section nineteen; southeast quarter of northwest quarter, east half of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-nine.

Township Thirty-five, Range Twelve.

East half of southeast quarter, and lots four, five and six of Section thirteen;

Township Thirty-one, Range Thirteen.

North half of northeast quarter, and southwest quarter of northeast quarter of Section eleven; northeast quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirteen; west half of northeast quarter, northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-three; southeast quarter of northeast quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-five.

JOSEPHINE COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Thirty-three, Range Five.

West half of southeast quarter, and southwest quarter of Section three; south half of south half of Section five; north half of northeast quarter, northwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section seven; north half of northeast quarter, north half of southwest quarter of northeast quarter, north half of south half of southwest quarter of northeast quarter, northwest quarter, north half of southeast quarter of northeast quarter, west half of southwest quarter, south half of southeast quarter, south half of northeast quarter of southeast quarter, south half of north half of northeast quarter of southeast quarter, and south half of northwest quarter of southeast quarter of Section nine; southwest quarter of northwest quarter, southwest quarter of southwest quarter, southwest quarter of southeast quarter, and lots four and five of Section eleven; southeast quarter of northeast quarter, southwest quarter of northwest quarter, and south half of Section thirteen; east half of southeast quarter, east half of southwest quarter of northeast quarter, west half of southwest quarter, northwest quarter of northeast quarter of northwest quarter, east half of northeast quarter of northwest quarter, south half of south half of southwest quarter of northwest quarter, southwest quarter of southeast quarter of northwest quarter, east half of southeast quarter of northwest quar-

ter, southeast quarter of northeast quarter, and east half of northeast quarter of northeast quarter of Section fifteen; all of Section seventeen; north half of northeast quarter, southeast quarter of northeast quarter, east half of northwest quarter, north half of southeast quarter, and lots one, two and eight of Section nineteen; southeast quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, and lots one and three of Section twenty-one; all of Section twenty-three; north half, southwest quarter, west half of northeast quarter of southeast quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-five; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and south half of Section twenty-seven; all of Section thirty-one; all of Section thirty-five.

Township Thirty-four, Range Five.

North half, and north half of southeast quarter of Section three; north half of northwest quarter, and southwest quarter of northwest quarter of Section five; south half of northeast quarter, and southeast quarter of Section nine; north half of northeast quarter, southwest quarter of northeast quarter, south half of southeast quarter of northwest quarter, northeast quarter of southwest quarter, and southeast quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; northeast quarter, northwest quarter of northwest quarter, west half of southwest quarter, north half of southeast quarter, and east

half of southeast quarter of northwest quarter of Section twenty-nine; southwest quarter, and south half of southeast quarter of Section thirty-one; east half, north half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section thirty-three; west half of northeast quarter, northwest quarter, and south half of Section thirty-five.

Township Thirty-five, Range Five.

Northwest quarter of northeast quarter, south half of northeast quarter, west half, and southeast quarter of Section one; northeast quarter of northeast quarter, south half of north half, north half of southeast quarter, north half of south half of southeast quarter, and southwest quarter of Section three; west half of northeast quarter, west half, and northwest quarter of southeast quarter of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, west half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section nineteen; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, north half of southwest quarter, north half of southwest quarter of southwest quarter, southeast quarter of southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and north half of

southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half of northeast quarter, north half of southwest quarter of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter, north half of southeast quarter of northwest quarter, and southwest quarter of southeast quarter of Section twenty-seven; south half of northeast quarter of northeast quarter, south half of northeast quarter, west half of east half of northeast quarter of northwest quarter, west half of northeast quarter of northwest quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-nine; southeast quarter of northwest quarter, southwest quarter, west half of southeast quarter, southeast quarter of northeast quarter, and southeast quarter of southeast quarter of Section thirty-one; north half, southeast quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section thirty-three; northeast quarter, east half of northwest quarter, and south half of Section thirty-five.

Township Thirty-six, Range Five.

All of Section one; all of Section three; southeast quarter of northeast quarter, north half of southeast quarter, and southwest quarter of northeast quarter of Section five; northwest quarter of northeast quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section seven; west half of east half, and west half of Section

nine; northwest quarter of northeast quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section eleven; all of Section thirteen; north half of southeast quarter of northeast quarter of Section fifteen; south half of southeast quarter of Section nineteen; lot eight, southeast quarter of southeast quarter, and north half of northeast quarter of Section twenty-one; lot eight, and southeast quarter of southwest quarter of Section twenty-three; south half of southwest quarter, and northwest quarter of southeast quarter of Section twenty-nine; north half, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-one; southwest quarter of northeast quarter, and northeast quarter of southeast quarter of Section thirty-three.

Township Thirty-seven, Range Five.

Northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section one; southeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and south half of Section five; northeast quarter, and west half of Section seven; north half, southwest quarter, east half of southeast quarter, and east half of northwest quarter of southeast quarter of Section nine; all of Section thirteen; north half, southwest quarter, north half of northeast quarter of southeast quarter, southwest quarter of northeast quarter of southeast quarter, west half of

southeast quarter, and west half of southeast quarter of southeast quarter of Section fifteen; all of Section seventeen; north half of southwest quarter, and southwest quarter of southwest quarter of Section nineteen; northwest quarter of northeast quarter, and northeast quarter of northwest quarter of Section twenty-one; all of Section twenty-three; southwest quarter of northeast quarter, east half of northeast quarter of northwest quarter, northwest quarter of northwest quarter, northeast quarter of southwest quarter of northwest quarter, and west half of west half of southwest quarter of Section twenty-five; east half of northeast quarter of Section twenty-seven; east half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; north half of northeast quarter, and south half of southwest quarter of Section thirty-three.

Township Thirty-eight, Range Five.

All of Section three; all of Section nine; north half of northeast quarter, northwest quarter of northwest quarter, northeast quarter of southwest quarter, and southwest quarter of southwest quarter of Section eleven; east half of northwest quarter, northeast quarter of southwest quarter, and southeast quarter of Section thirteen; southeast quarter of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter of southwest

quarter, east half of southeast quarter of southwest quarter, northeast quarter of southeast quarter, and northwest quarter of southwest quarter of Section fifteen; northwest quarter of northeast quarter of northeast quarter, south half of northeast quarter of northeast quarter, northwest quarter of northeast quarter, south half of northeast quarter, southwest quarter of southwest quarter, west half of northwest quarter of southwest quarter, west half of east half of northwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section twenty-one; northeast quarter of northeast quarter, south half of southwest quarter, and southeast quarter of southeast quarter of Section twenty-five; all of Section twenty-nine; all of Section thirty-one; north half of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; east half of Section thirty-five.

Township Thirty-nine, Range Five.

All of Section one; northwest quarter of northeast quarter, west half, and southeast quarter of southeast quarter of Section seven; all of Section nine; south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section eleven; all of Section thirteen; southeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section fifteen; all of Section seventeen;

all of Section nineteen; all of Section twenty-one; north half, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range Six.

Southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section one; south half of south half of Section nine; north half of northwest quarter, and west half of southeast quarter of Section eleven; south half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section thirteen; north half, and northwest quarter of southwest quarter of Section fifteen; all of Section seventeen; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nineteen; south half of northeast quarter, northwest quarter of northwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-one; northeast quarter, south half of northwest quarter, and south half of southeast quarter of Section twenty-three; southeast quarter of northwest quarter, northeast quarter of southwest quarter, southeast quarter of southwest quarter, and west half of southeast quarter of Section twenty-five; west half of northeast quarter, west half, northwest quarter of southeast quarter, and south

half of southeast quarter of Section twenty-seven; all of Section twenty-nine; north half of northeast quarter, and northeast quarter of northwest quarter of Section thirty-one; north half, north half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; east half of northeast quarter, southwest quarter of northwest quarter, west half of southwest quarter, and east half of southeast quarter of Section thirty-five.

Township Thirty-four, Range Six.

North half, and north half of southeast quarter of Section one; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and north half of southwest quarter of Section three; south half of northeast quarter, and west half of Section seven; southeast quarter of southeast quarter of Section nine; southeast quarter of southwest quarter, and southeast quarter of Section eleven; west half of east half, southeast quarter of southeast quarter, and west half of Section thirteen, east half, and east half of southwest quarter of Section fifteen; northwest quarter of northeast quarter, and west half of Section seventeen; all of Section nineteen; northeast quarter of northeast quarter, south half of north half, northwest quarter of southwest quarter, and north half of southeast quarter of Section twenty-one; east half, and south half of southwest quarter of Section twenty-three; all of Section twenty-five; southeast quarter of northeast quarter, north half of southeast quarter, and southwest quarter

of southeast quarter of Section twenty-seven; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, southwest quarter of southwest quarter, and northeast quarter of southwest quarter of Section twenty-nine; all of Section thirty-one; east half of northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-three; lots one, two and five of Section thirty-five.

Township Thirty-five, Range Six.

East half, north half of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section one; southwest quarter of northeast quarter, northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and southwest quarter of southeast quarter of Section three; south half of northeast quarter, northwest quarter of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section five; north half, north half of south half, and southwest quarter of southwest quarter of Section seven; north half, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section nine; northeast quarter, northeast quarter of southwest quarter, south half of southwest quarter, and northeast quarter of southeast quarter of Section eleven; east half, north half of northwest quarter, southeast quarter of northwest quarter, and east half of southwest quarter of Section thirteen; northeast

quarter of northeast quarter, northwest quarter of northwest quarter, south half of north half, and southeast quarter of Section fifteen; northwest quarter of northwest quarter, and southeast quarter of southeast quarter of Section seventeen; east half, north half of northwest quarter, and northeast quarter of southwest quarter of Section nineteen; northeast quarter of northeast quarter, northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-one; south half of northeast quarter of Section twenty-three; northeast quarter of northeast quarter, southeast quarter of northwest quarter, and southeast quarter of southwest quarter of Section twenty-five; southwest quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-seven; north half, and southeast quarter of Section twenty-nine; northeast quarter of northeast quarter, southwest quarter of northeast quarter, west half, and northwest quarter of southeast quarter of Section thirty-one; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-three.

Township Thirty-six, Range Six.

North half, north half of southwest quarter, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section one; north half, southwest quarter, and south

half of southeast quarter of Section three; south half of north half, northeast quarter of northwest quarter, and south half of Section five; north half of northeast quarter, west half of northwest quarter, west half of southwest quarter, and south half of southeast quarter of Section seven; north half, west half of southwest quarter, and east half of southeast quarter of Section nine; northwest quarter of northeast quarter, and northwest quarter of Section eleven; north half of northeast quarter, and northwest quarter of Section seventeen; north half of southwest quarter, southeast quarter, and lots five, ten and eleven of Section twenty-one; southwest quarter of northeast quarter, west half, and southwest quarter of southeast quarter of Section twenty-three; west half of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and south half of Section twenty-five; northwest quarter of northeast quarter, southeast quarter of northeast quarter, west half of northwest quarter, and south half of Section twenty-seven; northwest quarter of northeast quarter, south half of northeast quarter, northeast quarter of northwest quarter, and east half of southeast quarter of Section twenty-nine; northwest quarter of northwest quarter, and south half of northwest quarter of Section thirty-one; northeast quarter, north half of northwest quarter, and northeast quarter of southeast quarter of Section thirty-three; east half of northeast quarter of Section thirty-five.

Township Thirty-seven, Range Six.

East half of northeast quarter, northwest quarter

of northwest quarter, south half of northwest quarter, west half of southwest quarter, and northeast quarter of southeast quarter of Section one; east half, and south half of southwest quarter of Section three; southwest quarter of northwest quarter, east half of southwest quarter, and southwest quarter of southeast quarter of Section five; northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section seven; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section nine; north half of northwest quarter, south half of southwest quarter, east half of southeast quarter, and northwest quarter of southwest quarter of Section eleven; northeast quarter of southeast quarter, south half of southeast quarter, northwest quarter of northeast quarter, and southwest quarter of northwest quarter of Section thirteen; north half, and southeast quarter of Section fifteen; northwest quarter of northwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; northwest quarter, and south half of Section twenty-one; west half of northeast quarter, west half, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-three; northeast quarter, northwest quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-five; all of Section thirty-five.

Township Thirty-eight, Range Six.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-nine, Range Six.

All of Section one; all of Section three; lots one, two, three and four of Section five; south half of south half of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range Seven.

South half of Section thirteen; all of Section fifteen; all of Section twenty-one; all of Section twenty-three; northeast quarter, west half, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-five; northeast quarter of northeast quarter, south half of northeast quarter, east half of southwest quarter, and southeast quarter of Section

twenty-seven; all of Section twenty-nine; northeast quarter, west half of west half, and east half of southeast quarter of Section thirty-one; northeast quarter of northeast quarter, west half of northwest quarter, north half of southwest quarter, and southeast quarter of Section thirty-three; south half of northeast quarter, west half, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-five.

Township Thirty-four, Range Seven.

North half of north half of northeast quarter of northeast quarter, west half of east half, and west half of Section one; all of Section three; west half of northeast quarter, northwest quarter, and south half of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; east half, northeast quarter of northwest quarter, south half of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-five, Range Seven.

All of Section one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; northeast quarter, north half of northwest quarter, southeast quar-

ter of northwest quarter, northeast quarter of southwest quarter, and lots seven and nine, and north half of lot eight of Section five; southeast quarter of northeast quarter, northwest quarter, and south half of Section seven; all of Section nine; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section eleven; north half of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; west half of northeast quarter, southeast quarter of southeast quarter, and lot eight of Section twenty-five; northeast quarter of northeast quarter, west half of east half, southeast quarter of southeast quarter, and west half of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; northwest quarter of northeast quarter, northwest quarter, and lots one, eight and nine of Section thirty-five.

Township Thirty-six, Range Seven.

North half of northeast quarter, south half of northwest quarter, southeast quarter, north half of southwest quarter, and southeast quarter of northeast quarter of Section one; lots three, six, seven and eight, west half of northwest quarter of northwest quarter, and northeast quarter of southwest quarter of Section eleven; lots eleven and twelve of Section thirteen; southwest quarter of northwest quarter, and southwest

quarter of Section twenty-three; southwest quarter of northwest quarter, and south half of Section twenty-five.

Township Thirty-seven, Range Seven.

Northwest quarter of northeast quarter, north half of northwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section one; all of Section three; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section five; north half, north half of southwest quarter, and southeast quarter of Section seven; north half, north half of south half, southeast quarter of southwest quarter, and southeast quarter of southeast quarter of Section nine; northeast quarter, southeast quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section eleven; all of Section thirteen; west half of northeast quarter, northwest quarter, and south half of Section fifteen; east half of northeast quarter, northwest quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section seventeen; south half of northeast quarter, west half, and southeast quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine; east half, northeast quarter of southwest quarter, and south half of southwest quarter of Section thirty-one; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-eight, Range Seven.

All of Section three; all of Section five; north half of north half, southeast quarter of northwest quarter, northeast quarter of southwest quarter, northwest quarter of southeast quarter, and lot four of Section seven; west half of northwest quarter, lots one, two, three, four and five of Section nine; all of Section eleven; east half of northeast quarter, lots two, three and four, and south half of Section thirteen; north half of northeast quarter, and south half of Section fifteen; lots one, two and five, southwest quarter, and east half of southeast quarter of Section seventeen; west half, lots one, two, three, four, five, six, seven and eight of Section nineteen; northeast quarter, northeast quarter of northwest quarter, west half of southwest quarter, and east half of southeast quarter of Section twenty-one; all of Section twenty-seven; north half of southwest quarter, and southeast quarter of southwest quarter of Section twenty-nine; all of Section thirty-one.

Township Thirty-nine, Range Seven.

Northwest quarter of Section nineteen; northeast quarter of northeast quarter, south half of northeast quarter, west half of northwest quarter, northwest quarter of southwest quarter, and north half of southeast quarter of Section twenty-one; east half, and east half of west half of Section twenty-seven; north half of northeast quarter, northeast quarter of northwest quarter, and south half of northwest quarter of Section twenty-nine.

Township Forty, Range Seven.

North half of Section three; north half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter of southwest quarter, and southwest quarter of southeast quarter of southwest quarter of Section five; west half of northwest quarter, north half of southwest quarter, northwest quarter of southeast quarter, and lots one and two of Section seven; northeast quarter, and south half of Section eleven.

Township Thirty-two, Range Eight.

South half of northeast quarter, northwest quarter, and south half of Section thirty-one.

Township Thirty-seven, Range Eight.

All of Section one; all of Section three; northeast quarter, north half of northwest quarter, and north half of southeast quarter of Section five; all of Section seven; all of Section nine; all of Section eleven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; east half of northeast quarter, west half of northwest quarter, east half of southwest quarter, and west half of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; west half of northwest quarter,

and east half of southeast quarter of Section thirty-five.

Township Thirty-eight, Range Eight.

South half of southeast quarter of Section one; west half of northeast quarter, and west half of Section three; northwest quarter of northeast quarter, northwest quarter, southwest quarter, and west half of southeast quarter of Section nine; south half of north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirteen; west half of west half, and east half of southeast quarter of Section fifteen; west half of northeast quarter, south half of southwest quarter, and southeast quarter of Section twenty-three; all of Section twenty-five; east half, east half of northwest quarter, and southwest quarter of Section twenty-seven; lot one of Section thirty-three; all of Section thirty-five.

Township Thirty-nine, Range Eight.

All of Section one; all of Section three; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter of southeast quarter, and west half of Section five; all of Section seven; northeast quarter of southwest quarter, and lots five and six of Section nine; all of Section eleven; all of Section thirteen; southeast quarter of northeast quarter, northwest quarter of northwest quarter, northeast quarter of southeast quarter, and north half of northeast quarter of Section fifteen; north half of northeast quarter, southeast quarter of northeast quarter, southwest quar-

ter of southeast quarter, and west half of Section seventeen; all of Section nineteen; north half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of northwest quarter, southwest quarter, and east half of southeast quarter of Section twenty-one; north half, south half of southwest quarter, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section twenty-three; northwest quarter of northeast quarter, and north half of northwest quarter of Section twenty-five; north half of northwest quarter, southwest quarter of northwest quarter, northeast quarter of southeast quarter, northwest quarter of northeast quarter, and southeast quarter of northeast quarter of Section twenty-seven; all of Section twenty-nine; northeast quarter of northeast quarter, west half of east half, and west half of Section thirty-one; east half, and east half of west half of Section thirty-three; southwest quarter of southwest quarter, and lots six, seven, eight, nine and ten of Section thirty-five.

Township Forty, Range Eight.

Southeast quarter of southwest quarter, southwest quarter of southeast quarter, and lots one, seven, eight and nine of Section one; all of Section three; northeast quarter, east half of southeast quarter, and lots one, two, three, four, five, six and seven of Section five; east half of northeast quarter, southwest quarter of northwest quarter, south half, and lots one, two, three, four and five of Section seven; north half, southwest

quarter, west half of northeast quarter of southeast quarter, west half of southeast quarter, and west half of southeast quarter of southeast quarter of Section nine; east half of east half, southwest quarter of northwest quarter, and west half of southwest quarter of Section eleven; lot three, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirteen; northeast quarter, east half of northwest quarter, east half of west half of northwest quarter, and east half of southeast quarter of Section fifteen; west half of east half, southeast quarter of northeast quarter, and west half of Section seventeen; northwest quarter of northeast quarter, west half of southwest quarter, and east half of souteast quarter of southeast quarter of Section twenty-one; south half of southeast quarter of northeast quarter, west half of west half, and lots one and seven of Section twenty-three.

Township Forty, Range Nine.

North half, southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and lot one of Section one; northeast quarter of Section thirteen.

JACKSON COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township Thirty-two, Range One.

All of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven;

all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; east half of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and southeast quarter of Section twenty-three; all of Section twenty-five; east half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section twenty-seven; all of Section twenty-nine; north half of northeast quarter, northwest quarter of southwest quarter, and northeast quarter of northwest quarter of Section thirty-one; northwest quarter, west half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range One.

All of Section one; all of Section three; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section five; east half of northeast quarter, south half of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section seven; northeast quarter, east half of northwest quarter, and south half of Section nine; all of Section eleven; north half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of south half of Sec-

tion thirteen; all of Section fifteen; southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section seventeen; northeast quarter, west half, north half of southeast quarter, and southwest quarter of southeast quarter of Section nineteen; all of Section twenty-one; west half of east half, southeast quarter of southeast quarter, and west half of Section twenty-three; northeast quarter, west half, and north half of southeast quarter of Section twenty-seven; all of Section twenty-nine; northeast quarter, south half of northwest quarter, and south half of Section thirty-one; east half, north half of northwest quarter, and south half of southwest quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-four, Range One.

East half of northeast quarter, west half of northwest quarter, and south half of Section three; all of Section five; all of Section seven; all of Section nine; east half, north half of northwest quarter, and south half of southwest quarter of Section eleven; north half of northeast quarter, northwest quarter, and west half of southwest quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and south

half of southeast quarter of Section twenty-one; northeast quarter of northeast quarter, south half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-three; east half, east half of northwest quarter, and southwest quarter of southwest quarter of Section twenty-five; north half, east half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-seven; west half of east half, northeast quarter of southeast quarter, and west half of Section twenty-nine; all of Section thirty-one; northeast quarter, southeast quarter of northwest quarter, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-five, Range One.

North half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and east half of southeast quarter of Section one; all of Section three; all of Section five; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section seven; all of Section nine; northeast quarter of northwest quarter, west half of west half,

northeast quarter of southwest quarter, and south half of southeast quarter of Section eleven; north half, southwest quarter, and east half of southeast quarter of Section thirteen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and southwest quarter of Section fifteen; all of Section seventeen; north half, and northeast quarter of southeast quarter of Section nineteen; all of Section twenty-one; southwest quarter of northeast quarter, west half, and southwest quarter of southeast quarter of Section twenty-three; all of Section twenty-five; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-seven; northeast quarter of Section twenty-nine; southwest quarter of northwest quarter, and lot two of Section thirty-one; east half of northeast quarter, west half of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirty-five.

Township Thirty-six, Range One.

East half, northwest quarter of northwest quarter, and southeast quarter of southwest quarter of Section one; northeast quarter, and north half of southeast quarter of Section three; north half of northeast quarter of Section five; east half of northeast quarter, and

lot three of Section seven; west half of northeast quarter, south half of northwest quarter, and southwest quarter of Section nine; east half of northeast quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section eleven; south half of southwest quarter of Section thirteen; northwest quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and south half of southeast quarter of Section fifteen; east half, east half of northwest quarter, northeast quarter of southwest quarter, and southwest quarter of southwest quarter of Section seventeen; east half of east half, southwest quarter of southeast quarter, northwest quarter of northeast quarter, and west half of Section twenty-one; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-three; northeast quarter, west half of northwest quarter, and south half of Section twenty-five; northwest quarter of northwest quarter, south half of north half, north half of south half, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section twenty-seven; southwest quarter of northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and south half of southeast quarter of Section twenty-nine; north half, west half of southwest quarter, and northeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-seven, Range One.

North half of northeast quarter, northwest quarter,

southeast quarter of southwest quarter, and west half of southeast quarter of Section one; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and southwest quarter of Section three; north half of northeast quarter, southwest quarter of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section five; northeast quarter, northeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section seven; east half of northeast quarter, west half of northwest quarter, northwest quarter of southwest quarter, south half of southwest quarter, and northeast quarter of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; southeast quarter of northwest quarter, and northeast quarter of southeast quarter of Section fifteen; east half, and east half of west half of Section seventeen; southwest quarter of northeast quarter, northwest quarter, and west half of southwest quarter of Section nineteen; east half, northwest quarter of southwest quarter, and south half of southwest quarter of Section twenty-one; northeast quarter, southwest quarter of northwest quarter, southwest quarter, and northeast quarter of southeast quarter of Section twenty-three; northeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, and northwest quarter of southeast quarter of Section twenty-five; north half of northeast quarter, northwest quarter, southeast quarter of southwest quarter, and southeast quarter of southeast quar-

ter of Section twenty-seven; southwest quarter of northeast quarter, northwest quarter of southwest quarter, south half of southwest quarter, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section thirty-one; west half of northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter and west half of southeast quarter of Section thirty-three; northeast quarter, east half of northwest quarter, west half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-five.

Township Thirty-eight, Range One.

Northwest quarter, south half of southwest quarter, and west half of southeast quarter of Section one; northeast quarter of northwest quarter, and southwest quarter of northwest quarter of Section three; northwest quarter of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section five; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section eleven; east half, and east half of west half of Section thirteen; southwest quarter of northeast quarter, and northwest quarter of southeast quarter of Section fifteen; southwest quarter of northwest quarter of Section thirty-one.

Township Thirty-nine, Range One.

West half of northeast quarter of Section seven; west half of northwest quarter, and northwest quarter of southwest quarter of Section seventeen; all of Section nineteen; northeast quarter, east half of northwest quarter, east half of southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and west half of southeast quarter of southeast quarter of Section twenty-one; southwest quarter of southwest quarter of Section twenty-five; northeast quarter of Section twenty-seven.

Township Forty, Range One.

Lot three of Section one; all of Section nineteen; all of Section twenty-one; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one.

Township Forty-one, Range One.

All of Section one; lot one of Section thirteen.

Township Thirty-two, Range Two.

All of Section nineteen; east half of northeast quarter, west half of northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; southwest quarter of northeast quarter, west half of southeast quarter, and west half of Section thirty-three.

Township Thirty-three, Range Two.

Southwest quarter of southwest quarter of Section

one; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section three; all of Section five; northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section seven; north half, northeast quarter of southwest quarter, south half of southwest quarter, and northwest quarter of southeast quarter of Section nine; south half, and south half of northeast quarter of Section eleven; all of Section thirteen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section fifteen; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seventeen; northwest quarter of northeast quarter, south half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section nineteen; northeast quarter, north half of south half, and southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-seven; southeast quarter of northwest quarter, and northeast quarter of Section twenty-nine; northwest quarter of northeast quarter, south half of northeast quarter, east half of northwest quarter, northeast

quarter of southwest quarter, north half of southeast quarter, and lots three, four, five, six and seven of Section thirty-one; east half of northeast quarter, and southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-four, Range Two.

North half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, and north half of southwest quarter of Section five; south half of southwest quarter, and southwest quarter of southeast quarter of Section seven; all of Section nine; north half of northeast quarter, southeast quarter of northeast quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, south half of south half, and northeast quarter of southeast quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; northeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-nine; southwest quarter of Section thirty-one; north half of northeast quarter, southeast quarter of northeast quarter, and east half of southwest quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-five, Range Two.

North half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quar-

ter of Section one; north half, and north half of south half of Section three; southwest quarter of northeast quarter, west half, northwest quarter of southeast quarter, and south half of southeast quarter of Section seven; southeast quarter of northwest quarter, and west half of southwest quarter of Section nine; northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section thirteen; northeast quarter of northeast quarter, south half of north half, and south half of Section fifteen; all of Section seventeen; north half, and southeast quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; southeast quarter of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-six, Range Two.

All of Section one; all of Section three; north half of northeast quarter, southwest quarter of northeast quarter, east half of northwest quarter, and south half of southeast quarter of Section five; west half of northeast quarter, northwest quarter, and north half of southwest quarter of Section seven; north half, southwest quarter, and south half of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; east half of northeast quarter, southeast quarter, west half

of northwest quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section fifteen; north half of north half of Section seventeen; south half of southwest quarter, and southwest quarter of southeast quarter of Section nineteen; northwest quarter of northwest quarter of Section twenty-one; north half, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-three; all of Section twenty-five; south half of northwest quarter, and southwest quarter of Section twenty-nine; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirty-one; all of Section thirty-five.

Township Thirty-seven, Range Two.

All of Section one; north half of northeast quarter, southeast quarter of northeast quarter, and northeast quarter of southeast quarter of Section three; all of Section five; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section seven; northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section nine; north half of northeast quarter, northeast quarter of northwest quarter, southwest quarter of southwest quarter, and southeast quarter of northeast quarter of Section eleven; south half of Section thirteen; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, southeast

quarter of southwest quarter, and southeast quarter of Section fifteen; all of Section seventeen; east half, east half of west half, and lot four of Section nineteen; east half of northeast quarter, west half of northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half, southeast quarter of southwest quarter, and southeast quarter of Section twenty-seven; all of Section twenty-nine; east half, and northeast quarter of northwest quarter of Section thirty-one; northeast quarter of northeast quarter, south half of north half, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-eight, Range Two.

Northwest quarter, and south half of Section one; all of Section three; north half, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section five; all of Section seven; all of Section nine; north half of northeast quarter, southwest quarter of northeast quarter, west half, and south half of southeast quarter of Section eleven; all of Section thirteen; all of Section fifteen; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section seventeen; southwest quarter of Section nineteen; northwest quarter of northeast quarter, southwest quarter of southwest quarter, and west half of southeast quarter of Section twenty-one; east half of northeast quarter, and north half of northwest quarter of Section twenty-three; northwest quarter of northeast quarter, south half of north half,

north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-five; northwest quarter of northeast quarter, northwest quarter, and southeast quarter of southwest quarter of Section twenty-seven; southwest quarter of Section twenty-nine; southeast quarter of northwest quarter, northeast quarter of southwest quarter, and northwest quarter of southeast quarter of Section thirty-one; east half of west half, northwest quarter of southwest quarter, southwest quarter of northwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; east half of southwest quarter of Section thirty-five.

Township Thirty-nine, Range Two.

West half of east half, south half of northwest quarter, and southwest quarter of Section one; all of Section three; southwest quarter of northwest quarter of Section five; lot eight of Section seven; northeast quarter of northeast quarter, south half of northeast quarter, and northeast quarter of southeast quarter of Section nine; northeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of north half, north half of southwest quarter, southeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section eleven; northwest quarter of northeast quarter, south half of northeast quarter, west half, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirteen; northeast quarter of

northeast quarter, south half of northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, and west half of southwest quarter of Section fifteen; west half of southeast quarter, and southeast quarter of southwest quarter of Section twenty-one; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-five; north half of northeast quarter, northwest quarter, and northeast quarter of southeast quarter of Section twenty-seven; lot one of Section thirty-one; east half of southwest quarter, southeast quarter, and northeast quarter of northwest quarter of Section thirty-three; north half of north half, southeast quarter of northeast quarter, and northeast quarter of southeast quarter of Section thirty-five.

Township Forty, Range Two.

Southwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of Section one; southeast quarter of northeast quarter, and northeast quarter of southeast quarter of Section seven; northeast quarter, northeast quarter of northwest quarter, northeast quarter of southwest quarter, west half of west half, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirteen; northeast quarter, northeast quarter of northwest quarter,

and east half of southeast quarter of Section seventeen; south half of Section nineteen; east half of northeast quarter of Section twenty-three; all of Section Twenty-five; east half of east half, southwest quarter of southeast quarter, and lots two and three of Section thirty-one.

Township Forty-one, Range Two.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; lots one, two, three and four of Section thirteen; north half of north half, and lots one, two, three and four of Section fifteen; north half of north half, and lots one, two, three and four of Section seventeen.

Township Thirty-three, Range Three.

Lots three and four of Section seven; all of Section nineteen; west half of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; northwest quarter of northwest quarter, south half of north half, and south half of Section thirty-three.

Township Thirty-four, Range Three.

West half of southeast quarter, and southwest quarter of Section three; all of Section five; all of Section seven; north half of Section nine; south half of northwest quarter, and southwest quarter of Section eleven; west half of southwest quarter of Section thirteen; northeast quarter, northeast quarter of northwest quarter,

south half of northwest quarter, north half of south half, and southwest quarter of southwest quarter of Section fifteen; all of Section nineteen; north half of north half, southwest quarter of northwest quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; southeast quarter of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southeast quarter, and lots one, two, three, four, five, six, seven, eight and nine of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-five, Range Three.

All of Section one; north half of northeast quarter, and northwest quarter of Section three; all of Section five; southwest quarter of Section seven; east half, and north half of northwest quarter of Section eleven; all of Section thirteen; northeast quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section fifteen; southwest quarter of northwest quarter, west half of southwest quarter, and southeast quarter of Section seventeen; north half of northeast quarter, southeast quarter of northeast quarter, west half of west half, southeast quarter of southwest quarter, and south half of southeast quarter of Section nineteen; west half of northeast quarter, east half of northwest quarter, and north half of southeast quarter of Section twenty-one; east half of northeast quarter,

west half of northwest quarter, southwest quarter, and northwest quarter of southeast quarter of Section twenty-three; west half of northwest quarter, and southwest quarter of Section twenty-five; south half of Section twenty-seven; southeast quarter of Section twenty-nine; all of Section thirty-one; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-six, Range Three.

All of Section one; south half of northeast quarter, west half of west half, southeast quarter of southwest quarter, and southeast quarter of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-one; all of Section thirty-three; north half, north half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-five.

Township Thirty-seven, Range Three.

All of Section one; north half, east half of southwest quarter, and southeast quarter of Section three; all of

Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; east half of northeast quarter, west half of northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; north half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and south half of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; northeast quarter, northwest quarter of northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-eight, Range Three.

All of Section one; north half, north half of southwest quarter, and southeast quarter of Section three; north half of northeast quarter, northwest quarter, and south half of Section five; north half, northeast quarter of southwest quarter, south half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seven; north half, and southwest quarter of Section nine; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirteen; north half of northeast quarter, and northwest quarter of Section fifteen; all of Section seventeen; north half, northeast quarter of southwest quarter, northwest quarter of southeast quarter, and south half of

southeast quarter of Section nineteen; west half of east half, southeast quarter of southeast quarter, and west half of Section twenty-one; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; east half, east half of northwest quarter, and northwest quarter of southwest quarter of Section thirty-one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-nine, Range Three.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; south half of northeast quarter, west half of northwest quarter, east half of southwest quarter, and southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; northwest quarter of Section twenty-seven; southeast quarter of northeast quarter, northeast quarter of northwest quarter, west half of west half, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; north half, and southeast quarter of Sec-

tion thirty-three; southeast quarter of Section thirty-five.

Township Forty, Range Three.

North half, north half of southwest quarter, and southeast quarter of Section one; all of Section three; northeast quarter of northwest quarter, west half of west half, and southeast quarter of southeast quarter of Section five; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section seven; all of Section nine; northwest quarter, and south half of Section eleven; northeast quarter, southeast quarter of northwest quarter, and south half of Section thirteen; all of Section fifteen; northwest quarter of northwest quarter, south half of northwest quarter, and lots one, two, three, five, six, seven, eight, nine, ten, eleven and twelve of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Forty-one, Range Three.

All of Section one; all of Section three; all of Section eleven; lots one, two, three and four of Section thirteen; lots one, two, three and four of Section fifteen; lots one, two, three and four of Section seventeen.

Township Thirty-seven, Range Four.

All of Section seven; all of Section seventeen; all

of Section nineteen; all of Section twenty-one; north half of Section twenty-nine.

Township Thirty-eight, Range Four.

North half of north half, and south half of Section one; all of Section three; northeast quarter, north half of northwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section five; north half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section seven; all of Section nine; all of Section eleven; all of Section fifteen; all of Section seventeen; southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, and west half of southeast quarter of Section nineteen; all of Section twenty-one; all of Section twenty-seven; all of Section twenty-nine; east half of northeast quarter, southwest quarter of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-nine, Range Four.

East half of southeast quarter, and northeast quarter of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; east half of southwest quarter of Section eleven; southwest quar-

ter of northeast quarter, and north half of southeast quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; northwest quarter of northeast quarter, and west half of Section twenty-seven; all of Section twenty-nine; northwest quarter of northeast quarter, east half of east half, northwest quarter of southwest quarter, and south half of southwest quarter of Section thirty-one, north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-three.

Township Forty, Range Four.

Northeast quarter, southeast quarter of northwest quarter, and south half of Section five; all of Section seven; northwest quarter, north half of southwest quarter, and southeast quarter of southwest quarter of Section nine; all of Section seventeen; all of Section nineteen; all of Section twenty-one; south half of Section twenty-five; northeast quarter of northwest quarter, and east half of southwest quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half, southwest quarter, and southwest quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Forty-one, Range Four.

All of Section one; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section three; all of Section five;

northeast quarter of northeast quarter, west half of east half, and west half of Section seven; all of Section nine; northeast quarter, west half of west half, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section eleven; lots one, two, three and four of Section thirteen; lots one, two, three and four of Section fifteen; lots one, two, three and four of Section seventeen.

South of Base Line and West of Willamette Meridian.

Township Thirty-two, Range One.

Lots seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen and sixteen, and south half of Section one; east half of Section eleven; all of Section thirteen; south half of Section nineteen; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range One.

All of Section five; all of Section seven; all of Section nine; all of Section seventeen; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section nineteen; north half, southwest quarter, and north half of southeast quarter of Section twenty-one; all of Section twenty-three; north half, northeast quarter of southwest

quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; northeast quarter, south half of northwest quarter, southwest quarter, and west half of southeast quarter of Section thirty-three; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, west half of southwest quarter, southeast quarter of southeast quarter, and northeast quarter of southwest quarter of Section thirty-five.

Township Thirty-four, Range One.

All of Section one; east half of southeast quarter, lots one, two, seven, eight and nine, and west half of northwest quarter of Section three; west half of northeast quarter, and east half of northwest quarter of Section five; northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section seven; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section nine; all of Section eleven; all of Section thirteen; southeast quarter of northeast quarter, southeast quarter, and lots one and three of Section fifteen; north half, southeast quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section seventeen; all of Section nineteen; west half, and lot eight of Section twenty-one; all of Section twenty-three; all of Section twenty-five; east half, east half of west half, and north-

west quarter of northwest quarter of Section twenty-seven; north half of northeast quarter, southwest quarter of northeast quarter, west half, and west half of southeast quarter of Section twenty-nine; northeast quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section thirty-one; all of Section thirty-five.

Township Thirty-five, Range One.

Northwest quarter of southeast quarter, and south half of southeast quarter of Section one; southwest quarter of southwest quarter of Section three; northeast quarter of northeast quarter of Section five; southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section seven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, east half of southwest quarter, and southeast quarter of Section nine; east half of southwest quarter of Section eleven; east half of northeast quarter, and south half of Section thirteen; northwest quarter of northeast quarter, south half of northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section fifteen; west half of northeast quarter, and northwest quarter of southeast quarter of Section nineteen; northwest quarter of northwest quarter of Section twenty-one; southeast quarter of southwest quarter of Section twenty-three; southwest quarter of southwest quarter of Section twenty-five.

Township Thirty-six, Range One.

Lots four and five of Section nine; southwest quarter of northeast quarter, and southeast quarter of northwest quarter of Section eleven; northwest quarter of northwest quarter of Section fifteen; northwest quarter of northeast quarter of Section twenty-five; northeast quarter of southeast quarter of Section twenty-seven; northwest quarter of northeast quarter, and north half of northwest quarter of Section thirty-five.

Township Thirty-seven, Range One.

Southwest quarter of southeast quarter of Section one; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirteen; northeast quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section fifteen.

Township Thirty-eight, Range One.

Northwest quarter of southwest quarter of Section seventeen; northeast quarter of southwest quarter, south half of southwest quarter, and lot one of Section twenty-one; east half of northeast quarter, northeast quarter of southeast quarter, south half of southeast quarter, and southeast quarter of southwest quarter of Section twenty-nine; southwest quarter of northeast quarter, northeast quarter of northwest quarter, south half of north-

west quarter, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; northwest quarter of northeast quarter, northwest quarter of northwest quarter, and south half of northwest quarter of Section thirty-three; southeast quarter of northeast quarter, and east half of southeast quarter of Section thirty-five.

Township Thirty-nine, Range One.

Northeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and east half of southwest quarter of Section one; east half of southeast quarter of Section three; north half of southeast quarter, and southeast quarter of southeast quarter of Section five; west half of northeast quarter, northwest quarter, and south half of Section seven; north half, southwest quarter, and northwest quarter of southeast quarter of Section nine; northwest quarter of northwest quarter, south half of northwest quarter, southwest quarter, and southwest quarter of southeast quarter of Section eleven; northeast quarter of southeast quarter of Section thirteen; all of Section seventeen; north half, southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section nineteen; all of Section twenty-one; northwest quarter of southeast quarter, south half of southeast quarter, southwest quarter of southwest quarter, and lots one, two, three, four, five, six, seven, eleven, twelve and thirteen of Section twenty-three; northeast quarter of northeast quarter, west half of east half, and

west half of Section twenty-seven; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section twenty-nine; all of Section thirty-one; northeast quarter, south half of northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Forty, Range One.

All of Section three; all of Section five; all of Section seven; all of Section eleven; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range Two.

Lots three, four, five, six, eleven, twelve, thirteen, fourteen, fifteen and sixteen of Section one; all of Section three; all of Section five; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section seven; all of Section nine; all of Section fifteen; all of Section seventeen; all of Section nineteen; south half of southwest quarter, and northwest quarter of northeast quarter of Section twenty-one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; north half of northeast

quarter, southeast quarter of northeast quarter, northwest quarter, northwest quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-four, Range Two.

All of Section one; northeast quarter of northeast quarter, southeast quarter of southeast quarter, west half of east half, and west half of Section three; west half of northeast quarter, northwest quarter, and south half of Section five; all of Section seven; east half, and west half of northwest quarter of Section nine; northeast quarter, northeast quarter of northwest quarter, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section eleven; northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section thirteen; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, and south half of Section fifteen; northwest quarter, and south half of Section seventeen; northeast quarter, south half of northwest quarter, and south half of Section nineteen; north half of northeast quarter, southeast quarter of northeast quarter, southeast quarter of northwest quarter, west half of southwest quarter, and northeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; northeast quarter, northeast quarter of northwest

quarter, west half of southwest quarter, northeast quarter of southeast quarter, and west half of northwest quarter of Section twenty-five; northeast quarter of northeast quarter, south half of northeast quarter, east half of west half, southwest quarter of southwest quarter, and southeast quarter of Section twenty-seven; north half of southeast quarter of Section twenty-nine; northwest quarter of northeast quarter, south half of northeast quarter, east half of southeast quarter, west half of northwest quarter, and east half of southwest quarter of Section thirty-one; northeast quarter, south half of northwest quarter, south half of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, and north half of southeast quarter of Section thirty-five.

Township Thirty-five, Range Two.

Northeast quarter, and northeast quarter of northwest quarter of Section one; northwest quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section three; south half of northeast quarter, and northwest quarter of southeast quarter of Section five; east half of Section seven; northeast quarter of northeast quarter, southwest quarter of northeast quarter, south half of northwest quarter, southwest

quarter, and north half of southeast quarter of Section nine; southwest quarter of northwest quarter, and northeast quarter of southwest quarter of Section fifteen; south half of north half, and south half of Section seventeen; north half of northeast quarter, and southwest quarter of northeast quarter of Section nineteen; northwest quarter of northeast quarter, southeast quarter of northeast quarter, southwest quarter of southwest quarter, and east half of southeast quarter of Section twenty-one; southeast quarter of southeast quarter of Section twenty-three; southeast quarter of northeast quarter of Section twenty-five; northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-nine; south half of northeast quarter, northwest quarter, and south half of Section thirty-five.

Township Thirty-six, Range Two.

Northeast quarter of northeast quarter, south half of northwest quarter, southwest quarter, and west half of southeast quarter of Section one; east half of Section three; southwest quarter of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section five; north half of northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and southeast quarter of Section seven; west half of Section nine; northwest quarter of northeast quarter, and lot four of Section eleven; lot seven of Section thirteen; lots nine

and ten of Section fifteen; northwest quarter of northwest quarter, southwest quarter, and south half of northeast quarter of northwest quarter of Section nineteen; lots four, five, six and seven of Section twenty-one; northwest quarter of southeast quarter of Section twenty-nine.

Township Thirty-seven, Range Two.

Lot five, and south half of southwest quarter of Section five; east half of east half, south half of northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, and northwest quarter of northwest quarter of Section seven; west half of northeast quarter, east half of northwest quarter, and northwest quarter of southwest quarter of Section seventeen; north half of southwest quarter of northeast quarter, and northeast quarter of southwest quarter of Section thirty-one.

Township Thirty-eight, Range Two.

Lot six, and southwest quarter of southwest quarter of Section three; northeast quarter of northwest quarter, east half of northwest quarter of northwest quarter, and south half of southwest quarter of Section seven; southeast quarter of Section seventeen; northeast quarter of northeast quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of Section nineteen; west half of northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southwest

quarter of Section twenty-one; northwest quarter of southeast quarter, and northeast quarter of southwest quarter of Section twenty-three; north half of north half, and south half of south half of Section twenty-seven; east half, northwest quarter of northwest quarter, and west half of southwest quarter of Section twenty-nine; all of Section thirty-one; north half of northwest quarter, southeast quarter of northwest quarter, east half of southeast quarter, and northwest quarter of southwest quarter of Section thirty-three.

Township Twenty-nine, Range Two.

North half, north half of southwest quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section five; northeast quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section seven; northeast quarter, east half of northwest quarter, south half of south half, and northeast quarter of southeast quarter of Section nine; northeast quarter of northeast quarter, south half of northeast quarter, southwest quarter of northwest quarter of northeast quarter, east half of northwest quarter of northeast quarter, southwest quarter of northeast quarter of northwest quarter, east half of northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section seventeen; east half of northeast quarter, northeast quarter of northwest quarter, south half of southwest quarter, and northeast quarter of southeast quarter of Section nineteen; all of Section twenty-one; west half of northeast

quarter, northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section twenty-three; south half of northeast quarter, southeast quarter of northwest quarter, and south half of Section twenty-seven; south half of northwest quarter, southwest quarter, and southeast quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; all of Section thirty-three.

Township Forty, Range Two.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; north half, southwest quarter, and west half of southeast quarter of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range Three.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all

of Section thirty-one; north half, north half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Thirty-four, Range Three.

All of Section one; all of Section three; all of Section five; all of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; all of section twenty-one; north half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, west half of southeast quarter, and northeast quarter of Section twenty-three; northeast quarter, east half of northwest quarter, and south half of Section twenty-five; all of Section twenty-seven; northeast quarter, east half of northwest quarter, northeast quarter of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-nine; all of Section thirty-one; north half, north half of south half, and southeast quarter of southeast quarter of Section thirty-three; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section thirty-five.

Township Thirty-five, Range Three.

North half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section one; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section three; southeast quarter of southwest quarter, and south half of southeast quarter of Section five; northeast quarter of southwest quarter, south half of southwest quarter, and southeast quarter of Section seven; all of Section nine; west half of northeast quarter of northeast quarter, southeast quarter of northeast quarter of northeast quarter, northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section eleven; northeast quarter of northwest quarter, west half of northwest quarter, north half of southwest quarter, and east half of southeast quarter of Section thirteen; all of Section fifteen; north half, north half of southeast quarter, southwest quarter of southeast quarter, north half of southwest quarter, southeast quarter of southwest quarter, and east half of southwest quarter of southwest quarter of Section seventeen; all of Section nineteen; north half of northeast quarter, southwest quarter of northeast quarter, northwest quarter, west half of east half of southwest quarter, west half of southwest quarter, and east half of west half of southeast quarter of Section twenty-one; north half, southwest quarter, and west half of southeast quarter of Section twenty-three; all of Section twenty-seven; northeast quarter,

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west half of east half of southwest quarter, west half of southwest quarter, north half of southeast quarter, east half of southwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section twenty-nine; north half of northeast quarter, northwest quarter, and south half of Section thirty-one; east half, northwest quarter of northwest quarter, south half of northwest quarter, and northeast quarter of southwest quarter of Section thirty-three; west half of east half, southeast quarter of southeast quarter, and west half of Section thirty-five.

Township Thirty-six, Range Three.

West half of northwest quarter of Section one; north half of northeast quarter, southwest quarter of northeast quarter, west half of southeast quarter of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, southwest quarter of southeast quarter, west half of northwest quarter of southeast quarter, and lots one, two, three, four and five of Section three; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and northwest quarter of southeast quarter of Section five; north half, north half of southwest quarter, and southeast quarter of Section seven; all of Section nine; northwest quarter of northwest quarter, north half of southeast quarter, southeast quarter of southeast quarter, and lot three of Section eleven; lot seven of Section thirteen; west half of northwest quarter of Section fifteen; north half of northwest

quarter, southeast quarter of northwest quarter, and lot three of Section seventeen; southwest quarter, and west half of southeast quarter of Section nineteen; lot five, and northeast quarter of southwest quarter of Section twenty-one; southeast quarter of northeast quarter of Section twenty-three; northeast quarter, south half of northwest quarter, southwest quarter, and north half of southeast quarter of Section twenty-nine; all of Section thirty-one; lots two and three, and southwest quarter of southwest quarter of Section thirty-three; northeast quarter of northeast quarter, southwest quarter of southwest quarter, and west half of southeast quarter of southeast quarter of Section thirty-five.

Township Thirty-seven, Range Three.

Northeast quarter of southwest quarter, south half of southwest quarter, west half of southeast quarter, and lot five of Section one; north half, east half of southwest quarter, and southeast quarter of Section three; north half of northeast quarter of northeast quarter, south half of north half of southeast quarter of northeast quarter, south half of southeast quarter of northeast quarter, northwest quarter of southwest quarter, south half of southwest quarter, southeast quarter, south half of southwest quarter of southwest quarter of northeast quarter, lot one, and south ten acres of lot five of Section five; east half, southeast quarter of northwest quarter, and northeast quarter of southwest quarter of Section seven; west half of northeast quarter, west half, and east half

of southeast quarter of Section nine; west half of east half, and southwest quarter of Section eleven; north half of northeast quarter, and northwest quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section twenty-one; south half of northwest quarter, southwest quarter, and northwest quarter of southeast quarter of Section twenty-three; south half of northeast quarter of Section twenty-five; south half of northeast quarter, northwest quarter, and southeast quarter of Section twenty-seven; northeast quarter of northeast quarter, northwest quarter of northwest quarter, south half of north half, and south half of Section thirty-one; all of Section thirty-three; southwest quarter of southwest quarter, northeast quarter of northeast quarter of southeast quarter, northwest quarter of southeast quarter of southeast quarter, north half of southwest quarter of southeast quarter, and north half of south half of southwest quarter of southeast quarter of Section thirty-five.

Township Thirty-eight, Range Three.

Northwest quarter of northeast quarter, southeast quarter of northeast quarter, and east half of southwest quarter of Section one; north half, and east half of southeast quarter of Section three; east half of southwest quarter, and southeast quarter of Section five; north half, north half of southwest quarter, southwest quarter of southwest quarter, north half of southeast quarter of southwest quarter, southwest quarter of southeast quarter of southwest quarter,

north half of north half of southeast quarter, north half of south half of northeast quarter of southeast quarter, southeast quarter of southwest quarter of southeast quarter, and south half of southeast quarter of southeast quarter of Section eleven; southwest quarter of Section thirteen; west half of northwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section twenty-one; northeast quarter of northeast quarter, west half of west half of northwest quarter, southeast quarter of southeast quarter, and lots four and five of Section twenty-three; northwest quarter of northwest quarter of Section twenty-nine; all of Section thirty-one; southwest quarter of northwest quarter, west half of southwest quarter, and lots one and seven of Section thirty-three; west half of Section thirty-five.

Township Thirty-nine, Range Three.

East half, east half of west half, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of Section one; northeast quarter, and southwest quarter of southwest quarter of Section three; north half of northeast quarter, southeast quarter of northwest quarter, southwest quarter, and south half of southeast quarter of Section nine; northeast quarter, east half of northwest quarter, and lot one of Section eleven; north half of northeast quarter, southeast quarter of northeast quarter, northeast quarter of northwest quarter, and southwest quarter of Section thirteen; east half of Section

fifteen; all of Section twenty-one; north half of Section twenty-three; northeast quarter of Section twenty-five; northeast quarter, south half, southeast quarter of southwest quarter of northwest quarter, northeast quarter of southeast quarter of northwest quarter, and south half of southeast quarter of northwest quarter of Section twenty-seven; east half, southwest quarter of northwest quarter, north half of souhtwest quarter, and southeast quarter of southwest quarter of Section thirty-three.

Township Forty, Range Three.

All of Section one; all of Section three; south half of north half, lots one, three and four, and south half of Section five; east half, north half of northeast quarter of northwest quarter, north half of northwest quarter of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and south half of southeast quarter of northwest quarter of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; east half, and east half of east half of southeast quarter of southwest quarter of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half, southwest quarter, and north half of southeast quarter of Section thirty-five.

Township Forty-one, Range Three.

North half, and south half of south half of Sec

tion one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; all of Section five; all of Section seven; all of Section nine; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; north half of north half, and lots one, two, three and four of Section thirteen; north half of north half, and lots one, two, three and four of Section fifteen; north half of north half, and lots one, two, three and four of Section seventeen.

Township Thirty-two, Range Four.

Lots five and twelve of Section thirty-three; all of Section thirty-five.

Township Thirty-three, Range Four.

All of Section one; all of Section three; south half of southeast quarter of Section five; all of Section nine; all of Section eleven; all of Section thirteen; northeast quarter, east half of northwest quarter, and south half of Section fifteen; all of Section seventeen; all of Section nineteen; north half, north half of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of Section twenty-nine; all of Section thirty-one;

all of Section thirty-three; and all of Section thirty-five.

Township Thirty-four, Range Four.

All of Section one; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section three; northeast quarter of southwest quarter, south half of southwest quarter, and east half of Section five; all of Section seven; all of Section nine; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; all of Section thirteen; northwest quarter of northeast quarter, west half of southwest quarter, west half of east half of southeast quarter of southwest quarter, west half of southeast quarter of southwest quarter, and northeast quarter of southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; northeast quarter, and west half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; northeast quarter of northeast quarter, northeast quarter of northwest quarter, south half of north half, and south half of Section twenty-seven; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-nine; east half, and east half of west half of Section thirty-one; northeast quarter of northwest quarter, southwest quarter of southwest quarter, and southwest quarter of southeast quarter of Section thirty-three; northeast quarter of northeast quarter,

south half of northeast quarter, north half of northwest quarter, east half of southwest quarter of northwest quarter, southwest quarter, southeast quarter of northwest quarter, northeast quarter of southeast quarter, southwest quarter of southeast quarter, and northeast quarter of southeast quarter of southeast quarter of Section thirty-five.

Township Thirty-five, Range Four.

Northeast quarter of northeast quarter, southwest quarter of northwest quarter, and west half of southwest quarter of Section one; north half of northeast quarter, and southeast quarter of Section three; north half, northwest quarter of southwest quarter, south half of southwest quarter, and northwest quarter of southeast quarter of Section five; all of Section seven; northeast quarter of northeast quarter, north half of northwest quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section eleven; all of Section thirteen; southeast quarter of Section fifteen; north half of northeast quarter, southeast quarter of northeast quarter, west half, and southeast quarter of Section seventeen; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section nineteen; southwest quarter of southwest quarter of Section twenty-one; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section twenty-three; north half of northeast quarter of Section twenty-seven;

all of Section twenty-nine; all of Section thirty-one; northeast quarter of northeast quarter, west half of east half, southeast quarter of southeast quarter, and west half of Section thirty-three; north half, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section thirty-five.

Township Thirty-six, Range Four.

North half, north half of southwest quarter, north half of southwest quarter of southwest quarter, southeast quarter of southwest quarter, and east half of southeast quarter of Section one; south half of northeast quarter, east half of southwest quarter, and southeast quarter of Section three; northeast quarter, south half of northwest quarter, and south half of Section five; all of Section seven; northwest quarter, north half of southwest quarter, west half of southeast quarter, and southeast quarter of southwest quarter of Section nine; northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section eleven; northeast quarter of northeast quarter, south half of northeast quarter, southeast quarter of northwest quarter, southwest quarter, and west half of southeast quarter of Section thirteen; northeast quarter, and northeast quarter of northwest quarter of Section fifteen; west half of northeast quarter, south half of southeast quarter of northeast quarter, northwest quarter, and south half of Section seventeen; north half, north half of south half, and lots three and four of Section nineteen; southwest quarter of northeast quarter,

south half of south half, northwest quarter of southeast quarter, and lots three, seven, eight, nine and ten of Section twenty-one; north half of northeast quarter, southeast quarter of northeast quarter, and west half of Section twenty-three; east half of northeast quarter, southeast quarter of southwest quarter, northeast quarter of southeast quarter, and lots one, seven, nine and ten of Section twenty-five; northeast quarter of northeast quarter, south half of southwest quarter, and lots nine, twelve and fourteen of Section twenty-seven; northeast quarter of northeast quarter, northeast quarter of northwest quarter, south half of north half, and south half of Section twenty-nine; east half, northwest quarter of northwest quarter, south half of southwest quarter, and southeast quarter of northwest quarter of Section thirty-one; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-three; southeast quarter of northeast quarter, west half of southwest quarter, and lots one and five of Section thirty-five.

Township Thirty-seven, Range Four.

North half of north half, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southeast quarter of southeast quarter of Section one; southeast quarter of northeast quarter, and south half of Section three; all of Section five; all of Section seven; all of Section nine; west half of northeast quarter of northeast quarter, south half of northeast quarter, and east half of southeast quarter of Section eleven; west

half of northwest quarter of Section thirteen; west half of Section fifteen; all of Section seventeen; east half of northeast quarter, east half of northwest quarter of northeast quarter, east half of east half of southwest quarter of northeast quarter, southeast quarter, south half of northeast quarter of northwest quarter, west half of northwest quarter, west half of southeast quarter of northwest quarter, northwest quarter of southwest quarter, and west half of southwest quarter of southwest quarter of Section nineteen; north half, southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section twenty-one; west half of east half, north half of northwest quarter, southeast quarter of northwest quarter, and southwest quarter of Section twenty-three; northeast quarter of northeast quarter, south half of north half, and south half of Section twenty-seven; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section twenty-nine; east half of west half of northeast quarter of northeast quarter, east half of northeast quarter of northeast quarter, west half of northwest quarter of northeast quarter, west half of east half of northwest quarter of northeast quarter, south half of northeast quarter, northeast quarter of northwest quarter, northeast quarter of southeast quarter, and lots one, three, four and five of Section thirty-one; north half, north half of southwest quarter, southeast quarter, and southeast quarter of southwest quarter of Section thirty-three; north half, southwest quarter, and west half of southeast quarter of Section thirty-five.

Township Thirty-eight, Range Four.

All of Section one; all of Section three; south half of northwest quarter, and south half of Section five; northeast quarter of northeast quarter, and southwest quarter of northeast quarter of Section seven; all of Section nine; east half of east half, southwest quarter of southeast quarter, and southwest quarter of Section eleven; north half, east half of southwest quarter, and southeast quarter of Section thirteen; north half, and southeast quarter of Section fifteen; northeast quarter of northeast quarter of Section seventeen; north half of northeast quarter, southwest quarter of northeast quarter, west half, west half of southeast quarter, and lot three of Section nineteen; northwest quarter of southwest quarter, south half of southwest quarter, and southwest quarter of southeast quarter of Section twenty-one; northeast quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, south half of southwest quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section twenty-three; west half of southwest quarter, and lots one, two, and five of Section twenty-five; all of Section twenty-seven; north half, southwest quarter, and northwest quarter of southeast quarter of Section twenty-nine; north half, southwest quarter, northwest quarter of southeast quarter, and south half of southeast quarter of Section thirty-one; north half of northeast quarter, southeast quarter of northeast quarter, east half of northwest quarter, and south half of Section thirty-three; all of Section thirty-five.

Township Thirty-nine, Range Four.

All of Section one; all of Section three; south half of northwest quarter, west half of southwest quarter, east half of southeast quarter, and lots one, three and four of Section five; north half of northeast quarter, southeast quarter of northwest quarter, southeast quarter of southeast quarter, and lots two and four of Section seven; all of Section nine; all of Section eleven; all of Section thirteen; all of Section fifteen; all of Section seventeen; northeast quarter, south half of northwest quarter, and south half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Forty, Range Four.

North half, north half of southwest quarter, south half of south half of southwest quarter, and southeast quarter of Section one; northeast quarter of Section three; southwest quarter of Section seven; all of Section eleven; all of Section thirteen; southeast quarter of Section fifteen; all of Section seventeen; all of Section nineteen; north half, north half of southwest quarter, and northwest quarter of southeast quarter of Section twenty-one; all of Section twenty-three; all of Section twenty-five; east half, and west half of southwest quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; north half,

southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of Section thirty-five.

Township Forty-one, Range Four.

Southwest quarter of northeast quarter, southeast quarter of northwest quarter, and south half of Section one; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section three; all of Section five; all of Section seven; all of Section nine; northeast quarter, east half of northwest quarter, and south half of Section eleven; north half of north half, and lots one, two, three and four of Section thirteen; north half of north half, and lots one, two, three and four of Section fifteen; north half of north half, and lots one, two, three and four of Section seventeen.

KLAMATH COUNTY, OREGON.

South of Base Line and East of Willamette Meridian.

Township Thirty-eight, Range Five.

All of Section one; all of Section three; all of Section nine; north half, west half of southwest quarter, and lots one, two, three and four of Section eleven; lots one and two of Section thirteen; all of Section fifteen; all of Section twenty-one; southwest quarter of northeast quarter, south half of northwest quarter, south half, and lots one, two, three and four of Section twenty-three; all of Section twenty-five.

Township Thirty-nine, Range Five.

All of Section one; all of Section three; all of Section eleven; all of Section thirteen; northeast quarter of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section seventeen; southwest quarter of southwest quarter of Section twenty-one; northwest quarter of Section twenty-nine; north half of Section thirty-one; west half of southwest quarter of Section thirty-three.

Township Forty, Range Five.

West half of Section seven; south half of Section twenty-three; all of Section twenty-five; northeast quarter of northwest quarter, southeast quarter of southwest quarter, south half of southeast quarter, and lots one, two, three and four of Section thirty-one; all of Section thirty-five.

Township Forty-one, Range Five.

All of Section one; all of Section three; all of Section five; all of Section seven; east half of Section eleven; lots one and two of Section thirteen; lots one, two, three and four of Section fifteen; lots one, two, three and four of Section seventeen.

Township Thirty-eight, Range Six.

All of Section five; all of Section seven; all of Section nine; all of Section seventeen; all of Section nineteen; west half, and west half of southeast quarter of

Section twenty-one; south half of southwest quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-three; northeast quarter of northeast quarter, southeast quarter of northwest quarter, south half of southwest quarter, and southeast quarter of Section thirty-five.

Township Thirty-nine, Range Six.

All of Section five; all of Section seven; west half of Section nine; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of Section fifteen; all of Section seventeen; east half, east half of west half, and lots one, two, three, and four of Section nineteen; west half of Section twenty-one.

Township Forty, Range Six.

Southwest quarter, northwest quarter of southeast quarter, and lots three, four, five, six, seven, and eight of Section one; south half of northwest quarter, and lots two, three and four of Section three; southeast quarter of northeast quarter, southwest quarter of northwest quarter, and lots three and four of Section five; all of Section eleven; all of Section thirteen; all of Section twenty-three; all of Section twenty-seven; all of Section thirty-one; southeast quarter of northeast quarter, and east half of southeast quarter of Section thirty-three; all of Section thirty-five.

Township Forty-one, Range Six.

All of Section one; north half of northeast quarter,

southeast quarter of northeast quarter, northwest quarter, west half of southwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of Section three; north half, southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section five; northeast quarter, north half of southeast quarter, southwest quarter of southeast quarter, and lots two, three, four, nine, ten, eleven, and twelve of Section seven; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and southeast quarter of Section nine; west half of northeast quarter, northwest quarter, north half of southwest quarter, northwest quarter of southeast quarter, southwest quarter of southwest quarter, and south half of southeast quarter of Section eleven; lots one, two, three and four of Section thirteen; lots one, two, three, and four of Section fifteen; lots one, two, and three of Section seventeen.

Township Forty, Range Seven.

All of Section three; all of Section five; north half, northeast quarter of southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of Section seven; all of Section nine; all of Section eleven; northwest quarter, and south half of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; west half of east half, and west half of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three; west half of north-

east quarter, west half, and northwest quarter of southeast quarter of Section thirty-five.

Township Forty-one, Range Seven.

All of Section three; all of Section five; all of Section seven; north half, east half of southwest quarter, and southeast quarter of Section nine; northwest quarter, and north half of southwest quarter of Section eleven; north half of north half, and lots one, two, three, and four of Section fifteen; north half of north half, and lots one, two, three, and four of Section seventeen.

LANDS GRANTED BY THE ACT OF MAY 4, 1870.

CLARKE COUNTY, WASHINGTON.

North of Base Line and West of Willamette Meridian.

Township Two, Range One.

Lot one of Section one.

North of Base Line and East of Willamette Meridian.

Township Three, Range One.

West half of southwest quarter of Section three; east half of northeast quarter, and northwest quarter of northeast quarter of Section twenty-one; lot one of Section thirty-one.

COLUMBIA COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township Three, Range One.

Lot two Section twenty-one.

Township Four, Range One.

Lots six and seven of Section seventeen; lot three of Section nineteen.

Township Three, Range Two.

North half of north half, southwest quarter of northwest quarter, north half of southwest quarter, southwest

quarter of southwest quarter, and northwest quarter of southeast quarter of Section three; all of Section five; north half, and west half of southwest quarter of Section seven, northeast quarter, north half of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southwest quarter, and north half of southeast quarter of Section nine; northwest quarter of northeast quarter, and northeast quarter of northwest quarter of Section eleven; west half of southwest quarter of Section fifteen; east half of southwest quarter, and northeast quarter of southeast quarter of Section seventeen.

Township Four, Range Two.

All of Section seven; north half of southeast quarter, and southeast quarter of northeast quarter of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southwest quarter of Section thirty-three.

Township Five, Range Two.

All of Section thirty-one.

Township Three, Range Three.

All of Section one; all of Section eleven.

Township Four, Range Three.

Lots one, two, three and four, and south half of Section one; all of Section three; all of Section five; east half of Section seven; all of Section nine; all of Section

eleven; all of Section fifteen; all of Section seventeen; east half of Section nineteen; all of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section twenty-nine; east half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

Township Five, Range Three.

East half of Section thirty-one; all of Section thirty-three; all of Section thirty-five.

TILLAMOOK COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township One, Range Six.

Northeast quarter, southeast quarter of northwest quarter, and south half of Section nineteen.

Township Two, Range Six.

North half of southwest quarter, southeast quarter of southwest quarter, and west half of southeast quarter of Section nineteen.

Township Three, Range Six.

North half, and southwest quarter of Section seven.

Township One, Range Seven.

South half of southwest quarter of Section twenty-three; northeast quarter, southeast quarter of northwest quarter, and north half of southeast quarter of Section

twenty-five; east half of Section twenty-seven; south half of southwest quarter of Section thirty-one.

Township Three, Range Seven.

South half of Section five; all of Section seven; all of Section nine; all of Section eleven; north half, and southwest quarter of Section thirteen; all of Section fifteen; all of Section seventeen; all of Section nineteen; all of Section twenty-one; north half, and southwest quarter of Section twenty-three; all of Section twenty-seven; all of Section twenty-nine; all of Section thirty-one; all of Section thirty-three.

Township Four, Range Seven.

Northwest quarter of Section three; all of Section five; all of Section seven; west half of northeast quarter, northwest quarter, north half of southwest quarter, and northwest quarter of southeast quarter of Section nine; north half of north half of Section seventeen.

Township One, Range Eight.

Lot three of Section one; west half of west half of Section twenty-three; west half of northeast quarter, southwest quarter of southwest quarter, and northwest quarter of southeast quarter of Section twenty-five; southwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and west half of southeast quarter of Section twenty-seven.

Township Two, Range Eight.

West half of northwest quarter of Section thirteen; east half of southwest quarter, and south half of southeast quarter of Section twenty-one; west half of west half of Section twenty-seven; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section thirty-three.

Township Three, Range Eight.

Southwest quarter, and south half of southeast quarter of Section one; all of Section three; all of Section nine; all of Section eleven; all of Section thirteen; south half of northeast quarter, northwest quarter, and south half of Section twenty-one; all of Section twenty-three; all of Section twenty-five; all of Section twenty-seven; all of Section thirty-three; all of Section thirty-five.

Township Four, Range Eight.

North half of north half, southeast quarter of northeast quarter, southwest quarter of southwest quarter, and southeast quarter of Section one; north half of north half, northeast quarter of southwest quarter, and south half of south half of Section three; east half, and east half of west half of Section nine; all of Section eleven; north half of north half of Section thirteen; north half of north half of Section fifteen.

WASHINGTON COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township Two, Range Two.

Southeast quarter of southeast quarter of Section five; north half of northwest quarter, and southwest quarter of northwest quarter of Section seven; north half of southwest quarter of Section nine; north half of northeast quarter, and northeast quarter of northwest quarter of Section nineteen; southeast quarter of northeast quarter, and north half of southwest quarter of Section twenty-one; southwest quarter of northeast quarter of Section twenty-nine.

Township Three, Range Two.

East half of northeast quarter, northwest quarter of northwest quarter, south half of northwest quarter, and south half of Section nineteen; all of Section twenty-one; north half, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of Section twenty-nine; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section thirty-one; southeast quarter of southeast quarter of Section thirty-three.

Township Two, Range Three.

West half of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter of southwest quarter, and southeast quarter of Section

one; southwest quarter of northeast quarter, northwest quarter, northeast quarter of southwest quarter, northwest quarter of southeast quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of Section three; all of Section five; southeast quarter of southeast quarter of Section seven; west half of southwest quarter of Section nine; northeast quarter of northeast quarter, southwest quarter of northwest quarter, southwest quarter of southwest quarter, northwest quarter of southwest quarter, and northeast quarter of southeast quarter of Section eleven; northeast quarter of northeast quarter, northeast quarter of northwest quarter, and southeast quarter of southwest quarter of Section thirteen; west half of northeast quarter, and southeast quarter of Section seventeen; south half of northeast quarter, and north half of southeast quarter of Section twenty-one; southeast quarter of southeast quarter of Section twenty-three.

Township Three, Range Three.

All of Section three; all of Section five; east half of Section seven; all of Section nine; north half, southwest quarter, and north half of southeast quarter of Section thirteen; east half of northeast quarter, and north half of southwest quarter of Section fifteen; northwest quarter of northeast quarter, south half of northeast quarter, northwest quarter, and south half of Section seventeen; east half of Section nineteen; east half, north half of northwest quarter, southwest quarter of northwest quarter, and east half of southwest quarter

of Section twenty-one; north half, north half of southwest quarter, and southwest quarter of southwest quarter of Section twenty-three; west half, and east half of southeast quarter of Section twenty-five; all of Section twenty-seven; east half of northeast quarter, northwest quarter, and west half of southwest quarter of Section twenty-nine; east half of Section thirty-one; northeast quarter of northeast quarter, and south half of northeast quarter of Section thirty-three; northeast quarter, northeast quarter of northwest quarter, south half of northwest quarter, and south half of Section thirty-five.

South of Base Line and West of Willamette Meridian.

Township One, Range Five.

West half of Section three; south half of northeast quarter, and north half of southeast quarter of Section five; east half of east half, and north half of southwest quarter of Section nine; north half of northwest quarter of Section fifteen; northeast quarter, and south half of Section nineteen; all of Section twenty-nine; north half of northeast quarter, and west half of Section thirty-one.

(Of the foregoing lands described as situated in Township one South, Range five West, the north half of the northwest quarter of Section fifteen was included in a patent correctly reciting that the same was earned and patented under said Act of Congress approved May 4, 1870. The patents for all of the other lands above described as situated in said township recite that said lands were earned and patented under said Act of Con-

gress approved July 25, 1866, as amended. The defendants contend, and it appears to the court, that all of said lands were earned, and should have been patented, under said Act of Congress approved May 4, 1870. Therefore, for the purpose of accuracy, said lands are described in this schedule as lands granted by said last named Act. However, this judgment and decree shall apply, and is intended to apply, to all of said lands, whether earned under the former or the latter of said Acts of Congress.)

Township One, Range Six.

East half of northeast quarter, and northeast quarter of southeast quarter of Section twenty-five; all of Section twenty-nine.

MULTNOMAH COUNTY, OREGON.

North of Base Line and West of Willamette Meridian.

Township Two, Range Two.

North half of northeast quarter, and west half of northwest quarter of Section three; southeast quarter of southwest quarter of Section fifteen.

Township Three, Range Two.

South half of northeast quarter, north half of northwest quarter, south half of southwest quarter, and southeast quarter of Section twenty-seven; north half of Section thirty-five.

YAMHILL COUNTY, OREGON.

South of Base Line and West of Willamette Meridian.

Township Two, Range Six.

All of Section twenty-one; east half, and northeast quarter of northwest quarter of Section twenty-nine; northwest quarter, and west half of northeast quarter of Section thirty-three.

Township Three, Range Six.

North half of Section five.

(The patent for all of the foregoing land described as situated in Township three South, Range six West, recites that said land was earned and patented under said Act of Congress approved July 25, 1866, as amended. The defendants contend, and it appears to the court, that all of said land was earned, and should have been patented, under said Act of Congress approved May 4, 1870. Therefore, for the purpose of accuracy, said land is described in this schedule as land granted by said last named Act. However, this judgment and decree shall apply, and is intended to apply, to all of said land, whether earned under the former or the latter of said Acts of Congress.)

SCHEDULE B

Schedule describing the right-of-way lands excepted from the operation of this judgment and decree, being the schedule referred to in Paragraph IV hereof.

The aforesaid excepted lands consist of a strip of land one hundred feet in width on each side of the center line of the main track of the railroad of the Oregon and California Railroad Company, as constructed, established and in operation at the date of this decree through and across the following described tracts of lands, viz:

South of Base Line and West of Willamette Meridian.

Township Twenty-four, Range Five.

Lot five in southeast quarter of southwest quarter of Section twenty-nine.

Township Twenty-nine, Range Five.

West half of southwest quarter of Section twenty-one.

Township Thirty, Range Six.

Southwest quarter of southwest quarter of Section thirty-one.

Township Thirty, Range Seven.

Southeast quarter of southeast quarter of Section thirty-three; north half, and northeast quarter of southeast quarter of Section thirty-five.

Township Thirty-one, Range Seven.

Northeast quarter of northwest quarter of Section one; northwest quarter of southwest quarter, and south half of southwest quarter of Section nine; north half of northwest quarter, and west half of southwest quarter of northwest quarter of Section seventeen; northwest quarter of Section nineteen.

Township Thirty-two, Range Seven.

Southwest quarter of southwest quarter of Section seven; west half of northeast quarter, northwest quarter of northeast quarter of northwest quarter, southeast quarter of northwest quarter, northeast quarter of southeast quarter, and east half of northwest quarter of southeast quarter of Section nineteen; southeast quarter of northeast quarter of Section twenty-nine.

Township Thirty-three, Range Seven.

Lot one, or northeast quarter of northeast quarter of Section three.

Township Thirty-one, Range Eight.

South half of southeast quarter of Section twenty-three; west half of west half of Section thirty-five.

Township Thirty-two, Range Eight.

East half of northeast quarter, and northeast quarter of southeast quarter of Section thirteen.

Township Thirty-six, Range Five.

Northwest quarter of northeast quarter of Section twenty-one.

Township Thirty-four, Range Six.

East half of northeast quarter of Section thirty-three.

Township Thirty-five, Range Six.

Northwest quarter of northwest quarter of Section three; west half of northeast quarter, and east half of northwest quarter of Section nine; southwest quarter of northeast quarter, and northeast quarter of southeast quarter of Section twenty-seven.

Township Thirty-six, Range Six.

Southwest quarter of northwest quarter, and northwest quarter of southwest quarter of Section one.

Township Thirty-three, Range Seven.

Northeast quarter of southeast quarter of Section twenty-five.

Township Thirty-four, Range Seven.

Northwest quarter of northeast quarter of Section one.

Township Thirty-six, Range Three.

Lot three of Section eleven; lot seven of Section thirteen.

Township Thirty-six, Range Four.

Lots three and four of Section nineteen; northeast quarter of northeast quarter of Section twenty-seven.

South of Base Line and East of Willamette Meridian.

Township Forty-one, Range One.

Northwest quarter of northeast quarter of Section one.

Township Forty, Range Two.

Northeast quarter, and east half of southeast quarter of Section seventeen; south half of southeast quarter of Section nineteen; lot two of Section thirty-one.

Township Forty-one, Range Two.

West half of northwest quarter of Section seven.

The aforesaid excepted lands also include the following described parcels or tracts of land, viz:

A strip of land one hundred feet wide on the westerly side, and one hundred and fifty feet wide on the easterly side of the center line of the main track of the railroad of the Oregon and California Railroad Company, as constructed, established and in operation at the date of this decree, through and across the east half of the southeast quarter of Section one, Township thirty south, Range six west, W. M.

A strip of land one hundred feet wide on the northerly side, and one hundred and fifty feet wide on the southerly side of the center line of the main track of the

railroad of the Oregon and California Railroad Company, as constructed, established and in operation at the date of this decree, through and across the south half of the southwest quarter of Section one, Township thirty-two south, Range eight west, W. M.

A strip of land one hundred feet wide on the easterly side, and one hundred and seventy-five feet wide on the westerly side of the center line of the main track of the railroad of the Oregon and California Railroad Company, as constructed, established and in operation at the date of this decree, through and across the west half of the northeast quarter, east half of northwest quarter, and the northeast quarter of the southwest quarter of Section twenty-nine, Township thirty-four south, Range six west, W. M.

All of the west half of northeast quarter, and northeast quarter of northwest quarter of Section fifteen, Township thirty-three south, Range six west, W. M.

Done in open court, during the March, 1913, term thereof, this first day of July, 1913.

CHAS. E. WOLVERTON,

Judge of the District Court of the United States for the District of Oregon.

(Endorsed) Judgment and Decree filed July 1, 1913.

A. M. CANNON,
Clerk U. S. District Court.

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SCHEDULE A 1305

Schedule describing the lands granted by the Act of Congress approved July 25, 1866 (as amended) and by the Act of Congress approved May 4, 1870, which have heretofore been patented to the defendant Oregon and California Railroad Company, and which, at the date of the institution of this suit, were unsold lands still held and claimed by the defendant Oregon and California Railroad Company, being the lands hereinbefore referred to in Subdivision (a) of Paragraph IV of this judgment and decree.

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Lands Granted by Act of July 25, 1866 (as amended)—

Tillamook County, Oregon.

South of Base Line and West of Willamette Meridian 1306

Washington County, Oregon.

South of Base Line and West of Willamette Meridian 1307

Multnomah County, Oregon.

South of Base Line and East of Willamette Meridian 1309

Yamhill County, Oregon.

South of Base Line and West of Willamette Meridian 1310

Clackamas County, Oregon.

South of Base Line and East of Willamette Meridian 1315

Clackamas County, Oregon.

South of Base Line and West of Willamette Meridian 1329

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Polk County, Oregon.

South of Base Line and West of Willamette Meridian 1329

Marion County, Oregon.

South of Base Line and West of Willamette Meridian 1333

Marion County, Oregon.

South of Base Line and East of Willamette Meridian 1334

Lincoln County, Oregon.

South of Base Line and West of Willamette Meridian 1339

Benton County, Oregon.

South of Base Line and West of Willamette Meridian 1340

Linn County, Oregon.

South of Base Line and East of Willamette Meridian 1346

Lane County, Oregon.

South of Base Line and East of Willamette Meridian 1354

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Lane County, Oregon.

South of Base Line and West of Willamette Meridian 1358

Douglas County, Oregon.

South of Base Line and West of Willamete Meridian 1389

Coos County, Oregon.

South of Base Line and West of Willamette Meridian 1445

Curry County, Oregon.

South of Base Line and West of Willamette Meridian 1457

Josephine County, Oregon.

South of Base Line and West of Wil- Meridian 1459

Jackson County, Oregon.

South of Base Line and East of Willamette Meridian 1480

Jackson County, Oregon.

South of Base Line and West of Willamette Meridian 1504

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Klamath County, Oregon.

South of Base Line and East of Willamette Meridian 1531

Lands Granted by the Act of May 4th, 1870.

Clarke County, Washington.

North of Base Line and West of Willamette Meridian 1536

Clarke County, Washington.

North of Base Line and East of Willamette Meridian 1536

Columbia County, Oregon.

North of Base Line and West of Willamette Meridian 1536

Tillamook County, Oregon.

South of Base Line and West of Willamette Meridian 1538

Washington County, Oregon.

North of Base Line and West of Willamette Meridian 1541

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Multnomah County, Oregon.

North of Base Line and West of Willamette Meridian 1544

Yamhill County, Oregon.

South of Base Line and West of Willamette Meridian 1545

SCHEDULE B.

Schedule describing the right of way lands excepted from the operation of this judgment and decree being the schedule referred to in paragraph IV. hereof.

South of Base Line and West of Willamette Meridian 1546

South of Base Line and East of Willamette Meridian 1549

Index for the entire Transcript will be found in back of last volume together with Errata sheet.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME IV

PAGES 1551-2080

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

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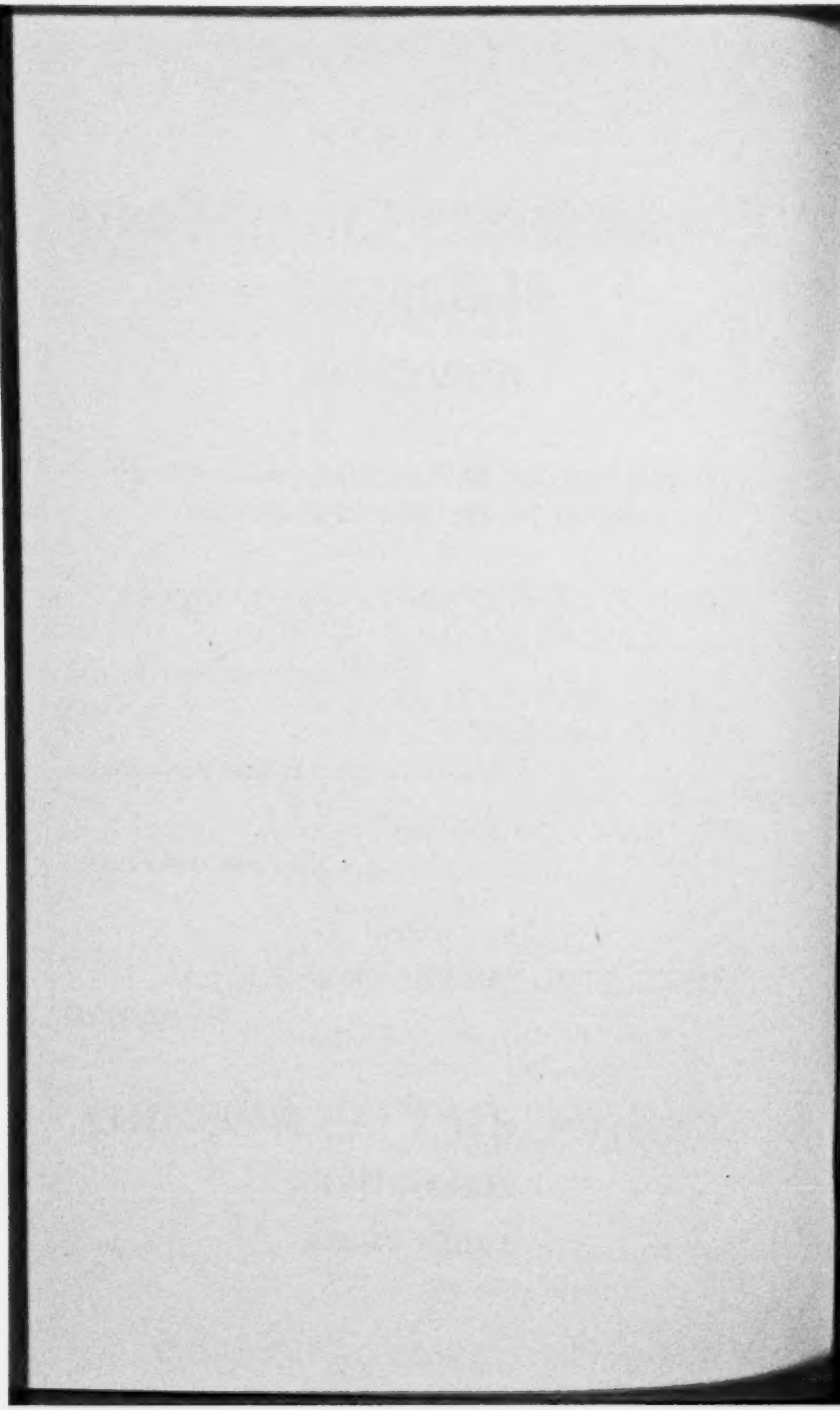
TRANSCRIPT OF RECORD

VOLUME IV

PAGES 1551-2080



[STATEMENT OF THE EVIDENCE]

And afterwards, on the .... day of December, 1913, and within the time allowed by orders of Court the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage (individually and as trustee), Union Trust Company (individually and as trustee), defendants and appellants herein, filed their and each of their STATEMENT OF THE EVIDENCE taken, reported, filed and considered in said cause in words and figures as follows, to-wit:

Case No. 3340.

District Court of the United States
For the District of Oregon

United States of America,

Complainant,

vs.

Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage (individually and as trustee), Union Trust Company (individually and as trustee), and others,

Defendants.

Come now the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage

(individually and as trustee), and Union Trust Company (individually and as trustee), defendants and appellants herein, and present this their and each of their statement of the evidence taken, reported, filed and considered in said cause.

WHEREUPON, It is certified that on the 3d day of January, 1913, the complainant and the said defendants-appellants made and filed in said cause, as a part of the evidence therein, a "Stipulation as to the Facts" in words and figures as follows, to-wit:

[STIPULATION AS TO THE FACTS]

[TITLE]

It is stipulated and agreed by and between the undersigned, that the following is a true and correct statement of the particular facts hereinafter set forth, subject to valid objections for irrelevancy or immateriality only; except in the particular instances where objections for incompetency also are herein expressly made and taken; all objections for irrelevancy and immateriality not herein expressly taken, shall be served and filed within twenty days after the filing of this stipulation with the Clerk of the above mentioned Court.

All parties hereto reserve the right to introduce further and additional evidence, within due time.

SUBDIVISION I.

Subdivision I of complainant's Bill of Complaint

(hereinafter referred to as "the Bill") correctly states, on pages 3 and 4 thereof, the citizenship and place of residence of each of the defendants; *excepting* that the defendant Stephen T. Gage is, and at the time of the filing of the Bill was, a citizen and resident of the City of Oakland, in Alameda County, California.

SUBDIVISION II.

ITEM 1. On July 25th, 1866, Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon."; which act was approved and became operative on July 25th, 1866.

ITEM 2. The copy of said Act, set forth on pages 5 to 10, inclusive, of the Bill, is a correct copy thereof.

ITEM 3. The said Act of July 25th 1866 was amended by an Act of Congress approved June 25th 1868, entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon.' "

ITEM 4. The copy of said amendatory Act of June 25th 1868, set forth on page 10 of the Bill, is a correct copy thereof.

SUBDIVISION III.

ITEM 1. The document hereto attached, marked "Ex-

hibit No. 1 to Stipulation." is a correct copy of the original Articles of ncorporation of the Oregon Central Railroad Company (of Portland).

ITEM 2. The said original document was presented to the said Secretary of State on October 6th 1866 by Joseph Gaston, who requested the said Secretary to file the said document and permit him (Gaston) to immediately withdraw it for exhibition to the Legislature of Oregon, then in session; whereupon the Secretary of State did write with a lead pencil the date, "October 6th 1866", on the back of the said document or on an envelope containing the same, and the said Gaston immediately departed with the said document and envelope in his (Gaston's) possession, and it was not returned to the said Secretary of State's office until November 21st 1866. At the time said document was presented to said Secretary of State as aforesaid no certificate or certificates of acknowledgment were appended thereto, and the only signatures thereto were those of J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. H. Chenoweth, Joel Palmer and H. W. Corbett. At the time said document was returned to the said Secretary of State's office on November 21st 1866, as aforesaid, it was in the form set forth in said "Exhibit No. 1 to Stipulation."

ITEM 3. The said Oregon Central Railroad Company (of Portland) projected its railroad line from the City of Portland in a westerly direction to the village

of Forest Grove, and thence southerly to and beyond the village of McMinnville, on the *westerly* side of the Willamette River; from which circumstances the said Company became known as (and will be hereinafter designated and referred to as) the "West Side Company", and its railroad line became known as the "West Side Line."

ITEM 4. On October 10th 1866, the Legislature of the State of Oregon adopted, and the Governor of said State approved, the Joint Resolution a correct copy of which is set forth on pages 11 and 12 of the Bill.

ITEM 5. The West Side Company, assuming itself to have been lawfully designated therefor, on May 25th 1867, through its Board of Directors, adopted a Resolution assenting to the said Act of Congress approved July 25th 1866, and on July 6th 1867 filed a certified copy of the said Resolution in the office of the Secretary of Interior, together with a certified copy of its Articles of Incorporation and a certified copy of the said Joint Resolution of the Legislature of the State of Oregon; and on or about August 20th 1868, the West Side Company filed in the Department of Interior a map of survey of its said projected line of railroad, a correct copy of which, on a reduced scale, is hereto attached, marked "Exhibit No. 2 to Stipulation."

ITEM 6. The document hereto attached, marked "Exhibit No. 3 to Stipulation.", is a correct copy of the original Articles of Incorporation of the Oregon Central Railroad Company (of Salem), filed in the office

of the Secretary of State of the State of Oregon on April 22nd 1867; and on or about the last-mentioned date the persons whose names were subscribed to the said Articles of Incorporation, contending that the West Side Company was never lawfully incorporated or organized and designing to secure the grants, franchises and other benefits of the said Act of Congress approved July 25th 1866, caused proceedings to be taken which were intended to organize, under the general incorporation laws of the State of Oregon, the Oregon Central Railroad Company (of Salem) named in the Articles of Incorporation filed, as aforesaid, on April 22nd 1867.

ITEM 7. The last-mentioned Oregon Central Railroad Company (of Salem) projected its railroad line on the *easterly* side of the Willamette River from which circumstance the said Company became known as (and will be hereinafter designated and referred to as) the "East Side Company", and its railroad line became known as the "East Side Line".

ITEM 8. The East Side Company, in furtherance of its aforesaid design, procured the Legislature of the State of Oregon to adopt and the Governor of said State to approve, on October 20th 1868, the Joint Resolution a correct copy of which is set forth on pages 13 and 14 of the Bill.

ITEM 9. A controversy arose between the West Side Company and the East Side Company as to which of the said Companies was entitled to the grants, fran-

chises and other benefits of the said Act of Congress approved July 25th 1866, which controversy, continued until about January 1870.

ITEM 10. On April 10th 1869, Congress passed an Act entitled "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland, in Oregon.', approved July twenty-five, eighteen hundred and sixty six."; which Act was approved on April 10th 1869.

ITEM 11. The copy of said Act, setforth on pages 15 and 16 of the Bill, is a correct copy thereof.

ITEM 12. On June 8th 1869, the East Side Company, through its Board of Directors, adopted the Resolution, a correct copy of which is setforth on pages 16 and 17 of the Bill; and on June 30th 1869 the said Company filed a certified copy of the said Resolution in the Department of Interior of the United States.

ITEM 13. On October 29th 1869, the East Side Company filed in the office of the Secretary of Interior of the United States a map of the survey and location of the first sixty miles of its projected line of railroad, extending Southerly from Portland.

ITEM 14. On or about December 24th, 1869, the East Side Company completed the construction of the first twenty miles of its said line of railroad, commencing at Portland and extending southerly therefrom; and on December 31st 1869 the said twenty-mile section

of constructed railroad was approved by Commissioners appointed pursuant to the provisions of Section 4 of the said Act of Congress of July 25th 1866, who had theretofore examined the same.

ITEM 15. "Exhibit A" to the Bill is a correct copy of the original Articles of Incorporation of the Oregon and California Railroad Company, filed in the office of the Secretary of State of the State of Oregon on March 17th 1870.

ITEM 16. The said Articles of Incorporation of the Oregon and California Railroad Company were executed and filed in triplicate, one in the office of the Secretary of State of the State of Oregon, one in the office of the County Clerk of the County of Multnomah, Oregon (being the County in which the principal office of the said company was located), and one in the office of the Secretary of the said Company, at the City of Portland, in the said County of Multnomah.

ITEM 17. On March 29th 1870, the East Side Company executed and delivered to the defendant Oregon and California Railroad Company, the instrument in writing a correct copy of which is attached to the Bill as "Exhibit B"; which instrument was recorded in the office of the County Recorder of the several Counties in which was situated any part of the lands intended to be granted by the said Act of Congress of July 25th 1866.

ITEM 18. On April 4th 1870, the defendant Oregon and California Railroad Company, through its Board of

Directors, adopted the Resolution, a correct copy of which is setforth on pages 20 and 21 of the Bill; and on April 28th 1870 filed a certified copy thereof, together with a certified copy of the said instrument in writing dated March 29th 1870 (copy attached to the Bill as "Exhibit B") in the office of the Secretary of Interior; and at all times since the date of the said instrument the defendant Oregon and California Railroad Company has assumed, and still assumes, itself to be the successor of the East Side Company in and to all the franchises, rights and property granted or intended to be granted by the said Acts of Congress.

SUBDIVISION IV.

ITEM 1. On May 4th 1870, Congress passed an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon"; which Act was approved on May 4th 1870.

ITEM 2. The copy of said Act, setforth on pages 22 to 25, inclusive, of the Bill, is a correct copy thereof.

ITEM 3. By the words "Oregon Central Railroad Company", in the said Act of May 4th 1870, Congress intended to and did refer to the West Side Company.

ITEM 4. On July 2nd 1870, the West Side Company, through its Board of Directors, assented to and accepted all of the provisions of the said Act of May 4th 1870; and on July 20th 1870, filed the said assent in the office of the Secretary of Interior.

SUBDIVISION V.

ITEM 1. By the issuance and negotiation or pledge of mortgage bonds, approximately $8,000,000 was during the year 1870 procured by the defendant Oregon and California Railroad Company, and approximately $1,000,000 was during the year 1871 procured by the West Side Company in the same way; and with the funds thus procured the work of constructing the lines of railroad contemplated by the said Acts of Congress of July 25th 1866 and May 4th 1870, respectively, was prosecuted continuously until about January 1873.

ITEM 2. As hereinbefore set forth (Sub III, Item 14), the East Side Company completed the construction of the first twenty miles of its line of railroad commencing at Portland and extending southerly therefrom; and on or about March 29th 1870, executed the instrument in writing a copy of which is attached to the Bill as "Exhibit B". With the funds procured by it in 1870, as setforth in the next preceding "Item 1", the Oregon and California Railroad Company, during the years 1870, 1871 and 1872, completed the construction of the East Side railroad from the point at which the East Side Company had quit the work to a point near Roseburg, a distance of approximately 197 miles; and with the funds procured by it in 1871, as setforth in the next preceding "Item 1", the West Side Company completed construction of the railroad contemplated by the Act of Congress of May 4th 1870, from Portland to McMinnville by way of Forest Grove, a distance of approximately 47 miles.

ITEM 3. About January 1873, the said funds became exhausted, and because thereof further construction of each of said railroads was at that time discontinued, and was not resumed by the Oregon and California Railroad Company until about June 1881, and was never resumed by the West Side Company.

ITEM 4. On or about July 24th 1874, the direction and control of the financial affairs of the said two Companies were assumed, and thereafter exercised, by the then creditors thereof, organized under the name "Bondholders Committee"; which Bondholders Committee, on or about February 29th 1876, acquired all capital stock of both of said Companies and thereafter, and until on or about June 1st 1881, the affairs of said two Companies were conducted by and under the control of the said Bondholders Committee.

ITEM 5. On October 6th 1880, the West Side Company executed and delivered unto the defendant Oregon and California Railroad Company, the instrument in writing a correct copy of which is attached to the Bill as "Exhibit C"; a certified copy of which instrument was filed with the Secretary of Interior of the United States on or about October 20th 1880.

ITEM 6. At all times since the date of said instrument the defendant Oregon and California Railroad Company has assumed, and still assumes, itself to be

the successor of the West Side Company in and to all the franchises, rights and property granted or intended to be granted by the said Act of Congress approved May 4, 1870.

SUBDIVISION VI.

ITEM 1. On or about May 7th 1881, the financial affairs of the Oregon and California Railroad Company were adjusted, substantially, as follows: All the said Company's capital stock was, by action of its Board of Directors and Stockholders, canceled, and the amount of its capital stock was then established at, has ever since remained and still is of, the total par value of $19,000,000, consisting of $12,000,000 preferred stock and $7,000,000 common stock; and in payment of its then existing indebtedness, with accrued interest thereon, all of the said new capital stock was then issued, and ever since has been and still is outstanding. By the issuance of said new capital stock, and use of a part of the proceeds of the new bond issue referred to in "Item 5" of this subdivision, all of the Oregon and California Railroad Company's then existing indebtedness was fully paid and discharged, and the several mortgages and other instruments purporting to secure the same were canceled and satisfied.

ITEM 2. On June 2nd 1881, the defendant Oregon and California Railroad Company executed and delivered to Henry Villard, Robert Peebles and Charles Edward Bretherton, as Trustees for the owners and holders of the said preferred stock, the Trust Deed a correct

copy of which is attached to the Bill as "Exhibit D".

ITEM 3. On or about June 28th 1881, the Trust Deed referred to in the next preceding "Item 2" of this subdivision, was recorded in the office of the County Recorder of Multnomah County, Oregon, in Book 27 of Mortgages at page 179; and thereafter, and about the same time, the said Trust Deed was recorded in the office of the County Recorder of the Several Counties in which was situated any part of the lands granted by either of said land-grants.

ITEM 4. Thereafter such proceedings were had and action taken under the provisions of the said Trust Deed, by and with the consent and co-operation of the Oregon and California Railroad Company, that the defendant Stephen T. Gage became, and now is, the sole surviving Trustee thereunder; and the said defendant Stephen T. Gage as such Trustee (but not individually), and the defendant Southern Pacific Company as the present owner of all of said preferred stock, claim and assert a lien upon the said lands, under and by virtue of the said Trust Deed.

ITEM 5. By the issuance and negotiations of two separate issues of its corporate bonds, bearing date June 1st 1881 and May 26th 1883, respectively (known and designated as "First Mortgage Bonds" and "Second Mortgage Bonds", respectively), the defendant Oregon and California Railroad Company provided approximately $5,000,000 further construction funds; and on

or about June 1st 1881, the work of constructing the East Side railroad was resumed and thereafter continued until about January 1884. During the last-mentioned period of construction the East Side railroad was constructed and extended from Roseburg to a point about one and one-quarter miles southerly from Ashland, in the State of Oregon, a total distance of approximately 145 miles.

ITEM 6. About January 1884, the last-mentioned construction funds became exhausted, and the work of further construction was discontinued until about April 1887, when it was resumed.

ITEM 7. About January 19th 1885, the said First Mortgage Bonds and Second Mortgage Bonds being still outstanding, in a suit theretofore brought and then pending in the United States Circuit Court for the District of Oregon, wherein certain of the holders of the said First Mortgage Bonds were plaintiffs and the defendant Oregon and California Railroad Company and others were defendants, the railroads and other property of the said Oregon and California Railroad Company were placed in the hands of a Receiver then and in that suit appointed for that purpose.

ITEM 8. On May 12th 1887, the general status of the said land-grants was as follows:

(*a*). Under the East Side grant, during the year 1871 to 1877, inclusive, patents for 323,078.68 acres of land (being lands contiguous to the first 125 miles

of the said East Side Railroad) were applied for by and issued to the defendant Oregon and California Railroad Company. Except as aforesaid, no patents under the said East Side grant were issued until the year 1893.

(*b*). No patents under the West Side grant were issued prior to the year 1895.

(*c*). The total length of the East Side railroad is, approximately, 367 miles. With the exception of the northerly 197 miles thereof, no part of the East Side railroad was constructed within the times prescribed therefor; and on May 12th 1887, the portion of the East Side railroad extending from Ashland to the southerly boundary line of the State of Oregon, remained unconstructed.

(*d*). That part of the West Side railroad extending from Forest Grove to Astoria, was never constructed, and because thereof the granted lands of the West Side grant contiguous to such unconstructed railroad were, by Act of Congress approved January 31st 1885, entitled "An Act to declare forfeiture of certain lands granted to aid in the construction of a railroad in Oregon.", declared forfeited to and the ownership thereof was resumed by the United States.

(*e*). Of the aforesaid granted lands, 163,430.28 acres were sold by the Oregon and California Railroad Company prior to May 12th 1887. Nearly all of the said sold lands were so sold to actual settlers, in small quantities, although in a few instances such sales were

made in quantities exceeding 160 acres to one person, and for prices slightly in excess of $2.50 per acre.

SUBDIVISION VII.

ITEM 1. The defendant Southern Pacific Company was incorporated by an Act of the General Assembly of the State of Kentucky, entitled "An Act to incorporate the Southern Pacific Company.", approved March 17th 1884; which Act was amended by an act of the General Assembly of the State of Kentucky, approved March 21st 1888, entitled "An Act to amend 'An Act to incorporate the Southern Pacific Company' approved March 17th 1884." A correct copy of the said Act of March 17th 1884 and amendatory Act of March 21st 1888, is hereto attached, marked "Exhibit No. 4 to Stipulation."

ITEM 2. "Exhibit No. 5 to Stipulation", hereto attached, is a correct copy of Articles of Association, Amalgamation and Consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, filed in the office of the Secretary of State of the State of California on June 23rd 1870, amalgamating and consolidating the said Companies into the Central Pacific Railroad Company, incorporated as such by the said Articles.

ITEM 3. "Exhibit No. 6 to Stipulation", hereto attached, is a correct copy of Articles of Amalgamation and Consolidation between the Central Pacific Railroad Company, the California and Oregon Railroad Com-

pany, and the other Railroad Companies therein named, filed in the office of the Secretary of State of the State of California on August 22nd 1870.

ITEM 4. At the time Articles of Amalgamation and Consolidation referred to in the next preceding "Item 3" of this subdivision were filed, the said Central Pacific Railroad Company was the owner of all unsold lands west of a point near Ogden, in Utah, coterminous with the Central Pacific railroad from Ogden by way of Elko and Reno, in Nevada, Colfax, Auburn, Sacramento, Stockton, Niles and San Jose to San Francisco, in California, granted by the Act of Congress approved July 1st 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.", reference to which is hereby made as the said Act is published in United States Statutes at Large, Volume 12, page 489 and following, as enlarged by the amendatory Act of Congress approved July 2nd 1864, entitled "An Act to amend an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.', approved July first eighteen hundred and sixty-two.", reference to which is hereby made as the said amendatory Act is published in United States Statutes at Large, Volume 13, page 356 and following; and at the time the said Articles of

Amalgamation and Consolidation were filed, the said California and Oregon Railroad Company was the owner of all unsold lands in California, granted by the Act of Congress approved July 25th 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California, to Portland, in Oregon.", a correct copy of which is set forth on pages 5 to 10, inclusive, of the Bill.

ITEM 5. From the date of filing the last-mentioned Articles of Amalgamation and Consolidation until July 29th 1899, the said Central Pacific Railroad Company remained the owner of all lands of the three several land-grants setforth in the next preceding "Item 4" of this subdivision, which were unsold at the date of filing the said last-mentioned Articles, and were not thereafter, from time to time (prior to July 29th 1899), sold by the said Central Pacific Railroad Company; and by the instrument in writing executed and delivered on July 29th 1899, a copy of which is hereto attached, marked "Exhibit No. 7 to Stipulation.", the said Central Pacific Railroad Company granted and conveyed unto the Central Pacific Railway Company, all lands of the said land-grants remaining unsold on July 29th 1899. The statements in this Item and the last preceding Item 4 concerning the ownership and conveyance of the lands granted by said Acts of Congress are made subject to the terms and provisions of said Acts of Congress respectively, and all rights of the United States there-

under—the title to said lands not being an issue in the suit at bar.

ITEM 6. "Exhibit No. 8 to Stipulation", hereto attached, is a correct copy of the Articles of Association and Certificate of Incorporation of the Central Pacific Railway Company, referred to in the next preceding "Item 5" of this subdivision hereof.

ITEM 7. "Exhibit No. 2" to the printed "Joint and Several Answer of Defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, to Bill of Complaint of the United States, in the above-entitled Case.", on file herein (hereinafter referred to as the "Joint and Several Answer"), is a correct copy of the Agreement, dated February 7th 1885, by which the said Central Pacific Railroad Company leased its said railroad from Ogden to San Francisco and branch thereof from Roseville Junction to Delta, together with certain other railroads and property connected therewith in the said Agreement described, unto the said Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company has held possession of the railroads and other property therein described, and operated the said railroads, as such lessee, continuously since the date of the said Agreement, and still continues to so operate the same.

ITEM 8. "Exhibit F" to the Bill is a correct copy of the Agreement, dated July 1st, 1887, by which the

defendant Oregon & California Railroad Company leased all its railroads in Oregon (including its East Side railroad and its West Side railroad) and other property used in connection therewith in the said Agreement described, unto the defendant Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company held possession of and operated the said railroads and property as such lessee, continuously from June 6th 1888, until August 1st, 1893.

ITEM 9. "Exhibit No. 3" to the said Joint and Several Answer, is a correct copy of the Agreement, dated January 1st 1888, by which the said Central Pacific Railroad Company leased its said railroad from Delta to the north boundary line of the State of California, unto the said Southern Pacific Company; pursuant to which Agreement the said Southern Pacific Company has held possession of and operated the said railroad, as such lessee, continuously since the date of said Agreement, and still continues to so operate the same.

ITEM 10. "Exhibit G" to the Bill is a correct copy of a new Lease, dated August 1st 1893, by which the Oregon & California Railroad Company leased all its railroads in Oregon (including the East Side railroad and West Side railroad) and other property used in connection therewith in the said Lease of July 1st 1887, described in "Item 8" of this Subdivision hereof, unto the defendant Southern Pacific Company; pursuant to which last-mentioned Lease the said Southern Pacific

Company has held possession of and operated the said railroads continuously from August 1st 1898, inclusive, to the present time, and still continues to so hold possession of and operate the same.

ITEM 11. On or about December 1867, the principal stockholders of the said Central Pacific Railroad Company of California became the principal stockholders of the said California and Oregon Railroad Company; and on or about August 1st 1899, the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Central Pacific Railroad Company; and on or about August 1st, 1899, the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Central Pacific Railway Company; and on or about April 9th 1901 the said Southern Pacific Company became, has ever since remained and still is, the principal stockholder of the said Oregon and California Railroad Company.

ITEM 12. On or about July 31st 1885, the defendant Oregon and California Railroad Company and said Central Pacific Railroad Company entered into a certain agreement in writing, a copy of which marked "Exhibit No. 9 to Stipulation", is hereto attached; and on or about October 11th 1886, the said Central Pacific Railroad Company, the Pacific Improvement Company (a corporation organized in 1878 under the laws of the State of California) and the defendant Southern Pacific Company entered into a certain agreement in writing a

copy of which marked "Exhibit No. 1" is attached to the said printed Joint and Several Answer. Prior to the execution of either of said two last-mentioned contracts, the stockholders of the Oregon and California Railroad Company became and were organized under the name "Stockholders Committee", certain of the owners of the aforesaid mortgage bonds became and were organized under the name "Frankfort Bondholders Committee", and certain other of the owners of said bonds became and were organized under the name "London Bondholders Committee", said Bondholders Committee representing the owners of substantially all of the aforesaid First Mortgage Bonds and Second Mortgage Bonds of said Oregon and California Railroad Company.

ITEM 13. "Exhibit E" to the Bill is a correct copy of a written Contract made and entered into by and between the parties named therein, on March 28th 1887.

ITEM 14. Pursuant to the provisions of the said Contract of March 28th 1887, on or about May 12th 1887 all of the capital stock and all of the said Second Mortgage Bonds of the Oregon and California Railroad Company were transferred, assigned and delivered to the said Pacific Improvement Company, and all of the said First Mortgage Bonds were transferred, assigned and delivered to the defendant Southern Pacific Company. The statements of this Item and the next succeeding Item 15 concerning the transferring, assigning and delivering of the capital stock of the defendant

Oregon and California Railroad Company to said Pacific Improvement Company, and by the latter to said Southern Pacific Company, shall not be taken as an admission on the part of the Government that said capital stock was not held by said Pacific Improvement Company in trust for said Southern Pacific Company, as charged in the Bill.

ITEM 15. The said Pacific Improvement Company held said capital stock of the Oregon and California Railroad Company until April 9th 1901, when it assigned and transferred the same unto the said Southern Pacific Company; and the said Southern Pacific Company has ever since remained, and still is, the owner and holder of said capital stock. The said Pacific Improvement Company owned and held the controlling interest in said Southern Pacific Company from about March 1887 until after April 9th 1901.

ITEM 16. "Exhibit H" to the Bill is a correct copy of the Trust Mortgage, bearing date July 1st 1887, given by the said Oregon and California Railroad Company to the defendant Union Trust Company of New York.

ITEM 17. By that certain provision of the Trust Mortgage referred to in the next preceding "Item 16" of this subdivision hereof, which reads as follows: "And all the property, real, personal or mixed, which on the twelfth day of May, 1887, was covered by the mortgage securing the then existing First Mortgage Bonds of

the Oregon and California Railroad Company", reference was had, and intended to be had, to a certain Deed of Trust, executed by the said Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, as Trustees, bearing date June 1st 1881, a correct copy of which is attached to the Bill as "Exhibit I."

ITEM 18. The said Trust Mortgage of July 1st 1887, referred to in the next preceding "Item 17" and "Item 16" of this subdivision hereof, was recorded on January 20th 1888, in the office of the County Recorder of Multnomah County, Oregon, in Book 63 of Mortgages, at page 287; and about the same time the said Trust Mortgage was recorded in the office of the County Recorder of each of the several Counties in which was situated any of the lands granted by the said Acts of Congress of July 25th 1866 or May 4th 1870.

ITEM 19. The defendant Oregon and California Railroad Company executed and delivered certain of the bonds provided for by the said Trust Mortgage of July 1st 1887, of which $17,745,000 in amount are still outstanding; the payment of all which bonds, both as to principal and interest, was and is guaranteed by the defendant Southern Pacific Company.

ITEM 20. The Bonds secured by the Mortgage to the defendant Union Trust Company of New York as Trustee were used in large part, pursuant to the provisions of the Contract of March 28th 1887 ("Exhibit

E" appended to the Bill), to retire the Bonds secured by the earlier Mortgages of June 1st 1881 and May 26th 1883, respectively, which had been sold abroad; and a large part of the balance of said Bonds secured by the Mortgage to Union Trust Company of New York also were negotiated abroad; and most of the Bonds secured by the said Mortgage to the defendant Union Trust Company of New York are now owned abroad—especially in Holland and Germany.

ITEM 21. By the issuance and negotiation of two separate issues of its corporate Bonds bearing date June 1st 1881 and May 26th 1883, respectively, the defendant Oregon and California Railroad Company provided funds aggregating approximately $5,000,000 which were used in the construction of its railroad; and the Bonds secured by the Mortgage of the Oregon and California Railroad Company to the defendant Union Trust Company of New York, dated July 1st 1887, were used to retire the Bonds secured by the Mortgages of 1881 and 1883, aforesaid, and to complete the construction of the said railroad.

ITEM 22. The total amount of the Bonds issued under and secured by the Mortgage of the Oregon and California Railroad Company to the defendant Union Trust Company of New York was $20,000,000; and from the proceeds of the sale of lands received by it, the said Union Trust Company of New York has paid off $2,255,000 of said Bonds, leaving a balance outstanding of $17,745,000.

ITEM 23. The defendant Union Trust Company of New York, as trustee for the owners and holders of said Bonds, claims to have and hold a lien upon the said granted lands, under and by virtue of the said Trust Mortgage of July 1st, 1887.

ITEM 24. During the year 1887, the last section of the East Side railroad, extending from a point near Ashland to the southern boundary line of Oregon, and the section of railroad in California extending from Delta to connection with the said East Side railroad at the said southern boundary line of Oregon, were constructed by the said Pacific Improvement Company. "Exhibit No. 10 to Stipulation," hereto attached, is a correct copy of a certain contract made and executed on or about June 6th 1887, by and between the said Oregon and California Railroad Company and Pacific Improvement Company. At the time of the execution of said contract of June 6th 1887, a large part of said work of construction had been performed by said Pacific Improvement Company; but it is not intended hereby to stipulate whether said prior work of construction was performed pursuant to said contract of October 11th 1886, or some other contract, or otherwise.

ITEM 25. On or about June 6th 1888, the aforesaid Receivership proceedings were dismissed, and the said Receiver was discharged, and all of the said First Mortgage Bonds and Second Mortgage Bonds (not including the bonds issued under the Trust Mortgage of July 1st 1887), together with all Mortgages and Trust

Deeds securing the payment thereof, were canceled and discharged; and thereupon and ever since the defendant Southern Pacific Company has continued in possession of, pursuant to its hereinbefore mentioned Leases from the Oregon and California Railroad Company (copy attached to the Bill as "Exhibit F" and "Exhibit G"), of the railroads and all property therein described.

SUBDIVISION VIII.

ITEM 1. "Exhibit No. 11 to Stipulation", hereto attached, is a correct copy of a Resolution adopted by the Board of Directors of the Oregon & California Railroad Company on February 7th 1891; "Exhibit No. 12 to Stipulation", hereto attached, is a correct copy of Resolution adopted by the said Board of Directors on March 14th 1892; and the forms of Deeds setforth in the said Exhibits are the forms of Deeds referred to in Subdivision VIII, 3rd paragraph on page 41 of the Bill herein.

ITEM 2. Lands of the said East Side grant to the amount of 2,422,708 acres were patented to the defendant Oregon and California Railroad Company between the years 1893 and 1906, both years inclusive; and the lands of the said West Side grant to the amount of 128,618.13 acres were patented to the said Company between the years 1895 and 1903, both years inclusive; which patents were issued, from time to time, between the said dates pursuant to applications made therefor by the said Oregon and California Railroad Company, from time to time, between the years 1876 and 1906.

No patent has issued to the Oregon and California Railroad Company, under either of said land-grants, since the year 1906, except Supplemental Patent No. 3, dated June 21st 1909, for 161.75 acres of land in the indemnity limits of the said East Side grant.

ITEM 3. A rapidly increasing demand for the lands of the Oregon and California Railroad Company, in large quantities and at increased prices, commenced about 1889 or 1890, and has continued ever since.

ITEM 4. From about 1894 to 1903, the said Oregon and California Railroad Company sold and disposed of some of its said granted lands to persons not actual settlers in quantities exceeding 160 acres to one person, and at prices exceeding $2.50 per acre; and in several instances, between the said dates, the said Company sold lands of the said grants in quantities of from 1,000 to 20,000 acres to one purchaser at prices ranging from $5.00 to $20.00 per acre, in one instance at $35.00 per acre, in one instance at $40.00 per acre, and in one instance a sale of 45,000 acres at $7.00 per acre was made by the said Company to a single purchaser.

ITEM 5. The defendant Oregon and California Railroad Company has heretofore made approximately 5,306 sales of its land-grant lands, aggregating 820,000 acres; approximately 4,930 of which sales were for quantities not exceeding 160 acres to one purchaser, aggregating about 296,000 acres, and approximately 376 of which sales were for quantities exceeding 160 acres to one pur-

chaser, aggregating about 524,000 acres.

ITEM 6. Substantially all of the said 524,000 acres were sold to persons other than actual settlers, who purchased the land for purposes other than settlement, and at prices in excess of $2.50 per acre; approximately 478,000 acres of which 524,000 acres were sold since the year 1897; and approximately 370,000 acres of the said 524,000 acres were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser.

ITEM 7. Approximately three-fourths, in number, of all sales made since the year 1897, were made by Contracts providing for payment of purchase price in from five to ten equal annual payments, and execution of conveyance upon final payment; many of which sales were still pending under such Contracts on January 1st 1903, the conveyances under which were executed from time to time after January 1st 1903, and a considerable number of said Contracts were still pending when this suit was brought.

ITEM 8. Of the total sales made as aforesaid, 4508 had been fully executed and conveyances given aggregating 740,002.45 acres at the time the said printed Joint and Several Answer was filed; and at said time 571 executory Contracts were still pending, aggregating 81,684.31 acres.

ITEM 9. "Exhibit No. 4" attached to the said Joint and Several Answer is, substantially, a correct statement of all land sales made by the defendant Oregon

and California Railroad Company, including all sales executed by conveyances and all sales under Contracts not executed by conveyances, at the time the said Joint and Several Answer was filed. "Exhibit J", attached to the Bill is, substantially, a correct statement of all conveyances of said granted lands made by the defendant Oregon and California Railroad Company, and of all contracts pending at the time said "Exhibit J" was compiled, viz: July 1st, 1908. The apparent discrepancies between said "Exhibit No. 4" attached to the said Joint and Several Answer, and said "Exhibit J" attached to said Bill, are explained by the fact that said "Exhibit No. 4" attached to said Joint and Several Answer is compiled with reference to the original date of sales; while said "Exhibit J" attached to said bill is compiled with reference to the date of excuted conveyances, except as to pending contracts; moreover the classification of sales (as to purchase price and quantity sold to each purchaser) in said "Exhibit No. 4" attached to said Joint and Several Answer differs from the classification used in said "Exhibit J" attached to said Bill.

SUBDIVISION IX.

ITEM 1. At or about the time the said Joint and Several Answer was filed herein, there remained unsold of said granted lands, 2,360,492.81 acres, of which 2,075,616.45 acres were theretofore patented unto the Oregon and California Railroad Company under the

said land-grants, and 284,876.36 acres thereof at that time remained unpatented; all of which unsold lands are claimed by the said Oregon and California Railroad Company under and by virtue of the said land grants.

ITEM 2. Approximately 1,800,000 acres of the said unsold lands are situated southerly from Eugene, and constitute more than one-third, in alternate sections, of all lands lying within approximately twenty miles on each side of the East Side railroad from Eugene to the southern boundary line of Oregon; only a small portion of which granted lands, in that part of the East Side grant, have ever been sold.

ITEM 3. Since January 1st 1903, and principally since February 14th 1907, persons exceeding 4,000 in number have severally applied to the defendant Oregon and California Railroad Company to purchase certain of the said unsold lands in quantities not exceeding 160 acres to each person; said applicants claiming that they desired such lands to settle and establish a home upon; and in a few instances claiming that they had settled and established a home upon the lands applied for by them; and at or about the time the said applications were made, each applicant stated that he then was willing and able to tender payment at the rate of $2.50 per acre for the lands applied for by him, and in a few instances such tender was made.

ITEM 4. On or about January 1st 1903, the Oregon and California Railroad Company withdrew from sale

all the said unsold lands; and the said Company at all times refused, and still refuses, to approve or accept any of the applications to purchase referred to in the next preceding "Item 3" of this subdivision hereof, claiming that all the lands so applied for are essentially timber lands, unsuitable for any other purpose.

ITEM 5. The defendant Oregon and California Railroad Company now assumes and asserts an absolute and unconditional estate in and to all of the said unsold lands.

ITEM 6. "Exhibit K" to the Bill, as corrected by "Exhibit No. 5" to the said Joint and Several Answer, contains a correct list and description of all the said unsold lands which have heretofore been patented.

ITEM 7. "Exhibit No. 6" to the said Joint and Several Answer, contains a correct list and description of all unsold, unpatented primary lands, and of all unsold selected but unpatented indemnity lands (claimed by the defendant Oregon and California Railroad Company under the said land-grants.)

ITEM 8. The reasonable value of the said unsold lands exceeds the sum of $30,000,000.

SUBDIVISION X.

ITEM 1. The defendant Oregon and California Railroad Company has, in addition to the purchase price received from sales of the said granted lands, received and enjoyed the following other benefits on account of

said granted lands, between April 1st 1870 and April 30th 1911; towit:

(*a*). A large number of contracts of sale have been forfeited because of defaults in payment of the annual installments due thereon, and the installments previously paid, amounting in all to $88,205.06 have been retained by the said Railroad Company.

(*b*). A portion of the said lands has, from time to time, been leased for certain rentals therefor paid the said Railroad Company, amounting in all to $5,532.07.

(*c*). The said Railroad Company has cut and used large quantities of timber growing upon the said land, receiving the benefit therefrom to the amount of $18,-850.25, a reasonable stumpage value thereof at the times of such cutting.

(*d*). In addition to the aforesaid amounts, the said Railroad Company has also received $10,687.92, collected from persons who, without its permission or consent, cut timber growing on the said lands.

SUBDIVISION XI.

The foregoing "Subdivision X" hereof sets forth, substantially, the correct value of all growing timber cut by or with consent of the defendant Oregon and California Railroad Company from the said unsold lands, and the amount received by the said Railroad Company for growing timber cut by others from the said lands without its consent; and the said Railroad

Company has not cut, nor permitted others to cut, timber growing on the said unsold lands, since the commencement of this suit; and all of the said unsold lands now are, and at all times since this suit was brought have been, withdrawn from sale by the said Railroad Company.

SUBDIVISION XII.

ITEM 1. Until about the year 1890, or 1891, there was substantially no demand for said granted lands, except for the purpose of settlement or by persons of limited means able to purchase such lands only in quantities not exceeding 160 acres and at prices not exceeding $2.50 per acre; and nearly all sales made prior to the year 1894 were of that character, and to such persons.

ITEM 2. During a large part of the time prior to the year 1894, the defendant Oregon and California Railroad Company maintained an immigration bureau, engaged in inducing immigration and settlement upon said lands; and the greater part of the sales of lands to persons not settlers thereon, or in quantities exceeding 160 acres to one person, or for prices exceeding $2.50 per acre were made after the year 1894.

SUBDIVISION XIII.

ITEM 1. "Exhibit No. 17 to Stipulation" is a correct statement of the facts therein set forth; and is appended hereto for the purpose of correcting "Exhibit No. 9" to the said Joint and Several Answer, and of

admitting the same to be true as thus corrected.

ITEM 2. "Exhibit No. 10" to the said Joint and Several Answer, is a correct statement of the facts therein set forth, after striking out "A few", the first two words thereof.

ITEM 3. "Exhibit L" to the Bill is a correct copy of a Memorial adopted by the Legislature of Oregon on February 14th 1907, and communicated to Congress immediately thereafter.

ITEM 4. The Joint Resolution of Congress, a correct copy of which is set forth on pages 53 and 54 of the Bill, was approved on April 30th 1908; and this suit was instituted pursuant to said Joint Resolution.

SUBDIVISION XIV.

Since the beginning of this suit, forty-five other and separate suits have been brought in the name of the United States, each against the defendants to this stipulation and another person or other persons, asserting and praying for the enforcement of claimed rights and equitable remedies pertaining to certain of said granted lands subject to such suits, sold and conveyed by the defendant Oregon and California Railroad Company to such other persons defendants, in alleged violation of alleged provisions or conditions of the said land grants.

SUBDIVISION XV.

The parties hereto disagree as to what are the true

facts which Subdivision "XV" of the pleadings of the respective parties put at issue, and proof of such facts at issue is left open.

SUBDIVISION XVI.

Pursuant to the rules and regulations of the Department of Interior in that behalf adopted and in force, all of the aforesaid patents were issued and based upon applications in writing therefor, from time to time filed in the appropriate land office of the United States by the defendant Oregon and California Railroad Company as the "successor and assignee" of the said East Side Company and West Side Company, respectively —which said applications contained description lists of the lands so claimed and for which patents were so applied for; and each of said applications was accompanied and supported by an affidavit in writing signed and sworn to by the Land Agent of the defendant Oregon and California Railroad Company thereto duly authorized, alleging among other things as follows: "The said lands are vacant, unappropriated, are not interdicted mineral, nor reserved lands, and are of the character contemplated by the granting Act" under which patents were applied for, and issued as aforesaid.

SUBDIVISION XVII.

ITEM 1. The Contracts and Deeds executed by the defendant Oregon and California Railroad Company prior to about the year 1894, contained (substantially) the following reservation clause:

"Reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way or other railroad purposes, when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises, and the right to use all water needed for the operating and repair of said railroad, and also reserving all claim of the United States to the same as mineral lands."

ITEM 2. The words "and also reserving all claim of the United States to the same as mineral land" were stricken from the said reservation clause in the Contracts and Deeds executed by the said Railroad Company from about 1894 until about 1902; and in Contracts and Deeds executed by the said Railroad Company during and at all times after about the year 1902, the words "and also reserving and excepting from said described premises so much thereof as may be mineral lands", were substituted for the said stricken out words.

ITEM 3. The defendant Oregon and California Railroad Company claims to be the owner of all rights, lands and interest in lands, at any time excepted or reserved by the said clause.

SUBDIVISION XVIII.

The undersigned defendants claim that the defendant Oregon and California Railroad Company is, and claims to be, the owner of said granted lands (primary

and indemnity), patented and unpatented, not heretofore sold and transferred by its Deeds of conveyance, together with all right of way and other rights and property in Oregon described as granted by section 3 of the said Act of July 25th 1866 and the first section of the said Act of May 4th 1870, and all the rights and property reserved as aforesaid for any and all railroad purposes, and the improvements upon all of the said lands and property; and the undersigned defendants claim that all of the said land and property is subject to the defendant Union Trust Company's said Trust Mortgage of July 1st 1887.

SUBDIVISION XIX.

ITEM 1. "Exhibit No. 13 to Stipulation" attached hereto, contains a correct statement of all maps of survey and location filed in the office of the Secretary of Interior of the United States by the East Side Company and the Oregon and California Railroad Company, and the dates thereof, under and pursuant to the provisions of the said East Side grant; also a correct statement of the map filed in the same office by the West Side Company under and in pursuance of the said West Side grant, with the date of such filing.

ITEM 2. "Exhibit No. 14 to Stipulation" attached hereto, contains a correct statement of the dates of construction, completion, approval and acceptance, of the several sections of the said East Side and West Side railroads, separately stated.

ITEM 3. "Exhibit No. 11" to the said Joint and Several Answer, correctly shows the quantity of land patented to the Oregon and California Railroad Company, compiled by years, separately stated as to the East Side and West Side land grants, and also giving the dates of all Acts of Congress recited or referred to in such patents.

ITEM 4. All of the West Side grant patents listed on the said "Exhibit No. 11" to Joint and Several Answer, recite that they were issued to the said Oregon and California Railroad Company "as successor to the Oregon Central Railroad Company"; but no patent issued for lands of the East Side grant, contains a recitation that it was issued to the Oregon and California Railroad Company "as successor to" any company.

SUBDIVISION XX.

ITEM 1. "Exhibit P" to the Bill gives a correct list of the suits therein referred to; and a fair statement, of reasonable accuracy, is given on page 60 of the Bill, of the allegations and substance of the complaints filed in those suits.

ITEM 2. During the month of December 1908, all of the said suits other than the one brought by Roy W. Minkler, were consolidated with this suit. Thereafter, and on or about January 15th 1909, all the persons other than the said Roy W. Minkler named in the said "Exhibit P" as complainants, filed herein their cross-com-

plaints; and on April 24th 1911, demurrers theretofore filed by the undersigned defendants to each and all of said cross-complaints were sustained by order of the Court.

ITEM 3. On or about June 9th 1910, the said suit brought by Roy W. Minkler, was dismissed by mutual consent of all parties thereto.

SUBDIVISION XXI.

ITEM 1. An Act was passed by Congress entitled "An Act to create an Auditor of Railroad Accounts and other purposes.", approved June 19th 1878; a correct copy of which Act, as published in United States Statutes at Large, Volume 20, on pages 169 and following, is attached hereto marked "Exhibit No. 15 to Stipulation".

ITEM 2. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for other purposes.", approved March 3rd 1881, published in United States Statutes at Large, Volume 21, pages 385 to 413, inclusive, Congress (on pages 409-410 of said publication) provided as follows:

> *"Office of Auditor of Railroad Accounts*—For Auditor, who shall hereafter be styled Commissioner of Railroads, four thousand five hundred dollars; book-keeper two thousand four hundred

dollars; assistant book-keeper, two thousand dollars; railroad engineer, two thousand five hundred dollars; one clerk, one thousand four hundred dollars; one copyist, nine hundred dollars; one messenger, six hundred dollars; traveling and other expenses, two thousand five hundred dollars; incidental expenses, three hundred dollars; in all, seventeen thousand one hundred dollars."

ITEM 3. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.", approved April 17th 1900, published in United States Statutes at Large, Volume 31, pages 86 to 134, inclusive, Congress (on pages 124-125 of said publication) provided as follows:

"*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; book-keeper, two thousand dollars; assistant book-keeper, one thousand eight hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all, eleven thousand four hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads shall terminate on the thirtieth day of June, nineteen hundred and one."

ITEM 4. By an Act entitled "An Act making appropriations for the legislative, executive, and judicial

expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and two, and for other purposes.", approved March 3rd, 1901; published in United States Statutes at Large, Volume 31, pages 960 to 1009, inclusive, Congress (on page 1000 of said publication) provided as follows:

> "*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; book-keeper, one thousand six hundred dollars; one clerk of class two; one clerk, one thousand dollars; and one assistant messenger; in all, nine thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and two, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior, together with the records and files of the office."

ITEM 5. By an Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.", approved June 28th 1902, published in United States Statutes at Large, Volume 32, Part 1, pages 419 to 481, inclusive, Congress (on pages 455-456 of said publication) provided as follows:

> "*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant mes-

senger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and three, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior together with the records and files of the office."

ITEM 6. By an Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth nineteen hundred and four, and for other purposes.", approved March 3rd 1903, published in United States Statutes at Large, Volume 32, Part 1, pages 1083 to 1147, inclusive, Congress (on page 1119 of said publication) provided as follows:

"*Office of Commissioner of Railroads*: For Commissioner, four thousand five hundred dollars; one clerk, one thousand dollars; one assistant messenger, seven hundred and twenty dollars; in all six thousand two hundred and twenty dollars; *Provided,* That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and four, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior together with the records and files of the office."

ITEM 7. The said Bureau of the Interior Depart-

ment was organized as provided by the said Act of June 19th 1878, and continuously administered as such under annual appropriations from Congress until the termination of said Bureau and the transfer of the duties, files and records thereof to the Secretary of the Interior, in the year 1904, as required by the said Act of March 3rd 1903; and, pursuant to the requirements of the said Act of June 19th 1878, the forms of reports to be made by the Railroad Companies contemplated by the said Act, including the defendant Oregon and California Railroad Company, were prepared and adopted and transmitted to the said Railroad Companies, including the defendant Oregon and California Railroad Company, by the said Bureau, from 1879 to 1903; and the defendant Oregon & California Railroad Company complied with the provisions of the said Act, and the demands of the said Bureau, as to the making of said reports, continuously from 1879 to 1903, both years inclusive, as is hereinafter set forth.

ITEM 8. Beginning with the report for the half year ending December 31st 1879, and continuing down to and including the year 1903, reports were made of the transactions of the Land Department of the defendant Oregon & California Railroad Company, upon the said blanks formulated and furnished therefor by the said Bureau of the Interior Department, as follows:

(*1st*) *For the half year ending December 31st 1879:*

Total cash receipts from all sales to date	$83,579.93
Average price per acre for all sales to date	2.23
Average price per acre for all sales during half year	2.39
Average price per acre for all purchases to date	2.48
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.25
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.50

(*2nd*) *For the half year ending June 30th 1880:*

Total cash receipts from all sales to date	$95,873.99
Average price per acre for all sales to date	2.27
Average price per acre for all sales during half year	2.28
Average price per acre for all purchases to date	2.27
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

(3rd) *For the half year ending December 31st 1880:*	
Total cash receipts from all sales to date	$106,621.36
Average price per acre for all sales to date	2.26
Average price per acre for all sales during half year	2.12
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.00
Maximum price per acre now asked " " "	5.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00
(4th) *For the half year ending June 30th 1881:*	
Total cash receipts from all sales to date	$121,610.33
Average price per acre for all sales to date	2.26
Average price per acre for all sales during half year	2.24
Average price per acre for all purchases to date	2.26
Maximum price per acre from sales (not town lots)	10.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	5.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

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(5th) For the half year ending December 31st 1881:	
Total cash receipts from all sales to date	$131,633.02
Average price per acre for all sales to date	2.25
Average price per acre for all sales during half year	2.25
Average price per acre for all purchases to date	2.25
Maximum price per acre from sales (not town lots)	5.00
Minimum " " " " " " " "	1.25
Maximum price per acre now asked " " "	10.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00
(6th) For the half year ending June 30th 1882:	
Total cash receipts from all sales to date	$177,712.57
Average price per acre for all sales to date	2.24
Average price per acre for all sales during half year	2.24
Average price per acre for all purchases to date	2.24
Maximum price per acre from sales (not town lots)	3.50
Minimum " " " " " " " "	1.12
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00

(7th) *For the half year ending December 31st 1882:*	
Total cash receipts from all sales to date	$198,302.97
Average price per acre for all sales to date	2.25
Average price per acre for all sales during half year	2.25
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	1.00
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	0.25
Average " " " " " " " "	2.00
(8th) *For the half year ending June 30th 1883:*	
Total cash receipts from all sales to date	$228,794.28
Average price per acre for all sales to date	2.89
Average price per acre for all sales during half year	2.75
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

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(9th) *For the year ending June 30th 1884:*

Total cash receipts from all sales to date	$268,317.92
Average price per acre for all sales to date	2.4087
Average price per acre for all sales during year	2.7250
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

(10th) *For the year ending June 30th 1885:*

Total cash receipts from all sales to date	$340,039.95
Average price per acre for all sales to date	2.4534
Average price per acre for all sales during year	2.5608
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

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(*11th*) *For the half year ending December 31st 1885:*

Total cash receipts from all sales to date	$361,559.86
Average price per acre for all sales to date	2.45
Average price per acre for all sales during half year	2.65
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(*12th*) *For the year ending December 31st 1885:*

Total cash receipts from all sales to date	$366,352.35
Average price per acre for all sales to date	2.43
Average price per acre for all sales during year	2.70
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	1.00
Average " " " " " " " "	2.50

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(*13th*)	*For the half year ending June 30th 1886:*	
Total cash receipts from all sales to date		$384,389.72
Average price per acre for all sales to date		2.47
Average price per acre for all sales during half year		2.99
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		7.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.50
(*14th*)	*For the half year ending December 31st 1886:*	
Total cash receipts from all sales to date		$407,876.54
Average price per acre for all sales to date		2.44
Average price per acre for all sales during half year		2.99
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		7.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.50

(*15th*) *For the year ending December 31st 1886:*	
Total cash receipts from all sales to date	$407,876.54
Average price per acre for all sales to date	2.44
Average price per acre for all sales during year	2.99
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50
(*16th*) *For the half year ending June 30th 1887:*	
Total cash receipts from all sales to date	$435,254.92
Average price per acre for all sales to date	2.49
Average price per acre for all sales during half year	3.19
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	7.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

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(*17th*)	*For the half year ending December 31st 1887:*	
Total cash receipts from all sales to date		$458,836.01
Average price per acre for all sales to date		2.51
Average price per acre for all sales during half year		3.40
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		7.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.50
(*18th*)	*For the year ending December 31st 1887:*	
Total cash receipts from all sales to date		$458,836.01
Average price per acre for all sales to date		2.51
Average price per acre for all sales during year		3.24
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		7.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.50

(19th) *For the year ending December 31st 1888:*

Total cash receipts from all sales to date	$512,598.23
Average price per acre for all sales to date	2.58
Average price per acre for all sales during year	3.74
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	10.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

(20th) *For the year ending June 30th 1889:*

Total cash receipts from all sales to date	$541,650.33
Average price per acre for all sales to date	2.642
Average price per acre for all sales during year	4.96
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	15.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " " , about	3.50

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(*21st*)	*For the year ending June 30th 1890:*	
Total cash receipts from all sales to date		$626,520.03
Average price per acre for all sales to date		3.146
Average price per acre for all sales during year		6.32
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		15.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00
(*22nd*)	*For the year ending June 30th 1891:*	
Total cash receipts from all sales to date		$707,556.88
Average price per acre for all sales to date		3.33
Average price per acre for all sales during year		4.92
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		25.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00

(*23rd*)	*For the year ending June 30th 1892:*	
Total cash receipts from all sales to date		$785,536.79
Average price per acre for all sales to date		3.61
Average price per acre for all sales during year		5.61
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		25.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00
(*24th*)	*For the year ending June 30th 1893:*	
Total cash receipts from all sales to date		$859,477.34
Average price per acre for all sales to date		3.66
Average price per acre for all sales during year		4.51
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		25.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00

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(25th) *For the year ending June 30th 1894:*

Total cash receipts from all sales to date	$909,008.59
Average price per acre for all sales to date	3.63
Average price per acre for all sales during year	2.83
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	25.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

(26th) *For the year ending June 30th 1895:*

Total cash receipts from all sales to date	$946,952.81
Average price per acre for all sales to date	3.40
Average price per acre for all sales during year	3.49
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

(27th) *For the year ending June 30th 1896:*	
Total cash receipts from all sales to date	$986,605.69
Average price per acre for all sales to date	3.40
Average price per acre for all sales during year	3.57
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00
(28th) *For the year ending June 30th 1897:*	
Total cash receipts from all sales to date	$1,020,329.75
Average price per acre for all sales to date	3.40
Average price per acre for all sales during year	3.35
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00

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(*29th*)	***For the year ending June 30th 1898:***	
Total cash receipts from all sales to date		$1,069,513.25
Average price per acre for all sales to date		3.41
Average price per acre for all sales during year		3.95
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00
(*30th*)	***For the year ending June 30th 1899:***	
Total cash receipts from all sales to date		$1,234,225.97
Average price per acre for all sales to date		3.75
Average price per acre for all sales during year		2.62
Average price per acre for all purchases to date		.....
Maximum price per acre from sales (not town lots)		30.00
Minimum " " " " " " " "		0.50
Maximum price per acre now asked " " "		15.00
Minimum " " " " " " " "		2.50
Average " " " " " " " "		3.00

(31st) *For the year ending June 30th 1900:*	
Total cash receipts from all sales to date	$1,542,728.71
Average price per acre for all sales to date	3.77
Average price per acre for all sales during year	5.02
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.00
(32nd) *For the year ending June 30th 1901:*	
Total cash receipts from all sales to date	$1,852,756.51
Average price per acre for all sales to date	4.076
Average price per acre for all sales during year	5.348
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots(	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	15.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50

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(33rd) *For the year ending June 30th 1902:*	
Total cash receipts from all sales to date	$2,298,061.25
Average price per acre for all sales to date	5.00
Average price per acre for all sales during year	7.85
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	20.00
Minimum " " " " " " " "	2.50
Average " " " " " " " "	3.50
(34th) *For the year ending June 30th 1903:*	
Total cash receipts from all sales to date	$2,735,532.88
Average price per acre for all sales to date	4.73
Average price per acre for all sales during year	4.22
Average price per acre for all purchases to date	.....
Maximum price per acre from sales (not town lots)	30.00
Minimum " " " " " " " "	0.50
Maximum price per acre now asked " " "	.....
Minimum " " " " " " " "	.....
Average " " " " " " " "	.....

ITEM 9. The said report for the year ending June 30th 1890, set forth in the foregoing "(21st)" paragraph of "Item 8" hereof, contained the following additional item: "Less Contracts surrendered, During the year No. of acres 34,185.27, Total to date No. of acres 82,279.12."

ITEM 10. The said Bureau of the Interior Department made annual reports to the Secretary of Interior, as required by the said Act of June 19th 1878, from 1879 to the termination of said office; which reports were embodied in the annual reports of the Secretary of Interior for the same years, transmitted by him to the President of the United States and by the latter to the two Houses of Congress, and the said Secretary's annual reports were there referred to appropriate Committees and printed as Executive Documents.

ITEM 11. Of the reports so made, embodied, transmitted, referred and printed, are the following, relating to the Oregon & California Railroad Company:

(*1st*)—For the year 1883, Executive Documents 2nd Session, 47th Congress, 1882-83, No. 1. Part 5, Vol. 2, page 471:

> "Oregon & California Railroad Company chartered March 17, 1870, and opened for business December 1st, 1872. The Company is now successor, by consolidation, of the Oregon Central Railroad Company, purchased September 1st, 1880,

chartered July 25, 1866, and owns the land grant of said Company; the Western Oregon Railroad Company, purchased October 9, 1880; and the Albany & Lebanon Railroad Company, leased December 5, 1880, at a rental of $1 for each period of six months, this Company to pay taxes and keep up repairs. The several lines are operated in two Divisions, that is:

East Side Division:	*Miles.*
Main Line, Portland to Roseburg	198
Lebanon Branch, Albany Junction to Lebanon	11.5
West Side Division:	
Portland to Corvallis	97.
Total, exclusive of side-tracks	306.05

"The estimated grant of land to these combined companies amounts to 3,940,000 acres, of which 322,062.40 acres have been patented to June 30, 1882. Of this latter amount lands had been sold up to December 31, 1881—date of last report—for an amount aggregating $309,486.15, at an average price of $2.25 per acre. The minimum price now asked is 25 cents, the maximum $10 per acre."

(*2nd*)—*For the year 1886,* House Executive Documents, 2nd Session, 49th Congress, 1886-87, Vol. 9, page 596:

"The Company has received by patent from the Government 323,068.68 acres of land, of which 237,773.78 acres have been sold. It has received from sales $384,889.72, and there are outstanding on time sales $385,647.67."

(*3rd*)—*For the year 1887,* House Executive Documents, 1st Session, 50th Congress, 1887-88, Vol. 11, page 1173:

"The Company has received by patent from the Government 323,068.88 acres of land, of which 242.516.35 acres have been sold. It has received from sales $407,876.54, and there are outstanding on time sales $377,545.36."

(*4th*)—*For the year 1888,* House Executive Documents, 2nd Session, 50th Congress, 1888-89, Vol. 12, page 454:

"The Company has received by patent from the Government 323,068.68 acres of land, of which 254,964.08 have been sold. It has received from sales $458,836.01. and there are outstanding on time sales $363,638.55, of which $91,313.69 is interest."

(*5th*)—*For the year 1889,* House Executive Documents, 1st Session, 51st Congress, 1889-90, Vol. 11, pages 512, 513:

"The Company has received by patent from the Government 323,068.88 acres of land, of which 269.442.88 have been sold. It has re-

ceived from sales of land $541,650.33, and there are outstanding on account of time sales $394,226.58, of which the sum of $98,992.42 is interest.

"The average price per acre for all sales to date was $2.64, while the average price for sales made during the year was $3.96."

(*6th*)—*For the year 1890,* House Executive Documents, 2nd Session, 51st Congress, 1890-91, Vol. 13, page 174:

"The Company reports that to June 30, 1890, there had been patented to it by the United States, 323,068.68 acres of land, and that 225,170.57 acres had been sold, the total cash receipts from all sales amounting to $626,520.03. There remained outstanding on account of time sales the sum of $516,-287.66. Average price per acre for all sales during year was $6.32."

(*7th*)—*For the year 1891,* House Executive Documents, 1st Session, 52nd Congress, 1891-92, Vol. 16, page 192:

"The Company reports that to June 30, 1891, there had been patented to it by the United States 323,068.68 acres of land, and that there had been sold 298,261.45 acres, the total cash receipts from all sales amounting to $707,556.88. There remained outstanding on account of time sales $449,996.40 principal and $153,031.65 interest, making a total of $603,028.05."

(*8th*)—*For the year 1892,* House Executive Documents, 2nd Session, 52nd Congress, 1892-93, Vol. 14, page 188:

> "The Company's report shows that to June 30, 1892, there had been patented to it by the United States 323,068.68 acres, and that there had been sold 340,475.85 acres, the total cash receipts from all sales amounting to the sum of $785,536.79. There remained outstanding on account of time sales $638,055.08 principal and $194,903.80 interest, making a total of $832,958.98 on this account."

(*9th*)—*For the year 1893,* House Executive Documents, 2nd Session, 53rd Congress, 1893-94, Vol. 15, page 130:

> "The report of the Company shows that to June 30, 1893, the total number of acres received by patent was 323,068.68, that the total cash receipts from all sales had amounted to $859,477.34; and that there remained outstanding on account of time sales the sum of $861,923.64, principal and interest.
>
> "The receipts of the land department for the year were $73,940.55, and the expenses $75,570.07."

(*10th*)—*For the year 1894,* House Executive Documents, 3rd Session, 53rd Congress, 1894-95, Vol. 16, page 143:

> "The Company submits the following report on

June 30, 1894, of the operations of its Land Department to date:

	Acres	
Acquired by United States patent		615,555.58
	Acres	
Disposed of for cash	201.93	
Disposed of on time contracts	17,299.27	
		17,501.20
Balance owned by Company		598,054.38

"The Company also reports that the total cash receipts from all sales to date amounted to $909,008.59, and that there remained outstanding on account of time sales the sum of $891,905.60, principal and interest. The receipts during the year were $49,525.25, and the expenses $55,449.08."

(*11th*)—*For the year 1895,* House Documents, 1st Session, 54th Congress, 1895-96, Vol. 16, page 156:

"The records of the General Land Office show that to June 30, 1895, there had been patented to the Company 1,162,067.28 acres.

"The Company submitted the following report on June 30, 1895, of the operations of its Land Department to date:

	Acres.
Acquired by United States patent	1,163,073.56
Disposed of for cash and on time contracts	381,402.78
Difference, unaccounted for	781,670.78

"The Company also reports that the total cash receipts from all sales to date had amounted to $946,952.81, and that there remained outstanding on account of time sales the sum of $700,064.64, principal and interest.

"The receipts during the year were $37,747.22, and the expenses $59,294.90.

"The average price per acre for all sales to date had been $3.40, and the average price now asked is $3.00."

(*12th*)—*For the year 1896,* House Documents 2nd Session, 54th Congress, 1896-97, Vol. 14, page 166:

"The records of the General Land Office show that to June 30, 1896, there had been patented to the Company 2,180,366.07 acres.

"The Company reports that to June 30, 1896, it had received by patent from the United States, 2,397,717.17 acres of land, and there had been disposed of for cash and on time contracts 387,119.43 acres, leaving the balance owned by the Company, 2,010,657.74 acres.

"The total cash receipts from all sales to date amounted to $986,605.69, and there remained outstanding on account of time sales, principal and interest, $875,146.35.

"The report of the operations of the Land Department during the year, shows a deficit of $81,770.68.

"Average price per acre received was $3.57.

"Average price per acre now asked, $3.00."

(*13th*)—*For the year 1897,* House Documents, 2nd Session, 55th Congress, 1897-98, Vol. 14, page 137:

"The records of the General Land Office show that to June 30, 1897, there had been patented to the Company 2,287,131.66 acres. . . .

"The Company reports that to June 30, 1897, it had received by United States patent 2,503,754.59 acres of land, and had disposed of for cash and on time contracts (not including cancelled contracts) 382,443.44 acres.

"The total cash receipts from all sales to date amounted to $1,020,329.75, and there were outstanding on account of time sales $775,881.34.

"The receipts for the year were $33,724.06, and the expenses $60,012.11.

"The average price per acre now asked for land is $3.00."

(*14th*)—*For the year 1898,* House Documents, 3rd Session, 55th Congress, 1898-99, Vol. 16, page 152:

"The Company reports that to June 30, 1898, it had received by United States patent 2,561,685.30 acres of land, and had disposed of for cash and on time contracts (not including cancelled contracts), 504,606.53 acres.

"The total cash receipts from all sales to date amounted to $1,069,513.25, and there were outstanding on account of time sales $792,999.38.

"The receipts for the year were $49,183.50, and

the expenses $73,183.06.

"The average price per acre now asked for land is $3.00."

(*15th*)—*For the year 1899,* House Documents, 1st Session, 56th Congress, 1899-1900, Vol. 20, page 181:

"The Company reports that to June 30, 1899, it had received by United States Patent 2,659,300.56 acres of land.

"The total cash receipts from all sales to date amounted to $1,234,225.97, and there were outstanding on account of time sales $734,957.16.

"The receipts for the year were $164,712.72, and the expenses $77,138.22.

"The average price per acre now asked for land is $3.00."

(*16th*)—*For the year 1900,* House Documents, 2nd Session, 56th Congress, 1900-01, Vol. 29, page 185:

"The Company reports that to June 30, 1900, it had received by United States patent 2,787,363.55 acres of land.

"The total cash receipts from all sales to date amounted to $1,542,728.71, and there were outstanding on account of time sales $1,189,918.71.

"The receipts for the year were $308,502.74, and the expenses $91,932.33.

"The average price per acre now asked for land is $3.00."

(*17th*)—*For the year 1902,* House Documents, 1st Session 57th Congress, 1901, Vol. 25, page 218:

"The Company reports that to June 30, 1901, it had received by United States patent 2,795,567.64 acres of land.

"The total cash receipts from all sales to date amounted to $1,852,756.51, and there were outstanding on account of time sales, $1,808,985.66.

"The receipts for the year were $310,027.80, and the expenses $72,713.77.

"The average price per acre now asked for land is $3.50."

(*18th*)—*For the year 1903,* House Documents, 2nd Session, 58th Congress, 1903-1904, Vol. 21, page 159:

"The Company reports that to June 30, 1903, it had received by United States patent 2,928,809.55 acres of land, and had disposed of, for cash and on time contracts, 1,032,591.47 acres.

"The total cash receipts from all sales to above date amounted to $2,735,532.88, and there were outstanding on account of time sales, principal and interest, $2,800,637.57.

"The receipts from this source for the year amounted to $437,471.63, and the expenses to $105,936.96.

"The average price per acre now asked for land is $4.73."

ITEM 12. The Commissioner of Railroads appended to several of the reports set forth in the next preceding

"Item 11" hereof, a copy of the said Acts of Congress approved July 25th 1866, April 10th 1869, and May 4th 1870; for greater particularity as to the reports in which said Acts of Congress are set forth, all parties may refer to the said official published reports.

ITEM 13. The original reports by Railroad Companies to the Commissioner of Railroads, and by the latter to the Secretary of Interior and by the latter to the President, and by the President to Congress, for the years mentioned in this Subdivision XXI of Stipulation, shall be treated as having been offered and received in evidence subject to the defendant's right to object to all or any part of the same as irrelevant, and immaterial. None of said reports shall be extended into the record (except as set forth and quoted in this Stipulation), but all parties to this Stipulation may refer to said reports in this District Court and in any Appellate Court, the same as if the said reports were inserted in the record of this case.

ITEM 14. For the purpose of showing the use made by Congress of said reports mentioned in the foregoing "Item 13" of this Subdivision XXI, and for the further purpose of showing whether the fact that lands were sold by the Oregon & California Railroad Company for prices in excess of $2.50 per acre was considered by Congress or any of the Committees thereof, and if so to what extent, all parties to this Stipulation may refer generally to the Reports of Congressional Committees, Congressional debates, and other proceedings shown by

the Congressional Globe or Congressional Record, and other recognized Official Reports; subject to the defendants' right to objection to all or any part of the same as incompetent, irrelevant, and immaterial, *except* that objections as to competency shall not go to identification of the Congressional Globe, Congressional Record, or other Official Reports referred to, beyond the apparent authenticity of the same.

SUBDIVISION XXII.

ITEM 1. The Supreme Court decision in Holliday vs. Elliott, as reported in 8 Oregon 81 et seq., shall be treated as if having been offered and received in evidence, subject to the defendants' objection as irrelevant, and immaterial.

ITEM 2. All Committee Reports and debates in Congress as appearing in the official printed copies of the Congressional Globe or Congressional Record, and all other proceedings in Congress which appear in any recognized Official Reports, relating to the enactments of the Acts of Congress approved July 25th 1866, June 25th 1868, April 10th 1869, May 4th 1870, January 31st 1885, and September 29th 1890, referred to in the Bill of Complaint and Answers, shall be treated as having been offered and received in evidence subject to the defendants' right to object to all or any part thereof as incompetent, irrelevant, and immaterial, *except* that objections as to competency shall not go to identification of the Congressional Globe, Congressional Record,

or other Official Reports referred to, beyond the apparent authenticity of the same.

ITEM 3. "Exhibit No. 16 to Stipulation" attached hereto, contains a correct statement of the Stock quotations therein set forth.

SUBDIVISION XXIII.

The foregoing "Stipulation as to the Facts" is made for the purpose of this suit only; and nothing therein contained shall be held or taken as an admission or estoppel affecting any of the parties thereto in any other suit in equity, action at law, other legal proceeding, or otherwise.

B. D. TOWNSEND,
Counsel and Attorney for Complainant.
Special Assistant to the Attorney General.

P. F. DUNNE,
WM. D. FENTON,
WM. SINGER, JR.,
Counsel and Attorneys for Defendants Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage.

JOHN C. SPOONER,
MILLER, KING, LANE and TRAFFORD,
JOHN M. GEARIN, and
DOLPH, MALLORY, SIMON and GEARIN,
Counsel and Attorneys for Defendant Union Trust Company of New York.

EXHIBIT NO. 1 TO STIPULATION.

Know all men by these presents, that we, the undersigned citizens of the State of Oregon, do hereby associate ourselves together as a private incorporation, under and by virtue of the General Incorporation law of said State.

1st.

The corporation hereby created shall be known as the "Oregon Central Railroad Company.", and its duration unlimited.

2nd.

The object and business of the corporation shall be to construct and operate a railroad from the City of Portland, through the Willamette Valley to the southern boundary of the State; under the laws of Oregon, and the law of Congress recently passed granting land and aid for such purpose.

3rd.

The corporation shall have its principal office in the City of Portland.

4th.

The capital stock of said corporation shall be five million dollars, divided into general, and preferred interest bearing, stock, in such proportions as the incorporators, or board of directors, may deem proper.

5th.

The amount of each share of the capital stock shall be one hundred dollars.

6th.

The termini of the railroad proposed to be constructed by said company, shall be for the northern end, at the City of Portland, and for the southern end at some point on or near the southern boundary of the State, as may be hereafter determined by actual survey.

In Witness Whereof we have here set our hands and seals this————————day of September, A. D., 1866.

J. C. SMITH.	Seal.
I. R. MOORES.	Seal.
J. H. MITCHELL.	Seal.
E. D. SHATTUCK.	Seal.
JESSE APPLEGATE.	Seal.
F. A. CHENOWETH.	Seal.
JOEL PALMER.	Seal.
H. W. CORBETT.	Seal.
M. M. MELVIN.	Seal.
GEO. L. WOODS.	Seal.
R. R. THOMPSON.	Seal.
J. C. AINSWORTH.	Seal.
S. G. REED.	Seal.
JOHN McCRACKEN.	Seal.
C. H. LEWIS.	Seal.
B. F. BROWN.	Seal.
T. H. COX.	Seal.
J. GASTON.	Seal.

(Five cents in Revenue Stamps, canceled.)

State of Oregon, Marion County, S. S.:

Be it known that the persons whose names are attached to the foregoing articles of incorporation, appeared before me, the undersigned, a notary public for and within said county and state respectively and at the time and places herein named, to-wit, J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer, and H. W. Corbett at Salem in said State on or about the 29th day of September, 1866, and M. M. Melvin, at Salem on or about October 23rd, 1866, and George L. Woods at Salem on or about November 10, 1866, and R. R. Thompson, J. C. Ainsworth, S. G. Reed, Jno. McCracken and C. H. Lewis at Portland, Oregon, on the 16th day of November, 1866; and they the said several subscribing persons to the aforesaid articles of incorporation did then and there, at the several times set forth in this certificate, sign and seal said articles before me and in my presence, and acknowledge the said signing and sealing to be their voluntary act and deed for the purposes set forth in said articles.

In Witness Whereof, I have here set my signature as said Notary Public and attached my official seal this 16th day November, A. D. 1866.

J. GASTON,

(Official seal) Notary Public.

(Five cents in revenue stamps, cancelled.)

State of Oregon, County of Marion, ss:

On this 20th day of November, A. D. 1866, before me, a notary public in and for said county, personally came the within named B. F. Brown, Thos. H. Cox and J. Gaston, who are personally known to me to be the identical persons whose names are subscribed to the within instrument, and acknowledged to me that they signed the same for the purposes therein set forth.

Witness my hand and seal of office this 20th day of Novemebr, A. D. 1866.

SETH R. HAMMER,

(Seal) Notary Public.

(Endorsed.)

Filed in the office of the Secretary of State this 21st day of November, A. D. 1866, at 10-1/2 o'clock A. M.

SAMUEL E. MAY,

Secretary of State.

Map of the Route of the OREGON CENTRAL RAILROAD.

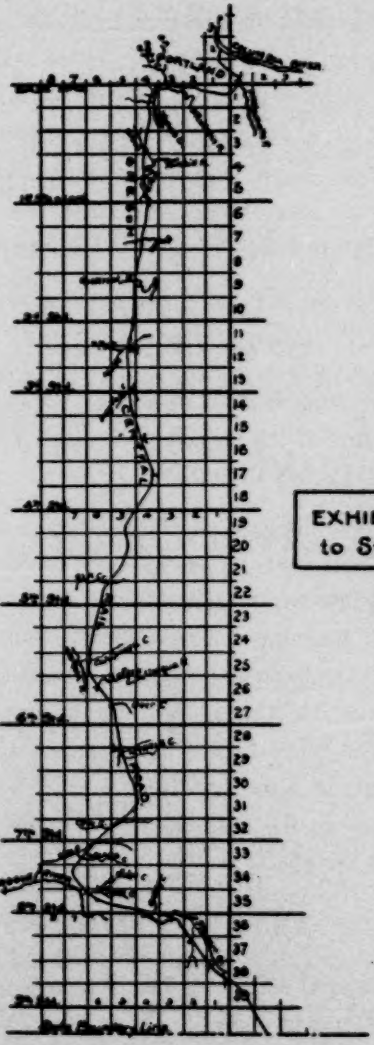

EXHIBIT No 2
to Stipulation.

SCALE 24 MILES TO ONE INCH.

EXHIBIT NO. 3 TO STIPULATION.

Know all men by these presents, that we, J. H. Moores, Geo. L. Woods, S. Ellsworth by Geo L. Woods, his Attorney, I. R. Moores, E. N. Cooke and J. S. Smith, by I. R. Moores, their Attorney, and Samuel A. Clarke have this day incorporated ourselves under and in accordance with the laws of Oregon, and we adopt the following as our Articles of Incorporation.

ARTICLE FIRST.

This corporation shall be known as and do business under the name of the OREGON CENTRAL RAILROAD COMPANY.

ARTICLE SECOND.

The enterprise, occupation and business for which the company incorporates is to construct a railroad with all the necessary branches, fixtures, buildings and appurtenances from Portland, in Oregon, southerly about three hundred miles to the California line, to maintain the said road; in good condition and repair, and to employ the same in the transportation of freight and passengers and freight.

ARTICLE THIRD.

The principal office for the transaction of the business of the Company shall be kept at the City of Salem, Marion County, Oregon.

ARTICLE FOURTH.

The capital stock of the OREGON CENTRAL RAILROAD COMPANY shall be fixed at Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000.00).

ARTICLE FIFTH.

The number of shares of the capital stock shall be Seventy-two Thousand Five Hundred (72,500) and the amount of each share of the stock shall be One Hundred Dollars ($100.00).

ARTICLE SIXTH.

The period of time during which the company shall remain in operation is not limited as to duration.

In testimony of our adoption of the foregoing Articles of Incorporation, witness our hands and seals this the twenty-second day of April, A. D. 1867.

JOHN H. MOORES, (Seal)
GEO. L. WOODS. (Seal)
S. ELLSWORTH,
By GEO. WOODS, Atty. (Seal)
I. R. MOORES, (Seal)
I. S. SMITH,
Per I. R. MOORES, Atty. (Seal)
E. N. COOKE,
Per I. R. MOORES, Atty. (Seal)
SAM'L A. CLARKE. (Seal)

(Fifteen cents in revenue stamps cancelled.)

STATE OF OREGON,
MARION COUNTY. } ss.

Be it remembered that on this the twenty-second day of April. A.D., 1867, personally came before me, a Notary Public in and for said County and State, the within named I. R. Moores, Geo. L. Woods, I. R. Moores, for himself and also as Attorney in Fact for each of the following named persons: J. S. Smith & E. N. Cooke and S. Ellsworth, by Geo. L. Woods, his Atty. and S. A. Clarke who severally acknowledged that they signed the within and foregoing instrument; in person or as Attorney, for the uses and purposes therein named.

In Witness Whereof, I have hereunto set my hand and Notarial Seal this the day and year above written.

C. S. WOODWORTH,
(Notarial Seal) Notary Public.

(Five cents in revenue stamps cancelled.)

(ENDORSED)

Articles of Incorporation of Oregon Central R. R. Co. Filed in the office of the Secretary of State this 22nd day of April, A.D. 1867.

I. R. MOORES,
Acting Secy. of State.

EXHIBIT NO. 4 TO STIPULATION.

CHAPTER 403.

An Act to Incorporate the Southern Pacific Company.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That Henry D. McHenry, Wm. G. Duncan, Samuel E. Hill, Samuel M. Cox, Henry McHenry, Jr., and their associates and successors and assigns, be and they are hereby created and constituted a body corporate and politic, under the name of the Southern Pacific Company, and as such shall have perpetual succession, and be capable in law to purchase, grant, sell, or receive, in trust or otherwise, all kinds of personal and real property to such amount as the directors of said company may, from time to time, determine; and to contract and be contracted with, sue and be sued, plead and be impleaded, appear and prosecute to final judgments all suits or actions at law or in equity in all courts and places; and to have and use a common seal, and to alter the same at pleasure; and to make and establish such by-laws, rules, and regulations for the government of said company and the conduct of its business as said corporation or the stockholders therein shall deem expedient or necessary for the management of its affairs, not inconsistent with the constitution and laws of this State or of the United States; and generally to do and execute all acts, matters, and things which may be

deemed necessary or convenient to carry into effect the powers and privileges herein granted; *Provided* however, that said corporation shall not have power to make joint stock with, lease, own, or operate any railroad within the State of Kentucky.

SEC. 2. The said corporation is hereby authorized and empowered to contract for, and acquire by purchase or otherwise, bonds, stocks, obligations, and securities of any corporation, company, or association now existing, or hereafter formed or constituted, and bonds, obligations, and securities of any individuals, state, territory, government or local authorities whatsoever, and to enter into contracts with any corporation, company, or association, individuals, state, territory, government or local authorities, in respect of their bonds, stock obligations, and securities, or in respect of the construction, establishment, acquisition, owning, equipment, leasing, maintenance, or operation of any railroads, telegraphs, or steamship lines, or any public or private improvements, or any appurtenances thereof, in any State or Territory of the United States, or in any foreign country, and to buy, hold, sell, and deal in all kinds of public and private stocks, bonds and securities, and said corporation may borrow and loan money, issue its own bonds or other evidences of indebtedness, and sell, negotiate and pledge the same, to such amounts, upon such terms, and in such manner as may from time to time be determined by the directors of said corporation; and it may mort-

gage all or any part of its property, assets, and franchises to secure such bonds and the interest thereon, on such terms and conditions as shall on that behalf be prescribed by its board of directors.

SEC. 3. The capital stock of said corporation shall be one million dollars, divided into shares of one hundred dollars each; which shares shall be deemed personal property, and may be issued, transferred, and forfeited for non-payment in such manner as the board of directors of such corporation may determine; and no person shall be in anywise liable as a stockholder of said corporation after said capital stock to such amount of one million dollars shall have been paid in in cash, and a certificate to that effect signed and sworn to by the treasurer and a majority of the board of directors of said corporation shall have been filed in the office of the Secretary of State of this State; nor shall the said corporation, nor any of the officers or agents thereof, be thereafter bound to make any further returns or certificates: *Provided,* however, that if, after the payment of such capital stock, any part thereof shall be withdrawn for or refunded to any of the stockholders when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts, the stockholders receiving the same shall be bound and obliged to repay to said corporation or its creditors, the amount so withdrawn or refunded.

SEC. 4. Any two of the persons above named as corporators of said corporation may call the first meet-

ing for the organization of such corporation at such time and place as they may appoint, by mailing a proper notice of such meeting to each of such corporators at least ten days before the time appointed; and in case a majority of such corporators shall attend such meetings, either in person or by proxy, they may open books for the subscriptions to its capital stock; and whenever five hundred thousand dollars shall be subscribed and ten per cent of said subscriptions shall be paid in cash, the stockholders of said corporation may organize the same, and said corporation may proceed to business.

SEC. 5. Each share of stock entitle the holder thereof to one vote, in person or by proxy, at all meetings of the stockholders; the holders of a majority in interest of the capital stock, present in person or by proxy, shall constitute a quorum (the corporation shall have a lien on all the stock and property of its members invested therein for all debts due by them to said corporation, which lien may be enforced in such manner as the by-laws shall prescribe.)

SEC. 6. The stock, property, and affairs of said corporation shall be managed by a board of directors of such number, of not less than three, as may be from time to time determined by the corporators or stockholders. The directors shall be elected by the stockholders at such time and place, and in such manner, and for such terms, as the stockholders shall from time to time determine. Meetings of directors or stockholders may be held within or without the State. No person shall be

elected a director who is not a stockholder of the corporation. A majority of the directors shall constitute a quorum of said board for the transaction of business. The directors shall appoint from their own number a president, and they shall also appoint a clerk and treasurer, and such other officers and agents as they may deem proper, to hold their offices during the pleasure of the board. In case of a vacancy or vacancies in the board, the remaining directors may fill such a vacancy or vacancies. The capital stock of said corporation may be increased from time to time to such sum as may be determined by the board of directors of said corporation, provided such increase or diminution shall be approved by at least two-thirds in interest of the stockholders of said corporation.

SEC. 7. The annual tax upon said corporation shall be the same as is now fixed by law for broker's license. *Provided,* that all property owned by said corporation and situated in the State shall pay the same State and local tax as is assessed upon similar property; and capital stock in said corporation, owned by citizens of the State, shall be assessed against the holders thereof as choses in action under the equalization law.

SEC. 8. The Company shall keep an office for the transaction of business, and the clerk or assistant clerk of said corporation shall reside within the State of Kentucky; but the said corporation may keep offices at such places outside of this State as in the judgment of its board of directors its business may from time to time

require: *Provided,* that nothing herein contained shall be construed as granting any lottery or banking privileges.

SEC. 9. This act shall take effect immediately upon its passage.

Chas. Offutt,
Speaker of the House of Representatives.
James R. Hindman,
Speaker of the Senate.

Approved March 17, 1884:
J. Proctor Knott.
By the Governor:
Jas. A. McKenzie,
Secretary of State.

CHAPTER 601.

An Act to amend "An Act to incorporate the Southern Pacific Company," approved March seventeenth, eighteen hundred and eighty-four.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. That the Act entitled "An Act to incorporate the Southern Pacific Company," which was approved March seventeenth, eighteen hundred and eighty-four, be and the same is amended by adding to Section 1 thereof the following words, to wit: except subject to and in conformity with the provisions of the laws of the State of Kentucky applicable to railroads, and acquiring no special rights that may be possessed by any railroads in the state except the general and ordinary rights of common carriers as possessed by railroads generally.

SEC. 2. This Act shall take effect from its passage.

Ben Johnson, Speaker of the House of Representatives.

J. W. Bryan, Speaker of the Senate.

Approved March 21, 1888.

S. B. Buckner.

By the Governor:

Geo. M. Adams, Secretary of State.

EXHIBIT NO. 5 TO STIPULATION.

Articles of Association, of Amalgamation and Consolidation, Executed this twenty-second (22nd) day of June, A. D. 1870, by and between "The Central Pacific Railroad Company of California," party of the first part, and "The Western Pacific Railroad Company," party of the second part; both of the said railroad companies being railroad corporations duly organized under and in pursuance of the laws of the State of California.

Whereas, "The Central Pacific Railroad Company of California," was duly organized under and in pursuance of the laws of the State of California, by filing Articles of Association in the office of the Secretary of State of the State of California on June 28th, 1861, and amended Articles of Association on the 8th day of October, 1864, to construct, operate, and maintain a railroad and telegraph line through the Counties of Sacramento, Placer, and Nevada, in the State of California, "from the City of Sacramento, in the County of Sacramento, in said State, to the eastern boundary line of the State of California, at or near the place where said line crosses the Truckee River, and running through Roseville, at the junction of said railroad with the California Central Railroad, and by or near to New-Castle, Auburn, Neilsburg, Illinoistown, Gold Run, Dutch Flat, Bear Valley, Crystal Lake, Summit Valley, and Donner Pass, together with such branches and extensions of the said railroad as the Board of Directors of said company may at any time deem necessary or proper to construct, operate, and maintain, by the laws of the State of Cali-

fornia, or other States or Territories, or the Acts of the Congress of the United States, now in force, or which may hereafter be enacted."

And Whereas, by the provisions of an Act of the Congress of the United States, entitled, "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the Acts amendatory thereof, approved July 2, 1864, and March 3, 1865, the said "The Central Pacific Railroad Company of California" were authorized to locate and construct their road as aforesaid, and to locate, construct and continue the same eastward in a continuous completed line until it should meet and connect with the Union Pacific Railroad, and certain rights, powers, donations, grants, rights of way, privileges, and franchises were given and granted to them, to aid in the construction of their said railroad.

And Whereas, on the 23rd July, 1868, the said "The Central Pacific Railroad Company of California" increased the capital stock of the company from twenty million dollars to one hundred million dollars, the latter amount being necessary for the constructing, completing, operating, equipping, and maintaining said railroad and its extension.

And Whereas, under and in pursuance of the laws of the State of California, "The Western Pacific Railroad Company" was duly organized on the 11th day of

December, 1862, and on the 2nd day of November, 1869, the "San Francisco Bay Railroad Company," another corporation organized under and in pursuance of the laws of the State of California, amalgamated and consolidated its interests, capital stock, rights, privileges, and franchises with those of the said "The Western Pacific Railroad Company," and formed both of said companies into one new company and corporation, to be called and known as "The Western Pacific Railroad Company," the objects and purposes of which were to purchase, construct, own, maintain, and operate certain railroad and telegraph lines, so as to form a continuous line of railway and telegraph, "Commencing at a point on the Central Pacific Railroad and connecting therewith at or near the City of Sacramento, and running thence by way of Stockton and the several routes mentioned in the several Articles of Association of the said 'The Western Pacific Railroad Company' and of the said 'San Francisco Bay Railroad Company' to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose, and to the several other points therein mentioned, to wit: The City of San Francisco, 'Yerba Buena Island,' otherwise called 'Goat Island', and the point in the Bay of San Francisco between 'The Encinal' and the City of San Francisco. Also, to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said 'The Western Pacific Railroad' and such several points on the Bay of San Francisco as the Board of Directors of said new and consoli-

dated company may from time to time determine. The length of the said railroad and telegraph lines being, as near as may be, two hundred and twenty-three miles."

And Whereas, by the laws of the State of California it is made lawful for any two or more railroad companies to amalgamate and consolidate their capital stock, debts, property, assets and franchises, and they are authorized and empowered so to do in such manner as may be agreed upon by the Boards of Directors of such companies so desiring to amalgamate and consolidate their interests.

And Whereas, the Boards of Directors of the said railroad companies, parties of the first and second parts hereto, have agreed to amalgamate and consolidate the interests of said companies upon the terms, agreements, stipulations and conditions hereinafter set forth.

And Whereas, more than three fourths of the value of all the stockholders in interest of each of said companies, parties of the first and second parts hereto, give and have given their written consent to such amalgamation and consolidation upon the terms, agreements, stipulations and conditions hereinafter set forth.

The said companies, parties of the first and second parts hereto, therefore, hereby mutually covenant and agree to and with each other to the following articles, to-wit:

ARTICLE FIRST.

The said companies, parties hereto, agree to, and do by these presents amalgamate and consolidate the capital stock, debts, property, assets and franchises of each of said companies, the parties hereto of the first and second part, into one company and corporation. And all the capital stock, debts, property, assets, and franchises in or to which said companies, the parties hereto, or either of them, have any right, title, interest or claim, either in possession or expectancy, at law or in equity, or which may in any way relate or pertain to the said companies, parties hereto, or either of them, are hereby amalgamated, united, merged, and consolidated into one company and corporation.

ARTICLE SECOND.

The name of the said new and consolidated company and corporation, hereby formed under these articles, shall be and is, "Central Pacific Railroad Company." The said new company and corporation is to and shall continue in existence for the term and period of Fifty Years from the date of these articles.

ARTICLE THIRD.

The objects and purposes of the said new and consolidated company and corporation are, to purchase, construct, own, maintain, and operate the railroad and telegraph lines, hereinbefore described of said parties of the first and second parts hereto, so as to form a continuous line of railway and telegraph from Ogden, in the

Territory of Utah, to San Jose, in California, and to the waters of the Bay of San Francisco, to wit: Commencing at or near Ogden, in Utah, at the connecting point of the Central Pacific Railroad and Union Pacific Railroad, and running thence along the lines of the Central Pacific Railroad and the Western Pacific Railroad, by way of Sacramento and the several routes mentioned in the several Articles of Association of the said "The Central Pacific Railroad Company of California" and of the said "The Western Pacific Railroad Company," to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the City of San Jose, California, and to the several other points heretofore herein mentioned, to wit: The City of San Francisco,—"Yerba Buena Island," otherwise called "Goat Island,"—and the point in the Bay of San Francisco between "The Encinal" and the City of San Francisco. Also to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said "The Western Pacific Railroad" and such several points on the Bay of San Francisco, and between the said "The Central Pacific Railroad" and such several points on the Bay of San Francisco and the navigable waters thereof, as the Board of Directors of said new and consolidated company may, from time to time, determine. The length of the said railroad and telegraph lines being, as near as may be, one thousand (1,000) miles.

ARTICLE FOURTH.

The number of Directors, to manage the affairs of

the said new and consolidated company and corporation, shall be seven. The following named persons shall act as such Directors until others are duly elected, to wit: Leland Stanford, C. P. Huntington, Mark Hopkins, Charles Crocker, E. B. Crocker, E. H. Miller, Jr., and A. P. Stanford.

ARTICLE FIFTH.

The capital stock of the new and consolidated company and corporation is hereby fixed at one hundred million dollars, that being the actual and contemplated cost of constructing the said railroad and telegraph lines thus consolidated, including the cost of the right of way, motive power, and every other appurtenance and thing for the constructing, running, and operating of said railroad and telegraph lines, as nearly as can be estimated by competent engineers. The said capital stock shall consist of, and be divided into, one million (1,000,000) shares of one hundred dollars each.

ARTICLE SIXTH.

The holders and owners of the capital stock of each of the said several corporations, parties of the first and second parts hereto, shall be entitled to receive and hold an equal amount and number of the shares of the capital stock of the said new and consolidated company and corporation now held by them respectively, and shall be entitled to receive from the new and consolidated company and corporation certificates therefor upon the surrender of the certificates of stock issued by said several

parties of the first and second parts, or if their right to stock is otherwise evidenced, then upon surrender of such evidence that they are entitled to certificates from either of said parties.

ARTICLE SEVENTH.

And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal, and mixed, of every kind and description; all its capital stock; all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands of every kind and description; and all rights, privileges, and franchises, corporate and otherwise, held, owned, or claimed by said parties of the first and second parts, or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims, and charges thereon, or in anywise affecting the same.

ARTICLE EIGHTH.

The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second

parts; but this amalgamation and consolidation shall not in any way relieve the said parties to the first and second parts, or the stockholders thereof, from any and all just liabilities.

In Testimony Whereof, the said parties of the first and second parts have severally caused these presents to be executed in duplicate, and each instrument to be signed by their respective Presidents and Secretaries, and the corporate seals of the said party of the first part, and of the said party of the second part to be hereunto affixed, in pursuance of Orders and Resolutions of their several Boards of Directors made the twenty-second (22nd) day of June, A. D. 1870.

(Stamp.)
(Stamp.)
C. P. R. R. Co. Seal.

The Central Pacific Railroad Co. of California,
By Leland Stanford,
President.
and E. H. Miller, Jr.,
Secretary.

(Stamp)
(Stamp)
W. P. R. R. Co. Seal.

The Western Pacific Railroad Co.,
By Leland Stanford,
President,
and E. H. Miller, Jr.,
Secretary.

We the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said "The Central Pacific Railroad Company of California," party of the first part to the foregoing new Articles of Association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation, and to the said new articles of Association, this twenty-second day of June, A. D. 1870.

Leland Stanford.
Charles Stanford.
By Leland Stanford, his Att'y in fact.
Mark Hopkins.
C. P. Huntington.
by Mark Hopkins, Att'y in fact.
C. Crocker.
E. B. Crocker, Att'y in fact.
E. H. Miller, Jr.
C. S. Scudder.
A. P. Stanford,
By Leland Stanford, Att'y in fact.
B. B. Crocker.
D. O. Mills & Co.
Albert Gallatin.
W. R. S. Foye.
C. H. Cummings.
I. E. Hollister.
Julius Wetzlar.
J. S. Friend.
Friend & Terry.
W. E. Terry.

We the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said "The Western Pacific Railroad Company," party of the second part to the foregoing new Articles of Association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation, and consolidation and to the said new Articles of Association, this twenty-second day of June, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in fact.
C. Crocker.
E. B. Crocker
By C. Crocker, Att'y in fact.
E. H. Miller, Jr.
A. P. Stanford.
By Leland Stanford, Att'y in fact.
C. H. Cummings.

No. 16.

State of California—Department of State.

I, L. H. Brown, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association of Amalgamation and Consolidation—Central Pacific Railroad Company, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 15th day of November, A. D. 1895.

(Seal.)

L. H. Brown,
Secretary of State.
By W. T. Sesnon,
Deputy.

(Endorsed:) 40, Central Pacific Railroad Company. Articles of Consolidation of the Central Pacific Railroad Company of California with the Western Pacific Railroad Company.

(Endorsed:) Filed in office of Secretary of State June 23rd, 1870, H. L. Nichols, Secretary of State. By Lew B. Harris, Deputy.

EXHIBIT NO. 6 TO STIPULATION.

Articles of Association, Amalgamation, and Consolidation, Made and executed on this the twentieth day of August, A. D. 1870, by and between the Central Pacific Railroad Company, of the first part; the California and Oregon Railroad Company, of the second part; the San Francisco, Oakland, and Alameda Railroad Company, of the third part, and the San Joaquin Valley Railroad Company, of the fourth part, all of said parties being Railroad corporations duly incorporated, organized, and existing under and by virtue of the laws of the State of California.

Witnesseth: That Whereas, The said party of the first part was duly incorporated and organized for the purpose of constructing, owning, maintaining, and operating a continuous line of railway and telegraph from Ogden, in the Territory of Utah, to San Jose, in California, and to the waters of the Bay of San Francisco, to wit: Commencing at or near Ogden, in Utah, at the point of Junction with the Union Pacific Railroad, running thence west to the eastern boundary of the State of Nevada, at the town of Toano, thence west across the State of Nevada, to the eastern boundary of the State of California, at the Donner Pass through the Sierra Nevada Mountains, passing through the towns of Elko, Carlin, Argenta, Winnemucca, Wadsworth, Reno, and intermediate points in the State of Nevada, to the town of Truckee, in the State of California; thence west, passing the towns of Cisco, Alta, Auburn, Roseville, Sacramento, Stockton, and intermediate points, to Niles Sta-

tion, in Alameda County in the State of California; thence to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose; also extending from said Niles Station to the city of Oakland, the city of San Francisco, Yerba Buena Island, otherwise called Goat Island, and the point in the Bay of San Francisco between The Encinal and the city of San Francisco; also to purchase, construct, own, maintain, and operate such branch and side lines and railroads between the said railroad and such points on the Bay of San Francisco and the navigable waters thereof as the Board of Directors of said company may from time to time determine; the length of said railroad and telegraph being, as near as may be, one thousand (1,000) miles.

And Whereas, The said party of the second part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad and telegraph, commencing at Roseville, in the County of Placer and State of California, and there connecting with the railroad of the party of the first part, hereinbefore described, running thence north through the towns of Marysville and Chico, to the northern boundary of the State of California, by such route and to such point on said boundary as may be selected by its Board of Directors, with such extensions into the State of Oregon as said Board may deem proper under and by virtue of a certain Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and tele-

graph line from the Central Pacific Railroad in California to Portland, in Oregon, approved July 25th, 1866," and with the power or right to change the southern terminus to some other point on the said Central Pacific Railroad between said town of Roseville and the bridge crossing the American River, near the city of Sacramento, whenever its Board of Directors may deem proper; the length of said railroad and telegraph in the State of California, being, as near as may be, three hundred and thirteen miles.

And Whereas, The said party of the third part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining, and operating a continuous line of railway from the City and County of San Francisco, through the City of Oakland and through a point on the easterly part thereof, in Alameda County to a point on the line of the railroad, formerly known as the San Francisco and Alameda Railroad, at or near Fruit Vale Station, in said county of Alameda; and also a continuous line of railroad from the extreme western point of the Encinal of San Antonio, in the county of Alameda, passing through said county of Alameda to a point on the Western Pacific Railroad (now a part of the railroad of the said party of the first part), at or near Haywards, in said county of Alameda and State of California; also, for the purpose of purchasing, constructing, owning, maintaining, and operating such branch and side lines and railroads, between the said railroad and such several points on the Bay of San Francisco, as its Board of Directors may,

from time to time, determine; the length of said railroad, being, as near as may be, twenty-five miles.

And Whereas, The said party of the fourth part was duly incorporated and organized for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Western Pacific Railroad (now a part of the railroad of the said party of the first part), at or near the city of Stockton, in the county of San Joaquin, in the State of California, and between said city and the crossing of the San Joaquin River, to a point on Kern River, in the County of Tulare, in said State; said points to be selected by its Board of Directors; said road passing through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare; the length, being, as near as may be, three hundred miles.

And Whereas, Said parties believe a consolidation and amalgamation of their capital stock, debts, properties, assets, roads, telegraph, lands, and franchises will be mutually advantageous.

And Whereas, More than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth.

Now Therefore, Under and by virtue of the statute in such case made and provided, the said parties do hereby mutually covenant and agree each with each and all

the others to the following articles, to wit:

ARTICLE FIRST.

Said parties do hereby amalgamate and consolidate themselves a new corporation under the name and style of the "Central Pacific Railroad Company" which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them or either of them subject however to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims and charges thereon, or in any wise affecting the same.

ARTICLE SECOND.

The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate all and each of the railroad and telegraph lines hereinbefore described for the period hereinbefore stated.

ARTICLE THIRD.

The Board of Directors of said new corporation shall consist of seven persons and the following named persons shall act as such Directors until their successors

shall have been duly elected pursuant to the by-laws of said new corporation hereinafter to be adopted, viz: Leland Stanford, William E. Brown, Mark Hopkins, Collis P. Huntington, Charles Crocker, Edward H. Miller, Jr. and Charles H. Cummings.

ARTICLE FOURTH

The capital stock of said new corporation shall be one hundred million dollars, consisting of one million shares of one-hundred dollars each, that sum being the contemplated actual cost of said railroad and telegraph lines, including rolling stock, motive power, depots, etc.

ARTICLE FIFTH.

Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, and shall be entitled to receive from said new corporation, certificates therefor upon the surrender of the certificates now held by him, or such other evidence of his ownership as he may now have, if no certificates have been issued to him by the company of which he is now a stockholder.

ARTICLE SIXTH.

Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations of what kind soever of each of the said parties, and shall pay and discharge all debts, claims, and demands, existing against either and all of said parties;

but nothing herein contained shall release the said parties or either of them or their stockholders, or any of them from any of their just liabilities.

In testimony whereof the said parties have severally caused these articles to be signed and executed by affixing thereto their respective corporate names and seals, by their respective Presidents and Secretaries pursuant to the orders of their respective Boards of Directors heretofore made on the day and year first above written.

Central Pacific Railroad Company,
(C. P. R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

(C. & O.) California and Oregon Railroad Company,
(R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

San Francisco, Oakland and Alameda Railroad,
(S. F. O. &) Company,
(A. R. R.) By Alfred A. Cohen, President,
(Seal) and by H. Lacy, Secretary.

(S. J. V.) San Joaquin Valley Railroad Company,
(R. R.) By Leland Stanford, President,
(Seal) and by E. H. Miller, Jr., Secretary.

The undersigned, being holders of more than three-fourths in value, of the capital stock of the Central Pacific Railroad Company, party of the first part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this sixteenth day of August, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in fact.

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fact.

W. E. Brown.
E. H. Miller, Jr.
C. H. Cummings.

The undersigned, being holders of more than three-fourths in value, of the capital stock of the California and Oregon Railroad Company, party of the second part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this the sixteenth day of August, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington,
By Mark Hopkins, Att'y in fact.

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fact.

E. H. Miller, Jr.
B. B. Redding.

The undersigned, being holders of more than three-fourths, in value, of the capital stock of the San Francisco, Oakland and Alameda Railroad Company, party of the third part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this the sixteenth day of August, A. D. 1870.

Alf. A. Cohen.
D. O. Mills.
F. D. Atherton.
D. P. Barstow.
W. C. Ralston.

The undersigned, being holders of more than three-fourths, in value, of the capital stock of the San Joaquin Valley Railroad Company, party of the fourth part in and to the foregoing articles, do hereby consent to the terms and conditions therein contained.

Done this the sixteenth day of August, A. D. 1870.

Leland Stanford.
Mark Hopkins.
C. P. Huntington.
By Mark Hopkins, Att'y in fact.

C. Crocker.
E. B. Crocker.
By C. Crocker, Att'y in fact.

E. H. Miller, Jr.
B. B. Redding.
C. H. Cummings.

No. 17.

State of California—Department of State.

I, L. H. Brown, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Amalgamation and Consolidation of the Central Pacific Rail Road Company, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 15th day of November, A. D. 1895.

L. H. Brown,
Secretary of State.
By W. T. Sesnon,
Deputy.

(Seal)

(Endorsed:) No. 41. Articles of Consolidation by and between The Central Pacific Railroad Co. The California and Oregon R. R. Co. The San Francisco, Oakland and Alameda Railroad Co., and The San Joaquin Valley Railroad Co.

(Endorsed:) Filed in office of the Secretary of State August 22d, 1870. H. L. Nichols, Sec'y of State. By Lew B. Harris, Deputy.

EXHIBIT NO. 7 TO STIPULATION.

An Indenture and Agreement, made and entered into the twenty-ninth day of July, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railroad Company, a corporation created, organized and existing under the laws of the State of California, and invested with certain rights and franchises by and under the laws of the United States of America, and by and under the laws of the States of Utah and Nevada, party of the first part, and the Central Pacific Railway Company, a corporation created, organized and existing under and by virtue of the laws of the State of Utah, of the second part:

Whereas, the party of the first part is the owner of the lines of railroad, the railways and other properties, rights, privileges and franchises, and the lands and notes and securities and moneys, hereinafter in the granting clause hereof described or referred to; and,

Whereas, certain portions of the said lines of railroad and railways and their appurtenances, and said lands, owned by the said party of the first part, are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California First Mortgage Bonds, secured by mortgage

dated July 25, 1865, of the several series and for the amounts and now matured or maturing at the dates hereinafter stated, respectively, viz:

Series.	Amount.	Date of Maturity.
Series A	$2,995,000	Matured.
B	$ 1,000	Matured.
	$ 999,000	December 1, 1899.
C	$ 4,000	Matured.
	$ 996,000	December 1, 1899.
D	$ 4,000	Matured.
	$1,379,000	December 1, 1899.
Total	$6,378,000	

(b) The Central Pacific Railroad Company of California First Mortgage Bonds, secured by mortgage dated January 1, 1867, of the several series and for the amounts and now matured or maturing at the dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of Maturity.
Series E	$ 5,000	Matured.
	$ 3,990,000	June 1, 1900.
F	$ 9,000	Matured.
	$ 3,990,000	June 1, 1901.
G	$ 13,000	Matured.
	$ 3,985,000	June 1, 1901.
H	$ 6,000	Matured.
	$ 3,993,000	June 1, 1901.

I { $ 13,000.....Matured.
$ 3,498,000.....June 1, 1901.

Total.....$19,502,000

(c) The Western Pacific Railroad Company First Mortgage Bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for $1,970,000.....Matured July 1, 1899.
B " 765,000..... " " " "

Total $2,735,000

(d) The California and Oregon Railroad Company, and Central Pacific Railroad Company, successors, First Mortgage Bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for $5,982,000..Maturing January 1, 1918.
B " $4,385,000.. " " " "

Total ...$10,340,000

(e) The Central Pacific Railroad Company First Mortgage Bonds (San Joaquin Valley Division), secured by mortgage dated October 1, 1870, for the amount of $6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds, secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds the amount of $2,038,000

are held as security for the Land Bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company Land Bonds, secured by mortgage dated October 1, 1870, to the amount of $2,134,000 and maturing October 1, 1900.

And, Whereas, heretofore and under date of February 1, 1899, the said party of the first part (in pursuance of a Settlement Agreement between the United States of America, the said party of the first part, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an Act of Congress, approved July 7, 1898) executed its twenty promissory notes in favor of the United States of America for $2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and,

Whereas, the said party of the first part is also indebted to the holders of its bonds to the amount at their face value of $56,000, bearing date October 1, 1886, and payable October 1, 1936, with six per cent. interest, payable semi-annually, commonly known and referred to as "Fifty-year Bonds of 1936."

And, Whereas, under and by virtue of authority from the States of California, Utah and Nevada, the party of the first part has sold to the party of the second part hereunder, subject to the liens now existing thereon, and upon and subject to the terms and conditions here-

inafter prescribed, all the lines of railroad, railways and other properties and rights, privileges and franchises, and lands, notes, securities and moneys hereinafter in the granting clause hereof described and referred to, and any and all other properties, claims, demands, choses in action, rights, privileges and franchises of the said party of the first part:

Now, Therefore, This Indenture Witnesseth, That, in consideration of one dollar, which, simultaneously with the execution hereof, has been paid by the party of the second part to the party of the first part, the receipt whereof by said party of the first part is hereby acknowledged, and for and in consideration of the undertakings, covenants and agreements on behalf of the said party of the second part hereinafter contained, said party of the first part has granted, bargained, sold, conveyed, assigned, transferred and set over, and hereby grants, bargains, sells, conveys, assigns, transfers and sets over, unto the party of the second part:

First. The lines of railroad owned by the party of the first part, extending from a point about five miles west of Ogden, in the State of Utah, through the States of Utah, Nevada and California, to and into the City of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last mentioned State, and from Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary; also the leasehold of the railroad from

a point about five miles west of Ogden to Ogden, in the County of Weber in the State of Utah.

Second. All the railways belonging to the party of the first part in San Francisco, Oakland and Alameda, in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers and transfer and ferryboats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, side tracks, bridges, viaducts, terminals, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned by the party of the first part, which shall in anywise, or at any time, belong or appertain to or be provided for use upon, or for the purpose of, any of said lines of railroad, and any and all other property, real or personal, of every kind and description, now owned by the party of the first part, for use upon or for the purposes of such lines of railroad or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels of the party of the first part now owned for use upon any of such lines of railroad or terminals or other property.

Fifth. Any and all other railroads, equipment and terminals owned by the party of the first part.

Sixth. Any and all corporate or other rights, privileges and franchises which the party of the first part now has or hereafter shall acquire, possess or become entitled to, for, or appertaining to, the construction, maintenance, use or operation of such lines of railroad or terminals or other property.

Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property.

Eighth. All and singular the several sections of land granted by the United States to the Central Pacific Railroad Company of California by an Act of Congress approved on the first day of July, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes.", and an act amendatory thereof, approved on the second day of July, 1864, also all the lands granted to the California and Oregon Railroad Company by an Act of Congress approved on the twenty-fifth day of July, 1866, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."; and also all the estate, right, title, interest claim and demand whatsoever, at law or in equity, of, in or to the same

or any part or parcel thereof, which the said party of the first part now has, holds, owns or is entitled to, or hereafter may or shall acquire, have, hold, own or be or become entitled to by force or virtue of the said Acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mortgage from the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, dated the first day of October, A. D. 1870, securing the Land Bonds of said last-mentioned Company, and all such parts and parcels of said lands as shall have since been released from the said mortgage securing such Land Bonds in accordance with the provisions thereof.

Ninth. All notes now outstanding given in payment for lands covered by such mortgage of the Central Pacific Railroad Company, dated October 1, 1870, securing said Land Bonds.

Tenth. All securities and moneys which are held in any sinking fund created or existing by or under any mortgage existing on the 20th day of February, 1899, whether of the party of the first part or any divisional company by the consolidation whereof it was formed.

Eleventh. All other properties, claims, demands, moneys, choses in action, leaseholds, rights, privileges and franchises owned by or belonging to the party of the first part, or to which it is in any wise entitled.

To Have and to Hold, the premises, railroads, railways, properties real or personal, claims, demands, choses in action, leaseholds, rights, privileges, franchises, estates and appurtenances, lands, land notes and scurities and moneys hereby granted, bargained, sold, conveyed, assigned, transferred or set over, or intended so to be, unto the party of the second part and to its successors and assigns forever, but subject to the liens thereon hereinbefore mentioned and referred to.

And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party of the first part are hereby conveyed), and for the purpose of securing the payment of the amounts becoming due on the notes given by said party of the first part to the United States under said Settlement Agreement, dated February 1, 1899, as in said Settlement Agreement prescribed, the party of the second part has assumed and hereby assumes the payment of all the indebtedness and guaranties of the said party of the first part, and has undertaken, covenanted and agreed, and hereby undertakes, covenants and agrees to and with the party of the first part that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific Readjustment Plan and Agreement dated February 8, 1899, issued by Speyer & Co., Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mattos Brothers and the Deutsche Bank of Berlin, as Readjust-

ment Managers, or as the same may be modified under the terms thereof and with the assent of the party of the second part, and in a certain Agreement bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyn Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London Committee of Central Pacific Shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as Readjustment Managers as therein stated, and the Southern Pacific Company, and in a certain other Agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle and George Coppell, Esq., as the American Committee of Central Pacific Share-Holders, the said Readjustment Managers and the Southern Pacific Company, and, under arrangements made or to be made with said Readjustment Managers will carry out such Readjustment Plan and said Agreements.

In Witness Whereof, the parties hereto have caused these presents to be signed on their behalf respectively by their respective Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, the day and year first above written.

Central Pacific Railroad Company,

(Seal of Central) By
(Pacific Railroad) Isaac L. Requa,
(Company.) President.
Attest:

W. M. Thompson,
Secretary.

Central Pacific Railway Company.

(Seal of Central) By
(Pacific Railway) Thomas Marshall,
(Company.) President.
Attest: David B. Hempstead,
Secretary.

State of California, }
City and County of San Francisco. } ss.:

On this 29th day of July, A. D. 1899, before me, E. B. Ryan, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn, personally appeared Isaac L. Requa, known to me to be the President, and W. M. Thompson, known to me to be the Secretary, of the Central Pacific Railroad Company, the corporation described in and who executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and fixed my official seal at my office, in the City and

County of San Francisco, the day and year in this certificate first above written.

E. B. Ryan,
Notary Public,
In and for the City and County of
San Francisco, State of California.

(Notarial Seal)

State of California,
City and County of San Francisco. } ss.:

On the 29th day of July, A. D. 1899, personally appeared before me Isaac L. Requa, who, being by me duly sworn, did say that he is the President of the Central Pacific Railroad Company, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by resolution of its Board of Directors, and said Isaac L. Requa acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in said City and County of San Francisco, on this 29th day of July, A. D. 1899.

E. B. Ryan,
A Commissioner of Deeds for the State of Utah, residing in the City and County of San Francisco, State of California.

(Seal)

State of California,
City and County of San Francisco. } ss.:

On this 29th day of July, A. D. one thousand eight hundred and ninety-nine (1899), before me, E. B. Ryan, a Commissioner of Deeds for the State of Nevada, duly appointed, commissioned and sworn, residing in the City and County of San Francisco and State of California, personally appeared the within-named Isaac L. Requa, President of the Central Pacific Railroad Company, and W. M. Thompson, Secretary of the Central Pacific Railroad Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said Company, and they each severally and personally then and there acknowledged to me that they executed the said within instrument as the free act and deed of the said Central Pacific Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal as such Commissioner, at my office in said City and County of San Francisco, the day and year last above written.

E. B. Ryan,

(Seal) A Commissioner of Deeds for the State of Nevada, residing in San Francisco, California.

State of Utah,
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, before me, Lula Geoghegan, a Notary Public in and for the County of Salt Lake, State of Utah, duly commissioned and qualified, personally appeared Thomas Marshall, known to me to be the President, and David B. Hempstead, known to me to be the Secretary, of the Central Pacific Railway Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of Salt Lake, State of Utah, the day and year first above written.

Lula Geoghegan,
(Notarial Seal) Notary Public.
My Commission expires September 17, 1901.

State of Utah,
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, personally appeared before me, Thomas Marshall and David B. Hempstead, who, being by me respectively duly sworn each for himself says that the said Thomas Marshall is the President of the Central Pacific Railway Company, and the said David B. Hempstead is the Secretary of

said Company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said President and Secretary, respectively, under and in pursuance of a resolution of its Board of Directors; and the said Marshall and Hempstead respectively acknowledge to me that said corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, in said County of Salt Lake, State of Utah, on this 31st day of July, A. D. 1899.

Lula Geoghegan,

(Notarial Seal) Notary Public.

My Commission expires September 17, 1901.

State of Utah,
County of Salt Lake. } ss.:

On this 31st day of July, A. D. 1899, before me, Lula Geoghegan, a Notary Public in and for the County of Salt Lake, State of Utah, duly appointed and qualified, personally appeared the within-named Thomas Marshall, President of the Central Pacific Railway Company, and David B. Hempstead, Secretary of the said Central Pacific Railway Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said Company, and they each severally and personally then and there acknowledged to me that he executed the said instrument as

the free act and deed of the said Central Pacific Railway Company freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal as such Notary Public, at my office in said County of Salt Lake and State of Utah, the day and year last above written.

Lula Geoghegan,
(Notarial Seal.) Notary Public.

My Commission expires September 17, 1901.

EXHIBIT NO. 8 TO STIPULATION.

State of Utah, }
County of Salt Lake. } ss.:

Know all Men by these Presents:

The we, the undersigned, whose names are hereunto subscribed, do hereby certify and declare that we have, under and in pursuance of an Act of the legislature of the State of Utah, entitled "An Act to provide for the formation of railroad corporations, for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances, authorizing the issue of bonds, making deeds of trust and mortgages and defining the rights and powers of such corporations," approved January 22, 1897, and the other laws of the State of Utah applicable thereto, associated ourselves together as a corporation for the

purpose of buying, owning, maintaining, operating and further extending the railroads, rights, property and franchises hereinafter described, and we further certify and declare that we have adopted and do hereby adopt the following

ARTICLES OF ASSOCIATION.

Article 1. The corporate name of the corporation hereby formed shall be "Central Pacific Railway Company." By that name the persons subscribing these Articles of Association, and all persons who may from time to time become shareholders in the corporation hereby formed, shall have perpetual succession, with power to adopt a common seal, sue and be sued, to acquire, hold, mortgage and convey property; to make contracts, fix and prescribe tariffs and rates of compensation for the carriage of persons and property, and generally to do all acts necessary or proper to carry into effect the powers and purposes of said corporation.

Art. 2. Said corporation shall continue in existence for the period of fifty years from the date of the filing of these Articles of Association in the office of the Secretary of State of the State of Utah.

Art. 3. Said corporation shall possess all of the powers, rights and franchises specified, referred to or provided for in these Articles of Association; and, also, all of the powers which, by said Act above entitled, approved January 22, 1897, and such other laws of the

State of Utah, corporations formed under, and pursuant to, the said Act and laws, are entitled to have, possess and enjoy as fully as if all of the provisions of the said Act in this behalf were herein set forth at large; and, also, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, or under the laws of other States or Territories of the United States, as hereinafter provided.

Art. 4. The amount of the capital stock of the said corporation shall be eighty-seven million two hundred and seventy-five thousand five hundred dollars ($87,275,500), which shall be divided into and represented by eight hundred and seventy-two thousand seven hundred and fifty-five (872,755) shares of the par value of one hundred dollars ($100) cash, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such Capital Stock two hundred thousand (200,000) shares of one hundred dollars ($100) each may be issued as Preferred Stock, and six hundred and seventy-two thousand seven hundred and fifty-five (672,755) shares of one hundred dollars ($100) each may be issued as Common Stock.

Such Preferred Stock shall be entitled, in preference and priority over the Common Stock of said corporation, to accumulative preferential dividends from August 1, 1899, up to four per cent. per annum gold, payable semi-annually, out of net profits of the corporation, as the

same shall be declared by the Board of Directros thereof, and shall be entitled to a preference and priority over said Common Stock in respect of capital in case of liquidation or dissolution. Subject to the preferential rights above described, dividends up to four per cent. per annum out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid upon the Common Stock of the corporation, and the balance of dividends payable out of net profits of the corporation, as the same shall be declared by the Board of Directors thereof, shall be paid *pro rata* upon the Preferred and Common Stock. The Directors may adopt proper by-laws to carry into effect the provisions of this article.

Art. 5. The number of Directors to manage and control the affairs of this corporation shall be seven, a majority of whom shall be sufficient to form a quorum for the transaction of business. The names and residences of those who shall serve as Directors for the first year and until their successors are chosen and qualified, are

Thomas Marshall,	Salt Lake City, Utah.
Jonathan C. Royle,	Salt Lake City, Utah.
David B. Hempstead,	Salt Lake City, Utah.
Douglas O. Morgan,	New York City, N.Y.
Henry Ruhlender,	New York City, N.Y.
Charles J. Dodd,	New York City, N.Y.
Richard R. Rogers,	New York City, N.Y.

Art. 6. The said corporation is organized and formed for and shall have the power to purchase, own, hold, enjoy, maintain, operate and further extend the railroads, property, rights and franchises, or any part thereof, belonging to the Central Pacific Railroad Company, a corporation heretofore organized under the laws of the State of California and invested with franchises under Acts of Congress of the United States, and under the laws of the States of Utah and Nevada.

The said corporation hereby formed shall have the power to acquire, possess and enjoy the lands and land grants, or any part thereof, and all rights with respect thereto, of the said Central Pacific Railroad Company or any or either of its constituent companies; and the said corporation hereby formed shall have the power to construct or acquire by lease, purchase, consolidation, ownership of capital stock or otherwise, branches, extensions and connecting or auxiliary lines, within or without this State, as the Board of Directors may from time to time deem expedient and as may be authorized by law.

The termini of the said railroad which the said corporation hereby formed is authorized to acquire, enjoy and operate as now constructed, and the States and counties through which the said railroad passes, are as follows, to wit:

The railroads extending from a point about five miles west of Ogden, in the County of Weber, in the State of Utah, through the Counties of Weber and Box

Elder, in said State of Utah, and the Counties of Elko, Eureka, Lander, Humboldt, Churchill, Lyon and Washoe, in the State of Nevada, and the Counties of Sierra, Nevada, Placer and Sacramento in the State of California, to and into the City of Sacramento, in said last-mentioned county and state; and from said Sacramento through the Counties of Sacramento, San Joaquin, Alameda and Santa Clara in the State of California, to San Jose in the last-mentioned county and State; and from Niles in the County of Alameda and State of California, through the County of Alameda, in the State of California, to Oakland, in said last-mentioned county and state, and from the Water Front to Mission Bay, in the City and County of San Francisco, in said State; and from Lathorp, in the County of San Joaquin, in the State of California, through the Counties of San Joaquin, Stanislaus, Merced, Madera, Fresno and Tulare, in the State of California, to Goshen, in said last-mentioned county and state; and from Roseville in the County of Placer, in the State of California, through the Counties of Placer, Yuba, Sutter, Butte, Tehama, Shasta and Siskiyou, in said State of California, to the boundary between the States of California and Oregon in the last-mentioned county; also the leasehold of the railroad from a point about five miles west of Ogden to Ogden, in the county of Weber, in the State of Utah.

The railroads situated in the Cities of Oakland and Alameda, in the County of Alameda, in the State of California, between the following termini, that is to say:

(1) From a point in the City of Oakland, County of Alameda and State of California, on the line hereinbefore described, running from Niles to Oakland, and near the intersection of First and Broadway Streets, curving towards and crossing the Estuary of San Antonio, to the City of Alameda in said county and State; thence running northeasterly through the City of Alameda, via Masticks Station, to the junctions with said first-mentioned line at Fruitvale, and Melrose Stations, and also from Masticks Station aforesaid, via Pacific Avenue, to the shore of the Bay of San Francisco.

(2) From Brooklyn Station upon said line from Niles to Oakland westerly through said City of Oakland, via Seventh Street, to the shore of the Bay of San Francisco.

(3) From a point of junction of the Oakland Mole of said line from Niles to Oakland with the wharf known as "Long Wharf," to the western end of said wharf.

The said railroads above described being the railroads which, on the 28th day of July, 1899, were the property of the Central Pacific Railroad Company herein referred to, and being 1,367.78 miles in length.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire and maintain.

Art. 7. The corporation hereby formed shall be vested with, and entitled to exercise and enjoy, all the powers, rights, privileges and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, belonged to, or were vested in, the Central Pacific Railroad Company, or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid Act of the Legislature of the State of Utah, approved January 22, 1897, and said other laws of the State of Utah; and said corporation shall also possess in each State or Territory, as respects its railroads, or any branches or extensions thereof situate therein, all of the powers, rights, privileges and franchises of railroad corporations organized under the laws of such State or Territory, or of the United States.

Art. 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions and connecting lines within or without this State, and for such purposes or any of them, as well as the purchase or acquisition of the railroads described in Article 6 hereof, may from time to time create and issue its stock, Common or Preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest, as the Directors may deem proper; and may use such stock

and bonds, or any part thereof, in payment of property to be purchased by such corporation, or the improvement or extension thereof, upon such terms, as the Directors may deem expedient; may guarantee the bonds or obligations of extensions, branches, or connecting or auxiliary lines of railroad; and in exercising its corporate powers, it may make such leases, purchases, contracts, conveyances and consolidations, and do such acts, as the Directors may deem necessary or expedient, not inconsistent with these articles or with the Constitution and laws of the State of Utah. The company hereby formed may also consolidate with or merge itself into any other railway company or companies in this or other States or Territories, pursuant to law; it may also from time to time mend these Articles of Association by filing amended Articles of Association, increasing the capital stock, or otherwise, agreeably with law, enlarging or changing the powers of the corporation hereby formed.

Art. 9. The Board of Directors of said corporation may from time to time adopt and change by-laws not inconsistent with the provisions of these articles or the Constitution and laws of the State of Utah. Said by-laws shall provide for annual elections of Directors by the stockholders, and for the election by the Directors of a President and Vice-President, and for the election or appointement of such other Vice-Presidents or other officers as shall be prescribed in such by-laws. Shareholders' or other corporate meetings may be held at such place or places in the United States as the by-laws may prescribe.

Art. 10. Stockholders shall not be individually liable for the debts of the corporation.

In Testimony Whereof, We have hereunto subscribed our names this twenty-sixth day of July, 1899.

Charles Steele.
Thomas Marshall.
Robert C. Chambers.
Jonathan C. Royle.
David B. Hempstead.
John E. Dooly.
Geo. B. Brastow.
Harry T. Duke.
George M. Downey.
Douglas O. Morgan.

State of Utah,
County of Salt Lake. } ss.:

On this 26th day of July, 1899, before me, the undersigned, Notary Public, personally appeared Charles Steele, Jonathan C. Royle, Thomas Marshall, David B. Hempstead, Harry T. Duke, John E. Dooly, George B. Brastow, George M. Downey, Douglas O. Morgan and Robert C. Chambers, to me known, and known to me to be the identical persons named and described in and who subscribed the foregoing instrument, and they acknowledged to me that they signed the foregoing Articles of Association for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Lula Geoghegan,
(Notarial Seal) Notary Public.
My Commission expires Sept. 17, 1901.

To the Central Pacific Railway Company.

I, *James T. Hammond,* Secretary of State of the State of Utah, do hereby certify, that on the Twentyninth day of July 1899 was filed in my office, the Articles of Association of said Association that said articles contain the statement of facts required by law, and that said Corporation is hereby constituted a body corporate, with right of succession as specified in its said articles of agreement, and is hereby authorized to exercise all the functions, enjoy all the privileges of a Corporation, and to transact al business of said Corporation, as specified in its said Articles of Association.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of said State at Salt Lake City, this Twenty ninth day of July A. D. 1899 at one o'clock P. M.

Great Seal
of the
State of Utah.

J. T. Hammond,
Secretary of State.

EXHIBIT NO. 9 TO STIPULATION.

This Agreement, Made and entered into this thirty-first day of July, 1885, by and between the Oregon and California Railroad Company, of Oregon, hereinafter called the Selling Company of the one part, and the Central Pacific Railroad Company, of California, hereinafter called the Purchasing Company, of the other part,

Witnesseth, as follows:

First: The Selling Company hereby agrees to sell and transfer to the appointee of the Purchasing Company all its railway lines (the constructed portion of which lines extend from East Portland to a point about one and a half miles south of Ashland, and from Portland to Corvallis, and from Albany to Lebanon and are about 451 miles in length) and the appurtenances and all its rolling stock, supplies and equipment, its lands remaining unsold at the date of this agreement, and its rights and interests in lands, and rights to acquire and earn lands, and all its rights, grants, and franchises granted by the United States and also all its interests of every decription in the Northern Pacific Terminal Company, at a price and upon the terms hereinafter specified.

Second: The transfer of the property sold shall be made as soon as possible, and in any case not later than the first day of July, 1886, and in such manner as to give a good and clear title to the property sold to the ap-

pointee of the Purchasing Company, either by means of a sale under foreclosure of the deed of first mortgage of the Selling Company, or by such other means as the Counsel of the Purchasing Company may approve.

Third: The property sold shall, when so transferred, be free from all debts, liabilities and encumbrances of every description, except such liabilities and duties as may be incident to the land grant and franchises granted by the United States to the Selling Company and agreed to be transferred to the appointee of the Purchasing Company and except any and all such liabilities for arrears of rent or otherwise, as may be incident to the interest of the Selling Company in the Northern Pacific Terminal Company. The value of the supplies transferred shall not be less than the value of those on hand at the date hereof and the Selling Company shall keep up the property to its present state of repairs until the transfer takes place. The whole amount of land sold at the date hereof does not exceed in aggregate 800,000 acres.

Fourth: For the purpose of adjusting the accounts and operating expenses, and dividing the earnings on the transfer of the property, an account shall be stated between the purchasing and Selling Companies as of the First day of July next; and all earnings of the railroads and other property sold, received after that date and the net proceeds and rentals of or from all lands sold or leased after the date hereof shall go to the credit of the Purchasing Company or its appointee which shall

undertake all expenses appertaining to the operation of the road as from the first day of July, 1886, and shall from such last mentioned date pay interest on the bonds to be issued in payment for the property purchased as hereinafter specified and shall pay or account for the dividends becoming due after said first day of July, 1886, on the shares in the Purchasing Company, to form part of the price as hereinafter mentioned. All net earnings of the existing railroads previous to the first day of July next, and the net price of all lands sold previous to the date hereof, shall belong to the Selling Company and no charge shall be made by the Purchasing Company or its appointee for receiving and paying over such amounts. The carriage of construction, labor and material over the existing lines shall be done at cost and without profit to the Selling Company, the certificate of the Chief Accounting Officer of the Central Pacific Railroad Company as to the amount of such cost being agreed to be final between the parties.

Fifth: The price of the property sold shall be $8,000,000 par value of the shares of the Purchasing Company, and carrying all dividends declared after July 1st, 1886, and $10,500,000 par value of bonds made or guaranteed by the Purchasing Company, to be secured on the property purchased as next hereinafter described, and carrying interest from July 1, 1886.

Sixth: The bonds to be issued or guaranteed by the Purchasing Company and delivered in payment as last mentioned, shall be payable principal and interest

in gold, forty years after date and bear interest from the first day of July next, at the rate of three per cent per annum for two years, and five per cent per annum thereafter, payable half yearly. Such bonds shall be either issued by or unconditionally guaranteed by, the Purchasing Company, as the Purchasing Company may decide, and shall be secured by a mortgage (to be made to the Farmers Loan and Trust Company in case such Trust Company shall perform the duties of trustee at not exceeding fifty cents per bond, otherwise the Union Trust Company, or such Company as shall be agreed upon by the parties) of all the property purchased hereunder, and of all extensions and of the future acquired property of the Purchasing Company in Oregon; and the deed of Mortgage shall be similar—except so far as otherwise stated in this agreement—to the existing deed of trust mortgage of the Selling Company. The net proceeds of the lands transferred and included in this mortgage shall form a sinking fund for the redemption of the bonds at par. The amount of the bonds to be issued under the mortgage shall be as follows: $30,000 per mile for every mile of standard gauge road, now or hereafter constructed or acquired and comprised in the mortgage and $10,000 for every mile of narrow gauge road now or at any time hereafter constructed or acquired and comprised in the mortgage. The mortgage deed shall provide for the issue and delivery to the Selling Company, upon the above mentioned transfer of the property to the appointee of the Purchasing Company, of the $10,500,000 of bonds

above specified and that the trustee of the mortgage shall further issue to the Purchasing Company or its appointee, for each mile of road constructed between Ashland and the California State line, $100,000 for such bonds, and for each ten miles of steel rails laid down on the present lines of the Selling Company and not now laid with steel rails, 450,000 of such bonds.

On the completion of the rail connection between the present lines of the Selling Company and the line of railway of the Purchasing Company any unissued bonds for which the mileage shall then be constructed, shall be transferred by the trustee to the Purchasing Company, or its appointee; *Provided, However,* that such aggregate issue to the Purchasing Company or its appointee shall not exceed, including the $10,500,000 to be issued to the Selling Company, the limit of $30,000 for each constructed mile. For any additional mileage constructed or acquired, either between Junction and Corvallis or elsewhere in Oregon, the Purchasing Company, or its appointee, shall be entitled to receive from the Mortgage Trustee, the sum of $30,000 for each mile of standard gauge road and the sum of $10,000 for each mile of narrow gauge road. The Mortgage Trustee, however, not to be compelled to accept less than ten miles of road at one time, except in cases of terminal sections. Deliveries of bonds under such mortgage are to be made by the Trustee from time to time upon presentation to it of affidavits of the President and Chief Engineer of the Purchasing Company, or its appointee, to the facts au-

thorizing delivery of such bonds under this article, and without other evidence and proof thereof.

Seventh: Notwithstanding the provisions to be inserted in the mortgage deed restricting the future issue of bonds to a mileage rate as above specified, the mortgage deed, shall permit the Purchasing Company, or its appointee, to require the Trustee at one time, or from time to time, to issue and permit the sale of such amount or amounts of bonds as the Purchasing Company, or its appointee, may think fit: *Provided, However*, that the proceeds of such bonds shall be received by the Mortgage Trustee, and not by the Purchasing Company, or its appointee, and shall be disbursed by the Mortgage Trustee to the Purchasing Company, or its appointee, only pro-rata as and when the Purchasing Company, or its appointee, would have been entitled to receive such bonds thereunder under the foregoing articles hereof.

Eighth: The present holders of the First Mortgage Bonds of the Selling Company shall have the option, for 21 days after notice to that effect shall have been published in one daily paper in London and Frankfort respectively, of subscribing, in the ratio of one new bond for every three old bonds now held by them, respectively, to the new bonds to be issued in the manner above stated, at the price of eighty-six per cent of their par value, payable one-fifth on subscription and the residue in equal parts at the expiration of three, six, nine and twelve months from the date of such subscription.

Ninth: The Purchasing Company, or its appointee shall, within three years, from the transfer of the property as above prescribed, complete the railway between the present Southern terminus of the railway lines of the Selling Company, at or near Ashland, in Oregon and the present Northern terminus of the Oregon division of the Railway lines of the Purchasing Company, at or near Delta, so as to form a through line between Portland in Oregon and San Francisco in California.

Tenth: The 80,000 shares of the capital stock of the Purchasing Company of the nominal value of $8,000,000 above mentioned, shall be delivered to the Selling Company upon the transfer of the property as above prescribed, and shall, in the first instance, be registered for the purpose of delivery in the joint names of George Henry Hopkinson, the President of the Selling Company, or of such other person as may be the President of the Selling Company and C. E. Bretherton, Vice President of the Selling Company, or of such other person as may be the Vice-President of such Company. But such shares shall carry dividends only from the 1st day of July, 1886, as above stipulated.

Eleventh: This agreement shall be void unless the Stockholders of the Oregon and California Railroad Company, shall, within two months from this date, ratify this agreement, and the two committees now formed respectively in London and Frankfort and representing the First Mortgage Bondholders of this Company, shall,

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within the same time, execute in due form a confirmation and acceptance of this agreement.

Twelfth: The Selling Company binds itself to execute to the Purchasing Company or its appointee, on or before the First day of July, 1886, a proper deed transferring the property hereby agreed to be sold, free from all debts, liabilities and encumbrances, except as above specified, and to transfer the possession thereof and in case it shall fail to do so, the Purchasing Company, may, at its option, declare this agreement to be void.

Thirteenth: No personal liability of any description shall attach to the officers of the two contracting Companies, who execute this agreement on their respective behalf.

In Witness Whereof, the parties hereto have, by their respective Vice-Presidents thereunto duly authorized, executed these presents the thirty-first day of July, 1885.

The Oregon & California Railroad Company,
By C. E. Bretherton,
Vice-President.

The Central Pacific Railroad Company,
By C. P. Huntington,
Vice-President.

EXHIBIT NO. 10 TO STIPULATION.

Agreement for Construction of the Oregon and California Railroad South of Ashland.

This Agreement, Made this sixth day of June, 1887, between the Pacific Improvement Company, a corporation duly organized and existing under the laws of the State of California, party of the first part, and the Oregon and California Railroad Company, a corporation duly organized and existing under the laws of the State of Oregon, and of the United States of America, party of the second part, Witnesseth:—

That the party of the first part agrees to and with the party of the second part,

First:

That it will construct and equip for the party of the second part that portion of the Railroad and Telegraph line of the party of the second part now uncompleted, commencing at a point near Ashland, in the State of Oregon, and extending southward to the Northern boundary line of the State of California, to a connection, at said boundary line, with the Railroad and Telegraph Line of the California and Oregon Railroad Company.

Second:

That it will construct and complete said portion of said Railroad and Telegraph line in a good and workmanlike manner to the satisfaction of the President and Chief Engineer of the party of the second part, and

upon a line located and to be located by said Engineer; that when said Railroad and Telegraph line shall be completed they shall be in all respects equal to the Railroad and Telegraph line of the California and Oregon Railroad Company, and shall comprise all things necessary and proper for a first class single track Railroad and a first class Telegraph line and the operation thereof.

Third:

That it will equip said Railroad with rolling stock (up to the standard of the California and Oregon Railroad) as follows:

1.—One locomotive for every four miles in length of said road constructed by it.

2.—Two passenger or mail or express cars for every five miles in length of said road so constructed.

3.—Six box or flat cars for every mile of road so constructed; and

4.—One hand car for every six miles of road so constructed.

The proportion of passenger, mail, express, box and flat cars to be furnished under the above specifications to be determined by the party of the second part, and all of said equipment to be furnished and delivered upon demand of said party.

Fourth:

That it will construct and equip the said Railroad and Telegraph line between said Ashland and said Boundary line within a reasonable time from the date hereof.

Fifth:

That it will furnish and pay for all the engineering service (except the salary of the Chief Engineer), requisite for the location and construction of said Railroad and Telegraph line.

Sixth:

That it will pay all costs, damages and other expenses henceforth incurred in procuring the right of way for said Railroad and Telegraph line.

Seventh:

That it will lay down upon the present completed line of said party of the second part first class steel rails of the same pattern and weight as those now laid upon the California and Oregon Railroad, to any extent which the party of the second part may, within two years from the date hereof, request and that it will lay said rails in a good and workmanlike manner and to the satisfaction of the President and Chief Engineer of the party of the second part.

And,

This Agreement further Witnesseth:—That the party of the second part agrees to and with the party of the first part as follows:—

First:

That it will pay to the party of the first part for each and every mile of said Railroad and Telegraph line constructed and equipped by said party of the first

part as aforesaid, One Hundred Thousand Dollars of its new Mortgage Bonds, with the coupons thereon, the issue of which is provided for in the third subdivision of an Agreement made and entered into in the year 1887, between George Henry Hopkinson, Robert Davie Peebles, Patrick Buchan and Charles Edward Bretherton, the Stockholders' Reconstruction Committee of the Oregon and California Railroad Company, the Pacific Improvement Company, a corporation organized and existing under the laws of the State of California, Lawrence Harrison, Andrew Haes, Henry Hopkinson, George Henry Kearton and Lawrence James Baker, a committee representing the British holders of the First Mortgage Bonds of the Oregon and California Railroad Company, Heinrich Hohenemser, Hermann Koehler, Carl Pollitz, Adolph Otto, Phillip B. Bonn, Siegmund Lion and Emil Kalb, a committee representing the German holders of the First Mortgage Bonds of said Company, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky and the laws of the United States of America, the Oregon and California Railroad Company, and the Union Trust Company, a corporation organized and existing under the laws of the State of New York; said payment to be made upon the construction, equipment and acceptance by the party of the second part of each section of ten miles or final fraction of such section of that part of said Railroad and Telegraph line the construction of which is hereinbefore provided for, said construction and aceptance to be established by the affidavits of the President and Chief Engineer of the party of the second part.

Second:

That it will pay to the party of the first part for every ten miles of steel rails laid by it under the provisions of this contract, upon the completed portion of the Railroad of the party of the second part, Fifty Thousand Dollars in Bonds with the coupons thereon, of the issue referred to in the subdivison hereof next preceding, and will make said payment of Fifty Thousand Dollars in said Bonds for every ten miles of rails so laid when the fact of their having been laid in accordance with the terms of this Contract has been established by the affidavits of the President and Chief Engineer of the party of the second part.

Third:

That the party of the first part may use its name in any proceeding necessary to obtain the right of way for said Railroad and Telegraph line to be by it constructed.

And,

This Agreement Further Witnesseth:—That should the party of the second part become dissatisfied with the manner of the prosecution of the work herein provided for, and the party of the first part should fail or refuse when requested to remove the cause of such dissatisfaction, or to prosecute said work as required by the party of the second part, or to perform any of the conditions of this agreement on its part to be performed, then the party of the second part may take possession of all the work finished or unfinished, and of all equipment, and

also of all the tools, horses, carts, wagons, provisions, material and other things used in the construction of said Railroad and Telegraph line, or purchased for that purpose, and may complete the said Railroad and Telegraph line and the equipment thereof, in the manner herein provided, at the expense of the party of the first part, the profit or loss as the case may be, to be received or sustained by the party of the first part.

In Testimony Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents and Secretaries, and their respective Corporate Seals to be hereto affixed.

EXHIBIT NO. 11 TO STIPULATION.

On Motion of Director Donald Macleay, seconded by Director R. P. Earhart, the following preamble and resolutions were unanimously adopted:

Whereas the sale of certain lands comprised in the land grants of this Company, described in the following schedule, has been effected by the Land Department of this Company; and

Whereas the Company has received the proceeds of such sales, and

Whereas, By decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July 1890, in a suit in equity of which James Steel was plaintiff and the Oregon and California

Railroad Company and the Union Trust Company of New York were defendants, it was adjudged and decreed by said Court that lands which were sold by said Oregon and California Railroad Company prior to May 12 1887 were not included in, or covered by that certain deed of trust from said Oregon and California Railroad Company to said Union Trust Company dated the 1st day of July, 1887, and

Whereas That prior to May 12th, 1887, lands were sold under Contract by this Company with a condition that a good and sufficient deed should be given, and

Whereas, Unpatented lands were sold after May 12th, 1887, under contract for quit claim deed only.

Resolved that the Second Vice President and the Secretary of this Company be and they are hereby authorized and directed to execute under their official signatures and the corporate seal of this Company deeds to the respective grantees in accordance with the terms of the Contract of sale and with the forms of deed now presented to this Board, which forms of deed are in words and figures as follows, to wit:

Deed No.—— Issued for Contract No.——

This Indenture Made this ————————day of————————A. D. 18——between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of

Oregon, party of the first part, and————————party of the second part.

Witnesseth, That Whereas, The party of the first part did on the ————————day of———————— A. D. 18——by its Contract Numbered———————— sell and agree to convey unto———————— the land hereinafter described for the sum and price of————————Dollars, to be paid as in said contract provided, and

Whereas, Said purchase price has been fully paid to the party of the first part, and said ————————as assignees of said———————— has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest which it, the party of the first part, has or may hereafter acquire from the United States in and to said land, and

WHEREAS, By the judgment and decree of the Circuit Court of the State of Oregon, for the County of Multnomah, rendered on the 12th day of July, A. D. 1890, in a suit in equity, in which James Steel was plaintiff and the said Oregon and California Railroad Company and the Union Trust Company, a corporation incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found, adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered

by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded in the record of Mortgages for said County of————————in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right, under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said County of————————

Now Therefore, In consideration of the premises, and of the payment to the party of the first part of the said sum of———————— Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, ———————— heirs and assigns, all of the said land, which is known and described as follows, to-wit

———————————————————————

containing, according to the United States survey thereof————————————acres, be the same more or less.

To Hold The said premises, with the appurtenances thereto, unto the said party of the second part, heirs and assigns forever, reserving however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises: and the right to take all water needed for the operating of said railroad: and also reserving and excepting from said described premises so much, and such parts thereof, as may be mineral lands, other than coal and iron.

And the said party of the second part does hereby, for————self and ————heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that————————will erect and maintain, on the boundary line or boundary lines between said premises and such right of way, a good lawful and substantial fence sufficient to turn stock.

In Witness Whereof, The said party of the first part has caused these presents to be sealed with its seal and executed by its———————— president and ————————secretary, and the party of the second part has hereunto set ———————— hand and seal, the day and year first above written.

(Signatures)

(Acknowledgment)

Deed No.——— Issued for Contract No.———

This Indenture, Made this————————day of————————A. D. 18—, between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, party of the first part, and———————— party of the second part.

Witnesseth, That Whereas, The party of the first part did on the————————day of ————————A. D. 18——, by its Contract Numbered————————sell and agree to convey unto————————the land hereinafter described, upon payment to be made therefor, as in said contract specified, reserving therein the right to said party of the first part, in default of such payment being made to cancel and annul said contract: and

Whereas, For such default the party of the first part did thereafter cancel and annul the said Contract, and did by its Contract Numbered———, on the————————day of————A. D. 18— sell said land unto————————for the sum and price of————————Dollars, to be paid as therein provided; and

Whereas Said purchase price therein specified has been fully paid to the party of the first part, and said————————as assignee of said ————————has thereby become entitled to a conveyance from the party of the first part

of all the right, title and interest which it the party of the first part, has or may hereafter acquire from the United States in and to said land: and

Whereas By the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July, A. D. 1890, in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found, adjudged and decreed by said Court that lands which had been sold by said Oregon and California Railroad Company prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded in the record of mortgages for said County of————————— in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands and that said Union Trust Company has no right, under the terms of said trust deed, to nor any interest in the money received by said party of the first part for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said County of—————————

Now Therefore, In consideration of the premises, and of the payment to the party of the first part of the said sum of———————— Dollars the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company party of the first part, does hereby convey release and quitclaim unto said———————— party of the second part————————heirs and assigns, all the right, title and interest which it the party of the first part, now has or owns, or may hereafter obtain or acquire from the United States, in and to the said land, which is known and described as follows, to wit:

---

containing, according to the United States survey thereof————————acres, be the same more or less.

To Hold the Said Premises with the appurtenances thereto, unto the said party of the second part,————————heirs and assigns forever, reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises: and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much, and such parts thereof, as may be mineral lands, other than coal and iron.

And the said party of the second part does hereby, for self, ——————heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that ——————will erect and maintain, on the boundary line or boundary lines between said premises and such right of way, a good, lawful and substanital fence, sufficient to turn stock.

In Witness Whereof, The said party of the first part has caused these presents to be sealed with its seal, and executed by its——————President and Secretary, and the party of the second part has hereunto set——————hand and seal, the day and year first above written.

(Signatures)
(Acknowledgment)

Resolved that the Land Agent be and he is hereby authorized and directed to deliver the deeds to the respective parties when executed by the Company.

EXHIBIT NO. 12 TO STIPULATION.

On motion of Director Donald Macleay, seconded by Director J. McCracken the following resolution was unanimously adopted, viz.

Resolved that the following form is hereby adopted as the form of deed to be given by this Company to purchasers of lands earned by the construction of this Com-

pany's railroads in pursuance of the Acts of Congress approved July 25th, 1866, and May 4, 1870, when under the terms of sale this Company agrees to merely remise, release and quitclaim its right, title and interest in such lands, said form being in words and figures as follows, to wit:

Quitclaim Deed No.——

Issued for Contract No.——

This indenture, Made this ———day of——— A. D. 18— between the Oregon and California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, party of the first part, The Union Trust Company of New York, a Corporation created and existing under and by virtue of the laws of the State of New York, party of the second part, and——————— hereinafter called the purchaser, party of the third part

Witnesseth: That in consideration of the sum of———————Dollars, paid to the party of the first part, and the sum of——————— Dollars, paid to the party of the second part, by direction of the party of the first part, as per terms of Deed of Trust by party of the first part to party of the second part, of date July 1st, 1887, the Oregon and California Railroad Company doth hereby remise, release and quitclaim unto said purchaser, his heirs and assigns, all of the right, title and interest, which it, the said Oregon and California Rail-

road Company now has, or owns, or may hereafter obtain or acquire in and to the hereinafter described lands, and the said Union Trust Company of New York doth hereby release and confirm unto said purchaser, his heirs and assigns, the said lands which are described as follows, to wit:

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containing, according to the United States survey thereof, ——————————acres, be the same more or less, being understood to be part of the land granted by the United States to the said Oregon and California Railroad Company, and embraced within the terms of and conveyed by a certain Deed of Trust, executed by the party of the first part to the party of the second part, as Trustee, and bearing date July 1st, A. D. 1887.

To Hold the said premises, with the appurtenances thereto, unto the said purchaser, his heirs and assigns, forever freed and discharged from the lien, powers and trusts of said Deed of Trust or Mortgage of July 1st, 1887, reserving, however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises, and the right to take all water needed for the operating of said railroad, and also reserving and excepting from said described premises so much, and such parts thereof as

or may be mineral lands, other than coal or iron.

And the said purchaser does hereby for himself, and his heirs and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that he will erect and maintain on the boundary line or boundary lines between said premises and such right of way, a good, lawful and substantial fence, sufficient to turn stock.

In Witness whereof, The said parties of the first and second parts have caused these presents to be sealed with their respective seals, and executed by their respective Presidents and Secretaries, and the party of the third part has hereunto set his hand and seal the day and year first above written.

(Signatures)

(Acknowledgment)

EXHIBIT NO. 13 TO STIPULATION.

Statement of maps of survey and location filed in the Interior Department of the United States, by the East Side Company and Oregon & California Railroad Company, under the East Side Grant:

Map of first section extending from East Portland to Jefferson was filed October 29, 1869.

Maps of the second and third sections (two maps) extending from Jefferson to a point in south line of Twp. 27 S., R. 6 W., W. M., was filed March 26, 1870.

Map of the fourth section, extending from the point in the south line of Twp. 27 S., R. 6 W., to a point in Sec. 30, T. 30 S., R. 5 W., was filed January 7, 1871; however, the line of road was amended by the filing of the map of the fifth section so that the railroad, as constructed, coincided with the map of the fourth section only as far as Station 1154 in Sec. 28 T. 29 S., R. 5 W., and the constructed line materially diverged from the location shown on this map for the remaining (approximately) 8 miles.

Map of of the fifth section, extending from Sec. 19, T. 27 S., R. 5 W., duplicating the location shown on the map of the fourth section from that point to Station 1154 in Sec. 28, T. 29 S., R. 5 W., and amending the line as shown by map of the fourth section from that point southwardly and extending to Station 1320+50 in Sec. 6, T. 30 S., R. 5 W., was filed April 6, 1882. This map was returned by the Commissioner of the General Land Office to the Secretary of the Interior with report and was received back by the Commissioner June 2, 1883.

Map of the sixth section, extending from Station 1320+50 in Sec. 6, T. 30 S., R. 5 W., to Station 2376+50 in T. 31 S., R. 7 W., was also filed April 6th, 1882, returned to the Secretary with a report and re-returned to the Commissioner of the General Land Office June 2, 1883.

Map of the seventh section, extending from Station 2376+50 to Sec. 33, T. 34 S., R. 6 W., was filed August 24, 1882, and was also returned to the Secretary with a report and re-returned to the Commissioner of the General Land Office June 2, 1883.

Map of the eighth section, extending from Sec. 33, T. 34 S., R. 6 W., to Sec. 21, T. 36 S, R. 3 W., was filed June 6, 1883.

Map of the ninth section, extending from Sec. 21, T. 36 S., R. 3 W., to the south line of Sec. 32, T. 37 S., R. 1 W., was filed July 3, 1883.

Map of the tenth section, extending from the South line of Sec. 32, T. 37 S., R. 1 W., to East line of Sec. 25, T. 39 S, R 1 E., was filed September 4, 1883 (General Land Office statement of Land Grants 1908, erroneously shows September 6, 1883).

Map of the eleventh section, extending from East line of Sec. 25, T. 39 S., R. 1 E., to the North line of Sec. 30, T. 40 S., R. 2 E. was filed August 1, 1883 (General Land Office statement of Land Grants—1908, errorneously shows August 2, 1883.)

Map of the twelfth section, extending from Sec. 30, T. 40 S., R. 2 E., to Southern boundary of the State of Oregon in Sec. 13, T. 41 S., R. 1 E., was filed August 18, 1884.

Maps of survey and location filed in the Interior Department of the United States, by the West Side Company claiming under the East Side grant:

Map of First section—60 miles, extending from Portland via Forest Grove and McMinnville, thence southerly towards Corvallis was transmitted by J. Gaston to the Interior Department of the United States and there received July 1, 1868 and was returned July 6, 1868 to Gaston for verification and other requirements.

In accordance with the said requirements a second map showing general location from Portland via Forest Grove, McMinnville and Corvallis to the South line of the State of Oregon, was transmitted by Gaston in compliance with the Secretary's letter of July 6, 1868 and was received by the Department of the Interior September 16, 1868, but no action taken thereon.

Also the map of the first sixty miles was returned by J. Gaston to the Interior Department and there received September 22, 1868.

Subsequently J. Gaston forwarded to the Secretary of the Interior and there received September 24, 1868, another map of the first sixty miles. Such map was sent by the Secretary of the Interior to Commissioner of the General Land Office November 22, 1871.

Maps of survey and location filed in the Interior Department of the United States, by the West Side Company, under the West Side grant:

The map of the section extending from Portland to McMinnville and from Forest Grove to Caster Creek was filed May 17, 1871.

The map of the remainder of the line from Caster Creek to Astoria was filed February 2, 1872.

EXHIBIT NO. 14 TO STIPULATION.

Statement of the dates of construction, completion, approval and acceptance, of the several sections of East Side railroad by the East Side Company and Oregon & California Railroad Company and West Side railroad by the West Side Company:

East Side railroad.

Construction of the First section of 20 miles 400 feet commencing at East Portland and extending to a point near Parrott's Creek was completed December 24, 1869, examined by commissioners appointed therefor and favorably reported upon December 31, 1869; such reports submitted by the Secretary of the Interior January 26, 1870 to the President of the United States and its acceptance recommended, and such recommendations were approved by the President January 29, 1870.

The Second, Third and Fourth sections of 20 miles each, extending from Parrott's Creek south-

wardly to a point about one-half mile beyond the Station of the City of Albany, 80 miles from the initial point, was completed during the year 1870, Commissioners' reports were dated September 28, 1870 as to Second and Third sections and December 10, 1870 as to Fourth section, and were transmitted by the Secretary of the Interior February 28, 1871 to the President of the United States with recommendations that the road be accepted and such recommendations were approved by the President February 28, 1871.

The Fifth and Sixth sections of 20 miles each were completed and the Commissioners' reports on such completion were dated respectively August 11, 1871 and January 13, 1872 and were submitted by the Secretary of the Interior to the President of the United States March 7, 1872, with recommendations that the line be accepted, which recommendations were approved by the President March 11, 1872.

The Seventh, Eighth and Ninth sections, beginning at a point 2½ miles Northwest of Eugene City, probably in NW ¼ of Sec. 23, T. 17 S., R. 4 W. and ending near Roseburg at a point which was probably in the SE¼ of Sec. 24, T. 27 S., R. 6 W., a distance of 77.3668 miles, was completed in 1872 and had been in effective use for traffic since the Summer of that year. The report of the Commissioners was dated December 27, 1876, submitted

by the Secretary of the Interior to the President of the United States July 10, 1878 with recommendations that the railroad be accepted and such recommendations were approved by the President July 11, 1878.

The Tenth section of 45 miles, beginning 585.66 feet South of the Roseburg depot in Sec. 24, T. 27 S., R. 6 W., and ending in Sec. 19, T. 30 S., R. 7 W., was wholly in operation from May 1883 and 28 miles thereof, from Roseburg to Riddle had been in operation since about November 1882. The report of the Commissioners was dated August 6, 1883 and was submitted by the Secretary of the Interior to the President of the United States August 20, 1883 with recommendations that the line be accepted, and such recommendations were approved by the President August 29, 1883.

The eleventh section of 100 miles in length, extending from a point 45 miles South of Roseburg to a point about 1¼ miles South of Ashland was open for public use on the following dates:

From the North end to Glendale, 20 miles—May 14, 1883.

To Grants Pass—55 miles—December 4, 1883.

To Phoenix—91 miles February 25, 1884.

To Ashland—99 miles—May 5, 1884.

The report of the Commissioners was submitted

by the Secretary of the Interior to the President of the United States January 13, 1887, with recommendations that the section be accepted. Said recommendations were approved by the President January 29, 1887.

The Twelfth section, extending from the point 1½ miles south of Ashland to the boundary line between Oregon and California, a distance of 24.135 miles, was completed prior to June 20, 1888 and the report of the Commissioners was transmitted by the Secretary of the Interior to the President of the United States October 23, 1889 with recommendatoins that the railroad be accepted and such recommendations were approved by the President November 8, 1889.

West Side Railroad.

The First section of 20 miles was completed and the report of the Commissioners dated January 6, 1872 was approved and the section accepted by the Secretary of the Interior February 16, 1872.

The Second section, extending from the 20th mile post to the Yamhill River, a distance of 27½ miles, was reported on by Commissioners on May 3, 1876 and the reports approved and the section accepted by the Secretary of the Interior June 23, 1876.

EXHIBIT NO. 15 TO STIPULATION.

An Act to Create an Auditor of Railroad Accounts and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section twenty of the act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes.", approved July first Anno Domini eighteen hundred and sixty-two, and the act entitled "An Act relative to filing reports of railroad companies," approved June twenty-fifth, Anno Domini eighteen hundred and sixty-eight, be, and the same are hereby repealed.

SEC. 2. That the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper at an annual salary of two thousand four hundred dollars, one assistant bookkeeper at an annual salary of two thousand dollars, one clerk at an annual salary of one thousand four hundred dollars, and one copyist at an annual salary of nine hundred dollars. Actual and necessary traveling and

other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction, incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed not to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand dollars is hereby appropriated for the uses and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and seventy-nine.

SEC. 3. That the duties of the said Auditor under and subject to the direction of the Secretary of the Interior shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are

enforced; to furnish such information to the several departments of the government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the government; and to make an annual report to the Secretary of the Interior, on the first day of November, on the condition of each of said railroad companies, their road, accounts, and affairs, for the fiscal year ending June thirtieth immediatly preceding.

SEC. 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said Auditor any and all such reports as he may require from time to time and shall submit its books and records to the inspection of said Auditor or any person acting in his place and stead, at any time that the said Auditor may request, in the office where said books and records are usually kept; and the said Auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire.

SEC. 5. That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in section four of this act, such neglect

or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand nor more than five thousand dollars, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC. 7. This act shall take effect on and after the first day of July, anno Domini eighteen hundred and seventh-eight.

Approved, June 19, 1878.

EXHIBIT NO. 16 TO STIPULATION.

REPORT OF QUOTATIONS
OF CENTRAL PACIFIC RAILROAD COMPANY STOCK
AND BONDS
EASTERN AND FOREIGN MARKETS

As Published in the San Francisco Evening Bulletin on the Dates Shown Below.

Date		Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1886							
Oct.	1	3	3	48½	48¼		
"	2	3	4	48⅜	48¼	...	116
"	3	Sunday—No issue.					
"	4	3	2	48⅜	48⅞		
"	5	3	3	49½	49⅜		
"	6	3	2	49½	47¼		
"	7	3	2	49½	49½		
"	8	3	3	49⅛	48½		
"	9	3	3	....	48½		
"	10	Sunday—No issue.					
"	11	3	2	48⅝	48	....	115½
"	12	3	3	47⅞	....		
"	13	3	3	47½	49		
"	14	3	3	49	....		
"	15	3	3	....	....	...	115½
"	16	3	3	48⅛	48	...	
"	17	Sunday—No issue.					
"	18	3	3	....	47½		
"	19	3	3	....	47½	...	115

Date	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1886						
Oct. 20	3	3	....	48	115	115
" 21	3	2	....	47½	...	115
" 22	3	3	....	47¼		
" 23	3	3	....	47¼	...	115
" 24	Sunday—No issue.					
" 25	3	3	47½	47¼	...	115¼
" 26	3	2	....	47	...	115¾
" 27	No Market Report.					
" 28	3	3	....	46⅞	...	115¼
" 29	3	3	....	....	...	116¼
" 30	3	3	47½	47½	...	115¾
Nov. 15	3	3	47⅛	47¼	...	115¾
Dec. 15	3	3	44	44	...	....
1887						
Jan. 15	3	3	....	42	...	114¾
Feb. 15	3	2	37	36¼		
Mar. 15	3	2	36½	36½		
Apr. 15	3	2	....	41½		
1887						
May 13	3	3	....	40½	...	117⅛
Jun. 15	3	2	38¾	38¾		
July 1	No Market Report.					
" 2	No Market Report.					
" 3	Sunday—No issue.					
" 4	Holiday—No issue					
" 5	No Market Report.					
July 6	Not quoted.					
" 7	" "					

Date 1887	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
July 8	Not quoted.					
" 9	No Market Report.					
" 10	Sunday—No issue.					
" 11	3	1	38	38		
" 12	3	2	....	....		
" 13	3	3	....	37		
" 14	Not quoted.					
" 15	"	"				
" 16	3	2	38	38		
" 17	Sunday—No issue.					
" 18	Not quoted.					
" 19	3	2	....	....	...	114¼
" 20	Not quoted.					
" 21	"	"				
" 22	"	"				
" 23	No Market Report.					
" 24	Sunday—No issue.					
" 25	3	1	37½	37½		
" 26	Not quoted.					
" 27	No Market Report.					
" 28	3	2	35¼	35¼		
" 29	Not quoted.					
" 30	No Market Report.					
" 31	Sunday—No issue.					
Aug. 15	3	1	....	....	...	115
Sept. 10	7	2	36	....	...	
" 19	3	2	....	33¾		
Oct. 14	3	2	29	28½		

NOTE: Report of San Francisco Stock and Bond Exchange, as given in the San Francisco Bulletin, shows Central Pacific Railroad Bonds quoted at asked 101 from Oct. 14 to Nov. 11, 1887, inc., without change. Otherwise, neither Central Pacific Stock nor bonds quoted in San Francisco Stock and Bond Exchange Report during the period covered by this statement.

Date 1887	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
Nov. 17	3	1	....	31½		
Dec. 1	3	1	....	32		
" 2	Not quoted.					
" 3	No Market Report.					
" 4	Sunday—No issue.					
" 5	3	1	35	....		
" 6	No Market Report.					
" 7	3	2	....	37⅞		
" 8	No Market Report.					
" 9	"	"	"			
" 10	"	"	"			
" 11	Sunday—No issue.					
" 12	3	1	36¼	36¼		
" 13	No Market Report.					
" 14	3	2	....	36½		
" 15	No Market Report.					
" 16	"	"	"			
" 17	"	"	"			
" 18	Sunday—No issue.					

Date	Page	Col'm.	STOCK Open	STOCK Clos.	BOND Open	BOND Clos.
1887						
July 19	3	1	....	35		
" 20	Not quoted.					
" 21	No Market Report.					
" 22	"	"	"			
" 23	"	"	"			
" 24	"	"	"			
" 25	Holiday—No issue.					
" 26	No paper in file.					
" 27	No Market Report.					
" 28	"	"	"			
" 29	Not quoted.					
" 30	No Market Report.					
" 31	"	"	"			

REPORT OF QUOTATIONS
OF CENTRAL PACIFIC RAILROAD COMPANY STOCK
AND BONDS
EASTERN AND FOREIGN MARKETS

As Published in the Portland Oregonian on the Dates Shown Below.

Date	Price of Stock
1887.	
March 28	36
June 6	40
June 8	50¼
Dec. 28	33¼
1888	
June 6	38
Dec. 1	35

EXHIBIT NO. 17 TO STIPULATION.

Exhibit No. 9 to the Answer should be corrected in the following particulars:

1. The introductory clause states that the Exhibit contains "a few instances" of the acceptance by the Interior Department as based for lieu land selections, of lands conveyed by the Oregon and California Railroad Company in quantities greater than 160 acres to a single purchaser, and at a price exceeding $2.50 per acre. This leaves the implication that there are other similar instances. As a matter of fact, this Exhibit contains all of the transactions of this character.

2. Exhibit No. 9 to the Answer states that in each instance noted the lieu base deed and lieu selection was approved by the Interior Department. The fact is that a number of these forest lieu selections were pending in the Interior Department at the time the investigation of the subject-matter of this suit was instituted in the year 1907. Upon the recommendation of the Attorney General all of these selections pending at that time were suspended, and still remain under suspension. As to these selections which are under suspension no action has been taken by the Interior Department, and the title to the base lands has not been approved. The selections under suspension are as follows:

All of the 5,042.96 acres conveyed by the Railroad Company to A. B. Hammond Company, described in Exhibit No. 9 to the Answer as Contract No. 5392;

All of the 5,013.18 acres conveyed by the Railroad Company to John Claflin, described in Exhibit No. 9 to the Answer as Contract No. 5393;

All of the 6,214.34 acres (excepting 4,014.34 acres) conveyed by the Railroad Company to Big Blackfoot Milling Company described in Exhibit No. 9 to the Answer as Contract No. 5394;

All of the 3,700 acres conveyed by the Railroad Company to Marcus Daly, described in Exhibit No. 9 to the Answer as Contract No. 5395;

All of the 9,044.35 acres (excepting 2,787.72 acres) conveyed by the Railroad Company to R. S. Moore, described in Exhibit No. 9 to Answer as Contract No. 5401;

With the exceptions above noted Exhibit No. 9 to the Answer is correct.

EVIDENCE

Whereupon, It is further certified that in addition to the foregoing "Stipulation as to the Facts" there was duly taken within the time allowed by order of the court, by and before M. A. Fleming, Special Examiner, duly appointed to take and report the testimony herein on behalf of the complainant and the said defendants and appellants in said cause, further and additional evidence in words and figures as follows:

Whereupon, Counsel for defendants objected to any testimony being taken in this cause, on the ground that a court of equity has no jurisdiction and that this court has no jurisdiction to hear and determine the matters in issue.

TESTIMONY FOR COMPLAINANT.

Whereupon W. W. COTTON, called as a witness on behalf of the United States being first duly sworn, testified: That he has resided at Portland, Oregon, for 22 years and is now (December 8, 1911) secretary of the Oregon & California Railroad Company and has been such since September 15, 1904; that his predecessor in office was George H. Andrews and that his first official relation with the Oregon & California Railroad Company was his position as secretary; that he has also been a director of the Oregon & California Railroad Company) but occupied no other position; that he does not know exactly whether he has been an employe or not of the Southern Pacific Company; that he received no salary from

that Company of any kind, but for a given period—exactly how long he does not know—the Southern Pacific Company paid a portion of his salary to the Oregon Railroad & Navigation Company for part of the work he was doing for the Southern Pacific Company; that he never received, directly, any salary from the Southern Pacific Company or the Oregon & California Railroad Company and no salary as secretary of the Oregon & California Railroad Company. He was secretary, director and general attorney of the Oregon Railroad & Navigation Company from the time of its organization in 1896 and prior to that time had been secretary of the Oregon Railway & Navigation Company and was attorney for E. McNeill, receiver, and also for S. H. H. Clark and others, receivers of the Oregon Railway & Navigation Company prior to that date. From September, 1889, to October 15, 1893, he was attorney for the Oregon Short Line Railroad Company, then operating the lines of the Oregon Railway & Navigation Company under lease; he is the general attorney of the Oregon-Washington Railroad & Navigation Company and its assistant secretary, also held similar positions with some subsidiary corporations of Oregon Railroad & Navigation Company. As secretary of the Oregon & California Railroad Company has custody of its corporate records, including the record of the minutes of its directors' meetings and stockholders' meetings and he has in his possession six volumes of these records: Volume 1 commencing on the 17th day of March 1870, Volume 2 commencing with a continuation of the meeting of December 14,

1878, Volume 3 commencing June 4, 1883, Volume 4 commencing September 19, 1887, Volume 5 continuation of meeting of May 6, 1895, Volume 6 meeting of April 10, 1906. And he has the original triplicate of the Articles of Incorporation of the Oregon & California Railroad Company which the statute required should be filed with the secretary of the corporation; also that he has in his custody the corporate records of the old West Side Oregon Central Railroad Company. Whereupon it was stipulated that Mr. Luther F. Steel may produce for the inspection and use of counsel in this case all the corporate records in the possession of the Secretary of the Oregon & California Railroad Company relating to the Oregon Central (West Side), Oregon Central (East Side) and the Oregon and California Railroad Company. Whereupon, the witness further testified that said Steel was his clerk and in personal charge of all these records; and that he (witness) was about to go away from Portland for an extended absence, that is, to be absent for at least five months, and that he would turn over to said Steel, as his confidential clerk, all records, documents, stock ledgers and other papers in his custody as secretary of these corporations, so that said Steel might identify them if subpoenaed to produce them in evidence in this case. The witness further testified that he identified as the records of these various corporations the documents, and books that he would turn over to Mr. Steel. Whereupon it was stipulated that no question would be raised as to the identification of such documents, books and records.

Whereupon, said witness upon cross-examination further testified: That he received from George H. Andrews, his predecessor, as secretary of the Oregon and California Railroad Company the corporate records of that Company, identified by him, and also the corporate records of the Oregon Central Railroad Company of Portland, known in this record as West Side Company, and also the corporate records of the Oregon Central Railroad Company of Salem, known as Oregon Central East Side, and that he received a large number of other papers all covered by a receipt; that he was not secretary of the Oregon Central (West Side) or Oregon Central (East Side) and never has been; that as a matter of fact there is no corporate officer of the Oregon Central (West Side) or Oregon Central (East Side) at the present time that he knows of; that his leave of absence is on account of serious illness from which he has just now recovered; that he has no official relation with the Southern Pacific Company at this time (December 8, 1911) excepting that he is statutory attorney in fact upon whom process can be served; that he has never been a member of its Board of Directors or a corporate officer, but was a stockholder for a short time.

Whereupon L. F. STEEL, called as a witness on behalf of the United States, being first duly sworn testified: That he is associated with W. W. Cotton and is the same person referred to in the testimony of W. W. Cotton in whose custody Mr. Cotton would leave the records of the Oregon Central Railroad Company of Portland

known as the West Side Company, the Oregon Central Railroad Company of Salem, known as the East Side Company, and the Oregon & California Railroad Company, and witness now produces the records of the directors and stockholders meetings of the Oregon Central Railroad Company of Portland, known as the West Side Company and of the Oregon Central Railroad Company of Salem, known as the East Side Company. Whereupon it was admitted by counsel for the defendants that said records so produced were the corporate records of said Companies. Whereupon the witness further testified that he thought he possibly could not produce the original triplicate of the Articles of Incorporation of the Oregon & California Railroad Company that was filed with the Secretary of the Company but would make a search for the same so that he could either produce said documents or testify that it cannot be produced.

Whereupon the complainant offered in evidence the complete records of the Oregon Central Railroad Company of Portland, known as the West Side Company, produced and identified by the witness L. F .Steel, heretofore marked by the Examiner for identification "Government's Exhibit 100-A" and also the records of the Oregon Central Railroad Company of Salem, known as the East Side Company, produced and identified by the witness L. F. Steel, heretofore marked by the Examiner for identification "Government's Exhibit 100-B" with the understanding that the originals might be withdrawn and copies substituted and read into the records, which said "Government's Exhibit 100-A" is hereinafter set out and described and made a part of this Statement

of Evidence and identified herein as "Government's Exhibit 100-A" and which said "Government's Exhibit 100-B" is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibit 100-B."

Whereupon JOSEPH GASTON, called as a witness on behalf of the United States being first duly sworn, testified; that his full name is Joseph Gaston and he resides at 440 Sixteenth Street, Portland, Oregon, and has lived at Portland for 44 years; was born in 1833 at Loydsville, Belmont County, Ohio; that he spent a year or two occasionally on his farm in Washington County, but considered Portland his home all the time; that he left Ohio in 1862 at the age of 29 and came direct to Oregon, settling at Jacksonville, Jackson County, Oregon, and lived there until the year 1865, when he moved to Salem; that he studied law and was admitted to the bar before he left Ohio and that he practiced law in Jackson County, Oregon, and for a while in Marion County, after he came to Salem; that he moved from Jacksonville to Salem and lived at Salem until 1868, when he moved to Portland and since that time, with the temporary absences mentioned, Portland has been his home; that in addition to practicing law at Jacksonville and Salem, he was engaged in newspaper work, temporarily editing the "Jacksonville Sentinel" for a salary and at Salem the "Oregon Statesman" for a salary; that he is the Joseph Gaston who was the first President of the Oregon Central Railroad Company of Portland (West Side)

and was intimately connected with the whole railroad history of the State of Oregon and that he first became interested in the subject of constructing a railroad in Oregon under the following circumstances:

In the autumn of 1863 a surveying party making a reconnaisance or preliminary survey for a railroad from Marysville in California to the Columbia River, came to Jacksonville on their way north from California and there, not having paid their men, they were stranded and stopped there. And in their troubles to pay their men they came to me to help them out in some way, and I heard all their stories and consulted with various citizens of Jackson County, and finally took up the proposition of taking care of the men until the next spring, and raising some money to continue this survey northward from Jacksonville to Portland, or the Columbia River.

That there were three men, Simon G. Elliott, George H. Belden and A. C. Barry in charge of that surveying party; there were eight men besides these three men who were actively engaged in the work of surveying, and A. C. Barry is the same man who afterwards continued the survey in Oregon. Barry was then a floater in Oregon, but his home residence was in Danville, Illinois. Mr. Elliott was a Californian. Mr. Belden was a citizen of Portland. Belden was a competent engineer. Mr. Elliott claimed to be, but witness does not think he had any qualifications for the place and Mr. Barry was not a surveyor. He was a lawyer that had been in

the army fighting the rebels, got wounded and retired, coming out to Oregon. There was no progress made as to the survey during the Fall of 1863; after the men arrived at Jacksonville they simply stayed there and he (witness) subsisted them until the next spring. A dispute arose between Elliott and Belden as to who should control the survey from Jacksonville to Portland and this controversy was not settled at all. They could not agree. Elliott went back to California and Belden came on to Portland and just left the men there. Neither of them had any further connection with the survey in Oregon. Whereupon the witness further testified as follows:

"The question of a railroad from Portland up the Willamette Valley had been discussed by prominent men in Portland, and Mr. Belden being a civil engineer, and anxious to get into that kind of business, had promoted the idea, and finally a survey was made from Portland to Eugene City, on the East Side of the Willamette River, by Mr. Belden, and the expenses of the same was borne by people of Portland. I think Mr. W. S. Ladd was prominently connected with it; and then by people along through the towns and counties on the East Side of the Willamette River. The survey went no further than Eugene City, and their proposition was no further than Eugene City."

Whereupon the witness further testified that it was the plan of Belden and Elliott, when the party reached

Jacksonville in October, 1863, that they would continue the survey to Eugene but they could not agree as to who should control the survey between Jacksonville and Eugene City. Belden claimed that he had the right to direct the survey in Oregon, according to the agreement, the same as Elliott had directed the survey in California. They talked it all before him.

The first thing to be done during the winter of 1863-64 preparatory to the continuing of the survey in Oregon, if it was to be continued, was to make a provision for the surveyors, the men who had done the work so far and he secured what was called the old hospital building in Jacksonville, which was already provided with beds and cooking utensils and everything, and vacant, and he put the men in that building to stay there until spring and provided them with food; he then commenced talking with various leading citizens of Jackson County to raise money to pay for the support of the men during the winter and to continue this work next spring on to Portland; he found the farmers generally willing and the first man to contribute any money and actively support the measure was the father of the man now called "Big Bill Hanley"—Michael Hanley—and with his assistance witness raised a subscription of enough money to keep the men during the winter, and to hire a team, and start the men in the spring. For the purpose of making the survey and subsequently building the railroad; he wrote to some men in the northern part of the state and in Jackson County about the matter, but did not get

anybody to encourage it much, excepting Judge Shattuck; there were some others but he was the man that encouraged the matter more than any one else although not a capitalist and not a man who could build railroads; they formed a little temporary incorporation under the laws of Oregon, to be a nucleus around which anything that was done might be held together which was called the California & Columbia River Railroad Company and the articles of incorporation of such Company were filed on October 13, 1863 although he does not remember whether that is the exact date or not; the witness thought that J. H. Moores, J. Gaston, S. G. Elliott and Charles Barry were the signers of the articles of incorporation of the California & Columbia River Railroad Company; this Charles Barry was the same person known as A. C. Barry before mentioned; he signed his name then as Charles Barry. His full name is Augustus Charles Barry. There was never any Board of Directors of the California & Columbia River Railroad Company and the organization was never perfected by the election of officers or the subscription of stock, but the survey during the next year, 1864, was conducted in the name of that Company. The receipts for payments to that promotion fund were issued by the witness as secretary of that corporation and in its name. Mr. Barry, outside of the men that did the actual work, was the only man that rendered any particular assistance associated with witness during the survey of the year 1864; of course there were a great many men that he was in correspondence with that helped along in any

way they could, but in the sense of leadership Mr. Barry assisted witness in a general way. With the financial support that witness had solicited during the winter of 1863-64 they resumed the survey in the spring of 1864, starting from Jacksonville and proceeding northerly, keeping on northerly to the Columbia River at St. Helens, then the party came back to Portland and commenced a line at Portland and ran up through the line now where the Narrow Gauge road is, or what we call the Narrow Gauge road, through the Sucker Lake pass, and on up into Yamhill County, connecting with the original survey there. Witness does not know exactly what time it was they reached Portland, but thinks it was in September, but is not certain as he was not here then, at this end of it. If the record shows October 1st, 1864 that is about correct. In the meantime witness thinks that he was aware of the fact that Congressman Bidwell of California had introduced in Congress a bill providing for a land grant to aid in the construction of a railroad from the Central Pacific in California to Portland, in Oregon. After the survey was completed Mr. Barry and witness got the engineers together at Salem and they made maps of their survey and witness and Barry prepared a pamphlet on the resources of Oregon to show the practicability of this proposition and had it printed at Salem. Mr. Barry took the maps and all the evidence of the engineers and that pamphlet and went on to Washington City to present the matter to Congress, in view of getting a land grant for the Oregon end of the proposition and witness thinks it was in the

month of November 1864 when Mr. Barry went to Washington. Barry remained most of the winter in Washington City. Witness does not know whether the bill introduced by Mr. Bidwell, after some amendment, was the same bill which finally became the Act of July 25, 1866, although he had correspondence with General Bidwell about it and Bidwell advised them to get into that bill in some way and co-operate with him. Witness had correspondence with Cornelius Cole who was a Senator from California. Witness could not say now whether Bidwell's bill was the one that passed Congress. There was a continual effort made to secure the passage of such a bill from some time in 1863 until the final passage of the act of July 25, 1866. Barry did not return to Portland after his trip East in the fall of 1864, but went back to Illinois. He did not have anything further to do with this project after that. The effort to secure the passage of the bill that winter was not successful. Witness did not go to Washington himself after that and he was not in Washington at any time prior to the passage of the Act of July 25, 1866 and took no part in the passage of that Act, except through the local Senators and Representatives in Congress and correspondence, but did endeavor to have the California & Columbia River Railroad Company designated as the corporation to build that part of the railroad in the State of Oregon, but failed in that attempt. Such failure was the trouble between Colonel Barry and Judge Williams who quarrelled over that matter. The fact was that Barry and witness had spent a great deal of time and

some money in trying to elect Judge Williams to the United States Senate on his promise that he would stand by us in that railroad proposition, and when he did not do so and backed out of it Barry and Williams had a quarrel in Washington. After the passage of the Act, his first information as to its passage was a letter from Senator Cole that the Act had passed. Cole sent him a copy of the Act and witness then took steps to get men interested and incorporate a Company in Oregon with a view of being designated under the act to receive the land grant. The Oregon Legislature then convening in September of that year, witness prepared articles of incorporation and got them signed and also prepared a bill pledging the State to pay interest on $1,000,000.00 of the Company's bonds and presented the matter to the Legislature. After he had got 25 or 30 names—witness has forgotten now how many—signed to the articles of incorporation witness took them to the office of the Secretary of State and to the office of the County Clerk in Portland and had them filed.

"I told the Secretary of State that I still wanted to use them with members of the Legislature after I had handed them to him to file, and he says, 'Well, I will just make a pencil filing on them, and you can use them,' and handed them back to me.

Q. Now, do you know what date that was?

A. Well, that was some time in September, I cannot remember just exactly.

Mr. Fenton: October 6, 1866.

Q. October 6, 1866?

A. Well, I thought maybe it was September.

Q. To refresh your recollection, I will direct your attention to a certificate of the Secretary of State upon the subject.

A. Yes, well.

Q. You observe that it was October 6, 1866?

A. Yes, I see. When I prepared that article, of course, I referred to the records.

Q. Now, on October 10, 1866, the Legislature of the State of Oregon passed the Joint Resolution No. 13, designating the Oregon Central Railroad Company as the corporation to receive the benefits of the act of 1866. I will ask you to state what you did after you presented these articles to the Secretary of State for filing and he made the pencil notation, down to the time that the Legislature passed this resolution.

A. Why, I was showing these articles of incorporation to the members of the Legislature.

Q. Were you in Salem at the time?

A. I was there every day. I lived there at that time.

Q. Who was Governor of the State at that time?

A. George L. Woods.

Q. Did you present these articles of incorporation to him?

A. I think so.

Q. Did he address to the Legislature a message upon the subject?

A. He did.

Q. I will ask you if you can identify the document that I now present to you as that message?

A. Yes, that is the message. I know there was a matter of some amusement about it. There was some stuff in it here toward the last that was considered buncombe, and very much like George L. Woods."

Whereupon counsel for the United States offered and there was admitted in evidence the special message of the Governor of Oregon identified by the witness and marked by the Examiner "Government's Exhibit 101," which said "Government's Exhibit 101" is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibit 101."

Whereupon the witness further testified there was no other corporation being organized by the name of "The Oregon Central Railroad Company" at that time so far as he knew and that the corporation referred to in the message aforesaid was the corporation that the witness was then engaged in organizing as he has described. That he consulted with Governor Woods about his signing that message. The Governor was helping him all he could. Witness presented the Governor with the articles of incorporation that he had prepared and

had presented to the Secretary of State and the corporate name of the corporation whose articles of incorporation he had so presented was "The Oregon Central Railroad Company." After the Legislature passed the resolution of October 10, 1866 designating the Oregon Central Railroad Company as the corporation to receive the benefits of the Act of Congress approved July 25, 1866, witness got a certificate under the corporation law signed by a certain number of incorporators designating himself to open the stock books of the Company—the corporation—and after that other signatures were obtained. It was represented to him by Governor Woods, at the time he sent in his message that if he (witness) would see R. R. Thompson with whom he had had a talk—R. R. Thompson was a wealthy man in Portland —and Captain Ainsworth and Simeon G. Reed, that he (the Governor) was satisfied that they would be willing to put up the money to build the first 25 miles of railroad, but that they must be consulted now, and considered, and that if they would sign the articles of incorporation the Governor thought it would be a very fortunate thing, and so witness came to Portland and saw these gentlemen and they did, or at least some of them did sign the articles, or at least agreed to support the proposition. Witness then went back to Salem and reported that he had succeeded in getting these men in. Witness brought to Portland with him the articles of incorporation for the purpose of getting these further signatures and did it with the knowledge and advice of Governor Woods. Witness being asked to examine the

articles of incorporation, a copy of which was then exhibited to him, further testified that he thinks it likely that H. W. Corbett was one of the first signatures he secured after the resolution had passed the Legislature, and that it is likely that Joel Palmer, the name preceding the signature of H. W. Corbett was the last signature obtained prior to the passage of the resolution of October 10, 1866. George L. Woods, the Governor, signed these articles of incorporation after the resolution of October 10, 1866, together with the other names which follow the name of H. W. Corbett. When witness came to Portland and saw Mr. Corbett, with whom he was acquainted, Corbett said "Yes, I will sign the articles, but I cannot put any money in," and witness asked Corbett if he would give him a letter to C. H. Lewis. Witness was not acquainted with Lewis. Corbett said "Yes, my signature is good enough for Lewis. You tell him that I sent you there." Witness went down and saw Lewis who said "Well I will sign them because Corbett did, but I won't put any money in." That was the recollection of witness of these two men. He then went to R. R. Thompson. He had a letter from Woods introducing him to Thompson and Thompson and Ainsworth and Reed all got together in a back room and they talked for an hour or so about the matter and then signed. Witness got John McCracken, who is still living, to sign afterwards. Afterwards he got Brown and Cox and witness was the last man to sign. Of these persons who signed the articles of incorporation prior to the passage of Resolution of October 10, 1866, J. S.

Smith was a man who had been prominent in affairs in Oregon. He was a member of Congress in Oregon afterwards and was at that time in Salem and manager of the woollen factory and was a large owner in the woollen factory in Salem. I. R. Moores was private secretary of Governor Woods and a man of some property in Salem and had been in the mercantile business there for years. J. H. Mitchell is the same Mitchell who afterwards became Senator from the State of Oregon and was afterwards identified with the East Side Company. I. R. Moores was present in the State House at Salem at the time witness presented these articles for filing on October 6, 1866. Samuel E. May was Secretary of State at that time and the conversation with reference to filing the same took place between witness and Mr. May on October 6, 1866, I think, in the presence of Mr. Moores, who was I think, assistant to Mr. May and private secretary to the Governor; that is, he was Assistant Secretary of State. Whereupon the witness further testified as follows:

"Q. Well, Mr. Gaston, I assumed that you had related, or narrated the conversation between yourself and Mr. May, but to avoid any doubt upon the subject, I will ask you to state fully the conversation between yourself and Mr. May upon that occasion, and whether Mr. Moores was present and overheard it.

A. Well, Mr. Moores was present and heard the conversation. And when I presented the articles of incorporation to him, I think that they were not in an envelope, and that Mr. May opened them, and looked

to see if there were three names attached, as he said that that was necessary to form a corporation before the paper could be filed; and after he saw that there was more than three names, he says to me, 'I will just file these in pencil, and give them back to you to use, as you wish.' And he made that filing in pencil, and afterwards admitted that he had made such a filing, because his writing was plainly visible after the trouble commenced between the two corporations. I showed him that and he took back a statement that he said formerly that he had not filed them.

Q. What was that pencil notation? How did it read?

A. Filed October 6.

Q. 1866?

A. 1866.

Q. And upon what part of the document was it?

A. Why, it was on the back part of the folded up document, where the space was left. There was no writing or anything. It was not on an envelope; it was on the document itself.

Q. Now, was it the same day or afterwards that you took them to Governor Woods—took the articles of incorporation to Governor Woods?

A. Well, I couldn't say now whether it was the same day or not, because I was in Woods' office every day that we were working on that proposition.

Q. Well, was it between the time that you had this conversation with Mr. May and the time that the legislature passed the resolution?

A. Oh, yes. I think I took them—I took them to Woods' office immediately afterwards, and then he said he would write this message to the Legislature.

Q. Now, how long were you engaged in soliciting further signatures to those articles of incorporation at Portland? About how long?

A. I think I was only one day in Portland—might have been two. I came down in the steamboat, and stayed a day, and went back, I think the next day.

Q. Can you, by reference to any memorandum or article that you have written upon the subject, state when you returned the articles of incorporation to the office of the Secretary of State?

A. Well, I could not state that exactly.

Q. I say, could you by reference to your articles here?

A. I don't know.

Mr. Fenton: The acknowledgment, Mr. Townsend, will show.

Mr. Townsend: November 21st. It won't do any harm to lead him on that.

Mr. Fenton: No, that is all right.

Q. Everything shows it was November 21st, if that conforms to your general idea?

A. That, of course, I think was about the time.

Q. Now, you did return them to the office of the Secretary of State about November 21st?

A. Yes.

Q. Did you know at the time that any new filing mark was made upon those articles of incorporation?

A. No, I did not.

Q. Did you know that there was then indorsed upon the articles of incorporation a filing mark as of November 21, 1866?

A. No, I did not.

Q. Did you know at that time that other articles of incorporation, designating the same corporate name, had been filed as of November 17, 1866?

A. No, sir, I did not.

Q. When did you first learn that?

A. Well, it was, I think, about a month afterwards, after I took the articles back, that I learned of that.

Q. And who informed you?

A. Mr. Moores.

Q. I. R. Moores?

A. Yes, Mr. I. R. Moores.

Q. Did you then go and inspect the articles of incorporation of the other company?

A. I did.

Q. Did you find the fact to be that the other articles appeared of record as having been filed prior to your articles?

A. I did.

Q. The records show that the signers of the other articles of incorporation were J. S. Smith, I. R. Moores, and E. N. Cooke. Was that the same I. R. Moores?

A. Yes, sir.

Q. Mr. Moores, then, was a signer of your articles?

A. Yes.

Q. And overheard the conversation between yourself and May as to the withdrawal of your articles from the files, and in the meantime signed the other articles, and filed them prior to yours?

A. Yes, sir.

Q. After you learned that articles of incorporation of another company bearing the same corporate name as your own had been filed, just state in a general way what, if any, controversy arose between you, and what resulted, carrying your narrative down to the time that Mr. Elliott arrived and the corporation of April 22, 1867, was attempted to be organized.

A. Well, after I found out that Moores had filed

those second articles, we had conversations. I told him that he could not do it; that there could not be two companies in the same name, and that he was aware that the articles I had filed, and had been before the Legislature, had been filed, and that the corporation was in existence under the statute, and that his filing of second articles was a void act—it was impossible for him to make it stick. But I didn't want any trouble, and he professed the same feeling, that he didn't want any trouble over the matter, and we had several meetings to try and compose the differences. And I wouldn't agree to anything but that they should withdraw their articles and proceed on the original filings, as that was the material that was before the Legislature, and that would not be disputed. It went on that way, in an unsettled manner—there was no agreement arrived at until Mr. Elliott—

Q. How about Mr. Clark?

A. Mr. Clark and then Mr. Elliott arrived on the scene, and after that, why, there were these third articles filed."

Whereupon witness further testified that the Mr. Elliott referred to was the same S. G. Elliott who arrived at Jacksonville in the fall of 1863 with the party of surveyors and he appeared in Oregon the next spring, in April 1867, he thinks, and immediately after he came to Salem to see him and Elliott said he had made arrangements for capital to build the road and all that and wanted witness to go in with them and become secretary of the Company. Elliott would be president and

they would build the road right off. Witness declined to throw away the old articles. Elliott wanted him to go in on the new articles—the third articles—and finally witness told Elliott if all the incorporators of the Company that witness represented would instruct him so to do, he would do so, but could not stipulate away any rights that they had, so that after Elliott arrived the third set of articles of incorporation, bearing the same corporate name, was prepared and these are the articles of the so-called East Side Company. Nothing was ever done with reference to the second set of articles filed on November 17th other than the mere filing of the same. There never was any organization under that whatever. Witness thinks that the third articles of incorporation were filed about April 22, 1867. The first controversy, after the articles prepared at the instigation of Mr. Elliott were filed, arose from the use of the corporate name and that was the controversy in the newspapers and among the people interested in the building of the railroad in a public way. It was discussed in the newspapers and the first thing witness did after he learned that they had authorized the issue of bonds in the name of the Company of witness was to send a circular to the bankers and brokers in New York, Philadelphia and Boston informing them of the facts of this dispute and that the third Company, or the Salem Company was to his notion, a fraud and a swindle upon any person that would invest in their securities.

Whereupon witness identified "Government's Exhibit 102" as such circular whereupon complainant of-

fered said exhibit in evidence to which defendants objected as incompetent and as a self serving declaration, which said exhibit is hereinafter set out and described and made a part of the Statement of the Evidence and identified as Government Exhibit 102.

Whereupon witness further testified that in the meantime they had to organize by subscription of one-half the capital stock of the Oregon Central Railroad Company, (West Side) before they (witness and his associates) could elect a Board of Directors. That was done by witness and other parties and they elected a Board of Directors, and proceeded to get their subscriptions and in Portland Captain John C. Ainsworth undertook to canvass himself for stock subscriptions and secure considerable money, which was collected and invested in the construction of the road. Witness does not recollect distinctly with reference to the acceptance of the grant extended by Congress by the Act of July 25, 1866, or as to whether it is not a fact that failing to secure a subscription of one-half of the capital stock of his Company within a reasonable time the incorporators did not sign an assent or acceptance and forward same to the Secretary of the Interior, which was rejected upon the ground that the acceptance had to be by the Directors of the corporation instead of the incorporators.

Whereupon the witness further testified as follows:

"Q. "Now, the records of the West Side Company, which are now in evidence show that the West Side

Company was finally organized on May 24, 1867?

A. Yes.

Q. Now, it is a fact, is it not, Mr. Gaston, that you failed to secure subscriptions to one-half of your capital stock, and to effect an organization you were finally compelled to, and did, subscribe in your own name, for the use of the corporation, a considerable—how much was it? Two Million?

A. Two and a half million.

Q. Two million and a half of the capital stock of the corporation?

A. Yes, sir.

Q. And the organization was effected in that manner?

A. Yes, sir."

Whereupon the witness further testified that it was after that that directors and officers were elected and the assent of the West Side Company adopted and forwarded to the Secretary of the Interior. The subscription by himself was not in the name of the Company like that made by the Salem fellows. It was in his own name, although it was by him as Trustee for the corporation. That O. H. Browning, Secretary of the Interior was part of the Committee that examined witness when he was admitted to the bar and witness wrote him a private letter explaining why these things were done in this way, with the other papers; witness was afraid at the

time that they would investigate that subscription he made to the capital stock and might question it and witness wrote Brownell a private letter explaining that all to him, with the assent of the Company which was forwarded. The Directors of the West Side Company were elected at the time the first stockholders meeting was held in May, 1867 and they proceeded to elect officers. Witness was elected first president and W. C. Whitson secretary, and speaking generally, from that time on until 1870 witness represented the West Side Company in a general way in its controversy with the East Side Company and its other dealings. Down to the time that Mr. Holladay became identified with the East Side Company in September 1868, John H. Mitchell represented them in this controversy and in all the dealings of the East Side Company in Courts and a great deal of the time outside of the Courts, but I. R. Moores was the man in all business transactions. Moores was secretary for a good while, but whether Moores was president at that time or whether George L. Woods was president he could not say. After witness and his associates got the line located for construction purposes as far as Fulkerson Gap in Polk County, they filed a map showing the exact line, in compliance with the formal requirements of the Act of July 25, 1866. It is my recollection that it was the Fulkerson Gap, but it might have been the other Gap. Witness thinks the date, alleged in the bill of complaint and admitted by the answer that the map that he speaks of was filed on August 20, 1868 in the office of the Secretary of the Interior is correct. Dur-

ing the year 1867 witness canvassed among the people of Washington and Multnomah Counties for subscriptions to the stock, and anything to get donations of land or anything that would give the Company a showing of property on which it could get money. Witness put in the time that way and after he quit, Captain Ainsworth took up the work and got subscriptions to the stock among the business men of Portland and the work of soliciting subscriptions to the capital stock was continued after what he considered to be the organization in May 1867. He did not have any other business and prosecuted that as diligently as he could. Nothing was done during the year 1867 in the way of construction work, and nothing was done in the way of construction until after Captain Ainsworth got some $50,000, he thinks it was, subscribed in Portland, it might not have been more than $25,000, but they were all cash subscriptions and when that was completed, the Company commenced work. There was nothing done during the year 1867 by the East Side Company in the way of construction, or preparation for construction, and witness thinks the East Side Company did not succeed in getting any subscriptions among the people. What efforts the East Side Company made he does not know, but Elliott went east after their organization, that has been described and endeavored to raise money there by the sale of these bonds that they offered. This general controversy that he has spoken of as to the right of the East Side Company to use the corporate name of the Oregon Central

Railroad Company was carried on throughout the year 1867, but was not so bitter as the succeeding year. The West Side Company broke ground on the 15th of April, 1868, and the East Side Company the next day. Witness further testified that as a result of his work, with the assistance of Mr. Ainsworth, the financial means of the West Side Company for carrying on the work of construction at the time it commenced construction on April 15, 1868, both as a cash donation and guarantees of interest on bonds etc. was as follows: "The most important item in the assets of the Oregon Central Railroad Company (West Side) was ten blocks of land here in the north end of the City, donated by the Couch Estate on condition that we make that the terminus of the line. Then there were various pieces of land in South Portland donated—Judge Marquam, I think, donated some, and other parties; and then there was the subscription list of Captain Ainsworth, which was immediately available, and probably was more important than any of them, because it was ready cash. We didn't have any cash in the treasury—never had any there—but we had these assets. Then in Washington County a great many men had made donations of land. There was one piece of land donated that is now inside of the town of Hillsboro, that was sold. It wasn't sold for very much then, but it was a valuable piece of land; and there were other tracts of land around over the country. And Mr. Newby had succeeded in getting donations of land himself, and Robert Kinney, I think, to the amount of about $12,000 at McMinnville. Altogether I suppose that these items amounted in value to $100,000."

Whereupon witness further testified that during the same session of the Legislature that adopted the resolution of October 10, 1866, it passed an Act guaranteeing the interest on a million dollars of the Company's bonds, but witness thought the conditions of that Act were that as each 20 miles of road was constructed the Company would get so much of these bonds guaranteed. There was a guarantee by the City of Portland of interest on $250,000 of bonds and a like guarantee by Washington County of $50,000 of bonds and $75,000 of bonds by Yamhill County. This in a general way constituted the available and prospective assets of the West Side Company. The bonds, of course, were available as they constructed the road, the other matters they had in hand and could deal with. The East Side Company, in a general way, did not have anything at the time it commenced construction. It had no money, no subscriptions to stock that were available, no donations of land or anything else that he ever knew of. The West Side Company commenced construction at a place on Carter Street in South Portland. As to the assets of the East Side Company, Elliott had gone east on the basis of what his Company had done to raise means there. He succeeded in buying two locomotives of someone in the East and in getting rails for 5 miles of track, and these were sent out to Portland. The freight was not paid. Nothing was paid but they were shipped and it looked as if the East Side Company owned them. After they got the bills of lading for the rails and locomotives they went to B. Goldsmith in Portland and borrowed $20,000

and on that money they commenced work very close to where the car shops of the Southern Pacific are located on the East Side of the Willamette River in East Portland. It was then out in the country. There was no town there then but that piece of land had been donated to them on condition that they would start there and make their track there, or shops, or something. He thinks it was in Tibbetts Addition, about one mile this side of the car shops. Mr. Tibbetts made the donation. It was on his land and he took a very active part for the East Side Company. During the year 1868 the West Side Company built the big bridges on the first five miles and graded the first five miles of track and the East Side Company, during 1868, commenced in East Portland, built a little showing of track along there and along out on their line up towards Oregon City, but he don't know how much work they had done because he never saw it. During the year 1868 the controversy continued between the East Side and West Side Companies. This controversy was carried on by witness and his associates undertaking to stop the East Side Company in every way they could. The East Side Company had located its right of way this side of Oregon City across a man's land that would not consent and they got this man to assist the West Side Company in fighting the East Side Company and the attorneys of the West Side Company answered for this man, denying that the East Side Company was a corporation. The East Side Company did not try the case, but made a new survey and went around the man's land and they

got rid of it in that way. Then the West Side Company brought a suit in Marion County Circuit Court to enjoin the East Side Company from the use of the corporate name. Richard Williams acted as attorney for the West Side Company and Judge Boise declined to grant any relief on the ground that no pecuniary damages had been alleged or shown by the West Side Company, (and another reason was that he did not see such men as W. S. Ladd sitting around interested in the case,) so he turned the West Side Company down. The West Side Company questioned the incorporation of the East Side Company at Portland in Multnomah County. District Attorney Mulkey brought an information questioning their right to act as a corporation, this being a quo warranto proceeding. On some technicality Judge Upton denied the writ. Judge Upton had been down to the office of the West Side Company and wanted Captain Ainsworth to take some interest in it, as this was an important matter and Ainsworth wanted to know what sort of interest they could take. Upton said they could give him some of their bonds. Ainsworth told Upton that they were not in that kind of business. They did not get any decision from Upton on their side of the case. It was then concluded that they would bring the case of Newby—William T. Newby had a son in San Francisco who was a lawyer—and they assigned to him a bond and upon this a suit was commenced before Judge Deady, and this suit was prosecuted until Deady made his decision that the East Side Company had no right to use the corporate name

of the West Side Company and knocked them out. In addition to legal proceedings which he and his associates caused to be instituted, this general controversy was also carried on by public meetings, circulars and newspaper articles. They not only published from time to time over the authority of the Company statements respecting the East Side concern and its illegitimacy but especially pamphlets. The East Side Company published a pamphlet and the West Side Company published a reply to it, but the newspapers on the West Side of the Willamette River, with one exception, took up the controversy and espoused the cause of the West Side Company while the newspapers of the East Side of the River, if they said anything, were generally in favor of the East Side Company on their side of the River. The most of them did not say anything in behalf of the East Side Company. In addition to that public meetings were held at Corvallis and other points and witness attended the meetings generally representing his Company but some of them were attended by Mr. Newby and some by Lair Hill who was one of the attorneys for the West Side Company. John H. Mitchell and Mr. Elliott represented the East Side Company and attended some of those meetings. The West Side Company projected its line of railroad on the West Side of the Wlilamette River and the East Side Company on the East Side of the Willamette River and these two names East Side and West Side had reference to the Willamette River. In a general way the nature of this controversy between the East and West Side Companies and the particular

questions that were discussed in the newspaper articles, in public meetings and otherwise, were two main points. First, that the East Side Company was not a corporation but a fraud; that it was a violation of the law and it had no legal existence and was simply a nuisance in the way of the West Side Company in carrying out its legitimate work and that it was injuring the prospects of the State and the Company in getting the land grant, and that the West Side Company was really entitled to that land grant. These were the three points that were brought up everywhere and discussed. Of course the personality of the parties engaged was to some extent involved and there were a good many bitter things said on both sides. The East Side Company's contention, in a general way, was that the West Side Company had not complied, that they never were legally organized in time to receive that designation, and therefore never had any right to the land grant, and that after, of course, they were recognized by the Act of Congress of April 10, 1869, that they had as much right to contend for the land grant as the West Side Company had. Witness identified "Government's Exhibit 103" as one of the circulars that was sent out on behalf of the West Side Company, signed by witness as its president, in connection with that controversy. This was distributed to the extent of thousands of them, sent to all the leading men in Oregon, to banking houses, brokers and railroad material men in Eastern Cities and was issued and circulated with the authority of the West Side Company.

Whereupon witness identified the document that was presented to him as a circular printed by the East Side Company during that same controversy marked "Government's Exhibit 104." The last named document is dated 1868 but is not signed by any one at all but was circulated by the Salem people. The witness identified a memorandum on the back of this circular in his own writing that says it was about May 1, 1868, and refreshing his recollection by this notation says that the circular was published and circulated about May 1, 1868, generally. It was sent to a great many people all over the Willamette Valley. Whether it was circulated outside of the State witness has no means of knowing, but there were a great many copies sent to them from friends of the West Side Company up in the Willamette Valley.

Whereupon the complainant offered in evidence "Government's Exhibit 103," to which defendants objected as immaterial, irrelevant and incompetent and particularly in this that it is a self serving declaration and not competent to prove the alleged facts recited therein and does not appear to have been authorized by the Oregon Central Railroad Company of Portland, heretofore marked by the Examiner for identification "Government's Exhibit 103, and which said "Government's Exhibit 103" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 103."

Whereupon the witness further testified as to "Government's Exhibit 104," that he had no definite knowledge or authority from which he could say that the same

was published and circulated with the knowledge of the East Side Company, but witness believed it was so published and circulated and everybody believed it but there was no definite knowledge or authority that he could refer to, to say that the East Side Company had authorized it. The same general arguments appearing in this circular "Government's Exhibit 104" were made by John H. Mitchell and others representing the East Side Company in the public discussions that took place between witness and others representing the West Side Company, and this circular represents the arguments that were used against the West Side Company. The East Side Company had some men at work right straight along from the time it commenced construction during the year 1868, but he does not know how many men there were, there never was a very large force. They got out of money and had to sell the locomotives in California to continue the work. Mr. Elliott was in charge of the work on the East Side Railroad at that time.

Whereupon the complainant offered in evidence "Government's Exhibit 104" heretofore marked by the Examiner for identification "Government's Exhibit 104" and which said "Government's Exhibit 104" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 104."

To which defendants objected as heresay, incompetent, immaterial and irrelevant and as containing self-serving declarations, and not proven to have been authorized by the Oregon Central Railroad Company of

Salem (East Side Company) and that such document cannot be used to prove substantive facts therein stated.

Whereupon witness further testified that there was another pamphlet after that on behalf of the East Side Company distributed during the year 1868, and witness identified "Government's Exhibit 105" as such circular or pamphlet. It was generally circulated throughout Western Oregon, particularly the Willamette Valley and witness thinks it was taken to Washington City.

Whereupon the complainant offered in evidence "Government's Exhibit 105" heretofore marked by the Examiner for identification "Governments Exhibit 105" and which said "Government's Exhibit 105" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 105" to which defendants objected as incompetent, immaterial and irrelevant and a self-serving declaration incompetent to prove any substantive fact stated therein and as not shown to have been authorized by the Oregon Central Railroad Company of Salem (East Side Company.) These were the only two statements that witness knew of that were circulated ostensibly on behalf of the East Side Company during the year 1868. Elliott had charge of the work on the East Side road from the beginning under a contract of construction given to A. J. Cook & Company, which A. J. Cook & Company was a myth; there was no one but Elliott. It was a contract with himself. Elliott was in charge of the work throughout 1868 but when Holladay came up to Oregon and took over the affairs Elliott

remained a director of construction forces for a short time but they soon quarreled and Elliott was ousted and had nothing further to do with the Company and as to financial affairs he had nothing to do with that after Holladay came. Elliott was superseded entirely by Holladay. Witness cannot tell the date Holladay came, but just as soon as he came to Oregon his financial man was George W. Weidler. He was Holladay's right hand man and made all payments in money after that. Holladay came to Oregon after the East Side Company began construction and after it had graded, as he thinks, as far as the Clackamas River. It was in the latter part of the summer of 1868 witness thinks when Holladay came. Whereupon counsel for complainant and dedefendants agree that it was September 12, 1868.

The general recollection of the witness was the same as shown by the records of the East Side Company, that Holladay took control of the Company by assignment of the contract with A. J. Cook & Company on September 12, 1868. Prior to that time the East Side Company had not, to his knowledge, made any claim to the land grant.

Whereupon the witness further testified as follows:

"Q. In the circular Government's Exhibit 104, which you say was circulated about May 1, 1868, it is stated as follows: "The charge has been extensively circulated that we are seeking to defraud the West side of the river of a valuable franchise—of State and Government aid—in answer to which we have only to say,

that we recognize that the Act of Congress granting lands, and the Act of the last Legislature of Oregon, are both inoperative, from the fact that the terms and stipulations of those Acts have not been, and cannot be, complied with. Any aid to be granted railroad enterprises in Oregon must be re-enacted by both State and General Government, and we have no hesitation in affirming that we claim no grants, privileges, or rights for our Company, we do not desire also extended to the West side of the valley.' I will ask if that represents fairly the general contention urged on behalf of the East Side Company during the controversy, prior to the time that Mr. Holladay became connected with the transaction.

Mr. Fenton: Objected to as immaterial, incompetent, irrelevant and as not binding on either Company.

A. I think it does."

Whereupon witness further testified that the controversy took this direction after Holladay came in that witness and his associates were soon apprised of the fact that Holladay was going to make an effort in the Legislature to have the Company that he was connected with either designated to receive the land grant or measures or action taken leading in that direction. The Legislature met every two years at that time in September, so that there was a session convening in September 1866 and the next session in September 1868 and the matter was carried before the Legislative session which con-

vened in September 1868. Both Companies appeared before the legislature and carried on the fight in the Legislature. The leaders that addressed the legislature on behalf of the Companies were John H. Mitchell for the Salem Company, the East Side Company, and James K. Kelly on behalf of the West Side Company. Holladay was in Salem and kept open house. Witness only knew from hearsay the manner of Holladay's campaign, he never was at his caravansary, but Holladay had quite a number of hired men there to work with members of the legislature, and after witness sold out his interest to Holladay the latter admitted to witness what Holladay had done there to beat them.

Whereupon witness being asked what Holladay said, counsel for defendants objected to that as not binding on the East Side Company as a corporation and as incompetent, irrelevant and immaterial.

Whereupon the witness answered that "he told me that it cost him $35,000 to get that action of the legislature in behalf of the East Side Company, and he told me the sums of money that he paid to some of the members of the legislature."

Whereupon counsel for defendants moved to strike out this answer as incompetent, immaterial and irrelevant.

Whereupon the witness further testified that this statement was made to him in the fall of 1870, or sometime between July and the fall, witness cannot tell the exact time. It was in one of his interviews in Holladay's

house on Third Street and Holladay was at that time president of the Oregon & California Railroad Company.

Whereupon counsel for defendants renewed the motion to strike out this testimony upon the ground that the declaration of Holladay could not be binding upon the Oregon and California Railroad Company and that it was not authorized.

Whereupon said witness further testified that this fight that was carried on in the legislature in the fall of 1868 finally resulted in the resolution of October 20, 1868, which in terms rescinded the former designation of the West Side Company and made a new designation in favor of the East Side Company. When the fight in the legislature started, the work of construction continued by both Companies. Witness thought that "Government's Exhibit 105" was not circulated on behalf of the East Side Company until after the legislature adjourned. That is his recollection. If it was circulated, it was circulated secretly. He did not see it until after the legislature adjourned. After the legislature adjourned, the fight was carried into Congress. The East Side Company employed Mitchell and witness thinks Chadwick to go to Washington City and present the matter there before Congress and the West Side Company sent Simeon G. Reed to represent its interests but witness did not go and was not in Washington during the time the matter was before Congress. He did not go until after the fight, until after they had got the

enabling act passed Congress, meaning the Act of April 10, 1869, and after they had practically complied with the act in constructing 20 miles of road. Then, witness went on to Washington City to get the new grant from Portland to McMinnville with a branch to Astoria. He went on to Washington in December 1869, and stayed there until May, 1870, but had only hearsay knowledge as to whether "Government's Exhibit 105" was used before Congress. He heard what he knew from Mr. Reed, their agent there. Reed represented that they had given copies of this to all the members of Congress and Senators.

Whreupon counsel for defendants moved to strike out the answer of the witness as hearsay. Witness further testified that he had a conversation with Senator Corbett on this subject and he told him the same thing but does not recollect that he ever had a talk with Mr. Holladay about it.

Whereupon counsel for defendants renewed his motion to strike out all of said testimony as hearsay and incompetent.

Whereupon the witness further testified that there was a circular prepared on behalf of the West Side Company for use before Congress in reply to "Government's Exhibit 105" and which was used before Congress, also with an additional statement made by Mr. Reed and thinks—but does not know—some other person joined with Mr. Reed in that statement.

Whereupon witness identified that circular as "Government's Exhibit 106" and testified that he wrote the

circular himself after he had seen "Government's Exhibit 105." That he had "Government's Exhibit 105" before him when he prepared "Government's Exhibit 106" and it was prepared for use before Congress and was prepared in January 1869. January 19, 1869 is approximately the correct date and it was authorized by the Company after he had written it.

Whereupon complainant offered in evidence "Government's Exhibit 106" to which counsel for defendants objected as incompetent, immaterial and irrelevant and as a self-serving declaration in favor of the Oregon Central Railroad Company of Portland, West Side, and as not competent to prove any probative or ultimate fact therein stated and as a narrative of alleged past events, as not authorized by the Oregon Central Railroad Company of Portland and as not used or circulated among members of Congress prior to vesting of the rights of the Oregon Central (East Side) to the grant of July 25, 1866, by the designation made by the joint resolution of October 20, 1868.

Whereupon the complainant offered in evidence "Government's Exhibit 106" heretofore marked by the Examiner for identification "Government's Exhibit 106" which said "Government's Exhibit 106" is hereinafter set out and described and made part of this Statement of the Evidence and identified as "Government's Exhibit 106."

Whereupon the witness further testified as follows:

"Q. Well, the controversy in Congress finally re-

sulted in the passage of the act of April 10, 1869?

Mr. Fenton: Objected to as calling for a conclusion and not for a fact.

A. Yes, sir."

Whereupon the witness further testified that after the act of April 10, 1869 was passed the East Side Company pushed its construction work more vigorously than before and the West Side Company completed temporary grading from the end of the five mile post on its line to the town of Hillsboro during that summer, but the West Side Company did not lay any track whatever prior to December 25, 1869, and the East Side Company completed its first section of 20 miles on December 25, 1869. He does not recollect doing anything on behalf of the Company with reference to the land grant under the Act of July 25, 1866 after the West Side Company failed to complete its first section of railroad within the time required by the granting act. If they did anything it has escaped his memory; that is, anything with reference to the land grant. The condition of the financial resources of the West Side Company in the fall of 1869 were very limited. It received its financial backing from the sources witness has already mentioned and the Washington county people had collected some money on their stipulation to pay interest on the bonds, which was turned over to the Company. The City of Portland had collected $10,000 or $12,000 on account of the interest it had stipulated to pay and it was turned over to the Company, and the Yamhill people, he thinks,

never levied any tax to collect the interest on bonds they had endorsed. The Company, by its own officers, carried on the work of construction on the West Side Railroad down to the fall of 1869. They had no contract with any one except the contract for the construction of the bridges which had been let to Stephen Coffin who had, under his contract, constructed the bridges on the first five miles of road. Witness had forgotten, but they had a contract with S. G. Reed & Company to construct, he thinks, 150 miles of road, which the witness thinks was dated in the fall of 1868, and this was one of the reasons that Reed went on to Washington to get the land grant to support that contract. After the act of April 10, 1869 was passed this contract was abandoned, and the Company was again thrown on its own resources. The Reed contract came to be entered into in this way. While witness was engaged in directing the work and expending the money that they had on the West Side road, Edwin Russell, manager of the Bank of British Columbia, said to him that he, Russell, was going back to London on a visit and if witness would give him a power of attorney he would see if he could raise any money for him in London on his bonds. Witness did not think there was much probability of his being able to do anything, but talked the matter over with Captain Ainsworth who thought, with himself, that they could not raise any money in any money market on their bonds as long as they were in litigation in the way they were with the East Side Company, but they decided that it would do no harm anyway and so they made out the

power of attorney to Mr. Russell to sell $500,000 of the Company's bonds in London. Russell went on there and to their great surprise within 30 days after he reached London cabled back that he could sell $500,000 worth of the Company's bonds at sixty five cents on the dollar cash and asked him to answer promptly whether they would take it. Witness showed the cable to Ainsworth who said to give him 24 hours to think about it and witness replied "All right," and went out to the country and gave him his 24 hours. Next day, not receiving any *answer* from witness Russell, knowing that Ainsworth was interested with him in the road cabled Ainsworth who replied declining the offer. Witness very greatly regretted this action and told Ainsworth that he thought it was a great mistake, that that would put the Company in funds to finish their 20 miles of road and get the land grant and Ainsworth said if they sold bonds at that rate they never could sell any more. On account of the disappointment to witness in that London transaction Ainsworth induced Reed to go into the contract to construct 150 miles of the road. When Mr. Reed came back from Washington and failed to get the legislation in shape that he wanted, or prevent the legislation of the East Side Company, the West Side Company abandoned the contract with S. G. Reed & Company and it was apparent to witness then that they would not be able to build the road in time. That is the first section of its railroad in compliance with the Acts of Congress. Subsequently they took steps to get another land grant. With the means he had he kept up work on the road

until the temporary grading was finished to Hillsboro and then Captain Ainsworth gave witness $1,000 to go back to Washington and see if he could get a subsequent land grant in aid of the West Side Company. Before he went back he had a talk with Senator Williams upon the subject.

Whereupon witness being asked to give the substance of that conversation, it was stipulated between counsel for the parties that this testimony should be subject to the objection of the counsel for defendants as incompetent, irrelevant, immaterial and as hearsay.

Whereupon the witness further testified as follows:

"A. Well, in Congress the senatorial representation from Oregon was divided. Mr. Corbett was an active friend of the West Side Company, and Mr. Williams assumed friendship to the East Side Company, and was instrumental in getting through the act of April 10, 1869; and for that action of Senator Williams, he was very generally condemned on the West Side of the river in the Willamette Valley, by the West Side people, and by a great many men in Portland. And when he came back to Oregon, he felt that more than ever and he came and had an interview with me at my office in Portland, and to defend himself for his course in Congress, and then wound up by saying, 'Now, I will show you my good faith and friendship for your company by doing everything I can to get you another grant,' and advising me to go to Washington, and be there and render him any assistance I could."

Whereupon the witness further testified that this conversation took place about the 20th of December, 1869, Congress meeting on the first Monday in December. Witness went to Washington pursuant to the suggestion of Senator Williams. Captain Ainsworth gave him $1,000 to defray his expenses there and witness went to Washington and arrived there about 15 days after Congress convened in December, 1869, and after that time the West Side Company never made any claim to the grant under the Act of July 25, 1866. Witness stayed in Washington until May 1870, but as soon as the second land grant bill was passed on May 4, 1870 he left Washington and came back to Oregon, leaving 4 or 5 days after May 4, 1870. During that winter, for the purpose of procuring the passage of that bill, witness met with the Committee on public lands repeatedly and discussed the proposition. The bill was drawn up by Judge Olney. When witness got to Washington he found that Cyrus Olney, of Astoria, had gone there for the purpose of getting a land grant bill in aid of a railroad to Astoria. Witness had not heard of that before leaving Oregon, but when he arrived at Washington Judge Williams told him of that and told him to have an interview with Judge Olney and combine their interests; that it would not do to have two bills, one for his Company and one for Olney's Company, and that they must get together and combine their interests and work together. Witness did that. He had an interview with Judge Olney and they immediately agreed upon a bill for a land grant from Portland to Eugene City on

the West Side of the Willamette River, with a branch from the main line to Astoria, from the vicinity of Forest Grove, and that bill was introduced by Judge Williams. After it was introduced, Mr. Holladay came on there and wanted to get a land grant for himself from Portland to Tacoma and the Northern Pacific people immediately commenced to "oppose our bill" with the belief that "we could knock out Holladay" because they wanted the land grant between Portland and Tacoma. Witness had numerous interviews with the representatives of the Northern Pacific and finally agreed with them that witness and his associates would work for the Northern Pacific land grant and the Northern Pacific representatives would work for theirs and put Holladay out of the ring. Witness then had meetings with the Senate and House committees on public lands and this bill for their Company was drawn up by Judge Olney and before the House Committee. Witness had frequent interviews with George W. Julien, who was chairman of the Public Lands Committee as to the features of that bill. Witness worked also with members of Congress. Sam Cox was an old friend of his from Ohio and John A. Bingham likewise. Bingham made a speech in the house for the bill and Sam Cox, notwithstanding his old friendship, and while witness had helped elect him to Congress, opposed the bill. He did not do it very bitterly but said he had to maintain his record that he was opposed to land grants. Witness had to talk to a great many men. The sentiment in favor of land grants to railroads was about dead and that was

the last bill that Congress ever passed in favor of land grants to railroads.

"Mr. Fenton: That was May 31, 1870?

Mr. Townsend: May 31, 1870. There was one March 1, 1871, the Texas Pacific.

Mr. Fenton: The one he refers to between Tacoma and Portland, in favor of the Northern Pacific, was May 31, 1870. That is the Northern Pacific Resolution.

A. Well, they were all agreed to at that same time, I think, before the committees. I thought our bill was the last one, and that they got theirs through first."

Mr. Fenton: No, yours was first."

Whereupon the witness further testified that the bill for the second grant which may be called the West Side grant, as originally introduced in Congress called for a grant along the west side of the Willamette River to Eugene and there was another proposition introduced in Congress to extend that grant. After witness had been in Washington two or three weeks or more, B. J. Pengra, of Eugene City, came on and made known to Williams that he wanted the land grant for a railroad over the line of the Oregon Central Military Wagon Road land grant, so as to provide for the construction of a railroad from Winnemucca in Nevada to Eugene City, Oregon. This was somewhat embarrassing, and they all had a meeting that were interested in these things at the house of Tom Fitch, who was a member of Congress from Nevada. Pengra had succeeded in interesting

Fitch in the proposition very much, and it was there agreed—at the house of Fitch—Fitch being Pengra's particular friend in the matter, that Pengra should have a land grant from Winnemucca to Eugene City, and that the West Side road, the Oregon Central Company, should have the land grant from Eugene City to Portland, with the branch from Forest Grove to Astoria, which would satisfy Judge Olney; and the land grant to Eugene would satisfy the old West Side Oregon Central Company; and the land grant from Eugene to Winnemucca would satisfy Pengra and his friends and the stockholders in the Oregon Central Wagon Road. When Holladay came into the field he objected to the land grant going any further than McMinnville, in fact any further than Forest Grove for the reason that it would prevent him, Holladay, from selling his bonds on the East Side road and defeat his enterprise, notwithstanding he would get the old land grant because it would be paralleling his line, and would possibly interfere with his land grant, so that Holladay induced Judge Williams to cut off the West Side land grant at McMinnville, under the promise that after he, Holladay, had sold his bonds, at the subsequent session of Congress, witness and his associates should have the gap between McMinnville and Eugene filled up with an additional grant. The bill providing for the grant from Eugene to Winnemucca was then pending in Congress. Winnemucca is on the Central Pacific, so that the plan would have made a continuous line from Portland to the East. There was a change in the legislation after witness left

Washington which had effect upon the future history of the West Side Railroad. Witness left Washington, he thinks, about the 7th or 8th of May and stopped at Wheeling, and at Belmont County, Ohio and then came to Oregon. When he got to Umatilla he received a telegram from Pengra to come back to Washington immediately, that Williams had backed out of his agreement and had introduced an amended bill for Pengra's road, compelling it to connect with the Oregon & California Railroad in the Rogue River Valley and that was the change. That amended bill was brought in in favor of Pengra's road. There was no change in the branch, or Astoria's interest.

Whereupon witness further testified as follows:

"Q. Well, now what promise of financial assistance, if any, had you had, that was withdrawn from you because of that change in the plan?

A. Well, before we had the meeting at Tom Fitch's house, Pengra brought Mr. C. P. Huntington, who was at the head of the Central Pacific Company over to Washington City to satisfy Judge Williams that he could get the money to build that road; and Huntington authorized the statement, and made the statement there, that if Congress would pass the land grant as Mr. Pengra desired it, and as it was agreed upon at Tom Fitch's house, he would finance the proposition and build the road to Oregon immediately from Winnemucca."

Whereupon witness further testified that the Pengra

bill was never passed and no effort was subsequently made to extend the grant of the West Side road from McMinnville to Eugene.

Whereupon witness further testified as follows:

"Q. Did you have any other prospective financial support than the assurance of Mr. Huntington at the time you returned to Oregon? That is, I mean, of any substantial character?

A. Well, I had a contract with some people in Philadelphia to build the railroad to McMinnville.

Q. And when did you make that contract?

A. While I was in Washington City.

Q. The records of the West Side Company disclose that it was on January 19, 1870. Is that approximately correct?

A. I expect it is. I don't recollect the date."

Q. Well, now, at that time did the West Side Company, as represented by you as its president, have any intention or purpose of claiming any further benefits, making any further claim of benefits, under the act of July 25, 1866?

Mr. Fenton: Objected to as immaterial, and as incompetent, and as not a waiver of any rights which the West Side Company may have obtained by what it did, under what record it had made.

A. No, we never asserted any further rights in the old grant; never expected to get anything from it of interest to us.

Q. And when this contract was made with the Philadelphia people in January, 1870, did that have reference to the former grant, or to the grant that you expected to get?

A. It had reference to the grant we had and what we had promised to get. The Philadelphia people had sent a man over to Washington to see whether we were likely to get what we claimed.

Q. Was that contract an absolute contract, or was it contingent upon your securing the new grant?

A. No, it was an absolute contract. They sent out an agent here to look the ground over afterwards.

Q. Well, now, what became of that contract?

A. Well, it was abandoned when Holladay bought the majority of the stock in the West Side Company."

Whereupon witness further testified that Holladay bought a majority of the stock in the West Side Company in June or July, 1870, shortly after witness returned home from Washington and he was induced to dispose of his interest in the West Side Company because they were in debt very much, and Holladay had bought up claims, and there were threats to bring bankruptcy proceedings against the Company and witness knew that that would be the end of the Company if they

did, as they were not in position to pay at that time. Witness had negotiations with Holladay and when they got to that state of affairs he had quite a negotiation with Holladay, through other parties before witness met him and these negotiations finally resulted in a specific proposition that Holladay would give witness $50,000 for his interest in the Company, as he had control of the stock. The proposition was verbal and conveyed to witness by Ben Simpson. Afterwards witness talked the matter over with Holladay for several evenings and Holladay confirmed the proposition Simpson made to him. Simpson was present. They had quite a discussion over the proposition. Witness was in debt on account of railroad business something over $40,000 and wanted these debts cleared off and the question was whether to get Holladay to go into a hard and fast proposition. He would pay the debts and give witness the balance in money, as witness had bought a homestead in King's Addition and wanted to build a house for a home. The proposition was in three parts; that Holladay would pay all the debts of witness and pay him the balance in cash and would keep the witness in the employ of the Company for five years at $250 per month. The debts referred to meant the debts of the West Side Railroad Company, for which witness was responsible. The negotiations finally resulted in an agreement. Holladay agreed to the terms of witness. Holladay first offered to keep witness in the employ of the Company as long as he wanted to stay. There was no trouble about that. And would settle the debts of the Company, but he first

wanted witness to take 100 feet square on the southeast corner of Alder and Fourth Streets for the $8,000 cash, but witness declined that. Then Holladay offered him land in the land grant, a township of land, and witness told him he could not give him any; that he did not have any right under the Act to dispose of the land that way. Witness told him that under the provisions of the Act it would have to be disposed of to actual settlers; that he did not propose to go out there and be an actual settler for 160 acres of land. Holladay finally agreed to pay the debts and give him the $8,000 and keep him in his employ, but after it had run a year or so and Holladay had not paid the debts and witness got the proxies of the London stockholders in the company into his possession and elected a Board of Directors, then they had a fight for the possession of the road and the fight was kept up. Judge Shattuck issued injunctions in favor of witness and his associates and Holladay and his associates got injunctions in favor of their side and it was hard to tell who had possession of the road for awhile. They had two boards of directors and two superintendents and Holladay and his associates threw the men of witness and his associates off the trains and their men threw Holladay's men off the trains. Finally Latham of San Francisco, who had raised all the money for Holladay, interfered and arranged with Mitchell, who was coming back from Washington to come up and have the debts paid off. Holladay finally authorized the money to be paid to Colonel Cornelius to pay off the debts and Cornelius went out and paid off all the debts. Another

proposition that was in dispute was that Holladay had refused to establish stations at Hillsboro and Forest Grove and wanted to build a town at Cornelius and pull down those two towns, and they had to have that settled, so it was agreed that those two towns were stations and Cornelius paid off all the debts and then the Board of Directors of witness and his associates surrendered and that was the end of the connection of witness with the West Side Company, or the East Side Company either. He never had any connection with railroads afterwards, except to help the Southern Pacific in some of its right of way cases and damage cases and that way. Witness was general freight and passenger agent for the West Side road for several years—three years or more—and had charge of Holladay's real estate companies and edited a daily paper—The Bulletin. Holladay was at the head of the affairs of these two railroads after witness sold out to Holladay. Halsey was Holladay's vice president and George Weidler was a general utility man and they ran the business until the German bond holders sent Mr. Koehler out here and then Holladay did not have so much to say.

Whereupon witness further testified as follows:

"Q. Now, Mr. Gaston, I want to call your attention briefly to a few of the issues raised by the answer of the defendants in this case, and, supplementing your former testimony, I want you to tell us what you can upon those disputed questions, avoiding repetition, so far as you can, of your former testimony. It is charged in the bill

of complaint that a controversy arose between the East Side Company and the West Side Company as to which of the two companies was entitled to the land grant after the resolution of the Legislature of Oregon of October 20, 1868, was passed. The answer admits that a controversy arose, but alleges that it arose at about the time of the incorporation of the East Side Company on April 22, 1867. What is the fact?

A. Why, the controversy arose about the name as soon as the East Side Company was incorporated, and it never stopped until it was apparent that the West Side Company could not earn the land grant. It was a continuing controversy.

Q. As to the name?

A. Yes, sir.

Q. But when did the controversy as to which company was entitled to the land grant arise?

A: Well, that arose as soon as the East Side Company appeared in Congress and wanted to put in its—well, as soon as the legislature passed the resolution declaring that we had not received a lawful designation, it was apparent then that they were going to take steps to get the land grant, and the controversy about that arose then.

Q. Prior to that time had they made any claim to the land grant, so far as you know?

A. No; they had disclaimed any claim to the land grant.

Q. Now, the bill of complaint alleges that after the East Side Company procured the passage of the resolution of October 20, 1868, which rescinded the former designation of the West Side Company, and assumed to make a new designation in favor of the East Side Company, the East Side Company applied to Congress for an extension of the time within which it might file an assent. The answer denies that the East Side Company applied to Congress. State what is the fact with reference to that, if you know.

Mr. Fenton: Object to that as incompetent, that the witness could not know, and that his information would only be hearsay, as he was not in Congres, not there, not a member, and did not go to Congress until December, 1869, after the loss of the land grant of July 25, 1866, by the West Side Company.

A. Well, I could only speak from hearsay and public report, that they were taking steps to claim the land grant. That is the way I understood it from my information.

Q. Was the subject discussed in the newspapers at that time here in Oregon?

Same objection.

A. Oh, yes.

Q. Were the proceedings in Congress upon the subject discussed in the newspapers?

Same objection.

A. Oh, yes, they were all published and discussed by everybody interested in those things.

Q. State whether or not the general newspaper discussion disclosed whether representatives of the East Side Company were in Washington soliciting the passage of a new act.

Objected to as hearsay and incompetent.

A. Yes, from time to time there were publications, by telegrams from Mitchell, as to the proceedings as things went along, and letters published as things went along, and when the act was finally passed in their favor, why, Mitchell and Chadwick sent a telegram to the Oregonian that they had gained everything they claimed—something like that.

Mr. Fenton: I object to that as not the best evidence.

Q. Now, did any officer or representative of the East Side Company ever, to your knowledge, dispute or deny any of those reports, or telegrams, or letters?

Objected to as immaterial.

A. No; not that I know anything about, no.

Q. It is also alleged in the bill of complaint, and

denied by the answer, that the West Side Company appeared in Congress and opposed the application of the East Side Company for an extension of time. You have already identified the circular that you prepared for use in Congress upon that occasion. Have you any further information upon the subject?

Mr. Fenton: Same objection, and as hearsay.

A. Nothing more than the fact that we had sent Mr. Reed there for that express purpose, of opposing any claims of theirs, and Reed's letters to myself and Ainsworth and others.

Q. Did Mr. Reed ever report to you, or the West Side Company, the circulars or statements which he presented to Congress?

A. He sent me copies. He never made any official report. He sent me copies.

Q. Are these documents the ones that you refer to?

A. Yes. These are the two. I don't know of any others, but these are the two documents that I refer to: one 'Remonstrance' signed by Reed and the other 'Objections' signed by Reed."

Whereupon counsel for complainant requested that these two documents be marked "Government's Exhibits 107 and 108" respectively for identification and the same were so marked and were identified by the witness as the circulars received by him from Mr. Reed, sent

from Washington.

Whereupon the complainant offered in evidence "Government's Exhibits 107 and 108," to each of which counsel for defendants objected as incompetent, immaterial and irrelevant, and as self-serving declarations purporting to be made by S. G. Reed, and as incompetent to prove any substantive fact recited or claimed to be stated therein, and as not having been shown to have been authorized by the West Side Company. Which said "Government's Exhibits 107 and 108" are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibits 107 and 108."

Witness was thereupon shown a newspaper clipping and stated that it was a publication of the telegram signed by J. H. Mitchell and S. F. Chadwick, referred to by him in his previous testimony and included in an editorial notice of the matter in the Oregonian.

Whereupon counsel for complainant offered this newspaper publication of the telegram in evidence and asked to read the same into the record instead of identifying the same as an exhibit.

Whereupon counsel for defendants objected to the same as hearsay, incompetent, immaterial, irrelevant and as not binding on any one, waiving objection to the method of identifying the same; which telegram reads as follows:

"Washington, D. C. April 10, 1869.

Editor Oregonian: The East Side Railroad bill has passed both Houses and received the signature of the President. The victory is complete.

J. H. Mitchell. S. F. Chadwick."

Whereupon the witness further testified as follows:

Q. "Mr. Gaston, the bill of complaint alleges that the West Side Company failed to complete the construction of any of its railroad within the time required by the Act of Congress July 25, 1866, and the Act of Congress of June 25, 1868. The answer denies this fact. Which is correct?

A. Well, it did not construct any railroad within the time required.

Q. The bill of complaint also alleges that the West Side Company abandoned all claim to the East Side grant under the act of July 25, 1866, on or about the month of January, 1870 and in lien thereof applied for and received and accepted a new grant under the act of May 4, 1870. This is denied by the answer. Please state what is the fact.

Mr. Fenton: Objected to as calling for a conclusion, both of law and fact, and as incompetent.

A. The fact was that the company did abandon all claim to the Act of Congress of July, 1866, and accepted the new act of May, 1870, in lieu thereof.

Q. Who represented the West Side Company at that time? Who had authority to say whether the West Side Company should abandon all claim under the Act of July 25, 1866?

Mr. Fenton: Objected to as immaterial, and for the further reason that the record of the witness thus far taken, and his testimony, shows that the West Side Company was unable to complete the first twenty miles required by the Act of July 25, 1866, after the passage of the act of April 10, 1869, and that when that failure occurred Mr. Gaston, for his company and his associates, no longer made any claim to any interest in the grant of July 25, 1866, but applied for another and an independent grant, without regard to the grant of July 25, 1866, after such failure and loss of the East Side grant by failure to construct within time.

A. Why, the board of directors represented the company, and it was decided to apply for a new grant, without any reference to the old grant. There was no condition of abandonment one way or another. It was simply concluded that the company never could earn the grant nor get it, and the thing to do was to get a new grant, if possible.

Q. Mr. Gaston, it is alleged in the bill of complaint that the East Side Company became involved in litigation, questioning the validity of its corporate organization, and because thereof the East Side Company was in effect reorganized under the name of the

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Q. Mr. Gaston, it is alleged in the bill of complaint that the East Side Company became involved in litigation, questioning the validity of its corporate organization, and because thereof the East Side Company was in effect reorganized under the name of the

Oregon & California Railroad Company. The answer denies that the East Side Company became involved in any litigation questioning the validity of its incorporation. You have referred in your testimony to two proceedings of that character. Can you call to mind any other proceedings?

Mr. Fenton: Objected to as immaterial and not the best evidence.

A. I think I have stated that proceedings were instituted against the East Side Company to prevent them from using our corporate name, and to dissolve their alleged corporation, under the quo warranto acts of Oregon, in the State courts. Now, if I did not mention the proceeding by the bondholder Newby in the United States Court, why, that—

Q. You did.

A. Well, that is the only thing in addition to what was done in the State courts. That case was prosecuted against the East Side Company until Judge Deady decided the matter.

Q. Mr. Gaston, to what extent, if any, did the line of railroad adopted by the West Side Company under the act of May 4, 1870, from Portland to McMinnville by way of Forest Grove, differ from the route of the road that had been adopted in the first place by the company under the act of July 25, 1866, that is, between those two points?

A. It didn't differ at all. It was precisely the same."

Whereupon the witness further testified that in the settlement with Holladay in the summer of 1870, his stock was assigned to Dr. R. H. Towler, the private secretary of Ben Holladay, as he recollects it, and after this settlement with Holladay the affairs of the two roads were still conducted separately and two corporations were maintained. Witness was general freight and passenger agent of the West Side road when they kept the business separately. Had separate freight offics and a man to look after that whose name he has forgotten, but thinks the general bookkeeping was done by Mr. Cunningham in the O. & C. office. This man whose name he had forgotten was Major Hampton, and then there was another man besides him. Major Hampton was the bookkeeper of the West Side road until it was taken over in 1876. Witness knows he kept his office up at the other place, and that young man, W. S. Ward, had his office in the old freight shed and kept that business separate. That was about all the separation. The freight house of the East Side Company was on the east side of the river and the West Side Company on the West Side of the river; that there was no bridge in those days so that the two freight offices had to be maintained separately.

Mr. Fenton: Mr. Townsend, the general offices also were kept separately. I don't know whether Mr. Gaston meant to be understood as saying that there was

any combination, but, as I understand, the Oregon Central (West Side) offices were kept entirely separate from the Oregon Central (East Side).

A. Yes, as Mr. Fenton says, there was Major Hampton there for years, and there was another man, too. I have forgotten his name. I am just trying to get it clearly in my own head. It was all kept separate, and Mr. Peebles came out here from London to look into the matter for the London stockholders, and I know I went with him out over the road, and everything was kept separately from the other company.

Q. The earnings and everything?

A. I think so. I think there is no doubt about that. Mr. Peebles looked into everything very carefully."

Whereupon witness further testified that Holladay, after settlement with witness the real dominating head of the West Side Company until the German bondholders came and displaced him, and during that same period was the real dominating head of the East Side Company. He does not think there were any relations between Judge Williams and Holladay, except Williams' fear of Holladay's opposition and the influence of Senator Mitchell, whom Holladay controlled. Witness never thought that Williams had ever yielded to any pecuniary influence or anything like that, but the relations of Holladay and Williams were friendly. Aside from what witness has testified, he does not think that Senator Williams gave Holladay any other sup-

port in that fight. Judge Williams was perfectly aware that the majority of the people in Oregon were opposed to Holladay and his ways of doing business, and Judge Williams himself was not in favor of Holladay's corrupt schemes and his highway methods of doing business; but what he did was to placate his opposition rather than to help him along witness thinks. Witness was on terms of friendship with Holladay after his settlement with him and does not think that in his subsequent talks with Holladay he learned anything that would indicate whether the East Side Company was presenting these circulars and making that fight before Congress—he does not think that was ever mentioned between them. Holladay was in Washington during that fight in Congress. He went there every year. He had two purposes there. The first was to look after his railroad interests and the second to get the old "mule claim" paid, as they used to call it. He had a claim before Congress for a large sum of money for the mules that the Indians and the rebels ran off during the war. Alleged mules and alleged rebels.

Whereupon on cross examination witness further testified that he studied law at St. Clairsville, Ohio, and was admitted to the bar of the Supreme Court of Ohio at Newark, by Chief Justice Thomas W. Bartley, who presided over the District Court, which entitled him to practice in all the courts of Ohio, and on this certificate of admission he was admitted to the Bar of the Supreme Court of Oregon in September 1863, about a year after he came to the State. He had practiced at Jacksonville

since about July 1862, being admitted by Judge Prim, a Justice of the Supreme Court at that time, and a Circuit Judge, now dead, and continued his practice at Salem with John Cartwright, afterwards United States Attorney. He was in partnership with him about a year and practiced law to a certain extent with Judge Kelly, afterwards United States Senator from Oregon, and Chief Justice of the Supreme Court of Oregon. He practiced in his office after Judge Kelly retired from the bench in 1882-3 and 4. He was, to a certain extent, in touch with his profession from the time he was admitted to the Bar in Ohio until he retired from active business of any kind. At the time he became connected with the Oregon Central Railroad Company of Portland, called the West Side Company, he would not pretend to say that he was conversant with the land laws of the State, or in a general way with the land grants that had been passed by Congress, or the decisions of the Supreme Court of the United States up to May 4, 1870, because he would not have a knowledge of anything that he had not specially looked up. It was the understanding of witness and his associates that the construction of the first 20 miles of road was a condition necessary to earn the grant. That is to say, if the Company did not construct the first 20 miles, or any part of it, within the time, that by reason of the failure to construct, the grant would be lost and witness thinks that was a provision in the Statute and he thinks it was the general judgment of the legal profession at that time.

Whereupon witness further testified as follows:

"Q. Now, do you recall the case of Schulenberg v. Harriman, that was decided in the October term of the Supreme Court, 1874, reported in 21 Wallace page 44, that announced a different doctrine from that generally understood before that time?

A. No, I don't.

Q. You were not familiar with that case?

A. No.

Q. And you have not examined it since?

A. No, Never did."

Whereupon the witness further testified that the California & Columbia River Railroad Company was never organized. The incorporation papers were filed. Witness prepared them. It was an Oregon corporation. He cannot say whether the articles were filed in the office of the Secretary of State at Salem or whether they were simply executed, but thinks that they were filed.

Whereupon the witness further testified as follows:

"Q. Do you recall whether what is called the Barry Survey, which was printed in the form of a pamphlet, was survey of the California & Columbia River Railroad Company, or was it a survey under the name of the Oregon Central Railroad Company of Portland?

A. I don't think there was any particular—I ain't certain that there was any particular name to it.

Q. Well, you said in your testimony that there was a Barry Survey?

A. Well, that was a general name that got to be attached to it because he was a manager of the party going along with it. It never got to be—it was never any legal or corporate signification.

Q. This Colonel Barry's report, then, was a report that was made and printed, as you recall, and it is referred to in the legislative proceedings, I think the Journal of the Oregon State Senate, 1864, in the Appendix, pages 36 and 37, and also the House Journal of 1864, pages 185 to 189. Do you know of its having been considered by the Legislature of 1864?

A. Well, I think it was read there, or parts of it was read, and referred to, and I think that there was an effort made to have it printed by the state.

Q. Well, now, that was a report based upon what survey and whose survey, as you recall it?

A. That was Barry's survey.

Q. Well, what I am getting at is, is that the same surveying party that stopped at Jacksonville, when you took it up when they were stranded there, and they subsequently went on north to the Columbia River?

A. Yes.

Q. That is the same survey that you referred to in your testimony.

A. Yes.

Q. And that was made in what year?

A. 1864."

Whereupon witness further testified that he does not think that the California & Columbia River Railroad Company ever had any capital stock subscribed, or elected a Board of Directors, but that was a fact he does not think that Barry knew when he made his report. Witness prepared the articles of incorporation of the Oregon Central Railroad Company of Portland, West Side, and they were written out by him in Salem.

Whereupon the witness further testified as follows:

"Q. I call your attention to page 141 and page 142 of Volume 7, No. 2, of the Quarterly of the Oregon Historical Society, which purports to contain a copy of these articles of incorporation, and of certificates of acknowledgment, and file-mark endorsement by Samuel E. May, and ask you if the signatures to these articles—J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer, and H. W. Corbett were not all taken, and their acknowledgments taken by you as notary public, at Salem, on or about the 29th day of September, 1866, and while the Legislature of the State of Oregon was then in session?

A. Well, now, it don't say—

Q. Will you look at your certificate of acknowledgment so that you may refresh your memory?

A. Well, I suppose that that states the fact. As they were taken, they would sign and acknowledge from time to time; but that certificate was not made up until some time afterwards.

Q. The certificate bears date what date?

A. The 16th of November.

Q. 1866?

A. Yes.

Q. Then the names that I have mentioned were signed to that document sometime on or before the 29th day of September, 1866; that is correct, isn't it?

A. Yes, they were signed before, just as I could see them.

Q. And this certificate shows that M. M. Melvin signed these articles at Salem on or about October 23, 1866, or rather acknowledged it before you at that time —is that correct?

A. Yes. They acknowledged the signature.

Q. And the certificate further shows that George L. Woods, at Salem, on or about November 10, 1866, acknowledged these articles. Now, when did Woods sign the articles? At what date?

A. Well, I suppose so, but I wouldn't say positively. I suppose that states the fact. There is some of them signed after the articles were first filed.

Q. I notice that the certificate recites that R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCracken, and C. H. Lewis acknowledged the execution of these articles on the 16th day of November, 1866, and it is certified by you under date of November 16, 1866, that they then and there, at these several times set forth in this certificate, did sign and seal said articles before you, and in your presence, and acknowledged the same. Is that according to your recollection?

A. Well, I think that that certificate there states it about as it was.

Q. States the facts?

A. Yes, I should say so.

Q. Now, I notice that on the 20th day of November, 1866, Seth R. Hammer certifies that B. F. Brown, Thomas H. Cox, and J. Gaston, personally known to him to be the identical persons whose names are subscribed to that document, acknowledged to him that they signed the same for the purposes therein set forth. When did Brown and Cox and Gaston sign with reference to that date?

A. I think that day.

Q. Now, the J. Gaston mentioned in that certificate is the same J. Gaston whose name appears last on the articles of incorporation, and that is your name?

A. Yes.

Q. Now, at the time that you went into the Secretary of State's office and delivered one copy of these articles of incorporation to him, being Samuel E. May, and as you say asked him to file the document, whose name, as you now recall it, were on the articles?

A. I think all of them above that of Mr. Corbett.

Q. It would be including Mr. Corbett?

Mr. Townsend: Including Mr. Corbett.

A. Well, maybe including that.

Q. All of those that you certify acknowledged and signed the same on or about September 29, 1866? That is the way your certificate reads?

A. Yes.

Q. At that time, though, when you handed these articles to the Secretary of State, you had not written the certificate of acknowledgement?

A. No, sir.

Q. And you did not then have the signatures of M. M. Melvin, George L. Woods, R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCracken, C. H. Lewis, B. F. Brown, T. H. Cox, or J. Gaston?

A. No.

Q. And you had not taken their acknowledgments?

A. No.

Q. And the acknowledgment of yourself, Thomas H. Cox and B. F. Brown had not been taken?

A. No.

Q. Now, when you delivered this document in that condition to Mr. Samuel E. May, Secretary of State, what did you say to him, and what did he say to you, as you now recollect?

A. Oh, I couldn't recollect that. I suppose I said that 'Here is the articles of incorporation of the Oregon Central Railroad Company. I want you to file them.'

Q. And what did he say, or do you recollect what he said?

A. And that I wanted to use them afterwards, in showing them to the members of the Legislature. He said, 'All right. I will put a pencil filing on it, and you can bring them back, and then I will put a pen and ink filing on it.' He put that on as a memorandum of the date that I presented it to him.

Q. That is, he put a pencil memorandum, as you recollect, on the back of this article or document?

A. Yes.

Q. Of the date when you delivered it to him?

A. Yes.

Q. And then he handed it back to you?

A. Yes.

Q. Now, was the object of it being handed back to you to enable you to go and get further signatures to the articles of incorporation, and complete the acknowledgment?

A. Yes.

Q. You had intended to get other signatures to it after, at the time he handed it back?

A. Yes; well, my main object was to show it to the members of the Legislature, and get these signatures that George L. Woods said he wanted put on.

Q. That would be Thompson and Ainsworth and Reed, of Portland?

A. Yes.

Q. Now, Thompson and Ainsworth and Reed were all known to be capitalists?

A. Yes.

Q. And were the leading capitalists interested in the West Side of the river, where Portland was then and now is situated?

A. Yes.

Q. C. H. Lewis and W. S. Ladd were the two other leading capitalists interested in Portland at that time?

A. Yes.

Q. Now, pursuant to that suggestion of Governor

Woods, you desired to have these articles so that you could get these other signatures?

A. Yes.

Q. Do you recall when George L. Woods was inaugurated as Governor?

A. No, I don't recollect the date.

Q. He was elected Governor at the June election, 1866, wasn't he?

A. Yes.

Q. Then he was Governor as soon as the Legislature met and canvassed the vote in September, 1866?

A. Yes.

Q. Then he was actually Governor at the time he signed these articles?

A. Yes, sir.

Q. Do you recall when H. W. Corbett was elected to the Senate, whether it was at this session of 1866?

A. Well, let me see—no, it wasn't at that session, was it?

Q. Yes.

A. Well, that was about the last day of the session.

Q. Yes, he was elected in September, 1866?

A. Yes, I recollect now, because he was up there fussing around about his candidacy for the Senate, and among other things, we had a reception up at my house, and he was there, and interviewing members of the Legislature.

Q. Now, I call your attention to the names of all these parties who signed the articles of incorporation of the Oregon Central Railroad Company of September, 1866, referred to in your testimony, and which were acknowledged by you,—the acknowledgments taken by you as indicated and concluded by Seth R. Hammer, and will ask you if there is any one living of that list of eighteen excepting yourself and John McCracken?

A. That is the only ones that I know of. I don't think there is any others.

Q. I call your attention to the articles of incorporation of November 17, 1866, referred to in your testimony, and purporting to be signed by J. S. Smith, I. R. Moores and E. N. Cooke, and will ask you if they are not all dead?

A. They are all dead.

Q. I call your attention to the articles of the Oregon Central Railroad Company of Salem, filed April 22, 1867, signed John H. Moores, Geo. L. Woods, S. Elsworth by Geo. L. Woods, Atty., I. R. Moores, J. S. Smith per I. R. Moores, Atty., E. N. Cooke per I. R. Moores, Atty, Sam'l A. Clarke, and will ask you if they are not all dead?

A. They are all dead.

Q. C. S. Woodworth, Notary Public, appears to have taken the acknowledgment to the articles of incorporation of April 22, 1867. He is dead, too, isn't he?

A. Yes.

Q. Is Seth R. Hammer living?

A. No, Seth is dead.

Q. Is Samuel E. May living?

A. No. May is dead now.

Q. Is J. C. Cartwright living or dead?

A. He is dead.

Q. M. N. Chapman, formerly Deputy Clerk of Marion County—"Mem" Chapman, as you knew him?

A. I don't know whether he is living or dead. He was alive three or four years ago, but I don't know whether he is living or not.

Q. You don't know. He is dead, is he not? I call your attention to an article signed 'Joseph Gaston' which appears in the Quarterly of the Oregon Historical Society, December, 1902, under the subject 'The Oregon Central Railroad,' and found at pages 315 to 326 of this Quarterly, and will ask you if you prepared and wrote and signed that article?

A. I did.

Q. I call your attention to this language, on page 325: 'After losing the land grant the Oregon Central Company sent Mr. Gaston to Washington City in December, 1869, where he was successful in getting from Congress a second grant of land to aid in constructing a railroad from Portland to McMinnville, with a branch from Forest Grove to Astoria; and under which grant the road was constructed to the Yamhill River at St. Joe.' You remember that paragraph, do you?

A. Well, if it is there, I wrote it.

Q. Now, you state there that, after losing the land grant, the Oregon Central Company sent Mr. Gaston to Washington City in December, 1869. Now, it is true, isn't it, Mr. Gaston, that before you started for Washington in December, 1869, the Oregon Central Railroad Company, as you have stated here, thought it had lost the land grant of July 25, 1866?

A. Well, the conclusion was that we were utterly unable to comply with the Act of Congress, and from that we assumed that we had lost the grant.

Q. In other words, because your company (West Side Company) was unable to build its first twenty miles before December 24, 1869, within the time required by the act of June 25, 1868, you and your associates thought the grant was lost?

A. Yes.

Q. Now, isn't this true, Mr. Gaston, that the rea-

son why Mr. Reed, representing the Oregon Central (West Side) went on to Washington to oppose any further legislation, and particularly the act of April 10, 1869, was because your company desired to contest in the courts the rights which each of you claimed to have under the respective designations made by the Oregon Legislature in 1866 and 1868, and that you did not want Congress to pass any act that would allow the East Side Company a chance to compete for the land grant, and give them a chance to build the first twenty miles, or to comply with the previous legislation? Isn't that the reason why your company sent Reed on to oppose any further legislation?

A. Well, now, as I recollect, the conversation between myself and Reed and Ainsworth in their office, when they agreed to that contract, was that if Congress let the grant stand as it was then, and made no alterations or amendments, that they, Reed and Ainsworth and Thompson, would put up the money immediately and build the twenty miles without any reference to any litigation.

Q. In other words, if there was no legislation, the West Side Company was ready, and had promise of financial support, and felt that it could earn the grant of July 25, 1866?

A. Oh, yes, there was no question about that, because those men had the money. They were here in Portla nd They didn't have to go anywheres else to get it.

Q. And that was your position—I mean, the position of the West Side Company, and your associates, notwithstanding the Legislature had attempted to designate the Oregon Central of Salem in October, 1868, as the company entitled to the grant?

A. Yes. They didn't care—Reed and Ainsworth said they didn't care a snap for what the Legislature had done; if Congress didn't interfere, why, they would build the road.

Q. And they didn't then ask for any legislation?

A. No.

Q. In 1869?

A. No, they simply—

Q. Opposed it?

A. Opposed it."

Whereupon the witness further testified:

In the controversy at Washington, Mr. Corbett, who lived on the West side of the river, and whose interests were in Portland proper, at that time there being no East Portland, or city on the East side of the river, and he having been elected Senator in 1866, when the West side company was designated as the beneficiary of the grant, or entitled to have the grant of July 25, 1866, supported that company in all of these efforts to prevent legislation, or to help it to earn the grant. While

Williams, elected in September 1864, and who had been two years in the Senate when Corbett arrived, was occupying a rather neutral position as to the two companies, desiring to please both if he could. In 1868 this controversy between these two companies as to who should build the road, and as to where it should be built, and as to which company should have the benefit of the land grant, had become a political question in the election in June 1868, and witness thinks that it is about true that the counties on the West side of the Willamette River as far south as Eugene, or Lane County, was practically unanimous for the West Side Company, and the East side counties from Multnomah as far south as Eugene were practically unanimous for the East Side Company, and that entered into the election of state senators and representatives to the legislature in 1868 on both sides of the river. He does not know whether it is true that the contest was carried forward along the same lines from Lane County south, through and including Jackson County. He had lived in the Southern part of the state, and most of the men down there supported him in the fight, but he does not know that they took sides simply because the West side counties were on his side.

Refreshing his memory of those early days, witness recollects that Upton was a representative from Multnomah County in the Legislature of 1868, and afterwards became Circuit Judge for that county. Witness remembers that some one offered House Joint Resolution No. 13, to designate the Oregon Central Railroad

Company, that is, the West Side Company, as the company entitled to receive the land and all the benefits of the Act of Congress approved July 25, 1866, on October 6, 1866, but he had it in his mind that Foudray of Jackson County offered the resolution, but if it is recorded that Upton offered the resolution, it is probably true. Witness knows that the special message of Governor Woods, identified by him, was communicated shortly before this legislative action was taken, but he does not think that he asked the Governor to send in his message, but the Governor was very enthusiastic over the matter, because he wanted to have some personal interest in it, and volunteered the proposition. Witness knows that House Joint Resolution No. 13 was referred to a committee, and knows W. W. Upton, E. D. Foudray of Jackson, James Gingles of Benton, Binger Herman of Douglas, and John Whiteaker of Lane; they were in the Legislature in 1866. Whiteaker had taken an active part in the matter, and witness thinks he was favorable to it. Witness knows that the Jackson County members supported the measure very enthusiastically, but he does not recollect as to the Portland members, but knows that Upton did, because Upton was figuring all the way through to get some interest in the proposition. Witness knows that Corbett, W. S. Ladd and Governor Woods and others were called before the House, and Woods and Corbett made very encouraging speeches in favor of House Joint Resolution No. 13. Ladd said he did not know much about it, but was in favor of building railroads and in favor of the general proposition; he

had not considered the matter much.

Witness recalls the bill that was passed and approved October 24, 1866, and referred to in the proceedings as House Bill No. 78 entitled, "A Bill to aid in the construction of the Oregon Central railroad," by which the state undertook to pay interest on a million dollars of bonds, to be issued by the Company, he having drawn the bill himself after the decision of the Supreme Court of California on a similar law. It was repealed at the next session and never executed in any particular. He does not recall that on October 17, 1868 Senator Miller of Jackson County introduced or offered Senate Joint Resolution No. 16, reciting the passage of House Joint Resolution No. 13 and making the recitations which appear in that rescinding resolution, and that he urged its passage; and does not recollect the vote on Senate Joint Resolution No. 16, but knows that it carried through the Senate afterwards. He remembers that S. C. Adams of Yamhill County, T. R. Cornelius of Washington County, Binger Herman of Douglas County, B. F. Holtzclaw of Josephine County, H. C. Huston of Lane County, S. Ison of Baker, C. M. Pershbaker of Douglas, Coos and Curry, and B. F. Burch of Polk County, voted against Senate Joint Resolution No. 16. and that the controversy became geographical, the West Side Senators voting as a unit, assisted by scattering votes from the other sections of the state; Witness thinks there was a lot of them dodged, that is, did not vote at all. The action of the Senate was communicated to the House on October 19th, according to the records, and witness re-

Company, that is, the West Side Company, as the company entitled to receive the land and all the benefits of the Act of Congress approved July 25, 1866, on October 6, 1866, but he had it in his mind that Foudray of Jackson County offered the resolution, but if it is recorded that Upton offered the resolution, it is probably true. Witness knows that the special message of Governor Woods, identified by him, was communicated shortly before this legislative action was taken, but he does not think that he asked the Governor to send in his message, but the Governor was very enthusiastic over the matter, because he wanted to have some personal interest in it, and volunteered the proposition. Witness knows that House Joint Resolution No. 13 was referred to a committee, and knows W. W. Upton, E. D. Foudray of Jackson, James Gingles of Benton, Binger Herman of Douglas, and John Whiteaker of Lane; they were in the Legislature in 1866. Whiteaker had taken an active part in the matter, and witness thinks he was favorable to it. Witness knows that the Jackson County members supported the measure very enthusiastically, but he does not recollect as to the Portland members, but knows that Upton did, because Upton was figuring all the way through to get some interest in the proposition. Witness knows that Corbett, W. S. Ladd and Governor Woods and others were called before the House, and Woods and Corbett made very encouraging speeches in favor of House Joint Resolution No. 13. Ladd said he did not know much about it, but was in favor of building railroads and in favor of the general proposition; he

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calls that C. B. Bellinger, who had successfully contested the seat of Daniel Carlisle, of Benton, strongly advocated this rescinding resolution, and that the House divided upon the same lines geographically as the Senate, but Bellinger was then running a little store up at Monroe, in Benton County, and for his action in that matter was compelled to leave the county or give up his storekeeping, and he came to East Portland afterwards and Holladay gave him a half block over in Holladay's Addition.

Witness knows that there was some scrap between R. A. Bensel and J. C. Alexander, but that was all he knew. The result was that the Legislature of 1868, after a full and vigorous campaign on the respective merits of the two lines, or the location of the two lines, succeeded in dividing Western Oregon geographically. Some of them voted on geographical division and for the people that they thought they were representing, and some of them voted for the coin that was in it.

Witness wrote the book called "Portland, Its History and Builders," as a matter of history and not as a matter of legal parlance, in drawing legal documents, and when he used the words "Thus securing this act of the legislature in his favor, Holladay continued to push the work of construction on the grade, and sent agents to Washington to get an act through Congress enabling his Salem company to file its acceptance of the land grant act. Congress finally, on April 16, 1869, passed an act extending the time for filing acceptance of the land grant and providing that whichever of the two com-

panies should first complete and put in operation twenty miles of railroad from Portland southward into the Willamette Valley should be entitled to file such acceptance of grant." That was the understanding of the effect of what was done, that was the popular way of expressing it. Witness furnished to Mrs. Victor a paper called "Gaston's Railroad Development in Oregon" in manuscript, and from this statement she compiled the statement that is in Volume 2, Bancroft's History of Oregon.

The desire to have a railroad from Oregon to the East took expression in the form of various companies and surveys, various works of exploitation, from as early as the exploitation of Governor I. I. Stevens in 1853. They had a railroad project up in the Provisional Government at one time before that, witness thinks, but Stevens was the first man to call national attention to the matter. The Willamette Valley Railroad Company was a project gotten up, witness thinks, to build a railroad from St. Helens up into the Willamette Valley. He could not vouch for the statement that a charter was granted to a company styling itself the Oregon & California Railroad Company, which proposed to build a road from Eugene City to some point on the East side of the Willamette River below Oregon City, or possibly to the Columbia River, back in April, 1854, but knows there were various schemes proposed about that time, and knows the St. Helens people had a great proposition, proposing to take all the business of the Willamette Valley to St. Helens.

Witness knows that the Governor's special message and this House Joint Resolution No. 13 found on page 251, down to and including the middle of page 260, House Journal, 1866, introduced by Foudray, was referred to a committee of which Foudray was a member, and that he took an active part and made some sort of report back to the House about it, but that is all he knows about it. They submitted therewith House Bill No. 78, a bill to aid in the construction of the Oregon Central railroad, which finally passed and became a law.

Whereupon Counsel for defendants offered and there was admitted in evidence and read into the record from the House Journal of 1866 the following: Mr. Foudray, from the select committee, to whom was referred the special message of the governor, in relation to railroad grant, presented the following report, accompanied by a bill:

REPORT

Mr. Speaker:

The special committee to whom was referred the governor's special message and the house joint resolution No.—, on the subject of railroads, have had the same under consideration, and beg leave to submit the following report, with the accompanying bill, to aid in the construction of the Oregon Central Railroad:

For several years the question of constructing a railroad through the Willamette, Umpqua and Rogue River valleys, has been very generally discussed before the people, some preliminary surveys have been made and much valuable information gathered upon the subject; but before this legislature will adopt any legislation bearing upon the question, it will doubtless be necessary to lay the important and material facts necessary to a proper understanding of the enterprise fully before the house, and to that end your committee has directed its labors.

That a railroad through the above named valleys is badly needed by the farmer and producer, and in fact all classes of our population, must be obvious to the most careless observer, and the bare mention of a few facts is amply sufficient to set it forth in the strongest light.

It is a well known fact that the wheat crop, the great reliance of the Oregon farmer, scarcely ever yields him one-third the price it commands in the San Francisco

market. In 1864 while wheat was selling readily for $2.00 in San Francisco, it would bring the farmer but 75 cents in the Willamette valley, and now when it is above $1.00 in San Francisco, it is dull sale at half that price here. The same inequality of prices will be found to prevail in all other articles of produce. It is absurd to expect our farmers to prosper and aid in developing the country, as long as they are subjected to such disadvantages in competing with the farmers of California. And we cannot expect that other branches of business will prosper when the farmer is thus deprived of the profits of a good market for want of cheap transportation at all times. And as agriculture underlies the prosperity and wealth of the state, it is useless to hope for general prosperity unless we resort to the means which other states and countries employ—cheap and ready transportation to a sure market. In southern Oregon the obstacles to the exportation of agricultural products are so great as to amount to a complete embargo; and such must forever continue to be the condition of that country, at least so far as the most profitable part of the farmer's labor is concerned, until the country is tapped by a railroad leading either to Portland or San Francisco. And as illustrating the necessity of a railroad connection to the people of the southern counties, we may mention the fact, ascertained from the books of the commission merchants at Crescent City, California, that the inhabitants of Josephine and Jackson counties have in a single year paid out as freight money alone, on 1,800 tons of merchandise imported, the sum of $179,-

700. This large expenditure would be reduced fully three-fourths by the construction of a railroad, while it would give the people some opportunity to pay for this merchandise by the exchange of the produce of the farms, while cheap goods and cheap machinery would stimulate the production of the mines immeasurably.

These are some of the burdens that the farmers of Oregon are laboring under for want of railroad transportation. It is growing worse every year, and will continue to do so, for the plain reason that the State of California is fast completing its system of railroads, having now over three hundred miles in actual operation and hundreds more miles projected, by which the resources of every acre of the agricultural land of that State will be afforded the advantages of railroad transportation to tide-water, and thus giving the farmers of that State such an advantage as will enable them to keep Oregon produce out of the markets of the world, until we, as a State, do for our farmers what California, as a State, has done for hers—aid in the construction of a system of railroads.

It is true that we have some steamboat transportation in this State. So had California; but, unfortunately for the State, it was like the steamboat advantages which compelled California to build railroads. It can only be relied on in certain seasons of the year, which being the season of rain and mud compels the farmer to submit to any rate of charges and send his produce to market, it may be, at the very time when prices rule the lowest. The prices for steamboat transportation are generally felt

to be onerous and burdensome, no matter whether they are as low as they might be or not, and the want of a railroad is all the more keenly felt, in order to afford that sure and permanent competition which always results in the prosperity of the country. As further illustrating the advantages of a railroad to the business of the country, we make the following extract from a report on this subject, by the senate committee on corporations to the last legislature:

"The direct pecuniary advantages of a railroad through Oregon may be briefly but more clearly set forth by a little calculation. Statistics carefully prepared by reliable men show that Polk county has this year produced one million bushels of wheat. Suppose that six hundred thousand bushels of this crop could be spared to the San Francisco market. At the prices heretofore prevailing since harvest, this was worth in Polk county about 75 cents per bushels, or $450,000. If there had been a railroad running through Polk county to steamship landing, this wheat would have sold in Polk county, readily, for $1.50 per bushel, or $900,000, making a clear gain of $450,000 to Polk county, on a single crop of wheat, and leaving a margin of 50 cents per bushel to transport the wheat to San Francisco—and all the direct result of railroad transportation. This calculation might be applied to wool, bacon, lard, oats, and especially to the article of hay. Oregon can ship no hay for want of means of transportation, while we have the ability and can produce the best hay in the world, and at a very large profit, if it could be cheaply trans-

ported to Portland.

"Owing to these burdens on Oregon farming, it is a notorious fact that California is now importing grain for feed from the Atlantic states cheaper than she can get it from the granaries of her neighbor Oregon. Some persons are disposed to berate and belittle Oregon farmers for their want of energy in not supplying this San Francisco demand at such handsome figures, and our newspapers take up and echo the cry, 'no energy, no industry,' etc.; and while it is true that Oregon farmers are no better than they ought to be, it is not true that they will be found lacking in energy and industry to supply San Francisco or any other good market, when the means for doing so is afforded them, so they can compete on an equal footing with the farmers of California and the eastern states."

Freight and passengers—rise in land.

One of the most striking and convincing prooofs of the great value of railroad transportation, is to be found in the rapid development of the western states, and especially in the increase of the wheat crop. In 1850, Wisconsin had no railways, and Illinois next to none. The wheat crop of Wisconsin that year was but 4,250,000 bushels; Illinois, 9,500,000; of Pennsylvania, 15,500,000; and Pennsylvania was then the greatest wheat producer of all the states by 2,000,000 bushels. But from 1850 to 1860, Wisconsin and Illinois completed their thorough railroad system, which enabled them cheaply and readily to bring their grain to the markets

of Milwaukee and Chicago; and so, in the year 1860, we find by the census tables, Wisconsin has produced 15,700,000 bushels of wheat; Illinois 23,900,000 bushels, and Pennsylvania but 13,000,000 bushels. During the ten years between 1850 and 1860, there was a falling off in the wheat production of the Atlantic states, while at the same time, almost wholly through the encouragement given to production by railway transportation, the five great wheat states of the west, Indiana, Illinois, Michigan, Wisconsin and Iowa, increased in production 47,000,000 bushels per annum—over three hundred per cent on the products of 1850 was yielded in 1860; and what is most remarkable, the price of wheat was nearly twice as high in the latter as in the former year. In the same states a similar increase is noted in almost every other agricultural production.

As a natural consequence to such results in the production of a country, would be an enormous increase in the value of all real estate and other permanent property. Such is found to be the fact everywhere. The construction of a railroad has always increased the value of the land in any country through which it runs, even in old settled countries, not less than three fold, and often quadrupled the returns on the assessor's list. But this is a fact so well known that it need not be dwelt upon.

THE OREGON CENTRAL RAILROAD

We come now to consider a definite proposition. Through the efforts of a few of our citizens, acting in conjunction with some railroad capitalists of California, and aided by the Pacific coast delegation in congress, a grant of twenty sections of public land per mile has been secured from Congress to aid in constructing a line of railroad from Portland, Oregon, to the Central Pacific Railroad in California. It is made the duty of this legislature to designate the company which shall receive and manage so much of this land grant as lies within the state of Oregon. In view of these facts the following named gentlemen have incorporated themselves under the general incorporation law of this state, to wit: J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, Edward R. Geary, S. Ellsworth and H. W. Corbett, under the name and style of "the Oregon Central Railroad Company," for the purpose of receiving the said grant of land, and using it so far as it may go, towards the construction of the proposed railroad, passing through the Willamette, Umpqua and Rogue River valleys. Under present circumstances, the land is not available for the purpose of raising money, one of the grant conditions being that twenty miles of railroad must be finished and put in operation before the government patent will issue for the land. It would be unreasonable on our part to expect the federal government to construct our works of internal improvement, without the least effort upon our part. We are also able

to state that this corporation, composed of our own citizens, have received an offer from capitalists able to command the means to construct the road, that if the State of Oregon would render certain aid to the enterprise, all the funds needed would be forthcoming. We are of opinion that it is better for the state to aid the matter, in its collective capacity, than to rely on the uncertain aid of private individuals. The reasons for this are many and obvious. It is emphatically a work for the benefit of the whole state, and every man, woman and child in it. It will benefit all in proportion to their property, and it is but simple justice that the property thus benefited should contribute its ratable proportion to secure a work of common benefit. We must offer some inducement for foreign capital to become associated in our interests.

It cannot be expected that the money of our Oregon capitalists, readily yielding here twelve per cent. per annum, will desire or be willing to go into a great enterprise with capital which is satisfied with six and seven per cent. per annum. For this reason we cannot rely on individual aid alone in the matter. The great profits and benefits of a railroad comes back to the people in that indirect way of increasing the value of their land, and raising the prices of their crops, rather than in dividends on subscriptions. Other states aid their railroads. In fact, it is the shape in which almost all the local aid is furnished. New York has been made the Empire State by a liberal policy toward its internal improvements, giving upwards of $20,000,000 to canals alone. Virginia

has given six millions to railroads. Ohio gave many millions to the construction of its canals and railroads. The young state of Minnesota has contracted to loan its bonds to the railroads of that state, to the amount of $24,950,000. Missouri has already given $17,656,000 in state bonds to the railroads of that state, which liberal policy would have ere this made her the Empire State of the west, but for the losses by the rebellion. California has contracted to pay the interest on $1,500,000 of the bonds of the Ceneral Pacific Railroad Company. And so it is in every state that would keep up with the prosperity of the age.

It is proposed by the Oregon Central Railroad Company, that if the legislature will levy and appropriate, whenever a section of twenty miles of railroad is finished and put in operation, a sum of money sufficient to pay the interest on $500,000 of the company's bonds; and whenever one hundred miles is finished and put in operation, the additional sum sufficient to pay the interest on another $500,000 of the company's bonds, and so pay this interest for twenty years, and also loan the company the sum of $10,000 for preliminary contingent expenses, the whole amount to be secured by a mortgage of all the company's property to the State, and to be returned at the expiration of the twenty years, then this company agrees to proceed at once to the work of constructing the road. After fully considering the matter, your committee are decidedly in favor of the proposition and have reported the accompanying bill to carry the same into effect.

Experience has shown in other states that such assumption of liability has not increased the rate of taxation on the property of tax-payers, and that the consequent increase of revenue growing out of the increase in the value of taxable property has more than compensated the interest assumed, and the states as well as the tax-payers have been less burthened, besides becoming holders of good mortgage security for all the money advanced. In Santa Clara county, California, where the county had subscribed $100,000 in bonds, the interest on which amounted to $7,000 per annum, stating that the rate of taxes had not been increased. The town of Evansville, Indiana, subscribed $200,000 in bonds to the Evansville and Crawfordsville Railroad, and it was not necessary to increase the rate of taxes in order to pay the annual interest. H. C. Wait, register of the United States Land Office at St. Cloud, Minnesota, states that the taxes have not been increased by reason of the aid furnished railroads by that state. The secretary of the state of Wisconsin reports that a large amount of the counties and towns of that state aided in their corporate capacity in the construction of railroads in that state, but that in no instance was it necessary to increase the rate of taxation in order to pay the annual interest on the bonds. In 1852 the state of Illinois issued its bonds to the amount of $12,000,000, taking therefor stock in the railways projected in that state, and although the annual interest on this vast amount of indebtedness amounted to $840,000 annually, yet such was the rapid increase of property on the tax roll, that it was not nec-

essary to increase the rate of taxation to pay it. The revenue from taxes on the increased value of property occasioned by these railroads, has already enabled the state to pay off more than $4,000,000 of the principal debt, and it is now believed that the remainder will be extinguished by the year 1876, without even increasing the rate of taxation from the time the $12,000,000 bonds were first issued until they are finally paid and cancelled. This is a great historical fact in the growth of this country, and assures us of our duty in going forward to do something for the State of Oregon.

If Oregon gives the aid to this railroad proposed by this bill, it will be necessary to pay $70,000 per annum as soon as one hundred miles of road is finished. Then how will the taxes stand? One hundred miles of railroad will add to the tax list, first, its own cost—not less than $4,000,000; secondly, not less than fifteen million dollars on the increase of value of land and all other property; aggregating an addition of nineteen million dollars to the assessable property of the state. At five and a half mills on the dollar, the present rate for state taxes, this railroad addition to the tax roll would produce $104,000 annually—$34,000 more than is asked for by the proposition submitted; so the argument is in favor of granting the aid asked for to build the railroad.

Your committee recommend the passage of the accompanying bill.

H. B. No. 78—"a bill to aid in the construction of the Oregon Central Railroad."

Whereupon the witness further testified that S. F. Chadwick, J. H. Mitchell, W. S. Ladd and Simeon G. Reed are dead. The old West Side Company did not lay any track prior to December 24, 1869. It made a temporary grade all the way to Hillsboro by December 26, 1869, and had built the bridges referred to and had built some bridges in Washington County further out, but had laid no rails. The Company obtained an ordinance for the location of its line on Fourth Street earlier than December 26, 1869. The measure had been pending for some time before the council, but he does not know exactly when it was passed. The bond issue of the City of Portland was for $250,000, and was afterwards enjoined in a suit brought by H. C. Coulson against the City of Portland and set aside as illegal. The counties of Washington, Multnomah and Yamhill turned over the money that they had collected; they made an assessment to pay the interest on the $50,000 and collected that money in and gave it to the West Side Company, but afterwards this was enjoined by the courts. A petition was circulated over Washington County asking the County Court to guarantee the interest on $50,000 of the bonds, and the County Court made an order to that effect. That was afterwards set aside, but Yamhill County made no order.

Witness has seen the articles reported in the Oregonion April 16, 1868, giving an account of the exercises which took place at the breaking of ground on the West Side April 15, 1868, and he made an address on that

occasion, and he supposes he must have subscribed it "J. Gaston, President of the Oregon Central Railroad Company," or else it would not have been in the paper that way.

"Q. I understood you to say that the Oregon Central Railroad Company (West Side) did not have one-half of its capital stock subscribed prior to the Stockholders' meeting of May 24, 1867, when the minutes of the Stockholders' meeting, as shown by Journal No. 1 introduced in evidence, were recorded in this book, at which B. F. Brown was President, George W. Lawson was Secretary, and it is recorded here as the first Stockholders' meeting. Had there been no Stockholders' meeting of the Oregon Central (West Side) before that time?

A. Isn't that a meeting of the incorporators?

Q. It reads this way: 'Stockholders' Meeting. Salem, Oregon, May 24, 1867. At a meeting this day held at the office of the company B. F. Brown was duly made president and G. W. Lawson secretary of the first stockholders' meeting. Whereupon came Seth R. Hammer holding the proxy of Thomas H. Cox, incorporator, G. W. Lawson holding the proxy of M. M. Melvin, incorporator, Cyrus A. Reed holding the proxy of Joel Palmer, incorporator, and B. F. Brown and J. Gaston, incorporators, in person, and also the present stockholders of said company, and upon a ballot being taken for the election of a board of directors, the following named persons were duly elected directors of the Oregon

Central Railroad Company, to-wit: William T. Newby, J. M. Belcher, B. F. McCleuch, W. C. Whitson and J. Gaston. The incorporators appointed Saturday, the 25th day of May inst. as the time and the town of Amity, in Yamhill County, as the place for the first meeting of said Board of Directors. Whereupon the meeting adjourned. B. F. Brown, President.'

A. Now, I had forgotten that meeting. I thought it was held at Amity, but that was a meeting of the directors that was held at Amity.

Q. This was at Salem. This was the first meeting, then, of the corporation?

A. Yes.

Q. Had you not had a meeting of the stockholders before that?

A. That was a meeting of the stockholders as well as of the incorporators.

Q. Yes, I know; but at that time, isn't it true, Mr. Gaston, that more than half of the capital stock of this company had been subscribed, so that you were legally organized?

A. Yes. In order to make a legal incorporation, I had subscribed one-half of the stock, and others had subscribed a little—a share or so.

Q. When was that subscription made by you of

one-half of the capital stock?

A. It must have been about that time—a day or two before, or on that day—I couldn't say.

Q. Well, the articles were filed with the Secretary of State, or by Samuel E. May, Secretary of State, were actually formally filed, and indorsed as filed, on November 21, 1866, and you claim they were actually tendered for filing, and received by him for filing, on October 6, 1866, in their uncompleted condition?

A. Yes.

Q. Now, when were the stock books opened for the subscriptions to the stock? About when, do you remember?

A. Well, it was about the time of that meeting there that you just read.

Q. Not until about May 24, 1867?

A. Well, that must have been about the time.

Q. Then, at the time that you were designated by the Legislature the stock had not been subscribed?

A. No, no stock had been subscribed.

Q. There had been no election of directors?

A. No.

Q. There had been nothing done excepting to execute in part the articles of incorporation?

A. Yes.

Q. Had you at that time filed the triplicate in the County Clerk's office, of Multnomah County?

A. Yes.

Q. You did that when?

A. I did that a day of two before I presented them to May.

Q. That is, before the 6th of October?

A. Yes.

Q. Well, now, did you leave them with the County Clerk in their then signed condition?

A. In Multnomah County?

Q. Yes.

A. I can't say now whether I did, or whether I brought them back that copy to Salem or not. I couldn't say positively about that.

Q. Well, now, if you left them with the clerk here of Multnomah County in October, but prior to October 6, 1866, then the articles that you left here were only signed by the first four or five people?

A. Yes. I must have taken them back and carried the three copies around, because they are all signed, I think, the whole three copies are all signed by those folks.

Q. Then if you tendered it for filing here, you did it the same as you did with May:

A. Yes.

Q. And withdrew it to get more subscribers?

A. Yes.

Q. And did you afterwards leave with the Secretary of the Oregon Central Railroad Company a completed copy?

A. Yes.

Q. As certified and acknowledged by you, and Mr. Hammer as the Notary Public?

A. Yes, sir.

Q. And that, of course, was not done until on or about November 21, 1866?

A. Yes.

Mr. Townsend: It could not be done until after May, 1867. There wasn't any secretary, you know, don't you? There wasn't any secretary until May 24th.

Q. With whom, now, did you leave this third copy?

A. I kept it myself.

Q. What capacity did you have?

A. Well, I was appointed, you know, by the incorporators to solicit stock, and had in that way the

charge of the papers.

Q. You had custody of the corporate records, as far as anybody had custody of them?

A. Yes.

Q. Until the stockholders met with the incorporators on May 24, 1867?

A. Yes, the incorporators executed a paper authorizing me, as secretary of the incorporators, to solicit subscriptions of stock.

Mr. Townsend: Just a moment Mr. Gaston. The statute provided that the incorporators, or a majority, should designate one of their number to receive subscriptions to capital stock?

A. Well, that is what they did.

Mr. Townsend: Yes, and it was under that authority you were designated?

A. Yes, and under that authority I had kept the office copy of the incorporation papers.

Q. But, as a matter of fact, the corporate stock books, or the subscription of the stock, was not actually made until a few days before the meeting of May 24, 1867?

A. No.

Q. That is to say, the physical subscription of your

name for one-half of the capital stock was not made until a day or two before May 24, 1867?

A. Yes, I think that is the fact.

Q. And do you recall whether that subscription was made on a stock book, or what it was made on?

A. Oh, I think we had a little stock book, but I don't know what became of it, or how that was managed. We must have had a little stock book.

Witness further testified that J. M. Belcher was a director and elected Vice-President of the West Side Company, and was a merchant at Lafayette. Belcher had a farm out near Wheatland in Yamhill County, at the time this was going on. Mr. McClench had a farm near Wheatland; lived just over the county line, above Wheatland. Belcher is dead. W. C. Whitson and Judge Williams are dead, and he thinks F. A. Chenoweth is dead. M. M. Melvin, J. C. Ainsworth, C. H. Lewis, B. F. Brown, Geo. L. Woods, Joel Palmer, R. R. Thompson, T. H. Cox, C. N. Terry, W. T. Newby, B. F. McClench, S. Ellsworth, W. W. Upton, E. D. Shattuck, Matthew P. Deady, C. B. Bellinger, W. S. Caldwell, J. A. Chapman, former mayor of Portland, Ira Jackson, County Judge of Washington County, Thomas B. Humphreys, County Clerk of Washington County, E. W. Haines, Secretary of the West Side Company, George H. Andrews, T. R. Cornelius, S. C. Adams, James B. Newby, son of William T. Newby, S. G. Elliott, Ben Holladay, J. N. Dolph, George Weid-

ler, R. W. Towler, H. B. Tucker, George W. Eberts, S. Coffin, C. M. Carter, J. B. Underwood, Levi Estes, S. M. Smith, C. S. Silby, Judge Olney of Clatsop, W. R. Halsey, all are dead. All of the men, as far as he knows, that were in any wise connected with the Oregon Central Railroad Company (West Side), excepting himself and John McCraken, one of the incorporators, are dead.

Whereupon the witness, upon redirect examination, further testified that after he sold out his interest in the West Side Company to Holladay, as he has described, and after he entered the employ of the West Side Company under Holladay, he became acquainted, to a certain extent, with the plans of Holladay as to handling the land grants. He became so acquainted by conversations with him, just casual conversations, not specially you know.

Q. What were those general plans, so far as you became acquainted with them?

Mr. Fenton: Objected to as hearsay, and as not binding on the Oregon Central Railroad Company of Portland, or the Oregon Central Railroad Company of Salem, or on the defendants or either of them, and as not showing any authority on the part of Mr. Holladay to make any declarations or statements on this subject.

A. He had organized a corporation, with main office in San Francisco in charge of Mr. Wilson, who had formerly been Commissioner of the General Land Office

in the United States Government, and who had charge of the whole business of disposing of the lands. Mr. Wilson had prepared maps and pamphlets, and sent them broadcast over the United States and European countries, advertising the lands for sale; and they had appointed a local land agent here in Oregon, and made Mr. I. R. Moores, who had formerly been connected with the East Side Oregon Central Railroad Company—put him in charge of that office in Portland; and advertised the lands in Oregon. And men would come in there and file applications to purchase the lands on time. I filed applications to buy a quarter section in Wapato Lake, in Washington County; and oh, there were a great many men came in; and the terms were very liberal to people who wanted to buy the lands—a small payment down and interest on the balance, and small payments running for eight or ten years.

Q. Well, now, was the corporation that you refer to The European and Oregon Land Company?

A. I think that was the name of it.

Q. You say that he placed Mr. Joseph F. Wilson—was it?

A. Joseph S. or Joseph F. I couldn't say what the middle name was. I was acquainted with Mr. Wilson. I met him in Washington City.

Q. Joseph S. Yes, you are right—Joseph S. Wilson. He had formerly been Commissioner of the General Land Office at Washington, D. C.

A. Yes, sir.

Q. Now, when was he Commissioner of the General Land Office?

A. Well, he was Commissioner of the General Land Office when I was in Washington City in the winter of 1869-70.

Q. Did you know anything about any correspondence between Mr. Holladay and Mr. Wilson on the one hand, and Senator Williams, who had become Attorney General of the United States, on the other hand, with reference to a legal construction of the provision of the grant prohibiting sales except to actual settlers, in limited quantities, and for a limited price?

A. No, sir, I did not know anything about it.

Q. Or did you know anything about any correspondence between Mr. Holladay and Mr. Wilson, on the one hand, and the Department of the Interior on the other hand, upon that subject?

A. No, sir.

Q. Did you see Mr. Wilson's writing so as to become acquainted with it?

A. Well, I think I had correspondence with Mr. Wilson myself. I have seen his signature.

Whereupon, the witness, being shown Government's Exhibit 109, idetnified the copies of the letters purport-

ing to have been signed by Wilson therein, and identified the signature of Wilson, as being his signature.

Whereupon, Counsel for complainant offered in evidence Government's Exhibit 109, Government's Exhibit 109-A, Government's Exhibit 109-B, Government's Exhibit 109-C and Government's Exhibit 109-D, duly certified, as prepared by and under the direction of James F. Casey, employee in the Railroad Division of the General Land Office at Washington, D. C., to each and all of which exhibits Counsel for defendants objected that the same were immaterial, irrelevant, and as not controlling the legal effect of the acts of Congress; which said several Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D are hereinafter set out and described, and made a part of this statement of the evidence and so identified herein.

Whereupon the witness further testified on re-direct examination, that he thought he had made himself clear, that the vote on the proposition of this railroad grant before the Legislature of Oregon in 1868 was made on geographical lines, except where members of the Legislature were influenced by other and improper considerations. It was the understanding of witness then and is yet that the division in the vote for and against the proposition referred to was upon geographical grounds except where the members had changed their minds and voted for a consideration personal to themselves without reference to the justice of the contentions of the two companies or the interests of their constituents.

STIPULATION

Whereupon it was stipulated between the parties by their respective counsel that the record from the Sennate and House Journals of the State of Oregon for the year 1868 shows the residence by counties of the members of the Senate and the members of the House who voted in favor of Senate Joint Resolution No. 16, which subsequently became the resolution of October 20, 1868, and that the Senate Journal for the year 1868, at page 253, shows that there were fourteen votes cast in favor of the Resolution and eight in opopsition thereto and that the fourteen Senators voting in favor of the Resolution were from and represented the fourteen counties, as follows:

Name of Senator	County
Bayley	Benton
Brown	Marion
Cochran	Lane
Crawford	Linn
Cyrus	Linn
Dribblesbis	Grant
Ford	Umatilla
Hendershott	Union
Miller	Marion
Miller	Jackson
Powell	Multnomah
Stout	Multnomah
Thompson	Clackamas
Trevitt	Wasco

It is further stipulated that the House Journal shows at page 366 that twenty-eight votes were cast in favor of the Resolution and eighteen in opposition thereto and that the names of the twenty-eight who voted in favor of the Resolution, together with the counties which they represented, respectively, are as follows:

Name of Representative	County
Alexander	Linn
Alexander	Benton
Bellinger	Benton
Beers	Baker
Bryant	Linn
Butler	Wasco
Cox	Josephine
Crooks	Linn
Davenport	Marion
Denny	Marion
Gerrett	Clackamas
Gray	Grant
Gilfrey	Lane
Johnson	Linn
Kirk	Umatilla
Louden	Jackson
Litchenthaler	Marion
Minto	Marion
Powell	Multnomah
Rinehart	Union
Smith	Jackson
Stites	Linn

Name of Representative	County
Simpson	Marion
Trullinger	Clackamas
Tandy	Lane
Winston	Clatsop
White	Jackson
Whiteaker	Lane

Whereupon upon re-cross examination the witness further testified that he had no personal knowledge of the formation of the partnership agreement of Ben Holladay with C. Temple Emmett and S. G. Elliott, alleged to have occurred on September 12, 1868; he only knew the general statement that they were partners. Holladay came to Oregon first in connection with the railroad enterprises in the latter part of June or the 1st of July, 1868. Witness does not know whether Holladay was interested or not in the promotion of surveys of California parties earlier than that. That was his earliest knowledge of Holladay being in Oregon. He met William Norris connected with these railroads only once. Norris was a great friend of Holladay and was in some way an intermediary in the steamship companies with Latham. He did not know that the European & Oregon Land Company was incorporated as a California corporation December 21, 1870. He only knew in a general way that it was a California corporation, but did not know when it was incorporated. Witness knew that Joseph S. Wilson was president of that company and he saw the offices at 3320 California Street, San

Francisco, California. Witness does not think that Wilson was ever in Oregon in connection with this business. I. R. Moores was the land agent of the company at Portland during this short time that the European and Oregon Land Company undertook to dispose of this grant, but he does not think it ran a great while. They did not succeed in selling the land; it was a very expensive proposition and Holladay said to witness that he would have to get rid of it, or something like that. They caused the advertisement of the sale of this land to be circulated on the Continent of Europe in various languages and spent considerable sums of money to invite settlement of these lands as early as 1871 and 1872 as witness understood from the statements and the literature that he saw. He saw a great deal of that literature and knew that a great deal of it was in languages he could not read and that they were extensively circulated for the purpose of inviting settlement of these lands; witness saw several pamphlets at Holladay's rooms; of course he could not read them, but Holladay said they were being circulated. Witness thinks that Norris was concerned in that matter, he was a sort of confidential friend of Holladay's. He could not say that he knew any of the officers of the European and Oregon Land Company, except Wilson. He was personally acquainted with Wilson before Wilson came to California. Witness knew that William C. Ralston and Francis Avery were interested with Holladay in these schemes, but he could not say that they were officers of the European and Oregon Land Company. He re-

members that Ralston was cashier of the Bank of California and knew him personally; he knew that William Norris was connected with the Northern Pacific Transportation Company, but could not say in what capacity, and that Faxon D. Atherton of San Francisco was one of the trustees of this company, and that Milton S. Latham was manager of the London and San Francisco Bank and also one of the trustees of this company; he knew Latham in Ohio before Latham came out here. Witness did not know Ed. H. Green and does not recollect that he was one of the board of trustees of the European and Oregon Land Company.

Whereupon *S. S. Marr,* called as a witness on behalf of the United States being first duly sworn, testified upon direct examination; that he is now what is called law examiner in the General Land Office and has been working continuously in the Railroad Division of the General Land Office since May 1, 1877. The Railroad Division was created about June, 1872. Before that, it had been what was called "F Section of Division C" of the Public Lands Division. He was formerly Chief of the Railroad Division from 1897 or 1898 until sometime in 1908 and was chief at the time this suit was instituted.

Witness prepared at the request of counsel for complainant, or caused to be prepared in his Division a statement showing the date of the lists or selections, the number of selections, the Act of Congress under which they were made, the area as finally clear listed, and pat-

ented, the date of approval by the Secretary, number and date of patent, of all lists and selections and patents pertaining to the grant in Oregon under the Act approved July 25, 1866 and the grant under the Act approved May 4, 1870.

Whereupon the witness identified this statement as Government's Exhibit 110 as such statement prepared by him and under his direction and from his belief it is correct; it was prepared for that purpose and was compared and the statement is correct as far as it could be made. It was prepared under such circumstances that as an official he could certify as to its accuracy; he was Chief of that Division at the time it was prepared from the records of his Division, under his immediate supervision and he felt responsible for the accuracy of it.

Whereupon counsel for complainant offered in evidence Government's Exhibit 110, to which counsel for defendants objected as immaterial, irrelevant and incompetent, and renewed the objection to the jurisdiction as made at the opening of the case and it was stipulated that these objections may be understood as going to all the testimony of the witness. Whereupon it was stipulated between the parties that Government's Exhibit 110 may be read into the record and the original exhibit withdrawn, which said Government's Exhibit 110 is hereinafter set out and described and made a part of this statement of the evidence and identified herein as Government's Exhibit 110. Whereupon witness further testified that Government's Exhibit 110 was pre-

pared before the year 1909, during his service in the Railroad Division of the General Land Office, his work pertaining to the administration of these railroad land grants, including the proceedings with reference to lists and selections and the issuance of patents. He would not like to say now that he approved any of the lists with reference to any of the lands involved in the present suit; he does not remember whether any patents were issued to the company during his time, but the record will show if any were issued during his time, that he approved those lists as Chief of the Division, approved the certificate of the clerks of his Division that was attached to them, that the lands are clear, of the character prescribed in the grant, and passed under it. Such a certificate as that is attached to every list, and if any such patents were issued during his time as Chief of the Division he approved that certificate. Whereupon, upon cross-examination, the witness further testified, that he was clerk in the Railroad Division from May 1, 1877, up to the time he became chief; his duties were from May 1, 1877, up to the time he became chief, adjusting conflicting claims between the railroad companies and settlers or others within the limits of the railroad grant; when any tract of land became in conflict or was claimed by somebody other than the railroad company, within the limits of this railroad grant, that came up to his Division for adjustment; that Division determined and decided the matter, and witness did that; that was his particular duty during that time. He examined some of the grants, perhaps some of the lists to see wheth-

er they were clear or not, but the particular duty was settling that contest between the settler or other claimant and the railroad claimant. When he became Chief of the Railroad Division his duties were to administer the Division; review all the letters that were written, see whether they were correct or not and in accordance with the law. He had about 20 clerks under him as chief of the Division, and the Commissioner who would sign the letters, was his superior officer. After a letter was prepared, that is a decision rendered deciding this conflict that occurred, it would go to what is called the law clerks—an examining board of lawyers; they would pass upon this question, and issue it, sign it, approve of it, and then it would go to the Commissioner for signature, who would sign it, return it to the Division and the Division would copy and mail it. Any of the clerks of the Division that had any occasion to go to the files would have access to the files relating to these two grants. In the adjustment of a claim, a conflict between the railroad and settler, or others, it was the duty of all the clerks who had that to examine to examine all these files; not only that but to examine the plat books and all the other records of the office and often times the field notes. In explanation of the manner in which the correspondence relating to these grants is kept the witness says: "When a letter would come to the office that had reference to any particular railroad grant, we have a file that belongs to that particular railroad—a box that we put that letter in. If it is something that we don't think would affect the grant in any way, why, it goes

as a miscellaneous letter; but if it is a letter that we think would have any effect upon this grant, we would put it in what we would call the Oregon and California file —have a file for that purpose. Now, when that letter is answered, or any decision is rendered in the matter, why, that is press-copied—used to be—in a book for that purpose, just an ordinary press-copy book. And they had no particular press-copy book; they all went into the same book. All the letters addressed to registers and receivers went into one book, and all the letters addressed to individuals, miscellaneous letters, went into another." Witness further testified that letters addressed to the Secretary of the Interior would go into the miscellaneous press-copy book, as a rule. For a time they had a Secretary's record, but for a good many years back now it has gone into the miscellaneous book. Different persons would pass upon the railroad selection lists in the Railroad Division and in other Divisions. It used to be the practice to have two clerks examine that list in his Division and append their certificates to it and sign it; then at times there were other clerks—it went to what is called the Swamp Division; a clerk there would examine it and append his certificate; it went to the Mineral Division, and clerks of the Mineral Division would append their certificate. Each one of those certificates, being approved by the chief of the respective Divisions. It is now the practice upon its return from the Department clear-listed and approved by the Secretary to go to the Recording Division to be written up as a patent. At the time that most of these patents were

issued, they were written in the Railroad Division. No one clerk had full charge of examining the lists and writing the patent, but it was the practice, really, to give the lists to the clerks who had charge of the particular state that the land was located in, because he was more familiar with that than anybody else, and more likely to get it right, but no one man had everything to do with one particular list. Whereupon the witness upon redirect examination, further testified that the course one of these lists and selections of lands by land grant railroad companies took, in detail, from the time it was first filed in the local land office and transmitted to the general land office was that the list was taken up and examined by the Railroad Division of the office, for the purpose of determining whether it was of the character of lands prescribed in the grant and subject to patent to the company. The examination of the Railroad Division was of tract-books and the plats and field notes, to determine that there was no conflicting claim. After the examination was made the list was referred to the Mineral Division of the General Land Office for examination by that Division to determine whether it was free from any mineral claim. After that it was referred to the Swamp Division to determine that it was free from any swamp claim. The Mineral Division and the Swamp Division appended their certificates to the list, but only as to whether the land was mineral or swamp land. The Railroad Division did all the rest of the examination. The Railroad Division determined that the land was within the proper limits described in the list. Some-

times it was an indemnity selection, an indemnity list; sometimes it was a primary list. If it was a primary list the office determined that the land was within the primary limits of the grant; and if it was an indemnity list, the office determined that it was within the indemnity limits of the grant, in the first place. They had on file maps which defined the primary and indemnity limits of each grant, so that by reference to the records he could tell whether the lands claimed by the railroad company were within the limits of the grant to that company. That was one thing that the Railroad Division determined. The other Divisions didn't pay any attention to that part of it. Their certificates were as to whether the land was mineral in the Mineral Division, and whether it was swamp in the Swamp Division. There were some claims in the Mineral Division that did not show upon the tract books. That was the reason of referring to the Mineral Division. The Swamp Division kept a set of tract books of its own, and that was the reason of sending it to the Swamp Division, for fear that there might have been some neglect or error in posting it. But the work of determining that the land was free from all claims was the work of the Railroad Division, and that Division first determined whether it was within the limits of the grant at all. After witness came into the office it was determined by the office whether the railroad had been constructed opposite the lands claimed, and whether the lands had been earned. Prior to that time this had not been done. It frequently happened that there was land, particularly under the old state grants, which the

office certified without knowing whether the road was constructed at all, and that happened so in the other grants, too, sometimes; witness thinks that this was avoided when he came in the office in 1877. The office then determined that the road was constructed opposite the land and it ought always to have been done so. The office determined whether there were conflicting homestead, pre-emption or other claims of record; that is any claim under the public land laws of the United States, or any other laws of the United States, or any private claim, or anything else that conflicted with that grant. In the examination of those grants, if they found there was a claim existing to that land, either at the date of the grant or at the date of the definite location of the road, then they would cut that tract out of the list. That would defeat the grant, even though the land might have been free at the time of the selection or listing by the company. If it was covered by some claim at the date of the grant or at the date of the definite location, it ought not to pass under the grant. These are what the office calls present grants, and when the line of the road is definitely located, then the grant attaches in the primary limits; and whatever is free and clear and of the character of lands intended to be granted, passed at the time of the definite location of the road, or did not pass at all. In the indemnity limits, the right accrued on selection, and it did not make any difference what the previous condition of the land might have been if it was clear at the time of the selection; but in the primary location, that land must have been free at the date of the

grant and at the date of the definite location. Witness does not think that outside of these several things mentioned by him that the Railroad Division determined anything else. When these things were all determined in favor of the Railroad Company, the list was submitted to the Secretary, with recommendations that it be approved. The land was all clear-listed before it went to these other Divisions. If the other Divisions found anything the matter with the list they would have to write that list over again, or partly, whatever it was to make it clear. After all the examinations had been made the list was then submitted to the Secretary for his approval, and if there was anything discovered that was wrong with it up to the date of approval, they would correct it if necessary. They got the clear list after examining the records of each Division, excepting the Mineral Division and the Swamp Division. Many times they would have that examination made by the Mineral Division and Swamp Division before the Railroad Division made the fair clear-list, then it would have to be gone over again afterwards before the other Divisions put their certificates on. The certificate of the Mineral Division would show that there was no mineral claim there, or if there had been a mineral claim that the mineral claim had been adjusted, and rejected, and wiped off the record. And it would be the same with the Swamp Land Division. Then it was for the Railroad Division to determine if there had been any previous claim that had been wiped off the record, whether that claim was sufficient to have defeated the grant, that

is to bring the lands within one of the exceptions to the grant.

"Q. Now, since you have been identified with the Railroad Division in 1877, has the Railroad Division ever, in recommending a list or selection for patent, considered or determined whether any of the conditions subsequent annexed to the grant have been violated?

Mr. Fenton: Objected to as immaterial and incompetent.

A. No.

Q. Well, why haven't you done that?

Mr. Fenton: Same objection.

A. Why, the reason, perhaps, why we haven't done this was that this land passed under the grant. We had determined that, that it passed under the grant.

Q. That matter was determined by the Department of the Interior's own act?

A. Yes.

Q. And the rule as to what it would do?

A. Yes.

Q. I want to know what the practice has been, and when it arose, and whether it has been followed, and for how long, of passing upon the breach of conditions subsequent annexed to the grant or not passing upon them. I want to know which is the fact.

A. We did not. We never passed upon the question as to the breach of the conditions subsequent. The way I understand this thing is this, now, that that was something that the company was required to do after it got its patent. It had no right, legally, to do these things until it got its patent. For instance, the sale of the land, if it did, it might have sold something that it had no right to at all. But after the company got its patent, then the condition subsequent required it to do something. Now, that was a matter that we didn't pay any attention to.

Mr. Fenton: I move to strike out the answer of the witness as an opinion on a legal question, and as incompetent.

Q. I will ask you, Mr. Marr, whether, since the decision of the Supreme Court in Schulenberg v. Harriman, speaking generally now, the Department of the Interior, and particularly the Railroad Division of the General Land Office, either considered or determined whether there had been any breaches of any conditions subsquent annexed to the grant, in passing upon lists and selections of land and approving them for patent?

Mr. Fenton: Objected to as incompetent and immaterial.

A. Well, I will say this, that only for a short period along in the early '80's—I cannot remember the time exactly—when there was a question as to looking to the forfeiture of these grants, we were directed then not to issue patents under railroad grants where the road had

been constructed after the time prescribed in the law when it should be constructed. That was afterwards set aside, or anyhow we were directed to go on and issue these patents, for the reason that we had no right to do anything else. After the road was constructed, that was.

Q. I understand. Well, at the time in the early 80's that you were instructed not to issue patents for lands to railroad companies who constructed the railroad after the time prescribed, do you not recall that there were many acts pending in Congress for the forfeiture of those grants, some general acts as to all grants, and a great many acts relating to pacific grants, and that the order of the secretary in most instances referred to the fact that legislation was pending, and no patent should be issued until Congress had acted?

A. Yes.

Q. You find that set forth in Donaldson's Public Domain?

A. Yes. Yes, that was the reason for it—there was legislation pending. In fact, the Act of March 3, 1887, was under consideration some time before it was passed.

Q. And the General Forfeiture Act of September 29, 1890, was under consideration for some time?

A. Yes.

Q. Thirteen or fourteen years, was it not?

A. I don't remember how long, but it was some time; a good while, anyhow."

Whereupon, upon recross examination, the witness further testified, that since he had been connected with the Railroad Division, he had always ascertained, or attempted to ascertain, whether the roads claiming lands under these land grants had constructed their roads opposite to and coterminous with the lands applied for, and he thinks that this rule has not been departed from since he has been with the Railroad Division. For a time he was instructed not to approve for patents lists applied for where the roads were not constructed within the time, although at the time of the application for patent the road had been constructed past or opposite to and coterminous with the lands; and that was particularly from the time these acts introduced in Congress were fiirst introduced up to September 29, 1890, when the General Forfeiture Act was passed, that, that practice prevailed. The Act of September 20, 1890, was a General Forfeiture Act, and attempted to forfeit, and did forfeit, for failure to construct opposite to and coterminous with the road not then constructed. It did not forfeit anything opposite constructed road. All constructed road, whether constructed in time or not, was considered as if it had been constructed within the time under that act, and was so construed in the Railroad Division. These lists were posted on the tract-books as soon as they could get them there, but at the time witness first came into the office, those lists would come to the Railroad Division first, and they would send them up to be posted on the tract-books before the Railroad Division took action. That was the first thing the Railroad Division did.

Whereupon J. F. CASEY called as a witness on behalf of the United States, being first duly sworn testified; that he is at present employed in Division F of the General Land Office, which has several Divisions designated by letters. Division F is the designation of the Railroad Division. He has been employed in the Railroad Division for about a year (March 4, 1912), but was there before, about fourteen years before for about four years and in the meantime has been employed all the time in some other Division of the General Land Office. He first came in to the General Land Office in 1889. Was out then for a short time and returned in 1893 and has been continuously in the General Land Office since 1893. He is familiar with the records of the Railroad Division in the General Land Office pertaining to railroad grants. "Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D" were prepared and certified under his direction, for use as evidence in this case, at the request of counsel for the Government. Explaining the manner in which correspondence is filed and kept for reference in this division, witness testified that the letter, when it is received, goes to what is called the mail room, is there docketed and a jacket made for it; the jacket is briefed. All the papers pertaining to that letter are put in one jacket; that is, if there were more than one or two papers, if not, it did not have any jacket. Then the letter is referred to the Division in which it belongs. It is answered there and if the letter relates to one of these particular grants, it is put in the file box of that grant. If it relates to any general subject it is put

in Miscellaneous Files. There is a separate file for each grant. This jacket contained a brief of what the letters contained, that is, the subject matter of the letters. At the time he had the certified copies designated as "Government's Exhibit 109, 109-A, 109-B, 109-C and 109-D" prepared they covered all the correspondence upon that subject found in the files of the General Land Office, but he did not examine the records in the Interior Department thoroughly. He did examine the complete files pertaining to the Oregon and California grant and the so-called Oregon Central grant, being grants under the Acts of Congress approved July 25, 1866, and May 4, 1870, respectively and there were no other papers in these files pertaining to the subject matter of these exhibits, except the ones set out in said exhibits. He took all the boxes containing the files of letters received, examined these and then went through the press copies of the answers, that is he read them and he did not find in the files anything pertaining to the restrictions of the grant, upon the sale of the granted lands, other than disclosed by "Government's Exhibits 109, 109-A, 109-B, 109-C and 109-D."

Whereupon, witness testified as follows:

"Q. Is there any record in the General Land Office showing that that subject was ever before the General Land Office, except this one transaction?

A. This is all found in the Railroad Division. As to other divisions, I could not answer."

Whereupon witness further testified that he is familiar with the general system of handling the correspondence in the General Land Office and if any correspondence had reached the General Land Office, or any transaction had been addressed to the General Land Office in any manner pertaining to the construction or administration of these provisions of the grants restricting the sale of the granted land, they would have been referred for action and for filing to the Railroad Division. He gained his familiarity with the manner of handling the mail in the General Land Office in what is known as the Mail Room, where the mail is received and distributed. He worked there for two, or three or four years. He does not exactly remember how long. He has examined the records of the General Land Office and particularly the Railroad Division so that he can explain the circumstances under which the patent of June 21, 1909, designated as "Supplemental Patent No. 3 for 161.75 acres of land, covered by Selection List No. 2, of September 23, 1871" was issued to the Oregon & California Railroad Company. The patent was issued for the fractional northeast quarter, the southeast quarter and the fractional southwest quarter, away back. Subsequently Mr. Hoehling, on June 10, 1909, requested that as a re-survey had been made of that and the plat showed the description to be different from the description which is in the patent, a supplemental patent correcting the description so it would agree with the survey, be issued, and that was the reason the second patent was issued, to correct that description in the original. It was just to cor-

rect the original patent and not to cover any additional lands. To correct the description of the patent dated May 29, 1872. He has examined the lists and selections filed from time to time by the Oregon & California Railroad Company under the Act of July 25, 1866, and also under the Act of May 4, 1870, upon which patents were issued, as to the form of these lists and selections and the name of the party who acted for the Railroad Company as Land Agent or Land Commissioner, and has prepared a statement which accurately sets forth the facts.

Whereupon witness further testified as follows:

"Q. Please refer to this statement, and explain fully concerning the forms of lists and selections used in the administration of these two land grants, and the names of the persons acting on behalf of the Oregon and California Railroad Company from time to time as land agent, or acting land agent, or Land Commissioner.

A. Under Act of July 25, 1866, no lists or selections were made except in the name of the Oregon and California Railroad Company. Under the last named Act lists and selections were made in the general form of List No. 1 (Government's Exhibit 111), dated July 12, 1870. Selections and lists continued in this general form until early in 1876, and were signed by I. R. Moores as Land Agent. Beginning on or about June 17, 1876, the selections and lists were upon the general form of List No. 8 (Government's Exhibit 111-A), signed by Paul Schulze as Land Agent. Selections and lists continued in this general form until about the year

1885. From the latter date the selections and lists were upon the general form of List No. 16 (Government's Exhibit 111-B), signed by George H. Andrews as Acting Land Agent, until November 19, 1888, when William H. Mills was appointed Land Agent, and thereafter the lists and selections were in the general form of List No. 17 (Government's Exhibit 111-C), until September 15, 1904, at which latter date Charles W. Eberlein was appointed Acting Land Agent, and thereafter the selections and lists were in the general form of List No. 104 (Government's Exhibit 111-D), until June 15, 1908; at the latter date Henry Conlin was appointed Acting Land Agent, and thereafter the lists and selections were in the general form of List No. 106 (Government's Exhibit 111-E), until September 21, 1908, when B. A. McAllaster was appointed Land Commissioner, and since that time lists and selections have been in the general form of List No. 116 (Government's Exhibit 111-F).

Under the Act of May 4, 1870, all lists and selections upon which patents have been issued were made in the name of the Oregon and California Railroad Company. Under the latter act the selections and lists upon which patents have issued were in the general form of List No. 1 (Government's Exhibit 111-G), dated January 20, 1888, signed by George H. Andrews as Acting Land Agent, until November 19, 1888; since which latter date all lists and selections have been in the general form of List No. 11 (Government's Exhibit 111-H), signed by

William H. Mills as Land Agent. No lists or selections have been made under the Act of May 4, 1870, since Mills ceased to be Land Agent for the Oregon and California Railroad Company."

Whereupon the lists and selections referred to in the answer of the witness are produced and identified respectivly to conform to the answer of the witness.

Whereupon the complainant offered in evidence "Government's Exhibits, 111, 111-A, 111-B, 111-C, 111-D, 111-E, 111-F, 111-G and 111-H" excepting the description of lands and blank forms which are not filled out, and which by consent are omitted, to each of which counsel for defendants objected to as immaterial.

STIPULATION.

Whereupon it was stipulated that certified copies of said exhibits just offered may be substituted for the originals and that such certified copies should be read into the record, which said several exhibits are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Government's Exhibits 111, 111-A, 111-B, 111-C, 111-D, 111-E, 111-F, 111-G and 111-H" respectively.

Whereupon the witness further testified that the subject of the issuance of the corrective patent on June 21, 1909, as shown by the records of the office was referred to Mr. Lord, an employe of the Railroad Division, who prepared the letter transmitting the patent to the

Recorder for signature. Mr. Lord is now dead. Everybody knew that this suit was pending, but he could not tell whether Mr. Lord knew it. Witness looked up generally the records of the Railroad Division relating to any correspondence or other transactions involving the provisions of these two grants, restricting the manner of selling the granted lands. There was no other correspondence with other parties, or other transactions relating to the same subject that he was able to find.

Whereupon the witness, upon cross-examination, further testified that the stamp on the letter of June 10, 1909, purporting to be signed "A. A. Hoehling, Jr., attorney for said Company," referring to the Oregon Railroad and Navigation Company which contained on the upper right hand corner these words and figures "65218. Registered G.L.O. June 12, 1909. Referred to ———————— Assigned to Lord." was put on in the Mail Room where they received the mail and the Mr. Lord there referred to is F. C. Lord of the Railroad Division, who had charge of the lists and patents. The presumption is that this matter was referred to Mr. Lord and that he prepared the patent and sent the letter transmitting the patent to the Recorder for the President's signature. Mr. Lord was in the Railroad Division in that capacity a great many years, and was between 50 and 60 years of age somewhere when he died.

Whereupon the witness further testified as follows:

"Q. Isn't he the man that would know, probably,

as much about the pendency of this suit to forfeit these land grants as any other man in the Railroad Division?

A. Not that I know of.

Q. Wasn't it his duty to know about the issuance of patents, and to take orders as to the refusal to issue further patents?

A. Yes, sir.

Q. Now, if there was a suspension of the further issuance of patents, on account of this suit or for any other reason, Mr. Lord would be the man to have that knowledge, wouldn't he?

A. He would be very apt to have it, yes, sir.

Q. Whom would he get it from?

A. Just like the rest of us.

Q. I mean, from whom would he get it?

A. Unless he was told unofficially, there would be an order issued.

Q. If it came to him unofficially, from whom would it come?

A. From his chief, or somebody told him.

Q. Who was his chief?

A. I don't know whether it was at that time a Mr. Dudley or Obenchain.

Q. It was a matter of common knowledge that the Government, after the passage of the resolution of April 30, 1908, by Congress, was prosecuting this suit to forfeit these lands? I mean, a matter of common knowledge in the office of the General Land Office?

A. I don't know whether it was common knowledge. I couldn't say that of course.

Q. The officers in the Railroad Division knew it?

A. I couldn't answer that.

Q. In your direct examination, I understood you said everybody knew it?

A. Well, at that time, 1909."

Whereupon the witness further testified that the letter of Mr. Hoehling of date June 10, 1909, was referred to Division F, Oregon and California Railroad Company, and is a request for a supplemental patent, and this is the patent about which he has been interrogated. Acting upon that request the patent was issued.

Whereupon defendants offered in evidence, as part of the cross examination of the witness this letter marked "Defendants' Exhibit 250," and requested that the exhibit be read into the record and withdrawn by consent, which said "Defendants' exhibit 250" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Defendants' Exhibit 250."

Whereupon the witness further testified that the original jacket copied on the first page of "Government's Exhibit 109" is the original jacket which should have contained the letter of Attorney General George H. Williams of date June 27, 1872, addressed to Willis Drummond, Commissioner of the General Land Office, and replied to by Mr. Drummond in his letter of July 16, 1872, which is set out and made a part of "Government's Exhibit 109" and is identified as "Government's Exhibit 109-D." The number of the original jacket was so faint, perhaps it was not taken. The number shown is "7128" in red ink and the letter on the jacket is "K," which refers to the series. They used to use these letters instead of the years. The number "7128" was given when it was received in the office to identify it. Referring to letter "L" on the copy of the jacket when it is letter "K," the letter on the original is so faint perhaps it was not taken. Witness could not tell what the letter "R" in ink on the margin of this jacket stood for in these days, but thinks it was to show the Recorder put it in the book. That is, that the letter of June 27, 1872 was recorded. It would be recorded in two books. One in volume 1, page 13, and this would be found in the General Land Office somewhere. He went and looked up the original volume where it was recorded when it was received here, but never noticed the volume number. He found that letter recorded and the original of it, that is the letter of Williams of June 27, 1872. What he found was merely the record of the receipt of the letter, the letter itself was not recorded. The letter "R" merely indi-

cates that the letter was received and not that there was a record of the letter. The letter "M" in ink under the words "Answered July 16, 1872" stands for Mendenhall, who was a clerk in the office, but is now dead. It would have been his duty to answer this letter of Attorney General Williams of June 27, 1872 and return it to the filing clerk to put in the files and it would then have been in his custody until he returned it to the files. Witness first looked to find this letter of Attorney General Williams of date June 27, 1872, in November 1911. He did not look in the Department of Justice among the files of the Attorney General's office and could not tell if there are any records, letter-books of the letters written by the Attorney-General in 1872, kept in the Attorney General's office and he made no search for them there.

Whereupon witness further testified as follows:

"Q. Now, I notice this envelope, or 'Jacket' as we call it, is simply an envelope of about the size of 4½ inches, about the size of a legal envelope or docket folded about 8x2½ inches, and on one side of it is really the form of a sealed envelope; on the other side are these words: 'Letter No.' printed, and then at the bottom 'Referred to Div.' and 'Received G.L.O. 18' printed. All the rest is manuscript on the face of the jacket? That is correct, isn't it?

A. Yes, sir.

Q. Now, in that jacket, which was produced here in this condition by Mr. Marr in our presence, just awhile

ago, I notice copy of opinion given by Samual M. Wilson, etc., marked in red 'B'—letter 'B'; and I notice a letter from Willis Drummond, of June 14, 1872, addressed to George H. Williams, Attorney General, on paper headed 'Department of the Interior, General Land Office.' And I notice a printed document, with the red letter 'A' on the same, being copy of contract between Trustees of Land Grant, Second, The E. & O. Land Company, and third, The O. & C. R. R. Company; and a letter to Attorney General Williams on the office letter-head of The European and Oregon Land Company, of date January 27, 1872, signed 'Jos. S. Wilson, Prest.' And I notice a letter of June 5, 1872, purporting to be a copy, on paper 'Department of the Interior, Washington, D. C.' signed 'C. Delano, Secretary.' And I notice another letter, on the letter-head of the European and Oregon Land Company, of date January 27, 1872, addressed to Ben Holladay, and signed 'Jos. S. Wilson, Prest.' And I notice another letter, of April 10, 1871, addressed to Hon. Jos. S. Wilson, Prest. E. & O. Land Co., purporting to be signed 'I. R. Moores, Land Agent O. & C. R. R. Co.' And another letter, of no date and no signature, but headed 'Department of the Interior, Washington, D. C. 18—' addressed to Jos. S. Wilson, President E. & O. Land Co., San Francisco, Cala.' Now, are these all of the documents, letters or correspondence, or papers, that you found in this jacket when you first made your search?

A. I couldn't answer that without examining that copy there to check it. I think it is, though.

Q. Well, if these documents that I have referred to all are copied and no others are copied, in Government's Exhibit 109 and 109-A to D, inclusive, then your answer would be that it covers all that was found in the jacket when you went there?

A. Yes, sir.

Q. You didn't find any written opinion there from John H. Mitchell as the attorney of the Oregon and California Railroad Company?

A. No, sir, not unless there was a copy made.

Mr. Townsend: No, it is not there.

Q. As a matter of fact, there is no such opinion in that file, or was in that jacket, written or signed by John H. Mitchell as attorney for the Oregon and California Railroad Company?

A. No, sir.

Q. Do you know how many different people may have had access to this jacket and its contents since July 16, 1872, down to a year ago, when you first examined it?

A. No, sir.

Q. Every clerk in the General Land Office, or in the Railroad Division, would have access to that, wouldn't they?

A. If they had some business, yes.

Q. As a matter of fact, it was out in the hall, where any one could come along and look at it?

A. It was out in the hall, yes, sir.

Q. And this file is in a loose jacket, and how is it kept separate from the other years, or other letters in the file known as the Oregon and California Railroad Company file?

A. That is 1872. There was a band around the 1872 letters.

Q. Well, now, isn't it true, Mr. Casey, that these contents are sometimes not all returned into the same jacket, and that one paper might get into a file for 1873, for instance?

A. Yes—it doesn't very often happen.

Q. It does happen, though?

A. Yes, sometimes.

Q. And isn't it true that sometimes an important instrument, like the assent of a railroad company to a land grant, is examined by some person who is interested, gets into the wrong file, or gets into an entirely different pigeonhole in these records, and is afterwards found in this place, and restored to the proper file?

A. Papers are sometimes misplaced.

Q. And that experience is not altogether unusual, then, in the way these records are kept?

A. It is not very ordinary.

Q. And it sometimes might get into a file entirely different from the Oregon and California Railroad Company, as in a case where an acceptance got into the file of the Northern Pacific Company, and was afterwards found in the wrong file?

A. There is a possibility."

Whereupon the witness further testied that he could not say that sometimes a letter or document belonging in one file may be mislaid and placed inadvertantly in the file of another different company or individual and does not come to light for some years. That is not very liable to happen. These records known as the Oregon and California Railroad Company file, that were in the General Land Office, that is the general files, were not kept in one room, but were in about four rooms. That is, three and the hall, as witness thinks. He thinks there is no clerk, or chief, or officer here in the office that was in charge in 1872. Witness could not answer whether nearly all are dead or are gone or out of the service that were employed in 1872, but that Mr. Marr was the oldest employe in the General Land Office in this Division. That is, the oldest in service, and is the oldest one that would have anything to do, or any connection with, the file of the Oregon and California Railroad Company. Witness does not know who Buxton is, whose name is on this jacket in pencil. This name was on the jacket when witness first examined it. He does not know whether he was a clerk in the office or not.

Whereupon, upon re-direct examination, the witness further testified as follows:

"Q. Mr. Casey, your attention has been called to the fact that the photographic copy of the jacket containing the Government's Exhibits 109, 109-A to 109-D, inclusive, reads at the top 'Letter L,' whereas it appears upon the original to be 'Letter K,' and your attention was also directed to the fact that upon the original jacket it appears to be 'No. 7128,' while upon the photographic copy it appears 'No.——,' the number itself not appearing. Combining these two circumstances, and examining the original jacket and the ink in which the letter 'K' is written and the figures '7128' are written, I will ask you to explain how this probably occurred.

A. The letter 'K' is written in purple ink, and it does not photograph. The figures '7128' are so faint that they possibly did not photograph, or probably did not photograph.

Q. So that this jacket originally was printed in black ink 'Letter L. No.——' and the letter 'K' has been written over the printed letter 'L' in ink, so that if the ink did not take the photograph would show 'Letter L. No.——,' as it was originally printed?

A. That is correct.

Q. Did you find any other jackets relating to this general subject?

A. Two others.

Q. Please produce them.

A. Letter I No. 92,880, containing a letter from Honorable George H. Williams, Attorney General, dated April 20, 1872; and letter K. No. 6956, which contains a copy of letter of June 5, 1872, from the Secretary of the Interior.

Q. Now, can you explain why when the letter of June 27, 1872, was received from Attorney General Williams, the former correspondence was transferred to the jacket in which was placed the last letter received from General Williams upon the subject?

A. The papers were all taken over, presumably, from the way the answer reads, the papers were taken over to the Secretary and brought back, and the letter answered, and all the papers placed in the last jacket.

Q. Do the documents placed in this last jacket, which has been identified here as 'Letter K. No. 7128' bear any filing marks that show that they were intended to be kept in that jacket?

A. Yes, sir.

Mr. Fenton: In what jacket?

A. This last one.

Q. How is that indicated?

A. They are labeled on the inside, each paper, beginning with 'A'—labeled 'A-7128,' 'B-7128,' etc.

Mr. Ogilvy: Are there two A's and two B's?

A. No.

Mr. Fenton: While we are on that subject, I don't understand the reason for the A, B, C, D, E, F, G, H.

A. Each letter was indicated in that manner that went into the file.

Mr. Ogilvy: Were these numbers there when you first examined them, Mr. Casey—A, B, C, D, etc. 7128?

A. I couldn't swear to that. I think they were, though. I didn't notice for that particularly.

Q. I will call your attention to the notation at the bottom of this jacket, 'Letter K No. 7128.' It originally read as follows: 'Received (G. L. O.) June 28, 1872' which was the day after the date of the last letter written by Attorney General Williams; and the date at the bottom was subsequently changed to read July 17, 1872; and a further notation upon this jacket shows that the letter was answered on July 16, 1872. Does this not indicate that the entire files were transferred to the Secretary's office, as you have stated, and were finally refiled on July 17, 1872?

A. Yes, it appears to indicate that. The letter downstairs shows the date it was received was on the 17th. It was taken over, and must have been received informally.

Mr. Ogilvy: It shows it was received the day after it was answered?

A. Yes. It was probably received informally."

Whereupon, the witness further testified that from the records of the Railroad Division, it appears that William H. Mills, who acted as Land Agent for the Oregon and California Railroad Company from 1888 until some time in 1904, also acted during the same period as Land Agent for the Central Pacific in 1888, but he could not tell for how long thereafter. Mr. Lord died about a year ago, to the best of his knowledge. Other people besides the clerks of this Division had access to these files; an attorney in good standing, and attorneys for the Railroad Companies have access to them. It is a frequent occurrence for attorneys representing those land grant companies to go up and inspect these files. He has not had charge of the files but believes the attorneys had had as much assess to these old files ordinarily as the employes of the Department. He could not state how recently these files had been examined by attorneys for the Railroad Companies, but he does not mean by his testimony to raise any implication that papers have been taken out of their proper files either accidentally or intentionally by the employes of the division.

Whereupon upon re-cross examination, the witness further testified that he does not mean to imply by his testimony that any employe or attorney of any of these railroad companies intentionally or accidentally took out any of these documents.

Whereupon the witness further testified as follows:

"Q. I notice that this jacket you referred to under the head of 'Letter K' bears a number '6956' and is headed 'Honorable Secretary of the Interior, June 5, 1872.' and down below in pencil 'Copy of'—then in ink 'Reply to ours of the 20th ult.' and then in pencil this language: 'This copy belongs to certain papers filed by Attorney General Williams May 20, 1872, and has been placed therewith:' and in brackets 'To be filed:' then the usual blank 'Referred to Division F' in ink; then 'Received (G. L. O.)' in print; in ink 'July 16, 1872.' This is the jacket that you referred to as from which the transfer was made to jacket No. 7128?

A. No, sir; it is the first one—92880.

Q. Well, that is one of them—one of the two jackets?

A. Yes, sir.

Q. In whose handwriting is this pencil memorandum 'This copy belongs to certain papers filed by Attorney General Williams May 10, 1872, and has been placed therewith. (To be filed') And at the bottom in pencil is the name 'Cromwell'. Is that in his handwriting?

A. I couldn't tell you that, sir. There was a clerk here by the name of Cromwell."

Whereupon witness further testified that Cromwell was just a clerk in connection with the Railroad Division and would have access officially to these files, and his

duties would sometimes require him to have such access. Cromwell died about 1895. The pencil memorandum on this jacket was there when witness first saw it. He notices that the jacket now contains a copy of a letter of June 5, 1872, purporting to be from Secretary Delano to Commissioner of the General Land Office Willis Drummond, which is typewritten on Department of the Interior stationery, but he does not think the original is in '7128.' The original letter of the Secretary addressed to Commissioner Drummond is not in these files and he cannot tell where the original is. It would probably be in these files, he could not tell why the original letter of Secretary Delano addressed to Commissioner Drummond should be in the Secretary's office and not in the Commissioner's office. This is a typewritten and not a photographic copy witness thought.

Whereupon witness further testified as follows:

"Q. Now, I notice this 'Letter I. No. 92,880' jacket is endorsed in writing 'Hon. George H. Williams, Attorney General, April 20, 1872. Papers in the case of Oregon & California R. R. Co. &c. Acknowledged May 20, 1872. Papers sent to Secretary May 20, 1872. Sec. to Atty. Genl. June 14, 1872, transmitting copy of Secretary's opinion;' and then 'Received (G. L. O.) April 22, 1872.' Now, is that a part of this same file relating to this correspondence between Attorney General Williams and the Commissioner of the General Land Office?

A. Yes, sir.

Q. And I notice the figures '15-139' on the back of that jacket. What does that mean?

A. It means the volume in which the thing was docketed.

Q. Now, in that jacket I now find an original autograph letter of George H. Williams, written on stationery 'Department of Justice, Washington, April 20, 1872,' addressed to Hon. Willis Drummond, Commissioner General Land Office, Washington, D. C. From your knowledge of the handwriting of General Williams, or Attorney General Williams, would you say that was an autograph letter of his? It is written in the same hand as the signature, isn't it?

A. Yes, sir.

Q. And appears to be an autograph letter, doesn't it?

A. Yes, sir.

Q. Now, is that photographed by you, or did you photograph the carbon copy?

A. That was photographed.

Q. The letter itself?

A. Yes, sir.

Q. The photograph would take all this ink, would it?

A. Yes, sir.

Q. Now, you found that as the only inclosure in jacket No. 92,880 at this time?

A. That is all.

Q. These three jackets are the only jackets that you found anywhere in the office of the General Land Office, or in the files of the General Land Office, relating to this subject matter?

A. That is all.

Q. You don't mean to say that there are no other? There may be some other correspondence?

A. That is all I found.

Q. That is all you found. That is all.

Mr. Townsend: In your investigation of the records relating to the Oregon and California grant, you have also examined the files of the office of the Secretary of the Interior, have you not?

A. Yes, sir."

"Counsel for defendants admits that the counsel for the Government, through Mr. Casey, produces a jacket from the files of the Oregon and California Railroad Company, formerly the Oregon Central, indorsed thereon 'Received January 20, 1869. Dated January 19, 1869. From Hon. George H. Williams, U. S. Senate. Subject, encloses S. Bill No. 776, To authorize the Oregon Central R. R. Co. to file assent to Act July 25,

1866, and asks for Secretary's views. Case 2, G 1, and answered January 20, 1869, page 565, Volume 1 Railroad,' and therewith a letter of George H. Williams of date January 19, 1869, headed 'Senate Chamber,' addressed to 'Hon. O. H. Browning, Secretary of the Interior, Washington, D. C.' together with a pamphlet enclosed therewith entitled 'Statement of facts relative to the incorporation and organization of the Oregon Central Railroad Co. of Salem, Oregon,' being a copy of Government's Exhibit 105."

STIPULATIONS.

Whereupon it was agreed that the circular or pamphlet designated as "Statement of Facts" need not be included because it is a duplicate of "Government's Exhibit 105." It was also admitted that by letter dated January 20, 1869, Joseph Gaston transmitted to the Secretary of the Interior a copy of "Government's Exhibit 106," entitled "The Inside History of the Oregon Central Railroad Companies," which was filed in the office of the Secretary of the Interior on March 15, 1869.

And it was further stipulated that if the Government shall offer certified copy of the jacket enclosing this document, the document itself need not be repeated for the reason that it is an exact duplicate of "Government's Exhibit 106." And it was further stipulated that if this copy is made, the ink writing will be shown

on the photograph, by ink if necessary."

Whereupon it was further stipulated between the parties, by their respective counsel, as follows:

STIPULATION.

Mr. Townsend: It is stipulated that J. F. Casey, if recalled as a witness on behalf of the Government, would testify that the records of the General Land Office show that the forest lieu selections referred to in Exhibit No. 9 to the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, were examined as to the title of the base lieu land tendered to the Government by the following named persons, who were law clerks in the General Land Office during the time that said forest lieu selections were pending in the Interior Department, namely: F. C. Dezendorf, Albert G. Hall, Harry W. Happy, Marvin M. McLean, Fletcher Meredith, Benj. F. Sparhawk, George C. Stewart, Alva S. Taber, James D. Tyler and Hugh H. Williams; and that, in so far as the titles to any of said base lands were accepted and approved by the Interior Department, as set forth in said Exhibit No. 9 to said joint and several answer as corrected by Exhibit No. 17 to the Stipulation as to Facts entered into in this suit, the same were approved and accepted by the foregoing named law clerks.

It is further stipulated that, if the foregoing named law clerks were called and sworn as witnesses on behalf of the Government in this cause, each of them would

testify that he approved the title to said base lands without actual knowledge of the provisions of the Act of April 10, 1869, or the Act of May 4, 1870; that he passed the title after an examination in the following manner: Accompanying each forest lieu selection was an abstract of title showing patent by the Government to the Oregon and California Railroad Company, conveyance by the latter to a certain grantee, and conveyance by the latter or some subsequent grantee to the United States; the patent record of the General Land Office was examined to verify the statement in the abstract as to the issuance of patent—all of which patents were recorded and of record at length in the General Land Office; the tract books were then examined to ascertain that the lands tendered as base had not been used before for the same purpose, and to ascertain generally whether the lands tendered were proper base for the selections tendered; each of said law clerks passing upon said titles as aforesaid then approved the title, assuming that the patent created an unconditional and unrestricted title, and without examining the granting acts, and without actual personal knowledge of the provisions of the Act of April 10, 1869, or the Act of May 4, 1870; after the title to the base lands tendered had been examined in this manner, the selection was referred to the several divisions of the General Land Office to ascertain if the selected lands were subject to any prior adverse right of any kind; after the selection had been approved by each division of the General Land Office examining the subject, it was referred to the Chief of the Forest Lieu

Division, with the certificates of all of the law clerks and other employees who had examined and approved the selection as above stated; the Chief of the Forest Lieu Division then approved the selection without special examination of any of the subjects investigated by the law clerks and chiefs of the several divisions as stated above; in reliance upon the approval of the latter, the selection was then approved by the Commissioner of the General Land Office, and in like manner was approved and patent ordered issued by the Secretary of the Interior.

It is further stipulated that, for the purpose of this case, it shall be considered that the parties above named have been sworn and testified as heretofore set forth, subject to such objections as counsel for defendants now desire to interpose.

To which testimony contained in said stipulation, and the whole thereof, and to each and every part thereof, excepting as to the approval by the Secretary of the Interior, the defendants objected upon the ground that the same is incompetent, irrelevant, and immaterial and particularly upon the ground that such testimony cannot be considered to impeach, qualify or limit the action of the Secretary of the Interior, or of the United States acting by and through him as such Secretary.

STIPULATION.

Whereupon it was stipulated that Mr. Charles J.

Winton, if called as a witness would testify as follows:

"That he and three of his former business associates came from Wisconsin, where they were engaged in business, in the year 1901, for the purpose of purchasing timber lands in Oregon, which trip resulted in a written contract between the Oregon and California Railroad Company, as vendor, and A. B. Hammond and Charles J. Winton, as purchasers, covering approximately 45,000 acres of these railroad lands situated in the Counties of Tillamook, Yamhill and Washington, all of which were included in the West Side grant with the exception of 160 acres. The lands covered by this contract are not involved in the present suit, No. 3340, but are involved in the separate suit instituted against Hammond and Winton and others, being suit No. 3449. The contract referred to was dated August 16, 1901, but was in fact executed early in September of the same year, when Mr. Winton made a second trip to Oregon for that purpose. This general statement is made to explain the references by Mr. Winton in his testimony to the different trips to Oregon. The transactions referred to in the testimony of Mr. Winton now offered occurred after the signing of the contract dated August 16, 1901, and during Mr. Winton's second trip to Oregon, which was some time in September, 1901."

Whereupon it was further stipulated that the George H. Andrews referred to by witness in his testimony was George H. Andrews who, as shown by other testimony in this case was for many years acting land agent and

secretary of the Oregon & California Railroad Company, and who died about two years ago, to all of which testimony the defendants objected upon the ground that the same is incompetent, irrelevant and immaterial and particularly upon the ground that it appears from the testimony of Winton that the so-called verbal option was not in fact or in law an option, but if anything, a general conversation with a prospective purchaser of some of these lands; that it does not appear that Andrews, either as secretary or acting land agent, had any authority to make or offer to make a verbal or any option; that the terms of the verbal option were not reduced to writing, were not certain either as to price or quantity or location, and the same would be void under the statute of frauds because not in writing and void because uncertain; that the minds of the parties did not meet either as to price, acreage, time or terms.

Whereupon counsel for defendants admitted that contract No. 6242 of date August 16, 1901, was executed by the Oregon & California Railroad Company, as party of the first part and A. B. Hammond and Charles J. Winton, as parties of the second part, and that it was executed by the Company in the words stated and that this is the contract referred to in the testimony of witness.

Whereupon a certified copy of this contract of August 16, 1901, as recorded in the county records was admitted in evidence on behalf of the Government, to which contract reference is made in this Statement of

the Evidence, as if the same were fully written herein and the same may be considered a part of this Statement of the Evidence.

Whereupon it was stipulated that said witness C. J. Winton, would further testify as follows:

"Q. What else did you have to do with Mr. Andrews at that time in reference to the purchase of these lands, and what else did you do?

A. I talked with Mr. Andrews regarding the timber resources of Oregon, chance of manufacturing, and asked him as to what his opinion was as to my coming to Oregon to live—whether there was an opportunity here of carrying on a successful active operation in his judgment, and he told me that there was and that he thought I could make no mistake in coming, and before I left for my home—I am not sure whether it was on that trip or the third trip I made, because I came to Oregon a third time in the Fall—it was on the second trip, I think I am correct in saying it was on the second trip, and I had a verbal option from Mr. Andrews on one hundred thousand acres of Southern Pacific land, or the Oregon and California land—

Q. When you speak of the Southern Pacific lands you refer to the lands of the Oregon and California Railroad Company—

A. Which were in Oregon.

Q. Which is a part of the Southern Pacific system, so far as the operation is concerned?

A. Yes, sir. The lands upon which I had this option embraced all the so-called Oregon and California Railroad lands in the State of Oregon, and were to be selected in lots of not less than ten thousand acres in one locality, burned spots and bare spots thrown out, and the price was eight dollars an acre, and the terms were one-tenth down, and the balance in nine annual payments, six per cent interest. The price on the lands of the Oregon and California Railroad Company had been advanced—their general price—from seven to eight dollars per acre, shortly after the purchase made by Mr. Hammond and myself of the Tillamook tract.

Q. The first thing you did when you came to Portland on the second trip was to go before Mr. Andrews in company with Mr. Hammond and close up your contract?

A. Yes, sir.

Q. Your option for additional lands was a subsequent transaction?

A. Yes, sir.

Q. How long was it before you returned home on that trip that you had this conversation with Mr. Andrews with reference to the purchase of additional railroad lands?

A. We had talked in a general way about different tracts of lands that he was offering for sale and during one of those conversations I brought up the proposi-

tion of getting an option on one hundred thousand acres from him in groups, as I have stated. This—shall I tell you what was in my mind on that thing, or don't you care?

Q. Go ahead and state completely the negotiations you had with Mr. Andrews upon that subject, give the nature of the understanding you had with him, and any purpose you had you may add by way of explanation.

A. He gave me the option and said that this would mean the withdrawal of the Oregon and California lands in the State of Oregon from market until we had made our selections.

Q. That is—now, to make that definite, Mr. Winton, he gave you an option to select one hundred thousand acres from all of the unsold railroad lands?

A. Yes, sir.

Q. The lands to be in tracts of not less than ten thousand acres in any one particular locality or watershed?

A. Yes, sir.

Q. And the price was to be eight dollars an acre?

A. Yes, sir.

Q. How long was the option to run?

A. The option was to run until I could tell him definitely whether we would make the purchase, and

payment would be made then of one-tenth the purchase price.

Q. That is when you exercised the option?

A. When we made the selections.

Q. But how long were you to have to make the selection—how long after you got home?

A. A year to make the selection, if we told him we would take it—we were to have a year to make the selections.

Q. How long were you to have to tell him whether you would take it?

A. Until I could confer with my associates.

Q. That is after your return home?

A. The second time.

Q. And he understood in a general way that that would be within a couple of weeks or so—something like that?

A. Something like that.

Q. Now, did you have any contract in writing covering that option?

A. No contract in writing, no writing about it.

Q. You simply had a verbal option and probably an understanding that some written agreement would be

made if you notified him that you and your associates would exercise the option?

A. Yes, sir.

Q. After your return to your home after the second trip you did not exercise the option, and so notified him, I assume?

A. Yes, sir.

Q. And that was the end of that transaction?

A. Yes, sir.

Q. For a course of two or three weeks, then, you had under consideration, as you understand it, had the right to exercise the general option which you have described?

A. Yes, sir.

Q. Well, now, why didn't you exercise that option, Mr. Winton?

A. I favored exercising that option. My associates thought it would be better—they didn't favor it and they were in the majority and I let it lapse.

Q. What objection did they have to the deal?

A. They knew of the lands that we were buying on the Kilches River for less money, and I told them that we could buy claims here—at least they were so represented to me and we had bought some of them for less money than the railroad company's offer. We could

get them direct from the homesteaders at from six to six and a half an acre; the railroad company asked eight dollars.

Q. Who made that objection? Who of your associates objected to the exercising of this option upon the ground that you have just stated?

A. Why, it was talked over in a general meeting that we had, and that was the conclusion arrived at.

Q. How did Mr. Mortenson feel on that subject; how did he express himself, I mean?

A. I don't know as I could say. He has generally been pretty lenient with me in letting me have my own way in transactions we have been interested; I think he would have agreed if I had urged him to. I wasn't perhaps as strong in my conviction that that was the thing we ought to do as—I don't remember how he expressed himself on that.

Q. Do you remember how the Gilberts expressed themselves?

A. I think it was the general talk that we had better rest a little bit and await developments.

Q. Do you remember how Mr. Ross and Mr. Smith expressed themselves with reference to this option?

A. I think Mr. Ross didn't favor buying it.

Q. Well, now, if you knew that you could get lands from homesteaders at six dollars and a half an acre,

why did you favor the purchasing of timber lands from the railroad company at eight dollars an acre?

A. I thought it was a chance to do a big amount of business on a small amount of money. The selecting of that land would tie up all the railroad company's lands in Oregon for a year, and I didn't think it could be done inside of two years. In the meantime we would select out the choice tracts of ten thousand acres at eight dollars an acre, and I thought we could in turn sell them and make a good turn on them at an advance over what we had paid.

Q. Well, now, neither you nor your associates had learned of anything that influenced you in determining whether you would exercise that option?

A. Not a thing. The question of the title of these lands never came up in any way, shape or manner that we have had any occasion to consider it until this agitation in 1907. We considered that the contract that we had with the Oregon and California Railroad Company was just as good as though we had a contract with the United States Government for that much land, and that we got exactly the same title.

Q. I understood you to say yesterday that you and Mr. Mortenson and your associates on your return to Wisconsin, the first trip, considered that you could afford to pay more for these railroad lands than for the homestead lands because of your confidence in the titles?

A. And the fact that they were grouped up. It costs money to group up lands. Some one has to stay here and meet the man when he comes in to sell, got to meet him and wait for him until the time comes when he wants to sell.

Q. Now, if that consideration influenced your associates and yourself on your first trip to Oregon, what occurred between these two trips that you know of that induced your associates to reverse their position and recommend not taking these additional lands because homestead lands could be bought for less?

A. Well, the transaction of these one hundred thousand acres was a large transaction and they didn't care to go into a transaction of that magnitude; they didn't want to obligate themselves for that much money. The business had developed into one of a great deal larger magnitude in just a few months than any of us contemplated when we first came to Oregon and it was turned down on that account.

Whereupon Frank Griffith, called as a witness on behalf of the complainant, and being duly sworn, testified: That he is in the employ of the Government at the present time and has been in its service since 1899, and during that time he has been employed in the Interior Department and under assignment to the attorneys for the Government in connection with public land cases and is at the present time assigned by the Interior Department to assist counsel for the Government in this

Oregon and California land grant case and other public land cases; that at request of counsel for Government in this case he examined the files of the office of the Secretary of the Interior and the General Land Office with reference to all correspondence and all documents relating to land grants of the Oregon and California Railroad Company that are involved in this suit. He found among the files of the General Land Office and the office of the Secretary of the Interior, correspondence relating to the construction of the Act of April 10, 1869, which has been introduced in evidence in this case as Government's Exhibit 109, and this exhibit together with the other documents that have been introduced in evidence by the defendants in connection therewith, constitute all of the letters, files and other records relating to that question which are on file in the office of the Secretary of the Interior and the General Land Office; he made a careful search to ascertain if what he has stated is true, extending over a period of several weeks. He made different trips, once in regard to the land office and at another time in regard to the Secretary of the Interior's office and examined every document on file in either office relating to these two grants; these files included the letters that had been received by the Commissioner of the General Land Office, or by the Secretary of the Interior, in any way appertaining to these grants, or at least, the files purport to contain those letters.

"Q. I will ask you whether during the early administration of the Oregon and California Railroad Company land grants, being the Act of July 25, 1866,

and the Act of May 4, 1870, involved in this cause, who, if any one, acted as the medium of communication between the railroad company or its officers on the one hand, and the Interior Department, or Commissioner of the General Land Office on the other part?

Mr. Fenton: I object to that as calling for the opinion of the witness, and his conclusion from numerous documents and files and from the correspondence itself, and is therefore not competent, the documents being the best evidence.

A. George H. Williams, both while he was in the Senate and was Attorney General for the United States.

Mr. Townsend: Q. About how many communications did you find which were presented to the commissioner of the General Land Office or the Secretary of the Interior by George H. Williams which emanated from the Oregon and California Railroad Company or its officers relating to these land grants?

Mr. Fenton: Same objection.

A. I should say about forty-five.

Mr. Townsend: Q. Did those letters relate to varied subjects or to one particular subject?

Mr. Fenton: Same objection.

A. They related to every subject connected with the road.

Mr. Townsend: Q. Including filing maps of location, etc., of lands, issuance of patents, and subjects of that kind?

A. Yes."

Whereupon the witness further testified that during a part of the time he was engaged in examining the records of these offices Mr. Townsend, counsel for the Government, personally participated with him in the work. A. A. Hoehling, Jr., is the Washington Attorney, or one of the Washington attorneys, of the Oregon and California Railroad Company, the California and Oregon Railroad Company, Central Pacific Railroad Company, and Southern Pacific Railroad Company, or allied companies which had land grants. Witness during that time, and while he was examining the records of the General Land Office and of the office of the Secretary of the Interior, found Mr. Hoehling or his assistants engaged in a search of those records relating to land grants of the Oregon and California Railroad Company. Witness is familiar with Government's exhibit 105, being "Statement of facts relative to the incorporation and organization of the Oregon Central Railroad Company of Salem, Oregon," and found a copy of that pamphlet in the files of the office of the Secretary of the Interior. Whereupon, upon cross examination the witness further testified that he did not read the whole of Government's Exhibit 105, but from the outside cover of it and about the last page of it, he would say that it is the same thing. He did not read either of them all the way through;

he read the outside cover and the last page. He saw no more than one pamphlet there, that is the only one of its kind that he saw on file back there were other pamphlets but not on that subject. The one he saw was Government's Exhibit 105. He was going through those files on two different trips. The trip that he found the pamphlet was in 1912, about the end of March. He found these various documents, including the correspondence, and communications from the various companies to the Commissioner of the General Land Office and the Secretary of the Interior pretty well scattered around the General Land Office. They did not keep the same system; whether the system was bad or not he would not want to say, but it was the old style system of filing that was followed, there was a place for everything, but nearly everything was in that place. It goes by years. They would just put on the year 1868, and everything that related to a railroad company for that year would be there; there would be a band right on the outside of it, but it just goes by the year. There is a band around 1869, too, and if that band happened to get loose and the papers detached, the papers for the several years might be mixed. He could not say whether the files of the Oregon Central of Salem were separately kept or not, and would not say that they were found indiscriminately among the files of the Oregon and California Railroad Company and the Oregon Central, West Side. He does not recollect whether he found a separate file for the Act of May 4, 1870, or found a separate file for the Oregon Central. He saw that Book

of Letters Received, but did not pay much attention to that part, because there was not much correspondence there at that time. It was generaly given under the name of the person who wrote the letter. No one showed him where these files were, as he was pretty well acquainted where they were, or where they ought to be, but he went down with another fellow and they hunted for them and found them. He had worked at this thing for over thirteen years and knew where all of those files were and where they ought to be.

STIPULATION.

Whereupon it was stipulated that the court should take judicial notice of the pleadings, records, files and proceedings in each of the suits in equity referred to in Exhibit No. 10 of the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage herein.

Whereupon Richard Koehler, called as a witness on behalf of complainant, being first duly sworn, testified; that he now lives and has lived in Portland since 1874; that he was born in Germany; in 1874 he came to the United States as the financial agent or representative of the German bondholders of the Oregon and California Railroad Company under its bond issue of 1870 and some subsequent issues; he was connected with the railroad in various capacities as the representative of the bondholders committee jointly with Mr. Villard

and others for some time, and when the road was reorganized in 1881 became vice-president; was vice-president before that and was manager or local manager of the property. When the road was placed in the hands of a receiver in January 1885 he became such receiver and had charge of and managed the road during the receivership until June 6, 1888, when the receivership terminated. He then became general manager of the railroad and acted in that capacity until 1904. He is and was familiar with the railroad, the nature of its property, the character of the track, extent of the track, extent and character of the rolling stock, depots, buildings and other equipment, and has been so familiar since shortly after he came to Oregon in 1874. At the time the mortgage of July 1, 1887 was executed the Oregon and California Railroad Company owned 451 miles of railroad in Oregon; the mortgage covered that, together with any additional mileage that the railroad might afterwards acquire, and the company had this number of miles of railroad as early as January 19, 1885. After the railroad was reorganized in 1887 and 1888, as set forth in the pleadings and evidence in this case, the railroad was extended from Ashland to the southern boundary line of the state, connecting with the line which had been extended from the south; since that time the company has constructed and has bought and reconstructed a number of miles of railroad, until the present mileage is about 661 miles and a fraction, but he does not know the exact mileage at this very moment, but would have to refer to some

of the annual reports or statements, but it is over 660 miles. In his judgment the railroad of the Oregon and California Railroad Company, including all equipment and rolling stock, and the other property mentioned in the mortgage, on July 1, 1887, with the exception of the land grant lands, was of the value at that time about $50,000 a mile. To which last named testimony the defendants objected as incompetent and immaterial, but the competency does not go to the qualification of the witness to testify on that subject, and it was understood that this objection should go to all the rest of the testimony of the witness upon this subject. The witness further testified that the value of the road, after that time, has increased and to-day with its 660 miles of track, or more, he thinks the reasonable cash value of the road exceeds $50,000 a mile. The mortgage of July, 1887, restricted the bond issue to $30,000 a mile, that is, bonds were issued in accordance with the terms of the mortgage, and these bonds were never issued to a greater extent than the limitation provided for in the mortgage. Whereupon upon cross examination on behalf of the defendant Union Trust Company the witness further testified: That in his testimony he estimated the value of the road at the time of the Union Trust Company mortgage at $50,000 a mile and bases that figure upon his remembrance of the value of the railroad property generally, the cost of construction of railroads, and its prospective earning power. These are the three elements he would mention, and also his knowledge of railroad property

generally. The road was finished to a connection with the lines of the Central Pacific in the State of California, except the part to be built over the Siskiyou Mountain Range. While this construction was quite expensive, yet it would have created practically a through line between the Northwest and Portland, Oregon, and San Francisco, and there was to be expected a large amount of passenger travel as well as freight travel to be gradually developed. He took this into consideration when he stated that the property was worth $50,000 a mile. He figured that if the connection was made with the California and Oregon line in California, there would be a future probably for the road. If connection had been absolutely impossible for whatever reason it may have been, the value would have been less, how much less he is not prepared to say. The cost of construction from Ashland south was very great. That was an expensive piece of road to build, that is to a connection with the California and Oregon line over the Siskiyou Mountains. The road was only once in the hands of a receiver, but it was near bankruptcy often; it was near bankruptcy in 1884, but never came to actual bankruptcy until January, 1885. His testimony that the value of the road has increased since that time up to the present, is based also upon the consideration of the traffic arrangements between the railroad and the Southern Pacific and what is denominated by the Government as the Southern Pacific System. Without through traffic, the value of the property would not be as much as it is by enjoying this

through traffic. Suppose that in the future, or immediately, or at any time these traffic arrangements should cease, and the Southern Pacific, instead of continuing to use the line as at present, should use the Natron cut-off, which comes into the Oregon and California at Eugene, and connectes with the Central Pacific at Weed, and suppose in addition to that, that a parallel line down the Willamette Valley should connect at Eugene with this line over the Central Pacific at Weed, he could not give any estimate what the Oregon and California line from Portland to Ashland would be worth, but thought however that the increase in population all over this section of the country would in part at least compensate for any loss of travel which at present is enjoyed by the only line between Portland and San Francisco. A condition is possible when it would not be the only line down through the Willamette Valley and there is now a line known as the "Oregon Electric" running to Eugene. If traffic arrangements were made so as to connect that up and go across over to Weed then the Oregon and California line from Eugene to the southern boundary of the state would not grow in value as if it remained a monopoly; it would be a local line beginning at Portland and ending at Ashland, with no transcontinental connections whatever, unless it found its own independent connections in California, and unless it should go on and build, say from Ashland, a separate line on down through, but as the conditions are now, it would have no connections with anybody or any other line, except

its own. To which last named testimony counsel for complainant objected for the reason that the Act of July 25, 1866, requires the operation of the railroad from Portland to the southern boundary line of the state and from there connecting with the California and Oregon Railroad in California to the Central Pacific in California, as a continuous line. Witness further testified upon redirect examination, that on July 1, 1887, the railroad from Ashland to the southern boundary line was nearly completed and the same was true of the railroad on the California end northerly to connect with it and that the contract for the construction of the railroad was made early in the year 1887 and work was well along at that time. In the valuation of the road on July 1, 1887, he had taken into consideration the connection of the two lines. He thinks the name of the road constructing the Natron cut-off is the Oregon and Eastern Railroad Company. He is now exclusively an official of the Oregon and Washington Railroad and Navigation Company. He would not go so far as to assume that there will be no future railroads constructed unless there is an increase in business which justifies the investment. He has not taken into consideration the construction of future roads in making his estimates, but does not believe there will be any future road constructed for the sole purpose of depreciating the value of this railroad. The railroad of the Oregon and California Railroad Company is in his opinion an essential link in the railroad service of the Pacific Coast, and in his judgment this

railroad will always possess a value, not only for the local business, but as a connecting link in the general railroad systems of the United States, and particularly the Pacific Coast, but he would say that there is a possibility that several lines of railroad may be built within territory which permits of better operating features as to grades and curvature than the Oregon and California extension presents, but that fact does not change his opinion as to the value of the property.

STIPULATION.

Whereupon it was stipulated that Richard Koehler if called as a witness by the complainant, would testify that the Southern Pacific Company, one of the defendants in this case, is solvent and financially responsible and financially able to pay all outstanding bonds of the defendant, Oregon and California Railroad Company, the payment of which has been guaranteed by the Southern Pacific Company, as set forth in the pleadings and as shown by the evidence and stipulation as to the facts in this case. But the defendants object to the testimony as incompetent, immaterial and irrelevant. Whereupon the complainant offered in evidence that certain contract, dated November 11, 1902, between the Central Pacific Railway Company and the Oregon and California Railroad Company, as parties of the first part, and the Pokegama Sugar Pine Lumber Company, as party of the second part, being a certified copy of the original contract filed in the office of the County Clerk for Klamath County, Oregon,

which was admitted in evidence and marked Government's Exhibit 127, which said Government's Exhibit 127 is hereinafter set out and described and made a part of this statement, of the Evidence and identified herein as Government's Exhibit 127.

STIPULATION.

Whereupon it was stipulated by and between the parties hereto that all the facts and circumstances proven by Government's Exhibit 109, should for all purposes be deemed to have been specifically pleaded in detail in the bill of complaint herein, and that the admissibility of said evidence and the legal effect thereof should in all respects be the same as if all of said facts and circumstances had ben set out in detail in said bill of complaint; and that a formal amendment to said bill of complaint may be made at any time herein, in this court or in the appellate court, to carry out the purpose and intent of this stipulation. And it was further stipulated by and between the parties that the replication filed by the complainant herein shall have the same force and effect as if filed after the filing of the amended answers of the defendants and all amendments to the amended answer, the purpose hereof being to waive the filing of a second replication subsequent to the aforesaid amendments to the answers. It was further stipulated by and between the parties hereto that all of the evidence in this case shall be deemed to have been taken after all of the amendments had been made to the pleadings and the issues framed. It

was further stipulated that no further pleadings, answer or amendment on the part of the defendants shall be necessary or required as to the facts and circumstances proven by Government's Exhibit 109, to which the stipulation hereinbefore made refers. It was further stipulated by and between the parties that the corporate records of the defendant Orgon and California Railroad Company shall be considered in evidence as Government's Exhibit 129, and that the originals may be withdrawn, and that such portions thereof as either party may desire may be included in the printed record in this cause and made a part of this statement of facts, subject to any objection that either party may have that the same are incompetent, immaterial, or irrelevant. Whereupon the complainant offered in evidence certified copies of letters on file in the office of the Secretary of the Interior and General Land Office, collectively, and identified as Government's Exhibit 130, it being agreed that the original certified copies may be withdrawn and the documents read into the record, which said Government's Exhibit 130, as read into the record, is in words and figures as follows to-wit: Letter of George H. Williams addressed to Secretary of the Interior O. H. Browning, dated January 19, 1869:

'Senate Chamber,
Washington, Jan'y. 19, 1869.

"Sir:

I respectfully invite your attention to Sec. (1) of an Act entitled 'An Act granting lands to aid in the

construction of a railroad & telegraph line from the Central Pacific Railroad in California to Portland in Oregon approved July 25, 1866,' providing for the disposition of the lands granted by said Act in the State of Oregon.

"Enclosed please find a pamphlet entitled 'Statement of Facts' which fully sets forth the rights & claims of a company designated by the Legislature of said State in October, A. D. 1868, commonly called the 'East Side Company.'

"Enclosed also please find a paper signed by nine members of the Oregon Senate protesting against the action of said Legislature in October A. D. 1868, in which the rights & claims of a company designated in October 1866 commonly called the 'West Side Company' are fully stated.

"I have nothing to say as to the rights or claims of either company, but in view of the fact that the Articles of Incorporation of the West Side Company were not filed in the office of the Secretary of State until after its designation by the Legislature in 1866, & in view also of the fact that the East Side Company cannot file its assent as required by the Sixth Section of said Act, I am apprehensive that the benefits of said Act will be wholly lost to the State unless something is done to prevent it. Will you be good enough to advise me if there is anything in the action of your Department or the views you entertain of this matter making unnecessary

the proposed legislation.

Yours truly,

Geo. H. Williams.

Hon. O. H. Browning,
Secty. Interior,
Washington, D. C."

Also letter written by Secretary O. H. Browning to George H. Williams in response to the foregoing, dated January 20, 1869:

"DEPARTMENT OF THE INTERIOR.

Washington, D. C. January 20, 1869.

Sir:

I have received your letter of the 19th instant, and the accompanying copy of S. Bill 770, to amend 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon, approved July 25th 1866,' with other papers relating to the subject.

Said act of 1866 required the Legislature of Oregon to designate a company organized under the laws of the State to locate and construct so much of said road as was in Oregon, and that the Company so designated should file its 'assent' to the Act of Congress within one year after its passage.

By a resolution adopted by the Legislature, October 10, 1866, the Oregon Central Railroad Company was designated to locate and construct said road in Oregon.

Two companies called the Oregon Central Railroad Company claim to have been so designated. These it appears are locally called the East-Side Company and the West-Side Company.

At the date of the adoption of said resolution by the legislature neither company had been organized as required by the laws of Oregon. The West-Side Company however filed its assent to this Department within the year.

By a resolution adopted by the legislature in October, 1868, the East Side Co. was designated. The purpose of the bill as understood, is to authorize this company to file its 'assent' without prejudice to the rights or interests of the other company, and you ask for an expression of my views as to whether there is any necessity for the proposed legislation.

In reply I have the honor to state, that as the matter now stands, the grant so far as the portion of road in Oregon is concerned, has lapsed, while the grant for that portion of the road situate in California is still in force, and some legislation by Congress is necessary to revive the grant for the Oregon portion of the road.

The proposed bill, if it becomes a law, will, in my opinion, accomplish that purpose.

On the 13th instant, I declined to act upon maps filed by the West-Side Company 'in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject.' I enclose a copy of said letter.

The papers which accompanied your letter are herewith returned.

I am, Sir,

Your Obt. Servant,

O. H. Browning,

Secretary.

Hon. George H. Williams,

United States Senate.

Also letter written by J. H. Mitchell, signed as Attorney for the Oregon Central Railroad Co., Salem, Oregon, addressed to Honorable Jacob D. Cox, Secretary of the Interior, dated April 12, 1869:

"Washington, D. C.,

April 12th, 1869.

Hon. Jacob D. Cox,

Secretary of the Interior.

Dear Sir:

By the terms of an Act passed by Congress and approved July 25, 1866, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon,' it was provided that the grant so far as Oregon was concerned should go to such company thereafter organized under the laws of Oregon as the Legislature of that State should designate. The sixth section of such act also required the assent of the company so designated to be filed in your Department within one year from the date of the passage of such Act.

No company was designated, however, until October, 1868, when the Legislature by Joint Resolution, which I herewith transmit, designated the Oregon Central Railroad Company, of Salem, Oregon, as the company to take and manage the grant.

By an act passed June 25, 1868, the time in which the first twenty miles, and in fact the whole road was to be completed was extended, and by another act passed at the recent session of Congress, and approvd April 10th, 1869, the time in which the assent of the company designated was to be filed in the Department of the Interior was extended giving one year from that date. This assent will be presented for filing as soon as I can return to Oregon and have a resolution for that purpose adopted by the company designated in Act 1868, which is the only company that ever has been designated by the Legislature. And I now call attention to this matter in order that no action may be taken by your department that will in any way recognize another company known as 'The Oregon Central Railroad Co. of Portland, Oregon, which never has been designated by the Legislature, and which has been attempting to secure some recognition by your department as being entitled to the grant. And in this connection I would attract your attention to a letter of Secretary Browning addressed to Senator Williams dated January 20, 1869, wherein your predecessor decided that unless some such legislation as the act recently passed was had the grant would lapse. In proof of the statement here made I beg leave to submit the accompanying documents which

this communication I ask may be filed in your office, to the end that no action may be taken until the assent of the Oregon Central Railroad Co. of Salem, Oregon, can be filed.

Very respectfully,

J. H. Mitchell,

Attorney for the Oregon Central Railroad Co., Salem, Oregon."

Also letter written by George E. Cole, as Secretary O. C. R. R. Co., dated June 9, 1869, addressed to Honorable Jacob D. Cox, Secretary of the Interior:

"Office of the O. C. R. R. Co.

Salem, Oregon,

June 9th, 1869.

Dear Sir:

Herewith please find enclosed proceedings of the Board of Directors of the Oregon Central Railroad Company of Salem, Oregon, assenting to the provisions of the Act of Congress of July 25, 1866, and acts amendatory thereof, which assent I am instructed to present in your office for filing. In doing so I would respectfully attract your attention to a letter of your predecessor (Secretary Browning) of date January 20th, A. D. 1869, also to report of Senate Committee on Public Lands made March 22, 1869, a copy of which I herewith enclose; and would also attract your attention to an Act of Congress approved April 10, 1869, based on said report, whereby the Act of July 25, 1866, aforesaid entitled 'An Act to aid in the construction of

a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon' was amended so as to authorize the company designated to file its assent within one year from that date. A map showing the location of the road for the first sixty miles will be forwarded at an early day.

Hoping enclosed assent will be filed and requesting an acknowledgment of receipt of same.

I have the honor to be very respectfully,

Geo. E. Cole, Secretary O. C. R. R. Co.

Hon. Jacob D. Cox,
Secretary of Interior,
Washington, D. C."

Also letter signed by I. R. Moores, as president of the O. C. R. R. Co. of Salem, and Geo. E. Cole as Secretary of the O. C. R. R. Co. of Salem, addressed to Honorable J. D. Cox, Secretary Department of the Interior, Washington, D. C., dated September 19, 1870.

"Office of

OREGON CENTRAL RAILROAD COMPANY.

Salem, Sept. 19, 1870.

Sir:

At the request of J. Gaston, Secretary of the Oregon Central Railroad Company of Portland, Oregon, we the undersigned hereby certify that 'The Oregon Central Railroad Company of Salem, Oregon, was disincorporated and dissolved according to the laws of Oregon, on

the seventh day of April, 1870, and does not now exist as a corporation or company under the laws of this State.

Respectfully yours,

I. R. Moores, Pres, O. C. R. R. Co. of Salem,
Geo. E. Cole, Secy. O. C. R. R. Co. of Salem.

To Hon. J. D. Cox,
Secy. Dept. Interior,
Washington, D. C."

Also letter signed by George H. Williams, addressed to Honorable J. D. Cox, Secretary Department of the Interior, Washington, D. C., dated September 21, 1870:

"Portland, Oregon, Sept. 21st, 1870.

Sir:

J. Gaston, Secy of the Oregon Central R. R. Company, has handed me your letter of August 2, 1870, addressed to him as the President of said company, in which you state that the 'assent' offered by said company, to the provisions of an Act of Congress entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon,' approved May 4, 1870, will be accepted as a sufficient 'Assent' to said Act, if it be shown that the company which Mr. Gaston represents is 'the Company for whose benefit the said grant was made.' I can state of my own knowledge that the company of which Mr. Gaston was formerly President, and of which he is now Secy, is the corporation entitled to the benefits of said Act, and for which it was passed.

The *East Side* Oregon Central R. R. Co. was regularly disincorporated and dissolved by voluntary action of its stockholders, before the above named Act of Congress became a law; and the company which Mr. Gaston represents is now the only corporation under its name in this State.

Respectfully yours,

Geo. H. Williams,

Hon. J. D. Cox,
Secy. Dept. of Interior,
Washington, D. C."

Also letter signed by J. Gaston as Secretary O. C. R. R. Co., addressed to Honorable J. D. Cox, Secretary Department of Interior, Washington, D. C., dated September 21, 1870:

Portland, Oregon, Sept. 21st, 1870.

Sir:

Enclosed please find certain documents, which please place on file, with the 'Assent' heretofore sent you on the 18th of July, 1870.

I am directed to notify you that the Oregon Central Railroad Company and their assignee, The Willamette Valley Railroad Company, objects and protests against the withdrawal of any public lands for the Northern Pacific Railroad Company on their line between Portland, Oregon, or Vancouver, W. T., and Puget Sound, until such reasonable time as the two first named companies can file their maps on their line between Portland and Astoria, Oregon; for the reason, that the land

Grants of these several companies, on these lines, will overlap, each other, and the grant of the first named companies being prior in time, is prior in right.

Respectfully yours,

J. Gaston,
Sec. O. C. R. R.

Hon. J. D. Cox,
Secy. Dept. Interior,
Washington, D. C."

Whereupon the defendants objected to the admissibility of each of said documents and to the whole thereof, as immaterial and irrelevant.

Whereupon complainant rested its case in chief.

TESTIMONY FOR DEFENDANTS.

Defendants proceeded to offer testimony in their behalf.

Whereupon B. A. McALLASTER, called as a witness on behalf of defendants, being first duly sworn, upon direct examination testified that he resides at Oakland, California, and is Land Commissioner of the Oregon and California Railroad Company, Land Commissioner of the Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Land Company, and was appointed by the Board of Directors of the Oregon and California Railroad Company its Land Commissioner September 28, 1908, effective September 21, 1908.

Whereupon witness produced a certified copy of the

resolution of said Board of Directors, which was offered received in evidence marked "Defendants' Exhibit 251," and is hereinafter set out and described and made a part of this statement of the evidence, identified herein as "Defendants Exhibit 251."

Whereupon witness produced a copy of his appointment by the Board of Directors of the Central Pacific Railway Company as its Land Commissioner, which was offered and received in evidence and marked "Defendants Exhibit 252," and is hereinafter set out and described and made a part of this statement of evidence, identified as "Defendants Exhibit 252."

Whereupon witness further testified that he was appointed Land Commissioner of the Central Pacific Railway Company on September 26, 1908 as of date September 21, 1908, and was appointed Land Commissioner of the Southern Pacific Railroad Company by the Board of Directors September 23, 1908, effective September 21, 1908. Whereupon defendants offered in evidence the minute book of the Oregon and California Railroad Company, the minute book of the Central Pacific Railway Company, and the minute book of the Southern Pacific Railroad Company, showing the adoption of these various resolutions, and asked leave to withdraw same and substitute copies thereof marked as heretofore. Whereupon the resolution of the Board of Directors of Southern Pacific Railroad Company was marked and identified as "Defendants Exhibit 253," which is hereinafter set out and described and made a part of this statement of the evidence, identified herein as "Defendants Exhibit 253."

STIPULATION.

Whereupon it was agreed between the parties that the Southern Pacific Railroad Company is the Southern Pacific Railroad Company of California, and not the defendant Southern Pacific Company, and the so-called Southern Pacific Railroad Company is the company that was consolidated pursuant to the laws of the State of California, the constituent companies consisting of the former Southern Pacific Railroad Company of California and corporations bearing the same corporate name organized under the laws of Arizona and New Mexico.

Whereupon witness further testified that he first entered the land department of the Union Pacific Railway Company, in the branch office at Kansas City, in December, 1882, as a clerk; that office then handling what were formerly land grants of the Kansas Pacific Railway Company, extending from Kansas City to Denver, Colorado, and the land grant of the Denver Pacific Railway and Telegraph Company, extending from Denver, Colorado, to Cheyenne, Wyoming. In 1887 that Kansas City office was consolidated with the Omaha office of the Union Pacific Railway Company, which office had previously handled the Union Pacific land grant from Omaha, Nebraska, to Ogden, Utah, and at that time he was made chief clerk of the consolidated office. In May, 1890, he was appointed land commissioner of the consolidated office, and retained that position until September 21, 1908, and was land commissioner of the Union Pacific Land Department from 1890 to 1908;

from 1882 to 1887 he occupied various desks in the office, and then in 1887 was made chief clerk of the consolidated office and had general charge of the entire office under the then land commissioner, and after his appointment as land commissioner, he had the administration of the land grants of the Union Pacific, Kansas Pacific and Denver Pacific companies, leasing lands, selling lands, appraising them, acquiring patents, and attending to all the duties pertaining to the land department. He was appointed by the executive committee of the Southern Pacific Company as land commissioner on or about the 8th of October, 1908, to take care of certain lots which that company owned in the towns of Russell City, Alameda County, California; Mina, Esmeralda County, Nevada, and Imlay, Humboldt County, Nevada. Whereupon defendants offered in evidence the instrument evidencing the appointment of witness as land commissioner of the Southern Pacific Company for the purposes stated by him, and asked leave to read the same into the records as "Defendants Exhibit 254," which said "Defendants Exhibit 254" is hereinafter set out and described and made a part of this statement of the evidence and identified herein as "Defendants Exhibit 254." The Southern Pacific Company never has had a land department, within his knowledge. From 1882 to 1887 the Kansas City land office had charge of the Kansas Pacific land grant from Kansas City, Missouri, to Denver, Colorado, and the Denver Pacific Railway and Telegraph Company's land grant from Denver, Colorado, to Cheyenne, Wyoming. From 1887

to 1908 the consolidated office at Omaha cared for those two grants, and also the Union Pacific Railway Company grant from Omaha, Nebraska, to Ogden, Utah. The dates of the Acts of Congress making these grants to the Union Pacific and Central Pacific Railway from the Missouri River to the Pacific Ocean were July 1, 1862 and the amendatory acts of July 2, 1864.

The jurisdiction of the Central Pacific Railway Company in relation to its land grant, territorially, was from Ogden, Utah, to Sacramento, California, under the acts of 1862 and 1864, and from Roseville Junction, California, to the north line of the State of California under the act of July 25, 1866. The Central Pacific grant originally ran through to San Jose, but that grant was disposed of. The Central Pacific does not own it now from Sacramento to San Jose; the railroad between Sacramento and San Jose came back to the Central Pacific, but not the land.

The Southern Pacific Railroad Company held the grant from San Jose to Tres Pinos in California, and from Alcalde to Needles in California under the act of Congress approved July 27, 1866, and branch line grant from Mojave to a point near Yuma, Arizona, under the Act of Congress approved March 3, 1871.

The Central Pacific Railway Company now owns that portion of the grant in the State of California made to the California and Oregon Railroad Company under the act of July 25, 1866. As Land Commissioner he

has jurisdiction over that portion of the grant of July 25, 1866 made to the California and Oregon Railroad Company, now owned by the Central Pacific Railway Company in California, and also the grant of land owned by the Southern Pacific Railroad Company, and also that portion of the grant of July 25, 1866 in Oregon now owned by the Oregon and California Railroad Company, and such jurisdiction also covers the unsold portion of the grant of May 4, 1870 owned by the Oregon and California Railroad Company. As Land Commissioner he keeps records showing the boundaries of the various grants; plats showing the location of the lands granted to the company and also those lost to the grant; records showing the applications filed by the company for patents; the issuance of patents; any and all contests or hearings in the land offices relating to the right of the company to receive patents for certain or any lands; records of the field examinations of the lands, of their appraisal, and the character and topography of the lands; records of sales made by contract or for cash; records of deeds made, and various and sundry other records necessary to know what is acquired, how disposed of, and what is left. He has a fairly complete set of the plats of the United States surveys, and copies of field notes to an extent, but not complete. The companies have tract books showing in a condensed way the various conditions of title, etc., although these are not now in use. The companies substituted for that a card record as to lands that had not been disposed of prior to the institution of the card record system. The card records

do not show all the lands, because cards were not made for those lands which had been sold and deeded by the company prior to the time when the card record was instituted. Otherwise than that, they do show all of the land owned by the company or claimed by it. The tract books show the rest up to that time. The companies have reports showing the topography and character of the lands, occupancy of them, the values as estimated by the field agent who makes the examination. Those values are not always treated as being the market values. It is absolutely necessary that these various records, reports, etc., be kept full and complete and correct. Otherwise the companies could not handle the land grants at all.

In the execution of land sales, the companies use generally a deed which grants and conveys the land, and these forms are substantially the same as to each land grant. In cases where the companies may sell a piece of land for which patent has not yet been received by the company, or where there may be some occupancy that the companies would prefer to recognize the occupant and deal with him on a quitclaim deed rather than first dispossess him in order to put it where the companies could handle the tract with a grant and convey deed, the Companies use quitclaims for conveyances. There are very few quitclaim deeds used. They use quitclaim deeds where a former deed has ben lost by the grantee, who seeks a deed of further assurance, or a deed from the company to replace a lost deed that has not been recorded. He has three forms of Central Pa-

cific deed. Form No. 3332 has been in use heretofore, but is not now used. Form 4501 is for the conveyance of land in which there is no right of way to be reserved for the railroad, and Form 4502 is the form in which rights of way are reserved, and these two forms are the ones customarily used at the present time to convey Central Pacific lands. Deeds of the other companies are similar in form. These forms 3332, 4501 and 4502 are not used for conveying Oregon and California Railroad Company lands, but they are substantially the same.

Whereupon defendants offered in evidence Forms 3332, 4501 and 4502, which were received in evidence as "Defendants Exhibit 255," which is hereinafter set out and described, made a part of this statement of the evidence and so identified herein.

Whereupon witness further testified that Form 3332 is one used when the company has occasion to convey a tract of land that is unpatented but the company claims that it is entitled to a patent but has not yet received it, and that is the reason that form is used. Form 4501 is used for any patented land through which it is not necessary to reserve rights of way for the railroad, but occasionally it is necessary to include some special exceptions in particular cases. and for this there is a blank space left for such exceptions. Form 4502 is used in conveying lands through which it is necessary to reserve rights of way for the railroad. He had made no sales since his appointment as Land Commissioner of the Oregon and California Railroad Company of any conse-

quence, and the only deeds that have been executed, with certain exceptions to be mentioned later, were deeds made in completion of contracts outstanding prior to the institution of this suit, that is to say, where there were executory contracts upon which partial payments had been made, which were in effect, where parties were entitled to their deeds on payment of the balance of the purchase price as they matured,—and in such cases the company has performed by executing the deeds called for by these contracts. Since this suit was instituted in September, 1908, there has been made a sale, in October, 1908, to the City of Sheridan of forty acres, as to which the City of Sheridan had previously instituted proceedings to condemn the tract for water supply, and the purchase price for this tract was $10.00 per acre,—$400.00. In December, 1908, a sale was made of 160 acres, at $2.50 per acre,—$400.00, to Franklin Martin, in settlement of a suit which Martin had brought some time before. This suit was not brought pursuant to any claim that he had a right to it at the $2.50 per acre under this statute. In December, 1910, the company sold a right of way to the Salem, Falls City and Western Railway Company, 3.20 acres at $15.62 per acre, total $50.00, pursuant to condemnation proceedings which had been instituted by that company. In May, 1912, the company sold to the Oregon Electric Railway Company a right of way, 2.60 acres, for $500.00, pursuant to condemnation proceedings. In January, 1910, the company sold a right of way to the Portland Southwestern Railway Company, number of acres not stated, total consid-

eration $1220.80. That was also pursuant to condemnation proceedings. In June, 1910, the company sold to Roy W. Minkler 80 acres at $22.50 per acre—$1,800.00, and that sale was in settlement and compromise of a suit brought by Roy W. Minkler, one of the defendants in this suit. With the exceptions noted, no sales of Oregon and California Railroad Company lands have been initiated or consummated by him as Land Commissioner since his appointment or since the commencement of this suit.

The form of deed which the Oregon and California Railroad Company has been using in the consummation of the executory contracts for land that were contracted to be sold prior to the commencement of this suit, is Form No. 3398, which is regularly executed by the Vice President and Secretary of the Oregon and California Railroad Company, and where they are trust lands, joined by the Union Trust Company. Whereupon defendants offered in evidence said Form 3398, which was received and marked "Defendants Exhibit 256," which is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Q. Now, I wish you would state, if you know, what the policy of the land department of the various companies that you have represented in the past, and that you now represent, has been in respect to promotion of settlement of any of these lands that are subject to or capable of settlement? What do you know about that?

Mr. Townsend: That is objected to, on the ground that it is immaterial and irrelevant, and particularly in view of the testimony of the witness that his personal knowledge as to the Oregon and California Railroad land grant is limited to the period commencing September 21, 1908, during which entire period the pleadings admit that all lands of the Oregon and California Railroad Company have been withdrawn from sale, and therefore this witness can have no personal knowledge as to the policy of the Oregon and California Railroad Company, and the testimony is therefore incompetent and hearsay.

A. The policy of the Union Pacific Railway Company was always to induce settlement by every means possible, for the reason that settlement means building up the country and traffic for the road. The policy of the Central Pacific Railway Company and of the Southern Pacific Railroad Company since my appointment has been along the same lines.

Q. What would have been the policy of the Oregon and California Railroad Company as to that class of lands but for the institution of this suit, if you know?

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness as to what would have been the policy, instead of evidence as to the actual policy of the company.

A. The policy would have been to have offered the lands for sale, had it not been for the fact that this

suit had been instituted before I took hold of the department.

Q. And in making these offers of sale, what would have been the policy of the company as to inducement to promote settlement as to lands that were capable of settlement, if you know?

Same objection.

A. Well, the principal inducement that we offer is a long-time contract.

Q. What I mean is, would you have offered any inducements to promote the settlement of any of these lands that are capable of settlement, if you had the opportunity to sell?

Mr. Townsend: Same objection; and upon the further ground that it permits to the witness his own opinion as to what lands are capable of settlement.

A. Well, the efforts of the department are mainly directed to securing settlers.

Q. Is or is not this a policy which these land-grant roads have pursued from the beginning of your connection with them, and continued up to the present time wherever possible?

A. It has always been the policy to sell the lands to people who would settle on them and improve them.

Whereupon the witness further testified that he had prepared or caused to be prepared a tabular statement

for each county in which some portion of the lands of the so-called East Side and West Side grants are situated, showing the record of deeds or contracts, selling or for the sale of the lands of the Oregon and California Railroad Company, which tabulated statement was prepared under his direction and supervision, and is an accurate transcript of these records. Whereupon witness produced the tabulated statement for inspection, and further testified that this tabulated statement had been checked up and found to be correct according to the recorded instruments, with the character of the instrument, the date, the name of the grantee, the description of the lands, and consideration stated, and the book and page of the various records. They show that information correctly, and in the conduct of his office these documents are relied upon by him as correct and as correctly stating the facts therein collated. Whereupon defendants offered in evidence said tabulated statements for Columbia, Washington, Multnomah, Tillamook, Yamhill, Polk, Marion, Lincoln, Linn, Lane, Douglas, Clackamas, Coos, Josephine, Curry, Jackson, and Klamath Counties, Oregon, and Clarke County Washington, which was marked collectively "Defendants Exhibit 257," which "defendants Exhibit 257" is hereinafter set out and described and made a part of this statement of the evidence, and identified herein as such.

Explaining how these documents were tabulated and from what sources of information they have been obtained, witness further testified that the fire of April

1906 destroyed all of the records of the land department, and after that it became necessary to restore those records from all sources from which the information could be obtained. In so doing, individuals were sent to the various counties, or arrangements made with abstract companies who had abstracts of record, to furnish the department with complete abstracts of all deeds which had been given by the Oregon and California Railroad Company. The same arrangements were made in respect to deeds of the other companies, and not only deeds, but contracts—anything—any document of record in the county records, which had been executed by or on behalf of the Railroad Company, were ordered abstracted in that manner, and those abstracts became the company record of the deeding of lands prior to the 1906 fire, and these are compiled from those abstracts. These abstracts and examinations thus made were furnished to him as the records of his office, upon which he acted, and upon which the company relied to re-establish the records of the land department after the fire of April, 1906, and witness has these original abstracts and reports for the inspection of counsel for the Government if desired. Witness is satisfied from these abstracts and from the reports thus made and obtained, that this tabulated statement is a correct record of what it purports to be, and he, as Land Commissioner, is acting upon that record. Whereupon defendants renewed their offer of these documents so tabulated and so compiled, heretofore herein referred to as "Defendants Exhibit 257."

Whereupon Counsel for Complainant interrogated

the witness, who further testified that he first came to San Francisco to take charge of the land department of the Oregon and California Railroad Company, together with these other companies mentioned by him, September 21, 1908, and prior to that time he had had nothing whatever to do with the land department of the Oregon and California Railroad Company, although he had inspected somewhat the records of the land department of the Oregon and California Railroad Company in May 1907. May, 1907, was the first time he saw any of the records of the land department of the Oregon and California Railroad Company, from which he compiled "Defendants Exhibit 257," and his knowledge as to the manner in which they were obtained is what he had to learn in order to carry on the office. He had nothing to do personally with the procuring of these records, and his knowledge was from what he learned in the office, and not from his personal contact with the transaction, as witness said he found the records in the office, and as to the manner in which they were obtained his knowledge was limited to what he had ascertained from the employees of the office, or otherwise, since he became connected with it.

Mr. Townsend: Now, the Government objects to the introduction of this Exhibit 257, on the ground that it is incompetent and hearsay, and no foundation has been laid.

Mr. Fenton: I was going to say that counsel for the Government, unless he withdraws this objection, puts us to the expense and necessity of calling the county

recorder of each of these counties to check up personally these lists; and if he can satisfy himself that they are correct, I should be glad to have him do so, and save us that expense and delay.

Mr. Townsend: In response to that, I will state in the record, that I have no present reason to doubt the accuracy of these statements, but, in view of the manner in which they have been vouched for, not intending to challenge the good faith of the witness, still I do not feel justified in consenting that they be received in evidence at this time. However, if I can satisfy myself that they are correct in fact, the objection as to the manner of identifying the county records will not be urged as an objection.

Mr. Fenton: Very well. I will ask leave to withdraw these, and have the recorder and clerk put in the date of the record of each one of these documents in a column on the margin of them, and then return them to the files.

Mr. Singer: And certify to it.

Mr. Fenton: I will offer them for the present with that promise, and ask leave to withdraw them from the examiner for that purpose.

Mr. Townsend: The Government consents to the withdrawal of these documents for the purpose stated, reserving the right to either renew or waive its objection when the documents shall be reoffered as proposed.

Mr. Fenton: That will be all right. I would like

to have it understood, Mr. Townsend, that all these re
ords and files referred to by Mr. McAllaster are subje
to your inspection, and tendered to you for that purpos
if you should desire at any time to do so.

Mr. Townsend: I will not attempt to avail mysel
of that privilege at this time, but will indicate later t
the witness any records that I desire to inspect.

Received and marked as "Defendants Exhibit 257,
and withdrawn as agreed.

Whereupon witness further testified that he, as Lan
Commissioner of the Oregon and California Railroa
Company, has in his possession certain records require
to be kept by him in the administration of these tw
grants, known as the East Side and West Side grant
and had prepared a typewritten statement of the resul
shown by the tract books and cards referred to by hi
as to the status of all lands within the limits of the Ea
Side grant, so-called, and a similar statement of all lan
within the limits of the West Side grant, so-called, as
May 1, 1912, showing the total quantities lost by or o
account of other grants, entries, etc., with the particular
the total quantities realized, with the particulars, an
the total deficiencies of each grant, and the causes ther
of, which the witness then produced, and the same w
identified and marked "Defendants Exhibit 258.
Whereupon witness testified that "Defendants Exhib
258" correctly states the status as of date May 1, 191
of that part of the grant situated in Oregon made b

Act of Congress approved July 25, 1866, and also the status as of date May 1, 1912, of the grant made by Act of Congress approved May 4, 1870. Whereupon counsel for Complainant reserved the right to object to the introduction of said document, after cross examination of the witness. Whereupon, the same was received and marked "Defendants Exhibit 258," which is hereinafter set out and described, and made a part of this statement of the evidence, and identified herein as such.

Whereupon witness further testified, in explanation of the figures representing the acres stated on Defendants Exhibit 258, that the information is contained in the company's land office records, and was obtained from examination of the General Land Office records and United States Local Land Office records, and this "Defendants Exhibit 258" correctly states, as shown by the company's land department records, and as shown by the records of the General Land Office and the United States Local Land Offices, the facts upon which this exhibit is based. These figures and notations explaining the figures are relied upon by him as correct in the administration of these grants. He has prepared a map showing the results disclosed by the records of the land department in his custody, as to the primary and indemnity lands of the so-called East Side and West Side grants, showing in colors lands patented to the company, granted or available under the grants but not patented, lost to the grants by other disposition made by the United States, and disposed of by the company. This map was prepared under his direction and super-

vision, and the information on which it was prepared is based upon the records of his office, and as in the case of the statement just presented, is based on information taken from the General Land Office and local land offices of the United States. He believes the map to be absolutely correct, and he, as Land Commissioner of the Oregon and California Railroad Company, acts upon it and relies upon its verity. Whereupon witness produced said map, and the same was received in evidence as "Defendants Exhibit 259," which is hereinafter set out and described, and made a part of this statement of the evidence, and identified herein as such.

In explanation of that map and the legends thereon, the witness says that the interior red lines on the map indicate the 20-mile or primary limits of the grant of July 25, 1866 on either side. The exterior red lines indicate the indemnity limits—the 30-mile limits on each side. The green interior lines up at the top of the map indicate the 20-mile limits of the grant of May 4, 1870, and the exterior green lines indicate the outer five-mile limits, or indemnity limits of the same grant. The green coloring on the sections indicates the patented and unpatented unsold lands of both grants, not including unselected indemnity lands. The sections colored carmine are lands covered by outstanding contracts of sale. The sections colored blue are those lands which have been deeded by the grantee companies. The sections colored yellow are lands lost to both grants by adverse entries. The sections colored brown are lands unavailable for in-

demnity selection because within forest or other reserves established subsequent to the grant. The sections enclosed within green lines are unselected indemnity, including pending suspended lists and unsurveyed lands. In other words, they are indemnity lands that either have not been selected or are in pending selection lists. The large body of land in yellow from Portland south to about Creswell, Lane County, Oregon, both within the place and indemnity limits of the grant of July 25, 1866, indicates lands which were lost to the grant by reason of entries or other disposals made by the United States before these grants became operative. The most of the losses came under the Donation acts and the Settlement acts in that territory. There were other causes of loss. To a very large extent these parcels marked in yellow are lands which were occupied or taken under the Donation or Settlement laws in the early settlement of Western and Southern Oregon, as ascertained by witness from his knowledge of the township plats and records in the General Land Office and in the United States Local Land Offices, obtained in various ways, and particularly in compiling this map. To a large extent, the lands indicated by a large valley in yellow, or a body of land in yellow indicated on this map, of which Roseburg, Douglas County, on the Umpqua River, is substantially the center, were lost by donation claims and homestead entries. That body of land also includes the Roseburg and Coos Bay Wagon Road grant, which was lost because the United States erroneously patented them under the wagon road grant instead of holding

them for the railroad grant, to which they properly belonged.

Whereupon, counsel for complainant objected to the testimony of witness last above, as to whether the United States erroneously patented these lands, as incompetent, irrelevant and immaterial, and a mere conclusion of law and fact by witness.

Whereupon witness further testified that it was a fact that these lands were lost to the Oregon and California Railroad Company and were granted or patented to the Wagon Road Company, and it is true that these lands in and about Roseburg, Douglas County, Oregon, that were taken under the Donation Land Laws, were settled, as witness understood, in the early settlement, and are largely in the agricultural portion of Douglas County. The lands indicated by the body of yellow surrounding the town of Medford, in Jackson County, are agricultural, and were lost to the company under the Donation Land Law and other settlement laws, long prior to the grant of July 25, 1866. That constitutes part of the Rogue River Valley, of which Medford is the central town. This yellow, all through on this map, shows lands that are situated in the valleys of Western Oregon, and which are chiefly in the agricultural portions thereof, to which counsel for complainant objected as incompetent, irrelevant and immaterial.

Whereupon witness further testified that he had been through these lands on the train and particularly observed that in certain localities lands in sight from the

rain were agricultural lands, and were being cultivated, nd he would not dispute that the Willamette Valley is ituated largely where that large body of yellow shown n this map is located, for it is a fact that the Willamtte Valley is so situated. The Umpqua Valley is situated in and about Roseburg, as shown on the map. The Rogue River Valley is situated in and about Medford. He has prepared another map of the unsold lands involved in this suit, showing as a result from the records of the company, the timbered and non-timbered lands of these grants, the topography of the country in which they are situated, and generally the character of these lands, which was marked as "Defendants Exhibit 260." The information indicating the different classes of lands indicated by the green and yellow coloring on the map, was obtained from the records of his office, based on General Land Office and United States local Land Office records. The information as to topography, streams, mountain ranges, etc., was taken from the plats in the office of the Surveyor General of the United States for Oregon. As a sample report showing information as to the topography, timbered character or non-timbered character, or other information for use in his office, used by him in connection with the field notes of the Surveyor General's office and the United States Land Office records, in the preparation of this map, witness says there are six original reports of field examination of lands which show the information required. He has all of the original reports in his office, of which this bunch of six is a sample, and they are all prepared in the same way

under his direction by his employees and representatives, for the files of his office, and largely all on the same printed forms, although there have been different forms in use at different times. These reports are required by him to be made in the administration of the grant, and the Company acts upon and relies upon them and they are part of the files of his office as Land Commissioner.

Q. For the guidance of yourself as Land Commissioner, and in the administration of the land grant, is there any other way to obtain accurately the information contained in these reports, excepting in the way these have been obtained?

Mr. Townsend: Objected to as incompetent, irrelevant, immaterial, a mere conclusion, and argumentative.

Q. I mean, any other practicable way?

A. No, sir.

Q. As Land Commission, in your experience with the various land grant companies to which you have referred and about which you have testified, is this the usual and ordinary way to obtain the information desired?

Same objection.

A. Yes, sir.

Q. As a man experienced in the operation and administration of land grants, and in ascertaining the value, the physical characteristics, situation, location, topog-

raphy and timber contents, have these reports been obtained in the usual and ordinary way by you as an expert, in the conduct and management of these particular land grants?

Mr. Townsend: Objected to upon the same ground.

A. Yes, sir.

Q. Are you prepared to say, from these records, reports, and the records of the United States Land Office, and the records of the Surveyor General's office, that this map—Defendants' Exhibit 260—correctly represents what it purports to represent?

Mr. Townsend: That is objected to on the ground that it is incompetent, irrelevant and immaterial; that it is based entirely upon hearsay and self-serving declarations made by the officers and agents of the railroad company; that the witness has not qualified himself to testify as to the character of the lands included within this grant, and that his testimony is necessarily hearsay and incompetent; and upon the further ground that the so-called classification of these lands is a mere arbitrary classification, and does not describe the lands with reference to any issue involved in this case; and upon the further general ground that it is immaterial in this case whether the lands are timbered lands, agricultural lands, or what their character may be.

A. Yes, sir, it does.

Mr. Fenton: Defendants now offer these six sample

reports as a physical illustration of the method pursued by the Land Commissioner, and as part of the files of his office, and ask to have the same marked as "Defendants' Exhibit 261." I now tender to the Government's counsel all the records and files of the office of the witness, particularly all of the original reports of which Defendants' Exhibit 261 is a sample, which is received in evidence and marked Defendants' Exhibit 261, and is hereinafter set out and described and made a part of this statement of the evidence, identified herein as such.

Mr. Townsend: Government objects to the introduction of Defendants' Exhibit 261, upon the same general grounds last stated, and upon the further specific ground that this is an attempt to prove the character of two million three hundred thousand acres of land by exhibiting unidentified reports and thus denying to the Government the opportunity to cross-examine the men who claimed to have made an examination of these lands, and upon whose alleged examination of the lands it is now sought to establish the character of the lands; the evidence is therefore incompetent and hearsay; and the evidence is further incompetent and hearsay to prove the contents of other reports made by the land examiners of this railroad company.

As to the offer by the counsel for defendants to the attorneys for the Government that the records of the office of the witness may be inspected, counsel for the government further objects, upon the ground that such an offer is obviously impracticable, and furnishes the

Government no opportunity whatever to test these records, it being obvious from the testimony of the witness that it has required a large force of officers and agents of the railroad company to compile the information which they themselves now offer, and it is impossible for the Government attorneys to inspect these records and verify the accuracy of the hearsay evidence now offered; and moreover there is no legal authority for an attempt to prove these facts in any such manner.

Q. Please, state, Mr. McAllaster, the names of your field examiners and their residences, so that counsel for the Government may know who they are, who made these reports.

A. Mr. A. W. Rees, Portland, Oregon. He is our chief field examiner for that district, and in charge of the work, and does a great deal of it himself. He has as his assistants Mr. L. D. McLeod, S. C. Bruce, D. C. McLennan, J. C. Rogers, Alexander Wilkinson, Elmer Capell. Those men constitute our present force of examiners in Oregon.

Q. Are these the names of all who made reports of field examinations of these lands, that were and are a part of the files of your office, on which any part of this map Defendants' Exhibit 260 is based?

A. No, we have had other men in that kind of work, who are not now with the Company.

Q. Can you give me their names, and their residences, if you know?

A. S. A. Carmichael, C. A. Cavel, F. A. Elliott, Ben Irwin, Roy Woods. That is all of which I have a record at hand. There may have been others.

Q. Who was or is Mr. F. A. Elliott? What position does he hold at the present time?

A. He is State Forester—I think is his title—of Oregon. He has charge of the forestry work carried on by the state.

Q. His offices are at Salem, Oregon, are they?

A. Yes, sir.

Whereupon witness further testified that he had prepared a statement showing the number of acres of land in each county in Oregon and Washington involved in suit 3340, being the suit now on trial, United States vs. Oregon and California Railroad Company et al., showing the number of acres which had been covered by the Oregon and California Railroad Company's field examinations, and the classification thereof as determined from such examinations, as shown by these reports, whereupon witness produced that table or statement identified as Defendants' Exhibit 262, and testified that it is a correct statement. Whereupon defendants offered the same in evidence, to which counsel for complainant objected upon the same grounds as hereinbefore set out, and it was agreed that such objections may be considered as here set forth in full. Which said Defendants' Exhibit 262 was received in evidence and is herinafter set out and described, and made a part of this statement of the

evidence, and identified herein as such. This Defendant's Exhibit 262 purports to show that the total acres involved in this suit are 2,075,616.45 acres, of which there has been examined 847,795.98 acres up to the date stated, and that this is forty per cent of the entire grant. These figures are correct. It purports to show that seventy-eight per cent of the area examined is timber land, and this is correct according to these reports. Whereupon it was stipulated that all testimony as to the details of Defendants Exhibit 262, including the preceding testimony and all similar testimony that may follow, shall be received subject to the objections heretofore assigned by complainant.

Whereupon witness further testified that the table or statement showing that nineteen per cent of the area examined was grazing land is correct according to these reports, and that two per cent of the area examined is agricultural land, and is correct according to these reports.

Whereupon defendants offered in evidence the map heretofore identified as "Defendants' Exhibit 260," and the same was received in evidence and marked "Defendants' Exhibit 260," which said Defendants' Exhibit 260 is hereinafter set out and described and made a part of this statement of the evidence, and identified herein as such, to which complainant objected upon the same general grounds heretofore assigned as to any evidence based upon the reports of the so-called land examiners of the railroad company and other sources of information

related by the witness, it being stipulated that these objections may be considered as having been made and set forth in full.

Whereupon witness further testified that as Land Commissioner of the Oregon & California Railroad Company, he had prepared a third map showing the unsold lands of both grants and illustrating in colors the disposition made by the United States of intermediate even sections, which he produces for the purpose of identification and which is marked "Defendants' Exhibit 263." This map was made upon information, records and files in his office and is a correct map. The green coloring indicates the lands of the Oregon & California Railroad Company involved in this suit; the lands colored green without other marking being patented lands; those colored green with a red circle are unpatented lands involved in this suit; and those colored green with black circle are unsurveyed lands involved in the suit. The red coloring indicates lands not involved in the suit which were taken up as public lands of the United States under settlement entries. The lands colored yellow are those taken up as public lands of the United States under non-settlement entries. The homestead entry law was principally availed of to obtain the settlement entries indicated in red; the timber and stone law principally to obtain the lands indicated as non-settlement entries in yellow, and some to general entries and cash entries. The timber and stone act of 1878 included the State of Oregon, but he does not remember what other Pacific Coast States or Territories it embraced, or whether it

was limited to Oregon, California, Nevada and Washington. The information as to the Company's own lands was obtained from its own records made up as heretofore explained. The information as to the even numbered sections was obtained by examination or the records of the United States Local Land Office and abstracted from them.

Whereupon defendants offered in evidence "Defendants' Exhibit 263" to which counsel for complainant objected, upon the general grounds heretofore stated and particularly upon the ground that no foundation has been laid for the testimony of this witness, as to the accuracy of the map, and it appears from such testimony that the map is compiled from information furnished to the witness, or his office, by others, and there is no testimony vouching for the accuracy of the details from which the map is compiled.

Whereupon said "Defendants' Exhibit 263" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Defendants' Exhibit 263."

Whereupon witness further testified that the information from which "Defendants' Exhibit 263" is compiled is all of record in his office and part of the records of the office and the Company relies upon the map as being correct. Referring to rough township plats prepared by him, showing disposition by entrymen of the portions of even sections marked "Defendants' Exhibit

264" he testifies that this set of plats was compiled from abstract made by employes of the Department from the United States Local Land Office records in Oregon, from the County records of the sundry Counties in Oregon, and from examinations made of the lands themselves and it is a correct showing of the facts therein indicated.

Certain of the settlement entries, which were entries made under the Donation claims law, Homestead law, Pre-emption law, and like laws, were not examined —that is, the lands were not examined in the field—and those tracts are marked by the letters "P" indicating pre-emption, "H" indicating homestead, "D" indicating Donation claims. Other lands, taken under like settlement entries, were examined in the field, and the green coloring indicates grazing lands now owned by the entrymen, but not occupied. Green coloring with the black "T" indicates grazing lands owned by transferee from the entryman, but not occupied. Green coloring with the letter "E" indicates grazing lands occupied by the entryman. Green coloring with the letter "O" indicates grazing land occupied by a transferee from the entryman. The red coloring indicates timber lands owned by the entryman, but not occupied. Red coloring with the letter "T" indicates timber land owned by a transferee from the entryman, but not occupied. Red coloring with the letter "E" indicates timber land occupied by the entryman. Red coloring with the letter "O" indicates timber land occupied by transferee from the entryman. Under the head of "Non-settlement

Entries" are shown those lands which have been taken by any form of entry under a public land law which does not require settlement as part of the acquirement of title. Lands covered by these entries were not examined in the field. The blue coloring with the letter "E" indicates timber entries owned by the entrymen. The blue coloring without any letter indicates timber entries owned by transferees from the entrymen. The yellow coloring indicates lands entered by scrip, and now owned by timber companies. The yellow coloring with the letter "S" indicates lands entered by scrip, and now owned in small holdings. Uncolored lands marked with letter "C" were cash entries. Those marked with letter "M" were mineral entries. Those marked with the letter "I" were Indian allotments. Those marked with the letters "Is." were isolated tract patents. And those marked "Coal" were coal entries. These colors in "Defendants' Exhibit 264" are not intended to have any relation to the colors on these maps. It is a separate color scheme used in these plats. Roy Woods, whose name appears on the first seven townships of this "Defendants' Exhibit 264" was one of his employes as a field agent who examined lands in the field. The coloring indications, so far as land examinations go are based on his reports. W. E. Stuart, whose name is mentioned on this Exhibit was an employe of the Department and did all the work of coloring and lettering of these plats. He compiled the information from the records made by abstractors and examiners. J. H. Ray was one of the employes of the Department engaged in gathering the

information. He was a field man. Edmond Stowe was one of the field men engaged on that work. Ivan Hawkins was one of the men engaged. Kendall, whose name appears on certain of these sheets was one of the men engaged on the work. Kinser, Kemptoy, G. E. Cartier, E. and W. J. Lander, L. M. Stonebreaker, C. L. Knox, Lynch, Olinger, White, Boehmer, Beekman, Eberspacher, Rodolf, Williams, Lake, Coppock, Landers, O'Shea, Lyman, Ashford and Look, were field agents employed by the Department to make this examination and reports. They made, respectively, written reports from field examinations and delivered them to him, and based upon these reports and upon the examination of the Local Land Office records, and the County Records, where the deeds are recorded and other records, all sources of information obtainable by him, this "Defendants' Exhibit 264," with the showing as stated, was prepared and brought to date (about May 12, 1912).

Whereupon defendants offered in evidence said document "Defendants' Exhibit 264," reserving the right to call any or all of these field men to testify further in reference thereto if Governments counsel shall not be satisfied, on investigation, that it is substantially accurate.

Whereupon counsel for the Government objected to the introduction of said exhibit upon the general grounds heretofore assigned as to compilations attempted to be identified by the witness, including the ground

that the same is incompetent, irrelevant and immaterial, based upon hearsay, and no foundation has been laid for the testimony of the witness as to the accuracy either of the compilation itself or to the materials from which the exhibit is compiled, which said "Defendants' Exhibit 264" is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had certified copies of the field notes of the surveyor generals office of Oregon showing the character of the land as returned by the surveyors when the Government survey was made and these notes were a part of the information used in making up "Defendants' Exhibit 264." These certified copies have been conveniently bound in packages 1, 2 and 3 and for the purpose of identification being marked "Defendants' Exhibit 265" were produced by him.

Whereupon defendants offered in evidence said certified copies so identified as "Defendants' Exhibit 265," to which counsel for complainant objected as irrelevant, immaterial and incompetent particularly upon the ground that the character of the lands involved in this suit is immaterial under the issues.

Whereupon it was stipulated that all evidence as to the character of the lands involved in this suit, or the lands in the intermediate even sections, including "Defendants' Exhibit 264" is received subject to this same general objection.

Whereupon said "Defendants' Exhibit 265" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Witness testified that he had prepared from the records of the Company, or caused to be prepared, a map showing the elevations above sea level of stations between Roseville Junction, California, and Portland, Oregon, on the line of the located and operated road mentioned in the act of July 25, 1866, and produces the same for the purpose of identification, and the same was marked "Defendants' Exhibit 266," and in explanation of said map witness further testified that the green line shown thereon is the line of the present constructed and operated so-called West Side line (that is, from Portland by way of Forest Grove to a point at or near McMinnville) under the Act of May 4, 1870. The red line shown on the map is the line of the constructed and operated road from Portland south to Roseville Junction, known as the East Side line, constructed under the Act of July 25, 1866. These lines appear to be located on the map of the standard form of the Oregon and California Railroad Company, showing the lands granted, not only to that Company, but to the California and Oregon. It is the Company's lithographed map showing the lands which the Companies claimed. That is to say, it shows the place and indemnity limits of the grant of July 25, 1866, and of May 4, 1870, on either side of the located and constructed and operated roads indicated in green and red respectively. It shows the lands un-

sold and claimed by the Company at the time the map was printed, June 1, 1907, and it aims to and does show the exterior limits of both grants. The figures in circles along this line show the elevation in feet above sea level. The lands shown in black on this map represent the lands that were owned at the time the map was printed, June 1, 1907. No sales have been made since 1907. There have been lands deeded since, that were sold under contract, with the exception of the few instances heretofore related by him. Lands that were standing under executory contract in 1907, when this map was lithographed, in many instances, have been subsequently deeded, but this would not bear on this map. It is not a title map of the lands, or aimed to be. He has used the lithographed map of the Company and has located these railroad lines or tracks with the elevations and that is the purpose of that map.

Whereupon defendants offered and there was received in evidence said map "Defendants' Exhibit 266" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness produces "Defendants' Exhibit 267" and in explanation of such exhibit testifies that this picture and photograph and memoranda attached, were records of his office, found by him therein when he took charge September 21, 1908. Charles W. Eberlin was the Acting Land Agent of the Oregon & California Railroad Company and F. A. Elliott and Homer D.

Angell were employes of defendant's land department. B. A. Gifford was the photographer that took the pictures, but witness has no personal knowledge of the taking of the photographs, or the facts stated in the memoranda, merely producing them as a part of the files of his office.

Whereupon defendants offered in evidence "Defendants' Exhibit 267" under promise to call Homer D. Angell and B. A. Gifford to further identify the exhibit. Whereupon counsel for complainant objected to the introduction of said exhibit on the ground that same is incompetent, irrelevant and immaterial and that the character of the land is immaterial and irrelevant.

Whereupon said exhibit was received in evidence with the memoranda thereto attached and the same is hereinafter set out and described and made a part of this Statement of Evidence and identified herein as "Defendants' Exhibit 267."

Whereupon witness produced a photograph with certain memoranda attached dated April 15, 1912, which was marked "Defendants' Exhibit 268." Whereupon witness testified that the photograph shown in "Defendants Exhibit 268" was taken under instructions given by witness to Mr. Rees and taken by Mr. Gifford during the spring of 1912 and covers lands within the limits of the grant.

Whereupon defendants offered in evidence this exhibit with leave to verify the memoranda attached if re-

quired by complainant. Whereupon counsel for complainant made the same objection to said exhibit as to "Defendants' Exhibit 267." Whereupon the said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of Evidence and identified herein as such.

Whereupon witness produced a map marked "Defendants' Exhibit 269" and testified in relation thereto that the photograph was taken during the year 1912 under instructions given by him to A. W. Rees and the photograph was made by Mr. Gifford and shows an area lying within the limits of the land grant. There are two photographs taken from slightly different view points.

Whereupon "Defendants' Exhibit 269" was offered in evidence by defendants, with leave to call A. W. Rees and Mr. Gifford to further identify the same and the lands shown therein, to which counsel for complainant made the same objection as last above, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness produced a package of photographs, 92 in number, marked collectively as "Defendants' Exhibit 270." Whereupon witness testified that seven of these photographs were taken in the early part of 1912, under his direction, and the direct supervision of A. W. Rees, and taken by a photographer employed by Rees; that attached to each photograph is a

memorandum showing the location of the land and the names of the parties claiming the improvements shown. The remainder of the photographs were largely taken before witness took charge of the Department and he found them in his office when he came in. Attached to each photograph is a memorandum showing the location of the land and the name of the party claiming the improvements in each case and the name of the photographer who took the photograph. Some of these were taken shortly after witness came to San Francisco; that is, those that are dated subsequent to September 21, 1908, but under instructions given by his predecessors in office. They also bear similar memorandum. These lands shown in these various photographs are all lands belonging to the Oregon and California Railroad Company and involved in this suit. From his knowledge of these structures and his investigation of the matter, none of these structures were put upon these lands by the consent, permission or direction of the Company, or any representative of the Company. Most of these structures were built along about 1907 and 1908. All of these photographs, except the seven taken in 1912, are photographs of locations involved in the so-called Lafferty suits parties plaintiff who have been made defendants in this suit, or who may have intervened, or filed cross complaints. Some of these taken in 1912 were lands involved in such suits and others not. The remainder of the seven relate to improvements made by trespassers or so-called applicants to purchase these lands who have been refused. About 10,000 applications to purchase

quarter sections of timber lands belonging to the Company at $2.50 per acre have been made to the Company and refused since the commencement of the first Lafferty suit, about that time, up to July 30, 1912. These applications are made usually in this way. Some person comes in to the office with a bunch of applications, any where from 5 to 10 up to 50 or 100 and presents one application and tenders the sum of $400.00 with it and that being rejected, this person follows by presenting another application and tendering the same $400.00 and that being rejected the process is gone through with the entire bunch that the party brings in. This party is attorney or agent for the applicant, or at least claims so to be and in nearly all cases the blanks used by these so-called applicants are printed forms. He has prepared a memorandum showing the number of applications of that class up to a certain time and whether or not several persons have made application for the same quarter section. This memorandum was prepared about March 1, 1909 and shows the applications that were in his hands at that time. There were 7991 applications in his hands on March 1, 1909, covering 6168 quarter sections, or in some cases less. Occasionally an 80 acres. The entire number of applications up to July 30, 1912, would, he thinks, approximate 10,000. When this table was made up on March 1, 1909, there were 4749 tracts of land each covered by one application; there were 1097 tracks each covered by two applications; 256 tracts each covered by three applications; 54 tracts each covered by four applications; 8 tracts each covered by 5 applica-

tions and 4 tracts each covered by six applications.

Whereupon witness testified that insofar as the lands covered by these applications had been examined, he finds them to be timber lands. To which testimony counsel for complainant objected upon the ground that the testimony of witness and exhibit compiled by him with reference to the character of the lands involved in this suit in incompetent, immaterial and irrelevant, the character of the lands not being a material issue in this suit.

STIPULATION

Whereupon it was stipulated between the parties, by their respective counsel, that any and all testimony hereinbefore and hereinafter set out tending to show the character of this land, submitted by defendants, shall be deemed to be taken subject to this objection. This stipulation shall be deemed to apply to all of such testimony hereinafter set out taken on behalf of defendants and shall apply to all testimony, including exhibits hereinafter set out, taken on behalf of defendants, tending to show the character of the even intermediate sections within the limits of the grants involved in this suit.

Whereupon witness testified that the lands covered by these applications are all valuable timber lands and the best are included therein, and they are chiefly valuable at the present time for the timber. The lands will range in value from $10.00 an acre to $100.00 an acre. The value of these lands with reference to their desirability is fixed by the amount of timber measured or expressed in the number of thousand feet board measure;

that is to say, the stumpage, or the number of board feet as shown by the cruise of a timberman. The value ranges from 75c per thousand feet up to $2.00 per thousand feet stumpage for these lands and similar lands in Oregon. The variation in value between 75c per thousand feet and $2.00 per thousand feet is caused by the kind of timber, the character of the timber, its location and the logging conditions, and he had in mind by the use of the word location, accessibility to transportation by water or rail. These improvements shown in these various photographs "Defendants' Exhibit 270" are largely in what are known specifically as the Lafferty suit cases, and his recollection is that they made application in practically the same way.

Whereupon witness produced three printed blank applications filled out, which collectively were marked as "Defendants' Exhibit 271" and testified that these were a fair sample of the printed applications presented to the Company in the way he has indicated by these so-called intending purchasers. He did not, nor did anyone connected with the Company have anything to do with the preparation of these printed blanks, or authorize the use of the same. When these applications are received by mail, or presented in person, they are rejected and filed away and preserved. They have been preserved upon the advice of counsel for the Company. These applications generally contain a tender and witness thinks it occurs in all of them, to-wit:

"I herewith tender to said Company the sum of

$2.50 per acre in payment for said land," etc. When coin is produced it is merely tendered in connection with a group of applications, if more than one is presented. The same coin is used by the same person for each of the different applications. The business of land brokers that has grown up out of this controversy and which has resulted in the application of some 10,000 people to purchase these lands is co-extensive with the boundaries of the United States, perhaps including Alaska and the Islands. There are offices and men engaged in this kind of business advertising it in Omaha, Kansas City and as witness recollects in Boston and New York and many other places that he does not now recollect. These attorneys or timber locators interested, take these applications on behalf of the applicants and purport to file the applications upon lands which the County Records show free from any similar application and they charge the applicant generally about $75.00 per application, sometimes it is $50.00 and at other times it may be other amounts, but as a rule it is about $75.00 per application. That is their fee and the understanding is that the applicant will have $2.50 per acre to pay whenever this suit is determined. In many cases these attorneys or land brokers require the applicant to sign an agreement to sell the land whenever they get title at an agreed price per thousand feet of stumpage that may be on the land, usually at a price of about one-half of the market value. Whether there is any contingent fee in it, he does not know.

Whereupon defendants offered in evidence "De-

fendants' Exhibits 270 and 271" which was received and are hereinafter set out and described and made a part of this Statement of Evidence and identified as "Defendants' Exhibits 270 and 271."

Whereupon witness testified that he had seen a good many advertisements purporting to advertise for applications and applicants headed "Oregon & California Railroad Company lands" where the party did not disclose his agency but attempted to represent that he was really acting for this land grant or for the Company, but he does not recall now the particular wording in any of the cases, but as a rule they were so worded that to the ordinary reader they would appear to be published by someone authoritatively acting as agent for the Oregon & California Railroad Company. They were not authorized in any instance.

Whereupon witness produced a package of advertising blanks and forms used by these timber locators so-called, with notations of his office thereon, which collectively were marked "Defendants' Exhibit 272."

Whereupon witness further testified that some of these were clipped from newspapers, others came in with correspondence from different people making inquiry regarding the matter and asking if the facts were as there stated. The power of attorney purporting to appoint H. W. Miller of the City of Portland, State of Oregon, the true and lawful attorney for the applicant came in with some letter. Miller had no authority to act for the Oregon & California Railroad Company for him or for

any one else connected with the Company. Some one at St. Louis wrote him to ascertain something concerning the advertisement of John M. Kreider, Suite 806-7 New Bank of Commerce Building, St. Louis, Mo. and that is all he knows about Kreider.

Whereupon witness, referring to a letter purporting to be signed J. M. Kreider, addressed to A. C. Edwards, 3863 Farnam Street, Omaha, Neb. dated July 15, 1909, and the letter of witness of July 20, 1909, to Edwin R. Tuttle, Traveling Passenger Agent, Union Pacific Railroad Company, St. Louis, Mo. enclosing the following clipping:

"OREGON.

OREGON TIMBER.

United States government gave 6,000,000 acres choice timber land in Oregon to railroad company 40 years ago, to be sold at $2.50 per acre; 1,300,000 acres remain unsold; now worth $50 per acre; male and female American citizens only can now apply for 160 acres of this land at $2.50 per acre; only $75 payable now. For full particulars address, J. M. Kreider, 806-7 New Bank Com. Bldg., St. Louis, Mo."

stated that these are a part of the advertisements and literature circulated by J. M. Kreider procured by witness since this question arose as to the disposition of this grant. Kreider enclosed a lithographed circular under St. Louis date July 21, 1909, purporting to be signed by St. Louis business men of standing and this accompanied these circulars. Witness does not remember that

they had any particular application from clients through John M. Kreider, although there may have been, but he did not represent the Oregon & California Railroad Company or the land department or any one connected with it.

Q. I call your attention to my letter to Mr. Eberlin, of August 9, 1907, enclosing clipping from the "Journal" and "Telegram," which clippings, for the purposes of this record, I will identify by reading them. Telegram July 18, 1907:

"FOR SALE—TIMBER LANDS.

TIMBER—

Parties wishing to make an application for some choice railroad lands, heavily timbered, cannot do better than to call at our office and get full particulars. We are prepared to locate several at this time, and our fees, including making all the papers and location, are within the reach of all.

HOWSE & MILLER,
66 Sixth St."

Also notice purporting to have been printed in the Journal of July 19, 1907, which reads:

"TIMBER.

WE ARE STILL IN A POSITION TO locate several parties on railroad lands in southern Oregon, cruising better than 4,000,000 feet per quarter section; for making tender to the company and filing papers in the clerk's office afterward, location, including all attorney fees, we charge the sum of $25. Now come and

look into this proposition, if you have never bought any lands from the company heretofore, remember this does not interfere with any of your other rights, call and get full particulars.

HOWSE & MILLER,
66 6th St.

Open evenings. Phone Main 6188."

Also:

"TIMBER LANDS.

Intending purchasers desiring to be located upon lands with heavy timber in the land grant of the Oregon & California railroad in southern Oregon can secure the same by acting quickly. Location fees including all necessary attorney's fees are reasonable. Address J. E. Verdin, Grants Pass, Or."

Did you receive, or did you find these in your files and the files of your predecessor in office?

A. Yes, sir.

Whereupon the witness further testified that he did not know Howse & Miller, or either of them, or J. E. Verdin and neither of them had any authority to act for the Company, him or the land department. The Portland Journal and Evening Telegram were printed and circulated in Portland at that time.

"TIMBER CLAIMS. The present time now affords you the opportunity to locate yourself upon a splendid timber claim, accessible to both railroad and driving streams; cruise ranges from 4,000,000 to 9,000,000 feet. Price $2.50 per acre. We locate and you

purchase. Address P. O. Box 1206, Tacoma, Wash." Is that one of these advertisements that you found?

A. Yes, sir.

Q. Did that advertiser represent you or the company?

A. Not at all.

Q. Does that refer to the same class of lands that these others refer to, as far as you can tell?

A. Presumably so, yes.

Q. I notice a circular here headed: "Land Grant is Basis of Suit," purporting to be from the Evening Telegram, Portland, Oregon, Monday, September 16, 1907; and purporting to be an advertising circular of Coates & Horsman, Spokane, Washington, on the outside cover of which appears these words:

"C. H. Coates J. H. Horsman.

COATES & HORSMAN.

Railroad Timber Lands $2.50 per Acre.

ranging from 3,000,000 to 6,000,000 ft. to quarter section. Direct purchase. No rights required. Telephone Main 7245. Office, 415-416 Mohawk Block.

Spokane, Wash."

Do you know these gentlemen?

A. No, sir.

Whereupon witness testified that he received this circular in the usual way. That these gentlemen did not represent the Oregon & California Railroad Company, himself or any one else and that neither authorized the publication of this circular or the article.

Q. I notice another circular here, headed "Extracts from the Oregon and California Railroad Grants, Act of 1869," purporting to be from M. P. Alford, Chicago Office 923, 184 La Salle St. 'Phone Main 2022." Did Mr. Alford represent the company or you?

A. Not in any way.

Q. Did you receive this in the same way that you received these others?

A. Yes, sir.

Q. I notice a circular here enclosed by Mr. M. P. Alford, Chicago Office, headed: "Exceptional. An Opportunity to file on Timber Lands in Oregon." Did you obtain that circular in the same way that you obtained these others?

A. Yes, sir.

Q. And did Mr. Alford have any authority to represent you or the company?

A. No, sir.

Q. I notice a long circular here headed: "Railroad Lands. Statement of Facts," with pencil notation, "Trewavas, Lee & Co., 26 Montgomery St., S. F." with a report thereon by you to Mr. Herrin, of date March 19, 1912. Do you know this firm?

A. Not personally, any more than as shown by that report.

Q. Where do they purport to be doing business?

A. At 26 Montgomery Street, San Francisco.

Q. Have they any authority, or did they ever have any authority, to represent the Oregon and California Railroad Company, or to make these advertisements?

A. No, sir.

Q. One of these refers to a clipping from the Oakland Tribune, of Sunday, March 17, 1912, relative to lectures given by this firm. Do I understand that these gentlemen conducted a lecture course here in Oakland, or in San Francisco, trying to induce people to make application to them for the purchase of these lands?

A. Yes, sir.

Q. I notice a clipping here purporting to be from the Omaha World-Herald of December 18, 1909, which reads:

"Oregon.

$75.00 will locate you on a quarter section of the best agricultural land, level, heavy timber, close to the Pacific Ocean and accessible to railroads and rivers. Price $2.50 per acre when you secure title. Call or write 413 Karbach Block."

Is that one of these advertisements that you secured the same way?

A. Yes, sir.

Q. I notice another which reads:

"OREGON TIMBER LANDS.

You now have an opportunity to apply (without interference with homestead rights) for 160 acres of valuable timber and agricultural lands in Oregon at $2.50 per acre; timber averages 4,000,000 to 8,000,000 feet per quarter section (cedar and fir); accessible to railroads and rivers; close to Pacific Ocean and in á de-

sirable climate; limited 160 acres to each applicant; locating fees very reasonable.

FORREST LAND CO., 612-613 Shukert Bldg."

Is that one of these numerous advertisements that you procured?

A. Yes, sir.

Q. Who is the Forrest Land Company?

A. I don't know them at all.

Q. Who is the party who says, "Call or write 413 Karbach Block," and where is that?

A. That is a building in Omaha. I think I had some correspondence with the people, the name I don't remember now.

Q. Did these people, or either of them, or did this company, have any authority to represent the Oregon and California Railroad Company, or to act for it?

A. No, sir.

Q. I notice also an advertisement which reads:

"$150.00.

"$150 is all the money required to get 160 acres of timber land in Oregon cruising from 3 to 6 million feet of good merchantable timber. No prior timber or homestead applications affect this, as it is not Government land. For full information call at

OREGON DEV. CO., 1110 and 12 Call Building."

Did this so-called Oregon Development Company

have any authority to make this advertisement, or to represent the Oregon and California Railroad Company, or you?

A. No, sir.

Q. That appeared in a San Francisco paper, did it, or do you know?

A. Well, I should judge so, but I couldn't say positively.

Q. I show you a circular purporting to advertise "Timber Land Information Club, Daniel McDonald, Hotel Chandler, Marshfield, Oregon." Did this gentleman represent you or your company, or any one connected with it?

A. No, sir.

Q. Did he have any authority for the company, or for you, or any one else connected with it, to issue that circular?

A. No, sir.

Q. I notice, among others here, a clipping from the San Francisco Chronicle, headed "Denounced by Land Office. Statements of Northern Promoters Declared to be Untrue." "Special Dispatch to the 'Chronicle'." Under a Seattle date line. Is that one of the clippings that you made with reference to the activities of these gentlemen in advertising these lands?

A. Yes, sir.

Q. You had nothing to do with the publication of any of these notices, did you?

A. No, sir.

Q. I notice "San Francisco, March 16," 1912 date line dispatch which appears in the Oakland Tribune of Sunday, March 17, 1912, descriptive of the firm of Trewavas, Lee & Co. Is that the same firm about which you spoke some time ago in this examination?

A. That is the same firm, yes, sir.

Whereupon defendants offered all of these for the purpose of showing in part the origin of the long list of applications and that defendants did not authorize or promote the same and to show that this activity took place since about 1907, subsequent to the passage of the Memorial of the Legislative Assembly of the State of Oregon of February, 1907, to which said exhibit counsel for the Government objected as follows:

"The Government admits that the defendant Oregon & California Railroad Company never authorized any of the parties mentioned as having solicited applications to purchase to represent the railroad company or its land department, or any of its officers; but the Government objects to the evidence as immaterial and irrelevant, in so far as it may be claimed to characterize all of the applications to purchase, because it does not appear that all of the applications to purchase originated in this manner; and further objects to the exhibit upon the ground that it is immaterial how the parties were induced to make applications to purchase, if applications in fact were made and rejected, and the terms of the grant were violated in that manner; and the Govern-

ment objects particularly to the letters that are included in this exhibit, upon the ground that they are incompetent, hearsay, irrelevant and immaterial."

Whereupon said documents were received in evidence and marked "Defendants' Exhibit 272" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had caused to be taken certain photographs, 88 in number, showing the improvements upon certain lands in even sections within the limits of these grants, which were collectively marked "Defendants' Exhibit 273" and that these photographs were taken under his instructions by field agents, showing as they made examinations of the even numbered sections, which are shown on the map, improvements or lack of improvements, as the case might be on those tracts. These photographs of tracts on the even sections are tracts of land within the limits of this grant and were taken the early part of 1912, possibly a few the latter part of 1911, but he thinks all were taken in 1912. Noticing a memorandum on one of these, which, for illustration, reads "Photo by C. W. Kempton 5/7/12/ S. E. ¼ Sec. 26-4, S. R. 5 E. Looking Southeast. No improvements except pile of stones which appear to have been used as temporary fireplace." He testified that Mr. Kempton was one of the field agents engaged in making examination of these lands and as a rule the memoranda on the backs of these various photographs identify the land claimed by so-called

settlers and the date when the photograph was taken. The photographs were taken under his direction and supervision for the use of his office. Noticing as a sample "S. W. ¼ Sec. 34, Township 8 South, Range 2 East. Leon D. Hedges' Homestead. View looking north. Picture taken by C. W. Kempton April 27, 1912." He testifies that he ascertained that that was the homestead of this man on this particular quarter by abstracting the United States Land Office records and the field man then went upon the premises and took this photograph. Witness ascertained, or caused to be ascertained in the same way, the name of the so-called entryman and the description of his land and then the location of the land by his employes and these entries of settlers or entrymen were obtained from the United States Local Land Office records in each instance. These photographs give on the back the description of the particular land where the photograph was taken, or where it is shown in the picture. J. A. Kinser was one of the field agents and the photographs were taken under the immediate personal supervision of A. W. Rees and witness relied upon them as being correct.

Mr. Fenton: I offer these now, for the purpose of showing the general character of the improvements of the entrymen on the tracts described—general character of their improvements and general character of the land—under the promise, if required by the United States or counsel for the Government, to call the photographers and field examiners for further identification, if the defendants shall be so advised that it is neces-

sary, and ask to have them marked collectively as "Defendants' Exhibit 273."

Mr. Townsend: The Government objects to this evidence, on the ground that it is immaterial and irrelevant; that the character of the intervening sections and the character of the improvments thereon is immaterial to any issue found in the case; and the Government expressly objects to the statement of fact as to the presence or absence of improvements, and other like notations appearing upon the back of these photographs, on the ground that it is incompetent and hearsay. As to the identification of the photographs themselves, the Government reserves the right to object to them upon the ground that they are not properly identified if it shall so appear.

Whereupon said "Defendants' Exhibit 273" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness further testified that these photographs purporting to show panoramic views of certain sections of the country marked "Defendants' Exhibit 274" were taken under his direction and show the general character of the country in the immediate vicinity of the points noted on the back of each photograph and all within the limits of the Oregon & California grants; that is they are within the indemnity limits of the grants and cover, in view not only lands claimed by the Oregon & California Railroad Company, but lands in the even

sections. They are within the primary, as well as the indemnity, limits. They are intended to show the general character of the country within the exterior limits of the grant.

Whereupon defendants offered in evidence said "Defendants' Exhibit 274" and the same was received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he had prepared a tabular statement marked "Defendants' Exhibit 276" and that it was compiled from the records of his office, the sources of which were the United States Local Land Office records, the General Land Office records and in part his attorney's records in Washington. These selection lists are made up in the first place and sent to the United States Local Land office. Two copies are retained by that office, one of which is transmitted to the General Land Office in Washington, the other retained in the Local office and two copies are returned to his office, certified by the Register and Receiver, one of which is retained in his office and the other one sent to his attorney in Washington. This tabular statement is made from these lists and from the ultimate action taken by the land office, local or general, and the ultimate action taken by the President of the United States in issuing patents. This "Defendants' Exhibit 276" correctly states the selection lists and all other matter found in this statement. The date certified, refers to the certification by the Local Land Office and this abbreviation

"O. C" refers to Oregon City, "Van." refers to Vancouver, "Ros." to Roseburg, "Port." to Portland, "L. V." to Lakeview, "Pat." means patented, "Resel." means reselected, "Rear." rearranged, "Rej." rejected, "Er. sel." erroneous selection and "Dup." duplicate.

Whereupon defendants offered in evidence such tabulated statement as "Defendants' Exhibit 276" which was received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Witness understands that sales of granted lands were temporarily suspended pending examination that was being made into the condition of the land grants, records, etc., but there never was any order of withdrawal to his knowledge, and there was no formal order of restoration. Before he took charge of the land department at San Francisco he was advised by Judge Cornish, then Vice President of the Southern Pacific Company, that as soon as the records could be straightened out, after the fire, the intention was, as to these lands, in so far as they were not needed for company uses, to offer them for sale; referring by "not needed for company uses" to the lands described in Exhibits numbered 7 and 8 to the answer. Judge Cornish is William D. Cornish, who was the executive assistant to E. H. Harriman, President or an officer of the Oregon and California Railroad Company. The executive jurisdiction over these lands at this time was under Mr. Harriman, and Judge Cornish was his assistant and had special charge of this mat-

ter. Judge Cornish is dead. He had some correspondence with Cornish concerning matters relative to these lands, and thinks possibly some reference was made in that correspondence to the sale of these lands, other than the reserved portions. He had seen a telegram signed by Cornish to the predecessor of witness, Eberlein, which was part of the files of the office and preserved from the fire. There are two telegrams that relate to that land, which read:

"New York, April 5, '07.

C. W. Eberlein, (Received Apr. 5, 1907.)
(Land Dept. S. P. R. R. Co.)

San Francisco.

Please mail me report at convenience showing progress made in rehabilitating your office and also what extent you are receiving and handling applications for lands and especially lands other than timber and mineral.

W. D. Cornish. 3:50 P. M."

"New York, April 24, 1907.

C. W. Eberlein, (Received Apr. 24, 1907.)
(Land Dept. O. &. C. R. R. Co.)

San Francisco.

I have not yet received any report from you as to progress in selling lands.

W. D. Cornish. 12:23 P. M."

Counsel for complainant objects to the materiality and relevancy thereof. Witness further testified that Chas. W. Eberlein, mentioned, was the acting land commissioner of the Oregon and California Railroad Com-

pany and his predecessor as land commissioner. He resigned some months before witness took charge, and Eberlein was succeeded by Henry Conlin, who is not now in the service. Witness succeeded Conlin.

The list described in Exhibit No. 7 to the answer of the defendants, is a statement showing right of way and unsold East Side Grant lands acquired through Oregon and California Railroad Company, and is correct. This suit No. 8340, now on trial, was brought before he was appointed land commissioner September 21, 1908. The complaint was filed September 4, 1908. Exhibit No. 8 to the answer of the defendants is correct. The records of the department, when he took charge in September 1908, showed the reservations contained in Exhibit No. 8 to the answer, which purports to be a schedule of unsold lands under reservation from sale on account of timber, iron, coal or oil which they are known or supposed to contain. So far as he knows, the reservation was made on the new records after the fire on the strength of a list which Mr. O'Brien furnished as being the list furnished him previous to the fire, of lands reserved for these purposes, referring to the fire of April 18, 1906 in San Francisco which destroyed almost all of the records of the land department. O'Brien was then Vice President and General Manager of the Oregon and California Railroad Company, and the operating official of the line of road from Portland to Ashland, and also an executive officer of the company. The record shows that these lands were reserved on account of being supposed or known to contain timber, coal, iron and oil, and his de-

partment did not undertake to determine that these substances which were supposed to be in these lands, were necessary to the railroad in its operation and maintenance; that was an operating department matter. They had been directed to be reserved by the operating department, and there have been no restorations of any kind with reference to these lands thus reserved, and no order of reservation made by the Board of Directors of the Oregon and California Railroad Company so far as he knows. He never received any formal order. These reservations are usually made on the request of some operating official who knows or thinks there may be something in the land. Since becoming Land Commissioner of the Oregon and California Railroad Company, the Department has at all times asserted ownership of the lands. As they examine the lands and find parties occupying them, the company asserts its ownership and insists that these parties take leases on the lands or vacate. The company has paid taxes on the lands—done whatever might be necessary to assert ownership. It has appeared in contests in the land office where the question of its right to claim has been raised, and it has defended its title of ownership. The company has sent field agents over about forty per cent of the entire grant, making examinations as to the character and value of the lands. The company maintains a force of fire wardens to patrol the lands and protect against fire during the summer. The examinations made by field agents cover forty per cent of the entire grant—78 per cent of the timber. The company has made a good many

leases of lands for grazing purposes, and where it finds some one occupying a small piece of land, there may be a few acres in cultivation, or where an adjacent owner wants to use the lands for pasture purposes, the company has made leases in those cases. In a good many cases the reason for making the lease where there is an actual occupation, is to prevent the statute of limitations running against the company by the occupancy. The company has maintained quite a force of fire wardens in the State of Oregon, patrolling the lands during the dry season. The company has paid taxes on these lands. The counties of Oregon in which the lands are situated, through their county assessors, have continued their assessments, increased their valuations for assessment purposes, and made assessments upon these lands the same as other or similar lands that are privately owned, and without regard to this suit or the claim of the United States. The valuations have been raised, witness thinks, in all of the counties, certainly almost all of them. The company is at all times endeavoring to keep the assessments down as low as may be possible. It is a fact, within his knowledge, that some of the counties, through their county courts, have authorized the assessors to employ, or have directly employed timber cruisers, and have made cruises of substantially all these lands for assessment purposes, and made their assessments on the basis of the board measure reported by their cruisers, and witness thinks that this accounts in part for the increased assessment of a considerable portion of these grants. There are about 240 leases out-

standing. He has prepared a statement showing the lease number, date of lease, when it expires and the number of acres, and the total acreage is 24,671.02. Whereupon witness produces Defendants Exhibit 278, and states that it is a correct statement of what it purports to show. Whereupon defendants offered said exhibit in evidence and the same was received and marked "Defendants' Exhibit 278," which exhibit is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as "Defendants' Exhibit 278."

Whereupon the witness further testified that but for this suit, he should have proceeded to secure his examination of the land, determine valuations, and make sales of the land as opportunity offered. In so far as the lands were capable of settlement, the company would have preferred always to sell to a settler. Defendants Exhibit 279 shown witness, consists of advertisements published by his department, setting forth the facts that the lands of the Southern Pacific Railroad Company and the Southern Pacific Land Company now—formerly railroad company—are on the market for sale, and setting forth the natural resources of these lands. These advertisements show that they are specially addressed to farmers and others desiring to make settlement on these lands when purchased, which are capable of such settlement. The practice of publishing these advertisements was, generally speaking, commenced about July, 1911, when they actually had some lands ready for sale, and the advertisements had been spread broadcast over the Western

half of the United States, with the result that there has been a sale of a very considerable area of land within the past year. If this suit had not been brought he would have pursued the same policy with reference to the lands in Oregon that were capable of settlement, or that could be disposed of, other than the lands described in Exhibits 7 and 8. Whereupon defendants offered in evidence said collection of advertisements, marked "Defendants' Exhibit 279." Whereupon, upon examination by counsel for the Government, the witness further testified that this advertising material had been prepared and circulated by him or under his direction, since he became Land Commissioner of the several companies named by him, and has been prepared and circulated since the institution of this suit. Whereupon counsel for complainant objected to the introduction of this Defendants' Exhibit 279 as incompetent, irrelevant and immaterial. Whereupon said Defendants' Exhibit 279 was received in evidence and marked "Defendants' Exhibit 279," which is hereinafter set out and described and made a part of this Statement of the Evidence, and so identified herein.

Whereupon the witness further testified that Defendants' Exhibit 280 was in the files of his department when he took charge, that is, it was a part of the records of his office. Whereupon defendants offered in evidence Defendants' Exhibit 280, to which complainant objected as immaterial and irrelevant, which Defendants' Exhibit 280 is hereinafter set out and described and made a part of this Statement of the Evidence, and so identified herein.

Whereupon the witness, upon cross-examination, further testified that Defendants' Exhibit 278, containing statement of outstanding leases, represents as high an acreage as has ever been under lease, so far as he knows. There was very little correspondence in the files of the land department of the Oregon and California Railroad Company preserved from the San Francisco fire of 1906, but he can produce what was saved. The correspondence in the land department now is generally filed with relation to the land particularly referred to, and in so far as correspondence was saved from the fire and capable of being preserved, it has been filed in the same way, and may be scattered through a large number of files. It can all be produced.

This testimony is being taken in the Flood Building, at San Francisco. The greater portion of the offices of the Southern Pacific Company and its proprietary corporations are located in this building, so far as they have offices at San Francisco, but he could not say what the percentage is, he does not know; a very considerable portion of it is occupied by the offices of the Southern Pacific Company and its proprietary corporations, say six or eight floors, but does not know how many floors, or how much space they occupy. He has occupied his present offices since he became the Land Commissioner of the Oregon and California Railroad Company, and his personal room is number 880. The main entrance is number 801, where the clerical force is at work. There is upon the door of room 801 these words "801 Southern Pacific Company—Land Department—B. A. McAl-

laster, Land Commissioner—F. W. Houts, Assistant Land Commissioner." He has testified that the Southern Pacific Company never had a land department.

Whereupon, upon re-direct examination, witness further testified that that sign on the door of room 801 was put on the door about a year ago, excepting the words "Southern Pacific Company," and these words "Southern Pacific Company" were placed there within the last two months, and without his knowledge or direction, or permission being asked, or anything else, and he does not know who did it, or why it was done. The Southern Pacific Company has no land whatsoever. It has a few town lots, and has no occasion for a land department, nor has it a land department, and it has no records in the land department that are called Southern Pacific Company Land Department records, except the records of those few town lots about which he has testified, and for which he is land commissioner.

Whereupon the witness, upon re-cross examination, further testified that very likely he had stationery which was used for a number of years, which reads "Southern Pacific Company—Land Department," and which was used in correspondence referring to this grant. It also shows Oregon and California Railroad Company upon it, and Southern Pacific Railroad Company, as separate companies, but using a joint letter-head. Whereupon the witness produces, upon request of counsel for the complainant, Form 3311, and further testified that they used that form in conducting correspondence in relation to the affairs of any of the companies that they may be

corresponding about. Sometimes—a great many times they do not use a letterhead at all in conducting the correspondence of the office. In purely office correspondence they do not use any letterhead. Sometimes this letterhead is used in carrying on the correspondence relating to the affairs of his office, and sometimes it is not. He does not know how long it had been in use. He does not remember now just what they were using when he came, or whether, so far as the printed matter is concerned, this is substantially the form in use when he came; that particular form was not in use when he came. No one printed the words "Southern Pacific Company —Land Department" on this letterhead without his knowledge or consent. He does not know who it was that put the words "Southern Pacific Company" on the entrance door of his office. It has been there two or three months, but he has made no complaint to any one about it. He assumes that these words were put on the door by some one's order, but he does not know whose. He has had no occasion to inquire, and it does not make any difference to him.

Whereupon complainant offered Form 3311 in evidence, marked "Government's Exhibit 112," to which counsel for defendants objected as immaterial and irrelevant, which was received and so marked, and is hereinafter set out and described and made a part of this statement of evidence, and so identified herein.

Whereupon witness further testified that until the death of Judge Cornish in October or November, 1908, Judge Cornish had general charge of the land grant of

the Oregon and California Railroad Company and other land grants mentioned. Cornish was Vice President of the Southern Pacific Company, but could not state whether he was an executive officer of the Oregon and California Railroad Company, but his impression now is that he was not. He took instructions from Judge Cornish without inquiring what his relationship was to the company, because he had been working under Judge Cornish's instructions for a good many years. At the time he took his instructions he had not inquired whether Judge Cornish had anything to do with the Oregon and California Railroad Company or not, but Cornish gave him instructions concerning the company and he took and followed them. No deeds had been signed under direction of witness at the time of the death of Judge Cornish. Cornish died very shortly after witness became Land Commissioner.

Whereupon witness, upon re-direct examination, further testified that he had produced and tendered to Government counsel all of the records of his office that were saved from the fire of April, 1906, and that his assistant and one of the assistants to counsel for the Government are in possession of these records now, going through them, and he has gathered together and delivered, as stated, all of the records of the land department which were saved from the fire, so far as he knows of such records. Referring to Government's Exhibit 112, being letterhead Form 3311, witness says that the words and figures "Standard 12-11-20,000" means, standard form, December 11, 20,000 printed, and the

date when that supply of blanks was printed. The form was probably in use before that. Form 3311, with the words and figures "Standard 7-08-10,000" containing typewritten figures "March 23, 1909" is the form that was in use in the office when witness took charge of it in September 1908. This was clipped from a letter in his office files of date March 23, 1909, the date on which the particular letter was written. Government's Exhibit 112 was not in use when he came. That form is one that he prepared some time after he came, in consequence of consolidation of the three land departments into one office under his control, referring to the three land departments of the Southern Pacific Railroad Company, the Central Pacific Railway Company, and the Oregon and California Railroad Company, and the stamp on Government's Exhibit 112 "Southern Pacific Land Company" is a rubber stamp that has been placed on the form since the organization of the Southern Pacific Land Company, which is a part of this department. The Southern Pacific Land Company holds by purchase the residue of the Southern Pacific Railroad Company's land grants. Oregon & California Land Company is a company organized and holding title to lots in certain townsites in Oregon, and a few acreage tracts, generally called non-operating lands. He does not know as to how the stock is held, but assumes that it is a small corporation with a capital stock of about $5000.00—stock of which is held in trust for the Oregon and California Railroad Company.

Whereupon defendants offered in evidence Form

3311, Standard 7-08-10,000, March 23, 1909, and the same was marked "Defendants' Exhibit 281," which is hereinafter set out and described and made a part of this statement of evidence, and identified herein as such.

Whereupon the witness further testified that in speaking of the consolidation of the office, he referred to the fact that he was Land Commissioner of each one of these various companies, and as Land Commissioner had the records of all of these various companies under his control and in one office, or set of offices. There had been no legal consolidation of the land departments of these various companies. Their business is kept separate, and he is the one officer for all of them, and the records are kept in his offices under one control. Whereupon witness was shown a letterhead which was marked Defendants' Exhibit 282, and the witness testified that it is a letterhead that he found among his files and supplies, and the imprint "12-24-06" indicates that it was printed December 24, 1906, and the fact that Charles W. Eberlein's name is on there indicates that it was the form that he used while he was Acting Land Agent for the Oregon and California Railroad Company. The use of the form probably terminated about the time that Defendants' Exhibit 281 was printed in July 1908. Witness used the form of July 1908 for some time after he became Land Commissioner. He does not think that they used the other form, but thinks that they were practically all used up before that.

Whereupon defendants offered Defendants' Exhibit 282 in evidence, and the same was so received and

marked "Defendants' Exhibit 282," and is hereinafter set out and described, and made a part of this statement of the evidence, and so identified herein. Whereupon the witness further testified that these defendants' Exhibits 281 and 282 are printed upon green paper, which was the standard color used prior to Government's Exhibit 112, for all the Oregon and California Railroad Company's supplies used in the land department. He made up a separate pay roll for the Oregon and California Railroad Company, and it passed through the Oregon and California Railroad Company's land accounts and was paid by check on the Oregon and California Railroad Company. The Southern Pacific Land Company and the Central Pacific Railway Company each has its own pay roll form, its own pay roll is made out, passed through its own books of account, and is paid by its own checks. His salary as Land Commissioner for these different companies is apportioned in part against the Central Pacific Railway Company, in part against the Southern Pacific Land Company, and in part against the Oregon and California Railroad Company. He does not know of his own knowledge how the account is kept, where the Oregon and California Railroad Company has no funds available for payment of its indebtedness on account of the operation of the land department—that is properly an accounting matter. He does not know exactly, not sufficiently to explain to the court, what the relations of the Southern Pacific Company as a clearing house are to the Oregon and California Railroad Company in respect to its financial mat-

ters. He thinks that the proceeds of the sales of lands, with reference to the Union Trust Company, are handled through the New York Office, but he does not know the details of it. Supposing that he should receive the proceeds of a sale of land, for which a deed is executed in which the Union Trust Company joins, the proceeds would go to the Assistant Treasurer from the Oregon and California Railroad Company at San Francisco. The Auditor does all the bookkeeping in connection with that money and the Assistant Treasurer makes disposition of it. Witness has nothing to do with that.

Whereupon, upon further cross-examination the witness testified that six letters shown him marked "Government's Exhibit 113," were found in the files of the land department of the Oregon and California Railroad Company, which survived the fire of April 18, 1906, and the letters written upon green paper are answers that were written by his predecessor Eberlein. Whereupon complainant offered these six letters in evidence as Government's Exhibit 113, which said Government's Exhibit 113 was received in evidence, and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon witness further testified that the file which he had produced as requested, related to the years 1904 and 1905, and they were the only files which survived the fire. A very few boxes of letters, and just as they could take them out without reference to what they were or anything else, survived the fire, and the balance was destroyed. Whereupon the witness being

shown some correspondence during February 1904, identified same as Government's Exhibit 114, and testified that that is a part of the correspondence that was saved. Whereupon complainant offered said correspondence in evidence and the same was received and marked "Government's Exhibit 114," which is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon witness further testified that Government's Exhibit 115 is also a part of the files of the Oregon and California Railroad Company Land Department that survived the fire. Whereupon complainant offered Government's Exhibit 115 in evidence, which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified upon redirect examination, that he had made additions to Defendants' Exhibit 257, and each of them had been certified by the county clerk or county recorder of the respective counties, showing the dates on which the various deeds were recorded in the county records. This is shown on the right hand margin of each page. The necessary corrections made in the book and page of record and each county statement has been certified by the county recorder or county clerk of the county.

Whereupon the defendants re-offered Defendants' Exhibit 257 heretofore received in evidence and so marked, and counsel for the Government making no ob-

jection that this is a summary from the public records certified by the county clerk, instead of a certified copy of each of the documents, and the same is hereinafter set out and described and made a part of the statement of the evidence and identified herein as such.

Whereupon the witness further testified that he had prepared a statement concerning the lands involved in certain suits pending in the then Circuit Court, now District Court of the United States for the District of Oregon, wherein the United States is complainant and the Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Union Trust Company, and other co-defendants named in the statement are parties defendant, showing the number of the suit, the number of the contract involved, the purchaser, the acres involved, the price per acre, the consideration, the number and date of each deed, the grantee, the date of contract, purporting to be a statement summarizing what are commonly called in this record Forty-five suits against so-called Innocent Purchasers and others. This statement is compiled from the bills of complaint in the various cases, and from his record of the sales that were made, and it is a correct statement. Whereupon defendants offered and the same was received in evidence as Defendants' Exhibit 294, which is hereinafter set out and described and made a part of this statement of the evidence and identified as such herein.

Witness further testified that he had prepared a map showing the location of the lands involved in the so-called Forty-five suits that are summarized in Defend-

ants' Exhibit 294, and it shows in colors the lands involved in the various suits, and bears a legend showing the particular suit indicated by each color, the number of suit, acres involved, and upon the face of the map the name of the purchaser of the land who is the defendant in the suit. The lands are correctly shown on this map. The lands of the Oregon and California Railroad Company that are involved in this pending case have not been colored on this map.

Whereupon defendants offered Defendants' Exhibit 295 in evidence and the same was received and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified that he had prepared a statement showing the executory contracts outstanding January 1, 1908, covering the land sales of the Oregon and California Railroad Company, giving the number of the contract and date of the contract, the name of the contract holder and description of the land, the number of acres, the price per acre, the consideration, the amount unpaid when default occurred, the date of default, the date when payments were made after default occurred, the amount of such payment, if made, the date of closing account in consequence of the default, the date of final payment or deed, and the character of land as shown by the field agent's report where there were any reports, the name of the field agent and the date of examination where there were such field agents and examination, and showing the totals of these

various matters. The statement was prepared from the land department records and is correct in so far as those records give the information. The figures 2110 under the heading "Contract number," means the number of contracts that were outstanding on that date. The figures 462,614.59 mean the total number of acres covered by those outstanding contracts, and under the column "Consideration" the figures $2,746,216.35 indicate the total purchase price for the lands covered by those contracts, that is, the purchase price agreed to be paid. The figures $207,614.14 represent the portion of the purchase price which was unpaid on contracts on which default had occurred prior to January 1, 1903, that is, the total amount of overdue payments, or total amount of payments where default had occurred necessary to take up the entire contract, that is, contracts that were in default, and the figures $9530.19 mean that that is the amount that was subsequently paid after January 1, 1903, of the total amount of $207,614.14 which was unpaid on that date on defaulted contracts. Whereupon defendants offered in evidence this statement marked "Defendants' Exhibit 296." Whereupon, upon examination by counsel for complainant, the witness further testified that as far as they had the information, under the heading "Name of contract holder," he has given the name of the assignee. In many cases they have neither the name of the assignee nor the original purchaser. This statement covers not only the contracts which were in default, but all pending contracts on January 1, 1903. Whereupon counsel for complainant objects to the last

two columns of this statement as incompetent, irrelevant and immaterial, and upon the specific ground heretofore urged as to the character of the lands.

Whereupon the witness further testified upon redirect examination, that he had the original reports from the men who made these reports in the records of his office, and this memorandum is made from these reports and is correct in accordance with these reports. These reports are part of the official records of the Company, and were acted upon by him, acting for the company as Land Commissioner, in handling these lands, and relied upon by him as accurate. They were made in the usual and ordinary course of business as conducted by field agents in this business. These examinations by field agents, being of lands under outstanding contracts, were made on a different form, and covered somewhat different information, that is, they covered practically the same information as to the character and topography of the land, but went more into the question of improvements, the whereabouts of contract holders, and like information, which was not necessary in connection with unsold lands.

Witness made another report or statement showing sales made during the year 1903, and it contains a complete statement of all contracts issued. Cash sales were not included in this statement, and the statement is correct. It is obtained from records of the sales made. Whereupon defendants offered and there was received in evidence this statement marked "Defendants' Exhibit 297" and also "Defendants' Exhibit 296," which are

hereinafter set out and described and made a part of this statement of the evidence and identified herein as such.

Whereupon the witness further testified that the reports referred to by him are a part of the office files; that they were made in the ordinary course of business and there are no new names indicated other than those shown on Defendants' Exhibit 296; witness relied upon these reports as being correct in the administration of this grant and in the sale of these lands. Contract No. 6695, in favor of N. Rust, is still an outstanding contract and is not reported as defaulted, the payments due on it have not been paid and it is still a valid contract. Whereupon complainant interposed the same objection to Defendants' Exhibit 297 as was interposed to Defendants' Exhibit 296. Whereupon the witness further testified that Defendants' Exhibit 298 is a statement prepared from his office records and is correct; there are statements there for each year from 1903 down to 1912. These yearly statements, Defendants' Exhibits 297 and 298 supplement Defendants' Exhibits 296 and 297. By referring to Defendants' Exhibit 296 one can, wherever his records show, ascertain the name of the purchaser which is not included in these annual statements since January 1, 1903; there were no contracts issued after 1903. Whereupon defendants offered and there was received in evidence Defendants' Exhibit 298, which is hereinafter set out and described, and made a part of this statement of the evidence and identified herein as such. Witness further testified that he had prepared statements show-

ing "Defaulted contracts upon which accounts were closed during 1903," and "Contracts not in default January 1, 1903, upon which default occurred during 1903, but accounts not closed during 1903," and the contracts outstanding January 1, 1903, from the records of the Oregon and California Railroad Company Land Department, and these statements are correct. Whereupon defendants offered these statements in evidence and the same were received and marked Defendants' Exhibit 299, which is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Witness further testified that he had prepared similar statements, marked Defendants' Exhibits 300, 301, 302, 303, 304, 305, 306, 307 and 308, covering the succeeding years and testified that these statements were prepared from the Land Department records of the Oregon and California Railroad Company and correctly show the facts. Whereupon defendants offered each of these statements in evidence and the same were received and marked respectively, Defendants' Exhibits 300, 301, 302, 303, 304, 305, 306, 307 and 308, which said several exhibits are hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon the witness upon further cross-examination testified that his experience in the handling of railroad lands, commenced in 1882 as a clerk in the office at Kansas City, which handled the Kansas Pacific and Denver Pacific grants; those roads were consolidated with the Union Pacific in 1880 and were consolidated at the time he entered the office; he served

in that office until 1887 when it was consolidated with the Omaha office, which handled the grant of the Union Pacific proper. Mr. Harriman was not connected with the road at the time witness went to Omaha in 1887; Harriman's connection with the road began about 1899 or 1900. Witness knew Judge Cornish; Cornish's first connection with the Union Pacific was as special master in chancery during the receivership, which occurred about 1893, and Cornish was made special master shortly after that; the receivership continued until Mr. Harriman re-organized the properties in 1898 and until the reorganization became effective. Shortly after the road was reorganized Judge Cornish became connected with it as Vice President and held this position until his death. Judge Cornish was located at New York; he was one of the executive officers of the Union Pacific, having general supervision of the subject of its land grants and supervised the general handling of those grants by the land commissioner or other officer having direct charge of the subject. The policy of the Union Pacific at the time of the consolidation of the Kansas City office with the Omaha office in 1887, in regard to the handling of the land grants of the companies composing the Union Pacific System, was the same policy that had been in force for years before, generally speaking. The several grants were owned by the one company from 1880 on. The Union Pacific acquired the properties of the Kansas Pacific and the Denver Pacific by consolidation, and the Kansas Pacfiic and Denver Pacific corporations became extinct. So that selections and lists under the

Denver Pacific and Kansas Pacific grants, after the consolidation, were made by the Union Pacific itself, and patents issued to the Union Pacific as the assignee or grantee of these other two corporations. In May, 1890, he became land commissioner of all these Union Pacific grants mentioned, and served in that capacity until 1908, when he came to San Francisco and entered upon his present employment. During that period from 1890 to 1908, a period of 18 years, or after Judge Cornish became connected with the Union Pacific' he supervised in a general way the work of witness as land commissioner of the Union Pacific. Judge Cornish was the man who in 1908 sent witness to San Francisco to enter upon his present employment; and after he entered upon his present employment his work was still supervised by Judge Cornish until his death. There was no real change in that respect as to the person who supervised his work after he came to San Francisco from what it had been when he served in Omaha as long as Judge Cornish remained alive. Judge Cornish died November 1, 1908. Judge Cornish was succeeded, temporarily, in his work at San Francisco, as land commissioner of these several companies, by R. S. Lovett and then by Mr. Herrin. Lovett supervised his work from about April or May, 1909, until March 1, 1910, since which latter date his work has been under the supervision of Mr. Herrin, general counsel of the Southern Pacific Company. Witness could not say positively as to whether Judge Cornish ever held any official position with reference to the Oregon and California Railroad Company and he never

addressed him as such official as he recalls. He thinks that Judge Lovett was president of the Oregon and California Railroad Company, but not positive about that. Mr. Harriman was president of that company until he died, and thinks Lovett was president after Mr. Harriman died. His work as land commissioner of these several companies mentioned has to some extent been supervised by President Sproule. Mr. Kruttschnitt has not, since witness' connection with the land department at San Francisco, or with the Union Pacific Land Department, had any supervision of land grant matters pertaining to these railroads. The land department maintains a number of men as mineral field agents, and ordinary field agents, and timber cruisers, who are engaged in examining the lands under his jurisdiction, the lands of the Oregon and California, the lands of the Central Pacific, and the lands of the Southern Pacific Land Company. The Southern Pacific Company maintains a geological department, and it has been his practice to call upon the consulting geologist at the head of that department for information concerning mineral lands and at his request he has made examination of lands and charged the cost of that work against the land department, and witness charges it against the proper company. He has not done any work of that character in Oregon. He does not know why the Southern Pacific Company maintains a geological department, that company has always had it so far as he knows; but he does not know how it was instituted. He is familiar with the litigation involving the oil lands down in Elk Hills,

which is now pending in the southern district of California, in a general way, but does not know that the Southern Pacific Railroad Company contends by way of a defense that Mr. Dumble, one of the geologists of the Southern Pacific Company, was not an employe of the Southern Pacific Railroad Company, and therefore the latter company is not bound by his knowledge, although witness is not fully familiar with that feature of the case. He knows Mr. Dumble, who is head of the geological department of the Southern Pacific Company; he is the consulting geologist and has an office at San Francisco and also one in Houston, Texas.

"Q. Now, Mr. McAllaster, the fact is that you are selected and employed by the Southern Pacific Company, without saying anything at the present as to how your salary is paid, but you were actually selected and employed by Southern Pacific officials for the Southern Pacific Company, were you not?

A. Well, that is not in accordance with my appointment. My appointment was by the Board of Directors of each company; and my appointment by the Board of Directors, or rather the executive committee of the Southern Pacific Company, was made some time after the other appointments, and for the limited purposes named in the appointment only.

Q. But at the time that Judge Cornish transferred you from Omaha to San Francisco, you had an understanding with him as to the terms of your employment, did you not?

A. Yes, sir.

Q. The amount of your salary?

A. Yes, sir.

Q. And that was afterwards apportioned among the companies the boards of directors of which appointed you land commissioner?

A. At the same time that the resolution of appointment was made by each board, the compensation to be paid by that company was also fixed by another resolution.

Q. I understand; but your total compensation was fixed by Judge Cornish at the time that he transferred you from Omaha to San Francisco, was it not?

A. Yes.

Q. And after you got to San Francisco, the several companies whose granted lands came under your management then divided the total that you were to receive among themselves by resolution of their board of directors?

A. Well, just as I hire a man today as a field agent, for instance, and he is to do work wherever I happen to send him for any one of the companies or all of them, as the case may be.

Q. That is another circumstance, is it not—that you hire men for work generally upon all of these land departments, and then charge for their services against the several companies as you may direct them to work from time to time?

A. Yes.

Q. The only difference in your own case being that yours is a fixed charge, apportioned arbitrarily among

the several companies regardless of the amount of time that you may spend one month on one land grant or upon another?

A. Yes.

Whereupon the witness further testified that at the time that quit claim deeds were adopted by the Oregon and California Railroad Company, he was not in its employ and he has no way of testifying as to what the real reason for the change was, except as he might infer or may have been informed by others. He could tell in any particular individual case why a quit claim deed was given in that case, because the record will show the reason why. He has gathered from the office records and reports that these forms were used in connection with unpatented lands. He does not think quitclaim forms were used generally for patented lands. Since he became land commissioner he used a form which he thinks reads: "Grants and conveys all the right, title and interest the company has or may hereafter acquire." He does not consider that a quitclai mform of deed. And he makes this distinction in his answer that he does not consider a deed which grants and conveys the right, title and interest that the railroad company has or may hereafter acquire as a quitclaim form of deed; he means by the term quitclaim form of deed the old familiar form which simply quitclaims the present interest of the grantor. And this deed covering interest that may hereafter he acquired distinguishes it in his mind from the ordinary quitclaim deed and the fact that they used the word "grant" in there. No warranty forms of deed have

been used as to patented or unpatented lands since he became land commissioner of the Oregon and California Railroad Company. He knows that generally on the Coast "bargain and sale" deed is used instead of a warranty for all land conveyances. There are comparatively very few warranty deeds used on the Pacific Coast by anybody. There is a limited implication of warranty in a "bargain and sale" deed, at least in California; he would not say as to the other states. He would not know and would not undertake to give the technical definition of what the implied warranty is. The only reason why the Oregon and California Railroad Company uses a form of deed which carries with it no warranties whatever when conveying lands that have been patented to it by the United States, that he knows of, is that it is practically the standard form for all of the several companies and generally the form that is used by individuals. Referring to these maps and statements and other compilations identified by witness, and received in evidence, witness testified that he has a good deal of personal knowledge as to the accuracy and details of them, in that he supervised the making of them, and to a considerable extent had personal knowledge of the details that go into them; but he would not admit that he had personal knowledge or information as to the details of the maps showing what lands of the even numbered sections intervening the lands involved in this suit were entered under settlement laws and what were entered under non-settlement laws, but would admit that the details of abstracting the records of the United States

Land Office and county records were done by the employes of his department, the information they obtained was sent into the department and then under his direction it was transferred to these maps. He knows that the information which they sent in is correct, because they were sent out to get the correct information and he relied upon them to do so. This does not constitute personal knowledge upon his part as to the accuracy of those details and he disclaims in a way any personal knowledge of the abstract work, because that was all done by employes outside of the office and he did not see them do the work, and was not with them at the time they were doing it. The map was made in the office from the information they furnished and under his supervision. He did not check over all of the details of that map, but simply directed men upon whom he relied and upon whose competency and integrity he relied, and who were employed in his office to make the map as he instructed them to. He can say that if he was using the map for any purpose, he should rely upon it as being correct. He understands the distinction between the knowledge that a business man might rely upon and the knowledge which may be the basis of evidence in court as personal knowledge of the facts. He did not personally put the coloring on the map, but he did watch while the work was being done, looked at the map from time to time and saw that it was being correctly done and as he wanted it done. He did not check each individual tract to see that it was colored properly, but presumes that he checked some of the tracts to see that they were colored properly. He does not remember just

what particular details he had to do with the map, but had the work done in such a way that he could ascertain that it was correct, by relying upon the accuracy of the men who were doing the work. That is not the sole basis of his knowledge of the accuracy of the map. He was looking at the map every few days, and seeing that they were proceeding along the lines of what was laid down for them to do, and doing the work as he wanted it done, and correctly, but he did not check each individual entry and showing on the map. If he discovered anything that was not right he had it corrected. There is not a piece of work that is done in his office that is not checked at least once, or perhaps two or three times before it is considered final, by the men under him. He does not undertake to do these things himself, there are so many of them. His general statement with reference to this map is also true of the others in a general way. And it is true with reference to these compilations that have been introduced in evidence, to a considerable extent; some of these compilations he did more detail work on than others. In each instance he relied on the records of the office, and a large part of this was done before he became connected with the office.

"Q. Now, take for example, that map which purports to show what lands are timbered and what lands are agricultural—defendants' exhibit 260—now all you know as to the accuracy of that map is that you had employed graders and examiners of land from time to time, and you found in the office reports of graders and examiners who were employed before you became con-

nected with the office, and you directed that the reports of all of these examiners and graders be used for the purpose of compiling a map that would contain the information which their reports conveyed to the land department—isn't that true?

A. Yes, sir.

Q. As to the accuracy of the reports of these graders and examiners, you have no personal knowledge?

A. I have not.

Q. Other than your personal reliance upon those men?

A. That is all."

Whereupon the witness further testified that he realizes that men under certain circumstances might reasonably differ as to whether a given piece of land was susceptible to cultivation after the timber was removed. The differences in opinion of land examiners and land graders would not be very great, the character of the land is too well defined. Frequently he had land examined by more than one grader; sometimes intentionally and sometimes the work will overlap. Sometimes the work was done three or four years ago and he would want it done over again as of date. One piece of land may be timbered land three or four years ago and somebody cut the timber off in the mean time. There is nothing to show upon the map which of these lands, if any, would be suspectible to cultivation after the timber was removed. He does not remember that in the an-

nual reports of the Southern Pacific Company each year that it is stated that it has a land department, and gives the officers thereof, but thinks his name is shown in the annual report of the Southern Pacific Company, but just how it is shown he does not remember. Defendants' exhibit 260 purports to give the character of the land in detail by sections. An individual examination of each section is not necessary in order to prepare such a plat. He has many reports in the office to show a particular district is all timbered, or a particular township, or a part of a particular township. Those were not taken into consideration in making up that detailed statement of forty per cent examined. They were taken into consideration in making Defendants' Exhibit 262, which simply goes into the general showing of what is timbered land and what is non-timbered land. There is nothing on the map to show what part of it is based upon detailed examination of the land, and what part is based upon general reports as to large areas, for instance a township or a half township. When a man reports as to an entire township instead of by sections, he has not made a close detailed examination of it, or he would have reported by sections. Very frequently they get what he calls recognaisance reports, which are intended to tell in a general way where the timber is and what part is non-timbered claims, or what part may be agricultural land. When land has timber on it, it is, generally speaking so classified by him and his graders, without reference to the question whether it could be used for agricultural purposes after the tim-

ber is removed; at the same time his reports show that the printed forms call for the information as to whether or not the land will be agricultural land after the timber is taken off. At the same time, for all present purposes they call that timber land. Defendants' Exhibit 262 does not show what is suitable for agriculture after the timber is logged off, and the stumps cleared out and the land leveled up and put in shape for farming. That has not been taken into consideration there. That is called timber land, because that is what it is valuable for now, and will be for a good many years to come. It will take a long time before the land will be worth the expense of removing the timber and grubbing out the stumps to make it agricultural. There is a very large part of the lands involved in this suit that never will be suitable for agriculture. There is another part that after the land is logged off, if developements in the way of transportation facilities and opening of the country are sufficient, or if they ever become sufficient to warrant the expense of grubbing out the stumps, the land might then be used for agriculture, but that will be years and years from now. There may be some tracts that might warrant that expense in the near future, but they are a very small proportion of the whole.

"Q. Now, from Albany in this state to the state line, there are no transportation facilities except those controlled by the Southern Pacific Company. Isn't that true?

Mr. Fenton: From Albany which way?

Mr. Townsend: South to the state line. I mean west of the Cascades.

Mr. Fenton: That projection of the line, about 25 miles of it built from Medford to the Rogue River, called the Medford and Eagle Point out from Medford; and then there is the Oregon and Southeastern for 18 miles into the Bohemia district, that we don't have anything to do with.

Mr. Townsend: Where is that?

Mr. Fenton: Cottage Grove to Bohemia. It is 18 or 20 miles.

A. And there is the whole Pacific Ocean with several streams extending up into this grant that can be utilized for transportation purposes.

Q. Particularly fish.

A. Particularly what?

Q. Particularly fish?

A. I am not a fisherman. I don't know.

Q. You don't know why those streams have not been utilized for transportation purposes, do you?

A. To some extent because the harbors are not as good as they might be, or as good as the population immediately surrounding those harbors hope to make them in the near future.

Q. But in a general way, it is a fact, is it not, that the Southern Pacific is the only means of transportation with reference to these lands, from Eugene, I will put

it, south to the southern boundary line of the state?

A. No, because they can be transported out over the ocean, and have been—the products are being transported.

Q. How do they get to the harbor?

A. Down the rivers.

Q. What rivers?

A. The lower portions of the Rogue River, the Umpqua River and Siuslaw River.

Q. How long a distance from the harbor are those streams navigable?

A. Well, I cannot give you the distance in miles, but I do know that more or less lumber is taken out through those streams and through the bays at their mouths.

Q. Well, do you mean that there are mills situated upon the streams, and that the lumber is transported down the streams for any considerable distance to the harbor, or do you mean that the logs are floated down to the mills?

A. I don't know for what distance. I do know that lumber is—I say I know—it is my information from reliable sources that lumber is transported from the west coast of Oregon by water.

Q. Now, what companies, what mills do you refer to?

A. I cannot give you the names of any of them.

Q. Do you refer to the Smith mill on Coos Bay?

A. As I said, I cannot give you the names of any of them, but it is my general information that that is done.

Q. Well, do you know that there are any transportation facilities that would be available to the lands in this grant for agricultural products to be transported to the harbor and thence by sea.

A. I can judge from the fact that there have been a half dozen ports organized under the Oregon law for the purpose of developing that traffic, by water from the west coast of the State of Oregon. There is some traffic now, and they expect to develop more.

Q. You have not answered my question as to whether or not any of that is available with the present facilities to any of the lands involved in this suit.

A. Well, very little with the present facilities.

Q. So that, speaking with reference to the present facilities, it is a fact, is it not, that the Southern Pacific Company is the principal means of transportation with reference to that portion of the land involved in this suit that are situated from Eugene south to the southern boundary line of the state?

A. It is the principal means of transportation for that territory, yes."

Whereupon the witness further testified that he did not admit that a large quantity of this land would be available to settlement if it had improved transporta-

tion facilities. A small quantity might be made available for settlement with a great deal of expense. He does not classify as non-agricultural lands, lands which are not now available for settlement because of the lack of transportation facilities. They are classified as timber lands if they carry timber, or they are classified as grazing lands if they do not carry timber. That is all they are good for now, and all they will be good for for a good many years to come and until transportation facilities are afforded and until settlement within the Willamette and other valleys, has reached a point where there is no more room, and the settlers have been forced into the outlying districts. In other words one could not today, and witness is speaking now as a land man, sell those lands that witness is speaking of for agricultural purposes. No one would buy them for that purpose; meaning, generally speaking, the lands in this suit. He knows from 25 years experience in handling lands. Not handling these lands, but from handling lands of like character; he handled a lot of them in California during the last three or four years. He has had no experience whatever in handling these lands or offering them for sale upon the market. These have not been on the market. He has had eight or nine thousand applications to buy these lands at $2.50 per acre, which he has refused. Those applications did not contemplate buying them for farming purposes, because that is not what they are useful for and he assumes to speak for the purpose, the mental purpose, of eight thousand people that he has never seen, because he can read from

the character of the land itself what they are buying it for. When a man applies to buy a quarter section at $2.50 an acre that carries fifty or a hundred thousand feet, board measure, of timber to the acre, it is absurd to suggest for a moment that he is buying that for agricultural purposes. He is buying it for the timber pure and simple. The mere fact that a man offered one hundred dollars an acre for the land would not make it agricultural land, it would make it timber land. He does not know that the price of $2.50 an acre has anything particularly to do with the character of the land. He has not seen any of this land applied for except from the railroad. He has not been over the land personally and he does not know from what he has seen from the railroad that he has seen any tract covered by these applications. Without seeing the lands or the persons who applied to purchase it, he would not assume to assure the court that none of them applied to purchase that land for the purpose of homes and there may be some tracts that homes might be made on, but speaking comparatively and taking into consideration all of the lands involved in this suit, the percentage is very small. So far as the settlement of these lands, using that word settlement in the sense of going upon them and living there and making homes on the tract, he does not think the suspension of sales has retarded the settlement of Oregon at all. It possibly has delayed somewhat the timber operations in Oregon. He does not know that settlers have gone upon the lands intervening those railroad lands, and have been compelled to abandon their

homes because they were living in a checkerboard, where each section was separated from the other section by this railroad land that is withheld from sale. If a settler could get a quarter section on an even numbered section, and off that quarter section could make his living, it would not make any difference whether there was any other quarter section open for the entry of someone else or not. If he went on a quarter section and the surrounding land was withheld from the markets and the result was that he could not make a living, then the land that he went on was not suitable for his settlement. Lands otherwise suitable for settlement will not be rendered unsuitable for settlement in the sense that the settlement would be profitable by the withholding of the intervening lands from the market. The withholding of the intervening lands does not render the others unsuitable for settlement.

"Q. Does it not render them unsuitable for a home, in the sense that the surrounding lands cannot be settled up, roads cannot be opened, schools cannot be established.

A. But surrounding lands are settled up, roads are opened, and schools are established in this very land grant. You are outlining conditions that do not exist.

Q. Well, how do you know they do not exist?

A. From the reports that I have of conditions that do exist.

Q. Now, you have had some thirty or forty men employed in examining this grant for different purposes

that you named in your direct examination, did you not?

A. Yes.

Q. Did you ever instruct one of them to ascertain whether any settlers had been compelled to abandon their settlement because of the retardation of development of the vicinity in which he lived, by the withholding of these railroad lands from sale?

A. I do not know that we ever instructed them to go into the reasons why the lands were abandoned. In fact, that would be a hard thing to do, when you go and find a quarter section with some battered down improvements on it, that show abandonment for years —it would be pretty hard to find the man that was there and abandoned it, and find out why he abandoned it. We have not undertaken to chase up that information.

Q. Because that would be adverse to you, wouldn't it?

A. No, because it would be of no earthly use to us or anybody else.

Q. You have not looked for any information that would be adverse to you, have you?

A. And I want to say further that my whole testimony has been based on the understanding that I was testifying from knowledge gained in my work, not from personal examination. I have stated that many a time. What I have said, I have said knowing it to be the fact from the information that I have gained, and necessarily gained in carrying on my office.

Q. But you have no personal knowledge of the accuracy of the information upon which you base your testimony?

A. Well, I have this personal knowledge, that if I find a field agent or other man don't accurately report the facts, he don't stay with me very long.

Q. How would you find it out?

A. In many ways."

Whereupon the witness further testified that they have many ways of finding out whether a man is doing his work right or not. If the company had occasion to have that particular piece of land re-examined by some other field agent, and the report was absolutely different, then they would undertake to have both reports verified and see which one was right. Witness is speaking now of an individual particular quarter section where, for some reason or other, the company thought here had been some mistake made. He has had many quarter sections re-examined because he thought there was some mistake made. He is speaking now of his entire experience and not particularly in this Oregon and California grant. The question necessarily goes into 25 years of experience in handling land grants, and one cannot be confined to any one particular quarter section, or any one particular land grant. If an examiner had been in his employ and he had found him accurate, he would rely upon his report being correct. He would not know if the report was correct except in so far as he relied upon that man.

Whereupon the witness upon re-direct examination further testified that he recognized "Defendants' Exhibit 366" as an official publication of the United States, which was received in evidence and marked "Defendants' Exhibit 366" and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon the witness recognized House Report No. 2215 House of Representatives, Fifty-first Congress, first session, as an official document published by the United States.

Whereupon defendants offered said report in evidence and asked leave to have the map read into the record, together with the amended bill accompanying the report, as a part of the same. Whereupon it was stipulated between counsel for the respective parties that all of the reports of the Committees of either House of Congress and the general debates upon the subject of the bill in both Houses of Congress, may be considered as having been reecived in evidence the same as if extended at length in the record. It being understood that such evidence shall be subject to the objection that the same is incompetent, irrelevant and immaterial, and that the purpose of this stipulation is that the Court shall take Judicial notice of the official reports, the Congressional record containing these Committee reports, the Congressional debates and other proceedings without further identification. Counsel for the Government objected to the introduction of Report No. 2215 and the

bill accompanying the same on the ground that the same is incompetent, immaterial and irrelevant and counsel for defendants objects to the admissibility of the debates in Congress or Committee reports generally as incompetent.

Whereupon said report No. 2215 and bill accompanying the same was received in evidence and is in words and figures as follows:

"The Committee on the Public Lands, to whom was referred the bill (S. No. 2781) 'An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes,' having fully considered the same, would respectfully report:

"On April 1, 1890, this committee reported a bill on this subject (H. R. No. 8919), which bill has not yet been considered by the House.

"In some respects the two bills are in substance the same, and we recommend the amendment of the Senate bill No. 2781 as follows:

"Strike out all after the enacting clause, and insert—

"(1) Section 1 of the House bill as section 1. This is substantially the same as section 1 of the Senate bill.

"(2) Section 2 of the House bill as section 2.

"(3) Section 2 of the Senate bill as Section 3.

"(4) Section 4 of the House bill, which is identical with section 4 of the Senate bill.

"(5) Section 3 of the Senate bill as section 5.

"(6) Section 5 of the Senate bill with an addition as to the reduction in price of lands restored to $1.25 per acre, to stand as section 6.

"(7) Section 6 of the House bill to stand as section 7. This leaves of the Senate bill sections 7, 8, and 9.

"Section 7 would include the Tennessee and Coosa and the Mobile and Girard Railroads in Alabama, and extend the time for their completion one year.

"Section 8 applies to the Gulf and Ship Island Railroad in Mississippi.

"More than thirty years have elapsed since these grants were made by Congress in aid of these railroads, and not only has the policy of making such grants been long abandoned, but your committee think proposal to extend time for construction has not met with favor in the House. And so they do not include these sections in the amended bill.

"Nor do the committee recommend section 8.

"The committee has for several years recommended in forfeiture bills a prior right of purchase of a limited quantity not exceeding 320 acres of forfeited land to any one having a contract of purchase with the State or corporation under the grant.

"Section 8 proposes to give this privilege to holders of tax titles and to an unlimited amount of land.

"We do not give this our assent.

"We recommend that the Senate bill, amended as indicated, do pass.

"AMENDED BILL.

"AN ACT to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, for the construction or benefit of which lands have heretofore been granted; and all such lands are declared to be a part of the public domain: PROVIDED, that this act shall not be construed as forfeiting the right of way or depot grounds of any railroad company heretofore granted, or lands included in any city, town or village site.

"Sec. 2. That all persons who, at the date of the passage of this act, are actual settlers in good faith on any of the lands hereby forfeited and are otherwise qualified, on making due claim on said lands under the homestead law within six months after the passage of this act, shall be entitled to a preference right to enter the same under the provisions of the homestead law and this act, and shall be regarded as such actual settlers from the date of actual settlement or occupation; and any per-

son who has not heretofore had the benefit of the homestead or pre-emption law, or who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act. The Secretary of the Interior will make such rules as will secure to such actual settlers these rights.

"Sec. 3. That in all cases where persons are in possession of any of the lands affected by any such grant and hereby resumed by and restored to the United States, under deed, written contract with, or license from, the State or corporation to which such grant was made, or its assignees, executed prior to January first, eighteen hundred and eighty-eight, they shall be entitled to purchase the same from the United States, in quantities not exceeding three hundred and twenty acres to any one such person, at the rate of one dollar and twenty-five cents per acre, at any time within two years from the passage of this act, and on making said payment to receive patents therefor; PROVIDED, That in all cases where parties, persons, or corporations, with the permission of such State or corporation, or its assignees, are in the possession of and have made improvements upon any of the lands hereby resumed and restored, and are not entitled to enter the same under the provisions of this act, such parties, persons, or corporations shall have six months in which to remove any growing crop, and within which time they shall also be entitled to move all buildings and other movable improvements from said lands: PROVIDED FURTHER, That the provis-

ions of this section shall not apply to any lands (situate in the State of Iowa) on which any person in good faith has made or asserted the right to make a pre-emption or homestead settlement: AND PROVIDED FURTHER, That nothing in this act contained shall be construed as limiting the rights granted to purchasers or settlers by 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March third, eighteen hundred and eighty-seven, or as repealing, altering, or amending said act, nor as in any manner affecting any cause of action existing in favor of any purchaser against his grantor for breach of any covenants of title.

"Sec. 4. That section five of an act entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,' approved May seventeenth, eighteen hundred and sixty-four, and section seven of an act entitled 'An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes,' approved March third, eighteen hundred and sixty-five, and also section five of an act entitled 'An act making an additional grant of lands to the State of Minnesota in alternate sections to aid in the construction of railroads in said State,' approved July fourth, eighteen hundred and sixty-four, so far as said sections are applicable to lands embraced within the indemnity limits of said grants, be, and the same are hereby, repealed; and so much of the provisions of

section four of an act approved June second, eighteen hundred and sixty-four, and entitled 'An act to amend an act entitled 'An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State,' approved May fifteenth, eighteen hundred and fifty-six, be, and the same are hereby, repealed so far as they require the Secretary of the Interior to reserve any lands but the odd sections within the primary or six miles granted limits of the roads mentioned in said act of June second, eighteen hundred and sixty-four, or the act to which the same is amendatory.

"Sec. 5. That if it shall be found that any lands heretofore granted to the Northern Pacific Railroad Company and so resumed by the United States and restored to the public domain lie north of the line known as the 'Harrison line,' being a line drawn from Wallula, Washington, easterly to the southeast corner of the northeast one-fourth of the southeast quarter of section twenty-seven, in township seven north, of range thirty-seven east, of the Willamette meridian, all persons who had acquired in good faith the title of the Northern Pacific Railroad Company to any portion of said lands prior to July first, eighteen hundred and eighty-five, or who at said date were in possession of any portion of said lands or had improved the same, claiming the same under written contract with said company, executed in good faith, or their heirs or assigns, as the case may be, shall be entitled to purchase the lands so acquired, possessed, or improved from the United States, at any time prior to

the expiration of one year after it shall be finally determined that such lands are restored to the public domain by the provisions of this act, at the rate of two dollars and fifty cents per acre, and to receive patents therefor upon proof before the proper land office of the fact of such acquisition, possession, or improvement, and payment therefor without limitation as to quantity: PROVIDED, That the rights of way and riparian rights heretofore attempted to be conveyed to the city of Portland, in the State of Oregon, by the Northern Pacific Railroad Company and the Central Trust Company of New York, by deed of conveyance dated August eighth, eighteen hundred and eighty-six, and which are described as follows: A strip of land fifty feet in width, being twenty-five feet on each side of the center line of a water-pipe line, as the same is staked out and located, or as it shall be hereafter finally located according to the provisions of an act of the legislative assembly of the State of Oregon approved November twenty-fifth, eighteen hundred and eighty-five, providing for the means to supply the city of Portland with an abundance of good, pure, and wholesome water over and across the following described tracts of land: Sections nineteen and thirty-one, in township one south, of range six east; sections twenty-five, thirty-one, thirty-three and thirty-five, in township one south, of range five east; sections three and five, in township two south, of range five east; section one, in township two south, of range four east; sections twenty-three, twenty-five, and thirty-five, in township one south, of range four east, of the Willam-

ette meridian, in the State of Oregon, forfeited by this act, are hereby confirmed unto the said city of Portland, in the State of Oregon, its successors and assigns forever, with the right to enter on the hereinbefore-described strip of land, over and across the above-described sections for the purpose of constructing, maintaining, and repairing a water-pipe line as aforesaid.

"Sec. 6. That no lands declared forfeited to the United States by this act shall by reason of such forfeiture inure to the benefit of any State or corporation to which lands may have been granted by Congress, except as herein otherwise provided; nor shall this act be construed to enlarge the area of land originally covered by any such grant, or to confer any right upon any State, corporation, or person to lands which were excepted from such grant. Nor shall the moiety of the lands granted to any railroad company on account of a main and a branch line appertaining to uncompleted road and hereby forfeited, within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure, by virtue of the forfeiture hereby declared, to the benefit of the completed line; and the price of all lands affected hereby and hereby restored when in any way sold is hereby reduced to one dollar and twenty-five cents per acre.

"Sec. 7. That nothing in this act shall be construed to waive or release in any way any right of the United States to have any other lands granted by them, as recited in the first section, forfeited for any failure, past or future, to comply with the conditions of the grant."

Whereupon the witness upon cross-examination further testified that the various compilations and maps identified by him were all prepared, except one or two which may show the contrary on the face, since the institution of this suit, for the purpose of being used in this suit. They were compiled to show the facts as shown by the records of the office. Witness testified that the compilations themselves are not of any practical use, and were never of any practical use in the office. He does not remember anything that is especially part of the office records. "Defendants' Exhibit 263" purporting to show the disposition of the even numbered sections intervening the unsold portions of the land grant involved in this suit was prepared specially for use in this case and had no practical use in his office in the administration of the grant, and when he says that some of these documents, speaking generally, are relied upon by his office, he refers to the sources from which these maps and computations have been compiled rather than the maps and statements themselves, and it is largely true that his only knowledge as to the accuracy of these maps and compilations rests upon the fact that he directed how they should be compiled and prepared and knows that the men that did the work had before them the details from which they could have made them accurately, the witness supervising the work as much as he could. He attended to some of the detail work, but as a rule it was done by clerks in the office. It was not possible for him to give a close personal check. In "Defendants' Exhibit 263" he has included any form of selection or

entry that did not require settlement on the land. It was not the intention to say that none of these lands may have been taken for settlement purposes, that was not within his knowledge. The records of his office disclose that quit claim deeds had been used by the Oregon & California Railroad Company in conveying lands that had not yet been patented and such instances of conveyance are not limited to cases where mineral claimants contested the Company's selections or lists and the contest was finally compromised between the mineral claimants and the Company. It is impossible for him to say, from recollection, how many instances he has found where the Company did issue deeds prior to patent outside of lands claimed by mineral claimants. The records show quite a number. The records show that the lands were sold in the ordinary course of events, the deed issued and the patent sometimes subsequently acquired and sometimes not yet acquired. He would not say that these were prior to the receivership in 1885, he does not recollect. Any lands lost by the Act of January 31, 1885, are not considered other than to show them as lost, if shown at all.

Whereupon witness further testified as follows:

"Q. Now, you recall that there was litigation instituted by the United States involving the northern four or five townships on the easterly side of the grant under the act of July 25, 1866, known as the Northern Pacific Overlap case. You recall the fact that there was such litigation?

A. I know there was such a case, yes.

Q. Now, do you not know that, when the Northern Pacific Overlap suit was instituted by the United States, the railroad company gave notice to all parties holding contracts for lands involved in that litigation that no further payments would be received under the contracts until the litigation was terminated?

A. I know only that some people have claimed to have received such notice. I don't know the facts as to the notice having been given.

Q. Well, now, do you not know that there are quite a number of outstanding contracts involving lands that were tied up in that litigation for some time, and which contracts have not been finally forfeited for failure on the part of the purchaser to comply with the conditions of the contracts, and at the same time that those lands are not included in the defendants' answer here as either sold or unsold lands?

A. I remember of a few cases,—I don't think there is quite a large number—where contracts are still open accounts on our books, and where parties claim that they were given some extensions of time on account of the Northern Pacific Overlap cases. Now, I do not recall that there is any showing in the answer of tracts of land that have been sold. The answer is confined to a showing of lands unsold, as I recollect it, and those contracted lands are not in the list of unsold lands."

Whereupon the witness further testified that "Defendants' Exhibits 296 and 297" show whether the con-

tract has been cancelled on the books or not, and show in a column under the heading "Date of closing account in consequence of default" the dates when all contracts that have been closed for default were so closed. So far as these contracts are concerned, they have been forfeited and the lands may have been sold under another contract later on. So far as these contracts are concerned, the lands unless later sold, would appear in the statement of unsold lands. Under another column is shown "Dates of final payment or deed." These dates show that a deed had issued, or that the contracts had been paid in full. Where no date appears in either of these columns the contract is still outstanding, so far as the accounts and records show and the description of the land, contract number, name of contract holder, so far as the Company is advised, are shown in connection with the statements. He cannot tell without a very great deal of research the cases where the purchasers dispute the claim that the lands have reverted to the Railroad Company. On pending contracts that are in default, the exhibit shows which of these pending contracts is in default, where the account is still open on the books. Under the heading in the two columns "Amount unpaid when default occurred" and "Date of default" that information is given. Then under double column "Payments made after default occurred. Date—Amount" it shows what has been paid subsequent to the date shown in the column headed "Date of default." By taking this exhibit and referring to these items which show default and also the column showing date of final pay-

ment or deed, as well as "Date of closing account in consequence of default," one would have all contracts as to which default has occurred and where the rights of the purchaser and the Railroad Company have not yet been settled; that is, if there is no entry under the heading "Date of closing account in consequence of default" and likewise under the heading "Date of final payment or deed" then that means that the contracts are in default and if nothing appears under the heading "Payments made after default occurred" that means that the default is still continuing. None of these instances are included in the pleadings in this case as unsold lands. The donation land claims were taken up before this grant was made, and that is the reason for the resulting loss within place limits. Donation land claims were a matter of record in 1866.

Witness further testified that the records and letter files of the Oregon & California Railroad Company which survived the San Francisco fire of 1906, and heretofore produced at the request of counsel for the Government, were such records and files and were found in the form produced when he entered the office. That he was present when Mr. Eberlein testified and remembers that Eberlein explained that "Government's Exhibit 115," being correspondence in which the assignability of that entire grant, with right of lieu selection in favor of the assignee was discussed, belonged to other files than the Oregon & California Railroad Company. Witness did not intentionally put any of the files belonging to any other grant in the Oregon & California Rail-

road Company files. This exhibit had inadvertently gotten in there and was there when the files were gotten out and so far as he knows was there during all the time that he had had custody of those files. Witness does not recall definitely relating to the sale to Franklin Martin in December 1908 of 160 acres of the granted lands at $2.50 per acre. The case was terminated shortly after witness took charge of the office and his action in connection with the matter was largely in accordance with advice of the law department, which was thoroughly familiar with the facts. He does not recall where the land was situated and would have to refer to the files in the case in order to say much concerning it, beyond the fact, as he has heretofore testified, that that was a sale which had been entered into pursuant to settlement of a law suit. It is his recollection that these lands are involved in this suit now pending. Referring to the sale made in June 1910 to Roy Minkler of 80 acres at $22.00 per acre, that was a suit instituted for Minkler by A. W. Lafferty, in the Federal Court sitting at Tacoma and is the suit referred to in the bill of complaint in this case and that was the suit that was compromised. He admits that there is a small percentage of agricultural lands involved in this suit but does not remember whether his previous testimony was confined to a statement that he would have sold agricultural lands but for this suit. He presumes he would have sold timber lands had it not been for this pending suit.

Whereupon witness being recalled on behalf of defendants on direct examination testified as follows:

Mr. Fenton: Q. Mr. McAllaster, you may state, if you will, whether or not you have examined the corporate records of the Oregon Central Railroad Company of Salem, the Oregon Central Railroad Company of Portland and the Oregon and California Railroad Company in the custody of the secretary of the Oregon and California Railroad Company, and as a result of such examination of these corporate records, you are able to state succinctly what you find with reference to the financial operations of these companies from the beginning down to the period covered by your investigation?

A. Yes, I made such examination of these corporate records while I was in Portland last October, and I found the result as follows:

"The Minute Books of the Oregon Central Rail-
"road Company (East Side) and the Oregon Central
"Railroad Company (West Side), and the Oregon and
"California Railroad Company show certain moneys to
"have been obtained towards the construction of the
"road, as follows:

"The East Side Company was incorporated April
"22, 1867, and immediately thereafter let a contract
"to A. J. Cook & Company for construction of the
"line for one hundred and fifty miles south from Port-
"land. Subsequently this contract was amended and
"later another contract was entered into with Cook and
"Company for construction from the 150th mile post
"south to the Oregon State line. All of these contracts
"were eventually assigned by Cook & Company to Ben

"Holladay and Company, and from time to time cer-
"tain shares of capital stock and certain mortgage bonds
"were delivered to either Cook & Company or Ben Hol-
"laday and Company.

"On March 28, 1870, the East Side Minute Book
"shows a proposition from Ben Holladay and Com-
"pany to the effect that such Company would turn over
"to the East Side Company all stocks and bonds it
"held, all the completed and uncompleted railroad lines,
"all rolling stock and other property, all mills, ma-
"chine shops and their contents, all live stock, imple-
"ments and property owned by or standing in the name
"of Ben Holladay and Company which had been ac-
"quired or were intended for use in construction
"and operation of the railroad, in consideration
"of which the Railroad Company was, within
"two years, to pay the full amount of money which Ben
"Holladay and Company had expended, and to pay all
"liabilities which had been incurred by Ben Holladay
"and Company in connection with the construction of
"the road, or defending the corporate rights of that
"railroad, which amounts were supposed to aggregate
"between $800,000.00 and $1,000,000.00.

"Coincidentally there was received by the East Side
"Company from the Oregon and California Railroad
"Company a proposition to purchase the entire prop-
"erty in consideration of the Oregon and California
"Railroad Company assuming the payment to Ben Hol-
"laday and Company of the $1,000,000.00, or there-
"abouts, above referred to.

"Wherfeore it appears that there had actually been "expended by Ben Holladay and Company about "$1,000,000.00, which had gone into the construction of "twenty miles of completed road, and of a considerable "grading and partial construction beyond the end of "the completed line, and in the purchase of equipment "for operating the completed twenty miles, and equip-"ment of all kinds for railroad construction.

"The Minute Books of the West Side Company "show that stock was authorized to be sold on certain "terms, and that from time to time calls were made up-"on stock subscribers for cash payment of percentages "of their subscriptions; also that subscriptions were re-"ceived of real estate, for aid in the construction of the "road; also that contracts were let with S. Coffin and "S. G. Reed & Co. for construction and that some pay-"ments were made on account of those contracts, but "the books are not clear as to the amounts paid; also "that on or about September 8, 1880, certain construc-"tion work had been done by the Northwestern Con-"struction Company, amounting in value to $20,893.92, "against which the West Side Company had an off-"setting bill for freight transportation amounting to "$7887.40, leaving $13,006.52 unpaid.

"From the West Side Company's Minute Book the "folloging statement has been compiled:

"Feb. 9, 1872, page 228, — Borrowed
" from London Syndicate
" by depositing $4,395,000
" first mortgage bonds as
" collateral $1,000,000.00

"Apr. 30, 1876, page 306,—Second Mort-		
" gage bond issue.....		300,000.00
"Oct. 6, 1880, page 515,—Amount of cash		
" " paid in on capital stock sub-		
" " scriptions .....$		47,531.17
" " page 521,—Net earnings		
" " from operation of the road.		25,250.00
" " Value of construction work		
" " done by Northwestern Con-		
" " struction Company and		
" " paid by freight transporta-		
" " tion		7,887.40
" " Value of construction work		
" " done by Northwestern Con-		
" " struction Company, unpaid.		13,006.82
" " Individual subsidies appar-		
" " ently partly in cash and		
" " partly in real estate sub-		
" " scriptions towards the fi-		
" " nancing of the road.....		95,466.24
" " Cash received from land		
" " grant sales		4,984.69
" " Rental due from Western		
" " Oregon Railroad Company		1,750.00
""		
" Total .....$		1,532,484.13

"all of which was unquestionably applied, or intended "to be applied upon the construction of the railroad, "and constituted the actual value which the Oregon and "California Railroad Company obtained when it took "over the West Side Company's property.

"In addition, the Oregon and California Railroad "Company, in taking over the West Side Company's "property, assumed the following liabilities:

"Amounts borrowed by West Side Company from O. & C. R. R. Co to pay interest on bonds and for other purposes	$120,997.40
Interest owing on two notes for $1,000,000.00	612,796.34
Interest owing on second mortgage coupons	97,230.00
Total	$831,023.74

"from which it would appear that at the "time Oregon and California Railroad "Company acquired the East Side there "was an actual investment of $1,000,000.00
"and at the time O. & C. R. R. acquired "the West Side Company there was an ac- "tual investment of $1,532,484.13
"

"Total investment	$2,532,484.13
"Accrued interest charges	831,023.74

"The accrued interest charges, the $300,000.00 sec- "ond mortgage bond issue and the $1,000,000.00 bor- "rowed from the London Syndicate, and the balance due "the Northwestern Construction Company were subse- "quently taken care of by O. & C. R. R. Co.

"Concerning the showing that on or about January "31, 1881, the stockholders made payment in full for

"the then remainining capital stock of the Oregon and "California Railroad Company, amounting to $1,759,- "200.00, beg to advise that the records of the minutes "of meetings of Boards of Directors and stockholders of "the Oregon and California Railroad Company show as "follows, book and page reference being in the typewrit- "ten copies of the original records which have been certi- "fied to by Mr. W. D. Fenton, Secretary:

"Prior to February 1, 1881, there was outstanding "capital stock amounting to $20,000,000.00, held by the "following persons:

"R. Koehler, Trustee	$19,999,500.00
"R. Koehler	100.00
"C. H. Lewis	100.00
"P. Schulze	100.00
"J. N. Dolph	100.00
"C. A. Dolph	100.00
	$20,000,000.00

"There was outstanding indebtedness as follows:

"Outstanding first mortgage bonds O. " C. R. R. Co., dated April 14, 1870	$10,950,000.00
"Outstanding West Side Company first " mortgage bonds, amounting to $4,- " 395,000.00, which were pledged as " collateral security for two notes " amounting to	1,000,000.00
"Outstanding second mortgage bonds " West Side Company	300,000.00
"Note due Northwestern Construction	

" Company on account of construction	
" work done for West Side Company..	13,006.82
"Interest due thereon	520.27
"Interest owing on the two notes for	
" $1,000,000.00	625,296.35
"Balance of interest owing on the second	
" mortgage bonds West Side Company	93,490.00
"Outstanding indebtedness of the West-	
" ern Oregon Railroad Company which	
" O. & C. R. R. Co. had assumed as the	
" purchase price of that line.....$	1,520,564.05
"Total of such outstanding indebtedness.$	14,502,877.49

"(a) Holders of all of the 7% bonds of April 14, "1870, except $32,800.00 supposed to have been lost or "destroyed, and $30,700.00 held in the congressional land "grant sinking fund, also

"(b) The trustees of the mortgage of April 15, "1870, covering the railroad,

"(c) The trustees of the trust deed of April 15, "1870, covering the land grant,

"(d) All the stockholders:

"that the capital stock be reduced to $1,759,200.00, and "that first mortgage bonds aggregating $2,000,000.00 "be issued to apply in part upon liens of the West Side "Company, just bought in, and in part upon liens of "the Western Oregon Railroad Company, just bought, "and to provide a fund for the general purposes of the "company.

"In connection with the stockholders meeting held "February 1, 1881, it is shown that the stock had been "transferred so that the holdings on that date were,—

	2744	
"R. Koehler, Trustee.....	199,943.17592	shares
	6488	
"R. Koehler	11 17592	"
	6488	
"C. H. Lewis	11 17592	"
	6488	
"P. Schulze	11 17592	"
	6488	
"J. N. Dolph	11 17592	"
	6488	
"C. A. Dolph	11 17592	"
"Total	200,000.00	shares

"It was shown that the capital stock of $20,000,000.00 "was wholly unpaid, and the holders were unable to pay "a greater assessment than $1,759,200.00, and that if "the stock was reduced to that amount the holders pro- "posed to pay the same in full, and therefore the reduc- "tion was ordered made.

"It is shown the proceedings authorizing the issue of

"$2,000,000.00 six-per-cent bonds, as a superior lien to "that of the mortgage and deed of trust of April 15, "1870.

"It is recited the outstanding indebtedness as herein- "before given.

"The proposition is shown that upon the "surrender of the two West Side notes "for		$1,000,000.00
"and the surrender of the first mortgage "bonds of the West Side Company...		4,395,000.00
"and the surrender of the second mortgage "bonds of the West Side Company...		300,000.00
"and the surrender of the interest coupons "thereon, amounting with interest to..		93,490.00
"and the full satisfaction of the Western "Oregon Railroad Company mortgage		1,520,564.05
"and the surrender of the Northern Con- "struction Company's note for.....		13,006.82
"and upon the stamping of the first "mortgage bonds and coupons (ex- "cepting those lose and those held in "the Congressional land grant sink- "ing fund), that the Oregon and "California Railroad Company will "thereupon pay to the holders of in- "debtedness in such proportion as "may be agreed upon, cash.....		$93,755.00
"and deliver in such proportion as		

"may be agreed upon new first mort-
"gage bonds ($2,000,000.00 issue) .. 1,700,000.00
"and for the balance of said indebted-
"ness will credit as payment for re-
"duced capital stock upon assign-
"ments from holders of indebtedness. 1,759,122.95

"the total of said indebtedness being. $3,552,877.95

"At a stockholders meeting held on February 2, "1881 it is shown that the stockholders then were:

"R. Koehler, Trustee	$1,758,700.00
"R. Koehler	100.00
"C. H. Lewis	100.00
"P. Schulze	100.00
"J. N. Dolph	100.00
"C. A. Dolph	100.00
Total	$1,759,200.00

"It is evident that the proposed arrangement had "been carried out and that therefore the holders of the "various items of indebtedness, who apparently were the "German bond holders and who were also apparently "the actual owners of all of the outstanding stock, had "in effect appropriated $1,759,200.00 of the amounts "coming to them in the payment of the indebtedness, "and used the same as their payment in full to the Rail-"road Company for that amount of capital stock.

"The same result as to outstanding indebtedness and "capital stock would have been obtained if the German

"bond holders, being also the stockholders, had paid "in cash the $1,759,200.00 and the Railroad Company "had then used that money, together with the $1,700,- "000.00 of bonds and the $93,755.00 of cash to satisfy the "$3,552,877.49 of indebtedness. It is immaterial wheth- "er the German bond holders and stockholders, being "identical, were out of pocket by failing to receive $1,- "759,200.00 of the indebtedness due them, or by paying "into the Company's treasury that amount of money out "of their own pockets and subsequently receiving it back "again as payment of the indebtedness due them."

Whereupon witness further testified that from these books, or corporate records of these Companies he had prepared a statement showing in a general way the financial operations of the Oregon Central Railroad (East Side) and the Oregon Central Railroad (West Side) and the Oregon & California Railroad Company, as gathered from the records of the meetings of the stockholders and directors of the Company, and being shown "Defendants' Exhibit 380" testified that he prepared that statement and that it is an abstract from the records of the meetings of the directors and stockholders of the Companies named and is correct according to the records; that he has had experience as an accountant and bookkeeper sufficient to justify him to make this statement and compilation.

Whereupon defendants offered in evidence "Defendants' Exhibit 280" which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as

such.

Whereupon the witness produced a certified copy of the patent issued by the United States to the Oregon & California Railroad Company, which includes the lands described in contract 5394, being the third item of Exhibit No. 9 of the answer and by consent of the parties the same was read into the record, omitting descriptions and is as follows:

"The United States of America.
"To all to whom these presents shall come, Greeting:

"Whereas by the Acts of Congress approved July "25, 1866, June 25, 1868, and April 10, 1869, to aid in "the construction of a railroad and telegraph line from "Portland in Oregon, thence southerly through the Wil- "lamette, Umpqua and Rogue River Valleys to the "Southern boundary of Oregon. Authority is given to "the Oregon and California Railroad Company of Ore- "gon, a corporation existing under the laws of the State " 'to construct a railroad and telegraph line' under cer- "tain conditions and stipulations as expressed in said "Acts and provision is made for granting to the said "Company every alternate section of public land desig- "nated by odd numbers, to the amount of ten alternate "sections per mile on each side of the said railroad on "the line thereof and within the limits of twenty miles "on each side of said road, not sold, reserved or other- "wise disposed of by the United States, and to which a "pre-emption or homestead claim may not have attached "at the time, the line of said road is definitely fixed.

"And Whereas, it is further enacted in said section "that when any of said alternate sections or parts of "sections shall be found to have been granted, sold, re- "served, occupied by homestead settlers, pre-empted or "otherwise disposed of, other lands designated as afore- "said shall be selected by said Company in lieu thereof, "under the direction of the Secretary of the Interior in "alternate sections designated by odd numbers as afore- "said nearest to, and not more than ten miles beyond "the limits of said first named alternate sections.

"And Whereas, official statements from the Secre- "tary of the Interior have been filed in the General Land "Office, that Commissioners appointed by the President "under the provisions of the fourth section of said Act "of July 25, 1866, have reported to him that the said "Oregon and California Railroad and Telegraph Line "commencing at a point in East Portland in the County "of Multnomah, State of Oregon, and ending at a point "on the boundary between the States of Oregon and "California where it joined the California and Oregon "Railroad a distance of three hundred and sixty miles has "been constructed and fully completed and equipped in "the manner prescribed by said Act.

"And Whereas, that portion of said road lying be- "tween the city of Portland, Oregon, and the town of "Roseburg in Township 27 South, Range 5 West, a "distance of one hundred and ninety-seven miles was "completed within the time prescribed by the law, and "the balance of the road was completed after the expira- "tion of such time. And Whereas certain tracts of

"land have been selected by the duly authorized agents "of the Oregon and California Railroad Company as "shown by such agent's original lists of selections ap- "proved by the local land officers and now on file in this "office. And Whereas said tracts of land lie within the "indemnity limits of said grant and are particularly de- "scribed as follows, to-wit:"

(Descriptions omitted.)

"The said tracts of land as described in the fore- "going make the aggregate area of ninety-seven thou- "sand nine hundred and twenty-nine acres and sixty- "seven hundredths of an acre (97,929.67).

"Now, Know Ye, that the United States of Amer- "ica in consideration of the premises and pursuant to "the said Acts of Congress have given and granted, and "by these presents do give and grant unto the said Ore- "gon and California Railroad Company of Oregon, and "to its assigns all the tracts of land selected as afore- "said and described in the foregoing, yet excluding and "excepting from the transfer by these presents 'All Min- "eral Lands' should any such be found to exist in the "tracts described in the foregoing but this exclusion and "exception according to the terms of the statute 'shall "not be construed to include coal and iron lands.'

"To have and to hold the said tracts with the appur- "tenances unto the said 'Oregon and California Rail- "road Company of Oregon, and to its assigns forever "with the exclusion and exception as aforesaid.

"In testimony whereof, I, Benjamin Harrison, Pres-

"ident of the United States of America, have caused "these letters to be made patent, and the seal of the Gen- "eral Land Office to be hereunto affixed.

"Given under my hand at the City of Washington, "this the third day of March in the year of our Lord, "one thousand eight hundred and ninety-three, and of "the Independence of the United States the one hundred "and seventeenth.

"(Seal)

"By the President Benjamin Harrison,

E. Macfarland, Asst. Secretary."

Whereupon on cross-examination witness further testified that this statement of the financial affairs of these Companies is based strictly upon what appears in the minute books and other books of these corporations; that the question whether Holladay had accepted $1,000,000 or $800,000, or any other particular sum is based upon the fact that he so contended in the reorganization of 1870, and that the Company, by accepting his proposition, virtually conceded it and it so appears in the minutes of the Company relating to that transaction, and he has no way of knowing from these books whether Holladay did actually advance that money himself or whether he had borrowed it and then repaid it out of the bond issue of 1870 and there is no way for him to know whether that did or did not occur, beyond what is set forth in the minute books and there is nothing in the minute books showing how Holladay expended the money that came into his hands, but simply the fact

that the money did come into his hands and was exhausted and that is the only thing that the minute books show concerning it. The minute books do not show or for the main part, the books do not show how he expended the money, they do not show specifically that it was for the purpose of construction. They do not show it in detail.

Whereupon the defendants offered in evidence in connection with the testimony of witness the minute books referred to by him and asked leave to withdraw the same, which was assented to by the Government.

Whereupon, WILLIAM HOOD, called as a witness on behalf of defendants, being duly sworn, testified that he is Chief Engineer of the Southern Pacific Company and its leased lines; was educated as a civil and railroad engineer at Dartmouth College. He has been connected with the construction of all of the Southern Pacific Company lines between Ashland, Oregon, and San Antonio, Texas, and Ogden, Utah, excepting what was built prior to 1867, and has been continuously in the service of the Central Pacific Railway Company, Southern Pacific Railroad Company, and other lines now leased to and operated by the Southern Pacific Company, since May 3, 1867. He was assistant engineer for some time, then assistant chief engineer for a certain period, and then chief engineer for the Central Pacific Railway Company and the Southern Pacific Railroad Company, and as such Chief Engineer or otherwise of the Central Pacific Railway Company was intimately connected with the construction of the road between Roseville Junction and Ashland, known as the

land grant road of the California and Oregon Railroad Company in California, under the Act of Congress of July 25, 1866, and known in Oregon as the Oregon and California Railroad Company, from the state line to Portland, under the same grant, from Marysville to Tehama, and somewhat connected with it from Tehama to Redding, and closely connected with it and actually in charge from Redding to Ashland, Oregon. He recalls an agreement of date October 11, 1886, between the Central Pacific Railroad Company, Pacific Improvement Company, and Southern Pacific Company, known as "Exhibit 1" to the printed joint and several answer of the Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage in this suit, and has seen a copy of same to refresh his memory recently. At the time this agreement was put in force it was handed to him to read for his guidance in connection with the construction of the railroad. He would not remember at this time its dates, or other matters of that description. His remembrance is that he saw a duplicate belonging to the Pacific Improvement Company, which was an executed document, as he remembers. He constructed that portion of the road between Delta and Ashland under this agreement. Roseville Junction to Lincoln is 10.4 miles; Lincoln to Wheatland, 11.1 miles; Wheatland to Yuba, which was then a local name on the railroad immediately south of the Yuba River at Marysville, 10.1 miles, and it should be understood that he had no connection with this construction, but he has compiled this from his office records, which office records he has

renewed since the fire. The methods by which payments were made as the work of construction progressed on that portion of this line constructed by him, was that when a certain number of miles had been built, any convenient number of miles, a certificate would be issued signed by the President of the road and himself, certifying that the Pacific Improvement Company had completed a certain number of miles, and giving initial and terminal points of this certain number of miles—that was from Delta to Ashland, a distance of 132.387 miles. These certificates that Pacific Improvement Company had constructed certain mileage and was entitled to such and such compensation, were issued by the president or vice president in his absence, and by himself as chief engineer. He was an officer of the Central Pacific Railroad Company. The officers who signed these certificates were officers of the Central Pacific Railroad Company. He does not remember occupying at that time any position with reference to the Central Pacific Railroad Company other than chief engineer. As such officer, as its chief engineer, he constructed the road from Delta to Ashland. The company abandoned something like a mile and a half of track south of Ashland, which had been constructed by Oregon and California Railroad Company, and built an entirely new road to correspond, situated somewhat to the eastward of this abandoned road, so that the Central Pacific Railroad Company constructed beyond the Oregon line the distance from the State line between Oregon and California to Ashland, that is, the Pacific Improvement Company con-

structed, for the Railroad Company, between the State line and Ashland. Whether it was the Central Pacific Railroad or the Oregon and California Railroad Company, he could not tell. As Chief Engineer of the Central Pacific Railroad Company he had charge of all that construction, although the contract was in the name of the Pacific Improvement Company It was under this contract, said Exhibit No. 1, his position as Chief Engineer caused him to be in charge of the construction to see that it was done satisfactorily.

Whereupon, upon cross-examination, witness further testified that the Pacific Improvement Company was, in effect, the contractor, and he was in charge of their work in as intimate a degree as he would be in any case in charge of the work of a contractor, which would mean that he was responsible for the location of the road, its grade system, its curves, and every detail; the contractor, Pacific Improvement Company, building it as directed, and under his immediate supervision. He performed a similar service quite frequently where the Pacific Improvement Company was the contractor. He knows that Huntington, Crocker, Stanford and Hopkins, in a general way, had the reputation of controlling the Pacific Improvement Company, but he did not know. He knew that these were the men who directed and controlled its affairs—he having no personal knowledge of the stockholders. He knew in a general way that they controlled and directed the affairs of that corporation. A great deal of the contract work of the Southern Pacific Company and the so-called constituent companies of the

Southern Pacific system, was done in the name of the Pacific Improvement Company. The cash payments to men on the pay rolls for the construction of the California Line from Delta to the northerly line of the state, were made by the Pacific Improvement Company, excepting his salary and expenses. The contract provided that his salary and expenses should be paid by the Central Pacific Railroad Company. He does not know how the Pacific Improvement Company was paid by the Central Pacific Railroad Company other than the contract, and he is not clear in his remembrance of that in detail. He knows that they were authorized to get paid by his certificate and the certificate of the president. He remembers in a general way that this contract provided that the Pacific Improvement Company should be paid for constructing the railroad from Delta to the northern boundary line by 80,000 shares of the capital stock of the Central Pacific Railroad Company, and $4,500,000 of bonds. His certificates, however, did not take that into account, they simply certified to the completion of the road in sections, according to mileage. He does not know how they apportioned these payments. He does not remember in detail that a similar contract was entered into between Pacific Improvement Company and the Oregon and California Railroad Company for the construction of the road from Ashland to the southern boundary of Oregon, but he does remember clearly that he certified as to the completion of the road in that district, the same as he did south of the State line, and must have had authority for it. The certificate was

made, as he remembers it, not addressed to any one, simply "The Pacific Improvement Company has completed," etc., etc., specifying the distances; was signed by the president and himself, and the Pacific Improvement Company presented that to the proper company for payment. He is not clear who was president of the Central Pacific at that time. It may have been Charles Crocker; he paid very little attention to those things. The executive officers of that company have changed a number of times in its history, and he could not remember as to the Oregon and California, who was president in 1887. He does not remember of being consulted by the president of the Central Pacific Railroad Company, or any of its officers, with reference to the Oregon and California Railroad property prior to this time, and he did not inspect the road, or its general properties, before the Central Pacific people became interested in the Oregon and California Railroad Company or entered into any contract with reference to it. He did not make any inspection of the Oregon and California railroad, or any part of its railroad, prior to the time that he performed this work in connection with construction. He does not know when the Pacific Improvement Company acquired its holding of the capital stock of the Southern Pacific Company, and has no knowledge whatever as to the ownership by the Pacific Improvement Company of Southern Pacific Company stock. He has no knowledge of the details of any common interest the Pacific Improvement Company, and the Southern Pacific Company, and the Central Pacific Company, or the other

constituents of the so-called Southern Pacific Railroad System, or that they were closely related, or controlled by the same set of men, except such as any other citizen would have through newspapers, and his knowledge would be about as reliable as that of any other citizen in those respects. He had no occasion to know anything about who controlled or directed the affairs of the company, referring to Huntington, Crocker, Stanford and Hopkins. He would be notified that a road was to be constructed; he would see a contract, like the one testified to, to guide him; he would then direct the construction; he would not receive any instructions from any one; they never gave him any, and he controlled the engineers on construction, the same as if they were on his own road, although they were not. He was assistant engineer in 1867, and was not appointed to that place, but was employed. He was appointed assistant chief engineer of the Southern Pacific Railroad Company, and thereafter of the Central Pacific Railroad Company, by Charles Crocker. He was appointed or elected, which ever it was, chief engineer of the Southern Pacific Company, which covered everything, so to speak, ex-officio, on account of the lease, but does not remember whether it was an appointment or an election. If it was an appointment, it was by Charles Crocker, as he remembers that Crocker was active here at that time, whatever position he may have held. His relations with Charles Crocker and Leland Stanford, and C. P. Huntington, and Charles F. Crocker, and Mark Hopkins, and D. D. Colton, were entirely relations with

them as railroad officers, that is, as president, vice president, etc., treasurer, and the like of that, directors of the railroad corporations and of the Southern Pacific Company. He had no relations whatever with these men concerning the Pacific Improvement Company, or any other company, excepting as officers of the railroad company. His relations with the Pacific Improvement Company were entirely through its secretary, who was an employe.

"Q. Yes, but you are now stating the nature of your relations with these men, Mr. Hood, whereas I want you to state whether or not the same men did not, in a general way, control and direct the affairs of one company that also did of the others—of one railroad company, of all railroad companies, and of the Southern Pacific Company?

A. I knew that officially."

Whereupon the witness further testified that he did not know of his own knowledge, that these same men controlled and directed the affairs of the Pacific Improvement Company. He dealt with the secretary of the Pacific Improvement Company exclusively, frequently from 1888 on. If it had been a practical question in the administration of his affairs to go to the man who controlled and directed the affairs of the Pacific Improvement Company, he would have gone, and did go to the secretary of Pacific Improvement Company, who was a salaried employee, like almost any secretary. He would say that he was dealing exclusively with the secre-

tary of the Pacific Improvement Company. He recalls at certain dates that for some time J. H. Strowbridge was president of the Pacific Improvement Company, and F. A. Douty was secretary, and he remembers that was the state of the case while the road was being built from Delta to Ashland, although he may be mistaken as to the president, but he does know that Strowbridge was for a considerable period president, and Douty was secretary of Pacific Improvement Company, and knows that he went to Douty on business between the Central Pacific Railroad Company and the Pacific Improvement Company. It is difficult to remember specifically how many contracts there were between Pacific Improvement Company and any of the constituent companies of the Southern Pacific Company. He can remember in general what roads they built, but could not give the dates of contracts or terms. For instance, they built the road from Shingle Springs to Placerville, and he thinks the road from Mojave to Needles. He was not chief engineer of that road, and that is why he says he thinks so. He was assistant chief engineer of that road, it was the Southern Pacific Railroad. He thinks that the Pacific Improvement Company built from Indio to Yuma, and he could probably, if he took time, recall other construction. As he recalls, in all the contracts that he has examined for the construction of railroad by the Pacific Improvement Company, payment was to be made in either capital stock or bonds of some of the railroad companies now constituting the Southern Pacific System; the amount of capital stock or bonds

was generally, but not always defined. When the amount was not defined, it was determined by the cost of the road, and a small percent, sometimes five, sometimes ten, for administration service and possibility of loss in marketing securities—that is, the contract would provide that the Pacific Improvement Company should construct the road and it should receive the actual cost, with five or ten per cent for administration. He thinks the contract provided that, but at any rate he remembers instances where that was the way that payments were actually made. This was a good while ago and he don't remember always in detail. He performed exactly the same service as to that part of the railroad situated in the State of Oregon south from Ashland, as he did to that part of the railroad in the State of California from Delta north—his action and certificates were identical. From Delta to Ashland, he was shown the agreement for his guidance, and instructions were given when to commence work. That was really all the instructions he got. As to that portion between the State line and Ashland, his recollection is not clear, except as to one point, and that is, he kept going on with his work. He did not build south from Ashland at the same time that he was building north from Delta. He built straight north through to Ashland continuously and laid track the same way. The last track laid was right in the north end of Ashland yards—in Ashland. That included a new line for a mile and a half south from Ashland, in place of that which had formerly been constructed and abandoned; instead of building to the south end of the line as originally

constructed a mile and a half, or thereabouts, south of Ashland, he built to Ashland direct. He does not know, only in a general way, who built that mile and a half of track that was abandoned, or when it was built, but understood it was a portion of the construction to Ashland from the north. It was not a part of the construction that was commenced under the new management of 1887, and abandoned. To make it clear—in addition to building a mile and a half of track south of Ashland, the people who did that had also started isolated pieces of construction between Ashland and the State line. For instance, they had partially built a tunnel at a place known as Buck Rock. They had occasionally built a little piece of grade. They had commenced and built quite a little of the present Summit tunnel near Siskiyou station, which portion of the Summit tunnel he fixed up, and completed the tunnel. That portion of the Summit tunnel which he mentions at Siskiyou station, which was built by his predecessors, is the only part of their work south of Ashland which he utilized. He could give no details as to the organization which did this work. He did not certify in these certificates as to the amount of cash that should be paid. The certificates simply stated that the Pacific Improvement Company had completed so many additional miles of railroad, from survey station to survey station, blank miles; that is, it specified the miles. They were signed by the president of the road, or a vice president, and himself. That was the last he would see of it. They did not state the amount of money that the contractor was entitled to. He does

not know what was the cost of construction of the railroad from Ashland to the southern boundary line of Oregon. He would be on the work during the period of construction from seven to ten days at a time; perhaps in the next week or ten days he would be as far south as San Diego, and would then swing back and stay there another week or ten days. He kept in very intimate touch with the actual work of construction. He commenced construction from Delta sometime after the spring of 1884. His remembrance is that the work commenced in this way, by spending a little money getting some bridge foundations excavated, and the masonry brought up above flood mark, and so on, ready for fast construction, and that construction went on that way for some little time, and then finally a real force was put to work. This was shortly after the summer of 1884, and he would think it was about the fall that they went to work more in earnest, that is, north from Delta. In addition, he would say that they had done previous to that time some isolated pieces of work north of Delta; he is speaking now of the way the work went on, not the continuous railroad. There was some work done in isolated places along the proposed line of railroad prior to the execution of this contract of October 11, 1886. There was some work done north of Delta in a small way, in advance of the track here and there, during the summer and fall of 1883. Then they stopped entirely the fall of 1883, at which time the track was at Delta. In fact, the track was a mile or two north of Delta, and they recommenced in a small way, with bridge founda-

tions, he thinks, in the fall of 1884, and later commenced more vigoriously somewhere in the fall of 1884, or the spring of 1885. He is speaking now regardless of any documents. The Pacific Improvement Company was contructing this railroad at that time, that is, was actually doing the work, and his remembrance is that the final written agreement was made retroactive with respect to this work; that was his understanding at any rate. The Company was paid on that basis. The Pacific Improvement Company had, in any event, done some portion of this work of construction prior to October 11, 1886, and they are the ones who paid the bills. He could only state in a general way the amount of work that was done in that way prior to October 11, 1886. The track was laid a mile or two beyond Delta, north of it, in the summer of 1883, and up to Christmas or thereabouts, there was considerable work done north of Delta, in the way of grading at isolated spots. The work then stopped entirely for quite a period and was commenced again in isolated spots in a small way, he thinks in the spring of 1884, possibly in the next year, he could not be positive now; and the work then went on faster in 1885. The Pacific Improvement Company paid all money to the laborers and others, paid every one but him. There was a great deal of construction done in 1886 north of Delta, and the road was finally completed to Ashland in December, 1887. He thinks the road on January 1, 1887, had the end of the track somewhere near where Weed station is now, a little north of Mt. Shasta—a little north of the summit. The track

was at Igerna, or thereabouts, on January 1, 1887. Igerna is about 57 miles from the State line, and it is about 26 miles from Ashland to the southern boundary of Oregon. As he remembers it, the railroad was constructed and completed during the year 1887 from Igerna to Ashland. His forces were scattered over the line from Igerna to and including Siskiyou Summit tunnel on the first day of January, 1887, and on that date the track had been completed to Igerna, but a very great amount of work had been done north, but he could not say what per cent or proportion of the total work had been done north of Ignera before January 1, 1887, but would simply say that the grading and masonry forces and tunneling force had been scattered over the distance from Igerna to Ager, which is about 40 miles, at off and on points, and forces were also at work or about to commence work on the Siskiyou Summit tunnel, and the tunnels north of that point. The Summit tunnel was situated in Oregon, and he is not clear whether he commenced or was about to commence work on it January 1, 1887, but his remembrance is that he was about to commence work on it. He remembers going up there and finding about four feet of snow about that time, along with Strowbridge, who was, he thinks, president of the Pacific Improvement Company, and a force was sent on there to the tunnel promptly thereafter. It is impossible for him to say whether it was before or after January 1, 1887, that the force actually commenced work on the Siskiyou Summit tunnel in Oregon. The first work that was done in Oregon by the Pacific Im-

provement Company forces, outside of engineering work, was on the Siskiyou Summit tunnel and its approaches, and that commenced, as nearly as he can recollect, somewhere about January 1, 1887.

Whereupon, upon redirect examination, the witness further testified:

Q. Mr. Hood, in order that you may refresh your memory and make any explanation you may desire, I call your attention to the fifth clause in this agreement of date October 11, 1886, being Exhibit 1 of the answer, and under which you, as chief engineer of the Central Pacific Railroad Company constructed the line from Delta to the State line between California and Oregon, which reads: "Fifth. That the said Pacific Improvement Company shall and will repay to the said Central Pacific Railroad Company within one hundred and twenty days from the date thereof all sums of money with interest thereon, at the rate of six per cent per annum heretofore by the said railroad company expended upon that portion of its aforesaid line of Railroad and Telegraph Line lying north of Delta, and that if said railroad company has not fully paid all the costs and expenses incurred as aforesaid, the said improvement company will assume the whole thereof and will upon demand pay off and discharge the same, or that if the said railroad company is compelled to pay the same or any part thereof the said Improvement Company will within one hundred and twenty days after notice thereof, repay to the said railroad company the full amount of any such payment or payments, with interest at the

rate aforesaid." And referring to same now, isn't it true that, prior to the execution of this contract of October 11, 1886 (Exhibit 1 of the answer) the Central Pacific Railroad Company had done construction work from Delta north, under your supervision as chief engineer—you had done it yourself, in fact—for the Central Pacific Railroad Company, and that this fifth clause in this agreement was to cover that?

A. Well, that is my general remembrance of it. You understand that absolutely the Pacific Improvement Company organization paid out these moneys—these advance moneys that you speak of. Whether they did it acting, for instance, for convenience, for the Central Pacific Railroad Company or not, who had no such organization, I could not tell you at this late date. But, as a matter of fact, the Pacific Improvement Company paid the payrolls and the material bills. Now, if they did it for the Central Pacific Railroad Company and immediately were reimbursed therefor, as agents, I am simply in ignorance of it—don't know anything about it.

Q. You remember the fact, though, that physically there was construction north of Delta before the date of this agreement of October 11, 1886?

A. Yes, surely; and we all considered it retroactive; and I know that actually the Pacific Improvement Company organization paid the money, perhaps as agents of the Central Pacific—I am in ignorance of that; don't know anything about it.

Q. You constructed, as chief engineer or assistant

chief engineer, roads for the Central Pacific Railroad Company and the Southern Pacific Railroad Company long before there was any Pacific Improvement Company?

A. Oh, yes.

Q. Or any Southern Pacific Company?

A. Yes.

RE-CROSS EXAMINATION.

Q. Well, now, prior to the organization of the Pacific Improvement Company, what company was the contractor that the Central Pacific Railroad Company dealt with, and the Southern Pacific Railroad Company?

Q. Well, I will say, what company or individual?

A. I think the Pacific Improvement Company was organized—

Q. Now, it is stipulated in this case that it was organized in November, 1878, Mr. Hood, and I assume that is the correct date.

A. Yes—I was trying to think when in the 70's it was. It was some time in the 70's—I remember that.

Q. I am stating that to refresh your recollection.

A. Yes, it was in the 70's—I remember that. There was a Contract and Finance Company that did work.

Q. What was the name of that company?

A. Contract & Finance Company.

Q. Oh, that is the corporate name?

A. Yes, Contract and Finance Company. And there was at one time a Southern Development Company, but I think that was subsequent to 1878. And there was a Western Development Company. My impressions are that the Western Development Company was just prior to the Pacific Improvement Company.

Q. Well, didn't the Pacific Improvement Company in effect succeed the Western Development Company?

A. That is my remembrance, without any specific knowledge. That is my impression.

Q. Now, in a general way, Mr. Hood, these various contracting companies were controlled by the same general interests, were they not?

A. Well, I cannot testify in any general way. I can testify only that I had relations of the kind I have described with the officers of the railroad company and with the officers of the sundry construction companies. I consider them as contractors.

Q. Yes, but there was some relation between the construction companies and the railroad companies?

A. I had no knowledge whatever of that kind, any more than any contractor.

Q. Well, was it not a matter of common history that those companies were companies controlled by Huntington, Crocker, Stanford and Hopkins?

A. No, nothing but hearsay—nothing but common talk. It was common talk. I knew nothing about it.

Q. That was the common talk, was it not?

A. Common newspaper talk.

Q. Did you ever see it denied?

A. I don't remember. Quite willing to testify to anything I know.

Q. I understand; but I think you are unduly conscientious about it. I think that your knowledge is sufficient to enable you to testify to some of the facts that I have asked you, and you are reluctant because you are too conscientious about it.

A. Not at all. I would be very glad to testify to anything that I know, but I am unwilling to testify to something that I never had any means of proving.

Q. Well, in your dealings with these various contracting companies, did you not learn who were the controlling factors of the company?

A. Ordinary talk—no specific knowledge. I knew only the officers of the contracting companies.

Q. State whether or not the contracts made with these other construction companies were carried on in the same general way as the contracts that were made with the Pacific Improvement Company.

A. I had no specific knowledge of the contracts until the time that we now have in hand; that is, the construction of the Central Pacific Railroad or California and Oregon Railroad. That was the first time that I was chief engineer of the Railroad Company and had to handle the contracting company. That is the first

contract that I ever say. I have seen anything there was subsequent to that time, but never anything before. Previous to that time I was assistant chief engineer of the Central Pacific Railroad or Railway, which ever it might have been from time to time, and of the Southern Pacific Railroad of the sundry states and territories, actively in charge of work wherever work was going on the fastest, but not in charge of certificates as to what contractors had done.

Q. Well, now, in your entire experience from May 8, 1867, with these different companies that you have mentioned, did you ever know of an instance where the railroad company itself constructed the railroad, that is, without contract, you understand?

A. Well, a good many instances recently.

Q. Well, I will limit the question, then, to the year 1901?

A. I think that in some instances the Pacific Improvement Company did not have a contract, where they constructed the roads, but were paid cost and per cent; I think that was the case; but in general in years back the roads were built by contract with a construction company. It is impossible for me to be specific.

Q. I understand. Now, did the Central Pacific Railroad Company have any construction equipment? Did it own any construction equipment, other than the limited amount always carried by a railroad for the purposes of its repairs?

A. I don't know of any.

Q. And is that true of the other railroad companies with which you have been connected?

A. That is in general true, yes. It is true today where we let contracts to individuals.

REDIRECT EXAMINATION.

Q. Isn't it true, Mr. Hood, that nearly all construction today that is undertaken by railroad companies, is let to contractors, whether organized as corporations or as firms, or partnerships, or individuals; the railroad company protecting itself by written contracts and supervision, inspection, and approval of its chief engineer?

A. Almost universally true, so nearly so as to be stated as universally true.

RECROSS EXAMINATION.

Q. Is it usual for the railroad company to enter into its construction contracts with a corporation controlled and owned by a part of the stockholders and officers of the railroad company itself?

A. I have no information that I could testify on in that particular.

Q. Now, Mr. Hood—Mr. Huntington, Mr. Crocker, Mr. Stanford, and Mr. Hopkins were influential in the affairs of the Southern Pacific Railroad Company, the Central Pacific Railroad Company and these other companies that you have mentioned, were they not, down to the year 1901?

A. I knew them as officers of those companies—

officers and directors.

Q. And you knew that they were influential in the management of the affairs of those corporations, did you not?

A. I so considered them.

Q. Now, did you not also know that they were influential in the affairs of the Pacific Improvement Company?

A. No knowledge of it definitely.

Q. Have you knowledge of it indefinitely?

A. I have no means of adding to my previous testimony on that subject.

Q. You dealt with the Pacific Improvement Company from 1878 until 1901, did you not, at various times?

A. Up to the time that I was chief engineer of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, and also the Southern Pacific Company, whenever I had any relations with the Pacific Improvement Company they paid my salary and I was working for them.

Q. Who employed you?

A. The Pacific Improvement Company.

Q. What individual?

A. According to contract. You will notice the contract provides for the payment by the Pacific Improvement Company of engineering salaries, except of

the chief engineer, and I was not the chief engineer.

Q. But what individual employed you for the Pacific Improvement Company?

A. The chief engineer of the railroad companies, as, for instance, myself after I became chief engineer, employed all the engineers, in the way of engaging them, that the Pacific Improvement Company paid the salaries and expenses of.

Q. Well, then, the relations between the Pacific Improvement Company and the railroad company were so intimate that the railroad company actually designated the employees of the Pacific Improvement Company?

A. The Pacific Improvement Company had no power to employ engineers pertaining to these constructions, except those engineers were approved by the chief engineer of the railroad company. This was to enable the chief engineer of the railroad company to suitably protect the interests of the railroad company.

Q. Well, now, will you please examine Exhibit 1 attached to the answer, and tell me where the provision is to authorize the railroad company to designate the engineers that shall be employed by the Pacific Improvement Company?

A. The second clause on page 88: "Second. That the said Pacific Improvement Company, shall furnish and pay for all the engineer service necessary or requisite for the location and construction of said railroad and its appurtenances, such location and construction to be

subject to the approval of the President or Chief Engineer of said Central Pacific Railroad Company, who may direct such changes to be made as they may deem proper; but, the salary of the Chief Engineer shall be paid by the said Central Pacific Railroad Company."

Q. Well, now, where is there anything in there that authorized the officers of the railroad company to designate the engineers that should be employed by the Pacific Improvement Company?

A. The fact that the location and construction of the railroad was to be subject to the approval of the President or Chief Engineer of the railroad company, and that approval was in fact delegated to the Chief Engineer, practically, implied that the engineering force should be to his satisfaction, and was always so construed, and was always so practically carried on.

Q. Well, this provision authorized the chief engineer of the railroad company to change the route of road as surveyed by the engineers of the Pacific Improvement Company?

A. Which meant that he could order the engineers of the Pacific Improvement Company to do anything he chose.

Q. Does that mean that the railroad company could designate the employees of the Pacific Improvement Company?

A. Absolutely; and they did so.

Q. So that the Pacific Improvement Company was

entering into a contract with the railroad company to build the road for a certain specified price, and they had no means of knowing where the road would be located, or what would be the actual cost of construction?

A. Other than such information as might be given them by the chief engineer.

Q. Well, where is there anything in this contract that designates the location of the road?

A. I don't know of any place.

Q. Well, can you explain what relation existed between the Pacific Improvement Company and the Central Pacific Railroad Company that would induce the Pacific Improvement Company to construct a road of over 130 miles in length, or of over 100 miles in length, for a certain specified price, and leave it to the railroad company to afterwards determine where the railroad should be located, and how it should be constructed?

A. It was known, as it is always known, very closely where the railroad was going to be built. The terms of the act of the land grant, if I remember rightly, practically specified a general route in the way of where the railroad should go, up the Sacramento River, etc. And today, if we were to let a contract to an individual or a contracting firm, as is not unprecedented in railroad work, that they should build a certain distance of railroad for, for instance, a certain lump sum of money, we should unquestionably insist, even where they paid as a part of their work the salaries and expenses of the engineers

on location and construction, that those engineers should be exclusively, in all essential matters, under the orders of the chief engineer of the railroad, and their personnel should be subject to his approval. We would not let a contract any other way to John Smith at this minute, under any circumstances, if we wished to protect the interests of the railroad company.

Q. I want to ask this witness, as a practical engineer, if he ever knew of a contract between strangers —I mean, where the contracting parties had no other relations—in which the contractor agreed to build a railroad between certain specified points for a certain lump sum, and leave to the railroad company the right to designate the location of the road afterwards?

A. The location of the road is generally approximately designated in advance, or no contractor or firm would make such a proposition.

Q. Don't the contracts provide expressly where the survey shall be, and don't the ordinary railroad construction contracts include profile maps and everything, showing the amount of grading, and the amount of tunneling, and all other general features of the proposed line of railroad?

A. Always subject to change.

Q. Certainly. But when they are subject to change, do they not always provide for a proportionate compensation to the contracting party?

A. Generally by the cubic yard, or lineal foot, or

other function.

Q. But in this instance the Pacific Improvement Company agreed to take 80,000 shares of the capital stock of the Central Pacific Railroad Company, and $4,500,000 of its bonds, and construct a railroad from Delta to the State line, upon such route as the railroad company might thereafter designate?

A. Unquestionably, except as generally outlined in the contract. But I am not clear as to the drift of your question. Is it that they made a bad trade?

Q. No, it is because the Pacific Improvement Company, and the Central Pacific, and the Southern Pacific were one concern, and it didn't make any difference to them what the terms were?

A. I know nothing about that.

A. I know nothing about the relations of the companies, other than as shown in the contract.

REDIRECT EXAMINATION.

Q. This is a land grant road that was under construction, and it had to be constructed on a line of definite location, did it not, under the requirements?

A. General route.

Q. Yes, under the requirements of the Act of Congress; and the first paragraph of Exhibit No. 1, page 87 of the printed answer of the defendants, uses this language: "That the said Pacific Improvement Company shall in a good workmanlike manner construct,

finish, furnish and complete the railroad and telegraph line of the said Central Pacific Railroad Company, commencing at a point near the said town of Delta and running thence in a general northerly direction by the most practicable route to a point on the Southern boundary line of Oregon, there to connect with the road of the said Oregon and California Company a distance of one hundred and four miles, as near as may be, together with the rolling stock, buildings, instruments, and fixtures thereof," etc.

A. Yes.

Q. Now, that was the line upon which that railroad was proposed to be constructed, was it not?

A. Yes, sir.

Q. And at that time the Central Pacific Railroad Company, as you have testified, had already proceeded with considerable construction prior to the date of that agreement?

A. Yes, sir.

Mr. Townsend: This witness has said the Pacific Improvement Company did—the Pacific Improvement Company paid the bills?

A. Paid the bills.

Mr. Townsend: Well, the Pacific Improvement Company did the work, did they not?

A. Not of necessity; they might have been agents of the Central Pacific.

Q. The Central Pacific Railroad Company had

theretofore located this line, and had done some general construction along between Delta and the State line, as you have heretofore testified?

A. Yes, sir.

Q. But the bills for that work were either paid by the Pacific Improvement Company, excepting your own salary, or thereafter assumed?

A. Yes, sir; that was my understanding of it.

Q. The map of definite location of this line had been filed in the General Land Office as early as 1871, had it not?

A. Very early, before I had anything to do with it.

Q. And the road today is, substantially, constructed and operated where it was originally located?

A. Yes, sir, where it was originally filed.

Q. Yes, that is what I mean. So that, as a practical proposition, any contractor could, in advance of making his contract, ascertain substantially where the road was to be built, and its probable cost?

A. He could form an idea of the practicable final location of the road and its probable cost.

RECROSS EXAMINATION.

Q. Well, now, Mr. Hood, I don't want to have an extended argument with you about this, but there are many ways of building a railroad from Delta to the Northern boundary line of the State, along the identical

route designated by the maps filed by the railroad company? Were there not?

A. You mean—

Q. I mean as to grades and curves?

A. You mean whether it would hit a point harder, or less, and so on?

Q. I mean, there could be many different plans of constructing it over that identical route?

A. In detail, yes.

Q. As to grades, and curves, and other detail?

A. Yes.

Q. And the ascertainment of those details would be essential to approximate the probable cost of construction, would it not?

A. Except in this way; that it was specified and understood that it should be located in a practicable and commonsense manner.

Q. Yes, but, for instance, it might cost twice as much to construct a railroad between those two points which at no place should have more than a two per cent grade than to construct one which might have four per cent grades?

A. It might cost a great deal more, yes.

Q. And those details are essential to know in order to approximate or estimate the probable cost of construction?

A. It might differ very materially with the grade system.

Whereupon, the witness, upon cross examination, further testified that he has no data of any kind and there is no record existing, by which he would know, or by reference to which he could approximate the cost of construction of the railroad from Delta to Ashland. He saw the contract of October 11, 1886, identified as Exhibit 1 of the answer, in executed form, at about that time. He drew the conclusion from the contract that he was to build the road properly and to his satisfaction, and to certify to its having been so completed from time to time, and he acted accordingly. He has no rememberance or knowledge that there may have been some other contract that succeeded the contract of October 11, 1886, which determined the price to be paid, and the other details of the transaction. He only recollects this one contract, and he supposes that the railroad was constructed by the Pacific Improvement Company for the Central Pacific Railroad Company pursuant to this contract, which is the only one that came to his attention. He acted according to that contract, certified the distances constructed, and saw that the road was built right. It was the custom to certify as to the completion of the road in sections, and he refers to the specification in the contract to that effect. He would say that that was the general provision that he referred to, and that his recollection is that he certified to the completion of the road in sections, as provided by this contract. He could not change his previous testimony, which was to

the effect that, physically, he went right on and built the road in Oregon, and certified to its completion, and whether it was under this contract or another contract, he could not possibly tell.

Whereupon, upon redirect examination, the witness was shown an official volume, published by authority of the State of California, called the "Seventh Annual Report of the Board of Railroad Commissioners of the State of California, for the year ending December 31, 1886." Whereupon, there being no objection to the introduction of the portion of said volume hereinafter set out, the defendants offered in evidence the official report of the Central Pacific Railroad Company for the year ending December 31, 1885, printed therein, and the same was received in evidence and read into the record as follows:

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

VOLUME V

PAGES 2075-2666

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

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Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME V

PAGES 2085-2666

"CALIFORNIA RAILROAD COMMISSIONERS.

REPORT 7.

1886."

SEVENTH ANNUAL REPORT

OF THE

Board of Railroad Commissioners

OF THE

STATE OF CALIFORNIA

FOR THE

YEAR ENDING DECEMBER 31, 1886.

(SEAL).

SACRAMENTO.

State Office.....P. L. Shoaff, Supt. State Printing.

1887."

[2085]

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"Central Pacific Railroad Company,

Names and Residences of Officers and Directors.

Leland Stanford, President.....San Francisco, Cal.
C. P. Huntington, First Vice-President
23 Broad Street, New York, N. Y.
Charles Crocker, Second Vice-President,
23 Broad Street, New York, N. Y.
Timothy Hopkins, Treasurer....San Francisco, Cal.
E. H. Miller, Jr., Secretary.....San Francisco, Cal.
Charles F. Crocker.....San Francisco, Cal.
Moses Hopkins.....San Francisco, Cal.

Business Address of the Company.

Fourth and Townsend Streets....San Francisco, Cal.
No. 23 Broad Street.....New York, N. Y.

The Central Pacific Railroad Company was incorporated August 22, 1870, and formed by consolidation of the companies whose names and dates of incorporation are shown in the table below:

1. Central Pacific Railroad Company, consolidated June 23, 1870. Central Pacific Railroad Company of California (chartered June 28, 1861; amended October 8, 1864.)

The Western Pacific Railroad Company, chartered December 13, 1862.....	The Western Pacific Railroad Company, consolidated November 2, 1869.
San Francisco Bay Railroad Company, chartered September 25, 1868	

2. California and Oregon Railroad Company, consolidated December 18, 1869.

California and Oregon Railroad Company, chartered June 30, 1865	California and Oregon Railroad Company, consolidated Jan. 16, 1868.
Marysville Railroad Company, chartered November 29, 1867..	
Yuba Railroad Company, chartered November 17, 1862.....	

3. San Francisco, Oakland and Alameda Railroad Company, consolidated June 29, 1870.

San Francisco and Alameda Railroad Company, chartered March 25, 1863.....	San Francisco and Alameda Railroad Company, consolidated Oct. 15, 1868.
San Francisco, Alameda and Stockton Railroad Company, chartered December 8, 1863....	

San Francisco and Oakland Railroad Company, chartered October 21, 1861.

4. San Joaquin Valley Railroad Company, chartered February 5, 1858.

The above four roads were consolidated August 22, 1870, under the name of the "Central Pacific Railroad Company."

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"1. Date when the road, or portions thereof, were opened for public use (northward):

From Roseville Junction to Lincoln...Oct. 24, 1867.
From Roseville Junction to Wheatland.Oct. 28, 1867.
From Roseville Junction to Yuba....Sept. 19, 1868.
From Roseville Junction to Marysville.June 1, 1869.
From Roseville Junction to Nelson...May 31, 1870.
From Roseville Junction to Chico.....July 2, 1870.
From Roseville Junction to Sesma....July 11, 1871.
From Roseville Junction to Tehama..Aug. 28, 1871.
From Roseville Junction to Red Bluff..Dec. 6, 1871.
From Roseville Junction to Redding..Sept. 1, 1872.
From Roseville Junction to Delta....Sept. 1, 1884."

Page 259:

"State of California,
City and County of San Francisco. } ss.

Charles F. Crocker, Acting President of the Central Pacific Railroad Company, and E. H. Miller, Jr., Secretary of the said company, being duly sworn, depose and say, that the statements, tables, and answers contained in the foregoing sheets, have been compiled and prepared by the proper officers of said company, from its books and records, under their direction and supervision; that they, the deponents, have carefully examined the same, and that as now furnished by them to the Board of Railroad Commissioners, they are, in all respects, just, correct, complete, and true, to the best of their knowledge, and, as they verily believe, the same contain a full and true exhibit of the condition and affairs of said

company on the thirty-first day of December, 1885.

CHAS. F. CROCKER,
E. H. MILLER, JR.

Subscribed and sworn to before me, this fourteenth day of July, 1886.

E. B. RYAN, Notary Public in and for the City and County of San Francisco, California."

Whereupon defendants offered in evidence in connection with the testimony of witness, a certified copy of a resolution of Board of Directors of the California and Oregon Railroad Company, adopted October 8, 1866, assenting to the Act of Congress of July 25, 1866, and the same was received in evidence, marked "Defendants' Exhibit 284," subject to the objection of the Government that the same was immaterial and irrevelent, which said Defendants' Exhibit 284 is hereinafter set out and described and made a part of this statement of evidence, and identified as such.

Whereupon defendants offered in evidence as a part of the testimony of witness, a certified copy of the reports of the Commissioners to the President of the United States, approving and accepting the railroad constructed under the Act of July 25, 1866, from Roseville Junction northward 77.6 miles to a point near Chico, in California, of date August 9, 1870, with endorsements of approval and acceptance thereof by the Secretary of the Interior and the President of the United States, which reports were received in evidence and marked "Defendants' Exhibit 285," to which counsel

for complainant objected as immaterial and irrelevent, which said Defendants' Exhibit 285 is hereinafter set out and described, and made a part of this statement of the evidence, and identified as such.

Whereupon GEORGE M. CUMMING, called as a witness on behalf of defendants testified that he resides at San Francisco, is a civil engineer by profession, retired at the present time. He was shown what to the best of his recollection was a copy of the agreement of October 11, 1886, being Exhibit 1 to the answer of the Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage in this suit, and asked to see if he could locate the original. To the best of his recollection an executed copy of this instrument was at one time in the files of the Pacific Improvement Company, in whose employ he was for quite a number of years. He called at the office of the Pacific Improvement Company in this City sometime in the early part of 1912. He does not remember exactly the month, and made a search of their office and also of the warehouse over in Alameda, in which place was supposed to be all the papers that they had that they were not using at that time, papers that were taken away from their own vault at Fourth and Townsend and stored after the fire of April, 1906, in San Francisco. He examined all the papers in that storehouse, paper by paper and was unable to locate the original of that. He was given absolutely free access to all the papers of the Pacific Improvement Company and searched very care-

fully every place where the paper should possibly have been. This typewritten copy is the one which was handed to him by Judge Singer to guide him in looking for the original, and while he could not state positively, in a general way he thinks it is a correct copy of the original document which he saw while he was in the employ of the Pacific Improvement Company, in its office or in its possession. He had the handling at one time, as such employe, of a great many contracts the details of which he does not remember, but while he cannot positively swear to it, he is almost positive that he must have handled that document in the course of his employment and he would say that this is a copy of the document which he handled. He was assistant engineer on the construction of the line between Delta and Ashland and an employe of the Pacific Improvement Company. He took orders from Mr. Hood who was in charge of construction. Witness was the office engineer in charge of the office work representing the Pacific Improvement Company in the construction of that mileage. He was not aware at the time, that he was in charge of the office and engaged in construction under the supervision of Chief Engineer Hood, under this contract, but he presumed that he was; that is, at that time he was not aware personally of that contract excepting in a general way. They knew that they were working for the Pacific Improvement Company which was building the road under contract. They understood that the work was to the State line for the Central Pacific Railroad Company. He was in charge of the

office under Mr. Hood but not in charge of construction and all of this time he was acting as an employe of and paid by the Pacific Improvement Company. All that he knew as to whether or not that railroad from Delta north to the State line was constructed by the Pacific Improvement Company under its contract said Exhibit 1, is that he was an employe of the Pacific Improvement Company and they were building the road for these different companies, but as to the existence of that specific contract at that time, he was not aware of it; that is, he was in a subordinate capacity. He does not know of his own knowledge who paid for the construction of that part of the railroad, what Company received the pay, excepting that he knows as an office engineer he made estimates and was an employe of the Pacific Improvement Company and they as contractors had at least one subcontract for masonry. The Pacific Improvement Company had no outfit for building masonry and that contract was sublet. He prepared the estimates at the end of the month for the masonry on the different 20 mile sections as they went along and turned this in to the Pacific Improvement Company. He knows that the Pacific Improvement Company paid these bills to the masonry contractor James Scobey. Witness was personally on the construction work from Delta to Ashland from June, 1886, to sometime in the fall of 1887. When he started in they were camped at a place called Mears Creek, in Shasta County, California, north of Delta on the first 20 mile section. They always counted by 20 mile sections north of Delta. That was

June, 1886. He started in at Mears Creek in June, 1886. The work had been progressing some time before that. He had been employed in the office in San Francisco for a time and had gone up on this construction work in 1886 in June, and they were there until some time in July when they moved their camp to a point just above Dunsmuir, they were there until sometime in August or September, 1886, when they moved to Sisson Station; they then moved from there and held a Thanksgiving Day celebration when the camp was at Edgewood, in Siskiyou County. They moved from there to what was the Salt Works on the Shasta River, several miles this side of the station which is called Montague. In January he came to San Francisco, just after the new year of 1887. They celebrated Christmas by going into Yreka from this place at the Salt Works and along in February, 1887, they moved to a point about 3 or 4 miles south of the Klamath River opposite Laird's ranch and on the first of June, 1887, they were camped right at the State line. In June or July they moved from the Siskiyou Mountains and camped on the land of Dollarhide who owned the toll road. That was the last camp that they had that he was in. That was the main office camp, besides that they had other smaller camps where an assistant engineer having a party in charge, or four or five men, was either ahead or behind the main office. They had small parties a great many miles ahead of them, but he is speaking now of the general office force, the headquarters. He left somewhere in the fall before the last spike was driven and does not recol-

lect now the exact date that he left. He quit about a month or two before the construction was completed in December, 1887. The work was well on to Ashland, as far as grading was concerned. He had been to Ashland and was familiar with the work going on, but did not stay until the end. Towards the end work slackened up, the number of men employed became gradually less as they got towards the finish, but he remembers as a matter of historical fact that the last spike was driven in December or before Christmas, 1887, from the fact of the return of some of the men from up there.

Whereupon defendants offered in evidence the typewritten copy of this document of date October 11, 1886, being Exhibit 1 of the answer.

Whereupon witness further testified that to the best of his recollection he was sufficiently familiar with the general records of the Pacific Improvement Company and made such a search based upon his familiarity with such records that he can assure the Court that the executed copy of this contract "Defendants Exhibit 283" was once in existence among the records and files of the Pacific Improvement Company, that it has since been lost and that it cannot now be found or produced and that "Defendants' Exhibit 283" is, according to his recollection, a copy of that lost instrument.

Whereupon counsel for complainant objected to said evidence as immaterial and irrelevant.

Whereupon said "Defendants' Exhibit 283" was received in evidence and marked "Defendants' Exhibit

283" and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness further testified that he first entered the employ of the Pacific Improvement Company in 1881, some little time after he graduated from the University of California. He was first in its employ in Monterey, making surveys around Hotel del Monte and Pacific Grove, and in 1882 was in the employ of the Central Pacific Railroad Company, under S. S. Montague, chief engineer and continued in his employ until along in 1883 or '4 or '5. He was in the employ of the Pacific Improvement Company from 1885 until the fall of 1887, the time of the completion of this road. He entered the employ of the Southern Pacific Company and was in their employ until 1890. He re-entered the employ of the Pacific Improvement Company, in its office, from 1890 to 1902. After 1902 he was employed by the Southern Pacific Company up to 1910 and resigned from the employment of the Southern Pacific Company, December 31st, 1910. The president of the Pacific Improvement Company in the early days, along about 1883, '4, '5 and '6 was J. H. Strowbridge, but as he understood it, according to the by-laws of the Company, the secretary, F. S. Douty, was the executive officer and he knows that he was authorized to perform many acts as such executive officer. All of his business was done wth Frank S. Douty. He was supposed to be the executive officer of the Company. So far as his own employment was concerned with regard to the Pacific

Improvement Company, Douty was the man with whom he had to do. Witness was of course a subordinate employe and not an officer. The Pacific Improvement as far as he was concerned was a separate entity or corporation and was always looked upon as such, as having no connection with any of the others. Mr. Douty himself used to impress that upon his employes. Some of them, whether joking or in earnest, would ask the relationship to the Central Pacific Railroad Company and later to the Southern Pacific Company and Douty always insisted that they were absolutely separate corporations and had no connection one with the other. The Southern Pacific Company was incorporated in 1884. He did not personally know, while he was an employe of the Pacific Improvement Company, anything about the holdings of the stock or the control of the Pacific Improvement Company by any of these railroad companies. He had no access to the stock books whatever. So far as he knew no one directed Douty what to do or what not to do. He took orders himself from Douty and understood, and from his recollection of the by-laws, Douty was authorized and empowered to do a great many things. For instance, to sell land, execute deeds and contracts. The Southern Pacific Company, so far as he knew never undertook to make any direction or supervision or any orders directing or controlling the Pacific Improvement Company or its employes. There was an incident when they were in the same building at Fourth and Townsend when the Southern Pacific Company issued a set of rules for the

guidance of the employes of the company and for the tenants of the building. These rules were framed under glass and sent around to the different departments and one was sent in to the office of the Pacific Improvement Company. Douty called one of the clerks in the office, presented him with these and told him that he wanted these rules carried out. The clerk said that he would see that they were carried out. Douty said, "Excuse me, you don't understand what I mean. I want you to take these rules and carry them out and throw them in the ash heap. The Southern Pacific Company has nothing to do with us. We don't take orders from them." That was the general tenor of the two companies as far as the employes knew. He knows that there were quite a number of contracts where the Pacific Improvement Company constructed railroads or had contracts for the construction of other roads, or other properties other than this particular one of October 11, 1886. They were all kept in a box called "Contracts" that is, contracts for the construction of different lines. There was one for the Southern Pacific branch railway, one for the line from Collis to Fresno, one from Shingle Springs to Placerville, a lot of small roads that were built, and that the Pacific Improvement Company built under contract with these different roads. These roads were all subsequently incorporated either into the Central Pacific Railroad Company or the Southern Pacific Railroad Company, but he could not say who owned them all at the time they were built. He knows that they were small companies, separate corporations, and had

separate directors. The Pacific Improvement Company, during the time it was engaged in the construction of railroads, always had a construction outfit up to a certain time, but somewhere late in the 1890's the Pacific Improvement Company sublet its contracts to other contractors and did not actually perform the work themselves. Charles Crocker, the father of Charles F. Crocker, was the actual railroad builder. He was the man out in the field himself. He died in 1888. Crocker was present when the spike was driven. He was specially requested to come up there. C. P. Huntington, Leland Stanford, and T. R. Judah are dead. S. S. Montague, former chief engineer of the Central Pacific Railroad Company, died in 1884. Mark Hopkins died in 1887, F. S. Douty died April 11, 1900. J. H. Strowbridge is still alive, but he has not seen him for a great many years. He must be an old man well on to 90. He lives in Alameda County, but has not heard of him for a long time. Witness is informed that the Pacific Improvement Company still owns Del Monte and the property at Pacific Grove,—he has never heard of its parting with the title.

Whereupon upon cross examination, witness further testified that he graduated from the University of California in 1881, and shortly afterwards entered the employ of the Pacific Improvement Company, making application for the position to F. S. Douty.

"Q. Now, you have known, during all of your experience with the Pacific Improvement Company, the

general historical fact that C. P. Huntington, Leland Stanford, Charles Crocker and Mark Hopkins or their respective estates after they died, controlled and virtually owned the Pacific Improvement Company, did you not?

A. Well, I personally, of course, did not know that, but it was so stated in the papers and public prints many times.

Q. I don't mean, now, Mr. Cumming, to ask you to state as to the actual ownership of stock, but this general historical fact is what I wish to bring out. That is true, is it not?

A. That was generally believed in California.

Q. Do you know whether Mr. Douty owned any of the capital stock of the Pacific Improvement Company, other than a few qualifying shares to act as a director?

A. Well, I don't think he did. I don't know, though.

Q. What I mean is this, Mr. Cumming: In the same general way that you know that Mr. Harriman was the controlling spirit of the so-called Harriman lines, and Mr. Hill is the controlling spirit of the so-called Hill lines, you do know the historical fact that these four gentlemen who were associated in business, and were sometimes called the "Big Four" of California, did control the affairs of the Pacific Improvement Company?

A. Well, as I say, it was generally believed in California that that was so.

Q. Well, that has been believed so long that it has become an historical fact, has it not?

A. Well, I don't know whether I am competent to say that or not. I presume it has.

Q. Now, the same gentlemen also controlled the affairs of the Central Pacific Company, did they not?

A. The same answer to that. That is, it was generally believed in California that that was so.

Q. And also the Southern Pacific Railroad Company?

A. Yes, sir.

Q. And the several constituent companies, these other companies that I have mentioned, as rapidly as they were acquired?

A. That was generally believed, yes. Whether it was so or not, of course, I do not know.

Q. Of course, I do not refer now to a time after any of them died, but I mean down to the time that they died, and then their estates, of course, succeeded them. Do you know what the general business was of the Pacific Improvement Company?

A. Well, I know, as a matter of fact, that they were incorporated to do almost anything in the world, whether it was banking business, building railroads, buying and selling lands, loaning money, and everything else.

Q. Well, you know that they lived up to their articles of incorporation, too, don't you? They did engage in almost all kinds of business?

A. Yes, sir.

Whereupon witness further testified that he worked for the Pacific Improvement Company from 1881 to 1882. In 1882, he entered the employ of the Central Pacific Railroad Company under Montague, Chief Engineer, and afterwards in 1885 entered the employ of the Pacific Improvement Company again, serving until towards the fall of 1887, when he went into the employ of the Southern Pacific Company and was in its employ until 1890, when he went back into the employ of the Pacific Improvement Company and continued in its employ until 1902, and then returned to the employ of the Southern Pacific Company, remaining until December 31, 1910. Nearly half of the time since 1881, he has been in the employ of the Pacific Improvement Company and became acquainted with its general affairs in a general way and knows that it was the owner of a number of town sites along the lines of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, also owned and leased some terminal facilities but does not think it operated any but presumes that the Railroad Companies themselves operated the terminal facilities but does not know. He does not remember and does not know that the Company owned and leased bridges at different points along the lines of

the railroad. The Pacific Improvement Company sold terminal facilities and right of way to the Railroad Company which were acquired in course of construction. The Pacific Improvement Company from 1881, down, did most of the construction of these railroads he has mentioned and under the terms of the contracts, as he remembers them, the Pacific Improvement Company was required to furnish right of way and depot grounds for the Railroad Company. He does not recall that that is not true in the case of contract Exhibit 1 attached to the defendants' answer. In most contracts the Pacific Improvement Company was authorized to use the name of the corporations for condemnation purposes. Sometimes the Pacific Improvement Company received in payment for constructing these lines of railroad, different portions of them, capital stock and bonds or other corporate securities and sometimes it was cost and a percentage. In some instances the Pacific Improvement Company constructed the railroad and the railroad merely paid it a percentage profit on the work. It was quite a common practice, during his experience, for employes of the Pacific Improvement Company, Southern Pacific Railroad Company and Central Pacific Railroad Company and afterwards the Southern Pacific Company to be interchanged. That is, for a man to be employed for part of his time by the Pacific Improvement Company and part of his time by these railroad companies. They shifted them from one to the other, from the payroll of one company to the payroll of another, as they would in any other business. The

Pacific Improvement Company constructed street railroads for the Oakland Railroad Company and for the Market Street Railway Company in San Francisco and Oakland. These are entirely independent companies and not subsidiary companies of the Southern Pacific Company, that is they are now, and he thinks they had no connection with the Southern Pacific Company at any time, so far as he knows. He believes also that the Pacific Improvement Company constructed a line in Washington, now a portion of the Northern Pacific—a coal road at Carbonado. The Pacific Improvement Company built up to 1902, or somewhere along there, most of the railroads that at that time constituted, or at least not most of them but a great many, that constituted, the Southern Pacific system at that time and that represented a very large proportion of the business done by the Pacific Improvement Company.

Whereupon witness further testified as follows:

"Q. Now, there was such a co-operation between the Pacific Improvement Company and these other railroad companies, of which Mr. Huntington, Mr. Hopkins, Mr. Crocker and Mr. Stanford were the principal stockholders—I say, there was such a co-operation between those companies that it became a matter of common rumor about the Pacific Improvement Company's office that they were virtually one enterprise?

A. Well, no, not as far as the secretary was concerned. He always insisted quite to the contrary. In fact, he was a crank on that subject, as to the separation of the two companies.

Q. I understand, but I say that the business was so carried on as to lead to general rumors of that kind among the employees of the Pacific Improvement Company, with the exception of the secretary?

A. Well, I don't know whether that is so or not. The secretary insisted that the two companies, or the different railroad companies and the Southern Pacific Company were not in any way part of the Pacific Improvement Company, and employees were instructed —in fact, when it came down to that, there was, as a matter of fact, you might say, a great deal of feeling between the employees of the Pacific Improvement Company and the employees of the Southern Pacific Company. They didn't consider themselves of the same outfit at all.

Q. There was considerable jealousy between them, was there not?

A. Yes, sir.

Q. The same as there has developed a jealousy between the officers and employees of the Oregon Railway and Navigation Company and the Southern Pacific Company since they were absorbed by the Harriman lines?

A. I don't know anything about that. I never was up on that road at all.

Q. Well, now, you say that Secretary Douty was constantly insisting that there was no identity between the Pacific Improvement Company and these railroad

companies?

A. Yes, sir.

Q. Well, why did he have to keep warning the employees of the Pacific Improvement Company of that fact?

A. I don't know, excepting he used to say it was merely the truth, that was all, that it was so, and he was simply trying to correct, as he used to say, a popular error.

Q. Well, he never issued any statements, or made any statements to indicate that the Pacific Improvement Company was not connected with the Northern Pacific Railroad Company, did he?

A. Well, I don't know whether he ever made any such statement as that or not. It probably never was called to his attention.

Q. None that you know of?

A. None that I know of.

Q. Or as to the Great Northern Railway Company?

A. No.

Q. Well, now, why was it that it was necessary for him to be constantly warning his employees that there was no connection between the Pacific Improvement Company and the Southern Pacific Company, or its constituent companies?

A. Well, I don't know his mental processes at all,

excepting what he said, that it was practically to disabuse their minds of any idea that they would get from anything they saw in the newspapers, or, as he put it, "popular error."

Q. Well, did you not testify on direct examination that it was common rumor among the employees of the office that they were virtually one and the same thing?

A. Well, no, I don't think I testified to that.

Q. Did you not say that there was a rumor to that effect, and that Mr. Douty used to make these statements to correct what he termed an error?

A. No. As I said, there might have been talk—I don't believe that I actually said that; that is, you asked me if it was not an historical fact that they were the same parties that owned both companies, and I answered that, as far as I knew, that that was commonly believed, yes.

Q. Well, now, did you know the historical fact that the Pacific Improvement Company owned virtually a controlling interest of the capital stock of the Southern Pacific Company?

A. I say that was generally believed, yes, but I didn't know it.

Q. You know the general historical fact, do you not, that the Southern Pacific Company was organized by Mr. Huntington and his associates whom I have heretofore mentioned, and became the general operating company for these constituent companies of the Southern Pacific system?

A. That is, the Southern Pacific Company?

Q. Yes.

A. Yes.

Q. And did you not know that at the time, or shortly after the Southern Pacific Company was organized, Mr. Huntington and his associates of whom I have spoken before, placed their Southern Pacific Company stock-holdings in the Pacific Improvement Company?

A. Well, I don't know that, no.

Q. You do not know that general historical fact?

A. Well, I have known quite a few historical facts in my time, which were subsequently ascertained not to be facts.

Q. Well, I am not asking for any historical facts that you have ascertained not to be facts. I am asking you for historical facts that you have not ascertained to be untrue.

A. Well, I don't know whether that was so or not —whether it was true or untrue.

Q. But you know that general historical fact, do you not?

Mr. Fenton: I object to the use of the word "historical" fact as misleading. A fact is a fact, and a rumor or report, or common rumor would be a different thing. It might be true or might not be true. And I make the further objection that all of this inquiry has

no relevancy to the question as to whether or not the lands involved in suit are subject to forfeiture for violation of the land grant made July 25, 1866, or any amendments thereto, or the act of May 4, 1870; and, of course is not cross-examination.

Q. I refer to the general historical fact that Mr. Huntington and his associates organized the Southern Pacific Company, under the laws of the State of Kentucky, as an operating company to take over under leases the several railroads constituting the present Southern Pacific Railroad System, and that they pooled their holdings of the Southern Pacific Company's stock in this Pacific Improvement Company?

A. That was a thing a great many people generally believed; but I don't know it.

Q. The Pacific Improvement Company had its offices in the same building as the Southern Pacific Railroad Company and Central Pacific Company?

A. Yes, sir.

Q. All of the constituent companies of the Southern Pacific Railroad System had their offices in the same building?

A. Yes, sir.

Q. And the Pacific Improvement Company also had offices in that building.

A. Yes, sir.

Q. When the rules promulgated by the Southern

Pacific Company were delivered in the office of the Pacific Improvement Company, do you know who it was that made the mistake that you have referred to? Who was it that delivered the rules there?

A. Who delivered them?

Q. Yes.

A. They were brought into the Pacific Improvement Company by a porter in the employ of the Southern Pacific Company, as I remember it.

Q. You don't know why this employee of the Southern Pacific Company made the mistake of considering the Pacific Improvement Company as virtually identical with the Southern Pacific Company?

A. I don't know whether he thought he made a mistake or anything. He probably was acting under orders from his superior officer, who was a Southern Pacific official.

Q. You never knew of the rules and regulations of any other railroad company being delivered in the offices of the Pacific Improvement Company, did you?

A. No, it didn't come to my knowledge. Possibly the Market Street Railway Company may have issued some rules of that kind, but I don't know anything about it.

Q. But you don't know of any of the rules of another railroad company having been delivered in the offices of the Pacific Improvement Company?

A. Not to my knowledge, no, sir.

Q. With the exception of these street railways that you have mentioned, it is a fact, is it not, that all of the railroads that were constructed by the Pacific Improvement Company for these various small railroad companies that you have mentioned, shortly after construction became merged into the Southern Pacific System?

A. Oh, I wouldn't say shortly afterwards. Some were shortly afterwards, and some some time afterwards.

Q. That may be because the fact was not brought to your attention until some time after it occurred?

A. Oh, excuse me, I misunderstood your question. Yes, that is a fact, yes. I thought you said it became incorporated in the Central or Southern. It was some time after they were constructed, in some cases quite a number of years, before they were consolidated into the Central or Southern Pacific Railroad Company.

Q. That is, as the Pacific Improvement Company constructed these lines of railroad, the general practice was for the Pacific Improvement Company to receive the corporate securities of the railroad company as the consideration for construction?

A. Yes.

Q. And then subsequently the lines of railroad would be merged into the Southern Pacific Railroad System?

A. Yes, they became part of the Southern Pacific

Railroad System afterwards, yes, sir.

Q. Now, you don't deny the general fact that there was obviously complete co-operation between the Pacific Improvement Company and these various constituent companies of the Southern Pacific System, do you?

A. I don't deny or affirm anything of that kind. I don't know.

Q. Well, what is the fact?

A. I don't know.

Q. You do not know whether there was co-operation between those companies?

A. Well, co-operation in what way?

Q. Well, in all substantial ways that affected the interests of those companies?

A. Well, all I know is, the Pacific Improvement Company built the road and turned it over—built these different roads and turned them over.

Q. Well, have you any way to account for the coincidence that, every time they constructed a railroad and took the corporate securities of the railroad in payment for construction, the Southern Pacific System subsequently absorbed those railroads?

A. Well, no, I don't know why they did it. All I know, the Pacific Improvement Company built the roads and received their pay for them, and they became part of the Southern Pacific System after they were built.

Q. But they were constructed originally as independent companies?

A. Yes, they were all separate corporations, all these small companies you speak of—separate corporations.

Q. And invariably, they afterwards went into the Southern Pacific System?

A. They all are in there now, yes.

Q. Did you know to what extent the Pacific Improvement Company was a stockholder of the Southern Pacific Company at any time in its history?

A. No, sir, I never knew that definitely.

Q. Therefore it necessarily follows that you know nothing of the circumstances under which it disposed of any of its holdings that it might have had?

A. No, sir.

Q. Now, as to the construction of this railroad north from Delta to Ashland, you were asked whether that railroad, or at least that part of it that is situated in California, was constructed under this Exhibit 1 annexed to the answer, which is identical with "Defendants' Exhibit 283," which you have identified?

A. Yes, sir.

Q. Now, isn't this the fact, Mr. Cumming; that you simply recollect that there was such a contract at one time, of which you saw a duplicate original, but as to whether it was superseded during the progress of this work of construction, you have no knowledge yourself?

A. No, sir.

Q. So you would not assume the responsibility of testifying to the conclusion that, in a legal sense, the road was constructed under this contract or any other particular contract?

A. Oh, no, sir; I couldn't draw any such conclusion as that.

Q. And you have no knowledge as to the contract under which the railroad was constructed in the State of Oregon?

A. No, sir.

Whereupon witness further testified that the Strowbridge referred to as president of the Pacific Improvement Company was generally in charge of all the grading forces in the construction work, he was not an engineer but was a practical railroad builder, he was the original—what we would call riding boss—on the old Central Pacific when that was constructed. Charles Crocker was the head pioneer in the field work. Originally Strowbridge was an employe or superintendent under Crocker, away back before the time of witness, that is what he heard, he does not know that of his own knowledge. Crocker died in 1888, Hopkins in 1877. Crocker returned from active work in the field after the completion of the Central Pacific sometime before 1870. The Central Pacific was completed May 10, 1869. Strowbridge did not have any other business than that of construction work, of course he was president of the Pacific Improvement Company, but witness means ac-

tive physical work in the field in the construction of railroads. Strowbridge was a masterful big man in his way, but he does not know that he would be termed a man of executive ability so far as office work goes. He was in and out of the field and in and out of the City, that is his work carried him over a great deal of territory and in the course of that migration he was passing in and out of San Francisco just the same as the chief engineer of the road was passing in and out. He was president of the Pacific Improvement Company, but the executive officer of that Company, under its by-laws, as he understood it, was its secretary. There were separate boards of directors of these various Companies, there may have been duplications of some or all of them, but he does not remember and does not know whether these separate boards of directors were identified in any way. His work with the Pacific Improvement Company was that of an engineer in charge of the office records of the Company, with reference to construction, and also other matters with regard to land, that is when he was in the San Francisco office. Out in the field, he was just simply on regular construction work in charge of the office, calculating estimates, figuring out quantities and work of that character. In the San Francisco office, he was there as an engineer and in charge of different branches of work, did almost anything besides engineering work that came up. He was, in a general way, familiar with different branches of the business. When he was out in the field he was engaged in making estimates, requisitions for necessary supplies, etc., figuring quantities on South-

ern Pacific contracts, in fact doing all the ordinary office work that an engineer would do on construction, making drawings of masonry plans and things of that kind. He could not say exactly when the Pacific Improvement Company started to construct the railroad north from Delta, but knows work was going on in 1885 when he was there. Whether it was Pacific Improvement Company or the Railroad Company he does not know. He was not engaged on it himself. He was working for the Pacific Improvement Company, but not in that neighborhood. He was out on some surveying work that had no connection with that work at that time —it was on another line of railroad. He was making preliminary surveys in Southern Oregon on a line from Ashland south to the state line to connect with the southern end of the railroad when it finally reached the State line and his recollection is that he was employed and paid, at that time, by the Pacific Improvement Company. This was a preliminary survey that he made, practically a *reconnaissance.* He does not think that they followed the general line of survey for the location of that railroad, they made several surveys and he thinks part of it was finally adopted, approximately, portions of it were adopted. There was construction work going on then north of Delta, and the men strung out for some little distance beyond, maybe twenty to forty miles, that was in 1885. In 1886, he actively went up on that work and they were then some twenty miles north of Delta with finished line. He does not know under what arrangement if any, the Pacific Improvement Company was extending this survey or making this survey from

Ashland to the southern boundary line of the State of Oregon during the year 1885. He never knew the history of that at all, the work was done under Hood's direction. Witness does not remember what official of the Pacific Improvement Company directed him to engage in the work, he was in a very subordinate capacity on that work and did not come in contact with anybody other than the immediate man that was running the party who was an assistant engineer. He was merely doing what they called topographical work on that survey and he does not know whether the assistant engineer that was in charge of the party was an assistant engineer of the Central Pacific Railroad Company or whether he was a Pacific Improvement Company employe. It is in part true that a great deal of that work was done under such circumstances that it was difficult for him to say whether it was done by the Pacific Improvement Company or by the Central Pacific Railroad Company, that is this first part, but he remembers positively they were paid on the construction work, he was an employe of the Pacific Improvement Company, and was paid by that Company. The chief engineer engaged on this work was paid by the Central Pacific Railroad Company so they have always heard him state. He cannot say or recall whether the assistant engineer was paid by the Pacific Improvement Company or the Central Pacific Railroad Company and does not know where the Pacific Improvement Company secured the funds used in the construction of this railroad, and he has no idea of the approximate cost of the construction

of this railroad from Delta to the northern boundary line of the State of California and from the northern boundary line of the State of California northerly to Ashland. He knew, in a general way at the time, possibly in a specific way, but it passed from his recollection. These estimates that he made had reference to sub-contracts rather than the general work itself. Undoubtedly there was an estimate made of the entire cost of construction from Delta north to Ashland, this being the usual custom in advance of construction. He knows that he personally estimated quantities on surveys on the California and Oregon, that is on surveys, if he recollects rightly, between or through the Sacramento canyon as far as Sisson. His recollection is that he calculated the quantities in the earth work on that part before construction. This is situated north of Delta. He does not remember when he made the calculations excepting that it was sometime before its construction and after its location, in fact in his time, he calculated a great many estimates of quantities after the survey was made, preceding construction and he cannot recall any specific piece or time, except in a general way. He knew it was the general practice, he would not swear positively as to any piece except that he recalls some work in the vicinity of Sisson, south of that, probably in his general duties work of making estimates and calculating probable cost of construction during the years 1886 and 1887, would come up. The actual final location of the railroad in the State of Oregon between Ashland and the southern boundary line of the State was run on

the ground by stakes, the location was actually finished in 1887 antedating construction. Actual location of a portion of the line was antedated, as he remembers it, the actual construction probably a short time, how short he could not say, he knows the locating party was, in 1887, making final location quite frequently at the last moment the actual location had been changed as they would put in what they called a "D" line, that is some little change to lessen a cut, or go around a rock point, or something of that kind. He has no personal recollection of the market value of the capital stock of the Central Pacific Railroad Company during the year 1887, knows nothing about it. He does not know in detail concerning the ownership by the Pacific Improvement Company of the capital stock of any other corporation, and does not know what constituted the general assets of the Pacific Improvement Company during this time.

Whereupon on re-direct examination the witness further testified that he knows in a general way that the Pacific Improvement Company was interested in and became a purchaser of large bodies of land adjacent to or through which these railroads would be subsequently constructed during a period of time before construction, out of which they made town sites and conveyed rights of way to the Railroad Company and in that way they would convey a right of way through these lands and the Railroad Company and the Pacific Improvement Company would be interested in the town

sites that would be subsequently developed by reason of the construction of the railroad. Occasionally the Pacific Improvement Company, in order to get right of way, would have to buy a whole ranch; that is unless they condemned the right of way, occasionally they would buy the whole ranch, deed the right of way and depot grounds to the Railroad Company and keep the remainder. He could not say how large an acreage the Pacific Improvement Company owns at the present time at Del Monte and Pacific Grove, it was several thousand acres the last he knew of it. He knows they owned the Point Pinos, Pescadero and Laureles ranches and the Del Monte grounds and that they had built a tourist hotel of large proportions at Del Monte and have maintained and operated that for a good many years and that they owned practically all the lands on the peninsula where Pacific Grove was laid out, and sold practically all the town lots in the town of Pacific Grove; that they have a 17-mile drive through their forest to Cypress Point on the ocean, leading off from Del Monte and have other lands throughout the State. The railroad never had any connection with these properties that he knew of. Since the Pacific Improvement Company moved its offices from Fourth and Townsend January 1st, 1895, they occupied some rooms in the Union Trust and some rooms in the Crocker Building, but a few years after that their offices were entirely in the Crocker Building, apart from the Union Trust Company building and apart from any building that had any connection with the Southern Pacific Com-

pany offices. Horace G. Platt became president of the Pacific Improvement Company, with offices in the Crocker Building, and Richard Derby was manager of the Pacific Improvement Company, succeeding Douty and after the death of Derby A. D. Shepard became and still is manager. Neither of these gentlemen had any connection with any of these railroads. The Pacific Improvement Company removed its offices from the building at Fourth and Townsend on the first day of January, 1895. The Pacific Improvement Company and the Southern Pacific Company were in the same building afterwards, that is in the Union Trust Building, situated at the corner of Market, Montgomery and Post, and they were there until 1898, when the Pacific Improvement Company moved across to the Crocker Building. The Railroad Company, at a later period moved as an entirety to the Merchants Exchange Building on California Street in San Francisco and had offices in the Hobart Building and in the Wells Fargo Building previous to that time and at these times the Pacific Improvement Company had no offices in these buildings, after 1898 when the Pacific Improvement Company moved into the Crocker Building. From 1894 to 1898 part of the offices of the Pacific Improvement Company were in the Union Trust Building and part of the offices of the Southern Pacific Company were in the same building but after 1898 they did not occupy the same building, that is his recollection. The offices of the Pacific Improvement Company at the present time (August, 1912) are in the Crocker Build-

ing, San Francisco, and have been since 1894 in part and entirely since 1898.

Whereupon upon re-cross examination the witness further testified that the Pacific Improvement Company acquired in a number of instances tracts of land along the proposed lines of railroad of these Southern Pacific constituent companies and afterwards platted them into town sites and handled them as such. The Central Pacific Railroad Company did not own townsites along its line nor did he know of the California and Oregon Railroad Company, afterwards consolidated with the Central Pacific Railroad Company, owning any townsites on the line. He presumes that the Railroad Company had the right to designate where townsites should be located along the line of railroad. Explaining why the Pacific Improvement Company was permitted by the Railroad Company to acquire the townsites and then subsequently give it the benefit of these townsites, witness testified that the Pacific Improvement Company bought the land and deeded the right of way to the Railroad Company, laid out the land into townsites which it had purchased and sold it. The Railroad Company could have located the townsites where it saw fit, or individuals could have gone and bought a piece of land and if it was a natural site for a town, built a town on it and got a side track put in by the railroad company, and got a townsite the same as the Pacific Improvement Company, which was done in different parts of the State of California. Down in the San Joaquin Valley, there are towns other than the

railroad towns. That is true in the construction of any new line of railroad.

Whereupon the witness further testified as follows:

"Q. But insofar as the railroad company itself might have availed itself of its opportunity to acquire townsites and secure the profit that would result from the sale of townsite lots, it did not do it, but the Pacific Improvement Company did it? Isn't that true?

A. I don't know of the Central Pacific Company engaging in any townsite business. In fact, I know there was one townsite proposition they had over in Alameda County.

Q. That antedated the organization of the Pacific Improvement Company, which was organized in 1878?

A. No, that was subsequent that they subdivided that—subsequent to the organization of the Pacific Improvement Company.

Q. Do you know whether the townsites along these railroads were all located on even numbered sections or not?

A. They were located on odd numbered sections and even numbered sections.

Q. Well, the Pacific Improvement Company had to acquire the odd numbered sections, if they hadn't been previously entered, from the railroad company, did it not?

A. It would have to acquire the odd sections, pro-

vided it was going through territory in which the land had been unsold.

Q. I say, which had not been previously entered?

A. Oh, yes.

Q. Now, you know the fact to be, do you not, that the Pacific Improvement Company actually took deeds for some of these townsites, if not several of them, from the railroad company itself, and afterwards platted the townsites, and made the profits that resulted from the sale of the town lots?

A. Yes, in some cases they got them from the railroad company, and others from other private proprietors.

Q. Now, can you explain the relation that existed between the Pacific Improvement Company and the railroad company, that induced the railroad company to turn over its own lands to the Pacific Improvement Company, to enable it to enjoy the profits resulting from the platting of townsites and the sale of town lots?

A. Why, they sold the land to the P. I. Company the same as they would sell it to any one else. The P. I. Company frequently paid large prices to the Central Pacific Railroad Company for the land.

Q. But the fact is that, not only the Central Pacific Company, but the other constituent companies of the Southern Pacific Railroad System, as it constructed its road under contract with the Pacific Improvement

Company, instead of platting the townsites along the line, sold the lands to the Pacific Improvement Company, and the latter company handled the townsites?

A. Well, that is, of course, where it fell upon a railroad section. There are a great many cases—for instance, the townsite of Sisson, townsite of Smithson, and other townsites on this particular California and Oregon line—where the Pacific Improvement Company acquired the land and laid out the townsite itself—bought the land. That is true of Montague, and Sisson, Delta and Smithson. The only townsite that that applied to was the townsite of Dunsmuir on that line—that is the only case. All the others were acquired by the Pacific Improvement Company by purchase, or by an agreement with the owner, who entered into an agreement with the Pacific Improvement Company in consideration of their putting a townsite on his land—they gave a deed to the Pacific Improvement Company, and took back an agreement by which they were to receive one-half of the net proceeds of the sales of the town lots. That was the general method with the Pacific Improvement Company. Most of their townsites were acquired in that way.

Q. Well, then, the Pacific Improvement Company was permitted by the railroad company to enter into contracts that would locate the townsites along the railroad?

A. Well, any person could have started a townsite as well as the P. I. Company.

Q. But they had to be located where the stations were established on the line of the railroad, didn't they?

A. Yes.

Q. So that it rested with the railroad company to designate where the townsite should be situated, governed, of course, by general considerations of the topography of the country?

A. Yes.

Q. But it was always optional with the railroad company to change the location of the townsite?

A. Oh, the railroad, of course, could change the townsite if it pleased anywhere—put it on top of a mountain or down in a swamp—but there were certain physical conditions, of course, which they could not get away from, and frequently that land was owned by a private individual, who entered into a contract with the P. I. Company, or started a townsite of his own."

STIPULATION.

Whereupon it was stipulated between the parties that other witnesses, employes, officers or custodians of the records of the Southern Pacific Company and Central Pacific Railroad Company, parties to the agreement Exhibit No. 1 of the answer, would, if called, corroborate the testimony of the witness Cumming that they had made a search and had been unable to find the original of said Exhibit No. 1 to the answer and such search would show that the original could not be found.

Whereupon C. P. LINCOLN, called as a witness on behalf of defendants, and being duly sworn testified, that he is head clerk in the Auditor's office and as such has custody of the corporate accounts of the Oregon and California Railroad Company, which he received from the Secretary George H. Adams through J. L. Wilcutt in September, 1904; from that time Wilcutt has had the custody; witness was in direct charge of the books from September, 1904, until August, 1912, but until May 10, 1910, they were in the custody of Mr. Wilcutt, when they were transferred to Auditor McDonald. Witness has kept the books posted, making monthly statements therefrom personally. That balance sheet, Defendant's Exhibit 286, as of February 11, 1912, shows the outstanding bonds under the mortgage to the Union Trust Company of July 1, 1887, and also the capital stock. They aggregate thirty-six million dollars practically and that bears a close relation to the cost of the properties. There are four million dollars additions and betterments, making forty million dollars that is shown. The four million dollars is not capitalized. But this thirty-six million dollars, the cost of the property, is practically the face amount of the stocks and bonds outstanding as shown on this exhibit. This exhibit, which is a correct reproduction of the books of corporate accounts of the Oregon and California Railroad Company for the eleven months ending May 31, 1912, has been verified and found to be correct by him from the books of the company. Whereupon defendants offered this balance sheet, marked Defendants' Exhibit 286, in evidence, whereupon the following col-

loquy occurred between counsel for the parties:

"Mr. Townsend: Government objects to the introduction of Defendants' Exhibit 286, upon the ground that the same is incompetent, irrelevant and immaterial. It is merely a copy of the records carried by the company, and does not import any verity. The item as to cost of constructing the railroad is in no way vouched for, and the cost of construction is not an asset in any event. This document is purely hearsay and secondary evidence, and no foundation has been laid for the introduction thereof. This latter objection does not go to the question whether Exhibit 286 is a correct copy of the original of which it purports to be a copy, but does go to the question that the original itself is but a compilation of deductions and computations, and is therefore hearsay and not the best evidence.

Mr. Fenton: Would you require the company to produce the original blotters and the original vouchers that enter into these balance sheets?

Mr. Townsend: Well, I cannot concede the accuracy of that item "Cost and construction" unless I see upon what it is based.

Mr. Fenton: Counsel for the defendants desire to state at this time that, if the original blotters, vouchers and other documents upon which the corporate records of the Oregon and California Railroad Company are based, showing this Balance Sheet of General Ledger for eleven months ending May 31, 1912, are required to be produced or accounted for, the defendants would

be able to prove that all the originals were destroyed in the fire of April 18, 1906, and that the re-establishment of these corporate accounts is based upon official reports made to the Interstate Commerce Commission required by law, to the Oregon Railroad Commission at various times required by law, and copies saved in the New York Office, and that since April 18, 1906, the records have been carried forward in the same manner in original books of entry based upon actual transactions from time to time, and that the witness, if required or permitted, would so testify, and vouchers for which are in existence since April 18, 1906. Now, I ask the Government whether counsel would require us to go into this vast mass of testimony in detail, for the purpose of showing a summary of what the books now show, as evidence by this Balance Sheet 'Defendants' Exhibit 286?'

Mr. Townsend: I am willing to admit that this statement is a correct statement of the corporate assets and liabilities of this company as they have been carried in the books of the company from time to time; but I do not admit the accuracy of the items.

Mr. Fenton: That is to say, that the items represent money actually received or disbursed?

Mr. Townsend: Yes. I don't admit that the balance sheet of the corporation as to its asests and liabilities is competent evidence of the facts which it purports to state. I do not admit that as a matter of law, and I reserve my objection to the competency and relevancy

and materiality of the statement upon that ground. But I do admit that this exhibit, 'Defendants' Exhibit 286,' is a correct statement of the continued balance sheet as appears on the books of this corporation from the beginning down to the time that this purports to have been made.

Mr. Fenton: You dispense with the production of such books as we may have—they are here for your inspection—and to our accounting for the destruction of those prior to the fire of April 18, 1906?

Mr. Townsend: There is no necessity for proof on that point. I may want to examine the books personally."

Whereupon said Defendants' Exhibit 286 was received in evidence and is hereinafter set out and described and made a part of this statement of the Evidence and identified as such. Witness further testified that Defendants' Exhibit 286 was prepared about the first or second of July, 1912, that he prepared one of these statements every month and sent two copies to the New York office and one to the auditor. One copy is kept by witness in the Corporate Accounts Bureau. This exhibit is a correct summary from the original books of the Oregon and California Railroad Company, and correctly shows what it purports to show.

"Q. Now, if the $17,745,000 worth of bonds issued and outstanding had inured to the benefit of the Southern Pacific Company, would that balance sheet show what it does?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, calling for a mere conclusion or opinion upon a matter that is not properly the subject of expert testimony.

A. That balance sheet would not show that.

Q. That is to say, if the $17,745,000 had been received by the Southern Pacific Company, this balance sheet would be entirely different?

Same objection.

A. Now, those bonds, the proceeds of the bonds were paid to some one for constructing a road, the balance sheet indicates. Whether the proceeds were paid to the Southern Pacific Company or not, that balance sheet does not show. They might have been paid to John Smith, if John Smith built the road, you see.

Mr. Townsend: That answer is objected to, upon the ground that the exhibit itself is the best evidence of what it purports to show, and the answer is but a mere conclusion upon a subject that cannot be proven by expert testimony."

Whereupon the witness further testified that Defendants' Exhibit 287 is correct according to the books of the company in the auditor's office. Whereupon defendants offered Defendants' Exhibit 287 in evidence, and in connection therewith offered to prove, if required, loss of the records prior to April, 1906, and their re-establishment from the best sources available, and their actual record since that date based upon vouchers of ac-

tual daily transactions in the custody of the auditor, and verified by the witness, and that the witness would so testify, if necessary or required by the Government. Whereupon the following occurred:

"Mr. Townsend: This statement—this covers only transactions during April, 1911, is misleading.

A. This is April, 1911, but here is where it is carried forward right to since the beginning on this balance sheet. The balance sheet is a sumamry right from the beginning.

Mr. Fenton: Those statements or balance sheets are made every month, are they?

A. Made monthly.

Q. And what do you do with these monthly statements?

A. They are distributed to various officials—one to the deputy comptroller, one to the auditor, and several other officials receive them.

Mr. Townsend: The Government does not object to the introduction of Defendants' Exhibit 287 upon any ground relating to the question whether this is a correct copy of the balance sheet as it has been maintained from time to time by the railroad company; but it does object to the document on the grounds of its competency, immateriality and irrelevancy, and particularly on the ground that the balance sheet does not import verity.

Mr. Fenton: You don't require us to account for the loss of the original books or material upon which the

balance sheet is based, or to produce the original books and offer them in evidence, do you?

Mr. Townsend: There are some accounts that I wish to have examined; for instance, the account of taxes—I think that should be itemized by year, so that we may see how much taxes were paid at the time this suit was instituted.

Mr. Fenton: Counsel for defendants offer to produce and furnish for Government counsel, if not to offer in direct evidence on behalf of defendants' case, at Portland, an itemized statement showing the taxes paid each year, as far as it is possible to do so from the records that have been preserved from the fire, bringing the showing down to and including March 15, 1912, the date when the last payment of taxes was required to be made, under the laws of the State of Oregon.

Mr. Townsend: I also wish the same itemization as to the accounts of examination and appraisal of lands, salaries and expenses—general offices, salaries and expenses—miscellaneous, and law expenses.

Mr. Fenton: That can be made since 1906. The disbursements prior to that date I do not believe can be itemized, as the books containing the items have been destroyed. But since that date we will undertake to comply with the request of the Government's counsel, and have them ready at the Portland hearing.

Mr. Townsend: I also would like these itemized accounts by years to state with more particularity what ex-

penses enter into these general items. I do not ask for each specific item, but to classify the items with more particularity than appears here, so we may know.

Mr. Fenton: We will offer to do that from the books since April 18, 1906. I will have the transcript of your requests furnished to Mr. Lincoln, account officer, and try to produce this at the hearing at Portland.

Mr. Townsend: Now, with that general understanding, the Government will reserve the question of requiring the production of the books and vouchers upon which this statement is based until the compilation just requested is furnished to counsel for the Government. I assume that it will cover it.

Mr. Fenton: Defendants' counsel desire the record to show that all the books of the Oregon and California Railroad Company now in the offices of the auditor in relation to this matter are open to examination of any representative of the Government, and the books are in part now present, and counsel is at liberty to avail himself, by himself in person or by his representative, of the inspection of these books for any purpose, at his convenience between now and the Portland hearing." Whereupon said Defendants' Exhibit 287 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon the witness further testified that he had checked up Defendant's Exhibit 288 and verified the

same with the records of the auditor of the company and the figures shown in that exhibit are correct according to these records. Whereupon counsel for complainant objected to the same as immaterial and irrelevant, which said Defendants' Exhibit 288 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon the witness upon cross examination testified as follows:

"Q. Mr. Lincoln, there are a number of items in this balance sheet, such as law expenses, examinations and appraisals, and other items which were incurred by the company because they were endeavoring to sell the lands other than "to actual settlers in quantities not exceeding one quarter section and for a price not exceeding $2.50 an acre," are they not?

Mr. Fenton: Object to that, for the reason that there is nothing in the account to show anything about sales at $2.50 an acre, or in excess of that, or in excess of 160 acres, and no segregation.

A. I cannot say. I cannot answer it.

Q. Well, can you explain why there should have been any expenses for examination and appraisals of the lands if the company had obeyed the law, and simply endeavored to sell them to actual settlers, in quantities not greater than one-quarter section, and for a price not exceeding $2.50 per acre?

Mr. Fenton: Objected to as an argument on behalf of the United States, and not an inquiry into the facts,

and a matter about which the witness could have no knowledge.

A. I cannot answer that.

Q. You cannot explain why examinations and appraisals of the lands were necessary if the railroad company had kept within the restrictions imposed by the granting act?

Mr. Fenton: Objected to as calling for a conclusion of law to be tried in the case, and the witness cannot testify as to the conclusions of law.

A. I cannot, no, sir."

Whereupon witness further testified that he does not know what the assessed valuation for taxes was based on and has no personal knowledge as to the accuracy of the items contained in Defendants' Exhibit 286, except that he found them upon the books of the company. Witness did not state that this statement shows that the bonds issued by the Oregon and California Railroad Company, secured by the mortgage of July 1, 1887, did not inure to the benefit of the Southern Pacific Company. The balance sheet does not show to whom the bonds were paid. They may have been paid to any one who built the road. Witness is not familiar with the contract of March 28, 1887, entered into between the Southern Pacific Company, the Pacific Improvement Company, the Oregon and California Railroad Company, the Union Trust Company, and the so-called London Bondholders' Committee, and Frankfort Bondholders' Committee. Wit-

ness does not know whether the bond issue under the mortgage of July 1, 1887, and payment of which was guaranteed by the Southern Pacific Company inured to the benefit of that company or not. There is nothing to show that they did or did not inure to the benefit of the Southern Pacific Company, according to that balance sheet. It does not indicate whether the bond issue of July 1, 1887, was used by the Southern Pacific Company to buy a former bond issue. It shows four million dollars expended for additions and betterments that have not been capitalized yet, in other words that the road cost over forty millions of dollars and they have only got about thirty-six million dollars for the capital liabilities, which shows it paid for those betterments, if not out of earnings, that they advanced the money for those betterments, and that they were essential and necessary, and that the Oregon and California Railroad Company has never capitalized that at all. The money for those betterments and additions has been advanced by the Southern Pacific Company to the Oregon and California Railroad Company to pay for those betterments and additions in accordance with the terms of the lease. He does not mean to testify that the lease provides that the Southern Pacific Company shall advance money to the Oregon and California Railroad Company, or that the Southern Pacific Company itself shall make the additions and betterments. It is in the third paragraph of Exhibit "G," at the bottom of page 147 of Government's Exhibit "G" in the bill. When it comes to settlement, "Provided, however, that if at the time, viz.: Such 1st day of May

when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any such sum due or owing from the party of the first part to the party of the second part, for or in respect of advances or payments theretofore made by the party of the second part, or for new additions or improvements to the demised premises, or any part thereof," that covers it, the Southern Pacific Company deducts that advance before it makes the settlement with the Oregon and California Railroad Company, indicating that the Oregon and California Railroad Company pays the betterments. The second item in Defendants' Exhibit 286 reads: "Additions and betterments $4,131,296.40 represents money expended by the Southern Pacific Company for additions and betterments under the terms of the leases set forth in the bill of complaint in this case."

Whereupon ROBERT ADAMS, called as a witness on behalf of defendants, and being duly sworn, testified, that he is Assistant Auditor of the Southern Pacific Company, and resides in Oakland, California. That the Defendants' Exhibit 269 is a correct summary taken from the books of the company. Whereupon defendants offered said Exhibit in evidence, to which counsel for complainant objected as immaterial and irrelevant, upon the theory that the amount of money received by the railroad company from the sale of lands, and its expenditures, is not material to the issues in this case, but the Government did not object that Defendants' Exhibit 289 is a correct transcript of the books of the company, but does object to general compilations and balance

sheets as evidence, but admits the loss of documents heretofore referred to as similar evidence, which said Defendants' Exhibit 289 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as such. Whereupon witness further testified that statements of the Oregon and California Railroad Company, Forms 77 and 78, for the month of March, 1906, had been sent to the Eastern offices. These statements showed the transactions for the month of March, and cumulative from these statements the records of the company were started; that is to say, the statements that had been made from the books of the Oregon and California Railroad Company which were in existence prior to April 18, 1906, had been forwarded to the offices of the company at Omaha and New York, and these statements were based upon the books of the Oregon and California Railroad Company that were destroyed, and that is why the statement "Defendants' Exhibit 289," since April 1906, is made up from the records of the Oregon and California Railroad Company that are now in the custody of the Auditor and kept here. Defendants' Exhibit 288 is a correct statement of the transportation of Government freight and passengers for the five years 1906 to 1910, inclusive.

Whereupon, on cross examination, witness further testified that Defendants' Exhibit 289 is made up in the following manner: It has been the custom to render monthly reports, showing a general balance sheet of the Land Department business, at the end of each month,

and which reports were cumulative, showing all transactions down to the date of the report; that report was compiled from the detailed records of his office, and the report of March 31, 1906, was sent to the New York office and the Omaha office, and after the destruction of his other records, these reports were used for the purpose of continuing that balance sheet, and the only possibility of error is between the first day of April and the 18th day of April, 1906, the day of the fire, and with that exception he feels confident to vouch for the general accuracy of this present balance sheet, Defendants' Exhibit 289, and the statement is correct.

Whereupon Defendants' Exhibit 289 was received in evidence and marked "Defendant's Exhibit 289" and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon, on redirect examination, witness further testified that he had prepared a statement, Defendant's Exhibit 290, showing the financial account between the Southern Pacific Company and the Oregon and California Railroad Company under the lease of July 1, 1887, and the succeeding lease of August 1, 1893, showing receipts and disbursements by fiscal years down to and including June 30, 1912; that the statement was prepared from the general books of the Oregon and California Railroad Company, starting with the balance as of June 30, 1905, and then gives in detail all entries on the books from that date to June 30, 1912. Whereupon defendants offered said exhibit in evidence, to which counsel for complainant objected upon the same grounds as

were urged as to Defendants' Exhibits 286 and 287, but no objection was made because of the failure to produce the original books from which said exhibit was transcribed, the Government admitting that this is a correct copy of these books. Whereupon said statement was received in evidence, marked "Defendants' Exhibit 290," and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon, the witness further testified that he had prepared a financial statement showing the account between the Oregon and California Railroad Company and the Union Trust Company from July 1, 1887, under the mortgage of that date, showing receipts and disbursements on account of land sales so as to show the actual disposition of the proceeds of sales of lands and the income from lands, and this statement is prepared from the books of original entry of the company, and is a correct statement from July 1, 1887, to the close of June, 1912, showing all transactions.

Whereupon defendants offered said statement in evidence and marked "Defendants' Exhibit 291."

Whereupon witness further testified that he knows that the statement from the trustee shows the payment of the sum of $300 marked as "Paid to John M. Gearin," and $713.41 "Paid to Dolph, Mallory, Simon & Gearin" for expenses in connection with this litigation, which said Defendants' Exhibit 291 was received in evidence and so marked, and is hereinafter set out and described

and made a part of this statement of evidence, and identified as such.

Whereupon witness further testified that the item of $3,062,364.80 is in the statement as of June 30, 1912, but the details of the expenses and taxes are shown in the exhibits more in detail. They will not check with this, for the reason that these statements are of April, while this statement—Defendants' Exhibit 291—has been brought down to June, 1912, but the expenses for the subsequent months are similar to those as shown in detail on those statements. From that statement—Defendants' Exhibit 291—the Oregon and California Railroad Company had paid to the Trustee, Union Trust Company, up to June 30, 1912, $2,497,713.01, as shown in the second part of the statement, "cash paid over to Trustee as per previous statement." That statement means that the Oregon and California Railroad Company had paid over to the Trustee, the Union Trust Company, the amount of $2,497,713.01. The lower part of the statement, "Statement of application of cash receipts by Trustee to date," shows again the amount paid over, the "interest allowed by Trustee on cash deposits, $51,523.87," and then the use of that fund—"Paid for 2255 called bonds, $2,245,075. Paid for accrued interest on called bonds, $51,175." Certain other expense, and the "cash in hands of trustee unapplied," as of June 30, 1912, $242,859.76. The statement of $3,062,364.80, in the upper part of this Defendants' Exhibit 291, showing a total of $4,603,250.82, means that during the period of this litigation, or for the past

three years or more, that the company, Oregon and California Railroad Company, has paid taxes and other expenses; that is, that the sum of $4,603,250.82 represents the total cash received by the Oregon and California Railroad Company from May 13, 1887, to June 30, 1912, from all sources, as shown by the first part of the statement. Of that amount it paid to the trustee $2,497,713.01, and the balance is the amount that has been paid for expenses and taxes during the period of the last three or four years—how long, he does not remember. The lower part of the statement shows that the advances by the Oregon and California Railroad Company for expenses and taxes were $956,826.99, and according to this statement this item of $956,826.99 represents advances by the Oregon and California Railroad Company for expenses and taxes; that is, the Oregon and California Railroad Company would still owe the Union Trust Company under this mortgage $1,540,886.02; that is to say, the Oregon and California Railroad Company has received from all sources on account of the trust fund from May 13, 1887 to June 30, 1912, $4,603,250.82, $1,540,886.02 is really reduced by the amount $956,826.99 advanced by the Oregon and California Railroad Company, as shown in the lower part of the statement. He has brought with him samples of the blanks, showing the transaction as it is handled through the accounts and reports made to the trustee.

Form 215 O. & C., which is a statement made to the Union Trust Company of New York, is prepared monthly, shows the contract number, name of purchaser,

description of land sold, number of acres, price per acre, and the consideration, and is signed by the land agent of the Oregon and California Railroad Company and the Vice-President of that company. Form 216 O. & C. is the memorandum of contract made for sale of land, shows the date of contract, name of purchaser, residence, description of tract, the number of acres, and price per acre, and the amount, and the terms of payment under the contract. This is certified as correct by the land agent of the Oregon and California Railroad Company. Form 217 O. &. C. is statement made to the Union Trust Company of New York, of land sales and collections, monthly statement showing the date, name of purchaser, contract number, and the principal and interest, and new sales during the month.

218 O. & C. This is made to Union Trust Company of New York, Trustee under Indenture dated July 1, 1887. This shows the date of the collection, contract number, whom it is collected from, stumpage and depredations, land leases, expenses and taxes refunded, and other collections—what for and the amount, and to what account credited. Form 219 O. &. C. is statement of land contracts cancelled. This is made to the Union Trust Company of New York, monthly, shows the contract number, name of purchaser, description of land, and amount of principal cancelled, and the amount of interest cancelled during the current month and from May 13, 1887, to the beginning of current month, and total cancellations from May 13, 1887, to end of current month. This is certified as correct by the Land Com-

missioner. Form 220 O. & C. is an abstract of disbursements made monthly to the Union Trust Company of New York, shows the date of voucher, voucher number, issued to, what for, and the amount. It is signed by the Land Commissioner and vice-president, subscribed and sworn to before a Notary Public for California and for Oregon. Form 221 O. &. C. is the monthly statement of account with the Union Trust Company of New York, showing the cash receipts, expenditures, Union Trust account with the Oregon and California, and statement of application of cash receipts by trustee. Form 222 O. & C. is monthly statement to the Union Trust Company of deeds authorized for execution by Board of Directors, showing the deed number, contract number, issued to, date of final payment, principal, interest, interest cancelled on anticipated payments, net interest collected on contracts, interest collected on overdue payments, total. This is signed by the Land Commissioner and subscribed and sworn to before a Notary Public for California. Form 223 O. & C., certified copy of resolution of Board of Directors. This is a statement to the Union Trust Company of New York, being certified copy of resolution of Board of Directors authorizing the execution of deeds on the part of the Oregon and California Railroad Company; shows deed number, grantee, description of land, and the consideration. It is signed by the Secretary of the Oregon and California Railroad Company.

Whereupon, defendants offered in evidence these forms as Defendants' Exhibit 292, which was objected

to by complainant as immaterial, and the same was received in evidence and marked "Defendants' Exhibit 292," and is hereinafter set out and described and made a part of this statement of the evidence and identified as such. Whereupon witness further testified that he had prepared another table or statement outlining the manner of handling cash receipts and the movement through the records, and refreshing his memory from this memorandum which he had made, stated the course of business as follows: The application to purchase, with the remittance, is sent to the assistant treasurer in San Francisco. The same report, or application to purchase as it is known, is then sent to the auditor, and the money received thereon is reported. Third, the application to purchase is entered in the record of contracts and record of land sales books, and then sent to the Land Commissioner to have the contract prepared. Fourth, the remittance reported by the assistant treasurer is applied to the purchase account in the record of contracts book, and receipt therefor issued. Fifth, auditor advises land commissioner when contract is paid in full. Sixth, land commissioner prepares deed for contract. Seventh, deed is sent for execution and release by the trustee. Eighth, deed when returned from trustee is delivered to the grantee. Ninth, sales and income from lands are credited to an account styled "Proceeds from Sales of Granted Lands." That is the bookkeeping course. That this was the bookkeeping process, and that these receipts as the proceeds of sales, income account, are credited on the auditor's books of the com-

pany. They are first entered on the treasurer's books, and the postings made to the auditor's books from the treasurer's cash record, and that covers the total. The net amount is what has always been paid to the Union Trust Company, that is, the receipts less expenses and taxes. Instead of sending the gross receipts to the Union Trust Company, out of the gross receipts is paid the expenses and taxes, and the net amount is sent. The trust fund is charged with these expenses and taxes. The relations of the United States and the company in the transportation of freight and passengers between Roseville Junction, in the State of California, and Portland, Oregon, on the line of this road constructed under the Act of July 25, 1866, as to Government transportation of property and passengers, are, that such property and passengers are handled free to the Government over that part of the line, and it is known in the requisitions made by the United States, and called "Free Land Grant Road." This free movement applies to all shipments from any part of the United States that may be received and carried over that portion of the mileage, except United States mails. Witness thinks there is no other exception. It would and does apply to transportation of troops of the United States. He knows that from August 1, 1902, freight and passengers have been handled without cost to the Government, or free, over that line, and from his recollection of the records of what was done prior to that time, and from information furnished by men who have been in the office for a great many years and handled that line of business con-

tinuously for thirty-five or forty years, during the earlier years, the business was very heavy. He says the earlier years—for a period, he thinks it was during the Spanish-American-Cuban war, it was very heavy over that line, but what is the practice now has existed during the life of the entire operation of the property, and he would say that it was understood that a statement had been filed in an Oregon case at one time which showed a very large volume of business handled over that line during the early days, but he has not been able to duplicate that statement in the office. It was thought possibly it was at Portland or at Salem. He refers to a statement from the Auditor's office prior to the fire, and thinks it was in 1904, as recollected by Mr. Sherburne, who has handled the business for years, that he had had the statement prepared. He tried to refresh his memory, but could not. In regard to the freight matters, there is an exhibit in the case covering the transportation subsequent to the fire, but prior to the fire it is a matter of recollection.

Whereupon, on cross examination, witness testified that he was assistant auditor for Southern Pacific Company; had been with that company for ten years last past, but assistant auditor for about three years; before that, auditor of disbursements. He was promoted from disbursements department to assistant auditor. He commenced work with the Southern Pacific Company in 1902. Prior to that time he had never been employed by the Southern Pacific Company or any of its allied or subsidiary corporations, or by the Union Pacific. He

was employed on the Chicago & Alton Railroad, which is not considered a Harriman line. He was first employed by the Chicago & Alton, then by the Southern Pacific Company. He was with the Illinois Central for about two years. The auditor's office is located in San Francisco, as is also that of the general auditor of the Southern Pacific Company. While the Southern Pacific Company is a Kentucky corporation, its operating and administrative offices are at San Francisco. The chief executive office is located at San Francisco; that is, the President of the road, and the other officers are located there. It has also an office at New York. It is a fact that the Southern Pacific Company operates a number of companies under lease, and he thinks it is the principal stockholder of these companies from which it holds leases, and believes that the Southern Pacific Company practically owns all of the stock of the Oregon and California Railroad Company. His duties relate to the accounting department of the Southern Pacific Company, and that includes the operation of all these roads that comprise the system of roads operated by the Southern Pacific Company.

Q. Now, have any of these companies from which the Southern Pacific Company holds a lease, a separate accounting division, or does it all pass through the one accounting division?

A. No, the accounting organization would take care of the corporate accounts of the Oregon and California Railroad Company, for instance.

Q. Yes, but it is all one general accounting division, with separate books for each of the companies whose accounts you keep? Isn't that true?

A. Well, no, not that way; I think I can clear that up; that each company keeps its own books, that is, its corporate accounts, from which this statement, for instance, is prepared, of the Oregon and California Company. But the operating accounts, revenues and expenses, from the operation of the Oregon and California, or the Central Pacific, or the other companies, are all handled in the one office and by the same force of men—of course, distributing the earnings and expenses to each company—which could not be handled otherwise very well.

Q. Well now, you said that where lands were sold, for instance, the moneys received were paid to an assistant treasurer?

A. Yes.

Q. What is his name?

A. The present treasurer is H. A. Jones, assistant treasurer.

Q. He is assistant treasurer of what?

A. He is assistant treasurer of the Southern Pacific Company.

Q. Now, is it not true that all of the constituent companies of the Southern Pacific system, their funds are paid in to that same man, this same assistant treasurer?

A. That is correct.

Q. And the Southern Pacific organization there acts as a sort of a clearing house for all of the constituent companies of this railroad system?

A. The Southern Pacific Company handles the accounts and the affairs of the other companies, and distributes through their accounts to each corporate company the revenues and the expenses. You might call it a clearing house.

Q. That is only by way of analogy. I do not mean it is technically correct.

A. Yes, that follows the idea.

Q. So that the receipt of moneys from the sale of the lands which were granted by these two acts of Congress involved in this case, is by the assistant treasurer of the Southern Pacific Company, and then the accounting department of the Southern Pacific Company disburses it, and credits it, and charges it where it belongs?

A. The assistant treasurer shows on his books that the amount was received from a certain source, and to be applied to a certain source—his records show that; and the accounting department abstracts his records distributing the amount accordingly.

Q. Now, from whom do you get instructions as to the distribution of these moneys—these receipts and disbursements?

A. The statement that is received with the receipt will show that it is to be applied on the sale of a certain

piece of land, for instance, land of the Oregon and California Company, or the Central Pacific Company, or what not, and that amount is checked, of course, and the credit applied accordingly.

Q. Well, the Southern Pacific Company acts as a sort of a banker for all of these constituent companies, doesn't it, receiving the moneys of the various companies, and disbursing them?

A. That is correct. It receives the money, and disburses it or accounts for it.

Q. Now, the moneys of these constituent companies are disbursed upon the authority of what office?

A. On the authority of the officers of the Southern Pacific Company; or in the case of the land department, on authority of the land commissioner—the Oregon and California land commissioner.

Q. Well, there is one officer who acts as land commissioner for all of the constituent companies, too, is there not?

A. I would not be positive as to that, whether he is land commissioner of all or not. I think at the present time that Mr. McAllaster is land commissioner of the Oregon and California Railroad Company, yes.

Q. And of the Central Pacific?

A. I could not say as to that. I believe that he is, but I would not be positive as to that.

Q. Well, that is already in the record, so if you

have no personal knowledge, I will not question you about it.

A. No, I don't know.

Q. Then, it is a fact, is it not, that the Southern Pacific Company determines what shall be done with the moneys received from the sale of Oregon and California Railroad Company lands?

A. I would say no, that the Southern Pacific Company does not; that it is disbursed in accordance with the terms of the agreement.

Q. I will ask you to examine defendants' exhibit 290. State if that does not show that the Southern Pacific Company does disburse the moneys and renders monthly accounts showing how it has disbursed it.

A. No, this statement is prepared from the books of the Oregon and California Railroad Company that are kept by the accountant who has charge of the corporate accounts of the Oregon and California Company.

Q. Well, isn't this also kept in the books of the Southern Pacific Company?

A. No. No, this is taken from the books of the Oregon and California Railroad Company.

Q. Do you mean that the Southern Pacific Company has received and disbursed these many millions of dollars, and has never kept any record of it?

A. No, I don't mean that, no. Of course the Southern Pacific Company keeps records of all receipts

and disbursements. But this statement which we have here is a statement prepared from the books of the Oregon and California Railroad Company. The Southern Pacific Company books will show the same information, of course.

Q. Well, that is just what I am getting at. These same items appear in the books of the Southern Pacific Company, do they not?

A. Why, most of them, yes; most of these items; yes, most of them. For instance, I find here, showing the earnings and expenses of the Oregon and California Railroad Company for this period to June 30th, that these earnings come from the operation of that railroad, and they will appear in the Southern Pacific accounts.

Q. That is, the totals, or in detail?

A. They will appear there in detail, and of course in a great deal more detail than on the Oregon and California books.

Q. Because the Southern Pacific Company is the operating company?

A. The Southern Pacific Company is the operating company, yes.

Q. Now, by this it appears that the Southern Pacific Company carries a general cash account with the Oregon and California Railway Company, in which is charged all moneys received by the Southern Pacific Company on account of land sales, receipts from transportation, and from all other sources, in one general

cash account, and in the same account there is credited to the Southern Pacific Company the amounts that it has expended?

A. Just a moment, please—in one general cash account. I don't grant that.

Q. Well, one general account? Eliminate the word cash—one general account between the Southern Pacific Company and the Oregon and California Railroad Company? Well, I will use your own language, "In general account." That is correct the way you drew this up, isn't it?

A. Yes.

Q. There is such an account, "Southern Pacific Company in General Account with the Oregon and California Railroad Company?"

A. Covering everying, the entire transactions between them.

Q. Yes. And the Southern Pacific Company receives all the cash and disburses all of the cash, charging itself with what it receives and crediting itself with what it disburses? Isn't that true?

A. That is correct, yes, sir.

Q. Now, do you know whether, when the Southern Pacific Company makes an expenditure, for instance, for taxes on these Oregon lands, whether it receives any authorization from the Oregon and California Railroad Company officers to make that disbursement?

A. Taxes on the Oregon land?

Q. Yes.

A. Why, those taxes are taken care of by the Oregon and California Land Department.

Q. You say is taken care of?

A. Yes. They would check up, prepare the voucher and everything for payment.

Q. That is simply to convey to the officers of the Southern Pacific Company the information as to the amount of taxes, isn't it?

A. Why, it is to pass it through the accounts and through the treasurer for payment, but the entire work and everything in connection with it is done by the Oregon and California Land Department, not by the tax agent of the Southern Pacific Company. He knows little or nothing about it.

Q. Are you sure about that?

A. Why, I would be quite sure of it, because he does not handle such matters. If he does, why, I don't know anything about it.

Q. The tax agent of the Southern Pacific Company in the Wells Fargo Building here at Portland does not handle the subject of taxes?

A. I was thinking of the tax agent in San Francisco. I do not know what Mr. Eddy does up here.

Q. You would not deny the tax agent of the Southern Pacific Company located here in Portland does not attend to these tax matters here in Oregon?

A. I do not know as to that. No, I would not deny it.

Q. Do you know who it was that determined that the Southern Pacific Company should deduct the amount that it paid for taxes on account of these Oregon lands from the receipts from the sales of the lands?

A. No, I don't know, but I understood that was in accordance with the terms of the mortgage.

Q. Are you familiar also with the terms of the lease?

A. No, I cannot say that I am.

A. No, I am not familiar enough with that to answer any questions in regard to it.

Q. You cannot explain upon whose authority the expenses of maintaining the land department, and the taxes paid upon these lands, were deducted from the amounts that were turned over to the Union Trust Company?

A. No, I am not familiar with that at all.

Q. This exhibit 290 is not a detailed statement of the account but simply the monthly totals of the several items? Isn't that true?

A. Not altogether. If you will notice, we have given the items in considerable detail. For instance, there is sundry disbursements by San Francisco office during July, 1905, $4,454.82; land department, $4,382.99; director's fees, $65.00; stationery, $6.83—$71.83

total. We have given enough of it all through all of these items, we have endeavored to make sufficient segregation to make the matter clear.

Q. But they are compiled by month, I say, rather than by individual item.

A. Yes, they are compiled by monthly entries, and where segregation was necessary to make clear, why, we have done that. For instance, there is July 31, "Coupons and Registered Bonds Interest paid by New York office during July, 1903, $422,050." Nothing more is necessary there to make that clear. But where it was, where the amount was made up of several items, we have divided it to give complete information. But when you take gross receipts, for instance, the amount there is gross receipts for the period—of course, there is no detail except showing the class—mail, express, freights, etc.

Q. Exhibit G of the bill of complaint, which is admitted to be correct by the answer, is the supplemental lease of August 1, 1893, between the Oregon and California Railroad Company and the Southern Pacific Company, which it is admitted by the pleadings is still in full force and effect, and has been since that date. This lease provides that the Southern Pacific Company shall pay, among other things, the interest upon the bonded indebtedness of the Oregon and California Railroad Company. Now, if that be true, why does the Southern Pacific Company charge the Oregon and California Railroad Company with the amount that it pays

pursuant to this lease?

A. I know nothing about it. It is a matter I have nothing to do with—I am not called upon to handle at all.

Q. Well, then, there is no way that you can assure us that any of the items of this exhibit 290 is correct, in the sense that it was an indebtedness owing by the one company to the other?

A. Oh, this is the record of actual transactions as handled through the books. There is no doubt that the statement is correct. But just why they do that, or the terms of the lease pertaining to the bond interest, I know nothing about that. I am not required to handle it, and do not handle it.

Q. Do you know whether there is charged in here $5,000 a year that is paid to the Oregon and California Railroad Company under the terms of the lease?

A. No, I don't find that in here.

Q. There is included, however, in this statement all items of construction and improvement, including new mileage, new railroad—isn't that true?

A. Yes; yes, the operating revenues and expenses and charges for the betterment and addition of the line of the Oregon and California Railroad Company.

Q. And this account starts out on June 30, 1905, with a balance in favor of the Southern Pacific Company of over six millions of dollars? That is true, is it not?

A. $6,338,936.79. And it closes on June 30, 1912, with that balance reduced to $2,542,721.18?

A. That is correct.

Q. And in addition to that reduction in the cash balance claimed by the Southern Pacific Company on June 30, 1905, there is the amount that has been invested in new railroad between those two dates as the net result?

A. In addition to that, you say?

Q. Yes.

A. No.

Q. What I mean is that the so-called deficit of over six million dollars has been reduced to a little over two million, and a large amount of money has at the same time been invested in new railroads and betterments and improvements?

A. Everything that has been invested in new railroads, betterments or improvements of the Oregon and California Railroad Company are in these figures.

Q. Yes, but what I am getting at is this: That the operation of this railroad and the receipts from the sale of lands, and the amounts that the railroad company has paid out, results in the reduction of a deficit of six million and a little over to a little over two million, and at the same time in the increasing of the total amount of the property as disclosed by your statement of assets—you have withdrawn that for the purpose of being corrected—but of several million dollars between those

dates—that itemized statement you had there; it had the word "Grants" instead of "Railroads."

A. No, this doesn't show that part of it.

A. In this statement?

Q. Yes.

A. Where do you find that?

A. Yes.

Mr. Tonwsend: You mean there has been no new mileage constructed since 1905 in the State of Oregon?

Mr. Fenton: That is included in this account.

A. Let's see. I wouldn't be sure about that.

Mr. Townsend: What about that, Mr. Koehler?

Mr. Koehler: Not that I know of.

Mr. Townsend: No new mileage since 1905?

A. It is possible that there have been some extensions of the line up there.

Mr. Koehler: That is not the O. & C.

Mr. Fenton: There has been no Oregon and California mileage constructed since 1905.

Mr. Koehler: I was thinking of that extension from Natron, but that is not O. & C.

A. That is from Natron down to Klamath.

Mr. Koehler: Yes.

A. That is separately incorporated. Yes, that is separately incorporated. But this shows, of course,

that the deficit of six million dollars has been decreased to two million five hundred and forty-two thousand.

Q. Take the item under date of August 31, 1905: "Sundry Disbursements by San Francisco Office during August, 1905, namely: Land Department $62,873.55." Do you know what that was for?

A. You mean generally what that was for, or the specific items? Of course, I haven't a statement.

Q. No, I mean specifically, why was that month so much larger than the others?

A. I don't know. I couldn't state as to that. I don't know why August is heavier than the other months —August 31, 1905, no, I cannot explain it.

Q. Has the Oregon and California Railroad Company a treasurer?

A. Mr. Jones, assistant treasurer, is treasurer for all these companies, handles the funds of the companies; he is treasurer of the Southern Pacific, the Oregon and California, the Central Pacific, the S. P. R. R.

Q. Did you ever see a check drawn on the bank account of the Oregon and California Railroad Company?

A. Never have.

Q. Has there ever been one that you know of?

A. Not that I know of.

Q. Mr. Adams, I notice in the statement of assets and liabilities of the Oregon and California Railroad

Company no reference to the land grant. Point out to me, if it be a fact, where it is listed there as one of the assets of the company. I refer to Defendants' Exhibit 286.

A. Nothing in here refers to the land grant specifically.

Q. Well, or otherwise.

A. Let us see. Land grant accounts and land trust fund. This covers the entire account of the Oregon and California Railroad Company, including the land matters.

Q. Where is there anything in here showing the lands listed as an asset of this Oregon and California Railroad Company?

A. This is a balance sheet.

Q. Doesn't this purport to be a statement of assets and liabilities?

A. Oregon and California Railroad Company balance sheet as of May 31, 1912, showing the capital expenditures and other matters pertaining to the accounts for that period.

Q. I said, does it not purport to be a statement of the assets and liabilities of the Oregon and California Railroad Company?

A. Yes, balance sheet.

Q. Now, the assets are made up of the items stated here, none of which include any of the lands still held

by the Railroad Company or claimed by the Railroad Company? Isn't that true?

A. Let me look at that again.

A. This is a balance sheet of the Oregon and California Railroad Company for the eleven months ending May 31, 1912, which shows the capital expenditures, cost of road and franchises, $36,791,228.12; additions and betterments $4,131,296.46; equipment $95,918.00.

Q. I ask the specific question whether there is any item there that includes the unsold granted lands still claimed by the railroad company, and which are involved in this matter?

Mr. Fenton: The defendants will admit that it does not include the railroad land grant, the acreage, or any valuation of that acreage. It does not purport to show it.

Q. That is true, isn't it?

A. There is nothing in this statement, no. This shows the capital expenditures and the current assets and liabilities referred to.

Q. Now, among the liabilities are included the outstanding bonds secured by the mortgage of July 1, 1887, stated here to be $17,734,000. That is one item of the liabilities, is it not?

A. That is first mortgage five per cent bonds of 1887. That is correct.

Q. And it also includes nineteen million dollars of capital stock?

A. That is correct.

Q. So that this statement shows the assets of the company to be $43,807,385.36?

A. The assets of the company as capital and—

Q. Well, that is the assets?

A. That is correct, yes.

Q. And the liabilities to be $44,143,631.93?

A. That is correct.

Q. So that, deducting the capital stock it shows the liabilities to be $25,143,631.93, and the assets to be as heretofore stated?

A. I don't get that. The capital stock is $19,000,000. Deducting that, I think you have the answer.

Q. Do you know where, if any place, in the books of the Oregon and California Railroad Company, or of the Southern Pacific Company, if at all, these unsold granted lands that are involved in this suit are inventoried or carried as an asset?

A. No, I do not.

Q. The railroad is carried as an asset at its cost, is it not?

A. At its cost, yes.

Q. Yes, but it is carried as an asset?

A. Yes.

Q. The only question is whether it should be carried at a valuation independent of its actual cost.

Q. You carry it at its actual cost in your books?

A. Yes, the books show the amount that was put into the railroad—the cost of construction.

Whereupon the witness further testified that he could not say in what form money is remitted to the Union Trust Company. That is handled through the New York office. The New York office conducts the transactions with the Union Trust Company and reports to him the payments made to the Trust Company, and these are entered upon his books. He does not know anything about the manner in which the prices for which the lands are sold are determined, but accepts the price approved by the land department. Part of his salary is apportioned to the Oregon and California Railroad Company, the same as the other officers who act for more than one company; their salaries and general office expenses are apportioned among the several companies which they represent. The leases of the companies provide for that. These expenses are all in the first instance paid by the Southern Pacific Company out of its funds, and charged against the company in the proportion which is agreed upon. The rules determine what proportion shall be charged against each company. These rules that are laid down by the commissions, vary. Train mileage, car mileage, road mileage, locomotive mileage, or some other basis is used which determines the value of the service to each company. The expenses of station agents and other employes located on the line of the Oregon and California Railroad Company are

charged to that company. The expenses of officers whose services and jurisdiction extend over more than one corporate property are distributed on the basis that will nearest cover the actual services performed for each. The passenger officials are distributed over corporate properties on a passenger train or car mileage; freight officials on a freight train or car mileage. The Commission of the State of Oregon have prescribed rules for apportioning salaries of officers whose jurisdiction extends over more than one state, and these rules are followed in distributing salaries and expenses in the State of Oregon. They state that the salary of an official whose services extend into some state other than Oregon shall be distributed on a mileage basis, or whatever other basis that in their judgment is considered just and equitable. The distribution of his own salary so far as the State of Oregon is concerned, is determined by the Railroad Commission of that state. The question of service performed for the land department is decided by the officials of the Southern Pacific Company. The accounting department would probably say to Mr. McAllaster, "How much of your services are chargeable to this company or to the Oregon and California Land Department, and how much to the C. P. Land Department?" That would receive consideration and very likely his recommendation would be considered. The auditor of disbursements considers the apportionment recommended by the man in charge. If Mr. McAllaster of the land department, recommends certain apportionment should be made of the salaries, that receives con-

sideration and final approval until such time as it is considered that there should be a change made in it. This auditor of disbursements is the auditor of the Southern Pacific Company. He performs services for all of the companies, and his salary is charged just the same as that of witness, to all of the other companies. He is subject to the general auditor of the Southern Pacific Company, who is subject to the President of the Southern Pacific Company. This distribution is determined by the executive officers of the Southern Pacific Company. Payments by the New York office and similar items are in this statement, and the item under August 31st, "Coupons paid by New York office during August, 1905, $30,625," is for interest coupons on the bonds. These items of payments by the New York office and similar items are the disbursements referred to by him as made direct by the New York office as distinguished from the other items in the statement. Explaining the statement—Exhibit 290—showing payments made to the Union Trust Company on account of land sales,—there is an item under January 31st on the first page, 1906, "Union Trust Company of New York, Trustee Mortgage, 1887, amount collected on Ida M. Eaton note and paid to Union Trust Company of New York by the New York office, $1,193.53," and on the next page under date of March 31st, an item "Payment by the New York office during March, 1906, (additional) $34,657.47, which is itemized as "Union Trust Company of New York, Trustee Mortgage of 1887, amount due from April-

October 31, 1905, $9,467.29. Amount due for November, 1905, $19,415.18;" that represents the monthly collections from the sales of land that were paid over to the Union Trust Company. That is taken up in the account of the month of March, 1906, and means that the actual turning over of the money was deferred these few months, so that while the money was paid in March, the item here shows that it was for the preceding months.

Q. Well now, dropping down to the bottom of that same page, under date of June 30th I find expenditures for the year ending June 30, 1906, as follows: "Construction, Henderson to Springfield $120,049.94; Construction and Improvement $537,649.67." Do you know whether that is new construction or simply reconstruction or betterment of the existing road?

A. Why, I could not be positive as to that, but I believe from the reading of it that it is what is known as additions and betterments to the existing line, although the first item, "Construction Henderson to Springfield $120,049," looks as if it was construction of a new line from Henderson to Springfield. The other item "Construction and Improvement $537,649," I think is improvements to existing property, for the reason that there are no other items in here.

Mr. Fenton: What is the date of that? I can tell you.

Mr. Townsend: It says for the fiscal year ending June 30, 1906. It does not give it any more specifically.

Mr. Fenton: There was a link between the Natron

branch and the main line from Henderson over to Springfield that might be called new construction. I don't remember the date. It connected the two lines. That is, the Woodburn-Springfield branch and the main line, Henderson being at a point near Engene.

A. I find on the statement for the year 1907 as follows: It reads, "Construction and improvements" and there it is divided between the betterments and additions, which satisfies me that this item in 1906, "Construction and improvements," is construction of additions and betterments to the operated line rather than new construction; that during the year 1906 we had some difficulty in dividing our new work between additions and betterments because of the records destroyed in the fire, so in some cases we had to lump them.

Q. Under date of June 30, 1907, I find the following items going into construction and improvement. The first item that you have just referred to "Account Construction Henderson to Springfield," $39,150.57 with an interest charge added amounting to $841.75, and then these other two items, namely, "Account betterments $621,580.83, account additions $277,625.50." What were those additions, if you know?

A. Those were additions made to the operated line. I can speak positively as to that, because all charges to these accounts additions and betterments are made in accordance with the classification as prescribed by the Interstate Commerce Commission.

Q. Would you include in additions additional ter-

minal facilities, switches or sidetracks?

A. Yes, or increased weight of rail, and there are a great many things. There is a classification prescribed that includes additions.

Q. How would you distinguish betterments from additions? Now, for instance, the laying of new rails, would you call that a betterment or an addition?

A. That is done for us by the Commission. The Interstate Commerce Commission prescribe rules stating what shall be an addition and what shall be a betterment to the property. But you and I, I think, will understand it if we say that it is an improvement to the operated lines. In one case it is considered an addition and in another a betterment. Just how I can explain that, it is not clear in my mind now. In fact, it it pretty hard for any one to understand just where they draw the line between an addition and a betterment; but it is an improvement to an existing property. An addition is a new building where none existed before; a betterment is enlarging that building or structure.

Q. The renewal of rails and ties as they are worn out is not put in as a cost of operation?

A. Yes; oh, yes.

Q. The replacing of worn out material then, is a cost of operation?

A. That is correct, yes, sir.

Q. That would be included in this general amount which I find at the end of each year for the total of the

fiscal year?

A. Operating expenses, yes, sir, except that the Interstate Commerce Commission have prescribed rules governing as to what shall be considered an operating expense and what shall be considered an addition or betterment to the property, so that the rules of the Commission have been strictly observed, of course, in arriving at these figures.

Q. That is true with reference to this particular statement, exhibit 290, is it?

A. Everything, yes.

Q. That the distribution of those items has been as nearly as you could in accordance with the rules of the Interstate Commerce Commission?

A. Yes, just as closely as we could follow it.

Q. On page 12, under date of June 30, 1911, you will see also charged $33,080.22 for construction of motor car line—Ashland, Oregon. That of course is new construction.

Mr. Fenton: No.

Q. Do you find it?

A. Yes, sir.

Q. It says, "Expenditures during year ending June 30, 1911, motor car line—Ashland, Oregon, construction."

A. I don't know what that item is, whether that is a new line or whether it is reconstruction of an old

line. We have done a great deal of that work in Oregon and California.

Q. Under date of June 30, 1911, on page 12, the second item "Interest on open account with Southern Pacific Company for year ending June 30, 1911, $310,-892.40." What is that?

A. That is interest on cash advanced to the Oregon and California Railroad Company that year.

Q. Well, that is this balance of credit that is carried in favor of the Southern Pacific Company on this statement from time to time, isn't it? For instance, it starts out with a cash credit at the very beginning of the statement, $6,338,000.

A. Oh, no, no. The Southern Pacific Company advanced money, you will find down here. Take this year, that motor car line Ashland construction, addition and betterment $378,032.25. To betterments $206,-011.82, and other amounts that have been advanced to the Oregon and California Railroad Company, and the interest is computed on those advances.

Q. Well, then, you mean that every investment that the Southern Pacific Company makes of its moneys, in betterments and improvements on the Oregon and California Railroads, carried as a continuing indebtedness by the Oregon and California Railroad Company, and interest is charged upon it?

A. Interest is charged, yes. Interest is charged on all amounts advanced the Oregon and California Rail-

road Company for additions, betterments and new construction work, just as is common between any companies.

Q. But the Southern Pacific Company gets the benefit of those additions, because it operates the line, does it not? Let me ask you a question: Is that done under the lease, or because of any agreement outside of the lease, so far as you know?

A. Really, I never considered that. It is so common that you get interest on money that you loan or advance to another concern.

Q. Or that you build a railroad to operate for yourself?

A. Yes.

Q. The Southern Pacific Company spends money to build a railroad to operate itself, and charges somebody else interest on it?

A. It is operating the Oregon and California Railroad under a lease.

Q. Yes, but it gets all of the proceeds from the operation, doesn't it?

A. No, I don't think it does. I don't remember just what the terms of the lease are now. The facts are, though, that the Southern Pacific Company charge and collect interest on cash advanced these other companies—the Oregon and California or whatever company it advances money to.

Mr. Fenton: Defendants will admit, that is, defendants for whom we speak, that under the lease the Southern Pacific Company operates the Oregon and California Railroad, collects its entire income from operation, and accounts for it and charges that company with any advances that it may have made over and above what it has received, and that that was the reason why this deficit appears; that there has been a deficit from the beginning of the lease down to the present time.

Q. You have nothing in your office, so far as you know, that would show who actually advanced the money that was used in the construction of this railroad from Ashland southerly to the State line, have you?

A. No.

Q. Nor from Delta in California northerly to the State line?

A. No. Our records—

Q. Nothing from which you could send any statement after you return to San Francisco upon that point?

A. As to who advanced the cash?

Q. Yes, who actually advanced the cash.

A. No, only from the records as they now exist showing that the cash was advanced.

Q. That the cash was expended, you mean; but as to whether it was advanced by one company to another, there is nothing in your records here to show, is there?

A. The cash was expended but not advanced—I don't quite understand.

Q. I say your record here shows simply so much cash expended in construction, but it does not show where the money came from?

A. No. No, it shows the cost of the property there as about forty million dollars.

Q. What rate of interest is charged by the Southern Pacific Company on these advances?

A. I could not say. I cannot answer that.

Q. Look on page 8, the last item under date of June 30, or the next to the last item under date of June 30th, it says: "Difference in rate of interest from 4 per cent to 6 per cent on open account with S. P. Co., year ending June 30, 1909." Now, what does that mean?

A. That would indicate that there was an adjustment in the accounts as between the two roads of interest charged.

Q. Well, that the rate was raised to six or reduced to four?

A. Raised to six.

Q. It indicated it formerly had been charged at four per cent, and the difference was now charged?

A. Two per cent more.

Q. To raise it to six per cent?

A. Yes. That is year ending June 30, 1909.

Q. It is possibly the result of an erroneous compu-

tation.

A. Pretty low rate of interest that year.

REDIRECT EXAMINATION.

Q. I now show you a statement which for the purpose of identification may be marked "Defendants' Exhibit 293," and ask you to explain where you obtained that statement and what you understand it represents.

A. This statement represents the cost of the road and equipment of the Oregon and California Railroad Company at the close of each of the years named in the statement—December 31, 1888, $30,927,000,—and June 30, 1912—

Q. You need not read the statement.

A. The first year in the statement is December 31, 1888, $30,927,000; June 30, 1912, $41,147,417.58.

Q. Now, from what sources did you obtain the figures for the years ending December 31, 1888, and down to and including December 31, 1895?

A. The figures for those years were taken from the annual reports of the Southern Pacific Company forwarded to its directors.

Q. Do you recall, Mr. Adams, whether those reports are made to the Interstate Commerce Commission in the name of the Oregon and California Railroad Company as well as in the name of the Southern Pacific Company, as to this particular mileage, or as to each so-called leased company?

A. There are two reports made. One is by the Southern Pacific Company—the operating company, and the other by the Oregon and California Railroad Company.

Q. They are both required to be made to the Interstate Commerce Commission?

A. Yes. They require a different form of report for an operating company and a leased company; but the reports are rendered in accordance with the requirements of the commission.

Q. And these, then, are official figures taken from those reports?

A. Oh, yes, yes.

Whereupon defendants offered in evidence Defendants' Exhibit 293, to which complainant objected on the ground made to Defendants' Exhibit 286. Whereupon said Defendants' Exhibit 293 was received in evidence and marked "Defendants' Exhibit 293" and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon the witness further testified:

Q. Do you know why it was there was a change in the fiscal year from December 31st to June 30th, or do you have any knowledge on that subject?

A. Why, yes, it was made to conform with the reports that were made by railroad companies generally to the Interstate Commerce Commission. Their fiscal year ends June 30th.

Q. That is, the fiscal year of the Interstate Commerce Commission?

A. Yes, the fiscal year; and usually a railroad company's fiscal year ends June 30th to conform with the Commission's year.

RECROSS EXAMINATION.

Q. Now, by process of subtraction you can determine from this defendants' exhibit 293 the amount expended in any given fiscal year that is covered by the report for betterments and improvements and additions?

A. That is correct.

Q. And construction? That is all included of course?

A. Yes.

Q. That is, it would include new construction and betterments and additions as well?

A. It would include—no, new construction. Construction of a new line would not be included in there. I mean by that that that does not include the entire construction of lines in Oregon. It would include any new work on the Oregon and California Railroad.

Q. Or any new construction by that company or in the name of that company?

A. Yes.

Q. But not any new Southern Pacific Company lines in the name of some other corporation?

A. Yes, that is it.

Q. I understand.

REDIRECT EXAMINATION.

Q. Mr. Adams, I wish you would refer to defendants' exhibit 291, and make such explanation of that exhibit as you think will show what is the status of this $956,826.99.

A. On the right hand side of the statement we find cash receipts from May 13, 1887, to end of current month, $4,603,250.82. We find on the middle part of that statement advances by O. & C. railroad $956,826.99, making a total of $5,560,077.81, which was disposed of as follows: Expenses and taxes (left hand side of the statement) $3,062,364.80; cash paid over to trustee $2,497,713.01, making the total of the receipts $5,560,077.81.

Q. Then somebody must have advanced $956,826.99 for expenses and taxes more than the total receipts on account of this trust fund?

A. The expenditures for that amount in excess of the receipts, which amount was advanced by the Oregon and California Railroad Company as shown by the statement.

RECROSS EXAMINATION.

Q. Is that item included in the expenses and taxes account of $3,062,364.80?

A. The item of advances by O. & C.?

Q. Yes.

A. No, sir.

Q. Then this statement shows the expenses and taxes of this land grant, or these land grants, from May 13, 1887, to June 30, 1912, to be over $4,000,000.00?

A. No, sir. It shows them to be $3,062,364.80.

Q. Well, I ask you if that item of expense that is designated as advances by O. & C. R. R. Co. for expenses and taxes—$956,826.99, is a part of the $3,062,364.80, or whether it should be added to it to get the total expenses and taxes.

A. No, no, not at all. The item of expenses and taxes, the $3,062,364.80 is fixed—that is an expense. That is nothing else. That is expenses incurred. Now, to meet the expenses incurred and the amount paid to the trustee required over and above the receipts some one to advance some money, namely $956,826.99, which was advanced by the Oregon and California Railroad Company.

Q. I am going to get to that part in a moment, but you don't understand me. I say, that that is not an expense in addition to this $3,062,364.80, but is included in that amount.

A. No, it is not an expense in addition, nor is it included in the amount.

Q. Why is it designated for expenses and taxes?

A. Where is it designated?

Q. Why is it designated for expenses and taxes?

A. It is not designated for expenses and taxes. The expenses and taxes are as shown—$3,062,364.80, you see. That is expenses and taxes. Now then, paid to trustee $2,497,713.01, making the total of $5,560,-077.81. Now, the receipts were short of that amount $956,826.99. Some one put up that cash—the Oregon and California Railroad Company.

Q. That is exactly the point. But I am trying to get you to explain that that is not an added expense. If it had just read, "Cash advanced," it would have been just as intelligible as it is now.

A. Excuse me, but it is not an added expense. If I did not state that, it is not.

Q. That is what I am trying to develop—that should not be added to the other.

A. No, you are right.

Q. It is just cash advanced?

A. Yes.

Q. You say that is advanced by the Oregon and California Railroad Company?

A. Yes.

Q. Well, where do they get the money?

A. Why, the Oregon and California Railroad Company—where did they get that money? Presumably from the Southern Pacific Company. But whether they got this money, or what money they got, the South-

ern Pacific Company advanced them money and have advanced money to them all through the year and years.

Q. Do you keep a cash account for the Oregon and California Railroad Company?

A. In that way—credit their account with the credit, and charge their account with the cash received and with the cash disbursed on account of the land accounts, speaking of Oregon and California land accounts.

Q. You mean, as you testified this morning, that you keep an account of the cash that the Southern Pacific Company receives and that it disburses?

A. Yes.

Q. But you do not mean that the Oregon and California Railroad Company actually receives or disburses any cash?

A. No. No, I don't mean that at all.

Q. And this $956,826.99 was obviously advanced by the Southern Pacific Company, but in its account with the Oregon and California Railroad Company it was charged against the Oregon and California Railroad Company.

A. That is what it amounts to.

Q. That is all there is to it?

A. Yes; there cannot be anything else.

Q. You don't understand that to be an advance in one sum, but the total of perhaps several items?

A. They paid the bills as they came along.

Q. It is probably the total of a number of items rather than a single item?

A. That is right.

Q. And I presume those same items, or at least a part of them, would be found in this more detailed statement, defendants' exhibit 290, as having been advanced by the New York office, or the San Francisco office for that matter, and charged against the O. &. C.?

A. Yes, they will appear in there as the transactions occurred, but as to detail more particularly in the statement of expenses and receipts as shown by this. This is the analysis always.

Mr. Fenton: Referring to what exhibit now?

A. 287, I guess that is called. That form is the class of expenditures, you know. But your statement is correct that they will be found in that form.

Q. That is, for the years that are covered by exhibit 290?

A. Yes, sir.

Q. This may include additions prior to the year 1905? This item of $956,826.99 appearing in defendants' exhibit 291 may include items antedating this exhibit 290, for all you know?

A. Possibly, but I think not. I think there is nothing there prior to 1908. I think it is all since that time.

Q. You think the items could be ascertained more specifically, then, in this exhibit 290?

A. Oh, no; you could not find the item in there, no. You could not get that out. It simply means that the Southern Pacific Company has paid those bills, and that is the amount that they have advanced to them.

Q. They must appear in this?

A. They do appear in there, but you would not recognize them from that statement, nor no one else. I mean that you could not locate an expenditure with cash as you find it in there. Now, I wanted to make this clear, and I hope that I have. The statement seems to be left handed till you look at it closely.

Whereupon J. H. SHARP, called as a witness on behalf of the defendants being first duly sworn, testified that he is tax clerk in the Land Department and commenced employment with the Company in 1883, under William H. Mills, then land agent for the Central Pacific Railroad Company. He became a deputy under Mills in 1885, and continued such deputy for William H. Mills, land agent of the Central Pacific Railroad Company until the death of Mills in May, 1907. Mills was appointed land agent of the Oregon and California Railroad Company in 1888 and until his death occupied that position; his position as deputy did not apply to the Oregon and California; he had no formal appointment, but had charge just the same. "Defendants' Exhibit 255" being deed form 3332, form 4501 and form 4502, purporting to be forms of deeds of the Central

Pacific Railway Company are the same forms in general use by the Central Pacific Land Department at the time Mills was appointed land agent of the Oregon and California Railroad Company. These forms were drafted by William Singer, Jr. Mills was never at any time land agent of the Southern Pacific Company. The Southern Pacific Company did not, to his knowledge, have a land department in San Francisco. Prior to the time that Charles W. Eberlein succeeded George H. Andrews as acting land agent, the land department of the Oregon and California Railroad Company was maintained and operated at Portland. Andrews reported any matters of that kind to Mills under whose direction he was acting.

Whereupon on cross-examination witness further testified that Mills was land agent of the Central Pacific Railroad Company, which included not only the grant to the Central Pacific under the Act of July 1, 1862, but the grant to the California & Oregon Railroad Company under the Act of July 25, 1866. His title was land agent. Shortly after the Oregon and California Railroad Company became a part of the system of railroads operated by the Southern Pacific Company. Mills then became land agent of the Oregon and California Railway Company and George H. Andrews at Portland acted under the direction of Mills. He means to say that the Southern Pacific Company itself did not have anything to say as to the policies to be pursued in the disposition of the lands of its constituent companies, and that it did not influence under the administration of

Mills the policies pursued by the Central Pacific Railroad Company as to its original grant or as to the grant to the California & Oregon Railroad Company, or as to the grants in the State of Oregon involved in this case. He believes Huntington was president of the Southern Pacific Company during that time, but could not say whether or not Mills was responsible to Huntington for the discharge of his duties. He supposes Mills took his instructions from the Board of Directors of the Central Pacific Railroad Company, but he never knew Mills to have any practical instructions or suggestions from time to time while Mills was engaged in that work. He does not know that Mills was subject to instructions of Huntington as to land matters, but thinks Mills was given free range by the Board of Directors. He does not know anything about any other duties of Mills, but only knows that his duties related to land matters. The connection of Mills with the Company related to these land grants and land matters and not to operation or anything of that kind. He believes that Judge Cornish was at the head of the land department after the Southern Pacific Company became a part of the so-called Harriman lines —he so understood it. In that way he may have at that time had general supervision of the policies of all these land departments, but he does not know anything about that himself. He took his instructions from Mills, and he does not feel competent to say from whom Mills took his instructions, outside of the instructions that Mills got from the Board of Directors of the Central Pacific Railroad Company in his appointment.

Whereupon DAVID LORING, called as a witness on behalf of defendants and being first duly sworn, testified that he resides at Portland, Oregon, and is at present a civil engineer and surveyor and is not in the employ of the Southern Pacific Company or the Oregon and California Railroad Company, or any of the parties to this suit. He entered the employ of the Oregon and California Railroad Company March 1, 1882, as engineer on location and construction during a portion of that year. Later on he was for a short time in charge of the taxes of the land department and immediately after that was right of way agent, obtaining the right of way on the southern extension from Roseburg to the State line of Oregon, to the southern State line. After that was finished he went into the land department of the Company as chief clerk, that was sometime in 1884, and he remained there as such until October 1, 1904. During the last two years, or about that length of time, he was assistant treasurer to the Oregon and California Railroad Company, his immediate superior, while he was in the land department was George H. Andrews, who was first secretary and treasurer of the Company and supervised the operation of the land department and who later on became acting land agent and remained such until October 1st, 1904. Andrews was succeeded as acting land agent of the Oregon and California Railroad Company by Charles W. Eberlein, who took charge as he understands. He has no personal knowledge what his position was. The land department of the Oregon and California Railroad Company during the time he

was connected with the Company was maintained, located and operated at Portland, Oregon, and he served as chief clerk from early in 1884.

Whereupon over the objection of counsel for complainant that the same was immaterial and irrelevant and that the witness was incompetent to testify as to the policy of the corporation, witness further testified that when he went into the office the land agent I. R. Moores had just lately died and he was put in charge of the office, subject to the supervision of Mr. Andrews, whose office was on the lower floor while theirs was on the upper floor of the building. He found a form of contract in force requiring payments annually with interest and deeds to cover the same when paid up in full and collections were made on these contracts according to the form required. The tract books, meaning the plat books, showing the land, had prices marked on them by their predecessors, and where he thought the land was not priced high enough, he changed the prices to conform to what in his judgment they should be sold at, and in cases where those lands were sold the contracts were made out in conformity with those prices, subject to Mr. Andrews' revision. In some cases Andrews changed the prices and in some he did not. They had a book which had been made up before the time of witness from examinations made by field agents of the property with the appraised prices on them, varying from 25 cents to $10.00 or $12.00 an acre. These prices were not marked on the plats, but in selling any of the land included in these examinations they were guided by them in the price.

Some years afterwards they started examining lands on their own behalf and the appraised values as given by the examiners were entered with the description of the property in the same book up to a certain length of time. Then he made a set of books which each field agent should have covering a whole township of odd numbered sections and his descriptions were all written in those with his appraisement of value, and filed, and were used thereafter. When contracts which had been made were paid up, the proper deed was filled out to conform to the conditions in the contract, and a list of the same was made up monthly or periodically, and executed by the president and secretary and he as notary executed nearly all of these deeds with the exception of when he might have been away on a vacation or sick. The deeds provided a release of the mortgage given to the Union Trust Company of July 1, 1887, for that particular tract of land and after the deeds were executed at Portland they were sent to the trustees to be released there. A list of the lands with a full statement of the amounts received was sent with them and in due time they came back and were delivered to the owners, if they could find them. They could not always find them. That is to say that the deeds were so drawn that the Union Trust Company joined in releasing that particular tract.

Whereupon the witness further testified as follows:

Q. Now, what was done, if anything, about observing in any way the Act of April 10, 1869, attempting to modify or limit the price and quantity at which the lands

granted by the Act of July 25, 1866, should be sold, and the provision of the Act of May 4, 1870, upon the same subject, during the time that you had official connection with this land department?

A. I don't think that I was governed at all by the Act, only by instructions from my superior as to what I should do in the office.

Q. And in placing the prices and in estimating the quantities of land which should be sold or included in any contract of sale or deed, did the Company in the administration of this grant while you were in the office or connected with the land department, pay any attention to those statutes?

A. In respect of settlers on railroad land, odd sections, they made a point of selling to them at the appraised value of the land without considering the improvements that there might be on it.

Q. By what appraised value do you mean?

A. By our field agent's, or such information as we could otherwise gather.

Q. Now did that appraised value have any reference to the two dollars and a half an acre?

A. I don't know that it did; not in my instructions.

Q. Now those so-called settlers that might be on an odd section within the limits of the grant, were there many of them in the latter part of your administration or were these principally during the very early part?

A. They were nearly all south of Roseburg, who

had settled on the land prior to the construction and withdrawal of the land south of Roseburg, before my time.

Q. That is to say, when the Company came to the administration of the grant after the withdrawal of the lands and the construction of the road it was found that there were some people actually on odd sections within the limits of the grant that had gone there prior to the withdrawal and that as to these you recognized their applications to purchase and sold it to them at the appraisal prices fixed by your cruisers; is that the way I understand it?

A. That is the fact.

Q. And that is the way that that was handled?

A. That is the fact.

Q. Could you, roughly speaking, give any estimate as to the number of such so-called settlers or cases where persons had gone upon the lands and had made some improvements and were in possession when the Company undertook to administer the grant?

A. I could not give any estimate of amount or number of people. There was a book kept, called Railroad Pre-emptions.

Q. Railroad Pre-emptions?

A. A railroad pre-emption book; and that was the list I referred to. It was written out in the handwriting of our predecessors almost entirely, and when the withdrawals were made so that it made the grant ef-

fective to us we sent them proper notices, and I think that out of the whole amount on that list not over five per cent responded. We sent them regular notices, and then after a length of time we sent them a registered letter stating that if they did not buy within a certain time we should cancel that old filing and sell to anyone else. Some responded and we sold to them at the appraised value after we had examined it. When they answered we sent out some one to look at it, and then from his report we fixed the price.

Q. Were these so-called settlers that were in that situation persons who had entered upon the lands supposing or believing that they were public lands?

A. I could not say.

Q. And had undertaken to make settlements at one hundred and sixty acres or less?

A. I could not say. I know positively, though, that a great many of them were old donation settlers having donations and having other lands adjoining.

Q. Well, had they moved off of their donation claims on to these railroad lands, or simply enclosed them?

A. I can't remember about that.

Q. In making these appraisals and selling these lands to those people, did you, or did you not, estimate the value of any of their improvements and charge them for them, or did you just estimate the value of the land?

A. Estimated the value of the land.

Q. Do you recall whether there was ever any conflict or contest between any of these so-called settlers and the Company with reference to any of these lands?

A. I don't remember now.

Q. Don't you know, as a matter of fact, that there were never any contests with reference to these lands that were settled upon under these circumstances during the time you had charge?

A. Not to my knowledge or remembrance.

Q. There were none to your knowledge?

A. Not to my knowledge or remembrance.

Q. What became of that book which you called the Pre-emption Book, do you know?

A. It was, with all papers, turned over to Mr. Eberlein.

Q. And could you give the Court any idea of about the number of entries, I mean claims or pre-emption claimants approximately that that book would have in it?

A. I could give you approximately the number, but a great many of them were by different parties for the same land, or a portion of the same land overlapping, so that it would not be the actual number of say one hundred and sixty acres each.

Q. Can you give the Court any idea of the probable acreage of land that might have been affected or that was affected by these so-called pre-emption filings, as

you call them?

A. My remembrance is that there were in the neighborhood of four hundred odd filings; but that would not represent one hundred and sixty acres to each, as I say, because what proportion were duplicated or partially duplicated I can't tell.

Q. Now, as I understand you, Mr. Loring, the Company undertook to recognize these people when they were actual settlers on odd sections and to adjust the prices to let them have the lands if they desired them?

A. We did; and we sent notices to every one of them.

Q. Without regard to the $2.50 an acre clause, or without regard to their improvements?

A. Without regard to their improvements or any price except what our field agents placed on it. If we had an answer from a man that we sent to, then we examined the land. If we had no answer, we didn't examine the land.

Q. About what proportion of these pre-emption entries in this book were put there by the predecessor of Mr. Andrews, Mr. I. R. Moores?

A. Nearly all of them. There may have been a few in the first two or three years of Mr. Andrews' and my supervision.

Q. Now what was the policy, if you know, of the Company during this time that you were in the admin-

istration of this grant with reference to encouragement of the sales of these lands to persons who would settle or cultivate the same or establish homes upon them?

A. The preference right was always given to them as against anyone else.

Q. Do you recall, Mr. Loring, about when it was that these lands that were remote from the foothills and remote from the Willamette Valley and from the Rogue River Valley and the Umpqua Valley, and the other agricultural portions of Western Oregon, and that were situated in the Coast Mountains and in the Cascade Mountains, began to have an inquirng or general market value for timber purposes? Do you remember about when that was?

A. No, I don't think I do.

Q. Well, was there a time during your connection with the Company when there began an inquiry for these outlying lands that had hitherto had no market value and the inquiry was on account of their timber values?

A. My impression is it was after 1894, the high-water; scarcely much of anything before that.

Q. Well now, was this inquiry all at once or was it gradual?

A. It was gradual and increased as the Michigan and Wisconsin and Minnesota timber men came out here.

Q. Now that, as you remember, was not earlier than 1894?

A. I think not. There may have been a few scattering cases.

Q. These timber lands about which these inquiries were made and about which I have inquired were not in the valleys that I have mentioned, were they?

A. No.

Q. They were in the Cascade Mountains and in the Coast Mountains, were they not, chiefly?

A. Yes.

Whereupon witness further testified that William H. Mills became connected with the land department about 1888. Andrews consulted Mills, advised and reported to him as to the land sales, prices or anything of that kind. Mills made several trips to Portland after he became officially connected with the administration of the land department of the Oregon and California Railroad Company in 1888, supervising the land department, but witness thinks that Judge Singer came for Mills before Mills came. The land department continued to remain at Portland and to be administered there until the 1st of October, 1904.

Whereupon the witness further testified as follows:

"Q. During all of that time and during the time you were connected with it did you have any knowledge of any land department of the Southern Pacific Com-

pany?

A. I knew that there was a land department in San Francisco, but what it represented I didn't know.

Q. Well, was there any land department of the Southern Pacific Company here?

A. Not that I know of.

Q. And was there any land department maintained by the Southern Pacific Company at Portland?

A. Not in our offices."

Whereupon witness further testified that during the year 1888, respecting the grading of land or the cruising of timber lands after Mills came into connection with it, they put on larger forces of men in cruising the land, that is, one man went out in charge of the grading of land, cruising and getting a description of it; this man usually took from one to three men with him and in some cases had what they called a crew of three or four parties and had a general camp and cook and pack animals and the man in charge did cruising himself and had subordinates under him who did it and made out their own reports, but subject to his instructions. In 1891 and from time to time thereafter, approximately there were four parties in the employ of the Company of two or three men each, these men were instructed to examine certain districts or certain townships or portions of townships. He furnished them with the books to make their reports in and the books came back and were filed, and in a great many instances he or some assistant in the office made tabular lists of the amount of timber of

different varieties on these lands. The lands were nearly always examined for timber. The books referred to were about six inches by four and a half square, about three-quarters of an inch thick. On the left hand side of the page would be lines and the initails northeast, and part way down northwest, and then southeast and then southwest, for the quarter sections, and space enough on that page to write in those descriptions of the land. On the opposite page facing it was shown the quarter sections, subdivided into forty-acre tracts, so that the topography of the country could be put in there and that went all through the book by quarter sections, so that each book covered a whole township. The topography of these lands examined, was shown, on that quarter section diagram, on the opposite page from the writings, they were not put in by gradients. By topography he means showing the lands where the streams ran across the different lines of the forties or through them, and showed, where the man was able to do it, the hatching, as they called it, showing the hills or the valleys, as they might be; and in some instances they had barometers, in most cases they did, and they put down the barometer reading of the elevations of the different points. These books were printed and furnishd by the Company through him in the shape of small octavos of about seventy-two pages, practically. There were 18 sections to a township and four pages to each section and the books were three-quarters of an inch thick. When they were completed by the field men, they were filed away in the Company's office. He does not recall or state how

much of these grants involved in this suit, including the unpatented lands, was cruised in the field and reported upon in this way before he left the Company in October, 1904, but would say that it was considerably more than half. Richard Koehler was the excutive officer of the Oregon and California Railroad Company that resided at Portland at the tme and had general supervision over the land department and was in charge of the operation of the road. His position as related to the Oregon and California Railroad Company was that of second vice-president and manager, as he understood it. Koehler was also a director of the Company.

Whereupon the witness further testified as follows:

Q. What is the fact, Mr. Loring, if you know, as to whether some of these lands in these early days that were sold were sold at a price less than two and a half an acre?

A. I don't think any were in our time, but my remembrance is that there were some few cases showing on the contracts as sold less than that before our time.

Q. You say "our time"; you mean from the time you came into connection with the Company?

A. Prior to 1884.

Q. Yes.

Mr. Townsend: Now you mean subsequent to 1884.

Mr. Fenton: When he said prior to his time he meant prior to 1884.

Q. Were you yourself over a considerable portion of these lands during the time you were connected with the Company in any way?

A. Yes, quite a considerable.

Q. What would be your knowledge as to whether or not these parcels of land that were susceptible of actual settlement or the establishment of homes were large or small tracts contiguous to each other, or whether they were large or small tracts that were widely separated from each other and with other lands between that were either timber or incapable of actual settlement? What is your recollection and knowledge on that subject, based upon your personal knowledge from being over these lands, and based upon your knowledge of these field reports, these books that were returned to you, and the official knowledge that you obtained in that way from the records of the Company?

Mr. Townsend: The question is objected to in so far as it relates to the knowledge of the witness based upon field reports and any other source of information than personal observation, as incompetent, hearsay and irrelevant and immaterial. There is so much evidence concerning the character of this land and its susceptibility to settlement that I have not incumbered the record by interposing an objection every time the subject is touched in the examination of the witnesses, and I therefore ask counsel to stipulate at this point that all testimany heretofore taken or hereafter taken concerning the character of the land and its susceptibility to settlement

shall be received subject to the objection by the Government that it is immaterial and irrelevant, the character of the lands in no way excusing breaches of the condition as to quantity of lands to be sold to any one purchaser or as to the price at which the same should be sold, and the character of the land or its susceptibility to settlement, therefore, being in no way at issue, directly or indirectly, in this case.

Mr. Fenton: It may be understood, and the defendants so stipulate, that the Government may save its objection and exception to all testimony of this character heretofore taken or all that may be taken hereafter, tending to show the character or kind of land, or its capabilities, as stated by counsel.

A. I had occasion to go over the greater part of the lands south of Roseburg during my term as right of way agent. Also after that every year I took two weeks in the mountains hunting, and at a different locality every year, for upwards of fifteen years, and I that way became very conversant with the country and the nature of the land. I can't remember any large tracts which were remote from the immediate valley which would be easily settled and upon which a man could make a living. There were some small places which would make a very good residence and perhaps could make a garden, but he would have to clear the heavy timber to do anything further, and they were not very near together.

Q. Were these parcels that were capable of being occupied for a home site, for a garden and dwelling,

small tracts generally?

A. Almost always.

Q. And were they or not widely separated from each other?

A. Almost invariably.

Q. And were these not chiefly such lands as had been entered upon or claimed by these so-called pre-emption claimants during construction or prior to the completion at that time?

A. I am not referring to those; I am referring to entirely different lands.

Q. Now what is your knowledge as to whether or not the Oregon and California Railroad Company has at all times since 1884 when you came to have knowledge of the Company's affairs, up to October 1st, 1904, when you discontinued your relation, been in the possession of these lands, how did the Company evidence this claim to possession, in what different ways, if you know?

A. Approved selection lists were on file in the office, patents issued by the Government to the Railroad Company were in the office and such patents had been recorded in the various counties in which the land represented in them lay; they issued deeds for lands embraced in the patents and sometimes otherwise; and they paid the taxes on the lands, which was sufficient evidence to me that they owned the land.

Q. What did they do, if anything, about protect-

ing the lands from fires and trespassers and persons who might take possession of them by sending field agents or other persons over them?

A. They had inspections made where it was heard that men were trespassing on the land; agents were, at times, sent to them to see by what right they were there, and, if they had none, to make them either purchase or get off; and I think we had a suit in ejectment to eject one party from the land, if I remember right. We also protected some of the land by stretching a wire all around it, and during the last ten or twelve years of my service we had fire wardens during the hot weather all through the timbered tracts protecting them, making reports monthly and looking after the fires.

Q. What efforts, if any, did the Company make to prevent depredations or destruction or waste of the land by persons who were not entitled to take the timber or trespass upon the same?

A. I can't remember any individual instance, but they attempted to stop anything of the kind that they heard of or could see.

Q. What, if anything, did the company do towards leasing the grazing lands, any lands that were suitable for grazing purposes or purposes of that character, during the time that you were there?

A. There was some leasing of lands during the latter part of my term with the Company, but my remembrance of it is not very distinct, as I had nothing to do

with that. It was all done by instructions from Mr. Andrews personally.

Q. Was this claim of the Company to ownership one that was open and generally known to everybody, if you know?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, and assuming a state of facts not shown to exist, and calling for a conclusion of the witness upon a question of fact and also a question of law as to the character of the so-called claim of ownership.

A. It was so understood through the country, commonly.

Q. What is the fact, if you know, as to whether prior to the completion of the railroad from Roseburg south to the California state line, the timber lands, that is such lands as were chiefly valuable for timber and were not available or susceptible of settlement or the establishment of homes, had any market or other value? That is, the road was completed over the territory I have mentioned in December, 1887. I refer to the time prior to that time as to whether these timber lands so-called had any market value.

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial, and assuming that some of the lands were not susceptible to settlement.

Witness: Will you state in what part of the grant?

Mr. Fenton: Read the question and that will indicate it. I say the timber lands, prior to 1887.

(Last question read.)

A. There was no demand on our office for any of the land as timber land. The only land I ever heard of prior to that date as having a market value was the Government even section lands south of the Siskiyou Mountains and east of the Cascades known as the Jenny Creek district, which was bought up by cash entry, a great deal of it, and some by timber claims for timber.

Q. Was that in the eastern part of Jackson County, Oregon?

A. The southeastern and partly in Klamath.

Q. And in the State of Oregon or in the State of California?

A. Oregon.

Q. Then you did hear that some of these lands were entered under the pre-emption law, I mean the even sections in the southeastern part of Jackson County and the western part of Klamath County, known as the Jenny Creek country?

A. Yes, sir.

Q. And do you know what became of those lands? Did you follow it up?

A. They were bought by speculators.

Q. Timber investors?

A. Yes, sir.

Q. Now were these lands prior to December, 1887, and commonly called timber lands, applied for by any

persons desiring to settle upon them the same so far as you know? I mean to the Company.

A. If they applied for the lands we didn't know that they wanted to settle on them. The application didn't have to so state.

Q. I understand, but from your knowledge of the administration of the grant aren't you able to say whether people applied for any of these timber lands for the purpose of going in there and making homes on them or settling?

A. Not to my knowledge.

Q. As a matter of fact, was there prior to 1887 any movement in these Company lands on the part of the Company or any applicants to purchase for any purpose of any considerable amount?

A. No, except there was a slight movement in the eastern part of Clackamas County.

Q. Clackamas County?

A. Yes, which was nearby here.

Q. That is south of Portland here?

A. And the timber being susceptible, being easily gotten to market; they would go in there and cut that off and could utilize it nearby.

Q. Well, these people that would apply for the purchase of these lands in Clackamas County, were they applying for it or buying it for the timber that was on it, or buying it for the land to make homes?

A. Some of them made homes on it after they cut the timber off, but whether they stayed there any length of time I could not say. They had their homes there at the time, a few of the purchasers. They were purchasers from us.

Q. But you don't know whether these purchasers in a short time sold the lands to mill men and afterwards moved away? You don't know?

A. I have no knowledge of that.

Q. Do you know of your own knowledge of any of these people that bought a quarter section from the Company in the eastern part of Clackamas County that removed all the timber from any of those quarter sections that were timbeerd lands when they bought them?

A. No.

Q. As a matter of fact, a few German settlers bought some of these lands in the eastern part of Clackamas County and made small clearings and lived on these lands and sold timber from these lands to the saw mill men while they were living there?

A. Yes.

Q. Isn't that about the way that that was done in small quantities?

A. To my personal knowledge it was done in some few cases. I was on the ground and saw the places.

Q. Was there any considerable number of those instances, or only a few?

A. Not many.

Q. What do you mean by not many, as many as twenty or thirty, or how many?

A. Well, of the lands which we sold in that locality I should not suppose there was more than five per cent of them that did that.

Q. Five per cent of the sales which the Company made?

A. Yes.

Q. Now what is the fact, Mr. Loring, as to whether or not during all the time you were connected with the Company in its land department the Company did not undertake to sell its lands that it did sell at the best price that it could obtain to anyone who wanted to buy without regard to two and a half an acre, or without regard to the area, other than these cases where these pre-emption people had, as you say, in the early days gone upon some of these lands where the Company preferred them? What is the fact as to how that was done?

A. We always got the best price we could.

Q. And did you, or not, sell more or less than one hundred and sixty acres, as the circumstances seemed favorable to the Company?

A. We sold as much as the man was willing to buy.

Q. Is it or not true that the land sales at prices exceeding two and a half an acre and in quantities exceeding one hundred and sixty acres to a single person were generally unknown and kept secret by the Company? Did the Company maintain, or attempt to maintain,

any secrecy as to its conduct of its business in this respect?

A. I never knew there was any particular secrecy maintained, otherwise than if an outside party who was not purchasing should inquire what land we had sold and how much to any particular person, we refused to give him information, as it was none of his business.

Q. Well, why did you do that?

A. Simply because it was a matter between us and the purchaser.

Q. If you had other lands for sale in the same vicinity and had sold to John Smith, for instance, one eighty in the same section and John Jones would come in and want to buy an eighty alongside of him and should ask you what John Smith paid for the eighty, would you refuse to tell him?

A. I don't remember, but I don't think I should tell him. I should tell him the price of the land we wanted, but it didn't matter—

Q (Interrupting) Now did you give any instructions to these people who took these contracts for the purchase and sale of the property that were payable in installments, that they should keep still and never show their contracts to anybody, or keep it away from the public?

A. No.

Q. Now, if you had been handling this same body of land and had not obtained the title under these acts

of Congress but had bought them yourself without regard to any of the terms of any statute, had a fee simple title, would you have maintained the same policy of telling an inquirer who asked about the price at which somebody else had bought a piece of land, that you could not tell him what it was, or you didn't want to, or you would not tell him? Would you have pursued the same policy with reference to that kind of land as you did with reference to this land grant?

A. I don't know but what I should have.

Q. State to the court whether or not, Mr. Loring, the company, or any of your officers over you and giving you directions, at any time withheld from the public or secreted from the public, as charged in the bill of complaint in this case, in substance, so as to conceal the fact that some of these lands were sold and most of them were sold in excess of two and a half an acre, and some of them in quantities in excess of one hundred and sixty acres?

A. No.

Q. Did the Company, or you, or anyone connected with the Company, withhold from the public records any of these contracts if the parties desired to have them recorded?

A. No.

Mr. Townsend: Were any of these contracts acknowledged?

A. No.

Mr. Townsend: Were any of them entitled to record under the laws of this state?

A. They were recorded, some were.

Witness: I said some were recorded.

Mr. Townsend: Were any of them entitled to record under the laws of this state?

Witness: I don't know."

Whereupon the witness on cross-examination further testified that he has lived in Portland continuously since he severed his connection with the Oregon and California Railroad Company on October 1, 1904, and he was living in Portland during the year 1907 and recalls meeting Mr. Townsend, counsel for the complainant, on August 23, 1907, or about that time and discussed the general subject of his knowledge concerning this land grant with him. The conversation took place in the old grand jury room of the Post Office Building and in the northwest corner thereof at Portland, Oregon. He could not say that Mr. Fulkerson as stenographer took down in short hand the information which witness gave Townsend. His impression is that the stenographer was a woman but he would not say that Mr. Fulkerson was not the person, he does not know. He remembers that the statement was taken down in short hand and that he gave the information from time to time as Mr. Townsend dictated the substance of it to the stenographer in his presence, and that afterwards when the statement was completed, a copy was given to

him for inspection in Mr. Townsend's office and he read it over and corrected it.

Whereupon witness examined "Government's Exhibit 116" and further interrogated in reference thereto testified that Mr. Townsend, after discussing one subject with him would then dictate the substance of it consisting of a few lines or in some instances a paragraph and in that way they went through the subject and Mr. Townsend and he did not talk the entire subject first and then dictate the entire statement afterwards. He corrected Townsend, if the latter made an erroneous statement as he dictated. He did not intend to make any statement to Townsend but intended to assent to what Townsend might make if it was correct. Witness gave Townsend the information first and then Townsend attempted to dictate to the stenographer the information which he gave to Townsend and as Townsend dictated witness corrected it from time to time if Townsend made any error. Referring to this statement "Government's Exhibit 116" witness says that it is not the statement which he made for the reason that he swore to and signed two statements under promise that he would have one of them which was never given to him—this statement is not signed.

Whereupon the witness further testified as follows:

"Q. Now, you have examined this document Government's Exhibit 116; you have read it, have you, Mr. Loring?

A. Yes, sir.

Q. You have just called my attention to one portion of it which you say you do not recollect of having stated. Please underscore that part, and then I will read it into the record. I erased your crosses, but you know where it is.

(The witness here underscored portions of said document, as requested.)

Q. Now you have indicated that on page 5 of this statement the words "and it was the policy of the Company to avoid selecting as long as possible in order to keep them off the tax rolls," and also the words occurring four lines beyond, "and second, to avoid taxes," were not included in the oral statement which you made to me and that you do not recall that it was included in the statement that I dictated?

A. It should not have been, because it was not a fact and I would not have made any such statement unless it were a fact.

Q. So that your recollection is that you did not make those statements and that those expressions and words were not in the statement that you made to me and which I dictated?

A. They were not intended to be.

Q. I say that is your recollection, that they were not?

A. Yes, because I would not have assented to anything of the kind if I had known that it was there.

Q. With that exception do you say that the bal-

ance of the statement is correct, in substance, as the statement that you made to me at that time?

A. As near as I can remember.

Q. You would not now deny any of the balance of the statement?

A. I don't think I should, no.

Mr. Townsend: I now offer—

Witness (interrupting): One minute, Mr. Townsend, further on there, there are some statements relating to mineral examinations and sales which are rather obscure in the wording. I can understand what is meant there, but perhaps someone else might not.

Q. Well, I will give you an opportunity to explain what you meant by that, and that will clear it up. That is not probably material at this time, because not covered by your present examination, but so that you may not be misunderstood you are entitled to explain it, and I will give you an opportunity to, and I don't know any better time than right now. Please indicate the part that you refer to, designating it by page, and make any explanation that you think proper.

A. Mr. Townsend, this is what I referred to. The clause here reads, "It is also a fact that afterwards minerals were discovered, and such lands were sold as mineral lands after being patented." That is not what I would have intended to say. I should have intended to say, "It is also a fact that where mineral lands were discovered such lands were sold as mineral lands after be-

ing patented."

Mr. Townsend: I will state that I had that same understanding.

Witness: That I have just stated?

Mr. Townsend: Yes; and the awkward phraseology of it in this statement was mere carelessness in dictating.

Witness: That is the way it looked to me.

Mr. Townsend: I did not understand that you meant to say that they found where there were mineral lands and then got them patented.

Witness: That is the way it reads there.

Mr. Townsend: Well, it is susceptible, possibly, to that construction.

Witness: Yes.

Mr. Townsend: But that is not the way it was intended.

Witness: No.

Whereupon complainant offered and there was received in evidence "Government's Exhibit 116" to which defendants objected as incompetent, immaterial and irrelevant and not competent particularly by way of impeachment, which exhibit is hereinafter set out and described and made a part of this Statement of Evidence and identified as such.

Whereupon witness further testified that when he

became chief clerk of the Land Department in 1884 he found the records of the office were kept at least in part upon plats and part upon tract books and that some of the patented lands had been appraised and prices had been fixed upon the lands and these prices noted only on the plats. They also included lands not patented but no indemnity lands that had not been patented and they related more to the northerly part of the grant than to the southerly part. He has no personal knowledge of the method pursued by his predecessors in that work arriving at these prices except from the books of reports of field examiners. There were some small packages in the office when he went there but most of these had been rewritten into the book to which he has referred, but there was a great deal more examination and appraisal of the lands and fixing prices after he came into the office than before. When he and Andrews were of the opinion that the price which he found in the office, as to any particular piece of land, was insufficient he raised it to its real market value, according to his judgment. He fixed these prices subject to the approval of Andrews for the first year or two, and after that either Andrews did it or he and Andrews did it jointly, after Andrews moved up into their office. That practice continued as to fixing the price of these railroad lands more or less until he severed his connection on October 1, 1904. Andrews practically did it all the last ten years of their connection. No one supervised Mr. Andrews' work and Mills did not give his personal attention to the fixing of the prices of these lands unless Andrews asked his advice and that

was not as to all of the lands but as to some particular parcel of land, nor did Andrews ever consult anyone else besides Mills to the knowledge of witness. Witness did not to his knowledge consult anyone except Andrews or Mills, at least he has no personal recollection of doing so and never to his knowledge, after July 1, 1887, did the Union Trust Company take any part whatever in fixing the price at which these lands should be sold. The matter was determined, so far as he knew, by the employes of the Railroad Company and the Trust Company's connection with the sales of the land was limited to receiving the money and joining in the deeds.

Whereupon the witness further testified as follows:

"Q. Now, I did not quite understand what you meant by this class of pre-emptioners who were listed in this book which you found, and I think you said perhaps some additions were made to it after you came into the office. Let me ask you rather an involved question, but please follow it closely so that I can see what you mean. Do you mean that this book contained a list of those people who settled upon the land before the filing of the map of definite location and before the withdrawal of the lands of the Department of the Interior?

A. I don't know that they settled on it. They made their filings with us prior to that time. I have stated that I don't know if any of them were actual settlers on the land, in direct-examination.

Q. I understand, but they purported to be and filed some sort of a claim to that effect with you; is that it?

A. Yes.

Q. Now did you have regular blanks for them to make those claims upon, to make those filings?

A. I don't remember.

Q. You don't know whether it was a uniform form of blank, or whether they came in in different forms?

A. I can't remember that. They were all entered in this book in somebody's handwriting but ours; whether they were in regular formal application blanks or otherwise I don't now remember.

Q. Well, the substance of them was that they represented that they had settled upon the lands before the lands had been withdrawn, and that they desired to purchase them from the Railroad Company? Was that the substance of it? Or did they claim some right to purchase?

A. I don't know that they claimed any right. I think that they claimed that they were settlers on the land.

Q. And desired to purchase?

A. And desired to purchase.

Q. When you say that they were given preference to purchase, Mr. Loring, isn't this the fact: That at that time there was not a very large demand for those lands, and they were the most likely purchasers and therefore you were naturally brought into negotiation with them first as to the sale of those lands?

A. I don't know about that. All that southern country from Roseburg south, before the maps of definite location and withdrawal nearly all of that land could have been bought and was bought around there for a dollar and a quarter an acre. It was then offered land and it could be bought cheaply, and they did buy it all through there for that.

Q. You mean from the Government?

A. From the Government. You could go into the Land Office at Roseburg and buy day after day; one person could buy as much as he wanted to.

Q. Well then, you do not remember, do you, of there being any contests or any competition between these so-called settlers who wanted to purchase and persons who did not claim to be settlers?

A. Not at that time.

Q. As a matter of fact, if a person who had not claimed to be a settler had offered you more for the land you would have sold to him, wouldn't you?

A. Not if it had this filing on it. When we commenced selling south of Roseburg, which we didn't do until after the maps of definite location and withdrawal, and I think still later than that, when anyone made an application for land we always referred to this old pre-emption book to see if it conflicted with any of those applications before we sold to the one that was a new applicant.

Q. If the so-called pre-emption claimant, which is

sufficiently accurate for the purpose of our examination here, if he would give the same price as anyone else you gave him preference, did you not?

A. Yes.

Q. Now if he would not give as much as another applicant to purchase, would you still give him the preference?

A. There never was such an instance.

Q. Well, that is what I meant before, that there never was a time when you really had an opportunity to demonstrate whether you would give the settler the preference if somebody else would have offered a greater price. There never was such a time, was there?

A. I don't know of any such instance.

Q. So that you do not mean that you gave these settlers a preference in that sense that you would sell to them for less than you would to anyone else?

A. Not unless they had refused to purchase at the price we offered.

Q. Not unless who had refused?

A. You see, we notified all those parties to purchase when we were ready to sell; all of them; and then afterwards, whether we got replies, or if we did not get replies we sent registered notices to see if we could get answers, and where we got answers we then had the land examined and gave them a price at which we would sell to them. In almost all cases where we had answers

they purchased, and some they didn't. But I don't remember of any case where anyone who was not one of these pre-emptors offered to buy any land that a pre-emptor had applied for and had answered those letters which we sent out.

Q. So that this competition between the settlers and the non-settlers never took place during that time?

A. Not as regards those pre-emptors south of Roseburg.

Q. Now Mr. Loring, speaking generally the Company never to your knowledge made any effort to confine themselves, or, rather, to keep within the restrictions of these two grants as to the sale of the lands? I think you testified on your direct-examination to that effect.

A. In what respect?

Q. As to the sale to actual settlers only in quantities not exceeding one hundred and sixty acres to one purchaser and for a price not exceeding two dollars and a half an acre.

A. Only in relation to these pre-emption claimants I have just lately referred to.

Q. Well, did you understand that that was in obedience to these provisions of the grant?

A. No.

Q. So that that was a mere business policy of the company rather than responsive to these provisions of the grant?

A. That is all; thinking that they were there they had the best right if they had made the improvements which they claimed in their applications, we always gave them the preference right; or any settler at any time when he came up and claimed that he had a claim out in the mountains anywhere and he wanted to buy, we sold to him, rather, as against a large timber purchaser.

Q. Was there ever a time when you refused to sell to anybody that came to purchase and would pay the price that you asked?

A. I don't know any case.

Q. You don't know of a single instance during your twenty years' experience when they ever refused to sell to anybody when they came there and applied to purchase and would pay the price that the Company asked for the land?

A. I haven't any remembrance now, if there was any such.

Q. So that, if a man came into the office and applied to purchase a tract of land and offered to pay your price, he did not have to state whether he was a settler or not in order to negotiate a purchase of the land?

A. No.

Q. Do you not remember the fact to be that after Mr. Mills became land agent, and commencing with the years, speaking generally now, from 1890 to 1894, without confining it to any one of those years but at that

general time, that the Company, acting through its land graders and timber curisers, and particularly Mr. Britt and Mr. Elliott, went out and blocked out timber lands and rather encouraged the sale of the lands to the purchasers of timber lands?

A. I don't know that that was done, no.

Q. It is a fact, is it not, that during all that time the Company was endeavoring to sell all of the lands it could and for the best price it could; that is true, isn't it?

A. Yes.

Q. And when this demand for timber lands began the Company encouraged it and promoted the sale to the timber land buyers, did it not?

A. That is the fact.

Q. And with that end in view they employed experienced timber cruisers, like Mr. Britt and Mr. Elliott, and had them go out and block out timber properties that could be operated as one body and then negotiated sales of those large bodies of timber lands?

A. I don't know that they blocked it out especially. When any of those principal examiners went out they would examine a township, or a certain number of townships, but if some of the land was over a different watershed or different drain to that they were not so particular in examining that as they were the main body, but they would complete the township over that divide if they could do so in that season or in that trip.

Q. Well, that is what I meant. You have ex-

pressed it more clearly than I did in my question; that they would examine the land with reference to the watershed so that they could report the bodies of timber that could be operated together.

A. That was part of their business; what they went for, in any event, anyhow.

Q. Now do you not remember that one of the first large timber sales that was made was in the Mohawk Valley to the Boothe-Kelly Company, where Mr. Britt went out and examined a body of land there in a given watershed and reported it and through his efforts in connection with yours, perhaps, and the other employes of your office, that sale was negotiated to the Boothe-Kelly Company?

A. Well, he didn't examine that for any one particular watershed. He was directed, if I remember right, to examine all the lands in that locality that he could that season. I don't think he did it in one season; I think he took parts of two seasons to examine that tract in there, and later on it took other parties' time to examine the balance that was further back.

Q. Now, after that body of timber was examined and the practicability of operating it as a lumbering concern was determined, do you not remember that negotiations were entered into which resulted in the sale of a large body of land in that vicinity to the Boothe-Kelly Lumber Company?

A. The Boothe-Kelly Lumber Company,—John Kelly applied at the office and went into the matter with

Mr. Andrews and eventually bought a large tract of the land and at another time later on bought some more.

Q. But you do not remember personally whether Mr. Britt at the time he cruised it and examined it had in mind a prospective sale to the Boothe-Kelly people?

A. No, I haven't the slightest idea.

Q. You don't remember? You don't know?

A. Oh, no, I don't know what he had in mind at all.

Q. Now Mr. Loring, your recollection is that the substantial demand for timber lands began in 1894, or about that time?

A. Somewhere after 1894; about that.

Q. There were a few scattering sales, you said, before, but the substantial part of the sales of timber lands in large quantities took place after that?

A. Yes, except this large sale in eastern Multnomah, which was made before our time.

Q. To whom?

A. Neppach, I think.

Q. Oh, yes; and then there was that sale to the Gardiner Mill Company, too, that was made before your time?

A. Yes.

Q. So that down to that time, speaking generally, the conditions of the market was such that there was not much demand for these lands, except by settlers and

in small quantities and for a small price? That is true in a general way, is it not?

A. Yes, generally.

Q. And the greater part of the large sales, that is sales of large quantities to single purchasers and for a price considerably in excess of two dollars and a half an acre, took place after this demand for timber land arose which you describe as having occurred about 1894, or a little afterward?

A. That is correct.

Q. Did you ever hear while you were in the office any discussion of these provisions of the grants relating to the sale of the lands other than the discussion with reference to the Eaton case over here in Clarke county, Washington?

A. No; it would not be discussed except between Mr. Andrews and myself and Mr. Ewald, the old assistant treasurer, and the question did not arise except in that Eaton case.

Q. Down to that time it had never been discussed even between yourselves?

A. Not between Mr. Andrews and myself?

Q. Well, between yourself and anybody else?

A. No.

Q. That is what I meant.

A. Not with me; I hadn't.

Q. Then there was no discussion of it to your knowledge?

A. No.

Q. Now is it not true that there had been no public discussion of the question that came to your knowledge?

A. I haven't any knowledge of that.

Q. What I mean is, you knew of none?

A. I hadn't heard any.

Q. Now you do not know why this subject was not discussed, do you?

A. Not the slightest idea.

Q. Have you any other explanation other than that it had not been brought to the attention of the public?

A. I haven't any knowledge why it wasn't brought to the attention of the public.

Q. But it was not brought to the attention of the public, so far as you know?

A. Not to my knowledge.

Q. Did you find in the office any correspondence with reference to these provisions of the grant and the question whether they were enforcible or not?

A. Not that I know of. If there was I didn't search back through anything. I had enough troubles of my own without looking for back records.

Q. Well, of course in your work you would sometimes have occasion to refer to the back records, but at no time did you run across any correspondence of that

kind, as you now recollect? Is that true?

A. So far as I know. We had a good many papers in the files and correspondence with the Registers and Receivers of the various land offices, and that matter so far as I saw in those files and looking for information relating to different cases, never was touched on.

Q. Did you personally know of these restrictions of the grant at the time that you entered the office?

A. No.

Q. It was some time afterwards that you learned of it yourself?

A. A long time afterwards.

Q. Did you learn of it before the Eaton case?

A. No, it wasn't called to my attention.

Q. Nothing arose then, either publicly here in Oregon or in connection with the discharge of your own duties down there in the office, which called your attention to these provisions of the grants?

A. No.

Whereupon defendants moved to strike out "Government's Exhibit 116" and the whole thereof as incompetent, irrelevant and immaterial and as hearsay and as shown to be a narrative of a past transaction and a good deal of such narrative as hearsay.

Whereupon CHARLES W. EBERLEIN, called as a witness on behalf of defendants, being first duly sworn testified that he resides at San Francisco. Was

appointed acting land agent of the Oregon and California Railroad Company in the fall of 1904, resigned as such June 1, 1908. Before that time he reorganized all the land grants of the Harriman System of roads, Union Pacific, the several grants in Texas, Central Pacific, Southern Pacific—Southern Pacific Railroad Company and Oregon and California Railroad Company. When he refers to the Harriman System of railroads, he alludes to the Union Pacific, Southern Pacific Company and the Southern Pacific Railroad Company, all of these constituent companies. He made a quick trip to the Pacific Coast in 1902, as near as he can place it now, took a glance at things generally in the Portland and San Francisco offices and returned to New York. Later, about the first of January, 1903, he came to Portland and entered into a thorough examination of all the affairs of the Oregon and California Railroad Company land grants and went to California about June 1st and there took charge of land affairs. Subsequent to January 1, 1903, the Oregon and California Railroad Company land grants and Southern Pacific Company land grant and the Central Pacific Railway grant came under his supervision and examination. One of his chief reasons for coming to the coast was to examine into the affairs of these different land grants from a business point of view to see if they could be handled more economically and with greater facility and ease. There were three complete organizations at that time and all of them running on different plans—plans that had been the growth of a great many years. Their books

and their blanks, their method of doing business and methods of accounting were all different. Each land department was handling cash and doing an accounting business, and for general purposes it was thought to be wasteful and cumbersome, difficult to understand by people at a distance. It was for the purpose of consolidation and simplification that the work was done, as much as for anything else. On an examination of records at San Francisco he found complications arising from a divided control. William H. Mills who was land agent of the Central Pacific Railway Company, held the title of land agent of the Oregon and California Railroad Company, and had a set of tract books in the office at San Francisco. George H. Andrews held the title of acting land agent of the Oregon and California Railroad Company and was loaded with the care and all the work practically of the Oregon and California Railroad Company grants. The divided control, the continued interference by Mills in things he did not know anything about, led to a condition, necessarily, of confusion in the records, and it was necessary in order to get any understanding, and particularly to reform the records, to suspend temporarily the business of the department, and that was done on his order, referring to suspension of business, he means the sale of land, which temporary suspension he ordered in the spring of 1903. There was no regular order of withdrawal, he simply told them to hold up sales while they wrote up new tract books. In furtherance of his general plan to reorganize the land department of the Oregon and California

Railroad Company and to ascertain the status of these grants, the financial situation of the sales and the condition of the taxes, he found out by a pretty extended examination made by himself individually, that a great many errors and omissions had taken place in the tract books of the Company and from any data in possession of the road that he could find, it could not be supplied. Deeds had been issued, warranty deeds in some cases, the consideration taken and accepted and the lands afterwards lost. Very often there had been sales, in a number of instances enough to put him on inquiry, lands had been sold before patents had been issued and afterwards patents had been denied. The whole condition was such that any business man reducing his affairs to order, would have called a halt. He devised a tract book that would serve for all land grants, meaning the three land grants, speaking of the Oregon and California grants as one, Southern Pacific Railroad Company grant as another and Central Pacific Railway grant as another. The same form of tract book was devised to meet all these cases, so that one set of men could keep these different books, that there should be system and order in all these land grants. The condition of the Oregon grants—he does not wish to reflect on Mr. Andrews, who is dead—the control of the grant was not in his sole control, he was subject to very vexatious limitations—the condition that had grown up called for a change of system, which should have been made before it was, to take care of complications in title. For instance, the preparation of that general printed map of

June 1, 1907, was started long before that date, that is the date when it was printed, but in the preparation of that map, his recollection is now, that many thousands of donation land claims, about 10,000, are found within the limits of that grant. There were a large number unsettled and complications arising from resurveys. These donation land claims had been taken up during the fifties and their exterior boundaries did not coincide at all times, leaving a small triangular strip of ground in a great many cases—islands in the Willamette River and elsewhere—a large amount of land which, in the condition of these grants down to very recent times, was not considered worth anything; but it was his business to see that every particle of property that belonged to the road should be gathered up and a record made of it. That was the general condition that existed and had he not come upon the ground at that time, some one would have had to take up that work and prosecute it, simply by reason of the changed land conditions, which were then becoming acute, as they have since become acute. It became necessary to practically examine in detail every single section of land that originally fell to the two roads, to follow the title first through the land offices, and they were abstracted and all the data collated and transferred to new tract books. They made examinations, took the plats—United States Surveyor General's plats,—and in a number of cases those plats have been succeeded by others. There have been innumerable changes in these land grants. These donation land claims were necessarily irregular and there were many

thousands of them. There were no quadrangular surveys at the time those lands were taken in Oregon. The donation land claims were not taken according to legal subdivisions. There were no legal sub-divisions at the time they were taken. The lands were settled upon as the records apparently indicate and enclosures made, or temporary surveys made, by settlers under the Donation Act, and afterwards surveys were run out by the Surveyor General to conform to the notification made by the donation claimant. In doing so, donation land claims were taken so as to include the best available land at the time, and they would run the lines up the little valleys of small streams. At the time he took charge of the lands of the Oregon and California Railroad Company they were not all surveyed, a large body is unsurveyed. Speaking in a general way without reference to particular detail and referring to "Defendants' Exhibit 259," that is a fair representation of the record title as reflected by the records of the Surveyor General's office and of the United States Land Offices and in checking up the lands that are covered by the act of July 25, 1866, and the act of May 4, 1870, he found that it required, and became necessary in his judgment, to go through all of these public records. He thinks the records of the county were examined at that time for taxes and that they relied upon the deed records of the Company. They did not examine for deeds until at a subsequent time. The work of reorganization and checking up, was begun in the late spring of 1903 and was practically completed in the fall of 1904. The work

was pushed to the utmost. Worked as many people as they could. The work was jammed through pretty hard. It was desirable, in his opinion, that there should be a careful examination of the lands lying along the railroad lines by operating officials and traffic officials, to determine what lands the railroad company should reserve for its own operating and traffic purposes. As to that, he means that it was simply good business that at this time the operating officials should say what lands they were going to need for extension of yards, for water supply for engine, for fuel supply. At that time engines were burning wood on some of these divisions south. As to traffic, his experience on the Union Pacific and in the east had shown him that with the filling up of the country, the extension of traffic would call for grounds at central shipping points for stockyards and things of that kind. He turned over to the operating and traffic officials a list of lands which he had prepared co-ordinately with this other work, lands classified by section, township and range and also by counties, and they entered opposite the specific tracts what the land was to be reserved for and such reservations were entered on the tract book. In the fall of 1904 the work had practically been finished, excepting some general cleaning up, and he removed all the records, files and property of the land department to San Francisco and consolidated it there with the Southern Pacific Railroad Company. He does not mean consolidation in a legal sense of the term, but simpy it was kept in the same office, under his supervision as land officer, and the books and records of the

two grants, that is the Southern Pacific Railroad grant and these two grants of the Oregon and California Railroad Company, were kept by the same set of men and the records were kept separately. There could be no consolidation of records. He removed the physical custody of these records of the Oregon and California Railroad Company appertaining to the land department to the same set of offices in which he was also placing the records of the Southern Pacific Railroad Company, having charge of the grants in California, and he allowed the same staff of clerks to work upon the respective books of these land departments. Everything was kept entirely separate. The blanks and correspondence of the Oregon and California Railroad Company were even printed on green paper to distinguish at all times and keep from confusion. The Southern Pacific was on yellow paper. The reservation of 100,000 acres of timber lands for the future use of the Companies, in the operation of the Oregon and California railroad was made around near the railroad, convenient to transportation, such as for the manufacture of ties and bridge timbers and things of that kind, for the purpose of protecting the railroad against any possible contingency that might arise and to prevent the railroad, and incidentally the public, from extortion on the part of large timber interests; and that was afterwards found to be most necessary. These 100,000 acres were down around the Umpqua River, he cannot give the exact boundaries, though the lands were reserved and the plats thereof were all filed in the New York office when he left there.

Whereupon the witness further testified as follows:

Q. Now, what, if anything, did you do after you had thus re-established the records according to your plans, re-established the tract books according to your plans, and removed the offices of the land department of the Oregon and California Railroad Company to San Francisco, towards the restoration of the lands to sale in the usual and ordinary way, and why was that not consummated prior to April 18, 1906, when the fire in San Francisco occurred? State fully and generally, in your own way.

A. I notified my superiors in 1904, I think before I took the property, the books and records away from Portland, that we were ready; that the affairs of these two grants had been thoroughly reorganized and placed in a condition, a statement of the condition of the grants, the acres patented and unsold, and unpatented and unsurveyed, the whole thing was sent on, with the information that we were—I was ready at least, to proceed with the sales, or turn the grants over to a successor, which was the agreement with me when I consented to take the acting land agency, that I was to be relieved just as soon as this thing could be brought about. Now, as to the rest of your inquiry, in the fall of that year, I think it was the winter of that year 1904-5, before the first of January, though, because I fix the first of January by a forestry congress held in Washington, to which I was the delegate from the Southern Pacific Railroad Company. I was there at that time, so it was before

that time that I fix it. I was called to Portland—I don't know now just how or why, or whether it was on a request from Mr. Cotton—but at any rate Mr. Cotton surprised me by telling me that he had understood that I had given out that the road was going to resume sales, and was ready to, and I told him that I had, and as far as I knew, there was no reason why they should not go on at that time. "Well," he said, "you can't do it. The taxes have not been paid for years on some of it, and there are tax complications there. The records are in such shape that you could not go on and sell land, because you don't know but what a large part of this grant has been lost."

Q. Who was and is Mr. Cotton?

A. W. W. Cotton is, I think, he was in those days the attorney of the Oregon Railroad and Navigation Company.

Q. Was he or not also the adviser of the general officers that were in charge of the operation of these railroads in Oregon?

A. Why, as I understood it, you were the counsel and adviser for the Southern Pacific lines in Oregon; but as an explanation, as near as I can place it, how Mr. Cotton came to interest himself in this matter, was that there had been about that time, I think before that time a change in the tax management of these properties, both the O. R. & N. and the Southern Pacific lines in Oregon, and Mr. Morrow, J. W. Morrow, I think his name is—

Q. Yes.

A. Was appointed the tax agent or commissioner of all of these properties, the Harriman properties in Oregon.

Q. Isn't it a fact, Mr. Eberlein, that J. W. Morrow, who had been the tax agent of the O.-W. R. & N. Company, or the O. R. and N. Company it was then, was placed in charge of the tax matters of the Oregon and California Railroad Company and the Southern Pacific lines in Oregon, as a joint officer?

A. Yes, sir.

Q. And that Mr. Cotton was the legal adviser of the O. R. & N. Company, and in that way came into official relation with the tax department, or with the officer handling the tax department of the Oregon and California Railroad Company and its properties in Oregon?

A. Mr. Morrow, as I recollect, I understood had for years, or for some time at least, been the tax officer of the Oregon Railroad and Navigation Company, reporting directly to Mr. Cotton, and that when a change was made in the tax matters of the Southern Pacific lines his jurisdiction was extended to cover, and he still reported to Mr. Cotton.

Q. Now, then, at that point, after you had received this advice from Mr. Cotton with reference to the state of the tax affairs, tax matters, or tax titles affecting these land grants in Oregon, what, if anything, did you do towards investigating this matter, and what attorneys

did you employ, and for how long did this work continue?

A. The tax situation had not been considered by me as important, as I understood that the taxes had been paid on all patented lands. I had, in entering the data, looked into that matter somewhat, but not at all carefully, because I assumed that that had been done. Mr. Cotton informed me that that condition was very bad; that undoubtedly a lot of lands had been lost. How Mr. Cotton knew I never have been informed. At his request I had employed his uncle, who is since dead, to assist in this reorganization here, and he was representing me while I was necessarily absent below, as I was a great deal of the time.

Q. You refer to Mr. William Wick?

A. W. W. Wick. Now, Mr. Cotton made it appear to me that the situation was very bad.

Q. What was the title of Mr. Wick's employment? What was he called?

A. Oh, he was a clerk; that was all. He had no title at all.

Q. But when you were absent, he was your representative?

A. He was here, not in charge, but simply in the reorganization of the records doing the record work and following up these matters of title in the different offices, and collating the stuff and putting it in shape that it might be entered in the tract books. And Mr. Cotton

then advised me that it would be necessary, by reason of the peculiarity, as I recollect his advice, the peculiarity in the laws of Oregon, that there should be an examination of the tax records of all the assessors' offices in every county in which the grant lay in Oregon, for a period of fifteen years, as to each tract of land, and he advised the appointment of W. C. Bristol to take charge of that, and to organize a force to go on and make this examination, and that was done.

Q. Now, this reference to the tax laws of Oregon, at that time do you recall whether it referred to the fact, that under the laws of Oregon, then and now, lands were required to be assessed in legal subdivisions, or by proper descriptions, and that they might be assessed to the owner, if known, or if not known, to an unknown owner?

A. Yes, sir. We found that there was a large amount of land assessed to unknown owner. Some of it had gotten away.

Q. How long were your attorneys and tax agents and special employes in that work, engaged in this work of going through the assessment rolls and the tax matters for the purpose of removing any delinquent tax sales, or clearing up the title that might be involved by reason of anything of that kind over the period of fifteen years?

A. I can only speak for the work that was done under my own jurisdiction, for which I was responsible.

Q. Well, that is what I mean.

A. That investigation was a very long-winded affair—necessarily so by reason of the condition of tax records in some of these outlying counties, which was exceedingly bad, and it took over a year. My report, as I refresh my recollection from some correspondence I saved from the fire, shows that I turned over the results of that investigation to Mr. O'Brien on, I believe, the 30th of March, 1906. I think it appears in there, just prior to the fire, with a request that he should take it up and place it in the hands of attorneys to be cleaned up.

Q. Now, did you also cause to be employed Angell and Fisher, attorneys and searchers of records, and competent men of this city, in connection with this work?

A. Yes, sir. Angell and Fisher were employed by me, and they reported first to Mr. Bristol; and afterwards Mr. Bristol dropped out, and they reported to me as long as that investigation was in effect.

Q. Now, as a matter of fact, Mr. Eberlein, after your attorneys and your special representatives had made this investigation of these tax matters, you found that there wasn't very much trouble with the lands on account of tax matters, didn't you?

A. I paid very little attention to it after that; it dragged along, as I was informed from time to time—it dragged along for several years in the hands of Mr. Cotton, through a man by the name of Kollock, I believe.

Q. J. K. Kollock?

A. Yes. But the final outcome of it all was that a very small amount of land—some land was lost by that, and there was a considerable body of land that was subject to small—oh, unpaid taxes in some cases, tax title which were redeemed, and all that; but take it altogether, for the amount of time involved and the amount of money spent, if we had known what the land was, we would very much better have let it go.

Q. Now, as the result of that investigation, you found that, on account of the peculiar assessment laws, that is, assessing lands perhaps to a man who had purchased the lands under contract—

A. Yes, that is what I mean.

Q. And he had neglected to pay the taxes as required by his contract, that these lands had become delinquent, and that when the contract was forfeited, the company had overlooked the payment of taxes until probably tax sales had resulted, which required redemption? You found some instances of that kind, didn't you?

A. Oh, there were a number of instances of that kind. There were also instances of where land was deeded and the company continued to pay taxes.

Q. That is to say, where lands had been deeded away by the company, and the company's tax list had included those in a few instances, and they were being carried on the tax roll of the company?

A. Yes. Things had been run in that respect very

lax in the department. For instance, the land agent would send out a list to a county, a list of lands, and ask for extension of the current taxes, and the county officer in charge would find himself too busy, or otherwise engaged, to comply, and he would simply send back the list with a memorandum of the total amount; and instead of following the thing up, Mr.Andrews, who was then in charge, and a good man, but inclined to give everybody the benefit of the doubt, in his good intentions, he would simply make up his voucher for the full amount, and send it down; and so we found, in a number of cases, they had the receipt for taxes in a county for a year that didn't specify a single description of land and in that case there were sales made out of that surreptitiously; and by your advice, I know I made a redemption in a case of that kind.

Q. You refer to the Garbutt matter?

A. The Garbutt matter?

Q. Over in Curry County?

A. Yes.

Q. We redeemed in that case by paying the penalty and the purchase price and interest and a small consideration above, did we not?

A. Yes, sir. We paid enough.

Q. Now, didn't you find also this situation: that many times, or in some instances, if not many, the county assessors would assess the entire reported area of lands owned by the company in his county, in bulk?

A. Yes.

Q. As so many acres, say 200,000 acres, and it would be assessed in bulk, without any particular description of any particular quarter section on the assessment roll, and the taxes would be charged against the entire valuation, and when the company came to pay it, it paid it in bulk? You found that in some instances?

A. That followed. There was every kind of a variation of unbusinesslike methods that appeared in that investigation.

Q. That was the result of the improper assessment by the assessor, in the first instance?

A. Yes, sir. It seemed to be impossible to control the situation.

Q. In the later years, however, the lands were carefully listed and assessed by legal subdivisions, as I understand?

A. Oh, yes, I think so. It took some time to get them into businesslike shape.

Q. Now, you say that you reported the completion of this matter about March?

A. May I refer to this correspondence here to clear up that date?

Q. Well, just refresh your memory by looking at that correspondence. About March, 1906?

A. Well, I find that this was being done all through March. For instance, I find here a letter to Mr. J.

Kruttschnitt, who was director of maintenance and operation, advising him that I had sent to Mr. O'Brien, the Vice-President of the Oregon and California Railroad Company, a list of Congressional lands in Douglas County, Oregon, which has been corrected to date. That is the list I told you I had made contemporaneously with that map.

Q. That was reservation for railroad purposes?

A. No—well, that as for general purposes. In this case I sent it to him showing the tax situation. It was all printed, and we had a large number of copies, and we sent them out. I have also sent him a summary of the tax investigation, for use of the tax commissioners and attorneys employed to clear the company's title to these lands from tax complication.

Q. What is the date of that letter?

A. That is March 30, 1906. There are other letters, though, that appear a little earlier than that. They were sent in as fast as they were completed, each county by itself. Here is one in Lincoln and Washington counties. Here is a letter to Mr. O'Brien of January 26, 1906. There is one for Multnomah and Marion Counties, of January 10, 1906. I think the last went in about the 30th of March, 1906. We kept them going. There are some in December, 1905—December 26, 1905; December 13—and some even earlier than that. Anyhow, it shows that the utmost dispatch was had, and nothing was held up.

Q. Now, Mr. Eberlein, before this tax investiga-

tion was entered upon in this specific and general way, at the suggestion of Mr. Cotton, by reason of his belief that the records were in such shape as to justify the detailed tax search that you have referred to, had you taken any steps to announce the resumption of sale of these lands that were to be sold, and, if so, what notice or publication did you cause to be made?

A. Why, the first intimation I gave out that they would be for sale was in 1904.

Q. Yes, I understand, but you afterwards, in a talk with Mr. Cotton, found that you should make search. Now, did you give any notice of intention to resume sale in 1904, in the latter part of that year?

A. Yes, sir.

Q. What did you do in that respect?

A. Mr. A. L. Craig was at that time the general passenger agent of the Oregon Railroad and Navigation Company. Mr. Craig was interested in the settlement, of course, of all this territory, and we had frequent talks about the condition, and he was urging very strongly that lands that could be settled upon should be thrown open to settlement, and while there was very little land in this grant that would be available, still any movement at all would probably stimulate people to come in and buy land here, and settle.

Q. You mean lands outside of the grant?

A. Oh, yes, outside of the grant, in private ownership. So in 1904, right in that winter, that fall rather,

I inserted a page advertisement in a pamphlet in which this matter was called attention to.

Q. Do you remember what that pamphlet was or what its uses were?

A. Well, it was one of these highly colored flamboyant pieces of railroad literature. I don't remmeber its title. Lurid colors and lots of adjectives, I remember, that is about all.

Q. Sending out to eastern people?

A. Yes, all over, for general distribution everywhere.

Q. Advertising the promotion of immigration, etc., in this territory?

A. In this territory.

Q. That was published about what time?

A. In the fall of 1904 is my recollection.

Q. Then after this tax matter went under way, did you take any steps to discontinue your advertisements to sell?

A. Well, that had gone in. Mr. Cotton called my attention to that, and considered it a very grave mistake, and it did embarrrass me a great deal. There was no definite offer made in it, but it was calling attention to the conditions here, and that the sales would be resumed in the near future. Of course, the resumption of sales rested upon orders from elsewhere.

Q. Now, what happened shortly after March 30,

1906, when you say you had completed practically your reports on tax matters?

A. On the 18th of April, 1906, the earthquake and fire in San Francisco occurred, which destroyed everything that the land department owned in the way of records and correspondence. The only correspondence saved, I think, was about ten boxes of files like those you see here, partially charred and of very little value.

Q. Now, what happened to the tract books that you had prepared?

A. They were destroyed—had to be entirely renewed.

Q. What other records were destroyed, now? Just state, in a general way, what other records were destroyed belonging to the operation of the land department of the Oregon and California Railroad Company.

A. The tract books, deed records, sales records—every book and scrap of paper, the whole of its contracts, I think, none of the outstanding contracts, executory contracts which the company held at that time numbering several hundred—they were entirely destroyed, and the record had to be renewed.

Q. I will ask you to state, Mr. Eberlein, whether or not the company, by its acting land agent, Mr. Andrews, and his predecessors in office, and you as his successor, kept large leather bound books, in which were extended the duplicate of every executory contract made by the company, and upon which a marginal reference was made to assignments that might be made from time

to time, and whether, when you came into the possession of these records, you did not find several volumes of those which had been kept in due course, showing the duplicate contract retained by the company of all these sales?

A. You mean the record of it?

Q. Yes.

A. Yes, sir, there were such records. It was part of the record of the office to keep a sales record.

Q. Do you remember how many volumes there were from the earliest date down to the time you took charge in October, 1904?

A. No; but I remember that there were about seven thousand contracts issued up to that time.

Q. Do you recall the fact that one volume of these records, or two of them, were used and produced in court, and went to the supreme court of the state of Oregon in the case of Neppach against the Oregon and California Railroad Company, and that this large volume was filed as an exhibit in that cause, and was in the supreme court of the state of Oregon, and that it contained several hundred of these contracts at the time this Neppach contract was recorded and entered.

A. I remember very well, now that you recall it to my mind, of that record being taken from the office to be introduced as testimony, as an exhibit in that Neppach case.

Q. And do you recall that Mr. O. F. Paxton, who

was the attorney for Mr. Neppach at that time, had access to all these records, and that this volume was in the circuit court here, and also in the supreme court of the state of Oregon, and afterwards returned to you with the file marks of J. J. Murphy, Clerk, by A. S. Benson?

A. I remember the return and the file marks very well.

Q. Now, didn't that contract book contain several hundred contracts in addition to the old Neppach contract upon which that suit was based?

A. Oh, yes.

Q. Now, what became of all those record books?

A. Every record book of every description that was in the department on the 17th of April, 1906, was destroyed. That is my information in regard to it, or so badly charred as to be of no value at all as a record.

Q. Well, now, how did you restore these contracts and get any trace of them, and how long a time and what amount of work was it to do that? What difficulties did you surmount?

A. That makes the back of my head ache to think about it.

Q. State in your own way.

A. We found ourselves, the week following the fire, without any records, without any means of doing business. The contracts were gone. It was not expected that they would be recorded. The company

never recorded duplicate originals, unless it were for the purpose of a suit, or something of that kind.

Q. Executory contracts for the sale of land in this state are not required to be put on record, are they?

A. No, so I understand.

Q. Never have been?

A. Never have been. Nor were they in California.

Q. Recurring again to the employment of Mr. W. C. Bristol, was he not also employed to take over from my office at that time the collection and adjustment of delinquent contracts upon which there had been payments in default for a number of years?

A. Oh, yes—tried to make Billy earn his pay.

Q. Do you recall—in fairness to Mr. Cotton and to yourself—the fact that in September, 1904, Mr. Fenton was seriously ill?

A. I remember it very well.

Q. And that he was temporarily absent from his office for a period of about two months?

A. Yes, sir.

Q. And do you recall the fact that he did not actively resume business until about the first of May, 1905?

A. Well, I remember that he was absent for some time, and was reported seriously ill.

Q. And was absent by permission of his superior officers?

A. Oh, yes.

Q. Do you recall also the fact that Mr. A. L. Craig, who was general passenger agent of the Oregon Railway and Navigation Company, was the joint general passenger agent of the Southern Pacific line in Oregon at that time?

A. Yes, sir.

Q. Now just state to the court in your own way, in a general way, how you succeeded, if you did succeed, in finally reproducing the record evidence, or some record evidence, of some records upon which the company could safely proceed to administer these grants, and collect its outstanding executory contracts, and proceed with the performance of the same by making deeds from time to time as they were discharged or paid.

A. As I have already testified, in the making of these new tract books and records, I at the same time made up a classified list of all the lands of the company in these grants, and that list, in the case of the Oregon and California Railroad Company, was printed on green paper, long sheets, classified by section, town and range, and also by counties. It made a pile of paper comething like three feet high. That list I had sent to Mr. O'Brien to assist him, to give him information as he might want it of what lands the company owned.

Q. He was then vice-president of the Oregon and California Railroad Company?

A. He was then vice-president, and that list was

classified as to patented, unpatented, selected, unselected, unsurveyed lands, and was a transcript of the books, at the time that it was made. It of course changed every day. In the office that list was kept even with the record every day, changes made, as they were made in the record they were also made in this list; but of course in the case of a list being sent, as this was to Mr. O'Brien, no change was possible. He was not advised when we made a deed or took patent, or lost land, or anything of that kind. That list also had a classification by counties, and by section, town and range, of all sold lands subject to unpaid contracts, and opposite, as I recollect it, the description the number of the contract was given, but that was all the data there was. Now, when the fire came along, Mr. O'Brien notified me that he had the list.

Q. Where was Mr. O'Brien's office at that time?

A. Here in Portland.

Q. Had been all the time?

A. Had been all the time. And to that one circumstance alone, we owe that we were able to begin operations within six months from the time that the fire took place, and give notice of the sale of such lands as we were able to sell at that time, which would be agricultural or grazing lands. We could not sell timber land, because our cruising reports for about forty years had been entirely wiped out by the fire.

Q. Now, these contract numbers shown on this list would give you, you say, the number of the contract.

Would it also give you the name of the vendee?

A. Gave no other information except the description of the land covered and number of the contract. Of course, if we had anticipated any such thing as occurred, why, we would have put more information, but all we could do in that case was to examine the records of the counties. The examination was made—had to be made again of the United States Land Office records. They had to be abstracted again so as to show the change of land between the date of this list and the date of the fire, at the time the examination was made, to show the changes in regard to patent or loss of land, or other complication—governmental complication. Then we had to examine every recorder's office in every county in which any of the grant lay, in Washington and Oregon; and then we also examined the deed records and the contract records for every year since 1866 in all those counties. In that way we were able to supply a lot of missing information. For instance, we reorganized or restored our deed record for one thing, but it so happened that, in a very large number of instances, the deeds given in years past had not been recorded. In a great many cases it arose from ignorance, and in a great many cases from intention.

Q. You mean people who had obtained deeds from the company would retain them off the records?

A. Keep them off the records, yes. And from the currency that was given to the catastrophe that had happened to us, a search began to be made by the

people among their papers, and very often they found that they had mislaid them, very often they had been lost, and there was an immediate demand, and a very insistent one, for deeds, which we were wholly unable to act upon, and it took months to make these examinations of county records. In that way we found that in some cases an inconsiderable number, but still it all helped, that the vendees had recorded contracts, which, of course, were not entitled to record, but still had been accepted and recorded. Well, that helped us somewhat. But the struggle to restore missing information took us all over the United States and down into Canada, and we had to send everywhere. The people holding contracts, in the vast majority of instances were very kind and agreeable, and sent their contracts in.

Q. Allowed you to make copies of them?

A. To allow us to make copies of them and restore our records. And only in a very few instances was any attempt made to take advantage of our condition. In some cases it became known that we had lost our duplicate contracts, and the vendees holding them committed the offense of altering the provisions in some cases—very few, though.

Q. Well, in fairness to the public generally, you would say that there were only a few rascals like that?

A. But very few. The public generally responded, and did everything they could to assist us.

Q. Now, about how many would you say were there of those unrecorded deeds, which happened to go upon

the record after the fire, just roughly speaking?

A. I couldn't make a guess.

Q. You recall there were some instances?

A. Oh, there were a number of instances; they kept cropping up for several years—demands for deeds on the claim that they had lost.

Q. I understand, but you spoke about some deeds being in existence after the fire, in the custody of the grantee after the fire, that found their way to the record. Now, there were not very many, were there, of that kind?

A. I cannot say. Of course, they would slip their deeds on the records of the county where they were and that would not become known to us, nor would we be posted. We probably caught them when we made our abstracts from the county records.

Q. Now, as to the deeds which were lost, and for which they desired new deeds, in those instances, where the grantee made a bona fide showing and submitted an abstract of title showing that he was entitled to a new deed, did the company regularly execute deeds of further assurance?

A. Why, that is a matter that I left entirely in the hands of the law department for the grant, and took the advice of the attorneys. In those cases they satisfied themselves as to the bona fide character of the applicant, and as to whether he was entitled or not. In some cases I understand the suggestion was made of a friendly

action, and an order of court that would protect the company.

Q. Yes, in some instances they brought a suit to restore their title or establish the existence of the muniment of title that had been lost, and in other instances the company made quitclaim deeds.

A. I believe at the time I left all connection with the land grant in 1908, I think in all the grants that were under my control something like 20 tracts of land remained which we had been unable to discover the grantee.

Q. Yes, to discover who was the grantee.

A. Yes, who was the grantee.

Q. Now, this brings the matter down to what period of time? About when did you succeed in getting your records restored, and to be in condition for a second resumption of sales of these lands?

A. There was an immediate and fierce onslaught on the office before the remains of the city was cool, for a sale of lands—timber lands.

Q. By whom were these applications? What class of lands were applied for? Who were the people that were wanting these lands?

A. Well, the Booth-Kelly Company was extremely active and insistent. Weyerhauser Timber Company wanted land right off quick.

Q. Well, were these people that were applicants

for the purchase of lands intending settlers, or were they timber investors?

A. Oh, just investors in timber—speculators.

Q. Now, when were you, with your records thus destroyed and finally restored, in condtiion to proceed with sales in the regular and orderly course, outside of timber lands, I will say, if there were any such lands?

A. The fall of that year the rumpus and noise had grown to such an extent—

Q. 1906?

A. 1906, the summer of that year, that in the latter part of August, I think, I notified my superiors that we could act upon such applications, as we had information or could get it quickly, and we also gave notice at that time by circulars to all that we would sell agricultural lands such as we might have, or grazing land, just as soon as the application could be examined; and as to timber land we were not in a position to sell timber land until such time as we could restore the necessary data upon which to act intelligently, and that was being done as quickly as possible.

Q. You refer to the cruising of the timber lands?

A. Yes, sir.

Q. Now, pursuant to this notice that you were prepared to receive applications from persons desiring to purchase any of such agricultural lands or grazing lands as the company might have, and that upon investigation of these tracts, if they were found to be such, that a price

would be given, could you say to the court approximately about how many such bona fide applications were received and acted upon before you left the company's service in 1908?

A. I don't remember any that were acted upon.

Q. I mean that were received of this class that intended to apply for agricultural or grazing lands, excluding now timber.

A. I don't remember any.

Q. Now, isn't it true, or is it true, Mr. Eberlein, that whatever applications were made for the purchase of lands, were applications to purchase lands that were chiefly valuable for timber, or in some instances, in Jackson and Josephine counties, lands that were thought to contain mineral prospects, by miners and others of that type?

A. On examination of these so-called agricultural applications, they were found to be in cases mineral; in almost all cases—in the vast majority of cases, simply timber, and in the remainder of the cases water power.

Q. Now, isn't it true, or is it true, Mr. Eberlein—you may state in your own way—that the agitation for a forced sale, or to force this land on to the market, began in the preliminary campaign for the election of the legislative assembly of 1907, which took place the first Monday in June, 1906?

A. Yes, sir, it began in the summer of 1906, and the fact that we were helpless was disregarded, and

brutally so, by a great many people down in these valleys.

Q. Do you recall the fact that in Jackson county, the campaign in that county was made by the two political parties, from which Senator Mulit was a state senator who afterwards introduced and secured passage of senate joint memorial 3 in the legislative assembly of 1907; that the canvass in that county took the form of an agitation against the Oregon and California Railroad Company because it would not restore to sale these so-called agricultural lands—mineral lands in Jackson county? Do you recall that agitation?

A. I recall that agitation you refer to, and I also recall the fact that this agitation was made the basis of a congressional campaign—as to whether that year or later, I do not know—in which one Hawley campaigned on the basis of this agitation.

Q. Do you remember that there was some action obtained from chambers of commerce and commercial bodies, and other influential bodies, calculated to—calling upon the legislative assembly or congress to take action?

A. As near as I could get at the facts, and I believe they are true, the threats that emanated from particularly Booth-Kelly Lumber Company that we would be forced to let go, and all that sort of thing—the agitation started, I believe, at Eugene, the headquarters of that concern, and was regularly worked up among these commercial bodies all down through the valley, and I remember having correspondence with a man by the

name of Eggleston, I believe, who was secretary of the Rogue River Valley something or other association, demanding immediate restoration to sale of all the lands in the grant, and I simply wrote him, and gave him the exact facts and conditions as they were.

Q. Do you remember that Mr. A. C. Dixon, represting the Booth-Kelly Lumber Company, was an active promoter of this agitation in 1906 and 1907?

A. Yes, sir. He also came to San Francisco and made demands to see records and all such things that did not exist at that time, and did a good deal of talking. He was also present at the hearing of the land committee of the house of representatives at Washington, held, I think, in 1907, and was present there with Mr. John W. Blodgett and Arthur C. Hill.

Q. Who were they?

A. They were officers and large owners of the Booth-Kelly Lumber Company, and Mr. Dixon was there representing, and did a great deal of talking, and as I recollect it admitted openly before the committee of the house that his concern had taken the lead, and had secured and fomented this agitation, and that was the understanding conveyed by him to that committee and all before it.

Q. He made a statement, did he not, before the committee that was published as an official document?

A. Yes.

Q. Now, who were the Booth-Kelly Lumber Com-

pany? That is, what interest had they in all this matter?

A. The Booth-Kelly Lumber Company, when I first began to examine into the affairs of this land grant, were very active in the manufacture of lumber, and they had mills—large mills, I believe, at Eugene and at Springfield, and Wendling, I believe at that time. I may be mistaken as to just those names, but that is my recollection. They were also acquiring very largely timber down through their section of the country, and they had acquired, as I discovered at that time, directly from the railroad company about 70,000 acres.

Q. That is from the Oregon and California Railroad Company?

A. Yes, sir. The reason for my examination into their affairs particularly was the bitter complaints that were made by other large timber buyers and owners, of the favoritism which they claimed was extended by the railroad company to Booth-Kelly Lumber Company. They certainly did have some exceedingly favorable contracts. They bought land with timber on time, with very little cash payment, and at such prices which even at that time created a credit upon which they could raise money. All those things were known all throughout the lumbering circles on this coast and in the East, and many complaints were made in regard to it; and it is their large holdings, and their determination to get the inside track and keep it (as they had it at that time so far as railroad lands were concerned) that made them very insistent, and so much so that they rather assumed

to dictate the affairs of the Land Department.

Q. Did they or did they not insist to you upon sales of further lands to them, to fill out their holdings in Lane County and elsewhere?

A. Yes. Their purchases from the railroad company had been made in such a way that I thought it necessary to call the attention of my superiors in New York to the system which they had pursued. For instance, in sales of 20,000 acres, they would go through three townships, and take a string of forties down through the center, in some cases, of a section, take a piece off another section, and so on down through the entire purchase, and in that way they beat down the value of the remaining timber, and they then came in immediately on the heels of it, and would say, "Now, here is the rest of the timber in these townships, and nobody will want it, nobody can use it but ourselves. We will give you $2.00, or some such price, an acre for it."

Q. Were those applications favorably entertained by you?

A. No, sir. I believed that the Booth-Kelly Lumber Company had all the timber at that time that was necessary to a profitable operation for a great many years to come, and that disposing to them would only foster a monopoly, and that in the end it would result in curtailment of product, and it would be an injury both to the state and the railroad.

Q. There has been some complaint made here that the Oregon and California Railroad Company, through

the dominance of the Southern Pacific Company or otherwise, had created a land monopoly here, and that this land monopoly had interfered with the development of Western Oregon. Now, referring to the timber lands, Mr. Eberlein, I would like you to state to the court, from your knowledge and experience and observation, and from actual transactions, why it was desirable and necessary for this company to reserve about 100,000 acres of these timber lands for its own use, for ties, bridge timbers, etc.?

A. I believed that the railroad company should protect itself while it could in regard to necessary supplies of timbers and ties. It had this considerable body of timber, which was fast disappearing from its ownership, and that I could see, from having run out the purchases that, for instance, the Booth-Kelly Lumber Company had made, and the Hammond & Winton purchases, that were afterwards crystalllized under the Weyerhauser interest and some other interests that I could mention, and having followed the thing out through county records to see whether these same large interests were not consolidating the even numbered sections in their holdings, I found that to be the case. That was my own investigation, and in that way it appeared to me that the timber of Western Oregon was gradually becoming consolidated into a few large holdings; that the result might be very detrimental to the railroad company, and of course to the people of Western Oregon, by reason of increase of rates which must necessarily follow increas of operation cost; and for that reason that 100,000 acres

of timber was set aside to be a perpetual reserve for the protection of the railroad company from extortion. Now, that was the reason for that reservation, and that reservation itself for that purpose is evidence of the intention of the railroad company to depend on that, but not to retain the ownership of the remaining timber land.

Q. Now do you recall the circumstance following the fire where ties were one price, and where the tie was immediately advanced by timber manufacturers in Western Oregon?

A. They were jumped, as I recollect it, from about 22 or 23 cents to 63 1/3 cents over night, and the threat was that they would go to a dollar.

Q. Who were the large timber holders? I mean, who were manufacturing railroad material in Western Oregon at that time?

A. Largely Booth-Kelly Lumber Company; and the railroad depended upon them largely—had to—for its supplies.

Q. Did you ever examine the rating of Booth-Kelly Lumber Company, to ascertain their financial rating, and what it was?

A. I don't recollect of having made any examination of that kind, though I think that the ownership—the control, I should say, passed from the individuals who were in control when I first came here, to this Bay City or Menominee crowd, of Blodgett and Hill, Michigan operators.

Q. That is to say, the Booth-Kelly Lumber Company stock, and the control of that was disposed of by John F. Kelly and R. A. Booth, or a majority of it, and passed to Michigan timber investors, who now own the property?

A. Yes, sir, I think so.

Q. Do you recall the fact that Mr. Hawley, that you referred to, was Honorable W. C. Hawley, a professor in the Willamette University at Salem, when he was elected to Congress from that district?

A. Why I don't remember. I thought he was a preacher or something of that kind.

Q. No, he was Professor of History in the Willamette University, a Methodist institution at the capital of the state, and was elected to Congress from that district.

A. He was elected to Congress, I know. I believe he is still an incumbent.

Q. Do you know, or can you say whether or not he was affiliated with and a political associate of Senator Booth, who was one of the controlling men in the Booth-Kelly Lumber Company, about this time?

A. I understood that he and Mr. Booth were very friendly. They were both of the same faith, and prominent in those circles.

Q. The same political party?

A. Yes, sir.

Q. And Mr. Hawley is the present Congressman who has been rather active in the procurement of the passage of the resolution of April 30, 1908, under which this suit is being prosecuted?

A. Yes, sir.

Q. And also somewhat active in securing the passage of what is called the "innocent purchasers" bill, by which a million acres of these lands that have been passed to these large holdings, have been confirmed in these holdings upon payment of $2.50 an acre, by stipulation of the attorney general?

A. Yes, sir.

Q. You speak of the number of acres approximately that the Booth-Kelly Lumber Company acquired from the Oregon and California Railroad Company. How early were these first contracts made, in a rough way, would you say?

A. Subsequent to 1898, I should say. That is my recollection.

Q. And how late would you say was the last contract? I am not asking you to give an accurate time, but approximately and as your memory serves you?

A. The last contract made directly by the company, it seems to me was made about 1902.

Q. Do you recall, Mr. Eberlein, about the total holdings of the Booth-Kelly Lumber Company of timber lands outside of the 70,000 acres which they acquired from the Oregon and California Railroad Company in

that vicinity?

A. I had an examination made of the records of those central counties there—Marion and Douglas and Lane, and probably as far down as Jackson and Josephine, to find out what they had acquired. I knew what they had from the Railroad Company, which amounted to about 70,000 acres at that time. I found a large number of assignments of small contracts—railroad contracts, contracts to individuals or small concerns—and I found also the transfer to them of a large number—I say a large number—a considerable number, as I remember it, of timber entries that had ripened into titles—understand I don't mean that there was any collusion, or to suggest anything of the kind, but what on the record appeared to be perfectly proper purchases by them from individual holders who had taken title directly from the Government, or from the railroad of such, and it amounted to about 100,000 acres, as I remember.

Q. That is including the 70,000 acres?

A. Yes, including the 70,000 acres.

Q. Now, you found, did you or did you not, by this investigation, that the Booth-Kelly Lumber Company had succeeded in obtaining title to numerous or several homesteads down in these timber belts?

A. Yes, sir, I think so.

Q. And others were under the Timber and Stone Act, do you think?

A. I think so. I had them, I remember, platted in different colors to show the different class.

Q. Now, I wish you would state to the court whether there is any other, or was during that time any other large manufacturing timber company in Western Oregon south of Salem, other than the Booth-Kelly Lumber Company?

A. I don't remember of any.

Q. I mean outside of the mills on the coast.

A. Yes. So far as mills within this grant are concerned, I do not think there were any of any size. There were a few that had bought timber, a small amount of timber, but they were inconsiderable in size. My recollection is that Booth-Kelly Lumber Company, in their operation, had taken up, bought the lands of some small mill proprietors, and shut down the mills, consolidated in their large milling operations at these different places on the Willamette River—the upper river, at the head waters. And I don't think there were any. The railroad company depended largely, had to depend largely on them for its supplies, and at the time of the fire they immediately shut off those supplies and forced the railroad company to establish mills of its own.

Q. Where were those mills established?

A. Those were established at different points—I cannot tell you just now, but in the neighborhood south of Eugene.

Q. At Marcola, in Lane county?

A. Marcola, yes, that is one place, Lane county. I think that was run by Fisher Brothers. We established mills at different points down throughout the grant, for the purpose of supplying ties and timbers.

Q. They were not commercial mills, were they, at all?

A. Not at all. The operation of lumber business is ultravires, as I understand, and not possible for a railroad company; and those mills are operated at a serious loss, simply because the railroad company could not take advantage of the market—could not sell its seconds and stuff of that kind, which make a margin of profit in commercial mills. And those mills were established and operated simply because Booth-Kelly and other operators refused at once to furnish the railroad company with necessary supplies to keep its lines open, except at most ruinous prices, which could not be considered.

Q. That is to say, the mills on these lands of the Oregon and California Railroad Company were operated for railroad purposes, to manufacture ties, bridge timbers, and other material necessary for renewals and betterments of the lines, and were not operated for commercial purposes.

A. They were not operated for commercial purposes at all, and were operated simply by reason of the company being forced to operate them, by the action of Booth-Kelly largely, and other mills too; but Booth-Kelly was the principal supply, and it was immediately

cut off.

Q. Now, you spoke something about Mr. Dixon being at Washington at this particular time. Have you any personal knowledge of his being active before the legislature of the State of Oregon for 1907, or do you know anything about that?

A. Only by hearsay. That is all.

Mr. Townsend: The Government objects to all of the testimony of this witness as to the circumstances leading to the adoption of the Joint Memorial of the Legislature of the State of Oregon in February, 1907, addressed to Congress and the Executive Officers of the United States, and also leading to the adoption of the Joint Resolution of Congress, approved April 30, 1908, directing and authorizing the institution of this suit, and also the recent act of Congress authorizing a compromise of the so-called purchaser suits; also all testimony relating to the action of the Booth-Kelly Lumber Company and other lumber companies with reference to the sale of ties and other building material to the Railroad Company; also the efforts on the part of these lumber companies and timbermen to purchase lands from the defendant Oregon and California Railroad Company; also all other testimony implying that the agitation resulting in the institution of the present suit was brought about by or on behalf of these timber men and mill operators by Congressman Hawley, Senator Mulit, or anyone else, for the purpose of enabling these timber men and mill operators to acquire a monopoly of

the manufacture or sale of lumber in Western Oregon or any part thereof, upon the ground that the same is hearsay, incompetent, irrelevant and immaterial and was elicited from the witness by questions calling for mere conclusions and arguments and not for facts within the knowledge of the witness. For the purpose of avoiding the incumbering of the record objection was not made specifically to these questions at the time they were propounded, under agreement with counsel that the general objection could be made at the conclusion of this line of testimony as to the whole thereof and it being understood that the same shall be considered as having been interposed as to each question and answer as well as to the whole thereof. Unless you have some objection I am going to adopt that general objection to avoid the incumbering of this record.

Mr. Fenton: None at all. I was going to say that counsel for the defendants desires to say that the defendants do not admit that the statement by Government Counsel is a fair statement of the facts as testified to by the witness, and that the objection made by counsel is in a sense argumentative, and the defendants desire the record to show that they object to the statement as not in accordance with the testimony disclosed by the record, the record showing that the witness was present and participated personally in many of the matters about which he testified and that the record will speak for itself. We make no objection that counsel reserved his right to object at this time.

Mr. Townsend: Yes, but I want the record to show

that this objection shall be considered as being addressed to each question specifically.

Mr. Fenton: Oh, yes; it may be so understood.

Mr. Townsend: And each answer.

Mr. Fenton: It may be so understood.

Whereupon witness further testified that as to the sources of his information, or information received from others as to the general character of the unsold portions of these grants involved in this suit, he would just say generally in the beginning that a large part of the grant had been cruised and examined and reported on and the reports covered not only the character and the amount, the condition of the timber, but also the character of the land. They attempted to report upon the general character of the land as land. These reports were made during a period of time from 1870 down to the time of the fire (April 18, 1906) and so far as he could judge from the character of the reports that were on file when he took possession, the reports were made by men who were in the employ of the Company in the capacity of cruisers for years together, which would argue that they were well made and consecutively made in a great many cases. As to the cruisings done under his own control and direction, he could speak of those. As to his personal examination of the grant he cannot say that he has been over the entire grants, but has been through the grants in different places at different times from 1902 down. In February and March, 1903, he made a trip through the upper part of the grant, Clackamas, the upper part

of the country below, back through the grant, back out of the valley; that is where the lands of the company are. He had been across the grant, across the Cascade Forest Reserve through the Company's lands on horse back where there were no trails, looking after the character of the timber and the land, everything connected with it. He has been in different parts of the heavily timbered part of the grant, the valuable part of the grant, repeatedly through it; that is, in the southern part of the State. He has been a land owner and a rancher down in Klamath County adjoining the grant for the last seven years. He knew something about the character of land and what it will produce and its capacity for production. He has dealt in land for a good many years in one way or another. He is not a timber cruiser, but has been through these grants in different places to examine the stand of timber and the character of it. The cruising done during his control of the grant was by men formerly in the employ of the Company when he came there and they had been for years in that particular branch of the business. N. E. Britt was the chief cruiser and F. A. Elliott was under him. Both left the service while he was still in control, several years after he came here. A. W. Rees, he believes is still in that capacity with the Company, and then there were quite a number of others whose names he does not remember, who were taken on or off just as the occasion would require. He has been through the timber lands in the grant owned by the Company in the eastern half or part of Jackson County, Oregon, and in the western

part of Klamath County, Oregon, known generally as the Jenny Creek country. He made reconnoissance of the Klamath River Country once and reported on it from Klamath Falls down Klamath River. He has never been to Coos Bay. Never in that part of the grant and has not been on the water shed west of the Coast Range. In California he has been immediately below the line and knows the general character of the country. He has been in the Cascade Forest Reserve in the eastern part of Multnomah and Clackamas Counties and went through that property and the intermediate lands of the Oregon and California Railroad Company pretty thoroughly once with Mr. Pinchot. He has been in the Cascade Forest Reserve clear down to 48 south, somewhere down in there, very near the State line; that is, to fractional section 41, which is the Oregon boundary. He has been through the southern or lower end of the Cascade Forest Reserve and the lands of the Company within the indemnity limits and abutting on the west of the indemnity limits on the east side of the grant adjacent to the Forest Reserve and through that country repeatedly. He is not familiar with the western side of that part of the grants. He has not been in Yaquina Bay through Lincoln and Benton Counties. These are not very valuable lands and he never took the time to go near them. Has not been on the granted lands of the West Side land grant. Does not know those lands (Referring to grant of May 4, 1870). The general character of the land that he has been over in the grant of July 25, 1866, the northern part of that grant, the extreme

northern end of that grant, that is about east and southeast of Portland, there is some very heavy timber. It is rough country and no large agricultural possibilities at all. As to the south end of that grant the land—practically all the unsold land—lies in the mountainous country or rough country, very much broken. The best part of the timber lies in the extreme southern end of the grant; that is the sugar pine country in Jackson and Klamath counties, but that country lies high, very dry and is cold. There are practically no possibilities in there, for extensive cultivation, because the land is not suited for it, the character of the land is thin and sandy. It will be a forest country always, and in his opinion it would not be susceptible to cultivation on account of the climatic conditions and soil, rock, etc., even if the timber were removed. He cannot speak, except in a general way, of the lands in the eastern part of Josephine County, east of the railroad and immediately north of Jackson county, having skirted that country east of the range. The general character of this land is timber and wood land very rough and broken. The land in the eastern part of Douglas County on the Umpqua River and the streams that lead into the North and South Umpqua, is a good timber country. It is all timber, practically. The valleys are narrow and it is valuable chiefly for timber, so held to be now. The timber lands in Lane County on the head waters of the Willamette River, Coast Fork, Middle Fork and the McKenzie are good timber lands, but in a rough country. what there remains. There are small patches of land all through the country,

isolated tracts here and there, where, if the timber was removed, the land would be susceptible to agricultural purposes, but the country is full of land, the Willamette Valley is full of land, covered with brush now, that is very much better for cultivation than any lands that he knows of, in this grant and more accessible to transportation.

If for no other reason the stumps would be prohibitive to the adaptability of this land for agricultural purposes, because of the character of the growth, especially the fir growth which is the principal growth of the country tributary on the slopes into these interior valleys on the west of the summit of the Cascades and that by its resinous character, its long tap roots, as everybody knows in this part of the country, are exceedingly hard to extract, and it costs from fifty to one hundred and fifty dollars, that has always been his information, to clear the land of stumps and there is plenty of land to be had in these interior valleys for less than that price. Well on toward 200,000 acres of this grant is rough, is absolutely barren, rock slopes, without any possibility of growth of any kind. He would call it chaparral down in the lower country. The land that he speaks of has not even chaparral growth and would not even be goat pasture and there is no value at all to that land that he knows of. You could not settle a colony of flies on there and get sustenance for them. He thinks it would not be valuable for a homestead or preemption if it were to become public land. It is just waste land, that is all. He can give only a general description of that land. He

cannot give the particular section, township and range descriptions. He can only give the general locations. The company is still paying taxes on this land, they were when he was there, such as have been surveyed. Shortly after the fire, the Weyerhauser Timber Company made an application to purchase all the timber in certain townships, he cannot name them now but they are in the townships from the state boundary north, part lying particularly around Pokegama, which is their center. They own about 12,000 acres of land there, which was originally purchased from the Railroad Company by a man by the name of Cook, he believes, which passed to Hervey Lindley, who built that little line of road from Thrall Junction on the Southern Pacific main line north into and across the state line into Oregon, with a terminus at Pokegama, where Lindley had some kind of a mill operation; and before this time the Weyerhausers had acquired that little railroad and that timber holding of Lindley. They made an application for all the land in these townships, aggregating about 50,000 acres, as he now recollects, and they wanted to buy it right off, and his belief is that they offered about $5.00 an acre for it. Their application was entertained and it was pushed very vigorously by the Weyerhauser people. This came to him through Mr. Calvin; then there was a great deal of correspondence back and forth between himself and Mr. Kruttschnitt, who took a hand in it and Judge Cornish. Witness protested against taking any action at that time, because the company was wholly unprepared. The company had no cruisings of that country at

all and could not act intelligently, and it was the heaviest timber in the grant; being the sugar pine belt and practically the only body of sugar pine that the Railroad Company had. The pressure was very heavy, and finally he got an order to have the land cruised and have it done with the greatest possible dispatch, which he did. He ordered Mr. Rees down there and the company got as many cruisers, that it could depend upon, as possible. They established two, probably three, camps in that district and cruised it that summer and late in the fall of the same year, 1906. He found that they had asked for just the nucleus of that country; with the 50,000 acres that they wanted, there was tributary and depending upon it, about 70,000 acres more than would either have to go with that sale or else become of very little value, because it would be worthless to anybody except the Weyerhausers; that is it could be sold for very little. So that was included. He submitted the results of that report and the whole negotiation flattened out and was never resumed. That is to say, when his final report was turned in, the application to purchase by the Weyerhousers, was denied. There never was any negotiation for the sale of the grant entire, to any one that he knows of, but he cannot say that there were no negotiations with Weyerhausers or any one else during his time, that he was not cognizant of, but he believes that he knew everything of the kind that was going on. The company never made any attempt to sell the grant as a whole to anybody, and there never was any application that he knows of, to buy it as a whole. He does not re-

call anyone who ever applied to purchase so large a body of land as 50,000 acres, other than the Weyerhauser Timber Company referred to. There were some small sales made after the discontinuance of sales in 1904, up to the time he retired from the management and control of the companies—to timber people. Some small sales were made to timber people. He refers to some small timber sales that were made subsequent to April, 1906. These were sold to the Southern Pacific and by that Company were sold, he thinks, to Cole Brothers, and to Fisher Brothers, at Marcola, and other small mill men. The sale of these lands to these parties in connection with the mill manufacture of lumber for ties and bridge material, was part of the means the company was obliged to resort to, to keep the lines open during that period of the rebuilding of San Francisco. Those mills were entirely additional, to the mills that the Southern Pacific Company itself established. These small sales referred to represent just a few sections; a half dozen sections would cover it. The letter of August 16, 1905, addressed by him to Peter F. Dunne, General Attorney, Southern Pacific Company, being Government's Exhibit 115, had nothing to do with this case. This is the letter that was published and it has nothing to do with the Oregon and California lands even remotely. That letter and the correspondence going before and after between himself and Mr. Dunne and other officers related entirely to a proposal at that time to transfer the lands unsold of the Southern Pacific Railroad grants in California to a land company and the occasion for that suggestion at that

particular time was the fact, that the issue of bonds of the Southern Pacific Railroad Company of California, dated in 1875, matured, he thinks, the 1st of April, 1905; at any rate they matured that year. A refunding issue was in process of being put out to refund these matured obligations. The old issue of 1875 was a lien upon all the lands of the Company, that is the Southern Pacific Railroad Company. It had nothing to do with this company in suit, and it became necessary in drawing the new deed of trust to secure refunding bonds to include the usual provisions in regard to the security, the land grant security for these bonds and the manner in which it should be handled, the same thing that is usual and customary in such instruments. During the discussion of the deed of trust the suggestion originated, to divorce entirely these lands from this refunding issue, to turn the lands over when they were relieved from the lien of the old issue into a land company. It had no relation whatever to the Oregon and California Railroad Company grants in Oregon. Something is said in that letter, which stated that, "Mr. Chambers has undoubtedly looked this matter up. He makes no citation to Department Decisions but I think this matter can be brought about by conference with the officials at Washington, who are just now inclined to be friendly to us." D. A. Chambers was an attorney of the Southern Pacific at Washington, attended to all departmental matters referred to him by the land department and other departments. The whole question involved and the one that was submitted to Mr. Dunne and myself,

was a practical one as to how or whether these grants could be transferred by the Railroad Company, the original grantee, to a grantee of the Railroad Company, and whether such grantee of an entire grant would be subrogated to all the powers and privileges as to the selection of indemnity for lost lands enjoyed by the original grantee under the acts of Congress. The question was a complicated one, necessarily for one reason, because of the intense complication that had arisen in that particular grant, those two particular grants to the Southern Pacific Railroad Company, out of suits brought by the United States, a number of them, in what is known as the Overlap Litigation. The United States had made an alternative grant to the Southern Pacific Railroad Company and to the old Atlantic and Pacific Railroad Company. That was one suit out of which, or one condition of facts, out of which, grew several suits. In that case the lines of general location of those two roads when first projected were very near coterminous; they crossed and recrossed; and although the Atlantic and Pacific never did construct a foot of road in California, still some of those old alternative rights survived and were cut off finally by action of Congress in 1886, he believes. However, the Government of the United States set up the most unusual charge that notwithstanding the grant was forfeited, the Southern Pacific had constructed and had earned its grant, the United States insisted that it step into the shoes of the old Atlantic and Pacific grant which never constructed, and therefore brought a suit and finally prevailed. He merely cites this to give an in-

stance of the character of the complication that existed at this time and that is referred to in this letter. That involved the practical question whether or not an assignee of a grant under one of these acts of Congress would be recognized as the beneficiary of the grant in the readjustment of claims in relation to the payment of fees for lands, selection of indemnity, and so on and so on, and obtaining patents to lands that were not patented, and whether they could surrender base lands lost and take indemnity, the same as the grantee company. By the term "friendly" he did not mean anything improper. He never was mixed up in anything improper that he knows of, certainly not with the United States in regard to land matters. The question there involved was simply this: The facts mentioned were notorious throughout all the departments, beginning late in 1904 and from that on during the whole Roosevelt administration, and he thinks, the present administration has inherited that tendency. The Departments at Washington were exceedingly hard to deal with. He means that when one would go to talk with the head of a department about the ordinary business of the department—he knew it was so in his case—before he could get a hearing, the attorney for the department and two or three witnesses, had to be brought in to hear what you had to say. He thinks —the suggestion seemed to him that being an official of the Harriman lines, one was under suspicion, and the heads of the department evidently thought that somebody might report it to the head "Bull Moose" and he would go and toss them. The whole air was charged

with suspicion. It was hard to deal with them. It was hard to get anything through the departments. He does not care to go into details very much except to clarify the statement. The condition of affairs existed that he speaks of. In January, 1905, the first Forestry Congress was called in Washington and the railroads were all invited to send delegates, and they represented a large, as they did in these grants, a very large interest in forestry matters, but in that case there was not a single representative of any of the Harriman lines that was asked to participate; they were shut out and snubbed in every way; and it only emphasizes the unfriendly situation in which he found the affairs at Washington—the Government officers at Washington. During 1905, the Reclamation Service, in January, 1905, and the head of the Geological Survey made very insistent appeals to him for assistance, in getting certain things through the Oregon and California legislatures in regard to the Klamath Irrigation project. They had spent $90,000 in making surveys and examinations, and had to get the co-operation of the states of California and Oregon in releasing and conveying such rights as the states had, in these interstate lakes to the United States before that project could be put on its feet. That is one of the things. This finally resulted in the passing of acts by both California and Oregon, granting the rights of the states to the United States. They did everything they could to assist them at that time, and it was to the work done by the Railroad Company that the Reclamation Service and Geological Survey owe their

success in that matter wholly. During that year Mr. Pinchot came to California, just about this time, just before the time this letter was written, and he made a formal request, that the Oregon and California Railroad Company should deed by absolute conveyance to the United States all of the lands granted or claimed by the Railroad Company in the southern end of the Cascade Forest Reserve in Jackson and Klamath Counties, Oregon; embracing probably 400,000 acres of the very best timber land in the grant, carrying all the sugar pine, the best belt of sugar pine there is, in Oregon today, and that was to be turned over, and the consideration offered to the Railroad Company for such a proposed transfer, was the privilege of cutting off its own timber on those lands whenever and subject to such conditions and regulations as the Forestry Bureau of the United States might impose. The object of Mr. Pinchot, as Chief Forester, in securing this land, was to make a permanent forest reserve, and when the timber was cut off it would be valuable for reforesting. The elevation of these lands is 5,000 feet and over, and agricultural crops would be very limited in that region and he doubts very much whether one could raise profitably any crops in that particular country. That proposal was made to him verbally by Mr. Pinchot in San Francisco and was afterwards renewed by him in New York, and was afterwards renewed in writing to him, and he supposes the papers are in the department now. It was renewed by Mr. Pinchot and made by him, as an official of the United States, as he was then Forester of the De-

partment of Agriculture, formerly of the Department of the Interior. But what he had reference to in that case was simply, that the friendly disposition of these gentlemen was so much in contrast with the notoriously unfriendly attitude, not of the gentlemen personally because they are very courteous gentlemen, and he has had the very most pleasant social relations with them, but as officials they were very, very hard to deal with, and their attitude at that time was such a strong contrast to the atmosphere in which they lived in Washington that it was worthy of comment. He alluded to the changed situation when he used the word "friendly," and if they wanted something out of the Company, why that was the time to get what the Company needed. At that time the Company wanted to have recognition of the department that this grant would be assignable and that the holding company would have the same rights that the land grant company had as to selections and obtaining patents, and things of that kind; perfectly proper in every way and a business proposition. Referring to Government's Exhibit 113, the Company was not in a position to entertain applications to purchase from any of these gentlemen, and he has explained heretofore the reasons why the Company was in no position to offer these lands for sale, or to sell them. These letters, Government's Exhibit 113, are all requests for transportation, trip passes and things of that kind. They are just the common run of stuff, of that kind, with which the departments are always flooded. When he received these applications, he notified them that their applica-

tions would be examined as soon as possible, and they generally were examined at once and if found to be agricultural or grazing, as they were in a few cases specified to be, he notified them, the Company would enter into negotiations with them for sale. Upon investigations of the applications to purchase these particular lands, they were usually found to be timber, sometimes water power, sometimes mineral, but mostly water power and timber.

"Q. It is alleged in the Answer that 'Said Oregon and California Railroad Company has at all times openly and notoriously claimed,' and so forth, to be the owner of the lands in this suit, has at all times caused the said lands to be protected by field agents who traveled over and protected the same against depredation and waste, has at all times paid the taxes levied and assessed upon and against the said lands, and in divers other ways openly and notoriously proclaimed and asserted and has been in possession of the said lands, and that large and different portions of said lands were reduced to possession and improved from year to year by persons holding leases thereof for grazing and other purposes from the Company, and other portions of lands were reduced to possession as right of way, station ground, depot ground, and the like for railroad purposes of the Company. Now what would you say as to the facts in respect to that matter? What was done, or did you do, towards carrying out and protecting the possession of these lands during the time you had charge or control of the same?

Mr. Townsend: Objected to as incompetent, irrel-

evant and immaterial, and assuming that the lands were reduced to possession of the Oregon and California Railroad Company, which is not disclosed by the evidence.

A. The lands were absolutely owned and controlled, and so always understood to be, and we paid our money, protected it at great expense against fire and depredation, paid the taxes, an increasing burden of taxes, exercised every incident of ownership in regard to real property.

Mr. Townsend: The answer is also objected to as incompetent, irrelevant and immaterial and consisting of mere conclusions of fact and law and not a statement of facts from which the ultimate facts of possession may be deduced.

Q. State to the Court whether or not the Company while you were in charge took such possession of these lands as their nature and character permitted?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, and calling for a mere conclusion and an opinion of the witness as to what constitutes possession, and a conclusion of the witness upon the question of fact as to what extent the lands could be reduced to possession and in no way establishing the rule as to actual possession within the meaning of the Oregon statute relating to suits to determine adverse claims to real property.

A. We took possession; we had possession, continuous possession, during my time.

Mr. Fenton: Just read the question. I don't think you got the question, Mr. Eberlein.

(Question read)

A. Yes."

Witness further testified that his official relations with the Oregon and California Railroad Company were discontinued June 1, 1908. He made an official report or statement of facts relating to the land grants of the Oregon and California Railroad Company, the successor in interest of the Oregon Central Railroad Company, East Side, and the Oregon Central Railroad Company, West Side, on or about that time. On one of those pages he gives a list of the authorities, sources of information. It is a bald statement of facts, reproduces the acts of Congress and the legislature, the correspondence of the Interior Department and other sources, reproduces the articles of incorporation of the different railroad companies, and was intended to be a full statement of all the facts bearing upon the case. The facts concerning the physical character of the grant were from all reports and from his own knowledge, the number of acres, the acreage and condition thereof, from the letters of the Commissioner of the General Land Office, reproduced in full in that compilation. The letter of Binger Herman adjusting and settling the grant is reproduced in full. This report is based upon the records of examinations of the lands in the grant by particular tracts made during all the years prior to April 18, 1901. All the information that was in the department or could be gathered was

summarized in the facts given.

"Q. Well, I notice at page 70 of this report, which I will show you presently and which I will offer for identification, a statement that the report of your field agents shows 1,496,640 acres covered with timber and unsuitable for agriculture, and 703,652 acres of grazing land unsuitable for agriculture, and 7,320 acres that might be used for agricultural purposes at the present time but which acreage consists of small isolated tracts, many of them remote from transportation and settlements and scattered in small bodies in different places throughout the whole extent of the grant along creek bottoms and on hill sides. Now from what sources of information outside of your personal knowledge did you obtain that information?

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial, and being an attempt to introduce in the record this self-serving statement of the witness while an officer of the defendant and obviously made after the passage of the Act of April 30, 1908, as a part of the preparation of the defense in this case.

Mr. Fenton: No; it was made May 1st, 1908.

Mr. Townsend: Well, the Act was passed April 30th, and had been pending six months before and Mr. Eberlein was there. I know; I saw him myself.

Mr. Fenton: You don't think he made it that night?

Mr. Townsend: No; I think he made it anticipating that the act would go through.

A. From the field force of the department, men employed who had long familiarity with the grant having reported on the grant for a great many years.

Mr. Townsend: The answer is also objected to upon the ground that it now appears that the statement was made upon hearsay of others.

Q. Were these reports reports of your employes?

A. Yes sir.

Q. And were the reports made in the usual and ordinary course of business by your men in the field, thus employed, on which you relied as an official of the company?

A. Yes, sir.

Q. And did you act upon them as correct?

A. I did.

Q. I notice on page 69 of this official report of yours of May 1st, 1908, statement of lands in various counties, embracing Oregon and California Railroad Company land grant assessed for taxation as shown by record of county assessors for year 1906, and showing assessors' classification of Oregon and California Railroad Company lands as tillable and non-tillable. From what sources was that table prepared?

A. From the official statement of the officers of the various counties. I think the sheriffs make those statements in this state, do they not?

Q. The Assessor.

A. The Assessor?

Q. Yes.

A. Anyhow, the official whose business it was; in his official statement. I think they are on file in the department still.

Q. I notice in this statement that the acreage of patented unsold lands of Oregon and California Railroad Company assessed as tillable is only fifteen acres and the balance all assessed as non-tillable?

A. That is the fact.

Q. For that year?

A. For that year.

Q. That was 1906?

A. That is the assessment of 1906.

Q. That was about two years before the resolution of April 30th, 1908?

A. Yes sir.

Q. Now I notice a map attached to this report of yours of reduced size. What do you have to say about the accuracy of that map, if you know?

A. Well, the map was made up under my order and shows the amount of land that was excepted from the grant by process of law.

Q. What it purports to show is a correct delineation of the grant?

A. Of the grant and the character as to certain

things.

Q. Now to whom were these reports submitted?

A. To the different officers of the company, primarily to Judge Cornish. I left for Europe immediately, severed my connection entirely with the road, and that was the last work of any magnitude I did for the Company, and I think copies of it were sent to different—

Q. (Interrupting) To the officers of the Oregon and California Railroad Company?

A. Yes, sir, I think so; to the attorneys.

Q. What have you to say as to the correctness of that report in the statement of ultimate facts based upon your knowledge and the knowledge of the records upon which it is based?

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial and a mere conclusion of both law and fact, and necessarily hearsay.

A. The report as it stands is all but a very small part official records, as to which there can be no question.

Q. As to the balance?

A. As to the balance it is simply bald statement of actual facts and figures; there can be no other deduction —there are no deductions in that report; it is simply a statement of actual figures and facts.

Q. Well, such of the facts as are stated and such of the figures here as relate to the acreage of grant, and such matters as that, upon what are they based?

A. They are based upon the actual books of the Company and they are corroborated by the official statement and settlement of the grant by the Honorable Binger Herman officially, and his letter, his official communication is reproduced in full in that.

Q. As to the sales and matters of that kind that would appear in the records of the Company and as to the reports of cruisers and things of that kind upon which you base the acreage of timber and of grazing and of non-agricultural lands, as I understand that is based upon the official reports made to you by these cruisers and others?

A. That is true.

Q. Do you recognize this document which I now hand you as your official report made May 1st, 1908, as identified, and about which you have been testifying?

A. This is one of the copies, one of the duplicates or triplicates, or quadruplicate copies; I don't know; and it is exactly the same as the original, excepting my signature which appears to be omitted from this copy.

Q. It is a typewritten duplicate of the original which you signed, and is an original in itself, excepting that your signature is not on it?

A. Yes, sir.

Mr. Townsend: That is objected to as calling for a conclusion of the witness on a question of law and evidence.

Witness: That is my copy that has been in my possession ever since it was made."

Whereupon defendants offered in evidence said report prepared by the witness and marked Defendants' Exhibit 309, to which counsel for complainant objected as incompetent, irrelevant and immaterial, based upon hearsay, and a mere statement of conclusions of fact and law, and is a self-serving declaration, prepared by one of the officers of the company for the purpose of this defense and that there is no evidence accounting for the loss of the original documents upon which the statement is based. Whereupon the same was received in evidence and was marked Defandants' Exhibit 309 and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon the witness further testified, referring to the number of outstanding contracts, in giving the name of the grantee or vendee, that the names of the vendees were practically unknown the morning after the fire, and it was very difficult and a long drawn out operation to ascertain the addresses and names of the vendees of a number of these sales. He took a man to New York in May, 1906, and put him to work in the office of the Union Trust Company making abstracts of all data that the Union Trust Company had regarding sales and collections from 1887, the date of their mortgage down. He went further than that and made arrangements with the officers of the Farmers Loan and Trust Company, which was the trustee under former instruments, and got what information it had, and he scraped New York

clean so far as he could find anything that was there and he discovered a great deal of information in that way. Whereupon the witness upon cross-examination further testified that he has none of the files of the Oregon and California Railroad Company relating to these land grants,—nothing relating to the Oregon and California Railroad grants. He has this statement of his and if there is anything that he has, of course he will go through it and let counsel for the Government have it. He formerly lived at St. Paul in Minnesota and became acquainted with and knew Judge Cornish a great many years. Judge Cornish was appointed by Judge Sanborn as Master in Chancery in the receivership proceedings involving the Union Pacific Railroad about 1893, and that receivership continued about five years until about 1898, and in the discharge of his duties Judge Cornish naturally became familiar with Union Pacific affairs. Cornish became vice president on the reorganization of the Union Pacific by Mr. E. H. Harriman and served in that capacity until his death. Witness resided at St. Paul about 15 years, until about July 1, 1901, when he entered some form of employment in connection with the Harriman lines. His original employment was assisting the Vice President in regard to land affairs of the Union Pacific. His first employment was to assist Judge Cornish in connection with the administration of the land department of the Union Pacific, and that was his first official connection with railroad land grants. He had more or less to do with the lands of the old St. Paul and Sioux City grant in the matter of handling them as

the trust officer of the old St. Paul Trust Company. When he first became associated with Judge Cornish his official residence was at St. Paul. He was then employed on some special work by Cornish in connection with the Union Pacific land grants. He had several different employments practically at the same time, but it had to do with lands largely, referring to his employment beginning July 1, 1901, which included the Union Pacific land grants. Most of his work was done there outside of just digressions when he would be sent out to make special reports or something else, like the irrigation possibilities of the Snake River Valley. He made a long examination and report on that in the winter of 1901 and 1902, but returned to the land grant business. Judge Cornish was then stationed at New York City, but rarely visited St. Paul after 1901, he was there occasionally but not very often. He had conferences with him almost always at New York. Sometimes he met him on his way west, or when he came to Omaha, but that was very rarely. He left St. Paul when he went to the Union Pacific employment. On July 1, 1901, he went to Omaha. He was confidential adviser of Judge Cornish and the New York office and his work there in a general way was the same as his subsequent work in the west. That is, to make recommendations as to the reorganization of the land department and the reformation of some of the methods of handling its business, and that was the general character of his work at Omaha, making reports and recommendations. He remained at Omaha from July 1st, 1901, until some time in 1902, when he

first came to the Coast. But this trip was one for the purpose of general observation, and he returned to Omaha after that trip. He returned to New York, but didn't have much to do. He was detailed on his return from that trip to Omaha to take up and examine into the affairs of the Union Pacific Coal Company, and barely got started on that work when he was sent for, to be consulted about coming out here. That was some time in 1902. He had practically finished the work he was sent there to do with the Union Pacific land grant. It was sometime in 1901, or 1902 that the ownership and control of the Southern Pacific was acquired by the group of financiers known as the Harriman System, and the same group became interested in the affairs of the Oregon and California Railroad Company, and Mr. Harriman became president of the Oregon and California Railroad Company. Harriman became president of some of the constituent lines of the so-called Southern Pacific System, but he does not know as to all; he was president of the Southern Pacific Railroad Company, he does not know as to the Central Pacific, but understands that he became president of the Oregon and California Railroad Company. Judge Cornish was never an officer of the Oregon and California Railroad Company to his knowledge, but Judge Cornish gave attention to the work which witness was doing and witness reported to him. Whether Judge Cornish had official connection or not with all of the land grants constituting the so-called Harriman lines, he does not know or remember as to some of them, but as to having immediate supervision and being the

man between witness and Harriman and to whom the reports went and someone to whom he reported in New York on these special missions and which he was sent out to fulfill, Judge Cornish was that man. That included work with reference to the Union Pacific grant, the Kansas Pacific grant, the Denver Pacific grant, the Central Pacific grant, the Southern Pacific Railroad grant, and California and Oregon grant and Oregon and California grants; and he may say the grants in Texas. But there is a distinction to be made as to the Union Pacific proper land grant, Union Pacific Railroad land grant, Kansas Pacific grant, and Denver Pacific. In that case Judge Cornish was the vice-president of the Union Pacific Railroad, in direct charge officially. He was president of the Union Pacific Land Company, which took over and held title and managed and disposed of all of the lands of the Kansas Pacific and Denver Pacific grants. In these other cases, he was not officially connected with the subordinate companies, to his knowledge. But waiving the question of his official authority, Judge Cornish actually supervised the work of all the grants in substantially the same manner. Supervision is the right word, because he did not exercise the same authority by any means over these grants here on the Pacific Coast that he did over the Union Pacific grants. Judge Cornish did control the actions of witness upon questions of policy, and did give witness instructions on the Union Pacific, but he never thought he had the same amount of authority on these grants on the

Coast, including the land grants involved in this suit and he, Cornish, never exercised it. Judge Cornish always waited to hear what Mr. Harriman had to say about it. So really Mr. Harriman was the man who directed it. That accounts for long delays that were suffered here in the rehabilitation and other things, because there was no one who would act offhand as they did on the Union Pacific. Judge Cornish acted as a sort of go-between for witness and Mr. Harriman. There was no practical purpose served in this roundabout way of getting his recommendations to Mr. Harriman. It was an unfortunate occurrence, that was all. He does not mean to be understood that Judge Cornish did not exercise any authority at all, but he does say that Judge Cornish did not have and did not attempt to exercise, the same authority on these grants on the Pacific Coast that he did on the other grants, for the reason of lack of official connection. It seemed to witness that almost any specific question that he presented to Judge Cornish in connection with the Oregon and California Railroad grant as to which he deferred action until Judge Cornish consulted with Mr. Harriman, was about everything that amounted to anything of any importance; that Judge Cornish was a great fellow to sidestep things; in this connection it may be well to say that Mr. Kruttschnitt exercised or assumed to exercise about as much authority over these land affairs as Judge Cornish did, and it was the practice of witness,—he was very often at a loss to know how to proceed and he made reports, as will be found, to Mr. Kruttschnitt at the same time that he made

them to Judge Cornish,—and between the two stools he generally fell down between them and affairs were hung up here for that reason. Now as to particular instances of this, he does not call to mind any particular one at present. There was a reason why Judge Cornish should not sidestep as to the Union Pacific grant the same as he did with reference to the grants in question. Judge Cornish was the vice president and by direction of the board in charge of land affairs of the Union Pacifc Railroad Company, and was also the president of the Union Pacific Land Company. He was the man that was vested with absolute and final authority in those matters and he acted promptly in those cases; so much so that in a little over a year's time they thoroughly reorganized these grants and put them on the market, and in three years' time they were practically sold out, referring to the Union Pacific grant. On these grants in question the trouble was, from the very start, to get authority for anything. If there was anything that looked as though anybody had to have authority, why, it would go to Judge Cornish and he would discus it with Mr. Kruttschnitt and the latter would pass it back and then sometimes they would jointly go to Mr. Harriman and have a talk. Harriman was president of the Union Pacific at the time Judge Cornish was appointed to this office. He does not think that Mr. Harriman disturbed himself very much about the Oregon and California grant, that he ever heard of; that is, not to his knowledge. Harriman really depended upon somebody to look after these affairs for him, but the fact remains that they did not act

on that but felt as though these matters on the Pacifc Coast were large and complicated, and they wanted some more direct authority, as he supposes. Judge Cornish had no authority from any board of directors that he ever heard of; and the only authority Judge Cornish had was by letter from Mr. Harriman. Witness got his authority from Judge Cornish, who had authority enough to give him authority. Everything witness did in connection with these grants on the Pacific Coast was under the authority of Judge Cornish, except what Mr. Harriman gave himself. Practically he was just as much under the supervision of Judge Cornish after he was formally appointed acting land agent as he was before; at least he assumed that he was. That is, in the actual practical carrying out of his work, he consulted with Judge Cornish just the same after his appointment on October 1, 1904, as he did before, but he also consulted with Mr. Kruttschnitt and others. There was a divided control out here all the time. His appointment as acting land agent made no change in that respect. He came from New York and reported back to New York right along. In connection with his work, that is the result of his work relating to these several land grants, he observed a general policy that was pursued by Mr. Harriman and Judge Cornish with reference to the administration of these land grants. They attempted to consolidate and standardize all their activities, and they also attempted to administer the land grants with reference to one another to serve the common interests of the constituent companies and also of the parent companies, and it never got

beyond the stage of reorganization with him. Ties were bought here in Oregon, not only for the lines in Oregon, but for other Southern Pacific lines, and Union Pacific lines. The reservation of 100,000 acres of timber lands never got so far as to serve all of the constituent lines of the Harriman lines, so far as he knew. The intention as to that reservation was, so far as he was concerned, simply with the road which he was interested in. But he assumes of course that those timbers and ties cut from that land might be used and probably would be used by other lines and paid for by them. He does not know how many ties could be cut from the 100,000 acres that were reserved, nor how many miles of railroad it would supply with ties and bridge timbers, but generally speaking, if properly administered and reforested, it would supply a large one. Whether the entire Harriman System he would not say, because the entire Harriman System would not come here for ties. They would not want to come here for ties, because the freight would eat them up. That 100,000 acres of timber lands there, would supply the lines on this coast, he presumes; though of that he does not claim to be qualified to speak. The number of acres that should be reserved was, he thinks, determined in conference with Mr. Kruttschnitt, who was the general manager and vice president of the Southern Pacific Company, and he thinks on the board of all of the original companies on this coast. He knows he was a director, probably an officer, of the Southern Pacific Railroad Company, and believes he was a director and probably an officer of the Oregon and California Rail-

road Company and was vice president of the Southern Pacific Company; but he thinks he was not an officer of the Union Pacific, or the Oregon Railroad and Navigation Company, or the Short Line. He thinks that the quantity of timber lands that should be reserved was determined in that conference with Kruttschnitt. He does not think Judge Cornish passed upon them, because that was something outside of his knowledge. Cornish would necessarily have to depend upon recommendation. As to the fact of the advisability of making the reservation and setting aside the lands he does not think that Judge Cornish would attempt to pass on the question. He does not think that he knew anything about it.

"Q. Now, Mr. Eberlein, it was one of the policies of Judge Cornish and yourself and, I may say, Mr. Harriman and the other officers of any of these companies who assumed or exercised any authority with reference to the subject, that the land grants should be administered with a view to promoting the general financial interests of these companies; isn't that true?

A. Well, if you mean by the general financial interests the managing of them in a careful, conservative, economical way in which they would produce the greatest results, both in money and in other ways for the roads, yes.

Q. That is what I mean; that the administration of these land grants was conducted along lines of policy that included other questions than the mere money that might be derived from the sale of the lands?

A. Well, that was always my idea.

Q. And you got that idea as the result of your connection, consultation and work with the other officers that you have mentioned, as well as your own initiative?

A. My own study of the case.

Q. And you found that that general view was shared by the others with whom you came in contact, including your superiors?

A. I believe so.

Q. Now when you came to Oregon or to the Pacific Coast in 1903 and entered upon the work of straightening out the affairs of the land grants involved in this case as well as the other land grants upon the Coast, you made your office where? Your headquarters, I mean.

A. The headquarters were San Francisco.

Q. You had offices elsewhere where your work was carried on, but your personal headquarters were San Francisco, were they?

A. Yes. I kept an office in New York and was called there frequently, but I was in San Francisco most of the time. But it must be understood that I didn't come here to run any land grants.

Q. I said to straighten out the affairs.

A. Just the matter of reorganization, the examination and reporting. The other was an afterthought and was to be temporary. That was the agreement with me,

that I would not be required to administer details only for a short time to relieve a difficulty.

Q. You came here with the understanding that your work here should involve substantially the same scope as it had on the Union Pacific?

A. Yes, sir.

Q. Straighten out the affairs of these land departments and put them upon a more economical and more practical basis and start it along the lines of the new policies and then that you would be succeeded by some one else?

A. Yes, sir; relieved.

Q. Now, Mr. Eberlein, you know as a practical fact, do you not, that the Southern Pacific Company virtually controls transportations affairs, speaking in the broad sense now, in western Oregon west of the Cascades and particularly from say Albany to the southern boundary line of the state?

A. I believe it is the only rail line between those points.

Q. There are some small—

A. (Interrupting) I mean through.

Q. (Continued) —transportation facilities in addition to that, but in a general way the Southern Pacific lines constitute substantially all of the available means of transportation of the products of the State of Oregon west of the Cascade Mountains and particularly south of Albany?

A. Yes.

Q. And that was true during all of the time of your work out here?

A. Yes, sir."

Whereupon defendants objected to this character of testimony as immaterial, incompetent, and irrelevant and it is stipulated between counsel that this objection may go and is understood as reserved to all this class of testimony.

Whereupon the witness further testified as follows:

"Q. Now, Mr. Eberlein, Mr. Harriman was really the dominant factor in all of these companies, was he not?

A. In everything he had anything to do with I think he was the dominant spirit.

Q. That was owing not only to his peculiar and wonderful genius in affairs of this kind, but also to the natural disposition of the man?

A. Yes, sir.

Q. And it is entirely correct to say that after the Union Pacific acquired the controlling interest in the Southern Pacific lines that you have mentioned that the affairs of all of these constituent companies were conducted with reference to the will of Mr. Harriman in so far as he exercised it?

A. That is generally true, I believe.

Q. Now reverting again to the fact that the Southern Pacific Company, as the operating company of these

constituent lines, including the Oregon and California Railroad, controlled virtually all of the transportation facilities in western Oregon in the district that I have indicated in a previous question, it is also a fact, is it not, Mr. Eberlein, that at the time you entered upon your work in connection with these land grants and even to the present day the Oregon and California Railroad Company, subject to the rights asserted by the Government in this suit, owned and still owns between one-third and one-half of all of the lands tributary to the line of its railroad here in Oregon? I refer now to the main line extending from Portland south through Salem, Albany, Eugene, Roseburg, Medford, from say Eugene southerly to the southern boundary line of the state and by tributary to its line of railroad I mean within the limits of its land grant, both primary and indemnity, as exemplified on the maps that have been introduced in evidence here?

A. I should judge that the statement of about one-third within the limits fixed by you would be—

Q. (Interrupting) Substantially correct?

A. About correct as between the exterior boundaries of the grant. However, I never understood that the ownership was subject to any claim of the United States,—not while I had anything to do with it.

Q. I say, subject to the rights asserted in this suit?

A. Well, that I could not pass upon. I am speaking of the thing I always understood and so held it to be in absolute ownership in the railroad.

Q. I understand that.

A. Yes.

Q. But you do not deny—

A. (Interrupting) That there is a suit.

Q. That the ownership is subject to any rights that the United States may have, without conceding that they have any?

A. Without conceding they have any, certainly.

Q. But you do not deny they are subject to any rights the United States may have, though?

A. If the United States can prove any rights, yes.

Q. So that in the discharge of your duties in connection with this land grant in Oregon you found the Southern Pacific in control of the transportation in western Oregon and particularly southerly from Eugene, and also in control through its stock ownership of the Oregon and California Railroad Company of virtually one-third of the lands tributary to that line of railroad?

A. Within the limits of the grant?

Q. Yes.

A. I won't say outside of that, because there may be a large body of land outside to the west that would be tributary and perhaps is tributary, that I would not know enough about to testify to.

Q. Well, as I explained before, by tributary to the line, I mean within the limits of the grant?

A. Yes; yes. Very well.

Q. Now in your work in connection with this grant and in devising the plans for the reorganization of the land department and the adoption of new policies for the handling or use of these lands, did it ever occur to you that the lands controlled to a certain extent the subject of transportation in future years?

A. Why, I don't know that I thought of it in exactly that angle. The matter had a great deal of thought on my part, all that I could give to it. The principal thing in my mind was the divesting of the Railroad Company of this large body of lands. I didn't think that it was to the best interests of the road that it should retain these lands. It was a burden.

Q. It was your opinion that the best policy was to pass these lands on into independent proprietorships?

A. Yes, sir.

Q. To become an instrument of production to aid in transportation?

A. Population and industry. That was the whole idea. There was no advantage to this line of road, or any line of road, to have a contiguous land grant without settlers, without people on it.

Q. Well, if a line of railroad has virtual control of the subject of transportation in a given community and owns virtually one-third or more of the lands tributary to the line of road, and by that I mean as I have explained before within thirty or forty miles of the railroad, and specifically speaking within the limits of this land

grant, it also controls to a very marked extent the production of the territory tributary to that line of railroad, does it not?

A. Not necessarily.

Q. Well, it can control it?

A. It might; if it wished to pursue a suicidal policy it might do so. But I don't understand that that has ever been the policy of the Southern Pacific.

Q. But you realize, do you not, the difficulties that a competing line of railroad would encounter if it attempted to invade a field where its competitor owned one-third of the lands tributary to the line?

A. It might be, as you say, something that a competitor would have to consider. On the other hand, it would be unfair to the line of road, the pioneer, that its property should be used to induce a competitor.

Q. In other words, you feel that it would be unfair for the pioneer road, as you describe it—and by that you mean the Oregon and California Railroad in this case?

A. Yes, sir.

Q. To so dispose of its lands that it might attract a competing line of railroad?

A. Yes, sir; that is my idea.

Q. And that was your idea during the time that you were engaged in the work in connection with these land grants that you have described?

A. Yes, sir.

Q. Now what plan or policy, if any, did you discuss or attempt to evolve or devise that would secure to the Southern Pacific Company and its constituent company, the Oregon and California Railroad Company, the benefits of the transportation of the products of this land included in this land grant?

A. My plan, which was simply a recommendation, originated with me, never had any active recognition that I know of from the general officers of the road, was that that land grant should be sold out reserving only so much of it as was necessary to the operation and to the traffic of the road, in exactly the manner testified to by me yesterday. That would mean simply reservation for stations and rights of way for various purposes, stock yards for traffic, and land that had water for engine supply, gravel banks, and things of that kind, which were of more value to the road than to anybody else and which the road would have to acquire from some one else if it disposed of them; and after those reservations had been made, to sell that grant in such a manner as to produce the best business results for the Railroad Company and by doing so it would produce the very best results for the community. And my idea was, and I believe it is correct economically, the land belongs to the road; they paid for it by the construction of the road, earned it. If it owns the land it owns the product of the land, as the timber, I recommended the land should be sold at a very reasonable price to responsible people who would within a reasonable time develop, that is by the establishment of mills, develop the product, and when so developed that

all the Railroad Company reserved would be the right when so developed to carry the product, the lumber product, at the rates then current as to which any other line would carry the product; otherwise, to have the right of the shipment and the routing of the product of the land.

Q. So that your plan was to sell the lands by such a method and upon such terms to be inserted in the conveyance as to create covenants running with the land that would guarantee to the railroad the transportation of the product of the land?

A. Exactly, subject only to such further reservation as would protect the shipper; and that is, he would not have to pay any more for the transport of that over the Southern Pacific lines and its connections than he would over any other competing line at the time of shipment.

Q. Well, do you honestly think if all of the lands marked in black upon any one of those maps were passed into private proprietorships under conditions which required that the product of those lands should be shipped over the Southern Pacific line, that there would ever be any competing line?

A. Certainly.

Q. You think there would be?

A. Certainly. It is the history of all railroads that where you have an industrial community growing, that a single line will not carry the product, and that the very fact Congress of the United States established that grant in the form that it established it as well as every other

land grant established by Congress—and I have reorganized several now—in the way it did, to prevent a monopoly, and it does prevent a monopoly. There is one-half of all the land that is in there—yes; there is more than that; there is the entire body of the Willamette Valley, as you will see from those maps.

Q. I refer now southerly from Eugene.

A. Well, take it southerly from Eugene; you have got the Umpqua Valley, the entire body of that valley is in private ownership and has been since before the time this road was established, and it is open to any competing line who will come in; and it must be remembered that a competing line has actually paralleled that line that you have reference to east of the mountains, throwing feeders across the mountains into the Rogue River Valley, for instance. There is not anything to prevent another line, notwithstanding that land grant. The Southern Pacific, according to my view of the case, was simply holding what belonged to it of right, and it should have.

Q. Do you mean to say that, referring now to Defendant's Exhibit 259 and pointing to the City of Eugene, if the Southern Pacific Company had the right guaranteed by covenants running with the land, to transport the product of all of the railroad lands appearing upon this map from Eugene southerly to the state line, that it would have no advantage over a competing transportation line that would attempt to enter that field?

A. Certainly.

Q. It would have?

A. It would. But you must remember that the timbered land in your district you have just indicated has been culled over and the best of it has gone into ownership other than the Oregon and California. They are there; you can see them on that map.

Q. They are not indicated on that map. Here is the map they are indicated upon. Now if you will eaxmine it you will find but a very small proportion of it has passed into other ownership.

A. As I say, it is the best part of it.

Mr. Fenton: About four hundred thousand acres, Mr. Townsend.

A. You go down into the sugar pine belt and you will find that the heart of that was disposed of. The best of the timber of that grant was, as I say, culled, and has been since 1898, and the culling process was simply stopped when the lands were, or the business of the grant was suspended necessarily.

Q. But you considered it substantial enough to recommend it, didn't you?

A. Certainly.

Q. And your recommendation was considered and entertained by Judge Cornish, was it not?

A. I don't know whether by Judge Cornish, it was by others.

Q. Did they ever go so far as to consider the form

of deeds that should be executed that would contain covenants of the character I have described?

A. I believe that Judge Singer drew a clause; whether in form of deed, I don't know that it ever got that far.

Q. Do you know of any instance in the industrial history of this country, or any other country, when a transportation line had a legal right to the transportation, exclusive legal right to the transportation of the products of virtually one-third of the land tributary to the line?

A. Well now, south of Eugene?

Q. No; I am referring to any railroad, now, for any district.

A. I am not familiar enough with the transportation history of the world to know. You could find such examples in Europe, I have no doubt, but all I am interested in was what was for the best interests of this strip of country and what it needs is industries. It is of no advantage to this state, or certainly not to the road, the condition in which I found this grant.

Q. It is not yet, is it?

A. That is not the fault of the road.

Q. It doesn't make any difference—

A. It is the fault of the United States.

Q. It doesn't make any difference, the fact is that the present condition is detrimental to the commercial

and industrial interests of this state, is it not?

A. Certainly, by reason of the suit of the United States which prevents any sale or disposition, that has prevented men from even milling the timber that they own.

Q. Who?

A. The men who have bought timber from the Railroad.

Q. Well, who has been prevented from cutting it?

A. Anybody.

Q. Well, name one.

A. Anyone who has bought that timber, until the passage of this act which galvanizes their title; they were not safe in cutting any timber that was on land bought from the Railroad Company.

Q. I am not talking about whether it was safe, or not. Tell me one company that quit?

A. I don't know that they quit, but they must have cut under—unless they had some agreement with the United States they were not safe.

Q. Well, did the suit of the United States in any way interrupt the operation of a single industrial plant in Oregon?

A. I believe it has.

Q. What one?

A. I can't name them, but the impression that I gained from being in this state is that it has. From the

talk that I have had with the timber men themselves I believe it has.

Q. What timber men have you talked with who expressed that?

A. Oh, I have talked with Mr. Hammond; I have talked with Mr. Blodgett; I have talked with a number of them at different times; and the consensus of opinion of those who were milling was that they didn't know where they were.

Q. Well, did any of them say that they had arrested for a moment the turning of a single wheel?

A. No, I don't suppose they did, because they were in a position where they had to go ahead in order to keep their plants open.

Q. Well, how did the suit in any way interfere with the operation of existing industrial plants?

A. Simply by clouding titles and making it a very dangerous performance for any man to proceed.

Q. Well, however dangerous it might have been they did proceed, didn't they?

A. I can't say as to whether they did or not. My impression is they did not run to their full capacity in the way they were before.

Q. Well now, where did you get that impression?

A. My impression gathered from my familiarity with conditions in this state, living in the state as I do most of the time and in the southern part of it which is a timber country.

Q. Well, can you tell me one mill that has reduced its products because of the pendency of this litigation?

A. Now I am not familiar with the inside operations of these milling companies. I am testifying generally to the general expressed opinion, the fact that the lumber industry, whether entirely due to that cause or not, has suffered prostration in that lower part of the state. Whether that extends all over I do not know.

Q. Well, you know, don't you, that the Southern Pacific Company tried to nearly double the cost of transportation on timber from that part of the state to San Francisco?

A. I am not familiar with that fact.

Q. They tried to raise it from $3.20 a ton to over $5.00 a ton, didn't they?

A. Well, that is information to me. I didn't know it.

I don't know it. It may be the fact, but I don't know it.

Q. Now have you ever considered the question whether the milling industry in Oregon, and particularly western Oregon, has been in any way stifled by the service and rates of transportation put in force by the Railroad Company?

A. That might be.

Q. I say you have never studied that?

A. That was never a part of my business to study that.

Q. Mr. Eberlein, this proposition or suggestion, however you may describe it, of selling the lands upon such terms as to guarantee to the Railroad Company the transportation of the product of the lands, was under discussion and consideration at about what time?

A. I think that suggestion was made by me about 1904. Anyhow, it was when I was actively at work making a report on the conditions here as I found them.

Q. It was after your appointment as acting land agent?

A. I think before.

Q. And how long was it under discussion and consideration?

A. I don't know as to that. It cropped up again. I renewed that recommendation as late as 1906.

Q. Now your testimony upon direct examination indicates the fact to be, and I therefore ask you if it is not a fact, that when in the fall of 1904 you contemplated the resumption of the sale of the lands, and which purpose was abandoned as you have described because of the objections urged by Mr. Cotton, and when you again formed the purpose in 1906 of resuming the sale of lands, which purpose was again interrupted as you have described by the loss of your records in the San Francisco fire—

A. (Interrupting) That is, as to the sale of timber lands only.

Q. Yes, but what I am getting at is that at those

times you intended to put on sale only the agricultural lands, did you not?

A. That is all that it was possible to put on at that time.

Q. It was not intended to put on sale any of the timber lands?

A. Just as fast as it could be cruised and we were justified by information in making the sale.

Q. Well now, you don't mean that they were to have been put on sale until the question of the manner of selling them and whether this condition that you have referred to should be imposed upon sales, had been determined, do you?

A. No. It was not in my province; I wasn't an operating official nor a high official of any kind. That was largely a traffic matter, beyond my province entirely, and I merely made that suggestion. It was for others to act upon it. But I will say that I never had any orders to incorporate that suggestion. I believed in it thoroughly myself and I renewed it, I remember, in 1906.

Q. What I mean is this: That when the time would have finally arrived when you would recommend that the sale of timber lands be resumed, you would have renewed the same recommendation, wouldn't you.

A. I did. I will say that. I did.

Q. And the question was never definitely decided, so far as you know, was it?

A. It never was during my time.

Q. Now you say that in 1906 if a party would have applied to purchase agricultural lands you would have entertained the application and sent out a person to examine the lands and fix a price?

A. I did just that.

Q. Why couldn't you send out a person to examine any particular timber lands that were applied for and examine them?

A. I did, just that,

Q. Did you make any sales?

A. No, sir.

Q. Why not?

A. Because they would not take them.

Q. At the price you fixed?

A. I suppose so. I refer now to the application of the Weyerhauser Timber Company.

Q. But to no other?

A. I don't recall any other, because we did cruise some timber which we sold to the Southern Pacific Company, but that was under the necessities created by the fire; and as to others, I was in the East largely in 1907, I think pretty nearly the whole year, so that what was done here was done during my absence and I can't say, only that I know that cruising went on.

Q. Well now, when the Weyerhauser people applied to purchase this large body of timber land you had

it cruised and fixed a price?

A. Yes, sir.

Q. Well, when the Booth-Kelly Company applied to purchase some timber lands in 1906 why didn't you have that cruised and fix the price?

A. I don't recollect the specific application of Booth-Kelly Lumber Company in 1906.

Q. Well, I understood you to say that they applied to purchase land from you in 1906, and because they could not purchase it that they started this entire agitation?

A. I think they did.

Q. Well, what land did they apply to purchase?

A. Probably that that lay contiguous to their purchases down there. I can't give you the facts because I have no papers before me.

Q. Well, did they apply to purchase any?

A. I think they did.

Q. Well, why didn't you have it examined and give them a price?

A. Possibly did.

Q. Well now, please do not deal in possibilities. If you have no recollection please say so.

A. I can say I have no recollection of particular facts.

Q. Well, have you any recollection of having had the lands cruised that they wanted to purchase, and sub-

mitting to them a price?

A. No, I have not.

Q. But you do recollect very clearly having done so with reference to the application of the Weyerhauser Company?

A. Certainly.

Q. Now with reference to the purpose of resuming the sale of these lands after clearing the records, in the first place, and then renewing the records after the San Francisco fire, you of course can only speak for yourself; isn't that true, Mr. Eberlein?

A. Yes.

Q. That is as to what the real purpose of Mr. Harriman was, or his intent, or that of Mr. Cornish, you cannot assume to speak?

A. I don't assume to speak for anyone but myself.

Q. Do you remember when Mr. Harriman visited Oregon and California and the Pacific Coast generally, in September, 1907?

A. September, 1907? I didn't know—I don't remember of his being here at that time.

Q. Do you remember that he was here in September, 1907, at Portland, and went south to San Francisco and Sacramento and addressed a conservation congress at Sacramento in the early part of September, 1907?

A. I may have known it at the time, but I have no

recollection now.

Q. Do you remember that Mr. Harriman, on September 2nd, 1907, at Portland, gave out an interview, which was published in the Evening Telegram of Portland, Oregon?

A. I don't remember of any such article.

Q. (Interrupting) Wait a minute; let me finish the question. In which he stated that it was his policy to put on sale the agricultural lands but that the timber lands should be reserved by the Railroad Company? Do you recollect it?

A. No, I don't recollect it; nor do I believe that he ever said it.

Q. Do you recollect that at Sacramneto in his speech there he stated that the timber lands in Oregon would not be sold but would be reserved by the Railroad Company?

Mr. Fenton: The same objection. What date, Mr. Townsend?

Mr. Townsend: That was in the fore part of September, 1907.

Mr. Fenton: At Sacramento?

Witness: Now, let me just qualify my testimony that has gone before. I do recollect now that you call it to mind, of being at Sacramento and of being one night at, I believe it was the Irrigation Congress.

Q. It might have been the Irrigation Congress in-

stead of a conservation congress.

A. I think it was an irrigation congress, and I was there and I met Mr. Harriman there, and I don't recall at this time having heard any such remark made by him.

Q. Well, did you hear his speech before the congress?

A. I think I did. He was there for that purpose that night. He would not be there for any other purpose. The record of the congress, though, will be conclusive on that, of course. Let me suggest something to you. The record of the proceedings of the National Irrigation Congress of that date are to be had. I believe they can be found in the city.

Q. Do you know where we could get a copy without too much delay?

A. Any of these libraries.

Mr. Fenton: Would that contain the speech?

A. It contains verbatim reports of all speeches and all proceedings.

Mr. Fenton: Would it contain Mr. Harriman's speech that night?

A. If he made that speech it was reported. I was an officer of the Congress one time when it was here in Portland, and I know that all speeches, all proceedings are reported verbatim.

Q. Well, you have no reason to doubt the accuracy of the Associated Press records of that subject, have you?

A. Why certainly.

Q. What is it?

A. Why, of course.

Q. Now, is it not a fact, Mr. Eberlein, that in 1906 and 1907 it was your purpose to resume the sale of agricultural lands only but not timber lands at that time?

A. Now, so far as I controlled it myself, and speak for myself, it was my desire and my recommendation; whatever was the determination of my superiors I can't speak for, but my recommendation was to resume the sales of timber as fast as they could.

Q. I direct your attention to Defendants' Exhibit 277, consisting of two telegrams addressed to you by W. D. Cornish, the first bearing date New York, April 5, 1907, and the second bearing date New York, April 24, 1907, and ask you to read those, please, not aloud but for your own information.

A. Yes, sir.

Q. You observe that in his first telegram Judge Cornish said as follows: "Please mail me report at convenience showing progress made in rehabilitating your office and also what extent you are receiving and handling applications for lands and especially lands other than timber and mineral." You observed that language, did you?

A. Yes, sir.

Q. Well now, is it not a fact that at that time, without referring now to your own individual judgment as

to what should be done, that it was the purpose and intent of Judge Cornish as expressed to you, not to resume the sale of timber and mineral lands?

A. That is not what that means.

Q. What is it?

A. That is not what that means. It might bear that construction from your point of view, but the fact is that the reference to timber land there had reference to the impossibility of our making any general sales at that time.

Q. What do you mean by general sales?

A. I mean throw the thing open to everybody to come in.

Q. Well, can you explain why you could not have sold any timber lands in the year 1907, if you had wanted to?

A. Because you can't do a thing piece-meal, not timber; that is, if you have any consideration at all for what you are doing. There are one or two reasons why it was not practical. In the first place, my recommendation was to cruise the grant generally and classify it and group it before resuming sales.

Q. Well, was there any reason why if a man wanted to buy a particular piece of land in a locality which had been completely cruised and classified and graded, that you could not entertain his application without waiting until the entire grant was cruised?

A. That may be, but there were no conditions of

that kind.

Q. Did you have any applications to buy timber during the year 1907?

A. I think so.

Q. Other than the Weyerhauser Company?

A. I think so.

Q. Did you sell any?

A. No, I didn't.

Q. Did you quote a price to any of the applicants to purchase?

A. I think not.

Q. Did you send anyone out to cruise the land which they applied to purchase?

A. Yes, sir.

Q. And did not quote a price?

A. I don't recollect of any prices being quoted. I recollect of sending applications with the information and everything to Cornish at New York. I didn't assume to sell, you understand. The matter was referred to him, the matter of all sales. Had he ordered the sales made they would have been made.

Q. Then the reason that they were not sold was because Judge Cornish did not authorize the sales?

A. Neither he nor anyone else.

Q. Now that is also true during the year 1908 down to the time that you severed your connection with the

road?

A. I was in New York the entire time, almost the entire time of 1907. I was here only a few weeks.

Q. How about 1908?

A. I was not here at all, except to pack up some goods, some household goods and go back to New York.

Q. You were in New York then in 1908 until May 1st?

A. Until June 1st.

Q. Until June 1st?

A. Yes.

Q. Well now, during that time were there any applications for the purchase of timber lands?

A. I think there were applications. No; I wont be sure about that. It was about that time that, after the excitement here, as you know, started, it had a very quieting effect on everybody.

Mr. Fenton: What do you mean by excitement?

A. Oh, I mean the excitement that was fomented against the Railroad Company and the land grant.

Q. Well now, without speaking with any feeling in the matter, you mean that when the question of the right of the Railroad Company to convey the lands in quantities exceeding one hundred and sixty acres and for a price exceeding two dollars and a half an acre, and to other than actual settlers, that then there were not very many people who cared to risk the title and therefore

there were few applications to purchase? Is that what you mean?

A. My recollection is just this: As to 1907, in fact, subsequent to the Weyerhauser Timber application, which was disposed of in Decemebr of that year 1906, it is my recollection and I believe I am correct that there were no applications, bona fide applications to buy. There were a number of cases where people asked that an application be filed; and I will say they went so far in, I think a number of instances, a great many, probably, to say that there was no immediate desire for it but that whenever the Company was in a position to sell, that they understood there was to be some litigation, that they wanted to be in a position to have their application recognized and considered.

Q. Now, so that the examination may not be misleading, I will state that I do not include in the scope of any of my questions at the present time the so-called applications to purchase by those who claim the right under these acts of Congress to buy at two and a half an acre.

A. No, I don't refer to that class at all. I refer to those simply making application to buy tracts of land and asking that their applications might be filed so that they be recognized in order.

Q. Now you were authorized by Judge Cornish to sell strictly agricultural lands, were you not?

A. Yes; subject to his approval in each case.

Q. But you were not authorized by him to sell timber lands?

A. None. He did not authorize, and so did Mr. Kruttschnitt authorize the cruising of the Weyerhauser timber.

Q. But that was an exception that was made, wasn't it, Mr. Eberlein, and over your protest?

A. Well, it would appear so.

Q. And really against your advice, wasn't it?

A. Against my advice.

Q. Your advice was not to entertain that application to purchase?

A. I would not.

Q. I say that was your advice?

A. That was my advice.

Q. Now with that exception you were not authorized to entertain any application to sell timber lands during the years 1906 and 1907 or 1908?

A. I think not, so far as I know.

Q. But you were authorized to entertain applications and sell agricultural lands, subject to the approval of Judge Cornish?

A. And grazing lands.

Q. And grazing lands?

A. Yes, sir.

Q. But even those had to be referred to Judge

Cornish?

A. Yes, sir, that is true.

Q. And at that very time, Mr. Eberlein, as your report shows which you made to Mr. Cornish, you believed that there was but fifteen acres of agricultural lands in this grant?

A. No, I won't say that I believed there were only fifteen acres.

Q. Well, you so reported, did you not?

A. Oh, no.

Q. Based upon the Assessors' reports?

A. I put in the table the official returns of those Assessors to show what the Assessors themselves thought.

Q. Well, did you think that the Assessors' returns were correct?

A. No, I do not think they are correct, not when they assess railroad lands ever, or railroad property.

Q. Well, did you think the Assessors' returns were correct as to what quantity of these railroad lands were agricultural in character?

A. No, sir.

Q. You thought that there were more agricultural lands?

A. There were more, and that report states the fact to be what I did think there was.

Q. You thought there were about seven thousand

acres?

A. About seven thousand acres.

Q. So that it is a fact, is it not, that during the years 1906, 1907 and 1908 until you severed your connection with the Railroad on June 1st, 1908, you were authorized only to sell agricultural and grazing lands and no timber lands?

A. That is true.

Q. And it is also a fact, is it not, as disclosed by your report, that out of the two million three hundred thousand acres involved in this suit over two million acres were considered as timber lands?

A. No, not two million acres. I think there was about a million and a half acres considered as timber and wood land. That is my recollection.

Q. Your report here states that your information from the reports of your graders and land examiners is that of the patented lands 1,496,640 acres were covered with timber and unsuitable for agriculture?

A. Yes, that is right.

Q. Were you on the Coast in September, 1907?

A. Yes, sir. I was here and left here in October, 1907, to New York, and was practically not here again during my incumbency, except about a week, leaving on the 22nd of Februaary, 1908. My work was practically finished in September, 1907, and I resigned at that time, though my resignation was not accepted until the following June.

Q. Do you remember whether you were in Oregon in September?

A. I don't think I was.

Q. You now recollect that you did see Mr. Harriman at the time that he visited the Coast during that month, but you think that it was in California that you saw him?

A. I saw him in Sacramento. I went up to Sacramento to the Irrigation Congress and was there the night that he addressed the convention.

Q. Do you recollect of learning that on September 2nd, 1907, when Mr. Harriman visited Portland, he was reported in the newspapers as having said to the reporter of the Evening Telegram, of Portland, as follows:

Mr. Fenton: We object to that as purely hearsay, of about the third degree. Go on.

Q. (Continued) "What conditions did you find in the interior?" "Sparsely settled regions. You go miles and miles before you see a face or a habitation. I traveled vast stretches and saw nothing but chipmunks. The country is undeveloped. Oregon needs more people. I passed forest reserves and timber land granted to military wagon road companies. The reserves and the military road companies control too much land. This should be remedied. The reserve policy requires changing and the military company should be made to dispose of holdings." Next question: "Then, Mr. Harriman, your contention is that Oregon cannot be properly nor speedily developed until the corporations which have

vast holdings are forced to open the country to dispose of the lands?" Answer: "Yes." Question: "And does this include the lands granted to the Southern Pacific?" Answer: "Yes, the Southern Pacific, too. But the Southern Pacific hasn't much land. You see, before we came into the Southern Pacific the Company was pressed for money and was disposing of lands and giving options to syndicates and speculators, and we didn't know how much land we had so we stopped until options expired to ascertain just what we had in land. The Southern Pacific will sell land to settlers but not to speculators. We can tell a speculator from a settler as well as anyone. The agricultural land we will sell, but the timber land we will retain because we must have ties and bridge timbers and we must retain our timber lands for future supply. The Southern Pacific has an insufficient amount of timber now, and we have had to buy large tracts looking to the future supply of ties and materials. Yes, we will sell to settlers, but speculators will get none." Do you remember of such an interview having been brought to your attention?

A. I may have read the stuff at the time; probably did, because it was in the line of my work. It made no impression. It is gospel, though.

Q. It is what?

A. It is gospel; it is good sense.

Q. What do you mean is good sense?

A. Oh, I mean to say that if he said as is reported,

with the emphasis on the "if," that the Company would not sell any more timber to speculators, he said a very wise thing and the only wise thing for this state. That is the trouble with the conditions down there now.

Q. He says he would not sell agricultural lands to speculators and would not sell timber lands to anybody, speculators or otherwise?

A. Well, I didn't understand the reading, if that is the case. It is just as well not to sell land to speculators, though. That is, as I say, what the road and the country have suffered from. You take the Weyerhauser timber interests, for one thing; they have an enormous investment in this state in timber but not to my knowledge have they ever milled a foot.

Q. And yet the Weyerhauser Company was the only company whose application the Railroad Company would entertain?

A. Oh, no.

Q. In 1906?

A. Oh, no; no, I think not.

Q. What other application was entertained?

A. Now, let's see ——

A. Now, if you want to know about that, I can tell you a little incident that only goes to show, that I made a call once with Mr. Harriman on Mrs. Potter Palmer at the Waldorf in New York; I made more than one call. That was in response to an application which

she made about in 1907, and she was very insistent upon it. I had that land cruised.

Q. How much land was it?

A. Oh, several thousand acres; I forget how much. That is immaterial. It is the fact that you are after whether these applications were considered.

Q. Well, where was that land situated?

A. That land was situated in the grant.

Q. I understand, but where?

A. Well, I am coming to that. Don't get impatient with me. I am kind of slow. That, as I recollect, was southwest of Eugene, somewhere in the neighborhood of the McKenzie River, somewhere where some sons of hers were interested, and she referred to friends of hers who bought very largely, Michigan interests, Michigan people. I believe she referred to the interests now in control of the Booth-Kelly Lumber Company. While she made a great fuss about that timber that was for speculation, not for any immediate use at all, and that fell through. It must be remembered that in the fall of 1907—meanwhile the work of getting records together and keeping up field work had been going on ever since the fire. In the fall of 1907 the great crisis struck New York, and, as you may remember that, it put a pretty effectual stop to every kind of industry, speculation in timber land and everything else as well. People didn't have the money to buy, and my recollection is that the effort to acquire timber land when the Railroad Company was in no posi-

tion to sell it stopped about that time as everything else did, and I think that it was pretty effectually stopped until some time in 1908 or 1909. Meanwhile the suit had intervened and that stopped things. I don't think anything was done in 1908 that I remember of.

Q. How many times did you see Mrs. Potter Palmer?

A. I think twice.

Q. I thought you said several times?

A. Twice, I think.

Q. Did Mr. Harriman go with you, did you say?

A. He did. He did.

Q. Did she designate the lands that she wished to buy?

A. She did, and, as I have testified, I had them examined.

Q. Why did you have them examined?

A. Because they were applied for.

Q. Well, I thought you said she was a speculator and you would not sell to her?

A. We didn't sell to her.

Q. You didn't have to have the lands examined to determine whether she was a speculator or not, did you?

A. Oh, possibly.

Q. You did?

A. Certainly.

Q. You had to have the lands examined to determine whether Mrs. Potter Palmer was a speculator in these lands?

A. Whether she intended to speculate in these lands, yes.

Q. Well, how could you tell from an examination of the lands?

A. Well, you can tell sometimes from the location of the land. It is queer but it is the fact. And you can tell very frequently by your conversations, your conferences with people, what they propose to do with land. That might not have appeared in the first instance. The first instance was that there was an application came out to me and the cruising was done as rapidly as possible and the papers went on to New York about the time that I went down there, and Mrs. Palmer came there about that time.

Q. Well, you knew who Mrs. Potter Palmer was when the application came in, didn't you?

A. Oh, yes.

Q. You knew she had some interests near Eugene?

A. I didn't at the time when the application came in; I knew it afterward.

Q. But then you knew her general history as Mrs. Potter Palmer of Chicago?

A. Oh, I knew she was financially responsible, I

suppose.

Q. And you knew who she was?

A. Oh, yes.

Q. In a general way?

A. Oh, yes.

Q. When her application to buy these lands came in you sent a cruiser out to have them cruised?

A. Yes.

Q. And the report of the cruiser was sent East?

A. Yes, sir.

Q. Do you remember whether the report of the cruisers included anything other than the general character of land and an estimate of the amount of timber?

A. Just the usual data that a cruiser turns in, the character of the land, the character of the timber, the classification of it, and the——

Q. (Interrupting) Value of it?

A. The value of it.

Q. Well then, you and Mr. Harriman went and called upon Mrs. Palmer?

A. At her request.

Q. Did you ask her whether she wanted the lands for speculation?

A. Well now, to go into that, the incidents of that call, the last call developed the fact that Mrs. Palmer not only wanted that timber but she wanted to buy

all the timber in about six townships down the east side of the grant, along about I think opposite or in the neighborhood of the Booth-Kelly holdings. There was no immediate intention on her part to make use of them. The first application she made was for a comparatively small body of timber that might have been, though it was not immediately tributary it might possibly have been used for some small milling operation, but when we got down to talk about it she had made up her mind, or changed her mind, rather, that she wanted a vast deal more, and the thing fell right there. We didn't cruise that timber; we didn't go on with it in my time. I think she abandoned the project.

Q. Now, do you recall any other applications to purchase during that year?

A. I might if I had time to think it over, but I never charged my mind with things of that kind, though other applications were undoubtedly made and probably other cruisings made. As I have already testified that in 1907 my work proper was finished in the summer of 1907, and early in September, 1907, I resigned, sent my resignation to Mr. Harriman, and instead of accepting it he ordered me to New York and my office was there during the remainder of the time in which I was connected with the road. I was here for about one week after that. That was all.

Q. Was there any policy adopted at that time not to sell timber lands to speculators?

A. I don't remember of any such policy being defi-

nitely enunciated. No orders given, if you mean that. I don't know of anything of that kind being done. But it had been my recommendation long before not to do it.

Q. Well, you mean then that the application of Mrs. Palmer was turned down because she was a speculator?

A. I can't say so in terms.

Q. Well, what has her being a speculator got to do with it? That is what I am trying to get at.

A. It has a very great deal to do with it, in tying up timber land for an indefinite time, just as has been done here. A very, very small fraction of the timber that the Southern Pacific, or the Oregon and California has sold since 1898 has ever been milled. It has just been held for the rise.

Q. Held for the what?

A. Held for the rise.

Q. Oh, yes.

A. Just the increase in board measure per annum in these large purchases is more than interest and taxes, and that is why they can carry it and why they do carry it. The Oregon and California Railroad has sold the most valuable timber in all this holding, allowed them to cull it and sold it at less than twenty cents a thousand feet board measure.

Q. Now, your idea is that the Railroad Company should hold it and get the benefit of the rise?

A. Not at all; it never has been; but—

Q. Well, how does it help the state industrially to have these lands held by Mrs. Potter Palmer? I mean by the Railroad Company instead of Mrs. Potter Palmer?

A. It helps it to this extent: That the Railroad Company has no intention of holding it in mort main.

Q. Oh; and Mrs. Potter Palmer has?

A. Yes, undoubtedly. Anybody that comes in and wants to buy all the timber in six townships of land, you can take it right straight that they have no immediate intention of doing anything with it. And that is borne out in the case of every large purchase, and I don't except any, because of the purchases made by the Booth-Kelly Lumber Company, even, of seventy thousand acres, probably more than that with what they acquired indirectly from the railroad, of that very, very little has been cut. They bought it so cheap that it is more profitable for them to hold it, and that is why Mrs. Palmer and everybody else wanted to buy very cheap and of the Railroad Company. So far as my connection with the Railroad Company goes and my suggestion to it was that you could afford to proceed with your sales of timber at these very low prices but you must provide for some kind of use being made of it industrially and not allow it to be tied up, because in that way it is simply strangling industry, and, by the way, prevents that competing road you were talking about a while ago.

Q. So that your idea was that the Railroad Com-

pany should hold this land so as to prevent somebody else from strangling industry?

A. No, no, not at all. The Railroad Company could not do so. That is self evident from the map. You cannot tie up the country with a checkerboard map. You can't do it. You can by selling to these large holders, because they can and they do body up their timber, and they can make a complete monopoly and they can limit output. They may do about anything they please. The Railroad Company can't, you could not tie up—you can't make a monopoly of a single section, nor of a dozen sections, nor of a hundred sections, if you have got the same amount of land of the same character intervening which may go into private ownership; but the minute you turn it over to a single individual who can and who does body the country up, as the Weyerhauser Timber Company has done, you are simply tying up that country and you await their good pleasure; that is all.

Q. Do you mean that the Booth-Kelly Company and the Weyerhauser Company and these other large purchasers after acquiring the railroad lands bottled up the even numbered sections?

A. Certainly. That is what the Railroad Company never did, never intended to do, never could do.

Q. So that the ownership of the odd numbered sections by the Booth-Kelly Company, or the Railroad Company, or anybody else, is necessarily a leverage which will control the even numbered sections, isn't it?

A. Not at all, not in the hands of the Railroad Company.

Q. Why not?

A. Because, as I have said, the Railroad Company has not, cannot and will not if it could, body up the timber. It never has attempted to, never intends to do so, and could not do so.

Q. Why couldn't it?

A. In the first place, it is not transportation business. I believe, as you gentlemen would all call it, it is ultra vires. They are not authorized to go into the timber business. They would have no object in bodying up timber if they were not.

Q. Now the Southern Pacific Raliroad Company in California was not authorized to go into the oil business, was it?

A. It may not have been, but——

Q. (Interrupting) I say it was not, was it?

A. Not that I know of.

Q. But it had no difficulty in organizing a subsidiary corporation called the Kern Trading & Oil Company and engaging in the oil business, did it?

Mr. Fenton: We object to that as wholly irrelevant, and, as I am informed by Judge Singer, not the fact in the case, and a matter about which the witness would have no knowledge.

Mr. Townsend: Well, the witness approved the lease.

Mr. Fenton: And wholly irrelevant in this case.

Witness: I approved the lease?

Mr. Townsend: You approved it or disapproved it. You know the fact.

Witness: Well, you know the difference between approving and disapproving it.

Mr. Townsend: Well, it doesn't make any difference, you are acquainted with the fact.

Witness: It makes a great deal of difference, going into this record at this time. I never approved any lease.

Q. You know that the Kern Trading & Oil Company was organized in California as a subsidiary organization of the Southern Pacific to operate its oil lands, don't you?

A. The Kern Trading and Oil Company is a corporation organized I believe under the laws of California, and more than that I don't believe I know much about it, as my evidence involuntarily and otherwise in this Elk Hill suit will show that I didn't know what the purposes of that Company were, and I don't now.

Q. Do you mean to say if the Oregon and California Railroad Company here in Oregon wished to block out these timber lands that you do not know that they could organize a land company and do it, and no question of ultra vires would intervene?

A. I don't believe that is a supposable case between us.

Q. It could not be done?

A. I don't believe it would be done.

Q. I am not asking whether it would be done, but is there any legal obstacle in the way of it?

A. I can't say.

Q. "Do you mean to say if the Oregon and California Railroad Company here in Oregon wished to block out these timebr lands that you do not know that they could organize a land company and do it, and no question of ultra vires would intervene?"

A. So far as that calls for a legal conclusion I must decline to answer, because I don't know. As to the practical question, which I take to be the only question here, it is that such a thing is not a supposable case even.

Q. Well now, you had no difficulty in answering a similar question when it was addressed to you by the Southern Pacific people in May, 1905, concerning which you testified yesterday, did you?

A. May, 1905? I don't recollect what you refer to.

Q. Do you remember that you testified that the letter that you wrote to Mr. Dunne with reference to the transfer of an entire grant was with reference to the question of organizing a land company and transferring the entire grant to that company?

A. That had reference to the transfer of a land grant to a land company operating not as a usual land company does for the purpose of acquiring property, but for the purpose of merely selling the rest of that grant.

Q. Well, do you mean to say that you don't know

whether a land company so operated, so organized, could acquire other land?

A. I do not know. It would depend entirely upon its articles of association.

Q. Well, couldn't its articles of association so be drawn that it could?

A. I haven't any doubt that it might be.

Q. But you see in the fact that the Booth-Kelly Company has acquired over seventy thousand acres of this land an industrial menace that you do not see in the holding of two million three hundred thousand acres by the Railroad Company?

A. They are entirely different cases. In one case the lands were acquired for a certain purpose. They were acquired by reason of certain acts which the Railroad Company had consummated. In the other case this property was acquired from the Railroad Company presumably for industrial purposes. The Railroad Company is not authorized, as I understand it, to go into any manufacturing business. If it has this land, which it got honestly and openly, it certainly has the right to dispose of that land in such a way as will do to the railroad the most good, and you can't do the railroad any good without doing this whole body politic in here the same measure of good. There can be no throttling of industry that does not injure the railroad, and there can be no expansion of industry without benefiting both the state and the railroad. Those are self-evident, hardly

worth mentioning but I just set them down.

Q. Well, then, it necessarily follows that the logical thing would be to transfer all the lands in the state to the railroad?

A. No, not at all.

Q. Why, if you think that the industrial interests of the railroad and the industrial interests of the state and the interests of the railroad as the proprietor of the lands are identical, then you mean to say that there would be no industrial injury if the Railroad Company owned all the lands, do you not?

A. No, I can scarcely agree with the logic. It seems to me faulty. This is a case where the railroad finds itself possessed of certain property, with certain industrial capabilities. As I have testified over and over again, so far as I am concerned,—and my acts, reports, everything, speak for themselves,—the Railroad Company tried this experiment for years of disposing of timber lands to whoever would come for them and let them cut out what they wanted and practically at their own price. As I have said heretofore, the net result of that was that the Railroad Company sold timber, standing timber, merchantable timber, for less than twenty cents a thousand feet on the average. I believed, and so recommended, that the selling of timber at such very low prices up to the present time had but one effect. That was to tie the timber up. It was more profitable to hold it than it was to manufacture it. Now the only suggestion that has been put to the railroad by me has

been that the timber land should be sold, but it should not go to augment any more large holdings, because there is no reason for doing so, no commercial reason for doing so. It limits the number of operators in the state. My recommendation was specific to the point that the small mill men should have a chance and not be compelled to go to these large holders and get at a large price what they needed for their mills. I believe that is the proper policy. Anyhow, it is what I recommended.

Q. Now you say it was more profitable to hold these timber lands than to mill the timber off of them?

A. It was in the hands of these people who bought at that price.

Q. Well, do you suppose that they have not been aware of that fact the same as you?

A. Oh, undoubtedly.

Q. The truth of the matter is that the price of lumber and other commercial conditions have rendered milling enterprises unprofitable for the last few years; isn't that so?

A. I am not familiar with prices of lumber or building conditions. I have not followed them since I was in the Railroad Company. I do know, however, and I know from talking with the people who are interested, that the whole northeastern end of California—I say the whole; a large part of it; Modoc, Shasta, Lassen counties—is owned by the T. B. Walker interests, and they began to acquire those interests in 1889. They

bought out timber concerns and mills and shut them down and they have existed all this time simply upon the increase in the growth of the timber which, as I have told you, is large enough in timber of certain age to more than equal the taxes and interest on the investment; and in this particular case it must be remembered that this timber was sold by the Railroad on conditions that never were duplicated that I know of in this country. Take the Booth-Kelly Lumber Company, for instance; it bought tract after tract and gave contracts which required practically no payment of money, which created at once a credit by which they could borrow money, and the Railroad Company got no benefit from it.

Q. Well, you know that the Northern Pacific sold all of their timber lands to the Weyerhausers, substantially, don't you?

A. Yes, they did, and they were sorry for it afterward.

Q. I know, but why are you picking out the Booth-Kelly Company as the great depredator in all these transactions?

A. Because it was.

Q. What is it?

A. Because it was, certainly.

Q. Yes, you have personal feeling against Booth-Kelly Lumber Company, haven't you?

A. Absolutely none whatever.

Q. When you came out here you suspected that

there had been some improper influence by which they had obtained exceptional terms from the Railroad Company, did you not?

A. When I came out here I had never heard of them.

Q. After you came out here and learned of these sales you did, did you not?

A. When I became aware of what was done and became aware and received their calls and their demands, and when I had their depredations reported every week and knew the unusual terms that had been granted to them, I saw by looking into those affairs that that kind of business was not good for the railroad and was good for nobody but the people interested in that enterprise; that is all.

Q. You even went so far as suspecting some of the Southern Pacific officials with having been in collusion with the Booth-Kelly Company, didn't you?

A. I didn't suspect.

Q. You didn't suspect it?

A. No.

Q. You knew it?

A. I knew that they were interested with them in certain purchases.

Q. Who?

A. Oh, is it necessary to go into those old things?

Q. I want to know why you have such a feeling

against the Booth-Kelly Company.

A. So far as Booth-Kelly is concerned, I have mentioned Booth-Kelly for the reason that they were the largest purchasers, individual purchasers, I believe. They were the most active, and it was a typical case and it is a typical case in regard to this grant. Now it don't make any difference to me who has the Booth-Kelly, who is interested in it, but when you are discussing this grant you will sooner or later come right back to that. How did it work in those cases? They had the largest number of contracts. They had the most unusual contracts granted, and their whole connection brought out a great many protests from other timber buyers, and large ones, wanting to know why they should have these special privileges, and all that sort of thing, and I could not—

Q. (Interrupting) Now, just a moment right there. Who made those protests?

A. Well now, let's see. Those protests were made by different lumbermen in the East for instance. I have a recollection of one man, whose name I can't recall, who was a large timberman in the East whom I met on Mr. Kruttschnitt's private car on a trip East in 1904, who asked me the direct question why they and why other large timber operators could not get the same privileges and the same terms as Booth-Kelly. I had to disclaim, because so far as I knew there was no reason; the only fact was that they had it; they were on the ground; they were the most active, energetic, and they were conducting mills.

Q. Now I want you to put into the record the contracts that you say constituted special privileges to the Booth-Kelly Lumber Company.

A. Well, do you expect me to give them by number and description of the land?

Q. No; I want to know it so I can trace it up and see whether you are correct.

A. You can just call for the record of those contracts.

Q. They are here in evidence. You can look them through.

A. Show them to me.

Mr. Townsend: Where is that exhibit of defendants' contracts of January 1st, 1903? (Counsel here refers to exhibit.) Now I want you to point out the contracts.

Witness: What is it you want?

Mr. Townsend: I want the contracts that the Booth-Kelly Company had when you came here and that you found and which you criticise as having extended to them special privileges that were not extended to other purchasers of timber land?

A. You can't show that by that record.

Q. Why not?

A. Why, because it don't show the terms.

Mr. Fenton: Those are the outstanding contracts.

Q. I don't ask you to find the terms in this record, but I ask you to designate the contracts.

A. Well, anything you find in there that is Booth-Kelly, or John F. Kelly, Trustee; and I think a large number of those shows no assignments. There are a great many that were acquired; and, as I have testified, that they bought directly seventy thousand acres and acquired about thirty thousand more, which makes a hundred thousand acres of timber, and they claim by their advertisements and published stuff to control and have an ownership of about ten billion feet of standing timber. I don't vouch for that fact; that is their own statement.

Q. Now any contracts that they bought by way of assignment, certainly they got no concession from the Railroad Company as to them, did they?

A. No, not at all.

Q. Now the principal contract that you have in mind, and to be frank with you, which I thought you would refer to, was the contract for about twenty thousand acres to John F. Kelly as trustee?

A. No.

Q. Is it not?

A. I didn't have that in mind.

Q. You didn't have that contract in mind?

A. No, I didn't have that in mind.

Q. They then didn't get special privileges as to that contract, did they?

A. The Booth-Kelly Lumber Company?

Q. Yes.

A. As assignee, yes.

Q. Well, how did they get it as assignee when the Railroad Company sold it to someone else? and they had to buy it from that other person?

A. I am merely stating the fact as I believe it is and has been reported. John F. Kelly was a member of the firm. George H. Kelly was. Booth was, J. H. Booth and R. A. Booth, and that contract was, I believe, though not in my time that I know of, assigned to the Booth-Kelly Lumber Company.

Q. Well, how does that show that the Railroad Company extended special privileges to the Booth-Kelly Company in the sale of that land?

A. Well, you are talking about all the contracts, aren't you?

Q. I am speaking about that particular contract. Let's get through with that one.

A. Well, suppose we talk about the contracts made directly to the Booth-Kelly Lumber Company. Wouldn't that be within the purview of your inquiry?

Q. No; I want to finish with reference to that contract with John F. Kelly, Trustee, first.

A. Yes.

Q. Now in what respect did the Booth-Kelly Company get any special concession or privilege with reference to that contract?

A. Well, I will tell you, that contract covers about

three townships of land, as I recollect it. Now, mind you, this is a good many years old.

Q. Well, your recollection is correct.

A. Very well.

Q. It is townships twenty, twenty-one and twenty-two south, range one west.

A. I compliment you on your ability to remember the location. I could not. That contract was made in such a way, and the privilege granted was of this character: Pieces of timber were taken out of a whole section, the whole thing was riddled up and down one side and another, so that the remainder of the timber on that purchase must come to the holder of that contract at practically his own price. Now I say that constitutes a special privilege. It ought not to have been sold that way.

Q. Well now, Mr. Eberlein, isn't it possible that you are mistaken about that?

A. I think not. I would refer to the contract.

Q. Now that contract is of record there, and if it were not for the fact that it would unnecessarily delay your examination I would like to have you take a set of township plats and map them out, because I did it this noon.

A. I mapped that once. I believe that map is still in the files of the Railroad Company in New York.

Q. Well now, do you not know the fact to be that

the Railroad Company placed their price upon that land and that Mr. Dixon and Mr. Kelly and other comparatively small stockholders of the Booth-Kelly Company, tried to induce that Company to buy the land, brought it before their board of directors and the company refused to buy it, did not consider it a good buy, and that was why Mr. Kelly and a few of his associates bought it for their own personal speculation?

A. I think very likely that is true.

Q. Well now, if this was such an unusual privilege to the Booth-Kelly Lumber Company, how do you account for the fact that they refused to buy it on those terms?

A. Now, just let's get that straight. You have picked out a contract which was not made to the Booth-Kelly but was acquired by them by assignment. Now, you see your inquiry tends to confuse me; whether it will confuse the Court I don't know, but it confuses me. Now we will just keep those things separate. I don't claim, nor do I think you do, that the making of that contract to John F. Kelly, Trustee, even though among them were these same men, same stockholders of the Booth-Kelly Lumber Company, was binding upon the Booth-Kelly Lumber Company, but they got control of it by assignment afterwards. I think the facts that you state are undoubtedly true.

Q. Do you not also know it to be a fact that these same men, Mr. Eberlein, who had tried to persuade their company to buy it and the Company had refused to do

it because they didn't consider it an attractive purchase, that after they had made three or four payments the Company finally changed its mind and bought it back from these men at an advance of something like ten dollars an acre?

A. I don't know anything about that. I only know the fact that they did. But that is not what I was referring to in my testimony. As I tell you, I didn't refer to that particular contract.

Q. Well, you must have had that contract in your mind or you would not have had it platted up; you say it is now on the records of the Company?

A. I think it is.

Q. You certainly had it in mind at one time?

A. Well, I know; but I didn't necessarily have to connect it up with the Booth-Kelly Lumber Company. It was an improvident contract, and as such I characterized it; and it was. And that is the policy, not only the Booth-Kelly but all of them, of large purchases to which I objected. Now don't put it on the ground that I have any particular grudge against Booth-Kelly, because I haven't. I don't care anything about them.

Q. Well, I am afraid that the import of your testimony would give that impression, Mr. Eberlein.

A. Well, then, it would weaken my testimony, would it not?

Q. Not if it were well founded; not if you had grounds for it; but if you don't mean it that way I want

the record to correctly represent your feeling on that.

A. Well, I am here to give you the facts. The fact is that probably the reason why I have mentioned them more than any other is that I had more to do with them than any other; I had more trouble with them than anybody else.

Q. Now when Mr. Dixon came to San Francisco and asked to see certain records in your office what records did he ask to see?

A. I have a recollection on two or three occasions that he demanded—he didn't put it very much in the way of a request, either, but he was pretty insistent on seeing our cruisings on certain timber lands; what timber lands I don't pretend to recollect.

Q. Who brought him into your office?

A. Oh, I don't remember that.

Q. Who sent him there, if you know?

A. Sent him to the office?

Q. Yes.

A. Well, I presume he knew the way there and came.

Q. No, but who introduced him into your office, if you know?

A. Well, now, my recollection is that I didn't meet him at all.

Q. Do you remember the fact to be that Mr. Herrin introduced him into the office?

A. Not that I know of. He may have been to Mr. Herrin, as a great many people did go to Mr. Herrin; when they wanted to do business with the land department and they thought they might not be able to do business with me they went very often to Mr. Herrin. Now that you mention it I have a recollection of somebody, a messenger or somebody coming down from the law department with the information that Mr. Dixon wanted something and he wanted it right away, and I said, "Who is Mr. Dixon?" And he said he was some connection to the Booth-Kelly Lumber Company. I merely said that if Mr. Dixon had any business to do with the land department he had better come down. He never came.

Q. When did he make the request for these cruisings?

A. I think that same time. That is my recollection.

Q. Well, you say that your only recollection of it is that a mesenger came down?

A. Yes.

Q. And said he wanted some information?

A. He did. I am giving you the recollection.

Q. And Mr. Dixon never came down himself?

A. He didn't come to me; no.

Q. I understood you to say that Mr. Dixon came and made certain demands and rather in an offensive way?

A. It was. The way it came about may have been the fault of the intermediary, but the demand was a pretty peremptory one, as I recollect it, to send out of the office, not to the law department but to Mr. Dixon, who was I understood up there at that time, certain documents, and my recollection is that those documents were not in existence at that time and could not be sent. That is, that the cruisings had not been made. He probably had been advised or thought probably that we had restored certain cruisings.

Q. Now, did he ask for the cruisings, Mr. Eberlein, or the price that you asked for the land?

A. No; it was papers, Mr. Townsend. If it had been price there would not have been any—that would have been very easily answered and he would have been answered at once. But the extraordinary demand for papers belonging to the department to be sent out of the department to a man who had no connection with the department and whom I didn't know at that time rather made an impression.

Q. Well, you know that the man who came into your office was an employe of the Southern Pacific Company?

A. Oh, I don't remember anything about that. I don't charge my mind with a lot of detail of that kind, but the man probably I knew or probably he came to my assistant; I can't tell you. But that is the way it got to me. I am giving you the fact as I remember it.

Q. Well now, the upshot of all this is that you considered that all of the timber land had been sold in Oregon that could be used by mill men legitimately for sometime to come?

A. No, not at all; all that could be used within a reasonable time by the large purchasers. There were other men in Oregon who were not men of large capital at all, but who had small mills and were turning out ties and timbers, and I believed that those men ought to be fostered, and I think so yet.

Q. Well, did any of them apply to purchase any of these lands during the years 1906, 1907 and 1908?

A. Well, there were indirectly several sections of timber turned over to Cole Brothers and to Fisher Brothers. Those are two I remember. There may have been others. But it only illustrates the policy which I wished to pursue.

Q. Well, those were turned over by the Southern Pacific Company and not by the Oregon and California Railroad Company, were they not?

A. For the reason that the Oregon and California Railroad Company, under contract with the Union Trust Company, could not enter into the kind of an agreement that was necessary to enter into with those men.

Q. But the fact is that those lands were first conveyed by the Oregon and California Railroad Company to the Southern Pacific Company, were they not?

A. So we got our money for them. The Oregon and California got their money .

Q. And it was a year or two afterwards that the Southern Pacific Company made its dealings, whatever they were, with Cole Brothers and Fisher Brothers?

A. No.

Q. If I have the names correctly.

A. Yes, you have the names correctly, but you are mistaken as to that fact. They were at work in 1906 on those lands, and as I recollect it and as my information goes, we made a price on those lands to the Southern Pacific Company, who took them over in order to get necessary supplies to keep open the lines of this operating company. They paid for that to the Oregon and California Railroad Company and the money was turned over to the representative of the bondholders. Now the Southern Pacific Company, as I recollect it, made a contract with these men agreeing to take their output, paying them, they returning such part of it every month, the cost, to the Railroad Company, because they were not in funds to enable them to buy outright. And that was a very good arrangement for them; it enabled them to make more than days' wages, which they could not have done if they had to go to any one of these large timber owners and buy the timber.

Q. The Southern Pacific Company took most of the product of their mills, do you mean?

A. I think it took it all, and paid for it current prices.

Q. Then, when you get right down to it, the fact of the transaction was that that was the method by which the Southern Pacific arranged to supply itself with ties and building material without actually operating the mill itself?

A. Certainly. That is right. They did, though, operate mills themselves.

Q. I understand, but I am talking about these particular mills?

A. Yes, sir; that is right.

Q. Now in grading these lands as agricultural lands, lands that were capable of settlement, as has sometimes been said in the course of the examination, you did not do that with any idea of complying with the laws involved in the case at bar, did you?

A. Well, do you mean having this land appraised?

Q. Having them classified as agricultural or settlement lands; you didn't do that with any idea of selling the lands within the terms of the grants which are involved in this case?

A. If you mean this little accident of a few lines that old George W. Julian slipped over on Congress there, why of course not. We never pretended to, never entered into any calculation at all.

Q. You have apparently the same feeling towards George W. Julian that you have toward the Booth-Kelly Lumber Company?

A. Oh, no. One man was a common nuisance; I don't say that of the Booth-Kelly Lumber Company.

Q. Which one was that?

A. Julian.

Q. Oh, yes. He was a member of the Joint Committee of Congress in charge of the conduct of the War of the Rebellion, was he not?

A. He was a member of Congress from Indiana, and I came from that general part of the country, and, as I remember, he had a reputation of being an objector to anything and everything, a mischief maker; and there was a sigh of relief when he retired from Congress.

Q. Relief to the railroad companies, do you mean?

A. Relief to Congress, to the suffering people.

Q. It was under his leadership that the policy of granting lands in aid of internal improvements finally ceased, was it not?

A. I don't know as to that. I was pretty small at that time.

Q. Well, you ought to remember the good things about him as well as the bad, no matter how small you were.

A. Probably his obituary notice takes care of all of that.

Q. You have just concerned yourself in finding out what you could that was bad about him; is that it?

A. Oh, no; no; but unfortunately the evil that men

do lives after them, and that is the only thing that has survived that I know in regard to Mr. Julien.

Q. You haven't read my brief?

A. No. I have been intending to take a week off to read that. I hear it is a good one, and I am going to read it, I will promise you.

Mr. Fenton: It will take more than a week.

Q. Would you have put any of the agricultural lands on sale to actual settlers only in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents per acre?

Mr. Fenton: Objected to as immaterial.

A. If I had the sale of it I would have sold the agricultural land first to the adjoining proprietor, if he wanted it, the man that had struggled along making a farm down there in that country, and if there was any adjoining land which he might make use of by incorporating it into his farm he should have had the opportunity first, and that was what we endeavored to do, and I would not have cared anything at all about the amount or the price.

Q. Well, you would have cared about the price, wouldn't you?

A. I would have got a reasonable, fair price for it, on general principles, and for the particular reason that the contract with the Union Trust Company, the deed of trust, provides that the land must be sold for a fair

actual value, and they refused on several occasions to pass deeds on the ground that the consideration was not large enough.

Q. But you would not have paid any attention to this little joker that you describe as having been slipped over on Congress by Mr. Julien?

A. No, sir, I would not.

Mr. Fenton: Defendants admit that they would not have paid any attention to the priviso of April 10th, 1869.

Mr. Townsend: Or of the similar provision of May 4th, 1870?

Mr. Fenton: Or of Section 4 of the Act of May 4th, 1870, with respect to the limitation on the grant, which was not a valid limitation among other things and never was recognized by the Company and never was insisted on by the United States until April 30th, 1908.

Witness: And it was disregarded by every respectable attorney in the state that ever examined the title.

Mr. Townsend: Now I will pause for a moment for Mr. McAllaster and Mr. Singer to extend their remarks into the record, so that there may be a complete representation on this subject.

Mr. Singer: Well, I would suggest a limitation of Mr. Townsend, who is a respectable lawyer, and he has a different opinion, and you didn't mean it that way.

Witness: Oh, no.

Mr. Singer: Mr. Townsend is certainly a respectable lawyer and the equal of any of us.

Mr. Fenton: Let's not put all of that in the record.

Witness: No, don't put this in the record, but Mr. Townsend knows I had no intention of applying these remarks to him.

Mr. Townsend: Well, the record will show for itself how those remarks were intended.

Q. The fact is, I think, as has been developed from the testimony, but to make it positive I will ask you, that no lands were sold during the years 1906, 1907 and 1908, with the exception of the conveyance to the Southern Pacific Company, if it took place during those years? I am not certain of the date of that, but with that exception there were no sales of any of these lands, were there?

A. That is all I recollect at this time.

Q. Now you say that in the fall of 1904 Mr. Craig, who was the Joint Passenger Agent of the Oregon Railway & Navigation Company and the Southern Pacific lines in California, after conference with you upon the subject caused circulars to be issued announcing the intention to resume the sales of lands that were susceptible to cultivation?

A. I don't remember the limitation in the advertisement. It was general in its terms and referred to the approach of the time when land grant lands would be offered for sale.

Q. Well, you say it was designed to attract set-

tlers?

A. Yes, sir. It wasn't a special circular; it was something inserted into a pamphlet that was put out by his department.

Q. You say that it was expressed in flamboyant terms, lurid colors and lots of adjectives?

A. Yes, that is right. I don't mean this particular notice, because as I recollect it I wrote it myself, but the general literature in which it appeared was ordinary railway literature of that character.

Q. Now you say that after the fire in 1906 you had no means of knowing what deeds had been executed. Did you not know that in May or June, 1879, the Oregon and California Railroad Company through its board of directors adopted a bylaw prohibiting the execution of any conveyances on behalf of the Company unless the same were specifically authorized by resolution of the board of directors and that thereafter no deeds were executd until authorized by resolution of the board of directors and that the minute books of the meeting of the board of directors disclosed all deeds that were executed after that time?

A. I may have known that fact, and I have no doubt that we exhausted all the means of information that were open to us and that among them. But I don't recollect of having recourse to that particular source. I do remember of going to the Union Trust Company and getting a lot of information.

Q. Now you say that in 1906 by the latter part

of August this rumpus and noise that had been stirred up with reference to forcing the Railroad Company to dispose of these lands had become so great that you gave notice to your superiors that you were able to sell agricultural and grazing lands; that is true, isn't it?

A. Well, I gave notice to them that we were in position to go ahead and to treat applications for that class of lands as rapidly as they could be examined.

Q. Now from whom did you learn that the Booth-Kelly Company had made threats that they would force you to let go of this land?

A. Directly.

Q. From whom?

A. A talk with Mr. John W. Blodgett at one time.

Q. When?

A. In New York, in my office there, I think during the year 1907. There was a great deal of talk indulged by them which traveled to me—I speak of these talks, these particular conversations—that we would be obliged to let go. I didn't pay much attention to the talk at that time but it was current.

Q. Well, who did you hear say it personally, John W. Blodgett, you say?

A. Why, I refer to my talk with Mr. Blodgett more than anyone else.

Q. And what did Mr. Blodgett say?

A. I can't remember the exact language.

Q. Well, give the substance of it?

A. But Mr. Blodgett is a courteous gentleman and would not be apt to use brutal language at all, and in that case it was simply a very positive intimation on his part that we would have to do it. I believe at one time in one conversation—I had more than one; he was in my office there several times; one time Mr. Arthur C. Hill was with him; among other things he made bitter complaint to me in criticism of the railroad by reason of their running mills, that we had no right to run mills and that they ought to buy their stuff from them; and I told him that the only reason the mills were ever started or operated was simply because they canceled their contracts and refused to furnish any stuff when the company most needed it. But that can hardly be urged against them, because the market at San Francisco took a tremendous jump, and they paid large bonuses for furnishing lumber quickly; but the Railroad Company was criticised very severely by them.

Q. Well, I understood you to say that the Booth-Kelly Company boosted the price on ties from twenty-three cents to over sixty cents over night?

A. They did, so I was advised.

Q. Now you say that the market price raised at San Francisco now?

A. Why, of course. It certainly did, by reason of the fire.

Q. Well, the Booth-Kelly Lumber Company was not the only party that supplied ties and building ma-

terials at San Francisco, was it?

A. No, no; a great many others.

Q. Well, who was it that boosted the price?

A. They did so far as I was informed. Probably the rest did, too; but as I understand it they were the main dependents of the road; from their geographical position the lower end of the road in making their extensions always got their supplies from them.

Q. They didn't boost the price, then; they simply took advantage of the advanced price?

A. They took advantage of the advanced price, but it had the same effect upon the Railroad Company; it left them helpless.

Q. That is, the Railroad Company had to pay the market price for the stuff?

A. The contracts were canceled, as I was informed by Mr. Harriman himself, practically without any notice. Now of course there may have been reasons for it, but still it was very burdensome upon the Railroad Company, and it might be urged, I think justly, that the Railroad Company should have notice in a case of that kind; but I am not making any point as to that.

Q. Now you say that Mr. Dixon was present before Congress in the year 1908 or 1907, and assisted in the passage of the resolution directing the institution of this suit?

A. Why, he appeared before the committee of the House, which you addressed.

Q. Well, did he urge the pasasge of the resolution?

A. Yes, sir.

Q. Well now, don't you know that he was the only opposition I had during the entire effort I made to get that resolution through?

A. No, I don't.

Q. Don't you know that he first tried to amend it and afterwards tried to defeat it?

A. I don't know anything about what his lobbying was, but I know what his remarks were before the committee.

Q. Well, what were his remarks before the committee?

A. Well now, I think they are quoted. I make a quotation in that document there. I will not undertake to repeat remarks; I will read them to you.

Q. Well, if you take out any isolated quotation it might not fully represent the position that he took before the committee.

A. Well, I believe it did. Now what you refer to, you may think that I knew of Mr. Dixon's activities down there but I did not. It may have been known to others in connection with the Railroad, but not to me. I merely appeared before that committee with Mr. James Gore King, who was the representative of the Union Trust Company. We came down from New York to attend that hearing, and those remarks were made by

Mr. Dixon, and the understanding of his attitude was the same by Mr. King and myself. That is why we never had any reason to change our opinion that he was there throwing the burden of everything on the Railroad, claiming the dubious honor of having fomented all of this agitation for the purpose of depriving the Railroad Company of a land grant. I believe his language is not susceptible of any other construction. What his subsequent acts were I don't know anything about.

Q. Now did Mr. Dixon or any other representative of these purchasers do anything before that committee other than to contend that they had purchased their lands in good faith, without knowledge of these restrictions, and asked to be relieved by an amendment to the bill or resolution?

A. I remember the address of Mr. Blodgett and of Mr. Hill, and my recollection is that theirs was along that line. They testified, too, as to the non-agricultural character of the land which they had purchased, and I don't remember of their making any direct onslaught on the Railroad Company, but it was different in the case of Mr. Dixon, though I understand he represents the same company that Mr. Hill and Mr. Blodgett did.

Q. Now you say that Mr. Hawley, Congressman Hawley, he also made a campaign upon this same general subject?

A. Yes, sir.

Q. And that he was a colleague of Mr. Booth, who

was a member of the Booth-Kelly Lumber Company, or, at least, was very friendly with him, you say?

A. I have understood that he was, that they were very close together, socially and otherwise.

Q. And the fact was developed during the course of your direct examination that Mr. Hawley was very instrumental in getting through the resolution directing the institution of this suit and also instrumental in getting through the recent act authorizing the compromise of the purchaser suits. Do you mean to imply Mr. Hawley has been actuated in this matter by a desire to help the Booth-Kelly Lumber Company?

A. Why, that wasn't my direct testimony at all. I don't think it can be inferred from it. Mr. Hawley in doing what he did I have no doubt did what he thought was right and in accordance with campaign promises he had made.

Q. Well, do you mean to say that your direct testimony did not develop the fact that the Booth-Kelly Company had started this agitation, and that Mr. Hawley then carried it on in his campaign and was a great friend of Mr. Booth, and that afterwards when he went to Congress he got through the act that would carry out the threat of the Booth-Kelly Lumber Company and had subsequently gotten an act through that would now galvanize the title of the Booth-Kelly Lumber Company, as you expressed yourself?

A. Well, I believe those are the facts as you have stated them.

Q. So you did think then that Mr. Hawley has been actuated in his public service in this matter by a desire to assist the Booth-Kelly Lumber Company in carrying out its original threat and now giving it entity?

A. That would be calling for a personal opinion and I don't care to give a personal opinion about these people.

Q. Well, isn't that the intention of your testimony?

A. No. My testimony is to try to stick to facts. I have been drawn into some discussion here, but as to that I don't think I will go that far. I don't care to impute or impugn Mr. Hawley's motives. I only know the fact to be that his campaign was contemporaneous with the events which you mention, that he went into Congress on a campaign of agitation against this land grant, and I believe that is the fact.

Q. Well, what special significance did you mean by calling attention to the fact that he and Mr. Booth were very friendly, to quote your exact language?

A. I believe that was called out by the examination, and I am merely stating what I have heard. You may call that hearsay.

Q. You say, "I understood that he and Mr. Booth were very friendly; they were both of the same faith."

A. Yes.

Q. "And prominent in those circles."

A. I believe that is true; and I say that that was

called out in examination.

Q. Have you in mind now anyone else who is very friendly with Mr. Hawley and was of the same faith and prominent with him in the same circles?

A. I don't know, I am sure.

Q. Mr. Booth is the only man in the State of Oregon that you call to mind who is friendly to Mr. Hawley and is of the same faith and prominent with him in the same circles?

A. If I were well acquainted in the State of Oregon I might be able to cite others, but at the present time I haven't an acquaintance that would justify me making any such statement.

Q. Well then, do you mean to say that when you called attention specifically to Mr. Booth that you did not mean to carry with it any implication of the motive of Mr. Hawley in this matter?

A. I believe again that my answer in that case was called out by examination, and I have stated the case. Now if there is a connection I think that it will appear right there.

Q. Well, what has taken place to call your mind so particularly to the friendly relations between Mr. Booth and Mr. Hawley and not to the friendly relations between Mr. Hawley and any other resident of this state?

A. I think it is a fair conclusion from known facts, if I may be permitted to testify to conclusion—am I?

Q. You have to a great many.

Mr. Fenton: Answer the question in your own way.

A. That the agitation, as I was informed and as I believe, started at Eugene. As I was informed and as I believe it was started through, largely so, members of the Booth-Kelly Lumber Company, and I think that this agitation was seized upon for campaign purposes and was used as such, and Mr. Hawley was the beneficiary of this situation which was thus created. I think that is a fair, reasonable, safe conclusion.

Q. Now, you also directed attention to the fact in your examination that Mr. Hawley was somewhat active in securing the passage of what is called the Innocent Purchasers Bill, by which the large holdings of these large purchasers have been confirmed?

A. Yes.

Q. Now, don't you know that that bill was passed unanimously by both houses of Congress?

A. It may; it may be.

Q. Don't you know that that bill was promoted by Senator Bourne, Senator Chamberlain, Congressman Lafferty and Congressman Hawley alike, all of them in favor of it?

A. Undoubtedly, though I don't know the fact; I don't keep up with such things.

Q. Well, why have you been keeping up with Hawley so much and not the rest of them?

A. Well, I haven't been singling out Mr. Hawley; as I say, his name has been called out in this examina-

tion.

Q. Well, I have called out the others?

A. Very well.

Q. Now don't you know about the others?

A. Why, what do you want me to testify in regard to the others?

Q. I ask you if you don't knew the others have been equally active and you say no?

A. I say I presume they were. They were all from Oregon.

Q. Well, do you know whether they were or not?

A. This condition, however, exists in Mr. Hawley's district, and this as I understand it was not the basis of any legislative campaign, congressional campaign. It may have been in Mr. Lafferty's case; I don't know; I presume it was. But I suppose all of the representatives in Congress at this time have taken advantage of this unfortunate condition. I don't see that that, however, is pertinent in this inquiry.

Q. Well, it is just as pertinent on cross examination as it is on direct, isn't it?

A. Oh, certainly; certainly.

Q. Now when you examined these lands in your various trips in the grant that you describe were you looking to see how much of it could be settled upon?

A. That was one of the things I looked at.

Q. Why did you want to ascertain that?

A. Why, I didn't go for any such special purpose. I went taking a general look over the grant, to see the character of the land, the timber or whatever there was on it. That is only one element in the calculation.

Q. Now you say you went through the Cascades; at what point?

A. We crossed below here, came out about Hood River.

Q. Any other point?

A. No; we crossed over here and came out at Hood River.

Q. Is that the only place you ever crossed the Cascades?

A. Oh, no; I have crossed the Cascades below.

Q. Where?

A. Klamath County.

Q. So that Multnomah and Klamath Counties were the only two places you ever crossed the Cascades?

A. I think so.

Q. Well, that gave you no personal information as to the land between, of course?

A. Oh, no; I haven't testified to anything else.

Q. Well, I didn't know just where you crossed; it wasn't brought out in your direct examination.

A. Well, I understood that it was brought out and

that I testified as not having been in the district around the center of the grant or around east of Eugene, or in any of that country, and it is true.

Q. You say you have never been in the western part of the grant?

A. I have never been in the west side of the grant at all.

Q. You don't know anything of the character of the Coast Range from personal observation, except such as may be——

A. (Interrupting) Except at the boundary of the state on the California side. I know that very well.

Q. But you don't know the character of the Coast Range?

A. North of that point?

Q. North of that point.

A. No.

Q. You do not know that in many places you can find land under cultivation clear to the top of the Coast Range, do you?

A. No, I do not, not on these grant lands. It has never been so reported to me, at least.

Q. Now in making up your statements and in forming your estimate as to the character of this land you have relied considerably upon the reports made to you by these cruisers that you have referred to?

A. Yes, sir.

Q. Including Mr. Britt and Mr. Elliott you mentioned in your direct?

A. Yes.

Q. You relied upon their statements, did you?

A. I did, also on Rees's statement.

Q. Well now, did you really trust Britt's judgment in those matters?

A. Oh, I trusted Britt's judgment in a great many matters; no reason why I shouldn't.

Q. Well, weren't there some matters in which you didn't trust his judgment?

A. His judgment?

Q. Yes.

A. What do you refer to?

Q. Well, wasn't Britt one of the fellows that you thought was interested in that sale to John F. Kelly, Trustee?

A. I believe he was.

Q. And you thought that was dishonest on his part, didn't you?

A. I don't believe any man can serve two interests, the buyer and the seller, at the same time.

Q. That is what I mean.

A. Well, that is what I mean.

Q. Now as I recollect it, his interest there was in the name of his wife or some relative, wasn't it?

A. My recollection is that it was; I was so informed.

Q. Well, after having learned that he was guilty of a double dealing of that sort, did you still trust his reports as to other matters that came to your attention?

A. I think Mr. Britt was out of the service about that time, but later I have had talks with Mr. Britt and he is a man who has had a very wide experience here, and as to his testimony as to the character of lands, that does not attempt to fix a value, but as to character of lands I could not understand and I don't understand why his statement should not be taken.

Q. Now you explain this letter that you wrote August 16, 1905, addressed to Mr. Dunne, as having reference to certain conversations that you had had with Mr. Pinchot?

A. Why, a part of the letter refers to that.

Q. Well, I mean the part referring to the change in the attitude of the officers of the Government.

A. Yes, sir.

Q. Now you say Mr. Pinchot came to you what time?

A. Some time in that year prior to that time, he was in San Francisco, as I remember it, and made that proposal to me, and he afterwards covered it by letter.

Q. Now this proposal, stripping it of the embellishments with which he might have adorned it, was a simple

proposition that the Railroad Company should give the Government a large tract of land, approximately four hundred thousand acres, I think you said?

A. I didn't say four hundred thousand; I don't know; but it was as I recollect it all the land—

Q. (Interrupting) In the Cascade Mountain Reserve?

A. In the Cascade Forest Reserve, lying in the eastern part of Jackson and in Klamath counties, the western part of Klamath.

Q. And that the only consideration that the Railroad Company was to get was the privilege of cutting off the timber under such rules and regulations as the Forestry Service might establish?

A. That is what I remember of it.

Q. Well now, did that appear to you to indicate that that was a friendly act?

A. Well, I don't know. I had the feeling all the time that it was the steel hand in the velvet glove; is that it? We were so much in the bad books of the Government at that time I thought Mr. Pinchot thought we would be willing to do most anything.

Q. Well then, it wasn't so much that you thought that he was friendly with you as it was that he was taking advantage of the situation?

A. Well, what I did think was that the attitude having changed to such an extent that a representative of the administration would come asking something in

the form of a favor, whatever you might think about the ultimate outcome of it, was such a remarkable change that if we wanted to get our transfer of that grant recognized, recognized within a reasonable time, why that was the time to do it.

Q. Why, you hadn't any idea of complying with his request, did you?

A. I had none; no.

Q. Nor any other officer of the Railroad Company, so far as you know?

A. I don't believe so.

Q. Your idea was to string him along until you could get what you wanted and then turn him down; is that it?

A. Oh, no, no, no; not at all; because the matter was simply pending at that time and this other matter was pending at that time, and it was not a question of stringing anybody because the Government of the United States had a right to make any such suggestion or proposition and have it considered.

Q. But you have no further explanation to make as to why you considered that an evidence of friendship on the part of the officials of the Government?

A. Not at all, excepting the attitude, as I say, both of that and the Reclamation Service, all wanting something and wanting to apparently be friendly.

Q. Now you remember of writing the letter of August 11, 1905, to Mr. D. A. Chambers that has been

introduced in evidence, don't you?

A. Yes.

Q. Now if you didn't have in mind a transfer of the Oregon and California Railroad grant why did you use this language: "I merely wish to explain that what I wish to know is what is the practice regarding transfers of grants made by Congress for railroad purposes, such as Southern Pacific, Oregon and California," and so forth?

A. Such as what?

Q. Southern Pacific, Oregon and California, and so forth?

A. Oh; Oregon and California has no significance there. I might just as well have said Central Pacific. That just came in my head.

Q. Now can you explain why throughout this correspondence, including your letter to Mr. Dunne, there is not the slightest reference to the transaction to which it relates?

A. Why, there were so many letters that passed in regard to that same thing. That is simply a coincidence. There was no intention at all to leave out anything. And another thing, while I think of it, you called attention to the fact that I have cited as an example the Southern Pacific Railroad Company grants and the Oregon and California Railroad grants is that they are the particular grants which we dealt with that have an indemnity provision, and that was the great thing that was the stumb-

ling block in that case.

Q. Well, I know, but now if you were simply inquiring with reference to the Southern Pacific grant why didn't you say so, say that you wanted to know what would be the practice under the Act of July 27th, 1866, granting lands to the Southern Pacific Railroad Company?

A. Why, probably because it didn't occur to me to do so.

Q. You knew that the Interior Department had held that some grants were assignable and that others were not?

A. I did not, or I would not have taken the trouble to have Chambers look the matter up. You see, I am not an attorney, and there are a lot of things I don't know and I depend on attorneys to find out for me.

Q. Well, do you consider that in asking an attorney a question as to whether the Southern Pacific Railroad grant in California could be assigned and the assignee could exercise the right of indemnity selection could be intelligently presented to an attorney without calling his attention to the grant that you had in mind?

A. My dear sir, as I have said there are a number of letters that preceded and also followed that particular letter. That letter possibly had some ear mark on it at the top of it as to subject that would disclose that; whether that copy shows it I don't know.

Q. This letter shows, Mr. Eberlein, that it is the

first communication from yourself to Mr. Chambers upon the subject, because it starts out and says, "I found it necessary to wire you today as follows."

A. Yes.

Q. Then quotes the telegram, and then you follow on and explain to him why you had to send it. It shows upon the face it is the first communication.

A. Yes. Well, what is the matter with the letter?

Q. What I am asking you is, why, if it referred only to the Southern Pacific Railroad grant you didn't mention it in any of this correspondence?

A. It is not necessary in that case at all. I was asking for an opinion as to a principle, and if the Government of the United States had in other cases accepted an assignee of a congressional grant that is what I wanted to know and it didn't make any difference to me what name you put on it. As far as that objection goes I consider that entirely immaterial. But I will say here, if that is what you want to know, that if you think that there is anything in that correspondence that even obliquely refers to this Oregon and California grant I can tell you emphatically no, it does not. The idea of transferring the Oregon and California grant to a land company was never sprung that I know of.

Q. Have you any way of explaining how or why that correspondence was filed in the Oregon and California Railroad file?

A. I can't tell you. That might be the blunder of

a clerk. It may not have been Oregon and California file; I don't know that it was.

A. I can testify as to the filing system before the fire, and that is what governs here.

Mr. Townsend: Wasn't there a separate filing system for the Oregon and California correspondence?

A. No, sir. We kept them filed, as I recollect it, by a system which—we didn't keep them in that shape; I will tell you that right now. That is something that wasn't saved from the fire, which you have in your hand.

Mr. Fenton: The box, you mean?

A. No; the box wasn't saved from the fire.

Mr. Fenton: That is the letter file?

A. No, no; the case wasn't filed; or that wasn't the way they filed letters. Now, what you have there, gentlemen, is the results of this tax investigation in Oregon, which happened to be saved and thrown into that box. But those boxes never were in the fire, which can be seen. You could not scorch part of those contents and not scorch the outside.

Q. Now you say that when the Government was installing the Klamath Irrigation project that the Railroad Company, referring, I assume, to the Southern Pacific, did everything it could to get the states of Oregon and California to consent to either the raising or the lowering of the level of those intra-state lakes, or securing legislation which granted to the Federal Gov-

ernment the title to the bed of the lake.

A. Those series of lakes, naming them in the acts.

Q. Now what did the Railroad Company do to induce the states to pass those bills?

A. I don't know what steps were taken. I only know that I was importuned to get Mr. Harriman interested so that the matter might be taken up in these two legislatures and passed. The time was getting short and what steps were taken here I don't know because I wasn't present in the state. I was in the East at the time.

Q. Well, you have testified, however, that the Railroad Company had sufficient influence to get those bills through the legislatures of the two states?

A. Did I? They may have had; I don't know; but I wasn't present in the state and I only know the fact that the bills passed in the time that the Government desired.

Q. You say here, "It finally resulted in the passage of acts by both California and Oregon?

A. Yes, sir.

Q. Granting the rights of the states to the United States?

A. We did everything we could to assist them at that time and it was to the work done by the Railroad Company that they owe the success in that matter wholly."

A. Well, I will stand by it. I believe it is true.

Q. Now, Mr. Eberlein, you say that the Booth-Kelly people started this agitation in 1906 and that it spread quite rapidly until about August that the public agitation was so great that you took cognizance of it in some way, it was brought to your attention in some way. That is the general substance of your former testimony. Hadn't there been considerable agitation before that time?

A. Why, not that character of agitation; not demands. What I referred to was the proceedings and resolutions by different commercial bodies, of which they always favored me with a copy and a pretty stiff letter. That was the first time there was any organized movement that I know of.

Q. You had been anticipating that for sometime, hadn't you?

A. That there would be trouble over that?

Q. Yes.

A. Oh, I think that signs pointed that way.

Q. As a matter of fact, when you first came out here you read the granting acts and discovered this provision, which is the general basis of this present litigation, didn't you?

A. Why, I read the granting acts but as to that clause that you mention I was informed at the time that that was not considered operative, and I will take this opportunity of changing my very unfortunate remark

that I made there a while ago without any reference at all that could be offensive to any one in regard to the opinions of attorneys. I sincerely regret the remark that might be construed in a way that I had no intention at all. What I had reference to was that I was informed and believed that up to the time that I came here that these titles had passed muster with attorneys and that it was the consensus of legal opinion here on the Coast and in Oregon that the language did not operate to cloud the title to these lands.

Q. But, I say, you learned of the provision in the grant, without calling now for any testimony as to what you were advised with reference to its validity?

A. Oh, I read the act, yes. I believe there is some such language in the Union Pacific grant, but I don't remember as to that exactly.

Q. No; it is entirely different in the Union Pacific grant.

A. The same question was brought out in the old Crowe resolution at one time I remember down there.

Q. But I want to get at the question now of the responsibility of the Booth-Kelly Lumber Company for this agitation. As a matter of fact, were you not looking for agitation and wouldn't there have been the same agitation if the Booth-Kelly Lumber Company had never been in existence?

A. I don't believe there would. Possibly. You can't tell what might have come about. But a concerted action of this kind has to have promotion by some in-

dividual or individuals that have power and have standing in their districts, and it originated at Eugene, and as I say I am informed and believe that R. A. Booth was chairman of the first meeting that was called to protest.

Q. The matter was under discussion and consideration, however, by yourself and other officers of the Company prior to 1906, was it not?

A. I don't think it was under any serious discussion at any time. I have one recollection of having made an inquiry in regard to some case or other in which that was spoken of. I remember particularly of taking notice of a suit or an effort made by so-called bona fide purchasers who attempted to acquire the lands of the Elijah Smith grant in that way, and I took the matter up then and suggested—

Mr. Fenton (interrupting): You refer to the Southern Oregon Company's grant?

A. Yes, sir, the Southern Oregon Company. I suggested at that time that if those clauses were identical with these in the Oregon and California grant, that any adjudication there would undoubtedly affect us.

Q. Well now, if the Booth-Kelly Company was responsible for initiating this agitation, why, in your letter of February 20th, 1904, addressed to Judge Cornish, did you use these words: "I hand you copy of letter written to Mr. Herrin on the subject of the two dollar and fifty cent limitation sales to actual settlers in the grant to the Oregon and California Railroad Com-

pany. The matter is going to come to a head without any action on our part. I enclose copy of the printed reports on the subject. I have advice from Oregon that there is considerable excitement and undoubtedly we shall be obliged to defend ourselves vigorously. I wired Mr. Andrews as per copy enclosed to keep to work"—I think that should be at work, probably a clerical error—"vigorously with his defaulted contracts so as to save us as much trouble as possible."

A. I am familiar with the letter. Now what is that question? What did I mean by it?

Q. I say if the agitation was started by the Booth-Kelly Company why did you write him in 1904, two years before, that you were advised that there was considerable excitement in Oregon then upon the subject and you should undoubtedly be obliged to defend yourselves vigorously?

A. Because that was the only thing that a business man of reasonable intelligence could infer from what was transpiring. That had reference, I believe, to this action I have just testified to in reference to the Southern Oregon Company.

Q. Oh, yes; the correspondence shows that.

A. Well now, that is what I meant, and I think it is easily inferable that if those people had a like clause in their grant that undoubtedly the whole thing would spread. It did not, though, at that time, and the peculiar circumstance in all this is that this business, so far as the Oregon and California Railroad Company is concerned,

became acute only after the fire. Then it came to a head with surprising rapidity when we were entirely helpless to proceed.

Q. Now Mr. Eberlein, I want you when you return to San Francisco to consult such records of the office of Mr. McAllister as you can and designate in a written statement the deeds or contracts to the Booth-Kelly Lumber Company which you contend—

A. (Interrupting) Are improvident?

Q. (Continuing) Were improvident and included special privileges extended to that Company, and address your communication to Miss Margaret A. Fleming, the Special Examiner before whom this testimony is being taken, at Postoffice Building in the City of Portland. Identify it by your signature so that she may extend it in the record as your complete answer to one of the questions which I asked you and which you were unable to answer from the material now before you.

A. I will be very, very glad to do so.

Mr. Fenton: Will the witness be good enough to furnish counsel for the Government and counsel for the defendant a copy of his letter for their files?

Witness: Yes, sir.

RE-DIRECT EXAMINATION.

Questions by Mr. Fenton:

You were asked about a reservation of a hundred thousand acres of timber lands of the Oregon and Cali-

fornia Railroad Company for railroad purposes; do you or do you not know whether or not the Union Pacific Railroad Company has a reservation of about forty thousand acres of timber land of its own which is likewise under reservation for railroad purposes?

A. You mean the Union Pacific?

Q. Yes.

A. No, I do not. I don't recall any reservation there.

Q. You don't remember?

A. No. Mr. McAllaster would be competent to testify about that.

Q. You don't know whether there is or is not?

A. No, sir, I do not.

Q. Now referring to the John F. Kelly, Trustee, contract which you regarded as improvident, and which you learned was a contract in which some twenty-five people were interested and for whom he was trustee, and in which you say some employes or officers of the company were interested, I wish you would state to the Court whether or not any of the officers of the Oregon and California Railroad Company, or whether or not any of the counsel for that Company or for the Southern Pacific Company, and particularly whether Mr. P. F. Dunne, Mr. William D. Fenton, Mr. William Singer, Jr., Mr. William F. Herrin, were in any wise interested in, connected with, or parties to, that contract, directly or indirectly?

A. No, sir, not that I am advised. The names of railroad men whom I identified on that contract were those employes of the Southern Pacific Company.

Q. Were they men of official responsibility, executive officers of the Company?

A. They were not in the first rank.

Q. Were they in any wise connected with the land department excepting Mr. Britt?

A. No, sir.

Q. Who was interested as a cruiser?

A. No, sir.

Q. And who had nothing to do with fixing the values?

A. With the traffic and operating departments were all.

Q. From whom did Judge Cornish take his directions as to any action for the Oregon and California Railroad Company?

A. Mr. Harriman, I understand.

Q. You were present at the meeting of the Irrigation Congress held at Sacramento in 1907, in September, which Mr. Harriman addressed?

A. I went there to hear the address.

Q. And did you hear it?

A. I did.

Q. Do you think that is reported officially in the

proceedings of that year of the Association?

A. I was not a delegate to that particular Congress, but I was officially connected with the National Irrigation Association at its annual meeting in Portland, and at that meeting and at all others that I have attended there was an official stenographer who took down verbatim all the addresses and the debate, I believe.

Q. Now you spoke about your idea of the sale of these timber lands which you suggested to your superiors when sales should be resumed of timber land, was to reserve in the contract of sale the products of the land. Do you mean that the Company making the sale should reserve in that contract, or was it your recommendation to reserve in that proposed contract anything else other than the products of the manufacture of the timber, or did it have application to grain and wheat?

A. Nothing whatever but the transport of the product of the timber in cases where it was shipped.

Q. This contract of reservation would be in the contract of sale, and was it your idea that such a reservation or covenant should be in the deed?

A. I understood—my advice was, that it would be necessary to include it in the deed.

Q. Yes. That was never adopted?

A. Never to my knowledge.

Q. Any reservation of that kind as to the transportation of the products, consisting of timber, by the South-

ern Pacific Company in this case, or the Oregon and California Railroad Company, if it should resume the operation of its road in its own name, you said would be at current rates. Do you not know that those rates, if unreasonable, would be fixed by the State Commissions of the State for local hauls or intra-state hauls, and by the Interstate Commerce Commission for interstate hauls?

A. Yes, sir.

Q. Whatever the agreement might be?

A. Yes, sir; certainly.

Q. You understood that, did you?

A. I understood that, and my idea was to include that provision so that it would be thoroughly understood.

RE-CROSS EXAMINATION.

Questions by Mr. Townsend:

In any of your experience in connection with this land grant, and by that I mean the two land grants involved in this suit, do you know of any instance where the purchaser of lands knew at the time of the purchase of this clause in the grant which in terms restricts the manner in which the granted lands might be sold?

A. I wasn't present at the time these sales were made.

Q. Well now, I am asking you if anything that came within your observation had any bearing upon that subject, to the end that I may send for the evidence if it

is in existence?

A. The only thing that I know of is talk with these different purchasers who came in and spoke of that.

Q. But that was after this agitation arose, was it not?

A. Oh, I think so; probably before in some cases, but always after the execution of the contract. I wasn't present at that time, and whatever of that kind came up was taken up afterward, and it is only from what these people have said that leads me to believe that they examined their title and believed that they were safe in getting it.

Q. That they had no knowledge of any defect of any kind?

A. Oh, they had knowledge. I know some of them evidently had knowledge. I mean the larger purchasers. The small purchasers, I haven't an idea that they ever knew of it at all or examined the title. They bought under an executory contract and they never saw an abstract.

Q. You don't know whether any of the large ones did at the time of the making of the sale, or not, but you do recall that some of them spoke of it afterwards?

A. They spoke of it afterwards in such a way that led me to believe that that matter was discussed and passed up.

Q. Now do you remember who discussed it with you?

A. Well, now, this is a hazy recollection. I can't swear positively, but I had a number of talks with Mr. A. B. Hammond, and it is in my mind, when you mention that, that he told me of that. He is the kind of a man who would examine his purchase pretty carefully, and I believe I have heard it mentioned, just when I don't know, that this matter was gone into by—

Q. (Interrupting) Mr. Linthicum?

A. Yes, for the Weyerhausers.

Q. No; for the Booth-Kelly.

A. Booth-Kelly?

Q. Yes.

A. Well, didn't they make—I have got it when they bought out Lindley that they made an examination of that.

Q. They may have done so at that time, too, for all I know.

A. Yes.

Q. With the exceptions that you have stated, you know of no specific instances of that kind?

A. I don't recall any; no.

Q. That is, that you recall now?

A. I don't recall them now.

RE-DIRECT EXAMINATION.

Questions by Mr. Fenton:

Out of the many hundreds of contracts in all nearly

eight thousand, you had no opportunity to talk with the vendees or with the grantees as to whether they knew at the time or before they bought the land as to what their knowledge was of these provisos in the acts of Congress of April 10, 1869, and May 4, 1870?

A. Oh, no; I never had any talks with them generally.

Q. What you mean to say is, then, that you never heard that question discussed by any of these purchasers or parties who had acquired the title until after this question was raised in the public prints and in these discussions?

A. Yes; that is what I intend to convey.

RE-CROSS EXAMINATION.

Questions by Mr. Townsend:

Just one more question on that subject. You found nothing in the records of the office before the fire indicating that any of the purchasers had discovered these provisions and objected to the title upon that ground?

A. No, I never saw a case of that kind.

Whereupon J. N. SHERBURNE, called as a witness on behalf of defendants, being first duly sworn, testified that he resides at San Francisco, California, and is head clerk of Government accounts of the Southern Pacific Company, and has been in the employ of that company and its predecessor since 1881. Its predecessor in the operation of the railroad from Roseville

Junction to the extension towards the California-Oregon state line, was the California and Oregon Railroad Company, and later the Central Pacific Railway Company, and he has been continuously in the department mentioned up to the present time. He had immediate charge of the preparation of Defendants Exhibit 288, purporting to be a "Statement of Government freight and passenger transportation over the free road between Portland, Oregon and Roseville Junction, California, for the years 1906 to 1910, inclusive, showing proportions accruing north and south of Oregon-California state line." This exhibit was prepared as to freight from the waybills, and the transportation of passengers from the ticket reports of the station agents.

Whereupon it was understood that all the evidence upon this subject should be received subject to the objection of the Government that it is incompetent, irrelevant and immaterial, and to the objection that the amount of service rendered by the Company in transportation of troops and property is no defense in this case; it being understood that no objection is made on account of not producing the original books of the company.

Whereupon witness further testified that the exhibit is a correct statement of the various amounts, and what it purports to show, as shown by the records of the company for that period. The records of these accounts in San Francisco prior to April 18, 1906 were destroyed by fire. He was familiar with these accounts previous to that time, that is, from 1882 down to 1906. The vol-

ume of business of this kind in the movement of Government freight and passengers over the road from Portland, Oregon, to Roseville Junction, California, from 1882 up to the year 1906, was approximately the same by years as shown in Defendants' Exhibit 288, as he remembers, with the exception of the period of the Spanish-American War in 1898, when it was heavier by reason of a great many regiments coming through Portland to San Francisco. He recalls at that time several of these regiments, some of the northern regiments, intended for the Philippines and destined for Manila were moved by the company from Portland to Roseville Junction and then to San Francisco. He recalls particularly Idaho and South Dakota and Minnesota. With the exception of the special occasion of 1898, known as the War with Spain, the movement of Government freight and passengers was approximately the same from the time the road opened, as shown in Defendants' Exhibit 288.

Defendants' Exhibit 336 is Department Circular No. 62 of date October 29, 1907, as issued by the Comptroller of the United States Treasury, different departments, with a view of having a uniform bill of lading on transportation, requested to cover movements of troops and property of the United States, and is furnished by the United States and the Treasury Department for use by this company and other companies in the transportation of Government employes and property.

Whereupon defendants offered and there was received in evidence, Defendants' Exhibit 336 which is hereinafter set out and described and made a part of this state-

ment of the evidence and identified as such.

Whereupon witness further testified that Defendants Exhibit 337 is Circular No. 16, Quartermaster General's Office, of date July 1, 1912, and is entitled "Schedule of Land-Grant and Bond-Aided Railroads of the United States and Instructions concerning Settlement of Accounts over such roads, with a Compendium of United States Laws showing the Conditions of the Grants or Subsidies," and has a map in the back of same, and was issued by the Quartermaster's Department of the United States Army, as a guide to the Railroad Company performing the transportation, the manner in which the bills are to be rendered for charges, and also as a guide to the settling or disbursing officers of the Government as to the settlement of such bills. There is at page 42 of this Circular the following:

No. 58.—Southern Pacific Company. From Roseville Junction, California, to East Portland, Oregon, under the column Statute, Volume and Page, these entries—July 25, 1866. 14—239; June 25, 1868, 15—8; April 10, 1869, 16—47, and opposite thereto these words: "And be it further enacted, That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit dispatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the Government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reason-

able rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States.—Act of July 25, 1866, Section 5."

This is the Act or section of the Act under which this service of which he has been speaking, has been performed by the Southern Pacific Company and its predecessors, since the construction of the road and since his knowledge of the same in 1882. The free service furnished by the company and represented by Defendants' Exhibit 288, is the free service referred to in the Act. The object of keeping a record of the amount of that free service is for statistical purposes. There is no stated period for the issuance of these circulars. Circular No. 16 is practically a reissue of Circular No. 13 issued June 1, 1912, and Circular No. 16 is the one under which the Government and the company are now doing business.

Whereupon defendants offered and there was received in evidence Circular No. 16, marked "Defendants' Exhibit 337," which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Circular No. 16 practically supercedes General Orders No. 41 from the War Department of date February 28, 1907, entitled "Regulations governing the military transportation over land grant and bonded railroads and the settlement of accounts for such service, with a compendium of United States laws showing the condition of the grants or subsidies, with map and other data, somewhat similar to the Circular No. 16, identified as Defendants' Exhibit 337, and containing at page 42, under No. 50, this entry: "Southern Pacific Company, San Francisco and Portland lines, from junction with Central Pacific Railroad to northern boundary of California," giving then the dates of the statutes and the section 5 of the Act of July 25, 1866, the same as set out in Circular No. 16, and which General Order No. 41 appears to be issued by order of the Secretary of War, J. Franklin Bell, Major-General Chief of Staff.

Defendants' Exhibit 338 is a complete set of forms of requisition made by the United States under this Act of Congress, upon the railroad operating the line from Roseville Junction, California, to Portland, Oregon, and they are known as a Quartermaster's Department United States Army bill of lading, requesting the transportation of property of the United States in three sections; the first the bill of lading proper, the second, a memorandum bill of lading, the third the shipping order. Also a Government Request for Transportation of passengers, Quartermaster's Department Form No. 17. This is only a copy of the form that is used as a requisition for passenger transportation. It is not

valid until it is filled out by the proper officers, and is identical with that used for transportation, but has on it the words in red ink "Copy not valid transportation request." The transportation request is issued by an officer of the army requesting certain transportation of a railroad company, the document being filled out. showing the number of passengers to be transported, and between what points. That document is surrendered to the company's agent, and transportation is furnished, either tickets, or a ticket covering the number called for by the document, the agent accepting the transportation request in lieu of cash. The request is then sent to the general office by the agent, to cover tickets issued by him, and the general office uses that as a bill against the Government for the service. If it is a free service, it is carried on the books of the company without charge to the United States and no bill presented. The three blanks relating to shipment of goods of property, are filled out or issued by a shipping officer, stating the commodity and points between which it is to be carried. That is also surrendered to the company, and used by the company to bill against the Government for such services, and if it is free service it is held in the records of the company and not surrendered to the Government, which is not presented with a bill. If the United States desires to ship a regiment from St. Paul to San Francisco, going partly over bond-aided or land-grant roads, over which the United States is entitled to free transportation, and it is routed in part over non-aided railroads, intermediate or connecting, and reaches Portland over a non-

aided road, or a road over which the Government is not entitled to free transportation, the shipment or movement of a regiment, and a like movement of Government property under this statute, receives free transportation over the road from Portland to Roseville Junction, and if the movement is destined over the non-aided road from Roseville Junction to San Francisco, that is charged against the Government and bill presented, and that part is paid by the Government; possibly not for the full amount which the company would charge for that service, but the Government makes a cash payment; that is, if the Government asks for service over a portion of the mileage that is bond-aided, over which it is entitled to free transportation, and it is a through movement over a part of a line that is connected therewith, that is entitled to charge for and be paid. The traffic offered by the Government at any point in the United States moves over this segment or portion of the bond-aided line, and also over that portion which is free, and it does not make any difference where the traffic originated, or over what roads it comes, if it is Government traffic, entitled to move free over a bond-aided or land-grant road over a portion of that haul, it is carried free. The business does not have to originate at Roseville Junction on the one hand, or at Portland on the other in order to entitle it to free movement.

Whereupon defendants offered and their was received in evidence these four documents marked "Defendants' Exhibit 338," which is hereinafter set out and described and made a part of this statement of the evi-

dence and identified as such.

Whereupon witness further testified that the United States is making these requests continually and has been up to this date, and the company is furnishing under the Act of Congress all transportation requested by the Government.

Whereupon witness, on cross examination, further testified that this transportation commenced in 1887, he believes, when connections were made between the California and Oregon and Oregon and California Railroads. There were a few military posts along the uncompleted portions of the roads prior to the completion of the continuous lines. The company used to have business as far north as Redding on the original California and Oregon Railroad running from Roseville Junction north, and there were a few shipments of property for the Weather Bureau and Signal Service, but the volume of business did not reach the company until the road was opened in the middle of December, 1887. The company commenced to keep an account of the amount of this traffic furnished the Government from the time the service was performed. It was in vogue when he took charge of the work, so that it was kept by his predecessor, but he has no personal knowledge of the time the company did commence to keep a record. He does not know anything about how to compute the amount of traffic of this character that the Government may have lost by reason of the delay in completing the construction of the railroad in accordance with the terms of the granting Act, and it would be difficult to make a computation of that

kind. It is the rule of the company that a record be kept of all transportation, whatever its nature, not only the Government transportation, but commercial, and this is the reason for keeping these records for statistical purposes. They keep a record of the amount paid by the Government for the transportation of mails, and that amounts to a considerable sum each year, on the road from Roseville Junction to Portland. The company is paid for that service on rates made by Congress, based on weight, but he does not recall the amount. He thinks this transportation account is greater than the mail account.

Whereupon, on redirect examination, witness further testified that he became an employe of the Central Pacific Railway Company in 1881, and at that time the Central Pacific Railway Company was operating the line from Roseville Junction towards the north as far as completed, and the Oregon and California Railroad Company operated the road from Portland to Ashland prior to 1887, and was operating the road, as he recollects, from 1882 down as far south as it was completed. He does not mean to say that the first free transportation under this Act of July 25, 1866, began in 1887, when the road was completed through. The company handled or had free transportation, to his knowledge, since 1882, when he went to work on that particular class, that is, as far north as the road was opened, but he knows nothing of that traffic from Portland as far south as it was opened. He had nothing to do with the Oregon and California Railroad Company. The Southern Pacific

Company was not incorporated until 1884, after the Central Pacific Railway Company was incorporated. He has no knowledge whatever of how much business of this kind was moved from 1869 up to completion in 1887 on the Oregon and California Railroad Company. Fort Vancouver is situated six miles from Portland, and Vancouver Barracks are on the Columbia River, and they have been there for a great many years.

Whereupon, on recross examination, witness further testified that it is his understanding there was a post at Vancouver before there was any railroad in there. Vancouver is on the Northern Pacific Railroad Company line. He remembers that the Northern Pacific was completed by Villard before he failed in December, 1883. While the Northern Pacific is a land-grant road, it is not under obligation to furnish free transportation. It is what is called a fifty per cent line, that is, in accepting the grant of lands, the company conceded the right of Congress to make such rates as Congress saw fit, and Congress has seen fit to cut the rate to fifty per cent.

Whereupon it was stipulated that J. A. Ormondy, Chief Clerk of John M. Scott, General Passenger Agent of the Southern Pacific Company Lines in Oregon, would testify substantially the same as J. N. Sherburne on the subject matter of inquiry, other than as to the volume of business with which the witness is not familiar.

Whereupon, F. W. SERCOMBE, a witness called on behalf of defendants, being first duly sworn, testified that he resides at East Orange, New Jersey; is an ac-

countant, and was in the office of the auditor at San Francisco, California, on September 20, 1905, and prior thereto, up to as late as January 4, 1906. His superior or chief officer, part of the time was George Klink, who was the auditor of the Southern Pacific Company and subsequently Charles B. Seger. These statements, Defendants' Exhibit 320, consisting of "Statement No. 1, showing by counties the assessment upon Congressional lands of the Oregon and California Railroad Company from 1891 to 1904, inclusive," and "Statement No. 1-A, showing by Counties the assessment upon Congressional lands of the Oregon and California Railroad Company from 1891 to 1904, inclusive," the first statement bearing date September 20, 1905, the second statement being dated January 4, 1906, were prepared under his direct supervision and instruction, in San Francisco, at the time specified and mentioned on these respective statements. The signature in the lower left hand corner of Statement No. 1 is his signature, and indicates that, to the best of his knowledge and belief, the statements are correct. The facts purporting to be stated, for instance, in the column as to "Taxes Paid" for each year, were obtained from the tax receipts of the company in the auditor's office, showing taxes paid on these lands. These compilations or computations showing average assessed valuation per acre, and average tax paid per acre, were made under his direction. It is his recollection that the figures showing the total acreage in columns, for the various counties, were obtained by him from the tax receipts and added up, and these state-

ments, computations and figures are correct, based upon the tax receipts and the records of the company examined by him at the time. His recollection is that these documents were prepared at the request of the office in Portland.

Whereupon, on cross examination, witness further testified that at the time these statements were made, Charles B. Seger was auditor. Seger did not sign these statements for the reason that he had recently come from Texas and was not thoroughly acquainted with the organization, and for the further reason that witness was in charge of the general accounts of the Southern Pacific Company, which included the so-called land accounts. He supervised the preparation of these statements to the extent of indicating to the clerks, precisely what kind of a statement he desired prepared, the documents from which this information should be compiled, and the manner in which it should be finally turned over to him, for transmission to the person requesting the information. He was asked for certain information and then issued instructions or directions to his clerks to prepare these statements accordingly. He supervised the preparation of the statements. He would check the work against the records of the company, the ledgers of the company, to see that the total taxes paid would agree with the aggregate of the statement, and it is his recollection that he would and did apply this check to the work to see whether the total amount corresponded with the ledger account.

Q. Well, now, for illustration, I call your attention

to Statement No. 1-A, referring to Tillamook County for the year 1902. I see that it states here the acres assessed to be 60,261.39; assessed valuation $148,420; average assessed valuation per acre $2.50. It shows right on the face of it that it is not correct. Did you notice that?

A. In what way is it not correct?

Q. Well, there is only one way in which it could not be correct; that is by being incorrect.

A. That the division of the acreage into the assessed valuation does not equal $2.50?

Q. Yes.

A. Well, I would have to verify that before I could say it is not correct.

Q. Well, you could see that 60,000 acres at $2.50 would be $150,000. It is more than 60,000 acres, and the total assessed valuation is $148,420, and the average is stated there to be exactly $2.50 an acre. Did you pay any attention to those things to say whether that is correct or not?

A. Not these deductions. They were made mentally or by pencil by the clerk preparing them. Those two columns, though, were from the original tax receipts. A clerk is liable to make a mistake there in carrying out those particular extensions; that information being prepared principally for the person who requested it as to the average assessment and average tax per acre, and in no way affecting the acreage or the taxes paid.

Q. Well, you did not purposely have those made incorrect, did you?

A. Oh, no; no.

Q. There is no reason why it should not have been made correct, is there?

A. No reason at all. There may be a clerical error in making that computation anywhere in the statement.

Q. I also observe here Washington County for the year 1892; acres assessed 22.748; assessed valuation $22,915, showing average assessed valuation more than $1.00 an acre, although it is stated here to be 58 cents.

A. Yes.

Q. Have you any way to account for that?

A. The same thing applies. It may also be accounted for by a typographical error in the stenographer copying the figures.

Q. The statement shows on page 1, if I understand it correctly, average of 2 cents and 7 mills tax paid per acre per year for the years 1891 to 1904, inclusive. Is that correct?

A. Yes, 2 cents and 7 mills.

Q. So that the total tax paid during those fourteen years average per acre is 37 cents and 8 mills, or fourteen times 2 cents and 7 mills?

A. Yes, that is the average.

Q. And, if I understand you correctly, these statements are based entirely upon your ledger account show-

ing tax account, taxes paid, and the receipts received each year from the local county officers?

A. County officer, whoever he was, yes.

Whereupon, on redirect examination, witness further testified that he is now employed in the office of the comtroller of the Southern Pacific Company at New York, Mr. Mahl, and has been continuously in the employ of the Southern Pacific Company during the times with reference to which he has testified. At the time these tables were prepared he was in San Francisco; he left San Francisco after the fire of April 18, 1906.

Whereupon, A. N. HOFFMAN called as a witness on behalf of defendants, being first duly sworn testified, that he is clerk in the Land Department of the Southern Pacific Company and has been in the employ of the Company two and a half years as clerk, on the records in the office and examining records in the United States District Land Offices. His work in United States Land Offices has been abstracting entries that bear adversely to the Company in different land offices in California, Nevada and Roseburg, Oregon. He has made an examination of the land in the Roseburg land office for the purpose of ascertaining the acreage of public lands not entered within the limits of the grant of July 25, 1866 and May 4, 1870. Although he did not enter all the work on the map, he checked it back with reference to the map. He verified "Defendants' Exhibit 339" in his examination of the public records of the Local Land Office of the United States at Roseburg. The red squares

on this exhibit show the vacant public land as to the even numbered sections within the limits of the grant. These red squares circled with green show the land within the forest reserves, the limits of forest reserves, and those with other circles show lands withdrawn for power sites, Fisheries Bureau and Indian Reservations. The memorandum with this map showing the estimated acreage of public lands in the Portland and Roseburg, Oregon, Land Districts of 1,012,960 acres within the limits of these grants as public lands not entered in the counties of Multnomah, Washington, Tillamook, Yamhill, Polk, Clackamas, Marion, Lincoln, Benton, Linn, Lane, Coos, Curry, Douglas, Josephine, Jackson, and Klamath, is, so far as these counties lie within the United States Roseburg Land Office District, correct on an estimated basis. In making the investigation, he worked from the tract books and from the plats in the District Land Office and those that showed vacant, he marked upon some smaller plats, that he had, and used that data from original search of the public records and transferred it to Defendants' Exhibit 339 which is correct according to the search which he made. Mr. Wall, he believes, assisted in the preparation of this data on this map and statement with reference to the lands situated in the Portland United States Land Office District and he and Wall worked together in connection with the preparation of this map. Wall did the work in the office and witness transferred Wall's work on to this map; that is to say, Wall did the work in the Local Portland United States Land Office, searching the records there for the data

and furnished him with data, and witness transferred it to this map in connection with the work that witness had personally done in the Roseburg office. These two districts covered all those counties mentioned in this list and a little more, he believes, up north. The table covers all of the vacant lands within the limits of the grant in these two land districts.

Whereupon defendants offered and there were received in evidence these Exhibits marked "Defendants' Exhibit 339" and "Defendants' Exhibit 340" to which complainant objected as immaterial.

Whereupon it was stipulated that the Wall referred to by the witness would, if called, testify as to said exhibits the same as witness Hoffman and that the testimony of the two witnesses would cover both exhibits, excepting that the testimony of Wall would relate to the land situated in the United States Land Office Portland District, which exhibits are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon L. F. STEEL, recalled as a witness for defendants, further testified that he had custody of the corporate records of the Oregon and California Railroad Company under W. W. Cotton, Secretary of that Company up to January 15, 1912, when Cotton resigned and his successor was elected. He has prepared a summary showing the stockholders, number of shares, the date of the election of directors, president, vice-president and secretary from the earliest period of the Oregon and

California Railroad Company down to January 15, 1912 and "Defendants' Exhibit 341" is the statement prepared by him from the records of the Company and is a correct summary of the facts as shown by the corporate records of the Company and was prepared at the request of Mr. Townsend, representing the United States in this suit.

Whereupon defendants offered and there was received in evidence "Defendants' Exhibit 341" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon JOSEPH GASTON, recalled as a witness on behalf of defendants testified that he is acquainted with the work which the Oregon Central Railroad Company East Side, known as the Salem Company, did by way of construction, grading etc. of its railroad from East Portland south in 1868 and prior to April 1869. They were in a contest with the Salem Company with respect to the land grant made by Congress in aid of the construction of the railroad from Portland to the California line and it was the interest and purpose of himself and associates to delay the East Side or Salem Company in every way they possibly could so as to exhaust their resources and prevent them from being in a position to have any claims or chance to get the land grant for their Company. In this work of opposing them, he and his associates, incited opposition among the land owners to give them the right of way or asking exhorbitant prices for the right of way and they pre-

vented them in every possible way they could, from getting labor, and did all they could to break down their credit and stir up law suits against them about their right of way. For the purpose of ascertaining the amount of actual construction work and the extent of the grading and other construction work between East Portland and Salem, he went over the line once with the superintendent of construction of the Oregon Central Railroad, or as it was called then the West Side. Afterwards this superintendent M. S. Hart went over the East Side line several times as many as three times, he thinks, to ascertain how much work the East Side Company had done and where it was and what sort of work it was and what probably were the expense in doing this work, his object being to ascertain the resources and to exhaust them, if they could. Prior to February 1, 1869 and during 1868, including January, 1869, as nearly as he could estimate it, there was work done all the way along the line of the Oregon Central of Salem, East Side, from East Portland to within five miles of the City of Salem. He thinks there was one patch of work on the south side of Lake Labish, and it was in places all along, owing to the disposition of farmers to give right of way and the facility for making a showing of work done, and his associates had Mr. Hart, the superintendent of the West Side Company make an estimate on his last trip, as to the amount of what Hart thought the whole amount of money the East Side Company had expended, that is suposing that they had paid for it all and Mr. Hart put the amount at $150,000.

Hart's estimate was made in February 1869, and he thinks that Hart's estimate was reasonable. He and his associates and everybody else knew that the East Side Company was not connecting up its work, that it would not count on the first 20 miles of railroad but was work that would count in the construction of the line.

Whereupon the witness further testified as follows:

"Q. Do you know anything about the pay-roll set out at page 130 of the printed record in the case of Holladay v. Elliott, which purports to show a correct footing of the pay-rolls and number of men employed on the Oregon Central (East Side), commencing with September, 1868, down to and including January, 1869, and for the period up to September 12, 1868, which foots up, according to this table, $49,113 from September, 1868, to and including January, 1869, and $81,455.31 prior to September 12, 1868, giving it by months, the number of men employed in each month, and the rate per month excepting that prior to September 12, 1868, which is given in a lump sum and referred to in Mr. Elliott's testimony as $81,455.31 in that case; and all aggregating $130,568.31, money disbursed on pay-roll account for construction? Have you any knowledge of that, or as to whether that is fairly accurate?

A. I think these old pay-rolls were submitted to me in some litigation between Holladay and Elliott, or John Nightingale and Elliott—I could not be certain which; but the pay-rolls were submitted to me as to my opinion of their reasonableness or honesty, and anything else I

might choose to say about them. I could not identify them now, but if they are the same payrolls, my opinion at the time was that Elliott had spent the money that he claimed he had.

Whereupon on cross examination witness further testified that there was no construction work prior to April 16, 1868 by either the East Side or West Side Companies. They commenced about that date, the West Side Company on one day and the East Side Company on the next day. The East Side Company projected its line on the East Side of the River where for the most part the expense of grading was much less than the expense of grading the line on the West Side road during the first few miles.

Q. Mr. Holladay and his associates spent a great deal of money in that political fight, did they not?

A. Yes, I think they did.

Mr. Fenton: Objected to as immaterial, and as not cross-examination.

A. Holladay admitted to me he had spent considerable money.

Mr. Fenton: It already has been testified to in direct by this witness called for the Government.

Q. And do you not remember, Mr. Gaston, that after the fight was taken into the Legislature and Holladay finally won out and got his resolution of October 20, 1868, adopted and approved by the Governor, that both sides then went to Washington to fight the next

battle there, which finally resulted in the act of April 10, 1869?

Mr. Fenton: Objected to as not cross-examination, and as incompetent, and as impossible for the witness to state what caused the act of April 10, 1869.

Q. You remember that?

A. I remember that both parties sent agents to Washington. Mr. Simeon G. Reed went on behalf of the West Side Company; and John H. Mitchell and Stephen F. Chadwick—I think that Mitchell went first, and that Chadwick joined him afterwards, or he was in Washington, and he helped in the fight there—helped Mitchell.

Q. Didn't Mr. Holladay himself go East?

A. I think he was—I think he was in the East; whether he was at Washington or not, I don't know.

Q. Well, now, isn't it a fact that after that resolution of October 20, 1868, was passed by the Legislature of Oregon both sides suspended construction until the fight in Congress had been disposed of?

A. Well, not immediately. I know that we kept our forces at work for a while, and I think they did theirs, too. But it was suspended by the West Side—I know Captain Ainsworth, who was putting up money for us, declined to put up more money until he saw the result at Washington; but we still did keep some men at work, and my recollection is that they kept some men at work, too, but how large a force, I couldn't say.

Q. Well, now, Mr. Gaston, don't you remember that Mr. Elliott came to Oregon in April, 1867, with $15,000 that he had gotten from the Huntington crowd in California, for the California end of this grant, and that that was substantially the extent of his financial resources?

Mr. Fenton: Defendants object to that as incompetent, and as hearsay.

A. No, I couldn't say what his resources were. I only knew by hearsay that he had sold out his interest in the California end of it to the Huntington crowd for $15,000, I think, as I recollect. If he had any other money, or if that was all in money, I don't know.

Q. And do you not remember that after he came here in April, 1867, and organized the last East Side Company, he immediately entered into a contract with A. J. Cooke & Company, which you have heretofore testified was simply Elliott acting under a fictitious name? You remember that?

A. Oh, yes, that was my information. I couldn't tell you how I found it out, but that was given out by their side, that they had made a contract with A. J. Cook & Company. And that circulated sometimes as J. Cook & Company. Jay Cooke was the great capitalist promoter of the Northern Pacific at that time.

Q. Now, do you know that Mr. Elliott immediately went East, and spent the year 1867 trying to raise money on the bonds of his East Side Company, and you were trying to block him in the meantime by sending circulars

to all the bankers of the East, exposing what you contended to be an attempted fraud on the part of Elliott?

A. Yes, I remember that. How long Elliott was in the East about that, I couldn't say. But I know he went East, and that I sent those circulars there to bankers, Jay Cooke, and the Railroad Journal, and everybody else—I got a Bankers' Gazetter, and sent it to all of them.

Q. And do you remember that there was no construction work during the year 1867 by either the East Side Company or the West Side Company, both companies being engaged in an effort to raise money?

A. Yes, sir.

Q. You were raising money here in the West, in Oregon locally?

A. Yes.

Q. While Mr. Elliott was in the East endeavoring to raise it there?

A. Yes.

Q. Now, don't you remember that, as the total result of Mr. Elliott's effort to raise money in the East, all he brought back was a couple of locomotives, which he brought around by way of the Horn, landed them at San Francisco, and then sold them to the Central Pacific, and brought to Oregon as his only financial resources the money that he got from the sale of those two locomotives?

Mr. Fenton: Objected to as hearsay and as incompetent.

A. Well, I know that was the talk, but I don't know that that was all the money Elliott had. I know that before—I think before they sold the locomotives they got $20,000 from Barney Goldsmith here in Portland.

Q. Do you know of any other resources that they had, except the $20,000 they got from Mr. Goldsmith and the money that they realized from the sale of the locomotives?

A. I only know from what men have told me, that is to say, that I would know personally, except hearsay, Now, they got $1,000 from Sam Brown, up there in French Prairie; and they got $1,000 from another man —I tried to recollect his name there, but I couldn't—he is an old friend of mine; and they got money from other people there, that it was never reported, simply because it was a general opinion among people on the East Side, a great many people, that Elliott's concern was not sound, but they were willing to put up money to help build a railroad, if the money was spent, believing that finally there would be a railroad, and that it would not be lost, and that it would help out the fight against the West Side people. Now, that is the way Sam Brown put it to me, and this other man. And each one of them were wealthy farmers, and they put in a thousand dollars apiece that they told me about; and they said others had, but I don't know who the others were. And how much money they raised in that way, I never could find out, of course.

Q. Well, now, isn't it a fact that, after Mr. Elliott started construction on April 17, 1868, he had not proceeded more than sixty days before he was unable to pay his men, and that you used that to embarrass him —you took advantage of that circumstance to embarrass them in the further prosecution of their work?

A. Yes, they missed on a pay-day, and we made all the capital we could out of it against them.

Q. Now, that was the time he enlisted the services of Holladay and brought Holladay to Oregon, or anyway that Holladay came to Oregon?

A. Well, now, I couldn't say about that. Now, they got that money from Barney Goldsmith, and they spent it along. I think Goldsmith put the same sort of condition upon them that the farmers of French Prairie did—that the money must be spent on the road, and not on lawyers; or, as they called it, in lawsuits or that sort of thing. They were willing to give money to help build a railroad, but not for lawsuits. And I couldn't tell you now whether the Goldsmith money was spent before the locomotive money and these different resources—I couldn't tell you. Of course, they would not—it was not to their interest to let out anything that they could keep back.

Q. But you do remember that they were practically "all in," as the expression goes, financially early in their work, and before Holladay came to their assistance?"

A. Oh, yes. And we thought we had them beat

several times. But it was just like the man who thought he had scotched the snake—why, they would curl up again, and start in.

Q. Now, as a matter of fact, Mr. Gaston, don't you know that their corporate minutes show that they were expending a large part of this money that they were getting from the various sources for attorney's fees and the expenses of the fight with you, to try to get the land grant away from you?

A. Well, they had to spend something that way; but I don't think that Mitchell got—he was their principal fighter—I don't think he got much money until Holladay came in; and then they struck Holladay for all the money they could get out of him.

Q. Do you know what Holladay's resources were?

A. I don't know about Holladay's particular resources just at that time; but I know from the statement of men in the East how he got his money to commence business on the Pacific Coast, and whether he had any left for this railroad enterprise or not, I don't know.

Q. Well, don't you know, Mr. Gaston, from your observation at that time and what you learned afterwards, that Mr. Holladay had gone broke at San Francisco and borrowed money from Latham, that Latham had advanced money to him, and finally financed his last venture here in Oregon, with the hope that he might pull out and repay Latham the money that he had borrowed from him at San Francisco?

Mr. Fenton: Objected to as immaterial and not cross-examination.

A. I don't know. Of course, I don't know anything about that certainly. I only heard reports that the money that he beat Russell, Majors & Waddell in Missouri out of—four or five hundred thousand dollars—he had put into steamships out here, and then by his reckless way of doing business he got in debt, and then he had to mortgage his steamships to Latham for money.

Q. Well, didn't you understand that the only money he had to use here in Oregon he got from Latham?

A. Well, I couldn't say that I understood just that; but that Latham was financing his speculations, and that in the end, why, he sent that man—I have forgotten his name now, a friend of his—to Germany to sell the bonds. Latham put up the money to send the people to Germany to sell the bonds. Holladay told me that himself.

Q. Well, now, this first year, 1868, that the East Side Company was engaged in construction, you have told me the fact—it is a fact, is it not, Mr. Gaston?—that they simply put in grading work, which could be done with the least expense, so as to make the greatest showing in the way of mileage?

A. Yes, they did that. They spent their money where it would make the biggest show.

Q. They would take the leveler stretches of the road, where the grading would be inexpensive, and throw in some grading?

A. Yes. And take a side hill and run up there, by New Era there, they could take the shovels and go along and shovel out over the bank there, and make a showing of track for quite a ways without a great deal of money. They did that wherever they could.

Q. Now, about how many miles of grading did the East Side Company do during the year 1868, if you should connect it up and make it continuous?

A. Oh, they must have done—in the way they did it, they must have done considerable over thirty miles.

Q. Well, now, don't you think that $5,000 a mile would be pretty expensive for that kind of grading that they did?

A. Yes, I think it would; but they spent money on other things, you know.

Q. What other things?

A. Well, they had a sawmill, and they had a pile-driver outfit, and various things like that. And then they had to keep up their organization, and those fellows require money. They had to have a superintendent and foreman, and all that sort of thing.

Q. Well, you could grade that tract from Portland to Salem, even as it is graded now, with $5,000 a mile, couldn't you?

A. No, you couldn't do that as it is graded now.

Q. Haven't you included, unintentionally, Mr. Gaston, some of the work that was done in the year 1869? Haven't you got the two years confused in your mind?

A. No. We was figuring on, you know, the session of Congress that came in—we was figuring on what sort of a showing could be made there at Congress.

Q. Well, now, don't you remember that, even after the East Side Company had beaten you in the Legislature and secured the resolution of October 20, 1868, and had again beaten you in Congress and secured the act of April 10, 1869—that even then, with their improved credit, it was all they could do to complete twenty miles by Christmas day, 1869?

A. Oh, I know it was. I know Holladay was exhausted, and they had a whole lot of trouble to get this little piece of road right over here in East Portland. They were awful hard up. And if I had been as smart as I ought to have been, I could have still beaten them. I had a chance to have got money from London, but I submitted the whole thing to Captain Ainsworth, who had put up the money for our side, and he turned down the proposition. I know they were hard up even after they got the action at Washington.

Whereupon witness further testified that he does not think that the East Side Company did more work in 1869 than it did in 1868, except buying of iron, which was a big item. He thinks it was 50 pound rails they put in but he cannot tell where they got the iron. The

iron was brought across the continent on the Central Pacific to San Francisco and then brought up in steamers. In the year 1868 the West Side Company did not do as much work as the East Side Company, by way of construction. He did most of the work for the West Side Company himself with a little party of men and he thinks they had about three little gangs working between the top of the ridge near Portland and Hillsboro. They spent a large part of their resources on some of these heavy grades. The bridges were the biggest items on the twenty six-miles of road from Portland. He could not say whether the East Side Company put any bridges in in 1868. He thinks the East Side Company had a sawmill installed up at, or this side, of New Era before the year 1869. He does not know what representations Mr. Reed made to Congress upon the amount of work that had been done by the East Side Company, in these pamphlets submitted to Congress. Witness issued a pamphlet explaining the unsoundness and crookedness of the organization of the East Side Company and that was circulated. He thinks Mr. Reed probably gave each member of Congress a copy of that pamphlet. He would not now change any statement that he had made in that pamphlet. He would not say now that he had not strained a point a little to depreciate the East Side Company before Congress, because that was part of the game, to belittle their work all they could. He had seen the pamphlets, the East Side Company issued and they pursued the same tactics. It was just about the same thing. Each side was trying to

belittle what the other had done and to exaggerate what his side had done. He fought them with the same weapon. He did not intend to make a downright false statement, he had some friends in Congress that he would not have liked to have caught him in that. Sam Cox and John Bingham from Ohio were very good friends of his and they had known him personally from boyhood. He did not want them to think any the less of him. He thinks that the land Holladay got on the East Side was entirely donated to him and knows that old Gideon Tibbitts gave a tract of land this side of the car shops and thinks that the land Holladay got was given to him. He does not recollect now of the East Side Company buying the lands. Witness thinks that if, on March 19, 1870, Holladay and his associates had expended $800,000 on the east side road, there must have been a great deal more expended during the year 1869 than during the year 1868, but he don't know whether they expended any $800,000—that is just a mere assumption. He remembers that at the time of the organization of the East Side Company, under the name of the Oregon and California Railroad Company, the documents relating to that transaction, all of which are introduced in evidence, show, or purport to show, the expenditure of $800,000 by Holladay and his associates prior to that time, but whether Holladay and his associates had really expended that, he has no knowledge and would not say that the statement of expenditures of $800,000 by Holladay and his associates or its pay rolls were correct. He could only give his opinion

of the value of the work done. He does not believe that Holladay and his associates ever spent $800,000 at that time and he would not give any credit to Elliott's pay rolls because they are payrolls, because he knows from the character of the man that he might make up any sort of a payroll. He could only judge from the appearance of the work done. In judging as to the extent of the work done by the East Side Company he is relying upon the reports of Superintendent M. S. Hart who was a better judge of that than he was. Hart was an old railroad grader and he put more confidence in Hart's judgment than in his own. At the time he saw the work it had not been anywhere near completed for that year. The East Side Company did a great deal more work after witness saw it than they had had done. It was about three months after the East Side Company commenced this work that he went over it, which would be sometime in July and as to what work was done after that, he has no personal knowledge, but is giving the information gained from Mr. Hart. He and Hart went along and saw where the line of the East Side Company was and they had worked a good many places and then Hart told him how much more they had done made his reports to him personally, so that he and Hart had knowledge of how the East Side Company was getting along. At the time witness inspected that amount of work there, he does not think there had been more than $40,000 spent and as to anything that was spent after that he has no personal knowledge but relies simply upon the reports of Hart to him, both as to

quantity of work and the probable amount that had been expended in connection with it, including the character of the work.

Whereupon on re-direct examination witness further testified that he went with Hart on one of these trips checking up this work. They went over the work to see the line of the East Side Company and how it was doing the work and where and getting all the information they could about it. They went as far south as Gervais, clear to the end of the work, and they had a party of men cutting out timber beyond Lake Labish this side of Salem, about 5 miles. He and Hart went over this work sometime in July, the exact date he could not say. He was up to Salem in September or October, 1868 and this was July 1868 when he and Hart went over the work. At that time they had cut out the timber beyond Lake Labish, of course that was part of the grading work. There was grading in French Prairie north of Lake Labish about the time he and Hart went over it, along about Gervais. Hart is dead. Hart was superintendent of the Oswego Iron Works for several years. The West Side Company took him from that work and he was then on construction work of the Oregon Central, West Side, after that, when he made personal reconnaissance of the line of the East Side Company. Hart worked for the Oregon Central, West Side, for a number of years and completed the line from Portland to Forest Grove, laid the track and everything. Witness as an officer of the Oregon Central, West Side, acted upon the report of Hart as superintendent

and engineer as to the value of the work done by the Oregon Central, East Side, in part in his calculations but witness had his own personal views up as late as July 1869. He does not think that he, witness, went over the line after that, towards Salem from East Portland, up as late as October, 1868, although he passed through that country on the old stage road which passed pretty close to this work and he could see from the stage line the work at several points and that the work was going on while the Legislature was in session. The East Side Company was making quite a showing in June, 1868. There was an election at which the respective friends of the two Oregon Centrals had a spirited contest as to who should win the legislature. All through the Willamette Valley people took sides. At that time the election to the Legislature took place in June. Milton S. Latham was president of the London & San Francisco Bank, Limited, a man of financial standing and good reputation as a financier. He had been United States Senator from California and was quite a successful man. He raised the money to build the railroad in California. The Oregon Central, East Side, built a lot of trestle work in East Portland along what is now East First Street and it had graded the track on the ground there and it built the trestles after it got the action of Congress.

Whereupon witness further testified as follows:

Q. I show you, at page 95 of this printed brief of counsel for Elliot in the case of Holladay and Emmet

v. Elliott and others, in the Supreme Court of the State of Oregon, January term, 1879, a picture which purports to be "Defendants' Exhibit No. 11. View of Oregon City—Willamette Falls. Railroad graded under Elliott in 1868. Referred to in P. Buckley's testimony," and will ask you to look at that, and state if you recognize that as a part of this grading done by Elliott in 1868, as shown by that exhibit, and as a picture of Oregon City and the falls, as they looked in 1868.

A. Yes, that is a very good picture of matters about Oregon City at that time; and that is where the track was located there along the foot of the bluff.

Q. That is about where it is now, isn't it?

A. Yes, the same position; and it shows the track here. Away up there is what was called "The Basin." You see, the steamboat men built a bulkhead around the lower end of the cliff—the cliff across the river—and made a basin there, that would bring the steamboats down there where they could shoot the freight right down to the lower boat. That was before the building of the locks and canal.

Mr. Fenton: I offer that exhibit, with the promise to still further connect it with further testimony, and ask leave to take it out of the book or to substitute a duplicate of it from another brief. I think I have another one or can get one; and ask to have it marked "Defendants' Exhibit 367."

It may be stipulated that photographic copies of these exhibits may be substituted in lieu of the originals?

Mr. Townsend: Yes, that is all right. I desire to ask a question with reference to the admissibility of this exhibit.

EXAMINATION BY MR. TOWNSEND.

Q. Are you certain, Mr. Gaston that the track was actually laid in 1868?

A. No, I wouldn't say that; but the grade is on there.

Q. As a matter of fact, I think your former testimony was that you think the track was all laid in 1869, don't you?

A. Yes, I think the track, the iron—the ties and iron—was laid in 1869.

Q. Put down in 1869?

A. Yes.

Mr. Townsend: With that qualification, I have no objection to the admission of this exhibit, although I do not concede that this exhibit was taken in 1868, or that the track was laid as shown in this exhibit in 1868; but will concede, on the faith of Mr. Gaston's testimony, that the grading was done as shown in this exhibit, with the exception of the laying of the ties and rails.

Mr. Fenton: Counsel for defendants desire to state that "they do not know whether the iron was laid in 1868, but do not wish to admit that it was not—leaving that to the testimony."

Whereupon defendants offered and there was re-

ceived in evidence "Defendants' Exhibit 367" which is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness upon re-cross examination further testified that on this trip in July, 1868, made by him and Mr. Hart, he found stretches of grading at different points along the line. They must have had eight or ten different bunches or crews of men, had one in each place and they were separated by ungraded sections of the road. Some of them had graded maybe a mile or two or more and so on—it varied. He could not say that there were stretches of five or six miles where there had been no grading at all, but there might have been some places, one place as much as that, but they were scattered all along the road, all along the line. As a matter of fact they were doing all they could to get financial support on the East Side all along the line. They were trying to get local support and to create public opinion in their favor and political opinion, in view of the approaching election and all that sort of thing and they were distributing their work with all these things in view. There is no question about that. Their work in the vicinity of Salem was undoubtedly for the purpose of influencing the acts of the Legislature and the people of Salem. They got no support from the people of Salem. They got no subsidy from the people of Salem but got promises of land. They did get land there for a station, but he does not think they got any money. They got money from big farmers, wealthy men, along the line. Brown was quite a wealthy man and there was quite a number

of others in French Prairie who were wealthy, as wealth went in those days. He does not recollect of ever having any conversation with Holladay or Mitchell or any of the people connected with the East Side Company about the statement that the East Side Company made before Congress, heretofore introduced in evidence.

Whereupon GEORGE H. HIMES, called as a witness on behalf of defendants and being first duly sworn testified that he is Assistant Secretary of the Oregon Historical Society and has been an officer of that Society since its organization, December 16, 1898. He has been secretary of the Pioneer Association of Oregon for 28 years and has lived in Oregon over 59 years. He was in business in Portland in 1868, as a job printer and was in Oregon when the Oregon Central Railroad Company, East Side, commenced construction in East Portland on April 16, 1868, and was present at the breaking of the ground on that day. He had occasion to go from Portland to Salem by stage during the summer of 1868, in July and in passing along the stage road of that time came in sight of the track where the line of the East Side Company was laid out and more or less of grading was being done and groups of men were scattered along from place to place covering a distance of several miles. These extended at that time, as near as he can recall somewhere probably between Hubbard and possibly as far south as Woodburn, that is, what is now known as Woodburn. Sam Brown's place is in the vicinity of what is now called Gervais, about two miles distant and there was grading in the vicinity of Sam

Brown's place. He remembers that, because he happened to stay there all night and knew Sam Brown very well indeed. He did not go off the stage road, but just observed the work as he went along, observed the road, the grading condition all in sight of the stage road at all points. This was along about the middle of July, or the first of August, 1868. There was no particular circumstance that fixed that date in his mind. He simply had occasion to go to Salem and had no other way of getting to Salem on a hurried trip at that season of the year, except by stage. The boats were going, but quite often it would take a much longer time to go by boat than by stage. The bars in the river frequently interfered. He remembers once he went and it took him two days to go by boat from Portland to Salem. The event of breaking ground for this East Side Railroad on April 16, 1868, attracted a great deal of attention because it was a movement, or the beginning of the movement, which led the people of that time to pay a good deal of attention to it. It was practically the first railroad. There was a movement the day before on the West Side of the river and there was a starting point of railroad construction. At that time there was no other railroad in Oregon aside from the Portage Road between The Dalles and Celilo and with that exception this was the only railroad in the State commenced. The first settlement was made by Young, in Oregon in 1834. There was Jason Lee on the East Side of the River, ten miles north of Salem, and Young on the West Side of the Willamette River, in the vicinity of what is now

Newburg. Young got there probably a little earlier than Lee, although both arrived in the same year, 1834. That, is the American settlement he refers to. Commencing with the immigration of 1834, which was the largest up to that time, Oregon began settling pretty generally through the Willamette Valley, especially in the vicinity of Hillsboro, in Washington County, and along up the Valley. Commencing 1843, largely in Yamhill County, in the vicinity of Lafayette and McMinnville, 1844 and 1845. W. T. Newby who came in 1843, settled upon the townsite of what is now McMinnville. Between 800 and 1,000 people came in the immigration of 1843, not all adults. There were a little short of 300 men capable of bearing arms who came in that immigration. There was no attempt made in those early days to make any record of the women and children, but he has added enough to the list of women and children so that it aggregates now the names of about 800 all told. Considerable immigration came in 1845, which must have been about 3,000. They settled adjoining those that had already settled—the land was not taken up consecutively, that is, continuously—there were stretches between these settlements that were already made, where others followed. The first settlers, settled along the water courses largely and followed the streams, and the second lot of settlers would settle just next to them, adjacent to water courses. The next large immigration was in 1847, and was probably about the same as that of 1845. There was a large immigration in 1849, but a large part of that went to California. The

discovery of gold on January 19th, 1848, and the information respecting that, got back in to the eastern part of the country the latter part of that year and the spring of 1849 brought out great numbers of people. A goodly number came into Oregon, but the number in proportion to those that went to California was very small. The immigration of 1852 was from 25,000 to 30,000, that is those who came across the plains in the year 1852. The proportion of men coming in that year was much greater than any other year before or afterwards. From his investigations so far, the proportion of those who came into Oregon would be about 10,000 out of the 30,000. They settled just adjacent to these settlements already made, and broadening out from the water courses, from the river towards the foothills. Up to 1852, they took their land commencing after the passage of the Donation Land Law, September 27, 1850, under that law. All claims prior to September 27, 1850, were taken up under what might be termed the land law of the Provisional Government, that is squatters' claims, afterwards perfected donations. There was no large immigration after 1852. There was not much of an immigration in 1865, especially in the Willamette Valley. There was considerable immigration in 1862, 1863, 1864 and 1865 in Eastern Oregon.

Whereupon witness further testified.

"Q. I will call your attention to Defendants' Exhibit 259, which I would like to have you look at. It shows a yellow field in the Rogue River Valley surrounding Medford, where I am now pointing, and a

yellow field in the Umpqua River Valley surrounding Roseburg, and from there on through to Oakland north, and then beginning south of Cottage Grove and all up through Eugene, Junction City, Corvallis, Albany, Salem, Oregon City and Portland. This yellow field shows lands that were lost to the railroad company within the limits of the grant, either by being taken under the Donation Land Law, or as in the Oregon Central Military Wagonroad grant along the Middle Fork of the Willamette, and the Coos Bay Military Wagonroad grant along the Umpqua, and other public land laws by which the railroad grant was lost in that limit. Where with reference to that map were the main donation land claims situated?

A. Well, they were all through from Portland southward as far as to the Calapooia Range, and then there were quite a number of settlers went into Douglas County, what we know now as Douglas County, in the vicinity of Yoncalla and Roseburg, in 1849, '50 and '51, and extended as far south as Jackson County, or Rogue River Valley, as early as 1851, '52 and '53.

Q. Then, as I understand you, Mr. Himes, the oldest settled portions of Western Oregon were in the Willamette Valley and the Umpqua Valley and the Rogue River Valley?

A. Yes, sir. Of coure, there were a few settled over at Port Orford in 1851, and there were some settlements along in the mountains—not in the mountains, but across the mountains, on the ocean side of the Coast Range.

Q. These were chiefly on streams?

A. Yes.

Q. And watercourses?

A. Yes; but on watercourses that had tributaries to the ocean; "some of the inlets or bays."

Whereupon, on cross examination witness further testified that these donation claims had all been taken long prior to 1866. No donation claims were taken, he thinks, later than 1855. It was modified by cutting down to one-half, the number of acres that could be taken under the donation land law. In a general way he thinks that the situation of these donation claims and their location and extent, were well known to local people in 1866 and from that on, so that the parties who secured this land grant for the Railroad Company, he thinks, well knew or must have known, the extent to which the lands had been previously settled upon. His connection with the job printing office commenced July 26, 1865, and was continuous from that date up to January 9, 1899. The original firm name was Carter & Himes. In a general way he knew of the railroad fight between the East Side and West Side Companies and was here while that was going on, and some of the literature with reference to that was printed in his office. He remembers in a general way, after Holladay came and became identified with the East Side Company that the matter was taken into the legislature in the fall of 1868, resulting in a resolution rescinding the designation in the year 1866, of the West Side or Gaston Company.

Whereupon witness further testified as follows:

Q. Now, do you remember after that that the matter was taken before Congress, and was a matter of discussion in Congress and before the committees of Congress, until the passage of the act of April 10, 1869?

Mr. Fenton: Defendants object to that as necessarily hearsay as to this witness. He could only tell what he had read in the newspapers or heard others say.

A. I remember in a general way about that from the public press.

Q. Well, you know those historical facts just as well as you do the historical facts Mr. Fenton has been asking you about, don't you, Mr. Himes?

A. Yes, sir.

Q. As to the settlement of Oregon and all these historical facts? That is true, isn't it, Mr. Himes?

A. That is true, yes.

Q. Now do you remember that in November or December, 1868, the East Side Company had a pamphlet printed by you, which was afterwards used in the controversy in Congress?

A. It was not printed at that time. It was printed in the following year—1870.

Q. In 1869, you mean?

A. No, I think not. It was not printed until 1870. I worked all day—set the whole business up myself with my own hands, did the press work, and I worked

night and day on that proposition some little time; and among other things I worked all day on the 4th of July. It couldn't have been in 1869. I think it was in July 1870 before that was printed. That is, now, the pamphlet I refer to gives what purports to be Elliott's side of the whole controversy.

Q. Well, now, you have the wrong pamphlet in mind. This was a pamphlet after Mr. Elliott's,—

A. Well, the pamphlet I have in mind would be a pamphlet I suppose hard on to one hundred pages. I have a copy of that pamphlet.

Q. This pamphlet that I refer to was printed before Elliott's connection with the company was severed,

A. Oh, I see.

Q. And before his controversy with Holladay arose; but has reference to the controversy between the East Side and West Side Companies. Now, I will show it to you, and see if you can recall it.

A. I rather think that is the pamphlet that Walling printed.

Q. No.

A. In looking this over, I see it was not the pamphlet I had in mind.

Q. Here is the resolution at the close of it.

A. This is a short, small pamphlet as compared with the other.

Q. Here is the resolution that goes with it, which

shows that, "At a regular meeting of the Directors of the Oregon Central Railroad Company, held November 25th, 1868, the following proceedings were had: 'On motion of Mr. Ellsworth, the foregoing statement of facts was unanimously adopted by the Board and the President and Secretary were instructed to officially sign the same, and attach the seal of the company thereto.'

I. R. Moores, President.

Saml. A. Clarke, Secretary."

A. I remember this pamphlet very well.

Q. Now, don't you remember that that was printed after the fight was concluded before the Legislature in Oregon here in 1868, and before the fight was concluded in Congress?

A. Well, I couldn't say. I remember the printing of that pamphlet as to its relation to the fight that was going on. Of course, I don't know that I have any recollection about that at that time, but, of course, it must have been by the showing of the date.

Q. Do you remember who had you print that?

A. I am not sure, but I think that—of course, Mr. Carter was the senior partner in the office, and he knew Mr. Moores very well, and he knew Mr. Ellsworth very well—Strictly Ellsworth—and my recollection about it is that the arrangement for printing was concluded between Mr. Moores and Mr. Ellsworth; and I was there, of course, as a partner, but was busy about other mat-

ters in connection with the office; and I have no distinct recollection about this matter, any further than that the copy and everything was turned in by those men, and then, of course, I did my work in connection with the printing of it; and as far as the business end of the transaction was concerned, I had no special thing to do with it; although in a great many cases—Mr. Carter was out of the office a good deal—I took in work; but in that particular case I never met Mr. Moores or Mr. Ellsworth up to that time.

Q. And is Mr. Carter alive?

A. No, he has been dead a number of years.

Q. Would there be any way in which you could ascertain the date that that was printed by you people?

A. Well, if you give me the date I will make a memorandum of it. I am not sure—I think, however, that I can tell.

Q. The date of the resolution of the Board of Directors of the Oregon Central Railroad Company in which it was directed that it be signed is November 25, 1868, and I therefore assumed in my former question that it was printed after that time. We have other evidence that it was in existence early in 1869, and I just wanted to see if you could not tell—

A. Well, I think it is possible that I can determine that date, although it might take me some time. I believe that I have the account books of the firm of that time. They would be stowed away among a good deal

of other stuff, and it might take me some time. I would be glad to look them over, and hunt it up. Now, just excuse me one moment—what is the date where the imprint is on that page, the date of that?

Q. That is 1868. You can testify that that is correct, can you not?

A. Yes, there is no question about that. That is correct, 1868—the firm of Carter & Himes was organized, or rather the partnership was entered into on October 5, 1868. The firm prior to that date was simply W. D. Cater, but our terms of copartnership began on October 5, 1868.

Q. And how long did it continue?

A. And it continued one year. It would take it in 1868 and up to the following year, 1869.

Q. So that this pamphlet must have been printed—

A. That was printed between October 5, 1868, and December 1, 1868. Somewhere along there.

Q. Well, now, are you acquainted enough with the manner in which the work was done so as to be able to testify that that was printed with the authority of the officers of the East Side Company?

A. Well, I should say it was, without any—scarcely any doubt. But in order to satisfy myself absolutely respecting that, I think it would be very necessary for me to overhaul the old books, if I can find them—and I believe I can—and see who made the entry, whether I made the entry myself for the work, or whether Mr.

Carter made it. If I made it myself, I could probably give some information about it; but if Mr. Carter made it, I could not.

A. Now, I was going to say in this connection, I have a very distinct recollection of doing some printing for Mr. Gaston, but I am not able, from anything that I can recall in connection with the wording of this, to say that that was what Mr. Gaston had printed; but I do know that Mr. Gaston had something printed. He made the arrangements with Mr. Carter. I did the typesetting myself. But it seems to me, from my recollection, that the matter Mr. Gaston had printed respecting matters of the railroad, was not so voluminous as that appears to be. But I would like, if it is possible, to see the original of that. I perhaps might be more sure.

Mr. Fenton: May I ask counsel what Government's exhibit you are asking the witness about?

Mr. Townsend: 105.

A. Yes, I remember this very well indeed. (Printed exhibit.)

Q. Well, now, Mr. Himes, having examined the original of Government's Exhibit 105, a typewritten copy of which was exhibited to you before, are you prepared to testify that Government's Exhibit 105 was printed by the firm of which you were a member, some time between October 5, 1868, and December 31, 1868?

A. I am, yes, sir.

Q. You know that at no time you permitted a false

date like that to get out?

A. Never. Never.

Q. From your general knowledge of the manner in which the business was conducted, and the business habits of yourself and Mr. Carter, and your general knowledge of this entire subject, the history of this railroad fight, are you not prepared to state, according to your best recollection, that the document was printed with the authority of those who acted for the Oregon Central Railroad Company, East Side?

Mr. Fenton: Defendants object to that as not the best evidence, and as only hearsay. You may answer.

A. My judgment is that publication was printed at the instance of Mr. Joseph Gaston—in my judgment.

Q. Mr. Joseph Gaston?

A. Yes.

Mr. Fenton: No. He has got it mixed up.

A. Yes, sir. Another publication that I had in mind, and I thought when I was looking over it casually that there was some reference to that—but I am satisfied that was printed by Mr. Gaston, or caused to be. I had nothing to do with the business arrangement. I remember those circumstances in connection with it—I wouldn't swear to it positively, but then it is my impression—I know that we printed a publication for Mr. Gaston connected with the railroad matters, and it gave a recital of the affairs in connection with the organization of the company, and also it related to some difficulty between

the two corporations, so-called.

Q. Well, you knew which company he was connected with, didn't you?

A. I knew he was connected with the West Side Company.

Q. Well, do you mean that Mr. Gaston put out a document purporting to be the authorized document of his adversary?

A. Well, of course, I couldn't go into the merits and give the reasons, or anything of that sort, but it is my judgment now—I cannot get rid of that impression. I know we printed something for Mr. Gaston, and I am satisfied, as far as I can recall, that that is the document. As I say, I am not positive of it. Of course, there might have been some other, but it has the earmarks of Mr. Gaston's work, as I understood the situation at the time. Of course, as I say, the business arrangements were made between Mr. Gaston and Mr. Carter. Mr. Gaston didn't know me in the premises, and I didn't know him, except simply as he came in. I remember distinctly a circumstance like this in connection with it; whatever the document was, there was a question about the payment for it; and I am not sure but Mr. Gaston brought the work to me first, when I come to recollect the circumstances connected with it, and that there was a job of a little bit more magnitude than I felt disposed to take into account without inquiring into the financial responsibility of the party offering the work; and that Mr. Carter came in soon afterwards, and I said to him "Here is a job that

is left here, but I didn't give him a price on it, because it is a man I don't know, and I want you to take care of it." And I remember that he said that there was quite a little work about that, and that we would have to be sure of the financial end of it. And when Mr. Gaston came in and talked the matter over—of course, I couldn't hear what was said; but whatever it was, it was entirely satisfactory, and the work was proceeded with and finished. The only way I could absolutely be sure would be simply to go back—I think I can find the old books of that date, and that would settle the question in my mind.

Mr. Townsend: I think Mr. Himes is mistaken.

A. It may be a confusion in the two different pamphlets.

Mr. Townsend: This is a scurrilous attack on Gaston, which he answered.

A. Now, this, I was going to say—of course, I didn't look it over only simply to examine the text of this —I simply recognize the printing and the type and everything of that sort; no doubt about that, not the least bit. We printed a pamphlet for Mr. Gaston. There is no question about that part of it. But my idea of the pamphlet that Gaston printed—and I didn't examine this more than simply looking at the type to find out the discussion of the text—only my idea of it was this: that it was a history, so to speak, of the transactions between the two companies, and an attempt on his part to show that the East Side Company had no rightful claim to the name.

Q. But this pamphlet is right the reverse.

A. Well, then, I am mistaken.

Q. This is an attack on the West Side Company.

A. Well, then, I am mistaken then, because, as I say, I didn't look it over sufficiently to get at the bearing; I just simply looked through to gather the type, and the headlines, and the subdivisions.

Q. You do not mean to put into the record here any suggestion that Mr. Gaston came to your printing office and had a pamphlet issued in the name of the other company, the East Side Company?

A. Oh, no, no; not by any means.

Q. Well, if this pamphlet, Government's Exhibit 105, is an attack by the East Side Company on the West Side Company, then that is not the pamphlet that Mr. Gaston brought to you?

A. No, that is not the pamphlet that Mr. Gaston brought to me. As I say, I didn't examine it thoroughly enough to get the trend of the document. There was only one point of doubt in my mind—that the pamphlet we printed for Mr. Gaston was not quite so voluminous as that one appears to be, or as that one is. The circular that Mr. Gatson brought, I couldn't really say how many pages, it was his side of that controversy, or at least bearing upon his side.

Q. There were several circulars issued. How about this one—Government's Exhibit 103? Do you recognize that type?

A. No, I think that is printed by A. G. Walling. However, there was one form of type that each of us had in common, and were frequently loaned some sorts, as we say, from one to the other, and it is possible that that might have been printed by our firm. We only printed —there was only one job that was printed for Mr. Gaston.

Q. How about that?

A. Well, I printed that.

Q. That was one which he did have printed? That is the Newby case.

A. I printed that.

Q. No, this is the brief of Mitchell, Dolph & Smith. Let's see if I can't get their brief in the Newby case.

A. There is the document I had in mind. I printed that.

Q. This is the document which was used before the Oregon Legislature presenting the claims of the West Side Company.

A. Well, that is the document—that is the one. I was mistaken. When I looked through that, there was so much more matter. I know that one you have your hands on.

Mr. Fenton: You better identify it, hadn't you? Salem, Oregon, October 13, 1868. Signed T. R. Cornelius.

Mr. Townsend: It is not necessary to put that in,

is it?

Mr. Fenton: No, it is not necessary. The witness says that is the one he printed, not the other.

A. Yes, that is the one.

Q. Mr. Himes, I have presented to you a book consisting of newspaper clippings, pamphlets and various documents and letters, which are collectively bound together and entitled "Oregon Railroad History," which has been compiled by Mr. Gaston from the various documents that he has had relating to the early railroad history of Oregon, and having directed your attention to a certain pamphlet issued by the West Side Company, under date of October 13, 1868, addressed to the Oregon Legislature, I will ask you if that is not the document which Mr. Gaston brought to you to have printed, instead of Government's Exhibit 105?

A. Yes, sir. I am very clear about that now.

Q. Did Mr. Gaston bring more than one document to you?

A. Only one.

Q. So that you are now positive that you were mistaken when you said that you thought he brought Government's Exhibit 105?

A. Yes, sir.

Q. Well, now, going back to that question again, have you any way of refreshing your recollection, without going over these old records that you spoke of, as to

who did bring this to you to be printed, referring to Government's Exhibit 105?

A. No, I have not. I couldn't remember.

Q. Well, I will not ask you to do that if it involves too much labor, Mr. Himes; but if you should happen to run across it without too much effort, would you please let us know?

A. Yes.

Q. And we can recall you to testify upon that subject.

A. Situated with the work that I have in hand today and tomorrow, it would be almost impossible; but I think that I can find it during the week, that is, in the course of a couple of days, and let you know.

Q. It is not of sufficient importance to justify our imposing upon you, Mr. Himes. If you can do it without too much inconvenience, I will thank you.

A. All right.

Whereupon J. C. MORELAND, called as a witness on behalf of defendants, being first duly sworn testified that he resides at Salem and is clerk of the Supreme Court and came to Oregon in 1852. He was referee in the case of Ben Holladay and C. Temple Emmet, plaintiffs against Simon G. Elliott and others, defendants, brought in the Circuit Court of the State of Oregon for Multnomah County and appealed to the Supreme Court of the State of Oregon, and heard and determined in the Supreme Court, in July 1879, and took and reported

all the testimony in that case, except a few depositions that were not taken before him. Most of it he took in long hand. The testimony of S. G. Elliott was taken down in short hand by A. J. Marsh and reduced to long-hand by him and read over to Elliott in the presence of witnesses. "Defendants' Exhibit 368," being a document of date April 23, 1867, purporting to be an agreement entered into between the Oregon Central Railroad Company of Salem, and A. J. Cook and Company, for the construction of the first 150 miles of the Oregon Central Railroad Company's railroad (East Side) was an exhibit offered and admitted in evidence in that case, and he knows the signature of I. R. Moores and Ben Holladay and the signatures to this document by these parties are genuine. He knows the signature of S. G. Elliott and of A. J. Cook & Company by S. G. Elliott and that is the genuine signature of S. G. Elliott. He knows the signature of John H. Mitchell and is not sufficiently acquainted with the signature of M. N. Chapman to identify it. Both of these men are dead. The endorsement or assignment, or purported assignment, of that document on the back of it, dated May 2, 1867, signed Albert J. Cook in the presence of W. D. Litchfield was on the document at the time it was introduced in evidence, but he does not know the signature of Albert J. Cook or W. D. Litchfield. He knew George L. Woods, president of the Oregon Central Railroad Company, and Samuel A. Clarke, secretary of the Oregon Central Railroad Company, and they are both dead. He is not sufficiently acquainted with the signature of

George L. Woods, but has seen his signature a good many times. He has seen the signature of Clarke and knows it very well and that is his signature. He has no question about that. When this document was admitted in evidence before him it was admitted without question to have been executed by the parties; both parties recognized it as the original. The signature in red ink on the front page of that cancellation signed "Ben Holladay & Co. Oregon Central Railroad Company, By I. R. Moores, President. Oregon Central Railroad Company, By Geo. E. Cole, Secretary." Witnesses "J. H. Mitchell" and "M. N. Chapman" are the signatures that he recognizes. These are the signatures of all these parties. That cancellation was on there at the time that this document was admitted in evidence before him. He commenced taking the testimony in this case in 1870 and it was continued at intervals until 1875. The signature on the assignment, or a part of it, by S. G. Elliott, of date May 20, 1867, witnessed in the presence of Walter Van Dyke, is the signature of S. G. Elliott, and it was on there when the document was admitted in evidence. "Defendants' Exhibit 369" purporting to be a memorandum of agreement of date May 12, 1868, between the Oregon Central Railroal Company and A. J. Cook & Company, and which purports to be signed on behalf of the Oregon Central Railroad Company "I. R. Moores, President O. C. R. R. Co., S. A. Clarke, Secretary O. C. R. R. Company, A. J. Cook & Co." Witnessed by Geo. Anderson and E. D. Towl, is a document he recognized as having been admitted in evidence before him and these signa-

tures are the signatures of I. R. Moores, and S. A. Clarke. The signature of A. J. Cook & Co. is in the hand writing of S. G. Elliott. The signatures of Ben Holladay, I. R. Moores, George E. Cole and J. H. Mitchell, on the document to the cancellation in red ink on this document of date March 29, 1870, signed "Ben Holladay & Co. Oregon Central Railroad Company, By I. R. Moores, President. Oregon Central Railroad Company, By Geo. E. Cole, Secretary." Witnessed by "J. H. Mitchell and M. N. Chapman," are the signatures of Ben Holladay, I. R. Moores, George E. Cole and J. H. Mitchell, and that endorsement and these signatures as they now purport to be, were on that document at the time it was admitted in evidence before him. Referring to "Defendants' Exhibit 369" which shows file marks "Filed Nov. 24, 1875, Geo. L. Story, Clerk, By R. L. Durham, Deputy," and then "Filed June 19, 1876, D. H. Murphy, Clerk," witness stated that George L. Story was clerk of Multnomah County and D. H. Murphy was Clerk of Marion County. The case was transferred for hearing from Multnomah to Marion. There was change of venue and the case was tried before Judge Boise. Judge Shattuck, who was on the bench in Multnomah County, had been an attorney in the case. He did not know how the file mark before the Clerk of the Circuit Court of Multnomah County came to be made. He had turned all the documents and papers in to the clerk of Multnomah County when he was through with it. The document purporting to be signed "Albert J. Cook, in the presence of W. D. Litchfield,"

bearing date May 2, 1867, purporting to be "Exhibit "W" attached to S. G. Elliott's deposition," and initialed "J. C. M." was an exhibit in the case and was introduced in evidence during the taking of S. G. Elliotts deposition, and the words "Exhibit 'W' " attached to S. G. Elliott's deposition is initialed "J. C. M." and are in the hand writing of witness. He did not know the signature of Albert J. Cook or the attesting witness W. D. Litchfield. This document was introduced by Elliott and sworn to as genuine.

Whereupon defendants offered in evidence each of these respective documents, "Defendants' Exhibits 368, 369 and 370," to which complainant objected as incompetent, irrelevant and immaterial, and hearsay, which said documents were received in evidence and are hereinafter set out and dscribed and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness further testified that Elliott was a witness in this case before him and called and recalled a good many times, and that these original documents belong in the custody of witness as clerk of the Supreme Court and that he would like to have these documents returned.

Whereupon it was stipulated that these original documents could be withdrawn and said Exhibits extended in the record by the Examiner and a copy thereof verified by the Examiner substituted therefor.

Whereupon witness further testified that he came to Oregon from Boise City, arriving on July 3, 1868. His

father then lived in Clackamas County, and shortly after coming he went up there and was there two or three times that summer and fall. He had never seen a railroad except those from lower to upper Cascades and from The Dalles to Celilo, and he was a good deal younger than he now is and was interested to see what a railroad would look like, and he paid some attention to that. He was over on the French Prairie and as far up as what is now the town of Gervais, or very nearly there. He was up to Sam Brown's place during that summer and fall, and wherever he got a chance or was in sight of it he would leave the road and go over and look where they were grading, between Oregon City and Portland. He was over that road three or four times that year. The grading was scattered along from about Stark Street in East Portland up to about as far as he was along that road, approximately where the town of Gervais is now. It is about thirteen or fourteen miles from Salem. He is not able to state how many gangs of men were working between these points grading, but they were scattered all along the way. He saw them quite frequently. He does not think that he is competent to judge of the value of that work. He was never engaged in it. He could not now identify the photograph "Defendants' Exhibit 367" as having been taken in that case, but knows there were a number of photographs introduced. This photograph represents Oregon City of course, taken there at Oregon City. That is familiar to everybody that is familiar with Oregon City, but this was not taken until after the road had been built, this was taken after 1868 because there

were not any rails laid there in 1868 at that point. When he took the testimony the road had been built. There were no rails there in September, 1868. He is very certain that picture was taken after that. There was some work done on the grading. Referring to "Defendants' Exhibit 371" witness says that it looks very much like that wall did up there, and a good deal like it does now. It has been changed some.

Whereupon said "Defendants' Exhibit 371" was offered and received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness further testified that he has been continuously a resident of Portland from 1868 up to June, 1907, and since then a resident of Salem, and is familiar generally with the general value of timber lands in Oregon from 1866 up to 1892 and thinks that timber lands as such were practically valueless up to sometime in the '80s. Then there began to be some demand for timber lands, as he recollects it, sometime, he could not fix the date, but it was along in the latter '80s he should fix it. In the early days in Oregon timber was not considered of any value. Men wanted places for farms and when they took a farm they burned up the timber. On his father's claim out in Clackamas County, trees that would make elegant saw logs, were burned to get them out of the way. The timber, on land in the Willamette Valley that had timber on it, in those early days that was needed for farm purposes, was all destroyed. There was no sale for the timber at all. His father took

a donation land claim in Marion County, approximately five or six miles east of what is now the town of Hubbard, it was pretty nearly in Clackamas County. Historically the first American settler in Oregon was Jason Lee in the year 1834. He settled ten miles below Salem in what is known as Mission Bottoms. In pioneer days, there was quite an immigration in 1843, some came every year from 1834 on, but the first large immigration came in 1843, there were about 1,000 that year. The next large immigration after that was in 1852, that was the largest immigration, he thinks, that ever came across the plains. It was considerably larger than in 1843. These people settled all the way from Multnomah County to Jacksonville. Some people who came in their train went out as far as Jacksonville and they took up their land mainly under the donation land law of 1850. Prior to 1866 there was a railroad built from The Dalles to Cellilo around the portage and he thinks this was built about 1866. He knows it was there in 1867, because he traveled over it. It was built by the Oregon Steam Navigation Company and as part of the link to operate their steamers in river transportation. With that exception there was no railroad in Oregon prior to the road built from Portland south. The construction work on the Oregon Central, East Side, and the constructon work on the Oregon Central, West Side, was the first railroad construction work in Oregon, with the exception of this link referred to as built by the Oregon Steamship & Navigation Company. Those were great days for Oregon when the road was opened. There were some settlements

along the edges in the mountains in those days, extending up into the Cascade Mountains out beyond the Sandy. He was through there in 1866 and there were some—one cabin he knows beyond the Sandy on the road across the Cascade Mountains. These settlements were along streams and on lands that they could secure for agricultural purposes and grazing, but there were only a few settlers in the mountains.

Whereupon on cross-examination witness further testified that the litigation between Elliott and Holladay and others, extended over a period of several years and the case was of a good deal of importance for those times and in that case the general early history of the building of these railroads was gone into quite thoroughly. In that suit Holladay and his associates did not seek to cancel securities held by Elliott, but to cancel a contract of partnership that was entered into between Holladay and Elliott. That was the subject of the suit, to cancel that partnership, these partnership articles. The general object of the suit was to dissolve the partnership. To some extent it did involve incidentally some of these corporate securities that Elliott had claimed in that suit. Holladay and his associates claimed to have made certain advances for the benefit of the former copartnership, which were to some extent disputed by Elliott, and Elliott claimed to have made some advances which were to some extent disputed by Holladay. It is true, that to take the testimony of Elliott as to what he advanced, by way of money, he could find corresponding testimony on the other side of the case, disputing these items in whole

or in part. In that litigation, Holladay claimed a considerable balance from Elliott and Elliott claimed a considerable balance from Holladay. In the final judgment of the Supreme Court, that is as far as his findings were set aside, the Court found that Holladay was indebted to Elliott about $28,000 on that agreement signed by C. Temple Emmett for Holladay and Emmett, of $21,000 at the time the partnership was entered into. The Supreme Court found that had not been paid. With that exception, the accounts were balanced. He does not remember how much Elliott claimed from Holladay in that suit, but it was a great many thousand dollars. The amount which Holladay claimed against Elliott aggregated a good deal in the way of damages that he claimed against Elliott for breach of the copartnership and for failure of Elliott to carry on the work. Witness reported findings of fact and performed the office of a master in chancery under a strict equity practice. There was considerable conflict in the evidence as to the manner of the work that had been done by Elliott and as to his competency to perform the work. There was a great deal of contradictory evidence. It was contended in that case that Elliott had misrepresented his financial backing and the question as to who Albert J. Cook was, and his backing was very extensively gone into. To his mind there was never any satisfactory evidence to account for Albert J. Cook. He heard the evidence on both sides and thought that Elliott had been operating under the name of Albert J. Cook and that Albert J. Cook was either a myth or some insignificant person that

Elliott had picked up and who was without any financial backing at all. Albert J. Cook had nothing to put into the concern so far as he recollects. He does not think Elliott claimed that Cook had put anything into it. His recollection is that Elliott did not organize the Oregon Central Railroad Company.. What influence a prospective contract with Elliott under the name of A. J. Cook & Company had in the organization of the Company, he does not know. His recollection is that the Oregon Central Railroad Company, East Side, was organized by a company of men interested in having a railroad on the East Side as against a railroad on the West Side and he does not think Elliott had that company organized. That is his judgment about it now.

Whereupon witness further testified:

Q. Don't you remember that Elliott came to Oregon early in 1867, and first tried to do business with Gaston, and then having failed caused this new company to be organized and capital stock to be subscribed in the name of the corporation itself, and then the construction contract which he immediately caused to be executed provided for the turning over of a large part, if not all, of that capital stock to him as A. J. Cook and Company, and that it was because he held that stock that Mr. Holladay, for one reason, organized the Oregon and California Railroad Company in 1870. And in this litigation Mr. Elliott was asserting some rights by reason of this preferred stock of the old East Side Company, possession of which he secured under this construction contract

he had held.

Mr. Fenton: I object to that as not in accordance with the record of either the Oregon Central or the Oregon and California Railroad Company.

A. It has been a long time ago and my memory may play me false as to that, but I do not now recollect that Elliott claimed any stock in the company. He claimed large interests under mortgages that had been introduced, but if Elliott had ever had any of that stock of the Oregon Central Railroad Company my memory fails now. I have not looked over this thing since 1875 to any great extent. If he got any of that stock I am not certain. These articles of agreement I have not read, but if he got any of that stock my memory plays me false. My recollection on that is not at all distinct—my memory. The stock, I think, was not made any particular question in this case because the stock was regarded as absolutely valueless. I have forgotten what became of the stock.

Q. Both sides treated the Oregon Central Railroad Company (East Side) as an invalid corporation, and as in effect a copartnership, did they not?

A. Well, I think it was rather conceded that that was an invalid corporation; that the president could not subscribe the majority of the stock.

Q. And that was the decision of the Supreme Court finally?

A. I so understand it.

Whereupon witness further testified that he and his people when they first came to Oregon went to live in Clackamas County, about six miles from the town of Hubbard, in township 5 south, range 1 east. The country there is pretty level and is a considerable distance from the foothills. His father took a donation land claim of 320 acres. The law was amended in 1852 so that he could take only a half section. Prior to that time they could take up a section. It was all timbered in spots. The timber was scattered but it extended all over the place. A great deal of it was good saw timber, a great many good saw timber trees were on the place. A good deal of that land is cleared now. When they lived there, there was probably not over 20 acres cleared. It was cleared in the main by hard work, by cutting down the trees and then burning them up and then grubbing up the grubs and hazel brush that were on them. If one would undertake the job of burning down one of these big fir trees and burning it up, it would, he thinks, be a big obstacle, although not insurmountable. It was good land, good soil, when cleared, but the clearing of those big trees was a big job.

Whereupon witness further testified.

Q. Yes, but here is what I am getting at, Mr. Moreland. In this case there has been some testimony introduced tending to prove, or at least intended to prove, that some of the lands, if not all of the lands involved in this case cannot be used for the purpose of settlement and cultivation, and one of the reasons as-

signed is the presence of the timber on the land. And what I am trying to get at is that that same obstacle was encountered by the early settlers, even under the donation claims.

A. Yes, sir. And it cost more to clear the land of those fir trees when they had to be burned up than the land was worth after it was cleared, if a man got anything for his wages while he was at work at it.

Q. Now, if the timber has since acquired a value, and it can be sold to assist the settler in clearing the land, then the difficulties confronting the settler are not as great today as they were then?

A. Nothing like as great if he can sell the timber. If we could have gotten pay, stumpage, for the trees that had to be burned up on that place the way they are paying for them now, the place would have paid for itself, I think. The timber would have paid for clearing.

Whereupon upon re-direct examination witness further testified that the Willamette Valley generally was not a timbered country when he came to Oregon. There were a great many prairies. The donation land claims that were taken were mainly taken in the valley, on level land. The preferred claims in these early days were on the prairies. Referring to "Defendant's Exhibit 259" and the yellow field on the map showing lands lost to the Company's grant by prior settlement in the vicinity of Needy and around there, witness further testified that the country around there was chiefly taken under the do-

nation land law, or some public land law prior to the time the railroad grant took effect. That it was all taken up as far as they thought it could be cultivated then. Out in Molalla there was a very beautiful prairie. There was no timber there. That prairie was taken up by early settlers before they came to Oregon. His father lived on his donation claim eight years and made their living on the place. They made all the living they got on the place, that is, his father used to go away and work for some of the neighbors very frequently and the boys and girls worked on the place and did what they could, but it was hard picking. He was eight years old when they came there.

Whereupon witness upon re-direct examination further testified that he remembers that there was a contract of partnership entered into between Ben Holladay, C. Temple Emmett and S. G. Elliott of date September 12, 1868, and that that was the contract involved in that suit. That suit was begun very shortly after Holladay discharged Elliott as superintendent. It was a question as to Holladay's power, Elliott being one of the partners, whether Holladay had the power to discharge Elliott from the position to which he was assigned by these articles of co-partnership and he thinks he was discharged in September, 1869, but he is not certain. The suit was begun, he thinks, less than a month after that, but he does not remember, the records will show that.

Whereupon witness identified his findings of fact and conclusions of law as referee in the case of Ben

Holladay and C. Temple Emmett, plaintiffs against S. G. Elliott and others, defendants, about which he has testified and the same were offered and received in evidence, together with the certified copy of the findings and decree of the Supreme Court of Oregon in that case as one exhibit, subject to the same objection heretofore made by complainant as to proceedings in that case, which said findings of fact and conclusions of law and certified copy of findings and decree of the Supreme Court are in words and figures as follows, to-wit:

"In the Circuit Court of the State of Oregon, for the
" County of Marion. At Chambers, September 28th,
" 1877, before his Hon. R. P. Boise, Circuit Judge.
"Ben Holladay and
"C. Temple Emmet,
Plaintiffs,
vs.
"S. G. Elliott, Gardner Elliott,
"T. R. Brooks and J. B. Rogers,
Defendants.

"This cause having been heretofore tried, on the motion of plaintiffs to affirm the report of J. C. Moreland, Referee, and the objection to said report filed by the defendant, S. G. Elliott, which report is as follows, viz:

"In the Circuit Court of the State of Oregon, for Mult-
"nomah County.

"Ben Holladay and C. Temple Emmet, plaintiffs, vs. S. G. Elliott, Gardner Elliott, T. R. Brooks and J. B. Rogers, defendants:

"I do hereby certify that I have taken the testimony

offered by the parties, and the same is herewith submitted in eleven volumes, together with the printed deposition of Ben Holladay and a large number of exhibits, papers, documents and drawings.

"The findings embrace every issue upon which I have been requested by either party, and upon the issues raised by the pleadings.

"The case was argued for the plaintiffs by J. N. Dolph, Esq., and submitted by the defendants without any argument on the 8th day of November, and the testimony, together with my findings of facts are herewith submitted.

"That each of the witnesses whose testimony was taken by me before proceeding to their examination, were severally sworn by me to tell the truth, the whole truth and nothing but the truth. Said depositions were read over to, or by each of said witnesses, and then by them severally subscribed.

"J. C. Moreland, Referee.

"In the Circuit Court of the State of Oregon for Multnomah County.

"Ben Holladay and C. Temple Emmet,

Plaintiffs,

vs.

"S. G. Elliott, Gardner Elliott, T. R. Brooks and J. B. Rogers, Defendants.

"To the Hon. E. D. Shattuck, Judge of the Court above entitled:

"Having been appointed sole Referee in the above entitled case on the 25th day of July, 1870, and having taken the testimony offered by both parties (which is herewith submitted, together with the minutes of my proceedings thereon) I beg leave to submit the following as my

"FINDING OF FACTS.

"First—That on the 12th day of September, 1868, the plaintiff, Ben Holladay and C. Temple Emmet, and the defendant, S. G. Elliott, entered into a copartnership of that date for the purpose of constructing, equipping and operating one or more railroads in the State of Oregon, and the States and Territories adjacent thereto; that by the terms of said copartnership the interest of each member thereof was as follows: Ben Holladay, 24-40 parts; C. Temple Emmet, 10-40; Simon G. Elliott, 6-40.

"Second—That said copartnership articles contained also the following special agreement: And, whereas, The parties hereto are about to purchase and take an assignment of all the contracts now subsisting between the Oregon Central Railroad Company of the one part, and A. J. Cook of the other part, and between the Oregon Central Railroad Company of the one part, and A. J. Cook & Co. of the other part, for the construction and equipment of the railroad from the city of Portland to the northern boundary line of the State of California.

"It is hereby further witnessed, that the said Simon G. Elliott shall not be called upon to advance out of his

own private means any money towards the work undertaken by this copartnership under the said contract, but the said Simon G. Elliott shall be charged with and shall account for his proportion of the expense of the said work whenever this copartnership shall have realized under and by virtue of the said contracts, or any of them, sufficient moneys to cover the outlays and expense incurred and paid by this copartnership in and about the said work. And it is further understood and witnessed, that the said Simon G. Elliott is hereby appointed the General Superintendent of the work of constructing, equipping and operating the said Oregon Central Railroad under the said contracts, and that he is to receive a salary of five hundred dollars per month, payable in gold coin of the United States.

"Third—That after the execution of the articles of co-partnership, and as part of the partnership transaction, plaintiffs gave to the defendant, S. G. Elliott:

"Office Ben Holladay & Co.

"Portland, Oregon, Sept. 12th, 1868.

"S. G. Elliott, Portland:

"Dear Sir:—On our purchase of this date from A. J. Cook & Co. of the pending contracts with the Oregon Central Railroad Company for the construction of the railroad from Portland to the California line, it is understood that we are to pay you the money furnished by you to the firm of A. J. Cook & Co. and standing to your credit on their books. This money is stated by you

to amount to about twenty-one thousand dollars. When the accounts are fully made up and the balance correctly ascertained, you will be entitled to our obligations for the correct amount. Respectfully yours,

"Ben Holladay & Co.

"That said paper was not executed on the day it bears date, but it correctly expressed the agrement between the parties thereto.

"Fourth—That on the 12th day of March, 1867, the defendant S. G. Elliott, procured from one A. J. Cook, at San Francisco, California, a written power of attorney to himself, to make all necessary arrangements with certain parties in Oregon for the building of a railroad from Portland south through the Willamette Valley, a distance of one hundred and fifty miles.

"Fifth—That said Cook was a man of small means, inexperienced in railroad matters, and that the writing was obtained from him at the request of defendant S. G. Elliott, with the understanding and under the agreement that said Cook was to have no interest whatever in said contracts to be made, and was not to be made liable for anything whatever, and that he took no part or interest whatever in the contracts afterwards made.

"Sixth—That on or about the 22d day of April, 1867, a corporation was formed under the general incorporation laws of this State, under the name of the Oregon Central Railroad Company, for the purpose of building and operating a railroad from Portland, Ore-

gon, southward to the California line, on or near the stage road, and having its principal office in Salem, Oregon; but that on the 23d day of April, 1867, only seven shares of stock had been subscribed to the capital stock thereof, by bona fide subscription—said Oregon Central Railroad Company, by George L. Woods, chairman, on the 22d day of April, 1867, having attempted to subscribe seventy thousand shares to said capital stock, and that there were never but thirty-one shares subscribed to the capital stock of said corporation, excepting said seventy thousand so attempted to be subscribed, the capital stock of said corporation being $7,250,000, divided into 7,250 shares of $100 each.

"Seventh—That at the time of the incorporation of said company there was another company organized and incorporated under the general incorporation laws of the State, under the name of the Oregon Central Railroad Company, for the purpose of constructing, maintaining and operating a railroad from Portland south to the California line, having its principal place of business and office at Portland, Oregon—said corporation being designated in these findings as the 'O. C. R. R. Co. West Side.' The first named being designated herein as the 'O. C. R. R. Co. East Side.'

"Eighth—That on or about the 23d day of April, 1867, the defendant S. G. Elliott, in the name of A. J. Cook, entered into a contract with the said O. C. R. R. Co., East Side, for the construction and equipment of one hundred and fifty miles of its road from Portland

south, a true copy of which contract is set forth as Exhibit 'A' attached to the deposition of Ben Holladay, as contained in volume 1 of the testimony herewith returned; and that on the 27th of November, 1867, the defendant S. G. Elliott, in the name of A. J. Cook, entered into a supplemental contract with said O. C. R. R. Co., East Side, modifying and changing said first contract, a true copy of which is attached to said deposition of Ben Holladay, marked Exhibit 'B.'

"Ninth—That on or about the 12th day of May, 1868, the defendant S. G. Elliott, in the name of A. J. Cook & Co., entered into another agreement, or contract, for the construction of the balance of said road from the end of the first 150 miles to the California line, being 210 miles more or less, a true copy of which contract is contained in Exhibit 'C,' attached to said deposition of Ben Holladay; and that on or about the 10th day of June, 1868, a supplemental agreement was entered into by the defendant S. G. Elliott, in the name of A. J. Cook & Co., with said O. C. R. R. Co. East Side, constructing and explaining the aforesaid agreement, a true copy of which is attached to said deposition of Ben Holladay, marked Exhibit 'D.'

"Tenth—That on the 2d day of May, 1867, said Albert J. Cook endorsed upon the first contract herein referred to of date April 23d, 1867, the following assignment:

" 'In consideration of the sum of one dollar to me paid by S. G. Elliott, of San Francisco, the receipt of

which is hereby acknowledged, I hereby transfer and assign forever all my right, title and interest in the within instrument.

" 'Witness my hand and seal this 2d day of May, A. D. 1867.

" 'Albert J. Cook.

" 'In presence of W. D. Litchfield.'

"And that thereafter said S. G. Elliott never had any other or further authority to use the name of said A. J. Cook, or had any further communication with him upon that subject.

"Eleventh—That at and prior to the time of making the said contract between A. J. Cook and said O. C. R. R. Co. East Side, referred to as Exhibits 'A' and 'B,' the defendant S. G. Elliott, fraudulently concealed from and misrepresented to the officers and Directors of said company the financial ability of A. J. Cook and his interest in said contracts.

"Twelfth—That in making said contracts said railroad company, relying upon the representations of the defendant S. G. Elliott, believed said Cook to be a man of large means, able to carry out his contracts and to be the real party interested in the contracts.

"Thirteenth—That on the 20th day of May, 1867, the defendant S. G. Elliott, assigned to N. P. Perrine seven-twentieths of said first mentioned contract of date of April 23d, 1867, for the sum of $3000 coin, which was paid by Perrine to said Elliott, and on said day said

Perrine and Elliott formed a copartnership under the name of A. J. Cook & Co., as equal partners, a true copy of which article of partnership is set forth in the deposition of S. G. Elliott returned herein on pages 90, 91 and 92 of the printed deposition.

"Fourteenth—That on or about the 29th day of May, 1867, the defendant S. G. Elliott assigned to James P. Flint one-tenth interest in said contract of date April 23d, 1867, a copy of which assignment is in the same printed deposition of S. G. Elliott on pages 100 and 101.

"Fifteenth—That during the latter part of March, 1868, the defendant sold and assigned to T. R. Brooks two-twentieths of said first contract, and to Gardner Elliott one-twentieth interest therein for $1,500 coin, which sum was paid to said defendant.

"Sixteenth—That on or about the ——— day of April, 1868, the defendant S. G. Elliott sold and assigned to Ignatz Frohman seven-twentieths of said contract of date April 23d, 1867, for the sum of $14,000 coin, and that said Frohman paid to said Elliott the sum of $13,300 coin, thereon, and that on said date said Frohman and said Elliott formed a partnership under the firm name of A. J. Cook & Co., a true copy of which articles of partnership are set forth on pages 307 and 308 of the printed deposition of said defendant Elliott.

"Seventeenth—That prior to the date of the formation of the copartnership herein the defendant Elliott had assigned one-twentieth in said contract to some other

person, whose name is not disclosed by the evidence, but said S. G. Elliott held control of the same, as he did of the two-twentieths assigned to J. P. Flint, referred to in the fourteenth finding, which control did not give him any interest therein.

"Eighteenth—That at the date of the formation of said partnership said persons still held said interest, respectively, in said contracts as aforesaid, but the plaintiff Ben Holladay held an agreement for the purchase of the interest of said Perrine, at the option of said Holladay, and that after the formation of the said partnership the plaintiff purchased said interest of said Perrine and Frohman.

"Nineteenth—That at and prior to the execution of the articles of partnership the defendant S. G. Elliott represented to the plaintiffs that he was a civil engineer, and that he was competent and well qualified to fill the position and to perform all the duties pertaining to the office of superintendent of the work of constructing, equipping and operating the said railroad under the said contract.

"Twentieth—That said representations were a moving cause in the formation of said partnership, and the sole reason of said Elliott being appointed to said position, plaintiff relying solely upon his representations therein.

"Twenty-first—That said defendant S. G. Elliott, at the time of the formation of said partnership was, and is wholly incompetent and not qualified to perform the

duties of such position.

"Twenty-second—That at and prior to the formation of said partnership, S. G. Elliott represented to the plaintiffs that the work of construction was so far advanced that it could be completed, ready for the ties from Portland to Salem, for the sum of $40,000 coin, and that plaintiffs relied upon such representations in forming said copartnership; that it cost for work done after said partnership was formed to finish said twenty miles ready for the ties $175,653 55-100.

"Twenty-third—That prior to and at the formation of said partnership the defendant S. G. Elliott represented to these plaintiffs that the said firm of A. J. Cook & Co. had received $775,000 of the bonds of the said O. C. R. R. Co. East Side, and $1,000,000 of the stock called interest-bearing preferred non-assessable stock, which had not been transferred to said company, all of which he represented he could control and would turn over to said firm upon its formation, except $39,400 bonds, which he represented to have negotiated for machinery.

"Twenty-fourth—That at the time of the formation of said partnership the defendant S. G. Elliott did not have control of all said stock and bonds, but had given away and sold for small sums $470,000 of said stock as follows: J. P. Flint, $100,000 of said stock; C. Temple Emmet, $100,000 of said stock; T. R. Brooks, $100,000; S. F. Elliott, $100,000; Gardner Elliott, $40,000; B. F. Avery, $10,000; E. B. Sadler, $100,000; John J. Kro-

mer, $10,000; Gen. B. F. Pratt, $10,000; Parker, $10,000 of it. That of said bonds that he had placed $22,800 in the hands of W. H. Martin, who refused to deliver the same up until he was paid for service in trying to negotiate them, and that a bond for $500 had been placed in the hands of one Brick who claimed to own the same.

"Twenty-fifth—That said S. G. Elliott, for said stock so disposed of, had received money as follows: S. F. Elliott, $7,500 coin; Parker, $500 currency; J. F. Emery, $350 coin; and that in account of money advanced to S. F. Elliott, for money advanced to A. J. Cook & Co. he should be charged with these amounts.

"Twenty-sixth—That among the property purchased for use on said railroad were four locomotives, which were sold by S. G. Elliott in San Francisco at a net profit of $4,000 in currency, and that in said account with A. J. Cook & Co. defendant S. G. Elliott should be charged with that sum.

"Twenty-seventh—That at or prior to the formation of said copartnership there were several suits or actions instituted and pending against the said O. C. R. R. Co. East Side, designed to test the right of the said O. C. R. R. Co. to use the corporate name.

"Twenty-eighth—That by reason of said suits and the cloud cast over the company, its bonds were of no value in the market.

"Twenty-ninth—That the stock called preferred interest-bearing non-assessable stock, was illegal and of no value.

"Thirtieth—That said contracts and none of them were, at the formation of said copartnership, or ever since have been of any value.

"Thirty-first—That prior to the formation of said co-partnership the Congress of the United States by an Act entitled 'An Act granting bonds to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, Oregon, approved July 25, 1866,' granted to such company organized under the laws of this State, as the Legislature might designate for the purpose of aiding in the construction of a railroad and telegraph line from Portland, Oregon, southward to the California line, every alternate section of the public lands (not mineral) designated by odd numbers, to the amount of twenty alternate sections per mile, ten on each side of said railroad line; and when any of said alternate sections or part of sections should be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, the right of way left to said company to select other land designated by odd sections nearest to and within ten miles of the limits of said first named alternate sections; and that among other things said grant was conditional that said railroad company should complete the first 20 miles of its road and put the same in running order on or before December 25th, 1869.

"Thirty-second—That the Legislative Assembly of the State of Oregon, by a joint resolution passed at the regular session thereof 1866, had designated the said O. C. R. R. Co. West Side, as the company to receive said

grant under said Act of Congress.

"Thirty-third—That the Legislative Assembly of Oregon at its regular session held in 1868, after the formation of the copartnership herein, by a like joint resolution designated the said O. C. R. R. Co. East Side as the company to receive said land grant.

"Thirty-fourth—That after the execution of said articles of copartnership, September 12th, 1868, the said firm entered upon the work of constructing the said road under said contract, the defendant S. G. Elliott acting as general superintendent of construction until October 4th, 1869.

"Thirty-fifth—That by reason of the incompetency and mismanagement of the said S. G. Elliott, the work on said first 20 miles was so delayed thereon that it could not have been completed under his superintendency within the time required by the Acts of Congress.

"Thirty-six—That by reason of the incompetency and mismanagement of the defendant S. G. Elliott as general superintendent of construction, work was delayed on said first 20 miles so far that the greatest portion of said work had to be done at increased cost on account of the heavy and bad weather, and that by reason thereof the cost of completing said first 20 miles was increased at least $10,000, and that plaintiffs have been damaged in that sum by his incompetency and mismanagement.

"Thirty-seventh—That on the 4th of October, 1869,

the plaintiff Ben Holladay, acting for himself and the plaintiff C. Temple Emmet, caused a notice to be delivered to the defendant S.G. Elliott, of which the following is a copy:

" 'Office Ben Holladay & Co.,)
" 'Portland, Oregon, Oct. 4th, 1869.)

" 'Mr. S. G. Elliott: As your services as general superintendent in the construction of the Oregon Central Railroad are no longer required, Mr. John F. Kidder has been employed to take charge of the work as constructive engineer.

"Respectfully, Ben Holladay & Co.'

"Thirty-eighth—That thereafter the said S. G. Elliott ceased to act in any manner, as a member of said firm in any capacity.

"Thirty-ninth—That thereafter the plaintiffs proceeded to complete the first 20 miles of said road, and by great exertion and diligence completed the same on the 24th day of December, 1869.

"Fortieth—That if the said S. G. Elliott had remained in charge as general superintendent said first 20 miles would not have been completed within the time specified by the Act of Congress.

"Forty-first—That nothing whatever was done by either of the parties thereto under either of the contracts referred to as Exhibits 'C' and 'D' heretofore.

"Forty-second—That on the 24th of December, 1869, work was suspended by the firm of Ben Holladay

& Co., except as to taking care of the property and disposing of the same.

"Forty-third—That there were no profits ever realized by the firm of Ben Holladay & Co.

"Forty-fourth—That said contracts were of no value to said firm or to any firms, and that to have fulfilled them would have entailed so great financial loss upon the contractors as to render the same impracticable as a business transaction.

"Forty-fifth—That on the 28th of March, 1870, the said contracts were by the said O. C. R. R. Co. East Side, duly canceled by the consent of the plaintiffs acting as the firm of Ben Holladay & Co.; and all the bonds and stock of said company that had come into the possession of said firm of Ben Holladay & Co. were delivered up and canceled, and on the said 28th of March, 1870, said company was dissolved.

"Forty-sixth—That all the assets of the firm of Ben Holladay & Co. (aside from the bonds, stock and contracts above referred to) did not exceed in value the sum of $10,000 (ten thousand dollars).

"Forty-seventh—That the total amounts paid out by the firm of Ben Holladay & Co. in the construction of the O. C. R. R. Co. under said contracts, exclusive of the amount paid to A. J. Cook & Co., was $596,510 55-100, which money was all paid out by the plaintiffs and was repaid to them by the said O. C. R. R. Co. upon the cancellation of said contracts.

"Forty-eighth—That after the execution of said partnership and prior to the commencement of this action, the defendant S. G. Elliott sold and assigned to the defendant T. R. Brooks, one-fortieth interest in said partnership, being one-sixth of his interest therein, and to the defendant Gardner Elliott another fortieth interest therein, leaving the defendant and S. G. Elliott only four-fortieths interest in said partnership.

"Forty-ninth—That neither party to said partnership was importunate to have the same formed, but the same was willingly entered into by each of said parties.

"Fiftieth—That since the commencement of this suit the plaintiff Ben Holladay has purchased the said interest from T. R. Brooks and Gardner Elliott and is now the owner thereof.

"Fifty-first—That the accounts of the parties stand as follows: Total amount expended on the road by A. J. Cook and A. J. Cook & Co., including $6,000 for services and expenses to April 23d, 1858, $64,109.82. The amount of expenses charged in this item of $6,000 were not more than $500, leaving a charge of $5,500 for services which plaintiff did not agree to pay. The amount received from the sale of $39,400 bonds in currency at par, gold being 140, would make in gold $28,142.85, with which he should be charged. He received from Ignaz Frohman $14,000, less $700 drawback, leaving $13,300 with which he should be charged. Received from N. P. Perrine $3,000; received from Gardner Elliott, $1,500; received from S. F. Elliott, $1,500; received

from J. S. Emery say $350; received from Parker $500 in currency, gold being 140 make $357; borrowed from Trust Company in San Francisco, paid by plaintiffs, $6,560; profits on locomotives, $4,000 in currency, gold being 140, $2,859; making a total of $63,006 to be deducted from the amounts on the road, would leave $1,103 with which plaintiffs should be charged on their letter or agreement dated Sept. 12th, 1868, as the money advanced by S. G. Elliott to the firm of A. J. Cook & Co., which plaintiffs had agreed to pay. Plaintiffs should also be charged with his salary to Oct. 4th, 1869 twelve (12) months and twenty-two (22) days, at 500 per month, $6,366.50; also, one-tenth of the assets of B. H. & Co. $1,000, would leave a total of $8,469.52, with which plaintiffs should be charged. Defendant S. G. Elliott received over and above his traveling expenses, from the plaintiff, $9,000—would leave the defendant S. G. Elliott upon a proper accounting between him and the plaintiffs, indebted to them in the sum of $530.45.

"Fifty-second—That on or about the 4th day of Nov. 1869, the defendant S. G. Elliott made a bill of sale to the defendant J. B. Rogers of all his household furniture and a lot of personal property. That said bill of sale was simply between the parties to facilitate the sale of said property to other purchasers by said Rogers, in the contemplated absence of Elliott, and was void as to the creditors of said Elliott.

"J. C. Moreland, Referee.

"I also find the following

"CONCLUSION OF LAW

"1st. That said Oregon Central Railroad Company was illegally organized, and its stock called non-assessable interest bearing preferred stock, was void.

"2d. That the plaintiffs had no legal right to discharge the defendant S. G. Elliott from the position of general superintendent, but his incompetency and delay in prosecuting the work precluded him from recovering damages for such discharge.

"3d. That the misrepresentations of the defendant S. G. Elliott as to his qualifications for the position of general superintendent of construction under the said contracts, his incompetency for said position and his sale of said interests in said partnership to T. R. Brooks and Gardner Elliott, entitle the plaintiffs to a decree dissolving said copartnership as of Nov. 5th, 1869, the date of the commencement of this suit, and a settlement of the partnership accounts as of that date.

"4th. That plaintiffs had judgment and decree against the defendant S. G. Elliott for the sum of $530.48, balance of account, and the sum of $10,000 damages to be apportioned by plaintiffs according to their respective interests.

"5th. That neither party received of the other any costs or disbursements.

"All of which is respectfully submitted.

"J. C. Moreland, Referee.

"And the Court having taken the same under advise-

ment, after fully considering the allegations and proofs of the parties and the finding of said Referee, finds:

"1st. The 20th finding of said referee should be modified in this—said representation of S. G. Elliott of his competency was not the sole cause of his being appointed superintendent of said road, but his position in being then in control of said road was one cause of his being so appointed.

"2d. That findings 35th and 36th are not supported by the evidence.

"3d. The 40th finding is modified so as to read as follows: The incompetency of S. G. Elliott as superintendent of said road made it necessary and proper for Ben Holladay & Co. to suspend him from that position and trust and to substitute another man in his place.

"4th. The 42d finding is not supported by the evidence.

"5th. The 2d finding of said referee as a conclusion of law is rejected as erroneous.

"6th. The Court further finds as a conclusion of law that from the fact found by said referee as modified as aforesaid, that the plaintiffs are entitled to a decree dissolving partnership, and that the defendant S. G. Elliott is indebted to the firm of Ben Holladay & Co. on account, the sum of $530; that of this sum plaintiffs are entitled to 9-10 dollars, equal to the sum of $477 (dollars), for which sum they are entitled to a decree, but not for costs and disbursements.

"It is therefore ordered and decreed by the Court that the said firm of Ben Holladay & Co. be dissolved, and that the plaintiffs have and recover from S. G. Elliott the defendant, the said sum of four hundred and seventy-seven dollars ($477), to be distributed between said plaintiffs—twenty-eight fortieths to Ben Holladay, and ten fortieths to C. Temple Emmet—and that they have execution therefor.

"R. P. Boise, Judge."

FINDINGS AND DECREE.

"At a Supreme Court begun and held at the City of Salem, County of Marion, State of Oregon, on Monday, the 7th day of July, A. D. 1879.

"Present: Hon. James K. Kelly, Chief Justice; Hon. R. P. Boise, Associate Justice; Hon. P. P. Prim, Associate Justice; P. H. D'Arcy, Clerk; Joseph A. Baker, Sheriff and Ex-Officio Bailiff.

"WHEREUPON on Fr'day, the 15th day of August, 1879, the same being the 28th Judicial Day, the following proceedings were had:

"Appeal from Marion County.

"Ben Holladay and C. Temple Emmett, Respondents,

vs.

"S. G. Elliott, Appellant.

"Now on this day the above entitled suit having heretofore been tried and submitted to the Court and taken under advisement, and the Court being now fully advised as to what final decree should be entered therein,

the Court finds:

"First, that the contract of co-partnership of Ben Holladay & Co., set forth in the complaint, was entered into without fraud or misrepresentation upon the part of either the appellant or the respondent.

"Second, that the bonds of the Oregon Central Railroad Company, mentioned in the pleadings, and the preferred interest-bearing non-assessable stock issued by the Oregon Central Railroad Company of Salem were illegal and of no value.

"Third, that on the 22nd day of April, 1867, John H. Moores, J. S. Smith, George L. Woods and others, filed articles of incorporation in the office of the Secretary of State and in the office of the County Clerk of Marion County, to incorporate the Oregon Central Railroad Company. That the capital stock was fixed at $7,250,000, divided into 72,500 shares of $100 each, and on the same day stock books were opened, when six shares of stock were subscribed by six different persons; then followed this subscription: 'Oregon Central Railroad Company, by George L. Woods, Chairman, 70,000 shares, $7,000,000.' That on the same day directors and other officers were elected, and on the 23rd day of April, 1867, the O. C. R. R. Co. thus organized; entered into the contract with A. J. Cook to construct 150 miles of its road, from Portland south through the Willamette Valley, for $5,250,000, to be paid in first mortgage bonds of the company payable in twenty years, and to be taken by the contractor, A. J. Cook, at par; That payments of

eighty per cent were to be made by the O. C. R. R. Co. for the work done by A. J. Cook; to be paid every month as the work progressed; That the O. C. R. R. Co. also agreed at the same time to issue $2,000,000 of preferred stock unassessable and bearing interest at the rate of seven per cent per annum, and deliver the same to A. J. Cook immediately after signing the contract, and that the common stock of the company should be offered to the people of Oregon at ten cents on the dollar; That afterwards the appellant, who became the owner of the A. J. Cook contract, associated others with him under the firm name of A. J. Cook & Co., and on the 27th day of November of that year entered into a supplementary agreement with the O. C. R. R. Co. whereby in consideration of materials bought for the construction of the road, the company agreed to issue and deliver to A. J. Cook & Co., $775,000 of first mortgage bonds on its railroad and franchises, and the bonds were issued accordingly. That the $2,000,000 of preferred stock specified in the agreement of April 23rd, had already been issued and delivered by the O. C. R. R. Co. to A. J. Cook & Co. That one million dollars of this preferred stock was given back to the directors of the company, according to a private understanding with them, that they were to have it to be used by them in procuring the necessary legislation in Oregon to promote the interests of the corporation, and that this delivery to the directors of $1,000,000 left still $1,000,000 of the preferred interest-bearing non-assessable stock in the possession of A. J. Cook & Co. That this is the stock and these are

the bonds, less $68,000, which was transferred by A. J. Cook to the firm of Ben Holladay & Co., upon the formation of the copartnership.

"Fourth, that the attempt to subscribe 70,000 shares to the stock of the O. C. R. R. Co. by the corporation itself through a person styling himself chairman, was done simply to evade the liability which the law imposes on all persons who subscribe to the capital stock of corporations.

"Fifth, that such subscription to the capital stock of said company by the corporation itself was illegal and void.

"Sixth, that such attempted organization of said company, based upon said illegal and void subscription to its capital stock, was illegal and void, and the said corporation was not organized according to law.

"Seventh, that it was under said illegal and void organization of said company that the contracts set forth in the complaint were executed by said company, and the stock and bonds therein mentioned were issued.

"Eighth, that said contracts were of no value.

"Ninth, that upon the formation of the copartnership of Ben Holladay & Co. in September, 1868, the work of constructing the railroad under the contracts of A. J. Cook and A. J. Cook & Co. was continued under the appellant as general superintendent, and was prosecuted with reasonable vigor until December, when it was partially suspended, and from that time until July, 1869, but little work was done. That during the month of

May, only nine, and July only eleven men were employed on the whole line of the road from Portland to Salem. That the appellant was absent in the Atlantic States during the preceding winter and returned too late to commence operations on the road during the months when work could have been prosecuted with the greatest benefit to the firm and the best season of the year for profitable labor in railroad building was suffered to go by and the appellant was discharged by the firm of Ben Holladay & Co. from their employment as general superintendent and for alleged inefficiency, and after he ceased to act as superintendent on the 4th day of October, 1869, a largely increased force of laborers was placed on the road, far higher wages were paid for workmen, and in this way the section of twenty miles was completed on the 24th day of December, 1869. That one of the chief causes why the work progressed so slowly during the spring of 1869 was the inability to procure the funds necessary to carry it on more vigorously.

"Tenth, that suits had been commenced in the U. S. Circuit Court and in the Circuit Court of this State against the O. C. R. R. Co. to test the legality of its existence as a corporation, and they had so far progressed as to foreshadow its overthrow. That Joseph Gaston, the president of a rival corporation of the same name, known as the Oregon Central Railroad Company (west side), had issued circulars and sent them to bankers and brokers in the East, setting forth that 'the corporation was a humbug and its bonds were worthless.' That it was known that the company was hopelessly in-

solvent; that Ladd & Tilton had presented to it for payment certain interest coupons which were protested for non-payment, and that there were no subscribers to the capital stock of the corporation from whom any money could be collected to defray the rapidly accumulating interest on the bonds and its preferred interest-bearing stock, and said bonds were worth nothing in the money markets of the world, and that to have gone on and attempted to complete the road under the contracts of A. J. Cook & Co. with that corporation would have been simply an act of folly, and would have bankrupted not only Ben Holladay & Co. but financially ruined every member of the firm, and that it was an impracticable undertaking to construct the railroad under the copartnership of Ben Holladay & Co. and for that reason a dissolution of the co-partnership should be decreed.

"Eleventh, that at the time of entering into the copartnership the firm of Ben Holladay & Co., in consideration of the transfer, to-wit of the property of A. J. Cook & Co., agreed to pay the indebtedness of that company, including a debt due to the appellant, then estimated at $21,000. That sometime after the formation of the copartnership Ben Holladay & Co. gave the appellant a written instrument to this effect, which was antedated so as to conform to the date of the agreement, which is as follows:

'Office of Ben Holladay & Co.

Portland, Ore., Sept. 12, 1868.

S. G. Elliott, Portland, Dear Sir: On our purchase

this date from A. J. Cook and A. J. Cook & Co. of the pending contracts with the Oregon Central Railroad Company for the construction of a railroad from Portland to the California line, it is understood that we are to pay you the money furnished by you to the firm of A. J. Cook & Co. and standing to your credit on their books. This money is stated by you to amount to about $21,000. When the accounts are fully made up and the balance correctly ascertained you will be entitled to our obligation for the correct amount. Respectfully yours, Ben Holladay & Co.'

"That this writing was accepted by the appellant, and that the amount of money furnished to the firm of A. J. Cook & Co. by the appellant, Elliott, was $21,000, and that said appellant is now entitled to that sum with interest, less the amount which was paid to him thereon by Ben Holladay & Co.

"Twelfth, that prior to the bringing of this suit the firm of Ben Holladay & Co. had paid to said Elliott, on account of said sum of $21,000, the sum of $8,000, and that there is due from the said firm of Ben Holladay & Co. to the appellant the sum of $13,000 with interest thereon since September 12, 1868.

"Thirteenth, that at the time this suit for a dissolution of the copartnership was commenced, the assets of the firm of Ben Holladay & Co. consisted in part of a section of twenty miles of railroad, then nearly completed. That by the terms of the contract entered into between the O. C. R. R. Co. and A. J. Cook & Co. the latter firm was to

receive $32,000 per mile for the construction and equipment of that portion of the road, or $640,000 for the twenty miles, which sum was to be paid to the firm of Ben Holladay & Co. under the contract of A. J. Cook & Co. in bonds of the O. C. R. R. Co. which were of no value for reasons already stated, and that the Oregon Central Railroad Company, having no lawful organization, the respondents appropriated and converted that section of the railroad to their own use and benefit, and subsequently sold it to the Oregon & California Railroad Company, a new corporation organized to complete it, and the amount of money necessarily expended in constructing that section of the road cannot be satisfactorily ascertained from the evidence in the case. That inasmuch as the respondents appropriated that section of the road, as well as all the work on the other portions to their own use, without the consent of appellant, it should be presumed that it was worth to them what it cost to construct it, including not only what they paid out upon it, but also the unpaid balance of $13,000, which A. J. Cook & Co. had expended upon it, and which Ben Holladay & Co. assumed to pay to the appellant when the co-partnership was formed, and that having terminated that copartnership and excluded the appellant from any participation in the settlement of its affairs and the disposal of its assets, the respondents should be held liable to pay the debts of the firm, as well as those due to themselves, as the amount due to the appellant; and the Court further finds that besides the railroad property belonging to Ben Holladay & Co. that firm had the machine shops,

also saw mills, wagons, carts, horses, etc. which the respondents also appropriated to their own use and subsequently transferred to the O. & C. R. R. Co., worth in the aggregate $19,500, of which the appellant was entitled to four-fortieths or one tenth, that being the interest which he had in the copartnership at the time this suit was commenced, making his share therein the sum of $1950.

"Fourteenth, that though in law the firm of Ben Holladay & Co. had no title to the lands granted by Congress to aid in the construction of the Oregon Central Railroad, yet in equity it was entitled to them, as all these lands were earned by the money and labor of Ben Holladay & Co., and were in fact afterwards transferred to the O. & C. R. R. Co., and whatever may have been realized by the sale must in equity be regarded as part of the assets of that firm, and although the partnership was terminated by the respondents before the lands for the first section were fully earned, yet they will not be permitted to exclude the appellant from his rightful share in the lands by affecting a dissolution of the copartnership a few weeks before the title to them became perfected. That nearly all the valuable lands embraced within the limits of the Railroad Grant for the first 20 miles had already been disposed of by the U. S. Government before the grant was made, and that up to September, 1868, there had been selected and patented to the O. & C. R. R. Co. for the first section of 20 miles, 32,267.36 acres, and about the same number of acres more could be selected whenever the surveys should be made.

That these lands were worth in the aggregate about 25 cents per acre, and that all the lands patented and unpatented, amounting to about 64,534 acres, were worth $16,133, of which sum the appellant ought to have one-tenth or $1,613.

"Fifteenth, that upon a fair settlement of the partnership transactions the respondents are justly indebted to the appellant in the following sums: Nine-tenths of the balance of A. J. Cook & Co. indebtedness unpaid by Ben Holladay & Co., $11,700, interest since September 12, 1868, $12,622.70; appellant's interest in machine shops, sawmills, etc., $1950, interest since November 5, 1869, $1886; equitable shares in land grant $1613; eight years interest on same $1280. Total $31,051.70. That of this sum the respondents should pay in proportion to the interest which they had respectively in the copartnership of Ben Holladay & Co., that is the respondent Holladay is to pay twenty-four parts or $21,909.46, and respondent Emmett ten parts or $9,132.08.

"It is therefore ordered, considered and decreed that the report and findings of law and fact of the referee and of the Court below, in so far as they are not changed and modified by the foregoing findings and conclusions, be and they are hereby confirmed, and that so far as they conflict therewith that they be and they are hereby in all things set aside and modified.

"It is further ordered and decreed by the Court that the copartnership of Ben Holladay & Company in the complaint mentioned be and the same is hereby dissolved

as of the commencement of this suit, and that said respondents be and they are charged with all the assets of said firm in accordance with the findings aforesaid, and that the appellant, Simon G. Elliott, have and recover from the respondent Ben Holladay the sum of $21,919.46 and that he also have and recover of and from the respondent, C. Temple Emmett, the sum of $9,-132.08.

It is further ordered and decreed that all the costs and disbursements incurred by the respondents and appellant in the Circuit Court and in this Court shall be paid by them in proportion to the interest which they have respectively in the copartnership; that is, the appellant shall pay one-tenth of such costs and disbursements to be taxed, and the respondents shall pay the remaining portion of such costs and disbursements; that the costs and disbursements in the court below shall be taxed there; that the costs and disbursements in this court are allowed, taxed at $359.10, and that execution issue therefor.

"It is further ordered that this cause be remanded to the court below for such further proceedings as are by law required.

"STATE OF OREGON,
"County of Marion- } ss.

"I, J. C. MORELAND, Clerk of the Supreme Court of the State of Oregon, do hereby certify that the foregoing copy of Decree has been by me compared

with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record, and in my office and custody.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Salem, Oregon, this 18th day of September, 1911.

(SEAL) J. C. Moreland, Clerk."

Whereupon WILLIAM SINGER called as a witness on behalf of defendants, and being duly sworn, testified that he is a member of the law department of the Southern Pacific Company in San Francisco, and as such has charge of all suits and proceedings in courts and land offices involving questions of title to lands or rights of way granted by the so-called Oregon and California land grant, California and Oregon land grant, Central Pacific land grant, and Southern Pacific Railroad Company land grant. He is also an attorney in such matters for the Southern Pacific Company. In the United States land office, pursuant to the rules of practice of that office, he authorizes the appearance of attorneys over his signature as general land attorney for the particular company represented. He commenced this employment in the year 1878, as a land office attorney for the California and Oregon land grant, then owned by the Central Pacific Railroad Company, as attorney for B. B. Redding, land agent of that company. In 1884, or 1885, he became land attorney for the Central Pacific Railroad Company's land grant, and for the entire land grant of the California and Oregon Railroad Company,

both in land office proceedings and in courts, other than federal courts. In 1894 there was added to his jurisdiction, federal cases for the California and Oregon, Oregon and California, Central Pacific and Southern Pacific Railroad Company's land grants. In 1888, when William H. Mills was appointed land agent of the Oregon and California land grant, witness investigated the title of that company to its lands in Oregon, and reported that to William H. Mills. After the year about 1884 or 1885 until 1894, he owed no allegiance to the chief counsel of the companies but acted as attorney for William H. Mills, as he understood it, under authority from Mr. C. P. Huntington, that he was such attorney for William H. Mills.

Referring to the form of deed described in Exhibits 11 and 12 to the Stipulation as to the Facts in this case, witness testified that upon investigation of the operation of the land department of the Oregon and California land grants, he found that warranty deeds were being given for patented and unpatented lands. He recommended to Mr. Mills in 1889 or 1890 that the issuance of warranty deeds be discontinued and that a deed granting and conveying the lands be given to patented lands, and that a deed quitclaiming all the right, title and interest which the company had or might thereafter acquire, be given to unpatented lands for the Oregon and California land grants, and his recollection is that he drafted the deeds set forth in those exhibits. This is confirmed by the peculiar phrase of the granting clause, "Grant and convey" not having been used, so far as his

observation goes, by any conveyancer but himself, and the other form of deeds "Remise, release and quitclaim all right, title and interest which the company owns or may hereafter acquire" having originated, he believes, with him; his belief is that those forms were drawn by him, sent by Mr. Mills to Secretary Andrews, then Secretary of the Oregon and California Railroad Company, with instructions to adopt and use them thereafter. Those forms of deeds comply substantially with the forms of deeds about that time drafted by him for use in conveying lands of those land grants, for which William H. Mills was land agent. The primary object of these forms of deeds was to standardize the forms of deeds, although an important consideration with him was to dispense with warranty deeds, which, in his experience as a railroad attorney, were not given by any railroad company other than the Oregon and California. There was no purpose by these instruments, or the adoption of these forms, to anticipate or meet any contention or claim now made by the United States in this suit as to the provisions of Section 4 of the Act of May 4, 1870, or the Act of April 10, 1869. His recollection is that prior to that time he had given a written opinion that the proviso in the Act of May 4, 1870 was a covenant and not a condition and that the Act of April 10, 1869 imposed no covenant if it had any effect at all. In fact, prior to the commencement of the case of Oregon & California Railroad Company against Eaton and the answer filed therein, they had attached no significance whatever to the proviso referred to either in the Act of

May 4, 1870 or the Act of April 10, 1869. It was his understanding always, and he believes it to be true, that Mills, during the lifetime of C. P. Huntington, acted as supreme executive officer in land grant matters, and did not submit forms of deeds to the consideration of anybody but witness and upon the approval of witness Mills passed them up to the secretaries of the companies for adoption.

Witness recognized what purports to be a certified copy of letters dated May 7, May 23, 1870, and May 20, 1872. The letter of May 20, 1872 purports to be a certified copy of a letter from Willis Drummond, Commissioner, to Honorable C. Delano, Secretary of the Interior, which letter refers to certain papers filed in his office by the Honorable George H. Williams, Attorney General, for the purpose of obtaining a construction by the department, of the proviso of the Act of Congress approved April 10, 1869, Statute, Volume 16, page 47, amendatory to the Act of July 25, 1866, Statute, Vol-16, page 239, etc., as an apparent certified copy under the seal of the general land office, marked as Defendants' Exhibit No. 373. Whereupon the same was offered and received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon witness was shown Defendants Exhibit 374, purporting to be a certified copy of a form of deed and acknowledgment from the European and Oregon Land Company, together with letter of date January 23rd, 1874, signed I. R. Moores, Land Agent, together

with a letter of Willis Drummond, Commissioner, to I. R. Moores, Land Agent, of date March 13, 1874, all certified by the recorder of the general land office under date of April 11, 1912, and the seal of said general land office affixed, and witness recognized the same as so certified. Whereupon defendants offered and there was received in evidence Defendants' Exhibit No. 374 which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness was shown Defendants Exhibit No. 375, purporting to be correspondence between the general land office and the Oregon and California Railroad Company, and therewith certified copies of executed deeds by Milton S. Latham and others, to the United States, Oregon and California Railroad Company, Farmers Loan & Trust Company, to the United States, and approved by R. Koehler, Receiver, in the suit of Lawrence Harrison, et al, against the Oregon & California Railroad Company, et al; from the Oregon and California Railroad Company to the Union Trust Company of New York, and to the United States, all relating to lands claimed by the United States to have been erroneously patented, and which documents purport to reconvey the title to the United States, together with the correspondence transmitting the same, and all being certified of date April 11, 1912 by the recorder of the general land office, under the seal of that office, and witness recognized that as a duly certified copy of these documents.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 375, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness was shown and recognized as a duly certified copy, a letter of the Assistant Attorney General, Walter H. Smith, to Secretary Delano, of date May 5, 1871; a letter of Secretary Delano to Attorney General Akerman of date May 8, 1871; a letter of Attorney General Akerman of date May 9, 1871 to Secretary Delano, and certain other correspondence connected therewith, and marked Defendants' Exhibit No. 376.

Whereupon defendants offered and there was received in evidence Defendants Exhibit No. 376, which is hereinafter set out and described and made a part of this statement of the evidence, and identifid as such.

Whereupon witness was shown a printed copy of an opinion of Attorney General Brewster, dated June 15, 1882, addressed to Secretary of the Interior H. M. Teller, being on pages 35 to 39 inclusive of Executive Document No. 29, 47th Congress, Second Session.

Whereupon defendants offered and there was received in evidence and is hereinafter extended in the record and is as follows:

"DEPARTMENT OF JUSTICE,

Washington, D. C., June 15, 1882.

"Sir: By a letter dated the 5th of January last, your "predecessor submitted to me a number of questions aris-

"ing upon an application of the New Orleans Pacific "Railway Company for certain lands claimed under the "land grant made to the New Orleans, Baton Rouge and "Vicksburg Railroad Company by the act of Congress of "March 3, 1871, chapter 122.

"The land grant mentioned is contained in the twen- "ty-second section of that act, which provides:

"That the New Orleans, Baton Rouge and Vicks- "burg Railroad Company, chartered by the State of "Louisiana, shall have the "right to connect, by the most "eligible route to be selected by said company, with the "said Texas Pacific Railroad at its eastern terminus, and "shall have the right of way through the public land to "the same extent granted hereby to the said Texas Pa- "cific Railroad Company; and in aid of its construction "from New Orleans to Baton Rouge, thence by the way "of Alexandria, in said state, to connect with the said "Texas Pacific Railroad Company at its eastern ter- "minus, there is hereby granted to said company, its suc- "cessors and assigns, the same number of alternate sec- "tions of public lands per mile, in the State of Louisiana, "as are by this act granted in the State of California to "said Texas Pacific Railroad Company; and said lands "shall be withdrawn from market, selected, and patents "issued therefor, and opened for settlement and pre- "emption, upon the same terms and in the same manner "and time as is provided for and required from said "Texas Pacific Railroad Company, within said State of "California; PROVIDED, That said company shall

"complete the whole of said road within five years from "the passage of this act."

"The eastern terminus of the Texas Pacific Rail- "road, as fixed by the same act, was a point at or near "Marshall, Tex.

"The New Orleans, Baton Rogue and Vicksburg "Railroad Company was incorporated by an act of the "legislature of Louisiana passed December 30, 1869, "which authorized it to construct and operate a railroad " 'from any point on the line of the New Orleans, Jack- "son and Great Northern Railroad, within the parish "of Livingston, running from thence to any point on the "boundary line dividing the States of Louisiana and Mis- "sissippi,' the route here indicated lying east of the Mis- "sissippi River. It was also authorized to construct and "operate a branch railroad from its main line (above "described) to the City of Baton Rogue; and for the "purpose of connecting its railroad with the railroads of "other companies, &c., it was furthermore authorized 'to "construct, maintain, and use, by running thereon its "engines and cars, such branch railroads and tracks as "it may find necessary and expedient to own and use;' "and such branch railroads were, for all the purposes of "the act, to be deemed and taken to constitute a part of "the main line of its railroad within the State of Louis- "iana.

"On November 11, 1871, that company filed in the "General Land Office a map designating the general "route of a road projected thereby from Shreveport, by

"way of Alexandria, to Baton Rogue, and thereupon a "withdrawal of the public lands along the same was or- "dered, which became effective in December following.

"Subsequently by an act of the legislature of Louis- "iana, passed December 11, 1872, the same Company was "given 'full power and authority to commence the con- "struction of their road in the City of New Orleans or "Shreveport, or at any intermediate point on their line "of road, as may best suit the convenience of said com- "pany, and facilitate the speedy construction of a con- "tinuous line from the City of New Orleans to the City "of Shreveport, or perfect railroad communication with "the Texas Pacific Railroad, or any other railroad in "northwestern Louisiana, at or near the Louisiana State "line: PROVIDED, however, That the said Company "shall construct the line of its road between the City of "New Orleans and the City of Baton Rogue on the east "side of the Mississippi River, to the corporate limits "of the said City of Baton Rogue, or adjacent thereto.'

"In the mean time, by the act of Congress of May "2, 1872, chapter 132, the Texas and Pacific Railway "Company (formerly styled the Texas Pacific Railroad "Company) was 'authorized and required to construct, "maintain, control, and operate a road between Marshall, "Texas, and Shreveport, Louisiana, or control and oper- "ate any existing road between said points, of the same "guage as the Texas and Pacific Railroad.' The same "act further provided that 'all roads terminating at "Shreveport shall have the right to make the same run- "ning connections, and shall be entitled to the same

"privileges, for the transaction of business in connection "with the said Texas and Pacific Railway, as are granted "to roads intersecting therewith.'

"On February 13, 1873, a second map was filed in the "General Land Office by the New Orleans, Baton Rogue "and Vicksburg Railroad Company, designating the "general route of a road projected thereby from New "Orleans to Baton Rogue, and a withdrawal of the pub- "lic lands along the same was ordered, which took effect "in April, 1873. The route between those places, those "designated, lies on the east side of the Mississippi River. "That company has not constructed any part of its road, "either on the route between New Orleans and Baton "Rogue or on the route between the latter place and "Shreveport; nor, indeed, has there been a definite loca- "tion of its road anywhere between the points mentioned. "Nothing beyond the designation of the general route "thereof appears.

"Pursuant to a resolution of its board of directors, "adopted December 29, 1880, all the right, title, and "interest of that company in and to the aforesaid grant of "public lands made by the act of March 3, 1871, were "deeded to it by the New Orleans Pacific Railway Com- "pany. This action of the board of directors and offi- "cers of the former company was afterwards approved "and ratified by the stockholders thereof at a meeting "held in December, 1881.

"The New Orleans Pacific Railway Company was "originally incorporated under the general laws of the

"State of Louisiana in June, 1875. Its charter was sub-
"sequently amended by acts of the Louisiana Legisla-
"ture, passed February 19, 1876, and February 5, 1878.
"It is thereby authorized to construct a railroad "begin-
"ning at a point on the Mississippi River, at New Or-
"leans or between New Orleans and the parish of Iber-
"ville, on the right bank of the Mississippi, and Baton
"Rogue, on the left bank &c., or from any point within
"the limits of this State, and running thence toward and
"to the City of Shreveport,' which is made its northwest-
"ern terminus.

"The route of this company as projected is under-
"stood to extend from New Orleans to Baton Rogue,
"and thence by way of Alexandria to Shreveport. Be-
"tween New Orleans and Baton Rogue it lies on the
"west side of the Mississippi River; while the designated
"route of the New Orleans, Baton Rogue and Vicks-
"burg Railroad Company, between the same points, lies
"on the east side of that river. Between Baton Rogue
"and Shreveport its general course and direction corre-
"sponds, in the main, with the route designated by the
"last named company. It is throughout its entire length
"from New Orleans to Shreveport within the limits of
"the before-mentioned withdrawals of public lands.

"In October, 1881, the president of the New Orleans
"Pacific Railway Company made affidavit that three
"sections of its road were then completed and ready for
"examination by the government; whereupon a com-
"missioner was appointed to examine the same, the re-
"sult of whose examination appears in a report made by

"by him to the Secretary of the Interior, under date of "the 26th of that month. One of the sections embraces "68 miles of road, beginning on the west bank of the "Mississippi River, opposite New Orleans, and ending "near the town of Donaldsonville; another embraces 20 "miles of road near Alexandria; and the third embraces "50 miles of road terminating at Shreveport. For each "of these sections lands are claimed by that company "under the aforesaid land grant, as assignee of the New "Orleans, Baton Rogue and Vicksburg Railroad Com- "pany.

"No map of definite location of any portion of its "road has been filed, other than those of constructed por- "tions. It appears that in February, 1881, the New Or- "leans Pacific Railway Company purchased from Mor- "gan's Louisiana and Texas Railroad and Steamship "Company, the road constructed on the west bank of "the Mississippi River by the New Orleans, Mobile and "Texas Railroad Company, from Westmego to White "Castle, a distance of 68 miles, and that the same has "become a part of the main line of the road of the New "Orleans Pacific Railway Company.

"The following are the questions submitted:

"1. Was the grant to the New Orleans, Baton "Rogue and Vicksburg Railroad Company, a grant in "presenti?

"2. Had the New Orleans, Baton Rogue and Vicks- "burg Railroad Company, at the date of its alleged "transfer of land to the New Orleans Pacific Railway

"Company, such an interest in the lands, under said "act, as was assignable?

"3. Is the New Orleans Pacific Railway Company, "such a successor to or assignee of the New Orleans, "Baton Rouge and Vicksburg Railroad Company as is "contemplated by said act?

"4. Should it appear that the 68 miles of the New "Orleans, Mobile and Texas Railroad was constructed "prior to the act of March 3, 1871, granting lands to "aid in the construction of the New Orleans, Baton "Rouge and Vicksburg Railroad, can the New Orleans "Pacific Company (its assignee) claim any benefit from "the grant? Or in the case of such prior construction, "and the nonconstruction of any portion of the New Or- "leans, Baton Rouge and Vicksburg road, has the pur- "pose for which the grant was made failed, and the "grant consequently lapsed?

"5. If the New Orleans, Mobile and Texas road "was constructed, subsequently to the date of said act, "is so much of its road as is now owned by the New Or- "leans Pacific Company such a road as is contemplated "for acceptance by the president within the meaning of "said act, and may patents issue to the latter for lands "opposite to and co-terminus with such constructed por- "tion of road?

"These questions are accompanied by a request for "an opinion upon such other questions of law as may "suggest themselves touching the transfer of said land "grant, to which reference is above made.

"Of the above stated questions the first three may be "considered together in connection with the following "inquiry, which presents itself at the outset, whether "the assent of Congress to the transfer made by the New "Orleans, Baton Rouge and Vicksburg Railroad Com- "pany of all its interest in said land grant to the New "Orleans Pacific Railway Company is necessary (by rea- "son of anything in the provisions of the grant itself) "to entitle the latter company to the benefit of said grant "in aid of the construction of the road projected by it.

"The act of March 3, 1871 passed to the New Or- "leans, Baton Rouge and Vicksburg Railroad Company "a present interest in a certain number of alternate sec- "tions of public lands per mile within the limits there "prescribed. Its language is 'there is hereby granted "to the said company' the number of alternate sections "mentioned; words which import a grant in presenti, "and not in future, or the promise of a grant (97 U. S. "Rep., 496) But the grant thus made is in the nature "of a float. It is of sections afterwards to be located, "their location depending upon the establishment of the "line of the road. Until this is definitely fixed the grant "does not attach to any specific tracts of land. Upon the "line of the road being definitely located the grant then "first requires precision, and the company becomes in- "vested with an inchoate title to the particular land cov- "ered thereby, which can ripen into a perfect title only "as the construction of each section of 20 miles of road "is completed and approved, when the right to patents "for lands opposite to and coterminous with such con-

"structed section accrues.

"The proviso in the grant that the company shall "complete the whole of its road within five years from "the date of the act is a condition subsequent, the failure "to perform which does not ipso facto work a forfeiture "of the grant, but only gives rise to a right in the govern- "ment to enforce a forfeiture thereof. Yet in order to "enforce a forfeiture such right must be asserted by a "judicial proceeding, authorized by law, or by some legis- "lative action amounting to a resumption of the grant. "(Schulenberg vs. Harriman, 21 Wall., 44) Hence, "until advantage is taken of the non-performance of the "condition, under legislative authority, the interest of the "grantee in the grant remains unimpaired thereby.

"Such being the nature and effect of the grant and "its accompanying condition, and no action having been "taken by legislation or judicial proceedings to enforce a "forfeiture thereof, it follows that at the period of said "transfer by the New Orleans, Baton Rogue and Vicks- "burg Railroad Co. this company was invested with a "present interest in the number of alternate sections of "public lands per mile granted by the act of 1871, not- "withstanding it was already in default in the perform- "ance of the condition referred to, and that it still re- "tained a right to proceed with the construction of the "road in aid of which the grant was made until advantage "should be taken of the default. But as it had not then "definitely fixed the line of its road, although a map des- "ignating the general route thereof was duly filed, that "interest did not attach to any specific tracts of land,

"but remained afloat, as it were, needing a definite loca-
"tion of the road before it could become thus attached.
"Was the interest here described assignable to another
"company, so as to entitle the latter to the benefit of the
"grant in aid of the construction of its road between the
"places named therein, without the assent of Congress?

"Doubt has perhaps arisen on this point in view of
"the fact that in one or two instances it has been thought
"expedient to obtain legislation by Congress confirming
"or authorizing a similar assignment (see section 2 of
"the act of March 3, 1865, chapter 88, and section 1 of
"the act of March 3, 1869, chapter 127), and also in view
"of the adverse ruling of this department in the case of
"the Oregon Central Railroad Company. (13 Opin.,
"382) However, a similar assignment made in 1866 by
"the Hannibal and Saint Joseph Railroad Company to
"the Pike's Peake Railroad Company, afterward known
"as the Central Branch Company, was held to be valid
"by Attorney-General Stanbury in an opinion given to
"the Secretary of the Treasury under date of July 25,
"1866.

"In the latter case the Hannibal and Saint Joseph
"Company, which was incorporated by the State of Mis-
"souri, with authority to construct a railroad between
"Hannibal and Saint Joseph, within that State, was, by
"the Pacific Railroad act of July 1, 1862 (section 13),
"authorized to 'extend its road from Saint Joseph, via
"Atchison, to connect and unite with the road through
"Kansas, and may for this purpose use any railroad
"charter which has been or may be granted by the legis-

"lature of Kansas', & c., and by the fifteenth section of "the same act it was provided that 'wherever the word "company is used in this act it shall be construed to em- "brace the words their associates, successors and assigns "the same as if the words had been properly added there- "to.' Subsequently, in 1863, an assignment was made "by that company of all its rights under said act (which "included an interest in both a land and a bond subsidy) "to the Atchison and Pike's Peake Railroad Company, "a company previously organized under a charter grant- "ed by the legislature of Kansas. The latter company "having constructed a section of 20 miles of the proposed "road west from Atchison claimed the benefit of the "grant made to the Hannibal and Saint Joseph Com- "pany, as its assignee, and this claim was recognized and "allowed, in accordance with the opinion of the Attorney- "General. It will be observed, however, that the Hanni- "bal and Saint Joseph Company was authorized to 'use "any railroad charter which has been or may be granted "by the legislature of Kansas,' and this, together with "the provision in the fifteenth section quoted above, may "have been regarded as sufficient to sustain the assign- "ment.

"In the case of the Oregon Central Railroad Com- "pany, mentioned above, a grant of a right of way "through the public lands, and also of alternate sections "thereof, was made to that company, 'and to their suc- "cessors and assigns,' by the act of May 4, 1870, chapter "69, for the purpose of aiding in the construction of a "railroad and telegraph line between certain places in

"Oregon. In August following an instrument was exe-
"cuted by the company assigning all its interest in the
"grant to the Willamette Valley Railroad Company,
"and thereupon the question arose whether the grant was
"susceptible of being thus transferred. The Attorney-
"General (Mr. Akerman), to whom the question was
"submited, after reviewing the various provisions of the
"act, some of which (see section 5) imposed certain duties
"and required certain important acts to be performed
"by the company, decided in the negative, holding that,
"upon consideration of those provisions, the Oregon Cen-
"tral Company was alone within the contemplation of
"Congress in respect to the donation made and duties
"imposed by that act. The words 'their successors and
"assigns' as used in the act, were regarded as words of
"limitation merely.

"But the grounds upon which that decision appears
"to have been based are not found to exist in the case
"now under consideration. Here a grant of a certain
"number of alternate sections of public lands per mile is
"made to the New Orleans, Baton Rouge and Vicks-
"burg Railroad Company, its successors and assigns, in
"and of the construction of a road from New Orleans, by
"the route indicated, to connect with the eastern ter-
"minus of the Texas and Pacific Railroad, which lands
"are required to be "withdrawn from the market, se-
"lected, and patents issued therefor, and opened for set-
"tlement and pre-emption upon the same terms and in
"the same manner and time as is provided for and re-
"quired from said Texas Pacific Railroad Company."

"The grant is coupled with no special duties or trusts, "for the performance of which there is reason to believe "the particular company named therein was more ac- "ceptable to Congress than any other. Its purpose is "to secure the construction of a railroad between the "points designated, and whether this purpose be ful- "filled by that company or by another company must "be deemed unimportant in the absence of any provision "indicative of the contrary. The interest derived by the "grantee, though it remains only afloat, is a vested in- "terest, and it is held under the same limitations which "apply after it develops into an estate in particular lands "until extinguished by forfeiture for non-performance "of the condition annexed to the grant. I perceive no "legal obstacle arising out of the grant itself to a transfer "of such interest by the grantee to another company, "and should the latter construct the road contemplated "agreeably to the requirements of the grant, and thus "accomplish the end which Congress had in view, I sub- "mit that it would clearly be entitled to the benefits "thereof.

"The question of the assignability of the interest of "the grantee would be more difficult if, after definitely "locating the line of its road, and thus attaching the "grant to particular lands along the same it was pro- "posed to transfer that interest to another company "for the benefit of a road to be constructed by the latter "on a different line, though following the general course "of the other road. But in the present case the facts "give rise to no such difficulty. The grant had not

"previous to the transfer become thus identified with a "particular line of road, and was thereafter susceptible "of location upon the line of the road projected by the "assignee (the New Orleans Pacific Company), pro- "vided this road met the requirements of the grant in "other respects, as to which no doubt is suggested.

"My conclusion is that the assent of Congress to the "assignment made by the New Orleans, Baton Rouge "and Vicksburg Railroad Company, as above, is not "necessary in order to entitle the assignee to the benefit "of the land grant in question.

"The remaining questions relate to the 68 miles of "railroad formerly belonging to the New Orleans, Mo- "bile and Texas Rialroad Company, but now owned by "the New Orleans Pacific Company, and made a part "of its main line between New Orleans and Baton Rouge.

"The land grant in question was, as its language im- "ports, made in aid of the construction of a railroad be- "tween certain termini, contemplating a road to be con- "structed, not one already constructed. It has not been "the policy of Congress thus to aid constructed roads. "Had a constructed road existed at the date of the grant, "which extended from one terminus to the other, and "afterward the New Orleans, Baton Rouge and Vicks- "burg Railroad Company, instead of entering upon and "completing the construction of a road, had purchased "the road already constructed, this, it seems to me, would "not have satisfied the purpose of the grant so as to "entitle the company to the benefit thereof. The same

"objection would apply where the constructed road ex-
"tended over only a part of the route contemplated by
"the grant. So far as I am advised, the action of the
"government hitherto has accorded with this view. On
"the other hand, if such road was constructed subse-
"quently to the date of the grant, and is owned by the
"grantee or the assignee of the latter, I see no ground
"for excluding it from the benefit of the grant should it
"otherwise fulfill the requirements thereof.

"Agreeably to the foregoing views, and in direct
"response to the several questions submitted, I have the
"honor to reply as follows: The first, second, and third
"questions I answer in the affirmative. The fourth
"question (including the alternative added thereto) I
"answer in the negative. The fifth question I answer
"in the affirmative—assuming, as I do, the company
"named therein to be an assignee of the grantee in the
"act referred to.

"I have the honor to be, very respectfully,

"BENJAMIN HARRIS BREWSTER,

"Attorney General.

"Hon. H. M. Teller,

"Secretary of the Interior."

Whereupon witness was shown and recognized Report No. 906, 47th Congress, Second Session, Senate, of date January 2, 1883 from the Committee on the Judiciary to accompany Bill S. 2301, by Mr. Garland, and identified as Defendants Exhibit No. 377. Whereupon defendants offered and the same was received in evi-

dence, and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness was shown and recognized Defendants Exhibit No. 378, being certified copies of certain correspondence between Joseph S. Wilson, as president of the European & Oregon Land Company, with replies thereto by the Commissioner of the General Land Office, offered collectively as one exhibit, which correspondence is in part under the signature of Joseph S. Wilson, President, on the letterheads of the European & Oregon Land Company. Whereupon defendants offered and the said Defendants Exhibit 378 was received in evidence, and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness was shown and recognized Defendants Exhibit 379, being a certified copy of map of the Oregon Central Railroad Company, West Side, filed by it under the Act of May 4, 1870, showing the definite location of the line of the Oregon Central Railroad under the Act of May 4, 1870, which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon it was stipulated between the parties that the Court in any stage of this case until and including a final hearing in the Supreme Court of the United States, if the case

shall reach that court, shall take judicial notice of all proceedings had in and final disposition of the forty-five suits against purchasers referred to in the "Stipulation as to the Facts," including issuance of patents to the lands therein described when issued, if any shall be issued, which stipulation, it was agreed, was subject to the objection on the part of complainant that the evidence is immaterial and irrelevant.

Whereupon, on cross examination, witness identified Government's Exhibits 126A, 126B, 126C, 126D, 126E, 126F, 126G, 126H, and 126I as correct copies of the originals of which they purported to be, and it was stipulated that these documents were properly executed and acknowledged, or signed by the parties purporting to have signed the same; proof of the execution and further identification of such documents being waived.

Whereupon complainant offered and there was received in evidence said Exhibits 126A, 126B, 126C, 126D, 126E, 126F, 126G, 126H and 126I, and the same are herinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon, witness further testified that there is printed in the same type as that of all other documents introduced in said Government's Exhibit 126A, 126B, 126C, 126D, 126E, 126F, 126G, 126H and 126I, Acts of Congress relating to the Oregon and California and Oregon Central Railroad Companies, chapter 242, "An Act granting lands to aid in the construction of a rail-

road and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," (14 U. S. Statutes, page 239), at the foot of which printed statute appears the words "Approved July 25, 1866; also chapter 80, "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon,'" (15 U. S. Statutes, page 80), at the bottom of that "Approved June 25, 1868"; and also "An Act to amend an Act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, approved July 25, 1866"; and at the bottom of that "Approved April 10, 1869 (16 U. S. Statutes, page 47); also "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," at the bottom of that "Approved May 4, 1870 (16 Statutues, page 94), these statutes, respectively, being set out in this printed document at length and in full.

Whereupon it was stipulated that the Central Pacific Railroad Company completed the construction and equipment of the California and Oregon Railroad from Chico to the south boundary line of Oregon in several sections, all on or before June 20, 1888; that the said entire constructed railroad was examined by commissioners appointed for the purpose and favorably reported on by them; that such report was submitted by the Secretary of the Interior with his favorable recommenda-

tions to the President, and such recommendations approved by the President, all on or before November 8, 1889.

Whereupon it was stipulated by and between the parties that the Court may take judicial notice of the decisions of the Secretary of the Interior and the Commissioner of the General Land Office, and the rules and regulations of the Land Department, of the reports of either of these officers to Congress, and the reports of any committee of Congress and the action of Congress thereon; subject to the objection that may be made by either party to the same, or any thereof, as incompetent, immaterial or irrelevant, or any other objection which might legally be interposed, it being intended to waive the actual production of these documents, to save expense and the incumbering of the record.

It was further stipulated by and between the parties that the following documents were recorded, in the manner provided by law, in the Records of Deeds and Mortgages of Multnomah County, Oregon, at the dates hereinafter mentioned, and thereafter, and about the same time, in the Records of Deeds and Mortgages of the other counties of Oregon in which any part of the lands involved in this suit are situated, to-wit:

Oregon and California Railroad Company to Faxon D. Atherton and Milton S. Latham, of date April 15, 1870, recorded April 16, 1870, at page 745, Book C, of the Records of Mortgages of Multnomah County, Oregon;

The Oregon Central Railroad Company to Milton S. Latham and Faxon L. Atherton, Trustees, of date July 15, 1871, recorded at page 132, Book E, of the Records of Mortgages of Multnomah County, Oregon, October 14, 1871;

The Oregon and California Railroad Company to Milton S. Latham, Faxon D. Atherton and William Norris, Trustees, of date April 15, 1870, recorded at page 727, Book K, of the Records of Deeds of Multnomah County, Oregon, April 18, 1870;

Oregon and California Railroad Company, Richard Koehler, Heinrich Hohenemser and others, to Klaas Van Oterendorp and Philip N. Lilienthal, Trustees, of date January 1, 1881, recorded February 28, 1881, at page 346, Book X, of the Records of Mortgages of Multnomah County, Oregon:

Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, Trustees, of date June 1, 1881, recorded August 18, 1881, at page 1, Book 27, of the Records of Mortgages of Multnomah County, Oregon;

Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, Trustees, of date June 2, 1881, Recorded September 13, 1881, at page 179, Book 27, of the Records of Mortgages of Multnomah County, Oregon.

Oregon and California Railroad Company and Robert Davie Peebles, George H. Hopkinson and Patrick Buchan, to Farmers Loan and Trust Company, of date

May 26, 1883, recorded at page 33, Book 41, on that date, in the Records of Mortgages of Multnomah County, Oregon;

Oregon and California Railroad Company to Union Trust Company of New York, of date July 1, 1887, recorded January 20, 1888, page 287, Book 63, of the Records of Mortgages of Multnomah County, Oregon.

Deed executed by Oregon Central Railroad Company to Oregon and California Railroad Company, of date March 29, 1870, recorded April 14, 1870, Page 702, Boox K, of the Records of Deeds of Multnomah County, Oregon;

Deed of Oregon and California Railroad Company, Milton S. Latham, Faxon D. Atherton and William Norris, to European and Oregon Land Company, of date March 28, 1871, recorded page 223, Book N, of Records of Deeds of Multnomah County, Oregon, April 4, 1871;

Deed from the European and Oregon Land Company to Milton S. Latham, Faxon D. Atherton, and William Norris, Trustees, and others, of date July 25, 1874, recorded page 264, Book Z, of the Records of Deeds of Multnomah County, Oregon, on January 4, 1875;

Deed from Oregon Central Railroad Company to Oregon and California Railroad Company, of date October 6, 1880, recorded at page 555, Book 42, Records of Deeds of Multnomah County, Oregon, on October 6, 1880.

It is further stipulated and agreed that either party may at any time furnish a certified copy of either of said documents herein above set out, and the same shall be admitted in evidence subject to any objection that the same is incompetent, irrelevant or immaterial; and this stipulation is made subject to any objection that either party may desire to make to the same, or any part thereof, as incompetent, irrelevant or immaterial.

It is further stipulated that, with respect to all of the conveyances, deeds of trust, mortgages and other documents above described, such proceedings were had that at the time of the filing of the bill of complaint, and at all times subsequent thereto, no parties had any right, title, or interest in or to, or lien upon, any of the lands involved in this suit, other than the defendants herein; the sole purpose of this portion of the stipulation being to avoid any question of defect of parties defendant.

It is further stipulated that the court may take judicial notice of the pleadings, proof and final decrees in the cases of United States v. Oregon and California Railroad Company, John A. Hurlburt and Thomas L. Evans; and United States v. The Oregon and California Railroad Company and Oregon Central Railroad Company—the latter named case commonly known as the "Quadrant Case;" and both of which cases reached the Supreme Court of the United States; and that either party, without being compelled to produce the records, may refer to any part of said record, including all plead-

ings, stipulations of fact, and other proceedings in each of said suits, subject to any objection that the same may be incompetent, irrelevant or immaterial, all parties reserving the right to introduce at any time to complete the record a certified copy of such pleadings, papers, stipulations, decrees or other proceedings in either of said cases, or any thereof, subject as aforesaid to any objection of either party that the same may be incompetent, irrelevant or immaterial.

It is further agreed between the parties hereto that the stipulations of fact signed by the parties in said causes were prepared by the attorneys for the defendants therein, and submitted to the Attorney General, who signed them.

Whereupon defendants offered in evidence, marked collectively "Defendants' Exhibit 381," Circulars Nos. 208 and 218, issued by the Department of the Interior, described as follows:

"Circular No. 208. The Three-Year Homestead Law. Department of the Interior, Washington, February 13, 1913."

"Circular No. 218. Additional Entries under the Enlarged Homestead Acts—Instructions. Department of the Interior. General Land Office. Washington D. C., March 17, 1913. (To) Registers and Receivers, United States Land Office, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington and Wyoming.

Whereupon the same were received in evidence and

marked as "Defendants' Exhibit 381" subject to the objection of the complainant that the same are incompetent, immaterial and irrelevant, and the said exhibit is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants offered in evidence a summary of patents to the Oregon and California Railroad Company, marked "Defendants' Exhibit 382," the Government waiving the calling of a witness to verify the accuracy of the statement, which said Defendants' Exhibit 382 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants offered in evidence a certified copy of the original reports of the commissioners appointed to examine and report upon the various sections of the constructed railroad of the Oregon Central Railroad Company (West Side), and of the Oregon Central Railroad Company (East Side), together with the action of the Secretary of the Interior and the President of the United States thereon, marked collectively "Defendants' Exhibit 383," which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants offered in evidence a certified copy of the affidavit of Henry Villard, of date January 8, 1883, from the records of the office of the Secretary of the Interior, marked Defendants' "Exhibit 384,"

to which complainant objected upon the ground that the same is incompetent, irrelevant and immaterial, and was an affidavit unauthorized by law, and is a self-serving declaration made by the President of the Oregon and California Railroad Company, and not a proceeding in which the Secretary of the Interior had any jurisdiction or discretion to act, and therefore such affidavit imports no notice of any kind to the United States,, and did not in any way pertain to any official duty of any officer of the United States.

Whereupon said affidavit was received in evidence, marked "Defendants' Exhibit 384," and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants offered in evidence, for convenience of parties, and in furtheranc of the stipulation, Report of the Committee on Public Lands, No. 1664, of date May 29, 1884, 48th Congress, First Session; Report No. 931 from the Committee on Public Lands, March 8, 1886; and Report No. 390 from the Committee on Public Lands, March 8, 1886—the last two reports being to the 49th Congress, First Session, and the same were marked collectively "Defendants' Exhibit 385", and were received in evidence, subject to the objections herein heretofore reserved, which said "Defendants' Exhibit 385" is hereinafter set out and described and made a part of this statement of the evidence, and identified herein as such.

Whereupon, for convenience, defendants offered and

there was received in evidence in connection with the stipulation as to the Quadrant Case, reference to United States vs. Oregon & California R. R. Co., 57 Federal 426; Oregon and California R. R. Co. vs. United States, 67 Federal 650; United States vs. Oregon &c. Railroad, 164 U. S. 526; and for convenient reference in the case known as "Northern Pacific Overlap"; U. S. vs. Oregon & C. R. R. Co., 69 Federal 899; Oregon & C. R. R. Co. vs. United States 77 Federal 67; United States v. Oregon & California Railroad Company 176 U. S. 28.

Whereupon defendants offered in evidence, marked collectively "Defendants' Exhibit 386", certified copies of the following deeds:

A deed from the Oregon and California Railroad Company to the City of Portland, of date July 3, 1893, for the S. ½ of S. ½ and NE ¼ of SE ¼, Section 23, Township 1 S., Range 5 E.; all of Section 27, Township 1 S., R. 5 E.; N. ½ of N. W. ¼, SE ¼ of NW ¼, W. ½ of NE ¼, SE ¼ of NE ¼, NE ¼ of SW ¼, and SE ¼, Section 31, Township 1 S., R. 5 E.; E ½ Section 33, Township 1 S., R. 5 E.; N ½ Section 19, Township 1 S., R. 6 E.; N ½ Section 5, Township 2 S, R. 5 E., containing 2234.70 acres, of which 514.80 acres are in Bull Run Forest Reserve, for the consideration of $4579.40.

Also a deed of date July 3, 1893, for S ½ of NE ¼ and S½, Section 25, Township 1 S., Range 5 E.; N ½ of NE ¼ and NW ¼, Section 35, Township 1 S., Range 5 E., S ½, Section 19, Township 1 S., Range 6 E., con-

taining 955.52 acres, all of which is in the Bull Run Forest Reserve for the consideration of $1958.82, which said Defendants' Exhibit 386 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

In connection with Defendants' Exhibit 386, defendants refer to the Act of September 29, 1890, known as the General Forfeiture Act, 28 Stat. L. 496-498.

Whereupon defendants offered in evidence certified copies of stipulations as to facts in the following cases:

No. 2272. United States v. Oregon & California Railroad Company; No. 2661. United States v. Oregon & California Railroad Company; No. 2658. United States v. Oregon & California Railroad Company; No. 2273, United States v. Oregon & California Railroad Company; No. 2657. United States v. Oregon & California Railroad Company; No. 1936. United States v. Oregon & California Railroad Company and Oregon Central Railroad Company; and the same were severally and separately marked, in the order named, "Defendants' Exhibits 387, 388, 389, 390, and 391, and 392, to each of which complainant objected on the ground that these are manifestly introduced for the purpose of binding the Government by the matters of fact set forth in such stipulations, and that such stipulations show upon their face that they were designed for use in the particular cases in which they were made, and not for use in any other litigation, and upon the further ground that the

issues in those cases in no way involved the question of the exact date or manner of the vesting of the grant under the Act of July 25, 1866, and further, upon the general grounds that they are incompetent, irrelevant and immaterial. Which said Defendants' Exhibits 387, 388, 389, 390, 391 and 392 were received in evidence and are hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants produced and formally offered in evidence certified copies of the deeds and mortgages hereinbefore referred to in the stipulation of parties, and the same were severally and separately marked as Defendants' Exhibit 393, 394, 395, 396, 397, 398, 399, 400 and 401, described as follows:

Mortgages. Oregon and California Railroad Company to Faxon D. Atherton and Milton S. Latham, of date April 15, 1870, recorded April 16, 1870, page 745, Book C. (Marked "Defendants' Ex. 393").

Oregon Central Railroad Company to Milton S. Latham and Faxon D. Atherton, Trustees, of date July 15, 1871, recorded page 132, Book E. (Marked "Defendants' Ex. 394").

Oregon and California Railroad Company et al. to Van Oterendorp et al., of date January 1, 1881, recorded page 346, Book X. (Marked "Defendants' Ex 395").

Oregon & California Railroad Company to Villard,

White and Bretherton, of date June 1, 1881, recorded page 1, Book 27. (Marked "Defendants' Ex. 396").

Oregon & California Railroad Company to Villard, Peebles and Bretherton, of date June 2, 1881, recorded page 179, Book 27. (Marked "Defendants' Ex. 397").

Oregon & California Railroad Company et al. to Farmers Loan & Trust Company, of date May 26, 1883, recorded page 33, Book 41. (Marked "Defendants' Ex. 398").

Deed of Trust. Oregon and California Railroad Company to Latham, Atherton and Norris, Trustees, of date April 15, 1870. (Marked "Defendants' Ex. 399").

Deeds. Oregon & California Railroad Company to European and Oregon Land Company, dated March 28, 1871, recorded Book N, page 223. (Marked "Defendants' Ex. 400").

European & Oregon Land Co. to Latham, Atherton and Norris, of date July 25, 1874. Recorded page 264, Book Z. (Marked "Defendants' Ex. 401").

Whereupon defendants produce certified copy of Quitclaim deed No. 1719, Oregon and California Railroad Company to the City of Portland, issued for Contract 3827. Dated March 14, 1892. Recorded Book 179, p. 203. Deed No. 995. And offer the same in connection with Deeds No. 2045 (issued for contract 1705), of date July 3, 1893, recorded Book 245, page 438, Oregon & California Railroad Company to the City of Portland; and deed No. 2046 (issued for Contract 1804),

of date July 3, 1893, recorded Book 246, page 468; heretofore offered and received as "Defendants' Exhibit 386."

Received and marked "Defendants' Exhibit 402," which said exhibits, so marked, are hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon defendants offered in evidence Exhibit 402, described as follows:

Certified copy of Quitclaim deed No. 1719, Oregon and California Railroad Company to the City of Portland, issued for Contract 3827. Dated March 14, 1892. Recorded Book 179, p. 203. Deed No. 995. And offered the same in connection with Deeds No. 2045 (issued for Contract 1705), of date July 3, 1893, recorded Book 245, page 438, Oregon & California Railroad Company to the City of Portland; and deed No. 2046 (issued for Contract 1804), of date July 3, 1893, recorded Book 246, page 468; heretofore offered and received as "Defendants' Exhibit 386," and the same was received in evidence over the objection of complainant that the same was incompetent, irrelevant and immaterial, and is hereinafter set out and described and made a part of this statement of the evidence, and identified as "Defendants' Exhibit 402."

"Whereupon it was stipulated between counsel for the respective parties that Deed No. 2046, of date July 3, 1893, consideration $1958.82, was executed pursuant to Contract No. 1804, of date February 16, 1883, exe-

cuted to A. G. Cunningham; and that the deed of date March 14, 1892, executed by Oregon and California Railroad Company to the City of Portland for the Northwest quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter, of Section 23, Township 1 South, Range 4 East, W. M., and the North half of the Southwest quarter of Section 5, Township 2 South, Range 5 East, W. M., containing 160 acres, was executed pursuant to contract No. 3827, but date of contract is not given in deed and date is unknown to counsel at this time.

It was further stipulated that at a meeting of the Water Board of the City of Portland of April 7, 1891, a committee was appointed to investigate these contracts and find out the amounts due, and the chairman, Henry Failing, reported that the amount necessary to pay off contracts was $8532.84; whereupon warrants were drawn for this amount, but deeds were not delivered until two years later, on account of final payments required according to the following memorandum, which appears on an envelope in the handwriting of Superintendent Dodge of the Water Board of the City of Portland:

Amounts paid O. & C. R. R. Co. by City of Portland:

April 17, 1891.....	$5958.69	
	2574.15	$8532.84
May 18, 1893.....	$ 522.05	
	490.00	
	102.80	1114.85
	222.30	
	208.65	
	33.00	468.95
		10,111.64

"X." "Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company.

No..... $.....

UNITED STATES OF AMERICA

STATE OF OREGON.

OREGON CENTRAL RAILROAD COMPANY.

Incorporated November 21, 1866.

FIRST MORTGAGE CONSTRUCTION BONDS.

KNOW ALL MEN BY THESE PRESENTS: That the Oregon Central Railroad Company, a body corporate, created under and pursuant to the laws of the State of Oregon, hereby acknowledges itself indebted and bound to the holder hereof, in the sum of one thousand dollars, gold coin of the United States of America, which sum the Oregon Central Railroad Company hereby promises to pay, at banking-house of Messrs. Dabney, Morgan & Company, in the City of New York, State of New York, to the said holder, on the fifteenth day of July, A. D. one thousand eight hundred and ninety-one, with interest from and after July fifteenth, A. D. one thousand eight hundred and seventy-one, at the rate of seven per centum per annum, payable semi-annually at the said banking-house of Messrs. Dabney, Morgan & Company, in the said City of New York, on the fifteenth day of January and July of each year after July fifteenth, one thousand eight hundred and seventy-one, on presentation and surrender of the annexed dividend and interest warrants.

This bond is one of a series of twenty-nine hundred thirty bonds of one thousand dollars each, numbered from one to twenty-nine hundred and thirty, both inclusive, and of twenty-nine hundred and thirty bonds of five hundred dollars each numbered from twenty-nine hundred and thirty-one to five thousand eight hundred and sixty, both inclusive, and amounting in the aggregate to four millions three hundred and ninety-five thousand dollars, and which have been made and executed by said Oregon Central Railroad Company under express authority granted by Acts of the Legislature of the State of Oregon, and also by an Act of Congress of the United States of America, approved May fourth, in the year of our Lord, one thousand eight hundred and seventy, and entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' and for the purposes authorized by and specified in said Acts, and each of them, and as security for the payment to the holders of said issue of five thousand eight hundred and sixty bonds, with interest to grow due thereon, said Oregon Central Railroad Company has duly executed, acknowledged and delivered, under the authority of said several Acts and of resolutions unanimously passed and adopted by its board of directors, to Milton S. Latham and Faxon D. Atherton, as Trustees, a mortgage or deed of trust bearing even date herewith, and whereby all the real and personal property, rolling-stock, roads, depots, stations, side-tracks, woodyards, franchises and effects, now owned or acquired,

or hereafter to be owned or acquired by it, are mortgaged and conveyed to the said trustees and the survivors of them, as by reference to said mortgage or deed of trust, or the record thereof, will more fully appear, and to which and to all the terms and provisions thereof, reference is hereby specially made.

And as a further security for the payment to the holders of said issue of said five thousand eight hundred and sixty bonds, with interest to grow due thereon, the said Oregon Central Railroad Company, has, in the manner and upon the terms and conditions specified in the said mortgage or deed of trust, irrevocably appropriated and set apart all the net proceeds of the sales of the lands granted to aid in the construction of the railroad and telegraph line of the said Oregon Central Railroad Company from Portland to Astoria and McMinnville, in the State of Oregon, described and mentioned in the Act of Congress of the United States of America, approved May fourth, one thousand eight hundred and seventy, entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' for the creation and maintenance of a sinking fund to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of all said bonds, both principal and interest, in the mode and manner specified in said mortgage or deed of trust, and to which reference is hereby made as a part hereof.

In witness whereof, the said Oregon Central Railroad Company has caused this bond to be signed by its president and attested by its secretary, and its corporate seal to be hereunto affixed, at its office in the City of Portland, county of Multnomah, and State of Oregon, under the express authority of resolutions of its board of directors, this fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy-one.

.....President.
.....Secretary.

This is to certify that the above bond is one of five thousand eight hundred and sixty bonds which are embraced in the mortgage or deed of trust, bearing even date herewith, made and executed by the Oregon Central Railroad Company, whereby all its real and personal property, rolling-stock, equipment, depots, roads, stations, side-tracks, wood-yards, franchises and effects, acquired and to be acquired, and also all the lands granted to said Oregon Central Railroad Company by the act of Congress of the United States of America, approved May fourth, one thousand eight hundred and seventy, and entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon,' are mortgaged and conveyed to us as trustees, as security for the payment of all said bonds, and which mortgage or deed of trust has been recorded in the several counties of Oregon, through which the railroad of said company runs, and constitutes the first lien or incumbrance upon the property therein described.

....., Trustees.

2547

(Form of Coupon.)

$..... The Oregon Central Railroad Company will pay to the holder hereof..... in United States gold coin, at the banking house of Dabney, Morgan & Company, in the City of New York..... on the fifteenth day of.....18.....being semi-annual interest on bond No.....

....., Secretary."

Whereupon the defendants offer in evidence from said printed document page 11 thereof, No. VII., likewise identified by the witness William Singer as a part of the collection of Laws and Documents referred to, and which is in words and figures as follows, to-wit:

"First Mortgage Bond of the Oregon and California Railroad Company.

UNITED STATES OF AMERICA.

STATE OF OREGON.

No..... $1000.

OREGON AND CALIFORNIA RAILROAD COMPANY.

Principal and interest payable in U. S. gold coin. Free from any U. S. government tax.

FIRST MORTGAGE BOND.

The Oregon and California Railroad Company acknowledges itself indebted for value received to the holder hereof in the sum of one thousand dollars, gold coin of the United States of America, which it promises

to pay to the holder hereof in the City of New York, on the first day of April, one thousand eight hundred and ninety, with interest thereon at the rate of seven per centum per annum, payable in gold coin as aforesaid, free from any U. S. government tax, semi-annually on the first days of April and October of each year, at the banking-house of Messrs. Dabney, Morgan & Co., in the city of New York, on presentation and delivery of the annexed interest warrants as they severally become due. And the said company agrees that this obligation and all rights and benefits arising therefrom may be transferred by general or special indorsement or by delivery as if the same were a note of hand payable to bearer.

This bond is one of a series issued by said company amounting in the aggregate to the sum of ten millions nine hundred and fifty thousand dollars, the said issue of bonds being expressly limited to the sum of thirty thousand dollars per mile for the entire length of the railroad of the said company to provide for the construction and equipment of the said railroad, and the said bonds are secured by a first mortgage on the said railroad, its franchise and rolling stock properly executed by the said company to Milton S. Latham and Faxon D. Atherton, trustees, for the holders thereof, by which mortgage the said company has conveyed to the said Milton S. Latham and Faxon D. Atherton in trust for the use and benefit of the holders of said bonds the said railroad, its franchises and rolling stock, as by reference to the said mortgage or the record thereof, as by reference

being thereunto had will more fully appear. And the said bonds have been further secured by a conveyance to the said Milton S. Latham and Faxon D. Atherton as trustees of the entire land grant made by the United States to said company of 12800 acres of land for each mile of its said railroad, said lands having been set apart and their proceeds having been pledged as a sinking fund, for the redemption of said bonds, as by reference to said last-mentioned conveyance in trust, or the record thereof, reference being thereunto had, will also more fully appear.

In witness whereof, the Oregon and California Railroad Company has caused its corporate seal to be affixed to this bond, and the same to be signed by its president and secretary, at the office of the said company in the State of Oregon, this fifteenth day of April, one thousand eight hundred and seventy.

....., President.
....., Secretary.

Coupon No. 40. $35. The Oregon and California Railroad Company will pay to the holder hereof thirty-five dollars, in U. S. gold coin, at the banking-house of Messrs. Dabney, Morgan & Co., at the city of New York, on the first day of April, 1890, being semi-annual interest on bond.

A. E. CUNNINGHAM, Secretary.

(Indorsed:) No..... $1000. United States of America. State of Oregon. Oregon and California Railroad Company. First mortgage, land grant, seven

per cent. gold bond. Interest payable in gold on the first days of April and October of each year, at the banking-house of Messrs. Dabney, Morgan & Co., in the city of New York, free from any U. S. government tax.

We hereby certify, that this bond is one of the within described series, amounting in the aggregate to $10,950,000, and is secured by a mortgage upon the property and franchises of the company, and is further secured by a conveyance to us, in trust of its land grant of 12800 acres of land for each mile of road constructed as within described, the said mortgage being dated the fifteenth day of April, 1870, and executed and delivered to us, which said mortgage is recorded in the several counties of the State of Oregon, through which said railroad passes.

....., Trustees."

Mr. Townsend: Both of the last two preceding forms are subject to the objection on the part of the Government that the same are incompetent, irrelevant and immaterial.

Whereupon A. K. SLOCUM was called as a witness on behalf of defendants, and being duly sworn, testified that he was manager of Circulation of the Oregonian on February 15, 1908, and recognized the photograph attached to his affidavit as a correct reproduction of a portion of the Morning Oregonian of the issue of August 12, 1871, which is undoubtedly a copy from the Oregonian of that date, and his affidavit to the effect that it is a photographic copy of the paper of that issue is correct, because he checked it up at that time. That

advertisement appeared in the Oregonian of the issues from August 12, 1871 to September 11, 1872, upon the dates listed in his affidavit, and the dates given are correct as shown by the original files of the Oregonian, which he inspected. Which evidence was received subject to the objection heretofore made to said Defendants' Exhibit 280 heretofore received in evidence.

Whereupon J. B. EDDY, called as a witness on behalf of the defendants, and being duly sworn, testified; that he is tax and right of way agent of the Southern Pacific Company, and tax agent of the Oregon and California Railroad Company, and has been in the tax department of the Oregon and California Railroad Company eight years. He was State Railroad Commissioner from 1893 to 1898. He entered the services of the Oregon and California Railroad Company in the tax department when it was consolidated with the O. R. & N. Company. He means when the offices were consolidated, the companies were not consolidated, they were put under the same general management at this end. He was right of way agent for the Southern Pacific Company, Pacific Railway and Navigation Company, Corvallis and Eastern Railway Company—the allied lines of the Southern Pacific Company in Oregon; and was also right of way agent for the Oregon and California Railroad Company —that is all property purchased for the use of the Southern Pacific Company for operating is purchased in the name of the Oregon and California Railroad Company, in connection with its leased lines. The Southern Pacific Company does not own any lands. The Oregon and

California owns it all, and when the Oregon and California Railroad Company finds it necessary to have additional right of way for any additional mileage that may be operated by the Southern Pacific Company, that right of way is acquired in the name of the Oregon and California Railroad Company and added to the holdings of that Company as railroad property. He has procured certain copies of so much of the assessment rolls of the Counties of Washington, Yamhill, Clackamas, Polk, Marion, Lincoln, Benton, Linn, Lane, Douglas, Coos, Curry, Josephine, Jackson, Klamath, Columbia, Tillamook, and Multnomah, in which the unsold lands of the Oregon and California Railroad Company involved in this suit are situated, including the unpatented lands to which the Company has obtained title within the primary or selected limits for the year 1911. Whereupon witness being shown Defendants' Exhibit 318, purporting to be such certified copy of so much of said assessment rolls for those counties as relates to said lands, and the same being recognized as such by the witness, defendants offered and they were received in evidence over the objection of complainant, that the same are incompetent, irrelevant and immaterial, being Defendants' Exhibit 318, which is hereinafter set out and described and made a part of this statement of the evidence identified as such. Whereupon witness further testified that he had prepared or verified from his records, based upon the taxes actually paid by the Oregon and California Railroad Company on the unsold Congressional lands, the acreage for each county, the valuation as shown by the

records of his office and the assessment rolls, and the valuation upon which the company has paid these taxes, the average value per acre as computed, the average value in mills, the total tax paid, and the average tax per acre in all of these counties, from 1904 down to and including the year 1911, and had prepared a blue-print tabulated statement, which he is able to say is correct, based upon the tax records of the company and the vouchers for taxes paid. Whereupon witness recognized this tabulated or comparative statement, marked Defendants' Exhibit 319, and further testified that this was prepared in his office, under his direction, from the press-sheets, vouchers, tax receipts and records of the office pertaining to these unsold Congressional lands, and obtained the facts shown in his vouchers from the assessment rolls in the hands of the sheriff for the collection of taxes. These are taken from the counties. They always send some one there to check them up and then transfer them to their records. This table is based upon disbursements actually made to the sheriffs of the various counties in payment of taxes and represents the payments actually made by the company, and they are correct. Whereupon defendants offered in evidence Defendants' Exhibit 319, to which complainant objected as incompetent, irrelevant and immaterial, which was received in evidence, so marked, and is hereinafter set out and made a part of this statement of the evidence and identified as such. Whereupon witness being shown two documents, marked for identification Defendants' Exhibit 320, and treated as one exhibit, Statement No.

1-A, showing by counties the assessment upon Congressional lands of the Oregon and California Railroad Company from 1891 to 1904, inclusive, of date January 4, 1906, purporting to be prepared by the auditor in San Francisco on that date; and Statement No. 1, showing by counties the assessment upon Congressional lands of the Oregon and California Railroad Company from 1891 to 1904, inclusive, together with the acreage assessed, the assessed valuation, the average assessed valuation per acre, the total taxes paid, and the average taxes paid per acre, purporting to be prepared by the auditor at San Francisco, California, September 20, 1905, Statement No. 1-A also showing the acreage assessed, the assessed valuation, the average assessed valuation per acre, the total taxes paid, and the average tax paid per acre, and stated that these documents came from the auditor at San Francisco and are a part of the records of the office. The records of the company in San Francisco were destroyed by earthquake and fire on April 18th, 1906. The name of Robert Adams is the name of an employe in the auditor's office, signed at the lower left hand corner of Statement No. 1, and he is satisfied from the documents that they were prepared in the auditor's office from the records of the company, and he has acted upon that as such for the company, and has every reason to believe that they are correct. He did not make them, but they correspond with the records of later date. Whereupon defendants offered these documents as one exhibit, Defendants' Exhibit 320, to which complainant objected as incompetent, irrelevant and im-

material, which exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as such. Whereupon witness further testified that one of these documents was arranged by counties and the other by years, merely for convenience. The same information is in one that is in the other, only put in a little different way for convenience of reference. He prepared Defendants' Exhibit 321 from the records in his office, and that table or statement includes the information contained in part in Defendants' Exhibit 319 and Defendants' Exhibit 320. There is an overlap in those though. Defendants' Exhibit 319 and Defendants' Exhibit 320 are all summarized in Defendants' Exhibit 321. Defendants' Exhibit 321 is a correct statement of what it purports to show. Whereupon defendants offered in evidence Defendants' Exhibit 321, to which complainant objected as incompetent, irrelevant and immaterial, which exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as such. Whereupon witness further testified, that this Defendants' Exhibit 321 showed in Coos County the total tax per acre from 1891 to 1911, inclusive, as $2.54 per acre and that is correct; that the total tax in Columbia County is $2.75 per acre for the same period of time, and that is correct; that the total tax paid during that period of time, in Multnomah County, is $2.75 per acre and that is correct. These exhibits refer to the Congressional lands, granted lands, of the Oregon and California Railroad Company, and in

so far as they cover the unsold patented lands, they include all those that are involved in this suit. Witness further testified that he has been more or less familiar with the territory shown by the yellow field on Defendants' Exhibit 259, for twenty-nine years; tolerably familiar with it for twenty years, going up and down in it, traveling on the railroads, and on the wagon roads; and he became familiar with the topography and general physical characteristics of what is known as the Willamette Valley as an officer of this company and otherwise as an officer and citizen of the State. Whereupon complainant objected to any testimony as to the character of the lands involved in this suit upon the ground that the same is incompetent, irrevelant and immaterial. Whereupon it was stipulated between the parties that this same objection should be considered as taken to all testimony offered by defendants relative to this subject without the necessity of repeating the same. Whereupon witness testified that the territory known as the Willamette Valley is practically all in yellow within the 20-mile limit of the grant made to the Oregon and California Railroad Company of date of July 25, 1866, and is all that portion of the map north of Cottage Grove to Portland, a distance of about 125 miles, roughly speaking. On the east side of the Willamette River it is practically level from Eugene to Oregon City. On the west side it is level in Lane, Benton and Polk Counties; Yamhill, Washington and Columbia Counties are more rolling. It was taken up largely under the old Donation Land Act, in the early days of the settlement of the

state. He refers to the donation land law, but does not recall its date. He knows these things from the fact that, in checking the right of way deeds they bear reference to the donation claims. Oregon City is the County seat of Clackamas County; Salem the county seat of Marion County; Albany the county seat of Linn County; Eugene the county seat of Lane County; Corvallis the county seat of Benton county; Dallas the county seat of Polk County; and Hillsboro the county seat of Washington County; St. Helens the county seat of Columbia County. The State Capital is at Salem. The State Agricultural College at Corvallis. The State University at Eugene. Oregon City is the oldest town in the State of Oregon, according to history and his knowledge. In the beginning of the government in this country Oregon City was the State Capital. Dr. John McLoughlin took a donation claim at Oregon City. He was the Hudson Bay Factor, the virtual ruler of this whole territory at the time the settlement began, and is commonly called in the history of the country "the Father of Oregon." Portland was first established as a town about 1845 or 1846, and was named after Portland, Maine. Oregon City is the head of shipping on tide water with reference to the Willamette Valley. Portland is the chief port for shipment of the products of the Willamette Valley by sea. Astoria was founded by John Jacob Astor in the early part of the last century, as a fur trading point. The Columbia River is the northern boundary of the State of Oregon. Captain Gray discovered that stream in 1792. Salem has been

the capital of the State ever since it has been a state, but there was a territorial capital before that, at Oregon City and at Corvallis a little while. Oregon was admitted into the Union in 1859. The Territory of Oregon was first organized in 1849 and the Provisional Government in 1843. Polk County was named after James K. Polk, President of the United States. Dallas, the county seat of Polk County, was named after George M. Dallas, Vice-President of the United States. Benton County was named after Thomas H. Benton, Senator from Missouri. Linn County was named after Senator Linn, Senator from Missouri and a friend of the Oregon Territory. Lane County was named after General Joseph Lane, the first Territorial Governor of Oregon, and its first Senator in Congress after it became a State. The first settlement of any consequence in the Willamette Valley was in 1843. There was considerable immigration in 1842. Jason Lee came in 1836 and settled at Salem, or near Salem; Mission Bottom, he thinks, just below Salem. The bulk of that land covered with yellow, not taken by these wagon road grants is agricultural land. There are large areas of the Willamette Valley that are open plains; French Prairie, Howell Prairie, Tualatin Plains, and the Albany Prairie, and quite a number of others of lesser note. The sides of this field in yellow, begin to rise up gradually, are foothills—foothills of the Cascades on the east side, and foothills of the Coast Range on the west. In Polk County the foothills begin practically at the town of Dallas. East of Dallas it is level. West of Dallas it is foothills, rising up to tall

mountains and to timber. The large body of land in yellow in the vicinity of Roseburg and Oakland, in Douglas County, outside of the Roseburg and Coos Bay Military Wagon Road grant, were settled under the Donation Law in the fifties. The lands marked in yellow that were thus settled are small prairies and foothills. The large body of yellow along the creek from Ashland to the Rogue River was settled in the early fifties under the Donation Land Law and the Pre-emption and Homestead laws. That is the section known as the Rogue River Valley, and from the junction to Bear Creek with the Rogue River southerly to Ashland, and is a valley mostly prairie, open country. The Siskiyou Mountains are at the south end. The summit of the Siskiyou Mountains is about ten miles this side of the Oregon and California boundary; and the summit is about fifteen miles from Ashland on a direct line. Ashland is about twenty miles from the summit by the wagon road, but in a direct line it would be perhaps twelve or fifteen miles. Cottage Grove is approximately 140 miles from Portland. Roseburg by railroad is 198 miles from Portland. Ashland about 343 miles from Portland. He cannot speak from knowledge as to these lands in the Willamette Valley in their native state being covered with any kind of timber; he can only speak from information; that there was on his first appearance in the valley extensive growths of fir and oak, mostly second growth fir and oak grubs—scrub oak. These lands in the valley were not called timbered lands in any sense as compared with these lands in the mountains. The lands in the

valleys are such lands as, when cleared, make first class agricultural land, and the lands in the mountains, when they are cleared, would not be worth much, if anything. This second growth fir and oak grubs in the Willamette Valley is good for cord wood. He caused a statement of taxes that were paid upon this land prior to 1891 to be prepared as far as he could get it. P. A. Worthington had charge of the preparation of the data for that; he was acting under his direction for the Oregon and California Railroad Company. Defendants' Exhibit 321 in the computation of total taxes paid, total taxes per acre, average tax per acre per year, does not take into consideration any taxes paid prior to 1891. This exhibit includes taxes from 1891 to 1911. The assessment rolls as shown are attached to a certificate for the Multnomah County assessment. The other forms for the other counties were prepared in his office on the usual form that the Company filled out for furnishing the Assessors with a list of these properties, and were filled out for the clerks to compare with their tax rolls and certify to the correctness thereof to save time. The "Port of Portland" shown on the tax roll for Multnomah County is local to that county and that form does not obtain elsewhere, excepting where there are different ports in different counties. Some counties do not have any. Taxpayers are allowed to pay half the taxes prior to the first Monday in April and the next half prior to the first Monday in October, if they so elect. If they are paid prior to the 15th of March a three per cent rebate is allowed, equivalent to six per cent interest

on the money. This is at the election of the taxpayer. He has caused to be prepared a summary of the census returns. Defendants' Exhibit 322 is a typewritten statement showing the population of certain places at each census for which there were returns for 1860, 1870 and 1880, and a printed slip giving the population of each of the counties in Oregon from 1850 to 1900 furnished by E. Dana Durand, Director of the Bureau of the Census, Department of Commerce and Labor, at Washington. Whereupon defendants offered the said exhibit as Defendants' Exhibit 322 in evidence to which complainant objected as incompetent, irrelevant and immaterial, which exhibit was received in evidence, and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such. Whereupon witness further testified that he had caused to be prepared Defendants' Exhibit 323, showing the population of certain counties and towns for the years 1890, 1900 and 1910 and the same is a correct summary of the census for the various years named to the best of his judgment and knowledge. This was furnished to him by Seneca Beach, who was superintendent of the census for Oregon. Whereupon defendants offered in evidence Defendants' Exhibit 323, to which complainant objected as incompetent, irrelevant and immaterial. Which Exhibit was received in evidence, and is hereinafter set out and described, and made a part of this Statement of the Evidence, identified as such. Whereupon witness further testified that Defendants' Exhibit 324, is a statement of the summaries of the assessment

rolls of the several counties of the state for the year 1911 as equalized by the county boards of equalization, and compiled by the Board of State Tax Commissioners of the State of Oregon as an official compilation, published by authority of the State of Oregon by the Secretary of State, of this State, and was furnished to him by the State Tax Board, and witness testified to the same effect with reference to Defendants' Exhibits 325, 326, 327, 328, 329 and 330; to which the complainant objected as incompetent, irrelevant and immaterial. Whereupon each of said exhibits was received in evidence, so marked respectively, and are hereinafter set out and described, and made a part of this Statement of the Evidence, identified as such. Whereupon witness further testified that Defendants' Exhibit 301, which purported to show the year, the acres, the valuation, the taxes paid for Benton County, Douglas County, Lane County, Linn County, Marion County, Washington County and Yamhill County, was prepared by P. A. Worthington, under his supervision. The lands referred to in this exhibit 331 are the unsold lands of the Oregon and California Railroad Company for the respective years in the various counties. The assessment of these lands in some of the counties was included with other property for taxation purposes. The tax figure represents the entire tax paid including rolling stock and road bed and other things. They were assessed in a lump. The assessors in those days did not seem to have as good a record as they have in these. He was able to ascertain from these statements the amount of taxes paid by the company

on its lands in the Congressional land grants, by going back and getting if he could, the taxes levied for that year and computing it on the valuation of the land, and by comparing it with the previous year where the land alone was assessed. That is, by taking the previous year and the succeeding years, where the land is assessed alone, and striking an average he could very nearly get it. Whereupon defendants offered in evidence Defendants' Exhibit 331, to which complainant objected as incompetent, irrelevant and immaterial; which was received in evidence and is hereinafter set out and described, and made a part of this Statement of the Evidence, marked Defendants' Exhibit 331, identified as such. Whereupon on cross-examination witness further testified, that he had lived in Oregon about 31 years, had farmed a little since that; served as deputy sheriff four years; Special Indian Agent of the Government for three years; Railroad Commissioner nearly six years and with the Railroad Company for twelve years; the balance of the time he edited a newspaper. When he first came to Oregon he took a bunch grass ranch in Eastern Oregon and farmed that for two years. Thirteen or fourteen years ago he bought a farm in the Willamette Valley and farmed that for a period of six months. This bunch grass farm in Eastern Oregon is in an open country and the farm that he purchased in the Willamette Valley had 27 acres of it improved and the rest of it was timber. It was located in Clackamas County, but he cannot give the description of it, section, township and range. It was just below the mouth of the

Molalla, on the west side of the Willamette River, three miles straight out from Canby, and then across the river. He lived six months on this farm, cleared up six acres, and hauled rails and sold the land. He has been in the employ of the Railroad Company nearly 12 years and is still in its employ. Whereupon on redirect examination witness further testified that he had made a computation of the average assessed value per acre of these lands from 1892 down to and including 1911, both inclusive, based upon the assessment rolls and the assessment of the property and the taxes paid, and prepared this Defendants' Exhibit 359, purporting to show the year, the average value per acre from 1892 down to and including 1911, and showing the highest assessed value of any lands in Columbia County and the lowest in Tillamook County, and it is a correct showing from the records of the company. Whereupon defendants offered said exhibit marked Defendants' Exhibit 359 in evidence. Whereupon the witness further testified that he took Columbia and Tillamook Counties because they were the highest and lowest average assessment for the year 1911. Whereupon complainant objected to the introduction of said exhibit as incompetent, irrelevant and immaterial, and that the amount of taxes is no defense in this suit. Whereupon said exhibit was received in evidence, and is hereinafter set out and described, and made a part of this Statement of the Evidence, and identified as such. Whereupon witness on cross-examination further testified that the average assessed valuation per acre during the year 1911, was the highest in Columbia Coun-

ty and the lowest in Tillamook County as compared with all of the counties within which these land grants are. He has been employed by the Railroad Company nearly 12 years as right of way agent, right of way and tax agent, special right of way agent and special tax agent and has had to do with the payment of taxes since 1904. He was in the tax and right of way office with J. W. Morrow, beginning in 1904, but his connection with it for the first two or three years was only incidental. His attention was given more especially to right of way matters. He knows that there was a system in effect with reference to the listing of lands for taxation, segregating those that were subject to contracts from those that were not subject to contracts, but whether that system had just been inaugurated or whether it had been in effect prior to that time he could not say. He thinks he has had enough to do with the matter of taxes on these lands since 1905 so that he can speak with reference to the general methods pursued by the Company. He does not think that the Company ever objected to the assessment of any of these lands above a valuation of $2.50 per acre on the ground that that was the limit of the interest of the Company in the lands. There was not to his knowledge any effort made to keep the assessment down to the point where the Government contends was the extent of the interest of the Company. The Railroad Company handled the subject upon the theory that it was the absolute owner of the lands, without reference to these restrictions in the granting acts. The only thing that it has been contending for was to see

that the land was assessed in about the same proportion as other lands of like value and no effort was made to avoid assessment above $2.50 per acre. He realizes that if the assessed valuation of these lands had since the year 1904 been kept down to not exceeding $2.50 per acre that the amount of the total taxes paid by the Railroad Company would be very greatly reduced. It is a fact that $1,637,314.69 have been paid since the year 1904, not taking into account the present year (1912) as against $737,601.12 paid down to and including the year 1904. These figures include all the taxes paid by the Railroad Company up to this time; that is the amount relating to the years 1905 to 1911 inclusive, included all taxes paid down to the present time, the taxes for the year 1912 not being due until March, 1913.

"A. Prior to 1891 the record of taxes paid is exceedingly difficult to obtain from the fact that some of the counties did not begin to assess granted lands until 1890, and in other of the counties the taxes are included with property such as roadbed and station grounds, so that the taxes on the lands can only be approximated. From the best available data, I find that prior to the year 1891 we paid in Benton County $2,546.42; Douglas County approximately $4,400.00; Jackson County, $40,878.22; Josephine County, $100.00; Lane County, $4,816.26; Linn, $1,400.00; Marion, $2,076.32; Multnomah, $723.40; Washington, $1456.56; Yamhill, $1,530.34, or a total of $59,927.52. From 1891 to 1904, inclusive, we paid $737,601.12; from 1905 to 1911, inclusive, $1,637,314.69, or a grand total of $2,434,843.33.

In 1911 the holdings of the Company were 2,119,927 acres, so that, on this acreage, the taxes paid would average $1.15 per acre. From 1874 to 1898, inclusive, the taxes paid were $326,420.61. In the latter year the holdings represented 2,322,084 acres, so that the taxes paid to that time would average within a very small fraction of 14c an acre. From 1874 to 1907, inclusive, the taxes paid were $1,208,833.86 or 58c an acre on 2,073,415 acres then owned. From 1908 to 1911, inclusive, we paid $1,266,009.47, or 57c an acre on 2,119,927 acres owned in the latter year. In the earlier years when the assessors began assessing the granted lands of the company, the valuation placed thereon was about 40c an acre in 1874, gradually increasing, and in but few instances exceeding $1.00 an acre as late as 1890."

Whereupon witness further testified, that he has computed the average amount of the taxes paid during these several periods with reference to the holdings of the company from time to time. If the taxes were apportioned among all of the lands that inured to the Railroad Company under its grant, including approximately 820,000 acres that have been heretofore sold and 2,300,000 acres that are involved in the present suit, the average tax per acre would be a little less as to the unsold lands. The taxes per acre prior to 1905, for instance, was very light, and if those acres were taken off and the taxes paid to that time were deducted from it it would not make a very material difference, but would make some difference. The gross amount of lands appearing to have inured to the Railroad Company under

these grants is 3,182,169.57 acres. Apportioning the total taxes paid by the Railroad Company down to this date, that is, apportioning the total taxes among all the lands that inured under the grant instead of the present holdings of the company, the average tax per acre is a fraction over 76 cents, figured on the basis of 3,000,000 acres and over. The average tax per acre on the total amount paid, prior to the institution of this suit on September 4, 1908, computing the average with reference to the total amount of lands which inured to the company under its grant, instead of the present holdings of the company, or the holdings of the company at the time this suit was instituted is a very little less than 38 cents per acre; making the same deduction with reference to the total amount of taxes paid down to the year 1904, and including that year, the average tax per acre paid would be less than 25 cents per acre, and making the computation with reference to the total quantity of land which inured under the grant, that is 3,182,-169.57 acres instead of the holdings of the company in the year 1904. More than one-half of all the taxes that have been paid by the company on these lands, from the beginning down to the present time have been paid since the institution of this suit. Whereupon on redirect examination witness further testified, that since 1908, including that year, most of the counties in which these lands are situated, have employed cruisers and have cruised the timber lands of the company in these various counties, including other lands of like character, which has resulted in largely increased assessments, not

only of the company's lands, but all other lands of that character. In making distribution or apportioning this tax per acre on the total lands inuring to the grant,—3,182,169.57 acres,—it is his understanding there would be included the lands that have been sold and deeded from time to time from the beginning down to date, that is, that the acreage 3,182,169.57 acres is the total number of acres in the grant. After these lands are conveyed to others, aside from the executory contracts of sale, by which the vendees assume the payment of the taxes as between the company and the county, the owners would pay these taxes on these lands, and the company would have no record of it in its disbursements. The owners would pay the taxes when the lands are deeded, and the taxes paid by the owners would not appear in the figures which the company charges as having paid on the grant. That would be stricken from the list. That would be true as to the executory contracts where the parties paid the taxes. Whereupon upon recross examination, witness further testified, that this computation of his, has been made from the records in the office since 1892. When the company makes a statement to the sheriff for the payment of taxes, for each county, every subdivision that it pays on, is included in the receipt. The company keeps duplicates of these, in the office and these reports are made from those duplicates? He has simply added together the amount of those receipts for each year in each county. The amounts paid by the company on lands that were subject to contracts, and then the amounts so paid charged against the purchasers, seem to

be very small. There have been about two or three instances since he has been handling it direct, and they are small amounts. Where the purchaser or the owner of the contract had not paid and allowed the tax to become delinquent, the company would pay it. Whereupon on redirect examination the witness further testified, that he is tax and right of way agent of the Oregon and California Railroad Company and the Southern Pacific Company, and has checked up Defendants' Exhibit No. 7, printed in and part of the joint and several answer of the defendants in this case, being a "Statement showing right of way through unsold East Side Grant Lands required for Oregon and California Railroad," and it is a correct reservation as made by the company. There are some extra widths that are required for meeting special conditions. As right of way agent he could say that that was reasonably necessary for the operation of this railroad. The tract described as "North half of Section 15, Township 33 South, Range 6 West. Reserve entire half section for reconstruction of railroad on account of change of line," is at the point just immediately south of Tunnel No. 9, where the road is constructed largely upon trestles and cuts through points of the hill. It is contemplated to change the line, taking out those curves and trestles, and a large amount of the land will be needed for borrow material. The company has not fully determined just where the relocated line will be. Whereupon, upon cross examination, witness further testified, that the Railroad Company has set this apart so that it will not be included

in any of the sales made of any of the granted lands, until after these changes are made, and it sees just what it needs out of that half section. All of these other reservations have reference to the permanent track and for the most part consists of 100 feet on each side of the track, which gives the railroad company a continuous right of way through that part of the state, at least of 100 feet on each side of the track, connecting it up with the public lands which it obtained, and includes the same general width of right of way on the odd numbered sections which it obtained in the even numbered sections of the grant.

Whereupon defendants offered in evidence Defendants' Exhibit No. 7 to the answer, in connection with the testimony of the witness, to which complainant objected as immaterial and irrelevant; which said Exhibit No. 7 is attached to and made a part of the joint and several answer of said Defendants in this suit, and designated as Exhibit No. 7 of said answer.

Whereupon P. A. WORTHINGTON, called as a witness on behalf of defendants, being duly sworn, testified that he is at present employed by the Southern Pacific Company and has been specially employed by Mr. Eddy of the Tax Department of the Oregon and California Railroad Company for the last 30 days going to the different county seats and checking the rolls and looking over the tax records all that he could find in the different counties. His purpose was to find what the records disclosed as to the amount of taxes paid by the

Oregon and California Railroad Company on its congressional lands in the different counties, referring to the lands described in the bill of complaint in this cause granted to the predecessors of the Oregon and California Railroad Company under the Act of July 25, 1866 and the Act of May 4, 1870. These certified copies of the assessment rolls for the year 1911 of the Congressional lands of the Company for the various counties include unpatented lands unsold, primary; these are in addition, as he understands, to the lands described in this suit. He found out by checking over the amount of land described in the suit, that these are in addition to those lands, and that would account for the fact that the Company apparently is paying on some unpatented unsold primary lands, that are not included in this suit and makes the difference between the acreage footing of say Clackamas County as shown in "Defendants' Exhibit 318" and as shown by the bill of complaint. In doing the work of preparing this statement in "Defendants' Exhibit 318" he checked with the officers where he could get them to assist him and at times went through and compared them with their roll and checked them over himself, and made the balances and saw that they balanced with the roll. These statements are correct upon his own knowledge, from the rolls officially on file with the sheriff or clerk of the respective counties. An examination of the headings of "Defendants' Exhibit 318" shows that the sheriffs or clerks certified in the major part of those outside of Multnomah County to that part of the roll which pertains only to the Congres-

sional lands, the valuation and taxes thereon, but do not go into the merits of the school districts and various other items that are on the roll generally. They did not use the top of the roll which is usually printed on these forms of blanks, the rolls are furnished to the various counties, like Multnomah for instance, by the State. That form is the form furnished by the State for different assessments and they are uniform for each county. There may be some minor changes as for the different ports in different sections of the State. He prepared personally "Defendants' Exhibit 331" from the records as he found them in the several counties and these statements are correct as found upon the records of the different counties and were taken from the assessment rolls—some of them—all that he had would be from the assessor's rolls and sometimes he would find the tax rolls in the hands of the sheriff. He found the records in many instances in the attics, piled away in some corner of the vault and very hard to find, and in some cases they could not be found at all, but he examined all the records that he could find in the counties named in the statement. Referring to the memorandum "No evidence that this was paid" referring to Lane County assessment for 1890 stating the number of acres, valuation and tax, witness testified that he found on the roll opposite the name and tax as to the other items marked the word "paid." In that particular instance he found the value was carried out and the number of acres, but there was no note on the margin of the book showing that the tax had been paid. Upon further investigation his

attention was called to the case of the Oregon and California Railroad Company against Lane County and James E. Noland, Sheriff, reported in 23 Oregon, to the effect that that year's assessment, made by the sheriff, was involved in litigation and resulted in a suit so that it appears that for 1890 a part of the taxes on these lands were paid and a part apparently unpaid, as shown by the roll, and that the reason of the sheriff's assessment was that it was an assessment upon indemnity lands that had not been selected that the sheriff made. Where the items shows the words "Included with other property" that means that the road bed or the station grounds and rolling stock of the Company were included. These were all carried in one column and he could not segregate them to tell how much of it was on the land without going back and getting the levy of that year and making a calculation. He found this the way in which the assessment was carried on the roll for Marion County. He has made a computation as best he could from these records and from "Defendants' Exhibit 331" to show what taxes have been paid by the Oregon and California Railroad Company on its Congressional lands from 1873 down to 1890, both years inclusive, and the result of his computation is that in Benton County the average number of acres assessed from 1873 to 1890 were 9753 acres and the tax paid $2546.42, the average tax per acre 26 cents. In Lane County from 1874 to 1890, the average number of acres assessed for the time were 52,000 acres, taxes paid $4816.26, the average tax per acre 9 cents. Linn County, from 1883 to 1890, the aver-

age acres assessed were 28,714 acres, and the tax was $1400.00, average tax per acre about 4.8 cents. From 1883 to 1890 Washington County, the average number of acres of land assessed was 5360 acres and the tax $1456.56, or an average tax per acre of 27 cents. Yamhill County, from 1877 to 1890, 11106 acres was the average assessment and the tax was $1530.34 or 13 cents per acre. This is substantially correct as shown by the assessment rolls and by "Defendants' Exhibit 331." Lincoln County was carved out of Benton County since 1891. It is his understanding that the lands had not been patented or selected by the Railroad Company and that was why these lands did not appear upon the rolls earlier. He has undertaken to show by "Defendants' Exhibit 331" all that he was able to find in these various counties and his search was confined to the counties disclosed in "Defendants' Exhibit 331." He has made an investigation and search of the records of Multnomah County prior to 1891 to see whether the lands in Multnomah County were withheld from taxation or assessment on account of the suit of the United States against the Oregon and California Railroad Company, Hurlburt and Evans and the record shows that the taxes were paid from 1875 to 1890 and the lands were not omitted from assessment and taxation on account of that suit. That suit was after the date mentioned by him along in 1893. He prepared "Defendants' Exhibit 352." These figures are copied direct from the records of Multnomah County and are correct.

Whereupon defendants offered in evidence "De-

fendants' Exhibit 352," to which complainant objected as incompetent, irrelevant and immaterial, which exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon R. A. BOOTH, called as a witness on behalf of defendants, and being first duly sworn, testified that he resides at Eugene, Oregon, and that "Defendants' Exhibit 332," being two maps purporting to show the lands of the Booth-Kelly Lumber Company in red, and the lands of the Wentworth Company in green, were prepared in the office of the Booth-Kelly Lumber Company under his direction. He is a shareholder and director of the Booth-Kelly Lumber Company, and is familiar with the holdings of that company and the Wentworth lands, and believes these maps to be accurate.

Whereupon counsel for complainant objected to the testimony of this witness relating to the character of the lands and their values, within the limits of these grants involved in this suit as incompetent, irrelevant and immaterial, and it was stipulated that this objection shall be considered as taken and made to all of the testimony of this witness on this subject.

Whereupon witness testified that these lands of the Booth-Kelly Lumber Company thus indicated on these maps, are chiefly valuable for their timber—except those that have been cut over. He does not know the name of the holding company of the lands colored in green,

known as the Wentworth lands, but his relation to these lands in organizing them into a fire district when he was manager of the Booth-Kelly Lumber Company, was with Mr. Wentworth of Chicago, who, he understands, is still interested in the lands. His understanding is now that they are under the care of L. J. Wentworth of the Portland Lumber Company in Portland, Oregon. These lands are chiefly valuable for their timber. Speaking of the character of these lands, with the timber cut off, they are ordinarily termed stump lands, the stumps still remain and all of the heavy debris such as does not burn readily with fires that are run over them for the purpose of clearing them as well as they reasonably and easily can be done for the purpose of protecting the remaining forest; they are hillsides, mountainous. The lands of the Booth-Kelly Lumber Company now owned in Lane County and in Linn County adjoining those in Lane, a bit more than half of them, or about 75,300 acres out of a total of about 136,000 acres, were acquired from the Oregon and California Railroad Company, and were originally part of this grant to that Company. He could not say, but Mr. Dixon could say, what proportion of this holding thus acquired from the Oregon and California Railroad Company has been completely logged off. The timber lands owned by the Booth-Kelly Lumber Company, as shown on these maps, are in the western foothills of the Cascade Range. They are along the small creeks which are tributary to the Willamette River, the different prongs, and on the hillsides and ridges between the streams. They are all mountainous and

hilly lands, except such as they find on benches formed by old slides and erosions and the narrow creek bottoms. The soil varies. It is all more or less rocky. Some of it is dark alluvial soil on the benches. Some of it is red. Some of it is rocky ridges. It has no value except for the timber, where the timber is standing, because the light is excluded, and there is no growth of vegetation that is valuable. After they are cut off and the light debris burned, so as to give a coating of ash, they are good grazing lands. Grass grows readily wherever it is seeded, and they form good pasture lands. If it is seeded immediately after burned, with such tame grasses as are in ordinary use in that locality, they can all be used the greater portion of the year, if the timber is cut off and the debris burned and then seeded in the stumps. The high lands perhaps would be covered with snow during three or four months of the year, and only the lower lands could be used. From his knowledge and investigation, the cost of clearing these lands of the stumps to render them suitable for plowing, where there is any soil that could be adapted to pasturage or grazing or agricultural purposes of any kind, varies greatly because of the different number of trees on the ground and the different character of the soil in which they grow. It would range anywhere from $50 to $500 an acre.

Q. Now, let me put to you this question. Suppose that an intending settler should apply to purchase one of these quarter sections in the state of natue in which it was before any of this timber was cut off, and should offer to the company, seeking to purchase it, $2.50 an

acre under this act of April 10, 1869, go on the premises as an actual settler, and there to make his home as an actual settler, I wish you would state to the Court whether or not in your judgment such land is adapted or was adapted to actual settlement in quarter sections in that way.

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial and calling for a conclusion of the witness both upon a question of fact and law, and not being a subject that comes within the scope of expert testimony in any way.

A. It is not adapted to settlement, and settlers could not make a living on it until after the timber was removed because of shade excluding the light and preventing any vegetable growth.

Q. Would or would not such settler be able to make a living on these lands for himself, or for himself and family, without cutting and selling the timber therefrom?

A. He would not.

Q. What, then, is the chief value of these lands and of lands similarly situated in this grant?

A. In their virgin state?

Q. Yes, that is what I mean.

A. The lands to which I refer belonging to the company and those intermingled are chiefly valuable for their timber.

Q. What would you call these lands then, what class would you put them in, agricultural or timber or stone or grazing, or what?

A. Timber-lands.

Q. About what proportion of these lands belonging to the Booth-Kelly Lumber Company in your judgment are without any soil that would be useful for any purpose—I mean that are rocky or contain no soil of value or are unfit even after cleared and grubbed for agricultural purposes or grazing purposes?

A. The percentage that would not do for grazing is very small, practically all do for grazing except where there are rocky ridges and where it is too rocky to allow the grass to reach the soil; but the percentage of that is very small as far as our land is concerned.

Q. You say it is nearly all suitable for grazing after it has been cleared of the timber and the debris by burning, and after being seeded. Supose that a settler or a man buying one of these quarter sections of logged off land was expected to make his living by grazing on the quarter section, and was not permitted to have the outrange all over the country, you may state whether or not the grazing on this quarter section under these circumstances would be sufficiently good to enable him to suport himself or his family.

A. It would not be. It is not the custom for one one to use grazing lands unless they have some arable land to use in conjunction with it, so that they may provide winter feed; but I consider the lands splendid grazing lands, and he could rent them to others.

Q. About what rental could he get from them, as compared with the rental charged by the Forest Reserve, or do you know?

A. If they were seeded he could get from 50 cents to one dollar per year.

Q. Per acre?

A. Per acre, yes; and seeded.

Q. From whom could he get that—large herdsmen?

A. Yes, and the ranchmen who own stock.

Q. About what would it cost him to prepare this land for seeding and pasturage and to put it in grass, as you have indicated?

A. If he simply runs a fire over it the cost would be very slight, unless he was unfortunate in burning adjoining timber for which he might be liable. The fire spreads over it quickly, and perhaps would permit 70 to 80 per cent of it to be used for pasture, and the cost of the seed would be from $1.25 to $2.50 per acre, owing to the kind of grass and quantity that he sowed on it.

Q. And does that include the labor of seeding as well?

A. Yes, sir. I think so.

Q. Now, does this grass that you refer to in that way require reseeding anually, or is it like meadow or something of that kind that lasts for a number of years and then would have to be reseeded?

A. The custom, of course, or good custom, would be to have perennial grasses, those that don't require to be seeded often.

Q. Then they would simply be reseeded after they had run out?

A. Yes, sir.

Q. Like an ordinary meadow in bottom lands?

A. Yes, sir.

Witness further testified that he was familiar with the unsold lands of the Oregon and California Railroad Company in Lane County; some of them in Linn, Douglas and Josephine, and that the lands of the Booth-Kelly Lumber Company are similar to the remaining lands of the Oregon and California Railroad Company that are intermingled and lying in the same vicinities. He would call these unsold lands timber or burned over lands. They are essentially the same in soil or in rock or in topography, in a general way, as the lands of the Booth-Kelly Lumber Company, and he would say as to the ability of a settler to make a living on these lands in their native state, that the settler could not do it. Of course, by that, he means if the settler remains on the land all the time. It is a mere guess as to what is the present value of the best particular quarter section of these timbered lands, either unsold or belonging to the Booth-Kelly Lumber Company, measured by its market or commercial value. There is no market for the lands now. There is no call for lands in that locality except as the Booth-Kelly Lumber Company may be picking up

occasionally a claim that adjoins their own. He does not know of any lands being sold in the market in the ordinary way. The Booth-Kelly Lumber Company buys some lands. He could give something of an idea what it pays for them, meaning the Booth-Kelly Lumber Company. The highest price that he knows, of timber investors paying for this class of land per quarter section, taking the best quarter section in Lane County, is about $1.00 per thousand on a stumpage basis. There are quarter sections that would be worth $10,000 at that rate. There have been no sales of these timber lands in the vicinity of the lands of the Booth-Kelly Lumber Company that he can recall, where they paid as high as $10,000 per quarter. There have been, however, within the last year, lands sold in western Lane County at about the rate he has named. The price that he named is the extreme price so far as he is advised, but there have been quite large sales within the last year in the Siuslaw region. He knows that the Johnson-Wendling Lumber Company made a large purchase in Lane County in the last year. This concern is composed of G. X. Wendling, of San Francisco; two of the Johnsons, and the Fleischackers of banking interests in San Francisco and largely interested in power lines. He cannot tell how many acres these gentlemen purchased in the sale mentioned by him. In the papers it is frequently referred to as a billion and a quarter and a billion and a half feet, and he has seen the map. It covers, or at least it is a number of different townships, but the acreage he could not give. It would be considered a large purchase. The lands of

the Booth-Kelly Lumber Company were purchased from the Oregon and California Railroad Company between 1898 and 1902.

Q. I wish you would state, Mr. Booth, in your own way, whether or not at the time you made these purchases, or at the time they were made, by the Booth-Kelly Lumber Company, they were made in the usual and ordinary course of business and at the then market price. State the circumstances under which these purchases were made, and including your judgment as to whether or not the prices paid were at the time reasonable.

A. The parties who organized the Booth-Kelly Lumber Company had been operating for quite a good many years previously in Josephine County, and attention was first called to the fir timber at Saginaw in 1896. We had been operating about ten years in Josephine County on lands purchased from the Oregon and California Railroad Company and others, and came to Saginaw to look over the operations there of Mr. J. I. Jones in 1896, and soon thereafter leased his plant for one year, with privilege of buying. At that time these lands were involved because he had contracts running with the company and they were assigned to us. Within the year we exercised our right to purchase, took over the contracts and bought a few hundred acres additional lands in that locality. The price that we paid for the lands that were under the contract was the price at which they had been sold or bargained to Mr. Jones, and the price that we paid for the adjoining lands was the price that

was asked us when we applied for it. After about a year's operation, or during the close, about the close of 1898, we applied for other lands known now as the Wendling Basin. The lands were on the market then, had been frequently quoted from $6 to $6.50 an acre, and we entered into a contract in March, 1899, for 18,000 acres plus, at $7 an acre, is all that we were asked for them. In fact it was 50 cents per acre more than they had been quoted to us in the beginning of the negotiations, but our company was small and taking a less area than had first been discussed; the price was advanced 50 cents. During 1898 and for two or three years thereafter we made frequent purchases from the company, but purchased more of the company lands from others who had contracts with them. In this way we purchased all the lands, all of the company lands that are shown by these maps. And during the same period, and since, we have purchased the intervening even sections. The prices that we paid were the prices asked by the Railroad Company, and were open to all buyers so far as I know. We paid the usual market prices in the usual way.

Q. How did these lands compare in quality with the remaining unsold company lands in the vicinity?

A. Well, we aimed at all times to buy in compact bodies, and in the purchases that I refer to we did buy in compact body unless it was a place where lands were burned.

Q. Before you made these purchases did the Booth-Kelly Lumber Company inform itself by cruising or in

any way as to the timber character of these lands?

A. It did.

Q. In doing this, did it proceed in any other or different way from that of any prudent buyer of timber lands in western Oregon?

A. I think not. The lands were examined by members of the company and their cruisers, then written into a contract. Before examining, however, we would confer with the Railroad Companies as to whether the lands were sold and at what price they would be offered us, and ordinarily we were given time to cruise them.

Whereupon witness further testified that no consideration was ever extended or given to the Booth-Kelly Lumber Company that was not extended or given to every other timber buyer that sought to buy land from the Oregon and California Railroad Company. He could not give the average price per acre of these lands purchased from the Oregon and California Railroad Company which the Booth-Kelly Lumber Company paid, but he could give the price stated in the principal contracts. The increase in value of timber lands and timber holdings in all parts of western Oregon, since the purchase by the Booth-Kelly Lumber Company of these lands, has been quite marked. In fact Booth-Kelly Lumber Company was the first large buyer from the Oregon and California Railroad Company in the interior, to do an interstate business. The Booth-Kelly Lumber Company demonstrated that the timber had value and was a fair competitor with other fir timber

shipped from coast points. When that was known, buying became general. Large timber buyers have made investments in Western Oregon and now have holdings there, from Wisconsin, Michigan, Minnesota, Illinois, Iowa, and other points, and also by people in Oregon. He considers that the Booth-Kelly Lumber Company was the pioneer company in demonstrating the fact that these timber lands when accessible to transportation, had a value resulting from the manufacturing of the timber into lumber and its shipment. Then later investors from these states mentioned, gradually came into this market, and from that time, the market gradually appreciated. He can name quite a number of these people who have thus come from these states and made investments in various parts of Western Oregon in the timber sections: Charles Green, the Wentworths, the Wright-Blodgett people, various people from Saginaw, Michigan, the Danahers and others from Detroit, the Drew Timber Company, and many others. The investments of these people, extended to timber lands of Western Oregon in different localities, both within and without the grant. From the date of the organization and operation of the Booth-Kelly Lumber Company, the price of timber lands in Western Oregon has been gradually appreciating, and he thinks, it is continuing. This market has developed in all of the counties of Western Oregon where there are timber lands. Those who invest for the purpose of operation, either immediately or within a reasonable time, buy only within the influince of transportation facilities. There are others who buy for the pur-

pose of holding a long time who pay little regard to transportation facilities, but buy for investment purposes. Transportation facilities are the principal factor so far as properties are concerned; that is, transportation that in some way gets connection with the ocean or a rail line. He has lived in Oregon all his life, and most of the time in Western Oregon. He commenced lumbering first in 1880, and has been interested in it at all times since, and has been acquainted with the value of these timber lands, or their market value, or whatever value they may have had, from 1880 down to the present time. These timber lands of the Oregon and California Railroad Company had no market value about 1880 of consequence for timber purposes or otherwise. At times small tracks, 40 or 80 or 160 acres, were purchased by small mills for local use, and at the time in the 80's when the railroad was extended from Roseburg south, there was some little market developed in that way for railroad use, but not in any other way. He thinks that these lands first began to have a market value about 1898; that their purchase was the first of consequence. About 1898 all the principal valleys of Western Oregon had been settled in a general way, and these valleys were used mostly for agricultural and grazing purposes. The first large claims were taken under the Donation Land Act and subsequent acts for homesteaders, the pre-emption law and public entry. In 1898 there was little land in the valley belonging to the railroad companies. There was considerable in the foothills that was purchased for agricultural and grazing purposes. Prior to 1898 there

was no demand in the region of the holdings of the Booth-Kelly Lumber Company by purchasers, or by any one, for these timber lands of the Oregon and California Railroad Company. When Booth-Kelly Lumber Company went in there, these timber lands of the railroad company were all offered for sale. There had been no purchases of any consequence. The timber lands of Josephine County, were purchased earlier than those of the Willamette Valley. The timber lands there, were mostly covered with pine, and had uses different from fir, and the operations followed immediately there, after the completion of the railroad. The chief value of these lands was their timber. He was interested in the manufacture of sugar pine and other pine lumber at Grants Pass for a number of years. The concern was, Sugar Pine Door and Lumber Company. He became an employe in August, 1888, shareholder in 1889, secretary in 1890, and manager in 1895. They sold their business there, after the organization of the Booth-Kelly Lumber Company, he thinks, in 1903. Practically all the timber of the Sugar Pine Door and Lumber Company that it purchased, was logged off by 1903, and the Sugar Pine Door and Lumber Company was manufacturing lumber that it purchased from the mills. The Sugar Pine Door and Lumber Company manufactured sash, door and general finish from sugar and yellow pine, or what is now known as California white pine, and the bird's-eye pine was used in some high class finish. It also manufactured box shooks and things of that kind—that was the principal item of business. Most of these lands that

were owned by the Sugar Pine Door and Lumber Company were acquired from the Oregon and California Railroad Company.

Q. What would you say as to the character of the soil there, and as to the fitness for any particular use after the timber was removed?

A. The most of the pine that we operated was taken from the granite soils. It grows there on that class of land more than any other, at least in all the regions near the railroad where we operated. The soil has little value after the timber is removed. There is, however, a red soil in the country, in that section where the pine also grows, that is valuable for fruit purposes.

Q. What would it cost, roughly speaking, to take the stumps out of this land that you refer to in Josephine County, and to make it arable, where there is any soil for that purpose?

A. It would vary, I think, from $20 to $50 an acre. The trees are scattering, and there is but little underbrush.

Q. Less stumps per acre on that character of land than on the lands in Lane County?

A. Yes, and they are more easily removed.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 332, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified—

Q. Mr. Booth, some testimony has been offered in this case from Mr. Charles W. Eberlein, and a report has been introduced in evidence written by Mr. Eberlein, on the subject of the agitation in Western Oregon, or in Oregon, to compel the Oregon and California Railroad Company to sell these unsold lands involved in this suit, and I think it is stated by Mr. Eberlein in substance that you had something to do with this matter. I deem it proper that you should make such statement on that subject as you care to make, and I will ask you therefore to state what, if any, connection you had with that matter, and what knowledge you have on the subject, stating the same in your own way.

A. Will I confine the statement to that phase of Mr. Eberlein's testimony to which you refer?

Q. For the present, yes.

Mr. Townsend: The Government objects to evidence of this character on the same ground that was urged during the examination of the witness Eberlein, namely, that it is incompetent, irrelevant and immaterial, the circumstances under which the Government instituted this suit being in no sense a defense existing in favor of the Railroad Company.

Mr. Fenton: Counsel for the defendants understand the objection is made, but deem it proper that the witness shall make such statement as he cares to make on this subject.

Mr. Townsend: Now, may it be understood that this

objection shall apply to all of the evidence of this witness upon the subject without renewing the same?

Mr. Fenton: Yes, it may be so understood.

A. Mr. Eberlein testified, as I understand it, that members of our company, and myself in particular, agitated the matter of forfeiture of the grant; that I had been at various meetings where there was such agitation, and that I had presided at one. The statement is unqualfiedly false.

Q. Mr. Eberlein somewhere in his testimony, I can't call particular attention to it, stated in substance and effect that these contracts made by the Oregon and California Railroad Company for the sale of these lands which were ultimately conveyed to the Booth-Kelly Lumber Company were improvidently made, and that certain officers of the Oregon and California Railroad Company, or certain employes of the company, were covertly or secretly interested in these contracts, or some of them, and that from his investigation of the matter he felt that the contracts were not made in good faith on the part of the Oregon and California Railroad Company, and that there were some favors of some kind extended to the Booth-Kelly Lumber Company for certain undefined reasons, and I think I recall asking him if certain particular officers whose names had been associated with the transaction were in this deal, to which he replied No, but that certain others were. I wish you would, in your own way, on behalf of yourself and on behalf of the Booth-Kelly Lumber Company, and on

behalf of the Oregon and California Railroad Company employes, state what the fact is in that respect, and whether or not any favors were extended, or any employes of the Oregon and California Railroad Company were interested, directly or indirectly, in this matter.

A. The best answer, I think, is to review the circumstances of the organization of the company and the purchases of the land. As stated before, the first purchase that we made of these lands (I refer now to the lands of the Booth-Kelly Lumber Company) was made from Mr. J. I. Jones. The company had not been organized, nor had any members of it had any acquaintance with Mr. Jones at the time of the initiation of this transaction. After acquainting ourselves somewhat with the manufacture of fir and its uses, and believing that a business could be built up by its manufacture, we brought the matter to the attention of a number of gentlemen whom we knew, and with whom we had business relations in California, and we talked to the principal officers of the company in relation to further operations, the uses of the materials, and the places where it could be marketed, and rates that would be given. This matter was taken up directly with Mr. C. P. Huntington, Mr. H. E. Huntington, Mr. George Crocker and Mr. William H. Mills. After negotiating with Mr. Mills for the lands in the Wendling Basin, which was the first purchase of consequence—

Q. That is in Lane County, I believe?

A. In Lane County, as shown on the map that has

been introduced—we agreed to purchase the lands at $7 per acre, which, as I stated a while ago, is 50 cents more than the price that was first asked, on account of our taking a less area than had been first discussed. The purpose of selling us the lands was to build up the transportation business of the road, and after the contract had been agreed to, and even after it had been written, we were not permitted to sign it until we had made an agreement for the manufacture and the transportation of the lumber. We made such agreement with Mr. C. P. Huntington simultaneously with the signing of the contract, and agreed to move over the rails of the company from Wendling, one point, not less than 2500 carloads of forest product within twelve months from the time that they would lay their rails to our mills. We purchased the right of way for that track, gave them the ties, and fulfilled our part of the contract. We have been operating since. As to whether it is improvident or not, the best answer is the condition of that community now. It is populous and prosperous, and ten-fold more settlers than there were at that time. We received no favors in it whatever.

Q. You say settlers—you mean people living in the country?

A. People living in that locality, employed in lumbering and supplying those who are employed in lumbering. There was no member of the company, of the railroad company, or of any other railroad company, interested then or at any other time or in any lands

that the company have owned or do own; that is to say, at any time that the company owned them. After the company had purchased as much land as its principal officers thought it should have, and a quantity sufficient to operate over an extended period of time, I called the attention to the directors to a body of land that was lying adjoining some that we had already purchased, and suggested that the company should own it. It was decided by the directors that they had purchased a sufficient quantity, and I then asked for permission to form a company to buy the lands so that they might be held in friendly hands. That was the last large purchase of lands made from the company in which I was interested, and I was one of 25 who purchased them. The purchase was made in the name of John F. Kelly, a trustee, and at the time the purchase was made there was no thought of any one in connection with the railroad being interested, but at a later time some of the employes of the company—

Q. Of the Southern Pacific Company?

A. Of the Southern Pacific Company, were interested, but the lands were eventually sold to the Booth-Kelly Lumber Company; but before they were, all the individual members sold their interests.

Q. I will ask you to state whether any officer or employe of the Oregon and California Railroad Company was interested, directly or indirectly, in this so-called Kelly contract, or in any of these lands that afterwards came to the Booth-Kelly Lumber Company.

A. Well, I think the parties were officers who were interested while they were held by Kelly.

Q. Well, I say the Oregon and California Railroad Company?

A. Oh, no, sir; they were not. I beg your pardon; none of them, or in any other lands owned by the Booth-Kelly Lumber Company.

Q. I wish particularly to inquire whether or not Mr. Richard Koehler, who was First Vice-President of the Oregon and California Railroad Company and General Manager of the Southern Pacific Company at that time, of the lines in Oregon, and who had been connected with the Oregon and California Railroad Company since 1874 down to I think 1904, had, directly or indirectly, any interest in any of these lands or in this contract.

A. Absolutely none.

Q. I will ask you whether George H. Andrews, Acting Land Agent and Secretary of the Oregon and California Railroad Company for a great many years, and who resigned September 15, 1904, and was succeeded by Mr. Charles W. Eberlein, and who had been with this company from the early days down, and who is now dead, had any interest in these lands or these contracts, directly or indirectly, or ever had?

A. He did not.

Q. I will ask you to state whether or not Mr. William F. Herrin, Chief Counsel of the Southern Pacific Company since 1894, down to the present time, had any

interest in these lands or contracts, directly or indirectly, or in any other way.

A. He did not.

Q. I will ask you whether or not Mr. William D. Fenton, who became counsel for this company in June, 1891, and who has continued in such relation up to the present time, ever had any interest, directly or indirectly, in these lands, or was connected, directly or indirectly, with the Booth-Kelly Lumber Company in any way.

A. He was not. Neither he nor any of the persons named ever had any discussion, and so far as I know any thought of such a thing.

Q. I will ask you to state whether Judge William Singer, Land Attorney of the Company, and connected with the Southern Pacific Company and the California and Oregon railroad, Central Pacific Railway Company and these companies since 1878, and continuously since, and still in such position, ever had any connection with Booth-Kelly Lumber Company or any interest in these lands, directly or indirectly.

A. None whatever.

Q. I will ask you to state whether or not any of these gentlemen, or all of them, because of any political relations to you or to any member of Booth-Kelly Lumber Company, ever exercised, attempted to exercise, or suggested to the Booth-Kelly Lumber Company, or to you, or you to them, any favors, concessions, undertakings or arrangement because of any political relations or otherwise.

A. Absolutely none.

Q. Then, as I understand, Booth-Kelly Lumber Company bought these lands from the Oregon and California Railroad Company in the same way as any other purchaser, and upon the same basis?

A. That is my understanding.

Q. Who was William H. Mills?

A. He was the Land Agent.

Q. Where was his office?

A. Located in San Francisco. The first purchase of consequence that we made was directly with him.

Q. Who fixed the price for the Oregon and California Railroad Company on these lands that were purchased through Mr. Mills?

A. Mr. Mills did. I would like to add, if I may be permitted—

Q. Go ahead.

A. That the majority of the lands formerly owned by the Railroad Company that were later purchased by us was purchased indirectly or purchased from parties who assigned contracts with the company, without any knowledge or initiation from us.

Q. These persons from whom you took assignments, were they any of the company's employes or persons interested?

A. They were not.

Q. And were these officers or any of them that

I have named interested in those contracts?

A. No, sir, or in any lands that we own or ever owned.

Q. I desire to call your attention to a statement contained in Mr. Eberlein's report, Defendants' Exhibit 309, found at page 80, which reads: "It may be asserted confidently that the present movement against the Oregon & California land grant was not instituted by persons wishing to settle, nor is it a movement for the general good." This report bears date May 1, 1908. "It has been brought on by agitation begun by certain large timber holding interests in Oregon for the sole and express purpose of compelling the railroad company to part with its timber holdings, in order that they might be acquired by these same timber holding interests. This fact has been well known by the land officers of the Oregon & California Railroad Company since the agitation was commenced, but it is brought to light clearly by the statement of Mr. A. C. Dixon of Oregon, an officer of the lumbering and timber holding corporation of the name of 'The Booth-Kelly Company,' before the Committee on Public Lands of the House of Representatives, on March 12, 1908. (See 'Hearings Held Before the Com. on the Pub. Lands,' etc., page 76), where he says: 'It was at a meeting of shippers, mostly lumbermen, that the question of disposal of lands still in the hands of the original grantees (Oregon & California Railroad Company) was first brought out in a public way, and the lumber interests were behind and favored every resolution on this sub-

ject adopted in the State and are still in hearty accord with the original purpose of the movement.' And, further: 'The Government, with all the agencies at its control, should secure their (the people's) rights from an offending corporation in a suit which we and other public-spirited citizens of our State have proposed and furthered continuously since it was first brought to public notice.' " This appears to be a quotation from the remarks of Mr. Dixon, set out at page 76 of a Statement of Mr. Dixon, made at the Hearings held before the Committee on the Public Lands of the House of Representatives, March 12 and 14, 1908, on Senate Resolution No. 48, instructing the Attorney General to institute certain suits, etc., published by the Government Printing Office at Washington, 1908; and I have verified the quotation from this statement of Mr. Dixon, as thus reported, and it seems to be an accurate copy of what Mr. Dixon is purported to have said. In view of Mr. Eberlein's statement in this report and his testimony elsewhere, that you attended and presided at one of these meetings, I wish you would state further, if you care to, what meetings, if any, you attended, where, and what was the purpose of these meetings, and what was the subject under consideration, whether you had anything to do with making this statement quoted from Mr. Dixon, or whether the Booth-Kelly Lumber Company, other than as represented by Mr. Dixon, so far as you know, took any such position.

A. I never attended any meeting that had for its purpose the discussion of the forfeiture of the grant, but

I attended one meeting in 1906 at Eugene that was called by the commercial organization at Cottage Grove. Their call was extended to the commercial bodies of the towns of the Willamette Valley. The meeting was quite largely attended in which they were discussing the proposed advance in rates, mainly what was known as the $3.10 rate to Bay points, but also the increase in the eastern rate.

Q. You mean lumber rates?

A. Lumber rates. I did not preside. I spoke at that meeting.

Q. What is the fact as to whether or not this meeting was called and attended mainly by persons who were interested in the manufacture and sale of lumber?

A. The call was a general one to people in the Willamette Valley. It was attended by quite a number of gentlemen from Portland, representing the transportation committee, as I think, of the Chamber of Commerce, and various other members of the commercial bodies of the Valley.

Q. Was there at that meeting under discussion the subject of compelling the Oregon and California Railroad Company to sell its unsold timber-lands?

A. Not so far as I recall.

Q. What was said, if anything, if you recall, at that meeting about an effort to be made to forfeit the grant for failure to sell the lands at all, or for failure to sell it in accord with this act of April 10, 1869, at

$2.50 an acre and to actual settlers, and in quantities not to exceed 160 acres?

A. Well, the matter discussed principally was the matter of rates on lumber, and so far as I recall nothing else. That is what I discussed.

Q. Was there or not any statement by any representative members there that the lumbermen should institute some method of reprisal looking towards forcing the company to sell these lands or to forfeit the grant if these rates were advanced? Was there not something of that kind said?

A. Nothing that I recall. It would have been absurd, of course, for the owners of timber-lands to urge forfeiture of the grant, when they would certainly know it would cloud their own titles.

Q. Well, at that time, Mr. Booth, isn't it true that the timber men, I mean the people who desired to invest in these lands, were opposed to the company's discontinuance of sale?

A. Well, I don't think that was so with timber men any more than other classes of people. There was a general remonstrance against it, and it extended to all classes of people, that it was not right and a mistaken policy, and so on.

Q. That is to say, to suspend the sales of the land?

A. To suspend the sales of the land.

Q. As they had been sold theretofore?

A. Yes, sir.

Q. Was there or not any particular demand voiced at that meeting, or any other, that these lands should be sold at $2.50 an acre to actual settlers in quantities not to exceed 160 acres?

A. There was not at that meeting, nor at any other meeting that I know of.

Q. The opposition, as I understand you, then, to the policy was because the lands were not open to sale, as they had been theretofore.

A. That is it.

Q. Did you or did you not have anything to do personally with the preparation of the joint memorial which was passed in February, 1907, by the Legislature of the State, introduced, I think, by Senator Mulit of Jackson County, other than to vote for it with all the other senators?

A. I had nothing to do with the preparation of it. I voted for it.

Q. The records of the Senate and of the House show that it was practically a unanimous vote on that measure. Was there or not any discussion in the Legislature on that subject?

A. I think there was. A number of senators spoke in favor of it.

Q. That was in February, 1907?

A. About that time, yes, sir. There was a general demand for it from the constituency all over Western Oregon.

Q. That demand was because the company had not continued to sell the lands as before?

A. Yes, sir. Now, if I may refer to a further statement there in connection with our company?

Q. Yes.

A. And the matter of agitation. I am informed that Mr. Eberlein said that we had threatened to have such measures introduced.

Q. I don't find that in the record. I don't think it is there.

A. I think it was in the newspapers.

Q. Well, I don't think it is in the evidence, but you may make your statement.

A. Because the company declined to sell us lands. That is not true, so far as I know. We never applied to the company for any lands that we did not purchase unless it might be two or three sections that were intermingled with ours. That was about the time the lands were withdrawn. But we never had any trouble with the company in any way in relation to the purchase of the lands—never any misunderstandings, and had no occasion whatever from that cause to agitate the forfeiture of the grant.

Q. I wish you would refresh my memory by stating who were the members of the Transportation Committee of the Chamber of Commerce that attended that meeting at Eugene to which you refer, in 1906.

A. Mr. Devers was there.

Q. A. H. Devers?

A. Yes, sir.

Q. H. Wittenberg?

A. I am not sure as to Mr. Wittenberg. Mr. Samuel Connell I remember. I don't know whether he was there as a member of the body, but I remember his being there. I don't think I can name any others, although I know there were several of them.

Q. Mr. Samuel Connell, I believe, at that time was in the manufacturing of lumber, the same kind of lumber, here in Portland?

A. Yes, sir; and I am inclined to think at that time he was Secretary of the Chamber of Commerce; if not he had been prior.

Q. Mr. Devers was a—

A. Member of the Committee.

Q. Member of the Committee. He was not in the lumber business.

A. No, sir; a grocer.

Q. He was a grocer?

A. Yes, sir.

Q. This meeting, then, was primarily to discuss a proposed increase of rates on lumber, common lumber, common green lumber, that was destined to Bay points in California, from $3.10 to a rate of about $5. Is that correct?

A. That is correct. I think also it had to do with

the advance of the eastern rate from 40 cents to a higher price.

Q. Fifty cents?

A. Yes, sir.

Q. And at that time the rates put in by the company, or threatened to be put in, or announced to be put in, were satisfactory to the Portland lumber manufacturers, who didn't use the railroad but who shipped by water, and were not satisfactory to the interior manufacturer?

A. That is correct.

Q. It was claimed, was it not, by the Booth-Kelly Lumber Company, that this rate of $3.10 had been put in by Mr. C. H. Markham about the time the Booth-Kelly Lumber Company established its business at Saginaw and Wendling, and that it was not a temporary rate but one that was to be continued? That was the claim, was it not?

A. The statements that have been made by members of the company, and by myself, were that it was a temporary rate when it was first made, but that after a year's time the rate had been tested, that it was satisfactory and was made permanent.

Q. Do you recall the fact that during that agitation of rate Mr. Stubbs, Traffic Manager, came to Oregon, and that there was some effort to agree on the restoration of that rate? He went to Wendling. He went over these properties with you and with other mem-

bers of the Booth-Kelly Lumber Company. Do you recall that circumstance?

A. I do.

Q. Do you recall that it was contended by the Company officials that the rate of $3.10 under the circumstances was not a compensatory rate, and that for that reason they ought to and should raise it; that it was afterwards litigated, and the rate was made $3.40?

A. Not just in the way you state it, Mr. Fenton.

Q. Well, just state it. I am stating from general recollection.

A. At that time our Wendling mill, the principal mill, was shut down, and Mr. Stubbs asked if we would operate it if the $3.10 rate was restored. We informed him that it would be, and he restored it on common green rough lumber. and we continued to operate. At a later time it was taken out and the $5 rate put in, and then it was litigated.

Q. Well, that is right. And what was the ultimate result of the litigation?

A. The rate was made $3.40.

Q. Do you recall that in that matter there was a difference of opinion among traffic officials in Oregon and traffic officials in San Francisco as to this controversy, and that the Oregon end of it, including Mr. Markham, wanted to maintain the $3.10 rate?

A. I do.

Q. That was a fact?

A. Mr. Markham wanted to maintain it, and other members. Mr. Stubbs was opposed but yielded.

Q. Now, then, that was the subject really under consideration at this meeting in Eugene in 1906, was it?

A. It was; and in connection with the eastern rate also.

Q. That is what I mean.

A. Yes, sir.

Q. In the discussion there do you recall that there was anything said or intimated by anybody as to the land matters?

A. Except indirectly. I remember this, that the establishment of the company's mills operating on its own lands was considered unfair to mill men.

Q. You refer now to the company's mills on—

A. The Wendling branch.

Q. On the Wendling branch, situated at Marcola?

A. Marcola, yes.

Q. Now, who considered it really a breach of good faith or an improper thing for the company to do under the circumstances? What manufacturing concern?

A. Well, as a matter of good faith I don't know that any one did, but it was very generally condemned; I think by all of us. I know it was by me.

Q. That is to say, the Booth-Kelly Lumber Company and other manufacturers felt that the company

ought not to engage in a business in which they were common carriers and in which others who were patrons of the road were making their living and making their profits, if any?

A. Yes; because these parties had purchased the company's lands, demonstrated that they were valuable, and were then operating and were at a disadvantage in selling if the company provided itself with its material.

Q. Now, then, that was a source of some irritation between the manufacturers and owners of timber-lands and the company?

A. It was a matter frequently talked about, yes.

Q. Now, did that give rise or occasion to the policy which later became generally supported by the public, leading to the attempt to forfeit the grant?

A. It might have been a factor, but I don't think a very material factor. Now, it was stated, if I may answer that more fully, in Mr. Eberlein's testimony that the Railroad Company was compelled to do this largely on account of the acts of the Booth-Kelly Lumber Company.

Q. On account of raising the price of ties?

A. Yes, and cancelling contracts for ties.

Q. What is the fact about that?

A. It is absolutely false. The Booth-Kelly Lumber Company never did cancel a contract with the Railroad Company, could not if it wanted to; but it frequently permitted contracts to be cancelled and never

had any trouble with the Railroad Company as to the sale of its product.

Q. Was there or not about that time a sharp advance in the price of ties by all dealers?

A. Yes, sir; in all kinds of lumber, not ties alone.

Q. What was the occasion of that sharp advance?

A. The extended markets and the general demand for lumber.

Q. Do you recall what was the price of ties about that time?

A. I do not.

Q. Mr. Booth, I show you what purports to be a certified copy of "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,' and so forth," which appears to be an Act of Congress, approved August 20, 1912, commonly known as the Innocent Purchasers Act, which, for the purpose of identification, may be marked Defendants' Exhibit 333. Do you recall the fact that such an act has been passed?

A. I do.

Whereupon witness further testified that the Booth-Kelly Lumber Company has a suit pending known as one of the forty-five Innocent Purchaser suits in this court, and that the lands involved in this suit and in another suit against John F. Kelly, Trustee, and a

third suit in which Booth-Kelly Lumber Company is interested, aggregate about seventy or seventy-five thousand acres, the entire purchase from the Oregon and California Railroad Company.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 333, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that it was his understanding that Charles W. Eberlein testified that on account of some grievance of the Booth-Kelly Lumber Company, W. C. Hawley was induced to run for Congress for the First District, and to introduce the resolution of forfeiture, and that witness urged him to support it. This statement is not true, and witness never at any time suggested to Hawley that he should run for Congress, and never discussed the matter of forfeiture with him at any time prior to his election, or at any time prior to the introduction of the resolution known as the Fulton resolution. After that resolution was introduced, he talked to Hawley about it, at the time witness was a witness before the Interstate Commerce Commission, as it affected the purchasers of the grant. He had a short conversation with Hawley in which Hawley stated that the matter had not been very generally canvassed, and what would be done so far as innocent purchasers, if there were any innocent purchasers, had not been developed. Hawley made no statement in relation to his action in regard to this act. With that exception, he had no conversation with Haw-

ley as to this resolution, nor as to his action in the matter, nor even as to running for Congress.

Whereupon upon cross examination witness further testified that he had lived in Oregon 54 years, was born in Yamhill County. He had not lived all of his life west of the Cascades. He had been in Eastern Oregon about three years in the 70's, with that exception he had lived in Western Oregon, that is in that part of Oregon situated west of the summit of the Cascades, and for a number of years last past he has been quite familiar with the general industrial and commercial history of Western Oregon. Kelly was associated with him in the Sugar Pine Door and Lumber Company but Kelly was not a stockholder until 1895 when witness became interested in the subject of establishing a general milling business, the first place was Saginaw and Kelly was one of his associates. He first took an option at Saginaw from J. I. Jones, whose holdings consisted mostly of railroad lands, but the option also covered some even sections. They first took an option for the purchase or lease and a few months after that, they made a lease for 12 months with the option of buying within the life of the lease and they exercised the right to purchase during that year and purchased in 1897. Shortly thereafter, they extended their plans and commenced purchasing these other railroad lands mentioned by him. Their negotiations for the purchase of lands in the Mohawk Valley, that is for the first large holdings, were in the latter part of 1898, the contract was in March 1899, and from that time on until late in 1902, they

made other purchases. In the meantime they got several small contracts and two large ones, where the Railroad Company had sold lands to other purchasers. The large ones were from Amos Hyland, for lands tributary to the Middle Fork. The Hyland contract covered nearly 7000 acres of railroad lands. They purchased from him at the same time, some lands from the even numbered sections intervening the railroad lands. After they negotiated these contracts with the Railroad Company, they filled in their holdings as much as they could reasonably, by purchasing the intervening even numbered sections. These contracts where they purchased from other persons, were generally in other localities. The Hyland contract, being on the Middle Fork, was where they had no holdings of any consequence at that time and the Jones and Cook contracts were on the Brumbaugh River. It is a fact, generally speaking, that they first acquired the railroad holdings and afterwards picked out the even numbered sections intervening them, except where they made large purchases like the Hyland and Cook. The deal with them carried also even sections, but the Company added to them, even and odd sections from time to time. In the case of Mr. Hyland he owned quite a little of the even numbered sections then, where it was in the locality where he lived and had an extensive stock business. He owned many of the even sections and had purchased timber lands from his neighbors on the even sections. In the case of the Jones and Cook contracts it is true that they had purchased the odd numbered sections from the Railroad

Company and then filled in by acquiring the even numbered sections. A large part of these lands referred to by the witness in his testimony, after they have been logged off, can be at a comparatively slight expense, converted into very good pasture lands. That has actually been done as to some of the lands that have been logged off; that has been fairly demonstrated. There is a sufficient rainfall in that general vicinity to give reasonable assurance of annual crops without irrigation. Dairying is generally carried on in this general vicinity and is understood to be profitable and he thinks it is. This dairying industry, has reference to lands between these holdings of the Booth-Kelly Lumber Company and the railroad, as a rule in the little valleys on the edges of the foothills. There are ranchers as far east as the holdings of the Booth-Kelly Lumber Company. These lands of the Booth-Kelly Lumber Company could not be used for agricultural or dairying purposes, until the timber has been removed, then if they are seeded to tame grass they would make good pasture lands and of course a considerable portion of them would do for fruit, gardening and even agriculture, if they were cleared. While he does not know the fact beyond the State of Oregon, it is true, he thinks that the timber must first be removed before lands covered with evergreen forests, not of deciduous trees, can be used for any kind of agricultural pursuits, dairying or grain growing, or fruit growing or otherwise. Grass grows more or less among the oaks and maples and things of that sort. The timber of fir and pine lands, must first

be removed and this is true with reference to these particular lands. When he refers to these lands as timber lands, he refers to the first use that can be made of such lands, and he does not mean by that, to exclude the possible use of the lands after the removal of timber, for grazing and agricultural purposes and when he says that these lands could not be used for the purpose of settlement and that the settler could not maintain himself upon the lands, speaking generally, he means that the lands could not be put to any use that would maintain a settler while the timber was standing. The reasonable value of the timber would go a long ways towards clearing the land and assisting the settler in establishing a home there. If he had the privilege or had the opportunity of disposing of the timber while he was clearing his land, he could make settlement on it. He thinks that to some extent as the milling industry has proceeded in this vicinity, with which he is personally familiar, employes of the different milling companies working for these companies at the same time have prepared lands in the vicinity in which they worked, by grubbing up the stumps, referring to lands that have been logged over and have thus prepared for themselves homes in that general vicinity. That has taken place to some extent. It has in instances where members of families working for the lumber concerns and other members of the family are clearing up homes along the foothills in the brush lands and in places in cut over lands.

Whereupon witness further testified as follows:

Q. Is it not a fact that a number of families have established homes in that general vicinity by that method that you have just described? I refer to lands that were timbered but have been logged off.

A. Well, that is especially true of the lands in the lower foothills that were covered with timber that has been removed and is being removed for wood and hauled into towns. There is a lot of that in Lane County, and I think in other counties, settlements being made in that way, but not much of that from the lands that we own or lands as remote from towns as they.

Q. Well, that is owing to the fact that settlement has not yet reached those remote parts, rather than the fact that the lands could no be so used. Isn't that true?

A. Well, there has been no policy adopted, so far as I know, of people who have cut over the lands yet of disposing of them, and the opportunity has not been given in that locality for that reason. It could be done if the cut over lands were sold to them.

Whereupon witness further testified that the Booth-Kelly Lumber Company has discussed the policy of reforesting its lands, but had not yet adopted a policy as to cut over lands. Pending a decision on that point, the Company has not disposed of its cut over lands. He lived at Grants Pass 12 years and at Eugene or in the vicinity 13 years and about 10 years at different periods near Roseburg. He is familiar in a general way with the country from Eugene south, practically to the State Line, but not very familiar at the present time with

Jackson County but is with Josephine, Douglas and Lane Counties. His knowledge of the character of the soil in Josephine County and its susceptibility to cultivation and growing of vegetable products, was gained largely during his residence there. It is true, that since he left there, the granite soils of Josephine County are being exploited, the lands are being cleared and advertised and offered for sale and some of them sold, but so far as his knowledge extends, it has not been demonstrated that these granite lands were good for vegetable products. He was there recently, at their fair, going there to attend to business matters in relation to his brother's estate, as he frequently does, and he made considerable inquiry then and also of the probability of irrigating the lands near Grants Pass, for the purpose of ascertaining how it would affect values there of lands than he had under control for his brother's estate. He was shown some products that were said to be grown on granite soil, that were fairly good, but the general understanding was that without irrigation the granite would not produce well. He is familiar with those lands immediately around Grants Pass, so far as planting is concerned. He knows that these lands have been planted and planted to grapes, lands on the hill sides in granite soil in sight of Grants Pass but the grapes are not yet bearing. What they may have done on any of these soils there since he left, with the exception of that immeditaely around the town and along the railroad he gained from inquiry from others. As he has stated these granite soil lands would produce with sufficient mois-

ture from irrigation, but while there was plenty of water in close proximity, the cost of putting it on the granite lands was excessive and that had not been carried out yet to any great extent, but probably would be. He is positive that they will produce some sorts of vegetation with irrigation. That has been demonstrated. The meeting at Eugene referred to by him in his testimony, was brought about by the announced plan or purpose of the Railroad Company, to increase rates on milling products and that is what really brought forth the meeting. The milling industry in Western Oregon in those vicinities that are dependent upon the railroad for transportation, had very largely been built up, on the faith of the former rates that the railroad company had put in force. Markets had been established and mills erected and the entire industry, built up with reference to the existing transportation rates and he considered, that the territory south from Eugene to the State Line, within 30 or 40 miles of the railroad is dependent for transportation facilities upon the Southern Pacific Company, as lessee of the Oregon and California Railroad Company. It is a fact that about the same time that the Railroad Company threatened or gave notice in some way, that it was about to increase the rate on lumber, that it installed also at about the same time, mills of its own at Marcola.

Whereupon witness further testified as follows:

Q. Now, I will ask you if it is not a fact that the real reason that brought about this public remonstrance that you referred to yesterday, this general public de-

mand which resulted in the unanimous adoption of the joint memorial of the legislature of Oregon addressed to Congress and the executive officers of the National Government, was the general fact that the Railroad Company had a virtual monopoly of transportation from Eugene southerly to the State line, and owned nearly one-half of all of the lands tributary to its line of road, and that the policy that had been adopted by the Railroad Company to withhold its lands from sale had materially checked the industrial and commercial development of that part of the state, resulting in this popular remonstrance and protest that you referred to, and which subsequently induced the unanimous adoption of this joint memorial to Congress.

A. I understand the question, but there is a certain deduction made there that I am not quite sure about. I can answer it in a general way, I think, so far as my own opinions are concerned.

Q. You understand the question now is, whether or not that general condition did not exist and that it was the discussion of that general condition that brought about this popular remonstrance, resulting in the unanimous adoption by the legislature of the State of this joint memorial?

A. I think it is true that the memorial was the outgrowth of the action of the Railroad Company in withdrawing its lands from sale and in the disturbance of freight rates. So far as I know, the agitation came first and continued from the commercial organizations at

Cottage Grove, where the town and the community was largely dependent on lumbering, where many small mills had recently been established. I think that those two things were the principal causes of the memorial.

Q. Well, now, from your general knowledge of the industrial and commercial history of Western Oregon from Eugene southerly to the southern boundary line of the State, and especially the territory tributary to the line of railroad of the Oregon and California Railroad Company, is it not a fact that the withdrawal of those lands from sale by the Railroad Company, and the withholding of the lands by the Railroad Company did materially check the industrial and commercial development of that country?

A. I think that is true to some extent in the three counties named, more particularly in Josephine County. It was true in a less measure in Douglas because there is not a great deal of milling there, and in Lane because most of the milling concerns had provided themselves with timber; but it affected Josephine County directly and immediately.

Q. Was not that view publicly discussed in this general public discussion that you referred to, which brought forth the joint memorial of the Legislature, was not that one of the elements that entered into the discussion?

A. That is a claim that was very generally made.

Q. One of the principal problems that your com-

pany has had to contend with has been the subject of transportation. Is not that true?

A. Yes, sir.

Q. And that has led you to give general study to that subject and particularly with reference to the community wherein the holdings of the Booth-Kelly Lumber Company are situated?

A. Yes, sir.

Q. Well, is it not true that the Railroad Company has virtually a monopoly of transportation from Eugene southerly to the southern boundary line of the State, and has had since the construction of the railroad? I am speaking now with reference to the subject of transportation as applied to the practical development of the industrial and commercial resources of that territory.

A. They are the only general transportation company in the regions near the railroad. Of course in that part of Western Oregon west of the Coast Range it is not influenced by that directly.

Q. You refer now to the territory that may make use of the ports on the Oregon Coast?

A. Yes, sir.

Q. Well, that is limited to the lands situated west of the summit of the Coast Range, is it not?

A. Yes, sir.

Q. And by far the greater part of this land grant is situated east of the summit of the Coast Range.

A. Yes, sir; so far as it relates to their land grant the answer would be in the affirmative. I understood you to include all Western Oregon.

Q. Well, my question did include Western Oregon, and for the purpose of completing the record I will ask you to limit yourself to the territory within the exterior boundary lines of this land grant. Now, is it not true that that territory is at the present time wholly dependent upon this Railroad Company for transportation, and has been since the construction of this railroad?

A. All the transportation is controlled by them, or influenced by them.

Q. Now, in your judgment, Mr. Booth, what effect would it have upon the future industrial and commercial delevopment of the territory within the exterior boundary lines of this land grant from Eugene southerly to the southern boundary line of the State if the Railroad Company should permanently withhold these lands as a permanent estate existing in its favor? My question is, what effect in your judgment would that have upon the general development of the industrial and commercial resources of that territory? I forget now whether I included that in my former question, this of course being subject to the same objection that has already been interposed.

A. If the lands are not to be occupied it would retard the growth in a general way and prevent the normal increase of population. But it would depend largely

on what policy the railroad might adopt as to the lands in permitting them to be settled.

Q. Well, would it not give the Railroad Company the opportunity to entrench its monopoly of transportation by virtually a monopoly of production of the lands tributary to the railroad?

Q. Omitting now from consideration the lands that at the present time have passed from the Railroad Company?

A. That would be true if the Railroad Company removed the growth from their own lands and carried it over their own rails, or if they required settlers who might go on those lands to ship over their own rails. I do not know how it could be otherwise.

Q. But the ownership of the alternate sections, either even or odd, necessarily controls the industrial and commercial development of that country, does it not, by anybody, either the Railroad Company or anybody else?

A. It affects and retards it.

Q. Can there be any general development of this territory with which you are familiar within the exterior boundary lines of this railroad grant if the Railroad Company owns and holds virtually one-half of the lands situated in alternate sections, as this grant is, unless the Railroad Company will join in the effort to develop those industrial and commercial resources?

Q. Would it be practical to develop that country

with the odd numbered sections withheld from development by the Railroad Company?

A. If they hold the timber-lands in any region it will probably retard the milling from the even sections that are intermingled, but when the timber is removed from the even sections, or on the brush lands, or things of that sort, it might retard, but it would not prevent the settlement on the even sections.

Q. But bearing in mind the establishment of roads and schools and other necessary incidents to the development of any territory, it is true of this territory, the same as any other, is it not, that the withholding of the alternate sections from settlement or improvement or industrial use would materially check and retard the development of the territory generally?

A. Well, I think my answer is a fair one, that it will retard it but not prevent it entirely.

Q. As illustrating that point, you testified yesterday, did you not, that there is no market for the lands intervening the holdings of the Booth-Kelly Lumber Company except the Booth-Kelly Lumber Company itself. Nobody else is buying the lands intervening your holdings.

A. No, sir. I didn't testify that. It is not true.

Q. What did you say with reference to that?

A. I don't think the question was up. What I mean to say is that other people are purchasing the lands intervening so that we do not own on the even sections, have been doing so.

Q. You were asked yesterday as to the reasonable market price for the most valuable piece of land within your holdings. My understanding was that you testified that there was no present market for those lands except such as the Booth-Kelly Lumber Company itself purchased.

A. I did not mean to be so understood.

Q. Well, then, I either misunderstood you, or you misspoke. That was my understanding yesterday.

A. I understood the question to be the maximum value of any given claim. I think that that was repeated several times, that it should be the maximum value, and that is what I meant to respond to.

Q. But it is true, is it not, that where the lands in one or more townships are held, one-half of them in alternate sections by a single proprietor or owner, and the intervening sections in small quantities by a large number of holders, that the owner of one-half of the lands in alternate sections does to a large extent control the market value of those lands?

A. It has a very marked influence.

Q. It is difficult, is it not, to secure a purchaser for lands covered with timber, which are situated in isolated tracts, even as large as a section.

Mr. Fenton: Does your question apply to timberlands?

Mr. Townsend: Yes.

A. The market is quite active in a small way for

timber-lands anywhere within the vicinity of our holdings; that is to say, they are changing hands, from one to another, but not in a large way nor at a high price; not at such prices as I named yesterday as a maximum price. But if the odd sections are held by one concern there can be no large grouping of lands, and without the grouping or continuous ownership the milling industry cannot be profitably carried on.

Q. That is, with the many problems that confront the milling industry, including the establishment of logging roads and the logging off of the land itself, and in view of the amount of profit made out of the business, it is impracticable to attempt an enterprise of that kind on any large scale with reference to the alternate sections of any particular tract of land?

A. That is true.

Q. Now in the valleys, and even in some of the foothills, it is a fact, is it not, Mr. Booth, that in the early days prior to 1880 the early settlers actually burned the timber in order to make way for a settlement, because there was not then market for the timber itself?

A. Yes, that was done much later than 1880.

Q. What I mean is, that the settlements that have been made in the valleys and in the sloping foothills were made many years ago, in a great many instances, even where the settlers had to burn the timber and got no value for it at all?

A. Yes, sir."

Whereupon witness further testified that he, in connection with Frank H. Buck, president of the Booth-Kelly Lumber Company, negotiated most of these purchases of railroad lands, so far as the first purchases were concerned. Later, the negotiating was done almost wholly by himself. The negotiation of those purchases was about equally divided, perhaps with the officers of the Company at San Francisco and at Portland. Negotiation for the first large purchase was conducted at San Francisco, and that related particularly to the general policy that the Company should pursue. Negotiations for the smaller ones, perhaps, the greater number of all the smaller ones, were with the Portland office, and in one instance, perhaps, the matter was discussed with both offices. George H. Andrews represented the Portland office and at San Francisco, they dealt with William H. Mills. They discussed the policy of the Railroad Company with Mr. Huntington, as to the uses the Booth-Kelly Lumber Company should put the timber to, that it bought, and they stated to Huntington that they were buying this, for the purpose of manufacturing, and agreed to ship at once and as soon as the land should come into their possession to construct a mill and commence shipping at once. They gave Huntington the territory about where they expected to ship, but the land negotiations were with Mills. Negotiations opened with Andrews were carried to San Francisco in order to get final decision in only one instance, where the matter was taken up at both ends. That was by common censent and not to go over Andrews or anything of that sort. The con-

tract was finally signed by Andrews. Andrews was subject to the general supervision of the San Francisco office during that time. That is his understanding.

Whereupon on re-direct examination witness further testified that he did not testify that the lands of the Booth-Kelly Lumber Company were in the Mohawk Valley, he did not mean to so testify, but that the lands about Wendling are in the Mohawk water shed. The lands of the Booth-Kelly Lumber Company about Wendling are mountainous lands and are not in any valley. He testified that the dairying was mostly between the holdings of the Booth-Kelly Lumber Company and the railroad. That is, the railroad referred to by him was the main line running from Portland through Eugene to the California State Line, or such branch lines as the Wendling line. There is considerable dairying in the Mohawk Valley below the other mills, and that is what might be called an extension of the Willamette Valley country. It is true that the valley lands of the Willamette Valley and other valleys in Western Oregon were settled under the public land laws and were mainly cleared of timber and were agricultural in their character, in their original state, but it is true that along the small streams extending well up into the foothills and even up to the timber regions, settlements up to 12 or 15 years ago, the cleared area was extended, even homes made, by felling timber and burning it. These lands referred to by him are along the border of the sections and the small streams that are tributary to the different prongs of the Willamette. He did not think that he

said in his testimony that these timber lands had no value and now have no value excepting for timber that is on them, but he said and repeats, that that is their chief value. He thinks they have some value after the timber is removed. He thinks that the reforesting is entirely problematical, but it is demonstrated so far as their value as pasture is concerned. The men who own these timber lands, who have logged them off, in his region, are considering the question of what to do in that respect. The beginning of the market for timber was when the Booth-Kelly Lumber Company had demonstrated that by manufacturing the timber into lumber and shipping the same, there could be something realized out of the timber. The percent of their output affected by the $3.10 rate varied at different times. There was quite a good deal of disturbance about the $3.10 rate as he now recalls. It either was withdrawn or threatened to be withdrawn three different times. In their early work, he thinks as much as 30 to 40 percent of their output was influenced by it. This $3.10 rate applied to all classes and later and finally it applied on rough green common lumber. That was the final adjustment.

Whereupon witness further testified as follows:

Q. Now, then, the $3.10 rate as it affected this rough green common lumber only affected it from Willamette Valley points to Bay points in California?

A. Well, that situation is comparatively recent, Mr. Fenton. Our early milling in the beginning to the time to which you first referred, in 1898, and around

there, our output went largely to California and to points that were influenced by that rate, where it was used as base rate, and so on. But the change to the common green rough lumber was the final adjustment of the rate, and with an understanding between the Railroad Company and the shippers. But earlier the $3.10 rate applied to all classes of lumber.

Q. I understand. And this later understanding was when with reference to the first application of the $3.10 rate?

A. I cannot give you the exact date now.

Q. Well, you had not been long manufacturing until the understanding was had that this $3.10 rate was limited to the common rough green lumber?

A. Yes, we had manufactured quite a number of years and had manufactured extensively before it was ever disturbed; established all of our mills.

Q. Yes, I know; but it finally was limited to the class of lumber that you speak of, and was in operation for a good many years before there was an effort made to raise it to the $5.00 rate, about which the complaint was made in 1906.

A. The $3.10 rate was in operation for quite a good many years.

Q. That is what I mean.

A. Before there was an attempt to raise it.

Q. Yes.

A. That is true.

Q. Well, then, later it was applied only to the common lumber, common rough green lumber?

A. Yes, sir.

Q. And that was the situation when the effort was made to raise it to $5.00?

A. The final effort.

Q. Yes, by the company.

A. Yes, sir.

Whereupon witness further testified that there were copies in his office of some affidavits that were procured by the Booth-Kelly Lumber Company and submitted to the Public Lands Committee at Washington while the Congress was considering a bill to compromise with the purchasers involved in the 45 suits referred to in this record, which affidavits were submitted to the Public Lands Committee by Mr. Dixon. These related to the character of the lands and the cost of clearing.

Whereupon witness further testified as follows:

Q. These were—you might state generally—these related to the character of the lands, as I understand, and the cost of clearing?

A. Yes, sir.

Q. Suppose the Oregon and California Railroad Company had in 1906 or 1907 offered for sale all of these timbered lands to so-called actual settlers in quantities not exceeding 160 acres and at a price not exceeding $2.50 an acre, and had sold them to so-called actual

settlers or persons who would go actually and build a cabin and live on the land for six months, or whatever the time, three months, no time being fixed in the statute, and the title of the company had vested in these actual settlers, how long, in your judgment, Mr. Booth, would it have been until these actual settlers acquiring these lands at $2.50 an acre could have resold them to timber buyers and timber investors and mill men at a large advance; and how long would it have been until most of these lands would have passed into timber investors or timber men for the purpose of development?

Q. You may answer.

A. I think your question is at what time they could have done that?

Q. Yes; and what would they have done probably?

A. Well, I could answer it perhaps more accurately by referring to the conditions in the Mohawk or Wendling Basin. When we purchased the lands of the Railroad Company there about all of the even sections had been taken either by homesteaders or entrymen, under the Timber and Stone Act, but there were no residents in there except along Mill Creek, and as I recall now in two places where the lands had been cut over in part and the logs floated down the stream to Coburg, and there were two families living there, the families except the husband remaining on the property, but the husbands were away at work. And with that exception there was no one in that region. And of course they could not make a living on them, and did not attempt

it, and there was no opportunity given them until our mill was established there, which was about 1898.

Q. What became of the title to these even sections?

A. We purchased them.

Q. That is to say, their chief value was for the timber, and the party holding the title disposed of them for that purpose?

A. That is right.

Q. And in your judgment that would have been the result if these lands had been sold to actual settlers under this $2.50 an acre—

A. It is the result of all the lands we own.

Q. Well, from your knowledge of the character of the lands that you own, the same thing would apply to other lands in the grant of the same class?

A. Yes, sir.

Q. Now, then, would there have been any more of a commercial or industrial development if the company had sold these lands to these so-called actual settlers and required them to stay there on the land? Would that have been at all practicable or possible?

A. It would not have been, the class of lands to which we are referring.

Q. Then the only industrial development that would have resulted from the sale to actual settlers would have been the vesting of the title ultimately in timber investors to these lands, and their consequent

use in due time when they desired them to manufacture.

A. So far as it relates to these lands that is true.

Whereupon upon re-cross examination the witness further testified as follows:

Q. Now, it is a fact, is it not, Mr. Booth, that the milling industry in Oregon has been conducted, to a very great extent, under a system by which the millers purchase the timber instead of the land itself. That is true, is it not?

A. I think not; not in our locality.

Q. Well, it is true, is it not, that the timber on a stumpage basis will usually bring almost as much money as the title to the land itself, if there is a reasonable time given for the removal of the timber?

A. If it is purchased at a time that the timber could be removed that is true, but in many instances, of course, cases where it is purchased for an investment, they would not buy unless they had fee to the land. But if it is for the purpose of manufacturing, I think they would bring just about as much.

Q. The Forestry Service is doing that same thing today, selling the timber and reserving the fee to the Government, is it not?

A. Not in our locality; but it is more or less negotiating; but there have been no transactions made there that I know of, though there has been considerable talk of it.

Q. That is largely because the Forest Reserve lands

are more remote than other lands that are held by the mill owners, and therefore it is not a practical business proposition to purchase the timber within the Forest Reserves at the present time?

A. Principally because of the higher prices that they ask for their timber, and the restrictions in removing it.

Q. That is, the Forestry Service has been asking for a higher price than the real market value of stumpage in that vicinity?

A. Yes, and that other lands can be purchased for, and they have imposed restrictions.

Q. And in addition to that have imposed certain restrictions as to the removal of the timber and the clearing of brush, etc.

A. That is right.

Q. That makes it a less profitable business transaction for the mill operator?

A. That is right.

Q. Mr. Booth, in all of your dealings with the railroad people in the purchase of these lands, did any of them ever call your attention to this clause in the granting act which in terms prohibits sales except to actual settlers in quantities not greater than 160 acres to one purchaser, and for a price not exceeding $2.50 per acre?

A. They did not.

Q. Did you yourself know of them until after this agitation arose?

A. I did not.

Whereupon A. C. DIXON, called as a witness on behalf of defendants being first duly sworn testified that he resides at Eugene, Oregon, and is manager of the Booth-Kelly Lumber Company and has resided in Oregon twenty-three years, ten years in Jackson County, seven months in Josephine County and between twelve and thirteen years in Lane County. He was a student from 1889 to 1893 and has been engaged in the lumber business since 1893. He attended the public and high schools at Ashland and the normal school at Monmouth, but did not graduate at Monmouth. He was there in 1892 and 1893. His business career has been at Ashland, Grants Pass and at two or three different towns in Lane County. At Ashland, he was in the retail lumber business from 1893 to 1899 and the firm name was Norris & Company. He was in the retail business for the major portion of that time, about five years as Norris & Company and then under the firm name of Hicks and Dixon. They purchased a sawmill and continued to retail lumber and at the same time manufactured lumber. They also leased a claim. Their sawmill was about six miles south of Ashland, in the foothills of the Siskiyous and they manufactured pine and fir, mostly pine. He was connected with the Sugar Pine Door & Lumber Company in Grants Pass for about seven months as stockholder and working in the office under Mr. Booth, at the same time working in the Bank part of the time. The Sugar Pine Door & Lumber Company operated at Grants Pass and then sold out to other people. The operation is still going on there in some modified form.

The general character of the timber that was used there, was mostly pine. There were several small mills operating there, principally in the summer time, and closed down in the winter, and he could not state with any accuracy, the amount of the cut. His next lumbering experience was at Wendilng, Lane County, where he went in March, 1900, until August 1901 when he went to Coburg and was there until June 1905, and then went to Eugene, where he has been since. He is a stockholder and manager of the Booth-Kelly Lumber Company and has been its manager since February 1910. The majority of the stock of that Company is owned in Michigan, in the hands of parties who live in Michigan. John W. Blodgett is one of the large stockholders, and their Michigan headquarters or place of business, is at Grand Rapids. The cut of the mills of the Booth-Kelly Lumber Company, when they are running, is 175,000 feet a day of ten hours. One mill is idle, which if running would add about 40,000 feet a day to the cut. One of the mills was burned down last year, it was cutting a little over 100,000 feet a day. They have two mills now operating and one idle. They did have four. One of these mills operating is located at Wendling, one that is operating at Coburg, one at Saginaw that could be operated but is idle, and one at Springfield that is burned. He is more or less familiar with the lands of the Booth-Kelly Lumber Company and knows where they are located and thinks he is familiar with the character of the lands as to their being timbered or otherwise. These lands are chiefly valuable for the timber and he thinks

the Wentworth lands are chiefly valuable for timber, only he has not seen all of the Wentworth lands. He has been through some of them. It is his understanding that the Wentworth lands are purely timber lands. In his judgment, he would think the larger portion of the unsold lands of the Oregon and California Railroad Company involved in this litigation, are in the same general class. He was in attendance before the Committee on Public Lands of the House of Representatives, March 12 and 14, 1908, when the committee had under consideration Senate Resolution 48, instructing the Attorney General to institute a certain suit. He made no formal appearance before that Committee at that time. He made a written general statement in behalf of the Booth-Kelly Lumber Company directly, and not with any authority from any other Company, and as purchasers of these lands. He made the statement headed "Statement of Mr. A. C. Dixon, of Oregon" found at pages 76 and 77 of the printed "Hearings Held Before The Committee on the Public Lands of the House of Representatives, March 12 and 14, 1908, on S. Res. No. 48 Instructing the Attorney-General to Institute Certain Suits, etc." and that statement was according to the facts as he understood them.

Whereupon defendants offered in evidence that portion of this document set out at pages 76 and 77 purporting to be "Statement of Mr. A. C. Dixon of Oregon" including the front page of this document and the second page down to and including the word "Committee" and just preceding the words "The American Eagle."

To which complainant objected upon the ground that it is incompetent, irrelevant and immaterial, and not a proper method of examination, and consists largely of hearsay statements and conclusions of fact and law.

Whereupon there being no objection, said portion of said document so offered was received in evidence and read into the record instead of the original in words and figures as follows:

"HEARINGS

HELD BEFORE THE COMMITTEE ON THE PUBLIC LANDS OF THE HOUSE OF REPRESENTATIVES

MARCH 12 and 14, 1908

ON

S. RES. No. 48

INSTRUCTING THE ATTORNEY-GENERAL TO INSTITUTE CERTAIN SUITS, ETC.

WASHINGTON

GOVERNMENT PRINTING OFFICE

"INSTRUCTING THE ATTORNEY-GENERAL TO INSTITUTE CERTAIN SUITS.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Thursday, March 12, 1908.

The committee met at 10 o'clock a. m.

Present: Representatives Mondell (chairman), Volstead, Smith of California, Gronna, Howland, Reynolds, Hall, Hamilton, Ferris, Craig and Hammond.

Present also: Hon. William F. Englebright, Representative from California; B. D. Townsend, Esq.; Aldis B. Browne, Esq.; L. E. Payson, Esq.; J. B. Thompson, Esq.; W. S. Humphreys, Esq.; John W. Blodgett, Esq., and others.

The committee thereupon proceeded to the consideration of Senate Resolution No. 48, heretofore considered by a sub-committee.

The Chairman. The meeting this morning was called for the consideration of Senate Resolution No. 48. This resolution was referred to a subcommittee by the chairman for the consideration of certain legal questions; but since the appointment of that subcommittee other questions as to the equities of certain purchasers of the land in question have arisen which had not been presented at that time, involving questions of public policy. In view of that fact, without discharging or relieving the subcommittee, it was deemed best to have a hearing this morning before the full committee; and while we have not a quorum at this time, if there is no objection we will proceed to hear the gentlemen who are here for the purpose of presenting facts with regard to the resolution to the committee."

"STATEMENT OF MR. A. C. DIXON, OF OREGON.

Mr. Chairman, as one interested in the effect of Senate Resolution No. 48 I wish to address you briefly as to some phases of the question not fully presented at any of the hearings before your committee up to the present time.

In order to explain my position clearly and to indicate from what sources and in what manner I have gathered the information I wish to place in your hands, I will say that I went to Oregon when 15 years of age, and have lived there over seventeen years, and for fifteen years of that time have been engaged actively in the lumber business. A good portion of the few thousands of dollars I have been able to accumulate is invested in the Booth-Kelly Lumber Company, with which company I have been connected for nine years, purchasing a small interest therein long before the time Messrs. Blodgett, Hill, and other Michigan men came into our company. For several years past I have interested myself in transportation matters in the State of Oregon and have been very actively engaged in securing a railroad commission law in that State and in conducting several suits against the Harriman system before our State Commission and the Interstate Commerce Commission on account of what we claim are unjust and illegal rates on lumber maintained by these lines. By reason of my position as chairman of the committees in charge of these rate cases I have come in close contact

with the timber owners and mill men who are now deeply concerned by the measure your committee is deliberating on.

There are over 250 sawmills located along the line of the Oregon and California Railroad within the limits of the grant lands. These mills produce 600,000,000 feet of lumber per year, employing at least 8,000 men, with a yearly pay roll in excess of $4,800,000. The development of this industry, which may be considered a vast one when the sparsely settled condition of Oregon is understood, would never have assumed any proportion up to this time if the mill owners had not been able to buy grant lands and had not felt that they could purchase them from time to time as they needed the timber, for the following reasons:

These grant lands comprise practically every alternate section in the region the mills are located in; and if these lands are eliminated from the timber accessible to any mill, then between each 640 acres belonging to the operator there will be one mile in each direction of territory from which no timber can be taken and across which his logging roads can not be built or, assuring that they can be, from which he could secure no tonnage.

A glance at any township map will convince the most skeptical that no one could begin to operate under these circumstances. It therefore follows that the manufacturer must control or have access to timber in bodies more or less solid and united in character.

It was at a meeting of shippers, mostly lumbermen,

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that the question of disposal of lands still in the hands of the original grantees was first brought out in a public way, and the lumber interests were behind and favored every resolution on this subject adopted in the state and are still in hearty accord with the original purpose of the movement, it being necessary for the perpetuation of their business, for the reasons stated above. It has never been contemplated that lands already sold and upon which development has been in progress for years should be taken from the present holders and again placed on the market. To do this would arrest development of the State and give its chief industry a blow from which it would perhaps never fully recover. To even attack the titles of the present holders would be almost as serious a matter, as during the time suit was being conducted none of the lands, either in odd or even numbered sections, could be logged.

As to development, within the time of my connection with my company we purchased 17,000 acres of grant lands in a body, the nearest point of which was 17 miles from a railroad. We furnished the ties and right of way, and the Southern Pacific Company built a road 17 miles in length, connecting the timber with a shipping point. I aided in construction of our Wendling mill at a place where there were less than a half dozen families within a radius of 5 miles, and the men of these families had to leave home a portion of each year to make a living for those dependent upon them. Now there is a town of 600 to 800 people at this point, with employment for 300 men, and along this 17-mile road are 10 sawmills where

there were formerly none, and the little valley is alive with the hum of industry and has developed beyond the dreams of those who were familiar with it ten years ago. Every acre of farming land in this valley has necessarily appreciated in value as these mills were built, and employment was furnished by them to large numbers of men.

I submit to you that, leaving aside all technical questions as to conditions subsequent, covenants, violation of contract, constructive notice, etc., we did, after using all possible business caution and as between men of honorable intention and fair dealing, innocently buy these lands in good faith, for value, and are the bona fide holders of same, and are the true settlers and developers of the State of Oregon, and our title to these lands should be quieted now, in the interests of the industries of Oregon and its further development and in the interests of fair play, justice to all, and in consideration of public policy in its broadest sense.

I have in the past and want to continue to interest myself in the development and welfare of the State, and can not bring myself to believe that the property and possession of myself and of friends who are similarly situated are to be placed in jeopardy in order that the Government, with all the agencies at its control, and the people thereof should secure their rights from an offending corporation in a suit which we and other public-spirited citizens of our State have proposed and furthered continuously since it was first brought to public notice and the primary intent of which we are still in hearty accord with.

I hope that the resolution before you will be so reported that the lands still in the hands of the railroad company will be opened to settlement and development and that those already in process of development and in the hands of innocent purchasers will be in no way disturbed."

Whereupon witness further testified that at the time he made this statement he was acting directly for the Booth-Kelly Lumber Company and the statement was submitted to some of the principal stockholders of the Company and some other owners, or representatives of owners of these lands which had been purchased. The circumstances were, that the statement was submitted in lieu of an oral statement and for the purpose of presenting their ideas to the Committee. The statement "there are over 250 sawmills located along the line of the Oregon and California Railroad within the limits of the grant lands," is a correct statement. The information was compiled by the Secretary of the Oregon & Washington Lumber Manufacturers' Association and by Mr. George Cornwall, editor of The Timberman, at the request of the witness, as chairman of the Transportation Committee of that Association. He is not sure, but thinks that Edmund P. Sheldon was secretary of the Oregon & Washington Lumber Manufacturers' Association at that time, but they had had several secretaries and he is not certain as to who was secretary at that time. He thinks that the statement "These mills produce 600,000,000 feet of lumber per year, employing at least 8,000 men, with a yearly pay roll in excess of $4,800,000," was

fairly accurate and correct at that time. The information was prepared by these same men, as the result of replies to inquiries that had been sent to the mills through the Association where they were asked to report the capacity and cut of their mills and some of which was furnished by himself in regard to their own mills, based upon the best statistical information that he could verify by himself. Those figures were at that time approximately correct. Many of these mills were operating on lands acquired from the Railroad Company, the larger ones on lands acquired from the Railroad Company and the even sections. The smaller ones, some of them were very small, and only operated on one section during their entire existence, sometimes on the even and sometimes on the odd section. The fact stated in the statement that "The development of this industry, which may be considered a vast one when the sparsely settled condition of Oregon is understood, would never have assumed any proportion up to this time if the mill owners had not been able to buy grant lands and had not felt that they could purchase them from time to time as they needed the timber," is in his opinion just as stated, and the reason for it is that mills could not attain any size or do any considerable amount of business, if they confined their operations to the even numbered sections, because of the physical impracticability and almost impossibility of logging on alternate sections and leaving the intermediate sections standing. From an operating standpoint in the lumber business, it is economically best to have the holdings of the land in continuous solid bodies rather than

to be interrupted by holdings between different tracts that might be owned by the operating company. These granted lands are these involved in this suit against the purchasers, those that they were operating on, and referring to the statement "If the mill owners had not been able to buy grant lands and had not felt that they could purchase them from time to time as they needed the timber," witness says, that they could not have started on any considerable scale if they had not already purchased, or been able to purchase immediately, lands from the Oregon and California Railroad Company. They could not continue their operations only as they could purchase them later on, purchase more of them, and he thinks it is true that these unsold lands involved in this suit still owned by the Oregon and California Railroad Company would become a commercial necessity to the continued and further operation of these mills already located on the even sections or on granted lands already purchased. His statement would only apply to the timber lands because they would have no use for any others. The statement that "It was at a meeting of shippers, mostly lumbermen, that the question of disposal of the lands still in the hands of the original grantees was first brought out in a public way, and the lumber interests were behind and favored every resolution on this subject adopted in the State and are still in hearty accord with the original purpose of the movement, it being necessary for the perpetuation of their business, for the reasons stated above," is both accurate and truthful so far as he knows. He speaks from his own personal knowledge, except as

to any negative questions involved. He stated that that was the first meeting at which this was brought out in any public way and it was the first one of which he had any knowledge. That meeting was at Eugene. He thinks the statement "It has never been contemplated that lands already sold and upon which dvelopment has been in progress for years should be taken from the present holders and again placed on the market. To do this would arrest development of the State and give its chief industry a blow from which it would perhaps never fully recover," is correct. He made the statement that certain action had never been contemplated. He of course has no means of knowing what some people might have contemplated, but he never had heard of it, and it was not a matter of general knowledge and he thinks the statement is true now that that never was contemplated by people in general to disturb the owners and those in control of the property involved in these suits against the defendants. As to arresting the development of the industry he thinks that would go without saying. They could not operate without the timber lands. He is quite sure that it was the principal industry in the State at that time, in that section of the State at least. If they had been enjoined or prevented from cutting on these lands, practically all the large mills would have been compelled to close up. John W. Blodgett was one of the principal stockholders, not an officer, of the Booth-Kelly Lumber Company.

Whereupon the witness further testified as follows:

Q. I notice in this statement of Mr. Blodgett, at

page 100 of this document :

"The Chairman, Mr. Blodgett, while the question of the value of these lands would certainly not control in any action that the committee may take, still the question of value has been raised here a number of times, and just as a matter of interesting information, I think the committee would like to know as to the character of these lands generally; for instance, the character of the lands that your company own. Take your 70,000 acres and average them, and what do they run?

"Mr. Blodgett. Do you mean how many thousand feet per acre?

"The Chairman. Yes.

"Mr. Blodgett. Our lands were selected lands, of course, selected for the timber, and they represent, of course, a higher average than the average of the grant in that territory. I should say they ran perhaps 40,000 feet per acre.

"The Chairman. The entire 70,000 acres?

"Mr. Blodgett. Our lands, possibly 40,000 per acre; that is, they did average that originally. Of course we have cut a great many thousand acres."

What is your information on that subject, and how does it correspond with the statement of Mr. Blodgett?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, and particularly upon the ground that it incorporates into the record the unsworn statement of Mr. Blodgett, and is therefore hearsay.

Q. You may answer.

A. I should say that his statement as to the stumpage per acre is probably slightly under the actual figures as demonstrated by the land we have cut off since that time. I have not made an accurate average. I should say perhaps it was 10 per cent too low.

Q. I notice in this same statement of Mr. Blodgett this:

"The Chairman. What is a fair estimate of the value of stumpage in that country in advance of the improvements you have put on to make them accessible?

"Mr. Blodgett. Well, in the boom time, existing about a year ago, I should say perhaps 75 to 80 or 90 cents per thousand feet, in large, compact bodies, large enough for an operation. That would not be true of an isolated tract of 160 acres, because 160 acres in that mountainous land of itself is of no value except speculative value."

What is your knowledge and judgment as to the accuracy of that statement and as to your own views on the subject?

A. I am not so very familiar with stumpage values at that time. I didn't at that time know any price as high as that being paid. And as far as it being an average of any prices we had ever paid or been paid in that section of the country, I think it was considerably above the average.

Q. How is the price now of stumpage on lands such

as the Booth-Kelly Company owns, or lands similarly situated?

A. That is a very difficult question to answer intelligently. I have been buying lands for the company for three years approximately. Have bought several thousand acres. The highest price that I have paid has been twenty-two dollars an acre, twenty-two dollars and some cents. I have not bought any large quantities at one time, however, probably 1100 or 1200 acres in one purchase is as much as I have bought.

Q. Do you know what the United States asks for its stumpage in the forest reserve in Oregon?

A. Not except through newspaper report and hearsay.

Q. I notice in this statement of Mr. Blodgett, page 101, this question :

"The Chairman. You are fairly familiar with that grant yourself, personally?

"Mr. Blodgett. Yes; I have traveled over quite a portion of it myself.

"The Chairman. It does not average in timber anything like as good as the lands you bought?

"Mr. Blodgett. No, sir. As soon as you get out of the Willamette Valley you run out of the fir country and run into the white pine or yellow or sugar pine. The land of the gentleman Mr. McKee represents is in the white and sugar pine. I have also inspected that land.

"The Chairman. That is good timber land?

"Mr. Blodgett. Yes, sir; excellent timber land. That was also selected timber land."

Now, what do you say as to the correctness of those statements of Mr. Blodgett, from your own knowledge?

Mr. Townsend: Objected to upon the same grounds urged before to questions incorporating portions of the statement of Mr. Blodgett, and on the further ground that the statement of Mr. Blodgett is not before the court and cannot be made the subject of contradictory or impeaching testimony, and this is not a proper method of eliciting testimony from the present witness.

A. I have seen part of the land owned by Mr. McKee's client. I have seen quite a good deal of the grant —not all of it by any means. I think his statement is correct. That is, that we have selected lands, and the other large timber companies have selected the best of the lands.

Q. I notice Mr. Blodgett, further interrogated by the Chairman, says:

"The Chairman. That is good timber land?

"Mr. Blodgett. Yes, sir; excellent timber land. That was also selected timber land.

"The Chairman. As heavy as yours?

"Mr. Blodgett. No, sir; because, as I say, sugar pine does not grow as heavy.

"The Chairman. Is it of higher or about as high stumpage value?

"Mr. Blodgett. It is of a little bit higher stumpage value, all things considered.

"The Chairman. Possibly a dollar?

"Mr. Blodgett. Yes, sir.

"The Chairman. It possibly would run as high as 35,000 to 40,000 feet?

"Mr. Blodgett. No, sir; white and sugar pine, an excellent yield of that is 20,000 feet."

Now, what do you say, from your own knowledge, as to the accuracy and correctness of that statement of Mr. Blodgett's?

A. I know nothing about the pine values in that particular section at that time. The statement as to stumpage to the acre, 20,000 feet being an excellent yield in pine, is correct.

Whereupon witness further testified that he thinks he knows, in a general way, the present market value of stumpage of white and sugar pine. It is another very difficult question to answer. It is from $1.00 a thousand to $2.50, and depends very largely upon accessibility to transportation and availability for immediate use. Arthur Hill, who appeared before this committee and made a statement was, probably at that time, the largest stockholder in the Booth-Kelly Lumber Company. He then lived at Saginaw, Mich., but is now dead. Probably with one or two others, Blodgett and the estate of Arthur Hill control a majority of the stock of the Booth-Kelly Lumber Company, although he is not sure. They are

very large holders of stock. No policy as to the best use of logged-off lands of the Booth-Kelly Lumber Company, has been settled upon. It has been actively discussed several times and he thinks covered by what the witness Booth said, discussing the policy of reforesting, the disposal to settlers, and the possibility of grazing and pasturing lands. He has no means of knowing what would become of the titles to these timber lands if the Company had sold them to actual settlers in quantities not exceeding 160 acres at a price not exceeding $2.50 per acre and had made these sales, say, in 1906. The titles that had been given to individuals before that time largely went into the hands of the lumber companies and timbermen. He has no personal knowledge of the lands that the so-called actual settlers have applied for excepting from newspaper reports and court records.

Whereupon the witness further testified as follows:

Q. Well, what would be, in your judgment, the value of the best quarter section of the unsold land of the Oregon and California Railroad Company? What would it be sold for at private sale without being forced, for the purposes of the timber holdings or the timber that is on the same, within your knowledge?

A. The best possible price that could be secured would be from some one who was operating close to that section, right up against it—could use the timber quickly—you said quarter section, or section?

Q. Yes, 160 acres of the best timber land that is

left.

A. I should say from eight to ten thousand dollars.

Q. I have had submitted to me, as representing a small mill company known as the Nehalem River Lumber Company, at Timber, Oregon, the purchase of the timber on a quarter section of land near Timber, in Tillamook County, the present owner of the timber or quarter section submitting a price of practically $40,000 for the timber on that quarter section, reserving the title to the land for reforesting, or for logged off purposes, or for any useful purpose, if there is any, and merely proposing to sell the timber, this timber being situated close to a sawmill situated on the Pacific Railway and Navigation Company's line west of Hillsboro. Do you or do you not regard that as an extravagant price for timber on a quarter section of the best fir land in this country, situated on a railroad close to a mill?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial.

A. It would be for any quarter section of O. & C. lands in the Willamette Valley that I know anything about. The timber in the Nehalem country is, I understand, somewhat different from what it is here.

Whereupon witness further testified that he has no present knowledge of any quarter section in the Siuslaw country or elsewhere in Lane County being sold for more than the price he paid for the quarter section mentioned, $3500.00 for 160 acres. He knows of one quar-

ter section that the purchaser told him he paid $5000 for, and he thinks that he did. He knows of the purchase made by the Wendling Johnson Lumber Company. The lands were west of the Coast Range, practically all in Lane County, although there may have been a very little of it in Douglas County, but he thinks not. The men who did the buying told him approximately the amount of money expended, which was between a million and a quarter and a million and a half dollars, but the amount of acreage he never heard. The purchase was made from a great many different individuals and ran along for several months as different titles came in. Booth-Kelly Lumber Company had about 2200 acres there that they sold and he thinks that sale was consummated in January, 1912. The Booth-Kelly Lumber Company got for these 2200 acres $54,000, about $24.00 an acre. The Booth-Kelly Lumber Company had a cruise on these lands and the sale price was made on the basis of approximately $1.00 per thousand feet. These lands were situated near the Siuslaw River, scattered some on the east side and some on the west side of the Coast Range, about 30 to 36 miles west of Eugene. These lands were in Lane County, just outside the limits of this grant, he thinks. The deed was passed in January or February, 1912. He was present at a number of hearings before the Committee on Public Lands of the House of Representatives on the hearing of H. R. 22002, concerning the Oregon and California land grant, and made a verbal statement to the Committee. He was acting for the Booth-Kelly Lumber

Company and almost all of the other defendants in what are known as the "Forty-five Innocent Purchaser Suits." When he made that statement he was not acting for all of them, but most of them, and he made the statement found at pages 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 of a document published by the Government Printing Office at Washington, 1912, entitled "Oregon and California Land Grant Hearings Before the Committee on the Public Lands, House of Representatives on H. R. 22002, Concerning the Oregon and California Land Grant April 2, and May 2, 6, 8 and 25, 1912," and reading from that statement, pages 55 to 66, both inclusive, the witness said that is the statement he made.

Q. Now, I call your attention particularly to this part of your statement:

"Now, as to our views relative to our situation and to the compromise, we feel that the Government can afford to be very considerate of us for a number of reasons. First, going back to the purpose of Congress in granting these lands, it was primarily that the road be built, and, secondarily, that the country be developed as a result of this grant of land. We take the position that we have aided in the development of that section of the country to the fullest extent, and that in no other way could the lands have been used for development except in the way we have used them.

"The reason for that is this: The land is heavily timbered, much of it on steep hillsides, and in most in-

stances the soil is rocky and not susceptible of cultivation. Now, no actual settler could have taken 160 acres of these lands, nor 1600 acres, nor any other number of acres, and made a living for himself and family. It would have been practically impossible, and is today, with the better means of transportation and other facilities that they have now."

What is the fact as to the accuracy of that statement, and is that based upon your personal knowledge?

Mr. Townsend: That is objected to as incompetent, irrelevant and immaterial, hearsay, and an attempt to incorporate into the record mere conclusions of fact and law and not evidentiary matters.

A. The statement is correct, as I thought at that time, and believe now.

Q. I call your attention to a statement on page 58 of this document, which reads:

"We think that there is no question about the original purpose of the Government having been literally carried out in a much better way than it could have been under actual settlement. In this regard, Secretary Fisher, in talking to me the other day, said that if the lands were of the character I said they were the Government made a tremendous mistake in 1866 in granting to the railroad company lands of a character not susceptible to settlement and then asking the railroad to sell them only to actual settlers. Now, they did do that, and you must know without seeing photographs of the timber that these lands are timberlands or we would not

have them, because we are in the timber business only. Now, if the Government did make this mistake 40 years ago we ask you here that we be relieved from the ill effects of it."

What have you to say with reference to the truth of that statement?

A. The statement that I had this conversation with Mr. Fisher, that he stated what I said there and my reply is correct, and the rest of it was my opinion at that time and is now.

Whereupon complainant objected to this testimony as incompetent, irrelevant and immaterial and hearsay and an attempt to incorporate into the records mere conclusions of fact and law and not evidentiary matter, but a mere argument made by witness on behalf of one of the parties against whom the United States had instituted its suit, as a reason for urging Congress to authorize this compromise, and complainant particularly objects, to the method of examination, in reading to the witness, hearsay statements, and incorporating them, in this record, as evidence of the statements themselves.

Whereupon witness testified that the statement:

"We have done the larger part of the work necessary to make that land valuable for cultivation, and nobody wants to buy these lands now as homesteads at any price. Eighty-five or ninety per cent of them are useful only for reforestation, and we have not started to reforest them because we do not know to whom they belong. We have spent the necessary money to clear them of tim-

ber, and if the intention was that actual settlers should make homes on these lands, how much less useful for this purpose would they be if the timber was still standing?" and which contains the words "nobody wants to buy these lands now as homesteads at any price," he thought was not sufficiently full as to the use to which these lands could be put. He stated that they could be used only for reforestation, at least 80 or 85 per cent. He should have said reforestation or pasture because he knows that they are used for that. It was an oversight that he did not say so. To which testimony of the witness complainant objected as incompetent, irrelevant and immaterial and upon the further ground that the lands were involved in litigation in which injunction was asked against the incumbrance of the title.

Whereupon witness further testified that it is a fact that no one wanted to buy these lands as homesteads at any price. There have been some applications to buy small pieces, a few acres of bottom or arable land, as there are scattered around through them, but no application to buy for the purpose of buying 160 acres, or anything of that sort to make a living on.

Whereupon the attention of witness was called to page 60 of the statement, which reads:

"The Chairman. You have stated that the lands you have are not fit for actual settlement. Is the general character of these lands the same?

"Mr. Dixon. Well, as I stated, the fact that we purchased the lands for lumbering purposes is pretty

good evidence that the land is not fit for actual settlers. As to the railroad grant itself, I have been over it pretty well a number of times and out into the timber, and I think the actual percentage—anything that I might say would be a guess, but 20 per cent would be a pretty close guess—I think there might be 20 per cent of these lands that can be cultivated."

and testified that what he stated there was a guess and he could not do any better now. His impression is that his statement is correct.

Whereupon the attention of witness was called to a portion of his statement in that document as follows:

"The Chairman. What is the general description of the lands which your client holds?

"Mr. Dixon. They are all timbered lands, all covered with fir timber. They are rather hilly, usually along a little canyon with a creek running down the center. We have five timbered bodies, each one along a creek or river. We like to have them that way on account of the facilities for operation. The timber is cut and hauled down to the creek; then we build dams and float it out to the river or railroad it out."

and witness testified that that statement is correct, except perhaps in using the word "all." The lands are all timbered lands technically, that is incorrect because there are a few acres now and then that are not in timber, but the statement is to all intents and purposes correct. Those acres that might be capable of cultivation are widely separated from the rest, in spots here and there throughout the grant.

Whereupon there was read to the witness from said statement the following:

"The Chairman. What area of lands that have been cut off have been sold approximately?

"Mr. Dixon. Practically none."

Is that correct?

A. That is correct.

Q. "The Chairman. What area of them, if any, has been cultivated.

"Mr. Dixon. Practically none. They are not susceptible of cultivation. Our idea has been to reforest them, and we have left the small timber standing for that purpose."

What do you say as to the accuracy of that statement?

and the witness answered that that is correct. He would say that the idea of reforestation and pasturage is not paradoxical or incompatible. They go together and the Booth-Kelly Lumber Company has pasture land but thought perhaps later it might be reforestered.

Whereupon defendants offered in evidence the entire statement of the witness, together with the opening introduction of the Committee on Public Lands, House of Representatives, etc., pages 55 to 66 both inclusive and asked to have same read into the record.

Whereupon counsel for complainant objected to the document upon the same grounds hereinbefore set out but waived objection as to reading the same in to the record, which portion of said document reads as follows:

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VI

PAGES 2669-3240

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants

OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
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Portland, Oregon.

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Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No._____

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—o—

TRANSCRIPT OF RECORD

VOLUME VI

PAGES 2669-3240

"OREGON and CALIFORNIA LAND GRANT

"HEARINGS

"BEFORE THE

"COMMITTEE ON THE PUBLIC LANDS

"HOUSE OF REPRESENTATIVES

"ON

"H. R. 22002

"CONCERNING THE OREGON AND CALI-

"FORNIA LAND GRANT

"APRIL 2, and MAY 2, 6, 8, and 25, 1912.

"WASHINGTON

"GOVERNMENT PRINTING OFFICE

"1912."

(Pages 55 to 66 inclusive.)

[2669]

"COMMITTEE ON THE PUBLIC LANDS,

"HOUSE OF REPRESENTATIVES,

"Wednesday, May 8, 1912.

"The committee met at 10:30 o'clock a. m., Hon. Joseph T. Robinson (chairman) presiding.

"There were present before the committee Hon. A. W. Lafferty, a Representative in Congress from the second district of Oregon, and Mr. A. C. Dixon.

"The Chairman. Gentlemen of the committee, the hearing today is on H. R. 22002, by Mr. Lafferty. Mr. Dixon desires to be heard, and we will now hear him.

"STATEMENT OF MR. A. C. DIXON.

"Mr. Dixon. Mr. Chairman and gentlemen, I am representing primarily the Booth-Kelly Lumber Co., the largest purchaser from the O. & C. Railroad Co. of the grant lands under discussion. I am also authorized to speak in this connection for practically all of the 45 large purchasers who are parties in these suits. I feel that after what Mr. Townsend has said I can add very little of interest, and my chief purpose in taking your time now is to touch upon a few points which I think bear especially on the rights of these purchasers, and also to be subject to any questions you may want to ask concerning some of the points brought up the other day, and upon which I may be able to enlighten you.

"Now as to our views relative to our situation and to the compromise, we feel that the Government can

afford to be very considerate of us for a number of reasons. First, going back to the purpose of Congress in granting these lands, it was primarily that the road be built, and, secondarily, that the country be developed as a result of this grant of land. We take the position that we have aided in the development of that section of the country to the fullest extent, and that in no other way could the lands have been used for development except in the way we have used them.

"The reason for that is this: The land is heavily timbered, much of it on steep hillsides, and in most instances the soil is rocky and not susceptible of cultivation. Now, no actual settler could have taken 160 acres of these lands, nor 1,600 acres, nor any other number of acres, and made a living for himself and family. It would have been practically impossible, and is today, with the better means of transportation and other facilities that they have now. We have taken these lands and solidified them by buying the even-numbered sections and have built mills, made large investments, built towns, and furnished employment to hundreds and thousands of people. Now, just to spend a moment on that point. In our own instance the largest town that we have, the town of Wendling, is devoted entirely to milling. There are about 800 people there, with 300 men working in the mills and timber. They have an electric-light system, water system, and all the conveniences that a little town of that kind might have. The wages we pay are good—excellent, I should say—from the point of view of people here. Twelve dollars a week is the minimum for mill-

men and $17.50 is the average for employees in the woods. The more provident among these men mostly have their own homes or own farms elsewhere that they cultivate during a part of the year, and in every case they are better situated than the average or than almost any of the homesteaders in that section. I mention this town first, but there are dozens more there in a similar situation. In addition to these, there are a number of logging camps and mills where there are many men employed and where there are no towns, and these people naturally gravitate to the larger towns, such as Eugene, where I live. This is a town of 10,000 people now, and 10 years ago there were only 3,500 people there. The pay roll of the mills nearby is about $2,000,000 a year, and the development of the milling industry is almost the sole reason for the growth of the town.

"Mr. Townsend mentioned the other day the good faith with which these lands were purchased, and in this connection I wish to speak simply of our own case. We started out 16 years ago, without any capital of consequence, and upon the suggestion of Mr. Collis P. Huntington, of the Southern Pacific Co., we leased a small sawmill in the Willamette Valley with the idea of trying to find out if fir lumber, the only timber growing on these lands, could be shipped outside of the State at a profit. Up to that time there had been no market for, and no attempt to ship, fir lumber out of the State of Oregon. Mr. Huntington made us some special rates and we leased a mill for a year and started to develop the fir-lumber market. At the end of a year Mr. Huntington

stated to us that the rates were fairly satisfactory to him, and he would continue them in force. We found that we had made a fair profit, and accordingly we bought the mill which we had under lease. When we bought the mill we had to buy something to run it on, and so we bought timber near at hand, half of it from the railroad and the other half from settlers or whoever happened to have it. That was the beginning of our business. A year or two later the business still continued to show a profit and we purchased another mill and also another body of timber, and for a period of eight or ten years we bought these different bodies of timber at the going prices at which anyone could have purchased them if they had cared to. Now I do not think I need to dwell long on this point, because Mr. Townsend has said that in all of his investigations he has found no evidences of any fraud, and I know the circumstances in all of these cases, and it is hardly possible to think that there could have been anything of that kind. The lands were open for purchase and sale, and you or I or anybody else could have bought all of them if we had had the money to do so.

"Now in buying these lands we followed the business-like custom that we still follow, and I think that all of you would in like circumstances follow. We submitted each abstract to our attorneys, and in no single instance that I know of did they question the Oregon and California Railroad's deeds or raise any question whatever as to their title. As Mr. Townsend has told you, there was no question in the minds of anyone as to the validity

of these titles, and, using his expression, the titles were current in Oregon for years and years, and not only in Oregon but with the United States Government, because our company in several instances, and other companies, traded property with the Government, traded these lands back to them for other lands. We do not claim that we have a right to consider because the Government took the lands that the titles were good, but they made no question about it. I am simply telling you this to show you that they were just as ready to take them as anyone else.

"Now as to the suits themselves. There are 45 of these, covering approximately 400,000 acres of land. The other 400,000 acres which have been sold are in the hands of four or five thousand people. We do not want these small holders sued. Certainly not. But we are unable to see the difference between the titles that we have and the titles that they have. In other words, we do not see why 400,000 acres in the hands of 45 individuals and corporations, probably two or three hundred people altogether, stands in any different relation to the Government as to ownership than the 400,000 acres in the hands of four or five thousand people.

"Now, in the case of the Drew Timber Co., one of these parties: They bought 5,320 acres, and they have 11 bona fide stockholders, less than 500 acres to each stockholder. I fail to see the justice in attempting to take these lands away from these people when, if the 11 people had only known the circumstances, they could have gone out and bought 999 acres apiece and their

titles would not have been questioned. Our company owns 74,000 acres, and there are approximately 45 of us—some of the stockholders are estates—and there are more people interested in our company than there are thousands of acres involved. Now, the question was asked the other day as to the remedy we have against the railroad company. Our attorneys, and all the attorneys that have given the matter any attention, so far as I know, have said that we could not recover. Now, whether the railroad company knew this limitation or not I am not prepared to say, but they did not give us warranty deeds, and even if we could get back from them several years hence the amount that we paid for these lands we might about as well lose the whole thing. What we could recover would amount to but very little, as compared to the actual loss sustained, and I will illustrate one particular case. The last purchase made by us was 19,000 acres bought at $17.50 per acre. We bought the land from people who had bought it from the railroad company for $10 an acre, on time, with eight payments still to be made, and we assumed the contract and have made seven of the other eight annual payments still to be made. Now, when we got that 19,000 acres we planned another large milling enterprise. We bought this in 1905, and we immediately went to work and bought 19,000 to 20,000 acres intermingled with this 19,000 acres. The only way that land can be operated successfully for lumbering purposes is to have it all in a solid body. You can't have a checkerboard tract, and you can't build a railroad and cut logs on other people's

land. Now, it does not need any explanation to show you where we would be if we only got our money back. In the first place we can not get more than $10 an acre, and in the second place we can not get that until our title is proven perfect, and that will evidently be some time hence, and, as stated, our attorneys advise we could not recover then.

"Now, as to our operations. In our particular case one of our mills burned down during the pendency of this suit. Our largest mill burned in July last year, throwing out of employment perhaps 275 or 300 men. We still have the mill site, and we are anxious to rebuild; we are almost tempted to rebuild anyway, but we do not feel that it is a safe business proposition to put that money into a mill when we do not know for sure that we are going to have anything to operate the mill on, if the Government is successful in this suit and takes the land. Two other concerns have lost their mills by fire and are in the same situation. In addition to that, if we rebuild now and go on with developments we will have to borrow money, and we can't bond our lands or raise money on our property on account of this suit.

"Four years ago I happened to be in Washington on other business when this resolution came up, and seeing, as I thought, that it was dangerous to us, I sent for some of our people, and you are fairly familiar with the efforts that were made to have our titles quieted at that time. At that time the Attorney General and Mr. Townsend, and as far as I know the majority of the Public Lands Committee, were in favor of and were

anxious to have our titles quieted. It seems to me now, and I am sure I thought then, that there should be no trouble at all to get title to these lands and get entirely out of the difficulty if it were not for the one legal point that was made, which was that to quiet our titles then would have injured the Government's case against the railroad. The files of the committee and the files of the department will show the investigations that were instituted at that time. They went into the matter very fully, and there were several volumes of testimony published. It seems to me that it goes without question that unless circumstances are different Congress should be of the same opinion yet, and now that the way is open grant us the relief that we are asking.

"As to the compromise itself, we think there is no question about our good faith in the purchase of these lands. We think that there is no question about the original purpose of the Government having been literally carried out in a much better way than it could have been under actual settlement. In this regard Secretary Fisher, in talking to me the other day, said that if the lands were of the character I said they were the Government made a tremendous mistake in 1866 in granting to the railroad company lands of a character not susceptible to settlement and then asking the railroad to sell them only to actual settlers. Now, they did do that, and you must know without seeing photographs of the timber that these lands are timber-lands or we would not have them, because we are in the timber business only. Now, if the Government did make this mis-

take 40 years ago we ask you here that we be relieved from the ill effects of it. We do not want to pay the penalty for the mistakes of the Government. We have cut over about 15,000 acres of land. We have done the larger part of the work necessary to make that land valuable for cultivation, and nobody wants to buy these lands now as homesteads at any price. Eighty-five or ninety per cent of them are useful only for reforestation, and we have not started to reforest them because we do not know to whom they belong. We have spent the necessary money to clear them of timber, and if the intention was that actual settlers should make homes on these lands, how much less useful for this purpose would they be if the timber was still standing?

"Now, for the reasons I have stated, we do not feel that we ought to have to pay anything to get these titles in good shape, but we have been sued for something over three years and have not yet had a chance to appear in court. We foresee that it will be at least five years longer before the suit can be determined. In the meantime, on the very lands in question we are paying something more than $20,000 a year in taxes, and we are paying several thousand dollars a year for fire protection. We have a force of organized rangers for that purpose, and we are also paying interest on our bonded indebtedness on these lands. Now, notwithstanding the fact that we do not feel that we ought to pay anything, and that Mr. Wickersham and Mr. Townsend, down in the bottom of their hearts, feel that we ought not to, except as a legal proposition—notwithstanding these

things, we have made a proposition to pay the sum mentioned in the bill as a matter of expediency, so that we may know now where we are at. We had better lose these lands now than to go along for a number of years and let them lie idle and finally get them, because the damages to us in the meantime would be irreparable financially and so far as the ages of some of us are concerned. We can not get our youth back, or our efforts. Three or four of the largest holders of lands have died since this legislation was passed four years ago. We are trying to bring about a settlement which will leave the rest of us alive when the title is finally determined.

"Our course if this bill is not passed will not be one of our own choosing, but will be literally forced upon us. In that case we will be compelled to intervene in the railroad suits and add our equities to whatever equities the railroad people may have, and make the hardest kind of a fight we can to get our lands and also to help the railroad company out of their difficulties. Now, Mr. Townsend gave you a partial history of this resolution. There was never any trouble in Oregon, never a word said or any complaint about the lands that were sold. The whole difficulty arose when Mr. Harriman withdrew the lands from the market. The people and the commercial clubs and various organizations in Oregon started the agitation and sent a memorial to the legislature asking that the lands be sold and opened to settlement. During all this time, the four years since this resolution was introduced in Congres, we have carefully refrained from allying ourselves with anybody, because from the state-

ments of the Department of Justice, the President, and every one else we felt the time would come when our skirts could be cleared without injuring the railroad suit, and the Government would see the justice of our case and our titles would be quieted. We are urging that upon you today. I am not like Mr. Townsend. He would like to see section 6 passed, but he will not urge it, but I do earnestly urge upon you that this compromise be arranged. I do not make this as a threat, but as a statement of fact. If relief is not afforded we will have to tie up with other litigants in a way that may result in defeating the primary purpose of the Government as to the recovery of the railroad lands. If the suit is won against these purchasers it will tear down industries in which millions of dollars are invested. Our company at the time this resolution was introduced had over a million dollars invested, in improvements; $275,000 in railroads and equipment, and something over $700,000 in sawmills. There are a number of others that have the same or larger investments. If this suit is won, their property will be worthless; the property in the mill towns will be worthless, the homes that these men own will be worthless, and there will be several thousand employees out of positions. That will be the condition if the Government takes this land and puts it into forest reserve or into the public domain.

"Now, I think, with what Mr. Townsend has said, I have about covered the situation, and I do not feel like imposing on you any longer.

"The Chairman. Mr. Dixon, you stated that those

whom you represent, the parties in the 45 suits, do not wish to see the small purchasers sued, but as a matter of law their equities are absolutely the same as yours, which seems to be true. You have also said that unless this legislation or some similar legieslation is passed, those whom you represent will be compelled to intervene in the railroad suit and help to win that suit if possible for the railroads. What is the attitude of the purchasers whom you represent—what will be their attitude in the event that this legislation should be passed?

"Mr. Dixon. Well, Mr. Chairman, we are not interested at all in the other side, and our attitude would be one of neutrality.

"The Chairman. Actual neutrality or nominal neutrality?

"Mr. Dixon. So far as my company is concerned it would be actual. So far as I know I think it would be absolutely actual with all the defendants. I do not think any of the defendants are meddlers or anything of that sort.

"The Chairman. I did not mean that at all, but you can readily understand from the statement of Mr. Townsend and from your statement that this is a matter that widely affects the feeling and interest of the general public there, and you yourself have volunteered the statement that if the legislation is not passed you will help to win the suit for the railroads, and that you are in fact in sympathy with those who are in the suit. Now, I think the committee is entitled to know, without any feel-

ing toward anyone, since you have volunteered that statement, what your attitude will be if the legislation is passed. We are entitled to know that, since you have volunteered the suggestion that in the event the legislation is not passed you will join in with the railroads to help them win this suit.

"Mr. Dixon. If the legislation is passed, our first move will be to ask for a stipulation and then pay for the lands gotten under the railroad deed. After that is done we will observe, so far as our company is concerned, absolute neutrality. Our desire has been to see these lands opened up. We are embarrassed by the railroad holding up 2,400,000 acres, and the whole State has been kept from its proper development thereby. And I may say to you further in this connection, I was in a number of meetings where the resolutions were brought out and sent to the legislature, where we were considering this whole proposition, and the only desire of every one present was that these lands be sold. None of these people had a clear idea as to the rights of forfeiture. Our idea simply was to force the railroad company to sell these lands. We are in that attitude today. We want them sold.

"The Chairman. You have stated that the lands you have are not fit for actual settlement. Is the general character of these lands the same?

"Mr. Dixon. Well, as I stated, the fact that we purchased the lands for lumbering purposes is pretty good evidence that that land is not fit for actual settlers. As

to the railroad grant itself, I have been over it pretty well a number of times and out into the timber, and I think the actual percentage—anything that I might say would be a guess, but 20 per cent would be a pretty close guess—I think there might be 20 per cent of these lands that can be cultivated. This whole subject was crystallized on account of the refusal of the railroad company to sell some agricultural lands in Josephine County to a vineyardist. He had a vineyard down there, and I think it was 80 acres alongside of his vineyard, belonging to the railroad company, that he wanted to buy. They refused to set a price on it, and that is where the whole trouble started.

"The Chairman. What is the general description of the lands which your client holds?

"Mr. Dixon. They are all timbered lands; all covered with fir timber. They are rather hilly, usually along a little canyon with a creek running down the center. We have five timbered bodies, each one along a creek or river. We like to have them that way on account of the facilities for operation. The timber is cut and hauled down to the creek; then we build dams and float it out to the river or railroad it out.

"The Chairman. You heard Mr. Townsend's statement as to the value of the railroad lands, did you not?

"Mr. Dixon. Yes.

"The Chairman. What do you say as to the value of those lands?

"Mr. Dixon. He said he was certain that they were worth $25 an acre, and that some of them were worth as high as $30 an acre. I have been buying those even-numbered sections for our company for some time back, and the highest price that I have ever paid is $22 an acre, and that was within the last three years. It is only within three years that I have purchased any for the company. I have purchased several thousand acres in that time.

"The Chairman. Are those lands rising in value?

"Mr. Dixon. I think so, yes. There is no question about the increase in value. They have increased since we purchased them, although our own lands are not worth as much as we paid for them on account of the cloud on the title.

"The Chairman. What area of the lands purchased from the railroad company or their grantees by your people have been cut off? Do you know, approximately?

"Mr. Dixon. Well, in our case we have cut about 15,000 acres, and half of that is from the lands in question.

"The Chairman. Has there been any cutting recently done?

"Mr. Dixon. We have been cutting them steadily at a uniform rate since 1898.

"The Chairman. What area of lands that have been cut off have been sold, approximately?

"Mr. Dixon. Practically none.

"The Chairman. What area of them, if any, has been cultivated?

"Mr. Dixon. Practically none. They are not susceptible of cultivation. Our idea has been to reforest them, and we have left the small timber standing for that purpose.

"The Chairman. When was the first knowledge received in that country, actual knowledge, that there was any question as to a defect in these titles?

"Mr. Dixon. In 1906.

"The Chairman. And that was occasioned by a complaint made by some one who you say was a vineyardist to use the land for a vineyard and the railroad would not sell it to him?

"Mr. Dixon. The first I heard of it was in Josephine County, near Grants Pass, just outside of the city. There had been a great deal of irritation over the State, but it had never gotten any further than the murmuring of a general spirit of discontent. There was a good deal of cursing and damning the railroad company for not disposing of the lands, and about that time there was called a shippers' meeting to discuss freight rates and matters of that kind down at Medford, in Jackson County, just south of Josephine County. At that meeting a resolution was introduced to be presented to the legislature. These people came to discuss freight rates, but some of them brought this resolution in and intro-

duced it, and it was passed. This was done in three or four towns over the State, and finally they got a Mr. Mullit, a banker from Ashland, to introduce the memorial in the legislature.

"The Chairman. Well, now, why would you and your clients want to intervene in this railroad suit?

"Mr. Dixon. For this reason. Our idea in wanting to compromise is to get out of litigation, and if we cannot do this the only way we can hurry matters, advance them, is to get in the railroad suit. The object of the Government's attorney is to keep us behind the railroad company, and not let us come to trial before the railroad company does, because they fear our equities will allow us to win out and thus aid the railroad company. Our only purpose would be to crowd ourselves up and be in the first trial as a matter of expediency and to hasten the final decision.

"The Chairman. You feel that you have superior equities to any that the railroads may assert? Wouldn't you be rather strengthening the railroad case than strengthening your own case by intervening?

"Mr. Dixon. I do not feel that we would be strengthening our case at all and I do not think that our attorneys feel that the court would do an injustice to us simply because we were allied with the railroad company. We would get our rights and the railroad company would get theirs, but Mr. Townsend seems to be afraid that intervention on our part might prejudice his case.

"The Chairman. In other words, the influence, the actual influence, which the clients whom you represent might reflect for the benefit of the railroad company? That was clearly the intimation that Mr. Townsend made, and I think the committee may very well consider that without reflecting on anybody.

"Mr. Dixon. We don't think it would be anything of the sort. The main idea in allying ourselves with the railroad company is to get into court at the same time they do. If we do not get this compromise, the first thing I will do when I get home will be to discharge our employees and close down our mills, because there is a great question in the minds of our attorneys as to whether or not we will be asked by the Government to pay double or treble damages for trespass on their property.

"The Chairman. You mean that they might demand an accounting for the lumber taken?

"Mr. Dixon. It just depends on the situation here in Washington, the Attorney General, the temper of Congress, or something of that kind. Our attorneys have advised us that they thought it was not a good business proposition and they recommended against continuing our operations.

"The Chairman. As a matter of law, you would probably be held accountable for the timber cut if you lost the land.

"Mr. Dixon. We do not want to take any risk, anyway.

"Mr. Raker. In speaking of intervention, is it not a fact that some of the owners claiming from 500 to 1500 acres, who received their lands from the railroad company as part of this grant, as well as the company which you represent and the 45 others, sought to intervene in the railroad suit, and the court held that they could not intervene?

"Mr. Dixon. No, I think not; Mr. Lafferty went over that quite clearly in his presentation. The intervention that occurred, as I understand it, was the intervention of people who had settled on these railroad lands, made actual settlements on 160 acres, with the supposition that if this suit was determined in favor of the Government they would be first on the ground and would get 160 acres at $2.50 an acre, and they intervened to establish their rights. If I understand correctly, their intervention was of no avail.

"Mr. Raker. No one up to date has sought to intervene who owns lands obtained from the railroad company.

"Mr. Dixon. Not so far as I know; and I think I am correct in that. The taking of evidence in the railroad suit is to close the 1st of July, and I presume the trial will come soon after that. If we are going to intervene we will have to do it very soon.

"Mr. Raker. Of course, the amount involved in this suit and its character is one that could be—you have stated you are not an attorney?

"Mr. Dixon. No, sir.

"Mr. Raker. You do not know anything about the proceedings?

"Mr. Dixon. Only in a general way.

"Mr. Raker. Very well, I will change that question. Do you intend to convey to the committee the idea that if your people would intervene in this suit, that with their influence they would be in a position to influence the decision of the court now trying the case?

"Mr. Dixon. I would not want to insult the court, Judge Raker, by inferring anything of that kind.

"Mr. Raker. I know; I am only taking the statement made.

"Mr. Dixon. The statement was that our superior equities, according to Mr. Townsend's statement, might work against the main suit. We have no influence with the court, so far as I know. I do not know the court in Oregon, and I do not think there is any member of the company that would think of such a thing.

"The Chairman. Mr. Townsend did clearly state that one of the reasons which influenced the Government and the Department of Justice in eliminating the purchasers of areas under 1,000 acres was to prevent having to encounter the influence which would manifestly and naturally be exerted by so great a clientage.

"Mr. Taylor of Colorado. By reason of their equities.

"The Chairman. Yes. I do not think that Mr. Dixon mentioned anything of the character that Mr.

Raker suggested.

"Mr. Dixon. I certainly did not intend anything of that sort.

"The Chairman. I drew the inference from the suggestions made by Mr. Townsend that the same thing might result by reason of the superior claims of the parties in these 45 suits.

"Mr. Raker. Now, Mr. Dixon, if you feel that your equities and the equities of the 44 other parties that have been sued are of such a character that by presenting them to the court in conjunction with the railroad company's case—do you state to the committee that you believe that by combining your equities you would have a sufficient standing in court to have the court decide in favor of the company and, of course, eventually your people and the other 45 by virtue of that superior equity combined?

"Mr. Dixon. I think I have stated to the committee that that was Mr. Townsend's idea that it might be the final result.

"Mr. Raker. Is that your opinion?

"Mr. Dixon. I have no opinion on that point.

"Mr. Raker. Have you discussed it with your associates and counsel and others interested in that matter?

"Mr. Dixon. No; the first suggestion that came to us was from the Department of Justice.

"Mr. Raker. What is that?

"Mr. Dixon. I say, Judge Raker, that the first suggestion of this particular point came to us from the Attorney General, as going to show one of the reasons why he was in favor of a compromise.

"The Chairman. Do you know how many corporations own the land that you appear for?

"Mr. Dixon. How many of the 45 are corporations?

"The Chairman. Yes.

"Mr. Dixon. Almost all of them.

"The Chairman. Do you know whether any of the stockholders in these corporations are also stockholders in the railroad company?

"Mr. Dixon. That is not my understanding, unless some of them may own a little Southern Pacific or Union Pacific stock, just as any individual might. I do not think there is any connection in any way.

"The Chairman. Is there any considerable number of the stockholders in the purchasing corporations who are also stockholders in the railroad company that sold to the corporations?

"Mr. Dixon. No.

"Mr. Taylor of Colorado. You don't think there is any reason why your company should meddle in the Government's litigation when you get out of it yourself and have your own title quieted?

"Mr. Dixon. On the contrary, there is every reason why we should not interfere at all. It would not be any

of our business in any way. We certainly could not help either side if we were out of the case. We do not claim to have any influence with the courts in Oregon or any other place, and there is every reason why we should desire that the railroads should sell their lands.

"Mr. Taylor of Colorado. Your object in intervening is so that you can get a decision one way or the other during this lifetime, and close it up as soon as possible?

"Mr. Dixon. Yes.

"Mr. Taylor of Colorado. You desire to expedite the matter rather than to wait the ultimate determination of the Government's litigation and then litigate it afterwards yourself?

"Mr. Dixon. Yes. The Deparment of Justice has stated to us that they will use every means in their power to keep us behind the railroad company. That is the main suit and that is their intention. The proposal has been made by Mr. Fisher, Secretary of the Interior, and I think he will suggest it to this committee, either in writing or in person, and that is, that this bill as proposed is all right, but that the amount stated in the bill should be left discretionary with his department, or the Department of Justice, or some one else. Now, after I stated the conditions to him, his statement to me was that it was probable, or possible at least, that some of these parties would not have to pay anything, by reason of having developed the property, and others, perhaps, should pay more. Then he asked my judgment of what

the value of the land was.

"The Chairman. I think the committee would like to hear from Mr. Fisher on that subject first.

"Mr. Dixon. I want to answer him now, because I will not have an opportunity afterwards. We disagree with him on that proposition. We take the position that these values should not be left discretionary with any one, and that there should be no consideration of the present value of the land, for the reason that whatever development and whatever values these lands have now we have made and created and we do not want to have to pay for it the second time. These lands have their values because we have built railroads over them, because we have bought the even-numbered sections, and gotten them together in one body and have developed them, and we do not think it is a fair thing to have to pay for the values which we have helped to create. We do not want to leave it to the discretion of the Department of the Interior, or whoever else may be designated, and, as I stated to Mr. Fisher, we would prefer to deal with the delay of the law, that we know something about, to dealing with his department or any other department that would not say what it was ready to do. We think it is a matter of present knowledge and within the province of Congress. We think our equities are strong enough to say that we should be relieved now.

"Mr. Raker. There is one more question I would like to ask Mr. Dixon. Your idea in intervening would be to expedite the suits?

Mr. Dixon. Our suits; yes.

"Mr. Raker. You have consulted with your counsel and they have advised you that an intervention in the main railroad suit would tend to expedite the trial of that suit and bring it to an earlier hearing?

"Mr. Dixon. Which suit?

"Mr. Raker. The main suit commenced by the Government against the railroad company.

"Mr. Dixon. No; they say that it will expedite our suit, not the railroad suit. I assume that that will be fixed by the court and tried when the court is ready. The Department of Justice has stated that they would, if possible, keep us behind the railroad company, and our idea in intervening is that we will get on all fours with the railroad company in point of time. We will be in court when they are, in place of being an indefinite time behind them. That is the only purpose of our intervention.

"The Chairman. I believe Mr. Lafferty wants to be heard on this matter.

"Mr. Mondell. I would like to make this suggestion: It occurs to me that it might be helpful to the committee if Mr. Dixon would file on behalf of his company a statement of their principal improvements. That is a matter that we might want to go into, particularly the number of miles of railroad constructed, the number of miles of wagon road constructed, and the approximate cost of them.

"Mr. Dixon. I have sent to me every month our monthly trial balances, and I could furnish them very readily.

"Mr. Taylor of Colorado. No, we want the number of miles of railroad that you have built to penetrate your woodlands, and the number of miles of wagon road, and the cost of those roads.

"Mr. Dixon. I can give you that today or any time —the number of miles of railroads and wagon roads and the number of mill sites.

"The Chairman. Will you attach that to your remarks?

"Mr. Dixon. Yes.

"Mr. Taylor of Colorado. It is your opinion, in regard to this last question that has just been raised, that the present values of the lands depend upon the improvements that have been made, and it is your opinion that the people you represent are entitled to that value rather than the Government of the United States?

"Mr. Dixon. Yes, sir.

"The following is a statement of the railroads, wagon roads, etc., constructed by the Booth-Kelly Lumber Co. upon its lands in Oregon:

"The Booth-Kelly Lumber Co. has constructed and has in operation between 7 and 8 miles of logging railroad and has partly constructed 4½ miles more. The cost of the railroad in operation and that which is almost completed has been $341,000, this cost including equip-

ment. The committee will be able to judge from this statement that the country through which this road is built is anything but level agricultural country. The fact is, the road was very difficult to build on account of rock and the steep hillsides which were encountered.

"The grant lands for which we have been sued, approximating 74,000 acres, cost us $572,000. Our four sawmill plants cost $693,000. Logging property, such as donkey engines and rigging of all kinds, cost us $117,000. Dams and improvements in the rivers, not included in any of the above, cost $32,000. We have paid, all told, since beginning operation, in taxes, $223,000. We have paid out for fire patrol on our own lands $9,000. I might say in this connection we have organized and have charge of a patrol covering the timber lands belonging to about 70 different corporations and individuals—mostly individuals—all of whom contribute pro rata to the expense, and the total of the money we have paid out for fire patrol is several times the amount paid on our own land.

"As to wagon roads, we have approximately ten miles. The small amount of acreage is accounted for by the fact that wagon roads are only built into the edge of the timber, the roads from the edge of the timber in being what are called 'chutes' or pole roads, upon which logs are hauled. Of these, we have built for a number of years past an average of 4 or 5 miles per year, at a cost of twenty to thirty thousand dollars per year; but these roads are worthless as soon as the logs are out, and are not to be considered as permanent improvements.

"In addition to the actual expenditures made as above, our estimate of the cost of finishing the line already graded and under construction is $46,000. This is for the balance of the steel, the building of bridges and culverts, and the laying of sidetracks on grade already constructed.

"In addition to all this we have made permanent surveys and are ready to begin work on an additional piece of road approximately 12 miles in length, which will cost, according to our engineers' estimates, $203,000. All of this work will have to be done to provide for the next five years' logging and is a very small proportion indeed of the total which will be required to work out all of our holdings.

"Figures given above are only for the improvements and operations of the Booth-Kelly Lumber Co.; a number of the other defendants in these cases have railroads and improvements approximating if not equaling those of my company.

"Our mills alone have furnished the entire pay roll and support for the towns of Saginaw, population about 300; Wendling, population about 800; Coburg, population about 700; and has been the principal pay roll in Springfield, population about 1,800. The mills of the other defendants are likewise situated in regard to the towns of Leona, Cottage Grove, Mill City, Falls City, Dallas, Salem, and a number of other smaller towns.

"A number of improvements contemplated by my own company and other companies interested have been

held up on account of this litigation, and if the suits are compromised the development will go ahead again to a remarkable extent.

"Respectfully submitted,

"A. C. DIXON."

Whereupon the attention of witness was called to "A Statement of the railroads, wagon roads, etc., constructed by the Booth-Kelly Lumber Company upon its lands in Oregon," set out on page 66 of this statement, purporting to state the number of acres of land which the Booth-Kelly Lumber Company owned involved in these "Innocent Purchaser Suits," the cost of the four sawmills and other property, taxes paid, etc., and other facts, and stated that he made up the statement himself from the books and reports of the Booth-Kelly Lumber Company and he thinks it is correct.

Whereupon the attention of witness was called to a document with "Report No. 1008, House of Representatives, 62d Congress, 2nd Session. Oregon and California Railroad Land Grant. July 16, 1912.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed. Mr. Robinson, from the Committee on the Public Lands, submitted the following Report. (To accompany H. R. 22002.)" and witness stated that he had seen that document before and had a copy of it, and that he had seen H. R. 22002 accompanying that report.

Whereupon defendants offered in evidence as one

exhibit these two documents, which were received in evidence marked "Defendants' Exhibit 334," and is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon the attention of witness was called to a statement or letter of his, of date April 10, 1912, appearing at pages 36, 37, 38, 39, 40, 41 and 42, inclusive, of a publication called "Suits in Oregon Hearing Before the Committee on Public Lands, United States Senate, Sixty-second Congress, Second Session, on S. 5835. A Bill Supplementing the Joint Resolution of Congress Approved April 30, 1908, entitled 'Joint Resolution Instructing the Attorney General to Institute Certain Suits, and so forth.' April 24, 1912. Printed for the use of the Committee on Public Lands, Washington Government Printing Office, 1912," and particularly page 40 of that statement, which reads:

"The lands in our possession are practically all such as are not capable of cultivation until after the timber is removed and the stumps cleared from the land, and then a major portion will only be useful for purpose of reforestation. These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands. We have used them in developing the country in the only way in which they could have been used, and in this use we have spent millions of dollars in building railroads, developing the streams, and building sawmills,

and are now furnishing employment to thousands of men, my own company having employed at the time the resolution of April 30, 1908, was passed in the neighborhood of 1,000 men, and our company was in process of development, so that within a few years we would have been employing from three to five thousand men—very many more than the number of men that could have been provided with 160 acres each from the lands in question. Employees in our mills and camps receive good wages, the minimum being $12 per week at the mills and the average wage in our logging camp $16.50 to $17.50 per week. The provident among these men have homes in these mill towns, and some of them own small farms elsewhere, which they cultivate during a portion of the year, and the average are much better off and in better financial position than they could possibly have been had they settled upon these lands as contemplated in the act."

Whereupon complainant renewed the same objections made heretofore to the testimony of this witness with reference to statements made before the Committee of the House.

Whereupon witness stated that he wrote that statement and delivered it to the President and that the statement is true except as to the particular he mentioned a little while ago. He overlooked the statement as to pasturage. He should have said that after these lands were logged off they would be useful only for reforestation or pasturage. That he thinks the state-

ment, "These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands," is true.

Whereupon defendants offered in evidence that portion of this letter, to which the complainant made the same objection to this statement as herein heretofore set out, which said portion of said letter so offered in evidence is as follows:

"The Chairman. The following letter addressed to the President by Mr. A. C. Dixon and submitted to the committee in lieu of an oral hearing will be printed as a part of the hearing:

"Washington, D. C., April 10, 1912.

"The President.

"Sir: In compliance with your request that I put in writing my statements to you of Friday last, with reference to S. 5885 and H. R. 22002, these two bills being identical in form, allow me to say that I am not an attorney, so this statement will necessarily be only that of a business man, and therefore will not attempt to deal in legal terms or in such other phases of the matter as might be covered by the Attorney General, who, I understand, will furnish you with an opinion on the bills. I am representing, primarily, the Booth-Kelly Lumber Co., but at the same time am representing the owners of at least 90 per cent of the lands covered by 45 separate suits brought by the United States against pur-

chasers of what are known as Oregon & California grant lands."

(Portion of letter referred to.)

"The lands in our possession are practically all such as are not capable of cultivation until after the timber is removed and the stumps cleared from the land, and then a major portion will only be useful for purpose of reforestation. These lands never could have been put into the hands of actual settlers and actually settled upon, for the reason that a settler could not make a living on 160 acres or any other number of acres of these lands. We have used them in developing the country in the only way in which they could have been used, and in this use we have spent millions of dollars in building railroads, developing the streams, and building sawmills, and are now furnishing employment to thousands of men, my own company having employed at the time the resolution of April 30, 1908, was passed in the neighborhood of 1,000 men, and our company was in process of development, so that within a few years we would have been employing from three to five thousand men—very many more than the number of men that could have been provided with 160 acres each from the lands in question. Employees in our mills and camps receive good wages, the minimum being $12 per week at the mills and the average wage in our logging camp $16.50 to $17.50 per week. The provident among these men have homes in these mill towns, and some of them own small farms elsewhere, which they cultivate during a portion of the

year, and the average are much better off and in better financial position than they could possibly have been had they settled upon these lands as contemplated in the act."

Whereupon witness being shown "Defendants' Exhibit 335," being a map issued by the "Department of the Interior, General Land Office, Fred Dennett, Commissioner," said that he thinks the map is what it purports to be.

Whereupon defendants offered said map in evidence as "Defendants' Exhibit 335" and the same was so received and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness upon cross-examination further testified that he, with certain other representatives of the large purchasers of these railroad lands, appeared in the early part of the year 1908 before the Public Lands Committee of the House with reference to Senate Joint Resolution No. 48, which afterwards became effective by passage and approval April 30, 1908, for the purpose of urging an amendment to the resolution which would confirm the titles of the purchasers, and that after the failure to secure such an amendment they endeavored by what they considered legitimate means to defeat the resolution itself. The effort was to try to get the resolution amended on final passage, or if they could not have it amended to have it defeated. It is not true that they in any way assisted the Government in

securing the passage of that resolution to authorize the institution of this suit. His reasons were not the only reasons and arguments presented to the two committees of Congress and which were considered by these committees in passing upon these bills. There were other reasons than those contained in his statement which were presented to the Committees of Congress during the consideration of these two bills during the above session which finally became enacted into law with some amendments as the act of August 20, 1912. The question as to whether compromise would be authorized or not was the main question that he heard discussed and was the only one he was interested in. He was not connected with the Booth-Kelly Lumber Company during the time that it made all of its purchases referred to by Mr. Booth in his testimony, but was with the company when it purchased, he would say, half of them or more. The railroad company, in making all the sales of that land, so far as it came within his observation, endeavored to get all they could for the land. The Booth-Kelly Lumber Company paid the market price, or a little above the market price at that time. As to the restrictions, he never had heard of them at the time the Booth-Kelly Lumber Company purchased the lands. He knew nothing of that. The Booth-Kelly Lumber Company paid the railroad company more than it had to pay for the intervening even-numbered sections. No one representing the railroad company ever informed any members of his company, so far as he knows, of these restrictions, or gave them any warning as to the nature of the title

that they were buying. He is quite sure they did not, and this was another reason that was submitted to the two committees in Congress upon the question of the equitable claim of these purchasers to a compromise as proposed by the act of August 20, 1912. In the deeds made by the railroad company to the Booth-Kelly Lumber Company there is no assurance or warranty of title. His understanding is that these deeds are legally termed bargain and sale deeds. There is no warranty, at least, in the deeds. One of the matters discussed during this time and presented to both committees as to this proposed legislation which finally became the act of August 20, 1912, was that the railroad company had sold these lands to purchasers for the highest market price, and no disclosure was made as to the restrictions upon the sale of the lands contained in the granting acts, and had given deeds without warranties, which left the purchasers without remedy if the Government should enforce a forfeiture against the purchasers. The refusal of the railroad company to sell its lands further arrested that part of the development that was dependent upon the operations on timber lands, and if the sale of these lands in that manner contributed to the development of Oregon, the refusal to sell them in that manner necessarily arrested the development of Oregon and in his opinion it could not be true that the railroad company has kept within the spirit or reason of these acts of Congress by first selling the lands in large quantities to mill operators and afterwards refusing to sell them at all. He has heard all of the testimony of Mr. Booth

as to the availability of this land for grazing and other agricultural purposes and thinks that his testimony is generally correct upon these questions. It is true that the more the settler could get for timber on the lands, the more money he would have for development purposes, but he does not think the value of the timber would have anything to do with the settlement. If the settler could sell the timber on these timber lands it would certainly have the effect to help rather than retard the settler. He does not think the value of the timber would have any bearing on his testimony in regard to the use of the lands for dairying or other agricultural purposes. Solid bodies of timber lands, in a general way, are essential to practical milling; the removal of the timber is also essential to any subsequent use of the lands in this vicinity for grazing or other agricultural use, referring now to lands that have heavy growth of timber upon them. It is true that if the railroad company should withhold permanently the alternate odd numbered sections in this timbered region involved in this suit, particularly in these localities with which he is personally acquainted, the necessary effect of that would be to prevent logging off the lands and prevent their ultimate subjection to grazing or other agricultural use, such of them as are adapted to that use. The railroad company controls practically all transportation facilities from Eugene south to the southern boundary line of the State, that is, with reference to the territory within the exterior boundary lines of the railroad grant, and has controlled it since the railroad was

constructed. The meetings referred to in his testimony and that of Mr. Booth were called, as far as he knew, primarily to object to the advance in rates threatened in 1906, and to rates that were considered unfair and these protests in regard to the land grant developed at these meetings were the first that he heard. The principal complaint was against traffic matters, unfair and unjust rates, as they thought at that time at least, and the matter of withholding the lands from settlement, the matter of the Railroad Company building its own mills to saw their ties and other things of that character were also discussed, including witholding the lands from sale. The principal object of the meeting at Eugene so far as he knew of it and he was one of the Committee on Arrangements, was to discuss traffic matters. Personally he did not know of the resolution in regard to the sale of grant lands until about the time the meeting was called to order. There was no commercial or industrial reason at any time since he has known these lands, as to a majority of the lands, why these lands could not have been sold in tracts of 160 acres and at a price not exceeding $2.50 per acre. He would not speak as to all of these lands, because he does not know. The vast majority of them could have been sold at that price at any time since he has been connected with the lands, in 160 acre tracts. He is not thoroughly familiar with the Timber and Stone Act requirements, but these lands could have been sold to individuals, in his opinion, at any time that they had an opportunity. He does not think the Railroad Company had to charge more than

$2.50 an acre in order to develop the country. He would say that perhaps 55 or 60 per cent of the logged off lands of the Booth-Kelly Lumber Company have been logged off since the year 1905. There have been practically no sales made at all of land grant lands by the purchasers of such lands since this agitation concerning the limitations upon the sale of the lands by the Railroad Company, commenced in 1906. With reference to the limitations upon the sale by the Railroad Company of these lands, the Booth-Kelly Lumber Company has repeatedly refused to buy grant lands since 1906 and refused to sell these large bodies of timber. Including the holdings of the Booth-Kelly Lumber Company and their timber lands in that vicinity and for that matter the other timber within the exterior boundaries of this railroad grant consists almost all together of fir and pine. It takes a number of years for these trees of long growth to reach maturity. There would be no very great change in a period of 25 or 30 years, nothing that would be noticeable except to an expert or some one making a critical examination. The conditions are approximately the same in October, 1912, as they have been ever since he has been acquainted with the land, and from the age of the trees were in the same condition in 1912 as they were 30 or 40 years ago without more than a slight change in the growth of the trees.

Whereupon on re-direct examination witness further testified that rails have been laid by the Oregon Electric Railway and trains are now operating from Portland through to Eugene and the official completion of this

road to Eugene was in September 1912. He thinks there is also a railroad from Cottage Grove leading out into the foothills and mountains of the Cascades, a distance of 25 miles not owned by the Southern Pacific Company, or the Oregon and California Railroad Company which serves a lot of saw mills on that line and it is true that according to general repute as to ownership the Hill Lines have the Pacific & Eastern Railway Company, a line from Medford in the Rogue River Valley to Eagle Creek and up the Rogue River Valley on surveyed connection to what is called the Oregon Trunk, leading from a connection with the S. P. & S. Railway up the Columbia River and up the Des Chutes south to Bend and beyond. He understands there is about 25 miles of that road already built in Jackson County. He thinks it is true up to this date with very slight exceptions that the facilities for shipment of all lumber or timber on the water shed of the Coast mountains are by way of Marshfield and other ports on the Pacific Ocean.

Whereupon witness further testified as follows:

Q. Now, in your letter of April 10, 1912, to the President, referred to and submitted to the Committee on Public Lands of the United States Senate, as you have heretofore identified it, you have used this language: "Within the next several years a great deal of irritation was created in Oregon by reason of the refusal of the Oregon & California Company, or the Southern Pacific Company, to place a price on these lands or offer them for sale, and as a result of this irritation a number of commercial and other trade organizations adopted

resolutions condemning this course on the part of the Railroad Company, and asking that some steps be taken to compel them to dispose of the lands." Referring to that, and refreshing your memory from that statement, what is the fact in that respect. Is that correct?

A. That is a correct statement.

Whereupon witness further testified that he is not positive but thinks that Senator Mulit, State Senator of Jackson County at that time introduced the resolution before the meeting at Eugene in 1906 relating to the sale of these railroad lands, but he is not sure that he was the one who introduced the Memorial in the Legislature of 1907. It is his recollection that the resolution that Senator Mulit brought to the Eugene meeting was introduced and adopted at that meeting at Eugene. That resolution and all the others that he ever knew anything about were simply urging the Company to dispose of the lands. He never heard of the matter of forfeiture until 1908 when he was in Washington.

Whereupon witness further testified as follows:

"Q. That is to say, the demand of the public in these meetings that you attended or that you knew of, was that the company be required to dispose of the lands as they had heretofore disposed of them, for the purposes of use to those who had use for them?

A. I don't know as to the disposing of them as they were heretofore disposed of, but the general idea and desire, as I interpreted it, was to have them sold and disposed of at a reasonable price. I think there were a

great many thought they ought to be sold at $2.50 an acre, but a great many others didn't care."

Whereupon witness further testified that there was no particular desire, that he knew of, to have these timber lands sold to actual settlers. He never heard the idea advanced in the community that these lands could be utilized for actual settlement.

Whereupon the witness further testified as follows:

"Q. Would actual settlers have purchased these lands for actual settlement or for the timber that is on them?

A. I don't know how to answer that question. If they had been actual settlers they could not have been purchasing them for the timber that is on them. But if they had been purchased they would have been purchased for the timber that is on them.

Q. There occurred a protest in this case about actual settlers. We have some 7,000 in this record pretending, some of them, to have actually settled upon the best timber lands in the grant, and others to have applied for the very best timber-lands in the grant unsold, and for $2.50 an acre, in 160 acre tracts, and there have been some 7 or 8 applying for the same quarter section, according to the record. Now, would these lands have been purchased by men to settle on them, or for the timber, if they had been sold at $2.50 an acre?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, and calling for a mere opinion of

the witness upon a matter that is not properly a subject of expert testimony, and the witness not being qualified to testify as to the intention of those settlers or their good faith or lack of good faith.

A. As far as the lands I am familiar with are concerned, they would have purchased them only for or chiefly for the value of the timber that is on them.

Q. You base that judgment upon the history of the disposition of the lands in the even sections of the same class, do you not, in part?

A. Largely, yes; the fact that I don't think they could do anything else with them, a big portion of them.

Q. You mean that they could only use them for the timber that is on them?

A. Until the timber was taken off.

Q. Their chief value, then, would be the timber?

A. I think so.

Whereupon on re-cross examination witness further testified that the first passenger or commercial train of the electric line went through to Eugene on the day this testimony was being taken, in September 1912. This line will not be used by the Booth-Kelly Lumber Company in the shipment of any of its lumber until or unless it is extended from where it is now. The electric lines have not, to his knowledge been used to any great extent for transportation of lumber, not in any quantities of consequence in any other part of the road where timber is being milled, nor does he know of its being transported

by means of electric lines, and he doubts whether that electric line will ever seriously compete with the Southern Pacific Company in the transportation of lumber or logs. The line from Cottage Grove to the Cascade Mountains is built and owned by eastern people and Mr. Hengen not by some of the mill men and does very little business other than transportation of lumber and logs principally which are transported to the Southern Pacific lines from the mills, from a point on the western slope of the Cascades, or in the foothills of the Cascades to Cottage Grove. In the immediate vicinity of Cottage Grove there are some twenty lumber mills and Cottage Grove does not buy the lumber transported over this other railroad, and that lumber must still be transported over the Southern Pacific to some other market. The line from Medford, which is constructed for a distance of about 25 miles, is up towards the Crater Lake country, Elk Creek. It is his understanding that the Hill Lines have constructed from a point four or five miles east of The Dalles, only on the opposite side of the river, connecting with the North Bank road southerly across the Columbia River by means of a bridge and then up the Des Chutes River, for the distance of about 150 miles, so there is a break between Bend, which is the southern terminus of the Hill line constructed from the north and the northern terminus of the Hill line that has been constructed from Medford of something over 100 miles—he does not know the exact distance. The Hill line as constructed and projected lies almost wholly east of the Cascades and it would not, under the present mile-

age that is built in the western part of the State be available for transportation purposes to the industrial plants or to the purchasers generally within the limits of this grant, from Eugene southerly to a point at least as far as Grants Pass or farther. He supposes it might be covered, but it could not be reached from the lines the Hill people now have or have projected as far as he knows anything of.

Whereupon complainant objected to all that part of the testimony of the witnesses Booth and Dixon inconsistent with the testimony of the witness Charles W. Eberlein upon the ground that the same was incompetent, irrelevant and immaterial and inadmissible because an attempt on the part of defense to impeach the testimony of one of its own witnesses. Whereupon complainant moved to strike out such testimony on the same grounds and it was stipulated that this objection and motion should be treated as if interposed to each question of each of the witnesses Booth and Dixon.

Whereupon F. A. ELLIOTT, called as a witness on behalf of defendants and being duly sworn, testified that he is 47 years of age, born in Illinois, resides at Salem, Oregon, and is State Forester. He has resided in Oregon since December 1888 and was appointed State Forester in April 1911 by the State Board of Forestry, composed of the Governor of the State of Oregon, and six other members, one of whom is George W. Peavy, head of the Forestry School at the Oregon Agricultural College, George H. Cecil, District Forester and four members appointed by the Governor, one

from the State Grange, one from the State Woolgrowers' Association and two from the Lumbermen's Association. He is now State Forester and is required, by virtue of his office, to make annual reports to the Governor. His duties are outlined in the law creating the State Board of Forestry. He has general supervision over the fire patrol of the State, including lands owned by private individuals and lands owned by the State and associations formed for fire protection. He made his first annual report to the Governor as State Forester December 1, 1911. His second annual report had not yet been published. "Defendants' Exhibit 360" is his first annual report as State Forester to the Governor for 1911, published by the State in 1912.

Whereupon defendants offered in evidence said "Defendants' Exhibit 360" to which complainant objected as incompetent, irrelevant and immaterial and hearsay and conclusions of the witness, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness further testified that the statements made by him in that report are as nearly accurate as they have any way of getting at it, to which last named testimony complainant objected as last above and as not a proper method of eliciting facts within the knowledge of witness.

Whereupon witness further testified that he was employed by the Oregon and California Railroad Com-

pany in its Land Department beginning in the latter part of April, 1889 and continuing until May 1st, 1906. His duties while in such employment from 1890 until about 1896 or 1897 were that he was assistant land examiner and assisted in cruising and classifying the lands being sold at that time belonging to the Oregon and California Railroad Company, granted to it by the Act of Congress of July 25, 1866 and May 4, 1870. After about that date, he was the chief land examiner of the Company and in that capacity did about the same kind of work, excepting that he had charge of all the field work for the Company after that. He went on the lands and cruised them in 40 acre tracts. A great deal of this work he did himself and a great deal he had done by other parties under his supervision. He understands that the reports which he made as cruiser or which were made under his supervision while he was in charge, prior to April 18, 1906, were practically all burned in the San Francisco fire. He made written reports of lands that he cruised, to Land Agent Andrews and later, to Eberlein, and thinks this form of report was gotten up by Rees and himself. These forms of reports are all substantially the same. Prior to the fire the Company used a book with four pages to a section, giving room for a quarter section, then a 40 in this quarter and on the opposite page, form for the report. These books were probably 4x8 inches in size in blank and were bound and had enough pages to hold a township. When the book was filled it was turned over to the Land Agent and kept on file in the office. He does not think any one of

the reports was saved. Referring to "Defendants' Exhibit 259," witness testified that he cruised a great deal of the lands in all the different counties in which the land lies shown in this exhibit, unless it may be Curry County. He does not know that he ever cruised any in Curry County, but in the other counties, he has done a great deal of cruising, probably has been over as many different 40-acre tracts as any one else in the country. They used to have a classification of these lands, as timber, agricultural and grazing. The character of the land in general, is rough and mountainous; that is the land itself. These three classes were on these blanks and also had two classes when the lands were denuded of the timber, that is, they were called either grazing or agricultural land, when denuded.

To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of the witness relating to the character of the lands within the limits of the grant involved in this suit, settlements thereon and public land entries thereof, and it was agreed between the parties that this same objection shall be deemed taken to all the testimony of this witness on that subject.

Whereupon witness further testified that all lands that were considered unfit for cultivation were designated as grazing lands when denuded. Taking southern Oregon, beginning with Douglas County, there is a great deal of land, among the unsold portion, that is

barren, rocky or covered with chaparral or brush, practically worthless for any purpose, that was classed as grazing land, simply because it was of no value for anything else. It has more or less brush, chaparral and all kinds of brush on the land and is rocky, very rough land. There is more or less of that scattered all through the grant, back in the mountains and foothills. He presumes Douglas County has more than any other kind of this character, of worthless land, because there is more railroad land in Douglas County. Josephine County would probably have a higher percentage of that kind of land than any other county. Off hand he would say that 40 per cent of the lands in Jackson and Douglas Counties would be worthless. The heaviest and most valuable timber lands of the grants, are in parts of Columbia, Washington, Multnomah, Clackamas, Yamhill, Polk, Benton, Linn, Lane and Douglas Counties. There are tracts of pretty good timber in Jackson and Josephine Counties, also in Lincoln County. Coos County is a very heavily timbered County. The comparative stand of timber on the unsold lands, compares favorably with the timber on the even sections, and with the timber in western Washington and in other parts of the world. It is just about an average of the timber in this State, with the exception that some of the very heaviest bodies of railroad lands have been sold. Generally speaking, he is familiar with these lands conveyed to the so-called innocent purchasers by the Company, aggregating something over 400,000 acres and they are the choice selected timber lands of the grant, up to the time these sales

were made. There is a great deal of timber land in the grant which is left, that is substantially the same but at the time these sales were made, the land that was sold was more accessible. The remaining lands now probably would not run quite as good in the stand of timber, but these lands are becoming more accessible all the time, and at the present time (1912), these unsold lands would be practically of the same quality of timber.

Whereupon witness further testified as follows:

"Q. What, from your knowledge of the timber-lands of this company, both those now owned, and those heretofore owned and sold to these innocent purchasers, and from your knowledge of the timber-lands on the even sections in western Oregon, within the limits of this grant, and coterminous with the unsold portion, has been the highest market price paid for any particular body of this timber-land, quarter section or otherwise, where the sale was a bona fide sale, made in due course, the seller selling because he wanted to sell, didn't have to, the purchaser buying because he wanted to buy and was able to buy? What is the best price for any quarter section that you know of that has been paid?

A. Well, the best price that I absolutely know of was $10,000.

Q. Where was that situated?

A. That was in Lincoln County. I am not right sure—I will have to look at that map to see whether that is within the grant either. It may not be. No, it is not. No, this is outside of the grant.

Q. How far away from the exterior limits of the grant on the west?

A. About four miles. Now, let's see, just wait a minute. Well, I know of a claim, this claim I say that I know of, I had an interest in that claim. I know of that being sold for $10,000. But there are claims just to the east of that in Polk County, that was in 8—9, well, I don't know positively but I know of sales being reported in there at $8,000 to $10,000.

Q. What is the fair market value of these best quarter sections, depending upon accessibility or availability, nearness to logging streams or rail transportation, of the best unsold quarter sections of timber-lands of the company? What is the fair market value of those quarter sections?

A. The timbered sections of the grant?

Q. Yes.

A. Well, I presume it would be safe to say $3,000 anyway.

Q. On an average?

A. On an average, yes, sir.

Q. And what would be the best maximum price, in your judgment, of the best quarter sections?

A. Oh, $10,000. There are claims that I could pick out that I know would sell for that.

Whereupon witness further testified that he does not know just where the claims of the Lafferty defendants

so-called, John L. Snyder and about sixty-seven or sixty-eight others are located, but knows all granted lands in Columbia County quite well and has cruised quite a good deal of it. These lands are generally very heavy timber, of the rough mountainous country and he would think these quarter sections in this best timbered area would very easily average anyway $3,000 or $4,000. Some of them no doubt would bring a good deal more, but he does not know where these claims are located and has not been in there since they were located.

Whereupon witness further testified as follows:

"Q. Now, taking this grant in its entirety, and based upon your knowledge of the same, obtained by cruising that which you have cruised, and by examinations made by you as an examiner, and other means of ascertaining the character of the land in person, by traveling over the same on its trails, from your knowledge obtained in your official capacity as State Forester, and having supervision of the fire patrol of the timberlands of the State of Oregon, including these and the lands in the even sections as well, and taking into consideration all the knowledge that you have of these lands that are unsold, involved in this suit, that are shown on this Defendants' Exhibit 259 in colors in green, I wish you would state to the Court what per cent of that grant in your judgment, is suitable for actual settlement for agricultural or horticultural or other such purposes?

Mr. Townsend: Objected to as incompetent, irrelevant and immaterial, in addition to the general objection urged as to this class of testimony upon the special

ground that it asks the witness to pass an opinion as to what constitutes actual settlement within the meaning of this law, and further, that there is nothing in the law requiring that the actual settler shall be wholly dependent for his livelihood upon the products of the land settled upon, and therefore calling for a conclusion and opinion of the witness upon a question of both fact and law.

A. What per cent of the land is agricultural land?

Q. Yes, that would be available for any agricultural or horticultural use.

A. Well, I should say from five to ten per cent.

Q. Now, suppose, Mr. Elliott, that the company had sold these lands, or would now sell these lands in this grant, and particularly the timbered portion thereof, and that portion which is chiefly valuable for timber, to these so-called actual settlers, at $2.50 an acre, in quantities not exceeding 160 acres, and give them a good title to each quarter section, and these purchasers or actual settlers, having this title to these timber-lands should desire to make the best investment that they could make, the best disposition or use of the land which they could, what would become of the title to these lands, in the ordinary course of business? Who would acquire these lands, and for what purposes could they be used, and would they be acquired, if you know?

Mr. Townsend: That is objected to, not only on the general grounds urged to all testimony relating to the character of lands, but particularly upon the ground

that it calls for a mere speculation or opinion of the witness as to what would become of the lands if the Railroad Company had obeyed the law, which is not a proper subject for expert opinion.

Q. You may answer.

A. What would these lands be purchased for? Was that the question?

Q. Yes.

A. They would be purchased for the timber, no doubt.

Q. What would become of the title to these lands? Where would the lands go shortly?

A. They would go into the large timber holdings. Of course, occasionally, a man might log a quarter section off himself, and keep the land, but it would be very seldom that that would happen.

Q. From your knowledge of the disposition of the lands in the even sections, coterminous with these, where title had been acquired under the Homestead Act or under the Timber and Stone Act, or other public laws of the United States, what has become of the lands in the even sections, where patents have been issued by the United States to these various parties, mainly?

A. It has very largely gone to large timber holders. Of course there are claims scattered all over the country that still belong to the original claimant.

Q. What is the chief value of these lands that have a value?

A. It is timber.

Q. Now, there has been some testimony in this case that some of these lands have been classified by the cruisers of the company as grazing lands, and especially after they have been denuded of the timber. What uses, if any, could these so-called grazing lands be put to, and in what way can they be said to be grazing lands, and what is the class of lands that you have classified as grazing lands, other than these worthless lands that you have spoken about already?

A. Well, the reason for classifying the lands as agricultural or grazing lands when they were denuded, was simply for the purpose of having a classification. Now, there was a time when we thought that all the land when it was denuded would either have to be used for agricultural or grazing purposes—That is all the uses we knew of for it. But under present conditions, and since the National Forests have been created, these lands largely, very largely, should be used for growing timber on.

Q. What do you mean by that?

A. It should be kept as permanent timber-land. Nearly all the lands in this grant are lands that should be used for growing timber.

Q. You mean reforestation?

A. Yes, resforestation.

Q. I will ask you to state whether or not these people who have logged off their lands, these large timber

owners, who have manufactured their timber, cut off their lands, have determined yet what to do with the logged off lands, if you know.

A. Very few of them have. Of course, there are some lands that they are clearing up, and putting into cultivation. Take along the Columbia River and places where it is susceptible of cultivation, they are using it. But otherwise it has generally grown up to young timber or brush, and not being used at all.

Whereupon witness further testified that it would take 50 to 75 years for second growth Douglas Fir to become saw timber from the time it is planted or seeded until it is merchantable. Reforestation of these timber lands after the timber has been once removed is impracticable under the present tax system, but he thinks the tax system should be changed so that it would be very practicable to reforest these cut over lands. The best use, in his judgment, to which the majority of these logged off lands could be put would be to grow more timber. These burnt over lands offer very little pasturage. He does not know how many acres it takes to keep a cow, but it takes quite a little and the main trouble is the young growth of timber or brush grows so fast that it chokes the grass out. There are places along the little creek bottoms where if they kept stock on it and kept the brush down very good grass grows, but taking the general run of the lands through the mountains, it grows up with brush and there is very little feed on it. The parcels of these lands suitable for some agricultural or horticultural purposes shown in the tabulated state-

ments, "Defendants' Exhibits 343 and 344" are generally in small patches, from an acre to a few acres, little creek bottoms or level benches, what are called bench lands, scattered all through.

Whereupon witness further testified as follows:

Q. Suppose that an actual settler, or person denominated as such in this record, should apply to the company for the purchase of a quarter section of this so-called grazing land, that is, land that is not chiefly valuable for timber, and the company should sell this quarter section to him, at the maximum price of $2.50 an acre, or less, and he should be expected to go out upon the property with his family, if he had one, support himself or his family by having this 160 acres enclosed, pasturing his stock on this 160 acres, if he has any stock, make his living for himself or his family, and a home there, what, in your judgment, would be his ability to do that?

Mr. Townsend: Objected to as purely speculative and argumentative, restricting the actual settler to a ridiculous life of inactivity and laziness, not contemplated by this statute.

A. Well, I don't know of any quarter sections, don't call to mind any, that I think a man could make a living on. In fact, I know of quite a number of places where 40 and 80 or 160 acres have sold a number of years ago, generally to fill out a piece of land, maybe a little fairly good land on this, to fill out a quarter section on Government land, for instance; but I don't call to mind now any quarter section that the company has

ever sold since I have been with them that a man has gone onto it and actually made a home, and made a living on that quarter section.

Q. Suppose that the company would sell one of these best quarter sections of timber-land to this so-called actual settler, at the maximum price of $2.50 an acre, and he should be expected to go out on this land to make a home for himself and his family, if he had one, what, in your judgment, would be his ability to make a living, for himself and his family on this timbered quarter section?

A. It would be impossible.

Whereupon witness further testified that there are very few, if any, entrymen who took homesteads within the limits of this grant on the even sections on the timbered area on the lands at the present time. They stayed on the lands long enough to get title to it and have abandoned it and their improvements have gone to rack lots of times, and generally you might say they have no improvements left on them. The improvements in the beginning were just make shifts as a general thing. Occasionally one would find a claim with pretty fair improvements, maybe 5 or 10 acres in a fair state of cultivation, but this is largely now grown up to brush. These lands in the timbered portions of the even sections thus homesteaded are now largely owned by large timber owners. To the best of his knowledge, he believes he has not worked for the Oregon and California Railroad Company any since May 1, 1906. He

worked some in California for Eberlein and McAllaster since 1906, on the other grants in California. He does not recall when he cruised the lands described in "Defendants' Exhibit 355" but thinks he did a little work for Rees sometime since 1906, possibly this is the work he did, but it had slipped his memory. This appears to be the only tabulated statement made from any cruisers reports made by him now in the possession of the Railroad Company. He cruised a great deal of these lands. He has no official or business relation with the Oregon and California Railroad Company or with the Southern Pacific Company or any of their affiliated or associated lines. He recognizes "Defendants' Exhibit 361" entitled "Professional Paper No. 4, Series H, Forestry 1, Department of the Interior, United States Geological Survey, Charles D. Walcott, Director, The Forests of Oregon, by Henry Gannett, Washington Government Printing Office 1902," and the map in the pocket entitled "Map of the State of Oregon showing the classification of lands and forests," as an official document and map issued by the Department of the Interior. This map has had quite a general distribution throughout the State. He has one of them. A. J. Johnson referred to was in the Forest Service of the United States, he thinks, but he does not know who he was.

Whereupon defendants offered "Defendants' Exhibit 361" in evidence to which complainant objected as incompetent, immaterial and irrelevant and as consisting of a mere statement of opinion of the compiler of

the document based upon information not under oath.

Whereupon "Defendants' Exhibit 361" was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon upon cross examination witness further testified that he is a witness under pay as an ordinary witness and has no other compensation, or promise of any other compensation.

Whereupon witness further testified as follows:

Q. You saw me in the summer of 1907 here at Portland in this very building, did you not?

A. I think I did.

Q. And you made a statement to me concerning the general subjects that you now have covered by your testimony, did you not?

A. I think so, yes.

Q. And as you gave me that statement, I dictated it to a stenographer, did I not?

A. You said you were having it dictated. Did you have it all dictated, all the conversation we had?

Q. I am asking you if you did not see me dictate it in your presence, did you not?

A. Well, I think you did, yes.

Q. You heard me, didn't you?

A. Yes, sir.

Q. And you saw the stenographer taking it down, didn't you?

A. Yes, sir.

Q. And it was transcribed on the typewriter and submitted to you before you left, was it not?

A. I don't think so.

Q. Will you swear that it was not?

A. I don't think it was.

Q. You swear that you never saw that statement after it was reduced to writing on the typewriter?

A. I don't think I ever did.

Q. You swear that you never read it over?

A. Well, I don't remember of reading it over.

Q. How many times did you visit my office with reference to those interviews?

A. Once, is all I ever remember of.

Q. Don't you remember that you visited it there once when it was dictated, and afterwards came back and saw the typewritten statement, after it was reduced to writing?

A. No, I don't remember that. I might have, but I don't remember it.

Q. I will ask you to examine this document, and state if that is not the statement as you made it to me at that time, and as I dictated it in your presence, and which was shown to you on the same day after it was reduced to writing?

A. I don't think I ever saw that in that form.

Q. I ask you to read it, and state whether you did not make the statements to me as set forth in that document, in the Postoffice Building in the City of Portland, in the State of Oregon, at about the month of August, 1907?

To which examination upon this subject defendants objected as incompetent and as not impeaching evidence or a proper method of attempting to impeach the witness as a narrative or purported narrative of a past conversation.

Whereupon witness further testified as follows:

A. What is the question you want me to answer now?

(Question read.)

A. I say that I did have a conversation with you, in which I made some of those assertions, but I don't think they are taken down as I gave them to you.

Q. I wish you would point out what portion of this statement does not correctly set forth the statement made to me by you at the time that I have indicated in my former question.

A. What is the question?

(Question read.)

A. Well, I might simply state that the conversation I had with you at that time was very largely the questions and answers were all made by yourself. I came in—you wrote to me once or twice to come down,

wrote me finally to come down at your expense, and I happened to be in town, and I came in to see you, and I began to give you a little history of my work with the company, and some of this is fairly accurate as to what I said. But it is very largely answers that you made out yourself to questions that you had already asked. You began with the assumption that, as I was not with the Railroad Company at the time, of course I had a grievance, and would open up and give you any information that I had. And furthermore, when I went on to state, and I see you have got portions of it here fairly accurate about the grades of the land—now, in cruising the land and grading it as agricultural and grazing lands, etc.,—you have that fairly accurate. But I remember very distinctly that as soon as I began to answer the questions and answering them in my own way, you began to answer them in your way, and asked me if that was not so and so, and to get out in a nice way with you, I let you answer to suit yourself, a great many of these questions.

Q. You have not played the same game here to-day, have you?

A. No, sir, I am under oath now. You told me at that time—you were very insistent on this—now, this is not under oath; this is just a general statement. Oh, there is a good many of these statements that are all right.

Q. Isn't it a fact, Mr. Elliott, that I told you that I was not in the affidavit getting business, and that I

did not care to take your affidavit, but that I wanted truthful information concerning the history of this grant, and your knowledge of it?

A. I don't know about that. I don't remember that detail.

Q. Do you mean to say that I kept cautioning you that you were not under oath for the purpose of getting you to state things that were false?

A. No, I did not say that.

Q. Did you say anything to me at that time that was false?

A. Not—no, I don't think I did.

Q. Well, do you say that in order to please me, when I asked you if things were so, that you agreed to them if you knew they were false?

A. Well, I say this: that you began with the assumption that I was going to give you a lot of information, and lots of information you tried to get out of me that I did not know anything about, but when you would ask a question, you would give the answer to it yourself, and I would let you go ahead and answer. Haven't you seen people that you would do that way with? I have, and you were one of them.

Q. That is your only explanation of that general statement, is it?

A. Yes, sir.

Q. That when you find anybody that wants you

to give certain answers, you will do it. will you?

A. Well, there are times when I will, yes.

Q. Why would you give it to me at that time?

A. Well, just because from the general way you began to ask the questions.

Q. Now, sir, is it not a fact that I discussed with you every statement that is made in that document, and having gotten from you your version of it, I then dictated it, sentence by sentence, to the stenographer, and turned to you and asked you if that was correct?

A. I don't think so. I don't remember that at all.

Q. Did I dictate that entire statement without asking you as to the character of the statement as I went along?

A. You dictated this from our conversation. We talked along, and you would turn and dictate to your stenographer.

Q. After I had discussed a given subject or question with you, I would then turn and dictate the substance of it to the stenographer, did I not?

A. Well, the substance as you interpreted it.

Q. Did you not agree to it at the time?

A. I don't think so, any more than I would say "Let it go at that."

Q. Do you swear that you ever used the expression "Let it go at that"?

A. No, I would not say that I did.

Q. Will you swear that you ever in any way indicated to me that anything I dictated to the stenographer was not absolutely true?

A. No, I would not.

Q. Did you sit there and deliberately let me dictate to that stenographer things that were not true?

A. Well, if this is what you dictated, I surely did, but I don't think this is what you dictated and read to me.

Q. I thought you said I did not read it to you.

A. Well, you say you did, though, and I say I do not think that if this is what you say you dictated and read to me, I do not think you ever did.

Q. Well, did I read anything to you at that time?

A. I don't think you did. I believe you just simply dictated to the stenographer and fixed this up afterwards. I don't think I ever saw that paper in that form. I am sure I never did. I don't think I was ever by you to me at that time.

Q. I want you to go ahead and answer my former question, and point out the portions of that document that you say do not correctly set forth statements made by you to me at that ime.

Mr. Fenton: Same objection as made before last above, that this would be an attempt to prove hearsay declarations of Mr. Andrews and other officers of the company, through the mouth of this witness, under the pretense of impeaching the witness, and it is therefore

incompetent.

A. Well, now, here is a statement here now, it says, "From Mr. Elliot's conversation, it is certain that Mr. Andrews, and those conducting the land business for the company, understood about the Act of 1869 which limited sales to actual settlers in limited quantities and for a limited price." Now, you don't say that I said those things, but you say from the conversation it is certain.

Q. Well, did you not, in substance, tell me that Mr. Andrews and the other persons named there did know about——

A. I don't think I ever did.

Q. Let me finish my question, please.

A. Well, go ahead.

Q. Did know about the restrictions of the grant.

A. I don't think I did.

Q. Well, go on with the next portion of that statement that you deny having made to me at that time.

A. Here is another one. "It is apparent that Andrews and Mills understood this point, and that they endeavored to dispose of as much of the land as they could before they were stopped, commencing about 1892, because as soon as there became a brisk demand for timber-lands, the policy of the company seemed to change from trying to dispose of agricultural lands to that of making a special effort to find purchasers for timber-lands, and the timber-land sales were exploited

thoroughly."

Q. Do you deny having made that statement to me?

A. You do not say here that I made it. You say "it is apparent from the conversation."

Q. I ask you the question, do you deny having made that statement, in substance, to me at that time?

A. Yes, I do. I do. Here is another statement: "Mr. Elliott thinks that in time fully 50 per cent of all the lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products." I do not think I made that statement.

Mr. Fenton: What is the answer?

A. I say in here it says: "Mr. Elliott thinks that in time fully 50 per cent of all the lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products." I do not think I ever made such a statement.

Q. Well, do you deny that you made that statement?

A. Yes, I do.

Q. You swear positively, do you, that you did not make that statement, in substance, as set forth in the document which you now hold, and which you have read?

A. I do.

Q. At the time that I have stated, that is, at about

the month of August, 1907, and in the old Grand Jury room of the Post Office Building of the United States, in the City of Portland, in the State of Oregon, you deny having made that statement to me, do you?

A. I do. And I will tell you, I will make a little explanation of that. I do remember you asking me the question about what per cent of the lands were agricultural, in the grant as now held by the company, and I said that there was none of it, practically none of it, from the fact that the agricultural lands were taken up before the company got their grant, and that prior to this time the company had sold to actual settlers, wherever they had any improvements on the land, or wanted to buy a small portion of land adjoining their holdings, they had bought it up, and at the present time there was practically no agricultural land in the district, in their grant, although I said that there was occasionally a patch all through these large timber holdings, that might be considered as agricultural land—small portions—and also that there was quite a proportion of it that was only valuable for grazing lands. Then you made the broad interpretation of agricultural lands as including these grazing lands. Now, you said, "Supposing that you call agricultural land what you call grazing lands—grazing is a department of agriculture, that comes under the head of agricultural."

Q. I said that to you, did I?

A. You said that to me.

Q. You remember that distinctly, do you?

A. I remember that.

Q. And you swear to it now, do you?

A. I do, yes, sir, I swear to it. And I said, "Well, that would make quite a difference, because there is a great portion of it that has always been considered as only valuable for grazing lands." But as to saying that even that portion would amount to 50 per cent, taking the grazing and agricultural lands together, I might possibly have made that assertion. But I think it is pretty large. This next statement here: "Mr. Elliott thinks that there were quite a number of instances where people had actually settled on railroad land, and wanted to buy the land for agricultural use, but were too poor to pay the price which the company demands, and were, for that reason, prevented from acquiring the land. In these instances, the price was very much in excess of $2.50 per acre." Now, I am positive I never made any such assertion as that. But I did tell you that wherever there was an actual settler on the land, the Railroad Company had always, so far as my knowledge was concerned, refused to sell that land to any one else but the actual settler, and in very many cases, where it was just simply a forty acres adjoining their homestead, if they had a little fence on it, a little piece of it in cultivation or fenced in as pasture, wherever that came to our knowledge, the Railroad Company refused to sell that to any one but the actual settler.

Q. The question is do you swear that you did not

make the statement you have read as set forth in that document?

A. I do. I say that I did not make that statement. (Hands back statement to counsel.)

Q. Is there any other portion of this statement that you deny having made to me at the time and place that I have indicated?

A. Well, there are several little places in there where I don't think I made it just exactly. I think you have given it a different interpretation from what I did.

Q. I want those pointed out. That is what I asked you to read it over for.

A. All right, sir. I will do that. Now, this statement here, Mr. Townsend. I don't know just what—it says. "The general instructions with reference to cruising were substantially the same during the entire time Mr. Elliott worked for the company." This statement here, now, "but the use to be made of the cruising apparently changed as the demand for timberlands increased." I don't know what could be meant by that, and I don't know why, if I did make such a statement, I don't know why it should be made. "But the use to be made"—because the use of these cruises was always the same. It does not make any difference what they were looking for, whether they were looking for agricultural lands, or what they were looking for, the actual cruise of the lands, you know, was made for the purpose of classifying and appraising the lands; always was

that; and I don't know why that statement should be made in there, "but the use to be made of the cruising apparently changed as the demand for timber-lands increased." The use of it—I surely would not make such a statement as that, because the purpose of all these cruises was to ascertain the character and the value of the land.

Q. Do you deny having made that statement to me at that time and place that I have indicated in my former question?

A. Why, yes, I do, because the use of these cruises has always been for the same purpose. I surely never would make an assertion like that. Now, "The efforts to sell were to meet the condition then existing, which was that sales could be made to none except those who wished the land for agricultural or grazing use." I probably made that assertion there, but that was not to intimate that the company could not sell for anything but that, but that there was no sale for anything but agricultural or grazing use.

Q. I am not asking you to explain any of these statements made in there, but I am asking you whether you made them.

A. Well, I probably made that one, yes. I think that is about all that I would say.

Q. With the exceptions that you have noted, is it not a fact that you did at the time and place that I have mentioned make the statements set forth in this document?

A. I probably did, in substance, as you have it there.

Whereupon complainant offered in evidence as a part of the cross examination of witness the document last referred to in his examination as "Government's Exhibit 122" to which defendants objected upon the ground that it is a narrative or purported narrative based upon an alleged conversation between witness and Mr. Townsend and contains attempted or purported conclusions of Mr. Townsend from the conversation with the witness and is hearsay and not impeaching testimony and the document is unsigned and not a statement of the witness but the statement of counsel based upon his understanding of what witness may have said and is therefore incompetent, irrelevant and immaterial.

Whereupon defendants also moved to strike out said document for the same reasons which said "Government's Exhibit 122" was received in evidence and is as follows:

"GOVERNMENT'S EXHIBIT 122.

"INFORMATION RECEIVED FROM F. A. ELLIOTT.

"Mr. Elliott now lives at Newberg, Oregon. In the fall of 1888, he came from Illinois to Oregon, and in the spring of 1889 was employed as a member of the cruising staff of Mr. N. E. Britt, who was the chief land examiner of the Ore. & Cal. R. R. Co. Mr. Elliott commenced work in May, 1889. Just before starting out upon the cruise, Mr. Elliott overheard a conversa-

tion between Britt and Mr. Andrews, the acting land agent, and Mr. Andrews said, in substance, that he hoped Britt would find a lot of agricultural and grazing lands this trip, to which Britt replied that he hoped he would find a lot of good timber land, the same as he did the year before.

"Mr. Britt had been in charge of a cruise conducted by the railroad company the preceding year, the work being done in the Mohawk Valley, in Lane and Linn counties, in the viciniity of the Cascades. From information then and afterwards received, Mr. Elliott learned that the first general cruising done by the company was commenced in 1888. Prior to that time, what cruising had been done was for the purpose of individual sales.

"Mr. Elliott continued in the service of the railroad company from May, 1889 until May 1, 1907. The first two years Elliott worked as compass man with one of the crews. Then he became an estimator, and worked in that capacity with others for about seven years, when he became chief cruiser, in which capacity he served the company for the last nine years of his service. During the course of his employment, Mr. Eliott visited every portion of the grant, and there are but few townships which he has not examined in whole or in part.

"The general instructions with reference to cruising were substantially the same during the entire time Mr. Elliott worked for the company, but the use to be made of the cruising apparently changed as the demand for timber lands increased. When Mr. Elliott first started to work, there was practically no demand for

timber lands. Speculation in any of the lands was very rare. The efforts to sell were to meet the condition then existing, which was that sales could be made to none except those who wished the land for agricultural or grazing use. The theory of Mr. Andrews seemed to be that the company's principal chance of selling the land was to settlers who desired to cultivate it, or use it for grazing purposes.

"The general plan of the cruising was to ascertain first whether the land was timber land or not, and if timber land, whether the land was valuable for agriculture or grazing after the timber was removed. The same report was made with reference to the lands which had no timber. Agricultural lands were graded No. 1, 2 and 3, and grazing lands had the same grades. The theory of Mr. Andrews, as quite frequently expressed, was to find large tracts available for agricultural use and then induce settlement of large colonies, and disposing of the land to the members of the colonies. The lands were cruised with this purpose in view until the demand for timber began. This was in about 1892.

"Down to that time, there had been practically no demand for timber land for the timber itself. But the demand for timber land increased quite rapidly from 1892, and within the course of five or six years, there was a very heavy demand for timber lands by mill men and by lumber men, generally for speculation, as well as for actual milling use. Large lumber men from Wisconsin, Michigan, Minnesota and other eastern states came west in the years following 1892 and made large

purchases.

"Mr. Elliott says that until about 1892, the railroad company did not believe that the timber lands had any value which could be realized out of them for many years. That Mr. Britt, in cruising the lands in the Mohawk Valley in 1888, found large timber lands, and called the attention of Booth-Kelly people to them, and finally induced them to buy, and this was about the first sale of timber lands in any quantity, and was possibly made in the year 1891 or 1892.

"From Mr. Elliott's conversation, it is certain that Mr. Andrews, and those conducting the land business for the company, understood about the Act of 1869 which limited sales to actual settlers in limited quantities and for a limited price. This question was discussed some during all the time Elliott worked for the company. It is apparent that Andrews and Mills understood this point, and that they endeavored to dispose of as much of the land as they could before they were stopped, commencing about 1892, because as soon as there became a brisk demand for timber lands, the policy of the company seemed to change from trying to dispose of agricultural lands to that of making a special effort to find purchasers for timber lands, and the timber land sales were exploited thoroughly. During all this time, it is a fact that Mr. Andrews got as much for the land as its then market price. He was better informed than most of the timber owners, and was able to sell in large quantities; and taking advantage of these conditions and his knowledge, he constantly demanded the

top market price for timber lands.

"There was never any effort made to obey the conditions of the Act of 1869. Everything was done to sell the land as rapidly as possible in as large quantities as possible and for as high a price as possible without reference to the character of the purchaser or the use he intended to make of it.

"It was quite generally supposed and particularly by Andrews and the other railroad men themselves, that the eastern speculators were paying more for this timber land than they could get out of it for many years to come.

"The cruising was continued without reference to sales so as to include the entire grant as rapidly as possible, and the entire grant was practically all cruised by 1906 or 1907.

"Indemnity lands were cruised prior to selection for the very purpose of giving the company information to enable it to make intelligent selections. This does not mean that indemnity lands were all cruised before selection.

"Shortly after Mr. Harriman got control of the road in 1901, Mr. Eberlein came to the coast and organized the land departments of the different railroads in the Southern Pacific system. One of the first things he did was to stop sales and took the matter of sales entirely out of the hands of Mr. Andrews and Mr. Mills. The entire land business was checked over under Mr. Eberlein's direction. Mr. Eberlein expressed one of his

reasons for this, because he frequently said that Andrews was selling lands at much less than their actual value.

"Mr. Elliott does not know anything with reference to any instructions Mr. Eberlein has had from superiors, but recalls that the sales were stopped just about the time of the oil boom in California.

"Mr. Elliott remembers Eberlein explaining his reason for stopping sales by saying that he desired to acquire personal familiarity with the lands and their values before any more sales were made.

"Mr. Elliott remembers distinctly that there was a very marked change in the manner of land sales at about 1892. Prior to that time, there were practically no sales except to actual settlers in small quantities and for agricultural use. Then the demand for timber land began and developed very rapidly, and from that time on, nearly all of the sales have been of timber lands to timber men and speculators in large quantities and at prices considerably in advance of those obtained before.

"Mr. Elliott states that he is familiar, in a general way, with the lands in most of the large sales, and that all of the large sales contained some lands which had been reported to the company as valuable for agricultural use after the removal of timber, and some of the sales contained a considerable quantity of such lands.

"The character of the land and its susceptibility for agricultural use was apparently never considered. Sales were made in large quantities to the timber speculators of any of the lands without regard to their agricultural

character. The company never refused to sell lands to timber speculators where the price was satisfactory on the ground that the lands were capable of settlement. In a great many localities the Government land adjoining the timber land sold in these large quantities was actually under cultivation by settlers growing fruit, vegetables and other farm product. This had progressed to a limited extent because all of the country was undeveloped and settlers were just commencing to come in. Mr. Elliott thinks that in time fully 50 per cent of all lands now held by the railroad company will be valuable chiefly for the growing of fruit, vegetables and other farm products.

"Mr. Elliott thinks that there were quite a number of instances where people had actually settled on railroad land and wanted to buy the land for agricultural use, but were too poor to pay the price which the company demands, and were, for that reason, prevented from acquiring the land. In these instances, the price was very much in excess of $2.50 per acre.

"The general instruction of all the cruising was to ascertain the actual value of the land for all purposes, and Andrews endeavored to secure a liberal price for all the land. In fact, tried to get all that could be gotten out of the land.

"Mr. Elliott remembers very well the sale to Hammond & Winton in Tillamook county. It was a well known transaction at the time, and is the largest sale the railroad company ever made. There is absolutely no

doubt about the genuineness of this sale in 1901. Mr. Elliott and Mr. Britt together conducted the cruising of this land.

"The earlier contracts, even for timber lands, were, about all of them, ten-year contracts, and as the sales increased, Andrews took advantage of the increased demand and shortened the time of payment so that the latter ones were for seven years and some even for five.

"Mr. Elliott is confident that the railroad company never relinquished any forest reserve lands under the lieu selection law. The land in the forest reserve was sold by the company, and the purchasers made lieu selections.

"There was no substantial amount of agitation of the rights of the company to sell in quantities greater than 160 acres until during the past year. When the matter would be mentioned in the presence of Andrews, he would ignore the question and say that it was all tommy-rot or evade it in some such manner as that.

"Mr. Elliott thinks that there is about 2,600,000 acres left in the grant unsold, but this includes unpatented lands and unsurveyed lands, and Mr. Elliott is not very certain just how much of the land is unsurveyed.

"Mr. Elliott has just completed cruise of Polk county railroad lands, and examined practically 193,000 acres and cruised it at nearly 7,000,000,000 feet of merchantable timber at a valuation of about $5,000,000.00. Mr. Elliott thinks the timber alone on the remainder of the grant now owned by the railroad company is worth

from thirty to fifty millions of dollars, and this is on a conservative estimate of quantity, as well as price.

"The Southern Pacific Company is running three mills in Lane County. They cut everything and make it into ties, bridge timber and other timber generally."

Q. Do you remember who were present at the time you had the conversation with me and that I dictated a statement to the stenographer as the conversation proceeded?

A. I do not.

Q. Do you remember who the stenographer was?

A. I do not. I don't think I knew at the time. I probably did not.

Q. Was it a man or a woman?

A. Well, I think it was a woman, but I would not be positive of that.

Q. There were three or four other persons in the office at the time, were there not?

A. Yes.

Q. I had something like five or six clerks there?

A. Yes, probably, and a door-keeper.

Q. A door-keeper?

A. Yes, some man standing at the door to introduce me.

Q. Do you swear to that, Mr. Elliott?

A. I think I would, yes.

Q. That I ever had a door-keeper, or that anybody ever stood there to introduce you or anybody else?

A. Well, I was thinking there was a man there, I would not be positive of that.

Q. Well, why would you be mistaken on that?

A. Didn't you have a door-keeper, one that ushered people in?

Q. Never had in my life, here or anywhere else.

A. Well, I may be mistaken on it then.

Q. Why could you be mistaken on a point of that kind, if you are attempting to tell the truth here?

A. Well, I was under the impression that there was a man there to usher people in and out.

Q. Any reason why you should imagine anything of that kind?

A. No, sir, none whatever. That is just my recollection of it. It might have been one of your clerks.

Q. You say he was a big door-keeper, do you, too?

A. He was big—there was a big man there, I remember. It might have been one of your clerks. I don't know who he was.

Q. Fulkerson weighed 110.

A. No, there was a larger man than that there.

Q. How many rooms did I have there?

A. I don't know. I was only in one room, I think.

Q. It is a fact, isn't it, that as I discussed this sub-

ject with you, I dictated it in my own narrative, as this statement shows, and not in the first person for you to sign. That is true, is it not?

A. You were dictating, talking to a stenographer there all the time. I didn't know whether they were taking it all down, and apparently they did not take it all down. That is, the conversation as we talked it.

Q. Well, is it not a fact that I would discuss a subjest with you for some few minutes, and then turn and dictate a sentence or two embodying the substance of our conversation?

A. That is what I thought you were doing, yes.

Q. Well, you heard what I dictated, didn't you?

A. I think I did at the time, yes.

Q. Did you correct me in any particular?

A. I don't remember now at all. I do remember asking you at one time if you were having it all taken down, the questions and answers.

Q. Do you not remember that, in response to that, I told you that we would discuss each subject until we had agreed upon the form of the statement, and that then I would dictate it to the stenographer, and that that plan was carried out?

A. I don't remember that at all. You might have said it.

Whereupon witness further testified that he left the employ of the Railroad Company May 1st, 1906, to take

other employment. He was not dismissed from or requested to leave the service and it is not a fact that he and Mr. Britt were both dismissed from the service at that time. He thinks he has a copy of his letter of resignation, not with him, but he thinks he can produce it and the answer from Eberlein at the time, stating that he was sorry that he saw fit to quit. He has never been discharged from any employment of the kind. He does not think he ever told any one that he had made a statement to Mr. Townsend, counsel for the complainant, concerning this case, and he never told any of the employes or attorneys or officers of the Railroad Company, that he had made a statement; he may have mentioned the fact to Rees, but never to any attorney or any one else, since this trial began, meaning since the testimony was being taken, when he was here a month ago. He may have done some work for the Railroad Company in the summer of 1907 but thinks 1908 was the first time after 1906, when he cruised Polk County. That fall he worked for a pulp and paper company in California and Nevada and may possibly have worked for the Company some in 1907, but he thinks it was not until 1908. When he left the employ of the Railroad Company—May 1906, he went to work on the county cruise of Polk County for the County Court of Polk County for assessment purposes. He cruised everything in that county, that was timbered. He did not examine other lands excepting to see that they were not timbered. They would take a township, where it was all timbered and would naturally cruise all of it. This took him five or six months and

he had six to fifteen people assisting him, a crew all summer of from six to fifteen men under the direction of himself and Walter V. Fuller, the man who had the contract with him. They had made a contract with the county, to cruise these lands. Mr. Fuller has already testified as a witness for the Railroad Company in this suit, as he has been informed. Fuller had been cruising lands before they undertook this work. Fuller was in the timber business, buying and selling timber but not associated with him. This cruising for Polk County, is the first association they had ever had, in a business way. He did not quit the Railroad Company for that work, but because he thought he could do better, working for himself, than on a salary. He does not remember what time in the fall of 1906, but it was probably in September that they got through cruising the lands in Polk County. After that, he went to California to work for the Floriston Pulp and Paper Company who are practically the same people who own the Crown Columbia Pulp and Paper Company at Oregon City. He worked there in California until the fore part of December, when he came home. The next year he and Fuller did a little buying and selling and cruising for other people, part in Polk and Lincoln Counties for about a year. He does not think he worked for anyone on a salary during the summer of 1907. He thinks they were doing a little timber business during that year. The first work he did, after this work that he and Fuller did in 1907, was probably for the Central Pacific Railway Company in California, but he is not positive about that.

He thinks he worked during the summer of 1908, probably 4 or 5 months, in the employ of Eberlein a short time and later in the employ of McAllaster. He does not think he was there when McAllaster came in September 1908. He only had worked a month or so for Eberlein that summer but it might have been in the summer of 1909 that he worked for McAllaster 4 or 5 months. He only worked a short time for Eberlein, if it was in 1908. Eberlein is the man who had charge of the Oregon and California Railroad land grant in Oregon at the time witness resigned. Eberlein wrote him, that he had some special work for him, to do, down in California and he came down there to do it for him and probably worked a month or six weeks in all for him at that time cruising and checking up a trespass that a timber company had made on the railroad land. When he went to work for McAllaster the next summer, in 1909, he was making a preliminary cruise of the timber in northern California in Siskiyou County and was employed probably four or five months. That was the last work he thinks that he did in California. When he got through in California he came up to Oregon and did a little work in this grant that same winter, until about February and since that time he has not done any work for the Company. That is probably the time he did this little work in Clackamas County, in February 1910, that he had forgotten about. Since that time he has not done any work for the Railroad Company.

Whereupon witness further testified as follows:

Q. Now, upon what do you base your testimony

that I assumed that you had a grievance against this railroad company when I had my interview with you?

A. Just from the way you began talking to me.

Q. Well, what did I say?

A. Well, you said that, the way I remember now, I don't say—I wouldn't swear that this was just what you said, but that "you are out of the employ of the company now, and of course you,"—now you didn't say this just in this many words, but you intimated that, of course, I would tell all I knew about it, about the company.

Q. Well, was there any reason why you should not?

A. I didn't know that there was.

Q. Was there anything that I said there to indicate that you would tell anything that was not true?

A. Well, I don't know if there is, only I think you misinterpreted a good deal of the conversation.

Q. Well, isn't it a fact that instead of assuming that you would tell anything that was not true, I simply stated to you that I assumed, from the fact that you were out of their employ, you would tell the truth about it? Isn't that all there was to it?

A. Well, I don't know.

Q. Isn't that true?

A. State that question again.

(Question read as follows): Well, isn't it a fact that instead of assuming that you would tell anything

that was not true, I simply stated to you that I assumed, from the fact that you were out of their employ, you would tell the truth about it? Isn't that all there was to it?

A. Well, I don't know as that would be the natural assumption at all.

Q. Well, didn't you swear a few minutes ago that I said to you that now you were out of the employ of the Railroad Company, I assumed that you would tell all you knew about it? Didn't you swear to that?

A. How is that? State that question.

(Question read).

A. I don't think I did.

Mr. Townsend: Please read that answer back a page or two.

(Answer read as follows): "Well, you said that, the way I remember now—I don't say—I wouldn't swear that this was just what you said, but that 'you are out of the employ of the company now, and of course you,'—now, you didn't say this just in this many words, but you intimated that, of course, I would tell all I knew about it, about the company."

Q. Did you not a few moments ago testify in answer to a former question of mine, that I said to you in substance that you were out of the Railroad Company, and I therefore assumed that you would tell all you knew about the company?

A. I think I did, yes.

Q. Well, why have you changed your mind? Did you not testify in answer to two or three questions back, that you did not so testify a few moments ago?

A. I don't think I did.

(Question and answer read as follows): "Q. Well, didn't you swear a few moments ago that I said to you that now you were out of the employ of the Railroad Company, I assumed that you would tell all you knew about it? Didn't you swear to that? A. I don't think I did."

Q. Did you not testify a few moments ago just as the Examiner has now read to you?

A. Is that the same question he asked before? The first testimony was there that from your conversation I thought that you assumed this. I didn't say that you said this, but I said that from your conversation, you seemed to assume, or I thought that you assumed, that because I was out of the employ of the company, that I would say so and so.

Q. Well now, is that your version of it?

A. As near as I can get at it from the different questions you have asked, they are all the same.

Q. Well, have you not, within the last ten minutes both sworn that I said in substance that because you were out of the employ of the Railroad Company, you would tell all you knew about it, and at another time, that that did not occur? Have you not sworn both ways in the last ten minutes?

A. I don't think so, no.

Q. Well now, have you anything else to justify your present testimony that I assumed that you had a grievance against the Railroad Company, and would testify against them?

A. No, I have not.

Q. Did you tell me that you had any grievance against the Railroad Company?

A. No, sir.

Q. In our interview in 1907?

A. No, sir.

Q. Did you tell me that you had had any trouble with them?

A. I did not, because I never had had any trouble with them.

Whereupon witness further testified that he became State Forester on March 25, 1911, and has served in that capacity ever since and has had a number of men in his employ engaged in the general work under his charge, including local fire wardens. He has had in his employ what he calls supervising wardens in all the heavily timbered counties. The local fire wardens are under their supervision. The supervisors, as they call them, are hired generally by the timber owners. There is about one supervising warden to each of the counties containing large timber. Last year, (1911) they had, he thinks, twenty-three. This year probably twenty-six. Some counties last year where they had one man

in two counties they had one for each of the counties this year, and he had three men employed in that manner who were formerly employed by the Oregon and California Railroad Company. That is all that he could recall. Roy Woods, W. J. Lander and Porter S. King, are all that he remembers now, that have been in the employ of the Railroad Company. He has no list with him of these supervisors working for him during the time he has been State Forester. There is a list of the supervisors for 1911 in "Defendants' Exhibit 360" being the first annual report of the State Forester. The form used while Andrews was in charge was changed soon after Eberlein came into office to a form similar to "Defendants' Exhibit 261" and "Defendants' Exhibit 358." He cruised a portion of the land near Marcola in Lane County, adjacent to the mill of the Southern Pacific Company, mill No. 1 he thinks it is called, and at various times cruised a portion of the railroad lands in Eastern Clackamas County,—he thinks some lands in almost every township in which the railroad lands are situated in Clackamas County, but could not say that he has cruised all of them. He thinks he has cruised some lands in all of these townships except one or two, possibly. He has cruised nearly all the railroad lands in Polk County and has seen and observed the character of them and has cruised quite a good deal of the lands in Jackson County and has cruised all along the California line and has cruised some in the Butte Falls country and some in Evans Creek and on the main Rogue River and has cruised in the Jenny Creek country in townships

39, 40 and 41, ranges 4, 5 and 6 east. His opinion as to the character of these unsold lands involved in this suit applies, generally speaking, to the even numbered sections intervening those lands. There may have been a quarter section taken up here and there that would support a family, and there might have been a quarter section sold years ago, but the land that is now vacant, that is now in the hands of the Railroad Company and the lands that are not held by settlers, or not being cultivated or lived upon, he would say as far as he knows, there is none that will support a family. The length of time it would take to grow timber large enough for milling purposes on logged off land, depends on the location. Where the red and yellow fir grow one gets fairly good small saw timber in fifty to seventy-five years, good piling and some saw logs out of it. Pine timber would take longer. At present prices the present growth of timber would average about $3,000 a quarter; that would be a very conservative estimate of the valuation on it. For timber lands say $20.00 an acre, referring to the value of timber. He thinks the only practical use that can ever be made of that land is with proper methods of reforestation, to reforest it and get a new crop of timber about every seventy-five years. In seventy-five years from now it would probably be worth as much as the present crop is at this time, anticipating an increased price for the timber. At present prices it would not be worth so much. In his judgment there is approximately 4,600,000 acres of land within the exterior boundary limits of this grant that will never have any practical use except-

ing that of reforesting and getting a new crop of timber about every seventy-five years. This includes the land in the immediate vicinity of the Southern Pacific Company's mill at Marcola, that is the main portion of it. There may be little strips of land along near the Mohawk Creek that would be of more value for agricultural or grazing purposes, but the main portion of the land is of more value for raising timber. The country there is quite rough and generally is too rough for agricultural purposes.

Whereupon the witness further testified as follows:

Q. How about that country in around Butte Falls? Do you find any quarter sections there that would support a family among the railroad lands?

A. I do not think there are any of them there supporting a family—any quarter section in that country.

Q. Well, the Railroad Company will not let them.

A. No, but I mean the Government lands. You asked me about the Government lands.

Q. No, I asked you about the railroad lands.

A. Well, I don't think there are. And I say that I don't think there are of the Government lands where a man is living there on a Government piece of land or any piece of land, he has a little bit of agricultural or hay land and he uses several hundred or possibly several thousand acres of land to range his few stock on to make his living.

Q. Well now, if there are a large number of fami-

lies living on the even numbered sections in the township in which Butte Falls is situated, and have been living there for years, making a very comfortable living, and none of them with more than 160 acres, is there any reason why you should not have seen it when you went through there?

A. No, there is not.

Q. And if there are a number of families maintaining themselves on not to exceed 160 acres of land in the immediate vicinity of the mills of the Southern Pacific Company at Marcola, is there any reason why you should not have seen it?

A. No, sir. There are families in there along the Mohawk River, that are living on probably 160 acres or maybe less. But that is land that has been taken up for years, and it is not such land as is now vacant.

Q. It is entirely different from the lands of the Railroad Company, is it?

A. It is entirely different, in that it lays along the stream and is either little bottom lands or very low bench lands, and not rough and broken, like the vacant lands are.

Whereupon witness further testified that he knows a man by the name of Balderee who is logging foreman for the Gerlinger Logging & Lumber Company in the Black Rock country in Polk County. He thinks that during the time witness was cruising near Marcola for the Southern Pacific Company, that Balderee was

with the Booth-Kelly Lumber Company. Witness would not swear that he never saw a family cultivating and supporting themselves on logged off lands immediately adjoining these railroad lands, of the same character except that the timber had been removed and the land cleared and subjected to cultivation, but he cannot recall a quarter section of land that has been sold by the Railroad Company, on which a family is being supported. He became acquainted in a general way, while working as a cruiser, with the identity of the lands that had been sold by the Railroad Company, as well as the lands which still remain unsold. For a number of years he cruised practically all that the Company sold.

Whereupon on redirect examination witness further testified that he was in attendance upon this hearing under subpoena issued in this cause and served upon him.

Whereupon defendants offered in evidence pages 19, 20, 21, 22, 23 and 24 of "Defendants' Exhibit 360" as to the list of State Fire Wardens for 1911, showing patrolmen paid from Federal funds under section 2 of the Weeks law and State Fire Wardens serving without compensation, or in employ of timber owners or the U. S. Forest Service.

Whereupon witness further testified that these people whose names are on these pages were employed during 1911 as there stated.

Whereupon HOMER D. ANGELL, being called as a witness on behalf of defendants, and being duly sworn, testified that he is thirty-seven years of age, an

attorney, and resides at Portland, Oregon. He and his partner were employed by the land department of the Oregon and California Railroad Company for some time under Eberlein, and had charge of several men who made examinations of various parts of the grant and made reports on the character of the land and took photographs of certain portions of it. That has been four or five years ago now. He is a practical surveyor; began surveying during the summer when he was a small lad, and was employed continuously in that line of work from 1891 until 1903, and has had some, but not extensive, employment along that line since. A good portion of that time he was employed as chainman or other work on surveys, and for a number of years he did contracting work. He considers himself a competent surveyor in matters of that kind, but he never did any surveying for the railroad company other than assisting in locating these lands, of which pictures were taken. He assisted in taking some of the photographs marked collectively "Defendants' Exhibit 270." He assisted in taking the photograph, locating the land from the Government corner, and made the notations, referring to John L. Snyder's cabin on the southeast quarter of Section 17, Township 4 north, range 3 west; and also the notation marked "2" thereon; also Nos. 3, 4, 6, 7, 8, 9, and 10. These seem to be all the pictures that he can identify other than there were two large pictures taken, when he was present.

Referring to Defendants' Exhibit 267, with a notation attached to it, and affidavit made by himself and F. A. Elliott, he made that affidavit so signed by him, and

assisted in taking the picture, and he is one of the men shown standing on the right hand corner of the picture, which was taken by Gifford. The picture was taken from a point in the south half of section 8, township 7 south, range 6 west, and covers an estimated distance of perhaps eight miles in the view shown in the picture. The camera stood, he thinks, on section 8, an even section, but the lands that they were endeavoring to show in the picture were further out, and the picture is a correct representation of what it purports to show.

Referring to the photographs identified by him as part of Defendants' Exhibit 270, they determined who erected these cabins first, by the notices posted upon the cabins, presumably by the claimants, and by the names of the claimants on the notices, and in some instances they saw the claimants themselves, who were present. There was no one living in any of these cabins shown in the pictures which he has identified. In some few of them there were some small utensils for cooking, and in one, a roll of bedding, he believes. The cabins did not have any appearance of having been the domicile of a family or of anybody other than one or two showed that some one had camped there for a night or such a matter. There was an excellent stand of timber in each case where these cabins were situated; chiefly fir.

Whereupon complainant objected to this testimony as incompetent, irrelevant and immaterial, and it was agreed that this same objection shall be considered as taken to all the testimony of the witness relating to the character of the lands within the limits of this grant and

settlements thereon and public land entries thereof.

Whereupon witness further testified that he thinks he is familiar with the stand of timber in Western Oregon, which would be deemed commercially valuable. He gained his knowledge chiefly from his work in the Government service, in surveying timber lands. His work has been quite largely in timbered areas, and it was necessary to his report, to characterize the topography of the land, including the timber upon it, and the chief value that he ascribed to the land, and his experience in making these surveys and reports was in Oregon, and especially timber lands in Oregon, Washington and Idaho, and some portions of Montana. In each instance, the claims upon which these cabins were constructed, and upon which these parties whose names he had given, had made claims, that he examined, were taken upon lands that had a very heavy stand of timber, and there was no instance where a claim was made on lands that would not be classed as timber lands. What is considered a stand of timber per thousand feet board measure in Western Oregon that would make it commercially valuable for timber, depends somewhat upon its location, but his general experience is, that if there is a million feet to a quarter section, unless it is so isolated that it would be impracticable to market it, that it is valuable for timber. He has been over a considerable portion of the lands involved in this suit. He has been in Klamath County, but could not definitely say whether he has been on the portions of the grant in that county, but he has been pretty well around in the timbered area of that

county. He has been along the road from Ashland to Klamath Falls, and on most of the prominent roads, leading out from Ashland. He did some surveying in Klamath County several years ago, near Ashland, but does not recall the township. The timber through which he went where he made these surveys, was of good quality and a good stand of timber. A portion there, is exceptionally valuable for Oregon timber. It is what is called, he believes, sugar pine, and various qualities of pine, not very common in this state. But the major portion of timber is fir. He has been through Jackson County from several different directions, and especially in the timber. He surveyed, he thinks, at least one township in Jackson County, but on Williams Creek. He went from Jacksonville, and it is not a great way out there, west. He has been over lands of the company in the Williams Creek country in Jackson County. The stand of timber in there is not so good as the general stand in some sections of Southern Oregon. The timber is more scattering, but the land in that township is valuable only for timber, in his estimation. Outside of the timber lands, and outside of the valleys of the Rogue River and streams that lead into it, in Jackson County, in his opinion, the lands are of little value. These lands are rocky, covered with very thick brush, and scattering timber in places. There are open places, but outside of small tracts along streams, they do not seem suitable for agriculture, and there is a very poor stand of grass for grazing purposes on the major portion of it. The brush that grows over a good portion of this land that he has thus de-

scribed, is buck brush, commonly called, and manzanita, and these have no commercial value whatever of which he has ever learned. He has been over quite a portion of Josephine County out from Grants Pass. In a general way, these lands are similar to the lands in Jackson County, although the timber is better, he thinks, than in Jackson County, and perhaps more mountainous. The soil of the lands in Josephine County, on these uplands, is of poor quality, not adapted to agriculture. A good portion of the soil is a sort of red soil. There is a great deal of decomposed granite soil. In fact he has had occasion to ship some of that granite from Grants Pass for use at Portland in making walks, and it is used as ballast on railroads to some extent. He does not know of any use that it can be put to for agricultural or horticultural purposes. He has never been in Curry County. He has been over Douglas County quite generally. He did considerable surveying for the Government in that county, ran about thirty miles in length of the Willamette Meridian, he thinks, in Douglas County, and the lands of the company with which he is familiar in that county, are very mountainous and covered with heavy timber or undergrowth, with the exception of isolated tracts on creek bottoms or streams, and are not suitable for agricultural purposes. They are chiefly valuable for their timber, and there are portions suitable for grazing, but not to any great extent, back in the mountains. The chief stand of timber, a very valuable stand in that country, is fir. He has been over portions of Lane County in the timbered area; in fact, up on the McKenzie River,

and north and south. He has made some examinations of timber lands in Lane County in a general way, looking to see the quality of the timber, and if there were timber lands vacant, but has not made any examination, or been over any of the lands west of Eugene, in the Siuslaw country belonging to the company, or other timber owners. The lands which he examined in Lane County, or has seen, were principally tributary to the McKenzie River. They were very high mountainous lands, covered with timber or old burns grown up with undergrowth, and the chief value of these lands covered with timber, were for their timber. It was practically its only value under known conditions. He knows of no use to which these burned over lands in their present condition could be put, but he presumes that if they could be denuded of the brush so that grasses might grow, they would be suitable for grazing, but the cost of putting them in such shape that they would be suitable for that purpose, would be prohibitive. He has been in the Eastern portion of Linn County in the timbered area, in the Santiam country, up from Lebanon. He did some surveying on the Santiam, in township 10 south, range 4 east, but is not sure that this is in Linn County. He has been over a considerable portion of the company's lands in the eastern part of Linn County, and especially in connection with Government surveying. The chief characteristic giving these lands value is their timber; practically their only characteristic, other than isolated portions. These portions that might be utilized for some agricultural purposes, are small tracts, and his experi-

ence has been that there is no tract other than just a few acres, that is suitable for agriculture, at least without an enormous expense. These tracts are isolated and separate from one another, and lie chiefly along streams. There are certain level patches on divides that might be adapted to agriculture, but no body of land of any considerable size. He has not been in Lincoln County to any extent. He has been over portions of the timbered area of Marion County, and the lands, according to his information remaining unsold in the grant in that county, are mountainous and rough, and portions of them are covered with a good stand of timber, and their chief value is for the timber. There is a considerable area of burned over lands in Marion County among these lands. They are covered with stumps and standing dead trees, and heavily covered with undergrowth. Such lands have practically no value under modern conditions, of which he knows. He has been out through portions of Polk County, and has been on and examined some of the lands of the Company. The lands that he had to do with in Polk County were timbered lands, and portions of them were in old burns, and those that were covered with timber were chiefly valuable for their timber. The burned over land is of very little use without a great deal of expense in attempting to clear it. He has been over portions, but not over the whole of Clackamas County. He has been in places over the timbered lands on the Clackamas River. These lands are timbered, with the exception of portions that are scattering burns. The chief value of the lands belonging to the company that

he has examined in Clackamas County, was their timber. He has crossed over the mountains going from North Yamhill to the Coast in Yamhill County, over the headwaters of the Trask, and in going that way he presumes he would see or go over unsold lands of the company. The company's lands are scattered through there in the odd sections, and he thinks it would be impossible to go across, without crossing the company's lands. These lands and the adjacent even sections are mountainous, and considerable portions of them are covered extensively with timber, a good stand of commercial timber, and in places there are burns. He has to some extent been over the company's lands in Multnomah County, up towards Latourelle Falls, back from the Columbia River. These lands are very mountainous, exceptionally so, and covered with a heavy growth of timber. Portions of those lands perhaps have the heaviest growth of timber in the grant. He has been in the vicinity above Latourelle Falls, and towards Larch Mountain, and these lands have an exceptionally good growth of timber. It is his impression that he has not been over any of the lands in Washington County. He has been over roads leading into Tillamook County, which passed through the mountains, and in doing so, had to go over the timber lands. And from his knowledge of these lands in Tillamook County, he would say their chief value was for the timber. There is an excellent stand of timber on the mountainous lands in Tillamook County. He has been in Columbia County, out in the vicinity of these claims, the pictures of which were identified by him, and he ex-

amined somewhat the character of the lands surrounding these claims. The general character of the unsold lands of the Company in Columbia County is very heavily timbered and covered with a very heavy undergrowth. Their commercial value is for the timber only. According to his understanding of the value of timber, these claims of 160 acres each, are worth from $5,000 to $20,000. The market value of stumpage on such timber in Western Oregon runs from 75 cents to two or even three dollars, owing to location with reference to ability to get it out. He has not dealt in, bought or sold timber lands, but knows of them being bought and sold. He has quite a general knowledge as to the value of timber, for the reason that he had considerable to do with it at the time he was connected with the Oregon and California Railroad Company. The lands that were sold, the stand of timber was taken, and he placed valuations upon it, and then he had to do with the value of timber other than that. He surveyed in the Forest Reserves, but not for the purpose of locating the reserve itself. He has surveyed for the Government, lands that were in the reserve. He has been through Coos County, and thinks he surveyed a small fractional township in that county, in the timbered area, which had an excellent growth of timber. The character of the lands which he surveyed in Coos County is very rough and heavily covered with undergrowth. Its chief value is for its timber. He was reared on a farm in Eastern Oregon, and lived in a farm until he was about fifteen years old, and since that time has some knowledge of farm life from obser-

vation in this country, particularly in Western Oregon.

Q. Now, suppose the company had sold these lands to so-called actual settlers, in quantities not exceeding 160 acres, and at a price not exceeding $2.50 an acre, and the actual settler had obtained a good title to the quarter section thus sold to him, and it was covered with this stand of timber or with the timber that is on these unsold lands, how long do you think it would be after the so-called actual settler got his title at $2.50 an acre, that he could sell that land to timber investors?

Q. And what would be the best use that he could make of that land?

A. Practically the only use he could make of the land would be to sell it for its timber, or sell the timber. My experience has been, in surveying in the timbered areas of this state, as well as other states, that lands acquired by homestead from the Government on the timbered areas are never occupied for any appreciable period after title has been acquired. I suppose that in all the lands that I have surveyed, and that I have been connected with since 1892, there were not half a dozen that were acquired either by homestead or by purchase, that the parties lived on after they secured their title.

Q. What did they do with the land?

A. They moved off, the buildings went into decay, and the small portions that were cleared were soon overgrown with undergrowth, and if there was timber on the land, the lands were sold to holders of large timbered tracts.

Q. Would that be the experience of these lands if the title was passed to these so-called settlers, in quantities of 160 acres at $2.50 an acre?

A. It would.

Q. Now, suppose that a settler was expected, under the Act, to go out there and live on one of these quarter sections, like some of these photographs which you have taken here, and to make a living for himself and his family on that quarter section, and to confine his stock that he might own and might pasture to the quarter section, what, in your judgment, would be his ability to make a living for himself or his family on that quarter section.

A. In my opinion it would be impossible to make a living off the land itself. If the land was contiguous to roads, he might cut wood and haul that to market and make a living, or he might by trapping or hunting; but by making a living from agriculture on the land, it is an impossibility.

Q. Could he make a living by grazing on the land?

A. There might be some isolated claims that he could, in some portions of Southern Oregon, but in the mountainous regions of Tillamook County or Yamhill County, Columbia County, or in the Cascades, along the border of the Cascades, where the company's lands are now located, it would be impossible in practically every instance to make a living by grazing.

Q. If he undertook to live on any of these quarter sections by means of pasturage, would he or would he

not have to have an out-range besides?

A. It would be impossible to make a living off any one of these timbered quarter sections by grazing, being confined to that quarter only, in its present condition.

Q. Suppose a man went up into these big burns, picked out a quarter section that was burned over, or that did not at the present time have any considerable amount of timber on it, and undertook to make a home there for himself and his family, put some of this land to grass in the stumps after burning off the debris, do you think, or do you know of any quarter section within the limits of this grant where a man could go and take his family and fence his quarter section and make a living by pasturage on that quarter section?

A. I do not think there is a quarter section in the grant that could be used for that purpose. One of the main reasons why I am inclined to that opinion is that these lands are in high altitudes, and there is considerable snow falls there, and it lies on for a long period, and it would be necessary to raise hay in order to winter stock, or else take them to some other place during a large portion of the year. And a great deal of this land, when we begin surveying in June, the snow is very deep, especially on the north hillsides and all the mountains, and does not go off until midsummer, and then snow begins to fall in September in a great many places. As soon as we have the fall rains in the valley, it is snowing on the mountains.

Q. Some of these lands under the testimony here

have been classified as grazing, and there has been some testimony that these lands when logged off could be seeded, after the fire had run through and burned over the land, and that the land could be pastured in that way over considerable areas. Do you not think, or do you think, that would be practicable, that it could be done?

A. Not practicable under present conditions. From my own personal knowledge, I know of thousands of acres that have been logged off that are admirably situated for that thing, if it could be done, but they are not utilized for that purpose, and I presume the chief difficulty is that as soon as the timber is removed, there is a very dense growth of undergrowth springs right up, and that may all be taken off one year, and next year it is all on there. It is almost impossible, seemingly, without taking the stumps and plowing the land thoroughly from year to year for a number of years, to eradicate the undergrowth.

Whereupon witness further testified that re-forestation of these lands has not been called to his attention and he has no knowledge of that. He discontinued his employment about the time Mr. McAllaster became connected with the company, he thinks about four years ago, and since that time he has had no employment with the company, or with the Southern Pacific Company, and thinks he never made any cruising or formal reports to the company of cruising, with the exception, possibly, of one or two instances, practically none.

Whereupon, on cross examination, witness further

testified that he was born in Eastern Oregon, about eight miles from The Dalles, and remained on the farm until he was fifteen years of age, but was going to school a portion of that time. He was admitted to the bar in 1902, and has been engaged in the practice of law since 1903. Since he was twenty-one years of age he has been in the Government service other than when he was a student during the winter time, until he was admitted to the bar, the Government service referred to being Government surveying. He was a student in school during the winter and engaged in surveying during the surveying season, working for W. E. Campbell, United States Deputy Surveyor, and for Ed Sharp, who was a deputy, and after that witness was a contractor. He had been employed by contractors, men who had Government contracts, up until about 1900, and then for about ten years he was contracting for himself. He has owned farm lands since he reached man's estate, but he has not been actually engaged himself in farming, and would say that he understands farming as it is practiced in this country, but has not been engaged personally in the work of farming, and he has not been a farmer, except as an investor in some lands that he owned that are farm lands and that are being farmed; his experience until he was fifteen years old, on a farm, and since then, his people being farmers, he has had more or less to do with farmers. He is not a timber cruiser, although he testified as to having made some cruises of timber within this grant. He had made estimates of timber standing on claims, and he supposes it might be said that he made these as

a timber cruiser, although he is not a cruiser and does not pretend to be. He thinks he can determine in a fairly accurate way the stand of timber on a claim. His experience in the woods has been such, he thinks, that he can do that, but he has never followed timber cruising. The memorandum noted on these photographs referred to by him, were made as soon as he returned after taking the picture, perhaps the next day. He made the notes in the field and then had them written on the typewriter. He made notes and wrote them as soon as he could get to a typewriter. These are not memoranda that he made on the ground, he does not think they are even copies. He made notes and then made this up from his notes as soon as he could get to a machine, and they are not verbatim memoranda that he made on the ground. The affidavit attached to Defendant's Exhibit 267 was not made on the ground, but immediately after returning from the field, possibly the next day, when the matters were fresh in his mind. Two or three days was usually the extent of any one trip. He supposes he would say that he was in charge of the parties that were cruising this land, making the examinations and taking the photographs, if one would say that any one was in charge. They went out, two or three of them, to take the photographs, and received all of their directions from Eberlein. The photographs were taken in 1907, on the dates indicated in the memoranda. He thinks that it was after the people had filed their applications, as they were first filed in San Francisco. He was informed by the company, and it was his understanding, that these

people had filed applications. It is his impression that he surveyed a township for the Government on Indian Creek, in Klamath County, but he is not certain whether it was Klamath County or not, but he does not recall the details, because it is a good many years ago, and he has had no occasion to refer to it. He thinks that it was in, perhaps 1902. He did not, in 1902, survey that entire township, it was prior to that time. He was not in charge of the party. He was doing Government work at the time, but went with his nephew, who had some work there, and witness had some work in another place and they joined their cruise together, and went in on that work. He thinks that is the only township he surveyed in Klamath County, and he is not sure that it was in Klamath County, but he has been over Klamath County pretty much. He went from Klamath Falls to the lake, and then from the lake down to Medford, on a trip to see the country. He then went back on this work when they went up Indian Creek, and he passed through Klamath County, from Ashland to Klamath, and has been on the railroad running from Weed, California, up close to Klamath Falls. He is not sure whether that touches the lands involved in this grant or not. These trips that he made were traveling along the public highways and not surveying trips, except the one surveying trip that he had there. He made one or two other trips in that country. He thinks it is Klamath County, looking at some lands in connection with work for the company. Rees and he went down there. He does not recall the township; they went out from Ashland, back

into the mountains. He surveyed a township in Jackson County, and he thinks it is 39 south, 6 west, but is not sure—it is on Williams Creek, and that is the only township he surveyed there, he thinks, and the only surveying he thinks he did in that county. He thinks he did not do any cruising there. In Douglas, he did quite a little surveying, where he ran the Willamette Meridian, if that is in that county. It is either in or right on the boundary line, but may be on the boundary. He thinks he was on Township 32 south, to 27 south, going north. Referring to Defendants' Exhibit 259, it is his impression that they ran the meridian line from the southern boundary of township 30 south, to the northern boundary of township 27 south. He does not recall that he has done any surveying in that county excepting these two townships, and running the meridian, and he thinks perhaps not. He went through that country, through the timbered area there, looking for vacant lands after that, but did not make an accurate cruise of the timber, but sized up the timber going through. He did not go through the entire timbered area in Douglas County, but went over quite a bit of the timber near that he mentioned that he surveyed, and west of that. Since he became twenty-one years of age he has been in the mountains in the summer time, and in the winter in school, with no particular place of abode, excepting that his people live at The Dalles, where he supposes his headquarters would be, where his mother lived. He attended the University of Oregon four years after leaving The Dalles, and then three years in Columbia University in

New York, and has lived in Portland since 1903. He does not recall whether he did any surveying in Josephine County.

Q. In Lane or Linn County, have you surveyed any there?

A. I have done no Government work there.

Whereupon witness further testified that he had not cruised any lands in Linn or Lane County, but had been through the lands, looking at them to determine their character and the amount of timber, but not to make an accurate cruise. Some of that work was done for the company, and locating certain lands to see what they were valuable for, and as to other lands, he was looking for Government land that might have timber suitable for taking under the Timber and Stone Act. He has never filed a Timber and Stone claim or homestead entry, and never dealt in timber lands.

Q. Why didn't you file on some of the timber-land there was an opportunity to get?

A. If you had told me that ten or fifteen years ago, I would probably be worth $10,000 or $15,000 more. One reason I did not, when I was in the Government service I was prohibited from taking any lands under Government Act. That prohibited me from taking lands when I was directly connected with the Government, but not after I discontinued.

Q. You were not connected with the Government or working for the Government?

A. Oh, yes, I was. I was a contractor, and under bonds, and had to file my oath of office.

Q. That was while you were engaged as a contractor?

A. Yes.

Q. On the survey of these lands?

A. Yes. That continued up until about 1904, because there were certain contracts had not been closed up until some time after I was practicing law; they hadn't been finally disposed of, and I was still connected with the Government.

Q. Well, that merely contractual relation would not prevent you from filing on timber-lands, would it?

A. I think so.

Whereupon witness further testified that he would like to correct his testimony if he stated that he had made numerous trips over a number of counties looking for a timber claim. He did not state he was looking for a timber claim. He said he was looking for timber land, or lands that might be desirable to be taken under the Timber and Stone Act, but not for himself. He was looking for these lands for various persons. He had told two or three people where they might find timber claims, and he thinks they paid him for this information. That is the only selecting that he ever did. He never did any surveying or timber cruising in Polk County. He has examined the character of the lands with reference to timber for the company, but has not made accurate

cruises. He thinks he has never cruised or surveyed any lands in Benton, Washington, or Columbia counties, but he has examined lands for the company and made some other examinations for their general character. There was a great rush for timber lands here and the people who lived in Oregon, most of them, woke up about the time the timber was all gone, to the fact that they were valuable. After the lands practically were all taken, he did some reconnoitering around through various counties to see if there was any timber that might still be had. This was along from 1900 on. The timber excitement in Oregon started before 1900. He knows a great many people came here from Michigan and Minnesota as early as 1892, and took lands in the Santiam country. Large portions of these timber lands were acquired from the Government in 1900 and subsequently. He noticed the excitement with reference to filings in his Government work as early as 1892. Perhaps it was not so generally known then—it was more quiet. People who had come from timbered states, such as Minnesota and Michigan, were quietly taking up claims, and his connection with it was to the extent: these people who would locate on a township and where there would be three in a township, they would make application, and ordinarily the Department would order the township surveyed, so that in all these townships that they surveyed they would find three or four settlers, maybe half a dozen, who were acquiring timber claims under homesteads. There were no other persons in the township. It gradually increased until along in 1900. It was, he supposes, at its height

along in there some place. Large bodies of these lands were acquired in 1900 and subsequently through Santa Fe and other scrips that were required to be filed on surveyed lands, although he has no particular knowledge as to that. He did not have much to do with lands upon which scrip was placed. Scrip was either placed after the lands had been surveyed, or if it was scrip for unsurveyed lands, they knew nothing about it. They would put the scrip on and would not ask to have it surveyed. That was principally Northern Pacific scrip. There was some "additional" scrip. These photographs were all taken in the examinations of this land made while he was employed by the O. & C. Railroad Company and under the directions of the officers of that company. They were practicing attorneys when they were employed by the company. Their work when they began for the company was chiefly with reference to the investigation of titles. There were a great many of the grant lands that had been sold for taxes, and some of them had adverse possession running against them, and there were gaps in the rights of way, and matters of that sort, and their operating lands were involved. There never had been a thorough investigation of the titles, to see what condition they were in, and when Eberlein took charge of the office he started an investigation of that sort, and Mr. Bristol had charge of that for some considerable time. After Bristol quit the service they took up the work, and that was chiefly the work that they were doing, although they did do some work along the line that he has been testifying, in the way of examining

lands and making reports on lands upon which applications had been made under the Act of 1869; but the major portion of their work was in reference to titles. When that work was completed their services were discontinued.

Q. After the agitation of this suit began, then you were put on this work of examining into settlements?

A. Well, we made some examinations while we were closing up the other work. When the other work was closed up, why—

Q. That was in 1907?

A. Yes.

Whereupon on re-direct examination witness further testified that as he is informed, Henry S. Graves is Chief of the Forest Service, succeeding Mr. Pinchot, and he has seen the article "Defendants' Exhibit 345" purporting to have been written by Mr. Graves. Whereupon defendants offered in evidence this article entitled, "Farms in the National Forests," reproduced under the head of "Extension of Remarks of Hon. William Kent, of California, in the House of Representatives, Thursday, August 15, 1912," beginning at page 12098 and including page 12102 of the Congressional Record, and being the article in the Saturday Evening Post of August 17, 1912,—to which complainant objected as incompetent, irrelevant and immaterial and not properly identified,—which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified as Defendants Exhibit 345.

Whereupon witness identified the document "Issued June 17, 1911. U. S. Department of Agriculture, Forest Service—Bulletin 88, Henry S. Graves, Forester. Properties and Uses of Douglas Fir." Washington, Government Printing Office. 1911," which was marked Defendants Exhibit 346.

Whereupon defendants offered in evidence this document, to which complainant objected as incompetent, irrelevant and immaterial, and Defendants' Exhibit 346 was received in evidence, and the part thereof particularly offered is in words and figures as follows:

"Issued June 17, 1911.
U. S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE—BULLETIN 88.
HENRY S. GRAVES, FORESTER.

PROPERTIES AND USES OF DOUGLAS FIR

PART I. MECHANICAL PROPERTIES
PART II. COMMERCIAL USES.

BY

McGARVEY CLINE, Director, Forest Products Laboratory,

AND

J. B. KNAPP, Assistant District Forester.

(Seal) UNITED STATES DEPARTMENT OF AGRICULTURE
1862 1889
AGRICULTURE AND COMMERCE
THE FOUNDATION OF MANUFACTURE

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1911."

[2789]

"LETTER OF TRANSMITTAL.

UNITED STATES DEPARTMENT OF AGRICULTURE,

FOREST SERVICE,

Washington, D. C., January 16, 1911.

Sir: I have the honor to transmit a manuscript entitled 'Properties and Uses of Douglas Fir,' by McGarvey Cline, Director of the Forest Products Laboratory, and J. B. Knapp, Assistant District Forester, and to recommend its publication as Bulletin 88 of the Forest Service. The 3 plates and 15 diagrams which accompany the manuscript are necessary for its proper illustration.

Respectfully,

HENRY S. GRAVES, Forester.

HON. JAMES WILSON,
Secretary of Agriculture."

(Pages 9 and 10.)

"PROPERTIES AND USES OF DOUGLAS FIR.

INTRODUCTION.

It is the purpose of this bulletin to present the facts about the mechanical properties and uses of Douglas fir which have been collected by the Forest Service. Part I, which deals with the mechanical properties of Douglas Fir, is based on an exhaustive series of tests made in the laboratories of the Forest Service. The results of these tests are of special interest to the users of structural timber. Part II, which deals with the commercial uses of the timber, is based on information furnished by lumber manufacturers and other industrial concerns that use Douglas fir. The gathered facts are of interest in that they show the wide utilization of this tree.

Since 1903 the Forest Service has been making a comprehensive series of tests to determine the mechanical properties of the commercial woods of the United States. The work has been done at laboratories conducted in cooperation with the Yale Forest School, New Haven, Conn.; Purdue University, Lafayette, Ind.; the University of Colorado, Boulder, Colo.; University of California, Berkeley, Cal.; the University of Washington, Seattle, Wash.; and the University of Oregon, Eugene, Oreg. General summaries of the results secured have been published in Forest Service Circulars 32 and 115, 'Progress Reports on the Strength of Structural Tim-

ber,' and from time to time other circulars dealing with particular series of tests have been issued.

The tests on Douglas fir were made at the Oregon and California laboratories; the material was cut in Lane County, Oreg., and was contributed by the Pacific Coast Lumber Manufacturers' Association and by the Oregon and Washington Lumber Manufacturers' Association. For the information contained in Part II the Service is indebted to many manufacturers and users of Douglas fir, and especially to the officers of the Oregon, Washington, and Pacific coast lumber manufacturers' associations, for their cordial cooperation.

Douglas fir may, perhaps, be considered as the most important of American woods. Though in point of production it ranks second to southern yellow pine, its rapid growth in the Pacific coast forests, its comparatively wide distribution, and the great variety of uses to which its wood can be put place it first. Estimate of the available supply range from 300,000,000,000 to 350,000,000,000 feet board measure. It is very extensively used in the building trades; by the railroads in the form of ties, piling, car, and bridge material; and by many of the manufacturing industries of the country. As a structural timber it is not surpassed, and probably it is most widely used and known in this capacity.

The species is most abundant and attains its largest size not far above the sea level in southern British Columbia and in the region between the coast of Washington and Oregon and the western foothills of the Cas-

cade Mountains. (See Diagram 1, map.) Here large trees crowded close together rise to a height of from 200 to 300 feet, forming, either alone or mixed with hemlock, very dense forests that yield from 35,000 to 60,000 board feet per acre and sometimes as much as 100,000, and are in one recorded instance 500,000 feet.[1]

The wood is strong and hard, not very heavy, and fairly durable. These qualities particularly recommend it for structural purposes. The grain is straight. The spring and summer wood vary greatly in density; the spring growth is soft and spongy and almost white in color, while the summerwood is hard and flinty and very dark. The grain varies from as few as four or five rings to the radial inch to as many as forty-five.

In the eastern part of its range in the Rocky Mountain region, where the rainfall is not abundant and where extremes of climate occur, the trees are much smaller, rarely over 1½ feet in diameter and over 90 feet high. In this section the stand ranges from 2,000 to 8,000 board feet per acre.[2]

Douglas fir is known by various names in different sections of the country. The most common names and the States in which they are used are:

Douglas fir (Utah, Oregon, Colorado, Washington.)

Red fir (Oregon, Washington, Idaho, Utah, Montana, Colorado).

Douglas spruce (California, Colorado, Montana).

Yellow fir (Oregon, Montana, Idaho, Washington).

Spruce (Montana).

Oregon pine (California, Washington, Oregon).

Fir (Montana).

Red pine (Utah, Idaho, Colorado).

Puget Sound pine (Washington).

Douglas tree.

Cork-barked Douglas spruce.

The name Douglas fir has been adopted by the Forest Service and by various trade and technical associations, and is coming into general commercial use.

[1]Transactions of the Royal English Arboricultural Society, Vol. VI, p. 228.

[2]For a comparison of the Rocky Mountain and Pacific Coast forms of Douglas fir see Forest Service Circular 150 Douglas Fir, by E. H. Frothingham.

Whereupon witness recognized "Circular 150," "U. S. Department of Agriculture, Forest Service—Gifford Pinchot, Forester," marked Defendants' Exhibit 347," and recognized the same as an official bulletin issued by the U. S. Department of Agriculture.

Whereupon defendants offered said document in evidence, and particularly page 13, which shows the timbered area "(1) North Coast Region," Douglas fir covering the western part of the state of Oregon and Washington, to which complainant objected as incompetent, irrelevant and immaterial, which Defendants' Exhibit 347 was received in evidence and is hereinafter set out

and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness recognized as an official document issued by the Department of Commerce and Labor, Defendants' Exhibit 348, being "Forest Products, No. 2 Lumber, Lath and Shingles 1910 Compiled in cooperation with the Department of Agriculture: Forest Service, Henry S. Graves, Forester, issued February 20, 1912."

Whereupon defendants offered said document in evidence as Defendants' Exhibit 348, and read into the record that part of the table, page 4, "Table 2.—Lumber, lath, and shingles" as follows:

Number of active mills reporting and quantity of lumber cut, with per cent of increase and per cent distribution, by states: "1910, 1909, and 1908," under the column:

State	Rank in Production			Number of Active Mills Reporting		
	1910	1909	1908	1910	1909	1908
Washington	1	1	1	951	1,143	929
Oregon	4	9	8	574	696	595

Page 5, "Table 2.—Lumber, lath, and shingles—Number of active mills reporting, etc.

State	Lumber Sawed							
	Quantity (M feet b. m.)			Per cent of increase		Per cent distribution		
	1910	1909	1908	1909 to 1910	1908 to 1909	1910	1909	1908
Washington	4,097,492	3,862,916	2,915,928	6.1	32.5	10.2	8.7	8.8
Oregon	2,084,633	1,898,995	1,468,158	9.8	29.3	5.2	4.3	4.4

Also page 6 of this document, which reads:

"Mississippi, also a yellow-pine state, retains third place, and Oregon, with a greater cut than ever, has advanced to fourth place, while Wisconsin, the leading state 10 years ago, stands fifth. The rise of Oregon has been exceptionally rapid. This state, which ranked twenty-third in 1899 and reported 734,538,000 feet of lumber, has increased its production since that time 183.8 per cent, the cut in 1910 amounting to 2,084,633,000 feet, by far the larger part of which was Douglas fir."

Also diagram of the "Lumber production, by states, 1910," page 7, giving the "Billions of Board Feet" in a table, showing Oregon fourth, and which reads as follows:

"Probably not less than one-fourth of the lumber shipped from Oregon and about one-fifth of that shipped from Washington goes by water, the larger part of it to California ports. Large quantities of lumber produced

in these states, however, are shipped directly to Australia, China and Japan, South America, Africa, Mexico, and Central America, in the order named, and a considerable amount to Hawaii, Alaska, and the Philippines. The Alaska trade, however, is decreasing owing to the erection of lumber mills in that territory.

"California, producing chiefly redwood and pine, reported in 1910 the highest production since 1907. This state also ships part of its product to non-contiguous possessions of the United States and foreign ports. The three Pacific Coast states, together with Idaho, supply the bulk of the timber required in the western half of the United States."

Also page 9, bottom of page, commenting on Table No. 3, the following:

"The rank in point of production of the five leading woods was the same in 1910 as in 1909, Douglas fir showing the greatest relative gain.

"For more than 10 years yellow pine has been the leading wood in point of quantity produced. In 1910 this wood furnished a higher proportion of the reported cut than in any other year except 1904 and 1909. Douglas fir, with a greater production than ever before reported, ranks second, as it has done since 1906."

Also page 13, under the subject "Douglas Fir."

"The estimated stand of Douglas fir timber in the United States is greater than that of any other softwood and more than the combined stands of all the hardwoods.

Its geographic range extends over 10 states, from Colorado and New Mexico westward to the Pacific Coast. Its best development and heaviest stands are found in western Washington, western Oregon, northern California, and Idaho."

Also Table No. 5, "Lumber, lath, and shingles—Douglas-fir lumber—Number of active mills reporting and quantity cut, by states: 1910."

Douglas Fir Lumber Sawed:

State	Number of active mills reporting	Quantity (M feet b. m.)	Per cent distribution.
United States	1,347	5,203,644	100.0
Washington	516	3,259,546	62.6
Oregon	452	1,714,462	32.9

"Washington produced more lumber in 1910 than any other state, and practicaly four-fifths of the amount was Douglas fir. Nearly two-thirds of the Douglas-fir cut was reported from Washington; about one-third from Oregon, and the remainder, amounting to less than one-twentieth, was divided among eight other states."

Also page 17:

"The 1910 cut of western pine was the largest ever reported, exceeding that of 1907 and showing an increase of 4.1 per cent over 1909. California, Idaho, Oregon and Arizona show a moderate increase in production from 1909 to 1910, while Washington, Montana, Colo-

rado, and New Mexico show a slight decrease," Oregon showing 180 mills actively reporting sawing western-pine lumber, quantity 209,636 feet board measure; per cent of distribution 13.4.

Whereupon witness testified that Defendants' Exhibit 349 is an official document issued by the Forest Service September 5, 1907, to which complainant objected to as incompetent, irrelevant and immaterial. Which said Defendants' Exhibit 349 was offered and received and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness, upon re-cross examination further testified that he owns a small tract of land in Washington County, one the line next to Clackamas, in section 12, township 1 south, 1 west, close to the meridian, consisting of 28 acres of farming land. He supposes that it was timbered at one time, a good many years ago. A portion of the lands surrounding it, large bodies of it, is timbered at the present time. It has been logged off and is now cleared, and most of it was cleared when he purchased it. He owns the larger part of the stock of a corporation which owns a piece of land in Tillamook County, not far from the town of Tillamook. It is not a farm, it is a sort of waste land or burn. He has never seen it. He took a chance in buying it without seeing it, and does not know very much about it excepting that he had a man go on it and examine it. It is not dairy land. It has some timber on it, not a great deal. He didn't pay

very much for it, and thinks there is 80 acres in it. He is not putting it on the market to sell, but just letting it lie there. There is quite a dairying country around in Tillamook County, but he does not know as it is in that vicinity. There are dairying interests there in that county.

Whereupon, on redirect examination, witness further testified that there are no dairying lands on these timber lands of the company, and that these dairying lands in Tillamook County are down in the valley, around the town of Tillamook. It has been his experience on the land grant lands that all those portions of the grant that were suitable for agriculture or for dairying, or anything of that sort, were acquired by individuals soon after the grant was acquired, and while the grant was being sold, a great many years ago.

Whereupon, on re-cross examination, witness further testified that his last statement is from his observation in the field and from a study of the maps showing the lands that have been sold by the company or under contract. He could not tell by observation in the field when the land had been acquired, but could tell by observation in the field that certain lands that had belonged to the company were now under cultivation and had been acquired a long time ago. These lands were not timber lands.

Whereupon **A. W. REES**, called as a witness on behalf of defendants, being first duly sworn, testified that he is fifty-one years old, resides at Portland, Oregon, and is an employe of the Oregon and California

Railroad Company, and has lived in Oregon thirty years, with the exception of three years when he was in British Columbia and Washington. He has been in the saw mill business in the capacity of head sawyer and operated a mill from 1882 up to 1904 or 1905, and most of the time since, he has been in the timber business or cruising timber. Up to the present time, except in the last two or three years, he had charge of the Portland office of the Oregon and California Railroad Company. He is manager of the field work in Oregon for the company, and is a practical cruiser of timber lands.

Referring to Defendants' Exhibit 353, showing 16,351 acres being east of Willamette Meridian on one sheet, and 31,907 acres west of Willamette Meridian on another sheet, witness testified that he cruised these lands, he believes, all within the last four or five years, and these lists were made up from cruise reports that he made that are now in the office, and they show the character of the land as shown by the reports, and show the present condition by township, range, section, county, and whether timber, grazing or agricultural, as shown by these reports, and they also show the condition of the land when denuded, as shown by these reports, to which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands involved within the limits of the grant and to settlements thereon and public land entries thereof.

Whereupon witness further testified that these statements showing 7,124 acres in their present condition classified as timber lands, and 6,282 acres classified as grazing land, and 2,945 acres classified as agricultural lands, or 18 per cent of the total of 16,351 acres in their present condition as agricultural, are correct so far as his reports show and from his actual knowledge of the lands in the field, that is his judgment. The statement that when denuded there are 10,866 acres classified as grazing, and 5,485 acres as agricultural, and that the agricultural is 33.54 per cent of the total of 16,351 acres lying east of the Willamette Meridian, is correct according to his judgment, according to these reports. The statement showing 29,492 acres west of the Willamette Meridian, classified by him as timber, 2,295 acres classified as grazing, and 120 acres classified as agricultural in their present condition, or .376 per cent agricultural in their present condition, and when denuded 30,740 acres grazing and 1,167 acres agricultural, or 3.65 per cent of the total 31,907 acres, is correct according to his judgment.

Whereupon defendants offered and there was received in evidence these two tabulated statements marked "Defendants' Exhibit 353," there being no objection that the original reports from which these are tabulated are not produced, which exhibit is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that he had about two of each kind of these reports which he made

as a cruiser, with him, and producing three of such reports testified that he prepared Defendants' Exhibit 354, being three reports, and delivered the reports to the company, from actual cruises in the field made by him while in the service of the company as to these lands, and they are a fair representative sample of all of the reports made by him, upon which Defendants Exhibit 353 is based. These reports were made to the company to be acted and relied upon by it in the course of its business, and expressed his best judgment at the time they were made. F. A. Elliott, S. A. Carmichael, T. J. Cronin, C. A. Cavill, M. F. McGown, John McDonald, Ben Pack and Wm. W. Penoyer, who were cruisers for the company, made reports to the company in the same way, and these reports are in his custody as custodian of the records of the land department at Portland. He cannot explain how it is that Defendants' Exhibit 354 has two different forms, or how these forms happened to be used or adopted, as they were given to him to use by the San Francisco office, and some three or four years ago they changed the form of report, sending him the brown colored form S-5649 to be used in the future in place of the other form. Defendants' Exhibit 261, showing the cruise reports of McLeod and McLennan are substantially the same as this brown colored form. In preparing Defendants' Exhibit 353, he used the classification that is given on the form with reference to certain sections cruised, and did not have on these forms a classification for land that is barren or rocky, or totally unfit for any purpose, as a separate classification. That

character of land is classified as grazing land. Lands are either timber, grazing or agricultural in their original condition, under these reports, and when denuded they are grazing or agricultural. He included in grazing any lands, if there were any, that might be rocky, barren, or without any soil, or timber, or any value. Everything is grazing that is not shown as timber or agricultural land. His instructions were to classify the land as timber, grazing or agricultural lands. The timber lands are lands chiefly valuable for the timber, the stand of merchantable timber thereon. Agricultural lands are lands of very little timber and which could be plowed and cultivated, in quarter sections or less, used for agricultural or orchard purposes, and that would yield a reasonable return on the investment. All other lands are classified as grazing lands, regardless of whether they have any value for grazing purposes or not. That is to say, if they were neither timbered or agricultural, they would be classified as grazing.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 354, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that Defendants' Exhibit 355, purporting to be a tabulated statement showing the cruising of F. A. Elliott, is a correct statement.

Whereupon defendants offered said Defendants' Exhibit 355 in evidence, to which complainant objected

as incompetent, irrelevant and immaterial, and that the witness is not competent to identify the accuracy of these cruises, but no objection is made that the defendants do not produce the original reports.

Whereupon said Defendants' Exhibit 355 was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that S. A. Carmichael is a timber cruiser, who worked for the company a number of years, and that Defendants' Exhibit 356 was made from these cruisers' reports made by Carmichael to the company in his custody, and to the best of his knowledge that exhibit shows correctly what the cruise reports show. He caused these tabulated statements to be prepared under his supervision. A few of the reports he prepared himself, he actually participated in the work, and saw that the others were correctly done.

Whereupon defendants offered in evidence Defendants' Exhibit 356, to which complainant made the same objection as last above. Whereupon said exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that T. J. Cronin, C. A. Cavell, M. F. McGown, John D. McDonald, Ben Peck and Wm. W. Penoyar, whose names appear on tabulated statement marked "Defendants' Exhibit 357," were timber cruisers who cruised the timber for the

company at various times. Each of them made his report to the office, and these tabulated statements are correct reproductions of the summary of these reports so made, to the best of his knowledge and belief, and these reports are in his possession as custodian of the records of the company at Portland. These cruisers' reports were made in the usual and ordinary course of business, and these men were then in the employ of the company, and he believes they are all competent cruisers, they were supposed to be, and so far as he knows their work was satisfactory.

Whereupon defendants offered in evidence these tabulated statements marked as "Defendants' Exhibit 357," to which complainant objected as incompetent, irrelevant and immaterial, but made no objection that defendants did not produce the original reports, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that these cruisers' reports upon which Defendants' Exhibits 355, 356 and 357 are based, were all made upon substantially the same forms as Defendants Exhibit 354, and Defendants' Exhibit 261, possibly there were a few of these examination reports made by land examiners instead of by timber cruisers, which were used, although not many of them. Defendants' Exhibit 358 is the form that was possibly used by some of these cruisers. These forms were for making special reports on certain tracts of land that were to be examined for various purposes,

and were not generally used in the general cruising. This form, Defendants' Exhibit 358, has grades of agricultural lands, first grade, second grade and third grade —and timbered or wooded land, cultivation, care and extent, grazing land, first grade, second grade, third grade. They were used for special examinations of tracts of contract land that had reverted, or any other special examination.

Whereupon defendants offered and there was received in evidence as a representative sample of a report of a land examiner, Defendants' Exhibit 358, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that he does not think that these Defendants' Exhibits 343, 344, 353, 355, 356, and 357, which are based upon cruisers' reports in his office, include any lands cruised prior to April 18, 1906, reports of which were made before the fire and burned in the fire. The cruisers' reports of the company which were in existence prior to April 18, 1906 were all taken to San Francisco, and he presumes were burned in the fire, that has been his understanding. These tabulated statements would show only a very small portion of the lands actually cruised based upon existing records, and do not show all of the lands which he cruised from time to time since he became an employe of the company, down to date, nor very few of the lands cruised by F. A. Elliott, and there were quite a number of cruisers at various times whose reports the company does not have; cruises that were made previous

to the time the records were taken from Portland. The cruisers' reports of N. E. Britt, for instance, were sent to San Francisco along with the others, and he presumes were destroyed in the fire. The cruisers reports made by F. A. Elliott, other than these showing that he cruised apparently about 2,000 acres, were sent to San Francisco, and these tabulated statements only show a portion of the total cruises of these parties that did work before the fire of April 18, 1906. He has prepared or caused to be prepared a map which reproduces on the map, the location of the various tracts cruised by these various parties whose reports are tabulated in these exhibits, and Defendants' Exhibit 342 is such map, and that map, he believes, to be substantially correct. It may include a few lands or tracts not shown in the statements but does not include any lands that have not been cruised, as shown in these colors. The 880 acres which he cruised in Multnomah County is in the eastern part of that county. The 875 acres of that total of 880 acres classified by him as timber, is Douglas fir, generally called yellow or red fir, and the lands are chiefly valuable for timber. The five acres classified by him as agricultural, is land that has very little timber on, level enough to farm and plow, and fairly good soil. These parcels or acres classed by him as agricultural in their present condition, are generally situated along the creek bottom, while the other land extends back on the hillsides, although there are a few sections where it is bench land, level benches, with fairly good soil and level enough to

cultivate and not too many rocks. These agricultural parcels are isolated and widely separated from each other. His classification as grazing when denuded, includes all lands that are not classed as agricultural land. It might be worthless land, or any land not classed as agricultural land. Some localities make fairly good grazing land after they are denuded of the timber. Other localities are very poor, and there are some places where the lands are classified as grazing lands that have no apparent value for any purpose on account of being very rocky and no forage of any kind. A timber eighty, where the eighty is covered with an excellent stand of merchantable saw timber, he classifies as grazing after the timber is cut off and becomes what is called logged-off land. Usually one would have to do considerable clearing of brush, of lands that can be used for grazing purposes. The brush grows up very quickly after the lands are logged-off and they would have to be cleared to a certain extent, not to the extent of taking up the stumps, but to the extent of clearing it of brush and logs. There is a great deal of that land that could not be used at all for grazing. When the merchantable timber is logged off of these tracts of land, there is considerable of timber left of inferior quality, not suitable for milling purposes. The lands which were cruised in Clackamas County generally lie along the Clackamas River, where they include the bottom lands along the river, extending back onto the hills to some extent, but they cover lands that have more than an average of agricultural land. The

difference in the amount of grazing lands in the percentage in their present condition in the counties of Multnomah and Clackamas, as compared with the counties of Douglas, Josephine, Jackson and the other counties named in his statement of lands lying west of the Willamette Meridian, is, that in Clackamas and Multnomah there are large burns, considerable of that land examined was on burned sections that had no timber at all, or scarcely any, and these burns were generally classified as grazing lands, A large burn is in 1 south, 2 south—5 and 6 East, Clackamas County, Oregon, of rather high elevation as to a considerable portion, probably 2,000 feet to 4500 feet. These burns are usually covered with dead snags, trees that were killed years ago, and the trunks fallen down to the ground, and the ground usually covered with brush. These burns are generally covered with different kinds of brush, briers, and some wild grasses, and some places there is fairly good soil, and a great many places it is very rocky, and in most of the old burns the soil is very gravelly and unproductive. He cannot tell exactly when he began work for the company, but it was ten or twelve years ago—he knows it was more than ten years ago. He began in the capacity of timber cruiser, and before he commenced to cruise for the company he had been in the saw mill business, worked in timber for a number of years, ever since he was a grown man, the greater part of the time. He has done considerable cruising in Washington County, probably from one-half to three-quarters of the land that the company owns in that county,

and he thinks he has cruised at least one-half of the unsold lands of the company, inuring to the company under both grants, in that county. He has cruised nearly all of the lands in Multnomah County. He cruised with one other cruiser at one time, when they would take alternate sections, and he had been in Multnomah County at various times to cruise other sections. In Yamhill County, he presumes he has cruised only about seven or eight sections, but has examined quite a number of tracts. When he made an examination he would go on to the section and might go once or twice across it, making a general report of the character of the land, and not make a cruise of the timber. These examinations would enable him to tell in a pretty accurate way the character of the timber as well, or practically as well as to make a cruise of the timber. He thinks he has seen every section in Yamhill County that the company owns, but he has not made reports on every section. He supposes he has cruised about fifteen or twenty sections in Clackamas County, but has examined a considerable portion of the lands. There are some lands in Clackamas County, considerable, he has never made any report on, but went through and looked over in a general way, to get an idea of the character of the land. He has cruised about one-fourth of the sections in Polk County, but is familiar with practically all of the lands in that county. He does not remember of cruising but a few sections in Marion County, that is, making timber cruises, but has examined the greater portion of the lands in Marion County.

Referring to the map, Defendants' Exhibit 342, in the preceding testimony and in his subsequent testimony, he could tell better which lands he had examined and cruised, than from memory. He cruised about one-fourth of the lands in Lincoln County. He does not remember that he examined any lands in Lincoln County excepting in 13 South, 8 West, and two or three sections on the south side of 12 South, 8 West. Defendants' Exhibit 342 shows the boundaries of the various counties. He has cruised about one-third of the lands in Benton County. There were three cruisers there together, taking alternate sections, when he worked there. He does not remember of having made any special examinations in Benton County, although he has been through that county a number of times, and over the lands at different times. He has actually cruised only a small portion of the lands owned by the company in Linn County, and he does not remember of having made reports on more than probably ten per cent of the lands in Linn County. He has been over the lands in Linn County pretty thoroughly at different times. At one time he had a gang of cruisers in Linn County on the Santiam River. They camped at 12 South, 3 East, began at 11 South, 3 East, in the upper northwest corner of the township, and did some cruising there. By examining a piece of land he means that he has gone to the land and made an examination for some special or other purpose. Some times it would be to determine whether there were any improvements on the land, and he would then make a formal report

of such instances, such as has been introduced in evidence as one of the exhibits in his testimony. There was a party of three cruisers, of which he was one, in Lane County which cruised Township 15 South, Ranges 6, 7, and 8 West; 16 South, 6, 7, and 8 West; 17 South, 7 and 8 West, at one time. He presumes he cruised one-third of the land. He cruised considerable of the lands in 15 South, 1 East and 1 West; 16 South, 1 East and 1 and 2 West; 17 South, 1 and 2 West; some few sections in 20 and 21 South, 1 West, and cruised, or was actually with a party of other cruisers, of which he was a member, more than half of the total of 299,606 acres in Lane County, but it would be pretty hard to tell what proportion of this total area, outside of what he cruised or participated in cruising, that he examined or made an examiner's report. He can remember a great many sections that he made some report on. He knows the character of and has been over the greater part of the company lands in Lane County. He thinks he has cruised or has been in a company with cruisers in which he participated, of about one-eighth of the 616,843.14 acres owned by the company in Douglas County. He had made examiners reports only of a small portion of the lands in that county. He has been over about all of the balance of the land that he did not actually cruise or examine. He thinks he has been in every township probably, over the lands wherever there is any road or trail, and a good many places where there is not, and he can tell the character of most of the lands. He never did a great deal of cruising of the company lands in

Coos County. He has been over the greater portion of the company lands in Coos County. He has been over the company lands in Curry County, but never made a cruiser's report of the company lands in that county. He is acquainted with the character of a greater portion of the company lands in Curry County, he thinks. He has only cruised a very small portion of the company's lands in Josephine County. He has been over them very often, and made quite a number of reports of various kinds in special ways on different tracts. He was with a party that cruised six townships of the company's lands in Jackson County, and there are three sections, he thinks, upon which he made reports, and he is acquainted with the greater part of the lands of the company in Jackson County. He has actually cruised or been with a party of cruisers and participated in the work of cruising all of the lands of the company in Klamath County. He presumes he has cruised, or been with a party who has cruised one-fourth of the lands in Columbia County, and has been on the greater part of the balance of the sections in that county. He does not remember that he ever made a cruiser's report on any lands in Tillamook County, but he has been generally over the lands in that county belonging to the company, enough to have a fairly good idea of the character of the land, and can tell pretty nearly what they are. The lands that the company retained there are generally pretty rough, and a part of these lands is heavily timbered, and their chief value is for the timber, he would say, the timber land. Taking the entire grant over which

he has examined, in its present condition, he believes that not over four or five per cent of it, is suitable for agriculture, and he thinks about seventy-five per cent of the total area of this land grant in its present condition, in his judgment, would be classified as timber and chiefly valuable for timber only. He would say that about twenty per cent of this total grant in its present condition, in his judgment, would be classified as grazing, including old burns where there is some soil and timber but not suitable or valuable for timber, and including also lands that are rocky, barren or unfit for any useful purpose, and making three classes, timber, agricultural and grazing. He may have the timber estimate too high, he does not know, but that is approximately correct, he thinks, as nearly as he can tell. There are lands, if the timber is cut off and cleared, that could be used for agricultural purposes, lands that are level enough and soil good enough. From his knowledge of the grant, such lands that could be thus cleared and grubbed and made available for plowing after the timber is removed, that would be classified as agricultural, would be a pretty small per cent, especially a small per cent that the value of the land would justify the cost of clearing. He has made some inquiry at different times about the cost of clearing, and has cleared a little bit of land himself. There is a great deal of this land where it is heavily timbered that he does not think could be cleared for less than $100 an acre, that is, cleared of stumps, and some of it much more than that. He presumes there are places where it might

cost $500 an acre to clear an acre of land, but he would place the general cost for clearing timber lands at from $100 to $150 an acre; it would be above $100 an acre, the average over the grant. In some places in the Willamette Valley, he thinks, good agricultural land can be purchased for that price, clear, or comparatively clear of all timber. He only knows by hearsay and what he knows of land selling for as to the range of prices of agricultural land five or six miles away from cities, convenient to transportation, in the old settled part, say in Marion and Yamhill counties. It can be bought from $50 to $150 an acre.

Defendants' Exhibit 362 was tabulated from Defendants' Exhibits 343, 344, 351, 353, 354, 355, 356 and 357. It is a compilation from these other exhibits. These exhibits, including Defendants' Exhibit 362, are based upon cruisers' reports in his office. They do not pretend to cover or include any cruising made prior to April 18, 1906, reports of which were destroyed in the fire. They include practically all the cruisings made since that date which are in his office. There are a few that were missed in making up the statements, but the acreage is approximately correct; fractions are dropped sometimes. Defendants' Exhibit 362 is substantially correct, and Defendants' Exhibit 342 is correct, he believes, although some places where more than one cruiser would cover more than one section, the coloring on the map could not show both. It showed the last cruise made. He did not discuss with Elliott what his best testimony would be, or in any way influence Elliott directly or indirectly as

to his testimony, and there was no promise on his part directly or indirectly expressed or implied to induce Elliott to testify, and none by anybody else to his knowledge. Oswald West was Governor at the time Elliott was appointed State Forester. He is not acquainted with Buxton of Forest Grove, but believes that he represents the Oregon State Grange as a member of the Oregon State Board of Forestry. Geo. H. Cecil is a member of the United States Forestry Service. It is his opinion, but he is not sure that George W. Peavy represents the Forestry Department of the Oregon Agricultural College. The Oregon and Washington Manufacturers' Association is made up of timber and mill men of Oregon and Washington. The Oregon Forest Fire Association is an association of timber owners of Oregon. The Oregon and California Railroad Company is not a member of this association, or of the Oregon and Washington Lumber Manufacturers' Association, but it maintains its own fire patrol, excepting in one or two places, where the company has a joint patrol with other people.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 362, which is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon witness further testified that he is not acquainted with R. G. Balderee, but knows he is one of the intervenors or persons claiming to be intending purchasers of some of these unsold lands of the company.

Defendants' Exhibit 363 entitled "Map of the State

of Oregon published by the J. K. Gill Company, Portland, Oregon," is the best map he could get of the State of Oregon. The colors traced on Defendants' Exhibit 363 correctly outline the two grants, with place and indemnity limits.

Whereupon defendants offered and there was received in evidence Defendants' Exhibit 363, which is hereinafter set out and described and made a part of this statement of the evidence, and identified as such.

Whereupon witness further testified that Defendants' Exhibit 363 is as clearly correct as any map that is published, and the map shows a fairly accurate location of the lines of railroad of the Oregon and California Railroad Company, Southern Pacific Company, Oregon Electric Railway Company, S. P. & S. Ry. Co., and O-W. R. & N. Co., and other lines, and nearly as actually constructed and operated. The Pacific Railway & Navigation Company, running through Hillsboro by way of Butxon and Nehalem River, to Tillamook Bay and Tillamook, is in operation at the present time. It was completed in the winter of 1911 some time, but he does not remember the date. The hatched dotted lines show proposed railway lines. At the time this map was published, the Oregon Electric is shown as a proposed line from Salem to Albany and as far south as Eugene. This has been constructed and opened for traffic very recently, if it is open at all; he is not certain that it is. Its completion was celebrated recently at Eugene, on October 15, 1912. The road indicated by dotted lines from Springfield to be constructed by the Oregon and Eastern

to Klamath Falls to connection with the constructed line at Klamath Falls, is in operation from Springfield to or above Natron, and under construction from there on to Klamath Falls, and is a mountain road part of the way. The road marked "P. and E. Railroad," from Medford in Jackson County, is in operation from Medford to near Butte Falls. The proposed railroad from Drain down the Umpqua River to Marshfield, has not been constructed. It was attempted to be constructed by the Southern Pacific Company, but has been abandoned. The Willamette Pacific Railroad Company, an affiliated or subsidiary line of the Southern Pacific Company, is constructing a line from Eugene westerly to the coast, down the Siuslaw river, in what is known as the Siuslaw country. The Corvallis & Eastern Railroad shown on this map from Newport or Yaquina Bay, through Corvallis, Albany, on to Mill City, or a point just east of Mill City, is in operation. There is some level land along the creek around Mill City, with mountains on each side. The character of the country is generally mountainous, with timber growth. He is not certain if that timber growth extends further than Detroit, if so far. That appears to be about ten or twelve miles east of the eastern boundary line of the 30 mile or indemnity limits of this grant. The general character of the country as to quality of timber in that section is good yellow and red fir.

Whereupon on cross examination, witness further testified that he marked these boundary lines shown on Defendants' Exhibit 363, showing the limits of the O. & C. land grant, but these limits were not traced on that

map prior to any work done by him. The only thing that he had to do with the preparation of the map was the marking of these limits, of the boundaries of the grants, and re-tracing the line of railroad of the Oregon and California Railroad Company. That is a stock map purchased from J. K. Gill & Company. He looked the map over carefully and considered it as good a map as there is published of the State of Oregon. He thinks that the line of road leading from Tillamook mentioned in his testimony, is recognized as being a part of the Southern Pacific Railway System. The proposed road leading from Eugene to Marshfield, is said to be a part of the Southern Pacific System, and the work has recently been started and they are doing work there now, but he is not able to say how far; the actual construction has been going on less than a year. The road from Springfield around to Klamath Falls, he believes, is what is commonly termed a cut-off of some kind, and is reputed to be a part of the Southern Pacific System from Springfield down to Klamath. The road running from Eugene to Springfield has been in operation for many years as part of the Southern Pacific System, but there is another branch of the Southern Pacific Company from Woodburn to Springfield, which has been in operation for a number of years as part of the Southern Pacific System. The road leading from Albany through Gates and Mills City, commonly termed the Corvallis and Eastern, is said now to be a part of the Southern Pacific System. His knowledge of the ownership of all this road is by common repute and by his connection

with the Railroad Company and riding over the railroad lines.

In cruising lands he generally used what is called the "double run" cruise; that is, running twice through each forty acre tract, making his count of two acres on each cruise, giving four acres in a forty acre tract, and making the estimate on that. A timber cruise is approximate always. In Southern Oregon where the timber is more scattering, he often made a tree count, that is, count all the trees on the forty, but the general method as described by him, applied more to Northern Oregon, to the Douglas fir district. Grazing land includes all land that is not classified as timber or as agricultural land, whether it has any special value for grazing purposes or not. Some forms of his reports have three different grades of grazing lands, as good, fair, or poor, but these are examiners' reports instead of cuisers' reports. They use examiners' reports when making special examinations for any certain purpose, where they do not care for a cruise of timber, and he presumes it would be used where there was an application to purchase agricultural lands, if they had such application and were making examinations for that purpose, no doubt he would use the examiners' report. It goes a little more into detail than the cruisers' report does. The examiners' reports contain no blanks for estimates of the amount of time on the land, or for timber cruisers' reports. He does not remember when they began using these examiners' reports, but thinks it has been about four years. They had two or three different forms of examiners' blanks prior

to the time they began using the present blank, different from timber cruisers' blanks. He does not remember that they had any blanks for making reports at the time they used the book form. This book form was the only one used, that he remembers of. There is some fairly good grazing land within the limits of this grant, but the amount is very limited. There is a large burned area in Clackamas County. This is usually very rough land, covered with dead trees, down logs, overgrown with brush, and would be very expensive to clear, and it is a high altitude. Some of it at an elevation of 4500 feet. One place that he remembers of, according to the aneroid, is 4700 feet, and he would judge the minimum altitude to be 1500 or 1800 feet. There are several townships that are entirely denuded or partly denuded of timber in that burn, but the fact that that land has been burned over would not alone render it incapable of cultivation. In making these cruises shown on Defendants' Exhibit 342, there would be several cruisers who would go into some township or locality, and one of them would take one section, another would take another section, and in that way they would cruise the land, and usually they had a compassman to run the lines or make the location for them. He does not mean to say that he could state accurately the character of every particular tract of the grant in Lane County, but generally speaking he is familiar with the lands in Lane County, and he thinks he could state accurately the purposes and uses to which these lands could be applied, judging from whether other lands are being used of like character and what they

are being used for, if used at all. That is not what he bases his opinion on altogether. There is considerable land that is too rough to be used for any purpose unless for grazing purposes. It would be pretty hard to take a township in Lane County and describe section by section the lands in that township, but there are some townships in which he can remember almost every section. Perhaps he could not recall every section in very many townships without referring to the plats or maps, or something. He was cruising this land at the time of the fire, and cruised some lands after the fire. A great deal of the land that he was over, was for making special reports of different character. The greater portion of these cruises have been made since 1907. He had cruisers at work engaged in cruising this land from 1906 to the present time, and has cruisers at work now, and has Bruce, McLennan and McLeod working now as cruisers, but no others at work now. McLeod is not cruising timber all the time, but is part of the time on other work than cruising.

Witness has not had a great deal of experience himself in farming in the last twenty years. He was raised on a farm until he was grown, and he has been around among the farmers a great deal in connection with this work. In the work he has got to go over the country and stop at farm houses sometimes. The farm he was raised on was in Vermilion County, in Ilinois, at the edge of the timber. The whole area there was prairie south of the timber where they were, and there was prairie north of the timber. The earliest settled portion in that

locality was not in the timber, they settled along the edge of the timber. The farms were usually along the prairie, but near the timber. Extending south from the timber, where he lived, there was no timber for a great many miles. He does not think that that land in this vicinity in Illinois, was ever covered with underbrush and timber at one time. It was covered with prairie grass—open prairie—as long as he can remember. He has been south of that place on the border between Illinois and Indiana, around Perrysville or East of Danville, and south, and a great deal of that was timbered country. He cannot say whether or not it has been cleared off and is practically all under cultivation at this time. He has not been there recently. He has farmed in Oregon at Newburg, Yamhill County, owning some land there and farming it one season, but does not remember the section, township and range. This was in 1882 that he owned that land; after that he had it farmed by other people. He had about seventy, or a little less than eighty acres. It was near Newburg, at a little place called Spring Brook, and the farm cornered at the station at Spring Brook, or within two hundred feet of it, lying west and north of Newburg, about two miles. It was part of the Heater Donation Claim. He has owned no other land excepting a small tract that he now owns, which he has farmed; it is outside of the city limits; they raise potatoes and garden stuff, and berries on it, but he does not hold it as a farm, but as an investment. He has been employed by the company and engaged in its land work something more than ten years.

Whereupon, on re-direct examination, witness further testified that the timber cruising method described by him, is generally used by all timbermen for a basis for purchasing or selling timber lands, and it is a reasonably safe guide to ascertain the value of the land. These examiners' reports referred to by him were for the purpose of ascertaining the particular character of any particular piece of land trespassed upon, or where the contract was forfeited, or where the circumstances required special investigation other than cruising.

Whereupon, S. C. BRUCE, called as a witness on behalf of defendants and being duly sworn, testified that he resides at Portland, Oregon, and is a timber cruiser, and has so resided since October 1911, and before that resided in Jackson County about seven years. He has been engaged in the business of timber cruiser for about eight years, for Standard Lumber Company and Fidelity Lumber Company of Newport, Washington, and in grading lumber sold by both of these companies. He has been employed by the Oregon and California Railroad Company since August 1907, examining lands and cruising timber, and he is still in its employ, engaged in that business, reporting to A. W. Rees, Manager of the Portland office, having charge of matters relating to the lands of the company. Defendants' Exhibit 342, shows the lands that he cruised. Whereupon defendants offered said map, Defendants' Exhibit 342, in evidence, purporting to show lands cruised and examined by S. C. Bruce, S. A. Carmichael, C. A. Cavell, T. J. Cronin, F. A. Elliott, M. F. Mc-

Cown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, William Penoyar, and A. W. Rees, showing in the legend a color for each of these persons, under promise to call each of the other witnesses, and particularly A. W. Rees, to show that the map correctly tabulates, and by these legends shows, the lands that these parties cruised.

Whereupon said Defendants' Exhibit 342 was received in evidence, and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness stated that Defendants' Exhibit 343 shows the lands that he cruised, being a tabulated statement of such lands, showing a total acreage of 170,309 acres, and showing present condition of this acreage as, timber 134,312 acres, grazing 27,133 acres, agricultural 8,864 acres, and when denuded, grazing 132,669 acres, agricultural 37,640 acres.

Whereupon defendants offered said tabulated statement in evidence as Defendants' Exhibit 343, to which complainant objected as incompetent, irrelevant and immaterial. And it was agreed between the parties that this same objection should be considered as taken to all testimony of this witness relating to the character of the lands within the limits of the grants, settlements thereon, and public land entries thereof. Whereupon the same was received in evidence, and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness further testified that this tabulation or statement, Defendants' Exhibit 343, correctly states the proportions of these lands and the classifications according to his reports as they were compiled and tabulated, and according to his examination as made in the field. He classified as timber lands that would have 100,000 feet or over to the forty acres, and he classified as grazing in the present condition, land that had no timber, and as agricultural in the state of nature land that was level enough to be tilled and land that was not too stony or rocky. Under the column "When denuded" and under the column "Grazing", showing a total of grazing lands examined by him when denuded, of 132,669 acres, there would be a certain per cent that was agricultural and a certain per cent grazing. By classifying land as grazing, when denuded, he means land that is level enough to be farmed or tilled, put into cultivation, after the timber has been cleared off and the stumps are grubbed and the brush burned, etc. He classified land as agricultural, when denuded, which would be level enough to work, to farm, for tillage, after the timber had been removed and stumps extracted. That is, if he found a forty that might have a very heavy stand of fir timber, but that was sufficiently level, that it could be plowed, he would classify that, as agricultural when the timber was denuded. If he found a tract of land that was rocky, or the soil of which, was not fit for cultivation or for agriculture, he classified that, as grazing when denuded. So that all the land that he examined or cruised was put by him into two classes

when denuded, one grazing and the other agricultural. He has not made any allowance for lands unfit for any kind of vegetation. There is a certain portion of these lands classified by him as grazing lands, which he supposes would be too steep for any kind of crops, but he thinks it all could be used for grazing. Some portions of this grant in Jackson County, is worthless on account of rocks and chaparral. The general character of these lands in Coos County was that they were all heavily timbered. In order to put these lands into the class of grazing lands, the timber would have to be all removed, logged off and seeded down, if there was not sufficient grass there for grazing. In spots, there is grazing in these Coos County lands. There is wild pea vine.

Q. What you mean, then, as I understand you, is, that if the timber is cut down, and the brush and debris burned after it is logged off, and sowed to grass, grass seed, that there would be some sort of grazing that could be had on these lands?

A. Yes, sir.

Q. Mr. Booth has testified that that would be the condition of a certain per cent of the lands owned by the Booth-Kelly Lumber Company in the eastern part of Lane County, and that that would be the process by which the land could be made grazing. Is that the same classification (or the same understanding that you have of this defintion) of grazing that you have made?

A. Yes, sir.

Whereupon witness further testified that in classifying 1285 acres of the total acreage cruised by him in Coos County, as agricultural when denuded, he means land that was level enough to be farmed and cultivated after the timber was taken off. By the 110 acres of this total area cruised by him as adapted to agriculture, he refers to lands generally on a bottom, somewhere along a creek, and would not be all together, but would be in small, irregular tracts, where there was no timber. The 110 acres in section 33, township 27 south, 10 west, is land that was on top of a bench of the mountain, was level, and there was no timber on it, and he classified it as agricultural in its present state. The 15,197 acres classified by him as timber land in Coos County, would go close to 40,000 feet per acre, which is a heavy stand of timber. The timber in the main, in Coos County is yellow and red fir, with some cedar. The timber in Marion County cruised and classified by him is yellow and red fir, and would probably go 25,000 to 30,000 feet to the acre. The land classified by him in Marion County in a state of nature as grazing, was open land, upon which there were fern and old snags in places. It had all been burned over years ago. In places, it is rocky. Where he thought it was too rocky to be classed as agricultural land or unfit for the plow, he classified it as grazing, so that this acreage of 3845 acres in Marion County, classified by him as grazing, was so classified if it was not timber or agricultural. Wherever there was soil suitable for agriculture, or land that was level enough for such, he classified as agricultural. If it was

not too rocky and there was no timber, he would call that grazing land. He made no class for lands that were absolutely worthless, but considered that to be a certain grade of grazing land, and he did that all through the lands in these counties that he examined, so that the grazing classification includes all the lands excepting those that are covered with timber, or that are agricultural. In this compilation of the total acreage of lands examined by him of 170,309 acres, he made three classes in their present condition, timber, grazing and agricultural, and these are the same lands classified into two classes, grazing and agricultural, when the timber is cut off, and he has made no class of lands that were rocky and unfit for any purpose. He has put all in as grazing land or agricultural. In making his reports of his examinations to the company, he used the regular cruise report blank of the form of Defendants' Exhibit 261, and in making his examinations shown in Defendants' Exhibit 343 he used the form Defendants' Exhibit 266, and filled out the blanks as indicated. In making out these reports he filled in these forms as nearly as he could in every particular, where there was a blank to be filled, and made out a report for each section that he cruised, and this would apply to all of the lands that are described in Defendants' Exhibit 343.

Whereupon defendants offered in evidence Defendants' Exhibit 343, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

He prepared Defendants' Exhibit 343, excepting copying, and he prepared the data from his reports, and it is a correct reproduction of the facts stated in his reports as far as they are shown in the exhibit, and is correct. These original reports are in the office of the Land Department in the care of A. W. Rees.

Q. Suppose an actual settler, or any person should want to go on one of these quarter sections that you have classified as grazing when the timber is taken off, or in its present state where it is grazing, and for the purpose of making a living, supporting himself and his family, and his opportunity for that was confined to this quarter section, and he was required to make his living from the uses to which he put that quarter section for grazing purposes, state to the court whether or not such person, or any person under such circumstances, could support himself and his family on this quarter section of grazing land?

A. It would be doubtful.

Whereupon witness further testified that one head of stock could be supported upon about 20 acres of a quarter section of this grazing land as classified by him, confining the stock to that quarter section. That would be about eight head of stock for each quarter section. A man and his wife and family might make a living on eight head of stock pastured on 160 acres if the land was not too steep. He hardly believes a man and his family could make a living on eight head of stock supported on this 160 acres, although he never tried that kind of an

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experiment and never saw anybody else that did. He has heard of people taking numbers of goats in the mountains back on the range somewhere, where they would probably have 1000 acres, but not on 160 acres.

Whereupon, on cross examination, witness further testified that he commenced to cruise timber in the fall of 1909 and devoted his time, until the present time, to cruising these lands. He personally cruised all of these lands reported in Defendants' Exhibit 343. He had different parties assisting him in that cruise, the others were compassmen, he was the cruiser, and these other men were working under him as compassmen and assistants.

Whereupon L. D. McLEOD, called as a witness on behalf of the defendants, and being first duly sworn, testified that he is thirty-six years of age, resides at Portland, Oregon, and is employed at the present time as a cruiser for the Oregon and California Railroad Company. He commenced to work for the company in 1908 as a compassman or land cruiser, mostly cruising land the first year. He was then off and came back he thinks in the latter part of 1909. Anyway he has been in the employ of the Company enough to make about four years. He has had practically the last three years' experience in cruising, ever since 1909. Before that he had been out with the cruisers running compass, and did considerable work alone in making examinations of different kinds before he commenced cruising. In making cruise reports he used standard blanks, such as Defendants' Exhibit 266. Defendants' Exhibit 266 consists of three reports

prepared by himself and three that would seem to be reports of D. C. McLennan. In making his reports on all of the lands for the company, he used that form of report and returned these reports to A. W. Rees, acting agent or manager in charge of the office of the Company at Portland, whose superior is B. A. McAllister of San Francisco. Referring to Defendants' Exhibit 344, purporting to show that he has cruised in all 65,681 acres and Defendants' Exhibit 342, he says that he supposes the map shows correctly the lands which he cruised, to which testimony of the witness complainant objected as incompetent, irrelevant and immaterial and it was agreed that the same objection should be considered as taken to all testimony of this witness relating to the character of the lands within the limits of the grants and settlements thereon and public land entries thereof. Whereupon witness further testified, that as far as checking that exhibit with the map, he had not done it. That was done under the direction of Rees, but he prepared the tabulated statement, Defendants' Exhibit 344, from his cruise reports and he would say that Defendants' Exhibit 344 is approximately correct; and by that he means in putting in the acreage he had not used the fractions; and aside from the fractional lots, as to the acreage, which covered a very few acres, the statement is correct. The classification in timber and grazing and agricultural, is based upon his judgment of the lands from an examination made in the field, and upon the form of report, Defendants' Exhibit 266, which he used. By the term timber, used by him in his classification, he included lands that were

more or chiefly valuable for timber than for grazing or agricultural purposes. Lands that were classed as "agricultural" in a state of nature, were those that could be cleared and cultivated. Often lands were classed as agricultural lands, the value of which would not justify the cost of clearing. Agricultural lands were such as could be cleared and cultivated. He had three classes of land in the present condition, one timber, another grazing and another agricultural. When these lands are denuded he has only two classes, grazing and agricultural. All denuded lands that could be cultivated, if cleared, are classed as agricultural, whether they were heavily timbered in the original state or not. The lands that were not classified as agricultural when denuded, were classified as grazing, regardless of whether they were fit for any purpose or not. He has not made any classification of lands other than grazing that are unfitted for any purpose. In Clackamas County, according to the classification made by him, in their present condition, there is an area of 16,358 acres of timber lands, and 31,297 acres of grazing lands in a state of nature. Practically all of that country has been burned over, leaving spots of timber in the lower lands, and high benches, where it was damp and moist, and the grazing lands have been burned over. The timber has been destroyed, and some of the lands there that are classed as grazing, are really too stony and steep for any purpose. In the 4238 acres in Clackamas County classed by him as agricultural, in their present condition, are lands that could be cleared and cultivated, or at least level enough to clear and cultivate. In the

second classification of grazing when denuded, of 44,138 acres in Clackamas County, there is included a part of the timber lands, when denuded, and a part of that old burn that has been classified as grazing. There is a small per cent of these lands that would be grazing under present conditions, at this time. A greater part of it, before it would be of any great value for grazing would have to be cleared and seeded, and some of it classed as grazing, could not be made grazing under any conditions, because it is too steep and stony. Some of it is mountains of rock. The increased classification of agricultural land from 4,238 acres in a state of nature, to 7,755 acres when denuded, results from the lands that would be cleared where too heavily timbered to be agricultural without clearing the timber away. He supposes he has a general knowledge of the cost of clearing these timber lands and it would cost anywhere from $75.00 to $500 an acre. There is quite a difference as to the cost of putting these so-called grazing lands, where they are capable of being made grazing, either by cutting the timber off, or cutting the brush off and burning it, and seeding it into pasture, but he would judge it would run anywhere from $10.00 to $75.00 an acre approximately. He does not mean where he would grub the stumps off the land for grazing purposes. If a person was going to clear it, though, and cut the brush off and burn it and put it in good shape for grazing or for pasture lands, it would cost considerable to put some of that land classified as grazing land, and that would produce grass; some of it he would say would cost $75.00 an acre, even for grazing purposes.

For a man to log off the land that was heavily timbered, then run a fire through it, burn up the brush and the rejected saw timber, timber that was not fit for logging, then go over it by hand, and sow the grass seed in the ashes, it would make grazing, but it would not be nearly so good as if one went over it and burned all the logs. It is hard to burn things off clean with a fire that way, without slashing. There is considerable timber left, as a rule, when these lands are logged off for commercial purposes. The timber left is too small to pay for logging. There are a lot of logs and tops of trees left in the ground after logging, and there is a certain percent, chiefly unsound or punk trees, left standing, depending upon how much there is that would be unsound.

"Q. Now, suppose a man were to go out there in this country on any of these lands that you have cruised, and examined, with his wife and family, and was expected to make a living on 160 acres of these grazing lands, confining his herd or his stock and its increase to 160 acres that he would buy, what is the fact, if you know, as to whether a man could support himself and his family by such use of this land or any of it?

A. He could not do it.

Q. Suppose a man would go out there as a so-called settler, and get some of this best timber-land, a quarter section of it, which you cruised, and was expected to settle on the land and support himself and family, if he had one, by living on that land, making a home on it, and it had commercial timber on it, what would you say

would be his ability to make a living?

A. He could not possibly make it.

Q. What would he have to do with this land covered with timber in order to get his money back, if he bought it, say, at $2.50 an acre?

A. He would have to sell the timber sure.

Q. Well, would it be necessary for him to live on it, to be an actual settler, in order to sell the timber, or could he come to town? If he had a quarter section out there worth $10,000, for the timber, he could sell it, couldn't he, without being a settler on it?

A. Yes, if he had a deed to it.

Q. That is what I mean.

A. Yes."

Whereupon witness further testified, that a commercial stand of fir timber in this state, considered sufficient to make the land chiefly valuable commercially for timber, depends a lot upon logging conditions and the amount of timber adjacent and how large a body of timber one has. The 6.77 per cent, shown in Defendants' Exhibit 344, means that there is 6.77 per cent that could be made agricultural land, or could be cleared and used for agricultural purposes rather and that it is not timber land at the present time. The 12.44 per cent under the column "When denuded," means, that there would be that per cent of the lands more valuable for agricultural purposes than for any other purpose after being denuded of the timber. Under that classification, the balance of

the entire 65,681 acres would, when denuded, be chiefly valuable for grazing, where the land could be used at all. When making these reports and making up this memorandum, he did it with the knowledge that there is really considerable of these lands that could not be used for any purpose and are really of no value for any purpose whatever. He has not undertaken to segregate in these compilations, a class of worthless lands. He would consider lands worthless that are really too stony or steep to grow grass, or to be used for any purpose to produce anything on. There is a considerable percentage of these lands, included in Defendants' Exhibit 344 in that class. He did not classify them in the reports, while he knows there are considerable. In this table, they are classified as grazing lands. Agricultural lands, other than this 65,681 acres in a state of nature, is not all found in contiguous bodies. Those lands that are classified as agricultural lands, are generally found in patches along small streams or creeks and are usually in patches, though one might possibly find them all in one place in one particular section. They are, however, more generally scattered. Defendants' Exhibit 261, being a report prepared by him, February 13, 1912, is a typical illustration of the facts reported by him in all of these reports, depending on each a particular case. In his report of June 13, 1910, the SW¼ of Section 33, Township 1 South, Range 6 East, Willamette Meridian, Clackamas County, Oregon, containing an estimate of the total feet, board measure, 8,310,000 of the value of $9,422.50, is classed as timber and valuable for the timber on it. That value is possibly

a little above the average, compared in value with timber quarters generally, though he has seen quarter sections cruising from 15 to 20 million feet. The timber lands that he has been over, he would judge would cruise something like six or seven million to the quarter section, which is a fair average. Yellow fir has been estimated in this valuation at $1.25 per thousand feet, board measure, cedar at $1.25 per thousand feet and hemlock at 75 cents. This tract is two miles from Little Sandy, with favorable logging conditions and that would be a fair valuation, he thinks, to place on timber in that locality. Whereupon defendants offered in evidence Defendants' Exhibit 344, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon on cross examination witness further testified, that he has been cruising timber since 1909 and worked as compassman under Bruce, who preceded him as a witness in this case. Before being employed by the Railroad Company, he worked for the Portland Railway, Light & Power Company as a car conductor for about three years. Prior to working for the Portland Railway, Light & Power Company, he did some contracting and was in the wood business in Astoria, and he had some teams there, and he did the same thing in Seattle, and then he was in the cigar and tobacco business for awhile. After he sold out his outfit in Seattle he was in the mercantile business in Denver for awhile, that is, he sold mercantile contracts under the tontine line. He was born and resided on a farm and was in the farming busi-

ness until he was twenty-one. He was born and raised on a farm in North Carolina and came to Oregon about fifteen years ago. His timber experience has been mostly confined to his employment by the Oregon and California Railroad Company. In the South, his father was in the lumber business and interested in the mill business, but the experience of witness in that business was very small before he commenced to work for the Company. The classifications made by him is to show what the lands are mostly valuable for in their natural state. He has classified the lands as agricultural under the head "present conditions"; that is, that they are chiefly valuable for agricultural purposes in their present condition. Referring to such lands as can be tilled and cultivated, if cleared; their chief value is for their agricultural purpose, in their present condition, these lands that are so classified. Practically all of them may require clearing to render them susceptible to cultivation. His work as a cruiser commenced, he supposes, about the latter part of 1910, but he was working with Bruce in the latter part of 1909. Whereupon on redirect examination witness further testified, that he identifies Defendants' Exhibit 268, purporting to be a panoramic picture, or photograph, of certain places in Township 20 South, Range 1 West, taken by Mr. Gifford, April 3, 1912. He was present at that time and recognizes that the photograph is of the lands in that section, township and range. The photograph was taken from Eagles Point shown on the blue print, which is correctly located, with reference to the entire township. The snow peak Mount June, shown

in the photograph on the left, would be outside of the township. These photographs are correct reproductions of the scenes that they purport to record. He was present when the photograph, Defendants' Exhibit 269, was taken by Gifford, showing a point from which it was taken in township 4 North, range 3 West, Columbia County, and he saw the premises shown in that photograph and it is a correct reproduction of how it appears on the ground. He has been in other parts of the grant in other counties than those located in Columbia, Multnomah, Clackamas, Marion, Jackson, Polk, Lane, Douglas and Josephine Counties, shown in Defendants' Exhibit 344. He has been in practically all the counties in which the company owns lands and over the grant considerably in other work. He has been in very nearly every locality in the grant. There are a few localities in which he has not been. He has been over the grant quite thoroughly. He has not been over the lands in Jackson County as fully as he has in other counties, in fact, less in Jackson and Klamath than in any other counties, he believes. He has a general idea of the remainder of the unsold lands in Douglas County, other than those he actually cruised, because he has been over the county quite fully on the different roads leading through the county in different directions, and from his knowledge of the 616,843 acres in Douglas County, he is not prepared to say what per cent is chiefly valuable for timber as well as he would be as to what per cent of lands could be used for agricultural purposes. The lands are heavily timbered he would say. Roughly

speaking, from what he has been over in the grant, he would say a person would be putting it large to say that there was five per cent of these lands in Douglas County that in a state of nature were chiefly valuable for agricultural purposes. The lands in Coos County lie principally in the Coast Range, and he would think that five per cent, in a state of nature, would be agricultural lands. These lands in their present state are chiefly valuable for timber. The per cent of lands in Lane County that would be chiefly valuable only for agricultural purposes, would not run over six or seven per cent in their present state. He would not want to testify as to Linn County, because he had not been over the county as thoroughly as he had over some of the other counties. He has made several trips into Benton County at different places, but would rather not testify as to the lands in Benton and Lincoln Counties. He would judge that the percentage of lands that would be chiefly valuable for agricultural purposes in Marion County would run about seven per cent, and in Polk County about five or six, possibly seven per cent; and in Clackamas County about 6.77 per cent in their present state. He has been over Yamhill County quite thoroughly, but would rather not testify on account of not having examined the lands personally. He has been in Curry County, on several trips, walked 105 miles in three days to go in and out; that is an awful rough country, very rough and broken. The majority of these lands are not very heavily timbered. They are steep and rough. They are not very good even for grazing. These lands are principally on

the Rogue River in a rough country. The per cent of lands that would be chiefly valuable for agricultural purposes, in a state of nature, in Josephine County is rather small, because a lot of them, even the level lands there, are unsuitable for agricultural purposes. There is a granite formation there, and the larger part of the soil is like trying to make a rock produce and the per cent would run not more than three or four per cent, taking the county all the way through. In classifying 3,030 acres he had reported 10 acres that might be used for agricultural purposes, and that is a pretty fair sample he supposes. 1220 acres he classified as grazing in the present state, and in this classification he includes these granite, decomposed, lands. He has been over a considerable of Jackson County, but would rather not estimate the percentage. There is a very small percentage of it that is agricultural, even taking the lands that do not belong to the company, and include the lands that are down in the valley. There is not much valley land down in Jackson County. It is mostly mountainous. He has been over the county in a general way, in different places and parts of it he has been over he has found it very rough, broken and mountainous and there is a very large per cent of it that is not even good for grazing, what he would call good grazing. Outside of the work done on the cruise reports he has made several trips into Columbia, Tillamook and Washington Counties—in Columbia County four or five different times, probably the same in Tillamook and Washington. The unsold lands of the Company, in Columbia County are chiefly

valuable for timber. Of the lands which he has been over in Columbia County he has not seen any that he would think a person could possibly go on and make a living. The lands in Tillamook County are generally rough and mountainous and are chiefly valuable for their timber. He has been over some of the lands in Washington County and they are chiefly valuable for timber, if they have any value. Whereupon upon re-cross examination witness further testified, that besides making cruises he had looked after the lease and trespass work of the company, and that had taken him into different parts of the grant in different localities considerably and some of the lands a number of different times. By trespass work he does not refer to people who have settled on the lands, but to those who have cut timber from the Company's land. He does not refer to those people who have built houses, or cabins, or shacks. He has called on those people in regard to leasing and things of that kind, some who were living on the land at that time. It is the policy of the company to have those living on the land, lease it. He does not mean by trespass any reference to what has been referred to in this suit as the "Lafferty settlers" in Columbia County. He has covered each one of the legal subdivisions shown in Defendants' Exhibit 344 by a report that he submitted to the Company, and that covers all that he has cruised for the company, but not all that he has examined or been on. He would not say that this tabulated statement covered all the lands that he has cruised, because he has cruised some between the times he worked for the Com-

pany and when he was not in the employ of the Company, that is, not railroad lands, but other lands in the grant, within the limits, for other people.

Whereupon W. J. LANDER, called as a witness on behalf of defendants, and being duly sworn, testified, that he resides at Portland, Oregon, and that for the last thirteen months he has been Supervising Fire Warden for the State of Oregon over Douglas County, Oregon. He has lived in Oregon over twenty-five years, and his residence has been Roseburg, Harrisburg and Portland, Oregon. He has lived at Roseburg, Douglas County, about fifteen years and while residing there usually was in the land business; looking up land for himself part of the time. He has done some farming and became acquainted with that business in Pennsylvania, where he was born. He had a farm near Harrisburg, Linn County, but could not say definitely how long he had been engaged in the farming business, although several years in Linn County. He has had experience in cruising and examination of timber, for the purpose of ascertaining the character, quantity and commercial value of timber and is pretty well acquainted with the unsold lands of the Railroad Company in Douglas County. He has been over nearly all of Douglas County during the last twenty-five years, but in the last fifteen years he has been over the greater portion of Douglas County, both timber and farming lands and is well acquainted with the character of the lands owned by the Oregon and California Railroad Company, and other lands in Douglas County. He has examined tim-

ber lands on his own account, for himself and for the Oregon & California Railroad Company; he thinks he has been in the employ of the company as Fire Warden; thinks he was first Fire Warden in Douglas County, about thirteen years ago or more. He has been in its employ as Fire Warden until the last two years and is now acting as Fire Warden of the State Board of Forestry of the State of Oregon. Frank A. Elliott, State Forester, is his superior officer. As Fire Warden for the Oregon and California Railroad Company he patrolled certain districts, watched out for and extinguished fires, if he found them. His duties related to timber lands and his work was particularly active from June 1st to October 1st, of each year. In performing his duties as Fire Warden he patrolled a considerable portion of these lands each year quite thoroughly; that is, by going over the lands, following trails and roads. As Fire Warden for the State Forester, he has supervision of all fire wardens in that county, either State or privately paid wardens. This last summer he had ten federal patrolmen, five paid by the Railroad Company and five paid by the Douglas County Fire Patrol Association, which is composed of timber owners of lands in Douglas County. Some heavy timber owners that participate in this Douglas County Fire Patrol Association are the Musser Lumber Company, the Kribs-Pillsbury people, the Weyerhaeusers, Southern Oregon Company, and Neenah-Oregon Land Company, and several others. He has examined for the Oregon and California Railroad Company in probably all of the

western counties within which the grant lies. He made a good many examinations after the San Francisco fire, in regard to defaulted contracts of the company. The company seemed to have lost the contracts and he would go out and hunt these up. In making these examinations, he would go out on the land and see whether it was timber land or occupied, and when it was bought and whether the purchasers were still there, and he would examine the land as to its improvements, whether it was timber, or grazing or agricultural land and make a report. Whereupon the complainant objected to the testimony of this witness relative to the character of the lands within the limits of the grants involved in this suit and settlements thereon, and public land entries thereof, as incompetent, irrelevant and immaterial, and it was agreed that this same objection should be considered as made to all the testimony of the witness on these subjects. Whereupon witness further testified that these lands were lands that had been sold by the company under contract, but the parties had defaulted and forfeited their contracts. He found that the railroad lands that could be used for grazing or agricultural purposes were about all bought or appropriated in some way, that is, these tracts have been bought. There was no demand for these timber lands until recent years, except where there was a little mill along the Columbia River, or some other river. The character of the land that was in demand, belonging to the Railroad Company, prior to the time, timber became an object of demand, was such that it could be easily

cleared, or was cleared, little prairies that could be used for grazing purposes, situated mainly along the foothills and back intermingled along with other lands up the little streams, sometimes a little prairie along a sidehill that people could use for grazing, where there wasn't much timber. This land was generally bought by people that would want to go out and clear up a little home. Adjacent farmers would also buy them so as to have more pasture, or something of that kind. There was some inquiry for timber lands of this kind, such as these unsold lands in the foothills and mountains, about thirteen or fourteen or fifteen years ago. He has been over Jackson and Josephine Counties quite a good deal; and has been over the westerly part of Jackson County, but has not been further east in Jackson County than up Butte Creek as far as Prospect and Trail. He has never been in the Jenny Creek country and is not familiar with that country. He has not been very much in the Jenny Creek Country, very little. In Jackson County, the timber lands he only examined as to those defaulted contracts, or sometimes where there had been some depredations after the fire, when the company offered to sell grazing or agricultural land. He thinks it was just before this suit was started, the company offered to sell grazing or agricultural lands. Where people applied to buy those lands, sometimes the company would send him down to examine them. His acquaintance with the lands in Josephine County is about the same as in Jackson County, and he thinks he examined those lands that had been applied for, during the times of which he

speaks, as agricultural or grazing, where those applications had been made to the land department. He sometimes found them timber lands, but usually found timber lands and lands not fit for agriculture. He has been some over the lands in Washington, Polk, Yamhill, Benton, Lane, Clackamas, Linn, Marion and Columbia. He has not been in Klamath or Tillamook, but has been some in the Eastern part of Coos County. From his knowledge of the lands in Douglas County, and his acquaintance during the good many years that he has had charge of the fire patrol, he would say that, without clearing, the unsold lands of the company in Douglas County, in their present state, there would be very little, he does not know of any, that could be utilized for agricultural, horticultural or farming purposes. Probably three or four per cent of these lands, if they were cleared, would be valuable or could be used for agricultural or grazing purposes in Douglas County. Some of these timber lands that are heavily timbered, if they were cleared and grubbed, might be used for grazing or some agricultural purpose. Some of the burns might be cleared—there are burns in these timber lands—for probably $50 to $75 an acre, up to $300 or $400 an acre in heavy timber. The chief value of these unsold lands in Douglas County is for their timber.

"Q. Well, why wouldn't it be profitable for a person to buy these heavy timbered lands, or these lands that are more or less timbered, and sell the timber, and then clear the lands and put them under cultivation of some kind? Why wouldn't that be practicable and profit-

able to a settler?

A. It would not be profitable because you could go and buy land already cleared for less money than you could clear them.

Q. Now, suppose that a settler wanted to buy a quarter section of these timbered lands in Douglas County, at $2.50 an acre, and 160 acres in a tract, not exceeding 160 acres, and the company sold it to him and gave him a good title, and he went out there with his wife and children, if he had any, undertook to make a living on that quarter section, what would you say would be his chances of success?

A. He couldn't make a living on it. He couldn't clear enough of it to.

Q. Suppose the company had sold all of these timbered lands in this grant to so-called actual settlers, at a price not exceeding $2.50 an acre, within the last eight or ten years, since timber has become valuable, and had sold them in quantities not exceeding 160 acres, and these actual settlers had gone out on the quarter sections and built cabins, like some of these homestead settlers have done, what would have become of these lands, and what would have been their chief value after they had got title?

A. You could not find these settlers there. They would be just the same as on the even sections, where they have dug out little homes there. The people are not there—they have sold out to timber companies. They are not living there, as a general thing.

Q. Well, why do they not live on these lands?

A. Well, they wouldn't be profitable to stay there. They couldn't make a living on them.

Q. Then, if I understand you, these lands are chiefly valuable for the timber that is on them?

A. That is what I said awhile ago.

Q. And they are not capable of actual settlement?

A. No.

Q. Now, you may state whether or not that same condition obtains as to all of the unsold lands of the Oregon and California Railroad Company in the various counties where you have examined them?

A. The same condition prevails."

Whereupon witness further testified that he made the four reports, identified as Defendants' Exhibit 350. Two of these reports were on lands for which there had been applications to purchase at the time the company was offering to sell the lands. These are his original reports. The company was offering grazing and agricultural land and the applicants applied to purchase Section 19, Township 27 South, as such, but when he examined the land he found it was timber land. He made the examination in the report of March 14, 1912, for 113.19 acres in Douglas County, Oregon, which land was nine miles from Myrtle Creek. That is very fair grazing land and a little grass grows there. It was occupied by J. A. Worthington, and has been enclosed by him for twenty-five or thirty years, and he is the man

that owns the land around it. It includes his farm, but he made no claim. He had it enclosed and used it. The additional 40 acres in Coos County is as shown in his report on November 25, 1911, and the diagram showing a little tract marked in red color, and marked "open burn," he considered might be used for agricultural purposes. There was a man living on a burn east of that, and he had a slashing on this. That is on top of a high hill. When he burned his slashing, it burned the timber and brush, deadened it on that little spot, and that is about all the level land there is on it, and this man made no claim to the railroad land. The land described in his reports of October 6th and 7th, 1907, being in Section 15, Township 5 South, Range 7 West, Yamhill County, Oregon, excepting a 40, is very poor grazing land; just a little grazing there among the timber.

"Q. Now, Mr. Lander, you are a farmer, and have had some knowledge and experience of farming; what do you say as to the ability of a settler, or a man, with or without his family, going on 160 acres of this land that might be utilized for grazing purposes, and fencing this 160 acres and confining his stock and the receipts from the produce of that 160 acres to the 160 acres, being able to make a living?

A. Take land of that class, I remember that section very distinctly—there is very little grazing. He couldn't keep two cows in there in the summer.

Q. Now, from your knowledge of this grant, suppose these lands were cleared for grazing purposes, that

is to say, the lands became logged-off lands, and the stumps and brush were burned over, and a farmer or settler sowed timothy or other native grasses in the stump on the ashes, and in that way got some grass growing, but that he was compelled as a settler to only pasture this 160 acres, and support his cows or his horses, or whatever it may be on there, and attempted to make a living in that way, I will ask you to state whether or not that would be at all possible or practicable?

A. It would not be practicable.

Q. Would it be possible for a man to make a living in that way?

A. No, I don't think so. A very poor living."

Whereupon witness further testified, that the Southeast quarter of the Northeast quarter of Section 27, Township 27 South, Range 7 West, Douglas County, Oregon, examined by him May 24, 1907, and Section 19, Township 27 South, Range 7 West, Douglas County, described by him in his reports when classified as "timber lands" was so classified when all covered with timber. There was scattering oak trees and saplings on Section 27, and that is very poor grazing land. There is a little grazing on it. Section 19, of the same township, is mostly red fir, 30 inches in diameter, and would be merchantable saw-timber. Agricultural lands are such as would be comparatively level, as he classified them, they might be used for agriculture sometime, if it was level, if the timber was cut off. Section 19 is all

rocky and rough land. Speaking generally of the grant, it is very rough and broken, usually rocky in the southern part of the State. It is a kind of clay soil, not very good, in the heavily timbered belts of Douglas and Lane Counties. Whereupon defendants offered in evidence these four documents, as Defendants' Exhibit 350, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon witness further testified that he had never made any cruise for the company. He would sometimes state the approximate amount of timber on a section. He could not say how many reports of the character of Defendants' Exhibit 350, he has made to the company, but has made a good many. He was engaged from time to time in doing this character of work since shortly after the San Francisco fire, but did not work regularly. Sometimes he would work several months and be at some other work. In the summer time he took up the fire work. When he came to Douglas County twenty-five years ago, these unsold timber lands of the company were not worth anything, because there was too much timber on the land. Timber was not worth anything and it cost too much to clear it. He wanted to buy some himself, and he thought he would buy, probably, some agricultural lands himself, and he looked over the county pretty thoroughly, and didn't find any. He did not buy any railroad land from the company, from the fact it would cost too much to clear it. He has been down on the Siuslaw River, in Western Lane

County. Twenty-five years ago these timber lands in the Siuslaw country were not worth anything. He supposes they had a value, referring to the company's lands. These lands included the even sections and were not worth much, very little, because it would cost too much to clear them. Their chief value now is timber, and they are very valuable at the present time, he thinks. The highest price that he knows of any quarter section of timber lands in Douglas County, or in Western Oregon, being sold for is about $5,000 per quarter section. That was along the Coos County line, near the Coos River. He is not now in the employ of the company. Whereupon upon cross examination witness further testified, that he is now sixty-five years old, and was forty years old when he came to Oregon. He formerly lived in Monroe County, along the Delaware River, 90 miles from Philadelphia, before coming to Oregon. He lived near the Blue Mountains, near Delaware Water Gap. When he was a boy, he helped clear up a farm on the hills in Pennsylvania, in which State the land all had to be cleared, as far as he knows. Some of it was mountainous. But the mountains, take the Blue Mountains, those mountains they did not clear; it was rolling land that they cleared. He does not think there are a great many farms in the Alleghany Mountains, in the Western part of Pennsylvania. He has traveled on the Pennsylvania Road, between Harrisburg and Pittsburg, and never noticed from the train, farms along the mountain sides extending up to the top, along that line. There are little places there, but most of the good farms

are along the rivers in Pennsylvania. He was raised along the Blue Mountains, and they are about like the Alleghanies, but a different formation of soil. A good deal of the time since he has lived in Oregon, he has been buying and selling lands, farmed part of the time, but did not farm much for himself. His farm was a mile and a half from Harrisburg, he thinks in Section 14, Township 15 South, Range 4 West, but would not be positive. He took up a homestead, located in Douglas County, located in Section 8, Township 26 South, Range 8 West. His farm near Harrisburg was in the valley, and was prairie land. He owned other lands besides the farm and his homestead, but never farmed them. It is about thirteen or fourteen years since he first went into the employ of the company as Fire Ranger and has been engaged as such practically every summer, although not altogether for the company. He is now employed by the State of Oregon as Supervising Warden, under the State Board of Forestry. He has charge of the Oregon and California Railroad Company fire rangers, under arrangements with that company, and the State Board of Forestry. He does not know what arrangements the Railroad Company has made with the State Board of Forestry, except that he is instructed to assume charge of that work. He receives pay from the State and not from the Railroad Company. The Railroad Company is not in the Fire Patrol Association. The timber companies form the Fire Patrol Association. He ceased to work for the Railroad Company last May (1912) and has not been em-

ployed by it in any capacity since that time. He worked last winter for the company in the land office in getting out records of public land entries that had been made in the local land office. Sometimes he would go in the land office and look up the lands. He is the W. J. Lander that prepared, or assisted in preparing, the plat marked "Township 13 South, Range 7 West," shown on Defendants' Exhibit 264, and he prepared a number of these plats for use in this suit. Other than his duties as Fire Warden, prior to 1911 he was land examiner and would go out and examine and classify lands for the land department of the Oregon and California Railroad Company, under its manager, A. W. Rees. He always got his instructions from A. W. Rees, and did not deal directly with the San Francisco office. His directions were, to go out and examine lands. At the time he made these examinations this suit had not been commenced. They did not send him the applications to purchase at the time he made these examinations, before the suit was commenced. The company would say, that the land had been applied for, or something of that kind, and it would so state in its letter of instructions to him, and that is all the knowledge that he had with reference to that matter. He only acted as Fire Warden in Douglas County. His territory covered all of Douglas County. He had charge for some years of the fire patrol of the railroad company in Douglas County, but never had any patrols in Josephine, Jackson or Lane, or these other counties through which the grant extends. His examinations covered different

counties. His examinations might be in places from the Columbia River to the California line. They might be anywhere, any county where the company had lands. He thinks the company had other men employed in making examinations of lands besides himself. He might examine a piece of land in Jackson County, and the next piece of land might be in Washington County. He examined the land only after the San Francisco fire. He had no authority to approve any applications to purchase, or any leases. He would only send the applications to lease in and report the character of the land and send in the application. The leasing would be done afterwards. He knew nothing about the execution of the leases or the sale of the land. Sometimes in examining these lands he would put a value on them.

Whereupon D. C. McLENNAN, called as a witness on behalf of the defendants, and being duly sworn, testified, that he is of the age of fifty years, resides at Portland, and has resided in Oregon twelve years. His business has been cruising timber and foreman in different logging camps. He has cruised for the Oregon and California Railroad Company, and for different timber companies in Portland. Some of the companies he has cruised for are Finley Morrison & Son, J. D. Lacey & Company, E. W. Barnes and B. Giltner. He first cruised for the Oregon and California Railroad Company about six months in 1902, and his next work for them began December 1, 1909 and he has been with the company continuously since that time, and is now in its employ. He made the reports contained in De-

fendants' Exhibit 261. Whereupon complainant objected to the testimony of this witness, relative to the character of the lands, within the limits of the grants involved in this suit, and settlements thereon and public entries thereof, upon the ground that the same is incompetent, irrelevant and immaterial, and it was agreed that this objection should be considered as made to all of the testimony of this witness upon those subjects.. Whereupon witness further testified, referring to Defendants' Exhibit 261, that he classified this land in a state of nature as "timber land," "grazing land" and "agricultural land"; and when they were denuded of timber, he made two classes, grazing and agricultural. This classification was based upon those reports which he made in the field. He did not prepare Defendants' Exhibit 351, but it was prepared from his reports under the direction of A. W. Rees by some one of the office force. Speaking from memory, he would say that the acreage stated is correct. He did not have anything to do with the preparation of Defendants' Exhibit 342. He did his work in Columbia, Washington, Yamhill, Polk, Benton, Lane, Douglas, Coos and Tillamook Counties. He may have done a little in some of the other counties. He thinks he cruised in Tillamook County, as shown on Defendants' Exhibit 351, something over 10,000 acres, but he does not know about that, he never figured it up. The ordinary course of business in making these cruising reports, was, first, the location of the section, and then they usually would pace off 660 feet, called two tallies. Supposing they had located

the southeast corner of the section, they paced off two tallies west, and then paced right through the section, right straight north, till they got to the north line of the Section. Then they paced four tallies west, and paced through the other line of forties to the south side of the section; and so on through the section. In doing this they made a record, by keeping an account of the number of trees, or the number of feet on each two acres. He kept an account of the number of feet; when he paced a tally he would have two acres cruised. When they got four tallies, that is across a forty, one subdivision, they would have eight acres.

If the timber seemed to be fairly equally distributed over the forty, he would just average it up. When they had gotten eight acres figured up, what was on the eight acres, they would just multiply it by five. That gave them the forty acres; and so on through the section. Sometimes they measured the trees to get an average. This was one of the accepted ways of cruising timber for the purpose of ascertaining the merchantable timber standing on the lands. Where the timber was not equally distributed over the forty, supposing the timber is heavier on one side and lighter on the other, they would examine both sides a little more carefully, to get an idea of the amount of timber to the acre, and by this result one can figure it very closely. He made a memorandum of each tally of the amount of timber, and also noted in this memorandum the character of the soil, topography of the country, and everything relating to the character of the land. Whenever he crossed a stream

he would mark it. He also marked bridges or cliffs, or anything of that kind, so that he would have a fairly good description of the land when he was done. He would take note of the adaptability to agricultural uses, and the character of the soil and whether the land would be suitable for agriculture or grazing. There was no account taken of lands that are unfit for any purpose, but they are classified when denuded as either agricultural or grazing. If he found any land actually unfit for any purpose, it would be classified as grazing land. From his knowledge of the lands which he has cruised, he thinks the proportions as stated are approximately correct, with the exception of the grazing land. There is a lot of that, that is classed as grazing land, that is hardly fit for anything, but there is no provision made in the reports for saying anything about that. He thinks from his actual knowledge of these lands and from his cruising each 40 acres, that this exhibit is a fairly accurate estimate of the percentage that would be agricultural in the present state. As to its being agricultural in the present state, it requires a lot of clearing and such as that. This 30,098 acres, would be without any timber on it. The other is land that has no merchantable timber on it at present, and all that it is good for, is its value as agricultural land. It would be fit for agriculture, and there is no merchantable timber on it. There are stumps and logs and stuff of that kind, which are not valuable for anything. The acreage of agricultural lands from 5,958 acres to 30,098 acres would be increased by clearing. That is, the land is more valu-

able for timber than for agricultural purposes where there is a certain amount of timber and where there is only a small amount of timber it is probably more valuable for agriculture than for the timber that is on it. In a state of nature he found 5,958 acres that was more valuable for its agricultural uses than for any other purpose, but by denuding or clearing a little more he found 30,000 acres, having more or less timber on it, that would be more valuable for agricultural purposes after the timber was off. The 157,941 acres of grazing that would be left after the whole thing was denuded, would include lands that would be timbered and the timber would be cut off, logged off, and would also include any land whether it was rocky or otherwise. This 5,958 acres of so-called agricultural lands in their present condition, was scattered all over the land that he cruised, small pieces in different parts. They would be separated. Whereupon defendants offered in evidence Defendants' Exhibit 351, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified herein as such. Whereupon witness further testified, that he had been logging foreman in the east before he came here and had been logging foreman on the Columbia River and also for the Southern Pacific Company at Marcola.

"Q. Now, suppose, Mr. McLennan, that the company had sold these timber-lands, these unsold lands of the Oregon and California Railroad Company, to these so-called actual settlers, at $2.50 an acre, in quantities

not exceeding 160 acres, and had sold them since the timber became valuable, and had given them a good title, what would have become of these lands thus conveyed? What disposition would these actual settlers have made of them?

A. Why, if it was timbered land they bought, they would likely sell the timber; and if it was fit for agriculture, they would probably clear it up and use it as agricultural land, or as grazing land.

Q. Suppose the land had merchantable timber on it, and land should be sold at $2.50 an acre that would cruise and be worth $75 an acre, what would be the experience—what would become of the land? Would it go to timber investors, or would the purchaser live on it?

A. He couldn't live on it—couldn't make a living on it.

Q. Why couldn't he make a living on this for himself and his family?

A. There is nothing on it but timber and brush. He would have to clear the timber off in order to graze stock.

Q. Well, could he clear the timber off it if he went there to make a living?

A. No, he couldn't. No, he couldn't clear the timber off and make a living at the same time.

Q. As a matter of fact, what has become of the

even sections in this timbered country, that have been homesteaded or taken under the timber and stone act, so far as your knowledge is concerned from having gone through these woods?

A. Those homesteads have had a small piece of clearing on them, some half an acre, some three or four acres—very few of them any more than that—and they have been sold to timber companies, and as soon as the people have sold they have left, gone away. They are abandoned, and those clearings are all grown up with brush.

Q. What is the fact, if you know, in these mountains—the Coast Range and the Cascade Range, within the limits of this grant, wherever the land has been settled in this way by homestead claimants, or purchased under the timber and stone act where no settlement was required, as to who owns those lands at the present time?

A. Timber companies.

Q. Did these homestead claimants or homestead entrymen ever make any homes on these lands?

A. Why, they got to stay there as little as possible, but they don't make a living on these homesteads. They go out and work. If they have a family, they leave their family on these homesteads until such time as they get title to them, and then they sell out and leave.

Q. Did you ever know, in all your experience in

these timberlands, of a family living on these homesteads, as a class, continuously, enough to comply technically with the law?

A. After they get their title, they don't live on those lands, without it is some of those claims that are close in to the valley close to the valley, where they could graze stock or use it as agricultural land—but that would be in the edge of the grant. When you get out into the railroad grant, there is very little farm land. All the lands that are fit for agricultural or grazing were taken up or sold, or bought some time ago.

Q. Is it or not a matter of common knowledge, and haven't you observed it all through this grant where you have been, that the even sections where they have been homesteaded have cabins, that were log cabins or built of shakes, shingled with shakes or boarded up, that are in a state of decay, with practically no clearing, where there is no evidence of any human habitation ever having been there except that? Isn't that the history of the homestead entries in Western Oregon?

A. Yes, sir.

Q. Now, suppose that a man pretending to be an actual settler should buy some of these quarter sections at $2.50 an acre, and want to utilize it for grazing purposes, and was required to confine his stock to the 160 acres and to support his stock from that 160 acres, and then support himself and his family from that, what, in your judgment, would be his ability to do that?

A. He couldn't do it.

Q. Then when you speak of these lands as grazing, do you mean to be understood as saying that 160 acres would be sufficient grazing land to support a man and has family?

A. No."

Whereupon witness further testified, that he helped clear 160 acres within the city limits of Portland some time ago, in a tract known as the Vernon tract, about half a mile, a mile or so, from the Willamette River. He had a contract of clearing that of small brush and stumps. There were not very many stumps and no standing timber, just brush and some stumps and a few old logs. It was level land and was not of the class of this land in this grant. He has had no experience or knowledge of clearing timber lands, such as he cruised. He has seen clearings on the road leading up the Necanicum River from Seaside, about fifteen miles, a few clearings on either side of the road. He recalls that stumps are left about 15 or 20 feet high, which at the butt are two or three times the heighth of a man. The method used now in getting this down-timber into a pile to burn is donkey engines to get it together. The big stumps are blasted or burned out with powder, or split up and generally piled together with those donkey engines. Some of these stumps are quite close together, probably 8 or 10 feet apart sometimes, sometimes maybe 4 or 5 rods apart. There is a great deal of stuff in the ground that one cannot see on top. After you take the top of the timber off, there is quite a lot on the ground on those lands that he knows anything about.

These lands he has cruised compare favorably with those along the Necanicum. Some of the lands he cruised are not so heavily timbered. It would cost to get the stumps out, clear the land, and get those stumps off, as high as $200 or $300 an acre to make it fit for plowing.

"Q. Mr. Booth testified that the price would range all the way from $50 to $500 an acre. What is your judgment about that?

A. I should think that would be a pretty fair estimate."

Whereupon witness further testified, that these timber lands of the company that were unsold would be chiefly valuable for timber. The stumpage value of this timber on these lands runs from a dollar to a dollar and a half or two dollars, it depends on the location and the quality of the timber. Whereupon on cross-examination witness further testified, that before coming to Oregon he lived in Minnesota a good part of the time and was engaged in the timber business there, and has been engaged in that business since he was eighteen years old in one capacity or another most of the time, practically all his life. He first started to work for the Railroad Company in 1902, and worked he thinks about six months cruising timber. He then worked for the Southern Pacific Company as logging foreman for about six or eight months in 1906. He started to work the last time in 1909 and has worked for the company continuously since that time, and all this cruising mentioned in these reports here, was done since 1909. He worked for

the company under the directions of A. W. Rees. He sometimes cruised each day 160 acres and sometimes half a section. Some days less than 160 acres, cruising by 40 acre tracts. That is a fair average of cruising by the method used by him.

"Q. Now, Mr. McLennan, can you give me the names of any homesteaders that you know of that have merely settled on timber lands to obtain the title—or descriptions of the land?

A. Beg pardon?

Q. Can you give me the names of any homestead entrymen who have entered homesteads, built a shack, made a small clearing merely for the purpose of acquiring the title to the land in order to sell the timber on it, and not for the purpose of making a home out of it?

A. I don't think I made that statement; but I can show you lots of homesteads, just a small cabin, which has fallen into decay, and a small piece of clearing—some of them haven't got any clearing, and what little clearing there is is grown up to brush. I don't know the people that made the entries—I never looked into it. The people were not there, so I never went into that.

Q. You never examined into the history of the land?

A. They seemed to all have the same history, judging from—

Q. How did you know that that was a cabin that was placed there merely by some homesteader?

A. Because it is on Government land, and there would be no other object in building the cabin and making this small bit of clearing, and then letting it grow up.

Q. Don't you know, Mr. McLennan, as a matter of fact, that any number of cabins have been built in Oregon upon lands that were soon to be opened by survey, merely for the purpose of holding the land in order that scrip might be filed on it by big timber companies?

A. Well, in that case there is no homestead in those hills. They are all alike. I don't know what they have been taken up for, but I haven't seen any man living on a homestead in those mountains.

Q. You don't know what the cabins were built for? You merely have seen the cabins that have been abandoned?

A. Yes, sir.

Q. That is the only thing you base your testimony on?

A. I took it for granted that they were homesteads. In fact, I have been told that they were. But I didn't see the people—the people—were not living there."

Whereupon witness further testified that he never engaged in the examination of the lands for the company, other than this cruising about which he has testified. He has examined trespasses and such as that, in different localities out from Portland, wherever he ran

across a trespass, meaning where timber had been cut off the railroad lands. He has no reference to where someone squatted on the land, but refers to trespass by timber companies, or where farmers were cutting timber for their own use, or anybody for that matter. Whereupon on redirect examination witness further testified that he had a compassman with him when he was cruising these lands.

Whereupon ROY WOODS, called as a witness on behalf of defendants and being duly sworn testified that he is thirty-six years old, resides at Newburg, Oregon, and at the present time is in the fire patrol with the State. He had been a compassman at various times for the Oregon and California Railroad Company since 1902. He has been over the lands of the company as a compassman, some in Columbia, Josephine and Coos Counties, and very little in Douglas County. He was compassman for Charles Cavell and D. C. McLennan, who has just testified. He was not with him as compassman during the time he made all of his cruises but was compassman for McLennan in December 1909 up to March 1 1910. His first year out as compassman for Covell was in Josephine County, some in Douglas and Coos Counties but he is not certain as to Jackson County. He was with him as compassman something like probably about five months. He did not work with him in Multnomah, Washington, Linn, Lane or Clackamas Counties. He has had experience as a compassman with other cruisers for other people. He was out with the Moylans who were cruising he thinks for the

Booth-Kelly Lumber Company in January 1903. He has not worked for the Oregon and California Railroad Company since June, 1912. During the work that he did last for the company, he was looking over some of its lands and out with a photographer. He was looking out for people who had attempted to settle or locate on some of these lands to see the character of the lands where it was improved where it was inhabited and what was its general character. These lands were in Columbia and Washington Counties, some in Jackson and Josephine Counties. The lands he then examined, upon which parties had attempted to trespass or settle, were mostly timber lands. He was present and examined the timber lands in Columbia County where a lot of photographs were taken by Gifford and C. W. Kempton.

Whereupon referring to "Defendants' Exhibit 269" witness recognized photographs Nos. 2942 and 2943 and testified that he was present and saw these two photographs taken. Besides himself, Kempton was close at hand when they were taken and he thinks L. D. McLeod was on the ground at the time. He had occasion to run these lands out in 1910 when he was there and also had occasion to run these lands out this winter and is pretty well acquainted with that section, having been to most every corner in that township and that is the way he ascertained where the camera was placed. The top of the picture was taken from the place indicated in the blue print attached to the photograph. The three corners indicated are all perfect. The land in the prospect shown in the photograph is heavy timber

mostly and the land on the ridge is timber. In the immediate foreground of both of these photographs, the timber has been burned. Prior to that time it had been heavy timber. He would say that this land is on a straight line about 10 miles from the Columbia River and Houlton was the closest railroad station on the main line of the S. P. & S. Railroad Co. formerly the Northern Pacific. He was with Gifford at the time of taking another photograph, "Defendants' Exhibit 269." This photograph shows the character of the improvements made on these three quarters in section 8 same township. On one piece of land there had been a house at one time, but it had burned down. This land was, or had been government land at one time. These improvements were abandoned. They were all on even sections, at one time government land. From the lands he had covered and been over in person, the lands of the Oregon and California Railroad Company that he had visited, are a good deal more valuable for the timber than for anything else. He would think that the amount of timber on a forty necessary to make it of commercial value as timber land, would be a good deal owing to the character of the land, whether it is standing on end or could be cultivated after cleared. He does not know how much timber there would have to be on a forty to make it valuable to sell as timber land. He is not a timber man in that sense and does not know how much some of these forties run in board feet. He has had no experience in clearing this land. He has never taken a homestead himslf, and has no knowldge of abandoned homestead claims in timber

regions. On the even sections in this grant he has seen a good many of them that were apparently settled and abandoned. Some of these entrymen were living close to where their homesteads were, some of them he does not know where they are. In a great many cases titles to these lands have passed to timber corporations. In most cases where he was able to find the improvements there was a pile of rocks and a few scattering shacks all dilapidated. Some places there would be a board house probably with a little patch around it, a few berry vines or something where they had grown up all over the place, with windows and doors all out. There was no evidence of continuous settlement any more than just what is required to become in possession of the land. He has been in Columbia County and the homesteads on the ground that he went over were practically all abandoned, whereupon complainant objected to all the testimony of this witness relating to the character of the land within the limits of these grants, settlements thereon and public ruling thereon as incompetent, irrelevant and immaterial and it was agreed that the same objection should be considered as taken to all the testimony of the witness upon these subjects.

Whereupon witness further testified as follows:

Q. Well, now, what would you say as to the ability of a man to go onto one of these 160-acre timber quarters as an actual settler, to make a living for himself and family on the land?

A. It would be impossible.

Q. Why?

A. Well, there is nothing there to make a living from. There is no ground that you could derive anything from whatever.

Q. Couldn't he get out there and grub these big trees up, and cut the timber down, and sell it for cordwood, and sell it to these timber people, and in that way make a home for himself and his family?

A. Well, he might if he lived to be a thousand years old—he might get a patch big enough to support himself and family.

Q. Then, if I understand you, you would regard it as practically impossible for a man to go on these premises as a settler?

A. I do.

Q. And make a living for himself and family?

A. I do.

Q. Well, what is the fact as to whether he could not buy this land from the company, supposing the company was willing to sell it, at $2.50 an acre, and go out there and fence it, and make a living off it by raising cattle and pasturing it, or raising stock of some kind, using it as grazing land?

A. What do you mean—on this 160 acres?

Q. Yes, just 160 acres. What is your answer to that?

A. No, I don't think he could, no, sir.

Q. Well, now, suppose the company had sold all of these timber-lands to these so-called actual settlers, of which there are some several thousand actual or potential settlers shown in this record, at $2.50 an acre, in quantities not exceeding 160 acres, and had given the so-called actual settlers a good title, what would have become of these lands?

A. Well, practically in about the same condition they are today. What was handy to a mill would be logged off, and the balance would be in the hands of some timber corporation, standing just as it was.

Q. Then these so-called settlers would have to sell them, or would sell them?

A. Yes.

Q. Is that right?

A. Why, that would be the only thing they could do. That would be the main object in taking them, I should imagine.

Q. Would they be able to sell them at an advance of $2.50 an acre under the present market conditions?

A. They certainly would.

Q. Some of these timber-lands in Columbia County that you saw there, what would they be worth for 160 acres at the present market conditions?

A. Present market value?

Q. Yes.

Mr. Rabb: Objected to on the ground that the

witness has not shown himself competent to express an opinion relative to the market value of timber-land, as he is shown only to have been a compassman.

Q. You may answer.

A. Those claims in there went from twelve to fourteen—there is one young man, I think, in there has a claim in section 22, the northeast quarter of 22, if I remember the description right, has a standing offer of sixteen thousand or eighten thousand—I forget now which it was, with a lumber company there, I was informed.

Q. Sixteen or eighteen thousand dollars?

A. I wouldn't say for certain which it was at that time, but I was informed.

Q. Is that the fair market value of these lands?

Mr. Rabb: I move to strike the answer of the witness from the record as hearsay.

Q. Is that the fair market value of these quarter sections?

A. That is what they were sold for, I understood him.

Whereupon witness testified that he is not in the employ of the Company; that he discontinued his employment June 5, 1912, and is now in the employ of F. A. Elliott, State Forester, as supervising fire warden for Multnomah County. He has knowledge of what little timber lands there are in Multnomah County, but does not know where the unsold lands of the Company are

situated. There is a small strip of timber lands in Multnomah County situated on the extreme west line of the northwest corner and the extreme northeast; that is up the Columbia River from Eagle Creek south. There is no timber above Eagle Creek; there is also timber east of Latourell or Bridal Veil country. The timber in that section is fir and larch and is of average quality. It is merchantable timber.

Whereupon upon cross examination witness testified that he now resides at Newberg, Yamhill County. He is under F. A. Elliott, who is State Forester, formerly an employe of the Oregon and California Railroad Company. Since he was twenty-one years of age he has followed stationary engineering for saw mills, flour mills, brick yards, ice plants and worked at various times since 1902 for the Oregon and California Railroad Company, and his acquaintance with these lands is such as he gained while in its employ. He had the names of parties that had taken these homesteads that he mentioned as abandoned but can only recall one or two. One was Julius Floeter, who was in the southwest quarter of section 4 North 3 West, and a man by the name of Anderson on the northeast quarter of section 8, same township, and a man by the name of Wilson on the southeast quarter same township and section. These cabins were all near the section lines between the even and odd sections, within the limits of the grant, but he does not know whether these cabins were intended to be placed on the railroad lands. The entry calls for the ground the cabins are situated on. The names and descriptions

of the land were taken off the government records. He supposes they were handed to him by someone in the office of the Railroad Company at the time he went out to make the examination of these lands from January up to June 1, 1912.

Whereupon C. M. STITES, called as a witness on behalf of defendants and being duly sworn, testified that he is fifty-four years old and lives in Washington County, Oregon, and is a farmer. He has lived in Oregon since 1882, moving to Williams Creek, Josephine County, in 1883. He lived on a farm there until 1886 or 1887. He was assessor for Josephine County in the years 1895 and 1896 and always made his home called Williams Creek until 1907, when he moved to Washington County, where he is now living. His first experience in the sawmill business was in California. He worked there the season of 1897 and next at Merlin in 1898 for the Sugar Pine Door & Lumber Company and worked for that company every season except 1895 and 1896. He thinks he quit that Company in 1900 and in 1901 worked awhile for the Booth-Kelly Lumber Company at Coburg, starting in as a common laborer and finishing as foreman of the mill at Coburg, which mill had a capacity at that time of about 70,000 feet for 10 hours. His first experience in cruising timber lands in Oregon was when he commenced in 1897 when employed by the Sugar Pine Door and Lumber Company. He was superintendent of their mill or mills and cruised and then sawed out. In 1904 he began cruising for any person who wanted the work done and had worked for

a great many different people. This cruising for the Sugar Pine Door and Lumber Company done by him was in the vicinity of Merlin and Wolf Creek in Josephine County. He never cruised any for the Oregon and California Railroad Company but cruised Josephine County for the County of Josephine and made two trips as a cruiser to Eastern Oregon for the California & Oregon Land & Live Stock Company. He is familiar with the lands of the Oregon and California Railroad Company in townships 32 to 41 south inclusive, ranges 5, 6, 7, 8 and 9 west. Commencing with 32, which is in Douglas County, Oregon, and along in the northern boundary of 33 south, which is the boundary line between Josephine and Douglas, the water-shed is the boundary line between these two counties. Township 41 south is bordering the State line between Oregon and California. The actual cruising was done on surveyed land. He did not cruise any unsurveyed lands which would be in the north part of the county, Range 7 and 8 west is the boundary of the surveyed lands, and in the southern part of Josephine County there are some surveyed lands as far west as range 9. He has been in 39 and 40 south, ranges 2, 3 and 4 in Jackson County, on the head waters of the Little Applegate and partly on the head waters of the main Applegate, southwest of Jacksonville. He was never in the Jenny Creek country in the eastern part of Jackson county, but has been across the mountains and in Klamath Falls and through that country, but did no cruising in that part. He has also been on a trip of reconnaissance to Fort Klamath and north of

Fort Klamath, but did no cruising in that part of the country. He cruised all of the surveyed land of Josephine County for the County while he was assessor, but cruised no unsurveyed lands. His cruise included the unsold lands of the Oregon and California Railroad Company. He has cruised in 32-7 and 32-8 in Douglas County for himself and individuals. That would be in the south boundary of the county and in the country drained by the west and middle forks of Cow Creek. He has not done any cruising in the western part of Douglas County. He made a trip to Coquille and down through that country, cruised some in there, probably a section or something of that kind. As far as he saw, he became familiar with the general character of the timber in the western part of Douglas County but of course was not noticing that particularly. He has been in a part of what he supposes is Coos County, but does not know,—in the Coast Mountains within the 30 mile limits of this grant. He has been in Lane County. He made a trip up the middle fork of the Willamette River and across the range. He has made that trip some three or four times, first in 1893 on a pleasure trip. Then in going to Eastern Oregon he made two trips across there and immediately after he had been over the mountains he began cruising but did no cruising west of the summit of the Cascade Mountains. He saw all the timber that was in sight of the road, that is all, and the general character of the country of course. He has not been in the western part of Lane County and had no opportunity to see the timber lands of the Company and

others in Linn, Marion or Clackamas Counties, although he had been through Clackamas some but paid no attention to the timber. He has not been in Benton, Linn, Yamhill, Washington, Columbia or Tillamook or through the timber lands of Tillamook County. He is more especially familiar and has directly cruised all of the lands in Josephine County and does not think there is more than 1½ or 2 per cent of these unsold lands of the Oregon and California Railroad Company, with which he is familiar, that are suitable for settlement or agricultural or horticultural or other such purposes. His judgment is based on his farming experience and the observation of the experiments that have been tried by others on these lands and from farming operations and fruit raising operations that he conducted himself and saw others conduct there and is also based upon his actual knowledge in going over these timber lands that he has cruised. He was acting for Josephine County when he cruised these lands and has never been employed by the Oregon and California Railroad Company, to do any cruising of any of its lands. Of the lands that he cruised in Douglas County there is none that are suitable for agricultural purposes. The chief value of these unsold lands of the Company in Josephine and Douglas Counties and other sections with which he is familiar is the timber. In Josephine County the lands are very mountainous and what is really unsold contains very little pasturage, or would contain very little under any conditions. The pasturage in the higher mountains would amount to considerable, and

does under natural conditions, from about the first of June until November first. To give a good idea of how much pasturage is furnished, he would say that township 39 south, ranges 5 and 6 west, and township 40 south, 5 and 6 west, furnish pasture in the summer, and the maximum pasture has been furnished there for 1,000 to 1,100 head of stock which have absolutely eaten all the pasture in these four townships in that time, besides this stock was pastured outside of this area to some extent, referring by stock, to cattle mostly. That area would be something over 80,000 acres necessary to feed 1,000 to 1,100 head of cattle during that period. The foothills around the valley, in his judgment would raise good grapes, that is quite a per cent of it, probably 50 per cent of the percent he has named. Possibly once in awhile a place would raise peaches or pears and it is his judgment that is the extent of what the land would do. There has not been enough of these lands utilized to amount to a percent. There is one demonstration that proves that grapes can be grown commercially on such lands. He does not remember what section but it must be in township 37 south range 5 west, probably a mile from the Applegate River on a farm owned by H. Carson, who has he thinks 60 acres in grapes now. It is hill land. The expense of clearing this land and putting it to any such use as that would vary with the conditions and would run from $30 to $40 an acre up to $100 or $150 per acre, something like that. There is a limited area of that character of land in Josephine County. Land that is covered with saw or commercial timber would cost to

clear it and make it available for plowing, if there was soil, from $50 to $200 an acre, some places as high as $300 per acre. The soil of these lands in most of the eastern part of Josephine County is granite soil, decomposed granite. In township 35, 6 and 7; 36, 5 and 6, there is quite a lot of flat and small hill lands of decomposed granite mostly underlaid with beds of gravel, especially in 36—6. There never has been any profitable farming done on any of that land. Granite is a stone and this is just simply decomposed by the action of the weather. This township 36—6 he speaks of, the flat land is to the southwest from Grants Pass and is underlaid with a deep bed of gravel, he does not think any one knows how deep it is. It is gravel the size of a fist and down, so that the water leaches right through the ground and takes all the substance out of it. If it were irrigated it would possibly be suitable for cultivation, but it does not hold the fertilizer or moisture. It would not be at all practicable to irrigate these hill lands—it would be out of the question to do that. The supply of irrigating water from the gravity system is all taken and taken again. Probably streams that have one thousand inches have claims for three or four thousand inches. The talk of irrigating these lands is idle because there is not the water. He does not think there is any possibility of the lands which he cruised in Douglas County being utilized for any agricultural or horticultural purposes.

Whereupon witness further testified as follows:

Q. Now, suppose, Mr. Stites, that an actual settler, so-called, should apply to the company to purchase 160

acres of these lands that you speak of, at $2.50 an acre, and should be expected to go out there and settle on these lands, enclose his quarter section, and make his living for himself and his family on this quarter section, and confining his stock range to that quarter section, or his agricultural or horticultural productions to that quarter section, what, in your judgment, would be his ability to succeed or to utilize that quarter section for settlement purposes?

A. Well, the unsold lands are none of them that I would consider a man would be justified in undertaking such a thing.

Q. Suppose a man went out on a quarter section that had commercial timber on it, ranging in value according to the stumpage from $5,000 to $10,000 per quarter section, and the company, under pretense of his being an actual settler and applicant under this act of April 10, 1869, should sell him this quarter section, and he should go out there with his family, or alone, build him a shack for a home, undertake to live there, make a home out of it, and to make a living, what use would he put that land to, do you know?

A. That would depend in a great measure on how far he was from transportation where his land was located, and all those kind of things.

Q. Well, what would be the best use that he could put that land to, if it was heavily timbered?

A. The best thing he could do with it would be to sell the timber off the land, in my opinion.

Q. Suppose these timber lands of the company were all sold to so-called actual settlers, a good title given them, in quantities not exceeding 160 acres, at a price not exceeding $2.50 an acre, and they got a good title, were not required under the Act to live there any length of time, but just to settle, how long would it be, in your judgment, and from your knowledge of the way these timber lands have been taken and disposed of, until these actual settlers had disposed of all these timber lands for their market value?

A. Well, I would suppose that they would sell at the first opportunity.

Q. What is your knowledge, if you have any, as to what has become of the lands in the even sections, title to which has been taken from the United States, where they are covered with timber?

A. I am not informed as to what has become of the homestead entries. A great many of the timber claims have been sold—practically the majority of them.

Q. To whom have they been sold?

A. I don't know. Well, I believe that one group on the head of Williams Creek was sold to a man by the name of Olsen.

Q. What class of investors have secured the title to these lands, if you know?

A. I did not understand.

Q. What class of investors have purchased these lands?

A. Well, there has been some bought by mill owners, but mostly by timber speculators, I suppose. I am not very well informed on who has acquired the title.

Q. In your travels through these lands in Josephine County and in Douglas County, did you notice anything in the way of settlement on these even sections? What evidence of homestead settlements, if any, did you notice, and what has become of the improvements?

Mr. Rabb: Objected to as incompetent, irrelevant and immaterial.

A. The homestead improvements that I recall are mostly in 39—6. There were six homesteads there, which ground, I think I cruised in 1906. At that time the cabins were new, practically new. I seen no one at any of the cabins, but in most instances there was a little piece of ground spaded up, and some garden planted.

Q. What kind of cabins were they as to material?

A. They were built of split cedar.

Q. How large?

A. Oh, I should say 14 or 16 feet square.

Q. One or two stories?

A. One story high.

Q. Any fences?

A. I do not recall any fences.

Q. Any stock?

A. No stock.

Q. Any human beings?

A. No, sir.

Q. Any evidence of anybody living there?

A. None at all. Any more than this, there were outfits for camping and cooking in most of the cabins.

Q. What kind of timber was it where these settlements were?

A. These cabins mostly were built right along the flat of the stream, and the timber right in the bed of the stream was Port Orford cedar mostly. The hillsides were very steep, probably an angle of forty-five degrees, something like that, covered with fir timber, most of it.

Q. Good fir timber?

A. Not very, no.

Q. What was the chief value of these claims that you saw, these homesteads?

A. If they had any value, it was for timber.

Whereupon on cross examination witness further testified that he has been largely engaged in sawmilling since coming to Oregon. He has farmed on Williams Creek in Josephine County, where he owned 100 acres of land and his father owned 180 acres and they farmed together when he farmed. After he went to work for wages his father and the family lived on the farm. His farm is in section 34, township 38 south, range 5 west of Willamette Meridian. He has never filed on a home-

stead. He cruised all of the lands in Josephine County that he thought was worth cruising. This cruising was not done while he was assessor of Josephine County, but was done in 1905 and 1906 and part of 1907 after he had been assessor in 1895 and 1896. He did not cruise any solid townships in Dougslas County, but cruised around in two or three townships, 32-7, 32-8 and reconnoitered west of there but did not do any cruising. His only knowledge relating to the lands in Lane County is practically confined to a trip taken along the public highway concerning which he has testified. He has cruised a little land on the McKenzie, probably ten or twelve forties, something like that but does not claim any particular knowledge only as to the general lay of the country. He got his information about the homestead improvements in 39-16 from blue prints of the government plats which he always carried with him when he went to cruise the land. He does not know whether these entries have been abandoned or not. He knows that the alleged homestead settler hired these cabins built and he talked with the man that built the cabins. There were a number of them built by the same party, but he does not remember the man's name—the man he met while he was cruising below there. Individual locators or entrymen hired this man to build their homes; that is one man built them all, but the individual man hired this man as he understood it. He does not know whether this same man got the homesteads after the deal was perfected, but he does not imagine that he did, because he did not seem to him to have enough money to buy

anything—he did not buy them. This man was working for himself and lived there close to the claims, down the hill from them, and it would be naturally easier for him to build these cabins than anybody in the country. There were no people living in that township, only one man. The other man lived below in the next township. He thinks there was one man but he does not remember his name. Possibly his name is Barnett, he thinks it was, who lives in section 31 of that township. If he remembers rightly Barnett contested with the Railroad Company for title to his land and he was living on railroad land. If a man lives in a cabin he is supposed to have a bed and some furniture. In these cabins there was simply a frying pan or two and a place to lay down some blankets, something of that kind. There was no furniture of any kind. Possibly a block of wood set on end. This was in 1906. He does not remember or recall the names of any of these homesteaders.

Whereupon on redirect examination witness further testified that he had never been in the employ of the Oregon and California Railroad Company or the Southern Pacific Company.

Whereupon C. W. KEMPTON called as a witness on behalf of defendants and being duly sworn testified that he is thirty-six years old and is at present employed as inspector of sewers in the City Engineers' office, of Portland Oregon and has been in Oregon a little over two years and was employed as land examiner and taking pictures of lands by the Oregon and Cali-

fornia Railroad Company from January 1, 1911, until along in July 1912. He went out on some lands and took pictures on the Santiam River. He was through Polk and Lane Counties. A portion of the time he was by himself, but a majority of the time, Roy Woods, Kinser and Elliott, the State Fire Warden's son were with him. Witness took the photographs "Defendants' Exhibit 273" and made notes on the back of them, not being absolutely familiar with the different sections of the country he was in, knowing only just simply from examination and finding the quarter corners and by direction of streams that flow in regard to the maps that he carried to show his location. He made the notes on the back of the photographs after they were taken; that is, he would make notes at the time on each film, when he was taking all these, and afterwards would transfer them from that notation to the photograph. These notes accurately record what he noted at the time he was on the ground and they are correct. There is a photograph here showing the south half of the southeast quarter, and the south half of the southwest quarter, section 18, township 7 south, range 6 west, and the photograph was taken showing the improvements on the place April 2, 1912. The claim was a homestead of Alfred Haldeman. All that he has taken were homestead claims. The improvements were badly decayed; the buildings were put up out of shakes. The memorandum shows the size of the buildings that were on the land, the measurements show the size of the house that was built. The house was 12x12 and the barn 12x14

and were not occupied. There was no sign of occupation around them. To all of which testimony of this witness complainant objected as incompetent, irrelevant and immaterial and it was urged that this objection should be considered as taken to all the testimony of this witness as to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness further testified that the cabin shown in the photograph taken at this time was built on the bank of the creek and is in a canyon on the bank of a small creek. The timber on the claim was good fir timber and the land was chiefly valuable for timber; it was very rough. The next photograph shown him was taken on the head of what is known as the Rickreall River in Polk County and he knows that very well. The memorandum was a report that this was the homestead of John F. Johnson on the south half of the northeast quarter and the north half of the southeast quarter of section 2, township 8 south, range 8 west, and he got a portion of this data on the memorandum as to when the filing was made and patent issued from the Oregon and California Railroad Company at the time he went out to work and he got the date of the transfer of the title from the records in the Recorder's Office at Dallas. This notation shows the present owner; that is who owned the property at the time, and is what he secured in the office. The improvements on this land were badly in decay, broken down by a tree falling across the corner of the house, not occupied, and no farther improve-

ments on the land or ground at this place.

Whereupon it was agreed that this witness would testify that the memorandum on each of these photographs is a correct statement of what his testimony would be and the same was received as his testimony, subject to the objection made. It was further agreed that the witness would testify that he obtained the information as to when the land was filed on, when patented, from the land office of the company when he started out and obtained the date when sold and the consideration for such sale from the records of the Recorder's office in the various counties in which the lands were situated.

Whereupon witness further testified that he did not examine the County records as to all of these photographs. Those that are in Polk County where they are shown on the back, he has examined them. There may be other notations on some of those others where he did not go to the records in the county. Polk County he went there himself. He went through this county by himself and secured this data and made all the notations or memoranda that were made by him under the circumstances as he has stated he believes. He can tell by looking at the back of them whether or not he did so. He took these photographs according to the dates as placed in the memorandum on the back of the picture. Some few of these photographs are not homesteads. He was engaged in taking these photographs "Defendants' Exhibit 273" from about the 20th of Jan-

uary up to July, 1912, but was not out continuously. The lands shown in these photographs are situated in Polk, Lane, Clackamas and he believes there are one or two in Marion County. These reports or memoranda made on the back of these photographs show the descriptions and the memoranda as to conditions of improvements and occupation and so on are according to the facts as he found them on the ground. These lands shown in these photographs are chiefly valuable for the timber. He found very few of these improvements occupied, he thinks there is but one picture where there was any one occupying the improvements. These improvements were badly in decay and broken down. Occasionally there was an old wagon road going by these improvements, but mostly trails. There was no evidence of recent occupation on these lands, with the exception of one where there was an occupant. One place was occupied, they had been in there about two years and they had not at that time received their patent. The man was a homesteader and had a wife and children with him. The nearest town to which this was would be Mahama on the Santiam River in Marion County, about 12 miles away. He had a cabin and he saw him there in May, and all he knows as to whether he and his family had lived there continuously was the statement of the man that he had been there that time, and that he had been there since he built his cabin. He had about a quarter of an acre cleared. It was too early in the season for him to start the crops, excepting a small garden which they had started and making his

clearing there. His cabin had two rooms and with that exception he found no settlements or occupants on any of these claims.

Whereupon defendants reoffered each and all of these photographs marked "Defendants' Exhibit 273" being about 80 photographs in all and all of which are enclosed in an envelope marked on the outside "Defendants' Exhibit 273," which were received in evidence and are hereinafter set out and described and made a part of this Statement of the Evidence and identified herein as such.

Whereupon witness recognized "Defendants' Exhibit 273-a" as that showing the improvements on south half of northeast quarter, west half of southeast quarter of section 24, township 10 south, range 2 east, where he found this man and his family who had been there for some time as the man said. With that exception he found no evidence of occupation, no persons living on these premises shown in these photographs.

Whereupon said photograph so recognized was marked "Defendants' Exhibit 273-a."

Whereupon on cross examination witness testified that these notations on the back of these photographs were made in his presence, he dictated the memoranda from the notes that he made at the time he was on the ground on the films; he had a note book that he kept notes in and he used an Alvesta panoramic camera and these pictures were all taken while he was in the employ of the Company. He was employed by the railroad com-

pany from January until July, 1912.

Whereupon on redirect examination witness further testified that these memoranda on the back of these photographs are accurate from the memoranda made in his book at the time each day. He dictated these at the time they were copied on the photographs taken from his memoranda. The Oregon and California Railroad Company's land office furnished him the data of when these homesteads were entered and patented. It was the Portland office in charge of A. W. Rees that furnished this information. Some of these photographs had been enlarged, but were all taken with the same camera. The data as to when sold and the consideration, for what sold, where it appears on the back of these photographs was obtained by him in person from the Recorder's Office at Dallas. He would go to the volume that contained the record of the deed and take the date of deed and the consideration stated and verify the description of the land to see that it was the same land that was given as a homestead. He ran it down from the legal descriptions.

Whereupon witness testified as follows:

"Q. Did you pay any attention to see to whom these lands were conveyed, and what class of people were buying them? Whether they were timber companies or what?

A. Gone into the hands of timber companies."

Whereupon upon re-cross examination witness testified that he had charge of the party with whom he was,

when these pictures were taken. His instructions were, to go through and examine these lands and photograph whatever he found, they giving him the homestead locations and the descriptions of the homesteads. In taking photographs it is necessary to have weather conditions suitable for that purpose. These photographs are all of lands in range 5, 6 and 7 west and without referring to his notes he could not just recall what townships they were in but the lands were scattered over the strip and in ranges 5, 6 and 7 west but he could not recall without referring to his notes. He did not take a photograph of all the lands that had been entered from the government by homestead entries in these townships, weather conditions did not always permit and they did not return for that purpose. There were a few people living in these townships who had patented homesteads from the government other than he had shown. His only knowledge of these lands was such as he obtained on this trip. He was in Polk County something like three months.

Whereupon on re-direct examination witness further testified that very few of these homestead claims that he did not photograph were occupied. There was very little occupation. The condtiion of these that were not occupied, as to improvements where he did not take the photographs, was about the same as the photographs displayed. He was engaged in this business from January until July, something like six months, but not continuously, as weather conditions were such that at times it was not justifiable to put out any films. He would

say there would not be two per cent of the homesteads that he saw in all that time in all that country that had any settler actually living on them. The even sections were all taken with the exception of about, if he remembers correctly something like 840 acres in Polk County that was not taken of government lands. These lands that were homesteaded were very rough and rocky and they were chiefly valuable for timber, if they had any value. All of these photographs taken showed lands within the limits of the grant. A couple of these photographs were taken on an odd section but this is shown on the back of the photograph, with that exception they were all taken on the even sections, within the limits of the grant.

Whereupon **ALICK WILKINSON** called as a witness on behalf of defendants and being duly sworn testified that he is forty-two years old and resides at Gresham, Oregon, and has lived in Oregon over 8 years and has been in the business of lumbering or acted as compassman with cruiser McLennan. McLennan cruised in township 3 north, range 3 west and the southern part of 4 north range 3 west; township 19 south, range 4 west and part of township 3, range 5 west; township 21 south ranges 7 and 8 west; township 22 south, ranges 4, 5, 6, 7 and 8 west and he was with him during the time he cruised these lands as compassman. All of these townships are rough. To which complainant objected as incompetent, immaterial and irrelevant and it was agreed between the parties that this same objection should be considered as made to all the testimony of

this witness regarding the character of the lands within the limits of these grants and settlements thereon and public entries thereof.

Whereupon witness further testified that to the best of his judgment about five per cent of these lands would be suitable for agricultural, horticultural or some settlement purposes. These lands are chiefly valuable for timber. He has had no experience in cruising lands other than as a compassman for a cruising party. He has worked in the timber business ever since he was fifteen years old and has been doing everything—foreman in logging camps, all kinds of work, everything in logging camps and did work in a sawmill a little. He is not familiar with the character of these lands outside of the particular lands that he was over with McLennan, which had on them fir, cedar and hemlock, which were in Douglas and Lane Counties. He was also with McLennan when he cruised the 840 acres in one body in Washington County and 1340 acres in another body, part of it in that county, but could not say how many acres in that county. He served with him as compassman while McLennan was cruising them. He was with McLennan when he was cruising in Lane County in three townships. He was with McLennan in Douglas County from about the 4th or 5th of March up to the date he testified in October, 1912. The work that he did with McLennan was in Lane, Douglas and Washington Counties. He is still in the employ of the Oregon and California Railroad Company as compassman and commenced work this time for that company February 1,

1912. In the spring of 1910, he was out with them 27 days in Washington County. To make a quarter section of timber land commercial would depend upon where it is located and how close it is to transportation. Some would be worth more than others. Some that is way back is not worth so much, others close in are worth quite a little. A 40 that is only a million feet board measure is marketable, it all depends upon the quality and location and accessibility and distance from transportation.

Whereupon upon cross examination witness testified that he had been working in the timber as his occupation all of his life since he was fifteen years old, worked in Northern Wisconsin; came to Oregon in the spring of 1894 and did everything in logging camps; has been sawing in this country. Northern Wisconsin was a timber country.

Whereupon **BEN IRWIN**, called as a witness on behalf of defendants and being duly sworn, testified that he is an abstracter, residing at Portland, Oregon, and was employed by the Oregon and California Railroad Company from 1905 to 1910, chiefly abstracting and in some cases making examinations of land. He has been in portions of the grant in nearly all of its extent, making examinations. In Columbia County he has examined pretty closely. He has made examinations in Multnomah, Clackamas, Linn, Lane, Douglas, Josephine and Jackson. The most careful examinations were in connection with getting information relative to settlers or

trespassers on the company's lands in Columbia and Multnomah Counties. He searched for the location of certain lands claimed to have been settled upon by certain applicants for the purchase of these lands under the $2.50 per acre clause, and particularly lands thus applied for by persons represented by A. W. Lafferty in this litigation referred to in this record. He was on the work of finding their depredations and operations on the company's lands. These photographs, Defendants' Exhibit 270, containing a typewritten memorandum pinned to each thereof, signed "Ben Irwin," which memoranda thus signed are numbered 1, 3, 2, 16, N, 23, 24, 20, 19, 5 and 8, and unsigned numbers 26, 29, 27, 31, 30, 34 and 33, being in all eighteen photographs, were made under his direction in the field, in connection with A. W. Rees. He and Rees located all of these photographs—all of these cabins and views.

Whereupon defendants offered in evidence said Defendants' Exhibit 270 with the memoranda attached, to which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that the same objection should be considered as taken to all evidence of the witness relating to the character of the lands within the limits of the grants involved in this suit, settlement thereon and public land entries thereof.

Whereupon said Defendants' Exhibit 270 with said memoranda having been heretofore offered and received in evidence, are here reoffered and herein made a part of this Statement of the Evidence, identified as such.

Whereupon witness testified that he ascertained the descriptions and location of these lands upon which these cabins shown in the pictures, are located, by finding the section corners or quarter section corners, and pacing the lands in connection with his work as compassman for Rees, the cruiser and field agent of the company. These memoranda attached to each photograph were prepared by witness, in his report furnished to the company shortly after the examinations were made, and correctly represent the descriptions and dates, both signed and unsigned, as they were found by him at the time in the field. These photographs are of cabins and depredations upon land on the summit of the mountains between the Columbia and Nehalem Rivers, in Columbia County. The lands were very rough as a general thing, and steep, and the altitude was high. There was very heavy timber on nearly all of these lands. Fir was the predominating tree. He went into these cabins and in most instances there were a few dishes and frying pans, bedding, and in a few instances the parties or persons were near there trespassing upon the premises. In most cases there was no one present. In most instances the cabins were not occupied, but in a few instances they were occupied.

Whereupon complainant objected to said last mentioned testimony as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as made to all other testimony of this witness relating to the settlements, conditions and improvements made by set-

tlers on the lands within the limits of these grants.

Whereupon witness testified that these photographs were taken about the date stated in the memoranda by Fred H. McClure, mostly in the presence of witness. Some of these cabins were constructed of logs, and some logs and shakes. The shakes were split pieces of cedar. The cabins were roofed over with shakes. This material for these cabins apparently was obtained in all cases from the lands contiguous thereto. These lands upon which these improvements or cabins are located, as shown in these photographs, were chiefly valuable for their timber. In going to these cabins they traveled from Houlton to a point in the vicinity of the lands and occupied unused houses in section 8, township 4 north, range 3 west. There were many unused and abandoned houses, but they stayed at a house which had been used at intervals by the owner.

Q. Well, were those cabins of the same general character as these shown in the photographs, where you say they were abandoned?

A. There are not many cabins in there. They are about of that character.

Q. Well, were those on the even sections?

A. They were, yes, sir.

Whereupon witness testified that in township 4 north, range 3 west, from the best information he was able to gather, and he endeavored to find it, there was not a single permanent resident at that time. They

had abandoned their places, such as they were, and removed. He was present when other photographs were taken that have been introduced in evidence, and participated in taking the remainder of the photographs in Defendants' Exhibit 270 to the extent of locating them and directing the photographer, as described in the memoranda attached to the photographs. Photographs Nos. 96 and 88, looking northwest, are upon lands that did not belong to the company. They were in Columbia County, about three miles south of the lands upon which the trespassers were found, and represent abandoned cabins of former residents.

Q. Do you know whether these were homestead claimants or not, as shown in 96 or 88?

A. I do not know whether they were homestead claimants or not. My information in the locality was that they had formerly lived there.

Q. How long did it appear that those cabins had been abandoned?

A. About four or five years.

Whereupon witness testified that it is his recollection that they made several trips, and that the dates shown on the memoranda and photographs are very nearly correct, except that the 1907 dates are undoubtedly erroneous, that is, May and February, 1907, should be 1908. The first trip that he made was in December 1907. These photographs which he has identified were taken by Fred H. McClure, called as a witness in this

case. Witness and Rees found the corners and paced out the distance and located the exact points where the cabins were found. He has had some experience in ascertaining corners and lines of lands in this country. For four years he located lands at intervals, and the work required him to find the corners. These descriptions on these various photographs are all correct, excepting in a few instances the trespassers had erroneously placed their cabins upon lands other than they had intended, that is, some of the cabins were located off of the line of the lands applied for. He found a great many notices of these so-called applicants, or so-called settlers, in nearly all cases, he believes, usually posted on the cabin or on trees near by. The notice belonging to No. 45, appears to the left of the door, about three feet from the bottom, and was nailed to a log. The notice for No. 41 appears in the photograph nailed upon the door. In all cases these notices had some name signed thereto. These cabins appear to have been constructed within a few months or less time, with reference to the time these photographs were taken, and were constructed from timber cut and trees destroyed upon the land, and were built of logs and shakes. A shake is a split piece of cedar. The predominating and controling tree of these forests shown in the photographs is Douglas fir. Nearly all of these lands upon which these cabins are located, and in all the contiguous territory around the same, were very rough, and all were chiefly valuable for timber, and nearly all of these claims were heavily timbered, and would run, as esti-

mated or measured by a cruiser, from five million to fifteen million feet per quarter section. It was the best timber to be found. There were some roads to go to these cabins, but the great majority of them were at some distance from roads. He was required to travel either over very poor trails or through the untrodden forest. A wagon could not be gotten to more than one cabin in five. There were no school houses or churches near these lands. He was present at the time other photographs were taken of the grant lands. He took a few photographs in Douglas County, west of Drain. These taken by him were taken after all of the other photographs shown in Defendants' Exhibits 273, 267, 268 and 269 taken by other persons. He has taken views of other parts of the grant, but not for this purpose. These photographs taken by him near Drain were taken for the company, and showed the character of the lands to be very rough. He had to do with taking some photographs in the vicinity of Larch Mountain, east of Portland, near Bridal Veil and Bull Run and that section, but was not present with Homer D. Angell when the photographs containing his signature to the memoranda were taken. Larch Mountain country is in Multnomah County. The character of the lands up there where these photographs were taken is very rough and rugged and heavily timbered. The land is chiefly valuable for timber. He has only been a compassman in other parts of the grant for Rees. When Rees was cruising he was with him every moment. He was cruising or looking at the character of the lands

on only isolated portions of the lands when he was acting as compassman, except in Lane County, which includes a number of the parcels shown in these photographs. The lands shown in 20 south 1 west are in Lane County. These lands described on the bottom of these photographs are situated in Lane County, on a tributary of the middle fork of the Willamette River, southeast of Eugene. These lands are very rough, mountainous and timbered. Measured by what he has observed while he was carrying and compassing for the cruiser, and while he was going through other portions of the grant, he would say that very little of that land could be cultivated without clearing at an expense greater than the land would be worth after being cleared. He has knowledge from investigation or personal experience as to the probable cost of clearing these timbered lands, where there was any soil that could be utilized after it was cleared. He has cleared a few acres himself and under his direction, and his information is that it would cost from $100 to $200 an acre to clear heavily timbered, or even lightly timbered land, and that cost would depend upon the extent, number and size of the stumps. There is a large amount of land in the southern part of the grant which is useless for any purpose except raising timber, on account largely of the climate, and the great majority of the land in the grant is not suitable for anything except timber. The soil of the land in the southern part of the grant is rocky, the land mountainous, and climate requires irrigation. The soil is not fit for anything—rocky soil that will not

grow anything. He has been over the lands of the company in Jackson and Josephine Counties to a considerable extent, and has been practically in all parts of the grant except Benton, Washington, Tillamook and Lincoln counties. He uses his independent judgment with reference to the character of these lands. He is not now in the employ of the company.

Whereupon witness produced certain photographs, which he says he took in other portions of the grant than those indicated. Whereupon the same were marked Defendants' Exhibit 313, and the witness testified that these photographs were taken in Douglas County and purport to show locations within the limits of the unsold lands of the company involved in this suit, and these lands are in section 27, township 22 south, range 6 west, and the photographs were taken March 9th or 10th, 1909, by him, and correctly represent what they purport to show.

Whereupon defendants offered these photographs, so marked, in evidence, and the said Defendants' Exhibit 313 was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon witness testified that the lands where these photographs were taken, were heavily timbered and chiefly valuable for timber. The lands were very rough in most instances. The cabins were not occupied. They appeared to have been abandoned a few months. The cabins were constructed from material

made from trees cut upon the land, and were built from shakes and logs, and had been built within a few months. From his experience and observation, the stand of timber per quarter section, would be about six million feet, and that would be, relatively speaking, medium heavy. Douglas fir was the predominating tree. He knows how to measure or estimate the number of board feet and has done some of it.

Whereupon witness, upon cross examination, testified that prior to his employment by the company, his occupation was that of a stenographer principally. He has worked at other occupations, clerking in stores, farming, etc., farmed in northern Nebraska, a prairie, open country, left the farm in Nebraska when he was about twenty years old, and is now employed as an abstracter in the City of Portland for himself. He has not been employed by the Oregon and California Railroad Company or Southern Pacific Company since 1910. These examinations made by him of the lands involved in this suit, were made while he was an employe of the Oregon and California Railroad Company. The office in San Francisco designated some of the lands he was to examine, and some of them were designated by Angell & Fisher, and he obtained his instructions principally from Angell & Fisher. The last examination made by him, he believes, was made under the direction of the California office, receiving instructions from General Land Agent B. A. McAllaster. The instructions were sent jointly to Rees and himself. He found the persons referred to by him as trespassers

upon the lands that he knew belonged to the company. He knew the company owned, or claimed to own the land. He has had two or three years experience in the timber, while he was in the employ of the company, and that is the only experience in the timber he ever had. He cruised timber in Clackamas County and assisted in cruising timber as compassman in Multnomah, Columbia, Lane, Polk, Josephine, Jackson and Douglas Counties, between 1907 and 1910, inclusive. The earlier cruise was in connection with land that had been contracted to be sold by the company and had reverted. He does not think, take it all in all, that the greater part of his examinations of the land had been made with reference to lands that these men had squatted on in the grant. These particular examinations were made after the suit had been filed by Lafferty in behalf of these parties. He made a good many examinations prior to 1908 in different parts of the grant, but referring to the lands especially in Columbia County, in 20 south, 1 west, that he had mentioned as having been settled upon by trespassers, they were all examined in 1908 and subsequently after suit had been filed by some of the parties at least to obtain title to the land.

Whereupon **FREDERICK A. KRIBS**, called as a witness on behalf of defendants and being duly sworn, testified that he is fifty-two years old, is a land dealer by occupation and resides at Portland, Oregon, and has resided there since February, 1902. Prior to that time his home was in Minnesota. He has been engaged in the timber business, buying and selling timber lands, making

investments or handling timber lands, about twenty-seven or twenty-eight years, and his experience in that line has been principally in Minnesota and in the Coast States of Idaho, Washington, Oregon and California. He is acquainted with the unsold lands of the Oregon and California Railroad Company, inuring to that Company under the Act of Congress of July 25, 1866, and May 4, 1870, involved in this suit. He is more familiar with the lands in Coos and Douglas Counties and some few lands in Curry County, and is familiar in a general way in Linn and Lane Counties. He is not very familiar personally in Washington County, although he has had men out examining lands in certain parts of this County. He has been out in Eastern Multnomah County, over in the Bull Run District, up towards the Mt. Hood country. He has ridden and driven through that part of the country a great deal. The character of these lands is principally mountainous. To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of these lands within the limits of these grants, the settlements or possibility of settlements thereon and public entries thereof.

Whereupon witness further testified that these lands in Multnomah County are valuable for timber. He has made no personal examination of the timber lands of the Company in Yamhill County. He has driven through the country a great many times, but has been only on the farming lands in Yamhill County. The unsold land of

the Company in Clackamas County is all timber and mountainous country. He has made two trips into that country. Generally speaking the character of these lands is mountainous and timbered, and some are burned over lands. At the present time these burned over lands would not have much of any value. They are too remote. He presumes they could be used in the summer time for a short period for grazing land, or something like that. In the mountainous country, stock is generaly put in, in the months of May, June, July and August. Snow or heavy stormy weather in the higher altitudes generally keeps them from going in earlier. About that time of the year, they drive their stock in. Right back of Falls City in Polk County, the lands are mountainous and timbered and he would regard the value of these lands as pretty nearly wholly for their timber. The Abiqua and Molalla are rivers heading up in the mountains, especially the Abiqua. Abiqua basin is extra heavy timber and he is familiar with that particular vicinity. The other range of mountains, through there, he would assume is timbered the same in like way. He is not familiar with the lands situated on the Santiam River adjoining Lane County, near Mehama in Marion County. He has not been in that section. He would say that the value of this unsold timber land in Marion County is chiefly for the standing timber. He has no actual personal knowledge of Alsea Bay, which is outside of the grant, but has been all over the country west of the Alsea Basin and knows it is a timbered country from hearsay. His holdings in Lincoln County lie west of the Company's

lands. He has made no examination in Benton County. Thomas Creek, Santiam River, Calapooia and other streams, heading in the Cascade Mountains, which run west to the Willamette River, are all high in the mountains and the country as a whole is what is called a mountainous or timbered country and these lands of the Company situated in Linn County, are chiefly valuable for the timber. In a general way, he has knowledge of the timber lands of the Company in Lane County, as he owns a good deal, a good many of the even sections. It is all high and mountainous country and principally valuable for its timber. He thinks the Railroad Company had lands in 15 south 2 and 3 east, 14 south 2 east and 15 south 1 and 2 west, and that his Company acquired a good deal of lands over in that country. The timber lands in Lane County as compared with other sections of the State are very heavy timber lands, excepting the old burns. The country is rough and mountainous and as a whole he would say, would be at this time, wholly valuable for its standing timber. These old burns are pretty much the same all through the mountains. The green timber has been killed and old stubs standing, or the timber has fallen upon the ground and there is generally a thick growth of brush. It is commonly reputed that these fires have been caused from fires that have gotten loose from time to time, from careless hunters or campers, though a good many burns were known to exist in places before some of the old time settlers came there over fifty years ago. These burned over lands in some places would have a very fair soil. In other places

they would be rocky and poor and not of much value. Where the good timber is, through the Cascades, he would say the elevation would go from 1200 up to 2500 feet. Vegetation on these burns would be mostly different kinds of brush. In places, there is found pea vine, and in real open spots with not too much brush, little tufts of grass here and there and different kinds of brush, hazel brush, salal and vine maple. There is not very much of anything that could be done to use these burnt over lands at this time that would bring much of anything in the way of income or money. There are some spots where there might be here and there a little feed, now and then a creek coming through and the country being open, there might be a little grass, but one would have to have quite an area of that country, if he were going to make a stock range or stock proposition out of it.

Whereupon witness testified as follows:

Q. Suppose that a so-called actual settler should apply to purchase 160 acres from the company at $2.50 an acre, and the company should sell it to him in good faith, for the purpose of allowing him to make settlement on it, giving him a good title, and he was expected to go upon the land with his family, and fence it, and devote it to any useful purpose, such as grazing or agriculture, and make his living, confining his pasturage to that quarter section, what, in your judgment, would be his ability to make a living on any of these quarter sections in that way?

A. Well, over these mountains, on account of the

bad weather and conditions generally speaking, I do not think he could make a living. I do not think he would stay there.

Q. Suppose that the company had adopted the policy of selling all of these lands, timbered and otherwise, to actual settlers, in quantities not exceeding 160 acres, at a price not exceeding $2.50 an acre, and had conveyed to these so-called actual settlers these timber-lands with the understanding and expectation that they would go out on these timber-lands, attempt to make settlement, make a living, make a home, what use would these actual settlers make of these lands and what would become of the title?

A. Well, they would hold it until there was a good——

A. They would hold it according to their means, until there was a good market, and they would sell the timber to some lumberman or speculator, and it would all be owned by lumber companies now, or the most of it.

Q. What would be his ability, or what would be the possibility of a man being able to make a living as a settler on one of these quarter sections of timber-land?

A. Well, he might make some kind of a living, but it would be a very poor one, if he confined it strictly to one of these quarter sections high up in the mountains.

Q. Are these lands or not fit for actual settlement?

A. I would not say they were fit for settlement.

Whereupon witness testified that he is pretty familiar with all the timber lands in all parts of Douglas County, odd and even sections. He is familiar with some lands, knows more about them than he does others, but in a general way he is familiar with nearly all of the lands that are colored on that map, "Defendants' Exhibit 259." There might be some to the extreme east side that he does not know much about, on account of their location being so far up streams, but generally speaking the greater part of these lands are valuable for standing timber and in many townships he has made personal examinations and estimates. The character of the timber in Douglas County on these lands, is fir, and in the higher mountains principally old yellow fir; in the lower altitudes, red fir with now and then a little cedar and other kinds of timber but it is principally fir timber. The topography of the country where these timber lands are situated, are rough and mountainous and the elevation runs from 1200 to 3000 feet but through the upper Umpqua he would think about 2200 feet would strike a general average. He thinks the lands owned by the Railroad Company in Coos County would be the lands that would be up on the Coquille waters. He has selected a large part of his Company's lands on the head waters of the Coquille and these remaining lands he presumes are the ones that were not purchased. They are heavily timbered lands as a whole and their chief value is timber. He is acquainted with the timber lands of the Railroad Company in Curry County. In Curry County, these lands are in Townships 34 and 35 south, ranges

11 and 12 and township 31 ranges 12 and 13. 31-12 would be in Coos County, 31-13 mostly in Curry County. They are principally heavily timbered lands. Township 35, ranges 11 and 12 must be these green lands shown on the map. They are on the Rogue River and there are a few lands that he cannot personally tell about. The topography of the country, of these lands in Curry County, is mountainous. He is acquainted in a few places in Josephine County but has not an active personal knowledge, as he has never done much work personally in that country. He has had men in different parts of the country and along back from the roads and mountains generally, a rough mountainous country, and the lands where there is timber, are valuable for timber. In other places, there would be old burns or openings. He has gone through there in a general way, but has not done a great deal of work in that country. The character of the topography is mountainous. There are some places where the soil would be fair in Josephine County in these timbered areas. Other places quite a bit of rock and more like a mining country. Up the Rogue River in Jackson County there is land known as the Hopkins tract on Jenny Creek, he thinks that would be in the south side of the county. There is a tract known as the Goodfellow tract on the Upper Rogue on the east side which is fine sugar and yellow pine and the odd sections in through that end of the country are also fine timber, and the land is chiefly valuable for timber. He has not been personally in the western part of Jackson County on the Applegate Creek. He had

a man or two in there. Lands that are not covered with timber in Jackson County, but which are covered with chaparral, manzanita and other such like small growth, would have to be used for grazing land, something like that. The topography of these lands, both timber and otherwise, is all high elevation, mountainous. A man could have a tract of that and use it for summer grazing for cattle and sheep and so on. If a man was in the stock business for a living, and had 3000 or 4000 sheep, he ought to have about 14000 or 15000 acres of land, to graze them on. He does not know what the Forest Service figures this pasturage at, per acre, of these burned over and timber lands to sheep men or other stock men per annum, but he rents land east of the mountains in the same localities and gets seven and a half cents an acre for them. They are able to graze these lands generally from April to in September. A man could not make a living at a rental of seven and a half cents an acre for 160 acres of this grazing land. It would not amount to anything. He spoke of some lands known as the Jenny Creek country but he could not say from memory whether that is located just in Jackson or Klamath County. It is a very high grade timber on that stream. Jenny Creek as shown on this map is in Jackson County. Most of these lands to which he refers are in Klamath and part in Jackson Counties. That is fine timber, some of the best in the State. These timber lands in Klamath County are chiefly valuable for the standing timber. He is not very much acquainted with the unsold lands of the company in Columbia Coun-

ty. He has been along some of the roads but has never been interested in the timber there. He has had men out in Tillamook County but has not been there personally. He optioned and spent a lot of money in examining two different tracts of land in Tillamook County. It was very heavy timber land but he did not buy it. These lands that he optioned would be in the edge of the grant, just outside the indemnity limits of the grant of July 25, 1866, and within the limits of the grant of May 4, 1870. These lands that he had under investigation were heavy timber, very rough and mountainous. He has no knowledge of the unsold lands of the company in Washington County. He is acquainted with the holdings of the Simpson Lumber Company to an extent, in Coos and Douglas Counties and is acquainted with the timber holdings of the C. A. Smith Lumber Company in Coos and Douglas Counties and has been over a great many of these lands personally and he thinks he is able to judge the timber character of a 40 when he sees it. There are two ways of ascertaining the timber stand on a given forty, with a view of buying or selling and that is what they call "double running." The land is all run out in its legal subdivisions by use of the compass and is checked up on the different points to see that it is correct, then they make a tree count, or if the timber is standing pretty evenly all over the forty, measure half acres or acres here and there, strike a general average of what it is thought it will average per acre, right through and then multiply by the number of acres of timber, and have a

scale measure on the stump and do the figuring from the scale. The location of the unsold timber lands in this grant in western Oregon and the even sections owned by different people are considered good and the timber belt is considered about the largest in the United States. The predominating commercial tree in that territory, is Douglas Fir, which ranks as a tree that will make very good lumber. It is secondary in value to high grade pine but is considered very fine lumber. Referring to "Defendants' Exhibit 315" witness says that he has been pretty much through all that country where these pictures were taken. He could not identify from the picture, the identical 40 acres of land that any particular picture was made from, but knows these pictures were all taken down in Mr. Smith's timber and he knows the man who took the pictures. He has two or three of these himself and these pictures fairly and correctly represent what they purport to show. Relatively speaking the timber lands of Coos County is a larger belt than in other localities and it is heavy in point of stumpage. It will average all about as well in quality.

Q. What is the highest price for which a quarter section of a large holding of timber-lands has been sold within your knowledge and experience in this part of the State of Oregon, western Oregon, for instance?

"A. Where I am posted, the last two or three years, there were quarter sections sold from $4,000 up to $12,000 per quarter. But before that it was some cheaper, as there was not a great deal of opposition in picking up timber then."

Whereupon witness testified they are asking for timber lands in the locality near Timber in Washington County in the Nehalem and Tillamook, since the railroad went in, from $2.00 to $3.00 per thousand for their stumpage, and there are quarter sections there that will go from ten million as high as twenty to twenty-one million to the quarter section. Some of these quarter sections could not probably be bought short of $60,000.

"Q. Well, then, if an actual settler under this law should apply to the company to buy one of these quarter sections at $2.50 an acre, of which there are some 7,000 intervening in this case, actual or potential so-called settlers, his quarter section would cost him $400. Would he or not be able to sell one of these quarter sections for the prices that you have named?

A. He would get a good fat price as soon as he would get his title."

Whereupon witness testified that he had no connection with the Oregon and California Railroad Company or the Southern Pacific Company in business or otherwise and his business is that of dealing in timber lands principally.

Whereupon on cross examination witness testified that he had been engaged in the timber business practically all of his business life, twenty-five to twenty-seven years and since coming to Oregon he has been engaged in the timber business as a timber broker and an investor. He did a great deal of cruising the first two and a half years he was here in Oregon. The first two years, he

would have so many varying reports as to what there would be on a quarter section of timber, that he put in a hard week's cruising here, on some of these lands to find out who was right and who was wrong according to his judgment. He started out in the timber business and cruised for a great many years and that is all he did as a starter for many years. Since coming to Oregon, as a whole, he has cruised comparatively little. That cruising was in most all parts. He had generally made it a point, and would today, of going into a brand new territory, to go out and check up lands here and there and find out for his own satisfaction about how he thought it would average per acre, or how the tract would go. He depended largely upon reports of cruisers that he had tried out and tested. He does not personally go over everything in great detail as to lands that he purchases or invests in or sells or buys for other people. His knowledge concerning the lands included in this grant in Multnomah County result from his having driven through Multnomah County and he has been out over the timber belts and could observe them as he was driving through them. He was simply driving along the public highways and has been off on some of the smaller roads. He has been offered trades for property in town, personal or real, for lands alleged to be timber. In some instances they were and in some they were not; he went out to look up some of that himself. He does not know that he can give the location by township and range, without looking it up, but some was out in what they call Sandy River waters, and one piece out

near Cherryville, this side of Estacada. He has not made any extensive personal examination of the lands in Multnomah County. In Clackamas County he made a run in through some timber some years ago and then put men in there and he checked up some of their work. Take the county as a whole he has inspected a very small portion of the lands in that county. He has been out on one or two of the streams and ranged around through there and saw that it was a heavily timbered country where he was. It would not be a very large area of what he would call any detailed cruise but he got over quite a bit of the country, ranging through it on roads and trails to get general ideas of the country. He was in what they call the Abiqua Basin country. There is a smaller stream coming in through there, either the Clackamas or Molalla waters. He has had men in two or three different locations up in the mountains of this county looking up timber but has not been personally in any other portions than he has mentioned. As to Marion County his information is directly from men he sent there and is not personal knowledge. In Linn County he has been pretty much in Township 12, ranges 1, 2, 3 and 4; township 13 south, ranges 1, 2, 3 and 4; township 14 south, ranges 1, 2, 3 and 4; township 15 south, range 3 east; township 15 south, ranges 1 and 2 west, upon the Santiam and Rock Creek waters through there. In Lane County, he made one trip up the east or coast fork of the Willamette and was over on the Mohawk waters and was up above Wendling on that little railroad and back into the timber there.

A few miles in Jackson County, he looked into a lot of scattered lands that were offered to him east of Medford and then he was up in the Jenny Creek country looking over what is called the Hopkins tract and then up the Rogue River and looked into what is called the Goodfellow tract. All together he should think he ran over in a general way 140,000 to 150,000 acres. He went all through the different sections and examined now and then, a forty here and there, to verify other people's work. He made quite a general inspection in Josephine County about 10 or 11 years ago, and concluded not to invest and so his personal work has mostly been in the counties on this map—Douglas, Coos and Curry Counties—referring to "Defendants' Exhibit 312." In Josephine County he made one trip quite a number of years ago but cannot name the creek now. It was no main river. He went up two different creeks and went into a very high rough country, saw a good deal of timber, but a man would have to have a very large area in order to have a large amount of stumpage in that particular part where he was. He could not give the township and range of the general locality. That was 11 years ago. In Douglas County he has been pretty much over all the lands owned by the C. A. Smith Company, also by the Pillsbury, Kribs Company, and what is known as the Shook lands, and several other tracts. He has been pretty much over the timber belt all over Douglas County on the Smith and Umpqua Rivers and its branches and on that part of the Coos River that heads into Douglas County. A large part

of the lands he has mentioned, would be located in township 27, ranges 7 and 8, township 23, ranges 4, 5 and 6; townships 27 and 28, ranges 8 and 9; townships 24, 25, 26, 27, 28, 29, 30 and 31, ranges 9 and 10; townships 26, 27, 28, 29, 30, 31 and north part of 32, range 10. In fact he has tripped that whole country pretty nearly through to the ocean. In Coos County he thinks he has been in the part of range 9 which is partly in Douglas County; that would be townships 26, 27, 28, 29, 30 and 31, range 9; then in township 25, range 10; townships 25, 26, 27, 28, 29, 30, 31 and 32, range 11, townships 27, 28, 29, 30, 31 and 32, range 12. Range 13 is partly in Coos and partly in Curry County. He has been pretty much in nearly everything that was bought there one time or another. He has been around through these lands. He only knows the railroad lands in Lincoln County from hearsay. His lands are farther to the west along the coast.

"Q. Now, you spoke of leasing land for seven and a half cents an acre for grazing purposes. You get other consideration in addition to that, do you not, in the way of fire protection and removing of underbrush, removing the fire risk?

A. Well, the contracts claim that they will keep a watch out for fire, but there is no brush clearing, or anything like that.

Q. Naturally stock running through the timber would naturally remove a great deal of inflammable material, would it not?

A. Well, if you put in a band of goats, they would eat quite a lot of stuff. I don't know as sheep do very much but eat the grass."

Whereupon witness testified, that in taking the elevations in the Coast Range they used the barometer nearly all together, and he took the elevations in many places. As to elevations, he testifies in some cases from general knowledge and in other cases he took the elevations himself. They required, that their cruisers should take the elevations everywhere in the mountains and as to a great many elevations he is depending upon the reports received from the cruisers. His interest in lands in Oregon are principally with the corporation, in the stocks, etc., so that they own their stock together. He does own some personally but could not tell exactly without looking it up, several thousand acres. He is interested in probably somewhere about 100,000 acres all over the State of Oregon and has a substantial interest in these lands which are all valuable. He has been dealing almost all together in timber lands. In making purchases of lands, he looks after their timber value. In the last few years he has had also a soil examination made, but only in the last three or four years. He purchased principally for timber. Logging conditions and the stand of timber would outweigh any of the soil possibilities in his estimation. He knows about where the lands were, where these photographs shown in the magazine were taken, as shown in "Defendants' Exhibit 315" but not exactly, the exact spot. He was not there when the photographs were taken, but knows when the work

was going on and he helped arrange and lay out the work. He really has no personal knowledge that these are photographs of lands in Curry County and he did not assist in doing the work but sent men to help them. He knows they performed the work to his satisfaction.

Whereupon upon redirect examination witness testified that he did not recognize the photographs shown at page 49 of "Defendants' Exhibit 315" as that of any particular timber that he knows, but he can take one into a great many places of timber that Smith owns and he owns and get just as good a picture as that. The photograph is a fairly good reproduction of the scenes of forests on some of these lands of the C. A. Smith Timber Company. He cannot tell where the picture shown on page 51 of "Defendants' Exhibit 315" was taken but knows of several stands that would make a picture as good as that. He has seen timber of that kind in Curry County. The picture shown at page 53 of "Defendants' Exhibit 315" would be one of these mountains or ridges of timber taken from a high open spot. He has seen timber stands of spruce such as shown at page 55 of "Defendants' Exhibit 315." The tree shown at page 65 called "Second growth" is a young er tree than the old growth. He always figures that the same kind of a tree, but the second growth is a young tree. He has seen stands of second growth timber on this land of the C. A. Smith Timber Company in Coos County, such as shown in that photograph. The view shown at page 67 of "Defendants' Exhibit 315" is a fairly good mountain view of the location of the timber

holdings of C. A. Smith Timber Company in Coos County near Marshfield. He has been all down through that country in that section where that is shown. The view shown at pages 68 and 69 with the very high mountain in the distance, looks like it might be a scene taken from Johnson Mountain looking towards the south fork of the Coquille and the headwaters of the Sixes River, and that mountain looks something like Johnson Mountain. One can find in various locations trees like that shown at page 77 of "Defendants' Exhibit 315." They are very large and nice trees. Trees could be found like that on the C. A. Smith Timber Company's lands and on other lands and on the lands of the Oregon and California Railroad Company. There is such timber as is shown on page 79 of this exhibit on the head of the Sixes. Port Orford cedar is what is called white cedar. It is of the cedar family. The bark looks about the same as the red cedar tree. The wood is white and has a very strong odor and is used mostly for finishing and sometimes in boat building. It is practically all situated in Coos and Curry Counties with a little in Douglas County and he has never heard of it being anywhere else in the world excepting in this section. He can find spots in this heavy timber on the lands of the C. A. Smith Timber Company in Coos County that one can get a picture like that shown on page 99 of this exhibit. The capacity of the C. A. Smith Timber Company's mill at Marshfield, he thinks now would be about 600,000 feet per day and it is about the most modern mill of which he knows. The C. A. Smith Timber Com-

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pany ships at the present time by vessels to California where that company has a distributing point. The transportation obtained for all of the timber on the Coast Mountains or streams leading into the Pacific Ocean is principally by the steamers, in some instances by logging railroads. The Portland mills secure their logs largely by hauling them into the Columbia River and its tributaries or by having a logging railroad from the timber to the Columbia River and then towing their logs to the Portland market. The Portland mills get their lumber to market by water and by rail. The cut or manufacture of the mills in the City of Portland is about 600,000,000 feet per year ordinarily and he thinks probably 50,000,000 to 75,000,000 of that goes out by water and the rest by rail. Of that he is not sure, he has heard the relative amounts but cannot remember. The railroads carrying lumber from Portland are the Southern Pacific Company, the Northern Pacific and what is now called the North Bank, Great Northern, or Spokane, Portland and Seattle Railway Company. The railroad to Puget Sound from Portland would be the Northern Pacific and the Oregon-Washington Railroad & Navigation Company. He does not know if that is the Southern Pacific or who owns that now, that is the Oregon-Washington Railroad & Navigation Company. The Chicago, Milwaukee and Puget Sound Railroad runs to the Sound but he does not know whether it has connections at Portland or not. The general character of Western Washington as to lumber manufacture and timber is a rolling country and these logs are either

gotten out by the streams or by railroads and the lumber marketed by rail and by steamer. The country is principally all timber. He thinks there is more lumber manufactured in Washington, taking the small mills out on the roads, than in Oregon, but the two States manufacture much more than any other state. He was subpoenaed to be a witness here and he has an interest in a small tract of these Oregon and California grant lands purchased from Acting Land Agent Andrews several years ago and he bought some tracts that were assigned to him by other people and he would say that he is interested in about 4,000 or 5,000 acres situated in Coos County and he thinks they are involved in one of these forty-five suits brought by the United States. The Pillsbury Lumber Company is the defendant in the suit involving the lands in which he is interested, referring to the so-called Innocent Purchaser Suits in which the United States is plaintiff. The Smith-Powers Logging Company does the logging for the C. A. Smith Lumber & Manufacturing Company. He supposes that the picture shown at pages 84 and 85 of "Defendants' Exhibit 315" is that of the mill plant of the C. A. Smith Lumber & Manufacturing Company at Marshfield and it is a fairly good picture. He has been there and recognizes it as such. He has seen such boards manufactured by mills in Oregon, as is shown at pages 84 and 85 of "Defendants' Exhibit 315" and this is not an imaginary picture scene. He has seen the lumber yard or unite yard of the larger Marshfield mill of the C. A. Smith Lumber & Manufacturing Company shown in the pic-

ture at pages 94 and 95 of "Defendants' Exhibit 315" as it is moving its lumber more or less all the time. This is a picture of the lumber yard and he believes it to be a picture of Smith's yards. Marshfield is on Coos Bay.

Whereupon on re-cross examination witness testified as follows:

Q. Mr. Kribs, you do not want to convey the impression in the record here that the photographs of this timber that is referred to in Defendants' Exhibit 315 is a fair showing as to the stand of timber on the O. and C. lands, do you?

A. I have not said that.

Q. You do not want to convey that impression?

A. You can go on the O. and C.—you see those pictures there, Mr. Smith would have a great many lands in places well timbered, where he could not go and get probably as nice a picture as some of those. He pictured nice places here in a good body of timber. Now, you can go on the O. and C. and pick out lands, and you will get nice pictures like that.

Q. What was the purpose of that publication, Mr. Kribs, Defendants' Exhibit 315? I understand from your testimony that that was prepared partly under your supervision.

A. These photographs, I picked out men who were familiar with all the roads and trails, and knew all that part of the country, in good shape, and had them go out with the photographers who came out from Chicago, and did not know anything about timbered lands or

woodcraft at all. Had reports to get very nice pictures and how the work was going on, although I was not there myself personally.

Q. This is what you might term a booster issue of the publication that it purports to be?

A. It was really, you might call, an advertisement, gotten up by the American Lumberman at Chicago, and they probably worked the deal up for Mr. Smith, as he was starting out in this country, a good advertisement to show up his plant, timber, and general resources, make him better acquainted, and be a good thing for him, and they got him into it.

Q. Those photographs in that magazine show what might be termed the best stands of timber in Coos County, don't they?

A. Well, I don't know as you would say it was the best, but they would pick out in a good body of virgin timber, and then get pictures that would make nice pictures—get good pictures they took for the advertising.

Q. This stand of timber, you do not attempt to say it extends over this grant, such a stand as is shown in the photographs here?

A. No, there are some photographs there would not be any stand like that in the world, even—redwood.

Q. Some of the finest timber in the world, then, is shown in those photographs?

A. Some of the nicest places they could find, of course, which would be a higher average than a whole

large body of timber; but Mr. Smith's lands have been very carefully selected, and are generally all pretty heavy right straight through.

Q. Those photographs are not taken within the limits of this grant, are they?

A. There would be some of those pictures that were taken over in the Coquille country that would be right in where the company has got quite a large acreage, as I recollect.

Q. Coquille is not within ten miles of the limits of the grant, I believe, is it?

A. I should think it would be farther away than that.

A. There are places where I think some of those pictures were taken, up in the Eagle Mountain country, up in 31-10, some in 31 and 32-11. I think they were up there, and the Railroad Company have a large area in there.

Q. Do you know, as a matter of fact, where those photographs were taken?

A. Well, I had reports from one of the men that they were going up to take some pictures up on Eden Mountain, they were going to Cold Creek, which would bring them in 32-11. Then they swung around, and took some up the Coos River, some east of Marshfield, down near the Beaver Slough country, and then whenever these camps were located, which would probably be a little east from Marshfield, they took pictures gener-

ally all over the whole tract. That was the idea.

Q. You only know that from reports?

A. The orders were given to get pictures everywhere through the whole tract.

Q. I say your testimony as to that is based solely upon the orders that you gave, and the reports that you received?

A. Yes.

Q. Coos County contains about the heaviest stand of timber in the timbered belt there of any county in the state, does it?

A. No, I don't know as I would say that. It is about as heavy, will average about as heavy right straight through, take the main large body. But we have other locations in the state that will average up very heavy indeed.

Q. This locality where these photographs were taken is unusually heavily timbered?

A. Yes, that is extra nice timber.

Whereupon witness testified that he is agent for one of the C. A. Smith corporations known as the Linn & Lane Timber Company, which has very large timber holdings in Linn and Lane Counties. He is worth and owns property of more than several hundred thousand dollars and would say that he has spent about twelve years of good hard cruising, had a pre-emption claim, familiar with that class of people and saw them all through the wooded country and had about as little to

eat as the rest of them had and he has a pretty good idea what a fellow can do in these wooded countries and if one would put it away back in the mountains he can make it a good deal stronger. All of the lands in which he is interested are generally remotely located. They have at this time a speculative value and he could not give the true value of the same. He could not do it very well. It would be all guess work but he would consider himself to be worth several hundred thousand dollars.

Whereupon on re-direct examination witness further testified he began life as a hard working boy and knows what the needs and wants of the poor man are.

Whereupon W. R. WHIPPLE, called as a witness on behalf of defendants, and being first sworn, testified, that he is sixty-seven years old and resides at Grants Pass, Oregon, and has resided in Josephine County for about fourteen years, about that time at Grants Pass and the balance of the time in the southwest portion of the county. His business during that time has been surveying and civil engineering. He has been deputy County Surveyor, and deputy United States Mineral Surveyor for four years, and has also done some work in that county in the location of timber lands, or timber claims and is familiar with the unsold lands of the company in Josephine County. He has been over most of the grant in the near vicinity. The grant is mostly mountainous in Josephine County. He has surveyed land, run ditch lines and done mineral surveying in general when he went over the lands. In performing that work he became acquainted with and has knowledge of the charac-

ter of the lands in that county. It is mostly hilly ground. To which testimony the complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that they are hilly, and the soil is generally poor, mostly too broken to be cultivated; in fact, there is very little that could be cultivated. Probably about fifteen per cent of these lands in Josephine County are covered with timber of a merchantable character. He is making a rough estimate from his knowledge of the country. The balance of most of the land has been burned over. There has been timber on it sometimes, it is generally brushy and rocky, but part of it along the Rogue River district is decomposed granite, and it has very steep hills. He does not consider any of these burned over or decomposed granite lands as fit for any kind of cultivation, unless there may be some very small tracts. There would probably be ten per cent of the unsold lands of the company in Josephine County that would be covered with chaparral and manzanita. He would not consider that character of land of any value, except there might be some near a town where a person might possibly make a home and a living out of some other business. It is close to Grants Pass and a man might use it for a site to put a house on, but he would have to do something else to make a living, besides agricultural pursuits. There is very little

of this land close to Grants Pass that a man could live on. The land that is rocky, is unfit for cultivation. All of the ground that is really fit for cultivation, has been settled years ago. It had been sold in the early days and bought from the railroad company and occupied by small settlers, and then a great portion of the land was settled before the railroad land grant, under the Donation Land law and under other laws. He is familiar with the boundary line between Josephine and Jackson Counties and recognizes Defendants' Exhibit 259, showing the unsold lands of the company in colors.

"Now, assuming that there is that number of acres of unsold railroad land in Josephine County, consisting of 167,480.98 acres, what is the fact as to whether or not there are any lands in that list, that lot, capable of actual settlement, upon which a home-builder could or could not make a living?

A. I doubt whether there is. There might be once in a while a quarter-section where they possibly could by working hard, but I don't know of any where they could make a comfortable living, with a reasonable amount of work.

Q. This land that is timbered, if cleared, what would be the character of the soil as to the greater portion of the lands in that county?

A. It is nearly all poor, rocky, shaly soil.

Q. Would it or not be susceptible of agricultural use after it was cleared, even?

A. It would not.

Q. Now, Mr. Whipple, what is the fact, if you know, as to whether or not the settlements in Josephine County that have been made in the history of the state, haven't been made chiefly, if not almost entirely, on lands taken up under the Donation Act or settlement laws previous to the grant to the railroad company, as to whether or not these settlements have not absorbed practically all the land in that county that are fit for agricultrual uses?

A. They have.

Q. That is the fact, is it?

A. Yes, sir.

Q. Now, are you familiar with the topographic map of the United States, issued by the United States Geographical Survey, that has recently been placed in the hands of Deputy United States Mineral Surveyors and other officials of the United States?

A. They are on sale by the Government.

Q. You have seen those maps, have you?

A. I have."

Whereupon witness further testified that he is familiar with Defendants' Exhibit 310, being a topographic map of the United States, issued by the United States Geological Survey and recently placed in the hands of deputy United States Mineral Surveyors and other officials of the United States called "Riddles Quadrangle," showing the topography of a section of the country from Roseburg south. Whereupon de-

fendants offered and there was received in evidence said map, marked Defendants' Exhibit 310, which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such. Whereupon witness testified that Defendants' Exhibit 311 is a map of the United States Geological Survey, prepared by George Otis Smith, Director, showing the topography of the quadrangle, known as the "Grants Pass Quadrangle." Whereupon defendants offered and there was received in evidence Defendants' Exhibit 311, which is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such. Whereupon witness testified that the small black dots on these maps represent buildings of all descriptions and kinds and he thinks every building in the whole quadrangle is marked on the map, all sorts, cabins and houses, barns and buildings, and mining camps and everything of that kind, including cabins of homestead claimants, or any cabin built by any one, whether occupied or not. It also shows mines, roads and trails, mountain peaks and buttes and bench marks with the elevations. Everything is explained on the back of the map. Whereupon on cross examination witness testified that he had resided in Oregon about twenty-five years, fourteen years in Josephine County. He had never resided in Jackson County, but had done some work in there, surveying and cruising. His occupation during this time has been that of a surveyor. He has prospected some and located a few timber claims—cruised for timber. He was deputy United States Mineral Surveyor for four years and deputy

County Surveyor about 1909, 1910 and 1911, but not regularly employed during these three years as such deputy County Surveyor, was employed only as work was done, as called for by people living there, temporarily as the work required, but was deputized all of this time, doing work whenever it was called for. Several years ago, he was employed during this period by the Oregon and California Railroad Company, classifying lands of different kinds and attending to protests of mineral cases. It has been about ten years since he has done any work for the Railroad Company, and was employed approximately only eight or ten months, and then was a kind of an agent for the company for these lands in the Illinois Valley in Josephine County, for three or four years. He attended to all the cases wherever they had land applications; he went and looked at the lands to classify them and establish values. In classifying lands, he went out and examined the lands and classified them as to what they were best adapted to, agricultural or grazing, or whether timber, etc., made a statement exactly what they were and gave the general description of each 40-acre tract, in every section. He received his instructions as to what land to examine from Mr. Andrews, acting land agent for the company at that time. Descriptions were sent to him of each tract, that he examined, or 40 sometimes. Sometimes there were only forties that were unsold in some sections. He examined only the lands, descriptions of which were sent to him. These were not lands that had been applied for, to be purchased from the company. Those that

were examined for classifying, except a few tracts that had been applied for to be purchased from the company, but most of the lands that he had examined for the company were not in Josephine County. In Josephine County, he only examined those lands that people applied to purchase. It is not true there are scattered throughout Josephine County a great many very fine ranches and farms. There are not very many good, nice farms in Josephine County. There are a great many fruit ranches in Josephine County, but he does not consider them first class. They have been asking pretty high prices for these fruit farms, and marketing quite a good deal of fruit land down there, during the last four or five years especially. He knows in a general way, pretty well, but not altogether, what lands are railroad lands, and what are in private or public ownership, in Josephine County, and knows that there is a big body of railroad land in general sections or communities. He has looked over the railroad maps and run a great many lines, and knows from running the lines which are railroad and which belong to settlers, and he has looked up a great deal in the assessor's office to find out. He often needed to know the ownership of different tracts. He has testified that lands that were susceptible to agriculture within the limits of this grant had been taken up under Donation Land claims and other entries, nearly all of them. These granted lands, he thinks, have been withdrawn from entry since about 1870 and he knows that the railroad lands could not be entered by a donation claim, or homestead entry, or any entry pro-

vided for by federal laws, not at present; all that was taken up, was taken before the land grant, that is, all that was obtained from the Government. Then there is some that has been purchased from the railroad company. He attended to the sale of quite a number of pieces that had been contracted for, at least, from the railroad company. His acquaintance with these maps, Defendants' Exhibits 310 and 311, has been obtained by purchase of them from various people, who handle the same through the valley, and perhaps from some Government officer. Whereupon on redirect examination, witness testified that these fruit farms or ranches referred to, are situated along the Rogue River, and all of the ground nearly that is surveyable, that is reasonably level, so that they can plow it, has been planted to orchards—fruit trees and grape vines and such things. None of these fruit farms or ranches that he knows of, are on railroad lands.

"Q. Is it or is it not true that the fruit ranches are mainly in the Rogue River Valley, on lands that were obtained from the Government of the United States under the Donation Land law and the other settlement laws of the United States, and not on railroad land excepting on occasion where lands had been sold in the early days to purchasers?

Mr. Rabb: Objected to as leading.

Mr. Fenton: Yes, it is leading. I admit that. You may answer.

A. That is true."

Whereupon, FRED H. McCLURE, called as a witness on behalf of defendants, and being duly sworn, testified that he is forty-two years old, resides at Portland, Oregon, and is a photographer. He has been a photographer for ten years. During 1907 and 1908, he took a number of photographs at the request of Angell and Fisher. Referring to Defendants' Exhibit 270 witness testified that he took these photographs of this land, and made the notations on these photographs, explaining each. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that these photographs correctly represent what they purport to show. Homer D. Angell accompanied him on one trip when these photographs were taken and A. W. Rees and Ben Irwin accompanied him on all the other trips that he made. One of these three was present at the time each of the photographs was taken. He cannot state whether or not Angell accompanied him at that time and was present when the photographs were taken to which the name of "Angell" is attached to the memorandum on the photograph; and he cannot positively swear that Angell was present when he took the pictures that Angell had his name attached to, but he can say that one of the three persons mentioned was present at the time each of the photographs was taken.

Some of these photographs were taken in Columbia County. They went to Houlton and then went west from Houlton by wagon usually into these mountains or forests, where these photographs were taken. They could not go by wagon to these claims, a great many of them they would only get access to, over trails. They went on foot by trails usually. The country was extremely rough, and covered with trees. He is familiar with forests and would say that these lands where these various photographs were taken are heavily timbered lands. The predominating tree was principally fir. There were occasionally cedars. Some of these trails were well defined and others extremely hard to follow. He could not say where was the nearest railroad point to these places. He left the train at Houlton on the line that runs to Astoria, formerly called the Northern Pacific. These lands are situated in Columbia County. Some of the other photos were taken in Linn County. The only knowledge he has as to whether these descriptions of the lands contained in this memorandum are correct or not is that he got his descriptions from notices posted on nearly all of the cabins. Those accompanying him in some instances, assisted in verifying the descriptions and locations of the property. Several of these cabins at the time these photographs were taken were occupied. He thinks in one or two cases the people were present. There were not more than one or two instances in which any one was living in these houses or cabins at the time. Most of them were vacant. Some of them had evidence of occupation,—blankets, food,

etc. In most cases, the people that purported to own the cabins, or to claim them, were not there. The McLaffertys were there. The date stated in the memorandum attached to the photographs is about the time when the McLaffertys were there with their families, as well as he can recall it, but he cannot swear to the date. He noticed that one of the McLaffertys had two children. He does not know how long they have been living there, and does not know whether they are living there yet. They did not have anything in cultivation around there, except as shown in the photographs. He took all of the improvements which these people had, on the premises. He tried to show a general view of the surroundings. He does not remember any improvements, and did not see any garden, or grain fields, or orchards or trees planted, or school houses or any other evidences of settlement, excepting these cabins. In one or two cases there may have been a way to get a wagon to some of these cabins, but of this he cannot positively swear. Most of the cabins were pretty close together. There was one case on the other lands on which a man had a cabin, an old homestead which was occupied. He did not see any old homestead cabins that were abandoned and does not remember any habitations of any kind, except the one mentioned. He has taken other photographs for the company in Linn and Columbia Counties and made one trip into Clarke County, Washington, but has taken no others, except that he does recall that he took some photographs in the neighborhood of Bridal Veil, in the Eastern part of Multnomah County. Whereupon on

cross examination, witness testified, that he was employed to take these photographs by the Oregon and California Railroad Company, by Angell & Fisher, who were attorneys for the company. He was employed in taking these photographs, in the actual work of photographing the locations, sometimes they would be out for a week, sometimes a day or two. When there were several applications made for land, they would send him out with Rees and Irwin to take the photographs, but usually they would not go out for one application. He was sent out to take photographs of places which parties had applied to purchase from the company, meaning the McLafferty applications, involved in the Lafferty suits, and described by Lafferty as "actual settlers." In taking these photographs either Rees or Angell usually directed him as to the position he should set his photographic apparatus, in taking the pictures. They selected the spot where he should set up his apparatus and photograph the places, although he had a certain amount of latitude, and was supposed to show the general conditions in different directions. He was working under their direction. They were with him, had charge of his work and directed it, and he received no orders from any one but them. He was engaged by them to take the photographs and naturally took them where they told him. He did not engage in the examination of the lands and he is not a timber cruiser, or anything of that kind. They usually cruised the land and he took the photographs. In each individual case, it depended on the nature of the ground, how long it would take to

cruise it. He would remain on the ground sometimes while they cruised the timber and sometimes he would follow them. He could not say how long he would remain on the quarter-sections, the average time. Usually there were several pieces to cruise in one neighborhood, but it would take but a short time to take the photographs. Sometimes they would be in a week for several claims, located in one spot. They came there and would go out and cruise the land and he took the photographs. They did not stop longer than a day on one particular claim. He never attempted to go over the ground and examine the territory. He could not report on the ground. He carried his camera after the cruisers and had about all he wanted to do, on account of the rough ground. He knows nothing about the descriptions of these lands except as he has testified to the notices and so on, on some of the doors. It is possible that one can so set a camera or photographic apparatus, in taking a picture, that if a house set at the edge of a clearing, in a clump of trees, the picture would show a forest, the house in or on the edge of a forest there, without showing the clearing behind the camera, the photographic apparatus taking nothing but that which is in front of it. The photograph is taken, embracing a certain angle in front of the camera and does not show what is behind it. Whether one can take in a wooded country, a very small area in a photograph, depends on the lens. If one uses a wide angle lens, he can embrace about 75 degrees, if a longer focus lens, one could embrace less, a longer angle. These photographs and these cabins

show a very small area of land, they show probably 45 or 50 degrees angle. The photographs would take about 45 or 50 degrees, probably. None of those cabins or houses shown in the photographs, are very large. The relative area covered by the picture can be compared with the cabins shown on the land, although if the cabin is in the immediate foreground it shows much larger—naturally shuts out more of the distance. In most of the cases, the photographs were taken in different directions, to show the general conditions around the cabins, that is, several photographs were taken of each cabin. Possibly these owners of cabins, or occupants, may have been temporarily absent during his visits there. He was there only a comparatively short time and did not attempt to make a general examination of all that country there. He took the shortest and most convenient route for going in on to these lands, and was not looking for school houses, churches, or anything of that kind. He simply went up there to take the photographs of these lands as he was directed to do. He was glad enough to stick to the trails, without getting outside to look for schoolhouses or churches. Whereupon on redirect examination, witness testified, that naturally any schoolhouses or churches along in there, he might have seen them, and would be near the trail. He saw no clearings out there in those woods, of any consequence, except on a homestead that was not on railroad land. He does not remember any other clearing that was larger than a quarter of an acre. He thinks the man on the homestead had three or four acres cleared. The balance of his land was heav-

ily timbered, just like these. From appearances, this homestead had been there a number of years. The man's name was Schweitzer. He cannot tell how far out from Houlton his place is. It adjoins some of these railroad claims and he had no neighbors for a good many miles, except the applicants for this land, meaning these people that began to make application after this agitation came up to purchase at $2.50 an acre. These photographs Nos. 104, 112, 111, 108, 109, 106, 126, 127, 120, 121, 123, 124, 101, 100, 97, 98, 115, 117 and 118, were taken near Larch Mountain, in Multnomah County, near Bridal Veil, about twenty-five or thirty miles east of Portland. He made the notations that appear on the photographs and he can only identify the location by the notations made on the photographs. These notations made by him appear in the photographs and were made directly on the negative, so there is no possibility of making a mistake. He got the description in most cases from the notices on the cabins, in some cases from the people who accompanied him. He got the description of the name of the applicant, like William Cain, from the notice on the cabin. He is able to verify in most cases, the photograph and the description from his own examination made of these notices, which he now sees in the photograph. Whereupon on recross examination, witness testified that he made certain notations on these photographs, directly on the negative, printed on with the print, so there could be no discrepancy, and made the notations after he returned from the trip. He made notes on the trip, and made the notations on the nega-

tive from the notes he took on the trip. In some cases, he found in his book that he made a record of the different entries or notations on the negative. He knew what section, township or range to put on the negative, because the plates were numbered before he took the pictures. They correspond with the numbers on the negatives. For instance he took No. 18 and put down the section and number and township and the man's name, and the direction in which the photograph was taken, keeping the photograph or numbered plate. They were always numbered. Referring to his book, he was employed in this case nine days in taking these photographs, but this book does not embrace all. His book shows that the photographs were taken between September 24, 1907, and at different times until November 18, 1908, including the photographs of the so-called Lafferty actual settler lands. He charged from the time he left until he got back, as well as while he was on the ground. Whereupon on redirect examination, witness testified that after he got home he would then prepare his negative and make these pictures. Roughly speaking, he supposes he made a dozen trips. He was never employed by the company in any other relation than as taking pictures, which is his own business. He was employed as any other photographer might have been. He took photographs for any one who wanted them. Whereupon on recross examination witness testified, that he put in thirty-seven days and six hours on this work, including the time consumed in going to and returning from these lands, as follows: September 24, 1907, six hours time; September 26, 1907, one day's time; December 17, 1907,

nine days' time; February 1, 1908, three days' time; February 18, 1908, four days' time; May 21, 1908, six days' time; October 31, 1908, ten days' time; and November 18, 1908, four days' time.

Whereupon B. A. GIFFORD, called as a witness on behalf of defendants and being duly sworn, testified, that he is fifty-three years old, resides at Portland, Oregon, and is a photographer by profession, and has been such for about thirty-five years. His place of business is at Portland at present. He took the photographs, Defendants' Exhibit 367. To which complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that the same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that this photograph is a fair representation of the country covered, the physical objects shown in the photograph, which it purports to show, that the matters stated in his affidavit are correct as stated, except that he does not know what the sections were, excepting as they were pointed out to him when he made the photographs there. He is not a cruiser, but that is the photograph made from the point that they went to on that trip. The place where he put his camera, was pointed out to him by F. A. Elliott, Homer D. Angell and L. D. McLeod. He obtained these descriptions in his affidavit for them, that was the only way he had of doing it. He does not know what the elevation of his camera was with reference to the elevation

shown in the photograph. He knows that it was a good hard climb to get up there. They climbed to a point so they could overlook the territroy, to get a point of view, to show the general lay of the timber and country. He has pretty nearly forgotten which way they went to get there. It is a mountainous country, the picture shows that. At the time he took these photographs he was living at The Dalles. These lands lie in the Coast Range, west of the Willamette Valley, west of Dallas in Polk County. It is so stated on the photographs. He did not keep track of that. It was some time in the spring of 1908, he does not remember the date. Defendants' Exhibit 268 is a correct photograph or panoramic view, taken from near the quarter-post on the east line of section line of section 12, April 3, 1912, and is four photographs in panoramic form; the lower right hand corner of the picture is the point from where he took the picture shown in the upper one. They were taken about April 3, 1912, and correctly represent what they purport to show. He obtained the descriptions of these lands from McLeod, who went with him on the trip. "Eagles' Rest, High Point," is the high point shown in the lower right hand corner of Defendants' Exhibit 268. The country shown in Defendants' Exhibit 268 was almost all timbered, very few clearings. One cannot see any clearings at all in the picture there from that elevation. Referring to Defendants' Exhibit 269, photographs numbered 2942 and 2943, witness says that they were made on an 8x10 plate and enlarged from that. They were made in the spring of 1912, but he does not remember the dates. They are cor-

rect representations of what they purport to show. He cannot state from his own knowledge whether Defendants' Exhibit 269, showing where photographs Numbered 2942 and 2943 were taken, are in Columbia County, only from what they told him, that is, the particular place where these photographs were taken were pointed out to him by McLeod and Roy Woods. The upper large photograph shown in Defendant's Exhibit 269, shows in the picture that there were no openings there, in the foreview, and that it was a solid forest. The back view, according to the angle, of his lens, would give him a distance of about eight or ten miles in prospect or in view, measured in distance from the outside of the picture to the outside of the picture. The dark colors in the distance in the lower large photograph, indicate that it is all timbered. It looks like pretty heavy timber in through there, from his actual vision, that is, what they traveled through was. The length of the prospect or view as shown in the lower photograph would be about the same. It was made with the same angle as the other one was. He does not remember what was the angle of the lens that he used. He would have to measure that, before he could tell, that is a long way off in the distance, it would cover a wide space. The photograph is a correct representation of what was actually there on the ground. He took all the photographs shown in Defendants' Exhibits 267, 268 and 269, and made all of the photographs Numbered 2944, 2945, 2948, 2950, 2951, 2952, 2946, 2947 and 2949, being nine photographs in all, and numbered Defendants' Exhibit 270, about June 28, 1912, and they

correctly represent what they purport to show. He obtained the description noted on the photographs from the plats they had there, which they showed him. He is not a cruiser. Some of these cabins were occupied and some were not. There was certainly no one living on the premises shown in Photograph No. 2949. He could not say as to Photograph No. 2947, he did not see any one there. There was a party at 2952. 2944 was vacant and also 2945 and 2948. 2946 and 2951 are timber pictures. Rees, Wood and Kempton are shown in Numbers 2948 and 2950. There was an old man living in a cabin on 2952. He does not know how long he had lived there. When he took these pictures of the homesteads, about which he has testified, he went by wagon most of the way from Scappoose, leaving the railroad at Scappoose. He took these photographs at the request of Rees. The only other photographs he took for the company, other than those he has now identified and described, was that of a cabin on the first trip, when he got this big panorama. His photographs are known throughout the United States. He took the famous picture of Mt. Hood, showing the shadow of Mt. Hood in the lake. This picture is shown all over the world. He has also taken photographs of Crater Lake, and other points of interest in the State of Oregon, and they are known everywhere. Whereupon, on cross examination, witness further testified, that he was a commercial photographer, and employed a great deal by railroad companies in preparing their pamphlets and books in the way of getting views, etc., and employed by the Harriman Lines, the O. R. & N., and Southern

Pacific Company to do considerable work. A full half circle is represented in the back ground, or far horizon of the photograph or panorama of Defendants' Exhibit 268, it would be a hard guess to state the distance in miles. It would embrace a good many miles in half circle embracing the horizon clear around. He would say, it would be surely fifty miles, possibly seventy-five, possibly one hundred, it would be a half circle. The photograph was taken after four exposures. The half circle would embrace fifty or seventy-five miles away in the distance, and from one extreme to the other, in a full half circle, it might be more than that, that could be figured out according to distance. He assumes that the point where he set his camera would probably be twenty miles across, possibly further, it might be sixty miles. It is not very difficult to judge the character of lands in a photograph a distance of this length, covering an area of this amount, not any of it that one can see, but it is true that one has but a small area of print to show an enormous area of ground, and therefore he could not set out in any detail in a photograph, showing the specific formations of the land. The panorama shows what appears to be a valley, through which appears to run a stream, but he does not know what stream that is. Along the creek there are a few ranches, one can see them there. One could not see them if he was on that point, very clearly, unless he looked for them, but they are there. Everything in sight there shows in the photograph. It would depend on the size of his picture and the distance from the photographing apparatus. Anything one can see

with his eye, one could get with the camera. The peak in the distance shown, is a snow mountain, but he does not know the name. The land in the immediate foreground of Defendants' Exhibit 269, in the upper photograph slopes down, that is the only thing deceiving in the camera, it makes land look more level than it is. When taking a picture of a mountain, it looks lower, not higher, when taken from an elevation. Generally speaking, if one gets onto a high elevation everything before one flattens—looks much lower than it is, when the camera is higher, but when it is lower it looks much steeper and higher than it really is, but those are all made from higher elevations. The photograph in Defendants' Exhibit 268, in the lower left hand corner, is made from a lower elevation that the lands shown in the photograph. The photograph on the right hand side is made from a trail that they went up on. The hills appearing in the background in the lower photograph of Defendants' Exhibit 269, are not very much higher than the elevation from which this picture was taken, if it had been, this timber line would be way up here. They were up pretty near as high as the mountains when they made the photograph. The hills or mountains shown in the background are a considerable distance away, about six or seven miles across, possibly ten, to that point, maybe twenty miles; that is away in the distance; still a range beyond this one. He obtained the descriptions of these lands upon which these photographs were taken, and the area covered by them, from the cruisers that were with him. He did not examine any corners, or know anything concerning the

sections upon which he took the photographs, or area covered by the photographs. He could only estimate the area covered by the photographs by looking at it, and judging it, that is just the area without the description. He was at these cabins represented in these photographs only for a short time while taking photographs. There was nothing in these cabins, except the one where the man was living. He was in and saw the interior of all these cabins. There might have been an old shack of a stove that fell down, something of that kind. They were seemingly deserted. Sometimes McLeod, sometimes Wood selected the spots from which these photographs were to be taken. He was employed by the Oregon and California Railroad Company to make these pictures, and thinks he was paid by checks. He did not go into the timber shown in the background in these photographs, and knows nothing about that except what he could see from where he was. He made no personal inspection or examination. The timber in the background was about twenty miles away he should judge, some would probably be nine or ten miles. Whereupon, on re-direct examination, witness testified, that when he speaks of the area covered by the photographs being sixty or seventy miles, he means to the skyline, as one sees it in the distance. If there were cultivated clearings they would certainly be visible to the naked eye and the photographs or camera would show it. He could show some clearings in this picture, referring to Defendants' Exhibit 268, and there is some in this that did not have any clearings in

sight. There is one there. If it is wished he can point out some clearings along the little creek. Referring to Defendants' Exhibit 268, he does not know how he can describe it, but there is a house right there. It is just a cabin, no one in there at all. Now just down there is a mill; there used to be a mill there, where they stayed over night. There was a little ranch there and a rancher lives there, where he has been for twenty years or more, and that is what he refers to as showing any clearings, or ranches, or houses, or any object that might be within the view of the camera. Whereupon, on recross examination, witness testified, that there might be other ranches, other clearings in the valley that could not be seen with the naked eye, if they were hidden by trees.

Whereupon **ELMER S. SHANK**, called as a witness for defendants, being duly sworn, testified that he is thirty-two years old, and is an attorney and real estate agent, residing at Grants Pass, and has lived there five years, and followed the real estate business all the time, that is, the general business of selling lands, principally in Josephine and Jackson counties. He located at Grants Pass immediately after he finished college, and was in the real estate business partly for the purpose of finding the name of every ranch owner and knowing all pieces of property, all water rights, where the ditches came out, and to secure a personal acquaintance with every resident of the county, that it might help him in prospective future law business. He would think he had negotiated sales during the time he has been in that county amounting to nearly $500,000. He travels about in

his automobiles and otherwise, about an average of 1200 miles a month. He has had occasion only to go over the lands of the company in that county as he was passing to and from lands that might be offered for sale. In the general real estate business, many people having located homesteads, wanted to sell their improvements, and would ask him, as a real estate man, to bring customers to see them, but he does not think that he was ever able to locate any one in the five years, either on a relinquishment or homestead. Most of his customers were those who were able to purchase improved properties, and all of them, upon examining the homesteads, would decide that it would not be a paying proposition to settle on them. The homesteads range from places with perhaps an acre of clearing, run-down orchard, vineyard, or berry patch, with improvements of a log cabin or shack, up to improvements and clearings which had cost as much as $3000—house, barn, well, orchard, and fencing, to which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of this grant, settlements thereon, and public land entries thereof.

Whereupon witness testified that the average value of the improvements on the majority of these homestead claims that came to him for sale, he thinks, would not be over $500 to $700, perhaps $1000, and at the time they were offered to him for sale, these homesteads were almost invariably vacated. Aside from the improvements

referred to by him, these homestead entries had clearings from one acre up to forty acres, with an occasional piece of land that perhaps in 160 acres would have 60 acres that might have been more of the nature of prairie; but he would be incompetent to say whether it was really prairie or not, but it looked as such, that is, grazing land. He would not think that he had noticed over a dozen of these places that had as much as forty acres cleared. They were on what might be termed the first or second benches. First are the river bottoms, and then first and second benches, and then the hillside land. From what he has seen of abstracts, and from his acquaintance with the old settlers there, he thinks most of the present occupied land was taken by pre-emption and homestead—he doesn't know exactly what the law was—Donation Land claims they call them down there, and these were taken between the years 1852 and 1880 largely, he thinks. He thinks the map of definite location of the line of railroad of what is now the Oregon and California Railroad Company for his territory, was made some time during the year 1883. Prior to that time, all the lands not too heavily timbered were taken, and run as agricultural, horticultural, or grazing land. There was a time, about 1890, when the first large planting of orchards occurred in that valley. The bottom and river lands contained most of the orchards. Then there is another class of lands in little coves, protected sub-irrigated spots. He thinks nearly all of these lands fit for orchard use, were taken promiscuously from the even and odd sections, but mostly before the withdrawal of any of the railroad lands. The

Railroad Company got very little of these lands that are suitable for that purpose. From his investigation and knowledge of others at Grants Pass engaged in the timber business, he would say that from eleven and twelve to sixteen per cent of the total unsold lands of the company in Josephine County would be chiefly or solely valuable for timber purposes. From his knowledge of the total area of these unsold lands of the company in Josephine County, he would say that between four and five per cent of them is capable of being put to agricultural uses, but of this four to five per cent there is about three per cent that on account of being heavily timbered, uneven in character, or burnt over land, would not be agricultural until the land was cleared, the expense of which would run from $40 an acre to $75 and $100 per acre. He has had considerable experience in paying for clearing land of that kind. A settler generally tried to get as much cleared ground to start with as possible. That is the drawback against his country. The land costs so much to be cleared, and it is easier to sell at twice its intrinsic value, land that is cleared, above that which is not cleared. There are two general divisions of soil in Josephine County, red soil and granite soil. The unsold railroad land is largely granite land or red land, of rather high elevation, meaning by high elevation from 1600 feet upwards. Geographically speaking, that district is very old. It is of volcanic formation, and thrown in a great deal of confusion. The ranges are not long, but are broken—short, steep hills—and wherever the grade is above twenty per cent, it is very rocky. He would think

that twenty or twenty-five per cent of this unsold land was quite rocky, but as to be totally unfit for cultivation, that it is a question almost impossible for him to answer. Not over two and a half per cent would be available now for practical settlement. They class the unsold railroad land with Government land. Most of their customers are from the Eastern or Central States. The old definition of homestead in these timbered countries is used—that the Government bets the settler 160 acres of land that he will starve to death before he can prove up on it, and the Government usually wins, that is his regular stock description when one wants that land.

Q. In other words, if the land is not valuable for timber, or for mining purpose, or some such purpose of that kind, neither the lands within the even sections nor the lands within the railroad sections, would be available for actual settlement? Is that your answer?

A. No, sir.

Q. That is the way I understand you?

A. Yes, sir.

Q. That is correct, is it?

A. Speculative investment on these unsold lands, both the unsold railroad land and the Government land, is about the total of the market possibility today.

Q. Well, now, what speculative investment would anybody want to make of these lands? What would there be in there that he might speculate about?

A. There is a class of people in the large cities of

the East who think if they can buy any land at $2.50 to $10 an acre, they can sell it at an advance.

Q. That is to say, the class of people that would buy acreage, but would not know whether they could get good land or bad land?

A. They expect to raise nothing on the land but the price, and they think if the price is below a certain point, they can make a profit.

Whereupon witness testified that he does not know very much about the mineral side of Josephine County. As a general popular understanding in his county, they consider it a pocket country. There are pockets, and a host of prospectors continually fitting out, hunting pockets. In the Illinois Valley the "Queen of Bronze" seems to be a good mine, and slightly west from that, running north and south, is a ridge that seems to be of consistently strong formation of copper, the Alameda, in the Galice District, being in this line. There are some reputed good placer gold mines near Leland, and west of Leland, near the Alameda, which is a mine of high percentage ore, quite famous in that part. His general information as to the Columbia mine, is that it is about six miles from Leland, and it is a gold placer mine entirely. Gold mines are usually quartz mines in that county. Copper, he thinks, is almost entirely ore. There are two smelters in that county, one at the Alameda, the Galice District; one at the Queen of Bronze, at Takilma. He believes the Queen of Bronze is outside of the 30-mile limit of this grant, and is forty miles from Grants Pass,

but just where the line directly from the railroad cuts through, in relation to that mine, he is not positive. The other smelter is about twenty-five miles from Grants Pass, and sixteen miles from Merlin, which is nine miles from Grants Pass. The climate where this railroad land is situated, is quite dry in summer time. The country needs irrigation. It is the best climate in the world. Rogue River runs beside or through Grants Pass, which is six miles west of the line dividing Josephine and Jackson counties. The valley there is somewhat narrow. In Jackson County, about twelve miles east of the county line between Josephine and Jackson counties, the valley becomes very broad, and of a prairie nature, extending at right angles to the course of Rogue River and running south up Bear Creek to Ashland, about twenty to twenty-five miles. The Rogue River valley is about eight to twelve miles wide. There is very little level land of the unsold lands of the company in the Rogue River valley between Ashland and Grants Pass. There is a tract of land in the Rogue River valley called The Desert. It is known to almost every person that has ever passed through that country. It is largely unsettled. There is a land scheme on foot which claims to be able to make a part of it productive under irrigation. Without irrigation it is valueless. There is no unsold railroad land in that desert. There may be some on the northeast part of that in Jackson County, but he is not very familiar with the land on the east side of the desert.

Whereupon, on cross examination, witness testified that he has lived in Grants Pass five years, engaged dur-

ing that time in the practice of law and selling real estate, and generally dealing in all kinds of land, all kinds of types and soil, in the general real estate business, selling whatever was listed. He does not know what proportion of these lands handled by him has been fruit land. The largest acreage has not been of fruit land sold, although it can be said that any land sold for any purpose, is still good for some kind of fruit in that valley, but the lands handled by him have not been what are called fruit lands in contradistinction to other lands. The largest total of dollars in transactions has been of fruit lands, but the largest acreage in other lands. In 1908 he made a study for about six months of each particular section of railroad land then unsold in Josephine County, thinking that this might be sold some time in the near future very rapidly, and he wanted to be the best informed of any of the real estate men in that section in regard to the lands. He got the descriptions of the unsold railroad lands from Roseburg, he thinks from Mr. Alley's office, and got a series of blue prints, and from them could tell which sections were unsold, and there are a number that have had settlers on a short time. To get the boundaries of these adjacent to owned lands, the ones that would be first attractive to purchasers, he would get them largely from owners, hunters, timbermen, cruisers. He was not positive within 15,000 acres before today of the accuracy of the area of unsold lands of the company in Josephine County. He thought in that county there were from 160,000 to 175,000 acres of unsold lands. His knowledge of the boundaries of these lands, was gained largely

from others, but the knowledge of the lands was by walking or driving over or around them himself. He would think that he had made a personal inspection of 120 quarter sections, around in that neighborhood, of these lands, included in the grant in Josephine County. He figured from 36 south, 6 west. These quarter sections were from 36 south, 6 west, figuring north to near Glendale, around Wolf Creek, and down to 38—to 40 south and 2 east, along that right of way out 20 miles—about 10 miles east and north of the railroad right of way, and 20 to 40 miles west, wherever they happened to occur. Glendale is thirty-three miles north of Grants Pass, in Douglas County. Grants Pass is in 36 South, 5 West. He has made an examination of these lands about twelve to eighteen miles northeast of Wimer. Most of those lands in there are valuable for timber, and he has looked at them from a timber standpoint, but he has not made a personal inspection of all the odd numbered sections in that township, referring to Township 35 South, Range 4 West. He has not examined over twelve sections, he would think, in that locality. He has examined Sections 31, 35, 27, 25, and 5 and 7, in that township. He believes he has been over every piece in 36-4; most of the north half of 37-5; nearly all of 38-5; everything in 35 south, 6 west, and has been all over 36-6 west, and personally inspected that. He has been in all of 35-7 west, excepting 19 and 31. There may be five sections in township 35, range 7 west, that he has not been in. This is at the upper head of Pickett Creek, and he has not been north of that. He has been in

everything in the east four tiers of sections in 36 South, 7 West, and in 37 South, Range 7 West, except two or three sections in the southeast part, and probably all in Township 37 South, Range 8 West, excepting sections 5 and 7. Of these lands mentioned, he would not think that over five per cent would be agricultural land, or could be rendered so by clearing where there is any growth that would need to be cleared. There are 20 to 40 acre patches of good agricultural land yet unsold of these railroad lands; but, for instance, in 36 South, 4 West, in Josephine County, nearly the entire amount of land is rock. It is not good for anything, never will be unless the climate changes and the rock decomposes. He would think that on Evans Creek seven to ten per cent of that land in Township 36 South of Range 5 West, would be available for agricultural purposes, but it is a poor class of soil. It has much granite in it. He did not in his direct testimony estimate that eighty-five per cent of these unsold lands were not good for timber, but that fifteen per cent had good timber, and that four per cent was agricultural land. The homesteads that he had for sale were largely relinquishments that had been brought to him to put on the market, but he never sold one. He made a business of dealing in homestead relinquishments as a competitor in the business; he had them offered, but never succeeded in selling one. He usually spoke against them because in showing two dozen in five years no one ever bought. He always had something else that attracted more than that. Some of these homesteads had valuable improvements on them as much as $3000. He had

one particular homestead in mind for sale with $3000 improvements on it. It was in 36-6, or 37-6. He would not say that the greater portion of Josephine County is waste land. The two largest valleys in Josephine County are the Illinois Valley and the Rogue River Valley. The Illinois Valley was settled about 1852, and twenty years ago, from what he could see of the buildings and improvements and the old orchards, that valley was far ahead of where it is now (1912) in total valuation. The price of property generally, has increased in that valley during the last fifteen or twenty years, as a general proposition, a very large ratio of increase, but the Illinois Valley was intrinsically worth more fifteen or twenty years ago than it is now. The ranches and farms situated in Josephine County are generally irrigated. He believes there are a few successful ranchers in Josephine County, who have no irrigated lands. Fruit propositions are about the only successful non-irrigated propositions. Josephine County is more profitable for agricultural pursuits with irrigation. The conditions are extremely varied. Nearly all land will be benefited by irrigation; some land must have it; a few spots are sufficiently sub-irrigated for fruit, and some bottom soil, with years of the rainfall of 1912, irrigation would be unnecessary. He would not say that you could not successfully operate a ranch without irrigation in Josephine County—that would be stating it too broad, because those who come there, the Easterners, think they can make more money by paying higher prices for the irrigated land. Therefore, the unirrigated lands are not

sufficiently tried out. The cultivation of the non-irrigated lands is not on a broad scale, by a class of people who farm it as well as it should be. As a general proposition, farming in Josephine County is not really successful without irrigation, except bottom lands. His knowledge of mineral lands is rather inferior. His personal experience in mining operations in Josephine County is from personal examination with prospective settlers in the valley, visiting mines or so-called mines, but he never panned a half-dozen pannings in his life, but can detect whether there is gold there very quickly, and knows the character of dirt which pays. In visiting these mines, specimen pannings have been made to show investors what the value per pan would be. He has gained as thorough a knowledge of mining, geologically speaking, in perhaps an aggregate presence, with expert miners, of thirty days in his five years there—whatever that amounts to. He has made a study of mining in so far as it affects Southern Oregon and Northern California, but is not a practical miner. He is a geologist. His knowledge was gained from personal inspection with men who have knowledge of the leading mines and prospects of the community. He has inspected Granite Hill with Mr. Morphy; Swastika with Mr. Howland; Queen of Bronze; the Michigan mine; Logan mine; Wimer mine; the mines on the Three Pines Timber Company land; Greenback. He would go to these mines with the manager and would have an automobile of four to eight people—one or two automobiles of people—to look over the country—capitalists from the East. They would

follow the manager or foreman of the mines and learn all that they could therefrom. As a geologist, he tried to use his brains. He did not feel qualified to locate a person upon a mine, but could pass upon the mineral qualities of the land.

Whereupon R. L. BOOTH, called as a witness on behalf of defendants, being first duly sworn, testified that he is sixty-eight years old; by occupation, stock-raiser and farmer, and resides about seven miles north of Willamina, in the southwest part of Yamhill County, and has lived there since 1869. He lives in section 1, township 5 south, range 7 west, and is pretty well acquainted within an area of six miles each way from where he lives, but he does not know much about the land in Tillamook County, and is not acquainted west of McMinnville. His knowledge extends to the even as well as the odd sections within that six mile area. The township of railroad land east of him there is principally timber, saw timber, good timber, and he would say that that is the chief value of that land. The other railroad land there has dead fir timber on it, burned down many years ago. The snow-fall in the high part of it is six feet in the winter. The burned over land is red shot land. This burned over area was at one time covered with heavy timber. There have been saw mills there. There has been scattered timber on the creek west and northwest; it is all dead, that is, practically speaking—just a few trees left. The burned over land is good enough soil. The timber is of no value at all. The stumps are still there pretty thick. It was good timber, some of it—

very nice timber—large fir timber. The roots of these trees are still in the ground and sound. It would probably cost to clear timber land of that character from $100 to $125 an acre, and it could be cleared. It would cost that per acre to clear it, the best a man could do. The low lands, where the hills are not so high, would be pretty good fruit land. On the ridges, where the ridge switches off, the land is pretty steep. He thinks that there would be about twenty-five per cent of this land that could be cultivated if it were cleared, and this is true of the even sections in that same territory. He was County Commissioner eight and a half years. He would not want to farm this land on the higher points, which is covered with five or six feet of snow. Crops would be late starting in the spring, and the weather would be cold early in the fall, and he does not think it would be practical to use for agricultural purposes. It might do for grazing—something of that kind, but not general farming. He is an old pioneer of his county, and is a cousin of Senator Robert A. Booth, but has no business relations with him, and has not seen him since he went out to the saw mills.

Whereupon, on cross examination, witness testified that his home in Section 1 was taken up as a Donation Land claim before the line of definite location of the railroad grant was filed. He bought his land, and it had been under cultivation prior to 1869, when he went there. He knows the country at large but not the definite sections. He has followed stock business principally. He is not engaged in active farming now, but

has been. He has been in the county business, but has not done much since. Stock business is what he has followed principally—raising cattle and hay, and that is what he does. In his community they use the land a good deal for cattle range. If this unsold railroad land in that locality was cleared off, it could be used for grazing purposes, but would require labor to clear the lands off. He has been through the Tillamook country to the coast, through the Salmon and Trask. Next to the coast there are dairy ranches—clearing the land off and raising grain on it, but they are not doing that in his vicinity. After one gets over the ridge in Tillamook, there are lots of that kind. That shot soil on these ridges produces fair when cleared off, that is where it is not on the high land, but on the ordinary ridges where it is not so high. The land spoken of covered with snow, is only covered with snow in the winter time, and would produce grass all right. The altitude of that land is about 700 feet—the ridges way below that. He does not know how high that would be, not the main ridges. The surveyors told him that these ridges were about 700 feet high. The community is pretty well settled south of him, down below, the valley part is all thickly settled, and he has a number of neighbors in his immediate vicinity; his nearest neighbor is about half a mile away. That is an old settled community. The valley has been settled quite awhile—been taken up by Donation claims. Yamhill County at large is a fruit country, and some of this land referred to by him would be good fruit land, meaning these hillsides. He could not say anything

about grape culture, because he does not know, because it has never been tried there. He could not say whether grapes would do well or not. They raise English walnuts in Yamhill County, but not in that part. They raise them out more towards Amity, in the red hills. He could not say whether walnuts would do well or not on these lands; they have not tried to raise them, and he could not say anything about it.

Whereupon, on re-direct examination, witness testified that he lives on the Al Gates Donation Land Claim, and the Charles Fendall Donation Land Claim is right down the valley south of him, about five miles from where he lives. All of the agricultural land, practically, on Willamina Creek was taken up under the Donation law or Homestead law.

Whereupon H. W. SCOTT, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Forest Grove, Oregon, and is engaged in real estate and farming and has done more or less cruising of timber lands for the last twenty years, spending considerable time at that work, but could not say exactly how much. He has cruised lands in Washington, Yamhill, Columbia, Clatsop, some in Douglas and a little in Coos County. He has lived in Washington County about twenty-two years and in Yamhill County about ten years but never resided in Tillamook County. He is familiar with the timber lands in Tillamook County in a general way and with the timber lands in Clatsop and Columbia Counties. He knows that these unsold lands

in Washington County were obtained under two grants which overlap each other in that County. He is familiar with the lands say from 1 south 4 west, on west. He has been over the country in a general way, east of there, but never paid any particular attention to that. In a general way he is familiar with the lands in township 1 south, ranges 4, 5, 6, 7 and 8 west included in this grant; also township 2 south, ranges 5; 6, 7 and 8 west; township 3 south, 5, 6, 7, and 8 west; township 4, 6 and a little in 5 west; in 4 south, 7 west; 5 south, 6 and 7 west; 6 south, 6 and 7 west; 7 south, 6 and 7 west; 8 south, 6, 7 and 8 west; 9 south, 6, 7 and 8 west. He is not very well acquainted, only in a general way, with the lands of the Company north of the Base Line and west of the Willamette Meridian in townships 2 and 3, ranges 2 and 3 west. He never did any cruising in that part of the country but has been through the country there. Township 2 south, range 2 west is in Columbia County and part in Washington County. In the east, along next to the Willamette River, he never did any cruising but has been through it, all through all of that country there and has been through township 3 range 2 north of the base line and west of Willamette Meridian, where the green marks are on the map, referring to "Defendants' Exhibit 259" and has also been through township 3 north, range 3 west; township 1, range 5 west; township 1 south, range 6 west; township 3 south, range 1 west; township 1 south, range 2 west; township 2 south, range 2 west; township 1 south, range 3 west; township 2 south, range 3 west; township 1 south, range 4 west;

township 1 south, range 5 west. Some of these lands involved in this suit are in Tillamook County and he is familiar with these lands. He is familiar in a general way with the timber lands in Columbia County belonging to the Company but has not cruised that part and has cruised in Tillamook County in 1 south, 6 and 7 west; 2 south, 6, 7 and 8 west; 1 south, 1 and 2 west; 3 south, 8 west. More particularly than in other parts of Tillamook County, and has cruised in townships 2, 3 and 4 south, range 8 west; townships 3 and 4 south, range 7 west. He has cruised and is familiar with lands of the Company in Washington County south and from 1 to 4 west, but not east of that and has sold considerable lands of different kinds and different descriptions, and he generally goes through and looks it over; sometimes he looks it over in a general way and sometimes for people who wanted to know the amount of timber there was on it. In cruising a piece of timber land, one finds a section corner, or as near as possible, of the land, and paces the distance off to the land to be looked at or measured the distance with a tape line or chain, sometimes both, but ordinarily the distance is paced. There are several ways of doing the work. He begins at a corner of a forty, called single lining it, and paces off half way through that forty, if it is wanted to cruise 160 acres of land he paces off 250 paces and then runs through the center of that forty to the center of the forty, if going north then west through the balance of that forty to the center of the next forty, then south through the center of the forty and south to the section line where he started to check up and see how

he came out. If they are "double running" it the process is reversed and the work is done east and west. They get the amount of timber there is on the land, the general topography of the country, the way the streams slope and all kind of data in regard to the land, timber, soil and one thing and another. In making this cruise or search he would ascertin the character of the land as to soil and as to its being capable of settlement and as to its best possibilities. The character of the unsold land of the Company involved in this suit situated in Washington County is generally rough and broken, heavily timbered in a great many cases and a great deal of the land is rocky and not fit for cultivation on that account. It is unfit for cultivation on account of being too rough, steep and broken. In a great many cases there is quite a high altitude, snow getting very deep in the winter. The soil is generally all coarse mountain land and very unproductive. In order to clear this land for cultivation it would require ordinarily from $100 to $200 an acre to put it in cultivation, to which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be considered taken as to all testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that not over twenty per cent of these lands in the aggregate could be used in any way for agricultural purposes, even after the timber was cleared off, and he would not consider, in his

judgment, that any of it would be available for any agricultural purposes without the removal of the timber. There might be an isolated case where somebody has gone on to a piece of land, cleared up a few acres and abandoned it. There are a few cases like that where they started out on it and could not make a living on it, referring to both the even and odd sections. He saw a great many places in the last two or three years where there were notices tacked up on trees notifying people that they had settled and located on a certain piece of railroad land and every case that he ever saw where these notices were, was always where there was good timber. He never saw notices posted up on the burned places. From his observation within the limits of this grant, the so-called "actual settler" notices were posted on heavily timbered land, chiefly and only valuable for timber. He would say that probably one-fourth or one-fifth of the railroad lands in Washington County had been burned over. Formerly this area was heavily timbered and it now has left burnt trees and logs there. The large part of that land would not be fit for anything that he knows of and it would cost to clear from $100 to $200 an acre. It would not be any more suitable for settlement than any of the rest of it and there would not be more than twenty per cent of it that would be fit for cultivation. The soil is coarse mountain soil, coarse shot and clay and often rocky. The largest part of this land is of a high elevation, some running to about 3,000 feet elevation, and snow gets in there six and seven feet deep lots of winters and lays on sometimes for a big part of

the winter, some parts of it all winter, three or four months at a time. There are a great many homesteaders on the even sections within the limits of this grant in the Counties of Washington, Tillamook and Yamhill, who have abandoned their claims before they proved up and others took them up. A great many of these homesteaders who have proved up on the lands have abandoned them afterwards. They could not make a living on them. These homestead claims that have been proved up have been bought up generally by timber companies. He remembers one place on the South Trask on the bottom where it was settled up and houses were there, were settled twenty-five years ago and ten or fifteen years ago they were all abandoned, the houses going to rack and some of them had quite little clearings in there. They sold these lands. Some of these homestead entries within the limits of this grant with which he is familiar were abandoned before final proof, they were finally retaken. A great many of them were taken under the timber and stone act and proved up under that act. The lands within the limits of these grants in Tillamook County is very rough and mountainous, steep and broken and rocky in a great many places, heavily timbered and chiefly valuable for its timber, the only value that he considers the land has now. It would cost to clear any of these lands that might have the soil that could be utilized for agricultural purposes $100 to $200 per acre. He has had a great deal of experience of this kind of clearing up. Three years ago he cleared up some heavy timber land of his own. He blew the stumps out with powder and it

cost him all the way, for powder alone, from $40 to $80 an acre. After that he had the holes to fill up, the logs to burn up, the blasted stumps to clean up and he don't know exactly, because he did a great deal of work himself and the boys, and he never kept any exact account of the labor, but kept an account of the powder because he was trying to find out whether it was profitable to use powder or clear the land without powder. It costs in those cases ordinarily $150 an acre. That was about what he estimated it did. This land of his was situated in township 1 south, 4 and 5 west but had been originally homesteaded, but he had bought it. He owns 430 acres in one body about seven miles from Forest Grove on Scoggins Creek. Part of it is on high lands and part on low lands. He has cleared of this land about 40 or 50 acres from time to time extending over a number of years, some one time and some another. Part of this homestead owned by him was agricultural when it was first entered. He has been on this land twenty-five years and probably twenty per cent of it was really available for settlement in its original state. He has cleared at the heavy cost mentioned by him in the last few years by using powder, probably about 10 or 12 acres. He does not think there is any more economical method known to the people here by which this heavily timbered land can be cleared and made susceptible to cultivation. That is the cheapest way that he had ever tried. He does not believe that there is ten per cent of the unsold lands of the Company in Tillamook County within the limits of these grants that would be available for agricultural purposes,

and there is none of it that would be suitable for agricultural purposes without the timber being removed. The soil of these lands is a coarse clay and shot soil. The unsold lands of the Company in Yamhill County with which he is familiar is the same as in Washington County and chiefly valuable for the timber. There would be about fifteen to twenty per cent of the total unsold lands of the Company in Yamhill County that would be available for agricultural purposes, including such lands as might be available if the timber was removed. There would not be any portion of these lands in Yamhill County with which he is acquainted that would be available or useful for agricultural purposes without some clearing or something like that, that would not pay for the cost of cultivating it. The soil of these lands in Yamhill County is coarse clay and shot soil and rocky, a great deal of it is very rocky. These unsold lands in Washington, Yamhill and Tillamook Counties are all in the Coast Range excepting these lands east of Forest Grove in 1, 2 and 3 west, which would be in the foothills and hills of the Willamette Valley. Beginning at 1 south, 4 west, from there on is all in the Coast Range of mountains. The lands in Columbia County through which he passed, with which he is acquainted are generally heavily timbered. He would not say there was over fifteen or twenty per cent of these lands that would be available for any agricultural purpose with the timber removed and without the timber removed there would not be any.

Whereupon witness testified as follows :

Q. Well, isn't it true, Mr. Scott, that here and there throughout this grant, in the low little valleys and ravines and draws leading down to the larger streams, there is here and there a spot where a house could be built, that is level, with a half-acre in a place, that you could get a garden, plant a few potatoes, sow a few oats, and make a pretense of a home, and settle on this land?

A. Yes, sir.

Q. Well, what would the balance of the settlement be good for?

A. It wouldn't be good for anything. A man would starve to death on a settlement like that.

Q. Well, where these quarters were timbered, and a man could find half an acre where he could build his cabin or his house, put out a garden of a half-acre in potatoes and things of that kind, couldn't he make a living by getting the timber?

A. Yes, if he could sell the timber for the price it is worth nowadays, he probably could live off the sale of the timber. He certainly wouldn't live off what he would produce from the soil anyway.

Q. Then such claims on such tracts, if I understand you, would be chiefly valuable for the timber?

A. Yes, sir. There is another thing now I think of it. Take those bottoms you speak of along the rivers, out in this Coast Range of mountains, a great deal of that is the poorest land there is out there.

Q. How does that happen?

A. It is beds of gravel; the formation is steep, and the rivers and streams are very rapid, and the alluvial loam has washed away. You can see that upon the Willamette and Columbia rivers here—it has washed away, and lodged down on the low ground and flats.

Q. Then, as I understand you, within the limits of these railroad lands, the level bottoms are very small?

A. Yes, sir, just little places along the canyons.

Whereupon on cross-examination witness testified that he has not lived on his ranch for twenty-five years but has lived in Washington County that long and has been in that county all the time excepting three years when he was in California. He has lived on his ranch and in the town of Forest Grove, moving to Forest Grove five years ago and living there ever since, but he farms his place, going back and forth almost every day when not doing something else. He has cruised for a great many people or for his own purpose for the purpose of selling timber and has cruised for the Hammond Lumber Company and Louis Blaumauer who is now dead. Blumauer owned some timber land, some 1600 acres out there. Witness cruised for a great many people who did not even own timber, who wanted him to look at a piece of timber they wanted to buy, and cruised for lots of others he could not name. He was employed by the Oregon and California Railroad Company about twenty-two or twenty-three years ago when it started in to examine its land, could not tell the man

with whom he cruised the timber and who took him through these lands in Washington County and showed him in a general way the section corners or lines and trails and packed some for him. This was in Washington County south of the base line and in Yamhill and Tillamook Counties. He has never been employed by the Company in any other capacity since that time. He never cruised any lands in 2 and 3 north in ranges 2 and 3 west, but went through and looked over that in a general way. His object in going through it was to see what the timber and country were like and how much Government land there was, that was good timber and all that kind of thing. At different times he went to look at pieces of land for other parties, people who wanted to sell out or something of that kind and he would go and look at it. In some cases he ran section lines of the Company's lands in this locality. In running a section line there would be a railroad section on one side and Government land on the other, and his knowledge of these lands is of a very general character. He only made an examination of the Railroad Company's lands in Washington and Tillamook Counties in township 1 south, ranges 4, 5, 6, 7 and 8 west when running the section lines out looking at the Government land and would also see a great deal of the railroad land, quite a lot of that he would have to run through and look the lands over. In fact he looked over quite a lot of that for the A. B. Hammond people and made a personal inspection of a great deal of that land. He inspected a lot of that country before it was surveyed and located a great many

people on the lands there before it was surveyed and built cabins and a big part of those trails through there he built and helped to build. At the time they first went in there they supposed that the Government would get all the land and in there on the unsurveyed part and so they looked over that just the same as they did the Government part of the land. He first started into that country twenty-five years ago and a little farther south of there he was in thirty-five years ago. He has been along in that Coast Range in that country, cruised timber and land, hunted and prospected that country more or less in the last thirty-five years, outside of the three years he was in California. This railroad land has been withdrawn from entry ever since he has been in that country. He had a good many other occasions besides that referred to for the Hammond Company, to make special inspection of the Railroad Company's lands. He bought some of the Railroad Company's lands himself situated in township 1 south, range 5 west near his ranch. None of his ranch was obtained from the railroad land, but all from the Government, part of it was in odd sections but was taken before the railroad came through. He has been engaged in locating people on homesteads in that section of the country and has located people on the even numbered sections within the limits of this land grant, and he has filed and perfected a homestead entry on the northeast quarter of section 22, township 1 south, range 5 west, right north of Sheridan, it was 5 south and 6 west he believes, but does not know if he can tell the section without looking it up. There are a great many

times that he looked at these lands with reference to the soil and all the conditions connected with the lands, logging and soil and streams, climate and all that kind of thing, but his principal knowledge concerning these lands was obtained while he was cruising the timber. He could not find out anything about the land without he was out in there. There was no other way that he knew of. He lived seven years on his homestead in 1 south, 5 west in section 22 and two different winters they were there the snow was five feet deep in his yard, so he knows pretty well about that. He used to go out and shovel snow off of some of the cabins out there, where the people were not there, six and seven feet deep and had a pretty good way of knowing about what that was. Portions of this land of the Railroad Company is very heavily timbered and has a good market value, good quality of timber. The money a person would receive for his timber would help some in paying for the clearing of the land. The value of the timber would not largely pay for the cost of clearing the land. He has 160 acres of timber land himself in 2 south, 5 west and the best offer he ever had for it was $3500 and he does not think one could clear that land for $200 an acre. He would not take the contract to do it at any less than that. Clearing land in these mountains is a little different from what it is down in the valley where a man can get at everything and where everything is accessible, good roads and railroads. One has to transport all his powder and material and build a wagon road in there. It would cost $10,000 to build a road to it.

Whereupon on re-direct examination witness testified that he filed on his homestead on the northeast quarter of section 22, township 1 south, range 5 west, twenty-five years ago last spring. The land is steep and broken and rough and chiefly valuable for its timber. He lived on it seven years and stayed there two years after making final proof. He did not make it his home because he could not make a living on it and if he had not been cruising timber and one thing and another like that, he would have starved to death on it. He first took it up as a pre-emption and when the time was drawing near for proving up, paying $400.00 the Secretary of the Interior allowed him to take that as a homestead, to relinquish his pre-emption filing and take it as a homestead, although he had had a homestead once before, he allowed him to perfect title to it, which he did and that was his salvation. He was no nearer having the $400.00 when near the end of that time, when the 33 months was almost up than he was when he went there. He used to go and work out, grub stumps for the neighbors there for a dollar a day, as good a wage as he got at that time, and buy bacon and flour and take it back to his family. At the end of the week when he came home they had everything eaten up he took there the week before and he could not say that he was getting any farther ahead. When this timber excitement came up, people came in taking up timber, he knew all the country, all about it, all the lands, etc. Then he started in on that and his place was a kind of stopping place and they stayed there as long as that went on. That was all he made out of

that. When he went there timber had no market value. He went and homesteaded because he did not know any better. He wanted a piece of land and had to have it. These homestead settlers in that general vicinity all abandoned their claims practically every one of them and the lands were re-entered and taken up under the timber and stone act. He located people on both. Most of them were at first homesteaders and then when they saw they could not live on the land and comply with the law they either abandoned them or relinquished to other people and they took them up under the timber and stone act. These lands were finally nearly all bought up by different timber companies. The timber is all they were any good for. He bought some railroad land from the Company somewhere about eight or nine years ago in the same vicinity, he thinks about 300 acres altogether first and last. Some of these lands he sold under his contract with the Railroad Company but it was all paid out. He assigned his contract to others. The land was chiefly timber. He does not own any of it now. Different parties own it. One man by the name of Longren owns part and another man in Spokane, Munson, owns a piece of it and it is owned by people who are holding it for the timber values. His knowledge of these lands that he did not specifically cruise is sufficient to enable him to tell the character of the land as to soil and timber and other possibilities. He can tell exactly what the condition is just as he has, and knows absolutely what he is talking about.

Whereupon on re-cross examination witness testified

as follows:

Q. You never have made an examination of these railroad lands?

A. Quite a good many of them I have.

Q. Wait till I finish the question, Mr. Scott.

A. Yes.

Q. For the purpose of determining whether 160 acres of land could be obtained in contiguous bodies, not by legal subdivision, that would furnish a sufficient amount of agricultural or tillable land for a man to make a living on? I don't mean that he could make money on, but that he could make a living on, supply himself and family with the necessities of life?

A. Yes, sir, I did. I looked for my own personal benefit, for I wanted a piece of land just like that. I went onto the Nestucca country 34 years ago this summer, and went down there and looked at a piece of a section of railroad land at that time, for that purpose, and looked it all over, and looked that country thoroughly to see if I could find a piece of bottom land, or something of that kind, that was suitable for making a home; and I spent a good deal of time in there at that time. I lived then north of Sheridan.

Q. You don't mean to testify, however, Mr. Scott, that you have made such an examination as I have described in my question previously asked you, with reference to all of these lands that you have testified concerning, some of which you have testified that you never

cruised, that you merely had passed through and made some casual examination of?

A. Well, now, I will answer you in this way: I have went all over that land, and all through all that country, and looked for just those things, just exactly like what you are talking about now; and I remember the nearest of anything that I found of that kind was a piece of land in Section 5, Township 2 South and 5 West; and I think a woman here of the name of Mrs. Badgley, right here in town, owns the piece of land now; and that was in a railroad section, and was supposed to be railroad land. Now, I will show you how thoroughly I looked out and hunted it up; and from the fact that nobody seemed to take it up, and the railroad people would not offer to sell it, I went farther, and had an attorney to look it up, and looked the thing up and found that this land had been filed on prior to the time of the railroad grant, and had been abandoned. And I got that—got a party to take that as a homestead. Now, that lay in a "T" shape there, and there was a kind of a swale. There is some of this what we call alder flat land, and it was the best piece of agricultural land that I knew of. It was just kind of a little strip—little spring branches run down, this kind of black alder land; and they took that then as a homestead.

Q. That was on an even section?

A. That was on an odd numbered section. Section 5, 2 South, 5 West. It had been picked out—I forget now—sometime about '62 or '63. That is the best of my

recollection. I think this railroad grant was about 1865, wasn't it?

Mr. Fenton: One was 1866 and the other was 1870.

A. Well, it was prior to that time anyhow; and this former entryman had picked this out as being the best piece of land that he probably could find in there, and I done the same thing. I was looking for something of that kind.

Q. You don't remember the description of that land, do you?

A. Yes, sir, I do.

Q. What is that?

A. It was the north—it was "T" shaped, now—I might make a mistake in it; it is section 5.

Q. What township and range?

A. 2 South, 5 West, section 5. It is right at the quarter post anyhow. I think it was the north half of the northeast quarter and the southwest of the northeast quarter, and it might possibly have been the Northwest of the Northeast and the Northeast of the Northwest, and then a row of forties run south of that. That is the way that stream ran in there. I wouldn't be just positive now, off hand.

Whereupon GEORGE W. JONES, called as a witness on behalf of defendants, being first duly sworn, testified, that he resides at McMinnville, Yamhill County, Oregon, is at present County Clerk, and has resided

in that county for forty-seven years. He will have been County Clerk, at the close of this term, eight and a half years, before that he was in the lumber and sash and door business. His first sawmill was on Panther Creek, in Yamhill County. In 1876 he purchased 320 acres of land of the Oregon and California Railroad Company in Section 9, Township 3 South, Range 6 West, and operated there ten years, and removed to Section 3, Township 3 South, Range 6 West, and operated there fourteen years. The first mill on Panther Creek was about eight miles and the other two about seventeen miles from McMinnville. His first purchase, including the railroad and non-railroad land was 320 acres. After that he purchased the north half of the Northeast quarter of Section 3, Township 3 South, Range 6 West, that is, after he moved the mill. He made his first purchase from private individuals on Panther Creek. He is conversant only with the lands of the company located in Townships 2 and 3 South, Range 6 West, and probably one tier of sections in the west of Township 2 South, Range 5 West, and Township 2 South, Range 6 West. While he has been on and hunted over some of the lands in 4 South, 6 West, he is not so conversant with them and would not wish to testify as to anything but what he absolutely knows. He has ranged these mountains a great deal, but is only conversant with these two townships, and wishes his testimony to be confined principally to them. The general character of those lands, referring to the country, is very abrupt, cut into deep ravines and gullies. He supposes the highest elevation would be

about 2,000 feet. His first mill was located at 1,200 feet above sea level; his second one not so high. The general character of these lands with the exceptions of now and then an isolated swale or tract that he has knowledge of, is not agricultural, is wholly fit only for the timber. For the time that he ran his mill, for twenty-four years, he didn't even raise vegetables, it was cheaper to buy and haul them in than to raise them. He does not think that five per cent of these lands, with which he is acquainted, could be used for agricultural purposes. To all of which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon, witness testified, that only those few tracts that he speaks of, that had been taken years ago, in a state of nature could be used for agricultural purposes. He cites one taken by Mr. Carr in Section 12, Township 3 South, Range 6 West; he refers to lands heretofore sold and taken; of what is remaining, he does not know of any that could be used for agricultural purposes. The land is what is termed "shot land." It is a kind of rocky formation. In fact the rocks are almost to the surface of the ground. There is very little soil. After the timber is removed some grasses grow there; it could be used for stock raising, but the principal growth is what is called salal and Oregon grape—not very much value. Nothing will grow where the grapes

and salal are, but where there is no salal and grape, after the timber is removed there is a species of grass that will grow there that will furnish very good summer grazing; but owing to the deep snows in winter, a man would be compelled to have some place to take his cattle. He could not maintain them in that range. He has no knowledge of the cost of clearing this heavily timbered land, but knows that it would cost enormously. There are several kinds of trees in that section. In Township 2 South, 6 West, the principal growth is yellow fir, with a considerable amount of hemlock, and what is termed here by the people "larch." He knows of the burned area within the limits of this grant, west of McMinnville, what is called "the Meadows." Those tracts of land that were taken along above Meadow Lake, on what is called Walker Creek were taken years ago principally for the dead cedar timber, that was burned, that could be worked up into shingles, posts, etc., and shipped out. There was one or two beaver dams in there, but he has never known them to cultivate them at all. The soil of this burned area, he considered unfit for agricultural purposes, except where it was in a swale, an ash swale or something of that kind, where it is beaver dam, or something of that kind, where it has deposits. That would be a small, not a large area. Some of these even sections within the limits of this grant, these railroad lands, most of them he knows of, have been abandoned since they removed the cedar timber. Some of them have been sold. One does not find many of that class where the timber is not removed, except on Walker

Creek, in Section 12—3 South, 6 West, taken by Mr. Carr. He sold to some other party. There are very few of these settlers left on the lands in the even sections; after removing the cedar timber and taking from them what they could to make a living, they have abandoned them, or disposed of them. There is a very small amount of that class of land in these two townships. In going over the head waters of the Trask in his fishing and hunting trips, within the limits of this grant, as far as he saw, he considered both the even and odd sections about the same nature as those of Townships 2 and 3 South, Range 6 West, except they are more precipitous and more rugged. The timber was all he could see any value for. The mountains lying along where the elevation is in some instances 2,000 feet above sea level, and are called the Coast Range. They are very nearly parallel with the Pacific Ocean. It is a continuous mountain range from the Columbia River to the California State line, and thence on down. Whereupon, on cross examination, witness testified, that he has been engaged in the milling business and in the manufacture of products of timber since his residence in Oregon, and his acquaintance with land has been as a timber man. He owned no lands in 2 South, 6 West, but his lands adjoined. He has been in 3 South, 6 West, and has been through a great portion of 2 South, 6 West; has hunted and fished over most of it. Has a general knowledge of, but never cruished the timber, or ran the lines of these townships, and has a general knowledge from traveling through the country, hunting and fishing. He located a timber claim

in 2 South, 6 West, but never perfected his title to it; he let it go, but he wishes he had. He has purchased from the Railroad Company, in all, 600 acres. The first purchase he made was in 1876 and he paid $1.25 an acre for the first 400 acres. The second purchase he paid $3.00 an acre. He afterwards paid $5.00 an acre for the north half of the northeast quarter of Section 8, Township 2 South, Range 6 West. This Meadow Burn that he speaks of—he does not know, but he supposes they were burned—there is no evidence of very much timber ever have been on it. It is a meadow three quarters of a mile long and averaging an eighth of a mile wide, now covered by a lake that is located in Sections 8 and 16, Township 3 South, Range 6 West, a half mile west from his mill, right down to the lake. He is not now engaged in the lumber industry. He never attempted to raise anything on any of his lands, and never attempted to clear them, or produce any products from the soil.

Whereupon J. D. ZURCHER, called as a witness on behalf of defendants being duly sworn testified that he is thirty-three years old, an abstractor and engaged in buying and selling timber lands. He resides at Roseburg, Oregon, and has resided there five years. During that time he has been engaged in the business of abstracting and buying and selling timber lands. The name of his Company is the Commercial Abstract Company. "Defendants' Exhibit 312" was prepared from abstract records in his office and correctly represents the ownership of land as shown by the deed records of Douglas

County. The abstract records in his office are built up from records in the Court House of Douglas County, that is from the records in the office of the Recorder of Conveyances. His records are also based on the Land Office records. What the deed records do not show they search the Land Office Records for additional information and he is able to say that he has verified the sources of information with the official records and traced the same or reproduced the same upon this map.

Whereupon Defendants offered this exhibit in evidence marked "Defendants' Exhibit 312" to which complainant objected as incompetent, irrelevant and immaterial and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidenc and identified herein as "Defendants' Exhibit 312."

Whereupon witness testified that "Defendants' Exhibit 312" is a map of Douglas and Coos Counties as prepared from the plats on file in the United States Land Office and on that he has painted the lands owned by the Oregon and California Railroad Company, C. A. Smith Timber Company, the Neenah-Oregon Land Company, the Roach Timber Company, Kendall Brothers, Pillsbury Lumber Company, Lennan Land Com-

pany, the Bradford-Culver Timber Company, the Myrtle Lumber Company, the Gardiner Mill Company, Weyerhaeuser Land Company, A. H. Hinkson, and Sparrow, Coach & Kroll, in different colors. This legend on the left hand side of the map shows these respective land holdings and the colors are shown in a small square. The light or pale green colors represent the unsold lands of the Oregon and California Railroad Company in Douglas County. There are none of these lands shown in Coos County. The dividing line between Douglass and Coos Counties is the dotted line through the map and his records do not show any of the unsold lands of the Company in Coos County and so far as the map shows the timber lands of these other people and the unsold lands of the Company it is confined to Douglas County alone with the exception of one or two places where the line crosses over which would make it lay in Lane County and in Josephine County and Jackson County, just on the border. He has been over practically all of Douglas County through the mountains and they have in their office cruises of timber of practically all of Douglas County and he has ascertained by personal inspection the timber character of these lands. They buy and sell timber lands, and it is necessary for them to inspect a great deal of this timber in buying it and he has done that personally. He has traveled over and through this grant, the unsold portion of it, and is acquainted with what is called merchantable timber. He does not know or cannot say as a cruiser how timber cruisings are made nor has he ever made any cruisings as

a timber cruiser. He knows how that work is done from his knowledge of how timber is cruised. It depends upon what kind of a cruise one wants to make. They will go through and measure a tree, the heighth of it and count the number of trees to the acre. It is estimated as a rule that way. Of course a man may go out and walk through the timber and guess at it and make a cruise that way, but they measure the heighth of the trees. There are several different methods by which one can measure the heighth of a tree. A man becomes familiar after years of practice of estimating the heighth of a tree. One does not take a tape line.

Whereupon witness testified.

Q. Now, assuming that this timber on certain parts of it stands upon soil that, when the timber was removed, it might have some agricultural value, or some value for grasses or fruit or grazing purposes, or other agricultural or horticultural uses, about what per cent could be made available for such argicultural or horticultural purposes when the timber was removed, in your judgment?

A. Oh, I should suppose it would average 15 or 20 per cent.

Whereupon witness testified that he could not say exactly what it would cost to remove this timber and clear the stumps and roots and make it available for use in agricultural pursuits, but should estimate that it would run all the way from $100 to $300 or $400 an acre to cut that timber off and clear it.

Whereupon witness testified.

Q. What is the character of the soil of this land that you would speak of as being cleared, or subject to clearing, this fifteen to twenty per cent that might be made available for some agricultural purposes? What would be the character of that soil in the majority of the grant?

A. Well, that is generally first-bench land, and the soil is fairly good, because it is on the best soil where the best timber grows.

Whereupon witness testified that the land that was first settled in Douglas County was upon the Creek bottoms, open land. The best soil in the county at that time was taken up under the Donation law and these lands were in the valleys. Drain is on the main line and there is a surveyed projected road on Elk Creek. There was some land originally granted to the Railroad Company along the line of the railroad between Elk Creek and Roseburg but practically all of that land has been sold by the company to settlers, that is, such of it as the company ever obtained title to. This road was not built until about 1878 and the country was settled up in 1850 or thereabouts and as a result most of this land was acquired under the Donation and homestead laws and cash entries. The unsold land in the vacant places shown on this map outside of the solid blocks, or the checker board lands, are nearly all barren, rocky points, and have not very much value of any kind. A settler might make a home in there but he would not make a living. This land that is left there would be suitable for goat pasture in the

spring when the grass was a little green, what little grass grows there. The checker board shown by this map in color shows the lands of the Oregon and California Railroad Company in light green. He thinks that that map practically defines the timber land both east and west of the railroad as to the main body of the land; where this main body begins is about the line of the timber land, it is probably varied a little in places. The southern part of that map shown in shape of checker board form, indicates all timber land down through there, pointing to the green squares as shown on the lower half of it. He would say that about seventy per cent of the unsold land of the Company in Douglas County was merchantable timber land, that would leave about thirty per cent of that land that would be practically worthless, the soil being rocky and unfit for cultivation of any kind. The country is all very rough. The Gardiner Mill Company he believes is the only Company at the present time of those shown on the map that are manufacturing lumber out of their holdings in Douglass County. The Neenah-Oregon Land Company is a Wisconsin corporation and he thinks also the C. A. Smith Company. Kendall Brothers is a partnership of Pittsburg, Pa., Pillsbury Lumber Company he presumes is a Minneapolis concern. The Lennan Land Company he thinks is an Oregon corporation with offices in Minneapolis. The Bradford-Culver Timber Company is a Wisconsin corporation. The Myrtle Lumber Company is an Oregon corporation, but the principal stockholders are the Lovejoys who are eastern people. The Gardiner Mill Com-

pany is an Oregon corporation whose principal stockholders are California people. The Weyerhauser Land Company represents the Weyerhauser interests and everyone knows who they are, not a resident, but a foreign corporation. A. H. Hinkson lives at Eugene, Oregon. Sparrow, Coach & Kroll he believes is an eastern company. The C. A. Smith Company is not manufacturing any lumber from its Douglas County holdings, but it has holdings also in Coos County and a mill at Marshfield. With the exception of the Gardiner Mill Company, none of these large holdings are being utilized for the manufacture of lumber or any other useful purpose. These timber lands of these various Companies other than the Oregon and California Railroad Company in his judgment, are the best timber lands in Douglas County. He is acquainted with the stumpage or number of thousand feet on a forty on some of these lands. Township 26 south, range 9 west, is very heavily timbered. The land in section 14, township 26 south, range 9 west is owned by the C. A. Smith Company and will run 16,000,000 feet of timber to the 160 acres. West of the railroad in Douglas County in the Coast mountains the land is reckoned among the best timber in the State of Oregon. On the east it is not so good. With the exception of the Gardiner Mill Company of which he can speak positively and the exception of the Neenah-Oregon Land Company, all this timber was bought about five years ago by these Companies, that of the Neenah-Oregon Land Company has been purchased within the last two years. This map shows all the

streams, all the roads, all the donation land claims taken up under the donation land law, the principal towns and postoffices in the County. It does not show the mountains but that is shown by the topography of the map.

Whereupon on cross examination witness testified that he was in the mountains every summer with the timber cruisers when they go out but he is not a timber cruiser. He is an office man and has a working knowledge of timber which he obtained while in the employ of different companies and while working for himself. He was in the employ of the Southern Pacific Company for about two years. His principal knowledge concerning these lands was not gained while so employed. He had four or five times as much experience in timber lands since he left the Southern Pacific Company than he had before that time. While employed by the Southern Pacific Company he did work with reference to these lands both in the field and office, investigating the matter of squatters upon the land and reporting upon the kind of land that it was. He would examine and report on the character of the land, also on the people who had settled on the same. His work was all over the State, but the principal part of it was in Douglas and Jackson Counties. He was in the employ of the Company during the years 1905 and 1906. In 1907 he entered the employ of Frank E. Alley who was engaged in the abstract business and witness was in business for himself at the present time. "Defendants' Exhibit 312" while showing Douglas and Coos Counties, the color-

ings and work of witness on this map was confined to Douglas County. He was raised on a farm in Eastern Oregon and Ohio, but had never farmed in a timbered country such as this. He is acquainted with the possibilities of the soil by observation. He knew of no sales of logged off land in Douglas County, unless it would be down on the Coast. His knowledge concerning the settlement of this land was obtained from the records. His knowledge about the conditions and settlements of the land about 1850 he obtained from the Land Office records. He could tell when settlements and filings were first made upon the land by the records in the land office. In the entries under the Donation Law the applicant states when he first settled on the land and that is what he formed his opinion from. There are several small companies operating in Douglas County that are not shown on "Defendants' Exhibit 312." He obtained his knowledge as to the residence of the corporations mentioned by him from the records in the Clerk's office and personal correspondence with the people. He does business with quite a number of these corporations. He bases his knowledge as to the amount of this land that is valuable for cultivation or could be rendered agricultural land from his own observation. Somebody else might disagree with him on that. There is probably a little land along creeks in sections 1, 5 and 7, township 32 south, range 4 west that could be cultivated. In township 29 south, range 5 west there is not much agricultural land in the township except in sections 30 and 31 and a little in 33 and 35, but he could not state posi-

tively as to the last two mentioned sections. In township 30 south, range 5 west, there is some very fine land, but not unsold railroad lands. Referring to township 30 south, range 5 west, the agricultural land follows the river up to about the southeast corner of section 9, then begins to narrow up into the canyon, closes in and opens out above in three or four places and then it is a narrow canyon all the way up. There is no agricultural land in the unsold railroad lands in township 31 south, range 6 west, but he cannot tell exactly whether there is any land of this character in section 29. He speaks as to a whole township. There is very little agricultural land in that township. In 23 south, 6 west there is some fairly good land along the creek but this land is all heavily timbered. The same conditions exist in township 24 south, range 6 west. The land in there as a rule is pretty fair down in the southern part of the township. This land is close to Oakland. In township 24 south, range 6 west, through which he had marked the Umpqua River as running he would say that it was very rough. The river runs through a deep canyon and that country is all very rough through that whole township, odd and even sections. There are a few farms but not very many. There is some farming land in this township. In his judgment not more than one-tenth of one per cent—five or six hundred acres—out of the total of 616,843 acres in Douglas County is in its present condition suited for agriculture.

Whereupon on re-direct examination witness testified that the settlers referred to on this unsold railroad

lands they called squatters who go out and build a little cabin, clear a little place for a little garden, some of them would and some of them would not do that and start in to making posts, cutting and selling wood. In no case that he investigated had the so-called settler made any offer to the Railroad Company to purchase the land. They were trespassers. In his experience these cases were few and were in Douglas and Jackson Counties. There had been a number of homestead entries relinquished and a timber and stone filing made on the land. As far as he knew, cabins and improvements of homestead entrymen on the even sections within the limits of the grant had all been abandoned as soon as title was perfected and the title passed to timber companies, especially in a certain section. These lands that were homesteaded and subsequently entered under the timber and stone act in even sections, were all timber lands.

Whereupon witness testified.

Q. Well, then, if I understand you, Mr. Zurcher, there are not very many settlers within the limits of this grant, on the even sections, at the present time?

Objected to as leading.

A. There are not. Take practically all this territory in through here (pointing to the southeast part of the map), and all you will find is an occasional bachelor's cabin. Once in a while you will find a man with a family on a little creek. You won't find any farming country in there at all.

Q. These cabins that you refer to on these home-

steads, what were they? What kind of structures or homes were they?

A. Log cabins.

Q. Are they inhabited at this time?

A. Some of them are, as I say—an occasional one.

Q. Well, those that are abandoned are not inhabited, are they?

A. No, sir.

Q. These that are inhabited, along what streams are they?

Q. Where are these people's claims or settlements with reference to streams and little valleys, if there are any?

A. Well, you will find some along the South Fork of the Umpqua River, up on Cow Creek, and up on the West Fork of Cow Creek, on Camas, and a few up on Rock Creek.

Q. State to the court the extent of the agricultural lands, if any, along those creeks, that are within the limits and still belong to the Oregon and California Railroad Company. Is there any of it?

A. There is very little, except, as I say, along the creek bottom, there would be a little land that might be susceptible to cultivation after clearing it.

Q. How large a spot, we will say to a forty, or to a quarter section, where there would be a chance for a man to make a clearing and to put a house, on any of

this land that is unsold belonging to the railroad company?

A. Well, I would say that a ten-acre tract would be a large one.

Q. And what would be the character of the balance of the land?

A. It would be hilly and covered with timber.

Q. You have taken into consideration all these facts in making your estimate of percentages, have you?

A. Yes, sir.

Whereupon witness testified that his knowledge, concerning the homestead, timber and stone and other public land entries on the even sections within the limits of this grant in Douglas County, was obtained from the Land Office Records as to what the notices are, and from traveling through the country all over Douglas County. He found that in the even sections, which were the only sections that could be entered, he would find a timber claim entered and a homestead entered, for instance one would go out and take up a timber claim and contiguous to it would take up a homestead, live on it there until he would commute it and either hold it for investment or sell it to some timber company. The lands obtained through a majority of these entries have been sold to timber holding companies. This country is all rough, broken land, heavily timbered.

Whereupon upon cross examination witness testified that not all of his information with reference to the set-

tlers on even numbered sections was obtained while in the services of the Oregon and California Railroad Company and engaged in ejecting settlers from the lands in Douglas County, but that is where he received his first information.

Whereupon upon re-direct examination witness testified that he was employed by the Oregon and California Railroad Company, and not by the Southern Pacific Company.

Whereupon C. H. STEWART called as a witness on behalf of defendants being duly sworn testified that he is sixty years old and is manager of the Commercial Club at Albany and came to Linn County in 1865, and was County Clerk of that County from 1882 to 1884 and County Judge from 1904 to 1908. After the close of his term as clerk in 1884, he went into the hardware and implement business and remained in that business until about 1902. He was in the real estate business for one year prior to the time he came to the management of the Commercial Club of Albany. The name of his firm was Steel & Company, that was in 1902 or 1903, not very largely outside of the city. He was County Clerk two years and as such ex-officio a member of the Board of Equalization for Linn County, and was County Judge four years and as such a member of that board. He is to some extent acquainted with the unsold lands of the Oregon and California Railroad Company in Linn County. He has lived in Albany and in Linn County during all the time he has been in Oregon and he has, if he remembers correctly, been through 1 and 2 east considera-

ble, hunting and fishing and several times in looking at the general character of most of the land in 1, 2 and 3 east for the purpose of taxation. He has been through considerable of ranges 1 and 2, townships 9, 10, 11 and 12, and in that section in the south part of the county in township 15, he thinks that runs to 1 west. He has been over that part of the lands considerable at one time. In the north part of the county he was there several times hunting and fishing, but while he was County Judge he went through townships 9, 10, 11 and 12, ranges 1 and 2 east and down in township 15, probably 1 west and 1 and 2 east, for the purpose of taxation, and he thinks his knowledge would enable him to testify in a general way as to the timber or general character of these lands, at least they determined the valuation of the lands for taxation purposes on account of it. To which testimony complainant objected as incompetent, irrelevant and immaterial and it was agreed that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that he supposes that half of the unsold lands of the Company would be cultivated, provided they were cleared, the other half is somewhat rocky and broken, so hilly that it would hardly be susceptible of cultivation. They taxed that half that could be utilized for agricultural purposes if cleared of the timber, at about one-half of the value of the other holdings of private companies; this that was so taxed was

timbered, but the character of the timber was not so good. It had been culled by previous purchases. That part of these lands that are covered with timber would be so expensive to clear that it would be almost prohibitive. He would say that it would cost from $150 to $200 an acre to clear. The chief element of value of these timber lands would be the timber. The yellow field on "Defendants' Exhibit 259" beginning at the towns of Cottage Grove or Eugene and extending north towards Houlton beyond Portland, with Salem, the capital, about the center and a little farther south and a little west of south, with the town of Albany in the apparent center at the widest portion, represents the Willamette Valley in Western Oregon. North of this land shown on that yellow field with Corvallis and Albany near the center extending from the east boundary of the indemnity limits of this grant and the west boundary of the indemnity limits of this grant towards Yaquina Bay, was taken under settlement laws prior to the appropriation of these lands by the Railroad Company. There is very little soil on these unsold lands in Linn County; which he has testified are rocky, precipitous and hilly. Probably on the south side of these mountains where it is very rocky and where the winter rains have washed the soil entirely off, it is not susceptible for cultivation at all. The foothills where these unsold lands in Linn County are found, are simply called the foot-hills of the Willamette Valley, or Cascade Mountains. The Cascade Range runs parallel nearly with the Willamette Valley on the east side and runs north and south.

Whereupon on cross examination witness testified that he is manager and secretary of the Albany Commercial Club; has lived in Albany since 1865 and until 1882; was connected with a newspaper, from the time he left school in 1867 and was County Clerk from 1882 until 1884 and from 1884 to 1904 he was in the hardware and implement business and County Judge from 1904 to 1908, and since that time he has not done anything excepting that for a year and a half he has been secretary of the Commercial Club. He has never been a farmer or engaged in farming, but has been very close to that business, selling implements all over that country. He does not own any land in that country but had owned one piece inside of these holdings in 11 south, 1 west, but has forgotten the section. It was partly good agricultural land, the agricultural part was very good. Practically all of these railroad lands in Linn County are rolling. Ranges 1 and 2 east are not in a mountainous country, they do not extend up to the Cascades proper, 3 would get up into the mountains. There are a number of ranches south of that place. He is acquainted with the Maley ranch, the old Thompson ranch, the Hiram Billings place. This railroad land is more broken than these places. These ranches are along close to the Santiam Valley. When one gets back on the ridges, it is very broken and rugged and sometimes rocky. The railroad lands are relatively in the same position as these ranches. The railroad lands are south of them. Counsel for the Government has picked out some pretty good places there mentioned by him. There are other places

right by the side of those, or very close to them, that are very bad, a great many abandoned right there. One will find settlers running away up as far as 4 east and following up these valleys that break out of the mountains. The good land runs back following the valleys and people are living there, making their homes with their families, but not on the ridges; they would be in the valleys. Stemgrant, the son-in-law of Billings, has a ranch that is in the valley, part of it runs down on the creek bottom and it is rolling land. A great deal of this land in township south 13 and 14 was timber land at the time it was entered, as shown by present indications and surroundings and has been cleared off and made good ranches of. He thinks that fifty per cent of these railroad lands in Linn County would be susceptible of cultivation if it was cleared of timber.

Whereupon witness testified :

Q. Well, now, Mr. Stewart, in your opinion, don't you think that it would pay to clear that land and make homes there. If these early settlers could go onto that land and clear it when they couldn't sell their timber—there was no market for their timber, it was valueless—wouldn't that timber assist in paying, if not entirely pay the expense at the present day?

A. Where those settlements have been made, it is where they have found some clear land. The land that they have in cultivation has not all been cleared off. It has not been cut right out of the virgin forest. They have taken advantage of clearings, and, of course, cut off some

timber, too, in those creek bottoms. They cut that and slashed it, and that has been cleared off.

Q. There has been considerable land cut off and cleared in that country solely for the purpose of marketing the timber?

A. Yes. They have gone on the hills—some people have gone in there. I remember in 1882, when I was clerk, there was a small colony came in there, and something like eight or ten of them took claims up there. Homesteads. Several of them abandoned those claims, and came down in the valleys and rented land, and now own good farms down there. The other men are up there grubbing yet, and they never will get through.

Q. That is your opinion in the matter? You never farmed?

A. I have been very close to the farmer, because I sold him what he did his work with, all of his implements.

Q. But you have never engaged in the industry?

A. No, not very largely. I have hired some of it done. It doesn't pay.

Q. You feel that it doesn't pay to clear land in order to cultivate it?

A. Oh, no; no, life is too short for that.

Whereupon witness testified that up in his part of the country he does not think there is as much cleared land as there was forty years ago. He does not mean

that he thinks that the people are leaving their lands that they have cleared, but that the new growth of oak and fir is coming up a great deal faster than it is being cleared. Up to that time it was nearly clear. The settlements have increased in this country. Not very many entries of Government land or homesteads have been taken up throughout the foothills and mountains—that was nearly all taken up before the railroad grant, most of it, but since, there have been some entries of Government lands along in favored places. Speaking of donation claims, homesteads and pre-emptions, he knows that in 1882 to 1884 when he was in there, the business was all done before him and there were very few of these entries. They came to him as County Clerk to execute their papers because it saved them the trouble of going either to Roseburg or Oregon City, that was in 1882 to 1884. Whenever they clear off this land it is good for grazing purpose. It is good grazing and the land itself is rich. Wherever it is cleared of brush or timber, it would be splendid grazing land. The undergrowth is very thick on the west slope of the Cascades. They raise considerable fruit around Albany and nearly all of these railroad lands would be good fruit land. It is not sold at high prices as fruit land, as it is at Hood River and Medford. If these lands were cleared off, it would be as good fruit land as Hood River or anywhere else. The fruit land in the grubs runs from $20 to $50 an acre in his county, but they also raise goats in Linn County and this land in the foothills of the mountains would be fine grazing. A very small portion of this land is suscepti-

ble to cultivation in its present state. He has passed through these unsold lands concerning which he has testified, and something like he supposes half a dozen times at different places, out on road business and then at that time in 1904 they were beginning to raise the taxation on timber lands and that subject was up very often in his Court. They were looking into that as much as possible. Whenever he got out into the foothills, although he does not know that he ever went just especially to look at these lands, he always did look at them, while he was there and had them pointed out to him as much as possible, for the purpose of bringing the matter before the court, to settle the valuation of them for taxation purposes. When he was traveling through he would necessarily look at the lands. He did not follow the lines or anything of that kind but had certain sections pointed out as Company lands and generally talked with farmers and settlers in the neighborhood about them. He would not go through these lands like a cruiser would, but made an examination for the purposes of valuation and fixed the values with the assessor. The assessor did not make a personal inspection or have a cruiser inspect these lands. They went up there personally and passed their judgment upon this land by passing through them.

Whereupon on redirect examination witness testified that he knows of quite a number of homestead entrymen, who as soon as they secured their title from the Government sold it, to some of these Eastern land syndicates. These homesteads were on the even sections and were about of the same character as the lands that he has

been describing. They were timber lands, that is, the value was in the timber and not in the land.

Whereupon on re-cross examination witness testified that a number of settlers have gone up there and remained on the land, homesteaders, one generally finds them along these streams, or in some places where the rolling country between is open, they have taken advantage of that. It is true to some extent that as the clear lands at the bottom of the valleys are settled up, people have been taking the poorer lands, and going up into the hills, but there has been very little clearing going on up there, one will find a few places where they have done that but very little.

Whereupon W. H. FALLIN, called as a witness on behalf of the defendants, being duly sworn, testified that he is forty-nine years old, lives at Grants Pass, Oregon and works for Josephine County in the assessor's office. He has been assessor of Josephine County since he was elected in 1902. He was deputy sheriff and tax collector four years before that. During his time of office as assessor he had absolute charge of the classifying and cruising of all the lands in Josephine County, railroad, Government and all of it. As assessor he had been on the land a good deal and really knows about the lands. He never cruised any and don't know anything about cruising. The unsold lands of the Oregon and California Railroad Company is mountainous, part of it is timber land and part of it is barren. It is bald hills considerable of it; he realy did not cruise it, there wasn't enough timber on it to cruise it. To which testimony

complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of this grant, settlements thereon and public land entries thereof. Whereupon witness testified that this barren land that is free from timber, is rough, rocky and barren granite, with some gass growing on it. He would think there was not over five per cent of this unsold land in Josephine County that would be suitable for agricultural or horticultural purposes, that one could use at all. Wherever there is a stream or creek, there is probably a little bit of bottom land there, that might be used for agricultural purposes. There might be a little hillside, but in certain townships, say 36-5 near Grants Pass, there was some lapsed contracts that have gone back, where the land is fair, that can be used as agricultural land, but this is all scattered, isolated land.

"Q. How large a parcel with reference to, say, any particular 160 acres would this parcel or tract be that could possibly be used for any agricultural purpose?

A. Well, there are a few instances where you could get—well, you might say, take 9 Section 36-5, the Southwest quarter, you could get probably 80 acres out of that, and you might out of the Northwest quarter—the west half of the west half—that is pretty fair land; but it has gone back to the company; it has all gone back to the company.

Q. That is to say, this that you refer to as possibly adapted to some agricultural purpose is land which had been years ago contracted for sale by the company and then forfeited by the purchaser?

A. That is it.

Q. Well, then, if the purchaser let it go back, the land was then of not very much value, was it?

A. They couldn't make a living on it. I knew the people."

Whereupon witness further testified that a very small per cent of the lands that are covered with timber, where timber is the chief value, could be utilized for agricultural purposes after the timber is removed, he would say that it was not over five per cent, that would be putting it pretty strong. The character of the soil of these unsold lands in that county, even where the timber is standing and growing, is generally granite formation, called granite land. Grass don't grow where there is heavy timber, but will grow during April, May and June, when there is some grass, and one can graze almost anywhere in the open country, all over there, but that don't last long. There is a kind of browse,—there is pea vine there, and different stuff growing in that country.

"Q. Suppose that an actual settler, so-called, should apply to the company under the act of April 10, 1869, to buy at the rate of not to exceed $2.50 an acre, a tract of this land not exceeding 160 acres, and the company should sell it to him, and there was no other land there over which he could roam his stock outside of his 160

acres, what would be his ability to make a home of his 160 acres, and support himself, or himself and family if he had one, in your judgment?

A. I do not think he could make a living on it. In fact, they don't live there. There is many a township where there is not a settler living there.

Q. Why wouldn't he be able to make a living, as an actual settler, for himself and his family?

A. The ground wouldn't be productive enough. He couldn't raise anything. And he couldn't graze enough cattle on 160 acres—there wouldn't be enough sustenance for them to live on.

Q. Something has been said in the record in this case about clearing off some of this land by grubbing it, burning the timber stumps, and then seeding it to grass. I wish you would state, in your own way, whether or not any of this land is available for such use, and whether it would be at all practicable for this so-called settler to make a living that way on 160 acres.

A. There are thousands of acres in that country without any timber at all. They had bald hills—there is no grass there only for a short time.

Q. Couldn't a man have some of this land cleared, and take 160 acres of it, after the timber was cut down, seed it to grass or some kind of forage, and make a living by raising stock on the 160 acres?

A. Well, he might, but I don't believe but a little of it. Of course, he might pick out a piece once in a while

that you could do that.

Q. Do you know of any instance in that county where any other party is attempting to make a living in this way on this land, as grazing land, limiting it to 160 acres?

A. No, not in those outside districts.

Q. I am not inquiring of you, Mr. Fallin, about the bottom land in the Rogue River Valley, or the land that was taken under the Donation land law in such portions of the county as were settled in the fifties and later, under the Donation land law or prior settlement laws, but I refer to lands of the class of these unsold lands of the Oregon and California Railroad Company could a man make a living in any way on any of these lands, excepting by selling the timber?

A. Of course, I couldn't tell whether he could, or whether he couldn't make a living. They don't do it—they don't try to do it. There isn't any one living in those districts. Of course, a man might or he might not."

Whereupon witness testified that he does not think there is a settlement in Township 33 South, Range 7 West. There is a man mining in Section 34 and there is another man in that township, but no one lives there; and in Township 34 South, Range 7 West, is about the same, the railroad goes through the edge of that township. Leland is in Section 8, Township 34 South, Range 6 West. One could not get more than ten miles away from that, and if one did, he would be closer to Wolf Creek. There are no settlements in that township. There

are some miners there. The reason the country is not adapted to settlements is that they cannot live there. It is different in different townships. He could show a settlement in Township 33, Wolf Creek, and at Tyler Creek, but between there and the lower part, that is a mining country. There is a settlement at Wolf Creek in the little valley along the creek; which valley is narrow, averaging about a quarter of a mile on either side up, and gets into the mountains and is abrupt. There is some red soil in Josephine County, generally on this high land, which is very good; and some white granite, which is not. The red soil is considered good fruit land; and in that red land are all the gold mines and placer mines, the banks are red. When one gets a hillside that is protected right he may get a piece of land that is good for fruit culture, but the per cent would not be great, it would not be over five per cent on the whole, he has included that character of land in his estimate of five per cent, he figured on the whole thing. As a general thing the land in Josephine County is not heavily timbered, although in Township 34 South, Range 5 West there is some very heavy timber on the east line, which is good timber, down in 39-5 and 6 West, is good timber, generally it is light timber, but of good quality. There is sugar pine in there and it is high grade timber, what there is there. There is a reserve there, as shown on Defendants' Exhibit 259, and also a reserve known as the "Ashland Forest Reserve." These reserves are mostly timber lands. The Siskiyou Forest Reserve was established in 1907, and is in Josephine, Curry and Coos Counties, he thinks. He does

not know whether any of it is in Douglas County or not. The general character of those lands is timbered lands, mostly unsurveyed land, and as far as Josephine County is concerned, is unsurveyed. These reserves run into the grants. Whereupon on cross examination the witness testified:

"Q. What years did you say that you were assessor in Josephine?

A. I am assessor now.

Q. You are at present assessor?

A. I am working at the office, and I have been since 1902. That is when I was elected. I have been connected there ever since.

Q. You have been assessor since 1902?

A. No, not assessor. I have been working in the assessor's office, but not assessor.

Q. You never have been?

A. Yes, I was six years.

Q. What years were those?

A. 1902 to 1908. I had the timber cruised while I was assessor.

Q. Who is the present assessor?

A. Pollock.

Q. Now, you are a timber cruiser, Mr. Fallin?

A. No.

Q. What has been your business during the last 15

or 20 years?

A. Assessing.

Q. Assessing all during that period?

A. Yes.

Mr. Fenton: During the last 15 or 20 years?

A. Oh, no, I was deputy sheriff four years."

Whereupon witness testified that before entering the public service he was in the merchandise business at Grants Pass. He has never been employed by the Southern Pacific or Oregon and California Railroad Companies. Generally speaking Josephine County is a good fruit country. They raise good fruit there. The same general character of soil does not exist all through the county. There are favored localities where they raise good fruit, and others where they cannot raise it. A large portion of these unsold railroad lands is rolling, and might contain considerable soil for fruit raising. He has never been engaged in the fruit raising business, except just around his home; he has some trees at home, in his door yard, and has some apples, peaches and plums, and different things like that. Grants Pass is the center of a fruit raising country. He had charge of making these examinations of these lands for classification with reference to assessments. He hired men, and thinks Mr. Pollock the present assessor, was his deputy and was one of the cruisers employed by him, getting a cruise of the lands. This classification is on record. There is one in the assessor's office and another in the clerk's office

which is the same thing. All of these lands of this grant are classified as to being timbered or agricultural and assessed on that basis. He has assessed in every place and went all over the county. Has not inspected personally all of the land; never went on lots of the land, because he had no occasion to go there. Every place where there was a settlement he had been, assessed the people in there and looked at the land. By settlement he means where there is anybody to assess; he would go and see them, and has done that for many years, that is go and see the settler all over the county. He did not go to every place one year; but he did go, and he has testified from what he has observed during these trips.

"Q. You never made an examination of the 40-acre subdivisions of these lands, to see if 160 acres could be selected that would contain enough land to make a living?

A. No; no, I never did that personally.

Q. Not money, but a living for a man and his family—a settler and his family?

A. I have only examined the reports that the cruisers brought in. They reported on the land.

Q. You base your knowledge largely upon that?

A. Yes to that extent."

Whereupon witness testified that taking all the lands in Josephine County there are about 20,000 acres in cultivation, that is what the assessment roll shows. He does not think there would be over five per cent of the whole

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land in the county that would be susceptible of cultivation, and does not believe there is that amount; it might run a little bit more, but not much, that is the general average, he thinks, of course, that is only his opinion. Whereupon on redirect examination witness testified that the fruit land adapted to fruit culture and used for fruit in Josephine County is all over the county. They raise fruit all over Josephine County, where there is any settlement. Fruit that is grown for commercial purposes is chiefly located in the Rogue River Valley, on the valley ground. The Rogue River Valley, as it passes through Josephine County, is not very wide. Below Grants Pass it would probably be a half mile on each side of the river in width; that is, the bottom lands. He does not mean the foothills. It is about a mile wide for probably ten miles below Grants Pass. Above Grants Pass it is not so wide. There is not much there, it is a narrow valley. There is some very good fruit lands in the foot hills immediately adjacent outside of this valley. Another half mile on each side would be along the sunny foot hills, along this valley. A lot of this land within that mile which is broken and hilly and some of the soil is decomposed granite and is not all in cultivation by any means. The lands adapted to fruit culture within that mile limit would be more or less spotted. The assessor's rolls show that there is about 20,000 acres of agricultural land in the entire Josephine County, that is, there is that much on the assessment rolls in actual cultivation. He does not know how long it has been since the first lands were settled in the Rogue River Valley, but it was by

Donation Claims, under the Donation law. Grants Pass has been a town since 1883, or 1884. He does not know when the railroad was constructed to Grants Pass. He came in 1888 and the railroad was there when he came and had been built through to the California line at that time. He only knows from hearsay when it was completed from Ashland south; it was through when he came there. The population of Josephine County is about nine or ten thousand.

Whereupon **IRVINE P. GARDNER**, called as a witness on behalf of defendants, being duly sworn, testified that he is thirty-seven years old, by occupation a surveyor and timber estimator, and resides at Myrtle Creek, Oregon, and has lived in Douglas County between five and six years, and has been buying and estimating timber during that time. He had charge of appraising Indian lands for about two or three years, in Minnesota, for the Government, and took the ranger examination and surveyed out and selected ranger sites for the Government in the Cascade-Umpqua National Forest Reserve for a few months, and cruised timber for the last fifteen or sixteen years for a living. During his summer vacations, while at college and law school, he ran compass in Northern Wisconsin and Northern Minnesota, with the exception of one year of the Spanish-American War, in which he participated. In the fall or winter of 1898, he went into the woods in Northern Wisconsin, estimating and logging, and worked there two years, running compass most of the time, and doing some estimating. He then went with Major G. L. Scott, Indian

Agent at Leach Lake, Minnesota, and took charge of the surveying and appraising of Indian lands for him. The year prior to that he was superintendent of logging on the Northern Pacific Railroad for the Ashland Iron and Steel Company—estimated timber and cut it for the furnaces. He was with Major Scott then for about two years, and then with Major Michelet at White Earth, Minnesota, in the Government service. He then estimated and bought for Nichols & Chisholm Lumber Company and the Shevlin Company—estimated and scaled in Minnesota. For the last four years he has bought and estimated for the Neenah-Oregon Land Company of Wisconsin, a corporation of Neenah, Wisconsin. His headquarters have been in Douglas County, and all his work in Oregon has been in Douglas County, with the exception of a little in Josephine and Jackson. He has cruised in Douglas County about 4,000,000,000 feet of timber situated on about 100,000 or 125,000 acres. The lands except in the indemnity limits, have been altogether where people have filed or they have been the even sections. He has been in the South Umpqua country, practically to every quarter post and corner, and on most of the railroad lands, with the exception of a year ago this winter, which he spent in the abstract office which they have, in which the President of his company has a half interest, referring to the Commercial Abstract Company of Roseburg, he has been in the woods continually, probably two hundred and fifty days in the year he has been estimating, mostly in the South Umpqua country. He has estimated and bought all the Neenah-Oregon

Land Company's lands on the South Umpqua River and Myrtle Creek. He has a general or specific knowledge of other unsold lands of the Oregon and California Railroad Company in a good many localities in Douglas County. He has been out estimating for other people, and one year before he went to work for that Company he worked on general estimating, estimated all over the county, wherever his clients wanted him to. There are three or four methods in use by cruisers. The two general basic methods are, what are known as single running and double running of forties. To single run a forty, one starts at a known corner, and would go north or east or south or west, as the case may be, two tallies or 250 paces; then run directly through the land which they are estimating north, east, south or west, as the case may be, tranversely, directly across it. That puts one on each ten acres of the land that one is looking at. In double running, one goes half the distance, and then horseshoes it, as it were, or 125 paces, which would put one on every two and one-half acre tract of the land. In order to ascertain the amount of timber, one could take it, either strip method or circular acre. The strip method is taking everything for 250 paces, or two tallies, thirty-three feet, on each side, which gives an acre. The circular method is standing in one place and taking everything in a circle within approximately fifty-five paces, giving a circular acre. The contents of a tree, as a general rule, is arrived at through volume tables, which are tables made through the figuring of contents of trees at mills. There are the Clement Table, King's, Spalding's and

several others. Spalding's is one of the standards. The Government has adopted Scribner's Decimal C Rule as its standard. As a general rule, a cruiser obtains the height of timber through pacing down timber. In almost all forests there will be a certain percentage of down timber. Probably on a quarter section one would pace ten or twelve, or even only four or five or six trees, to a certain diameter, starting from the butt pacing, and get the height that way. All volume tables practically are made either stump or breast high, inside the bark at the stump. In exact estimating which they do, they always use what is known as a diameter tape, which gives the circumference. Measuring around the circumference and subtracting the bark, will give the diameter figured out. In getting the height of the trees by computation, where it is not paced, one can use a clinometer, which is a scale figured out, or can use half of a square, with a small level on it, and by pacing the base of the square, and sighting up to the top of the hypotheneuse, where one can catch the top of the tree—the base and perpendicular will be the same, what one would have to pace on the base would give the height of the tree. The remaining unsold lands of the Oregon and California Railroad Company in Douglas County, Oregon, would average, probably, 35,000 feet board measure straight through per acre, counting everything. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the char-

acter of the lands involved within the limits of these grants, settlements thereon, and public land entries thereof.

Whereupon witness testified that these unsold lands are chiefly valuable for their timber. In the present condition, at this time, a great deal less than one per cent of this total area, in his judgment, would be available for horticultural or agricultural purposes. Twenty-five to thirty per cent could be farmed after the timber is removed. He has a homestead of his own, and what clearing he has done has cost him from one hundred to two hundred dollars per acre, and he has cleared a great deal of land, and helped clear land in camps.

Q. From your knowledge of the timber that is on this land, that you say might be utilized for some agricultural or horticultural purpose after the timber was cleared, what would you say the average cost per acre would be to clear such land and make it available for use?

Q. Go ahead and answer.

A. After the timber is cut or before, at the present time—take it in its present state?

Q. Take it as it is?

A. Taking it in its present state, the average cost would be from $75 to $100 per acre to clear.

Q. Do you say, or do you think that you could clear some of this land that runs 6,000,000 feet board measure to a quarter section, at the rate of $100 an acre?

A. Why, it would have to be done in a commercial way, with donkey engine and derrick. Certain people are contracting to. It costs from $10 to $25 an acre to slash, and it will take on your trees anywhere from two to ten sticks of powder per stump. I never figured it out that way, but it would take—some of it could be done. It would probably average nearer $150 than $100 to clear it free of stumps.

Q. What is the fact, if you know, as to the presence of the roots in the ground of these trees, after the stumps are blown out by powder?

A. Well, if they blow the stumps out, the roots will bother if not pulled up for a few years.

Whereupon witness testified that these unsold lands are practically all mountain lands. In Douglas County, the part that he has been over, runs from five hundred feet, which is the elevation of the Umpqua River at Roseburg, to points in one or two places, five thousand feet. The majority of the divides between the different places, the summits of them, will probably average from twenty-eight hundred to thirty-five hundred feet, that is, between the different ones—Cow Creek and the North and South Umpqua. A large majority of these lands is in the Cascades and Cascade foothills and Coast Range and Coast Range foothills. The average elevation would probably be 2000 feet. The majority of the lands are at an elevation of about 2000 feet, because in the bottom of the valleys, the elevation will run from 1000 to 1500 feet, and the crest from 2500 to 3000. He uses an

aneroid in all his work and takes the elevation on every ten acres and every section line in the country, and at all his bases, he takes the elevation. He bought or estimated all of the lands indicated in red on Defendants' Exhibit 312, owned by the Neenah-Oregon Land Company. He has been over township 25 south 2, for the Ferry Estate, and has been in a great many of the townships at different times. These lands are practically all heavily timbered. The entire holdings of the timber companies represented in there will run very close to 60,000 or 65,000 feet board measure per acre, referring to all the timber holdings represented on that map, Defendants' Exhibit 312, other than the Oregon and California Railroad Company. The majority of these scattered parcels about Looking Glass, up to, say, Yoncalla, shown in green, are open and barren lands, along the summit of the divides, which were not purchased with the bulk of the land. The unsold railroad lands indicated by these colors in green, within the area just mentioned, appearing still to belong to the Railroad Company, are mostly grazing lands in the spring. A great deal of that land was sold by the Railroad Company on contracts that were defaulted, the purchasers did not make the payments. Some few of these scattered parcels in that area along the river are agricultural, but most of that soil is bad. It could be settled on, but a person could use it only for grazing or pasturing, that is, a majority of this land. A settler could not make a living on any of it, or very little. From the records of the land office and district court, and the abstract company with which

he is connected, a large area of lands that are unmarked with any color, that are white on this map—Defendants' Exhibit 312—show that they were purchased from the railroad company under contracts, or else taken as donation land claims, that is in the old settled part of the Umqua Valley. He has been all along the Umpqua River from Winchester Bay to Roseburg, and up all around the summit of the divide, and inspected all the range on the summit of the divide, on the South Umpqua and Rogue River divide. Ninety-five per cent of the even sections, within the limits of this grant and adjacent to the railroad lands, is covered with merchantable timber. From his experience in the abstract office and looking up title, checking blue prints, etc., he knows that the title to the even sections, where the title has been disposed of, has passed into the hands of timber companies, a good deal of it. It was originally entered under the Timber and Stone Act, the Homestead and the Commutation or Cash Entry Act, and scrip. A great deal of it has been taken under the Act of July 30, 1898, and the Acts of 1902 and 1903. The Act of July 30, 1898, is the act of Northern Pacific scrip, individual claimant scrip. The Neenah-Oregon Land Company has bought probably thirty homesteads, which it will be glad to lease for taxes, and cannot lease one. It has offered to lease these homesteads to persons who would take possession for the payment of taxes. In five years it has leased one piece, very close to a school house up in the mountains. Very little of this land is capable of being used for agricultural purposes. In the South

Umpqua country, in Township 28 South, Ranges 3, 4, 5; Township 29,—1, 3, 4, 5, 6, 7, 8 and 9; Townships 31, 32, 33, most of 34; 31—1, 2, 3, 4, 5, 6, 7, 8; 32—1, 2; parts of 32—3; 32—4, there are not five homestead entrymen living on the land, title to which they obtained under the homestead law. There may be more than five, but there are very, very few. Looking over the country generally, his blue prints and in the abstract office, probably in that territory five hundred people obtained that land under homestead or the commutation act. The rest was taken under the Timber and Stone Act. He is not stating anything but what he has examined himself personally, through cruising. A great many of their cabins have been burned, and a great many have been abandoned. Some few of them, the patches that they have are being used by cattlemen and others, who keep up the fences.

Q. What I am getting at is, the entryman that settled the land, what has become of him in nine cases out of ten, if you know?

Mr. Rabb: Objected to as leading, suggesting to the witness the answer to the question.

A. Sold out and out of the country, most of them. A majority of this land in our part of Douglas County was settled in 1902 and '3 and 1901, a great deal of it by people who came from Michigan, Wisconsin and Minnesota and took up land.

Now, in the main, to whom were these homestead claims or homesteads transferred,—to what class of pur-

chasers, from your knowledge, if you know?

A. Timber companies.

Whereupon, on cross examination, witness testified that he was born in the State of New York, and went to Omaha in 1887, and spent all his summer vacations, until 1898, in Northern Wisconsin. Bayfield was his summer home. Until that time he ran compass, scaled around the mills, worked on the booms, worked with boats. When there was nothing else doing, during his vacation, a good part of it, he worked in the timber business, that is, worked at it when he was not fishing or hunting. By an estimator, he means one who cruises and estimates timber for a living. He actually cruised himself, and was engaged in that business in Minnesota, and surveying. He had charge of surveys, but had to appraise the amount of timber on the Indian lands and the quality of soil for the purpose of selling, and has followed that occupation for a living ever since. The President of the Commercial Abstract Company is DeWitt Van Ostrand, of Phillips, Wisconsin, who is also President of the Neenah-Oregon Land Company, and has a half interest in the Commercial Abstract Company. The Commercial Abstract Company is not interested in the lands. He worked in the office looking up records and titles to what lands they got. His duties in the office are nothing at all, excepting two years ago this winter, in bad weather, he went into the office of the Commercial Abstract Company and his salary went on. He has done very little work for the large lumber companies interested in that vicinity in

Douglas County, aside from the Neenah-Oregon Land Company, for which he worked steadily for four years, with a few exceptions. His testimony and his knowledge of this grant is confined to Douglas County. They bought in 35—7 in Josephine County, about one thousand acres, and he has worked quite a little along Rogue River. His specific knowledge is practically all in Douglas County. He knows very little with reference to other lands, and he does not want it understood that his testimony goes further than the limits of Douglas County. He would not testify to anything he did not know personally. Less than one per cent of these lands are agricultural in character in Douglas County, in his opinion, until the timber is removed. He would not include grazing as an agricultural pursuit in the timbered lands, because almost all the green places shown on this map might be classified as grazing lands. There is good grazing land on a good deal of it for a month or two in the early fall and before it dries up in the spring, those rocky ridges. When he makes his estimate on each and every forty, he figures the amount of tillable land on it. His estimate would read something like this: So many acres in cultivation, cleared; so many acres susceptible of cultivation when the timber is removed; so many acres grazing; so much rough and rock and barren. He has a homestead in Section 18, Township 28 South, 3 West. Part of it is agricultural land, what he has cleared, about twenty or twenty-five acres now. He took that up for the purpose of making a home, and he has a home.

Q. Now, Mr. Gardner, referring to Defendants' Exhibit 312, I will ask you as to the lands in Township 28 South—4 West, what percentage of those lands is agricultural?

A. Section 1 is on the divide, on the head of North Myrtle Creek. Along the creek, along the main creek, which is heavily covered with timber, there would be a strip of land when the timber is cut which would be agricultural in character, in the Southwest quarter of the section. Section 3 has some land on it which is agricultural, probably fourteen or fifteen acres. I know very little about Section 5; 7 is on the divide, and has quite a little grazing land on it, very little of it tillable. Section 17 is all rough, steep and mountainous. Section 15 is all very steep, with the exception of some mining land, or land that they attempt to call mining land—illegal mining locations—in the southeast quarter the bottom land is all washed out through placer digging there along the creek. Section 13 has quite a bottom of Myrtle Creek, but the remaining land, with the exception of the north half of the southeast quarter, which is along by the fork and good bottom, is all rough and mountainous. Section 21 is all mountainous, with the exception of a small piece on Lee's Creek. Section 19 is nearly all—all the land on that that is left is quite mountainous, but there is a bench in the northwest quarter that will probably have, when the timber is cut, some very good land on it—the north slope of the bench. Section 29, that is all mountainous, the remaining land. Section 27, the west half of 27 is that west of the creek,

west of Myrtle Creek, which goes through in a northeasterly and southwesterly direction. That west of the creek is a gentle slope; that east of the creek is very rough. 31 is all mountainous, practically. 33, there is no agricultural land in 33 at all. 35 is on the crest of the divide between North and South Myrtle Creek. There is very little land on that any use. 23 is covered with mining locations, practically all of it. 25 slopes into Riser Creek, it is quite steep. That is all.

Whereupon witness testified that in that specific township, at the present time, very little of it is agricultural, probably 25 per cent of that township is agricultural when the timber is removed. It is all grazed at times with sheep and cattle, certain times of the year; this year for six weeks from about the first of June until about the middle of August. In the middle of July they take the sheep out. The feed is not good in August. There are probably one thousand acres of the unsold lands of the Oregon and California Railroad Company in this township that are good grazing lands. There is a very little of it that could be plowed at the present time, probably forty acres. 29 South is alll grazed at times, everything in the country. The whole country is grazed, but it is not what you might call grazing land. It would take probably an average of 160 acres, more or less, to support a cow. There is some burned over land; there is no bunch grass. Bunch grass is about the only thing they can fatten on in that township; but cattle do well along the creeks in the heat of summer. Practically all of the land in that township has

been taken, either commuted or homesteaded. Of the unsold lands of the Oregon and California Railroad Company in Township 29—3, probably 25 per cent, after the timber is removed, is agricultural land. At the present time there is very little. When the timber is removed, he would say not over 20 per cent is agricultural. He would not say that all of it is good for grazing, but they graze over it all; but there is very little grazing except on the burned ridges. There will be a burned ridge running through it, that would have fair grass or pea-vine. In the mountains they do not graze on grass much, but mostly on pea-vine, which is only good from the time it gets its growth, gets some substance to it, till the middle of July, when it dries up and is not good. It is a pretty hard question for anybody to answer, what percentage of this land is grazing land when the timber is removed, that is, it would take a lot of time, and it would be a guess for him. He would say that the top of all the ridges which would have pea-vine on for a month in the year, when the cattle and horses could support on that, would be grazing land, but he could not state the percentage, but it would be just a guess. The township grazes, with what they use in the bottom—there is only one man who is extensively in the cattle business, that is Lloyd Ade, in section 21, 16—28, and he runs, with what feed he has in the bottom, about 100 to 150 head of cattle, and he is able to graze them in the summer, and that is about all the grazing that is being done in that township now. He said that with his stock the range was pretty well stocked. When the land is cleared, if

it should be seeded down in the ashes, in that township, it probably would be 25 per cent grazing in addition to the 20 per cent of agricultural. Probably one-half of it could be used for grazing when it is cleared and seeded. Very little of the unsold lands of the Oregon and California Railroad Company in that township is agricultural in its present condition, none that he knows of in township 29—3. Probably five or ten per cent along the ridges in township 29—4 would be grazing, but the timber lands are all grazed at certain times of the year, not to exceed five per cent on the burned ridges, in their present condition. All of it is not grazing lands. That is, nobody can answer that. In Roseburg he told Mr. Underwood that one could use that land only for a very limited time; that one could run cattle; the great proportion of it could be grazed, but it would support stock for just a few days in the year. In the present condition, probably 50 per cent of that land could be grazed for only a few days in the year. It is an awfully hard proposition to fix what percentage would be grazing, unless one will fix some basis. The Government fixes the basis for that in the forest reserve. In the township referred to, there is not over 250 head of cattle on the odd and even sections, and the range is overstocked. There is very little land in Township 29—4, probably one thousand acres that are chiefly valuable for grazing purposes. After the land is cleared and seeded there would probably be 2500 or 3000 acres. After the land is cleared very little within 29—4 would be agricultural land, and of the unsold lands of the company probably

ten per cent in that township would be agricultural. There are 225 head of cattle grazed in township 30—1 south in the National Forest Reserve during the summer season, and the range is pretty well stocked. There would be about twenty acres in Section 21, in its present state, that would be agricultural. There would be about one-twentieth of one per cent of the thirteen sections in that township that would be agricultural, and about twelve and a half per cent of the unsold Oregon and California Railroad Company lands, probably one thousand acres, in that township, in the National Forest, as grazing land at the present time, and after the timber is removed, or the land is cleared, there will be fifty or sixty per cent of that township that will be grazing, but it is covered with a very heavy stand of timber. About twenty-five per cent of the land would be agricultural land. At the present time, with the exception of an old orchard and old buildings in the northeast quarter of section 23, there is no agricultural land in the unsold portion of township 30 south, 2 west. There are about fourteen or fifteen acres of agricultural land in the Northeast quarter of section 23, which would make one-thirtieth of one per cent of that unsold land in that township agricultural. It is all grazed. There are about seventy-five head of cattle running in there now. Probably ten or fifteen per cent of it would be grazing land in the present condition, and when cleared, probably twenty-five or thirty per cent of good grazing and agricultural land; probably twenty per cent agricultural, and probably 15 or 20 per cent would be grazing land, when

it is cleared and seeded and burned. Probably one-tenth of one per cent is agricultural in township 30 south, 3 west, there is just a little patch there, grazing, south of the river, that is, one-tenth of one per cent in the entire township would be agricultural, and twenty-five or thirty, maybe forty per cent in that township, possibly, of grazing land, when the timber is removed. There is a little patch there of agricultural land in the present state, which could be farmed, and when the timber is removed, there will be a probably fifteen or twenty per cent in that township which would be agricultural land, and after the timber is removed probably an additional twenty or twenty-five per cent, maybe more, in that township, would be grazing land. It is a pretty fair township. There is only a small fraction in Section 23, Township 30 South, Range 4 West that is cultivatable at the present time, in the entire township, probably one-tenth of one per cent, and probably ten or fifteen per cent grazing land in the present state. After the timber is removed there may be probably ten or fifteen per cent on the benches that would be agricultural. Practically all the good agricultural land in that township has been taken. There would probably be an additional ten or fifteen or twenty per cent after it is seeded, that would be grazing. In 30 south, 5 west, there are a few little places that are cleared. He thinks most of them are under contract at the present time, and probably five or ten per cent grazing, burned over. Practically all this township when cleared could be grazed. There is very little agricultural land remain-

ing. It is all contracted or sold in that township. Probably five per cent of the remaining would be agricultural, and the balance, probably forty or fifty per cent, would be grazing land. Probably forty acres in Township 31 south, 1 west, is agricultural at the present time —referring to the unsold lands of the company—and probably twenty per cent is good grazing at the present time. About one-fifteenth of one per cent of the unsold lands in that township, would be agricultural; probably fifteen or twenty per cent at the present time grazing. After the timber is removed twenty per cent could be plowed; probably half of it would be grazing land; probably seventy-five per cent of that land would be grazing land. All agricultural lands can be grazed too. He makes these estimates off-hand, from his practical knowledge of it. There are about twenty-five acres in Section 1, Township 31 south, 2 west, which is all the agricultural land there is at the present time, amounting to one-fourth of one per cent, and twenty per cent of grazing land. There is a good deal of burn in that township. Probably five per cent of this township when cleared, would be agricultural in character, and fifty per cent grazing if seeded. 31—3 south, with the exception of a little on Cow Creek, is all timbered and mountainous on the divide. Only two homesteaders went into that. None of the unsold lands of the company in that township are agricultural at the present time. Twenty-five per cent would be grazing. Probably ten per cent would be agricultural, and twenty-five per cent, maybe thirty per cent, grazing, when the land is cleared. About one-

twelfth of one per cent of the land in Township 31—4 South, in its present state, would be agricultural, and twenty per cent grazing; and when cleared, five per cent agricultural and thirty or thirty-five per cent grazing. There is no agricultural land in the unsold lands in Township 31 South, 5 West, and very little grazing; he would say about five per cent. This township is all heavily timbered and steep slopes. but most of it, the southwest part of the township, all the railroad land and the other, has been bought by the Duluth Timber Company. He is basing his estimate on these unsold lands of the O. & C. Company, shown by Defendants' Exhibit 312, and is not including the lands of the Duluth Timber Company or any other timber company, in making his estimate. After the timber has been removed from that township, one per cent will be agricultural, and five per cent grazing. There is no agricultural land—no one living in township 32 south, 1 west, except one person in section five. There are ten acres in Section 5, in lot 2, that are agricultural in character, and that is the only agricultural land in that township. One-twentieth of one per cent would be agricultural, and five per cent grazing. It runs from 65,000 to 70,000 feet per acre. After the timber is removed there would be very little agricultural land there; probably one hundred acres in the township, or two per cent of it. On top of these divides there would be a section or two of grazing land, probably ten per cent. Township 32 south, Range 2 west, has just been surveyed. There is no one living in that township except three settlers. This township is outside of

the definite limits and has never been patented to the company. He is well acquainted with these lands in that township. The company never had any lands to sell in that township. It is outside of the map of definite location. All of these townships mentioned in his testimony are west of the Willamette Meridian. In township 32 south, range 3 west, one-tenth of one per cent of these unsold lands are agricultural in character, and twenty or twenty-five per cent grazing, and after timber is removed, twenty-five per cent could probably be tilled and probably an additional twenty-five per cent grazing. The company owns no agricultural land in township 27 south, 3 west. Probably twenty to twenty-five per cent of that land in that township is grazing in its present condition; probably ten per cent would be agricultural when the land is cleared, and fifteen per cent additional would be grazing. Of the patented lands of the company in township 28 south, range 3 west, there are no agricultural or grazing lands on either of the two quarter sections. They are both in the forest reserve. The rest of it is all settled on. This exhibit shows nothing but 320 acres of unsold railroad land in that township. He is acquainted with all of the lands of the O. & C., excepting in the Forest Reserve. His acquaintance has been from cruising the even sections. He has cruised all the even sections in these townships and going onto the O. & C. lands and crossing them in criusing the even sections. The two quarter sections shown on this exhibit are both very rough, rocky and mountainous and are heavily covered with a dense stand of timber. The north-

west quarter of section 19, and the southwest quarter of section 31, in Douglas County, described in the complaint, are both covered with a heavy stand of timber, and are of very little use for anything except timber value. There is no agricultural land, and probably ten per cent of these lands would be, for a certain time of the year, grazing. There are a couple of pea-vine ridges through there. About 20 acres in township 26 south, range 2 west, is agricultural in character at the present time. In section 7, along the North Umpqua River, there are about twenty acres covered with an application, he thinks the records show, that was in cultivation. Probably twelve per cent of the 8000 acres grazing. The south half of that township is covered with a stand of timber that will run 100,000 feet to the acre, 7,000,000 to a forty. There is a good deal of those benches—that is a very peculiar township, built just like a ladder, the lands jump up about 1000 feet and then there is a bench, and then jump up another 1000 feet, then 3000 feet from the North Umpqua river. These benches are covered with a heavy stand of timber—very good land; they are north slope benches. Probably twenty per cent of that land could be plowed after the timber is removed, and probably an additional twenty per cent would be grazing. In township 28 south, range 3 west, he has testified that none of the unsold lands would be agricultural. He has never cruised the south half of that township, which is in the Forest Reserve. He has not testified in regard to the south half, he never cruised it and could not testify to that. He has been through the south half of

the township probably a dozen times, through the trails —White Rock and other trails. He lives in that part of the township, and aside from along Buck Fork and one or two of the creeks, it is quite heavily covered with a dense stand of timber, and probably not over ten per cent would be agricultural when the timber is removed. His homestead is Lots 1 and 2, the east half of the northwest quarter, section 18, township 28 south, range 3 west, Willamette Meridian, Oregon. There are only 320 acres in that township among the unsold lands of the company. They are all rough, rocky, mountainous—that is, the 320 acres. He would estimate none of it as agricultural. Ten per cent would be grazing; there are two ridges that run through it that would be fairly good grazing.

Q. Mr. Gardner, there is no difference between the lands in the even numbered sections and the odd numbered sections in thse townships that you have just previously testified to, is there? That is, Township 30 South —2 West; 30 South—3 West; 30 South—4 West; 30 South—5 West; 31 South—1 West; 31 South—2 West; 31 South—3 West; 31 South—4 West; 31 South—5 West; 32 South—1 West; 32 South—3 West; 27 South —3 West; 26 South—2 West; and 28 South—3 West?

A. Yes.

Q. What makes that distinction?

A. The clearing and settling on the even sections inside of the definite limits, by homesteaders and people that commuted, which—

Q. I know, but— excuse me for interrupting.

A. That is practically the difference, generally speaking. The land originally, there was very little difference.

Q. The land in its natural state was the same?

A. Practically the same, yes, sir.

Q. Now, isn't it a fact, Mr. Gardner, that if these lands in the township just previously mentioned were divided into 160 acre tracts by legal subdivisions, but not by quarter sections, isn't it a fact that the percentage of agricultural land would run from one to two-thirds of the lands situated in these townships?

A. Well, it would, in so far as anything suscepitible of being grazing at all. I will state for the benefit of the court, that the affidavit that you are referring to—they wanted me as a witness—stated that the land, if it is cut and seeded, would be good for agriculture. That is what I stated to Underwood. I don't know whether it is in the affidavit or not. And I stated it would be capable—anything you can run anything through, anything that has a spear of grass on it—you can run it through all of it, I said, except the rocky parts.

Q. Isn't it a fact that one-third would be agricultural lands and about two-thirds grazing lands of these townships that I have mentioned?

A. No. No, that would be the whole of it. One-third and two-thirds make a whole. It would not be that.

Q. You remember of having a conversation with Leonard Underwood, Special Agent of the General Land Office, on the 15th day of March, 1912, with reference to this land?

A. Yes, sir, I did.

Q. And at that time you made an affidavit before Mr. Underwood with reference to some of these lands?

A. I made a statement to him, yes.

Q. I will ask you to examine this document, and state whether or not that is the statement that you signed, or affidavit?

A. Yes, it is.

Q. In this affidavit, among other things, you state (referring to the affidavit): "That he (meaning you) is familiar with, and has been over repeatedly the South Umpqua country, being township 28 S., R. 4 W.; Twp. 29 S., Ranges 1, 3 and 4, W.; Township 30 S., Ranges 1, 2, 3, 4 and 5, W.; Township 31 S., Ranges 1, 2, 3, 4, and part of 5 W.; that part of Township 32 S., Ranges 1, 2 and 3 W., north of the Rogue River Divide in Douglas County. That from his knowledge of said area it is his judgment that one-third of same is agricultural in character, and the balance largely grazing land." Isn't that statement contained in that affidavit?

A. Sure that statement is. The affidavit speaks for itself.

A. The best evidence, I should think.

Q. In this statement do you not also state, "There

are now thousands of cattle and sheep annually grazing on same"—referring to the lands just previously mentioned?

A. I will state that that is the whole lands in there, that is including the odd and even sections; and the even sections, a great deal of it along the river, has all been farmed; and I told Mr. Underwood of it specifically, and said, why, certainly there is that many. There are several people run sheep there. They take them up while the pea-vine is green. This year they have had them there five or six weeks, then there was no more feed. They run sheep through there at certain seasons. He said that it didn't make any difference, if the land was agricultural, whether it was covered with a dense growth of timber, he said the land was of an agricultural character no matter how much timber there was on it; and he said that anything that cattle could run over at all was grazing land. Well, then, I said it is all that, because cattle runs all over it.

Q. Referring to the affidavit again, Mr. Gardner, you also stated in this affidavit, did you not, "That he (referring to yourself) is also familiar with and has repeatedly been over part of the North Umpqua country, being Twp. 27 S. Range 3 W; part of Township 28 S. Range 3 West; part of Township 28 S. Range 2 West; Township 26 S. Range 2 West in part. That the above area, in affiant's judgment, would run one-third agricultural land and two-thirds, or the larger part of two-thirds, grazing land"?

A. Yes.

Q. That statement is contained in the affidavit, isn't it?

A. Yes.

A. It does.

Q. Referring again to the affidavit, this affidavit states, does it not, "That affiant believes if said areas above described were subdivided into 160 acre tracts, the same percentage would obtain on an average per 160 acre tract?

A. Yes, sir.

Whereupon complainant offered the affidavit referred to in evidence as Government's Exhibit 117, to which defendants objected as incompetent, immaterial and irrelevant, and upon the further ground that the definitions of grazing and agricultural were given to the witness by the special inspector, Mr. Underwood, and the answer shows that it was the answer of the special inspector and not of the witness, excepting in those general terms. Which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as Government's Exhibit 117.

Whereupon witness testified that the lands that he had in his homestead, in section 18, township 28 south, range 3 west, are timbered lands, and in a general way are the same general character of land as lands in these townships mentioned as to the timber, but he picked out

the only piece in there, that has less timber than there is on either side of him, so that he could clear it. It is in the range running through the Oregon and California, but is not of the same general stand of timber; it contains the same Douglas fir and incense cedar and the same sort of timber as the other lands. He took this homestead up to make a home for himself, for settlement purposes. His acquaintance is principally with the southern part of this grant. He is not so familiar with the northern part, only from occasional trips to look over an individual claim.

Whereupon, on re-direct examination, witness testified that what he saw of the northern portion is on the Calapooia and in the Rock Creek country and on the north Umpqua, and it is heavily timbered and rougher than his part of the country.

Q. Now, referring to this Government's Exhibit 117, who was Mr. Leonard Underwood?

A. Why, Mr. Leonard Underwood was special agent of the General Land Office. He was down there procuring evidence, I guess, for the Oregon and California Railroad suit.

Q. That is, for this suit, on behalf of the Government?

A. He told me that he would want me up here as a witness, and I told him that the land cleared, agricultural land, was very limited in all of it. He said any land which was fairly level, or could be farmed after

the timber was removed, was agricultural land.

Q. In other words, he gave you a definition of what he claimed agricultural land was?

A. Yes, sir.

Q. And he gave you a definition of what was grazing land? What did he tell you?

A. He did, in so far as I told him the sheep came up in there for a certain time of the year every year, and cattle did, all over the grant.

Q. Didn't he tell you that grazing land was any land that sheep or cattle could run over at all and feed on?

Objected to as leading.

A. Well, now, I couldn't state, Mr. Fenton, that he told me that. He said anything that you have ever seen cattle or sheep going over, but he didn't state it as broad as you did. He didn't tell me that.

Q. If he defined grazing land as anything that you have seen cattle go over or sheep go over, that would be his definition of grazing land, as you understood it in this affidavit?

A. Yes, sir.

Whereupon witness testified that the cattle that grazed over the lands of the South Umpqua country are owned by Ben Nichols, of Riddle, and Hi Acker, of Acker's Butte. He is out there in township 29 south, range 1 east. He runs about 65 or 70 head of cattle in

that township. Further east, Wright Brothers and Thompson have about 75 or 100 head of cattle, which they run over that whole country, and by what was known as the Short Ranch, now owned by two parties who have bought it, whose names he does not know. They run a couple of hundred head—they range over probably five or six townships. Most of these lands over which they range is deeded. They took these lands when they went in there; in township 31 south, range 1 west, all of section 15, half of 16, 9 and 4, and part of 3, were bought—all the open land was bought that they could run cattle on, and that is where they run most of their cattle.

Q. Is it or is it not true, if not, state exactly what the fact is, that the whole country is open wild country, in a state of nature, excepting here and there small tracts that may be enclosed along the creeks and streams, and that everybody's cattle in that whole country, local or otherwise, are during a certain season of the year, driven up there and allowed to roam at large over the pea-vine and such stuff as there may be in the woods and on the burns? State what the fact is.

A. They are.

Q. You may answer.

A. It is, yes, sir. The cattle are taken up into the forest reserve; but the local cattle, most of them, will follow the feed. In other words, they will work up in June and July up into the mountains, and when the pea-vine goes, then they work down, and in August

and September they will work on the creeks, where they can get lush feed and everything, and then after that they work down onto their patented lands.

Q. What character of vegetation is there on these railroad lands, upon which stock could graze and upon which they do graze at any time of the year or at such times of the year as they are there? What kind of feed is it?

A. Well, on the O. & C. lands inside of the grant, there is very little bunch grass. The majority of the time they live on the pea-vine.

Whereupon complainant objected to the foregoing questions as leading.

Whereupon witness testified that this grazing takes place from one to three months, from the time the pea-vine starts to get ripe in June, up to some time in August, and they follow the ridges and burns, and then get the pea-vine.

Q. Suppose an actual settler wanted to go in there and tender the company $2.50 an acre under the act of Congress, and claim to be a purchaser of 160 acres by legal subdvisions, what is the fact, if you know, as to whether that 160 acres would or would not afford pasturage of any kind for the support of any kind of stock, and if so, about how much stock, and for how long a time?

A. Well, I have on my place—speaking personally—I have four or five head of stock, and they eat about all that I can get.

Q. Yours is a very good place, down on the bottom in part?

A. Mine is on the creek bottom mostly.

Q. But I am speaking now of 160 acres applied for by some actual settler, under this so-called act of April 10, 1869, to buy it at $2.50 an acre and make a home on it.

A. There isn't a place, not one place on that grant, that a person could go on and make a living, of the unsold lands.

Q. Why couldn't he use it for pasturage and get rich?

A. Well, on account of the underbrush or salal and other stuff that they don't eat, or eat very seldom.

Q. Now, isn't it true that, if he was the only actual settler in the whole township and had the balance of the lands to pasture on, he might pasture it for two or three months in connection with the rest of the grant? Isn't that true?

A. One might. He might run a small bunch of cattle.

Q. Now, if the Oregon and California Railroad Company lands were open to settlement, 160 acres to each, could four settlers occupying each section make a living for themselves or their families, either by using the land for agricultural purposes or for grazing purposes?

A. No, sir.

Whereupon witness testified that Nichols, who owns some of this cattle, lives at Riddle, about thirty-five miles from where he runs his cattle. He drives them every year into that country—the range has gone this year, and this is about the last week for the sheep to return. They were turned out on the range some of them, this spring, and some of them wander up in the forest reserve. The only persons in the sheep business are Donovan Brothers, or James Donovan, at Myrtle Creek, who runs from 900 to 1500 head of sheep for a short time in the summer. He drives them up and takes them out. His first camp is eleven miles from Myrtle Creek; the last about thirteen miles. The sheep live there mostly on the poison oak, and grass browse, and pea-vine, mostly on pea-vine. They eat poison oak like a horse, and they like it. A horse will eat it more than anything else, that is, horse, sheep and cattle. They take the sheep up into these mountains and woods as soon as they can, in the spring after lambing, and they have taken them out this year already. They are up there about two months. They have a shepherd with them, one or two men, and dogs, and hold them in there. As soon as they start to shrink, and as soon as the pasture gets so it cannot support the sheep, they take them out. It would take four or five years for anybody to go in three and get any place in such shape that he could keep fifty or seventy-five head of sheep. They would be able to do that by slashing, burning, and sowing grass seed in the burns. On burned over land, or when land would be cut, after the timber was cut and the slashing

was burned, one can sow in the ashes in the fall, and get a very good stand of Italian rye, or orchard grass, or in the low swales, timothy, which will make very good pasture. Grasses would grow in patches on the land that he thinks could not be cleared and used for grazing purposes; that which would not be practical to clear; could be grazed all right that way. Grasses on that class of land, growing among the stumps, roots and trees, if one did not overstock it, could be grazed almost the whole year. It would be impracticable to take a quarter section of land as an actual settler, slash it all off and graze it, and be able to make a living with stock, because the cost of merely burning and slashing would be so much greater than he could buy open land for elsewhere, that it would not be practical. The chief value of this grant, from his standpoint and in his judgment, is for its timber possibilities.

Q. Did Mr. Underwood tell you what he wanted this statement, Government's Exhibit 117, for?

A. He told me that it was for the general character of all the land in those townships. He didn't mention the railroad grant.

Q. Was this written out by you or by him?

A. Written out by him.

Q. And how long were you in conversation with him?

A. Probably fifteen or twenty minutes at that time, about thirty minutes, maybe.

Q. And the definitions of agricultural land and of grazing land were discussed by you and him under the terms as stated by you?

A. Yes, sir. It should have been in there.

Whereupon, on recross examination, witness testified that this land in the grant is not of the same general character as his homestead. He spent a year looking around, practically, when he came here, before he could find a piece that he could homestead. It has mountains on both sides of it. It is not of the same general character and not the same mountain range. The highest point is 241 feet from the lowest point on his place. He has between twenty and twenty-five acres of cleared land. The homestead has cost him very nearly $4,000 to get in the shape it is in now, with his buildings. He is not connected with the Commercial Abstract Company, but testified that Mr. Van Ostrand, who is the president of the Neenah-Oregon Land Company, owns a half interest in the Commercial Abstract Company, and witness worked one winter, as he was drawing his salary from Van Ostrand; he worked a year last winter for the company in the office. J. D. Zurcher, who testified in this suit is manager of the Commercial Abstract Company.

Whereupon WILLIS VIDITO, being called as a witness on behalf of the defendants, and being duly sworn, testified, that he is sixty-eight years old, is living in Corvallis, Benton County, Oregon, at present, and has lived thirty-seven years in Township 14 South, Range

8 West in Alsea Valley. Until about nine or ten years ago he farmed and carried mail; he ran several mail routes in the Coast Range in years past; one eleven years, another sixteen years, and another three years, he thinks. He was assessor of Benton and Lincoln Counties forty-two and forty-four years ago, and was Justice of the Peace in Alsea Precinct, he thinks, about fifteen years. Alsea Valley, or Precinct, is now in Benton County. He is acquainted with a good portion of the unsold lands of the Oregon and California Railroad Company in Benton County, Oregon, and has lived in the vicinity of these lands for forty years, and handled all the chittam bark for the Oregon and California Railroad Company ten years ago. He is not working for that company at present and has not been this year. He was fire warden for that company in that range, he thinks, for about nine years. The company paid him and he looked after all fires in all that country; and thinks there was about 75,000 or 80,000 acres mapped out to him that he looked after during that time. In his younger days he hunted a good deal over these unsold lands and leased these lands for the company on shares two different years, for a per cent of the chittam bark, not less than one-third, or whatever he could get. There are various kinds of timber on these lands. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of the lands within the limits of this grant, settlements thereon and public

land entries thereof. Whereupon witness testified that the timber on all the high lands is nearly all common red fir, some Noble fir, and the lower lands along the creek bottoms, is alder, cedar, maple, vine maple, cascara and various other kinds of brush and small timber. This chittam bark is the cascara sagrada. There have been great quantities of that, but it has been pealed for some thirty odd years and there is very little of it left. The chief value of these unsold lands in Benton County would be timber, nearly the total value. There are many parts of this land that is burned land, that has nothing on but fern, that comes annually. Every two or three years, fire gets in and burns off hundreds, sometimes thousands of acres. No one ever took any trouble to seed it, and consequently there is nothing on the land of any value. The only thing that the soil of this burned over land could be used for would be when it burns over sometimes to sow it to grass, that you might get some benefit out of it in the way of range. The low lands of this burned land might be used in this way for range if one could get seed on it, but he has never heard of any one sowing any seed on this burn. He has insisted that it be done, that the people over there pool together and buy seed and sow these lands in order to have range.

"Q. Now, suppose that an actual settler, under this so-called claim of the Government that the company is under obligation to sell to actual settlers at the rate of not to exceed $2.50 an acre and in quantities not exceeding 160 acres, should take a quarter section, or apply for it and the company should let them have a quarter

section of this burned over lands upon which to settle and make a home, how would that man make a living on that piece of land?

A. There is none in Township 6, 7 nor 8 West and 13 South, 6, 7 nor 8 west, in 14 South, that anybody could make a living on, either Government land or railroad land.

Q. Why?

A. Well, it isn't of a nature that they could do anything with that quantity of. I took a claim in 1872, and I couldn't make a living on that, and it was the best, I think, that was available at that time, nearly forty years ago."

Whereupon witness testified that near the divide of the Coast Range, the timber is usually pretty heavy and has very few open spaces. Further west near the line of the company's grant, is less timber, a good deal of second growth, and where second growth timber now is about the right size for piling, but not old enough, there is absolutely nothing grows. He knows of one claim that the company sold before the lands were withdrawn by the Government, that would be a very good claim for agricultural purposes. Various parties have spoken to him about that claim at different times when he was in the employ of the company. They wanted to locate on it and he thinks that the company leased that land to get twenty tons of chittam off it after a good part of it had been sold. There is some good bottom land on it. It is situated in Section 7, Township 14 South, Range

8 West. He never figured on any per cent of the lan
in Benton County that could be used for agricultu
purposes or for any useful purpose other than for ti
ber. There would be a very small portion of it th
could be utilized for such purposes. There are thousan
of acres of this land that do not have any undergrow
or pea-vine on. There is Oregon grape and salal bru
growing on high ridges and some north hills of the l
lands, but the only available substance for grazing wou
be these native running briars, which cattle live on wh
they range over it. Cattle could graze on the high lan
during June, July and August. On the low lands th
could run over it, and do, the year around. There is l
of these lands now in Township 13 South, Range 7 We
and there is not a living man on that whole townshi
In Range 13 South, 8 West there are no inhabitants
that township, either on the even or odd sections. T
reason for that is, no one is fool enough to think that
could make a living on it. There was one claim tak
in that township, which a man lived on, but he sold out
another fellow, who raises a garden there. There h
been some logging done on it, but he don't live on
There is not an inhabitant living in that township. The
lands could not be used to any extent for pastura
purposes at all, in the present condition of the lan
There are many benches in the lands of the company a
on the even sections which, if cleared, would raise grs
and might raise garden and fruit, but the expense
clearing would not justify any man to take them u
with the understanding that he would ever clear the

up. He has never had any experience or knowledge as to the cost of clearing these timber lands, this heavy timber land, in Western Oregon. He has had a few acres grubbed out of these creek bottoms, in maple and ash timber, which cost him about $80 an acre to clear up, which had never been slashed. There were standing trees here and there in the bottom land along the creek, not this big fir timber. He never heard of anybody trying to clear it by burning up the stumps or logs. It does not seen to him that any one would take chances on getting the odd or even sections of these heavy timbered lands, covered with merchantable timber and undertake to clear them. He finds that in southern Benton County, there is a good deal of land that is very rocky, close to the surface—no rocks in sight. He prospected for some mineral and found that the land is decomposed sand, rock, and wherever a tree grows and turns up, it throws up a lot of bed rock on much of that land. The land, if blown out, or where it is on low, wet land, the roots grow very shallow, and lay all on top of the ground, and those roots could be exterminated, and there is an awful lot of them, but on higher land the roots go deeper, the higher the land the deeper they go, and most of it is rocky under the surface. His knowledge of the root and soil character of this grant is confined chiefly to Benton and Lincoln Counties. He knows where the company's lines are, in Lincoln County and is acquainted with the unsold lands of the company in Townships 12 and 13 South, Range 8 West, and Townships 13, 14 and 15 South, Range 9 West. He became acquainted with

these lands and their character by looking after fires over various parts of the grant for the last ten years, by leasing out those lands for chittam, and has run lines dividing up sections, and hunted up the stakes, and knows all about it. Opposite 13 and 14 South, in Lincoln County, the company's grant only runs about a mile into that county, and there is but very little timber on the company's lands. It is second growth, what there is. Section 30, Township 14 South, has a good body of heavy old timber on it; but that is the only section along the line there of the company's grant in Lincoln County that has any timber on in 13 or 14 South. There is a little timber on section 30, in 13 South, that is good timber. Where the character of the land has no merchantable timber on it at present, there is an undergrowth of fern, salal, vine maple and cherry, and all that kind of thing. On Section 21, 13 South, the elevation is 3,700 feet. There is some pretty fair soil on that summit. It is grass land; and also in 15 South, there is a mountain range there that contains some prairie grass on it. He does not know of any of the unsold land in Lincoln County that would be valuable for agricultural purposes.

"Q. What per cent would be available for pasturage purposes, to a man who would go there and settle, and take 160 acres?

A. Oh, it would be worth something to him, because, as I say, the cattle runs all over that country. It makes no difference what the distance, nor how high it

is. They pick out salmon berry leaves on the creek bottoms, and salal, and fern, and running briers, but the briers, on the most of that country, is the only pasture there is. There is no grass—no native grass.

Q. I mean, suppose a settler would go in there and buy 160 acres, take a homestead of 160 acres, expecting to make it his home, and be confined to that piece of land to make his living, either by pasturing stock or any useful avocation relating to agriculture or horticulture, how would he get along?

A. He would be caught.

Q. He wouldn't, then, be able to make a living on the place at all?

A. No, he couldn't make a living for a family on a piece of land, unless he had money to squander and live on.

Q. I mean out of the land?

A. No, he couldn't make it out of the land. I never have advised anybody, in years past, not in the last ten or fifteen years, to ever take a homestead. I knew where there was vacant Government land, but I couldn't recommend anybody to take it.

Whereupon witness testified, that he knows of part of the even sections within the limits of this grant, where the land is chiefly valuable for timber, which had been taken under the Timber and Stone Act, and thinks that most of it was taken for this cascara bark, and after they peeled the bark off they threw the claim up, and all

that Government land was filed on along the line between Lincoln and Benton, about eight or nine years ago, and he does not think that there is any one of them living on those claims today. They were just simply vacated. He thinks only one man perfected his title. There is no one living on these homesteads taken in the last twelve or fifteen years. The homesteads were sold to timber syndicates. Some of them had cleared up five or six, or ten acres, that is, they had cut off the timber and sowed grass, and burned up part of the logs; they had timber enough on their claims, so they sold out for a good figure, and just simply left, vacated, and the timber owners own it now. Nearly the entire value of the unsold lands of the company in Lincoln and Benton Counties, consists in its timber. Whereupon on cross examination, witness testified, that he has been during the last fifteen or twenty years employed considerable in connection with these lands; during the summer time as fire warden, and during the summer season for two or three months by the Oregon and California Railroad Company. The company never tried to do anything with that chittam bark for the past eight years, he thinks. He looked after it while he was in the office, during the summer season, and tried to see that none of it was stolen off the lands; but the company never ordered him to lease out any of it, or make anything out of it. He was employed as fire warden in the summer time up to a year ago; and patrolled for the Government this season. He was fire warden, commissioned by the State Board of Forestry to patrol in the

North part of Benton County this season; that is, fire guards that the appropriation provides shall be expended by the State for fire protection. He ran a good many lines of these sections, most of them in the western part along the line between Lincoln and Benton Counties. He would sell a forty to a party for the company for chittam, and another forty or half section of the same section to somebody else, and he had to run a mile through the section, and pace it out, and give them their territory to work on. The Oregon and California Railroad Company showed these lands to him in Township 13 South, Ranges 6, 7, 8 and 9 West; and Township 14 South, Ranges 6, 7, 8, and 9 West, and the county line is a mile and a third south in 15 South. The maps the company furnished him in later years only authorized him to go to the county line, which was the south line of 15 South, and as far as the grant went west. Those are the lands that he has been more thoroughly over than others. He has just a general knowledge of the other lands. He is better acquainted with the western part than he is along the divide. There is no chittam bark on that divide, and when he was interested in working on those lines, it was the western part, along the line of Lincoln and Benton Counties. He has worked as fire warden on all of these lands in Benton County, he thinks, that is, there hasn't been fire on all of them, but he has been over all of them during that time. That is true, also, as to the grant in Lincoln County, it only runs about a mile along there. Whereupon on re-direct examination, witness testified that he thinks he has gone

over the lands, within the limits of the grant, in both of these counties sufficiently to enable him to tell whether they are timber, agricultural or grazing lands.

Whereupon DENNIS McCARTHY called as a witness on behalf of defendants and being duly sworn, testified that he is forty-six years old, resides at Marshfield, Oregon, and is a timber cruiser and that he has resided in Marshfield, Coos County, Oregon, eight years and has been cruising timber most of the time. He was in the employ of the Simpson Lumber Company when he did the first cruising in the county. He cruised for outside companies that bought timber there and the last four years he has been in the employ of the county. For timber companies, his duties were principally estimating the amount of timber on certain tracts of land and in cruising for the county, his duties were estimating the timber, classifying the land as to its soil and whether it was adapted to grazing or cultivation, etc. He also ascertained whether the land was chiefly valuable for timber. In cruising, one starts in, at the corner of the section or whatever the land is, he is working on and runs through the land. It is according to whether it is heavily or sparsely timbered. They aim to go through the timber so as they can see the whole of the timber or whether or not the land is all timbered or not and either count the trees or average it up by the acre. Where the timber stand is uniform they generaly average it up by the acre, count the number of acres on a certain tract and average up the balance, if it is uniformly timbered. In cruising for timber companies, who are either appli-

cants to purchase or wish to know the contents of their timber holdings, he uses the same methods of cruising. They ascertain the number of trees, by either counting all the timber or a certain number of acres and averaging the rest and then get the size of the trees by measurement. They generally measure down timber in order to get the size of the trees and then once in awhile the standing timber, the diameter of the stump and take that as a guide, take the down timber, giving it the same contents as they would a down tree of the same diameter. He did not use very much these volume tables. He generally used tables that he had made himself from actual measurement of timber that was down, or in logging camps where they were cutting and measuring up a certain number of trees and made a memorandum, kept a book for that purpose. He is familiar with and carries Spalding's and Doyle's rules and several of these tables and scales used by loggers and others. He understands how to triangle and obtain the heighth of trees but they never do that, they generally take the down timber and use that as a guide to the length of the trees. These methods are the most accurate that one can get, because they take actual measurement of the down timber in the same vicinity they are cruising. Timber investors buy or sell right along always on his cruises. The Simpson Lumber Company is a large corporation, has sawmills in Coos County and has been operating there for fifty years. The sawmill is at North Bend on Coos Bay. The Company has two mills, one has a capacity of about 100,000 feet a day of ten hours and the

other about 50,000 feet, he would think. There is only one more sawmill at North Bend manufacturing lumber —he believes California men own it now. It was built by some local men and he believes they sold out. It is only a small mill of about 50,000 capacity. He cruised all of the timber holdings of the Simpson Lumber Company about eight years ago. He believes that "Defendants' Exhibit 314" is a fairly good map of that section of the country. The red color on the map is the Simpson Lumber Company's lands and he is able to identify them in a general way from his actual knowledge of where these lands are on the ground. He recognizes them all. Most of these lands of the Simpson Lumber Company are steep mountain lands. The north of the map is in Douglas County. The lands in Douglas County in township 22 north, range 12 west, are all high steep mountain land. He does not know how many acres the Simpson Lumber Company owns in Douglas County. There are approximately 4,000 acres in that county, to all of which testimony complainant objected as incompetent, irrelevant and immaterial and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, the settlements thereon and public land entries thereof.

Whereupon witness testified that the Simpson Lumber Company owns about 24,000 acres in Coos County which are chiefly valuable for timber. He is acquainted with the C. A. Smith Lumber Company transacting

business in Marshfield, Oregon, where they have two large sawmills, one of the capacity of 300,000 feet board measure in ten hours and the other about 150,000 feet. He could not say accurately but the volume of lumber manufactured and shipped by the C. A. Smith Lumber Company from Marshfield, which comes from the timber on the water shed west of the Coast Range in Coos County, must be something over 100,000,000 feet a year—it is more than that, he does not know how much more it would be. He could not say how much money that company has invested in these mills and timber holdings in Coos County. It is a very large enterprise. He has been through the mills of the C. A. Smith Lumber Company and over a great deal of its timber lands. The bulk of the holdings of the C. A. Smith Lumber Company is in the southeastern part of the county and he thinks this company owns about 70,000 acres in Coos County. Some of these lands are within the limits of the Oregon and California railroad grant, heretofore purchased from the Oregon and California Railroad Company. The Simpson Lumber Company owns in Coos County about 24,000 acres. The Menasha Woodenware Company, of Menasha, Wisconsin, owns a large tract of timber formerly owned about 20,000 acres and has recently purchased another large tract there of about 70,000 acres and it has pretty close to 100,000 acres there all together. These timber lands of that company are mostly all mountain lands, principally fir timber which is the principal tree in Coos County and western Douglas County, with a little scattering hemlock and

cedar. Weyerhauser Timber Company is the next largest owner of timber lands in Coos County, owns about 25,000 acres in that county. He does not know the extent of its holdings in Douglas County. It has a large tract there. The holdings of the Weyerhauser Timber Company in Coos County are all heavily timbered mountain land. He has cruised part of the unsold lands of the Oregon and California Railroad Company in Coos County. He thinks they have cruised about 60,000 acres of them up to this time. His knowledge of the balance of these lands is just a general knowledge. He has been through the townships in which they are situated but has not cruised these townships yet. He has been sufficiently over them to be able to state, in a general way, the general character of the rest of these lands. So far as he has been through the unsold lands of the Oregon and California Railroad Company in Coos County, they are mostly high lands, heavily timbered lands, as far as he has seen them and he has actually cruised about 60,000 acres of them and these were all heavily timbered lands, and as to these that he has not specifically cruised but traveled through or over, they were chiefly timber and most all high mountain land. These unsold lands are nearly all steep mountain slopes, gulches and generally rough country. In their present state, he would not consider, that any of it would be available for agricultural or horticultural purposes and it is so heavily timbered that it would not be practical to clear the timber and cultivate it. It would not pay, he thinks, any part of it, to clear the heavy timber off

of it and cultivate it and their chief value is timber. There is a small portion of this acreage where, if the timber was cut and removed and the lands grubbed or the roots taken out, it would be plowed or tilled but whether it would produce anything to pay or not he could not say—there would probably be five per cent of it, the slopes would be easy enough or level enough to plow or till—there would probably be five per cent of that, after the timber was cleared off, that would be available for agriculture, providing it would produce crops. He does not know about that. These lands are generally about the highest elevation of any lands in the county, from 1500 up to 3000 feet, some more than that. In some places where this timber would be, that might be removed, the soil is fairly good clay soil, but the land is generally all rocky. The soil in some parts of it is very good—good clay soil, good clay loam. There is not any of it in its present state that he knows of that would be susceptible to grazing. If the timber was cut down and removed and the stumps cleared and grass was sown in the ashes, after the clearings were burned, there would probably be, perhaps fifty or sixty per cent of it that would be so as stock could range over it, if it would grow grass. He does not know as to that. What he means is, that it would not be so steep that stock could not go on, probably sixty per cent of it that stock could range over and feed on. Whereupon witness testified.

Q. Suppose that a settler would come to the company and say, "Here, I want to pay not to exceed $2.50

an acre for 160 acres of that land out there, and I want to make a home on it—I want to settle on it," and the company should sell it to him, from your knowledge of this grant, I wish you would state to the court whether or not such settler would be able, confining himself to the particular quarter section, however he might select it, to support himself and his family, make settlement there, by any means, either for grazing what few stock he might have on it, or devoting it to agricultural or horiticultural or any other useful purpose?

Q. You may answer.

A. I don't know of any that would be available or practicable for a settler to go on and make a living.

Whereupon witness testified that there is very little settlement on the even sections within the limits of the grant in Coos County. There is scarcely any settlement on the lands. There is very little evidence of any settlement. Most of that land has been taken under the timber and stone act or with scrip. The title, after it passed to the entryman, has most all passed into the hands of some of the large timber holders. These even sections that have been thus entered are all heavily timbered lands. There are scarcely any remaining even sections within the limits of the grant, not entered. It has been most all taken up with the exception of a few spots that have been burned, an old burn. What has been burned is mostly vacant and still public land. Most of these even sections within the limits of this grant in Coos County have nearly all been taken under some law of the United

States, mostly under the timber and stone act and when the entry was completed and title vested in the entrymen the lands have all passed substantially to timber investors. These lands owned by these various timber companies in Coos County, including the timber lands outside of the grant towards the Pacific Ocean owned by these various timber companies, the C. A. Smith Company and the Simpson Lumber Company and other timber investors, is most all very heavy timbered country and compares very favorably in the estimation of timber men with timber elsewhere in the State. It is considered just as good as any part of the State he believes. C. A. Smith, he believes, came from Minneapolis, Minnesota. Witness has made a few trips into Curry County, and has passed through some of the timber lands in that County. He does not remember that he has passed by or been on any of the unsold railroad lands in Curry County. He has been in township 31 south, range 12 west, which is partly in Coos County, but knows that, only in a general way, he has not cruised that township yet. He has been some on township 34 but has never been in township 35, range 11. He has been in the north third of township 31, range 13. The general character of those lands that he has visited or seen in Curry County is that they are all on high hills, steep, rough country, and the timber is fairly good there. The land's chief value, as far as he has seen, in Curry County was for timber. He could not see any that was available for agricultural purposes. He has been cruising for Coos County four years to arrive at the valuation of the

lands for assessment purposes, to classify and value the lands as for assessment purposes.

Whereupon defendants offered in evidence "Defendants' Exhibit 314" to which complainant objected as not properly identified, which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he is personally acquainted with Charles A. Smith of the C. A. Smith Lumber Company and has been at all the camps of that Company, but could not say as to the number. The Smith-Powers Logging Company is C. A. Smith and Mr. Powers, residing in Marshfield. That company logs for the Smith mills. He has seen the publication called the "American Lumberman," published at Chicago. It is considered the best publication in the timber interests that there is, on the Pacific Coast or elsewhere in the United States. A photograph on the front page of the issue of November 11, 1911, of the "American Lumberman" is the photograph of C. A. Smith, he believes, and he recognizes that document as the "American Lumberman" of November 11, 1911. The photograph or picture shown at page 48 looks like that country in a general way, but he cannot see any particular marks that would show it was taken in Curry County for sure, but he can see that it is a forest country just the same as it would be. They have plenty of that kind of timber shown at page 49 of this magazine. The tim-

ber where the man is standing between the two large trees seems to be a fairly good stand of timber for that locality. He has seen a good bit of the Port Orford Cedar in Curry County and the picture at page 51 is a good picture of the Port Orford Cedar. The picture at page 53 looks as though it might have been taken in that country and he has seen such trees as those of that timber shown on pages 54 and 55, and the picture on page 55 is a good picture of the spruce timber growing in that country. He has cruised all that spruce timber where the camp is situated. They cut such timber as that shown at page 59 of this publication. They cut a good deal of that high timber there of that heighth. The picture at page 61 is a good picture of that section as also the picture at page 63 which is a fairly good and typical illustration of what is on the ground after the timber is felled. The picture at pages 64 and 65 correctly represents the situation as it actually is. He recalls a large number of young men that were sent out to take lessons in forestry and reproduction of forests from some of the forests of Coos County, but he does not recall where they came from. He knows there was a large number there, this year. The map at page 66 is a good map of the timber holdings of the C. A. Smith Timber Company in that part of the country and the picture at page 67 seems to be a good picture of that forest country. The profile map or panoramic map at pages 68 and 69 looks as though it was a good picture of that country in general outline and he has seen such timber lands in that section as shown on page

70 of this publication which seems to be a good photograph. He recognizes the picture at page 73 as a picture of camp 5 showing the operations of the C. A. Smith Lumber Company, or logging company, and of the yarders as they call them and has seen such works, there a good many times. He has been in the mill of the C. A. Smith Lumber Company at Marshfield and the photographs at pages 87, 88, 89, 90, 91 and 92 of this publication seem to be good, true photographs of that mill. He has been at the yard shown on pages 94 and 95 of this publication and it is a good picture of that yard as it was at the time the picture was taken. There is not so much lumber in that yard at the present time. The picture at page 99 is a good picture of portions of the timber there of the C. A. Smith Timber Company. He recognizes these pictures relating to the mill and the timber lands of the C. A. Smith Timber Company and has seen this before. They are good pictures. He recognizes the picture on page 111 of the modern steel steamship "Nann Smith," owned and operated by the C. A. Smith interests. That ship is still operating there.

Whereupon defendants offered in evidence all parts of this publication recognized by the witness and particularly all of the article describing the C. A. Smith Lumber Company and its interests at Marshfield, Oregon, in Coos and Curry Counties, Oregon, to which complainant objected as incompetent, irrelevant and immaterial and not properly identified, excepting the photograph of C. A. Smith and the C. A. Smith lumber-

ing plant at Marshfield and the vessel "Nann Smith" mentioned by the witness, which exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon, witness further testified upon cross-examination as follows:

Questions by Mr. Rabb:

Mr. McCarthy, you testified in relation to some of the photographs in Defendants' Exhibit 315?

A. Yes, sir.

Q. Now, so far as the photographs of the lands are concerned, you cannot identify those lands as being Coos County lands, can you?

A. No, not as——

Q. They may be in Bohemia somewhere?

Mr. Fenton: Read that question and answer. He interrupted him.

Question and answer read.

Mr. Fenton: Now, I would like to have your answer.

A. Some of the pictures of the timber land, might be taken in other parts of Oregon and show just about the same, but we have such timber there as is in all those pictures.

Q. You don't mean to identify those photographs as photographs that were taken in Coos County?

A. I don't suppose any one could do that. No one

could do that, you know.

Q. You didn't take the photographs?

A. No, I didn't take them.

Q. And don't recognize the places as places that you are acquainted with?

Mr. Fenton: Object to that because it is not divided. The witness says he didn't take the photographs, and he could answer that No. The other part of it is another question, as to whether he recognizes any of the spots that those photographs show—logging camps, etc. You may answer.

A. Well, there's some of them I can recognize the places. But in the standing timber, where there isn't anything but the standing timber, of course, that I couldn't do—recognize the spots.

Mr. Fenton: Speak a little louder.

A. Where it is pictures of the standing timber, I cannot recognize any particular objects in the pictures that I could say positively they were taken there.

Mr. Rabb: I move to strike out the exhibit from the record as improperly identified, witness not being shown to have knowledge of the matters contained and stated—of the photographs shown by this exhibit.

Mr. Fenton: Counsel for defendants give notice that they will call another witness to further identify these photographs as being photographs of what they purport to show timber lands of the C. A. Smith Lum-

ber and Manufacturing Company—and that these are all places in Coos and Curry Counties.

Whereupon witness testified that he had lived in Oregon eight years, residing in Minnesota and Montana before coming to Oregon. He lived about ten years in Minnesota and worked in the timber camps for awhile first and then started timber cruising there. He was employed in Minnesota by different companies,—The Musser-Sauntry Lumber Company. He was raised on a farm and worked in the timber woods more or less all his life since he was able to do anything. He was raised in New Brunswick, Canada, which is a timber country. The farms in his native country were farms that had been cleared. Timber had previously grown upon the lands. The O. & C. lands that he cruised in Coos County were all high mountain lands. He cruised first in township 24, 25, 26, and 27, range 10 west; township 26 south, range 9 west, west half of that township; township 29 south, range 9 west, all of that township; township 21 south, range 10 west, what lands the company has in that township; two sections in township 26 south, range 11 west, he believes a little more than that—that is about all he guesses. These lands are on the west of the Coast Range. Practically all of the timber lands in that section are owned by large timber companies, both in the even and odd sections. He cannot recall any particular pieces of the lands of the Oregon and California Railroad Company in Curry County that he has been on. He only knows the general character of the formation of these lands and all

the lands there in Curry County are up on high, rough, hilly ground, very rough country there, aside from little valleys. He does not base his knowledge as to these lands solely upon his knowledge of the lands in Coos County. He has been through Curry County and may have crossed over some of the railroad lands in Curry County, but he could not recall any particular quarter section or anything of that kind, that he has been on; in a general way he knows these lands. All the lands in Curry County aside from the little strip along the coast are very high and mountainous and rough. He has never been over these lands in Curry County that are involved in this suit. He has been through the country enough to know what they are, in his opinion. He did not testify that he had never seen these lands, only in a general way. Vegetation grows very heavy thereon. All the lands on the western slope of the Coast Range are very prolific in their growth of grass and trees and vegetation grows very heavy there. On the low bottom valley lands along the rivers grasses and crops of all kinds grow well, but in the timbered area there, there is practically no grass growing in the timber. The timber is too heavy and dense for any grass to grow. He does not know whether the heavy growth of timber prevents its growth but the grasses do not grow in the timber there as it does in other places where he has been. The entire country in Coos County was originally most all timber. Along the bottom lands the heavy fir timber did not grow as it does on the mountain tops. It was more of myrtle, maple and alder and such timber

as that, which is not merchantable timber as a rule, growing mostly on the bottom of the Coos River and the Coquille River and is not merchantable timber, as a rule, it is a different class of timber, different soil. There is nothing in the formation of the soil that would prevent vegetation or grasses growing on these lands involved in this suit, on parts of them the soil is fairly good, where it is not too rocky, on the high mountain slopes some places there is nothing but bed rock, there is no soil on them, other places are very rocky, such as boulder rock and some of these townships, for instance in township 27 south, range 9 west it is not altogether a lava formation, but is something similar to that and the soil is very rocky. There isn't practically any soil on it. It is all a small shale rock. This is in township 27 south, range 9 west. It is very heavily timbered down there. There are parts of the land that he has cruised that is good soil. The soil is good wherever there is soil that is not too rocky. It does not always take good soil to raise good timber because one will see very large timber growing practically on rocks. They root almost on the bare rock. This large timber grows on almost barren rock, in some places. He is acquainted with the newspaper called 'The Coos Bay Times, Marshfield, Oregon," and it is a paper of general circulation in Coos County. The photographs in that paper indicated as "Coos County Strawberry Field" might have been there. They raise strawberries there and there is some timber there in the background of the strawberry patch. He cannot tell from that photograph whether

it is heavy timber or not. It may not be saw timber. The photograph "Pear Tree in Blossom" might have been there, they raise some pears there, not very much. They do not raise them to a very large extent. In places there are pears. He recognizes the photograph "Anson Rogers' Beautiful Farm Home on South Coos River" in this same paper as the home of Mr. Rogers in Coos County. It looks very much like it anyway and is a photograph of his home farm there. He cannot recognize the photograph "Another Coos County Farm" in this paper as any particular farm, but it might have been there. There are such places. He recognizes in this paper the photograph "Panoramic View of Stephen Rogers' Farm" as a photograph of Mr. Rogers' farm in Coos County and he recognizes the photograph "Myrtle Lodge, Home of Mr. and Mrs. F. E. Rogers, on the South Coos River" as the photograph of the home of Mr. and Mrs. F. E. Rogers. There is timber back on the hills back of the farm, as shown by the photograph, and there is some growth of timber or what appears to be perhaps logged off land, but there is no land cultivated that was logged off. There was some they used for grazing land on the hillside there on the slopes. It is fair grazing land on the lower slopes. The photograph in the lower left hand corner on the same page of this paper entitled "Coos County Farm Scene" he recognizes as a farm scene in Coos County. It might have been there and the photograph "Panoramic View of Stephen Rogers' Farm" looks something like dairy farms down there.

Whereupon complainant offered said paper in evidence marked "Government's Exhibit 118" which was received and so marked and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon witness testified that he does not know exactly the population of Coos County. It must be somewhere about 12,000 he thinks. The average price of the good bottom lands in Coos County along the river is somewhere about $70.00 per acre. He believes they ask higher prices than that for some of it along the rivers. Dairying, farming, fruit growing, lumbering, coal mining, market gardening, cattle and poultry raising are all carried on to some extent in that county, he believes. He has been a timber cruiser for the last fifteen years and has examined lands largely for big timber companies who were not interested in obtaining agricultural land. They do not want agricultural lands. In working for these timber companies he examined a piece of land with reference to the timber. They must always report in making cruises on the possibilities of the land, whether it is suitable for agriculture after the timber would be removed from it. He cannot recall, only in a general way, to what timber company he ever made a report on the agricultural possibilities of the land after the timber was removed in Coos County, he generally put it in his reports of any land that he ever examined, the character of the land and made a topographical map of the lands that he examined. He always has done that. At times he may not have done it. The

principal thing in cruising lands for logging companies, examined by him was to examine as to the timber and the logging facilities only. He did not consider the agricultural value of these lands he examined in Coos County while he was working for the logging and timber companies so much as they do now since he has been working for the county. In a general way the topographical map always shows the slopes, whether they are high or steep. Most always he made out his report whether the land was suitable for agriculture or grazing after the timber would be removed, or whether it was very high, rough and rocky. He is not speaking of the county, but in a general way, all estimtaes that he made or ever made. He made written reports. As to all the land he cruised for the Simpson Lumber Company he made topographical maps of each forty acres. In a general way he believes that the reports will show whether it was agricultural land or not. He cannot say that he specifically reported whether each subdivision was suited for agriculture or not, he could not say in that report. He was not so particular at that time as he is now. Whereupon witness testified:

Q. Don't you know, as a matter of fact, Mr. McCarthy, that the Simpson Lumber Company was not interested a particle in the agricultural character of that land?

A. No, that wouldn't make any difference. A cruiser's report should show that anyhow, if it is right.

Whereupon witness testified that in making his

cruises for the county his reports show whether the land is agricultural land and he classifies that in its present state and shows whether it will be suitable for agricultural or grazing lands, or whether it might be, after the timber would be removed—that is shown on each forty acre tract in a place provided for in the report by itself aside from the timber in the report blank. In the report blank, there is a place for inserting whether it will be agricultural land when the timber is removed. He worked some for other timber companies besides the Simpson people. He cruised some for C. R. Smith, the Menasha Woodenware man, but was not with them very long. He picked up some timber for them, sold some timber to them, but not very much. He did not sell them any logged over lands, he sold some lands of the Simpson Lumber Company, part of which had been logged over. The Woodenware Company understood that part of the lands sold to them was timber, but they did not understand that all of the lands that they purchased were timber. They had their own man cruise the lands. Their own cruiser came there and cruised the lands. He cruised the lands first but they sent a man there before they closed the deal to cruise it. They had two or three men on it of their own. There is considerable agricultural land around Myrtle Point and there are several little towns down in Coos County. Myrtle Point is somewhere near or in township 29 south, range 12 west, but he does not exactly remember without looking at the map. There is no railroad running into Coos County from the outside. There is a short local railroad

from Marshfield to Myrtle Point. Transportation coming in from the outside is only by water. Title has passed from the Government to practically all of its lands in Coos County there, the even numbered sections. There is very little vacant Government land in the county. Most all of that was taken before he came into the county. There is a little agricultural land around the town of Sitkum, in Coos County. There is not any land that would be very easily cleared and cultivated in the eastern part of the county. There is a little strip in the valley along the Coquille River at the town of Sitkum in township 28 south, range 10 west. It is a very little narrow strip. Bridge is in township 29 south, range 11 west, somewhere near there. He has never cruised very much right around there near Bridge. There is a little strip of valley along the river where there is some agricultural land. He does not know where Bancroft is. It is a little postoffice station. He does not think there is any town there, but he does not remember ever being there. He knows there is a place called Bancroft there somewhere. He knows Gravel Ford, there is some agricultural land around there. There are a good many streams running through Coos County, branches of the Coquille River. There are not many that run into Coos Bay except the Coos River. There is some agricultural land down close to the mouth of the streams. There is considerable bottom land but after one goes up a certain distance, the valleys are very narrow, just narrow strips. There is quite a little bottom of agricultural land along the east fork of the Coquille River down there at Gravel

Ford. There is quite a little bottom of agricultural land in the northern part of Coos County north of Myrtle Point. In the timber area, there is scarcely any range, there is considerable range along on the east branch of the Coquille. The timber is too thick. The grass does not grow and cattle do not range on the northern part of the county at all.

Whereupon upon re-direct examination witness testified that he started four years ago in April cruising the timber lands of tax payers in Coos County each year for the County of Coos and put in all the time for two years and practically ever since, with the exception of about three months last winter. He found out who owned the lands by generally checking from the records or sub-divisions, generally checked from the records in the Court House and marked off the sub-divisions and the owners, generally had a map of the owners, ownership maps of all the townships in the county. The county did not furnish him an ownership map, he made these maps generally himself from the records. The county made an assessment of these lands to the owners each year based upon his cruise. He thinks 60,000 acres of the unsold lands of the company in Coos County would be very near what he had cruised, it might not be exactly that. While cruising these lands and the other timber lands in the county, he became, in a general way, familiar with the other part that he did not cruise. A couple of townships that the company had lands in, that he had not done very much in, he has not cruised them by forties. He has a sufficient or general knowl-

edge of the part that he did not cruise, he had been over it more or less, and had such general knowledge as would enable him to make a fairly good estimate of the character of the soil, of the timber on the lands, and its general conditions. Coquille and Coos Rivers and other short streams are heading, with their branches, in what they call the Coast Range of Mountains, the west slope of the Coast Range. He would guess that Coquille, the County seat of Coos County in a straight line, is about eighteen miles to the mouth where is empties into the Pacific Ocean. Myrtle Point, on the Coquille River by railroad, is about thirty miles from Marshfield, and Coquille, the County seat to Marshfield by rail is about eighteen miles, and he thinks they call it nine miles from Coquille up to Myrtle Point. He thinks that Coquille has about 1,200 people and Myrtle Point about 1,500. Myrtle Point is the last town of any size on the way from Marshfield, by way of Myrtle Point to Roseburg. After one leaves Myrtle Point going east he has to go by stage or mountain road to reach Roseburg through the Coast Range.

Q. "What is the fact, if you know, as to whether or not practically all of the argicultural, dairying and fruit lands of Coos County are situated on the bottoms of the Coos River, the Coquille River and other streams leading into the Pacific Ocean or into these streams, in the western part of Coos County and outside of the limits of the grant?

A. Yes. All the land that is cultivated in Coos

County is practically on the river bottom."

Whereupon witness testified that these are all west of the west boundary line of this grant involved in this suit that he knows of. He does not know of any that is not. He thinks this "Government's Exhibit 118" "The Coos Bay Times, Marshfield, Oregon, Evening Edition" was published sometime in January, 1912, or early last winter. The photograph "Anson Rogers' Beautiful Farm Home, on South Coos River" is on tide water of the Coos River. The tide does not ebb and flow over these lands that are shown that appear to be diked in that picture. That tide land or tide stream must be about fifteen miles from Marshfield; from the Pacific Ocean to the mouth of South Coos River is about six miles by water. South Coos River empties into the Coos River about ten miles from Coos Bay, right below that Anson Rogers' farm shown in that picture, a short distance. Marshfield is on Coos Bay. Coos River empties into Coos Bay. South Coos River empties into the bay right west of Marshfield on the east side of the Bay. Marshfield is situated on the west side of the bay. The character of this land showing the beautiful farm home of Mr. Rogers is what they call the bottom land of Coos River. It is not tide lands. Most any kind of grass grows on it, but he could not say whether it grows before it is cultivated. The "Panoramic View of Stephen Rogers' Farm" is right across on Coos River a short distance above the Anson Rogers place shown in the picture. There is no tide water running through this farm of 740 acres with 220 acres in cultivation described

in the article. The tide ebbs and flows in the stream that runs through this land. The heighth of the tide there is ordinarily about seven feet at this point where these farms are. These farms must be ten miles away from the western boundary of the line of this grant to the nearest point. There are no wagon roads hardly on Coos River, and it would be about the same distance by wagon road to the nearest west boundary line of this grant, from the nearest point of these farms. There are really no wagon roads on Coos River above tide water. They go by boat or launch and the transportation is most all by launches on the tide water of these streams. Above these farms the valley narrows down to a small gorge and there is scarcely any bottom land above tide water in Coos River. The Coquille River empties into the Pacific Ocean south of Marshfield and there are small river steamers running from Bandon to Coquille City. There is tide water in Coquille River above Coquille City, but he could not say what the ebb and flow of the tide is as far up the river as Coquille City, it must be four or five feet, probably more than that. The tide affects the waters of the Coquille River as far east as Myrtle Point. Myrtle Point is very near the limit of tide water, except in very high tides. These farms and dairy ranches and fruit farms lie outside of and west of the grant, towards the Pacific Ocean. Sitkum is a ranch farm house and a postoffice there and has a population of probably ten or twelve, along there. He could not say how long it has had a postoffice, but thinks it had a postoffice when he came to the county. There

are no stores there. There is no place of business there, only the stage station. The man that runs the stage between Roseburg and Marshfield keeps his horses there and has a ranch there. They keep stage horses there and change horses there. This stage line runs the whole year, but there is a part of the year they have to use pack horses instead of wagons on account of snow and bad roads, more particularly the snow on the mountain range, from Sitkum to Roseburg. There are two stage lines from Coos County to Roseburg, one from Coos to Roseburg, and the other from Myrtle Point. The stages pass over what they call the Coast Range of Mountains. Capa Arago Lighthouse Bridge is right west of Marshfield and below the mouth of the entrance to the harbor of Coos Bay. This Coos County Strawberry Field is not within the limits of the grant. The picture of the Coos County Dairy Scene is a tide water scene. The milk is transported from these dairy farms to the creameries and cheese factories on Coos River by these launches. On Coquille River they probably do a little dairying above tide water, on the smaller bottoms along the streams but on Coos River the transportation is all practically done on tide water by launches. There are several cheese factories, there are two or three places perhaps more that manufacture cheese in Coos County. There is not any particularly large cheese factory there that he knows of. Any of them that he knows of are on tide water. There is one on Coos River on what is called Catching Inlet, a branch of Coos Bay and one over on the Coquille River on tide water.

Whereupon on re-cross-examination witness testified that Coquille River empties into the ocean. There is not any bay there, he believes that it runs over into Myrtle Point, in township 29 south, range 12 west, and then there are branches extending out eastward into Douglas County and south into Curry County and east over the edge of Douglas and Coos Counties and that is the east branch last referred to. He is acquainted with Bridge, situated in township 29 south, range 11 west, and there are some ranches right along there. He thinks Bancroft is a postoffice, but he cannot locate that—he knows there is a place of that kind there somewhere. Etelka is in township 31 south, range 12 west, and there are some ranches there along the south fork of the Coquille River. All the ranches on the Coos River side on the Coos Bay side are practically all on tide water. There are other ranches in the western part of the county on the Coquille side on branches of the Coquille River. There are small bottoms that run up above tide water, very narrow bottoms on most all of the branches. These people would naturally build their cheese factories down at tide water in order to market their cheese. He supposes the transportation facilities on the Coos River side are practically all water. On the other side there are roads running up to all the ranches so far as there are ranches on the river. It is water transportation on Coos River. They would naturally put a manufacturing industry of any kind down near the shipping point, that is where all the ranches are on the Coos River, they would naturally put them there. All the ranches on the Coos River side on

both branches of Coos River on Coos Bay in the valleys running into Coos Bay are on tide water. On Coos River they are all on tide water. On Coquille River a large majority of them is on tide water. These are bottom farms, that is, referring to these Coos farms and on the Coquille side. The ranches around Bridge and Bancroft, Myrtle Point and Sitkum, are on bottom lands and have very little hill lands. Sometimes they clean off a small piece of the side hill for grazing or something of that kind, but they are practicaly all bottom farms in the County. These are not tide farms on tide water around Bridge or Sitkum. Tide does not extend into eastern Coos County or around Sitkum or Bridge. There is not very much tide at Myrtle Point. That is just about the head of tide water, it just raises a little there, the tide varies there at different times of the year, he is acquainted some with the variation in the tide but cannot recall the exact figures. There are three stage lines running over into Coos County, one from Drain and two from Roseburg. The one that runs from Roseburg by Sitkum runs only part of the year, they have quite a high range on the road. There had been no serious accident on the stage road by way of Sitkum but the serious accident had been on the Myrtle Point road and it is not the condition of these roads more than it is the snow, that prevents these stages from running during the winter time. The Myrtle Point stage runs all the year round from Roseburg into Marshfield, part of the time in the summer it is an auto stage. The Drain stage runs all the year round, it crosses over the Coast Range but

not so high as the Roseburg line. The Drain route follows the valley of the Umpqua River down to the Coast. There are quite a number of ranches along the Umpqua River right in the valley on the bottoms. The Coast Range varies from place to place, some places the divides are lower to get over than in other places. The Coast Range averages about 3,000 to 3,500 feet in altitude in places, that is, the divide will average that. He does not mean that that would be the altitude from tide water of the divide, the divide is broken and is not continuous.

Whereupon upon re-direct examination witness testified that the stage line from Drain to Marshfield goes down to Elkton, down the Elk Creek, a branch of the Umpqua River, and then follows the Umpqua River to Scottsburg, and at Scottsburg the passengers are transferred to a boat and taken to Winchester Bay, on the Pacific Ocean, and at that point the boat is abandoned and a stage takes them up, and the passengers are carried by stage on the beach to a point on Coos Bay, and there take a boat and are transferred by boat on Coos Bay to Marshfield. There are some ranches along the Umpqua River between Elkton and Scottsburg and from Scottsburg to Gardiner located along the river bottoms. These ranches seem to be general farming and dairying, and they raise some grain along there. He does not think there is any valley from Scottsburg to Gardiner. He does not remember any. There are places from Elkton to Scottsburg where the valley is about from a quarter to a half mile wide. The Umpqua River follows

a deep gorge from Elkton to Scottsburg and the bluffs on either side of the Umpqua River all the way down through that canyon varies from fifty to one hundred feet and then the mountains are high there. The gorge would probably be fifty to one hundred feet, but there are high rocky slopes above that—high mountains on both sides of the river. The Umpqua River practically cuts a gorge through the Coast Range. He believes that Myrtle Point is outside of the westerly boundary line of the indemnity limits of this grant. Sitkum is the eastern limit of the farm lands along that branch of the Coquille River, and is just on the eastern boundary and in the adjoining section to the Umpqua Forest Reserve shown on "Defendants' Exhibit 259." There is one store at the town of Bridge, a small, little country store, and no other business there except a little farm. He could not state the number of acres of farm land there at Bridge, little farms extending up the river from there, little narrow strips of bottom along it, he could not say how many acres there would be. Bridge is located on the middle fork of the Coquille River about twelve miles from Myrtle Point. It is a mountain stream, and at Bridge it does not narrow into a gorge, it is not navigable and you could nearly jump across it in summer time, in winter time there is quite a lot of water in it and it is a swift stream. He thinks they have driven some logs by there from above. The C. A. Smith people get most of their logs by logging railroads. Formerly they got most of them down there from the mountain streams, they would roll the logs down by the mountain streams, but the

Smith people get most of their logs by railroads. Logging down these streams is practically abandoned. They use donkey engines to haul the logs into the streams, a short distance from the streams and a logger can move a log with a donkey engine and cable without resetting his engine, about a quarter of a mile. If he wanted to move it farther, he would have to reset his engine.

Whereupon on re-cross examination witness testified that Myrtle Point appears to be on the edge of the limits of the grant, by reference to "Defendants' Exhibit 259." Myrtle Point is an agricultural town depending upon agriculture. There is a sawmill there. Local people have a sawmill there, but he does not remember the name of the company. That mill cuts about 40,000 feet in ten hours and he supposes employs fifteen or twenty men. There are other farm houses close by Bridge that probably get their mail there, but right in what is called Bridge he does not remember of more than a couple of residences there. There are probably a couple of houses within a range of a quarter of a mile of Bridge.

Whereupon J. F. NELSON, called as a witness on behalf of defendants, being duly sworn, testified, that he is sixty-two years old, resides at Mulino, Clackamas County, Oregon, and is at present a farmer, and he has resided in that county about thirty-six years and occupied the position of county assessor from 1902 to 1909, and while such resided at Oregon City. His present business is farming. He is very well acquainted with the unsold lands of the Oregon and California Railroad

Company in Clackamas County, where they are, and is acquainted with the even sections within the limits of the grant and became acquainted with them before he was elected assessor. He was deputy in the assessor's office at that time, and went around over the county, and over parts of this land belonging to the company, as deputy assessor. He was deputy assessor three years, under John C. Bradley two years; under Bradley from 1894 to 1898 and Williams from 1898 to 1902. He did not assess these lands while he was deputy assessor but passed over them as deputy. During the seven years that he was assessor he assessed these lands, he was over them while he was deputy, but not while he was assessor. He has not been over and through them since that time, frequently, but he has been over them several times; they used to go in there hunting and fishing. He passed through them twice while he was deputy assessor. These lands are situated in the southern and eastern part of Clackamas County, and most of them in the southern part of the county. These lands are nearly all in the Cascade range. The majority of the land is timbered land, or land that is worthless. The majority of it is up in the Cascade Mountains. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be considered as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon, and public land entries thereof. Whereupon witness testified that the value of these lands would be

mostly for the timber on them. Most of this timber is fir and spruce, he thinks. There is very little of this land down in the valley where it could be put into agriculture, there is but very little of that, most of the land is up in the mountains where it would be beyond the settlements. In his judgment there is not over four per cent of the lands of the company in that county that would be good for agricultural purposes. Some of the land in the foot hills which is not clear back on top of the mountains, would be good for a short time in the summer for grazing, which he would judge was about twenty per cent of the whole. There is only a short time in the summer that it can be used for grazing purposes, because they would have to wait until the snow goes off. It is up near the snow line and they have to wait until the snow gets off the ground and the stuff grows. It is mostly pea-vine, wild stuff like that. He supposes horses, cattle or other stock might perhaps graze on that land for three months in the summer after the snow was gone and the stuff grew, which takes some little time.

"Q. Now, suppose a so-called actual settler or purchaser should want to buy 160 acres of land in this grazing section, to make it a home, and was required to confine his stock on this 160 acres for grazing purposes, and was not permitted to have a range outside, what would you say as to his ability to support his stock on this 160 acres? Limiting it to that 160 acres only?

A. Why, he couldn't do it. He couldn't keep his stock on it. He couldn't have feed for them.

Q. Why? Why do you say that?

A. Why, because he couldn't get the feed off that 160 acres to feed from the time the pasture gave out until it came in again the next year.

Q. How many stock would 160 acres of this land, any 160 acres of this land, really support for two or three months in the summer, if they were limited to that 160 acres?

A. There couldn't but a very few head. You see, this pea-vine doesn't grow all over. It just grows in spots."

Whereupon witness testified, that a good deal of the grant is of a rocky nature, and there is loose rock on it. It has been burned over, a good deal of it. Most of the other vegetation is this tall fern that nothing will eat. He does not know that there is any other particular vegetation. Once in a great while one will find a spot where there happens to be a little other grass. There is a good deal of salal on that ground up there. He never saw any animal eat the salal. He does not think they would eat it. Possibly goats might, as they will eat most anything. That land that has been burned over in Clackamas County might be used for grazing purposes, if there is anything on it. He would judge that about thirty-five per cent of it could be so used. The burned area is in the southern part of the grant, in Townships 6 and 7 South, Ranges 2 and 3 East, in the south part of the county. Butte Creek is the line between Marion and Clackamas counties. The line between Clackamas

and Multnomah Counties is in Township 2 South, he thinks. The line between Multnomah and Clackamas Counties runs practically east to the top of the Cascade Mountains. Most of the company's lands would be in what is called the southeast part of the county. The Forest Reserve which is at Bull Run, is close to Bull Run; part of Bull Run is in the Forest Reserve. The Cascade Forest Reserve is east of that. He has been at Wilhoit Springs, and Gowley Creek and Butte Creek. He has not been out to the head waters of Clackamas River, which heads in the Forest Reserve. He has been on Clear Creek, Canyon Creek and Cazadera, all through that country; and has been to Cherryville and Eagle Creek, all along there, and has lived in Clackamas County thirty-five years. He considers that the railroad land that has timber on it, would not be good for anything, after this timber is removed; that is for a settler or a person to buy, or for a person to go on. He would not consider that it would be worth anything, because it is so far back in the mountains that they couldn't raise anything on it to make a living on it and for the reason that it is so far back in the mountains, the soil, he does not consider it good to raise anything on, and it is so far back in the mountains, they have frost away late in the spring and early in the fall. Climatic conditions on account of frosts and elevation would interfere with the production of crops. The soil is what he calls "shot land," meaning soil that won't pulverize up like the lands do down in the valley. It works up in little bits of round lumps and dries up. Down in the foothills they raise

some garden stuff and some grain, but no one has any land up in that part, back where the railroad land is. He does not think there is any grain or fruit, to any extent, could be raised on these unsold lands if the timber was taken off. He knows this side, where they have tried to raise grain and fruit, and they raise very little. He knows by experience what it will cost to cut down and clear this land of the stumps of fir timber, because he had land cleared up, and it will cost from $75 to $100 an acre, depending upon how heavy and big the timber is. The land that he grubbed and cleared was fir and some little pine. It was just medium as far as the timber is concerned, neither heavy or light. He bought powder and had the stumps blown out.

"Q. Suppose that the land was timbered, and would carry six million feet of saw timber, board measure, to the quarter section, what would you say as to about what that would cost to get the roots out—take the timber off and get it ready so you could plow it?

A. Well, six million feet is just medium, a medium amount of timber on a quarter section. I would judge it would cost $75 an acre.

Q. Well, now, after you had cleared this land, what would the bulk of it be good for, if anything?

A. Well, I don't know where the timber is whether it would be good for anything or not. I don't think that it would raise anything worth while, that is, to pay for farming.

Q. Why?

A. Because it won't grow.

Q. Well, why won't it grow?

A. Because the soil is not fit for agricultural purposes, and, as I said before, it is too near the snow line.

Whereupon witness testified that there is a good deal of these unsold lands, after the timber is removed, that is rocky, a great deal of it; more than one-half that is up in the mountains is rocky. That is all cut up with canyons up there; wherever these creeks come, there are canyons, and deep canyons, and this timber grows right in the sides of the canyons; and there is hardly any level land, to amount to anything between the canyons. These little creeks that one sees here make deep canyons up there, and the Molalla and Clackamas and all those creeks are very deep canyons. There are no valleys to amount to anything along these creek canyons up there in the mountains where one could farm any. Clackamas County has been settled in the western part of the county, around Oregon City and Milwaukie since about 1840. Oregon City is the oldest town in the Willamette Valley; and it was the first seat of government for the Territory of Oregon, where Dr. John McLoughlin lived and died. Dr. McLoughlin was in the employ of the Hudson Bay Company first, and afterwards when he settled and took up his claim at Oregon City, he never got title, because he was not an American citizen. Oregon City is about thirteen miles from Portland. Mt. Hood is in the eastern part of Clackamas County, Ore-

gon, and a little southeast of Oregon City, about fifty miles, in the Cascade Mountains. Whereupon on cross examination witness testified that he had lived in Clackamas County thirty-five years and had been in Oregon forty-two years. He has lived two miles on the other side of Mulino, on the Molalla River, which is his post office, except six years of that time when he lived in Oregon City while he was assessor. While he was deputy assessor he went through these lands to assess the residents of owned property there. The deputy assessor doesn't assess the railroad land. The assessor himself does that in the office. He went around assessing the people who resided in the county and went over these lands in going to their residences. In visiting the settlers he passed over the railroad lands, and that is his acquaintance with them. The town of Mulino, near which he lives, is some distance from most of these railroad lands; about twelve miles away from most of it. There is a little railroad land within five or six miles of Mulino, and some right close to where he is. Small pieces, but most of the lands of the railroad company are about twelve miles away from his place. He has been over these lands at other times than as deputy assessor; he has been up there fishing and hunting, and all over the mountains. That is a great resort up in there for fishing and hunting, and when they hunt they go all over it. Township 3 South, 1 East, is six or seven miles from Oregon City, and Oregon City is thirteen miles from Portland, making nineteen miles from this land to Portland. The unsold lands in Township 3 South, 4 East is

near Cazadero. He has been all over there. There are settlers all through that country there. Township 3 South, 4 East is settled; 4 South, 3 East is settled and part of 4 South, 4 East is settled. He cannot give the sections now in 4 South, 4 East that are settled and that are not settled; but most of 4 South, 4 East, one is getting up pretty well towards the foothills of the Cascades and there is a portion of that, that is settled and a portion that is unsettled. Here and there are creeks in through there, and the best lands are all taken. All that is left in there now is something that is rough, and is not really worth taking up, because it is on the sides of canyons. 4 South, 5 East and 4 South, 4 East is the same. Dodge and Elwood are up in the foothills of the Cascades. Elwood is south of Sandy. He did not go up to Elwood from Sandy, but went in the other way. He has been all through there. These lands are very rough, cut up with creeks and canyons, and everything—all of this. A good many of these claims—part of them—are on the side hills and are worth nothing but as grazing lands. There are a good many of these settlements in through this section. They get a good piece of land in 160, and the balance of it is grazing land on the side of the canyon. These creeks make big canyons. 5 South, 2 East is a good township, that is all settled, that is good farming country in there. There is very little unsold railroad lands in that township. The company has a little piece of railroad land right here on the Molalla River, probably 30 or 40 acres in there. Section 13 is in the north end of that township, along the Molalla River, and when

one gets up there and a little back, the Molalla commences. All of the lands that are on that Molalla—there is some good farming lands on the Molalla—after one gets up a little further there is a little valley. There are good farming lands in the eastern part of this township, in 5 South, 2 East. He is acquainted with the railroad land in Section 25, Township 5 South, Range 2 East, the Southeast quarter of Section 25 is back in the foothills of the Cascades, and he could not say that he was acquainted with that specific tract. 5 South, 3 East is a settled township; not all of it, he does not mean that it is all settled; it is partly settled, there are settlers in that township. Township 5 South, 4 East is getting up into the foothills of the Cascades, there are settlers in there, it is partially settled. It is not a fact that there are settlers in all of these townships. After one goes south from 6 South, there are but few settlers. There are some settlers in 6 South, 2 East and 6 South, 3 East. He does not think there are any settlers in 7 South, after one passes 7 South, 2, 3 or 4 East. That is getting up into the Cascade Range and he does not think there are any settlers there. He would not say positively whether there were or not, but he does not think there are. He had a plat of every piece of land in the county when he was assessor for his own use, and he knew all about the land. There are some settlers in 7 South, 2 East, the other side of Soda Springs. There are no settlers in the township where Table Rock is situated. There are some settlers in Township 6 South, 4 East. Township 5 South, 5 East, is up in the foothills. It is possible there might

be some settlers in there. He cannot say exactly that there are no settlers at all. 5 South, 4 East is getting into the Cascade Mountains. 4 South, 5 East, is in the Cascade Mountains, east of Cazadero and Estacada. There are settlers in that township and a few, but not many, in Township 3 South, 6 East, which is way up in the Cascade Mountains. There are not many settlers there, he thinks. He is perfectly satisfied that there are not many settlers there, but he would not swear there wasn't. He would not be positive, but he is convinced there are some settlers in Township 6 South, 4 East. Township 6 South, 5 East, part of it is in the Cascade Reserve and part of it is settled. In Township 2 South, 6 East, Marmot is settled, and at Cherryville there are some settlers, but not many. That is in what they call the burn. Dodge is up in what they call the German burn. That has all been burned over years and years ago. There must be settlers in 3 South, 6 East. There are several townships where there are no settlers. This county runs to 8½ South, he thinks it is, and 9½ East.

"Q. Now, please examine the map, Mr. Nelson, and tell me what townships have no settlers in them, to your knowledge?

A. Well, we will say 7 South, no—none—I wouldn't say there was none in 7 South, 2 East. 7 South, 2 East, you see. Here is the county line—3 South and 7 East.

Q. That is 7 South, 3 East you are pointing to.

A. What was it you asked?

Q. I asked you just to name the townships there were no settlers in?

A. 7 South, 3 East, there are very few. I cannot answer those questions positively from my memory.

Q. You wouldn't testify positively, then, that there are no settlers in any of these townships?

A. Well, I would testify that there was no settlers in it, to the best of my knowledge; but I could tell by going to the assessment roll, I think, because we assessed. I have got maps of Clackamas County, or did have, that showed every tract of land and who owns it at the present time every year, and if I could examine them I could tell exactly what townships and everything was settled, and what was not.

Q. But from your present knowledge, you would not attempt to testify positively as to what townships had settlers and what had not?

A. No, sir, I wouldn't do that, because I don't want to testify to anything but what I know."

Whereupon witness testified that the locations of these lands in the different sections odd or even, makes a good deal of difference in the formation of the soil and in the lands; for instance, Section 3, 6 South, 5 East, might be a good section, and some other might be in a canyon or worthless. The numbering of the sections would make no difference. In the southern part of the county, covered by his testimony, there is probably no difference between the railroad lands and the even num-

bered sections. Most of the northern part, covered by his testimony, was taken up before the land grant was given to the railroad. His testimony is in regard to the railroad land, because the good land has been either taken up or bought up until one gets back into the Cascade Mountains. There is some of the land that is worthless, that they wouldn't have, even down here in 5 South, 2 or 3 East, some that is worthless, they wouldn't have it. The general character of the land is the same, whether on the even numbered or odd numbered sections, and his testimony would have to cover the condition of the country as it exists there.

"Q. You never examined this—ran the lines on this land—to see if 160-acre tracts could be selected by 40-acre subdivisions, that would furnish support for a man and his family in cultivation and use of the land?

A. No, I never ran the lines, but a majority of the land is up in the mountains, so far back that it would not support a man and his family. There is parties that have land up in this side of the railroad land that cannot make a living on their land, because produce or grain, or anything of that kind won't grow. It has been burned over, and it is poor land. Is poor land, that is, all stuff won't grow on it. Once in a while you will find a piece of land there that you can grow some fruit on, or you can grow a little vegetables.

Q. Isn't it a fact that this shot land you have mentioned is generally considered good fruit growing soil?

A. In a fruit location; but when it is too far back,

it isn't worth anything.

Q. If the altitude there is not very high, is it, Mr. Nelson?

A. I don't know just what the altitude is, but it is getting pretty well up when you get up to 6 and 7 South, that is, when you get up to 6 South, 2 East, there is a valley Wilhoit Springs is in. When you get past that, you get right up in the foothills of the Cascades. I don't know what the altitude is. I know parties that have gone on Government land in 6 South, 2 East, and tried to make a living there, and gave up, moved out, because they couldn't raise grain or vegetables to live on.

Q. You were so informed? That is from hearsay, I understand?

A. I saw it, and have been there.

Q. You didn't know anything about their uses of the land, did you? You didn't know how they cultivated the land?

A. I did.

Q. Except what you were told?

A. I knew the parties well, and knew them for years.

Q. So you would say that none of this land is susceptible to cultivation in the grant?

A. No, I don't say that at all. I don't say there is none of it at all, because there is some of it in the grant that is good land—some of it.

Q. I mean in Clackamas County, that you have testified to?

A. Yes, that is what I mean. There is some good land in this grant in Clackamas County that is susceptible to cultivation.

Q. Where is that land located, Mr. Nelson?

A. It is 4 South, 2 East, that you was looking at here—a very little. There is not much land that is good for cultivation; but this in 4 South, 2 East, is what we would call in the valley, and that could be cultivated. In Section 11, 4 South, 2 East, they have got some land there that, after the timber is removed, if a person would clean it up, it would be farm land; they could farm it. But it would cost them $100 an acre to clear it up—more than the land is worth.

Q. Your experience in farming has been principally in the valley land, hasn't it?

A. I have been around. My farming, personally, has been in the valley land, but I have lived up in the mountains, and seen where they farmed there on this burned-over land, like the railroad company has. Persons will try it for a while, and then they will give it up. They cannot make a living on it, and move out. I know of several that has done that."

Whereupon, witness further testified that there is considerable of this railroad land that is not burned over. If it had been burned over there would be no timber on it. Second growth is not considered when one is talking

about timbered lands. Of course, there is second growth of timber; but when he speaks of timber lands, he don't mean second growth. Some of the timber in those foothills is good timber. To make it accessible to market they would have to build a logging road and railroad in there. There are no streams one could run the logs down. They would have to put a railroad in there. These timber lands are about fifty miles from Portland. There are some of the railroad lands in 4 South, 3 East, that are susceptible to cultivation. Possibly there might be some railroad land there, a little in there, in Township 4 South, 3 East, that would be tillable. The railroad land, when they assessed it, if it was not timbered land, and could be cultivated, was put down in that way on the assessment roll, so that he would know what kind of land it was, but he could not remember the sections of Clackamas County; there was over one million acres in the county, and it is utterly impossible for him to remember each section, just how it lays. He has a way of knowing the percentage of these lands that are susceptible to cultivation, or suitable for agriculture, and figured it out from the assessment rolls and his own personal knowledge. He has been over a great share of the land himself. A good deal of the land in Township 5 South, Range 3 East, is settled and possibly there might be some tillable land in the railroad company's land. He could not tell about Section 7. He does not remember the sections in each township, just how they are. Township 5 South, 3 East, is out about Canyon Creek. Some of the specific tracts he could testify to, from his

personal knowledge, because he knew the sections and knew the land, where it is; but as a general thing, he wouldn't do it. That is only in the southern parts of the county. He knows that land is worthless. He can testify to a good deal of that land in the southern part of the county as worthless. He can testify that the unsold lands in that vicinity generally, because all of the unsold lands are unfit for cultivation. A person couldn't make a living on it; if it were cleared up a person couldn't make a living on it. He does not mean that his testimony shall go to all the lands in Clackamas County to that effect, just the lands in the Cascade Mountains, that are so far back they are not worth cultivating—a person couldn't make a living on them. Of course, they have good land in Clackamas County, a little of it, but not much; private individuals own most of it. There are settlements running up into these townships, within which these lands are situated and until one gets too far south. In 6 South, 2 East, there are some little settlements, and in 7 South, 3 East, a very little. Butte Creek cuts across through there and cuts off some of those two townships, and puts it in Marion County. There is a good deal of livestock raised in Clackamas County. There isn't near enough stock raised in that county to supply the markets. There is a good deal of stock in the county—there is a good deal of stock bought outside of Clackamas County for the markets here, and after one gets back in the foothills there isn't so very much stock raised. Mots of the sheep and cows from Eastern Oregon range on the Forest Reserve. He does

not think the unsold lands in Clackamas County would make a good sheep range, people never take any sheep up there. There is a good deal of land in Eastern Clackamas County that is not in private ownership, there is quite a lot in Eastern Clackamas County outside of the Forest Reserve, he could not tell how much there is. There is considerable fruit raised in Clackamas County, but he does not think considerable fruit is raised in the vicinity of these railroad lands; or very much in the eastern or western edge of the lands in the grant. As a general thing farmers have a little orchard for their own use, and that is about all the fruit there is raised around there. He has heard of the Hood River fruit country, at Hood River, Oregon, on the slope of Mt. Hood, part of the Cascade Mountains, but does not know whether it is generally recognized as one of the finest fruit countries in the United States. He thinks they haven't tried it. People who want to sell lands will say that it is good for a good many things that it is not good for. He does not know whether the Hood River fruit country is producing good fruit now or not. He would like to say in explanation a little more about the Hood River country. When asked the question he didn't understand about the Hood River fruit country. He was thinking of Mt. Hood. The Hood River fruit country is, of course, a good ways from Portland, on this side of the Columbia, across the Cascades. He knows all about that country. Mt. Hood is situated in Township 2 South, Range 9 or 9½ East, in the eastern end of Clackamas County. Clackamas County runs to

the top of the mountains. He has been up to the Hood River fruit country and knows that it lays in the Cascades. He does not know how far from Mt. Hood the fruit country is, he could not say in regard to that. Mt. Hood is in 2 South, 9 East, right on the edge of Clackamas County; 9 East is 18 miles east; 2, 3, 4, 5, 6 and 7 South, Ranges 2, 3, 4, 5 and 6 East, wherein the railroad lands are located; Mt. Hood would be 18 miles east of these railroad lands. He does not know the distance from Mt. Hood to the Hood River lands. The Hood River lands are altogether in different shape from the lands on this side of the Cascades. Hood River is down on the Columbia, and naturally would be good fruit land, the company's land is up on top of the Cascade Mountains, where he don't think it would be a fruit country at all. He couldn't say from having seen Mt. Hood, which is visible from the fruit lands in the Hood River Valley, and the lands of this grant in Clackamas County, what, if any, difference there is in the distance from Mt. Hood to the Hood River fruit country. He really hasn't any opinion, because he does not know anything about it, and cannot tell. He has been to Hood River several times, but never paid any attention to the distance between Hood River and Mt. Hood. He knows that the Hood River fruit lands are in the foothills of the Cascades. These lands of the railroad company are about on top of the Cascades, and the Hood River lands are down in the valley, on low ground next to the Columbia River, and that makes a great deal of difference. It is a fact that the Cascade Mountains, the foot-

hills commence at the Columbia River, at the town of Hood River, and gradually go up to the top of the mountain. There isn't much of a foothill to these fruit lands. It isn't very far from the Columbia River up to the fruit lands in Hood River; they are not much higher than the Columbia River. Some of these fruit lands are practically all on hillsides, on rolling land, and some of them are right on top of the flat; table lands, gradually rising—flat lands up from the river. There is no river flat, but the Columbia would naturally be the level. He does not know how far these fruit lands extend back. He was up on the first bench and went over it. He never saw any fruit growing along on the flats of the Columbia River. He was not up there. He does not know as to whether the flats along the Columbia River would overflow at this place. He does not think the Columbia could get high enough to overflow them. It is rather steep from the Columbia River up at Hood River and along there. It is not straight up. They have a wagon road up there. It is a steep hill. He never paid any attention to how that land lies towards Mt. Hood, but it naturally gradually ascends to Mt. Hood; it would have to do so. He could not tell if that is a broken country, as he never was outside of the town of Hood River, up on the top of it. It is a broken country when one gets up in there. It might be broken at the river, and still when one got up on the first bench, there might be a little stretch of level land there. He never tried to raise any fruit or vegetables, or any grains, or agricultural products of any kind, in the vi-

cinity of or on any of these railroad lands, but he is well acquainted with persons who have, and has been at their places. These persons tried to raise fruit there. He does not suppose they were experienced fruit people. The names of these persons were Mr. Paynter, Mr. Russell and Mr. Davis. Russell lived there and Davis lived there, about fifteen or twenty years, perhaps twenty-five years, and were old settlers in that country. They had to go into the cedar timber and make shingles to make a living. They couldn't make it off their land. He knows that because he was clerking in a store, and received the shingles from them, and knew all about it. He has been all over their lands and knows all about it. He knew all about their financial condition, from having clerked in a store where they bought groceries, and being up on their farms. He has been up on their farms while he was in the store and after he was out of the store, when he moved into Clackamas County. They lived up there fifteen or twenty-five years. When the timber and deer ran out, so they couldn't make shingles and get their groceries, they moved out. They have all left there. He thinks they have been out of these perhaps fifteen years or more. He cannot give the section where they lived, but they lived in 6 South, 2 East. He does not know the section they lived on. He thinks they both lived in the same township and range, they were quite close together. They lived there in 1876, and he does not know just when they left. He came down here in Clackamas County. He knows they have been gone—Davis has been dead a good many years, but his family

left there. Russell is living now, and he left there quite a good many years ago. He has been on Russell's farm. Russell tried to raise grain, hay and oats for his cattle, and the oats would grow about a foot and a half or two feet high, where they did grow, and the fern would grow a great deal higher. He never got the ferns out of the ground. Davis died down on his son's farm in the valley. This fern land is not generally recognized as good vegetable land, even when it is cleared. Some of it is, but fern will grow very large where one cannot grow anything of vegetables, or fruit, or grain, to amount to anything at all. One generally finds ferns in rich, loamy soil most all over Oregon. One will find ferns where the land is not all rocks, but where it is rocky gravel, fern will grow most any place. It will go down to moisture fifteen or twenty feet, the roots will. He does not know that a number of the best fruit farms in the State of Oregon are on fern lands.

Whereupon J. T. GRAY, called as a witness on behalf of defendants, being duly sworn, testified that he is forty-five years old, by occupation a farmer, and has lived in Township 12 South, Range 6 West, in Benton County, Oregon, where he has lived for fourteen years, about fourteen miles or thereabouts from Corvallis. He has been over about half of the unsold lands of the Oregon and California Railroad Company in Benton County. He first hunted over them, and this summer he was out a month and a half as a fire patrol. He traveled them as a fire patrol for the Oregon and California Railroad Company, to protect their timber and

other timber as well, from fire. Part of these lands are covered with fir timber, and part are burned. To which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that about three-quarters of the lands that he had traveled over was timbered and its chief value was its timber. Some of the lands he had visited were burned over; he could not state the number of acres, but would say there is a good scope of country, probably ten sections, which had been burned over. The character of some of this soil is gravelly, and other is more of a clay soil, while some of it is loose soil, with fern in it. Most of the vegetation grown on this land is fern and salal and some portions of it has grown up to brush. He would say that of the entire holdings of the company, both timbered and burned over, that he has visited, there would be not over fifteen per cent suitable for agriculture or horticulture, or any useful purpose, other than the timber that is on it. He would hardly know what use to put these burned over lands to, but these few settlers who have settled between the railroad land back of the peak, have tried to run a few goats, with out-ranges, but he does not know as to their success. There is very little grazing on these burned over lands; the vegetation is fern with a few patches of peas early in the spring. What pea vines there are, are only in

small patches. These pea vines only afford sustenance for animals two or three months.

"Q. Now, suppose, Mr. Gray, that an actual settler, under this law which the Government is seeking to assert against the company, should apply to the company and be allowed to purchase 160 acres at $2.50 an acre for a home for himself, I wish you would state to the court what this man would do, or could do, if anything, with this 160 acres, if he was required to confine himself to that land, and did not have the privilege of pasturing outside land, or doing work outside.

A. Well, there is very little of it that can be got to with a wagon road without a big expense, and it is generally rough, and I don't think a man could live on it the year around—he would have to move out in the winter time.

Q. What do you say, and what can you say, and what is the fact, as to whether or not such a man, under those circumstances, on 160 acres, could or could not make a living at any useful business on the land?

A. Not at present, unless something would turn up that we haven't got in our community there."

Whereupon witness testified that a majority of these timber lands is fairly good timber. He has had experience as a logger, and knows the fir timber that is capable of being manufactured into saw timber or lumber. He has had experience as a logger nine years for the Benton Lumber Company in Benton County. About twenty per cent of these lands he has been over in Ben-

ton County would make first grade lumber. Most of the timber would come under the head of second class timber; a small portion would be first, and a small portion would be third class. He has been over the balance of these lands in Benton County, or near them, or across them, to some extent, other than those that he has spoken of, but not enough to give evidence before the court here of what the character of the balance is. He noticed the general character of the balance, just from looking at it, and it is broken land, and it was just about the same as what he had been over, from looking at it as he went along. There are other burned districts in this unsold land, besides the 6,400 acres of burned area that he had mentioned, that he had not been over, but it is the same kind. Its value is less, because it is further back in the mountains, where nothing but a pack horse could be gotten to the land. Mary's Peak is 4,600 and some feet high, and has good timber around it. He doesn't know the height of the others. Grass Mountain is a little lower. Mary's Peak is a snow peak and carries snow until July. He doesn't know the exact distance, but it is southwest from Corvallis and must be sixteen or eighteen miles. Mary's River rises on Mary's Peak and flows in a northeast direction, but not direct, and empties into the Willamette at Corvallis.

"Q. Where are these lands now, chiefly, with reference to Mary's Peak?

A. The timber land is around Mary's Peak, east of it, and further southeast, across the little valleys

there that is between."

Whereupon, on cross examination, witness testified that he has been in the employ of the Oregon and California Railroad Company about a month and a half this summer, and is the only time he ever worked for the company, and is not employed by them now, but was up until it rained and made the fire safe, about a week ago; something like that, since he has been out for the company, a week or ten days ago. It has been raining somewhat all summer, but they have had one or two seasons that they were required to look after the fire. He couldn't tell the exact number of acres that he patrolled. The tract he patrolled follows the ridge about sixteen miles long, varying in width on account of being burned off, and perhaps six miles wide on an average. He could give a part of the location of these lands by looking on a map. He lives in 12-6 West and there is some timber there. In 12-7 West there is also timber, and he patrolled these townships; and he had a view of it that way. A little valley runs through, known as the Alsea Valley and Wells Creek. There was a wagon road there, and he drove that way. He has lived in 12-6 West ten years the 8th of November, 1912, and prior to that time he lived about two miles southwest of Corvallis. He now lives on Section 32, which was a homestead that he had purchased. There are settlers in that township besides himself, several of them. There is a little valley, which is just settled, the valley part. Not all the settlers in that township are located in that valley, some are across the divide from him, out of the timber

entirely. He never ran the lines of the sections that he patrolled, but just passed along the hills; he has been on both sides. There are settlers on the even numbered sections in the valley, and there were a few settlers on the lands of the company behind Mary's Peak; but on the ridges there are no settlers except in the valley. They are on both odd and even sections in the valley. They were taken by donation claims or sold to them. There is a town of Alsea in one of these townships, a postoffice, and there are settlers in that vicinity. The township line runs through Alsea. The north part of Alsea is divided. It is in 14-8 West. The dividing line is right in the north part of Alsea, splits the town. He has only a very general knowledge of the remainder of this grant, from having observed it at a distance, except that he has been almost all over what he has testified to, on both sides of those ridges, broken country, that has this timber on. He patrolled that country. When it was raining he made some trails on these sides, so that the land could be got to in case of fire when it was needed with a pack horse. The soil is not very good, in general, in the townships where the railroad lands are situated, it is too broken and steep, and only a small portion of the soil is good. There are parts—small parts of it—that are good, but they are small. There are no other grasses besides pea vines the season round that would furnish range for goats, sheep or cattle. There are places in the foothills where they have a little bottom land and a lot of side hill, and they range this rough country in that way. Where one has enough valley land to raise

feed for the winter, they can keep stock and range on these hills in the summer, and drive them down in the winter and take care of them.

"Q. Isn't it a fact there are a number of 160 acre tracts that a man could take up in these railroad lands, that is, not by legal subdivisions, but in 160-acre tracts, 40-acre subdivisions, that a poor man could take up, a man that was up against it financially, and make a living there for himself and his family?

A. No, sir; none at all. That question is like this—a man would have to have money to live on, and be able to go out and buy, before he would be able to go up there and live a number of years to clear this up and live at all, even if the soil was good.

Q. There is some agricultural land in there, isn't there, in its present state?

A. Down in this valley is very fine land, but it is narrow.

Q. There is some of that land is railroad land, isn't it?

A. That is the valley?

Q. Yes.

A. Not to my knowledge. There might be a small piece somewheres that I don't know of; but none, literally speaking."

Whereupon witness testified that he lives in Section 32, Township 12 South, Range 6 West. There is no

railroad land adjoining him. There is not a great deal of railroad land in that township. There is some of this Coos Bay wagon road grant land there, he thinks it must be, because Section 5, right close to where he lives, belongs to that grant. Whereupon on redirect examination witness testified that he goes to these lands for patrolling, by a road running right down through the center of the district, called the Alsea road. Alsea is a valley over on the coast. It reaches tide-water further down. Alsea has been settled thirty or forty years. He has been in the Alsea Valley. He is not prepared to tell what kind of land is on the coast in the Alsea Valley; but around the town of Alsea there is nice, good land. Alsea has three or four hundred population. The Alsea River heads right west of Mary's Peak, and the other branch heads around back of Bellfountain, by a little mountain they call Green Peak. Bellfountain is a post-office, has a store or two, and is out across on the Willamette Valley side. There are some settlements on the Alsea River, which leads over into the Alsea Valley, along the river. This valley is a narrow valley. Down to Alsea it is fairly well timbered, both sides of this little stream. He got into these lands of the company to patrol them by cutting a trail for his saddle horse; one could not drive an automobile or team through them very well. Whereupon, on recross examination, witness testified that Alsea is about thirty miles from the coast, he would say a little further than that. Alsea Valley leads to the coast, but the town is not on the coast. Alsea is about the center between Corvallis and the coast. Cor-

vallis is a city of some size and the Oregon Agricultural College is located there. There is quite a lot of good fruit country in Benton County; they are setting out large orchards. Corvallis is outside of the timber belt and it is about fourteen miles by wagon road before one strikes much timber; and it is about the same distance to the railroad lands which he was patrolling; that is, about that distance of fourteen or fifteen miles to the nearest foot of it. Corvallis is situated in the Willamette Valley and is surrounded by a fine agricultural country. He is not prepared to say whether there was or was not some railroad lands in the townships in which Corvallis is located, or in the adjoining townships.

Whereupon W. V. FULLER, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Dallas, Oregon; is at present a merchant; has lived in Polk County eleven and a half years, and has been in the timber business in Polk County about eight years, and has handled and cruised timber lands and has had experience in cruising timber lands in Polk County. He does not know anything about the lands in Polk County east of Range 6 West. These lands, whatever there are, are just a very small fraction and are not timbered, not much, if any, timber on them, but in Ranges 6, 7 and 8 West, he is familiar with all of the unsold lands of the Oregon and California Railroad Company and has been practically on every forty acres of these lands and familiar with them since 1901. The lands lie in the Coast Range of mountains on both sides, on either slope, east and west side and on top of the

mountains, and are mostly very hilly land—he supposes as hilly land as there is in the Coast Range of mountains in Polk County, and the elevation will run from 1000 to 3500 feet, to which testimony complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that most all of the railroad lands in Polk County are well timbered. The main portion of the timber is fir, but in some parts there is a small amount of white pine, larch, hemlock and cedar. There are five or six sections of land, the bulk of which has practically no timber on it. The remainder of these lands would run from 40,000 to 75,000 feet per acre. This would be considered a good stand of timber. The value of these lands lies almost wholly in their timber. There is very little of the total area of these unsold lands that would, in his judgment, be agricultural or suited to agricultural or horticultural purposes. If one wanted to go into it by sections, he could get at it easier. He thinks there is not ten per cent of it that could be used for agriculural or horticultural purposes, for the reason, in the main, that the elevation is too great there for farm products or fruit to grow successfully. There is a great difference in the soil. In the main, if the lands of the company in Polk County were on an elevation suitable for raising crops, etc., he thinks they would

raise crops. Some of them, however, are very rocky. Probably thirty per cent of this land could be utilized for grazing purposes. These lands that could be used for grazing purposes lie on a less elevation, say, than 1000 feet, and on this there is a good deal of pea vine and other small growth of vegetation that stock eat. Sometimes the pea vine grows at a higher elevation than that, but not a great deal. He thinks there is thirty per cent, or such a matter, of the entire area of these lands that could be cleared of timber, burned over, seeded to grass, and devoted to grazing purposes. It would cost from $75 to $100 an acre to clear this land of the timber so they could be suitable for agricultural purposes. He has known a good many people who have undertaken to make a living up in those hills, cleared little patches of land at different times, and he knows that at this time one cannot find any of them living there. They did not seem to be able to make a living. Practically all of the entries in the even sections within the limits of these railroad lands have been sold, a good portion of them have been sold. Some are still in the hands of the original entrymen, who hold them yet. The reason he knows to whom this land has been sold is that he has a great many times made out maps of all the lands in Polk County, and he was occupied that way last week several days making out a map for the Spaulding Logging Company. Therefore, he knows practically every forty acres of land in Polk County. The land is owned in the main—the land is owned by the Spaulding Logging Company, and Mitchell & McClure, the land in the name

of Mitchell, Trustee, the Willamette Valley Lumber Company—he has forgotten the parties who bought the Mitchel tract there—five large holders. This land in the even sections was mainly entered under the Timber and Stone act. The homestead entries are exactly in the same condition as the stone and timber entries. The timber companies, when buying in there, did not pay any more or less for a homestead entry than a stone and timber entry, excepting where the settler had possibly cut off ten or fifteen acres of timber to make a home, they would deduct that from the land, because the timber value was not there on those acres, that had been removed. These lands were bought for the timber and that was their chief value then and now. The homestead cabins and other improvements of the homestead entrymen are there yet, excepting in some few instances where they have been burned or rotted down; they are not occupied. Under the timber and stone act no settlement is required. The character of settlers or entrymen was that of any one who happened in the country there; some had families and some had not. In the main, these settlers commuted on their homesteads at the end of fourteen months. They generally complied with the law as to residence during the first fourteen months as near as they could, before they proved up; some of them resided continuously on their lands, and some did not.

Q. Suppose that a man would apply to the company under this act of April 10, 1869, to settle on 160 acres of this land and pay the company the price of

$2.50 an acre, and desire to make it his home and make settlement on it, what, from your knowledge of these lands, would be his ability to do that and make a living?

A. They could not make a living off the land alone. He would have to have some other way of supporting his family.

Q. Well, now, why couldn't he take 160 acres that way and make a home for himself and family, and make a living?

A. One reason is because the land is so heavily timbered, unless he had some outside money to clear the land, it would be an impossibility. Another reason is, as before stated, the altitude is such that crops will not grow successfully, that a man can get his seed back, you might say.

Whereupon, on cross examination, witness testified:

Q. Do you remember of having a conversation with E. S. Foley, a special agent of the General Land Office, at your drug store in Dallas, on or about the 9th day of March, 1912?

A. I remember of having a conversation with some one. I don't remember who it was.

Q. Do you remember of executing an affidavit before Mr. Foley at that time?

A. I don't remember of executing any affidavit.

Q. I will ask you to examine this document and state to the court whether that is not an affidavit that you executed before Mr. Foley on the date stated?

A. It seems to be my signature. Do you want me to read it all? Do you want to ask me any questions about it?

Q. Yes. In this statement or affidavit, Mr. Fuller, is it not stated that "He (meaning yourself) is engaged in the drug store business, and where he has lived,"— "W .V. Fuller, being first duly sworn, deposes and says that his residence and postoffice address is Dallas, Oregon, where he is engaged in the drug store business and where he has lived for eleven years. And affiant further says that for seven years he followed mining and land locating in Townships 7, 8 and 9 South, Ranges 6, 7 and 8 West,"—

A. That is cruising, that word there.

Q. That is "cruising" instead of "mining"?

A. Yes.

Q. (Continuing) "and is familiar with said lands and with their character. At this time the greatest value of these lands, generally speaking, is for its timber, although much of it would be valuable if cleared for general farm purposes, including fruit, dairying and grazing purposes. And affiant further says that on June 11, 1907, he made an application to the Oregon and California Railroad Company to purchase the southeast quarter of Section 31, Township 8 South, Range 7 West"— a word I can't make out—"in Polk County, Oregon, which said application was declined, and said railroad company refused to recognize or consider the application

in any way." Signed "W. V. Fuller." And also stating, "Subscribed and sworn to before me at Fuller's drug store in Dallas on this 9th day of March, 1912." Those statements are contained in that affidavit there?

A. Yes, sir.

Whereupon complainant offered said affidavit referred to in this cross examination in evidence, to which defendants objected as not impeaching evidence, as incompetent, irrelevant and immaterial, and as being prepared by the Government, written out by Mr. Foley as a special agent of the General Land Office in his own language, on some conversation which he may have had with the witness, which said exhibit was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence, and identified as such.

Whereupon on redirect examination witness testified that he did not know who Mr. Foley was, and he had forgotten all about the occurrence, but he remembers now that a man did come into his store and talk to him about the land, and he sees that that is his signature to the affidavit. He does not remember—he had forgotten what the document contained.

Q. Did you make the statement to Mr. Foley that "At this time the greatest value of these lands, generally speaking, is for its timber'—you made that statement to him, did you?

A. I presume that I did, yes.

Whereupon witness testified that he presumes, although he could not say, that he also made the statement, "Although much of it would be valuable, if cleared, for general farm purposes, including fruit, dairying and grazing purposes." By the words "much of it" he means there is some of it, quite a bit of it, in fact, that after it was cleared, would be valuable for general farm purposes, including fruit, dairying and grazing purposes. He does not remember that he told him about the climatic conditions that would prevent it being suitable for agricultural and horticultural purposes. He did not talk to him only a little while. Foley did not tell him what he wanted this statement for. He has a record of his cruises referred to in this statement. He made this record in 1907 or 1908, he does not remember which. A good share of it was made by him as the result of his own cruising. He was deputy county assessor and had a contract from the county for cruising all of the timber lands in the county for assessment purposes, and he made that cruise for that purpose, and this is a copy of that record made by him or under his supervision. He will take Township 7 South, 8 West, that he cruised and read the amount of each forty.

Section 1, northeast quarter of the northeast quarter, 2,900,000 feet; the northwest of the northeast, 2,900,000 feet; the southeast of the northeast, 1,800,000 feet; the southwest of the northeast, 2,200,000 feet; the northeast of the northwest, 2,800,000 feet; the northwest of the northwest, 3,200,000 feet. I will state that those forties largely overrun—there was about 60 acres to a forty, or

nearly that. The southwest of the northwest, 2,400,000 feet; the southeast of the northwest, 2,200,000 feet; the northeast of the southeast, 2,100,000 feet; the northwest of the southeast, 3,300,000 feet; the southeast of the southeast, 2,100,000 feet; the southwest of the southeast, 2,000,000 feet; the northeast of the southwest, 2,100,000 feet; the northwest of the southwest, 3,000,000 feet; the southwest of the southwest, 2,100,000 feet; the southeast of the southwest, 2,200,000 feet. Take section 23 of the same township: The northeast of the northeast, 1,300,000 feet; the northwest of the northeast, 1,200,000 feet; the southwest of the northeast, 1,600,000 feet; the southeast of the northeast, 2,000,000 feet; the northeast of the northwest, 1,500,000 feet; the northwest of the northwest, 1,700,000 feet; the southwest of the northwest, 600,000 feet; the southeast of the northwest, 800,000 feet; the northeast of the southwest, 1,900,000 feet; the northwest of the southwest, 2,000,000 feet; the southwest of the southwest, 2,000,000 feet; the southeast of the southwest, 1,800,000 feet; the northeast of the southeast, 2,400,000 feet; the northwest of the southeast, 1,800,000 feet; the southwest of the southeast, 1,800,000 feet; the southwest of the southeast, 2,200,000 feet.

Q. What township and range is that in?

A. 7 South, 8 West.

Q. Now give another township and range.

A. Take 8 South, 8 West, directly south of that.

Q. 8 South, 8 West?

A. Yes, sir.

Q. All right.

A. The north tier of forties in this township run short, as they have overrun in the township north. In Section 1, the northeast of the northeast, 1,500,000; the northwest of the northeast, 2,700,000; the southwest of the northeast, 1,400,000; the southeast of the northeast, 1,200,000; the northeast of the northwest, 1,600,000; the northwest of the northwest, 1,700,000; the southwest of the northwest, 1,400,000; the southeast of the northwest, 1,700,000; the northeast of the southwest, 2,600,000; the northwest of the southwest, 1,900,000; the southwest of the southwest, 3,600,000; the southeast of the southwest, 2,400,000; the northeast of the southeast, 1,900,000; the northwest of the southeast, 2,000,000; the southwest of the southeast, 1,900,000; the southeast of the southeast, 3,400,000—very heavy timber.

Q. Anything in Section 3, Township 8 South, Range 8 West?

A. Yes, sir. The northeast of the northeast, 700,000 feet; the northwest of the northeast, 800,000; the southwest of the northwest, 1,600,000; the southeast of the northeast, 500,000; the northeast of the northwest, 1,300,000; the northwest of the northwest, 1,400,000; the southwest of the northwest, 1,400,000; the southeast of the northwest, 1,400,000; the northeast of the southwest, 1,500,000; the northwest of the southwest, 1,300,000; the southwest of the southwest, 1,200,000; the southeast of the southwest, 1,800,000.

Q. Do your cruisings that you have there in your record show anything for the even sections in that township and range?

A. It shows exactly the same, yes—everything.

Q. You cruised the even sections, too, did you?

A. Oh, yes, certainly.

Q. Now, take an even section there, and give us the cruising on it in that same township and range, alongside of the railroad section—Township 8 South, Range 8.

A. Take Section 2. That lies between 1 and 3 that I just read. The northeast of the northeast, 1,200,000 feet; the northwest of the northeast, 1,400,000; the southwest of the northeast, 1,800,000; the southeast of the northeast, 1,900,000; the northeast of the northwest, 1,400,000; the northwest of the northwest, 1,400,000; the southwest of the northwest, 1,600,000; the southeast of the northwest, 1,100,000; the northeast of the southwest, 1,700,000; the northwest of the southwest, 800,000; the southwest of the southwest, 800,000; the southeast of the southwest, 1,000,000; the northeast of the southeast, 1,800,000; the northwest of the southeast, 1,700,000; the southwest of the southeast, 1,000,000; the southeast of the southeast, 900,000.

Whereupon witness testified that in making these cruisings he cruised by forties—both the even and odd sections. He cruised all of the timber lands in Polk County, over 200,000 acres, including the lands involved in this suit, all of the timber land that run over a certain

amount, that one would call timber land at all. He cruised Townships 7, 8 and 9 South, 6 West; Townships 7, 8, 9 and 10 South, 7 West, but there was very little of Township 10 South, Range 7 West, in Polk County. He cruised Townships 7, 8 and 9 South, Range 8 West. The purpose of this cruising of which he made this record was to arrive at its value for assessment purposes. He is not positive whether it was for the year 1907 or 1908. The diagram shown in his record is a township of thirty-six sections. In cruising these lands he sought to find out the amount of timber, the quality of timber, the lay of the land, the quality of the soil, its distance from navigable water or railroad, and everything that would tend to show the value of the land, and his testimony in this case is based upon this information thus obtained.

Whereupon on recross examination witness testified that these lands he has described are pretty well to the west side of the grant, excepting 7-8, that is pretty well to the east side of the grant in Polk County. The line of the western limits of the grant is in Range 8, extending a little east of the center of these two townships. These two townships are rather in the extreme northwestern portion of Polk County.

Whereupon R. B. HUNT, called as a witness on behalf of defendants, being duly sworn, testified that he resides at Eugene, Oregon, and is a civil engineer, and has lived in Lane County fourteen years. He is well acquainted with the unsold lands of the Oregon and California Railroad Company in Lane County.

Referring to Defendants' Exhibit 259, witness testified that Lane County is bounded on the east by the summit of the Cascade Range, on the west by the Pacific Ocean, and on the south by the Calapooia Range from its junction with the Cascade Range, following westerly to Range 7 West; thence following north on the section lines to the Siuslaw River; then following down the Siuslaw River to the north line of the last tier of sections, or the north tier of sections of Township 19 South; then following west to the Pacific Ocean, and is bounded on the north by the watershed between the Calapooia River and the McKenzie waters, starting from the junction of that divide of the Cascade Range and following in a westerly direction to Range 2 West; then running by sections down to the last tier of sections north, in Township 16 South; then following west to the Willamette River; then following the center of the Willamette River in a northerly direction to the last tier of sections in Township 15 South; then following west to the Pacific Ocean. He has been on each township, and on each section of some townships of these lands marked in green on Defendants' Exhibit 259. For six years he was deputy county surveyor of Lane County, and was engaged in surveying out lines. For several years he was examining timber for private individuals and for a large timber concern. Most all of the examinations that he was making were of lands adjoining the Oregon and California grant, and in some instances they were not, but in most instances they were land adjoining, in the even sections. In the reports he gave on these blanks

of the timber companies he reported the timber and logging conditions, the topography of the country, the soil, and the agricultural lands, and all that would make a complete report of the land, and he made these reports in the form of what are called in this record "Cruisers' Reports." He is a practical cruiser. In every instance in making the examinations of these even sections adjoining the unsold odd sections, he would be running a line between the two sections, and necessarily would pass around the boundaries, and from his knowledge thus obtained, the chief value of these unsold lands of the company in Lane County would be for their timber. To which testimony complainant objected as incompetent, immaterial and irrelevant, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof.

Whereupon witness testified that, in his judgment, he would say there was somewhere between fifteen and twenty per cent of these lands that could be used for agricultural purposes. They are situated — a forty where one comes down to a stream or creek, there would be a few acres out of the forty that would be valuable for agriculture if cleared, but the majority of the unsold lands are further back in the mountains. The settlements of the country have taken up all of the lands that would be suitable for agriculture, and the lands that are left are the lands that are rough and mountainous, cov-

ered with timber, so that it would be very poor for agricultural purposes. For grazing purposes there would be a greater per cent than for agricultural purposes. Under the present conditions there would be only a very few months in the year that these lands would be valuable at all for grazing, but if they were logged, burned over and seeded, there would perhaps be the four summer months out of the year that stock could graze over—perhaps for grazing that would run sixty or seventy per cent of these lands.

Q. Now, let me put this question to you: This that you speak of as being suitable for grazing would be about 60 or 70 per cent provided the timber was cut off, removed, logged, and then the remnant burned, the stumps, and seeded to grass or some growth upon which the stock could have the summer range? Is that what I understand?

Mr. Rabb: Objected to as leading.

Mr. Fenton: Yes, I know it is leading.

A. Yes, sir; that was what I meant.

Whereupon witness testified that it would cost in the neighborhood of $40 or $50 an acre to clear this land suitably for this method of making it grazing, but not to take the stumps out. It would cost all the way from $100 to $150 an acre to remove the stumps and clear the land of roots, so as to make it available for agricultural purposes. The powder to blow out the stumps of one of these average acres of timber would cost from $30 to $50 an acre. One would use black pow-

der, and usually black and giant powder together. The black powder being a slow powder, it is usually used with the giant powder. These unsold lands are chiefly valuable for timber. It would hardly be considered first-class timber, taking it straight through, because all the best of it has been taken up by actual settlers. He knows that timber companies have bought a lot of timber lands from the company, and that the Booth-Kelly Lumber Company has bought a large tract of timber land. There is the Fisher Timber Company—in fact, all the timber companies operating in there.

Q. Then what remains of this grant that is unsold, that is timbered land, is what there is left after a good many years of these lands being on the market for timber?

A. Yes, sir.

Whereupon witness testified that the timber market about ten years ago was very low. He was in the employment of a timber company at that time, and buying timber, and since that time the market has been steadily increasing in value. There is a very little timber of any kind now that has a stumpage value of less than one dollar per thousand. The average value of the best quarter section of these unsold lands in Lane County would be in the neighborhood of one million to a forty, or four million to a quarter section, which would make the value of the quarter section $4,000. The best unsold quarters would be worth at least twice that. He has personal knowledge of a good many applications made

to the company by so-called actual settlers or purchasers of these lands at $2.50 an acre under this act of Congress of April 10, 1869, and these applicants always tried to get on the best quarter sections. Sometimes they make mistakes. He means by that that they try to get on the quarter section that has the most timber.

Q. Well, now, suppose one of these applicants to purchase one of these quarter sections should receive a deed from the company, and the company should accept the $2.50 an acre, and this purchaser should desire to use that quarter-section for an actual settlement for a home, what would be its value for him as a settler?

A. He couldn't use it for a home.

Q. Why couldn't he use it for a home?

A. It wouldn't pay him to do it. He couldn't make a living on it.

Q. Well, why? How would he get any value out of it?

A. The value would be in the timber.

Q. When and how?

A. Well, it has a market value now. He could sell it.

Q. To whom could he sell it?

A. Well, he could sell it. Mr. Wendling, of Wendling, Johnson & Company, is buying in that country there.

Whereupon witness testified that Wendling, John-

son & Company are big timber holders, who have bought large tracts in the western part of Lane County, and who purchased a million and a half of timber at $1.00 per thousand in the last two years. They would have to pay for this land if a man had title to one of these 160 acres thus acquired from the railroad company, the market price, which would be $1.00 a thousand. That is the lowest price he knows of.

Q. Then if a settler could buy this quarter-section for $2.50 an acre, he would get it for $400, and could immediately sell it to a timber syndicate for $4,000?

A. Yes, sir.

Q. Well, now, is that true generally of all of these applications to purchase of this class, that you know of, in that country?

A. Why, yes; generally it is true.

Whereupon witness testified that unless the land is within a Forest Reserve, in the even sections, the title to most of it in the even sections in Lane County within the limits of and adjoining these unsold railroad sections, has been deeded to those individuals. In the first place, patents were issued in the nature of a homestead, taken along the streams and valleys, and afterwards, in the timber, within the last ten years, these lands in the even sections have been taken as timber claims under the timber and stone act. In nearly every case where final proof has been made in homestead cases, if lands were timbered, in these even sections, the lands were sold to some timber company. Large timber holders own a

majority of these lands in the even sections in Lane County. No settlement is required under the timber and stone act. These lands entered under the timber and stone act were sold the same way, to large timber contractors. The Cascade Forest Reserve is in the eastern part of Lane County.

Q. Referring to this land that you say might be grazed land, what is the fact, if you know, as to whether any man could take a quarter-section of it, and use it successfully for grazing purposes, and make a living on it, if he was confined to his quarter section?

A. In my opinion, he could not.

Q. Well, when you speak of it being good for grazing, what do you mean?

A. Oh, in a general way.

Q. Do you mean that, if a man was a stock man and cattle man down in the valley, for four months in the year he could drive his cattle into this mountain range and let them roam over the thousands of acres there, the even and odd sections that might be unenclosed, and in that way get some benefit for grazing? Is that what you mean?

Objected to as leading.

A. Well, I had reference to odd sections.

Q. I understand. Well, now, suppose the odd sections were all divided into quarter-sections, which were fenced up, would it be of any particular value for grazing from which to make a living?

A. Not to take the tract as a whole in Lane County, no, sir, it would not.

Q. In other words, the grazing there would be in the way I have spoken of, the lands being out on the common, a man having headquarters, and his cattle could roam at large over a large body of land?

Objected to as leading.

A. Yes, sir.

Q. Is that what you mean?

A. Yes, sir.

Whereupon witness testified that he noticed the yellow body of Defendants' Exhibit 259, and that the town of Eugene appears to be in the center of the valley, on the Willamette River. Eugene is very near in the center, but it is a little bit closer to the foothills on the east side of the valley. The military road grant of the Oregon Central Military Wagon Roard shown in yellow, was given on account of a road built from Eugene into the central part of Oregon, and he believes that grant was prior to the railroad grant, but whether prior or not, the lands within that grant appears to have been lost to the Oregon and California Railroad Company. Eugene had a population of 9009 according to the census of 1910.

Q. What is the fact, if you know, as to whether there are any actual settlers within the limits of these unsold lands of the Oregon and California Railroad Company, on the even sections or on any of these lands

that have been heretofore sold by the company, if there are any?

A. Yes, sir; it is quite thickly settled.

Q. Well, you don't mean, do you, that the lands within the limits of the grant are quite thickly settled—these timber lands?

Objected to.

A. No; I mean this county.

Q. No; I didn't ask you about the county. My question was as to the settlements within the limits of these unsold railroad lands.

A. Well, in nearly every case where there is a stream that flows through the townships, there is settlement along the streams—all the streams.

Q. Are they many or few? I mean, now, within the limits of this grant, near these unsold railroad lands.

A. There are a good many close to the Willamette Valley; but after you go back toward the head, they are very scattering toward the head.

Q. State whether or not there are any settlers with homes in the indemnity limits of this grant, being ten miles on each side?

A. Yes, sir.

Q. Where are they? Where would they necessarily be?

A. They are along the streams and valleys.

Q. Are they few or many?

A. Well, the first ten-mile limit there are many.

Q. Well, I mean the indemnity limits, not the place limits.

A. Oh, the indemnity—that would be the thirty-mile limit, you mean?

Q. Yes, the thirty-mile limits. Are there any settlers in the thirty-mile limits?

A. Yes, there are settlers in the thirty-mile limits.

Q. Where would they be?

A. They would be along the streams.

Whereupon witness testified that he does not know the character of the lands, marked in blue, lands deeded by the Oregon & California Railroad Company on this Defendants' Exhibit 259. He is acquainted with the Booth-Kelly Lumber Company lands. They are very fine timber. He knows that the center of what are known as the Wendling mill, and operations of the Booth-Kelly Lumber Company, is in township 16 south, range 1 west, and range 1 east, and he is quite familiar with their holdings through that part of the country, and if the 70,000 acres of the Booth-Kelly Lumber Company are situated near there, it would be fine timber land, and would be the best as compared with the unsold timber land of the Oregon & California Railroad Company in that vicinity. It would be better than what the railroad company has left. The timber around Wendling would average between six and ten million feet to 160 acres. He is acquainted with the

timber holdings on the Siuslaw River, and in the watershed adjacent to or tributary to that river, in Lane County, within the limits of this grant. Porter Brothers own over 20,000 acres in Western Lane County; Wendling-Johnson Lumber Company about 30,000 acres; Sterritt & Hovey have over 20,000 acres; Stewart and R. V. Jones of Portland about 15,000 acres. These are the largest timber holdings, and they are considered fine timber. The character of the unsold lands of the company in that vicinity would be considered as second-class timber, but what would be considered merchantable within the meaning of the market, and he believes would average four million feet to 160 acres, but that would not include the burned areas. The burned areas are generally covered with salal brush. He could not give the acreage of the burned area, but knows that in Western Lane County—he thinks about two years ago—there was a fire that burned over in the neighborhood of fifteen sections of railroad land. This would be covered with brush. Some of it before the fire was heavy timber. The soil of the Coast Range is generally a clay soil, running all the way from a few inches to sixteen feet, with sandstone formation under that.

Q. What is the character of soil as to its being productive or otherwise; where it is burned over, what would it produce, if anything, that could be utilized, taking into account elevation and everything else?

A. The Coast Range is very productive in that part. The hills are not very high on an average. The summit is about 1000 feet above sea-level. The valleys

are very narrow, and numerous spurs—small streams; if the soil was level so you could farm it, why, there is some of it there would produce grain, or most anything in the way of vegetation.

Whereupon witness testified that the lands in the eastern part of Lane County, on the east side of the grant, are much higher and run all the way from 1000 to 3000 feet, some even higher than that. The higher the elevation, there would be more frost than at a lower elevation. This burned over country usually grows up with pea-vine, which can be used for grazing in the spring and earlier part of summer by cattle, a couple of months. On the Coast Range there is what they call rhododendron, black huckleberry, thimble berry and salal brush. He does not know of any animal that will eat salal bushes, but cattle will graze a little on salmonberry bushes. The huckleberry bush grows five or six feet high on an average, but stock does not feed on these bushes but very little. There are several points where there would be snow in the eastern part of the grant in Lane County, during part of the year. One point is called Mt. June. It gets its name from the fact that snow is usually there in the month of June. He recalls among the timber companies or timber investors that hold lands in Lane County, excepting the Oregon and California Railroad Company, Booth-Kelly Lumber Company of Eugene, Boston-Oregon Lumber Company, of which Mr. Winslow of New York is the head, who is also identified with the Indino Quartered Oak Company, also the Drew Lumber Company, of which

Wells Gilbert is agent, the Leffingwell Estate, for which Major Forrest is acting as agent at Eugene, two Brown Lumber Companies, one of Eugene and one of Cottage Grove that has some mills at Cottage Grove, the Wendling-Johnson holdings, of which Mr. Wendling, at Weed, California, is head, Porter Brothers, who have an office in Portland, Sterritt & Povey, with their head office in Chicago, for whom Elliott Bean of Eugene is agent, a tract owned by R. V. Jones of Portland and Mr. Stewart of Astoria, called the Western Oregon Timber Company, or some such name. The Weyerhauser Timber Company own considerable land in there. There is considerable land there that is known as the "N. P." land—Northern Pacific script, but he could not say how large an area of acreage there is of this Northern Pacific script, but knows there is considerable of it through the country. He has done business with most of these timber holders, and is well acquainted with them.

Whereupon on cross examination witness testified that he has resided at Eugene fourteen years; is thirty-six years old; lived at Bandon, Coos County, before coming to Eugene; is a civil engineer by profession; has worked for the Government and the railroad companies, and his work for the Government was Deputy United States Mineral Surveyor, sectionizing in the mineral surveys, but was working for a contractor. While employed in the Government work he was not under salary from the Government, but the mineral surveyors made the surveys. The work was done for the Government.

He did that work as deputy mineral surveyor, and did the work for contractors on Government work, and sectionized Quinault Indian Reservation in 1904 as contract work. He has also been chief engineer of the Pacific Great Western Railroad Company, with its termini at Eugene and the mouth of the Siuslaw River, which is under construction. He ran out the original line for this road. He has had something like ten years experience in timber cruising, perhaps a little more than that, since he started in. As a school boy in the summer months he started out first cruising during three months' vacation, and would work along first one thing, and then another; first as a chainman. He started cruising the timber by making an estimate of the timber. The first thing he did was scaling on what they call a dump, where the logs are hauled in before they are put in the river or on cars for transportation, measuring the logs with a scale. He cruised timber for the Booth-Kelly Lumber Company, Boston-Oregon Lumber Company, the Laswell Company, but these were for large companies. He might have done work for some other companies, but he does not call to mind. The most extensive work was for people in Lane County. He worked for the Booth-Kelly Lumber Company off and on something like seven years, and for the Boston-Oregon Company about sixty days, and during the summer months, one summer, for the Laswell Lumber Company. He was the cruiser and had a compassman with him when making the estimates on this timber. He has cruised timber for practically all of the people of Lane County, who

have been in the business of buying and selling. Before coming to Eugene he was in school at Bandon, and had no business. His testimony is confined to Lane County, and he wants it understood that his testimony goes only as to lands in that county, as far as he has been into it. From this map that he sees on the wall, and from his memory only now, he thinks that there is not more than ten sections in the western part of Lane County in this land grant but what he has been on one line of the section, in township 16 south, ranges 1 and 2 west, and 1 east; township 15 south, ranges 1 and 2 west; township 17 south, ranges 1 and 2 west; township 18 south, range 1 west and 1 east, he believes he has been over eighty per cent of the sections by being on the line. He means by being over it, by being on one line of these sections. The rest of the land in the grant, he is not so familiar with, only by a township, or in a general way, perhaps cruising one or two sections in the township. The ones that he is more familiar with he has just pointed out, or given by number and they are in the eastern part. Those in the western part with which he is most familiar are township 15 south, ranges 6. 7 and 8 west; townships 16, 17 and 18 south, ranges 6, 7 and 8 west. He has been over all but ten sections in the western part of the grant, that is an estimate. He is acquainted with townships 19, 20, 21, 22 and 23 south, ranges 1 west and 1 east; 1 east would apply only to townships 20 and 21 south, with which he is not so well acquainted. In ranges 2, 3 and 4, townships 20, 21, 22, 23 and 24, he is acquainted with these. It would be hard to say how

well acquainted he is with these, he has been over these townships considerably, enough so that if one would name any landmark there he could tell its location, or the topography of the country, map out the streams or the roads. He would know only from memory what sections they would pass, but would know what township they were in. He does not believe that he has cruised any of the lands in green on that map, Defendants' Exhibit 259. He was employed by the Southern Pacific Company in 1909 on a railroad survey, and by the P. R. & N. Co., or Lytle Road, built from Portland to Tillamook Bay as locating engineer for nine months, and located the lines from the mouth of Salmonberry to Satin Falls, and from the Nehalem around Garibaldi and Tillamook Bay. He believes that is a subsidary line now of the Southern Pacific Company; it was known at the time as the Lytle Road. E. E. Lytle, he believes, was the president of the road. He has never been engaged in locating timber claims in his life, or any Government land, excepting that he has bought relinquishments and placed script on them. He bought script and got the lands, when working for the Booth-Kelly Lumber Company. The valley referred to in his direct testimony as the Willamette Valley, is all farming country, and part of township 15 south, 2 west, is farming land, and a part of these green lands on this map in there is susceptible to agriculture and tilling, and there is considerable agricultural land in these green lands in townships 15, 16, 17 and 18 south, ranges 1 and 2 west, and there are settlers in all these townships. Eugene

is in section 31, in 17-3 west, the closest part, would be seven or eight miles from Eugene, and the farthest away would be twenty-five miles. There are settlers through townships 15, 16, 17, 18 and 19 south, ranges 5 and 6 west, and considerable of the land there is under cultivation. There are small farming lands around Goldson. Elmira is in the foothills of the Coast Range, in section 25, township 17 south, range 6 west, and there is some farming land around Blachley, in township 16 south, range 7 west. Triangle Lake is in Blachley basin, and there are farming lands about there. There are a very few settlers in township 15 south, range 8 west, that is what is called deadwood country, and the mountains are very high. It is a large range that runs out and makes Cape Perpetua. There are settlers in township 16 south, range 8 west. There are settlers around Green leaf, on what is called Lake Creek, in section 35-16 south, 8 west. There are railroad lands, colored in green, adjoining or in that section, as shown by this map, Defendants' Exhibit 259. There are settlers in township 18 south, range 6 west. Ivison used to be a post office, in township 18 south, range 7 west, but the party who was there has sold out and left, and there is no one living there now, and there are some settlers in that township. There are a very few settlers in township 18 south, range 9 west, in the southeastern portion, which is back taward Roman Nose Mountain, and is a very high, rough country. There are settlers in all of these townships excepting there might be one or two townships out of the grant where there would not be

any settlers. These would be eastern townships. From the way the township lines run, there is not a township but which hits a stream, and every stream would have settlers on, so there would be no township where there would not be any settlers, but by naming a township there would be settlers in it, for the reason that the township lines are more than six miles from one stream to another. It would be possible to carve out a six-mile square, the boundaries for a township, which did not contain a settler, but he is not positive as to that. He would not want to be understood to say that there would not be such a condition existing there. There are not very many settlers in township 15 south, range 2 west, only on the Willamette side, where the township goes down into the land marked in yellow. That township is a mountainous country, and not merely foothills. It is what is called the Coburg Mountains, the range that comes down from the watershed between the Calapooia and the McKenzie rivers, and the general direction is westerly until it reaches near township 15 south, 1 west, and then it swings around almost south and enters some high hills just north from Eugene, making a gateway. If one would notice from the topography of the country that the Mohawk River flows south, and the coast fork flows north, going through a narrow gap at Eugene, caused on account of the topography of the country, there is quite a high range. The Mohawk flows through township 15 south, 1 east and 1 west; 16 south, 1 west and 2 west; 17 south, 2 west, in confluence with the McKenzie

River. The Mohawk Valley is an agricultural country. The part of the grant in the western part of Lane County has considerable good clay soil, and in this ridge west of the Mohawk River there is some clay soil on that; but the other part, on the slope of the Cascade Mountains, the soil is not so good; there is considerable more rock, there would be a part that could be farmed if the country was level. When one gets near the summit of the mountains, the clay soil has washed, eroded, slid off, so that it is very shallow, and this would be universally true, in the entire country, back into the higher elevations, the higher mountains, the soil would be so thin it would not amount to anything. The timber is poor there. The burned area is over the higher elevation. As a rule, the better the timber, the better the soil. He was born on a farm, raised on a farm until he was ten years old, and that is his only experience in farming, and he would not attempt to say that he has any knowledge, except a general idea, spending most of his life in the country he has learned somewhat. He has spent his life out of doors in the fields, and his work has been such that he had to stay with farmers at their homes, cruising timber, and so on, and he would not want it to be understood that he did not know anything about farming. His farming has not been as an expert, but he would think that he knew something about it, but not as an expert farmer, but by coming in contact with and being around farmers. He never has engaged in farming for a livelihood, and has never taken a homestead, and never settled on any lands, timbered lands, or attempted to clear

them, or anything of that kind. He does not remember of cruising any of the unsold railroad company's lands in Lane County. He has cruised some that have been sold.

Whereupon on redirect examination, witness testified that the lands with agricultural possibilities in the Mohawk Valley, would average half a mile wide for a couple of townships, and narrows then into numerous small streams and valleys; part of it goes out into little branches. The waters in Mohawk Valley are called the Mohawk River, which empties into the McKenzie River. Eugene is about seven miles from the mouth of the Mohawk River, and the mouth of the McKenzie River is about six miles in almost due north direction, and the Mohawk in a northeast direction. The McKenzie River empties into the Willamette River. The valley along the McKenzie through the land about which he is being interrogated, would be south of the McKenzie, which flows close to the foothills to the north. There is a valley along the McKenzie River that extends up a few miles about Waterville, sixteen miles from Eugene in an eastern direction. The McKenzie is one of the wildest and most rapid streams in Lane County, and its waters are the source of fine power sites, and it heads in a very high altitude, in Fish Lake and Clear Lake. These water power sites, on a straight line, must be from seventy-five to eighty miles easterly from Eugene, in the Cascade Mountains. The lands in the Mohawk and McKenzie Valleys, after one enters the foothills of the Cascade Range, that are agricultural,

are small tracts or parcels, and that is true with respect to any of the lands on these streams within the limits of this grant.

Q. Now, counsel asked you if there were not settlers in practically all these townships within the limits of this grant in Lane County, Oregon, and I believe you answered that, possibly with the exception of one or two six-mile squares, there would be a settler or settlers. What character or kind of settlers do you refer to, and where would they be situated?

A. They would be along the streams.

Q. And how much arable land or agricultural land would there be on a homestead or a claim of any one of these settlers thus described by you, and what would be the character of the rest of their holdings.

A. That is where the streams flow through the land that is unsold?

Q. Yes.

A. Why, they would in most cases be small.

Q. What would be the character of the bulk of their lands?

Q. What would be the balance of the quarter-section or 160 acres of this settler, aside from that portion that he might make a garden on, or pasture a cow on, or utilize for any useful purpose as agricultural or horticultural land?

A. It would be valuable for the timber that is standing on it in most cases.

Q. These settlers that you refer to, what character of settlers are they—what kind of entries?

A. Why, I think most of them are homesteads.

Q. What is the fact, if you know, as to whether these lands that are thus settled are chiefly valuable as a quarter-section for timber or for agricultural purposes?

A. Why, in the western part of Lane County, most of the settlers have sold their lands and moved out. Their buildings are there yet.

Q. Buildings vacated?

A. They are vacated; and timber men have bought the land for the timber that is on the 160 acres.

Q. Now, these settlers that are still there, where they have made final proof, what is the chief value of these entries or lands that they have within the limits of this grant?

Q. You may answer.

A. Why, in most cases, they would be valuable chiefly for the timber.

Q. How does the timber on these entries, as timber, compare with that that is on the unsold portion of the grant of the Oregon & California Railroad Company, as to quantity and value in proportion to the acreage?

A. Why, usually on the homesteads there is twenty or thirty acres that has been burned over and the tim-

ber has been killed, so taking it in proportion to the claim of 160 acres, why, I think in most cases it would be a less amount of timber. That might not hold true with timber that is away back, but with the adjoining timber.

Q. Yes, what I mean to inquire about is, is the timber on these homesteads that are still occupied substantially the same kind of timber, and quality, as the adjoining railroad unsold quarter-sections?

A. Yes, sir; certainly.

Q. How extensively have these homestead entrymen abandoned their homesteads? I mean, after they proved up and sold to timber people, how extensive and general is that in Lane County, in the timbered section within the limits of this grant, if you know?

A. Why, it is quite extensive, and some places they have moved out so that where there was a schoolhouse and a postoffice, why, the buildings are standing there, but without any one occupying them.

Q. What has happened to postoffices in some instances?

A. They have been discontinued.

Q. What has happened to the school?

A. Well, there is no school there. I presume there is a school district, but they don't have any school. There is no one to go.

Whereupon witness recognizes the official bulletin known as "Thirteenth Census of the United States,

1910," prepared by the "Bureau of the Census, E. Dana Durand, Director," showing the population of Oregon, the number of inhabitants by counties and minor civil divisions, prepared under the supervision of Wm. C. Hunt, Chief Statistician for Population, and recognizes the same as the official bulletin issued by the Census Bureau.

Whereupon defendants offered the same in evidence marked "Defendants' Exhibit 317," which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as such.

Whereupon on recross examination witness testified that there is quite a fruit country a little south of Eugene, and at Creswell there are quite large orchard tracts in the stage of growing. The Bornstadt Company has purchased a large tract, but he does not believe any of the trees have borne any fruit yet, but it is considered good fruit land. That tract has been planted to trees for several years, and there are trees growing on it. There may be among the foothills, on the streams, a portion of these unsold lands of the company that could be used as fruit lands.

Q. Isn's it a fact that quite a large amount of that land could be used for raising grapes, for instance, that might not be available for raising grains?

A. I presume grapes would grow on it; but it would not be practicable, on account of the steepness of the ground.

All of the best land there has been sold and taken up, and only the roughest remains in Lane County, and while his testimony may seem to show that it is one-sided, trying to make it appear that the country is rough, it is simply because the best of the land is gone and this is the part that was considered the roughtest and farthest back that has remained. There are certain benches, table lands, in townships 15 and 16 south, range 1 west, that would be parallel with the ridges, following along out parallel, between the directions of the streams and the ridges running through a part of these townships, that could be used for fruit and grapes. It would not be very wide, but it would be parallel with the streams that would extend through the township. In the valley the fern land has been killed out. There is none there now. Most of the valley land is under cultivation. There may be very small patches in there of fern land, but one could not, generally speaking, say that it was fern land. He believes there have been large areas of fern growth there, by the evidence one can see—referring to the Willamette Valley. There is some dairying land within the vicinity of these granted lands. Cottage Grove is situated within the vicinity of this granted land, and there is a creamery there. Cottage Grove is twenty-two miles south of Eugene, in section 28, township 20 south, range 3 west.

Whereupon on redirect examination witness testified that he does not know of any vineyard of any size in Lane County, that is, a commercial vineyard. He knows of one or two grape vines, but would not call them a

vineyard. There is no one in the business of operating a commercial vineyard in Lane County, and he does not know of any grapes ever being grown on these lands in the grant. The Willamette Valley does not seem to be suited to grape culture. There is no one in that business in Lane County. Cottage Grove is on the main line of the Southern Pacific, south of Eugene, and between Portland and San Francisco. That section of the country has been settled up ever since he can recollect. Lane County is not considered a dairying county. Tillamook County is considered a dairying county. But there are some creameries—there is one creamery in Eugene, but he does not know of any one who has a large herd in that county. The dairying land within the limits of the unsold portion of this grant, either on the even sections or on the unsold lands, would be very small, if there is any.

Whereupon on recross examination, witness testified that he believes the only Government land open to entry in Lane County that is available, is in the Forest Reserve, and it is subject to certain restrictions and regulations so that no one has taken it up.

Whereupon JACKSON F. KIMBALL, called as a witness on behalf of defendants, being duly sworn, testified that he is thirty-nine years old, resides in Klamath Falls, Oregon; has resided there for ten years, and is by occupation a timber cruiser, which has been his business chiefly. He is local representative of the Weyerhauser Timber Company and subsidiary companies in Northern California and Southern Oregon, and is sec-

retary, treasurer and general manager of the Forest Fire Association for Klamath and Lake Counties, the objects of which is the protection of timber from forest fires during the summer season. All the timber companies in Southwestern Klamath County, and most of the larger owners in Northern Klamath County, are members of the Association; and there are, in round numbers, about 500,000 acres of timber lands represented in this Fire Association. These lands, thus represented, are embraced in what is called the Pokegama Plateau, which takes in what is called the eastern part of Jackson County in the high Cascades, and all the timbered lands out to the Klamath Basin; and that is what is called Unit No. 1. The balance of the timber in Klamath and Lake Counties, is operated in connection with the United States Forest Service, but he could not give the acreage of timber land in the Forest Service in these two counties. The Weyerhauser Timber Company owns altogether down in that country 300,000 acres; that is, the Weyerhauser Company and its subsidiary companies. He would have to look up his notes to be sure about this. They have in the Pokegama Plateau, or in Southwestern Oregon and in Jackson County, between 80,000 and 90,000 acres. These lands that are in that patrol are either in Jackson, Klamath or Lake Counties. In the patrol of the Weyerhauser Timber Company and the Weyerhauser Realty Company, are something like 250,000 acres of timber lands, called a yellow pine tract. There is some fir mixed in the holdings. They consider it a good tract for the

timber. Defendants' Exhibit 316 shows the holdings of the Weyerhauser Land Company, and the red coloring on the maps represents the Weyerhauser Land Company, the yellow the Pokegama Sugar Pine Lumber Company, and the green the Pelton-Reid Sugar Pine Lumber Company. He knows from personal inspection, or cruising, or from having been over the land at some time in the past, the lands shown on the maps in red, being map No. 1, the acreage of which he would have to guess at, but would say around 70,000 acres in the Southwestern part of Klamath County and the Southeastern part of Jackson County. He is familiar with the tract as far west as Range 4, and he has been in portions of townships 38 and 39, range 3, but very little. Range 4 is practically on the top of the Cascades. To which testimony complainant objected to as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of these lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified that the general character of that country in that vicinity, within the limits of the grant, with which he is acquainted, is a timbered country on the divide of the Cascades. The lands marked black, with which he is familiar, do not represent the best lands in there by any means. By that he means that the most of the better sections belong to some of the timber companies in there. Referring to Defendants' Exhibit 259, the unsold lands

of the Oregon & California Railroad Company, shown in green, with which he is familiar, generally speaking, are timbered lands, and chiefly valuable for timber. The timber is yellow and sugar pine, white and red fir, what they commonly call larch, which is botanically known as Shasta, or Noble fir. The most valuable lands of the country are in the Jenny Creek country, meaning the lands marked in green. They are timbered lands, and as a rule are covered with white fir, or very old burn, which evidently happened a good many years ago and left those high points with nothing but brush on them. The soil on these railroad lands, with which he is familiar, in the eastern part of Jackson County and the western part of Klamath County, is generally in the high country, and it is more or less rocky and brushy. The percentage of what they call agricultural land in that country, would be very slight, as to those lands with which he is familiar. It would be an awful guess to give the percentage. There are very few acres comparatively. His company owns in there, in the association, 77,000 acres, in round numbers and he should not imagine there were a thousand acres altogether in that 77,000 acres that would be suitable for agricultural or horticultural purposes. There would be little spots, little glades, as they call them—there are a few little spots on the headwaters of Jenny Creek that it is possible a settler might clear a few acres of land and raise a little garden. While that country is very brushy, he has figured in offering this tract to sheepmen, that being a portion of their business in all the rest of their

lands which are under lease, that that entire area in these would carry 20,000 sheep. By that he means all running west of the Klamath River, all of that country in through there. In figuring that over, they also included the territory which is open country in Northern California, and they figured that they would range over a territory, roughly speaking, of about one million acres. The sheep are herded, starting in the low lands early in the spring, with what they call the spring range. The sheep work as the snow recedes, north into the high hills. Starting along in April, lambing time down in the lower country, the sheep would run to Thanksgiving possibly; that is, they would work up in the high hills for possibly four months during the summer, and gradually work back when the storms came on, until they were down in this open land. About half of this one million acres is in California, as he estimates, and that portion is generally an open country. The sheep would be on the timbered portion of this one million acres, which he says would be about 500,000 acres, depending upon the season, but he would say generally about four months. There are seasons favorable, which would mean five months. The people that would own or have 20,000 sheep, or such large bodies, are still to be produced. They have been offering these lands for the last four years in an effort to get sheepmen in there, and so far it has not proven attractive to the sheepmen. They are trying to pursue exactly the same methods which the Forest Service attempts to carry out in selling the right to graze on these timbered lands. He believes that it is a good thing for

their timber, and incidently produces a little revenue. As sheep graze they are herded and graze the lands closely, and there is a good deal of the inflammable material which is on the ground during August, the dry season, that the sheep either eat up, or tramp into the dust, make it into dust, and thereby reduce their fire risk. These sheep are always accompanied by shepherds or herders. The sheep are usually divided into a band of 2,000. In that country down there it is very brushy and a wise sheepman would probably not have over 1,500 sheep, and they generally figure on a camp tender for three herders, not over that. The presence of these herders and campers, they think, is very good. They have a stipulation with them whereby they are to observe certain rules and regulations which the Forest Service has found advantageous, and which they have also found, in reference to care in building their fires; and also in case of a fire, their interests are identical with the Weyerhauser Timber Company, in suppressing them.

Q. Now, Mr. Kimball, suppose that a settler, under the act of April 10, 1869, should apply to the railroad company to purchase a quarter-section, whether in legal subdivisions by 40's, or a string of 40's, or in any way that it might be sold to him, and the company should sell to him, as an actual settler, at $2.50 an acre, any of these lands that are unsold, or in that general vicinity, and he would be expected to confine his activities to his own quarter-section to make a living, either by grazing sheep, or by raising cattle, or by agriculture or horticulture, or any use that he could put this land to as an

actual settler, state, from your knowledge and experience, what would be the result of his attempt to make a home on this quarter-section?

A. If he could use that quarter-section as a basis, whereby he could lease a large area in there, either from the timber companies, the railroad company, or from the forest reserve, a band of sheep of 2000 head would support a family.

Q. How much range would that 2000 sheep have to have on these lands?

A. Well, it is safe to say that they would need in there 200,000 to 250,000 acres.

Q. My question supposes that he is buying this for a home, now?

A. Pardon me, I want to change that. We figure down in there not less than ten acres to a sheep. That would be 20,000, wouldn't it?

Q. Yes.

A. My multiplication is wrong.

Q. But suppose he was confined to his quarter-section, and all the quarter-sections were fenced, if that were possible, what would he be able to do with that quarter-section in grazing or farming, or horticulture, or anything else that would enable him to make a living?

A. There are little spots in there where it is possible that a man might make a living, although the only way they have been able to do it is supplemented by trapping and working out. As far as being dependent

on the soil is concerned, I don't know of a single vacant piece of land in that country—by that, I mean, including the railroad land—where it would be possible for a settler to make a living from the land itself.

Q. Now, there are about seven or eight thousand applicants in this record for the purchase of quarter-sections under the pretense that they desire them for homes, actual settlement, at $2.50 an acre, and in 160 acres, or quarter sections. Within your knowledge in that section of the country, would these actual settlers or would they not be able to make a living on the quarter sections?

Q. You may answer.

A. It would depend.

Q. I mean confining it to the land, to the quarter-section.

A. It would not seem possible to me. Occasionally there is a man that can live on practically nothing, but the average man going in there, I doubt if he could select an area in there where he could raise sufficient produce to support him.

Q. Why would he not be able to raise on a quarter-section sufficient produce to support him—what is the reason of it?

A. The general character of the land in there is not productive, even grain, or any other natural product of the soil.

Whereupon witness testified that the fine fruit lands

in Jackson County are principally in the Rogue River Valley. He is not familiar enough with it to give definite information as to the area of the Rogue River Valley, or how long or how wide it is. He imagines that it is the area which is colored in yellow, pointing to the yellow field in the vicinity of the Rogue River and around Medford, in Jackson County, shown on Defendant's Exhibit 259. He does not know from personal knowledge anything about the character of the Weyerhauser holdings, shown on map No. 4 of Defendants' Exhibit 316, and only knows that the Weyerhauser Timber Company has acquired them for timber purposes. He has very little personal knowledge of the lands shown on map No. 2 of Defendants' Exhibit 316. He cruised in there for awhile, on Little River in Douglas County. These lands of the Weyerhauser Timber Company, with which he is familiar, are covered with a heavy stand of yellow and white fir. Those that he cruised were very good. It is so long ago that he does not remember exactly, but he thinks something between 25,000 and 50,000 feet to the acre. He is not familiar at all with any of the lands shown on map No. 2 of Defendants' Exhibit 316, showing in red the timber holdings of the Weyerhauser Timber Company in Lane and Douglas Counties, in the vicinity of the West Fork of the Willamette River, and the middle fork of the river, and in the vicinity of Wildwood, in Township 22. He is not familiar at all with the lands shown on map No. 3, of Defendants' Exhibit 316, showing in red, lands in the eastern part of Marion County, on Little River, North Fork; also on the San-

tiam River in Linn County, within the limits of the grant and outside of the limits of the grant, in the eastern part of Lane County and some scattered sections in the eastern part of Lane County. His knowledge is chiefly confined to the lands of the Oregon & California Railroad Company and other timber owners in Jackson and Klamath Counties. Whereupon defendants offered in evidence these four maps, Nos. 1, 2, 3 and 4, of Defendants' Exhibit 316. To which complainant objected as not properly identified. Which was received in evidence and is hereinafter set out and described and made a part of this statement of the evidence and identified herein as such. Whereupon on cross examination witness testified, that he is the local representative of the Weyerhauser Lumber Company, and its subsidiary companies, in Southern Oregon and Northern California. He does not know approximately how much land the Weyerhauser Timber Company owns in Oregon, but it owns many thousands of acres, and he presumes, although he does not know, that it is one of the largest land holding companies in the United States. He is acquainted with the lands referred to in his direct examination, described as beginning in the west of Townships 38, 39, 40 and 41, all in Range 4 East; and then Township 38, Range 5 East, down to the California line, and Range 6, beginning with 36, and running down to the California line, in fact from Range 6 East, where the yellow pine occurs in all that country, he is more or less familiar with. He does not mean to say that he has been over every

quarter-section, but in a general way he has been over these townships. A great deal of it he has cruised by forties. He has been engaged in the timber business about twenty years, and it is practically all he knows. In their business down there, since they have started in the leasing business, it has become necessary to get more or less information in reference to farming, but his farming experience is all theoretical. The Weyerhauser Timber Company is about through acquiring timber lands in that section of the country. They have acquired quite a little chunk; timber is what the company is engaged in and that is what it is after; it does not deal in agricultural lands at all, unless it is for timber. It is not dealing or investing down there, generally, in real estate. With reference to the ranging of sheep, about which he has testified, they have all of their lands leased east of the Klamath River; but none in that area which they call the Pokegama Plateau—the Jenny Creek belt. They have large areas of grazing land throughout their timber holdings. Whereupon on redirect examination witness testified that he could not tell the exact acreage of lands they had leased in Oregon, but approximately it is about 200,000 acres. They are all leased to sheepmen and for the purpose of sheep grazing. They leased from year to year and they generally figured about as the Forest Service does, that five acres of range will carry one head of sheep, they have found. They leased only from year to year in Oregon. The sheep man goes in about the first of June, and generally leaves the range by October first; in the high mountains the time is

shortened very much. The leasing business is carried on by the company in that way, partially to get a little revenue and partially to get a little fire protection. The sheep men pay them five cents an acre per annum, generally. They have a little land north of the Klamath Indian Reservation that is not productive. The market price, so far as they are able to get at it, is five cents per acre; that is the price that the sheep men are willing to pay them. If a man had 160 acres of that kind of land, at five cents an acre, he would get $8.00 a year. That is the best that they have been able to do and they are in the business for what there is in it. Generally these people that rent that land in there this way, are large sheep men. He always tried to play fair with the natural users of the range, but in the very nature of things it gravitates to the big men. The little man cannot afford to pay often times what the big man can. The headquarters of most of these men are at Lakeview. Most of the sheep winter on the desert, as it is called; that is a vast body of public land that lies east of the timbered tract in Lake County, which is naturally in the western part; and as a rule they have to drive from about 50 to 100 miles from their winter range to their summer range. The District Forester of the United States gets for the lands within the Forest Reserves in Oregon, where they lease to sheep men, or cattle men, seven cents per head for summer range, and it varies up to, he thinks, thirteen cents, including the lambing range. That is an open country, that is not timbered, is furnished to sheep men where they lamb. The Forest Service fig-

ures stock per acre, for leasing purposes, about the same as they do, generally. There are territories where it takes a great deal more land, and other territories don't take as much, but on an average about five acres to a sheep. The Forest Service charges seven cents a head for their summer range, and his company charged equivalent to twenty-five cents a head, and he thinks they are getting considerable larger incomes than the United States. There are reasons for that all right enough, under their rules and regulations. The lands within the Forest Reserves are known as timber lands. There are, of course, spots in the Forest Reserves that have agricultural possibilities.

Q. But what, relatively, are these lands in the United States Forest Reserve as compared with the unsold lands of the Oregon & California Railroad Company in eastern Jackson County and western Klamath? How do they compare, if you know?

A. The lands of the railroad company that I am familiar with are located on the high Cascades or on the slope of the Jenny Creek plateau, and there is mighty little stuff in there that is much account. But further north, in the forest reserve, there are quite a good many little meadows, natural meadows, in the high plateau country—if that answers your question.

Q. I am referring to the timber character of the two classes of lands.

A. Oh, it is about the same, as far as the kind and amount.

Q. You mean by your answer that in the forest reserve there is probably a fraction more land that could be utilized for grazing, or for agricultural purposes, in that section than in the railroad lands?

A. Yes, I think so. A little further north there are quite a number of spots in there that is good grazing land.

Whereupon, on recross examination, witness testified that in the comparison he was referring to the Crater National Forest. The Forest Reserve is not run as a money making institution; it would naturally charge much less than a private concern would for the use of the range in the Reserve. There are a good many reasons why it is necessary for them to do that. The settler has rights that a timber company does not have to recognize, but the Forest Service does have to. It is very natural that the conditions should be different; and then, of course, his company is out for all there is in it. He would lease his range to the small holder, or small stock man, the same as a large one, if by doing that it did not put them in a position where they could not lease all their lands. They might have a man who would want a choice bit of grazing land in their territory, and by renting to him they would be prevented from leasing a whole lot of other land, and they would probably turn him down as a business proposition. That is the way they look at it. It is a fact that they consider the good will of the settlers living in the vicinity of their lands as some consideration in leasing the lands, a very vital consideration, there is no question about that.

Whereupon MILFORD JACOBS, called as a witness on behalf of defendants, being duly sworn, testified, that he is fifty-four years old, resides at Tacoma, Washington, and his business has always been logger and timber cruiser; he has been a timber cruiser, done nothing else, for the last fifteen years. He has cruised timbered lands in the states of Oregon and Washington, and worked mostly for the Weyerhauser Timber Company. He has cruised timber lands for the Weyerhauser Timber Company, and its subsidiary companies, in the Coos Bay country, and in the country north of Eugene, the Calapooia Range country. He has seen Defendants' Exhibit 316, from a distance, and looked at these maps, and says that he has done a lot of work in the Jenny Creek Basin, in Townships 38, 39 and 40 South, Range 5 East, north of the line of California there, and has cruised lands, he could not say how many acres for the Weyerhauser Timber Company, in the Jenny Creek country. He was sent in there to look over that country, to see what it was, as a timber proposition, and then he did a lot of work cruising afterwards. In going through the country they took notice of the conditions of the country, whether it was a timber proposition or not. He has no recollection of the lands shown on map No. 4 of Defendants' Exhibit 316. He has done quite a lot of work on the lands shown in red colors on map No. 2 of Defendants' Exhibit 316, in Coos County, near the Umpqua Forest Reserve; and also the lands in Coos County and part of Douglas County, east of the Umpqua Forest Reserve, shown on this map. He has done

work on the east side of this No. 2 of Defendants' Exhibit 316, in the eastern part of Lane and Douglas Counties. He has done some work there. He became somewhat acquainted with the conditions of the whole country in doing work on these lands of the Weyerhauser Timber Company. The Weyerhauser Timber Company did not buy isolated tracts of timber. They would not buy a piece of timber unless it was a timber country. The method of cruising depends on how close a cruise is wanted. If it is wanted very close, in a few acre tracts, he counted every tree. If it is wanted extra close, he took calipers and measured it; he didn't usually do that. He usually takes acre tracts and counts them and makes an average of every ten acres. There is a report goes in on ten acre tracts. His reports would show of these lands cruised by him for the Weyerhauser Timber Company, in these various localities, that he cruised about 25,000 feet to the acre, but that should be raised about forty per cent, because it was cruised quite a number of years ago, when they did not cruise closely. The price of these timber lands has advanced and the market has become more active, and cruisers are expected to, and do as a matter of fact, cruise more closely; they cut a great deal more closely. There is a great deal more timber cut off of an acre now than there was ten years ago, because timber is worth more. Stumpage has gone up and they cut it closer. The market value of stumpage runs in the neighborhood of a dollar a thousand. Different pieces and different localities will vary, but that is a fair average. The price

in the Columbia River country, known to the loggers of Portland and the timber buyers and mills of Portland and tributary to the Portland logging market, will run from $1.50 to $2.50 per thousand. He does not know whether logs produced from these timber lands that are tributary to the Columbia River market for Portland go clear to Astoria or not. He has never been down there. As far as he knows, they were logging what they could to take to Portland. He knows the price of stumpage for logs in the Nehalem country, in Tillamook County, that is, not the timber that has been logged to the present time, he couldn't, but the land that is on the market for sale he has knowledge of the stumpage prices. They quote stumpage in that section of the country, at the present time, at $1.00 a thousand, and they base their price on $1.00 a thousand stumpage, which is the market value. There is a good deal of timber in Lane and Douglas Counties, along where the Weyerhauser Timber Company has made its investments, which only has a speculative value at the present time. It is held for speculation. It cannot be utilized at the present time, and it depends somewhat on who holds it as to the market value, whether it is a large company or a small individual. Whereupon complainant objected to the testimony of witness as to the character of these lands within the limits of these grants, as incompetent, irrelevent and immaterial, and it was agreed between the parties that this same objection may be

deemed taken as to all the testimony of this witness relating to the character of the land within the limits of these grants, settlements thereon, and public land entires thereof. Whereupon, witness testified, that the timber in the Jenny Creek country, with which he is familiar, will run largely to yellow pine. There is quite a per cent of sugar pine down the Pokegama, and as one gets up and into the hills it runs more yellow pine, and some white pine.

Q. What is the character of the unsold lands in the Jenny Creek country? I mean the lands of the Oregon & California Railroad Company that are in the eastern part of Jackson County and in what we call the Jenny Creek country, if you know?

A. Why, the land there, it is practically all the same thing. There are a few little clearings along Jenny Creek. They are small. And there is some open country there, but the land is a timber proposition.

Whereupon, witness testified, that these lands of the Oregon & California Railroad Company in that section are chiefly valuable for timber. The unsold lands of the Oregon & California Railroad Company, belonging to that company in Jackson County and in the Jenny Creek country, marked in green on Defendants' Exhibit 259, are not very heavily timbered. The best of the timber has been sold for timber purposes. He accounts for the fact that the best timber has been sold, and is now held by other people, because these people were buying timber in there and they bought the best.

He cannot tell the year when the market for these railroad timber lands, in that section of the country, first became more or less active. The Weyerhauser people went in there about eight or nine years ago, possibly ten years ago. Under present conditions the unsold lands of the Oregon & California Railroad Company, with which he is familiar, in the Jenny Creek country and in the eastern half of Jackson County and western half of Klamath County, have no value for agricultural purposes. They would have some value as a grazing proposition. If one would limit grazing possibilities to a quarter section, if it lay aside of a piece of land that was suitable for agriculture on a creek bottom, it would be of some value as a grazing proposition. There is very little land there that could be used for agricultural purposes, in the unsold portion of this grant, with which he is familiar. He has never come in connection with a grazing proposition, but knows in a general way about grazing sheep over large areas of land. These lands of the company could not be utilized for grazing purposes in any other way than as stated by Mr. Kimball. Where the majority of the lands has been bought up in the eastern half of Jackson County and the western half of Klamath County, the lands that remain would naturally be poor soil, because the heaviest timber grows on the best soil mostly; that is invariably the rule. When one gets timber, he gets fair soil; when one gets poor soil, he gets poor timber. In that country down there where the yellow pine grows, is clay soil and shale, being broken rock. There is a good deal of it rocky. Some

places it is all clay.

Q. Is it or is it not productive after the timber is removed, or is it fit for anything, if you know?

A. Yes, there is people in all of that country there in different places, scattered settlers there, that have a little creek bottom, and they farm what they can, and work up on the sides. Sometimes they raise a little on that other land outside of the creek bottom; sometimes they don't.

Q. When you speak of these people living in there, you refer to small settlements in the little valleys and creek bottoms?

A. Yes.

Q. Are there any settlers on the even sections within the limits of these timber belts?

A. Along the river.

Q. But they are only on the lower streams?

Objected to as leading.

A. River and streams. After they get up the creeks they have to irrigate, but along the river bottom it is wet enough so they don't have to irrigate.

Q. What are these river bottoms? Are they small or large?

A. They are small tracts.

Q. When you speak of small tracts, how many acres would you speak of as capable of agricultural uses

even along the river bottoms?

A. Along the river bottoms; oh, there is possibly, in twenty-five miles there, or twenty miles, get outside of the timber area there—take it from Klamath Lake, the lower end of Klamath Lake——

Q. I mean within the limits of this grant, now—within the thirty-mile limit of the grant, and not including anything that is outside of the grant?

A. I don't know just where your grant comes, where it is located in regard to Klamath Lake.

Q. Look at the map, Defendants' Exhibit 259, Mr. Jacobs, over here. Here is Medford.

A. Here is Klamath Lake here. That is outside.

Q. This map shows the indemnity limits of thirty miles, and the place limits of twenty miles, and in green shows the unsold portion of the company's lands in Jackson County. Now, the question is, where are any settlements within the limits of that grant, on the even sections, if there are any, in the unsold portion?

A. Oh, there is two or three halfbreeds live in there.

Q. Two or three halfbreeds—pointing to what place, Klamath River?

A. Yes, I expect some of them is on that river.

Q. In the Klamath River country?

A. Yes.

Q. Well, now, the Klamath River has no valley,

except small and narrow?

A. Very small, narrow valley.

Q. How wide?

A. Oh, that valley there is in the neighborhood, probably—in that one place, two or three halfbreeds have probably got forty acres that they cultivate in there.

Q. Are there any settlements in the Jenny Creek country within the limits of this railroad land?

A. There are two or three families live where the old stage line crossed Jenny Creek, and upon the head of the creek there are some other people, right in here.

Q. What kind of settlements are they that they have?

A. They are keeping cows up in there. At the upper end of that Jenny Creek is a poplar growth brush, and it is quite easily cleared, that is, three or four hundred acres up there that could be cleared at a reasonable cost.

Q. Where do they range their cows?

A. They range unfenced land, the whole territory. It don't confine the cattle to their own range.

Q. Suppose a settler was to go in there and get a quarter-section of this unsold railroad land at $2.50 an acre from the railroad company, taking the quarter-section according to legal subdivision of forty acres in a string or in a square, whichever way it was best for him,

and he was expected to confine his way of making a living to that quarter-section, was not permitted to range his cattle or his stock over the unenclosed lands outside, and was expected to have this quarter-section used for every purpose that it could be used, either for grazing or for raising garden, or horticulture, or grain, or hay, or any agricultural or horticultural purpose, I wish you would state to the court, from your knowledge of these unsold lands, whether or not such a settler, under such circumstances, could make a living on any quarter-section there, or any considerable number of them?

A. Well, there possibly could be picked up a section of land on the head of Jenny Creek that would support life.

Q. That is to say, out of this total area, you think there might be as much as a section that could be gathered together?

A. I think maybe.

Whereupon witness testified that the balance is timber lands. There are places there where it is covered with loose rock, quite large, washed off, had very little timber on it. It has no value as agricultural land. He does not think that he stated the per cent, that he thought of the total which would be agricultural in the Jenny Creek country in the timber area, and not including lands that are comnig under the irrigation ditches, within the limits of the grant, in the unsold portion. Including land that might be irrigated, he thought that two per cent could be used for agricultural pur-

poses. He cruised some land in Coos County, and in the western part of Douglas County, and above Eugene; but he did no cruising on the Siuslaw River in the western part of Lane County; he might have on a little tributary to it, but not down on the river. He cruised some lands as shown on one of these maps, pointing to the lands southeast of the Umpqua Forest Reserve and west of the head waters of the Millicoma River, and his recollection is they were in Townships 23, 24 and 25 South, Range 10 West. He found that land to be rolling, quite well up, good elevation, and young growth of timber, that was about twenty years old, as he understood it. It was fir timber and he did not believe that this land was chiefly valuable for anything except timber. It was a timber proposition. He cruised most of the lands in Townships 21, 22 and 23 South, Range 1 West, and some in Townships 22 and 23 South, Range 2 West; that land is a timber proposition. Practically none of that land colored in red is suitable for agricultural purposes. When the timber is removed it may be suitable for grazing land. The even sections and the unsold lands of the railroad company in these various localities, where these lands of the Weyerhauser Timber Company are situated, is of the same general character and chiefly valuable for timber. Taking both localities, there is practically very little of these railroad lands that would be valuable for agricultural purposes. The soil in the Coos Bay country possibly might be a little better after the timber is off than it is up in 1 West; but the amount of agricultural land there included in

that timber area there, is very limited, what would be called agricultural land is almost a negligible quantity, probably one per cent. There is some of that timber land, when the country becomes settled up and the timber is worked off, could be worked into small orchards and grazing, and general farming; and he would say that sixty per cent of the land that he examined, possibly a little more, after the timber is cut off, extracted, cleared and grubbed, and the stumps blown out, could be used for fruit purposes, and grazing, and some agricultural purposes. Take the country right through there, $100 an acre would be cheap for clearing it; he does not think it could be done for that, but that would be cheap.

Q. Don't you know that the clearing of these lands that are heavily timbered, in this fir country, would run from not less than $100 up to as high as $300 an acre?

A. I am well aware of that fact.

Q. That is the fact, is it?

A. Yes, sir.

Q. How do they clear this heavy timber land of its stumps?

A. Do you mean after the logs are taken off?

Q. Yes.

A. With powder mostly. Sometimes they burn the stumps out with fire.

Q. Have you ever seen them use giant powder and

black powder mixed?

A. Why, there is a stumping powder put up by these powder concerns for that purpose—put up a stick for that.

Q. Do you know what it costs per acre in this heavy timber for powder alone?

A. Well, I have bought powder and blowed out an acre or two, but I couldn't tell you exactly the cost of it.

Q. Have you any idea as to an estimate of what is would cost on this heavily timbered land just for powder alone, to say nothing of labor?

A. I should think it would be worth $10 an acre.

Q. You don't know?

A. I have no actual knowledge of the present price of powder, nor a very clear recollection of what we paid for it at the time, quite a number of years ago.

Q. Well, now, let me ask you, suppose that an actual settler was to go and apply to the company for 160 acres of this timber land that you are acquainted with, within the limits of this grant, belonging to the railroad company, and would be permitted to buy it at $2.50 per acre, and settle on it intending to make it his home, and was expected to make a living on this 160 acres without the right of pasturing on the outside lands, but to put that land to any use that he could, I wish you would state to the court whether or not there is any considerable number, or any of these quarter-sections that

could be made a home of, from which a man could make a living under those circumstances?

A. There is very little of it. The Government land that lay contiguous to this land, that was taken for homesteads, had small patches of timber destroyed on it, and the people stayed there until they could sell the timber proposition and leave it.

Q. Now, then, applying your knowledge and experience to the quarter-section of railroad land that I speak of, what would be the experience of a man who would go in there and try to make a home on a quarter-section and be confined to it?

A. He would starve out.

Q. Why?

A. Because he couldn't make a living.

Q. Why couldn't he make a living?

A. Unless he had capital enough to start with. Take a man with $5,000 to $7,000, he might go into that heavy timber there and make a living.

Q. He wouldn't make it on the land; he would make it on the money he would put into it?

A. Yes, sir.

Q. Isn't it a fact he could go out in the valley and buy, with his $5,000 or $6,000, land cheaper than he could clear it up.

A. It would be the best proposition for him to do.

Whereupon witness testified that a large part of his

work of cruising these lands was done along about 1903 and 1904, something of that kind; and these timber lands began to move on the market about that time, which was about the time when the Weyerhauser people began to buy these lands. There was very little market for timber before the Weyerhauser people commenced buying on the Coast. They made the market. They alone made the market. The fact that they came in here and commenced buying extensively induced other people to come. The first two or three years after the Weyerhauser people were here, there were not so many other people buying, but the number of buyers increased rapidly after the Weyerhauser people began to buy, and the number is still increasing. These timber people come chiefly from Wisconsin, Minnesota and Michigan. There are places in these timber lands, in its native state, where there is considerable sword-fern or what are called brakes. The old burns are mostly grown up to ferns first, and then brush comes in. It takes a good deal of land, in its present state, to support an animal anywhere in that country. He knows of pea-vine on that land, and there are places, isolated places, where the condition would be favorable, there is pea-vine on it. But pea-vine does not usually come into an old burn. There is some pea-vine on some of this land. The pea-vine is good feed in the spring and summer; but there is not enough to make it of any particular value as a feeding proposition.

Q. There has been some testimony in this case that there was a good deal of grazing up there over these

lands, in the shape of pea-vine, for cattle, and things of that kind. Would there be grazing there on a 160 acres, or would a man have to have several thousand acres to graze over?

A. He would have to let them roam at will over the country.

Whereupon, on cross examination, witness testified, that he worked for the Weyerhauser people when they commenced buying here; and has worked for them since that time, six years steady. He has been employed by the Weyerhauser people since about 1900; and has worked, not all the time, since that for them. Some of the time he has done work for the Government on the Yakima watersheds. He has been cruising, making it his business, for the last fifteen years. He has been working in the timber business and cruising for thirty years; he is now fifty-four years old and has been in the timber business since he was twenty years old.

Q. These lands of the Oregon & California Company included in this map, so marked, that you have examined, have been noticed by you in cruising the Weyerhauser timber?

A. Yes. Wherever we go into a piece of timber we take notice of the surrounding country, the general formation and the amount of timber to be found.

Q. Other than the lands in the vicinity of the Weyerhauser tracts, you have not examined?

A. Only as we go through getting to those lands,

now, traveling through the country.

Q. Just as you would casually go through? You made no special examination?

A. Made no special examination, unless there was a big burn. If there is a farm or anything in the vicinity of the land we are buying, or a clearing, we make a note of it.

Whereupon witness testified that it would be hard for him to describe accurately, by sections and ranges, the lands of the Oregon & California Railroad Company he had examined. He has no memorandum of his work there. There is quite a lot of that work that was done under other parties. They had done a lot of work that does not show on that map. Defendants' Exhibit 316. Referring to Defendants' Exhibit 316 he has done a good deal of work in Township 40 South, Range 5 East. They had headquarters at Pokegama, and worked there, got their supplies there, and worked on Jenny Creek, and up Jenny Creek. Jenny Creek, as shown on Defendants' Exhibit 316, No. 1, runs south through Townships 39 and 40, Range 4 East. He has done work in Township 39 South, Range 5 East; and was cruising in 39-6 East at a place called Buck Lake, and was cruising in there. He has done a little work along the Klamath River in Township 40 South, Range 6 East. The Klamath River runs through that township diagonally.

Q. Yes, I will permit you, Mr. Jacobs, to refer to that memorandum book, refreshing your mind as to the locations.

A. Section 9, 21 South, Range 1 West; Section 10, Section 12, Section 18, Section 26, Southeast quarter of Section 28, Section 32, Section 34. That is all in that township.

Mr. Fenton: What township was that?

A. 21 South, Range 1 West. In Township 22 South, Range 1 West, Section 2—not all of the section—551 acres, Section 4, Section 6, Section 10, Section 12, Section 13, Section 18, Section 20, Section 22, Section 26, Section 30, Section 32, Section 34. That is all in that township.

Q. What township is that?

A. 22 South, Range 1 West. 23 South, Range 1 West, Section 4, Section 8, Section 10. That is all in that township. 22 South, Range 2 West, Section 4, Section 6, Section 8, Section 12, Section 26, Section 28, Section 30, Section 32, Section 34. That is all of that township I have cruised. And 23-2 West, Section 6, not all of it, 216 acres; Section 20, Section 22, Section 26, Section 28—480 acres; Section 32, Section 34. That is all of that township. 22 South, Range 3 West, Section 12, 211 acres; Section 22, 240 acres; Section 24, 280 acres; Section 26, 320 acres; Section 28, 80 acres. That is all of that township. 23 South, Range 3 West, Section 2, 121 acres; Section 6, 405 acres; Section 14, 40 acres; Section 10, 240 acres; Section 18, 320 acres; Section 22, 320 acres. That is all in that township.

Q. That book that you refer to, Mr. Jacobs, that you have taken these sections down, you have recently

inserted those?

A. Yes, I took them down.

Whereupon, witness testified, that the Weyerhauser Timber Company gets a water power site once in a while, but its business is timber and lumber, and it is not engaged in agricultural pursuits, or acquiring agricultural lands for the purpose of exploiting them or of engaging in farming. He does not think there are much cheaper methods of clearing lands than blowing the stumps; that is the cheapest method there is of clearing land. One cannot haul them out as a stump there, but will have the dirt to get off the roots, and that costs about as much to get rid of the stump as it does to get it out of the ground, it has to be dug out. As a usual thing, if the land is any good, it is clay soil, and one has to get that off the roots before they will burn. If they are shot out it is clear and it is all ready to burn. They pull stumps, with stump-pullers, and use donkey engines quite extensively, with pulley blocks; but take fir stumps and it is not a successful proposition. There is a char-pitting method, and also boring and burning stumps. He has seen machines for this purpose, and that is another method that is used. They have devised during recent years, a number of new methods of removing stumps from the land and clearing them, but contractors clearing railroad right of way all hang to powder, and use the cheapest method there is known. In clearing for railroad purposes powder is used on stumps to remove the stump. It might be used to remove a log,

too, but not to remove the dirt; the way the railroad contractors shoot the stumps off, it doesn't blow the dirt right off the right of way; and he doesn't think the use of powder has anything to do with blowing the dirt off the right way. He has taken stumps out in street work; during the hard times in 1892 and 1893, they did some street contracting, and that has been his experience, although he has cleared lands too. He never did very much of it in this country for agricultural purposes. They did not have any serious difficulty with timber where he was brought up on a farm in Wisconsin, on the Mississippi River. The timber was scattering, and the stumps, they let stay in a good many years, because they could plow right along on their burns. The country was a hardwood proposition, a different proposition from this. It was what is called a hardwood country. Most of the clearings that he has seen in the western portions of Oregon and Washington, and he has seen a good many in the valley, were in vine maple, some alder, and timber of that kind. There are spots where they have got into the fir timber, but the majority of the farms that were cleared are not fir timber. From present evidences in the Willamette Valley a good deal of it was covered with a dense undergrowth, but he would judge from the looks of it there was a good deal of open country, too. In testifying concerning these lands he has referred to their present condition, as to their agricultural possibilities, with the timber on them. A burn does not necessarily kill the soil; that depends a good deal on the condition of the ground at the time of the burn and of the

timber standing on the ground. There will be a few small isolated places where the soil will be destroyed, kind of vitrified; but that is rare, and it does not apply generally. He has never been employed by the Southern Pacific Company, or the Oregon and California Railroad Company, with reference to their lands. This suit is the only thing he has ever had to do with them. He has cruised over a lot of railroad lands; that is, he took preliminary runs through them for the Weyerhauser people; lands that they did not buy, he just made a casual examination of them generally, to see whether they wanted the lands at the price. The value of these lands have constantly increased during the years buyers have come in, and the timber and land have both increased in value. He does not know what the Weyerhauser timber holdings are in Oregon, and would not like to state approximately what they are; he has never figured it out himself. The greater portion of these timber lands have been obtained from the railroad company and through the use of scrip in the even sections. The Northern Pacific Railway Company located the timber lands in Oregon and Washington with Northern Pacific scrip and then sold to the Weyerhauser people. The Weyerhauser people did not use any scrip, they bought the land; they paid more for the scrip land than they did for the patented land. Whereupon on redirect examination witness testified, that he did not read the description of all lands that he had cruised and as shown on his memorandum; he has some more, and practically the same conditions would apply to them. Whereupon, on recross ex-

amination, witness testified, that the lands he referred to are in Coos County, and that he cruised in Section 2-24 South, Range 10 West, 601½ acres; cruised 578 acres in Section 4-24 South, Range 10 West; Section 5 of the same township and range; Sections 6, 7, 8, 10, 12, 14, 17, 18, 19, 20, 22, 24, 26, 28, 29, 30, 31, 32, and 34, Township 24 South, Range 10 West; Sections 2, 4, 7, 8, 10, 12, 14, 18, and 24, Township 25 South, Range 10 West. The divide there is what they call the North Fork of the Coos, between that and Coos Bay. That is on the Pacific Ocean divide; the water runs into the Pacific Ocean or Coos Bay. The soil in those townships is not so good as it is further south. It would be agricultural land when the stumps are out, quite a per cent of it, but it is not as good as it is further south, around the south part of the bay or harbor. Whereupon, on redirect examination, witness testified, that there are a few people who went in there along the bottom lands along the creek, took up homesteads and lived there, had some cows, and made a living selling butter; that was not timber stuff; that was vine maple they settled on down on the little streams. No one wants a homestead in the timber land there as a farming proposition. There are some homesteads in the timber lands, he thinks, in there; they got some vine maple land, that is easily cleared. There are no homesteads in that timber land where he was. The even sections there were scripped by the Northern Pacific Railway Company. Timber men own, generally speaking, that timbered land now, where the title has passed out of the Government.

Whereupon W. T. GRIEVE, called as a witness on behalf of the defendants, being duly sworn, testified; that he is thirty-five years old, is assessor of Jackson County, has lived in that county since 1889, and has followed the business of farming, running stock, timbering, and official business since he was fifteen or sixteen years of age. Between thirteen and fourteen years ago he was deputy assessor, and after that he went to farming again; and for the last four years he has been the main assessor of the county. His father, John Grieve, was assessor when he was deputy, and he was deputy two years, and is now in his fourth year as assessor. He has lived in Jackson County about twenty-three or twenty-four years, and is acquainted with the unsold lands of the Oregon and California Railroad Company in Jackson County. The first introduction he had in regard to these lands was the second year—he would not swear positively whether it was the first or second year when he was deputy assessor —William S. Crowell up to that time was the Probate Judge of Jackson County—his father raised the assessment on all the Oregon and California Railroad lands at that time. He was acting as deputy, accompanied with a notary public, and rode through all the out districts even after the assessment was made. He had to ride the out districts, that was his part of it, to ride the out districts as deputy assessor. After this was done Judge Crowell ordered him to take a notary public and go among the farmers in these railroad lands and get affidavits from them as to the actual value of this particular tract of land, which he did. He refers to a con-

troversy between the company, in 1896, when Judge Crowell was County Judge, which resulted in some litigation as to the assessment of the land grant in Jackson County. He was instructed by Judge Crowell to procure this information. After he was deputy assessor, and prior to that time, he had always lived the bulk of the time, the bulk of the time operated in the out districts—that is, out along the creeks and rough districts. He ran cattle on these lands. He had examined these lands for his own personal information; and had located timber lands through the county; and also since becoming assessor, he had looked into the matter of this land business very carefully. He could not state that he had been over every section of these unsold lands in Jackson County, but he had been over every district, and every portion of each district where there would be any question; that is, he has practically seen all of it. To which testimony of the witness complainant objected as incompetent, irrelevant and immaterial, and it was agreed that this same objection should be deemed as taken to all the testimony of this witness relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified, that in ascertaining the value of these lands, in looking at it, considering it, and living there, he has been able to ascertain the general character of these lands, what it is good for and not good for, what is covered with timber and what is not covered with timber, etc. He does not know that he can state just exactly how many acres there are of this grant, if any, that

are practically of no value, and without any timber values on them, but if he remembers right they figured that up pretty close, and he believes that the amount was something like one hundred and ninety to one hundred and ninety-two thousand acres, something like that, close to that, that they considered worthless, as far as any farming was concerned. In certain districts of the county there are steep mountains, which are very steep, especially on the Applegate side is the steepest, and there is no timber on a lot of that; it is too steep for farming, unless one would terrace, and it would be impossible to do that; then it is very rocky, they have got some very rocky land there. On the Applegate side there is what is called chaparral on the lowest hills there, and there is some live oak shrubs, but no large live oak trees; there is this kind of brush, and live oaks and laurel, and manzanita; higher up there is the red rooting brush, and what is sometimes called slickleaf, and snow brush, and there is some vine maple. These worthless lands, of which he speaks, are all of a volcanic nature. There has been at times a good deal of mineral prospecting, within the limits of this grant, in Jackson County, and that is very true in regard to the west side of Jackson County; there is one mine in Township 31, Range 1 East; outside of that, on the east side, there is but very little; in fact there is no mining on the east side of Jackson County.

Q. What working mines are there on the west side of the county and anywhere within the limits of this grant, on the even sections or elsewhere, or on the rail-

road sections, where they have land that is unsold?

A. They are mining some, I guess, on railroad land that has not been sold; but I don't think there is any big operating mines.

Q. You mean prospectors?

A. Yes, sir.

Q. What is it called? What kind of mining is it called?

A. Well, pocket-hunters, they call them. Of course, there is several ledges of quartz. It is quartz and placer. There is the Opp mine. That is quartz. They have got a stamp-mill there, I believe ten stamps. There is Braden mine, close to Gold Hill. That is one of the oldest mines they have there. Then there is several small quartz mines around close to Gold Hill. Then in above Woodville they have mostly all placer, on what they call Jump-off-Jo Creek. Then on Sterling Creek they have a placer, and on Forest Creek they have a placer. And on Footes Creek, at the mouth of Footes Creek, there is a dredge known as the Champlin dredge, and on the head waters of Foote Creek they have small placers.

Q. What kind of mines are these—what mineral?

A. Gold.

Q. These pot-hunters, or pocket-hunters for gold, have any of them succeeded in locating any claims that they have developed and worked?

A. That is, you mean?

Q. Commercially, I mean.

A. You mean on the grant lands, or on any lands?

Q. On any lands on that side?

A. Well, the pocket-hunter, you know, he digs out a pocket, and that is about the end of it. They have succeeded in digging out some very rich pockets.

Q. These pockets, are they uniform, or are they transitory and scattered?

A. No, they are scattered.

Q. And do they last?

A. No, as a general rule, they never last. I never have known one yet to last.

Q. It is known, then, as a pocket mining country?

A. Yes."

Whereupon witness testified, that outside of the mining that may be in it, the only value of the remaining 251,000 acres would be for the timber there is standing on it, and possibly for what grass grows on it, that is, for grazing. The largest majority of the timber of this remaining land is fir; that is, the bulk of it. It will probably run, he should judge, taking it as a whole, the Oregon and California Railroad grant would not exceed twenty-five per cent pine, including sugar and yellow pine, which is above eighteen inches at the top. The balance of the timber would be red and yellow fir. The best portion of the timber is situated in the Jenny Creek, the Big Butte, Elk Creek, Evans Creek, Footes Creek,

and there is some on the head water of the Applegate, but it is considered that Applgate timber is rather light. For the districts that he has stated, he would be safe in saying that the timber would average 20,000 feet to the acre; and that is of commercial value, and is what he has testified to. It would be very hard to say, taking the whole thing, valleys and all, within the limits of this grant, referring to the 251,000 acres of the unsold portion, covered more or less with timber, what per cent in its present state could be used for any agricultural or horticultural purposes; and the reason why, is that to make it farming land it would necessitate the removal of some of the timber off of it. There are places that one would find openings, natural openings, small openings, but to go in and pick up a quarter section and take it as it comes, one would have to remove timber to get any kind of farming land and farm it. Taking the possibilities of this 251,000 acres on an average, as to each quarter section, if the timber was cleared, the land adapted to agricultural use, or that could be used for agricultural purposes, would not exceed one-eighth, which would be about twelve per cent. These agricultural parcels would be in spots. Take the Big Butte district, there is probably a township, close to a township, in there, that one might say would be all farming land, if the timber was off of it; that is to say, if the timber was cut and removed and the stumps grubbed out, could be utilized for some farm purpose; grazing, or vegetation, or grain, or something of that kind. It is not alfalfa land, it is a clay subsoil there. They plow it, but

it is not a success, it is not alfalfa land, that high land; but other stuff, they have grown hay and grasses on it.

Q. These small agricultural spots, where are they with reference to these streams that run up into the foothills and mountains?

A. That is, you mean, whether they are right along the streams?

Q. Yes.

A. Or whether they are scattered away from the streams?

Q. Yes, that is what I mean. What is your knowledge on that subject?

A. Well, the bulk of them, the large per cent of the land that would do to farm, of this character, probably could all be put under water, the largest portion of it could be put under water, but it is not along the streams. It is scattered away from the streams.

Q. It would have to be irrigated, then?

A. Yes, it is necessary to irrigate that land. Of course, it grows crops without irrigation, but then it is better to have irrigation.

Q. Something has been said in this testimony, or in the record in this case, by some of the witnesses, about grazing over these lands during a portion of the year. I want to ask you this question: Suppose that the company should sell to some so-called actual settler under the act of April 10, 1869, at the rate of $2.50 an acre, a quarter-section of this land in this 251,000 acres, and

the settler should have it in legal subdivisions, not necessarily in a square, but in forties, and he should be confined to making his living, by grazing the land or putting it to any useful purposes, on his 160 acres, I will ask you to state to the court whether or not such so-called or pretended actual settler, under these conditions, could or could not make a living for himself or family on this 160 acres?

A. He couldn't do it unless he had something else to fall back on to make a little money on; he coudn't go on and make a living at first.

Q. What do you mean by having something else to fall back on?

A. Some income. He coudn't move onto a quarter-section there and begin to make a living for him and his family at once—he couldn't do it.

Q. Why, Mr. Grieve, couldn't he do that?

A. Because the property is not in condition to do it. It takes too much to clear it. You have got too much to go through. In fact, I have tried it—I know it can't be done.

Q. Now, something has been said in this case about large sheep drivers or sheep owners, owning from 1500 up to 20,000 head, leasing these lands, or leasing lands of this character, and ranging over these lands, over a section of four or five hundred thousand acres. Now, what is the fact, if you know, as to whether these lands could be used in that way, and how large an area would

have to be grazed over in order to be practicable?

A. It would depend, of course, altogether on the bunch of animals you had in your herd. There is in Jackson County what we call spring range, which gives out—that is on the low foothills; that gives out about May—the last of May or first of June, not later than that. Then they have to drive to the higher lands for their summer range. Now, they would have to range over quite a territory. With the brush and timber there is on this land, it is a very hard matter to state just the number of acres that it would take to support an animal in that country; because there are places that there are openings in, of course, that there would be no brush, and it would be all grass; and then in the brush there is pea-vine and stuff, and there is a large amount of grass that grows in there, that is good feed. And there's some districts—in the white pumice district there around Prospect, there is absolutely not a spear of grass grows on it for a township.

Q. Well then, as a practical question, a man who would want to use this land for grazing purposes profitably, would want for, say, 1000 head of sheep, approximately, about how many acres during the season that he could range them?

A. This land is not like the Government forest reserve. There they go right into the summits of the mountains in the reserves, and it would take thribble the amount of this land that it would on the Government reserve land for the same amount of sheep.

Q. Why is that?

A. Well, you have got more timber to contend with, for in the Government reserve, when they lease a man their grazing lands, it is all in these glades, these open glades, on top of the mountains, in the larch timber or in the white fir, as we call it, and there isn't a man in Jackson County that runs sheep but what goes to the high mountains for his summer range onto the reserve. I don't know of a man in Jackson County, outside of one in the south that has his residence in California—he has the Weyerhauser people's tract rented there, and he grazes sheep on that; there is some of that in Jackson County—outside of that, there isn't a timber man in Jackson County that has got his timber lands under a lease to any stock raiser, because there is not grass enough to pay a stock man to pay the price that they will want for the range.

Q. The Weyerhauser Timber Company, I understand, get at the rate of five cents an acre from sheep men on their lands, under their lease, per annum. That would be $8.00 for a quarter-section.

A. Yes.

Q. Have you any knowledge of any of these lands within the limits of this grant being leased, or some quantity of lands being leased for grazing purposes at all?

A. No, I have not.

Whereupon, witness testified, that ranchers or far-

mers who happened to live along these little creeks pastured these railroad lands, but they did not, to his knowledge, there is not one of them, who pays any rental for any grazing lands. The railroad company owns the land and pays the taxes, and these ranchers have the range. The fine fruit country in Jackson County, famous for Rogue River apples, is located in the heart of the Rogue River Valley. The meridian line cuts the fruit district, the main valley, very nearly in two. That fruit district runs up from Ashland to Woodville. Ashland, he believes, is in Township 39 South, Range 1 East, and Woodville is in Township 36 South, Range 4 West; that runs diagonally there across. He supposes Rogue River Valley covers probably, well take and consolidate it, would probably be four or five townships. The valley is about fourteen miles wide in the widest place, and it narrows up about Ashland, a little south of Ashland, he supposes, it would be, not over three or four miles wide there.

Q. Now, what is the fact, if you know, Mr. Grieve, about there being a range of bare hills, that have no timber and not much of anything else on them, east of the valley, on the east side of the Rogue River Valley?

A. That is what we call the foothills.

Q. Yes, what is that covered with?

A. That is covered with white oak trees, and these scrub black oaks. They are all scrub trees—there is no merchantable oak. And poison oak, and chaparral, and stuff like that, that comes in.

Q. I have been riding through on the train, and didn't see any fruit on there.

Mr. Rabb: I object to the attorney testifying.

Q. I am making a question out of it. What is the fact about that?

Mr. Rabb: Objected to as leading also.

A. Those low foothills there, there is white oak, and there is black oak, and poison oak brush, and chaparral, and manzanita on them, and there is no particular value to them.

Q. The fruit lands, then, as I understand, are not situated on that character of land?

Objected to as leading.

A. In some cases, there is some of those hills are the same character of land as they are a little lower down. They run those orchards up about as far as they can get them on those foothills, and that is the same character of soil as there is on top. But you couldn't farm it there—it is too steep and rocky.

Q. In the west side of Rogue River Valley, around Jacksonville, what is the situation as to the character of land in the foothills, beyond the valley part?

A. That is a free soil,, on the west, around Jacksonville, is a free soil; and take it due north of Jacksonville, it is granite formation, and they even get—they have a quarry out there, and they are getting some granite out of there. And take it around Jacksonville and south of Jacksonville, the soil is free and red, a red

soil. And take it east of Jacksonville, between Jacksonville and Bear Creek, that is the black loam land, pretty near all of it, except some spots. It is very spotty.

Q. This that is east of Jacksonville, and towards Medford, and on either side of that space, isn't that part of this good fruit land?

A. Yes, sir; the best there is in Rogue River Valley.

Q. Yes. Now, I have been told, and I think that it is generally known, that some of this fruit land around Medford, when the trees are six and seven years old, and are set out to Yellow Newtowns, and what is the other standard?

A. Spitzenberg.

Q. Red Spitzenberg apples, that the market value of it is $1,000 an acre, or like that. What is the fact about that?

A. That is very true. They have sold for that, and they even have sold for $2,000 an acre, from $1,000 to $2,000 an acre. The Burrell people sold at $2,000 an acre.

Q. You refer to the Burrell Investment Company, of Portland?

A. Yes.

Q. Where are the lands of that company situated, that they have devoted to fruit culture?

A. They are situated in Township 38, Range 1 West, and maybe in 1 East. I don't know whether it is in 1 East or not.

Q. Are they in the valley?

A. Yes, sir; they are in the main heart of the valley. They are south of Medford.

Q. How far from Medford?

A. About four miles.

Q. How long has the Rogue River Valley been settled, from your knowledge, and from your knowledge of the history of that country?

A. I cannot give you the exact dates on that, but it is one of the oldest settled portions of the State of Oregon. Jacksonville, I believe, is considered among the oldest towns in the state.

Q. I call your attention to this map, Defendants' Exhibit 259, which shows in yellow body, Gold Hill, Tolo, Sams Valley, Beagle, Eagle Point, Agate, Medford, Willow Springs, Jacksonville, Phoenix, Talent, Ashland, and, according to the legend on this map, all that country in yellow consists of lands lost to the grant by adverse entries, that is, by donation land claim settlements, homesteads, or other settlements, in the early days. State to the court whether or not that yellow field there practically represents all of the agricultural and fruit lands of Jackson County?

A. It does.

Q. I notice on this same map Applegate Creek, which heads west of Jacksonville, and appears to run northeast out towards Wilderville, and then finally gets into the Rogue River, I think, somewhere near Grants Pass, does it not?

A. Yes, it heads due south of Jacksonville.

Q. I notice along that stream a body of yellow shown on this map. State to the court whether or not that yellow represents practically all of the agricultural land along the Applegate Creek, and Williams Creek country.

A. It does.

Q. I call your attention to the fact that on this map along Butte Creek, and Lake Creek, Little Butte, and up Antelope Creek, this same yellow field extends shown on this map. I will ask you if that does not show substantially all of the valley land or agricultural land along those streams in Jackson County?

Objected to as leading.

A. It does.

Q. I notice in this large yellow field in Jackson County occasional fractional sections of land in green, which on the map is supposed to indicate, according to the legend, the unsold lands of the Oregon & California Railroad Company, in some places there would be a forty and other places a quarter-section, other places almost a section with a 40 out that is yellow. What is the character of that land that is situated thus in the low

lands of the Rogue River Valley, or in that yellow field? What kind of land is that—this unsold railroad land?

A. There is some of that, one piece right here, around here at the mouth of Bear Creek, that is first-class stuff.

Q. How much is there of that?

A. Well, it seems to me—I cannot give you the exact acreage in that farm, but it seems to me it runs about 200 to 240 acres, something like that. That is under lease to somebody there—the company owns it. Now then, this, after you get back here on this side——

Q. Pointing to the east side of Phoenix?

A. Yes, this is the east side here. This is sticky. This is all sticky land here.

Whereupon, witness testified, that he means by sticky land that which is generally called gumbo; that is, land that is all run together. One cannot walk through it, it all sticks to his feet when it rains; it is not free soil. They farm this land. The desert is between Eagle point—Agate is right on the edge of the desert, which extends from Antelope Creek down into the forks between Bear Creek and Ashland. That desert is hard pan land, and is used for the purpose of fruit. They are developing it now. The Rogue Lands, Incorporated, have begun to develop it; it has never been cultivated before in the main desert, only on the edges. This company has run up in the desert and they are developing

it by putting water from Little Bear Creek. They have brought a ditch from Little Bear Creek, and put in a ditch there and are selling water to the farmers. They take a drill and drill down through the subsoil of rock on that desert there, and put in two shots of giant powder down about eight feet, blowing it up, crushing up that rock, and when they do that they put in a tree. Then they went to work on about probably an acre and a half there, blasted it all over, ever so often, and planted alfalfa on that. It has not done very well even then, but it is growing. They got a stand, but he does not think it is a success, the alfalfa part of it; it may be, it has not shown. There is lots of that yellow field, speaking of Defendants' Exhibit 259, that is spotted. The reason why it won't make good fruit land is that they have the hard-pan to contend with. Hard-pan is land that is cemented together in strata. There are two stratas there that they have got to go through, and that is the reason they went eight feet. There is only about three, he guesses, right under the surface there is a hard-pan, about eight inches down; and then about four or five feet, five to eight feet, he thinks, that the other stratum runs; and they blasted through the first stratum, which was not a success; and then they had to go down through the second. It is a Spokane company that obtained this water-right on this desert, and brought up the desert and is trying to develop an irrigation section to be sold; they bought that several years ago and have been developing it with this water on the land in the dry season, setting their trees, and then they have been sell-

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ing it. They are just young trees; they had one orchard there, the first one they planted, they went through the first stratum of this bed-rock, or hard-pan, and they pulled that all out; it was not a success; the trees died. There are some good fruit lands around Eagle Point; they grow Yellow Newtown and Spitzenberg apples there, principally along the creeks. He cannot state exactly how many carloads of these commercial apples are shipped annually from the Rogue River Valley; they expect this year to ship out a thousand carloads, but they won't do it. They are shipping some to European countries and some to New York. They depend on New York and Chicago. He cannot state definitely in regard to the amount of sales of pears, the number of carloads; it would only be hearsay, but he knows that there are a lot of pears shipped, and they are the best there is, they claim. He could not state what they get f. o. b. for their pears at Medford which are shipped to New York. The market is largely New York and Chicago. He does not know exactly what they get for the Yellow Newtowns and Spitzenbergs shipped to Chicago and New York and elsewhere in the east, but he believes that they figure close to four cents a pound, which, figuring fifty pounds to a box, would make close to $2.00; about $2.45 to $2.50 somewhere close there; it is close to four cents a pound or better. These apples and pears go out on the Southern Pacific from Medford; that is, they are started from Medford on the Southern Pacific, and are shipped from Medford to New York by rail; that is, to New York and Eastern

points. He cannot testify what the grower gets for delivery on the car. He can tell what he is doing with fruit. He purchased apples last fall from a man in Ashland by the name of Barnhard, who charged him four cents a pound, figuring fifty pounds to the box, and who said he was charging him just what he got at Ashland. There are a lot of peaches grown at Ashland, and some grapes grown at Jacksonville. There are some vineyards there; there are no large vineyards; there are some that they make a commercial business of at Jacksonville and Medford. There is one man at Medford by the name of Demmer. They are annually shipping considerable peaches from Ashland; and they have now planted peaches more extensively all over the valley for what they call fillers. That is where a man sets out an apple and pear orchard, he has to set his trees so far apart; they figure that there will be about seven or eight years wait on an average for pears; they put these peaches between the trees, and in three or four years they come into bearing; then when the apples and pears come into bearing then they grub out the peach trees, so they are called peach fillers. They have not irrigated in the Rogue River Valley until very recently, but they do now. They have put water onto the Snowy Butte Orchards. It makes considerable difference as to the fertility and production in the Rogue River Valley land, whether one has water. The blacksoil, or black land, in Jackson County, between Jacksonville and Central Point, is what they call the alfalfa land; it grows anything, but that is alfalfa land; it is very deep soil,

and has no clay subsoil. Some of it has been set to orchard, but they have found, as a general rule, that land is too strong, and makes too much wood growth; and in some cases, such as the Snowy Butte Orchards and the Hanley Orchards, they have grubbed some of their orchards up, the orchard is subjected to blight, and they have put it back into alfalfa. They ship wheat into the Rogue River Valley. They do not produce any wheat there. They ship in all the grain that is used there. They ship in barley, oats and even potatoes. There was more grain there prior to the time when they went into fruit, but they have always shipped in grain, instead of shipping it out. Whereupon, on cross examination, witness testified:

Questions by Mr. Rabb:

Q. Mr. Grieve, do you remember having a conversation with Harry E. Laughlin, Special Agent of the General Land Office, March 16, 1912, at the court house in Jacksonville, Oregon, with reference to these lands?

A. What is the name?

Q. Harry E. Laughlin.

A. There has been agents in there, but I cannot recall that name. There has been several agents in there. There has been Government agents and railroad agents, you know, in there, but I haven't kept track—first one comes and then the other— and I don't know, I couldn't state as to that, as to the man's name. I wouldn't want to swear to the man's name.

Q. I hand you this document, Mr. Grieve, and ask you to examine it and state whether or not that is an affidavit executed by you on the date that it purports to have been executed.

A. Here is one here 5 East, they have got it. That don't include that. This is my signature right here. I remember this. There must have been a mistake when they put that 5 East down there. I don't remember any 5 East being there. This 5 East here—I don't know nothing about that.

Mr. Fenton: How is that?

A. There is 5 East marked here.

Mr. Fenton: The question is, did you sign the document?

A. Yes, I signed this document; but this 5 East—I don't know anything about that.

Q. This document that I have handed you has your signature on the margin of the first page.

A. Yes.

Q. And at the end of the statement?

A. Yes.

Q. In this document, is it not stated——

Q. Is it not stated, "I. W. G. Grieve, a citizen of the United States, 35 years of age, residing at Jacksonville, Oregon, where I am County Assessor of Jackson County, Oregon, being duly sworn, depose and say: I have been county assessor for about three years last

past. I have lived in Jackson County, Oregon, for the past twenty-four years; and prior to becoming county assessor, I spent about seventeen years in the stock business, and about four years in locating people on Government land. During my residence in Jackson County, I have lived at Central Point, Prospect, Jacksonville, on Little Butte Creek, on Big Butte Creek, and elsewhere. I have ranged cattle on almost all the out-districts of said county; and through ranging cattle, locating people on lands, hunting, performing the work of county assessor, etc., have become very familiar with the lands in all parts of said county. I have had experience in farming; and by having lived most all my life in farming communities, have become familiar with agricultural conditions, particularly in said Jackson County, Oregon. I am very familiar with the lands now owned by the railroad in the following described townships; and I estimate the number of quarter sections thereof which are suitable for settlement purposes, that is, which would support a family, at the percentages stated below:

"Those which drain into Trail and Elk Creeks and the upper Rogue River, namely, Tps. 32 S., Rgs. 1 W., and 1 and 2 E. W. M.; Tps. 33 S., Rgs. 1 W. and 1, 2 and 3 E. W. M.; Tps. 34 S., R. 1 W. and part of 1 E., and 35 S., Rgs. 1 W. and 1 E., 20 per cent.

"Those which drain into Big Butte Creek, namely, Tp. 34 S., Rgs. 2 and 3 E. and part of 1 E.; Tps. 35 S., Rgs. 2 and 3 E., and part of Tp. 36 S., R 3 E., 40 per cent.

"Those which drain into Little Butte and Antelope Creeks, namely, Tps. 36 S., Rgs. 1 W. and 1 and 2 E., and part of 3 E.; Tp. 37 S., Rgs. 1, 2, 3 and 4 E., 20 per cent.

"Those which drain into Evans and Sardine Creeks and tributaries, namely. Tp. 33 S., Rgs. 2, 3 and 4 W.; Tp. 34 S., Rgs. 2, 3 and 4 W.; Tp. 35 S., Rgs. 3 and 4 W., and the portions of Tp. 36 S., Rgs. 3 and 4 W., which are north of Rogue River, 20 per cent.

"Those drained by Sams and Beagle Creeks, namely, Tp. 35 S., Rg. 2 W., and part of Tp. 36 S., R. 2 W., 50 per cent.

"Those which drain into the Rogue River on the south, and into Bear Creek as far south as Ashland, namely, part of Tp. 36 S., Rgs. 2, 3 and 4 W.; Tp. 37 S., Rgs. 1, 2 and 3 W., and part of 4 W., and Tp. 38 S., Rgs. 1 W. and part of 2 W., and 1 E., 50 per cent.

"Those which drain into Jenny and Dead Indian Creeks and those south of Ashland, which drain into Bear Creek, namely, Tp. 38 S., Rgs. 2, 3 and 4 E.; Tp. 39 S., Rgs. 1, 2, 3, 4 and 5 E., and part of 1 W.; Tp. 40 S., Rgs. 1, 2, 3, and 4 E.; Tp. 41 S., Rgs. 1 2, 3 and 4 East, 30 per cent.

"Those which drain into Applegate Creek and its tributaries, namely, part of Tp. 37 S., R. 4 W.; Tp. 38 S., Rgs. 3 and 4 W., and part of 2 W.; Tp. 39 S., Rgs. 2, 3 and 4 W., and part of 1 W.; Tp. 40 S., Rgs. 1, 2, 3 and 4 W.; and Tp. 41 S., Rgs. 3 and 4 W., 15 per cent.

"Taking all the quarter sections together which I have estimated above as suitable for settlement purposes, I estimate that they will average twenty acres of plow land to the quarter section; and I know that practically all of the railroad lands in the territory above mentioned is good grazing land.

"I consider the above estimates as conservative; and I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes, and fruit growing."

A. They have got there, they have got my initial wrong in the beginning there. It is all lead pencil—I don't know. I know that is my signature to it.

Q. That was a correct reading of this document, wasn't it, Mr. Grieve?

A. Yes, sir.

Mr. Fenton: The document speaks for itself, and is the best evidence.

A. That is all right—I don't deny. But this "W. G."—that is not my initial. I didn't notice that. I couldn't swear whether it was "W. G." or "W. T." at that time that he put down there. Of course, this is my signature here. I remember the document.

Q. The statement that I read was contained in this document?

A. Yes. We talked that over—I cannot recall the man's name. There has been so many in there, that I cannot—I don't know now.

Mr. Fenton: The question is, is that you signature to the document?

A. Yes, that is my signature. There is no question about that.

Whereupon complainant offered said affidavit, referred to in the testimony of the witness, as part of his testimony, marked Government's Exhibit 120; to which defendants object, unless offered for the purpose of impeachment. Whereupon said exhibit was received in evidence, so marked, and is hereinafter set out and described, and made a part of this statement of the evidence, and identified as such. Whereupon on redirect examination witness testified:

Q. In whose handwriting is this statement that you signed, Mr. Grieve?—Government's Exhibit 120.

A. It is the handwriting of the party that was there at that time. I cannot recall his name. What did you say his name was?

Q. Government's counsel didn't read you the name. Did you hear the name?

A. Yes, sir; I heard the name. He told me the name there, but I cannot recall it.

Q. Harry E. Laughlin.

A. There has so many been there.

Q. "Harry E. Laughlin, Special Agent, G. L. O."—General Land Office. The 16th day of March, 1912. How long were you talking with Mr. Laughlin

before this statement was written?

A. If I remember right, the gentleman that came in, whether his name was Laughlin or not——

Q. That doesn't make any difference what his name was.

A. I cannot swear. He came in in the morning—I believe it was in the morning he came in, or some time—I think that I was busy at that time—and he wanted to know if I would give him some idea in regard to the O. & C. Lands; and he came back.

Q. How long a time were you talking to him?

A. I think he came back in the forenoon. I don't suppose he was in there—he wasn't in there to exceed an hour, I don't believe, if I remember right. It wasn't long, anyway.

Q. Then how long after this conversation with him, which you think may have been an hour, was it that he came back with this affidavit?

A. That was when we had the conversation. He came in and asked me, and I told him he would have to come in later, if I remember right, and then he came back; and whether he wrote that document there or not, I cannot state, or whether he had it written out when he came in.

Q. Whose language is used in this affidavit? Whose language is this that is used there—his or yours?

A. That in regard to the townships and ranges, I

think it is mine.

Q. I mean, whose is the other languarge, aside from the mere description?

A. He wrote that out, if I remember right.

Q. For instance it says here, using the words "suitable for settlement purposes, that is, which would support a family." Now, whose language is that?

A. Well, he wrote the document. He asked me them questions as he went along, you know, and of course he was the one that wrote the document. As to whether I put that in there, I couldn't swear to that.

Q. Well, what do you mean—what did he tell you was the meaning of land that was suitable for settlement purposes, if he did tell you?

A. That is, he wanted an approximate estimate on it. I told him I couldn't be exact on that, because that is something that was very hard to get at. We had no cruise.

Q. What do you mean by the use of the words "settlement purposes?" Just tell the court, in your own way, what you mean by that.

A. Well, that would be land that would actually be level enough to till, and it would be land that contained timber and everything, just as the land stands now, in its raw state. That was the information he wanted when he came in there.

Q. Did you believe land suitable for settlement

purposes would include timber land?

A. Yes, that included the timber land, that included all lands, that had everything on it; that is, as it is right today.

Q. What I am getting at, have you included in your definition of land "suitable for settlement purposes" lands that were timbered, but the timber of which could be cleared and grubbed and the land utilized in that way for settlement purposes?

A. Yes, sir; yes.

Q. Now, when you say, "Taking all the quarter sections together which I have estimated above as suitable for settlement purposes, I estimate that they will average twenty acres of plow land to the quarter section," you mean twenty acres of plow land after the timber is cleared?

A. Yes, sir; after the timber is cleared.

Mr. Rabb: Objected to, as the witness has previously testified that the statement related to the character of the land in its present state.

Q. Well, you mean in its present state with the timber on it?

A. Yes, with the timber on it.

Q. But you didn't mean by the words "suitable for settlement purposes," that a man would go out there and settle on a piece of timber land, and then make a living off of it just as it was, with standing timber on it?

A. No, no. It is simply that this could be—there could be this much plow land covered to a quarter section.

Q. That is, it is possible to obtain it by clearing the land; not otherwise?

A. Yes, sir.

Q. You don't mean that every quarter-section would have twenty acres of plow land on it? That is, twenty acres of land that had timber that could be cleared, that would be suitable for settlement or agricultural purposes—that every quarter-section would have that?

Mr. Rabb: Objected to as not a proper question.

A. No, that was as a lump sum. That was an aggregate. That was the question that was put to me at that time.

Q. Did this examiner, this special agent, tell you what he wanted this for?

A. I don't believe that he did. I don't believe that he told me. There has been so many of them there. There has been several in there.

Q. Did he tell you anything about this suit between the Government and the company, this man Laughlin?

A. I cannot recall that, because some of them have, and some of them have not. Now, if I met the man, if I met him face to face, I would know the man.

Q. And it has in this, "I consider the above estimate as conservative, and I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes and fruit growing." Now, what does that mean? All the lands, of everybody in Jackson County?

A. That means all the lands—that means climatic conditions in Jackson County.

Q. And includes the Rogue River Valley?

A. Includes all of it, yes. It is stated there—the townships and ranges given there even in the valley.

Q. I understand; but he uses the expression, and makes you use it, "I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes and fruit growing. Did you mean by that statement to include all the lands in Jackson County, including the Rogue River Valley?

Mr. Rabb: Objected to upon the ground that counsel is assuming facts not shown by the testimony of the witness.

A. Yes, sir.

Q. Were you asked by the attorneys or counsel for the Government, or any one representing the Government, to be a witness in this case?

A. No, I was not.

Whereupon, W. E. BALL, called as a witness on behalf of defendants, and being duly sworn. testified,

that he resides at Toledo, Lincoln County, is forty-eight years old, is county assessor of Lincoln County, and has been such for nearly five years. Lincoln County was created and cut from Benton County in 1893, he thinks it was. He is familiar with the unsold lands of the Oregon & California Railroad Company situated in Lincoln County, and the company owns in that county, according to his recollection, 15,906 acres. His duties as county assessor caused him to investigates these lands as far as he could. He has followed the usual travel through trails and roads running in through that country, and taking observations in a general way of the lands; and he thinks he viewed, at least he intended to view, substantially all of the lands. He knows what is merchantable timber when he sees it. The character of the timber that generally grows on these lands is second growth fir, which predominates in the timber in that country. He has a little memorandum he took off of his books before he started to make the assessment, which will refresh his memory as to the character of these lands. To which testimony of the witness complainant objected as incompetent, irrelevant and immaterial, and it was agreed between the parties that this same objection should be deemed taken to all the testimony of this witness, relating to the character of the lands within the limits of these grants, settlements thereon and public land entries thereof. Whereupon witness testified, that he thinks he can remember substantially. The portion he considers where the old growth predominates is 480 acres, in Township 14 South, Range 9 West, and there

would be about 6,000 acres, or a little more, of young fir timber, or what he calls second growth, and that land is chiefly valuable for timber. This second growth timber is considered merchantable. In a general way the balance of the land is called hill land; but in these hills are some bench lands, some small bottoms, in places through it. He would call that hill land which is steep, practically worthless outside of the timber, and he thinks there are perhaps six or seven thousand acres; portions of this six or seven thousand acres could be good for goat range perhaps, if cleared. It has salal, alder, vine maple and some fern mixed with the salal in places on it. There are some tracts of this six or seven thousand acres, in places, small tracts of it, that could perhaps be used for agricultural purposes; and he would say that scattered through this six or seven thousand acres, fifteen per cent of it could be used for agriculture or horticulture. These parcels are all scattered through the six thousand acres, and are small benches and small bottoms on creeks, scattered pretty generally through these lands. Of the balance of nine thousand and some odd acres, about three thousand acres are what they term better land than the hills he has been describing. It is better because it is nearer roads and settlements, and a little more level in its character—a little better land. But this is not all in one body. This is scattered through this remaining nine thousand acres and over. They term it a little better land and assess it a little different. It is not scattered all the way through, but it is not all in one place; it is nearer to settlement, nearer to roads and

is a little more level as a whole. It is covered about the same, except he forgot in the first place to say that there is some young fir scattered over in places, some small trees, all over this country. This 3,000 acres, to which he refers, would need to be cleared of brush and timber —he thinks, it would. He has had a little experience in clearing lands, not that kind of land, but in clearing lands, as he is a farmer himself, or used to be, before he got into the assessor's work. He does not know exactly, but his judgment would be that this land perhaps would cost to hire it cleared and put in cultivation from $25 to $50 an acre. This land in portions of it is rough; there are portions of what they term bench, which is practically level; there are portions of all this land which is rough hills; of this 3,000 acres, as near as he could judge, there would perhaps be 25 to 30 per cent of it that could be utilized for agricultural purposes, or for fruit and things like that. The balance of the nine thousand and odd acres, after taking out the 3,000 acres, is covered by second growth timber and old growth, and they value it principally for its timber, and it is chiefly valuable for its timber. He would say that of the total of 15,906 acres, 1,500 to 2,000 acres are agricultural and horticultural, thus scattered and in its present condition. These small tracts making up this 1,500 to 2,000 acres would range from five to fifty acres in a place. There is none of this land cleared so far as he knows. He never saw any of it cleared, and there is none of it, in a state of nature, that is fit for agricultural or horticultural purposes, until it is cleared; that is, he does

not think so; he never saw any. He means that there is about 1,500 to 2,000 acres in all that could be made useful for agriculture or horticulture. It would be about ten per cent of the whole 15,906 acres.

Q. Now, suppose that the company should have an applicant under this Act of Congress of April 10, 1869, to purchase 160 acres in legal subdivision all together—I mean in a string of forties, or in a rectangle or square, as the land might be selected, at the price of not to exceed $2.50 an acre, and in a quantity not exceeding 160 acres, and the applicant bought it for a home, for settlement purposes, upon which to live and make a home, I will ask you to state, from your knowledge of this land and the conditions in which it is at the present time, whether or not such person, if he were confined to his quarter-section thus selected, and not allowed to use the balance for grazing, was expected to make his living on that piece of land for himself and his family, and make a home of it—whether in your judgment a man could find a quarter-section that would be suitable for a home, for actual settlement, upon which he could make a living?

A. Yes, he could find some. There is some that he could make a home of.

Q. Out of this 1,500 or 2,000 acres?

A. Yes, sir.

Q. But with that exception, what would be the success of trying to settle this land?

Q. You may answer now. Supposing the settler

was confined to the quarter-section?

A. I don't think it would be a good business proposition for him to undertake it on this land.

Q. What is the fact, in your judgment as to whether or not anybody would undertake to make settlement and homes on this land, eliminating this 1,500 to 2,000 acres, and whether it is practicable?

A. They might some undertake it, but I doubt of its being practicable. I don't think so.

Whereupon, witness testified, that there was a fire through that country, commonly known as the Yaquina Bay fire, years ago; the old settlers say there were two fires, which one of them burned this part he does not know; one in 1858 and the other in 1868. They burned a great scope of country. There are some burned stumps standing there yet in places. This burned area is the same country which he has been describing as hill lands. It was originally timbered land, principally, he thinks. There is some indication in this burned district of reforesting; in places it is covered now with a young growth of fir. It would, he thinks, if reforested scientifically, if seed were scattered over it, in his judgment, ultimately go back to good fir timber; and if reforested it would be chiefly beneficial for timber; and it is in the timber belt of the Coast Range of mountains. Whereupon, on cross examination, witness testified, that he had been assessor of Lincoln County nearly five years; this is the fifth roll he has made, which he is now making. They did not cruise the timber in Lincoln

County for the purpose of assessment; they have no cruisers. He gets the best information he can through deputies and through his own observation. He tries to get deputies who knew conditions and knew the country in each locality; and in this particular case, of these railroad lands, the first year he was assessor, he sent a deputy through this country to survey these lands and mark out on the plat what was timber and what was not. He assessed them that year from that knowledge as a deputy assessor, and witness has the plat in the office now which that deputy marked. The information he has other than this is general, and his own observation in going through the country and talking with the people in through there. He never personally made an examination by running the lines, or segragating these railroad lands, and never attempted to cruise the lands, or make an examination on the ground, except in passing along the traveled trails and roads; and to some extent he has based his opinion as to the character of these lands upon the reports made to him by men that have worked under him. He does his work on their reports. Lincoln County is a hill county, and these lands, he thinks, lie on the western slope of the Coast Range. Practically all of those lands on the west slope of the Coast Range have red soil and grow vegetation profusely, due to some extent to the moisture on that side of the range. Lincoln County is not very much of a dairying county yet, they have started in on it. The dairying business is more extensive, perhaps, north of there in Tillamook County, but they are starting in the

dairying business in Lincoln County. The lands they farm in Tillamook County, with few exceptions, are bottom or bench lands; the hill land of Tillamook County is not farm land, so far as he knows; he never heard of it. A greater portion of these lands in Lincoln County is now set with some kind of small timber. There are some lands in Lincoln County not covered with timber, tide lands and some lands along the coast, that have simply salal, no timber. There is very little logged off land in Lincoln County; there are some old burns that are being cleared, very little, if any, logged off lands, because they have but very little in Lincoln County, and no logging is done there. The only railroad they have is the road running from Corvallis over to Toledo in that county. He classified these lands by getting information for the office of what portions were tillable, and what portions were bottom and could be tillable, what portions were rough, and what portions were timber lands; but on the roll they say so many acres of land worth so much money, and do not classify them on the roll. They added these different character of lands all together in the office, and set it out on the roll as so many acres of land worth so many dollars, without classification. Fruit does pretty well in that country. It is a sparsely settled country. They have family orchards. There is no merchantable and no marketable fruit raised for market; very little of any kind of fruit in Lincoln County; fruits and berries do well there. He recognizes the photographs shown in Government's Exhibit 121, entitled "Toledo, Oregon." These two photo-

graphs are pictures taken of a sawmill in Toledo, and showing a hilly background, with some timber on it. It is a photograph of Toledo, with the hills in the background, and is situated in Lincoln County. Whereupon complainant offered said documents and photographs in evidence, as Government's Exhibit 121. To which defendants objected on the ground that the documents or photographs do not relate to the lands in suit, or similar lands, and is therefore irrelevant, incompetent and immaterial, and so far as the article is concerned, is hearsay. Whereupon said exhibit was received in evidence, and is hereinafter set out and described, and made a part of this Statement of the Evidence, and identified herein as Government's Exhibit 121. Whereupon, on redirect examination, witness testified, that he did not confine his knowledge of these lands altogether to these reports made to him by his representatives in the field; he has seen the country, and thinks the whole of it; and has been through the country several different ways, in the settled parts, where there are roads and trails through which he could get through, he should think a territory covered by one-half of these lands, perhaps, but maybe not on each piece of land, but through the country and he is satisfied that he knows the character of these lands. Referring to Government's Exhibit 121, to the picture, "Glimpse of Woodland Scenery in Vicinity of Toledo," his best judgment is that that is the Siletz River, north of Toledo, and most of it is a timbered country. There is lots of fine timber in the Siletz country. He does not recognize, or locate, the picture "Bottom lands near To-

ledo are especially productive." The bottom lands around or near Toledo, or in the vicinity of Toledo, are principally tide lands. The statement in this exhibit "Vast timber resources. Directly tributary to Toledo there are, at a conservative estimate, between 15,000,000,000 and 20,000,000,000 feet of merchantable timber," is overdrawn, how much, would all depend upon what one would consider tributary to Toledo. Practically all of the timber that is near Toledo is on the Siletz; and Toledo is nine miles from the Siletz River; and if they counted the Siletz country as tributary, that would be a good estimate. Very little of that timber could be delivered at Toledo, except by rail. They would have to build logging roads; and the same thing is true of the mills on Yaquina Bay. There is a short road, perhaps a mile and a half long, running up the slough. They haul these logs to tidewater and float them to the mills. This road does not tap the main body of timber, however; it does not reach them. Toledo claims seven or eight hundred population, and is the county seat of Lincoln County; Toledo is on the Yaquina River, which empties into Yaquina Bay at Newport, which is at the mouth of Yaquina River and Yaquina Bay. The Corvallis & Eastern Railroad runs from Corvallis, through Toledo, to Yaquina Bay. There is about half of Lincoln County that is timbered with merchantable timber. He has seen these folders, marked Government's Exhibit 121, but he has never examined them very closely; he does not know that he has ever seen one just like this one, but he has seen some of them. Whereupon, on

recross examination, witness testified, that he thinks the timber in Lincoln County is due north from the western border of these lands on the Siletz River, in that vicinity there; a little west, principally north. Stock raising would be, he thinks, the main industry of the people in Lincoln County. They raise sheep, goats and cattle. They raise Angora goats to quite a large extent. He thinks that Government's Exhibit 121, purports to be issued "under the co-operative Community Plan of the Southern Pacific Lines in Oregon. Wm. McMurray, General Passenger Agent." He remembers seeing one like this one, and examined it a little, and thinks this is the same.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VII

PAGES 3245-3788

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

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EVIDENCE IN REBUTTAL FOR COMPLAINANT

Whereupon MICHAEL KEBELBECK, called as a witness on behalf of complainant being duly sworn testified, that he was born in Bavaria, Germany, and is fifty-four years old, coming to the United States when he was twenty-four, and is living now at Cottage Grove, Lane County, Oregon, and has lived in Lane County twenty-four years. When he first came to Lane County he bought eighty acres of land west of Cottage Grove; was there awhile and then worked for the Booth-Kelly Lumber Company about fourteen or fifteen years logging, and then got a place on the Coast Fork south of Cottage Grove about seven miles. During the time that he has lived in Lane County he has become familiar with the character of the land in the vicinity where he lives. He worked for the Booth-Kelly Lumber Company east of Saginaw at a place called Bear Mountain in sections 2, 8, 3, 9, 15, 16, 17 and 21. They have a mill in section 16 now. He worked all around there in that country and up and down the flume, from there down to Saginaw, they sent him east and west and north and he looked at the timber and which way the road comes out to log and one thing and another there. He was also back a little at Fall Creek he logged there several years. He worked at Wendling five or six years and then at Deerhorn up the McKenzie River for three years on sections 21, 27, 22 and 28 in that country there. He worked in Wend-

ling six or seven years. When he was in Bavaria he farmed. He had worked there on a farm all the time and made a living there. When he came to Oregon he bought land here and then switched over to logging, but now he is going back to farming again. He is familiar with the general character of the soil in Lane County, in these different communities and knows part of township 20, range 4 west and has land in that and then in township 19 in Saginaw and then in Wendling, he believes in 17. He was through there. In township 20, range 4 west is where he located his eighty acres. He knows out there sections 26, 28, 34 and 35, some settlers back in there. He had a little ranch first in section 25 and knows all that through there. He prefers the McKenzie country. Wendling is good soil too and it is pretty good soil really all through there. These different sections mentioned by him are in township 20 south, range 4 west. He is not acquainted with any of the lands purchased by the Booth-Kelly Lumber Company from the Railroad Company in that vicinity, that is, in township 20 south, range 4 west, but is acquainted with the railroad lands in Lane County.

Whereupon witness testified:

Q. I will ask you whether, from your experience in farming, that land is valuable, or will be valuable for agricultural uses after the timber is removed?

A. Well, it will be. It will be, because I tried myself—I was in Fall Creek. I grubbed out a rod square in one place, I had a rod square, and in one place

I had 20 feet square. I dug out a place, and put a fence around it. My wife was along, and my two boys were along—wanted to get out and go wherever I went to. So we went and grubbed a piece of land, grubbed the roots out—salal brush and everything—grubbed it out in the fall, and put it in in the spring; and I had the best garden that ever a man could see anywhere. The boys, they come down from McKenzie or from Wendling, come up and said, "Well, Mike," they said, "you beat them all." And if I hadn't done it myself, I would never believe it. I had lettuce that grew up, just swift up, and radishes, and anything—turnips—anything I put in. It didn't need the water like it does down in the valley. That keeps moist up there, that soil, better than down in the valley. And then I had apples in winter, and I put them in the ground, the seed, and one year they grew that high (illustrating). The second year they grew six foot high, and I had 71 apple trees on one little space, and I know they grew. The fruit grows better up there, about 1000 feet up from the valley, than it does in the valley. It is better fruit. Its leaves are wide open green all summer, and down in the valley they curl up. And it don't need so much irrigation up at the top. Some way the soil don't dry out as quick as it does down below.

Q. Do you know whether the Booth-Kelly Lumber Company itself has used any of its land for the purpose of growing an orchard, or hay?

A. Not of orchard. But Booth-Kelly Company told me at first in Saginaw, they sent me up some seed,

orchard grass and timothy, and I had to sow it, burn and sow it. Had to burn first, burn the slashing, and then sow it; and that grew fine. As well as in Wendling they told me I should sow some, and I did. And at McKenzie there is the best crop of hay anywheres, in section 21. It is three and four feet high. You couldn't see hardly at all walking in it. That is the best I ever saw anywhere. It is on the MeKenzie. Well, at Wendling, too. The grass grows good in the burn, grows fine. Of course, after it kind of runs out, you want to grub it and work it good, and it will grow again.

Q. Well, now, how does that land there compare with similar soil that you have seen cultivated in Bavaria, as to quality of the soil, and rainfall, the way the land lays—whether level or rolling, or hilly, and all other conditions?

A. This soil seems to me stronger than where I had to work and grub in the Old Country. I can raise a heavier crop, and better potatoes. I don't know why, whether it is the new land, while that is old land, farmed a thousand years or something, and here, why, it is new. But here I can raise better stuff on the same thing than I can there. I don't know why it is—whether it is because that is old, or whether it is because this is new and everything here. But I can raise better stuff here than I can there on the same condition, the same ground.

Q. Is it just as hilly over there in Bavaria as this land is here?

A. Well, some is hillier. Some is hillier, but we

had to climb up and work it, though.

Q. Well, do they work land of that same kind over in the Old Country?

A. Yes, sir, we do. Yes, they do.

Q. Now, Mr. Kebelbeck, these different quarter sections of land that you know of that were purchased by Booth-Kelley Lumber Company from the railroad company, and the railroad lands that are still left and held by them in that general vicinity there where you are acquainted, I will ask you whether, in your judgment, a man could make a home on those quarter sections, and make a living for himself and his family?

A. Well, I know they can. I know they can, except I would take out some mountain pinnacles. There is a rock point up in there, and there is a mountain over there they call Oshkosh in Wendling; or there is, say, Bear Creek mountain—it comes right up steep. But outside of that, I will take any quarter section and make a good living on it.

Q. Well, now, how much land is covered by these mountain tops that you spoke of?

A. Well, those mountain tops I was speaking of, the pinnacle of it, I don't think it is more than about 160 acres.

Q. In each case?

A. In each case of that mountain what I would take out. I would not like to really tackle to farm it there.

Whereupon witness testified that he tried to buy some land from the Oregon and California Railroad Company near Cottage Grove. He left the place twelve years ago which he sold. About fourteen years ago or such a matter there was a forty back of his eighty, water he used for the house came out there, and he thought he had better buy it before anybody else bought it, so he would get the water for his house use. He applied to the Railroad Company to buy that forty and it replied that it was not for sale but that if it was, they would let him know. He wanted to get more land there, because there was a nice place on it like his, below on the flat. He wanted to extend his field further and it was good upland outside of the spring, good grazing land and some patches on it that could be grubbed out and worked and farmed. This was about fourteen years ago. Afterwards he moved to town and wanted to buy a piece of railroad land in section 35, a forty looking towards Cottage Grove but the Company would not sell it. It was not on the market they said. He is familiar with the land between Cottage Grove and his farm in section 32, township 21 south, range 3 west and with the land from there on to the divide on the west. He went over there once with his wife on a trail; that is pretty good land. He went from his place over to Brumbaugh Creek, Louis Geruh had a homestead out there. He believes that in every quarter section of the land except the mountain tops in that vicinity with which he is acquainted, a person could find about forty per cent, he could plow and there are lots of other things

that could grow on the rest, without plowing. There is grazing land and it could be used for all kinds of things without plowing. He thinks it is safe to say there is about forty per cent that could be plowed, in his judgment. They plow steeper land than that in the Old Country and have a hill-side plow which plows all one way. He was at the mills of the Southern Pacific Company at Marcola but was not very far back. The Wendling mill lies further up. He went through from there to McKenzie and saw men working but he did not go out in the woods much. The land around Marcola is good, is all right. It is not very hilly what he could see from the railroad and he went back to two mills there. It was all right as far as he could see. Where they were logging it was not very steep. He is acquainted up at Saginaw a whole lot, quite a few sections. He started in on section 9, then on sections 17, 5, 3, 8, 11, 10, 16, 21 and 15. He is acquainted with those sections up there in Saginaw all around the mill and cruised the timber. He is not exactly a timber cruiser but Booth-Kelley Lumber Company sent him and the superintendent of the Company out to look at a mill site on section 16 and the superintendent required them to cruise through the timber all through that country. In addition to these sections in these different townships or around these different mills referred to, he is acquainted in a general way with that country in that general vicinity and the other land in that general vicinity is just about the same general character through there as the land that he examined particularly. He

is a naturalized citizen and not interested in any of these lands in any way. His place is in section 32, township 21 south, range 3 west on the Coast Fork, which was an old donation land claim and his deed goes back to 1879 he believes. He never worked for the railroad company to speak of. When he first came to Cottage Grove he worked a few days on the section and then Japs were employed and he had to quit. This work for the railroad was when he first went in to that country twenty-three or twenty-four years ago and it was only for a few days, and with that exception he has never worked for the Oregon & California Railroad Company, nor for the Government.

Whereupon on cross-examination witness testified that he had never taken a homestead and does not think there is much left in Lane County to homestead. The bulk of the land that he has been over and examined is mostly timber land with fir and hemlock and is saw timber. The fir, hemlock and cedar is the principal stand, but the most is fir. It is good timber to buy and a good place to make an investment in timber land, and is chiefly valuable for timber. It is good timber and would be best. He is pretty well acquainted around Saginaw, which is on the railroad. The land that he knows around Saginaw is about a mile and a half or two miles east and northeast from Saginaw and is timber land. His eighty that he owned near Cottage Grove is in Section 25, township 20 south, range 4 west, near a place called West Veatch about, three miles straight west from Cottage Grove on railroad land. It was timber and was a little

ash timber and he has owned it about twelve years. It was railroad land, because he had to send $93.00 to the Railroad Company when he bought, as the land was under contract at that time and he made the last payment. The Railroad Company had this contract with Hamilton Veatch. The other railroad land that he wanted to buy, was a forty just west of that. He had the north half of the northeast quarter of section 25 and he wanted to buy a forty that adjoined that on the south but did not offer the Company any price because he did not know what the price was. This was about fourteen years ago. This forty was principally timber land. A man by the name of F. F. Miller bought it from the Railroad Company and there is a house on it now. He bought it about six or eight years ago. Wendling is on a branch of the Mohawk about twenty-two miles from Eugene and the country is a little rolling. It is good timber, pretty good timber there; around Wendling there are farms here and there, where the timber comes down, but not above Wendling any more, not since they logged. There are no farms on this timber land in the timber, it is just wild timber. The land is chiefly valuable for the timber, but if it is cleared off it is good for farming too. If he had to hire the land cleared and blow out all the stumps it would cost him $75.00 an acre, maybe $50, maybe $75. The heaviest timber where the stumps are eight or ten feet through at the butt might cost him a little more. He believes he could clear that land if they would give him a contract for $75.00 and the heaviest for $100.00 an acre. The big trees on this land average from a foot and

a half up to five feet. In the best timber there are some fifteen, twenty and thirty trees per acre, but he does not think there are one hundred trees on any acre. Not many of these trees are six feet through, but there are some. He has never grubbed out any stumps that large or blown them out with powder, he has grubbed out oak grubs a little but not any big trees, and there is a whole lot of roots under the ground in these lands and one could not plow it, without taking these roots out. They logged off some lands in section 21 on the McKenzie, right across from Deerhorn Postoffice, and burned the logs and seeded the land down; this hay that he spoke of was on this logged off land; there must have been 120 acres, possibly 160 of timothy and orchard grass which was used for pasturage. They did not pretend to mow the hay, the hay was growing in the stumps and there were fifteen or twenty stumps to the acre. This land was logged off by the Booth-Kelly Lumber Company, who bought the timber from another party and had a certain time in which to log it off in section 21, and that in sections 22 and 27 belonged to the Booth-Kelly Lumber Company. He has never tried to make a living on 160 acres of this timber land, but tried to make a living on his eighty, which is on a bench. Cottage Grove is one of the oldest settled portions of the Willamette Valley and the land around Cottage Grove, he understands, was taken up as donation land claims and there is a donation land claim close to the railroad section that he is in. He has been told that that donation was taken under the law of 1850—they all took it up around there at that time. He has a

place on the Coast Fork close to the river of 108 acres which he bought. He does not know whether it is railroad land, but believes that it is part of a donation claim. It is on the Coast Fork of the Willamette River and is comparatively level land, about half of it is timber, what is on it, is saw timber, but there is not enough of it to sell the logs. There is just enough on it for family use for generations to come. There is about 45 acres under cultivation which he rents. It is used for raising wheat and oats and potatoes. He did not exactly cruise for Booth-Kelly Lumber Company, but that company had him run out their lines where he got the timber out and one thing and another. He first owned his eighty acres, and when he got pretty good wages from the Booth-Kelly Lumber Company he sold it and moved his family to the timber with him. He sold that eighty about twelve years ago for $750.00 and since that time he and his family had been living out in the timber at the mills of the Booth-Kelly Lumber Company, for whom he had been foreman since he left his farm, until he quit.

Whereupon on redirect examination witness testified that after the timber is taken off of these lands he could make it good plow land, a good home. The ordinary settler does not hire people to take out the stumps in clearing land, they go at it in a different way, space by space, clearing an acre a year and another acre or two or three and keep on that way—that is the way. They cannot spend $200.00 or $300.00 or $1,000 a year. It is pretty hard to start, but it is better than any other thing and a man can go out and make a living and by

and by a nice living. He is not working now for the Booth-Kelly Lumber Company; he left its employ July 4th last. He is living in Cottage Grove now, where he has his home, and he believes he is going back on the place some of these days and farm—that is on his place over on the Coast Fork. If a person grubs land and grubs it down ten inches below the top that is sufficient to farm. The Booth-Kelly Lumber Company have been asked a few times to sell some of their logged off land, but as far as he understands, it is not for sale. Some one wanted to buy 80 acres and they would not sell. People cannot get hold of these lands, and cannot buy them. It is not for sale. He heard that Booth-Kelly Lumber Company did not want to be bothered with a small tract of land to sell, that is, they wanted to keep it one way or the other. It would injure them if they logged off 80 acres in front or 160 acres and some one got farther back, it would injure them to log through. They do not want to sell now or until further on. If they would sell now, supposing they would make a cattle ranch out of it as they thought at first, there would be cattle in there at Saginaw and if they would do that it would spoil their ranch. If they want cattle range, they want a great big portion of land in one piece—that has had something to do with it. He does not think they have to sell and he does not really know whether they do not want to sell isolated tracts because they would have to haul their logs across it.

Whereupon witness further testified.

Q. About how many quarter sections of this railroad

land and Booth-Kelly land, of this same general kind that you have spoken of, do you know of, that in your judgment would support a family if properly farmed? About how many quarter sections do you think you know of down in that country, of the railroad land and the Booth-Kelly land, that would support a family if properly farmed?

A. Well, really, as far as I went over it, I never found anything yet that four families couldn't make a living on a section of land. I never found it yet, outside of those pinnacles there on the top of the high mountain. I went over a whole lot of sections. I went in Saginaw and in Wendling, and in Fall Creek, and I went over a good many sections of land, and I never found it yet. I was out last week from Cottage Grove, on section 1, and we found a space up there of several acres, right on the top, with a flat ash swamp on it, fine black ground. And there is what I found on section 27. I looked over some timber, wanted to buy it from Booth-Kelly, on section 27, on the left hand side. I found there was a nice swamp up there, too—leaf grass about that high (illustrating), black ground, ash, and maple, and things through it. You find most in every quarter section, you find some springs and some good land. That part, the land is all right—a person can make a living on that.

Whereupon O. J. LAWRENCE, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Zion, Lane County, Oregon, and has lived there six years; prior to that, he lived for fifteen

years at Aberdeen, on Grays Harbor, Washington, and prior to that, in North Dakota, near Bismarck. He was brought up on a farm. While at Grays Harbor he was in a logging community, but he was engaged in the mercantile business. There was very little farming—just little truck patches here and there at Aberdeen. He observed the uses that could be made of logged off timber land while at Grays Harbor—saw quite a bit of it, and also has considered the subject since he has been a resident of Lane County. He is familitr with a part of the lands in Lane County. In the particular section where he lives, he was deputy assessor last year, and had to do with assessing the timber lands in certain townships, and went over them, while discharging his duties as deputy assessor. He became quite familiar with four townships while so engaged. He is familiar, in a general way, with the lands surrounding these four townships, and has hunted more or less there. The four townships to which he refers are townships 19 and 20 south, 1 west, and township 18 south, 1 east and 1 west. During this time, and in the manner mentioned, he became familiar with and assessed railroad lands in these townships. In township 20 south, 1 west, he presumes that nearly one-half are railroad lands, and very little railroad land in township 19 south, 1 west. He does not know anything about railroad lands in 18 south, 1 east. He has seen some of these lands that have been sold by the railroad company in that general vicinity. He has examined some of the lands owned by Booth-Kelly Lumber Company in these townships, that is, in 19 south, 1 west; that is, he knows

they sold a section there at one time, which is a part of the old wagon road grant on the middle fork of the Willamette. His observation has extended into the so-called foothills of the Cascades there. He is familiar with the lands which have standing timber upon them, and also the logged off lands, and has made an observation as to the value of these lands for agricultural or horticultural use after being logged off.

Q. I will ask you to state whether, in your judgment, lands in the vicinity that you have described, including not only the railroad lands but the intervening even numbered sections and lands that have been sold, can be used for agricultural or horticultural purposes after the timber has been logged off?

A. They can.

Q. I will ask you to state what is your judgment as to whether a quarter section of that land is capable of maintaining a family by subjecting it to agricultural and horticultural use?

A. I think it would be very difficult to find, in that territory that I have gone over, a single quarter section that would not support a family. I know of one such quarter section, and that is the only one that I ever observed there. That is just broken rock. It has quite a bit of timber on it, but there isn't any farming land on it.

Q. What township is that in, if you remember?

A. That is in township 20 South, 1 West. It is a part of section 2.

Q. Your full name is Orange A. Lawrence, is it not?

A. Yes, sir.

Whereupon witness testified that he applied to the railroad company to purchase the northeast quarter of Section 17, township 20 south, range 1 west, of these unsold railroad lands, and he examined the land before he applied to purchase it. It is a very fine piece of land.

Q. Is that land of such a character that it could be settled upon, and improved, and cultivated so as to support a family?

A. Yes, sir, it is very fine, a very fine piece of land. It has one table-land on it of about 40 acres, that is covered with timber, of course, very good timber, but it is fine land. It would make just the finest kind of a place after the timber was removed; and it has nice running water on it, and the soil will grow anything there that a person would want to raise there—splendid grass and all kinds of berries, and plums and apples do finely on all of that land.

Q. State whether or not you applied to purchase that land intending to settle upon it and make a home of it.

A. Yes, sir, that was my intention.

Q. From your knowledge of the character of the land and its value for agricultural and horticultural use, would you be willing to take it without the timber?

A. Well, I would if I were a younger man; but,

of, course, at my age I think I might trade it to my young brother, and let him work at it.

Q. But would it be valuable for a home with the timber removed?

A. I think it would.

Whereupon witness testified that he had made experiments to test the value of that land for the purpose of growing fruit, berries, and other farm products, and had some very fine fruit that he raised this year. He has never raised very many berries. They raise currants, which do very nicely. His neighbors raise all berries, and they cannot be exceeded as far as he has seen anywhere. When he first came onto the place he grubbed out six acres and set out apple and cherry trees, and a few other varieties, but of those he has seven hundred trees, apples and cherries, mostly apples, and they have all done very nicely. They commenced to bear this last year, and the quality of the fruit, he has never seen any better anywhere. They traded for a place when they went out there, and it was on that place, because he had a few acres opened up on it; and he traded some merchandise stock for this place in section 4, township 20 south, range 1 west. There are many other persons in that same township who have applied to purchase lands from the railroad company. He is one of the interveners and cross-complainants in this suit, represented by Mr. Lafferty, his attorney. The land he has applied to purchase is described in the bill of complaint as the northeast quarter of section 17, township 20 south, range 1 west. He has

become acquainted, since living in that general vicinity, with other lands in a general way, outside of these four townships, and is quite familiar with the farming lands. He is twenty-five miles from Eugene, and he always drives over to the county seat, and he always compares in his mind the two classes—timber lands and farming lands, and their relative values. They raise up there—on lands that have been farmed twenty years, on high hill land, as high as five tons of hay to the acre, and he has never seen anything like that down in the valley. He refers to township 20. His neighbor raised hay that went five tons to the acre, vetch and oats. The quarter section he applied to purchase is in the same township and the same kind of land. He has given thought and study and has had experience upon the subject of removing stumps —clearing land for cultivation after it is logged off. He did that the first season he was there—employed a man and cleared six acres. If it were gone at, at the right time of the year, and in the right way, with proper appliances, the land could be cleared for $40 to $50 an acre, by the char-pitting method. It might be sometimes advisable to use a little dynamite to give the fire a chance to get under the stump, to have a stick of dynamite to make a hole with, and the fire will do all the rest of the work. A stump fired in that way improves the land very much. He felled a tree in his field there and burned the log, and at least twice as much hay grew where that log was burned—a great deal higher hay grew there than on the other land around it, and places where the stumps are burned out could be used just the same. The finest kind

of grass grows there, and a tree can be set out there and it will do very nicely. If one does not burn it, the tree will very likely die, that is, if you do not use any fire there the ground seems to lack heat or something that the fire supplies, and anything grows right there.

Q. Even after these lands were logged off, and somebody else got the value of the timber, would they or would they not still be valuable for purposes of settlement, making a home, cultivation, and supporting a family?

A. I regard all of that land as having a great future. I have studied along that line quite a good deal, and I think it has a very great future. I think it will be very much more valuable for agricultural purposes, considering all the advantages that it has—plenty of good water every place pretty nearly; and the soil is fertile, and there is quite enough of it that can be plowed for to maintain a family, and the rest of it is all good grazing land, and I think it has a great future and is very valuable.

Whereupon witness testified that it would be necessary to remove the timber from this heavily timbered land before it could be used for agricultural or horticulural purposes. The trees will do very little good in timber, and it must be removed, and they must have sunshine before any real growth can be had—referring to grain, berries and fruit. Grass will grow in the timber, but will grow a good deal better where the timber is removed. Stumps don't make any difference—it grows just as

well.

Whereupon on cross examination witness testified that he applied, through Mr. Lafferty, to purchase the northeast quarter of section 17, township 20 south, range 1 west. They went to the railroad office and told them that they desired to buy that particular tract of land, as he had settled on it, and made, as they regarded it, the necessary improvements, and they tendered them the money, $400, with whatever taxes might be coming to them, and tendered the gold. He did not sign any written tender prepared by Mr. Lafferty, or some timber locator, but went in person with his money, and made the tender to a person who seemed to be the head bookkeeper of the office. This was approximately three or four years ago. He had built two cabins on this land, in the woods. In building these cabins he put up a frame and split out cedar shakes, and covered them in that way. He did not hew it out of the split timber, but peeled the young trees, which makes a very nice frame. He moved into the cabin and was there until he broke his leg, when he had to quit for awhile. He lived in the cabin something like six months. His family was there occasionally. He did not sleep there all the time, just there part of the time, off and on. He had the other place he was keeping up, in section 4, about a mile from this place for which he had made application. He traded for the land in section 4, consisting of 160 acres of timber land, and paid what they called $2500 in merchandise. It had a few acres cleared and an old house on it. The land had been taken a long time before, but he does not know how

it was entered, but supposes under the homestead act. He does not know whether it was a donation or not. His neighbor, David C. Matthews, told him that that part around there had been settled thirty-five years. The closest place to railroad from this place would be Goshen, seventeen miles away.

Q. How did you come to pick out this northeast quarter of section 17, Township 20 South, Range 1 West?

A. Well, I had looked around a good deal through the woods, and that is pretty level land?

Q. Well, didn't you pick it out because it had fine merchantable timber on it?

A. Well, of course, the merchantable timber would help to prepare it for a farm. I suppose that is a consideration.

Q. Now, Mr. Lawrence, don't you tell the court that the fact is you selected that quarter section because it was one of the best quarter sections of timber-land there were in that country?

A. No, sir.

Q. Isn't it, as a matter of fact, the best quarter section of timber in that neighborhood?

A. No, sir.

Q. It is about as good as any, isn't it?

A. No, sir.

Q. Well, why didn't you pick out one that was bet-

ter?

A. This one was right handy, and it is good farming land.

Q. But it was good timber, wasn't it?

A. Very good.

Q. Did you have a cruise on it?

A. No, sir, never had a cruise.

Q. Did you know what the county's cruise on it was?

A. No, sir.

Q. What is the county's cruise on that quarter section?

A. They never gave me time to cruise it, but they said to go over it and report in a general way about what it was worth.

Q. How many thousand feet, board measure, per acre is there on that quarter section?

A. Oh, I would have to approximate that.

Q. Well, approximate it?

A. Well, there is forty or fifty thousand.

Q. Per acre?

A. Yes, sir.

Q. Well, that would make it a good valuable quarter section of timber-land, wouldn't it?

A. Very good.

Q. What is it actually worth today as timber-land?

A. Well, I am offered claims that adjoin it for $3,000 a quarter.

Q. It was actually worth $3,000 for the timber that was on it when you applied to purchase it, wasn't it?

A. That would be my judgment, although we didn't have to pay so much as that.

Q. Didn't you really select that, Mr. Lawrence, because it was good timber-land?

A. Well, if there had been just that land there, and one that had no timber on it with equal soil, of course, I would have taken the farm land.

Q. Yes, I know, but it was covered with timber. You took it primarily for the timber, didn't you?

A. No, sir.

Q. You never expected to clear that land yourself, did you?

A. Well, I expected to hire it cleared.

Q. How old are you?

A. 54 years old.

Q. And did you expect to go there, and take your family, and clear an acre a year, and make a living?

A. Oh, no, I didn't have to do that.

Q. Now, isn't it actually the fact that you applied to purchase that because it was valuable for timber now —right now?

A. No. If it hadn't been valuable for farming land, I should not have been interested in it.

Q. Well, wouldn't you have paid $2.50 an acre for it for the timber that was on it, and never expect to live on it?

A. Oh, yes, I would at that time.

Q. Yes, and wouldn't you have been glad, and thought you had made about $2600, if you could have got it?

A. I certainly would have been glad, because I could have sold it for more than that.

Q. More than $2600?

A. More than $2.50 an acre.

Q. Well, you know that it was worth at that time $3,000 for the timber that was on it, don't you?

A. Well, I don't know about that. They were buying timber at $1600.

Q. I understand; but you don't want the court to understand that you wanted that for a home for yourself at once?

A. That is what I wanted it for. That is, I might not always want to live there, but I thought it was capable of making a great property.

Q. Yes.

A. And I had means so that I could hire the development done, and if I didn't live there all the time, I could have a place, a beautiful place, to go when I want-

ed to.

Q. You were advised by Mr. Lafferty that it was necessary for you to go out there and build your cabin, and live there awhile?

A. No, we did all that before we ever knew about Mr. Lafferty.

Q. Who advised you to do that?

A. Why, I advised my neighbors that we had better all do it.

Q. What was the idea?

A. Well, that is what the law required, as I understood it.

Q. You had to make some kind of a settlement?

A. Yes.

Q. How long were you going to keep that settlement up?

A. Well, we hadn't decided on that point.

Q. Just so you made a settlement of five or six months—then you expected to go away and leave it?

A. Oh, no. We hoped that we would receive such encouragement as would lead us to make all the improvements that the land ought to have.

Q. How long since you lived in your house that is on there—that cabin?

A. Oh, I haven't lived there steadily since I broke my leg. That is two years ago.

Q. Have you lived there at all since that time?

A. I have been there, and stayed there.

Q. How many nights have you stayed there?

A. I don't remember.

Q. As a matter of fact, Mr. Lawrence, you have not been there within two years and stayed over night on that place, have you?

A. Yes, sir, I have.

Q. One night?

A. I have been more than one night.

Q. Did you sleep in the cabin?

A. Yes.

Q. What have you got in the cabin that you slept on?

A. I have got a bed.

Q. A bedstead?

A. Certainly. Spring bedstead, mattress.

Q. Did your wife go there and stay with you?

A. No, sir.

Q. You would just go and stay by yourself?

A. Well, my girl was there awhile—we stayed.

Q. How long—two or three nights?

A. We didn't stay very long.

Q. How much did you have cleared there around that cabin?

A. I had very little.

Q. What did you plant on that land, if anything?

A. I planted some garden stuff.

Q. What was it?

A. Radishes and onions, and planted some trees.

Q. What became of the trees? Are they growing yet?

A. They are growing yet today.

Q. You didn't put out any fire though, to plant them in, did you?

A. Well, I burned a little around there.

Q. You had to burn this soil before it would support a tree, didn't you?

A. Well, they didn't do very good, because I didn't have fire enough—I hadn't burned enough to make it do good.

Q. And the tree didn't really do any good, did it?

A. The trees have not done very well, because they have not had sunshine enough.

Q. Now, your onions and lettuce, and stuff of that kind—just a little of that, wasn't there?

A. Yes, there wasn't very much.

Q. Just about like they would do on these homesteads, where they take them out in the mountains for the timber that is on them?

A. Something like that.

Q. Now, this soil that you speak of being such fine soil—it has to be burned over once so as to give life to it, doesn't it?

A. Well, I don't know about that. Of course, if you remove the timber it gets the sunshine, and the sunshine will produce vegetation.

Q. I understood you to say in your direct examination, that this land would not produce, would not support a tree—I mean an apple tree or a domestic tree, a fruit-growing tree—until after it was burned over?

A. Well, that, I referred particularly to where the tree stands. That ground under the tree is packed hard, and nothing else does well on that place, that particular place where the tree stands, until it had either sunshine or fire.

Whereupon witness testified that he had lived in the vicinity of these lands a little over six years, and these lands are considered pretty heavily timbered as compared with the other lands in Lane County. These lands have never been cruised by the county. He got the amount of timber on these quarter sections for the purposes of assessment when he went over them. He is a pretty good judge of timber—and has been buying and selling it for fifteen years. He made no segregation of the character of the land as to being agricultural, timber, or otherwise, but just estimated the value of the property. One would have to consider the land as well as the amount of timber, and he did put a value on that land for its agricultural purposes, but did not segregate the two values, but

had them in mind, that is, its agricultural possibilities and its timber. He never assessed logged off lands, and does not know that the timber was the principal element upon which the county was assessing the property.

Q. Now, you say that these logged off lands, you think, could be cleared for $50 an acre?

A. $50 an acre?

Q. Yes.

A. Yes, sir, I am hiring it cleared today for $40.

Q. What kind of land?

A. Heavy timbered land.

Q. Where is it?

A. Section 4.

Q. How many thousand feet of timber did that land carry before it was logged off?

A. Oh, it will carry 50,000 to the acre.

Q. And do you take the stumps out?

A. Everything has to be taken out ready for the plow, and fenced, at $40 an acre.

Q. How deep do you take the roots out?

A. Well, down so the plow won't hit them—about eight or ten inches.

Q. Well, then, when Mr. Booth testified that these lands would cost from $50 to $500 an acre to clear, your judgment differs from his?

A. I don't think he was well informed.

Q. You know Mr. Booth, don't you?

A. No, sir.

Q. R. A. Booth, of Booth-Kelly Lumber Company?

A. I have heard of him. I don't know him.

Q. These other people that you say have made applications to purchase in this same township, who are they?

A. Well, there is R. G. Balderee, and Lake, and there were two or three Smiths, and Mr. J. F. Holbrook.

Q. All in timbered land?

A. Yes, it is all more or less timbered.

Q. And they are all intervenors in this suit, all of you represented by Mr. Lafferty?

A. Yes, sir.

Q. And all made your applications to purchase, and offered $2.50 an acre, in the same way?

A. So far as I know, that was the way it was done.

Q. And all made little shacks on the place out there, and made a pretense of living in them for a while?

A. Oh, they lived—I know they lived very continuously on that land for a long time, some of them did.

Q. Are they still living there?

A. Oh, no, of course, they had to go out where they could school their children.

Q. Had to go out where they could make a living, hadn't they?

A. Oh, they could have made a living there—they have been.

Q. What can they do to make a living there? Just tell us.

A. They can raise cattle and sheep, and they can raise fruit, and it has been done there for thirty-five years, and they are still living there.

Q. Do you mean to tell this court a man could raise cattle and sheep on 160 acres of this timber-land, and confine it to that, and not pasture outside?

A. That is what I am doing now.

Q. And make a living.

A. That is what I am doing.

Q. On 160 acres of this land?

A. Yes, sir.

Q. Before the timber is removed?

A. Yes, sir. Plenty of pasture in the woods.

Q. How many head of cattle can you pasture on 160 acres of timber-land.

A. You can keep 20 to 30 head very nicely.

Q. Where would you get your hay to feed them in the winter-time?

A. You don't need very much.

Q. Where would you get what you would need?

A. You can always find little places that you could raise all the hay you would require for your milk cows, and the others do just as well if they are not fed.

Q. Do you mean to say to the court that a man could take 160 acres of this timber-land, fence it, and have twenty or thirty head of milk cows on that 160 acres, make a living in that way, and that they would be supported on this place?

A. I wouldn't say all milk cows, but I say twenty or thirty head of cattle. Let there be milk cows enough for the family, and the young cattle get along very nicely. The milk cows would need some roots, or something like that, to do much good.

Q. Yes. You haven't done anything of that kind with this 160 acres that you applied to purchase, have you?

A. Why, my cattle run on it a good deal.

Q. It is unfenced, isn't it?

A. No, sir, it is not fenced.

Q. That is what I mean. They rove over the whole country there, don't they?

A. Well, yes, they go where they please.

Q. They live on pea-vine, and whatever there is growing there in these mountains?

A. Lots of pea-vine and grass. There is just lots of all kinds of good food.

RE-DIRECT EXAMINATION.

Q. When you made your application to purchase this land from the railroad company, did you receive any encouragement of any kind from the railroad company?

A. We didn't—I didn't receive any particular encouragement, unless—I don't know—not any verbal encouragement. Of course, I observed their doings a good deal, and kind of figured on my chances and so on, but I don't think they gave me very much encouragement.

Q. Did you ever receive any notice of any kind from them after making your application to purchase?

A. No, sir.

Q. Did you know, or did you not know that the railroad company denied your right to purchase the land in that manner?

A. I don't know whether they objected to it or not. They didn't do it anyway.

Q. Well, now, if they had accpted your application and sold you the land, and conveyed it to you, could you have sold the timber and cleared the land, and subjected it to cultivation?

A. Why, most certainly.

Q. Well, then, when Mr. Fenton asked you what you could do with that land with the timber on, I will ask you what you could do with it if the land was conveyed to you and you had the right to remove the timber? Would that make any difference?

A. Indeed it would.

Q. How about the even numbered sections in that township 20 South, Range 1 West? Are there any settlements on them?

A. Yes, sir.

Q. How old are they?

A. Thirty years—twenty or thirty years.

Q. People living there?

A. Yes, sir.

Q. With their families?

A. Yes, sir.

Q. What are they doing?

A. They are raising hay and stock and fruit, and making very comfortable livings.

Q. Any reason that you know of why the same thing could not be done on the adjoining odd sections, held by the railroad company?

A. I see the land all just the same. Now, up in section 32 it is very high—section 32, Township 20 South, Range 1 West, is a very high point of land—and a German family by the name of Kloster went there something like thirty-five years ago. It was all heavy timber, and they settled up on that high land. There is a nice little bench up there—it is rolling—and they lived there until a year or two ago. The hill was so high that—the lady is a cripple, and she didn't like to walk up and down the hill; but you can see all of that

Lost Creek River basin from there—you can get just as nice a view as you can from some of those high peaks; and they have always raised the finest fruit up there, the quality is unsurpassed any place I have ever examined it; and the hay this year, they raised three or four tons to the acre. I was through it in June—it is a very rank growth. And it is clay soil, and just like all of the hill land around there.

Q. From your knowledge of that general country in there, Mr. Lawrence, I will ask you whether, in your judgment, the best way of developing that country is to sell it in large blocks to large timber companies, and use it simply for the taking off of trees, and then when the trees are removed to reforest it, and permanently withhold it from cultivation? I will ask you whether that is the best use that can be made of that land, having in mind the development and settlement of the country, from your knowledge of the general nature of the soil, and all of the conditions that enter into the question?

A. Why, from what I know of the country and its possibilities, from what I have seen done there, I know that, in my judgment, the best way would be to let people have it that will make homes of it and develop it; and some of the very most beautiful homes in Lane County will be up in that part of the country. I have been of that mind for quite a good many years, and have told my neighbors that.

Q. Now, did the refusal of the company to sell

this land and convey it to you in any way influence your action in making further improvements upon the land?

A. No, sir. I just kept up the improvements just the same. I hoped that they would change their mind or something; if they had it under consideration, that they would finally give us the land.

Q. Well, suppose that the railroad company had accepted your application and sold you the land, and conveyed it to you at the time you applied to purchase it, what would you have done with the land?

A. Well, I had it in my mind to make a beautiful place of it, a valuable place, as all of those places can be made valuable, and the timber there would help to do that; it would clear the land, probably, and make it quite easy to make a fine place.

Q. Well, why didn't you do that?

A. Why, I didn't understand that we would be allowed to cut very much of the timber. I understand that they had been stopped from doing that. In fact, one of the gentlemen that took one of these claims was ordered to get off the land by the railroad's attorney; and they sent a man up there to see what he had actually cut off; and we didn't want to go too far. We thought we showed good intention by doing what we did. And the trail—to get a good road into those claims, some of them, is a matter of quite a good deal of work; and I have got a road that you can go over with an automobile to my cabin. Perhaps I would have to remove a few

trees—they are always falling across the trail; we would have to get them out every month or two. With that exception, you could go right today to my cabin with an automobile.

Q. I will ask you whether, in your judgment, these lands would have been settled, cleared, improved, and reduced to cultivation, and made homes of, if the railroad company had sold them to settlers who applied to purchase them?

Mr. Fenton: Defendants object to that as something the witness could not possibly know, and as a mere surmise on his part.

A. Well, I have lived in seventeen states—I have lived in North Dakota, and I have seen what people had to do there to make a living, and the disadvantages they have to contend with; and when I think of that, and places where people do live and get along, I think that they certainly would be very well off if they could have a chance to make homes in there, and they would appreciate it so much that it would be taken up in a day, if it were known, that land for the purpose of making homes.

RE-CROSS EXAMINATION.

Q. Mr. Lawrence, I show you two photographs, "Defendants' Exhibit 270," purporting to show a photograph of your cabin on the northeast quarter of section 17, Township 20 South, Range 1 West, looking north, and a like photograph looking northeast, and will ask

you to state whether those are fairly good protographs of those cabins as they were on the 15th day of May, 1908, four years ago?

A. Is this representing the same cabin?

Q. Yes, same cabin, different view.

A. That is a fairly good view. That is my best cabin. I have got one that ain't quite so good as that.

Q. On the same place?

A. Yes, sir.

Q. What was the idea of building two cabins?

A. Well, the other one is built on the best land, but I had to go across a big gulch to get there, and I didn't take time to make a road to get across there.

Q. How far away from this cabin?

A. It is more than a quarter of a mile.

Q. Did you furnish both cabins in the way that you speak of having furnished?

A. Well, I furnished the other one, and then I removed the contents over to this one.

Q. There is where you intended to make your home, in this cabin?

A. Yes, sir, this is where I intended to make a home for awhile, anyway.

Q. Do you see any place there where an automobile could travel in front of that cabin, or around there, to get to that?

A. Well, here is a little kind of bad hill there; but right up on top of that hill there is a good road. Of course, it would be a little difficult right in here for a hundred yards.

Q. You notice that picture shows some fine timber just behind the cabin, doesn't it?

A. No, it is poor timber.

Q. I mean it is heavily timbered?

A. Oh, it is a lot of brush there.

Q. Did you locate that on this good agricultural land that you speak of? Is that the place?

A. No, I just built that cabin there for convenience, but the other cabin was located on the choice land.

Q. Well, how did you come to put this over there? There is where you wanted your garden, and your settlement, and your improvements?

A. Well, there is a good place right behind there, that could be easily cleared out there—that brush there.

Q. How far back?

A. There is five or six acres there that could be nicely cleared out, and make a nice little place for fruit.

Q. Where did you plant your tree and your onions?

A. Over where the other cabin was.

Q. You didn't plant any here, did you?

A. I planted a little garden there, but it didn't do

much.

Q. I wish you would take a pencil, and mark out with a cross there where you made your garden, on this photograph.

A. You can't see it here.

Q. As a matter of fact, you cannot see that human hand has ever stuck a spade or a hoe or anything else in the ground there, can you?

A. Well, you might not be able to see it, but I can see where I have dug ground.

Q. Just put a cross there where you have dug around for garden purposes.

A. I have dug around here in front of the house, down below here. You cannot see it, but it is down below this pitch here.

Q. Just mark out in front of the house where you have attempted to make any garden.

A. There is a little place right in there. You cannot see it on this picture.

Q. In front of the house.

A. Yes, there is a place burned off there.

Q. How big a space is it?

A. It is not large, but I just had a little garden there.

Q. Was it as much as a foot square?

A. Oh, it was half as big as this room.

Q. You say there was a space in front of that cabin half as big as this room, which is about 20x30 feet, where you planted any garden in front of that cabin?

A. Yes, sir.

Q. When did you plant it? What year?

A. Now, I wouldn't be certain about that. I think it was the first year I took it.

Q. What year was that?

A. Three or four years ago.

Q. Wasn't it in May, 1908, that you made your application to purchase?

A. I wouldn't be certain without referring to the papers.

Mr. Townsend: The complaint shows the suit was filed April 7, 1908.

Q. You filed your suit immediately after you made your application to purchase, didn't you?

A. I believe it was filed soon after.

Q. Yes, and you built your cabin just before you filed your suit?

A. Quite a little bit before.

Q. Well, six weeks before?

A. Something like that.

Q. And you had made your garden just before?

A. Oh, I don't know. I think the garden was made later than that. We had to do quite a bit of burn-

ing there to expect to receive any returns on our labors.

Q. Why did you have to burn?

A. Why, it is all brush. You try to open up that land, and you will have more brush covering the ground. You have got to get rid of that brush.

Q. What is the elevation of this place where this garden is?

A. Well, now, I would have to guess at that. I would say it was a thousand feet above the level of the sea.

Q. What is the nearest stream?

A. There is a little creek down there a couple of hundred yards, or a hundred yards from the cabin. Lost Creek is the nearest logging stream.

Q. How far away is that?

A. It is a little over a mile.

Q. Can you log from these premises to this creek?

A. Why, yes, the grade is very favorable for logging.

Q. And you took that into consideration when you took this land, did you?

A. Oh, that was all talked up to me when they sold me the land.

Q. Who sold you the land?

A. Mr. William Whitney.

Q. Who is William Whitney?

A. He is the gentleman that lived on the place.

Q. Well, I mean this quarter section—this railroad land?

A. Oh, I thought you meant the other.

Q. No, this railroad quarter section is favorable so it could be logged to Lost Creek?

A. That whole tract in there is quite favorable for logging.

Q. You considered that when you made the selection of this quarter section, didn't you?

A. No, I never thought of it.

Q. Didn't enter your mind at all?

A. No, I don't know that it did in particular.

Q. Well, did it in general?

A. Oh, if I thought about it at all, I would have thought that whole country there, that the whole basin is quite favorably located for logging.

Q. And you knew that when you made your application to purchase?

A. Well, if I had thought about it, of course I would have known it.

Q. Didn't you think about it?

A. Never gave it any particular consideration. I wasn't thinking about that.

Q. You were not thinking about the timber on this land at all?

A. Oh, that was a valuable asset to clear the land,

to make it a home. Of course, I would have to think about it.

Q. You thought about it a good deal, didn't you?

A. Well, I thought about it some.

Q. Just name the seventeen states that you have lived in, Mr. Lawrence.

A. I was born in New York state. My people moved to Wisconsin, and lived in North Dakota, lived in Ohio, and we lived in Indiana. I didn't live very long in some of those places. I peddled, and when I peddled I lived in the states when I was in them. I have not had a home in seventeen states, but I have been in that many in that way.

Q. I understood you to say, in answer to counsel's question, you had lived in seventeen states?

A. I meant by going through the states, I had.

Q. You had a home in eight or ten, hadn't you?

A. I have had a home in New York, Wisconsin, North Dakota, Minnesota, Montana, Washington and Oregon.

Q. And have you followed the mercantile business all that time?

A. No, sir, I used to teach school, used to peddle, kept books; did a little of everything.

Q. What have you been doing in Lane County the last six years?

A. Farming.

Q. On this piece of land in section 4?

A. Farming and buying and selling timber.

Q. I mean this section 4?

A. Oh, I improve all of that property as fast as I can.

Whereupon witness testified that he had been buying and selling timber in Lane County in a small way—didn't have much means. He bought a section of Booth-Kelly Lumber Company, part of it was timber, in section 25, township 11, range 1 west, which he has yet. It is not logged off, and part of it is pretty good timber, and it is in logging territory. He paid $4000.00 for it—does not know why the Booth-Kelly Lumber Company sold it. It is good saw timber. One-half of the section has been burned off. What timber there is, is good saw timber. He did not buy the land for the timber, but thought about its farming possibilities whenever he would go over it. It is very fine. The timbered half of it would have a stand of 50,000 feet to the acre. He offered it for $1.50 per thousand, but could not find any buyers. He had an offer of a dollar, which would make $50 an acre. He paid $4,000 for the section, and was offered $1.00 a thousand for the timber land, which would go 50,000 feet to the acre, and he wanted $1.50 per thousand. It could be logged off. He had another claim there and was offered $20,000 for the 800 acres, but he does not know what purpose the gentleman had in mind. That half section that he said was burned off is right up on the top of a high mountain, very precipitous,

and there is a man by the name of Tom Malloy who lived up there close to Zion, who had a beautiful place, but no road to get to it, but could raise all kinds of stuff there. The whole half section owned by witness there, which is burned over, is the same kind Malloy left his premises and went where it would not be so hard to get in and out. Malloy could make a good living, but if he raised anything there he could not get it out very well, and would not have any market for it. He could not haul it out very well; he could have fixed the grade all right, but his sister gave him a place on Fall Creek and it was an easier problem for him.

Whereupon on redirect examination, witness testified he bought this section from Booth-Kelly Lumber Company three or four years ago and they gave him a deed, which is recorded. This land is in section 25, township 19 south, range 1 west, and $10.00 is the consideration named in the deed. He did not buy this all for himself, and he does not own it all himself. He told an Eastern friend of his about the matter and that he thought it would be a good thing for them to buy it together, and his friend said to go ahead, if his judgment approved, and have it cruised. He had it cruised and it did not come quite up to his expectations. His judgment was that it was a good buy and he bought it. He has never seen the land, although he and his friend own it together today. He also bought 160 acres in section 24 adjoining this, making 800 acres altogether, for which 800 acres he was offered $20,000 two or three years ago, in a lump sum, and when he says that he was

offered $1.00 a thousand, he means it figured out about $1.00 a thousand. When he said he wanted $1.50 a thousand, he told the party he wanted $30,000 for the tract.

Q. Now, have you understood that the railroad company would prevent the persons who applied to purchase this land, and, for instance your own quarter section in the northeast quarter of section 17, Township 20 South, Range 1 West—would permit you to reduce it to cultivation and remove the timber for that purpose?

A. No, sir, I did not. I certainly thought they would not do it. I thought we would get into trouble, and we had some talk among ourselves about that.

Q. Well, then, does what you have done with reference to that land truthfully represent what you could and would do if the railroad company would convey the land to you, and permit you to subject it to the use to which it is susceptible?

A. Well, of course, there would be an element of risk there, that I would take in going on, and I didn't feel like doing it. I thought I had done enough to show my good intention. If I could get the land, why, I would do all that was required, and make what I thought I could make out of it. I think those places would be worth five times as much when the timber is off, and they are in such a state as they can be put in; and I have investigated this land business quite a bit, and figured on its possibilities, and what they do over in

the Walla Walla country with their lands there, and considered the altitude, and what it was capable of raising. I think that some of those townships there that we have been talking about, particularly Township 20 South, Range 1 West, has got possibilities that are equal to anything that Walla Walla has got for raising wheat for fall sowing. It does not do good for spring sowing; but fall sowing, it is excellent for rye, or wheat, or oats; and part of it is at such an elevation that the snows protect it in winter, and I believe that it will be just a wonderful place.

Whereupon on recross examination witness testified that he has seen the wheat, rye or barley growing on some of these timber lands there. His neighbors have raised them, just little patches here and there of this wheat, oats and rye. They have raised quite a bit of it, something like two or three acres on a place. That was on a piece of ground that was very heavily timbered at one time, but cleared off by some of these people. It grows better on the hills, on the rough lands. These spots are right on the hills. All the land of that German family he mentioned, is of that kind, is apple land and will raise hay and anything there. There is about twenty acres of hay on this German place, right on top of the hill, formerly very heavily timbered—the same as he has. They burned the timber up and did not sell it. The German family have lived there twenty-five years—raised a large family. He thinks they must have taken the land as a homestead in section 32. He does not know whether it was a homestead or donation. They only

tried to clear about forty acres of the 160 that they own. They cleared that forty acres more or less perfectly, and have been about twenty to twenty-five years in clearing the same. There is a man and his wife and six children, who have no trouble to get a living. They raised the stuff on the ground there and have cows and sheep. They did not dare to let their stock go too far over the country. They kept sheep and it was really dangerous to let them go very far on account of cougars, so they confined them to quite a close range to their place, but the cattle went further out, quite a ways. The whole country around there was open and they had access to that range for four or five miles in every direction, but they did not need it for their cattle, and their sheep were kept closer at home under surveillance, and he presumes they went over the land near by. They had twenty or thirty head of sheep, something like that, and sometimes ten or fifteen or twenty head of cattle, and two or three head of horses. He does not think they marketed any produce anywhere. They could have sold butter and milk, but he does not know whether they did or not. They did not sell any cream that he knows of, but they may have done so. Their nearest neighbor before he went in there, was about a mile, and the nearest school house more than a mile, and their nearest post office a mile to a mile and a half, called Zion Post Office, established before he came there, but since has been moved.

Whereupon on redirect examination, witness testified that this land of the German family spoken of, is

in the southeast quarter of section 32 township 20 south, range 1 west, but they have sold all but forty acres of it for timber land to Hyland Brothers.

Whereupon on recross examination witness testified that Hyland Brothers have a saw mill, but he does not know how extensively they manufacture. They own 800 acres of timber land on Lost Creek, and 160 on the Willamette, and have quite a lot over on Fall Creek—he don't know how much.

Whereupon JAMES WHITFORD, called as a witness on behalf of complainant, being duly sworn, testified that he is eighty-three years old; by occupation a timber cruiser; resides at Cottage Grove, and is employed by the Star Lumber Company. He has worked for the Booth-Kelly Lumber Company, and lived in Oregon ten years last spring. He has been in Lane County, and from Columbia County through to Josephine County. He has cruised mostly in Lane County, back and forth, and been engaged in the timber business pretty much all this time. He has never done any farming in this country.

Q. Have you been in farming communities, and are you acquainted with the character of soil of the land that is used for agricultural purposes?

A. Well, I have seen a good deal of land here in the mountains and in different places. It look very fine. I have seen very fine growth—stuff growing.

Referring to Defendants' Exhibit 259, witness testified that he has looked over the lands on the Coast Fork,

some of them pretty closely, and has been on the McKenzie and on Fall Creek. Parties would write to him from Minnesota to look at the lands and he would go and look at them; these lands he refers to were in Lane County. There is no difference between the even and odd sections. As a general thing one is equal to the other, as far as he can see. He has been over township 20 south, 1 and 2 west; 22—3; 23—2 and 3 west, and has a claim in 23—3 west, in section 2. He has been over these lands some. He does not think there is a section there that he has not been over, railroad and all. The land is about the same every place he has been in Oregon. Some places are more broken. Down in Coos it is more broken country, and in the Coast Range it is more broken. He has a general knowledge of these lands in the western part of Lane County, and also of the lands in the eastern part of Lane County. He has been on the McKenzie, but has a more specific knowledge of these lands that he has described by township and range, and was over these lands and the timber for the purpose of making a cruise of the lands. In making a cruise he has always noted the character of the soil, as to its agricultural uses, and made a statement whether it was good land or rocky, whatever it was. That was a part of his duties. Take the lands in these townships right through, as a general thing it would go fifty per cent farm land, if they were cleared and improved. Of course, there are hills, to be sure, but then they could all be worked. The remainder of the land when it approaches the river, that is the high knolls, where the

rocks make an appearance, is grazing; but grass grows on it. That is, the remainder of the fifty per cent would be grazing, in his opinion. He applied to purchase lands from the Railroad Company about five years ago, and wanted to get a quarter section in section 15, township 22, range 3 west, in Lane County, and they said it was not on the market. The percentage mentioned by him would run generally as to all of these lands about which he has testified. He cannot see much difference. One can see where they have settled on the even sections. It is all the same. They have settled on section four and on section two in that township, and there are settlers intermingled on the even sections. He does not think there is any vacant land in that township but what is taken.

Whereupon, on cross examination, witness testified that part of this railroad land that he applied for, was very good timber. There was a nice bottom and flat right there on Wilson Creek, which came down through it. The timber that could be logged on it was about three miles from the river, and they can log that distance, but there was about forty acres of it upon which there was no timber at all scarcely—it was vine maple, and kind of a flat. He cruised this quarter section and called it 4,000,000 feet. That would be a good merchantable quarter section as timber land. It was better than that. He did not make any offer for the land, but only made an application for it, and they reported that it was not on the market. He did not want to buy

it for the timber that was on it—he was going to settle on it. He tried to get a homestead on it one time, but could not get it as a homestead. The reason he did not pick out a quarter section that was all open instead of one that had timber on it, was that he could not get it in his time. All that was open, was taken. Most of the land with which he is acquainted is most all fair timber land. Some of it is better than others. He has never sold any timber, but has been a cruiser of timber lands; cruised for Charles Ladd of Portland, out in North Yamhill, and cruised there for the Carlton Lumber Company above Fairchild's old saw mill, and found some very fine timber up there. George Perkins had a saw mill there, but it is not running now—that mill is all sold out, but he owns a lot more timber in there. The timber land in that section is the best in Oregon. It is fine land after one gets the timber off, but it is now chiefly valuable for its timber. That is the reason he bought some; he bought a lot for Ladd & Tilton, because people could not do anything with it until they got the timber off. The only way to get anything out of it is to cut the timber off. He is now employed by the Star Lumber Company, doing anything that comes along—has been cruising a little. That company has not much timber land. It is in Lane County, in 21-1. He has not done any work for any of these large timber investors in Lane County. He is a man of family, but his family lives in Minnesota; they are all married off. The timber land of the Carlton Lumber Company on the head waters of the North Fork of the Yamhill River

is fine timber—fir and larch, a good deal of it larch, which is called Noble fir. He guesses that the timber lands of Western Oregon, west of the Cascade Mountains, particularly on the western slope of the Cascade Mountains and on the eastern slope of the Coast Range and the western slope of the Coast Range, including Coos, Yamhill, Tillamook, Lane and Douglas Counties, have the finest fir forests anywhere in the country, and that section is known throughout the United States as a timber country. He does not know as it is known altogether as that. They have some good valleys that there is no timber on. Men that were taking timber claims would have him go and look and see if there was any burn, see if they were all right. He does not know of any movement of Minnesota and Wisconsin people in these Oregon lands lately. They have taken timber claims, a good many of them in the timber.

Q. You speak about these settlements on the even sections—most of these settlements are in these timbered lands, aren't they?

A. Yes; but they were mostly settled years ago. One-half of them settled on homesteads.

Q. Most of those were settled by homesteads years ago?

A. Yes.

Q. The cabins have rotted down?

A. No, by gosh, some of them are living on them and making improvements.

Q. I know; but most of them have rotted down?

A. There is lots of them living on them, making a living.

Q. Did you ever see any abandoned claims in there that the timber people have bought up?

A. I have seen timber-claims abandoned, but not very many homesteads.

Q. You have seen some homesteads that the cabins were abandoned, haven't you?

A. Not but very few.

Q. In the timber districts?

A. I have seen a few over on North Yamhill abandoned.

Q. Did you see some in Western Lane County in the Coast Range?

A. No.

Q. See any in Coos?

A. I have been in Coos and been on the Siuslaw and Smith River. I have seen men that lived there for 12 or 14 years on timber claims.

Q. Most of these people that have settlements are on little creeks, are they not?

A. Yes, sir.

Q. And have a little open land, or little bottom land along the creeks?

A. Well, generally; but lots of it is up on the hills;

lots of them right up on the hills.

Whereupon witness testified that the Carlton Lumber Company had about 1600 acres which he estimated as containing 650,000,000 feet; that was a good buying estimate, but it was not a good fair selling estimate. If it was estimated again it would go over that. He cruised it for the buyer and it was proper to cruise it as low as he could conscientiously.

Whereupon N. H. MARTIN, called as a witness on behalf of complainant, being duly sworn testified, that he is forty-seven years old, resides at Cottage Grove and has lived in Oregon practically all his life. He was raised on a farm up to about seventeen years ago. The main part of his life was spent on a farm five miles west of Cottage Grove in Lane County and he is familiar with the farming conditions in Lane County and other parts of Oregon and on the western slope and west of the Cascade Mountains. Referring to "Defendants' Exhibit 259" his actual work in estimating timber has been in Marion, Linn, Lane, Douglas, Josephine and Curry Counties. There is where most of his work has been. He has traveled over other counties on the western slope in a general way but his timber estimating has been in those counties. He has cruised timber in township 8 south, range 1 east, the head waters of Little North Santiam. His work was also in township 8 south, range 4 east right next to the Reserve on the waters of the Little Fork or north tributaries of the Little North Fork of the Santiam. His work in Lane County has been on

the Mohawk, McKenzie River, Willamette and the West Coast Fork, tributaries of the Willamette, Row River, Brumbaugh River and the Coast Fork of the Willamette. His work was scattered over these townships in 19 south, to about 6 west, meaning all the townships in 19 south, 1 west, to range 6 west, inclusive. He has not done actual estimating in all the townships but has traveled over them. He has estimated in township 19, Ranges 1, 2, 3 and 4 West, but has never done any estimating in range 5 and 6 west, but has been over 5 and 6 enough to familiarize himself with the soil and the general conditions of land in those townships. He has had the same experience as in township 19, in townships 20, 21, 22 and as far south as township 26 south to about range 6 west. In 20 south he has been as far over as 10 west, right over on the coast, 8 and 10 west and he has been in practically all of the townships south of that up to 26 south, 5 and 6 west, except 26. He has only been in 2 and 3 west in 26 south and that is as far west as he had been in that township, that is in 2 and 3 west in 26 south, that is he has been in all of the townships from 20 south to 25 south inclusive, ranges 1 to 6 west inclusive, excepting that he expects in township 20 there are ranges 7 and 8 and possibly 6 that his travels have been very limited in and he would not undertake to say that he was familiar with 20 south, ranges 6, 7 and 8 west, but has a very good knowledge of ranges 9 and 10 west. His travels in township 21 were up to range 6 west but no farther. In 22 south the same and in 23, 24 and 25 about the same and also

in 26 ranges 1 and 2 west, and he has been in 20 south ranges 9 and 10 west, that is the only two townships west of 6 that he has had any experience in worth mentioning. He is acquainted in a general way with the lands in townships 20 to 26 south, ranges 7 and 8 west, but not by actual work. He has traveled through some of the country sufficiently to acquaint himself with the general characteristics of the country as to soil and timber growth and its formation. He has traveled along the Siuslaw River from the head to its mouth and on the divide between the Siuslaw and Smith River and some north of the Siuslaw on the divide and he has been in township 20 ranges 7 and 8 west and has traveled the full length practically of the two Umpqua Rivers, the south and the north fork and on the divide between the south and the north fork of the South Umpqua River. He believes the territory that he has gone over does not cover any township south of 26, as near as he can locate it from "Defendants' Exhibit 259." He has not covered any territory south of township 27 south excepting right along the railroad. He has of course traveled on the railroad and on the west fork of Cow Creek and he has been in township 31 south ranges 7 and 8 west and has done some cruising in 31 south 8 west and he has been through the township sufficiently to familiarize himself with the lands in that township and his travels farther south than that have not extended very far from the railroad. The lands just mentioned are those he cruised in Josephine County. The lands on the Santiam that he cruised were in Marion County on the Little

North Fork of the Santiam. The lands that he cruised in that territory would run 30 to 40 per cent agricultural land. The other land that he traveled through going and coming to his work was about the same, as near as he could tell.

Whereupon witness testified:

Q. State as to whether or not, Mr. Martin, a sufficient amount of tillable land existed on each 160-acre tract, described as I have mentioned, that would be sufficient to maintain a man and his family, if he should settle on this land.

A. There is very few quarter sections in that locality but what would support a family.

Q. Now, in the Douglas County lands, in 19 and 26 South, in the ranges that you have mentioned in your testimony that you were acquainted with, what, if any, material difference exists in those lands? That is, are they of the same general character?

A. The character of the land is better in that range than the other, for the simple reason that the climatic conditions are better. It is in a lower altitude. The ground is more of a red soil, but lower altitude; and, with the exception of a few steep hills and small rocky points, it is better on an average than the Little North Fork locality.

Mr. Fenton: Little North Fork of the Santiam, you mean?

A. Yes, sir.

Q. Do those same general soil conditions exist, and-climatic conditions exist, as to all the lands that you have mentioned in Douglas County, that you are acquainted with?

A. Practically the same in Lane and Douglas.

Q. What percentage of 160-acre tracts, described in 40-acre subdivisions contiguous, would be susceptible to settlement and the support of a family, of the lands that you have mentioned in Douglas County, in your opinion?

A. You mean 160 acres in 40s?

Q. 160-acre tracts in contiguous 40-acre subdivisions; not by a legal quarter section.

A. Simply adjoining, you mean?

Q. Simply adjoining 40-acre tracts?

A. Well, the sections, of course, vary in the townships. The average will run 25 per cent, or better. In many sections you will find forty acres that every foot of it can be farmed—reasonably smooth—and others you will find steep places, that would be too steep; but on the average, taking the whole range here, it will go better than 25 per cent. But the climatic conditions are better, as I said, than in the Little North Fork of the Santiam territory.

Q. You mean, there would be more than twenty-five per cent of agricultural land?

A. Yes.

Q. Now, what percentage of the 160-acre tracts described the way I have mentioned would support a family, would be suitable for settlement, of these lands in Douglas County, that you have covered by your testimony?

A. You mean, what per cent in the range from 1 to 6 West, of each quarter section?

Q. I mean, what percentage of 160-acre tracts, dividing the land covered in your testimony into 160-acre tracts, what percentage would be suitable for settlement purposes; that is, that a man could go on, and make a living on, as settlers commonly do on lands?

A. Well, there is very few of the 160-acre tracts mentioned in that territory but what could be settled, and would make a living for a family. There would be a few exceptions. While the other 160-acre tracts nearby would run a higher per cent, I estimate that it will all average about thirty or forty per cent. Some will run low and some high.

Q. In speaking of 30 or 40 per cent, you are speaking of the amount of the land that can be cultivated in the quarter section, aren't you?

A. Yes, in each quarter section.

Q. Now, Mr. Martin, upon what do you base your opinion that a family could go on these quarter sections and make a living? State in your own words.

A. For the simple reason that the soil is of good reasonable depth. Some of it is dark, some of it is red

soil, and observations have shown me that it will produce, being settled by people in different localities, growing crops—observation of growing crops and climatic conditions; the fact that a great deal of it is not covered with real heavy timber, and some of it, that that has heavy timber, as a rule has fairly good soil, capable of producing different varieties of crops.

Q. In your travels and in cruising over this land that you have described, did you find settlers or people living and making their homes on any of the lands in the even numbered sections?

A. I have, in a great deal of this territory, found settlers dotted around through the country; not very many in some places, but they would be scattered around. In running the lines in my work, I would unexpectedly come onto a settler up on a ridge, a little home.

Q. Were those settlers confined to land lying contiguous to and along streams?

A. Not altogether. The first settlers were located on the streams, naturally; but others located on the high lands.

Q. You mean the ones that came later, do you, by "the others?"

A. Yes, as a rule.

Q. Now, in this territory that you have covered by your testimony, Mr. Martin, are the lands located along the streams generally taken up?

A. Yes.

Q. By the early settlers?

A. They are.

Q. Where would a man seeking a place to settle have to go to in order to find land to get at a small price?

A. He would have to go onto the ridges, what we call uplands.

Q. Are there any benches through this area?

A. There are—very often find a flat ridge, top of a ridge flat, and containing 30 or 40 acres in a tract; others smaller benches. From the streams up, you will find benches up to the top of the divide in many localities.

Q. When you speak of ridges, Mr. Martin, you do not mean a pointed peak, or a ridge that comes to a precipitous point, do you?

A. No.

Q. Please describe what you mean by a ridge.

A. By saying a ridge, I mean a rolling country, that is not high, not steep and rough. I mean a gradual slope—rolling country.

Q. Did you ever locate anybody on these railroad lands?

A. No, sir. I refused to. I was asked to do so, but I did not want to take people's money.

Q. They have requested you to assist them in getting locations?

A. I expect a hundred persons have asked me to locate them on railroad land.

A. Different persons along the Willamette Valley.

Q. Mr. Martin, you testified that there were but few quarter sections in Douglas County, in the lands that you have described, but what would support a family. Now, what do you mean by that?

A. Well, I mean, you take in a township for basis, I mean that in each township, on an average, there is not more than half-a-dozen in each township, but I would consider would support a family.

Q. That includes even and odd numbered sections, does it, Mr. Martin?

A. It includes all the territory in the township.

Q. Well, in Josephine County this land in 31 South that you have mentioned, how would that run as to settlement, as to the susceptibility to settlement and the support of a family, as compared with the Douglas County lands that you have mentioned?

A. Well, it is not so good there. The land is rougher there. It does not run as high a per cent of agricultural land as in Douglas County, the part that I traveled over. It is rougher, although the soil is very good; but it is steeper, and not so good soil as in Douglas and Lane Counties.

Q. Well, how many 160-acre tracts in each one of those townships in 31 South that you have mentioned, would be susceptible to settlement and the support of a family?

A. The work that I did in the two townships only

covered three quarter sections in one and four in the other. I traveled over other ground making preliminary examinations, but did not cruise only the seven quarter sections, in 31 South—7 and 8 West.

Q. How much of the township did you become acquainted with, Mr. Martin, in your cruising and in your travels?

A. About half of each one.

Q. From your knowledge of this land, what percentage of the 160-acre tracts described as I have mentioned in my previous questions would be susceptible to settlement, suitable for settlement, and would support a family?

A. I think about fifteen to twenty-five per cent of the ground that I traveled over in these townships.

Q. Do you mean that about fifteen to twenty-five per cent of the land is susceptible to cultivation?

A. Yes.

Q. Well, how many quarter sections in these townships, not quarter sections by legal quarter section but by 160-acre tracts, lying contiguous in 40-acre legal subdivisions, would support a family, that is, would be suitable for settlement?

A. Well, I would estimate that about that per cent of the quarter sections that I traveled over would support a family—from fifteen to twenty-five.

Q. That is about one-fourth of them—tyenty-five per cent?

A. Yes, from fifteen to twenty-five per cent; hardly a fourth.

Whereupon witness testified that the most part of his work of cruising was in Lane County, and his testimony with reference to these lands which he has mentioned as lying in Douglas County is applicable to the lands in Lane County. They are very much the same on the Douglas County side of the Calapooia Range, they are a little steeper, but the soil is good. The slope is more gradual on the Lane County side, it is more smooth on the Lane County side of the Calapooia Range, to a certain range on the east. When one goes up towards the Cascades it gets higher and rougher, but from 20 south to 6 west the land will average smoother on the Lane County side than it will on the Douglas side. In townships 20, 21, 22, 23 and 24, along there, the soil conditions are very much the same, only the land is steeper on the Douglas County side. There would not be any material difference as to the number of 160-acre tracts that would be suitable for settlement in Lane and Douglas Counties.

Whereupon on cross examination witness testified that he is forty-seven years old and raised on a farm following stock raising and farming until about seventeen years ago. His father had a pre-emption west of Cottage Grove and came to Oregon in 1857. His father's place was west of Cottage Grove. Cottage Grove is in the center of the upper end of the Willamette Valley and is one of the oldest settled sections of Oregon, and

there were many donation claims taken around Cottage Grove, and as the settlement increased the foothills were taken under the homestead and pre-emption laws. Some of the railroad land that was lying in the valleys and foothills has been sold, a good many years ago, and also most of it close in the valley has been sold and that in the foothills around Cottage Grove very near the railroad has been sold. There is timber on a large portion of the unsold land. The demand for timber claims commenced about 1900, and there might have been some demand for timber as early as 1894. Local people did not pay much attention to these timber lands when the demand first arose. His observation is that about 1900 there were a great many eastern people who came out and took timber claims. All kinds of people. There have been homesteads taken all along as far back as he can remember and after the timber demand became active he observed that a good many homesteads were taken away back in timber country and some built cabins and commuted, paid up after fourteen months, got their patents or final receiver's receipts and moved away. A great many of the individual holdings have passed to the large timber owners. The timber and stone act of 1878 was applicable to Oregon and he knows that a great many quarter sections were purchased under that act, which required no settlement and limited the amount to bona fide purchasers to 160 acres where the applicant could swear that he had gone on or seen the land. A great many of these timber claims thus acquired under the timber and stone act passed into the hands of large timber dealers.

The two largest companies that he worked for were the Storey-Bracher Company and Honore Palmer., the son of Mr. and Mrs. Potter Palmer. He cruised a good part of two years for the Palmer people and a longer time for the Storey-Bracher Company and then for other similar concerns or private individuals in different localities. It is his understanding that Honore Palmer represents himself in making these investments, and he is the son of one of the millionaire families of Chicago. He has met Mr. Sumner, his financial representative, and supposes that he is the business manager in the field and looking over these cruises with him and determine whether they would buy or not. He knows that Sumner bought some lands in the vicinity of Eugene near the Booth-Kelly Lumber Company holdings, and witness helped estimate the timber on them. He forgets now whether there were 1,000 or 2,000 acres in one place. It might have been 1900 acres. He would not be positive. He heard that they talked of building a large mill there, and logging railroad to connect with the railroad operated by the Southern Pacific Company. He could not say that he selected these lands, before they were bought, and that he selected them on water sheds so that they could be successfully logged to one place. As a rule he never asked many questions of these people. They put their data before him and asked him to cruise in certain townships and sections and he went ahead and did the work without asking questions. He asked very few questions. He cruised also for Honore Palmer on the Coast Fork of the Willamette River, which is about thirty miles from

Eugene in the Calapooia Range, a spur of the Cascade Mountains, which spur is at right angles to the Cascades. The elevation of the Calapooia in that locality is not very high, but is rather a low divide, from 1,000 feet on up reaching as high as 2,500 feet. The Calapooia crosses Douglas County and a part of Lane County at right angles to the railroad and connects the Coast Range with the Cascade Range and streams that head in the Calapooia are mountain streams and are swift. He would not classify them with Cow Creek, they are not as swift as Cow Creek. The headwaters of the Umpqua River, North and South Umpqua rise in the Cascade Range, and the Umpqua goes to the Coast. The Calapooia River heads in the Calapooia Range and empties into the Umpqua and is a part or stem of the great Umpqua River. He cruised several thousand acres for the Storey-Bracher people, but could not say how many, but thinks perhaps 6,000 or 7,000 acres. He worked all one summer and fall in one place that he remembers of and cruised a strip two miles wide through two townships in the Calapooia Range but never figured it up to say just how many acres, but it runs into thousands. This was in Douglas and Lane Counties, mostly in Lane County. J. O. Storey is one of the main men in the Company; his associates are Bracher Brothers, he thinks, one or two of them. They are from Michigan or Wisconsin or some of those eastern states, and they have been operating in timber lands in Douglas and Lane Counties several years. He first began work for them five, six or seven years ago. He could not say how many

acres they have in their holdings all together, but he has cruised for them nearly 8,000 or 10,000 acres he would think. He has cruised for Michigan, Wisconsin and Iowa people probably 1,500 acres for them in particular. He has not dealt in timber land very much. He took one homestead in section 30, township 23 south, 1 west in Lane County, but he did not prove up. He claimed his homestead about a year. It had some very good timber on it. He relinquished it to the Government and another party took it up immediately. He had an understanding with the party who succeeded him that he would relinquish to the United States who was to make his filing and he received no consideration for his relinquishment. The party in whose favor he relinquished proved up and the quarter was sold to timber people, there was a timber claim under the timber and stone act put on this homestead, when he relinquished to the United States. They filed under the timber and stone act and paid $2.50 an acre for it. It was several years after the man got his final receiver's receipt until he sold to a timber concern. The party had not lived on the land at all, she got about $2,000 for the land. This was perhaps six or eight years ago, but he could not say. The last knowledge he had, the Storey-Bracher Company, he thinks, owned that land. He is not positive but he thinks they were the last owners.

Whereupon witness testified:

Q. Well now, the locating business of so-called settlers on these timber lands has been pretty active in the

last four years, hasn't it?

A. Yes, sir.

Q. And it is still active, or has it rather quieted down?

A. It is rather quiet now.

Q. About the time this suit was commenced, did it become active, in September, 1908, that was?

A. You mean locating on railroad land?

Q. Yes.

A. I presume it was at that time. I am not positive just when this suit commenced.

Q. Do you know how they did that? These men that were doing the business that you declined to do. How did they do it?

Mr. Robb: Objected to as not proper cross examination.

A. Well, I suppose that they would represent that they would go and look the ground over, and then negotiate with people to locate them on it for so much a quarter, and put up notices, have the people to put up notices, and they would form in associations in different parts of the valley, and have an attorney, and locate land that way.

Q. How much did they charge—these timber locators—for picking out a quarter section and getting somebody to make an application to purchase and locate?

Q. You may answer if you know what the ruling charge was.

A. I think the price ran from $25 to $200, perhaps.

Q. Now, isn't it true, Mr. Martin, that these timber brokers or locators did a thriving business for about three or four years there, and got a great many people to make applications to the railroad company, tender them $2.50 an acre, and charge them for locating on these quarter sections?

A. I think that is true.

Q. The record shows here about seven thousand interveners, all of whom claim they have done that. Is that the way this business was done, as far as you know?

A. I could not say as to the number. I have not looked the records up. But there was a great many that were supposed to locate on these lands.

Q. Would these people go out and build a cabin or shack on the quarter that was selected, and stay there a night or two, and then go away?

A. I never saw anyone living on the ground, but I have seen their cabins in my travels that they built. A great many would not build cabins—just put up notices. I would see their notices as I traveled through the country.

Q. Now, what kind of land was it generally that these people had these cabins on and notices posted, timber or otherwise?

A. More or less timber all through the country.

Q. Wasn't it, as far as you could see, about the best timber that could be picked out on these railroad quarters?

A. Well, the location that I observed as a rule covered about all the railroad land in the country.

Q. In other words, they just plastered this railroad land with these notices and attempted locations?

A. I have seen more than one notice on the same claim.

Q. Now, what were they after—the timber that was on the land?

A. I couldn't say.

Q. Well, the land was chiefly valuable for timber, wasn't it?

A. Not as a rule.

Q. Well, wasn't the timber merchantable that was on it?

A. In some places it was.

Q. Well, as a rule these locations were mainly on the unsold railroad land—all on the unsold land, wasn't it?

A. Why, I would think so.

Q. And the unsold land of this company in the counties where you have been and cruised, was timber land, wasn't it?

A. A great part of it was.

Whereupon witness testified that one dollar a thousand feet board measure is the highest price he knew of a quarter section of timber lands selling for in Lane or Douglas County in the last four years, and that was the stumpage price. He knows of quarter sections of land that would run very close to twenty million feet board measure and at a dollar a thousand stumpage that would be $20,000 for a quarter section, but he has not known of any particular quarter section being sold at that price in that locality. He does not think that the market price of stumpage on these timber lands in that County would average as high as a dollar a thousand. The last land that was bought in Douglas and Lane Counties of which he has knowledge, he thinks, sold, a majority of it, at about fifty cents. He thinks it was gathered in large tracts and the small tracts were grouped together. He does not know of any timber companies which are offering to sell stumpage for fifty cents. He does not believe he knows of any large holdings offered for that price now. He does not believe they are very active at present in buying, there seems to be a little lull, which may be on account of pending graduated single tax measure. Some localities of these lands which he has cruised in Douglas and Lane Counties in 160-acre tracts in legal sub-divisions would in his judgment be twenty-five per cent agricultural, others higher. He thinks thirty to forty per cent. By agricultural he means land that is in good localities with good climatic conditions, low altitudes, smooth enough to cultivate, the soil being good,

clear of rocks and such as that.

Whereupn witness testified:

Q. Well, you don't mean that these timber lands are agricultural do you—claims that would go twenty million feet of fir timber—you don't mean that is an agricultural tract, do you, in your classification?

A. I mean that many of the best timber lands are on good soil.

Q. Well then, you would classify a quarter section that had twenty million feet of good saw timber on, if the soil was good, and if it was sufficiently level that it could be plowed over after the timber was removed and the stumps cleared, you would classify that as agricultural?

A. I would.

Q. So that when you say lands are agricultural, or a certain per cent is agricultural, or a certain per cent of quarter sections is agricultural and capable of supporting a family you mean after the timber is taken off, that it has a soil that could be used for some agricultural purpose? That is what you mean?

A. Yes, I classify it as agricultural lands, for the simple reason that it is capable of producing, after the timber is taken off, producing different kinds of crops.

Q. Have you ever had any practical experience in living on a quarter section of this timber land that runs twenty million feet to the quarter, or that is commercially valuable for timber, and tried to make a living on it?

A. I have lived on land very similar. I did not live on land that grew that heavy timber. But I have passed over many of them.

Q. Have you ever known of anybody up in that country that had a quarter section of timber land, that concluded to and was clearing it, rather than sell it for the timber that was on it?

A. Yes, I know of quite a number.

Q. Just name anybody that you know that is on a timber quarter, that is in good faith going ahead, cutting down the saw timber, grubbing out the stumps and burning up the logs, and making any considerable progress in making a farm out of it, instead of holding it for the timber. Just name them. Give the location too.

A. Well, in township 22—well, I would say 21 or 22 south, 4 west—I am not positive now. It is in section 12. Mr. Aaron Kelly was living on a quarter there, doing my work in that vicinity—but he is dead now—clearing up part of it, raising different kind of crops on it.

Q. How much did he have cleared on his quarter section?

A. Oh, probably from five to ten acres.

Q. And what did he do with the balance of the 160 acres?

A. He hadn't done anything with the balance at that time.

Q. How far from the railroad was that?

A. About two or three miles.

Q. And how long had he owned this quarter section? How long had the title been out from the United States?

A. He had been on it a few years—I couldn't say how many.

Q. Do you know whether it was a homestead, or pre-emption, or timber claim?

A. I think it was a homestead.

Q. Had he got his title?

A. No, not at that time.

Q. Then he couldn't cut the timber on it, could he, except for domestic use?

A. Only for his own use, that is all.

Q. Did he have a family there with him?

A. Yes, sir.

Q. Now, what kind of crops did he raise?

A. He had hay and different kinds of garden.

Q. Was he on a little stream?

A. Well, no; he was on a bench, upon a hillside.

Q. Did he have any living water, running stream there?

A. A spring, I think.

Q. Now, did he have any stock?

A. A few.

Q. What kind of stock?

A. Cattle, and perhaps a few horses.

Q. How many cattle did he have, would you say, approximately, now?

A. Well, I couldn't say.

Q. Forty or fifty head?

A. I think not that many.

Q. Were they milk cows or simply beef cattle?

A. Some of them were milk cows.

Q. And was he doing a stock business?

A. He had a few stock, was living there, making a living, and——

Q. Did his stock range out?

A. I simply meant he appeared to be making his living there for his family.

Q. Did he range his cattle over the unenclosed lands outside? Did they go over wherever they wanted to?

A. Those that were turned out could range wherever they wanted to.

Q. Didn't he turn out every one of them, except a few cows that he kept in his enclosure for milk?

A. I think perhaps most of them ran on the range.

Q. How many horses did he have?

A. Not very many.

Q. He had just a team, didn't he?

A. I presume two or three.

Q. He probably had a pony that he rode when he ent to town?

A. He didn't have to ride. He could go on a agon.

Whereupon witness testified that the nearest good ading point of this party was at Cottage Grove, about x, seven or eight miles away, southeast, between the outhern Pacific railroad and the Coast Fork of the Villamette. Comstock and Anlauf are on the railroad nd this piece of land was on the Lane County side west f the road and runs pretty close to 1500 feet high from 200 to 1600 feet, along there. Some of it was very fine mber, but some of it not heavy. The territory of which e is speaking is not in the Comstock locality but across he Calapooia on the Lane County side. It has not been ut off but is in its virgin condition, but is in the same eneral character of land. The way he went in when e cruised these timber lands on the Santiam, on the Lit-le North Fork of the Santiam above Mehama, he does ot know what the exact distance according to air lines ould be from Albany, but they were quite a ways east nd north from Mill City and above Elkhorn, on the estern slope of the Cascades, next to the Cascade For-st Reserve. The settlement, as a rule, in that locality, as not on the best timbered lands but on the ridges and ivers. Some of them were old settlers. Some had not een there many years. One would find an occasional abin that was not occupied, but not so very many, they ere mostly occupied. On the even sections in these tim-

bered lands the settlements extended all the way along the two streams, the North Fork and the Little North Fork, and on both sides of the divide, the low divide between the Little North Fork and the North Fork, and on the other side of the divide, between the Olalla and the Little North Fork very close up to the summit, and he would presume there were a dozen settlers actually living on their quarter sections in that region that he saw, and in most instances they were men with families. He thinks the settlements in the timbered areas with which he is familiar in Douglas and Lane Counties were greater in some of the other localities than that, in proportion to the area he covered. Eliminating the settlers down in the valley in the foothills of Lane County where he has described the sections or territory where he had cruised he would think there would be five, maybe more, to a township, and there is not much difference as to the lands that he has cruised in the eastern part of Douglas County, they were about the same; he thinks the settlement was a little thicker on the west side of Lane County on the Siuslaw as a rule. There was a good deal of settlement on the Siuslaw, Smith River and the Umpqua. The Siuslaw heads near Cottage Grove about twenty-two miles from Eugene and runs from the western part of the county on west to the coast. It does not run through the eastern part of the county. He does not think the timber on the Siuslaw is quite as good on an average as on the Nehalem. Many parts of the little valley along the Siuslaw is covered with heavy timber. Some of it has no timber, some of it is open. He knows the Siuslaw

Gorge through which the Willamette Pacific Railroad Company is building a tunnel and he understands it requires tunnelling to get a railroad through; some places of the Siuslaw River are in a gorge and some places the land is flat on each side of the river for a ways. There is a great deal of land in that section that is timbered. A great deal of it has been burned off. Most of the burned areas was once covered heavily with timber and is reputed to have been burned prior to the coming of the white man, about sixty or seventy years ago at least. The burn is a very large one. He measured one fern sixteen feet high in that locality. The soil is red and dark gray and affords a great deal of food for cattle in that locality. It grows pea vine, gourd vine and clover grows very fine in there when it is sown. Some of the burns are cultivated, but not a very great proportion in that locality. Most of the burn is in a state of nature as left by the fire to the growth of small brush and stuff, such as he has mentioned. The elevation is a great deal lower than 2500 feet. It is not that high as a rule in the Siuslaw country. When one gets up on the high ridges between the streams one gets that elevation, but a great deal of the country is lower than that. He only knows of the purchase of the large timber holdings by the Johnson-Wendling Company in the Siuslaw country this year by reading about it. He has cruised a great deal of the timber during the last twelve years and before that worked some at surveying and different things. He never cruised Douglas and Lane Counties for assessment purposes. The three methods which he uses in cruising

are what are known as single, double and four times running through. He plats the ground, marks the streams and takes the elevations. He writes out his reports in the evening after he gets through his work on blank forms. In his reports he reported anything about soil conditions. With reference to noting the topography of the lands that he cruises, that depends upon the instructions that he receives. He marks the streams in all places and in a majority of cases the people employing him ask for the character of the land. A great deal of the lands he is employed to cruise are timbered lands. As a rule he gets the heighth of trees, while cruising, from measurements of down timber. In some places on these timbered lands the timber is fully matured and in others it is younger and still growing. After the tree becomes fully matured it begins to decay, not so very fast on the start, but as it gets older it decays faster. He knows of some of the full grown timber offered for sale on the Forest Reserve, but thinks that the United States asks $1.50 per thousand for fir timber but they have not been making any sales that he knows of. There are certain restrictions that they compel a person to comply with in the logging of these grounds, and he does not know whether they are too strict or whether it prevents the sale or not. He could not say whether it is the price or the regulations as to the method of leaving the land that constitutes the objection.

Whereupon on re-direct examination the witness testified that lands containing a stand of 20,000,000 feet to 160 acres are very unusual. There are very few of

such lands in Douglas or Lane Counties and there is only one that he knows of in these Counties that is that heavy. He has never seen another claim that had that much timber on it. The timber growth is not uniform or the same in all places. It is very irregular. The timber is not generally heavy as a rule. There is a great deal of light timber, open spots and then one will find a heavy forty possibly, a heavy quarter, but not every section. There is more or less light timber and open spots, some of which would be easy to clear. Since the demand for timber became brisk a comparatively few years ago, there has been an increased demand for agricultural land and for lands that could be cultivated and he has had many applications for land suitable for homesteads in the vicinity of these lands about which he has testified. A great many of these people told him that they wanted these lands for homes, that is these people who sought to engage his services to find them agricultural lands. The demand for lands for homestead purposes in the western part of the State of Oregon is quite general now and has increased during the last ten years. Very little of the public lands are left. It has practically all been taken up. In some cases he knew that these abandoned cabins in the timber of which he has spoken were on homesteads, others he had no way of knowing and he did not inquire, but in some cases he knew that they were on homesteads. He does not think it has been the general practice of the citizens of Oregon to file homesteads on lands and immediately abandon them, after making proof and sell them to a timber company. There were very few of these

abandoned cabins. He knows some of the parties who have filed on homesteads and then abandoned their cabins as he has mentioned. He wishes to say in regard to these abandoned cabins that a very large proportion of them, the majority of these cabins that have been abandoned, the land had been bought by companies, the people sold out, moved to towns, a great many of those who were bought out went to towns. They did not just get up and leave the lands, they sold their lands after they had made their proof, but that was unusual and there were very few of these abandoned homes that he found. He knows of the scrip locations on these lands and knows that scrip was used on a number of even sections, quite a good deal of scrip. Practically all of the streams in this country have their sources in the mountains. 2500 feet elevation on the Calapooia Range is the highest point. The largest burn he knows of in the Coast Range in Lane or Douglas Counties is between the Siuslaw and Smith River and is the burn mentioned containing this high fern. It does not contain very much merchantable timber, but small growth growing up with a small growth of timber. The old settlers claim that the Indians burned this land over in the early days, burned this off every year and kept it burned off. This main big burn was burned off more than fifty years ago, he thinks, although he has no actual knowledge, and no one else he thinks has any actual knowledge when it was burned. The land about which he has testified has increased in fertility but he does not think there has been any material change as to the mountains and the general susceptibility

of the land to settlement since this grant was made. The remainder of these lands about which he has testified besides the per cent of lands that could be tilled, could be used for grazing land. The soil is very good on a great deal of it, but the steeper part of the mountains would be too steep to plow, but it would raise good grass. Fruit would grow well on this land, if it was not too steep to be cultivated. As far as cultivation is concerned it would grow good fruit. He has surveyed for the Government in Township 20 south, 10 west on Smith River in Douglas County. He thinks the ridges divide there at that point and the line follows the Siuslaw a ways and then jogs up on the ridge.

Whereupon witness testified:

Q. Now, Mr. Martin, there has been some testimony in this case, as to the reforestation of this land after the timber is removed. What, in your opinion, is the best use that could be made of the land after the timber is removed from such as is covered with timber?

A. I will say that I have worked for the government on the reserve, and I would say that the agricultural products from this land would be much more valuable to coming generations than the timber by being reforested.

Q. How long would it take to reforest this land? That is, for the timber to attain such growth as would make it merchantable timber, if you know?

A. It takes about two hundred years.

Q. What has been the effect, Mr. Martin, of the sale of this land to large timber companies, and the withdrawal of the lands from the general public market, if you know?

A. It has retarded the settlement of the country, kept back the development of the territory by people not being able to settle on the land.

Q. Are these lands close to transportation?

A. A great deal of them are.

Q. Situated as the railroad lands are in alternate sections, what, if any, effect would that have with reference to the settlement of the even numbered sections?

A. It has retarded the settlement, of course, of the other land to some extent.

Q. In what way, Mr. Martin?

A. Well, on account of causing a more thinly settled locality, you know, in developing schools and such as that, and highways, roads.

Whereupon, on re-cross examination witness testified that what is commonly known as lieu land scrip has been used a great deal for the purpose of acquiring these timber lands in the even sections, in the territory with which he is familiar; he has used some of it himself. J. W. Parrish has used some and he knows by hearsay about the large companies using it, and he knows it has been done according to general information. The last scrip he used for this purpose cost $8.75 per acre. The Northern Pacific Railway Company has located some of

these timber lands in the even sections with scrip, it was in lieu of the Rainier mountain country in Washington, scrip that was given them on land in the Rainier Mountain country. It was put into a reserve, they could locate this scrip on Oregon lands and they got the scrip in lieu of lands granted to the Northern Pacific Railway Company under the Act of July 2, 1864, and could locate the scrip in Oregon and they located a lot of these lands in Douglas and Lane Counties. He could not say exactly how many acres they had scripped in Douglas County on the even sections of these timber lands. Their holdings in the Umpqua Reserve and Cascade Reserve are quite large. The dividing line between the two reserves is the watershed between the Willamette and Row rivers, two tributaries of the Willamette and there are several thousand acres they have scripped, and they have scripped also in the even sections within the indemnity limits of this railroad grant in these counties, but he does not know as to the odd sections. The brown lands shown on "Defendants' Exhibit 259" unavailable for indemnity selections within forest or other reserves from township 17 south nearly the whole distance down to 31 or 32 south in the indemnity limits, designated as lost to the company by reason of being appropriated, or withdrawn, or under reserve, is similar to the land adjoining it in the twenty mile strip and he does not know the exact number of acres in Lane County which the Northern Pacific Railway Company has scripped. He did know the cruise, but has forgotten now, it was a large amount. He did not directly cruise for the Northern Pacific Rail-

road Company, but did work for them under other people, under the cruising party a short time. He arrived at the time it would take to reforest a piece of this timber land, which he says would be two hundred years, by calculating the growth of the timber in different localities, counting the grain to get the number of years it requires to get a certain size to make it merchantable timber and he figures that some of these largest trees may be two hundred years old, or more than that. The oldest tree that he can remember, in these forests, using the accepted method of arriving at the age of trees, is something over two hundred. There are some second growth fir trees in some parts of the Willamette Valley that are not over fifty years old and are eighteen inches through at the butt. The growth of such a tree depends upon the density of the forest, where it is thicker, it does not grow so fast.

Whereupon witness testified :

Q. Do you remember seeing a forest east of the railroad, between Woodburn and Gervais, on the east side of the track as you go south, that forty years ago was just little fir trees, not much higher than the ceiling of this room, that today are seventy-five feet high, and the trees, many of them, are eighteen inches at the butt, and they stand so thick that the sun very rarely penetrates into that grove?

A. I don't know of that particular grove, but I know of others similar.

Q. I call your attention to that grove because it is

along the railroad, and well recognized, and known by everyone who is interested in reforestation?

A. Yes, sir, I think I have noticed the grove.

Q. Well, now, those trees, while not desirable for large mill timbers or mining timbers, will make saw timber for most uses, do they not?

A. To get timber of that size, that should be cut and used to advantage, it has got to be in what they call old growth, very thick, and where it grows tall and slow. The young growth that comes up fast don't make good timber. It don't make good lumber.

Q. That is to say, the timber at fifty years of age is not so good for all purposes as trees that are one hundred years old.

A. No, it is not good, as a rule.

Whereupon upon re-direct examination witness testified that timber that grows rapidly usually is trees that stand by themselves, and are swell butted and the grains are coarse. The other timber is tall and small and the grain is fine and much stronger and takes on a good finish, while the other is hard and coarse grained, and has not the strength the other has. It is considered waste to cut it at that stage. This Northern Pacific scrip, he thinks, can be located on unsurveyed land and was largely located on unsurveyed lands in Oregon. He has no actual knowledge that Northern Pacific scrip has been located on the ten mile indemnity limit of this grant.

Whereupon witness testified:

Q. Now, Mr. Martin, if a settler would go on this land, taking a 160-acre tract, how could he make a living? In what manner?

A. Well, when he first settles on the land, when it is covered with brush and timber, in order to make a living for the first few years, he could put goats on it, and raise them at a very good profit. 160 acres of most any of this land will keep two hundred head of goats. Their food is nearly entirely brush, browse off the young brush and vegetation—requires very little feed for them in the winter in the low altitudes, and the returns on the wool and increase are very profitable.

Q. Is the goat industry carried on to any extent in the vicinity of these lands?

A. The goat industry is scattered all over Lane County and Douglas, as well as farther north.

Q. Now, would they require any food, other than the growth on the land, during the winter season?

A. I have wintered 225 head of goats several winters with less than five ton of hay. Other winters, when they have a little soft snow, why, it requires some feed for a few weeks. A few tons of hay will carry two hundred head through very easily.

Q. Would these people have to buy their hay?

A. Well, they can raise it.

Q. Is their land situated in 160 acre tracts, sufficient land to raise hay that would support a herd of goats?

A. There are very few of these 160-acre tracts but what have light patches of timber and brush that can be cleared easily. The heavy tracts of solid timber over 160-acre tracts, over the entire lot, are very scarce. It is spotted all over the country. And there are always little benches of light timber and brush that can be cleared, and bottoms, small bottoms on the head waters of the streams can be cleared very cheaply, and produce good hay—any kind of agriculture.

Q. Are there many of these spots scattered through the timber of Lane County, that you have spoken of?

A. They are all through it—scattered all through it; some of them quite large—forty acres sometimes.

Q. Would the income from the raising of goats maintain a family?

A. It will.

Q. Support it?

A. Yes, sir.

Whereupon on re-cross examination, witness testified:

Q. Suppose you had 200 goats on each quarter section of this land, would you have the land all fenced to take care of them?

A. It would depend on whether I had to or not.

Q. I know, but suppose that you had to enclose your premises, to confine your pasturage to your own quarter section, and everybody had 200 goats, on each

quarter section, do you think that would be at all practicable, Mr. Martin?

A. I think it would support them easily.

Q. What do these goats raise or produce that is marketable?

A. Well, an increase in the stock.

Q. It is called mohair, isn't it?

A. Yes, sir.

Q. And they raise about how many pounds of mohair to a goat, the best goats that they have in this country?

A. Well, it ranges all the way from 3½ to 5 pounds to the head, owing to the grade.

Q. It takes a mighty good goat, doesn't it, to bring five pounds of mohair?

A. Not a very good Angora to raise five pounds.

Whereupon witness testified that he does not know how many goats there are in Lane County. He knows of one man near his town that owns over five hundred head. He supposes that Polk County is the best goat county in the State. He has heard that there are a great many goats in that county. He knows that goats eat fir, they prefer hardwood browse but would eat the young fir. He has had them to eat it in his own range. They prefer vine maple and hard woods of that description, they really prefer a variety; they browse on all kinds of brush. They will even eat poison oak, and he

has slashed in ground and had young brush start, fir brush, very thick on the ground, and put them in the pasture and cleared it entirely with goats. They would kill it out. They are used to grub any kind of land. They prefer hard wood browse. The average clip of mohair is more than two and a half pounds per head. Every city and town in his locality buys and ships mohair; a greater part of it is sent to London. The price ranges from twenty to forty-five cents per pound and he thinks the average for the last few years has been in the neighborhood of thirty cents per pound, maybe a little more than thirty cents per pound, so that if a man had two hundred goats and raised five pounds to each, that would be one thousand pounds of mohair, which at thirty cents would be worth $300.00.

Whereupon, on re-direct examination, witness testified that if one takes a mixed herd of goats that is usually raised by the rancher he would raise abount one hundred head as the natural increase, worth from $2.00 to $5.00 a head, owing to the grade, and he always sold his best goats at $5.00 a head. For the finest breed of goats, the blue ribbon variety, one would pay several hundred dollars for some of them. These fine goats eat brush just the same as the others. He has no interest in this suit other than as a citizen of the State of Oregon and did not volunteer to come down here but was subpoenaed.

Whereupon, upon re-cross examination, witness testified that he was interviewed by the Government's rep-

resentative at Cottage Grove and made a written statement of what his testimony would be several months ago and later was subpoenaed and brought here as a witness.

Whereupon A CREASON, called as a witness on behalf of complainant, and being duly sworn, testified: That he is fifty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in Oregon, most of the time in Douglas County, for thirty-three years. Roseburg is near the center of the county, a little north of the center. He has been principally engaged in the stock business since he came to Oregon, and has owned and operated quite a bit of acreage in that county. He has had no experience in the lumber or timber business, other than to buy lumber needed for building purposes, or for fencing. He never owned anything that he figured as timber land, except a quarter of a section in 27-1 West. He has been handling cattle and sheep principally, but some horses in his stock business, and raised them to sell. One of his stock ranches consisted of 1,071 acres and adjoined the City of Roseburg; another, about nine miles east of Roseburg, consisted of 665 acres, another about two miles north of Roseburg consisted of 361 acres, and another consisted of 628 acres, eleven miles west of Roseburg, in Township 27-7; he has some other small pieces scattered around the country. He went to Douglas County in 1879, and he thinks the railroad was constructed to Riddle or Glendale at that time, but he would not say positively as to that. For a distance of forty miles south and twenty or twenty-five miles north of

Roseburg, he has been practically all over, and is acquainted with that territory; and has been clear across the state. He has been frequently over that country the last ten or fifteen years, but has never done any timber cruising. The territory he speaks of extends clear through to the Coast. He is a little bit acquainted in Lane County and knows some of the land in that county directly west of Eugene. He owns 160 acres in there. The railroad land adjoins that, and he has been over that; it is within the limits of the grant and he was told that it was railroad land. He has not been very extensively over Lane County, but has observed the land in that county in the vicinity of this quarter section, of which he speaks; from Albany west, along the Mohawk and Corvallis, and along through ten or twelve miles, he would say, west of the main line of the Southern Pacific, he has been through that a few times buying goats and stock, and riding over the country, and hunting and fishing some, but not as extensively as he has been in Douglas County. He has been up and down the railroad from Portland to the southern boundary line of the state, more or less, and thinks that he has become familiar with the general development of the industrial and commercial resources of Oregon in these vicinities that he speaks of.

Q. State whether or not you know the general method that has been pursued by the railroad company with reference to the disposition of its lands in these communities that you speak of?

Q. During the time that you have resided in that

vicinity.

A. Very much to the disadvantage of the settler.

Q. The question is, do you know?

A. Yes, sir; I know.

Q. State what it is.

A. The country has been held back to a great extent by the settlers being only allowed the even sections, and the odd sections unimproved, disadvantages for schools, for roads, and every other convenience that would be of advantage to the development and the settlement of the country.

Q. Does that observation apply to the general territory that you have described that is within the limits of the railroad grant, or to some particular part of it?

A. To practically all that I have been over.

Q. Do you know the general character of the soil within this territory that you have spoken of? I refer now always to the land within the limits of the railroad grant, unless I otherwise designate.

A. As a whole, you mean?

Q. Yes.

Mr. Fenton: Which he has seen.

Mr. Townsend: Yes.

A. Yes, sir; I am acquainted with it.

Q. Acquainted with the general lay of the country as to elevations and other natural conditions?

A. Yes, sir.

Q. Are you acquainted then with the general question of the adaptability of that land to cultivation and the raising of horticultural and agricultural products?

A. Yes, sir; I think I am.

Q. Are you acquainted with the value of that land for the purpose of settlement and the maintenance of families of the settlers?

A. Yes, sir.

Q. What have you to say as to the quality of that land, considering now the character of the soil, the way in which the land lies, and all other conditions, natural conditions, as to its availability for the purpose of settlement, and the use of the land for the purpose of maintaining and supporting a settler and his family.

Mr. Fenton: Objected to as calling for a conclusion of the witness and not for specific statements of fact, and as therefore incompetent.

A. The land as a whole is very good. It is somewhat broken, but I would say 75 or 80 per cent of the whole is good agricultural land, capable of making many good homes for people that are willing to go into the frontier and hew out a home, clear up the land, take their families, and develop the country and make homes, and could make good livings.

Q. Have you had any experience with reference to the use of logged off lands for agricultural and horticultural purposes?

A. Yes, sir.

Q. Have you taken that into consideration in your previous answer as to the quality of this land?

A. Yes, sir. What I mean by agricultural land is land that is suitable for farming by the work of man cleaning the brush off, timber off, such like as that. None of it can be farmed—I say none of it—a great deal of it cannot be farmed if he had to go right into the timber and stumps to start with, because that has got to come off first. Some of it is open, ready for use at the present.

Q. It has been testified to here, Mr. Creason, that there is not a quarter section of land within this grant, referring now to the unsold lands still held by the railroad company that would support a family. Is that true?

A. Absolutely false.

Q. What proportions of the quarter sections with which you are familiar would support families, if properly handled?

Mr. Fenton: Objected to as calling for a conclusion of the witness without any statement of facts.

A. Their land as a whole, the even and odd sections that I have been through hunting and fishing and running stock, it would be hard for me to pick out an odd section from an even one, but I have some land of my own that the railroad company has land adjoining it which I have leased, or that my man on the place has

leased, that I could say positively, because I have been right on the land and could name the quarter section and the forty, etc., but take the whole back a ways, it would be hard for me to say which section I was on, whether it was an even section or an odd—but take it as a whole, I will venture to say there is not a quarter section in the territory I have been over that would not make some man a reasonably good home; some better than others; but any of it he will find more or less farm land or agricultural land.

Q. Are there any settlers within that territory, speaking now with reference to the limits of this grant?

A. Yes, sir.

Q. Now, have you proceeded west from the grant to the Coast?

A. Clear to the Coast, yes, sir.

Q. State whether you found any difference as to the settlement of the country as you left the grant and proceeded to the Coast.

A. You get out of the grant limit, and you find it much thicker settled than you do in the limit of the grant.

Q. Why is that?

A. The only reason I can account for it is, it has better conveniences—they can have better roads, more settlement; can have schools where they cannot where it is so thinly settled.

Q. Well, what has brought that condition about?

A. Government lands, people are allowed to go and take it as homesteads, pre-emptions, and various ways.

Q. Well, why hasn't the same thing occurred within the limits of the grant?

A. The last number of years the railroad company has absolutely refused to sell it, or have to me, at any rate, as I have made application for it.

Q. In your judgment, if the railroad company had disposed of those lands to settlers, would the same conditions exist within the limits of the grant that you found immediately adjoining it on the west?

A. Much better, because the climatic conditions are much better on the east side of the Coast Range than they are on the west side of the Coast Range. I think it would have been more thickly settled.

Q. Now, how with reference to the sale of these lands in large quanities to timber buyers and others—are you acquainted with that general condition?

A. Not positively. I know in a general way of it being sold in large tracts.

Q. What effect, if any, has that had upon the settlement of the country?

A. Very much held the country back, on account of those people bought it and were holding it for speculative purposes, I presume, or at least they are holding

it and not selling it; no settlers on that land. There are none of those large tracts that I know of that have been bought that ever anybody has allowed any settlers to go on.

Q. Now, in your testimony with reference to the availability of this land to settlement, state whether or not the same thing would be true after the timber is removed, referring now to such lands as are timber lands?

A. Yes, sir.

Q. Do you know of any of these railroad lands that would be valuable for the sole purpose of settlement after the timber is removed?

Mr. Fenton: Objected to as immaterial.

A. Except in a general way as I speak of, with the exception again of these tracts that I have leased, or that my men have leased. But outside of that, to go on any one section to know positively that it is a railroad section, I would not know whether it was an odd one or an even one. But as a whole, why, it would be thickly settled in places—people would be glad to have it, many people.

Q. Do you know, from your own observation at Roseburg, and in that vicinity, whether settlers have come in there and tried to get any of that land?

A. Yes, sir.

Q. To what extent and when? Describe it in a

general way.

A. I know of two men about eighteen miles, I would judge, east of Roseburg, on the North Umpqua River, or close, by the name of Barker, that went in there before the land was surveyed, taking a squatter's right. Afterwards the land was surveyed, and they found that they were on railroad land. They had made homes there, they had cleared up some land, and calculated to prove up on it as Government land till it fell to the railroad company, and since that time they have never been able to get a patent to it. One of them lives in Roseburg at present. The other, a brother of the same man, is dead. They both told me——

Mr. Fenton: Objected to what the witness was told by these people as hearsay.

A. I saw them on the land personally myself.

Mr. Fenton: I do not object to that. I object to what they told you.

Mr. Townsend: Go ahead with your answer.

A. Both of them have told me that they had tried time and again to get the land, and were unable to secure it, and eventually moved off.

Q. When you saw them on the land, what were they doing?

A. Farming it, had a little stock; both of them good hard working men; had families—one of them had a family—the other, I believe, did not, but one of them I know did, because one of his sons is working for me

now.

Q. Do you know whether they had any other means of livelihood than the product of the land upon which they were settled?

A. I think none whatever.

A. How long did they live there?

A. They lived there—well, it is hard to say, but I would say eight to ten years.

Q. Do you know the description of that land?

A. No, sir; I couldn't tell you the exact description, but I can give you very close to it. If I could have the map, I could show you almost exactly.

Mr. Fenton: There is a map right here, Mr. Creason.

A. (Referring to map.) It would be right in there. Before the country was surveyed they went in there. I wouldn't say what section it was in, but it is right at the old Patterson mill and a little above Glide.

Q. Now, how about recent years? Do you know whether there have been any settlers coming into Douglas County, particularly coming to Roseburg?

A. The last seven years there has been the greatest immigration of settlement that Douglas County has ever had, and the last five especially; in fact, for the last ten years, but the last settlement, people are coming all the time in the last five years, there are a great many of them that come looking for homes.

Q. State whether, in your judgment, the railroad lands situated in Douglas County, and particularly those within the limits that you have described, could be disposed of to settlers and reduced to settlement?

A. Yes, sir; very readily.

Q. It has also been testified to here, Mr. Creason, that these unsold lands of the railroad company that are involved in this suit, including the lands in Douglas County, together with the even numbered sections that intervene those railroad lands, are not good for anything excepting the growing of timber, and that the only use, practical use, that can be made of them, is to cut off the growing timber, and then hold them for the purpose of reforesting them. Is that true, in your judgment?

A. Absolutely no truth in it. It would make hundreds of good homes if they would allow people to have it.

Whereupon witness testified that his knowledge of the lands as to sections is limited to the few tracts that he owns individually; these he knows exactly, and the adjoining land he also knows; the other lands within the general boundaries, that he mentioned, but without reference to their legal subdivision, he also knows; and he knows the character of the land; and it is of the same general character all the way through, with the exception of a little bit through Cow Creek Canyon, which is the roughest section of Douglas County.

Q. I was going to ask you about that. The land

is visible from the train as you go along the Oregon and California railroad there in Douglas County, how does it compare with the remainder of the land in Douglas County.

A. South of Roseburg it goes through the roughest section of the country; north of Roseburg through some of the best.

Whereupon witness testified, that he never located a man on a piece of these railroad lands in his life; he did apply to purchase some of it himself; he applied individually twice, once by correspondence and another time by offering the actual cash. He made an application for a number of friends, probably a hundred, he could not say positively, but in the neighborhood of a hundred friends, possibly more, which applications were refused. He knew the character of a part of these lands only that were applied for, and knew positively the piece that he applied for; he had seen the land. The land was of such a character that it could have been made a home of, and would support a family. He heard part of the testimony of the preceding witness, Mr. Martin. A settler when he first goes onto a piece of land, has always the hardest time when he first settles on it to make a living; but if he will go on there, raise a garden, take a little stock, for instance goats, as this man suggested, there is no reason why he could not make a living on any quarter section there is in it. It would not be a practical thing to raise goats, but to clear the land and get rid of the goats, because after the land is cleared the goat is

not as much profit as when the land is uncleared. The goat is a brush animal almost wholly, or nearly so. The goat helps to clear the land very materially, in the way of taking out the small brush or any shrubbery that he can get at, anything that is within his reach. The greater portion of this land after it is cleared is good for any kind of farming that one wants to do—stuff that will grow through Southern Oregon, any kind of garden stuff, fruit and berries of all kinds. Whereupon, on cross examination, witness testified, that he owns in Douglas County 665 acres in one piece, 361 acres in another, 628 acres in another, 161 acres in another, and he has sold off possibly two-thirds of the 1,071 acres which he formerly owned next to Roseburg. The farthest tract away from Roseburg is in Section 2, Township 27 South, Range 1, about thirty miles. Some of the other is in the town of Roseburg; that is a part of this 1,071 acre tract. Part of it is eleven miles west of Roseburg, nearly due west, and part of it from nine to eleven miles east, at the head of Oak Creek, which empties into the North Umpqua, about north of Roseburg, over towards Winchester. The South Umpqua River, for about three-quarters of a mile, runs through Roseburg. Part of this 1,071 acres which he owned, has been patented thirty-five or forty years, and was taken under the donation land law, many years ago, part of it, not all of it, 160 acres of this land, seven miles west of Roseburg, was a donation claim; this which is thirty miles away from Roseburg was a homestead, taken by a man by the name of Strader, witness

has owned it three years. Strader first went on this homestead about nine or ten years ago, and lived on it a little over seven years before he got his patent; it was not surveyed when he went on it; there was some timber on it and some open land; he raised quite a bit of garden stuff and some timothy; there was no road to it; it is not occupied now; he bought the improvements from Strader, which was on the place, but they are not occupied; the improvements are the ones that Strader made. Witness has not made any improvements himself, but has kept the place leased to the Forest Service for two years, and occupied, he thinks, by a ranger, but could not say, but that is his understanding. He leased the whole 160 acres for what the taxes amounted to, some $14 a year, last year. All these other lands, other than the homestead, he used for stock purposes and they are more or less timbered, with fir and some oak; and are on what they call hill land. His principal business is that of a stock man, but he hasn't a great deal of stock. He keeps the 628 acres leased, the 665 acres leased and the 361 acres leased to people for stock purposes by them. As rental for these leased lands he gets part of the stock and of the produce that is raised on the lands. He leases on what is called one-third. He gets as rentals more than three per cent on the value of his land, after paying the taxes. Five per cent net, after paying taxes, is good fair profit for a farmer. Eighty acres of one of these tracts of his, east of town, was railroad land, but he does not know how long ago it was purchased from the railroad company. A man by the name of

Shoemaker bought the land and he thinks it must have been sold less than thirty years ago, possibly twenty, he could not say. He does not know what Shoemaker paid for that eighty; it has good timber on it, quite a bit of it, and it is saw timber. He thinks Shoemaker bought it directly from the railroad company, but he does not think Shoemaker lived on it; in fact, there has never been any improvements on it. Shoemaker lived adjoining this tract, and used it in connection with the lands he had adjoining, and used it principally for stock purposes. There is a part of the land which he owns that would be worth two or three thousand dollars an acre and part of it not over twenty or twenty-five dollars an acre; the land north of Roseburg is valuable land. The land on Oak Creek is about nine miles from Roseburg, and the farthest is about eleven miles; and it is worth about twenty or twenty-five dollars an acre. He has about thirty acres in cultivation in the 361 acre tract, and about sixty acres in the 665 acre tract. Practically all of these two places on Oak Creek is fenced; he does not know of a forty acres that lays out open on the range. He knows of cattle men, stock men and sheep men herding their stock into the mountains or foothills on the open lands, and he does that himself. He gets permission from the Forest Service to drive his stock into the Forest Reserve. When he has them down in the lower part of the country they are in inclosures all the time. The number of acres that they run over when they are in the Forest Reserve depends on the amount of stock one wants to run as to the amount of land that the Forest

Service will set aside for a person. It is hard to say how much he did have in the Forest Reserve; he had three locations where the area was quite large, but the grazing part of it, where the best grass was, was not so large. By quite a large area, he means several thousand acres. The Forest Service does not charge him by the acre, but by the head; that is, five cents for sheep and twenty-five cents for cattle; and one can go in in May and stay until November, and pay five cents for sheep and twenty-five cents for cattle for the season. He does not think the Forest Service leases any land at all. They charge for a permit; the man that runs the stock on the lands pays so much a head. He does not know of any one, outside of the Forest Service, that leases land, or gives any permits for leasing lands, except in the valleys where he lives, one would lease from his neighbor. Roseburg is one of the old settled sections of Oregon, and he thinks the Umpqua Valley has been settled for about fifty years. Oakland has between 800 and 1000 inhabitants, and is eighteen miles north of Roseburg in an old settled section. He was never around Drain a great deal. He went directly to San Francisco and made the applications to purchase the railroad lands, which he applied for, and made these applications to Charles W. Eberlein for 160 acres, being the SW¼ of Section 23, Township 27 South, Range 9 West, he thinks it is. He had been over that land before he made his application; it is rolling land and has fir timber on it principally; and he offered to pay Eberlein $2.50 an acre for it.

Q. And you did that under the claim that you were

entitled to it under the act of April 10, 1869?

A. I thought I was; yes, sir.

Q. Yes, I know. Were you advised to do that by Mr. Leavengood?

A. No, sir.

Q. By anyone?

A. No, sir.

Q. Well now, how did you find out about that?

A. I knew it ever since I have lived in Oregon.

Q. You knew of that provision.

A. Yes, sir.

Q. And it was generally known, wasn't it?

A. I think it is generally known. Any man that didn't know it, it is probably through his own ignorance. It was plain for anybody to know. It was a matter of record.

Q. Yes, a matter of public statute.

A. I think so, yes.

Whereupon witness testified, that he represented about 100 or more applicants, a majority of whom lived in Roseburg. He did not make out their papers for them, but a lawyer by the name of A. N. Orcutt, a partner of Judge Fullerton at one time, made them out. Orcutt is his attorney, but not in this matter. These 100 applicants employed Orcutt, who went down with witness to San Francisco and was present when witness

made the tender to Eberlein; Orcutt was present and saw that it was well done; witness took these 100 applications with him at two different times. These applications were printed blanks; and in the blank applications they applied for a particular quarter section and offered to pay $2.50 an acre, and represented that they desired the land for actual settlement; and they claimed the right under the Act of April 10, 1869. He could not say whether there was an affidavit to these various application blanks; it was a written form and made a matter of record when he returned to Douglas County. He did not commence any suit on these applications, and is not sure whether any of these people are interveners. He does not know who located these other quarter sections applied for by these 100 people, but he knows that Charles Thoms located a few of them. Thoms might have been a timberman at that time, but he is now in business in Coos County. He knows that twelve or fifteen of these people were not charged anything for locating them, but he does not know whether Thoms charged generally. He knows that they did not generally get from $75 to $150 a piece for each claim, these that he is speaking of. He thinks a majority of them paid $5. He does not know what kind of lands these men applied for, or anything about the character of these lands, except a few of them, three or four different ones that he knows of; Simon Caro, for instance, he knew what he applied for, because his claim was quite close to his own, and he had seen it himself. Caro was a merchant in Roseburg, and he has been there thirty or

forty years in business; he applied for a pretty well timbered quarter section. All this happened about four years ago, he thinks, but he could not be positive; it happened long before this suit was commenced; he thinks it would be two years before the suit was begun, which was September 4, 1908. He could not state positively if it was before or after April 30, 1908, but the records will show exactly when it was done, because the applications were made a matter of record when they returned from San Francisco. There was a good deal of agitation about that time, and he was one of those who first started it; and he certainly was active in starting it; he had feeling in the matter and wanted to see his neighbors get some of the land; wanted to see the settlers, or men coming into the country, get some of it if they could. He had no feeling against the railroad company, none whatever; but he wanted some of the land. The quarter section that he applied for is worth, in his judgment, today, five or six thousand dollars, and the principal value of it at present would be for the timber that is on it. He only knew a few of the other quarter sections applied for; they were similar to the one he made application for and about the same thing. He figured the quarter section he applied for was worth more than he was to pay for it and he thought it was worth five thousand dollars, and he offered to pay four hundred dollars for it.

Q. Now, these two settlers that you speak about going in on unsurveyed land that the railroad company wouldn't sell them, that is between Glide and Hoaglin?

A. Yes, sir; on the south side of the river.

Q. On what river?

A. The North Umpqua.

Whereupon witness testified, that this land, above referred to, was on the North Fork of the North Umpqua River, and was rolling land, pretty well covered with timber. It would be hard for him to say what these two quarter sections were worth, but he would say three or four thousand dollars. The man that lived there raised more or less garden stuff, and had some stock which roamed mostly on the hills adjoining him; he does not think that he had all the land fenced at the time; he had some of this quarter section fenced, but could not state as to how much; he knows that he had, because he was there and saw it; he had fifteen or twenty acres in cultivation on the hillside, on the slope of the hill. On one of these claims there was no creek at all; it slopes towards the North Umpqua River. The land did not lead down to the river, but led towards the river. One of these tracts was a quarter of a mile from the river; it might have run through one of them; but one of them the river did not touch, he thinks. They had access to the entire range back of them for their stock, and every person had the same. One of them had twelve or fifteen head of stock, but he does not know as to the other. He thinks that these places were from sixteen to twenty miles from Roseburg.

Q. Now, when you speak of this land being 75 to 80 per cent agricultural, you mean after the timber is taken off and the land is cleard?

A. I mean right today, it is 75 per cent of it that is good agricultural land.

Q. Well, you don't mean that it is now fit to be used for agricultural purposes until the timber is cut off?

A. Until it is cleared up, sure enough.

Q. Then, when you say agricultural to the extent of 75 to 80 per cent, you include in that these best timbered quarters?

A. I include everything that can be cultivated, that is good reasonable land for cultivation.

Q. After the timber is taken off.

A. No, after or before, just what will be good for agriculture when it is put in condition to be cultivated.

Q. You take 160 acres that is heavily timbered, how are you going to cultivate that now?

A. Cut the timber off it.

Q. That is what I asked you?

A. Yes, sir.

Q. You classify 160 acres of the best timber land in Douglas County as agricultural if it has good soil.

A. If it has good soil and can be cultivated.

Q. Yes, after the timber is off?

A. Certainly.

Whereupon witness testified, that he wrote to the company to try to buy some of these railroad lands ad-

joining him on Oak Creek, other than the formal application to which he has referred; it was the same character of land, rolling timber and brush. This was from five to seven years ago; it was some years before this agitation was started. He thinks it was before 1907, it seems to him it was about 1905, but he would not say positively. He applied for eighty acres, wrote to the general offices in San Francisco. Judge Fullerton gave him the address to write to and he wrote that he wanted to buy it and wanted to know if the land was for sale, and what they would take for it; and they replied that it was not on the market for sale. He does not know that it was Eberlien who replied to him, but thinks it was one of his clerks and he thinks the name was Henry Conlin, who was one of Eberlein's clerks. It was ordinary hill land, which could be cultivated if the timber and brush was off of it. Some of it was fair timber, but it did not have any saw timber. There was some oak and fir, young fir and a little laurel on it; and some creek bottom land, and a little ash swale on it. The first general inquiry for the purchase of timber lands in Douglas County, to his knowledge, he thinks was about nine years ago, as nearly as he can remember. The last three years it has not been very active, and before that, at times, it seemed to be very active. His recollection is that the inquiry for timber, some market for timber, developed somewhere about 1903, he might be mistaken a year or two in the date, it was between eight and ten years ago when the first timber rush began, he means when the demand began. There might have been

some inquiry for these timber lands before 1902 or 1903, but he had never taken any interest in these timber lands, and did not hear of any particular demand until somewheres about 1902 or 1903; there was quite a rush from four to seven years ago. To his knowledge the best price that any quarter section of timber land has sold for, either stumpage or by the quarter section, he thinks, has been about $5,000; this was situated on the west slope of the Coast Range in Coos County on the head of Coos River. A. O. Rhodes sold that quarter section.

Q. Do you know any of these large timber investors in Douglas County? I mean, know of their holdings?

A. I have been over what was claimed to me to be part of their holdings.

Q. What companies do you refer to?

A. Booth-Kelly Lumber Company.

Q. And have you been over any of the timber holdings of C. A. Smith Company?

A. I have been on part of theirs.

Q. And the Meenah-Oregon Land Company?

A. I have heard of them, but I don't know where their lands are.

Q. The Roach Timber Company?

A. I have been on some of that.

Q. Kendall Brothers?

A. Kendall Brothers, I have been on a good deal

of that.

Q. Pillsbury Lumber Company.

A. I know that.

Q. Lennon Land Company?

A. I don't know that.

Q. Bradford Timber Company?

A. I don't know that.

Q. Myrtle Lumber Company?

A. I know a little of theirs.

Q. Gardiner Mill Company.

A. I know part of theirs.

Q. Weyerhauser Land Company?

A. A little of that.

Q. A. H. Hinckson?

A. His is scattered all over. I know a little of that.

Q. Sparrow, Coach & Kroll?

A. I don't know that.

Q. Do you know any of the holdings of the Northern Pacific Railway Company, that have been scripped by that company in Douglas County?

A. No, sir; I don't.

Q. You have never been in the timber business yourself?

A. No, never been in the business.

Q. Never made any investments in timber excepting this quarter section of the homstead that you bought?

A. That is all. I did buy a piece, too, in Jackson County.

Whereupon witness testified, that the land he bought in Jackson County, three years ago, and still owns, he never saw and does not know where it is, that is, not what township and range, but he thinks it is in the northwestern part of Jackson County; he bought "unsight and unseen," as they used to say; he had a cruiser, who claimed to have seen it, a man whom he thought he could trust; he did not buy it on a cruise, and he did not get a cruise. A man had cruised it, that he knew, and he talked with him about it, and he told him that it was a good piece of land, that there was forty to sixty acres of it that would be good farm land, and it had some very good timber on it and that it would cruise about 3,000,000 feet, if he remembered right.

Q. What did you pay for it?

A. That is my business.

Q. Did you buy it three years ago.

A. Three years ago.

Q. Well, then, you decline to answer?

A. Yes, sir.

Q. Well, what is it worth?

A. It is worth $2,000.

Q. One hundred and sixty acres?

A. Yes, sir.

Whereupon witness testified, that this land last referred to is not railroad land and he does not know whether it is in the railroad limits or not. He believes it was not a homestead; he thinks it had been homesteaded and then commuted; that is the way he understood it. There were no improvements on it that he knew of; he never saw the land. He presumes, but did not know, that it had the usual cabin of a homestead settler. Whereupon on redirect examination witness testified:

Q. You know in a general way about homestead cabins, do you?

A. Yes, sir; in a general way I know.

Q. You know also, in a general way, about the way railroad companies try to get 2,300,000 acres of land that they are not entitled to?

Mr. Fenton: I object to that as incompetent, and I think improper on the part of Government counsel.

A. I believe that is their method.

Q. Do you know of any reason why, if a man has defrauded the Government of 160 acres of land by a homestead entry, that a railroad should take two million three hundred thousand acres that they are not entitled to?

Mr. Fenton: I protest against this inquiry on the part of Government counsel representing the Depart-

ment of Justice.

A. The Government never let 160 acres go, or no other number of acres, that they didn't get their money for, except they let it go to some railroad corporation.

Mr. Fenton: I move to strike out the answer of the witness as immaterial and irrelevant, and as not responsive to this inquiry at all.

Q. What have you to say as to these large holdings that have been called to your attention, of the C. A. Smith Company and other companies as to the character of the land? Is it of the same general character that you have described, or different, and if different, in what respect?

A. The same general character of land. A great portion of it is good agricultural land when cleaned up.

Q. One of the railroad land examiners and cruisers has testified here that in the whole of Douglas County there is not to exceed 600 acres of these unsold railroad lands that are agricultural in character and that can be cultivated. What have you to say as to the correctness of that testimony?

A. He is absolutely mistaken. If he has ever been over any portion of it to speak of, he knows that he is wrong.

Mr. Fenton: Defendants move to strike out the answer as argumentative, not testimony.

Q. Now, your attention has been directed to the increase in the demand for these lands for timber pur-

poses. I will ask you whether or not there has been, at any time within your recollection, an increase in the demand for lands for agricultural purposes and for home purposes, and if so, when?

A. In the last seven years, or say for the last ten—seven especially—there has been more demand for homes, for agricultural lands, than there has for any other character of lands. Land of all kinds has advanced in the last few years. I would say, from one to four hundred per cent—agricultural lands.

Q. Now, have markets improved for agricultural products in the mean time?

A. Yes, sir.

Q. What have you to say as to whether the development of that country has also been held back by lack of transportation facilities?

A. Very much so.

Q. Now, this homestead that you bought from the original homesteader, who lived upon it some seven years, as you testified, and which is situated about eighteen or twenty miles from Roseburg—about thirty miles, close to thirty.

Q. Thirty miles from Roseburg, do you know whether the intervening land between his homestead and the railroad was developed in the meantime or not?

A. No, sir.

Q. To what extent, if any, did that affect his op-

portunity to maintain a home there?

A. It affected him very materially. He was nearly thirty miles from railroad transportation, sixteen or eighteen miles from a school, for all he had no family; no wagon roads, and most impossible for a man without means to have made roads when he had to make them all across railroad quarters or lands and others.

Mr. Fenton: I thought that land was west of Roseburg?

A. East of Roseburg, in 27-1, section 2, right on the divide between the North Umpqua and what is called the East Umpqua, or the Middle Fork. I can put my finger right on it. (Witness points to place on map.)

Whereupon on recross examination witness testified, that the homestead he bought is in Section 2, Township 27 South, Range 1 West, and is in a Forest Reserve; it was unsurveyed when he took it, but it is now about three miles inside of the Forest Reserve, or something like that. He does not think that there is any railroad land adjoining it, that he knows of, and he thinks the nearest railroad section, according to the map, would be about five miles west. He does not know how long that Reserve has been there; he knows that that was one of the main drawbacks to his getting his title to it, the forest rangers opposed it and claimed that they wanted the land for a ranger's station and that part of it was timber land. Practically all of it is agricultural land, but it was the contention of the forest rangers that it was timber land; it was finally patented to the man from whom

he bought it. He did not buy it for the timber primarily, and he did not buy it for a home; he bought it for an investment. Practically all of it is good agricultural land. Part of it is already cleared of timber; and the part that has timber on it is good agricultural land after it is cleared. Whereupon on redirect examination witness testified, that there are no settlements around this land that he applied to purchase and no road into it; and he believes that he could sell it for more for the value of the timber to some of these big timber men than he could for a man to go on to make a home of, but the quarter section would make some man a good home that would go on there and clean it up. There is some good farm land on it. In his judgment, the value of that land for agricultural purposes, after the timber was removed, and assuming that the land in that vicinitly was also similarly settled up, would be eight or ten thousand dollars.

Whereupon CAL HILEMAN, called as a witness on behalf of complainant, and being duly sworn, testified, that he is thirty-six years old, was raised close to Knoxville, Tennessee, and his post office address at the present time is Wendling, Oregon; his present occupation is ranching on a small ranch. He has lived in Oregon about twenty-two or twenty-three years. He lived on the McKenzie a few years, was east of The Dalles a couple of years, and lived on the Mohawk River eight or nine or ten years. The Mohawk River is located near Mabel, east of Eugene, in Lane County, Oregon. He was raised on a good farm, and his father had a good

sized farm all his life. Farming has been his occupation up to the time he was married thirteen years ago; since that time he drove team four years for the Hyland Lumber Company, and T. R. Yeager, and the Sunset Lumber Company at Mabel. His experience has been such as to familiarize him with the farming industry of Western Oregon; he has worked quite a bit of land there. He has been in contact with the people engaged in farming, to a considerable extent. He is only familiar from memory, without referring to the map, with Section 33, Township 15 South, Range 1 East of these railroad lands involved in this suit. Referring to Defendants' Exhibit 259, he does not know much about the townships and ranges through that country, but has ridden over lots of that country, and is familiar with all the country through Marcola, on the Mohawk, in Township 16 South, Range 2 West. He lives on Section 33, Township 15 South, Range 1 West, and is acquainted with the lands about Mabel, in Township 15 South, Range 1 West, and a few miles north of Mabel. He is acquainted with the lands in the vicinity of Camp Creek some, and has ridden in there quite a bit. He rode that country from Marcola to Camp Creek, all through there —clear through to Walterville. He is acquainted very little south of Walterville. He has been over that country to Mabel and Wendling, Walterville, Mohawk and Camp Creek, shown on Defendants' Exhibit 259, and has traveled the wagon roads and has been in the hills through there, driving cattle, but did not know, of course, whether it was railroad land. He has traveled over them

a number of times, other than on the public highways. He had cattle in there, and he was looking after cattle, and gathering cattle in the fall, and all through the summer he made from two to three trips a month salting cattle. He would go north of Mabel about three or four miles, and would go through about three or four miles above Wendling. He never gathered cattle east of Wendling, that is, run cattle in there, but he has bought cattle east, clear through all over the valley, and is acquainted with these lands east of Mabel about seven or eight miles, and about three to five miles, something like that, above Wendling, and as far as Mabel, and about six or seven miles east of Wendling; west of Wendling he does not know how many miles, but a good ways. South of Camp Creek he has not traveled very much. He has a general knowledge of the entire country from Mabel, in Township 15 South, Range 1 West, to Township 17 South, Range 1 West, and gained that knowledge by traveling along the public highways and ranging cattle through that country. His duties with reference to the stock would carry him off the public highways, and over this land generally, and he is acquainted with the general character of that land, and with its agricultural and grazing possibilities, and with the growths that are on the land, such as timber, and is acquainted with the hills, and the general formation of the country. His father's farm, that he speaks of having been raised on, was at Mabel, in the same section that Mabel is in; he could not tell the description, or what section, township or range, except as they have referred

to Defendants' Exhibit 259. He looked at his deed and thought his land was in Section 33, Township 15 South, Range 1 East; that is his place, which is about a half mile east of Mabel; and his father's farm is contiguous to his lands, where his father has lived about twenty-three years, engaged in farming, and he farms it all the time, every year; and that has been his occupation since he has lived there; he has raised a family. From his acquaintance with this land in the area he has described, in his judgment, fifty to sixty per cent would be agricultural land, that is, land that could be tilled, and actually cultivated. The balance of the land would be useful for grazing. The grazing land in that vicinity is good; it raises good grass. He applied to the railroad company to purchase land from them; he thought it was about seven years ago, but it is in the neighborhood of about ten years ago. This land is located in Section 33, Township 15 South, Range 1 East, where they adjoin the land he now lives on; it was a good piece of land, which he wanted to farm. At that time he had not bought the place he now lives on, but he wanted this piece of railroad land to live on. The company offered to sell him the land, but he wanted to buy eighty acres, and they said the 320 acres was for sale, at $10.00 an acre and he wanted eighty acres of it. He did not make an application for 320 acres; they did not put any price on the eighty-acre tract he wanted, and so he just dropped it. The railroad lands generally in the vicinity of his place and that of his father's farm, are good. He has been farming railroad land. He bought 120 acres of

railroad land and has been farming it for five or six years; he bought that from some party other than the railroad company. He could not see any difference in that land from the other lands in that locality. There was no timber, to speak of, on the lands that he and his father have, very little. The growth of timber in that general vicinity is pretty good. He had to clear some of his land in order to farm it; he cut the underbrush, burned it, and the stumps still remain; he plowed around the stumps. It had been timbered land prior to the time he began to cultivate it. The Hyland Lumber Company bought it, and logged the timber off, and he bought the stump land. It belonged to an old gentleman by the name of Wortman, who died, and the timber had to be sold; the Hyland Lumber Company bought the timber, and he bought the land. The Hyland Lumber Company is composed of Hyland Brothers. The timber on this piece that he bought was good, but scattered and light. There had been trees growing on his father's place in patches, but there was about 100 acres of it that he did not think ever had any timber on it. There is timber growing on some of this land that he mentioned as between Mabel and Camp Creek. There are places in there similar to the places that he is farming and that his father is farming. Referring to his neighbors through the neighborhood there, there are Adams, Ernests, Hammonds, Riggs, Van Meter, Smith, Pickwitt, Arnold, Downings and a number of others, who live in that vicinity where he does, and are engaged in farming. That is a general farming community in

that locality. He knows by hearsay that the railroad company owns considerable land in that vicinity, of which he speaks, and he knows that he applied to purchase some of it. Whereupon on cross examination witness testified, that he could not say how long ago the land that his father owns had been deeded by the man, or the persons who preceded his father, or when the railroad company sold it, but he thinks it was a great many years ago. It is situated on the Mohawk River, and his father has cleared about 130 or 135 acres and owns about 270 acres. He could not state whether it was all railroad land. There is quite a mountain on his father's place, about thirty or thirty-five acres, maybe forty acres; most of the land in the bottom is cleared, he thinks there are eighteen acres up on the high bench, the rest of it is on the Mohawk River bottom. He does not know whether that place was bought from the railroad company twenty-five or thirty years ago. The improvements on it are fairly good; a barn and frame house with six or seven rooms, and has a fire place and chimney.

Q. And the garden there is old, so old that you have to manure it to keep it up?

A. Well, I suppose they do.

Q. About like one of these farms down in the Willamette Valley, as far as development and age is concerned? Is that right?

A. Yes, sir. Some of it has been farmed a good many years.

Q. Some of it has been farmed so long that it really don't raise wheat very well without it is summer-fallowed, or crops are rotated?

A. Well, he has some mighty fine wheat on it.

Q. I know, but he has to have oats one year and then has wheat the next year?

A. Well, I couldn't say for that, whether he changes it around that way or not.

Whereupon witness testified, that that is good farming land if he changes the crops around. He does not summer-fallow very much. He does not sheep it though when he does summer-fallow. He has no sheep, but has a few cattle. His father never had any cattle to speak of, just a few horses; besides cattle, he has four or six head of cattle. The place witness has in Section 33, Township 15 South, Range 1 East, is just above his father's, on the Mohawk River, which runs through his place, which is just a small stream. They used to log down that stream before the railroad was built, all the logs that they had that came from that watershed, came down the Mohawk River, and went to Coburg, which is somewhere in the neighborhood of twenty-two or twenty-three miles away from his place. He owns 112 acres there, and his land was railroad land. He bought from the Wortman heirs; Wortman died and the Wortman estate had to sell the timber; and the Hyland Lumber Company bought the timber and paid $400 for it and he paid $400 for the land. He couldn't say positively how long the Wortmans owned the land,

but several years though; it was not improved by them at all, but was wild land and he improved it and built a house on it. He has one acre cleared now of stumps on that land, and the stumps still remain there on the balance. After the Hyland Lumber Company logged it off, he slashed it and burned it over and sowed it to grass, and he pastures part of it, that is, he did that at first. He has about four acres only in cultivation, sown to crops, besides the grass, and he raises on this four acres oat-hay to feed his cows and horses in the winter time. He raises just a little corn down in his garden for family use, has a few head of hogs, for home use, he runs all the way from ten to fifty head of cattle and they run on the range all the way from two to seven miles from his place; he has a fine range there over seven or eight miles of country, or a good deal larger than that, and can pasture the railroad land if there is any railroad land in there, and in that way he gets some pasturage by going over a big area; they can go seven or eight miles without going through a fence, they can go a long ways, several hundred, he thinks; they can go to the Blue River and clear on through, if they have a mind to do it, which is over thirty miles. Stockmen sometimes drive in, but he does not think that they herd any during the summer months. They brand the stock with a registered brand and turn them loose, and then in the fall come and gather them up. They pasture these railroad lands just the same as the other lands.

Q. The railroad company pays the taxes on the lands, and the farmers in these boundaries get the bene-

fit of it—in pasturage, I mean?

A. Yes, sir; we turn our stock out and let them go.

Q. Well, now, if you didn't have any outside pasture, these people that drive their herds in there in the spring and go up and get them in the fall, they wouldn't be able to do that?

A. No, sir; they would not.

Q. If all the quarter sections were fenced in there, and everybody had to confine his stock to his own quarter section, the pasturage for each man would not be as great, would it?

A. Well, he would just have to keep what the place would furnish grass for.

Whereupon witness testified, that he would not want to keep very many cattle on 160 acres, but that amount of land would keep quite a few sheep for awhile. It would keep them longer than one season, and if one don't keep the sheep too long, it would keep from 100 to 150 head.

Q. Yes, you can keep 150 head a month, but you could not keep them all summer?

A. Oh, yes.

Whereupon witness testified, that they could not run sheep and cattle together very well, they won't run together very well, and won't pasture over the same grass very well. He has never tried running hogs and cattle together, and he does not know about that. He is a farmer and has a separate pasture for his hogs. He

knows that sheep won't follow cattle and cattle won't follow sheep. He could not tell how many bushels of grain he or his father had threshed on their places, witness has not threshed any. He could not tell how much his father threshed on his place this year; he had wheat and oats and he could not tell whether he hauled that to market, but he knows that he feeds some to his stock on his place and sells lots of it over the neighborhood, to fellows who live on places and do not raise any to feed their cattle in the winter time, like himself. Lots of these farmers up there come to his father's place for wheat and oats. These farmers raise lots of hay, but sell their hay and buy oats. They sell their hay to timber companies, the Booth-Kelly Lumber Company and the Coast Range Lumber Company. There are several parties on these timber lands that have all the way from fifteen to fifty acres on bottom lands and uphill land, too. Mr. Pickwitt has somewhere about twenty-five or thirty acres on that hill land. He thinks Pickwitt has owned his land twenty-three or twenty-four years. He could not tell if it was a donation claim, but he thinks he homesteaded part of it. He does not think it was railroad land. It is on the Mohawk River right there close to Mabel, just about a mile from the Mohawk River. He does not think that there is any branch that runs through this place. Mabel is a small place and there is nothing there but a saw mill; he could not say how many men work in that saw mill, but he thinks somewhere in the neighborhood of about 250 at the present time. The saw mill is owned by the Coast

Range Lumber Company. He does not know how many acres of timber they have there; the closest timber is within a mile of the mill. They get their logs to the mill by their own logging railroad. He does not think they ship any timber. He could not tell how much lumber they cut per day; he does not think they cut very much at the present time. Some of the men who work there live in their houses. They have only about, he thinks, somewhere in the neighborhood of twenty new houses, and there is quite a good many in tents, and other old houses, other shacks. The company maintains part of these houses, in which the men live, while they work, and the rest of the men live in tents and old houses. It is really a logging town; there is a store and post office there, besides the mill. He could not tell when the saw mill was established; there has been a mill there for years. It is a logging country. There is timber back aways, lots of it.

Q. This land that you speak of as having good soil, isn't it true that where there is heavy timber on this land, as a general thing, the soil is better than where there is no timber?

A. Well, that may be true, or most of it is.

Whereupon witness testified, that he thinks the market price of a good quarter section of timber would be from three to five thousand dollars, but he could not tell the stumpage value of timber in that vicinity, and does not know of any sold at this time; he has heard of it being sold, lots of it, but they give so much for the bulk

of it. He thinks that Pickwitt's place was a homestead.

Q. Did you see any homestead cabins up there, where they proved up and sold out—got their titles and sold out to timber people?

A. Yes, sir.

Q. What became of their cabins?

A. They burned down.

Q. Where the timber was, if the cabin was in the timber, it didn't burn that, did it?

A. Well, part of those cabins there was no timber within—oh, there was a lot of them was three or four-acre tracts; there was an opening where they had built their cabins.

Q. They had cleared out three or four acres, such a matter?

A. No, there was no timber there—never was.

Q. They built their cabins in this opening?

A. Yes.

Q. And the rest of it was timber.

A. Yes, sir.

Q. And after they proved up, they sold the land to timber companies?

A. Yes, sir; Booth-Kelly Lumber Company.

Q. Booth-Kelly Lumber Company bought a good deal of that?

A. I think so.

Q. And they are logging it off?

A. Well, they have logged part of it. Some of it they have not.

Q. Well, then, this land up there that is worth $3,000 to $5,000 a quarter is chiefly valuable at the present time for the timber that is on it, isn't it—at this time?

Mr. Rabb: Do you understand the question?

A. No, I didn't.

(Question read.)

A. With the timber on it, it is, yes, sir.

Q. That is the principal object that makes it sell, is the good timber on it?

Whereupon witness testified that he never made an offer on any of this railroad land, or any application to purchase any of it, other than this eighty acres that he has spoken of.

Q. How often did you go out in the summer time to salt your cattle in these woods, in the mountains?

A. Well, from two to three times a month, and sometimes oftener when I wasn't busy.

Whereupon witness testified, that the way he recognizes his cattle is that they are branded with a registered brand; other people go out and salt their cattle, too, in the summer time. They generally turn the cattle out on the range sometime in March, or April, and gather them, sometimes not until November, and sometimes

not until December. They let the calves run with the cattle out in the woods until fall, and brand the calves the next spring and turn them out. Sometimes cattle disappear, but he does not know what becomes of them, that is about the only risk that they run. They get free pasturage during the summer time. Whereupon on redirect examination, witness testified, that he raised on his place besides hay and oats, cabbage, potatoes, beets, rutabagas, parsnips, carrots, corn, tomatoes, cucumbers, peaches and apples, raised practically all kinds of fruits and vegetables. He keeps a few hogs and feeds them on his place. He never measured the acres he had planted to oats and hay exactly, but he thinks there are only about three or four acres of it. The land down in that country is about the same. It is situated about the same as his own place. It is a broken country. There would be patches maybe of four or five acres that is nice level garden land, and that condition is true in reference to where his father's farm is located.

Q. Now, Mr. Hileman, what is your opinion as to whether a man could go onto 160 acres, and settle with his family on 160 acres of land, generally in that vicinity, and make a living?

A. He can go on there with 160 acres, and he can make him a living there.

Q. Does that apply to all of this land that you have testified to, between Mabel and Camp Creek, that you have been over?

A. Yes, sir. I don't think there is a quarter section

in there but what a man can make a living on.

Whereupon on recross examination, witness testified:

Q. He could make a living just in the same way that you have made a living, wouldn't he, Mr. Hileman?

A. Well, a man can make a living on that piece of ground without working out.

Q. I don't mean working out, but by having stock and allowing it to run on the range in the summer time, and in the winter, why, he would have feed enough upon these open pieces that he could clear to take care of his stock through the winter?

A. Yes, sir.

Q. And that is the way he would make his living until he cleared an acre more?

A. Yes, sir.

Q. Now, did you ever clear any of this heavy timber land?

A. Yes, sir; I have cleared it.

Q. With big fir saw timber?

A. Yes, sir.

Q. How did you do that?

A. Well, I have helped dynamite them.

Q. And how big are these stumps that you have to dynamite?

A. Some of them was awful large—five or six foot

through.

Q. How big are the roots?

A. Oh, they are very large.

Q. And how much of that tree, you might say, is underground—take one of those big trees?

A. I couldn't tell you, but there is a lot of them underground.

Q. Pretty near as much wood under ground as there is above ground?

A. Oh, no; not that bad. But there is some.

Q. A very large amount? Those roots go down into the ground how deep?

A. I couldn't say; but some of them, I think I would be safe in saying, five to six feet deep.

Q. A fir tree doesn't have a tap-root, as a rule, does it?

A. Some of them has; a few of them go down.

Q. But the big roots that support a big fir tree are roots that branch out?

A. Yes, a ways; and then go down.

Q. How far from the tree do those roots run sometimes?

A. A good long ways.

Q. Probably thirty feet, don't they?

A. Yes; I have taken them out further away than

that.

Q. They are as big as your body, some of those roots are?

A. Not that far away; about like my arm.

Q. I mean, close to the tree they are as big as your body sometimes.

A. I don't think so out that far.

Q. Well, how far?

A. At from six to eight or ten feet.

Q. And under the ground?

A. Yes, sir.

Q. Sometimes on top of the ground as they leave the tree?

A. Occasionally you will find them on top of the ground.

Q. Now, after you have dynamited a stump, what is then left to do?

A. Is to fill up the hole.

Q. Well, how big a hole does it make?

A. It makes a pretty big hole in the ground sometimes.

Q. Pretty near put a house in, couldn't you?

A. Well, a small house, you might.

Q. What do you do after you fill up the hole?

A. It is ready for farming.

Q. What do you do with these roots when you get them out?

A. Pile them and burn them.

Q. Do you use donkey engines to pull these things together in a large pile there, and have a big fire in the winter?

A. No, sir.

Q. You have seen them do that down on the Nehalem, haven't you?

A. I have seen them do that down there on the mill.

Q. Haven't you seen them do that down on the Necanicum and all this heavy timbered coast?

A. No, sir.

Q. Take a donkey engine and pull them together, and get a pile of roots sometimes higher than this house and bigger than this building?

A. I use a timber block.

Q. Block and tackle?

A. Yes, sir.

Q. And a team?

A. Yes, sir.

Q. What do you have to do that for?

A. Put two or three of them together so I could burn them up.

Q. Have them into a pile?

A. Yes, sir.

Q. Get a pile as big as this courthouse?

A. Oh, no. Get three or four or five roots together and burn them up.

Q. Well, suppose you went in there to clear the land, with the timber on it, the first thing you would do would be to sell the timber, wouldn't it?

A. Well, I have cleared it on the McKenzie that we would fell the timber and burn it up, big logs, heaps of it.

Q. You wouldn't do that if the timber was worth a dollar and a quarter or fifty cents stumpage even?

A. I wouldn't nowadays.

Q. The first thing to do with this quarter section of fine agricultural land that is heavily timbered would be to sell the timber?

A. I would clear enough to make my garden.

Q. You could do that with a space as big as this room, couldn't you?

A. No, not that small. I would want an acre or an acre and a half.

Q. That wouldn't take long to get an acre or an acre and a half? You could grub that out and clear that out in one winter, couldn't you?

A. I could, all but the big stumps.

Q. After you had got the place for your house picked out, and got your place dug out for your garden, and then the forest was on the rest of the land, the

first thing that you would think about would be to sell that timber to somebody that would pay the best price for it, wouldn't it?

A. Yes, sir; and get it off as quick as possible.

Q. And then, after you had sold the timber you would have left the stumps cut up eight or ten feet above the ground by the timber people?

A. Yes, sir.

Q. Sometimes twelve feet above the ground?

A. Yes, sir.

Q. So as to avoid a heavy butt?

A. Yes, sir.

Q. They saw those off, don't they, those timber men?

A. Yes, sir.

Q. Go and get a ladder and put a man, and another one up on top of the ladder ten feet high, or a platform, and saw it off and let it fall?

A. Put in a spring board.

Q. A man takes care of himself and gets out of the way the best he can?

A. Yes, sir.

Q. And then you are left with the stump there, that is ten or twelve feet high sometimes?

A. Yes, sir.

Q. And you are left with all the small timber that

is not saw timber?

A. Yes, sir.

Q. And the brush?

A. Yes, sir.

Q. And there is brush and debris and stuff, and what do you do with that—burn it?

A. I slash it down, finish slashing, and burn it up.

Q. After you have burned it, then what do you do?

A. Well, I go to work, if I ain't going to plow it right away, and seed it.

Q. Seed it down to grass and get a little pasturage that way?

A. Yes, sir.

Q. You run it that way for awhile?

A. Yes, sir; until it runs out, and then I plow it.

Q. You cannot plow it very well with these big stumps in there?

A. I have plowed acres and acres of it.

Q. Land that has stumps?

A. Yes, sir.

Q. That is a good deal like plowing with what we call a peavine mower around these oak hills in Tennessee, isn't it?

A. Yes, something similar, the same thing.

Q. I have been there—I know.

A. I can show you hundreds of acres farmed, though, with all the big stumps in.

Q. You couldn't run the machine over it, could you, to cut it?

A. Cut it with a mower, drive around the stumps the same as you go around with the plow.

Q. Well now, that is about the way it is cleared, isn't it?

A. Yes, sir, that is the way the most of it is cleared up in the country—all of it practically.

Q. And the result is they haven't got very much cleared?

A. They farm it with the stumps in all the time.

Q. It has been about fifty or sixty years this country has been settled, hasn't it?

A. Yes, sir, somewheres in that neighborhood. Oh, it hasn't been that long.

Q. The first settlement in the Willamette Valley, four miles north of Salem, was in 1830, wasn't it?

A. I couldn't tell you that, sir.

Q. Eighty-two years ago. Well, there is wheat land in the Willamette Valley that has been farmed over sixty years, isn't there?

A. I don't think so.

Whereupon on redirect examination witness testi-

fied:

Q. These lands that you have spoken of as having been cultivated around the stumps, where was that land located, in the vicinity of these lands that you have described as being acquainted with?

A. Yes, my own place and Pickwitt's, and all of those places.

Whereupon J. P. CURRIN, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-seven years old; resides at Cottage Grove, Lane County, Oregon, and has resided there most of the time for forty-five years. He is a pharmacist and does surveying and teaching also. He was born in Virginia; has also lived in Creswell six years, which is nine miles north of Cottage Grove and is in the same locality. He has done county surveying, also for the Oregon and California Railroad Company, and government surveying. He assisted in the survey connecting the land claims to the line of the Oregon and California Railroad, the deeds for the right of way, in 1871, that is, where the lines intersected, crossed the land claims, he would take the distance back to the established point, referring to donation claims, homesteads and the government section lands; that is, checking up right of way matters, in connection with the right of way the company desired, with the public surveys as evidenced by donation land claims, homesteads, and other lands. This was prior to the time the track had been laid and the road constructed. He worked for the Company across Lane County perhaps a week

or ten days, from one county line north to the south line, excepting within the corporate limits of Eugene City. He has done government surveying—surveyed in six different counties—Benton, Lane, Crook, Grant, Umatilla and Union, and had a number of government surveying contracts. He was county surveyor less than a year—the latter part of 1870 and part of 1871. He is acquainted with the agricultural conditions existing in Lane County, and referring to Defendants' Exhibit 259, showing the lands involved in this suit in green markings, he is more particularly acquainted with the southern part of Lane County, including some of township 19. He is very little acquainted with the lands in Lane County north of township 19. He surveyed in the north part of the county on the donation claims or deeded lands more particularly, and surveyed 20 south 1 west, 22 south 2 west, and 23 south 3 west, and he thinks he has been over this country generally so as to acquaint him with the general character of the land. In his opinion thirty to forty per cent of that land is agricultural, and the remainder could be used for grazing or orchards. Quite a large per cent of it that is too rough to plow or to put into a field, might be planted in orchards. The rough land could go back to the forest. Some of the rough land is steep and rocky, and it would not be practicable for any other purpose. He has not surveyed on the railroad lands in the western part of Lane County, but he has been over that country, it is smooth, mountainous country. Speaking of what is along the road where he has traveled, he would think that land would average per-

haps a little greater per cent agricultural than in the eastern part, that is, a greater per cent of it would be agricultural land. When he surveyed these townships he found settlers in there. These townships were partly-surveyed, the heads of the valley, the three townships were surveyed and settlers were there, and settlers are in these townships now.

Q. Now, in 20 south, 1 west, Mr. Currin, would this land, in your opinion, if divided into 160-acre tracts, and not by quarter sections but by 40-acre subdivisions, would that support a family if a man should settle on that land?

A. Did you say 40 acres or 160?

Q. 160 in forty-acre tracts, but not by quarter section.

A. In a large majority of them they could, yes.

Q. Is that same condition true of the lands that you have testified concerning in Lane County?

A. Yes, it is. Perhaps a little more favorable in that township than in some of the others.

Q. Now, Mr. Currin, are all the railroad lands covered with timber? Are they timbered lands, all of them?

A. If you mean saw timber, I say no.

Whereupon witness testified that he applied to purchase lands from the railroad company in his wife's name about five years ago, located in section 17, township 20, south, range 3 west. His wife owns land in section 17, and one forty in 18. That land is agricultural and fruit

land, and is used for raising fruit and other agricultural purposes, and his wife has owned it five years. The character of the railroad land which his wife applied to purchase is hill and bench land. His wife's farm is the west half of the southwest quarter, and this he applied for is the east half of the southwest quarter and is contiguous to the farm of his wife. The land his wife applied to buy has some plowed land on it today, and there are about fifteen acres which could be plowed and put in. It was a timbered tract, but is cleared up. The railroad company contracted that land to a party and he cleared it off, took the timber off, and then changed his contract to another piece west of that, so it left that one clear and comparatively ready to plow. That was the land his wife applied to buy. The prior contract covered this land and it was thrown up and the party contracted for the forty west of the tract owned by his wife. He knows of one tract of one thousand acres of logged off land in Lane Conuty, which is situated from two to six miles southwest of Cottage Grove, which was purchased by M. H. Anderson for the purpose of using the land for agricultural purposes. It was his understanding that he paid five dollars an acre. Timber had been all over it—it was merchantable saw timber, but not very thick, only in patches some good timber. The timber in Lane County that is found high on the mountains, averages very well. Get higher on the mountain, it would be heavier, and it varies over the county according to locality. The altitude has considerable to do with it. There is quite a good deal of fruit raised in Lane County. It

is not a new industry in that section of the country; there are old orchards; there are a great many new orchards coming in, but there are more old. Commercially speaking, it is a new industry. He is acquainted with the fruit raising business in a small way. He thinks the mountain or rolling land is better to raise fruit on; it does better at higher altitude.

Q. What is your opinion, Mr. Currin, as to the effect upon the settlement of this country by the sale of the lands of the O. & C. Company to large timber holders and the withdrawal of the lands from the market?

A. I think it will hold the country back from settlement a great deal.

Whereupon, on cross examination, witness testified that he had lived in Lane County about forty-three years, residing all that time at Cottage Grove, excepting about six years when he was at Creswell, which is nine miles north of Cottage Grove. Cottage Grove is on the line of the Oregon and California Railroad, and is one of the old settled portions of Lane County. Quite a portion of the land around Cottage Grove and Creswell is in the valley. Quite a portion of it but not most of it, was taken up under the donation law. The valley at Cottage Grove is about a mile wide. The Willamette Valley narrows below there. There are some places below there that is narrower than it is at Cottage Grove. It opens out at that point, and then comes in above. The level land in the valley at Creswell is about a mile or more wide, but take some of the rolling land, take up the

swale there, it would be several miles. Including the foothills, the valley, he would think, at Creswell is about three miles wide, and at Cottage Grove about two miles wide. He was employed about ten days in connection with the right of way matters, checking up the corners or ties of the right of way deeds on lands deeded as right of way of the Oregon and California Railroad Company, in 1871, when they were locating the line through Lane County. He was working under a right of way man, and with that exception, he has never had any employment with the Southern Pacific Company or the Oregon and California Railroad Company. He includes in his classification of thirty to forty per cent of the lands which he had surveyed through or been over in Lane County as agricultural lands, lands that may be covered with some kind of timber, but which when cleared the soil would be good and sufficiently level to put to some agricultural use.

Q. And the balance of the land that you say might be used for grazing purposes is too rough to use for ordinary agricultural purpose?

A. Particularly steep.

Q. Yes. So that in making this classification of agricultural, you take into account the topography of the country as well as the character of the soil?

A. Yes.

Q. And really those are the two controlling elements that you use in classifying agricultural lands?

A. I do, yes, sir.

Q. Now, much of this land that you have thus classed as agricultural is covered with the heaviest timber in Lane County, isn't it?

A. Quite a good deal of it, yes, sir.

Q. That is to say, the better class of timber and the heavier stand grows, especially fir timber, where there is pretty fair soil? Isn't that true?

A. I think so, yes.

Whereupon witness testified that he thinks the saw mill men prefer timber which is from three to four or five feet thick at the butt. They will cut it perhaps two feet to four feet, and the height of the tree will run up two hundred feet in the larger timber. The largest tree that he has ever seen is one standing on the side of the road as one goes into Bohemia, which is said to be ten feet at the butt. He has observed that several times. He is not capable of answering what per cent of the total forests of Lane County would range from say six to ten feet at the butt. He is no cruiser, has never had any experience in cruising, and is not a saw mill man. The eighty acres of land his wife applied to purchase is railroad land in section 17, township 20 south, range 3 west, and that was about five years ago. It was land adjoining that owned by himself and wife about one mile north and two miles west of Cottage Grove. Hanson Brothers were the first purchasers of the tract which his wife applied to purchase. Hanson Brothers had a contract,

which he supposes was obtained from twelve to fifteen years ago, and they were three or four years in paying up. Hanson Brothers first had a contract on the eighty east of his wife, and after Hanson Brothers took the good timber off—they cut timber for railroad wood and when they got that off, they threw that up and took the west half of it, which was heavily timbered, saw timber. That is, these people bought the land under a contract and cut the timber off while holding it under contract for railroad wood and sold the wood to the railroad company, and then they made a change with the company and took the one west. They simply let the land go back to the railroad. They had no deed, only a contract, and that is the tract that his wife applied to purchase. That tract had been cut over for the cordwood that was on it; that is, about twenty-five acres had been cut over for cordwood purposes. The balance of the land gets up on the summit where it is brush and some oak timber, very little fir. It was chiefly valuable for raising grain and fruit in particular, when his wife applied for it. At that time the timber was already off, and it was very little work to take the stumps out. That had been railroad land about twelve or fifteen years before it was purchased by Hanson Brothers, and had come back to the railroad company in the way of which he speaks. With that exception, neither he nor his wife ever applied to purchase any railroad land, or made any application to file on any of these timber lands. He knows that a great many did, particularly around Cottage Grove, Roseburg and Eugene. Timber first became a matter of inquiry

as an investment and as a purchase, somewhere in the 90s in Lane County. There was a widespread depression in 1893 in business and in financial circles in Oregon and in the United States, and it was shortly after that that the timber inquiry began to develop. This demand or inquiry for timber investment was wholly among speculators. The company that got the information from him was in the East. He thinks the market began to become active in Lane County about 1900—it might have been before that. He thinks the timber was pretty much all taken about that time in his country. The timber became a matter of inquiry that was active and acute, in his judgment, and was at the highest tide of timber activity about 1900. The timber land was bought up for speculation and for investment by these timber people.

Q. Have you ever stopped to make an investigation to ascertain about how many acres of timber lands in Lane County that had been taken up under the timber and stone act, and under homesteads, and under preemptions, and under scrip, and in various ways, including the lands which have been purchased from the railroad company by timber investors and millmen, are now owned by mill men and timber men outside of the railroad company?

A. I could not tell what proportion. I think a large majority of our good timber is owned by those companies.

Q. That class of people.

A. Yes.

Whereupon witness testified that Booth-Kelly Lumber Company, Row River Lumber Company, Star Company, Brown Lumber Company, Chambers Company, Spriggs or Briggs Company and several others are manufacturing their timber and shipping it and using it and making business in Lane County. There are several other mills there. There are seven mills on that twenty mile road running to Bohemia, but some of them are not running. That railroad is the Oregon & Southeastern and runs from Cottage Grove into Bohemia, and has on it seven or eight mills which manufacture lumber to be shipped out of the state if they can get a market for it. He thinks Booth-Kelly Lumber Company has a large outside trade, and that these mills on the line leading up to Bohemia ship outside when they can get orders. He only knows by hearsay that the Hyland Lumber Company has large mills up in that country. The present way of getting rid of the timber on these lands is to get the timber off, manufacture and sell it in the markets of the world or use it for improvements. Before the land could be used for agricultural or horticultural or other purposes, the timber should be removed, so that there would be a period of time when the development of the country in the timbered countries is to take the timber off, manufacture and ship it and get the best price for it possible.

Q. Well now then, suppose that the company in this case, Mr. Currin, had sold these 160 acres to these

so-called actual settlers within the last seven or eight years, and had allowed them to pick the best quarter sections of timber in Lane County still unsold by the company, and had sold it to them for $2.50 an acre, or $400 for a quarter section, and had given them a good title, wouldn't they have had to sell the timber first to get the country developed.

A. I know of persons that have cut it down and burned it up.

Q. I know, but that would be destructive, wouldn't it?

A. It would.

Q. Wouldn't they first utilize the land by selling the timber to somebody?

A. It would be the better way, I would think, yes, sir.

Q. That would be the better way.

A. Yes.

Q. Well now then, wouldn't they be able, if they wanted to sell, to get a better price from timber investors and practical sawmill men selling the land outright. In this record in some cases the testimony shows as high as $5000 a quarter. Wouldn't that be the way most of these timber quarters would go—just as the homestead timber quarters and the cash entry timber quarters, and the entries taken under the timber and stone act have gone? Wouldn't they go to the timber people?

A. As a matter of finance, I think they would.

Q. Yes, that is the history of the way these things would go?

A. Yes, sir.

Q. And that is the way they have gone?

A. Yes, sir.

Q. As far as they have got title in the main?

A. Yes, sir.

Q. So that if we should sell every quarter section of good timber in Lane County to these so-called actual settlers, and give them a good title, the title to that land would pass in a year or two to the timber investors, wouldn't it?

A. In a majority of cases I think it would.

Q. And they would use it for speculation, or hold it for investment, or manufacture the timber into lumber to get their money out?

A. Yes, sir.

Q. Now, you say you know of a thousand acres of logged off land which was sold at five dollars per acre to a Mr. Anderson. Where was that land—this side of Comstock?

A. It lays east from Comstock. From the summit of the Calapooia mountains down to the Coast Fork.

Q. Yes, it was land that the timber was taken off by the Comstock mills and other sawmill men?

A. Yes, it was taken off by a mill at Latham. It

comes east.

Q. Taken off by a mill at Latham?

A. Yes.

Q. Do you know what these timber people got off these lands in the way of timber, and how long they were engaged in cutting the timber off and manufacturing it?

A. The Chambers Company are just finishing it up.

Q. How long were they engaged in that work of sawing it into lumber?

A. Perhaps two or three years. Not any longer than that.

Q. From whom did they buy these timber lands?

A. Well, from settlers principally.

Q. That is, these people that went in there and settled on these so-called timber lands, either by homestead or pre-emption or in any other way, sold it to a sawmill, got their money, and the sawmill company then cut the timber off, and they finally sold the logged off land to Mr. Anderson. That is the history of it, isn't it?

A. That is mainly the history of it, yes, sir.

Q. Now, what is Mr. Anderson doing with it?

A. It is an investment to sell out in smaller tracts for agriculture.

Q. He bought it on speculation?

A. I think so.

Q. Where does he live?

A. Cottage Grove.

Q. He is a real estate man, isn't he?

A. No, he is a timber man.

Q. Well, he is a man that bought a thousand acres, as a capitalist, at five dollars an acre, with the idea that he would subdivide it, and sell it to poor men who would go on there and settle? Is that the idea?

A. Men of limited capital, yes, sir.

Q. That is what I mean? Well, has he sold any of it yet?

A. Not that I know of.

Q. What kind of stumps are on this land?

A. Well, the timber is rather a poor quality, only some thick patches of it.

Q. Not as heavy as generally speaking?

A. Easily cleared. Some of it is already clear.

Whereupon witness testified that the elevation at that point runs up from the river to perhaps five hundred feet. He has an orchard up about five hundred feet that is immune from these frosts in the early spring and fall in Lane County. When one gets up 400 or 500 feet they are above the frost line. One can get into the frost line again getting still higher; they get into the fruit line when they get up about 500 feet. There is an intermediate belt where one gets above the frost line that is lower, and he thinks one will get to a place where they

are in the frost line above, but they have no land in that part of the county that would come under that class. He has never noticed any orchards or things of that kind, where the elevation was 1500 feet high. There is perhaps one exception to that in 20 south, 2 west, where there is on orchard, he thinks, in the neighborhood of 1500 feet, which is now twenty years old, on a donation claim; he thinks, in section 18. A good many of the settlers in some of these townships through which he has surveyed, had gone on to these unsurveyed lands and taken claims and were unable to obtain title, and therefore petitioned the Government to survey it, so they could perfect titles.

Q. And some of those are still living there?

A. Yes, sir.

Q. They have not all sold to timber people?

A. No, sir.

Q. These that are living there, most of them, are on the streams at the headwaters?

A. On it or near to it.

Q. How?

A. At a slight elevation, some of them, but near to the streams.

Q. They are not very numerous, though?

A. No.

Q. Now, you say that a large majority of the quarter sections, in forties, not in quarter sections but in forties, running along there in a T-shape, or so that the

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forties abut each other, in the particular sections of the country that you have visited, would support a family. Now, you mean by that, after the timber was taken off that the man could make a living on the place?

A. Yes, sir, timber and brush; brush in particular.

Q. Well, if he had to confine his pasturage of his stock on a quarter section of this land that was timbered land, make a living that way, he would have a pretty hard time, wouldn't he?

A. On some of them he would, but on I think the majority of them he would not.

Q. He would have to sell the timber to get something out of it as he went along?

A. According to his means, of course.

Q. Do you have any idea about how many people in your neighborhood made application under this $2.50 an acre proposition to get some of these good quarter sections of railroad land that has timber on it—in your county or in your neighborhood?

A. I do not. I don't think there are but very few.

Whereupon witness testified that most of the railroad timbered lands were gone. Booth-Kelly Lumber Company bought up the biggest portion of them; also the Weyerhauser Company. Very few people around Cottage Grove, that he knows of applied for any of these railroad timbered lands. He did not do so, but was advised to do so. There were lots of fellows running around through Western Oregon about the time this suit was

commenced and before, in 1907 and 1908, trying to get contracts to locate people on these lands and to get one hundred dollars or more out of everybody to do it, and they induced a few there in their neighborhood, not many, to do that. These brokers were telling these people how much timber they could get in that way, he thinks that is correct. He went to school at Corvallis from 1868 to the summer of 1870, and graduated in the first class at the old college at Corvallis in June, 1870, which was the old Southern Methodist College preceding the Oregon Agricultural College.

Whereupon, on redirect examination, witness testified that the money that a man could get for the sale of this timber would materially assist in clearing up his land and putting it in a condition to be cultivated, if he should settle upon one of these claims which has timber on it. There are three eighties of railroad land in section 17, including the one adjoining his place, that would make very good homes for three families.

Q. I understood you to testify on direct examination that the majority of the quarter sections in the area that you were acquainted with would furnish support to a family—would be suitable for settlement purposes, in other words?

A. For some families it would, yes, sir.

Q. What do you mean by that, Mr. Currin? Please explain.

A. Well, some families can live on half what others can. People from Europe can live on one of our rough-

est quarter sections. It would require better land for an ordinary American family to live on.

Q. You mean that people in poor circumstances could make settlements on there and gradually develop the land?

A. I do; yes, sir.

Whereupon witness testified that the demand for agricultural lands has increased during the last ten or fifteen years, and the public lands have been almost entirely taken up in Southern Lane County, and there is no land there in Lane County that would be good farm land without clearing, that has not been taken.

Q. To your knowledge, have any people settled in this timbered area prior to the time when timber was valuable, and have cleared the land off, burning what would be now termed merchantable timber?

A. Yes, sir; there is a great many, quite a good many.

Q. Are those lands still used for agricultural purposes?

A. They are, yes.

Q. Occupied as homes?

A. Yes, sir.

Q. Now, Mr. Currin, if a man wanted a tract of this land for a home as a farmer, and wanted to engage in the farming business, what, if anything, would prevent him from selling the timber and retaining the title

to the land?

A. I do not understand your question exactly. Do you mean what legal reason would be in the way? Until a man has perfected his homestead he cannot sell it.

Q. I am not speaking of a homestead. I am speaking, if a man would buy a 160-acre tract of this land that had timber on it, merchantable timber, at $2.50 an acre, if he desired to engage in the farming business, I am asking you if he could not sell his timber and keep his title to the land, using the money that he would obtain from his timber to assist in clearing up the land.

A. Yes. There would be nothing in the way at all, that I can see.

Q. As a matter of fact, Mr. Currine, isn't it true that, as an agricultural proposition, this timbered area is a better proposition today than it was when these settlers first came in there and burned the timber?

A. It is; yes, sir.

Q. They now can sell the timber and use the money in assisting in clearing the land.

A. The timber is an asset now while it was in their way before, and it was an expense to them.

Q. How about the increase in the value and price of farming products, including stock, cattle, sheep and goats?

A. The market is better now, better prices than there used to be.

Whereupon, on recross examination, witness testified that the cost of living has increased, and he thinks that it is true that the great complaint of the agricultural world is that the cost of living has increased faster than the cost of the farm products, and he thinks that is a fact.

Q. Now then, you speak about these settlements on some of these timber lands with which you are acquainted that were made a good many years ago, before these people could sell their timber, and that they are still there. Most of these settlements were on the streams and foothills in Lane County, that you refer to, were they not?

A. I refer more particularly to those up on the side of the mountain, pretty high up, but on a smooth mountain side, where there are swamps and flats. Most all of it was susceptible to clearing and cultivation.

Q. Those people went in there, and had 25 or 30 miles of mountain range for whatever stock they might have?

A. They had outside range, that is correct; yes, sir.

Q. And the only available means of living and getting an income was from their stock that was thus ranged over the public lands and over the railroad lands, for miles and miles?

A. These I have reference to are farmers. They cultivate quite a good deal of land, and have their fruits

in particular, and raise their own hay, vegetables, etc.

Q. I understand, but they do not market their products? They feed them to their stock in winter, and feed their potatoes and garden stuff to their families, and then they make their money, if they do make any, from the stock business? That is the way they did it for many years?

A. A good many of them make their living more by selling vegetables and fruit that they raise on the ground.

Whereupon witness testified that there is a good wagon road into these places, and they come into town with their vegetables and fruit, haul them into town and sell to the people in Cottage Grove. Quite a good many people make their living that way. Cottage Grove is a place of about twenty-five hundred people, besides there are a great many mill companies there and they would sell vegetables to them; they would sell wood, a good deal of that, and ties. There is none of this stuff that they would haul over ten or fifteen miles; they are close in to the railroad, and these are the settlements—the mountain settlers—to which he refers.

Whereupon on redirect examination witness testified that S. C. Bruce, about June 1, 1912, representing the Railroad Company, requested him to lease this eighty acres of land that he tried to buy.

Whereupon W. C. TIPTON, called as a witness on behalf of complainant, and being duly sworn, testified, that he is sixty years old and resides at Roseburg, was

born in Missouri, came to Oregon in 1854 and has lived in Oregon ever since, about 18 miles east of Roseburg in Douglas County. He has been in the farming and stock business ever since he has been in Oregon. They located 18 miles east of Roseburg in 1855, and he has lived there ever since until within the last ten years, during which time he has lived in Roseburg. Referring to Defendants' Exhibit 259, he has been over the lands shown, involved in this suit, marked in green, from Myrtle Creek to Calapooia Creek in Townships 25 to 28, inclusive, clear through from near the summit of the mountains — all through these mountains there, and is acquainted generally with the railroad lands shown in that area, and became acquainted with them by riding over them after stock, buying and driving stock; that is, the country up and about Myrtle Creek is where he was buying stock. He is acquainted with the agricultural business, and the possibilities of agriculture in Douglas County and that vicinity. In passing through, and the like of that, he could not tell what was railroad land, what were odd sections and what were even sections, a man would just consider it as a whole. There is not one of these 160-acre tracts—not necessarily legal quarter sections, but also in tracts of "T" or "L" shape — but what a person and a family could make a living on them; of course, they would have to clear them up, a good many of them, but there are quite a number of quarter sections that have already open land enough that a person could make a living on, that is a family. He would say from sixty-five to seventy-

five per cent of these quarter sections would be suitable for a man to go there to engage in the farming business. There are settlers living in that country, both on the even and odd numbered sections, which are of the same general character. He could not tell how long these people had been living in that community; they have been living there a long time, some of them have, and some of them not so long. They have gone on to that land and cleared it up, some of them have, and made homes there. Lands that are not susceptible to tillage or cultivation, could be put to grazing, pasture land. It would not be necessary to take out the stumps to render the grazing lands of the best quality of grazing lands. He has purchased land of the company in Township 26 South, Range 3 West, when his father and he were in partnership. The land was bought in his father's name, and they bought in quite a lot below there, in Section 4. He could not just say how much they paid an acre for the land. They bought it at all prices. They bought one whole section, taking the whole section through, for a dollar an acre, and then they paid as high as three dollars, he thinks; he is not sure, but thinks, from $3 to $3.50 an acre was the highest. They bought qutie a lot at $2.50 an acre, and then a whole section at a dollar an acre. They bought that section about when the land was first put on the market. They made an application and offered to pay a dollar an acre for it, as much as his father would pay to the company, and they did not want to accept it, and sent a man up there to look it up; it was covered with oak grubs and there was

no other timber on it, only oak timber; when the man went back, the company wrote that they could have it for a dollar an acre; he thinks the man was George H. Andrews, located at Portland. That was the lowest price they paid; that land was very rocky, but it was fine grazing land; and they wanted it for pasture; it gave an outlet, and they wanted it for pasture, and that was all it was used for.

Q. Mr. Tipton, what is your opinion as to the effect of the railroad company selling the lands of the grant to large timber companies?

Q. The large timber companies in large tracts, and in withdrawing the lands from the market, failing to sell to actual settlers at $2.50 an acre?

A. Well, it has kept settlers out. It has been a drawback for settlers coming in and taking up the land, because if they came in and took up the even sections, it would throw the settlements so scattering that they could not have any schools, and could not get roads, nor anything of that kind at all. That is the main drawback. That is one thing that has hurt our country up there, is big land holders, in my opinion. That has hurt our country, the big land holders.

Whereupon, on cross examination, witness testified, that he and his father came to Oregon in 1854, when he was two years old. They came from Missouri, and his father and mother took a donation land claim on the North Umpqua; they each took a quarter section; they got here a little too late to take a half section each. They

got 320 acres under the Donation Act of September 27, 1850. His mother died on the donation claim, and his father came down to Roseburg and lived with his daughter a short time; he came down in the fall and died the next spring. His land is four miles right up the North Umpqua River from where the donation land claim was, and he owned 1,240 acres of land. Witness had a fine farm up there. He did not farm more than 100 acres, that is for hay and everything, the balance for grazing and pasturage. He bought that land about fourteen years ago, and sold it to George about eight years ago; it has not been subdivided since he sold it, but it has been sold now to another party, and all kept together. He owns a lot in the town of Roseburg, where he lives, and that is all the land he owns. While he owned this 1,240 acres he was in the stock business. It was about 20 miles east of Roseburg, and it was a stock country around there where he lived. It was really a stock country, but it was a good farming country, but people did not farm it so much. They used to farm it pretty heavy. They threshed in one season in particular 6,000 bushels of grain off of their place, about twenty-seven years ago; since that time the farm has been utilized mainly for grain enough to feed the stock, and for stock purposes. He is acquainted, in a general way, but not by legal subdivisions or by sections, with the lands lying east of Roseburg, between the Calapooia River and Myrtle Creek. Myrtle Creek is a branch of the South Umpqua and the Calapooia is a branch of the North Umpqua. There is an area on this map, Defendants'

Exhibit 259, marked in yellow, which were lands lost to both grants by adverse entries, that is, lands that were taken under the donation act, or homestead, or pre-emption act, prior to the grant. He notices the yellow field on both sides of the North Umpqua, as far up as Winchester and Glide; that land was all taken, and the railroad company got none of that except that shown by the small green spots in there. There is 330 acres of land that his father owned in there on the North Fork of the Umpqua, at the mouth of Oak Creek, and that was all taken under the homestead, or donation law, prior to the railroad grant, before the railroad ever came through there. He remembers when the railroad was built to Roseburg, but he could not tell the year, it was somewhere about 1881. It was extended a few miles south to Glendale after that, but it was quite awhile before the train ever passed through the pass, and then it went from Glendale to Grants Pass and stopped there awhile, and later on went through, but he could not tell how long it stayed at either place. The unsold lands of the company joins the Forest Reserve, on the headwaters of the Umpqua. Referring to Defendants' Exhibit 259, these that are in brown shown on this map, were lost to the company by reason of being in a Forest Reserve. He knows about that Forest Reserve, but does not know exactly where that line runs through there. He notices that above Glide and south of Hawthorne, on the Calapooia, there is quite a body of timbered land in there belonging to the company; and that some of this in green is still owned, and that in blue has been

sold. He understands the map shows the blue lands as having been deeded by the company. He notices that nearly all the land on Calapooia Creek is colored blue, and would be deeded, and the only green that is left is down towards Hoaglin and east and northeast of Glide, in that vicinity. Myrtle Creek is out where, on the South Fork of Myrtle Creek, there is a little post office called Nugget, and he knows that place. Around in that section there is a good deal of railroad land that is unsold, according to this map in green. He has been through these unsold portions in there, just riding through gathering stock. Some of this trail goes from Nugget over to what is called Deer Creek, and he has been through on that trail. Deer Creek comes into Roseburg; the trail goes through that country, and he has been through that trail quite often. In riding along, going back and forth, he would be going from Myrtle Creek back to Deer Creek and looking through. There are people living all through these mountains, that have a few head of cattle, and he was buying cattle and picking them up from ranchers in there that had stock to sell. He was buying them for George Cole, a butcher in Roseburg, and he has been at that for the last ten years. These cattle that the people on these ranches have, where they don't range on their own land, range out on the commons; they have these railroad lands and the even sections to range there, and the ranchers could pasture the railroad land, without the railroad company should fence it, and that it did not do. These ranchers fence what land they want to farm, what they want to

raise hay and the like of that; they have a few acres that would be fenced and the balance would be outside of the fence, what they want to hold. Most of these men have stock in there. They generally have cattle and some have sheep; they raise the cattle for the market, for the money there is in them. Some of these ranchers have as high as 50 head of cattle. He bought as high as 60 head and upwards of one fellow, who was a rancher, and had bought his place of 160 acres. He bought 60 head and had a good stand left; his cattle ran out on the commons. If all these railroad lands were fenced up and owned by settlers, he would not have much pasture, but other people could have. Most of this unsold railroad land there is pretty well timbered. There are no saw mills in that section in up there by Nugget. This territory that he is especially familiar with is about 25 miles from Roseburg and gets into the Cascade Mountains pretty well. These ranchers up there, most of them, settled not only on the headwaters of the little streams, but along the streams and on the uplands. There are nearly always springs nearly all through these uplands, and they are well watered. In going through that country he did not notice very many old cabins on the even sections, that had been abandoned, where the timber was; there are some, of course. There are some of these people up there that have lived there until their children got so they had to go to school, and they moved out just as he did. He lived on his ranch until his children got up so he had to school them, and he moved to Roseburg to school them. He knows of some sections

where they had built school houses. The railroad company has paid for over half the school houses and has paid half of the support of the school for nine months. There are not many settlements that have nine months school in the year, but the railroad company would pay half the expense for that nine months school, in some of these sections, and the railroad company had no vote on it. The railroad company contributes its proportion of the expense of building the roads that are built; if they have the land they have to pay the taxes. The difficulty of getting the roads through is a difficulty which the railroad company meets just in proportion to its holdings; and if people would settle on there, the people could put the roads through, and he thinks there is no reason why they could not get them through. They would have to pay taxes only on what they own; and they would have to contribute their proportion of the expense of that road to the extent of what they owned, unless it was paid out of the general fund. Most of these lands that are covered with timber could be used for pasture until the timber was taken off. The stock would run loose through the woods. They would have to be cleared for farming. In his judgment the soil and topography is such that about seventy-five per cent of these lands, that he knows of, could be made agricultural if the timber was removed; that is, it could be made ready for farming purposes after the timber was removed. It would not be necessary to take out the stumps to use it for pasturage. They would just cut the trees down, burn them up, get rid of the timber, and then sow the

grass in the stumps. One would not have to cut the big timber down; one could clean out the underbrush, sow the grass and have good pasture. Fir timber is tolerably thick and a tree carries its foilage the year around; it is evergreen. He can take a person on the ground and show him where he has sown grass in the heavy timber, which is as fine pasture as one ever looked at. He could pasture 25 or 30 cows on 160 acres of this timber land, by leaving the trees standing and sowing grass in among the trees, but would not keep very many just in the timber that way. Goats are the best to keep in the timber, and they eat fir timber pretty well, also hazel brush; they want a variety; they eat maple, hard woods and shrubs, and will clean them up and eat it up pretty well. It is not practical to have goats on every quarter section, but pretty much all of it. He has had a good many goats, but never had over 200 at any one time. When they had goats they were among the first to have them in their part of the country. He does not know how many goats there are in Douglas County now, he has not had any for a long time. They never combed the mohair, they sheared it off and sold it. Thirty per cent of the fleece of a goat has that wiry hair through it, but he does not know that this is discarded by the manufacturer. He does not know anything about the manufacture of it. They just sold their mohair at Roseburg, and he does not know anything about what was the loss to the manufacturer. He refers to the white Angora goat, the longer the fleece the better the goat is, but he does not know whether the longer the hair, the worse the fleece is.

Q. That is not the reason you sold your large holdings of 1,240 acres?

A. Well, no; I sold my large holding to get out where I could school my children. I was living too far away from school. But I do think that, if those large tracts were cut up so as people could come in and settle, it would be a better thing for our country.

Q. The first thing to do, though, with these timber lands would be to get rid of the timber and make some use of that, wouldn't it?

A. Of course, they would have to get rid of the timber.

Q. They wouldn't want to burn that up? They would want to sell it?

A. If they couldn't sell it, they could burn it.

Q. They wouldn't burn up a quarter section that was worth $5,000 for the timber?

A. There would be no need of it.

Q. They wouldn't do that, would they?

A. I shouldn't think they would.

Q. It would probably go to a timber buyer?

A. Of course——

Q. Just the same as the rest of it has gone?

A. Yes, sir.

Whereupon on redirect examination witness testified, that he was just speaking of the timber as going

to the timber buyer, just the timber, not the land. He had nothing to do except clip off the goat's hair, or wool, sack it up, tie it up and haul it off. They raised goats in that territory, and they ran out on the range and thrived on this growth found in this area. That is what they got these goats for, to run out on the range, slash off a patch of oak grubs or oak brush, and they would put the goats in on it. The large holdings of lands, in the locality of the railroad lands, are not fenced, and the railroad company is no better to the grazing man than the rest of the people. The reason they have only three months school there, is that there are not enough people living in there to keep up the school. The railroad lands are taxed the same as other lands, and the people of the county have not imposed on the railroad company in these matters, that he knows of; the methods of taxation are prescribed by law. He never knew the railroad company to construct any roads for the benefit of the people who lived there, or of their building any school houses, only where they were built by a tax, the same as the other people; the other people had to put up their part of the tax. They contributed what they had to contribute by law. Whereupon on recross examination witness testified, that Glide is two miles from his 1,240-acre place, and about three miles up on the North Umpqua, north of the section east of Glide. The North Umpqua ran through his place and cut one 80 acres of his place in two. His place was about six miles from Glide, northeast of Glide, on the river. He had two sections in his 1,240-acre tract, and owned some rail-

road land. He could not tell how long ago that railroad land was sold. John Livingstone bought a half section of it and witness bought half a section at one time. He cannot tell when Livingstone bought it, but he bought it when the railroad company was selling under contract, in payments. This was about the time the railroad came to Roseburg, in the early days, but he could not tell just when. Livingstone bought by contract and had not paid for it when witness bought it from him, and he had to finish out the payments on the contract. He had a pretty good range for his cattle on that place there. They ranged all over the North Umpqua and clear up in the Rock Creek country, on the railroad lands and even sections, too. They run in the open. Whereupon on redirect examination witness testified, that there are some abandoned homesteads, because others went in there with them with families, and they found they were on railroad land, and moved out, and then they could not stay on account that there were only a few families of them to keep up school, after they had built the school house and all. There was Mr. Comas, Mrs. Rooney, Mr. Lillie and Mr. Langworthy. These lands that these people located were on Rock Creek, and he thinks in Township 26. Hoagland is in Township 25 South, Range 2 West, and the lands there are good for agriculture. Lilly had, he does not know exactly, but thinks, as much as five or six acres in cultivation on his place before he left it when he found out it was railroad land. There is other land where they had some cultivation in, but he does not know how much. He hardly knows how

much it would cost to clear this land with the ordinary stand of timber that is on it. He has cleared a right smart of it, but he always hired the men by the day; but he does not think that ordinarily it would cost over $40 an acre. He cleared on his place heavy fir growth, between 80 and 90 acres of it. He hired the men by the day. That was about 30 years ago when they cleared that and it was heavy fir timber. The underbrush through this timber is mostly maple and hazel and hardwood. Whereupon on recross examination witness testified, that the land which they cleared was the only patch that they grubbed the underbrush all out and just as soon as they got it out they started the plow; as the plow hit a root they had men there with axes, and cut the roots out; by the time they got the ground plowed, all they had to do was hitch to the stump, the fir timber has no tap root, it sits on the ground. This fir grove was not young timber, but was big timber. They sawed all the timber and rolled it into the river. It was on the river bank. They had no saw mills, or access to do anything at all with it. This was about 30 years ago. He does not think it cost over $40 an acre, not more than that, if it did that. The wages for the men at that time were about one dollar a day; and one can now get all the men working on the ranches for a dollar a day, that is all they pay now, a dollar a day on the ranch, unless it is in harvest, and then they pay a dollar and a half a day with board included. He has never tried to grub out any of that heavily timbered land, except this grove, which they grubbed out and put in corn. That

grove was on his father's donation land claim, in below Glide on the Umpqua. It is not in the yellow field, shown on Defendants' Exhibit 259, but above that. That yellow field is on the south side of the river. His father sold his land before his death; he had sold everything. These people that settled on these railroad lands, settled there before it was surveyed and he thinks it must have been 12 or 14 years ago, but he could not say positively. He has seen some of these abandoned homestead entries, where the homestead entryman got his title, and the cabin is still standing; but he does not know if that land has passed to the timber companies. He knows of one place there where it has not passed to the timber company. There is Mr. Shoup, he sold his homestead, because he had to go out to school his children. That is on Rock Creek. He could not tell what he got for it, but Mr. Bellows in Roseburg bought it. He is not a timber man that he knows of; and he does not think he is in the timber business at all. Bellows does not live on the place; his boy owns part of a store in Roseburg. The property is not occupied now.

Q. You know, don't you, that all through the Coast Range and the Cascade Mountains there are homesteads that have been laid on these timber lands, and that the people, when they got the patent—single men, for instance, particularly—have sold the timber land to these timber companies?

A. Well, now, to tell you the fact, I don't know of one now.

Q. You cannot recall one personally?

A. No, I cannot. No, I cannot.

Q. But you have seen these cabins in there, haven't you, that are not occupied and abandoned, in the even sections?

A. Now, in the forest ranges, I know up there there is lots of cabins on nearly every quarter section, that the forest rangers took it from them, on account it was timbered. They claimed it was not agricultural land.

Q. They never got any title to that?

A. No, they never got any title to that.

Q. But I mean on the even sections, outside of the United States Forest Reserves.

A. Yes.

Q. Nearly all of the even sections, the title has been taken in the same way?

A. Yes, sir.

Q. There is no public land there any more?

A. Well, now, there is people that has taken homesteads right in back of our place.

Q. I am not asking you that, Mr. Tipton.

Mr. Rabb: Let him answer the question.

A. Their homestead cabins stand there.

Q. I understand, but all that even section land, the title has been extinguished by some kind of convey-

ance from the United States? There is no public land left there, is there?

A. Of the Government land, even sections?

Q. Yes.

A. Oh, yes, there is some, quite a little. Oh, yes, sir; there is a lot of Government land left not homesteaded yet.

Q. In that country?

A. Yes, in that country.

Q. That is not taken up?

A. That is not taken up.

Q. Is it timber land?

A. Timber on it, yes.

Q. I mean, is it saw timber?

A. Well, yes, sir; there is quite a lot of saw timber on it.

Q. The best, however, is taken up, isn't it?

A. No. In that Rock Creek country there isn't but two or three claims that is taken up, and got a title to it.

Q. The rest——

A. The rest stands there today.

Q. The rest is all Government land?

A. Yes, sir; the Government land stands there today.

Whereupon on redirect examination witness testified:

Q. That is outside of the forest reserve?

A. Yes, sir. Yes, sir.

Mr. Fenton: On Rock Creek?

A. On Rock Creek, they are outside of the forest reserve.

Q. Do you know why this land has not been taken up, Mr. Tipton?

A. Well, the railroad land is in there, and it throws them so far apart they cannot have any schools nor nothing. That is why it is not taken up. They cannot get roads made into it.

Q. Well, in your opinion, Mr. Tipton, if the railroad land passed into the hands of settlers, do you think the Government land in the even numbered sections would be taken up?

A. Yes, sir. Yes, sir; that whole Rock Creek country would be taken up.

Whereupon on recross examination witness testified, that they would have to clear up this land before they would get very much value out of it, unless they wanted it for stock. Whereupon on redirect examination witness testified, that clearing was required on the lands that were settled there in the early days, lands that have been settled on, and people are living on there now, and that is a condition that all settlers have to meet in that country.

Whereupon W. H. MILLER, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Gold Hill, Jackson County, Oregon, has lived in Oregon forty-one years, and was born in Josephine County. He spent his life at the home place, which was on the boundary line between Jackson and Josephine counties, and which was the east line of the farm that he lived on. He has been engaged in farming, mining and mercantile business, and is at present in the general merchandise business at Gold Hill, in Jackson County, and has become familiar in a general way with the character of the lands in Josephine and Jackson counties, and with the history of the industrial and commercial development of these two counties, since he has become old enough to observe these things. He thinks he is acquainted with the general character of the soil, climatic conditions, the lay of the land, and other conditions that enter into the usefulness of the lands in Josephine and Jackson counties. His knowledge does not extend to any great extent beyond these two counties, and he is not familiar with the southern part of Douglas County. He is familiar with the natural vegetation that grows in Josephine and Jackson counties, and with the use that may be made of that soil there for the growing of horticultural and agricultural products, and with the other industrial uses that may be made of these lands, their natural or artificial products, such as grazing, raising goats, etc. And based upon his knowledge of the general character of the soil of these two counties, he has made an estimate with reference to the

quantity of agricultural and horticultural lands existing among the present holdings of the Oregon and California Railroad Company in Jackson and Josephine counties. He took his list of railroad lands from the bill of complaint in this case, and he included in his general estimate townships 37, 38, 39 and 40 south, ranges 2, 3, 4, 5 and 6 west. He knows that a good portion of that land is in the most mountainous portion of Jackson County, while some of the other lands are in the lower altitude, where the mountains are not so high, and they include some of the roughest land in Jackson County. The lands in Josephine County on which he has made his estimate, he thinks, are not quite as rough land as part of the lands in Jackson County upon which he has made his estimate. He is familiar in a general way with the general character of the railroad lands in the townships mentioned by him, and has been over a good portion of the lands, most of them. The adjoining lands to these that he has been over, are comparatively of the same general character as those which he has been over. While he was not on these adjoining lands, he looked at them at a distance and believes they are just the same.

Q. Now, I will ask you to state what percentage of these lands with which you have become familiar and acquainted within those townships that you have named, referring now to the railroad lands, the description of which you got from the bill of complaint in this case—what percentage of those lands, I say, in your judgment are susceptible to the growing of agricultural and horticultural crops in paying quantities?

A. The estimate that I made, based on my judgment by being over the land and seeing a good portion of it, I estimate that there would be something like sixty-six per cent that could be used.

Q. That is, two-thirds of the land?

A. Two-thirds.

Q. State whether or not, in your judgment, if those lands were placed in the hands of settlers, the settler could, by making a proper use of the land, maintain himself and family, in tracts of 160 acres or less?

A. I think he could, yes.

Q. Are there any of the lands there of such character that a man could maintain himself and his family on less than 160 acres, referring now always to these railroad lands that are involved in this suit?

A. In some parts I think he could make a living on less than 160 acres.

Q. How much less?

A. I think I know of a few forty-acre tracts, one especially in my mind at the present time, that a man could make a good living off.

Whereupon witness testified that a settler there to make a livelihood could grow fruit, grain and small garden, and he knows of instances where settlers have been making a livelihood on similar lands in that same locality. His general estimate of the area of lands includes about 53,000 acres, and if he made no mistake, includes all of the railroad lands within the townships he

has named. He is familiar with the general history of that territory in those townships as to the sale and disposition and use of these railroad lands within those townships. He does not know about the date when the Railroad Company withdrew these lands from sale, but he knows they were taken out of the market, somewhere about January 1, 1903, he thinks it was.

Q. I will ask you to state whether the manner in which the railroad company at first sold these lands in large tracts, and afterwards withdrew them from sale entirely, has affected the development and settlement of that territory?

A. It has.

Q. In what way? Has it promoted settlement or has it retarded settlement?

A. No, it has retarded settlement.

Q. To what extent?

A. Well, to quite a large extent. In other words, there is a great deal of land, if the people could have bought, they would have improved it and made homes.

Q. I will ask you whether or not, in your judgment, if those railroad lands had been disposed of in 160-acre tracts to settlers, that territory would have been settled up and developed, and now be occupied by persons living upon them and developing them, cultivating them and living off from the products of the soil?

Q. What is your best judgment, Mr. Miller?

A. I think they would.

Q. I will ask you whether, in your judgment, the manner in which those lands have been handled by the railroad company, including the withdrawal of them from sale, has affected the development and settlement of the intervening even numbered sections?

A. I do not believe I can answer that question.

Q. You have no opinion as to whether the withholding of the odd numbered sections from settlement and development has had any effect upon the settlement and development of the even numbered sections?

A. I have not thought of it that way.

Whereupon witness testified that not all of the even numbered sections have been settled upon and developed, and he could not answer to what extent with reference to the railroad lands in these townships that he has mentioned the even numbered sections have been settled upon and are now occupied by settlers. There is some of it that has not been settled upon. He thinks that if the railroad land had been opened for settlement, the other land would have been settled up more than what it has been. In his opinion, the uplands in the foothills could be used for horticultural and agricultural purposes, and in his opinion, the lands available for agricultural and horticultural use are not limited to the valley lands. Some of their best fruit is raised on the higher lands, and the high lands are adapted for grape culture. They grow grapes among other horticultural crops. There are many different kinds of berries—raspberries, blackberries, strawberries; also fruits such as apples, peaches,

prunes, pears. Grapes have been cultivated quite extensively in some parts of Jackson County especially, and some parts of Josephine County. Some of the grape culture is an old industry; some of it is new. By that he means that it is old in some parts of that country and is new in some other parts. These lands are not all covered with timber. On some parts of it there is quite a bit of timber; on other parts the timber is not so good —it varies.

Q. Well now, does your answer with reference to the availability of those lands for settlement purposes, does that or does it not apply to the lands that have timber on?

A. It applies to both.

Q. So that before it could be used, then, for these other purposes the timber would have to be first removed?

A. Yes, sir.

Q. Have you taken into consideration those conditions and the cost of removing the stumps and preparing the soil for horticultural and agricultural use? I say, have you taken those conditions into consideration in your previous answers as to the availability of that soil of those lands for agricultural and horticultural use?

A. Yes, sir.

Q. Is your opinion in that respect wholly speculative, or is it based upon observation of yours as to

similar use of other similar lands?

Q. Do you understand what I mean, Mr. Miller?

A. I am not sure that I understand the question.

Q. The question is this: Now, in testifying as to the use that can be made of these lands for the growing of fruit and grapes and berries, is that wholly theoretical with you, or have you seen lands of that kind actually used for that purpose?

A. No, sir; I have seen them actually used for that purpose.

Whereupon witness testified that the climatic conditions in that territory are favorable for the growing of these crops which he has named. The elevation there in these townships varies from 1000 feet to 4000 feet, and he has seen grapes, fruits and berries grow at an elevation 2200 feet. He has taken the elevation into consideration in estimating the quantity of these lands that can be used in the manner testified to by him. It is rather hard to say how many acres of good fruit land is required to make a comfortable living for a settler and his family down there, referring to the good fruit land in these railroad lands; ten acres of good fruit land is enough, referring to the fruit land part of these railroad lands. He knows of instances where families are making a living on as low an acreage as that on lands similar in all respects to the railroad lands. In his opinion, some of these railroad lands concerning which he has testified, are as good as the best fruit lands around Grants Pass. There is quite a considerable quantity

of these railroad lands of that character—which is good fruit land; there is no large amount of it, but there is quite a considerable amount of it—good fruit land. Lands of this character are distributed throughout the different townships of the railroad lands. He does not call to mind any of these railroad lands that are actually under cultivation at the present time. He thinks the parties have bought them or have title to the lands, to that which they are farming, and they are not involved in this suit.

Whereupon on cross examination witness testified that a portion of Josephine County was created out of Jackson County, and it has been Josephine County ever since he knew anything about it. The line was straightened out at one time a good many years ago. Some portions of Josephine County are considered rather rough, mountainous country. A good portion of Josephine County is mountainous land, quite a good deal of it. His father owned 160 acres, taken up by him as a homestead before witness was born. It is about fifteen or sixteen miles from Gold Hill, but the nearest postoffice when he lived there was about eight miles. Grants Pass was their place of business, which is fourteen miles away. This place was on the Applegate, south, or southeast of Grants Pass. He does not know how long the Applegate country has been settled—it was before his time. Some donation land claims were taken up in the Applegate country. He thinks he said that sixty-six per cent of these lands with which he is familiar in a general way, could be used for agricultural or horticultural purposes

after the brush and timber is off. He thinks there is some of this railroad land with which he is familiar that has good saw timber on it. Some parts of the timber in Josephine County is pretty good for saw purposes, but not in that portion about which he is testifying, that is, those townships are not so very good. He became acquainted with these townships about which he has testified, by mining and prospecting, which he followed eighteen years, mining quartz and placer both, and locating mining claims and operating mining claims in the Missouri Flat country, the Applegate country, and Horse Creek country, but he is not interested in mines now. There are some pockets there, but it is not a pocket country. The mining is placer. Gold is all he had anything to do with. He mined off of some pretty good land. Some of the placer land they have, is some of the best agricultural land they have. He can show some very good farming land where they are quartz mining in the fields, and where they are farming all around them. They go down and find the quartz below the soil, and he can show one place of that kind. Gold Hill has a population of something like five hundred, and is on the railroad. Some of these grapes are shipped. Mr. Carson for one, owns the Redland Nursery on the Applegate—everybody knows his grapes, and he thinks he ships some of them to Portland. They are of different kinds. Some of them are Tokays. There are some grapes grown around Jacksonville, right on the top of the mountain, 2200 feet elevation. Jacksonville is about 1600 feet elevation; Ashland about 1800 feet, and Med-

ford about 1400 feet. The Rogue River Valley runs in elevation, he thinks, about 1000 feet at Grants Pass to about 1700 feet at Ashland, and practically speaking, the valley part, the low part, is all level land. There were lots of oak grubs and oak timber around Jacksonville and Medford at one time, but not very much fir timber. Part of the land between Jacksonville and Medford is the best kind of farming land, and has been for fifty years. These grapes grown there on the J. N. T. Miller place are not down in the valley, that is, up at Jacksonville, which is not in the valley but on the higher land, on the foothills. The slope leads five miles west from Medford up to Jacksonville, and J. N. T. Miller's place is on the foothills and extends up above. He knows the Hanley place there, and it is all level, black muck soil, except Hanley Butte. He does not know how much they want for the orchard land around south of Medford, but he knows there is some good orchard land, but he does not think they are selling it at $1000 an acre within two miles of Medford now. He has heard that they had sold some of it for that price, but he does not know it to be a fact. Some of the mountain lands are better fruit land than the low land.

Q. Well, now, answer my question. Do you consider that the lands in the foothills, up in these mountain lands, acre per acre, are as good lands as the Burrell orchard land, for instance, south of Medford that they get $1000 an acre for?

A. Not to take the whole, that is take all the land;

but that that is good is as good.

Q. Yes, if there is a shirt tail full there that is good, why it is good. That is what you mean?

A. No, sir.

Q. Well, do you mean to say that there is any considerable per cent of these railroad lands that are like the lands that I refer to around Medford?

A. No, I didn't say that they are like that Medford land.

Q. Well, that is what I am asking you about. Is there as much as one one-hundredth per cent of all of these railroad lands like any of those lands down there?

A. One one-hundredth per cent?

Q. Yes, one acre in the hundred equal to those lands of the Burrell Orchard Company, or of Johnny Olwell, or of old man Stewart, or of any of those men that own those fine lands around Medford?

A. I don't know what percentage, but I can show you just as good fruit, land will raise just as good fruit as the Burrell land or Olwell land, either one, and it is not in the valley.

Q. You will find it on the hills here and there in spots?

A. Yes, sir.

Q. Here and there in spots?

A. Certain patches, yes.

Q. You don't undertake to say, you don't want the court to understand, that all that land is of that character?

A. No.

Q. Or that any considerable per cent of it is?

A. No, I never said it was all like that.

Q. You don't want the court to understand that a large per cent of it is either, do you?

A. I want him to understand there is portions of it is as good fruit land.

Q. Small portions here and there, is that right?

A. Small tracts.

Q. Here and there through the grant that you are familiar with?

A. Yes, sir.

Whereupon witness testified that he has been engaged in the merchandise business going on four years. There are no vineyards out there where they manufacture wine, but no one can show any better vineyard than the Redland vineyard, which has a good many acres, he does not know how many. He does not know that he can name another vineyard in Josephine County, but he can in Jackson County. He knows that some of them in Jackson County ship their grapes. They used to manufacture wine in Jackson County and sell it, but he does not know whether they do now or not. It was not sold generally. He does not think there are very

many grape farms in Josephine County of the character of the vineyard of which he speaks on the Applegate. There are more of them in Jackson County. There is the one that he has named in Jackson County, but there are no other large ones; there are several small ones. Most of the farmers have a small vineyard for their own use, and do not sell many grapes. He is not a timber cruiser, and never estimated a piece of timber land to estimate how much timber was on a forty or a quarter section, not to try to be accurate at all, but he has figured on a few pieces somewhat, but never made a business of it. He tried to buy some of this railroad land quite awhile ago, but does not remember the time. He tried to purchase the land and the company would not sell it to him at any price.

Q. Did you make application on these blanks that were circulated around the country here four or five years ago trying to get people to make applications?

A. No, sir.

Q. Did you have any of these timber brokers apply to you to get you to send an application for $2.50 an acre to get a good quarter section of this timber land?

A. No, sir.

Q. You never did that or had anybody apply to you to do that?

A. No, sir.

Whereupon witness testified that Defendants' Exhibit 365 is somewhere nearly correct in its location of

the boundaries of Josephine County, Grants Pass, Applegate Creek and Gold Hill. He thinks that the map is fairly accurate of the streams, as far as he can see them, and the location of these towns, omitting the small branches of the streams. It looks to be about right so far as he can tell. He knows where Glendale is, but he is not acquainted in Douglas County. Jacksonville is shown on this map about five miles due west of Medford, and he thinks that is about right. He has been in the western or southern part of Josephine County, down at Waldo, but not very far off the wagon road. The lands with which he is familiar, with reference to Grants Pass, are southeast of Grants Pass, in the Applegate country, and about Wilderville and Murphy, and Davidson, and Kubli, and Applegate, which is in Jackson County. Applegate is a postoffice, and the Applegate Creek is in both Jackson and Josephine Counties. He was just prospecting through these lands, riding through them for the purpose of looking after mining interests, and was not looking for timber especially, just noticed the timber as he went through. He has driven stock in there very little; has done so some of the time, but he is not a stock man, but at that time he drove some stock to Williams Creek, a tributary of the Applegate, for the purpose of putting them on the range. It was then and is now customary for farmers who live down on the Applegate to drive their stock out into the mountains to range during the summer over public lands as well as the railroad lands wherever they were not enclosed.

Whereupon defendants offered in evidence Defend-

ants' Exhibit 365, which was received in evidence, subject to the official census reports, and subject to any corrections that might be made by the official figures of the census of 1910, which exhibit is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon on redirect examination witness testified that he did not know of any of these donation claims being located up in the hills in this general character of territory that he has described. They were mostly down in the valley proper. Some of these donation land claims ran back up on the hills a little bit, but they were mostly on the level land. He thinks the roughest part of Josephine County is in the south and southwestern part. He does not think that the townships about which he has testified, are in the roughest part of Josephine County. He is acquainted with the decomposed granite soils in Josephine County somewhat, and knows that it is being used quite a considerable for horticultural and agricultural purposes. He is not as familiar with the lands in Josephine County as he is with those in Jackson County. When he says that these fruit lands that exist in these railroad sections about which he has testified, are not like the lands around Medford, he means that the land is not level, and is of a different soil from that, a different altitude, and the soil is generally not so deep on the mountains as it is in the valley. The hill lands grow good fruit; wherever one finds land that is fruit land on the mountains it grows good fruit. It is a different character from the fruit land around Medford. He did

not restrict himself exclusively to fruit lands when he testified that two-thirds of the land covered by his testimony would be available for agricultural or horticultural use, and it is not necessary that it should all be fruit lands in order to be susceptible to settlement. There are sufficient quantities of this fruit land among these railroad sections to be available for practical commercial use, and he would say that about two-thirds of the quarter sections included within these railroad sections concerning which he has testified, contain enough fruit land and agricultural or horticultural land to support a settler and his family if properly used. The towns in the Rogue River Valley, such as Medford, Gold Hill, Grants Pass, Jacksonville and Ashland, are supplied with good schools. Some parts of the country where these railroad lands are situated have good country schools. Usually the lands are not opened up in the way that would attract settlers. It is not opened up by good roads. He does not know whether the road and school facilities would be considered sufficient at the present time. He does not mean to testify that this vineyard spoken of by him in Josephine County, is the only one in that county, but he means that it is the only one that he can name, of commercial value. He believes the better the land the better the timber. He knows of instances where the vacant railroad lands involved in this suit are of the same general character as those settled upon in the even sections adjoining.

Whereupon W. J. PENGRA, called as a witness on behalf of complainant, and being duly sworn, testi-

fied, that he lives in Lane County, Oregon, about three and a half miles east and a little north of Eugene, which is his post office address. He lives within a mile and a half of the main Willamette River, and he is fifty-five years old and was born in Lane County, Oregon. He has followed the stock business for twenty-five years, and the last four or five years he has been farming a little. He does not run stock now, to speak of; a few cows, some hogs, and a horse or two, and he raises a little hay, a few strawberries, some kale, a little corn, and such as that—diversified farming. He lived for a year and a half above Goshen, on what was known as the old Spores place, for five years, which is about seven miles north and east of Eugene. He has lived on no other farms in Lane County, other than those he has mentioned. While he was in the cattle business he had occasion to go around through the county, and bought cattle all over the county, more or less, and became pretty familiar with the general character of the soil there and the way it lays. He bought cattle in the Mohawk country, McKenzie country, Camp Creek, Fall Creek, the Willamette and Siuslaw, and has been all over that country more or less; and has been around over the county to some extent on other errands, in addition to buying cattle. His traveling about the county was largely in connection with his cattle business, and he observed the extent to which the country there is settled up and used for farming purposes, in a general way, referring to the parts of the county with which he is familiar. He knows that there are a lot of railroad lands

involved in this suit, in the Mohawk country and some in the McKenzie. He does not know where they all lay, or anything about that. He has never run any lines. He knows something about the general character of the soil through the foothills and in these little valleys, that he speaks of, and knows some of the Booth-Kelly holdings in the Mohawk basin, and a little on the Mill Creek country, but not a great deal of it. He does not know anything as to the railroad lands particularly. He knows as to the lands that lay near the valley along the foothills there, and does not know whether they are railroad lands or government land, or what they are. He does not really know anything about the townships, but he could point out the little streams on the map, Defendants' Exhibit 259. He has been on Mill Creek up perhaps a half or three-quarters of a mile above the Wendling Mill, and that is as far up as he has ever been on that stream. He has been on the Shotgun and in above Shotgun and across the ridge, and down to the Calapooia, McGowan Creek, and some of these little creeks, and all of those little tributaries that come in from the west; and has been on almost all of those little streams that flow into the Mohawk, and also on the east. He has been across the mountain on the McKenzie river. He has been off the stream, going both sides, principally on the north side of the stream. He has bought cattle on Lost Creek, the Pleasant Hill country, up on the Coast Fork, out in on the headwaters of the Siuslaw, and down on the Siuslaw and along the Coast; and along the Siuslaw westerly through Lane County to the Coast.

He has not been up and down the main Siuslaw River, but simply along the road down as far as Mapleton, at the head of the south tide, and some of these little creeks that come in there. In the Mohawk country, he thinks as far back as he has been up those creeks and over those little ridges and breaks, he would say that perhaps fifty per cent of that would be suitable for agriculture when the timber and brush is taken off. The balance of the land there could be used for grazing. Some of that land is fairly good for grazing. He does not know anything about the odd or even sections, but he speaks of the land as a whole and with reference to the country generally. He has seen a little of the difficulties that encounter the settler in the removal of stumps and clearing of land of brush, and preparing it for cultivation; but he has not had any experience in the hills himself, but has had some experience elsewhere. Some of the land that he had experience with was formerly heavily timbered. Usually on the best soil one finds the best timber.

Q. Now, bearing in mind your previous testimony as to the proportion of this land that might be used for agricultural purposes, I will ask you whether, in your opinion, based upon your own experience individually and also upon your observation of the experience of others in that vicinity, whether in those localities with which you have become familiar, a settler could maintain himself and family upon 160 acres of that land?

A. Well, yes. It would depend something upon the man, I think.

Q. That is true in all new countries, is it not, Mr. Pengra?

A. I think so, yes.

Q. It is only the hardiest who really reduce new countries to cultivation—isn't that true?

A. Yes.

Whereupon witness testified, that the lands along the Siuslaw, back from the river, are very abrupt, a great deal of it. In the upper part of the Siuslaw country they are not so steep, not so abrupt. He does not know much about the lands along the main river back from the river, except on the headwaters of some of those tributaries of the Siuslaw. Some of those lands are good agricultural lands, while there are a good many of them that are covered with timber, some of them are under cultivation. As a general rule lands that are covered with good timber are susceptible to cultivation. Whereupon, on cross examination, witness testified, that he had lived in Springfield a good many years, that as a stockman going over the timbered portions that he has mentioned, he was buying cattle. The people he bought from ranged their cattle in the mountains, principally in the brush, and ranged them over the outside lands, principally, adjoining their places and he supposes over the railroad lands the same as the others. He does not know how much country these cattle did range over, sometimes the cattle would range back for two, or three, or four miles. He does not know that the cattle during part of the season ranged in the mountains. He thinks

they would turn the cattle outside and let them go with their calves and get them back in the fall, that was the common way of doing it. Some of these cattle were branded, some were ear marked. They were branded, or marked, with some mark. He does not know that these people made their living altogether that way. They all had a little stock; some of them made shingles and cedar posts and had a deerskin or two to sell occasionally. They had gardens and orchards. Most of these people were on the streams and some of them were on the benches back of the streams, but most of them were on the streams. He had noticed abandoned claims in his travels through this timbered country, but he does not know whether they were on even sections or on homesteads, or whether they had gotten title or not. A good portion of the timber in that country was good merchantable timber and some of the Siuslaw country had very fine timber, and some had no timber at all, part of it having been burned off. The fifty per cent of this land that he had stated was agricultural, in the territory over which he had been, includes such land as has soil that could be put to some kind of cultivation if the timber were off, and that is the way he classified it. There is none of that land that is extremely level, it all has some little slope to it, there would be benches and then a little steep place, and then a bench, maybe a little slope off to one side or the other, whichever way the land happened to lay. He could not say that fifty per cent of the railroad land would be agricultural, but he thinks all the land that he passed over, whether even or

odd sections, would be about fifty per cent that would be agricultural lands, when the timber is removed. Whereupon on redirect examination witness testified, that the general character of those foothill lands are rolling and broken, and whether the hills are large or small depends on how near one comes towards the summit of the ridge; in some instances the ridges lay near the valleys and the hills would be more abrupt. Where the main ridge breaks back, the hill would be more gentle in its slope. While it would not perhaps be level there may be level places, practically level. But there will always be some slope to it; there will be little benches, ravines and hills. In some instances in the unsettled portions of Lane County the roads follow the streams; as a general rule though the roads follow the little ridges. In making trails through these foot hills, it is easier to make a trail over a ridge, or follow a ridge and backbone of a slope that comes down from the ridge than it is to follow the creek, from the simple fact that there is more or less fallen timber in the creek bottom, and the ridges are more accessible. These roads are not for the most part so abrupt as to be inaccessible. The lands that he passed over have been along the Mohawk Valleys, or near the Mohawk Valleys. He does not know whether the Booth-Kelly Lumber Company owns any part of these lands or not, but he supposes they do. They do at Wendling, he knows. He does not know anything about the description of the railroad lands, nor where they lay. In this general territory, concerning which he has given an estimate of the agricultural lands, he

does not know what are or what are not Government lands, railroad lands, or Booth-Kelly lands, or what the ownership of the lands may be.

Whereupon W. A. RENNE, called as a witness on behalf of complainant, being duly sworn, testified that he is forty years old; lives about three miles west of Walker Station, in Lane County, Oregon, and is a farmer by occupation. He has lived in Oregon since the winter of 1887-88, and before that lived in Illinois. Referring to Defendants' Exhibit 259, he is acquainted from Creswell west, on Camas swale, the country that is situated over on the headwaters in the Siuslaw country. The Camas swale is around Creswell and west. Creswell is in township 19 south, range 3 west, and the Siuslaw country mentioned by him is west of Creswell, extending over as far as Loraine, but he has not been west of Loraine to speak of. He has been south of Loraine as far as Drain, but has not been over the lands of the company northwest of Drain to speak of, but has been over these lands indicated in green north and east of Drain; from the railroad clear back down to Creswell, in this general community, in townships 19, 20 and 21 south, ranges 3 and 4 west, and practically he has been over all of it, hunting and trapping. He has lived at Walker about twenty-five years, and engaged in farming. He owns one hundred and twenty acres altogether, which is about three miles north and west of Walker. One forty is in section 30, one in 29, and one in 32, all in township 19 south, range 3 west. He has about six acres that he plows now, besides possibly an acre for

garden, such as that, and his land is all under fence. He is acquainted with the agricultural possibilities in that vicinity concerning which he has testified, also about the possibilities of the soil in producing crops, and the necessity of clearing.

Q. Now, in your opinion, Mr. Renne, what per cent of the 160-acre tracts of land in this area that you are acquainted with would be suitable for settlement; that is, that a man could go on there and farm them and make a living?

Q. On a 160-acre tract, taken by legal subdivisions of forty acres, but not by a quarter section?

A. I understand you he is to take four forties that are adjoining each other.

Q. Yes.

A. It don't make any difference in what shape, or anything like that?

Q. No.

A. Well, I think in this territory that I have been over, that 75 per cent of it could be utilized that way.

Whereupon witness testified that a part of this territory is settled upon by people engaged in agricultural pursuits and raising fruit—is quite a fruit country, and there is a large orchard there in that vicinity. He could not say positively as to the sale of orchard lands around Creswell, only what he has heard, that they are selling at prices ranging from $400 to $700 an acre. He makes a living on his place, and he thinks his place is just

about an average with the ordinary 160 acre tract that a man could select in this general country. He raises grain, hay, fruit, vegetables of different kinds, on his place, and the conditions as to the other lands in this area are the same as it is on his land. He keeps stock on his place too, goats, sheep, a few hogs, couple of cows, and chickens.

Q. What effect, if any, Mr. Renne, has the failure of the Railroad Company to comply with the conditions in the grant relating to the sale of these railroad lands to actual settlers at $2.50 an acre—what effect, if any, has that had on the development of that country.

A. I think if all of this land could be taken as in a body close together, different families, so as they would have neighbors close, etc., it would have been settled up, the most of this land would have been taken. It has kept the roads from being built into these places, schools, churches, etc., and if I understand the school law, it takes so many pupils to have a country school started —ten, I believe—I would not say positively but six to start a school, before they could have school.

Q. Don't the laws of Oregon require them to have ten pupils in a district before they can organize a school, and have to have six pupils in order to maintain the school?

A. That is my understanding, yes.

Whereupon witness testified that at Cottage Grove up the Coast Fork—that is what it is called in his

country—as far up as Black Butte quicksilver mine, he is acquainted with the lands shown on this map, Defendants' Exhibit 259, marked in green. It would be south and east as far as Black Butte mine, and then as far north from the Black Butte mine to Row River, which leads in east of Cottge Grove, and empties into the East Fork. This railroad that leads out from Cottage Grove follows up Row River, practically towards Bohemia, and runs through townships 21 to 22 south, in ranges 1 and 2 west, as shown on this map. He has trapped all over that country one winter, as far south as the Coast Fork, which goes up towards Black Butte mine. Black Butte is a quicksilver mine, but it not up towards Bohemia, it is south and west. He supposes the marking "Black Butte" in 23 south, range 3 west, is meant for Black Butte. The Coast Fork is the river upon which the Black Butte mine is situated, or just a little south of it. He thinks that territory there will average about the same as the other territory of which he has first testified with reference to the possibility of agriculture and suitableness to settlement.

Whereupon, on cross-examination, witness testified that he did not exactly get his knowledge of these lands by going over the streams and trails, but all over through the woods. He got it while he was trapping. He is not a cruiser, or a timber man, and he has not attempted to look at this land with a view of ascertaining how much timber there was on it. Part of this unsold railroad land is heavy timber, and other places not so much. He does not know what these heavy timbered quarter sections

are worth in the market; he has no knowledge on that subject. He owns 120 acres of land. Forty acres of it was railroad land which he bought from the company. He made application for the forty acres in August, 1901, and has paid out on it. He wrote to the company, and he paid $152 cash for the land. They listed it to him at $4.00 an acre on credit. It was timber land in part, fir and brush, all kinds of timber, pretty fair saw timber; part of it is still there. He has not sold any saw timber from his place. It is not too far away for sale of the stumpage for timber. It is about three miles from Walker. There is no sawmill right at the store. There is a sawmill west of Walker, and there used to be one at Saginaw—is yet, but these mills are not running now. The Booth-Kelly mill is away off east of Saginaw in the woods, and they flume their lumber down to Saginaw after it is sawed, and their planer is there. The mill would be quite a distance from his place. The saw timber that is on his land could not be very handily marketed and sold at Saginaw. He has never been offered a price for any of his saw timber and never offered it for sale himself. He has about six acres on his 120 acres that he plows, besides a garden consisting of probably an acre. He has raised on these six acres wheat and hay, a little hay on that, and he raised seventy-five bushel of wheat, machine measure, but did not raise any oats or barley or corn. He raised some hay on this, possibly three or four tons; timothy, velvet grass or mesquite, and some wheat mixed with it. He sowed this as an annual crop. He keeps two

cows, and has seventy-one goats at present, and they range on this brush land of his. He has owned his goats about six years, and sells the mohair from them. If he remembers right, they average somewhere between three and a half and four pounds of mohair per head. They are Angora goats. He got his start from a neighbor about a mile from where he lives, who had fifty head. His neighbor sold his place and moved down near Portland, and witness bought his goats when he sold out. Nearly all his neighborse in the country run a few goats. He has several neighbors located in there within a mile and a half or two miles. He could not say how many are settled within a township there, excluding the railroad and excluding settlements right along the railroad, and excluding Walker and the sawmill, and things of that kind, but there are quite a good many, two or three miles from the railroad, in the foothills, and some pretty good land, some hill land, and some fir timber. Some of these railroad lands are further back in the mountains, and some are not. Some are adjoining that that he bought; there are forty acres adjoining him right on the east, which will average with what he bought. Part of it is timber. This forty is all there is right in there. He has not talked with counsel for the Government about these drawbacks of schools and roads, and lack of settlement on these railroad sections affecting the development of the country. He looked up the school laws himself to see how the school law was. He used to be a director at his school and came to know in that way. He thinks that they can vote a school tax on these railroad lands if they wanted to support these

schools by voting a tax on the other lands just the same. These railroad lands are unfenced, and he supposes they could be pastured if one would want to turn out their stock on the range. A good many of these ranchers that are further back on the hills than he is, have a little stock, and they turn their stock out to range over any unfenced lands. There is pretty good timber on a part of these railroad lands in Lane County. Timber became an item of consideration in value for the timber alone, something like seven or eight years ago, he would judge, but could not say positively. The timber demand has been pretty active in Lane County.

Q. Now, do you know of some homesteads taken in these timber lands, by single men and others, taken for the timber, and then after they got their title by proving up or commuting, paying the cash in fourteen months, they sold out to timber people, got their money, and got $3,000 or $4,000 for them? Do you know of such instances as that in your county?

A. I know of one fellow that bought a tract. Now, I wouldn't say how much there was in it, possibly 160. And then he sold it out, but I couldn't say what he got for it.

Q. Well, he bought a relinquishment, did he, and then laid out a homestead on it?

A. I think it was Government land. He first homesteaded it, and then bought it in in a certain time.

Q. A certain time?

A. Yes.

Q. That is to say he entered it probably, and then commuted by paying the cash?

A. Yes, sir, that is the way he got it.

Q. And then he turned around and sold it?

A. He sold it afterwards, yes, sir.

Q. How long after he had commuted did he sell it? How long afterward?

A. I couldn't say whom he sold it to, or how long after.

Q. You know it was sold for the timber that was on it?

A. I don't know whether it was for the timber, whether they wanted it entirely for that, or for the land besides.

Q. Was it good timber?

A. Pretty fair timber, yes.

Q. Where was this quarter section?

A. It was in west of Walker.

Q. How far west?

A. I should judge five or six or seven miles; somewheres along there.

Whereupon witness testified that he thinks that principally all of the public lands of any particular value in Lane County have been taken. He supposes that they have been taken under the homestead or timber

entry, or in some way, by scrip, and the titles obtained from the Government in that way. He thinks that Lane County has as much timber as any county in Western Oregon. This timber is mainly away from the old settled portions and in the foothills adjoining the valleys, and in the Cascade Mountains and Coast Range. There is not very much of it down in the valley. He has never been a timber cruiser, but has been a farmer in the way of which he has spoken, and has also been a trapper for martin, coon, mink, skunk, anything like that that he could catch—wildcat, cougar—for the sale of their furs and hides. He quit the trapping business about five or six years ago. Before that he could trap successfully. These fur-bearing animals got pretty well trapped out in that locality, they were driven farther back into the mountains.

Q. Well, assuming that the record has that statement—we will not take the time to go back and find it—assuming now that that statement of fact is true, that these quarter sections have been sold at from $3,000 to $5,000 per quarter, good timber-lands in Lane County, that is, $20 to $30 per acre, and that there was no means of disposing of the timber except by cutting it down and burning it up, now, what would a farmer pay for that quarter-section in that situation, for the purpose of making a home of it?

A. I know of land there that, if I was able to and so as I could, I would pay $10 or $15 on acre for any day.

Q. And burn the timber?

A. Yes, sir, and burn the timber. That is what I have done with what I have cleared up.

Q. And you would do that, and then grub the land out?

A. All but lots of the large stumps; take out the smaller ones, or run goats on them and let them kill it out, and then rot out.

Q. What would you say open land in the Willamette Valley can be had for, that is absolutely clear today, and not influenced by the location of a city near it, like Eugene, but ten or twelve miles away from Eugene—old farm land, donation land claims—what would you say that could be bought for, or do you know?

A. I couldn't say positively just what it could be bought for, no.

Q. Don't you know that the bulk of the land in Lane County that is in the old settled portions of it, taken up under the donation law, fairly well improved and fenced, can be bought all the way from $50 to $200 per acre, at the present time?

A. I couldn't say positively.

Q. Well, isn't that about your recollection of it?

A. Something like that, I suppose.

Q. A great deal of the land can be bought for $25 an acre, where some of it is brush and hill, and covered with old improvements, and where there is about half

of it in cultivation. Isn't that true?

A. I think so.

Q. Well, a man would be better off to go down and buy some of this land than to go back into the mountains and buy a timbered piece of land, unless he wanted to buy the timber, wouldn't he?

A. Well, there is lots of it that would be better land than this cheap land would be, after he got it cleared, that is back in the hills.

Q. I know, but he would pay two or three times for it in getting the timber off, if he couldn't get the money out of the timber, wouldn't he?

A. Well, he could kill the brush and such as that out with goats and stock, and be making a profit off it while he was doing this.

Q. But he couldn't very well kill a fir tree that was six feet at the butt with a goat, could he?

A. Not large ones.

Q. A goat don't do much on a fir tree that is six feet thick at the bottom, do they?

A. No, sir. But you take small trees, a goat will kill it out.

Q. But the goat doesn't do anything to a sawlog or sawtimber?

A. No, sir.

Q. He browses on the shrubs and short brush?

A. Yes, sir.

Q. And will climb a stake and rider fence to get to it?

A. He will do that, too.

Q. It don't prefer the evergreen when it can get the other kind—hazel brush and things of that kind?

A. Well, he will take a bite of one kind, and just keep going that way—first off this and then that, and all over.

Q. But he don't bite fir trees, as a rule?

A. I can show you lots of them that has been bit in my pasture.

Q. I know, but he didn't bite a fir tree, that is a saw tree?

A. Oh, no. Fir brush I am speaking of—small.

Q. Oh, just little fir trees that are six or eight feet high?

A. Yes, sir.

Q. He would nibble at a limb as he went by to get a hazel brush?

A. And make a mislick at the hazel, and get the fir.

Q. Yes, but when it comes to clearing saw-timber, you don't use a goat to clear saw-timber?

A. A goat don't like saw-timber, no.

Q. He don't want to eat sawlogs?

A. No, sir.

Q. So all this talk about a goat clearing land is, that the goat is used to kill the shrubbery, and is useful on oak grub land after the oak grubs are cut down and the sprouts come up, to keep the oak grubs from growing up again?

A. Oak grub and vine maple and hazel—all such hardwood as that, that you will find in the hills any place.

Q. Yes, wherever you can cut the oak grub down, or the other hard woods, there are sprouts come up the next year, and the goat is good to keep that down, and will finally kill that tree?

A. Yes, sir.

Q. But it don't have very much to do with a fir tree—I mean a saw tree?

A. No, sir.

Whereupon witness testified that he sold his mohair last spring for thirty-seven cents, and the average price for the last five years has been about thirty cents, running from twenty-five to thirty cents on an average. He does not know how many goats there are in Lane County. He is a man of family, his family lives on these premises, but the children do not go to school; they are not old enough for school yet. They have a school there that he could send them to.

Whereupon on redirect examination witness testified that four dollars was the price placed upon this forty acres

of land that he purchased from the Oregon and California Railroad Company, but that he got a five per cent discount on that price by paying cash. This land was rolling, and adjoining the land that he is now living upon, and he is using it for pasture and such as that. The other forty-acre tract that he applied to purchase from the Railroad Company and was refused, adjoined just east of the one that he purchased. His father lives in section 30, township 19 south, range 3 west; the same section that the homestead of witness is in. His father came to Eugene in the winter of 1887-8, and lived in Eugene a year and a half, or right close to that, and then they moved out on the homestead of 120 acres. His father proved up on his homestead and has been living there ever since. His father's land was rolling, contained some timber, and some of it had to be cleared. Witness was about fifteen or sixteen years old when his father took up his homestead. The family consisted of six children besides his father and mother. Witness was next to the youngest of the children. His father made his home and living upon his homestead. When they put the house on his father's homestead they had to cut the brush out in order to get room enough to put a house in there. His father's place would average about the same as the other lands he went through in that country. It was not necessary to grub all the stumps out before grain can be sown on land that contains a timber growth. The six-acre tract that he is farming has large stumps left in the field and he plows around them, and is raising crops there every year, wheat and hay, and such as

that. He cuts his hay with a mowing scythe. Where the clearing is older the ground has been grubbed out, except the large stumps, and that is cut with a mowing scythe. He cut his wheat this season with a binder, or rather his neighbor did for him, around these stumps that are in the smaller field. His father has about ten acres of land under plow on his place. Stumps are removed by settlers in that community in various ways. Some blow them up with powder, and others by what they call pitting, burning them out; get a fire started around the base of the stump, and keep piling on stuff until one gets a good fire started, and then cover it over with dirt, and keep it covered until the stump burns out. That is called char-pitting, and involves only labor, attention to the fire after one gets it started, that it don't break out; keeping it covered, smoldering in there until the stump has burned out. This soil is productive.

Q. About what would be the average of land that could be made susceptible to plowing on this tract that your testimony has covered, that is, on each 160-acre tract? I am not speaking now of your homestead, Mr. Renne, but I am speaking of the entire tract that your testimony in chief covered.

A. You have reference to the amount that actually could be plowed, if it was grubbed or cleaned up?

Q. Yes.

A. I should judge about thirty-five or forty per cent of it, right around there close.

Mr. Fenton: What do you mean? Right around

close to those figures, or close to your place?

A. Close to the figures—35 or 40 per cent of the land.

Whereupon on recross examination witness testified that he could not state the year that his father took up his homestead, but that they lived in Eugene during the winter of 1887-8, remained there a year and a half, and then moved out on the homestead. He has not figured out what year his father took up his homestead, but if it was in 1890 witness would have been about eighteen years old at that time, and was the next youngest child in the family, and there were six children, three boys and a girl older than himself. He could not say as to whether the older children were of age when his father went out on the homestead. A sister was next older than he, and there were three brothers older than this sister, and he supposes there were two years' difference in their ages, but could not just say, and the three brothers were practically all men grown when his father took this homestead, and stayed with his father on the place, assisting him in the work, and did not work out very much. These brothers slashed the land, rolled the logs together and burned them, and did such work as that. He had one sister two years younger than himself, who lived on the place with his father and mother when they went to the homestead. The girls helped work around the house, but did not work in the field. His father now has on his homestead about ten acres that can be plowed. The balance of the land is brush and timber, which he uses for pasture.

Q. So that your father, with three grown sons and yourself, 18, or about that, after being on that homestead twenty-two years, has succeeded in clearing ten acres? That is right, isn't it?

A. Well, it didn't occupy all these twenty-two years to clear that.

Q. I know, but that is the fact? You have succeeded in clearing ten acres?

A. Yes, sir, that is what is cleared there.

Whereupon witness testified that his fathers' homestead is about four and a half miles from the railroad by wagon road, the nearest station being Creswell. Walker is about the same distance. Creswell is just a small place. He does not know its population in 1910; probably about four hundred people living there in 1910 —he couldn't estimate. Creswell is his father's trading point. Witness trades at a store at Walker; there is just one store and a few dwellings and a post office at Walker.

Whereupon on redirect examination witness testified that his father's place has been under cultivation, he should judge, ten years anyway. He and his brothers are married and have been living away from their father's place for some time; all of the children have been. Witness left his father's place and has been working for himself for the last twelve or fourteen years, and some of his brothers left his father's place before that.

Whereupon C. L. STANDINGER, called as a wit-

ness on behalf of complainant, being duly sworn, testified that he is thirty-nine years old, and his post office address is Molalla, Route 2, Clackamas County, Oregon. He has been in Oregon fourteen years, and has lived in Clackamas County thirteen years, in section 6, township 5 south, range 3 east. About the first half of the time he has been in Clackamas County he was in saw mills, and the balance of the time on a farm. He owns 108½ acres of land in Clackamas County, upon which he lives at the present time. He had owned more. The other land that he owned was adjoining this, and part of it was some that he bought from the railroad company in 1900, in section 11, township 5 south, range 2 east. He purchased from the railroad company eighty acres at $4.00 an acre, by installments, in section 11, township 5 south, range 3 east. He had a little saw mill on it and made a failure of it and sold the whole thing. He intended to make a farm of it, if he could. The present land that he owns he purchased from W. O. Vaughn. It was originally a donation land claim—more or less timbered. Vaughn logged the timber off and he bought it as logged off land. There was no land in cultivation at the time he purchased it, no improvements whatever. He paid $6.00 an acre for it on October 2, 1907. He has slashed about eighty acres of that land, and has had about ten acres upon which he has raised two crops. He slashed the underbrush and stuff, and bad timber that was left after they got done logging, burned it, fenced it and seeded it, and this grain which he raised was where there were small stumps. The land lays so he could

swing a cradle over it, and where there were big stumps logged off, he cut around them, cut a crop of wheat on them. The next year he had hay and cut it with a scythe. He is now grubbing the stumps. The first year he stayed at the saw mill near by, until he had money enough to build him a house, and the place has been his home ever since, and he has made his living from that land and he has had no other means of support than that furnished from this land. He had about sixty acres of this land slashed, everything that the loggers left was cut down, except some of the large doty trees, that is, more or less decayed, that the loggers did not want. He left these big ones standing, and anything smaller was felled. Then the land was burned over, then fenced and then seeded to timothy. As to the ten acres there, he piled the stuff that didn't burn and went in there with a shovel and plow, and tore up the ground and seeded it to wheat. He raised 35 bushels of wheat to the acre off of that, and the next year he seeded that to oats and vetch, and raised 25 tons of hay off of it this summer that way—cut it with the scythe. He has now grubbed thoroughly in there, and he is pulling the smaller grubs, and leaving these big large ones that the loggers left where they fell. The loggers took everything from two feet up, and all those big stumps he left there scattered on this part. He has picked the place where the timber was lightest to begin with naturally, and he is pulling the small stumps and leaving the biggest ones. He can plow around them and drive a binder and mower around them. He is familiar with the business of farming in this general com-

munity in Clackamas County, in the timbered land. Referring to Defendants' Exhibit 259, he lives in section 6, township 5 south, range 3 east, and in the west half is where he owns his land. He has worked on a farm two summers just west of there. It was a home place. It was the Charles Cutting donation land claim. In the saw mill he worked in sections 11 and 12, township 5 south, range 2 east, where these two mills were located. He has been around there all the time, and is familiar with the country for several miles around there — he would say five miles in all directions. He is acquainted with townships 4 and 5 south, ranges 2 and 3 east. He lives at the intersection of these four townships, and the different parts of these four townships he is familiar with. He is very well acquainted with sections 7, 5 and 31, in township 4 south, range 3 east; sections 5 and 7 in township 5 south, range 3 east, and these little tracts marked in green in township 5 south, range 3 east, he is familiar with. He has a general knowledge of the remainder of the land in these townships, and has been over them sufficiently to acquaint himself in a general way with the growth on them and the character of the land and their agricultural possibilities. Most any tract there of 160 acres of these unsold railroad lands would support a family. He does not think one could pick out 160 acres there that would not support a family, and these lands would be suitable for settlement.

Q. Mr. Standinger, what has been the effect of the railroad company's refusal to comply with the terms of the grant in selling to actual settlers in 160-acre tracts,

at $2.50 an acre, if you know, in that community that your testimony covers?

Q. Do you understand the question, Mr. Standinger?

A. Yes, I understand the question. Do you want an answer?

Q. Yes.

A. Well, it has in various ways. One way it has retarded our schools, inasmuch as the schools draw money according to the number of pupils. And there are people in there that would have bought land if they could get it. It has kept settlers out, and kept our schools back. There is a sawmill there now that has practically logged off—no timber handy unless it would be railroad timber; there is a little of that probably they could get—they are moving out of the country. This is an industry out of the country. That is handicapped too. If the settlers had it, they would have cleared off this logged off land, and improved it, and it would be more valuable with the improvements on it, and the stock and everything, than it is now. And there is everything that would have been in favor of improving the country if we had more settlers there.

Q. About how much plow land could they get on a 160-acre tract, a settler on this railroad land?

A. Oh, there is no 160 but what you could get 25 per cent. Some of it considerably more.

Q. Are similar lands settled upon and made homes

of in this vicinity, other than the railroad lands?

A. Yes, sir.

Whereupon, on cross examination, witness testified that his home is situated in the west half of section 6, township 5 south, range 3 east, which he purchased from W. O. Vaughn. The title passed through three or four hands. It was originally the Andrew J. Cutting donation land claim, or a part of that claim. He bought 80 acres in section 11 from the Railroad Company, which was in township 5 south, range 2 east, and he thinks it is the east half of the northeast quarter of section 11, or the west half, he would not be positive now. It is not improved. The man that bought it just fenced it and makes a pasture of it. He bought it himself from the railroad first, contracted for it in the year 1900, and agreed to pay $4.00 an acre, and owned it five or six years before he sold it to the man who now owns it. He sold it with a little saw mill and some odds and ends for $750. He didn't really get any more out of the land than what he paid for it—it was practically a forced sale. Only a garden patch on it has been cleared since he bought it from the railroad company. The present owner does not live on this eighty, he uses it for pasture. It has a house and two barns on it, but the present owner never lived on the place. He uses it for a camp there some times in the summer, and to keep stock there all the time. These stock do not range outside over the country generally. When they are not there the owner has them on his own place. It belongs to W. A. Shaver at Molalla,

who is a large stockman there. Shaver has a large place at Molalla of about 160 acres, probably not that much. He has cattle and a few sheep. Twenty-five per cent of these railroad lands in that vicinity with which he is familiar in those two townships, some four or five miles east of where he lives, up the eastern boundary of the township, with which he is familiar, could be plowed after the timber is cleared. Some of it is in burns, that is, some of it could be plowed without taking the timber off. It is burned in patches. There may be eighty acres there that would have four or five acres burned, and just a little fern, a little undergrowth, four or five acres of timber and then a little opening which is burned in patches. These open places would be very easily cleaned. There are lots of places there where there would be forty acres, half of which would be easily cleared that way, and the other half would be spotted. These open places in these burns that are free from timber, that would not require clearing, are scattered over the different quarters.

Q. And are they small parcels, three or four acres in a spot?

A. Oh, there will be more than that in a spot. Those burns they are irregular. Those burns will cover perhaps thousands of acres, and they are irregular, you know with spots of timber here and there in them. There are farms scattered all over these burns, small farms. People, of course, cannot clear the whole place in a few years. They have houses scattered, lots of houses and

small farms, with a few acres, up to ten or twelve or fifteen acres. Farmers work in the saw mills but very little. Sometimes the young men that are just about coming of age will work in them, but the regular farmers do not depend on saw mills and do not try to work out, they have enough to do at home. They raise hay, wheat, oats, barley, have a few cattle to milk, some hogs and sheep. Some of them have goats where they have land that is brush land. They haul their stuff to market at Canby and Oregon City. Canby is fourteen miles away; Oregon City is sixteen miles. Molalla post office is six miles from his place. At Molalla there is a hotel, restaurant, three stores, a creamery, and a number of residences, two blacksmith shops. It is not on the Molalla River, but is about three miles from the river south. He thinks Molalla is situated on a donation land claim, but is not positive. Most of these donation land claims were taken there from 1845 clear on to the end, until 1873, till the time came when they could not get any more land there. These railroad lands of which he speaks, are within four or five miles of where his place is in section 6, township 5 south, range 3 east, and it is hard to say what these railroad lands in their present condition, the best of them would be worth—the value of the timber as well as the land. He thinks there are lots of people who would pay $20 an acre for some of it. There is a market for the timber off of these railroad quarters that have timber on them. This market would be at Hult's sawmill at Colton and at Mulino, and the Schafer Lumber Company at Meadowbrook. These three mills could

buy. There has been a mill down near Canby, the Adkins sawmill, but that is sold, and they have quit running logs on Mill creek. In fact, they could not get any more, about all is tied up in the railroad land. They could not get them. These mills would have to stop running unless they could buy timber from somebody. The Hults mill has some outside timber situated along Mill Creek. Some is all felled, piled, and ready to put in the creek on the half of section 6, in the same section in which he is. The timber is just normal, and they pay stumpage for this timber around about a dollar a thousand. They leave the land with lots of trees that are too small for logs, lots of them are rotten and doty, and occasionally a white fir or hemlock that is not merchantable timber, and lots of underbrush. They cut these large trees above the pitch in the stump, which runs all the way from three feet to probably ten feet, and they use a spring board on the big ones; on the small ones, two or three feet in diameter at the butt, they cut without the spring board. These forties are good for that country, or the average for that country, and would average perhaps four hundred thousand feet. He does not know how much per acre the best of it would run, but he has in mind one eighty from which they have taken two million feet in that neighborhood, in section 12, township 5 south, range 2 east, which would be about a mile south and a mile west of section 6 in which he is. There has been a pretty good market for timber there. If he were to buy one of these quarter sections that had a stand on it of 400,000 feet to the forty, or 1,600,000 feet to the quarter section,

or 2,000,000 feet board measure to an eighty, the first thing that he would do to get his money out of it and make it profitable, would be to try to sell the timber. Whether he could sell the timber for a dollar a thousand stumpage would depend a good deal on the location. He might get that, and he might get only 75 cents, depending on how close it is to a mill or creek or river. Most of these tracts of railroad lands there could be logged off and the logs sold to some of these mill people. If he had an eighty acres thus situated, that carried two million feet board measure of saw timber, and could sell it for a dollar a thousand, that would be about two thousand dollars for the eighty acres, and some of these quarter sections would be worth from two thousand dollars to four thousand dollars for the timber that is on it, that is the best ones. If the company should sell a quarter to him as an actual settler at $2.50 an acre, he would get today two or three times his money back, or five times his money back out of the timber, but if he had bought the land seven or eight years ago, he would not. There was no market for timber seven or eight years ago. The market for timber lands first came to his knowledge about the time he bought his piece of the company in 1900. The character of the market for timber since that time has been improving all the time. Twenty years ago these timber lands were worth from $2.50 to $5.00 an acre, depending on location, for agricultural purposes, that is a man would go in there and buy the land and clear it a few acres each year. The percentage of agricultural land would average better than 25 per cent; the poorer

ones would run about 25 per cent; some would run much better. He knows of homesteads taken around in that section there in this timber land. There is the old White homestead and the Beasom homestead. The White homestead is in section 7, and the Beasom homestead in section 6-9, but he does not know how long ago they were taken, but quite a number of years before he came to the country. This timber about which he spoke as just felled and ready to put in the creek, is off of the Beasom homestead—these two million feet. The homestead was 160 acres. They live on that place there and have a farm. He could only guess how long that homestead was there before he came to the country, but it was long before he came. There are donation land claims right up next to these homesteads, and there are donation claims further up in the mountains than this, still beyond this, on the streams. He is a man of family, and he has not worked in the sawmill or in any other business outside since he has been living on his land. He went on to his place to live in February, 1909, three years ago. The reason he did not go on the place before that was that he had to work and make money to pay for it. He could make a living on the place and pay for it after he had a house built and the slashing done and the grass started to grow, but naturally a man has to have money to invest in any business. Take the land in a state of nature with no money, he could not do anything, and no one could. A man would have to have a little money to clean up a little and get started. That is, he had to go and work out and get some money to pay for his place and to help

improve it before he could go on it to live.

Whereupon on redirect examination witness testified that that big burn is just above him to the east. This section is about the edge of the big burn. That is the reason the timber there is in patches. It is in the edge of the big burn, and the edge is irregular. Take some quarters in this burned area and 50 per cent of them would be easily cleared. Other forties there would be very little burned—they vary. He is more or less acquainted with this area in this big burn, which is located around Colton. Colton is two and a half miles east of him, and is the present post office. He thinks Colton is marked on Defendants' Exhibit 259. What is known as old Colton would be about five miles away. The post office is changed here now—pointing to a place just above James, which is at about the corner of sections 3 and 4, township 5 south, range 3 east, on the line between sections 3 and 4, township 5 south, range 3 east. He would say that that burn with reference to that, runs off northeast and then comes off from Colton and runs up on a big hill. He has never been up on the top of the hill, and does not know what section it is in. It would run up there five or six miles or more, maybe ten miles up on the hillside, up on the mountain in section 2, township 5, up to about 4 east. There is a lot of good farm land there. The eastern portion of it is on the side of a mountain—it is poor land but will do for grazing, but not for farming. The remainder of the land other than the plow land of these 160-acre tracts, would make good grazing land. There is a creamery at Molalla, and the dairying industry is thriving in

that community. They have started a corporation at Colton, and a year or two, as soon as they get more capital, they are going to start a creamery there locally. That is a good dairying country, and dairying has been one of the leading industries on the farm.

Whereupon E. E. QUICK, called as a witness on behalf of complainant, being duly sworn, testified that he lives at St. Helens, Columbia County, Oregon, and is fifty-nine years old, and has lived in Oregon since 1862. His father first settled in Washington County on what is known as Chehalem Mountain, and witness has lived in Washington and Columbia counties ever since. He does not actually know in what township and range he lived in Washington County. They lived on what is called East Dairy creek. He was a young man at that time and did not pay much attention to that. They moved from Chehalem Mountain to East Dairy. They lived about two years in Chehalem, and the remainder of the time on East Dairy creek for about seventeen years, until 1880, and then he moved to St. Helens, Columbia County, Oregon. He was married about that time and removed to Columbia County, where he has lived ever since. His first official position in that county was that of county school superintendent; afterwards county clerk, and he has been county treasurer. He holds no official position at the present time. He has been in the abstract business for about seventeen or eighteen years, and has township plats and everything of the different localities of the county, and has traveled and been over different sections of it; often goes

out hunting and fishing, things like that, through different sections of the county, and this abstract business has brought him in touch with the general history of the development of that county, and he thinks he is acquainted with the general character of the soil and the lay of the land. He is acquainted in a general way with the lands in the townships in which the railroad lands involved in this suit are situated in Columbia County, and particularly in township 4 north, 2 and 3 west; 3 north, 2 west; and more particularly 3 north, 3 west. He also knows some in township 5 north, 2 and 3 west. He has been over these lands to some extent, out through that section of the country different times, over the county roads and on to some of the lands. One might say from his knowledge of the abstract business that he is more or less familiarly acquainted with all the entire county, that is, different portions of the county. He lived on a homestead there himself, which he took up in 1884, and which is in township 4 north, range 1 west. He lived on his homestead there about four years, made it his home and cultivated it, and was able to make a living off that land. He was elected county clerk in 1888 and left it on that account, but his family lived on the place until he made final proof. He commuted the homestead and made final proof before his family left the place. He then moved into St. Helens, but he owned the place for a number of years after that. He cleared up quite a good deal of it while he owned it, probably forty acres of it is cleared, and possibly sixty odd acres of it slashed and fenced. He fenced the entire 160 acres. By

slashing, he means that he cut down the large timber and the small timber, cut the small timber and brush first, and then felled down or cut down the large timber and burned it, and seeded that to pasture. He left the stumps in the ground, that is, in slashing. He removed the stumps from the forty acres that he cleared. There were probably three or four acres of a swale in one place of small ash timber on that land. He included in that quite a little bunch of fir and cedar, which was pretty thick. The cedars and firs ran from two feet to three and four feet in diameter. The entire place was covered with timber. There were three or four acres of swale that had ash trees on it, and the balance of the land was fir and cedar. Some of it was merchantable saw timber. He sold some of the timber to a mill, some of the standing timber, but that was after he had made final proof on the place and got his patent. He sold it to a mill company and they logged off part of it. He had made quite a slashing before they had done anything. The timber that he felled and burned was much the same in character as that which he afterwards sold. In the early days there was no market for the timber. They did not consider it of any great value at that time. The practical method of making use of the land for agricultural purposes throughout his whole neighborhood and country there, was to clear the land up and get it into cultivation. Nearly all of the railroad lands involved in this suit in Columbia County are in the townships with which he is particularly well acquainted. In other townships there are only a few acres in each township, with the exception

of one township where there are two sections of railroad lands. In his opinion, there is about 70 to 80 per cent of that land in these townships with which he is acquainted, speaking now with reference to the land generally as a whole, and including the railroad lands, that can be used for agricultural purposes when the timber is removed, and he thinks it would be a good investment for a farmer to pay for the removing of the timber and the clearing of the land for agricultural and horticultural use.

Q. In your judgment, basing your knowledge, or basing your answer upon your knowledge as to the general character of the soil and lay of the land, the difficulties that would confront the settler in the way of clearing the land and preparing it for use—in your judgment, could a settler maintain himself and his family on one of those quarter sections of railroad land within those townships?

A. Well, if he is a man without any means, the first year possibly he might not do that; but when he had cleared up two or three acres of land, why, he certainly could do it, I believe.

Q. After he got started in the way that you have described, what would be the practical thing for him to do with reference to extending his clearing, if anything? That is, I mean now in your own language describe in a general way how a settler should go about it, after he went upon the land, to put it into cultivation and get the best use of the land for agricultural and horticultural purposes?

A. Well, of course, he would have to build his house and get some place to live to begin with. Then he would go to clearing the land and putting it in vegetables and things of that kind, small tracts at first, and afterwards sowing grass and planting out fruit trees; and fruits of all kinds grow well in that section of the country, in part of that section of the country; and grass and things of that kind grow well.

Q. Well, now, that is what I meant before when I said agricultural and horticultural use.

A. Yes.

Q. You limited your answer to agricultural use.

A. Yes.

Whereupon witness testified that apples do well in there, especially Northern Spy apples do fine; pears do well; cherries do quite well; strawberries grow excellent, they have excellent crops of strawberries anywhere in that section of the country, out where this land is located, amongst people who are living in that vicinity; loganberries, blackberries, raspberries, and in fact all kinds of small fruits; and prunes do as well as apples and pears. They cannot raise any peaches in there. Clover does well on that hill land—clover and orchard grass. Timothy does not grow so well on the upland as it does on the bottom land, but orchard grass and clover grow well on that upland, which they call the hill land. It is all good for fruit and vegetables. The climate is favorable for these different kinds of vegetable growth that he has mentioned. It would probably be unpleasant

for the purposes of a home in some instances, because rather isolated, and because there are not a great many settlers through there. But about eight miles from St. Helens, out in township 5 north, 2 west, is what is called the Western Cooperage plant, where they bought up a number of homesteads in there; and people have proved up and made final proof on their homesteads; they have a splendid school, a little store and postoffice, and they are selling that land in there that they bought from those settlers, after getting the bolt timber—they were in the stave business, after getting the bolts and stuff of that kind, they were selling that land at $60 or $70 per acre, about seven or eight miles west of the river; that is, after getting the bolt timber. That is, they were in the stave bolt business, and they cut out the yellow fir. They are barrel manufacturers. He supposes that their business took out 75 or 80 per cent of the timber. It is clear stuff that they use principally, and it possibly might not go that much. That would leave plenty of fir for home use or anything of that kind, and the balance of the land in stumps. They have been selling that from $60 to $70 an acre, some of it, but some of it had been cleared by these settlers, had been cleared up and farmed for a number of years, and they are selling that land at about $70 an acre. The purchasers are making little homes of it in ten, fifteen or twenty acre tracts, and are living there. These tracts are cleared, and are large enough to maintain a family. He is familiar in a general way with the manner in which the railroad lands have been handled in that vicinity, as to being sold or withheld

from sale.

Q. I will ask you whether, in your opinion, the manner in which the railroad company has sold the lands or withheld them from sale has retarded or promoted the development and settlement of that country?

A. I would say that it had retarded the development and settlement of the country.

Q. Well, substantially or otherwise?

A. Well, I should say substantially.

Q. I will ask you to state whether, in your judgment, if the lands that we have been referring to as railroad lands in those townships that you have referred to and which are involved in this suit, had been disposed of to settlers, or should be disposed of to settlers now, would that territory or would it not become settled and populated by settlers?

A. I think it would.

Q. You said, in answer to a former question of mine as to whether it would be a pleasant place for a home, that some places would be isolated. Would that condition be the same if these railroad lands should be turned over to settlers?

A. No, sir.

Q. I will ask you whether, in your judgment, the withholding of the railroad lands from settlement has had any effect upon the settlement of the intervening even numbered sections?

A. Well, I would think it would have had some effect on it, possibly.

Q. How, with reference to the establishment of roads and schools. What effect has the withholding of these lands from settlement had in that respect?

A. Well, it has not tended to development or building of roads and schools, farther than what it has contributed in tax. The railroad company are probably taxed for the land. They might have used the tax on the roads to some extent.

Q. Do you know, as former school superintendent, that a certain number of pupils are required in order to establish a school and maintain one?

A. Yes, sir.

Q. Now, are you familiar with any of the other parts of Columbia County that are similar to that part of Columbia County where the railroad lands are situated?

A. Yes, sir.

Q. Do you know of similar lands being settled upon in the other parts of the county?

A. Yes, sir. Take the Nehalem Valley, for instance; that is in Columbia County—quite a good deal of the Nehalem Valley. That was heavy timbered lands, and it has been settled up along the river and on the hills. There they have established schools and built roads, and have some of them made some good farms—especially in the bottom lands, where the clearing possibly would

not be so heavy. There would be some tracts, maybe, the timber would be scattering on the bottom; but the hill land is heavily covered with timber, and they have good schools and good roads in that Nehalem Valley.

Q. Do you know of any instances where the lands adjoining the railroad lands involved in this suit are in the possession of settlers and being used for the purpose of settlement?

A. I can call to mind just at this time about one place owned by Mr. Grand. If I remember rightly, he is really on a railroad section. And he is making a good living there on the place. It is on Scappoose Creek, and of course he has some little bottom land, but most of his land has been timbered hill land.

Q. You mean it was formerly a railroad section?

A. I think it was, if I remember correctly about it.

Q. That the company had sold?

A. Yes.

Q. You don't mean it is land involved in this suit?

A. There has been a few tracts sold by the railroad company in early days up in the vicinity of Scappoose.

Q. But that is not the land involved in this suit that that man lives on?

A. No; but it is adjoining the railroad land, other railroad land.

Q. Now, these instances where you know of the land being cleared of heavy timber, either by slashing, as

you have described it, or fully cleared by removal of the stumps, are they of rare occurrence, or are they of frequent enough occurrence so as to indicate that the same could be done as to the other lands?

A. I would say they were frequent enough to say that could be done with other lands.

Q. At the present time the settler would not have to burn the timber? It could be sold, couldn't it?

A. Why, in a great many instances, I believe it could be sold, anywhere near any of the logging camps. You see, in that county, there is a number of railroads running out into the logs, into the timber.

Q. You mean logging roads?

A. Logging roads; and anywhere in the vicinity of these roads, the timber could be sold to those logging camps.

Whereupon witness testified that most of these logging roads run down to the Columbia River, he thinks all of them run down to the Columbia River so that the logs could either be disposed of at the mills along the Columbia there, or towed in the Columbia to some market. The price of this land after it is cleared and put into shape for cultivation, speaking in a general way, depends somewhat on its proximity to the front. What he means by the the front is near the river or railroad. Land within six or eight miles, as he has before stated, is worth fifty or sixty dollars an acre after it is cleared of stumps. Of course nearer the front, one can scarcely

buy any cleared land for less than $100 or $150 an acre down his way. Further back it might possibly not be worth so much as that. His answer includes the slopes as well as the low level lands. The river runs almost north along opposite St. Helens, as shown on this map, Defendants' Exhibit 259, and these railroad lands that he has been referring to, are shown on the map, most of them, as in townships 3 and 4 north, ranges 2 and 3 west, and they extend from the river five or six to ten or twelve miles. Most of these railroad lands are pretty heavily timbered. Some of it he would consider good saw timber. His recollection is, that the stumpage, generally speaking, in there, is assessed at about two dollars a thousand. He does not think there would be any doubt of the ability of a settler to clear the land and make a home if he had the benefit of that timber, if he was anywhere near those logging roads to dispose of it. He might have a tract too far away, that he could not dispose of it. That is, he could not give assurance that his answer would apply to each individual quarter section. He does not think it would in every instance require 160 acres of that land to maintain a settler and his family, with the possibility of raising small fruit and vegetables and things in that section of the country. He could make a living on ten acres provided he had it in small fruits and things of that kind when that country is ultimately cleared and settled up, because he could get a market for it, and would raise enough on ten acres to support an ordinary family. He cannot say exactly that he knows where the McLaffertys and a number of oth-

ers represented by Mr. Lafferty, made what they claim to be settlements in there, and made application to purchase land from the railroad company; he cannot say that he knows exactly where those lands are situated. He does not think he has been up in there on those lands. He has not been there within the past four or five years, but he does not mean to qualify his former testimony that he is acquainted with that general territory. He has been over that territory quite a good deal, but not since this controversy arose.

Whereupon on cross examination witness testified that he sold the timber on his homestead in 1889, he thinks, to Wickstrom & Howard, and received a dollar a thousand for the fir and cedar, and did not realize over $500. These people to whom he sold were men that owned a little mill built on the corner of his homestead. If he had kept that timber until now, he could easily have gotten two dollars a thousand for it, and he thinks two dollars a thousand is the usual market price of stumpage reasonably accessible to logging roads or some means of transportation. The Chapman Timber Company has been buying quite a good deal of stumpage in there, and the Benson Lumber Company, the Nehalem Investment Company, and the Lamb Company, and several other companies have been buying timber lands through there. In fact, he has made a number of abstracts for the Benson Lumber Company and all of those companies. He refers to S. Benson, and he knew him well when he drove a yoke of oxen into St. Helens. He has made his money in timber lands and logging, a great deal of

it in Columbia County, and in buying timber lands and stumpage in Columbia County. He knows that Benson is interested in building in Portland.

Q. Now, suppose that these Lafferty people, who have attempted to buy this land from the railroad company, or made applications to buy it, at $2.50 an acre, should get a deed from the railroad company and a good title at $2.50 an acre, what would they be able to do with the best quarter section of timber that is situated in that group of claims or quarter sections that these clients of Mr. Lafferty have applied for? What would they be able to do with that quarter section—what could they sell it for?

A. Well, if it was accessible to any of these railroads, they could sell it for possibly two dollars a thousand.

Q. What would be the stumpage? I mean what would be the quantity of merchantable logging timber that the best quarter section of this land would carry—about how many million feet, board measure?

A. Well, I think there is tracts out there in that section of the country that will go six million to the quarter section. That is an exceptionally good one, though.

Q. What would they average, the timber land?

A. Well, take it all the way through, they would average probably three million.

Q. Now, if they averaged—if the best one brought six million——

A. That might be too large, but I am not certain about that.

Q. You are reasonably familiar though with the timber lands of Columbia County and the contents of these quarter sections?

A. Yes, sir. I have worked in the timber quite a good deal.

Q. And you have been in the abstract business, and in a general way have knowledge of what these timber companies are paying for these quarter sections?

A. Yes, sir.

Q. And other tracts?

A. Yes, sir.

Whereupon witness testified that the market for timber land has been pretty active for the last five years in Columbia County. These people of whom he speaks, like the Chapman Timber Company, are large concerns, buying a large acreage for the timber. If a quarter section had six million feet board measure on it, and one could get two dollars a thousand, that would be twelve thousand dollars for a quarter section. It would be pretty hard to say what would become of these timber quarters of Mr. Lafferty's clients if they got this title, that is, what would be done with them. They might sell the timber and reserve the land. If the lands were in close proximity to those of the Chapman Timber Company and these other large companies, they would probably be transferred to these large companies, and he

would say that it is probably the case in his county that substantially all the homesteads and cash entries and timber entries and entries under the timber and stone act, where they carry valuable timber, would probably be transferred to these large companies. He knows of a number of homesteads and pre-emption claims that were sold to these timber men. In nearly all instances the companies buy the title as well as the timber. There are a few instances where the land has been reserved. That is, there are a few instances next to the Columbia River, within four or five miles, where the owner of land wants to reserve the land and has some timber, and he sells the stumpage, as he did with his. He does not own his homestead now. He sold it about 1898 to William Skuzie, who is himself not living on the place but his son and son-in-law have divided the place between them and have been living there all the time. He would not say that all of these timber lands shown on Defendants' Exhibit 259 are within six to fifteen miles of the Columbia, there may be others beyond that. It would be about fifteen miles from St. Helens to the farthest railroad land. These railroad lands are on different elevations, and will range from eight to six hundred feet up to twelve or fourteen hundred feet, the highest point. These lands are in what one would suppose would be called the Coast Range, a part of the Coast Range. They are more or less rough, some of them, and some of them are gradual slopes; quite a good deal of that land is a kind of gradual slope. According to that map, Defendants' Exhibit 259, all of that land came to the company under

the grant of May 4, 1870, and the yellow field follows along north from Hillsboro about ten or twelve miles, almost in a body clear across that part of Columbia and Washington counties within the limits of this grant, with no railroad land either sold or unsold in that territory; that is, if that map is correct. He thinks the majority of these lands in yellow along the Columbia River, on both sides of it extended to a point three or four miles west of Yankton, with no railroad land either sold or unsold of any consequence in that territory, except a little over in Clarke County, Washington, if the map is correct. He supposes that Holbrook is in the area shown on this map on the Astoria road, just below where the United Railways turns out at Burlington in Washington County. Holbrook is just built down the river on the slough. Most all of this unsold railroad land in green is hill land, and there are some large burns in there, which was heavily timbered until these burns. There might be a section burned there. He could not say if any of Lafferty's clients have made applications on any of these burns, or that any one has made application to purchase any of these burns. He does not know who has made application, and who has not. Some of the burned land is owned by men that have taken up homesteads. There are a few settlements out there on the burned even sections, but there is very little. There are not over four or five claims in the burn. Most of them are homesteads; in fact they were all at the beginning homesteads. There is some dead timber, and a few cedars possibly, left on these homesteads. That burned

area is about ten miles away from St. Helens, near what they call Bunker Hill. It is pretty hard to say how many saw mills there are in Columbia County. There are two at St. Helens, one at Scappoose and five or six at Rainier, four or five at Clatskanie, besides one or two other country mills probably. He could not tell exactly how many there are. These saw mills are not all on the Columbia River. The mill at Scappoose is out near this railroad land, out towards up Scappoose Creek, toward the Chapman Timber Company, which has a logging road from that down to the S. P. & S., which crosses the railroad. Mills at Clatskanie are off the river a little ways, some of those mills are off the river. There is a Westport slough in Columbia County out of which logs are rafted to Portland. The Benson Logging Company logs in the Westport slough, or did log there, and he thinks Benson sold to Portland, and also rafted to San Francisco. He thinks St. Helens has about a thousand population now. Rainier is supposed to have the greatest population of any town in Columbia County—Rainier or Clatskanie. Rainier has about 1359 population, according to the census of 1910, and the population of the county in 1910 of 10,580, has increased some; he would think it has increased ten per cent in two years. St. Helens is about twenty-seven miles from Portland by rail. Goble is twelve miles below St. Helens, in Columbia County The Northern Pacific Railway Company built and operated its trains across the river at Goble, from Puget Sound to Portland about 1883, and it has been in operation up until the bridge

was built at Vancouver about two years ago. The Astoria & Columbia River Railroad, operating from Portland to Astoria, does not touch St. Helens. This road has been there twelve years at least, and the Northern Pacific operated all of its trains by way of Goble, across the Columbia River, between Puget Sound and Portland, until the bridge was built by it across the Columbia at Vancouver in the last three or four years. The Astoria & Columbia River Railroad Company has been operating trains between Portland and Astoria, through Rainier and a little west of St. Helens daily, and sometimes three or four trains a day, for the last ten or twelve years. Speaking of these lands as being agricultural, he means after the timber has been removed.

Whereupon, on redirect examination, witness testified that he thinks A. B. Hammond was instrumental in building this railroad from Portland to Astoria, and that he held it some time before he disposed of to the Northern Pacific Railway Company, and it did not become the factor that it is today until after it became a part of the Northern Pacific Railway System. His recollection is that the Northern Pacific Railroad was built by the Northern Pacific in 1883, and the road between Portland and Astoria did not become a part of the Northern Pacific Railway System until something like 1904 or 1905.

Q. Now, Mr. Quick, you said that if these lands were sold at $2.50 an acre to settlers, there would be a market for the lands by the demand for them on the

part of those large timber companies, and that those who purchased them from the railroad company could sell them to the large timber companies if they desired to?

A. That is for the timber, yes.

Q. Well, now, would it be necessary for a man who bought those lands, desiring to make a home on them, to do that?

A. No, it would not be absolutely necessary for him to do that.

Q. Of course, a man, after he had cleared it up and made a nice home of it, he could still sell it, if he wanted to get the money out of it, the same as you did with yours?

A. Yes, sir.

Q. That is true, isn't it?

A. That is true.

Q. Well, do you mean to testify that, if these lands should be sold by the railroad company to settlers, they would necessarily be passed on by the settlers to large timber companies?

A. No, sir; not necessarily. Taking that as a supposition, it could be done, you see, if they wanted to.

Q. In your judgement, do you think that they could sell the timber and retain the land, if they wished to?

A. Well, they do in some instances sell the timber

and retain a portion of the land; not all of it, but a little home, or something that way. But generally speaking, the timber company wants the whole title when they buy. I mean the timber company in buying would want the whole title. That has been the custom on nearly all the land that was bought in Columbia County.

Q. That is true largely because, where the timber is sold on a stumpage basis it has to be removed within a specified time?

A. Yes.

Q. Whereas if the timber company buys the land itself, it can hold the land indefinitely?

A. Certainly.

Q. And has no restriction as to the time that it must remove the timber. It that it?

A. Yes, sir. That is right.

Q. But do you know whether in these railroad sections concerning which you have testified, a settler could not find a market for the timber if he desired to sell the timber and retain the land?

A. Just read that question.

A. No.

Q. That would be a matter for future development of the market?

A. Yes. It would, yes.

Whereupon C. F. CARTER, called as a witness on behalf of complainant, being duly sworn, testified that

he lives at present at Gold Hill, in Jackson County, Oregon. He is forty-four years old, and has lived in Oregon about thirty-two years, most of the time in the meadows of Evans Creek. His father lived in Jackson County since about 1880. He lived right in there in the meadows all the time but about two years, referring to a place named Meadows of Evans Creek, that is what they called it when they went in there. His father lived in section 21, township 34 south, range 2 west, for about nineteen or twenty years. He went on there when witness was about fifteen years, about 1883, something like that. His father had a tract of eighty acres. When his father went on it the land was pretty well covered with brush—some little timber. His principal business when he lived on that place was farming that eighty-acre tract. He did not own the eighty acres. The railroad company was supposed to own it. His father never got title to it. He could not say whether he ever made an application to the railroad company to buy it. The company was not selling the land but had taken it off the market. The company was not selling, because the land was off the market. He does not know whether his father ever actually made application for it. His father left the land because he could not get title to it. His father had a family. This land was principally plow land—most of it good farming land. They were near Medford, Central Point and Gold Hill. They were all near about the same, and Spikenard is in the same township, or at least he supposes it is. It is in township 34 south, range 2 west. The general character of the land in that locality

is rather hilly, and level spots around on it, and springs, and the like of that. There were settlers in the vicinity of his father's place. The land was hilly and mountainous, with fields on it, little fields around on it. There are about ten or eleven settlers who live within a radius of seven or eight miles of his father's place. They had pretty good little mountain ranches and were making a living on it. These ranches were built on the mountains. One of them was right pretty nearly on the divide. He has been over a good deal of that country there, all around in the mountains there. He used to hunt in there quite a little, and that was the same general character as this land that was settled on there. Settlers were interspersed through this mountain country.

Whereupon, on cross examination, witness testified that he could not give the description of this eighty of railroad land which his father lived on, by legal subdivisions. It was in section 21, township 34 south, range 2 west; quite a ways from Wimer, and about half a mile from that fork of Evans Creek which runs up through the Meadows. Meadows was like a little meadow in an early day, and the place called "The Meadows" covers several sections. It is over eighteen miles on Evans Creek up from Woodville, but he does not know the exact distance. The country down on Evans Creek is a fine little valley there, but it is different land up there where his father lived. Down on Evans Creek is bottom land, and this that he refers to is not. Woodville is at the mouth of Evans Creek, and is about eighteen or twenty miles distant from his father's place. It is not

level country all the way up there. That country is up quite a little ways, and then it is not level, then opens out into the Meadows again. It is a fact that the country on Evans Creek, the farm land on Evans Creek, is of the same general character as the farming land up around Central Point in Jackson County. It may be some of it just as good, but it is not the same character of land, all of it. There is a whole lot of difference between one land and another, one is made land and the other is not. A lot of that land over about Central Point and Medford is made land along the creek bottom. Central Point is on the railroad and on land that has been there for many years, and Central Point has been a town since the railroad was constructed through there in 1884 or 1885. Gold Hill is about nine miles from the mouth of Evans Creek, and Wimer is on Evans Creek. He cannot tell how far his father's place was from Wimer. He has been down through there. He cannot tell how long a stream Evans Creek is. His father went on to this piece of railroad land in 1883, and lived there about nineteen or twenty years, during which time he did not have any title and he did not pay for the land. He does not know whether he applied to purchase it or not. He said the land was taken off the market was the reason his father did not get it, but he could not tell exactly when it was taken off the market. He does not know that it was not taken off the market until 1903, but he knows that it was taken off before 1903 because he has been gone from there since that. It was taken off while witness was on there, and he left before

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that. His father died about 1903. Witness did not apply to purchase this land because the company had taken it off the market. He knows it was taken off of the market because he heard that it was taken off. He did not write to the company or any of its employes to find out. His father stayed on the land until he died. Witness moved away from there just about that time. His father did not die on the premises, but he had moved off of it. He farmed that place there about nineteen or twenty years, and had about twenty-five acres in cultivation. They had some hill land on it. There was about sixty acres of that could be plowed—sixty acres of the eighty, after the timber and brush was taken off. They could not plow it with the timber and brush on it. There was more brush than there were fir trees.

Q. Now, you want the court to understand that this unsold railroad land within those two or three townships surrounding this eighty is about the same character as this eighty acres that your father lived on for about twenty years, and didn't buy or pay anything for?

A. No, sir.

Q. Well, what is the fact about that?

A. Well, the facts is what I told you a little bit ago, told this man about the character of the land—these other people that was up on the mountain sides.

Whereupon witness testified that he never cruised any of these unsold lands of the railroad company. Some of these unsold railroad lands may be timber lands, and some might not be. There are places there a man could

settle on and make a little home out of it. They have timber. There are not many sections in there that has not got a little timber on it. There is one saw mill up the hillside further on Evans Creek. Kesterson and Silsby's saw mill is away down below—just how far he could not tell, but it is quite a little ways. He could not tell where their saw mill is, but it is on Evans Creek, that is, they had one in there. He does not know where they have a mill now. He could not tell anything about the saw timber below there, because he was only along the road down there—he never had anything to do with land in there. All he is speaking about is right up there, close to where he lives. All that he knows about that that is back in the hills, he has been over there hunting.

Whereupon D. P. CALDWELL, called as a witness on behalf of complainant, being duly sworn testified that he is fifty-one years old, and resides at Walker, Lane County, Oregon. He was born in Iowa and came to Walker in the year 1890, and has made that place his home. He has not been there all the time. He lived there most of his time for more than fifteen years, and has been engaged in farming in Oregon. Prior to coming to Oregon he was engaged in farming and as a laborer. Examining Defendants' Exhibit 259, witness testified that he was acquainted with the lands in township 20 south, ranges 3 and 4 west, and in township 19, which would be north of him. He is pretty well acquainted all over three or four townships in the country there around about six to eight or ten miles in any direction from Walker, and is acquainted with the coun-

try of which he speaks, and knows better by the names than he can tell by the map. He has been to Wendling, but he is not acquainted with the lands through there, he only just went up the Mohawk Valley and back. This yellow field running clear through to the end of the map or the side of the map is the wagon road grant there. That would be south and east from Eugene, and he has been up through the Pleasant Hill country and south of the Pleasant Hill country he has been on the Coast Fork of the Willamette; he has been through that country and through the hill country there. He has been up in that country from the Oregon & Southeastern Railroad; north of that railroad that runs east from Cottage Grove. He has been over those hills towards Bear Creek, and through to Pleasant Hill. He does not know the country so well by the number of sections and ranges as he does by observation. He knows it better by creeks and towns. He has been on Lost Creek and through that section of the country. Always when he was in the hills he observed what was around him, took notice of the timber and the land. He had a homestead in township 19 south, range 4 west, in section 25, but did not prove up on it. He lived there about three years, a little more. It was very good land. There was timber on the land, and open places; kind of bench land formation, that is, for grade. He farmed it in the way new settlers generally farm such land and he knows what a settler has to buck up against when he starts it. He knows what they have to contend with. He had to build a road about three-quarters of a mile to get to it.

He left his homestead on account of sickness; he was advised to take his wife and family away; and to get to send his children to school, young children. He has three children. He made his living on his homestead while he was there.

Q. Now, from your observation of this land that you have been over, railroad land and land in the vicinity of the railroad land, what percentage of 160-acre tracts by contiguous 40-acre subdivisions, but not by quarter sections, would furnish support for a family if the settler would go on that land?

A. What percentage?

Q. Of the 160-acre tracts would support a family, to move on there as a settler?

A. I don't know as I just understand the question. That is, what percentage of the 160 acres would it take to support a family?

A. No, that is not the question, Mr. Caldwell. About how many of these 160-acre tracts, described the way I have in my previous question, could a man go on with his family and make a living on, as a settler on them?

A. Well, he can make a living on any of them that I have seen.

Q. Would there be sufficient plow land to raise the hay and grain and vegetables that he would need?

A. Yes, sir.

Whereupon witness testified that there was railroad land on two sides of him in the vicinity of his homestead.

There were three quarter sections right around him where he was. They were, if anything, better than the quarter section that he took, because he was up higher in the mountains. About the first thing a settler starting out on one of these 160-acre tracts would have to do, would be to make a road to get there, and the next thing he would have to do would be to cut off the brush, build him a house and move in, and haul in enough supplies to last him about a year, and then go to slashing brush and burning it, and seed it down in wheat and grasses, and get his cows accustomed to the place, and go to making a living. In his experience, lands had been cleared and put in cultivation in that vicinity, he helped to clear land in the territory with which he is acquainted, of which he speaks. The character of the land that he cleared was rolling, had timber and brush on it; some of it pretty steep grade. He has helped to clear land that was steep enough that they would let the horses rest after it was cleared, going up the hill two or three times maybe. The horses needed rest drawing discs or weeders or anything. He helped the orchard company clear off some land a year ago last June that this summer he helped cultivate, and he would let his team rest two or three times going up the hills. In the hill land there, in the two or three townships with which he is mostly acquainted, he thinks that they could, according to what land he has worked over, farm about eighty per cent of it; about eighty per cent of it could be put under the plow.

Whereupon on cross examination witness testified

that he means by agricultural or plow land that it could be plowed after the timber and brush had been removed; that is to say, probably twenty per cent would be too steep or too rocky to plow. He does not know whether this homestead that he took in section 25, township 19 south, range 4 west, upon which he lived for three years, had been homesteaded before he took it up. The man that located him upon it said that it had been entered before, he told him that it had been—the entry had been cancelled some time. That is to say, he thinks it was lost to the railroad grant because it had been settled upon or entered prior to the time the railroad grant was made. That was the way he understood it, and then it had been abandoned and he found it, or the man that located him found it as vacant land. Before the grant became effective it had been taken and then abandoned, that was the way he was told about it and the way he understood it. He does not know what has become of it since he abandoned it. He does not know how the title is, or whether it is public land now or not. There was a man who bought some of his stuff that he had on there, but there is no one living on that land now. There might have been some good saw timber on this 160 acres of his, but not very much. Some of it was pretty rough, and he could have cleared some of it, and did clear and raise hay. He did not clear very many acres free from stumps, probably not more than two acres, but mowed over about twelve acres of hay. He does not think more than two acres were cleared free from stumps, and he would say that he slashed and burned besides the two

acres about twelve acres. He had cows while he was living there with his wife and three children, and these cows roamed outside and pastured over the railroad land wherever they wanted to go. He had three cows to milk, and several calves and yearlings, something like that, but he did not go into the stock business particularly. These cows helped to make his family living. He did not keep hogs, he thinks he had only one hog on the place. He did not keep any goats, but had three or four horses, but did not raise horses for sale, nor sell any grain or fruit off his place. He sold some vegetables, some onions, potatoes, lettuce and such stuff. He does not know how much he would sell any one year. They would, when they would go down, take a little stuff out of the ground. Just like one would take a marketing of eggs. They took eggs, too, and some chickens. He raised feed and chickens and a little butter to sell, and they would take whatever they had to spare. He presumes that he did not get over forty or fifty dollars a year out of that. When his wife got sick while they were living on the place, the doctor told him that he had better move away and he moved down to Cottage Grove, which is a pretty good town, but he does not know its population. That is the place where this railroad begins that leads out to Bohemia; he has not been out there on the railroad, but has been to Bohemia, out to the mines there. That is a good timber country, and there are a good many saw mills out on that road up in the timber. He has been once over to Wendling. Most of the time since he came to Oregon he has been

living at Walker, excepting the three years he was on his farm; he has been away from there some. He lived at Cottage Grove between three and four months. Since he left the homestead he has been farming and laboring, where he lives now at Walker, and he only has twelve acres at Walker; he rents land. Walker is his post-office, and the twelve acres of land which he owns is about a mile and a half from Walker, and the place that he rents is little more than two miles. These twelve acres that he owns was bought from the railroad company, but he does not know how long ago it was bought from the railroad company. It is a part of the old settled country. The land that he rents is in a railroad section. He is in section 5, township 20 south, range 3 west; that had been sold a good while ago by the railroad company, and of these twelve acres probably three acres in cultivation, and the balance—nine acres—are stumps and timber, logs. He has never worked in the cruising business, and but very little—a few days maybe—in a saw mill. During the time that he lived on his homestead, he did not go out and work for wages anywhere; he might have helped his neighbors, to exchange work, just swapping work among the farmers. He did not go out to work. He never went over any of these railroad lands in the three or four townships of which he has any knowledge, for the purpose of estimating any timber that was on the land. He knows where the Booth-Kelly Lumber Company's timber is at Saginaw, but he does not know how far their holdings go, but their mills are quite a ways, he would say five or six miles from the

railroad. That is pretty fine timber that the Booth-Kelly Lumber Company has in there, but he does not know how much timber to a forty they have—he has no knowledge of that.

Whereupon U. S. DIX, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Colton, Clackamas County, Oregon, and was born in Missouri. He is forty-four years old, and was seven years old when his people moved to Oregon. They moved over in Washington County, lived near Glencoe, he thinks about four years, and then moved from Washington County into Clackamas County, Oregon; that was about thirty-three years ago. His father took a homestead in section 34, township 4 south, range 3 east, and died about 1898. He has lived on this homestead since he moved to Clackamas County. His father proved up and got a patent, and witness is living there now with his mother. His father's family, and since he died, the survivors of the family, have made their living on that place; spent all of their time on the farm; all the time excepting about two weeks in the fall, when he was running a threshing machine, threshing in that vicinity for others than on his own farm. He threshed over townships 4 and 5 south, range 3 east, and he is familiar in a general way with the development and settlement of that country, but does not know particularly of any railroad land in his vicinity. He has been around over the country there quite a little, but never paid any particular attention to any of the land. Looking at Defendants' Exhibit 266, witness says that he lives in sec-

tion 34 of that township there, and that the lands marked in black is railroad land. He has been around over township 5 quite a little, running around with the threshing machine, and he has never been up in the townships east of that, in range 4 east, and does not know anything about that in there; he does not hunt any. He has not been any further south than in the township south of township five, only in crossing it, as he is on the road going from his place to Gervais, and in that way he has been up in there a time or two and passed it in crossing; that is all he knows about it. He is not acquainted with that part of the country at all. Gervais is on the railroad, in the Willamette Valley, but he is not acquainted with that part of the country at all. Section 33, that joins his place on the west, averages up with his land and is just about the same thing as his land, and the land north of him in township 4 south, range 3 west, sections 29, 27, 25, 23 and 21, are just about the same as where he lives there, about the same all the way through there. That is true with reference to section 31. He does not know hardly what one would call the soil they have out there. It is burned over land; that is, a good share of it has been burned over, that is, burned over before the settlers went in there; there is quite a bit of it is what they call the burn; there are bodies of timber, too—some timber; the burns are in patches. Where they have done any clearing the timber has been burned and it is out in the open. They had to burn the old logs and stumps where they cleared—they had to burn them. Some of the timber was down—quite a lot

of it was down—when his father moved there. They had to burn the logs, the rotten logs and stumps. There is about somewhere around 25 acres in cultivation on this place that his father owned, at the present time. When the family first went there, his father made shingles to furnish the groceries until he got the land open enough so that it would make a living. After they got enough open so that they could make a living, they absolutely made their living on the land. He first commenced threshing in 1895, when they first got the machine, seventeen years ago, and he has been doing some of this threshing for his neighbors since that time, he has been threshing every year since that time. It would average about fifteen days each year. This year he thinks he threshed at about twenty-six or twenty-eight different places. He could make his living from his place independent of the threshing outfit.

Q. The bill of complaint in this case shows that in that township 4 south, range 3 east, the railroad company has, subject to the rights asserted by the Government in this case, lands in section 1 over 500 acres; section 3, 40 acres; section 5, over 200 acres; section 9, 40 acres; section 13, 280 acres; section 19, 47 acres; section 21, 200 acres; section 23, 280 acres; section 25, 200 acres; section 27, 320 acres; section 29, 120 acres; section 31, 240 acres, and in section 33, 120 acres. Now, in your judgment, does your general description of that land apply to these lands generally, or do you wish to make any exception as to any of these particular lands?

A. No, I think it would be general.

Q. What is your opinion as to whether a settler could go in there and settle upon these lands, and make a living for himself and family, on tracts as large as 160 acres?

A. Well, I think he could do it all right.

Q. Now, the other township that you are acquainted with. You say it is township 5 south of the one which you live in?

A. Yes.

Q. The bill of complaint in this case shows that there are in that township considerably over two thousand acres of land, commencing in section 1 and running through some of the odd numbered sections down to section 23. Is your general testimony with reference to the character of these lands and their susceptibility to settlement, does it apply generally to those lands?

A. I think it is all just about the same, as far as that goes, as near as I could make out.

Whereupon witness testified that there is quite a lot of that land in there that is occupied. Section 35 has four or five different families living on it; they just came in there a couple or three years ago. They are improving right along. As far as he has been around over other similar lands in these same townships in the possession of settlers, they are making a living on their land, those that have land there. He never applied to purchase any of these lands from the railroad company. He is still living on his place.

Whereupon on cross examination witness testified that he thinks his father entered this tract as a homestead about thirty-three years ago, when witness was about eleven years old. He went with his father on the place. There wasn't any of it cleared when they went there, and there was only a little shack built on there; he does not know who built it. It had been settled upon before his father entered it; there was a fellow who filed on it and built a shack there, but he does not know why he gave it up. He supposes he attempted to homestead it before his father did; he filed on it, but he does not know anything about that. The first entryman had just had a little spot around the shack there, probably a quarter of an acre or so, cleared. The shack was a little box house of rough lumber. He does not remember the man's name. His father filed a contest and succeeded in the contest, showing that the man had not complied with the homestead law by reason of settlement. He could not tell whether this man had any family or not. All he knows is that his father filed a contest against a man who had previously tried to enter the land under the homestead law, and his father was successful, and had a preference right of entry after the contest was decided in his favor, and he entered it as a homestead and lived there until he died. He did not pay anything for the land excepting the five years residence and cultivation. His father died October 15th, 1908, and had a family of seven children, of which he was the second. The children all left home but him. His brothers have a saw mill and his sister is married.

There are three brothers interested in the saw mill, the saw mill is twelve miles southeast of Oregon City. They get their timber for sawing off their neighbors. They did not take homesteads; they did not file on any lands at all. He has not taken a homestead and never tried to take a homestead out in that country. There were a lot of even sections that were public lands when he went out there with his father, but he was not old enough to take them. He was twenty-one about 1889, but there were no public lands to speak of there at that time, it had been taken up. As far as he knows the people were living on all the quarter sections in the even sections.

Q. I know, but that would make about four people to every section of this government land prior to 1889. Now, you don't mean to say that there were four families living on every even section in that country prior to the time you became of age so you could take some, do you?

A. Well, I don't know as to that.

Whereupon witness testified that he is about four or five miles south of Hyland, six miles east of Meadowbrook, a mile from Colton, northeast, and lives on Milk Creek, in the northeast quarter of section 34. There is a man by the name of Swanson who lives in section 33. He got his land from the Swedish Colonization Company, who got it from Mr. Jones. Jones had a lot of land there and some of it he got from the railroad company, and some he does not know how he got. He knows where Canyon Creek is. He notices on this map that

the green colors on these lands in there, different sections and parts of sections, and that the land colored green are unsold lands of the railroad company involved in this suit, and that colored blue is sold land, formerly railroad land, and not involved in this suit, and he notices the green is pretty scattering around him and around Colton where he lives, he thinks there is not very much railroad land left there compared with the whole section of the country. He notices the yellow field on this map, showing lands that the company did not get, but which went to people under the donation land law, or homesteads or pre-emptions, before the railroad company got its title, before the grant took effect. Most of that land west of him is in the yellow field. These lands on Mill Creek are not level little bottoms. Towards the upper end, it is just narrow bottoms and as one gets down further it widens out. He did his threshing in the country north, west and south of Colton; threshed in Hyland, but did not go in around Springwater, or far up as Schubel. He was out as far as Clark's, about six miles. He would think that he went over about twelve or fourteen miles square in threshing. Most of his threshing was done west, north and south of where he lived. They threshed over on Dickey's Prairie, just north of Molalla River. Dickey's Prairie would be off a little south and east on the north side of the Molalla River, the north Molalla River, in the Molalla bottom, which is pretty good farming country in there. He could not say as to whether that country on the Molalla River had been settled for fifty years, or whether it was do-

nation land claims in the early days. Once in awhile there are old farm houses. They mostly built new houses in there. What they call Dickey's Prairie, is an old settled country. He could not tell how many bushels of wheat he threshed in a season of fifteen days without his book. He threshed for so much a bushel, and they threshed about a thousand bushels a day this year. A dry ordinary season, other than like August just past, they would thresh fifteen hundred bushels a day if they got a good run, but they did not average a thousand this year. They threshed oats, too. They did not thresh oats or wheat up in this country east of where he lives, not in the mountains. He would say that when these lands were cleared and grubbed of timber two-thirds of it could be plowed. One could not do it before it was cleared. He could not tell if any of the unsold railroad land has good timber on it, for he never cruised it any, and never paid any attention to the timber. He does not know whether it has a thousand or a million feet to the quarter section, or to the eighty, or anything about that, and all he means to say is that when the timber is cleared off, whatever there is, there is two-thirds of it that has soil and is sufficiently level that it could be farmed. His father lived on his place until he died; homesteaded it thirty-three years ago, and had twenty-five acres cleared altogether of the 160 acres. They had stock there—two cows, one hog and a team. Most of the ranchers up there are going into the dairying business now. They don't raise much stock. Down towards his place they are trying to get into the dairying business.

He has never been up in the mountains there. It would be hard to tell what is the average value of this land of his father's, and like land, which belongs to the railroad company, per acre on an average, but he would say that his father's place there was worth something like $25.00 an acre. Around Colton there is not much valley land, it is mostly rolling land, and he would think it is worth about twenty or twenty-five dollars an acre. Some of that which he threshed on was worth more than that over on Dickey's Prairie and around Meadowbrook. He could not say, taking 160 acres or 80 acres in a tract, how much it would be worth, but he supposes it would probably be worth from twenty-five to seventy-five dollars an acre, around Dickey's Prairie in there. Colton has a postoffice and store. There is no postoffice at Clarkes. There is no postoffice at Meadowbrook either. At Molalla there is a postoffice and store; he is not sure whether there are two stores there or not. Elwood is just a postoffice. There is no postoffice at Hyland or anything. At Liberal there is a store. There is a flouring mill and lumber mill at Union Mills. At Mulino there is a flouring mill and two stores and a saw mill. There is no postoffice at Schubel. He never was at Dodge, does not know anything about it. There is no postoffice at James. He is not acquainted at Springwater—in that part of the country. He is twenty miles southeast of Oregon City, and about twenty miles from Canby and Barlow. The Molalla is quite a little stream. He does not know where it heads; he never was at the head of it, and he could not say if it heads up in the

Cascade Range; it is up there somewhere in the eastern part of Clackamas County. He never was up there and does not know anything about it.

Whereupon on redirect examination witness testified that he does not know who composes the Swedish Colonization Society that handled the lands bought by S. W. R. Jones from some one, he does not know who Jones got it from; that land was situated there in section 35, that is east—he owned that, and then in township 5 south of him. Jones owns some in there, he owned something in the neighborhood of four thousand acres. The Swedish Colonization Company bought that of the Jones heirs. The company bought the whole piece—the Swedish Colonization Company—and they distributed it out just as one wanted it. One could buy five, or ten, or forty, or eighty acres, whatever he wanted. They have disposed of most of it, and most of it is occupied. They are going ahead and making farms out of it, and people are living on it. Some of them are making a living off that land. Some of them are working out. There are poor men who work out once in awhile to get groceries, so they can improve their land. They are still clearing the land. The Swedish Colonization Society bought this land about four years ago, and then there are new ones coming in ever since, every year. He is not sure whether it is more than four years ago; he is not sure about it, it might have been longer than four years; the records are more accurate on that subject than his memory. This land that the Swedish Colonization Society has distributed among settlers is just

about the same as the rest of the lands in that general vicinity. He has never been but about a mile east of his place, just across section 35, on 36. Section 36 is just about the same thing as his. He can see the land beyond him there, east. After one gets east of 36, the foot of the mountain begins and he is in what is called the foothills in section 34. Those foothills increase as one approaches the mountain. According to the geological survey, the altitude where he lives is about seven hundred feet.

Whereupon on recross examination witness testified that he knew S. W. R. Jones in his lifetime; does not know whether he is dead or not. He used to live on French Prairie, out near Gervais, and the last he heard of him he was living, and was a speculator in lands, and bought lands wherever he could. He does not remember just when the Swedish Colonization Association bought these lands from Jones or his estate. It seems to him that it was like four years ago, but it may be longer than that. He does not know what they paid an acre for it. This Swedish Colonization Association belongs at Colton, and he does not know who composes it; he knows some of the men who are in the company; they are farmers making homes there. They come from different places, some of them from Dakota, some from Nebraska, and different Easten states, but he could not tell how many of these farmers are in this Swedish Colonization Association. Just a rough guess he would judge about sixty families of them who moved in there, all on this four thousand acres, which they are farming and clear-

ing up. He does not know what they paid for it an acre. They bought whatever they felt like. Some of them had means, and some of them had to borrow money to buy their places, and the Colonization Society helped them. It is a sort of community of interest that these Swedish families had when they organized this association, and are dividing the land among themselves. He threshed grain for them this year. He could not tell how much. Some of them did not have over 150 or 200 bushels, and then some of them had more. Part of these people are east in 35, and part of them are south of where he lives. He threshed for two farmers in section 35. He thinks there are about four families and one bachelor who live in section 35, and the rest are about from a mile to two miles west and south of him, where he threshed. This land is mostly burn. It has been burned off before it was settled; burned a great many years ago, some forty or fifty years ago, maybe longer. He does not know what that land is worth that these people have but it is about the same as his.

Whereupon J. L. BOYLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-two years old; resides in Canyonville, Douglas County, Oregon, and has lived in Douglas County, where he was born, all his life. He was born and raised in section 7, township 30 south, range 4 west, and the last four years has lived in section 27, township 30 south, range 5 west. The place where he was born in township 30 south, range 4 west, was the donation land claim of his father, who filed on that donation land claim

some time in the fifties. His donation land claim was 160 acres, and then he had a pre-emption of 85 acres. He has been a farmer all his life, excepting the last four years; has been personally engaged in farming. He has been a justice of the peace several times, a deputy assessor and notary public, and is a notary public now. He was deputy assessor in 1898, 1899, 1900 and 1901, and as such was required to examine the lands assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. As deputy assessor he worked in that locality, and made the assessments for those townships, and in the vicinity of where he was born and raised. He thinks he is familiar with the land in those townships, having been born and raised there and over them more or less all his life. As deputy assessor he also had to visit all the settlers in that community and assess their personalty and make assessments on their real property. There are railroad lands in the immediate vicinity of his father's donation land claim. Sections 19 and 20 are immediately south of his father's donation land claim in township 30 south, range 4 west. His father applied to purchase railroad land in the seventies; his father and a partner in the stock business made a filing on 160 acres each. His father's was in section 19 and that of his partner, Gilbert McNear, was in section 29. They never obtained the land. He did not exactly make an application, but Mr. Britt was the land appraiser of the company and he made an application to him and offered him $2.50 an acre as the railroad land agent, and Britt said he would put the matter before the company, and he came back

afterwards and appraised the land. This land has all been surveyed since. It was the south half of the south half of section 19, 120 acres of which that he applied for. There were 160 acres there vacant, but he only tried to buy three forties. That could be made a good farm, but he did not intend to use it as a farm, but as a stock range to raise stock on. Britt told him that he could have one forty of it for $2.50 an acre and the rest of it for $5.00 an acre. Britt was there and made an examination. He could give the name of one farmer or settler in section 19, township 30 south, range 3 west, who owns lands adjacent to railroad land. B. H. Fate bought 160 acres himself—80 acres that he paid $2.50 for and 80 acres $3.50 an acre for, and he bought a man's right, a man by the name of Andrew Werley, he bought his railroad right and paid $5.00 an acre for it. Werley contracted for the land. Tate took up the contract and paid for the land. He has it practically all under cultivation now. Practically all the railroad land adjacent to that which is now owned by the company, can be made homes. He does not know just how much of it there is, but the greater portion of that can be made good homes; there is no question about that. The even section there are all taken up and homes are on them. The odd sections are railroad lands and, he understands, off the market. That applies generally throughout this territory with which he is acquainted; that is, the even sections are settled upon and the odd sections are vacant.

Q. Now, Mr. Boyle, from your acquaintance with this territory you have testified that you have been over

in assessing and have lived in all your life, what percentage of the lands, in 160-acre tracts, could be used as homes; that is, a settler could go on there, take 160 acres, and support his family as the ordinary settler does?

A. Do you mean that it should be tilled, plowed, cultivated, or as a general purpose as a farmer uses his land?

Q. As a farmer uses his land.

A. Well, I should say that he could use the greater per cent of it. I am satisfied, from my observation as an assessor, that fifty per cent of it can be tilled.

Q. Fifty per cent of the lands could be tilled?

A. Yes, sir; in that part of it that I assessed and went over, I am satisfied that fifty per cent of that can be plowed. But it can all be used for pasture land. Now, I am not saying that there isn't timber on it at all, because there is a great deal of good timber on that land.

Whereupon witness testified that in this territory the soil is fertile. They grow wheat, oats, corn, barley, prunes, apples, in fact all kinds of vegetables and fruits, except tropical fruits. They raise stock there. Prunes is the main fruit that they raise; also corn, wheat, oats and barley are the main grains. The people who have settled on the land have the greater portion of the ground cleared and in cultivation. They have gone in to the timber in there and cleared it.

Q. Mr. Boyle, in your opinion, what has been the effect of the failure of the railroad company to comply with the conditions of this grant in refusing to sell land to actual settlers at $2.50 an acre, and in selling the lands in large quantities?

A. It has retarded the development of our country.

Q. In what way, Mr. Boyle?

A. By preventing settlers from settling on this land. But now, if the railroad company would sell it at $2.50 an acre, I don't doubt but what it would soon settle up.

Whereupon witness testified that the demand for land in this locality for settlement purposes is good and has increased in recent years. The first settlers in this country took the bottom lands and the next best the higher lands, and they are now going on up. The bottom land is usually considered best, that is true, but in his referring to bottom land one must understand that the early settlers got on the larger streams and took their homesteads, but where he lives the creek bottoms are just as good land, but it is more narrow. Land of this same general character is being cultivated in the county there and used as homes by farmers.

Whereupon on cross examination witness testified that he assessed these lands around Canyonville for the years 1898 to 1901, both inclusive; that is, four different years. He would not be willing to state the number of acres of railroad land that he thinks he assessed, that

the company owned at the time he made the assessment, and could not approximate, for the simple fact that he only assessed land that the company had actual patents for. Ranges 2, 3, 4 and 5 are within the limits of the railroad grant; the northwest part of 1 is within the limits, and the southeast part is not, that is in the idemnity belt, and part of that which he assessed is within the place limits, or within the twenty miles, and a part within the indemnity. He assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. There are thirty-six sections in a township, each section containing 640 acres, and every odd section belonging to the railroad company, with the exception of what had been taken up, and barring two sections in every township for school land. Canyonville, as shown on Defendant's Exhibit 259, lies almost due east of Riddle. He sees that this yellow belt shown on Defendant's Exhibit 259 is all through along the Umpqua River and around Riddle to up towards Myrtle Creek, and that map, according to the legend, represents lands that were within the place limits of this grant, but which had been taken under the donation land law, or the pre-emption law, like his father did, before the railroad grant became effective along about 1889. Canyonville is in section 27, township 30, 4 west. That is an old settled part of that country, and his father's donation land claim is in the next township east, sections 7 and 18. The old home is in section 7, but under the donation land claim his father took part of section 7 and part of section 18. There were other donation land claims along the Umpqua

River, on both sides of the river, and there were a lot of donation land claims taken around Riddle, clear up to Myrtle Creek, and on down to Roseburg, Winchester, Oakland and Wilbur, in all that country. General Lane lived and died at Roseburg, and was the first Governor of Oregon, and the first United States Senator, and that was one of the oldest settled sections of the State of Oregon, around Roseburg. It was first settled in the Willamette Valley, down about Salem and Oregon City, and Clatsop, near Astoria, down on Clatsop Plains. Judge Deady used to live and do business out at Douglas in that Umpqua country. He generally practiced law in Roseburg. There have been sales of railroad land in the vicinity, in township 30, ranges 1, 2, 3, 4 and 5 west, but none recently that he knows of. He had this talk about buying this piece of railroad land with Mr. Britt in 1892, he thinks it was, and the company offered 40 acres to him at $2.50 an acre, and the other 80 acres at $5.00 an acre, and he did not buy because he did not care to pay $5.00 an acre for the land. It was worth it then, and is worth more today. In section 30, an adjoining section to 19, Hopkins sold 160 acres for $4500 cash, just the same kind of land, adjoining the very identical part. It would be pretty hard to tell how much this 120 acres would be worth an acre today. Hopkins cleared his land, had it all cleared off and under fence. This other land is not fenced, but he would be willing to give a man $10.00 an acre for this 120 acres if he would give him a deed for it—it is worth that in his judgment. Hopkins' land had improvements on it, and this land

has not. He would give $10.00 an acre for it, but would not give any more. This railroad land that he assessed in the two lower west townships is not mostly timbered land. The other township the greater portion of it is timbered. Douglas County did not have a cruise of these lands when he assessed them. They have now, he understands. There are saw mills and timber holdings in the vicinity of these lands. There are three saw mills in the immediate vicinity of Canyonville. In this territory to which he refers there is the Michigan Land Company, represented by the Gardner brothers, that owns land, but he does not know how many acres of timber land they own. Timber is valuable now. He thinks timber first became an item of value for the purpose of market and sale in that section of the country about eight or ten years ago, and timber claims sell from eight hundred dollars to a thousand dollars, depending on the cruise. The saw mills pay from 65 cents to one dollar a thousand for timber where they buy it, depending on the stand on the quarter section as to what it is worth for timber. The demand for timber is not very active. It has never been very flush up there because they are six miles from the railroad and fifty-one miles from the sea. If there was a railroad out from Myrtle Creek up the Umpqua River into the Cascade Mountains so that this timber could be logged to it or hauled to it, the timber would have a very large value, and so would their agricultural land. Transportation is certainly needed. There is a great deal of heavy timber on the South Umpqua up in the Cascade Mountains, and all that it needs is trans-

portation to make the timber and the land valuable.

Q. The first value, though, would be the timber, wouldn't it, primarily.

A. No, I am a farmer. I look at it from the other side.

Q. Now, suppose that you had a quarter section out there near Canyonville, or on the Umpqua River where it could be logged, that had on it six million feet of merchantable saw timber, and the soil was good, but it had this heavy timber on it, and the company would sell that to you for $2.50 an acre, as an actual settler under this law that the government is trying to enforce or assert in this case, don't you think, if you got a good title to that 160 acres, of good timber land, and it went six million feet to the quarter, that you could sell it for about six thousand dollars for the timber alone.

A. And keep the land?

Q. Yes.

A. Sure I would.

Q. Well, don't you think you could do that?

A. No, I don't think so.

Q. What do you think you could get for it?

A. Well, that is a pretty hard proposition. They are selling from $800 to $1000 per claim now.

Q. I understand.

A. Now, if a railroad company would go in there

it could not possibly increase the valuation so much, could it?

Q. Well, I am asking you. You said that the stumpage value was about 65 cents.

A. From 65 cents to a dollar a thousand.

Q. Yes, to a dollar a thousand. Now, if it was a dollar a thousand, and there was six million feet on the quarter section, that would be six thousand dollars, wouldn't it?

A. But now wait just a minute.

Q. Well, answer the question and then we will argue it.

A. That is true. That is true. But now we will take the Alder Creek Lumber Company, one mile west of Canyonville, bought from Mr. Biggs six years ago, 160 acres of land that has timber on, 160 acres of land, and they have not taken it half off yet. Well, now, if a timber company is going to be twenty-five or fifty years getting off the timber, why, the man would not live long enough to farm his land, would he?

Q. Well, now, isn't that the trouble with this land, and why it was not settled before the timber had any value was because they could not market the timber?

A. No, sir.

Q. What was it?

A. The trouble has been there has been too much open land to take up in Oregon. Now, people are tak-

ing up the timber land just as fast as they can get it, and clearing it in my section of the country just as fast as they can.

Q. Well, now, as a matter of fact you can go down around Myrtle Creek and on the South Umpqua, along the place where your father had a donation land claim, and buy that land that was settled fifty years ago for fifty dollars to seventy-five dollars an acre, can't you?

A. No, you can't, not improved land.

Q. What can you get it for?

A. It is selling at—the place adjoining father's own homestead place was sold for $16,000.

Q. How many acres?

A. 160 acres.

Whereupon witness testified that the place adjoining his father's homestead which sold for sixteen thousand dollars was a place that had prunes that were bearing and selling in the markets of the world. These lands are not all covered with fine prune orchads. Some of them have prune orchards that are twenty-five years old. The areas around Myrtle Creek there have been supplying the prune market, and prunes have been a staple for twenty years.

Q. And the prune orchard of course would bring a big price. But I mean the land that is not put in prune orchards, or that is not in that high state of cultivation like some of this land around Medford, with an orchard on it eight or ten years old, the land is worth

about $50 to $75 an acre, isn't it, before the orchard is put on?

A. I think you are just about right. Without an orchard the land is probably worth, would sell for $50 to $75 an acre. With an orchard on it——

Q. A great deal more.

A. Now, the one that I said sold for $16,000 only has 18 acres of an orchard on it.

Q. But eighteen acres of fine prune orchard there, at the prices that rule, would be a fairly good piece of property, wouldn't it?

A. Surely, surely.

Q. Some years you don't make anything on the prunes, and other years you make a good thing? That is right, isn't it?

A. Yes, sir.

Whereupon witness testified that never in his experience has it been that prunes would not pay the cost of drying. Some years prunes were really an unprofitable crop, but that was before he was engaged in the business. If the land had timber on it, it certainly could not be used for agricultural land until the timber was removed. Some of this timber is inferior. The better the land the better the timber.

Q. And the value of a quarter section depends largely upon the amount of timber there is on it? At present in the market, I mean.

A. Well, not true, not so altogether in our locality. I am speaking from my immediate vicinity. We do not consider the timber as you people do here probably, because we do not consider that 160 acres that is not worth more than $800 or $1000, it hardly pays a man to file on it. Those people who filed on land, filed on timber claims, are selling those claims now for $800 to $1000; and I think the Gardiner brothers would so testify if they were here.

Q. Well, what are they selling these $800 or $1000 claims for? What are they selling them for? Why don't they stay there and make homes?

A. They were men who were located by timber men, who never intended to make homes there.

Q. Well, then, is that the way these lands have been taken up out there?

A. Well, some of it has been taken up that way, sure.

Q. Timber companies get fellows to go out and enter the land?

A. Well, I don't know that now, but I do know that a great many of them have sold their claims to the Gardiner brothers. It is a Michigan firm—Michigan people.

Q. I understand they have only got $800 to $1000 for the 160 acres?

A. I know of three claims that have been sold for $800.

Q. Did they commute and pay up?

A. They paid for their claims, yes.

Q. That is to say they commuted their homesteads?

A. No.

Q. What were they?

A. They were timber and stone, taken up under the timber and stone act.

Q. They were taken up under the timber and stone act, where they didn't have to live on the place?

A. Yes, sir.

Q. They had to go through the farce of swearing that they went and looked at it and saw that it was timber?

A. Yes, sir.

Q. Bought it at $2.50 an acre, or whatever the government price was above that?

A. I don't know what the government price was.

Q. As soon as they got the title why then they sold it to these timber companies?

A. Some of them have.

Whereupon on redirect examination witness testified that the majority of these people who bought lands under the timber and stone act were principally residents of towns who went out there and purchased the lands under the timber and stone act, which required no residence, no necessity for cultivation or improvement of the

land, and the United States used to sell that land at a flat price of $2.50 an acre until within recent years, but it now bases the price upon an assessment or upon a cruise that the government makes of the land. He does not know of any homesteaders who have gone up there and taken up claims merely for the purpose of getting the timber, who abandoned their claims as soon as they proved up. The Hopkins claim sold for $4500, 160 acres—what they call a mountain ranch. That was in section 30, adjoining section 19, the township that his old home is in. It was in the mountains. The other sale that he spoke of, the 160-acre tract, for $16,000, was an old donation land claim, that was a farm; it has eighteen acres of orchard on it, and the rest of it was farming land, the majority of it. There was about forty acres of what they call waste land—grazing land, too steep to farm. He has a general slight knowledge of the territory south of township 30. He was never over that very much. In township 31 south, ranges 3 and 4 west, he made the assessment there one year, and then turned it over to a Mr. Redfield who was deputy assessor in that precinct. That land is practically the same as that about which he has testified; it is practically all the same all over that country from Roseburg south to the boundary line of Douglas county. He has hunted and been over it, herded sheep over it and drove stock over it quite often. He has been over the lands in township 29 south. He does not know that he has ever been in township 28, but he has been in township 29, and the same condition exists as to that land. Myrtle Creek is in township 29,

runs along through 29 and 28, and is settled from practically the head of Myrtle Creek. Day's Creek heads in township 29, and is settled—there are settlements from its mouth to the head. These settlements are more or less along the streams which run up into the mountains, until one gets in the Elk Creek country, in range 1, in the same range that he lives in, one west. That is more of a plateau, more rolling; quite a number of stock ranches in there. They do not pretend to farm, but raise fruit and stock. There are streams running extensively through these lands. By streams he means creeks, small streams leading into the river or larger creeks. The purpose of settling on the streams is in order to have water, and one gets more or less level land on the creek bottoms.

Whereupon J. H. TURNER, called as a witness on behalf of complainant, being duly sworn, testified that he is forty-eight years old, lives at Mulino, Clackamas County, Oregon, and follows carpenter work mostly now. He has a little place that he lives on and works on odd spells. He has lived at Mulino about four years, and came to Oregon in 1887. He lived east of Portland eight miles one year, and in 1888 moved into Clackamas County. Mulino is, he believes, in section 17, township 4 south, range 2 east. He has 20 acres in section 18, His land is on Milk Creek, west of Mulino. He has been all through the lands shown in green colors on Defendants' Exhibit 259, around Mulino, and he has been at Hyland, Springwater and Elwood. Elwood and Dodge are in township 4 south, range 4 east, shown on this map. He used to own forty acres there on Milk Creek, but he

cannot tell the section it was in, but it was right in there by Elwood. There is some railroad land in that Hyland country, between there and Elwood, but he only knows of one forty of these railroad lands shown on that map. He is acquainted with that general country in there marked with the green markings, has hunted birds all over it. He is acquainted with the general character of it, its formation and the soil, because he worked around Hyland there, farming for other people, and his father had a place there, which witness farmed. He rented another place around Hyland there, and owned the forty acres in there at Elwood. He knows pretty nearly about what the land through that part of the country is. He farmed about five years there in Hyland, and before that for other people; he never ran a place for himself, but worked for other people.

Q. Well, Mr. Turner, on this railroad land that you are acquainted with, have a general knowledge of, what is your opinion as to whether that land is suitable for settlement in 160-acre tracts?

A. Well, in that there locality, yes. But as far as knowing where the railroad land is located, I don't know anything about it.

Q. You didn't know whether they were railroad lands or other lands?

A. No, I didn't. There was some that had bought railroad lands, so they said, but then I don't know as to that. But take it through that country there, it is good soil. They raise fair crops. They raised around

Hyland there, when I was there—that has been fourteen years ago though since I was there —they raised from about fifteen to twenty bushel of wheat on an average, and from about forty to sixty bushel of oats.

Q. What would you say as to this land being suitable for settlement in 160-acre tracts, that is, if a man would want to go on that land, 160 acres of it, and farm?

Mr. Fenton: Defendants object to that unless the witness knows of the railroad land that is of that character. You may answer.

Q. Do you understand the question, Mr. Turner?

A. I don't know as I really do.

A. Well, if a man would get it cleared up, it is a good ranch, good ground.

Whereupon on cross examination witness testified that he does not know much about these railroad lands around Mulino. There is not much railroad land in there. That is an old settled country around Mulino, and there is just a little railroad land lying unsold east of Mulino, towards Springwater. The Molalla River is an old settled part of Clackamas County, and Mulino is on Milk Creek. It is quite a stream, and affords water there for grist mills. There is one saw mill in Mulino, which gets its logs up Milk Creek; about the farthest that they are getting logs so far, is at a new saw mill which went in there lately about a mile and a half away, but there used to be a mill there years ago. This land in there east of Mulino is mostly timbered. It is quite a

ways up to the Cascade Mountains, but then one goes east up towards Clarks, and it is principally timber and brush all the way, there is some saw timber up there. Up on Buckner Creek there is some good timber up in there. He means that when the timber is taken off of this land it has sufficient good soil and is sufficiently level that it could be farmed, or most of it; that is what he said, if it was cleared it would make good ranches. He never took a homestead and never applied to purchase any of this railroad land, and never owned any of it. He owns twenty acres of land down at Mulino, it was all timbered. He has about three acres cleared, something near that, he never measured it, the rest of it is timber and brush. He has some saw timber on his twenty acres. He offered the timber stumpage on it for $1.25 to a man the other day, the market price ranges from $1.00 to $1.25 and $1.50, some are getting $1.50, but not very many, there are a few. He supposes that there would be perhaps 150,000 feet of saw timber on his twenty acres. It has been partly logged off. There is some big timber left. He does not know why the big timber was left, but they just took off what was the handiest. It was logged off by James Atkins about six or seven years ago, something like that. Witness had a brother-in-law that he got the timber for. He would not take less than fifteen hundred dollars for these twenty acres, and thinks it is worth $75 an acre. He has bottom land on it, and in one way his land is better than the general run of land because it is made land, better than the hill land for some things, as far as fruit

is concerned, they can beat him to death, that is, the upland is better for fruit, for apples and such as that, much better.

Whereupon JOHN ZEEK, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-four years old and resides near Canby, Clackamas County, Oregon, and has lived in Oregon more than forty years. He is a farmer at present, was formerly a blacksmith, and has been engaged in farming about three years. He lives in an agricultural community and has been acquainted with the business of farming during his residence in Oregon, and is acquainted with the lands that are suitable for tillage, useful for farming purposes to a certain extent. He has lived in Clackamas County twenty-five odd years, and for part of the time in the southeastern part, that is, not far beyond the center of east and west perhaps, but pretty well towards the south side. Part of the time he was in Molalla, most of the time in and about Canby, and some of the time in New Era. Referring to Defendants' Exhibit 259, he does not know anything about the range, but knows about the town of Molalla, and four section corners there where the town of Molalla is. The map shows Molalla at the corner of sections 4 and 5 and 7 and 8, in township 5 south, range 2 east. He notices that the lands colored in green represent on this map the unsold lands of the Oregon and California land grant, and he is acquainted with some of those lands south and east of Molalla about seven miles, maybe a little more than seven miles south, and he don't

know just how far but several miles east, approximately five or six miles along the Molalla River. There may have been a new postoffice established in the vicinity of James since he was there, it was thirty-two years ago that he was there. He knows where Wilhoit is, and is somewhat acquainted with the unsold lands of the railroad company in the vicinity of Wilhoit. He is not acquainted at Colton, but knows where it is. He has never been over in that vicinity, nor at Dodge or Elwood. South from Molalla to Soda Springs, and a little perhaps the other side, as they would go hunting, and east from Molalla five or six miles, where they would go out hunting and fishing at times through that section of the country, he has traveled over pretty well; that is, about five or six miles east from Molalla, and about seven or eight miles south, and he is acquainted with a portion of the unsold lands of the railroad company in that territory. He was looking for land somewhat himself when he was out there, as well as hunting. When he would come to a piece of railroad land, those that he was with would know what was railroad land and what was government land and they would tell him and he would look at it. He is acquainted with the general character of these lands in that community. Some of the unsold lands of the company were very desirable; that was his estimate of it. Some of it was a little bit rough, but there was a very small portion of it, in his estimation, but what could be cultivated in one way or another. He was looking for land, and when he would come to a part of this land that was railroad land, he

would take notice of it in particular to see about how much there would be that could be cultivated and so on, and the price in the neighborhood surrounding, and there were a good many pieces that he thought was very desirable land for farming purposes. Some of the land in this vicinity was quite rolling, some of it was what one would call rough land, and there was some that was compartively level land—not very large areas of really what one would call level land, like there is here in the Willamette Valley, but there was a large portion of it that could be cultivated. The topography of the ground, he would call rolling. He is not acquainted at present with the demand for land by settlers in that community, but at that time the demand was considerable. Nearly all of the government land had been taken up — one could not find anything that was vacant, scarcely anything at all. His acquaintance with this area would go back about thirty-two years; that was the time that he was there, thirty-two years ago. He has just passed through that country since, but lived there at that time and carried on business at Molalla, and he has retained a general knowledge of the land there at all times; he has not forgotten it by any means.

Q. If the railroad company complied with the conditions of the grant and opened this land to sale to actual settlers at $2.50 an acre, what is your opinion as to whether it would have been taken by actual settlers?

A. I think that if the land had been available, it would nearly all have been taken. The demand, I be-

lieve, was such, and the wants of the land was such that it would have been nearly all taken.

Q. When you say if it had been available, what do you mean by that, Mr. Zeek?

A. Well, I mean that if they could have got it from the company, there has been so many years it has been out of the market that you could not do anything with it; that they could not get it.

Q. This territory that you speak of, how does the railroad land lay there generally as to its being a compact body or in scattered tracts?

A. Well, I really don't know exactly how much would be in a tract, but then there were a good many places we could get a hundred and sixty acres in a body and other smaller tracts.

Q. Quite a number of tracts of railroad land laying in this vicinity.

A. Well, as to the amount of lands lying contiguous to each other, as to that I could not really say, because you travel around quite a little. We would come to one piece of railroad land, and then we would go a little further around and find another place, and so on around. I didn't take particular notice of about how much there would be one joining the other. But there was 160 acres in a good many different pieces.

Q. Are there any lands of similar character settled upon and farmed in that community, Mr. Zeek?

A. Yes, all the Government land there was there

was of similar character, and it was nearly all settled upon at that time.

Q. Is that settled upon by farmers?

A. By farmers. Yes, by farmers. They would not undertake to farm it all, of course, but they would farm what they needed to, and they would have some stock.

Whereupon on cross examination witness testified that he now resides near Canby, in Clackamas County, and has so resided there in the neighborhood of about twenty odd years. The nearest mail route to him is Canby, four miles, east and north. Canby is a level prairie country. Some call it the lower end of the Molalla Valley; it is close to the mountains. Canby is on the Southern Pacific Railroad, which railroad is owned by the Oregon & California Railroad Company, and leased to the Southern Pacific. He lived in Canby part of the time, carrying on business in Canby, before he moved to his farm near Canby. Prior to going on to the farm, he was at Canby three years. Before he moved to Canby he came from Sellwood, which is just outside of the city limits of Portland. He lived at Sellwood about a year, and before that he lived at Clackamas Station, in Clackamas County, Oregon, this side of Oregon City, on the line of this same railroad. He lived at Clackamas Station about a year, and before that he was at Mulino. He moved around considerable, but he thinks he was at Mulino just a little while, not more than two or three months, doing blacksmithing there, and before that he

lived at Molalla Corners, where he had a shop; that is now the town of Molalla, which is not a large place; it was not very large at that time. He does not know its size now, he has not been there for a few years, ten years or more. He passed through Mulino about two and a half years ago, something like that. He does not think his knowledge of the country is just casual, he knows something about it. He has not been over all of the land around Mulino, perhaps over not entire sections, but in more than two or three sections around Mulino. He does not know exactly how far east of Mulino he has been, but he has been up above Meadowbrook. About a year and a half ago he was out to Mulino, and went up above Mulino to what is known as Schafer's mill, almost to Schafer's mill, going up the Meadowbrook road. He does not know how far Schafer's mill is above Meadowbrook, but he thinks two or three miles, something like that. Molalla is out in the old settled part of Clackamas County, and from where the road called the Oregon City road strikes the Molalla River, he would think it is about three miles, perhaps a little more or less. He does not know that he could describe the quarter sections or half sections or eighties of this railroad land that he was over when he was out there at the time of which he speaks; he cannot tell in what township or range or section it is in. He has been east of Molalla five or six miles, a little more or less, up the Milk Creek, up past Meadowbrook, and then to the left out to Springwater. He does not know just how far it is, but he has been up beyond Molalla five or six miles.

Molalla is shown on Defendants' Exhibit 260; also Molalla River, Mulino and Meadowbrook. Meadowbrook is northeast of Molalla. Mulino is not so far up. The map may be correct. The river runs north at Canby, and Canby is east of the Molalla River. These railroad lands that he saw were about five or six miles from Molalla and south around Soda Springs. He recognizes Wilhoit as shown on the map and it would be seven miles from Molalla to Wilhoit by straight line, and he was beyond Wilhoit a mile or so, something like that; and then east of Molalla five or six miles.

Q. That would be, one, two, three, four, five, six. Well, now, you see six miles wouldn't get in that range, wouldn't get over five tracts of railroad land now unsold, of about eighty-acre tracts, or 400 acres of railroad land in that vicinity, and you wouldn't get in the other direction, from Molalla south to Wilhoit, but about two sections scattered around on Rock Creek, and between Wilhoit and Molalla. Now, are those the lands you saw?

A. Well, you don't think for a minute that I am trying to tell you what there is unsold now. I am telling you what was then.

Q. When was this, now?

A. About 32 years ago. I am not telling you anything about now.

Q. What you are testifying about now may be relating to land that the company owned 32 years ago?

A. Yes, in this same tract.

Q. Oh, I see. So that if they only own these small parcels at the present time, you could not say from your testimony what the character of those parcels is?

A. Not any particular parcels, no.

Q. All you can say is in a general way that you were out there 32 years ago, and you saw some railroad land that looked to you and was in your judgment fairly good agricultural land?

A. Yes. It was extra good, some of it.

Q. Well, it was not any better than the even sections.

A. No, but they could not get them, that is the reason—the even sections were all taken. There was no Government land to be taken there that I could find. .

Q. It had all been taken under the donation or homestead or pre-emption law?

A. Yes, sir.

Q. A good deal of it had been taken under the donation land law, hadn't it?

A. Well, I don't know whether there were any donation land claims there or not, but I don't think there was. There may have been, but I don't think there was. I don't know of any.

Whereupon witness testified, referring to Defendants' Exhibit 259, and the yellow field shown thereon, that there was some land taken under the donation land

law there in Molalla; he thinks one section cornering at Molalla, that was Sam's section, which had been taken under the donation law. The homestead law was passed, he thinks, in 1862 or 1863, and the pre-emption or donation law before that. There was not very much timber on any of this land that he was acquainted with. There was some, but not very much, it was mostly in a burn, mostly burned land. Thirty-two years ago, so far as he could find out, the piece that he bought from the railroad company, that he bargained for in the Springwater district, the company was selling it all the way from $3.50 to $4.00 and up to $10 an acre. The more timber on the land the higher the land, the higher the price. Timber at that time did not have very much commercial value, but they estimated the timber land as being more valuable than that which did not have timber.

Q. Well, now, wasn't there a good deal of railroad land in here about that time that could have been bought for $1.50 an acre?

A. Not to my knowledge.

He bought two little tracts from the company in the Springwater neighborhood, but he does not remember what sections they were in now, it has been so long ago. He could not say how many acres, but he thinks it was something over twenty acres. He bought that to make a home on it, but never succeeded in living on it. He fenced in a part of it and plowed it and planted some fruit trees and garden stuff, but never got on the farm.

He paid from $3.50 to $4.50 an acre for it, and bought it for a home. He did not live on it because his circumstances would not permit him going at the time he needed to go. He bought it under the ten year system and made one payment, but did not pay it out. He forfeited his title by failing to make payments. He does not know if the company still owns the land. Part of it was timber land, and had a little good saw timber on it. He does not know whether it has been logged off. He has not been out there since about thirty-two years ago. He has not been there since he fenced in a part of it. He fenced in and cultivated about an acre and a half of this twenty acres, he would think. His family never lived on it, and he never had any buildings on it at all. He planted a little orchard, set out some berries and one thing and another, and he guesses that has all gone to waste. He does not know how many saw mills there are in the eastern part of Clackamas County. He does not know if the Molalla country is one of the oldest settled parts of Oregon. It has been settled a long time. He knows there are donation land claims there, and he would suppose it has been settled, and he knows according to history that Oregon City was the first seat of government in Oregon, and he read that the territorial council met there for many years in the fifties. He does not know whether Dr. John McLoughlin attempted to take a donation land claim where Oregon City stands but he failed to get a title to it. He has read something about it, but his memory is not exactly clear on that. He knows that Dr. John McLoughlin was the Hudson Bay

factor here in the early forties. He has read considerable about Dr. McLoughlin and knows historically that he died at Oregon City and was buried there, but he does not know anything about whether Congress perfected the title or attempted to perfect the title to that property where Oregon City stands. He knows that about Oregon City is one of the old settled portions of the Willamette Valley, and by the donation land claims out about Molalla he would suppose that it had been settled a good while, because the donation land law was repealed when the homestead law was enacted. He does not know just what year the timber market became active in Oregon or in Clackamas County, but he knows it has been quite a number of years ago; it has been as long as 1894 anyway, he would think, and timber has been in great demand the last few years. He never tried to buy any other piece of this railroad land; he was just out looking—what he knows from the settlers around where the railroad land lay; that was about thirty-two years ago, and the price of the land and so on, and then he would go and look at it. He does not know what the land around Molalla is worth, but around Canby it is worth all the way from $100 to $250 an acre. His place is four miles from Canby, and is an open farm; he has twenty-one acres there. He does not think land without any buildings on it can be bought there for less than $200 an acre, that is in the neighborhood of where he lives. They are expecting to have a railroad, an electric line, built across Canby out to Molalla, and on around by way of Silver, but the nearest

point from where he lives is about three miles to a railroad. The whole country is valuable now and rated at good prices all over around Molalla and down to Canby.

Whereupon on redirect examination witness testified that he thinks he contracted to pay for this railroad land $3.50 for part of it and $4.50 for another part of it. He bought it in two parcels—it was in two sections, and was adjoining the farm of a man by the name of Tucker, and was adjoining farming land—joined another man's farm by the name of Frank Bunney, who had bought some railroad land—and was just the same as lands that were being farmed adjacent, there was comparatively no difference. He contracted to buy that land for a farm. There was no timber on it to speak of, just a little bit on one part of it. That part that he bought, or most of it, is good level land.

Q. According to the bill of complaint, Mr. Zeek, there yet remains unsold in the township in which Molalla is situated—5 south 2 east—718 acres of railroad land in sections 3, 5, 13, 25 and 35, the tract in section 5 being only about four acres, and in section 35 being 400 acres; in township 6 south, range 2 east, where Wilhoit is situated, there is located in section 1, 420 acres; in section 5, 552 acres; in section 7, 475 acres; in section 9, 240 acres; in section 11, 40 acres; in section 13, 360 acres; in section 15, 280 acres; in section 17, 120 acres; in section 19, 315 acres; in section 21, 80 acres; in section 23, 80 acres; in section 25, 440 acres; in section 27, 160 acres; in section 29, 400 acres; in section 33, 480

acres, and in section 35, 600 acres of railroad land. And in township 5 south, 3 east, the township directly east of the township where Molalla is situated, there is 160 acres in section 1; 160 acres in section 5; 290 acres in section 7; 440 acres in section 11; 600 acres in section 13; 80 acres in section 17; 240 acres in section 21, and 560 acres in section 23—all unsold lands of the Oregon and California Railroad Company. Now, your knowledge covered a portion of these townships, as I understand—that is, south from Molalla——

Mr. Fenton: South from Molalla seven miles, and five or six east of Molalla.

Q. And in the township where Molalla is situated?

A. Five or six miles east of Molalla and about seven or eight miles south of Molalla. And the land that I speak of having bargained for was in the Springwater district.

Q. That is at Springwater?

A. Yes, I don't know the section now.

Q. Springwater is, according to Defendants' Exhibit 259, in township 4 south, range 4 east, in section 4. How far from Springwater was this?

A. It was only just simply a postoffice at that time, Springwater postoffice, and it was about—I should think about two miles, if I remember right, east.

Q. Were you acquainted with the lands in that vicinity?

A. With the lands?

Q. Yes.

A. I didn't look around very much. Mr. Bunney took me out there to show me this particular piece of land, and it was about what I wanted and about as much as I wanted, and I didn't look much farther. It suited me first rate.

Q. Your knowledge of that locality is somewhat limited?

A. Is limited, yes.

Whereupon W. H. KANDLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-three years old, resides at Springwater, Clackamas County, Oregon, seventeen miles east of Oregon City. Springwater is a little country town, a little village there, of store and blacksmith shop and boarding house and so on, small hotel—a farming community, just a small neighborhood town. His business is that of farming, in which he has been engaged all his life. He has lived in Springwater fifty-three years, was born and raised there, and now lives in the same locality. He lives on the old donation claim that was settled in 1852, which was in sections 4 and 5, township 4 south, range 4 east, he thinks. From his experience, he is acquainted with the farming business in Clackamas County, and has traveled quite a lot over the county. They produce most all kinds of grain, wheat, oats, vetch and field peas, and most all kinds of fruit—

apples, pears, cherries, prunes—most anything in the fruit line outside of peaches, all kinds of small fruit do well there. He has raised more or less stock in that country and has been in the dairy business quite a little bit. One might say that one-half of the farmers in the community of Clackamas County, in which he lives, milk a few cows and sell the cream at the Schleswick Creamery in Clackamas County, near the Clackamas bridge near Stone. There is a good demand for the products of the dairy. Referring to Defendants' Exhibit 259, Springwater is in section 4, township 4 south, range 4 east, and he lives on his farm half a mile east of Springwater. He is generally acquainted with the unsold lands of the Oregon & California Railroad Company, represented by the green sectional markings. He has been over them more or less. He is well acquainted with the lands, he thinks, as far as ten miles east of Springwater. He has been as much as forty miles east of Springwater in the mountains, but that would be on hunting trips, hunting expeditions up there. But for ten miles east of Springwater he has hunted over that and helped his neighbors gather beef cattle in the foot of the mountains and the foothills there, and been over the lands more or less all the time. He is not so well acquainted on the north side of the Clackamas River; that would be in the Garfield district, but he has been through there a number of times. He does not know just where the railroad land would lay, or anything about that north of the Clackamas River but east, on the south side of the river, he has been over more or less all his life,

ever since he was a little boy, and his knowledge as to the northeast is of a more general character than east. Southeast of Springwater he would be acquainted with the lands out to the foothills, he would judge it would be eight or ten miles—that would take in the Elwood district and the Dodge district. Elwood is shown on this map, Defendants' Exhibit 259. He has hunted over the mountains a few times up in towards the south branch of the Molalla, on the headwaters of the Clear Creek and Molalla—the north branch of the Molalla. He has been over these lands on the headwaters of Milk Creek, on the very edge. He is not acquainted with the lands in the vicinity of Canyon Creek, except just passing through. He could not tell anything much about those lands. He has passed through there and knows where Canyon Creek is, and Milk Creek. He has hunted on the headwaters of Canyon Creek, in the mountains, but further down he knows nothing about it. He is a little better acquainted a little south and east of Springwater than he is right east. Cazadero is right east of Springwater, that would throw him on the east side of the Clackamas River. He has not hunted or been on that side of the river as much as he has on the southeast side of the river. He is acquainted with those lands marked in green in township 4 south, 5 east, on the north fork of the Clackamas River, which is headed northeast from Springwater up towards Mt. Hood. The North Fork of the Clackamas is on the north side of Springwater, and Milk Creek is south—a little west of south of Springwater. The headwaters of it are almost

due south from Springwater. The land south and east of Springwater, in Township 4, has been burned over about eleven of twelve years ago, and a majority of it, one might say, would be called deadening. It is covered with more or less dead timber and underbrush that has grown up in the deadening, and it is rolling land, lots of spring branches breaking out from the hills, and running into the Clackamas River. A proportion of that land could be farmed all right, and it is good fruit land. That condition does not extend as far east as his knowledge runs. If one would run ten miles southeast of Springwater, he would get into the foot of the mountains, and when they get into the foot of the mountains, of course that is rough and rocky and hilly, and is not good for anything except some pasture land; but as far as eight miles back southeast, there are settlers all through, and that is true generally of all the land within that radius. Most all of the homestead land is taken up there, and as a general thing people are living on the land. There is once in awhile a vacant piece where they have proved up and went off and left it there, he supposes until they would get able to start in and improve it, clean it off; but most of them have a man on them. These settlements extend back about ten miles southeast, clear to the foot of the mountains, up on the foot of the mountains, and up the Clackamas, on the main fork of the Clackamas. He knows a party who owns a good ranch up there thirty miles above Estacada, a man by the name of Davis. He has taken up a piece of land there that has quite a lot of opening on,

and he is farming it, raising hay and garden stuff, and has set out fruit trees. Farm products grow there in that locality. They raise good fruit forty miles southeast of Estacada, on the Clackamas River, in the Hot Springs country. That is getting pretty well up into the foot of the mountains. It is too rough for farming in the mountains unless one would get onto a bottom on some of those rivers. There are benches in the mountains in the vicinity of which he has testified. He does not know that there would be anything to prevent a man from farming there, only those benches are small. A man could not get a very big farm on those benches in the mountains. One will find benches there of ten or fifteen acres which a man could farm. Clackamas County, up in the foothills, is not considered a very good grazing country. They do not have the grass there that they ought to have. Still cattle do fairly well, but it is not considered a good grazing country. It is good for fruit lands, small fruits, and is all right for grain if it is cleared up once, but it takes some muscle to clean it up.

Q. To what extent, if any, Mr. Kandle, has the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre, and withdrawing the land from sale—what effect has that had upon the settlement of that land in the vicinity that you have testified to?

A. There is land up there that I have seen people looking at that would like to buy it, but they couldn't hardly afford to pay the price that they held the land

at; they didn't think they could go onto a wild piece of land and pay the price that the railroad people wanted for it, and come out—pay for it and make a living for their family. The consequence was they didn't take it.

Q. How long ago was that, Mr. Kandle?

A. Oh, you might say there has been people looking at railroad lands back for the last thirty years.

Q. That land has been off the market for some years, hasn't it, to your knowledge?

A. Yes, the last few years. But years back, you know, it was on the market, and people looking at it, and a good many of them did buy, and some did not.

Whereupon on cross examination witness testified that his father took 320 acres in the section east of Springwater in 1852, a donation land claim, and there are other donation land claims which were taken around in the neighborhood of Springwater that he knows of. That is an old settled part of Clackamas County. There are 260 acres of his father's donation land claim in cultivation now. He owns the east half of it himself. He has 130 acres, and the other 160 acres below has about 130 acres in cultivation. There is a railroad which runs to Cazadero, and he is three and a half miles south of Estacada, and Cazadero is east of him about two miles. They ship their produce to Portland from Estacada. There is no shipping point at Cazadero. That railroad used to be known as the O. W. P. but it has changed

hands and he does not know just what the name of the road is now, but he understands that the Portland, Railway, Light & Power Company has bought it. There is a power plant at Cazadero. It is quite a large plant. Referring to his statements about helping his neighbors herd cattle a few years ago, they would turn out a few head of stock cattle on the range and let them go back up southeast towards the foot of the mountains. These cattle ran clear up on the mountains, and they range all the way from Springwater ten or fifteen miles, and would range over quite a lot of Government land that had been taken up, where the parties had just fenced three or four acres, and the rest was laying outside, and some railroad land, and some school land. These unfenced lands out there used to have quite a lot of timber on them, that is, up close to the foot hills of the mountain, but down off the foot hills there was scattering timber, and more or less underbrush, and a good deal of old rotten logs that were laying down and had been down hundreds of years. There are some saw mills, not any large mills that cut very much timber around that vicinity, and they locate themselves where there was just a small bunch of timber. There was not timber enough for a large mill. The demand for timber lands in his neighborhood became pretty active about ten or twelve years ago. He does not know much about any increased demand because there is very little timber in there. There is not enough to make it an object.

Whereupon on redirect examination witness testified that he bought a small tract from the railroad com-

pany once, containing about 29 acres. He bought the same piece that John Zeek contracted for after he had left it, and he thinks he paid $7.00 an acre for it. This railroad line that he lives on is an electric line running from Portland. It is 33½ miles from Portland to Estacada, and there is an electric line running out to Estacada. This electric line runs clear above Cazadero to the North Fork of the Clackamas; that is, it is graded there and the track laid almost to the North Fork, and it runs from Portland in the neighborhood of forty miles. Springwater is thirty-seven miles by the railroad; that is, thirty-three and a half miles from Portland to Estacada, and three and a half miles south to Springwater, and the lands would be about forty-seven miles from Portland, that is, the outside limit of these lands to the foothills, would be about forty-seven miles from Portland. There is some railroad land laying southeast of him on Clear Creek, and some railroad land lying on the south side. There is an eighty lying on the south of this piece he bought from the railroad people. That land has a little patch of second growth, pretty good saw timber on it. About half of it could be cultivated, and the rest would be a pretty good little bunch of timber, and would make good pasture after it was logged off. He believes that the rest of these tracts that lay below the foothills, off of the side of the mountain, that fifty per cent of them could be put in cultivation and farmed. Of course there are canyons running through that would be too steep, but on the benches and up on the ridges there could be farmed, he believes,

fifty per cent of it. The railroad land down on Clear Creek, of course that lay, quite a lot of it, on the hillsides. There could not be quite so much of that farmed, but it could be worked into pasture land by burning off and sowing with orchard grass and timothy, etc. There is no railroad land adjoining him at the present time. There used to be some land there adjoining him that Mr. Bonney bought right over south of him, a forty, and that forty joined the 29 acres that he bought. Mr. Bonney used to own it. A man by the name of Mr. Miller bought that forty and the 29 acres from him. The title has passed from the railroad company, and Miller has made a good little farm of it. The demand for timber commenced about ten or twelve years ago. People paid no attention to timber in that section up to about ten or twelve years ago, and then they commenced to want to get hold of a piece of timber land. The people who settled on the even sections burned the timber up in every possible way they could, to get rid of it. That community where he lives was generally a timbered section, had scattering timber over it. They had no prairie land in that county at all. They had timber scattered all over their farms. There has been an increased demand for agricultural lands the last ten or twelve years, and the price of agricultural land during this period has increased materially. There is a good demand for lands for settlement purposes, but there is not very much land for them to get hold of any more.

Whereupon on recross examination witness testified that free from buildings, his land is worth $100 an acre.

The average value of the unimproved land out there, taking it as it runs, say for four or five miles east of Springwater, and four or five miles south of Springwater, eliminating the improvements, will run from $15 to $35 an acre. He is seventeen miles southeast, almost east, a little south of east, from Oregon City.

Whereupon A. W. RIGGS, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-three years old, and lives 2.9 miles from Canby, which is situated in Clackamas County, Oregon, and has lived in Clackamas County sixty-three years, except about seven months at Hood River and a few years in Portland when he was a child; his father settled on 640 acres within a mile of the river at East Portland in 1847 or 1848, or somewhere around there. He dug three wells to get water, and had to pack water from the Willamette River for a mile, and so left the place. He has been farming most all of his life, in the neighborhood of Canby, and he is pretty well acquainted with the farming conditions of Clackamas County, Oregon, and the products and stock that they raise, and the ability of the land to produce. He notices Canby on Defendants' Exhibit 259, and he could hardly tell the unsold lands of the company marked in green on this map, Defendants' Exhibit 259, but he has 160 acres in section 12, township 7 south, range 2 east, on Cold Creek, which is not used very much for the reason that there is not very much of a settlement in there; but they use it for grazing purposes and strawberries and all kinds of fruit. He bought 160 acres of a homestead for $2.50

an acre, six years ago last January, and then sold it the other day for $10.00 an acre. That land was burned land, he calls it. He thinks they said the fire ran through there in 1849, and the timber is getting pretty well rotted. There has been no timber on that part of the land that is worth very much. There is some piling on it—there is timber there a foot and a half or two feet through, now, but not on very much of it, just in places. Of the 160 acres he bought, he thinks there could be about seventy-five per cent of it rendered suitable to cultivation, and most of it around there could be rendered suitable for cultivation. One might drop over to the Molalla Canyon, and there is a whole lot of that, that is not worth anything excepting for pasture, it is too steep. As to saying that he is acquainted with the railroad land, he could not say, because he does not know what sections are railroad land, but he has been all over the mountains in that vicinity, hunting elk and deer, and he is acquainted for several miles around there, some four or five miles, pretty well, and he would judge at least one-half of it is taken, the even sections, homesteaded. A man right south of him had a homestead of eighty acres; that is all he could get in one body, and there was another eighty acres he thought he could get after he homesteaded this. They told him he could take two eighties, or hold one at a time, but he said another man jumped the other eighty acres. He homesteaded that, and has proved up on it, and the most that he raised of any value was strawberries. Last year on about half an acre he had sixty crates of straw-

berries, and sold them at $1.50 a crate, at Soda Springs, seven miles, and he said they turned right around and sold them to a man who came from Portland in an automobile for $3.00 a crate. This land produces other products than strawberries. There are settlers living in this community; a few settlers around there, and the reason there are not more is because they cannot get the railroad land, and there is no school. This man east of him had to move out to school his children, and he was afraid he would lose his homestead. He had five children there and it is four miles to any school. They raise on these homesteads, in this settlement, mostly hay, for the reason that they have mostly stock. There is no threshing machine comes in there to thresh what little they raise. They raise hay and such as they can feed to their stock. He knows of railroad land there; he knows of one forty acres that could all be cleared, it is easily cleared—quite a lot of open land already to plow on it. This homesteader plowed part of it and raised hay for his stock. There is but little land cleared on the farm there that witness owned, in township 7 south, range 2 east. He bought it on account of his stock. His grandson went up there one summer and cleared an acre and a quarter of land without a stump on it—flat land, as good land as one ever saw; nice flat land, bottom land. It was a homestead, but there was not more than an acre cleared when it was proved up on. They had fenced it with wire in order to keep stock there. The title passed from the government to that land during Cleveland's administration. He would think on an

average, generally speaking, that seventy-five per cent of the land in that vicinity, if it was cleared up, could be cultivated, but it is just like other land, it is hard clearing. There is a burn there, just this side of the burn is green timber, and he is just in the edge of the burn. There is 640 acres of railroad land just this side of his place. Six years ago there was a time when people commenced thinking they were going to get the land and they all squatted and put notices on it. That land is still timbered. There are open places where they could put in garden or a little stuff, but it is timber land. It would not pay a man to go on that timbered land and make a home on that land in that township. It would not pay him because he could not live there. There is too much timber, and to cut that timber and waste it, would not pay him. He thinks this is in section 1, township 6 south, range 2 east. The land there is good—the land is number one, and could be cultivated if it was cleared. He thinks very nearly every bit of it could be cultivated. That timber land has no grazing on it—it is in the green timber. All the grazing part is out in the burn; then there is so much fern grows that there is not a great deal of that. That is what he said about grass. This mesquite grass has to be sowed. On the place he bought there is quite a lot of grass in through there, where they had stock. It would be good for sheep, but there is a heap of it just fern and logs. There is fern up there that grows away up high, measuring nine feet long, which prevents the grass from growing. The cow has to wade right around and knock

that fern around to eat the grass. There is lots of grass among it in places. The soil, most of it, is good. The only thing against that country is, it is up and down hill, and the stone on those steep places, it is, rocky. In that timber, there is good soil. It is not any harder to clear than some other land was. It is not any harder to clear than right here, he thinks; his father was here, —meaning East Portland,—when this was all timbered. He tried to purchase a piece of this railroad land down near his home, forty acres, but did not get it. The railroad company said it was not for sale, and they would not give him an option on it. They wanted him to write to them and advise them as to the quality of the land, and he did that when he wrote to them. It is forty acres of land on the Molalla River, between Molalla and Mill Creek, and has small timber on it. It has been skinned of the timber by settlers. One would cut in on it a little ways and another one on the other side, until there is not much left only second growth timber, but still it has good second growth timber, such as piling, and cedar for telephone poles, and cotton wood. He never took up a homestead. He filed on thirty acres once, sold the improvements to another fellow and threw it up. That was all the land there was in the bunch, thirty acres. That was in the settlement there where he lived.

Whereupon on cross- examination witness testified that the 160 acres that he owns out there is in section 12, township 7 south, range 2 east. He does not remember exactly how long ago that place was home-

steaded, but it was proved up in Cleveland's administration, about thirteen years ago. He supposes the man lived on it five years. It was a homestead. He supposes that a good part of the 480 acres in section 6, township 7 south, range 3 east, and 80 acres in section 32, township 6 south, range 3 east, and 40 acres in section 8, township 7 south, range 3 east, a good part of that was government land at that time. He thinks the southeast, or the northeast quarter of that was taken before his was, by a man by the name of Bonney. There is no government land there that is of any account now; it is no account because it is too steep. Section 6, township 7 south, range 3 east, 480 acres, is on the streams where it is too steep. His land sets in between two streams, and is comparatively more level there than where the land breaks over on to the Molalla and Butte Creek. Where it breaks over on the side it is too steep for a man to plow. He could not farm it, but could use it for grazing land, that is all. If this government land is there now, it is not worth taking; people could not take it and make a living on it. These people that five or six or seven years ago tried to get on to a railroad section there, three or four of them going out there —did not build cabins, they just put up notices, except one fellow built a cabin and lived there for a year and then moved off. They thought maybe they could homestead the land if the railroad company lost it; that is, if the railroad company lost the land, they thought they would get in there and settle on it. One fellow was on a piece of that section at that time that was pretty nearly

all timber, but there is some open land on it; three or four acres of open land in spots, it is flat open land; one could plow it. The section is pretty well timbered —saw timber. He does not know the price of timber there. His father-in-law owned a piece right adjoining that land, but he never would tell him what he got for it. He does not know what the stumpage is worth, or what they pay a thousand for good saw timber. He is not acquainted with the timber business and never dealt in it. That was pretty good timber there. The quarters that did not have any timber on were pretty well picked out—that was the trouble. They selected this section, where three or four people put up notices on it, about the time this controversy commenced as to whether the railroad could hold the land.

Whereupon on redirect examination witness testified that this section of land that he mentioned as having notices posted on it, was section 1, township 6 south, range 2 east, but he does not know anything about the stand of timber on it. He never cruised any and never knew anything about that business. His father-in-law homesteaded a piece right adjoining him that is as timbered as it is. There are some settlers living in there, in township 7 south, range 2 east. That 640 acres was pretty well covered with timber, but from his place out the other way, where the settlers are, it is all burned country, no timber of any account. His place has the best second growth timber that there is in there. There is quite a lot of piling on the creek bottom, but most of it is barren land—nothing but willow brush and fern. The

burns do not destroy the soil. Burned land is good land, if one gets in and cultivates it.

Whereupon on re-cross examination witness testified that he does not know when the burn was, but the people tell him that it was in 1849, but he has timber there that is from six inches up to two feet through. These trees that are two feet through are very tall. They may be one hundred feet or more than one hundred feet. He thinks they have all grown since the fire. He would say that he had on his place probably thirty-five or forty acres of fir timber. He knows that this fir timber does come up, and inside of sixty years makes saw timber.

Whereupon on re-direct examination witness testied that his knowledge as to the growth of the fir timber is limited to this section of the country where he has lived. Large saw fir timber generally used for logging purposes, does not grow in any such length of time as that, but this second growth will make saw timber, that is what he means. Now, there at his home, he knows that when that brush was only so high, he could drive over it with a wagon, and now they have made saw timber out of it. They had a little mill in there and sawed up a lot of this timber and made lumber out of it, and made fencing and rough lumber. Some of those trees were about two feet in diameter. He knows that to be the case because he saw wagons drive over them. He does not know how much the general conditions as to the natural formations and possibilities of agriculture, and the timber conditions, since 1870, have changed. He does not know that they have changed; he could not

say that they had. Timber growth always, since he has been there, is just the same. Whenever one makes a burn and leaves it, it is soon growing up into fir brush. The general conditions in that country have been the same since 1866. He remembers well when his older brother slashed a piece of land, and now witness can show one tree two feet through on it. That has always been timbered country during that period. It seems as though that burned country does not set to fir like it has down in the valley; he thinks it has been burned off so many times. That timber of his up there, is on a creek bottom, and the rest of the land up there has no fir on it to amount to anything. The fir timber grows in the valley where he lives that he knows of, but this up in the mountains is on a creek bottom, where it is rich beaverdam—would be called beaverdam land; it is real black land.

Whereupon on re-cross examination witness testified that he thinks that this burned area up there has been burned over a good many times, and that probably kept the timber from growing up.

Whereupon W. R. LAMB, called as a witness on behalf of complainant being duly sworn testified that he is forty-seven years old, resides near Medford, Jackson County, Oregon, and has lived in that County about thirteen years, and has been farming most of that time in the Big Butte Country and on the North Fork of Little Butte and near Medford and owned lands there. He first lived and farmed in the Big Butte country.

His land was in section 26, township 34 south, range 3 east, where he had two hundred acres. He took up a homestead in Jackson County, he thinks in section 26, township 34 south, range 3 east. He lived a little while at Talent before he went up there to the Big Butte place; he took his homestead when he went up into the Big Butte country right away, it was 160 acres. He had a timber forty beyond there about a mile which he filed on under the timber and stone act. He lived on his homestead there about four years. The character of this land that he farmed there was reddish like loam; it was partly timber, partly open country, mostly timber. He cultivated about 25 acres, as near as he could tell, not all on the homestead, right close to it though. Part of the land required clearing and part of it did not before it could be plowed or cultivated, but not all on his own land. He had a family and earned a living there and supported himself and family on that land. He left that country on account of school for his children. When he first went there, there was no school and they organized a district and built a school house which burned down. They built another and it burned down. There is railroad land all through that country, the odd sections. There was difficulty in getting a sufficient number of children to organize and maintain a school in that vicinity at first, but they had enough children by going a good long distance for school. The reason he left his homestead was in order to get better facilities for his children than there were in that vicinity. The school house burned down and he had no way of

educating his children. He should have said two school houses burned down. He sold the land and does not know if it is still farmed as he has not been there since he left it five years ago. There were settlements in there, people living in that community when he left. He farmed on Little Butte Creek, on the North Fork of Little Butte. He farmed near Medford, in Jackson County and a little near Talent before he went up into the Big Butte country, all in Jackson County. His experience is sufficient to acquaint him with the possibilities of farming and the farming business in Jackson County in the vicinities where he has been acquainted. Farming has been his business practically ever since he resided in Jackson County. He worked a short time in the sawmill but very little. His homestead was in section 26, township 34, 3 east, and referring to "Defendants' Exhibit 259" he does not know that he could tell just how much of the land in the vicinity of section 26, township 34, range 3 east he has been over, but he has been over an area, he thinks, of ten miles, from there to Butte Falls and perhaps five miles south and east of the land he is speaking of; that is east of this township 34, 3 east. He could not tell exactly the boundary lines, how far he was, referring to township 34 south, range 3 east. He is fairly well acquainted with that country in through there, four or five miles either way from where he lived on his homestead and ten miles to Butte Falls. Butte Falls was south and west of there. He is fairly well acquainted with township 36 south, 2 east. Lake Creek runs through that township and Little Butte

Creek according to this map, "Defendants' Exhibit 259." He has been all up and down the North Fork of Little Butte Creek. Lake Creek is on the forks between the North and South Fork of Little Butte Creek and he is acquainted with the land on the North Fork of Lake Creek and has been back to Soda Springs and is fairly well acquainted with the lands in the vicinity of Soda Springs, but has not been in there as much as he has around Lake Creek. The County road goes right to Soda Springs. He has been off the road along towards Soda Springs and has hunted through that country and has run stock through there some, not very much, not as high as the Soda Springs but he has around Lake Creek. He had a farm in the vicinity of section 34, township 36 south, range 3 east, which was two miles up the creek from Lake Creek, up the North Fork of Little Butte. Lake Creek is the postoffice. Forty acres of the land was railroad and forty was school land. He does not know what the source of title of the balance of the land was. The farm contained 300 acres. He has a farm near Medford, about a mile and three-quarters from the depot of the Southern Pacific Company at Medford. He thought that land had been taken up some years ago, it is an alfalfa ranch that he is living on at present close to Rogue River. He is not much acquainted west of Eagle Point, but east of there he has been through that country. The map shows Eagle Point in township 30 south, range 1 west, and shows tracts of railroad land in that township, comparatively small tracts. He has been around Brownsboro and is fairly

well acquainted in that vicinity. He would not know railroad land from any other there as he had never had it mapped out to him. He has been around by Central Point, near Jacksonville, close to Medford, north of Medford. He is fairly well acquainted about Jacksonville, which is the county seat of Jackson County, about five miles west of Medford, something like that. He has been to Ashland and about seven miles south of Ashland on the railroad, as well as on the wagon road, only years ago on the railroad and he has been on the wagon road from Ashland. He is acquainted with the lands in the vicinity of Butte Falls and he has been up Willow Creek east of Butte Falls. He has not been over the lands in that vicinity away from the bed of the creek, but has just been up the road and it was sufficient to give him a knowledge of the lands in that vicinity. As far as he could say there is a great deal of timber in through there, in the area he has described around his homestead, there are open glades and there is a large amount of railroad land in that vicinity. He believes about half of the country is railroad lands. In their raw state, the way these lands are at present they are good grazing land.

Whereupon witness testified:

Q. What percentage of those lands do you think, in your opinion, would be suitable for settlement purposes, that a man could go on there and take up 160 acres of land for the purpose of making a home there?

A. You mean just taking the country over; how much per cent of the quarters—quarter sections?

Q. How much per cent of the 160-acre tracts, regardless of whether they were quarter sections. They might be in a T-shape or L-shape, 40-acre legal subdivisions of land contiguous, lying contiguous, 160 acres.

A. I would think about 75 per cent.

Q. How much farm land would you think on an average a man could get from the lands?

A. Well, I would think about 60 per cent of it could be farmed after it was cleared.

Q. Now, in this other territory out from Lake Creek that you are acquainted with—

Mr. Fenton: That is on Little Butte.

Q. Little Butte Creek, on the north fork there, out from Lake Creek, the Soda Springs country?

A. That is grazing land a great deal of it through that country.

Q. Well, what per centage of it do you think would be suitable for settlement purposes, that is, for a man to take 160 acres for the purpose of making a home there and farming it?

A. I would think about the same as it was on the other creek, about 75 per cent.

Q. How about the average of tillable land?

A. It won't run as high a per cent, I don't think, through there; that is, it is hilly more—it wasn't quite as level as it was up in the Big Butte country. A man could farm it, but it wasn't as easy farmed as it was in the Big

Butte country.

Q. How does that land compare as to having any timber on it with the other country that you are acquainted with?

A. That hasn't got near as much timber as it has in Big Butte. The timber is scattering.

Q. Now, are there lands of similar character, that is, that have been timbered lands there, are any of those lands being farmed in these viciniites?

A. They are.

Whereupon witness testified that they raised in these vicinities wheat, corn, well he would say all kinds of small grains that he has ever seen grow, stock, hogs, cattle, horses, all kinds of poultry, and there are settlers living in that community who have gone into the timbered country and made farms on lands similarly situated.

Whereupon witness testified:

Q. Mr. Lamb, in your opinion, what has been the effect, if any, of the railroad company's failure to comply with the conditions in their grant in failing to sell the land in tracts of 160 acres to actual settlers for $2.50 an acre and in selling in large tracts to big companies, and in withdrawing these lands from sale?

A. Will I answer it?

Q. Just go ahead and answer it.

A. It has hurt schooling, hurt the population of the

country.

Q. By hurting the population of the country, do you mean—

A. Kept settlers out of there.

Whereupon witness testified that he applied about five years ago to purchase land from the Oregon and California Railroad Company, being the southwest quarter of section 27, township 34 south, range 3 east. There was a great deal of timber on most of it, some open glades in it, free soil, reddish colored loam, and was well situated for agricultural purposes. There was good grazing land on it. He had farmed land adjoining this and had raised two tons of wheat hay to the acre adjoining this land of the same general character. The lands that are not adapted to tillage and could not be plowed would raise good grass and could be used for pasture land.

Whereupon on cross-examination witness testified that he took his homestead April 27, 1903, lived on it four years, commuted and paid up at $1.25 an acre. It was in section 26, township 34 south, range 3 east, and was not on a creek but close to Camp Creek, a branch of the North Fork of Big Butte. It was about ten miles by wagon road from his place to Butte Falls. There were about five acres in cultivation on his homestead when he left. His five acres was bench land. It was not on running water. His improvements were not on this five acres, but right by it. His improvements consisted of house, barn, fence, wood shed, smoke house;

his house was 16x24 with a kitchen 14x16. The kitchen was a box, and the balance of it which he made would be called frame. He cut the poles, used studding, split out pieces for the sheeting and used what they call shakes or clapboards in that country. The shakes were made out of sugar pine. The main part of the kitchen was made out of sawed stuff and the rest was hewed out. The kitchen was boxed and had studding and the house was ceiled with lumber on the inside, the main house. He floored the house with lumber. He built his barn out of hewed pieces and sided it up and covered it over with shakes. It was all made by himself or hired men on the ground. The five acres was originally partly open. It was a deadening and he could not tell how much timber he cut off of it. He cut the snags as they called them, or dead trees down and rolled them up and burned them. This five acres was a deadening and it was practically clear. It had been burned over timber land. The old snags and logs and things of that kind were left from the fire and were still there. He lived on that place four years. His family consisted of himself, wife and four children.. He did not have any hired man during that time, and did all this work of clearing this five acres himself. He left the stumps and burned around them. He sowed wheat on this five acres. He could not tell how much wheat he raised in any one year on his five acres, he mowed it for hay and did not thresh any of it. There were no threshers in that country. It is fairly well up in the mountains but he could not tell the elevation, but it is a good deal higher than Medford, but he could not say

how much higher. He could not say whether it was in the frost or below the frost line. He planted some young apple trees there but they were not old enough to bear when he left that country. He planted potatoes for his own use and had no frost early in the fall. He did not raise anything on the place to sell. He worked outside some, carpentered some and worked for some of his neighbors. The twenty acres that he farmed was about a mile away, something like that, he rented that. He thinks that twenty acres was on a homestead and was on a creek called Freeze Creek, a little branch, there was water in it in the winter time but none in the summer. This farm of twenty acres had been cleared out of the timber, and he does not know how long it had been cleared, but he farmed it. This twenty-acre tract was not on the stage road, there was a building on the land. He rented this place from Fred Rapp, who he thought had owned it for about seven or eight years. He paid one-third of the wheat hay, which yielded about two tons to the acre, as rent. He had some horses and four head of cattle. The cattle roamed out over the country around there. He ran his own cattle, turned them loose at the homestead and let them go, but they would not go far. He also had some calves. He received $22.50 an acre for his homestead from the purchaser, Woodbury of Kalamazoo, Michigan, whom he supposed were timber people. There was scattering timber through his homestead, except the five acres he cultivated. He does not know what the purchasers bought his homestead for. He never made any cruise or estimate of the timber on his home-

stead. He did not think that he had a good timber quarter section of land. He does not know what a merchantable timber quarter section of land would be. The forty acres that he took under the timber and stone act was not adjacent to the homestead but was about half a mile from the nearest corner of it. This last mentioned tract was timber land and he sold it to Woodbury. Woodbury resides in Kalamazoo, Mich. He sold this land four years ago last March. He commuted on the homestead about 1906 or 1907, he does not remember. He had no thought of selling the homestead to Woodbury, before he made his proof upon it. This sale was attended to for Woodbury by B. H. Harris, who paid for the land through the Medford National Bank. Harris was a sawmill man up on the Big Butte, but he does not remember the name of the company. He had heard that Harris was operating for W. S. Dewing, Kalamazoo, Mich., and had heard that Dewing has a lot of timber lands on the Big Butte. He had never seen Woodbury, who bought his homestead. He has not been to the homestead since he sold it and does not know whether anybody lives on it now. There was fir and a little sugar pine on the homestead. Most of this timber is saw timber. The two school houses that burned down were built by tax. He does not know how the railroad lands were taxed. They levied a certain amount of tax, so many mills tax and built the school houses and he supposes whatever land was in the district had to pay a proportion of the taxes. The last school house burned down the fall before he sold his homestead in March or February. He farmed on

the Little Butte, owned 320 acres there which he purchased from a man by the name of Peck. Part of this land was a homestead, forty acres railroad land, forty acres school land and he does not know what was the origin of the title of the remainder. He paid $3,000 for this land and owned it over two years and sold it for $5,000 to Mr. Farrar who is in Portland at present, but he does not know where he makes his headquarters. He did not know where Farrar lived when he purchased this land, but does not think that he was a timber man, or dealing in timber, and did not know whether Farrar lived on the place. In this 320-acre tract there are 60 acres in cultivation and part has not very good timber on it and would hardly be called timber land. Some of it was desert land which was good for pasture.

Whereupon witness testified:

Q. What kind of soil is it?

A. Part of it was what we call sticky soil, part free soil.

Q. And rocky?

A. Part of it was rocky.

Q. Hardpan that you can't get through without pretty nearly blasting?

A. Some of it was; some of it was not.

Q. A good deal like the desert out there north towards Eagle Creek from Medford, that they are trying to break up now with these plows that go below the hardpan?

A. Yes, and they are making good ranches of them.

Q. A Spokane concern is trying to put water on it, and put out a few trees, and sell it to suckers?

A. They are making a good living on it. If you had attended the Jackson County Fair this year you would have seen good products grown on it.

Q. What made you sell this 320 acres of land?

A. Well, I don't know, the same as anybody else would take a notion to sell anything.

Q. Now, you say that in your judgment sixty per cent of these railroad quarters, in the vicinity of your homestead and in the vicinity of this farm on Little Butte where you are acquainted, could be farmed after it was cleared?

A. Yes.

Q. Well now, it would have to be cleared of the timber before it could be farmed, wouldn't it?

A. And brush.

Q. Well, I mean the timber that is on it would have to be cleared, too, wouldn't it?

A. Well, a man could farm around the stumps if he wished, raise grass.

Q. I know, but wouldn't he have to cut the trees down and cut the timber and logs?

A. On North Fork it ain't very heavily timbered.

Q. But just answer my question without arguing.

You would have to cut the timber down, wouldn't you, before it could be used for farm purposes?

A. Part of it could and part of it couldn't. Part of it is already clear.

Q. How do you mean clear?

A. I mean nothing on it—glades open, what we call open glades in that country.

Q. How large an open glade is there on any one of these quarter sections?

A. Section 15, township 36, 2 east, there must have been five or six acres adjoining the forty that I owned clear.

Q. That has an open glade on it?

A. Clear, clean, no brush on it.

Q. What kind of stuff is there on it—anything at all?

A. Grass.

Q. What kind of grass?

A. Wild grass.

Q. What kind of soil?

A. Sticky.

Q. Any rock?

A. A few.

Q. Is it steep or level?

A. Neither one. It is just a gradual slope.

Q. Now, how many settlers, Mr. Lamb, can you name that lived within a mile of your homestead, that lived on the same character of land, and did not live on the creek bottoms and on land that had been settled years ago? In other words, how many settlers within a mile of your place clear around can you name that lived there when you were there?

A. Mr. Aldrich. Very few, because the railroad took a mile out of each corner, and we couldn't get settlers very close to us.

Q. Now, these people that lived there, did they take homesteads?

A. Mr. Aldrich did.

Q. When did he take his homestead?

A. The same time I did, I believe.

Q. Has he sold his place?

A. No.

Q. Is his timber land?

A. Partly.

Q. Now, name someone else within a mile on either side clear around. Take a two-mile circle. I mean a circle, and leave your place out—

A. Two mile?

Q. Yes, two miles, a mile on each side.

Mr. Rabb: It is a mile on each side. The radius is a mile. A mile from your place.

A. Mr. Byden.

Whereupon witness testified that Byden relinquished his homestead but not to a timber company. He thinks he relinquished it to some party in Medford, but does not remember the name and does not know what became of it, or how much was received for it. The land that he applied to purchase from the Railroad Company, the southwest quarter of section 27, township 34, 3 east, was about half a mile northwest from his homestead and part of it had timber on it. He made application to the Railroad Company to purchase this land. He and one of his neighbors wrote to the Railroad Company and he does not just remember where they wrote to. He had his application recorded in Jackson County. He offered $2.50 per acre to the railroad for this land, and it was as good a quarter section as the homestead that he sold.

Whereupon witness testified:

Q. If you had got that for $2.50 an acre you would have got it for $400, and then you could have sold it for $3600, couldn't you?

A. I suppose I could have if I had wished to have sold it.

Q. You looked around, did you, to find a good quarter before you made your application?

A. Yes, a good average quarter.

Q. Yes, you wanted to find a good piece of timber land, didn't you?

A. Well, I wanted to get a piece of land to run stock on.

Q. And you would take the timber if they would throw it in, wouldn't you?

A. Oh yes.

Q. And you wanted to run stock on it while this timber stood? Wasn't that the idea?

A. Well, I might slash some of it off.

Q. Yes, a little, enough to build a cabin.

A. I don't know what I would have done with it until after I had got it.

Q. You didn't move on it, did you?

A. No.

Q. You didn't make a cabin like some of these Lafferty clients in this record?

A. No. I didn't think there was any use when they wouldn't sell it to me.

Q. Although you went to the trouble to have them file your application and make your contest in the records of Jackson County?

A. Yes, sir.

Q. You were advised to do that?

A. I was told the railroad company had agreed to sell it to settlers for $2.50 an acre, that I might settle on it.

Q. You didn't want to settle? You wanted to run your cattle over it?

A. Wasn't that settling on it?

Q. Is that the way you wanted to settle on it?

A. I would have moved on it if they had let me have it.

Q. The timber would have paid you to move on it for a while, wouldn't it?

A. The timber would have paid me to move on it for a while?

Q. I say, honor bright, wouldn't it have paid you to move on it for six months to get the timber?

A. Yes, it would have paid me to move on and hold it for five years.

Q. To get the timber, that is the fact, isn't it?

A. Ask that question again, won't you?

(Question read.)

A. Not only to get the timber. I would have liked to have the land.

Q. You would have liked to get the timber too?

A. Yes, I would have taken the timber along with the land.

Q. As a matter of fact the real reason you applied for that quarter section over a quarter section that didn't have any timber on it was because there was timber on it

—now, isn't that the real fact about it?

A. It would have been hard to take a quarter in that section that didn't have any timber on it.

Q. I know, but you were not looking for a quarter section that didn't have any timber on it, were you?

A. I couldn't have found it in that country.

Q. I know, but knowing that—you knew it was all pretty good timber, didn't you?

A. It was not all timber. I testified there were some open glades on it.

Q. I understand, but the quarter section that you applied for, and offered $2.50 an acre for was a pretty good quarter section of timber as that timber runs in there?

A. Yes.

Q. And you picked that out because it had pretty good timber on it, didn't you?

A. Well, I don't know that I picked it out any more than I would a good many other quarters. It wasn't any better than some other quarters.

Q. I understand, but you picked that quarter section out because it had good timber on it, now, didn't you?

A. Well, it had good land, too, on it.

Q. I understand, but answer my question. Didn't you pick that quarter section out because it had good timber on it—yes or no?

A. Yes.

Q. That is all.

A. Partly, I might answer.

Whereupon on re-direct examination witness testified that during his residence in Jackson County he had been engaged mostly as a farmer but never engaged in the timber business. At the time he took his homestead he had no land, no home, and wanted a home. He purchased the other farms mentioned for the purpose of making a living off of them by farming and raising stock. The sticky land referred to by him is black land and is a productive soil.

Whereupon upon re-cross examination witness testified:

Q. Will a plow scour in this sticky land?

A. Not good.

Q. Don't you know you cannot drive two hundred feet with a plow in the ground in that sticky land until it chokes up and you cannot get any further?

A. No, I don't.

Q. Fills the mold board so it is clear and smooth and you cannot keep it in the ground?

A. Oh yes, you can.

Q. Do you tell me that that sticky land, that the plow will scour in it at all?

A. Not scour good.

Q. It won't scour at all, will it, unless it is wet—half water?

A. In the fall of the year, when the first rains take place it is as good as any land we have got.

Q. Do you know that land over about Jacksonville belonging to the Hanley estate that you cannot get a plow to stay in the ground unless it is wet as water?

A. Yes, you can.

Q. That is sticky land, isn't it?

A. I am not acquainted very well with the Hanley ranch.

Q. How many acres of that sticky land have you tried to plow?

A. I don't know as I could just tell you that.

Q. You have never had very much experience if you think a plow will scour in it.

A. Yes, I have. I say it won't scour good in it—I don't argue that at all.

Whereupon on re-direct examination witness testified that the Rogue River Valley is on sticky land. This soil produces grains, fruits and vegetables and is used for general farming purposes in that county. The land in the vicinity of his homestead that was in cultivation and that which he cultivated was good farming land. Nearly all of the lands that were cultivated in that section of the country contained more or less timber. He was up in that country five years ago and people were living up

there, farming timbered land which was cleared and slashed, part of it and part of it was open glades. Nothing would prevent the farming of this land except the timber that grows on it, except where there were patches that were rocky, but the bulk of it was very easily cleared of rock after the timber was off. This would be a good farming country after the timber is removed. It will take some work to clear the timber of course.

Whereupon CHARLES RANDLES, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years old, resides at Lake Creek, Jackson County, Oregon, and has lived in Jackson County since 1881. He was born in Redding, California. For the last twenty years he has been engaged in riding after stock. He ran a farm, along with stock raising, which was located on the south fork of Little Butte in Jackson County, Oregon. Lake Creek is a post-office and there is a stream there that is called Lake Creek. The post-office is right at the mouth of this creek and he should judge that that ranch is about twenty-five miles from Medford. When he came to Jackson County in 1881, he came with his father. He was at that time fifteen years old. He moved from California to Jackson County with his father and mother. His father and mother lived in that Little Butte country—Lake Creek country as it is called. They settled there and his father took a homestead on the south fork of Little Butte creek, about fourteen miles south of Butte Falls. His father and mother lived there until twelve years ago. They proved up and got a patent to the land. He was

not at home much after he was seventeen years old. He rode after stock, worked over in Harney Valley, and some west of the Cascade mountains.

This homestead of his father lay part of it on the creek, part of it was hill land, and some scattering timber on it, principally pine, some fir. Some of it was good sized timber and some small. It was scattering hill timber. Verp little of it was saw timber. His father cleared and grubbed the land out of the creek bottoms, cleaned them up, put them in garden stuff, alfalfa, and so on, and they cleaned up about seventy-five acres of brush and timber land. They lived there from 1881 up to twelve years ago, which would be about nineteen years.

His father went from Jackson county to Yreka, California, and stayed a while, and at the present time he is in Medford.

The land that his father cleared was cultivated and put into alfalfa, a good part of it, a portion of it raised potatoes, onions, beans, corn, oats, wheat, barley, all kinds of grain. That land is something about 1860 to 1865 feet in elevation, about the same as Ashland. Part of the land is sticky land, and the creek bottoms was land that had been made from time to time, sandy loam, and is good, productive soil. His father had about forty or forty-five acres in alfalfa there. He raised small grains on most of the balance of the land. There was some waste land on it, pasture land. The waste land was used for pasture. He had one hundred and sixty

acres, and then witness bought one hundred and sixty acres adjoining from a man by the name of Davis, which was all hill land. They then had three hundred and twenty acres of land there. He farmed a portion and pastured a portion of this land that he bought from Davis. It was in township 36 or 37, range 2 east. The nearest post-office was Lake Creek, about four miles east. He doesn't remember the number of the section, but it was in the southern part of the township, near the central portion. Most of the riding after stock that he did was in that vicinity, in the Butte Creek country on the head of Dead Indian. He became familiar with the country there in riding after stock that way. He had ridden all through that country. He was riding most of the time and had been over the lands quite a good deal and observed the extent to which the land is settled there, and has observed the use to which the land has been put there for the purpose of growing agricultural and horticultural crops to quite an extent. It is hard for him to get at the size of the country that he has been over, but he has been through the head of Dead Indian country, which is as far south as he is acquainted with the country, being about twelve or fourteen miles from Lake Creek, and he has been about twelve or fourteen miles north from Lake Creek as far as Butte Falls. He has been through the Butte Falls country, but he is not very much acquainted on Butte Falls but in the vicinity of Butte Falls. He has not been very much along the Rogue River. He is not much acquainted with the Rogue River country. He has been east of Mt. Pitt from Lake

Creek straight to Mt. Pitt, about twenty miles; he has been all through that country west from Lake Creek to Medford, which will be about twenty-five miles west. He has ridden after stock in there something like twenty years, and also in eastern Oregon. He has been at the business about twenty-five years, and he thinks he has put in about twenty of it in this section (referring to the places mentioned in Jackson county). He does not know in a general way where the railroad lands are situated in that territory. He never paid any attention to railroad sections or government sections. He knows as a whole, as a general thing how the country looks and the lay of it. The principal part of the territory with which he is acquainted in that territory compares very well with the land homesteaded by his father, and that he bought adjoining his father's homestead. There are settlers up Lake Creek about fifteen miles, from Lake Creek post-office. Some of these settlers are engaged in stock raising, some in farming, raising vegetables, etc. That is a pretty fair alfalfa country in there. On the south fork of Little Butte, most all of these settlers have their bottom lands in alfalfa. On the north fork, they raise mostly meadow, and on the hill lands they raise grain, hay, corn, wheat, oats, and all such as that. Take the land in general from Lake Creek for eight or nine miles east, and it is all good corn country, and wherever one can get the timber off and the land cultivated, one can raise good corn. That condition extends south clear through to Ashland, and all of that country and north in and about Butte Falls, which is as far as he knows

much about the country, that condition exists as far as he knows the country there. That country is a broken country. One comes to creeks; there will be canyons along there, and the side hills, and benches; there will be quite a draw which they farm, and then one would come on up to this level country and timber. Most of that level, flat country has good timber scattered over it, some heavy, some not so heavy. All of that land practically could be farmed if the timber were off. The land where the heaviest timber grows is about the same character as the other land. There is not much difference in the formation of the land in that section of the country.

Q. Now, speaking generally with reference to this large area that you have become familiar with, I will ask you whether that land is of such character and is so situated generally that it will support a settler, if it is properly cleared and properly handled?

A. Yes, I think most of those quarter sections they could get enough on them of land to support a family if they were properly farmed and cleared up—cleaned up and worked.

Q. Did your father support his family on that homestead of his?

A. He did. He supported about ten children on it.

Q. So that land will grow children as well as alfalfa, will it?

A. Yes, sir, it seemed to.

Q. Now, just in your own language state a little more definitely about how many of those quarter sections in that area that you are acquainted with would support a family if properly handled, Mr. Randles?

A. Well now, as to that you take the country as a whole, I will say, you know, of that, what I speak of as that base timbered land, I think that there could be about forty per cent of that would be agricultural land—just take it as a whole.

Q. Well now, what percentage of agricultural land does a settler need in the 160 acres in order to maintain himself, using the balance of the land for pasturage when it is good pasture land?

A. Well, if a man can get 25 acres of good land he will support a family on it.

Q. This tillable land, does it lie in large tracts, or is it distributed through the country there?

A. Well, it is distributed, pretty evenly distributed.

Q. Are there very many quarter sections there that could not be cleared and cultivated and maintain a family?

A. Not many.

Q. How many quarter sections out of one hundred, in your judgment, in that general territory that you have described, would support a family, if cleared and handled in the proper manner, take it on an average through that whole country as you know it?

A. Well, it would reach eighty per cent of them.

Q. Did your father clear his lands of the timber or was it already cleared when he went there?

A. There was a good deal of timber on it.

Q. How did you clear it?

A. Not so much timber as brush land, a good deal of brush land on the place my father had, and some large—quite large timber, cottonwood and all such timber as that, hazelbrush, salal brush, hawthorne and all such as that.

Q. How did you clear it?

A. Grubbed it out with a grubbing hoe the biggest part of it.

Q. Now, in testifying that that land would support a family, or settler's family, if properly handled, do you take into consideration the difficulties of clearing the land?

A. Yes, sir.

Q. Have you seen the land cleared down there?

A. I have seen quite a good deal of land cleared there. In fact there isn't a ranch right in my neighborhood there but what the greater portion of it has been cleared.

Q. Well, do you know why the balance of it has not been reduced to settlement?

A. Now, in regard to that, there is people would make homes there if they could buy this railroad land and buy it right, they could make good homes on it; but

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they are kept out because it is withdrawn from the market.

Q. Well, this land that is withdrawn from the market and that is not settled upon, is there any difference between that land and the land that has been settled on?

A. Oh, as I said a while ago, it is just about the same character of land.

Q. I didn't ask you with reference to the land that is not tillable. How is that as to being grazing land, and what quality of grazing land?

A. Well, the principal part of that country is good grazing land; both timber and open land is good grazing land.

Whereupon witness testified, that the timber, when one gets pretty well back in the mountains, is principally white fir. When one gets a little lower down, there will be considerable red fir and pine. His father's homestead is now used for farming by Bonny Brothers, but right at present it has been turned back to his father. His father sold it to them and he had to take it back. It is still in cultivation. His father did not leave the place because he could not make a living on it, but got too old to farm any more and sold out on that account. Land is worth there, after it is cleared and put in cultivation, from fifty to seventy-five dollars an acre, taking a whole quarter section of land. Cost of clearing that land and putting it under cultivation depends altogether on the kind of timber and brush that is on it. There is some of that land that cannot be cleared, some rocky land that would

not pay to clear up. Take a quarter section, there might be portions of that land that would be too rough and rocky, but there is very little of it that would not pay to clear. That applies to land that has large timber on it, as well as that which has small brush on it. The heavy timbered land would be the most expensive to clear to get out the stumps. They do not clear the brush before they grub it, they slash it and they clear it different there. Some slash it down, burn it off, and then grub. Others grub and burn as they grub the brush out, and some use a stump puller, and some grub it with a hoe. There are all ways of cleaning it up. They blasted a good many of the stumps out in his part of the country, and some few have used the charpitting process, but they have mostly cleared by blasting. The principal part of that country there now will grow all kinds of small grain, corn, oats, wheat, barley, potatoes, cabbage, onions, beans, and all such as that, and fruit grows all through that country wherever he has been—such as apples, prunes, peaches—some parts won't raise peaches, but then the greater part of it will, and pears also. Blackberries, raspberries, strawberries, all kinds of berries like that grow good there. The quality of the fruit is just as good as they have in the main valleys there. The altitude at his father's place was about 1860 to 1865 feet, and the altitude gradually increases as one approaches Mt. Pitt on the east. He could not say what the altitude is about twenty miles east of this Lake Creek post-office,—that is, up about Fish Lake or next to Mt. Pitt. There are settlers about ten miles

from the summit of Mt. Pitt. The kind of crops that can be grown does not change very much when one gets into the higher altitude. They raise quite a good deal of stock in that country at the present time—a good many cattle are raised in that country. They raise hay to feed them in the winter, and turn them on the range in the summer—range them back in this Mt. Pitt country, all over from Lake Creek up to Mt. Pitt and all through there cattle are ranged, and the head of Dead Indian country is summer ranged. The land that is cultivated is fenced so that the balance can be used as range. Dairying business is carried on to a small extent there, but not a great deal. They are about fifteen miles from Eagle Point market, and about twenty-nine miles from Medford from where he is at the present time. He is now working for Mike Hanley at the Hanley ranch on the North Fork, about four or five miles east from Lake Creek. They grow meadow mostly on that ranch, meadow and fruit, they have a home orchard there but they do not market their fruit. They are engaged in stock raising and raise fruit for consumption on the ranch there. The roads between there and Medford are not very good. There is a wagon road east from Lake Creek to Fish Lake, which is fairly good. One can go over it with a wagon. There are a good many settlers up there in each township in that general country he has been describing, something like twenty or twenty-five in the back district, and down in the Lake Creek country all the land is settled with the exception of the railroad land.

Q. Do you know whether the holding back of the railroad lands has affected in any way the development and settlement of that country?

A. Oh, I think it has to a certain extent.

Q. How does it affect it?

A. Well, it keeps people out, that there is homes there that they could make homes on it if they could get hold of the land.

Q. It has been testified here in this case that there is not a quarter section of railroad land within this entire grant that would support a family, a settler and his family. Is that true?

A. No, I think that statement is a little off.

Q. As these other lands have been settled up, to that extent has that reduced the available range in there?

A. Why, certainly, it has reduced the stock range. The more they settle the less out range we have.

Q. Have you noticed any change in that respect during the twenty years you have been riding in there?

A. Oh, a great change, yes.

Q. When did this increase in settlement take place?

A. Well, now, in my country it has just gradually settled up. They keep getting back, you know, gradually. It has been that way all the time you know. There was no rush of settlement. It just gradually settled up.

Q. And that applies to this territory generally,

does it?

A. Yes.

Whereupon, on cross-examination, witness testified: that George Ratcliffe joined his father's place on the east when his father went in there. There was also Swingle up Lake Creek, and then just above there was his father's brother, Sam Randles; then came Tongue, a German, and then just across the creek was Peck, and then came his father's place and George Radcliffe, and then Perry Farlow at that time. Those people were all there and were on homesteads. These homesteads were not on Lake Creek at all, but were on the South Fork of Little Butte Creek. They settled on the creeks in those early days because it was natural that a man would go along a creek to settle where he has a chance. The land along the creek bottoms, a man has access to water and all. The bottom land was not more open than the others, it was not so much that the land was level as that the water was there and the bottom land is a little better land on an average than hill land. The lands of these settlers ran on each side of the creeks. They put their houses on the bottom along the creeks in those early days. There is some vacant Government land within a radius of twelve or fourteen miles of Lake Creek. These Government lands that are left would average about one-fourth agricultural land.

Q. Well, now, you said 25 acres is enough on each quarter section to support a family of this land, if it was cleared.

A. It is, when they can get in and work it, it is enough.

Q. Why don't people go in and take these vacant Government lands that are in there?

A. A good many people don't like to get in and work hard enough to make a living on that.

Q. Well, there is forty acres in there, and there is eighty, and there is 120 and there is 160 acre tracts, and there are some much larger tracts in that territory, all of Government land today, has been from the beginning, and is unsettled, nobody on it.

A. Can you tell me where those lands are?

Q. No, I say within twelve miles of that Lake Creek settlement that you have been over.

A. Yes.

Q. Now, you say there is some Government land there. Whatever there is there that is vacant, why don't the people take that?

A. Well, that I can't say.

Q. Isn't it because those lands are not worth taking up?

A. No, at the present time I don't think there is, that you could get but very few 160 acres there that is not worth taking up.

Q. Well, if there are any Government lands in there, you think they are worth taking?

A. Yes, sir; I do.

Q. You don't know why they are not taken?

A. No, sir; I don't know why they are not taken. But I don't think you will find them in that area up there but what is worth taking up.

Q. Well, now, then, most of the settlements in that twelve by fourteen miles each way from Lake Creek and then east of Lake Creek to Mount Pitt, and from Lake Creek over to Big Butte, are on the streams or headwaters of these various creeks, are they not?

A. Well, they are close to the creeks, most of them.

Q. Now, your father cleared his land along the creek bottom, didn't he?

A. Yes; also hill land.

Q. The alfalfa is on these creek bottoms?

A. Certainly the alfalfa is on the creek bottoms.

Q. They don't raise this alfalfa up on these hills?

A. No, they don't raise it on the hills.

Q. And the orchards are nearly all down in these creek bottoms?

A. Well, there is orchards there that is on hillsides.

Q. I am not asking you to say that there are no orchards anywhere else, but the orchards most of them are on the creek bottoms now?

A. Along those farms, those home orchards are mostly.

Whereupon witness testified that, they do not raise any fruit for the market up in that country and there are no apples shipped East that he knows of from anywhere except down around the valley around Medford. Eagle Point is on a little railroad known as the "Jim Hill" road, the Pacific & Eastern. It was built a short time ago. It runs out from Medford to Eagle Point and then to Butte Falls, and is in operation. There is a saw mill at Butte Falls but it has not been there a great while. It was put there just before the railroad went in there, he thinks. There is a portion of the country there that is owned by timbermen. He thinks that probably right through that Butte Falls country, the timber would average a little better than some other parts of Jackson County. He has been through the Jenny Creek country, but does not know anything much about it and does not know whether it is good timber or not. He never cruised any timber. In his riding after stock, he gathers up stock and takes them on to the range and goes out and salts them. He did this for Mike Hanley, who has a ranch on the North Fork of Little Butte. The water supply for Medford is taken out of the North Fork of Little Butte. The settlement above the intake on the North Fork of Little Butte is very thin. That is the only place the town of Medford could select to get water. He would not say that they selected it on account of settlers but he could name the number of settlers if desired. There is Ilinger and George and Ed Frye, Gus and August Alder, Milo Conley, John McAllister, Charlie Turrell and D. Brad-

shaw, who all have claims. The Fry boys have been settled there for the last seven or eight years, and Conley settled there twelve years ago. There is no cleared land on the creek. He did not get any clear land at all, excepting a little glade up on the side of the mountain. The rest of his land is brush land, has been a burn at one time, part of it, and part of it is timber. He raises goats for a living and has about two hundred head, which pasture mostly on his place, which is partly fenced. He would judge that there is about sixty acres fenced, and about eight or nine acres cleared and under the plow. The Frye Boys are up on a bench, clear away from the creek on the side of the mountain, about a mile and a half from the creek. It has been timber land at one time, pretty heavy timber in there, and a fire burned it and they raise meadows on this place. One of them has sheep, the other has a few goats, and they raise vegetables and work around various ways to make a living—he couldn't tell just what. They sell a few vegetables to farmers around there—that is, to other settlers, while they are making a living, some few. They do not sell to the saw mills—there is only one little saw mill in there that they could get to. It depends upon the location about the timber—what kind of timber it is. In this country up there that he has just been describing, timber is very scattering. There isn't any timber there where that old burn was that is of any account much. He is not acquainted with the Lamb homestead. He has been through that country, but don't know anything about the sections and would not know what part

of the country the sections were in if one would name them.

Q. You could hardly apply for a quarter section up there outside of these burns, but what you would get pretty good timber on, could you?

A. The timber is not bad. It is scattered timber all over that country.

Q. I know, but a good many people have gone in there to buy this land for the timber? That is right? Haven't they?

A. Well, that I don't know much about. There has been quite a lot of timber dealing done, as I have heard of, but as to know it myself, I couldn't say.

Whereupon witness testified, that he never took a piece of Government land himself, either homestead or timber claim. He has been there about thirty-one years, something like that, and was fifteen years old when he went out there, and never took a homestead or timber claim. He was a stock man.

Q. You were a stock man?

A. Yes, sir.

Q. Well, now, this stock, have you ever herded, or driven, or rounded up several hundred head of cattle into the range, driven them up or collected them up?

A. Yes, sir.

Q. Whom did you do that for?

A. Mr. Hanley.

Q. Well, now, these cattle that are herded in that way all the way back to Mount Pitt, they roam over all that vacant land, whether it is owned by timber people or by the Government or by the railroad company?

A. They do.

Whereupon witness testified, that practically the only thing that is enclosed is the land that they farm, or that they want to pasture lower down. There is a lot of that land, Government land and railroad land, that is not fenced. If all of these quarter sections were fenced, the herding business would have to stop. He thinks that about 40 per cent of this land would be agricultural if the timber were cleared. Bonny Brothers bought his father's place about two years ago last August and agreed to pay $8,000.00 for the three hundred and twenty acres. They were not able to make the payments and his father had to take it back.

Q. What is this land that you have described, in a general way now, I mean, outside of these lands that have been settled upon, like your father's place, land that is owned by the railroad company, for instance, and other land that is not actually occupied by settlers, excluding now the improvements in houses or barns or fences, what would you say these quarter sections were worth per acre today on an average?

A. Well, now, that is a hard question to answer. I am not posted on the land prices.

Q. Well, you said, in answer to counsel for the Government, that this land was worth from sixty dollars to seventy-five dollars an acre. Now, what land did you refer to?

A. I referred to lands—he asked me about these lands that was cleared up ready for——

Q. Those bottom lands?

A. No, these lands that is settled, and been settled, been partly cleared, and what is left that is about the way they would range. Not the outside range country, that has no settlement or anything on—that I didn't have reference to at all.

Q. Well, now, what would you say that was worth, that that is outside of these that are settled on, say on railroad sections in that vicinity?

A. Well, I would just have to make an estimate of my own.

Q. Yes; well, now, what is your judgment of what it is worth an acre, take it a quarter section apiece as they run, and average it.

A. Well, I would say about $30 an acre.

Q. So that if a man applied to purchase a quarter section of this land from the railroad company at $2.50 an acre, and he was sold this land at that price, he would make about $27.50 an acre, in your judgment, without having to do anything in the way of clearing it up.

A. Well, that would be my judgment on the land, that that would be about what it would be.

Whereupon witness testified, that he had never applied to purchase any of this railroad land. He is now and has been working for two years for Mike Hanley by the month, and gets $75.00 a month and board for his family. He is an experienced stock man and the stock business of Mr. Hanley he thinks is profitable. He thinks he makes some money out of it. Hanley owns and pastures over his lands 750 to 800 head of cattle. He ships some and sells some right there in the home market, sells to local butchers, and some he ships by rail. He is about the largest stock man in that vicinity. There are others who have quite a few head and they all follow the same general business—when they are in the stock business. They turn their cattle out and the cattle go where they please, and they do not pay anything for the use of the lands that they range over that he knows of. Some of the stock goes into the Government reserve, the Cascade Forest Reserve, but he does not know what they pay for running on the reservation. A part of Hanley's cattle go into the reservation. He gets permits. There is good grass on the reservation.

Q. Well, it is pretty nice for the United States to have the reserve there for these stockmen to pasture on, and for this railroad to have these lands out so they can pasture on, isn't it, quite profitable to them?

A. There is good grass on it.

Whereupon witness testified, that there is no shipping of apples done from Lake Creek. There are quite

a number of little small orchards all through that country for use as home orchards. There are a few strawberries shipped, not a great many. They do not ship any pears from there, but ship quite a bit of butter and eggs—such as that. They are taken down to Medford and sold there. Lake Creek is just a postoffice and was established about twenty-two or twenty-three years ago. and is about twenty-five miles from Medford. The foothills begin east of Medford, going out to his place, just after one gets across the desert, less than ten miles. The country around Medford is practically level, and the level country extends almost from Tolo clear up to Ashland, where it begins to get quite hilly before one gets to Ashland after passing Phoenix. At Phoenix, it begins to climb pretty well. It is nearly level as far west as Jacksonville. The foothills begin almost at the town of Jacksonville, and the foothills begin about ten miles notheast of Medford on the way to Eagle Creek.

Whereupon, upon redirect examination, witness testified, that this land could be used also to raise goats on. This is not being done to a very big extent, there are quite a few goats. Mr. Coshow and Mr. Conley have some, and he cannot name the parties who have several small bunches. There are quite a few goats in there.

Q. You think at least eighty per cent of the quarter sections in there would support a settler and his family?

A. Yes, sir.

Q. Now, this remaining twenty per cent, is that

general in its distribution, or is it in certain localities?

A. It is just in certain localities. Well, there would be some quarter sections, you know, that would be rough, and some that would be along like say in canyons and places like that.

Q. Well, are those quarter sections that could not be utilized for the purpose of settlement on the even numbered sections as well as the railroad sections?

A. Yes, sir.

Q. Do you know whether it is a fact that the lands that have not been taken up for homesteads, by homestead entries down there, are lands of that character?

A. It might be. I don't know where those lands that he had reference to—I don't know where they are located.

Q. It is your best judgment that the available lands that were Government lands have been taken up?

A. Yes, sir.

Q. Now, you say you think these lands will average about $30 an acre in there?

A. Yes, sir.

Q. Counsel for the defendants asked you if an individual could purchase them at $2.50 an acre if he would not make a profit without doing anything. I will ask you, if the railroad company has only a $2.50 interest in those lands, and it can keep them, will it not make $27.50 an acre without doing anything?

A. They would make the same profit, certainly.

Mr. Townsend: I will withdraw the question.

Q. Take 160 acres, with 25 acres of good land that can be cleared and cultivated, such as you have described, and the balance of the land being average pasture land that there is in that country, about how many head of stock can you raise on that 160 acres?

A. On that 160 acres about 50 head.

Q. Would that make a comfortable living for a settler?

A. Yes, sir.

Q. You mean cattle?

A. Yes, sir.

Q. Would that make a comfortable living for a settler?

A. That many head of cattle will.

Excused.

Whereupon CHARLES A. EDMONDSON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years of age, lives at Butte Falls, Jackson county, Oregon, and has lived in Jackson county about twenty-seven years. Since residing in Jackson county, his occupation has been farming and stock. His father lived in Jackson county and was a rancher there. He has lived and been engaged in farming near Butte Falls, in the Butte Creek country,

and has resided in that teritory for twenty years. The character of his farming was hay raising and such as that, and cattle, but he raised no grain to thresh. They sowed grain for hay. He is not a great deal, but is a little, acquainted with the farming business in Jackson county, and is acquainted with the farming business in the territory with which he is acquainted at Butte Falls. Referring to Defendants' Exhibit 259, he is well acquainted from Butte Falls around there in townships 33, 34 and 35, ranges 2 and 3 east, and has been over these lands sufficiently to acquaint himself with the farming business of these townships quite a little. The general character of that country there is that it is a timbered country. It is a free, loamy soil, and of the same general character, generally speaking, pretty much through there in this territory. There are several farmers in that area. They raise mostly hay, vegetables, berries, and such as that. They raise grain, sow lots of wheat in there for hay. They raise oats, some rye, barley and wheat, and some corn—but not much corn because they do not get so much to the acre for feed. They raise cattle, hogs and fruit there. He went over this land riding through for stock, hunting and looking through the woods, referring to townships 34, 35 and 36, ranges 2 and 3 east.

Q. Township 34, range 2 east contains between three and four thousand acres of unsold railroad land, township 35, range 2 east the railroad company still retains a substantial part of the original grant in practically every section, and the same conditions exist as to 36,

2 east?

Q. How much of the land in that area that you have testified concerning would, in your opinion, be suitable for settlement purposes by a man who would settle upon the land for the purpose of making it a home and engaging in the farming business; that is, on each 160-acre tract described, not necessarily by quarter section, but by legal subdivisions of forty acres lying contiguous.

A. Oh, I think half of it.

Q. What percentage of plow land would a man be able to get on a 160-acre tract, in your opinion?

A. I think it would average forty acres on every 160.

Q. Well now, do you mean, Mr. Edmonson, that only half of it, half of this entire area, would be suitable for settlement?

A. No. I meant there would be half of it would be agricultural to the plow—would be plow land.

Q. I intended to ask you, Mr. Edmondson, how much of this land could be taken in 160-acre tracts, for settlement purposes, by a man who was seeking to make a home, engaging in the farming industry to make his livelihood from it.

A. Oh, I expect a person could take 75 per cent of it probably as homestead land that way.

Q. How much land in this community would you have to have on 160 acres to supporta family; that is,

how much plow land would be required by a man engaged in farming?

A. Oh perhaps forty acres.

Whereupon witness testified, that his father lived in township 34 south of range 3 east, and raised hay and other crops on his ranch there. There is quite a little of this area in flats on the creeks that run through there, and there are bench lands in that country. The bench lands are timbered and have a loamy soil through that country, and brush. The benches in area vary somewhat, some of them are good big benches and some of them are not so large. It is practically a level country from the mouth of Willow Creek north five or six miles, just a bench bottom. His farm or homestead had one hundred and sixty acres in it, and he had six acres under cultivation. He made his home and maintained his family there, and made a living on that and his stock, made his living in the farming business—right in the stock. He was on the homestead. There are prairies scattered through the country, open land that is free from timber, and this covers a considerable area. There are quite a few prairies there, but he does not know the extent. He does not think the expense of putting those lands in cultivation would be great, and it would not be necessary to remove any timber from the prairie lands. He does not think there is any growth on any of that land that would prevent the land being farmed. The soil is such as would raise grains, hay, vegetables and fruits mentioned by him as being raised in that community. The land that could not be tilled would be good grazing land, unless

there would be some rocky point or something that it just happened to be. Outside of a little grazing, there might be places that would be rocky and perhaps worthless for any purpose, but not many of them, not much of this land would be that way.

Q. In your opinion Mr. Edmondson, what has been the effect of the railroad company's failure to comply with the conditions of this grant and sell these lands to actual settlers in 160-acre tracts at $2.50 an acre—what has been the effect upon the community?

A. I think it has kept our settlement back in there.

Q. Has it affected the farming business in that country?

A. Why, to a certain extent, I suppose.

Whereupon witness testified, that some of the lands that have been timbered have been cleared in that community and are now under the plow. Farms of that character exist in that country.

Whereupon, upon cross-examination, witness testified, that he does not mean, by saying that these farms have been cleared that a few acres on each quarter section have been cleared,—not exactly that,—and he does not mean that a whole quarter section has been cleared. He don't know any whole quarter sections that have been cleared. Generally, the lands that have been cleared are where each settler would have from five acres to probably forty acres cleared. Fredenburg, near Butte Falls there, has fully forty acres cleared. He has been

there quite a little while. The balance of his land is pasture land, with scattering timber on it. The homestead of witness is in section 32, township 35, range 3 east, which he took in 1904, and proved up on it in six years, living on it all the time there, keeping his family there. He still owns and lives on his homestead. His nearest post-office is Butte Falls, seven miles distant. None of the land in the vicinity of his place has been logged off in there. Some of it has been sold to timber people. He does not know W. S. Dewing, but thinks he is a Kalamazoo lumberman or timberman. He could not tell in regard to the acreage of timber in that general section of Butte Falls. He has heard that Dewing had timber holdings in there. There is a saw-mill company there at Butte Falls, called the Butte Falls Lumber Company, in which Dewing is interested, but he cannot tell who the Company is. They do not operate. They have suspended at present. They have not cut a great deal of timber in there. He thinks these timber quarters in that section around there are now worth perhaps thirty dollars an acre, or something like that. If a man had a good timber quarter and there were no impovements of any kind on it, he could sell it for about thirty dollars an acre, but he does not know of any being sold at the present time. Timber is regarded as valuable in that country. There have been timber deals going on there, he thinks, for six or seven years, but he does not know exactly how long. He does not know of many timber deals there lately. He knows that quite a lot of timber is in there yet, and there are quite a lot of private holdings in there in

the hands of homestead claimants. He thinks some of these homestead people have sold to timber people. He is not so well posted in regard to who has their land, only those around him. Near him there, he knows in his neighborhood about who holds their land and those away he could not tell. There is some good timber on his homestead and it is about all saw timber. He thinks it would run somewhere near about three million feet, board measure, on his hundred and sixty. He could not tell what he could have sold his quarter section for, for the timber that is on it alone, in the last four or five years, as he has not had it on the market and he never had an offer for it. He expects his quarter section would be worth thirty-five hundred dollars all right. He knew it was timber when he took it up—he knew there was timber on it. He had lived in that vicinity for twenty years and he is now forty-five years old. He filed on this homestead in 1904, that was about the time the country started to settle up in there. People began to come in and take homes but at that time he does not think there was any timber selling in that country. About that time people began to look at the timber and consider that the timber was worth something, he thinks. He never had much experience in the timber business, and was not posted in the timber business, and was no timber dealer. There were not many timber deals in Jackson county until about eight years ago. He does not know of any old pioneers that have taken land in there. They were most all of the second generation—the drifters came in from other countries. He supposes that he was like a good

many other fellows,—did not take his homestead in time, did too much running around, or something or other.

Q. Now, don't you know, Mr. Edmondson, that it was because homesteads became more valuable because the timber began to be worth something? Isn't that the fact?

A. Yes, and our government land began to get more scarce.

Q. Well, but the land was still there—the land didn't run away?

A. And I had a right to 160 acres of it. Therefore, I took it.

Q. I understand. Well now, Mr. Edmondson, will you, under your oath, say that you didn't really take that for the timber that was on it?

A. Not altogether I didn't, no.

Q. Well, but you wouldn't despise the timber because there was timber on it?

A. Oh no, I didn't, no.

Q. It was a pretty good inducement, wasn't it?

A. It was an inducement, and I have got good land with it.

Q. Yes, I know, when you cut the timber off it is all right.

A. Yes, it is. You are right.

Q. But the timber was what made you take it, wasn't it?

A. Not altogether, no.

Q. Chiefly, it was the chief reason you took it?

A. I could get a bunch of land with timber on it, and I took it.

Q. Well, I will ask you this question: As a matter of fact, didn't you take it because it was a good quarter section of timber land, that had three million feet of saw timber on it?

A. And agricultural land, that is the reason I took it.

Q. Well, how much have you got cleared?

A. I have got about six acres.

Q. You expect to be how old when you get the rest cleared?

A. I don't know.

Q. Now, as a matter of fact, you never expect to clear the rest of it, do you?

A. Well, now, I couldn't say to that. If I get some way of disposing of my timber some way or other so I won't have to burn it and waste it on the ground, I will clear it probably.

Q. In other words, if you sell the timber to good advantage you may clear up some of it, unless you get too much money for the timber? Then you will live like a gentleman.

A. If I could sell the timber, I can probably clear it, as you say. But I can't cut my timber and waste

it there on the ground.

Q. You wouldn't think of doing that?

A. No, I wouldn't think of doing that.

Q. The timber is too valuable to burn it up, isn't it?

A. That is true.

Q. I say the timber is too valuable to burn it up, isn't it?

A. I cleared six acres there and burned it, and found it quite a job.

Q. I say the timber is too valuable to burn, isn't it?

A. It is too valuable to burn.

Whereupon, upon re-direct examination, witness testified, that he has made this homestead his home with his family ever since he took it up, and never engaged in the timber business, and is no speculator in timber. His purpose in taking the homestead was to get a home.

Q. Now, about the time that you have testified that a demand from people commenced coming in there, taking timber, was there any increase in the demand for land for settlement purposes?

A. Sure there was.

RECROSS EXAMINATION.

Q. Why didn't you take a quarter section of that good land there that didn't have so much timber on it for a homestead, if you didn't want the timber?

A. I didn't know where to get it.

Q. Is it all timbered?

A. Pretty well the government land is all timbered in there.

Q. Couldn't hardly get a quarter section in there but what has pretty good timber on it?

A. There are others ahead of me that gobbled that up.

Q. Did you ever apply for a railroad quarter?

A. I applied for a railroad forty.

Q. Where was that?

A. Section 9, township 35, range 2 east.

Q. Was that a timbered forty?

A. No, sir.

Q. That was pasture land?

A. There was about thirty acres on the forty that is just black sticky land, oak.

Q. How much did you offer to pay for it?

A. I didn't make them any offer.

Q. You just wrote to them?

A. I wrote to the man at San Francisco, and he answered me back, and that settled it.

Q. When was that?

A. That was in 1907.

Q. You didn't make an application on these blanks that these timber brokers have sent all over the United

States and have men sign, to offer $2.50 an acre and file on the land and claim it under an act of congress—you didn't do that?

A. No, sir, I didn't. I wrote to the land commissioner at San Francisco, and he answered me back and said that the land was not on the market and the letter would not be recognized, and so that was all there was to it.

Q. Now, let me ask you are most of these quarter sections out there on the railroad quarters about as good as your quarter section, so far as the timber is concerned?

A. Well, in that territory there, they are.

Q. That is, they would run on an average of about three million feet of saw timber, in your judgment?

A. I think so.

Whereupon, upon re-direct examination, witness testified, that part of the land is heavily timbered and part of it more sparsely timbered. Part of this land that he has just testified about is heavily timbered, and part of it more lightly, but taking it on an average, he would judge that it would go somewhere near what he has stated. There are some parts of it that are glade land, and such like as that, but just to average it up he would judge it would go about three million feet. The glade land would be prairie and open land.

Whereupon on re-cross examination, witness testified:

Q. It would be here and there a little spot that would be what you would call a glade—four or five or ten acres in a spot?

A. Yes, sir; and here and there four or five acres with timber on some of it.

Q. That is what you mean by prairie land?

A. Yes, sir.

Whereupon, upon re-direct examination, witness testified, that this glade land would be two or three acres in lots of it. He does not know of any that he can think of that would be any larger on any of the railroad holdings there. There are some open prairies there, but he does not include those in these little glades. He thinks the most of these open prairis were taken before the grant was given in there,—most of those big, open prairies. Titles to those had passed before the grant took effect.

Whereupon W. T. HOUSTON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-seven years old, lives in Section 20, township 34 South, Range 1 West, Trail precinct, Jackson County, Oregon, on a farm, and has resided in Jackson County all his life. He was born in Medford, Oregon, and has lived about eighteen years on his homestead. He took his homestead of one hundred and sixty acres about eighteen years ago, and received a patent about seven years ago. He has a family of eight children. He has twelve or fifteen acres of land under cultivation on his

homestead. It was brush land when he first took it, some oak timber on it, and he had to clear all that he has in cultivation in order to render it tillable. He has principally supported his family and himself from his homestead since he took it up. He raises corn, wheat, oats, any kind of small grain, potatoes, beans, cabbage, anything most of every kind, and it is average land for these purposes. He raises apples, peaches and pears. He has been engaged in the farming business all his life; was raised on a farm, and his father was a farmer in Jackson county and has a homestead in township 35 where witness was raised until he was twenty-one and was married. His father's homestead was one hundred and sixty acres, and he had five children. What is not in cultivation of the homestead of witness, he has fenced and keeps goats and a few cattle, he has only twenty goats. He uses that land for grazing. It is cheaper than grubbing for goats to kill the brush. Referring to Defendants' Exhibit 259, he is near Rogue River in section 20, township 34 south, range 1 west. He was raised at Beagle post-office,—his father owned the place where that post-office is, in section 12, township 35 south, range 2 west. He is pretty well acquainted in township 35 south, range 2 west. From there he moved to township 34 south, range 1 west, and has lived there ever since. He knows pretty well the railroad sections in township 35, range 2 west, and township 34, range 1 west, and has a pretty fair knowledge of the country about twelve miles north and south of there, about five miles from Rogue River, north or northwest, through the Meadows country. As-

bestos is a postoffice in the Meadows country, in section 26, township 33 south, range 2 west. He is somewhat acquainted with that land extending from where he lives to that postoffice and some of it beyond the postoffice, and he is acquainted with the general character of the land in the area he has mentioned, and north of where he lives up to the divide, to Douglas County, up Trail Creek,—he has been through that country some and enough to gain a fairly good knowledge of the character of the land there. Where he lives and in township 35, the land is mostly without timber, with the exception of oak and a few pines. As one goes north up Trail Creek, it becomes more timbered. Up pretty near the Umpqua Divide, the timber is pretty heavy. The land that is not taken up and cleared, in township 34 south, range 1 west, is mostly brush, low brush with oak timber, and is about the same thing as his homestead.

Q. Now, Mr. Houston, in your opinion, how many of the 160-acre tracts, what per cent or proportion of the 160-acre tracts in this area that you have mentioned, described by contiguous forty-acre tracts, but not necessarily by legal subdivisions, would, in your opinion, be suitable for settlement purposes, that is, for a man to go on there, as you have done on your homestead, and make a home of it for the purpose of engaging in farming?

A. I should think that about probably half of the quarter sections something about like the one I have taken.

Q. About half of the quarter sections are?

A. Yes, about the same, worth about the same, that is considered as good as mine was when I took it up.

Q. That is in that township?

A. In that township.

Q. Well, how much plow land could they get on each one of these 160-acre tracts?

A. You could get at least fifty per cent of plow land if the brush was off in 21. That is right due east of me. And in 17, corners with me, and in 29, corners on the south, it would make, I should suppose, about 50 per cent; about half the land would pay to cultivate if the brush were off so you could plow.

Q. How many of the quarter sections would be suitable for settlement, would contain enough plow land that a man could support himself, in this township, leaving a comparison of your own homestead out of it.

A. Well, what I am acquainted with—of course, I don't know how many has been taken up; I don't know exactly how many railroad quarter sections there are in that township—but what I am acquainted with, why, I should think about three-quarters of those quarter sections would support a family, if he had means to clear enough land to commence on.

Q. Well, now, with this other area outside of the township that you are in there, what would you say as to a man's ability to go on 160 acres of that land, described as I have mentioned before, and engage in farming and make a living?

A. In township 35, it is just similar, about the same thing there is in 34. But north, towards the Umpqua divide from where I live, is a different country. It requires more clearing—there is more timber.

Q. How about the character of the soil?

A. It is just as good.

Q. And the conditions except for the clearing would be practically the same as in the other townships.

A. The land is just as good, if not better, if the timber were off.

Whereupon witness testified, that the failure of the railroad company to sell this land to actual settlers at $2.50 an acre in the community in which he lives has delayed settlement to an extent. If this land was on the market, there would be at least half of the quarter sections that there would be someone on if it was put on at a reasonable price,—say from $2.50 to $5.00 an acre. People would settle there as he has done on his homestead and make a home out of it. If it was government land, there would be more than half of the land settled up.

Whereupon, upon cross examination, witness testified, that his father's claim, by the road, is six miles away from his. The nearest postoffice or trading point of witness is Trail Creek. Trail Creek has a couple of stores and a postoffice. There has been a postoffice and small store at Trail Creek ever since he lived there, about eighteen or twenty years. He is now living on his homestead,

but his father sold his homestead a few years ago. The homestead of witness is in Trail Creek precinct, on a branch called Long Branch, about five miles south down the river. Trail Creek is marked on Defendants' Exhibit 259, Stewart Creek, but it has always been called Trail Creek, and it empties into Rogue River, about a half a mile below his homestead. He cannot tell how large Rogue River is, but he thinks it empties into the ocean and rises in the Cascade mountains north and east of him. He has been living on his homestead eighteen years, and went on the homestead when he was twenty-nine years old. At the time he went on his homestead, there could not have been possibly more than half an acre of it clear or open.

Q. Now, this brush that you have cleared up on your homestead—I think you said twelve to fifteen acres you had clear?

A. Yes, sir.

Q. What kind of brush was that?

A. Well, it is manzanita and chaparral, what it is called up there—I don't know what you would call it.

Whereupon witness testified, that the brush on the ground is pretty thick, but it only grows up about as high as one's head mostly. The chapparal don't make a very large root,—one can pull them with a good team when the ground is wet. The scattering oak grubs, they either have to grub or pull with a stump puller. These are what might be called foothill lands. He cannot tell the exact height above the river at that place.

There is a break near the river and he is up on what one might call bench land. The Rogue River at this point has a narrow bottom, probably, on an average along where he lives, about a couple of hundred yards back from the river. The valley known as the Rogue River Valley, in Jackson County, in which Central Point, Tolo and Medford are situated, lies south of him a considerable distance. Central Point is about eighteen miles distant. There is a valley opposite his place. The valley opens out down the river after one goes down. There are streams that empty into Rogue River, and of course there is flat counrty. The valley proper, the bottom of the Rogue River proper, does not open out to amount to anything in farm lands until one gets down to Grants Pass or below. The bottom near the river is comparatively narrow until one comes to Table Rock, which is about ten or eleven miles from his house. He is north of the Rogue River valley, and Table Rock lies just north of Rogue River and south of Table Rock is the Rogue River valley. There is no valley of any consequence west and northwest from Table Rock. The valley lies back, Sam's Valley country runs back a mile. There is the Modoc orchard in Sam's Valley country, and between the two Rocks there the bottom widens out after one gets to Table Rock, and there is a pretty large valley runs back plumb out between the Rocks, and it is all level back to Sam's Valley. He thinks that the valley where the Modoc orchards are, along the Rogue River, is just about a mile and a half wide back to the Rock. It is a large valley as measured by valleys out

there, for bottom land. It is wider than anywhere north or northeast of there. The mountains at lower Table Rock close in near the river from that on, and next to Gold Hill, these mountains are pretty steep and abrupt, but he could not tell how high they are in there.

"Q. Those mountains are not much account, are they?

A. I cannot tell you that either. I have never tried."

I am not much acquainted from Sam's Valley down the river.

Q. Don't you know, Mr. Houston, that any man riding along the railroad there, following from Grants Pass up to Gold Hill and from Gold Hill on to Tolo, where you have Table Rock in view, and these mountains on either side in view, can see the Rocks from the train on an angle of nearly 45 degrees, most of that country? Isn't that true?

A. Some of those peaks run up.

Q. Well, it is nearly all peaks all the way down to Grants Pass, on both sides of the river, isn't it, excepting this little valley of about a mile wide in places?

A. I cannot tell you anything about the country below about Gold Hill.

Whereupon witness testified, that he had been on the train along there, and could see how it looks, and it looks pretty rough. It looks like there was a good deal

of chaparral and manzanita on the ground. One cannot see the rocks everywhere. He hasn't taken notice along the road going down the Rogue River. He has been along the line a few times and to look at it, it looks rough and he has seen some rocks, some canyons. He could see a few rocks but he could not tell how many. To the best of his knowledge, he had six acres of cleared land on his homestead when he proved up at the end of five years. Before he proved up and during the time he lived on his homestead, in order to make a living he bought a small tract of about ten acres, and of course worked out more or less around different places. This ten acres that he bought was mostly cleared—there was six acres of it cleared when he bought it. He doesn't know whether this ten acres was part of a homestead or a donation. It was a water lot in section 21. It had been settled a long time before he came there. He cultivated that during the time he lived on his homestead, and when he worked out he did most everything, — sometimes plowed for other people, and did most anything for people that lived near there. He never sold any wheat but had sold corn. He could not tell how much corn he had raised in any one year on his twelve or fifteen acres on his homestead. He sold the corn to his neighbores for feed or seed corn, or something like that, and sold by the bushel. It would be hard to tell how many bushels he had sold for feed or seed to his neighbors during any one year, but he had sold not over, he supposes, fifty or sixty bushels in any one year. He could not tell how much corn he raised

this year, but he did not raise any to sell this year. He had roasting ears for his family, and raised some corn as feed for his stock. He has twenty goats and about twenty-five head of cattle. His cattle run around, he does not keep them inside of a pasture, except the calves. The cattle run out on the range around close there. He had a few cattle that went back with other people's cattle who had larger bunches around the foot hills and up towards the head waters of the divide looking over towards Douglas county, and he occasionally rode back to get them, although he never had more than thirty or forty head of cattle at any one time. He sold some few cattle some years, and some years he did not. In the last few years, some of his neighbors had their cattle run back as far as the divide, about ten to twelve miles up to the head of Trail Creek from his place. When one gets to the head of Trail Creek, along near the divide, the timber is heavy in places. He would judge that most all the timber lands on the even sections up there was mostly taken, although he is not very well acquainted after one gets up near the divide. There are not very many settlers up near the divide, and he could not tell how much of these even sections had been taken up. He thinks there is probably a few kind of waste tracts of government land left up there where there is no land or timber. He has no map of the country and he could not tell exactly. He never cruised any timber nor applied to the company to purchase one of these quarter sections of good timber, up there, and no one ever asked him to sign an application to the company and offer the com-

pany $2.50 an acre, and he never knew about people doing that around in Jackson county, but he had heard of it before he came to court in this case. He usually sold about twenty-five to a couple of hundred sacks of potatoes raised on his place, and some small vegetables like that,—a few grapes and apples, different things. He thinks he could sell four hundred boxes at present. He has about two or three acres of an orchard. There are some Spitzenbergs and Newtown Pippins, a few Baldwins and Bellflowers. He would judge that the market for Yellow Newtons and Spitzenbergs first came up about eight years ago when they began to sell those two varieties or setting them out. He has not shipped any apples by railroad, nor sold any to dealers this year who did ship. He does not think he sold to anyone last year who shipped them out of the county. He never has sold any butter or milk to the creamery. He might occasionally sell some butter to his neighbors, some small amount, but not to amount to anything. He means when he says that about half of this land could be farmed, that after it has been cleared, after the brush and what trees there are, are off, it could be farmed. Further north and into the fir country where the timber is heavier, it would be more expensive to clear than where he is. Referring to Defendants' Exhibit 259, he is on the opposite side of the river from Eagle Point, six miles up the Rogue River. Beagle postoffice is where he was raised, and he is nearer the river than he was when he lived there. He is now in 34 east, and the postoffice is in township 35. There used to be a postoffice

at Etna. He lived right near there about five miles south of Trail, which would bring him just about to the edge of the yellow field shown on Defendants' Exhibit 259, which shows the Rogue River valley country. These are what one would call oak and chaparral foot hills, most of that country. There is as much as about half or three-fourths of those quarter sections in there that are suitable for cultivation, that would pay to clear up, and some whole forties. He might mention a few whole forties that a man could clear, the whole forty and farm it all after clearing them of these oak grubs and chaparral. Chaparral and manzanita and oak brush is the principl growth in that country. There is occasionally a little pine. There is some rock on those foot hills around there. In places it is rocky, but he would say there is half or more that could be plowed without the rocks bothering to much extent. It would not all have to be cleared. There is an occasional one hundred and sixty that one might get. He might mention one or two where one could get fifteen or twenty acres on that is reasonably good land, without clearing at all. That country is mostly south. Trail Creek is five miles above him. It is called Stewart Creek on this map. They always call it Trail there. There are several settlers along in there on the even sections above Trail, but he could not give the quarter section or the exact numbers of their land. They live along the creek and back. Some of them live back along west of Trail. There are several who live back pretty well up on the hill. Some of them have been there about ever since, he has been there from fifteen

to eighteen years. After one gets up Trail four or five miles, most of these even sections have pretty heavy timber in places. There is a little road work up there for the people who live there, and they work in different ways around, and most of them raise pretty good gardens and generally keep a little stock. They run their stock outside all through that country mostly. He thinks the reserve only charges them about thirty cents a head a season for pasturing their cattle. There is quite a lot of that land there in the reserve. He does not know that they have to pay the railroad people anything. It seems as though the country is partly settled where it belonged to the railroad, and they were never asked to pay. The stock roams all over that not fenced. The rule there is if you keep stock off the land you must fence it,—that is, one must fence against the stock. The majority of his hundred and sixty acres is fenced. He might have a few corners around,—he has never had it surveyed exactly.

Whereupon, upon redirect examination, witness testified that, speaking of the quarters of waste land up in the northern part of the Umpqua divide, he means that it is rock, a good part of that country. There are some canyons and deep places where it is broken land, which one might say is worthless without it was just for pasturage. He is in section 20, and section 17 corners with him, and sections 29 and 21 lay right to the east of him in township 34 south, range 1 west, where his homestead is situated. He is pretty well acquainted, of course, with those three sections, and they are pretty much the same

land as his, some probably a little better. He took his because he was right along the road and wanted a handy place to get at. This road he refers to runs from Medford to Crater Lake.

Whereupon WILLIAM BRENNER, witness called on behalf of complainant, being duly sworn, testified, that he is fifty-three years old, resides at Scio, Linn County, Oregon, and has resided in Linn County fifty-three years. He is a farmer by occupation and owns a farm about three miles below Scio, and about ten acres in town, and raises on his farm wheat and oat hay, and raises fruit and vegetables at home, such as potatoes, cabbage, beans, onions, apples, pears, plums, cherries, and he thinks there are a couple of prune trees. He has been engaged in farming in Linn County about three, possibly four, years, and was in the livestock business before that time. He is acquainted generally with the farming and soil conditions in Linn County. He is personally acquainted with these unsold railroad lands in Linn County, township 10 south, range 1 east, township 10-2 east, township 11-2 east, and part of 11-3 east,—that is, the western part of 3 east. He is not personally acquainted in township 10 south, 3 east, but has passed through it and he thinks he is acquainted with the general formations of land there and the conditions of the soil in those townships. He would place the percentage of lands in these three townships that are susceptible to cultivation, that could be cultivated, at about 90 per cent straight through.

Q. What proportion of the 160-acre tracts in forty-

acre legal subdivisions but not necessarily by quarter sections, in your opinion, could be made a home for a settler there, a man who wanted to settle there, and engage in agriculture, if he would go on the land and make a bona fide effort to clear the land of whatever might be on it, and farm it?

A. That varies quite a good deal. Some quarters are practically level, others are rocky.

Q. What would be your opinion as to the percentage of 160-acre tracts, take it straight through, that a man could select there, confining his selections to a section, not permitting him to go out of the section?

A. I cannot explain that exactly. Because some of it is too rough, and the rest of it, part of it would be say a rock cliff on it, and the rest of it you might say practically level, or in canyon shape like.

Q. Well, how many 160-acre tracts, in your opinion, stated by percentage, could a man clear off enough land and cultivate it to support himself and family?

A. Well, I am not posted on that. It would take a good big piece for me to make a living. Some people would make a living on a small tract.

Q. That would depend somewhat on the living that the man had?

A. Yes, sir, and how he worked his land, too.

Q. You testified that 90 per cent of this land would be susceptible to cultivation after it is cleared?

A. That is to the best of my knowledge.

Q. And the other ten per cent, now, what is that?

A. That is rock.

Q. That is waste land?

A. Yes, sir, it is rock.

Q. That is the land that you referred to when I asked you the question relating to the ability of a man to make a living on this land, settling on 160 acres.

A. This land cannot be cultivated at all where those rock are. It is impossible.

Whereupon witness testified, that there is some awfully good timber on this land, and some that is worthless. Take it in five, township 11, 2 east, take it in 8 and 9, there is nothing in that. It has been burned off, it is a big burn, there is nothing there. In 4 there is quite a rock cliff running through there. The timber does not get heavy until one gets farther back in these ranges. It is better after one gets back from the settlements a few miles, but it is pretty good to start in with. The Oregon & California Railroad Company retains a substantial part of its original grant in these townships and ranges, and he is informed that the Northern Pacific Railway Company has large holdings there.

Q. Isn't it a fact that several of these townships are owned practically altogether by the Northern Pacific Railroad Company and Oregon & California Railroad Company?

A. I think the railway company owns all of 3, 11-3 east, and I think there are just two homesteaders, if I

remember right, that have taken it as homesteads. I believe that is all in 3, township 11.

Whereupon witness testified, that he owns about a hundred and fifty acres on his farm, which he rents. The farm is situated near Scio in the Willamette Valley, and a part of it had a growth of timber on it, which has been cleared. There is other land in that vicinity that has been cleared and put under cultivation, and these lands that have been cleared produce good crops.

There was no cross-examination.

Whereupon J. W. HAYS, called as a witness on behalf of complainant, being duly sworn, testified, that he is seventy years old, resides at Gold Hill, Jackson County, Oregon, and has lived in Jackson County thirty-five or forty years. He farmed continually there for about ten years, two miles west of Gold Hill in township 36 south, range 3 west, immediately west of Gold Hill two miles. It is just a mile from the center of town to the end of his line, straight through by line on the south side of the river. He raised everything on his farm that is generally raised on a farm, wheat, oats, barley, hogs, chickens and cattle. It takes all to make a farm. He raised potatoes, apples, peaches and corn. He has his place rented out. He is pretty well acquainted with farming conditions there and soils that produce, and reasonably well acquainted with lands that can be cultivated and crops that can be raised. Some of the land that he has farmed there was river bottom, sandy loam land, and some of it lays back off the river and is clay

soil. The land that is up from the river bottom is called up-land, it is back up-land. It lays on a little creek, close to the creek, and is rolling, not flat, land. It is inclined to be rolling. Referring to Defendants' Exhibit 259, he notices Gold Hill on the map and he has been all over this country in through 35 south time and time again. He couldn't name the places that he has been over because he ran all over the hills prospecting, that is where he ran when he was doing nothing else. He ran all over the hills, but he could not name the sections. He was at Wimer, all through that land and through that country, all through west of Wimer. Pointing to 35 south, range 4 west, where Wimer is situated, and 35 south, range 3 west, where Sardine Creek is, the lower end of this creek is in township 36, 3 west, where it empties into the Rogue River. The upper end of this Sardine Creek is in 35 south, range 3 west, and he is, generally speaking, acquainted with the lands in that township and in township 36 south. Wimer is in township 35 south, range 4 west and he is generally acquainted with that and with the township south of that, 36-4 west, where Woodville is situated, just about the center of township 36 south, range 4 west, he is fairly well acquainted with that. Gold Hill is in township 36 south, 3 west, and he is acquainted with the railroad lands in that township and in township 37 south, 3 west, which is directly south of Gold Hill, and he is pretty well acquainted with portions of that—the north part of it. He is acquainted with and has been through the vicinity of Draper, which is in 37 south, range 4 west, and has been over the lands

in that township. He has not been recently over the lands in Applegate country,—not for several years, but he has been there sufficiently to acquaint himself with a knowledge of the country and the soil and the lay of the land there. He was raised in Applegate, and he was twenty-four years in the Applegate country in Josephine county. Applegate is a postoffice, has a little store, and is in township 38 south, range 4 west. He has been in there, principally along on the river, but has never been back on the side of the mountain. He has been on the main road. There is a creek in 38 south, 3 west, on the main road just before one gets to Jacksonville. He is not very well acquainted through where Ruch is, and he cannot give an intelligent view of the land north of township 35. He knows the lands on Sardine Creek, but he is not acquainted farther north in Jackson county than township 35. West of Beagle, he is very well acquainted, running up into township 34 south, range 2 west, and in 3 west. He has been over in 2 west in the Beagle country. He has been over these lands for different purposes. He has prospected all through that Sardine country, has been over every acre of it. For several years he spent his odd time prospecting in through there, also on the south side in the Gall Creek and Foote Creek region in there, which is about five or six miles from Gold Hill,—probably not that far by lines but in traveling the way they go. He has been over the land other than when he had prospected. He had stock in there. Years ago he had stock which ran in on both Sardine and Gall's Creek. He had cattle

and horses in there. He has been over and is acquainted with the railroad lands in the township in which Gold Hill is situated, 36 south, 3 west, and the land is generally clay soil, with some rocks on it, scattering rocks, covered with brush and scrub timber. From 35 per cent to 40 per cent of that land, from his observation from seeing land like that, that has been worked through the country there the last few years, could be made susceptible to cultivation. They grow most everything on it, when a practical farmer gets to work on it. The other lands that he has mentioned as being acquainted with, compare about the same with the railroad lands in the township in which Gold Hill is situated, take it through, conditions would be about the same.

Q. What is your opinion as to the ability of a man to take 160 acres of this railroad land and make a home of it, use it for farming purposes?

A. Well, that is a question of the ability of the man. It depends on the ability of the man in regard to that. If he is a practical man, why, he could make a living, and there are some men that couldn't make a living on 160 acres of good land.

Q. His ability and industry would have something to do with that?

A. Yes, sir.

Q. Well, take a man, an industrious farmer, what would you say as to his ability to make a living?

A. Yes, he could utilize it by raising what stuff is

there, and having his chickens and cow and hogs with him, and that all counts in with practical farming with me. I couldn't farm unless I had cattle and some cows and pigs and chickens to help make the farm pay, to use right at home to feed up your waste.

Q. What has been the effect, Mr. Hays, of the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre in 160-acre tracts—what has been the effect in that community where you have resided for 35 or 40 years?

A. Well, it keeps the settlement down so that it would be sparsely settled, you know, is the effect, because I know of persons that wanted to buy that and couldn't buy that, wanted to settle and had to go away.

Q. Are lands of similar character farmed there and used as homes by farmers?

A. Yes.

Whereupon, upon cross-examination, witness testified, that his place was a part of the Jacob Gall donation land claim, and is at the mouth of Gall's Creek, and is on the south side of the Rogue River, and originally consisted of three hundred and twenty acres. There are about sixty or seventy acres of it bottom land. The balance of the land is clay soil and runs back up Gall's Creek, on both sides of it.

Q. Have you any hills on your place, any of that rough hill country on your land?

A. Nothing but benches, old bench land. It is not hill, because this was taken in an early day.

Q. They took it just the way they wanted it?

A. Took it the way they wanted it, yes.

Q. Under the donation act they could take it in any shape they please?

A. Yes, sir, at the time they took it, they could have taken it that way.

Whereupon witness testified, that in prospecting over these townships, he was sticking holes and prospecting for gold. He does not consider that country around Gold Hill, all through there, a pocket mining country. It is a mining country. He has prospected these lands for minerals of some kind. He located several mines and has taken out some money. Then he has located some mines and let them go back. He didn't have money enough to develop them. He never developed a mine himself. He means when he says that he prospected and took out some money, that he took out some specimens of rock and had it milled. There was a mill there in the country to mill it with, part of the time, he had it milled at the Sardine mill and some at the Gold Hill mill. There is a quartz mill at Gold Hill. The valley between Gold Hill and Grants Pass, along the Rogue River, is a narrow valley along both sides of the river. In some places, the hills back of Gold Hill and on either side of the Rogue River go up very abrupt right at the river and then they break back. The greatest elevation

is next to the river, and then they break off back, it is more accessible to travel. Some places one cannot get straight up from the river. He does not consider the timber on these railroad lands in these townships that he has been over merchantable timber. It is scrubby pine, oak and fir. There are spots of rocks on some of these quarter sections and on the government land, just the same as on the other, the whole country is more or less spotted. There is some government land in there adjoining his place, it is too steep to be taken up and there is no timber on it worth taking. There are some of these railroad lands—some of these railroad quarters in that same condition—that is, the railroad land is spotted. Where the peaks run up abruptly it may be a railroad or it may be a government forty or eighty right on the top of one of these back-bone or ridges that run through there. The lands along the creek are best as a rule—really a little the best for certain purposes, and you really get more level land along these creeks as a rule. These farmers that live back on these farms back of Gold Hill have real farms. Some of them have one hundred to a hundred and fifty acres in cultivation back in these hills. There are some right up on Sardine Creek there, just up on the high benches away from the creek, not right immediately on the creek, they come down to the creek, but the land they cultivate is back on a high bench.

Q. Sams Valley is a pretty good farming country, isn't it?

A. Right in Sams Valley, yes, sir.

Q. And the Evans creek country is pretty good too?

A. Yes, sir.

Q. They are all little tributary streams that run into the Rogue River?

A. Yes, sir.

Q. Well, now, don't you know, Mr. Hays, that this railroad land that you have been over until about seven years ago was on the market at $2.50 an acre, nearly all of it, especially that that was prospected over for mineral purposes?

A. No, sir, I don't know it.

Q. Don't you?

A. No, sir.

Q. Did you ever apply to purchase any of that land that you prospected over?

A. I had a partner that applied for a piece on Foote creek that they wouldn't sell it to him.

Whereupon witness testified, that his partner wanted one hundred and twenty acres for orchard land; this was about eight or ten years ago. He does not know that he offered to pay anything, but the company refused to sell it to him, as his partner reported to him. They were partners and it was a business transaction, but he did not see the communication from the company. He applied himself, personally, to purchase only one little piece. There was a little seven acre tract lying between

his place and the river—a little fraction of seven acres—which was sandy loam land, mostly sand, and was on the river bottom. He did not buy it, but applied to purchase it about twelve years ago. The Company refused to sell it to him on account of the water front, or something of that kind. He paid but little attention to it because it was a small fraction. That piece of land where it lays is worth one hundred dollars an acre because it is water front. He wanted it because it joined right on to his land and connected him with the river and he could use this land and would join his donation land claim. He owned stock which roamed back five or six miles from his place on Gall's Creek, for two years, which pastured all over the land that was unenclosed, including the railroad land and even sections just the same. If he had stock now, they could not do that. They would have to have a different system now because they would have to eat the brush which has grown in there. It has been protected and has crowded the grass out and many stock could not live in there, but it could still be used for stock to a certain extent. The brush has grown up on this land and it was formerly burned off. The farmers and stock men used to burn the brush out all they could to keep it down so they would get good pasturage. They did not kill any timber there. The stock men would burn off this land and clear off the under brush and in that way would get fairly good grazing and free pasture. He owned that place down below and made about as much on the ranch as he did on the stock. These small ranchers that had homesteads

away back all had to have some stock, and that was a part of the proposition to make a living and was a part of the problem with him. They had to have stock to range out to make their living.

Whereupon witness, upon redirect examination, testified that the upland and land away from the stream higher up is good for fruit raising, as far as he has seen it tried, fruit does first rate. Fruit raising had been tried on these hill lands and he has seen fruit growing.

Q. What effect, if any, has the withdrawal of these lands from sale and the failure to sell to actual settlers—what effect if any has that on the schools and the ability of people to obtain schools for their children?

A. Why, their being isolated, they cannot have the facilities of schools as they can where it is thickly settled, on account of those alternate sections laying around, a man being on one and the other not being settled, I would judge.

Q. Mr. Hays, please describe if you can the lands as they have been settled up in this country; that is, what lands were taken first and what lands have been taken up gradually—the character of them.

A. The first locations that were made there were in the openest places, in the low land; and then as they go ahead they keep going up, working higher up in the hills, working up on the upper land, gradually going up as it passes along. Now, I have noticed the last few years that where there have been roads opened out they

have settled all along these roads and cultivated all kinds of stuff—apples, peaches and all sorts of stuff right on this road; that it was settled up.

Q. The first land was taken up under the donation law?

A. Under the donation law, yes. The next was homestead and pre-emption.

Q. Have the settlements advanced into the timbered sections as years have passed?

A. Yes, they are going that way. They keep going and growing that way all the time.

Q. That is, the first settlers took the lands that were the easiest cleared, and the men who came later had to take lands that they would have to devote more work to putting in a state for cultivation?

A. Yes.

Whereupon J. W. KELSOE, called as a witness on behalf of complainant, being duly sworn, testified that he is twenty-eight years old, and resides five miles from Derby, in Jackson county, Oregon. Derby has a post-office and a little store. He is a rancher and stock raiser and lives on his homestead there, which he has had about two years—a little over two years, and which consists of one hundred and sixty acres and is described as the northwest quarter of section 2, township 34 south, range 1 east of Willamette Meridian. He has lived in Jackson county about twenty-eight years, practically all his life. He has not had a great deal of experience in farming

for himself but did quite a little farming for wages and has worked on a farm at intervals, half of the time for himself, the other half for other people—since he started to work on a farm when he was fourteen. He is acquainted with the soils, climatic conditions and farming business in Jackson county. Referring to Defendants' Exhibit 259, his homestead is located in township 34 south, range 1 east, and the town of Derby is marked on this map near the corners of sections 14 and 15, 22 and 23. He is acquainted from Derby to Big Butte, taking two or three miles on the northeast of Big Butte and along Big Butte from the mouth of it, in around Butte Falls and also a strip on this side of Big Butte. He is acquainted with the lands five miles east of Derby and about five miles north of Derby. He is not acquainted northwest of the town of Trail, excepting to the Rogue River and a very little south of Derby, just along the road, there is a road that runs in there and he has been across it in a couple of miles. He is acquainted very little on the west of Derby. He has worked farming in sections 14, 2 and 3, and 23, in township 34 south, range 1 east, where they raise berries, hay, fruit, apples, wheat and oats. Wheat and oats are the main crops, it is not threshed, it is grain hay, used as hay. They raise corn and vegetables in these places where he has worked, such as potatoes, cabbage, carrots, rutabagas, and turnips. There are settlers in that township besides himself. The even numbered sections are nearly all settled up. There are quite a few of the odd numbered sections which are settled, pieces out of them

are settled. The remaining unsold railroad lands in that area with which he is acquainted will average about with the even sections and is about the same kind of land. The unsold lands of the company, the lands that have not been settled upon, that have not been purchased from the railroad company, would average approximately half that could be cultivated and crops raised on them—that is, 50 per cent of that land could be cultivated, and he thinks that 50 per cent or half of a one hundred sixty acre tract would be sufficient for a man who is an actual settler to maintain himself and family on. The other half of the land would be suitable for pasture for sheep, goats, hogs.

Q. What effect, Mr. Kelsoe, has the failure of the railroad company to comply with the conditions of the grant and sell this land to actual settlers at $2.50 an acre, in tracts of 160 acres, had upon the development of the country that you are acquainted with there.

A. It has been a detriment in roads and schools is the main thing.

Q. Has it retarded settlement?

A. Yes, sir.

Whereupon, upon cross-examination, witness testified, that his homestead is the northwest quarter of section 2, township 34 south, range 1 east, about five miles northeast from Derby, which is not a town but has a postoffice and a little store, but he could not tell how long it had been a postoffice and little store. He has resided there seven years and

it was a postoffice when he went there and there has been a store built there. The store was erected about three years ago. Leeds is a farmhouse and postoffice close to the Rogue River, about twenty miles up Rogue River from Eagle Point, something like that. At Trail there is a postoffice and little store combined, and there was a livery stable and kind of hotel there, he thinks. He is not so well acquainted at Trail, although he has been there. Derby is on the Big Butte and Eagle Point on Little Butte. The section in which his homestead is located, is not on the head of any stream or creek and there is no stream or creek running through that section. His homestead is not timber land but is covered with brush and timber. What he means by timber is, that it is not covered with saw timber—it is wood timber. He would term wood timber oak and scrub timber. He has about a quarter of an acre cleared on his homestead. He lives on his homestead with his wife. He has no fence on his homestead. Moved there a little over two years ago and lived there continuously, excepting the time that he was off. There is a piece of land in section 23 which he spoke about farming, and he has been at his father's place during the time he was putting that in. His father's place is in section 14, about two and a half miles from his place. Most of the time he took his wife with him when he was farming that place. There is a house, barn, sheep corral and well on his homestead. His house is sixteen by twenty-four with a four foot addition built on one side, and then cut through so that the four foot addition is all under one

roof, and he built a bedroom. It is a three room house, sawed material, which he obtained from the mill that used to be on the top of the mountain. That is a timbered country above where he is. He did not take a timber quarter for the simple reason that the timber was higher up than he wanted to go. The Government timber was about all owned at the time that he had taken his homestead—the quarter sections that had been public land had nearly all been taken, it was not occupied but was held by owners as timber claims. Most of them entered this under the timber and stone act. Some of it had been homesteaded but the largest part of that country was entered under the timber and stone act. He supposes they took it for the timber, as it is pretty fair timber. These homestead people up there who took timber lands did not, to his knowledge, sell out when they got title. He knew of no abandoned homestead cabins up there in that best timber, where the cabin has gone to wreck and the land has passed to timber companies or timber investors, except that he now recalls two. He recalls two of these abandoned cabins and does not recollect more than the two that he knows have been abandoned. He could not say how many settlers there are in township 34 south, range 1 east, outside of the postoffice and the people who live at and run the postoffice. It is what he would term a pretty thickly settled country for a mountain township. Right around in that country, most of the mountain townships have many people in them and have good schools. There are two schools that he knows of in that township, one of

them has something like ten or twelve children and the other one there had eight on the list. They have six months in their school year, supported by a two mill tax last year. He couldn't tell if the tax is levied on all the land in the school district as he is not posted in school laws enough to know. He does not pay any taxes on his land because it is a homestead, but everyone who has a title has to pay taxes and he supposes the railroad is included. They have good summer roads in that township, but mud in the winter. Some places are worse than others. Some places in that country would mire a saddle blanket. He has been through the Willamette Valley, up about Eugene, in the winter time with pack horses and the roads are very bad. He has counted thirteen settlers that he knows of in that township where his homestead is situated. There are families in there with whom he is not acquainted. Three of them he would say live on the stream of Big Butte, and three at the postoffice and store. He does not know of any forest rangers of the United States living in there, but knows that some of these forest rangers do live out towards the forest reserve. He has run stock on the outside range up towards the mountains east of him, and it is quite a common way to turn the stock loose and let them go in the summer months. There are quite a few cattle ranged up in that country that belong to these ranchers and others down in the valley farther. There are not so many north of him in the summer that would get to the Rogue River, but there are some northeast of him and about something like three hundred to five hundred

head of cattle range in there that really don't belong there. The main cattle man in that country is Nichols. Most of these ranchers that he speaks of in this township and others, have a few head of cattle that they turn loose on the summer range. To make a living he has sheep, wool, hogs and cattle to sell. He sold twenty mutton sheep before he came down to Portland. His sheep range along the Big Butte on the commons. He got a boy from the Aid Society in Portland who generally goes out and brings his sheep in at nights and looks through them once or twice a day. He has never sold any beef cattle. He bought a bunch of cattle, and pretty nearly all the cattle he has sold have been yearlings. He sold out the cattle business. He sells his hogs at Central Point and Medford. Medford is about thirty miles away and Central Point twenty-five miles, and Eagle Point fourteen miles. Eagle Point is where he has always hauled his stock from. He generally rounded up at his father's place. The place of witness is sixteen miles and a half from Eagle Point, which is quite a little trading point on the Pacific & Eastern Railroad, which has been there for about two years. Eagle Point is on Little Butte, just before it empties into the Rogue River, and he expects Eagle Point had been settled before he was born. Eagle Point is a place of something like one hundred fifty to two hundred inhabitants. He does not know whether donation land claims were taken around Eagle Point, that was before his time, when he came there that country was settled up.

Q. You say fifty per cent of these lands could be

cultivated. You mean if the brush or whatever there is was cleared? You mean the soil is good enough and the ground is sufficiently level that it could be cultivated?

A. No, not necessarily. It is level enough to cultivate, I think, yes. I think it would have fifty per cent, that much, now.

Q. You mean if the brush was cleared?

A. Yes, sure.

Whereupon witness testified, that he cleared a quarter of an acre last year to see what it would do, after the farming season was over. They told him the land was too dry to raise anything. He cleared that for an experiment and raised wheat. He let the stock eat it. He put it in and let it come to a head to see what it would raise. He has not raised any vegetables. He has not lived on the place in there he was farming near his father's place. His father was on his farm and what time he was farming he was at his father's place. Most of the time during the two years he had been back and forth to his homestead. It was not his intention merely to comply with the law by being on the place only every six months and doing a little improvement. His stuff had all been at his home and it had been his home when he was not at work. He was away from home most of the time at work. He did not go away from home necessarily to make a living. He expects he could have made as good a living, probably better, if he had stayed at home—he don't know why he did not stay at home,

except that he needed the crops that he was raising on this other place. He didn't have his place cleared and he would have to make something while he was getting ready to improve his place. He has one child of his own, and also a little boy from the Aid Society. The boy goes to school but his girl is not old enough to go. His family is not at present on the homestead. They came to Central Point with him when he came down to Portland as witness in this case and his wife is there waiting for him, but they have not moved away. He did not take a timber quarter up there because he was not looking for timber. He wanted the land for a home. He does not know that he could or could not have gotten a good timber quarter if he had wanted to, he never posted himself on the timber back there, he never paid any attention to it, never looked to see whether any of these railroad quarters had good timber on them—never paid much attention to timber at that time.

Whereupon, upon redirect examination, witness testified, that this homestead of his, contains no timber of any value except for fuel, that is about all. There is some timber that would do for fencing and probably little improvements. It would not pay him to mill it, but if he had a mill of his own, it would probably pay him to cut it for fence and improvements. He has forty-one head of goats that have ranged most of the time since he has had them on railroad section 3 out on Butte. He does not range them on his homestead, only turns them loose and watches them awhile and drives them back. He has a little piece fenced in on the railroad land and

he keeps them confined. Goats are a great deal of assistance in cleaning off the land, by eating the brush out, killing the brush off, opening it up on the brush land. His purpose when he took this homestead was to make a home out of it and that is what he intends to do with it. There is a spring above the house about a quarter of a mile that he intends, as soon as he can, to pipe down there to irrigate his garden and berry patch. There is a man living right by the side of him, and he and this man had been talking about going in together and building a ditch for about six miles out of Clear Creek, and they went over and surveyed the ditch but they haven't thoroughly decided whether they will do it or not. He intends to clear up enough of his land so that he can make a living from it. Oak timber is hard to clear and it will be slow to clear, and he intends to clear it as fast as he can. The character of the land his father lives on, is mostly black, sticky and brush, and the character of the land is good as to its productiveness. He raised on his father's place, garden and vegetables and hay. The main crop is hay, about all. They just raise garden enough for themselves and what hay they need. He would think that the less schools they would have in that section, the less the railroad land would be taxed—if the railroad pays the taxes levied on its land. The wheat that he raised on his land grew good. He measured it and it was about four feet high. It headed out good heads four inches in length and the grains seemed to be full.

Whereupon, upon recross examination, witness tes-

tified, that this grain he raised was on that quarter of an acre. He did not cut it at all but turned the horses in and let them pasture it off. It was just a little patch, in a circle—and it would be hard to guess at the size of it, he estimated it as something like a quarter of an acre. It was below his barn. The buildings and barn were on the same forty acres with the clearing. He has this clearing in one place and his buildings in another place. It is about a hundred and fifty yards from his house down to the clearing, he did not want to farm the land right in his yard, he wanted to put that into berries or something, in fact he had set it in berries. He has nothing fenced excepting that little piece, and that only with a brush fence, he has a little wire fence around his house, the yard is fenced in around the house. The quarter of an acre that is cleared is fenced with brush fence. He pulled the brush off the trees and threw them around for a fence and sowed this wheat in there to see whether it would produce. He had been told it was too dry there to produce.

Whereupon W. A. BOGARD, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-six years old, resides at Roseburg, Douglas County, Oregon, and was born in that county in what is known as Sutherland Valley, on a farm. He lived on a farm with his father until he was sixteen years old and he has been on a farm off and on since, his father resides on a farm there now. He has not farmed any since that time—that is, to go out in the fields and actually farm, but he has been out there every month on

the farm and he thinks he is acquainted with farming and farming conditions generally in Douglas County. His father first had a forty-acre homestead there, and then afterwards bought a hundred and sixty acres adjoining that. The homestead of his father was about 50 per cent of it agricultural land, may be more, something like about twenty-five acres of the forty he cultivated. Of the hundred and sixty that he bought later on while he was there with him, he would guess that his father had something like about forty acres that he cultivated and could have cultivated more. The balance was good pasture land and was a sandy soil, some of it was rolling. It was all good pasture land and more of it could have been farmed. Part of it was timber and slashed off. In fact, the entire forty that his father homesteaded was all timber and that was slashed, and then something like forty acres of the hundred and sixty was slashed. Clearing was required for that place, and his father certainly made a living from the land that he farmed. His father had a family of five children. The present business of witness is that of a timber cruiser and he has been engaged in that occupation during the last seven years—that is in the timber business. He milled one year, 1907, and he has been in the business for seven years. He has worked pretty much over Douglas County. There are some parts of Douglas County with which he is not so well acquainted, but along west of the railroad and some of the northern part of Jackson County, he has been over considerably. In his business, he located some homesteads, and he is in the real

estate business at the present time. As a timber cruiser, a man generally examines the timber lands and the soil, and the possibilities of taking the timber off, and what the land would be fit for when the timber is removed, and the expense of clearing also. He takes notice of all these facts in cruising lands, and would make a thorough examination of the land as well as the cruising and the possibilities. Referring to Defendant's Exhibit 259, he can give the townships and ranges in which are the unsold portions of the railroad lands with which he is acquainted and over which he has been. Starting in at township 22-6 south, ranges 7, 8 and 9 west, he has been over that a great many times. In fact, over the entire Smith River country. That is where he learned his business, with the Smith-Powers Company. He was going to include that down to township 25, which is practically the same, and then the ranges beginning at range 5 and running to range 9 west, all west. He is not acquainted east of the meridian. Beginning at township 26-2, and all down the line, all the way down the line till one gets down to township 28, he is acquainted, but he is not much acquainted in township 29. Township 26-3 is the farthest north. He has been very little through township 28-4 west, but he has been in township 28 south of ranges 5, 6, 7, 8 and 9 west, through that country a good many times. In fact, through the entire country there. He does not know but what he is as well acquainted with one part of it as with another, excepting a few points, as he stated, in township 29-2 and in down to township 32 he is not so well acquainted. The

farthest north of these lands with which he is acquainted is about township 22. He has been over a good portion of that township a great many times, beginning at ranges 4 to 9 west.

Q. Well, now, what is the character of that land as to its agricultural possibilities, possibilities of settlers going in there on 160 acres of land, and settling there, and making a living on the lands, as to the railroad lands indicated there on the map by the green?

A. In my experience and examination of the land I find about 35 per cent of it would be agricultural land, and I judge 95 per cent would be agricultural and grazing lands.

Whereupon witness testified, that some of the timber on that land is pretty good timber, and part of it is not. Ranges 8 and 9 in there are very good timber. The timber varies, it is not all solid all over. There is not a township in there that is solid timber all over. His estimate is based upon the clearing of the land, and all his estimates are based upon putting the land in cultivation. There are some places where a man could get some land that is clear. Of course, further back and in the mountains there would be less. There are townships there with a good many sections that the land could be cleared very easily, and some of it is prairie land, that is on railroad lands. What scattering land there is, in townships 28 and 29, quite a bit of that is open land. He is acquainted in township 23 from ranges 4 to 9 west, and they are practically the same as those he has described

in township 22; very little difference in township 23, if anything, a little better—more of the land is open, especially ranges 8 and 9, that is very good land and the timber is about the same, very little difference in general. He is acquainted in township 24 from range 2 to 9 or 10 west, and the agricultural possibilities of the railroad sections are about the same, as those described in reference to townships 22 and 23, he would think they were not quite as good in a portion of it—very little difference. He does not know but what they are about the same there in township 24—very little difference. He is acquainted in township 25 south, ranges 2 to 9 or 10 west, and a portion of these railroad sections, compared with the others, is better. Take it as a whole, they would average about the same, but he would state that township 25, range 8, is tolerably rough—that is, township 25 is rougher, but there is a burn and not much timber in there. It is a large burn, one of the largest burned areas in that district is in that township. That burn covers three or four sections, at least, in one solid burn, and then there is a strip of timber and other burned areas on and on all through the township—half of it is burned. He is acquainted with the railroad lands in township 26, running from ranges 3 west to ranges 10 or 11, and it is about the same as the railroad land and other outstanding land—practically about the same as the other. He is acquainted in township 27, beginning with range 3 to range 10, and the agricultural possibilities of those lands are very good. The township in ranges 3 and 4 is very good land. Then they are more

abrupt towards the coast and more timber. The soil is good, most all the land the soil is practically good on that, only it is not so level. This territory consists of a good many areas of bench lands and flats in 1 and 2 west. He is well acquainted in township 28 south, beginning with range 4 west, that is in the wagon road grant, and there is very little railroad land in that excepting in ranges 4 and 5. The railroad land in that township is very good—that is all good land in there and he thinks there is more agricultural land and less timber land as compared with these other lands he has mentioned—quite a portion of the railroad land in township 28, range 5, is better land. There is a good deal of prairie land. This is about eleven or twelve miles from Roseburg, which is a city of about 6000 population. He is acquainted with the railroad lands in township 29-4 to ranges 13 or 14. A part of these lands are very good for agricultural possibilities. The townships over near the coast, in ranges 11 and 12, are better than the balance. The other lands are about in proportion with the lands in Douglas County. He does not know whether ranges 11 and 12, township 29, are outside of the grant. About 65 per cent to 70 per cent of ranges 11 and 12, township 29, could be cultivated and the balance would be good grazing land. It is all good soil in there, low rolling hills. He is acquainted with township 30, range 4 to range 13, of these railroad lands marked in green on Defendants' Exhibit 259. There is a variation in these townships, at the coast. There is very little difference in all of that, that is east of the

railroad, that is practically the same—the water sheds and the land—excepting township 27, which is better than the balance of it. From township 30 south, ranges 11, 12 and 13 west, he does not know whether the grant takes in that or not. that is a good deal like the townships he has described above. There would be 65 per cent or 70 per cent of it good grazing or could be cultivated. The land in ranges 11 and 12 west is rolling land, low hills, and benches and flats, none of it is steep or rough to speak of, and does not rise like some of the other land. Beginning with township 31, ranges 5 to 13 west, he would like to class that with the balance of it. Beginning with range 10 to 13, it would be about 65 per cent agricultural land in township 31. He is acquainted with township 32, ranges 4 to 9 west, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 33, ranges 4 to 7, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 34, ranges 5, 6 and 7 west, and the railroad lands in that township and those ranges are pretty fair, the most of it—perhaps 45 per cent of it would be agricultural land. He is acquainted with township 35 south, ranges 5, 6 and 7 west, and he does not believe they are quite as good as the lands in township 34 south, ranges 5, 6 and 7 west. Township 35 south, range 7 west, is pretty fair, there is about 35 per cent could be cultivated. He has been through the other ranges in this township from time to time, but would not care to pick them up because there are others there that he knows better. He is acquainted with the other

townships south of there, but not very much, he has been through there a great many times but is not as well acquainted with them as he is with others, he has been through there generally and has cruised in there a good many times, but these townships here and there, and pieces here and there—he has made a trip on Evans Creek in township 34 a good many times, but then not generally speaking of the country. He is not particularly acquainted with the character of the lands in ranges 1 west to 4 west, in the township that he stated he was acquainted. He has been through them, but then these that he has named he has been over a great many times and he would not care to pick up those he is not particularly acquainted with. These percentages, in his estimate, would hold good if the lands were divided into one hundred and sixty acre tracts by contiguous forty-acre subdivisions, and in his opinion that much land would be sufficient to support a man and his family, taking this land up for farming purposes. If one gets twenty acres of agricultural land on one hundred and sixty and the balance is any good at all, he can support a family.

Q. What would you say as to the availability of these lands in their present condition for settlement in 160-acre tracts, by actual settlers, for the purpose of going on the land and making a home there, farming, going into the farming business?

A. Why, I think they would be all right. I don't see any reason why a settler could not obtain a home and maintain his family there.

Q. I am speaking now, Mr. Bogard, in their present condition. Have settlers gone onto lands similar to this and cleared it up and made farms out of it?

A. Yes, sir; certainly. Certainly, practically everything was taken.

Q. Has that been of frequent occurrence or rare?

A. No, very frequent. There are a great many people through every day looking for such land.

Q. For what purpose?

A. For unimproved land or public land, for small homes. What I mean is, men with little means.

Q. Mr. Bogard, are there many people who have gone onto lands that contain timber in this area that you are acquainted with, cleared up the lands and made farms of them—homes?

A. Yes, sir.

Q. In small tracts, 160 acres, or, as your father did, on forty acres?

A. Yes, sir.

Whereupon witness testified, that in his work as a timber cruiser, he ran the lines and became familiar with the various parcels of land. He did a good deal of that work for different people. He has come across settlers in the hills there or on the benches, and in these even numbered sections near the railroad lands, he found them settled all over the country. These lands are adapted to fruit raising and he knows they are good for that purpose because he has seen fruit growing on sim-

ilar lands. He found on these or similar lands, grains of all kinds and vegetables.

Q. Mr. Bogard, in your opinion what has been the effect of the railroad company's failure to sell the lands in this grant in tracts of 160-acres to actual settlers at $2.50 an acre, in compliance with the conditions of the grant.

A. Well, it has been a detriment to the country. It has kept out schools and roads, kept out business in the towns, owing to the fact that they don't get the market for produce that might be grown on this similar land. It has held the country back in every way that settlement could, or non-settlement.

Q. That is brought about by keeping out settlers?

A. Yes, sir.

Q. Now, Mr. Bogard, from your knowledge of this country, please state how the development has taken place as to the lands that have been first taken up by the people who went in there some years ago, and as to the lands that have gradually come under cultivation and settlement.

A. Well, of course all I know about the land that was taken up is what I get from the records, some of it, before my time; but first the donation claims, and they followed along the river, on the bottom land, or along the military wagon road. That was one view possibly in locating there. And then came the homesteaders, pre-emptions, and they worked on from time to time

until they have taken all the public lands.

Whereupon witness testified, that the bench land or hill land there has been put into cultivation or clearing, homes are built all through the mountains. The first lands taken were those that were easiest put under cultivation. The settlements and cultivation have gradually extended further out from the streams and up into the hills and into the more timbered sections, and have extended clear through, from the river to the coast. There has been an increase in the demand for settlement lands by people who are seeking homes to engage in the farming business. There has been a great demand for lands and the demand has increased in recent years, in the last six years. He knows of some people that have attempted to buy this railroad land, and knows of settlers that are on it now and are making a home on it.

Whereupon, upon cross-examination, witness testified, that his father's homestead is in section 12, township 25 south, range 5 west, about sixteen or seventeen miles from Roseburg north, and five miles from Oakland southeast, and about five miles from the railroad. His father is not residing there now, having sold the place about five years ago. He had 200 acres of which 160 acres was a homestead. He cannot tell how long ago it was taken, but it was taken before they settled in there, a good while ago. He is twenty-six years old past, and this homestead must have been taken in the early settlement of the country. It was taken, he would say, thirty years ago. There are quite a good many do-

nation land claims along the rivers in Douglas County. Roseburg is the county seat of Douglas County and is a town of about 6000 inhabitants, situated on the railroad, and the country around Oakland is an old settled country. His father did not take up a claim under the timber and stone act, but witness got a quarter section under the timber and stone act in Curry County in section 23, township 35, range 14 west, which he took four years ago for the timber that was on it. There have been quite a good many entries taken under the timber and stone act in Douglas County. It is pretty hard to say whether there were more quarter sections taken under the timber and stone act of these timber lands than under the homestead act. He does not know as there has been a great deal of difference. He would judge there would be about half and half—that is, he thinks that of the timber lands of Douglas County, so far as he knows from his knowledge and acquaintance with the records and with the lands themselves, about one-half of the number of timber claims have been taken under the timber and stone act, and the other half under the homestead act. In going over Douglas County and these various townships of which he speaks, he was part of the time in the employ of timber people, cruising part of the time. When he first began he was with the Gardiner Mill Company, located at Gardiner, on the coast, at the mouth of the Umpqua River. He then worked some with the cruisers of C. A. Smith, with his cruising parties, something like five or six months, and worked with the Gardiner Mill Company off and on for four

years. They had a lot of land that they bought, ranches and timber lands and all. They bought off the timber of some of them, and some places they bought the timber, ranch, farm and all; some places they bought stumpage, and in other places they bought the title. As a rule, these timber people did not buy the title—they have up to late years but the last year or so they are not buying as many titles. If a man has a sawmill, he will buy stumpage somestimes, but when he has not a sawmill and wants to buy timber, he will buy the title if he can get it. He has cruised, he expects, for a thousand different individuals and would not undertake to name them here. He could name a good many different people. He has not followed the business of locating people on timber quarters very extensively in Douglas County, most of them were taken before he went into the timber business. He has cruised for probably a thousand individuals and has located some of these people. He does not know how many he has located on timber claims since he has been cruising, but has located a few—probably thirty or forty. The timber cruisers for individuals do not charge so much for finding the quarter that has good timber on it and then go out and ascertain or cruise the amount of timber and then bring the buyer and seller together. Most of his locating has been down in Curry County and northern California, in townships 40 and 41, ranges 13 and 14 west, and on up the coast. He cruised for these individuals simply because he was in the business. They wrote out here for someone to cruise a quarter of timber or a piece of land

they had bought. They had land cruised to ascertain how much timber there is on it, to know the character of the land and how much it might be worth. They like to know about how much timber there is on it, as they might want to sell it, mill it off or clear it off. They cruise to find out the stand of saw timber there is on the quarter, if it is a timber quarter they have and are handling it for the timber, buying it for the timber, selling it for the timber, but this is not always the case in cruising, the main purpose of cruising is to ascertain the amount of timber there is on a quarter section. He cruises what timber there is on it, what he actually thinks it would saw out, to the best of his knowledge. It doesn't make any difference whether his cruising is for the buyer or seller. He has been at this business for the last four years in Douglas County and has made a living at it. He does not know about how many million feet of saw timber he has cruised in the last four years, but a good deal. Seven or eight million feet is a good stand of timber to a quarter section and the best that he has cruised. The average stand of timber per quarter section in Douglas County is about two million feet, and such a timber quarter with two million feet is not very saleable, but is considered merchantable—it could be sold. The best price that he had known people to pay for timber quarters in Douglas County is four thousand dollars. In his travels through this timber belt, there is an old cabin here and there, occasionally one on land that has been homesteaded, that has been abandoned. These timber claims are all the way up to the summit of the

Coast Range. The Government lands are practically all taken in Douglas County, here and there a quarter—very scarce. He does not think that Douglas County has some of the best timber in western Oregon, the best timber, in his judgment, is in Coos County, adjoining Douglas County. Douglas and Lane counties are both considered good timbered counties, and there is pretty fair timber in them, but they are not the best. Speaking of agricultural land, he means that after the timber is removed these lands would be agricultural to the per cent that he has stated, in his judgment. There has not been a great deal of demand in the last three or four years for timber in Douglas County. The demand was greatest, within his knowledge, about seven years ago, and began to be active about 1902. Before that time he does not know whether the timber in Douglas County was considered worth much or not, or worth anything. He doesn't remember before that time, he was not in business and does not recollect. Before timber became of commercial value, in clearing the land they did not try to save much timber until there were some fire restrictions. He did not know who caused them, but there were fires. Until timber was worth something, if they did any clearing they burned it up and they are doing it today. In a great many places, they are burning up good saw timber today. They are burning up timber to clear up the land. They are clearing up some of these good timbered quarters. Those that are living on there today are burning the timber, clearing it down and logging it together and burning it. They have all

the way from three to fifteen or twenty acres cleared on some of these timbered quarters. They slash the timber down, aim to haul it as near together as they can, and then burn it. They slash saw timber from three to six feet at the bottom or butt of the tree, if it happens to be near where they are improving. They are working right on through, he does not think they are saving the timber. They leave no timber standing. Some places they leave here and there a tree, but mostly they are clearing it, they generally start in on the brush land or where there is less timber, generally start in where there is no heavy saw timber—naturally would do this. He does not know whether they leave the saw timber until they have cut the other down, but they are clearing it, logging it off, he knows a good many cases where they are taking it off. These clearings he speaks of are from three to fifteen acres, and some of them have as high as forty acres, they have not cleared that, because it has been on a burn or something of that kind, some of them that have more land cleared, have taken advantage of an old burn. His business is that of timber cruiser and real estate, and his partner is Finis Dillard. He does not know of a timberman down there who has located four or five thousand people on these railroad lands, or who induced a lot of people to file applications, or tender applications to purchase this land at two dollars and a half an acre, and then got them to intervene in this suit. He is not personally acquainted with a man named Leavengood at Myrtle Creek, but knows of his operations down there, but does not know

that he induced three or four thousand people in Douglas County, and who lived abroad, to come in there and make application to purchase these timber lands. He never saw any of them on the land, never saw him or saw him going out with any of them. He does not know of any of those applicants having applied for valuable timber quarters in Douglas County, and he never cruised any of these lands for these so-called applicants, nor applied for a timber quarter himself. The land was off the market before he knew anything about it. He never applied under this act of Congress that they are trying to enforce here or declare a forteiture under. He took a homestead in section 26, township 22 south, range 4 west, about thirty miles north from Roseburg on Elk Creek, a tributary of the North Umpqua. It had about three million feet of timber, most of it on an eighty. He took it about a year ago and then relinquished it for $925.00, and the man to whom he relinquished it filed on it and is still there. There was about three million feet of timber on the hundred and sixty acres. The man that he relinquished to is a single man and is making improvements on it. He is putting in cultivation about fifteen acres, or will have in the spring. This land is up on the bench, up on the side of the mountain. The man is clearing it himself, some small brush on it, perhaps half a dozen trees on this fifteen acres. He felled several trees of saw timber there. He doesn't know whether the man can sell his timber if he gets his title, he might. The stumpage in that country out there is worth about sixty-five cents, taking large tracts. There

are no large timber holdings in Douglas County that he knows of, that he had anything to do with. He never cruised any of these large timber holdings out there.

Whereupon, upon redirect examination, witness testified, that that land in this general area with which he was acquainted was originally, judging from the present state of it, covered with more or less growth of timber. There is timber scattered here and there of different kinds on most all of the lands, excepting the river bottom land. The river bottom land would cover just about the area that was taken with donation claims, that is about on an average. Of course, there were some donation claims that ran up on the hill to take in timber, but that would be just about an estimate. There is a wagon road grant in Douglas County, running from Roseburg to the coast, the Coos Bay Military Wagon Road, and covers practically township 28. He does not know just how wide that grant was, but something like six or eight miles, he observes the yellow marking through Defendants' Exhibit 259. It is principally in townships 28 and 29 from range 6 to the end of the grant, and he notices the marking "Coos Bay Military Wagon Road." Most all of the people that filed on timber and stone claims were non-residents of the state. The original applicants were 90 per cent of them non-residents of the state. A good many scrip locations have been made in Douglas County, but not as much as in some of the other counties, he thinks not as much as in Coos County. Those who purchased under the timber and stone act were mere speculators in timber. There

has been a change in recent years, as the values of land have increased, in the purchasing, or rather in the selling of timber. Generally if a party has a timber claim, he wants to know what the value of the land is and if there is a portion of it that can be reserved for good farming, without too much timber on it. That has occurred in the last three or four years. In the last five years, land in that section of the country with which he is acquainted has gone from twenty dollars an acre to two hundred dollars an acre, and on up close to five hundred dollars; but the land in the raw state has gone from twenty to two hundred dollars an acre. The timber has not increased in value in the last five years. In fact, one cannot get as much for timber now as he could five years ago. The average stand of timber on these lands with which he is acquainted would be about two million feet, taking the timber land, land that has timber on it, on an average, to a quarter section. Four million feet is a very good claim in through that country. There are breaks in the timber by reason of lack of growth of timber or burns. There are very few sections that are all covered with timber, very few quarters that are all covered. There are either four or five acres to the quarter that are open, sometimes more of course, but take it on the timber claims there are very few sections that are entirely covered with timber. In recent years there has come up small brush, such as hazel and arrow wood, on the open places. Eighty acres of his homestead was timber. The rest of it was scattering trees, but all fair land. There is not an acre of rock

land on it. There is probably thirty five or forty acres, at least that much, of it that can be cultivated. The man who purchased this land from him is using it as a home and is staying right there and improving it, and makes his living on that place. He has been on there less than a year, he has not raised a crop, but then he is preparing to put in a good crop this coming spring.

Whereupon, upon recross examination, witness testified, that there was about three million feet on this eighty acres of his homestead. There was about forty thousand feet to the acre, eighty acres of that. If the whole quarter section had been as good as the eighty, there would be about six million feet on the quarter, but it is like most of them, the timber is in patches. The value of these unsold lands on an average, through where he has traveled and over which he has gone and with which he is acquainted, in his judgment, taking into account the timber and soil and everything that enters into the value of a piece of land, would be from fifteen to twenty dollars an acre, possibly twenty-five—some of it—take it on an average. There is a portion of these quarter sections of unsold railroad land that is worth as much as a hundred dollars an acre. It is the land as land that gives them that high value at the present time. He means that he could sell some of these quarter sections for a hundred dollars an acre that is not covered with timber. There are forties of these quarter sections which are not covered with timber, that he could sell for one hundred dollars an acre. He does not suppose one could find a quarter section right through that

one could sell for one hundred dollars an acre, but thinks one will find portions of them that can be sold for a hundred dollars an acre. There is a forty in township 28 south, range 5 west, about twelve miles from Roseburg, that one could sell for a hundred dollars an acre in its present state. That is creek bottom land. There is as much as two hundred acres of creek bottom land. That land is worth from two hundred to three hundred dollars an acre, and the land around it is old settled land, part of it under the donation claim. One can come down the Willamette Valley around Lane County and buy cleared land for from one hundred to a hundred and fifty dollars an acre; but one cannot buy much bottom land around Roseburg, out towards Myrtle Creek, for less than a hundred dollars an acre. One can buy some of that hill land for sixty, seventy or eighty dollars an acre, but there will be some brush on it. One would have to pay for land over about Myrtle Creek, around the railroad, up to two hundred or three hundred dollars an acre, that is where there is an orchard on it, some of it, and some of it has no orchard. A man doesn't like to cut off a portion of his place from the orchard and sell it. He thinks two or three hundred acres around Myrtle Creek would sell for two hundred or three hundred dollars an acre; it would, if it was in the bottom. Around Sutherland there is quite a valley, about a mile or two wide and eight miles long, that land is all cleared and level. He does not suppose there is as much as two hundred acres of it irrigated. A great deal of it is being put out in young trees from one to four

years old, and is being held and exploited by land companies, by Frank Waite, who has sold some of it as high as seven hundred dollars an acre. He is not acquainted with the land in the Rogue River Valley around Medford, but that Sutherland land is not like this railroad land, that is out in the mountains. There is some of this railroad land, he will say, that is better than that Sutherland land that they have in fruit there—but, take it as a whole, it is not. One will find a forty, some places a hundred acres on a quarter, that is better than the land of Frank Waite. Some of it has timber on it, some of it is not very heavy, some of it is quite heavily timbered. He does not want to create the impression, by his testimony, that the land in this grant is generally of the character of the land around Sutherland. This land is spotted all over, some of it black heavy soil, even better than that land. That is not good land around Sutherland. He thinks the grant all over would average in value, taking everything into consideration, as far as he knows, probably somewhere from fifteen to twenty dollars an acre. If a man could get a good quarter section of this timber land for two dollars and a half an acre, he does not think he could sell it for more than fifteen or twenty dollars an acre, if there was timber on it, to some timber company. He is sure he could not. If he wanted to sell it, perhaps he could sell it, there is a demand for land, that a man can sell any kind of land less than twenty dollars an acre any time. He does not know how much land he sold last year, but he thinks a couple of thousand acres. The title has passed. His

partner is Finis Dillard, and they operate a real estate business in Roseburg, and have no men working for them. He has only been in the real estate business the last seven months. He did not buy out a business that had been already established. He and his partner started up together; his partner had some few lists, but very few. Real estate has not been very active during the last year, rather quiet.

Whereupon, on redirect examination, witness testified, that if the railroad company had only a two dollar and a half interest in this land and is permitted to retain it at a value of fifteen to twenty dollars an acre, it would make the same profit that an individual would who would purchase the land at that price and sell it at fifteen or twenty dollars an acre. It is the fault of the company if they have paid taxes on it for thirty-five or forty years. The reason why this two hundred acres of railroad land near Roseburg remains unimproved is that the railroad company won't sell it. There are other small tracts in the same township that are equally good. These tracts are about eleven miles from Roseburg by wagon road, and less than that on a direct line.

Whereupon B. F. SHIELDS, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in that county thirty-eight years. For the last ten years he has been a timber cruiser most of the time. A timber cruiser is supposed to go out and look claims over, estimate the timber, and see the character of the land, etc., and report as to the

character of the land, the amount of timber on it, and the agricultural value of the land—at least he does so. As a general rule, he estimates the agricultural value of the land before and after the timber is removed. He was raised on a farm in township 28 south, range 8 west, Douglas County, Oregon, about fourteen to sixteen miles west of Roseburg. This was his father's home of eighty acres of rolling land, partly timber—oak grubs. His farther was engaged in general mixed farming, and cultivated on his farm thirty to thirty-five acres. His father had a family of nine children. Witness took a homestead in section 30, township 25 south, range 2 west, and sold that to Frank E. Alley of Roseburg, who sold it later on. There is a fellow who has it rented, raising hay and stuff on it, using it for agricultural purposes. Witness filed on that claim April 1st, 1902, and sold it in 1907, he thinks it was. It has been used for farming purposes all the time. He had about ten or twelve acres cleared in one piece, and six or eight acres in another piece, and raised hay and garden stuff, potatoes, corn and vegetables of all kinds. He had a family. Hay and garden stuff are generally raised in that community; some fruit—but just for their own use, very little fruit. They raise corn there, and the hay is mostly oats, wheat and timothy. Referring to "Defendants' Exhibit 259," he is acquainted with these unsold railroad lands and the lands under contract, especially the unsold lands marked in green from township 21 south, ranges 7 and 8 west, located on Smith River, and in his opinion probably 35 to 40 or 45 per cent of township 21

south, ranges 7 and 8 west, of the unsold lands of the company could be utilized for tillage; and that in the next township (22), about 30 or 35 per cent would be suitable for plowing and tilling, and about 25 per cent of township 23 south, ranges 2, 3 and 4 west. He would think that in township 24 south, ranges 2 and 3 west, probably 35 per cent would be suitable for tilling and plowing. In 24 southwest, there is only part of that, about half, the south half, which runs up pretty high into the mountains, but it would do for grazing land. Township 25, ranges 1, 2 and 3 west, there would be about 35 per cent that could be tilled, and in township 26 south, ranges 1, 2 and 3 west, from 25 to 30 per cent could be rendered suitable for cultivation. Township 27 south varies. That township would vary from 25 to 35 per cent, somewhere in that neighborhood, that could be rendered suitable for cultivation. He is acquainted with ranges 2 and 3 mostly. In township 28 south, ranges 2, 3, 5 and 6 west, he is acquainted with the unsold lands of the company and they would run about the same as the others. It might be as one gets closer to the valley that it would run a little higher. In township 29 south, ranges 1, 2, 3 and 4 west, they would average about the same as the others. Of course, as one gets closer to the valleys, the percentage of land that could be rendered suitable for cultivation would run higher—further out it is not so high. He is acquainted with ranges 1, 2 and 3 in township 30 south, and it will average about the same as the others. In township 31 south, ranges 1, 2 and 3 west, he is acquainted, and the

lands in township 31 would range pretty well. It is pretty well open in township 31, there is a good deal of open land, probably 40 per cent of that in township 31, range 1 west. He is acquainted with some of the lands in township 32 south, ranges 1 and 2 west, and this would run from 25 to 30 or 35 per cent, somewhere in that neighborhood, as agricultural land. He is very little acquainted with any of the lands in township 33 south, and is but little acquainted with any of the lands south of that, in the grant. He has been through there. He is acquainted with the railroad lands on the west side of the railroad in township 25 south, ranges 8 and 9 west, some of that would run 40 per cent, while others would run about 30 per cent. He is not acquainted with any of the other townships on the west side of the railroad, to speak of. He thinks that the average that he has given would generally carry through as to one hundred and sixty acre tracts of railroad land, selected by forty-acre legal subdivisions, but not necessarily by quarter sections.

Q. What is your opinion as to whether tracts of land such as the railroad land is that you are acquainted with in this area as to being suitable for settlement purposes, for the purpose of a man going on the land with his family and making his home, engaging in farming, earning his living?

A. He can. He has got to first clear the land, of course, it takes a little means to start with.

Q. He would have to have something to start?

A. Yes, something to start with. Of course, he could go on there and work out part of the time, you know, and then part of the time on the place.

Q. Doesn't that same condition prevail as to any raw land that a man would go on?

A. Yes, sir; it does, if he hasn't got means.

Q. Are there settlements on lands of similar character to these unsold lands of the railroad company that you have been over?

A. There are, yes, sir.

Q. I mean by settlements, people actually living on the lands and farming them, making their living there?

A. Yes, sir.

Whereupon witness testified, that these people go in there and build homes and clear up the land. They have some stock, such as that, raise hay and garden stuff. These lands generally raise fruit in that area, most all kinds of vegetables, and most places they raise corn, wheat and oats. Away high in the mountains sometimes one cannot raise such as tomatoes, but they can raise most of the stuff. He has seen wheat, oats and timothy raised there, mostly grains, and apples, pears, prunes, peaches and cherries, potatoes, cabbage, carrots, squashes and rutabagas.

Q. In your opinion, Mr. Shields, what has been the effect of the railroad company's failure to comply with the conditions of the grant, failing to sell this land to

actual settlers at $2.50 an acre, in tracts of 160 acres?

Mr. Fenton: Objected to as assuming that the railroad company has failed to comply with the terms of the grant.

Q. That is, the effect upon the community.

A. Well, it has been tending to hold the people back and keep out schools, and the building of wagon roads.

Q. Has it affected the settlement of the country in any way?

A. It has.

Q. Materially or not?

A. Materially; yes, sir.

Q. Now, Mr. Shields, there have been some questions asked in this case, and some testimony relating to the manner in which the lands have been taken up in the areas covered by this grant, or in part of the area covered by this grant, that is, of homesteads and timber and stone claims. Now, will you please tell what your experience has been with reference to the people who have taken up homesteads in this country—this general country?

A. Why, in what way? What do you mean? In what way?

Q. Have people generally abandoned their homesteads?

A. Why, no; not as a general thing they don't.

Whereupon witness testified, that no residence what-

ever was required for timber and stone entries, and he thinks most of the lands transferred by entrymen from the Government obtained their title under the timber and stone act. These people who filed on these timber and stone claims were principally from the East and Washington, the most that he knows anything about. They were from all over the eastern countries.

Whereupon, upon cross-examination, witness testified, that he is a timber cruiser by profession, and has been so practically the last ten years. He has not cruised for any timber company in Douglas County, but mostly for individuals. Timber first became an object of inquiry, as he remembers it, about seven or eight years ago, somewhere along there. In places, these lands with which he is acquainted, over which he has been, are considered fairly good timber lands. These unsold railroad lands, taking them on an average, would carry something like two million feet or a little better, not much more than that, take it as an average on the whole. When a claim carries two million feet of saw timber, it is considered an average timber claim for that country. The highest stand of timber on any quarter section which he has cruised or known of being cruised in Douglas County, would run to eight million feet—some of them ten million feet, and the value of such a claim that carries ten million feet to the quarter section depends upon the locality, etc. If it is on the coast where there are saw mills, probably one will get a dollar and a half to two dollars a thousand feet, but take it west of the railroad, if one can get fifty to seventy-five cents he would be

doing well. That would mean selling the land as well as the timber. They generally buy the land and all together, as a general thing. He has known of very few people who have taken homesteads, proven up on them either by commuting or living the five years, and then selling the land to timber people.

Q. There are cases of that kind, though, all through this timber belt?

A. I suppose so.

He means that this per cent of agricultural land mentioned by him would be agricultural after the timber is removed or cleared up.

Whereupon, upon redirect examination, witness testified, that there has been an increase in the value of farming lands in the last five or six years in his vicinity. In the last four or five years there has not been much demand for timber, it has been about on a standstill. In fact, he does not believe one could sell it for as much now as one could four or five years ago.

Whereupon JAMES S. BAILEY, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-one years old, resides at Ashland, Jackson County, Oregon, was born in that county and has lived there most of the time. He was born in Rogue River Valley, township 38 south, range 1 west. His father was a farmer and rancher and farmed in different parts of Jackson County. He owned a farm in the Rogue River Valley for a while, farmed in different parts of that valley, and then in 1894 bought a ranch on

the Ashland-Klamath Falls road, twenty-four miles east of Ashland. It was what one would call a mountain ranch, consisting of one hundred and thirty-three acres. It was the northwest quarter of the northwest quarter of section 4, township 40 south, range 4 east, and the south half of the southwest quarter of section 33, in township 39 south, range 4 east. It was rolling land, some of it was rocky. There were small patches of good soil on the place, and perhaps out of one hundred and thirty-three acres there was thirty acres of what one would call good tillable soil; this hundred and thirty-three acres was all the farm that he had, and he farmed about thirty acres of it. His father earned a support for himself and family on that land, and had no other means of support. Section 33 was all railroad land excepting eighty acres that his father owned in that section, who had part of it fenced in, made application to the railroad company for it, but for some reason did not get it. He does not know the exact date of the application, but it was about 1888, and the company replied that it would send an appraiser out and appraise the value of that land, and the company put a price on it of seven dollars and a half an acre. At that time, the lands were selling around there at two dollars and a half an acre and his father felt that the company was holding him up a little, and he tried to see if there was not some way of what he called getting fair play. Later on his father offered the railroad company seven dollars and a half an acre, with the result that he could not get it because the land was withdrawn from the market. He

made this offer somewhere along in the 90's. It dragged along for quite a while before his father finally decided to pay seven dollars and a half an acre for it. This land that his father applied to purchase was agricultural land, fit for nothing only for farming purposes, and that was the use his father had in view, the only thing he wanted it for—for farming. Witness farmed quite a little in different parts of Jackson County. The first farming that he did for himself was on Emigrant Creek, about eleven miles east of Ashland, in townships 39 and 40, range 2 east. He farmed there for three years and then went to Klamath County on Spencer Creek, and was there for a year or two. He farmed the old Spencer ranch one year, and in 1899 he bought a place on Corral Creek on the Ashland-Klamath Falls road, twenty-two miles east of Ashland, consisting of a hundred and sixty acres in section 6, township 40 south, range 4 east. He farmed that for four years. There was not much land cleared on the place when he took hold of it. He cleared considerable, and in the four years that he had it, he added, he thinks, twenty acres to the agricultural part of it. That was a timbered tract, portions of it was heavy timber. He left his father's place down in township 40 south, range 4 east, in section 4, in 1890. He worked on his father's farm there continuously from the time his father bought the place until he left home. In his experience, not only the flats that exist along the rivers in Jackson County, but the high lands and hills and mountains there, will produce most anything one will plant, except lemons and

oranges. Apples do well, vegetables of all descriptions do well. From his personal experience, he knows that lots of the higher ground there will grow good timothy, any of it will grow good grains, good fruit—grow orchards, that is, to a certain elevation. The elevation where his father lived and where he lived, in what is called the Jenny Creek Basin, fruits do well there, such as apples, plums and pears. The altitude of Klamath Falls is forty-two hundred feet, and there is farming there at that altitude, where they raise alfalfa and grains of all descriptions, apples, potatoes and onions. They raise them for the market. He does not remember the exact elevation of his father's place in township 40 south, range 4 east, but thinks it was thirty-four hundred feet. His father raised everything in the way of grain, vegetables and hay. Vegetables do as well or better there than they do in the lower altitude. His father's farm was in what is known as the Jenny Creek country. It is known as the old Jenny Creek Station on the road between Ashland and Klamath Falls. It was the old stage station. He does not think his father ever kept the stage station there while he was there. It might have been used that way before his father went there, he could not say as to that. This land that his father bought was homesteaded by James Purvis. Referring to "Defendants' Exhibit 259," witness points out township 40 south, range 4 east, and states that Shake is the name of his postoffice, and that he is familiar with the country in general and is personally acquainted with all of it—that is, townships 38, 39, 40 and 41 south,

ranges 1, 2, 3, 4, 5, 6, 7 and 8 east. Eight east is not within the limits of the grant, excepting as to a very small area. He has been pretty thoroughly all over these townships and the greater portion of it that is in the Government sections in particular, he has looked that out by tally in five-acre tracts. He had been there on different occasions. He located a good deal of country out in townships 38, 39 and 40, ranges 6, 7 and 8 east, and over in township 41, range 8 east, and then he has worked for different timber companies cruising through that country, all the timbered portions of it, and has been on practically every section of it, has been over it thoroughly in the even sections, and in some instances the odd sections. He notices the blue color shown on this map in townships 39 and 40 south, which indicate lands that have been deeded by the railroad company. He has been thoroughly over townships 38, 39, 40 and 41, ranges 6 and 7 east. He will start in east and come back on it—on 5 east, and in ranges 4 and 3 east. In 1 and 2 east, he has looked that over pretty carefully in different ways. When he lived in township 40, range 2 east, he lived there for three years and had stock on the range, and was over the range continually, and had looked over different sections in township 40 south, range 2 east for people. He was looking after them with a view of getting a homestead in that country. He has been in townships 38 and 39. In 3 east, he was never thoroughly all over except on the east side of 38 and 39 in 3 east. He was looking for timber in that country for different people. His first trip in

there was with a man by the name of Angell. He thinks Angell had something to do with the Hopkins estate. Angell came to that country with the Pierce Brothers and bought up lands for the Hopkins, and they were the ones that bought that tract for Hopkins in that country. Witness went up into townships 38 and 39, range 3 east, and worked in there about three months with Angell in that country up there. He knows about townships 38, 39, 40 and 41, about as well as he could any country. He always looked forward to the possibilities of agriculture and farming whenever he was in the country, and as a timber cruiser it would be a part of his duty to classify the soil and the land. They make that up in their notes, what per cent of it would be fit for agriculture and grazing. He could take the blue prints of each township and point out practically every forty acres in it which would be suitable for cultivation. There are sections in there through townships 38, 39, 40 and 41, ranges 3 and 4 east, that he presumes with a little time he could name. He would say that fifty per cent of it could be used for cultivation. Now, when he says that, he speaks from people that he knows have gone in there and removed the timber off the lands. For instance, in township 38, in township 40, range 8 east, parties went in there, and on land he did not himself at that time think was any good, they took the timber off and put it in cultivation and are making a living there. Also old man Clyder, who lives at Green Spring Mountain, on the Ashland-Klamath Falls road, the old man has been there, he does not know how long, but ever since

he can remember, and his land is a side hill, he thinks he has a hundred and sixty acres on a side hill, and it is pretty stony and rocky, the old man has made a living on it continuously. He raises fruits and vegetables, some hay, keeps a few milch cows, a few pigs and chickens. In the territory west of Ashland and west of the base line or the meridian line, he is not so well acquainted till one gets into Josephine County. In Josephine County he is pretty thoroughly acquainted with townships 39 and 40 south, ranges 7, 8 and 9 west, and has made a pretty careful examination of those lands from being employed there as a cruiser and locator on the unsettled lands. He looked at a great many sections there that are patented. In townships 40 and 41 south, range 9 west, he has made detailed cruises on all of them, elevations on every five acres. In township 40 south, range 8 west, he has been over pretty thoroughly and he would say that practically all—he would say 75 per cent of township 40 south, range 8 west can be cultivated. In township 39 south, range 8 west, all of that country in there is settled. The yellow markings on "Defendants' Exhibit 259" indicate lands that were lost by prior entries. Pointing to the extreme western tier of sections around Kerby, 75 per cent of it is fit for agriculture. He would say 40 per cent of that extreme western tier anyway, in his best judgment, would be suitable for agricultural purposes—speaking of the entire township. In townships 38 and 39, he is thoroughly well acquainted with them, and take it all into consideration, he would say that anyway 40 or 50

per cent of it could be cultivated. Some of it is rolling, but then it is good soil. The soil is good, free from stones. About the only thing one would have to do to put it in cultivation, would be to take the timber off where there is timber on it. It is not all timbered, the timber runs in bunches, it is some scattering. A section occasionally has a good stand of timber on, and may be the next section will have scarcely any on it. He is not well enough acquainted with the other sections or townships, or parts of townships, there, to pass his opinion as to the amount of agricultural land on them. He has been over a portion of townships 38, 39 and 40, range 6 west, but he has not been over this thoroughly enough to pass judgment on the agricultural land there is on them. He has been practically all over the county, but not to look it over carefully.

Q. Now, Mr. Bailey, if these unsold lands of the railroad company were divided into 160-acre tracts, and taken by a settler for the purpose of making it a home, and engaging in agriculture, what percentage of those 160-acre tracts do you think would be suitable for that purpose, that a man could go on and successfully farm in a modest way, sufficient to earn a living for himself and family, and the tract need not be in quarter sections, but by legal 40-acre subdivisions lying contiguous?

A. You want the percentage?

Q. The percentage of 160-acre tracts, in your opinion, in this area that you are acquainted with?

A. In my best judgment, 80 per cent of it.

Q. There are sections, I presume, that none of it would be susceptible to agriculture?

A. There are sections that I do not think any one could go onto and make a living, and then there are sections again that are all good tillable land—take the whole section. Of course, 20 years ago, when there were few people in the country, why, they did not look after those things as closely as they do at this time.

Whereupon witness testified, that the demand for lands for farming purposes by settlers, homesteaders and people of moderate means who are looking for farming lands has been on the increase the last four or five years, to his knowledge, rapidly increasing. There are settlers in several places on lands that he has mentioned, some of them are earning their support from the lands—in fact, most of them are.

Q. In your opinion, Mr. Bailey, what has been the effect of the railroad company's failure to comply with the conditions of this grant in selling their lands to actual settlers at $2.50 an acre in tracts of 160 acres, in the localities that you are acquainted with in Jackson County, and Josephine County?

A. It has been discouraging. It has had a discouraging effect.

Q. In what way, Mr. Bailey?

A. When people go out to look for a homestead or a piece of land that they can get hold of, acquire title to, make a living on, and they find it is railroad land and it is not on the market, they become discouraged.

Q. Has it retarded the settlement, then, in those counties?

A. To a certain extent, yes.

Whereupon, on cross examination, witness testified, that the Ashland-Klamath Falls road has been a public highway as far back as he can remember, and is one of the oldest roads in southern Oregon. They go over the Cascade Mountains between Rogue River Valley and Klamath Falls, also by what they call the Dead Indian road at this time, the road has been open there ever since he can remember, but they have not been traveling it a great deal until the last ten, twelve or fifteen years. The road that he speaks of as the Ashland-Klamath Falls road is a road that has been known to the travel and to those counties and to the state for a great many years before his time. His first recollection of the country is that the first stage station out of Ashland on the road to Klamath Falls was at Howard's. That is right on the west side of the top of the divide, Green Springs Mountain, about sixteen miles out from Ashland. The next station was at the old John Lacy place, which witness bought later on, in section 6, near Corral Creek, twenty-two and a half miles from Ashland. Then the next station is the old Parker station, just across the line in Klamath County, thirty-two miles out from Ashland, and the next one is the old Cooper station, about forty-six miles from Ashland. They carried the mails over this road for many years. The military operations in the Modoc war were in 1873, a little before his time.

He was not old enough to have any knowledge of that. He had been told there was a trail that goes out by Buck Lake—that is what they now call the Dead Indian road, Horseback trail, and this was the old stage road at that time. It is better now than it used to be. It is his understanding that they are planning to build a road from Medford by way of the Forest Reserve over to Crater Lake, but this would be, in his opinion, rather a round about way to get to Klamath Falls, but he knows there was such a project as that and that both counties had adopted it and the state undertook to make an appropriation to cover it, and that was defeated on the ground that it was unconstitutional. Medford was very much interested in that. The place that his father owned had one hundred and thirty-three acres and he does not remember how long ago that homestead was filed on or taken, and he never looked it up from the records. He knows that Mr. Purvis lived there for some time before his father went there, from the improvements there were on the place. Forty acres of it is a fraction, he thinks it would be lot 4 in the even section, and then there was eighty acres in the railroad section. Purvis took that before there was any railroad grant, he thinks. The grant bears date July 25, 1866, but the road was not built or definitely located, he supposes, until after Purvis took his homestead, at any rate, the railroad did not get this piece of land that Purvis homesteaded. There was no land in cultivation on the Purvis homestead at the time his father went onto it. There was a log house and barn, his father put on fences, and later built a new

house and barn and cleared perhaps thirty acres on Jenny Creek, not all right on the creek bottom, it was on the creek, and then back up on the bench, the creek ran through it. There was about six acres he would think, right on the creek bottom and the rest of it lay up west of the creek, up on the bench land, perhaps from fifty to a hundred feet above the creek bottom, sloping toward the creek bottom. Some of this land his father cleared had pine timber on it, scattering pine. There is underbrush out there in places, but as a rule it does not prevail in Josephine County or in the western part of the grant. What little timber there is on that particular land is generally pine. Pine predominates in the Jenny Creek country, there is fir mixed through it. The best sugar pine and yellow pine in Oregon stands between Jenny Creek and Klamath Falls, and that is regarded as the best sugar pine and white pine in Oregon or on the coast, and is said probably to be the best in the United States. He thinks Hopkins bought forty-one thousand acres of fine white pine and yellow pine and sugar pine.

Q. Well, that is the character of the timber that I speak of?

A. Yes sir.

His father kept a few cows and hogs and raised a few horses to sell when he was making his living on this Purvis homestead, he raised draft horses, just ordinary farm horses. His father had stock—cattle—that ran at large, but not over thirty or forty head of cattle that

roamed over that country. He sold cattle for beef, usually figuring on turning off from a hundred and fifty to two hundred dollars worth a year. He did not always turn off hogs for the market, he almost always made bacon of his hogs for his own use, and had some to sell to the people that traveled along the road, that is, to travelers who would come along, and he would sell them bacon by the pound as they might need it, and in that way he would sell eggs, butter and chickens, that would be to the travel that would pass over this Klamath Falls and Ashland road. Three years he dairied and sold his butter in Ashland, then milking ten cows—he thinks it was in 1902 and 1903, or 1904, somewhere along there, he would not be right sure as to the time. in summer these cattle his father had would usually be turned out on the range and go wherever they wanted to—very seldom would go over two miles from home. No one that he knew of herded cattle out into these mountains or up Jenny Creek. A few ranchers that were scattered along this road did keep some cattle and as a rule they grazed out everywhere, wherever they wanted to, wherever they would choose to go, and they were at liberty to go. These railroad lands were all unfenced. His place was not up Jenny Creek from there, it was right west about a mile and a half from his father's place, it formerly was a homestead, he could not say how long it had been taken. John Lacy took it as a homestead and later he sold it to Grenville Naylor, and witness bought it from Naylor. Lacy was the man that kept the stage station and witness kept the stage station

for a year. When he was keeping the stage station, he simply rented them a barn, fed their hostler that took care of the horses, and part of the time they took their meals there, part of the time they took breakfasts at his place. The travel was not very heavy over that road at the time he kept that station. The stage went by there twice a day, once each way, it was a two horse stage. There was about six or eight acres cleared on his place when he went there and he probably cleared between twelve and fifteen acres. The lands that he cleared were timber lands, and part of them very heavy, it was pine timber, and what he did not make into wood for his own use he burned up. He thinks that everything that they raised there they sold to the travelers along the road—practically everything that they raised, and he also kept stock, too. He thinks that the most cattle for beef or stock that he ever sold in any one year while he was there, was ten head. In his estimate of all these lands with which he is acquainted that would be agricultural, he referred to lands after the timber was cleared off. The location of land there for timber or for any other valuable purpose, became active in Jackson County along in the early 80's, 1885 or 1886—he does not just remember when. He cannot remember the exact dates when timber became an object of inquiry by investors, but then it was along in 1888 and 1889, along in there, and from that up to '92 and '93. Hopkins bought in there along about 1890 — there was lots of timber changed hands in that country before 1900. He has cruised for these timber people and did cruising for in-

dividuals before they finally located on a quarter. If they came to him and asked him if he would go and look at a certain quarter section for individuals who wanted to locate on a piece of land, or if he knows of a quarter section of land that would be suitable for a timber claim or homestead, why, as a rule, they never made much difference, they took it either way they wanted it. He located a considerable number of timber quarters.

Q. Well, now, what is the practice—do you charge —a man comes into your office and says: "I want a good timber quarter somewhere in Jackson County," and you tell him that you could locate him, do you keep a set of plat books or blue prints or memoranda from which you can pick out a good quarter?

A. I do.

Q. And then do you charge him so much for locating him if he finally takes it?

A. I do.

Q. What is the ruling price? How do you govern that?

A. Well, the first locating I ever did, I got $50 a quarter for it.

Q. What do they pay? What is the current rate now, about?

A. $250.

Q. Now, what do you do when a man says, "Well, I want you to get me a quarter," what is the process? Do you go out with him and cruise it?

A. Go out with him and look it over, and run it out carefully.

Q. And then, do you cruise it by five acres?

A. If he wants it, why, we do.

Q. And then you charge him for the time that you are cruising in addition to the location fee?

A. Certainly. Certainly.

Q. Then, what decides whether he will take it or not—the amount of timber that is on it?

A. The amount of timber that is on it, and the location of it.

Q. How many claims do you think you have located in Jackson County during the last ten years, or the time that you have been cruising?

A. Not many in Jackson County. I have located a great many more in Klamath and Josephine County than I ever did in Jackson County.

Q. Well, have you located several hundred in these counties, do you think?

A. Oh, perhaps 250.

Whereupon witness testified, that he had located these people under the timber and stone act and under the homestead act, both ways. He presumes that in all the locating that he ever did, 75 per cent of them took under the timber and stone act. He has located a number of homesteads that have some timber on them. In looking for a homestead for people that wanted to take

a homestead, he did not ignore the timber. If he found a quarter section that could be located under the homestead, that had good timber on it, it was evidence that the land was—the better the timber was the better the land was. The more timber a man could get on his homestead, the better the land.

Q. And of course the timber was not any drug to it?

A. It was not.

He does not know that he could say what timber is worth per quarter section there now. The best timber in that Jenny Creek country there where this fine timber was, he knows what they can buy it for. There is some timber there that is not on the market, but there is lots of timber on the market through the country there that can be bought for fifty cents and a dollar a thousand. Three million feet on a quarter there makes it a merchantable quarter for timber in that country out there, to make it worth taking. Take the unsold railroad lands that he has been over, and as a whole he does not think they would average a million feet. Twenty-five per cent of them would have as much as two or three million feet on them. The best timber has been picked out, culled out, by these timber buyers. The character of that which is unsold, in its soil is similar to that that has been sold, but the timber won't average as good. Parts of it is in the timbered country. Western Oregon is considered a timber country. Until one gets to the divide there, going from Ashland east, there is no timber

that country to speak of at all, that is from Ashland
out to the eastern boundary of townships 39 and 40,
nge 2 east. There are people living on top of those
ls in sight of Ashland. Every place that has a place
g enough to build a house, most, has a settler on it.
at is about ten, twelve or fifteen miles from Ashland,
d there is some of this land outside of the range of this
llow field on this map, "Defendants' Exhibit 259."
ere has been lots of it settled on recently. He does
t mean that there are settlers covering all that bald
l country east of Ashland. The most of it is owned,
t he says there are settlers living around there wher-
er they can get a forty, and people are making a liv-
g on them. Those hills, most of them will produce
ything. The most of the settlers that have gone in
ere recently have not the opportunity to get a few
res of bottom land, and they are tilling the soil on
ose hillsides, taking off the brush, setting it out to
uit, within ten to fifteen or sixteen miles of Ashland.
ess than four months ago he visited four places up on
at they call Tom Spring Mountain, about eighteen
les from Ashland by wagon road, by legal subdi-
sion it is about twelve or fourteen miles. These foot-
ls around the Rogue River Valley are, most of them,
rren except they are covered with scrubby growth of
aparral, manzanita, and some pine. In this particular
cality, they haven't anything there but oak and service
d pine, and one will find poison oak most any place.
hese people take these lands as homesteads. In the
st three, four or five years, as the lands increased in

value in the valleys, of course, it increased the value of the foothill ranches. He does not know that he could place a value on these lands in the Jenny Creek country that he calls timbered lands, that is, what they are worth an acre, there is no market, of course, different prices, on an average of it right through, they would perhaps be worth fifty dollars an acre. There is not much—not any—difference between the railroad land and the even section in the Jenny Creek country. The best timber has been selected and bought up, and the most of it, both on the even and odd sections, would be worth fifty dollars an acre if it was cleared up and put in cultivation. In its present condition, in his judgment, it would be worth twenty dollars an acre. He never applied to purchase any of this railroad land and never located any one who attempted to make an application under this Act of April 10, 1869, to purchase a quarter section out there for two dollars and a half an acre from the company. He knew of that being done. He had forgotten the fact—but he had located a quarter section for a man under this statute. He does not know whether he can tell the name or not, but the land was in section 3 and 9, township 40, range 4 east, it was all timbered. Those particular quarter sections would perhaps run three and a half to four million feet. It was twenty-six or twenty-seven miles from Ashland in the Jenny Creek country, and it was a railroad quarter. The man went onto it but did not build a house on it. He posted a notice on it and made his claim under the Act of April 10, 1869. He did not pay him in full for locating him

on it—he paid him part of it. This man came to witness to locate him on the railroad claims, and he told him that under the present circumstances witness did not think he could get it. He said he wanted a claim anyway, and if witness would locate him he would pay him a hundred and fifty dollars, and witness told him it was his opinion that he would never get the land. He was not to pay the hundred and fifty dollars until he got the land, and he has not got it yet and witness has not got his hundred and fifty dollars. He picked out a pretty good timber quarter, which was what the man wanted. He got about the best there was in there. It would be hard to place a value on that quarter at the present time, with the timber on the ground, it would perhaps be worth four or five thousand dollars, probably more, but the land itself, if the timber was off, would be worth fifty dollars an acre easy enough. The man claimed to him that he wanted it for a bona fide home.

Q. They all want to be actual settlers for about ten minutes, until they get the title. Isn't that about right?

A. I couldn't say as to that. I don't know anything about that.

Q. They are very careful to pick out the best timber they can find? Isn't that the fact?

Q. Isn't that the fact?

A. Well no, not always.

Q. That is the rule, isn't it, as far as you have had

any experience?

A. Well, in some cases, of course, they look forward to the value of the timber, and in others they want something that can be cultivated. They would much rather there would not be any timber on it.

Q. 40 or 50 years from now, why, they think in their mind that this timber will be removed, and then they will have some land? Is that the idea?

A. I couldn't say what their idea is.

Whereupon witness testified, that he thinks this man had a family and lives in Ashland now, but he could not tell what his business is.

Whereupon, upon redirect examination, witness testified, that there were five of these people who came to him and told him about the prospects of the railroad land being put back on the market and they wanted a claim, wanted him to go and select a claim, that is, help them select a claim. He gave them his opinion of it, and they said they were willing to take their chances, they knew they could get it, and the location where they wanted, in his opinion, had been sold to this man Hopkins, and he told them that. They said that that did not make any difference—Hopkins would lose it. At first they didn't want to pay anything, until they got their location on the land, that is, until they got their aplication allowed. He told them he could not put in his time for nothing, and they finally agreed to pay him fifty dollars apiece to go and show them the land, and then pay the other hundred dollars when they got their application

allowed. They went on the land and started to build a house, put a foundation on it, put up a notice. He showed them several sections, and they made the selections themselves, then they made an application for the land, he was told—he don't know that to be a fact, but they were refused. This man from Ashland that he spoke about paid him fifty dollars, he didn't get the hundred and fitfy dollars, but only got a partial payment. He merely showed them the lands that they wanted to see, he showed them several sections in that part of the country and they made their own selections. They thought those were the better. They looked at the agricultural part of it. They could have gotten other claims there, perhaps located just as well as these, only the soil was not so good. There was more rock available than there was on those particular sections. They solicited his services but he did not solicit anyone to make a filing, and advised them against it. Most of the people he has testified to having located timber and stone claims for in that country, are people of moderate means, some of them practically had nothing—say three or four hundred dollars. They lived principally in different parts of the United States, most of them lived around Portland, Oregon, and most of the people who bought timber and stone claims were city people, merely speculating in timber. Most of the people were from the city of Portland, some were from Seattle. The Hopkins people were from Lock Haven, Pennsylvania. The old gentleman is dead, his sons still retain the title to the timber lands. They own all the best of the timber lands in this country, the

Hopkins estate and the Oshkosh Land and Timber Company own the best of the pine through that section of the country. Speaking of the land being cultivated on the mountains and hill sides, old man Tyler has been there for the last forty years, and he has nothing only a hillside ranch. It is rolling, in his opinion if it had had timber all over it he would have had better soil and would have been growing more crops than he is at the present time. These last persons that he spoke of are new people in the country, up on the side of the mountain, they are located on the side of the mountain. It is not steep like some of these coast mountains are, but they all have nice gardens and some grain there. Their grain was cut when he was there, they had it in stacks and in the barns—some of them did not have any barns. Tyler's place is about thirteen miles from Ashland by road. On above Tyler's place, still further up on the side of the mountain, where they have no bottom land at all, there is D. N. Davis and his two sons, they both have homesteads there, in section 8, township 40 south, range 3 east. The old gentleman has been there for a number of years. He is cutting down the timber, burning it up, clearing the land there on the side of the mountain, making a living for a good big family. His two sons have taken homesteads there. One son has eighty acres in his homestead, that is in the timbered country. The first lands that were taken in this country where he has lived since his birth, were the most level valley land that they could find; then as the land increased in value and the population increased, they moved out until they are up on the

mountains, and all through the mountains at the present time. Most of these lands have been acquired by homesteads. He does not know but few people who got them any other way. He thinks he could mention one or two cases where they bought railroad lands, Kincaid, he thinks, bought some railroad land in what he thinks they call Hyatt Prairie country. The Barrons, he thinks, bought a little there, in Township 39-3 South, on the headwaters of Keene Creek. Practically all the lands the railroad company has sold in Jackson county were the sales made to these large companies. All the titles have been acquired from the railroad company, so far as he knows, only by what they call capitalist companies, people that wanted it for speculation. He does not know whether the railroad company has parted with the title to this land that his father wanted to buy, adjoining his farm there in township 40 south, range 2 east, and he does not know whether the company still owns that land.

Q. What is your opinion, Mr. Bailey, as to the effect, the difference in effect between holding these lands as the Railroad Company have the present holdings, and the condition that would have existed had the lands been open to settlement under the conditions of the grant at $2.50 an acre in 160-acre tracts? I mean, holding it there with this timber on it that exists there, or making farms of it—the difference between those two effects upon Jackson County especially?

A. In my best opinion, there would be a good per cent of it occupied at this time by bona fide settlers.

Q. What do you mean by settlers?

A. I personally know of at least one hundred homes that would be built in the country, that are not here now, if people could have acquired title to railroad lands.

Q. What would those people—what business would they engage in?

A. In general ranching.

Q. Ranching is a term that here in the west we apply to farming?

A. Yes, sir, farming. A farm, the way I look at it, is a large place that you raise grain on. A ranch is a general ranch, a little stock and fruit and vegetables and hay.

RECROSS EXAMINATION.

Q. You mean a stock place?

A. Yes, sir.

Q. Well now, suppose the Railroad Company had sold these lands, these timber-lands, at $2.50 an acre, in quantities of not to exceed 160 acres, within the last five or six years, and given them a good title, how many of them do you suppose would have sold their lands to these timber people at an advance of about $20 or $30 an acre?

A. I don't think any of them would, because I don't think they could have gotten it.

Q. Well, don't you think the most of them that

paid $2.50 an acre, if they had got $20 they would have sold out, wouldn't they?

A. In some instances they might have. But then, I know of lots of good people that would have been living on those lands today, improving them, and would have taken them from an agricultural standpoint fully.

Q. I understand that is what you are here to testify to, about the agricultural end of it. I am asking you this question, Mr. Bailey: Suppose the Hopkins land had been sold to these so-called actual settlers, at $2.50 an acre within the last 10 or 15 years, they could have turned around, couldn't they, and sold these Hopkins lands for from $30 to $50 an acre, couldn't they?

A. I have been told that they could have been sold for $40 an acre.

Q. Don't you know they could have sold them for at least $30 an acre any day almost?

A. There has been times when it could have been sold for that, I am satisfied of it, yes.

Q. Well, now, then, these actual settlers, buying at $2.50 an acre that character of lands, when they got the deed, next day they could have sold it for $30, couldn't they, per acre?

A. Well, perhaps they could, yes.

Q. Well, now, do you mean to tell me that they would not have passed the title to these lands to the timber investor or speculator, under those circumstances?

A. Not in all cases.

Q. Not all cases, but in the most of cases they would, wouldn't they?

A. Well, now, that is pretty hard for me to say what people would do.

Q. Well, don't you know that that would be the case, the natural thing to do ?

A. Well, I don't know that it would, no, I don't.

Q. Do you want the Court to get the impression that you think they would not do that, when they could make $27.50 an acre by just paying $2.50 and getting the deed, and getting it right back again?

A. Well, what—

Q. Just answer my question.

A. I don't know that I clearly understand the question yet.

Q. That is your answer, is it?

A. Well, I am not prepared to say what people would do in those instances, but I can only speak from personal acquaintance with people that I do know. If they owned some of those best timbered lands, they would not part with the lands for no $40 an acre.

Q. They would want probably $100 as an investment?

A. They would consider the value of the land much more than the timber that is on it.

Q. Well, they would not consider the timber, then, of any value?

A. They certainly would.

Q. And yet they could sell their claims for five to six or seven thousand dollars a quarter?

A. Some of them, yes.

Q. What did these people who proved up under the Timber and Stone Act, what did they do, most of them, with their quarters? Hold them and sell them to timber people?

A. Most of them sold them. Some of them still hold their claims.

Q. That is, they got them for $2.50 an acre, and sold them for as high as $25 or $30 after holding them a year or two?

A. Well, I will say all the way from $5.00 to $25 and $30.

Q. From $5.00 to $25.00 an acre?

A. Yes, sir.

Q. And that they would do in two or three years after they have made final proof, paid their $2.50 and got their patent?

A. Yes, sir.

Q. Never went on the land, and never struck a tree or cleared an acre on it?

A. They all went on the land, all that I ever knew anything about.

Q. They went on the land and looked at it, under

the requirement, as they thought, of the Land Department, which required them to swear they had seen the land?

A. Yes, sir.

Q. Some of them would go and look at it half a mile away?

A. I never located anybody in my life that looked at it that far away.

Q. There was a requirement of the Land Department that they had to swear in making their application they had seen the land?

A. They had to testify that they had personally examined each and every legal subdivision.

Q. Yes, and that it was chiefly valuable for timber?

A. It was chiefly valuable for timber.

Q. And was not agricultural?

A. It was not agricultural.

Q. And you have located a great many, and they have been able to sell at from $5.00 to $25.00 an acre?

A. When they have sold, yes.

Whereupon, upon redirect examination, witness testified, that under the requirements of the Timber and Stone Act, the affidavit required that they should make oath only that the land was chiefly valuable in its present condition for the timber or stone that was on it. There should be a distinction between the speculator, as one

may term the Timber and Stone Act man, which requires no residence on the land, and the settler. His way of looking at it is, that if the land was all sold to Hopkins, it would never benefit anybody but that man Hopkins, while if it was sold in one hundred sixty acre tracts, it would benefit each applicant on that tract, even if they did sell it for the timber that was on it.

Q. If they would sell, however, to an actual settler, a man who would actually settle on the land, for what purpose would he use it? For what purpose have those men who have made bona fide settlements, used the land that they have settled on in this community that you are acquainted with?

Q. Do you understand the question, Mr. Bailey?

A. I don't know that I do.

A. Well, if they would sell it, they would use the money they would get for it, generally speaking, to put themselves some place in a comfortable home, but the most—well, say 50 per cent of it, would be inhabited.

Q. Now, there are men, are there not, Mr. Bailey, who have taken up lands, even under the Homestead Act, merely for the purpose of speculating in the lands, not for the purpose of making it a home, as you would judge from their actions after making proof?

A. Well, in my opinion there has been.

Q. Now, isn't there a distinction between those men and the man who has taken up the land with the intention of making his home on it, farming it?

A. There is.

Q. Then, if these lands were sold in 160-acre tracts, to actual settlers, the lands would be disposed of practically as the Government lands have under the Homestead laws?

A. Along the same lines; couldn't be otherwise—couldn't.

Q. And fraud could be guarded against in the same manner that the Government guards against fraud?

A. Certainly it could be.

Whereupon witness testified, that he has spoken of this Jenny Creek timber, but there is no other timber in that area that compares with that as to value or stand. It is said to be, by all large holders of timber lands, the finest body of sugar pine in the United States, and it is not a fair comparison as to the area with which he is acquainted as to the timber value.

Whereupon GRANT TAYLOR, called as a witness on behalf of complainant, being duly sworn, testified, that he lives at Winchester, Douglas County, Oregon, and has lived in that county about fourteen years, eight years of which he lived in Winchester. He had a farm there above Winchester about a mile east on the North Umpqua, consisting of four hundred and seventy-nine acres. He sold that and does not own it now. He farmed about seventy-five acres of it, raised potatoes, corn, grain, and hay, and did general farming and had stock on the place. The land that he farmed was along

the river, but the pasture land was rolling. He has cruised timber some. He followed locating and looking over land for companies about eight years and has cruised some land for people and made reports as to the land, and as to some of these lands in these reports he reported on the farming possibilities, soil, and matters of that kind, and in some of them he merely gave the estimates of the timber. He is acquainted with the possibilities of farming the part of Douglas County over which he has been, and he is so acquainted from his actual experience as a farmer and his observation of the farms he has seen. Before going to Douglas County, he lived three years at Salem, Oregon, and in Oregon altogether about seventeen years. Referring to "Defendants' Exhibit 259," he is familiar with township 22, ranges 1, 2, 3, 4 and 5 west, inclusive, and as far south as township 26, ranges 1, 2, 3, 4, and 5 west. He obtained his knowledge of these lands in looking over the timber and locating. In locating people and cruising the timber, he would run the lines ordinarily of a section or subdivision of the land that he was looking at. If the timber was removed from those lands, marked in green on Defendant's Exhibit 259, in that area with which he is acquainted, he would say that 50 per cent of it could be rendered suitable for cultivation,—by cultivation, meaning tillage of the soil,—basing his opinion upon his knowledge of farming as carried on in the communities in the vicinity of the land. This average would apply to all these lands with which he is acquainted. Some places, a man could farm a hundred and sixty acres, and other places he

could not get more than ten or twenty acres on a hundred and sixty acres,—that would vary as to the various tracts, the character of the land, the character of the country.

Q. Mr. Taylor, in your opinion, would these lands if divided into 160-acre tracts be suitable for actual settlement, for a man to go on there and engage in farming, for the purpose of making it his business, and for the purpose, of course, of supporting his family, as an ordinary homesteader would do?

A. Oh, probably one-third of the land could be cultivated and made homes of.

Whereupon, upon cross examination, witness testified, that he is forty-nine years old. His place is about a mile east of Winchester and Winchester is about five miles and a half from Roseburg. The North Umpqua is quite a considerable stream at Winchester. It rises up near Crater Lake and empties at Winchester Bay into the Pacific Ocean. He has been a timber cruiser and timber locator for about eight years, and he has perhaps located a hundred and fifty timber claims in that time. He was working for himself when he first started locating parties from the eastern states. When he started out, he charged these people about fifty dollars a claim, but finally got up to two hundred dollars after claims got scarce. As a timber locator for these people, he would take them out, show them the land, show them the lines, take them around the lines. He kept a list of what he thought was the best available quarters of tim-

ber. He had maps of them and has them yet. He located quite a number of people under the Timber and Stone Act and a few under the Homestead Act. Quite a number of these people were from Portland, some from the state of Washington and some from the eastern states. Locating began actively about seven years ago, and timber first began to be considered an object of value about ten years ago. These people that he located, finally got title to the lands, some of them sold, and some have them yet, and some of them held the land for investment. They were timber lands. A good timber quarter runs from three million to ten million feet, some of them, some better. A ten million quarter section on the Umpqua that could be logged is worthy about fifty cents a thousand for stumpage. In buying these lands, they usually bought a hundred and sixty acres, and took the title to the land.

"Q. Now when you say that probably one-third of these lands could be made farming lands, you mean after the timber is cleared off?

A. Yes.

Q. And the stumps are grubbed up and made so it could be plowed?

A. Yes."

He never applied to purchase any of this railroad land and he never located any of these people on any railroad lands. These locations were all in Douglas county that he made and were made in the timber belt.

Whereupon, upon redirect examination, witness testified, that he spoke of one-third of these one hundrd and sixty acre tracts, he thought, as being suitable for the purposes mentioned, and a man could settle on hundred and sixty acre tracts of these lands with only ten or twelve acres of plow land, and make a living on them for himself and his family. That would depend somewhat on the man that located there. When he estimated one-third, he estimated that that would, in his opinion, make the living that he is accustomed to.

Whereupon, upon recross examination, witness testified, that these men that would go on there without any means at all, would have to work outside for a while to get something to make their little improvements and help them clear up the land.

Whereupon G. E. KELLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is thirty-eight years old, lives three miles south of Dillard, in Douglas County, Oregon, and has lived in Oregon since 1885. His occupation, since he has grown to man's estate, has been mostly farming and laboring in Oregon. His step-father was a farmer. Witness farms about twenty-five acres at the present time. His farm is located in section 7, township 29 south, range 6 west, and he raises principally garden, hay, stock, but not grain to thresh. He raises grain to feed. He uses wheat and oats for hay, and vetch. He is acquainted with the farming business in that locality. Referring to "Defendants' Exhibit 259," Dillard is situated

in township 29 south, range 6 west. He is practically acquainted with that whole scope of country there, township 29, ranges 6 and 7, township 30-6 and 7, and east half of this particularly, the east half of townships 29 and 30-7, and he is acquainted with these up above Dillard (pointing to yellow field just above Dillard). Those townships contain a substantial amount of unsold railroad land. There are settlers living in these townships on government land, adjacent or near unsold lands of the railroad company, as indicated by the green markings, and they are engaged in farming and agriculture. That locality is pretty thickly settled, and the lands they are using are of the same general character principally as the railroad sections. He would say that 66 2-3 per cent of these railroad lands could be rendered suitable for cultivation after removing the timber or brush, and by cultivation meaning tillage of the soil, removing such of the timber or brush as would be necessary to put them in a state of cultivation.

Q. Now, if those lands should be taken by actual settlers in quantities of 160 acres, by contiguous 40-acre tracts, what is your opinion as to the number that would be, the percentage that would be suitable for settlement, and would furnish support to a settler such as a homesteader?

A. I think 50 or 75 per cent in different sections.

Whereupon witness testified, that these settlers or farmers raised in this vicinity, grain, all kinds of small grain, corn, all kinds of berries, fruits, tomatoes and mel-

ons—all kinds of farm products. There are farms there, all the way from two-acre farms up to two thousand acres. There are not so many of these thousand-acre farms now as there were. Most of these big farms have been subdivided. The average acreage of these farmers who own and farm and use the land for farming purposes in the vicinity of these railroad lands, is from two acres to four hundred acres, and he supposed about an average farm, take the country through, would be about thirty or thirty-five acres. Most of these people live on the land and follow the pursuit of farming.

Q. In your opinion, Mr. Keller, what has been the effect of the failure of the Railroad Company to fulfill the conditions of this grant, in failing to sell to actual settlers at $2.50 an acre, in tracts of 160 acres, and in withdrawing the land from the market?

A. I should say it had retarded settlement to a certain extent, quite an extent.

Whereupon, upon cross examination, witness testified, that he had taken a homestead of forty acres in section 7, township 29 south, range 6 west, in 1896, lived on it three years and commuted it. He paid two dollars and a half an acre for it. It was in a railroad section. He did not live there at the time the railroad grant was made, but he had heard that there was a man who was squatting on there, his settlement was initiated before the grant took effect, and this man afterwards abandoned it and it became public land. It was not railroad land at the time witness filed on it. Witness cleared

about six acres of this forty-acre tract, and the man who preceded him had not cleared any. The balance of the forty acres had very little timber, but was pasture and brush. This forty is southwest of Dillard, three miles by the road survey, and witness lives on this land and makes his home there. He does not own any other land besides this forty but he farms other land, having a lease of a hundred and sixty acres adjoining. It is not all open land; there are about ten or twelve acres on this 160 acres that is plowed, and a lot more that is slashed, and a lot more of it is open land that he does not farm but uses for grazing purposes. He does not run a stock farm to any great extent, but raises a few cattle, milk cows, chickens, garden stuff for sale, and sells his garden stuff at Dillard or Roseburg. He sells a few potatoes, just a few strawberries, a few chickens occasionally, and eggs and butter and cattle. The number of cattle that he sells varies with different years, he sells from one to five head. He raises hogs for his own meat, but does not sell any. The land around in that vicinity is not all fenced, there is a good deal of land out to the common. This land, other than the railroad land that is not fenced, belongs to different settlers. They have not fenced all their land. They have fenced a little piece where their buildings are, where the land is cleared, and the balance is left open. These settlers do just about the same as he does principally. Their stock can go on the common, any place they want to, and if a man wants to keep stock off his land, he must fence against it, that is the general rule in farming country, especially in timbered country.

He pastures the railroad land and doesn't pay anything for it, and pastures the government land just the same. The railroad pays the taxes, if anybody pays it, on these lands, and the farmers adjacent get the benefit of any pasturage. He does not cut any wood on any railroad land, and people do not make a practice of cutting wood on railroad lands. He never applied to purchase any railroad land directly from the company and never made any application to the company on one of these blanks, by which parties apply to the company to purchase one hundred and sixty acres at two dollars and a half an acre.

Q. You have heard about Mr. Leavengood out there at Roseburg, working up 3000 or 4000 people in Douglas county on lands, didn't you?

A. I have heard of it.

He has never done any of that and he is not one of Leavengood's applicants and never located any homesteads other than his own. Dillard is an old settled part of Douglas county, old man Dillard was an old pioneer who came there in the '50s and took a donation claim where Dillard is. The railroad went through it and bought its right of way through his place. A good deal of that land around Dillard was taken under the Donation law. It is sort of little valleys and foothills around there. Most of the railroad land that is left, with which he is acquainted, is back in the foothills generally. Not all of the best agricultural railroad land that was there, has been bought a long time ago by farmers, but that

which was the easiest to get at, closest down to Dillard and in that vicinity, was bought by people, farmers and others, a good while ago. The unsold railroad land in that section that he speaks of, south of Dillard and southwest of Dillard, is on Looking-Glass Creek, about ten or twelve miles from Dillard, from this yellow land shown on "Defendants' Exhibit 259." That is all open country up as far as Ten Mile, and south of Ten Mile at Olalla is open country. As one goes further up the Looking-glass, the valley narrows along the Looking-glass, and there are some Donation Land Claims on the Looking-glass away south of Olalla, and that was settled away back in the '50s. The railroad quarters that are left in there are covered more or less with timber and brush and hills and some rock. Some of the hills are tolerably high and tolerably steep.

Whereupon, upon redirect examination, witness testified, that this six-mile limit as shown on Defendants' Exhibit 259 of the Roseburg and Coos Bay Military Wagon Road comes nearly down to the limits, down very near the town of Dillard—it comes to Dillard. That land, according to this map, was lost to the grant by reason of the grant to the Roseburg and Coos Bay Military Wagon Road. He knows that as a matter of history. He knows that in south of Dillard there, this wagon-road grant is from Dillard north, as shown on the map, south of Dillard one will observe the green markings on the map within a mile of Dillard there to the south. The green markings on Defendants' Exhibit 259 show that the railroad hold-

ings are practically intact.

Q. A very few of the blue markings appearing in these townships. Now, in 29-6, according to the Bill of Complaint, Mr. Keller, the Railroad Company still holds 120 acres in Section 1, 223 acres in Section 3, all of Section 5, 416 acres in Section 7, 446 acres in Section 9, 195 acres in Section 11, 600 acres in Section 13, 345 acres in Section 15, 309 acres in Section 17, 292 acres in Section 19, 492 acres in Section 21, 520 acres in Section 23, 400 acres in Section 25, 560 acres in Section 27, 160 acres in Section 29, 320 acres in Section 33, and 240 acres in Section 35. In Township 30 South, Range 6 West the Railroad Company still holds 464 acres in Section 1, 470 acres in Section 3, 476 acres in Section 5, 622 acres in Section 7, 480 acres in Section 9, 400 acres in Section 11, 120 acres in Section 15, 495 acres in Section 19, 440 acres in Section 21, 40 acres in Section 23, 111 acres in Section 25, 320 acres in Section 29, 131 acres in Section 31, 40 acres in Section 35. In Township 29 South, Range 7 West, the Railroad Company still holds all of Section 1, Section 11, Section 13, Section 15, Section 31 and Section 33, and 229 acres in Section 3, 162 acres in Section 5, 458 acres in Section 9, 200 acres in Section 17, 617 acres in Section 19, 280 acres in Section 21, 598 acres in Section 27, 240 acres in Section 29. And in 30 South, Range 7 West the Railroad Company still holds all of Sections 3, 9, 15, 17, 19, 21, 25, 29 and 31 and 420 acres in Section 1, 339 acres in Section 5, 521 acres in Section 7, 440 acres in Section 11, 480 acres in Section 13, 520 acres in Section 27, 440

acres in Section 33, and 600 acres in Section 35.

A. I think you made a mistake.

Q. Now, from the green markings on the map, Mr. Keller, isn't it a fact that these descriptions I have read here include practically all of the railroad lands that they obtained under the original grant as shown by the markings on the map?

A. Yes, sir.

Q. What is the character of the soil in these lands, Mr. Keller?

A. What is the character of the soil?

Q. Yes, the general character of the soil.

A. In which way?

Q. Is it a clay black loam, or what?

A. Oh, its composition! Well, it varies.

Q. Please state the kind of soil.

A. Some of it is sandy. Some of it is dark loam. Part of it is clay.

Q. Is it a productive soil, or are these soils productive?

A. They are.

Q. What do they raise on them?

A. Well, the people that live on them, they raise most anything they want to grow—fruit, berries, grains and gardens.

Whereupon, upon recross examination, witness tes-

tified that some of these railroad lands were pretty rocky in that twelve miles square, and to a certain extent were tolerably steep. The country south and west of Dillard, going over the ridge to Looking-glass, south of Olalla, is pretty rough in there; that is, in that other township, though.

Q. Well, practically more than half of these railroad lands are rough and sort of mountainous?

A. Well, they ain't all level, sure.

Q. How?

A. They ain't all level.

Q. No, they are not level like this floor here?

A. No, not by a long way.

Q. Pretty steep and rocky in places?

A. Yes, in places they are."

In some places there are south hillsides that are practically without any soil, but have a little grass in the spring, that burns out by the first of June. The north hillsides that have oak grubs on them, or shrubery of that kind, have a better soil. As a general thing, the better the timber, the better the soil, the more there is on it. Some of these lands have saw timber on them. Dillard is a very small place, with a postoffice, station and two warehouses, and has a store, hotel, and several dwellings around there. There is no sawmill there now and no manufacturing. There is a prune dryer there. At Dillard and around there, there are some pretty good

prune orchards in the valley.

Whereupon, upon redirect examination, witness testified that it is generally an agricultural country around Dillard there.

Whereupon JOHN NEUNER, called as a witness on behalf of complainant, being duly sworn, testified that he is thirty-one years of age, resides at Glendale, Douglas County, Oregon, and has lived in Douglas County, Oregon, about eighteen years, practically ever since he came to Oregon. He was a farmer, engaged in grain farming—general farming—for about fourteen years on the Umpqua River at a place called Day's Creek, situated in the Umpqua valley on the South Umpqua, in sections 2 and 9, in township 30 south, range 4 west. They raised all kinds of small grains, small fruits, and all kinds of stock that are generally raised in that particular country. They farmed mostly on bench lands there in Day's Creek. Bench land is land that is lying on a higher raise than that of the lower lands. The lower land through there is called bottom land, and then farther back on the next raise is the bench land. They also farmed some of the hill land. It is quite high up on the slopes. The bench lands are not as a rule necessarily level; they are also siding and sloping, some slope quite abruptly. Quite a per cent of this land was timbered when they went there. They cleared up a good portion of it, perhaps, on the entire tract, about one hundred acres. They farmed about six hundred acres there—quite an extensive farm

for that country. He was farming with his father, George Neuner. Referring to "Defendants' Exhibit 259," he is more particularly acquainted with the land in townships 29 and 30 south, ranges 3 to 7 west, and that portion lying south for two townships on ranges 3 to 7 west, inclusive. That would include townships 30, 31 and 32 south, ranges 3, 4, 5, 6 and 7 west, in southern Douglas County. He has been over about every quarter of that country. He is thoroughly familiar with it, has been over it for the last six years, more or less all the time. He has cruised a good deal of that land in there and has had also a little real estate experience in through there. He is in the livery business, too. He has been over that land a good deal, with timber owners, and also with farmers, etc., small farmers and stock raisers. In his opinion, eliminating the yellow lands which were never owned by the railroad company, and the blue lands which have been sold by the company, 75 to 80 per cent of that land, especially the railroad sections marked in green in township 30 south and the ranges mentioned by him, could be used for agriculture in the broadest terms, meaning by broadest terms, stock raising and the general pursuits of agriculture. That is, after the timber is off, 30 to 40 per cent of it could be made suitable for cultivation. About 70 per cent of township 31 south, ranges 3 to 7 west, of railroad land would be fit for agriculture, and about 25 to 30 per cent for cultivation. About 80 per cent of township 32 south, ranges 3 to 7 west, would be fit for settlement, and about 30 to 35 per cent of it tillable. There are settlers

or farmers residing on lands adjacent or contiguous to the railroad lands and of the same general character, and that applies to all three townships that he has mentioned. In his opinion, 75 per cent of that land in township 30 south, ranges 3 to 7 west, if it were divided into legal subdivisions of one hundred and sixty acres each, would support families, and about 70 per cent of township 31 south, ranges 3 to 7 west, would be suitable for that purpose and could be utilized by a farmer to earn his support. It is a little rougher, the hills are a little higher. About 75 per cent of township 32 south, ranges 3 to 7 west, could be so utilized, meaning in each case that if a man would go on a hundred and sixty acres of it as a homesteader, it would be suitable for settlement purposes. There are people living on one hundred and sixty acres of land in that vicinity, making a living there and earning a support.

Q. How long have settlers been in this area of this country? I am eliminating now the lands that were lost to the company by reason of prior entries and land grants, as noted on the yellow field in the map.

A. Well, that country has been a good deal of it, a good portion of it, has been settled ever since I came to the country.

Q. Mr. Neuner, in your opinion, what has been the effect of the Oregon and California Railroad Company's failure to fulfill the conditions of the grant, and sell to actual settlers in 160 acre tracts?

Q. I will add, in this area that you are acquainted

with?

A. Why, to the best of my knowledge, and which I think I have a thorough knowledge of, it has greatly retarded the development of that country, in the way of keeping people out that were looking for homes. A great many people were looking for, have been for the last six or seven years, to my knowledge, have been looking for homesteads, and they cannot be secured, because the Government land that was there was taken up during the timber rush by outside speculators, and consequently that did not leave very much Government land; and that that it did leave was so far apart that it was difficult for people to get in there with families and get schools and roads.

Whereupon witness testified that a good portion of this area contains more or less timber all through it—it is called a timber country. From his knowledge of this general country, as he has observed it, it was, in its original state, practically all a timbered country to a more or less extent, and the lands back on the benches and slopes required clearing generally in that country before they could be cultivated. But the creek and river bottoms were, to his knowledge, cleared. The area covered by the creek bottoms, as compared with the lands now in cultivation in that country, is small. The country was developed by the people going in and settling on these lands in that community, clearing them up, and following it with general farming and stock raising. The first settlers occupied the bottom lands, and that was the

easiest to clear. That would naturally follow in any country. Settlement has not progressed very much as time has gone on. As he stated once before, the timber—pretty much of it—pretty much of the land was taken up by the timber speculator, and what little there was left was settled to some extent where it was accessible to roads and schools. But there being so much of this railroad land held up made it difficult for them to get schools—ordinary school, church, etc. Farming has extended up farther into the hills and valleys as time has progressed. He knows of lands occupied, adjacent to railroad lands, of the same general character, which have been used for farming purposes, from which farmers earn a support for themselves and families residing on the land.

Whereupon, upon cross examination, witness testified, that he is in the timber business to some extent, and has made timber locations for a few people in Douglas county. He located nearly all people that came in from Spokane, largely Spokane people—a few. These so-called locators were men who were seeking to buy timber quarters under the Timber and Stone Act. This was about six years ago. The first rush for timber was about twelve years ago. People took up timber lands largely through this particular section, a great many Eastern people. They did not take up homesteads so much at that time. they got it through the Timber and Stone Act, and he presumes they also began to buy railroad land about that time, twelve years ago, in the timbered area. Some of the timber people that bought

some twelve years ago and since in Douglas County, to his knowledge, are the Myrtle Creek Lumber Company, which bought quite a large area of land up there, and W. P. Johnson. There are a large number of timber holdings in that county, large timber holdings.

Q. These timber lands that were taken under the Timber and Stone Act, and a few under the Homestead Act that you know about, were they good timber lands as a rule they got, about as good as they could get?

A. Yes, about as good, naturally.

Q. About how many million feet to a quarter section is considered a good timber quarter, good average timber quarter?

A. About 3,000,000, an average.

Q. Have you any judgment as to what these unsold railroad lands would average in the timber holdings, taking now the timber-lands, and excluding the bald hills and the foothills where there is no fir timber.

A. Excluding the bald hills?

Q. Excluding the bald hills, and excluding the bare hills and the hills covered with brush and with oak grubs—small brush as you have there in that country, and including the pine and fir and cedar and hemlock and spruce, and such timber as is commonly called saw timber, about what would be the average, in your judgment, of these timber-lands per quarter section?

A. About 3,000,000 feet.

Q. Now, what is the best stand of timber that you,

as a cruiser and a real estate man, and as a citizen of Douglas County, familiar with these matters, know of in Douglas County? About the largest stand per quarter section.

A. In that area that I spoke of, about 6,000,000 feet would be considered the best—among the best.

Whereupon witness testified that the highest price of such a quarter section, within his knowledge and observation, would be about three thousand dollars. He would figure that the stumpage would be about fifty cents. Land has sold at a higher stumpage in some of the more favored quarters, and as high as a dollar in some parts, depending upon accessibility to logging streams or convenience to transportation of some kind. If a man could get a dollar, or if they sold it at the rate of a dollar a thousand, and it carried six million feet, that would be six thousand dollars for a quarter. Most of his locating people on these timber claims was done by other people, he merely got the cruise, looked over the land for them, and the timber for them, and they usually brought them in, and these other people would give him about half of what they would charge; that is, a timber locator would come to him and say, "I have a customer now, and I want you to cruise the land, and I will divide with you the charge, whatever we get." They did not get as high as two hundred and fifty dollars a quarter, about two hundred dollars was about as high as they got.

Q. Did you ever locate any of these so-called actual

settlers that Leavengood and others found out there in Douglas county and brought some of them from the east?

A. No.

Whereupon witness testified that he located no one who used blank forms and made tenders to the Company for railroad land. He had nothing to do with and knows nothing about that. He heard that these people charged fifty dollars, but has no personal knowledge of that.

Q. Did you ever see any of these notices on these railroad quarters, where these actual settlers had posted notices that they claimed it under this Act?

A. I think I have noticed some of the notices, yes, sir.

Q. Did you ever see any cabins where they have built shake cabins, and put a little bedding in, and a stove?

A. No. No, not that I know of.

Whereupon witness testified that there were not very many in Douglas County, within his knowledge. That began about five years ago, after withdrawal of the lands in 1907, 1908, about the time that the Legislature adopted a memorial in 1907, asking Congress to forfeit this grant.

Q. Then the whole country began to look for these timber lands, didn't they?

A. Yes, there were quite a good many through

there, to my knowledge, a good many people moved up on this railroad land.

Q. Yes, they all thought they were going to get the land right away.

A. Well, not so many. A good many wanted to get the more favorable places to make homes of it.

Q. Well, some times there were four or five tried to get the same quarter section?

A. Well, not to my knowledge.

Q. Well, those people that moved in have moved out again, haven't they?

A. Yes, they have moved out now. Well, not all of them. I know of some that are still there yet, cultivating the soil.

Q. Farming some of the railroad lands?

A. Yes.

Whereupon witness testified, that to his knowledge there are two men with families farming this railroad land. They are at Day's Creek, and have built houses there—improvements, house, barn, outbuildings. One of them is in section 35, township 29 south, range 3 west, and his name is C. N. Wood, and he has cleared about twenty-five acres and the balance is brush and timber, and has a little saw timber on it. The other man is Jesse Tiller, who has about thirty acres cleared, the balance of the land that he claims is oak timber, this oak timber is not very valuable down there. It is not saw timber, it is not just oak grubs, and has no commercial

value excepting for wood. There is not much saw timber on this quarter. These men did not offer two dollars and a half an acre to the Company and then go and settle on the land. They wanted to buy it, to his knowledge—at least they told him so. They offered to buy it of Eberlein of San Francisco. One of them has been there for about six or seven years, has a pretty good house, barn, outbuildings, fences. Witness does not know whether the man is taking chances as to whether he can get title or not, and does not think the man has any contract with the railroad company—does not know whether he has or not. The nearest postoffice to them is Day's Creek, which is just a postoffice. A good deal of this land he is speaking of now that he has been over there, is on Day's Creek, which flows into the Umpqua river at a point eight miles east of Canyonville; the other lands that he was talking about. Cow Creek runs up through there, and the railroad runs along Cow Creek from Riddle to Glendale. The country is very rough right through where the railroad runs—very rough. The railroad lands there in sight of the track from the train have not been logged very much, it is not good timber, it is rather poor quality right along the track there. Those hills on either side, the land is not very good—not along the track, and this condition extends either way from the railroad a quarter of a mile, and when one gets away that distance there is pretty good land—plateaus and timber, land and timber—fir, pine and cedar. There is some little mining in that section, largely placer. Cow Creek Canyon is one of the

worst and most rugged mountain canyons in western Oregon, to his knowledge. The land that his father is on is a Donation claim. It is the Donation claim, he thinks, of John Day, who settled along in the fifties, and was one of the oldest places in Douglas county. Of the six hundred acres of that land that they had when they went there, there was about five hundred acres clear, and that is pretty good farming land yet. They raised grain and stock—they hauled out a great deal of the grain to the railroad. They are not there now. He doesn't know in regard to shipping conditions of grain now, and does not know that they are shipping flour from the Willamette Valley and eastern Oregon into southern Oregon today to feed the people. They used to raise a good deal of grain in the Umpqua Valley, and those warehouses at Dillard and Riddles all carried considerable grain in the early eighties. They raise a good deal of grain yet in Cow Creek and Umpqua Valleys and ship out a good deal. Some of it is milled in the county, and some of it is shipped out yet, to his knowledge. He does not know whether it is shipped out of the County, but it is shipped to various parts of the County, it might be to some mill in the County. He does not think, generally, that there is as much grain raised in Douglas County as there was twenty years ago.

Whereupon, upon redirect examination, witness testified, that they are devoting their lands that were formerly in grain a great deal of them, to diversified farming in Douglas county, and there has been a good deal of subdivision in that section. There is a tract at Suth-

erland that was quite a large farm at one time, north of Roseburg, that has been subdivided and sold. In making his estimates on the amount of this land that is agricultural land, that could be tilled and which is suitable for settlement, he has taken into consideration the rough lands mentioned in his cross examination. Six million feet of timber on a quarter section is a very large stand of timber for that area. It is the best through there. This timber is not one big dense forest.

Q. Please describe, in your own language, the way the timber lays there.

A. It is considered a timber country, because there is oak grubs and oak through there; but nearly all the southern slopes, or a great portion of the southern slopes are covered with this oak grub, and also open draws, especially in the draws a good deal of this land is open, and the northern slopes are more or less covered with heavy growth of timber, fairly heavy; and also some of the western slopes, a good many of the western slopes are burns—areas that have been burned over. The wind has some time or other come in there and blown down a great many of the trees, and then fire caught them.

Whereupon witness testified, that these burns and draws and other open places he has mentioned are lands that would be suitable for cultivation—farming and ranching there, they clear up the land largely by stock, and it does not take so much of that land there to support a family. Twenty acres of that land there would support a family, and they can devote the rest to graz-

ing. These people who came in from Washington and filed on Timber and Stone claims were not people looking for agricultural lands to settle on. They were speculators purely and were looking solely for timber. In some instances, these people took up lands under the Timber and Stone Act that contained little or no timber. There was a wild rush about that time to obtain timber, people became over-excited over the subject of timber. There is a considerable area in these railroad lands of which he has testified that contains no merchantable timber, that would be suitable for agricultural purposes—that is, for actual tillage of the soil, and he would say that about 30 per cent of it which contains no merchantable timber could be rendered suitable for cultivation.

Q. Now, Mr. Neuner, if the Railroad Company were to open up these lands, and sell them to actual settlers, or if they should come into the hands of actual settlers, men engaged in farming, in your opinion, would that assist the people in Douglas County in raising a sufficient amount of grain to supply the demands of the community?

Do you understand the question, Mr. Neuner?

A. Yes, sir. I would say that it would. But Douglas County, if I may state that?

Q. Certainly.

A. Douglas County, especially southern Douglas, is given up to diversified farming. There is a great deal of dairying through there now, fruit raising, poultry

raising, and that way it would materially develop the country.

Whereupon, upon recross examination, witness testified, that he had cruised one of these railroad sections at West Fork. He made an application for section 11, township 32 south, range 8 west, about five years ago to the Company, and applied to buy it. He cannot recall the cruise, but it was light, it was about eleven million as near as he could say. He wanted it for milling purposes. The Company told him it was not on the market then, but if they should sell it he would get the first chance at it, and the Company did not sell it to him. It was fir timber, about a quarter of a mile from the railroad near Glendale, West Fork.

Whereupon, upon redirect examination, witness testified, that he never made an application to purchase as a settler, with the intention of settling on the land. The railroad company did not, to his knowledge, sell any of that land to those people that he has spoken of as having lived on railroad land, farming it. He applied for the entire section of railroad land mentioned. It was not farming land, some of it could have been agricultural land when the timber was removed, and he had land value in his mind when he applied to purchase it.

Whereupon, upon recross examination, witness testified, that he had both the timber value and the land value in mind when he applied to purchase. One of these men who went on to this railroad land, these two

farmers that he said were cultivating it now, one went on about six or seven years ago, and the other went on about five years ago. He thinks they went on just before 1907. There was no agitation about it before they went on to his knowledge.

Q. Did you know about this $2.50 an acre clause in this Act of April 10, 1869, or did you hear about that before that?

A. I heard about it, yes. I knew that they were selling at that when the land was still on the market.

Q. Well, did you know that this clause in the Act of Congress of April 10, 1869, that they claimed that the company had to sell it to actual settlers at $2.50 an acre? Did you know about that?

A. Yes, I knew about that.

Q. Now, that is a matter that was known in Douglas County a good many years ago, wasn't it?

A. Well, I dont' know whether it was known generally or not. Those people that followed that line of work—they were acquainted with the conditions?

Q. People who handled real estate titles were pretty familiar with that claim that was made before this late agitation in 1907, weren't they?

A. Well, I was. I don't know in regards to the others.

Q. Don't you know that the question was a matter of common discussion among attorneys of southern Ore-

gon for as far back as 1896?

A. I didn't know that.

Q. You didn't know that yourself?

A. No.

Q. Do you know that it was made a question in a Jackson County tax case in 1896, when Judge Watson was representing Jackson County in that litigation over the taxes in Jackson County?

A. I didn't know that.

Q. But you knew it before the Government commenced this agitation?

A. Oh, yes, this recent agitation.

Whereupon witness testified, that these two families living out there were not on quarters; one of them, Wood, has forty acres, and the other man has eighty acres. The forty acres would be worth perhaps about fifty dollars an acre, and the eighty would be worth about a thousand dollars. He does not know whether the railroad company is paying the taxes on it and these men are getting the benefit of it. The eighty acres lies on top of a mountain called the Bland Mountain, that is why the value would not be so great. On a straight line, these places are about two miles apart. That on the mountain is worth about twelve to fifteen dollars an acre. It is not worth as much as the other forty. The man is making a good living there. The forty acres is worth about twenty-five dollars an acre,—about $1000.

Whereupon, upon redirect examination, witness tes-

tified, that if the railroad company would sell to these men at two dollars and a half an acre, or at such price as these men were willing to pay, the company could relieve itself from the payment of taxes on these lands.

Whereupon H. J. MILLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-nine years old, resides at Oakland, Douglas County, Oregon, and has lived in that county about seventeen years. At present he and his father are in the manufacture of black oak wagon material. Prior to his going into that business, he worked in the woods considerably; he also did some locating, and ran compass for several different cruisers—acted as compassman for timber cruisers. He is somewhat acquainted with the farming conditions in Douglas County. He worked on a ranch when he first came to southern Oregon for a couple of years, and has had actual experience in farming—has farmed some. He has located people, that is, he took them out and showed them the land, ran out the lines. These people were desiring to make entry of public lands, both homesteads and timber claims, timber and stone applications. He would think, from the appearance of these people who generally desired to file a timber and stone application, that they were people that were fairly well off, that were city people usually. He would think that the homesteaders were a poorer class of people, men looking for homes who desired to engage in the pursuit of farming or ranching. Referring to "Defendants' Exhibit 259," he is familiar with townships 23 to 25, both inclusive, ranges 3 to 5 west, both

inclusive, and has also been in township 23, 2 west. He has been over a great portion of these lands personally and knows the formation and the growth that are on them, and the character of the soil. He would think, as a whole, that 30 to 35 per cent of the land in this area could be rendered suitable for cultivation. The land in these townships is pretty generally the same, unless it is back in township 23 south, range 3 west. There it is more mountainous land, but he does not believe the percentage of that land there that could be tilled would be less. It might be a little less, perhaps, but taking it as a whole, he thinks 30 per cent of it would be about right. Generally speaking, if these lands were divided into a hundred and sixty acre tracts, this average would hold good as to each tract. There might be a hundred and sixty acres that did not have that much—that had practically no farming land at all, while other places might be almost all tillable land. There are lands in there similarly situated that are cultivated, that is, lands that have been timbered. There are settlers in that country that he has described with whom he is acquainted. They raise hay for their stock and garden stuff and some fruit. He thinks that one could raise hay on these lands, most any kind, fruit, garden truck of any kind. Speaking of hay, he means oats and vetch. Vetch is a pretty good crop. Wheat and oats are used as hay in that country. They raise potatoes, cabbage, corn; fruits grow on these lands—apples, prunes, plums, berries, grapes. The size of the tracts cultivated by the settlers in this area in the vicinity of the railroad lands, or on

lands of a similar character, depends, of course, on how much of a place they have. Lots of those fellows in there have big ranches, but they farm from ten to thirty, forty or fifty acres, ten to fifty acres he would say. These farms were generally timbered in their natural state, but they have slashed the brush and burned it, and they have been pretty generally cleared.

Q. Mr. Miller, in your opinion, what has been the effect of the Railroad Company's failure to comply with the conditions of this grant, and in failing to sell the land at $2.50 an acre to actual settlers in tracts of 160 acres? What has been the effect of that failure to comply with these conditions upon the community there?

Q. Go ahead and answer.

A. I think it has kept back settlement and retarded the development of the country.

Q. Are there many demands in your community for homestead lands, people want them to settle on?

A. Yes, sir.

Q. And actually engage in agriculture?

A. Yes, sir.

Q. Are you able to find any open Government lands?

A. No.

Q. Have they been entered?

A. All the desirable ones.

Whereupon, upon cross examination, witness testi-

fied, that he lives at Oakland, Oregon, and is twenty-nine years old, and commenced to locate people on timber lands about ten years ago. To do that, they take them out and find the corners, and show them the land in general, and their fees were usually from one hundred to two hundred and fifty dollars. They never cruised a claim for the man to see how much timber he was going to get approximately. The man was his own judge, usually, whether the quarter was desirable or not. A man could tell pretty well, he thinks, when he looks over a quarter, about what it would run, just by looking at it in a general way. As a locator, he has had some experience in cruising parties, and when he was commissioned by a man to go out and get a timber quarter, he exercised his best judgment, but showed him the land and told him about how much he thought it would run. Having experience with cruising parties and having been in this timbered country for a number of years, he could tell pretty well, approximately, if it would run one million or three million feet to the quarter section; and acting upon his judgment—the party relying somewhat upon that—with his own eyes looking at the corners and running through the timber, the man decided whether he will locate and pay the price. If the man does not take the quarter, he doesn't get any fee for his work. He tried to get a quarter that would be acceptable. He does not know how many of these quarter sections he has located in the last ten years in Douglas County, in these timbered lands, but approximately he would expect that he has located twenty-five or thirty

quarter sections, and of these twenty-five or thirty, he would guess that eight, ten or a dozen were homestead claims.

Q. Did these homestead claimants find satisfactory quarters that you showed, that had good timber on them —these eight or ten, did they take the claims?

A. They took them, yes.

Q. Did you find pretty good timber for them on their quarters?

A. Well, some had timber and some quarters did not have any to speak of.

Q. Some quarters did not have any timber on to speak of?

A. Not of any commercial value.

Whereupon witness testified, that there are not very many open quarter sections of Government land in that country worth taking that are left.

Q. That is what I mean. There are some open quarters on bald hills and rocky points that probably nobody would take except for pasturage? Isn't that true in some parts of Douglas County?

A. Yes, some parts of it, it is.

Some of the vacant land there, perhaps, is practically worthless for timber or for anything excepting it may be for pasture—summer pasture. The average stand of a quarter section in Douglas County would be six or seven million feet—that is not the average, the average,

he would say, would be "three million—two and a half or three million feet." These timber claims that he located he thinks would average about three million feet. These railroad lands he says are about 30 per cent agricultural or tillable, or could be made agricultural or tillable, on an average, taking it all over, he means would become such after the timber and brush has been removed or cleared. These ranches that he said were big ranches are stock ranches. They are on the Calapooia, on the headwaters of the Calapooia. These big ranches were taken at a very early date, usually those large ranches were taken in early days, and they were donation claims. Some of them, he thinks, bought additional quarters, he presumes that they bought the land of the original purchaser. Some of these large holders, he thinks, were people who bought from the railroad company for pasturage, or something of that kind, adjacent to their regular holdings.

Q. Well, now, they then got the better part of the railroad land, so far as it being available for agriculture or for grazing was concerned, didn't they, those that bought first?

A. Yes, it was added to their holdings, I presume.

Q. Well, that was only in the last seven or eight years that these railroad lands that are unsold came to be sought after for timber? Isn't that a fact—the last eight or ten years?

A. Well, I don't know how long it has been.

Whereupon witness testified, that the timber demand became active about twelve years ago, he thinks, and the market was most active, timber was at its highest demand, about six years ago, he thinks, about 1906, and he believes it continued through 1907 and on down to date with more or less activity. He applied to purchase some of the railroad timber lands. He gave an attorney ten dollars, and he sent it in, put in an application for him. This was Mr. Dimick of Portland, who was then at Oakland. He does not remember whether he signed a printed blank application or not, but did whatever he was told to do. He does not remember if he offered to pay, in the application, two dollars and a half an acre, that is what they understood they were to pay—that it could be bought for that. He did not select the quarter section applied for and he never saw it and he has forgotten what section it was in—part of it was on Smith River. It was in that dairy country, on the headwaters of the Smith River. He thinks there was some saw timber on this land—there was good land on it, too. He had never been over it before he selected it, but talked with a cruiser that worked in that country who said he had been all over it and said it was good land, and told him it was good timber. He doesn't remember what the estimate was, he doesn't know positively whether it was very good or not because he did not see it. The cruiser told him that he had better take it. He has forgotten the name of the cruiser and does not know where he lives. He never went out on these lands and settled on them. He worked as a compassman for cruisers, with

a cruising party—he thinks that Roach is the name and that is the company that is paying taxes on the lands. He thinks it is a large timber company, a Spokane company. He worked as a compassman for the cruisers of that company a couple of weeks. He also worked for a man by the name of Ghormley. He has not cruised any of these unsold railroad lands. He worked a couple of weeks for Ghormley, and he has forgotten who Ghormley was working for. They were individuals cruising timber lands.

Q. Now, you say there were some of these settlers in this general territory that you have described, or on some of these lands in the even sections, and they have small parcels cleared. I suppose you mean they have got all the way from an acre up to twenty-five acres, depending on the length of time they have been on their homesteads or their lands, whatever it is.

A I spoke of the ranchers, didn't I?

Q. Well, do you mean ranchers that have been there a good many years?

A. Yes.

Q. Oh, ranchers that made early settlements in there?

A. Yes, ranchmen and homesteaders.

Q. These ranchers some of them have been there 30 or 40 years, haven't they, up those streams?

A. Some of them, yes.

Q. Some of them have been there, took land under

the donation law away back in the early days?

A. Yes, sir.

Q. They are the people that you referred to?

A. Oh, no; I referred to homesteaders.

Q. Well, some of those homesteaders have settled in there as far back as 1862.

A. I referred to homesteaders, if I remember right, as having approximately 10 to 50 acres.

Q. They have been there 10 to 40 years, some of them, haven't they?

A. A great many of them have. Some of them have not.

Q. They are mostly on streams or little valleys on the headwaters, and some of those streams, aren't they, those you speak of?

A. Some of them are, yes.

Q. Most of them are, are they not?

A. Yes.

Whereupon witness testified,

Q. Did you ever see any abandoned homestead cabins up in the woods where there were people who had apparently made final proof and left their shacks and gone away?

A. I have seen some, yes. I guess they were homestead cabins, they were cabins at least.

They were cabins on timber quarters and they were

not occupied and had not been for years, according to the way they appeared, and might have been hunters' cabins, or trappers', so far as he knows. He does not know whether they were really hunters' cabins or not, and he doesn't know that all of them were old abandoned cabins that people had formerly built there on these lands to take them up, some of them were. They were not occupied at the time he saw them, and had not been for years, and were rotting down and abandoned.

Whereupon, upon redirect examination, witness testified, that there are extensive clear bottoms along some of the streams where the settlements are on the streams in the vicinity of these railroad lands. These bottom lands are as good lands as they have anywhere. Usually it was heavy timber originally. There are some benches through these mountains that settlers are living on.

Q. Now, you spoke of the abandoned cabins that you knew were homestead cabins. How many of those cabins have you seen that you recall, that you actually know have been homesteads, and used merely for the purpose of obtaining title to land under the homestead law, with the purpose or intention of abandoning them?

A. They were deserted, you mean? They were put there and did not expect to prove up, do you mean?

Q. They were put on there merely as a make-shift to obtain title to the land from the Government?

A. Well, I don't know of any that were put on there with those intentions. I don't know what their in-

tentions were, in fact.

Q. Well, how many abandoned cabins have you seen on claims that you knew were obtained from the Government by homestead entry, that you know had been homesteaded?

A. I don't know more than four or five.

Q. How many settlers who were actually living on their homestead, and making a living from the land, do you know in the vicinity of these railroad lands?

A. I know lots of them.

Mr. Fenton: Homesteads you are speaking of?

A. Homesteads, yes, sir.

Q. Were the lands that are farmed in this community generally timbered lands prior to being put under cultivation?

A. Well, part of them were. Part of them were not.

Q. What were not?

A. It was a prairie; always had been, I guess.

Q. Where is that prairie located, or are there different prairies?

A. Oh, yes, there are different prairies. There is prairies all over, quite often run into a prairie in the woods, you know—open land.

Q. What is their condition?

A. It might have been an old burn, you know.

Q. Is that a general condition throughout this section of the country?

A. Part of it, yes.

Q. Does it extend into these railroad lands? That is, do you find any of the prairies in these railroad lands that you are acquainted with?

A. Yes, sir.

Whereupon O. M. CARLSON, called as a witness on behalf of the complaintant, and being first duly sworn, testified, that he is thirty-five years old, resides at present in Brownsville for the last year, lived in Oregon since 1900, and has lived in Township 15 South, Range 3 East of the Willamette Meridian, in that neighborhood. Most of the experience in farming that he has had was that he took a homestead there and cultivated it, and part of the time he worked out in the timber and for farmers. His homestead is in Township 15 South, Range 3 East, in Sections 24 and 25. He had farmed prior to that time. He was born and raised on a farm in Sweden. He lived on his homestead until a year ago last fall. He was up in that neighborhood. He got married then, a year ago last fall, but he was single all the time while he had his homestead. He had about four acres under cultivation on his homestead, planted a garden and potatoes, and had the remainder of it seeded in grass. Referring to Defendants' Exhibit 259, from Brownsville up the river, he has been up clear to Crawfordsville, to the headwaters of the

Calapooia, as shown on this map, extending up to Township 15 South, Range 4 East. He has been through from over on the Mohawk from Springfield, all through the Mohawk. From Springfield all through there, through the Mohawk country; he has been on that and through from Crawfordsville over to the Mohawk to Marcola. There is Marcola and Wendling also, and part of McKenzie, from Springfield up to Thurston, Walterville, Leeburg and Vida or Gate Creek, what they really call that, and as far up as Blue River, which is on the McKenzie. He has been up to Leeburg there, south of the river, where he has been working. A considerable portion of that land in there is owned by the Booth-Kelly Lumber Company, who purchased it from the railroad company, as shown by the blue markings. He has a general acquaintance with the lands in the vicinity of Mabel, and general knowledge of the lands in Township 15 South, Range 1 West, north of Mabel, and is acquainted with the lands in Township 17 South, Range 1 West, and that vicinity. He has also been over in there at Camp Creek. The lands up the McKenzie in Township 16 South, Range 2 East, are above Vida, above Gate Creek, some call it Vida. Gate Creek is not marked on the map, and is located in that township and he is acquainted with the southern part of Township 16 South, Range 1 East. He has been over that country, working on the Mohawk, and working on the McKenzie, and traveled through that timber on the trails. He went over there and has been hunting over in there a good deal, and the general character of

that land in that country is pretty well timbered, and some openings, some burned off a good many years ago. He is acquainted with the farming conditions in this section of the country, and the lands that are farmed successfully. In his opinion eighty per cent of these lands could be rendered suitable for cultivation; that is, suitable to plowing and raising crops by cultivation, after the timber and brush have been removed. There are lands in that vicinity of the same character as these railroad lands which are farmed; and these farms are occupied by settlers living on them. He has been out over some of these railroad lands; he was out there one year with some timber cruisers of the railroad company and they told him they were railroad cruisers, but he never found out what company they were cruising for. In his opinion the unsold lands of the railroad company would be suitable for homestead purposes. Whereupon on cross examination, witness testified, that his homestead is on the West half of the northwest quarter of Section 25 and the west half of the southwest quarter of section 24, township 15 South, Range 8 East. His nearest post office is Blue River, in Lane County, on the McKenzie River. His homestead is closest to the railroad from Springfield and up on the McKenzie and then he goes from Vida on the wagon road that goes up to the mines. He passes through Vida, and his homestead is probably about 15 miles east of Vida, down on the Calapooia—the headwaters of the Calapooia, which runs into the Willamette at Albany. It must be about 30 or 40 miles from Albany, more than that to his home-

stead, about 50 miles from Albany; that is, it is about 20 miles up into the mountains from where he leaves the foothills and valley. He took his homestead in 1900. It is mostly saw timber on his homestead. He had never cruised it, or had it cruised. There may be a good 3,000,000 feet on it, for all he knows. It is principally fir, red and yellow, good standard saw timber and some hemlock. Hemlock is good saw timber where it is large enough and is used to make boxes and box shakes for fruit shipments, which is quite an industry in this country. He has about four acres of the 160 acres cleared, in one place. He did not find a clearing there when he started. It was not a burn, it was on the bottom, right on the Calapooia River bottom. It was covered with brush and timber, vine maple brush, the most of it. There was some saw timber on the four acres that he cleared, probably about six or seven big trees. He built a cabin on it and lived in the cabin, and when he went away to work he left his things in the cabin. He would go there and stay a few days and make a garden, and make a little clearing, and then he would go off to work and come back again, he lived there quite a little bit, but of course he had to work out for a living, he could not make a living on the homestead alone. He lived on it five years and kept up this method of working out and going back to his place. He left his bedding, stove and things of that kind in the house when he went away. He locked it up and did not leave anybody in charge. Some of the homesteaders did the same way and some of them were married and stayed on their land with their families,

they would go out and work and leave their families at the place, they had to do that to get started. It would take them, he should judge, two or three years to get started. He did not have any money to buy stock with until he got started there, and that was the reason why he did not raise stock and let them roam over the mountains, and make his living that way. He owns this quarter section still. He does not know of any land being sold in there. He does not know whether he could get fifty cents a thousand for it or not, he never offered it for sale. He has heard that the best timber had been bought there from seventy-five cents to a dollar a thousand, but of course that is all he knows.

Q. Well, if it was sold at $1 a thousand, your quarter section having about 3,000,000 feet on it, would be worth about $3,000?

A. Yes, I think it would.

He got married a year ago. There is no wagon road in there, and it was inconvenient to bring a woman in there, so he could not get in there as handy and live there as he did before when he was single. When he was single he could go through the mountains and on trails. That is a timbered country principally. Eighty per cent of that land could be farmed after the timber is logged off, and the stumps are either burned around or blasted out, and the timber removed.

Q. Well, Mr. Booth says that would cost from $50 to $250 an acre to do that, you know Mr. Booth, don't you?

A. Yes.

Q. Well, is that about what it would cost in your judgment?

A. Well, I don't suppose it would cost quite as much as that.

Q. Well, if a man did his own work it would not cost that much?

A. No, it would not.

Q. But he would be 30 or 40 years in clearing 160 acres of timber land if he did it by himself, wouldn't he?

A. Oh, he might.

He only knows of two homestead cabins up in that timber land where the people who took homestead claims had made their final proof, or had commuted and paid the cash and got the title from the Government and had moved away, these were timber lands and the parties proved up and still held the lands. It is good timber lands like his. They were not friends of his. He knew them, and they are both dead now. When they were proving up and living there, they left and worked out just as he did. They moved away before they died. They had the same kind of improvements and occupied them the same way as he occupied his. One was a married man and one a single man. The widow of the married man is still living, but not on the place, she has moved away. Whereupon on redirect examination witness testified, that one of these homesteaders who died, lived on his homestead until about five months before

he died. He was ill when he left, and had to be carried out of there, he left to get medical attendance. There are people still living there in that section of the country earning their support from their places or homes. He was a single man all the time that he had his homestead, and he did not consider his absence from home as being any inconvenience. If he had been a married man, he would have cleared more of his land and made it self supporting. He has noticed the difference between the single homesteader and the homesteader who is married as to the development of his homestead. The married man really makes that his home, and keeps it up in better condition to make a home out of it. A single man goes ahead and does as near as he can. He might not get quite as much improvements as a married man. He has noticed that a married man is more inclined to become a farmer than a single man who settles on a homestead, unless he marries and brings his wife on the homestead.

Q. Mr. Carlson, in your opinion, has the manner in which the railroad company has handled these lands, especially in selling to large purchasers, and in withholding from sale and refusing to sell, to comply with the conditions of the grant to sell to actual settlers in 160-acre tracts at $2.50 an acre, has that had any effect on the settlement of the community that you have been acquainted with?

A. It has been a drawback to the country, keeping settlers from coming in and settling up the country.

Q. This country is generally a timbered area, isn't it?

A. Yes, it is.

Q. Well, the people who are farming there, engaged in farming now, what were their lands in their native or natural state, originally?

A. Well, at one time in the early days, they was all timber.

Q. They had to clear their land before they could cultivate it?

A. They had to clear it to put it in cultivation.

RECROSS EXAMINATION.

Q. They settled first on the streams, and got creek bottoms, river bottoms, and what little cleared land there was?

A. Yes.

Q. Some of them took donation land claims up on the Calapooia?

A. Yes.

Q. A great many years ago?

A. Yes.

Q. They started out with a few acres already cleared, and then as they wanted to extend their farming, why, they would clear the little brush that was there?

A. Yes.

Q. And in that way, in the course of 50 years, they

got a few acres of plow land?

A. Oh, yes.

Q. Now, these settlers that you say, these homesteaders that you say that you know are still living in there, have they all proven up?

A. Nearly all proved up.

Q. They don't move away as a rule until they prove up, do they?

A. No.

Q. After they prove up, why, then they can go wherever they please. If they want to sell the land to timber people, they can do it?

A. I suppose so.

Q. Well, they do that if they want to, that is, timbered land, isn't that right?

A. Yes.

Whereupon on redirect examination witness testified, that they can sell, after they get itle, and they can do whatever they please with the lands, sell it or keep it. These settlers that he speaks of are still living there, they went on this land about the same time as he did, and have obtained their title. Whereupon on recross examination witness testified, that he was a single man and did not have any home, and he wanted a home and a place to stay. The timber was there and he could not very well get around it without taking the timber and ground together. He took it in 1900 and he did not

know of any timber that was being sold in Linn County very much. The Booth-Kelly people had bought a lot of timber around in all their section, he supposes about that time. He did not hear very much said about the fine timber up in that country at that time, and did not until later years. He did not go out anywhere else to try to find a quarter section that was all clear. At the time he took his homestead he did not know at all how much timber there was on it, but he thought it was pretty good timber. He went over it before he took it. He talked with timber people or his neighbors about how good the timber was before he filed on it, and they said there was timber on it, but they were there ahead of him. Any quarter section up there had timber on it.

Whereupon, on redirect examination, witness testified, that in 1900 timber had no value in that country, practically. When he took his homestead the fact that it had timber on it, did not enter into his mind, or influence him in taking it; the thought of it did not influence him in taking it. He would have preferred to have had land without the timber, that is, cleared land, with the timber off the land. If he had to do it over he surely would have the land and not the timber. There were no open lands open to homestead entry in 1900 below him. They were all taken up then. They went on the Government land and squatted there, and in 1901 the Government surveyed that township. He took the best land that he knew of for homestead purposes, and with the intention of making a home out of it. Whereupon on recross examination witness testified, that he

had made a home of it, he has not left it yet. Whereupon on redirect examination witness testified, that he moved to Brownsvile only a year ago (1911) and he made his proof in 1907. He lived there four years after he made his final proof.

RECROSS EXAMINATION.

Q. How much time did you work out during the four or five years that you claim you were living on your place?

A. Well, maybe half of the time.

Q. And the rest of the time where did you live?

A. I lived on the homestead.

Whereupon JOHN THOMAS DEADMOND, called as a witness on behalf of complainant, being duly sworn, testified, that he was born in Lane County, Oregon, in 1854, and has lived in that county almost all of his life. He was born on a farm about three miles north of Eugene City. His father had several farms, and at that time he had three hundred and twenty acres in the valley—an old donation claim. He worked on his father's farm until he was about seventeen or eighteen years old, and he farmed near Harrisburg, Lane County, in the northern part, next to the line, for three years, besides the work he did on his father's farm. He is running a rooming house in Springfield at the present time, and after he quit farming he was a contracting logger, commencing about 1877. There are different ways of farming—some raise some kind of grain, small grain, vege-

tables, fruits, stock raising. In other ways than from his own actual experience, he has come in contact with the farmers and has become acquainted with quite a few methods of farming lands and the crops that they raise on them, and is acquainted with the productive soils of that country, that will produce crops, and with the character of the lands that can be cultivated and tilled. He had a farm—his wife owned it. He bought a piece of railroad land in section 1, township 17 south, range 1 east, of seventy some odd acres. He does not remember just exactly whether he paid three or three and a half an acre for that, it has been sometime since he bought that land, but it must have been about 1882 or somewhere along there. Of the crops produced in the farming industry in Lane County, there is wheat, potatoes, vegetables of all descriptions, grain, hops, garden products. The land cultivated there where these products are raised is of different character, there is a dark heavy loam that produces well, some grain and hay, and there is a sandy soil which produces vegetables of all descriptions—bottom lands, and there are hill lands which produce fruit and vegetables of all descriptions. The land that he bought from the railroad company was largely timbered, some brush in places—mostly timbered when he purchased it. He farmed it after he cleared up the land, and made a home there and lived on the place. That was in township 17 south, range 1 east, and he thinks the Booth-Kelly Lumber Company has land right adjoining that. They have timber—timber lands in there. He earned a support from this land which he purchased

from the railroad company. He did not have very much when he went there. His family consisted of one boy, three girls, and his wife. He does not know the altitude of this land. The railroad land which he bought was in the northeast corner of section 1. After he cleared this land he raised most anything that he wanted to there—garden, oats, wheat, hay, or anything that he wanted to plant, including fruit. This particular place that he is speaking of now that he bought from the railroad company—Mr. Albert Ward has that place now and is farming it—is still used as a farm. Witness cut a good deal of timber off of this place, and cleaned it up. When he was on the place, he cleared about eight acres, put it in cultivation, and brushed off and seeded down about twelve acres more to grass and made a pasture out of it. Since then this has all been grubbed off, they have cut all the timber down and grubbed the stumps out, and made a farm of it, it is not all cleared, he does not know exactly how much of it is cleared. Part of this land in that territory is called hill land—bench land or bottom land, some of it is bottom land. There is a distinction between hill land and bench land. When one gets up on the bench land it is more heavy soil, of a different kind of clay a little, and it is flat, and then there are benches that go up, and so on back—terraced. There is a bench there that produces just as good grass as the bottom land, and there is some of it produces better fruit, while the bottom land is better for vegetables, for hop purposes, or such as that. Referring to "Defendants' Exhibit 259," he has been down around

Springfield, Thurston, Walterville, Leeburg, and there is Vida in there somewhere, which is at the mouth of Gate Creek. He does not know as he could tell exactly the township of these green lands, that is, of the territory with which he is acquainted. He was in section 1, township 17 south, range 1 east, right on the north side of the river, somewhere about three miles—probably three and a half miles by wagon road, to Leeburg. He does not know the distance straight through, and in fact he has been all over this territory, all over these tributaries, hunting and fishing—he has roamed all around.

Q. Sufficiently to acquaint yourself with the formations of the land and the soil, and its adaptability to cultivation?

A. Partly, yes. I have noticed quite a little bit of the timber and everything else.

Whereupon witness testified, that he had been in most all of township 16, has hunted in township 16, range 1 east, and 17-1 east, and also in 18-1 east, from the summit of the mountain, from Fall Creek on both sides of the McKenzie River. He has been in township 16 south, range 2 east, in the vicinity of Vida, and is acquainted with the lands in that township. He has been from Vida quite a little, that is quite a burn in through there. He has been through Vida and up Gate Creek. There is quite a big burn up through there until one gets back on the mountain between the Calapooia side and the headwaters of the Mohawk, and then there is green timber from that on back, and this is bench land—dif-

ferent land. There are settlers in these various townships he has mentioned, people living on farms there, farming the lands. In township 16 and on Gate Creek, there are quite a few setlements in there. There is quite a good settlement up in what they call the forks of Gate Creek, and in townships 16 and 17, range 1 east, also. There are quite a good many settlers in township 17. He is not acquainted much with township 16 south, range 2 east, about Wendling, but is acquainted in and about Camp Creek, township 17, range 1 west of the Willamette Meridian there, and is pretty well acquainted with the lands in township 17, range 1 west, in the Camp Creek district. That is mostly farming country down in there. There are some settlements up the McKenzie River and in east there within ten or fifteen miles of the summit of the Cascade Mountains. He does not know exactly where this railroad grant runs, but if it runs up there it runs a good long ways, but he does not know exactly how far it runs. Township 16, range 2 east, is twenty-five miles beyond Vida, and Vida is in section 34, township 16 south, range 2 east. Twenty-five miles beyond, going east, would carry one outside the limits of the grant—that must be outside the limits of the grant because it is within ten miles of the county line. The grant does not extend to the summit of the mountains that he knows of. One leaves here and goes to the headwaters of the McKenzie, gets to the summit of the mountain, and this place that he speaks of is on what is called Lost Creek, at a little place called White Branch, owned by Mr. Lewis. Also on the same creek

just below him, there is what is called the Lost Creek station. They have been living on that for a good many years, and then just below, down at Foley Springs and Belknap Springs and McKenzie Bridge.

Q. Now, Mr. Deadmond, in your opinion, what percenetage of these railroad lands could be rendered suitable for cultivation in this area that you are acquainted with?

A. Well, now, there is different land. The percentage is owing to what a man would want them for, for agricultural purposes. He would have to dispose of the timber for to make any cultivation.

Whereupon, witness testified that the timber would have to be removed to make the land suitable for agricultural purposes. Part of this is a timbered country and part of it is burned. It was a timbered country, but it is a big burn. There is not much merchantable timber on that burn, that is in there by Vida. It is quite a big burn in through there which has no merchantable timber to speak of. West of the meridian line, there would be one-half of that, after the timber was removed, that would be good for agricultural purposes and grazing. East of the Meridian, it would not go quite as much—probably one-third. West of the meridian, he believes, there could be pretty nearly half of that which could be plowed after the land was cleared. These lands are a good deal the same in general formation and soil as the lands that he farmed up there, on which he lived in that locality. He knows from experience that these lands

are productive and will produce good crops—he thinks they will, of course, there are exceptions. In some places he does not think one could raise anything on it, due to stony land. There would be breaks in the timber or forests, there would be small burns, and then a good big strip of timber. But in lots of cases the timber extends right along for several miles. Lands similar to this area have been successfully farmed and are being successfully farmed now—part of it—that is, lands that have been timbered and cleared.

Q. About what areas do these men cultivate over, those farmers that live in this area, about how many acres do they generally have under cultivation?

A. Well, there is some places that they run different amount of acres. Some small places that they are farming, and some that is larger. Some in that territory there is fifty or sixty or seventy acres.

Whereupon witness testified, that of the men that are actually farming there, engaged in that business, making a living, take it all around up there, it will run twenty to twenty-five acres that they are farming. This bench land produces first-rate, especially for fruit, it produces a little better fruit, to his notion, than the bottom lands—that is, what he has seen up on those benches, is better fruit. There is more or less of this bench land all the way through that country that he is acquainted with. It runs all over the mountains, climbs from one bench to another, and then on until one gets to the summit. There is what they call a divide on each

side of the river, and then clear on through to the Cascades—natural terraces.

Whereupon, upon cross examination, witness testified, that he bought this railroad land somewhere about 1882. He was the first purchaser. He went onto this land, he thinks, about a month after he bought it, and lived on the land for some seven or eight years. In addition to living on the land, he ran a logging business. The logs were rafted from there to Corvallis, some of them. He logged for Max Friendly of Corvallis, the Corvallis Lumber Company. During the time he lived on this piece of land, he was in the logging business most of the time.

Q. And that is why you wanted to get up there in that vicinity, so as to be handy to your logging?

A. Well, that was my business at that time, I went there on the river to log in the first place.

Q. That was the reason why you wanted to get up in that neighborhood so as to be handy to your logging business?

A. Well, it would be naturally the case, that I wanted to get handy.

Q. I just want to ask you if that was the reason?

A. Yes, sir.

Whereupon witness testified, that Foley Springs and Belknap Springs are summer resorts, pretty well up the McKenzie in the mountains. They are mineral springs, and places where people go in the summer and

spend a few weeks, do fishing and some hunting, going back into the mountains. During the winter they are not open except to the care-takers—that is about the way. They have located those springs, he supposed, for that purpose—for summer resorts. They are about fifty-six miles east of Eugene by wagon road, and there is a good stage road up there. The McKenzie Bridge is six miles below Foley Springs. There has been some farming there. Itis a great place there for fishing etc.—summer resorts. Of the people that have settled in there, some have settled recently and some of them have been in there for a good many years.

Q. Those that were in there a good many years ago, they catered to the summer trade, sold them vegetables, eggs, chickens and things of that kind, didn't they?

A. Yes, sir. Mr. Powers was there for a good many years.

Witness got some of the logs off of this piece of land that he bought. He thinks he cut off of this seventy acres, about as near as he can remember now, somewhere near two million feet of fir timber, and it had just a tolerably good stand. He does not think it was an average—not quite as good as the average. He thinks that he cut about two million feet off of this seventy acres, as near as he remembers now. This he cut off was sold along in the eighties sometime, for a sawmill at Corvallis. He did not raft the logs—they did the rafting. He delivered them to his people and they took them

in the water on his place, and they rafted them down to Corvallis. They did not go to Eugene. They went down the McKenzie River, which empties into the Willamette below Eugene, and from there they went to Corvallis. That was the customary way they had of getting logs down out of the mountains. When he farmed near Harrisburg, he was on a place that belonged to Mr. Kennerly, about five or six miles up the river from Harrisburg. It was on the prairie, south of Muddy. He was never on the Henry Schooling place out on Muddy, but knows pretty near where it is. This place is south of there eight or ten miles. That is all old settled country, it was taken up under the donation law. This was a donation claim that he was on there farming. It was valley land, practically always clear. In some locations in the early days when they settled in the Willamette Valley, the amount of oak timber, oak grubs and small fir was very much less than it is at the present time. He guesses that it is accounted for by the fact that the Indians in the early days used to burn the grass in this young timber and keep it from growing, and that since that has been discontinued the oak timber has grown up. The burns used to keep down the brush, and so on.

Q. And since the white men have come in and gone to enclosing the premises, and stopped this grass that used to be six or eight feet tall here in the Willamette Valley on the prairies, why, the oak grubs have grown up in a good many places that didn't have them before.

A. Not down on this level ground, not on the

prairie, I don't think.

Q. Some fir groves have grown up, haven't they, around about Salem and out beyond?

A. Up in there, but in the valley, in this farming at the time when those farms were taken up.

Q. It was always clear?

A. Yes, sir. On the hills this oak grub possibly has grown.

Whereupon witness testified, that there were some old donation land claims on the Mohawk River, about seventeen miles east of Eugene, and there were donation claims up the Mohawk quite a ways, settled in the fifties when he was a small boy. The foothills, some of them, were parts of these donation claims—they run up on these benches, and as one got further back into the mountains the saw timber began. About 1892 there was the biggest demand for timber lands, as he recollects it, outside of this local demand for sawmills such as he supplied. The general demand for timber, he thinks, was the biggest about 1892, when there was quite a little rush—1892 and 1896 they were after the timber, he thinks, that is as far back as 1896. He does not remember exactly what year it was that the Booth-Kelly Lumber Company began to operate around Wendling and Saginaw and up in that country. The timber demand became pretty active after they began to buy in there, and just shortly before they went in, and since that time there has been pretty good demand for timber lands. Some of these lands he has cruised over himself.

He would go on some of those timber lands that they have had, and was logging it off by forty acres, etc. He would go and cruise that before he went to work on it, to see how many million feet he was going to get off. He logged the timber on contract with the owner of the land, the owner would sell some of the stumpage for seventy-five cents, and some for one dollar, he thinks, that is, the time he was speaking of when the Booth-Kelly Lumber Company went in there. He logged for those farmers, that is for people that had small pieces of land there, and they got different prices for their timber. Some of them would get as high as a dollar, from that down to fifty cents, depending on the distance from water, and what they wanted to get it off this land. These settlers that he speaks of up there up where this timber was, aside from those who have settled on donations and along the little streams, have gone in there in the last few years, since he had been in the logging business. He was in the logging business in 1877, and there has been quite a little bunch of settlers in there since. He has been around over that timbered country and noticed a good many people had purchased timber quarters under the Timber and Stone Act. The class of people generally who bought under that act had the money to pay for it. He thinks they paid two dollars and a half an acre for it. He noticed whether any of these homesteads were up there on the timber lands.

Q. Has your experience informed you as to whether or not a good many of these, or some of these homestead claims, located on these timber quarters of good value,

the improvements were abandoned after they had got their title or made their final proof?

A. Well, there is a question there that is a little different to me. There is homesteaders that went in there in this here timber belt that never complied—he was not a homesteader, he was a speculator.

Q. But he used the homestead law for the purpose of getting title?

A. Yes, he must have done it, because he never done anything on it.

Q. And he would simply build a little shack and go out and stay.

A. That is some.

Q. I understand. Go out and stay two or three nights in the six months, and clear up a quarter acre for a garden, and sleep there two or three nights? He would do that until the 14 months expired, and if he had $2.50 an acre, he would commute and get his patent?

A. Yes, sir.

Q. Or he would stay the five years in this way, and work out, and finally get his patent?

A. Yes.

Q. Then he would vacate his premises and sell it for timber?

A. Well, no; not all those that lived the five years.

Q. But, generally speaking, they commuted, those fellows that wanted to sell?

A. Yes, those that commuted generally come there 14 months, as you say, and get the title, and probably you wouldn't see them any more in there. I call them speculators.

Q. Some of these people would be men who were working for the timber companies and sawmills, and would go out as hired men?

A. Yes, sir.

Q. Wasn't it a common thing for them to say: "Now, gentlemen, you can get $300 or $400 by using your homestead right for me, and I will put up the money when the time comes, and you will convey it to me." Wasn't that a common practice?

A. Well, I heard that talked, yes.

Q. And that was done quite generally in this timbered section. Isn't that right?

A. Yes, sir.

Whereupon, upon redirect examination, witness testified, that he had mentioned as resorts Foley Springs and those soda springs up in the mountains. Those springs are beyond the limit of this grant quite a distance, as shown by the distance from Vida, quite a distance east of that as shown on the map there. He could not tell how far they are from this town of Vida. It must be twenty miles up there, by wagon road, and they are fifty-six miles from Eugene by wagon road. These resorts are in the Forest Reserve.

Q. Now, if this land was divided into 160-acre

tracts, Mr. Deadmond, about what would be the average amount of land that could be cultivated in each 160-acre tract?

A. You mean the entire tract clear east?

Q. I mean the lands, the railroad lands, that you are acquainted with there in the area that you have testified to.

A. I think it would go forty per cent, something like that. That is, after the timber was removed.

Q. Yes, after that is what I meant. What is your opinion as to whether these tracts would be suitable for settlement for farming purposes, as a homesteader, bona fide homesteader?

A. A good many of them would make homesteads, if they was cleared up, and timber cleared. A good many of them would make nice little homes.

Q. Now, you spoke of hometsead claims in that vicinity there, some speculative homestead claims and other homestead claims. Now, please explain what you mean by that, Mr. Deadmond?

A. What I mean by that, there was some of those settlers went in there and improved the land when they bought them, and cleared it up, and made nice little places, while others did not do anything, only just simply built a little shack and go off.

Q. Do you mean the homesteaders who went in and improved? Did they continue to live on their lands?

A. Yes, sir.

Q. And are living there on it?

A. They proved up, and some of them is still living on it.

Q. They took them up for homes?

A. Yes.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VIII

PAGES 3789-4252

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

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No._____

United States Circuit Court of Appeals

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Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME VIII

PAGES 3789-4282

Whereupon J. E. KENNERLY, called as a witness on behalf of complainant, being duly sworn, testified, that he is fifty-nine years old, lives in Lane County, Oregon, and has lived in Oregon since 1876, in Lane County most altogether, in the vicinity of Eugene, Springfield and Leaburg. He has been ranching, farming quite a bit, in the stock business a good deal, raised stock, and bought and sold stock, also logged some. He has been engaged in farming about twenty-three miles east of Eugene in section 10, township 17 south, range 1 east, and owned a hundred and sixty acres there—not all in farm. It was not a homestead; he bought it. There was about seventy acres of it on the McKenzie River bottom, and the balance was on the hillside, bench land, part of it. He had that all in grass and the bottom land he farmed, consisting of about thirty-five or forty acres. The balance he had seeded down, it had been timber land, but was logged off, cleared and seeded to grass, timothy and clover hay. He raised on his farming land almost anything he wanted to, wheat and oats, vegetables of all kinds, berries and fruit. He is acquainted with the farming conditions and the crops raised in that vicinity generally throughout that part of Lane County. They can successfully raise there almost anything they want to, in the way of grain, vegetables, wheat, oats, rye, barley, vegetables of most any kind, fruit and berries. He lives at Leaburg now, which is shown on "Defendants' Exhibit 259," and is acquainted with that area from the mouth of the McKenzie to the head of it. The McKenzie River empties into the Willamette near the

corners of townships 16 and 17 south, ranges 3 and 4 west, according to this map, and meanders through township 17 south, ranges 1, 2 and 3 west, and township 17 south, range 1 east, and flows into the southern part of township 16 south, range 2 east, and into the northeast corner of township 17 south, range 3 east. Those are the menderings of the river as shown on "Defendants' Exhibit 259." He is acquainted on each side of the river from four to six miles out, and has been in that country a long while and has traveled all over this country, rode all over it, hunted all through it, and is pretty well acquainted with it and with the conditions of the soil, the lay of the land, and the formations there. There is about one-third of these railroad lands that are good farming lands, tillable lands, and he believes that average would hold good if the lands were divided into one hundred and sixty acre tracts. There are settlers living on similar lands, engaged in and earning their living from, farming, in that community. There is about one-third of it that is good pasture land, for instance, the hillside is a little too steep to plow. It is good soil, and they burn it off and seed it to grass for pasture land. He lives now in section 10, and the railroad lands are near his land—section 9 joins him and a part of that is railroad land, section 3 joins his place and that is railroad land. The Booth-Kelly Lumber Company owns a part of section 3 which they bought from the railroad company. Other parties there own a part of section 9, part of it is in litigation between a settler and the railroad company. That lays right along the river, right west of his place, joins him on the west. Part of sec-

tion 9 lays right on the river and is sandy soil. The bench land, hill land, is a dark red clay soil. These lands mentioned are about the same as that he has farmed there. He is engaged in farming there now, but not very extensively.

Q. In your opinion, Mr. Kennerly, what has been the effect of the Railroad Company's failure to comply with the conditions of this grant to sell to actual settlers in tracts of 160 acres, at $2.50 an acre, and in selling to big companies in large tracts, and withdrawing the land from sale in this community that you reside in, or are acquainted with?

A. Well, it has been quite a drawback to our country there, shutting out settlers, and they have got some good land there in that section of the country.

Q. You mean land that would be good for farming purposes?

A. Yes, good for farming purposes, yes.

Whereupon, upon cross examination, witness testified, that, take it as a whole, he could hardly say what this railroad land is worth in his judgment, on an average, taking into account the timber that is on it and all its possibilities. There is a difference in the land itself, and then there is a difference in the timber, but take it as a whole, he supposes it ought to be worth right in his section there, twenty dollars an acre—the best of it. The best of it in hundred and sixty acre tracts, would probably be worth twenty-five dollars an acre. There are some bad tracts or parcels in there that are of no

particular value for any purpose, in certain localities there, on the high mountains, high peaks, that it is nothing but rock. Take it all over, about one-third or one-fourth of that railroad land in there would be practically of no value, that is, what he refers to as on high peaks and rocky. He doesn't see what those little points could be worth. Take the whole of the land that he knows, within five to six miles either side of the McKenzie River from where the railroad lands begin up to where they end, one-third of it would be agricultural land. He believes that he did not say that 25 per cent of the whole thing would be rocky and of no particular value, but then it is something near that. This piece of land that he owns there was a homestead and was entered about forty years ago. He logged off some of it—about sixty acres—and got something near 1,700,000 feet of average fir timber. He sold part of it to Max Friendly at Corvallis, and also to the Booth-Kelly Lumber Company. The man from whom he bought had logged off a little of it, a small amount, right on the bottom along the river. This land of his, that had been cleared was right along the river, in the bottom mostly, that was covered with heavy timber and brush until this man logged some of it off. They usually slashed the brush there in the spring, and then in the summer when it gets dry they run fire through it, burn the brush all out, and then take powder, after it is logged off, and blow the stumps out, haul them off, and cultivate it. In that way he cleared about thirty-five acres, entirely clear, one might say, and then he is cultivating some that the stumps are not taken out yet.

That on the hillside is in the stumps, the logged off part, he uses that for pasture land, and sowed that to grass after he had slashed it and burned it. He feeds all that he raises there on his place, practically, to his stock, excepting what he sells to the travel. He is keeping a stand on the road, hotel and feed barn, and consumes it all right there. There is a good deal of travel passing his place, going across the mountains to eastern Oregon and to Foley and Belknap Springs. He sells them hay, vegetables, fruit. He is about forty miles from Belknap Springs and thirty-two miles from McKenzie Bridge. He is twenty-three miles from Eugene. There is a post-office right at his place, within thirty steps of his house. He does not keep the postoffice, but it is on his place. There is no Donation Land claim taken right around him there on the McKenzie, the nearest donation claim that he knows of, is seven miles down to Walterville, and was the donation claim of a man by the name of Starman, he believes. He supposes it was settled in the fifties. When he says that about one-third of this land is agricultural, he means after the timber is removed and it is cleared. It is all timbered land right in their section. He thinks the character of the timber there on these railroad lands that he knows is about the average of Lane county. About four million, three and a half to four million feet would be a good average timber claim per quarter section. He does not believe that these railroad quarters there would run on an average of four million feet because the best of it has been bought up by the timber people; but he thinks the unsold rail-

road lands would average about three million feet per quarter section. He does not know that they were taking the land for the timber exactly, but the biggest rush that they had there for timber claims was about 1894 to 1896. The homesteaders would come in there and take up the land, and the companies began to buy. Before the homesteaders would go in, they had no market for their timber, to speak of, before that the timber was not sought after at all. The homesteaders were just burning it up and destroying it to get rid of it, but after that time the homesteaders began to rush in and the timber people began to buy. Most all of the government land that is worth anything in that section of the country has been taken in one way and another, either under the Timber and Stone Act, Homestead Act, or some kind of scrip. There are parts of the government land worth something, but not a great deal, the best of it is all taken, of course. There are probably some pieces that would pay to enter. They are small and scattering. He logged off of several sections there. He bought a part of a section of school land in section 16, logged that off—one hundred and twenty acres, he thinks. Then he bought a hundred and forty acres of railroad land in section 11, township 17, range 1 east, logged off one hundred acres of that, and then he sold the one hundred and forty acres. He logged off this railroad land about 1890, he thinks it was, and sold the logs to the Harrisburg Lumber Company for local consumption by the mills in the valley. That was before they began to ship lumber by the railroad east and to California. That

was before the Booth-Kelly Lumber Company came in and developed the industry. In their part of the country, the Booth-Kelly Lumber Company is the largest timber company, lumber concern, that is manufacturing. Some of these yellow streaks up the McKenzie and the Mohawk are practically level land along the streams, and that seems to be land that was taken under the Donation law, or under some previous settlement law, prior to the time the railroad grant took effect, and it seems to follow the streams, that is about the way they did in those early days. He is now living right at Leaburg, in section 10, which is next to section 9, which is railroad land. He thinks that along the McKenzie river there where Leaburg is, which is shown in yellow, about half of that section, whatever its number is, was taken under some settlement law, either homestead or pre-emption, before the railroad grant took effect. The McKenzie river is a good fair sized stream, about a hundred miles from its source to the mouth, and is a logging stream for about forty miles. Vida is thirty miles from Eugene. It is not in the timbered country, that is in a big burn which was burned fifty years ago. There is a big burn there, about fourteen miles long and twelve miles wide, and Vida is in this old, big burn. It was formerly timber and then burned over. Vida has a post-office and a little store there, and there are a few families —three or four—at Vida. On this burned-off land, and then back on the hills, on the benches, it is pretty much all taken up, all the level land is taken up by homesteaders. When one gets up the hillsides, there would be

little benches of level land—that is what he means by benches; and these benches are from fifty yards to three hundred or four hundred yards wide generally. They are almost level—level enough so they farm them. Some of these benches are two hundred or three hundred yards long, some of them a quarter to a half mile or a mile long, and these benches are frequent as one climbs the mountain. That is what he means by benches, and that is what they mean about benches. These benches are usually covered with timber, excepting where there has been a burn, only in this deadening there, there is nothing but brush, there is no timber left. The timber is all killed and burned off. At the present time, there is nothing on this burn but brush of different kinds—vine maple, dogwood, greasewood, in their native state. There are a few old stubs still standing, very few, though, they are all gone pretty nearly. There are a few logs on the ground, and there is a little small young fir coming up. He had had a little experience or knowledge of second growth fir and of the time it takes down along the McKenzie river there, for these young firs to get to be saw timber, and it takes quite a while. In fifty years, from his observation, the tree would be about twenty inches in diameter, if the soil was good, and its height would depend a good deal on the locality and soil in which it grows. From his experience, if it happened to grow in the right locality, a tree twenty inches in diameter would probably be two hundred feet high. The thickness of this second growth depends on the locality, too. If it is in the right locality, they grow pretty thick, probably

every ten feet. Trees that are twenty inches at the butt and two hundred feet high, can be used for saw logs—the little mills use them, and they are used for piling timber, a good deal of it, and for telephone poles and telegraph poles, piling generally. If a man calculated to live a hundred years or so, he supposes that if he had a forty of that kind of growth, it would be more profitable to keep it rather than to cut it up at that age, but he would think if he wanted to get the use out of it in his lifetime he would have to cut it. Measured by generations of men, these forests would certainly reproduce themselves in time, if they were given time enough and not burned up or cut down.

Whereupon, upon redirect examination, witness testified, that this logged-off land that he had cleared, he sold the timber and retained the title to that land where he is living. That burn is right there at Vida that he spoke of, that big burn around Vida. He couldn't tell exactly, but it crosses about two miles below Vida crosses the river, lays on each side of the river, the river runs up about through the center of the burn and lays on each side of the river, six miles on each side of the river, and it is about fourteen miles long where there is no green timber at all left standing except the young growth, the brush that has come up.

Whereupon, upon recross examination, witness testified, that he was born in Arkansas.

Whereupon, upon redirect examination, witness testified, that he was twenty-one years old and past when

he came to Oregon.

Whereupon, witness was recalled, and upon direct examination, testified, that he applied to purchase some of this railroad land from the Company in 1905 or 1906, which land was located in section 3, township 17, range 3 east, on the McKenzie river, right at the edge of the grant in section 3, township 17, range 3 east, the extreme eastern limit of the grant. He wanted that for a stock ranch, farming and stock raising. There is a fine range all around there in this big burn about which he spoke, and it is level. There is a little timber on it, but very little, probably 400,000 or 500,000 feet on the quarter section. He does not know what the railroad company did with his application. He wrote to the company, made application for it, and wanted to buy some of it, he wanted that quarter section, and the company wrote back that it was taken off of the market so he did not pay any attention to it. He has not the dates exactly. Almost every bit of that quarter section was agricultural land, that is, could be farmed. Referring to "Defendants' Exhibit 295" which shows the lands indicated on this map as owned by C. H. Chick and W. H. Richardson in different colors, he does not know whether this land that he applied to purchase, was north of the Chick tract and northeast of the Richardson tract. He does not know to whom this land belongs but this is now west here (referring to the Chick tract). The land lying south of it, right across the river, he does not know who owns that. Mr. Mason owns the adjoining land to it, laying south, a small tract. He has been all over

the Chick tract and Richardson tract. The land is rough, very rough land, compared with the land that he has, so far as farming is concerned (pointing to the Richardson and Chick land). It is on the south side of the river. Now, this is on the north side, and is a different country altogether, so far as the land is concerned, and is a different formation.

Whereupon, upon cross examination, witness testified, that he wanted this railroad quarter to make a stock ranch of, and then he would have the out-range there for several miles, and probably could get the use of some of that country. East of this, the land is taken by homesteads and fenced. North of it is a homestead, and northeast is a homestead, and people are living there, that is in that burn. After one gets outside of that burn, it is all good timber land. That land was not fenced, but the chances are he would get the use of that for a few years for range. He expected to raise hay and feed his stock there. He would use the range whenever he could get it honestly. He calculated to buy an acre adjoining that he could plow. He expected to fence this quarter section as quickly as he could, and he expected to turn his stock out and they would certainly go onto the adjoining range. He expected to deal in cattle. He has been in the cattle business and thought it would be a success. There was no other quarter section up there that suited him as well as that location, and he was kind of stuck on that quarter section. That quarter section is worth about twenty dollars an acre. At that time, it was not worth so much. At the time he

applied to purchase it, it was probably worth seven or eight dollars.

Whereupon J. M. WITHROW, a witness called on behalf of complainant, being duly sworn, testified, that he is sixty years old, lives at Springfield, Lane County, Oregon, and has lived in that county twenty-one years. He has had quite a little experience in farming in Lane county. He farmed about five years in that county and farmed different tracts. The first farming he did, he was logging, and he farmed just in hay, a twenty-acre piece for eight years, the same piece he lived on there, and he made his hay to log with. That land was situated on the McKenzie river, right below Walterville. Walterville is in section 28, township 17 south, range 1 west. The land that he farmed was bottom land, right near the river. It had been in timber years ago, that piece, but he logged off the land that adjoined it, all around it, after he moved there, heavy timber. He did not cultivate any of the logged-off lands, but the man that owned it, logged it by contract, seeded it and raised grass on it. But the same land since is in cultivation, but it was not, at that time. It has been placed in cultivation since he logged it off. He has also farmed down below Coburg, between Coburg and Harrisburg, two years. There was a part of that ranch that was bottom land, and part of it what they call prairie land, out in the prairie, level, valley land. He farmed two hundred and forty acres there. He thinks that was taken up under the old Donation law and belonged to some heirs by the name of Barger. He leased the place. He does not

know and couldn't tell where that was located in regard to section. The products raised in this country generally, up out of the valley, are hay, oats, barley and wheat. Of late years, they have raised lots of fruit, but at the time he farmed there, there was not so much fruit. The fruit industry has been largely developed in recent years. There is a big orchard on the place he had. It had lots of fruit, but the neighbors didn't have. There weren't many orchards there that were bearing. Referring to "Defendants' Exhibit 259," and locating Walterville thereon, he has been all over that whole township 17 south, range 1 west. He has lived there a long time, and hunted a good deal when he was not logging, and went all over it. He is not acquainted about Wendling, not quite so far up as Wendling, in township 16 south, range 1 west. He is well acquainted with it up as far as Marcola, which is about a mile south of Wendling on the range line. He has been about six miles from Wendling, pretty near anyway. He is not more acquainted with the railroad lands in that township 16, range 1 west, south of Wendling, than he is with the Government land, the settlers' land. He is acquainted with it all, has been all over it, and is generally acquainted with the lands there, and with the lands in township 16, range 2 west, that is, west of Marcola, and in the vicinity of Donna, right on their road going up through that country. He is not acquainted with any of the lands in township 18 south, but has been in the Fall Creek country, all along, but then he did not know the ranges, or numbers, or any thing, just went through there. He has been north of

Fall Creek in this territory with the green markings and the white markings, in township 18 south, range 1 west, he has been all through there, and is well acquainted with it. His work runs right up the river, up the McKenzie river, right on up in township 17-4, 3 and 2 east, and township 16-4, 3 and 2 east, all of that. He had a piece of land in township 16-2, his homestead was in that township. The grant does not extend beyond range 3 east in this locality. The railroad lands do not extend beyond that. He knows about where they are. They run into township 17-3 east, about two miles into township 17-3 east, as a general thing. That has been his beat for seven years, he comes pretty near knowing where they are exactly. He was Fire Warden four months in the year for seven years in there, in that McKenzie river territory, in those numbers he gave there. He was Fire Warden for the McKenzie Timber & Lumber Company—Michigan people, and it would take him out over the territory—he would say, sometimes. The percentage of lands in this area covered by the green markings, that he would consider suitable for cultivation would be owing to how far one would come down the river. One comes down as far as Walterville, and from that east of his beat there, he would say that the land there would go about 50 per cent that would be suitable for cultivation, that is, could be rendered suitable by removing timber and brush, or anything of that kind that should be on it. On the south side of the McKenzie river, in township 17, range 3 east, the country is broken, very broken and mountainous. There are lots of good

little places in there, but of course that would be hard to get to. It is broken country, while on the north side, it is good—practically good. There is a distinction between the north and the south side of the McKenzie river in the lands. In range 2, township 16, the land runs good and it runs good in township 17-1, and through there on the south side, but in township 17 south, ranges 2 and 3 east, there is a rough spot right in there that would not run so good. There are farmers and settlers engaged in farming all over, with the exception of township 17 south, range 3 east, there are but three or four in that township, there is more than that, too. Township 17 south, range 3 east, is not owned nearly solid by the Booth-Kelly Lumber Company, they own some in there, but this company he worked for owns a good deal, or most of the land. That township is practically owned altogether by some of these companies. He owns some land in there, his daughter owns some land in there, and there are a few odd pieces scattered around in there, but, generally speaking, it is owned by big companies. They obtained a great deal of that land, the even sections, by scrip, he thinks. These settlers in there raise a little stock, and hay, and garden, and some fruit, commencing to raise fruit, it is a good fruit country, they expect it to be good for fruit in there. In his opinion, if this land was divided into one hundred and sixty acre tracts, it would, on the north side, average about what he has stated the general average of plow land is in that area. It would not, however, in this one township, that would be spotted, that township would

not go more than one-four, if it would go that, but the other townships, the one above it, that is past the railroad limits, but one would make a hard climb to get up over the river on top, and after one would be on top, if the road was cut out there, for three miles at a stretch, one could run an automobile through the country, it is practically level after one gets through there. That is good country when it is logged off. That is the best belt of timber there is on the McKenzie river, and is claimed to be the best belt, and is where one could run the automobile. If the trees and logs were cut out, an automobile could be run in that country through three miles of his trail. The way he puts it, it is not steep enough to stop them. But that is back away out of the railroad limits, and is very heavy timbered, and is east of the grant, extends beyond the limits of this grant. The railroad grant only runs to the center, or hardly to the center, of township 17, range 3 east. There is a railroad section which joins a piece of his land there on the west. It was a timbered piece he got. His homestead was in 16-2, and this piece was in 17-3. He had his homestead seven years before he got title to it, and sold it to lady whose name he cannot recall. There was a lady who came here to Portland, and sent some man out to get big pieces of timber in there, and she got it, but he could not call her name at the present. She was from the East somewhere, he thinks from Michigan. He believes it was Mrs. Potter Palmer of Chicago, Illinois —he would not be positive, but he thinks that is the name. She bought lots of timber there.

Whereupon, upon cross examination, witness testi-

fied, that he was paid as Fire Warden for the McKenzie Timber & Lumber Company, as they called themselves. They were Chick, Morton and Lewis, three or four of them, he cannot remember them, but they belong in Michigan, and part of them in Portland. They have, in township 17 south, range 4 east, 16,000 acres of these timber lands up in that country. They bought homesteads, they bought them and people deeded them to them and moved away. They sold them out to them. He presumes they were buying them for the timber. There were a good many of them, these homesteaders, who were young men, and quite a number of them were not. But those who had families were the same as he was when he held his down, he supposes. He had a family. He sold his land to this lady he was speaking about, to Mrs. Potter Palmer, and got two thousand dollars. He sold his land twelve years ago, but has forgotten the date. His homestead was in section 10, township 16 south, range 2 east, and was the northeast quarter of section 10. His nearest postoffice was Vida, about five and a half miles away. Vida is a stage station. There is a stage which runs up the McKenzie to Blue River, and also from there to the springs. This was a stopping place for them to take dinner, change horses, and so on, referring to Foley Springs. Blue River is the point that they all call it, Blue River stage, and when they get to Blue River, there is another stage which runs from that to the springs. They cannot make it in a day, so they change there and come out after night with the last drive. That is all timbered country

up through there, except in township 16 south, range 2 east, and was all heavy timbered country until this fire ran through it. That timber was burned when he came to this country and they claim it was burned about fifty years ago. There are young firs just in spots, in little creek canyons, there are streaks of fir growing up, and around the edge of the heavy timber there is fir growing up, but there is not all over. He does not know the reason why it does not seed with fir all over again. They do have fires in this burn occasionally, different parts of it. It was one of the great dangers that as a Fire Warden he had to guard against, that of fires being set in this dry burn, and then he had to stop them before they got to the main timber or they would cause them lots of trouble. Young fir timber grew there once, and it certainly would again if they would let it alone, if the fires were not set out, he thinks. These fires are from hunters and from travelers and from campers mainly, and fishermen up that river. He entered a timber claim there in township 17 south, range 3 east, and paid the Government so much an acre for it, under the Timber and Stone Act, six years ago. He thinks he got title to it under the Timber and Stone Act, in about a year and a half. He did not live on it at all, he had to go and look at it. He went all over it, took two men as witnesses, found the corners, had it cruised or estimated, and it has been cruised now by other parties twice since that. He owns it yet. It cruised about four million feet fir timber, good saw timber, and he supposes it is worth four thou-

sand dollars. His daughter bought some timber, and her husband had several pieces of timber, he got killed, and that left it to her. Her husband was a timberman, worked in timber, always had ever since he was a boy, and he had a pre-emption piece, and a homestead and timber claim piece, all timber. He does not know what they would run, those three quarters. One of them, he believes, was cruised last week and they cruised it at eight million feet. That was a good fair piece of timber. That was a piece he took under the Timber and Stone Act. He took that, he thinks, seven years ago. He does not know when he took his homestead, but he took it before that, a good while before that. It was not adjoining that, but was over in another township entirely, in a timbered belt. It is all timber up there, they have to take it in the timber if they take it. The rush for timber, to get timber land, occurred about 1894 and 1895, and it continued and has been pretty active until the last two years when it has been rather quiet. It was pretty active about 1906 and 1907. He could not state the year when the Booth-Kelly Lumber Company went into that country and started their sawmills. He was right there, but he does not know exactly, but it was about twelve or thirteen years ago. He does not know that after they bought up extensively and began to manufacture lumber and ship it out to California and east, timber had a better demand. He doesn't know that that cut any figure with it, because what little they cut didn't cut much figure with the price of timber. These companies that came in is what raised the price of timber

and made it active. He thinks Mrs. Potter Palmer, who bought his timber, had a considerable number of acres up there. He thinks right there in that locality she bought about two thousand acres. There are no government quarter sections there until one gets into the reserve. The timber and everything is taken that is worth taking, practically all but the railroad land, it lays there. In his judgment, the best quarter sections of this railroad land up there today, counting the timber and everything else that goes to make up a valuable quarter section, the best ones are worth anyway five thousand dollars, if one would go to pick any of them out, to the quarter. These railroad quarter sections, take it over those townships that he beat through there, that he went through so much, they would average three million feet anyway. He has not done a good deal of logging, not very extensively, he logged for seven years. He logged by contract. He had a team and put in logs for so much a thousand. He raised his hay to feed his horses when he was logging. He raised his hay on a piece of land right there where he lived, near Walterville. Walterville is quite a little village, has a store, blacksmith shop, postoffice, drug store, two hotels, two big barns that keep travel, and there is quite a lot of people live there in the town, and is sixteen miles from Eugene, on the stage road to Soda Springs and Foley Springs, and there is lots of travel there in the summer time. Those places are mountain resorts where a great many people go constantly. People come in there from Kansas City and spend the month of August, from San

Francisco, and come from everywhere, all over. It is a wooded country where they hunt, fish, and have a rest. It is good fishing and there is good water. He lived down near Coburg when he farmed, in a part of the valley which has been settled a long time. He came from California to Oregon, but was born and raised in Iowa, came to California, and from there to Oregon, and is now living in Springfield. He is Fire Warden, and then goes through the woods, hunts and traps, and so on, through the winter season, and he might be said to be a woodsman and timberman. He has been in the woods the biggest part of his time for twenty years, all over those townships that he showed, and has been all through them in all directions.

Whereupon, upon redirect examination, witness testified, that his homestead was in section 10, the northeast quarter of section 10, township 16, range 2 east, right north of Vida, on the headwaters of Gate Creek. His daughter's timber was located in sections 10 and 24, township 17 south, range 3 east. She had two pieces. It was within the limits of the railroad grant—both pieces. These settlers, some of them farm extensively —big farms—and others again are what they would call new comers, and haven't very much grubbed out yet, but they are at work on it right along. He couldn't state what they would average, he means back on the foothills. They have settled in township 16 south, range 2 east, since this grant was made. The government land in this burn is practically all taken, there is probably a piece or fraction occasionally that is not. They have

built houses on them, have cleared out patches, some of them not more than one acre, and some of them ten or fifteen acres, back for three miles from the river. They are comparatively recent settlers in this burn. They have been there—some of them have been there ten years, and some of them haven't been there only the last three years—it has been settled up, more extensive settlements have gone in.

Whereupon, upon recross examination, witness testified, that he had cleared about three acres on this homestead, and he cleared that three acres the first two years he had it, and then that was all the clearing he did. He did not reside on the homestead all the time. He had a family, and in school months he would have to come out of there. There was no school. He would come down to Walterville where there was a good school, fifteen miles from his homestead and would go up in the summer time and take his wife and children and spend the summer up there, and raise a garden, and when fall came on they would move back to Walterville. He did this every year, but he always got a permit. He did not get this permit as much to enable him to make a living elsewhere, but it was to get out to the school. He got the permit from the officials of the government, the local land office. They would give him permission to be absent from his quarter section. He could be away six months at one time, if he wished. He kept that up for seven years. He kept that up for five years. He was in there on the place, back and forward still, on still afterwards, after he did prove up. He had no trouble in

proving up, he had no contest. The other homestead entrymen up in that country, some of them had families and did about the same way he did, some of them would have to come out of there, there were not enough of them to get a school in there and they would have to come out.

Q. These single men that went up in there, and took homesteads and then the lands afterwards turned up, on commuting or on final proof, sold to these timber companies, how did they manage their settlements—these single fellows, how did they do?

A. Well, they would just go in and out now and then, do a little work and come out, and be gone and go back.

Q. I have understood that a good many of those young fellows were sawmill hands, and young fellows from the towns, that they would go and file on a good piece of timber-land, and put up a little shack of shakes, and put a bunk in there, and take a few canned goods out, and a little bacon, and stay a night or two, and then in the spring put in a little garden, sow a little stuff, and then go away, go back home. Is that the way that was done by a lot of those single fellows?

A. Well, no, not at the time I was holding mine, there was none of those sawmill boys or anything of that kind in there. There were settlers, and men that came in there off of ranches in the valley, and one place and another, and take them up as a place, young fellows.

Q. And then would go back to the valley?

A. Yes, sir.

Q. Well, now, as a matter of fact, don't you know, Mr. Withrow, that people, after this timber rush as we call it, went from Salem and Albany and Eugene and all around?

A. Oh, yes, I think they did.

Q. And undertook to enter these lands in the best way they could, some of them under the Homestead Act and some of them under the Timber and Stone Act, so they could get a quarter section?

A. Yes, I guess they thought they was entitled to it.

Q. And they made a form of complying with the Homestead law?

A. Yes, sir.

Q. Where they didn't take it under the other law?

A. Yes.

Q. And they kept up their business at home in the towns, until they finally commutted?

A. Yes, sir.

Q. Isn't that the fact?

A. Well, there wasn't very many of them commutted.

Q. They generally saved their $2.50 an acre?

A. In Cleveland's administration, you know, there wasn't enough money for a young man to get hold of

to commute.

Q. I understand times were pretty hard during that time.

A. I think so. I found it out so.

Q. So they had to stay their five years?

A. Yes, they had to stay it out.

Q. Well, they stayed it out by going up there every six months, and then getting money working out, and finally got their patents?

A. Yes, sir.

Q. But you cannot do that now? You have got to comply with the law?

A. Well, one reason you cannot is there ain't any timber to take in that country.

Q. If there was plenty of timber, they would do the same thing?

A. They would be foolish if they didn't, if they could get it that way.

Q. They have got it that way, a good deal of it?

A. Well, that is the way you have it figured out.

Q. Is that right, Mr. Withrow?

A. It is with some of them, but I don't know as the majority would go that way, but there was now and then in that timber entering business we had a fraud occasionally, as well we do in everything else.

Q. I know, but they didn't think that was a fraud?

Wasn't that the custom of the country?

A. Well, not entirely, no. They didn't want to beat anybody, only some of them—

Q. That was the custom of the country at that time?

A. It seemed to be. It was a rush for the timber anyway.

Q. That is right?

A. Yes.

Whereupon, upon redirect examination, witness testified, that these people who were living in there who made their homes there for from ten to twenty years, acquired title to the land and those that have been there that long have not only homes they have made a living on, but they made a little money. They acquired their lands by homestead, lived up to the requirements of the Government laws. These men, who made a pretense of residence on the homesteads and then selling to timber companies, not living on them as he did, after they got the title, there was nothing in there for them, and they stayed out where they could get work. Now in that country, there is not a road in it back in there, only trails, pack trails, and so on, it is not fit for a fellow, really, to live, without enough of them would go so as to make a road out, to do something. Several years ago the railroad company sold some few pieces in that locality to settlers, in the vicinity of these lands that he is speaking of. It must have been ten or twelve years ago that they sold it. These people who bought from the railroad com-

pany used the land according to the location of the land; some of them would buy it for the timber that was on it, he supposes, and others bought it for homes. There are a good many of them who bought forty or eighty acres from the railroad, that was in those burns, and even where it had quite a little timber on it, and slashed it off, and made them good homes, and lived right there. That is what one at present might term a remote region. The nearest railroad is at Springfield, down in there it is all the way from twelve to twenty miles to a railroad.

Whereupon JAMES W. KINMAN, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty years old and lives two miles from Mabel postoffice, Lane county, Oregon, and has lived in that county ten years. He has a ranch, is a farmer, and has been engaged in farming on the same place in section 28, township 15 south, range 1 west, ever since he has been in Lane county. He has eighty acres of good land which, in its native state, was timbered land. Part of it was logged off after he got it, and part of it was logged off before. It had been slashed and the timber burned and cleared out. He does not know how long the man had lived on the place before he got it. It was patented land. The man that he bought of took it as a homestead. Witness sold the timber that he took off of the place to the Hyland Lumber Company. He applied in 1905 to the railroad company to purchase one hundred and sixty acres of land in section 21, which joined his land and he wanted to make a ranch out of it. He does not know what was done with his application, he

never got an answer. He wrote to the Southern Pacific Land Office at San Francisco, California. He is familiar with the business of farming in the vicinity of his land, and in that part of Lane county in which he lives. They raise grain for hay, oats, vetch, cheat hay, clover, fruit, all kinds of vegetables, garden truck, and the soil is productive. Mabel is shown on "Defendants' Exhibit 259," and is right where he lives now. That is where he bought there near the postoffice as it was there at that time, but they have changed it down to the mill now. The green markings on this map, he understands, represent the unsold lands of the Company, and the blue represents lands that have been deeded. He is acquainted with these lands from Shotgun Creek, shown on this map, and he has been all over that township to the fork of the creek, what they call the forks of the Mohawk, from the summit down, both on this side, from what they call Mt. Bunker south of Mabel. He has been over that area, about four miles up to the summit, what they call the summit, between the Calapooia and the Mohawk, and is acquainted with the lands there, that is on the north side of the Mohawk, and on Shotgun Creek, which runs through township 15 south, range 1 west, and he has been pretty well over this country, pointing to the northwest portion of township 15 south, range 1 west, on the north side of the Mohawk. He is acquainted with that territory west of Shotgun Creek, but was never back in that country but once, north from Mabel, east from Shotgun Creek, that would be the northwestern portion of township 15 south, range 1 west, as shown

on this map. He is acquainted in township 14 south, range 1 west, down to the summit. There is a very small portion of railroad lands in that township. Township 14 south, range 1 west, is beyond the summit and he hasn't been there. He has been up what they call the east forks of the Mohawk, perhaps ten miles from Mabel. Section 29, township 15 south, range 1 west, half of that or more, in his opinion, could be rendered suitable for cultivation; section 19 is rather rough and broken after one gets back away from the creek in section 29, half of that or a little more, and in 19 there would be perhaps about one-fourth, that could be rendered suitable for cultivation. All this land with which he is acquainted, from the Shotgun east to what they call the summit, between the Mohawk and the Calapooia, what he has been over and noticed, if it were cleared off would be half so that could be farmed. There are settlers, people engaged in farming, in section 21, but back of that there are none. Similar lands are farmed in that general community, and the same averages would hold good if the lands were divided into one hundred and sixty acre tracts.

Q. In your opinion, Mr. Kinman, what has been the effect of the railroad's policy in handling this grant, failing to fulfill the conditions by selling the land to actual settlers in 160 acre tracts at $2.50 an acre—what has been the effect, if any, upon the development of this community?

A. It has kept settlers out.

Q. By settlers, what do you mean?

A. Why, people would have made homes out of it, if they could have gotten it.

Q. Do you mean engaged in farming there?

A. Yes, sir—orcharding.

Q. Now, the settlers that are over there in that country, Mr. Kinman, how have they developed their land? Just describe it.

A. Well, there is two families living on 21, been making good livings, and there are six families of us living in 28, and that is south of 21, and east of 29.

Q. Have they been earning their support from the lands that they had in these sections?

Whereupon witness testified that these settlers had lived there ever since he had been there. There is some pretty good timber on section 21, and there are open, fairly open ridges, and some swamp, land covered with hazel brush and small stuff in these lands in sections 21 and 28 that he has mentioned. This area he has described is, part of it, heavy timber, and then there are open countries in there. He does not know what it would run. He never cruised them and does not know as to that. He came from Iowa.

Whereupon, upon cross examination, witness testified that section 21 is a railroad section, and there are

two families living on that section. He thinks they bought the title from the railroad company. They were living there when he came there, he thinks one of these, Van Meter has eighty acres, and Smith has one hundred and sixty acres, but he does not know what they paid for their land. It was before he came there. He understood Mr. Smith to say that he had about forty acres of his hundred and sixty acres cleared, and the other man has twenty or more acres cleared, by cleared he means ready for the plow. These people had four or five head of cattle. At present, he has only one pony on his place. He has been in the cattle business some up there, he has been keeping them on his place—had fodder. His place is all fenced, and he does not avail himself of the outside range, but some of his neighbors use the outside range. They raise up there to sell, potatoes, garden truck and apples, they have a market for this at the sawmill, it is the Coast Range Lumber Company now, it used to belong to Hyland Brothers, but it has changed hands, also a mill at Wendling. It is not a great ways to Wendling. The place there at Hyland is now called Mabel—there are thirty or forty houses at Mabel, and working in the sawmill when the mill is operating, there are at the present time about a hundred and fifty men. They are rebuilding a big mill at present. They have not been running steady for the last two years. They ship their lumber out by railroad, the Southern Pacific Company Railroad comes up what they call Hyland siding, and the Coast Range Lumber Company has its spur road up to the mill and its woods. That is not the railroad that

is building over from Natron to Klamath Falls, but is a branch. That whole country there is pretty much a timbered country. Going to his place, he does not go to Wendling. He first reaches the valley land, about a mile below him, on the Mohawk. He does not know how long the Mohawk has been settled with Donations and early settlers. The settlers were there when he came, long before he came. He never took a homestead in this country and never entered any land under the Timber and Stone act. He bought his eighty acres from a man who had a patent from the United States, and paid nine hundred dollars for the eighty acres and, in his judgment, it is now worth thirty-five hundred dollars. This unsold railroad land that adjoins his, taking it as a whole, by quarter sections, timber and all just as it stands, he does not know what it is worth, he is not a timber cruiser, there is timber on this in places, and part of it is saw timber. He does not know about how much those timber lands run in timber, per quarter section, on an average, he never cruised any. Not having any experience in cruising, he would not know how much timber was on a quarter section of this railroad land, but there are patches of heavy timber, and then there are open places, and the land in section 21 would be worth more if the timber was off than the timber would be worth. The timber and brush keep grass from growing. He means that if a man owned the land, it would be better for him if there was no timber on it, if it was cleared land. If the timber was off, it would be worth more for everything than it is with the timber on it—the land would be worth more.

He could probably sell the land today more for the timber than for the land, perhaps, as there is timber on it. There is a demand for timber. Principally on the south part of it, this timber is second growth, on the northwest part of section 21, it is bigger timber. By second growth he means limbs, small timber, timber that has not reached its full age. Second growth is not old growth timber. There is smaller timber, from little stuff up to two or three feet in diameter. He does not remember the largest fir tree in diameter in that country of which he knows, but he expects that some of those fir trees are six to eight feet in diameter, and there are several that would be as much as six feet where they would be cut off at the ground. When they are cutting this timber for logging purposes, they do not cut them right down at the bottom, sometimes they cut them as high as one's head, six or eight feet high, and use a spring board to stand on to saw, and they learn how to saw so that the man on the spring board can protect himself when the trees fall. That is the way these timber men manage to cut these trees down for logging purposes, and that is called "standing the spring board." They know by the shape of the cut what slope to give it to make the tree fall in a certain direction. He had done that kind of work, but most all of the farmer boys in this country have not done that kind of work. There are lots of them that live in that timbered country who do not work at it, lots of them do not work much at anything. He applied for one hundred and sixty acres of this land in section 21 about 1905, wrote to the company

to know what it wanted for it, and if it would sell it, and he addressed his letter to the Land Department of the Southern Pacific Company in San Francisco, California, and got no reply. "Q. You never applied to purchase any of this railroad land under this Act of April 10, 1869, where this $2.50 an acre business is being used by people who apply for lands. A. No, I just wrote to them to see if they could sell, or what I could get it at." As a farmer, he wanted to buy it and wanted to pay and would have paid a reasonable price, what he thought was right.

Whereupon, upon redirect examination, witness testified that the land, this piece of land that he was speaking about, would be more valuable than the timber and would be better with the timber off, and if a man should purchase that land, the best proposition, the best way to handle it, would be to sell the stumpage and keep the land. That was the land he applied to purchase and that he wanted for farming, and he intended to clear it up and make a ranch out of it.

Whereupon, upon recross examination, witness testified that he intended to sell the stumpage or get the timber off and sell the timber for whatever he thought was right, and then burn it over and seed it to grass the first year or two, and work it up that way. At that time he could have gotten for timber stumpage, per thousand feet, about fifty cents, and he estimated that the timber stumpage would bring forty to fifty dollars an acre, perhaps, taking it on the whole hundred and sixty acres.

Q. Well, if you could have got that at $2.50 an acre and then sold the timber for $40 or $50 an acre, you would have made a pretty good thing, wouldn't you, and had the land left?

A. Well, I would rather have had it with the timber off; if it had been cleared, it is worth more.

Q. You would have made a pretty good thing, though, wouldn't you?

A. I wouldn't have made such a great thing after paying the price to get the stumps out and the logs all off.

Q. No, but if you had just stopped, and hadn't put the money back into the ground, you would have made the difference between $50 an acre and $2.50 an acre, wouldn't you?

A. Well, there would have been some difference, yes.

Whereupon, upon redirect examination, witness testified that he had lived in that community ten years, and during that time the railroad company had sold lands up in that section. Louis Van Meter bought a forty in section 21 since then, that is all he knows of in there. He does not know of the company selling to any other people who desired lands for farming purposes. Booth-Kelly Lumber Company owns a good deal of land in there, but he does not know whether they bought it since then or before.

Whereupon, upon recross examination, witness tes-

fied that Louis Van Meter sold his forty that he bought from the railroad company sometime ago to a man for orchard purposes for eight hundred dollars. There was not very much timber on it. Van Meter paid something near four hundred dollars, he thinks, but he does not know.

Whereupon, upon redirect examination, witness testified:

Q. Mr. Kinman, if the Railroad Company have only a $2.50 interest in this land, and are permitted to keep it and sell it at the increased price, they would make the profit?

A. Yes, sir.

Q. Off the land just the same as the individual would make the profit?

A. If I had bought it and I had sold the timber, yes.

Whereupon F. M. WILKES, a witness called on behalf of complainant, being duly sworn, testified, that he is thirty years old and has resided in Corvallis, Oregon, since 1907. He is county engineer of Benton county, and incidentally surveyor in the employ of the Government during the field season. He is acquainted with the farming business in Benton county to a limited extent. He has never farmed in that county, but was raised on a farm in Washington county. Exactly the same conditions do not exist in the two counties so far as farming is concerned. Washington county is a rich county and has a different soil entirely. Benton county is very spot-

ted, has more of a spotted soil, and he would say is not so productive. However, Benton county seems to carry off the blue ribbon in the state exhibits. His business as surveyor and engineer carries him to the homes of farmers and he has had an opportunity to observe them largely, that has been his business since 1908. He was elected to the office in 1908 and has occupied it continuously ever since. He notices that Corvallis is marked on "Defendants' Exhibit 259," and that the green markings on that map indicate the unsold lands of the Oregon and California railroad land grant. He is intimately acquainted with more or less of these unsold railroad lands. Once in a while, there is a small river lot in through there (pointing to map) and he is more intimately acquainted with that than he is with the lands farther out. Most of this land in here (pointing to map), he has been in contact with, one time or another, surveying lands around near it. In township 14 south, ranges 5 and 6 west, he thinks there is a small amount of land, that is in here, Bellefontaine, Glenbrook, Monroe, country in through there—there are small amounts of lands that are within that area, those townships, 13 south, ranges 5 and 6 west, that he is fairly well acquainted with. Township 12 south, range 6 west, he believes the biggest part of that is in the Wagon Road grant. He notices the yellow markings which represent lands that were lost to the grant by reason of prior grants and entries. In townships 10 and 11 south, ranges 5 and 6 west, he is pretty fairly well acquainted. He never had any occasion to work in range 7, the west half of 6 and

7, through township 10. Benton county begins in township 10, near the north line of 10, and continues to the north line of 15, below the south line of 14. He is not very well acquainted with the west parts of those particular sections, or particular townships, from township 10 to township 14, ranges 6 and 7 west. From 10 to 14, townships south to range 5 west, there are a few isolated tracts in there, all those are desirable farm lands, at the present time these lands are covered with more or less of river bottom growth, fir, white fir and ash, maple and kindred river bottom, typical river bottom growth, and that would be very desirable for farming lands if opened to entry, he would think. Similar lands to those are farmed in that district all around. They are fractions which have been left, legal subdivisons which are left, after the donation land claims were taken up, and are small, usually very small fractions that lay contiguous to the donation land claims, and in no instance that he knows of in those particular townships stated are they more than small fractions of fifteen or twenty acres, along there—very small—but when one gets over in from townships 10 to 14 in range 5, which is all within the grant, there are very few only isolated tracts in those townships. They would be all suitable for agricultural purposes, and they lay within the bottom and on the lower foothills. From township 10 to township 14 south, in range 6 west, one is beginning to get out in the end of the foothills, or into the more mountainous country, and the agricultural lands in that range of townships embraced within the boundaries of the county would

probably average 50 to 60 per cent that could be cultivated to advantage. In range 7, from township 10 to township 14, he has not as accurate knowledge of that, as he has of the other, for the reason that it is mostly timbered and a great deal of it unimproved lands, and he has not had occasion to be in it a great deal. But from the observations that he has made in through there, a lower percentage would be available for cultivation, not over one-third. He has not the acquaintance with that land that he has with the land further in the valley, for the reason that there is not nearly as much surveying within that particular part of the country as there is out in the valley. That covers the lands with which he is acquainted in Benton county. If divided into one hundred and sixty acre tracts, this average would generally prevail, with the exception of probably a few isolated cases that it would not, perhaps, due to the locality of the country, steep hillsides, or something like that—more or less. He believes that it would, though, throughout. Lands similarly located and situated, with similar soils, are used for farming purposes successfully in that locality. There are farms more or less all through them. He knows the general character of the country there, as one sees it from Corvallis, looking west both in a northerly and southerly direction, and can see well up on to the summit of the Coast Range there. One can see the lower foothills, the outer foothills ranging back four or five miles from the main part of town there, and beyond that one cannot see but very little of the Coast Range, in fact, one cannot see any of the summit of the

Coast Range along there at all, only in special cases like Mary's Peak, or some of those high range peaks, some of those high points. A person standing in Corvallis can see, in that timbered country there, on the east slope of the Coast Range, here and there patches of cultivated land, with grain growing, that is true to the northwest. The land to the west is up Mary's River, and that is within the boundaries of this Wagon Road grant, and outside of the O. and C. grant, but that is mostly donation land claims. They were taken up there in the early fifties, donation land claims were, and, of course, they are more or less cultivated all through. That land on either side of the railroad, as one goes to Yaquina Bay, a large part of it has been burned over. After one gets out beyond Harris, the little station of Harris on the Corvallis & Eastern, beyond there it is more or less burned over, it has been burned over for a number of years. That land is of the same general character as the land north and south of it, excepting for the fact that the timber has been burned off. They are now selling that burned over country, and people are going in there and making use of it to quite an extent. Those farm lands are pretty extensively taken up.

Q. Don't you remember that somebody bought that wagon road grant and has been distributing it in small tracts to settlers?

A. Yes, they have been selling it out of late years, to settlers all through there, and there is a good many

settlers in there.

Whereupon, upon cross examination, witness testified, that he was born at Hillsboro. These foothills west of Corvallis four or five miles were pretty well taken up into the hills under the Donation law, and then there was a fringe of fractional railroad forties, twenties and eighties in the foothills just back of that adjoining these donations. Within the valley the donation land claimants were allowed to take up their donation land claims in any shape, and the result was there were a number of fractions, and some of them were not appropriated, he supposes, at the time this grant was made. Most of the lands in the foothills, inuring to the company under this grant, within a range of four, or five or six miles from Corvallis, have been sold a good many years ago to these farmers. There are only a few isolated tracts in there, just small tracts. When one gets further, back seven or eight miles from Corvallis, then one begins to get into the railroad lands, and some that have timber on. One begins to get into the heavier timbered country, with the exception of this burned area, which he believes is principally covered by this Wagon Road grant, and that was at one time timber land. He believes that Mary's Peak is four thousand feet, something like that, in elevation. Corvallis is a town with a population of nearly five thousand, and is the seat of the Oregon Agricultural College, formerly a college maintained by the South Methodist Church. It is only within comparatively recent years that it has become a state institution. Corvallis has been a town, and

is an old settled community from as early as the fifties, and he thinks that it was a little earlier than that. It is at the mouth of Mary's River, at the junction of Mary's River and the Willamette, and he thinks the railroad was built to Corvallis about 1879, that is further back than his time, but it is a long time anyway. The road known as the Corvallis and Eastern has been in existence from Yaquina Bay and through Corvallis on east beyond Albany for more than twenty-five years, it was probably that long anyway. It was first started as the Oregon Pacific, or its predecessor, by Colonel Hogg. The road went into the hands of a receiver at one time and was sold for about $100,000, he knows that is its history, it hardly paid its receiver's certificates, it did not pay anything. As far as he knows, these railroad lands, up to 1905, were being sold to whoever wanted to buy them. He had never had any occasion, had never heard anything along that line, never had any interest in railroad lands, for the reason that at that time he was going to school. There is a large body of railroad land belonging to this company which remains unsold in Benton county. He has never read any statistics of the amount of land that there is in there. He has never cruised any of these lands, not any of this land grant. He has cruised considerable lands in the county, has done cruising at one time and another for the county for assessment purposes, but never cruised any of these railroad lands for assessment purposes. They were already cruised for assessment purposes, the timber lands, before he went into office, practically, so that he would not

make an estimate on the time that it was cruised. When the timber became an object of merchantable transaction, the county began to consider about getting it cruised so as to tell how to assess it. He thinks that a dollar a thousand is probably the stumpage value of these timber lands at the present time. He has not heard of any timber being sold in Benton county for quite a long while, but that was the prevailing price at the time that he knew anything of it. A good timber quarter in Benton county will run from two to eight or ten millions to the quarter, there is very little that goes ten million. He would say probably the average of timber lands in Benton county would not be over three or four million a quarter section. He has never applied to purchase any of these railroad lands and he has never taken a homestead. He has never used any of his rights whatever.

Whereupon, upon redirect examination, witness testified, that this railroad that was constructed from Yaquina Bay easterly through Corvallis and Albany on to Detroit, in the Cascade mountains, was purchased by A. B. Hammond, he believes, and he understood that one of the conditions of the sale was that he was required to reconstruct the roadbed and the bridges and ties, and put it into shape for operation. He does not remember who bought it from Mr. Hammond, after getting it into operation. The Southern Pacific is the supposed operator of the road, but the Corvallis & Eastern Railroad Company, he thinks, has the control, that is, that is the corporate name of the company, he thinks. He thinks that it is a subsidiary company, but the name and corpora-

tion of the Corvallis & Eastern, he believes, is preserved. It is operated as part of the Southern Pacific system of railroads, that seems to be the general opinion. He does not know what they paid Mr. Hammond. When he says that Mr. Hammond bought this railroad, he means Hammond and some of his associates, Hammond was probably the main man in the deal.

Whereupon, upon recross examination, witness testified, that he believes, if he is not mistaken, that Hammond operated the road as the Coast and Willamette Valley railroad first. He thinks that when Hammond sold it, it was then organized under the name of the Corvallis and Eastern, which now operates it, sells tickets and handles it. He understands that it is a subsidiary company, and a part of the Southern Pacific system. The summer business is pretty good to Yaquina Bay, there is fair travel over the road all the time, fair passenger business, there is not a great deal of freight business, and never has been, so the old timers tell him, any freight business over that road since the time that Hammond bought it up. Hogg tried to make a port at Yaquina Bay, had a line of steamships in there at one time, but he does not know that the expense of operating the steamships broke the road.

Whereupon, upon redirect examination, witness testified, that he had been out east from Albany up to Detroit, a few times, but he would not say as to the business of the Corvallis & Eastern there. He does not believe they do more business there than they do on the

west end of the road. They do more freight business, possibly, but he would not say that the passenger business was as much, he does not think it is, a good deal smaller trains run anyway. That road is the connecting link between Corvallis and Albany, and is practically the only railroad connection in there at the present time. The Oregon Electric is coming in now, but the rails are not laid that far west yet. It crosses the Willamette River at Albany.

STIPULATION.

Mr. Townsend: It is hereby stipulated that R. G. Balderee, if called as a witness, would testify that he has been a resident of Oregon for more than twenty years, living most of the time in Lane County; that he is familiar with the lands in Townships 16 South, 1 and 2 West; 17 South, 1 East and 1 West; 20 South, 1 West, and 21 South, 1 West, in Lane County; also Township 14 South, 7 West, in Benton County, and Township 8 South, 7 West, in Polk County; that he has done considerable cruising in those districts. He will further testify that, of the lands in 8 South, 7 West, 50 per cent could be subjected to cultivation after being cleared of timber and the stumps removed; that of the lands in Township 14 South, 7 West, 65 per cent could be cultivated after the land is cleared by the removal of the timber and stumps; that of the lands in Townships 16 South, 1 West and 2 West, 80 per cent can be cultivated after the timber is removed and the stumps taken out; that of the lands in Townships 17 South, 1 West and 1 East, ap-

proximately 50 per cent can be cultivated after the land is cleared of its timber and the stumps removed; that of the lands in Township 20 South, 1 West, approximately 70 per cent can be cultivated after the timber is removed and the stumps taken out; that of the lands in Township 21 South, 1 West, approximately fifty per cent can be cultivated after the timber is out and the stumps removed.

His general testimony as to the character of the land and the stand of timber, and other facts and circumstances upon this general subject, would be substantially the same as the testimony of O. J. Lawrence as to Lane County; and the same general testimony would apply to his judgment as to the lands in 8 South, 7 West, and 14 South, 7 West, except as to the quantity that could be cultivated.

He would further testify that he is the R. G. Balderee mentioned in the bill of complaint who made application to purchase a quarter section of land in Township 20 South, 1 West, along with O. J. Lawrence, and that the general circumstances under which his application was made, settlement was made and maintained, and other circumstances relating thereto, are substantially the same as in the case of O. J. Lawrence.

Mr. Fenton: Counsel for defendants consent to this subject to the objection that the testimony, or part thereof, is incompetent, irrelevant and immaterial, and other objections made to the testimony of O. J. Lawrence; it not being intended to admit, of course, that the testimony

is true.

Mr. Townsend: And it is stipulated that the present offer shall have the same force and effect as if he had been called, sworn, and testified, and objections had been interposed as stated by counsel.

Mr. Fenton: It may be so understood.

STIPULATION.

Mr. Townsend: It is further stipulated that E. C. LAKE, if called and sworn as a witness in this case, would testify that he is one of the parties who made application to purchase land in Township 20 South, 1 West, and was made a cross-complainant in this present suit; that the testimony of Mr. Lake as to the character of the land in that township, and its susceptibility to cultivation and settlement, would be substantially the same as the testimony of O. J. Lawrence, excepting that the knowledge of Mr. Lake extends only to that one township, and not to the other lands referred to in the testimony of Mr. Lawrence; and Mr. Lake would further testify concerning his application to purchase, settlement, residence, improvements, and other details connected therewith, substantially the same as the witness O. J. Lawrence.

Mr. Fenton: And his cross-examination would develop substantially the same state of facts.

Mr. Townsend: Yes.

Mr. Fenton: It may be so stipulated, subject to the objections made to the previous testimony.

Mr. Townsend: Subject to the objections made as to the offer of the testimony of R. G. Balderee.

Whereupon C. W. MARIELS, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-one years old, and lives in the town of Gooch, a sawmill town in Linn county, Oregon. There is a sawmill and shacks there, and a postoffice, that is all. His father moved into Linn county in November, 1884 or 1885, he is not sure which, and his father lived on section 26, township 9 south, range 2 east. The house stands in the southeast quarter of the northwest quarter of section 26. His father took up a homestead there of practically one hundred and seventy-six acres. It was a fractional quarter section that ran more than one hundred and sixty acres, laid down on account of the donation land claim up against it. His father was the original entryman on this homestead. It was heavy timber land, brush and timber. His father has been dead since 1888, and the land belongs to his brother and himself. His father was a carpenter, he had been a farmer all of his life until he came to this country, that is, he had farmed, but when he came here in his early days he had learned the carpentry trade and went to carpentering, and took that land as a homestead, went on to that land there after he had been there something like three years. His father farmed that homestead, and when he died had about six acres under cultivation, and took his family there, about ninety days after he filed on it, died on the place. Witness lived in Salem part of the time while his father lived on the homestead. He had business there,

had cattle on the place all the time, and was backwards and forwards, and has lived there, he might say that had been his home all the time since then, right in there. His father raised hay, vegetables, fruit, and had stock there and made his living right on the place. His father had less than fifty dollars when he came here with his family, and had to go in debt the first winter for his living, after that he worked out in the neighborhood, and the like, and at the time he died was out of debt, and had made his living on the place. He is and ought to be acquainted with the farming and products of the soil in this general vicinity of Linn County, as he has lived there the greater portion of his life in that community. Referring to "Defendants' Exhibit 259," he is in what would be called Fox Valley, which is the postoffice there, and is about six miles east of Mehama. Mill City is marked in there but he is on the Linn County side, he is six miles east of Lyons, and is acquainted with all this country in there, and has been all through all of that country there, clear east to the summit. He has not been north any further than the divide between the Little North Fork of the Santiam that runs through Elkhorn and the Molalla, on the extreme eastern limits of the grant. He has been up in here quite a distance, probably six to ten miles from the Little North Fork, from Elkhorn, from here on up, in township 8 south, range 2 east. He has been east clear over the mountains, clear into the Three Sisters into Eastern Oregon. He is not acquainted with the lands in township 8 south, range 1 east, but has been in township 8 south, range 2 east, has been

through that district, and in township 9 south, ranges 1 and 3 east. He has been through township 8 south, range 3 east, but is not much acquainted through there. He is acquainted with township 10 south, ranges 1, 2 and 3 east, and has done some locating in and is acquainted with the lands in township 11 south, range 4 east. None of the lands in township 11 south, range 4 east, are included in the grant. He has been through that country all south of that, but as far as being acquainted is concerned, he is not. He has been pretty well through the mountains. The lands in township 8 south, range 2 east, would not run over 25 per cent that could be cultivated, that is in the mountains, and it is rocky country in there. The lands in township 9 south, ranges 1 and 2 east, will run 75 per cent, and township 9 south, range 3 east, will run from 40 to 60 per cent, along there, and township 10 south, ranges 1 and 2 east, will go probably 50 per cent, a little the rise of that, and township 10 south, range 3 east, will be up in the mountains again where it will probably go 40 to 50 per cent. He has done lots of hunting through that country, some locating and acting as guide, and has done some cruising. He hunted through that country and has been pretty thoroughly over it, has been all through it and has been from where he lives south pretty well all through the mountains, went through with pack horses and teams, through to California. If this land were divided into one hundred and sixty-acre tracts, these percentages stated would hold good as to each one hundred and sixty acres. He does not know of but one or two one hundred and sixty

acres in there but what a family could go on and make a living, meaning township 9 south, range 2 east, township 10 south, range 2 east, township 9 south, range 3 east, and so on. In township 8 south, range 2 east, there is some of that in Stack Creek and Horn Creek that they could not do it, it is very steep and rocky. The lands that could not be cultivated could be used for pasture land, they could run cattle, sheep, goats—very little sheep in their country there—cattle and goats, on this pasture land. They raise wheat and oats and hay of all kinds—clover and some timothy—and are introducing alfalfa, in the vicinity of these lands, but they have not made a success of that yet, there are one or two good patches, outside of that there is not. They raise all kinds of vegetables, and all kinds of fruit, outside of peaches. Lands similar to the railroad lands are settled. By settled, he means people have taken up homesteads and live on them, make a living on the land in following agricultural pursuits, farming. His father's place is now logged off, the timber was sold and the title to the land retained. They got $2750 for eighty acres of timber, the other timber is not sold. He applied to purchase lands from the railroad company in section 35, township 9 south, range 2 east, near his father's homestead, it joined his place. He desired that land to make a home and it is good land, part of it has timber on, heavy timber, but there is a part of it that is swamp, and a kind of meadow on it, a vine maple swamp. He and his three brothers tried to buy all the section that was left there, that is four hundred and eighty acres off the section, and there was probably

in the whole thing about sixty acres of this swamp, but in reality the meadow and the swamp on the part that he wanted was something like eighteen to twenty acres. The swamp referred to in the low ground would have to be drained. That is what they call a Nine Bark swamp, or a beaverdam, and it is covered with brush, and water stands on it in the winter time, and till late in the summer, and then around the edges there is a kind of fern glade, and this swamp is lower ground—and the higher up it gets, probably this glade is ten or twelve feet above the swamp, and it runs out into vine maple swamp then, with very little timber on it. There is probably twenty acres which has vine maple, and the rest has heavy timber. The whole thing could be rendered suitable for cultivation if the timber was off. There would be on that one hundred and sixty acres probably not more than twelve to fifteen acres on the hillside that one could not plow and the rest of it could all be plowed. He made his application to purchase this land the first time along about 1896, but he is not sure about the time. The company replied that they asked something like fifteen dollars an acre for it. The last time he applied, was in 1908, and the company answered that it was not for sale at all.

Q. Mr. Mariels, what has been the effect, in your opinion, of the Railroad Company's failure to fulfill the conditions of this grant to sell the land to actual settlers in tracts of 160 acres, at $2.50 an acre? What is its effect in that community that you lived in there?

A. It has kept settlers out of there, kept people out

of the country. You take it there now, Mr. Henry Bodiker, he had a homestead on top of the mountain there, and just the way the country laid, there was a railroad section on each side of it, that was good land, and he couldn't, nobody could get in there next to him. He had no school, he had to send his children, well, between 3½ and 4 miles to school.

Whereupon, upon cross examination, witness testified, that his father took this homestead in 1884 or 1885, in section 26, township 9 south, range 2 east, on the Santiam river. The Potter donation land claim joined it. He does not remember whether that donation claim was a half section or a section. There were four hundred and eighty acres in the Potter place originally, but there was part of it Mrs. Potter's donation claim, and he does not know whether it was three hundred and twenty acres or four hundred and eighty. That donation was settled a great many years ago, in the fifties. His father's homestead was all timber land, he had cleared before his death five or six acres right around the house. It was not right on the Santiam, but up on the first bench from the Santiam, a little over a quarter of a mile from the river. The Santiam River bottom overflows at high water. It is not covered with cottonwood and stuff like that, but is all gravel and rock, and is all river bar there, that North Santiam on up. There is no open land on the river above his father's place, nor this side of it that is any good. It is the first bench above the river that has any farming land at all to speak of. On this Potter donation land claim, he thinks there is something like two hundred acres

of cultivated land now, that is, of the old place. He could not tell how much of that was prairie in the beginning. He knows that they have cleared up—he would think there have been about sixty acres of it, seventy acres, cleared since he went there. They slashed and cut the logs, girdled the trees and killed them, and then felled them after a few years, and logged it up and burned it. They have taken the stumps all out now, they burned the stumps out. He did not say that his father had his place logged. His father never did have his place logged. The boys sold the timber off the place in the last four years to Fred Gooch and it was sawed in a sawmill there. The sawmill is right on their place and has been there four years last March. They sold in the first sale, eighty acres of timber to Gooch. He couldn't tell how many million feet it amounted to, he did not scale it, they sold it, for a lump sum of twenty-seven hundred and fifty dollars. They estimated the timber at about 75 cents a thousand, which was about the market price at that time. It is now worth a dollar to a dollar and a quarter to a dollar and a half. This clearing that he had done on his father's homestead, all together, on both places, was probably something like twenty acres, that is, there is some of it that has not been plowed yet, that he will plow up this winter, about twenty acres. It is not all on his father's homestead, he bought a place there, a part of this old Potter donation land claim, two years ago at $25 per acre, the east part of it, the timber part of it, ninety-seven acres of it, and probably eight or ten acres of this cleared land that he speaks of is on the Potter do-

nation land claim and the balance of the twenty acres is on the homestead. The two boys now own the homestead and, in addition to that, he has a part of the Potter place, and one of his brothers bought part of the Harm place which is east of that. His father's homestead, owned by him and his brother, is not for sale, and he could not say what would be its fair market value if it was for sale, he could place a value on this piece of land of his which lays right on the west side of this, referring to the Potter land, he is holding that ninety-seven acres at $5000.00, and he thinks that is plenty high enough, it is probably worth forty or forty-five dollars an acre. There was four hundred and eighty acres of this railroad land that he and his brothers, the three of them applied to purchase, each a quarter section, it was timber and brush. It had some good saw timber on it, it had something like three million feet to each quarter section. It was a mile and a quarter to two miles from the Santiam River, and could be logged. They log within two or three miles of the Santiam River, using cables and a donkey engine. The stumpage would be worth a dollar probably. The company asked fifteen dollars an acre for that land in 1896, and he applied for it last in 1908.

Q. Did you make an application under this $2.50 an acre statute?

A. No, sir. Yes, I made application there, and they answered me back that it was absolutely not for sale.

Q. Did you sign one of these written blanks that

these timber locators and brokers had been circulating around?

A. No, sir.

Q. You just wrote a letter?

A. I wrote a letter, and made out a blank, had a blank made out by a Notary Public.

Q. But did you offer the $2.50 an acre?

A. Yes, sir.

Q. And you claimed to be an actual settler, did you?

A. Yes, sir.

Q. But you never went on the land to settle on it?

A. How is that?

Q. You never went on the railroad land, though, to settle on it, did you?

A. Well, never built no house. I went up there and made some improvements.

Q. What did you do?

A. Done some slashing, and put some fence onto it, and used it for pasture until later on, until I got my notice that it absolutely was not for sale, and so I went and tore the fence down.

Q. Well, your intention was to make actual settlement in that way?

My intention was to put up a house and move my family onto it. His application was made some time

in 1908, and he went to work and fenced part of it, and did a little slashing, and where he started in to slash there, he aimed to put up a house. He did not do much slashing, probably something like a half acre. It was not in the big timber. That was in near this fern glade, this swamp, probably three-quarters of a mile, on an air line, from the house on his homestead, but by wagon road it was two and a half miles. At that time his family consisted of his wife and three children. He was living in Salem at that time, and in business at Salem, and he made this application out at Salem. R. R. Ryan was the notary public. He does not think Ryan was in the business of taking these applications. He does not know of any applications that Ryan made out. He does not know where his two brothers made their applications, but they applied for the other two quarters. All three of these timbered quarters would carry, in his judgment, about three million feet to a quarter. He does not know that his brothers made their applications in 1908. They made it from 1906 to 1908, along there somewhere, in the same way, at two dollars and fifty cents an acre. They were living at Fox Valley, what is Gooch now, and about a half a mile from these places, from a half to a mile of these places. There was some Government land away back in there that was not taken. They did not take that Government land because this railroad land was better land and closer up to settlements. This Government land had good timber on it, it had three million feet on it and a whole lot more. It is not still Government land—he could not tell who had taken it. There

has been some homestead land taken there, a whole lot under the Timber and Stone Act. While he was living in Salem, his business was handling horses. He was there about six years, off and on. While his father lived on this homestead, he followed his trade and worked out when he could, at carpentry work. He was fourteen or fifteen years old when his father went on the homestead in 1884. Witness worked out away from home, worked down on the Albany prairie, on a ranch down there. The rest of the children are younger than he, he is the oldest one of the family. His father did not get ahead by his help, he was not enabled to support himself and his family in that way. He is sorry to say that he didn't help his father much before his death, he didn't help the family enough. His father worked out when he could, he was a carpenter, but at that time there was no carpenter work to be done up in that part of the country at all, he did work out a good deal of the time, and only cleared about six acres, but that was heavy timber that he cleared. His father kept some stock, which ranged all over the country there, south. He does not know how many cattle his father kept, probably he had twenty or thirty head, somewhere along there, he would sell a few cattle every year; he did not sell any vegetables or anything of that kind, until the railroad went in there in 1887, when he sold what vegetables and potatoes and the like he had then. It operates three trains a day from Mill City up, and runs a logging train from Mill City up, and freight, besides passengers, regularly. Gooch is a little sawmill town, but he does

not know how many men work at this sawmill, but would judge something like thirty or thirty-five, that is in the sawmill and in the woods. They get their logs from the mountains around there. He has cruised some of this railroad land, he never cruised any of the railroad land excepting for himself. He cruised in section 25, township 9-2, and section 3, township 10, range 2, and he cruised that for himself because it was a good piece of land and his idea was to try to buy it, and he afterwards did try to buy it. This is not the land that he has referred to. He tried to buy three different pieces. As fast as they would answer him back on one, he would write again. In section 3, township 10 south, range 2 east, that will go something like 4,000,000 to 4,500,000 feet to a quarter section. He cruised that in the winter of 1908 or 1909. He did not apply to buy a quarter section of that under this Act. He wrote to the Company for prices on it, and told them he wanted to make application to buy this quarter in section 3, but did not state what price he wanted to buy it at. He got a reply that it was not for sale. He wanted to go out there and settle on this piece of timber land. At that time he hadn't bought this Potter place and he was looking for a location, and wanted to take his family out to that. If a man would be right careful, he would get big timber enough on this quarter in section 25 to fence it, that would be all. There was some of that quarter that was good farming land. The reason that he did not take that quarter that had no timber on it for a home was they refused his application. He has applied to

buy three different quarter sections of this railroad land, they wrote to buy and the Company informed them that there wasn't any of it for sale, and they would write for another piece.

Q. You wanted to make a home, and be an actual settler on each one of these three?

A. Well, I suppose when they turned me down on where this timber was that I could buy this where there was no timber, so I wrote to them.

Q. Now, you intended, though, to settle, if they would let you, on each of the three?

A. Yes, sir. No, either piece that I bought I aimed to settle, yes.

Q. Well, but you first applied for two timber quarters, didn't you.

A. How is that?

Q. You first applied for two timber quarters?

A. I first applied for a piece in 35. They turned me down on that, and then I applied for a piece in 3, and they turned me down on that, and then I wrote in reference to 25.

Q. And they turned you down on that?

A. Yes, sir. They said they had no land in that district for sale at all.

Q. Yes, I understand that. You have stated that two or three times.

A. Yes.

Q. But each of the first two quarters was good for timber, one had about 3,000,000 feet on it, and the other had about 4,000,000 feet?

A. Yes.

Q. That is right, isn't it?

A. Yes, sir.

Q. And when you couldn't get the timber quarters, then you tried them on a quarter that didn't have any timber on?

A. Yes, sir.

Q. You intended to move onto the first one they sold you?

A. Yes.

Q. And make an actual home and a settlement?

A. Trying to buy a piece of land, yes.

Q. Now, why didn't you take a homestead? You had a homestead right, hadn't you?

A. Yes, sir.

Q. Well, weren't you, after the time you became 21, weren't there a lot of good homesteads up in that country?

A. Yes, sir.

Q. Why didn't you take a homestead, and get some of this good timber?

A. I have got a homestead.

Q. Where is your homestead?

A. It is in—that is I haven't got a homestead. I took one in 11-4.

Q. What section, part of section?

A. Well, now, I couldn't tell you just exactly what section it is in.

Q. When did you file on that?

A. Never filed.

Q. You selected it?

A. I went in there before it was surveyed, and just took a squatter's claim on it.

Q. Have you ever applied? It has been surveyed since?

A. It has been surveyed, yes, sir.

Q. How long ago?

A. Why, I don't remember just when that survey was accepted.

Q. Is your time up in which to apply?

A. Yes, sir.

Q. You haven't applied, though?

A. Yes, I applied.

Q. Where did you apply? At the local Land Office?

A. Yes, sir.

Q. At Portland?

A. Here at Portland.

Q. When did you make the application?

A. Either four or five years ago.

Q. And have you made improvements on it?

A. How is that?

Q. Have you made any improvements on it?

A. Built a house onto it, yes, sir.

Q. Have you lived on it?

A. Well, no, I didn't live on it.

Q. You just did about what others do when they take a homestead?

A. No, sir. They notified me that it was not open for settlement, that the Railroad Company had placed scrip onto it, and unfortunately I had a family, and my wife was in no shape to stay there that winter, and I had to move out, go back.

Q. You did live on the land?

A. Yes, sir.

Q. How long did you actually live on the land?

A. I was not on the land—I didn't have my family on the land very long. I was on the land very near all summer.

Q. Just tell us how long you had your family on the land?

A. Well, I don't know as I could.

Q. Was it one night or two nights?

A. Oh, yes, they was out longer than that. There

was one child that I never took in, because he was a baby, and my wife she was in there with the other children, and she was in there I don't know how long.

Q. A week?

A. She was in there twice.

Q. A week or ten days?

A. There was one time, yes.

Q. And did you have a house to live in, or did you live in a tent?

A. I had a house to live in.

Q. You built just a little shack?

A. I built a cedar house—14x16.

Q. And you took a few things in to cook with, and a few little bedding?

A. I took some bedding in, yes, sir.

Q. And then your wife was there about a week, and some of the children, and then after that she came back again for a little while? Is that right?

A. Yes, sir.

Q. And then you finally gave it up?

A. No, sir.

Q. You still claim it?

A. I gave it up because I had to that winter, and moved out.

Q. What winter was this?

A. It was 1907, I think it was.

Q. Was your wife up there in the winter or in the summer?

A. She was there in the fall.

Q. What month?

A. She was there both in July and August.

Q. Well, that is practically summer in this country, isn't it, July and August?

A. Yes, sir.

Q. Well, that is about the time when we have our vacations in the mountains?

A. Yes, sir.

Q. Sort of recreation?

A. Yes, sir.

Q. Do any fishing out there—hunting?

A. How is that?

Q. Did you do any fishing or hunting out there during that time?

A. I hardly ever fished any at all.

Q. I know, you hardly ever, but did you that time?

A. I don't think—I don't think I had a fish pole in my hand for ten or twelve years to fish, until this summer, sir.

Q. You didn't fish any out there that time?

A. No, sir.

Q. Did you hunt any?

A. I don't remember whether I did or not. I generally do, though, when I am around the woods.

Q. Did you see my brother H. L. Fenton out there hunting elk and deer in that country?

A. No, sir.

Q. You know him, don't you—lives at Dallas?

A. I have heard of him.

Q. Well, you have heard of him, he is a hunter?

A. Yes, sir.

Q. Goes into that country and spends his summer hunting sometimes?

A. Sometimes, yes, sir.

Q. Now, then, you get elk out there sometimes, don't you?

A. No, sir.

Q. They are all gone?

A. No, there is elk in there.

Q. Well, that is what I thought, there is elk.

A. That is, not in that part of the country. There is elk in the country out there in the Cascade Mountains, yes, sir.

Q. Now, this homestead, that was scripped by the Northern Pacific, I suppose?

A. Yes, sir.

Q. Did it have any timber on it?

A. Yes, sir.

Q. How much did it have on it, in your judgment?

A. Probably seven million and a half, or eight million.

Q. Seven or eight million would be a good claim, wouldn't it?

A. Pretty fair claim, yes, sir. There is some claims, though, that has got more timber than that on.

Q. Did your brothers take homesteads out there, too?

A. Well, I don't think they did, no. They might have, but I don't think that they did.

Q. Why didn't you take it under the Timber and Stone Act?

A. How is that?

Q. Why didn't you take some of this timber under the Timber and Stone Act, and get a good quarter section of timber?

A. Unfortunately you cannot do that on unsurveyed land.

Q. Wasn't there some surveyed land out there you could take under the Timber and Stone Act, that would have had good timber on it?

A. Yes, sir. Not in that township, no, sir, not in that township.

Q. Well, I mean in the same township that you are farming.

A. Yes, sir.

Q. A good deal of that land was taken that way, wasn't there?

A. There was some land taken that way, yes, sir.

Q. And some of it taken by homesteads?

A. Yes, sir.

Q. Taken a good deal like you tried to take this quarter section homestead—the same way?

A. No, sir. The homesteads that have been proved up in there, that is, outside of some three or four, has all moved their families onto them, and proved up onto them proper.

Q. But when they proved up on one of those finest timber quarters, they sold out to timber people, didn't they?

A. Why, they was forced to, yes, sir.

Q. You mean forced to, because they could get a good price for the timber and do better by selling it?

A. No, sir. No. They were pretty near forced to on account of the railroad Company owned the odd sections around them, and they couldn't get settlers in there to help them develop the country, and have schools for the children, and the like of that.

Q. They usually sold out about as soon as they proved up, didn't they?

A. No, I know several homesteads that is still owned by the parties that homesteaded.

Q. Yes, I know there are a few?

A. Yes, sir.

Q. But those that got good timber, as soon as they got their title, why, they got a good offer and they sold out a couple of years ago, didn't they, most of them?

A. Well, there is part of them sold out, yes. There is part of them sold out.

Q. What did they get for those timber quarters, generally, that they sold?

A. Well, I couldn't tell you. The price has varied a good deal.

Whereupon witness testified, that he could not tell that he knew of very many homesteads outside of this Bodiker place which was sold, who got something like ten thousand dollars for his place. He had two hundred and eighty odd acres in there. Bodiker bought some railroad land in there, and sold to Robert Shaw for the Curtis Lumber Company. Shaw was manager of the Curtis Lumber Company and has put forty acres of orchard on the land now. He could not tell whether they bought that land for the timber, but Shaw was superintendent or manager of the Curtis Lumber Company, and he thinks lives at Albany, but he don't know. The Curtis Lumber Company does business up there along at Detroit and along the river, and owns thousands of acres of timber lands in that country.

Whereupon, upon redirect examination, witness testified, that this homestead or settlement that he had on the unsurveyed land was beyond the eastern limits of the grant in range 4, twenty-five miles from the railroad. The railroad runs through sections 25 and 35, and is about three miles from section 3, township 10 south, range 2 east. In township 9 south, range 2 east, the railroad runs through the corner of section 35, and also the corner of section 25, and this settlement that he had in 4 east was about twenty or twenty-five miles from a school house. This railroad land that he tried to buy in sections 25 and 35, in township 9 south, range 2 east, is about a half a mile from a school. The applications that he made to purchase land from the railroad company were in 1896, along there, and it was quoted to him at something like fifteen dollars an acre—the exact price he does not remember. He made three applications for railroad land. He did not apply for the second one before he had received an answer to the first. After he got his answer, he would write about another piece. The company never said in the letters that there was none of the land for sale when it answered his letters, they said that the piece of land was not for sale, and so he would write about another piece, and in this way he happened to write about the three pieces. One of these tracts contained no merchantable timber, in section 25, on the Linn county side. On the Marion county side, there is a little scrub timber on it. but on the Linn county side there is comparatively no timber at all. There is some small fir, that is, brush four or five inches through, and very thick

hazel brush and dogwood, such as that. Probably sixty or seventy acres of that quarter could be put under cultivation. Bodiker owned some railroad land, bought some railroad land there, he could not say how long he lived up there. Bodiker was in there when they went to the country and he could not state how long he lived there. Bodiker has sold and moved out a couple of years ago, and bought a place down in the valley, on the railroad. The Bodiker place was an old settled homestead, homesteaded years ago, somewhere along in 1882 or 1883, he is not positive about that, and it was sold about two years ago. Shaw is putting out a forty acre orchard there, with apples, and he understands that he is putting—he hasn't it set out yet, but witness understands he is going to put out some pears, and he was talking with the man on the place a month or six weeks ago and the man said they hadn't set out anything only apples. Witness doesn't know about their pears, they have some fruit on it. Bodiker had quite an orchard there when he sold the place. That homestead was timber land. It was right up on the mountain, the highest point there is around there within quite a little ways of him, and right in the heavy timber. Bodiker went in in the heavy timber and took that up, and burned up the timber that he cut from his place in clearing.

Whereupon, upon recross examination, witness testified, that Bodiker got about ten thousand dollars for his land. He could not tell how many million feet of timber was left on it. Part of it was heavy timber, though. Bodiker burned the timber off of the land he cleared up

and cleared something like sixty acres, he does not know just how much, that was from 1882, down to the time he sold a couple of years ago.

Whereupon ANDREW ANDERSON, called as a witness on behalf of complainant, being duly sworn, testified, that he is sixty-one years old and resides at Scappoose, Columbia County, Oregon, and has lived in that county twenty-eight years. Prior to the time he went to Columbia county, he was in Baker county about two months. He was born in Sweden, but is a naturalized citizen of this country. The first year after moving into Columbia county, he worked around farms and one thing and another, but he was not there two months before he started to get a homestead. He made his filings in February, 1885. His homestead is located about six miles from Scappoose by the road. It was timber land when he took it up. He has cut the timber down, burned it up and cleared the land, and has now about ten acres under plow, about forty or fifty acres burned over and seeded down for pasture. He lives on his homestead and has made it his home since he first took it up. He is a bachelor. He raises most anything on his homestead there that can be raised around the country, grain, wheat, rye, oats, barley, peas, vegetables, some apples, some pears, some plums and prunes. He has done nothing else besides farming since he took up that land. Referring to "Defendants' Exhibit 259," there is some railroad land in sections 9 and 5, township 3 north, range 2 west, and some in section 19, township 3 north, range 2 west, and there is section 1 in township 3 north, range

3 west, with which he is acquainted. He is somewhat acquainted with those townships, but not so that he could describe them all. In township 3 north, range 3 west, he is acquainted with nothing but sections 1, 2 and 12. After the timber is taken off and the land is cleared, in his opinion 50 per cent of that land could be put under the plow, take the whole country,—some sections more and some few less. He is acquainted with lands of the railroad company generally in township 3 north, range 2 west. In section 5, for instance, there was a man who bought some land there, and he helped him to do some work on it, so he knows the land, and in section 5 he has been all over that several times, in section 5, township 3 north, range 2 west. In section 9, he knows there is one hundred and sixty acres that was taken before the railroad company got the land, which he is acquainted with and also the land down in there. He does not include in his estimate the land that the railroad company did not get, but take it all over in township 3 north, range 2 west, he would think there would be 50 per cent of the unsold lands of the railroad company, in his opinion, that could be rendered suitable for cultivation. He is not acquainted with any of the other lands in this railroad area in Columbia county. There are similar lands under cultivation in the community of these railroad lands. The lands of the railroad company with which he is acquainted in township 3 north, range 3 west, have no timber, neither section 9 nor section 5 in that township has any timber to amount to anything, they have only brush. In township 3 north, range 2 west, that is section

1, the north half of that is heavily timbered, and the south half there has very little timber. There is no timber on the railroad land in the other townships that he has mentioned. He is acquainted in township 3 north, range 3 west, sections 1, 2 and 12. Section 1 ought to be about six miles from Scappoose, he thinks. He applied to purchase some land of the railroad company—he applied, but gave it up. It was in December of 1907. The land that he applied for was in section 1, township 3 north, range 3 west, the southeast quarter. Prior to filing his application, he had never done a thing to the land, only went there once and put up a notice, and was over the country. The company replied to his application to purchase land that it was not for sale.

Whereupon, upon cross examination, witness testified, that E. E. Quick of St. Helens prepared the papers for him when he applied for the land, using a printed form. He applied for it under the two and a half an acre clause as an actual settler. He put a notice on the property before he had Quick do the business for him, that is, he posted a notice on the quarter section. He was not advised to do that by Quick. He had done that before he took any advice from Quick. This two dollars and a half an acre business was spoken of all over the country, that one could apply for a quarter section and the company would be forced to sell to the person, providing the land went back to the Government. That became generally known all over the country about the summer of 1907, he thinks, and there was quite a rush to get these timber claims under that. Two men got a

section, one came after him and took it, one got his and put a notice on top of his. On this quarter section that he took, there was about a million and a half feet of timber. He had a homestead of one hundred and sitxy acres and wanted another homestead, and if it was going at two dollars and a half an acre he wanted to get another place to settle on. He never did a thing on this hundred and sixty acres out there. While he was proving up and living on his homestead down near Scappoose, about six miles west of Scappoose on the Scappoose creek, he worked out around the first three years and did that to get something to live on, and after that he had a cow or two and a little garden and made his living on the place. He sold some timber off of the place in 1905 to W. O. Jeff, since incorporated in the name of the North Coast Lumber Company, in Boston. It was fir and cedar, he sold a little over two million feet. There was about 150,000 feet of cedar. He sold his cedar too quick, he got only fifty cents for the fir, and seventy-five cents for the cedar, and if he had held it a year he could have just doubled that amount, he could have got a dollar for the fir if he had held it a year, and a dollar and a half for the cedar. They logged it off. He run a fire over that and seeded it down to grass, and now keeps stock there. He has only three cows on there. This homestead is not all fenced, it doesn't need to be fenced. He has fenced what he needs for plowing purposes, about ten acres, and makes his living by stock and by farming. He sells some forty, fifty or sixty sacks of potatoes a year raised on this ten acres, and then he runs his cream down to the

creamery and gets about twenty dollars a month for cream from his cows. His stock pastures right on his ranch. His stock has not left the ranch for the last two years. They cannot get up into the deep woods, and below he has a fence. It is heavily timbered, and the cattle do not know that he has no fence. He is acquainted with only one section, with section 1, in township 3 north, range 3 west. The south half, in his estimation, has about 300,000 feet of saw timber on it, and the north half ten or twelve million feet on it, that is a pretty thick heavy set of timber. Take the whole country through there, he thinks it will average about four million feet to the quarter section, that is in township 3 north, range 3 west. He knows sections 1 and 7, he had forgotten 7, in township 3 north, range 3 west, which is all of the railroad land that he knows in that township. Section 7 will run about fourteen or fifteen million feet to the whole section, about three and a half million to the quarter section, in his estimation. He does not know any other section in township 3 north, range 3 west. He knows sections 5, 7 and 9 in township 3 north, range 2 west. On sections 5 and 9 there is no timber at all, and section 7 is as he has already stated. Sections 5 and 9 have not been logged off, but have been burned off, kept burning off until everything was gone, only some brush remains. It was a clean country twenty-five years ago, and now it is all overgrown with young fir. It is a second growth fir, on this old burn, and runs from six inches, he would think, and there is some that would be a foot and larger, and one hundred feet high or more,

and they have grown up in twenty-five years. He thinks that this second growth fir in that country there would reach one hundred and fifty feet high, and some of it eighteen to twenty inches at the butt, in fifty years, judging from the way it has grown. Sections 5, 9 and 7 in township 3 north, range 2 west, are all that he can describe. Section 9 is of the same kind as in section 5—burned off. There is second growth fir growing on that, thick enough so one can hardly get through where it is left alone. As they grow larger, they grow slower. In twenty-five years more, it would not have three million feet on it, but ultimately it might have three or four million feet on it. Take the whole country through after the timber is removed and the stumps taken out, about 50 per cent of it could be farmed. Very little of it is rough or rocky. Some of the land would run less than 50 per cent, and some would run more. He thinks it would average about 50 per cent that could be farmed after the timber is removed and stumps taken out, that could be plowed. He is five miles from the railroad in a straight line. That railroad was there when he came in 1884, but no train was running on it. That was the Northern Pacific at that time, running between Puget Sound and Portland, when they used to cross down at Goble, across the Columbia River, and now it is the Astoria and Columbia River Railroad Company, or the Spokane, Portland & Seattle, and he thinks there are about three trains each way, passenger trains, and he does not know how many freights. He thinks that country around Scappoose has been settled for fifty years.

These railroad lands are mostly back in the foothills and in the mountains. That part down next to St. Helens and Scappoose and through there has been taken up under the donation law, excepting here and there a homestead. There is a road from Hillsboro through the mountains over into Columbia county, by way of Scappoose, out to Washington county. That road goes from Scappoose and over the mountains, but that was vacated years ago. There are two roads in there now. One goes to South Scappoose Creek, and crosses over the mountains to Washington county, and the other starts from Rock Point and goes over to Washington county, but all get finally over to Hillsboro.

Whereupon, upon redirect examination, witness testified, that these roads he referred to are county roads, wagon roads, not logging roads.

Whereupon T. W. GRANT, a witness called on behalf of complainant, being duly sworn, testified, that he is fifty-seven years old, and resides in section 17, township 3 north, range 2 west, in Columbia County, Oregon, and has resided in that county about thirty-seven years. A good portion of the time while he has been a resident of that county, the first part of the time he was a day laborer, hauling cordwood. He has followed farming and timber, farming and dairying at the present time, in a small way. His land which he is now farming is near the Washington county line, in section 17, township 3 north, range 2 west, and he has eighty acres of railroad land. In 1880, he purchased one hundred and twenty acres from the railroad company in

section 17, on contract, and his mother purchased one hundred and twenty acres adjoining him in the same way, at his suggestion. In 1885 he sold his contract and went to southern Oregon. Returning in the Fall, he purchased from his mother eighty acres, under arrangements made with her, and was to pay her what she had paid on this land, return the money she had already paid out, and he was to continue the annual payments, which he did, but there were no papers made out, no legal transfer made until after she obtained her deed from the company. As soon as she obtained her deed from the company, she deeded eighty acres to him that he had paid for. He grows on that place principally, hay, because he is keeping cows, but he grows almost all kinds of vegetables for family use, and corn and kale. He is a married man, has a wife and four children. He owns only this eighty acres, and he is making his living there now from that land and his cows. He keeps five and six cows, and is adding to them each year, and expects to enlarge it as he enlarges his dairying. He has a separator, and his cream is delivered to the skimming station there and shipped to Portland. The dairying business is carried on quite extensively in that community in which he lives, and that community is considered a dairy country. They have been engaged in the dairying business in that country a few years. Four or five years ago he had about four cows. He followed that about two or three years and did not have cows enough, he thought, to make it pay, and sold them out, and then started in again about a year ago, purchased five head, kept five and six head of

cows. This eighty acres he obtained from the railroad company, or which his mother contracted for, was brush and timber. There was some timber on it, but they called it brush land. He is really not much acquainted with any of the railroad lands excepting in section 17. He is pretty well acquainted with that, all over south of there. He has been over the land in a general way, but he knows nothing about the lines, just the country in general, in a general way, used to hunt up there considerable. That is in township 3 north, range 2 west. He has a general knowledge of the country around his home place, and has been over, in a general way, perhaps three or four miles south of him. He was only over that occasionally, perhaps once or twice a year, carrying his gun and hunting deer. He noticed the lay of the land and the character of the soil and the growths that were on the land on these trips, and he would judge that there is about 50 per cent of that land with which he is acquainted that would do for what they call tillable land, would be level enough to be tillable land, and then there is probably 45 per cent of it that would do for pasture if the brush were slashed off and burned, which is in addition to the 50 per cent that could be tilled. He would think there was at least five per cent that would be no good for anything. There are similar lands which are cultivated and there are farms in his vicinity, and there are some farms there within that radius, of the same general character of lands. The lands vary somewhat, some of them, perhaps, might be poorer, but some just as good or perhaps a little better than his land. He would think that his would be

about the average. Some lands would perhaps be a little more level than what he has, and then, perhaps, there are others again that would be a little rougher than his. These lands have timber in spots, streaks, and there are places that have nothing but brush, and there are other places again that are mostly burns—with very little brush on them. He is referring to the lands about him there in this area.

Whereupon, upon cross examination, witness testified, that his mother and he bought this railroad land about 1880 or 1881, he is not positive which. He had one hundred and twenty acres and she had one hundred and twenty acres, and they paid two dollars and a half an acre for the land, in ten installments. At the time they bought this land, none of it was cleared. He would judge that he had cleared about fourteen or fifteen acres of this eighty acres, and the balance he uses for stock to range over mostly, some of it, three or four acres is slashed and seeded to grass. There was some saw timber on his eighty, which he sold a few days ago for a lump sum. He believes he got two hundred dollars for his saw timber. It was sold about 1896. His mother kept forty acres of this railroad land until a few years ago, when she gave it to his sister and brother. There was timber on the north part of it, some of it was good saw timber. He could not say how much saw timber they had, he is not used to estimating the timber. This eighty which he owns is in section 17, township 3 north, range 2 west. He could not say only in a general way what railroad land he is acquainted with besides this section 17.

He does not know anything about the lines or the township lines, and could not say anything about the numbers. That which he has been over is in Washington county, three or four miles from his place. Some of that country that he has been over there has no timber at all. Some of it, after one gets pretty well south, has some timber on it. He is about four and a half miles from the railroad. His station is Scappoose. He is west of Scappoose, and lives about a half a mile from Mr. Anderson. "Q. Then all the railroad land that you really know anything about then is in this section 17? A. Yes, sir, that is all that I could speak anything about there." He would judge that 50 per cent of his land would be tillable, and of the balance 45 per cent would be pasturage if it was cleared off, and 5 per cent of no value, that would be a fair estimate and that would apply to the whole section 17. He couldn't hardly say positively if there is any railroad land in section 17 that is unsold. There is a great deal of that land in that vicinity which is owned by non-residents. These non-residents are not all timber people. A great deal of their land is unoccupied. Of course, there is some of this section settled up besides what he has—settlers living there. He never took a homestead. He knows the east half of the southwest quarter of section 17, township 3 north, range 2 west, and a part of that would make good pasturage; it is somewhat rough, no timber on it, it is second growth and it is not large enough for anything, it is sort of a scrubby growth. The northeast quarter of the southeast quarter, containing forty acres, is very good land, there is no tim-

ber on it, except second growth—most all second growth. It was burned over several years ago and a new growth has come up again. He would think this second growth would average about eight or ten inches. He delivers his cream to Scappoose, to the skimming station there, this creamery they ship to has an agent, receiving agent there at the old creamery plant, they take the milk there and the agent does the shipping, they have nothing to do with the shipping. That is what he means by that being a dairy country. They used to have a creamery located there, they sell now to the Oregon Cream Company in Portland. He could not say how much cream is shipped from Scappoose Station. There is a good deal shipped, and then there is a good deal shipped from Scappoose itself, where they are shipping is called Johnson's Crossing, and is perhaps a mile and a half or two miles south of Scappoose on this North Bank railroad, now the Spokane, Portland & Seattle. That railroad has been there ever since 1883. The country around Scappoose is comparatively level, and in five or six miles one starts in to get to the hill land, bench land they call it, and then a little further back into the mountains. The Columbia River is eight or ten miles east of Scappoose. They have the Willamette Slough there where they are—they live on the Willamette Slough. There is a good deal of stock on the Willamette Slough. Between the railroad and the Columbia River, there is a great deal of cattle, and a good deal of cream comes from that section.

Whereupon, upon redirect examination, witness testified, that he does not mean exactly that he is not ac-

quainted with railroad land other than in this section 17, but he does not know exactly what the other is. He is acquainted with other sections. He is well acquainted with land for about three or four miles around where he lives, and he has testified concerning his opinion as to that territory, as to the percentage that could be cultivated. Some of the other may be railroad land, but he does not know anything about the number, or the lines.

Whereupon, D. McLAFFERTY, called as a witness on behalf of complainant being duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Townsend:

Q. Mr. McLafferty, you are one of the cross complainants in this case, are you not?

A. Yes, sir.

Q. You are one of the persons who instituted suit against the Oregon and California Railroad Company and others, for the purpose of compelling them to sell you 160 acres of land which you had applied to purchase?

A. Yes, sir.

Q. And Mr. Lafferty was your attorney?

A. Yes, sir.

Q. And is your attorney?

A. Yes.

Q. How long have you lived in Oregon, Mr. McLafferty?

A. Four years and a half.

Q. And where did you live prior to that?

A. Aberdeen, Washington.

Q. How long did you live there?

A. Nearly 20 years.

Q. What business have you been engaged in, Mr. McLafferty?

A. Wall paper hanging business; wall paper hanger and painter.

Q. When you moved over into Oregon, to what point did you first come?

A. I went out on this Section 25, 4 North, 3 West.

Q. What part of the section?

A. Northeast quarter.

Q. And when was it that you went there?

A. In the spring of 1908.

Q. The spring of 1908?

A. Yes, sir.

Q. Since that time have you been over that township to any extent?

A. Somewhat.

Q. How about any of the adjoining townships?

A. Only to a slight extent in the township south.

Q. That would be 3 North, 3 West?

A. 3 North, 3 West.

Q. Now do you know where the railroad lands are situated in a general way in this township 4 North 3 West, and which are involved in this case?

A. I only know, not definitely, I only know of some few sections where other settlers have gone.

Q. You know of the tract which you yourself have settled upon, of course?

A. Yes, sir.

Q. And some other similarly situated, I understand?

A. Yes.

Q. Speaking in a general way, now, Mr. McLafferty, what is the character of the soil in that township?

A. The soil is what is known as a shot soil, deep, rich, mellow soil.

Q. Have you seen any demonstration as to what the soil will produce?

A. Yes, sir.

Q. In that same township?

A. Yes, sir.

Q. On the railroad lands or lands adjoining, or both?

A. Both.

Q. To what extent are the even numbered sections settled in that township?

A. They are all settled, as far as I know.

Q. How about the even numbered sections, adjoining this Section 25 that you settled upon?

A. All settled.

Q. To what extent have they made clearings of the even numbered sections, and removed the stumps and reduced the lands to cultivation?

A. So far as I have been over these even numbered sections, the settlers have made their homes and cleared, oh, from five to twenty acres, perhaps.

Q. What kind of crops are they growing on the cleared land?

A. They are not living there now. They have sold to the Chapman Timber Company, but there were orchards, apples, pears, plums on two of them that I know of.

Q. Now, there is pretty heavy timber in that township, isn't there?

A. Somewhat, yes, sir.

Q. That can be said generally of the entire township?

A. Yes.

Q. The Chapman Lumber Company, is that the same concern that Mr. Quick referred to in his testimony the other day?

A. I don't know that I heard Mr. Quick.

Q. Oh, you were not in the courtroom when Mr. Quick gave his testimony.

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A. I think not. When was that?

Q. Well, it was about ten days ago.

A. No, I didn't hear it.

Q. Now, have the even numbered sections been logged off to any extent in that township?

A. They have been, part of them being logged now.

Q. How about the township south of you—I mean the section south of you; south of 25.

A. South of 25 is 36, a school section, owned by the Chapman Timber Company, not logged.

Q. Is any of the land adjoining yours logged?

A. Yes.

Q. Which way?

A. North half of 30 on the east of me is logged. All of Section 24 on the north is logged. They are operating now on 26, on the west of me, on the west of 25.

Q. Do you know what the Chapman Lumber Company are doing with this land after it is logged off?

A. They are selling it.

Q. Do you know what they are getting for it?

A. I understand they are selling at prices all the way from $20 to $60 an acre.

Mr. Fenton: I move to strike out the answer as hearsay.

Q. Is that with the stumps in or with the stumps cleared?

A. That is with the stumps in, just after logging.

Q. Do you know who is the manager of that company?

A. The manager of the camp?

Q. Of the Chapman Lumber Company?

A. Yes, sir, Mr. James McNaughton is the superintendent of the logging camp.

Q. Is there a man by the name of Chapman who is connected with it?

A. I understand there was until perhaps a couple of years ago and he sold his interest to other parties.

Q. Do you know whether Mr. McNaughton has taken any of these logged off lands?

A. Mr. McNaughton told me a few days ago he had bought a quarter section of this logged off land.

Mr. Fenton: I move to strike out the answer as hearsay.

Q. Have you seen very much of the logged off land, enough of it so as to acquaint yourself with the character of the land?

A. Oh, yes, yes, sir.

Q. How is it there as to being rough or level?

A. It is somewhat rough, part of it, other portions are comparatively level.

Q. In your judgment, what percentage of that township could be cultivated after the timber is removed, and the stumps taken out?

A. You mean brought under the plow?

Mr. Fenton: The entire township you mean?

Mr. Townsend : Yes, so far as you are acquainted with it.

A. Well, so far as I am acquainted with it.

Q. Brought under the plow or otherwise cultivated.

A. So far as I am acquainted with it, possibly 75 per cent—60 or 65 or 70 per cent could be plowed. The whole of it—I call the whole of it agricultural land, because it would make the finest of pasture.

Q. Is there any waste land there in that township that you know of, to any considerable extent?

A. No, no. Do you mean rocky land by waste land?

Q. Yes.

A. No, not that I know of.

Q. Any land which, by reason of the character of the soil, is waste land?

A. No, sir. The soil is all of the same general character, shot soil.

Q. Are you still maintaining your home there?

A. Yes, sir.

Q. Have you any home elsewhere?

A. I have not.

Q. Have you made any experiments yourself as to

the use of that land for agricultural purposes or horticultural purposes?

A. Yes, sir, I have.

Q. What have you done in that respect?

A. I have about an acre under cultivation and in garden, vegetables, potatoes, corn, tomatoes, beans, squash, turnips, carrots, parsnips, onions, strawberries, raspberries—fruit trees.

Q. Have you fruit trees set out?

A. Yes, sir.

Q. How are they doing?

A. Fine.

Q. How old are they?

A. They have been set three years.

Q. Strawberries producing?

A. Strawberries produce finely. I had a patch of strawberries last year, 40x50 feet. The rows are 40 feet long and the patch was 50 feet wide. I picked 20 crates of strawberries from that patch, nice berries as you ever saw—nice as I ever saw. I sold about $22 worth to parties who came right to my door and took them away. This year I had just as many berries, but the market was down. I didn't sell berries this year. I bought some fruit jars and some sugar and canned the berries and sent them out, shipped them out to my boys in Aberdeen. I shipped two barrels of canned strawberries, packed in moss.

Q. Packed the cans?

A. Yes, the cans packed in moss. Strawberries were only worth a dollar a crate up there this year.

Q. Now, when did you apply to purchase this land from the Railroad Company?

A. In April, 1908.

Q. To whom did you apply?

A. Well, now, that I couldn't say. I went to what is known as the railroad offices in the Wells Fargo Building.

Q. Yourself?

A. Yes, sir, the land office.

Q. Do you know the name of the officer?

A. I do not.

Q. Your application was rejected?

A. Yes, sir.

Q. I will ask you whether you applied to buy that land with the intention of making a home of it?

A. Yes, sir.

Q. I will ask you whether that is still your intention, if you can secure the land?

A. It is.

Q. Is there considerable timber on the quarter section that you applied to purchase?

A. Well timbered, with the exception of about two acres in this little burn, where I built my house—abou

two acres where the fire had burned the timber off.

Q. Have you cut down any of the timber yourself?

A. Very little; a few trees—two or three trees that threatened to fall on my cabin. I cut those, and then other dry trees, stubs.

Q. What did you build your cabin of?

A. Cedar logs, split logs standing on end. First a sill and then split the logs eight feet long, split them in half and stood the logs on end with flat siding, and then plate on the top.

Q. Where did you get the logs?

A. Got them right there on this burn.

CROSS EXAMINATION.

Questions by Mr. Fenton.

Q. Mr. McLafferty, what is your first name?

A. David.

Q. What is the description of the tract you applied to the company to purchase under this Act of May 4, 1870?

A. The northeast quarter of Section 25, 4 North, 3 West.

Q. How did you happen to select that particular quarter section? Who selected it for you?

A. Mr. Snyder, John L. Snyder.

Q. Who was John L. Snyder, a timber cruiser?

A. I don't know whether he was a timber cruiser or not. I could not say.

Q. When did you say you went onto this land?

A. In April, 1908.

Q. Were you there on October 4, 1908?

A. Yes, sir.

Q. Have you a family?

A. I have a wife.

Q. Was your wife with you there at that time?

A. My wife was there with me.

Q. I show you a couple of photographs of "Defendants' Exhibit 270," Nos. 91 and 92, purporting to be taken by Fred H. McClure on October 4, 1908, and first look at No. 91, and say whether that is a fairly good view of your cabin as it was on that date.

A. Yes, I recognize that.

Q. Does that show the extent of the improvements that you had at that time, your clearing, etc.?

A. No, sir, it doesn't show the clearing. It shows the cabin.

Q. Where is the clearing where you had your garden?

A. Farther here to the right.

Q. How far away from the cabin?

A. Well, it is 100 feet, perhaps.

Q. Now, look at 92, and I will ask you if that is a

good picture of your cabin, the other side of it, showing the notice posted on the side there?

A. Yes, sir.

Q. Did you put up that notice?

A. Taken the same date. I did.

Q. Were you there when these pictures were taken?

A. Yes, I was.

Q. Was your wife there?

A. She was. The photographers refused to allow us to be in the picture.

Q. You do not appear in the picture?

A. No, sir, they wouldn't let us to be in the picture.

Q. Did you want to be in the picture?

A. I did, most certainly. And I wouldn't do that again. If a man comes to take a picture of my home, I shall certainly be in it.

Q. Well, now, then, what did you offer to pay the company for this land?

A. $2.50 an acre.

Q. How many million feet of timber is there estimated on there?

A. I don't know. I have been told the cruise was 10,000,000.

Q. Well, 10,000,000 of good merchantable saw timber?

A. I suppose so, yes, sir.

Q. Who told you there was 10,000,000 on there?

A. The man who is located on the southwest quarter told me.

Q. Who is that?

A. Mr. Witte—Fred Witte.

Q. When did he locate?

A. I think he located the year before I did.

Q. But under the same offer of $2.50 an acre?

A. I think so.

Q. And the same statute. And it was a timbered claim that he got, was it?

A. Yes.

Q. Now, where were you living before you went out and attempted to settle on this quarter?

A. I was living—I had been living in Port Townsend the year before, Washington.

Q. How did you happen to come over here and go out on this timber quarter?

A. Well, I heard of other settlers who were going.

Q. You heard of other people who were serving these notices?

A. Yes, sir, settling on railroad lands.

Q. Yes. And it was following the agitation in 1907, and you were one of a great many that went out there on these railroad lands?

A. I don't know of a great many.

Q. Well, how many went out there in your neighborhood?

A. About 30 in our township.

Q. In this township?

A. Yes, sir.

Q. Now, did you all go out there about the same time?

A. I could not say.

Q. Well, didn't you all go out there in the spring of 1908?

A. I don't know.

Q. How many went out about the time you did?

A. Oh, I don't know of more than half a dozen, five or six who went out there that spring. I think the most of these settlers in the township had settled the year before.

Q. Do you know Edgar McLafferty?

A. Yes, sir.

Q. Who is he?

A. My brother.

Q. Well, did he settle, or attempt to settle under the same way that you did, on the southeast quarter of Section 25, Township 4 North, Range 3 West?

A. Yes, sir, and at the same time.

Q. And he built a cabin, too, didn't he?

A. Yes, sir.

Q. Is he still living there?

A. Not there permanently, no.

Q. How long in the year does he stay there?

A. How?

Q. How much of the year does he spend there?

A. I couldn't say.

Q. Don't you know he hasn't been there in the last two years?

A. I think he was in there a year ago this summer.

Q. Stayed just a little while?

A. I don't remember.

Q. Now, don't you know he didn't stay there over ten days?

A. He might not.

Q. And he hasn't been there since, has he?

A. Not that I know of.

Q. Where is he now?

A. He is in Aberdeen.

Q. Gone back to work over at the Aberdeen mills?

A. No, he don't work in the mills.

Q. Well, he has gone back home then, to work?

A. Yes.

Q. Is he a man of family?

A. He is.

Q. Did he take his wife in there?

A. Yes, sir.

Q. How long did she stay?

A. I couldn't say as to that.

Q. She stayed there about a week when they built the cabin?

A. No, she wasn't there when they built the cabin.

Q. She wasn't there over a week all together, was she?

A. I couldn't say as to that. She was there somewhere from one to two weeks.

Q. And she has not been there since?

A. No, sir, she is a cripple.

Q. I know, but she has not been there since?

A. She is not able to go.

Q. I show you Nos. 89 and 90, purporting to be photographs of the cabin of Edgar McLafferty, on the southeast quarter of Section 25, taken by Fred H. McClure October 4, 1908, and ask if you recognize those as his cabin, pictures of his cabin and the surrounding country?

A. Yes, those are pictures of his cabin.

Q. They are fairly good pictures, are they not?

A. Yes, sir.

Q. Of the cabin and of the surrounding country?

A. Yes, sir.

Q. Did you see them taken?

A. I did not.

Q. Who is B. N. McLafferty?

A. He is my son.

Q. Well, did he go out there about the same time you did?

A. A little later.

Q. Well, he apparently has a cabin on the southeast quarter of Section 1, Township 3 North, Range 3 West.

A. I believe so.

Q. Well, is he a single man?

A. No, sir.

Q. Is he a married man?

A. Yes, sir.

Q. Did he take his family out there?

A. He did.

Q. When did he take his family out there?

A. Soon after he made settlement, he built his home, built his cabin.

Q. When did he make the settlement?

A. I am not sure whether it was—it was a few weeks after I went down—perhaps in the latter part of May or in June.

Q. Did he get a good timber quarter?

A. Why, said to be about 3,000,000 feet on that

quarter, I think.

Q. Has he been there the last year or two?

A. Yes, sir.

Q. Is he there now?

A. No.

Q. When did he leave. When was he last there?

A. He was there in September.

Q. How long did he stay when he was there?

A. A couple of weeks.

Q. And was he there the year before?

A. Yes, sir.

Q. How long was he there?

A. I could not say.

Q. A couple of weeks?

A. Perhaps a couple of weeks.

Q. And was he there the year before?

A. Yes, sir, every year.

Q. He was there a couple of weeks?

A. Every summer.

Q. Well, now, how much has he cleared?

A. He has not cleared, to cut down timber, cut down heavy timber, he has not cleared but very little.

Q. Did he have a garden there?

A. Yes, he had.

Q. When did he put the garden in?

A. He planted potatoes that fall.

Q. In September?

A. The first fall, yes, I think so.

Q. And those potatoes ripened next year?

A. Yes, sir.

Q. Winter potatoes?

A. Yes, sir.

Q. Plant potatoes in the fall out there?

A. Plant potatoes in the fall—hoe potatoes in the fall.

Q. How many potatoes did he plant?

A. Oh, not very many.

Q. About five or six?

A. Oh, no, he planted a patch nearly as large as this room.

Q. What did he do with them?

A. Used part of them there.

Q. When he was there during the two weeks the next year?

A. Yes, sir.

Q. And he batched there, did he?

A. He had his wife there.

Q. They were having a little summer vacation of

about two weeks in September?

A. You might call it so.

Q. Where did they go to? Where did they live when they were at home?

A. Aberdeen.

Q. I show you numbers 85 and 86, purporting to be pictures of the cabin of B. N. McLafferty, taken on October 3, 1908, and ask if you recognize those as good photographs of his cabin, two different views, and of the location around them?

A. Yes, sir, somewhat.

Q. Now, how much timber was there on the claim of Edgar McLafferty, Southeast quarter of Section 25?

A. Well, I don't think it is as good as mine.

Q. How much is yours? Yours is about 10,000,000?

A. They say about 10,000,000.

Q. His has about 8,000,000?

A. I presume so.

Q. About 8,000,000. Well, now, who is George E. McLafferty?

A. George E. is a nephew of mine. He is a son of Edgar.

Q. Where did he come from, Aberdeen?

A. He is living in Aberdeen. He is working there in Aberdeen now, yes.

Q. Well, now, he took the northeast quarter of Sec-

tion 1, Township 3 North, Range 3 West. How much timber did he get on his place?

A. I don't know.

Q. About 3,000,000 or 4,000,000?

A. There is as much as that, I presume.

Q. It is a good timber claim, is it?

A. Yes, sir, fairly.

Q. I show you pictures, Numbers 82 and 83, purporting to be taken October 3, 1908, of his cabin there in the woods, with a notice on the front door.

A. Yes, sir.

Q. I will ask you if that is a good picture of two different views of his cabin?

A. Yes, that is his cabin. It does not show his clearing.

Q. How much did he clear?

A. He has cleared in front of his cabin there, which would be back of the position from which the picture is taken, oh, a quarter of an acre, perhaps.

Q. What did he raise?

A. Potatoes, vegetables.

Q. When did he plant his potatoes, in the fall?

A. I couldn't say. I don't know.

Q. How long has he been there—two weeks?

A. No, sir. He was there all the first summer and

all that winter, and part of the second summer continuously.

Q. Is he a man of family?

A. He was not then. He was a single man then.

Q. Where did he go and marry?

A. He married here in Portland.

Q. And then took his wife where?

A. He took his wife there on the claim and lived the next summer.

Q. And then he went away?

A. Now they are in Aberdeen.

Q. And they have not been back since?

A. No, they have not been there this summer.

Q. How?

A. They have not been there this past summer.

Q. Who is E. L. McLafferty?

A. He is my son.

Q. He appears to have applied for the northeast quarter of Section 1, Township 3 North, Range 3 West.

A. Yes.

Q. Did he get a first-class timber claim?

A. About the same as George E. They joined.

Q. About how many million feet on that?

A. I don't know.

Q. Well, estimate it.

A. The timber is about the same as the northeast quarter.

Q. About 8,000,000?

A. Oh, no.

Q. 4,000,000?

A. Possibly.

Q. I show you what purports to be photographs Numbers 80 and 81, taken by Fred H. McClure, October 3, 1908, showing the cabin of E. L. McLafferty, and the timber with two different views, and ask you if you recognize those as fairly good pictures of the two views of his cabin and the surrounding country?

A. Yes, sir. That is a picture of his cabin.

Q. Now, is he living on that at the present time?

A. During the summers, yes, sir.

Q. They come there in the summer time and then they go away?

A. During the vacation, and then they go out to get their children in school.

Q. How many weeks in the summer do they stay?

A. Oh, they have been there from four to six weeks.

Q. And where do they go then?

A. Aberdeen.

Q. How far is Aberdeen from this land?

A. About 100—oh, 120 miles, I should say.

Q. How far is this land from the railroad?

A. Why, by the way of the camp, by the way of the Chapman Timber Company's road and camp it is about 13 miles. You are speaking of this particularly?

Q. Yes.

A. Well, that is, oh, let's see—I think it would be about 12 miles by the road and trail.

Q. Any wagon road to these claims?

A. No, sir, not to his claim.

Q. Any wagon road to your claim?

A. After I built it. I built a road for myself.

Q. What do you get into then?

A. How?

Q. What road do you get into?

A. Why, there was an old county road up to, as far as where the Chapman Timber Company's old camp is now. Then there was a road from there to one of these old homesteads.

Q. You mean one of these old homesteads that the Chapman Timber Company bought?

A. Yes, sir, on an even section. Then I built the road from there to my cabin.

Q. What is good timber a quarter in there worth?

A. I couldn't say.

Q. What was it worth about the time you went out there?

A. I don't know.

Q. What is the stumpage worth? What does the Chapman Timber Company pay?

A. They talk about a dollar a thousand.

Q. What do the Chapman Timber Company pay for these homesteads, after they make final proof?

A. I couldn't tell you. I never heard.

Q. Most of these homestead people out there have sold out to the Chapman Timber Company, haven't they?

A. Yes, before I went there.

Q. Now, who is George McLafferty?

A. He is my son also.

Q. He appears to have applied to purchase the northwest quarter of Section 25, Township 4 North, Range 3 West?

A. Yes, sir.

Q. I show you two photographs, Numbers 93 and 94, taken by Fred H. McClure, October 3 and 31, 1908, of what purports to be his cabin, and ask you if you recognize that as two views of his cabin?

A. Yes, sir, that is a picture of his cabin, that is, with the exception that the picture of his improvements was taken before the logs were cleared up, rolled up and burned.

Q. Has he got any garden there?

A. Yes.

Q. Where is his garden?

A. Down this way, in front.

Q. How far away from his cabin?

A. Oh, it is 100 feet, perhaps.

Q. Where is he now?

A. He is in Aberdeen.

Q. Was he there this summer?

A. Yes, sir.

Q. How long did he stay there this summer?

A. His wife was there about six weeks, I think. He was there—he has been there twice, at two different times this summer.

Q. This summer?

A. Yes, sir.

Q. Was he there last summer?

A. Yes, sir.

Q. They come every summer, do they?

A. Yes, sir, every summer.

Q. During August and September?

A. July.

Q. July or August and September?

A. July and August, yes, sir.

Q. That is when there is a vacation on?

A. Yes. They have children to go to school, they

have to get back.

Q. When the children have vacation, they come over here in the summer, and spend a few weeks on the place?

A. Yes.

Q. Then they go back to Aberdeen where they live?

A. Yes, they go back there to educate their children.

Q. Do they keep house? Do all these people keep house over at Aberdeen?

A. Yes, sir.

Q. Do you keep house over at Aberdeen?

A. No, sir.

Q. Well, now, how many of these McLaffertys are there, all of them, out there, that have taken these timber claims, as you claim?

A. There were six, I believe, you enumerated there.

Q. Did you all get together before you went out, and agree that you would go out there and take these timber claims?

A. No, sir.

Q. Who advised you to take them, all of you?

A. I don't know as any one.

Q. You are represented in this suit by Mr. A. W. Lafferty, are you not?

A. Yes, sir.

Q. The Congressman from this district?

A. Yes.

Q. Did you make these filings, applications to file or applications to purchase, under the advice or by the direction of Mr. A. W. Lafferty?

A. No, sir.

Q. What lawyer advised you to, if any?

A. No lawyer.

Q. Did you have these printed forms?

A. Yes, sir.

Q. Where did you get them?

A. From Mr. Snyder.

Q. And did Mr. John L. Snyder employ Mr. Lafferty, too?

A. I believe he did.

Q. And do you know who prepared these printed forms, upon which you made your application?

A. I do not, no, sir.

Q. Don't you know they were prepared by Mr. A. W. Lafferty after he had been back at Washington?

A. I did not know it.

Q. Well, Mr. Lafferty is still representing you in this litigation?

A. Trying to.

Q. Well, he is, isn't he?

A. Yes, sir.

Q. Have you been in attendance on this hearing, Mr. McLafferty, for some days?

A. Yes, sir.

Q. How long have you been here?

A. I have been here since a week ago Thursday.

Q. Well, then, you are interested in the result of this suit, are you?

A. I have been waiting here to give my evidence in the suit.

Q. I know, but you are interested in the result of this litigation?

A. Yes, sir, I am.

Q. Now, will you swear, under oath, that if there had not been any timber on this land at all, you would have gone out there and settled?

A. Had been no timber on this land?

Q. Yes, if there had been no timber at all?

A. And I could have located?

Q. On this quarter section?

A. Yes, sir, I would.

Q. The timber was not any inducement to you?

A. I didn't say that.

Q. What is the fact? Was it somewhat of an inducement?

A. Why, certainly.

Q. That timber claim that you got, 10,000,000 foot claim, is worth about $10,000, isn't it?

A. I presume it is.

Q. Isn't your judgment that you have got the best timber claim in that whole country?

A. I don't know that I have.

Q. Well, you think you have, don't you?

A. It suits me pretty well.

Q. Now, isn't it a good timber claim that cruises 10,000,000 feet of saw timber?

A. Yes, sir.

Q. And that is worth $10,000, isn't it?

A. I presume it is.

Q. And you want to get it for $2.50 an acre from the Railroad Company?

A. Yes, sir.

Q. After it has kept it for 30 or 40 years?

A. I want the Railroad Company to sell it to me according to the terms specified in the grant.

Q. You want it as Shylock wanted his bond?

A. I don't know as to that.

Q. The letter?

A. I didn't want the whole of it. I would be perfectly satisfied with a quarter section.

A. I ought to say that that picture of my place does

not represent my improvements.

Mr. Fenton: I suppose it may be considered that these have been sufficiently identified with the testimony of the witness that these photographs are all part of Defendant's Exhibit 270?

Mr. Townsend: Yes, they have all been offered.

Mr. Fenton: Yes, I say it will not be necessary to re-offer them.

Mr. Townsend: Oh, no.

Whereupon, on re-direct examination, witness testified:

Q. Well, now, Mr. McLafferty, do you want this land if you are not entitled to buy it?

A. No, sir.

Q. Do you know whether the Railroad Company wants it whether they are entitled to it or not?

A. I think they do.

Q. Now, would you be willing to take that place—if, under the law you are not entitled to the timber, would you be willing to take that place and let somebody else remove the timber, and still have a home of it?

A. If I am not entitled to the timber?

Q. Yes?

A. Yes, sir.

Q. If you are entitled to the timber, you don't want anybody else to have it? That is your position today?

A. No, sir. If I am entitled to the timber, I want my share of it.

Q. Well, now, as a matter of fact, while the timber does add greatly to the value of it, would that make a good home even after the timber was cut off, Mr. McLafferty?

A. It certainly would make a beautiful home.

Q. Suppose it had been logged off when you went there, I will ask you whether, in your judgment, you would have been willing to have applied to purchase it in the same manner with the intention to make a home?

A. I would. Of course, it would have been more of a hardship to make a home of it without the timber, but I would have been glad to have gotten it without the timber.

Q. Now, why haven't you cut down more timber and improved more of the land, cleared more of the land?

A. Because of the uncertainty of the case.

Q. Have you understood that you had a right, pending this litigation, to clear the land of its timber?

A. I have understood so.

Q. Who advised you to that effect?

A. Mr. Lafferty.

Q. But how have you felt about taking chances on removing the timber until your rights were decided by the court?

A. Well, I have not felt willing to cut the timber

to any extent until the case was decided.

Q. Well, then, to be honest with yourself, Mr. McLafferty, you are not trying to get that timber pending this litigation?

A. No.

Q. You are not going to take any of it unless the courts declare you are entitled to it?

A. If I did, I could have taken it and sold it to the Chapman Timber Company people, having a spur running across this section that I am on.

Q. Do you know why the photographer would not let you and your wife be in the picture?

A. He said that was the instructions of the people for whom he was working.

Q. What was?

A. Not to allow the settlers to be in the picture.

Q. Did you ask permission to be in the picture?

A. I did.

Q. And when he refused, where did you go?

A. In the house.

Q. Now, do you know why the photographer in each instance took these photographs so that they showed no clearings?

A. I don't know why. They probably had an object.

Q. Could they have taken the picture so as to have

shown the clearings?

A. Yes.

Q. At the same time as the cabin?

A. Yes, they could.

Q. As far as you are concerned, was the camera set at a point where it would show the clearing or where it would not?

A. Where it would not. They went up and down by my cabin several times before selecting the location for their camera.

Q. I will ask you if the location that they selected was not the one which would show the least clearing and the most timber?

A. Yes, sir.

Q. Now, how about these photographs here of E. L. McLafferty? There seems to be a clearing outside. Is that correct?

A. That is a burn.

Q. But there is no timber there?

A. No timber.

Q. And how with reference to this photograph of George E. McLafferty's cabin? Is that true there? Is that why that appears bare beyond there? Is there a burn, or has the timber been removed?

A. Allow me to look at that. No, that is looking over the brow of a hill. That is looking east over the

brow of a hill toward the Columbia River.

Q. So that there is timber beyond there, but it is on a lower plane?

A. Well, I think there is more or less of a burn down in there, too.

Q. Do these photographs fairly represent the roughness of the country in there?

A. Yes, sir, especially that one of mine, I was building a porch there at that time, at the time that picture was taken. I was building a porch, and it shows the stuff scattered about there.

Q. Now, has this debris that appears in the photograph there been cleared up?

A. No, this wood I had cut from a log. These blocks there of wood, and this shows the starting of a porch that I built. The eaves of my house were too low to start a porch roof there, and swing it out, so I set my posts in front, and then ran my porch roof from the post away back to the ridge of my cabin. So it makes a double roof on the south side, and makes a porch there in front about ten feet high in the front. Then since that I have built on another portion here, which makes a nice little bedroom about 10 feet square, and a woodshed.

Q. Then does this photograph represent your present improvements, or simply the improvements as they were on October 4, 1908?

A. Simply as they were the first fall after I went there.

Q. How about this debris here, is that still there?

A. No, that has all been cleared up, and I have raised corn and tomatoes there. I have strawberries on the other side, to the right.

Q. When you say to the right, you mean south of the cabin?

A. Well, I speak now of the tract that runs right down here where you go down here from the cabin, from the porch. On the right of that I have strawberries. On the left, well, I have strawberries too on the left here, but in the foreground I had corn and tomatoes and beans last year, and potatoes.

RE-CROSS EXAMINATION.

Q. How much did I understand you, Mr. McLafferty, to say you had cleared on the land you claim?

A. How?

Q. How much do you have cleared on the land you claim?

A. I have about an acre under cultivation.

Q. So that your corn, your beans and your potatoes, and your strawberries, and all that stuff is all on this one acre?

A. Yes, sir.

Q. It is under fence, I suppose?

A. No, not under fence.

Q. Oh, it is outside?

A. Fencing is not necessary.

REDIRECT EXAMINATION.

Q. You mean there are no cattle roaming in there?

A. No.

Whereupon F. G. McWILLIAMS, a witness called on behalf of complainant, being duly sworn, testified, that he is fifty-nine years old, resides at Ashland, Jackson County, Oregon, and has lived in that county and in Oregon fifteen years. Before coming to this state, he lived at Houston, Texas. His business in Jackson county is real estate and loans, and some mining—interested in some mines. He was raised on a farm until he was twenty-one years old and farmed, he was on his father's farm in southern Wisconsin until he was twenty-one years old. He has not farmed any since himself, but has dealt in farm lands in Jackson county. He knows the farms all over the Rogue River valley and Sam's valley, orchards and farms both, and ranches up in the hills, and is pretty well acquainted all over southern Jackson county, and part of Josephine county in a general way. They produce in Jackson county pretty nearly everything but oranges and lemons. They produce potatoes, wheat, corn, oats, rye, fruit of all kinds; they produce corn, and hay of all kinds, timothy, clover and alfalfa. He is interested with a company in Jackson county that is called the Ashland Commercial Orchard Company, which owns four hundred and sixty acres on Emigrant Creek, about six miles east of Ash-

land, in township 39 south, range 2 east,—it is an old donation land claim. He does not know that he can give the sections. Referring to "Defendants' Exhibit 259," he is acquainted with the territory in township 39, ranges 2 and 3 east, township 38, ranges 2 and 3 east, and is better acquainted with township 38, range 2 east. He has sold lands there and has shown lands all through it, has gone through it with a team and has shown different tracts of land there. One will notice the Willamette Meridian running through there. He is acquainted in township 39 south, also 38-2 east, quite well acquainted, because they have this body of land right in there. He owns eighty acres in section 16, township 38, range 2 east, he owns half of the southeast quarter, and then their Company owns four hundred and sixty acres in 38 south, range 2 east. Emigrant Creek runs along there. A mile south of section 16 is where they own this big tract of land, the four hundred and sixty acres that is in cultivation, that is in township 38 south, range 2 east. He is acquainted with those townships in a general way, referring to townships 38 and 39 south, range 2 east. He is acquainted with township 38-3 east, in the Dead Indian country, and has driven through there. He is only acquainted in a general way, by driving through the country there, noticing the lands. He is acquainted right around Lilyglen, which is a postoffice. This is a level country over in township 38 south, range 3 east, no mountains there, regular plateau for miles. He notices these green markings, which indicate the unsold lands of the railroad company. He is acquainted with the area

in township 38 south, range 3 east—only knows in a general way by driving through there. He would not know which was railroad land from the other lands. But in township 38 south, range 2 east, he knows of several sections of land there but does not know the numbers. In township 38 south, range 2 east, there is a lot of railroad land and a lot of homesteads. He knows that better because he has driven up there and sold lands in there and showed lands, sold ranches in there, and he has driven there several times. He would go up there to show lands for sale. He never went up there for any other purpose. He went up to show the Cove ranch a couple of times. Another time he went up to sell a piece of land—show the land. It was originally a homestead. When he went through township 38 south, range 3 east, he was driving to Crater Lake, and camped over there on Little Butte Creek, and noticed the land. He does not know that he is acquainted with any definite section of railroad land, only that it was pointed out to him that it was adjoining several of those homesteads in township 38 south, range 3 east, that was railroad land. He would not know the numbers of them. This land was adjoining different homesteads, and they were pointed out to him as being railroad lands. In township 38 south, range 3 east, he knows that the land is generally a nice level country. He was surprised after he got over that range the first time he went over there that it was such level land over along there. The road was quite level and the country was level for a good many miles. He would say that in his opinion 50 or 60 per cent of that land in town-

ship 38 south, range 3 east, could be rendered suitable for cultivation. He would think that the land in township 38, range 2 east, would run 50 per cent that could be rendered suitable for cultivation. That is a nice township of land after one gets up over the steep mountain. In getting out, it is a pretty steep hill until one gets up over the steep mountain, and after one gets up to it, it is a kind of plateau, level land up there, just gently sloping, it is not rough and rugged. There are people living all over that community, all over township 38 south, range 2 east, there are homesteaders, making their homes and living right there, opening up farms. The only right good timber lands that he noticed there would be on the Cove Range. They acquired that a good many years ago. They claim nine million feet on that and they own eighteen hundred acres, but that is one end of the ranch, of course. The rest is open land, three hundred acres open land, seeded to timothy and clover, fine ranch. He would not say where that is located, only it is on the east side of township 38 south, range 2 east, he could not give the sections. Some parties from Washington were talking about buying it. He did not pay any attention to the legal subdivisions. He thought that it was purchased from the railroad company, about twenty-five years ago, and it is on Cove Creek, that is one of the best ranches there is and contains eighteen hundred acres. He does not know whether there are any railroad lands that have been deeded or under contract in that amount in this township, that is what they claim to own there. The yellow field there shows the

lands that have been lost to the grant by prior settlement, either under the donation law or homestead law. Mr. Silsby of Ashland owns the ranch and claims eighteen hundred acres. He has a very fine house on it, and barns and blacksmith shops. He is well acquainted in township 39 south, range 1 west. That is a good deal more rolling and rough than the land he has been speaking about. He does not think there would be over 25 per cent of that land in that township that could be rendered suitable to cultivation. It is not timbered, it has no good timber on it at all, it is just brush and scattering large trees. And there are mines up in there, a lot of the timber that was fit for mining purposes has been cut out. The Ashland mine cut a whole lot of the timber. There is no big timber there that he remembers. The only other township he is acquainted with is township 37 south, range 3 west, that is on Jackson Creek, up from Jacksonville. There is quite a lot of railroad land in township 37 south, range 3 west. That country is pretty rolling, although there is some land that would lay pretty good there. It is a mining country in there, several mines in there. He would think that it would average about one-third that could be cultivated. There was some timber over in the north part of the township that was sold to Council Bluffs people for a logging company, and that is the only good timber that was on it. This would be south of Gold Hill, on Jackson Creek. He is not acquainted with any of the other lands in there. That is about all that he is acquainted with. The eighty acres of which he spoke is

located in Sam's Valley, and was originally a homestead, and he has owned that about three years. That land in its native state lays pretty good. There is a lot of timber on it. It would not be good logging timber, but there is a lot of laurel and oak, mostly laurel and oak, some pine. No part of it is under cultivation. It could be nearly all cultivated, it could all be cultivated, he thinks. That was part of a homestead, he cannot remember, but he thinks it was about eleven years ago, as near as he can remember, that was taken up, entered from the Government. They can produce anything on these lands with which he is acquainted, that could be produced in that country, grains and grass, timothy and clover. He does not think any of the lands with which he is acquainted are too high to produce fruits. Fruits are raised in that general community. Fruit has been raised up on the Cove ranch—they raise fruit there. That is in township 38 south, range 2 east, and he thinks they call the altitude about 3800 feet. There are settlers all through that territory. All the homestead land is taken, and lands adjacent, adjoining the railroad lands, are farmed and used for farming purposes.

Q. Now, what is your opinion, Mr. McWilliams, as to whether these railroad lands, if divided in 160 acre tracts, would be suitable for settlement purposes; that is, similar to a homestead, a man to go on there for the purpose of establishing a home and making a living there in the farming industry?

A. You mean the percentage?

Q. Yes, I mean the percentage of the 160 acre tracts that would be suitable for that.

A. Of all the lands we have been speaking about?

Q. Yes.

A. On an average of all of it, well, taking the land that I know west of Ashland and west of Jacksonville, and that east of Ashland, I suppose they would average about 33 1/3 per cent.

Q. Well, now, do you mean 33 1/3 per cent of the land could be cultivated?

A. Yes.

Q. Well, I mean what number of the quarter sections in 160 acre tracts would be suitable for settlement purposes? Not how much of it could be cultivated.

A. Oh, I see. Well, I think three-fourths of them would make homes.

Q. Now, in your opinion, Mr. McWilliams, what has been the effect of the Railroad Company's withdrawal of these lands from the market, their failure to comply with the conditions of the grant and sell the lands to actual settlers in tracts of 160 acres, the effect upon the community there, that you are acquainted with?

A. Well, I think it is very detrimental to the growth of the country. We would have many more people there if they had sold the land in 160 acres—I think easy twice as many in the towns and in the country.

Whereupon, upon cross examination, witness testified, that he had only been there about fifteen years. He knows that that land was on the market from about 1880 up to about 1905, about twenty-five years in Jackson county, and that only a small part of it has been bought, excepting that he thinks they took the land off the market around Ashland in 1901—at least he was told they did. He got that from the railroad agent or local agent at Ashland, P. B. Whitney, who was agent at that time in 1901. The reason for that was they were boring for oil, and he said the company had taken its land all off, it would not sell any of it after they got down about 1500 feet. There was a little oil excitement east of Ashland and the people thought they were going to get oil, and the railroad he thought, according to what Whitney said, withdrew a certain territory there from sale. He does not mean that they withdrew all the lands around Ashland. It was on the east side of Ashland where they were boring for oil. There was a coal find out there somewhere, and they thought they had struck coal. The railroad went in there and with its expert, Professor Dumble, tried to find coal, and found it. The people ran out of funds at Ashland, he was interested in that himself, but they never developed a coal mine there. There are coal croppings in several places throughout the country, from the Rogue River Valley to the California line. They never have found any coal that he knows of, in quantities sufficient to mine. They struck a little gas one time in western Oregon. The country around Ashland, as he under-

stands, has been settled for fifty years, and he heard that a good deal of that cleared land was taken under the Donation Land Law of September 27, 1850, and he knows in a general way that was how it was taken. The Orchard Company in which he is interested, east of Ashland five or six miles, is called the Ashland Commercial Orchard Company, and it has four hundred and thirty-six acres, and is on the donation land claim of Henry Chapman, taken in 1853. It was clear land, they have only a hundred and fifty acres in cultivation, it was never timbered land, but always kind of a prairie. He understands that the Rogue River Valley, the land that is now in cultivation in the Valley, was clear, all clear land in the beginning. But that was nearly all taken up under the Donation Land Law. This little piece of land that he speaks of in Sam's Valley, this eighty acres he bought, he bought it the year of the Seattle Fair, three years ago, and paid five dollars an acre for it. Sam's Valley is north of Gold Hill. This eighty acres of his, is about two miles right west of Sam's Valley. The first section in which Sam's Valley is situated is white, as shown on this map, and the second section west of that in Sam's Valley is yellow, and that shows that that was taken under some law prior to the time the company's grant attached, and that it was lost to the company, if it was in a railroad section. He thinks that his place is two miles west of Sam's Valley, but he may be mistaken. The present ownership map of Jackson county shows the name of Charles Coppock on this land that he bought, but he cannot remember the

ection that it is in. It is wild land, joining the Fitz-erald ranch, which is an old settled place, but he can-ot say whether the Fitzgerald ranch is a donation land laim. Part of this eighty acres that he owns is in the oothills. Ashland's water system originates southwest f Ashland. Ashland gets its water supply fourteen iles at the top of the butte. The Reserve comes down ithin three miles of the city. This is known as the shland Reserve and contains 16,000 acres, they claim. he Reserve was for the purpose of keeping the water ure for the city. It has timber also. The country with-two miles west of Ashland is probably a thousand eet higher than it is in Ashland. It is not very abrupt, ot very rough, and not very broken—it is not nearly broken as it in in some places. It is kind of a smooth ountain, lots of soil on the mountain. There is a agon road up to the Ashland Mine, and one up to a an by the name of Mahan who lived there for several ears. The Ashland Mine is three miles west of Ash-nd. That country up in there west of Ashland is not ltivated to amount to anything, there is no good saw mber on it either. It has been mined, and some of the g timber has been used for mining and for wood, and e rest of it is rock and chaparral and manzanita, and rubby oak—stuff of that kind. The surface is not so ry rocky, in spots there is rock. He thinks not over e-third of that could be cultivated even it it was eared. That land is nearly all owned by Mr. Billings d Mr. Anderson, who bought that in an early day, d have owned it for years, he thinks. Billings lives

in the edge of Ashland, and he thinks he has a section—nearly a section—around there, which he pastures and upon which he cuts fire wood. He sells plenty of cordwood at six dollars a cord and delivers wood to Ashland, and that is his only revenue outside of pasture. West of Jacksonville is a mining country. The Opp mine has a 20-stamp mill out there, just two miles from the post-office at Jacksonville. There is a good deal of that railroad land out west of Ashland and in the township south of Gold Hill, referred to in his testimony, which is covered with small stuff on it, with manzanita, chapparal, and greasewood and stuff of that kind.

Q. Don't you know, Mr. McWilliams, that there is about 100,000 acres of this railroad land grant in Jackson County that you could not sell today to anybody, excepting for prospective mines, mining prospects, for a dollar an acre, scattered over the grant, all over it, on account of the rock and chapparral and stuff of that kind—no timber on it of consequence?

A. No, I think there aint an acre there I couldn't sell for $2.50 an acre.

Q. That is your judgment.

A. That is what I would think.

Q. Well, if Mr. — I can't think of his name—in 1896 General Reames lived at Jacksonville. Did you know him?

A. Yes, sir.

Q. An old timer there?

A. Yes, sir.

Q. Now dead. And Mr. Beekman—C. C. Beekman?

A. Yes.

Q. Who lived there for 40 years, testified that there was over 100,000 acres of that land that was not worth twenty-five cents an acre. You would think that they were mistaken, would you?

A. Mr. Beekman is a kind of a pessimist, you know.

Q. Well, isn't there a lot of that land that you really couldn't do anything with, excepting probably having a large area of it you might try to pasture a little of it?

A. Well, the land that I am acquainted with—

Q. Well, I am not speaking now about what you are specially acquainted with.

A. Well, I couldn't speak to what I don't know.

Q. Haven't you been over a lot of this railroad land that you wouldn't consider of any particular value?

A. No, sir, I have not seen any but what I would consider worth $2.50 an acre or more.

Q. Well, what is the best of it worth that you have seen?

A. You don't mean for timber?

Q. Well, for anything.

A. Well, I aint much acquainted with the timber-

land. I would say it was worth from $10 to $15 an acre, a great deal of it.

Q. The timber quarters you would not know what they were worth for timber?

A. No, I aint acquainted with the timber business at all.

Q. You don't handle timber at all?

A. No, sir.

Whereupon witness testified, that there is a great deal of good timber in Jackson county. The best section of timber is in Jenny Creek, he has always understood that was the best. He only knows by hearing people talk about it what is reputed to be the amount of timber on a good quarter section. He understands that a timber quarter to be valuable for timber, that would sell on the market, would have to cruise about three million feet to be called merchantable timber, and according to his information a good many quarters in that county will cruise that and more. He is in the real estate and loan business. He applied to purchase some of this land under the Act of April 10, 1869. He applied for the southwest quarter of the northeast quarter of section 1, township 39 south, range 1 west. It had a prospect on it, he spent quite a little money on it. The railroad company sold him that land. That was fourteen years ago, and he got it for two dollars and a half an acre. He bought that under an arrangement that was then in force where the company sold any land that was considered mineral at a flat rate of two dollars and a half

an acre, on a quit-claim deed.

Q. And that was the custom that obtained in Jackson County and Josephine County on the part of the Company for years?

A. 14 years ago, yes, sir, they sold it. I wrote to Mr. Andrews. Mr. Britt came up there and found me mining on the land, and he says—I was acquainted with him personally—he says, "Mr. McWilliams, you are mining on my land." And I says, "This is not your land." He says, "It is railroad land. I am agent for the Railroad Company." "Well," I said, "I will show you that that is mineral land, and you can't hold it under your grant.' And I got a pan of dirt and panned it, and got a string of gold about that long. I says, "I am going to try to hold this claim. I have a brother who is a lawyer. It wont cost me very much." And he says, "Mr. McWilliams, I will tell you. You can buy that for $100. It is cheaper than to contest." He says, "You will have to apply to George H. Andrews of Portland." So I did, and got that land.

Q. In other words, the company, where there was mineral on the land, and it was possible that there was mineral in it, and it had mineral prospects, the Company had in force a rule under which they could buy this so-called mineral land at $2.50 an acre, at a flat price, under what we call a quit-claim deed?

A. Yes, but they did away with that shortly afterwards.

Q. I know, but that was obtaining at the time you

bought yours?

A. Yes, I tried to buy the other forty.

Q. Many people thought that the company had no right to these lands in which there was any evidences of mineral found, though they had a patent to it?

A. Yes.

Q. That was the advice which you had from your brother as a lawyer?

A. Yes, sir.

Q. And that was a question that had been litigated some in the courts down there before Judge Hanna?

A. Yes, sir.

Q. In Josephine County particularly there were several suits of that kind in which the Company won out? That is right, isn't it?

A. Well, I don't remember about that.

Q. The courts held that the patents were conclusive in the absence of fraud?

A. Yes, sir.

Q. But you paid this $2.50 an acre for this piece of land as mineral?

A. Yes, sir.

Q. Did you develop it?

A. After that I ran about 100 foot more tunnel.

Q. And did you find any—did you make it a paying mine?

A. No, sir, I quit.

Q. Well, why did you quit?

A. Well, my money ran out.

Q. Well, now, isn't that the experience of a good many men who went to mining down there in that country?

A. Well, that their money run out, yes.

Q. They could not develop it, or else it did not appear in paying quantities, sufficient to justify further expenditure?

A. Well, I still think it is a good prospect, only I got a better prospect back of Jacksonville, and paid $1,000 for it. We have a ten-foot hole, and we have developed that and took out $18,000 out of that.

Q. What mine is that?

A. That is the Gold Standard, we call it, adjoining the Opp Mine.

Q. Is that on railroad land?

A. Yes, sir.

Q. How did you get the title to that?

A. Well, we got it through Mr. Tom Reames. He had bought it from the Railroad Company, and he deeded to us.

Q. I see. So the title was out of the Railroad Company and in your company?

A. Yes, sir, in Mr. Reames.

Q. There is a good deal of mineral land over Jack-

on County, isn't there, both placer and quartz?

A. Yes, sir.

Q. A year or two ago there was a discovery of a pocket of some $23,000 or $24,00 dug out, just picked up on the surface of the earth down there, wasn't there?

A. Well, I have heard that, at Gold Hill, yes. Long before my time, though.

Q. But those pockets are scattered all over in Josephine and Jackson Counties?

A. Well, that is the characteristic of all mining countries.

Q. The result was in 1905 and 1906 there was a good deal of activity in mining and locating men on mineral prospects, wasn't there?

A. Well, there wasn't any locating that I know of. People located themselves. They went out and found something.

Q. What I mean is, there were people that were in all these towns, Grants Pass, Medford and Ashland?

A. Yes, sir.

Q. Prospecting and getting out on these differ[illegible] lands?

A. Yes, sir.

Q. Trying to find mineral lands, and trying to locate on them?

A. About 12 years ago there was lots of them, yes.

Q. And it was very active up to about 1906, and 1907, when the Railroad Company, as you say, withdrew the lands from sale?

A. Yes, sir.

Q. And then that created a good deal of agitation?

A. Yes, sir.

Q. And discussion as to whether or not the company could not be compelled to sell these lands?

A. Yes, sir.

Q. Then later, as timber became an item, that added to it, didn't it?

A. Well, I think it did.

RE-DIRECT EXAMINATION.

Q. Mr. McWilliams, you spoke of some other timber tract that you tried to buy there, or mineral tract that you tried to buy of the Railroad Company, other than the one that you did buy?

A. Yes, another 40 acres. I had spent $500 on that, too.

Q. Well, what was the history of that?

A. Well, I developed that, spent $500 on it, and then I thought if I could buy it I would save working the assessments every year, and I made application to buy it about 1905, I guess, and the company would not sell it. They said that they were not going to put their land on the market for awhile on account of the records

being burned in the San Francisco fire. I guess that was later than 1905, because that was after the earthquake, the next year after the earthquake.

The records had been burned, they said, and they had to re-list the lands, and have them passed.

Q. Do you know anything about the practice of the Railroad Company when contests were filed against the mineral land, or by the mineral man against the Railroad Company in the Land Office, prior to the issuance of patent, claiming that the land was mineral land, and therefore exempt from the grant, excepted from the grant, of getting a mineral man to dismiss his contest, and permit them to get patent, upon the agreement that they would sell the land to him at $2.50 an acre, representing that if he had to obtain it from the Government, he would have to pay $5.00 an acre?

A. Well, it would be just hearsay with me. I have heard that that was the case.

Whereupon H. S. PALMERLEE, called as a witness on behalf of complainant, being duly sworn testified that he is thirty-six years old, resides at Swastika, Oregon, on his homestead a few miles from Swastika, which is a little postoffice established by themselves, in Klamath County, Oregon. When his homestead is surveyed it will be the southwest quarter of section 36, township 38 south, range 5 east. He has lived on his homestead about seven years, which was unsurveyed land until about a year ago and the plats have not yet been filed and so far as the records are concerned would

still be classed as unsurveyed land. He has never perfected his homestead filing on the land. It was placed in the forest reserve about a year after he settled on the land. The character of the land through there where his homestead is situated is a large plateau covering several miles in extent and the soil is rather of a clay, sandy clay loam he would call it, and generally speaking it is timber land. His homestead is chiefly valuable for grass and grain and roots and some vegetables and he raises on it rye, wheat, oats—vetch and timothy do particularly well. He raises cabbage, kale and roots, such as carrots, onions and beets. The elevation is too high to make fruit a success, and is about 5300 feet. He has about five acres cleared on his homestead and 150 acres under good substantial stock fence. He has a good substantial house, well built, ceiled and papered, workshop, woodshed, barn and hay shed and fences inside his main pasture enclosing buildings and clearings upon his homestead. There are other settlers up in that community. He would say that right in that locality a very large percentage, he would say 80 per cent of the land could be cultivated and has soil that would be productive and lays in such a position that it could be cultivated when cleared. His homestead is in township 36 south, range 5 east in section 6. The reserve takes in part of section 3, all of sections 4, 5, 6 and 7, township 38 and has been extended since they settled there in 1906. He would judge from "Defendants' Exhibit 259" that his homestead is within the limits of this grant. He knows from his own knowledge that

railroad land adjoins him just across the county line in section 1, township 38 south, range 4 east and the section south of him, section 7, is considered a railroad section, which was unsurveyed until a year ago. He is acquainted with practically all the unsold lands, referring to "Defendants' Exhibit 259" in the north part of township 38, 5 east and about two-thirds of township 38, range 6 east and in 4 east practically all of 38 south, range 5 east. This land lies very level as a general thing. Of course there are ridges and hills through it but as a general thing that township lays very nice and he thinks eighty per cent of these lands in there could be rendered suitable for cultivation after it is cleared. There is a variety of timber on these lands; the white fir predominates there. There is also red fir and yellow pine and a very little white pine which makes up the balance. He has been through townships 40 and 41 south, range 2, 3, 4 and 5 east to quite an extent and has been all through those townships sufficiently to acquaint him with the general character of the lands therein, and in his opinion twenty-five per cent of township 40 south, ranges 2 and 3 east could be rendered suitable for cultivation. Then over in 40 south, 4 and 5 east there is a much larger percentage; that takes it down into a more level country which could be tilled a great deal easier than it could in the other portion. The other portion lies a good deal of it up in the Siskiyou mountains and some of it is quite hilly and rocky. He would say, to be conservative, that forty per cent of the last named townships could be cultivated, referring

to 40 south, ranges 4 and 5 east, and these percentages, as to the entire area that he has covered in his testimony, if the land were divided into 160 acre tracts would continue generally as to land that could be tilled. There are settlements and farms which have been there for some time in the same general communities as these lands about which he has testified. There is one in particular that he thinks is located in township 40 south, range 3 east, where the people have been there forty years, one family and in that same township there are several others that he could mention who have been in there from four to seven years from what they have told him, the only way of knowing, and from personal acquaintances, and while the land that they are located on in this particular locality is the one that he says is twenty-five per cent tillable, he would think they have small patches cleared of 10 to 15 acres and good comfortable homes and the balance is used for grazing and he would say that the grazing land all in through this rough part of the country raises very luxuriant grass, and the wild pea vine grows there, which is considered one of the very best stock feeds that they have in the mountain ranges. These settlers keep stock, goats, cattle, horses, hogs, in various numbers. He had some difficulty in obtaining his filing on his homestead. One reason was the unfriendliness of the Forest Service in holding back their applications and putting in various false reports in regard to them and their first application was thrown down. The second application for survey was lost in the Medford office and hindered for about six months;

then the surveyor's notes were lost in the Portland office for three or four mouths and finally reached Washington and they are there now, he supposes, they have not heard from them for a long time, and they hope they are there. This has had an effect upon the improvements of his homestead in this way. After they had been there about five years they got so little encouragement from the Government as to their doing anything that they ceased to do very much in the way of improving. They would like to know something definite before they would do very much more. They had spent a good deal of time and money in making their improvements and it is his intention to make a home of his homestead and cultivate the soil and use it for stock raising.

Whereupon, on cross examination, witness testified that he could not say positively as to how much timber he has on his homestead. The majority of the timber on his homestead is a white fir, which is not considered of very much value and he has not had any experience in estimating the amount of timber on the land and therefore his opinion would not be very valuable on that line. He would simply guess that there might be two million feet of good timber on his homestead. He has not cruised it and is not a timber cruiser. His business is that of farming. He was educated in Minnesota, came to Oregon seven years ago; was formerly a farmer; was raised on a farm and with the exception of about eight years that has been his work. He has never been in the Government service and has been in the grocery business and dry goods business in southern Minnesota.

He came to this section of the country where he located, to get a homestead about seven years ago. About that time there were a great many inquiries for timber and when he came out here he had in mind that he would get a good timber quarter, this quarter, his homestead, was shown to him but not as a timber quarter. When he came out from Minnesota he did take a timber quarter under the Timber and Stone Act in section 2, township 38, range 5 east, about three miles east of his homestead. He has been in the stock business to a very little extent while he has been on this homestead. It is a good stock country around there. He has never heard, and could not tell the number of acres in its native state on this out range that are estimated to be necessary to support one head of cattle. The ranchers there, or homestead entrymen, run stock and pasture them out in the common, in the Forest Reserve, and he thinks they pay for that privilege in the Forest Reserves forty or sixty cents a head for the season. Stock raising is the chief industry that these people have and the cattle all run at large over railroad lands too. The Forest Service for some reason or other has been antagonistic to all settlers locating in that part of the country. They do not know what the reason is but nevertheless it has been true that so far as they have been able to learn their reports upon settlers have all been other than favorable. It is not entirely because the Forest Service have reported that these lands were chiefly valuable for timber and were being taken for timber and not for homesteads. There is lots of land in through that reserve that is devoid of

timber and should an applicant wish to get one of these pieces of land, the report made by the Forest Service would be that if planted to timber it would grow timber, or that it was reserved for Forest Rangers Stations and it seems to be the method of the Forest Service to retain these lands as a timber reserve, that is lands that are either actually timbered at the present time or for growing timber in the future.

Whereupon witness testified:

Q. Do you know that Mr. Graves is of the opinion that nearly all of the lands within the forest reserves that are sought under the guise of actual settlers are really desired for timber? Don't you know that that is his published opinion?

A. Well, judging from the method of procedure of the forest rangers through that country, I would think that they do.

Whereupon witness testified that fruits do not successfully grow on these lands on account of their elevation. They are subject to frosts there during the summer months. George W. Jones, the postmaster at Swastika, the nearest postoffice, is a stock man and has a large ranch of 320 acres. Swastika is just a postoffice. For their nearest trading point they go to either Ashland or Klamath Falls. The distance is about the same. Ashland is about thirty miles distant. He is directly on what is known as the Dead Indian Road, the old established road. A man by the name of Whitcomb located him on this land. Whitcomb's principal headquarters

had been at Klamath Falls. He would call the lands which he has described and over which he has been in these various townships a timbered country, but would not say that the chief value of these unsold railroad lands was timber. There is now no demand for timber there at all and there has not been an active demand for timber. He has not known of a single sale made in that locality recently or at all. He is speaking of the locality of his homestead and there has not been very much of a demand for past years for timber lands in these various townships both east and west. He understands that Hopkins has about forty thousand acres in there on the Jenny Creek belt, about twenty-five miles southeast from him. He has heard cruisers talk about two million to three million feet as being a good timber quarter in that country. The man that had been forty years in there, of which he spoke in particular, raises all kinds of produce, fruits and grain, butter and eggs, and everything of that kind and he thinks his place is in township 40 south, range 2 or 3 east, about fifteen miles from Ashland he thinks. He homesteaded his place before the railroad acquired this grant. His name is J. M. Tyler and his postoffice is Soda Springs on the Green Spring Mountain road. He sells to the markets at Ashland and raises produce in the way of butter and eggs and he raises pork for that market and sells that in Ashland and is extensively engaged in that. He makes a little more than a good living. He is not in the hog or egg business as such, but is in the general farming business. His chief income would be from stock, butter and eggs, and

he has been there he thinks about forty years. The other settlers that have come in there later are Mr. Davis who lived back about two or three miles still further. He is off to one side of the main road and back in among the hills and has a homestead which has timber on it and it is just a fair timber quarter he would think. He has, he presumes, about ten to twenty acres cleared and has been there about seven or eight years, and is about two or three miles away from this man who has been there forty years. Another is J. D. Williams, whose homestead is about two miles still further back. He does not think he has a very extra good timber claim and thinks his is principally open land. He could not say how much he has cleared and under cultivation, but thinks he has about twenty-five acres and the balance he uses for pasture. The lands of this man are mostly fenced, some with wire fence and some with rails. They all have stock on the out range, cattle and hogs, that is what they get their living from principally, the stock business. They raise very nice potatoes and strawberries in that locality. Whenever they have more than they need for their own use, they haul it to Ashland, which is their nearest market. There is no stage travel in there, they are off the stage road to one side. The land which has timber on it could not be tilled until the timber is removed.

Whereupon JAMES F. WILSON, called as a witness on behalf of complainant being duly sworn testified that he is fifty-seven years old, resides in Linn County, Oregon, near Crawfordsville and has lived in

that country since 1881. He has followed principally logging but he is farming now. His farm is located in section 20, township 14 south, range 1 west and he owns only one hundred and seven acres. He does not remember how long he has owned it, but he never moved on to it until five years ago, although he bought it a good many years ago. It was a donation land claim. There are sixty acres under cultivation that he farms and he raises pretty nearly everything. He does not raise grain to thresh but raises grain hay, puts pretty nearly everything into hay that he raises. He has a young orchard on the place but none bearing. It is a pretty fair fruit country. He raises pretty much all kinds of vegetables. He purchased eighty acres of land from the Oregon and California Railroad Company about 1885, or 1886, and paid $3.50 an acre for it, it was good farm land, and he bought it for raising stock. He had it about all in farming land and pasture excepting ten acres, it was timber and densely covered with what he would call pole timber. When he speaks of pole timber he means from a little bush up to say ten inches. There was quite a lot of big timber rotten at the top, it was not counted valuable at all at that time. The timber had no value at all and he was not interested in timber. When he purchased the land it was solely purchased for agricultural uses, that is what he bought it for. Referring to "Defendants' Exhibit 259" he lives in section 20, township 14 south, range 1 west. Holley and Crawfordsville are in this township. All north of where he lives was taken a good many years ago and has been settled years and

years in old donation claims pretty much all of it. South of him then begins land that has been taken principally since he came into the country. He is acquainted with the general country south of where he lives now and is very well acquainted with all of township 15 south, 1 west over in the Mohawk country where he is. He has been all over and run his cattle all through the lands between the Mohawk and the Calapooia, that is townships 14 and 15. After he gets off of 14 and 15 he does not know the lines. The other he has been to corners and all around that land in townships 14 and 15 south, range 1 west, and he will say for twenty miles east of his old place through there hunting cattle and deer; that is east of Crawfordsville in townships 14 and 15 south, range 1 west, that lies through a low gap in the mountains, it is high on both sides, all nice land pretty much all of it. There is some in the east, a little on the east part of that, that is getting rough. Eliminating two or three sections he would say that half, or in the neighborhood of half of this land, after the timber that is on it has been removed, could be farmed or tilled. There are two of these sections one could hardly find a level enough place "to whip a dog on," section 11 in 15 and section 2 in 14 he did not make his estimate on each one. Referring to section 11, township 15, there is a mountain which rises up right there and covers that section. The section about covers it. It is very fine timber and only about eighty acres of the south side is bare and very rocky and very steep. Section 2 is on the head waters of Brush Creek and is all broke up in gullies before it

comes down to the main creek. That is very rough in there and heavily timbered, about the best timber there is in that country. There are settlers on the even numbered sections in this area with which he is acquainted in township 14 and 15 south 1 west. Township 15 along the river was pretty nearly settled when he came to the country in 1881, that is in the even sections, part of it in the even sections. There were some settlers off the river and there are some beyond, they are farming, some raising grass, stock and hay. The land about Foster and Sweet Home country is bottom land and is sandy land and is a little better land than where these settlers are in townships 14 and 15 south, 1 west. There is quite a bottom on the Santiam, along near Foster, bottoms and sloping land, it runs back up but this is taking him off of townships 15 and 14 and in a country that he never ranged over only to go up the Santiam River. He is acquainted, however, in that locality, has been up the river clear on across the mountains. There are a number of ranchers there in that Sweet Home country in townships 13 and 14 south, back in ranges 1 and 2 east, but he has never ranged through that Sweet Home country only to travel the main road and he is not acquainted with them, that is, some places that he knows were only just on the road, he has been over six or eight times across the mountains there. Fifty per cent of the land in each 160 acre tract in townships 14 and 15 south, 1 west, could be plowed except those two sections, he would say that a man could get very little tillable land on either one of these two sections.

Whereupon on cross examination witness testified that on the north hillsides of these railroad sections it is good timber, facing the north. Those north slopes on these hills and mountains carry the heaviest stand of timber, it seems to be much older than on the south side. The south side is not much bald in that country, it is all a timbered country. It runs from a pole country up to what he calls second growth, that is, generally speaking, among loggers, called second growth, that is trees that will cut say from four to eight hundred feet to the log, sixteen foot log eighteen to twenty inches at the butt. It has a thin bark and thrifty looking timber. Pole timber that he speaks of is six to eight inches and about like telephone poles. He supposes likely that this timber has grown up since it was burned over at one time but he does not know, it does not show it. It does not show that there are any big stumps there anywhere. He paid $3.50 an acre for this 80 acres in 1885 or 1886, and it is all cleared, in plow land and grass, except about ten acres. There are about thirty acres plowed on the place. He cannot tell just when he sold it. He bought it, he thinks, in 1885 and lived there about twelve years and then he bought another place and he sold that and he thinks he held it about two years longer, which would make about fourteen years, that would be about 1900 when he sold. He got $10.00 an acre for it. He logged a great deal of the time when he was living on this 80 acres; that is he drove team a great deal of the time for other people, hauled the timber, drove the team. He was principally ranching and logging, but not for him-

self at that time. At the time he was living on this eighty he was ranching and logging and raising stock was his business principally. His stock ran on the range. The settlers away from the river have generally sold out. They had principally timber claims and sold their lands, he thinks, the principal part of them along that river and away from the river, to the Booth-Kelly Lumber Company. He cannot tell the year when they sold but somewhere about the time that the Booth-Kelly Lumber Company went in there, about 1890, some odd years. It would be hard for him to tell the amount of timber that these homesteads that were sold to the Booth-Kelly Lumber Company would run, they had cut off and burned up so much timber there before there was any valuation, before it was worth anything and cleared the land and such like and he thinks really they had cut the best of it. What they had left would lay in such shape that they would go through there and estimate what was left, and it would be a hard job for him to tell how many acres they had, or what it would amount to, but it was of sufficient value for the timber for the Booth-Kelly Lumber Company to buy it. They gave up their settlement and moved away when they sold the land. He would say that some of these people had from five acres up to forty acres in cultivation on their homesteads. Most of these people that sold had lived there for a great many years and had done clearing. They did not sell about as soon as they got their patent, they finally sold out afterwards to the timber people. This 107 acres that he owns in section 20, township 14 south,

range 1 west is something a little above two miles from Crawfordsville principally southeast. It was a donation land claim of Thomas Woodfern and he cannot tell but expects it was settled in 1850. It was an old claim and was about two miles from the Calapooia River and lays on Brush Creek. He has not cruised any of these timber lands over on the Mohawk and through townships 14 and 15. He did not do any cruising except once in awhile when some of his neighbors had logged so much that they would want a cruise before they would have the regular cruiser of the Company to go in, that is they would want him to give them his judgment so as to guide them in dealing with the Companies and that was as far as he ever cruised any timber. That was on some of these homesteads that were sold. He never directly applied to purchase any other railroad land excepting this eighty acres. He never wrote to the Company about it but asked Britt, who stopped at his place a great deal when he was looking over this railroad land cruising it and running it out and getting the estimates of the thing, and there was an eighty that laid adjoining him on the north, the other half of the 160 acres adjoining the 80 he had bought, and he told Britt that he had a notion to buy it and Britt said he could not buy it. This was within the last seven or eight years while Britt was doing this work. It must have been right along in 1890 when Britt told him that he could not buy, that the thing was shut down then until they got done, they were not done cruising, they were not half done when they were at his place. Most of the time they were surveying

right around his place. This 80 acres that he wanted to buy from Britt was pretty well timbered and was flat black land and the timber was not of any value then, but it has since become of some value, but he was not buying it then for that. At that time timber was not worth very much, they would burn it up. That eighty he thought would go something like over 1,500,000 feet. He has not bought any stumpage since he got his land or had anything to do with it since he bought the railroad land. They sold their land instead of selling the stumpage. They sold their land out to these timber people, referring to the Booth-Kelly Lumber Company, who owns most of this along the Mohawk River.

Whereupon WILLIAM COCHRAN, called as a witness on behalf of complainant being duly sworn testified that he is sixty-one years old and resides in Linn County, Oregon, two miles north of Brownsville on a place partly in section 19, township 13 south, range 2 west and section 24, township 13 south, range 3 west and is engaged in farming there and raises most everything that is usually raised on a farm, oats, wheat, barley, etc., fruit and vegetables and has about 125 or 130 acres under cultivation and 800 acres altogether in his farm. He has the farming part of his farm rented at present. He raises stock principally, sheep at present. He raises apples, pears and prunes. The place was his father's donation land claim. There is railroad land in the vicinity of his farm, adjoining him on the east and northeast, consisting of forty acres in two separate tracts. Four-fifths of these two tracts could be tilled and cul-

tivated. In its native state the original character of this country was comparatively open. There was scattering timber at that time on a portion of it. He has cleared and cultivated the portion that was not heavy timber. The land he has not gotten under cultivation there is used for pasture. Referring to "Defendants' Exhibit 259" he is fairly well acquainted with the country at large, five or six miles south and north of the Calapooia and east from Brownsville eighteen or twenty miles and he is acquainted north and south five or six miles each way from Calapooia River which runs in a northwesterly direction and rises in a southeasterly direction. He is fairly well acquainted with all the land that runs along the Calapooia for eighteen or twenty miles east of Brownsville. He has traveled over it quite a good deal on each side of the Calapooia five or six miles. He is fairly well acquainted with the lands south of Crawfordsville, a distance of five or six miles on the Calapooia. He could hardly tell the lands with which he is acquainted by township and range and he has given the best description that he could. He has been over that land, hauling lumber and hunting and in hunting he would go off of the river and through the fields and woods there. Speaking generally as to the lands where the railroad lands are situated but not necessarily refering to the railroad sections alone, taking that whole section, he would say that four-fifths of the lands with which he is acquainted along the river could be rendered suitable for cultivation and the balance could be used for stock range. There are people living in this section

farming and engaged in farming on lands of similar general character. Taking the whole country that is settled altogether he thinks that this average generally, if the country were divided into 160 acre tracts, would hold good as to those tracts.

Whereupon witness testified:

"Q. Mr. Cochran, in your opinion, what has been the effect of the Railroad Company's refusal to comply, or its failure to comply with the terms of the grant, and sell these lands to actual settlers at $2.50 an acre, in 160 acre tracts—what effect has that had on the community that you are acquainted with there, if any?

A. I would say that it has retarded the settlement of the country."

Whereupon, on cross examination, witness testified that his father's donation was taken in the early fifties, before 1850, he should think. He is now sixty-one years old and was born on the donation land claim.

"Q. Your father was William Cochran?

A. Yes, sir.

Q. And you are a nephew of former State Senator Cochran?

A. Yes.

Q. Uncle Bob, as we called him?

A. Yes, sir."

He has lived in the vicinity of Brownsville all his life. His father's donation claim is about two miles

north of Brownsville, which has a population of 900 people. The Calapooia is one of the oldest settled portions of Linn County.

"Q. Now, you are acquainted in a general way with the lands on either side of the Calapooia for four or five miles and for a distance of twenty miles east of Brownsville?

A. Yes, sir."

That includes the donation claims, and the homesteads and other entries that have been settled along the Calapooia and that are not railroad lands, as well as the railroad lands, and also includes any portions of the railroad land that may have been sold heretofore, within this four or five miles on either side. He thinks most all of that country along the Calapooia there east of Brownsville was taken up under the donation law. These unsold lands that lie within four or five miles of the Calapooia River are in the foothills like, of the Calapooia. Not knowing which are railroad lands he could not say what they are covered with but only just as the country generally is. There is some timber four or five miles away from the Calapooia but not dense, not very large timber. There is some logging timber or saw timber within four or five miles of the Calapooia on the south side in spots. He would say eighteen or twenty miles up the Calapooia, near the Calapooia, there is some saw timber. He has never taken a homestead in this country and never applied to purchase any railroad lands excepting those two forties which have not any valuable

timber but are covered with oak grubs and when cleared one could plow the land, most of it. He does not know what it would cost an acre to grub these oak lands. They used to, twenty or thirty years ago, have Chinamen that they could get to grub the land down in the valley and they paid all the way from $15.00 to $30.00 an acre, depending on the stand. The Willamette Valley and around in Linn County was always substantially a prairie country. He guesses Linn county was one of the largest prairie counties in the Willamette Valley and had more prairie than any other county, unless it was Lane. In the four-fifths of the land on either side of the Calapooia within four or five miles that could be put under cultivation, he includes what had been settled, including donation land claims and all that have been taken in the early days.

Whereupon, on re-direct examination witness testified that what he terms prairie land is that which lies down away from the hills and on the level. There is some grub land out on the prairie in patches, but it is mostly on the foothills where the oak grubs and young fir grow. There was not originally in the vicinity of Brownsville considerable of this oak grub and young timber, small growth of timber on nearly all of those lands, it is second growth fir, that is young fir that has grown up in the last fifteen or twenty years, possibly longer and oak grubs that have grown there since he became grown.

Whereupon, on re-cross examination, witness testified that in the Willamette Valley as late as 1860 to 1870, much of the valley land was not broken up, not

plowed, and tall grass where the stock did not run over it, where it was not burned, came up and was in existence all over the valley,and later on, because there were no fires put out by Indians and others, oak grubs and second growth fir sprang up all over the valley in different parts and that is what he referred to about the oak grubs growing out on the valley. There is not much fir that grows out on the prairie but the oak grubs are a growth within the last forty or fifty years and it was formerly prairie. He accounts for that in this, that there were a few scattering large oaks out on the prairie near where those patches of oak grubs came and he supposes that is what seeded the ground, and he thinks they did not grow before because the Indians burned the land off.

Whereupon, on re-direct examination, witness testified that he thinks the Willamette Valley and Cascade Mountain Wagon Road land grant begins at Sweet Home and does not extend up as far as Brownsville. The Willamette Valley was practically all taken up by old donation claims he thinks and was the early settled part of the State. The early settlers took it that way.

Whereupon JOSIAH H. BEEMAN, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Gold Hill, Jackson County, Oregon, and has lived in Oregon twenty years and at Gold Hill all that time. He has been engaged in the development of mines, principally quartz mining since he came to Oregon. He has traveled largely all over Jackson County and to some extent in Josephine Coun-

ty, examining the opportunities for mining. He has traveled over a good deal of district that is not mineral in character in the way of hunting excursions, and for research of the formations. He has lived and was born on a farm. He worked on a farm in the east, in Michigan for three seasons and he has farmed some in a small way in Jackson County and he thinks that in his experience in Jackson County he has become familiar with the general industrial history of that county to which he refers and he has become familiar with the general character of the soil and other conditions that enter into the question of the adaptability of that land to agricultural and horticultural uses, and has made considerable examination together with men whom he believes to be experts in that line, examining the different types of soil, from an agricultural standpoint in Jackson County. He has been active in connection with his local commercial club in the capacity of president of the Gold Hill Commercial Club and a member of the Southern Oregon Development League, and they have an association connected therewith, with the State League. His interest in the industrial life in that community has not been limited to mining. He has been very much interested in the upbuilding of his community and has tried to gain a knowledge as to the adaptability of the soil for various purposes in the different districts. He had a long conference with Mr. Howard Reed who was carrying on experiments on behalf of the Department of Agriculture. Together they went over the district lying east of Medford, known as the desert land, and made a

thorough examination of the work and experiments carried on by the Roguelands Company, and the possibilities of the success of their proposition in the development of that land. He has noticed the development of the higher lands in the last five or six years and the growth of the trees that were set out on the higher lands, other than what would be called Rogue River valley lands, that the lands lately developed show a better growth than the lower or the high priced fruit lands of the valley known as the Rogue River valley. There is generally a greater depth of soil. The lands are air drained, and to a large extent sub-irrigated. By sub-irrigated he means that the water comes from the higher mountains under pressure of some kind and flows and seeps down the incline through the soil—keeps it moist and prevents the sap souring and allows a healthy growth of the bacteria of the plant. He really knows very little about it from a theoretical standpoint and wishes to testify only from practical knowledge and watching the industry from a personal visit and investigation. He considers the hill lands the most valuable in Jackson County for agricultural purposes. He has made observation as to the usefulness of the so-called decomposed granite land. That land is largely the type of soil in Josephine County close to the vicinity of Grants Pass. It is called there by those people, volcanic ash, to him it is known as granite. Those lands are very valuable lands with irrigation. He rather thinks that most of the granite lands require irrigation. He could not testify to many particular tracts of land in the

granite of Josephine County as much as Jackson County with reference to the growing of fruit, grapes and other agricultural and horticultural crops upon those decomposed granite lands without irrigation. There is very little of the granite lands in Jackson County. He does not know of experiments in these granite lands without irrigation. He knows in a general way where the railroad lands are situated in Jackson County which are involved in this case and these railroad lands average about the same as the other hill lands in Jackson County, which he has been describing, as to adaptability as to soil for the uses of which he has been speaking. His testimony upon that subject includes the communities where these railroad lands constitute a part of the lands. He knows of a good many places where they are raising very fine fruits on lands involved in this case now owned by the Railroad Company. He knows of instances where the adjoining lands are used. There are a great many places where the Government land has been taken up by the settler, homes built and made thereon, and while the railroad lands adjoining are lying idle, they are the same character and types of soil.

Whereupon witness testified:

Q. I will ask you whether, in your judgment, speaking of these railroad lands as a whole, 160 acres of them, if open to settlement, would support a settler and his family?

A. Yes, sir. There are a great many 160-acre tracts that I believe would, if the lands as a whole were thrown

open for settlement.

Q. Are you familiar in a general way with the manner in which the railroad company has sold or refused to sell its land in Jackson county?

A. Yes, sir, I have had a large experience in that line.

Q. I will ask you to state whether the policy that has been pursued by the railroad company has promoted or retarded the development of industrial and commercial conditions in Jackson County?

A. It has very decidedly retarded the commercial development in all lines of industry.

Q. Has that effect been restricted to the railroad lands themselves, or has it also extended to the intervening lands?

A. Very largely to the intervening lands in certain districts.

Q. How? Just explain what effect this policy has had, and how it has brought about the result you refer to?

A. Well, where the government lands would lie along established county roads, that is, along the good wagon roads, that land has been taken up and settled upon to a large extent by homeseekers; but in districts where there were no school facilities nor good wagon roads, those districts have been absolutely retarded and unsettled, I think by the main reason that the grant has been taken off the market.

Q. What lands?

A. The railroad lands.

Q. Now, is there any reason why roads could not be established and schools established in those communities if the lands were open for settlement?

A. I know of settlers that have gone upon the railroad lands and have attempted, apparently in very good faith, to make homes, that afterwards they found that they could not sustain themselves for the reason that the neighbors were distant, there were no means of ingress and egress to the property, and that the railroad refused to sell them the land after they had made settlement thereon, and that good lands for agricultural purposes have been taken up as timber claims, and have been sold to timber dealers, which has retarded the development; whereas if the lands were thrown open as is the purpose and intent, as I believe, of the grant—that the country would have been largely settled up, if conditions were different. Did you want me to go on about the mining interests?

Whereupon witness testified that on the very high lands adjacent and tributary to Gold Hill for a radius of eight or ten miles in most all directions, they raise very fine pears. They bear very early, from one to two years earlier than the fruit in the lower Rogue River valley proper, on very high lands he has taken pride in sending grapes and fruit to his friends in Portland and San Francisco. He thinks that fruit and those grapes are superior to the fruits and grapes that grow in the

Rogue River valley proper as to quality and he thinks they can be grown to a greater degree of profit than the lands known as, for instance the Burrell orchard, which is the highest priced land that has been sold to his knowledge in Jackson County. In most instances irrigation on these hill lands is not necessary. He thinks there are a great number of tracts of 160 acres that have from five to 160 acres upon them that would sustain a family and that more than fifty per cent, approximately, of the unsold railroad lands situated in Jackson County and in that part of Josephine County with which he is acquainted in quarter sections, would be fit for settlement and the maintenance of a settler and his family, that is more than fifty per cent of the quarter sections, more than fifty per cent of the quarter sections contain enough of this land to sustain a settler. There are a great number of 160 acres that would support a large number of people. These lands that he speaks of are scattered throughout the county. There is considerable of this railroad land involved in this suit in the vicinity of Gold Hill, a great many acres he believes, that is, in all directions from Gold Hill, within a radius of ten, twelve or fifteen miles. There are considerable desirable railroad lands within that area that are not timber lands to any degree. The lands about which he has been asked to testify here are practically non-timbered lands, nothing but fire wood and brush on them. The timbered section of Jackson County is up in what they call the Evans creek district, the Butte creek district and some in the Siskiyous and he is acquainted with those. He

thinks these lands, after the timber is removed and the lands are cleared would make very fine agricultural land to a large extent. He has been engaged in quartz mining, as he has said, for twenty years. He purchased quartz mines, paying pretty large sums for the mining properties and a great number of them had been situated on odd sections owned by the Railroad Company. He filed protests in 1895 and 1896 against the issue of patent to the railroad company for these lands, and on other tracts the railroad company made application, and he made protest after the application had been made, together with those interested in the development of mines in Jackson County. Hearings were ordered by the Department in proper order, and at the hearing the railroad was represented in a great number of cases, in fact, all the cases, he believes by N. E. Britt and a corps of assistants, he had five generally. All of those witnesses testifiled to having qualifications as to farming experience. He is testifying now from his personal appearance in the cases and from his personal knowledge of conducting the examinations in these cases. The witnesses produced by the Railroad Company were to the effect that these lands were chiefly valuable for agricultural purposes and in all the cases the lands involved in these particular cases were very high or mountain lands. In section 29, township 35 south, range 3 west, where his stamp mill is situated, the lands are very steep and the railroad witnesses testified that they were very fine agricultural land and he thinks that they were right and that they are good agricultural lands, and also mineral

lands. He had taken out a great many thousands of dollars in gold and silver from the lands now owned by the Railroad Company and withdrawn from sale. The fact that they are withdrawn from sale has retarded to a very large extent the mining industry of Southern Oregon. It is difficult to obtain capital for development of any enterprise until they can show an absolute title to the property, which of course is prevented by the refusal of the Railroad Company to sell the lands. In most of the tracts of land with which he is familiar and where these contests were heard, there is very fine agricultural land. His own land is in section 29, is quite steep, but the soil is very deep. He has been able to raise very fine vegetables, all the vegetables necessary for his camp. He has there grown potatoes and pea vines eight or nine feet high, and they had an abundance of peas on them. They had very large potatoes, some as nice potatoes as he every saw, both as to quality and smoothness, that is true of a good many of the mining camps, placer mines and quartz properties. He would say that there were more than twenty instances of contests of the kind he has described where the testimony was of the character mentioned. These contests commenced in 1896 and ended on October 14, 1912. Mr. Britt made the proposition to him that if he would withdraw his protest and let the Railroad Company obtain patent to the land on their agricultural value it would agree to sell him the lands after it had obtained patent. The company made that proposition to most, or to a great number of the protestants, to his personal knowl-

edge and he knows of instances where it was accepted by the protestants, who did withdraw their mineral protests and allowed patent to issue to the Railroad Company. He, however, refused to enter into any proposition of that kind, as he was sure that the lands were chiefly valuable for mineral, and he carried his cases to their conclusion, which resulted very largely in favor of the Railroad Company and against the miner for the reason that it became generally known that the Railroad Company would sell the lands to settlers; and there are those who believed that the Railroad Company would sell it who are at this time unable to buy the lands that they were interested in. The title of N. E. Britt was, he believes, chief surveyor of the Oregon and California Railroad Company and he had charge of the cruising in that particular Southern Oregon district. Witness took into consideration the question of clearing the land and reducing it to cultivation in determining its usefulness for agricultural and horticultural purposes. It is particularly noticeable as to the value of these lands from a practical standpoint in a trip from Gold Hill south on what is known as the Mountain road to Jacksonville, that land, lies very steep and high above the valley proper, commanding a full view of practically the whole of Rogue River Valley and until a few years ago was regarded as of no value, but in a great many instances it has been demonstrated beyond a question of doubt that those lands are the best fruit lands in Jackson County and it has been shown that the higher trees have the greater growth, in speaking of trees in the

same field planted on a steep hillside, from the highest point down to the black alluvial soil in the valley, that the higher most tree would comparatively be four or five times larger than the tree on the lower line down, or what would be known as the river, the alluvial black soil showing that the tree had some advantage, or a large advantage over the lower trees, which is accounted for by being air drained and possibly sub-irrigated. In mining he has known sub-irrigation to be over 3300 feet in elevation, at the top of Jump-off Joe, they mined on the very top of the mountain there, yet at the depth of sixty feet it was necessary for them to furnish the miners with gum clothes, gum coats and gum boots. And in the fruit lands some six or seven hundred feet above the elevation of Gold Hill, which would be 1600 or 1700 feet in elevation above sea level.

Whereupon witness testified:

Q. Mr. Beeman, I will ask you, from your knowledge of the general conditions in that country, your observation of the developments of the lands as a whole, whether in your judgment, if these railroad lands had been offered to settlers, they would have been settled upon, improved and developed, and would now sustain settlers and their families, and homes on them.

A. I most assuredly believe that they would be largely settled upon if they had been sold or had not been withdrawn from sale.

Whereupon witness testified, that there is practically no saw timber in the immediate vicinity of Gold Hill

and there is no timber on the land along this mountain road to Jacksonville, referred to by him. He is speaking from traveling over the lands and through across the mountains and going through and over the trails and personal observation and study of the types of soil in the different mineral belts. He believes that he is one of the first men that met Mr. Townsend when he first came to Oregon to investigate this case. He has given the subject of this suit special thought and consideration to a large degree since that time. During the first trip of Mr. Townsend here he went to the southern part of the grant and he took him over some of these lands that he is now referring to and took many other people too. He is quite enthusiastic as to the adaptability of these lands as to their natural resources but he has not intentionally permitted his enthusiasm for the value of these lands for the purposes stated to influence his judgment or testimony. He is positive he has not done so and is sure he has not been over enthusiastic in his work and study of these, and in any testimony that he might give here.

Whereupon, on cross examination, witness testified that he practices before the land department but has not been admitted to the bar of the State or to the Supreme Court of the State. He came to this state from San Francisco where he was in the merchantile business for a number of years. He lived in San Francisco all his life, with the exception of three years when he went to Michigan. He considers that he is a mining man and that that is his business at the present time. He owns

the Lucky Bart mine in sections 29 and 30, township 35 south, range 3 west and the Alice group of mines situated in section 11, township 37 south, 3 west. He is the sole owner, with his wife, of the Lucky Bart property. In the Alice group he has associates. He has some lime locations that he owns himself, two-thirds and an associate one-third, in township 36 south, range 3 west, in section 20, and he has some stock interest in other mining properties. He thinks he has 7,000 shares in the Gray Eagle, or the Oregon Gold Hill Mining Company, which is in section 29. He thinks the par value is $1.00 a share. He received that as an owner of the claim, but did not have title to the claim, the record title belongs to the Railroad Company, he has a possessory mining title. They have run several hundred feet of tunnel, winzes and shafts on there. At the time that he sold it they had taken out but very little gold, it is a gold mine, it was development work entirely, their ore was all on the dump. That land is patented to the Railroad Company and is part of the land that he lost in these mineral contests. He did not organize this company and he does not know who organized it. There are two claims, practically forty acres located on 1500 feet by 600, which would be 3000 feet by 600. He purchased them from the original locators and they were located under the mineral law and he purchased the claims from the mineral claimants. The mineral claimants protested and won out but in making the segregation they were not awarded the amount of ground that they were entitled to under the decision. The decision was that the seven

claims of the Lucky Bart Mining Company should be cancelled from their application. In making the segregation and survey, the railroad surveyor filed an affidavit that he could not find the claims of record as were testified to in the case, although they were of record. In making the segregation, for instance, they found the claim of Buckskin, which the notice said was 1500 feet, they segregated only 1400 feet and took a patent to a fractional lot known as lot number 2. The Railroad Company made the survey. Witness and associates were awarded only the portion of the claims covered by their location and they got a patent for, he thinks, less than one hundred acres, because it was mineral. He guesses that they are squatters and that that is their only right to possession. They have constructed a stamp mill, built a road at large cost, and extracted a great many thousand tons of ore. The portions of the mine owned by himself and wife that he did not receive title to, he purchased from the Railroad Company at $2.50 an acre in 1901, being 52 and a fraction acres and the deed was made to him personally and he owned it individually. They had a contest as to section 11 on mining claims that they purchased in township 37, traversed through the entire section 11. They did not get a patent to any of that—the Railroad Company got the patent to it. He won out as to that contest, but was wrong as to the section. The testimony was that they supposed that they were in section 13, the decision was that the lands claimed were more valuable for mineral. The railroad got a patent to the land, however, under some process that he

did not know at the time how it was done. He had a suit in the courts to set aside the patent, which was heard in Jackson County. The decision was not to set aside the patent, he alleged in his complaint that the land was mineral but it came about in a way that the Railroad Company sold its mining land to others. He and his associates did not get any title from the Railroad Company but sued a party who bought from the Railroad Company. In that instance the price, instead of $2.50 an acre was $12.00 an acre, but the court held that this party was a trustee for witness and associates. The title of the case was J. H. Beeman and John R. Mitchell against William Mendenhall, the case did not go to the Supreme Court. Witness finally lost the land. Judge Hanna decided that Mendenhall had a right to buy it from the Railroad Company at $12.50 an acre. Judge Hanna ruled that the patent was subject to attack, but title having left the Railroad Company under the patent he and the litigants fought it out between themselves and he lost. That was the way it was done. He did not appeal to the Supreme Court because he was pretty short of funds at that time. He had purchased forty acres where his tunnels were from the Railroad Company which would be the northeast quarter of the northeast quarter of section 11, where his development work was. He had purchased that in 1901 through his associate Mr. Mitchell. He is assessed in Jackson and Josephine counties for last year something close to $10,000. It is not all on his mining property. He has some property in Gold Hill that is assessed, some store buildings and a residence.

Most of his assessment is made up of Gold Hill property, practically all of it. He is assessed on this mining property at $6.00 an acre or 52 and a fraction acres in section 29 and forty acres in section 11, which would be 92 acres at $6.00 an acre, and also is assessed for the stamp mill and he does not know just what that is assessed at, but about $1,000 for improvements, something like that. He is assessed on this mining property then for about $1500.00. He was never at any time in the business of promoting applications and so-called settlements of these lands about the time Mr. Townsend first saw him in 1907. He never in any instance was connected with Mr. Hammersley or anybody else in the business of making application and tendering the $2.50 an acre on these printed blanks. He absolutely refused to have anything to do with such a proposition. He did not locate Frank Gingrass on some railroad lands, but he did have something to do with it. Gingrass located on a piece of railroad land in section 19, township 33 south, range 3 west and attempted to locate on 160 acres. The place is northeast of Gold Hill about twenty odd miles. Mr. Gingrass was a man who worked for him in the mines and he knows a great deal about the railroad lands and wished to settle upon them and witness assisted him. He gave him the use of animals and a horse and some implements on settlement. This land had considerable saw timber on it, he would judge about from two and a half to three million feet. Gingrass lived there for about a year and left it after the railroad refused to sell it. Gingrass offered $2.50 an acre under this act and

was refused, he was a single man, and cleared up quite a piece, built a cabin with windows, floors and doors in it, built a corral, dug a well and cleared, he should judge, not over an acre and a half, something like that, and stayed there nearly all the time he was building his house while he was there. Witness did not furnish him money to build it, but only assisted him by furnishing him horses and stock and stuff of that kind. Gingrass pastured stock out there, he did not have any cattle but had some horses, one horse belonging to witness and Mr. Ray had two most of the time there and with that exception witness had nothing to do with locating people on any of this railroad land. He thinks he was interested and heard about twenty mineral contests in all, in a great many instances he was attorney for the mineral claimants. Hammond & Vawter were first engaged for the Railroad Company, in a large number of them W. I. Vawter, who is now manager of the First National Bank of Medford, was one of the firm and one of the leading and responsible lawyers of southern Oregon. A. S. Hammond was at Medford at that time, the firm was Vawter, Hammond & Webster. He does not remember any others who represented the Company in these hearings, he thinks Judge Durham of Grants Pass succeeded when Vawter retired from the service of the Company. Dexter Rice of Roseburg also appeared in these contests. Dexter Rice is still local attorney for the Railroad Company in Douglas County, was interested in this last case. The first of these contests he had anything to do with, was about 1897 and these contests strung

along from that time down to October 14th last. He won in all of them and then did not get the patent, in all of them the Company got patent finally to some of them, portions of them, that is, he got the decisions but the Company got the land, not all the land, that was true in section 11, but this was not generally his experience that he would get the decisions and the Company would get the patent to the land. That happened in section 11 and partly in section 29; that is, as to the fractions of the claim. It was in 1897 or 1898 that Britt made this offer to compromise. There were a good many people who bought this railroad land that was thought to be mineral in character at a flat rate of $2.50 an acre and took the Company's deed out there during that time. There were a lot of people who did not have any contests with the Company, rather than enter a mineral claim they would buy a forty from the railroad wherever they thought there was a mineral prospect, that was a way that was not regarded by himself or others familiar with it as a proper way to do it. A good many people who had no controversy with the Company would go to the Company, thinking they had a prospect for a gold mine on a forty and would inquire of the Company what it would take for its title to that land, finding it to be patented, and they would buy it at a flat rate of $2.50 an acre. The business was handled for years prior to the time the land was taken off the market in 1905 or 1906 from $2.50 an acre up. The mineral land did not go at a flat rate. This land in section 11, after the trial and hearing and the railroad had received the patent to it, he at-

tempted to buy it after they had got a patent. He did not lose, he won, but he never got the land. After he had this contest and refused to compromise he then wanted to buy the land. The Company wanted to sell it based upon the true value of the mine, and in this instance they would not sell it to him at $2.50 an acre, he could not get the Company to set any definite price, they said it would be based upon the true value of the land as given by Mr. Mills. None of this land had any good saw timber on it, practically none. He supposes there is a lot of good agricultural land on it, but it was more valuable for mineral. He made proof in his cases that the land was chiefly valuable for mineral and that it was not agricultural and he produced witnesses as to the mineral character of the land, but he did not protest that it was not fit for agricultural uses. The decision of the Land Department or the Local Land Office was in his favor on that question, they held it was chiefly valuable for mineral. The Railroad Company finally got patents to some of the claims but not to all of them. He does not say that he thinks that particular land is chiefly valuable for agriculture. This decomposed granite that he speaks of is hauled by the carload by the Railroad Company and distributed in its various depot grounds and yards, as side walk and other stuff of that kind, so that a man going along the road down there and stopping at Grants Pass or Medford or Gold Hill would go out on this granite gravel walk around the railroad buildings and find it perfectly dry and almost solid. This would be agricultural and horticultural with water on it, he has

seen it demonstrated. He has seen very fine gravel lands in the Evans Creek district demonstrated to be orchard lands. Evans Creek lies immediately west and northwest of the town of Rogue River between Grants Pass and Woodville. The granite belt commences right close to the railroad. People did not settle largely upon this granite land, but have recently settled upon the granite land a great deal along the upper Evans Creek from Rogue River to what is called Bybee Springs, sixteen or seventeen miles. They raise alfalfa and onions on this granite land, which diffuses very readily. It is a different character of granite than that hauled by the Railroad Company. It is granite soil, and looks like mighty poor land to look at it, it is granite soil and there is some earth in it, it is not about three-fourths earth, he thinks it is largely just the decomposed granite. Granite is rock but is of different character, some has more mineral in it, more iron. He thinks that this desert land has not been attempted to be cultivated until about two years and a half ago, something like that, there are several thousand acres in that desert. He does not know where these people came from, they located water and built ditches, and it is called the Roguelands Company and the ditch is called the Butte Creek, he believes. The first proecdure to develop that desert was to take a surveyor out and survey off certain distances where they were going to blast for trees, and set stakes where they would put holes, and there is soil of about eighteen to twenty-four inches deep, then they encounter what is known as hardpan and it averages about eight or nine

inches in thickness and is a sedimentary cement that has settled there, rock formations, and is what they call cement. They get below that by drilling a hole and blasting it, then they have a depth of rock and gravel underlying that, washed or boulder gravel, showing that at one time that land was at the bottom of an inland sea and on top of that above the hardpan is a silt soil of clay and it shows there has been an erosion from the higher hills at one time. At one time it had not occurred to him that it was worth anything at all. He does not think these people are going in there drilling holes down through this hardpan, blasting the soil and rock up, taking a steam plow with a depth of about two feet and undertaking to break through that hardpan in that way, they are not blasting altogether, that plow is not for that purpose, they plow the sub-soil with the plow, it is full of little ravines and pot holes, so they can build their ditches and irrigate all the land. They are not plowing under this hard pan where they are planting trees, they blast it.

Whereupon witness testified:

Q. Well now, they are planting young trees on there, two-year-old trees, aren't they, and getting water on, and they are making nice blueprint illustrations of these five and ten-acre tracts with this water, and selling a contract to carry water on there for a number of years, and trying to sell that to the general market at so much an acre? Isn' that the scheme?

A. I know nothing about that part of their proposition.

Q. They haven't yet got to the blueprint stage, the lithograph stage, have they?

A. I didn't go there for that purpose. I went to ascertain whether or not the lands were adapted or could produce.

Whereupon witness testified, that these people have a tract there, he should judge there were eight or ten acres in it, that they use for a demonstrating and experimental farm and experiment station, and he should judge, from eating the fruit of the trees, that there is water on the land to keep the trees green. He has eaten very fine fruit off of these trees, three year old peach trees, which he presumes the peach trees are fillers, he knows what a filler is and believes they are used for that purpose. They are planting apples and raising canteloups, tomatoes and watermelons on this experimental tract. He should judge the apple trees are about three years old, he does not remember whether they are bearing yet on this place. There is one place that has been there for a number of years, it is an old orchard, part of it, that is where their experimental farm is on that old place, an orchard of apple trees to be commercial must be about eight years old in the Rogue River valley proper, but in the higher lands, such as he knows, people have made a commercial profit in less age than that, about six or seven years, that is apples, and five years for pears. There is a person on these hills that he knows of, that he can name, that is today selling commercial apples to the trade. His

name is Firman Zana and his place is on a high mountain west of the Sams Valley country north and west of Gold Hill ten miles, he is on a homestead, witness does not think it is on a donation but thinks it is a homestead. He believes it is section 12, about three miles from Sams Valley postoffice west, and there are other places right along there in that neighborhood. He could not state the amount of Zana's sales, but he has bought apples from him for the last eight or ten years, quite a lot of fruit for family use. That piece of land has been settled, portions of it, for a long time, Zana set some out, and has some trees there that are four or five years old that are now bearing. It has been settled around Sams Valley for thirty or forty years, but this hill land has been improved lately, in the last few years. He does not believe that these places were taken up thirty or forty years ago, but he does not know when this place was taken up. There is a small amount, commercially, of grapes on these hills. George Lyman has a claim on very high land, just a small vineyard, he would judge about two or three acres, something like that. It has been put out a number of years and is an old vineyard, and sells grapes mostly to the stores there. He thinks they ship some from Gold Hill, which is about three miles away north. Lyman has been living there ever since and he has known him during his residence there. He guesses that his place was a donation or a homestead, settled a long time ago. Mr. Johnson has a vineyard on a very high hill, about a mile and a half from Gold Hill, it is a small place, something like two or three acres in vineyard. He sells

to the stores down town and to the people and he does not know that he packs any grapes for shipment. Witness has bought them in boxes, and has sold them for him. They are Tokay grapes and a dark grape, which he believes he calls Berkshire, some name like that. Johnson has been there for a good many years. He does not know where the exact corners are but he understands this vineyard was on railroad land that Johnson squatted on it. Johnson has been there during the residence of witness in Gold Hill and he thinks Johnson ought to have good title by limitation. Johnson has a ranch there that they call the Bible Ranch, he does not know positively whether or not the land Johnson squatted on is railroad land, he never talked with him personally about that, he was testifying as to the high lands, as to the production of the land, but he does not know whether this particular land was railroad land or not. This Bible Ranch was planted and cleared of brush on both sides of a very steep ravine, and it looks from a distance like an open book, like the pages opened up in a book, it is spread, his fields are, clear along his lines, which gives it that appearance, one can see that a good many miles, this place was pretty high and pretty rough. The Sugar Pine Door & Lumber Company did not cut over a good deal of land around the country that he has been testifying about, nor around Gold Hill. Gold Hill is a place of about 500 people. He has lived at Gold Hill during the whole time that he has been in Oregon. He has tried to do his part as a citizen, to promote the settlement of the southern part of Oregon, or of this portion of the

country. He is not in the real estate business and does not solicit any real estate to handle. He has never located, or tried to locate people on Government lands. There is a lot of Government lands in Josephine and Jackson counties unsettled and these lands are about the same general class as the railroad lands that are unsold. The lands that are more valuable than the lands around the Burrell orchards around Medford are largely taken. The balance in this district are not taken because it is pretty hard for people to maintain themselves on account of being away from the main roads as established by the county. They could get roads in there by taxation, but a poor man coming in to settle, it is difficult for him to bring these things about. He thinks that some of the Burrell orchard lands, which are about three and a half miles southwest of Medford, which had eight or nine year old pear tree orchards on them were sold for $2,000 an acre and other orchard land that has two or three year old Spitzenbergs or Yellow Newtowns is sold from $800 to $1,000 an acre. They have several thousand acres of that valley land there.

Whereupon witness testified:

Q. Well now, then, if this unsold government land, and these hill lands generally, are worth more than that kind of land, I should think that they would have these big orchards all up on these hills.

A. They have.

Q. Where are they?

A. They are on the line of the road going south

from Gold Hill toward Jacksonville and on the west side of the road it is steep and mountainous. The east side slopes down to the Rogue river valley proper. In the past seven or eight years they have built and developed very fine orchards on that hill land.

Q. Name some of the people that own some of these orchards, and how large the orchards are within that territory seven or eight miles from the railroad.

A. I don't know the owners of the big orchards there.

Whereupon witness testified, that he calls twenty-five or thirty acres or ten acres a big orchard. They have cleared the land of the grubs and stumps and there is a lot of rock left. They have planted these trees on that kind of land. There are some of these trees that are eight or nine years old, the Van Vleet orchard, he could not tell how many acres each of these people have, but they have upwards of ten or fifteen or twenty acres. One man who ran for sheriff one time, whose name he cannot think of now, has an orchard. There are eight or ten such places along that hill land. They paid $200 and $250 an acre for it he is told. They bought it from the owners of it along there. Mr. Niedmeyer owns a tract there that is undeveloped that he has refused that much money for, he thinks, he would judge that it is about three and a half miles from the line of the road. It is all pretty rough and steep, and was not covered with timber at any time but with brush, principally shake brush or chaparral brush, as it is called. Some portions of Jackson County

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have a lot of very fine timber in it, Josephine county has a lot of fine timber. These unsold railroad lands are pretty well covered with timber in the upper districts, not in the districts around Gold Hill. The foothills are not covered with anything except scrubby brush and things of that kind, and as one goes back from the foothills he gets into the timber, away up on the upper Evans Creek is what they call the timber belt, that is a part of it. He assisted Mr. Townsend in working up the testimony in this case of the witnesses around Gold Hill and Jackson County to some extent. He was not employed by the Government to do that. He has been here in attendance at court about ten days. He did not have a number of witnesses here from Gold Hill that he brought down, or that he notified Mr. Townsend would be good witnesses. He indirectly cited cases to the inspectors. The inspectors were representatives from the field division office. Mr. Laughlin for instance representing the Government and he gave these inspectors the names of the various witnesses that he thought would make good witnesses. He did not give him twenty names, but could have done so, he told him regarding Mr. Ray and he should judge he gave him half a dozen names. He did not take written statements from these witnesses himself, but just turned them over to the inspectors who took their statements. He does not think he gave a written statement to Mr. Townsend himself.

Whereupon witness testified:

Q. Well, you have kept in pretty close touch with

Mr. Townsend and his assistants since 1907, when he first came out here?

A. I have been very much interested, yes, sir.

Q. You have kind of had it in for the company, haven't you?

A. No, sir.

Q. You had no feeling of any kind?

A. No, sir.

Q. You felt kind of good after the company—after you had won these cases and the company got the land?

A. I felt that if there had been any justice done me, and done the people at large—

Q. Well, you started in to get even, didn't you, Mr. Beeman—just to be right square about it?

A. I was not prompted by any such motives, no, sir.

Q. You couldn't feel very good if you thought you had been wronged by the company in these mineral contests, could you?

A. Well, there was nothing vindictive in my attitude.

Q. No, if you are hit on one cheek you are willing to turn the other—I know that; but you didn't feel very kindly towards the railroad officials and the company after you had won the contests and then the company finally got the land, did you?

A. I didn't think that I had had a strictly square

deal.

Q. Well, naturally you wouldn't feel very good about it, would you?

A. I haven't anything personal about it, I wouldn't see them wronged, if I could help it.

Q. But still you have been pretty active since this agitation for the forfeiture of this grant, haven't you?

A. As a citizen of the state, I have, yes, sir."

Whereupon, on re-direct examination, witness testified that he had been living at Gold Hill all this time. He has referred to a large amount of Government lands in Josephine County, but over half of the County is in the reserve, Siskiyou Forest Reserve is one of the recent reserves and was created somewhere in the year 1907. Mr. Loughlin called upon him about three months ago. He came to Gold Hill and he introduced him to some people whose names he had already on his list. Some of the names, the people were here as witnesses. He does not know whether it is a fact that subpoenaes were issued for all of them and some of them were not found by the marshal. Mr. Townsend has talked with him several times about this case since he has come here as a witness and before. In his talk with Mr. Townsend, Mr. Townsend said that he had heard of instances where the Railroad Company had by its deputies ordered settlers off the land and witness investigated and tried to ascertain whether or not there were instances where the company had done so, and Mr. Gingrass went upon the lands, witness knew that Gingrass intended to do that

so witness took witnesses, filed affidavits with the Railroad Company, he being one of the affiants, that were cutting timber, intending to hold and work the claim, and locate a permanent home thereon; that they had built a house, constructed a well, irrigating ditches, corrals and fences, and that Mr. Gingrass tendered $2.50 an acre. Witness has the letters where the Railroad Company refused and sent back this tender, but did not order the man off the land, simply said that his offer was necessarily declined. He did not find that the Company had ordered him off the land. He found no instance where the Company had ordered the settlers off the land. He has never been in the employ of the Government and never received a cent compensation from the Government. His mileage and per diem as a witness here at this time will be the first money he has ever received in the whole matter. He is under subpoena as a witness on behalf of the United States.

Whereupon witness testified:

"Q. Now, Mr. Beeman, upon the question of your feeling toward the railroad company, and without asking you for the details of the matter, I will ask you if you are not at this time co-operating with the railroad company in certain litigation relating to the taxation of property situated in Gold Hill? I ask you that leading question in that form, because it is just the ultimate fact that I care for rather than the details of it.

A. Yes, sir, I am."

Whereupon, on re-cross examination, witness testi-

fied that there is an attempt on the part of certain people of Gold Hill to pave a lot of streets down there and he is co-operating with the Company and other property owners in respect to that matter. This is a recent matter, within the last thirty days.

Whereupon, on re-direct examination, witness testified:

Q. Mr. Beeman here is one question that I want you to make clear. I asked you as to the percentage of these lands that you thought could be cultivated after being cleared, and if I remember correctly, you said approximately fifty per cent; and I then asked you what percentage of the quarter sections could be used for the purpose of settlement and cultivation, and my recollection is that you said fifty per cent. Now, in the latter answer I want to know whether you mean fifty per cent of the area of the quarter sections or fifty per cent of the quarter sections themselves?"

A. My understanding of the question was that I answered fifty per cent of the area.

Q. Well, what percentage of the quarter sections in that part of Jackson county and Josephine county covered by your testimony do you think contains enough tillable land or agricultural or horticultural land to support a settler and his family?

A. I think it would run upwards of seventy-five per cent of the quarter sections.

Q. You directed my attention during the noon recess to one instance illustrating the value of these lands

for agricultural and horticultural purpose. I don't recollect the details, but please explain it to the court.

A. The lands that are now held by the railroad company that I believe have a market value upwards to $400 per acre.

Q. Upon what do you base that view?

A. The adjoining land sold, four and a fraction acres for $2800, which I believe as a purchase price; I do know that the owners refused $2200 for the tract, and it sold for, I believe, $2800.

Mr. Fenton: How much in the tract?

A. Four and a fraction acres.

Whereupon witness testified, that adjoining that land is lot 5, section 21, township 36 south, range 3 west. He does not mean, of course, that all of the railroad land is of that value. That is a tract of eighteen acres in lot 5, eighteen and a fraction acres, he believes. That tract is well adapted to the raising of vegetables. The Germans on the adjoining tract raise very fine vegetables on the adjoining lands and it is exactly the same character of land, as those he spoke of.

Whereupon, on cross-examination, witness testified that this lot 5, section 21, township 36 south, range 3 west, containing eighteen acres lies half a mile west from Gold Hill, he should judge within half a mile of the city of Gold Hill on the banks of the Rogue River. It is gravel soil. He would not call it Rogue River bottom land. It is on the banks of the river, but it is on gravel

soil, the subsoil is rocks down, wash gravel, the gravel does not give it its value, it is very productive though. This eighteen acres is not occupied by any one. It is claimed to have been owned by a client of his who paid taxes on it for a number of years. This man thought he owned the land and claims to own it now. There is a fence around it, and he has claimed to own it for a number of years under the statute of limitations and he is paying taxes on it. It is not under cultivation. This man is Edwin Crews and his postoffice is Medford, he bought this land from his predecessors in interest, meaning his predecessors in interest were granted this land in 1884 by the Government. W. S. Fitzgerald transferred it to various people and it passed into the hands of Mr. Crews who thought he had a good title to it until after he had purchased. This is lot 5. Crews bought it from the successors of Fitzgerald. The Railroad Company claims adverse title to him. Crews claims to own it, he believes, by purchase. The patent has gone to the Railroad Company he has learned, since his purchase, on investigation that the patent has been issued to the Railroad Company. The date of the patent was some time in 1897 he believes. Crews has been in possession of it, he or his predecessors, ever since 1884, and they thought and believed they had a good title and witness believes that they have a claim there whether they can make it or not. Witness would not call it a good title, but thinks it is worth $400 an acre and they have done nothing on the land, have not cleared it or anything. He believes Mr. Messner, the immediate predecessor, has

been paying taxes on it for five years and how long before that he does not know, the abstract shows the taxes are all paid on the land by these various people since 1884, it also shows that the Railroad Company has been paying taxes on the same tract, and the County has been getting taxes twice.

Whereupon witness testified:

"Q. Well, you speak of that to counsel for the government, not to illustrate the value of this grant that is unsold, but I suppose just to show what a valuable piece of land this fellow has got that he claims to have gotten away from the railroad?

A. There are similar instances where I regard the lands of a very high value comparing them with prices of adjoining lands."

Whereupon witness testified that that tract came under his particular notice. He thought there might be like cases, he does not know of them though. He did not volunteer that to counsel for the Government since he was on the stand this morning. He spoke to Mr. Townsend some time ago and had forgotten it.

Whereupon, on re-direct examination, witness testified that the abstract of title furnished the predecessor of this land showed that it belonged to Mr. W. S. Fitzgerald; that a patent was issued to him for the land and it does not show that there was any patent issued to the Railroad Company for the land. It is a case where the Government has issued two patents for the same piece of land, one to the settler and then subsequently to the

Railroad Company covering the same piece of land. It was granted to W. S. Fitzgerald by patent specifically describing this land, lot 5, 18 acres, and acreage and everything tallies. The abstract was furnished by a regular abstract firm and he has had the abstract for his work and he has it in his possession. He believes it was a homestead patent prior to the railroad patent for this particular tract.

Whereupon GEORGE W. KEARNS, called as a witness on behalf of complainant being duly sworn testified, that he lives at Grants Pass, Josephine County, Oregon, and has lived there about ten years and has been engaged in the timber business there, and before he moved to Grants Pass he lived at Wolf Creek in township 33 south, range 6 west, in Josephine County, Oregon, and has lived in Oregon all of his life. He was born in Linn County and the greater part of his time he has been in Oregon but was associated with Sisson, Crocker and Company for about three years in California. He helped to build the Oregon and California Railroad from Roseburg through to what is known as old Fort Lane, that was when the road was started from Roseburg in the spring of 1881. He was foreman on construction work. He knows the country in the southern part of Oregon along the railroad and is pretty well acquainted is familiar with Josephine, Jackson and Douglas Counties and best acquainted as to detailed portions of the country in Josephine County. He has been engaged in the timber business for the last ten years handling timber lands, nothing only timber lands and

homesteads. He understands cruising and has done some of it, mostly all for himself, once in awhile but not often he does work for other people. He has become acquainted with the lands in Josephine County by being over these lands, locating them, cruising them and has been in most of the townships in the eastern part of the country where the railroad lands involved in this suit are situated. He is pretty familiar with the industrial history of that county. There are different soils in Josephine County. They have the granite soil, the red soil and that black river or alluvial soil and some of the lands are steep and rough and some of them are not. He knows where the Siskiyou Forest Reserve is, in Josephine County. He has a little County map that takes in about everything. He has worked in most every township in Josephine County outside of the Forest Reserve. There are about three classifications of soil there, granite soil, red shot soil and river black alluvial soil. He would think that part of the county would be about one-third each, as to these soils, he thinks that would probably be fair, along all the rivers there, the Illinois River and the Applegate River and the Rogue River and the other lands, he thinks would average pretty close of one-third each in regard to the classifications of those soils. The Applegate river soil will raise melons, grain, alfalfa, fruit and vegetables of all kinds. The red soil is good fruit land, good alfalfa land, good grape land, everything like that, if one has water. It must be or should be irrigated. Those granite lands, what are called granite lands, have soil in them, but they are demonstrating

beyond any question of doubt that they are superior fruit lands to the low lands. In section 12 in township 36 south, range 6 west, he believes there is a man who owns the southwest quarter of that section by the name of Skinner who has a homestead there, who has raised the finest apples and tokay grapes, strawberries and everything without irrigation, also peaches. In the southwestern part of section 12, the southwest quarter, that man there has the nicest fruit grown in the valley. They use them for demonstration there to show what the valley will grow, or what this granite land will grow. There is railroad land involved in this suit near that land referred to, used for purposes of illustration, there is section 11, which is all good land. Sections 1 and 3, each, is good land, he thinks one will find these sections still intact, owned by the railroad people. He thinks this map would show that there are some of these lands that have been sold in the grant there, the maps in evidence show for themselves what railroad lands are in the vicinity of the lands of which he has been speaking. They have been experimenting with these so-called granite lands with reference to growing agricultural or horticultural crops for a number of years. These orchards are bearing with which they are now demonstrating. This grantite land grows the best of grapes. When he says granite land he means there is some soil with it, granite land is a mixture of clay of some kind, but to look at it, it looks perfectly white, granite in it, but there is soil in it. The granite itself is very hard, some of it. The Company has a big granite quarry where it takes out all the

granite for all its depots and everything like that, right where it is marked "Granite," in section 12, the same section he is telling about now. This granite, some of it, he thinks is in section 12, there is quite a lot of it that is in that section. This on these places of which he is speaking is decomposed granite, but that granite there, they have to shoot it, blast it, it is hard enough for good building stone and everything like that. The land that he has referred to by way of illustration is near the place where the Railroad Company is taking out this granite for its depot walks, etc. The three characters of soil in the territory with which he is acquainted in the vicinity and of the same general character of these railroad lands, as he explained granite soil is on the high ridges, the red soil on the low benches and the river soils generally in flats. All these soils will produce sufficient agricultural or horticultural crops to maintain a settler and his family on 160 acres of that land. The land in this part of the country, where the railroad lands are situated are all of that character. Of course there are some spots that have rock, but he would say that there was ninety per cent of it of that character of soils, and fifty per cent of the quarter sections there would be of such a character that if properly used, could be made homes of and support a settler and his family. There are instances where a quarter section would support more than one family and where a settler would not need a whole quarter. This is not theoretical in his judgment but he has seen it demonstrated there.

Whereupon witness testified:

Q. I will ask you whether, in your judgment, if these lands should be disposed of to settlers, they would become settled up and occupied by settlers, cultivating the land and maintaining themselves and their families, and making homes of the lands?

A. Yes, sir, I think they would.

Q. I will ask you then, whether, in your judgment, the policy that has been pursued by the Railroad Company with reference to the disposition of those lands, has retarded or promoted the development and settlement of that county?

A. I think it has retarded it.

Q. To what extent?

A. Well, to quite a great extent.

Q. Now, has that effect been limited to the railroad lands themselves, or has it also affected the development of the intervening sections?

A. Yes, it has the intervening, as well as the railroad lands.

Q. Do you know whether that situation is actually met with by the people of Grants Pass in their efforts to develop that country?

A. Yes, they are all very anxious for those lands.

Whereupon witness testified, that there have been people coming in there looking for lands to quite a considerable extent. They have calls all the time for homesteads, cheap lands. The Government lands are prin-

cipally all taken. There is some timber in Josephine County. The good merchantable saw timber would be in township 35 south, range 4 west, and in 5 west there is some timber, also township 34, 5 west there is some very good timber. The balance of the county has some timber, but not very much. In the western part of Josephine County, there is not very much timber. The Forest Reserve has most all the timber, and has covered nearly all the timber west of him there. The biggest part of the land about which he has testified would have to be cleared, it is good soil after it is cleared. In a number of instances there are places where they could get five or ten acres on the 160 acres that would be very light clearing, if any. In between most of these little creeks, there are creeks all through there, take township 36 south, range 5 west, and between all those streams there are hills and ridges. All those ridges are good soil and are covered with scattering timber, some of them are very steep, but at the same time they grow grapes on these lands where they are so steep that when they haul them off the hills, the sled runs onto the horses. They use a sled instead of a wagon because of the steepness of the ground.

Whereupon witness testified:

"Mr. Fenton: A man could fall out of his dooryard there?

A. Pretty near, yes, sir, some of it in places."

Whereupon witness testified that he would say as a whole in this general vicinity he has referred to that there

would be twenty-five per cent of this rough land that would be tillable, that could be plowed. All these bottom lands could be plowed and he would think, but that is merely a guess, that there was fifty per cent of that bottom land that is not entirely flat, but comparatively level, which could be farmed, for instance the Illinois valley, the Applegate valley, Deer Creek valley and Sucker Creek valley, all of those valleys are comparatively level and cover from one to two townships, or maybe more. The country all around Kerby, Althouse and Holland is comparatively a level country, referring now to townships 38, 39 and 40 south, ranges 5, 6, 7 and 8 west. He is familiar, to a considerable extent, with the lands in Jackson County, he has done a great deal of work in township 33 south, 3 west, 34 south 3 west, 40 south, 2 west, 41 south, 3 and 4 west. There are railroad lands in these townships, odd sections, and these lands he considered timber lands; however, there is a lot of good soil in these lands, he would say that there is quite a per cent of these lands that would, after the timber was off, make good homes. All these bottom lands in Josephine County, to which he has referred are all in farming lands, mostly in fruits of all kinds. A great many of these bench lands and hill lands in Josephine County raise most everything, alfalfa and fruits of all kinds and vegetables of all kinds and he thinks he could, if desired, point to specific tracts of land in that county, as well as give general testimony with reference to it. Some of the even sections adjoining the railroad lands involved in this suit are used for agricultural and horticultural pur-

poses and are of the same character as the railroad lands and the same use could be made of the railroad land. The altitude of Grants Pass is 960 feet. There are some points in Josephine County where the altitude would run up to 3000 feet, possibly more. The hills and mountains there are all gradual slopes and he has known of instances where these hillsides have been used for agricultural or horticultural purposes. The lands he has explained in section 12, as above stated, are very steep lands, he would say the highest point on these lands would be 1200 to 1300 feet high. He has heard the testimony of Mr. Beeman with reference to the lands over in Jackson County and is familiar with some of the territory referred to in his testimony and he agrees with Mr. Beeman in so far as he is familiar with them. He thinks that is all the information he can give with reference to the character of the land there with which he is familiar, or that will throw any light upon the question whether the land could be used for the purpose of settlement and development. The soil is all right in most of these lands, only where the very heaviest timber is, and even at that there is good soil in them. In township 34 south, range 5 west, while it has quite an elevation, it has good soil and will produce, when the timber is cleared off. Timber grows there on the granite soil. The heaviest timber grows in Josephine County on what is called gray or red shot soil, red lands. There is a little milling or logging operation going on in Josephine County, but not to any great extent. He thinks Mr. Spaulding is the biggest operator

there now. He is over in what is known as the Sweet Basin country. In section 11, township 37 south, range 6 west, there is part of that that is sold by the Railroad Company that is the very best of land and the people who own it hold that land at about $150.00 an acre, that is a fair and reasonable price, he thinks it is a very good price, but that it is worth that; of course it is improved and all that and the land is cleared and under cultivation and his general description is a fair representation of it, as a whole, he thinks. He considered these lands in the several townships in detail, including these railroad lands, at the request of the Government, he had a map of the Railroad Company which shows the railroad lands and also what is purported to have been sold off, whether it is correct, he does not know, the map is the same as these maps in evidence in this case, it is the lower section which includes Josephine County, covering ten townships, from 31 to 41.

Whereupon, on cross examination, witness testified that he is fifty-five years old and was foreman on construction of the road from Roseburg to old Fort Lane from 1881 to 1883. Old Fort Lane is above Gold Hill in the edge of the valley at the same station that is called Tolo, about three or four miles north of Central Point and three or four miles south of Gold Hill. He was engaged in this construction work between Roseburg and this point a little more than two years. He worked through the Cow Creek canyon, which was a very rough piece of construction, and in his judgment, as a railroad construction foreman, he would say that the Cow Creek

Canyon compared with the most difficult pieces of railroad construction in the west. The country on either side of the Cow Creek Canyon is right in a canyon, these mountains run up pretty high on each side there and they were then covered with timber. Since that time a good deal of the timber, close to the railroad, has been cut off for lumber or fuel for the railroad,—some of it but not all of it. There is not very much good saw timber close to the railroad between Tolo and Roseburg now. The valley that they went through with the railroad settled when they got there in 1881. He would think that, as a dealer in real estate, and a man familiar with the location of these bottom lands along the Rogue River and these other streams, that most of that land was taken under the donation land law, or under the homestead prior to the time the railroad grant took effect. All he knows about the amount of level or clear land in the valley or in the county being appropriated by homestead or donation claims prior to the vesting of the grant, is that when they got to Grants Pass and in going up the Rogue River, when they struck the Rogue River, these level lands were all owned, title had been taken from the United States and they were all owned at that time. Grants Pass, so they claim, was named for General Grant. There is not very much of a pass there, they went over the old stage road but it does not appear to him to be very much of a pass. He recalls that from Roseburg south over the old stage road through the Cow Creek Canyon, a stage was maintained from Roseburg to Redding in those early days, and that

they used the Concord coach and drove all day and all night and it took about two days and nights continuous driving to go from Roseburg to Ashland. He got in the stage once at Rock Point and he thinks he got on at three or four o'clock in the afternoon and they got to Roseburg the next day about the same time, a distance of about seventy-five miles. That road had been maintained as a stage road from the days of the discovery of gold in California until the time the railroad was built. He had the pleasure of riding the last stage that came over the Siskiyous. He does not know whether there is nine billion feet of timber estimated to be merchantable saw timber in Josephine County; he does not believe there is, that is drawing it a little strong. They have a lot of good timber in that country. The Sugar Pine Door and Lumber Company operated around Grants Pass and took a lot of that timber within a radius of about six miles of Grants Pass and maintained an establishment there and employed several hundred men for several years, until they got the timber practically all away within a distance of six or seven miles of the track mostly. After that, they hauled logs, skidded them in from west of Grants Pass, some five or six miles, but they did not haul logs into Grants Pass, they had little sawmills out there. He does not think there are twenty sawmills in Josephine County now all together. He only knows personally of two or three mills that are operating there in Josephine County.

"Q. Now, isn't it true, Mr. Kearns, that there is a lot of this land that you say could be cultivated, or made

tillable if the timber was removed, that is very steep, and a man could hardly drive his team or could'nt plow it up without he had a side hill plow?

A. Well, there is some of those lands in that condition, but however, they are doing it." They just turn their moldboard and go back, with a side hill plow they have, they can switch over and turn and go right back with a side hill plow. He has been at Grants Pass about ten years, engaged in the timber business and locating people in quarters of timber under the timber and stone act and in Josephine County he would not say that he had located, within the ten years under the timber and stone act, more than fifty or seventy-five persons. He charged a location fee. He would make an estimate of the land himself, had sufficient knowledge of cruising to be able to make a practical estimate upon which a man could safely buy. A fair marketable claim would carry two million feet. He has located quite a number of homesteads that had timber on but not good merchantable timber. There is scrub timber.

Whereupon witness testified:

Q. In going through looking for these timber claims, have you ever noticed a number of timber quarters that had been entered under the Homestead Act by single men, where the improvements had been abandoned after the title had been obtained, and where the title had been transferred to some of these timber holdings or investors? Have you noticed that in your observation in going through these timber regions?

A. I have noticed a great many cabins that has been abandoned, but that was in townships where it was unsurveyed, and it was squatters. But you take it in where the lands was Government lands, where they could get their filing on them, and prove up on them, I don't know of very many of them.

Q. Well, wasn't it quite a practice, and hasn't it been until the prosecution of the land fraud cases in Oregon about six or seven years ago, for people in the towns, to exercise their homestead rights on these timber-lands, and make an effort to comply technically with the Homestead Law, and then commute at the end of 14 months, and pay the $2.50 an acre?

A. Oh, I know of a few cases, but there are not but very few cases like that.

Q. Never saw many since the prosecution of these land fraud cases?

A. Not so many before that. It is a pretty hard matter for a man to go out onto one of these pieces of land that is timber, you know, and try to prove up on it as a homestead.

Q. Well, they did do it in some instances, didn't they?

A. Oh, they have done it.

Q. Now, you say there are no vacant lands in Josephine County now?

A. Oh, there is some, I guess.

Q. I mean Government land.

A. There is some, I guess, yes.

Q. What is the reason that is not all taken? What is the trouble with it?

A. Most all the lands, however, in Josephine County that I know anything about personally had some kind of a filing, or tied up some way that it is not free to go and locate it.

Q. The Forest Service—I mean the Forest Reserve policy of this administration and the preceding administration has enclosed about one-third of Josephine County?

A. Oh, yes, can see here what it has taken.

Q. Has enclosed about one-third of Josephine County within the limits of a forest reserve. That is true, isn't it?

A. Yes, that is true.

Whereupon witness testified, that he thinks the population of Josephine County the last census was about eighteen or nineteen thousand, but he does not know the population of Grants Pass at that census but in his judgment it would have been about five thousand people. Grants Pass is the county seat of Josephine County which was created out of Jackson County, but he does not know when, but it was done, he thinks, before they built the railroad.

Whereupon witness testified:

Q. What, in your judgment, is the fair market value of all of the unsold railroad lands in Josephine

County? Just take that you know, now, what, in your judgment, is the fair market value of all these unsold railroad lands, supposing they could be sold in quantities of 160 acres, or not to exceed that?

A. Well, that, of course, would be owing to what a man would want them for. That would be only a guess on my part.

Q. What would be your guess?

A. Well, I would guess that those lands—

Q. Take them on an average now?

A. Take them on an average they are worth $10 an acre.

Q. What in your judgment, would be the value of the best timbered lands that the company owns in that county, unsold, per quarter section?

A. Well, that is including the land?

Q. Yes, including the land and timber and everything there is connected with it, per quarter section?

A. The best timber-land would be worth $5,000 or $6,000 for a quarter section.

Whereupon witness testified that he did not participate in locating people under this Act of April 10, 1869, on these railroad quarters. There was a good deal of that done in that County and several hundred people sent hundreds of dollars but he never placed one of them yet, but he knows that that was done. He got all prices for locating people on a timbered quarter and generally got

all he could, he has got as high as $600 and $700 a quarter section from timber investors, this was good timber and it was not in Josephine County but in Jackson County, township 33, 3 west, a man by the name of J. H. McDonald of Port Huron, Mich., paid him that. McDonald got hold of 160 acres under the timber and stone act four or five years ago. When he was working on the railroad from Roseburg to Old Fort Lane, between Gold Hill and Tolo these lands through there were not considered worth very much, he understood that those lands right around Tolo there could be bought for about $15.00 or $20.00 an acre at that time, that was out in the valley, and the hill lands around Grants Pass were all vacant Government land at that time and there was then no market for them. The first timber inquiry began in Josephine County and Jackson County about eight or nine years ago, when it became a matter of commercial and merchantable transaction and became pretty active. He has been in the timber business, timber locator, for about ten years and he thinks that was about the time the timber inquiry began and he has continued in that business ever since. It is quiet now simply because there is nothing for them to take. Most of the people who have timber want to sell and he does not consider the prices very high. He has a lot of timber lands now for sale at different prices, ranging all the way from $15 to $30 an acre, which is about the ruling price at this time, these lands are situated in all parts of Josephine and Jackson Counties, he has quite a lot of these lands for sale, one tract of 20,000 acres owned by different people

situated in Douglas County, simply got it in shape for selling and he is trying to sell it to a large concern that can afford to buy it. The price is $1.00 a thousand stumpage. That 20,000 acres it is estimated will cut 50,000 to the acre, which would make about $50 an acre or about a million dollars. He has had it on his books about two or three months and thinks he has a prospect of making a sale. That land is situated in Douglas County on the Smith River, quite a ways, about fifteen miles from the railroad. That goes into something over fifteen miles before one commences to get into the timber and then the timber goes right along down the river. It is quite a ways from Eugene. Smith River is a tributary of the Umpqua and goes into the north side of the Umpqua. About twenty-five per cent of these rough lands about which he had spoken he thought could be made tillable and he would class as rough lands about twenty-five per cent of the total unsold railroad lands and of that he thinks twenty-five per cent could be tilled, after the timber was removed. He thinks take the whole grant over, that about fifty per cent of the quarters could be occupied by settlers so as to enable them to make a living on a quarter section. They could make a good living if they could get five or ten acres. If a man started in broke on there, he would do like they did in the early days in Oregon, the facilities for making a living now-a-days are different from what they were then, he could put up a tent, if he could not build a house, and he could get in a little garden and he could work around and make it. They could work out for the

first year or two and get money to support their families; it would not cost a man like it does, it would be a pretty hard matter, he could devote himself to the stock business too after he got started.

Whereupon witness testified :

Q. Now, isn't it true that most of these people that have gone out and settled on these even quarters, quarters in the even sections have three or four acres in garden and truck, and a few hogs, a few cows, and worked out part of the time, and then they get stock, and let the stock range out over the unenclosed lands, and in that way they get along until they can make final proof and get title to their lands? Isn't that about the way they do?

A. Well, some of them does that way, but my experience with the most of these homesteaders is now, that the first thing they do is to clean up a little piece of ground, and get in strawberries, and get in a good garden, potatoes and such as that, and then, if they are any ways close to towns, they can haul their wood into town. Wood is worth something, you know. They cut wood.

Q. Well, the towns are not very numerous except on the railroad, are they?

A. Oh, no, only the lands that is tributary to the railroad.

Whereupon witness testified, that there are practically no towns off the railroad there, but just post

offices. These homestead ranchers sold strawberries. This man on Section 12, sells a lot of strawberries, and is right close to Grants Pass and has a market. They are not all situated within four or five miles of Grants Pass, but they have it now so that they have auto trucks that go out there thirty miles and bring in that stuff, garden stuff and apples. They go as far as Kerby and up on Williams Creek and get garden truck and bring in everything and ship it to Portland. They are bringing in their apples now with auto trucks, they bring in about five tons from Williams Creek a load with these auto trucks. They are shipping them everywhere, they are shipping them east. It takes about eight years for an apple orchard to become a bearing orchard, he thinks, seven or eight years. A homesteader going out and putting out an apple orchard would have to wait about eight years but if he would put out a peach orchard he would not have to wait so long, from four or five years. A pear orchard would bear in seven or eight or nine years, something like that. The Yellow Newtowns or Spitzenberg is about the apple that they market in the eastern market. They claim to ship something like 25 or 30 carloads of apples annually from Grants Pass, and the bulk of them come from those bottom lands along the Rogue River and he does not know whether they ship a carload of pears from Grants Pass, he does not know how many pears are shipped. Shipments of pears of any great consequence, he thinks, are from Medford, Central Point and Ashland, and some from Eagle Point, and he thinks they ship more apples than they do from

Grants Pass, he knows that they ship a very large number from Medford and from the little stations on both sides of Medford along the railroad. He has been in attendance as a witness on behalf of complainant ten or twelve days and sometimes has been listening to the testimony of the various witnesses, he came down here ten day ago as a witness on behalf of complainant and has been in attendance on the court ever since. He has not been specially employed or solicited bv the complainant to get any witnesses in this case. He was subpoenaed. He was interviewed by Mr. Schwartz, special agent of the General Land Office. He don't know that Schwartz is the regular inspector of the General Land office but supposes so. He has not had any litigation of any kind with the Railroad Company or in which it was interested.

Whereupon on re-direct examination witness testified that when he came here ten or twelve days ago, it looked to him as though there were a hundred witnesses for the Government ahead of him and those had to be called first. Very few have come since he came, most of them were here when he came.

Whereupon witness testified:

Q. Now, Mr. Kearns, with reference to the time that it would take a settler to establish an orchard on these lands, I will ask you whether the same problem does not confront a settler in the valley lands there?

A. The same thing, yes. It takes the same length of time. Only in these bench lands in these granite

lands—they are much earlier than they are in the bottom lands.

Q. Well, would the length of time that it takes to get a producing trees, either apple tree or peach tree or pear tree be any greater obstacle in the matter of settling these lands that you have been testifying about than it would as to the lands in the valley?

A. Not a bit. The same length of time. In fact, I think it would take longer.

Q. Where?

A. In the bottom, because, as I stated before, these granite lands when a peach is three and four years old on the granite lands, it produces.

Q. Well, now, how about the obstacles that confronted the early settlers in the valleys there? Did they have those same difficulties to encounter?

A. They had those same difficulties to go through that they would today.

Q. Did they have to work out until they got themselves established?

A. I suppose they did. I think the times are better now for those class of people than they were at those days.

Q. You were asked as to what a man would do who went out on some of these lands and was broke. Now, I will ask you what a man can do on any agricultural or horticultural lands in the world, if he is broke?

A. He cannot do very much. He can do the best

he can. That is about all he can do.

Q. Now, these people who have come to Grants Pass seeking lands of this character, have they come there broke, or are they people who have come prepared to buy lands and improve them?

A. Most of them have come there with—they have come there some of them with capital, capital to buy lands and improve them. Others come there with only a small amount of money. It was only four or five months ago I placed a man on a piece of land out there that only had $250. It was a relinquishment. He got the relinquishment for $250, and he has cleared up, and he must have ten or twelve acres cleared now. And he has absolutely made his living there since he has been there by doing this clearing, working for the neighbors around, and on his place, and improving it. His place today is worth—you cannot go and buy it of him. You cannot go and buy his relinquishment short of $1,000 today, and that is about four months ago—a man by the name of Wise.

Q. Now, how do the lands along the railroad through Josephine County compare with the other lands in the county?

A. The railroad lands or lands along the railroad through Josephine County, some of them is about as rough land as we have got right where the railroad run.

Q. Does the railroad follow the canyons there?

A. The railroad follows the canyons and the

river.

Q. Speaking generally, I mean.

A. Yes.

Q. Of course there are some level bottoms that the railroad passes over, I presume?

A. Oh, yes.

Whereupon on re-cross examination witness testified that the Wise homestead that he bought is in section 2, township 37 south, range 6, about six miles from Grants Pass on the south side of the Rogue River, west in the foothills. It has some timber, it is brush land, but no saw timber. It was not vacant before this man reliquished it, it was a relinquishment and had been taken for two or three years.

Whereupon THOMAS BENTON MASTERS, called as a witness on behalf of complainant being duly sworn, testified that he is fifty-one years old, resides at Portland, Oregon, at the present time, but formerly resided for eight years in Polk County, Oregon, about the central part of the county. He was superintendent of the logging camp and cruising timber while he was a resident of Polk County, he was superintendent for the Willamette Valley Lumber Company. He has lived on the coast thirty-two years and has been in Oregon twenty-five years out of that time. When he first came to Oregon he was a street car driver on the Holladay line and went from that to railroading and from railroading went into the timber. The timber business has been his business for the last twenty-six years. Referring to "De-

fendants' Exhibit 259" he points out Falls City and Black Rock and he is acquainted there. He points out the right of way from Falls City to Black Rock, he located that right of way. From the break of the hill that runs between Falls City and the Lacreole, between the break of the hill, about a quarter of a mile this side of the break, which is really abrupt right there, there is not much timber. He is acquainted with townships 8 south, 6 and 7 west and part of 7 south, 8 west. Falls City is in township 8 south, range 6 west. He is sufficiently acquainted with this section of country to know the soil conditions and the formation of the land and the suitableness of the same for agricultural purposes after the timber has been removed. He has been through that country and is familiar with township 7 south, ranges 6 and 7 west. Seventy-five per cent of that country in township 8 south, range 6 west, and the north part of township 9 south, ranges 6 and 7 west, in his opinion, would be susceptible to cultivation, after the timber is removed. He has been over township 7 south, ranges 6 and 7 west sufficiently to give him general information as to that territory and as compared with township 8 south, ranges 6 and 7 west, it would be just about the same. The north part of township 9 south, ranges 6 and 7 west, is better than township 8 south, range 7 west, better land. Where the timber is good it is just about the same, but the land is better, altogether better, more tillable land. He is acquainted with the general conditions of the southern portion of township 9 south, ranges 6 and 7 west, sufficiently to acquaint him with the general conditions there,

as compared with the other lands that he has been over and the general conditions are just about the same as they are in township 8 south, range 7 west. The township south of township 8, ranges 6 and 7 west, is better, a good deal better, that is the southern part of Polk County, that is a good deal better than township 8 south, range 7 west, but not any better than township 8, 6 west, generally. He had occasion every once in a while to go over these lands on what he would call a job of going out and cruising a piece of timber or looking for a piece of timber for the Company or someone else, and they would tell him to look over certain parts of certain sections and in that way he had a chance to get an idea of what the land was. As a timber cruiser employed in the timber he was required to make a report on the character of the soil and its suitableness for cultivation after the timber was removed.

Whereupon witness testified as follows:

Q. Now, Mr. Masters, if these lands were divided into 160-acre tracts, would this percentage that you have stated be generally carried out as to the number of acres that could be cultivated on the 160-acre tract?

A. Possibly there might be in one 160 acres that I know of, in 8-7, that there would not be 75 per cent. But in another 160 acres, there would be the whole of it in the same—well, in 8-7.

Q. Then the percentage would generally work out on the whole thing?

A. On the whole thing, yes, sir.

Whereupon, on cross-examination, witness testified that there are no mountains around Falls City or up towards Black Rock. What he means by a mountain is a place where a man could not take a horse or a mule or could not take a pack of one hundred pounds on his back or anything like that, that is, what he thinks is a mountain. Black Rock is between seven hundred and eight hundred feet above sea level, that is not what they call the coast range there, when they go out cruising, but when they go to the mountains, they go over about township 9 south, range 9 west, or over in that country. They always calculated that the mountains got higher until they got seven or eight miles beyond Black Rock as they go west, that is what they call mountains. There is not any timber to speak of south of Falls City. There is a lot of underbrush and second growth. It is wild and in brush and is not all cultivated. On the Luckiamute, west of Helmicks, all the way up for fifteen miles one goes into the mountains and is in the timber all the time, excepting what time one is not in the burn or in some little brush. Falls City by railroad is 9.45 miles from Dallas by what is called the Salem, Falls City and Western Railway. There never was but one sawmill at Falls City and that has been there fifteen years. There is a sawmill two miles west of Falls City. Falls City is incorporated. He owns property in Falls City. When he speaks of Falls City he means the corporate limits, just as one would mean if he meant in Portland. The sawmill that is operated there is known as that of the Falls City Lumber Company. The capacity of the mill for ten hours

he would say was 80,000 feet, cut into cants, not into inch boards, but into cants. There are three large timber concerns that do business at Falls City or near there. There is the Spaulding Logging Company, Charles K. Spaulding Company and there is what is known as the Dallas Logging & Lumber Company and the Great Western Lumber Company and then the Falls City Lumber Company, there are four instead of three, and these are all rather large concerns except the Great Western Lumber Company. They get their timber from the railroad, that is the Great Western Lumber Company and the Spaulding Lumber Company and the Dallas Lumber Company. He could not tell just where they got their logs or whether they own any timber land up there, he has heard that they do own timber land up there but he could not tell whether they do or not. He never knew of the Charles K. Spaulding Logging Company hauling any logs to Independence, but they are taking logs out on lands in that section up there. Charles K. Spaulding Logging Company is one of the largest logging and milling concerns in the Willamette Valley, they are not the largest, but they are one of the largest. The Booth Kelly Lumber Company is probably the largest, they are in the Willamette Valley. Up until within the last year, the Spaulding Logging Company did not take out as much timber as the Dallas Lumber Company. He has been over the unsold railroad lands in the places that he spoke of and can tell some particular sections of railroad land that he has cruised or been over. He has cruised some lands that the Oregon and

California Railroad Company owned or now owns in Polk County, and he did that for the Company about eight years ago, cruised forty acres for the Company which was in the northeast quarter of the northeast quarter of section 15, township 8 south, range 7 west. The railroad ran across one corner of it and took about one hundred feet of one corner off of that. He does not know that the Salem, Falls City and Western wanted to get a right of way across that forty but he knows that he cruised it, that Company got the right of way across that forty. It is his recollection that he found there was on that forty about 400,000 feet, that is a better forty than the average of that railroad land in there, it is not an average, but it is better than some of it. If it had been as good as some of it, Hirschberg would have had it. It is not an average forty that he cruised of timber lands that he knows there belonging to the Company, it is worse than the average and he thinks that the lands of the Company there would go a lot better than two million feet to the quarter of saw timber. He does not know all the lands that the Company has not sold, he only knows a little land that they had not sold at that time, that is that was supposed to have been sold, they would not average as much per quarter section as two million and a half, that is, not such as he knows. He knows of the unsold lands of the Company about six or eight quarter sections that is, of lands that are not sold, that is, he knows positively. He does not know whether the other lands are sold or unsold, but those that he is speaking about he knows are unsold, six, seven or eight quarter

sections that he knows are unsold would average very little timber per quarter section. They would not average a million to the quarter section, they have not been cut over, they have been burned, they would not average a million to the quarter. He has never cruised them and could not say what they would average, he would have to guess at that, this one particular forty that he did cruise. There was no use of cruising those because there was nothing to take off. His knowledge of the rest of the land there that belongs to the Company is just going through the country like a timber man would. He thinks that about seventy-five per cent on an average could be cultivated, after the timber was cleared and the stumps taken out, it would not be too steep. It would be better than land about Derry and Dallas but it would not be level, it would be better. Derry and Dallas are too flat, that is too flat around Derry and Dallas for fruit.

"Q. You don't want the court to understand that this land that is lying back there in the foothills is better than the land in the Willamette Valley and ought to have been settled years ago, do you?

A. Yes, sir.

Q. Then you have got the notion that the lands that are back in the foothills, covered with fir timber, however rough it might be, are better than the old Willamette Valley lands.

A. Yes, sir.

Q. I see. Well then why didn't the people go in

there and take up the even sections fifty years ago? Why didn't they do that?

A. They didn't have no way of clearing those trees off them."

It is only recent years that they have gone in there to settle at all. He could not say that a good many have settled and taken homesteads in that timber country, have proved up and sold their timber claims to the Charles K. Spaulding Logging Company and other people, but he guesses that some of them have done that, but he does not know of any who have sold to the Charles K. Spaulding Logging Company. He does not know a man that sold any of them. They all sold before he got there.

Whereupon witness further testified:

Q. Well, you have gone out there and looked them over. You are a timber man, and cruiser, and dealt in timber quarters. Didn't you find quarters there that people were applying for and wanting to buy, timber investors, and didn't you sell some of them?

A. The timber is mostly all, when I went there eight years ago bought by three different parties.

Q. Who were these three different parties?

A. Spaulding Logging Company and Joe Hirschberg and the Willamette Valley Lumber Company.

Q. How many acres did Joe Hirschberg get hold of by one way or another?

A. I heard 19,000, but I never knew how many. That is what I heard.

Whereupon witness testified that he did not say that Hirschberg got the best timber, but would say that he got his money's worth. The other people that bought there, the Spaulding Logging Company, he does not know how much the Spaulding Logging Company owns, or how much the Willamette Valley Lumber Company owns, but they are large holders of timber lands in that country. He has tried to take a quarter section of this railroad land, he thinks it was the southwest quarter in township 8 south, range 7 west, in Polk County, he did not settle on it, he did not take it, but applied to the Company to buy it under this Act of Congress and offered them $2.50 an acre, there were no printed blanks to sign. He just made his application put his money in, but they did not take his money. He made his application the latter part of June, 1907, before he applied to purchase. He knew what kind of land he was taking. He had gone out on the tract. He would judge there was about three million feet of timber on that quarter section, it is about eighteen miles from Dallas and about eight miles from Falls City, but not in the mountains. It is in township 8 south, range 7 west. He went through it, before he applied to purchase it and got a pretty good idea of how much timber there was on it before he applied. He offered to pay $2.50 an acre and he expects the timber on it, if he could get a good title to that quarter section, would be worth $1,000.00. He does not know if it is worth as much now as when he applied for it, he has

never lived on it. He lives in Portland and is running a woodyard, has a woodyard at 542 First street and has been in that business six months. Before he came to Portland he was living at Black Rock running a general merchandise store, and had been in the mercantile business at Black Rock two years. He did not apply to the Company to purchase this timber land while he was a merchant at Black Rock. Before he was in the mercantile business at Black Rock he was running a logging camp, superintendent for the Willamette Valley Lumber Company, and that was the time when he applied to purchase the land. Black Rock is just a postoffice—those logging camps, two or three little stores there mainly for the loggers.

Whereupon, on re-direct examination, witness testified that all of the best sections of the railroad lands there have been sold, and that was the reason he said that the ones that were unsold did not amount to very much, that there was not a million feet on them, he did not think. He knows there was not in fact.

Whereupon J. N. SWITZER, called as a witness on behalf of complainant being duly sworn testified that he is forty-seven years old and resides at Willamina, Yamhill County, Oregon, and has lived in Yamhill County forty-six years and one year in Washington County. He was born and raised in Yamhill County. His father was a farmer, and never had a very large farm, but owned at one time 320 acres close to Sheridan, which he sold, he was buying and selling, changing around, different times, never stayed in one place very

long on one farm until he got up in the mountains there and homesteaded. His father homesteaded in section 10, township 5 south, range 7 west and lived on his homestead about fifteen years. It was burnt over land, all dead timber when he entered it. His father cleared up about 18 acres of the 160, and there has been more of it cleared since, it had been pretty heavy timber one time in the early days, there had been forest fires which killed all the timber, a good deal of it was rotten. His father raised hay, vegetables, never threshed any grain there, always fed it out to the stock. The hay includes wheat, oats, vetch, they did not raise vetch then because they did not have it, they had wheat hay, oats hay and timothy, and raised all kinds of vegetables, carrots, parsnips; the soil was good soil. His father had about three acres of onion land and they raised onions on it for sale. They raised about six hundred sacks of onions there one year. He does not remember the year that his father went there, it was in 1878 he thinks, somewhere along about there that they went up into the mountains. That was the means of earning a support for himself and his family, there were seven children, this place was about twelve miles from the railroad. He has been engaged in farming pretty near all his life until the last three or four years, and has farmed there near Willamina, has farmed all his life in the Willamina Valley since he got hold of his farm and most of the time in township 5 south range 7 west. His father raised fruits on his homestead, had a few trees, not very many, never set out much of an orchard, about half an acre, but raised good fruit, the

soil was adapted to that, it was good fruit land, raised apples, pears, plums, berries. Willamina is in the valley. His father's homestead was right at the head of the valley, one might say it was out of the valley up in the edge of the mountains. He means the Willamina Valley, is up on the Coast Fork, a branch of the Willamina River. Referring to "Defendants' Exhibit 259" his homestead was right on the forks of this creek in township 5 south, range 7 west. There is very little of that land marked in green on this map that shows south and west up there, there is section 27 which is every bit of it good land, and is in township 5 south, range 7 west. There is one small part of that which shows green there, part of that has been bought years ago, the yellow part there. It does not show on there, and that marked red is railroad land that has been contracted, but the railroad company still has title to the land. He is familiar with that part there that is red. There is no waste land there on that section 27. Section 15, in township 5 south, range 7 west, is all timbered land, there is 600 acres of railroad land in that, and one forty sold out of that section 15. There is about fifty per cent, it would run near sitxy per cent of that section that could be rendered suitable for cultivation, for tillage, after the timber is removed. He has a pretty fair knowledge of the lands in township 4 south, range 7 west, and of that country and the existing conditions there. He is not very much acquainted in township 4 south, range 6 west, he has been there but has never paid much attention to it, he was over there for stock. He is acquainted with the general con-

ditions existing in that township and is acquainted with the general country in the parts which show the green markings there on the East Fork of the Willamina. That is a timbered country in there. Take the whole thing, after the timber is removed, about forty per cent of that land could be rendered suitable to cultivation. He has a general or specific knowledge of those lands marked in green, in township 5 south, range 7 west that he has not mentioned, and he would say that probably forty to fifty per cent in township 5 south, range 7 west, that he has not specifically mentioned by sections, could in his opinion be rendered suitable for farming purposes. There are people living, making homes and farming the lands similarly located in these townships, 4-7-, 5-7 west. Township 5-7 west has been settled quite a long time, most of that land, some of that land was taken under the old donation act in township 5 south, 7 west, quite a bit of that was old donation. If this land were divided into 160-acre tracts these percentages of plow land would generally hold good, in his opinion, that is, there would generally be these percentages of plow land as to each 160-acre tract.

Whereupon witness testified:

Q. Mr. Switzer, in your opinion, what has been the effect of the Railroad Company's failure to follow the conditions of the grant and sell to actual settlers at $2.50 an acre, in tracts of 160 acres in this community that you are acquainted with in Yamhill County?

A. Why, it would all be taken. It would all be sold

at that price now.

Q. To actual settlers?

A. Yes, sir, settlers would buy it now. Most of the Government land is taken in township 4 now. Nearly all the Government land is taken up, and in 5-7 it is all taken, I think. I don't think there is any Government land left there.

Whereupon witness testified that all of the Government land there has been homesteaded, all homesteaded in there in the last two years. There have been some forty odd families located in townships 4 and 5 south, range 7 west. The first settlers in the settlement of this country went on the low lands, the valleys, and open places along the streams. The more recent settlers have gone on the hills, the land is rolling, all of it mountain land, a good deal of level land on it, nearly all of those more recent settlers there have a little piece of bottom land on some of those creeks and streams, these townships are well watered, every forty has water on it, in either township, he thinks. He does not think there is a forty but what there is water on it, springs, there might be a forty too, but one could not take an eighty without getting a spring on it.

Whereupon on cross examination witness testified that his father's first name was A. J. Switzer, and he took a homestead and lived at one time over on Red Prairie in Polk County and on Mill Creek and had a place over there, it was about four or five miles from the

county line where he lived, he does not know what donation place it was, but it was a donation land claim and he was living there in 1868, 1869 and 1870, along there, he does not remember when he lived there. His father left there and went over to Washington County, they were there a year and then they came back and lived right south of Sheridan for a year and then went into the mountains. When they lived south of Sheridan they lived on a donation claim, Johnson owned the place at the time they lived on it, it was south of the Scroggins place, right up on Red Prairie there. He does not remember when they went up on the upper Willamina and his father took this homestead, but he thinks it was somewhere around 1878. At the time his father went up there he was the last settler on the creek. There was another man who went in the same time he did, a fellow by the name of Burton. At the time his father took that land he took the first place that was not taken up that creek, a man by the name of James lived there below, and it was four or five miles up the creek by the road from the donation land claim of Charley Fendell. Willamina is a place of about 500 people, at the end of the railroad that runs from Portland out to Sheridan, it goes about four and three-quarters miles from Sheridan to Willamina. The railroad has been there about five years, he thinks it was built four or five years ago by the Newberg Pressed Brick Company, it has a brick plant at Willamina, and they built that branch to ship out this stuff. Around that Willamina country is an agricultural and fruit district, and the last ten years a good many people

have come in there from Tennessee and other parts, and have settled around Willamina. There was no donation land claim adjoining his father's homestead, it is all homesteaded. His father sold to Jack DeLashmutt who lived on it. It was a stock ranch, and that is about the way his father and his family made a living on that place. They kept some cattle and hogs and their stock ran out there in the mountains, it was all open then to pasture. A good many claims have been taken, homesteads have been taken in the township north of this one in township 4 south, range 7 west in the last two years. That used to be a timbered township, but it is all burned over, there is no green timber on that township at all now, it is an old burn. It has been, he would guess fifty or sixty years since the first big burn. Every few years there would be fire come through there and burn it. There is no young fir on it to speak of, once in awhile there is some young fir. If fire had not been over that every year, there are some places where the young fir would have come back, some places where it would not. The stock keep the young fir down as much as the fire. Take that country close to Willamina, it has a heavy forest on it, it has saw timber and the reason is that nothing was ever done with it, they just let it lay idle and the timber came up on it and it is a pretty heavy forest now, all second growth fir, they are making ties of it today, it has grown, he would say just exactly, but there are trees there that have come up since he went to that country that they are sawing ties out of now, that is trees probably eighteen inches at the butt. If fires and stock had not interfered

the young fir there, in its native state would reproduce in the course of fifty or sixty years and make saw timber. This old burn has been taken the last two years, quite a good many people have gone in there and taken homesteads, they have not much clearing to do, they have the old logs and stumps to take off the land, and there is quite a bit of hazel and vine maple brush coming on this land, which has been growing, the fire kills it every few years and the stumps are in there and old roots, but the brush does not get very high except along the creek it grows very high and rank along the creek. The best timbered township in there would be township 4 south, range 6 west, he thinks, no, township 5 south 7 west, there is some timber, but not much in those two sections. There has been no timber logged off of the railroad lands and sold to the sawmills or cut down, he thinks, but there has been on the even sections, some of the even sections have been taken as homesteads and they are all cut off, sold off now on the homesteads. These people that took the homesteads in these timbered parts, did not sell the land to timber people, they cut the timber off, sold the timber there to the mill, sold the stumpage. He does not know about what a quarter section of that best timber would run in million feet. He has no knowledge of timber himself. He never cruised in his life. There is considerable good timber in sections 27 and 11 of these unsold railroad lands. Section 27, township 5 south, range 7 west is not clear land, but is good land, it is all timbered except about ten acres of prairie in it that has been plowed, the rest of it is timber, second growth

timber and some old growth, but it is good land and lays good and is all good soil, referring to the 121.20 acres of unsold lands of the Company. In section 15 there are 600 acres of unsold railroad land which is not all timber, there are some open burns in that, not very much though, it is mostly timber, there is a small burn in which the timber that is left is old growth timber, pretty good timber. The land adjoining section 15 at the present time has been selling at from $25.00 to $30.00 an acre, and the land in section 15 is worth $25.00 an acre for the timber alone. A man could afford to buy it for $2.50 an acre just for the timber.

"Q. And when you say that most of all that would be bought and settled upon at $2.50 an acre you mean that they would pay $2.50 an acre for most any of it there, and make the best use of it they could?

A. Yes, they would buy all that open land at $2.50 an acre now.

Q. Practically all the unsold railroad land in townships with which you are familiar, if put on the market at $2.50 an acre would be bought up wouldn't it?

A. Yes, would be bought up.

Q. By speculators or investors?

A. No, settlers would come in there and take it right now.

Q. I understand, but wouldn't it be a good investment for one to buy that 600 acres at $2.50 an acre?

A. Yes, it would be a good investment for any man.

Q. I could make a good investment to buy any of that land at $2.50 an acre?

A. Yes, sir.

Q. And I wouldn't have to live on it to make a good investment, would I?

A. No, sir, wouldn't have to live on it."

He is not much acquainted with township 4, 6 west. He has been over that, it is directly northwest of McMinnville and he is not acquainted with that very well. The Jones sawmill he does not think is in township 4 south, range 6 west, he thought that was further over. Fairchild is on the north fork of the North Yamhill, which is in townships 2 and 3, ranges 5, 6 and 7 west. 3 west would be immediately west of Carlton. He is not much acquainted with that at all. He lived there when he was small. He was born right there close to Carlton. McMinnville is in township 4, range 4 west, and the county line between Tillamook and Yamhill corners over west of McMinnville about ten miles. Willamina River as shown on this map has an east, middle and west fork, and Willamina River runs up into that timbered country in township 4 south, range 7 west, and the stream runs south to Willamina. Charley Fendell's donation land claim is just up the creek from Willamina in section 25, about two miles from Willamina. He notices these yellow sections all around in there on both sides of the Willamina Creek, running clear up into township 4 south, range 7 west. His father's homestead was in section 10, township 5 south, range 7 west, on a direct line about

five or six miles beyond Willamina. He was over on the Coast Fork. Not all of that country, in yellow there, is rolling foothill country, some of it, quite a bit of it is valley land. The Fendell place is all level valley land on the Willamina River, out from the river it is all rolling land. The Willamina Valley, where the Fendell place is, is a narrow valley, a narrow little valley of low lands and runs up on the hills. Sheridan is four and a half miles east of Willamina. Those foothills north and northeast of Sheridan towards McMinnville are all bald hills with quite a bit of brush and small grubs on some of them. In the early days the oak grub were not nearly as numerous and heavy as they are now, lots of that oak has grown up. He was told in that section of the country before it was broken up, that grass in the Willamette Valley and foothills there grew from a foot up to four and five feet high, but he did not notice much about that, they told him in an early day that grass was all over the valley as high as a horse's back. The fires kept everything down, the Indians kept it burned off. As soon as the whites got hold of the land, it has grown up, since pioneer days, with enclosure of the premises, and the stopping of the fires, the timber has increased and become more than there was before, excepting where it was grubbed. He thinks Yamhill county, this section, is one of the oldest settled portions of Oregon. The Grande Ronde Valley is west of Sheridan and Willamina about seven or eight miles, about seven miles to the edge of the valley. He thinks General Phil Sheridan had a fort there at Fort Sheridan in about 1860 or 1861

before the war. The old fort stood there until two years ago, when it was removed to Dayton and preserved by the people of the town as historical. The Grande Ronde Indians were put on the Grande Ronde Reservation and later on the Siletz. There was some settlement in these foothill lands prior to twenty years ago in a few scattering places on the creeks as they ran up. These foothills around Sheridan have been owned longer than twenty or twenty-five years ago, they have been settled quite awhile, they were in the country when he was there, and it was all open country. There have been no settlements in the timber back there, not away back until within the last few years. Before that there were some few ranchers on the creeks in the stock business, some up on the hills in township 4, there have been some ranchers for the last twenty-five years, they were not stock men, they kept a few head of cows, that is all, they cleared up quite a piece of land, some of them did in township 4 south, range 7 west. These railroad lands have not been much in demand until within the last ten years, there was nobody in there buying any land at that time. People come in thicker now and they want the land. Timber became the object of considerable inquiry in his section of the country eight or ten years ago, eight years ago and timber has become pretty valuable now. These 600 acres in section 15 are chiefly valuable for timber, more valuable for timber than for anything else now, but it is good agricultural land when the timber is off. It would cost quite a bit to clear it, some parts of it would cost almost as much as one could buy the cleared land for,

in some places a man could get 25 or 30 acres clear, once in awhile. To clear land would cost pretty much as much as to go and buy cleared land.

RE-DIRECT EXAMINATION.

Q. Now, Mr. Switzer, the settler who goes on the land, what method does he use in clearing the land? Does he hire it done?

A. No, he clears it himself, as a general thing. He goes on there, and he clears a little every year, what he can.

Q. Would it be possible for a man seeking a home of moderate means, to obtain any lands at $2.50 an acre that he could clear up and cultivate?

A. Oh, yes, yes.

Q. By his own labor?

A. Oh, yes.

Q. At $2.50 an acre, that he could clear up?

A. Oh, no, not clear for $2.50, no.

Q. I don't believe you understood my question, Mr. Switzer. Could a man go over into this country, and buy land at $2.50 an acre?

A. Could he go and buy it?

Q. Yes. Are there lands for sale there at $2.50 an acre?

A. No. No, there is none there for sale, no, I should say there is not.

Q. Then a man seeking a home, having small means, he could not go down in the valley and buy land, could he?

A. No, he could not buy land in the valley there very cheap.

Q. His clearing of this land, his labor in clearing this land, would be something like putting money in a saving bank?

A. Yes, something like that, yes.

Mr. Fenton: You can't very well convince an old settler of that.

A. They go in there, and they get a little place and they clear up a little every year. And in a few years they have got a home. There is one man up there that got a piece of that land, bought a piece of it one time, and sold it a few years ago, and he has been offered $100 an acre for it. He has cleared it all up, and got it in cultivation. One forty of that 160 he was offered $100 an acre for.

Q. Where was that?

A. Township 5, Range 7.

Q. Was that timbered land?

A. It was burned over land, hill land, this red shot soil.

Q. Is that the same character of soil that is found on these lands?

A. Well, it is different from valley land below, but

it is the same as the hill land all over 4 and 5. It is that kind of red shot soil, the hill land. The bottom land is kind of black loam on the creek, some sandy.

Q. You spoke about this section, its chief value being for timber. You mean in its present condition?

A. In its present condition, yes.

Q. It could not be farmed until the timber was removed?

A. Oh, no, it could not be farmed until it was cleared up. A man would soon clear up 25 or 30 acres on one part of that section that is a burn, lays nice, very. It has been burned ever since I can remember, fire went through there.

Q. Mr. Switzer, how is this land adapted for fruit raising?

A. It is good fruit land.

Q. Are the settlers in there raising, successfully raising fruit?

A. There has never been very much orchard put out there, only one upon the hills. There was one put out there 18 or 20 years ago, a small orchard. It is a fine orchard, bears the finest kind every year. It is good fruit. There has been quite a little set out in the last three or four years. There was one 20-acre orchard set out in 5-7.

Q. That has not had time to mature yet?

A. No, on the hill, right adjoining it, close to it, there is an orchard been bearing there for a number of

years.

Q. How, if at all, has the demand for lands for settlement purposes, homesteading purposes increased in this community?

A. Oh, it has increased wonderfully in the last four years, five years. They have taken everything they can get hold of, settlers are coming there, getting in there and getting on all the land, wherever they can get a forty they are taking it.

Q. Are they carrying on dairying to any extent in this country?

A. Yes, up there on the Willamina there is quite a few of them dairying.

Q. Has that industry increased in the last few years?

A. Oh, yes, sir, a few years ago there wasn't any one dairying in there.

Q. Where is your nearest creamery?

A. We all ship our cream from that country to Portland, Dallas, Corvallis—we haven't any creamery close. They run a wagon up there clear up to the head of the Willamina.

Q. That is a wagon collecting cream?

A. Yes, the Hazelwood. I used to run a wagon for the Hazelwood myself up there and collect cream, seven or eight miles above the town.

Q. That is the Hazelwood Creamery of Portland?

A. Yes, sir. They get all the cream from that country pretty near, most of it. Independence gets some, and Corvallis gets some.

Q. How are these lands adapted for dairying purposes?

A. They are all right for dairying. That is really the finest vetch there is. They are adapted to vetch. Then the wild pea-vine grows all over that country, used to.

Q. Now, this burn that you spoke of, Mr. Switzer, did that burn destroy the soil?

A. I don't think so. It seems to produce mighty well anyway.

Q. In your opinion, would these lands, if divided into 160 acre tracts, be suitable for settlement in areas of 160 acres, that is, where a man would go on with the purpose of farming and making a home of it?

A. Oh, yes, on 160 acres, a man could make a home there on 160 acres of land.

Whereupon F. J. STEWARD, called as a witness on behalf of complainant, being duly sworn testified that he is sixty years old and lives in Sheridan, Yamhill County, Oregon and has lived in Yamhill County fifty-five years and in Oregon since 1852. He was not born in Oregon, but when he came here he was a small boy. His occupation since he has been a resident of Yamhill County was that of a farmer and he has been engaged in farming on the south and west part of the county and

has farmed several different places there. There was the black, rich soil farm lands, some nice farms and some bottom land that he farmed. They were lands that were taken up in the early days, he thinks, which were used for farming purposes, that land was taken up under the donation land law. He took a homestead in township 4 south, range 7 west, it was high mountain land, situated in section 32. He has had experience in farming mountain land as well as valley land. This mountain land produces pretty nearly everything one would try to raise. There are some fruit trees and gardens. People have gardens up there, and they raise hay, grain hay. There is no threshing in there because it is an out of the way place for a threshing machine to get at. They do not raise grain to thresh, but they raise stock and fruit and garden. One might call it a farming country, the way the people live there. The land is used more for dairying purposes and raising stock. Referring to "Defendants' Exhibit 259," he is acquainted with township 3 south, range 7 west and township 4 south range 7 west, mostly acquainted with them. Township 4 south, range 7 west is on the west fork of the Willamina. They do not call that Willamina branches there, they are named by these creeks, West Fork of Willamina is called Coast Creek, that is the way they are named on their blue prints on the map there. He is better acquainted with that country by following the names of the creeks. The East Fork of the Willamina is called East Creek, that is in the green section of timber there, and on the Coast Creek country, all of that, and in through that country there is

all a burned district, has been burned off years and years ago, before he was acquainted with the country it had been burned off. There has been heavy timber all through that country, and it was burned, and the fire killed the big growth, and the timber stood there for years, until it became rotten, then it breaks and falls on the ground, that is in townships 4 and 5, range 7 west, that is the big burn, goes clear through to the coast, it goes clear back, reaches over to the coast and about forty miles wide, clear through along the Coast Range and goes clear over to Nestucca. He has been over these lands and he thinks he is acquainted with the conditions of them, the soil conditions and the growths that are on the land and the possibilities for agriculture and in this particular country that he speaks of there are thirty-five to forty per cent of that land that could be tilled. Judging by the places that are taken, claims they call them, people that have settled in there, that is in the area covered by the grant marked there in a general way, in his opinion, that this percentage would hold good as to 160 acre tracts, if divided into subdivisions. They could not perhaps take 160 acre tract and cultivate it, one could not start in and get thirty or forty per cent just in one place, in one certain piece, but one could have a field in one part of that tract of land, and on another portion of that land one could take a nice little field where people could open up and clear up the ground. That area is not heavily timbered, it is brush, it is not timber in that, most of that, some of it, in certain sections that he knows of has timber on it, but the most of it is what

they call the burned district. There are settlers in that burned area. That land has been settled there ever since the people seemed to find out that there was a place for homes there. The way that he looks at it, the people who advertised this country here up along the areas there along the coast have enticed homeseekers to come there and hunt for homes, and that has been of late years, just the last few years that they seem to know that they could go and make homes there. A good many of them are successfully farming this land, they are there, they have brought their household goods there, got pianos and all nicely fixed. Those lands were acquired by homesteaders by taking quarter sections, the settlers that are on them.

Whereupon witness testified:

Q. Mr. Steward, in your opinion, what has been the effect in this community of the Railroad Company's failure to fulfill the conditions of the grant, and sell to actual settlers in tracts of 160 acres, at $2.50 an acre?

A. I don't know as I know exactly the conditions that the Railroad Company agreed to, on this land. But there are people now that would take the land and buy the land if they could get it.

Q. Well, assuming that such a condition exists, that the Railroad Company were required to sell at $2.50 an acre, in tracts of 160 acres only, to actual settlers, people who would actually settle upon the land.

A. Yes, sir, they would.

Q. What has been the effect of the failure to fulfill those conditions in this community?

A. Well, I hear people say that if they could buy a certain quarter section of land there, they would like to buy it. That has been the talk for a good many years.

Q. For what purpose did they desire the land?

A. For homes, for a home, yes, sir, to make their home on it, and to improve it.

Q. In your opinion, if this land was opened up to sale at $2.50 an acre, only to actual settlers, would the land be taken by people who would take them up in such tracts for homes and farming purposes?

A. That is what people tell me they would do.

Whereupon on cross examination witness testified that he took his homestead, he thinks, nine years ago. He took the northwest quarter of section 32, township 4 south, range 7 west and it is about eleven miles from Willamina in an old burn. There was timber and brush and dead timber on it when he took it. There was no saw timber on it, nothing but logs. He did not live on his homestead at all one might say, he took the claim there and his wife felt that that was not a very nice place to live so he had a little house and barn put up there. A man paid him a little something for his house and barn and he relinquished his rights and never really lived on the homestead. He thinks he got $35.00 for his improvements and the man to whom he reliquished, filed

on it. His name was Cossach, a German. He did not perfect title, he lived on it, he and his son together stayed there about a year and they relinquished to a man by the name of Ryan but he does not know what they got for their relinquishment. Ryan did not prove up on it, Ryan did a little work on it and was called to Alaska and went away. It seems as though he had to go away, and a man told him a few days ago that he paid him $300.00 for his improvements. He was improving it, going ahead with it. He relinquished to somebody else under some circumstances a short time ago and that man is living on there now and has filed on it as a homestead. He does not know if he will relinquish or not. He might if he could get enough money out of it.

Q. You don't know whether he will stay on it and prove up?

A. No, I could not tell you that.

Q. It was not a very desirable quarter, then?

A. Well, not very. There was a railroad quarter down this side I would like to have got, but I thought if I could not get it, I would take the other. It was on an odd section. I don't know whether it was railroad land or not.

Q. The railroad section this side was on the market at one time, wasn't it?

A. Yes.

Q. Do you remember what the company offered it for, before 1905, about the time the change of adminis-

tration in the land grant came about?

A. No, sir, I do not.

Q. Well, anybody could have bought it 20 years ago for practically nothing, couldn't they?

A. I presume they could have got it cheaper than it could be got now.

Q. Don't you know, Mr. Steward, that a great deal of this railroad land there in the foothills and around could have been bought 25 years ago for probably $1.50 or $2.50 an acre?

A. Yes, sir.

Q. There was not any demand for it, really, was there?

A. No, sir. There was not the people here to ask for it. There was not the home-seekers.

Q. I know, but there was no settlers that wanted it?

A. Settlers had just worked back, they had taken claims along here, it was not policy to jump back on that land.

Q. I understand. What I mean is 20 years ago these railroad lands had no particular value to anybody.

A. Didn't seem as though they did, no, sir.

Q. Consequently there was nobody asking for the lands excepting a few farmers who wanted a forty adjacent to them.

A. Yes, that is it.

Q. And as the country filled up, and principally within the last five or six years, or seven years, and particularly since timber became an item, all the good timber-land in that whole country has been taken some way or other, hasn't it?

A. It has, yes.

Q. Some of it taken as homesteads, and some have taken it under the Timber and Stone Act?

A. Yes, sir.

Q. And the lands in this burn and open place are begun to be settled more or less?

A. Yes, sir.

Q. Some of them having the experience that you had, of relinquishing, and never going on?

A. Yes, sir.

Q. And others taking it, the second man relinquishing, and so on, until somebody has finally got the title to most of it?

A. Yes, sir.

The farming that he had done was chiefly down in the valley. His father's farm was about six miles, five miles southwest of McMinnville in the old settled place and was a donation land claim, the William E. Warren donation land claim and one immediately south of that was the Richard Miller donation land claim and all that country was taken up under the donation land law, 640 acres, and the foothills as they were bare and open were

taken under the homestead, and sometimes partly under the donation law. He remembers where Charley Fendell's donation land claim is. It is two miles up the creek from Willamina and he has been there a long time. His brother-in-law, N. K. Sitton, lived down near Carlton on a donation land claim too, he thinks.

Whereupon, on re-direct examination, witness testified :

Q. Mr. Steward, you spoke, or rather, Mr. Fenton spoke of the lands being on the market in the early days, and there were no takers. As a matter of fact, there were even sections open to settlement there?

A. Yes, sir, the even sections.

Q. Which a man would have to pay nothing for to the Government except filing fees of $4.00?

A. Yes, sir.

Q. Those were the lands that were taken by those first men that came in there?

A. They were the lands that were taken, yes. Under pre-emption law, there was some pre-emption claims at that time.

Q. That was prior to the Homestead Act, some of them?

A. Yes.

Whereupon witness testified that on this homestead that he took there he sold his improvements, that was all, and really received no compensation for relinquishing the claim. The man that is on the land now is clearing

it, slashing the brush off and clearing it. He has a garden on it. The railroad quarter of which he spoke that he would like to buy is in section 29, township 4 south, range 7 west, it is good land, creek bottom partly, it is quite good land. What they call Kennedy Creek comes down through there and there is quite a bottom of nice land through there, some bench land and fine grazing land, alder, ash and willow. It would just depend on how much a man cleared of this track as to how much plow land could be obtained, it has small brush stuff that could be cleared and one could plow quite a big per cent of it, it has no value for the timber that is on it and is only valuable for the agricultural uses to which it could be put. There is quite a little bottom along up through, of flat land, along up the branch flat land, they call it beaver dam land, good land for raising vegetables, anything like that, beaver dam land, as they express it, is very rich soil. One finds a piece of that land, as one goes up on the high ridges, there is high ridges, pieces of land one could not farm at all on this land, perhaps, but other portions are good land. This land adjoining Mr. Booth that belongs to the Railroad Company there, is in section 35, he does not remember how much is in that tract, it is in township 4 south, range 7 west. This railroad land in section 35 is high red soil, red shot land, good soil, if it was cleared off, the timber is rotten, the old big trees are rotting on the ground, it has a fine place for building, fine water as one ever saw, it lays out there, stock runs over it, some places it would not take anything hardly to clear it, other places it would

cost considerable to clear it. There is a big body of that tract that could be cultivated, but he does not know what it would be and it seems to him there must be fifty or seventy-five per cent of that tract there that could be cultivated and that land is worth, from an agricultural standpoint, $20.00 an acre anyway. He sold land in there in section 33, a little piece for Mr. Booth, for $20.00 an acre and it was higher and farther away than this land.

Whereupon on re-cross examination witness testified that he had not applied to purchase any of this railroad land under this act of Congress.

Q. There was a good deal of excitement after this agitation started about this Government suit, among people trying to get these quarter sections for $2.50 an acre, wasn't there?

A. Yes, sir.

Q. Not so much in your section, where the land was agricultural, as in the timbered sections?

A. No, perhaps not.

Q. You knew that that was going on as to the timbered lands in other parts of the state?

A. Yes, sir, I understood it was.

Whereupon H. S. MALONEY, called as a witness on behalf of complainant being duly sworn testified that he is sixty-three years old, resides at McMinnville, Yamhill County, Oregon, and has lived in that county since 1877. He is now county recorder of that county

and has been such since July, 1908. He has had twenty years' experience in farming and surveying in that county. He owned farming lands in Yamhill County near Sheridan, which is in the valley. He has been more or less engaged in surveying work since 1878, land surveying principally, he has done some government work. Referring to "Defendants' Exhibit 259," he had been over the upper part of all these lands north of Sheridan and Willamina, surveying, that is, in townships 4 south, ranges 5 and 6 west and has some little knowledge of township 3 south, 6 west, and also has been in 4 south, 7 west and has been all over township 5 south, range 7 west. Township 3 south, range 6 west is up in the Meadow Lake section, Jones' mill, and is principally burned over land, there is some green timber, he is not very much acquainted there. He surveyed some near Meadow Lake, which is principally burned around there, that is in the big burn which has been mentioned in the testimony of Mr. Steward and Mr. Switzer and is in the same area. There are some sections in there which have green timber, and there is some green timber in section 8, township 3 south, range 6 west. Meadow Lake is in section 15 and his knowledge of that land in township 3 south, range 6 west is rather limited with reference to agriculture. He rather thinks it is too high an altitude though to be very profitable for agriculture. He does not know just what it is, he has never taken the altitude. It is high and mountainous and he does not believe it would be successful for agricultural purposes but principally for stock rais-

ing. There are some settlements in township 3 south, range 6 west. There is one that would be in section 23, township 3 south, range 6 west. He has surveyed some in section 23, which is in a burn, but there is a shingle camp there, there are considerable shingles, and he thinks probably that was why that was taken. There was no land in cultivation when he was there and south of section 23 it is nearly all green timber. In township 4 south, ranges 6 and 7 west he is acquainted. Township 4 south range 6 west, the line runs diagonally from the northeast to the southwest corner, the southeast part of that township is principally green timber and would be considered as agricultural at least forty to fifty per cent. of it, if it was cleared. In section 15, he knows there was some railroad land that has been considered good agricultural land, but it has never been cleared, it is known as the Horse Ranch up there, it is fine grazing. Township 4 south, range 7 west, with the exception of perhaps the south tier of sections, is mountainous and principally adapted for grazing. There are settlers in that township, around there in township 4 south range 7 west, nearly all that south tier. There is a man by the name of Wade who took a homestead up in section 22, who lived on it his time and proved up, it is in a little basin in the mountains there on what they call Bible Creek. On section 21 a man by the name of Bible took up a quarter section there, which was practically all level land. He did not take it as a homestead, he bought it under the timber and stone act and the principal value at that time was the cedar timber, down logs, all fallen

timber. It was not logged off but the cedar logs are valuable for posts and shingles, that is how he got it under the timber and stone act, but there were some little beaver dams along the creek that were valuable and the altitude is lower, snow does not lay there deep. The altitude is not very high in that country, not in that basin but there is some of that which is mountainous all around it, that is too high an altitude he thinks for agricultural purposes. He does not think that he ever took the altitude in that country, but it is something like 2,000 feet though he should estimate, to the higher ridges, something like that. There is more of the high elevation in township 3 south, range 6 west, than there is of any other kind, it is mostly high. Only the lower elevations of that land are adapted for fruit raising. Bald Mountain is in section 29, which is a very high point and can be seen from all over the valley. He presumes that the land in this vicinity, at an elevation of 2,000 feet, would produce grain and similar crops, although he has never seen it. Ordinarily 2,000 feet is not an elevation that would prevent the growth of grain hay, he does not think it would prevent it, if one had soil, he thinks it would grow. The character of the soil in township 3 south, range 6 west, the higher mountains, he thinks is coarse shot land, as it is called, and there is not very heavy timber on it, it is burned over now, the timber is small. There is first growth of timber on Bald Mountain, the old logs were there twenty years ago, something like that. It has scarcely a log over a foot in diameter, showing that it never had been very

large timber on these higher mountains, but the lower levels, of course are washed from the hills and that land is pretty good soil. The growth of the timber that is on there now is second growth in this burn, there is some timber on it. It is principally fir, young fir, but it is generaly so thick that it never grows to any great size, it has grown so thick in there, it is more of an underbrush, it is not very difficult to remove, slash it off and burn it. The northern part of township 3 south, range 6 west, with which he is acquainted, is in that condition generally. The southern part has some green timber, heavy saw timber, old large fir, generally the size of the trees indicates the soil, and it is good timber. There is nothing that would prevent cultivating this land excepting the removal of the timber. These portions that are heavily timbered, take township 3 south, range 6 west, as a whole, the southern part of it, is pretty good, would be pretty good for agricultural purposes, but it is rather steep and broken. He has surveyed some in section 23, 15, 16 and 8 in township 3 south, range 6 west. He was there surveying for the Meadow Lake Club at one time, meandering or surveying their lands. Most of the lands were in the lake. Meadow Lake Club is the corporate name, it was a club house that was located there. At another time he surveyed some for a land holder in section 23 by the name of Frank Martin, he thinks. He has located a claim or two near the Bald Mountain as it is called in the south part of the township. As to settlers there on the even sections in this township, there are Williams Bros. and

a man by the name of Cobb who have taken claims in there on the burnt part of it and then the others have been taken as timber claims, the south part. The south part is timbered and he thinks the land was taken up mostly under the timber and stone act, some of it was taken as a homestead. He thinks Mr. Ivan Daniels took a homestead. These lands in township 3 south, range 6 west could be used for fruit purposes, those that are not too high an elevation he believes would be useful for fruit purposes. The elevation there would be mere guess work on his part, he is not an expert on those things, but on the top of Bald Mountain, the size of the growth of the timber where the logs are, rather indicates altitude. As a general rule, the foot hills are regarded as better land for fruit, on account of the drainage, but when one gets to the higher altitude, he does not know, he has never been engaged in the fruit business. He has a large orchard on his farm where he has lived for twenty years which was in the valley. He is acquainted with the lands in township 4 south, range 7 west, there are portions of that upon which he located settlers twenty-five years ago, in the west half of section 6 of that township on the Nestucca River, on a piece of bottom land, he presumes fifty or sixty acres of level land and it is not a very high altitude, and there were apples bearing at that time, that was in section 6 in this township a part of which was in the burn, it covers part of that burn. He is told that in the last year or two, every quarter section, in this township on the even sections, was taken up. This burn will in time become val-

uable by the undergrowth of young fir coming up now, but at the present time, it contains no merchantable timber, nothing unless it would be some of the flats where cedar logs are which are good for posts and shingles. It has been fifteen years since he was in township 4 south, range 7 west, and he has not been there since these settlers have gone in there and he knows nothing of the progress they have made, with reference to the land they have settled upon, except what he has gleaned from a paper that is published in Willamina, from a correspondent out among the settlers which he reads every week. It has been, he thinks, eight or ten years since he was in township 3 south, range 6 west, and he does not know whether the even sections there, such as were taken, have been settled on in that time. He is acquainted with a considerable portion of these lands in township 4 south, range 7 west, they are in this burn. From his personal knowledge, he could not say whether the even sections are settled in that township, but he understands that they are, every one of them. It has been, he thinks fifteen years since he was over in that township, he does not recall the time when he was in there. There is, as he has said, in that township, this basin where Mr. Bible has taken his claim and Mr. Wade has taken his claim. Bible got his claim under the timber and stone act and Wade homesteaded his as vacant land. They are not using that for farming purposes, but they are using it for grazing purposes. Bible bought his holdings and does not live over there, he rents it for grazing purposes. There is a high mountain just south of this basin. The

top of it, of course, is rocky and rough, but on the south slope of what is known as Springer mountain, there are some little pockets with wonderfully rich soil, but it has a great deal of rock, large rock. Some of these pockets are from one to two or three acres in there and some little cherry flats that are very fertile. It would be pretty much of a guess as to the true percentage of these lands with which he is acquainted, in township 4 south, range 6 west and 4 south, range 7 west, if divided into 160-acre tracts that would be suitable for settlement, that is, that enough plow land could be obtained to support a family, but there are very few of these quarter sections but what would have from five to twenty-five per cent of land that could be cultivated. In township 4 south, range 6 west, the southeast portion of it, some of them, were donation land claim taken in there. It would be mere guess work to say whether men have homesteaded and earned their support for themselves and families, on lands similarly situated, containing a similar amount of land in a 160-acre tract in this burned section in which the Railroad Company still owns some land. He does not know of but one settler in township 4 south, range 6 west. He believes he has made a very good living, he thinks, by raising strawberries on his land there and has peddled them out to McMinnville, that is, from his acquaintance of fifteen years ago, he has not been there for something like fifteen years. Mr. John Wortman of McMinnville owns a quarter section in section 8 and there are two or three other claims that are taken adjoining him there in section 4, but they were taken most-

ly for the timber, he thinks.

Whereupon witness testified:

Q. Mr. Maloney, how many acres of plow land, in your opinion, would be required to a 160-acre tract, taking into consideration the use of the remaining 160 acres for grazing or other agricultural purposes, how many acres do you think it would be necessary to have so a man could go on the land and earn a living from the soil there in this community?

A. Well, for those higher sections there, I don't believe a man, unless he has stock to utilize the grazing, could make a living on what land could be cultivated.

Q. Unless he had stock?

A. Yes.

Q. Well, utilizing it—if he would utilize the rest of the land for grazing purposes?

A. Well, it would be pretty hard to say."

Whereupon witness testified that he distinctly remembers some man calling upon him at his office in McMinnville, but he does not recall the date. The face of the gentleman sitting there (Mr. Laughlin) he has seen him before, he is the man who called on him there and witness executed some document in reference to the character of these lands after he had conversed with Mr. Laughlin.

Whereupon witness testified:

Q. I will ask you to examine this document, Mr.

Maloney, and state whether or not that is an affidavit that you executed before Mr. Laughlin, relating to these lands on the date that is stated in the jurat to the affidavit?

A. That is my signature, and as far as I can see, it was executed.

Q. What were the circumstances under which you signed that document, Mr. Maloney?

A. Well, in what way?

Q. Just state the circumstances,—how you came to execute that, any conversation leading up to the execution of it with Mr. Laughlin?

A. Yes, sir. I dictated to him, I presume, what is written there, in substance, at least.

Q. You read the statement over before you signed it, didn't you?

A. I did, or he read it to me. I don't remember which, of course, he—

Q. Now, Mr. Maloney—

Mr. Fenton: Of course he what?

A. Either I read it, or he read it to me, me looking on.

Mr. Fenton: I object to this as a manifest effort on the part of the United States to impeach its own witness, and to impeach a man who for 20 years has been one of the leading and substantial citizens of Yamhill County, who has been for eight years its County Sur-

veyor, and for four years its County Recorder, and for 20 years has had the respect and confidence of everybody in Yamhill County:

Mr. Rabb: The affidavit is not offered for the purpose of impeachment, but offered for the purpose of showing that the Government has been taken by surprise with the testimony of this witness, as reliance was made by the Government upon this statement made over the signature of Mr. Maloney, and has called him as a witness basing it upon that statement.

Mr. Fenton: Then the objection is further made that that is not a good reason for attempting to get into the record a statement made by this witness at the instance of the Government Inspector, upon a conversation that may have been loosely had in his office, and written out by the Government Inspector for the purpose of this case.

Q. Now, Mr. Maloney, in this affidavit, is it not stated that 'I, H. S. Maloney, a citizen of the United States, of legal age, residing at McMinnville, Oregon, where I am County Recorder of Yamhill County, being duly sworn, depose and say: I have lived in Yamhill County, Oregon, near the lands below mentioned, since the year 1877. For about 20 years of said time I lived on a farm, about half way between the towns of Sheridan and Willamina, Oregon, where I raised farm products. However, I hired most of the farm labor done, and spent most of my time in surveying near-by lands. During the remaining portion of the time since 1877, I was also engaged in surveying work, except since about

three years ago, when I became County Recorder. During said period from 1877 to 1908, I served as County Surveyor and Deputy County Surveyor for a number of years.

"I have surveyed lands in Township 2 South, Ranges 5 and 6 West; Township 3 South, Ranges 5, 6, 7 and 8 West; Township 4 South, Ranges 5, 6, 7 and 8 West; and Township 5 South, Range 7 West; and have as a consequence become familiar with the lands embraced therein. In some of these townships, I have made several surveys of section and quarter section lines and of particular tracts.

"The greater portion of the even numbered sections in the townships above described has been occupied by settlers for years; and the odd numbered sections will average just as good for purposes of settlement as the even numbered sections. I am confident that, should the said odd sections revert to the Government, and be thrown open to settlement and entry, at least ninety per cent of the quarter sections embraced therein would be taken up by settlers for home building purpose. I think that said quarter sections of 160 acres each will average at least 10 acres of tillable land per quarter section, and that most of the remainder of each such quarter section could be used to advantage for grazing purposes.

"Except on the high elevations, fruit of excellent quality and quantity can be raised on said cultivable lands.

"The odd numbered sections in the townships above

described have not been, and are not being now, settled upon, because it is generally understood among the people that said lands were withdrawn from sale by the Railroad Company a number of years ago, and that title from the Railroad Company cannot be secured. Consequently, I can give the names of no settlers on odd numbered sections who have made application to the Railroad Company to purchase and been refused.

H. S. MALONEY.

Subscribed and sworn to before me this 29th day of February, 1912, at the Court House in McMinnville, Oregon, the affiant having previously read same.

HARRY E. LAUGHLIN,
Special Agent."

That reading is correct of that statement, isn't it?

A. As far as I know it is, yes.

Whereupon complainant offered in evidence the document referred to in the questions to the witness marked "Government's Exhibit 123." Whereupon the same was received in evidence and is hereinbefore set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 123."

Whereupon witness testified in answer to interrogatories on behalf of defendants that the hand writing on the back of this document is in the hand writing of Mr. Laughlin and was made at the time.

Whereupon defendants offered said writing endorsed

on the back in evidence and the same was received in evidence as follows:

"Note. Mr. Maloney is engaged in a political campaign for re-election, and does not wish to be called as a witness till said campaign is over, unless it is absolutely necessary in the interests of justice." Signed "Laughlin." "Further Note. Mr. Maloney is a man of substantial character and definite opinions, and, in my opinion, would stand up well under cross examination. Accordingly, I believe he would make an excellent witness for the Government. Laughlin."

Whereupon said witness was further interrogated and testified as follows:

Q. Mr. Maloney, at the time Mr. Laughlin called on you at your office, and you executed this affidavit, you went over township plats, did you not, which you had there in your office, before you executed the affidavit or expressed an opinion?

A. He had the township plat there, which was copies of the Government plats which I had, and we may have referred to the maps on file in the office.

Q. You used your own plats? You had plats there in your office?

A. Yes, sir, have had them there all the time.

Q. Which you looked at and examined prior to executing this affidavit?

A. Oh, yes.

Whereupon, on cross examination, witness testified

that township 2 south, ranges 3 and 4 west, is nearly all in the old settled part of Yamhill County, and he thinks that the east half of townships 2, 3, 5 and 6 are in the old settled part of that county, he is not sure. Township 5, ranges 6 and 7 west is in the old settled part of the county around Sheridan and Willamina. He does not own any place now near Willamina, the place where he farmed was on the William McClure donation land claim about midway between Sheridan and Willamina, in the old settled part of the county. The claim of John Wortman was in section 8, township 4 south, range 6 west. John Wortman is cashier and president of the First National Bank of McMinnville. He is a banker at McMinnville and is considered a capitalist in that county. He purchased that quarter section from McCormack, who took it as a homestead. He does not know what Wortman purchased it for, but presumes it was more for a summer resort than anything else. It has very little green timber on it, he does not think he bought it to make a home, he has a home and resides in McMinnville. A. S. Bible referred to by him is dead, he was a big cattle man in Yamhill county for a number of years, lived at Sheridan and pastured his cattle in the foothills and mountains back of Sheridan in these townships referred to by him. This memorandum on the back of Government's Exhibit 123 that speaks about his not desiring to be called in this case until after the election, unless it was absolutely necessary in the interests of justice, was his own suggestion made to Mr. Laughlin. He was running at that time for the office of County Re-

corder, his competitor was Dr. J. H. Nelson, Holt Nelson of McMinnville, an old pioneer popular young man of Yamhill County and a republican, and witness is running on the democratic ticket. That county is republican by 1600 and something, according to the registration. He was elected once before County Recorder and three or four times County Surveyor and always elected on the democratic ticket and was a candidate on the democratic ticket yesterday but does not know whether he is elected or not. He probably got a majority of all the votes around where people know him at Sheridan. He came from Tennessee to Yamhill County, was born in Tennessee and had lived in Yamhill County since 1877. He first came there in 1873, but did not permanently settle until 1877.

Whereupon, on re-direct examination, witness testified that the registration of Yamhill County showed 1600 republican majority, the registration he is speaking of, the republican registration was 2,545 and the democratic 993, these are the exact figures taken from the clerk's office yesterday. He has not talked one word to any of the attorneys for the Railroad Company, either the Southern Pacific Company or the Oregon and California Railroad Company about his testimony in this case. He has been acquainted with Mr. Fenton for a number of years and Mr. Frank W. Fenton is the local attorney at McMinnville. He has never mentioned the matter to Mr. Fenton or he to the witness or the witness to him.

Whereupon, on re-cross examination, witness testi-

fied that he never had had any conversation with Mr. Fenton about this case or about anything else since he came to Portland as a witness here, and he has never talked with F. W. Fenton at McMinnville about this case, directly or indirectly, never even mentioned it to either one. He talked a little here, since he came down with Mr. Foster, Mr. Steward and Mr. Switzer. Mr. Foster is one of the witnesses that is to be called in the case, referring to Harrison Foster, F. J. Steward and J. M. Switzer, who were subpoenaed and came with him from Yamhill County and who are his old acquaintances and are witnesses for complainant, all of them. He did not come with them, they came yesterday and he came this morning. He never talked over with them what his testimony should be. He did not come down with them yesterday and he had no conversation as to what their testimony would be at all. They were just simply trying to estimate a little of what per cent. That is a problem that they consider as mere guess work as to what per cent and that was the principal talk, that is to say, he and these gentlemen have since they came here talked with each other about what per cent they thought would be, or might be, agricultural, if the timber was taken off, but they have not talked with anyone representing either of the companies or any of these defendants in respect to what his testimony should be or was.

Whereupon H. SHELTON, called as a witness on behalf of complainant being duly sworn testified that he is sixty-nine years old and lives six miles above Scio in section 7, township 10 south, range 1 east in Linn Coun-

ty, Oregon, and has lived there all his life, pretty nearly. They emigrated to Oregon in 1847 and he has been living there and was raised on the place, it has been sixty-five years ago, he was four years old when he came there, that was his father's place, a donation land claim of 640 acres, and he has been engaged in farming as his occupation all his life. He raises hay, oats and wheat and some stock. In its original state his father's donation land claim was mostly bottom land, there was some little on the hill side, but not much. It was not timber, only there were oak grubs on it and since they had moved there, settled there, there is second growth timber on some of it, that is, what has not been cut off. He is acquainted with the territory east of Scio. He has been out east of Scio, say ten miles each way or more. He notices on "Defendants' Exhibit 259" that Thomas Creek is marked on this map and Crabtree Creek and Crabtree, the post office, the town of Crabtree, and also Latham, Larwood and Jordan are marked on this map. He is acquainted in section 19 of the unsold lands of the Railroad Company which is south from where he lives, in sections 19 and 29, he has been over them, these sections are in township 10 south, range 1 east. There is a portion of section 19 which a man bought some, and there is fruit growing on it. He bought forty acres there in the northeast part of section 19. Some of section 19 has a good deal of timber on it, and there is some of it kind of open glades. He thinks that probably seventy-five per cent could be plowed after the timber is removed or after the land is cleared. Section 29 in township 10

south, range 1 east, has 560 acres of railroad land and is better than section 19. He has a general acquaintance with these lands shown in green markings for ten miles from where he lives in section 7 in township 10 south, range 1 east. Thomas Creek goes through that section, and according to the markings of this map that would extend over into range 2, township 10 south, range 2 east. Section 29 is as far south as he has been. He has been quite a ways northeast up towards the Santiam river, towards the railroad, up towards the north fork of the Santiam River, up that way. He used to hunt quite a bit up in there and he is acquainted with the lands as far up as the north fork of the Santiam. He has been over the land hunting, sufficiently to give him a general knowledge of the lay of the land and the soil a good deal and of the timber growths, etc. Some of it is suitable for farming and some of it has mostly timber on it. He would think there would be seventy-five per cent of this area with which he is acquainted, containing the railroad lands, take it all over so far as he has been over it and examined it and hunted over it, that could be cultivated, if it is cleared. He does not know if that percentage generally would be carried out as to each 160-acre tract. If it was divided into 160-acre tracts, it would not, hardly on all of it, some of it there is rocky and steep and it could not be cultivated. It is pretty good for grazing, there have been a good many who had stock there that run on the mountains there all the year round, here in the early days, but now days they do not allow them to run out. Speaking generally of all the townships, if the

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land were divided into 160-acre tracts there would be, generally, this percentage of plow land in each 160-acre tract. There would be sections perhaps that none of the land could be plowed. The lands are generally timbered in this country. Some places there are kind of open glades in it where there is no timber and then there are others that have thick heavy timber.

Whereupon, on cross examination, witness testified that his father's donation land claim was in sections 6 and 7, and where witness lives was in section 7. He lives on the Hammond Shelton donation land claim, part of his father's place. His father settled there in 1847, crossed the plains and he has lived there from his boyhood, from the time he was four years old up to the present time and has seen that country grow and develop and the lands settle and change hands. These unsold railroad lands that he has hunted over he supposes that for twenty years after 1866 they had no real value, not particularly.

Whereupon witness testified:

Q. When did they begin to have a value, as you remember it? About how long ago and for what purpose did they have a value? What first started the inquiry among them?

A. Well, it was for the timber.

Q. When did that first arise?

A. Well, that has been about, let's see, that must have been about ten years ago.

Q. Before that, these lands were hardly worth paying taxes on, were they?

A. No. They didn't value them anything. You see they were just in the woods that away.

Q. In the mountains, like?

A. In the mountains, yes.

Q. And away from any settlements?

A. Yes, it was away from the settlement.

Q. And are they not pretty rough?

A. Well, some of them is tolerably rough and some aint.

Q. They are mainly covered with reasonably good saw timber?

A. Yes. Yes.

Q. And that in the last ten years has had a market value?

A. Yes.

Q. There have been some homesteads up in that country taken for the timber, on the even sections, haven't there?

A. Yes.

Q. And those homesteads after they were taken and proved up, have been sold to timber people?

A. Yes, sir.

Q. They are chiefly valuable, then, for the timber that is on them?

A. Well, at the present time, but if the timber was off, why, they would be fairly good for some——

Q. They could be plowed?

A. Yes, some of them, yes.

Q. But the chief value at the present time is for their timber?

A. Yes, at the present.

Q. And has been for the last ten years?

A. Yes.

Q. Do you know what a good quarter section of timber up in that vicinity can be sold for now, about?

A. Well, I don't know what they could be sold at now. There is one of my neighbors there had a quarter section up there, and he got $5,000 for it.

Q. Was that a homestead?

A. Well, he took it up as a homestead, and then he commuted on it, and paid out in 14 months.

Q. He never lived on it, then?

A. Well, he stayed there awhile on it.

Q. Just stayed a night or two?

A. Yes. Yes.

Q. And then commuted and got a patent?

A. Yes.

Q. And then as soon as he got the patent, why, he sold it to the timber people?

A. Yes, sir.

Q. Was that done pretty generally around there to get these timber lands?

A. Well, I think that was about the way.

Q. The way it was done?

A. Yes, I think so, to the best of my knowledge.

Whereupon on re-direct examination witness testified as follows: "Q. Well, Mr. Shelton, this man that you spoke of, that commuted on this claim never cultivated or really established or maintained a home out there? A. Well, he put out some trees out there, some fruit trees and planted some potatoes." His name was Frost and there was some more who took claims the same time right in the same locality. He does not know whether they made nothing more than a pretense of complying with the law, he could not tell about that part of it now, they left their homesteads as soon as they had commuted and sold their claims. The land is chiefly valuable for its timber in its present condition with the timber standing. The timber would have to be removed in order to plow the land, that is the way. The land, of course, without removing the timber would be of no use for tillage. There is hazel brush and cherry and such as that in these open places. These areas could be cleared at very small cost compared to what the timber lands would cost, it would be cheaper. It is a fact that the lands in this community have been largely taken and are owned under this grant and by the Northern Pacific

Railroad Company which filed scrip on a large portion of the even numbered sections, before the survey was made, there was quite a bit of that. The homesteaders in that area were comparatively few, there were not so very many.

Whereupon, on re-cross examination, witness testified that he rather thinks it would cost more to clear this timber land and put it in cultivation than it would to go down in the valley and buy cleared land. Whereupon, on re-direct examination, witness testified that if a man had little means he could not get land in the valley for $2.50 an acre. As a poor man's proposition the valley lands would have to be excluded.

Whereupon W. H. YOUNG, called as a witness on behalf of complainant, testified that he is forty-seven years old, resides about three-quarters of a mile below Scio in Linn County, Oregon, and has lived in that county about thirty-two years. He is a farmer and has been engaged in that business upwards of twenty years, and always in Linn County. His farm is in township 10 south, range 1 west, and is part of section 18. He had another place of forty acres right below that which he farmed, in township 10 south, range 2 west. He was engaged in the cultivation of land there, he grubbed out some, it was nothing but a stump patch and tree, and he got that up, and put it into oats, that was the first place that he was on. There is eighty-five acres on the place that he has now, bottom land, and the other land was about twenty-five acres on the bottom and fifteen acres on the hill. That bottom land

that he farms now did not contain any growth of timber, that has been under cultivation a good many years, it was the old donation land claim of George Thomas. He has about forty acres in cultivation where he lives now, and he is making his living from this land which he is farming. He is a married man but has no children, he has had a boy with him whom he took to raise, he has had him for about ten or fifteen years. He is acquainted with farming conditions generally in Linn County. Referring to "Defendants' Exhibit 259," at Crabtree Creek, pointing to the section above Larwood, is where they go into the mountain. He is acquainted right in about Thomas Creek, which is on the eastern place limits of the grant as shown by this map, the twenty mile limit. He is acquainted with the lands west of there, and between Thomas Creek and Crabtree, between those two creeks in there. He is acquainted in through that area between Thomas Creek and Crabtree Creek, west of the line, the twenty-mile limit marked on this plat. He went over that territory for the purpose of hunting. He has been in township 10 south, range 1 east, south of Jordan, a branch of Thomas Creek runs down there through that country. He is acquainted with the formation of this entire area between Crabtree and Thomas Creeks and the east line of the place limits, and the general formation there and the growths that are there. He would think, that between 65 and 75 per cent of that land could be rendered suitable to cultivation by removing such growth as is on it, clearing the land. This territory is not all of it

covered with timber. Some of it is heavy timber, and some is in the deadenings, and some is vine maple flats. When he first started in there in hunting in this area, he supposes it has been over twenty-five years ago and this is the first year he has missed hunting there for fifteen or eighteen years, he has covered that entire ground there.

Whereupon, upon cross-examination, witness testified that the place that he owns there is a part of the donation land claim of George Thomas, who settled on Thomas Creek, but he does not know whether the creek is named after him. His place is west of Scio a half or three-quarters of a mile. The way they have to go to these timber lands, up Crabtree Creek from Scio, where he has hunted over them, takes them till they get to their camp, twenty-five miles, the way they travel by the trails. It would be a little less on a straight line, but to their camp where they hunt, that is up in the mountains. That country is pretty well timbered, in the main. He has been up Thomas Creek from Scio something over thirty miles or more, and that is in the timbered country. This little place on this map referred to is called Larwood. That is not the beginning of the mountains. The mountain starts about a mile or two miles from Larwood where they started, and these mountains do not get pretty steep after that, but just a kind of gradual grade down there—benches. He thinks the survey for their camp is about eighteen hundred feet high. This land up in there is covered pretty well with saw timber, as a class. He has lived there

in the vicinity of Scio for about thirty-two years. The unsold lands of the railroad company for the first twenty years after 1866 down to 1886, or about 1890, were considered worth two dollars and a half an acre, what they were figuring it on. They were not counted worth very much. It is only in the last eight or ten years, since the land became valuable for timber, that these lands have been looking up and had a market value.

Q. Do you remember about when timber first became to be an object and people would go out and get claims under the Timber and Stone Act, and go out and get homesteads in those mountains east of Scio? About when was that?

A. I don't think it is over ten or twelve years ago.

Q. A good many people went out there and took homesteads and got their title, and sold to timber people, didn't they?

A. Yes, sir.

Q. And a good many people took up quarter sections under the Timber and Stone Act where they did not have to live on it at all?

A. Yes, sir.

Q. And then they have sold that to timber people?

A. Yes, sir.

Q. And the same kind of land as these railroad lands, only they are a little better?

A. Well, I don't know. It is just about a stand-

off between them.

Q. About the same. Well, then, these railroad lands as they go down towards the foothills, have been on the market until the last seven or eight years? They were on the market as far back as you recollect nearly, haven't they been?

A. Well, I don't know anything about that. I never thought much about that.

Q. If there were any railroad lands down around Scio, and in that section of country, little fractions here and there, they have long since been bought up by farmers, haven't they?

A. Yes, all I know of them.

Q. Now, this map shows that there are no railroad lands near Scio until you get about four miles east of Scio, then there are small fractions that the company still appears to own, between Crabtree and Thomas Creek. Is that because it was hill land or timbered land that was not taken under the Donation Law or how did that happen?

A. I couldn't say how that would happen.

Whereupon witness testified that most of the land around Scio proper was taken under the donation land claim law, and that is one of the oldest parts of Linn County, they settled part of the forks of the Santiam. He never took a homestead up there. His only knowledge of these unsold railroad lands there in the mountains, is, that he has hunted over them about once a year

ever since he has been big enough to go hunting, and that is the way he got the knowledge that he has of these lands, by going over them as a hunter. He has hunted, he has made as high as five trips in the mountains, getting deer, elk very seldom. That country up there is not a wild country. He has had deer right down two years ago, right close to a few miles of his home. In the summer time, in August, the deer come down sometimes and follow the streams, but that is unusual in late years. This timber land up there is a long ways from the Three Sisters. He could not say how far from Mt. Jefferson, which is a snow peak in the Cascade Range and is nearer than the Three Sisters. Mt. Jefferson is on the headwaters of the McKenzie, the Three Sisters are further south.

Whereupon, upon re-direct examination, witness testified that Mt. Jefferson is about thirty miles on an air line from the western boundary of the indemnity limits of this grant, and would be about forty or fifty miles from any of this land at least. That is what they always count, between fifty and sixty miles, that is the way they always guessed it in the mountains, from the summit where their cabin is on the mountains. It is a fact that the greater portions of the even numbered sections in this area were taken by the Northern Pacific Railroad Company scrip prior to survey, and there were comparatively few homesteads ever filed in this timbered country. The settlers, as they came into this country, settled first on the creeks and river bottoms, and the settlers as they have come into the country have pushed

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back into the foothills and the mountains. In the last fifteen or twenty years the demand for lands for settlement and homestead purposes, has increased in that community. They have men in their country they cannot rent a farm for. Farmers themselves have to sell their stock for they cannot get lands to run the stock on. The lands in this area, in the even numbered sections, have been taken up practically since survey largely by scrip locations, and that has prevented settlement on the even numbered sections by persons seeking to farm to obtain farming lands.

Q. What has been the effect of the railroad company's failure to fulfill the conditions of this grant, and sell the land to actual settlers in 160 acre tracts at $2.50 an acre? What has been the effect in that community, in your opinion?

A. What effect has that had?

Q. Yes.

A. Well, it has had the effect to keep people to taking a homestead.

Q. Has it retarded the settlement of lands?

A. Well, yes.

Whereupon, upon re-cross examination, witness testified that he does not know why the people did not buy these lands at two dollars and a half an acre twenty years ago. Sometimes a man is so that he has not got means to buy them. He never gave it a thought as to whether these timber lands twenty years ago were worth

anything, he knows that the whole timbered country up there twenty years ago was considered waste land, and in some parts of that timbered land it would cost more to clear the land than one can buy valley land for.

Whereupon, upon re-direct examination, witness testified that a man of small means would have some difficulty in buying valley land at two dollars and a half an acre, and especially in their country. It is a fact that other lands, other than timber lands, were open to homestead entry twenty years ago, and people were not forced into the timber sections, and that is the reason they did not take that land. He has never known of the railroad company offering any of this land in this area at two dollars and a half an acre.

Whereupon, upon re-cross examination, witness testified that he never tried to buy any of it at two dollars and a half an acre, but he had a friend who did try it, in the last four or five years, under that act.

Q. He wanted to buy a good timber quarter, didn't he?

A. I couldn't tell you what he wanted to buy. He said he tendered the money, and they wouldn't take it. That is all.

Whereupon witness testified that his friend did not tell him where this quarter section was, but it had to be up in the timber, there was no other, it had to be up in the timber.

RE-DIRECT EXAMINATION.

Q. The land wouldn't necessarily be valuable timber land that a man would take in this area, Mr. Young?

A. Well, the way it is standing, it would be more valuable for the timber, if you take the timber off.

Q. You would have to clear the land before you could cultivate it?

A. You would have to clear the land before you could cultivate it, yes.

Q. Well, this friend didn't get the land?

A. No, sir.

Whereupon N. I. MORRISON, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty years old, and resides in Scio, Linn County, Oregon, and has resided in Linn County about twenty years. He had been engaged in farming to a considerable extent in Linn County, in section 24, township 10 south, range 1 east, where he owns land. He is not now engaged in farming, but left his farm four years ago next February. He had a homestead there of one hundred and sixty acres which he had taken up and upon which he had lived thirteen years. The land was brush and timber when he took it up. He was a man of family when he took his homestead, and his family resided with him on the homestead during his residence there, and he earned a living for himself and family from the homestead. He had about fifteen acres under plow, and a few acres cleared up ready for plow,

and an orchard set out that had never been plowed. He raised mostly grain hay, oat hay, and raised no wheat—nothing except what he raised mixed, oats and wheat mixed, for hay, he never saw anything better than he raised there, he raised vetch and things of that kind. He raised 26½ big loads of vetch and oats off of four and a half acres. That is very productive soil and he raised all kinds of vegetables, potatoes, beets, cabbage and squashes, everything. That soil produces good vegetables. Referring to "Defendants' Exhibit 259," he is acquainted with all of township 10 south, range 1 east, township 10 south, ranges 2 and 3 east, and the north half of township 11 south, ranges 1, 2 and 3 east. His homestead was located in section 24, township 10 south, range 1 east, on the east side, next to the township line, between ranges 1 and 2 east. There are railroad lands on all sides of him and those lands were better than his homestead, that is, he means for agricultural purpose or homestead purposes. He has run lines in this area with which he is acquainted, and in trying to help people find land in there, and has hunted over practically all of it, packed in there for cruisers—all over it—packed three months, every day, at one stretch, and is thoroughly familiar with the land and its formations and soil conditions. In his opinion, from his experience in farming in this vicinity, he would think probably in the neighborhood of 70 to 75 per cent of that land could be rendered suitable for cultivation after clearing the land of any timber or brush that might be upon it. These lands would average the same if divided into one hun-

dred and sixty acre tracts, that is, that percentage of plow lands would hold good as to each hundred and sixty acre tract. He knows some railroad sections that nearly every foot of it could be plowed. There is section 31, township 10 south, range 3 east—the railroad company does not own that now, that was sold to Green & Avery Timber Company. The railroad company has sold large areas of land there to big companies.

Q. Mr. Morrison, from your experience as a homesteader, what would you say as to the suitableness of these railroad lands for homesteading purposes, that is, going on it and taking up a homestead, and living on it, making a living on it, as you have done on your homestead?

A. I would not be afraid to tackle it on pretty near any of them. Of course, some would make a failure of it probably anywhere.

Q. In your opinion, Mr. Morrison, what has been the effect of the failure of the railroad company to sell this land to actual settlers at $2.50 an acre in 160 acre tracts, that is, the effect upon the community there.

Mr. Fenton: I object to that as assuming that the company has failed to comply with the terms of the grant in any particular, and as incompetent.

A. Well, it retarded the settlement. I know of parties that wanted to get land that did not have any timber on it, for to make a home out of—land adjoining me, and they would not sell it, would not put a price on it.

Mr. Fenton: That is recently?

A. That was seven or eight years ago.

Q. The lands, then, are not all covered with timber?

A. No, not all of it.

Q. This party that you spoke of, they wanted that for agricultural purposes?

A. Yes, sir.

Q. And the railroad company refused to sell to to them?

A. Yes, sir. The party lives here in Portland.

Q. Did they make a tender, do you know, to the company?

A. No, no. They just wrote to them and wanted to know what the price was, and they wrote back and told them that it was out of the market.

Whereupon, upon cross-examination, witness testified that the transaction last referred to was about seven or eight years ago. His homestead is in section 24, township 10 south, range 1 east, and about twelve or thirteen miles from Scio. He is on a fork of Thomas Creek called Blue Creek, about five miles from the mouth of Blue Creek. He kept stock on this homestead and used the grain, vetch and oat hay that he raised to feed his stock. When he first started in, he had only one cow, but he got into the stock business, more or less, as he could get it, got stock, goats, sheep and cattle. He enclosed all of his homestead excepting about a quarter

of a mile on one side of it, which he left open, that was back on section 19, a piece of railroad land, range, and he left that so his stock could range out over the railroad lands as far as they wanted to. He never had as many as forty or fifty head of cattle during the time he was there. He had about eighteen or twenty head, he thinks that was the most cattle that he had. He sold some each year after he got started. He could not tell exactly the most money he received in one year for sales of his beef cattle or calves. Probably the most cattle he sold at any one time was about one hundred and ninety dollars' worth, he probably sold more than that in one year. He only raised hogs, enough for his own use. He kept about ninety head of goats, and confined them to a particular pasture. The goats could run anywhere on the west half of his place, they would not go out through this opening, this quarter-mile back, there was a fence across there, he had it fenced through the center. He had 90 or 100 acres pasture, and probably five acres of this ninety or a hundred acres cleared up, ready for the plow, but it was never plowed, and probably 15 acres under plow in the whole quarter section. He still owns his place. There is saw timber there on his place, about two million feet, worth from seventy-five cents to a dollar a thousand. The majority of this railroad land that he had been over, that he had hunted over, and through which he had made some surveys, and into which he had packed for cruisers' supplies, is pretty well covered with saw timber. These cruisers were not cruisers of these mill companies or railroad cruisers, they

were just timber cruisers or companies that made a business of cruising tracts of land in order to find out how much timber certain landholders had in order to sell it to other buyers. He was not engaged in the business of locating people on timber lands in that section, not actually in the business. He helped them to locate, showed them places and the like of that, but he never asked anything for it. He helped people who wanted to find a timber quarter, helped them to locate and find the quarter. The demand for these timber lands became rather active about ten years ago, something like that. For many years before that, these timber lands were not sought after very much.

Q. Don't you know that for twenty years after 1870, say down to 1890, these timber lands of the railroad company and these unsold lands were practically valueless so far as any demand was concerned? Don't you know that to be a fact?

A. Well, yes, but then if I had had money, I would have been pretty apt to have bought some of it.

Q. Yes, you would have bought on anticipating that you could sell it, if you could buy it, at, say $2.50 an acre, you could have let it lie there until it became worth something?

A. I wanted to buy, did buy some railroad land. I wanted to buy more and they would not sell it.

He bought railroad land in sections 25 and 13, township 10 south, range 1 east, forty acres in each one of

them. He contracted for forty acres in section 25 in 1901 and paid two dollars and a half an acre for it. He bought a contract for the other forty in section 25, that was all. He wanted to get some more land next to that in section 19, and in 25, and they would not sell it to him, and he knew a party who had a contract on a piece of railroad land in section 13, and he bought his contract and paid four dollars and a half an acre. This man contracted it about the same time that he did, about eleven years ago, about 1901. The land that he bought for two dollars and a half an acre did not have any timber on it, it was covered with brush, vine maple mostly, but the soil was A No. 1. It was adjoining him, and that was the reason that he wanted it. The other tract had timber on it, probably about 800,000 feet, that is, on the forty acres. He sold that and got $1150 for it. He sold it partly to timber people, that is they hold a little timber there adjoining it. It was sold for the timber, that is what they bought it for, he expects.

Q. Now, as a matter of fact, Mr. Morrison, whatever homesteads were taken up in that timbered country within the last eight or ten years have been chiefly taken on timber quarters, haven't they?

A. Not all of it.

Q. I know, but the main ones have been taken, the best timber quarters that they could find?

A. Well, there is a good many homesteads taken in there, or several of them, not a good many that I advised them to go back and take a piece of timber land,

but they said they had been raised there all their life, and they did not think it would ever be worth anything, and so they took up a piece of brush land in preference to the timber.

Q. You advised them to take the timber?

A. Yes, sir.

Q. Under the Homestead Act, you thought that would be worth more money?

A. Well, I knew it would.

He knows of a section of timber land in that country for which they have refused sixty thousand dollars, that is section 28, township 10 south, range 2 east. It was to be practically a cash purchase, he cannot tell who owns it now. It was not taken under the Timber and Stone Act. He does not know the people, they were people that just came in there and took it for the timber, and it is still in the hands of the first takers, he is not positive though, but thinks it is. That section has never been cruised by timber cruisers, but it has probably sixty million feet on it, some of it is fir and some hemlock, this piece of land, that timber section, is about eighteen miles, something like that, east of Scio. Land around Scio—five or six miles from Scio—open land, is being sold in that old settled part of the country, without improvements, farming land, at one hundred dollars an acre. Nothing that is tillable, within five or six miles of Scio, can be bought for fifty dollars an acre. To buy any cleared land within five or six miles away from Scio, away from the influence of the town and in

the country, one would have to pay as much as a hundred dollars an acre, or if one gets out fifteen miles east of Scio, he would have to pay one hundred dollars an acre, and down towards Albany Prairie, down in that direction, it is worth probably more than that down there. Land has been going up for several years, kept going up. He knew of people applying to purchase these timber lands up there from the railroad company under this Act of Congress, and offering to pay two dollars and a half an acre, on these printed blanks that were circulated through the country there about five or six years ago. He does not know whether there were any parties from Scio or not who did this. There were a good many of these people who were strangers to him. They came there and put up a notice on a piece of his land, wanted to build a cabin there, on a piece of railroad land that he bought, and he told them that he guessed not, it was not a piece of timber land that he had bought, there was no timber on it, they put up a notice on it, and they put up a notice on a quarter section that he had applied for, they didn't build any cabin on there. The railroad company told them, as he understood it, that they would not allow them to build there, told them if they built there they would have them arrested for trespass and for malicious destruction of property, or something like that. He was not going to allow them to build a cabin and go into possession of his land if he could help it. Aside from that particular instance, these notices were posted all through that timbered country on these quarter sections. Some parties went in there and started

cabins, and then they served notice on them not to cut any more timber, not to cut anything to build their cabins out of. He does not know as there were dozens of these people, but there were a few there that he saw personally, and they claimed they were going on there, but they did not. They posted their notices just the same. Some of the places where these notices were posted had good timber, and some of them not so good, and some of them had no timber on. It would be a pretty hard matter to find a quarter but what had a little timber on anyway. It is a timbered country. These people found out what quarter section to get—there were locators that located them around just the same as they did on the government land, etc. People did not know where the section lines were, or section corners, or anything, and they would hire someone to go and show them where a certain piece of land was, and they would pay the locators a fee for that service. He thinks the highest he remembers they had to pay was about twenty-five dollars. He never heard of their paying as much as two hundred dollars if a man found a good timber quarter. They might have done so in some other localities—he does not know anything about it—but what they located in there, the parties charged them twenty-five dollars. One of these locators lived around Scio, but did not make a business of it. He made a business out there for a while, a short time. He knows of a lot of these lands being taken up under the Timber and Stone Act. These lands would be pretty good lands if the timber was off, but they were timber

lands. These people that took these lands under the Timber and Stone Act did not go out there and make farms of them, he has an idea that a good many of them never saw the land. He supposes that after they got the patents they sold the land to the timber companies probably, a good many of them. He knows that most of that land has gone into the hands of timber companies, and he does not know of any one tract any larger than that big section that is in the original hands, he knows of several smaller tracts that are owned by the original owners under the Timber and Stone Act.

Whereupon, upon re-direct examination, witness testified that it is a fact that a good deal of the even sections were located there by Northern Pacific scrip, which could be filed on unsurveyed land, in townships 11 and 12, ranges 2 and 3 east. The Northern Pacific company would scrip the even sections, and the Oregon & California Railroad Company owned the odd sections, so there wasn't very much room for either the homesteader or the Timber and Stone entryman. The land around that $60,000 section of which he spoke is all about the same right in there for several sections, that is in township 10 south, range 2 east. The timber there is far above the average of this general area. There are two or three sections in there where there is not very much difference, but then take the surrounding country, it is probably a little above the average right in that locality, in township 10 south, range 2 east, and as one gets down towards the valley, the timber is less. Practically all of the government lands have been taken

up in this country, and if a man desired to obtain land for homestead purposes, the last ten or fifteen years, he was compelled to go into the timbered area, like he was, to get a homestead.

Whereupon C. E. CLARK, called as a witness on behalf of complainant being duly sworn testified that he lives in section 21, township 11 south, range 1 east and has lived in that section ever since 1872. His father came there when he was a boy. His father formerly lived in the State of California and moved north into that country. Witness was one of thirteen children. His father had formerly been a farmer in California and came to Oregon in 1872 and brought him along with the family. He settled just below that land, bought about 215 acres, his old place, from a man by the name of Peter Zell where he lived. He did not die there on that place but he died about four years ago on the place where they are living. He lived there all this time. He and his father were ranching and sawmilling. His father got an old sawmill with the place when he bought it and they ran that. The sawmill was on the old place that his father bought. It was rather a small sawmill. There are different qualities of soil there. The upland is of a reddish cast, the bottom land is rich, some of it sandy loam, some of it black soil. One can raise anything planted and this applies to both kinds of soil. It is not very rough in there, just a gradual slope from the creek. He is forty-nine years old and has had no business experience excepting as a farmer, nothing any more than sawmilling there. He thinks that the soil is first-class.

They raise good fruit, good peaches. He has raised sugar corn and all such stuff as that, everything they plant there grows well. The soil is an average depth, he does not know that he could tell just exactly the depth of it. There is quite a bit of timber in that country there. The timber on their place they cut it, sawed it up into lumber, most of it. There is some little timber there yet. He thinks timber grows on good soil, it would not grow big on poor soil. Nothing has been logged off there in that country except what they had on their own lands. There has nothing been cut off the railroad lands back there. They sawed the saw timber out and the balance of what they had cleared up they rolled the timber together and burned and put the land into cultivation. He has about fifteen acres on his place that is under the plow and probably that much ready to plow that is not broke up yet. They had a home market there for their lumber from people living near by. He does not know as he could tell by the sections what area his knowledge extends to, but he is well acquainted with that country between Crabtree and Thomas Creeks and on both sides of Crabtree, some places over as far as the Santiam, and he supposes the area of a couple of townships. He has been all over that country, has seen the different farmers there using the soil and what they raise on it and that extends to townships 11 and 12, ranges 1 and 2 east. Crabtree runs right through townships 11 and 12. Crabtree Creek is northeast of Lacomb. He thinks that these unsold railroad lands involved in this suit are susceptible

to use by the settler. A man could go in and subject it to settlement and make a home of it and they would have been sold years ago if they had not taken them out of the market. He knows the railroad lands, knows it all, knows the sections as they come that way but could not call to mind just their lines and knows the areas and the character of the land. Fruits of all kinds grow well on that land, also vegetables of all kinds, wheat and oats and they raise nice kale, corn, cabbage and anything pretty nearly that one plants on it will grow. He never has tried sweet potatoes, but he believes he has ground that will grow them. He put out 130 peach trees there last spring and they are as fine a growth as he ever saw. Everybody that has looked at them say they are nice. Out of the 130 he only lost two trees. The railroad company will not sell its land in that vicinity, they do not sell it, the effect of that is to stop the immigration in there and the settlement. They do not have as good schools in there as they would if it was all settled up thickly, if it was all into homes, people all living there they would have plenty of children to have good schools and would have better roads.

Whereupon witness testified:

Q. What I want to ask you is, as a practical settler in that country yourself, whether the method that has been pursued by the railroad company has promoted or retarded the settlement and development of that country?

A. Why, certainly it has. I think that land would

have all been sold to settlers if they could have bought it. It would all have been settled up.

Q. Do you know of any reason why the railroad company could not have disposed of that land to settlers?

A. No. I don't know why they took it out of the market.

Q. Is it good land for settlement?

A. I think so. We have lands settled up there just like it, and some of it has been bought from the railroad.

Q. I asked you once before whether it was rough land or not, but in order to make your testimony definite, I will ask you what proportion of the land in that vicinity with which you are acquainted could be plowed, cultivated.

A. That is, after the timber is all off it?

Q. Yes.

A. Oh, you take the majority of it—of course, there are some sections, probably would be, where there were rough bluffs, or something like that, that could not be plowed, but then a majority of land up there—oh, I would say 40 to 60 per cent of it could be all plowed. There might be some hillside might be a little steep, but they have got to be pretty steep if they don't use them for something on a ranch.

Q. How is it as to that land? Is the general con-

dition of climate and moisture favorable or unfavorable?

A. O, I think it is favorable. We never had to irrigate there. Now, I have a brother-in-law from Pendleton down, he was there last year, and the year before both, and he told me I ought to irrigate, I had such a good chance there. I told him I didn't think we needed it. He was out one day right in the middle of the summer, scratched down, he said, three-quarters of an inch, and found we would get the moisture. He said we didn't need the irrigation. But then it might be good, for all I know, to irrigate.

Q. That is the usual experience that settlers always have, that somebody that doesn't know anything about it will generally give advice, isn't it, Mr. Clark?

A. Yes. In their country they have to irrigate, and here we don't. And we most generally have to have a drain somewhere to get rid of that moisture.

Q. Well, now, Mr. Clark, I will ask you one more general question, and that is this: some witnesses for the railroad company have testified that in their judgment, none of these railroad lands that are unsold and are involved in this suit, can be used for the purpose of settlement and making homes, cultivating, sustaining a settler and his family who lives on the lands. Now, without asking you to in any way reflect upon the judgment of those men, I will ask you whether you agree with them or not?

A. No, sir. I think we have got lands up there

that is far better lands than between here and home—between here and Albany. It is better land than some you are selling along here for $400 and $500 an acre. It is in the railroad hands, and they don't use it themselves, nor they don't allow anybody else to.

Q. How does that land compare with the lands in the valley?

A. Well I am speaking about this valley land along here. I was up here to Fairview, along up there, and they said there were lands there you couldn't buy for $400 or $500 an acre.

Mr. Fenton: Fairview, east of town here?

A. Yes, east of town. Those little hills along there, we have better lands up there that is not in use at all.

Q. Where do you live now?

A. I live up on the same place in Linn County.

Q. The same place we have been speaking about?

A. Yes, sir.

Q. Is it a nice pleasant home?

A. We think so.

Q. You are not looking for a trade of homes?

A. No, sir?

Q. Are there other just as good homes there?

A. I think so.

Q. In these railroad lands?

A. Yes, I think so.

Whereupon, on cross-examination, witness testified that he took a homestead in section 22, township 11 south, range 2 east about six miles from where he now lives and he must have taken that ten or twelve years ago, and lived on it during the time that he proved up. He lived on it fourteen months and then commuted. He took his family on to that place.

Whereupon witness testified:

Q. Did you stay there continuously, or did you go away to work afterwards?

A. Oh, I had to make a living. We got broke up in the mill business, and I just took up a homestead there to get a little start again.

Q. How long did you take your family and live practically on the homestead?

A. Oh, I could not tell as to that.

Q. Well, you built a cabin on it, did you?

A. Yes.

Q. And did you go up there in the summer time?

A. We had a cabin there for ourselves, and we had a cabin for our horses, an outbuilding.

Q. How much did you clear on that homestead?

A. Oh, we just put in a little garden.

Q. How much garden did you put in?

A. Oh, I don't know.

Q. About as big as this room?

A. Just about as big as this room. And then we set out some fruit trees there.

Q. How many friut trees did you set out?

A. Oh, there must have been a dozen or such a matter.

Q. Apple trees, I suppose?

A. Apple trees and plums.

Q. Did you fence the improvements?

A. Yes, sir.

Q. Now, are those improvements occupied now?

A. No, sir, I don't think so.

Q. And the trees have gone to waste, have they?

A. Oh, yes. Brush growed up around them, and smothered them out.

Q. Did you sell the claim?

A. Yes, sir.

Q. When did you sell it with reference to the time you got your patent?

A. Well, I don't remember. It was quite awhile after.

Q. Whom did you sell to?

A. Wright, Blodgett & Company.

Q. That is a big timber concern in Michigan?

A. Yes, sir.

Q. What did you get for your quarter section, if

it is a fair question.

A. $2,000.

Q. What did you pay to enter it—$2.50 or $1.25?

A. $2.50.

Q. You got 160 acres, did you?

A. Yes, sir.

Whereupon witness testified that he did not own his present place during the time he was taking his homestead, he did not own any land during that time. He then went back to the old sawmill place and bought this place here. His father's place was turned over to an assignee and he bought it at an assignee's sale. He has about fifteen acres on this place in section 21, township 11 south, range 1 east, under the plow and about that much ready to plow, that was the place that he bought in at an assignee's sale, it was a place that his father never owned, his father owned the place just below. His father did not take his place up as a homestead, that place just below, but bought it from a man by the name of Zell. It was the Joseph Elkins claim, he thinks it was a homestead. He thinks there was only 160 acres, but did not think they took donation claims under that. Elkins put up a mill there, a little mill for someone, and the man went off to the mines and was gone three years and he thought he would not get his pay so Elkins jumped his claim and took it. He could not tell how long that Zell land had been settled, it had been settled and sold a good many times before witness came to the

country. He supposes that place is ten miles from Scio southeast and nine miles from Crabtree. When he first came there, Scio was the nearest post office, but there is a little town right close called Lacomb, two and a half miles away. It is just a small place, about three stores, just a few residences. Other people went up into the foothills and mountains and took homesteads in these timbered areas in the even sections besides himself. Some of these homesteaders are living there yet, most of them did not sell to Wright, Blodgett & Company and other timber people, they did not take any timber lands around close to them. They have just taken ranches for their homes. Some of these homestead people besides himself took timber land, there is a man by the name of Herron who took a claim up there, but he sold this in the last year to some person from Medford whose name he does not know, but not to a timber man. He sold it for a fruit ranch and they are setting it out in fruit now, they put out fruit trees. He can think of some one up there who has entered a timbered quarter like he did and has sold out to these timber people. He thinks some of them entered under the timber and stone act and some proved up in fourteen months the same as he did. Some of them disposed of their holdings to the timber people. He thinks they made about the same kind of improvements that he did.

"Q. You say that about 40 to 60 per cent of this land could be made tillable after the timber was removed. Isn't it a fact, Mr. Clark, that these lands for twenty years up there, from 1872 down, these timber

lands were considered of practicaly no value?

A. Well, I don't know, it is just according to the demand for them. There was no demand for them, there wasn't many people in the country then like there is now."

He does not know when the general demand for timber became pretty active up there, it has been probably twelve or fifteen years ago. He bought some land from the railroad company. He has eighty acres that he bought from them and paid $2.00 an acre for it right where he lives in section 21, township 11 south, range 1 east. He could not tell how long ago it was that he bought it, but it has been something like twenty years ago. That is where he now lives and he has about fifteen acres cleared and there is a part of that which is on another eighty which he owns below, he owns 160 acres there. This railroad eighty that he bought is not a part of the land that he had logged off and sold to the sawmill. There is five or six hundred thousand feet still standing on this railroad eighty, that would be considered on the 160 acres that he has. The bottom land he has all cleaned off and slashed, and part of the hill land he has in pasture. He bought this railroad eighty about twenty years ago at $2.00 an acre. He was just a boy when he bought it there and he imagined it would make him a good home when he got to be an old man. One reason why he bought it was because it adjoined the eighty that he owned. He did not live on either one of these eighties just then, but he now lives on the railroad eighty.

Whereupon witness testified:

Q. Your father had a large family, I believe you said. Did he try to make a living running a sawmill?

A. Yes. He did make a living.

Q. How long did he operate that sawmill?

A. Well, he operated that until us boys was old enough to operate for him.

Q. And then you operated it?

A. We ran it.

Q. How long altogether, between you?

A. Well, we commenced there in 1872, and sold the last of it out, last of the mill out about six years ago.

Q. Did you operate it continuously during those years?

A. Oh, yes, we run it, worked along there.

Whereupon witness testified that people came up from the valley to buy lumber as far west as Scio. People in the Willamette Valley used to go up from the valley into the foothills or mountains with farmers' wagons and get fencing lumber or any kind of lumber they wanted and there was where the lumber trade was principally. He used to get about $6.00 a thousand feet for rough lumber and $12.00 and $14.00 a thousand for dressed lumber, and he thinks they can get twice as much as that now and a little more than twice as much. For a great number of years he sold his rough lumber at $6.00 and his second common for $6.00 and $8.00 and his clear stuff, dressed, for $10.00 or 12.00. He sold it as far west as Albany. Sometimes the farmers would come

up there with their teams and stay all night. They brought their hay and oats along and camped out. That is the way it used to be done through the Willamette Valley.

Whereupon, on re-direct examination, witness testified that they had no railroad up there yet, they have just got railroad land, that is all. He thinks industrial conditions would justify building a railroad into this country. Very few people realize either the advantages or the difficulties that confront a settler in this country excepting those who have actually faced them, and it is quite an easy matter either to exaggerate the advantages or difficulties. That railroad land there is just in the foot hills. He lives right in the upper end of the valley and then at that point it starts in with mountains, slopes gradually back. That does not change his testimony as to the usefulness of this land for settlement. They have a young lady up there who has taken a homestead and her mother has been living with her and they just went out yesterday to town.

Whereupon witness testified:

Q. What I mean is this: so far as the value of the land is concerned to settlers, does it make any difference whether you call it foothills or mountains?

A. Oh, I don't think so; not so they can get out and in. We have better health up there next to the mountains.

Q. Well, now, when you speak of it as foothills or mountains, does that go to the question of the character

of the land, or its susceptibility to settlement and cultivation?

A. I don't think so.

Q. When your people went into that country, was the timber of any value to you except for fuel and your building purposes?

A. Well, what we sawed into lumber was. We could make something out of it, of course.

Q. As early as 1872?

A. Yes.

Whereupon witness testified that in one way the timber is more valuable today than it was when he went in there, it is higher priced now. He does not know as the timber would be an obstacle to the settlement of that country. They have got to get that timber off. Some would use the timber in improving the lands. They have to have some timber for that but then there would be more there than would be necessary for farming, putting into ranches, as far as that is concerned. They would use that timber, they would not waste it, it should not be wasted. They could take the timber and sell it and get money for it and use that to clear the land up, and even if they could not sell the timber they could clear the land and make a good home out of it. If they could get money for the timber that would not obstruct them, but would help them in making a home out of the land, it would give them that to go on.

Whereupon, on re-cross examination, witness testi-

fied that he does not know what would be the average value of these railroad lands in their present condition. At the present time one can hardly estimate timber where it will go 200,000 feet to the acre. There is some timber up there that will go that. There is other timber land that has no timber on it at all, they are just bare, one might say. 200,000 feet to the acre has been cut right there at the Star Mill, they estimated one acre just to see what it would bring. Of course he does not know if there are many acres like that, but take pieces of timber that has 200,000 feet of timber, to take the clear lumber and work it up, one could not value it hardly. It would be worth a good deal of money. He would not feel hardly capable of pricing this unsold railroad land with which he is acquainted. He got $12.50 an acre for his timber land that he sold up there. He thinks that a timber quarter that carried 200,000 feet an acre would be worth $10,000 to $15,000, and he supposes that the value depends on how much timber one has got on the land in the main, as to whether it is high priced or low priced.

Whereupon upon re-direct examination witness testified:

Q. Well, now, just one more question, Mr. Clark: suppose that the timber should be cut off, I want to ask you, as a practical man living in that community, and knowing the conditions, whether the land would possess a value with the stumps in the ground, you understand, after the timber has been removed,—would it possess a value to the settler to come in there and clear the ground, and subject it to cultivation and make a home of it?

A. I don't know as I just understand how that is, how you mean that.

Q. Well, now, ask me more, so that I can make the question more definite. I do not want to make my question suggestive to you, Mr. Clark.

A. Well, now, ask it again, and see if I understand it.

(Question read.)

A. Yes, I think it would.

Q. What I mean is this: Is that land valuable only for the purpose of having a man come in and pretend to make a home, simply to get the timber, or is it valuable after the timber is removed for the purpose of making a home of it?

A. Yes, it is valuable, of course. It is valuable for a home.

Q. After the timber is removed?

A. After the timber is all gone, yes.

Whereupon, on re-cross examination, witness testified:

Q. Mr. Clark, it would cost about as much to remove the timber and grub it out as it would to buy an acre of cleared land, wouldn't it, if you had to hire it done?

A. It is according to the man. If you or I would go to work with a grub hoe, and grub it out, it would be very expensive.

Q. If you had to hire the work done, it would cost about as much as to buy the land?

A. I saw last winter in "the Homestead," where a man cleared 40 acres, and the timber was cut down as thick as it could be sawed. He cleared that 40 acres in one season with the help of two men.

Q. He must have been a Samson.

A. He char-pitted the stumps, burned them all out at once, he burned those logs in those holes. Now, you and I probably would not be wise enough to do that.

Q. That was one experience that you have had?

A. I just read that in "The Homestead."

Q. Oh, you read that in a paper?

A. I saw the picture of the land there, and it gave it in several numbers.

Q. The char-pitting proposition is an experiment yet, isn't it?

A. No.

Q. Do any char-pitting up there?

A. Yes, sir.

Q. How much have you done?

A. I have not done any of it, but I have seen the neighbors doing it.

Q. How much have you seen done by any person on this heavy timbered land?

A. They are doing quite a bit of it. There is a

neighbor right adjoining me. I saw several big stumps that he burned out there, right on both sides of me last winter, burned out those big stumps. After he got fire, all he did was to keep that covered up, and the fire did the work itself.

Q. Isn't it a pretty big job to set fire to one of these big fir stumps and to keep it going?

A. No, they tell me not.

Q. You never have done any yourself?

A. No, what I did I took out with a grub-hoe.

Q. Don't you use blasting powder to get these stumps out?

A. Yes, I blasted out some last winter.

Q. Haven't you seen these stumps hauled out with block and tackle and donkey engines—pulled up?

A. Yes.

Q. And make a pile as big as this courthouse, and set fire to it?

A. I shot 120 of the large stumps last winter with about $12.00 worth of powder.

Q. How long were you at it?

A. Just about two days.

Q. Did you estimate the cost of clearing an acre of this land that stands as that saw-timber does?

A. No, we were just shooting out those stumps around in what I had cleared.

Q. Don't you think it would cost from $50 to $100 an acre, if a man had to count in labor and material, and hire it all done?

A. It might cost him $200, some fellows, the way they manage. Others would do it lots cheaper.

Q. I mean a prudent, practical man, don't you think it would cost him $50 to $100 an acre to clear these timber-lands?

A. That depends, you know, on how you go at it.

Q. Well, wouldn't that be a fair price?

A. Well, I expect it would. But then, when that is cleared up, probably that land, after it is cleared up, they would charge you $500 or $600 an acre for it.

Q. Well, do you think it would be worth $500 or $600 an acre away up there twelve miles east of Scio?

A. What is the difference? If we have got a railroad out there, we can ship our stuff into the markets just as good as you can out here.

Q. Don't argue, Mr. Clark.

A. Yes.

Q. You haven't got a railroad there yet?

A. Well, we are going to have sometime. We live in hopes.

Q. I understand; but you are comparing that land without a railroad with land here at Fairview, twelve miles east of Portland?

A. Yes, sir.

Q. A city of 275,000 people, aren't you?

A. Yes, sir.

Q. And you find that land out here at Fairview, twelve miles east of Portland, in the woods, is worth $400 or $500 an acre, today, and you think that that land twelve miles east of Scio, up there in the mountains, would be worth $400 or $500 an acre some time, or when you get a railroad, after it is cleared?

A. Yes; they are selling the land right close to this area for $150 an acre.

Q. That is already cleared?

A. Yes.

Q. Desirable lands? Not in large quantities, are they?

A. Well, a man had eighty acres, and he refused to take that for the rest of it. Part of it was in brush.

Q. He refused to take $12,000 for eighty acres?

A. Yes, sir.

Q. Any timber on it?

A. Some of it has a little timber on it.

Whereupon, on re-direct examination, witness testified:

Q. Just one final question, Mr. Clark: In testifying as to the availability of this land for settlement purposes, have you taken into consideration the cost and difficulties of removing the stumps after the timber has been removed?

A. Nothing only that, that I told you about. That is all that I have blasted out. The rest I have grubbed out by hand.

Q. What I mean is this: In your general testimony have you taken into consideration, in testifying that this land would be available to a settler, have you taken into consideration the difficulties and the expense that a settler would have to encounter in removing the stumps?

A. No, I don't know as I could tell you that, because there is some acres, you know, that is much easier cleared than others. Maybe you will strike a patch of ground, suppose there is ten acres, of one acre that might cost as much as all the rest. I don't know how you would estimate it.

Q. Well, upon the general question as to which your testimony will be considered by the court, what have you to say as to whether this land is good land for a settler, considering the condition of the soil, the character of the soil, the climatic conditions, and also the cost of removing the stumps after the timber is removed? Have you considered all of those elements in saying that the land could be used by settlers, and that the land could be settled up?

A. Yes; it could.

Q. That is your best judgment?

A. Yes, sir.

Whereupon C. S. JACKSON, called as a witness on behalf of complainant being duly sworn testified that he resides at Roseburg, Oregon, and was born and raised

in Douglas County forty-five years ago and has lived there ever since, excepting a short time when he was away to college for two or three years. He was in the Leland Stanford University three years and in the University of Denver, Colorado, one year, and is by profession an attorney at law and engaged in active practice at the present time and located at Roseburg. He was born two miles east of Canyonville twenty-seven miles south of Roseburg on a farm. Canyonville is six miles off of the Oregon and California Railroad in township 30 south, range 5 west. His father settled there in 1853 on 160 acres of land he thinks. He was there in time but did not get it under the donation act. He entered the land under a public land law he thinks he took a homestead and then he took in addition adjoining that some pre-emptions also. He owned in all about 500 acres and the land was agricultural, a portion of it was timber land originally. The part of the land that was cleared and reduced to cultivation was the ordinary land there that they called the timber lands. There was about one-third of his father's place plow land. He remembers he helped clear a great deal of it himself during his younger days. The balance of it was clear when his father took it, about two-thirds of it was clear when his father took it, and the balance of it was cleared, and there is a large amount of it yet uncleared that is good agricultural land of the total five hundred acres. The timber there ranged from brush up to six or seven foot stuff. Lots of it was saw timber. His father sawed it and floated it down the river to a mill there was below there. His father made a wind-

lass grubbing machine, they called it, to clear the land. It was a capstan with a large windlass on it, and he used a two-inch rope and span of horses. They could pull out very large trees with that. Some of the logs were sold and some of them they had to burn on account of the mills not being near enough. They had to burn a good deal of the timber. The clearing was done through a period of several years. They were still clearing, he thinks, when he left the farm twenty-three or twenty-four years ago. The soil there was splendid. It is the same as all of the upland soils there in Douglas County. There are two classes of soil there, there is river bottom soil and what they call upland soils, the river bottom soil is the best, the better of the two. The upland soil grows all kinds of crops, all kinds that this zone would produce, that includes fruit, the very finest grows on the uplands. Many acres of orchards there now are put on the uplands. The upland fruit is a little better in flavor, but usually not quite so large in size. The river bottom lands are very productive and are richer than the upland lands in their natural state. River bottom land is better producing land. He has been all over Douglas County, thousands of times almost, he would say hundreds of times, and over adjoining portions of Douglas County, north, south, east and west, and referring to "Defendants' Exhibit 266" and starting in at township 30 south, range 5 west where he used to live, he has been in the mountains practically all over those townships from the head of Wolf Creek and Evans Creek in Josephine and Jackson Counties clear to the Crater Lake country, clear to the summit of the Cas-

cades south of Crater Lake and then north from there, from Crater Lake as far north as Mount Thielsen they call it, it used to be called Diamond Peak, and he has been from there down all the forks of the Umpqua River, from there to the mouth of the Umpqua where it flows into the Pacific Ocean and all over the tributary of Cow Creek to the summit of the Coast Range mountains, and north to the divide between the Willamette and the Umpqua Valley. He has been all over the watershed of the Umpqua. He has not had any farming experience since he left the farm twenty-two or twenty-three years ago, excepting when he went back to the farm during the summer seasons, occasionally he would go back to the farm—not to make it a business. He has not done any farming on his own account since then. His father is still living at Canyonville, he has got too old to live on the place and has moved over into town, he is nearly eighty years old now, he moved into town about ten years ago. The old farm is still producing. His father sold the farm. He thinks there is something like four, three families anyway, now living on it. The land in that locality is all of the same quality of land for several townships around where his father used to live. The character of the land there, a portion of it is similar to the general character of all the land through Douglas County. His father's land runs from the rolling hills down to the river bank, some of it is level and some of it is rolling, being part of the hills there and opened up to the outside range and his father always kept cattle there all the time he had been there, over all those outside ranges, a good

many acres of railroad land he had used there for years and years, two townships he thinks laying back of him between that and Myrtle Creek that was always open range, timber and brush, the same as what his father had. He knows in a general way where the railroad lands are situated in Douglas County which are involved in this suit and referring to "Defendants' Exhibit 266" that substantially represents the present holdings of the Railroad Company which the Government claims has been forfeited and he has a map like that which the Company furnished to him, that is, he called it a quadrant with a quadrangle for Douglas County. The even numbered sections which intervene these railroad lands are all settled, practically all settled now. They are either settled on or owned by people who are not living on them, they are practically all taken. The title has all passed and the settlers are all over them everywhere. He would almost say that there is a settler to nearly every even section, there would not be a settler for every quarter section. He knows some of those lands are held in large blocks by timber companies and knows there are a number of large holdings of that kind. The Smith people have lands and two or three other large companies all in that county there have lands. He should have said that the settlers would average more than one settler to every section. The settlers are farming and using the lands the best way they can, farming what they can of it and pasturing what they can of it. He knows that there is railroad land settled on, quite a few settling on railroad lands and have been there for years and years, farm-

ing it and using it. He has had clients who have been on railroad lands, who are there yet, the company has tried to oust them, some of them they have ousted and got them under contract with the company, or something of that sort, a good many of them have held their lands and are still holding them, without the consent of the company and they are cultivating the lands. He would say that seventy-five to eighty per cent of these railroad lands in Douglas County with which he is familiar could in his judgment be cultivated successfully, and will be some day. A settler does not have to have 160 acres of plow land in order to maintain himself and his family. He knows people there who are making a good living where they do not have more than three or four acres of plow land cleared and using, four or five acres will produce them hay for their horses and cow and they have their chickens and a few head of stock ranging in the mountains, none of it is fenced there. The Oregon laws do not require them to keep stock on their own lands, and they let them run at large, and everybody gets the benefit of all the outcountry and they all use it.

Whereupon witness testified:

Q. Well, taking into consideration all of those conditions, and the character of the soil, the uses that can be made of it, the quantity and quality of crops, both agricultural and horticultural, that can be grown on the lands, and taking also into consideration the amount of plow land that a settler has to have in order to maintain himself and his family, I will ask you to state, in your judgment, what percentage of the quarter sections of

these railroad lands, if disposed of and properly handled, would support a settler and his family?

A. On account of the general lay of the country, there being hills and valleys everywhere, there is hardly a quarter section but what some portion of it will extend down on to the leveler portions and furnish sufficient level land to build him a home upon and clear up for his own use. Some portions of it has cliffs of rock, for instance, that would prevent its use for most any purpose except the mineral that is found there. Those portions would not be suitable for agriculture nor farming, that is, plowing; but most of those rocky mountains that are found here and there have grass growing on them, and stock range on them, and they furnish a large supply of feed for domestic animals.

Whereupon witness testified that dairying can be profitably carried on in that country and would be a success there and is carried on to some extent. He has been there for forty-five years and knows almost every development that has been carried on in that county and is familiar generally with the industrial resources of that country and the history of the development of those resources down to the present time, and is familiar in a general way with the methods the Railroad Company has used with reference to its granted lands in that county, including the former disposition of them, down to about 1903, and then the withdrawal and withholding of the lands by the railroad company since the latter date and is familiar in a general way with the sale of

those lands in large tracts by the railroad company between the years 1894 and 1903. He knew that was their system at that time.

Whereupon witness testified:

Q. I will ask you, Mr. Jackson, whether in your judgment the methods that have been pursued by the railroad company, and the policy that has been observed by it with reference to these lands, has promoted or retarded the industrial development and settlement of that county.

A. It is a very serious handicap to the development of all Southern Oregon; not only Douglas County, but all Southern Oregon.

Q. Has that effect upon development been limited to the odd numbered sections themselves held by the railroad company at the present time, involved in this suit, or has it extended to the even numbered sections?

A. Yes, it has extended to the even numbered sections, and even goes farther than that. The mineral interests are suffering, and the tax question there has become quite prominent. The railroad company this year, I think, paid something like $103,000 on the railroad lands. That must necessarily be charged up to the expense of transportation, and we suffer from excessive rates, or greater rates than we should pay, because that is no part of the carrier's business.

Q. These lands that were sold by the railroad company in large tracts or large areas, between the years

1894 and 1903, state whether those lands are still held in large tracts or not, speaking generally now.

A. Yes.

Q. Now, explain to the court why the holding of these railroad lands in alternate sections by the railroad company, or by its large purchasers has affected the development of that county, not only the odd numbered sections themselves, but the intervening lands.

A. It isolates settlers, and because of their isolation they are denied the social developments that naturally belong to settlers, such as schools and churches and roads and highways. Every alternate section being under the control of the defendants prevents developments there, and many instances where settlers have gone in there, and because of those great drawbacks many of them leave their homes, and people with scrip will take them, or they will remain undeveloped.

Q. I will ask you whether, in your judgment, if those lands should be disposed of in 160-acre tracts to settlers, that is, if they should be offered in 160-acre tracts to settlers, whether that country down there could and would be settled up.

A. I believe that every quarter section would be taken within a few years and developed, made a home for a family.

Q. In making that statement, and in the making of your other statements with reference to these lands and the uses that can be made of them, have you taken into

consideration the question of clearing the lands?

A. Yes. Of course, the speed or progress of the settlement would be retarded as the development of the country in general would go forward. Becoming very thickly settled, the demand for homes becoming greater, would cause people, and the price of land increasing, would cause the settlers to take less and less desirable pieces; of course, the first settlers taking the best.

Q. Now, would it be necessary for the settler to find a market for the timber in order to clear the land, or a sufficient part thereof for the purpose of his use?

A. No. He could probably, under the present circumstances, market a portion of what he would take off the lands that he cleared. The remainder of it he would have to burn up. But he would not have to clear his entire holding to enable him to live.

Q. Do you know of instances where settlers are living on lands adjoining these railroad lands, and of the same character, and are maintaining themselves?

A. Many of them.

Q. In addition to what you have already testified to, do you know of any instances where settlers have attempted to buy these lands from the railroad company, and have been refused?

A. Yes, sir.

Q. To what extent? Give the court the benefit of your information upon that subject.

A. Well, in the course of my line of business I have

had a great many inquiries about the purchase of that where they have been turned down, and wanted to know whether there was any way by which they could secure the lands. A good many of these inquiries have been from men who are now on the lands, and a large number of them have been those who contemplate trying to get the lands; and they have all been refused since 1903, I think. Mr.—what's his name? McAllaster, I believe is their land agent—he usually writes to them,—they bring the letters in—that the lands have been withdrawn and will not be offered; and then since this suit has begun the letters also contain the additional statement that they cannot sell until the suit is disposed of, or words to that effect. There is a great clamor to get hold of these railroad lands by people who want to make homes on them.

Q. Now, is that limited to people who are trying to get them at $2.50 an acre?

A. I have had clients state that they would not necessarily confine the company to their price, that they would be willing even to give more in some instances, but usually they want to pay the $2.50.

Q. Now, did these instances occur, all of them, since this controversy arose, or did you have similar experiences prior to that time?

A. Since 1903, the withdrawal of the lands, the applications have been coming right along, clientage consulting about it right along. Prior to that we conducted a good many sales with the company.

Whereupon, on cross examination, witness testified

that his father's place was two miles from Canyonville, and he thinks that he and his brother acquired that from the United States as a homestead. He settled there in 1853 and then took some cash entries adjoining. He thinks he took his homestead when he went there, shortly after he went there. He and Gazley and Fullerton went in together, and his father took that about 1854 or 1855 when he was only about nineteen or twenty, he went there and squatted on it and took it. Witness would not say that he took that under the homestead act, he does not know that the homestead act was in effect at that time, his father got it under the land laws just the same. He thinks the homestead act came later. The first donation act of 640 acres was in effect and then that was reduced to 320 acres. He does not think the donation act was then passed but he thinks the 640 acre act was disposed of about 1853 and changed to 320 acres. His mind is not clear as to the exact dates of that. The pre-emption act had been in effect, he thinks, for a long time. He thinks the 160 acre homestead act was along about some time in 1860, but the donation act was trimmed down to 320 acres and 160 acres to an unmarried man. He does not know whether his father took the 160 acres as a donation, or just held on there until he got the homestead. He could not say as to that. He is not sure whether his father took it under the donation act or whether he just held it there, it was not hard to hold in those days. The rest of it his father took up about the same time under cash entries, he thinks all of it and had patents to five hundred odd acres, and when his father got his patents

to these lands very close to two-thirds of it was clear in its natural state. A good deal of the cleared portion lay on the river, the South Umpqua, and the part that was not cleared was back on the foothills, he cleared some of the bottom lands too. He could not say when his father sold these lands but it must have been ten or more years ago, he could not say about what he got on an average an acre for it, he could not say what he did get. The present owner he thinks paid a few years ago something like $10,000 for about 500 acres, but they are now worth a great deal more. He thinks the lands changed hands a time or two after his father sold them. Canyonville is a little old town on the old stage road and has about two or three hundred people, something like that. There is some mining around there, placer mining and quartz both. There is one quartz mine, it might be called a mine undeveloped, within one hundred yards of the city limits. Canyonville is six miles east of Riddle. Referring to "Defendants' Exhibit 259" there are no railroad lands in the valley around the South Umpqua in the vicinity of Canyonville, most of that land was taken before the right to the grant attached. The lands, the low country there, the Umpqua River does not furnish the only valley, there are little valleys up all those tributaries of the river, and they run from that back on the hills gradually in most instances, in some places they are precipitous. He would say that of these railroad lands with which he is familiar in Douglas County outside of the part that is naturally clear they would consist of brush and timber. He could not say definitely that Douglas County is one

of the best saw timber counties in western Oregon, Lane County has a great deal of saw timber, Douglas has a great deal of saw timber but it is splendid land, all good soil. The soil in Douglas County is different from what it is in Jackson county. He would say that there is a great deal of poor timber on these railroad lands in Douglas County. One can find good timber, that is he would call it good, although he is not an expert on timber. There is some good timber.

Whereupon witness testified:

Q. Now, Mr. Jackson, you say that you have represented a good many applicants to purchase these railroad lands. Do you refer to about five thousand applicants that made application through Mr. Leavengood, in Douglas County, to purchase these lands under the act of April 10, 1869, at $2.50 an acre, that sent out these printed blanks, which were signed by people from all over the United States, and made what they called written tenders, and demanded a convyance from the railroad company? Do you refer to those?

A. No, I never had anything to do with those.

Q. About how many applications have you had for the purchase of these railroad lands that have been transmitted to the company since 1903?

A. Oh, I couldn't say.

Q. Well, has there been as many as a dozen?

A. Oh yes, more. Oh, you mean that have been transmitted?

Q. Yes.

A. Possibly not more than that.

Q. Can you name the list of the persons whose applications you transmitted?

A. No, I could not.

Q. Could you name any of them?

A. Let's see. I wrote to the company for a fellow by the name of Kent I know.

Q. When?

A. He has got some of your railroad land fenced in too, and has had it for twenty years.

Q. When?

A. That must have been a couple of years ago possibly.

Q. Now, name anyone else.

A. I think a fellow by the name of Bolsinger. I wrote in his interest once, I think.

Q. Did you sign your own name as his attorney?

A. I usually did. Sometimes I wrote letters for them.

Q. Did you address them to the San Francisco office?

A. All the correspondence was done through the office there I think.

Q. All the correspondence was done with Mr. McAllaster?

A. Whatever was done was done with the present man, I think.

Q. Mr. McAllaster?

A. That is what you have reference to?

Q. Yes, that is what I mean. Now, can you name any others? You have named two.

A. Well, recently I think there has been one or two.

Q. Can you name them?

A. I am poor at remembering names.

Q. Now, what did these applicants offer to pay, $2.50 an acre

A. That was usually their desire, to pay the government price.

Q. Did they claim under the act of April 10, 1869?

A. Well, they seemed to. Now, the recent applicants seemed to be pretty well advised on this suit, and the price, etc., and they come in with that expectation of getting it.

Q. I mean since 1903 have they all asked under this act that have come through your office—the act of April 10, 1869?

A. You refer to the land grant act?

Q. Yes.

A. Yes, they wanted to get it under that act.

Q. All of them since 1903 that you have handled?

A. They wanted to take it, yes. They wanted to take it. I have advised them all the time—some of them have come and asked advice about taking it without consulting the railroad company—in most instances I have advised them to take it under the rules of the company.

Q. Well, to demand the price under the railroad act?

A. Just told them that, yes.

Q. That is under the $2.50 an acre?

A. Under the rules that the company were selling them under.

Q. That is, the ten-year proposition?

A. Yes, or cash either one, whichever they wished to pay.

Q. I understand. And as early as 1908 you knew, didn't you, of this proviso in the act of April 10, 1869, which attempts to amend the act of July 25, 1866, being the land grant act involving these lands and attempting to limit the amount that could be sold to 160 acres, and attempting to name the purchaser as an actual settler? You knew of that?

A. I knew there was an amendment there, but the effect of it I couldn't call to mind right now, because I have not examined it recently.

Q. Well, that is one thing we are trying to find out in this suit, is the effect of it.

A. Yes.

Q. But you knew of that statute? I mean, the lawyers knew of that generally?

A. Yes.

Q. In Southern Oregon, didn't they?

A. Yes, my attention was called to it when I tried to get this wagon road grant, when I was in the legislature in 1907 there.

Q. Well, but long before that, this question of $2.50 an acre to actual settlers was a matter of discussion among lawyers in southern Oregon, particularly in Jackson County, Josephine County and Douglas County, wasn't it?

A. In what respect, Mr. Fenton?

Q. As to the $2.50 an acre proposition, and the sale to actual settlers only, and in quantities not to exceed 160 acres?

A. As to whether that was compulsory or not?

Q. No, as to whether it was known. Didn't lawyers know of it and discuss it?

A. I think the lawyers knew of it; that is, those that had any work along that line knew of it.

Q. Nearly all of the lawyers in southern Oregon that had any practice at all had some knowledge of the public land laws and had some business in that direction?

A. Well, quite a few of them don't yet know about

that, because they have been asking me about it.

Q. Well, couldn't they find out from you?

A. I usually gave them my citations, where they could go and find the laws.

Q. Well, Judge Watson, E. B. Watson, former justice of the Supreme Court, raised that question in 1896 in the tax case in Jackson County, didn't he?

A. As to the taxing of railroad land?

Q. Yes.

A. There was a suit down there. I don't know who raised it.

Q. Well, didn't you know that that was discussed by him in one of his briefs in that case?

A. I am not very familiar with the case, although I understood that. I did not see his brief, no.

Q. Well, didn't you know that? You knew of that $2.50 an acre provision as early as 1896, didn't you, or before it?

A. Yes, I knew it was in there myself.

Q. Well, now, the lawyers generally knew of it, didn't they?

A. Well, I couldn't say as to that, Mr. Fenton. I don't think they did generally.

Q. How did you get your knowledge of that?

A. Well, I got pulled into that litigation pretty early.

Q. What litigation do you refer to?

A. I don't call it litigation really, but contentions for these lands. I had occasion to examine it.

Q. You had some business in the local land office, didn't you?

A. I have a little, yes.

Q. Ever since you have been practicing?

A. Yes.

Q. How long since you have been practicing law, Mr. Jackson?

A. Since 1898.

Q. Were you in the county clerk's office for a while?

A. Just a year.

Q. When was that?

A. 1898.

Q. And at that time you knew of this statute?

A. Well, I couldn't say that I did, no.

Q. How soon after you left the clerk's office?

A. It wasn't long after I got into practice when these contentions arose.

Q. Who first brought it to your attention?

A. I couldn't say. The Matthews up there had a contract from the railroad company for 320 acres, and I carried that along for three or four years. I think the company finally deeded it to them. They got a

deed to that. The contract was lost. But then it was earlier than that that I got in.

Q. That you knew of this $2.50 an acre provision?

A. Yes, I knew of it earlier than that.

Q. Now, you said, I think, that there was a good deal of clamor about the sale of these lands. When was that clamor—how early?

A. Well, of course it all arose, that is, most of it arose since the withdrawal.

Q. Since 1903?

A. Yes. Before that we had some difficulty on railroad or on mineral lands. I know father tried to purchase some from the company, and he didn't get it. They wanted thirty or forty or fifty dollars an acre—I don't know what it was.

Q. He didn't claim it though under the $2.50 an acre clause?

A. Well, no. He claimed it under that, but he was willing to give more even than that for it.

Q. Your father then knew of this $2.50 an acre clause?

A. Oh, no doubt he did. I guess he did. He did at that time I know.

Q. That was long before 1903?

A. Yes, that was before 1903.

Q. Now, this clamor that you speak of originated

after the company, as you say, withdrew the lands from general sale about 1903, as you recollect it?

A. Yes, the talk for the lands, or the applications made for them increased in numbers after that.

Q. About when did timber lands become an object of considerable inquiry and location under the timber and stone act, and under the homestead act, out there in Douglas County, and under scrip—anyway they could get it?

A. Well, do you mean when the greatest rush came for them?

Q. Yes.

A. That was about from 1900 to 1904 or 1905.

Q. It began about 1900?

A. Right along there somewhere, as near as my memory serves me.

He does not think that the railroad was built through Douglas County about 1878. He thinks it ranged from 1881 to 1885 when the line of definite location was established. If the record shows it was 1878 he would be wrong, but he does not think the record shows it. He would not say that for fifteen years after that time these lands had no particular value or that there was no particular inquiry for sale. The inquiries for sales were not as great then, he supposes because of the lack of influx of settlers. There was a demand for timber, but then timber closer to transportation was used first for domestic and ordinary local use, the question of

speculation was not as strong then as it was later. He could not say that there was not any speculative investment for timber in 1878, he does not say there was, he could not say he had any knowledge at that time. He does not remember that he ever put in an application to purchase any of these timber lands from the Railroad Company for himself. He filed on a homestead on lands in Douglas County, but he has not proved up yet. He took a squatter's claim off of his father's ranch once, but never proved up on that. That was when he had just about reached his majority, or a little before that. He did not prove up on that because he thought he could do better, and he went off to school. Some one took it afterwards and it is patented now. It was not a great while afterwards that some one took it, and it is taken all over that country now where they used to run cattle. The country is still open, further up the Umpqua and into the mountains, they run stock up into the mountains. He can tell of a settler on these railroad lands living there, Maccabee, with whom counsel for the Company has probably had some correspondence there about his claim. Maccabee is on Day's creek, but witness does not remember how many acres he claims but he and his predecessor have been there, he does not know how long, but they have been there a good many years. He thinks Maccabee was there before the definite line of location, and claims the lands as his own. He knows of railroad lands that are under fence by people who live on deeded land. This that is under fence is probably there under a claim of these people. Some of

them claim it is their land under the statute of limitations and others, he thinks, have stayed there where the Railroad Company has gone and got them to lease it from them, under their lease system now. He had clients with whom they have done that. He knew some people who had gone and taken a quarter section of this railroad land, jumped it and are claiming it. Very few of them have stuck. He has forgotten their names, He could not say as to whether these people had applied there through Leavengood and posted notices on these quarter sections generally, he was not advised at all on that. He does not think many of those people settled. He understands that a good many of those people were largely non-residents but he is not advised on that. He does not know Leavengood's system or anything about it, but he understood that he had a system and that he worked it pretty industriously. Personally he never had any litigation with the Company, he has had claim clients and timber claim clients and things like that and had a case against the Company involving the township site of Roseburg, that was the case of Johnson against Wollenborg, he believes that was the case which involved what is claimed to be the south half of the donation land claim of Aaron Rose and wife and covered a part of the town of Roseburg only and upon which part of the depot grounds of the Oregon and California Railroad Company are located, practically part of the grounds and he sued about three or four hundred people there in that suit. That suit went to the Supreme Court, it was a suit in equity for

partition. The Supreme Court held that partition was not a proper remedy. There is an ejectment action pending now against the Cobb Real Estate Company he thinks it is called but there was no ejectment yet as to any others. This Courtney Chauncey was a nephew of Mrs. Rose, Mrs. Aaron Rose the donation claimant, this land had not been occupied and claimed by these people who are now in possession, there is a scattering piece here and there, a scattering lot here and there, which has been held for a great many years. This tract has been laid out as a town in more recent years, the town has branched out in that direction, but he does not think that the town has been laid out in there, any on this part of it as long as thirty years.

"Q. Well now you have had some other controversies in which the railroad company was interested, haven't you?

A. Yes.

Q. You were interested in these and a witness in one of these freight rate cases weren't you, down at Salem?

A. No, well I did appear as a witness. I appeared more on behalf of the citizens of Douglas County there in that instance. They put me on the witness stand after I got there.

Q. The citizens of Douglas County used you as a witness?

A. They sent me down there to look after their

interests and the commission called me after I got there as a witness.

Q. But you told them you would testify as a witness didn't you?

A. No, they knew what I knew.

Q. I see, and they put you on the witness stand?

A. Yes.

Q. Simply to put it in the record?

A. I suppose so, yes."

He does not remember what that case was but thinks it was a case on class rates south out of Portland, distributive class rates out of Portland, involving merchandise but he is not sure. He thinks that was a case involving the first four classes principally, as he remembers it. He is not a merchant, has never been one, he is not a cruiser and has never been and never bought and sold timber lands as such, never farmed since he left his father's place and went to school excepting at the short intervals that he would come back to help his father until he got through college, university. He has not farmed since he graduated and does not own a farm and is not interested in the farm any more than a citizen would be. He owns some mining land in Jackson County up in Star Valley. The Railroad Company has some mining lands there that they have got to give up one of these days right adjoining his, but he is not interested in that only as an attorney. The Railroad Company got a patent passed on that particular piece that he has in

view now and if the Company does not deed it over, or dispose of it in some way to his clients he expects to bring suit to cancel that patent.

Whereupon witness testified:

Q. Well, all of your interests have been adverse to the company as a professional man, and also as a man interested in mining, haven't they?

A. I have never been fortunate enough, if you mean that, to be attorney for the railroad company, and therefore my position has always been on the opposite side.

Q. Well, if you were attorney for the railroad company you might not have been able to go to the legislature like you did go. Isn't that true?

A. Well, I don't know about that, Mr. Fenton.

Q. When were you in the legislature?

A. I was there, I think it was the 24th legislative assembly, the time the railroad commission bill was passed.

Q. 1907?

A. Yes.

Q. Well, were you a member afterwards?

A. No.

Q. And never before?

A. Never before.

Q. Have you been a candidate for public office?

A. I ran for the nomination for state senator fol-

lowing that, but Mr. Abraham succeeded me by twelve votes.

Q. Albert Abraham?

A. Yes, sir.

Whereupon witness testified that they were both members of the same party and were running for the nomination. A good deal of that land can be plowed in its natural state where there is no timber. Where there is timber it would have to be cleared, of course, but it could be plowed. One can plow and raise stuff among the trees. One can raise more stuff if one would take all the trees off of it.

Whereupon witness testified:

Q. Well, if you had a quarter section that cruised ten million feet of saw timber, you wouldn't be able to plow much on that quarter section, would you, without the timber was taken off?

A. Sometimes that amount of timber will be on one fourth of it, and the rest of it will be good.

Q. Well, where is there a forty that has, we will say, two and a half million feet on it of saw timber?

A. Some of it runs as high as twenty million to the 160.

Q. It does in that county?

A. I presume that some of it right on the Coast Range, yes, in Douglas. It might be over in Coos County, but it is very close.

Q. And it is of the same general character?

A. Well, the timber over there is a little better than it is in the interior.

Q. Run as high as twenty million feet to the quarter?

A. Once in a while they have timber there as much as twenty million feet to the quarter.

Q. Well, what would that be worth according to the prices that have obtained in that county?

A. In Douglas?

Q. Yes. What would a quarter section that had twenty million feet of timber on be worth? As an investment, I mean.

A. Well, it is running there now from 25 to 50 cents a thousand, but the land is worth much more than that.

Q. Oh, I suppose the land is worth two or three times as much as the timber, in your judgment?

A. The land will be there forever, Mr. Fenton, but you only get once the timber. That is my view of that idea.

Q. That is the reason you put these values so high on the agricultural portion of it? That is your idea about it?

A. I think the agricultural part outside of the timber is worth very much more than all the timber combined.

Q. Well now, if there was a quarter section of land there that had ten million feet of timber on it, and was tributary to the Umpqua river, where it could be logged so that they could have transportation, that would be worth a dollar a thousand today, wouldn't it?

A. I don't think there is any selling for a dollar a thousand, or very little.

Q. Do you know of that because it is held in strong hands, and they do not want to sell at that price?

A. No, they are trying to buy at less and are buying at less.

Q. And keeping what they have got?

A. The fellows that are able to are, I think.

Q. That would bring a quarter section up to about ten thousand dollars? Don't you know of timber quarters out there that have sold for ten thousand dollars?

A. No, not in Douglas.

Q. How high are the highest you have known of quarters selling?

A. That is governed, Mr. Fenton, by the kind of timber and the location.

Q. I mean the best that you know of that has been sold.

A. Yes. As I say, they are selling now, what are selling are selling from 25 to 50 cents.

Q. Well, there are not very many selling, are there?

A. Once in a while they are picking them up right now, and for the last six months they have been pretty active. But it is largely men that are representing these large timber interests.

Q. They are picking up all they can?

A. They are picking up all they can.

Q. At the best price they can get?

A. Yes. Ranging in price. And that country, all you have got to do is to look at the logged-off country down from the Calapooia gulch there, where your railroad runs, to see that it will all be agricultural land.

Q. Yes, I have been there and have seen that agricultural land that you speak of. Cow Creek canyon is a fine agricultural territory, isn't it?

A. Just after you get up off that steep hill, there is level territory up there.

Q. Nice agricultural country all along the railroad through the Cow Creek canyon?

Whereupon, on re-direct examination, witness testified that Cow Creek Canyon from bluff to bluff, from what is always known as the old George Riddle place through to four miles below Glendale is a gorge. The Railroad Company has followed the stream up through the gorge. The gorge puts right down to the creek almost continuously there for the distance of the Cow Creek Canyon. He does not know just how far it is, something like thirty miles through the Cow Creek Canyon and its width varies. There are a few scattering

ranches on the creek along up through there, but when one gets back on to the hills, gets up the first steep place out of the gorge, there are other little creeks coming in cutting through it and the country flattens out and widens out, and it is a good country through there for grazing and a good many homesteaders scattered all through there. He does not believe the gorge would be a mile wide at any place, meaning from the slope of the hill across.

Whereupon the witness was recalled by complainant and on re-direct examination testified:

Q. Mr. Jackson, there has been some testimony in this case, not only with reference to Douglas County, but other counties, to the effect that a great many homesteaders have proven up, received their patents, and sold to large timber companies. I will ask you whether, in your judgment, from your knowledge of the general history of the subject there in your own county, that condition would have taken place if these lands had not been sold in alternate sections covering large areas to timber companies, and the railroad company had not withdrawn its present holdings from sale; would the settler have been driven to that?

A. I know of some complaint involving that situation, and it is causing settlers to become discouraged, and some of them are leaving, selling out, those that have got rights, and others that haven't got rights are abandoning them.

Q. Now, when the settler becomes discouraged in

the manner that you have testified, I will ask you whether, with the alternate odd sections there held permanently either by the railroad company or by these large timber holders—whether the settler can find any purchaser except the large timber company which holds the intervening odd numbered sections?

A. It seems that these large timber holders, not only have gathered up a good deal of the public lands there, but before the withdrawal they had secured large tracts from the railroad company, and they not only hold the government sections, but the odd sections too, because of the sale by the railroad company in some instances to them before the withdrawal; and where those conditions prevail the settler is practically up against it, as the fellow says in plain, modern terms, and is almost forced to leave. He is isolated entirely.

Q. Well, what chance has he to sell to anyone except the large timber holder who owns the intervening alternate sections?

A. Our experience there now is that the timber interests are sort of dividing the territory and not competing against themselves for the purchase of the small holder, and he is practically at the mercy of the one man that is operating in that particular territory where the settler might be.

Q. Well now, in your judgment, does the fact that the homesteader under those circumstances is compelled to sell to the large timber holder—does that fact, I say, in your judgment, indicate that the lands could not and

would not be settled up if they were all open to settlement?

A. If these unfavorable conditions mentioned were relieved, of course there would be a greater incentive for the settler, and there would be more settling, and the settler would be more liable to remain and develop the country into an agricultural producing country.

Whereupon E. J. MAHAN, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Ashland, Jackson County, Oregon, and has lived in that county for twenty-three years. He was nine years old when he came into the county. His father was living then, but his mother was dead when his father moved to Oregon from California, where he lived about twenty-five years. His father settled in Jackson County, on a piece of unsurveyed land, two miles west of Ashland, from the post office, on a direct line it is not over a mile or mile and a quarter—in section 17, township 39 south, range 1 east, he believes this land was surveyed somewhere along about 1905. He remembers when the surveyors were there doing the work, because they camped at their place and he helped do the cooking, used to cook for them. His father went on that place on Christmas day, 1887, packed up on pack mules, and stayed there and made his home till his death a year ago this fall. He lived here with his father from the fall of 1889. His father went there in 1887, and then went back to California and got witness and his brother in the fall of 1889. His father built two houses on the place, both of which burned down, and he built

a third one. He had a barn, which is there now. Witness had the old house remodeled himself last year—built it over, and has been living there since his father's death. He is married and his wife is living there now with their baby. His father settled on 160 acres there. When it was surveyed, the railroad company claimed it, and there was a contest between his father and the company, which was decided in his father's favor in the local land office at Roseburg, and his father said it was a matter of record in the Roseburg land office there. The way he understood it, the railroad company appealed to the Department at Washington while Binger Hermann was in office, and Hermann ruled against his father on 120 acres, and that is the way his father explained it to him; so that his father finally got 40 acres and the railroad company 120 acres of the 160 acres his father settled upon, and the 120 acres is involved in this suit, being the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section 17, township 39 south, range 1 east. It is good land, good soil, and has good timber on it—it is number one land, most all suitable for cultivation when the timber is cut off and it is cleared. His father cleared about 20 acres on the 40 acre tract, and they still retain it. Part of the clearing was on this other land, and some of it he originally had in cultivation, and when he lost it he let it grow up in brush, quite a lot that they had cleared. This photograph shows the land there, and there is the barn his father built, and there is the house that he remodeled. This house is within fifty yards of

the line. This 120 acres lost, lays right back of the house there, and part of it is fenced, and part of it is under cultivation too—witness referring to a photograph which he produces, marked "Government's Exhibit 124," which was offered and received in evidence and is hereinafter set out and described in this Statement of the which he produces, marked "Government's Exhibit 124,"

Whereupon witness testified that he had also built a road to that property, his father, himself and brother built a road there that cost three thousand dollars, which cannot be built today for that. The altitude of that house is thirty-four or thirty-five hundred feet, and he would take that to be about an average altitude of the railroad land in that locality, sections 17 and 19, and all the land with which he is familiar there. His father set out an orchard on it and raised garden and berries, and improved it. When he went there it was thick brush and timber, big stumps. On about twenty acres they had taken out all the stamps and cleared it up and improved it, brush that one could not crawl through when they went there. Apples do not grow better anywhere than there, he picked off of trees his father set out there—now they had been neglected while his father was sick and could not attend to them, and had not been sprayed or pruned—and this spring he cultivated the orchard and pruned them, and he got thirty boxes of as nice apples as one ever saw. The fruit inspector was up there, and he asked him to stop and examine the trees, he was on a hunting trip by the place, and saw them, and the inspector claimed that that land some day was

bound to be the best apple land in the country, giving his reasons, he said that the codling moths and the insects would not bother, at that altitude as they do in the valley on the lower lands. He is familiar in a general way with the other railroad land in that township, and has been over it, ever since he was a boy, since he was nine years old. Their stock ranged over it, and they used to go out after their horses pretty nearly every day. The railroad land there in sections 19, 21, 25 and 27 is really better than this forty acres that his father got, there is better timber on the railroad land in these sections. This forty acres that his father got was the poorest forty out of the 160. He is familiar with most all of the lands west of Ashland, between Ashland creek and the Applegate, and with considerable of the railroad lands in the Dead Indian country, which is east of Ashland from ten to twenty miles. He could not say how much railroad land over there, is involved in this suit. He knows of some there, one particular piece which they call Railroad Prairie, because it is railroad land, it is nice prairie land, good grazing on it, and lays between what they call Glenwood and Lilyglen. He has been out there hunting with parties. Timber in that section he would not call extra good, the timber in that Dead Indian country, some of it, he would not call very good, there is lots of white fir and a good deal of yellow fir that is punky, but there is lots of land there and it is number one. He has hunted over nearly all the Dead Indian country, this one particular piece which they call the Railroad Prairie was about the only piece of railroad

land he could say that he was really very familiar with, in the Dead Indian country. He considers that there would be a quarter section there, or probably more, just going over it hunting. In addition to these specific tracts with which he is acquainted, he is acquainted in a general way with the lands in Jackson County, is familiar with everything, railroad and other lands, except there is a locality out east of Medford in what they call the Butte Creek country, out in there, that he cannot say he is familiar with, but he is familiar with the southwestern part of the county, very familiar with all of that. He has been over it, he could not say how frequently, probably a hundred times, hunting and after stock, ranging over it.

Q. Just step here to the map a moment. This is a map showing by this red line the location of the railroad. There is Medford, here is Jacksonville, here is Ashland, and these sections marked in black are railroad lands. These squares are sections. The squares with the heavier lines are townships. This is section 39-1 east where Ashland is located. And the township west of that, of course, is township 39, 1 west, and so on. I have been referring to Defendants' Exhibit 266. Now, are you familiar in a general way with that part of the county to which I call your attention, and where you find so many lands designated in black as railroad lands?

A. Yes, I am very familiar with all that section.

Whereupon witness testified that he believes that all of those lands are suitable for settlement, a large percentage of them, and in his judgment 160 acres of

that land, when it is cleared up, would support a settler and his family. He does not believe there is 160 in that range there but what it can be cleared up and made to support a family, and that is true with reference to the lands he knows over in the Dead Indian country. He helped his father clear this 20 acres that was cleared on his place, he and his brother and his father did the work, cleared it up, it was heavily timbered when they went in there. It was not good saw timber—some of it was, but there was not enough of it to be practical for saw purposes, but it was good for wood-stove wood. He cut the timber, cleared the land and sold the wood—cleared it up, made the timber into stove wood and hauled it to Ashland and sold it, that is the way he made his living while he was clearing the place. He has taken into consideration the expense and work involved in clearing this land, when he testifies that it could be made useful for the purpose of homes and settlement. The soil in there is granite formation, there is good soil and the average—the soil of the granite all through there would average twelve or eighteen inches of leaf mold, which is formed from decayed vegetation, it is light loam soil—granite formation. There have been several homesteads proved up by settlers in that same general country there, where these railroad lands are that he has indicated on the map, and at virtually the same altitude as his land there. There are no settlers back of him, he is the only settler there in that neighborhood. Up the other road, up Widner creek to the Applegate country, there are settlers back that way,

but he and his father built this road themselves, there was no road when his father went in there, just a little Indian trail. He believes these lands would be settled at once as fast as they were thrown open, if they should be offered to settlers. Withholding these railroads lands from sale by the company has certainly retarded the settlement and development of that country, there is no doubt about it. He knows who owns some of the even numbered sections intervening these railroad lands in that southwestern part of Jackson County. He knows of two or three places, homesteads, which have been homesteaded but practically the timber is cut off, and not much improvements made on them. Some of them they have improved, some they have not, some that has been sold by the railroad company and the timber is cut off. It was bought for timber and not for settlement, it seems.

Q. After the timber is cut off, and taking that land in the condition in which land always is after it is logged off, with the stumps in the ground and the accumulation of branches and other debris resulting from logging operations, and with the smaller brush still standing, I will ask you if, in your judgment, that land would be attractive to a settler, and a settler could afford to go upon the land and clear it?

A. Yes, sir, the majority of it he could.

Q. Now, these homesteaders that have gone in there and have left there, I will ask you whether in your opinion they would have abandoned their homesteads if the

railroad lands had been thrown open to settlement and the country had been settled up, as you have described?

A. I don't think so.

Q. Well now, Mr. Mahan, just explain how the withholding of the railroad company's lands from settlement has interfered with the settlers on the even numbered sections with reference to roads and schools and other conditions of that kind?

A. Well, there is one family that I know of, a man that came there about the time my father did, he bought a man's relinquishment—people of the name of Walter, he bought their relinquishment to a homestead right. That was unsurveyed land. And he moved on it, and built him a house, and made considerable improvements; set out some fruit trees, orchards. He had a big family, he had nine or ten children—I don't know how many. But when the railroad company got this land he moved off, and this particular piece has been sold since to a man named Provost, bought it in the first place from the railroad company, I believe, and the timber has all been slashed off it, and what improvements were there have simply decayed and gone to rack; but it is bought for timber speculation more than anything, I think. It is good land. Now, for instance, if this man that cleared it had been allowed to remain there with his family and improve that, he would probably have been living there yet, and it would be a nice home.

Whereupon witness testified that he has no interest in these lands, no special interest, other than as a citizen.

He did not apply to purchase any of these lands. His father applied to the railroad company for this 120 acres that was originally in his homestead claim, probably eight or nine years ago, something like that, and the company told him it was off of the market, not for sale. He does not know what is the reason the company told him it was off the market, that is what his father told him.

Whereupon, on cross examination, witness testified that he was thirty-three years old, and his father went on this homestead on Christmas day in 1887. By their road which they built to the property, and by the survey, he has heard his father say that the surveyed road was two miles from the Ashland post office, up on the mountain. The elevation at his house is about thirty-five hundred feet, about fifteen hundred feet higher than the post office at Ashland. They built the road from Ashland out themselves, from Nutley street, where they left Nutley street in the city straight to their place, fully a mile and a half of road. He and his father and brother, who were living there at the time, built this road. It was not a county road, they built it themselves, it is still a private road, they built it at their own expense, for their own use. They have no neighbors back of them. Some land has been held back after it has been cut off for wood, but there is no one living on it. His father had a contest with the railroad company as to the whole of this 160 acres, he understood that his father's final proof was accepted, the land was unsurveyed when he settled there, and he offered final

proof after it was surveyed, and it was accepted, but his father claimed that Binger Hermann ruled against him and only allowed him forty acres out of the 160 acres. He could not say that the railroad company got a patent, but it claims that it is railroad land, his father did not get it. His father did not give up possession of it, but has retained possession of it ever since till his death, and witness is still on it himself. His father deeded his rights to witness and his brother on his death, whatever rights he had, and he claims that that 120 acres really belongs to himself and his brother, under the claim which his father made, and has been in possession of it since his father went there, in 1887, about twenty-three or twenty-four years. His father did not fence it all, but had some of it fenced, this 120 acres. He has paid no taxes on this 120 acres. His father cleared up some of it when he had it under claim, he cleared up quite a piece, he could not say how much, but it was a piece around about the house, probably a couple or three acres, something like that. His father cut the timber off of that, and most of it has grown up, some of it is enclosed in chicken yard. He is not cultivating that only a small portion of the 120 acres, just a little corner of it now. He could not say how much of this 120 acres he is cultivating, as he does not know exactly where the line comes, probably there may be half an acre or an acre. The chicken house and buildings and outbuildings are on it. He could not say what this 120 acres is worth today, he has never cruised it, the timber would have to be estimated on it, and the land would have to be

estimated, and he really could not put a price on it, there is good timber on it—good wood timber, all of it. He would say that it would cut probably fifteen hundred cord of wood on this 120 acres, wood is worth one dollar a cord stumpage, which would be fifteen hundred dollars for the wood that is on it, and then the land after the timber is cut off, is worth more than the timber, after it is put in cultivation and cleared up, and would be worth at least fifteen hundred dollars more, and he believes that would make that 120 acres worth about three thousand dollars. His improvements are not on this 120 acres. He has no picture of the timber, he has no other picture besides this Government's Exhibit 124, showing the timber that is on this 120 acres, these are just some photographs his wife happened to have when he started. Handing counsel a photograph, witness says that that is another view of the house, taken right back of the house, that is part of that probably. That is practically all, he has no picture of the timber. There is a couple of photographs of a mining tunnel. His father had a mine there, but that is separate land. The railroad company never claimed that forty. The title lays between witness and his brother and the Government on that. He did not pay the railroad company $2.50 an acre for that, the company never claimed that against his father, his father contested the company on that and it never claimed the land, it abandoned it to him and gave it up, it is a quartz mine, one has to dig down into the earth to get it. They have got in one tunnel about four hundred feet altogether, and a

shaft about fifty feet, his father has milled sixty ton there from that upper tunnel that netted him $31.43 a ton in gold, and has taken out sixty tons which netted him that, and has taken about $1200 worth of gold out of this mining claim after paying all expenses. They put it all back in the mine in development work and they are still developing it. Witness ran 150 feet of tunnel last winter, that cost him about four dollars a foot, and he did the work himself and one man with him, and furnished the powder. The mine is practically a prospect, they are developing, showing it up, and they cannot put any price on it. They are going ahead all the time developing it.

Q. When sixty tons brings $1200 it is more than a prospect, isn't it?

A. Well, if we get enough of it, yes; if we get enough of it.

Q. That is a mine, isn't it?

A. Well, a mine is a large body of ore in sight, something you go up and put a mill on it. You put a mill up on sixty tons today, and tomorrow you haven't got anything.

Q. You don't think that is a pocket?

A. No, we have a true fissure vein, five feet between the walls, and we have cut it the full length of the vein.

Q. That is considered a good mine, isn't it?

A. That is considered a good prospect to make a

mine, yes; but it takes lots of development work to open it up.

Whereupon witness testified that one had to have money to put in a quartz mill, things of that kind. The description of that forty and the exact numbers—it is adjoining this other, section 17, township 39 south, range 1 east. The Ashland Reserve is back of this in the neighborhood of three miles, and there is timber all the way back of him. He does not know how many acres there are in this reserve, but there are several thousand acres. Referring to Government's Exhibit 124, there is fir timber shown to the right in the picture, that lays on their mining claim, that is small timber, which will average about twelve or fifteen inches in diameter, practically second growth. There are some heavy trees in it, that one can see there, some very large timber in it, and there is second growth in the picture that will average about twenty inches. that timber was pretty small when he went there, it has grown certainly since then.

Q. Now, over in the distance, that is, looking over beyond Ashland, over the hills, the bald hills on the east side of the valley, isn't it?

A. Yes, that is looking east.

Q. Looking east?

A. Looking across the valley.

Q. Those are bald hills over on that side mainly?

A. That is Grizzly over there.

Q. That is bald, isn't it, mostly?

A. There is timber on the top there back of Mount Grizzly.

Q. There is some scrub timber, little scrub trees?

A. There is some good timber there too.

Q. After you get over the ridge?

A. Yes, on the top, and over on the other side. On this side there is no heavy timber.

Whereupon witness testified that Provost, whose initials he does not remember, bought some land there, he thinks Provost came out to Ashland some twenty years ago, from Yamhill County, and bought some railroad land, and some other land for timber that was on it, and cut cord wood and stuff of that kind to haul to Ashland, and was in the wood business, and after he cut the timber off he sold the land, he did not cut all the timber off, they are still cutting timber off of it now. He has not sold any of the land that has been entirely cut off that he is familiar with, at least he does not know that he has. Provost has sold it all, has sold the land, and it has changed hands three or four times since then. He believes Provost owned two hundred acres that he bought there. They are not farming it, except a small portion, he does not know how much, but he has been there, but the people that have been living on the corner for the last year or so, are farming some of it, he does not know how much. They have only the work outside, and haul wood to town, but they have really discontinued hauling

wood. Another man had a mortgage, he thinks, and he has taken over this land on a mortgage, this little piece of land, this two hundred acres. It was first bought by Provost, who sold it to Phipps, Phipps sold it on terms, and they couldn't make good and gave security and lost it. He took a mortgage some way, and turned the mortgage over to a man by the name of Hodson, and Hodson practically has the land, they did not make good on it. They bought it to pay out on it and they did not pay out on it, they threw it up. He knows something about Railroad Paririe over in the Dead Indian country. There is about a quarter section, more or less, he would judge, it was about twenty-five miles east of Ashland, but he does not know what township and range it is in. He was over there hunting—and was over there once after a cow he bought, he bought a cow and went after her, over the range, to get her, six or seven years ago. There is lots of white fir around that prairie that he does not consider good, and lots of yellow fir that is punky—doty—he does not consider it very good. He does not know who owns that timber now. They call it Railroad Prairie because it belongs to the Railroad Company, and he knows there is lots of good prairie—glades rather—big glades. It is good land, lays nice, this Railroad Prairie. There is one party there in his neighborhood, back of him, by the name of Connor, or Cotton, who homesteaded a piece and put in a saw-mill and cut timber off for saw mill purposes, and sold it since, and the people who have it now are using it for wood recently, they have cleared up some of the land on it. In fact,

Cotton originally cleared up quite a piece, quite a lot of trees, he was killed, a man named Messenger shot him, and his widow disposed of the place, and the place has practically gone to rack since then, practically gone back into the wild since. They logged off the land for sawmill purposes and wood, and then moved away and it has grown up again. He does not know of any homestead people back in there who have sold their claims to timber people for investment, none that he knows anything about. There is no one living back of him, between that and the reserve, that is all in the timber. He has about twenty acres cleared, practically had it all set out to orchard at one time. Last spring he set out one hundred young trees more, and he has a lot of trees ordered to set out this fall, he has trees all over this, scattered all over it like an orchard, he might say there are ten acres in orchard, there would be in the neighborhood of ten acres bearing, he has never surveyed it, he does not mean that he has ten acres of apples that are bearing, he has about fifty or seventy-five trees coming into bearing, they are Newtowns and Ganos and some Ben Davis and some Spitzenbergs. He has about seventy-five trees of these kinds of apples coming into bearing, apples today that are marketable. He picked thirty boxes off of them this fall, and has them in his basement at home for his own use. He does not know what apples are selling for at Ashland this year, apples like those would bring the highest market price because they are free from any blemishes. They were not hurt by hail like all the apples in the valley were, that is, hail damaged most all the ap-

ples in the valley this year. They are not bothered with frost as much as they are down below, he had some tomato vines that were green when they were killed in town, the frost seems to miss the high land, and will settle down on the low land, they do not have the fog there, and that is one reason for it, that they have in the valley. He does not know the Burrell or John Olwell orchards at Medford by that name, but he knows a large number of fine orchards between Medford and Phoenix, on the right hand side of the railroad as one goes south, and these lands down there are nearly all in bearing trees. He claims his father's right to this 120 acres of that railroad land, and they are entitled to it, they have spent their life there making it their home, improving it, and built a road to it, and he does not think they would give up possession if they were asked to do so.

Q. Well, your father thought that Binger Hermann had wronged him in favor of the railroad company, didn't he?

A. Well, that seemed to be my father's opinion, yes.

Q. And you are of the same opinion, too?

A. Well, no; but we have made it our home, and we have gone to a great deal of expense to build a road up there.

Q. I understand, and you don't feel very kindly over the action of Mr. Hermann?

A. Well, no; no, I really—I don't know anything

about it. I am just in my father's—father said Binger Hermann ruled against him. That is as far as I know anything about it.

Q. But you are going to get that 120 acres if you can?

A. Yes, sir, that is a fact.

Q. Now, I suppose you mean that this land is suitable for agriculture, this railroad land that has timber on it, after the timber is removed?

A. Well, there is lots of it that can be cleared up that it hasn't got much timber on it.

Q. I am speaking now of that that his timber on it.

A. Timber on it?

Q. You would have to take the timber off it before you could plow it?

A. Certainly, it would have to be cleared and grubbed, certainly.

Whereupon, on redirect examination, witness testified that his father set out these fifty or seventy-five trees that are bearing, about six or seven years ago, something like that, but they have had no care, they were set out and stock has run on them, and they have been neglected because his father was sick all that length of time. He was an invalid on the flat of his back, in the hospital most of the time. This spring witness pruned them and plowed them and cultivated them, but did not spray them or anything like that. This is not the first year they

have borne fruit, they bore fruit about three years ago. His father got apples off of them when he was up there the last time, but they had been neglected since. Witness took out a lot of them that the gophers had eaten off, they hadn't had care. He took them out and set in new trees—left the best trees. He set out this year in the neighborhood of one hundred trees last spring, and has there something from one hundred and fifty to one hundred and seventy-five trees, more than that all told—he has two hundred trees, good trees, there are more than that, but there are two hundred that are good trees. He set those trees out to grow apples for his own use as well as to ship and sell. He also set out strawberry plants—five thousand strawberry plants last spring—and they are doing well, finest in the country, and he expects to have two or three hundred crates of strawberries next year off of them. He is preparing to set out more this season. They used to have a very fine strawberry patch there, and one summer they sold four hundred crates of strawberries off of those, at $1.50 a crate. They came on theFourth of July, when the others were all gone—there was a big demand for them. A little later they would come on when the market was the best. They all ran out for the lack of care and attention, and he plowed out the patch last year and set it in alfalfa last spring, and set out another patch. Alfalfa grows up there without irrigation, they cut three crops a year. It can be watered, all that land there has mountain springs and streams, there are springs on all of it, there is hardly a quarter section in there but what there is water—by

building a small reservoir one can get water on a great deal of it. It is his intention on this place to build a reservoir, in fact, he built the ditch last spring, he has the ditch dug, but he did not have time to build the reservoir. From his experience there and observation of the results, in his judgment, that land up there where he is, would ultimately be as good fruit land as the land in the valley, and for some fruits it is better, for apples it is better, it is a little high for peaches. They had some peaches this year on their trees, but he don't know—their peach trees are young—but he believes it is a little high for peaches, their pear trees are fine, they have a few pear trees and plums, pears and plums never fail to bear.

Whereupon, on recross examination, witness testified that there are some little apple trees shown in the picture there. The main orchard lays down on the other side of the house, that is an apple tree and that is an apple tree—pointing to the picture. Those apple trees were set out about four or five years ago. There is a tree right there, just a few days ago he picked two boxes of apples off that one little tree, which his father set out, he would think, about seven years ago, it is a red apple, he does not know what it is, but it is a nice apple. Some of the trees have died out in the open there, they were set out in rows, but then they have died out, there are little trees which he has set in there that don't show up, the trees died out for lack of care, and the stock beat them down, the stock got in on them. His father was sick and witness was not on the homestead at the time. Down below the barn he has a nice lot of trees, good sized, the barn is

on a little lower ground.

Whereupon S. N. WARFIELD, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-three years old, resides at Corvallis, Benton County, Oregon, and has been living at Corvallis ever since December 7, 1910, was born and raised in that county. Before coming to Corvallis he lived in Alsea Valley, was born in that valley in Section 7, Township 14 South, Range 7 West and has lived in Benton County all his life. His father was a farmer and homesteaded 160 acres, and then purchased 69 acres from the railroad company, and first moved on to a piece of railroad land, and after the surveys were made discovered that he was on railroad land, about a quarter of a mile too far on the north from his homestead line, and he then moved to the homestead. Witness was six years old when his father moved on this homestead, and recently after that his father purchased from the railroad company this other 69 acres, after proving up on his homestead, he moved back to where he had first made his improvments and his orchard. His father took up and moved on to his homestead about 36 years ago. His father intended to take a homestead there, but instead of getting the subdivisions that he intended to take, got off the line on to railroad land, and when he discovered the mistake, when the survey was made through there, he moved onto the land he intended to cover in his homestead settlement, and proved up under the homestead law. He does not remember how long it was after that, that his father purchased the railroad land, but he remembers

that he made his payments by instalments in ten years, and paid $1.25 per acre for the land. He could not say exactly the date his father bought that railroad land, but he knows it was recently after they moved onto the homestead. He purchased that about that time and began to make his payments about the time they moved on to the homestead, that was when the state school lands were selling at $1.25 an acre in Oregon. The homestead was principally bench land, he would judge there was about six acres in the bottom and the rest of it was what they call bench land, and this up-land, sort of rolling. His father lived on the homestead for some twelve or fifteen years, and his father's family lived there until they moved back on to the piece that had been purchased from the railroad company, and they are still living there, his mother is, in fact, his mother and one of his brothers are still on the place. They had a family of nine children and his father made his living in the farming business right there, all the time, on the place. Witness never left his father's home, his father died when witness was 18 years old, and he was the oldest one of the boys, but had a sister that was older than he was. The rest of the children were all younger, so he lived on the place and ran the ranch until he was married, and then he purchased a forty, right adjoining that, and lived there until he was elected county recorder and moved to Corvallis, lived there all the time. His house was within one hundred yards of his mother's. He managed and was really the head of the family ever since his father's death. That 40 acres that he purchased there was covered with brush

and timber, with the exception of about three acres, there was about three acres of cleared land at the time, that was a little burn when he purchased it. He has been engaged in farming his own place and that of his mother. He went to work and slashed that off, and has grubbed and cleared up a good portion of it now, and has cleared about 25 acres of his 40 acre tract. He raised wheat, oats, vetch and some clover on his father's farm and on his own farm. He raised corn, potatoes and all kinds of garden vegetables of all descriptions. Grapes do well, and they raised grapes, apples and pears, and they have a nice orchard now on the place. Referring to the Alsea Valley, he would not hardly be able to say how much it covers, on account of the way the river runs. Really the principal part of the valley lays in three sections on what they call the south side of the river, and then the North Alsea and the South Alsea; but it covers, he should judge, a township and a half or more. Practically using the watershed, there would be two, or three, or four townships there. In referring to the Alsea Valley he does not have reference merely to the bottom lands along the Alsea River, because he thinks there are many people living on the upland there, and he includes the benches and hill land as part of the Alsea Valley. That area taken in a township there, and extends from the river up and includes the benches and hills that were there. The valley practically is only at the widest place, he should judge, not more than a mile and a half wide, something like that. Along the Alsea river there have been settlements there for a number of years. The soil

of that bench land is really some of the richest land that they have, the soil is very deep, in fact, that bench land is where the large fern grows. Fern grows there probably eight feet high, lots of them, and where that large fern grows there is really some of the deepest soil that they have. He has cultivated this bench land, and it is productive soil. This bench land, with reference to the bottom land, lies higher. On their homestead, they farmed some 20 acres of bench land on the hill, and it was so steep they couldn't cut it with the binder, they used to cut it with a cradle, his father used to cradle it, and he has bound after him at different times by hand. He used to cut with a cradle, he and his neighbor, Mr. Steeplow, used to cut that with a cradle all right. Bench land and hill land are the same, he thinks it would be what one would consider either bench land or hill land, because what they call the hill is the rolling land, in fact, where it does not rise too high, because otherwise they would call it mountains. There are only two or three places they call mountains there, what they call Prairie Mountain and Grass Mountain, something like that, otherwise they would call it bench land or hill land. When he refers to bench land, he means hill land, the upland off the bottom. He does not mean table or level land, but he means the rolling land on the foothills. There are different people living in different sections that have different definitions for bench lands. It is rolling land, with a little flat on the top here and there. He has been engaged in farming in this country that he has spoken of since he was old enough to farm until

he was elected recorder and moved to Corvallis two years ago. He is acquainted with farming conditions in Benton County. Referring to Defendants' Exhibit 259, he notices the town of Alsea marked there, and the other markings thereon, pointing to the North Alsea and South Alsea, state that they are really the Alsea River, as they call it over there, they call one the South Alsea and the other the North Alsea. He is acquainted along Mill Creek, which is in Section 7, Township 14 South, Range 8 West, and right in there is the homestead and then a little further they had 69 acres there, in fact, he is acquainted with all of Township 14 South, Range 8 West, and the south half of Township 13 South, Range 8 West, and all of Township 14 South, Range 7 West, and he is well acquainted with Township 13 South, Range 7 West. His father's homestead is situated in Section 18, Township 14 South, Range 7 West. There is some timber in Township 14 South, Range 7 West, some very good timber, and there is a lot of it that has no timber on it at all, but is covered with some hazel brush, some little fir and there is some vine maple and cherry. He would think that he could tell what areas contain merchantable timber better from the sections. There is a portion of Section 9, and the north half of the north half of Section 11, and Sections 3, 17, 35, some in 25 and some in 19. In fact, there are not very many good sections in that township of timber. With the exception of these sections just mentioned the growth of timber is not heavy there, in any of those sections. The character of

the rest of the sections as to timber is that it is more or less scattered, open, and in fact, open bench, what they call open glades there, and there is lots of it that has nothing on it at all, just some little scattering brush. That township is what they call hill land or rolling land, principally rolling land. There are settlers living in that township on the even sections, every even section in that township is taken with the exception of the south half of section 20, and there are three quarters in section 32, he believes that is all but what is taken in that township. The character of the lands that are not taken there is rather rough and pretty steep, and is the poorest land in the township. Section 30 is not taken in that township. These lands were taken by homesteaders. They are living there and have proved up on their places. In fact, none of them have been sold to any companies. There are several sections of railroad lands in these townships there that would be just as good as a lot of that that has been settled heretofore, there is no difference between the odd and even numbered sections, the numbering makes no difference. The unsold lands of the railroad company remain practically intact as shown on this map, except for the few yellow markings and a few blue markings. They are as suitable for settlement purposes as the homesteads that have been taken up there, with the exception of some right along on the Alsea river which were taken in the early days, meaning adjoining the even numbered sections. He is acquainted with the railroad lands in Township 14 South, Range 8 West, and there isn't very much timber in that

township, in fact, there is but very little good timber in Township 14 South, Range 8 West, with the exception of Section 32. He does not think there is an even section piece of land in that township but what is taken, except about three-quarters of a section not taken. There are homestead settlers occupying the even sections in that township, sections 22 and 28 in that township are all homesteaded now, except there was one timber claim in section 28, the rest of it is all homesteaded and homesteaders are living there, and that is not as good as sections 23 and 15, which are better sections than those taken, better than the even sections there. Generally speaking the adjoining lands there in that section through that township, are of the same general character and formation,—the even and odd sections. He is acquainted with the south part of Township 13 South, Range 8 West, which is rough, in fact, it is what they would call the roughest land, about the roughest land in that section of the country there, that is further back from the Alsea river, and the ranches up on what they call Grass Mountain, which is, he should judge, about 3,000 feet high. Section 31 in that township has got some good land. There is a good portion of it that is covered with vine maple and cherry and soft maple, in fact, there are homesteads right adjoining that same township, that is underbrush more than timber, there is very little timber on it. There are settlers on the other even numbered sections, but not on all of them. Section 21 is principally all open, in fact, that was grazed two or three hundred head of cattle grazed every summer on

that. Section 20 is principally all open land, with the exception of one quarter section, the rest of it is all open land. Section 16 is all open and 22 is very nearly all open, it is in a burn, 22 is pretty badly burned. The north half of 22 has some tolerable fair timber, but the rest is all open. Section 27 is all open with the exception of the southwest quarter, it has some very good timber on it, the rest is all open land, in a burn. Section 36, part of it is farmed at the present time, there is a portion of 35 that is being farmed at the present time, it has been sold. 36 is a school section and 35 is a railroad section. There is not a heavy growth of timber in there generally through that township, except in the places he has mentioned. There are but a few sections of timber there, the south half of section 28 has a good growth of timber, and section 33 has one good quarter of timber. If the timber were removed, on the land he has mentioned, not very much on that up there could be cultivated, but it would be excellent grass land. There would be some of it that would be very steep, which would prevent cultivation there. There is some land in section 31 which could be cultivated, and quite a lot of Section 21 could be cultivated. only it is a little high for crops, about 3,000 feet in altitude. There are settlers residing in some of the even sections there, and also some cultivation of them. In section 6 it is all taken, in that township, there isn't but very little of it up there that is cultivated. The title to a part of these even sections has passed from the Government. The township generally is not very valuable for timber, with the exception of just a portion

of it. In the township, he should judge, there would not be more than one-fourth of the south half of it that would be valuable for timber at all, the rest is all open land. He is not much acquainted about the post office or town marked there on the map, Harlan. North there is the wagon road grant, the Yaquina Bay wagon road grant. He does not know just how wide that was, but thinks it was about a ten mile grant, but he is not quite sure of the width of that grant. The grant has been divided into small tracts and is being sold to settlers now, he could not say just how long settlers have been purchasing that land through there, he knows there have been several transfers since he has been in the office there. He has been up over that summit over the wagon road and also on the railroad, there are settlements all the way across on the road. They raise grain, vetch and dairying, goats, cattle and sheep up there, it is similar land to the land in the grant over south there. He is acquainted with a portion of Township 14 South, Range 6 West, not so well acquainted with that as he is further west, because his trading point is on the road to Corvallis and also to Monroe, and across over the county road running from Alsea to Monroe, and also to Corvallis. He is not very much acquainted in Township 13 South, Range 6 West. The lands he is acquainted with in Township 14 South, Range 6 West, are about the same as the lands in Township 14 South, Range 7 West, that is getting closer to the Willamette Valley. There is some good land right on the divide between Glenbrook and the south fork of the Alsea, there is a rich

dividing ridge between them. He is acquainted with some of the specific sections in Township 14 South, Range 7 West, and is practically acquainted with most all of them, it is open land, and can be cultivated after any timber or growth that is on it is removed. In Section 19, Township 14 South, Range 7 West, there is a portion that can be cultivated. The county road runs right through it. There is some good land, what they call bench or rolling land there, in fact, it is not steep at all, it could be easily cleared, and there is lots of it that has nothing on it only now and then an old snag, or a little hazel brush, or something like that. In Section 21 there is some good land, the northwest quarter of Section 21 has some good land, and it is practically level, the north half of Section 15 is all open land, there is no timber on it. The south three-quarters of Section 11 is all open land. Section 23 is principally open, and a portion of 27, though 27 is considered pretty rough, it rises up on the mountain. Section 19 has some good bottom land on it, in fact, his brother cultivated one forty there for six or eight years, or a portion of one forty. That is railroad land. He tried to buy it and the company would not sell it, so he continued to cultivate it, he fenced it for the company and cultivated it, that was in Section 19. Section 31 has some good land. Principally 31 and 37, and the north half of five, and portions of 33, are more adapted to stock raising than for agricultural purposes, there is a portion which would be good for agriculture. By agriculture he means tillage, plowing and sowing of grain. He has mentioned some sections which

had timber on them, and thinks that that which has timber on it would be just as good as the other for agriculture after the timber was removed and the land cleared. Section 19, where it has some of the best timber is some of the best land there is there. There is one hundred acres in one body there that is practically level, just a big level bench there, which is pretty well covered with timber. This 40 acre tract his brother tried to buy from the company, applied to purchase seven or eight years ago, and the company told him at that time that it had not placed a valuation on it and that when it placed a valuation, it probably would talk business with him, and before the company placed a valuation on it, it was taken off the market. His brother has applied to purchase it since then, within the last four years, and the company replied it was not selling the land, and that it was not for sale. In Section 5, Township 14 South, Range 7 West, there is probably 100 acres that is what is called Austin Howell flat, a big flat there, which is practically level. One can drive a wagon and team over all of it, and with very little work that could all be put in cultivation. In Section 23, Township 14 South, Range 7 West, there is what they call the railroad flat of 60 acres, that is practically as level as this floor. It is all just now and then scattering timber up on the benches, and could be cultivated, in fact, the land right by the side of it, is being cultivated up above. There is a ranch of 160 acres right by the side of it, and it was taken up three years ago, and was sold a short time ago for $3,500, right adjoining, the same kind of land. This 160 acres

adjoining this Section 23 was sold this spring. Section 21 is good land, there is a lot of bottom land in Section 21 that is covered with cherry and vine maple, there has been an application made for that. A fellow went to work and built a house on it, but finally abandoned it on account of not being able to purchase that. This was within the last six or eight years. He does not know what reply was received to the application. This man did a little slashing and built a house on that, and the railroad company refused to sell. This tract was on the bottom, there was vine maple and cherry on it, there could be 25 or 30 acres rendered tillable easy enough, it is right on the river, on what they call the Salmonberry stream. In Section 29 there is some good land, a man by the name of Roland improved some of that in there and built a house, but on account of not being able to secure title to it he had to abandon it, this was within the last seven years. Roland tried to get 80 acres of this railroad land. He probably could have gotten 15 or 20 acres of tillable land by clearing, out of that 80, on the little creek there. There is Section 17, Township 14 South, Range 7 West, which has been sold by the railroad company. Section 7, Township 14 South, Range 8 West, has a lot of open land. The west half of the west half of Section 7, Township 14 South, Range 8 West, is practically all bottom land. The railroad company sold that a few years ago to a man by the name of Chastine, who made a couple of payments and was not able to complete his payments and let it go back to the company and forfeited his contract. He could have

cultivated and made tillable at least half of that land. It lays right on the Alsea river bottom, right along the river, this man agreed to pay three dollars an acre for it, this must have been about 13 or 14 years ago that he entered into that contract. Section 15 has very little timber on it. Section 15, Township 14 South, Range 8 West is what they call principally rolling bench land, these open glades and benches, quite a portion of that could be cultivated, also Section 11 has a lot of land that can be cultivated, that is all in Township 14 South, Range 8 West. In Section 5 there is very little land which he would consider tillable land, some of it is a little steep, it is principally open, but a little steep. The soil is very good soil, but it is more adapted for grazing than for agriculture. They cultivate some of that steep land there, they cradled land adjoining this Section 5. In 14-5 there is a man by the name of Strake who bought 40 acres out of that section and has a nice orchard there, he and his family are living there on that place and he has cultivated land so steep that he had to mow it and then he was not able to put his team on it to haul that off, so he fixed it up and shoved it down the hill with a pitch fork, down to the road, where he could get it into his wagon. But he grows vetch there as high as a mans' head on that hill. He can slide his crop over his land, but he cannot drive over with his team, that is, with a wagon, they manage to plow that land, but it is pretty steep plowing, he had to plow it down hill, he can use a plow on it, but could not run a wagon or two-wheeled vehicle, he could not plow but one way either,

he had to plow around those knolls. Some of them have reversible plows, hillside plows, and they will plow through and reverse and go back again, reversing the mold board on it. A portion of Section 3 has some good land, the north half of the north half of 3 is not very good, in fact it is too steep, the greater portion of it would be too steep. There is some little timber on it, but there is some good land right in on the bottom, on what they call Schoolhouse creek, that has some good land on it. A man made an application on that a few years ago by the name of Taylor, and he failed to make his payments and it reverted back. He could not say what he did agree to pay for it at that time, because it has been some 15 years ago, most of it at that time was about $2.50 an acre, that is about 15 years ago since he made application for the land, he could not say when that land was forfeited. Section 31, Township 13 South, Range 7 West, has a lot of open land on it. There is a very little open land in Section 13-7, with the exception—that is, that would be suitable for tillable land, the northeast of the northeast part of the township would be more adapted to grazing than it would be for tillage, that is in Township 13 South, Range 7 West, there was a heavy burn there a few years ago. There are some settlers in there. Recently, this last fall, settlers have moved in there, they have applied to the county to build them a county road in there and the county has already sent the county surveyor to survey it. There is a great demand, he thinks, for lands for settlement purposes and there has been a number of people in the office inquiring

for land that they could get, as much as ten or fifteen acres which they could use for cultivation. Practically this land that these settlers went in on in that northwestern portion of the township there, had no value except for farming, agricultural and grazing purposes, there is no timber value there. That is not nearly as good land as some of the land that he has mentioned, and it is not so handy, accessible to get to, there is no road to it. There is no road running through there, but those sections he has mentioned, there is a county road right past them, or running through them. He does not know but what he has pretty well gone over a good portion of the townships, or sections there, that he is acquainted with, there might be some, but it would be scattering, so far as he knows now, that would be all of it.

"Q. Mr. Warfield, what has been the effect of the railroad company's failure to fulfill the conditions of this grant and sell this land to actual settlers in tracts of 160 acres, on the community there in which you are acquainted?

A. Why, I think it has retarded the country a good deal, on account of settling up by settlers, because there would have been many that would have been able to have gone on to this land and made homes there, for there are people making homes at the present time on land no better, and some not as good as a great portion of this land that is idle at the present time."

Whereupon witness testified that this hill land as compared with the valley land is the best fruit land that

they have, and the reason for that is, that it is considered self-drained land, and not only that, but where this large fern is, the soil is more porous, and is more adapted for fruit raising than what it is on the lower clay or sandy soil, it is the best fruit land that they have. The trees are not infected as much with disease and pests in the hills as they are in the valleys, in fact, they are not affected in the Alsea valley anything like they are in the Willamette Valley, but very few pests in that section of the country. The farmers there in that section of the country that he is acquainted with have lots of goats. He has never raised any goats, but his brother has been in the goat business for a number of years, and is at the present time, he has something like 100 head and has run as many as 250 head. Goats are a productive animal from a financial standpoint, in this particular, on this tract he mentioned awhile ago, his brother homesteaded 160 acres adjoining that, and the river being not far from his house there, and he had a large foot log across the river, and he would put the nannies on one side of the river and the wethers on the other, and the last winter that he had goats in on that place, the wethers were never fed a bite from the time he sheared them. He said he salted them a time or two, but he made no provision for winter feeding. The climate is not severe in that country. The country is adapted to goat raising, they do well there, goats are palatable as a food, and besides they get the increase and the wool, and he considers a goat just as good as a sheep. Whereupon, on cross examination, witness testified that his father and mother

were married in the Alsea valley, and settled and made a home there about 45 years ago. There were a few settlers in the Alsea country at that time. The Alsea River empties into the Pacific Ocean and gets to be quite a stream by the time it reaches the coast, it has two prongs near the post office at Alsea, one the North Alsea and the other the South Alsea, and that heads in the Coast Range Mountains. These homes about which he has been speaking are all of them on the west slope of the Coast Range. There is a portion of this cleared land where there has been a big burn, which was there 50 or 60 years ago according to the traditions of the community. The town of Alsea, he would judge, has some 25 or 30 houses, three stores and a post office. There is no saw mill at the village there, but there is a saw mill in the valley, there is one not far away. He should judge that the Alsea Valley is from a mile to a mile and a half in the widest places. It does not widen out into tide land as it gets towards the ocean, not from the Alsea Valley. From the Alsea Valley down to the head of tide water it is narrow, and one might say, one farm after another along down the river. It is not wide down there. There is no tide land until one gets down on the Alsea Bay, there is not much tide land around the Alsea Bay, but very little. Alsea has had 25 or 30 houses within the last year or two. The Alsea Valley has not been isolated and cut off by itself there over the Coast Range, away from Corvallis and the valley before the last ten years, more than now, only within the last three or four years they have made more improvements in the roads. They

do not raise the amount of grain in the Alsea Valley that they did twenty years ago. They turn it to stock raising and dairying. It is a clear stock and dairy country. These settlers that he says have gone in there on these hill lands have gone in there within the last 15 years, he should judge, with the exception of a few right down on the foothills adjoining the valley, what they would call probably along the river. Most of these railroad lands that he knew of having been sold, with which he is acquainted, in these various townships that he has described, were sold for about $2.50 an acre. These people who have applied to purchase in the last seven or eight years, have just applied for their prices, there are some of them who have made offers higher than $2.50 an acre for the lands. There were a number of these people living in the valley there who were bona fide applicants, but they were not attempting to get this land for $2.50 an acre under this Act of Congress. There is one man in beyond, by the name of Spencer, who has been living on a place there for 25 years before it was surveyed, and when it came to be surveyed, the railroad company got part of his house and a good portion of his orchard, and he made application to them, and then they would not sell to him, they have not put him out of his house, and he was living there, it was a homestead.

Q. You don't speak of that for the purpose of raising a prejudice against the railroad company?

A. Certainly not, not at all.

Q. You speak of that as an incident?

A. Just an incident.

Q. I don't refer to that kind of applicant. I refer to these people that are going out, applying for this railroad land, offering to pay $2.50 an acre for quarter sections of timber that range from eight to ten million feet to the quarter.

A. Yes.

Q. That is worth from $5000 to $10,000 today?

A. Yes, sir.

Q. You haven't any of that class of people over there that are making these applications, have you?

A. Very few of them.

The even sections, or parts of the even sections, are all taken, and title has passed from the United States to them. The principal part of these settlers residing in Township 14 South, Ranges 7 and 8 West, reside on the lands, and in the south half of township 13 South, Range 8 West, there are some who do not reside on these lands. There are not any homesteads applied for, or proved up on, or commuted, in the timbered part of these sections, the even sections, where they do not now live on the land. There were a number of homesteads filed there in Township 13 South, Range 7 West, but they changed from that before they made their proof, and took it under the Timber and Stone Act, in Township 13 South, Range 7 West, where it was suitable for timber. The Timber and Stone Act was passed in 1878. Twenty years ago, of course, there was not the demand for these

railroad lands that there is at the present time. At that time $1.25 to $2.50 an acre for these railroad lands would have been considered dear, of course, land values then were less than they are now. There were not the applications at that time, not like there are at the present time. In fact, there was not the demand for that railroad land at that time.

Q. Twenty years ago they could have got that land from the railroad company at probably $1.50 to $2 an acre, and it would have been dear at that, wouldn't it, looking at it at that time as it then appeared?

A. At that time it would have been considered, of course, land values then were less than they are now, yes.

Q. I understand, but at that time people didn't want to buy that land hardly at any price twenty years ago.

A. There were not the applications, no, at that time, not like there are at the present time.

Q. Just put yourself now in the position of the railroad company, and assume that the railroad company could only sell to actual settlers, in quantities not to exceed 160 acres, at a price not exceeding $2.50 an acre, isn't it true, to your knowledge, that from 1860, well, 1870, we will say, up to 1890 there was substantially no demand for that land except a few preferred quarters close to settlements?

A. Well, in fact there was not the demand for it at that time, and I presume there were not as many applications sent in on that at that time so much.

Q. In other words if the company would have been sitting around waiting for the actual settler to come, for about twenty years he would not be coming, would he, even at any price, from 1870 now down to 1890?

A. Of course, I don't know the conditions so much at that time, because that was really before I was at an age to take much interest in land values.

Q. I know, but your knowledge is based upon what has happened since?

A. Yes.

Q. Now, you know that up to 1890 there wasn't any demand for this railroad land of consequence?

A. Not so much as there has been in the last eighteen—sixteen or eighteen years.

Q. Yes, and most of that demand has been in the last eight or ten years? The bulk of the demand for these lands has arisen in the last eight or ten years? That is true, isn't it?

A. More so in the last fifteen years, yes.

Q. Prior to that time though there wasn't much demand for that land?

A. Not so much, no, because the condition of the roads then at that time was not good there.

Q. Well, don't you know, Mr. Warfield, as a resident of Oregon, that the lands in the mountains or in the timber or in the foothills from 1870 up to 1890 were practically unsought for any purpose, excepting

along the streams and in the old settled parts, like your father's place over there on the Alsea? Now, isn't that historically true?

A. Well, to a great extent it is, yes.

RE-DIRECT EXAMINATION.

Q. Now, Mr. Warfield, these people that have applied for land that you are acquainted with, over there in 14 south 7 and 8 west, they were people who sought the lands for purposes of settlement and agriculture, as I understand from your testimony?

A. Yes, sir.

Q. People who resided in that country?

A. Yes. There were a great many that I know of throughout the valley there that made applications for land there.

Q. They were not any timber speculators or people desirous only of procuring timber that might be on the land?

A. Not adjoining what we call the Alsea valley, or tributary near there. Of course, there has been applications on some of the timbered land through there. It has been filed.

Q. What have been the prices asked over there, do you know, in the last ten years on that land by that railroad company?

Mr. Fenton: By the railroad company?

Mr. Rabb: Yes, prior to the time that it was withdrawn from sale.

A. Before it was withdrawn from sale there was, for instance, Mr. Banton, Mr. Wrenn and Mr. Peak and Mr. Sapp a number of them that had settled on some land there before it was surveyed, and the railroad company asked them $7.50 an acre for this land. That was before it was withdrawn from sale. And so they carried this up—that has been going on now for, I should judge, about sixteen years. They won out here a few years ago."

Whereupon witness testified, that there were settlers on that land prior to the original survey, the man that the line ran through his house and orchard was D. R. Spencer, who attempted to purchase it from the railroad company, and the company would not sell it to him, that was some 15 or 16 years ago, recently after it was surveyed, when the patent was issued or the survey was made. The survey was made about some 18 or 19 years ago. He was a farmer, engaged in farming that land, and is living there at the present time. The settlements in this country were first made along the roads, which generally followed the rivers, and since that time these settlements have drifted back to what they call the bench lands, the upper land, gone up from the bottom lands on to the hills. He is not acquainted with the demand which was made of the railroad company between 1870 and 1890, not so much owing to the demand, because he has never himself made any applica-

tion for the land, being situated as he was, and not able to go on the land. The only demand that he knew about was such as he would hear of neighbors applying to purchase the lands. In fact he knows that his brother has tried to buy that land adjoining him there, and also a younger brother tried to buy land in Section 23, Township 14 South, Range 8 West, and the company refused to sell that. They wanted that land for agricultural purposes. His brother, as he has stated, cultivated a portion of that forty and improved it. He has testified that one brother applied for the land adjoining his homestead, that was after he had taken his homestead. His brother applied to purchase that land within the last six years. This is farming land, and is the tract he spoke of awhile ago, in what they call the Railroad Flat, it is practically level, just now and then a scattering tree on that, it is what they would call farming land, because it can all be farmed, every bit of it. Whereupon on recross examination, witness testified, that every thing is called a farm over there, every 160 acres that is taken that may some day be cleared, in a way, some of them would call a very small tract, one might say, their farm, because they use that for raising their feed for dairying. It is a great dairy country. If a man had 160 acres, and there were three acres that were cleared, he would say he had a farm, generally like he was speaking awhile ago of the bench land. Whereupon on redirect examination witness testified, that Corvallis is one of the greatest dairying centers in Oregon, one of the largest creameries in the state, outside of Portland, is

at Corvallis. The celebrated Corvallis butter is made at Corvallis, and they have a creamery in the Alsea Valley. Township 14 South, Ranges 7 and 8 West, is more or less used for dairying, they have a creamery in there, they have a stock company and there are 100 stockholders in that creamery. They have a creamery right there and they ship their butter to Portland. They have wagons going out and collecting the cream. This land that he has testified about is generally well adapted for dairying purposes. In fact, the clover grows right on the highest lands there. They raise some of the best clover there is in the valley on that land. The altitude of none of this land is too high for dairying purposes, excepting what he was speaking of in the south half of Township 13 South, Range 8 West, up there in Sections 20 and 21, there was a man drove his dairy cows up there this last summer, and dairied all summer there, but in the winter time the snow gets a little too deep for it to be practical. If he had hay there he could winter his stock there, if he had feed there. These homesteaders up there in the even sections are all making a living on their lands, all that have been in there any time, long enough to get any improvements made so as they can raise feed for their stock.

Whereupon, I. B. SPIKER, a witness called on behalf of complainant, being duly sworn, testified, that he is twenty-eight years old, and the majority of his time he has made his home at Glendale, Douglas county, Oregon, where his folks live. He has lived in Douglas county ten years, and it was ten years ago

when he came to Oregon with his father. His father bought a ranch at Oakland, Oregon, of four hundred and eighty acres, when he came here, it had been an old improved ranch. They cultivated part of it, but used it principally for a stock ranch. It was on the mountain side, on the slope of the mountain side, and they practically used it for stock ranch. They did not aim to farm to any extent on it, only just raise what hay and like of that they wanted for farming purposes. That land was rough, what they call rolling land, it was just kind of on the hillsides, might be on the slope. It was on the slope of the mountain side and it was rolling, and there were draws running through it. There was some timber, what one might call timber or brush on it. Nearly all that country in there, not all of it, but on this place in particular there was young growth fir from four to ten or twelve inches in diameter. His father cultivated about seventy-five acres, raised hay, but did not thresh any, they cut it all for hay for the stock they kept on the place, it was oat hay and vetch. They raised wheat hay, wheat and barley. They raised all the vegetables that they needed, and raised fruits on that land—all kinds of fruits there, apples, pears, peaches, plums and grapes. He does not know how long that land had been occupied for farming purposes exactly, but it had been taken up quite a while ago. There were three homesteads there and his father bought the three of them, and like old Oregonians, they had done practically nothing, only lived there on what was coming in easy, and that was all there was ever done

on it. There is railroad land on the north and south of this place, but he could not say as to the sections because he was never very familiar with the sections. One piece of that railroad land adjoining the farming land that is on his father's place is just like the rest of the land there. It is good black soil, suitable for farming purposes, could be plowed just the same as the rest of it is there alongside of it. There are eighty acres in that piece of railroad land on the one side there, and on the other side he believes there are a hundred and twenty acres, but would not be sure. That is in township 24, he believes, range 6, but could not be sure, he does not know the sections. His father's place is about eight miles from Oakland northwest, and Isadora is north of Copeland five miles by sections, in township 24, range 5 west. He thought it was about a mile and a half west from Isadora, it was on an even section, was homesteaded. The first four or five years they were near Oakland, they lived on the farm there all the time. The map shows some railroad land there that has been deeded. There is some deeded land adjoining the ranch there, railroad land, in section 13 and in several of the other sections there are smaller parcels. In township 24 south, range 5 west, the railroad company has, in section 3, eighty acres, in 29, twenty-eight and forty-one hundredths acres, in 31, two hundred thirty-six and seventy-three hundredths acres, and in 35, eighty acres, that is all the railroad land in that township unsold, as shown by the map. He has been engaged in the farming business and is acquainted

with the farming conditions in Douglas County, in his experience there on the farm. Referring to "Defendants' Exhibit 259," the country right in there at Isadora, where his father lived, he has been over, he has hunted sheep and cattle and the like of that all through that country. Of course, all these corners and sections, he never took any particular interest in them, because that was not interesting to him. But so far as this country is concerned in township 24 south, range 6 west, he has been all over this land and country in that township, he would not say over all the township either, because there might be some of it he had not been over, but take it in general, he has been all through there down to the Umpqua river. The Umpqua river is a pretty crooked river, pointing to the land indicating township, 24 south, range 6 west. He has been over that land sufficiently to acquaint himself with the general formation and character of the soil, referring to the lands just described in township 24 south, range 6 west, and extending into range 7 west, to the Umpqua river as shown on "Defendants' Exhibit 259." He has been over that land a good deal, knows the lay of the land to a certain extent, and what is on it, and what they do in there. He would judge that from 50 to 75 per cent, somewhere in that neighborhood, of that land could be rendered suitable for cultivation, in his opinion, after any timber or any other growths that may be on the land are removed and the land cleared, it is rolling land, it is not level land. That country is not level by any means, but then the majority of people use that

land who have it in shape to use. That land as compared with his father's place is practically just the same. It is all rolling land and the country is practically the same all the way through there, there are hills and canyons. There are settlers on nearly all those even sections in there that are not deeded. There is some of that land which has been deeded, sometimes when some of that land was taken for timber, they entered it under the Timber and Stone Act, and the Timber and Stone entries were deeded. The settlers there have stock, and raise stock and turkeys, and things like that. Sheep and goats are what they principally make their living off of. They cultivate the lands for their own use. Wherever they want lands they need to cultivate, sufficient to get what produce they want from it, for their stock and the like of that, they cultivate the lands and raise hay on them for their stock that they have there, and their garden stuff, and such like that, and have little orchards. They raise any kind of grain that they have a mind to sow—wheat, oats, barley and rye, and have all kinds of fruit—apples, pears, peaches, plums, cherries. That is not a heavily timbered country, it is not what one would call heavy timber, there is a lot of underbrush and young growth which has timber in it, but it is not an unbroken forest, it is not what one would call a solid belt of timber, anything like that, it is spotted, some places there are large trees, and some places there are small ones. In township 32 south, range 7 west, and township 33 south, range 6 west, shown on this map of the lands covered with the green markings,

he is acquainted with that. He has lived at Glendale for the past seven or eight years, that is, his folks have lived there, and he has been there the majority of the time—and he has been around in that country and knows it in general. He does not know it as to any particular sections, to point the sections out, he does not know just how the sections lay. He became acquainted with that country by driving around over the country there, on the wagon roads. He used to drive a livery team there, and drove around that country and got acquainted with it in that manner. He has been around in there some and has a general acquaintance with the lands in those townships. On the creeks, there are lots of level bottom lands, but when one gets off those creeks he will find land that is rolling, and probably little flat places on top of ridges, or benches—he does not know which one would call it—but kind of flat places. One could probably go up a hill a ways, and then would strike a flat or something like that, and on those places, as a rule, there is lots of good soil. One will find little spots in there, probably from an acre to three or four acres, which have very good grass on and the like of that. Then in the burns, where the brush happens to be burned off or something like that, they grow good grass. Around in there, if the brush and timber were removed in that country upon any of this land, he believes 50 per cent would be tillable land if it were cleared up so a man could work it. It is not so rough but what it can be worked. He is acquainted with the lands in township 25 south, range 7 west, north and

west of Stephens, along the railroad track, and he has been along the railroad track several times over a wagon road. A good many times he has traveled over that. A good deal of that land, he notices, has been taken up and was lost to the grant by reason of prior entries, indicated by the yellow markings on this map, "Defendants' Exhibit 259." He is acquainted with these tracts near the railroad that are marked in green, south of Oakland, which is on a hill. There is a divide about two miles and a half above Isadora, which is north. The tract that he is speaking of is south. That country in there has young growth trees, from eight to ten inches through. There is some of that land there which is deeded land, upon which they have cut cordwood and piling and stuff like that. But as to that one piece in particular, he never was on it to his knowledge but then that is what that is, but it is young growth timber, what they call second growth. That has yellow land there in all that township except that tract, showing that the railroad company lost it by reason of prior entry. Now, in township 32 south, range 7 west, there are settlers there, that country is all settled up in there. It seems as though every place that that land is not deeded in that country, there are settlers on it, it seems as though people want to get hold of land all the time. There is no land in that neighborhood that anyone seems to know of that is government land, or anything else that can be gotten now excepting what is in the Reserve. There is some government land, some in the Reserve there, quite a lot of it, there is no vacant land at all,

there might possibly be an eighty or something like that once in a while, but they are very scare. If these lands were divided into one hundred and sixty acre tracts, in his opinion that average would hold good generally as to those hundred and sixty acre tracts.

Q. In your opinion, Mr. Spiker, in these communities that you are acquainted with, what has been the effect of the railroad company's failure to fulfill the conditions of this grant and sell the land to actual settlers at $2.50 an acre—the effect upon the community?

A. The way the majority of the people seem to think, the way the land is and everything like that, I don't think it would be any doubt but what it wouldn't be but a short time till the large majority of that land would be occupied by people.

Whereupon witness testified that there would be people who wanted to have homes and make a living off of it, and would be willing to settle on this railroad land. At the present time, it is nearly impossible for a man to get hold of a piece of land at a moderate price, one can buy all the land he wants, if he has plenty of money and wants to pay the big prices that land is worth. He believes that it was in 1907 that he made an application to get some railroad land in the Kellogg district on the Umpqua—not on the river. He has forgotten the price of it because he did not get any reply to his inquiry, he couldn't get it. That was in 1907, he believes it was, and he has forgotten all about it. He knows the character of that land and was on it.

It is rolling land and there was some of it that had this young growth fir on, and some had large trees on—trees among it—and then there were some open spots. He thought at the time he was on it that if he had it cleared up, there would be a hundred acres that could be farmed on it. The young growth of fir, grows pretty thick on it. Of course, it is small but it is thick, and to start in with, a person gets that timber cut down and the ground seeded for about five dollars an acre, and it then makes good grazing land, and afterwards the stumps come out easy. It is not good merchantable timber, that young, and take it in that country, the young growth timber is considered worthless on the ground at the present time, of course, there will be a time when it will be worth money, he expects, but at the present time it is a detriment to the country, because there is no pasture land on it, and it is just standing there, and one could not pay his taxes on it if one would leave it standing there, unless one would wait and consider the growth of the timber on it. The increase in the value of the lands would pay the cost of keeping it all right enough, if a man wanted to keep it and had it so he could keep it. There will be a time when it will be worth something all right. He was intending to use that land for a kind of home, and a stock country, it seems like as though everybody figures on stock, there is really more money in stock. Take lots of this bottom land, a man can make more out of it by running stock on it than he can by farming it. He made an application through a lawyer in Roseburg, and paid

him a fee—thinks he paid him five dollars but would not be certain, he thinks it was five dollars he paid him for making his application. There were several of them who wanted to get hold of some land in that country where they would be in there, together.

Whereupon, upon cross examination, witness testified, that the lawyers he applied to were Orcutt and Fullerton, living at Roseburg. He knew how to select the quarter section because they were in there on the land. About that time they were told about this country being opened in there, and they thought they could get some homesteads in there or buy that land, and he and another man went in there and looked it over. The other man was not a cruiser but was a man who wanted to get some land in there too, and they both went in there together. He would judge that this land was about forty or fifty miles, something in that neighborhood, from Roseburg, on the Umpqua. The Umpqua runs together in there, they fork down the other side of Roseburg, and they both empty in together. It was west of the forks of the Umpqua. Kellogg is west from Roseburg. He might have said that it was east of Roseburg, but that was mistaken if he did say so. It was not over on the headwaters of the Smith River, it was in the Coast Range.

Q. It was in about the best belt of timber there is in western Douglas County, wasn't it?

A. Well no, I hardly think so.

Q. Well, it was good timber land, wasn't it?

A. Well, some of it has good timber, yes. There are some large trees.

Q. How much timber was there, saw timber, on this quarter section that you picked out, in your judgment?

A. Well, I am no judge of timber, that is, to estimate or anything like that.

Q. Did you have an estimate?

A. No.

Q. Did you think about the timber at all when you were going out there to find this quarter?

A. Well, not any more than anybody else. I didn't know what we were going to find when we went in there.

Q. Well, most anybody else would have been looking for timber, wouldn't they, about that time?

A. Why, there were lots of people that was taking timber wherever they could get it.

Q. There was a timber rush, as some of the witnesses have said, about that time, wasn't there?

A. Yes, that is about the time there was lots of timber taken.

Q. And they thought they could get these railroad lands for $2.50 an acre for that purpose among the rest, didn't they?

A. Well, that might have been some people's ideas, all right enough.

Q. Well now, just be square, Mr. Spiker, and tell the real fact. Weren't there several thousand applications worked up there in Douglas County, by Leavengood and Orcutt and the rest of the people out there, and you went in at five dollars a head, and sent your application after you had gone out and found where you wanted to locate? Now, isn't that the fact about it?

A. Well, I don't know as to the facts of the other people; but after this other man and I went in there and looked the country over, why that country is just practically—they talked about very good timber; of course I am no cruiser or anything like that; all I can tell I can tell when I see sticks on the ground, but as far as knowing how much is in them I don't know anything about that.

Q. You can tell when you see a tree that is 150 feet high and 6 feet at the butt, can't you?

A. Oh yes, I know one of those from a small one all right enough.

Q. You recognize one of those from young growth that is six inches at the butt and 25 feet high, couldn't you?

A. Oh yes, I could tell that much.

Q. Don't you think as a simple layman that you could give a pretty good guess whether a quarter section was good for timber or whether it was good for farming, to plow without the timber? Couldn't you tell that?

A. Well, that was owing to how much they would value this timber at.

Q. Well, you wouldn't have to be a blind man to tell the difference between a piece of land that was chiefly valuable for timber and a piece of land that in its present state was chiefly valuable for agriculture, would you?

A. Well, not at the way it would stand, a person could easily tell that.

Q. Did you make a written statement to the government inspector of what your testimony would be in this case—sign a written statement?

A. Yes.

Whereupon witness testified, that he forgets the name of the inspector, and he has not the statement he made with him. He does not remember the description of the quarter section that he applied to purchase at two dollars and a half an acre through his attorneys, but referring to the copy of the affidavit furnished to counsel by counsel for the Government, it was in township 24 south, range 7 west, Willamette Meridian, to the best of his knowledge. He offered to pay the Railroad Company two dollars and a half an acre under this Act of Congress which he had heard about. He does not know that there was any particular value put on that land that he applied to purchase. It was worth enough, in his judgment, so that if a man wanted to make a home, he could make a home in there. It was not worth—it would not be worth in his judgment, at

that time, three thousand dollars or five thousand dollars. One could buy pretty good timber at that time for less than three thousand dollars. He does not know if it was worth two thousand dollars, if he could have gotten title to it. It might have been, if he could have found somebody who would have bought it, it possibly would have been.

Q. I know, it might have been worth $10,000, depending upon the amount of timber?

A. Yes.

Q. But what was it worth in your judgment?

A. Well, I don't know hardly how to answer a question like that.

Q. It was clearly worth $400, what you offered to pay for it, wasn't it?

A. Yes, it was worth that much, or a person wouldn't probably have wanted it.

Q. It was probably worth $1000. You were safe in figuring it worth $1000, weren't you?

A. Why, I should think it would be worth $1000. It might be worth more, as far as that is concerned.

Q. Didn't that quarter section have three million feet of saw timber on it?

A. Well, now, I don't know as to that. I couldn't say that, because I don't know.

Q. You couldn't' say whether it did or not?

A. No.

Whereupon witness testified, that the young growth was second growth fir, and was thick and stood practically thick on the ground so that there was nothing else that would grow in under them, the young growth shades the ground. He does not think the second growth trees, on an average, would be as high as 100 feet, but would be something in the neighborhood of 50 to 75, and from six inches up to eighteen inches at the butt. He has followed farming as a rule the majority of the time, but he is not in that business now and is not on any farm now. He was in the butcher business at the time he was in Glendale riding around on the roads there, and when he was on his father's farm there about a mile and a half west of Isadora, he was just working on the ranch. His father did not take up that land as a homestead, but bought it from a fellow by the name of Sam Whittaker. His father had 480 acres, and he thinks he paid in the neighborhood of about twenty-one or twenty-two hundred dollars at that time, but would not be certain. That land is now worth probably four thousand dollars. There is about seventy or seventy-five acres in cultivation on the farm, and when his father bought it there was just about the same. Those from whom he bought had never cultivated it, but his father had cleared up some of it, cleared up part of it. He would judge they had cleared up fifteen acres on the place since they bought it, which would make from seventy to seventy-five acres in all cleared. He could not say whether that was an old settled place, he does not think it was a donation land

claim, because there were three different people who owned that land as homesteads. He thinks there were three different homesteads filed on it, but does not know when these homesteads were taken.

Q. It was in the early settlement of the country, wasn't it?

A. If it had been very early, they would have put a donation claim on it instead of taking single claims, would they not?

Q. Not necessarily. The homestead act was passed in 1862.

A. Yes.

Q. About six years before this land grant took effect out there in that section.

A. Well, it might have been settled there for quite a while.

Q. If it was 1862, that would be fifty years ago, wouldn't it?

A. Yes. I have heard them say—I have heard people say in that country that they rode over that country there when this young growth stuff that is growing up all over the country now was all prairies.

Q. Yes, in other words, this young fir has grown up within the knowledge of the white settlers, for the reason that before that time the Indians burned the grass and kept it down?

A. Yes, sir.

Q. And wherever the timber has been allowed to grow, within the memory of white men, in that section of the country, this young fir has grown from nothing up to twenty inches at the butt, hasn't it?

A. Yes, I guess it has.

Q. Within the memory of white men now living?

A. Yes, that is the way I understand it.

Q. Are you one of the interveners in this suit, represented by Mr. Leavengood or any other attorneys?

A. No.

Q. You haven't brought any suit to enforce your application to purchase this railroad quarter?

A. No.

Q. Now, did you ever take a homestead?

A. Why, I filed on a homestead, yes.

Q. Where was that homestead that you filed on, in what section, township and range?

A. It was in township 32, range 11 west.

Q. Is that in a timbered belt?

A. Yes, there is timber in that country in places, like everywhere.

Q. Was this piece of land that you filed on an open farm, cleared land, or was it a timbered quarter?

A. No, there was timber on part of it and part of it was burned off.

Q. Did you ever live on it?

A. Yes, sir.

Q. Are you living on it now?

A. No, sir.

Q. When did you file on it?

A. I believe it was in 1906 when I filed on it.

Q. Did you make final proof?

A. No, sir.

Q. Did you let it go?

A. Why, they returned my filing. The railroad company returned my filing. It was on railroad land.

Q. You mean you applied to purchase a railroad quarter?

A. No, it was not to purchase—I filed on it.

Q. How do you mean you filed on it? How could you file on it?

A. Well, I don't know as to that, but they accepted my money, and kept my money for about two or three years, and then returned it to me.

Q. And you kept the money?

A. Well, when they returned it to me, why shouldn't I?

Q. Do you still claim the land?

A. No, sir.

Q. So the trade was off?

A. Yes, certainly.

Q. Did you offer them $2.50 an acre, when you made this filing, as you say?

A. No, it was supposed to be filed on there at that time. There was no offer made at all for it. It was filed on.

Q. How do you mean filing? What did you do to file on a piece of railroad land?

A. Well, there was I and there was a couple more boys; it was unsurveyed land when we first located it.

Q. Unsurveyed?

A. Unsurveyed land; and we went in there and we settled in there.

Q. What do you mean by settled?

A. We went in and made our homes and improvements in there.

Q. That is you took along some coffee and provisions and bacon, and you stayed all night?

A. Well, the necessary stuff for a man to live on in there.

Q. Yes, for a day or two?

A. Well, I guess it was more. I put in the majority of my time for two years in there.

Q. Settling on this piece of land?

A. Settling on that piece of land, which I thought was mine.

Q. I see. Well, what did you do now on this quarter section? Just tell us?

A. Well, I had my house built there on it.

Q. How big a house and what was it out of?

A. It was a house about 14 feet square—12 by 14.

Q. Built out of shakes?

A. Built out of logs.

Q. Built out of shakes that were made there?

A. No, sir, it was made out of logs?

Q. Well, you covered it with shakes, didn't you?

A. Yes, I covered it with shakes.

Q. Made right off the ground?

A. Yes, sir.

Q. Did you furnish it?

A. Yes, sir, we had our stove and our beds.

Q. Did you have your wife with you?

A. No, sir, I am not married yet.

Q. Oh. Well then, what did you do while you were out there? What kind of work did you do on the place?

A. Why, I worked around there trying to fix things up to make something out of it, and make a home there. While we were in there we was working there all the time on our land.

Q. How much did you clear of this 160 acres and

put in cultivation.

A. Why, I didn't—I had about two acres right there where my house was, and there was in the neighborhood of sixty acres of a burn on it.

Q. Did you sow that sixty acres to something?

A. No, sir, it was all—been wild grass growed right there.

Q. Did you have some stock in there?

A. Yes, I had my horses in there was all.

Q. You didn't turn your horses loose in the country, did you, and let them go in there?

A. Yes.

Q. Let them range in there. Were you raising stock horses?

A. No.

Q. You just had a team, you mean?

A. Just had saddle horses in there.

Q. You just pastured your saddle horses? Did you stake them out?

A. No, sir.

Q. You just let them go out in the woods?

A. Yes, sir, turned them out there on that grass. They wasn't very apt to leave it.

Q. You didn't have any cattle, did you?

A. No, sir.

Q. Did you have any hogs?

A. No.

Q. Some chickens?

A. No, sir.

Q. Did you raise any potatoes?

A. Yes.

Q. How many bushels of potatoes did you raise?

A. Oh, I don't know. I raised five sacks in there one year on a little patch.

Q. And finally you gave up these extensive improvements and left that farm and went back to Glendale?

A. Why, when my filing was returned to me, there was no use for me to stay there when I had no chance to get it.

Q. Well, that is what you did—you went back to Glendale?

A. Yes.

Q. And your associates that went out there, they went back to Glendale, or went somewhere else?

A. Wherever they—I don't know just where they went to.

Q. Now, what in your judgment, Mr. Spiker, is this unsold land that you are acquainted with in Douglas County belonging to the railroad company, in these townships that you have been over—what in your judgment is it worth an acre today, or have you any judgment on that subject?

A. No, I haven't, because I never made any estimate of land. In fact, I know a very little bit about the value of land.

Q. You don't know much about land anyway, do you?

A. Well, as far as the prices are concerned, why, I don't. But I think that, to know a piece of land when I see it, I consider I know that much about it.

Q. But you wouldn't know what price to put on these unsold railroad lands from the knowledge that you have of it?

A. No, I wouldn't. I wouldn't know the real value of it.

Whereupon, upon redirect examination, witness testified, that he does not know how long this piece of land that his father had, these three homesteads, four hundred and eighty acres, had been settled. This homestead that he took or attempted to take, to file on, he went out there and settled on unsurveyed land and made a filing in the local United States land office at Roseburg, and when the land was surveyed it was discovered that instead of being government land it was part of this grant and his filing was, therefore refused, that is the way that he understands it. He was uncertain at all times as to whether he could maintain his title to the land. There was an uncertainty because it seemed at that time the majority of the people seemed to think, outside of the twenty mile railroad limit, if he understood it right, they didn't seem to know whether the

railroad company really had good title to the other extension of the limit or not, that is the indemnity limit. At that time, the majority of the people seemed to have their doubts but what maybe a person could file on that land and get it, and he was just outside of the railroad limit. He and his associates wanted that land, they considered that they were going to make a stock ranch out of it, and of course it had to be agricultural land. It has to be agricultural land before one can make a stock ranch out of it. He did not attempt to buy it merely to obtain the timber that was on it for speculation, that was not the idea at all.

Whereupon W. B. SHERMAN, called as a witness on behalf of complainant being duly sworn testified that he is forty-eight years old and resides in Josephine County, Oregon and has so resided about ten years. Prior to that time he lived in Michigan and was born in that State. He has engaged in the land business since he came to Oregon in Josephine and Jackson Counties, very little in Douglas County and he is familiar to quite an extent with the lands in Josephine County. He is acquainted quite extensively in that county, has bought and sold a good deal of land. With the exception of that part of the County which is included within the Forest Reserve, he is acquainted in a general way with the lands in Josephine County and has spent ten years nearly all the time on these lands, and that applies largely to the northwestern part of Jackson County. Speaking geographically he has been in all of the townships of Josephine County, with the

exception of the Forest Reserve and has made a study of the soil and climatic conditions in that county and that also applies with reference to this tract in the northwestern part of Jackson County. He is more familiar in five townships in the northwestern part of Jackson County, township 33, Ranges 2, 3 and 4 west and township 34, Ranges 3 and 4 west. He is well acquainted with all of these townships and in a general way with the townships adjoining them. His purpose in going out over these lands in Josephine County was because he was in the land business, inspecting lands and showing them to purchasers and buying and selling lands. He made his way through the county spending most of his time on lands with a compass, that is, a portion of it, and part of it on the wagon roads and trails using automobiles, horses and buggies in making his trips through the County, the different usual ways of traveling. About seventy-five percent of his time during these ten years has been occupied in that general way out in the field. He has interested himself in the development of that country, has promoted the fruit business, and the poultry business more especially, the grape business and orchard business and has been connected with commercial clubs. He organized first the Grants Pass Mining Association, second, the Grants Pass Athletic Club, third, the Grants Pass Commercial Club, fourth, the Grants Pass Poultry Association, the Josephine County Poultry Association, fifth, the Josephine County Good Roads Association and the Southern Oregon Development League, he was alone

in the Tokay Grape Association. These various bodies, with the exception of the Athletic Club have been engaged in demonstrating, developing and promoting the development of the resources of that country. He is familiar with the character of the soil, the lay of the land and the other climatic conditions belonging generally in this area that he has described and is familiar in a general way with the history of the development of the resources of that district since he took up his residence at Grants Pass and with the manner in which the Railroad Company has disposed of or held these railroad lands in that district. There are three different classes of soil, alluvial soil, red soil and brown soil, or commonly known as granite soil. The brown soil is commonly known as granite soil, sometimes called decomposed granite and porphyry. He thinks the proportion is about one-third of each. The alluvial soil is principally along the river bottoms, not always, but practically speaking. One finds the red soil on the first bench and part of the hill lands and the granite soil on the first bench and part of the hill lands. The red soil is intermingled with the granite or brown soil in places. In a general way, that district, speaking generally, is rolling although they have a great deal of level lands, he is speaking of lands outside of the Forest Reserve. By level lands are meant comparatively level lands, there is no real prairie in that country. He is speaking of Jackson and Josephine counties. He would consider that fifty percent of the land with which he is acquainted in these two counties is com-

paratively speaking, level, these lands that are rolling and which he does not include as comparatively level, can be subjected to cultivation. There are some lands there which are too rough to be cultivated. He would say that in that general district about thirty to thirty five percent are so rough that they cannot be cultivated, or there are other obstacles to the cultivation of the lands so that they cannot be cultivated either on account of their roughness or barrenness, or their general conditions which cannot be overcome. Speaking of that country from a matter of townships, the rolling land and the level land and rough land that cannot be cultivated, are intermingled. Most of these lands, other than the thirty or thirty five percent that he had described as being too rough or otherwise unsuited for cultivation, are in his judgment productive lands and can be subjected to profitable cultivation. The altitudes in that district vary from 1,000 feet above sea level to 2,500 feet above sea level and a few points run to 4,000 feet above sea level. These various types of land, taking up first the alluvial soil, can be used for all kinds of fruit, vegetables, hays and grasses and general farming purposes and they raise some grain, although these lands are more valuable for other purposes than they are for grain. The red soil on the benches and rolling lands are very valuable for fruit and vegetables. For some crops, that land is more valuable than the lands with the alluvial soil and some not so valuable, but speaking in a general way, they are about the same value and about the same can be

produced from them in the way of profit. The brown soil, or decomposed granite soil, can be used for fruit and vegetables, grasses, alfalfa and kale and that soil can be used successfully without irrigation, nearly all of those hill lands are sub-irrigated, by that he means, that the brown soil or decomposed granite and porphyry and nearly the entire district has water under it—from six to eighteen feet is as deep as one would have to go to get water. A man on a small tract, can dig wells and irrigate five or ten acres and make good money out of it without getting water from any other locality. Irrigation is not necessary or indispensable in order to make profitable use of that land for agricultural and horticultural purposes, they can raise one crop of garden stuff on any of that soil the same as they do in other localities, but to raise three or four crops on one piece of ground the same year, it is necessary to have water on some of it and he believes that is generally true all over the western country, as far as his knowledge and information extend, excepting that in other localities, a great many other localities, they cannot raise the second or third crop, as he understands it, even with water. In going over the district he found nine miles out of Grants Pass, a vineyard of about forty acres. After keeping track of that for a term of years he decided that the grape business was a very profitable one for the district and so he decided to form a grape industry. He started in by buying lands that were favorably situated and located for the purpose, cleared them, plowed them and planted them and induced other

people to do the same. He found that these grapes growing in the forty acre vineyard of which he speaks were on the south hill slope, red soil, and he bought and cleared and set out grapes on red soil, south hill slope largely, adjoining the city limits, that is, the tract adjoins the city limits of Grants Pass. He has a vineyard there of twelve acres, set out three years ago, it will be four years in the spring of 1913. These grapes are bearing, they commenced to bear some grapes the second year and got a commercial crop the third year and will increase after the third year until probably ten or fifteen years. Pruned in the proper way, it has never been demonstrated as to how long grape vines will live. The first grapes that were pruned to a stump, as they call it, grew up about twenty four inches and headed there. The first grapevines, as he understands, were pruned that way about three hundred years ago and they are still producing a good crop, but he does not mean that this occurred in Josephine County. He has demonstrated that tokays, and malagas will grow on these lands. The Concord does as well or better on the north hill slope. The product of the tokay grape compared with tokay grapes grown elsewhere is of a very much better quality in their district than in any other part of the United States. There are two districts in the United States where tokay grapes have been grown successfully, the Grants Pass District and portions of California. The tokay grapes grown in Josephine County are superior to the California tokay grapes in color and keeping and shipping qualities, they

are a very much firmer grape and will stand shipment better. In packing them, they put fifty to sixty pounds weight in pressing the tops of the crates down before they nail them. If the same thing were done with the California grape, it would ruin the entire package and it would have to be thrown away. The grapes produced in the Josephine County country have come in competition with California tokays in the Portland markets and they get a higher price for their grapes than is paid for the California grapes. He has seen places where they sell them retail, in Portland at five cents a pound more. They get from twenty five to fifty cents a crate more for them selling at wholesale. The 40 acre vineyard in Josephine County is thirty two years old but these other vineyards are three years old. About ten or fifteen people planted commercial vineyards in Josephine County three years ago. This was their first year's crop harvested this year and marketed locally and in Portland. The experiment of growing these grapes on the brown or granite soil, has been made in the district within his personal knowledge and he has observed that the result was good. It is just as good as the red soil, if any difference better. The brown soil produces fruit and vegetables of higher grade than the red soil or the river bottom soil. The flavor is better and the keeping quality is better and the color is better. Grapes, fruit and vegetables grown on the hillsides are better than similar products grown in lower altitudes. He does not know the scientific reason or explanation of that result, but does know

that that condition exists all over the country. As a rule the hill lands produce better fruit, better quality than the river bottom lands. He understands the same is true of oranges and lemons and nearly all classes of fruits. Nearly all districts have first developed the river bottom lands and then later on, the hill lands. Atmospheric conditions in the hill lands, in the higher altitudes, preclude certain blights that are found in the lower altitudes, in the bottom lands, including what they describe as sap souring. They also have more moisture higher up than they have on the lower lands, which has something to do with it, meaning moisture from sub-irrigation and rainfall both. The cultivation of the roots of the grape vines, brings the moisture up but artificial irrigation is not essential to the growing of grapes. Their grapes are better without artificial irrigaton, that is the trouble with California, that is the difference between the Oregon tokay and the California tokay. They irrigate the California tokay which makes them an inferior grape to the non-irrigated grape. The California tokay when cut with a sharp knife, the juice runs out, the Oregon tokay one can slice off into thin wafers and handle these wafers with a knife like a piece of beef, the tissue of the Oregon grape is much firmer than the tissue of the California grape, owing to that particular point, as he understands it. The flavor of the Oregon grape is good, it is as good as the California grape. The malaga grape has not been experimented with or grown as extensively as the tokay in that district, but wherever there is a malaga growing, it is

doing well and they get splendid fruit from it, splendid results and no other districts in the United States grow malagas, as he understands it. They are just starting in to grow malagas there, until this year there was but a small amount of malagas in that locality, and now they have several different men who have a few acres each. All of the three year old stuff is bearing and he has seen the fruit himself, they had them this year. He started in about four years ago exploiting the growing of tokay grapes in Josephine County, and spent most of his time and energy with the home people getting them into the industry. He took various ways of doing it. One thing he did, he gave the school children throughout the county a grape vine each, rooted vine, and a red stake to stick up by it, and then he gave prizes for the pupils who would raise the most vines the first year, the most length of vines. He gave out over 7,000 vines. They were not all given to school children, but after putting them in the schools, all over the county, he had two men on the streets giving them to everyone that came along that would take them and plant them, wrapping them up one or a dozen or two dozen, just as many as they would take. He gave away thousands of them. He had men for a week during planting season that did nothing but give away grape vines, and they are now being grown all over the county. He has personally seen the results from these vines he gave out, in this manner and has kept pretty good track of them. This was about four years ago. He does not know of any general failure on the part

of those grapes that he gave out in that way. Wherever he found a red stake sticking since, there has been a vine growing. Of course the object of the stakes was to mark the place and to continually advertise to the people passing by it, that where the red stake was, there was a grape vine, and everybody has taken pride in watching the development. They were so well pleased with the results when they came to pick this year's crop, they had their first annual Tokay Grape Festival last month at Grants Pass. There were over fifty automobiles in the parade decorated with grape vines and the fruit itself. Nearly all of the business places were decorated both with fruit and vines inside and outside. He could not say how many grapes were produced in Josephine County this year (1912). He could give an estimate in a general way of what will be the production next year on the lands that are set out to grape vines. They have somewhere, he thinks, between 200 to 300 acres there now. There are 535 vines planted per acre. They would get at least a crate per vine next year. He believes there are 1200 crates in a car. He thinks they would have 100 or 125 carloads shipped from there next year and the product would be worth $1.25 to $1.75 per crate and that would be something like $1500.00 or $1600.00 a car and he thinks there would be next year from 100 to 125 cars. They raised grapes from a commercial standpoint this year, sold them and shipped them. They were shipped all over the United States in single crates and in quantities to Portland. At their Tokay Grape Festival, there

were lots of grapes sold to people and shipped throughout the United States to friends and that is one of the reasons why it is hard for him to estimate the amount of this year's crop. Another reason is that he did not keep in close touch with that feature this year. If his estimate of next year's crop is borne out by the actual results there should be crops there yielding $150,000, in grapes alone next year, and the cultivation of the grape, specially the tokay grape, has proceeded to a point in Josephine County where he is convinced as a practical man, that it can be successfully conducted in that county, beyond a shadow of doubt. He knows, in a general way, where these railroad lands are located in Josephine County and a great deal of them contain lands of this same general condition which would be suitable for the growing of grapes.

Their folks have just learned that the poultry business there in the hill lands is very valuable. They can grow kale on those lands, and if a family has five or ten acres of land, they can cultivate, they can raise 1000 or 1500 hens, and it has been thoroughly demonstrated that they can make a profit of at least one dollar per hen per year. The reason that this community or district is peculiarly adapted to the poultry business is on account of the fact that they have so little rain and so much sunshine during the year. They have about twenty five inches of rain compared with fifty or sixty in the Willamette valley. They do not have the excessive heat in the summer that they do in the Petaluma district, the best poultry district in the

United States. In Petaluma, near San Francisco, California, they make from $1.00 to $1.50 per hen annual profit, at the same time they have to pay from $25. to $35. a ton for green kale and green alfalfa, where they in Josephine County, can raise there on their hill lands without irrigation from twenty to forty ton of kale per acre annually. They can pick their kale 365 days in the year. He means that they can raise on their hill land there without irrigation from twenty to forty tons of kale per acre annually and they can pick their kale 365 days in the year. That is what makes poultry so profitable in that district. He organized this Josephine County Poultry Association referred to, to promote that business. That matter has actually been demonstrated there. There are a great many more days of fog on the lower lands than there are on the higher lands, the higher lands would be more valuable on that account. Referring to the poultry, they have no diseases down there, as they do in other localities. The roup and such diseases are nearly unknown in that district, which makes it a very valuable point in their favor. Such portions of quarter sections as could not be used for the purposes he has indicated, such as for growing grapes, fruit, vegetables, other agricultural and horticultural crops and the raising of poultry could be used for grazing purposes. The higher lands are better than the lower lands for grazing. A settler, if he had 160 acres of that land could handle cows and pigs and poultry and fruit and vegetables. Apples are very productive in that locality, they are high grade, good qual-

ity. The Rogue River Valley, he believes it is conceded, excels the world in the growth of pears and their hill land is very good pear land. The pears grown on their hill lands have better keeping qualities than the pears grown down in the Rogue River Valley proper and they are a better flavored pear and they have a higher color and are of a superior quality and fully as productive. The trees will come into bearing at about the same time as in the valley. The pears do not have the pear blight in that district as they do in other districts, very little pear blight in the district and when they do have a pear blight, if there are signs of it, it is easily disposed of.

Whereupon witness testified:

Q. Well now, reverting to the general question I asked you a few moments ago, Mr. Sherman, taking into consideration these various opportunities that a settler would have to use the land profitably which you have mentioned, are there very many quarter sections in Josephine county, and particularly in that part of the county where these railroad lands are situated, which would not support a settler and his family?

A. There are some.

Q. About what percentage of all of the quarter sections?

A. That would not support a family?

Q. Yes.

A. Possibly 25 per cent.

Q. In your judgment then would 75 per cent of all those quarter sections, if put into the hands of settlers—would they support a settler and his family?

A. 75 per cent, did you say?

Q. Yes.

A. Yes, sir, I believe they would.

Q. Now, do you mean that he could just make a bare livelihood, or do you mean that the settler could thrive under those conditions?

A. He should be prosperous; if he is industrious, he would be prosperous.

Q. Mr. Sherman, you say that you are familiar with the general policies that have been pursued by the railroad company with reference to the disposition of its railroad lands there, and the withholding of them from sale since early in 1903. I will ask you whether, in your judgment, that policy has retarded or promoted the settlement and development of that country.

A. It has retarded development to a great extent.

Q. Now, is that a theory of yours, or have you seen it demonstrated?

A. It has been to me a very expensive demonstration that I have made.

Q. Explain what you mean.

A. I mean that I have spent thousands of dollars to get people to come to our district to locate—tens of thousands of dollars; and I mean that the biggest draw-

back that I have had was the fact that nearly one-half of the district was not available for settlement, on account of the Southern Pacific owning it and would not sell it at any price.

Mr. Fenton: You mean the Oregon & California Railroad Company owning it.

A. Pardon me. I believe that is right—the Oregon & California.

Q. Well now, what experience did you have with these prospective settlers in that respect?

A. Well, when we would take them out to sell them lands, we would take them in our automobiles or in our vehicles, and start out to show them a piece of land, and possibly one to ten miles from the railroad, and there was so much brush land, they would ask: "Well, what is this piece of land? Why isn't this cutlivated?" "Well, that belongs to the railroad company." "Well, aren't they going to sell it?" "No, it is not in the market at any price." And the prospective settler would say, "Well, if I buy this piece over here that you have showed me, will I have to pass through this brush country? Won't I have any neighbors on this land on either side of me? Won't there be anyone here to help build churches and schools and better roads and society, or am I to be here with brush on all sides of me?" And of course I had but one answer to tell them—that I didn't know when the railroad company would put their lands on the market. And that one thing alone has made it very hard to settle people there.

Q. Then I will ask you whether, in your judgment, the effect of the policy pursued by the railroad company in retarding settlement and development there, has been limited to the odd numbered sections held by the railroad company, or has it also extended to the even numbered sections intervening the railroad lands?

A. As I explained, it has made it hard for us to get settlers on the even numbers, because the odd numbers would be uncultivated. It has made it very hard to settle even the even numbered sections.

Q. Well now, to what extent have prospective settlers come into that country during the time that you have been working upon this subject?

A. Well, we have had thousands of people visit our locality. There was for a year or two that our hotels were filled full and running over. They would have to take people out to private houses almost every night in the year for a couple of years there, while we were doing a good deal of advertising and exploiting getting them in there—of course, the little amount that I spent was only a drop in the bucket compared with that spent by commercial organizations and other men in the same line as myself—and the railroad company, the Southern Pacific, have been very good about working with us in regard to that point; they have, as a rule, been ready to do their part of advertising, etc.

Q. Now, I will ask you whether, in your judgment, if these railroad lands should be offered to settlers, that district there would be settled up and con-

verted into homes of settlers supporting and maintaining themselves by the cultivation of their homesteads?

A. If those railroad lands were put on the market, in my opinion, that is, put on the market at a reasonable figure, at a reasonable price, we would have hundreds of people come there and buy those lands, and the district would be developed, which would induce more railroads and the general development of the locality. It has been bad for us in so many different ways, not being able to develop; by holding back the agricultural and horicultural possibilities, it has held out so many other things which would have been for the best interests of the locality.

Q. Mr. Sherman, describe more in detail the extent to which the poultry business is being developed in this district, and what has been done with reference to the transferring of some of the poultry business from this district in California that you refer to to Josephine county?

A. We have had two or three poultrymen come in there in the last two years. One was a Dr. Wilcoxson from some place in the East, and there was a Mr. Steinbach from Alaska, and there was a Mr. Wise from St. Louis—Charles Wise. And they were all three men very well posted in the poultry business, and they found that the hens—

Mr. Fenton: I think I will have to object to this as hearsay if it came from these other gentlemen to the witness.

A. They found that the poultry in that district, that is, the poultry that was what we call the barn lot hens, their plumage and their condition was much better than in any other—than the same class, of course, in any other district. So they went into the poultry business there. We started about a year ago, a little over a year ago—my office started exploiting the proposition; and we had a poultry show on the first of the year, and we got a great many people to go into the business. And there could not be chickens hatched in the district fast enough to supply the demand, so our people sent down to Petaluma and bought the day old chicks by the thousands, and had them shipped up there, and we now have about twenty or thirty people in the poultry business in a commercial way.

Q. Explain what you mean by shipping day old chicks, and how it is done.

A. Well, the day old chicks, they are called day old; however, they are taken as soon as they are hatched, they are taken and put into crates, and shipped the same as eggs. The chick can be shipped—they can be in transit 24 hours. The yelk of the egg when the chicken is hatched is in its stomach, and it furnishes itself food for 48 hours. Their little bills are sealed, as I understand it, and cannot be opened until the expiration of the 48 hours, so that they will stand the transit. And in taking advantage of that, our people have, in order to get a start this spring, bought a great many thousand birds from Petaluma. There is one man got 6000 birds now. Others have from 100 to 1000.

Q. What if anything has been demonstrated there with reference to the production of loganberries and strawberries?

A. Well, strawberries, we can raise two crops a year on this granite soil. We grow the best berries on the granite soil of any soil that we have there. The loganberry, it has been thoroughly demonstrated that we can raise from $300 to $700 per acre worth of berries from the granite soil.

Q. Now, does this granite soil absorb the rainfall readily?

A. Yes, sir, it holds the moisture well. With dry farming process, the granite is the best soil we have in that district. It is better than in the river bottom. It holds moisture better with cultivation, with dry farming, than the river bottom or the red soil.

Q. At the same time, how is it with reference to being muddy, speaking now as to its usefulness in the poultry business? Does it get muddy?

A. No, it don't get muddy and sour like the heavier soil would, which makes it better for the poultry business. You take the birds in the Petaluma district, for several months in the year they have to wash all their eggs—they are dirty. The hens are dirty, all their flower feathers and their wings, and so on, is muddy all the time. They have not any fit place, any fit grounds to keep them on. And that is another point that the Petaluma people claim that we are far ahead of them on, that is, we don't have to wash the eggs;

the eggs are always clean. Another thing with the kale, in feeding them, our kale is always picked fresh, and theirs is shipped in.

Q. Have you had any individual interest yourself with reference to orchard lands there, and if so what?

A. Well, I am interested in one tract of 3040 acres.

Whereupon witness testified that this orchard land in which he is interested, to which he refers, is north of Grants Pass between Grants Pass and Merlin, adjoining the City limits of Merlin and reaching from there to within about a mile and three quarters from the City limits of Grants Pass and parallels the Southern Pacific, or the Southern Pacific runs through it about three miles. They have cleared, plowed and planted about 800 acres to orchard. They have had it two years and so far they have cleared and planted about 800 acres and are still clearing and planting. Railroad lands involved in this suit are all around them. They started in to get a 5,000 acre tract, but the railroad lands would be intermingled so that they could not handle it practically and they had to cut it down to 3,000 acres. These railroad lands which intervene their lands are not of a different type of soil but are the same thing. They are selling these lands for orchard purposes at from $300. to $500. an acre, land that is being planted and the $550. and $600. price is planted and cared for for five years. He believed he had better refresh his memory a little further here, for they have some land

that they have sold at $200 per acre. They plant 530 vines of grapes per acre, that would be nine feet apart. They produce from one crate to five crates per vine and they figure at least a crate per vine, that is very conservative. They got this year on three year old vines, in a great many of them, wherever they had good care, a crate per vine on the three year old stuff this year and they figure $1.00 profit per vine, practically speaking $500.00 per acre. Any of those who are in the business who have harvested their crop this year from three year old stuff believe that is a very conservative figure. They have the United States for a market for those tokay grapes. They could ship them to the old countries, they will stand shipment to the old countries. If all of the lands in Josephine county of the type he has described should be used for the growing of these grapes, the market would get better than it is now. The trees grown on the granite soil, the fiber of the wood is very much stronger than the fiber of the wood grown on the river bottom soil. The tree will carry more fruit with less danger of breaking the limbs. They do not have to look after the propping of the limbs nearly as close or the pruning and the thinning on these granite and hill lands as one does on the river bottom lands. There seems to be as much difference between the fiber of the wood, the strength of the wood, of a tree grown on the hill lands comparing that with hickory, comparing the tree grown on the river bottom with maple.

There have been several efforts made by the local people to induce or interest capital to come there and

build railroads, but so far, it has failed in every case. One of the principal obstacles is the fact that only one, practically one-half of the district, is subject to entry or development, or he means to say, location or cultivation. He does not mean that half of it is subject to cultivation by reason of the character of the soil, but that people cannot buy it, it is not available, cannot be bought, it is not on the market, it belongs to the Oregon and California Railroad Company or the Southern Pacific Company, meaning the lands involved in this suit. He has worked with others, in several different cases, trying to interest capital in building a railroad out from Grants Pass, which occupies the natural strategic position there with reference to the country southwest of it. There is a natural opportunity for the construction of a railroad line southwesterly from Grants Pass through this district he has been describing and on to Eureka in California. There is a route now, he does not know as to Eureka, but to Crescent City, it is all the same, it is right on the Coast. He has not been over the route from Crescent City to Eureka, but across to Crescent City there is a route that engineers report on as being very feasible, and another one down the Rogue River across to Port Orford and Bandon. The route to Crescent City goes in a southerly direction through Josephine County from Grants Pass and goes through this district which he has been describing, including these railroad lands. The fact that virtually one half of the lands tributary to the proposed line of railroad is in the hands of a com-

peting line of railroad, the Southern Pacific Company, has proved an obstacle in his efforts to induce the investment of capital for the construction of a railroad extending from Grants Pass to Crescent City. They have not been assisted by the Southern Pacific in their efforts to secure the construction of this proposed railroad, but have been obstructed on account of the lands. A company coming in there with a view of building a road would investigate the resources of the country, and when it found the thousands of acres of land both timber, mining, agricultural and horticultural, that would not pay tribute at this time and would not know when these lands ever would pay tribute to the railroad, that point blocked it to a large extent. A railroad through that country is necessary for the final development of the real industrial resources of that country. They have mines and timber and fruit lands. There is a smelter sixty miles back from the railroad on the route from Grants Pass to Crescent City for which they have to haul the coke—that is either forty or sixty miles back from the railroad, forty miles he thinks instead of sixty miles—they have to haul the coke to the smelter and haul the matter out, besides all the freighting of all their supplies and things of that kind and it makes it prohibitive to the operation of large bodies of copper ore in that district. If they had transportation close to them, they would be developed and the mines would develop the other resources of the district. He is familiar with the timber resources of Josephine County, in a general way and there is much

saw timber there. It is pretty well scattered over the county however, some of the heaviest timber they have is in the northeast corner of the county. He is not familiar with that part in the Forest Reserve because his business never called him there, but excluding that, his answer is correct. He is well acquainted with Elmer Shank and Mr. W. R. Whipple and their testimony that eighty five per cent of these railroad lands situated in Josephine County involved in this suit are waste lands and unfit for any agricultural or horticultural use is not correct. He would judge that about sixty five percent of these lands could be reduced to cultivation for the different purposes he has mentioned, that is of the total acreage. It is not correct as testified to by Mr. Shank that none of that land could be used successfully for agricultural or horticultural purposes without irrigation. They have been raising fruits on all those kinds of lands and they have not had irrigation on any of them up to this time, excepting he guesses the last year or two there have been one or two tracts there, there has been a little water pumped on them from the river. These different commercial bodies he has mentioned have distributed literature containing the same general information as that contained in his testimony. This literature has been published and distributed by the Grants Pass Commercial Club in co-operation with the Southern Pacific advertising department. The Southern Pacific Company joined with the Grants Pass Commercial Club in the expense, each paying half of the expense of publishing this

pamphlet referred to by the witness. It was published by the Sunset Magazine and handed to the witness by counsel for complainant and referred to by him and hereinafter identified as "Government's Exhibit 125." He could not say if this pamphlet has been distributed extensively, they have been getting out these pamphlets right along every year and to the best of his knowledge it has been distributed extensively. The emblem on page 45 reading as follows: "This booklet issued under the co-operative community plan of the Southern Pacific lines in Oregon. Wm. McMurray, General Passenger Agent. Planned and executed by Sunset Magazine Homeseekers' Bureau, Portland, Oregon," is in all of these pamphlets of that kind that are published under this joint management referred to by him. He has not had any conference with any of the Southern Pacific people as to this, perhaps not as to this one particular pamphlet, but he has in regard to the general advertising campaign that he and his associates carried on for several years. He conferred with Wm. McMurray, the General Passenger Agent for the Southern Pacific Company, lines in Oregon. At that time the Southern Pacific Company usually sent a man down in that district and he, together with their Commercial Clubs, and other men who were interested, shaped up the literature, and he always participated in that work. The lands referred to in that pamphlet as being of "most excellent quality for the growing of fruit, grapes, poultry, vegetables and other agricultural and horticultural use," are of the same character as the rail-

road lands involved in this suit.

Whereupon complainant offered in evidence as "Government's Exhibit 125" this pamphlet, which was received subject to the objection that this pamphlet consisted of unsworn hearsay declarations, of the nature of such literature generally put out by promotion companies, societies, commercial organizations and immigration bodies, in any country at any time, and everywhere, and is therefore incompetent. Which exhibit was received in evidence and is hereinafter set out and described and made a part of this Statment of Evidence and identified as "Government's Exhibit 125."

Whereupon witness testified that during his operations down in that country, he had found so many places that the railroad lands were in the way and blocked development and promotion in so many different directions and entirely different ways that he went to investigating the matter to see if there was not some way whereby they could get the lands put on the market so they could go ahead and develop the district and he had the Congressional reports looked up by his friends and got the language of the grant of these lands to the Railroad Company and counseled with some attorneys about it and they told him that they believed that the lands were being withheld contrary to the language of the grant. The Secretary of the Commercial Club of Portland put him on a program at the State Fair where the Oregon Development League was having a three days session and gave him the subject "Mining in Southern Oregon" and he thought that would be a good

chance to bring up the point of the railroad's ownership of the land and their withholding it from the market and he did so in a speech there. He thinks that was at the State Fair six years ago, either five or six years ago, either in 1906 or 1907, it was in the fall at the State Fair in September. He never had seen, never had heard, of any public agitation upon the subject, and never had seen a word in print in regard to it prior to that time. He gave the language at that time in his speech, he gave the language of the grant, as near as he could get it, and he showed the condition that it was putting the country in, and what the outcome would be if they continued for a term of years and they would be held back and so on. The State papers took it up, the Portland papers took it up and published his speech in full. He believes the Oregonian had it in full on the front page and the other papers had it and since that, right after that, it went to the State papers through other states, and he got copies of his speech sent to him from almost every state in the Union, he guesses, in the next few months. In that speech he took up all branches, how it affected all branches.

Whereupon witness testified:

Q. There has been some testimony here by Mr. Eberlein, who was formerly land agent or acting land agent of the railroad company, to the effect that the agitation with reference to this provision of the grant relating to the manner in which the granted lands should be sold originated at the instigation of timber men for the purpose of forcing the railroad company to dispose of

more timber lands to timber companies. Now, had you heard of any such agitation at the time that you made your speech at Salem?

A. No, sir, there never had—not to my knowledge had there been any agitation of any kind prior to that time.

Q. And was the import of your speech, or its purpose, to force the railroad company to dispose of timber lands in large blocks to timber companies and speculators?

A. No, sir.

Whereupon, on cross-examination, witness testified:

Q. Mr. Sherman, prior to the time of this alleged withdrawal of these lands from the market by the railroad company in 1903, as assumed by counsel for the government, was there any objection, to your knowledge, to the manner in which the lands of the company were being offered for sale in Southern Oregon, and particularly in Josephine county, and as to the liberal terms upon which these lands could be purchased for at least twenty years before that period?

A. I was not familiar with conditions before that.

Q. Well, you know, do you not, that there was general satisfaction with the way and manner in which those lands were sold for a period of twenty years prior to 1903?

A. You see, I came here at that time.

Q. I know, but you knew from investigation, did

you not, that if the company would recur or go back to the methods of handling the land as they did prior to 1903, the people would generally be satisfied?

A. I don't remember of any discussion on the point.

Q. Well, you know, do you not, historically, that prior to 1903 the company offered these lands for a period of more than twenty years to anyone who would care to buy, in tracts of 160 acres or less, on liberal terms, at low prices and on long installments, and that the lands remained unsold practically up to the time you came to Grants Pass? Do you not know that to be a fact historically?

A. Yes, sir.

Q. Do you not also know, Mr. Sherman, that for a number of years preceding 1903 any land that was claimed to be mineral in character that had been patented to the company, and had nothing in it or on it other than a mineral possibility, and was not valuable for timber or for agricultural purposes—that such lands were sold to the first applicant or occupant at a flat rate of $2.50 an acre under quitclaim deeds uniformly by the company?

A. Why, of course, I was not here in those days, but I learned you are speaking of history?

Q. Yes.

A. I learned through the people there that if the railroad company found there was any mineral or anything of that kind, they withdrew them and did not sell

them to the applicant. That is the general impression that I have got.

Q. From the people who wanted to get them?

A. Yes, handed down.

Q. Well, haven't you got that impression since this alleged withdrawal of 1903?

A. Well, of course, I learned but very little of the details of the proposition until I came to the coast.

Q. When was that?

A. That was about that time, sir.

Q. About 1903?

A. Yes, a little before that. But I started to looking around and getting ready to buy something. I came here to buy railroad lands, and about the time that I came here they were withdrawn from the market.

Q. Well now then, suppose that the railroad company would now place these unsold lands upon the market, to be sold at private sale, upon reasonable and easy installments for deferred payments, at a reasonably low rate of interest, to whomsoever would buy, and particularly to people who might desire to buy tracts of 160 acres or less, and the price should be placed at what the lands are today actually worth in the market, do you think those lands would be sold under those circumstances and generally purchased?

A. I do.

Q. If that were done, do you not think also that it

would meet with the approval of your people, and the people of your county and Jackson county?

A. I believe the people of our county would be very glad to have those lands put on the market at a reasonable price, because it would not only mean immediate settlement of the lands, but it would mean the settlement of the other lands and the raising of the valuation of the other lands adjoining it.

Q. You mean that it would mean the immediate settlement of such lands as were suitable for that purpose?

A. Yes, sir.

Q. It would not mean the immediate settlement of that 35 per cent of these lands that you thought were of no particular value?

A. No; but the larger portion of the lands would be settled in a very short term of years.

Q. That is to say, they would either be settled or purchased?

A. Yes. Well, settled and purchased.

Q. You would say purchased rather than settled, wouldn't you?

A. Purchased and settled too.

Q. I know, there would be some people that would settle.

A. Yes.

Q. But a great many people would buy and would not settle, but would improve in one way or another?

A. Yes, sir.

Q. Now, isn't it true, Mr. Sherman, that one of the sources of irritation in 1906 was the inability of mining prospectors to secure title to these railroad lands where it was believed there were good mineral prospects, and didn't that interfere with the business of locating mining men on these lands, and was not that a source of public irritation in Grants Pass and Medford and other sections of southern Oregon?

A. The only agitation there was on account of its holding the country back in its entirety, not in mining particularly, or timber particularly, nor horticulture nor agriculture, but the whole country was being held back.

Q. I know, but don't you know as a fact that there were quite a number of people who desired forties and twenties where they thought there was a mineral prospect, but had located it on what they found to be railroad land, and they could not make any purchase of that land, and they were compelled either to contest the company's title, it being patented and, as they claimed, not belonging to the grant, as the mineral lands were excepted from the grant, and that that was the source of a good deal of irritation and public discussion in 1906, and particularly in the election in 1906?

A. I never knew of any discussion in regard to the matter.

Q. Don't you know that that was the discussion in the canvass in Jackson county at the election in June in

1906, when Evan Reames was running for representative?

A. Well, I didn't know very much about Jackson county at that time. I had not got into Jackson county so much, and it was about that time that I commenced mixing up with the commercial organizations.

Q. You didn't figure yourself in politics at all?

A. No.

Q. You were a promoter rather than a politician?

A. I was not a politician.

Q. You were engaged in the promotion of your enterprises?

A. Yes, sir.

Q. And have been ever since you have been in Josephine county?

A. Yes, sir.

Q. Now, I call your attention to the first page of Government's Exhibit 125, which shows two large trees which I take to be sugar pine, and will ask you if that is the first industry or the first asset in a state of nature in Josephine county—timber of that character?

A. Well, the first that was made any use of was not timber.

Q. What is that?

A. The first that was made any use of was not timber. Agriculture and horticulture was the first.

Q. I am not asking you that, because Josephine

county was settled more than fifty years ago.

A. Yes, sir.

Q. And the Rogue River valley through Josephine county has been taken largely under the donation act?

A. Yes.

Q. And orchards and grain and stock were produced there in the fifties. I am not referring to that.

A. Oh yes.

Q. But I am referring now to the chief asset of Josephine county in a state of nature as being timber. Now, isn't that true?

A. Not in my opinion. I think, Judge, I could convince you that a man could make more money in ten years off ten acres of grapes on a south hillslope than he could out of a thousand acres of timber. I think I could convince you of that.

Q. Do you know that Mr. James J. Hill, said to be the greatest living actual railroad builder in the world today, states that an acre of timber is the best basis of tonnage of a railroad that there is today in western Oregon?

A. Well, an acre of timber in western Oregon would mean at the minimum 25,000 feet of lumber—twenty to 25,000, or a carload. Now, we can produce a carload of grapes every year off two and a quarter acres of grapes. Now, the timber is one crop for all of our lifetime, just as for generations it takes to grow that carload, that one crop of timber; but on two and a half

acres of grapes in one year we can produce a carload of freight, and do it every year right along.

Q. I call your attention to the fact that your literature, put out by your commercial club at Grants Pass, advertises Josephine county as containing nine billion feet of standing unsawed commercial timber. Is that true?

A. Well, I think that is a little low.

Q. A little low?

A. Yes. I went over it here in the last two months, and I think there is more timber than that.

Q. More commercial timber?

A. Yes.

Q. I refer, not to the timber which the government has reserved in its reserve in Josephine county, but I refer to commercial timber that is owned by private parties.

A. Well, my answer was to all the timber in the county in regard to the nine billions,—a little over nine billions of feet.

Q. You know there is such an advertisement, or was last year, sent out by your commercial club to that effect, was there not?

A. Yes, it has been put out. It has been handled for two or three years.

Q. I would like to ask you where this mature orchard near Grants Pass showing careful culture, on page

seven of Government's Exhibit 125, is located, and whose orchard that is, and on what land is it, what donation land claim, if you know?

A. Why, this is five acres of Spitzenberg orchard —I cannot read it there; but that looks to me—I took the picture—

Q. You were the photographer that took it, or you supervised it?

A. I supervised it. I made the pose for the picture. This is one Spitzenberg orchard belonging to Mr. Hull, then belonging to Mr. Anderson.

Q. Where is it? On what land?

A. Well, now, by referring to my map I could tell the section.

Q. Yes, just refer to your map and give us the section, township and range that that orchard is on.

A. Yes, that is the orchard. I sold that property a couple of times now. I ought to know the description of it, but I don't. (Witness refers to map.) I believe that is in section 15, township 36 south, range 6 west.

Whereupon witness testified that the property last referred to is about three miles from Grants Pass, but he could not say upon whose donation land claim it is. It is a half mile from Rogue River in the valley and he would suppose that it has been settled for forty or fifty years, the orchard is twelve or fifteen years old, he does not know as to how long it has been settled, but it is one of the early places. Referring to page 12 of "Govern-

ment's Exhibit 125," which purports to show "Well drained hillsides of Rogue River valley," and which shows a vineyard, that is Carson's vineyard. It is hard to tell what section, township and range that is in. Tokay Heights is the property of witness. The tract referred to at page 12 of "Government's Exhibit 125" is Carson's vineyard, which is twelve miles from Grants Pass on the Applegate, it was a forty-acre vineyard, it is now sixty acres. That is the old vineyard that is over on the Applegate about twelve miles south of Grants Pass. The Applegate is one of the oldest settled portions of Jackson County. This land was not taken up under the donation land law, most of the valley land was taken under the donation land law. This land is on the foothills just up above the bottom. Thirty-two years ago Carson planted the upper part up here of this vineyard. Carson has grubbed a large portion of this vineyard lately because it was not of a commercial variety. Carson has never shipped a carload lot because he has never had a car of tokays. Mr. Carson's half acre was all they had to start with four years ago, now they have large tracts of it, he would say something between two and three hundred acres now scattered around over the different sections in favorable places. Referring to these "Mammoth pumpkins bearing witness to the fertility of the soil near Grants Pass," on page 13 of this pamphlet, this is on the Rogue River at the mouth of the Applegate, the junction, twelve miles below Grants Pass, in the old settled part of that country, settled probably forty or fifty years

ago. Referring to the words "Second growth of alfalfa. Yield averages seven tons a year," page 14 of "Government's Exhibit 125" this is about twelve miles from Grants Pass in the Rogue River valley on the low lands or the level lands and is on an old settled donation land claim, he could not tell the man's name, he could pick out the section of land it is on, but could not tell the name of the owner, he knows him well by reputation and sight. Looking at page 15 of "Government's Exhibit 125" which gives a photograph of a "Herd of Jersey cows which returned an income of $110 each for 1910," this is the Williams Creek bunch. Williams Creek is a tributary of the Applegate, he believes, but is not sure, not positive, that would be a part of the Applegate country and is an old settled part of Jackson County, probably a donation land claim in the valley, but he does not know as to that. Referring to page 16 of "Government's Exhibit 125" "Orchard of mature Spitzenbergs, near Grants Pass," this is the same orchard identified by him before, but is a different view. The orchard shown on page 17 of "Government's Exhibit 125" is not another view of this same orchard. He is trying to see who the man in the photograph is, he had most of these pictures taken, he can tell by the man as to whose orchard it is, it is in the Rogue River valley, he would suppose on the bottom there because of the size of the trees, not exactly that, in one sense that would answer that because their people did not know until just lately that the hill lands were as valuable as they are.

"Q. As a promoter you have been trying to teach

them that fact, haven't you?

A. I have done it, judge."

He cannot identify the orchard shown on page 18 of "Government's Exhibit 125" but it is in Grants Pass, but he cannot identify it. Grants Pass is situated on the level land there on the Rogue River and has been settled a great many years. The orchard on page 19 of "Government's Exhibit 125" entitled "Eight year old pear trees in a highly profitable orchard" is Scoville's orchard up on the hill about three and a half miles north of Grants Pass and between 1600 or 1700 feet contour and is one of those orchards up in the cove, up on the hill and has been an orchard about eight or nine years he thinks. It is on the right between Merlin and Grants Pass, is not in one of those little coves between Merlin and Grants Pass, it is not on that road, it is to the right of that road, it is on what they know as the Granite Hill road. This is red land, that is the red soil. This land was timbered, there was oak and laurel, cedar, fir andpine on it and some saw timber he thinks but that was before his time, but the other land adjoining it, he knows the conditions there all around it and there is scattered saw timber. This is about three and a half miles north of Grants Pass. He has different kinds of pears, principally Bartletts. The vineyard described as "Vineyard of Tokay and Malaga grapes containing 65 acres," shown on page 20 of "Government's Exhibit 125" is another view of Carson's vineyard over on the Applegate, that is the Carson vineyard referred to by him awhile ago as having been there a great many years. They started to plant it thirty-two

years ago. They put in a half acre of tokays and now they are grubbing up everything else and putting in tokays on the entire place. The "Young orchard containing an inter-tree crop of corn" shown on page 21 of "Government's Exhibit 125" he cannot recognize any of the mountains shown on that photograph or that orchard, all small orchards look alike and he would have to pick out something in the background or so on, so he could tell one from the other, and he cannot tell whether that is in the place that is indicated or not. He sees these large mountains there in the distance but cannot recognize them. He sees some telegraph poles, there is one close to the tree, but does not see any more, and the distance between the trees, there should be if it was a post, he cannot locate that. "Panoramic view of the Rogue River valley, showing especially Josephine County and the location of Grants Pass relative to the tributary country," shown on pages 24 and 25 of "Government's Exhibit 125" is not a photograph, that is made, evidently from a cast of some kind by the artist, it is not a photograph, it does not do justice to the locality and he thinks the maker was a mighty poor artist. It does not show much of anything except the line of the railroad and the stations and it shows Ashland, Medford, Central Point, Wilderville, and so on, and it shows Grants Pass as the center of the picture. The Oregon Caves are about forty miles from Grants Pass. The picture does not purport to be a birds eye view of that country. The picture of the forest "In the depths of the Forest in Josephine Coun-

ty," on page 27 of "Government's Exhibit 125" is a very ordinary picture of a very ordinary piece of timber land. If the trees stood as thick as that, from the size they appear to be that would be pretty heavy timber, and would be good. There are so many conditions in determining what a timber quarter like that would be worth. They are paying from $1.00 to $1.50 and $2.00 a thousand stumpage for timber with reasonable convenience for transportation where it could be logged in the present or immediate future. He does not recognize the tree or the location of a "Three year old peach tree filler in apple orchard, Grants Pass" shown on page 34 of "Government's Exhibit 125," he does not recognize the location, the tree takes the whole picture and he cannot see anything of the location, one tree looks like another. The picture "Winesap apple tree on orchard producing $1000 per acre," shown at page 35 of "Government's Exhibit 125" is on the Eischman orchard on the Rogue River, south of town. He cannot agree with counsel for defendant that that is an exaggerated statement of some famous tree in the old alluvial portion of the Rogue River valley used as a sample of exploitation, as he has kept track of the orchard. This does not state that these trees are eight years old and he knows the ranch to be eighteen years old from hearsay. He believes that orchard did produce a thousand dollars an acre two years in succession and land that would produce $1,000 an acre ought to be worth $4,000 an acre, but he does not know of any selling for that sum and never heard of any selling at that price. He was speaking of what it ought

to be worth, what it would pay twenty-five per cent interest on, it ought to be worth that much money. Referring to "Flame Tokays—Mediterranean grapes returning $350 per acre," shown at page 43 of "Government's Exhibit 125" he could not answer whether these are grapes shown in the ground or are fixed, to put in the picture to be taken after they have been gathered, he could only answer from the appearance. He had nothing to do with the taking of the picture and he does not know where this picture was taken. He would not say that the grapes were fixed to put in the picture to be taken after they had been gathered. He had seen tokays that were just as heavily loaded as that and he does not think that that has been arranged and thinks that that might be taken showing an actual vineyard in a state of nature. He has seen grape vines just as heavily loaded as that. There is a box at the foot of the picture there that has been picked, but the others have all the appearance of being on the vines and it looks very natural. He could not tell whether these are from Mr. Carson's orchard or not. There is only the vine of grapes and the man to recognize, so he could not tell. He does not recognize the man and he had nothing to do with taking the picture. Tokay grapes were not shipped this year by the carload. They shipped them by freight and express, none by carloads this year. He does not know how many pounds of grapes have been shipped or how many crates have been shipped this year. There were a great many shipped by friends to friends elsewhere in single crates, a great many used in the district and a great

many shipped. This year being the first year that all those bunch of fellows raised any grapes, they did not understand the proposition and they did not put dry sulphur in the bloom of the vines when it was in bloom, and if they don't—that is the only thing they have to do to grapes, the only doctoring they have to do, they mildew as a result of not putting the sulphur in the bloom, the grapes mildew, the only thing that has to be done to grapes. The grape is the most simple fruit to raise of any, but it has a mildew. A tokay grape has its pest and sulphur must be put in any time within a week or two or three, or else it will mildew.

Whereupon witness testified:

Q. That is what I mean. Now, you spoke about the development of copper mines being retarded. Do you not know that for forty miles almost in length in Siskiyou County, and certainly within a radius of forty miles, the great copper plants at Kennett, along the line of railroad between Sisson and Redding have desolated the country so that there is hardly a living tree or a living thing growing; and that it has been enjoined as destructive of all other industries?

A. I understand that the Kennett people—that is one thing that our people have been working on; that is why we are so anxious to have a railroad run through to the coast, and run out on one of these points, and put their smelters on the point, so the ocean breeze will carry those fumes of the smelter to the ocean, and we can get a market for the copper.

Q. If you do that, the prevailing winds are from the ocean, are they not—not from the land?

A. That depends on the locality. Now, there are two localities that the prevailing winds are all off shore.

Q. You would have to get it right over on the coast, then, wouldn't you, your smelter?

A. Yes, sir, it would be over on the coast.

Whereupon witness testified that they would have to have another railroad, they could not handle this ore without other railroads. They would have to transport the ore from the mines to the smelter as it is always done. There is no complaint of the smelter at Waldo. There is quite a settlement there, a small settlement, it has been a mining country for fifty years at Waldo. W. J. Wimer operated a store there for twenty years. They still extract a good deal of gold there in pockets and quartz around Waldo. He does not remember what the 3040 acres of orchard lands cost them now, they bought of a great many different parties and one 200-acre tract at $12,000, paid $4,000 for 80 acres, $5,000 for 160 acres and $40 an acre for 80 acres. He remembers the high priced ones and some of the low priced ones. He has put out 800 acres of that into orchard and the trees are one and two years old, and they are proposing to sell these now on a five year contract, care for them in parcels of five and ten acres or whatever anybody desires. Some of the people are moving on to the grounds and they attend to them just the same. It was their idea when they started in, to sell mainly to non-residents, but there are a good

many people moving onto the tracts. There was one set of buildings built there by one party costing $10,000, close to the railroad, as one goes down from Merlin, right on the edge of Merlin. Part of that is bench land, part of it is hill land. The pictures in their pamphlet (witness produces a pamphlet) are rather general of the district, their pamphlet is descriptive of the district. Their orchards were young when this pamphlet was gotten out, referring to this pamphlet which was gotten out before they planted any orchards, or about the time they had started to plant but they did have one or two little orchards. He does not know but what their pictures might be in there. $200 and $300 an acre was land that they were selling just as the land stood and when they put the trees in and gave a five years' contract, they asked $550 and $600 an acre, with interest on deferred payments at six per cent per annum. This pamphlet was published when they first started in. He did not know but what there might be one or two little orchards there on the tracts there in this pamphlet, but he does not find any. The railroad of the Oregon and California Railroad runs right through, it is twelve miles from Merlin to Grants Pass. Their tract is five miles long, he believes. The Southern Pacific Company has land between them and Merlin. The Country Club Orchard tracts is the same as Laurelhurst, and it belongs to the Rogue River Orchard Company, a corporation, of which he is one of the owners. W. T. Reed and F. E. Reed of Kansas City and F. F. Williams of Portland and S. D. Williams originally of Portland but now superinten-

dent of the works and living at their Club House, are interested with him in this property, the five own the property. They have built a $10,000 club house on these lands and he supposes they have put into this proposition from $150,000 to $175,000. They have spent very little advertising, comparatively speaking. They have done most of their work on the grounds. This is one pamphlet they put out and they put out a poultry pamphlet.

Q. Well, it is pretty well advertised because of this fine country club as the railroad goes by, isn't it?

A. Yes, sir.

Q. With its green roof and beautiful pergola porch, and everything of that kind?

A. Yes, sir. We feature the fact that the Shasta Limited passes through our holdings.

Q. Don't you feature the fact that the other trains also pass through there in daylight, some of them?

A. Well, we speak of the Shasta Limited.

Q. I understand; but the other trains do pass through there in daylight?

A. Oh yes, sir, they do pass through, but we don't advertise it as a special feature.

Q. We common people have to travel on the other trains—we can't travel on the Shasta.

A. Yes, sir.

Whereupon defendants offered in evidence the reduced map of this Country Club district and environ-

ments as a part of the testimony of witness, marked "Defendants' Exhibit 372," which was received in evidence and is hereinafter set out and described and made a part of this Statement of the Evidence and marked "Defendants' Exhibit 372."

Whereupon witness testified that these "day old chicks" do not start before they have broken the egg shell but when they are hatched, when they are out of the shell, that is he means to say as soon as they come out of the shell in incubators, the chicken comes out of the shell in the incubator and they take the youngster as soon as he comes out of the shell and put him in crates and ship him, that is, if he was born this evening and he kicks the shell off, the next morning he starts on his journey and is shipped in a crate from Petaluma, California, near San Francisco, to Grants Pass, over the Southern Pacific, which is a pretty careful road. They appreciate what the road has done for them, the company sent special wires and kept track of these shipments and posted them and the Company was very nice about it and they appreciate it too. One has to raise the feed for these chickens, their green feed and have to have good soil for them on account of raising their feed, otherwise it is very expensive.

"Q. If you had a little bottom land, you could raise the feed and haul it to them, couldn't you, just as they do at Petaluma?

A. They do that in Petaluma.

Q. They could do that here?

A. Yes, not and make as much money as we do, but it could be done."

The number of acres necessary in the way of feed, to successfully operate a chicken ranch on one of these foothill tracts, would depend largely on the number of chickens that one handled in the year, and also would depend upon whether one produces his own young chickens, whether he has kept his chickens over. For the general utility bird, utility ranch, where one buys his chickens and does not keep a hen until she is past two years old, it is very much less than it would be if one did all the work, if one specialized on it. Vetch is not particularly good for chickens, but two or three acres of country kale, this thousand headed kale that they can grow twenty or thirty or forty tons per acre, that will keep a lot of hens. Two acres of kale is a nice little patch. They are just starting into the chicken business in Josephine County in the last year or two.

Q. Now, this granite soil has degrees—some of it is so nearly complete granite and porphyry that it would not sprout a white bean? Isn't that true?

A. No, that is not true.

Q. Well, there is always some soil, some earth, besides the granite in this granite soil, isn't there?

A. I understand, and I see from observation by being along the Southern Pacific Railroad that the granite that they blast out of the granite pit up a mile and a half or two miles above Grants Pass, and ship it all along for ballast—I learn from observation that stuff grows in

that, and they have to keep weeding it out?

Q. That is to say these station yards, where we use this granite for walks, would be good to raise fruit and crops, do you think?

A. That soil would raise stuff of that kind.

Q. When you get water on it, why, it will grow anyway?

A. Yes, sir. That stuff is not in place. But you take our granite, which is in place, and by dry farming you can produce almost anything on it. But that stuff of course is not in place, and if it is not too thick, too deep so but what this moisture can work up through it.

Q. Don't you know, Mr. Sherman, that a good deal of this hill land around Grants Pass there has scrubby pine on it, and chaparral and stuff of that kind, where this granite land is, and that it would hardly support a goat in a state of nature.

A. Judge, that has been the opinion of a great many people, but they are learning that that is not true. They find that that soil is getting to be the best known, the best soil that we have. People are getting so they would rather have that than the river bottom soil. For me, I would rather have it—much rather.

Q. And your opinion of the value of these lands and of their utilization is based upon that impression which you have of this granite soil and other soil?

A. From observation and from experiment—experimenting with it.

Q. Now, what in your judgment is the value on an average of all of these unsold lands in Josephine County, and those in Jackson County about which you have testified? What would you say was a fair average price, if the railroad company was called upon as an owner, now, in good faith to put a price on these lands in 160-acre parcels; averaging it all over the unsold lands that you have testified about, particularly in Josephine County, what, in your judgment, would be that fair average price or market value?

A. Why, Judge, I couldn't answer that question right off, but I can point you to a great many different sections and quarter sections and forty acres that I know the values of them, that is, comparing with other lands adjoining.

Q. What would they be worth, the best price now? Take some of the best, what would it be worth an acre in quarter sections?

A. Well, your company have lands there that are worth from $100 to $200 and $300 per acre.

Whereupon witness testified that he would not put any value on this thirty-five per cent of the lands which he says would be of no value for any particular purpose, except for grazing, it is good for grazing, it would have some value for grazing, although it is rocky, steep and precipitous and too rough for tillage. That land for grazing purposes now, there would be other features to come in there, in fixing the price, in his judgment. If a man owned other land near it so he could use that for

grass, and then have another piece to raise stuff for his stock and so on, it would be more valuable than it would be otherwise but if he went to pick it out he would have to take the good with the bad, and if one had 160 acres of that land and could not pasture his stock outside, and let it roam up into the mountains, he would have to consider that when he came to pasture them. A good deal of the land up there is pastured now by ranchers and farmers outside, but this is not one of the chief elements or sources of their living, that is stock raising, it should be, but it is not. Some of these people who are up in the foothills and mountains away from the railroad, away from transportation, away from Grants Pass, are stock men back in there.

Whereupon witness testified:

Q. There are not many of those fellows up there raising Tokay grapes, and getting $500 an acre, are there?

A. No, sir, those fellows up there are not. Those fellows up there are mainly stock men.

Q. People experimenting in grapes and intending to go into the business are down next to the railroad, near the towns where they can get market?

A. The grape don't make so much difference about shipping as an apple or some of the other fruits.

Q. I understand, but as far as your knowledge goes, the experiments are being conducted along close to the line of railroad?

A. Yes, all the way from one to twelve miles from the railroad.

Q. The twelve miles is over as far as this old orchard of Mr. Carson's?

A. Yes, Mr. Carson's orchard is twelve miles.

Q. You refer to the twelve mile orchard as that one?

A. Yes, sir.

Whereupon, on re-direct examination, witness testified that these railroad lands in there were patented at different times. There were a great many of them contested for mineral and those patents were held for a considerable time and there was some of that land which was not surveyed and it was not patented until after being surveyed, and all that kind of thing. It was patented at different times as he understands it. He thinks that most of the patents have issued just of late, in the last few years. He believes that the Company has sold on contract, that is his understanding.

Whereupon, on re-cross examination, witness testified that he has a copy of his address made in September, 1906 or 1907, at the State Fair pasted in his scrap book and he thinks it was printed in the Oregonian. He knows there was one or two of the Portland papers which printed it in full. They asked for his likeness and he gave it to one or two of them and one of them he did not give it to. He did not have his address printed in pamphlet form, he had nothing to do with it whatever

and was very much surprised when he found that it got the attention that it did. It was printed in the Oregonian or Telegram, in two of the daily papers in Portland. He thinks the Oregonian was one and he thinks it was printed as his speech all the way through.

Whereupon, on re-direct examination, witness testified:

Q. Now, Mr. Sherman, your attention was called to the Hull orchard in this picture. That is, a photograph of which is in this pamphlet, which is located on section 15, township 36 south, range 6 west. Now, the bill of complaint in this case shows that in that same township there are railroad lands in section 9, which corners on 15, 480 acres; section 11, which also corners on 15, 200 acres; section 23, which also corners on section 15, 400 acres; section 21, which also corners on 15, 277 acres; and a large amount of land in the other odd numbered sections in that township. Do you know whether these railroad lands that I have referred to, and particularly in sections 9, 11, 21 and 23, which corner on 15, are of a different character from the lands which are included in the so-called Hull orchard?

A. Yes, they are, part of them—pardon me for looking at my map.

Q. I direct your attention to the other odd numbered sections in that township, and particularly sections 9, 11, 21 and 23.

A. Yes, sir, they are all of a different nature than the soil in section 15.

Q. What is the character of the soil in these other lands?

A. Well, there is some of two of those sections about the same soil, but as a whole, they are part of them red soil, and part of them is the brown soil; a small portion of them is river bottom soil, the same as the other.

Q. This in 15, is it all river bottom soil?

A. Nearly all. Well, there is a portion of that runs up.

Q. Well, where the orchard is, is that all alluvial soil?

A. Yes, sir. That is where he had 38 boxes of Spitzenbergs from one tree.

Q. Now, counsel for defendants has asked you with reference to the various orchards illustrated in this pamphlet, Government's Exhibit 125, if they are not all on the alluvial bottom lands and on old donation claims and old settled parts of the county. I will ask you whether it is a fact that all of the orchards and vineyards there are on lands of that character?

A. No, sir.

Q. About what proportion of them are on different kinds of soil, and what is the general history of the development of the fruit and grape culture there in that general district concerning which you have testified?

A. Why, that district, like all other districts, the first planting they did was on the river bottom lands.

That is characteristic, as I understand by studying the history of all districts that I have looked up. They first go on to the river bottom lands and plant their orchards and vineyards and so on, and then they go on the hill lands. Now, we have gone to our river bottom, and we are going to the hill lands. We commenced several years ago.

Whereupon witness testified that there are producing orchards on the hill lands. The river bottom lands have frost down there in that country and they have to smudge. The hill lands do not have the trouble with the frost, they have to smudge, in any apple growing district, good apple growing districts they have frosts. It takes a frosty district to produce a good apple, that is the history of the apple business in the United States and all over the world, as far as that is concerned. Wherever one has an apple orchard district, one has frost to contend with. The river bottom lands are very much worse than the hill lands. Frost is like boiling water, as long as one keeps it stirring and moving, it don't settle, but as soon as one stops it on flat lands, in a pocket, then it settles and the frost gets the fruits. This pear orchard of Scoville's is on red hill land. There are railroad lands in that vicinity, and there are railroad lands of the same character as the Scoville lands and he does not know of any reason why the railroad lands could not be used for the same purpose as the Scoville lands. This mildew on grapes of which he spoke is not peculiar to the Grants Pass district, but is general all over the world, any grape should have the use of dry sulphur, and it is not peculiar

to the tokay grape, that is one of the processes that has been developed by experience to prevent mildew in grapes. It is the one pest, the only thing they have to contend with in rgard to grapes, and they have that same thing to contend with elsewhere. He is not very much familiar with the copper industry in Montana.

Whereupon witness testified:

Q. Do you not know that the mines at Butte, a very large percentage of the ore is shipped by the Amalgamated Copper Company to Anaconda, a distance of some 24 or 25 miles to be smelted, and about as large a proportion shipped from Butte clear to Great Falls, a distance of over 200 miles, to be smelted?

A. Isn't it a fact that the ore, smelting ore, in order to get the proper flux has to be shipped in from a great many different mines, and isn't it a fact that hardly a smelter in the United States is on the ore body itself, and isn't it a fact that it all has to be shipped?

Q. I want you to answer that. Is that your understanding?

A. That is my understanding of it.

Whereupon witness testified that he has heard of the large smelters of Great Falls, Montana, operated by the Amalgamated Copper Company and knows that it had for a great many years the largest copper smelter in the world.

Whereupon witness testified:

Q. And Great Falls is the quotation grade of cop-

per the world over today—quoted abroad as "Great Falls or better?" You know that, don't you?

A. I knew that that was used as a standard. This proposed line, they would take right through our copper belt, from Grants Pass to Crescent City.

Whereupon witness testifed, that he knows of instances where these unsold railroad lands are worth from $100 and $200 to $300 per acre for use for agriculture and horticulture and that has no reference to their value for timber or mining or anything other than agriculture and horticulture. These lands join the city limits of Grants Pass on two sides. The railroad lands adjoining Merlin, are more valuable and the Company has lands back a few miles from the railroad that would be worth $100 an acre, $50 an acre, $40 an acre. The lands that are closer to the railroad are worth more than those farther back. The difference is on account of transportation, and there is no other difference, so that if transportation facilities should be provided, that difference would be to that extent wiped out. He knows of a great many tracts of railroad land worth from $25.00 up, a great many tracts up to $50 per acre for agricultural and horticultural purposes and that could be sold for that if offered. He does not refer to their value for timber, he is speaking of horticulture, and agriculture exclusively. They are worth more for that than for timber, timber would not be worth that much. This thirty-five per cent of land that he says has no particular value except for grazing purposes in connection with other lands is

scattering, it is the points and ridges, the tops of ridges along the high lands. There are quarter sections of that character of land, as to entire sections there would be a long strip, perhaps, up the ridge, something of that kind, but it would not include any one whole section, it would be a section in acreage or area, a whiplash proposition, a long strip of land.

Whereupon witness testified:

Q. Now, you are more familiar with this general subject than I am, Mr. Sherman. I don't want to detain you any longer unless you have in mind something to explain with reference to questions that have been asked you, either by Mr. Fenton or by myself, that would throw any light upon these general questions that have been put to you.

A. I see, a great many questions Judge Fenton asked in regard to cultivated lands or donation lands—I don't know that the lands that he referred to are all donation lands. There was very little clearing and developing done in that district after the construction of the railroad for a term of years. The way I would explain that would be from the fact—

Mr. Fenton: How do you know this, Mr. Sherman?

A. Well, from the conditions of the clearing and from the length of time that the lands have been cleared.

Mr. Fenton: You get that as a matter of general

history, not from personal knowledge?

A. The age of trees planted, and the age of buildings, and what the people tell me.

Q. Well, Mr. Sherman, your information on that subject is just as accurate when I question you about it as when Judge Fenton questions you, isn't it?

A. Yes, sir.

Mr. Fenton: I am not questioning that. I just want to know how he obtains it, whether from personal knowledge or whether it is derived from his general historical knowledge.

Q. Well, now, what you were about to say is in explanation of the testimony you gave in answer to the questions asked you by Judge Fenton, is it?

A. Well, I am kind of talking the thing over here with you folks here, to bring out the points and the truth of the matter. That is the way I am doing.

Q. Well, proceed, Mr. Sherman.

A. The point that I was going to make was in regard to the length of time that it appeared elapsed without any development in the district, which Judge Fenton bordered on. Now, at the time of the construction and before the construction of the railroad, the settlers and people who came in there saw that there would be sale for a great deal of products during construction days; and they cleared and plowed and planted and harvested crops to feed the people that were coming in at that time, the people that were working on

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the roads, and so on. Well, after the road was built, in a few years things laxed a little, and there was a period of a good many years that there was very little clearing, if any. I guess there was fifteen years that there was, practically speaking, very little development done in the district. And then it came a time when the people commenced coming into that district, and they started clearing again. That first clearing was all done on the river bottom lands, and the later clearing has all been done on the hill lands.

Q. Are they clearing now on the hill lands even in preference to the bottom lands?

A. The development these days is on the hill lands.

Mr. Fenton: The bottom lands are all cleared, aren't they?

A. Largely—largely all; not all; they are largely all cleared. There is a great deal of bottom land—quite a good deal of bottom land uncleared; but you see they are going to the hills for the fruit. Many of them are talking now that we should take out the trees from the river bottom lands, and put in hay and grasses and so on, and plant the orchards on the hills altogether. They feel that way about it; they commence to see, just as they have in all other districts, that the hill lands are more valuable for fruit than the river bottom lands.

STIPULATION.

Mr. Townsend: It is stipulated that E. J. GROVER, if called as a witness on behalf of the

Government, would testify substantially the same as the witness Charles A. Edmondson concerning substantially the same area of lands, and that his testimony would be substantially the same both upon direct and cross-examination, and redirect examination, and that his testimony shall be considered as having been offered and received, subject to the same objections that were urged to the testimony of the witness Edmondson.

I think I should qualify the foregoing offer by saying that Mr. Grover did not live in that vicinity as long as the witness Edmondson, and that there would be a difference in their testimony in that respect. Mr. Grover lived there during a period of eight or ten years, while the witness Edmondson lived there a much longer period.

Mr. Fenton: You cannot tell between what dates?

Mr. Townsend: I am willing for the record to show that he lived there between 1902 and 1911. He has been away from there about a year.

Mr. Fenton: Where does he reside now?

Mr. Townsend: He now resides in Portland.

STIPULATION.

It is stipulated that M. F. McCOWN, a witness on behalf of the Government, if called, would testify upon direct examination substantially as follows:

I have lived in Jackson County, Oregon, since July, 1900, and in Oregon all my life, having been born at

Oregon City, said State. I have been cruising timber since 1891, and have been cruising and surveying, mostly in Jackson and Josephine Counties, Oregon, since July, 1900. In 1906 and 1907, or 1907 and 1908, I spent about a year cruising lands for the Southern Pacific Ry. Co. to take the place of data lost by them during the San Francisco, California, fire. While so cruising for said company, Messrs. King and Cavell were associated with me part of the time, we three working from the same camp. In cruising the lands, we made special note of the timber, and also noted the agricultural and grazing lands, afterwards making maps and notes for the company showing these various features. Either while in the employ of said company or while at work for private parties, I have cruised over most of the lands in Jackson and Josephine Counties, and am very familiar with the railroad lands therein.

I have had about two years of experience in farming work, and have lived in small towns and agricultural communities all my life.

Of all the railroad lands in Jackson and Josephine Counties, Oregon, I estimate that about 75 out of each 100 quarter sections are suitable for settlement purposes; by that I mean that each of said 75 would support a family. I base this opinion on the fact that 75 percent of the quarter sections will average 25 to 30 acres of plow land to the quarter section, and most of the remainder of each such quarter section would be suitable for grazing purposes. This estimate of the amount of plow land to the quarter section I consider

is very conservative.

A large proportion of the lands I have classed as suitable for settlement purposes is good fruit land. It is stipulated that upon cross examination said witness would testify substantially as other like witnesses called by the Government have testified, on the general question of the suitability of these lands for settlement, the agricultural character thereof, the grazing character thereof, the timber character thereof, and the utilization for settlement purposes of these lands with which the witness was familiar, as disclosed by his direct examination.

This testimony to be received subject to the same objections made by either party to similar testimony.

STIPULATION.

It is stipulated that CHARLES M. COLLIER, a witness on behalf of the Government, if called, would testify upon direct examination substantially as follows:

I am a citizen of the United States, 54 years of age, and by profession a civil engineer, and my post office address is Eugene, Oregon. Since 1884, and during that time, have followed my profession as civil engineer, and most of my work being surveying, being County Surveyor for Lane County since 1886, and for a considerable part of said time have also held the office of City Surveyor for Eugene, and have also been Deputy U. S. Mineral Surveyor. I am familiar with and have surveyed over practically all of Lane County,

northern part of Douglas, and have surveyed more or less in Benton County. And during my work since 1886, have made Government surveys of nine or ten townships in Lane and northern Douglas Counties.

Based upon my knowledge of the topography of the country, character of the land, soil and so forth, I would say that, taking Lane County from its north and south boundaries and within the limits of the Grant limits of lands granted by Congress to the Oregon and California Railroad Company, and also as to that part of Douglas County north of the south line of township 20 South and within the limits of said grant, that approximately seventy-five per cent of the lands are suitable for settlement, that 50 per cent of said area is agricultural in character, and 50 per cent thereof grazing. A considerable portion of the area above described is timber or brush land, which covering would have to be removed before the agricultural lands can be utilized for agricultural purposes.

It is stipulated that upon cross examination said witness would testify substantially as other like witnesses called by the Government have testified, on the general question of the suitability of these lands for settlement, the agricultural character thereof, the grazing character thereof, the timber character thereof, and the utilization for settlement purposes of these lands, with which the witness was familiar, as disclosed by his direct examination.

This testimony to be received subject to the same objections made by either party to similar testimony.

STIPULATION.

Mr. Townsend: It is hereby stipulated that CHARLES V. GALLOWAY, if called and sworn as a witness on behalf of the Government in this cause, would testify in substance as follows:

I am, and for more than three years last past have been, Chairman of the Board of State Tax Commissioners, for the State of Oregon. As such officer I have become acquainted with the method of assessing real property in the several counties of the State of Oregon, including the classification of lands. I am also familiar with the methods by which the lands are classified in some counties as tillable and non-tillable lands. In eight counties of the State the assessors have made no classification of this kind. Those counties are Douglas, Klamath, Lane, Lincoln, Marion, Multnomah, Polk and Umatilla. Because of the fact that the assessment rolls for those counties do not distinguish tillable lands from non-tillable lands, all of the assessable lands in those counties are included as tillable lands in the statement of the summaries of the assessment rolls of the several counties of the State of Oregon, as equalized by the County Boards of Equalization, and compiled by the Board of State Tax Commissioners, as shown in Defendants' Exhibit 324, which covers the year 1911. In those counties where the local assessors do distinguish tillable lands from non-tillable lands, the county assessment rolls show this classification, and the lands are divided into the two classes of tillable and non-tillable lands. In those counties where this classification

is made, the practice has been to classify as tillable lands only lands that are actually under cultivation, and all other lands are classified as non-tillable lands. This practice was developed at the annual convention of the County Assessors held three years ago, and I caused inquiries to be made of all of the county assessors in the State, and thus became familiar with the foregoing facts. There may have been some slight variation as to this practice in some of the counties, but in none of them did it vary substantially from the statement made above. It has been the practice down to the present time for the county assessor of each county to file with the County Board of Equalization his original assessment roll of the county. Thereafter a duly certified copy of this assessment roll in each county, as equalized by the County Board of Equalization, is filed in the office of the Secretary of State, and the annual statements by the Board of State Tax Commissioners (for example, Defendants' Exhibits 324 and 325) are compiled from these certified copies on file in the office of the Secretary of State.

It is further stipulated that the foregoing shall have the same force and effect as if Mr. Galloway had been called and sworn as a witness and testified as herein above set forth, subject to such objections as the defendants, or either of them, may now desire to interpose.

Mr. Townsend: It is further stipulated that, in connection with the foregoing evidence of Mr. Galloway, the court shall take judicial notice of the provisions of the statutes of the State of Oregon relating to the

matter of assessments, and the county Boards of Equalization, and the Board of State Tax Commissioners, including all repeals, amendments and new enactments which were in effect at any time during the assessment of any of the lands involved in suit.

STIPULATION.

Mr. Townsend: It is further stipulated that JOHN W. KELLY, if called and sworn as a witness on behalf of the Government, would testify as follows:

That on September 2, 1907, he was a reporter for the Evening Telegram, a newspaper of general circulation published at Portland, Oregon, and that on said day E. H. Harriman, who was then President of the Oregon and California Railroad Company, visited Portland, and Mr. Kelly called upon him for an interview. The interview was had, and Mr. Kelly will swear that the statements made by Mr. Harriman to him at that time, including the interrogations by Mr. Kelly and the substance of the answers by Mr. Harriman, were in substance as follows:

"What can I do for you? Ask all the questions you like," was Harriman's salutation.

"Well, what do you think of Oregon since your trip?

"I know as much about Oregon as any man in Portland. I knew it before the trip, for I have had reports. I was not even surprised at the number of settlers, for I had reports on them. What impressed me more than anything else in Oregon is the climate.

It is the greatest climate for August I have ever found anywhere. There is nothing to beat it."

"What conditions did you find in the interior?"

"Sparsely settled regions. You go miles and miles before you see a face, or a habitation. I traveled vast stretches and saw nothing but chipmunks. The country is undeveloped. Oregon needs more people. I passed forest reserves and timber-land granted to military wagon road companies. The reserves and the military road companies control too much land. This should be remedied. The reserve policy requires changing and the military road companies should be made to dispose of holdings."

He includes the S. P.

"Then, Mr. Harriman, your contention is that Oregon cannot be properly nor speedily developed until the corporations which have vast holdings are forced to open the country, to dispose of the lands?"

"Yes."

"And does this include the lands granted to the Southern Pacific?"

Mr. Harriman permitted a smile to flit across his countenance. He wore eyeglasses, but took another pair from his pocket and polished them before making reply.

"Yes," said he, "the Southern Pacific, too, but the Southern Pacific hasn't much land. You see, before we came into the Southern Pacific, the company was

pressed for money and was disposing of lands and giving options to syndicates and speculators, and we didn't know how much land we had, so we stopped until options expired, to ascertain just what we had in land. The Southern Pacific will sell land to settlers, but not to speculators. We can tell a speculator from a settler as well as anyone. The agricultural land we will sell, but the timber-land we will retain, because we must have ties and bridge timbers, and we must retain our timber land for future supply. The Southern Pacific has an insufficient amount of timber now, and we have had to buy large tracts, looking to the future supply of ties and material. Yes, we will sell to settlers, but speculators will get none.

"One has to travel now long distances before coming to a cultivated district, and then travel another long distance before coming to another. Between these points there is nothing. The trouble with a railroad is that when it has been built you have to keep operating it, whether it is self-supporting or not. You can't pull up the track, put it in your pocket and take it to a more fruitful section."

This observation of Mr. Harriman is the only clew as to his intentions in Central Oregon. It might be construed that he does not believe the time ripe to project a line through that section, inasmuch as he found it weakly settled, but well developed where the settlers were.

"Of course," resumed the railroad magnate, "the

isolated spots under cultivation will gradually enlarge and spread, eventually reducing the unoccupied stretches between, but it takes time and is retarded by the reserves and the holdings of the military wagon road companies."

Mr. Fenton: Defendants object to this testimony offered, on the ground that the same is incompetent, immaterial and irrelevant, and particularly upon the ground that it is hearsay, and that if the statements were thus made by Mr. Harriman, he was without authority or power to make an admission or statement binding upon the defendants, or any of them, as the act or deed or admission of any of the defendants.

Whereupon complainant offered and there was received in evidence a deed dated August 7, 1886, from the Northern Pacific Railway Company to the City of Portland, for a right of way over certain lands and which the complainant contends is the deed referred to in Section 5 of the Forfeiture Act of September 29, 1890, which exhibit was received in evidence and marked "Government's Exhibit 128" and is hereinafter set out and described and made a part of this Statement of the Evidence and identified as "Government's Exhibit 128."

Mr. FENTON: Mr. Townsend desires to make a statement under oath, and the defendants consent that he may make this statement in his own way, without any questions, direct or cross, being propounded to him.

B. D. TOWNSEND, being called as a witness on behalf of the government, and being first duly sworn

to testify the truth, the whole truth and nothing but the truth, testified as follows.

MR. TOWNSEND: There are three subjects which I find myself compelled to explain into the record. Of course I asked permission to testify in the case reluctantly, but find myself under obligation to do so because of the facts as I will detail them.

When I first was employed by the government in connection with the Oregon and California land grants I was Assistant United States Attorney for the District of North Dakota, and received a telegram from Attorney-General Bonaparte in May, 1908, asking me if my time and other engagements would permit me to go to Oregon to prepare a bill in equity for the government. I did not know at that time to what the subject of the telegram related, or what kind of a suit was to be instituted. I went to Oregon, arriving there in June, 1907, and found that no preparation had been made for the institution of the suit. I then set about investigating this entire general subject and collected all of the information that I could concerning these grants for the purpose of submitting it to the attorney-general. At that time I understood that I would not be employed in the suit when instituted, and at the time that my work would simply consist of an investigation of the subject with a report to the attorney-general and to Congress so that they might take such action as they desired. It thus transpired as I was seeking information I would call before me certain men whom I understood had such information, and I interview

them and put their interviews in the indirect form as statements by myself of the facts that these different persons had stated to me. In that way the statement of Mr. Elliott, which was referred to in his cross-examination, was made. However, those statements were carefully prepared in the presence of the various persons making the statements and were revised by them, not only as I dictated the statements, but also after they had been transcribed on the typewriter. It is not a fact, as stated by Mr. Elliott, that at any time during my interview with him I indicated to him that I thought that he was adverse to the railroad company and would therefore give me information. The truth is, that with Mr. Elliott, as with several other persons who had formerly been employed by the railroad company, I exercised all the caution I could to see that no colored information was conveyed to me, and I expressly stated, I remember, to Mr. Elliott that I did not want any information based upon prejudice, but was seeking a correct statement of the facts to be presented to the attorney-general. I did not take those statements at that time with the idea of using them as evidence. At that time I did not know that the attorney-general would institute the suits. If I had known that the statements would ever be used as evidence, I, of course, would have had some one else take them so that my testimony would never be necessary to verify them. It was my actual endeavor at that time to see that the information which I reported to the attorney-general and Congress was accurate, and in this connection, it is right and fair that

I acknowledge that the railroad company gave me access to all of their records and such documents as I asked for, and I spent approximately sixty days abstracting their minute books and getting records of the company. I did this work in one of the offices of the company which they kindly furnished me for that purpose.

The next subject that I desire to cover by my statement relates to correspondence which took place in the year 1872, relating to the construction by the Secretary of the Interior of the provisions of the Act of April 10, 1869, which the company contends annexed to the grant and condition restricting the manner in which the grant of lands might be sold. This correspondence has been introduced in evidence as Government's Exhibit 109, and is also covered in part by some of the exhibits that have been introduced by the defendants. This correspondence was discovered in the files of the interior department by Mr. Griffith, and others acting with him, in making a search of those files. As soon as this correspondence was called to my attention I went to the Department of Justice to secure access to all the old files of the department. I made a search of those files myself instead of entrusting it to others, for the reason that I was very anxious to find anything that might be on file in the Department of Justice relating to the subject. The chief of the files and mails division of the Department of Justice explained to me thoroughly the old filing system of the department and turned the old files over to me. They were all separated

in the basement and I was able to pursue my search without interruption. During the years 1860 to 1875 there was a correspondence register or docket kept by the Department of Justice and in this book was recorded the letters received by the department and also letters written by the department. These correspondence registers or dockets were consecutive so that I could see that they were complete. I made a careful search of those dockets and could find no letter recorded there with reference to the correspondence which appears in Government's Exhibit No. 109. In making the search of these correspondence registers, I did not confine myself to any particular name, but actually ran through the dockets completely during the period covered by this correspondence, and as stated above, found no record of any correspondence upon the subject. The letters referred to in Government's Exhibit 109, written by George H. Williams, and addressed to him, were nowhere of record in the Department of Justice. In addition to searching these correspondence registers, I actually searched all the old files themselves and to assure myself that my search was complete I actually searched all of the files covering that period. I did not limit myself to any particular file where documents on a given subject were filed. The filing system at that time was by states. The correspondence received from Oregon, for instance, being kept separately in one file, and the same as to all of the other states. I think during the latter part of that time that that system was in vogue, that where there was more than one judicial

district in a state, the correspondence was kept by judicial districts, but I did not confine myself to the files relating to the State of Oregon. I included California, because some of this correspondence originated in California. I included New York because Mr. Holladay lived there and I made every effort to locate any correspondence that might be of record in the department upon that subject, and I feel that I am justified in saying as the result of my search that correspondence never was made a part of the official files or records of the Department of Justice.

MR. FENTON: Let me at this point note an objection. Defendants object to the conclusion of the witness just stated, and as immaterial, and to the whole of the witness' testimony on this subject as immaterial.

MR. TOWNSEND: (Continuing) I wish to add upon that subject that I spent no less than two weeks making this search, and had with me at all times one or more persons assisting me, particularly Mr. A. P. Fulkerson, who, as a special employe of the Department of Justice, was assigned to assist me in the cases over which I have charge.

I also participated to a considerable extent in the search made by Mr. Griffith and Mr. Casey of the records of the General Land Office and in the office of the Secretary of the Interior, but my search there was not complete, and I relied in part upon the search made by Mr. Griffith and Mr. Casey. The search of the records in the Department of Justice was complete

on my part. Any assistance that I received from others was supervised by myself, and all of the documents were actually examined by myself as they got them from the files for me.

I wish to state in addition to the foregoing that during my search of the records in the office of the Secretary of the Interior, I found the pamphlet, a copy of which has been introduced in evidence as Government's Exhibit No. 105. This pamphlet bore the filing mark of the office, and it was filed as of some time in January, 1869, and accompanying those documents relating to the Act of April 10, 1869, as I remember it, was the committee report, although I am not positive as to that. This copy of the pamphlet, which was a printed pamphlet, I took from the files for the purpose of introducing it in evidence in this case, but in some way it has become lost and I have made a very careful search for it and am satisfied that it has been lost and that I cannot produce it. The pamphlet was the same as Government's Exhibit No. 105 with the exception of the filing mark which it bore, as I have stated above.

Mr. Fenton asked Mr. Griffith if he was sure it was Government's Exhibit No. 105 instead of Government's Exhibit No. 106. I am prepared to assure Mr. Fenton that there is no possibility of a mistake on that point because I was so familiar with those pamphlets and the documents, that I could not be mistaken. I do not think that the pamphlet issued by the west side

company, Government's Exhibit No. 106, was in the files. In fact, I am positive that it was not, because if it had been I would have taken that to be introduced in evidence, the same as Government's Exhibit No. 105. I do not recollect that there was anything else in connection with the filing of that pamphlet in the Secretarys' office that would throw any additional light upon the subject other than what I have stated.

Referring again to Government's Exhibit No. 109, it will be observed on examining this correspondence, that the letter from the commissioner of the General Land Office, dated July 16, 1872, addressed to George H. Williams, as attorney-general, acknowledges the receipt of a letter dated June 27, 1872. We have never been able to find that letter or any copy of it. This is true, not only as to the Department of Justice, but also as to the Department of the Interior.

Mr. Griffith made a special search for that letter at my request, and when he testified yesterday that this was all the correspondence, he included that in his answer and that that letter could not be found. I am satisfied that it is true that the letter has either been mislaid or lost. The jacket in which this correspondence was filed in the General Land Office noted the fact of the receipt of this letter of June 27, 1872, but the letter itself was not within the jacket, although the other correspondence which has been identified as Government's Exhibit No. 109 was in that jacket. I think that is all I have to state.

TESTIMONY OF DEFENDANTS IN REBUTTAL

Whereupon FRED H. McCLURE, recalled by defendants in rebuttal, having been duly sworn testified on direct examination as follows:

Q. Mr. McClure, I show you photographs Numbers 91 and 92, purporting to have been taken by you October 4, 1908, of the cabin of D. McLafferty, which is a part of Defendants' Exhibit 270. Mr. McLafferty has testified that he and his wife were present at the time those photographs were taken, and that they wanted to be in the picture, and that you told them that they could not be in the picture, that your instructions were from the company not to allow any of these settlers to be shown in the photographs. Now, state what the fact is, as you recollect it.

A. I do not recall any instructions of that sort. I merely did that on my own responsibility. We photographers sometimes have to scheme around and take things in our own hands to get the pictures that we want, to overcome things that seem to be in the way. I did not think the people should be in it.

Q. Did you have any instructions of any kind from the company that these settlers should not be taken by you in the pictures?

A. No, sir, not that I recall.

Whereupon, on cross examination, witness testified:

Q. You do not mean to dispute Mr. McLafferty, then, as to whether you did refuse to let them be in the picture?

A. Oh, no. I may have told them. I probably told him I did not want him in the picture, on my own responsibility.

Whereupon, on re-direct examination, witness testified:

Q. You wanted the pictures to show the cabin and the improvements as nearly as they could?

A. Yes.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME IX

PAGES 4285-4892

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

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TRANSCRIPT OF RECORD

VOLUME IX

PAGES 4285-4892

Whereupon, it is certified that the exhibits offered and admitted in evidence on behalf of the parties to this suit, and hereinbefore referred to, set out and described in this Statement of the Evidence, are as follows, to-wit:

GOVERNMENT'S EXHIBIT 100-A

consists of the minute books of the Oregon Central Railroad Company, Portland, Oregon, (West Side).

GOVERNMENT'S EXHIBIT 100-A

JOURNAL OF MINUTES

OF

O. C. R. R. CO.

OF PORTLAND

VOL. I.

Journal Record of the Proceedings of Meetings of the Stockholders and of the Board of Directors of the "Oregon Central Railroad Company."

STOCKHOLDERS MEETING

Salem Oregon May 24th 1867.

At a meeting this day held at the office of the Company, B. F. Brown was duly made President & G. W. Lawson Secretary of the first stockholder meeting,

Whereupon came Seth R. Hammer holding the proxy of Thomas H. Cox Incorporator G. W. Lawson holding the proxy of M. M. Melvin Incorporator, Cyrus A. Reed holding the proxy of Joel Palmer, Incorporator and B. F. Brown and J. Gaston, Incorporators in person and also the present stockholders of said Company, and upon a ballot being taken for the Election of a Board of Directors the following named persons were duly elected Directors of the Oregon Central railroad company, to-wit William T. Newby, J. M. Belcher, B. F. McLench, W. C. Whitson and J. Gaston. The Incorporators appointed Saturday the 25th day of May inst. as the time and the town of Amity in Yamhill County as the place for the first meeting of said Board of Directors.

Whereupon the meeting adjd.

G. W. LAWSON, Secretary

B. F. BROWN, President

DIRECTORS MEETING

Amity Yamhill Co, Ogn. May 25th 1867

Pursuant to an appointment of the Incorporators

of the "Oregon Central Railroad Company" the Directors of said Company met at Amity in the County of Yamhill, State of Oregon on the 25th day of May A. D. 1867, and took the oath of office, and thereupon proceeded to elect officers for the ensuing year, which resulted as follows viz

For President.....J. GASTON
For Vice President.....J. M. BELCHER
For Secretary & Treas..W. C. WHITSON

The following resolutions were adopted.

Resolved: That this company accept the funds tendered by the citizens of Yamhill and Polk Counties, for preliminary expenses and to prosecute law suit to defend the Companys Corporate rights, on the terms tendered.

Resolved, that the Oregon Central Company hereby assent to the provisions of the act of Congress Entitled "An Act to aid in the construction of a Railroad and Telegraph from the Central Pacific Railroad in California to Portland in Oregon, approved July 26th 1866, and that the Secretary and President of this Company be instructed to forward a copy of this resolution to the Secretary of the Interior at Washington D. C. and file the same in his office.

Resolved, By the stockholders and Directors of this Company, that the principal business place or office of the Company be removed from Portland to Salem.

Resolved, that the President be instructed to go forward and collect any sums of money tendered under the proposition referred to above, and pay the same

over to the Secretary, and to solicit stock as opportunity may offer, and to continue to correspond with capitalists,

Resolved that the President and Secretary be instructed to proceed against the usurping Company lately organized at Salem, by suit to enjoin them, and that at least one Attorney be employed, to assist the Company, for that purpose,

There being no further business, the board adjourned.

W. C. WHITSON, Secretary, J. GASTON, President

Amity Oregon August 29, 1867

Pursuant to call of the President the Board of Directors met at Amity to-day and appointed W. T. Newby Sec pro tem. Upon consideration W. T. Newby was appointed a Committee to confer with D. C. Lewis, Civil Engineer, for the purpose of engaging his services to survey and locate the first sixty miles of the Road. On motion Board adjourned to meet at Wheatland on Sept 14, 1867.

W. T. NEWBY Sec Pro. tem J. GASTON President

Wheatland, Sept 14, 1867

Pursuant to adjournment the Board met at Wheatland today.

On motion it was resolved to offer the stock of the Company for sale to the Oregonians at twenty five dol-

lars per share in gold coin, or such equivalent as the Company may accept.

On motion it was resolved to invite Col Thos R Cornelius of Washington County to meet with the Board in future until he shall be elected a Director, or until the first twenty miles on the road is finished, for advice and consultation.

On motion it was resolved that the Directors of the Company should be entitled to five dollars per diem and expenses, for the time actually engaged in the service of the Company, until further orders.

Mr. Newby reported that he had employed D. C. Lewis as Chief Engineer, and necessary assistants to make survey, and that they were to commence on Monday Sept 23rd 1867, Mr. Lewis to have eight dollars per day.

Report accepted and Mr. Newby ordered to complete arrangements for the surveying party.

On motion the Board adjourned to meet at Hillsboro on Sept 24, 1867.

Mr. Lewis to be directed to commence at West line of City of Portland at mouth of Canyon and make trial or preliminary survey to head of Canyon in Washington County.

W. T. NEWBY,
Sec, Pro, Tem.

J. GASTON,
President

Hillsboro, Washington Co, Oregon, Sept. 24, 1867.

Pursuant to adjournment the board met at Hillsboro today, Sept. 24, 1867.

On motion, J. Gaston, W. T. Newby & T. R. Cornelius, were appointed an executive committee, with power to transact business of the board of Directors until further orders, and to call a meeting of the board at any time.

The following resolution was unanimously adopted.

Resolved. That we locate the Oregon Central Railroad on the nearest and best route taking into consideration the inducements offered on the different proposed routs, and the advantages for trade and business. Provided that the main road shall never cross to the East side of the Willamette River, and Provided further that said road shall run through the Tualitin plains in Washington County, Oregon.

On motion, the board adjourned until tomorrow morning at Eight o'clock.

September 25, 1867

Board met pursuant to adjournment, when the following resolution was passed,

Resolved, that Books be opened for the subscription of stock to this Company in Washington County, Oregon, as follows, viz:

"We the undersigned, The persons whose names, "are hereinafter subscribed in this book, hereby sub- "scribe for the number of shares of the Capital stock of

"the Oregon Central Railroad Company as are set op-
"posite our names, and agree to take and pay for the
"same at the rate of twenty five Dollars per share in
"U. S. Gold coin, (The Government aid granted for
"the construction of said Railroad being considered equal
"to seventy five Dollars per share, or seventy five per
"cent of the cost of said road) The payment of twenty
"five Dollars per share shall be in full payment for said
"shares. One fourth of the said subscription to be paid
"on demand, and one-fourth every sixty days there-
"after, until paid in full. And the money so paid shall
"be applied to the construction of a railroad passing
"through Tualitin Plains of Washington County,
"Oregon.

On motion it was resolved that the office of the Company be removed from Salem to Portland.

On motion it was resolved that the Treasurer of the Company be required to give bonds in the sum of Fifty Thousand Dollars in Gold coin.

On motion it was resolved that the following be adopted as the By-laws of the Oregon Central Railroad Company

Sec 1st

The following rules adopted by the Board of Incorporators are hereby ratified and confirmed in all respects.

1st shares may be subscribed and paid for with "claimed" or improved lands, rating them at a fair cash valuation.

2nd All persons who paid money or property in aid of "Barrys Railroad Survey," made in 1864, shall be entitled to have the same credited to the amount of ten per cent upon any subscription of one or more shares, provided they furnish satisfactory evidence to the board of directors, of payment in said year.

3rd. The board of directors shall have the right to reject, any subscription or subscriptions, for fraud or other matter bearing upon the interests of the company.

4th Neither the board of incorporators nor board of directors shall ever have any right or power to sell or dispose of the corporate franchises of this company, without a three fourths vote of all the stock subscribed in favor of such sale; but this proviso shall not be construed to prevent the Board of Directors from raising money to construct the companys road by a mortgage of its lands or other Real Estate, railroad or equipment; and in all questions upon which the Board of Directors may not unanimously agree, any stockholder may appeal, to a decision of a majority of the stock, which decision shall be final.

5th The above articles are hereby made a part of the contract of subscription between the stockholders and said Company.

Sec 2nd.

Each and every stockholder shall take his shares of stock, subject to section one and the succeeding By-laws.

Section 3rd

When any stockholder shall appeal from any action of the board of directors, he shall serve notice of the appeal upon the secretary of the company, who shall immediately call a meeting of all the stockholders by giving thirty days notice of such meeting stating the time, place and object of the meeting: the notice to be published in one or more of the daily papers of Portland

Section 4th

The fiscal and business year of this Company shall commence on the First day of June and terminate on the last day of May; and the President, Secretary Treasurer and chief engineer, shall each make a report at the close of each year.

Section 5th

The office of the Company, and of the President, Secretary, Treasurer, and Chief Engineer, with the books and papers thereto belonging, shall be kept in the City of Portland, from and after the work of constructing the road has commenced

Section 6th

The Board of Directors shall hold regular monthly meetings, at the Companys office unless otherwise directed by the Board, and a majority of the Directors shall constitute a quorum to do business. Special meetings may be called by the President.

Section 7th

There shall be elected annually five Directors, who shall hold their office one year, and until their successors are elected and qualified; And at the first meeting of any new Board of Directors they shall elect from their number a President, Vice President and Treasurer; and they shall appoint a Secretary and Chief Engineer who need not be directors, all of which officers shall hold their offices for one year, and until their successors are elected and qualified, unless removed sooner by the Board of Directors; and they shall each be entitled to such compensation for their services, as may be allowed and agreed upon by the Board of Directors. Before entering upon the duties of their offices, the Secretary and Treasurer shall each give bond in such sums and with such sureties as the Board shall approve. But no office shall be created, nor election of Directors or officers held at any other time or manner, except to fill vacancies, than as herein provided.

Section 8th.

The President of the Company shall have a general supervision and direction of the business and affairs of the Company, subject to the direction of the board of directors; and he shall preside at all meetings of the Board of Directors and of the Stockholders and shall certify who are elected directors by the Stockholders, and officers by the Directors. In case of his absence, death or resignation, the Vice President shall act as President. It shall be the duty of the President, unless

otherwise specially ordered, to sign in conjunction with the secretary, all deeds, bonds, certificates of stock, warrants on the Treasurer, all contracts, and the records of each meeting of the stockholders and directors. He shall also have the custody of the corporate seal and shall affix the same to all papers requiring a seal.

Section 9th.

The Secretary shall attend all meetings of the Board of Directors and of the Stockholders, and shall keep a record of their proceedings. He shall have the charge and care of all papers belonging to the company except executed bonds, and all notes, checks and other papers, for the payment of money to the Company. He shall keep the books of accounts, stock transfer book, list of original stockholders, and records of proceedings; and he shall keep the account books of the Company by "Double Entry" and be ready at any time to show the debts, credits and property of the Company—keeping an account with the Treasurer, showing the property in his hands. He shall certify to all assessments levied by the Board, and the stock subscribed, and furnish the Treasurer bills of the same for collection and charge him therewith.

The Secretary shall in conjunction with the President, sign all certificates of stock all notes, bonds, warrants on the Treasurer and all contracts and deeds. The Secretary shall also keep a record of all lands belonging to the Company, received by it, either by donation of Congress, donation of individuals or purchase, and

also all sales of the same, showing time, parties, consideration, and disposition of proceeds.

Section 10th.

The Treasurer shall receive take charge of and keep safely and disburse under the order and regulations of the board all moneys notes, bonds, subscription books, deeds, mortgages, bullion, currency credits and evidences of debt of every kind belonging to the Company and shall give an account of the same to the Secretary, upon his reception of any such property. He shall upon the order of the Secretary, collect all assessments on stock levied by the board, and receive and receipt for all moneys and credits of every description, coming to the company; and shall make full and correct accounts in proper books, always showing the condition of the treasury, and shall render monthly and annual statements of the condition of the treasury to the Board of Directors.

Section 11th.

The chief engineer when appointed, shall hold his office during the pleasure of the Board of Directors. It shall be his duty under direction of the Board to take charge of the surveys, location and construction of the Companys Railroad and other works and make such maps, reports, estimates and other engineer services as may be required of him from time to time.

Section 12th

At the first meeting of the Board of directors, they

shall annually elect an executive committee, which shall be composed of the President Ex-Officio and two Directors; which Committee or a majority thereof shall meet as often as once a week, during the construction of the Companys Railroad; and it shall be the duty of the Committee to Examine and audit all claims against the Company and allow the same before the President and Secretary are authorized to pay the same. The Committee shall meet once every day, if the business of the Company in their opinion, demands it; and no contract of indebtedness can be entered into for more than one thousand dollars by either the President or Executive committee which shall bind the Company without the previous approval or subsequent ratification of the Board of Directors.

Section 13th.

The annual meeting of the stockholders of this Company shall be held on the twenty-fifth day of May in each year; and the first meeting of the succeeding board of Directors shall be held on the first business day thereafter or upon the call of the President, in each year; Said meetings to be held at such places as the Board of Directors shall appoint

Section 14th

The Board of Directors shall elect an Attorney, who shall hold his office for such term as may be agreed upon and who, shall have the care and management of all suits, causes, actions and litigated matters in which the company is interested and advise the Board or the President

upon such questions as they shall submit to him and receive such compensation as shall be agreed upon

Section 15th

All subordinate officers and agents of the Company, shall be appointed or employed by the Board of Directors, President or chief engineer in the several divisions of service as may be regulated by the Board and compensation and wages shall be determined by the Board alone

Section 16th

The Board of Directors shall have power at any time to remove any officer or agent, for malfeasance or incompetency in discharge of his duties

Section 17th

All elections of Directors and officers by either stockholders or Directors shall be by ballot; and all committees shall be appointed by the President in meetings of Directors or stockholders, unless otherwise ordered in these by-laws

Section 18th

The Board of Directors shall prescribe the manner, times and places for taking subscriptions to the Capital Stock of the Company

Section 19th

Installments or assessments upon the stock subscribed shall be levied, demanded and called for in such

manner and at such times as shall be required by the Board of Directors; and if any installment or assessment so levied and demanded, shall remain unpaid after due notice given or published thirty days in one of the daily papers of the city of Portland, the Board may at their option either collect the delinquent installment by ordinary action at law or proceed to sell the shares of stock so delinquent at public auction at the office of the Company, first giving thirty days notice in said paper, of the time and place of said sale, the number of shares to be sold the amount delinquent thereon and the name of the delinquent stockholder

Section 20th

No certificates of stock shall be issued except for fully paid up stock and all such is transferable upon the books of the company, upon the surrender of the original certificate and proper evidence in writing of a bona fide assignment

Section 21st

All disbursements shall be made upon warrants drawn upon the treasurer, by the President and Secretary; but no such warrants shall be drawn without the allowance by the Board of Directors or the Executive committee and each warrant so drawn shall refer to the number of the account allowed and the nature of the transaction it is intended to pay

Section 22nd

All subscriptions of stock and donations, shall be collected by the treasurer or regularly authorized agents

appointed by the Board of Directors and said agents may be required to give bonds for the faithful performance of their duties and all moneys so collected shall be paid into the treasury the Treasurer giving his receipt therefor

Section 23rd

Vacancies in the Board of Directors, caused by Death resignation or removal by the Board, shall be filled by a majority vote of the other directors in office and such Director or Directors shall hold office until the first meeting of the Stockholders, when such vacancy shall be filled by them

Section 24th

These By-Laws may be altered or amended, at any meeting of the Board of Directors by a majority of the Directors present

The resignation of B. F. McLench as one of the Directors of this Company was presented as follows,

"To the Board of Directors of the Oregon Central Railroad Company: It being impossible for me to attend regularly the meetings of the Board I hereby tender my resignation as Director in said Company Spring Valley Sept. 21, 1867 (signed) B. F. McLench."

Upon motion said resignation was accepted and Thos. R. Cornelius unanimously elected to fill said vacancy

On motion the Board adjourned to meet at the call of the President

W. C. WHITSON
Secretary

J. GASTON
President.

Portland Oregon December 16, 1867

Pursuant to a call of the President of the Board of the Oregon Central Railroad Company, the Board of Directors met at Portland on Dec 16th 1867. Present J. Gaston, W. T. Newby, Thos R. Cornelius and W. C. Whitson.

On motion it was resolved that the Secretary proceed to notify the Stockholders of said Company that the first installment of twenty five per cent of the Cash subscriptions in Washington County to said Company is now due, and to demand and collect the same immediately

On motion it was resolved that the Executive Committee continue to canvass the Willamette Valley for subscriptions to the Capital Stock of the Company

On motion it was resolved that the Company adopt as a seal for the Corporation, with the following inscription—Cut of a plow, spade, rake and two (SEAL) sheaves of wheat, with the word "Portland" above and "Oregon" below, the whole to be surrounded with the words "Oregon Central Railroad Company of which seal the above and annexed is a Copy or *fac Simile.*"

On motion the Board adjourned to meet subject to a call of the President.

W. C. WHITSON
Secretary.

J. GASTON
President

Portland Oregon, February 13, 1868

Pursuant to a call of the President of the Oregon Central Railroad Company, the Board of Directors met at the City of Portland, on February 13, 1868. Present, J. Gaston, W. T. Newby, T. R. Cornelius and W. C. Whitson. Minutes of last meeting read and approved

The resignation of J. M. Belcher as one of the Directors of this Company was presented by W. T. Newby as follows,

"To the Directors of the Oregon Central Railroad "Company: Gentlemen, you are hereby notified that I "have by these presents resigned the offices of Direc- "tors, Vice President and Treasurer in the Oregon Cen- "tral Railroad Company of Portland, Oregon

Respectfully

Lafayette Feb. 11, 1868 J. M. BELCHER"

On motion said resignation was accepted and J. C. Ainsworth unanimously elected to fill said vacancy.

On motion it was "Resolved, that this company does hereby accept the proposition contained in the first nine sections of Ordinance No. "468" passed by the City Council of the City of Portland on the 5th day of February A. D. 1868, and approved by the Mayor on the 6th day of February A. D. 1868, entitled "An Ordinance to secure material for public buildings and the construction and repair of streets adjacent to the public grounds, and for other purposes and to levy a special tax therefor."

And (it was further resolved) "that the President and Secretary of this Company be and they are hereby directed and authorized to enter into and execute an agreement in writing embodying therein the provisions of said Ordinance No. "468" and binding this Company to faithfully perform all the conditions and considerations on the part of this company specified in said ordinance; and attach to said Agreement the official signatures such President and Secretary and the seal of this Company and file the said Agreement with the Auditor of the said City of Portland."

W. C. Whitson tendered his resignation as Treasurer, which was accepted and R. C. Kinney unanimously elected to fill said vacancy, whose bond in the penal sum of Fifty Thousand Dollars for the faithful performance of his duties was presented by W. T. Newby and approved by the Board

The following was adopted as an additional by-law. Section 25th

The duties of the Treasurer as defined by By-law No. 10, shall not be construed to allow the Treasurer to retain possession of his official bond, but such bond shall be kept by the Secretary.

On motion it was resolved that the railroad of this company be located through Washington County on the most practicable rout from the Summit of the mountain in "Cornell pass" to the lower end of Wapatoo Lake.

On motion the Board adjourned until tomorrow morning at Eight o'clock.

Friday, February 14, 1868

Board met pursuant to adjournment, Present as of yesterday with the addition of J. C. Ainsworth.

On motion it was resolved that the Secretary proceed to notify the Stockholders of said Company, that the second installment of twenty five per cent of the Cash Subscriptions in Washington County to said Company is now due, and to demand and collect the same immediately.

On motion it was resolved that the resolution adopted at Hillsboro on Sept. 25, in which subscriptions were allowed to be taken at Twenty five Dollars per share, be and the same is hereby revoked and hereafter no stock in this Company shall be sold for less than face or par value of the certificates of stock, and for all money (or notes given in lieu thereof) paid in the purchase of the Certificates of stock of this Company, certificates shall only be issued for as many Dollars as there is money paid or notes given.

On motion it was resolved that all the papers and documents of this Company be spread upon the Journal, as follows, viz:

THE ARTICLES OF INCORPORATION

FIRST:

"Know all men by these presents: that the undersigned citizens of the State of Oregon, do hereby associate ourselves together as a private incorporation under

and by virtue of the provisions of the General Incorporation law of said State.

1st. The Corporation hereby created shall be known as the "Oregon Central Railroad Company": and its duration unlimited.

2nd. The object and business of the Corporation, shall be to construct and operate a Railroad from the City of Portland, through the Willamette Valley to the Southern boundary of the State: under the laws of Oregon, and the law of Congress recently passed, granting land and aid for such purposes

3rd. The Corporation shall have its principal office in the City of Portland.

4th. The Capital Stock of said Corporation shall be Five Million Dollars, divided into general and preferred interest bearing stock, in such proportions as the Incorporators, or a Board of Directors, may deem proper

5th. The Amount of each share of the Capital Stock shall be one hundred Dollars.

6th. The termini of the Railroad proposed to be constructed by said Company, shall be, for the Northern end at the City of Portland and for the Southern end, at some point on or near the Southern boundary of the State as may be hereafter determined by actual survey

In witness whereof we have here set out hands and seals this 29th day of September A. D. 1866

J. S. SMITH	(seal)	R. R. THOMPSON	(seal)
E. D. SHATTUCK	(seal)	JOHN MCCRACKEN	(seal)
JOEL PALMER	(seal)	T. H. COX	(seal)
GEO L. WOODS	(seal)	J. H. MITCHELL	(seal)
S. G. REED	(seal)	F. A. CHENOWETH	(seal)
B. F. BROWN	(seal)	M. M. MELVIN	(seal)
I. R. MOORES	(seal)	J. C. AINSWORTH	(seal)
JESSE APPLEGATE	(seal)	C. H. LEWIS	(seal)
H. W. CORBETT	(seal)	J. GASTON	(seal)

(U. S. R. S.)
(5 cents)

State of Oregon,)
) ss.
Marion County.)

Be it known that the persons whose names are attached to the foregoing Articles of Incorporation, appeared before me the undersigned, a Notary Public for and within said County and State, respectively at the times and places therein named, to wit: J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer and H. W. Corbett at Salem in said State on or about the 29th day of September, 1866, and M. M. Melvin at Salem on or about October 23rd 1866, and George L. Woods, at Salem on or about Nov. 10th 1866, and R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCracken and C. H. Lewis at Portland, Oregon, on the 16th day of November, 1866, and they the said several subscribing persons to the aforesaid Articles of Incorporation, did then and there, at the several times set forth in this Certificate

sign and seal said Articles before me and in my presence, and acknowledge the said signing and sealing to be their voluntary act and deed for the purposes set forth in said articles.

In witness whereof I have here set my signature as
(L. S.) Notary Public and attached my official seal this 16th day of November 1866.

(U. S. R. S.) J. GASTON,
(5 cents) Notary Public.

State of Oregon,)
) ss.
County of Marion.)

Be it remembered that on this day personally appeared before me at my office in the City of Salem, Oregon, B. F. Brown, T. H. Cox and J. Gaston, who are all personally known by me to be the persons described in and who executed the foregoing conveyance. And each for themselves acknowledged to me that they executed the same for the purposes therein expressed.

(L. S.) Witness my hand and seal of office this the 20th day of November, A. D. 1866.

SETH R. HAMMER,
Notary Public."

SECOND:

"We the undersigned Incorporators of the "Oregon Central Railroad Company" hereby appoint Joseph Gaston of Salem, Oregon, Secretary of the Board of Incorporators, and authorize and designate him, as one

of the Incorporators of said Company, to prepare and open the Stock books of said Company under the following rules and regulations:

1st. The shares of the Capital Stock in said Company shall be subscribed for at their par value in Gold coin, or its equivalent in currency.

2nd. The "Board of Directors" may levy assessments as often as once in every sixty days, but not more than ten per cent shall be levied in such period.

3rd. Shares may be subscribed and paid for with "claimed" or improved lands rating them at a fair cash valuation.

4th. All persons who paid money or property in aid of "Barrys Railroad Survey" made in 1864, shall be entitled to have the same credited to the amount of ten per cent upon any subscription of one or more shares, provided they furnish satisfactory evidence to the Board of Directors of payment in said year.

5th. The Board of Directors shall have the right to reject any subscription or subscriptions for fraud, or any other matter bearing upon the interest of the Company.

6th. Neither the Board of Incorporators or Board of Directors shall ever have any right or power to sell or dispose of the Corporate franchises of this Company without a three-fourths vote of all the stock subscribed, in favor of such sale; but this proviso shall not be construed to prevent the Board of Directors from raising

money to construct the Company's road by a mortgage of its lands or other real estate, railroad or equipment and in all questions upon which the Board of Directors may not unanimously agree, any stockholder may appeal to the decision of a majority of the stock, which decision shall be final.

7th. As soon as the Capital Stock or one half thereof, of said Company, shall have been subscribed, the said Secretary is hereby directed to call a meeting of the Stockholders, in pursuance of the General Incorporation Law for the election of a Board of Directors.

8th. The above articles are hereby made a part of the contract of subscription between the Stockholders and said Company.

The above named Secretary shall open an office for the transaction of the Company's business, and proceed to the work of canvassing for subscriptions of stock in the Counties and Towns along the route of the road; and for such service said Gaston shall be allowed an annual salary of ..... Dollars and such necessary expenses as office rent, stationery, fuel and traveling expenses.

The Hon. F. A. Chenoweth of Corvallis is hereby authorized and appointed to canvass Linn and Benton Counties at a salary of .....

R. R. Thompson, S. G. Reed, J. C. Ainsworth, M. M. Melvin, George L. Woods, F. A. Chenoweth, Joel Palmer, Edward R. Geary, S. Ellsworth, J. H. Mitchell, H. W. Corbett by his proxy, W. S. Ladd, B. F.

Brown, T. H. Cox."

(10 cents)
(U. S. R. S.)

THIRD:

"We the undersigned Incorporators of the "Oregon Central Railroad Company" hereby certify that we were present at an election of Directors at the first meeting of the Stockholders of said Corporation, held at the office of J. Gaston, Stock Commissioner of said Company, in Salem, Oregon, on the 24th day of May, 1867, and that William T. Newby, J. M. Belcher, B. F. McLench, W. C. Whitson and J. Gaston were duly elected by a majority vote of one half the Capital Stock of said Corporation, the Board of Directors for said Corporation to serve for one year from the date hereof, and we hereby appoint Saturday the 25th day of May as the time, and the town of Amity, Oregon, as the place for the first meeting of said Board of Directors; and we hereby authorize J. Gaston to notify said Directors of their election, and the time of said first meeting.

J. GASTON,
B. F. BROWN,
JOEL PALMER,
By C. A. REED, Attorney,
T. H. COX,
By SETH R. HAMMER, Proxy,
M. M. MELVIN,
By G. W. LAWSON, Proxy."

Salem, Oregon, May 24th, 1867.

FOURTH:

"We the undersigned Stockholders of the "Oregon Central Railroad Company" hereby consent to an election of the first Board of Directors for said Corporation by the Stockholders thereof at a meeting of the same to be held at the office of J. Gaston, Stock Commissioner of said Company in Salem, Oregon, on the 24th day of May 1867; and we consent to the holding of such meeting; and we do hereby designate the persons for whom we cast our votes, as such stockholders to be such Directors, to wit: for J. M. Belcher, Wm. T. Newby, B. F. McLench, J. Gaston, and W. C. Whitson, May 24, 1867.

M. M. MELVIN casts five votes per J Gaston.
W. C. WHITSON casts one vote.
B. F. McLENCH casts one vote.
W. T. NEWBY casts one vote.
J. M. BELCHER casts one vote.
J. GASTON casts 24,996 votes."

(U. S. R. S. 5 cents)

FIFTH:

"State of Oregon, Marion County, ss.

I, J. Gaston, being first duly sworn to tell the truth, say that I will faithfully and honestly discharge the duties of a Director in the "Oregon Central Railroad Company."

(Signed) J. GASTON.

Sworn to and subscribed before me and in my presence by the said J. Gaston this 24th day of May, 1867.

(U. S. R. S.) C. N. TERRY,
(5 cents) Justice of the Peace."

"State of Oregon, County of Yamhill, ss.

We, W. T. Newby, B. F. McLench and W. C. Whitson, being first duly sworn to tell the truth, say that we will faithfully and honestly discharge the duties of Directors in the "Oregon Central Railroad Company."

(U. S. R. S.) W. C. WHITSON,
(5 cents) W. T. NEWBY,
B. F. McLENCH.

Sworn to and subscribed before me and in my presence by the said W. T. Newby, B. F. McLench and W. C. Whitson this 25th day of May A. D. 1867.

(L. S.) J. GASTON,
Notary Public.

SIXTH:

"State of Oregon, Yamhill County, ss.

I, James M. Belcher, being duly sworn to tell the truth say that I will faithfully and honestly discharge the duties of a Director in the Board of Directors of the Oregon Central Railroad Company, to which office I have been elected; and I hereby consent to the election of Directors made by the stockholders and Incorporators of said Company at Salem, Oregon, May 24th A. D. 1867.

J. M. BELCHER.

Subscribed and sworn to before me this 5th day of June A. D. 1867.

(L. S.) As witness my hand and seal of office as County Clerk of Yamhill County, Oregon.

(U. S. R. S.) S. C. ADAMS,
(5 cents) Clerk."

SEVENTH:

"State of Oregon, County of Multnomah, ss.

Know all men by these presents, that I Thomas R. Cornelius, being first duly sworn to tell the truth, say that I will faithfully and honestly discharge the duties of a Director of the "Oregon Central Railroad Company" of Portland, Oregon," to the best of my ability.

T. R. CORNELIUS.

This is to certify that Thomas R. Cornelius appeared before me, the undersigned, a Notary Public, for the State of Oregon, on this 4th day of February A. D. 1868 and took and subscribed the oath above written.

(L. S.) Witness my hand and Notarial seal,

J. GASTON,
Notary Public."

EIGHTH:

"State of Oregon, County of Multnomah, ss.

I, J. C. Ainsworth, being duly sworn, depose and say, that I will faithfully and honestly discharge the duties of a Director of the Board of Directors of the "Ore-

gon Central Railroad Company of Portland," to which I have been elected.

J. C. AINSWORTH.

Subscribed and sworn to before me this 13th day of February A. D. 1868.

J. GASTON,
Notary Public."

NINTH:

"Know all men by these presents, that I, Thos. H. Cox, one of the Incorporators of the Oregon Central Railroad Company, hereby authorize, empower and appoint Seth R. Hammer as my Agent and Attorney, as such Incorporator, to act for me as such Incorporator, at the organization of said Company, and do any act necessary to perfect the organization of said Company, provided, it does not involve me in any expense or liability to pay money.

THOS. H. COX."

Salem, Oregon, April 25th, 1867.
(U. S. R. S. 10 cents)"

TENTH:

"Canyonville, Nov. 15, 1866.

Know all men by these presents, that I, M. M. Melvin, one of the Incorporators of the "Oregon Central Railroad Company," do hereby designate and appoint Joseph Gaston of Salem, Oregon, as another of the Incorporators of said Company to prepare and open the stock books of said Company.

(U. S. R. S. 10 cents) M. M. MELVIN."

ELEVENTH:

"To J. Gaston, Salem, Oregon.

You are hereby authorized to represent me as a Stockholder in the Oregon Central Railroad Company, at a meeting of the Stockholders of said Co. to be held at Salem, Oregon, May 24th 1866, and cast five votes for me for such persons as Directors as you deem proper; and I hereby consent to a meeting of stockholders on said day.

M. M. MELVIN."

Canyonville, May 18th 1867. (U. S. R. S. 10 cents.)

TWELFTH:

"Eugene City, Sept. 26, 1866.

J. Gaston, Esq.

Dear Sir: Of course I cannot know the details of your plan of R. R. Bill, but placing confidence in you to carry out the general idea as heretofore contemplated I have no objection to your making use of my name as Incorporator, if you think best in connection with such names as you own and those you designate in your letter and to that end I hereby authorize and empower to use my name as if personally present and acting in that behalf.

Yours Very Respy.,

S. ELLSWORTH."

Attest:

J. W. SKAGGS (L. S.)

County Clerk.

THIRTEENTH:

Canyonville, May 18th 1867.

I hereby authorize Hon. G. W. Lawson to represent me as an Incorporator of the "Oregon Central Railroad Company" at a meeting of the Incorporators or stockholders of said Company, necessary to organize said Company, and to do any act for me and in my name, necessary to organize said Company, which will not bind me to pay money.

(U. S. R. S. 10 cents) M. M. MELVIN.

FOURTEENTH:

Portland, Oregon, Dec. 15th 1866.

J. Gaston, Salem, Ogn.,

Dear Sir: I had intended until this evening to be at Salem on the 18th inst., business engagement, however, render it impossible for me to be there.

I do therefore appoint you as my proxy, to act for me, and in my name and stead as one of the Incorporators of the Oregon Central Railroad Company at a meeting of the Corporators to be held at Salem on Dec. 18th 1866—and I instruct you to vote upon that occasion for J. Gaston, Esq., as General Canvassing Agent of such Corporation.

Very truly yours,

(U. S. R. S. 10 cents) J. H. MITCHELL.

FIFTEENTH:

This Agreement made and concluded this 14th day of February A. D. One Thousand Eight Hundred and Sixty-eight, by and between the Oregon Central Railroad Company of Portland, Oregon, a duly organized Company, duly incorporated under the laws of the State of Oregon, acting herein by and through their duly authorized President and their duly authorized Secretary W. C. Whitson, party of the first part, and the City of Portland by W. S. Caldwell, Auditor of said City, party of the second part, *Witnesseth,*

That whereas the said Oregon Central Railroad Company have accepted the propositions contained and embodied in the Ordinance of the City of Portland numbered 468, entitled "An Ordinance to secure material for public buildings and the construction and repair of streets adjacent to the Public Grounds, and for other purposes, and to levy a special tax therefor" passed the Common Council of said City on the 5th day of February 1868, and approved by the Mayor of said City on the 6th day of February 1868, a true copy whereof, certified to by W. S. Caldwell, Auditor of said City, is hereto annexed Marked "A" and made part and parcel of this Agreement, and whereas the said Railroad Company by a Resolution spread upon their Journal have directed their said President and Secretary to enter into an agreement in writing embodying therein the provisions of said Ordinance, and whereas the said Resolution has been presented to W. S. Caldwell, Auditor of said City; now

therefore in pursuance of and under the authority conferred by said Ordinance, The Oregon Central Railroad Company of Portland, Orgeon, hereby agrees, promises and undertakes in consideration of the Agreement of the City of Portland hereinafter contained, to commence to grade the Road Specified in said ordinance; and prepare the ground ready to lay the rails on or before the first day of May 1868, and to so complete the first five consecutive miles of said road on or before the 31st day of December 1868, and to so complete the first twenty consecutive miles of said road on or before the first day of July 1869—and the Oregon Central Railroad Company of Portland, Oregon, hereby further agrees, promises and undertakes at any and all times for the period of twenty years from the first day of January 1869, to transport and convey over their railroad all public messengers required to travel at the expense of said City, free of charge, and also transport and convey over their said railroad to or from any point on their line as may be required, free of charge or other compensation, than is provided in said Ordinance, all stone, gravel, earth, lumber and timber, or other materials which the City of Portland may require to be transported over the said Company's railroad; and the said Oregon Central Railroad Company of Portland, Oregon further agrees faithfully, diligently and efficiently to perform all the conditions and considerations specified in said Ordinance to be performed by said Railroad Company, and in case the said Railroad Company should fail to complete the sections as specified in said Ordinance or shall fail, neglect or re-

fuse to perform any of the terms, conditions and considerations as provided in said Ordinance then this contract shall become and be null and void and all the rights, benefits and privileges accruing to the said Company under this contract shall be totally forfeited, and the said Company shall be liable to the City of Portland, for the amount which shall have been paid by said City under said Ordinance and all damages which said City may sustain.

In consideration of the due and faithful performance of the terms, conditions and agreements on the part of the said Oregon Central Railroad Company herein set forth and as provided in said Ordinance, The City of Portland hereby agrees to pay the interest upon two hundred and fifty bonds of said Company of the sum of One Thousand Dollars each, at the rate of seven per cent per annum for the term of twenty years from the first day of July 1868 in United States Gold Coin in the manner and according to the terms and provisions of the said Ordinance, and the City of Portland further agrees faithfully to do and perform upon her part all other duties in said Ordinance declared.

In witness whereof the said Oregon Central Railroad Company of Portland, Oregon, by its President and Secretary aforesaid has hereunto set its hand and corporate seal and the City of Portland by its Auditor aforesaid has hereto set its hand and seal, at the City of Portland, Oregon, the day and year first above written.

J. GASTON,
President Oregon Central Railroad Co.

W. C. WHITSON,

Secretary Oregon Central Railroad Co. of Portland, Ogn.

(Seal of the Oregon Central Railroad Company)

W. S. CALDWELL,

Auditor and Clerk of the City of Portland.

(Seal of the City of Portland)

Signed and Executed in Presence of

D. FREIDENRICH,

A. B. HALLOCK.

(U. S. R. Stamps, Thirty Cents, duly canceled)

ORDINANCE NO. 468.

An Ordinance to secure materials for Public Buildings and the construction and repair of streets adjacent to the Public Grounds, and for other purposes and to levy a special tax therefor.

The City of Portland does ordain as follows:

Section 1. That for the purpose of securing gravel stone, brick, clay, lumber and timber for the construction and repair of the City Buildings of the City of Portland and of the streets adjacent to the Public grounds, and for other purposes as hereinafter provided, the Corporation known as the "Oregon Central Railroad Company of Portland, Oregon" be and is hereby authorized to issue Two Hundred and Fifty bonds of the sum of One Thousand Dollars each, bearing interest at the rate of seven per cent per annum, commencing on the first

day of July 1868 and payable on the first day of January and July thereafter semi-annually, for the term of twenty years; said bonds having thereto attached forty interest coupons, to each bond, each coupon representing the half yearly interest of its respective bond, said coupons to be signed by the Secretary of said Company, and countersigned by the Mayor and Auditor of the City of Portland as hereinafter provided, and to be made payable in United States Gold Coin at the City of Portland at the City Treasury of said City, at Portland, Oregon.

Section 2. That in order to carry out the provisions of the first paragraph of Section one of this Ordinance, there shall be levied and collected in the year 1868, in the same manner as the other city revenue is or may be collected, a tax of two and one-half mills on the dollar, of all the taxable property in said city, in addition to the other taxes; the same to be paid in the Gold or Silver Coin of the United States, and the moneys to be derived from such tax shall be and is hereby appropriated and set aside to constitute a separate fund, to be known as the "Railroad Fund" out of which "Fund" the said interest coupons, payable January first 1869 on said two hundred and fifty bonds, hereinbefore described, shall be paid as they may fall due, and be presented for payment at the said City Treasury, and if there shall not be in the Treasury in this said "Fund" sufficient money to pay the said coupons payable January 1st 1869, or if there shall be a surplus after paying said coupons, payable on that date, the City Council shall make such ar-

rangements, in this respect, as is provided in section three of this Ordinance.

Section 3. That in order to further carry out the provisions of the first paragraph of section one of this ordinance there shall be levied and collected in the year 1869, and annually thereafter, for the period of eighteen years, in the same manner as the other city revenue is or may be collected, a tax of four mills on the dollar, of all the taxable property of said City, in addition to the other taxes; *provided,* however, that the City Council may at any time reduce the rate of tax in proportion to the increase of the taxable property within this City, so that the revenue so collected by said tax shall not be less than the sum of Seventeen Thousand, Five Hundred Dollars per annum the said tax; the said tax to be paid in the gold and silver coin of the United States, and the moneys to be derived from such tax shall be and is hereby appropriated and set aside to constitute a separate fund to be known as the "Railroad Fund," out of which fund the said coupons for interest on said Two Hundred and Fifty bonds hereinbefore described shall be paid as they may fall due and be presented for payment at the said City Treasury from time to time for the period of nineteen years, and on payment thereof by the City Treasurer, said interest coupons shall be canceled and returned to the City Auditor; and if at any time there shall not be a sufficient sum of money in said "Railroad Fund" to pay said interest when due, then an amount sufficient to make up such deficiency shall be taken from the "General Fund" for that purpose, or the City Council

shall make such other contracts and arrangements as may be necessary to make up such deficiency; and whenever on the first day of January of any year there shall remain a surplus in said "Railroad Fund," after the payment of the interest on said bonds, payable on that date, such surplus shall be paid into the "General Fund"; provided, always, (and said bonds and coupons shall so express) that the City of Portland shall never be liable to pay the principal of said bonds.

Section 4. That in order to insure the performance of the conditions and considerations, on the part of the said Railroad Company, hereinafter expressed, and in order to avail themselves of the provisions of this ordinance, the said Railroad Company shall commence to grade the said Road and prepare the ground ready to lay the rail on or before the first day of May 1868, and the first five miles of said road shall be so completed, ready to lay the rail on or before the 31st day of December 1868, and the said Company shall further complete the first twenty miles of said road by grading and preparing the ground ready to lay the rail, on or before the first day of July 1869, and the agreement of the City of Portland to pay the interest on the Two Hundred and Fifty bonds of said Company, as herein provided, is made upon the express condition that said Company shall begin said work and complete the first five and first twenty miles, by the time as herein provided, and if the said Company shall fail to comply with the provisions of this ordinance in any respect whatsoever, then this ordinance as to said Company, shall become totally inoperative and be null

and void, and the said Company shall be liable to repay to the City of Portland the amount which shall have been paid by the City of Portland under this ordinance and be liable for all damages which the city may have sustained by such failure.

Section 5. That upon the completion of the first five miles of said road on or before the 31st day of December 1868, as provided in section four the Mayor and Auditor of said City shall countersign the coupons attached to one hundred of said bonds and deliver said one hundred bonds with coupons attached to William S. Ladd of Portland, Oregon, whose duty it shall be to take charge of the same, for the use and benefit of said Company and sell the same, at a price however of not less than Eighty-five cents on the dollar, but with the privilege of hypothecating the said bonds or any portion thereof, on the best terms said Company can secure, to raise money; and out of the money arising from such sale or hypothecation, the said Ladd shall purchase such railroad iron, rolling stock, and equipment and other material necessary and requisite for the construction and equipment of said Company's railroad as the said Company may designate and have the said iron, rolling stock and equipment, brought to the City of Portland, Oregon, and delivered to said Company as the ground is prepared to lay the rail; and upon the completion of five additional miles of said road ready for the iron rail, the Mayor and Auditor of said City, shall countersign the coupons attached to seventy-five of said two hundred and fifty bonds and deliver the same together with the

coupons attached to said Ladd, who shall be authorized to dispose of them in the same manner as he is authorized to dispose of said One hundred bonds, and apply the proceeds in like manner, under the direction of said Company, and upon the completion of ten additional miles of said road, by the time and in the manner provided in section four, the Mayor and Auditor of said City shall countersign the coupons attached to seventy-five, the remaining bonds of said two hundred and fifty, and deliver the same, together with the coupons attached, to said William S. Ladd to be disposed of for the use and benefit of, and under the direction of said Company. And upon the completion of said twenty miles of railroad, said William S. Ladd shall surrender any and all of said bonds remaining unsold to said Company. Said railroad to commence at the City of Portland and run into the Willamette Valley, not further north than the Cornell Pass.

Section 6. In addition to the standing committees of this Council, the Mayor shall appoint a Committee to be known as the "Committee on Railroads," composed of three members of the Council, whose duty it shall be to examine the road of said Company, and report from time to time the progress being made thereon, and upon the completion of the first five miles of said road ready for the rail, it shall be the duty of said Committee in conjunction with the City Surveyor, on the application of said Company to examine the said five miles of road and upon their certificate subscribed and sworn to that said five miles of road is graded and ready for the

rail, it shall be the duty of the Mayor and Auditor to sign the coupons attached to the first one hundred of said bonds, and deliver the same to the said Ladd; and upon the completion of the grading of an additional five miles of said road, and the examination thereof, and certificate of said committee and surveyor as aforesaid; it shall be the duty of the Mayor and Auditor to countersign the coupons attached to seventy-five of said bonds, and deliver the same to said Ladd, and upon the completion of ten additional miles of said road ready for the rail and the examination thereof and certificate of said committee and surveyor, as hereinbefore provided, it shall be the duty of the Mayor and Auditor to countersign the coupons attached to the remaining seventy-five of said bonds, and deliver the same to said Ladd; provided, however, that the Mayor and Auditor of said City shall not countersign any of said coupons unless said company shall begin work on said road and complete the grading thereof by the time and in the manner provided in Section Four.

Section 7. That the provisions of the preceding sections of this Ordinance, and the agreement of this city to pay the interest referred to said sections is made upon the express condition and consideration that said Oregon Central Railroad Company "does contract and agree, by the filing of its agreement hereinafter referred to, at any and all times for the period of twenty years from the first day of January, 1869, to transport and convey over their railroad all public messengers required to travel at the expense of said city free of charge, and also

transport, carry and convey over their said railroad to or from any point on their line as may be required, free of charge, or other compensation for transportation than is provided in this Ordinance, all stone, gravel, earth, lumber and timber or other materials which the City of Portland may require to be transported over the said Company's Railroad for the construction or repair of streets adjacent to public grounds, public buildings of said City, and any and all purposes for which the City of Portland may now or at any time hereafter lawfully provide.

Section 8. That in order to avail themselves of the provisions of this Ordinance, said Railroad Company, at a meeting of its Directors, shall accept the propositions contained in this Ordinance, and by a resolution spread upon their journal, direct their President and Secretary to enter into an agreement in writing, embodying therein the provisions of this Ordinance, and file the said agreement with the Auditor, signed by the President and Secretary of said Company, and sealed with their Corporate seal, binding said Company to faithfully perform the conditions and considerations on the part of said Company specified in this Ordinance, and the Auditor of this City is hereby authorized upon the presentation to him of a duly certified copy of the said Company's resolution of acceptance of the proposition in this Ordinance contained, to enter into and sign the said agreement to and with the said Railroad Company on behalf of this City, and attach thereto the seal of this City, which signing and sealing shall bind the City of

Portland faithfully to pay the said interest coupons as they may fall due, and the faithful performance of all other duties in this Ordinace declared.

Section 9. In case said Oregon Central Railroad Company of Portland, Oregon, shall fail to commence the work upon said road, or shall fail to complete the sections by the time and in the manner specified in section four, or in case said Company should fail to perform any of the terms, conditions and considerations, as provided by this Ordinace, the contract made in pursuance of this Ordinace with said Company shall become null and void, and the Council shall declare the same, and all the rights accruing to said Company thereunder forfeited by said Company.

Section 10. After the forfeiture by said Company as above provided, any other duly organized Railroad Company within this State may avail itself of the provisions of this Ordinace by laying out, grading and preparing the ground ready to lay the rail from the City of Portland to Eugene City, and completing the first twenty miles of said road on or before the first day of July, 1869. Provided that such Company shall file its assent to the terms, conditions and considerations expressed in this Ordinace, in writing, with the Auditor on or before the first day of February, 1869. *Provided,* that this section of this Ordinace, shall not be included in the acceptance of contract with the above mentioned Oregon Central Railroad Company.

Passed the Common Council February 5, 1868.

W. S. CALDWELL,
Auditor and Clerk.

Approved February 6, 1868.

J. A. CHAPMAN, Mayor.

State of Oregon, City of Portland, ss.

I, W. S. Caldwell, Auditor and Clerk of the City of Portland aforesaid do hereby certify that the foregoing is a full, true and complete copy of Ordinance No. "468" of the City of Portland, that I have carefully compared the same with the Original and found the same correct, and that said Original is now in my office and in my custody.

Witness my hand and the seal of said City hereto affixed, this 14th day of February A. D. 1868.
(Seal of the City of Portland)

W. S. CALDWELL,
Auditor and Clerk.

(U. S. R. S. 5 cts.)

A

Proceedings read and approved.

J. GASTON,
Prest. of Board.

Portland, Oregon, March 11th, 1868.

In pursuance of the call of the President of the Board, the Board of Directors met at the office of the Company in Portland, and was duly called to order for the transaction of business. Present J. Gaston in the chair, and Director T. R. Cornelius. The President of

the Board laid before the Board the contract proposed to be entered into with the County Court of Washington County. On motion of Director T. R. Cornelius, J. C. Ainsworth was elected Secretary *pro tem* of this meeting.

On motion of Director J. C. Ainsworth, the following Resolution was unanimously adopted:

"Resolved that the Oregon Central Railroad Company of Portland, Oregon, does hereby adopt, ratify, confirm and accept all the terms and conditions and stipulations of the Contract to pay interest on Fifty Thousand Dollars of this Company's bonds, proposed by the County Court of Washington County, Oregon, a copy of which is hereto attached, marked "B"; and that the President and Secretary be hereby directed to sign said contract on behalf of the Company, and attach the seal of the Company to the asme."

"B"

This Article of Agreement made and entered into this fifth day of March, A. D. 1868, wherein Washington County, Oregon, is party of the first part, and the "Oregon Central Railroad Co. of Portland, Oregon" is party of the second part.

WITNESSETH: That whereas a majority of the legal voters of said County have petitioned the County Court thereof, to render such aid by the levying of an annual tax to pay interest at seven per cent per annum on Fifty thousand dollars for twenty years, as will aid

in the construction of a Railroad through the central portion of said County, for the use of the County and the people thereof; and whereas the County Court of said County at the March session thereof, for the year 1868, has made an *Order* to carry out the prayer of said petitioners, and for other purposes, a certified copy of said *Order* is hereto attached marked "A" and made a part of this agreement; and whereas the President and Executive Committee of said Company being present has assented to and agreed to all the provisions of said *Order;* and whereas the Board of Directors of said Company has and doth hereby ratify, approve and agree to all the provisions of said *Order*, by directing their President and Secretary to sign this Agreement, and attach thereto the Corporate seal of said Company; therefore be it known that Washington County, Oregon, by the order of its County Court, made at the said session thereof, doth hereby contract and agree to and with the said Railroad Company, and the holders of the said Bonds described in said *Order,* to hereafter faithfully collect and pay the taxes and the interest referred to in said *Order,* for the term of twenty years from the first day of October, 1868, and perform all and singular of all other obligations and stipulations of said County and its officers, according to all the terms and provisions of the said *Order* hereto attached, marked "A" and made a part of this Contract; and the said Railroad Company upon its part doth hereby contract and agree and bind its associates, successors and assigns to faithfully prosecute the work of constructing its Railroad

through said County, according to the terms of said *Order*, to enable them to perform the transportation of persons and property for said County and the people thereof, as provided for in said *Order* "A" and said Company hereby contracts, and agrees for themselves, associates, successors and assigns, to faithfully do and perform all and singular of the conditions, considerations and stipulations of said *Order* of the said County Court hereto attached. In witness whereof the County Court of said County has this Fifth day of March 1868, ratified and confirmed the same, by the signatures of the County Judge and County Clerk of said County; attested by the seal of said County, and by the signatures of the President and Secretary of said Company, and the Corporate seal thereof.

(Seal of Washington County)

Hyer Jackson, County Judge.

Attest Thos. D. Humphreys, County Clerk.

J. Gaston, Prest Oregon Central R R Co.

W. C. Whitson, Secy Oregon Central R R Co.

(Seal of the Oregon Central R R Co.)

"A" "RAILROAD ORDER"

Whereas a majority of the legal voters of Washington County, Oregon, have petitioned the County Court of said County, to take such action by the levying of an annual tax, as will secure the construction of a Railroad through the Central portion of said County, for the use

of said County and the citizens thereof, to the extent of a seven per cent annual interest upon Fifty thousand dollars for twenty years, said interest to be paid in U. S. gold coin and after due consideration of the prayer of said petitioners: Therefore, be and it is hereby *Ordered* by the County Court of said County, in and at its session for the month of March, 1868, and upon the fourth day of said month, as follows:

Section 1st. That for the purpose of securing gravel, stone, brick, clay, lumber and timber, for the construction and repair of the County buildings of Washington County, and the transportation of persons and property, as provided in Section Six of this *Order*, and for the other purposes as hereinafter provided, the Corporation known as the "Oregon Central Railroad Company of Portland, Oregon," be and is hereby authorized to issue Fifty Bonds of the sum of one thousand dollars each, bearing interest at the rate of seven per cent per annum, commencing on the first day of October, 1868, and payable on the first days of April and October thereafter semi-annually for the term of twenty years; said Bonds having thereto attached forty interest coupons to each Bond, each coupon representing the half yearly interest of its respective Bond; said coupons to be signed by the Secretary of said Company and countersigned by the County Judge and County Clerk of said County as hereinafter provided, and to be made payable in U. S. gold coin at the County Treasury of said County.

Section 2. That in order to carry out the provisions

of the first paragraph of section one of this *Order*, there shall be levied and collected in the year 1868, in the same manner as the other County Revenue is or may be collected, a tax of three and one half mills on the dollar, of all the taxable property of said County in addition to the other taxes, the same to be paid in the gold or silver coin of the United States, and the moneys to be derived from such tax, shall be and is hereby appropriated and set aside to constitute a separate "Fund" to be known as the "Railroad Fund," out of which "Fund" the said interest coupons payable April 1st 1869 and October 1st, 1869, on said Fifty Bonds hereinafter described, shall be paid as they may fall due and be presented for payment at said County Treasury, and if there shall not be in the said "Fund" sufficient money to pay the said coupons payable April 1st 1869 and October 1st 1869, or if there shall be a surplus after paying said coupons payable on that date, the County Court shall make such arrangements in this respect as is provided in Section three of this *Order*.

Section 3. That in order to further carry out the provisions of the first paragraph of section one of this *Order*, there shall be and is hereby levied to be collected in the year 1869 and annually thereafter for the period of eighteen years, in the same manner as the other County revenue is or may be collected, a tax of three mills on the dollar, of all the taxable property of said County, in addition to the other taxes; provided however that the County Court may at any time reduce the rate of this tax in proportion to the increase of taxable property

within said County, so that the revenue so collected by said tax shall not be less than three thousand five hundred dollars per annum; the said tax to be paid in the gold and silver coin of the United States, and the moneys to be derived from such tax shall be and is hereby appropriated and set aside to constitute a separate "Fund" to be known as the "Railroad Fund," out of which "Fund" the said coupons for interest on said Fifty bonds hereinbefore described shall be paid as they may fall due and be presented for payment at said County Treasury from time to time for the period of nineteen years, and on payment thereof by the County Treasury said interest coupons shall be canceled and destroyed; and if at any time there shall not be a sufficient sum of money in said "Railroad Fund" to pay said interest when due, then an amount sufficient to make up such deficiency shall be taken from the "General County Fund" for that purpose, or the County Court shall make such other contracts and arrangements as may be necessary to make up such deficiency; and whenever on the first day of October of any year, there shall remain a surplus in said "Railroad Fund," after the payment of the interest on said Bonds payable on that date, such surplus shall be paid into the "General County Fund"; provided always, and said Coupons shall so express, that said County shall never be liable to pay the principal of said Bonds.

Section 4. That in order to ensure the performance of the conditions and considerations on the part of said Company, hereinafter expressed, and in order to avail themselves of the provisions of this *Order,* the said Rail-

road Co. shall survey and locate the line of their Railroad through said County and commence the work of constructing said Railroad upon said line within said County, on or before the 15th day of June 1868, and complete the work of constructing said Railroad sufficient to run cars thereon from Portland to a point opposite the town of Hillsboro on or before the first day of September, 1869; and if the said Company shall fail to survey and locate its line of Railroad or fail to commence work thereon, or fail to complete the road to Hillsboro on or before the 1st day of September, 1869, as herein provided, then this *Order* as to said Company shall become totally void, and they shall forfeit all rights thereto, and be liable to repay to said County all sums of interest paid on said Coupons prior to the date of such forfeiture.

Section 5. That in order further to carry out the provisions of the first paragraph of this Order, it shall be the duty of the County Judge and County Clerk of said County whenever, after the execution of the Contract hereinafter provided for, said Company shall present to them, the said County Judge and Clerk, the said "Fifty Bonds" described in Section One of this *Order*, to countersign with their official signatures, each and all of the said interest coupons attached to said "Fifty Bonds," which signing shall bind the County to pay the same according to their tenor as aforesaid; and after said coupons shall have been so signed, by said County Judge and Clerk, they shall deliver the whole of said Bonds, together with the said coupons attached, to Wil-

liam E. Smith, of Washington County, Oregon, who shall act as Trustee between said County and said Company, for the purposes hereinafter named, and shall give such security for the faithful discharge of this trust as may be hereafter required by said County Court; and it shall be the duty of said Trustee to receive and safely keep said Bonds and coupons, and as often as required by said Company, he shall examine the work performed by said Company in the construction of their said Railroad making such investigation of their Books, Engineer's estimates, &c as may be necessary to properly inform him of the amount of work performed by said Company in said County from time to time; and whenever said Company shall have commenced work on twenty miles of their said railroad, and shall have expended five thousand dollars on the construction of said Railroad within said County, it shall be the duty of said Trustee to deliver five of said Bonds with their coupons attached, so as aforesaid executed and countersigned, to said Company, and so whenever from time to time, said Company shall have expended five thousand dollars additional to the work of constructing said Railroad, in said County, said Trustee shall deliver to said Company five additional of said Bonds with their coupons attached, until the entire fifty shall have been so delivered, and if any of said Bonds shall remain in the hands of said Trustee, at the completion of said Road to Hillsboro as aforesaid, such remainder shall be then surrendered by said Trustee to said Company, and the compensation of said Trustee for his services herein shall be a reasonable

compensation for such service, to be estimated by said County Court, and to be paid by said Railroad Company; and the route of said Railroad shall run from the City of Portland through the Central portion of said County to the northern end of "Wapatoo Lake" passing within three-fourths of one mile of the Court House of said County.

Section 6. That the provisions of the preceding section of this *Order*, and the agreement of this County to pay the interest referred to in said sections, is made upon the express condition and consideration, that said Oregon Central Railroad Company does contract and agree, by the filing of its agreement hereinafter referred, at and all times for the period of twenty years from the 1st day of September 1869, to transport and convey over their railroad all public messengers required to travel at the expense of said County, and all County officers required to travel at the expense of said County, free of charge, and also transport, carry and convey over their Railroad, to or from any point on their line as may be required, free of charge or other compensation for transportation than is provided in this *Order*, all stone, gravel, earth, lumber, and timber, or other materials which said County may need to be transported over said Railroad for its county buildings, and all furniture and stationery required in the County offices for the use of the County, and all articles and animals with their necessary attendants on their way to the annual fairs of the Washington County Agricultural Society, and to the Fairs of the State Agricultural Society,

intended for exhibition for premiums at such Fairs; and such Company shall further contract to not charge a higher rate for freight or passage of the products and citizens of said County from points in said County to or from the City of Portland than they charge for like freight or passage upon similar and equal distances upon any other portion of the line of their said Railroad.

Section 7. That in order to avail themselves of the provisions of this *Order,* said Railroad Company, at a meeting of its Directors shall accept the propositions contained in this Order, and by a resolution spread upon their journal, direct their President and Secretary to enter into and sign an agreement in writing, attaching thereto the provisions and certified copy of this *Order,* and file a copy of the said Agreement, duly executed in Duplicate, with the Clerk of said County, which agreement and duplicate shall be signed by the President and Secretary of said Company, and sealed with their Corporate seal, binding said Company to faithfully perform all the conditions and considerations on the part of said Company specified in this *Order;* and the County Judge of said County is hereby authorized, on behalf of said County, to sign the said Agreement and Duplicate, which signing by said Judge shall be attested by the signature of the Clerk of said County, and the County seal thereof, which signing, sealing and attestation, by said County Judge and County Clerk, shall bind the County of Washington, faithfully to levy and collect the said tax, and pay the said interest coupons as they may fall due for the period of twenty years, as is herein provided."

On motion of Director Ainsworth, it was unanimously resolved that the Resolution adopted by the Board of Directors at the meeting of the same held Feb. 13th, 1868, fixing the route of the Company's Railroad through Washington County via Cornell Pass, be and the same is hereby rescinded.

On motion the Board adjourned.

J. C. AINSWORTH, Sect P. T. J. GASTON, President.

Portland Oregon Apl 18, 1868

Board of Directors met this day in pursuance of the call of the President. Present, Directors Cornelius, Ainsworth, Newby and Gaston. Gaston in the chair. On motion of Cornelius, Director Newby was appointed Secretary *pro tem.* On motion of Director Ainsworth it was resolved, that the President of the Board be authorized and directed to enter into and execute a contract with Stephen Coffin, binding this Company to purchase all the shares of stock (if the same be a controlling interest) which the said Coffin owns in the Oregon Iron Works Company of Portland, Oregon, at par, the said Coffin to take lands of the Company therefor, at prices to be fixed by arbitrators, and said Coffin to canvass for lands to be donated and subscribed to said Railroad Company, and if said Coffin does not secure lands sufficient to pay for said stock, said R. R. Company to have option to furnish balance of lands, or to pay said Coffin for his services in canvassing; and such other details as are necessary to perfect the contract. On motion of Director

Newby the Board adjourned.

W. T. NEWBY, Sec Pro Tem. J. GASTON Prest.

Portland Oregon Apl 24, 1868

Board of Directors met pursuant to call of the President, present Directors Cornelius, Ainsworth and Gaston. Gaston in the chair.

On motion of Cornelius Director Ainsworth was appointed Secy pro tem.

On motion of Director Ainsworth the President and Secretary of the Company were directed to issue a circular to the Bankers and Railroad men of the Eastern cities; setting forth the dates and facts of the two companies claiming one corporate name; the grants and aid which has been given to our Company; and the efforts of our Company to have the matters in dispute speedily settled.

On motion the Board adjourned.

J. C. AINSWORTH, Sect. P. T. J. GASTON, Prest.

Office O. C. R. R. Co. 10 A.M.

Portland, 15 May 1868.

The Board of Directors met this day in pursuance to a call of the President.

Present—Directors Ainsworth, Cornelius, Gaston & Newby. President Gaston in the chair.

Minutes of meetings April 18th and 24th were read

and approved.

Resignation of W. C. Whitson Secretary was read and accepted.

On motion of Director Ainsworth, seconded by Newby, E. W. Haines was elected Secretary to serve out the present unexpired term.

On motion of Cornelius, the President & Secretary are directed to reply to communication from the East Side Company, of date "Salem April 30, 1868"—and propose the appointment of a Committee of three from their Company to confer with a like Number Committee from this Company, with a view to the settlement of difference. On motion the President was instructed to prepare the necessary papers for a subscription by Yam Hill County of Seventy five thousand dollars.

On motion adjourned.

E. W. HAINES, Sec'y O. C. R. R. Co.

J. GASTON, Prest. O. C. R. R. Co.

Office O. C. R. R. Co.

Portland 15 May 1868 7 P. M.

The Board of Directors met this P. M., at 7 o'clock in pursuance to a call of the President.

Directors present Ainsworth, Gaston & Newby. President Gaston in the chair.

On motion of Director Ainsworth the Secretary is directed to give notice by publication three consecutive days, by publication in Daily Evening Bulletin, of the

Annual Meeting of the Stockholders & the election of five Directors, on the 25th inst at 10 o'clock A. M., to serve for the ensuing year.

On motion the President was authorized to negotiate with Gen'l Coffin for Blocks No. City of Portland & to secure a deed therefor & take possession of the same in the name of the Company for the purposes of a Depot.

On motion the Board adjourned.

E. W. HAINES, Secretary. J. GASTON, Prest.

Office of the O. C. R. R. Co.,

Portland 25 May 1868

Stockholders Annual Meeting.

In pursuance of the By-laws, and notice in the Daily Evening Bulletin (a copy of which notice appears in the margin)

> "NOTICE. The Annual Meeting of the Stockholders of the Oregon Central Railroad Company will be held at the office of the Company, in Portland, on the 25th inst. May, 1868. 3t
>
> E. W. Haines, Sect'y."

the Stockholders of the Oregon Central Railroad Company met at the office of the Company in Portland this day, the President of the Company, J. Gaston, in the Chair, and proceeded to an election of a Board of Direc-

tors for the next ensuing year. The Secretary was appointed teller, and the roll of Stockholders called, and the votes cast by ballot, and upon counting the same were found to be as follows: whole number of votes cast Twenty five thousand and Six (25006), of which number James W. Nesmith, Wm. T. Newby, J. C. Ainsworth, Thomas R. Cornelius, & J. Gaston each received Twenty five thousand and Six, whereupon the President declared James W. Nesmith, Wm. T. Newby, J. C. Ainsworth, Thos. R. Cornelius and J. Gaston duly elected to serve as Directors of the Oregon Central Railroad Company for the next ensuing year; and filed with the Secretary of certificate of which the following is a true copy.

"Portland Oregon May 25, 1868.

I, J. Gaston, President of the Oregon Central Railroad Company, do hereby certify that at the annual meeting of the Stockholders of said Company, for the purpose of electing a Board of Directors, this day held at the Company's Office in the City of Portland, the following persons, to wit, James W. Nesmith, Wm. T. Newby, J. C. Ainsworth, Thomas R. Cornelius and J. Gaston, having received a majority of all the votes cast by such Stockholders, at such election, for Directors, they are hereby declared to be duly elected as Directors of the Oregon Central Railroad Company for the next ensuing year.

J. GASTON

Prest. O C R R Co" over

The President then presented his Annual Report, whereupon the meeting adjourned.

E. W. HAINES, Secretary

J. GASTON, Prest.

FIRST ANNUAL REPORT OF THE OREGON CENTRAL RAILROAD COMPANY.

To the Stockholders of the Oregon Central Railroad Company: The By-Laws of your Corporation require that I shall make a report of the operations of the Company for the past year. My report must necessarily be meagre, inasmuch as the company has but recently got to the work intended by its incorporation—the construction of a railroad. But a brief review of the preliminary work of a corporation of the character of which this is intended to be, cannot be devoid of interest now, and will certainly form an interesting chapter in its history after success shall have crowned your efforts to build a great railroad intended not only as a blessing to the State, but as a highway for the nation.

Your first Board of Directors were elected on the 24th of May, 1867. None of them had any adequate idea of the difficulties to overcome in an undertaking of this character, even under favorable circumstances; but when we consider that the enterprise was launched in a new State whose people were unfamiliar with the great benefits railroads confer, where the capital available for anything out of the ordinary business transactions of the country was very limited and reluctant of

investment in a new enterprise, where a 'railroad spirit' had to be created by your Directors, before anybody could be induced to favor your enterprise, and last of all where bitter opposition was met at the very threshhold in the shape of a rival corporation, boldly claiming your Corporate name and franchises—when we consider all this, the prospect one year ago was gloomy enough, and it is not surprising that two of your Board resigned their positions in despair of accomplishing any permanent good. Under these circumstances it was not to be wondered at that the mass of the people, who are now active friends and supporters of your Company, had then but little confidence in the prospect of success. But labor conquers all things, and three members of your Board determined to give the enterprise their determined and persevering labors for one year. Under the circumstances, it was not known whether the Company would be recognized by the Secretary of the Interior at Washington City, as entitled to the land granted to aid in the construction of the road, or whether a contest would arise in his office, between the rival companies. After executing and forwarding the papers to the Secretary as required by law, it was deemed prudent to await his action. No reply was received from him until about the 1st day of September, when I received letters from the Secretary fully recognizing our rights to the land grant; and I may here add that within the last week I have received other communications from the Secretary, already given to the public through the press, conclusively showing that

no other company than yours has set up any claim in a legal way, or has any right whatever to the land granted by Congress.

From May to September, nothing was done to forward the enterprise further than to hold some public meetings, get the people to talk the matter among themselves, and arouse an interest in the construction of railroads generally.

After receiving the foregoing recognition of the company's rights, a canvass for subscriptions to the capital stock of the Company, and donations of land and other property in aid of the enterprise, was commenced in Washington and Yamhill Counties, which was subsequently extended to the city of Portland.

In February last, the City Council of the city of Portland resolved to extend aid to the company to the extent of interest on its bonds in the sum of $250,000. About this time Col. Cornelius of Washington County, and Capt. J. C. Ainsworth, of Portland, were invited to fill the two vacant places in the Board of Directors, which they accepted, and have since labored energetically to promote the interests of the company. The prospects of the Company now rapidly improved, and the overhanging clouds of distrust gave away to generous confidence with material support from all quarters where we had a right to expect it. In March the authorities of Washington county entered into a contract to pay the interest on fifty thousand dollars of the Company's bonds. About the same time a subscription

paper was started in Portland, which has been filled up with twenty-five thousand dollars cash, all the leading capitalists and business men aiding it more or less. Recently the necessary steps have been taken to secure the aid of Yamhill county in the way of interest upon seventy-five thousand dollars of the Company's bonds, with every reason to hope for success. Canvassing for subscriptions of land and cash is still being prosecuted in Multnomah, Washington and Yamhill counties with encouraging success, and the plan hitherto pursued will be prosecuted in every county along the line. In this connection I take pleasure in stating that the Company has recently secured the services of Gen. Coffin in this business, who has volunteered to leave his own business for a season to push the interests of your Company with all the energy which characterizes him.

Negotiations have been commenced to secure a portion of the iron and rolling stock for the first twenty miles in San Francisco. The company has secured fifteen acres of land with ample wharf privileges at the upper end of the city of Portland, for the purposes of a depot, besides several adjoining blocks, making their lands in the city of great value.

The assets of the Company at present are as follows:

Portland aid Bonds	$250,000
Washington County Bonds	50,000
Estimated value of land subscribed and donated in Washington, Yamhill and Multnomah	250,000

Cash subscriptions in ditto..... 37,000

Total $587,000

After the completion of the first twenty miles of road, the land grant of twenty sections of public land per mile, and the State aid of ten thousand dollars in State Aid Bonds per mile, on the first one hundred miles, will be available in the further prosecution of the work.

The estimated cost of the first twenty miles of road fully equipped with stations and buildings finished, is, in round numbers, $400,000. It is not possible to build this first section by converting simply the assets of the Company named above, for they could not be converted at anything like their value if put up at a forced sale; but it will be necessary to issue some First Mortgage Bonds thereon, which the Company is preparing to do at the proper time. It is satisfactory to be able to state that these assets have been submitted to the judgment of the ablest railroad capitalists and contractors on the coast, who are unanimous in the opinion that your Company has already secured the means to construct and equip the first twenty miles of road. It must be borne in mind that this first twenty miles will cost nearly double as much as any other section between Portland and Eugene City.

As soon as the road is completed to Hillsboro, which we hope may be accomplished by December next, it will commence earning something for the Company. No tangible means are at hand for making a correct esti-

mate of the earnings of this portion of the road. With the opening of the road will commence the erection of new towns along the line, the manufacture of lumber and other articles demanded in the growth of this city and the development of the country; and with this prospect it is not unreasonable to expect that the first twenty miles of the road would earn, at the lowest estimate, five thousand dollars ($5,000.00) per month. It could have no steamboat or other competition. Statistics are being collected by the engineers in charge, upon which to base an estimate of the earnings of the line from Portland to Eugene City, but this matter is reserved to another time.

The Board of Directors have had to resort to litigation to settle questions in dispute, with the rival corporation operating on the east side of the Willamette river, and it will necessarily require some time before these suits can be closed up, but in the meantime no one need be concerned about the result. Justice will be secured some time and the unnecessary trespass upon the Company's rights in the use of its corporate name will be prohibited beyond any doubt.

Since commencing the work of grading on the 15th of April, the work has been pushed as rapidly as circumstances would permit. At the present time there are fifty laborers engaged on the work of grading, besides the engineer corps. A larger force would have been employed, but could not be to advantage, the character of the work requiring a proportionate number of carts, and the carts could not be secured otherwise than

by ordering them built, which has required time. The progress made is very satisfactory, and stockholders and the public may rest assured that the work will be pushed with all the energy the means of the company will permit.

The necessary inquiries have been made through the proper channels, to ascertain upon what terms foreign capital can be secured. The people ought not to be deceived and misled. Foreign capitalists will not come here and build your railroads upon your mere request. They are quite as careful of their money as are Oregonians of theirs. While you would not likely invest your money in the bonds of a road proposed to be constructed, but which is not in fact graded, through Texas or New York, it is not likely that New Yorkers will invest in Oregon roads until they see something more than maps. No mere paper schemes, practicing upon the credulity of the people, will succeed. It requires dollars, but a dollars worth of wheat or land can be converted into the construction of a railroad as well as coin. And when enough of the commercial values of the country, be it cash, produce, land or labor, has been aggregated, to enable Eastern capitalists to see that we are in earnest, and have our affairs in a tangible business shape, there will be no trouble in securing money on the Bonds of the Company to further prosecute the enterprise.

Your Directors have let no contracts at exorbitant prices, squandering your contributions upon favorites, upon those who have no interest in the State, or to

enrich themselves, and do not purpose to do so. Economy has been required of your Chief Engineer, Superintendent, and all others having the incurring of expenses, and all employes exhorted to a faithful discharge of their duties. It is believed that this is the only way to secure success; and it is some satisfaction to know that this plan has the approval of those of whom we expect to ask further aid. Oregon has not yet done all that it may easily do to aid this great work, and especially those along the line who are to be most benefited by the road. Every man can help some. Let every man do so, and failure would be utterly impossible.

Laborers must be fed, and the farmers along the line can contribute flour, bacon, vegetables and all the necessaries of life, when they would have no cash to spare, and this they would not feel. Teams must be supplied and supported; horses and their provender are everywhere abundant; let them be freely supplied, and the work will not lag. The right of way ought to be cheerfully donated in every case. Cross ties can be easily furnished by persons along the line, each furnishing a few, and taking their pay in stock or lands. In this way let a "railroad spirit" be aroused and stirred up to a deeper depth, and the Railroad which is eminently the people's and an Oregon enterprise, will be pushed rapidly up the Willamette, through the Calapooias to Umpqua, and on to Rogue river, and spreading its iron arms out upon either side, will infuse new life into the whole country, make your wheat of uniform current value from Jacksonville to Portland, take

out every brush, reconstruct every farm, quadruple its value, erect comfortable houses everywhere, give the farmer the full value of his labor and his produce at his own door, create new towns and cities, and finally supply and serve the wants of a million of people, prosperous and happy in the enjoyment of one of the most favored spots and climes beneath the sun.

This beautiful picture cannot be accomplished without labor, nor can it ever be accomplished without a railroad. What the beautiful valleys of the Mohawk and the Gennessee of New York, the Scioto and Miami of Ohio, were thirty years ago, the Willamette, Umpqua and Rogue river are today. What the first named valleys are to-day, your beautiful valleys of Oregon may soon be, if we keep up with the progress of the age and construct this railroad. Then, let not the "Railroad spirit"—already aroused—flag in the least, and the best way to keep it alive and increase its value, is to go to the nearest subscription paper and subscribe something. No man fully feels the importance of anything until he is a "little interested." Far more can be accomplished by a little united effort than any one supposes. There are more than one thousand farmers in the Willamette Valley who could easily raise five hundred bushels of wheat in addition to their regular crops, to be put into this railroad one year from next harvest. Suppose by a united effort this was secured, it would make a half millions bushels of wheat, worth to your railroad not less than a half million dollars, every dollar or bushel of which could be turned into railroad iron. The very

fact that such an arrangement as this had been made in this State would give your Company great credit in New York and Liverpool.

In conclusion your Board of Directors feel encouraged to state that they consider the affairs and prospects of your Company in a very satisfactory, not to say flattering condition. We have no doubt of the success of the enterprise.

And with this unreserved statement of the condition of the affairs of this, the original Oregon Central Railroad Company, we would respectfully submit to the people of the State this proposition: Is it probable that two companies of the same corporate names, upon opposite sides of the same river, being competing lines for all the trade of the upper Willamette valley and beyond, and rivals in every respect, can reasonably hope to succeed under the present circumstances, and at this point in the history of our State? If it is not reasonable to hope for the success of both, does not justice to the interests of the whole State, a prudent regard for the tax payer, as well as the dictates of business economy, urge every friend of the interests of both sides of the Willamette river, as well as those of the Umpqua and Rogue river valleys, to decide in favor of and give their support to that company which has been recognized by the Land Departments of the U. S. Government, and endorsed by your chief commercial city, which has secured a respectable basis of home means, which has certainly the best showing for success, and thus enable them to speedily build one main line through to Jacksonville,

with such necessary branches as will fully accommodate the entire State west of the Cascade Mountain? Should the interests of foreign contractors, or the personal matters of our citizens, be allowed to prejudice the superior interests of the State and the people? And is it not especially the interest of this city, to see that the company it has endorsed and aided, shall not be unnecessarily embarrassed by rival enterprises? We ask of the people of the State a fair examination and discussion of these propositions.

All of which is respectfully submitted.

J. GASTON

President O. C. R. R. Co.

Portland, Oregon, May 25th, 1868.

Office of the Oregon Central R. R. Co.,

Portland, Oregon, 1st June, 1868.

Board of Directors met pursuant to call of the President.

Present, Directors Ainsworth, Newby, and Gaston. President Gaston in the chair.

On motion of Director Newby it was:

RESOLVED. 1st. That the Oregon Central Railroad Co., of Portland, Oregon, does hereby authorize and direct the President and Secretary of said Company to prepare, execute, sign and seal two thousand Bonds of the denomination of One thousand dollars each, in one series, numbered from One to two thousand, inclusive, to be First Mortgage Bonds, and of the manner,

form, tenor, and legal effect of the copy herein set forth marked "A."

"A"

The Oregon Central Railroad Company a Corporation duly organized under the laws of the State of Oregon, and having their principal office in the City of Portland in said State, acknowledge themselves indebted for value received to the holder hereof in the sum of One Thousand Dollars which sum they promise to pay to the holder hereof in the City of New York on the first day of January A. D. Eighteen Hundred & Eighty nine (1889) with interest thereon at the rate of Seven per cent per annum, payable semi-annually on the first day of January & July in each year at the Banking House of Lees and Waller in the City of New York on presentation and delivery of the annexed interest warrants as they severally become due, both principal and interest payable in Gold Coin of the United States of America. And the said Company agree that this obligation, and all rights and benefits arising therefrom may be transferred by general or special endorsement, or by delivery as if the same were a note of hand payable to Bearer. This Bond is one of a series of Two thousand of One Thousand Dollars each, issued by authority of the Board of Directors of said Company to provide for the construction and equipment of the Oregon Central Railroad, and is secured by First Mortgage properly executed by said Company to Charles M. Carter and James B. Harker of the City of Portland, State of Oregon bearing date

the first day of June, 1868, and stamped according to law with United States Revenue Stamps by which Mortgage the said Company have conveyed to the said Charles M. Carter and James B. Harker in trust for the use and benefit of the holders of said Bonds, all property, real and personal, rights, interests and franchises, vested or contingent (excepting subscriptions to the Capital Stock of said Company) and the right and franchise of said Company to the benefits of an act of Congress entitled "An act granting land to aid in the construction of a Railroad & Telegraph line from the Central Pacific Railroad in California to Portland, Oregon," Approved July 25th 1866, as by said Mortgage or the record thereof in the Clerk's Office in the Counties of Multnomah, Washington, Yamhill, Polk, Benton & Lane, in said State of Oregon, reference being thereto had, more fully appears. Said Bonds are further secured by a sinking fund arising from fifty per cent of the net proceeds of sales of lands under said act of Congress and ten per cent of the net earnings of said Company's Railroad which sums are to be set aside and loaned on undoubted security for the exclusive purpose of redeeming said Bonds when due.

(To the above Bond forty one coupons are to be attached, each for six months interest & payable on the first day of January & July. The first one payable on 1st January 1859 & the forty first one on the 1st day of January 1889, all payable at the Banking House of Lees & Waller New York City)

RESOLVED. 2nd. That said two thousand

Bonds shall be secured by a First Mortgage on the Company's Railroad & other property; according to the copy herein set forth marked "B."

"B"

THIS INDENTURE Made this first day of June in the year of our Lord Eighteen hundred and sixty eight, between the Oregon Central Railroad Company, a Body Corporate, organized under an act of the Legislature of the State of Oregon, Approved October 14th, 1862, entitled, "An act Providing for Private Incorporations and the appropriation of private property therefor," and the amendments thereto, party of the first part, and James B. Harker and Charles M. Carter, parties of the second part: WITNESSETH: Whereas the said party of the first part is authorized and empowered in and by the several acts of the Legislature of the said State of Oregon, above referred to, to borrow from time to time on the credit of the Corporation, and under such regulations and restrictions as the Directors thereof by unanimous concurrence may impose, such sums of money as they may deem necessary for constructing and completing their Railroad, and to issue and dispose of Bonds or Promissory Notes therefor in denominations of any sum and at a rate of interest not exceeding (seven) per cent per annum, and also to issue Bonds or Promissory Notes of the denomination aforesaid and at the rate of interest aforesaid in payment of any debts or contracts for constructing and completing their Railroad with its equipments

and all else relative thereto, and to secure the payments of said bonds or notes, the said Company may Mortgage its Corporate property and franchises.

And said Directors are also to provide in such manner as to them shall seem best, a Sinking Fund to be especially applied to the redemption of such Bonds on or before their maturity, and may also confer on any holder of any note or Bond, so issued from money borrowed, or in payment of any debt or contract for the construction and equipment of such road as aforesaid,

The right to convert the principal due, or owing thereon, into stock of said Company at any time within Eight years from the date of such Bonds under such regulations as the Directors may adopt.

And, Whereas, for the purpose of providing the means for the construction of the said Railroad and its equipment and completion, the Board of Directors of said Oregon Central Railroad Company have unanimously RESOLVED in substance and legal effect, every member of said Board being present and voting that said Oregon Central Railroad Company make, execute & deliver, under its corporate seal, its Bonds, bearing even date herewith, severally payable to the holder thereof or bearer, at the Banking House of Lees & Waller in the City of New York on the first day of January in the year Eighteen hundred and Eighty nine, with interest from and after the first day of July in the year Eighteen hundred and Sixty-eight, at the rate of Seven per cent per annum payable at the same place

Semi-annually as follows, that is to say:

That two thousand Bonds be made or issued, for the sum of One thousand dollars each, in the aggregate amounting to Two Million dollars and no more. And that for the purpose of a more specific identification thereof, that said Two thousand Bonds be numbered in a consecutive series from Number One to Number two thousand, both inclusive, and that upon the back of or endorsed on each Bond shall be printed and engraved a certificate signed by the said James B. Harker & Charles M. Carter, to the effect that such Bond is one of the first Mortgage Bonds to be secured by these presents. AND WHEREAS under and pursuant to lawful authority conferred by said several acts of the Legislature of the said State of Oregon the said Board of Directors of said Oregon Central Railroad Company have further unanimously resolved in substance and legal effect, that the President & Secretary of said Oregon Central Railroad Company execute & acknowledge in the name of and on its behalf & under its Corporate Seal deliver to said James B. Harker & C. M. Carter a Mortgage conveying assigning & transferring to him & them all its corporate real & personal property, franchises & effects (excepting individual land subscriptions and donations to Capital Stock) as security for the payment of said two thousand Bonds & the interest to grow due thereon & that said Mortgage shall contain all the provisions covenants & conditions hereinafter set forth and that such Mortgage and the two thousand Bonds thereby secured be severally dated the

first day of June A. D. Eighteen hundred & Sixty Eight. NOW THEREFORE THIS INDENTURE WITNESSETH, that the said Oregon Central Railroad Company, the party of the first part hereto, under & pursuant to & by virtue of the express powers & authority conferred upon & vested in it by said several Acts of the Legislature of the State of Oregon & under & pursuant to said Resolutions duly passed & adopted by the aforesaid unanimous concurrence of its Board of Directors & which are duly entered upon the official minutes of said Board & for & in consideration of the foregoing premises & especially for the purpose of effectually securing to the respective holders the payment of the said two thousand Bonds with the interest due and to grow due thereon, AND for and in consideration of the sum of ONE DOLLAR & other monies lawful money of the United States of America to it in hand paid by said parties of the second part hereto, at & before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, HATH granted, bargained, sold, assigned, transferred, & set over, enfeoffed, conveyed & confirmed, and by these presents Doth grant and convey to the said James B. Harker & Charles M. Carter & the survivors of them their or his successors or assigns, ALL AND SINGULAR the Railroad of the said party of the first part hereunto now, constructed or hereafter to be constructed, from a point in the City of Portland, Oregon to a point at or near the town of Eugene City in Lane County said State, & also & all future extensions of

said Railroad, TOGETHER with all its lands, tenements & hereditaments acquired & appropriated or which shall hereafter be acquired or appropriated for the purpose of a right of way for a single or double track Railroad & all the appurtenances thereto belonging, and also all the rights, benefits, values, franchises, and lands granted to said Company by virtue of an Act of the Congress of the United States entitled "An Act granting lands to aid in the construction of a Railroad & Telegraph line from the Central Pacific Railroad in California to Portland, Oregon," approved July 25th, 1866, and by virtue of any amendments thereto & by virtue of any legislation which has been heretofore, or which may be hereafter had in the Legislature of the State of Oregon, necessary to entitle said Company to the benefits of said act of Congress. AND ALSO all its land acquired & appropriated or which hereafter shall be acquired & appropriated for Depots, Engine Houses, Machine Shops, Work Shops, Superstructures erections & fixtures; & also all & singular the franchises rights & privileges now owned possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part AND ALSO ALL the rails, bridges ways piers depots Engine Houses car houses Station houses Ware houses Machine Shops Work Shops erections Superstructures fixtures privileges franchises & rights of said party of the first part, AND all the lands, tenements hereditaments & real Estate acquired & appropriated wheresoever and whatsoever, or now owned by said party of the first

part, or which shall hereafter be owned by it, & all & singular the locomotives passenger cars, freight cars and all other cars carriages Tools Machinery & Equipments for said Railroad & now owned or which shall be hereafter owned by the said party of the first part & also all goods & chattels rolling stock of every kind & description now owned or which shall be hereafter owned by the said party of the first part And in any way relating to or appertaining or belonging to or connected with said Railroad or the running & operating the same, together with all rents issues income profits money rights benefits & advantages derived or to be derived had or received therefrom by said party of the first part in any way whatsoever; Provided always that the individual land subscriptions and donations to the Capital Stock of the Company be hereby excepted from the operations of this Mortgage. TO HAVE & TO HOLD the said premises & every part thereof unto the said parties of the second part the survivors of them their & his successor or successors forever upon the following trusts, nevertheless; that is to say:

First. In case default shall be made in the payment of the interest in any of the said bonds according to the tenor thereof, or of the coupons or interest warrants thereto annexed, or in the payment of the principal of any of the said bonds when the same shall become due and shall be demanded, and if any such default shall continue for the period of three months, or in case of any default in any requirements hereof to be done or kept by the said Company, AND if any

such defaults shall continue for the period of three months, then and in either case the said parties of the second part the survivors of them their or his successor or successors in the trusts created or declared by this indenture, either personally or by their or his Attorney or Agent, may or upon due requisition, as hereinafter provided, shall enter into & upon All & Singular the premises hereby conveyed, or intended so to be, And each & every part thereof, & have hold & use the same, operating by his or their superintendents, managers or servants or other attorneys or agents the property of the said Company & conducting the business thereof & exercising the franchises pertaining thereto & making from time to time all repairs & replacements & such useful alterations additions & improvements thereto as may seem to him or them judicious, & collecting & receiving all tolls incomes rents issues & profits of the same & of every part thereof, & after deducting the expenses of operating the said Railroad property & appurtenances, & of conducting the business of the said Railroad Company, and of all the said repairs replacements alterations additions & improvements, and all payments which may be made for taxes assessments charges or liens, prior to the lien of these presents upon the said premises, or any part thereof, as well as just compensation for their or his own services and for the services of such attorneys or counsel as may have been by him or them employed, Shall apply the moneys arising as aforesaid to the payment of the interest on the bonds secured hereby, in the order in which such inter-

est shall have become due, rateably, to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due, to apply the said money to the payment of the principal of the said bonds secured hereby rateably to the persons holding such bonds, and after the payment of the principal of all the bonds, secured hereby, if any surplus shall remain, to pay over the said surplus to the party of the first part, or dispose of the same as any court of competent jurisdiction may order.

Second: In case any default shall be made as hereinbefore expressed, and defined, and shall continue as hereinbefore specified, then and in any such case, the said parties of the second part, and the survivors of them their or his successor in the trust created or declared by this Indenture, may, or upon due requisition as hereinafter provided, shall, personally or by his attorney or agent, sell & dispose of all and singular the premises hereby conveyed, or intended so to be, at Public Auction in the City of Portland, Oregon, or at such other place as the said Trustees or the survivors of them their or his successor may designate, and at such time as they or he may appoint, having first given notice of the time & place of such sale by advertisement published not less than three times a week for six weeks in one or more newspapers, to be designated by the said Trustees, the survivors of them their or his successor or successors, or to adjourn the said sale from time to time in their or his discretion, & if so adjourning to make the same without further notice at the time & place

to which the same be so adjourned, & to receive the proceeds thereof, & to make & deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds in the law for the same, which sale made as aforesaid, and whether subject to any lien or otherwise shall be a perpetual bar, both in law & Equity, against the parties of these presents and all other persons claiming or to claim the said premises or any part thereof by, to, through or under them, or any or either of them, & after deducting from the proceeds of such sale just allowances for all expenses thereof, including Attorneys & Counsel fees & all other expenses advances or liabilities which may have been made or incured by the said Trustees or the survivor of them their or his successor or successors, in operating or maintaining the said Railroad, property, or in managing the business of the said Company while in their or his possession, & in arranging for & completing the sale of the said hereinbefore conveyed property, and all payments which may have been made by them or him for Taxes or assessments or other charges upon the said property, as well as compensation for their or his own services, apply the said proceeds to the payment of interest on the bonds secured hereby in the order in which such interest shall have become due rateably to the persons holding the coupons evidencing the right to such interest, & after paying all interest that shall become due to apply the remaining proceeds of such sale as aforesaid to the payment of the principal of the bonds secured hereby, rateably, to the persons holding the said bonds, & after

the payment of the principal of the bonds secured hereby, if any surplus shall remain, to pay over the said surplus to the party of the first part, or to dispose of the same as any court of competent jurisdiction may direct. And it is hereby declared that the receipt or receipts of the said trustees the survivors of them their or his successor or successors shall be a sufficient discharge to the purchaser or purchasers of said premises for his or their purchase money & such purchaser or purchasers his or their heirs, executors or administrators, shall not, after payment of the receipt, & having such receipt, be liable to see the application of such purchase money upon or for the trusts & purposes of these presents or in any manner whatsoever be answerable for any loss or misapplication or nonapplication of such purchase money or any part thereof, or be obliged to enquire into the necessity or expediency of or authority for any such sale.

Third. At any sale of the aforesaid property, or any part thereof, made to enforce the lien created by these presents, pursuant to the power herein granted, or by judicial authority, the parties of the second part hereto as trustees or the survivors of them their or his successor or successors, may bid for and purchase the property so sold on behalf of all the holders of the hereby secured bonds, then outstanding, in the proportion of the respective interests of such holders; provided, that if all the property hereby conveyed to be sold, as aforesaid, at the time at which the purchase herein authorized may be made, shall not exceed the whole

amount of the bonds then outstanding with the interest accrued thereon, in behalf of which the said purchase shall be made, and, provided that if a portion of the said property shall be sold, it shall be sold at such price as shall in the judgment of the said Trustees the survivor of them their or his successor or successors, be reasonable.

Fourth. In case default shall be made in the payment of any half yearly interest, or any of the bonds hereby secured, at the time and in the manner provided in the coupons or interest warrants therewith issued, the said coupons having been presented & the payment of the interest therein specified having been demanded, and if such default shall continue for the period of three months after the said coupons shall have become due and payable, then & thereupon the principal of all said bonds shall be at the option of the Trustees the survivor of them his or their successor or successors become immediately due & payable; but a majority in interest of the holders of the said bonds may nevertheless, in writing, or by the vote of a meeting held pursuant to notice published daily for two weeks in a newspaper in the Cities of Portland Oregon, San Francisco, California, & New York City, New York, and before the interest in arrears shall be paid, instruct the trustees the survivors of them their or his successor or successors, to declare the said principal to be due, or waive the right so to declare on such terms and conditions as the majority may deem proper, or may annul or reverse the determination of the Trustees the survivor of them

their or his successor or successors, provided that no action of the Trustees the survivors of them their or his successor or successors, or of the bond holders shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Fifth. The Trustees, the survivors of them their or his successor or successors, shall have full power in their discretion, upon the request of a majority of the directors of the said Company to convey by way of release or otherwise to the person or persons designated in & by such written request any of the lands or property hereby conveyed or intended so to be acquired or held by the said Company for the purpose of Stations, Mills Depots Shops or other buildings and shall also have power to convey as aforesaid on like request any lands or property which in the judgment of the said Trustees or the survivor of them herein named or their or his successor, shall not be necessary for use in connection with the said property, or which may be held by the said Company for the supply of fuel water Clay Timber or other material, and also to convey as aforesaid on like request any lands not occupied by said Company or which may become desired by reason of a change of the location of any Depot Shop or other building connected with the business or operations of the said Company. And such lands occupied by the said Company & adjacent to such building or buildings as the Directors of the said Corporation or a majority of them may deem it expedient to disuse or abandon, by reason of such change, & to consent to any such changes & to

such other changes in the location in any and all such mills depots shops or other buildings as in their judgment shall have been expedient to make & deliver the conveyance necessary or proper to carry the same into effect. But any lands which may be acquired for permanent use in substitution for any so released shall be conveyed to the Trustees hereinbefore named the survivors of them their or his successor or successors, upon the trusts expressed defined created or declared by these presents, unless the directors of the Company shall at the time of communicating such request as aforesaid to the Trustees of the bond holders hereby constituted, or the survivors of them their or his successor or successors or thereafter and prior to the completion of such sale present and deliver up to such last Trustees or the survivors of them their or his successor or successors, for cancellation such a number of the bonds hereby secured as shall be equal. at the par value thereof, the price or consideration money for which such property shall be released or conveyed as aforesaid in which case the said last named Trustees or the survivor of them their or his successor or successors shall release or convey the same upon such written request as aforesaid & shall cancel & destroy the bonds so delivered up & surrendered but the proceeds of all lands released as aforesaid except as last herein provided shall be paid over to the Trustees the survivor of them their or his successor or successors to be applied by them or him to the purchase of bonds of the said Company in open market, but the said Company shall have full power

to dispose of according to their discretion such portions of the equipment machinery & implements at any time held or acquired for the use of the said Company & to facilitate its operations as may have become unfit for such use, & to replace the same by new, anything hereinbefore contained to the contrary in any wise notwithstanding.

Sixth. Upon a default in the payment of the interest or principal of the bonds hereby secured, or in the performance of any of the covenants herein contained, upon a requisition in writing signed by a holder or holders of a majority of the bonds, & a proper indemnification by the said holders to the Trustees or the survivor of them their or his successor or successors, against the costs and expense to be by them or him incurred, it shall be the duty of the Trustees or the survivor of them their or his successor or successors, to enforce the rights of the bond holders under these presents by entry, sale, or suit at law or in Equity, as being advised by Counsel learned in the law as they or he shall deem most expedient for the interest of all the holders of the said bonds, subject to the power hereby declared of a majority in interest of the holders of the said bonds by requisition in writing to instruct the said Trustees or the survivor of them their or his successor or successors, to waive such defaults; provided, that no action of the said Trustees or the survivor of them their or his successor or successors or bond holders, or both, in waiving such default, or otherwise, shall extend to or be taken to affect any subsequent default or to impair the

rights resulting therefrom.

Seventh. And it is hereby agreed by & between the parties hereto, & their successors & assigns herein, & with the holders of said Bonds, that the Board of Directors shall hereafter provide a "Sinking Fund" for the redemption & payment of the principal sum of said two thousand Bonds; that is to say, that "Ten per centum of the nett earnings of said Companys' Railroad, & Fifty per centum of the Nett proceeds of the Sales of the lands granted by said Act of Congress & the amendments thereto, shall be annually set aside by the Directors & Officers of said Company, & by them loaned at lawful interest on undoubted security, annually, and the Annual interest thereon invested in like manner, which investments, and the accruing interest thereon, shall constitute the "Sinking Fund" of this Company, for the redemption and payment of the principal sum & any unpaid interest of said two thousand bonds. And it shall be the duty of said Trustees & their successors, as often as they deem proper, to investigate the condition of said "Sinking Fund," and require the said Directors & Officers of this Company to faithfully execute this provision for the "Sinking Fund," and for that purpose, if necessary, to require the assistance of a Court of Equity.

And it is mutually agreed by and between the parties hereto that the said Trustees or the survivor of them their or his successor or successors, shall be entitled to just compensation for all services which they or he may

hereafter render in their or his Trust to be paid by the said Company or out of the income of the property, and for that purpose may at any time apply to the Court, without notice to any person, but the said Company, that the said Trustees or either of them or any successor or successors in such office may resign and discharge themselves or himself of the Trust created or declared by these presents by Notice in writing to the said Company three months before such resignation shall take effect, or such shorter time as they may accept as adequate.

NOTICE; That the said Trustees or either of them or their or his successor or successors may be removed in and upon a requisition declaration or instrument in writing under the hands & seal of a majority in interest of the holders of the aforesaid bonds duly executed, acknowledged & attested; that a successor or successors to such Trustee or Trustees shall be appointed with the consent of the holders, for the time being, of a majority in interest of the said bonds then outstanding, & the trustee or trustees so appointed shall thereupon become vested with all the powers, authorities & Estates received be granted to or conferred upon the parties of the second part by these presents and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any further assurance or conveyance by or on the part of the said Company, so far as such effect may be lawful, & upon the death resignation or removal of any Trustee or any appointment in his place, in pursuance of these presents,

all his power & authority by virtue hereof shall cease; & all the estate right title & interest in & to the said premises of any Trustee so dying resigning or being removed shall wholly cease and determine. And the said party of the first part for itself & its successors, in consideration of the premises, covenant and agree to & with the parties of the second part, or the survivors of them their or his successor or successors in the trust hereby created or declared, that the said party of the first part & its successors shall & will at all times hereafter keep open an Office or Agency in the City of New York for the payment of the principal and interest of & upon the bonds hereinbefore recited & described & hereby secured as the same shall become payable, & that any & every default in the due performance of this covenant shall be deemed & taken to be a waiver of presentment & demand of payment of all & every of the bonds & coupons aforesaid which may become payable during the continuance of such default. And it is hereby agreed between the parties to this Indenture that in the meantime and until default shall be made in the payment of the interest or principal of the said bonds or of some of them, or some part thereof, or in some of the covenants or agreements herein contained to be kept observed or fulfilled by the said party of the first part, it shall be lawful for the said party of the first part & its successors peaceably & quietly to have hold use possess and enjoy the said premises with the appurtenances & to receive the income tolls rents issues & profits thereof to its own use & benefit with-

out any hindrance or interruption suit or disturbance whatsoever of or by the said parties of the second part or their or his successors in the trust or any other person whatever lawfully claiming or to claim the same by from or under them or any of them. And the said party of the first part & its successors & all & every other person or persons whatsoever lawfully or equitably claiming any estate right title or interest of in & to the hereinbefore granted premises, by from or under or in trust from it shall & will at any time or times hereafter, upon the reasonable request, and at the proper costs & charges in the law, of the said parties of the second part or the survivors of them their or his successor or successors or assigns, make do & execute or cause or procure to be made done and executed, all and every such further and lawful & reasonable acts conveyances & assurances in the law for the better and more effectually vesting & conforming the premises hereby intended to be granted in & to the said parties of the second part, as by the said parties of the second part or the survivors of them their or his successor or successors, or their counsel learned in the law shall be reasonably devised or required. And also that the said party of the first part & its successors, the above granted bargained sold & assigned premises & every part & parcel thereof, with the appurtenances unto the said parties of the second part or the survivors of them or their or his successor or successors, against the said party of the first part & its successors; and against all and every person & persons whomsoever lawfully claim-

ing or to claim the same, by through or under it, shall & will WARRANT and by these presents forever defend.

RESOLVED 3d. That said two thousand Bonds shall be sold and disposed of according to the directions of the Board of Directors.

RESOLVED. 4th. That Edwin Russell, Esq. be authorized to sell Five Hundred of said Bonds at the City of London at not less than Sixty cents on the dollar, & that his commission be five per centum on net proceeds.

RESOLVED. 5th. That the President & Secretary be authorized to sell said Bonds in the State of Oregon in lots to suit purchasers at not less than Six Hundred dollars per Bond in U. S. Coin.

RESOLVED. 6th. THAT Director Newby be authorized to collect subscriptions, donations and take deeds for lands in Yamhill County.

Adopted, and on motion adjourned.

We the undersigned Directors unanimously concur in all the proceedings of the above meeting.

T. R. CORNELIUS

W. C. WHITSON.

E. W. HAINES
Secy. O. C. R. R. Co.

J. GASTON
Prest. O. C. R. R. Co.

Office of the O. C. R. R. Co.

Portland 27 June 1868

The newly elected Board of Directors met this A. M. at 10 o'clock. The meeting was called to order by E. W. Haines Secretary of the Old Board, who presented and read the proceedings of the Stockholders meeting of 25th May 1868.

Directors present Gaston, Ainsworth & Cornelius, all having filed their Oath of Office with the Secretary. Mr. Gaston was nominated and elected President of the Board for the ensuing year & with a few appropriate remarks took the chair.

Mr. W. S. Ladd was nominated and elected Treasurer of the Company.

E. W. Haines was nominated and elected for Secretary for the ensuing year.

Hon. J. W. Nesmith's declination to act as Director was read, accepted and ordered placed on file.

J. B. Underwood Esq was nominated and elected to fill the vacancy in the Board of Directors occasioned by the declination of Mr. Nesmith, filed his oath of office and took his seat as a Director.

On motion the following Resolution was unanimously adopted.

RESOLVED That the Oregon Central Railroad Company of Portland Oregon, does hereby adopt, ratify, confirm and accept all the terms conditions and stipulations of the contract to pay interest on Seventy

five thousand dollars of this Company's Bonds proposed by the County Court of Yamhill County Oregon, on the 19th day of June 1868 a copy of which is hereto attached marked "A," and that the President and Secretary be hereby directed to sign said contract on behalf of the Company and attach the seal of the Company to the same.

"A"

Whereas a majority of the legal voters of the County of Yamhill, in the State of Oregon, have petitioned the County Court thereof to aid in the construction of the Oregon Central Railroad through said County; and whereas the levying of an amount of tax sufficient to pay interest, at *seven per cent per annum,* on seventy five thousand dollars for twenty years, will aid in the construction and early completion of said Railroad—and whereas the levying of such a tax will be a compliance with the wishes of a majority of the voters of said County, petitioners as aforesaid, and whereas in constructing said Railroad through said County from North to South, the Yamhill River, or the North and South forks of said river will have to be bridged, and whereas the said Railroad Company will require for its use a telegraph line along the line of its said Railroad, which telegraph line said Railroad Company hereby agrees to construct and operate, and to transmit for said County free of charge all messages or dispatches in which said County shall have an interest, free of charge for a period of twenty years from the date said Company puts said telegraph line in Operation—and Whereas the early

construction of said Railroad through to said County, and the early construction of a bridge across the Yamhill river, or bridges, across its North and South forks, as may be determined by said Railroad Company, and the early construction of said telegraph line through said County are objects of great interest to the citizens of said County; THEREFORE, Know all men by these presents that this article of agreement made and entered into this 19th day of June, A. D. 1868, (wherein Yamhill County, Oregon, is party of the first part, and the said "Oregon Central Railroad Company" of Portland, Oregon is party of the second part) is made and entered into solely and expressly to secure the desirable objects above named—and is as follows:

WITNESSETH—That whereas the County Court of said County, at a special term of said Court, began and held at the Court House in the town of Lafayette in said County, commencing on Thursday the 18th day of June, A. D. 1868, made an Order having for its object the carrying out of the prayer of the petitioners aforesaid, and for other purposes, a certified copy of which *Order* is hereto attached, and marked "A," and made a part of this agreement; and whereas the President and Executive Committee of the said Oregon Central Railroad Company, to wit: J. Gaston, President & W. T. Newby & T. R. Cornelius, Executive Committee as aforesaid, being present, have assented to, and agrees to all the provisions of said *Order;* and whereas the Board of Directors of said Company, has and doth hereby ratify, approve, agree to & accept all

& singluar the provisions and conditions of said *Order,* and hereby directs their President & Secretary to sign this agreement & attach thereto the Corporate Seal of said Company;

THEREFORE, in consideration of these premises, & in order to secure the early & sure construction of a first class railroad through said County, be it known that Yamhill County Oregon, party of the first part hereto, by the order of its County Court, made, & entered of Record at the called term of said County Court above set-forth, doth hereby contract & agree to & with the said Railroad Company aforesaid & the holders of the said Bonds described in the said *Order,* to hereafter faithfully collect & pay the said taxes, & to appropriate the funds raised by said taxes, to the payment of the interest refe..ed to in the said Order, for the term of twenty years from the first day of July, 1868, and perform all and singular the obligations & stipulations of said County, according to the terms & conditions & stipulations of the said *Order* of the said County Court, hereto attached and marked "A" & made a part of this contract; & the said Railroad Company, upon its part, doth hereby contract & agree and doth hereby bind its associates, successors & assigns to faithfully prosecute the work of constructing its said Railroad through said County, according to the terms & conditions named in said *Order,* to the end that the said Railroad Company may be enabled to transport persons & property for said County, & the citizens thereof; and the said Railroad Company further agrees & hereby faithfully prom-

ises, to construct a good, suitable & substantial Railroad Bridge across the Yamhill River, or good, suitable & substantial Railroad Bridges across the North & South forks of said Yamhill river, which said bridge or bridges, as the case may be, said Company agrees shall be so constructed as to afford easy, safe & certain facilities for crossing said Yamhill river or said North & South forks of said river, as the case may be; and said Railroad Company agrees & hereby binds itself to open, & keep open, for the use of the public free from all charge, said bridge or bridges as soon as it or they be constructed; & said Railroad Company agrees & hereby binds itself to build said bridge or bridges, & to have the same completed, & ready for the use of the public on or before the 4th of July, 1870—and said Railroad Company also hereby further binds itself, that the free bridge or bridges, herein contemplated, & agreed to be built & kept in repair as aforesaid, shall be kept for the free & public use of the people of this State and the traveling public generally, for a period of not less than twenty years from and after the date of the throwing open said bridge or bridges for the use of the public, as provided for in said *Order* "A"; and said Railroad Company hereby contracts & agrees for themselves, associates, successors & assigns, faithfully to do & perform all & singular the conditions, considerations & stipulations contemplated in said *Order* "A", & required by said *Order* to be done and performed by said Railroad Company.

IN TESTIMONY WHEREOF, the County Court of said County has, this 19th day of June, A. D.

1868, ratified and confirmed the same by the signature of the County Clerk of said County, attested by the seal of said County—& in further witness whereof, the said "Oregon Central Railroad Company" of Portland, has caused these presents to be signed by J. Gaston its President,, & by E. W. Haines, its Secretary, & attested by the Corporate Seal of said Company.

Signed, sealed and delivered, in duplicate, by the contracting parties hereto, at the town of Lafayette, in said County, this 19th day of June, A. D. 1868.

(Seal of Yamhill Co. Court) Attest the Seal of said County.
(Signed) S. C. ADAMS
Clerk of said Court.

(O. C. R. R. Co. seal) Attest the Corporate seal of said Railroad Company.

(Signed)
E. W. HAINES,
Secy. O. C. R. R. Co.

J. GASTON,
Prest. OC R. R. Co

A RAILROAD ORDER.

Whereas a majority of the Legal Voters of Yamhill County Oregon, have petitioned the County Court of said County, to take such action by the levying of an annual tax, as will secure the early construction of a Railroad through said County, with free bridges for public use across the Yamhill River, or its two branches, as the case may be, for the use of said County & the citizens thereof, & to secure the construction of a line of telegraph through said County for the free

use of the Offices of said County for County purposes, to the extent of a seven per cent annual interest upon seventy five thousand dollars for twenty years, said interest to be paid in U. S. gold coin; and after due consideration of the prayer of said petitioners; Therefore be & it is hereby ***ORDERED*** by the County Court of said County, in & at a special term of said County Court, begun & held on the 18th & 19th days of June, 1868, as follows:

Section 1st. That for the purpose of securing the transportation of gravel, stone, brick, clay, lumber & timber, for the construction & repairs of the County buildings of Yamhill County; and for the purpose of securing free bridges for the public use of all persons, as hereinafter provided in Section Five of this *Order,* and for the purpose of securing the transportation of persons & property as provided in said section, & for other purposes as hereinafter & hereinbefore provided, the Corporation known as the Oregon Central Railroad Company of Portland, Oregon, be & is hereby authorized to issue Seventy five Bonds of the sum of One Thousand dollars each, bearing interest at the rate of seven per cent per annum, as shown by the coupons on each of said seventy five Bonds, & said interest commencing to run on the first day of July 1868, & payable on the first days of January & July thereafter, Semi-Annually for the term of twenty years; said Bonds having thereto attached to each forty interest coupons, each coupon representing the half yearly interest of its respective Bond; said coupon to be signed by

the Secretary of said Company & endorsed by the County Clerk of said County, as hereinafter after provided, & to be made payable in U. S. gold coin at the County Treasury of said County, by the Treasurer thereof.

Section 2. That in order to carry out the provisions of the first paragraph of Section One of this *Order,* there shall be levied & collected in the year 1868, in the same manner as the other County Revenue is now or may hereafter be collected, a tax of three & one half mills on the dollar of all the taxable property in said County, in addition to the other taxes, the same to be paid in the gold or silver coin of the United States, and the money to be derived from such tax, shall be & is hereby appropriated & set aside to constitute a separate "Fund," to be known as the "Railroad Fund," out of which "Fund," the said interest coupons payable January 1st 1869 & July 1st 1869, on said Seventy five Bonds, hereinbefore described, shall be paid as they may fall due & be presented for payment at said County Treasury, & if there shall not be in the said "Fund" sufficient money to pay the said coupons payable January 1st 1869 & July 1st 1869, or if there shall be a surplus after paying said coupons payable on that date, the County Court shall make such arrangements in this respect, as is provided in Section Three of this *Order.*

Section 3. That in order to further carry out the provisions of the first paragraph of Section one of this *Order,* there shall be & is hereby levied to be collected in the year 1869, and annually thereafter for the period

of Eighteen years, in the same manner as the other County revenue is or may be collected a tax of three mills on the dollar, of all the taxable property in said County, in addition to the other taxes; provided however that the County Court may at any time reduce the rate of this tax in proportion to the increase of taxable property within said County, so that the revenue so collected by said tax shall not be less than five thousand two hundred & fifty dollars per annum, the said tax to be paid in the gold or silver coin of the United States, & the moneys to be derived from such tax shall be & the same is hereby appropriated & set aside to constitute a separate "Fund" to be known as the "Railroad Fund," out of which "Fund" the said coupons for interest on said Seventy five Bonds hereinbefore described shall be paid as they may fall due and be presented for payment at said County Treasury from time to time for the period of Nineteen years, & on payment thereof by the County Treasurer, said interest coupons shall be cancelled & destroyed in the presence of the County Court of said County, and if at any time there shall not be a sufficient sum of money in said "Railroad Fund" to pay said interest when due, then an amount sufficient to make up such deficiency shall be taken from the "General County Fund" for that purpose, or the County Court shall make such other contracts & arrangements as may be necessary to make up such deficiency; and whenever on the first day of January of any year there shall remain a surplus in said "Railroad Fund," after the payment of the interest on said

Bonds, payable on that date, such surplus shall be paid into the General County Fund; Provided always, & said coupons shall so express, that said County shall never be liable to pay the principal of said Bonds; nor shall said County, or the Treasurer, pay or be required to pay said coupons or any of them to the said Railroad Company until said Railroad Company shall have constructed, completed & operated their said Railroad (which is understood and agreed to be a first class Railroad) from the City of Portland, Oregon, to the South bank of the Yamhill river, or to the south bank of the south fork of said Yamhill river, as the case may be; nor until the telegraph line aforesaid is likewise completed & operated from the said City of Portland to the said south bank of the said Yamhill river, or the said south bank of the said South fork of the said Yamhill river, as the case may be; but shall place said seventy five Bonds, together with the whole of said coupons, thereto attached, in the hands of William S. Ladd, Trustee as herein provided, who shall collect the coupons as fast as they fall due, & said Ladd shall retain said money so collected until said Company complies with its contract as herein set forth. And when said Railroad Company shall have completed & operated its first class Railroad & its telegraph line as aforesaid, then said County Court agrees & hereby binds itself to order the Trustee hereinafter & hereinbefore named, to surrender to & turn over to said Railroad Company the whole of the Seventy five Bonds hereinbefore named together with the whole of the coupons attached to said

Seventy five Bonds with any sums of interest he may have already collected; provided nevertheless it is expressly understood, stipulated & agreed to & by the said Railroad Company, to & with the said County of Yamhill, that said Railroad & said Telegraph are both to be fully finished completed & in running order & operation to the said Yamhill river or the south branch thereof, on or before the fourth day of July, A. D. 1870; and it is further understood & agreed, by & between the contracting parties hereto, that if the said Oregon Central Railroad Company of Portland, shall from any cause fail to complete said Railroad & said Telegraph line from the City of Portland aforesaid to the south bank of the Yamhill river, or to the south bank of the south fork of said river on or before the said Fourth day of July, A. D. 1870, then & in that event this contract is to be cancelled & of no effect whatever, & that in the event of a failure of said Railroad Company to comply strictly & faithfully with all its agreements & stipulations herein set forth, then this *Order* is to be deemed null & totally void & of no effect whatever.

Section 4. That in order to further carry out the provisions of the first paragraph of Section One of this *Order,* it shall be the duty of the County Clerk of said County, whenever after the execution of the contract hereinafter provided for, said Company shall present to him the said Seventy five Bonds described in Section one of this *Order,* to endorse with his official signature, in the form of a warrant upon the Treasurer of the County, each & all of the said interest coupons

attached to said Seventy five Bonds, which signature shall bind said County to pay the same according to their tenor as aforesaid; & after said coupons shall have been so endorsed by said County Clerk, he shall deliver the whole of said Bonds, together with the said Coupons attached, to William S. Ladd Banker, of the City of Portland, Oregon, who shall act as Trustee between said County & said Company, for the purposes hereinafter & hereinbefore named & shall give such security for the faithful discharge of his trust as may be hereafter required by said County Court, & it shall be the duty of said Trustee to receive & safely keep all of said Bonds & coupons until ordered by said County Court to pay the same over to said Railroad Company, which order shall be made as soon as said Railroad Company shall have fully complied with their part of this Contract in the construction of their said Railroad: Provided said Railroad Company shall live up to and fulfil this part of their contract on or before the Fourth day of July aforesaid & not otherwise; and it is understood & agreed by the contracting parties hereto that the compensation of said Trustee for his services herein shall be a reasonable compensation for such services to be estimated by said County Court, & to be paid by said Railroad Company; & it is further understood and agreed that the route of said Railroad shall run from the City of Portland through to Washington County via Wapatoo Lake & through Yamhill County from the North line to the South line thereof.

Section 5. That the provisions of the preceding sec-

tions of the Order, & the agreements of this County to pay the interest referred to in said Section is made upon the express condition & consideration that said Oregon Central Railroad Company does contract & agree, by the filing of its agreement hereinafter referred to, at any & all times for the period of twenty years from the fourth day of July A. D. 1870, to transport and convey over their Railroad all public messengers required to travel at the expense of said County & all County officers required to travel at the expense of said County, free of charge, and transmit over their Telegraph line all messages which would otherwise go at the expense of said County, free of charge for twenty years; & also transport, carry & convey over their Railroad for twenty years, to or from any point on their line, as may be required, free of charge or other compensation than is provided in this *Order* all stone, gravel, earth, lumber & timber, or other materials which said County may need to be transported over said Railroad, for its County Buildings, and all furniture & stationery required in the County Offices for the use of the County, & all articles & animals with their necessary attendants on the way, to & from the Annual fairs of the Yamhill County Agricultural Society & to & from the fairs of the State Agricultural Society, intended for exhibition for premiums at such fairs, & such Company shall further contract to construct its bridge across the Yamhill river or the two branches thereof, as the case may be, in such a manner, that either the upper or lower chord of the bridge or bridges may be used as a carriage way

for the passage of wagons, horses & footmen, & that the same shall be kept in good repair & open to the free use of the public without charge, for the period of twenty years; and such Company shall further contract not to charge a higher rate for freight or passage of the products & citizens of said County, from points in said County to or from the City of Portland or elsewhere than they charge for like freight or passage upon similar & equal distances upon any other portion of the line of their said Railroad.

Section 6. That in order to avail themselves of the provisions of this Order, said Railroad Company at a meeting of their Directors shall accept the propositions contained in this *Order,* & by a resolution spread upon their Journal direct their President & Secretary to enter into & sign an agreement in writing, attaching thereto the provisions & a certified copy of this *Order,* and file a copy of said Agreement duly executed in duplicate, with the Clerk of said County, which Agreement & duplicate shall be signed by the President & Secretary of said Company & be sealed with their Corporate Seal, binding said Company to faithfully perform all & singular the conditions & considerations on the part of said Company specified in this *Order,* & the County Clerk of said County is hereby authorized & directed, on behalf of said County to sign the said Agreement & duplicate, which signing by said Clerk shall be attested by the County Seal of said County, which signing & sealing by said County Clerk shall bind the County of Yamhill faithfully to levy & collect the said tax & pay

the said interest coupons as they may fall due, upon the conditions & stipulations herein set forth, for the period of twenty years, as is herein provided and specified and not otherwise.

On motion at 1 o'clock P. M. a recess was declared to 8 o'clock P. M.

At 8 o'clock P. M. the Board was called to order by the President. Present Gaston, Ainsworth, Underwood and Newby (Newby having filed his oath of office).

On motion it was

RESOLVED, That the road of this Company through Yamhill County be located on the line surveyed by D. C. Lewis last year by Wapato Lake and McMinnville and that the Company establish a Depot on the Land Claim of ———————— and Houseworth, and also a Depot within the present limits of the town of McMinnville.

On motion the Board adjourned.

E. W. HAINES,
Secy. O. C. R. R. Co.

J. GASTON,
President.

Office of the Oregon Central R. R. Co.

Portland, 25 August 1868.

The Board of Directors met this day at 1 o'clock P. M. pursuant to call of the President.

Directors present, Gaston Prest. Ainsworth, Cornelius and Underwood.

The contract with Mrss. Stitzel & Upson to sell the Company lands &c, dated 18th day of August, A. D. 1868 (on file in this office) was read and on motion it was ratified with the following:

Amendments, viz.:

Erase: on the eighth line the word "when" (after the word Upton) and the words "the interests" on the ninth line, on the second page from the top—and insert in the place thereof the words "whenever in the opinion of the Board of Directors the interests".

Erase: "and when it is reasonable and just that such action should be taken" words on the tenth and eleventh lines from the top of page two.

Add: The said Company reserve the right to annul this Contract, by giving thirty days notice to said Stitzel & Upton, whenever in the opinion of the Board of Directors, they, the said Stitzel & Upton, are not promoting the interests of the Company.

On motion a recess was declared to 8 o'clock this P. M.

The meeting was called to order at 8 o'clock P. M. by Pesident Gaston. Present Gaston, Ainsworth, Cornelius, Underwood & Newby.

Capt. Ainsworth presented the following: viz.

RESOLVED: That the Officers of the Company

be authorized to enter into a contract with John A. Slavins, providing for a regular way station on his land on the Summit of the Portland Mountain, provided that the said Slavin will lay off One hundred acres of land in proper form for a town, give the Company the right of way through his land for the Railroad, the right to the water from the Spring near the "Ghost House," and right of way for the water pipes therefrom, and convey by good title every alternate Block of Lots in said town so laid off". which Resolution on Motion was adopted.

It was directed that the Engineers proceed to Holmes Pass in Polk County, commence at the point where survey stopped and Survey to Albany, Corvallis & Eugene City to about four miles beyond Eugene City, through ———————— Pass.

On motion the Board adjourned.

E. W. HAINES, Secretary. J. GASTON, President.

Office Oregon Central Railroad Co.

Portland, August 27, 1868.

The Board of Directors met at 8 o'clock P. M., pursuant to call of President.

Present—Gaston, President Ainsworth & Newby.

On motion President and Secretary be authorized to execute the contract with S. Coffin for Trestle work on the First Five Miles of the Railroad, according to the terms of the contract now drawn up and read to this meeting. Motion adopted.

On motion adjourned.

E. W. HAINES, Secretary. J. GASTON, President.

Office Oregon Central R. R. Co.

Portland, 31 Octo. 1868.

The Board of Directors met pursuant to the call of the Prest. present Gaston President, in the chair, Ainsworth, Newby, Cornelius, & Underwood.

On motion of Newby, it was—

RESOLVED: That the proposal of Simeon G. Reed & Co. for the building of One hundred and fifty miles of the Company's railroad is hereby accepted, and the President & Secretary of the Company are hereby directed to execute the contract therefor, as the same has been drawn up and read to the Board.

Which resolution was unanimously adopted.

And thereupon in the presence of the Board the said contract is signed in duplicate by the said Reed & Co. and on behalf of the Company by the President and Secretary and sealed with the seal of the Company and one of the originals thereof is filed with the Company's records.

On motion it was unanimously:—

RESOLVED That the President and Directors continue the canvassing for subscriptions and donations of all kinds of property to the Company, on the best terms they can secure; and that the President be author-

ized to negotiate and sell such pieces of real estate, land, town lots &c as may be necessary to raise money to pay the Company's debts and carry on the business of the Company. And that land and other real estate, or other property be sold and transferred to creditors and claimants against the Company in satisfaction of their claims; that the sales be made in such way and manner as shall be directed by the President and shall best promote the interests of the Company; and that the President and Secretary be hereby authorized to execute in behalf of the Directors and the Corporation all deeds and conveyances necessary in the premises. Resolution adopted.

"It is ordered that the Trust Mortgage executed to Charles M. Carter and James B. Harker, on the 1st day of June 1868, to secure the payment of the principal and interest on two thousand One Thousand dollar Bonds, be amended in the following particulars to wit—(Refer to Mortgage on Co. Record & filed in this Office)—*on page 3* on line 10, erase "two" & substitute "Three"; on line 12 erase "Two" & substitute "Three"; on line 14 erase "Two" and substitute "Three"; on lines 15, 16 & 17 erase the words 'numbered in a consecutive series from Number one to Number two thousand both inclusive" and substitute in place thereof, "divided into two series, one series of two thousand Bonds numbered consecutively from one to two thousand both inclusive, and a second series of one thousand bonds, marked "Second Series First Mortgage," and numbered from one to one thousand both inclusive." On line 22, after the word "presents" insert, "and that not more than twenty

thousand dollars per mile of the said first Mortgage Bonds shall be issued on said railroad, and that not more than three million dollars of said First Mortgage Bonds shall be issued on the said one hundred and fifty miles of railroad."

On *page 4,* line 11, erase "Two" & substitute "Three"; on line 27 erase "Two" & substitute "Three".

On page 5, line 16, erase "a point at or near the town of Eugene City," and substitute in place thereof "the one hundred and fiftieth mile post on said railroad". On lines 17 & 18 erase "and also and all future extensions of said Railroad."

On page 7, on line 8, after "income" insert "earnings" and after "profits" insert "receipts"; on line 9 between the words "derived" & "had," insert "present and prospective," on line 10 after the word "received" insert "or earned by said Company's Railroad"; on line 27 erase "three" & insert "twelve."

On page 8, on line 2, erase "three" & insert "twelve".

On page 13, on line 16, erase 'three" & insert "twelve".

On page 17, on line 2, after the word "principal" insert "for twelve months".

On page 18, on line 4, erase "Two" & substitute "three", on line 18 erase "Two" & substitute "Three".

On page 21, on line 19, after the word "income" insert "earnings"; on line 27, after the word "them" insert, "And it is contracted and agreed by and between the said

Railroad Company, the said Trustees, the said Bond holders or any of them, that this Mortgage shall protect all the property rights, franchises earnings, profits, incomes receipts, dividends, herein mortgaged to secure the payment of the said Bonds and the interest thereon from the attachments liens judgments and all claims of all persons lawfully claiming or to claim the said property or any part or description of the same or interest therein in satisfaction or otherwise of their said claims. And it shall be the duty of said Railroad Company and of the said Trustees, and the right and privilege of any holder of the said Bonds or any of them, to employ agents, attorneys and Counsel and take any action necessary under the circumstances to protect said property or any of the same, or any earnings or profits of the same, from any and all claims, attachments, judgments or liens of any and all persons not claiming under this Mortgage."

In the "Notice" with reference to affixing Revenue stamps to the Bonds, the word "Two" is erased and "Three" substituted in place thereof.

And that the Mortgage heretofore recorded in the Clerks Office, be cancelled, and that a new Mortgage, embracing the one heretofore recorded and the above amendments, be executed by the President and Secretary of the Company, and delivered to said Trustees Carter & Harker, and recorded before any Bonds are issued.

On motion it was resolved that the salary of the Pres-

ident of this Company be Two Thousand dollars per annum, and necessary traveling expenses.

On motion it was resolved that the Acts of Director Cornelius and other Authorized Agents of the Company in issuing "Freight Receipts" heretofore at fifty cents on the dollar, be hereby ratified, and that the President and Secretary be hereby authorized to execute and sign such further amounts of "Freight receipts," or written obligations, payable by the Company in freight or passage on their road as there may be sale for at fifty cents on the dollar, to be of such form and amounts and be disposed of in such manner as the President may direct.

On motion the Board adjourned.

E. W. HAINES, Secretary. J. GASTON, President.

Office of the Oregon Central Railroad Company

Portland 28 Dec. 1868.

The Board of Directors met pursuant to call by the President.

Present, Gaston, Ainsworth, Cornelius & Newby.

On motion the President was authorized to answer Pamphlet recently issued by the East Side Company.

It was moved by Director Ainsworth that the Contract with S. Coffin for Bridge Building is forfeited by said Coffin for non compliance on his part with the terms thereof in time of completing. Motion adopted.

On motion the Board adjourned.

E. W. HAINES, Secretary. J. GASTON, President.

Portland 10th March 1869.

The Board of Directors met pursuant to call of the President and was called to order by the President. Present Directors Ainsworth, Newby, Cornelius and Gaston.

Mr. Coffin made a statement of his matters, when it was

RESOLVED: That the Officers of the Company be authorized to settle with Stephen Coffin for Bridges built by him at the measurement fixed by John Brazee.

The Board then fixed the following as prices for the land named, to Stephen Coffin on Bridge's account.

Newby	land	25	acres.....	$4,000.00
Johns	"	155	"	3,000.00
Campbell	4 lots	4	lots.....	1,100.00
Standley	land	200	acres.....	1,600.00
Ben Stewart	"	160	"	1,600.00
Jno Perkins	"	240	"	2,500.00
Town property at North fork.....				5,000.00
J. Burton	land	40	acres.....	400.00
J. Laughlin	"	50	"	700.00
Jno Laughlin	"	40	"	250.00

all in Yamhill County.

Betts claim eight dollars per acre.

Timber land on the line	$20	per	acre
Outside land	10	"	"
Conklin claim	12	"	"
Nye claim, Angel land	12	"	"

all in Washington County.

RESOLVED, That the above be prices for lands for the next thirty days.

RESOLVED, That W. W. Chapman be allowed Two Hundred dollars in full, and A. L. Lovejoy Seventy five dollars in full.

(over)

On Motion the Board then adjourned.

E. W. HAINES. Secy. J. GASTON, Prest.

Office Oregon Central R. R. Co.,
Portland Oregon 2d April 1869.

The Board of Directors met this A. M. pursuant to call of President. Present Ainsworth, Cornelius, Newby, and Gaston, and was called to order by the President.

J. C. Ainsworth, of S. G. Reed & Co., Contractors, gave notice of having stopped work on their contract on March 31st, 1869.

The President was directed to suspend work and take care of the property.

On motion, Board adjourned to meet at call of the President.

E. W. HAINES. Secy. J. GASTON, Prest.

Office of the O. C. R. R. Co.

Portland 20 April 1869.

The Board of Directors met pursuant to the call of the president—present Ainsworth, Cornelius Newby and Gaston, being called to order by the president, it was

RESOLVED: That the President be authorized to make such settlement with S. Coffin as he may think just and equitable. it was also

RESOLVED: That the Secretary be instructed to give ten days Notice of the Next Annual meeting of the Stockholders to be held on the 25th day of May 1869 by publication in the Daily Evening Commercial.

On motion adjourned.

E. W. HAINES, Secy. J. GASTON, Prest.

Office of O. C. R. R. Co.,

Portland, May 25, 1869.

The Board of Directors met by order of the President, at 10 o'clock A. M. present Ainsworth, Newby and Gaston. President Gaston in the chair.

The following preamble and resolution was presented, read, and on motion of Director Newby, was unanimously adopted.

Whereas the Oregon Central Rail Road Company have expressed a willingness to annul the contract made with S. G. Reed & Co. for the construction of one hundred and fifty miles of Rail Road, and the said Reed & Co. have assented thereto, therefore

RESOLVED, That the contract with S. G. Reed & Co. for the building of one hundred and fifty miles of road under date of October 31st 1868, be rescinded, and that the amount due Reed & Co. for advances &C be paid as follows to wit: The Rail Road Comp'y to deed to

Reed & Co. all the Blocks and fractional Blocks deeded to Rail Road Comp'y by Couch & Flanders, Reed & Co. to credit the Rail Road Comp'y with Ten Thousand Dollars for the same, and that Reed & Co. take First Mortgage Bonds, at 58c on the dollar for the balance that may be due them, provided that Reed & Co. agree that they will not press the Rail Road Comp'y for interest on said Bonds 'till twenty miles of Rail Road is built, and provided further that Reed & Co. also put in all their Rail Road Iron, spikes, and chains now on hand, (purchased of P. C. Brinck) for Bonds, at the same rate of 58c on the dollar. *When* the company has raised money enough to lay down said Iron, and provided further that the deed to said lots shall not be executed until the Central Pacific R. R. Co. or other parties shall so take hold of this Company's Road as to secure the construction of said twenty miles of Rail Road.

The following Resolution was presented, Read, and on motion of Director Ainsworth was unanimously adopted.

RESOLVED That the President of the Comp'y be authorized to dispose of the first Mortgage Bonds to the Stockholders of the Company who have paid cash for stock (or its equivalent, on which cash has been realized or saved to the Comp'y) on the following terms: Any Stockholder who is willing to duplicate his subscription, to have the said Bonds for what he has heretofore put in, and also his additional subscription or advancement, at the rate of 58c on the dollar for the said Bonds, and upon the further condition, that the interest on said

Bonds shall not be pressed against the Comp'y 'till twenty miles of Road is built.

On motion adjourned.

E. W. HAINES, Sect'y J. GASTON, Prest.

Office of the O. C. R. R. Co.,

Portland May 25 1869
10½ o'clock A. M.

In pursuance of the annexed notice:

NOTICE—Notice is hereby given that the annual meeting for the election of a Board of Directors of the Oregon Central Railroad Company for the next ensuing year, will be held at the office of the Company in the city of Portland, Oregon, on the twenty-fifth day of May, 1869, between the hours of 10 o'clock A. M. and twelve o'clock at noon. By order of the Directors.

E. W. HAINES Sec'y O. C. R.

Portland, May 12, 1869.

Ordered by the Board of Directors of this Comp'y at their meeting held April 20th, 1869, to be published, and which has been published daily for more than ten days last past, consecutively, in the "daily Evening Commercial" a daily newspaper published in the City of Portland. The Stockholders of the O. C. R. R. Co. met at their office in this City at the time stated above, and proceeded to the election of five Directors to serve for the next ensuing year. President Gaston in the chair. The Secretary call'd a list of the Stockholders,

and the following (representing a majority of all the stock) answered to their names.

J. Gaston	25005	shares
J. C. Ainsworth	5	"
S. G. Reed	5	"
W. T. Newby	12	"
J. M. Johns	98	"
G. W. Burnett by W. T. Newby, Proxy	4	"

An election was then held by ballot, resulting in the choice of J. C. Ainsworth, T. R. Cornelius, J. B. Underwood, W. T. Newby, and J. Gaston as Directors to Serve for the next ensuing year, they having received the whole and full vote cast, as above represented, whereupon the President declared the above named Gentlemen duly elected to serve for the term stated.

"Portland, Oregon, May 25th, 1869.

I, J. Gaston Prest of the Oregon Central Rail Road Company, do hereby certify that at an annual election of the Stockholders of the Oregon Central Rail Road Comp'y, held this day for the purpose of electing Directors to serve for the next ensuing year, the following named persons were elected (by a unanimous vote of all the stock represented) J. C. Ainsworth, T. R. Cornelius, J. B. Underwood, W. T. Newby, and J. Gaston.

J. GASTON, Prest.

On motion the stockholders meeting adjourned.

E. W. HAINES, Sect'y J. GASTON, Prest.

Office of the O. C. R. R. Co.

Portland, July 5th, 1869.

The Board of Directors met at 10 o'clock a. m. pursuant to call of the President. Present, Gaston (presiding) Ainsworth, Cornelius, Underwood, and Newby.

The proceedings of Directors Meeting and Stockholders Meeting held on the 25th of May, 1869 was read and approved, previous to which the Board was reorganized by the election of J. Gaston, President, J. C. Ainsworth, Secty. and W. S. Ladd Treas'r, all to serve for the ensuing year, after canvassing generally in reference to future plans of the Company, on motion adjourned, to meet at the call of the President.

J. B. UNDERWOOD, Sect'y Pro Tem.

J. GASTON, Prest.

Office of O. C. R. R. Co.

Portland Aug 28—1869

The Board of Directors met at 11 o'clock A. M. pursuant to call of the President. Present J. Gaston Prest. (in the chair) T. R. Cornelius and J. C. Ainsworth.

On motion of Mr. Ainsworth the following resolutions were adopted.

RESOLVED that the supplemental order of the Washington County Court made Monday the 2nd day of August 1869, Extending the time to complete Rail Road to Hillsborough, and other matters in said Order, be and the same is hereby adopted and assented to.

RESOLVED That the Sect'y be directed to send copy for filing to clerk of Washington County.

Directors meeting of July 5th read and approved.

On motion adjourned.

J. C. AINSWORTH, Secty. J. GASTON, Prest.

Office of Oregon Central R. R. Co.

Portland, Nov. 18, 1869.

The Board of Directors met at 7 P. M. pursuant to call of the President.

Present, J. Gaston, Prest., in the chair, T. R. Cornelius, J. B. Underwood, W. T. Newby and J. C. Ainsworth.

The minutes of the last meeting was read and approved.

On motion T. R. Cornelius was elected Vice President to serve 'till the next annual election.

T. R. Cornelius proposed to give two dollars per acre for the following named tracts of land viz.

Nye	tract.....	160 acres
Barrett & Walker	"	100 "
McKinney	"	100 "
Geo. H. Smith	"	80 "
Betts claim	.....	240 "
Marble tract	.....	160 "
Welch town lots	.....	35 "
		875

and on motion of Mr. Newby, the proposition was accepted, and the President and Sect'y are hereby authorized and directed to make Deeds for the same forthwith.

On motion (of Mr. Cornelius) the following resolution was unanimously adopted.

RESOLVED That so much of the Resolutions adopted at a meeting of the Board of Directors on the 25th day of May, 1869, as provides that Reed & Co. shall put in all their Rail Road Iron, Spikes, Chains, &C (purchased of P. C. Brinck) for Bonds at the rate of 58c on the dollar, *when* the Company has raised money enough to lay down said Iron, together with that portion of said Resolution, which provides that the deed to Reed & Co. of Blocks and Fractional Blocks deeded by Couch & Flanders to Oregon Central Railroad Comp'y, shall not be executed until certain conditions are complied with &C, Be, and the same is hereby *recinded,* and the President and Sect'y are hereby authorized and directed to make said Deeds to Reed & Co. (forthwith) or to whom they may direct. The President stated that in accordance with Resolution passed by the Board of Directors on the 25th day of May 1869, the account of Reed & Co. for advances &C, had been presented, amounting to the sum of $54,069.17, and that $44,080.00 of the amount had been canceled by the delivery to said Reid & Co. of Seventy-six (76) of the Company's first Mortgage Bonds, of the value of One Thousand Dollars each, and numbered respectively from one to Seventy-six inclusive, which at the rate of 58c on the dollar

amounts to the above named credit. That he had obtained from Reed & Co. a further sum of Five Hundred and eighty Dollars in coin, for which one more Bond of the value of One Thousand Dollars was to be given, and on motion of Mr. Cornelius it was voted, that the Treasurer be authorized and directed to turn over one additional Bond to Reed & Co. for the $580 thus rec'd by the President.

On motion the following Resolution was unanimously adopted.

RESOLVED: That the President be and he is hereby authorized to borrow One Thousand Dollars from S. G. Reed and to give the Company's note for the same payable in Six Months from date, with interest at the rate of one per cent per month, said money to be appropriated for the purpose of defraying his expenses East.

On motion it was ordered, That when J. B. Underwood shall present his account against the Company for services and money expended, amounting to enough for two Bonds at 58c on the dollar (including an order on the Post Office Department yet to be paid for .350$) That the Treasurer be authorized and directed to turn over to said Underwood *two* of the Comp'ys first Mortgage Bonds of 1000$ each, on condition that the interest on said Bonds shall not be collectable 'till twenty miles of said Rail Road shall be in operation.

On motion it was ordered that the President and Secretary be authorized and directed to make Deeds for 480 acres of Land (160 acres being taken from H. B.

Smith 240 acres from Chas. Angel and 80 acres from H. B. Tucker,) to W. C. Johnson, and that the President be charged with the same at the rate of four Dollars per acre.

RESOLVED That the President of the Company be authorized and directed to go to the Eastern States, to attend to the Company's interests and to negotiate for Iron and Rolling Stock, or enter into such contracts as will secure the building of the Company's Road, subject to the approval of the Board of directors.

On motion adjourned.

J. C. AINSWORTH, Secty. J. GASTON, Prest.

Office of Oregon Central R R Co

Portland Jan'y 12 1870 10 o'clock A M

Board of Directors met persuant to call of Vice President.

Present T. R. Cornelius Vice Prest, in chair, W. T. Newby, and J. C. Ainsworth.

Minutes of last meeting read and approved. On motion of W. T. Newby, it was voted that a proposition be made in writing to sell Three Hundred Thousand Dollars of first Mortgage Bonds at the rate of 58c on the dollar, the proceeds of such sale to be applied to the completion of the first twenty miles of the Comp'y Road. The Bond holders to select a committee of three to direct and superintend the disbursement of such funds, and to keep possession of the Road 'till the expiration of the

two years named in the agreement at which time, if the Company fail to pay the interest, the Bond holders will have permission of the Comp'y to foreclose. The parties purchasing the Bonds agreeing to wait two years before demanding interest, and also to pay over to the Comp'y all nett profits of the Road. A paper containing the substance above stated has been signed by the Directors at this meeting.

On motion adjourned.

J. C. AINSWORTH, Sect'y

T. R. CORNELIUS, Vice Prest.

Office of O C R R Co.

Portland Jan'y 12 1870 1 o'clock P. M.

Board of Directors met persuant to call of Vice President.

Present, T. R. Cornelius Vice Prest. in the chair, W. T. Newby and J. C. Ainsworth.

Director Newby stated that W. S. Ladd had offered 50c on the dollar for forty five thousand dollars of Comp'y first Mortgage Bonds, the coupons of which are endorsed by the County of Washington, said Bonds now being in the possession of said Ladd. On motion of Ainsworth the proposition of Mr. Ladd is hereby accepted. Minutes of last meeting read and approved. On motion adjourned.

J. C. AINSWORTH Secty.

T. R. CORNELIUS Vice Prest.

Office of Oregon Central Railroad Co.,

Portland March 15th 1870.

Board of Directors met persuent to call of Vice President.

Present, T. R. Cornelius Vice Prest. in the chair. J. B. Underwood and J. C. Ainsworth.

On motion, the following Preamble and Resolution was unanimously adopted.

WHEREAS The Oregon Central Rail Road Comp'y have failed to build the first twenty miles in time to avail itself of the Land Grant.

THEREFORE RESOLVED, That so much of the Resolution adopted May 25th, 1869, which restricts the collection of interest on first Mortgage Bonds sold to S. G. Reed & Co. 'till twenty miles of Rail Road shall be built by said Comp'y, be and the same is hereby recinded, and RESOLVED further, That all Bonds sold by the Comp'y be free from restrictions as to collection of interest or coupons.

RESOLVED, That J. Gaston the President of this Corporation, be and is hereby fully authorized and empowered to enter into a contract for the construction of the Company's Rail Road with Henry McAlister Jr. and Charles S. Hinchman and their associates, of the City of Philadelphia, Pa. on the basis of the preliminary contract entered into on the 19th day of Jan'y 1870 a copy of which is filed with the Comp'y, and for that purpose

to fully and completely bind this Corporation to the faithful execution of said contract; and that the Vice President and Secretary of the Corporation is hereby directed to execute this Power and Resolution over their respective official signatures, and the seal of the Corporation, and forward the same to the President. On motion adjourned.

J. C. AINSWORTH, Secty

T. R. CORNELIUS, Vice Prest.

Portland Oregon May 25' 1870

Pursuant to provision of By Laws, the Stockholders of the O. C. R R Co met at the office of the Company this day for the purpose of electing a Board of Directors to serve for the next ensuing year. C. M. Carter on motion was made Secretary pro tem in the absence of J. C. Ainsworth Secretary. The roll of Stockholders being read over, and votes cast by ballot, and counted, it was found that the following named persons have received twenty five thousand and fourteen votes each as such Directors of this Company, viz. T. R. Cornelius, C. M. Carter, Cyrus Olney, Robt H Lawborn and J. Gaston, and that the whole number of votes cast was 25014; whereupon said named persons were declared duly elected Directors of the Oregon Central Railroad Company for the next ensuing year, and the President directed to certify their election accordingly.

On motion the meeting of Stockholders then adjourned sine die.

C. M. CARTER, Secretary J. GASTON, President.

Office of the O C R R Co

Portland, Oregon, May 25th 1870.

I, J. Gaston, President of the Oregon Central Railroad Company do hereby certify that at the annual meeting of the Stockholders of said Company, for the purpose of electing a Board of Directors, this day held at the office of the Company in the City of Portland, the following persons, to wit: T. R. Cornelius, C. M. Carter, Cyrus Olney, Robert H. Lawborn of Philadelphia, and J. Gaston, having received a majority of all the votes cast at such election to wit, twenty five thousand and fourteen votes for each of said persons for such Directors, and they are hereby declared to be duly elected as Directors of the Oregon Central Railroad Company for the next ensuing year.

J. GASTON,

Prest O C R R Company

Office of Oregon Central R R Co

Portland Oregon July 2nd 1870

In persuence of the call of the Prest. of the Comp'y the Board of Directors met at their office in No. 3 Carters Block in this City at 8 o'clock P. M. of this day, and was call'd to order by the President at 9:30 P. M.

Present, J. Gaston Prest. in the chair, T. R. Cornelius, J. B. Underwood and J. C. Ainsworth.

Director Ainsworth moved to adjourn this meeting 'till Wednesday the 6th inst. at 8 o'clock P. M. Motion lost.

The President then presented the following Resolutions, towit:

"WHEREAS on the 28th day of June 1870 J. Gaston did take and subscribe twenty three thousand five hundred shares of the Capital Stock of this Comp'y, and whereas such subscription was made to promote the best interests of the Comp'y; Therefore be it Resolved that such subscription be and the same is hereby ratified and approved adopted by a majority. Ainsworth not voting.

2nd. WHEREAS it is impossible for this Comp'y to comply with their contract heretofore made with the authorities of Washington County, on or about the 5th day of March 1868, and the amendments and extensions thereof

THEREFORE be it resolved that said contract is hereby canceled so far as this Comp'y is concerned and the said County released from all liabilities thereon; and that the Prest. of the Co. be hereby directed to notify the County Commissioners of said County of the action of this Comp'y, and serve a copy of this Resolution on said Commissioners, and that the Prest. also be hereby authorized to enter into an agreement in writing with said Commissioners to make good this action of this Board, and also to collect together all interest coupons signed by the officers of said County, and together with the County Clerk of said County cause the same to be destroyed. Adopted.

3rd. RESOLVED that the Oregon Central Railroad Comp'y hereby assents and expresses their assent and acceptance of all and singular of the provisions of the Act of Congress entitled an act Granting lands to aid

in the construction of a Rail Road and telegraph line from Portland to Astoria and McMinnville in the State of Oregon which act was passed by the Senate of the United States Congress on the 20th day of Feb'y A. D. 1870, and by the House of Representatives of said Congress on the 29th day of April A. D. 1870: and that the Prest. of this Comp'y be hereby authorized empowered and directed to forward a copy of this Resolution to the Secretary of the Interior at Washington City, D. C., and file the same in his office. Adopted.

4th. RESOLVED That a meeting of the Stockholders of the Oregon Central Rail Road Co. of Portland, Oregon be and the same is hereby call'd to be held at the office of the Comp'y in Portland, Oregon, on Saturday the 9th day of July A. D. 1870 at 7 o'clk P. M. for the purpose of considering the propriety of, and authorizing the desolution of such Corporation, the settling of its business, disposing of its property, and the division of its Capital Stock, and any other business that may then be brought before said meeting, and that the Prest. of this Comp'y be and he is hereby authorized and directed to give notice of such meeting, and of the purposes thereof, by publication of the same in at least five issues of the Daily Oregonian and daily Herald newspapers published in the City of Portland Oregon. Yeas and nays call'd for, yeas, Cornelius, Underwood and Mr. Prest. 3. Nays, Ainsworth 1. J. C. Ainsworth as Director, Stockholder and Bond holder protesting against the adoption of this Resolution.

5th. Resolved that the Board do now adjourn to

meet at the office of the Comp'y in Portland on Saturday July the 9th at Six o'clock P. M. for the purpose of considering the propriety and authorizing the desolution of this Corporation, the settling of its business, disposing of its property, and the division of its Capital Stock, and for the purpose of transacting any other business that may then come before the board. Yeas and nays call'd for, resulting as follows. Yeas, Cornelius, Underwood, and Mr. Prest. 3. Nays, Ainsworth 1. J. C. Ainsworth as Director Stockholder and Bond holder, protesting against the adoption of this Resolution.

Approved,

J. GASTON, President.

Attest

J. C. AINSWORTH, Sect'y

Office of Oregon Central Rail Road Co.

Portland July 9, 1870.

Board of Directors met persuent to adjournment, and was call'd to order at 7:30 P. M. Present, J. Gaston, Prest. in the chair, T. R. Cornelius, J. B. Underwood, W. T. Newby, and J. C. Ainsworth.

Minutes of last meeting read. J. C. Ainsworth (Director) stated that the 1st Resolution adopted at the meeting of 2nd inst. was understood by him at the time as referring to Mr. Gaston's first subscription to the Capital Stock, and therefor allowed it to pass without voting. That upon making up the record he discovered the Resolution was intended to, and did apply to stock subscribed on the 28th of June 1870, and therefore he gave notice of his *Protest* against said Resolution. Di-

rector W. T. Newby also gave notice of his *Protest* against said Resolution.

While Mr. Newby was stating his objection to said Resolution the President signed the minutes of last meeting. Mr. Underwood presented the following.

RESOLVED, That a meeting of the Stockholders of this Company be and the same is hereby call'd to be held at the office of this Comp'y in the City of Portland Oregon, on Saturday the 13th day of August, A. D. 1870 at one o'clock p. m. for the purpose of considering the propriety of and authorizing the desolution of this Corporation, the settling of its business, disposing of its property, and dividing its Capital Stock: also for the purpose of electing five Directors to serve 'till the next annual election and until their successors are elected and qualified, and also for the purpose of transacting any other business that may then be lawfully brought before such meeting, and the President of this Company is hereby instructed to give notice of this meeting by publication for thirty days in the daily Oregonian and daily Herald, of Portland, Oregon, and for at least three issues in each of the weekly Oregonian and weekly Herald, said newspapers being published in the City of Portland, Oregon.

Yeas and nays call'd for, resulting as follows, yeas, T. R. Cornelius, J. B. Underwood, and Mr. Prest. 3. Nays, W. T. Newby and J. C. Ainsworth, 2. The Prest. declared the Resolution adopted, whereupon J. C. Ainsworth and W. T. Newby, as directors and Stockholders *Protested* against this Resolution.

Mr. Underwood presented the following.

RESOLVED. That the President be directed to make a full and complete statement of all the financial transactions of the Company from its organization to the present time, Showing the amount of money & property received, and from whome, the amounts expended and for what purpose, & also a full & complete statement in reference to all the property and assets of the Comp'y and the liabilities of the Comp'y, and to whom owing, and present the same at the meeting of the Board of Directors to be held on the 13th of August 1870. Adopted.

Mr. Underwood presented the following Resolution, which was adopted.

RESOLVED, That the Prest. be and is hereby instructed to publish notice in at least two of the daily newspapers within the City of Portland, requiring all persons having claims against the Company to present the same to him on or before the 1st day of August next.

Director Newby gave notice of his *Protest* against Resolutions No. 4 and No. 5, adopted at last meeting.

Mr. Underwood presented the following:

RESOLVED, That the Board do now adjourn to meet at ten o'clock A. M. on Saturday the 13th day of August 1870 for the purpose of considering the propriety of and authorizing the desolution of this Corporation, the settling of its business, disposing of its property, dividing its Capitol Stock and also any other business which may come before the meeting.

On motion to adopt, yeas and nays call'd for resulting as follows, yeas, T. R. Cornelius, J. B. Underwood, and

Mr. President. 3. Nays, W. T. Newby and J. C. Ainsworth, 2. Newby and Ainsworth protesting against the adoption of this Resolution. The President then declared the Board adjourned.

Approved

J. C. AINSWORTH, Secty.

J. GASTON, President.

Office O C R R Co.

Portland Aug. 13 1870.

Board of Directors met persuent to the Published notice of the President and was call'd to order at 10 o'clock A. M. Present, J. Gaston, Prest. in the chair, J. B. Underwood, W. T. Newby and J. C. Ainsworth. Minutes of last meeting read and approved.

President presented statement of the outstanding debts of the Comp'y and the financial condition of the Comp'y in compliance with Resolution adopted at the last meeting.

Director W. T. Newby offered the following Resolution, and moved its adoption, to wit.

RESOLVED, That for the purpose of paying the present indebtedness of this Company, and carrying on the work of constructing the Road, and particularly to place the first twenty miles of the Road in a condition to lay the tract as speedily as possible, an assessment of ten per cent upon all unpaid subscribed Capital Stock be levied, payable forthwith at the office of the Company in Portland.

Yeas and nays call'd for, resulting as follows. Yeas,

W. T. Newby and J. C. Ainsworth, 2. Nays, J. B. Underwood and Mr. President, 2 so the Resolution was declared lost.

On motion adjourned to 2 o'clock P. M. of this day. Attest

J. C. AINSWORTH, Secty.

Office of O C R R Co.

Portland, August 13, 1870.

Board of Directors met at 2 o'clock P. M., agreeable to adjournment. Present, J. Gaston, Prest. in the chair, W. T. Newby, T. R. Cornelius and J. C. Ainsworth. On motion of Mr. Cornelius the Board adjourned to meet at 8 o'clock P. M. of this day.

NOTICE TO STOCKHOLDERS OF THE "OREGON CENTRAL RAILROAD COMPANY" OF PORTLAND, OREGON.

AT A SPECIAL MEETING OF THE BOARD OF Directors of the "Oregon Central Railroad Company" of Portland, Oregon, duly called and legally held at the office of the Company, in Portland, Oregon, on Saturday, July ninth (9th), A. D. 1870, at Six o'clock P. M., the following Resolution was duly and regularly adopted;

"RESOLVED, That a meeting of the Stockholders of this Company be and the same is hereby called to be held at the office of this Company, in the City of Portland, Oregon, on Saturday, the (13th) thirteenth day of August, A. D. 1870, at one o'clock P. M., for the purpose of considering the propriety of, and authorizing the

dissolution of this corporation, the settling of its business, disposing of its property, and dividing its capital stock, also for the purpose of electing five Directors, to serve until the next annual election, and until their successors are elected and qualified, also for the purpose of transacting any other business that may then be lawfully brought before such meeting; and, the President of this Company is hereby instructed to give notice of this meeting by publication for thirty days in the Daily Oregonian and daily Herald of Portland, Oregon, and for at least three issues in each, of The Weekly Oregonian and Weekly Herald, said newspapers being published in the City of Portland, Oregon."

Therefore all Stockholders in the Oregon Central Railroad Company of Portland, Oregon, are hereby notified and requested to appear at the office of such Company in the City of Portland, Oregon, on Saturday, the thirteenth (13th) day of August, A. D., 1870, at one o'clock P. M., for the purpose of attending to the transaction of the business specified in the foregoing resolution, and also any other business that may then be brought before such meeting of Stockholders.

By order of the Board of Directors.

J. GASTON,

President, Oregon Central Railroad Company.

Portland, July 11, 1870.

The Stockholders of the O. C. R. R. Co. met at the Comp'ys office in the City of Portland on August 13th, 1870, pursuant to the above call, and were called to or-

der by President J. Gaston at 1 o'clock P. M.

Mr. J. N. Dolph presented the following Resolution, which on motion was adopted.

"Resolved, that the meeting of Stockholders now proceed to the election of a Board of five Directors, that each stockholder vote by ballot, naming the Director he votes for on his ballot, and casting the same as his name is call'd by the President; and the Secretary is directed to record the name of each Stockholder voting and the number of votes that he casts."

The President appointed J. N. Dolph as teller. The following named persons voted as their names were call'd

J. C. Ainsworth	6	
R. H. Towler, by G. W. Weidler	48504	votes
H. B. Tucker	6	"
Geo. W. Ebberts	18	"
S. Coffin	5	"
T. R. Cornelius	5	"
J. N. Dolph	1	"
Geo Weidler	1	"

whole number of votes cast 48546

resulting as follows:

R. H. Towler	rec'd	48513	votes
J. M. Gelman	"	48505	"
Levi Estes	"	48513	"
S. M. Smith	"	48513	"
C. S. Silver	"	48513	"

J. Gaston	"	10	"
J. C. Ainsworth	"	10	"
W. T. Newby	"	10	"
C. M. Carter	"	10	"
C. Olney	"	5	"
J. B. Underwood	"	5	"
Geo Weidler	"	8	"

whereupon the President declared the first five named as being duly elected.

Mr. W. T. Newby stated that in accordance with the "By Laws" of the Company, the Directors were to be elected on the 25th day of May in each year, to serve for one year and 'till their successors were elected and qualified, That on the 25th day of last May an election was duly held, and five Directors was duly elected, in consequence of which he protested against the present election.

On motion the meeting adjourned.

Attest

J. C. AINSWORTH, Secretary.

J. GASTON, President.

JOURNAL OF MINUTES

OF

O. C. R. R. CO.

OF PORTLAND

VOL. II.

"Office of the O C R R Company
Portland Oregon August 15th.
1870.

In pursuance of the call of the President of the Company, and in pursuance of the Bylaws of the Company, the new Board of Directors met at the Office of the Company in Portland this day at ten o'clock A. M. and proceeded to organize the Board—Levi Estes, C. S. Silver, Samuel M. Smith; and R. H. Towler having appeared as Directors in said Company; and proceeded to complete the organization of the Board. A ballot was then taken for officers of the Board, Messrs. Towler, Silver and Smith above named being present and voting, and J. Gaston acting as temporary Secretary. The following was the result of the balloting: For President, Samuel M. Smith; For Vice President, Levi Estes; For Treasurer, C. S. Silvers; For Secretary, J. Gaston.

Mr. Smith then took the Chair as President of the Board, and of the Company. On motion J. C. Ainsworth was removed from the office of Secretary of the Company.

Director Towler then offered the following Resolu-

tion, which was unanimously adopted, towit: Resolved that the 4th paragraph of Section One of the By Laws of the Company, adopted at the meeting of the Board on Sept 24th 1867, be and the same is hereby amended so as to read as follows, "4th The Board of Directors of this Corporation shall have the right and power to sell, assign, transfer and convey, any or all of the corporate franchises of this Corporation, to secure the construction of a Railroad and Telegraph line on the general route or line which may be adopted by this Company, provided that the Stockholders holding and representing three fourths of the subscribed stock of the Company, shall appear before the Board proposing to make such sale or transfer, and openly agree to and consent before the Board of Directors to such proposed sale or transfer, conveyance or assignment of such corporate franchises.

The President then delivered to the Board the following communication, which was read by the Secretary.
"Portland Oregon August 15th 1870
To the President and Directors of the Oregon Central Railroad Company of Portland Oregon:
Gentlemen: As President of the Willamette Valley Railway Company, I am authorized to, and do hereby propose to your Company, that if you will sell, assign, transfer, convey and set over to the said Willamette Valley Railway Company, all the right, title and interest, vested and contingent, of the said Oregon Central Railroad Company, in and to the franchises, benefits, priveleges, grants and lands, granted to your Company by an "Act of Congress" entitled, "An Act granting lands to aid in the construction of a Railroad and Telegraph line from

Portland to Astoria and McMinnville in the State of Oregon," which passed the Senate of the United States Congress Feb 28th 1870, then the said Willamette Valley Railway Co will build the said Railroad and Telegraph line, as proposed in said Act of Congress, and pay to your Company the sum of one dollar in consideration of such transfer and assignment of the said franchises and lands granted by said Act of Congress.

Respectfully,

BEN HOLLADAY,

President."

On motion the Secretary was ordered to incorporate said communication in the proceedings of this meeting, and file the same in the office. Mr. Silver then offered the following resolution which was unanimously adopted:

Resolved First, That whereas this Company has endeavored for three years past, to construct their Railroad Southwardly through the State of Oregon, and has been unable to do so, and is unable to secure the necessary money and means to do so, and whereas the Congress of the United States has passed an Act, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon," passed the Senate Feb 20 1870, and has designated this Company and their Assigns, as the grantee and beneficiary in said Act, and entitled under the terms and conditions of said Act, to take and hold and receive the franchises, benefits, grants and lands proposed in said Act, in aid of the construction of the said Railroad from Portland to Astoria and McMinn-

ville in the State of Oregon; and whereas this Company is unable to construct the said Railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon, and is unable to raise the necessary money and means to enable them, the said Oregon Central Railroad Company to comply with the terms of said Act of Congress proposing to aid in the construction of the said Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon; and whereas it is necessary to make immediate arrangements with some responsible Company in order to secure the construction of the said Railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon within the time limited in said Act of Congress; and whereas the Willamette Valley Railway Company has been duly incorporated and legally and regularly organized under the laws of the State of Oregon for the express purpose of constructing and operating a line of Railroad and telegraph from Portland to Astoria and McMinnville in the State of Oregon on the same general route with the said Oregon Central Company, and is now engaged in surveying lines for the purpose of selecting the best line for such Railroad and telegraph; and Whereas the said Willamette Valley Railway Company has expressly provided in their Articles of Incorporation the power to accept and receive the franchises, grants and lands proposed in said Act of Congress, and whereas the said Willamette Valley Railway Company is possessed of the necessary money and means to enable

(it) them to comply with all the terms of said Act of Congress, and construct the Railroad and telegraph line therein proposed to be aided, within the time limited in the law; and whereas the said Oregon Central Railroad Company having accepted said grants proposed in said Act of Congress, and assented thereto as prescribed in said Act of Congress; and whereas the said Willamette Valley Railway Company, by and through their President, Benn Holladay Esq, thereunto duly authorized and empowered, has by a proposition in writing, dated August 15th 1870 (a copy of which is filed in the office of said Oregon Central Company) proposed to construct and put in operation the said Railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon, on condition that said Oregon Central Railroad Company shall sell, assign, transfer, convey and set over to said Willamette Valley Railway Company, all and singular, the rights, benefits, interests, title and claim of the said Oregon Central Company, vested or contingent in or to, or which, they may be entitled to, of the said franchises, benefits, privileges, grants and lands, proposed to be given the said Oregon Central Railroad Company by the said Act of Congress, in aid of the said line of Railroad and telegraph from Portland to Astoria and McMinnville in the State of Oregon, and would also pay to said Oregon Central Railroad Company as a further consideration for the said transfer of the said franchises and lands, the sum of one Dollar; *Therefore,* be it *Resolved,* That the Oregon Central Railroad Com-

pany doth hereby accept the proposition of the said Willamette Railway Company. Before the adoption of this Resolution, R. H. Towler, on behalf of Ben Holladay, a stockholder who owns, holds and represents more than three fourths of all the subscribed capital stock of the Company, openly declared to the Board of Directors that he agreed and consented to the passage of the said Resolution, and agreed and consented as such stockholder to the proposition of the said Willamette Valley Railway Company, and was in favor of its acceptance by this Company. Director Silver then offered the following Resolution:

Second. Resolved that the Oregon Central Railroad Company of Portland Oregon, in and for the considerations set forth and expressed in the *First* Resolution aforesaid, and in and for the consideration of one dollar, doth hereby sell, assign, transfer, convey and set over to the Willamette Valley Railway Company of Portland Oregon, all the right title, interest and claim, vested and contingent, which the said Oregon Central Railroad Company, has or doth possess, or is entitled to have, in or to the franchises privileges, benefits, grants and lands proposed to be granted to said Oregon Central Railroad Company or their assigns, by the Act of Congress which passed the United States Senate Feb 20th 1870, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon." Before the adopting of this Resolution, R. H. Towler, on behalf of Ben Holladay a stockholder who

owns, holds and represents more than three fourths of the subscribed capital stock of this Company, openly declared to the Board of Directors that he was in favor of and agreed and consented to the sale of and transfer of the corporate franchises of this Company as proposed in said Resolution; The Resolution was then unanimously adopted.

Director Towler then offered the following Resolution:

Third: "Resolved that the President and Secretary of this Company, be and they are hereby authorized, empowered and directed to execute and deliver to the Willamette Valley Railway Company of Portland Oregon, a good and sufficient deed, upon and for the considerations contained in the letter of Ben Holladay Esq, the President of said last named Company conveying to said Willamette Valley Railway Company, all and singular the franchises, benefits, privileges, grants and lands, as is by the Second Resolution of said Board of Directors (Resolution marked "Second" above) of said Oregon Central Company, above written, assigned and transferred to said Willamette Valley Railway Company; and that said Secretary and President of this Company be also authorized and directed to execute and forward a certified copy of these said three Resolutions, this day by said Board adopted, to the Secretary of the Department of the Interior at Washington D. C." Before the adoption of this Resolution, R. H. Towler, on behalf of Ben Holladay, a stockholder who owns,

holds and represents more than three fourths of the subscribed capital Stock of the company openly declared to the Board that he was in favor of its passage, and agreed and consented to such a conveyance of the Corporate franchises of this Company as is proposed in said last Resolution, and then the Resolution was unanimously adopted. On motion of Mr. Silver the Board then adjourned to meet on the call of the President.

Attest Approved,

J. GASTON, SAMUL M, SMITH,

Secretary. President

Office of the Oregon Central Railroad Company.

Portland Oregon Sept 7th 1870.

Pursuant to call of the President, the Board of Directors of this Company met at the office of the Company in Portland Oregon this 7th day of September at 10 o'clock A. M. Director J. M. Gilman appeared as a Director. President Smith in the chair present, and also Directors Gilman, Towler and Estes, President called the Board to order. Director Towler offered the following Resolution, which on motion of Director Gilman, was unanimously adopted. Resolved. *First.* That the meeting of this Board called and held on the 15th day of August 1870, and the election of officers then made by this Board, be hereby ratified confirmed and approved. Director Towler offered the following Resolution, which on motion of Director Gilman was unanimously adopted.

Resolved, *Second,* That the adoption of the Resolutions, "First," "Second" and "Third" and the said Resolutions themselves, adopted by this Board on August 15th 1870, accepting the proposition of the Willamette Valley Railway Company to build a Railroad under this company's Land Grant; and transferring and authorizing the officers of this Company to deed and convey to said Willamette Valley the Land Grant made by Act of Congress mentioned in said Resolutions of August 15th 1870 to this Company, and each and all of the items of said Resolutions of this Board of the 15th of August 1870, be hereby ratified confirmed and approved. R. H. Towler, before the passage of the last Resolution above, on behalf of Ben Holladay as principal stockholder, holding and owning more than three fourths of the Stock of this Company arose and stated to the board, that he agreed and consented to the passage of this Resolution.

Director Gilman then offered the following Resolution, which upon the motion of Director Towler was unanimously adopted; R. H. Towler, on behalf of Ben Holladay, as holder and owner of more than three fourths of the Stock of this Company, openly agreeing and consenting before the Board to its passage. Resolved. *Third,* That the deed of the officers of this Company, made and executed on the 15th day of August 1870, conveying to the Willamette Valley Railway Company, the land Grant conferred on this Company by Act of Congress, and described in said Deed, be hereby ratified adopted and confirmed.

Director Towler then offered the following Resolution. Resolved. *Fourth*, That the action of a former Board of Directors of this Company, on the 25th day of May 1869, and all acts or Resolutions of said Board since that day releasing or pretending to release S. G. Reed & Co. from their contract with this company, dated and entered into on October 31st 1868, contracting and agreeing to construct one hundred and fifty miles of this Company's Railroad; and all acts or Resolutions of said Board in any way qualifying or modifying said Reed & Co's contract, or any other contract or agreement between this Company and said Reed & Co, be hereby reversed rescinded and declared null and void; and that the Secretary of this Company be hereby directed to notify and request said S. G. Reed & Co in writing, to return to and deliver up to C. S. Silver, the Treasurer of this Company, all bonds, coupons, or other property they have received under the said pretended release of May 25th 1869; and that if they fail to return such Bonds coupons or other property within ten days from the date of such notification and request, the President and Secretary of this Company be hereby authorized, to commence on behalf of the Company, proper legal proceedings to recover said property, or cancel such Bonds and coupons in their hands, and also to recover damages on their failure to proceed with the construction of this Company's Road under said contract of October 31st 1868.

On motion of Director Gilman the above Resolution was adopted by yeas, Gilman Towler and Mr. Presi-

dent, Nays Estes, on motion of Mr. Estes the Board then adjourned to meet on the call of the President.

Attest.

J. GASTON, Secretary. SAML M. SMITH President.

Office of the Oregon Central R R Company
Portland Oregon Sept 29th, 1870

Pursuant to call of the President the Board met at the office of the Company this day at one o'clock P. M.

Present, President Smith in the chair and Directors Silver, Towler, and Gilman.

The President called the Board to order.

Director Towler moved that the minutes of the last meeting be dispensed with—adopted. J. Gaston, Secretary, tendered his resignation as Secretary, which on motion was accepted. R. H. Towler was then nominated and elected by ballot secretary of the Company in place of J. Gaston resigned. On motion the Board adjourned to meet on the call of the President.

Attest.

J. GASTON, Ex Secretary. SAML M. SMITH, President.

Office of the Oregon Central R R Co
Portland Oregon Sept 30th 70.

Pursuant to call of the President, the Board of Directors met at the office of the Company this day at one o'clock P. M. Present, President Smith in the Chair, and Directors Silver and Gilman. Director

Smith tendered his resignation of the Office of President of the Company, which on motion was accepted. Director Silver was then nominated and elected by ballot President of the Board and Company, having received three votes, and was declared duly elected President. On motion the Board then adjourned to meet on the call of the President. (No signatures)

Office of the Oregon Central R R Co.

Portland Oregon March 27th 1871.

Pursuant to a call of the President the Board met at the office of the Company this day at 12 o'clock M. Present, Mr. President, Directors Smith, Estes, and Gilman. The minutes of the last meeting were read and approved. The resignation of Dr. R. H. Towler as Secretary and Director of the Company was then read and on motion was unanimously accepted. On motion S. M. Smith was elected Secretary pro tempore. On motion of Mr. Estes the Board then proceeded to elect by ballot a Director to fill the vacancy caused by the resignation of Dr. Towler. Mr. W. L. Halsey received four votes and was declared duly elected. He then appeared and qualified. Mr. Halsey offered the following Resolution which was unanimously adopted:

Whereas on the 31st day of October 1868 a contract was entered into by and between this Corporation and Simeon G Reed & Co. by the terms and conditions of which the said Simeon G Reed & Co were to build for this Corporation one hundred and fifty miles of Railroad; and Whereas at the time said contract was

entered into it was not the intention or expectation of the parties thereto that road should be built under said contract unless the said Simeon G Reed & Co should be able to secure the aid of Eastern Capitalists which, after suitable efforts they were unable to do; and Whereas, on the 25th day of May 1869 at a meeting of the Directors of this Corporation a resolution was passed, with the assent of said Simeon G Reed & Co, annulling said contract and authorizing a settlement to be made with the said Simeon G Reed & Co for advances made &c; And Whereas, other proceedings were subsequently had in reference to the final settlement of matters arising out of said contract and other dealings between this corporation and the said Simeon G Reed & Co, and between this corporation and Simeon G Reed and his associates; and Whereas, doubts have arisen as to the regularity and legality of the action upon the part of the Directors in annulling said contract and as to the finality of said settlement; *Now Therefore,* in consideration of the premises, and for the purposes of removing all doubts, it is hereby

Resolved. That the contract hereinbefore referred to between this Corporation and the said Simeon G. Reed & Co in reference to building said Railroad, or any part of the same, is hereby annulled as of the date of May 25th 1869. And all settlements appearing upon the records of this corporation to have been heretofore made with the said Simeon G Reed & Co and with the said Simeon G. Reed and his associates are hereby released and forever discharged from all damages or claim

of damages arising out of any violation or alleged violation of said contract between this corporation and the said Simeon G. Reed & Co, and from all demands of every name and nature which this Corporation may have had, or might have had against him, them, or either or any of them, arising in any manner out of said Contract. On motion of Mr. Halsey, H. Thielsen was nominated as Chief Engineer of the Oregon Central Railroad Company, and he having received four votes was declared elected. On motion adjourned to April 10th 1871 at 12 M.

Attest.

SAML M SMITH — C. S. SILVER

Secretary Pro tempore. — President

Office Oregon Central Railroad Co

Portland Oregon April 10th 1871.

Pursuant to adjournment the Board met at the office of the Company at 12 M this day. Present, Mr. President, Directors Smith and Estes. The resignation of Director James M. Gilman, was read, and on motion was accepted. Mr. J. H. Mitchell was nominated to fill the vacancy, and having received three ballots was declared duly elected. Mr. Mitchell then appeared, qualified as a Director, and offered the following Resolutions.

Resolved. That Section 7 of the By Laws be amended so as to read as follows

"*Section* 7. There shall be elected annually seven Directors who shall hold their office one year and until

their successors are elected and qualified; and at the first meeting of any new Board of Directors they shall elect from their number a President and Vice President, and they shall appoint a Secretary and Chief Engineer who need not be Directors, all of which officers shall hold their offices for one year and until their successors are elected and qualified, unless removed sooner by the Board of Directors; and they shall each be entitled to such compensation for their services as may be allowed and agreed upon by the Board of Directors." Resolved that Section 13 of the By Laws be amended so as to read as follows:

"*Section* 13. The annual meeting of the Stockholders shall be held on the (4th) Fourth Thursday of May in each year; and the first meeting of the newly elected Board of Directors shall be held immediately after the adjournment of the Stockholders meeting provided a majority of the Directors are present to qualify, otherwise they shall meet at the call of the President of the old Board"

Both of which Resolutions were unanimously adopted. The Board then adjourned to meet on Saturday April 17th at 12 M

Attest

SAML M. SMITH
Secretary pro tempore

C. S. SILVER
President

"State of Oregon)
)
County of Multnomah)

I, John H. Mitchell, being duly sworn say, that I will honestly and faithfully discharge the duties of a Director of the Oregon Central Railroad Company of Portland Oregon. J. H. MITCHELL

Subscribed and sworn to before me this 10th day of April 1871

Witness my hand and official seal

GEO W. MURRAY

Notary Public, State of Oregon

(Notorial) (5 cts)
(Seal) (Rev)
( ) (Cancel)
(W M)

Office Oregon Central Railroad Co

Portland Oregon April 17th 1871.

Pursuant to adjournment the Board met at the Office of the Company this day at 12 M. Present, Mr. President and Directors Smith and Mitchell. On motion of Mr. Mitchell the following Resolution was read and unanimously adopted:

Resolved. That the line of the Oregon Central Railroad, as located by the survey and map of H. Thielsen, Chief Engineer of the Oregon Central Railroad Company and herewith presented, from a point in the City of Portland 1614 feet East and 4123 feet

North of the South West quarter of Section 34 in Township 1 North Range 1 East of Willamette Meridian to a point on the Yamhill river near McMinnville 1610 feet West and 1950 feet South of the North East corner of Section 14 of Town 4 South of Range 4 West of the same Meridian, a distance of 47 75-100 miles; Also, from a point of Junction near the town of Forest Grove 720 feet East and 483 feet North of the South West corner of Sec 32 Town 1 North Range 3 West of the same Meridian toward Astoria up and along the valley of Gale's and Beaver creeks to a point outside the public surveys of the United States one mile beyond and north of the summit dividing the Tualitin from the Nehalem valley, a distance of twenty miles from said Junction, be and the same is hereby adopted and confirmed as the definite location of the line of said Road and said surveys and map herewith presented are hereby adopted and approved. Mr. Smith then offered the following Resolution, which was adopted:

Resolved. That the transfer to this company by the Willamette Valley Railway Company, on this date, of the lands, grants, franchises and privileges granted to the Oregon Central Railroad Company by the Act of Congress Approved May 4th, 1870, to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville, be and the same is hereby accepted. The Board then adjourned subject to the call of the President.

Attest.

SAML M. SMITH
Secretary pro tempore

C. S. SILVER
President.

Office Oregon Central Railroad Company

Portland Oregon May 25th 1871.

(Stockholders Annual Meeting) 2½ o'clock P. M. In pursuance of the By Laws of the Company and thirty days notice (continuous) in the Daily Bulletin (a copy of which notice appears in the margin) the Stockholders of the Oregon Central Railroad Company met at the office of the Company in Portland this day at two and a half P. M. The President of the Company C. S. Silvers in the chair, and on motion R. H. Towler was appointed Secretary pro temp.

Notice in Margin.

STOCKHOLDERS' MEETING.

The Stockholders of the Oregon Central Railroad Company of Portland, Oregon, are hereby notified to attend the Annual Meeting of the Company for the election of a New Board of Directors and such other business as may be properly brought before said meeting, to be held at the office of said Company, in the City of Portland, Oregon, between the hours of 10 o'clock A. M. and 2 o'clock P. M. of the twenty-fifth day of May next, 1871.

By order of the Board of Directors.

Attest:

SAML M. SMITH, Sec'y pro tem.

C. S. SILVER, President

Portland, Oregon, April 24, 1871.

The Secretary then reported the following list of Stockholders entitled to vote.

	No of shares
W. H. Halsey	48501
M. M. Melvin	5
Wm. T. Newby	1
W C Whitson	1
J N Belcher	1
B. F. McLench	1
J C Ainsworth	1
W D Hare	20
W G Scoggin	10
J T Fletcher	1
John S Griffin	6
C A Reynolds	4
J C Dobbins	20
L Patterson	9
Oliver Clay	2
D L Turpin	30
Edwin Constable	4
W W Catching	4
S H. Marsh	10
J. Wilke	1
Payton Wilks	2
Albert Simpson	1
Anderson Eanis	1
J Myer	10
Elkanah Walker	2

	No of shares
John J. Garrish	1
Francis A. Bailey	2
S. A. Holcomb	10
Henry Sewell	1
Wm. Mauzey	10
Philemon S. Field	5
Hy Buxton Jr	10
A C Brown	14
Jerome A Porter	4
D O. Quick	6
Wm E Smith	20
John T Scott	6
Alvarez Madison	8
Norman Martin	5
David McDonald	36
Stephen Blauk	4
Thomas Hart	20
Hyer Jackson	20
George H. Smith	8
C A Westfall	16
Henry B. Tucker	16
Jacob Halstead	6
John F. Lafferty	6
Chas McKay	1
W Balda	4
J R Boyce	2
Eliza Wolley (best)	29
H A Zachary	4

4443

	No of shares
J. S. Brugger	20
W M Tompkins	2
C W Conklin and wife	40
Joseph Leonard	4
W. R. Barrett	11
Jas D Phillips	1
Robert Walker	8
Josia West	4
John Harrison	10
Joseph E. Sedlock	100
T D Humphreys	10
McKinney & Hinshaw	30
Almaran Hill	14
M C Coulter	3
David Lennox	2
Henry Victor	1
James Smith	1
Thomas B. Hoover	1
George Ebbett	18
A Tongue	2
Jacob Hoover	4
F J Hoover	1
Zina W Wood	10
Thomas Steward	8
T R Cornelius	5
R C Kinney	5
R Glissan	5
D C Lewis	5

	No of shares
C Bills	5
A B Halloc	5
Jas Johnson	20
A. C. Brown	26
S. H. Miller	1
B. R. Churchill	1
Kenyon Crandall	7
Ed Jackson	10
Ladd & Tilton (WSL)	5
C M Carter	5
F. Dekum	5
S Coffin	5
Jacob Kamm	5
A. H. Johnson	5
T J Carter	5
John M Breck	5
J. Myrick	5
J B Harker	5
J C Ainsworth	5
Jos Teal	5
S G Reed	5
R Jhudd	5
McCracken & Merrill	5
A P Ankeney	5
J W Cook	5
Labbie Brs.	5
Emil Lowenstein & Co	5
Joseph S. Smith	5

	No of shares
W Lair Hill	10
G W Vaughn	5
David Monastes	5
John H Hayden	5
Walter Moffatt	5
E J Northrop & Co	5
Hiram Smith	5
Hannah Smith	5
J. A. Fisher	5
A Harker	5
Joseph Knott	10
Wiberg & Strowbridge	5
C A Burchardt	5
John Green	5
R R Thompson	5
Couch & Flanders	5
Estes & Steinson	5
Medorum Crawford	1
Wm Cree	5
J W Ladd	5
E Milwain	5
J. M. Johns	84
W T Newby	12
B E Stewart	2
D C Stewart	2
Thos Standley	26
Wm Ball	2
J B Newby	10

	No of shares
J Gaston	1
J H Mitchell	1
Geo W Weidler	1
Sam M Smith	1
J M Gilman	1
G S Silver	1
Ben Holliday	1
H W Scott	1

The roll of the Stockholders being called the following persons were present representing 48509 shares of Stock:

Medorum Crawford, representing		1 share
S M Smith	"	1 "
C S Silver	"	1 "
Thomas Cornelius	"	5 "
W L Halsey	"	48501 "

On motion of Mr. Smith a recess was taken until four and a quarter P M

Attest:

R. H. FOWLER, Secy-Pro Temp

C S SILVER President

Office of Oregon Central Railroad Co.,

Portland, Oregon May 25th, 1871

Annual Meeting of Stockholders, Continued.

In pursuance to motion of the Stockholders at a meeting held this day at two and a half P. M. they met

at the Company's Office at four and a quarter O'clock P. M. this day and proceeded to the election of a

Board of Directors

to serve the Corporation for the ensuing year. C. S. Silver in the chair and R. H. Towler Secy Pro. temp.

On motion of Mr. S. M. Smith, Medorum Crawford was appointed Teller of this election.

The roll of Stockholders was then called and the votes being cast by ballot, appeared by the count of the teller, counted in the presence of the meeting, to result as follows:

Whole number of shares present and voting 48510, of which number 48510 were cast for Ben Holladay, and 48510 shares were cast for W. L. Halsey, and 48510 shares were cast for Geo. W. Weidler, and 48510 shares were cast for J. H. Mitchell and 48510 shares were cast for Medorum Crawford, and 48510 shares were cast for H. W. Scott, and 48510 shares were cast for Thos. R. Cornelius.

No votes being cast for any other persons as Directors, and each one of said persons, having received a majority of all the shares of stock in the Company, said Ben Holladay, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum Crawford, H. W. Scott, and Thos. R. Cornelius, were declared by the President of the Company to be duly elected as Directors to serve this Company, for the next ensuing year; and thereupon signed and filed with the Secretary of the Com-

pany a Certificate of which the following is a copy,

State of Oregon)
)
County of Multnomah)

Portland, May 25th, 1871

I, C. S. Silver, President of the Oregon Central Railroad Company, do hereby certify, that at the annual meeting of the Stockholders of said company, for the purpose of electing a Board of Directors, this day held at the Company's Office in the City of Portland, the following persons to wit:

BEN HOLLADAY
W. L. HALSEY
GEO. W. WEIDLER
J. H. MITCHELL
MEDORUM CRAWFORD
H. W. SCOTT
THOS. R. CORNELIUS

having received a majority of all the votes cast at said election, and a majority of the shares of the Capital Stock of said Company, cast by such Stockholders, at such election, for Directors, they are hereby declared to be duly elected as Directors of the Oregon Central Railroad Company, for the next ensuing year.

C. S. SILVER
President, Oregon Central Railroad Company,

On motion the meeting then adjourned

Attest,

R. H. TOWLER, Secy Pro temp. C. S. SILVER, Pres.

State of Oregon)
)
County of Multnomah)

I, Ben Holladay being first duly sworn, say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company, of Portland, Oregon, for the term for which I have been elected, So help me God.

BEN HOLLADAY

Subscribed and sworn to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid.

Stamps 6 cents U. S.
Rev. Stamps canc'd
Geo. E. Coles
Notarial Seal

State of Oregon)
)
County of Multnomah)

I, W. L. Halsey, being first duly sworn, say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

W. L. HALSEY

Subscribed and sworn to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid.

3 Stamps 2 cents each
6 stamps canc'd
Geo. E. Coles
Notarial Seal.

State of Oregon)
)ss.
County of Multnomah)

I, Geo. W. Weidler, being first duly sworn, say that I will faithfully and honestly discharge the duties of Director of the Oregon Central Railroad Company of Portland, Oregon, during the term for which I have been elected, So help me God.

GEO. W. WEIDLER

Subscribed and sworn to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid

3 stamps
2 cents each canc'd
Geo. E. Coles
Notarial Seal

State of Oregon)
)ss.
County of Multnomah)

I, J. H. Mitchell, being first duly sworn, say that I

will faithfully and honestly discharge the duties of Director of the Oregon Central Railroad Company of Portland, during the term for which I have been elected, So help me God.

J. H. MITCHELL

Sworn and subscribed to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid.

6 U. S. stamps
(Rev.) canc'd
Geo. E. Cole's
Notarial Seal

State of Oregon)
)ss.
County of Multnomah)

I, H. W. Scott, being first duly sworn, say that I will faithfully and honestly discharge the duties of Director of the Oregon Central Railway Co., of Portland, during the term for which I have been elected, So help me God.

H. W. SCOTT

Subscribed and sworn to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid

6 U. S. Rev.
Stamps canc'd
Geo. E. Cole's
Notarial Seal

State of Oregon)
) ss.
County of Multnomah)

I, Medorum Crawford, being first duly sworn, say that I will faithfully and honestly discharge the duties of Director of the Oregon Central Railroad Co., of Portland, Ore., during the term for which I have been elected, So help me God.

M. CRAWFORD

Subscribed and sworn to before me this 25th day of May A. D. 1871

GEO. E. COLE

Notary Public in and for the County and State aforesaid.

6 cents U. S.
Stamps (Rev)
Canc'd
Geo. E. Cole's
Notarial Seal

Mem. This was sworn to and signed previously to H. W. Scott's as above.

State of Oregon)
) ss.
County of Multnomah)

I, Thomas R. Cornelius, being first duly sworn, say that I will faithfully and honestly discharge the duties of Director of the Oregon Central Railway Company of Portland, Ore., during the term for which I have been elected, So help me God.

T. R. CORNELIUS

Subscribed and Sworn to before me this 25th day

of May 1871 A. D

GEO. E. COLE

Notary Public in and for the County and State aforesaid.

6 U. S.
Revenue
Stamps canc'd
Geo. E. Cole's
Notarial Seal

Office of the
Oregon Central Railroad Company,

Thursday May 25th., 1871

In accordance with the Bye Laws of this Company, the New Board of Directors met at half past Four O'clock P. M. and qualified as such Directors, by taking and subscribing the Oath of office as appears on record on the preceding pages of this book. Present, Menr. W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum Crawford, and Thos. R. Cornelius.

The board proceeded to organize by calling Mr. Halsey to the Chair.

On motion of Mr. J. H. Mitchell, seconded by Mr. Crawford, Ben Holladay was put in nomination for President, there being no opposition candidate, the vote was proceeded with, and Mr. Holladay having received the entire vote of the Directors present, was declared unanimously elected.

On motion of Mr. J. H. Mitchell, seconded by Mr.

Crawford, Wm. L. Halsey was put in nomination for Vice President, there being no opposition candidate, the vote was proceeded with, and Mr. Halsey having received the entire vote of the Directors present, was declared unanimously elected.

On motion of Mr. J. H. Mitchell, seconded by Mr. Crawford, R. H. Towler was put in nomination for Secretary, there being no opposition, the election was proceeded with, and R. H. Towler, having received the entire vote of the Directors present, was declared unanimously elected.

No business requiring the action of the board being presented, on motion of Mr. Crawford, the board adjourned, subject to the Call of the President,

Attest

R. H. TOWLER, Secy. W. L. HALSEY, Vice President

Office of the
Oregon Central Railroad Company,
Portland, Oregon June 5th., 1871.

Pursuant to the Call of the President and written notice to each of the Directors, the board of Directors of this Company, met at the Company's office in Portland this day at 12:30 P. M.

Present Ben Holladay, President, W. L. Halsey, Geo. W. Weidler, Medorum Crawford, H. W. Scott and J. H. Mitchell.

On motion of Director Mitchell, seconded by Direc-

tor Scott, the following resolutions were unanimously adopted,

Resolved:

That the transfer and conveyance made to this company on the seventeenth day of April A. D. 1871, by the Willamette Valley Railway Co., of Portland, Oregon, of all the rights, franchises, lands, privileges and property, granted and intended to be granted to this Company, by the Act of Congress, approved May 4th. A. D. One thousand eight hundred and seventy, entitled "An Act granting lands to aid in the construction of a Rail Road and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and which was in August A. D. 1870 transferred to this Company to said "Willamette Valley Railway Company," be and the same are hereby accepted and this Company does hereby give its full assent to such reconveyance and to all the provisions of said Act of Congress,

Resolved:

That the Secretary of this Company be and is hereby authorized and instructed to forward forthwith to the office of the Secretary of the Interior at Washington D. C. a copy of these resolutions duly certified under the Seal of this Corporation.

On motion of Director Mitchell it was ordered that the Deed of Transfer be spread upon the records of this Company.

BEN HOLLADAY,
President

Attested
R. H. TOWLER,
Secretary

50 cents Internal
Revenue Stamps,
Ben Holladay, Prest.
M. Crawford, Secy
April 17, 1871.

COPY OF DEED

This Indenture made at Portland, Multnomah County, State of Oregon, this 17th day of April, Anno Domini, one thousand eight hundred and seventy one (1871) between the Willamette Valley Railway Company, Incorporated and organized under the General Incorporation laws of the State of Oregon, party of the First part, and the Oregon Central Railroad Company of Portland, Oregon, Incorporated at Portland, Oregon, under the General Incorporation Laws of the State of Oregon, party of the Second part,

Whereas, the Board of Directors of the Willamette Valley Railway Company of Portland, Oregon, did at a meeting of such Board, duly called and held at the office of such Company, in the City of Portland, Multnomah County, and State of Oregon on this 17th day of April A. D. One thousand eight hundred and seventy one (1871) unanimously adopt the following resolution to wit:

"Whereas the Oregon Central Railroad Company did on the 15th of August A. D. 1870, by its Board

of Directors at a meeting thereof duly called sell, assign, transfer, set over and convey for certain considerations, therein set forth, to the Willamette Valley Railway Co., of Portland, Oregon, all the right, title, interest, and claim vested and contingent, which the said Oregon Central Railroad Company then had and possessed or to which it was entitled, in or to the franchises, privileges, grants and lands granted and proposed to be granted to said Oregon Central Railroad Company, their successors and assigns by the Act of Congress which passed the Senate of the United States February 20th 1870, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and did direct the execution and delivery of a deed of conveyance therefore by the President and Secretary thereof, which deed of conveyance was in pursuance of such directions duly executed and delivered to the Willamette Valley Railway Co. on said 15th day of August A D 1870 and whereas some question has been made in the Department of the Interior at Washington City in relation to the power of said Oregon Central Railroad Co. to make such assignment transfer and conveyance and the Attorney General of the United States, Mr. Ackerman has given an opinion wherein he denies such power, and whereas a controversy in the departments and Courts, whatever might be the result, would lead to complications and embarrassments, and in a great measure depreciate its value of said grant, and retard the construction of the road; and

whereas the said Oregon Central Railroad Company, to whom such grant was originally made is now in a condition to proceed with said enterprise, and whereas the same persons who own and control over two thirds of all the stock in this Company, also own and hold over two thirds of all the stock in Oregon Central Railroad Company; Therefore in consideration of the premises, and of the consent of the Stockholders of this Company, holding and owning over two thirds of all the stock in this Company, now here present and consenting thereto, and of the sum of one dollar to this company paid, the receipt whereof is hereby acknowledged, This Company, the Willamette Valley Railway Co. of Portland, Oregon, does hereby sell, assign, transfer, set over and reconvey unto the said Oregon Central Railroad Company of Portland, the franchises, privileges, benefits, grants, and lands, granted or intended to be granted, to said Oregon Central Railroad Company, by the said Act of Congress, passed the Senate February 20th., 1870 and approved May 4th 1870, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon, and all right, title, interest and claim present and contingent, which this Company has therein by virtue of the assignment and deed of conveyance aforesaid to this Company, of date August 15th 1870, and the President and Secretary of this Company are hereby directed to make, execute and deliver to said Oregon Central Railroad Company a deed of conveyance in the name of this Company and

under its corporate Seal, for all such franchises, privileges, benefits, grants, lands, etcetera, as aforesaid,

Resolved further that the Secretary of this Company forward forthwith to the office of the Secretary of the Interior of the United States at Washington City, a copy of these resolutions duly certified under the Corporate Seal of this Company.

Therefore the said Willamette Valley Railroad Company, party of the first part herein, in and for the consideration and in pursuance of the premises aforesaid, and in and for the further consideration of one dollar to them in hand paid by the party of the second part, at and before its ensealing and delivery of these presents and the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, set over and conveyed, and by these presents they do grant, bargain sell, transfer, set over and convey unto the said: The Oregon Central Railroad Company of Portland, Oregon, party of the second part herein—their successors and assigns absolutely and forever, all the franchises, privileges, grants, and lands granted, and intended to be granted to the Oregon Central Railroad Company, their successors and assigns by the Act of Congress, approved May 4th (Fourth) A. D. One thousand eight hundred and seventy entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon." Also all its right, title, interest and claim vested and contingent which the said "The Willamette Valley Railway Com-

pany, party of the first part, herein now has, or owns, of in or to the franchises privileges, rights of way and lands granted or intended to be granted by said Act of Congress, herein before referred to by the title and the date of its approval by the President.

Together with all and singular, the privileges and appurtenances thereto belonging—and all the estate of the party of the first therein, To have and to hold the said described property franchises, lands, privileges, rights of way and appurtenances unto the said Oregon Central Railroad Company, party of the second part herein, their successors and assigns, absolutely and forever, for the uses and purposes in said Act of Congress specified.

In testimony whereof the said Willamette Valley Railway Company, party of the first part by Ben Holladay its President, and Medorum Crawford its Secretary has caused its corporate Seal to be attached this 17th day of April A. D. 1871, and witness also the hands and seals of the said President and Secretary, and the name of the party of the first part,

THE WILLAMETTE VALLEY RAILWAY COMPANY

(Signed) By Ben Holladay
President

THE WILLAMETTE VALLEY RAILWAY COMPANY

(Signed) By M. Crawford
Secretary

Signed, Sealed
and delivered
in our presence

Signed J. H. Mitchell
" A. M. Loryea
(Willamette Valley Rail-)
(way Co'y Seal)

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this 17th day of April A. D. 1871, before me the undersigned a Notary Public in and for Multnomah County, State of Oregon, personally appeared Ben Holladay personally known to me to be the President of the Willamette Valley Railway Company, and the person who as such president, executed the foregoing conveyance, also at the same time personally came M. Crawford to me personally known as the person, named in and who as Secretary of the Willamette Valley Railway Company, executed the within conveyance, and said persons, Ben Holladay and M. Crawford, severally acknowledged to me that they executed the foregoing Indenture, as such President and Secretary of such Willamette Valley Railway Company, freely and voluntarily, and the said M. Crawford, being duly sworn, did depose and say, that he has charge of and knows the Incorporate Seal of said Willamette Valley Railway Company, and that the Seal attached to the foregoing Indenture is such corporate seal and that he as Secretary attached the same thereto.

Witness my hand and Notarial Seal

(Signed) A. M. LORYEA,

(Notarial Seal) Notary Public for Multnomah County, State of Oregon.

State of Oregon)
) ss
Multnomah County)

I, C. W. Parrish, County Clerk in and for said County, do hereby certify that the foregoing instruments of writing were received for record April 20th 1871 and recorded on page 42 to 45 of Book O, of Deeds of said County,

Witness my hand and seal of office affixed.

County Court, (Signed) C. W. PARISH,
Multnomah County Clerk
Seal By L. DURHAM,
State of Oregon Deputy

Office of the Oregon Central R. R. Co.

Portland, Oregon June 13, 1871

Pursuant to call from the President, the Board of Directors of this Company met at their office this day at one P. M.—Present: Director W. L. Halsey, G. W. Weidler, J. H. Mitchell and H. W. Scott, Ben Holladay President in the chair:—

Director Mitchell offered the following resolutions, which upon motion of Director Scott seconded by Director Weidler, were unanimously adopted:

Resolved: That A. de Laski of London, England, be and hereby is authorized and empowered to negotitae

and make sales of the bonds of this Company, and in its name, to such person or persons, and upon such terms, as he may deem for the best interests of this Company, subject only to such restrictions, as may be imposed by the President of this Company, and the President and Secretary of this Company, are hereby authorized to make and execute and deliver in the name of this Company and for it, to said A. DeLaski a full power of Attorney, authorizing him to negotiate and sell such bonds, subject only to such restrictions by this Company, as the President may deem for the best interests thereof, to be inserted in such power of Attorney,

Resolved: That Wm. Norris of the City San Francisco, State of California be, and he is hereby constituted the General Agent and attorney in fact of this Company, with full power to transact all its financial and other business matters, in any part of the United States, with full power and authority to negotiate and sell any and all of the bonds of this Company to such persons and for such price, and upon such terms as he may deem proper, and for the best interests of this Company and also to borrow money thereon, giving the same as Collateral, and generally to act as Financial Agent and Attorney in fact, of this Company, with full powers in the premises, and the President and Secretary of this Company are hereby authorized and instructed to make, execute, and deliver to said Wm. Norris, in the name of this Company, and under its Corporate Seal, a full power of Attorney, constituting him such attorney in fact, with full powers aforesaid.

On motion the board adjourned then, subject to call by the President.

R. H. TOWLER, Secretary BEN HOLLADAY, President

Copy of Power of Attorney to Alexander de Laski, from Oregon Central Railroad Co.

Whereas the Board of Directors of the Oregon Central Railroad Company of Portland, Oregon, did on the 13th day of June, Anno Domini, One thousand, Eight Hundred and Seventy One (1871) at their office, and the office of said Company, in the City of Portland, in Multnomah County, State of Oregon, at a meeting of such board, duly called and legally held, duly and unanimously adopt the following resolution:—

That is to say:

Resolved: That Alexander de Laski of London, England, be, and he is hereby authorized and empowered to negotiate and sell to such person or persons, and in such place or places, and upon such terms, and for such price as he may deem for the best interests of this Company, any and all bonds of this Company, now issued or which may at any time hereafter be issued by this Company.

And the said de Laski is hereby appointed the Agent and Attorney in fact of this Company for such purpose, And the President and Secretary of this Company be and they are hereby authorized, and directed to make, execute, and deliver to said Alexander de Laski in the name of this Company and under its Corporate Seal,

and on its behalf a power of attorney giving and granting unto said de Laski full power as the attorney in fact of this Company, to make such negotiations and sales of the bonds of this Company as in this Resolution specified.

Therefore, Know all men by these presents, that in pursuance of the resolution aforesaid

The Oregon Central Railroad Company, a corporation duly incorporated and organized at Portland, in the State of Oregon in the United States of America, under and by virtue of the General Incorporation Laws of the State of Oregon, have made, constituted and appointed, and by these presents they do make, constitute and appoint Alexander de Laski of London, England, as their true and lawful Attorney in fact for such Oregon Central Railway Company Corporation as aforesaid, and its name and for its use to negotiate and sell to such person or persons, firms or corporations, at such time or times, and at such place or places on this Globe, and for such price and for such terms, as he may deem for the best interests of this said Oregon Central Railroad Company, any and all bonds of this Company now issued or which may at any time hereafter be issued by such Oregon Central Railroad Company. And to receive and receipt for all moneys arising from such negotiations or sales in the name of this Company, the said Oregon Central Railroad Company and for its use—

Hereby ratifying and confirming all that our said

attorney in fact, may lawfully do in the Premises

Witness the hands of Ben Holladay President and R. H. Towler, Secretary, of said Oregon Central Railroad Company hereto attached, and witness also the said Oregon Central Railroad Company by its Corporate Seal hereunto attached by said Ben Holladay its President and R. H. Towler its Secretary, at the office of the said Oregon Central Railroad Company in Portland, Oregon, this Twentieth day of June A. D. One thousand eight hundred and seventy one.

Signed, Sealed and delivered in presence of
Hall McAllister
Geo. W. Weidler

Oregon Central Railroad Company
By Ben Holladay, President
Oregon Central Railroad Company
By R. H. Towler, Secretary

(SEAL)

Copy of Power of Attorney to William Norris from Oregon Central Railroad Company

Whereas the Board of Directors of the Oregon Central Railway Company of Portland, Oregon, did on the 13th June A. D. 1871, at a meeting of such board, duly called and legally held, at the office of said Company, in Portland, Oregon, duly and legally adopt a resolution, of which the following is a copy:

Resolved: That William Norris of the City of San Francisco, and State of California, be and he is hereby constituted the General Agent and Attorney in fact of this Company, with full power to transact

all its financial and other business matters in any part of the United States, with full power and authority to negotiate and sell any and all of the bonds of this Company to such persons and for such price and upon such terms as he may deem proper, and for the best interests of this Company. And also to borrow money thereon, giving the same as collateral, and generally to act as the financial Agent and Attorney in fact of this Company, with full powers in the premises, and the President and Secretary of this Company are hereby authorized and instructed to make, execute, and deliver to said William Norris, in the name of this Company, and under its corporate Seal a full power of Attorney, constituting him such Attorney in fact with full power aforesaid,

Therefore in pursuance of the foregoing resolutions, the Oregon Central Railroad Company, a corporation duly incorporated in Portland, Oregon, under the general incorporation laws of the State of Oregon, has made, constituted and appointed, and by these presents does make, constitute and appoint William Norris of the City of San Francisco and State of California, Its true and lawful Attorney in fact, for it the said Oregon Central Railroad Company, aforesaid and for its use and in its name to negotiate and sell to any person or persons and upon such terms and for such price, any of the Bonds of this the said Oregon Central Railroad Company, and to borrow money thereon, giving the said Bonds as Collateral security therefore, and generally to act as financial Agent and Attorney in fact of the

said Oregon Central Railroad Company at any point of the United States, and in any and all of its business transactions, hereby giving and granting unto him the said William Norris, full power and authority in the premises, to act as the general Agent and Attorney in fact of the said Oregon Central Railroad and in such manner as he, the said William Norris may deem for the best interests of said Company.

Hereby notifying and confirming all that the said Attorney in fact may lawfully do in the premises.

In testimony whereof, the Oregon Central Railroad Company corporation aforesaid by Ben Holladay its President and R. H. Towler its Secretary has hereunto caused its corporate name and seal to be attached, and witness also the signature of said Ben Holladay, President, and R. H. Towler, Secretary, at the office of the Company in Portland, Oregon, this first day of July A. D. One thousand eight hundred and seventy one.

In Presence of — Oregon Central Railroad Co.
Andrew J. Moses — By Ben Holladay, President
Alex B. Mccready — Oregon Central Railroad Co.
(SEAL) — By R. H. Towler, Secretary

Office of the
Oregon Central Railroad Company
Portland, Oregon, July 8, 1871

The Board of Directors of this Company met at their office in the City of Portland this day at eleven o'clock A. M. in pursuance to call by the President

Present, Ben Holladay, Prest, in the Chair, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum Crawford, H. W. Scott.

The following resolution was offered by Director Mitchell and unanimously adopted:—

Resolved: That the Secretary of this Company be and he is hereby instructed to cancel all bonds of this Company heretofore issued, by endorsing on the same in ink or print the following:

Cancelled this ———day of———1871 by order of the board of Directors passed July 8th 1871.

Secretary O. C. R. R. Co.

All said bonds having been redeemed by this Company.

Upon motion the Board then adjourned.

Attest:

R. H. TOWLER, Secy. BEN HOLLADAY, President.

Office of the
Oregon Central Railroad Company,

Portland, Oregon July 11, 1871

Pursuant to the call by the President, by written notice to each of the Directors, the Board of Directors of this Company met at the Company's office this day at 11 o'clock A. M.

Present: Ben Holladay, Prest. in the Chair, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum

Crawford, H. B. Scott.

Director Weidler offered the following resolution, which was unanimously adopted:

Resolved: First that the sum of four millions three hundred and ninety five thousand dollars is necessary for the purpose of constructing and building the railroad of this Company now in process of construction in the State of Oregon, from Portland to Astoria, and from a suitable point of junction near Forest Grove, to the Yamhill River, near McMinnville, in the State of Oregon, a distance in all of one hundred and forty six and one half (146½) miles.

Resolved: That said four millions three hundred and ninety five thousand dollars be borrowed on the credit of the Company, and that construction bonds of the Company to the number of (5860) five thousand eight hundred and sixty, (2930) two thousand nine hundred and thirty thereof of the denomination of $1000 each and (2930) two thousand nine hundred and thirty thereof of the denomination of $500 each be issued and disposed of therefor, to wit:

$30,000 per mile on each mile of said railroad constructed and to be constructed from Portland to Astoria and from a suitable point of junction at or near Forest Grove, to the Yamhill River, at or near McMinnville, in Oregon.

Resolved: That said bonds be prepared and issued by the President and Secretary of the Company and be

signed by them and sealed with the Corporate Seal of this Company and dated on the 15th day July 1871, and to be payable to the holder thereof in gold coin of the United States of America, twenty years after the date thereof, to wit: on the

Fifteenth day of July 1891,

with interest in like gold coin at the rate of seven per cent per annum, payable semi-annually on the fifteenth days of January and July of each year after the year 1871, on the presentation and surrender of the dividend or interest warrants to be annexed to said bonds, and each of them, both principal and interest, to be payable in the City of New York, State of New York. That said bonds be numbered from one to five thousand eight hundred and sixty, both inclusive, commencing with those of denominations of $1,000, and be in the following form:

No. ..... $.....
United States of America, State of Oregon
Oregon Central Railroad Company
Incorporated November 21st, 1866
First Mortgage Construction Bonds.

Know all men by these presents; That the Oregon Central Railroad Company, a Body Corporate, created under and pursuant to the laws of the State of Oregon, hereby acknowledges itself indebted and bound to the holder hereof, in the sum of one thousand dollars, gold coin, of the United States of America, which sum, the Oregon Central Railroad Company hereby promises to

pay at the Banking House of Meur, Dabney Morgan & Company in the City of New York, State of New York, to the said holder, on the fifteenth day of July A. D. 1891, with interest from and after July fifteenth A. D. 1871 at the rate of seven per Centum per annum, payable semi-annually at the said Banking House of Meur, Dabney Morgan & Co. in the said city of New York on the fifteenth days of January and July of each year after July fifteenth, 1871 on presentation and surrender of the annexed dividend and interest warrants.

This bond is one of a series of twenty nine hundred and thirty bonds of one thousand dollars each, numbered from one to twenty nine hundred and thirty both inclusive, and of twenty nine hundred and thirty bonds of five hundred dollars each, numbered from twenty nine hundred and thirty one, to five thousand eight hundred and sixty, both inclusive, and amounting in the aggregate to four millions three hundred and ninety five thousand dollars, and which have been made and executed by said Oregon Central Railroad Company, under express authority granted by Acts of the Legislature of the State of Oregon, and also by an act of the Congress of the United States of America, approved May 4th in the year of our Lord, one thousand eight hundred and seventy, and entitled

"An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and for the purposes authorized by and specified in said acts, and each of them, and as security for the payment to

the holders of said issue of five thousand eight hundred and sixty bonds, with interest to grow due thereon, said Oregon Central Railroad Company has duly executed acknowledged, and delivered, under the authority of said several acts, and of resolutions unanimously passed and adopted by its Board of Directors to Milton S. Latham and Faxon D. Atherton as Trustees, a mortgage or deed of trust, bearing even date herewith, and whereby all the real and personal property, rolling stock road, depots, stations, side tracks, woodyards, franchises and effects now owned or acquired or hereafter to be owned or acquired by it are mortgaged and conveyed to the said Trustees and the survivors of them as by reference to said mortgage or deed of trust, or the record thereof will more fully appear, and to which, and to all the terms and provisions thereof, reference is hereby specially made.

And as a further security for the payment to the holders of said issue of said five thousand, eight hundred and sixty bonds with interest to grow due thereon, the said Oregon Central Railroad Company, has in the manner, and upon the terms and conditions specified in the said mortgage or deed of trust irrevocably appropriated, and set apart all the net proceeds of the sales of the lands granted to aid in the construction of the railroad and telegraph line of the said Oregon Central Railroad Company from Portland to Astoria and McMinnville, in the State of Oregon, described and mentioned in the Act of Congress of the United States of America, approved May 4th, 1870, and entitled,

"An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon" for the creation and maintenance of a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities for the purchase from time to time, and the redemption at maturity of all said bonds, both principal and interest, in the mode and manner specified in said mortgage or deed of trust, and to which reference is hereby made as a part hereof.

In witness whereof, the said Orgon Central Railroad Company, has caused this bond to be signed by its President, and attested by its Secretary, and its Corporate Seal to be hereunto affixed, at its office in the City of Portland, in the County of Multnomah and State of Oregon, under the express authority of resolutions of its Board of Directors, this fifteenth day of July in the year of our Lord one thousand, eight hundred and seventy-one.

..... President

..... Secretary

This is to certify that the above bond is one of Five thousand, eight hundred and sixty bonds, which are embraced in the mortgage or deed of trust, bearing even date herewith, made and executed by the Oregon Central Railroad Company, whereby all its real and personal property, rolling stock, equipment, road, depots, stations, side tracks, wood yards, franchises and effects, acquired and to be acquired and also all the lands granted

to said Oregon Central Railroad Company by the Act of Congress of the United States of America, approved May 4th, 1870, and entitled an "act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" are mortgaged and conveyed to us as trustees, as security for the payment of all said bonds, and which mortgage or deed of trust, has been recorded in the several counties of Oregon, through which the railroad of said Company runs, and constitutes the first lien or incumbrance upon the property therein described.

.....) Trustees
.....)

RESOLVED: That the coupons annexed to said bonds be in the following form:

$.....

The Oregon Central Railroad Company will pay to the holders hereof.....in United States Gold Coin, at the banking house of Dabney, Morgan and Company, in the City of New York.....
.....on the fifteenth day of.....
18.....being semi-annual interest on Bond No.
.....

.....Secretary

RESOLVED: That to secure the payments of said bonds, and the interest thereon, the President and Secretary, execute and deliver, in the name of the Company, and on its behalf, and as and for its act, a first mortgage or deed of trust on the said Railroad of this Company,

now constructed, or which may be hereafter constructed from Portland to Astoria, and from a suitable point of Junction at or near Forest Grove to the Yamhill river at or near McMinnville in Oregon, and all the property and franchises connected with, or appertaining to, the said Railroad now owned or held or which hereafter may be owned or held by this Company as aforesaid.

That Milton S. Latham and Faxon D. Atherton of the City and County of San Francisco, State of California, be named in the said mortgage or deed of trust, as mortgagees and trustees for the holders of said bonds and coupons thereto annexed, and that said mortgage or deed of trust be delivered to them, they having consented to act as such mortgagees and trustees, and being hereby selected for such purposes, and that said mortgage be sealed with the corporate seal of the Company, and be in the words and figures following, that is to say:

THIS INDENTURE,

made this fifteenth day of July, in the year of our Lord; One thousand, eight hundred and seventy-one, between

THE OREGON CENTRAL RAILROAD COMPANY,

a Body Corporate, created by and under the Acts of the Legislature of the State of Oregon, in that behalf made and provided party of the first part, and

MILTON S. LATHAM, AND FAXON D. ATHERTON

of the City and County of San Francisco, State of

California, parties of the second part

WITNESSETH: Whereas, the said party of the first part is expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon, and the Act of the Congress of the United States, approved May 4th, 1870, and entitled,

"An Act granting lands to aid in the construction of Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon," to borrow money for the object and purposes in said Acts and each of them specified, and for such authorized objects and purposes, said party of the first part is desirous of borrowing a sum not to exceed Four millions, three hundred and ninety-five thousand dollars, and of securing the payment of its Corporate Bonds or Obligations issued or negotiated therefor, by a mortgage or deed of trust to said parties of the Second part as trustees as hereinafter set forth and provided,

And whereas, under and pursuant to the lawful authority conferred by said several Acts of the Legislature of the State of Oregon, and of the Congress of the Unit ed States aforesaid the Board of Directors of the said party of the first part have unanimously resolved in substance and legal effect that said "Oregon Central Railroad Company" make, execute, issue and deliver under its Corporate Seal, its Corporate Bonds, bearing even date herewith, severally, payable to the holder thereof, at the Banking House of Meur, Dabney, Morgan & Co., in the City of New York, State of New York, on

the fifteenth day of July 1891, with interest from and after July 15th, 1871, at the rate of Seven per Centum per Annum, payable at the same Bank semi-annually, principal and interest payable in Gold Coin as follows—that is to say:

That twenty-nine hundred and thirty (2930) of said bonds be made or issued for the sum of one thousand dollars each, and that twenty-nine hundred and thirty (2930) of said bonds be made or issued for five hundred dollars each, in all five thousand eight hundred and sixty (5860) bonds, in the aggregate, amounting to Four Millions Three Hundred and Ninety Five Thousand Dollars, and no more, and that for the purpose of a more specific indentification thereof, said five thousand eight hundred and sixty (5860) bonds be numbered in a consecutive series from one to five thousand eight hundred and sixty, both inclusive, commencing with those of denomination one thousand dollars, and numbering them from Number One to two thousand nine hundred and thirty (2930) both inclusive, secondly, with those of the denomination of five hundred dollars each, and numbering them respectively from number two thousand and nine hundred and thirty-one, to number five thousand eight hundred and sixty (5860) and that upon the face of each bond be printed or engraved, a certificate signed by the parties of the second part here to, to the effect that such bond is one of the Five thousand eight hundred and sixty bonds intended to be secured by these presents,

And whereas said Board of Directors have further

unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part, by the Acts aforesaid, in substance and legal effect that the President and Secretary of said party of the first part, execute and acknowledge in its name, and in its behalf, and under its Corporate Seal, and deliver to said parties of the Second part hereto, a mortgage or deed of trust, conveying, assigning, and transferring to them in trust, all its corporate, real and personal property, road, depots, stations, side tracks, woodyards, franchises and effects, as security for the payment of said (5860) five thousand eight hundred and sixty bonds, and the interest to grow due thereon, and that such mortgage or deed of Trust should contain all and singular the covenants, provisos, and conditions hereinafter set forth, and that said mortgage and deed of trust, and the five thousand eight hundred and sixty bonds, thereby secured be severally dated the 15th day of July, one thousand eight hundred and seventy one.

And whereas, the Congress of the United States of America did by an Act approved May 4th in the year of our Lord, one thousand eight hundred and seventy, and entitled, "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" grant to the Oregon Central Railroad Company and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said railroad, and the rights to take from the adjacent public lands the materials for constructing said

road, also necessary lands for depot, stations, side-tracks, and other needful uses in operating the road, not exceeding (40) forty acres in any one place, and also each alternate section of the Public lands, not mineral excepting Coal and Iron lands, designated by the odd numbers nearest said road to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of, or reserved, or held by valid pre-emption, or homestead right, at the time of the passage of said act, and in case the granting of ten full sections per mile, could not be found on each side of said Road, within said limits of twenty miles other lands could be selected under the directions of the Secretary of the Interior, on either side of any part of said road, nearest to, and not more than twenty five miles from the track of said road, to make up such deficiency.

And whereas, the said "Oregon Central Railroad Company" party of the first part hereto, in and by the terms of said Act of Congress of the United States of America, approved May 4th 1870 is required to appropriate and set apart by mortgage or deed of trust to two or more trustees, all the nett proceeds of the sales of the said granted lands as a sinking fund to be kept invested in the Bonds of the United States or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of the first mortgage Construction Bonds of the Company, on the road, depots, stations, side tracks and woodyards, not exceeding thirty thousand dollars a mile of the Railroad, payable in Gold Coin, not longer than thirty years

from date, with interest payable semi annually in coin, not exceeding the rate of seven per Centum per annum —no part of the principal or interest of said fund to be applied to any other use, until all said bonds shall have been purchased or redeemed or cancelled, and each of the first mortgage Construction Bonds to bear the Certificate of the trustees setting forth the manner in which the same is secured, and its payments provided for.

NOW. THEREFORE, THIS INDENTURE WITNESSETH: That the said Oregon Central Railroad Company, the party of the first part hereto, under, pursuant to and by virtue of the express power, and authority conferred upon, and vested in it, by said several Acts of the Legislature of the State of Oregon, and of the Congress of the United States of America aforesaid, and under and pursuant to Resolutions duly passed and adopted by its Board of Directors and which are duly entered upon the official minutes of said board, and for and in consideration of the foregoing premises, and especially for the purpose, and with the intent of better and more effectually securing the payments of said five thousand eight hundred and sixty bonds with the interest due and to grow due thereon, and for and in consideration of one dollar, and other moneys, lawful money of the United States of America, by the said parties of the second part hereto in hand fully and truly paid to said party of the first part hereto, before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, en-

feoffed, conveyed and confirmed, and by these presents, doth grant, bargain, sell, assign, transfer, and set over, enfeoff, convey and confirm to the said Milton S. Latham and Faxon D. Atherton, the said parties of the second part, as Trustees and in trust, and to the survivor of them and to their or his successors or successor, all and singular the Railroad of said party of the first part heretofore constructed, or hereafter to be constructed from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river near McMinnville, in the state of Oregon, in all a distance of one hundred and forty six and one half miles, thirty thousand dollars of said bonds being issued to each mile thereof, together with all its lands, tenements, and hereditaments acquired and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America, approved May 4th 1870, and entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon and also its depots, engine houses, car houses station houses, warehouses, machine shops, workshops, superstructures, erections and fixtures, and also all and singular the franchises, rights and privileges now owned, possessed or acquired, or which shall hereafter be owned, possessed, or acquired by said party of the first part, and all lands, tenements, hereditaments and real estate acquired and appropriated wheresoever and whatsoever, or now owned by said party of the first part, or which shall hereafter be owned by it, and also, all and singular, the locomo-

tives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery and equipments for said Railroad, and now owned, or which shall hereafter be owned or acquired by said party of the first part, and also all goods and chattels now owned, or which shall hereafter be owned by said party of the first part, and in any way relating, or pertaining or belonging to, or connected with said Railroad or running or operating the same, together with all rents, issues, income, profits, moneys, rights, benefits, and advantages derived, or to be derived, had or received therefrom by said party of the first part in any way whatsoever.

To have and to hold, all and singular the premises, rights, franchises, property real and personal, hereinbefore, and hereby assigned, mortgaged, pledged and conveyed, or intended so to be and every part and parcel thereof, with all the appurtenances unto the same belonging, or in any wise appertaining unto them, the said Milton S. Latham and Faxon D. Atherton the said parties of the second part hereto, and to the survivor of them, and to their, and to his successors, and successor, and to their and his assigns in trust for the person or persons, firm or firms, bodies politic or corporate, who have heretofore, or who shall have hereafter at any time become the purchasers or holders or owners of any or either of said five thousand eight hundred and sixty bonds, amounting in the aggregate to four millions three hundred and ninety five thousand dollars, to wit: $30,000 per mile on said Railroad and no more, subject to the terms, provisions and stipulations in said Five

Thousand eight hundred and sixty bonds contained and subject also to the Provisions of the Act of Congress of the United States of America, affecting or relating to, or binding on the party of the first part, and also subject to the possession and management of said Railroad and property of said party of the first part, and its successors or assigns, so long as no default shall be made in the payment of either the interest or principal of said Five Thousand eight hundred and sixty bonds, or in or to either of them, and so long as the party of the first part shall well and truly observe, keep and perform all and singular, the covenants, agreements, conditions and stipulations in said Five Thousand eight hundred and sixty bonds, and in this Indenture contained and set forth, and which are to be observed, kept and performed, by, and on the part of the said party of the first part,

And the "Oregon Central Railroad Company" the party of the first part, hath covenanted and agreed, and by these presents doth, for itself, its successors and assigns covenant and agree with the parties of the second part; hereto, and the survivor and survivors of them and their, and his successors and successor, in manner and form following, that is to say:

First, That said "Oregon Central Railroad Company," the party of the first part, and its successors, shall and will pay or cause to be paid all taxes, charges, rates, levies and assessments imposed, assessed or levied, or which may hereafter be imposed, assessed, or levied upon the premises, franchises and property hereby mortgaged,

conveyed, and assigned, or intended so to be, and shall and will at its own proper cost, expense and charges, do or cause to be done, all acts and things necessary and proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises hereby created, or intended so to be, And further that the lien or incumbrance created by the execution and delivery of this Indenture constitutes and is in fact the first valid lien and incumbrance on the premises, property and franchises therein described.

Second, That said "Oregon Central Railroad Company" the party of the first part, and its successors shall and will at any time or times hereafter, and from time to time, execute, acknowledge, and deliver, under its corporate Seal, to the said parties of the second part, and the survivors or survivor of them and their, or his successors or successor, such other and further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such further or other acts or things as shall or may be proper, or necessary, or as their or his counsel, learned in law, shall deem necessary, proper or expedient for the better or more effectually securing the payment of said Five Thousand, eight hundred and sixty bonds, and the interest due or to grow due thereon, or for carrying into effect the true intent, design, objects and purposes of these presents, or making, preserving, continuing and keeping valid and effectual the lien and incumbrance created or intended to be created by the

execution, delivery, and recording of this Indenture, upon all the property, real and personal, rolling stock, equipments, franchises, and effects and especially the lands referred to in and by said Act of Congress, approved May 4th 1870 now owned, possessed or acquired, or which shall hereafter be owned, possessed or acquired, by said party of the first part.

Thirdly, And for the purpose of fully and more effectually securing the payment of the said Five thousand eight hundred and sixty bonds together with the interest due, or to grow due thereon, the said "Oregon Central Railroad Company" the party of the first part hereto for itself and its successors, hath pledged and hereby does irrevocably pledge, for the purposes and objects hereinbefore specified, to and with the said parties of the second part, and the survivors and survivor of them, their and his successors and successor, all and singular the net proceeds of the sales of the lands granted to the party of the first part, by the Act of Congress approved May 4th, 1870 hereinbefore mentioned, as a sinking fund, to be kept invested by the parties, of the second part, in the Bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of the First Mortgage Construction Bonds, of the party of the first part, herein before particularly described, and no part of the principal or interest, of said fund shall be applied to any other use, until all the said bonds shall have been purchased, or redeemed and cancelled. And in the event that the principal of said

First Mortgage Construction Bonds is not otherwise paid at the maturity thereof, then the fund aforesaid, which shall then have accrued from the proceeds of the sales of said lands, and interest thereon, shall be by said trustees, parties of the second part, or the survivor of them, their or his successors, or successor, applied to the discharge and payment of any and all amounts, both principal and interest, then remaining due and unpaid on all such bonds, and if such funds shall then be insufficient to discharge the whole amount then due on all such bonds, the same shall then be applied rateably thereon, according to the interests respectively of all such bondholders,

And it is further stipulated and agreed between the parties hereto, that if there remains a deficit in the payment of the principal and interest due on said Five thousand eight hundred and sixty bonds, after the whole of the fund aforesaid shall be applied thereon, at the maturity thereof, then the trustees, parties of the second part, hereto, their successors or successor, shall have full power and authority, to sell and convey any and all lands then remaining undisposed of which are included in the grant made by the Act of Congress, aforesaid, and which are hereby conveyed, and intended to be conveyed, in whole or in part as the said trustees may deem best for the interests of said bondholders, as may be prescribed or limited by any Act of Congress, in force, at the time of such sale; and if there shall be no such prescription and limitation by law, then said lands shall only be sold at Public Auction, in the City of Portland, in the State of

Oregon, to the highest bidder and no such sale shall be made, unless notice of the time and place thereof shall be first given, by publication, for at least six weeks in a weekly newspaper of general circulation, published in the City of Portland, State aforesaid, and the proceeds of such sale or sales, shall be applied in like manner to the payment of any balance, either principal or interest, then remaining unpaid on such bonds aforesaid, or any of them.

And it is hereby expressly covenanted, agreed and understood, and between the parties to these presents; that notwithstanding the execution and delivery of these presents, and of the covenants herein contained, the said "Oregon Central Railroad Company" the party of the first part hereto, shall have the right at any time after the execution of these presents to make sales of all and singular, the lands granted to said company by Act of Congress of the United States, approved May 4th, 1870, aforesaid, in the manner and mode prescribed by law therefor, and that the parties of the second part shall, and will at any time after the delivery to them of this Indenture, upon the request of the party of the first part, and upon the receipt by the parties of the second part from the party of the first part of the price or consideration for said lands, provided in and by said Act of Congress aforesaid, make, execute and deliver such releases, discharges and assurances in respect to the lands for which they shall have received the consideration provided by law, as the party of the first part or its counsel learned in the law, may require, for the purpose of making good

and sufficient title to said granted lands, so sold, to any and all purchasers thereof, clear and free from all lien or incumbrance created by these presents, and all net proceeds received from the sales of all or any of the lands granted or intended to be granted by said Act of Congress, shall be received and held jointly by the parties of the second part, and the President of the party of the first part, and shall be held subject to their control, and shall be immediately, and as soon as practicable, after the same are received, invested by said parties of the second part by and with the consent of the President of the party of the first part, in United States Bonds, or other more productive securities which securities shall be under the control of said parties of the second part, and the said President of the party of the first part, and shall be used solely in the purchase, from time to time, and the redemption at maturity, of said five thousand, eight hundred and sixty bonds, and it is expressly understood and agreed, that the lien created by this Indenture on said lands granted by said Act of Congress, shall upon the sale of any portion of said lands as aforesaid, and the payment of the purchase price thereof, to the said parties of the second part, cease so far as the same relates to the portion of lands so sold.

The parties of the second part shall not have the right to make sale of any said lands, without the consent of the party of the first part.

Fourthly, that the said "Oregon Central Railroad Company" the party of the first part hereto, shall and will, well and truly, pay the said sums of money in said

five thousand, eight hundred and sixty bonds mentioned, together with the semi-annual interest due, or to become due thereon, at the rate of seven per centum per annum, at the times in the manner, and at the place specified therein; and further, said "Oregon Central Railway Company" hereby covenants and agrees, that in case it shall have for the space of thirty days, made default in the payment of the semi-annual interest due or to become due, on either or any of the said five thousand, eight hundred and sixty bonds, or in case it shall fail to appropriate and set apart, in the hands of the said parties of the second part, all and singular, the net proceeds of the sales of the said lands granted to the party of the first part, by the Act of Congress of the United States as aforesaid as, and for a sinking fund for, and to be applied in payment or redemption of said Five thousand, eight hundred and sixty bonds in the manner hereinbefore, and in said Act of Congress specified then and in either of said cases, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said Five thousand, eight hundred and sixty bonds shall forthwith be and become due and payable, and the lien or encumbrance hereby created for the security and payment thereof, may be at once enforced or anything in said bonds, or in this Indenture to the contrary, notwithstanding, and that it shall and may be lawful and the said parties of the second part, and the survivors, and survivor of them, and their or his successors or successor, are hereby expressly authorized and empowered upon the request, and in writing, of any two or more holders

of any of said Five thousand, eight hundred and sixty bonds, to enter into and upon and to take actual possession of, all and singular the railroad premises, franchises, rights, property real and personal, and effects hereby granted, conveyed, assigned, mortgaged, pledged, transferred and set over or intended so to be as a security for the payment of said Five thousand, eight hundred and sixty bonds, as a security for the payment of said Five thousand, eight hundred and sixty bonds, and by themselves, or their Agents, to take, collect, and receive the tolls, earnings, income, and profits thereof and every part thereof, or to be derived therefrom, and that they, said parties of the second part, and the survivors and survivor of them, and their and his successors and successor, shall and may proceed, and are hereby expressly authorized and empowered thereupon, but within such reasonable time as they may deem proper, not less than sixty days, and upon and after public notice by advertisement for at least six weeks in one or more newspapers, published in the cities of New York, State of New York, and San Francisco, State of California, and Portland, State of Oregon, to proceed to sell at public auction in said city of Portland, to the highest bidder, as well, all and singular, the said railroad, rights and franchises, as all other, the property, real and personal, and premises hereby granted, conveyed, assigned, mortgaged, pledged, transferred, and set over or intended so to be, and all benefit and equity of redemption, whatsoever of the said "Oregon Central Railroad Company," the said party of the first part hereto of in and

to the same, and every part and parcel thereof, together with the benefit of the franchises belonging thereto or connected therewith. And as the attorney or attorneys of the said "Oregon Central Railroad Company" the said party of the first part hereto, for that purpose, and by these presents duly appointed and constituted, the said parties of the second part, and the survivor and survivors of them, and their and his successors and successor shall have full power, and authority to make, execute and deliver to the purchaser or purchasers thereof, a good valid and sufficient deed or deeds; conveyance, or conveyances, assignment or transfer in fee simple or otherwise of said railroad lands, tenement and real estate, of all and singular, the said personal or other property, rights, and premises hereby granted, assigned, transferred or conveyed, as aforesaid, which sale so to be made as aforesaid, in which deeds, conveyances, assignments, and transfers, so to be made and delivered as aforesaid, shall operate to convey, assign, transfer, and vest in said purchaser or purchasers, all the right, title, interest, and estate whatsoever, reversionary, or otherwise of the said "Oregon Central Railroad Company," the party of the first part, of, in, and to the premises sold, conveyed, assigned or transferred, and which said sale so to be made, shall be a complete and perpetual bar, both at law and in equity, against the said "Oregon Central Railroad Company, the party of the first part, its successors and assigns, and all persons and parties claiming by, from, or under it, or them in any wise or manner whatsoever, and that out of the

moneys or proceeds arising either from said tolls, earnings or receipts of said railroad or premises, or at or from said sale so to be made as aforesaid, after deducting first the expenses, disbursements, costs, charges and counsel, fees incurred in and about the conducting of said sale, or running and operating said railroad that they, the said parties of the second part, and the survivors and survivor of them, their and his successors or successor shall pay said Five thousand, eight hundred and sixty bonds or so many as shall be then outstanding, and unpaid, together with all the arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys if any there shall be to the said party of the first part hereto, its successors, or assigns.

This Indenture further witnesseth and these presents are upon the express condition that upon payment in full of said Five thousand, eight hundred and sixty bonds, and the interest due thereon, then these presents, and the estate hereby granted shall cease and be void, and the "Oregon Central Railroad Company" the party of the first part, shall be immediately and fully re-invested with the premises hereby granted in law, and in fact without any entry or other act whatsoever, and that until default shall have been made by said party of the first part hereto, either in payment of said Five thousand, eight hundred and sixty bonds, or in payment of the interest due, or to grow due thereon as aforesaid, or in appropriating and setting apart in the hands of the parties of the second part, their successors or successor, all and singular the net proceeds of the sales of said lands,

granted by the Act of Congress aforesaid, as a sinking fund to be kept invested in Bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity of the First Mortgage Construction Bonds of the Company hereinbefore contained, the said "Oregon Central Railroad Company" the party of the first part, and its successors and assigns shall remain in the quiet and peaceable possession and enjoyment of the said premises and property hereby granted and conveyed or intended so to be as aforesaid.

This Indenture Further Witnesseth, and it is hereby expressly agreed, that in case of death, resignation, incapacity or inability of any or either of the parties of the second part to act in the execution of any of the trusts aforesaid, then it shall and may be lawful, and the remaining acting surviving or competent Trustee or Trustees, and the President for the time being, of the said party of the first part, are hereby empowered to select and appoint by an instrument in writing, under their hands and seals, which shall be recorded in the same offices, where This Indenture shall be recorded, one or more competent persons to fill the vacancy or vacancies so created, in the manner aforesaid, and that such person or persons so appointed Trustee or Trustees, shall have and possess, and be invested with the same rights power as a Trustee or Trustees, as he or they would have had and possessed or been invested with had or they been originally made a party or parties of the second part to this Indenture, and shall perform the same duties in all

respects, and until such appointment shall so be made, in the manner aforesaid, and notwithstanding any vacancy or vacancies as aforesaid, said remaining, surviving, acting or competent trustee or trustees shall have full power and authority to execute each and all the trusts hereby created and their and his acts in the premises, shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same acts had been done and performed by all the parties hereto of the second part; and in case said appointments shall be made in the manner aforesaid, said party of the first part hereby covenents to make, execute and deliver all such other or further instruments, deeds, indentures, or assurances as may be necessary to enable the person or persons so appointed, to execute the trusts hereby created, and declared, as fully and perfectly, in all respects, as he or they could have executed the same, if originally made a party or parties of the second part to this Indenture:

In Witness Whereof the said "Oregon Central Railroad Company" the party of the first part hereto, hath caused these presents to be subscribed by its President; and attested by its Secretary, and hath under the express authority of the Resolutions of its Board of Directors, caused its Corporate Seal to be hereunto affixed; and the parties hereto of the second part, for the purpose of signifying their acceptance of the trusts hereby and herein created, have hereunto subscribed their names and affixed their respective seals: All done the day and year first above written.

(Signed) BEN HOLLADAY,
President of the Oregon Central R. R. Co.

R. H. TOWLER,
Secretary of the Oregon Central R. R. Co.

MILTON S. LATHAM, (Seal))
) Trustees.
FAXON D. ATHERTON, (Seal))

Sealed and delivered
in presence of
A. C. Cunningham,
E. A. Cunningham.

State of Oregon,)
)ss.
County of Multnomah.)

Be it remembered, that on the fifteenth day of July A. D. One thousand eight hundred and Seventy One, before me the undersigned, a Notary Public in and for the said County of Multnomah and State of Oregon, duly commissioned and qualified, personally came Ben Holladay the President of the Oregon Central Railroad Company and R. H. Towler, Secretary of the Oregon Central Railroad Company, whose names are subscribed to the foregoing mortgage or deed of trust, as parties thereto and as the president and Secretary of said Oregon Central Railroad Company, both personally known to me to be the individuals named and described in, and who executed the said mortgage or deed of trust, and they severally acknowledged to me, that he, the said Ben Holladay as President of the said Oregon Central Rail-

road Company, and he the said R. H. Towler, as Secretary of Oregon Central Railroad Company, executed the foregoing mortgage or deed of Trust, as and for the act and deed of the Oregon Central Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned, and he; the said R. H. Towler, being by me duly sworn did depose and say, that he is the Secretary of the Oregon Central Railroad Company, and resides in the City of Portland, Multnomah County, in the State of Oregon, that he is the legal custodian of, and has in his possession, and is acquainted with the Corporate Seal, of the said Oregon Central Railroad Company; That the seal affixed to the within and foregoing mortgage or deed of Trust is such Corporate Seal; that the same was so affixed by him as Secretary of said Company on the fifteenth day of July A. D. One thousand eight hundred and seventy one, By order of the Board of Directors of said Company, and that he signed his name as Secretary thereto by the like order of the said Board of Directors.

In Witness whereof, I have hereunto subscribed my name and affixed my Notarial Seal, the day and year above written, at the City of Portland, Multnomah County, State of Oregon.

(Signed), ANDREW J. MOSES,

(Notarial Seal) Notary Public in and for the County of Multnomah, State of Oregon

5 cents U. S. Int. Revenue Stamps cancelled

State of Oregon,)
)ss.
County of Multnomah.)

I, R. H. Towler, Secretary of the Oregon Central Railroad Company, do hereby certify that each of the Five thousand eight hundred and sixty bonds, which this mortgage or deed of trust is given to secure, has placed upon it the requisite United States Internal Revenue Stamps required by law: that such bonds in the aggregate have placed thereon and all duly cancelled, United States Internal Revenue Stamps to the amount Four thousand three hundred and ninety five dollars.

Witness my hand and the seal of said Company

Signed, R. H. TOWLER,
(Seal) Secretary of the Oregon Central
Railroad Company

(5 cents U. S. Revenue stamps cancelled)

State of Oregon)
)ss.
Department of State)

I, S. F. Chadwick, Secretary of the State of Oregon do hereby that Andrew J. Moses, whose name subscribed to the foregoing and annexed certificate of acknowledgement to said Mortgage or deed of Trust, was at the time of taking such acknowledgement and signing such certificate to wit: on the fifteenth day of July A. D. One thousand eight hundred and seventy one, a duly commissioned, qualified and acting Notary Public in and for the County of Multnomah and State

of Oregon, and that he then was, by the laws of the State of Oregon, duly authorized and empowered to take and certify under his notarial seal acknowledgements of deeds of conveyance and mortgages and deeds of trust and his signature to such certificate is genuine, also his Notarial Seal, and that full faith and credit are due to his official acts as such.

Witness my hand and the Great Seal of the State, at my office in the City of Salem, State of Oregon, this fifteenth day of July A. D. one thousand eight hundred and seventy one. (1871)

Signed, S. F. CHADWICK,
Secretary, State of Oregon

(Great Seal, State of Oregon)

United States Revenue Stamps, 5 cents cancelled.

Resolved, That the President and Secretary be, and they are hereby authorized and empowered to do and perform each and every act and thing necessary or proper to be done or performed under or virtue of the foregoing resolution.

Director Crawford offered the following resolution, which being seconded by Director Scott, was unanimonsly adopted:

Resolved, That Section six (6) of the Bye-Laws of this Company be amended so as to read:

The Board of Directors shall hold regular monthly meetings on the second Wednesday of each month, at the office of the Company, at the hour of eleven o'clock

A. M. of said day, and a majority of the Directors present shall constitute a quorum to transact business, and each Director shall receive ten dollars for each meeting of this Board he shall attend.

Special meetings may be called by the President. Upon motion the meeting then adjourned.

BEN HOLLADAY, President.
R. H. TOWLER, Secretary.

Office of the Oregon Central Railroad Company,

Portland, Oregon, Sept. 4th, 1871.

The Board of Directors of this Company met pursuant to the call of the President and written notice to each of the Directors in Portland, this day at seven o'clock P. M.

Present Ben Holladay in the Chair, Directors W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, H. W. Scott, and Medorum Crawford. No business being brought before the meeting, they adjourned on motion to meet at the Call of the President.

BEN HOLLADAY, President
R. H. TOWLER, Secretary

Office of the Oregon Central Railroad Co., Portland, Oregon, Sept. 7, 1871

Pursuant to the call of the President the Board of Directors of this Company met at the Company's office in the City of Portland, this day at ten o'clock A. M.

Present, Ben Holladay in the Chair, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell and H. W. Scott.

Director Weidler offered the following resolution which was unanimously adopted:

Resolved: That the President and Secretary of this Company be, and they are hereby authorized and instructed to make, execute and deliver in the name of this Company, and under its Corporate Seal, to the City of Portland, in the sum penal of Twenty Five Thousand Dollars in U. S. Gold Coin, a Bond, conditional that, this Company will, in the event of the ordinance now pending before the Common Council of the City of Portland, is passed, in laying its railroad track along North Fourth, Fourth, and South Fourth Streets of the City of Portland, at its own cost and charges, change the grade and improvements of such streets, wherever heretofore improved, so as to conform to said ordinance last referred to,

On motion the Board then adjourned.

BEN HOLLADAY, President
R. H. TOWLER, Secretary

Office of the Oregon Central R. R. Co.,
Portland, Oregon Sept. 15, 1871

Pursuant to the call of the President of Board of Directors of this Company met this day at the Company's office in the City of Portland at eleven o'clock A. M.

Present Ben Holladay, President in the Chair, W. L. Halsey, Geo. W. Weidler, M. Crawford, J. H.

Mitchell and H. W. Scott.

Upon motion of Mr. Mitchell, the following resolution was unanimously adopted:

Resolved: That the President and Secretary of this Board, do make, execute and deliver to C. M. Carter and Jas. B. Harker, Trustees in the Railroad Mortgage made by this Company of date Nov. 11th A. D. 1868, a Bond of Indemnity, in the Penal sum of $5000 —conditional that if said Trustees will enter satisfaction of Record of said Mortgage that this Company will indemnify said Trustees against all liability on two Bonds, outstanding and held by some person or persons fraudulently and without consideration, said two Bonds being of the denomination of One thousand dollars each, said bond to be with two sureties.

On motion the Board then adjourned, subject to the call of the President.

BEN HOLLADAY, President

Attest: R. H. TOWLER, Secretary

Copy of Bond of Indemnity from the Oregon Central Railroad Company to C. M. Carter, and Jas. B. Harker, Trustees.

KNOW ALL MEN BY THESE PRESENTS.

That the Oregon Central Railroad Company, a corporation duly incorporated at Portland, Oregon, as principal, and M. Crawford, and H. W. Scott as Sureties, are held and firmly bound unto C. M. Carter and

Jas. B. Harker of Portland, Oregon, in the full sum of Five thousand dollars Gold Coin of the United States for the payment of which, well and truly to be made and done, said Oregon Central Railroad Company, does bind itself and its successors, and the said sureties, do firmly bind themselves, their heirs, executors, and administrators firmly by these presents sealed, as hereinafter stated.

WHEREAS: said Oregon Central R. R. Company, did on the Eleventh day of June A. D. 1868, make, execute, and deliver to said C. M. Carter, and Jas. B. Harker, as Trustees for the benefit of the Bondholders a certain Mortgage, which mortgage was afterwards duly recorded in Multnomah and other Counties in Oregon, and Whereas, all the Bonds of said company, with the exception of two of the denomination of $1000, each, which said mortgage was given to secure, have been duly called in and redeemed by said "Oregon Central Railroad Company," and which Two, not so called in and redeemed, it is claimed by said "Oregon Central Railroad Co., are wrongfully and unlawfully held, by some person or persons, without having paid any consideration therefor and whereas: The said C. M. Carter and Jas. B. Harker, are about to acknowledge satisfaction of said Railroad Mortgage of Record.

Therefore: The condition of this Bond is such that the said C. M. Carter and Jas. B. Harker do acknowledge satisfaction of said mortgage of Record, and if the said parties of the first part bounders herein do forever save, indemnify and keep harmless, the said C. M. Carter and Jas. B. Harker, and their heirs, execu-

tors, and administrators from all costs, expenses, damages and liability whatever on or by reason of said two bonds so yet outstanding and not taken in, then this obligation to be void, otherwise to remain in full force and virtue in the Law.

As Witness the Corporate Seal and the signatures of the President and Secretary of the said Oregon Central Railroad Company, attached hereto, this fifteenth day of September A. D. 1871, By Order of the Board of Directors of said Company and witness also the hands and private Seals of said Sureties, aforesaid, all done at Portland, Oregon, the date aforesaid,

Signed, Ben Holladay, Pres. O. C. R. R. Co.

Signed, R. H. Towler, Secy O. C. R. R. Co.

Signed, M. Crawford) (Seal)
)
Signed, H. W. Scott) (Seal)
Sureties)

(Seal of Oregon Central
R. R. C.)

Witness Present
Signed W. L. Halsey
Signed A. G. Cunningham

Portland, Oregon

December 4th, 1871

Pursuant to call of the President the Board of Directors met at 11 o'clock A. M. this day at the office of the Company,

Present, The President and Meus. J. H. Mitchell, M. Crawford, H. W. Scott, and Geo. W. Weidler, Directors.

The meeting was organized by calling upon C. S. Dryer to act as Secretary pro tem.

Upon motion of Mr. Weidler, and the same being seconded, the following Resolutions were adopted, viz:

Resolved, that Whereas R. H. Towler, Secretary of this Company is now absent from the United States, and will not return during the next year, that the office of Secretary be declared vacant and further

Resolved, that C. S. Dyer be and he is hereby elected and unanimously declared the permanent Secretary of this Company.

There being no further business before the meeting, the same was declared adjourned to meet at the Call of the President.

C. S. Dyer, Secretary (No signature) President

Office Oregon Central Railroad Co.,

Portland, Oregon Dec. 22, 1871

Pursuant to the call of the President the Board of Directors met at the office of the Company this day at 11 o'clock A. M.

Present, President Meurs. Scott, Crawford and Weidler.

The minutes of last meeting being read and approved, on motion of Mr. Scott, the same being seconded, the fol-

lowing resolution was read and unanimously adopted.

Resolved, that the Line of the Oregon Central Railroad Co. as located by the survey and Maps of H. Thielsen, Chief Engineer of this Company, and herewith presented, from a point in the town of Astoria, Oregon, thence following up the Young and Klackskanine Rivers, to the summit of the Coast Range, thence down Fish Hawk Creek and up the Nehalem River to Castov Creek, thence up Castov Creek, to a point outside of the Public Surveys, one mile north of the summit of the range of hills dividing the Tualitin and Nehalim Vallies, be, and the same is hereby adopted and confirmed as the definite location of the said line of said road, and said surveys and maps, herewith presented are hereby adopted and approved.

There being no further business before the Board, the same was adjourned, to meet at the call of the President.

C. S. Dyer, Secretry Ben Holladay, President

BY LAWS

Office Oregon Central Railroad Co.,

Portland, January 9, 1872

Pursuant to the call of the President by written notice the Board of Directors met this day at 8 o'clock P. M.

Present, Ben Holladay, President, Meur. T. R. Cornelius, H. W. Scott, M. Crawford & Geo. W. Weid-

ler, Directors. The meeting being called to order, and the reading of the minutes, being dispensed with—

On motion of Mr. Cornelius, seconded by Mr. Scott, the following resolution after being read, was unanimously adopted, viz:

Resolved, That the Stock Books of this Company, be opened for the subscription of the unsubscribed balance of the Capital Stock of the Company.

On motion of Mr. Weidler, seconded by Mr. Crawford, the following resolution after being read was unanimously adopted, viz: Resolved: That all the Bye Laws of this Company heretofore adopted be and they are hereby repealed, and that the following be and they are hereby adopted as the

BYE LAWS

of the

OREGON CENTRAL RAILROAD COMPANY

of Portland

FIRST—The Board of Directors shall consist of seven (7) members to be annually elected by a majority vote of the stockholders, to serve for one (1) year, or until their successors are elected and qualified.

Vacancies occurring on the Board, by death, resignation, or otherwise, shall be filled by the Board electing a stockholder of this company to serve for the remainder of the term,

Any Director ceasing to be a Stockholder ceases to be a Director.

Second—The officers of the Board shall be a President, Vice President, and Secretary, who shall be elected by the Directors, at their first meeting after the annual election, to serve for one (1) year and until their successors are elected and qualified.

Third—The Directors shall hold regular monthly meetings, on the Second Wednseday of each month at the office of the Company, at the hour of 11 o'clock A. M. of said day,

A majority shall constitute a quorum for the transaction of business, provided that no bye-Laws shall be acted on, except at a regular meeting of the Board, when all the members are present and the same shall have been offered at a regular meeting previous thereto.

Notice of all Called or special meetings, of the Board of Directors shall be given by either serving notice thereof, personally, or leaving such notice, at the office, or residence or place of business, of such Director, provided it shall not be necessary to notify any Director, that may be absent from the State of any meeting of the Board, provided a quorum is within the State.

Fourth—Upon the request in writing signed by any two of the Directors, stating the business to be considered, and acted on by the Board, the President shall call a meeting of the Board, for such a time as he may decide,

Fifth—There shall be an Annual Election held by

the Stockholders of this Company on the 4th Thursday of May of each year at the office of this Company, at which the President shall preside, and sign a certificate of the result of such election.

The voting shall be by ballot, each stockholder shall cast one vote for each share of stock standing in his name on the books of this Company, on the day of such election, upon which there is no assessment due and unpaid.

Shares of Stock voted by proxy shall not be counted, unless the power of attorney authorizing said proxy be attached to such ballot,

Sixth—Each stockholder shall be notified by written or printed notice, delivered to him or mailed to his address so as to be received by him at least ten days previous to the day for holding such election, stating the time and place for holding the same.

Seventh—The Transfer Book of the Company shall be closed for ten days previous to and on the day of the Stockholders annual election. The Secretary shall make a certified statement of the stockholders on the day of said election for the government thereof.

Eighth—The President shall preside at all regular and called meetings of the Board; shall call the Board together as often as he may deem proper; shall have full control of all and every branch of the locating, equipping, and operating the road, to be built by this Company, have full authority and power to employ heads of departments and operatives and fix salaries to be paid to the same; also the salaries of officers of this Company, to

contract for, and purchase railroad iron locomotives, and all rolling stock required, tools, machinery, lands for right of way and Depot purposes, all and every article used or necessary for the construction, equipment, and operating of said road, to make contracts, negotiate loans in the name of this Company, and for its use, and to such extent, and upon such terms, as he may deem advisable: Also the sale of bonds, and transact all financial business of the company, of every kind and nature whatever, prosecute or discontinue work, on said road at pleasure, and do all and everything requisite to be done for the interests of said Company,

Ninth—The Vice President shall assist the President in the discharge of his duties, and in his absence, preside at all meetings of the Board and discharge all the duties of the President, and have all the powers conferred upon the President of this Company, by Article 8 of this Code.

Tenth—The Secretary shall attend all meetings of the Board, keep minutes of the proceedings and record the same in a book to be kept for that purpose, shall cause the books and papers of the Company to be kept in a neat and comprehensive manner, have Monthly Trial balances of the Books, showing face of Ledger, balance of accounts etc, rendered, shall countersign all contracts, agreements, mortgages, deeds, stocks, and other papers binding said Company, and shall have the keeping of the Corporate Seal of the Company.

Eleventh—The Permanent Seal of this Company

shall be the same as the impression herein.

No deed, mortgage, bond, stock, certificate agreement, or other instrument of writing of whatever nature or description, shall be binding on this Company, until signed by the President countersigned by the Secretary, and sealed with the corporate Seal of the Company.

Twelfth, At each regular meeting of the Board, the order of business shall be

1st—Reading the minutes of previous meetings and action thereon.

2nd—Unfinished business of last regular meeting

3rd—Reports of Committees and action thereon,

4th—New business

5th—No resolution or motion shall be considered unless it be seconded.

6th—All votes in the Board shall be viva voce unless a division be demanded, then each member shall vote yea or nay in answer to his name when called, and a majority shall decide.

Thirteenth—Each Director shall receive ten (10) dollars for each meeting of this Board he shall attend,

On motion of Mr. Weidler, seconded by Mr. Scott, the following Resolution after being read, was unanimously adopted—viz

Resolved: That J. Gaston, and T. R. Cornelius be and they are hereby appointed Agents of this Company, with authority to demand payment for stock of this Com-

pany, which has been subscribed, according to the terms of the subscription or to accept the surrender of said stock, or the transfer of the same to the Company or to such persons as may be designated,

On motion of Mr. Crawford, seconded by Mr. Cornelius, the following Resolutions, after being read was unanimously adopted, viz:

Resolved: That the President and Secretary of this Company, be and they are hereby authorized to purchase for this Company at a price not exceeding Twenty thousand dollars ($20,000) U. S. Gold Coin, all that piece or parcel of land situate in Multnomah County, Oregon, known and described as Block "E" in Couch Addition to the City of Portland, for the purpose of erecting thereon a "Round House" and other buildings.

On motion of Mr. Cornelius, seconded by Mr. Scott, the following resolutions after being read were unanimously adopted, viz:

Resolved: That this Company purchase of and from the Portland Warehouse and Dock Company of Portland, Oregon, the following described piece of land, to wit: In the Northern extension of Couch's addition to the City of Portland in Multnomah County, State of Oregon, a piece or parcel of land bounded, and described as follows, to wit: commencing at a point on the east line of Front St., in Couch's addition to the City of Portland, from which the South West corner of Block No. 21, in said addition bears south 29° 1′ East, 150 feet, thence North 29° 1′ West, along said line of Front Street 271-

3/10 feet, thence North 40° 16′ West along said line of Front Street 271-5/10 feet: thence North 57° 41′ East, 178-1/10 feet, thence south 27° 28′ East 548 feet, being parallel with and 20 feet West of the Portland Warehouse and Dock Company's Warehouse—thence South 60° 59′ West 110 Feet to the point of beginning; for a sum not exceeding one hundred ten ($110,000) thousand dollars, payable in Gold Coin: and the further consideration that this Company shall covenant and agree to, and with said Portland Warehouse and Dock Company to make such piece of land the point for the reception and discharge of all passengers travelling on the railroad of this Company, to and from the City of Portland for the term of Fifty (50) years, and also the point for the receipt and discharge of all City freight passing over said rail road either way for the said term of Fifty (50) years:

And the President and Secretary of this Company are hereby authorized and instructed to enter into a contract as above in the name of this Company, and under its Corporate Seal for the purchase of such piece of land, and to receive a Bond for a deed for the same from said Portland Warehouse and Dock Company Deed to be made upon the full payment of all the purchase money as above.

On motion of Mr. Crawford, seconded by Mr. Scott, the following resolution after being read was unanimously adopted, viz:

Resolved: That the President and Secretary of this

Company be and they are hereby authorized to lease the following described piece of land, belonging to this Company, and situate in the Northern addition of Couch's Addition to the City of Portland, to wit:

One piece of land marked "O C R R Co." on the map marked "A", attached to and made part of the deed from John H. Couch et al to O. C. R. R. Co. and commencing for the same at the Northwest corner of the lands of the Oregon Steam Navigation Company (commonly called the "Bone yard") and running from thence North westerly six hundred feet on a parallel extension of the South west boundary line of said "Bone yard" to a stake thence north easterly on a line parallel with the North West boundary line of said "Bone yard" two hundred feet, more or less to the Willamette River; thence along the said River six hundred feet to the North West boundary line of said "Bone yard" thence on a straight line to the place of beginning, with all the Water rights wharf privileges and franchises therewith connected and extending to the North East line of the grantees Claim in said river.

Such lease to be made in the name of this Company, and under its Corporate name and Seal, and to the Portland Warehouse and Dock Company of Portland, Oregon, on the following terms.

Such lease to be for the term of 20 years (Twenty) from date of lease, the said Portland Warehouse and Dock Company to pay a yearly rental of one Dollar per year, and also to erect suitable warehouse or houses and

platform or dock thereon, for the reception and storage of freight, and to receive and store all materials used or to be used in the construction or repair of the road of this Company, during the continuance of this lease free of all Charges,

This Company to covenant in and by said lease to land all freight of every description passing either way over the railroad of this Company (except City freight) on the improvements so to be made on the piece of land hereinbefore designated for and during the whole term of such lease, all such freight to be subject to such reasonable charges as the said "The Portland Warehouse and Dock Company" may from time to time impose thereon for Dockage or Storage—

This Company to pay said lessee the reasonable value of all improvements on such piece or parcel of land at the expiration of such lease.

On motion of Mr. Crawford, seconded by Mr. Weidler, the following Resolutions, after being read, were unanimously adopted, viz:

"Resolved: That the parties settling upon and improving any of the lands of the Oregon Central Railway Company, before the same are opened for market, shall be entitled to the pre-emption privilege of purchase on the same terms as the Company would sell the land for without improvement, and shall be subject to the same conditions of payment as all other lands belonging to the Company when brought into market.

Provided: such settlers shall file in the Land Office

of said Company, written application, giving notice of such settlement, and shall accept the privilege upon the condition that when the price of the land shall be fixed, notice thereof shall be sent by the Company's Land Agent, through the Post Office or otherwise as may be convenient, to the residence of the party claiming the pre-emption privilege, and if the land is not purchased by the said party, within sixty days from the date of such notice, the Company will be at liberty to sell the land to any other person.

Resolved: That the lands of this Company be sold upon the following terms—One fifth Cash, the balance in five annual installments bearing interest at the rate of ten per Cent per annum, payable annually.

Resolved: That payments for land sold by this Company, be received in United States Currency.

Resolved: That J. R. Moores is duly authorized to act as Land Agent for this Company.

On motion of T. R. Cornelius, seconded by Mr. Crawford, the following resolution, after being read was unanimously adopted, viz: Resolved: That Ben Holladay, President of this the Oregon Central Railroad Co'y, be and he is hereby specially authorized for and on behalf of this Company, to contract for and purchase Railroad Iron locomotives, and all rolling stock required, and all and every article used and necessary for the construction, equipment and operating of this said Oregon Central Railroad Company, to make contracts, negotiate loans in the name of this Company, and for its use,

and to such extent, and upon such terms as he may deem advisable. Also to negotiate and sell, hypothecate or pledge, to such person or persons in such place or places, and upon such terms and for such price as he may deem for the best interests of this said Railroad Company, each and all of the Five thousand eight hundred and sixty (5860) Bonds now issued by this said Oregon Railroad Company, amounting in the aggregate to the sum of four million three hundred and ninety five thousand ($4,395,000) Dollars, also to transact all financial business of the Company of every kind and nature whatever either in this country or any foreign country.

And that the Secretary of this Company be and he is hereby instructed to furnish the said Ben Holladay a copy of this Resolution over his signature as said Secretary, and to attach to the same the Corporate Seal of the said Oregon Central Railroad Company.

There being no further business before the meeting, on motion the same was adjourned sine die.

BEN HOLLADAY, President

C. S. DYER, Secretary

THIS INDENTURE, made the 15th day of January, A. D. 1872, in the year of our Lord, one thousand eight hundred and seventy two,

Between, Geo. W. Weidler, party of the first part, and The Oregon Central Railroad Company, of Portland, Oregon, a corporation duly incorporated under the laws of the State of Oregon, party of the Second part;

WITNESSETH: That the said party of the first part for and in consideration of the sum of Twenty Thousand ($20,000) Dollars, in Gold Coin of the United States of America, to him in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, and by these presents do, grant, bargain, sell, alien, remise release, convey, and confirm unto the said party of the second part, and to its successors and assigns forever, all that piece or parcel of land situate in the Multnomah County, Oregon, and known and described as Block E in Couch Addition to the City of Portland, in the County of Multnomah, and State of Oregon. The same being a fractional Block bounded on the North by K. Street, on the East by North Front Street, and North Fourth Street, on the South by J Street, and on the West by North Fifth Street in said City of Portland.

TOGETHER WITH ALL AND SINGULAR the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders rents, issues, and profits thereof, and also all estate right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof with the appurtenances.

To Have and To Hold, all and singular the said premises, together with appurtenances unto the said party of the second part and to its successors and assigns

forever, and the said party of the first part and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns against the said party of the first part and heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same, by, through, or under, the party of the first part shall and will warrant, and by these presents forever Defend,

In Witness Whereof, the said party of the first part, has hereunto set his hand & seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of — Geo. W. Weidler (SEAL)

J. N. Dolph
J. R. Moores

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this 15th day of January A. D. 1872, before me the undersigned, a Notary Public in and for the State of Oregon, personally came Geo. W. Weidler, personally known to me to be the person described in and who executed the foregoing deed and acknowledged to me that he executed the same freely and voluntarily,

In Witness whereof, I have hereunto set my hand and seal the day and year first above written.

(Seal) (#20, U. S. Rev. stamp)

J. R. Moores, Notary Public

Articles of Agreement made and entered into at Portland, Oregon, this Fifteenth day (15th) of January A. D. one thousand eight hundred and seventy two, BETWEEN

The Portland Warehouse and Dock Company, a corporation duly incorporated, under the General Incorporation Laws of the State of Oregon, party of the first part, and the Oregon Central Railroad Company, a Corporation duly incorporated at Portland, Oregon, under the General Incorporation Laws of the State of Oregon, party of the Second part.

WITNESSETH: That the party of the first part in and for the consideration of the sum of One hundred and ten thousand Dollars, and other good and valuable considerations hereinafter named, does for itself, and its successors hereby sell and agree to convey to the said party of the second part, the said The Oregon Central Railroad Company, its successors and assigns all the following described lot piece or parcel of land, situated and being in the Northern Extension of Couch's Addition to the City of Portland in Multnomah County, Oregon, to wit: Commencing at a point on the East line of Front Street in Couch's addition to the City of Portland, from which the south west corner of Block No. 21 in said addition bears South 29° 1′ East 150 feet, thence North 29° 1′ West along said line of Front Street 271-3/10 feet thence North 40° 16′ West along said line of Front Street 271-5/10 feet thence North 57° 41′ East 178-1/10 feet, thence South 27° 28′ East 548, feet being parallel with and 20 feet west of the Portland Ware-

house and Dock Company's Warehouse, thence south 60° 59′ west 110 feet to the point of beginning.

In consideration whereof, said party of the second part for itself, and its successors does hereby covenant to and with said party of the first part, its successors and assigns, that it the said party of the second part will on or before one year from this date pay or cause to be paid to the party of the first part, or its successors, the full sum of ($110,000) One hundred and ten thousand Dollars in U. S. Gold Coin, together with interest thereon from this date at the rate of Ten per Cent per annum in like Gold Coin, and upon the payment of such sum in full with interest as aforesaid,

The said party of the first part herein shall make or cause to be made, executed and delivered to the said party of the second part a good and sufficient deed of conveyance, clear of all incumbrances, for the lot, piece, or pacel of land, hereinbefore described;

But it is expressly agreed by the parties hereto, That it is a part of the consideration hereof, and this agreement is upon the express condition, and the said Deed of Conveyance shall so recite, that the party of the second part, shall for the term of Fifty years from this date make said lot or piece or parcel of land hereinbefore described the permanent and exclusive landing or Depot for all passengers traveling to and from the City of Portland on the Oregon Central Railroad Co'y, and shall also for said term of Fifty years from this date make such piece or parcel of land hereinbefore described the permanent

landing or Depot for all City Freight transported either way on said Oregon Central Railroad, and a failure to comply with these covenants upon the part of said The Oregon Central Railroad Company, its successors or assigns, shall operate at the option of the party of the first part, its successors, or assigns, a total forfeiture of the whole title and estate, in said piece or parcel of land to the party of the first part, its successors or assigns, and such condition shall be expressed in said Deed of Conveyance.

In Testimony whereof the said parties of the first and second part, by their respective Presidents and Secretaries, all being thereunto duly and specially authorized by resolutions of the Respective Boards of Directors of said two Companies, parties of the first and second part herein have hereto caused the Corporate names of said Companies to be attached, and their Corporate Seals affixed, and witness also the signatures respectively of the said Presidents and Secretaries.

A. G. Cunningham, President
Portland Warehouse and Dock Co'y

C. S. Dyer, Secy
Portland Warehouse & Dock Co.

(Seal Portland W'house & Dock Co.)

Ben Holladay, President,
Oregon Central Railroad Co.

(Seal O & C R R Company) C. S. Dyer,
Secy Oregon C. Railroad Co'y

Signed Sealed & delivered in presence of
J. N. Dolph
Laurence Higgins
25 cts Revenue Stamps U. S.

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this fifteenth day of January in the year of our Lord, One Thousand eight hundred and seventy two before me the undersigned, a Notary Public, in and for said County of Multnomah and State of Oregon duly commissioned, sworn, and fully qualified personally appeared the above named Ben Holladay, President of the Oregon Central Railroad Company, and C. S. Dyer, Secretary, of the Oregon Central Railroad Company, whose names are subscribed to the foregoing instrument or parties thereto, personally known to me to be the individuals described in and who executed the said instrument, and they severally acknowledged to me that he, the said Ben Holladay, as President of the said Oregon Central Railroad Co'y and he the said C. S. Dyer as Secretary of the said Oregon Central Railroad Company, executed the same; as and for the Act and Deed of the said Oregon Central Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned and the said C. S. Dyer being by me duly sworn, did depose and say he is the Secretary of the Oregon Central Railroad Co'y and resides at the City of Portland, Multnomah County, in the State of Oregon.

That he is the legal custodian of and is acquainted

with the Corporate Seal of said Company, that the Seal affixed to the foregoing agreement is such corporate seal, that the same was so affixed by him as Secretary of said Company, on the fifteenth day of January A. D. one thousand eight hundred and seventy two, by order of the Board of Directors of said Company, and that he signed his name as Secretary to said agreement by the like order of said Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above written.

J. R. MOORES
Notary Public

(Notarial Seal)

State of Oregon)
)ss.
County of Multnomah)

Be it Remembered that on this Fifteen day of January in the year of our Lord one thousand eight hundred and seventy two, before me the undersigned a Notary Public, in and for the said County of Multnomah, and State of Oregon, duly Commissioned sworn and fully qualified personally appeared the above named A. G. Cunningham, President of the Portland Warehouse and Dock Company, and C. S. Dyer, Secretary of the Portland Warehouse and Dock Company, whose names are subscribed to the foregoing instrument, as parties thereto, personally known to me to be the individuals described in, and who executed the said instrument, and they severally acknowledged to me that he the said

A. G. Cunningham, as President of the said Portland Warehouse and Dock Company, and the said C. S. Dyer, as Secretary of the said The Portland Warehouse and Dock Company, executed the same, and for the act and deed of the said The Portland Warehouse and Dock Company, freely and voluntarily, and for the uses and purposes therein mentioned, and the said C. S. Dyer, being by me duly sworn, did depose, and say that he is the Secretary of the Portland Warehouse and Dock Company, and resides at the City of Portland, Multnomah County, in the State of Oregon;

That he is the legal custodian of, and is acquainted with the Corporate Seal of said Company, that the seal affixed to the foregoing agreement is such corporate seal, that the same was so affixed by him as Secretary of said Company on the Fifteenth day of January A. D. one thousand eight hundred and seventy two, by order of the Board of Directors of said Company and that he signed his name as Secretary to said agreement by the like order of said Board of Directors.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above written.

J. R. MOORES,

(Notarial Seal) Notary Public

THIS INDENTURE OF LEASE made this 15th day of January A D One thousand eight hundred and seventy two; BETWEEN The Oregon Central Railroad Company of Portland, Oregon, a Corporation

duly incorporated, under the General Incorporation laws of the State of Oregon, party of the first part and; The Portland Warehouse and Dock Company a corporation also duly incorporated, under the general incorporation laws of the State of Oregon, party of the second part.

WITNESSETH: The said Oregon Central Railroad Company, party of the first part, in and for the consideration of the yearly rental of One Dollar, Gold Coin, of the United States, to the party of the first part, to be paid at the end of each year by the party of the second part, and other considerations hereinafter named, does by these presents demise and lease unto the said The Portland Warehouse and Dock Company, party of the second part, and to its successor and assigns for the full term of Twenty years from this date all the following described piece or parcel of land situate and being in the Northern Extension to Couch's Addition to the City of Portland in Multnomah County, Oregon, to wit:

One piece of land marked "O C R R Co" on the map marked "A" attached to and made part of the Deed from John H. Couch et all to "O C R R Co" and commencing for the same at the Northwest corner of the lands of the Oregon Steam Navigation Co'y (commonly called the Bone yard), and running from thence North westerly six hundred feet on a parallel extension of the southwest boundary line of said "Bone yard" to a stake, thence northeasterly on a line parallel with the northwest boundary line of said "Bone yard" two hundred feet more or less to the Willamette River

thence along the said river six hundred feet to the north west boundary line of said "Bone yard" thence on a straight line to the place of beginning, with all the water rights, wharf privileges, and franchises therewith connected and extending to the northeast line of the grantees claim in said river.

Together: with a right of way, at both the upper and lower portions of the hereinbefore described and leased premises from Front Street in said City of Portland to the said premises at least fifty feet (50) in width over and across all lands now owned by the said Oregon Central Railroad Company party of the first part, and all lands, which shall be hereafter acquired by said Oregon Central Railroad Company, during the continuance of this lease for the passage of passengers, stock, animals, and freight of every name and nature, drays, hacks, wagons and vehicles of every description to and from the said described and leased premises, and the improvements to be thereon erected to forever remain open and unobstructed by the party of the first part to the width aforesaid for the use of the party of the second part, and free to all persons having business with the party of the second part, on occasion to pass to or from said leased premises,

To Have and To Hold, the said described piece or parcel of land and the appurtenances by the party of the second part its successors and assigns for the sole purpose and exclusive use of the business of said party of the second part for warehouses, and for the receipt, transit over, landing on and storage of freight of every

description, and also of passengers if so needed, or desired by the party of the second part for such purpose, and said right of way forever,

And in consideration of such lease, the said party of the second part for itself, its successors, and assigns, covenant and agree to and with the said party of the first part, That the said party of the second part will within the next twelve months ensuing cause to be erected on said described piece of land hereby leased, a warehouse or warehouses of sufficient capacity and platform or dock to receive and store all freight coming to that point by said Railroad and Ocean & river vessel and to maintain the same during the continuance of this lease, and further to receive and store all iron or other materials used or to be used, in the construction or repair of said road of the Oregon Central Railroad Company, party of the first part during the continuance of this lease, without any charge whatever to said party of the first part, and further to pay to said The Oregon Central Railroad Company, party of the first part, the yearly rental of One Dollar U. S. Gold Coin, during the term of this lease said party of the second part to keep said warehouses and platforms or docks on said piece of land hereby leased in good repair for the receipt and storage of freight during the continuance of this lease,

It is further covenanted and agreed by the party of the first party for itself, its successors and assigns to and with the party of the second part:

That the said party of the first part, its successors,

and assigns, shall and will cause all the freight shipped on the said Railroad of the party of the first part, during the continuance of this lease (except City freight) to be landed on and taken over the said piece of land, hereby leased, and over and through the improvements to be placed thereon by the party of the scond part, all such freight to be subject to all reasonable charges which may from time to time be made thereon, by the party of the second part, for the use of such property and improvements for such purposes, at the expiration of this lease.

The party of the first part to pay the said party of the second part the reasonable value of all the improvements then on said piece or parcel of land hereby leased.

IN WITNESS WHEREOF; the said parties of the first and second part have by Resolutions of their respective Boards of Directors duly passed, caused these presents to be subscribed by their respective Presidents and Secretaries, and their respective Corporate Seals to be hereto attached, the date first above written.

BEN HOLLADAY
President Oregon Central Railroad Co.

C. S. DYER
Secretary Oregon Central Railroad Co.

A. G. CUNNINGHAM
President Portland Warehouse & Dock Co.

C. S. DYER
Secretary Portland Warehouse & Dock Co.

In presence of
J. N. Dolph
Laurence Higgins

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this fifteenth day of January, in the year of our Lord, one thousand eight hundred and seventy two before me the undersigned a Notary Public in and for said County of Multnomah and State of Oregon, duly commissioned, sworn and fully qualified, personally appeared the above named Ben Holladay, President of the Oregon Central Railroad Company, and C. S. Dyer, Secretary of the Oregon Central Railroad Company, whose names are subscribed to the foregoing instrument, as parties thereto personally known to me to be the individuals described in and who executed the said instrument and they severally acknowledged to me that he, the said Ben Holladay, as President of the said Oregon Central Railroad Company, and he the said C. S. Dyer as Secretary of the said Oregon Central Railroad Company executed the same as and for the act and Deed of the said Oregon Central Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned, and the said C. S. Dyer being by me duly sworn did depose and say that he is the Secretary of the Oregon Central Railroad Company, and resides at the City of Portland, Multnomah County, in the State of Oregon: That he is the legal custodian of and is acquainted with the

Corporate Seal of said Company: That the Seal affixed to the within Lease is such Corporate Seal, that the same was so affixed by him as Secretary of said Company on the fifteenth day of January A. D. 1872, One thousand eight hundred and seventy two, by order of the Board of Directors of said Company, and that he signed his name as Secretary to said lease by the like order of said Board of Directors.

In Witness Whereof I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above written.

I. R. MOORES,
Notary Public

(Notarial Seal)

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this fifteenth day of January in the year of our Lord (1872) One thousand eight hundred and seventy two, before me, the undersigned, a Notary Public in and for the said County of Multnomah, and State of Oregon duly commissioned, sworn and fully qualified personally appeared the above named A. G. Cunningham, President of the Portland Warehouse and Dock Company, and C. S. Dyer, Secretary of the Portland Warehouse and Dock Company, whose names are subscribed to the foregoing instrument as parties thereto personally known to me, to be the individuals described in and who executed the said instrument, and they severally acknowledged to me that he the said A. G. Cunningham, President of the said Port-

land Warehouse & Dock Co'y, and he the said C. S. Dyer as Secretary of the said The Portland Warehouse and Dock Company, executed the same as and for the act and deed of the said The Portland Warehouse and Dock Company freely and voluntarily, and for the uses and purposes therein mentioned, and the said C. S. Dyer, being by me duly sworn did depose and say, that he is the Secretary of the Portland Warehouse and Dock Co'y and resides at the City of Portland, Multnomah County, in the State of Oregon: That he is the legal custodian of and is acquainted with the Corporate Seal of said Company: That the Seal affixed to the within lease is such Corporate Seal; that the same was so affixed by him as Secretary of said Company on the Fifteenth day of January A. D. (1872) One thousand eight hundred and seventy two, by order of the Board of Directors of said Company, and that he signed his name as Secretary to said Lease by the like order of said Board of Directors.

In Witness Whereof I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above written.

I. R. MOORES,

(Notarial Seal) Notary Public

Office of the Oregon Central Railroad Company,

Portland February 6, 1872

Pursuant to call of Vice President acting in absence of President, The Board of Directors met at their office

this day at ten o'clock A. M.

Present, W. L. Halsey, Vice President, Meur. Scott, Crawford, Cornelius and Weidler, Directors.

The meeting being called to order and Mr. T. R. Gaston invited to be present, the claims of Meur. Ainsworth, Reid and Thompson was presented, when after some discussion, Mr. Ainsworth not being able to attend as requested by the Board of Directors, the Board adjourned to meet again, Wednesday morning 7th inst at 10 o'clock.

C. S. DYER, Secretary — W. L. HALSEY, Vice Pres.

Office, Oregon Central Railroad Co.

Portland February 7, 1872

Pursuant to adjournment the Board of Directors met at the office of the Company at 11 A. M.

Present, W. L. Halsey, vice president, Directors Scott and Crawford.

There being no quorum present the Board adjourned sine die.

C. S. DYER, Secretary — W. L. HALSEY, Vice President

Office Oregon Central R. R. Co.

Portland February 9, 1872

Pursuant to call by personal notice the Board of Directors of this Company met at their office this day at 11 o'clock A. M. Present, W. L. Halsey, Vice Presi-

dent, Directors Weidler, Crawford & Scott.

The reading of the minutes having been dispensed with Mr. Weidler offered the following Resolutions, which after being read and motion made and seconded was unanimously adopted, viz:

Whereas a proposition has been made to this Corporation by a London Syndicate of Capitalists, represented in San Francisco by Milton S. Latham of the London and San Francisco Bank, Limited, as follows:

Said Syndicate will at once loan for one year Five Hundred Thousand Dollars Gold, at an annual interest of Ten per Cent, payable quarterly. They will next Summer advance as the road is built to McMinnville, and for the sole purpose of building to that point, Five Hundred Thousand Dollars Gold more at the same rate of interest, and said interest payable in like manner,

The above loans to be secured by depositing in the hands of said Milton S. Latham, all the First Mortgage Bonds of this Railroad Corporation, aggregating $4,395,000.

The Syndicate is to have for two years from this date the exclusive option of selling the said First Mortgage Bonds for the highest price, for which it is to receive a commission of (5) Five per Cent on the Par Value of said Bonds, the proceeds less Commission to go for the benefit of the Road.

Now therefore be it Resolved: That said offer be accepted, and the President and Secretary under the Seal of this Corporation, are hereby authorized to sign

any agreement and notes to carry into execution said contract, and bind this Corporation to repay said offered loan or loans with the proposed interest and to hypothecate the First Mortgage Bonds of this Corporation under the terms stated.

There being no further business presented on motion made and seconded the meeting adjourned to meet on call.

C. S. DYER, Secretary

W. L. HALSEY, Vice President

COPY OF NOTE

$500,000 Portland, Oregon February 1872

One year after date, without grace, The Oregon Central Railroad Company promises to pay to the order of Ben Holladay, President, in San Francisco, the sum of Five Hundred thousand Dollars in Gold Coin of the United States for Value received, with interest from date until paid, at the rate of Ten per Cent per annum payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Trustees of said Railroad, passed 9th February 1872.

Witness our hands under the Seal of the said Corporation on this the day of February A. D. 1872.

BEN HOLLADAY,
President of the Oregon Central R. R. Co.

C. S. DYER
Secretary of the Oregon Central Railroad Co.

Office Oregon Central R. Road Co.

Portland, Ore February 14, 1872

Pursuant to Bye-Laws of this Company, the regular monthly meeting was held this day.

No business offering the meeting adjourned sine die.

C. S. DYER,
Secretary

Office, Oregon Central Railroad Co.

Portland, Ore March 13, 1872

Pursuant to Bye-Laws of this Company, the regular monthly meeting was held this day. No business offering, the meeting adjourned sine die.

C. S. DYER,
Secretary

Office of the Oregon Central R. R. Co.

Portland, Ore April 10, 1872

Pursuant to Bye-Laws the monthly meeting of this Company was held at their office this day at 11 o'clock A. M.

Present: Ben Holladay, President, Meur. Halsey, Weidler, Scott, Crawford and Mitchell, Directors.

Upon the meeting being called to order and the reading of the minutes dispensed with;

On motion of Col. T. R. Cornelius, seconded by Mr. Weidler, the following resolution after being read was unanimously adopted, viz:

Resolved: That the President and Secretary of this

Company be, and they are hereby instructed to make, execute, and deliver in the name of this Company to Thos. R. Cornelius a Deed of Conveyance for the following described Real Estate lying in Washington County, Oregon, to wit:

The southeast quarter of Section Thirty (30) in Township No. one (1) South Range No. one (1) West, containing one hundred and sixty acres, more or less, and further;

Resolved, That all conveyances heretofore made by this Company to said Thos. R. Cornelius for Real Estate be and they are hereby confirmed.

On motion of Mr. Halsey, seconded by Mr. Crawford, the following Resolution after being read, was unanimously adopted, viz: Resolved, That the Secretary of this Company give public notice by publication requesting all persons holding what purports to be Freight or Passenger Certificates of this Company to present the same, either to Thomas R. Cornelius at Cornelius, Washington County, or to the Secretary of this Company at the office of this Company within thirty days of this date, and upon the presentation thereof, said Secretary and T. R. Cornelius are hereby instructed to take a memorandum of each one, the amounts, owner, and how obtained, and report the same to this Company.

There being no further business, on motion the meeting adjourned.

C. S. DYER, Secretary

BEN HOLLADAY, President

Office, Oregon Central R. R. Co.

Portland, Ore May 11, 1872

At the call of the President, a meeting of this Company was held at their office, this day at 11 o'clock A. M.

Present, Ben Holladay, President, Meur. Halsey, Weidler, Scott, Mitchell and Crawford, Directors.

Upon meeting being called to order, and the reading of the minutes of last meeting dispensed with;

On motion of Mr. Mitchell, seconded by Mr. Halsey, it was

Resolved: That the permanent junction of the Oregon Central Railroad with the Oregon and California Railroad be and the same is hereby permanently established at Junction City, Lane County, Oregon, on the following described tract of land, to wit;—

Beginning at the intersection of the north line of Fourth Street in Junction City, in said County and State, with the East line of Front Street, thence easterly along the said north line of Fourth Street to the intersection of the east line of Elm Street, thence northerly and along the east line of Elm Street, to the intersection of the North line of Eighth Street extended, thence westerly, and along the extension of said north line of Eighth Street to a point thirty feet (30) westerly of the Centre line of the side track of the Oregon and California Railroad as the same is platted and recorded on the Records of same County, Thence northerly and parallel with said side track to where it joins the main track of said railroad. Thence northerly and parallel with the Center

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line Thirty (30) feet distant therefrom to the intersection of the south line of Seventeenth Street, Thence westerly along the south line of Seventeenth Street to the intersection of the east line of Greenwood Street, thence southerly and along the east line of Greenwood Street to the intersection of the North line of Eighth Street, Thence Easterly and along the North line of Eighth Street, to the east line of Front Street, thence Southerly, and along the east line of Front Street to the place of beginning, containing Twenty six (26) acres, more or less.

And it was further Resolved: That this Company conjointly with the Oregon and California Railway Company purchase of James G. Hughes the land above described for such purposes, and enter into an agreement under the Corporate Seal of this Company with said Jas. G. Hughes binding this Company to make such grounds such permanent junction, and to locate its permanent machine shops on the same.

And the President and Secretary of this Company are hereby authorized and instructed to enter into such agreement of purchase upon such terms.

There being no further business before the Company, the meeting was adjourned.

C. S. DYER, Secretary — BEN HOLLADAY, President

Office Oregon Central R. R. Co'y
Portland, Ore May 8th., 1872

Pursuant to the Bye-Laws of this Company, the regular Monthly meeting was held this day. No quo-

rum present the meeting was adjourned.

C. S. DYER,
Secretary

STOCKHOLDERS ANNUAL MEETING

Office, Oregon Central R. R. Co.

Portland, Oregon May 23, 1872.

In pursuance of the Bye-Laws of this Company, and ten days written notice having been given, the Stockholders of this Company met at their office in Portland, Oregon, this 23rd day of May A. D. 1872 at 11½ o'clock A. M.

The President Ben Holladay in the Chair. The meeting having been called to order, the Secretary filed a certified Copy of List of Stockholders as appeared on the Stock Ledger of the Company this day.

Thereupon the Stockholders present representing 46,173 shares of the Company proceeded to cast their ballots for the election of Seven Directors to serve for the ensuing year, resulting as follows:—

Ben Holladay	received	46,173	votes
W. L. Halsey	"	46,173	"
Geo. W. Weidler	"	46,173	"
J. H. Mitchell	"	46,168	"
H. W. Scott	"	46,173	"
M. Crawford	"	46,173	"
T. R. Cornelius	"	46,152	"
S. G. Reid	"	21	"

The following named persons having received a majority of all the shares of Stock in the Company, viz: Ben Holladay, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, M. Crawford, H. W. Scott and T. R. Cornelius were declared by the President of the Company to be duly elected as Directors to serve the Company for the next ensuing year,

And thereupon the said President signed and filed with the Secretary of the Company, a certificate as follows:

State of Oregon)
)ss.
County of Multnomah)

Portland May 23, 1872

I, Ben Holladay, President of the Oregon Central Railroad Company do hereby certify that at the Annual meeting of the Stockholders of said Company for the purpose of electing a Board of Directors, this day held at the Company's office in the City of Portland, the following persons to wit:

Ben Holladay, W. G. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum Crawford, H. W. Scott, T. R. Cornelius having received a majority of all the votes cast at said election and a majority of the shares of the Capital stock of said Company, cast by said Stockholders at such election for Directors, they are hereby declared to be duly elected as Directors of the Oregon Central Railroad Company for the ensuing year.

Signed, BEN HOLLADAY
President Oregon Central R. R. Co.

Upon motion the meeting then adjourned.

C. S. DYER, Secretary

BEN HOLLADAY President

State of Oregon)
)ss.
County of Multnomah)

I, Ben Holladay being first duly sworn say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon for the term for which I have been elected. So help me God.

Signed, BEN HOLLADAY

Subscribed and sworn to before me this 13th day of June A. D. 1872.

I. R. MOORES,
Notary Public

(Notarial Seal)

State of Oregon)
)ss.
County of Multnomah)

I, W. L. Halsey, being first duly sworn, say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

Signed, W. H. HALSEY

(Notarial Seal) Subscribed and sworn to before

me this 13th day of June A. D. 1872.

I. R. MOORES,
Notary Public

State of Oregon)
) ss.
County of Multnomah)

I, Geo. W. Weidler, being first duly sworn, say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

Signed, GEO. W. WEIDLER

Subscribed and sworn to before me this 13th day of June A. D. 1872.

I. R. MOORES,
Notary Public

State of Oregon)
) ss.
County of Multnomah)

I, John H. Mitchell, being first duly sworn say that I will faithfully and honestly perform and discharge the Duties of a Director of the Oregon Central Railroad Company, of Portland, Oregon, for the time for which I have been elected, so help me God.

Signed, JOHN H. MITCHELL

Subscribed and sworn to before me this 13th day of June A. D. 1872.

I. R. MOORES,
(Notarial Seal) Notary Public

State of Oregon)
) ss.
County of Multnomah)

I, Medorum Crawford, being first duly sworn, say that I will faithfully and honestly perform and discharge the Duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

(Notarial Seal) Signed, M. CRAWFORD

Subscribed and sworn to before me this 13th day of June 1872.

I. R. MOORES,
Notary Public

State of Oregon)
) ss.
County of Multnomah)

I, H. W. Scott, being first duly sworn, say that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

Signed, H. W. SCOTT

(Notarial Seal)

Subscribed and sworn to before me this 13th day of June 1872.

I. R. MOORES,
Notary Public

State of Oregon)
) ss.
County of Multnomah)

I, T. R. Cornelius being first duly sworn say that

I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term for which I have been elected, So help me God.

Signed, T. R. CORNELIUS

Subscribed and sworn to before me this 13th day of June 1872.

I. R. MOORES,

(Notarial Seal) Notary Public

Office Oregon Central Railroad Co.,

Portland, Ore June 12, 1872

Pursuant to the Bye-Laws of this Company notice was sent to the old Board of Directors of the regular Monthly meeting, to be held this day 11 o'clock A. M. No quorum being present the meeting adjourned to Thursday, June 13, 1872, at one and one half o'clock P. M. (Not signed) President

C. S. DYER, Secretary

Office of the Central Railroad Co.,

Portland, Oregon June 13, 1872

Pursuant to adjournment the New Board of Directors met at half past one o'clock P. M. and qualified such Directors by taking and subscribing the oath of office as appears on record, on the preceding pages of this Book.

Present Meur. Ben Holladay, W. L. Halsey, Geo. W. Weidler, J. H. Mitchell, Medorum Crawford, H. W. Scott and T. R. Cornelius.

The Board proceeded to organize by calling Mr. Halsey to the Chair.

On motion of Mr. J. H. Mitchell, seconded by Mr. Scott, Mr. Ben Holladay was put in nomination for President, there being no opposing candidate named, the vote was proceeded with, and Mr. Holladay having received the entire vote was declared unanimously elected President of the Company for the ensuing yar.

On motion of Mr. M. Crawford, seconded by Mr. Scott, Mr. W. L. Halsey was put in nomination for Vice President, there being no opposing candidate named, the vote was proceeded with and Mr. Halsey having received the entire vote was declared unanimously elected Vice President of the Company for the ensuing year.

On motion of Mr. Holladay seconded by Mr. Mitchell, Mr. C. S. Dyer was put in nomination for Secretary, there being no opposing candidate named, the vote was proceeded with, and Mr. Dyer having received the entire vote was declared unanimously elected Secretary of the Company for the ensuing year.

The Secretary then read a Report in compliance with a Resolution adopted April 10, 1872 relative to the Number of Passenger and Freight certificates issued by the old Company now outstanding, which report was accepted and placed on the file. No further business offering, the meeting adjourned sine die.

C. S. DYER, (Not signed)
Secretary President

Copy of Notes sent to Wm. Norris, June 19, 1872 the same being for monies advanced by the London and San Francisco Bank, on account of the Oregon Central Railroad Company.

Portland, Oregon 29th May 1872

$60,000. One year after date without grace, The Oregon Central Railroad Company promises to pay to the order of Mr. Ben Holladay, President in San Francisco the sum of Sixty thousand Dollars in Gold Coin of the United States, for value received with interest from date until paid at the rate of Ten per cent per annum, payable quarterly in like gold coin.

This note is executed in pursuance of a Resolution of the Board of Directors of said Railroad, passed 9 February 1872.

BEN HOLLADAY
President Oregon Central R. R. Co.

(Corporate Seal) C. S. DYER
Secretary Oregon Central R. R. Co.

Endorsed Ben Holladay, President.

$35,000 Portland, Oregon 7 June 1872

One year after date, without grace, the Oregon Central Railroad Company, promises to pay to the order of Mr. Ben Holladay, President, in San Francisco, the sum of Thirty five thousand Dollars in Gold Coin of the United States for Value received, with interest from date until paid, at the rate of ten per cent per annum, payable quarterly in like Gold Coin.

This note is executed in pursuance of a Resolution of the Board of Directors of said Railroad, passed 9 February 1872.

Witness our hands under the seal of the said Corporation on this the 7th day of June A. D. 1872.

BEN HOLLADAY
President Oregon Central R. R. Co.

(Corporate Seal) C. S. DYER
Secretary Oregon Central R. R. Co.

Endorsed Ben Holladay, President.

$25,000 Portland, Ore 12th June 1872

One year after date, without grace, The Oregon Central Railroad Company, promise to pay to the order of Mr. Ben Holladay, President in San Francisco, the sum of Twenty Five Thousand Dollars in Gold Coin of the United States for value received with interest from date until paid at the rate of Ten per cent per annum, payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Directors of said Railroad passed 9th February 1872.

Witness our hands under the Seal of the said Corporation on this 12th day June A. D. 1872.

BEN HOLLADAY
President Oregon Central R. R. Co'y

(Corporate Seal) C. S. DYER
Secretary Oregon Central R. R. Co'y

Endorsed, Ben Holladay, President.

$50,000 Portland, Oregon June 24, 1872

One year after date without grace, The Oregon Central Railroad Company promise to pay to the order of Mr. Ben Holladay, President, in San Francisco, the sum of Fifty thousand Dollars in Gold Coin of the United States for Value received with interest from date, until paid, at the rate of ten per cent per annum, payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Directors of said Railroad passed 9th February 1872.

Witness our hands under the Seal of the said Corporation on this the 24th day of June A. D. 1872.

BEN HOLLADAY
President Oregon Central R. R. Co.

(Corporate Seal) C. S. DYER
Secretary Oregon Central R. R. Co.

Endorsed Ben Holladay, President.

$55,000 Portland, Oregon July 1, 1872

One year after date, without grace, The Oregon Central Railroad Company promise to pay to the order of Mr. Ben Holladay, President in San Francisco, the sum of Fifty Five thousand Dollars in Gold Coin of the United States for value received with interest from date until paid at the rate of Ten per cent per annum payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Directors of said Railroad passed 9

February 1872.

Witness our hands under the seal of the said Corporation on this the first day of July A. D. 1872.

BEN HOLLADAY,
President O. C. R. R. Co.

(Corporate Seal)

C. S. DYER,
Secy. O. C. R. R. Co.

Endorsed by Ben Holladay, President.

Office Oregon Central R. R. Co.

Portland, July 10th 1872

Pursuant to Bye-Laws, the regular monthly meeting was called this day at 11 o'clock A. M. There not being a quorum present the meeting was adjourned.

C. S. DYER
Secretary

$50,000 Portland, Oregon 16 July 1872

One year after date without grace The Oregon Central Railroad Company promise to pay to the order of Mr. Ben Holladay, President in San Francisco the sum of Fifty thousand Dollars in Gold Coin of the United States for value received with interest from date until paid at the rate of ten per cent per annum payable quarterly in like Gold Coin.

This note is executed in pursuance of a Resolution of the Board of Directors of said Railroad, passed 9 February 1872.

Witness our hands under the Seal of the said Cor-

poration on this the 16th day of July A. D. 1872.

BEN HOLLADAY,
President O. C. R. R. Co.

(Corporate Seal) C. S. DYER,
Secretary, Oregon Central R R Co

$30,000 Portland, Oregon 23rd July 1872

One year after date without grace the Oregon Central Railroad Company promise to pay to the order of Mr. Ben Holladay, President in San Francisco the sum of Thirty Thousand Dollars in Gold Coin of the United States for Value received, with interest from date until paid, at the rate of Ten per cent per annum payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Directors of said Railroad passed 9th January 1872.

Witness our hands under the Seal of the said Corporation on the 23rd July A. D. 1872.

BEN HOLLADAY
President Oregon Central RR Co.

(Corporate Seal) C. S. DYER
Secretary Oregon Central R R Co.

Endorsed Ben Holladay, President.

Office Oregon Central R. R. Co.

Portland, Ore August 14, 1872

Pursuant to Bye-Laws the regular monthly meet-

ing was called this day at 11 A. M. A quorum not being present the meeting adjourned.

C. S. DYER,
Secretary

$500,000 Portland, Oregon 29th August 1872

One year after date, without grace The Oregon Central Railroad Company promise to pay to the order of Mr. Ben Holladay President, in San Francisco, the sum of Five Hundred Thousand Dollars in Gold Coin of the United States, for value received with interest from date, until paid at the rate of Ten per cent per annum, payable quarterly in like Gold Coin.

This Note is executed in pursuance of a Resolution of the Board of Directors of said Railroad passed 9th February 1872.

Witness our hands under the seal of the said Corporation on this the 29th day of Augt. 1872.

BEN HOLLADAY
President Oregon Central R. R. Co.

(Corporate Seal) C. S. DYER,
Secretary Oregon Central R. R. Co.

Endorsed Ben Holladay, President.

Office Oregon Central R R Co.

Portland, Sept. 11, 1872

Pursuant to Bye-Laws, the regular monthly meeting was called this day at 11 oc'lock A. M. A quorum

not being present the meeting adjourned.

C. S. DYER,
Secretary

Office Oregon Central Railroad Com'y

Portland October 9th 1872

Pursuant to Bye Laws the regular monthly meeting was called this day at 11 o'clock A. M. A quorum not being present, the meeting was adjourned.

C. S. DYER,
Secretary

Office Oregon Central Railroad Com'y

Portland Nov. 13, 1872

Pursuant to Bye Laws the regular monthly meeting was called this day at 11 o'clock A. M.

A quorum not being present the meeting adjourned.

C. S. DYER,
Secretary

Office Oregon Central Railroad Company

Portland 11 Dec. 1872

Pursuant to Bye Laws the regular meeting was called this day at 11 o'clock A. M. A quorum not being present the meeting adjourned.

C. S. DYER,
Secretary

Office of the Oregon Central R R Co.

Portland Oregon Dec 24th 1872

Pursuant to the call of the President, the Board of Directors of this Company met at the Company's office this day.

Present; Directors Mitchell, Weidler, Scott and Crawford. On motion of Mr. Weidler, Mr. Mitchell was elected President pro tem, and J. Gaston, Secy pro tem.

The President then laid before the Board the resignation of W. L. Halsey as Vice President and Director of this Company, as follows:

"San Francisco Dec. 18th 1872

To Ben Holladay, Prest.

I hereby resign as Vice President and Director of the Oregon Central Railroad Company.

W. L. HALSEY."

Which resignation on motion of Mr. Weidler, was received and accepted.

The President then laid before the Board the resignation of C. S. Dyer as Secretary of the Company, as follows:

"Dec 17th 1872 Portland, Oregon

To Ben Holladay, Esq., Prest. O. C. R. R. Co.

Dear Sir: I herewith tender my resignation as Secretary of the Oregon Central Railroad Company, to take effect from this date.

Yours respectfully,

C. S. DYER"

Which resignation, on motion, was received and accepted. Arthur De Pourtales was then nominated, and elected by ballot a Director of this Company in place of W. L. Halsey, resigned, Mr. De Pourtales having taken the oath of office as follows:

State of Oregon)
) ss.
Multnomah County)

I, Arthur De Pourtales, being first duly sworn say, that I will faithfully and honestly perform and discharge the duties of a Director of the Oregon Central Railroad Company, for the term for which I have been elected, so help me God.

A. DE POURTALES-GORGIER

Subscribed and sworn to before me this 24th day of Dec. 1872.

J. GASTON,

(Notarial Seal) Notary Public

Was then elected by ballot Vice President of the Company in place of Mr. Halsey resigned.

J. Gaston was then nominated and elected Secretary of the Company in place of C. S. Dyer resigned.

On motion the Board then adjourned.

A. DE POURTALES-GORGIER

Vice President

J. GASTON

Secy pro tem

Office of the Oregon Central R R Co.

Portland, Oregon Jan. 8th 1873

Pursuant to the By Laws of the Company the regular monthly meeting of the Directors of this Company was called this day at 11 oc'lock A. M. and a quorum not being present the meeting adjourned.

A. DE POURTALES-GORGIER
Vice President

J. GASTON
Secy.

Office of the Oregon Central R R Co.

Portland, Oregon Feb. 12th 1873

Pursuant to the By-Laws of this Company, the regular monthly meeting was called for the Directors this day at 11 o'clock A. M. and a quorum not being present the meeting adjourned.

A. DE POURTALES-GORGIER
Vice President

J. GASTON
Secy.

Office of the Oregon Central Railroad Company,

Portland, Oregon March 12, 1873

Pursuant to the By-Laws of this Company, the regular monthly meeting of the Directors of this Company was called this day at 11 o'clock A. M.; and a quorum not being present the meeting adjourned.

A. DE POURTALES-GORGIER
Vice President

J. GASTON,
Secy.

Office of the Oregon Central R. R. Co.

Portland, Oregon March 24th 1873

The Board of Directors met at their office this day pursuant to the call of the Vice President.

Present: A. de Pourtales, Vice President, and Directors M. Crawford, H. W. Scott, and George W. Weidler and Secretary J. Gaston. The Secretary read the following resignation from J. H. Mitchell.

"Portland, Oregon Jan. 21st, 1873

Hon. Joseph Gaston, Secy O. C. R. R. Co.

Dear Sir: I herewith tender my resignation as one of the Directors of the Oregon Central Railroad Company. Very respectfully,

Your obt. servt. J. H. MITCHELL"

Which resignation was on motion received and accepted.

Director Weidler then offered the following Resolution and stipulation, to wit;

"Resolved that the President and Secretary be directed to make and execute a contract or stipulation with Milton S. Latham, Esq. of San Francisco California in words and substance as follows, to wit: "In pursuance of a Resolution of the Board of Directors of

the Oregon Central Railroad Company, passed at their meeting of the 9th of Feb. 1872, the undersigned President and Secretary of the Oregon Central Railroad Company do hereby deposit with Milton S. Latham as collateral security for the payment of certain promissory notes, as follows, viz: one note for $500,000 gold dated 29th of Feb. 1872, made by the Oregon Central Railroad Company to the order of and endorsed by Mr. Ben Holladay, President due Feb 28th 1873, and bearing interest from date at the rate of ten per cent per annum; and one note for $500000 gold dated 29th of August 1872, made by the Oregon Central Railroad Company to the order of and endorsed by Mr. Ben Holladay President, due 29th of August 1873, and bearing interest from date at the rate of ten per cent per annum; which said notes are now held by said Milton S. Latham for account of owners. The following personal property of which the Oregon Central Railroad Company are owners, the same being at their risk and expense, to wit: all the First Mortgage Bonds of said Railroad Corporation, aggregating $4,395,000 gold coin. Therefore in case of the non-payment of said promissory notes, or either of them, or of the interest thereon when due, we hereby appoint and constitute Milton S. Latham, his successors or assigns, our Attorney irrevocable, with power of substitution, to sell at any time, after said notes or either of them, or of the interest thereon when due, remains unpaid, with or without notice to us, the whole or any part of said security, either at public or private sale, at his discretion, the

proceeds to be applied to the payment of the aforesaid promissory notes, interest due, and commission on sales, any surplus after said payment to be held subject to our order. On payment of the aforesaid promissory notes and interest this agreement to be void, and the security mentioned to be returned to us. This hypothecation is executed in pursuance of the Resolution aforesaid.

Witness our hands under the seal of said Company this 24th day of March A D 1873.

(Signed by the President (Seal)

(Seal) (Signed by the Secretary (Seal)

Which resolution was adopted. The Board then adjourned.

A. DE POURTALES-GORGIER
Vice Pres.

J. GASTON,
Secretary

Office of the Oregon Central R R Co.

Portland, Oregon April 9th 1873

Pursuant to the By-Laws, the Board of Directors meeting for the month was this day called at their office. No quorum appearing the meeting adjourned.

J. GASTON,
Secretary

Office of the Oregon Central R R Co.

Portland, Oregon May 14th 1873

Pursuant to the By-Laws, the Board of Directors

regular meeting for month was called this day at their office, at the usual hour. No quorum appearing the meeting adjourned.

J. GASTON,
Secretary

Office of the Oregon Central R. R. Company

Portland, Oregon May 22nd 1873

Pursuant to the By-Laws and written notice served on the Stockholders, the annual meeting for the election of a Board of Directors was called this day at the office of the Company at 12 o'clock M. George H. Durham, Esq. Attorney, appeared for stockholder W. T. Newby, and asked to have filed, a Protest against any election of Directors this day, for the reasons given, in his former Protest of Aug. 13th 1870, and that, as he alleges, the annual election cannot be held on the 4th Thursday of May, that the Present acting Directors have not been lawfully elected, and that J. Gaston is not the lawful Secretary, and Ben Holladay is not the lawful President, that the present acting Board of Directors have been guilty of fraud and conspiracies against the rights of the Stockholders and have wasted the Company's property, and are grossly mismanaging its railroad and violating its Charter and that they were elected by spurious stock which has never paid any assessments. Mr. Durham also presented the protest against an election by stockholder James H. Gaunt, similar to Newby's.

Mr. Gilbert appeared as the Agent of G. W.

Vaughn and demanded a certificate for five shares paid up stock.

Stockholder A C Brown appeared and proposed to sell his ten shares of stock to the Company.

The roll of stockholders was then called, and it appearing that there was no quorum present, only sixteen shares answering to the call, the Secretary postponed the election until Tuesday June 24th at one o'clock P. M.

J. GASTON,
Secy

Office of the Oregon Central Railroad Co.

June 11th 1873 Portland, Oregon

Pursuant to the by-Laws the regular monthly meeting of the Board of Directors was this day called at 11 o'clock A. M. and their being no quorum present the meeting was adjourned.

J. GASTON,
Secretary

Office of the Oregon Central R R Co.

Portland, Oregon June 24th 1873

Pursuant to the By-Laws, and in pursuance of an adjournment from the 22nd day of May 1873, the regular annual day for the election of Directors, the Stockholders met this day for the purpose of electing seven Directors to serve for the ensuing year. The President being present took the chair, called the meeting to order, and the Secretary called the roll of Stockholders as follows:

Names	Shares
Milton S Latham, Trustee	26000
Wm. Norris	20015
Wm. L. Halsey	2501
G. W. Weidler	492⅝
A. de Pourtales	81
Ben Holladay	46
M. M. Melvin	5
Wm. T. Newby	18
W. C. Whitson	1
J. M. Belcher	1
B. F. McLench	1
Thos H. Tongue	1½
Jno S Griffin	1½
D. O. Quick	6
Alvarez Matteson	8
Norman Martin	5
David McDonald	9
Stephen Black	8
Thomas Hart	5
Hyer Jackson	28
C. A. Westfall	16
H. B. Tucker	6
Jacob Halstead	1
Payton Wilkes	2
Jabez Wilkes	1
Albert Simpson	1
C. A. Reynolds	4
S H Marsh	1⅛
Wm. Campbell	82

Names	Shares
L. Patterson	2
Oliver Clay	2
Edward Constable	1
W W Catching	4
Henry Sewell	1
Mrs. Mauzey	2
Philemon S Field	5
Henry Buxton	10
A C Brown	10
W. Balora	1
J. R. Boyce	½
Eliza Best	7¼
J. S. Brugger	20
Margaret A. Conklin	20
Kenyon Crandall	2
T R Cornelius	5
D C Lewis	5
C. Bills	5
A. B. Hallock	5
J. S. Smith	5
W. Lair Hill	10
Ladd & Tilton	5
F. Dekum	5
Jacob Kamm	5
A. H. Johnson	5
T. J. Carter	10
Anderson Ennis	1
Elkanah Walker	2
Jno J. Gerrish	1

Names	Shares
Frances A Bailey	2
S A Holcomb	10
Joseph Leonard	4
W R Barret	12
Robt Walker	8
John Harrison	10
Joseph E. Sedlak	100
Charles McKenny	7½
George W Elberts	18
Walter Moffat	5
E J Northrup & Co.	5
J A Fisher	15
Wiberg & Strowbridge	5
C A Burchardt	5
R R Thompson	5
Couch & Flanders	5
E Milwain	5
T M Johns	24½
J. B. Newby	10
J. M. Ritchey	15
B. E. Stewart	2
D. C. Stewart	2
Thos. Standley	26
Wm. Ball	2
J. Gaston	1
M. Crawford	1
J. N. Dolph	1
Jno M. Breck	5
J. Mysick	5

Names	Shares
J. C. Ainsworth	6
Joe Teal	5
S. G. Reed	5
McCraken Merrill & Co.	5
Labbe Bros.	5
Emil, Lowenstine & Co.	5
Wm. Cree	5
J. W. Ladd	5
G. W. Vaughn	5
David Monnastes	5
S. M. Smith	1
C. S. Silver	1
H. W. Scott	1
J. W. Watts	1
S. C. Adams	2
G. W. Burnett	4
Jesse C. Moore	1

The following named stockholders answered to their names and voted: Milton S. Latham, Trustee, by Ben Holladay, proxy; Wm. Norris by Ben Holladay proxy, George W. Weidler, M. Crawford, J. N. Dolph & H. W. Scott.

Upon counting out the ballots it was found that the whole number of votes cast was forty six thousand five hundred and forty six and 5/8 votes; and the following named persons, to wit: Ben Holladay, George W. Weidler, H. W. Scott, M. Crawford, T. R. Cornelius, W. L. Halsey and J. Gaston each received said last number of votes for the offices of Directors of said

Companies; and on motion it was resolved that they be declared duly elected the Directors of this Company for the next ensuing year, and the President directed to certify their elction.

State of Oregon)
) ss.
Multnomah County)

Portland, Oregon June 24th 1873

I, Ben Holladay, President of the Oregon Central Railroad Company, do hereby certify that at an election for Directors this day held at the office of said Company in this City, each of the following persons to wit: Ben Holladay, G. W. Weidler, H. W. Scott, M. Crawford, T. R. Cornelius, W. L. Halsey and J. Gaston each received 46546⅝ votes for the office of Director in said Company, and I hereby declare the said named persons to be duly elected Directors of said Company for the next ensuing year.

BEN HOLLADAY,
Prest.

On motion the meeting then adjourned.

J. GASTON,
Secy.

BEN HOLLADAY,
Prest.

State of Oregon)
) ss.
Multnomah County)

Portland, Oregon June 24th 1873

I, Ben Holladay, and I, H. W. Scott, and I, G.

W. Weidler, and I, M. Crawford, and I, J. Gaston, and I, T. R. Cornelius, and I, W. L. Halsey, do solemnly swear that I will faithfully and honestly discharge the duties of a Director of the Oregon Central Railroad Company for the term of office for which I have been elected, so help me God.

BEN HOLLADAY
M. CRAWFORD
J. GASTON

Subscribed and sworn to before me this 24th day of June 1873.

Witness my hand and Notarial Seal.

I. R. MOORES,
(Notarial Seal) Notary Public

Office of the Oregon Central Railroad Co.

Portland, Oregon June 24th 1873

In pursuance of the By-Laws and upon the call of the President, the newly elected Directors met this day at the office of the Company for the election of officers and other business: Present, Ben Holladay, H. W. Scott, T. R. Cornelius, G. W. Weidler, M. Crawford and J. Gaston. H. W. Scott was called to the Chair, and J. Gaston made Sec. pro tem.

On motion of M. Crawford the following persons were nominated for the offices set opposite their names, and unanimously elected.

Ben Holladay.....President
W. L. Halsey.....Vice President
J. Gaston.....Secretary

By laws Amended.) H. W. Scott offered the following Resolution, which was unanimously adopted.

Resolved, that By-Law No. 2 (or the Second) be amended so as to read as follows:

"The officers of the Board shall be a President, Vice-President, Secretary, and Treasurer, who shall be elected by the Directors at their first meeting after the annual election to serve for one year, and until their successors are elected and qualified."

A. G. Cunningham was then put in nomination and elected Treasurer of the Company.

On motion the Board then adjourned.

J. GASTON, Secy. BEN HOLLADAY, Prest.

Office of the Oregon Central Railroad Company,
Portland, Ore Sept. 1 1873

Pursuant to a call of the President the Board of Directors met this day at their office at half past three o'clock P. M. Present, The President Ben Holladay in the Chair, J. Gaston, Secretary, and Directors Crawford, Cornelius, Scott, Weidler and Halsey.

Mr. Crawford offered and moved the adoption of the following preamble and resolutions: viz;

"Whereas this Company is indebted to divers persons and firms in Europe, for which indebtedness bonds of this Company have been and are hypothecated pledged and held as collateral security, and whereas at the request of Ben Holladay, Esq. President of this Company, said creditors have lately sent their Agents to this State, who have examined into the management of this Company, its financial condition, and the condition and management of its property, for the purpose of reporting the same to said creditors, with a view to some arrangement between this Company and its said creditors; and whereas it is necessary that some arrangement should be made between this Company and its creditors for the reduction of interest upon said indebtedness, for an extension of the time of payment of said indebtedness, and for the redemption of said Bonds held as collateral security as aforesaid, and for the payment of the indebtedness of this Company, and the payment and cancellation of its Bonds; and whereas it is desirable that such negotiations should be prosecuted in Europe, and so far as possible, there consummated; and whereas for that purpose it is necessary that this Company should have in Europe an Agent and Attorney in fact with full power and authority in the premises; and whereas the interests of this Company require the presence here of its President and other officers; and whereas William Norris, Esq of the City of San Francisco in the State of California is familiar with the affairs of this Company, and a suitable person to act as such Attorney in fact;

NOW, THEREFORE be it RESOLVED: That William Norris, Esquire of the City of San Francisco, in the State of California be and he hereby is made constituted and appointed the true and lawful Attorney in fact of this The Oregon Central Railroad Company, a Corporation duly incorporated, organized and existing under the General Laws of Oregon, and having its principal office and place of business in the City of Portland, Oregon, for and in the name of this Company, and in its behalf, to proceed to the Continent of Europe, and there or elsewhere, except in the State of Oregon, to settle and adjust all claims, accounts and demands, now subsisting or which may hereafter subsist between this Company and any and all persons firms or Corporations whatsoever, and to compound for any and all debts dues or demands owing to or by this Company, and to agree for the same in such manner and on such terms as he in his discretion may deem proper and to borrow money for the use of and in the name of this Company upon such terms and interest as he may deem advisable, and as security for the repayment of the same, to mortgage and pledge any and all of the real personal and mixed estate of this Company or any part thereof, and negotiate and agree for the issue and sale of the Bonds and other evidences of indebtedness of this Company, and especially to negotiate and agree with the Bondholders of this Company their Agents and Trustees for a reduction of interest on Bonds heretofore issued by this Company, and to agree for such rate of interest on the said Bonds of this Company, as

to him shall seem meet and proper; to negotiate and agree for the cancellation and surrender of said Bonds upon the issue of other Bonds of this Company, in lieu thereof, of such denominations, in such amounts, payable in such times, and bearing such interest as he shall deem for the best interests of this Company, to be secured in such manner as he shall deem advisable, or if he shall deem it advisable to negotiate and agree for the payment and cancellation of said Bonds by the sale, transfer and conveyance of any or all the property rights and franchises of this Company, or otherwise, and to negotiate for the sale of, mortgage, pledge, transfer and deliver any or all the bonds of this Company, and to negotiate for the sale of, mortgage, pledge transfer and deliver any and all Bonds of this Company which may be hereafter issued, and to negotiate for and agree upon the redemption of any and all Bonds of this Company, hypothecated to or held in pledge, or held in any manner, as security by any person or persons, firms or corporations for loans to this Company or otherwise, and to redeem any and all such Bonds upon such terms and in such manner as he shall think best; and to sell, mortgage, pledge, and to convey, transfer and deliver the Railroad with the appurtenances and rolling stock and other property of this Company, both real, personal and mixed, upon such terms and to such persons, firms or corporations as he shall see fit, and for such sums as he shall deem advisable; and for any or all of these purposes, to make execute and deliver, mortgages, transfers, Bills of Sale, deeds and other writings, in the name

of this Company, and any compromises, compositions, agreements or contracts by deed or otherwise in his opinion necessary or expedient in the premises, and generally to do and perform all matters and things, transact all business make, execute and acknowledge all contracts, orders, deeds, writings, assurances and instruments which may be requisite or proper to effectuate all or any of the premises or any other matter or thing appertaining or belonging to this Company, with the same powers, and to all intents and purposes, with the same validity as if done or executed by this Company.

Resolved, further, That the President and Secretary of this Company do execute and deliver to said William Norris a Power of Attorney embodying the power and authority hereby granted him in the name of this Company and under "its corporate seal."

Which motion being seconded by Mr. Halsey was put and unanimously adopted.

On motion of Mr. Halsey the Board then adjourned.

J. GASTON, Secy. BEN HOLLADAY, Prest.

Office of the Oregon Central R. R. Co.

Portland, Oregon Nov. 5, 1873

Pursuant to a call of the President, a Special meeting of the Board of Directors of this Company was held this day at their office at 2 o'clock P. M.

Present: the President Ben Holladay in the Chair, and Directors Halsey, Weidler, Scott, Crawford and Gaston.

On calling the meeting to order, the following proceedings were had: Resolved: That from and after this date no pass for free travel over the Oregon Central Railroad shall be issued to any person whatever, except to Directors, officers Agents and employes: Passed unanimously.

Resolved: 2nd That the President or Superintendent of this Company be authorized to issue exchange Passes, in their discretion, to officers of other Railway Companies. Adopted.

On motion Board then adjourned.

J. GASTON, Secy. BEN HOLLADAY, Prest.

Office of the Oregon Central R R Company
Portland, Oregon Jan 3rd 1874

Pursuant to call of the President, a special meeting of the Board of Directors of this Company was held this day at eight o'clock P. M. at their office. Present, The President Ben Holladay in the chair, and directors Halsey, Scott, Weidler and Cornelius. On motion the following resolution was unanimously adopted:

Resolved, that the Resolution of this Board passed Nov. 5th 1873, be amended by adding after the word "Company," "and such other persons as the President may deem to the interest of the Company."

On motion the Board then adjourned sine die.

BEN HOLLADAY, Pres.

J. GASTON, Secy.

Office of the Oregon Central R. R. Company

Portland, Oregon May 27th 1874

Pursuant to the call of the Vice President, the Board of Directors of the Oregon Central Railroad Company met this day at their office in the City of Portland in special meeting. Present Directors Halsey, Scott, Crawford and Gaston. Vice President Halsey in the Chair.

Director Scott offered the following resolutions, which on motion were unanimously adopted, to wit:

"Whereas this Company, the Oregon Central Railroad Company of Portland, is unable for want of funds to pay the taxes assessed and levied against the Company in the Counties of Washington and Yamhill in the State of Oregon; and whereas the Road of this Company has been levied upon and advertised for sale in said Counties for said taxes, and unless payment thereof is made, will be sold, and additional costs and expenses incurred. * * * Resolved: That this Company negotiate a loan of Milton S. Latham in the State of California, for the amount in gold coin sufficient to pay said taxes and costs and expenses accrued, payable upon demand, with interest from date at one per cent per month. * * * Resolved: That for the payment of said loan, if the same shall be made, the net revenue of the Road of this Company be pledged and set apart monthly for the liquidation of the same, until the same is fully liquidated; and the Treasurer of this Company is hereby authorized and directed without further order to apply

all such net revenue monthly until such loan and interest is fully paid. * * *

Resolved: That the President and Secretary of this Company, be and they hereby are authorized and directed to execute in the name of this Company and under its corporate seal or otherwise, the promissory note of this Company, on the terms aforesaid, and such other instruments as shall be necessary or convenient to secure the payment of such loan and interest and the appropriation of the revenue of the Road of this Company to such payment "monthly, as aforesaid."

On motion the Board then adjourned.

W. L. HALSEY, Vice President
J. GASTON, Secretary

STOCKHOLDERS ANNUAL MEETING 1874

Office of the Oregon Central R. R. Co.

Portland, Oregon May 28th 1874

Pursuant to the By-Laws and written notice served upon each stockholder through the Post Office, the Stockholders of the Oregon Central Railroad Company met at their office in the City of Portland this 28th day of May 1874 at 12 o'clock M. and was called to order by Vice President Halsey.

The Secretary called the Roll of Stockholders as follows:

Names.	Shares.	Names.	Shares.
Milton E. Latham, Trustee.	26000	W. W. Catching.	4
Wm. Norris	20015	Henry Sewell	1
W. L. Halsey	2501	Wm. Mauzey	2
C. W. Weidler	492⅝	Philemon S. Field	5
A. de Pourtales	81	Henry Buxton	10
Ben Holladay	46	A. C. Brown	10
M. M. Melvin	5	D. O. Quick	6
Wm. T. Newby	13	Alvarez Matteson.	8
W. C. Whitson	1	Norman Martin	5
J. M. Belcher	1	David McDonald.	9
B. F. McLench	1	Stephen Blank	8
Thos. H. Tongue.	1½	Thomas Hart	5
Jno. S. Griffin	1½	Hyer Jackson	28
C. A. Reynolds	4	C. A. Westfall	16
S. H. Marsh	1⅛	H. B. Tucker	6
Wm. Campbell	32	Jacob Halstead	1
L. Patterson	2	Payton Wilkes	2
Oliver Clay	2	Jabez Wilkes	1
Edward Constable.	1	Albert Simpson	1
Anderson Ennis	1	Labbe Bros.	5
Elkanah Walker	2	Emil Lowenstein & Co.	5
Jno. J. Gerrish	1	Wm. Cree	5
Frances A. Bailey.	2	J. W. Ladd	5
S. A. Holcolm	10	G. M. Vaughn	5
Joseph Leonard	9	David Monnastee.	5
W. R. Barrett	12	Walter Moffatt	5

Names.	Shares.	Names.	Shares.
Robert Walker ...	8	E. J. Northrup & Co.	5
John Harrison ...	10	J. A. Fisher.....	15
Joseph Sedlak	100	Wiberg & Strowbridge	5
Charles McKenny	7½	C. A. Burchardt.	5
George W. Ebberts	18	R. R. Thompson.	5
W. Baldra	1	Couch & Flanders	5
J. R. Boyce.....	½	E. Milwain	5
Eliza Best	7¼	I. M. Johns.....	24½
J. S. Brugger	20	J. B. Newby....	10
Margaret A. Conklin	20	J. M. Ritchey...	15
Kenyon Crandall ..	2	B. E. Stewart...	2
T. R. Cornelius...	5	D. C. Stewart...	2
D. C. Lewis.....	5	Thos. Standley ..	26
C. Bills	5	Wm. Ball	2
A. B. Hallock....	5	J. Gaston	1
J. S. Smith.....	5	M. Crawford	1
W. Lair Hill.....	10	J. N. Dolph.....	1
Ladd & Tilton....	5	S. M. Smith.....	1
F. Dekum	5	C. S. Silver.....	1
		H. W. Scott....	1
Jacob Kamm	5	J. W. Watts....	1
A. H. Johnson....	5	S. C. Adams.....	2
T. J. Carter.....	10	G. W. Burnett...	4
Jno. M. Breck....	5	Jesse C. Moore..	1
J. Myrick	5		
J. C. Ainsworth ..	6		

Names.	Shares.
Joe Teal	5
S. G. Reed.....	5
McCraken, Merrill & Co.	5

The following Stockholders answered to their names, to-wit: Milton S. Latham, Trustee, by A. G. Cunningham proxy, G.. W. Weidler by A. G. Cunningham proxy, W. L. Halsey, R. R. Thompson, J. N. Dolph and J. Gaston.

The proceedings of the annual meeting of the Stockholders for 1873 were then read and approved.

On motion of Mr. Dolph the stockholders now proceeded to the election of seven Directors to serve for the next ensuing year. R. R. Thompson voted "No," objected to any election being held, and asked that his vote be recorded against it.

The votes were then polled, with the following result: Whole number of votes cast 26495, of which Ben Holladay, George W. Weidler, H. W. Scott, M. Crawford, and T. R. Cornelius, each received 26495, and W. L. Halsey and J. Gaston each received 26494, and George V. James received one vote, for the office of Directors for the next ensuing year; whereupon Vice President Halsey declared Ben Holladay, G. W. Weidler, H. W. Scott, M. Crawford, T. R. Cornelius, W. L. Halsey and J. Gaston duly elected Directors of this Corporation of the next ensuing year.

R. R. Thompson then stated that he objected and

protested against this election, for the reason that it was irregular and held without authority of law, and asked that his objection be noted on the records of this meeting.

CERTIFICATE OF ELECTION.

State of Oregon)
) ss.
Multnomah County)

Portland, Oregon May 28th 1874

I, William L. Halsey, Vice President of the Oregon Central Railroad Company, do hereby certify, that at an election for Directors, this day held at the office of said Company in this City, each of the following persons, to wit: Ben Holladay, George W. Wiedler, H. W. Scott, M. Crawford, T. R. Cornelius, W. L. Halsey and J. Gaston having each received 26494 votes for the office of Director in said Company, which being a majority of the stock of said Company, I hereby declare the said named persons to be duly elected Directors of said Oregon Central Railroad Company for the next ensuing year.

W. L. HALSEY, Vice Prest.

On motion the meeting then adjourned.

W. L. HALSEY, Vice Prest.
J. GASTON, Secretary.

Office of the Oregon Central R. R. Co.

Portland, Oregon July 25th 1874

Pursuant to the call of the President, the new Board

of Directors met at the Office of the Company in this City this day at one o'clock P. M. Present: Ben Holladay, W. L. Halsey, G. W. Weidler, T. R. Cornelius, M. Crawford, H. W. Scott and J. Gaston.

The Directors then qualified by taking the following oath of office.

"I Ben Holladay and I W. L. Halsey, and I G. W. Weidler, and I, M. Crawford, and I H. W. Scott, and I, T. R. Cornelius, and I J. Gaston, do solemnly swear that I will faithfully and honestly discharge the duties of a Director of the Oregon Central Railroad Company, for the term of office for which I have been elected, so help me God.

Signed W. L. HALSEY,
G. W. WEIDLER,
H. W. SCOTT,
M. CRAWFORD,
J. GASTON.

Subscribed and sworn to before me this 25th day of July 1874.

(Notarial Seal) I. R. MOORES,
Notary Public.

The Board then proceeded to elect officers for the netx ensuing year, which election resulted in the selection of Ben Holladay for President, J. Gaston for Secretary and H. Hampton for Treasurer.

The President then announced that the Board was ready for business. Mr. Gaston then offered the following:

Whereas, Contract and Resolution, which was thereupon unanimously adopted, viz:

Whereas it is deemed by the Board of Directors of this Company for the best interests of this Company to enter into a certain agreement negotiated by the Agent and attorney in fact of this Company, between this Company as party of the first part, The Oregon and California Railroad Company as a party of the second part, Heinrich Hohenemser and others parties of the third part, and Milton S. Latham Trustee and attorney in fact of certain creditors of this Company party of the fourth part for the reasons set forth in said agreement which agreement is in words and figures as follows, to wit:

Whereas, the Oregon and California Railroad Company is now unable to pay the full interest on its first mortgage Bonds, and has defaulted in the payment of the coupons due: October first, eighteen hundred and seventy three, and April first, eighteen hundred and seventy four;

And whereas, said Company is under the necessity, in order to avoid a foreclosure and sale of the road by the bondholders, to make a compromise with the latter, which compromise has been made known to all the parties to this agreement;

And whereas, it is stipulated in said agreement of compromise as one of the conditions of said compromise as follows Ben Holladay herein agrees to join with the creditors of the Oregon Steamship Company, and the creditors of the Oregon Central Railroad Company, in

any arrangement, with their consent by which the entire property of these two companies, after their indebtedness is liquidated, shall belong to the Railroad Company, and be a further security by mortgage to the bondholders; And Whereas, said Oregon Central Railroad Company has the strongest interest in the conclusion of said compromise; And Whereas, said Heinrich Hohenemser, director of the Deutscha Vereins Bank at Frankfort-on-the Main; Aron Neiderhofheim, Manager of the Branch of the Bank of Commerce and Industry, at Frankfort on-the Main; Julius Schmidt, merchant at Frankfort on-the Main; Adolph Otto, counsellor-at-law at Heilbroun, in the Kingdom of Wurtemburg; Henry Villard, of Heidelberg, in the Grand Duchy of Baden; Michael Benjamin, director of the Baierischa Weckster Bank, at Munich, in the Kingdom of Bavaria; Carl Stachelin Bucknor, of the firm of Iselin and Stachelin, of Basle, in Switzerland; F. S. Van Nierop, director of the Bank of Amsterdam, in the Kingdom of the Netherlands, and Wm. Koester, of the firm of Koester and Company of Manheim, in the Grand Duchy of Baden, have established and proved their ownership of Six Millions four hundred and sixty eight thousand six hundred dollars of bonds of the Oregon and California Railroad Company;

And whereas, the parties aforementioned are admitted to be the lawful owners of the majority, in interest as well as in numbers, of the First Mortgage Bonds of the Oregon and California Railroad Company, by the said Oregon Central Railroad Company, as well as

by all the other parties to this agreement.

And Whereas, the creditors of said Oregon Steamship Company, to wit: Messrs Sulzbach Brothers of Frankfort on-the-Main, and others represented by Milton S. Latham as Trustee and attorney in fact, are the creditors of the Oregon Central Railroad Company, to the amount of one million dollars, in gold, with interest; And Whereas, said creditors hold as collateral securities for the principal and interest of their claim the entire issue of the first mortgage bonds of the Oregon Central Railroad Company, to the nominal amount of four million three hundred and ninety five thousand ($4,395,000) dollars; And Whereas, said creditors of said Oregon Central Railroad Company are equally interested in the preservation of the Oregon and California Railroad Company and the prevention of foreclosure;

Now therefore; in consideration of the premises and other valuable considerations, the parties to these presents thereunto moving, the said Oregon Central Railroad Company as party of the first part; the said Oregon and California Railroad Company as party of the second part; and said Heinrich Hohenemser, director of the Deutsche Verein Bank at Frankfort on-the-Main; Aron Niederhofheim, Manager of the Branch of the Bank of Commerce and Industry at Frankfort on-the-Main; Julius Schmidt, merchant, at Frankfort on-the-Main; Adolf Otto, counsellor at-law, at Heilbroun, in the Kingdom of Wurtemburg; Michael Benjamin, Director of the Baieriscke Mechster Bank at Munich, in the Kingdom of Bavaria; Carl Staekelin Bueknor,

of the firm of Iselin and Staeklin, of Basle, in Switzerland; F. S. Van Nierop, director of the Bank of Amsterdam, in the Kingdom of the Netherlands, and Wm. Koester, of the firm of Koester and Company, at Manheim, in the Grand Duchy of Baden, by Henry Villard of Heidelberg, in the Grand Duchy of Baden, their attorney in fact, and the said Henry Villard, as owners of six millions four hundred and sixty eight thousand six hundred dollars of bonds of the Oregon and California Railroad Company for themselves, their executors, administrators, successors and future holders of the bonds of the Oregon and California Railroad Company, as parties of the third part, and said creditors of the Oregon Central Railroad Company represented by Milton S. Latham as their trustee and attorney in fact, as a party of the fourth part, have covenanted and agreed as follows;

Article 1—The entire net receipts of the Oregon Central Railroad Company, (meaning by the term "net receipts," wherever it is used in this agreement, all receipts remaining after paying the operating expenses and taxes and such floating debt as now exists against said Company, and keeping the property of said Oregon Central Railroad Company in reasonably good repair, all outlay in every other case being prohibited except by the agreement of all the parties to these presents), shall be applied, first, to the payment of the interest, at the rate of ten per cent per annum, on said principal of One million dollars, gold loaned by said party of the fourth to said Oregon Central Railroad Company,

and, next to the payment of the principal of said loan.

Article II Whenever, and as soon as said interest and said principal shall be paid, either out of the net receipts of said Oregon Central Railroad Company, or in any other manner, the entire net receipts of said Oregon Central Railroad Company shall be paid to the parties of the third part, or their lawful representative, at the end of each month, and the parties of the third part shall apply the same in the same manner as the net receipts of the Oregon and California Railroad Company are to be applied under said agreement of compromise, to the payment of the current interest on the first mortgage bonds of the Oregon and California Railroad Company, up to the amount of seven per cent per annum, and upon the payment in full of said interest, and the redemption of the certificates of indebtedness to be issued for unpaid interest by said Oregon and California Railroad Company, rateably, according to the different series of said certificates of indebtedness, and finally upon the redemption of said certificates, for the payment of the principal of said bonds at maturity, or their purchase previously thereto.

Article III—The securities now in the hands of the party of the fourth part, to wit, four million three hundred and ninety five thousand ($4,395,000) dollars, first mortgage bonds of said Oregon Central Railroad Company, shall, secondly, serve as collateral security to the parties of the third part of their claims mentioned in Article II, without prejudice, however, to the claim of said party of the fourth part to said securities as col-

lateral, and said party of the fourth part shall hold said collateral security for his own benefit as long as he is not himself paid in full, but also for the benefit of the parties of the third party; upon payment in full of said party of the fourth part said securities shall pass into the hands of the parties of the third part, but nothing stipulated herein shall prevent the said parties of the fourth part from making good their claims against said Oregon Central Railroad Company for principal and interest by the sale, at any time they may it to their interest to make such sale, of the securities of said Company, held by them as collaterals.

Article IV—The party of the first part binds itself to deliver to the party of the third part at the proper time, said securities, as collaterals.

Article V—In case said party of the second part shall not comply with any of the provisions of the agreement or of the larger agreement between the party of the second part hereto and the parties of the third part and others (whereof these presents are expressly thereby made a part, and which is hereby made a part of these presents) the parties of the third part, at any time, at their option, and without any delay on a written notice to the several parties to this agreement, of seven days. advertised in any paper published in Portland, Oregon (the parties hereto waiving hereby all right to any other or further notice or time whatever fixed by statute or otherwise) shall have the right to require and cause to be made a sale of said bonds, or any of them, of said Oregon Central Railroad Company, so held as collateral

by the said party of the fourth part, and in this way or any other lawful manner, to cause themselves to be repaid (after the satisfaction of any prior claims, as aforesaid), for the principal and interest of said mortgage bonds of said Oregon and California Railroad Company, as far as practicable.

Article VI—The party of the first part binds itself to furnish at the beginning of each month, or as soon thereafter during the succeeding month as practicable, to the said parties of the second and third parts a statement of the receipts of the preceding month of said Oregon Central Railroad Company, and also to allow the said parties of the third and fourth parts, or their lawful representative, to examine at all times all the books, accounts, papers and property of the Oregon Central Railroad Company.

Article VII—All the provisions of the larger agreement between the party of the second part and the parties of part and others hereto (whereof these presents are expressly thereby made a part, and which is hereby made a part of these presents relating to the continuance of the agreement, the rights of the parties of the third part hereto in case of a violation of its term or a failure to carry it out by any of the parties contracting with said parties of the third part, and as to the acknowledgment of the ownership of bonds represented by the parties of the third part; and their authority and the continuance thereof, and the waiver and estoppel of any other party's right to question the same and other things therein specified, and the right of any three or

more of the persons composing said parties of the third part to act, and the right of said parties of the third part, or any three or more of them to do all acts and exercise all powers whatsoever, by their agent or attorney, and as to the manner and effect of admitting new persons into said parties of the third part and their rights, and as to the amount of interest to be paid in the first mortgage bonds of the party of the second part hereto annually, for the first five and the next three years, respectively, and all other provisions of the said larger agreement which secure any rights or benefits to any of the parties to this agreement, and are capable of application to the matters herein named shall be deemed to be a part of and incorporated in the presents, and adopted by the parties hereto in relation to all the terms of these presents as fully and to the same intents and purposes as if herein out at large, and in terms so applied and adopted.

Article VIII—The securities of the Oregon Central Railroad Company herein named, and now in the hands of the party of the fourth part, may, notwithstanding anything contained in this agreement, at any time, by the consent of and on terms satisfactory to the parties of the third and fourth parts, to be applied or used as security in order to provide the means to complete the said Oregon Central Railroad.

Article IX—This contract is assented to and executed in behalf of the parties of the fourth part upon the distinct understanding that nothing herein contained shall in any wise interfere with their respective hereto-

fore acquired rights in the premises; nor shall this contract be held as between them, or either of them, and the other contracting parties, or any of them to require any notice of any description whenever and wherever or in what way soever the parties of the fourth part, or either of them, may proceed to enforce their said respective rights and demands, and if in such case any notice whatever be required by reason of this contract in any proceeding at law, or otherwise, notwithstanding this article, then the parties hereto waive any and all notice by process or otherwise, and hereby consent that the parties of the fourth part may if they so choose appoint as attorney to represent the remaining parties hereto in any proceeding, if this article shall not be deemed to amount to a waiver of right to notice as aforesaid.

IN WITNESS WHEREOF; the said parties have hereunto set their respective hands and seals in quadruplicate, the said parties of the third part, except the said Henry Villard acting by their said attorney in fact, and the said several corporations have, by Resolutions of their respective Boards of Directors, caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective Presidents and attested by their respective Secretaries, in quadruplicate this 25th day of July, A. D. One Thousand eight hundred and seventy four."

(Signed by the aforesaid parties thereto.)

On motion the Board then adjourned.

J. GASTON,
Secretary

Office of the Oregon Central R. R. Co.

Portland, Oregon Feb. 9th 1875

The Board met pursuant to the call of the President for the purpose of electing Vice President. Present: Directors W. L. Halsey, J. Gaston, M. Crawford, George W. Weidler and H. W. Scott. On motion of Mr. Wiedler, W. L. Halsey was elected temporary Chairman.

On motion of Mr. Crawford the Board now proceeded to the election of a Vice President. The Chairman appointed the Secretary as Teller, and the election was held by ballot.

The ballots being cast and counted, it was found that four votes had been polled, and all in favor of W. L. Halsey for Vice-President. Whereupon Mr. Halsey was declared duly elected Vice-President of the Company.

On motion the Board adjourned sine die.

Attest:

J. GASTON, Secretary. W. L. HALSEY, V. Prest.

Office of the Oregon Central Railroad Co.

Portland, Oregon March 12, 1875

Pursuant to call of the Vice President the Board of Directors of this Company met at their office in

this City this day at eleven o'clock A. M. Present: Directors Halsey, Cornelius, Weidler, Crawford and Gaston, Vice President Halsey in the Chair. The Vice President offered the following preamble and Resolution which on motion of Director Crawford was adopted.

Whereas by the terms of "Article Four" of a certain agreement and contract entered into and executed on the 25th day of July A. D. 1874, by and between certain bondholders of the bonds of the Oregon and California Railroad Company to wit: Heinrich Hohenemser, Aron Niederhofheim, Julius Schmidt, Adolf Otto, Michael Benjamin, Carl Staekelin Buchnor, F. S. Van Nierop and Wilhem Koester by their attorney in fact Henry Villard, and the said Henry Villard, as parties of the first part, The Oregon and California Railway Company as party of the second part, Ben Holladay as party of the third part, and Faxon D. Atherton and Milton S. Latham Trustees, as parties of the Fourth part, it was and is provided among other things as follows:

And the said party of the third part further agrees at the time of the execution of this agreement, to assume or pay, or cause to be paid, the floating debt of the Company (meaning the said Oregon and California Railroad Company) now outstanding, to the extent of seventy five thousand dollars, not including interest on bonds, said amount being estimated by said party of the third part to be all of said floating debt and in consideration of this assumption and payment of said indebtedness, the party of the second part shall transfer, assign and

convey to the party of the third part, contemporaneously with such payment, and the release of the Company from said floating debt, an equal amount of its claims against the Oregon Central Railroad Company;

And Whereas, the floating indebtedness of said Oregon and California Railroad Company to the North Pacific Transportation Company did on said 25th day of July 1874 amount to the sum of $40,683.95-100 Coin dollars, on which day the indebtedness of this Company to said Oregon and California Railroad Company exceeded said sum,

And Whereas, in performance of the aforementioned stipulation in said contract contained, by an arrangement between said North Pacific Transportation Company (asking for and on behalf of said Ben Holladay) and the said Oregon and California Railroad Company which arrangement was consummated and carried into effect by the Secretaries of said last named Companies respectively on said 25th day of July 1874, forty thousand and six hundred and eighty three & 95-100 dollars of said indebtedness of this Company to said Oregon and California Railroad Company was transferred to said North Pacific Transportation Company in payment and satisfaction of said indebtedness of said O & C. R. R. Co. to said N. P. T. Co. and this Company having been credited on the books of said Oregon & California Railroad Company with said sum of $40,-683.95-100 and charge herewith upon the books of said North Pacific Transportation Company therefore:

Resolved, That said acts of said Oregon & Califor-

nia Railroad Company and of said North Pacific Transportation Company, and of said Secretaries of said Companies respectively in so far as they affect and have relation to the rights and interests of this Company in said transaction of transferring said indebtedness of this Company in said sum of $40,683. & 95-100 from said Oregon and California Railroad Company to said North Pacific Transportation Company, be and the same are hereby in all things fully ratified and confirmed in consideration of the extinguishment of so much of the indebtedness of this Company to said Oregon and California Railroad Company and that this Company acknowledges and admits itself indebted to said North Pacific Transportation Company in said sum of $40,683.95-100 in U. S. Gold Coin and hereby assumes and agrees to pay the same.

Director Weidler then offered the following preamble and resolutions which on motion of Director Crawford was adopted.

Whereas this Company is unable for want of funds to pay the taxes assessed and levied against it in the Counties of Washington and Yamhill in this State, and whereas the Road of the Company in said Counties is in danger of being levied on and sold for the payment of taxes whereby additional costs and expenses will be incurred, Therefore be it Resolved that the officers of this Company be authorized to negotiate a loan of Milton S. Latham of the State of California for the sum of four thousand dollars to pay said taxes in said Counties, which sum shall be made payable to

said Milton S. Latham on demand with interest at one per cent per month.

Resolved, that to secure the payment of said loan the net earnings of the Road of this Company be hereby pledged and set aside monthly for the liquidation of the same until said loan shall be fully paid and discharged; and the Treasurer of the Company is hereby directed without further order to apply all such net Earnings monthly until such loan and the interest thereon is fully paid.

Resolved that the President and Secretary of this Company be and they are hereby authorized and directed to execute in the name of this Company and under its Corporate Seal or otherwise, the promissory note of this Company on the sums aforesaid and such other instruments as shall be necessary to secure the payment of such loan and interest, and the appropriation of the net earnings of the Road as herein provided.

On motion the Board then adjourned sine die.

J. GASTON, Secretary. W. L. HALSEY, V. Prest.

Office of the Oregon Central R. R. Co.

Portland, Oregon May 27th 1875

Pursuant to the regular printed notice served through the Post Office, the stockholders of the Oregon Central Railroad Company met at the office of the Company in the City of Portland Oregon this day at 12 o'clock M. at which hour the meeting of stock-

holders was called to order by the Secretary, who then called the roll of stockholders, when the following stockholders answered to their names; to wit:

W. L. Halsey
W. T. Newby
Jno S. Griffin by T. D. Humphreys, proxy
Wm. Mauzey
S. H. Marsh
Wm. Campbell
Henry Buxton
A. C. Brown
David McDonald
Stephen Blank
Thos Hart by W. R. Jackson, proxy
Hyer Jackson's est. by W. R. Jackson, Admr.
Elkanah Walker by Stephen Blank, Proxy
S. A. Holcomb by George Morrow, proxy
Joseph Leonard by George Morrow, proxy
Charles McKenny, by T. D. Humphreys, proxy
George M. Ebberts by George Morrow, Proxy
W. Baldra by H. B. Luce, proxy
J. S. Brugger
Margaret A. Conklin by J. Beach proxy
J. S. Smith by Geo. H. Durham
W. Lair Hill
Ladd & Tilton
F. Dekum
Jno M. Breck by B. Killin proxy
Sam Lowenstine by H. B. Luce proxy
Wm. Cree's Estate, by John Catlin, Admr.

J. W. Ladd Estate, by W. S. Ladd
Wiberg & Strowbridge by Edward Woodworth proxy
R. R. Thompson
J. Gaston
G. W. Burnett by W. T. Newby proxy
Stephen Coffin
J. H. Gaunt by W. T. Newby proxy
O. H. Kimball
J. L. Hallett
Robt. Imbrie

The Secretary then announced that a quorum had answered to their names, and that the Acting President of the Company was not present or in the State.

W. T. Newby then moved that Stephen Coffin be elected Chairman of this meeting and President of the Company pro tem, which motion was unanimously adopted.

Mr. Coffin then appeared and took the following oath of office: "I do solemnly swear that I will faithfully, honestly and impartially discharge the duties of President of the Oregon Central Railroad Company, and Inspector of the election for a Board of Directors of said Company now about to be held.

S. COFFIN

Subscribed and sworn to before me this 27th day of May 1875.

Andrew J. Moses, Notary Public
(Notarial Seal) State of Oregon

The President then took the Chair, and appointed H. B. Luce and O. H. Kimball, Tellers of the election. W. L. Halsey then declared that he protested against further proceedings of the said Coffin as President, as he the said Halsey claimed to be the Vice President of the Company, and entitled to preside at the meeting. The Secretary then read the By-Laws of the Company to the meeting to show that the Vice President had no right to preside. J. N. Dolph then offered the following protest: "As a stockholder of this Company I protest against the proceedings of this meeting for the reasons that a large majority of the stockholders of this Company have been excluded from participating therein, and because the Secretary has refused to certify them as stockholders of the Company, and because the Vice President of the Company has been excluded from presiding over the meeting, and the whole proceedings are illegal and void."

The President then ordered the election to proceed, and directed the Stockholders to prepare their ballots.

The ballots were then cast, and counted by the Tellers, the Secretary recording the result of each ballot. The Secretary and Tellers counted the whole number of votes to the President, who then announced the result of the election in the following vote:

For Directors,

W. T. Newby.....25272 votes
Henry Buxton .....25272 votes
O. H. Kimball .....25272 votes

Stephen Coffin	25272	votes
Robt Imbrie	25272	votes
D. C. Lewis	25272	votes
J. Gaston	25267	votes
Stephen Blank	5	votes
George Morrow	1	vote

The President then made and executed the following certificate.

State of Oregon)
)ss.
Multnomah County)

Know all men by these presents that I, Stephen Coffin by virtue of the power and authority reposed in me by the stockholders of the Oregon Central Railroad Company, and by the General Incorporation law of said State and the By-Laws of said Corporation, and as President of said Oregon Central Railroad Company and Chairman of the annual meeting of the Stockholders of said Company, held at the office of said Company in the City of Portland Oregon this 27th day of May 1875, do hereby certify that I have acted as Inspector of the annual election by said Stockholders for a Board of Directors this day held in pursuance of regular notice, and that at such annual election the following named persons severally received the number of votes set opposite their respective names, viz: Stephen Blank 5 votes, George Morrow 1 vote, W. T. Newby 25272 votes, Henry Buxton 25272 votes, O. H. Kimball 25272 votes, Stephen Coffin 25272 votes, Robt Imbrie 25272 votes, D. C. Lewis 25272 votes and J. Gaston 25267

votes. And I do further certify that said named persons, to wit, W. T. Newby, Henry Buxton, O. H. Kimball, Stephen Coffin, Robt Imbrie, D. C. Lewis and J. Gaston have been regularly, duly and legally elected Directors of the said Oregon Central Railroad Company, and entitled to exercise the office thereof for the next ensuing year.

Attest:

J. GASTON, Secretary

S. COFFIN, President pro tem of Oregon Central Railroad Co., and Chairman Stockholders meeting.

The Directors then appeared and took the following oath of office.

"Know all men by these presents that I, W. T. Newby, and I, Henry Buxton, and I, J. Gaston, and I, O. H. Kimball, and I, Stephen Coffin, and I, Robt Imbrie, being each first duly sworn, say we, each for himself, that I (we) will faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company, to which office I have been elected for the next ensuing year, so help me God."

J. GASTON
S. COFFIN

Subscribed and sworn to before me this 27th day of May 1875.

Andrew J. Moses, Notary Public,
State of Oregon.

(Notarial Seal)

Stephen Blank then offered the following resolutions which were unanimously adopted.

"Whereas, Under the management of Ben Holladay, our investment in the Stock of the Oregon Central Railroad has been greatly depreciated, the rights of the creditors and stockholders have been defied, and the interests wants and convenience of the people along the line of the road wholly ignored and the road itself suffered to get out of repair, thereby imperiling the lives of passengers and endangering the safety of property, therefore be it resolved

1st—That we hereby wholly condemn and disapprove of the management of the Oregon Central Railroad by said Ben Holladay.

2nd—That we have good reason to believe that said Holladay has wrongfully and unlawfully appropriated and converted to his own use a large amount of the funds borrowed to construct said Road; and we therefore call upon the new Board of Directors to make a thorough investigation of said Holladays' acts, and if these suspicions be well founded, to take such steps as will compel the return of said property.

3rd—That we hereby instruct the Board of Directors to immediately put the Road in thorough repair, and make such regulations as will fully accommodate the people on its line and build up its business. On motion of W. T. Newby the stockholders meeting then adjourned sine die.

Attest:

J. GASTON, Secretary

S. COFFIN, President pro tem (of the O. C. R. R. Co. and Chairman (of the Stockholders' meeting.

Office of the Oregon Central R. R. Co.

Portland, Oregon May 27th 1875

In pursuance of a call of the President of the Company the Board of Directors met at the office of the Company this 27th day of May 1875, and was called to order by the President of the Stockholders meeting. On motion S. Coffin was elected President of the Board pro tem and J. Gaston Secretary pro tem.

On motion the Directors present, viz, S. Coffin, W. T. Newby, H. Buxton, Robt Imbrie, O. H. Kimball and J. Gaston proceeded to organize the Board by electing by ballot a President, Secretary and Treasurer, and General Superintendent. The President appointed O. H. Kimball, Teller, and the votes being cast by separate ballots, it was found that J. Gaston had received five votes for the office of President, that O. H. Kimball had received six votes for the office of Secretary and Treasurer, and that J. L. Hallett had received six votes for the office of General Superintendent. Durham and Thompson were then appointed the Attorneys for the Company; and the President directed to remove the safe, desks etc to the Freight office of the Company. On motion the Board then adjourned.

Attest:

J. GASTON, Sec. pro tem.

S. COFFIN, President pro tem

State of Oregon)
) ss.
Multnomah County)

Know all men by these Presents, that I, Stephen Coffin by virtue of the power and authority reposed in me by the stockholders of the Oregon Central Railroad Company, and by the General Incorporation laws of said State and the By-Laws of said Corporation, and as President of said Oregon Central Railroad Company and Chairman of the annual meeting of the Stockholders of said Company, held at the office of said Company, in the City of Portland Oregon this 27th day of May 1873 do hereby certify that I have acted as Inspector of the annual election by said Stockholders for a Board of Directors, this day held in pursuance of regular notice, and that at said annual election the following named persons severally received the number of votes set opposite their respective names, viz: Stephen Blank 5 votes, George Morrow

W. T. Newby.....25272 votes,
Henry Buxton.....25272 votes,
O. H. Kimball.....25272 votes,
Stephen Coffin .....25272 votes,
Robt Imbrie.....25272 votes
D. C. Lewis.....25272 votes
J. Gaston .....25267 votes

And I do further certify that said named persons, to

wit: W. T. Newby, Henry Buxton, O. H. Kimball, Stephen Coffin, Robt. Imbrie, D. C. Lewis, and J. Gaston have been regularly, duly and legally elected Directors of the said Oregon Central Railroad Company, and entitled to exercise the office thereof for the next ensuing year.

S. COFFIN,
President pro tem and Chairman
of the Oregon Central R. R. Co. of
Stockholders meeting.

Attest: J. GASTON,
Secretary

Know all men by these presents that I W. T. Newby, and I Henry Buxton, and I J. Gaston, and I O. H. Kimball, and I Stephen Coffin, and I Robt Imbrie, and I D. C. Lewis, being each first duly sworn to state the truth, say we each for himself, that I (we) will faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company, to which office I have been elected, for the next ensuing year, So help me God.

J. Gaston
O. H. Kimball
S. Coffin
W. T. Newby
H. Buxton
Robt Imbrie

Subscribed and sworn to before me this 27th day of May 1875.

ANDREW J. MOSES,
Notary Public, State of Oregon

(Notarial Seal)

State of Oregon)
) ss.
Multnomah County)

Know all men by these Presents, that I, D. C. Lewis, being first duly sworn say, that I will faithfully and honestly discharge the duties of a Director of the Oregon Central Railroad Company of Portland, Oregon, for the term to which I was elected on the 27th day of May, 1875, at the annual meeting of the Stockholders of said Company, So help me God.

D. C. LEWIS.

Subscribed in my presence and sworn to before me this 21st day of June, 1875.

GEO. H. DURHAM,
Notary Public for Oregon.

(Notarial Seal).

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OF

O. C. R. R. CO.

OF PORTLAND

VOL. III.

Office of the Oregon Central R. R. Co.

Portland, Oregon, May 27th 1875.

This being the day fixed by the By laws for the annual meeting of the Stockholders of the Oregon Central Rail Road Company, and due notice of the same having been given, a meeting of the Stockholders of said Company was duly held at the office of the Company at Portland, Oregon at 12 o'clock M. of this the 27th day of May A. D. 1875. In the absence of the President of the Company, W. L. Halsey Vice President of the Company was called to the chair and acted as the President of the stockholders meeting. J. Gaston, the Sec-

retary of the Company, refusing to serve as Secretary of the meeting, H. Hampton was on motion of J. N. Dolph, seconded by G. W. Weidler, duly elected Secty pro tem. A roll of Stockholders of the Company being called the following stock was represented, namely

J. N. Dolph owner of	5	shares
G. W. Weidler, owner.....	495 5/8	"
W. L. Halsey, owner.....	5	"
M. S. Latham individually and as Trustee by W. L. Halsey proxy owner of.....26,000		"
J. C. Norris by W. L. Halsey proxy owner of	2,500	"
In all 29,005-5/8		"

J. N. Dolph moved that the Stockholders meeting now proceed to the election of a board of Directors of this Company for the ensuing year. The motion was seconded by Geo. W. Weidler and upon the vote being had the motion was unanimously carried. Whereupon the Stockholders meeting proceeded to the election of a Board of Directors and a ballot being had resulted as follows:

Ben Holladay received.....	29,005-5/8	votes
W. L. Halsey "	29,005-5/8	votes
G. W. Weidler "	29,005-5/8	votes
H. W. Scott "	29,005-5/8	votes
M. Crawford "	29,005-5/8	votes
T. R. Cornelius "	29,005-5/8	votes
S. G. Reed "	29,005-5/8	votes

And said Ben Holladay, W. L. Halsey, G. W. Weidler, H. W. Scott, M. Crawford, T. R. Cornelius and S. G. Reed having each received the unanimous vote of the Stockholders present, and more than a majority of all the Stock of this Company were each declared duly elected Directors of this Company for the ensuing year and thereupon the President of the meeting filed a certificate of their election as such Directors, which is as follows, to wit:

"State of Oregon, County of Multnomah), S. S.

I, W. L. Halsey, Vice President of the Board of Directors of the Oregon Central Rail Road Company, hereby certify that at the annual meeting of the Stockholders of the Oregon Central Railroad Company held at the office of said Company at the City of Portland in the County of Multnomah in the State of Oregon, at 12 o'clock M. of the 27th day of May A. D. 1875 the following persons were duly elected Directors of said Company for the ensuing year, to wit:

Ben Holladay, W. L. Halsey, G. W. Weidler, H. W. Scott, M. Crawford, T. R. Cornelius and S. G. Reed. And that said Directors each received Twenty Nine Thousand and Five votes at said election, and more than a majority of all the Stock of said Company.

May 27th 1875.

W. L. HALSEY,

Vice President of Co. & President of Meeting of Stockholders.

On Motion July 10th proximo was fixed as the time of the first meeting of the Directors.

On motion the meeting then adjourned.

W. L. HALSEY,
Prest. Stockhlds. Mtg.

H. HAMPTON,
Secty. Pro tem

Office of the Oregon Central R. R. Co.
Portland, Or. May 31 /75

At a special meeting of the Board of Directors of the Oregon Central R. R. Co. held this day, due legal notice having been given to all the Directors of the Company in this State, were present.

W. L. Halsey, V. P. in the chair, M. Crawford, T. R. Cornelius, G. W. Weidler.

M. Crawford was elected unanimously Secty. pro tem. On motion of M. Crawford seconded by G. W. Weidler, it was

Resolved: That J. Gaston, Secretary of this Company, be and he is hereby removed from the office of Secretary of this Company.

On motion of T. R. Cornelius seconded by G. W. Weidler it was

Resolved: That H. Hampton be and he is hereby appointed Secretary of the Oregon Central Rail Road Company.

On motion of Mr. Crawford seconded by T. R. Cornelius it was

Resolved: That upon qualifying as Secretary of this Company, H. Hampton be and he is hereby authorized and directed to demand of J. Gaston, former Secretary, the Seal of this Company, and all books, papers, records, and other property in his possession, and if said Gaston shall refuse to deliver the same, the Attorney of this Company is hereby directed to replevin the same in the name of this Company.

On motion of T. R. Cornelius seconded by M. Crawford the meeting then adjourned.

M. CRAWFORD,
Secty Pro tem.

W. L. HALSEY V. Prest.

Office Oregon Central R. R. Co.
Portland, Oregon, July 10th 1875.

At a meeting of the Board of Directors of the Or. Central R. R. Co. held this 10th day of July 1875 pursuant to resolution adopted at meeting of Stockholders May 27th 1875, were present the following directors elect viz

W. L. Halsey
M. Crawford
S. G. Reed
T. R. Cornelius

H. W. Scott
Geo. W. Weidler

who qualified as such under the laws of the State of Oregon by subscribing to an oath of which the following is a copy, the original being duly filed, to wit

State of Oregon, County of Multnomah, S. S.

We, Geo. W. Weidler, W. L. Halsey, T. R. Cornelius, S. G. Reed, M. Crawford and H. W. Scott, being each first duly sworn, say and each for himself says, that I will support and maintain the Constitution of the United States and of the State of Oregon, and will faithfully and honestly discharge the duties of Director of the Oregon Central R. R. Company of Portland during my term of office, So help me God.

(Signed)	GEO. W. WEIDLER
"	W. L. HALSEY
"	T. R. CORNELIUS
"	S. G. REED
"	M. CRAWFORD
"	H. W. SCOTT

Subscribed and sworn to before
me this 10 day of July A. D. 1875.
(Seal)

(Signed) I. R. MOORES

Notary Public for State of Oregon, County of Multnomah.

Ben Holladay, also a director elect, being absent from the State, qualified as a Director of the Or. Central R. R. Co. before a Commissioner for the State of Oregon in the City of Washington, D. C., by subscribing to an oath of which the following is a copy, the original being filed, to wit:

United States of America, District of Columbia) S. S.

I, Ben Holladay, having been first duly sworn, say that I will support the Constitution of the United States and the State of Oregon, and will faithfully and honestly discharge the duties of Director of the Oregon Central Rail Road Co. of Portland during my term of office.

(Signed) BEN HOLLADAY

Subscribed and sworn to before me, Jos. T. K. Plant, a Commissioner of the State of Oregon, this 24th day of June A. D. 1875.

(Seal)

Signed JOS. T. K. PLANT

Commissioner of the State of Oregon.

On motion of W. L. Halsey seconded by H. W. Scott, T. R. Cornelius was chosen Chairman and H. Hampton Secty of the meeting.

The Chairman announced the first business of the meeting to be the election of Officers for the ensuing year.

W. L. Halsey nominated Ben Holladay for President of the Company, which being duly seconded and there being no other nomination an election by ballot was held, in which Ben Holladay received all the votes cast—five in number—and was declared duly elected President of the Compy.

Geo. W. Weidler nominated W. L. Halsey for Vice-President of the Or. Central R. R. Co. which being duly seconded, and there being no other nomination, an election by ballot was held in which W. L. Halsey received all the votes cast—four in number—and was declared duly elected Vice President of the Company.

W. L. Halsey nominated H. Hampton for Secty of The Oregon Central R. R. Co., which being duly seconded and there being no other nomination, an election by ballot was held in which H. Hampton received all the votes cast—four in number—and was declared duly elected Secretary of the Company.

W. L. Halsey nominated H. Hampton for Treasurer of the Oregon Central R. R. Co., which being duly seconded and there being no other nomination, an election by ballot was held in which H. Hampton received all the votes cast—four in number—and was declared duly elected Treasurer of the Company.

The Board of Directors being now fully organized, T. R. Cornelius, temporary Chairman, vacated the Chair and Vice Pres. W. L. Halsey assumed the same.

The resignation of S. G. Reed as a director of the

Or. Central R. R. Co. was read by the Scty, and on motion of T. R. Cornelius seconded by M. Crawford was accepted and ordered filed.

There being no further business to transact, on motion of C. W. Weidler seconded by M. Crawford the Board of Directors adjourned.

H. HAMPTON, Secty.

W. L. HALSEY V. Prest.

Office of the Or. Centl. R. R. Co.

Portland July 13 /75

At a meeting of the Board of Directors of the Or. Central R. R. Co. held at the office of the Company this 13th day July 1875, being the day fixed for the regular monthly meeting of the Directors, were present Geo. W. Weidler, M. Crawford, H. W. Scott. There not being a quorum of the Board present the meeting adjourned.

H. HAMPTON, Scty.

Office of the Or. Centl. R. R. Co.

Portland, September 3, 1875.

At a special meeting of the Board of Directors of the Oregon Central Railroad Co. held at the office of the Company this 3rd day of September 1875, the following named persons Directors of this Company were present. T. R. Cornelius, H. W. Scott, M. Crawford and Geo. W. Weidler. The President and Vice President both being absent, T. R. Cornelius was elected temporary Chairman the Secretary read the resignation

of W. L. Halsey as Vice President and on motion of Mr. Weidler seconded by Crawford it was accepted. G. W. Weidler was nominated for the office of Vice President and upon the ballot being cast he was unanimously elected.

On motion of H. W. Scott seconded by M. Crawford it was

Resolved: That H. Hampton, Secretary of this Company, be and he is hereby authorized to audit settle adjust and compromise the whole or any portion of the accounts between this Company and J. Gaston and to execute all necessary releases and receipts.

On motion of H. W. Scott seconded by M. Crawford it was

Resolved: That the President and Secretary of this Company be and they are hereby authorized to borrow of Milton S. Latham the sum of Twenty four hundred dollars Coin to be used to satisfy the judgment and costs in the case of W. T. Newby vs the Oregon Central Railroad Company in the Circuit Court for Multnomah County, and costs of pending litigation with said Newby. And the further sum of One thousand Dollars Coin to be paid to said Newby upon a full release and settlement of all further claims and demands against this Company and the surrender to this Company of two bonds of this Company of the denomination of one thousand dollars each now in possesison of said Newby and all interest coupons of said bonds, and the further sum of five hundred dollars coin to be paid upon compromise of cer-

tain pending litigation growing out of the last stockholders meeting of this Company concerning the legality of the election of the Directors of this Company, and to pledge to said Latham the net earnings of the Road of this Company as security for said loan and that they are hereby directed to set apart for that purpose monthly the net earnings of the Company until such indebtedness is liquidated.

And Resolved: That the President and Secretary of this Company be and they are authorized to pay said several sums for the purposes indicated above upon the settlement of such pending litigation to the satisfaction of the Attorney of this Company.

On motion of M. Crawford seconded by H. W. Scott it was

Resolved That: The President and Secretary of this Company be and they are hereby authorized and directed to establish stations at Hillsboro and Forest Grove in Washington County upon the following terms and conditions. The Company to use its own iron and ties for side tracks and switches and to put it down and to permit the people of those places to put up such buildings as they shall desire for warehouses and other buildings to accommodate the business at those places upon the same terms as the most favored stations upon the Road. The people at those places to give and secure to the Company the right of way for the Road of this Company through the lands of Wheelock Simmons at Hillsboro, and Alvin T. Smith at Forest Grove and to secure and

cause to be conveyed to the Company also sufficient lands for all necessary side tracks, switches, depot grounds, warehouses wood grounds and water tanks and car yards and other ordinary appurtenances of the Road and to bear all the expenses of establishing said stations aside from the iron and ties and putting down the same. The lands to be selected by the Superintendent of this Company and to be sufficient for the purpose. Whole to be conditional also upon the settlement of all pending litigation concerning the organization of this Company and as to the Board of Directors. Said lands to be conveyed to the Company upon condition they are to be used for the purpose of stations.

On motion of H. W. Scott seconded by Crawford it was Resolved That: Upon the compromise of pending litigation concerning the organization of this Company and dismissal of all actions on freight orders, the President and Secretary of this Company be and they are hereby authorized and directed to receive and cause to be received according to the terms thereof in payment for freight in the order presented all outstanding freight orders of this Company which shall appear to be genuine and duly issued by the Company and not paid or redeemed and which shall be presented in payment for freight equal in amount to the orders represented and which shall be presented within eight months from this date but not exceeding in the total amount four thousand dollars and not exceeding one thousand dollars per month.

There being no further business before the Board on

motion of H. W. Scott seconded by M. Crawford the Board adjourned.

GEO. W. WEIDLER, Vice Prest.

H. HAMPTON, Scty.

Portland, Sept. 14th 1875.

At a regular meeting of the Board of Directors of the O. C. R. R. Co. held at their office this day were present Geo. W. Weidler, V. P., T. R. Cornelius. There being no quorum present the meeting adjourned.

H. HAMPTON, Scty.

Portland, Sept. 15, 1875.

At a special meeting of the Board of Directors of the Or. Centl. R. R. Co. held this day at their office were present G. W. Weidler, V. P., in the chair, H. W. Scott, M. Crawford, T. R. Cornelius.

The Chairman having stated the object of the meeting to be the election of a director vice S. G. Reed—H. Hampton was nominated to the position by T. R. Cornelius, which nomination being duly seconded a ballot was had resulting in the unanimous election of H. Hampton as director of the Company, who qualified as follows: State of Oregon, Co. of Multnomah) ss. I, H. Hampton, being first duly sworn, say that I will support and maintain the Constitution of the United States and of the State of Oregon, and will faithfully and honestly discharge the duties of Director of the Oregon Central R. R. Co. of Portland during my term of office. So help me God.

H. HAMPTON.

Subscribed and sworn to before me this 16th day September 1875.

(Seal)

I. R. MOORES
Notary Public.

On motion of M. Crawford seconded by T. R. Cornelius the board adjourned.

H. HAMPTON, Scty.

Office Or. Cenl. R. R. Co.

Portland, Oregon, Feb. 23, 1876.

At a special meeting of the Board of Directors of the Or. Cent. R. R. Co. held at their office this day there were present: Geo. W. Weidler, Vice Pres. in the chair, T. R. Cornelius, M. Crawford, H. Hampton.

On motion of Mr. Crawford seconded by Mr. Cornelius the following resolution was adopted:

Whereas: This Company, The Oregon Central Railroad Company of Portland is unable for want of funds to pay the taxes assessed and levied against the Company in the Counties of Washington and Yamhill in the State of Oregon, and Whereas the Road of said Company is liable to be levied upon and advertised for sale in said Counties for said taxes and unless payment thereof is made will be sold and additional costs and expenses incurred. Resolved, That this Company negotiate a loan of Milton S. Latham of the State of California for the sum of four thousand dollars in gold Coin to pay said taxes in said Counties which sum shall be made payable to said Milton S. Latham on demand with

interest at the rate of one per cent per month.

Resolved that to secure the payment of said loan the net earnings of the Road of this Company be hereby pledged and set aside monthly for the liquidation of the same until said loan shall be fully paid and discharged, and the Treasurer of the Company is hereby directed without further order to apply all such net earnings monthly until such loan and the interest thereon is fully paid. Resolved: That the President and Secretary of this Company be and they are hereby authorized and directed to execute in the name of this Co. and under its Corporate Seal or otherwise the promissory note of this Co. for the loan aforesaid and such other instruments as shall be necessary to secure payment of such loan and interest and the appropriation of the net earnings of the Road as herein provided.

The Secretary then read the resignation of H. W. Scott as Director of this Company which on motion was accepted.

Geo. V. James was then put in nomination for Director in place of Mr. Scott resigned, which nomination being duly seconded a ballot was had which resulted in the unanimous election of Mr. James as Director, who qualified as follows: State of Oregon, Multnomah Co.) SS. I, Geo. V. James being first duly sworn, say that I will support and maintain the Constitution of the United States of America and of the State of Oregon and will faithfully and honestly discharge the duties of Director of the Oregon Central R. R. Co. during my term of office. "So help me God."

GEO. V. JAMES.

Subscribed and sworn to before me this 23 day of Feb. A. D. 1876.

I. R. MOORES Notary Public (Seal)

On motion of Mr. Cornelius, seconded by Crawford, the following Resolution was unanimously adopted. Resolved: That the President and Secretary of this Company be and they are hereby authorized and directed to receive and cause to be received according to the terms thereof in payment for freight in the order presented a certain number of outstanding freight orders in the total amount not to exceed five hundred dollars the same not having been ordered to be received by a resolution adopted by the Board of Directors of this Company Sept. 3, 1875.

No further business offering itself for the action of the Board on motion Board adjourned to meet at call of the President.

GEO. W. WEIDLER, Vice President
H. HAMPTON Secretary.

Office of the Oregon Central R. R. Co.

Portland, Oregon, April 7th 1876.

At a special meeting of the Board of Directors of the Oregon Central Railroad Company held at their office this day were present Geo. W. Weidler, Geo. V. James, M. Crawford, H. Hampton, Directors.

On motion of Mr. Weidler, seconded by Mr. James, the following resolutions were adopted.

"Resolved: That this Company negotiate a loan of Milton S. Latham, of the State of California, for the

sum of Six Thousaid Dollars $6,000 in Gold Coin, the said sum being needed to pay the wages and salaries of the servants and employees of the Company, and which sum shall be made payable to said Milton S. Latham, on demand with interest at the rate of one per cent per month in like Gold Coin.

"Resolved: That to secure the payment of said loan, that after the payment of a certain note of this Company for Four Thousand Dollars dated March 15th 1876, now held by the said Milton S. Latham, the net earnings of the Road of this Company be and are hereby pledged and set aside, monthly, for the liquidation of the same until said loan shall be fully paid and discharged, and the Treasurer of the Company is hereby directed to apply all such earnings, after payment of said note of $4,000. monthly until such loan and interest thereon is paid.

"Resolved: That the President or the Vice President in his absence, and Secretary of the Co. be and are hereby authorized and directed to execute in the name of this Company under its Corporate Seal or otherwise, the promissory note of the Company for the loan aforesaid and such other instruments as shall be necessary to secure payment of said loan and interest and the appropriation of the net earnings of the road as herein provided.

On motion of Mr. Crawford duly seconded the meeting adjourned.

H. HAMPTON, Secty.

Office of the Oregon Central R. R. Co.

Portland, Oregon, April 20th '76.

At a special meeting of the Directors of the O. C. R. R. Co. held at their office in Portland this day were present: Geo. W. Weidler V. Pres., T. R. Cornelius, W. L. Halsey, M. Crawford, Geo. V. James, H. Hampton.

Ben Holladay's resignation as President & Director was read and offered by Mr. Hampton, and on motion of Mr. Halsey duly seconded was accepted.

Col. T. R. Cornelius was then nominated for President by G. W. Weidler seconded by Capt. M. Crawford and was elected by acclamation.

On motion of Mr. Hampton duly seconded the following preamble & resolutions were adopted.

Whereas, the Bonds issued by this Company in pursuance of a resolution of the Board of Directors of this Company passed July 11th /71, have been and now are pledged to Milton S. Latham, Trustee, as security to certain creditors of this Company for a loan of One Million of Dollars borrowed for the construction of the road of this Company; and whereas this Company is indebted in other and further amounts for moneys expended in the construction of its Railroad; and whereas by an agreement dated Feby. 29th 1876, between Ben Holladay party of the first part and Heinrich Hohenemser of the City of Frankfort on the Main, Prussia, Director of the Deutsche Vereins Bank in the above

City and other owners of Ten Millions more or less First Mortgage Bonds of the Oregon and California Railroad Company parties of the second part, provision is made for the release and cancellation of certain of such further indebtedness of this Company, including the claim of the North Pacific Transportation Company, a corporation incorporated under the laws of the State of California, and also for a modification advantageous to this Company of the existing contracts between this Company and the Oregon Transfer Company, a corporation incorporated under the laws of Oregon, and for other things beneficial to this Company upon condition of the issuing by this Company and delivery to said Ben Holladay or his assigns, of three hundred bonds of this Company of One Thousand Dollars each, payable in thirty years after this date to wit: March 1st 1876 bearing seven per cent interest per annum, payable semi-annually, principal and interest to be payable in Gold Coin, the interest thereon to be secured by the pledge of the net earnings of the Oregon and California Railroad Company so far as the said parties of the second part to said agreement have a right to receive or control the same as representatives of the Bondholders of said road, said bonds also to be secured by second mortgage upon the property of this Company, all of which will more fully appear by reference to said agreement; and whereas it is deemed for the best interests of this Company to carry out said agreement by the issuing and delivery of said bonds upon the

conditions and for the purposes in said agreement specified. Therefore, Resolved: That bonds of this Company to the number of three hundred of the denomination of $1,000.00 each be issued for the purpose aforesaid or to be otherwise disposed of as shall hereafter be determined by this Board.

Resolved: That said bonds be prepared and issued by the President & Secretary of this Company and be signed by them and sealed with the corporate seal of this Company and be dated on the first day of March 1876 and to be payable to the holder thereof in Gold Coin of the United States of America thirty years after the date thereof, to wit on the first day of March 1906, with interest in like Gold Coin at the rate of seven per cent per annum, payable semi-annually on the first day of March and September of each year on the presentation and surrender of the dividend or interest warrants to be annexed to said bonds and each of them, both principal and interest, to be payable in the City of New York State of New York.

That said bonds be numbered from one to three hundred both inclusive and be in the following form: No. ..... $..... United States of America, State of Oregon, Oregon Central Railroad Company, incorporated November 21st 1866. Mortgage Bonds. Know all men by these presents: That the Oregon Central Railroad Company, a body corporate, created under and pursuant to the laws of the State of Oregon, hereby acknowledge itself indebted and bound to the holder hereof, in the sum of One Thou-

sand dollars gold coin of the United States of America, which sum the Oregon Central Railroad Company hereby promises to pay at the Banking House of Messrs. Rutten & Bonn, in the City of New York, State of New York, to the said holder, on the First day of March A. D. 1906 with interest from and after March First 1876, at the rate of seven per centum per annum, payable semi-annually at the said Banking House of Messrs. Rutten & Bonn, in the City of New York, on the First day of March and September of each year after March 1st 1876 on presentation and surrender of the annexed dividend or interest warrants.

This bond is one of a series of three hundred bonds of one thousand dollars each, numbered from one to three hundred both inclusive and amounting in the aggregate to three hundred thousand dollars, and which have been made and executed by said Oregon Central Railroad Company, under express authority granted by acts of the Legislature of the State of Oregon, and also by an Act of the Congress of the United States of America approved May 4th in the year of our Lord one thousand eight hundred and seventy and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," and for the purpose authorized by and specified in said acts, and each of them, and as security for the payment to the holders of said issue of three hundred bonds, with interest to grow due thereon, said Oregon Central Railroad Company, has duly executed, acknowledged and delivered under

the authority of said several Acts, and of resolutions unanimously passed and adopted by its Board of Directors, W. D. Shipman & S. L. M. Barlow as trustees, a mortgage or deed of trust bearing even date herewith, and whereby all the real and personal property, rolling stock, road, Depots, Stations, side tracks, wood yards, franchises and effects now owned or acquired, or hereafter to be owned or acquired by it are mortgaged and conveyed to the said Trustees, and the survivors of them as by reference to said mortgage or deed of trust, or the record thereof will more fully appear, and to which, and to all the terms and provisions thereof, reference is hereby specially made.

And as a further security for the payment to the holders of said issue of said three hundred bonds with interest to grow due thereon, the said Oregon Central Railroad Company has in the manner and upon the terms and conditions specified in the said mortgage or deed of trust irrevocably appropriated and set apart all the net proceeds of the sales of the lands granted to aid in the construction of the Railroad and Telegraph line of the said Oregon Central Railroad Company, from Portland to Astoria and McMinnville, in the State of Oregon, described and mentioned in the Act of Congress of the United States of America, approved May 4th 1870, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," for the creation and maintenance of a sinking fund, to be kept invested in the bonds of the United

States, or other safe and more productive securities, for the purchase from time to time and the redemption at maturity, of all said Bonds, both principal and interest, in the mode and manner specified in said mortgage or deed of trust, and to which reference is hereby made as a part hereof.

In witness whereof, the said Oregon Central Railroad Company has caused this bond to be signed by its President and attested by its Secretary and its Corporate Seal to be hereto affixed, at its office in the City of Portland, in the County of Multnomah, and State of Oregon, under the express authority of resolutions of its Board of Directors this 20th day of April the year of our Lord one thousand eight hundred and seventy six. (Signed) President (Signed) Secretary.

This is to Certify that the above bond is one of Three Hundred bonds which are embraced in the mortgage or deed of trust bearing even date herewith, made and executed by the Oregon Central Railroad Company, whereby all its real and personal property, rolling stock, equipment, road, depots, stations, side-tracks, woodyards, franchises and effects, acquired and to be acquired, and also all the lands granted to said Oregon Central Railroad Company by the Act of Congress of the United States of America, approved May 4th 1870, and entitled an "Act granting land to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," are mortgaged and conveyed to us as Trustees, subject to a prior mortgage of all said property executed to Milton S.

Latham, and Faxon D. Artherton, as trustees, dated July 15th 1871 as security for the payment of all said bonds, and which mortgage or deed of trust has been recorded in the several counties of Oregon through which the Railroad of said Company runs, and constitutes a lien or incumbrance upon the property therein described, subsequent only to the lien of said prior mortgage. Trustees.

Resolved: That the coupons annexed to said bonds be in the following form:

$.....

The Oregon Central Railroad Company will pay to the holder hereof .... dollars in United States Gold Coin at the banking House of Ruetten and Bonn in the City of New York, on the first day of ..... 18.., being semi-annual interest on Bond No..... Secretary.

Resolved: That to secure the payment of said bonds, and the interest thereon, the President and Sect'y execute and deliver in the name of the Company, and on its behalf, and as and for its act, a mortgage or deed of trust on the said railroad of this Company, now constructed or which may be hereafter constructed from Portland to Astoria, and from a suitable point of junction, at or near Forest Grove, to the Yamhill River, at or near McMinnville, in Oregon, and all the property and franchises connected with, or appertaining to the said Railroad, now owned or held, or which may hereafter be owned or held by this Company, as aforesaid.

That W. D. Shipman & S. L. M. Barlow of the City of New York, State of New York, be named in said mortgage or deed of trust, as mortgagees and trustees for the holders of said bonds, and coupons thereto annexed, and that said mortgage or deed of trust be delivered to them, they having consented to act as such mortgagees and trustees, and being hereby selected for such purpose, and that said mortgage be sealed with the Corporate seal of this Company, and be in the words and figures following, that is to say:

Rail Road Mortgage. This Indenture made this first day of March in the year of our Lord One Thousand Eight Hundred and Seventy six, between The Oregon Central Rail Road Company, a body corporate, created by and under the Acts of the legislature of the State of Oregon in that behalf made and provided, party of the first part, and W. D. Shipman and S. L. M. Barlow of the City and County of New York in the State of New York, parties of the second part.

Witnesseth: Whereas, the said party of the first part is expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon, and the Act of Congress of the United States approved May 4th 1870, and entitled an "Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon," to issue bonds and to secure payment of the same by a mortgage or deed of trust, as hereinafter set forth and provided.

And, Whereas, under and pursuant to the lawful

authority conferred by said several Acts of the legislature of the State of Oregon, and of the Congress of the United States aforesaid, the Board of Directors of the said party of the first part have unanimously resolved in substance and legal effect, that said "Oregon Central Railroad Company" make, execute, issue and deliver under its Corporate Seal, its corporate Bonds, bearing date even herewith, severally, payable to the holder thereof, at the Banking house of Messrs. Ruetten and Bonn, in the City of New York State of New York, on the first day of March 1906 with interest from and after March first 1876 at the rate of seven per centum per annum, payable at the same Bank semi-annually, principal and interest, payable in Gold Coin as follows: that is to say: That three hundred of said Bonds be made or issued for the sum of One Thousand dollars each, in the aggregate, amounting to Three hundred Thousand dollars, and no more, and that for the purpose of a more specific identification thereof, said three hundred bonds be numbered in a consecutive series from one to three hundred, both inclusive, and that upon the face of each Bond be printed or engraved a certificate signed by the parties of the second part hereto to the effect that such Bond is one of the three hundred bonds intended to be secured by these presents. And, Whereas, said Board of Directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part by the Acts aforesaid in substance and legal effect, that the President and Secretary of said party of the first part execute and

acknowledge in its name, and in its behalf, and under its Corporate Seal and deliver to said parties of the second part hereto, a mortgage or deed of trust, conveying, assigning and transferring to them in trust, all its corporate real and personal property, road, depots, stations, side tracks, wood yards, franchises and effects as security for the payment of said three hundred bonds and interest to grow due thereon, and that such mortgage or deed of trust should contain all and singular the covenants, provisions and conditions hereinafter set forth, and that said mortgage or deed of trust, and the three hundred bonds thereby secured, be severally dated the first day of March, one thousand eight hundred and seventy six.

And, Whereas, the Congress of the United States of America did by an Act approved May 4th in the year of our Lord One Thousand Eight Hundred and Seventy, and entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," grant to the "Oregon Central Railroad Company" and to their successors and assigns, the right of way through the public lands, of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands the material for constructing said road, also necessary lands for depots, stations, side tracks and other needful uses in operating said road, not exceeding forty acres in any one place, and also each alternate section of the public lands, not mineral, excepting coal and iron lands designated by the

odd numbers nearest said road, to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right, at the time of the passage of said Act, and in case the granting of ten full sections per mile could not be found on each side of said road, within said limits of twenty miles, other lands could be selected under the directions of the Secretary of the Interior, on either side of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

And, Whereas, the said "Oregon Central Railroad Company, party of the first part hereto, in and by the terms of said Act of Congress of the United States of America, approved May 4th 1870 is required to set apart by mortgage or deed of trust, to two or more trustees, all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the Bonds of the United States or other safe or more productive securities for the purchase from time to time, and the redemption at maturity of the first Mortgage Construction Bonds of the Company on the road, depots, stations, side tracks, and wood yards, not exceeding thirty thousand dollars a mile of the Railroad, payable in Gold Coin, not longer than thirty years from date, with interest payable semi-annually in coin, not exceeding seven per centum per annum—no part of the principal or interest of said fund to be applied to any other use, until all said Bonds shall have been purchased or redeemed or cancelled, and each of the said First Mort-

gage Construction Bonds to bear the certificate of the trustees setting forth the manner in which the same is secured, and its payments provided for. And Whereas, the said "Oregon Central Railroad Company" party of the first part has heretofore issued its bonds, amounting in the aggregate to Four Millions Three hundred Thousand Dollars and as security for the payment thereof has executed a mortgage or deed of trust, of all the property conveyed or intended to be conveyed by this Indenture to Milton S. Latham and Faxon D. Atherton as trustees, which mortgage or deed of trust is dated July 15th, 1871, and is duly recorded in the Records of Mortgages of Multnomah, Washington and Yamhill Counties, in the State of Oregon, all of which bonds are now pledged to Milton S. Latham of San Francisco, in the State of California, in trust for certain creditors of this Company, as security for a loan of One Million dollars, Gold, and accrued interest.

Now Therefore, This Indenture Witnesseth: That the said Oregon Central Railroad Company" the party of the first part hereto, under, pursuant to, and by virtue of the express power and authority conferred upon, and vested in it by said several Acts of the legislature of the State of Oregon, and of the Congress of the United States of America, aforesaid, and under and pursuant to resolutions duly passed and adopted by its Board of Directors, and which are duly entered upon the official minutes of said Board, and for and in consideration of the foregoing premises, and especially for the purpose, and with the intent of better and more

effectually securing the payment of said three hundred bonds with the interest due and to grow due thereon and for and in consideration of one dollar lawful money of the United States of America, by the said parties of the second part hereto in hand fully and truly paid to the said party of the first part hereto, before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, enfeoffed, conveyed and confirmed, and by these presents, doth grant, bargain, sell, assign, transfer and set over, enfeoff, convey and confirm to the said W. D. Shipman and S. L. M. Barlow the said parties of the second part, as Trustees, and in trust, and to the survivor of them, and to their or his successors or successor, all and singular, the Railroad of the said party of the first part heretofore constructed, or hereafter to be constructed from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river near McMinnville in the State of Oregon in all a distance of one hundred and forty six and one half miles, together with all its lands, tenements and hereditaments acquired and appropriated, or which shall hereafter be acquired and appropriated for the purpose of a right of way for its Railroad, and all the appurtenances thereunto belonging, and also all its lands acquired and appropriated, or which shall hereafter be acquired and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America, approved May 4th 1870 and entitled "An Act granting

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lands to aid in the construction of a Railroad and Telegrah line from Portland to Astoria and McMinnville in the State of Oregon, and also its depots engine houses, car houses, station houses, warehouses, machine shops, work shops, superstructures, erections and fixtures and also all and singular the franchises, rights, and privileges now owned possessed or acquired, or which shall hereafter be owned, possesed or acquired, by said party of the first part, and all lands, tenements, hereditaments and real estate acquired and appropriatd wheresoever and whatsoever, or now owned by said party of the first part, or which shall hereafter be owned by it, and also, all and singular the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery and equipments for said Railroad, and now owned or which shall hereafter be owned or acquired by said party of the first part, and also all goods and chattels now owned, or which shall hereafter be owned by said party of first part, and in any way relating or pertaining or belonging to, or connected with said Railroad, or running or operating the same together with all rents, issues, income, profits, moneys, rights, benefits and advantages derived or to be derived, had or received therefrom, by said party of the first part in any way whatsoever.

To Have And To Hold, all and singular, the premises, rights, franchises, property real and personal hereinbefore, and hereby assigned, mortgaged, pledged and conveyed or intended so to be, and every part and parcel thereof, with all the appurtenances unto the same be-

longing or in any wise appertaining, unto them the said W. D. Shipman and S. L. M. Barlow the said parties of the second part hereto, and to the survivor of them, and to their and to his successors and successor, and to their and his assigns in trust for the person or persons, firm or firms, bodies politic or corporate, who have heretofore or who shall hereafter at any time become the purchasers or holders or owners of any or either of said three hundred bonds, amounting in the aggregate to three hundred thousand dollars, subject to the terms, provisions, and stipulations in said three hundred bonds contained, and subject also to the provisions of the Act of Congress of the United States of America, affecting or relating to, or binding upon the party of the first part, and subject also to the prior lien of said mortgage of July 15th 1871, executed by the party of the first part, to Milton S. Latham and Faxon D. Atherton Trustees, in favor of all persons, firms or corporations who have acquired or may hereafter acquire an interest in or become the owners of any of the said bonds secured thereby, and also subject to the possession and management of said Railroad, and property of said party of the first part, and its successors or assigns, so long as no default shall be made in the payment of either the interest or principal of said three hundred bonds, or in or to either of them, or so long as the party of the first part shall well and truly observe, keep and perform, all and singular, the covenants, agreements, conditions and stipulations in such three hundred bonds and in This Indenture contained and set forth, and

which are to be observed, kept and performed by and on the part of the said party of the first part.

And the said "Oregon Central Railroad Company" the party of the first part, has covenanted and agreed, and by these presents doth, for itself, its successors and assigns, covenant and agree with the parties of the second part hereto, and the survivor and survivors of them, and their and his successors and successor, in manner and form following, that is to say:

FIRST, that said "Oregon Central Railroad Co." the party of the first part and its successors, shall and will pay or cause to be paid, all taxes, charges, rates, levies and assessments imposed, assesed or levied or wh may hereafter be imposed, assessed or levied upon the premises, franchises and property hereby mortgaged, conveyed and assigned, or intended so to be, and shall and will, at its own proper cost, expense and charges do or cause to be done all acts and things necessary and proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises, hereby created or intended so to be, and that except the lien of said mortgage of July 15th 1871 there is no lien upon the property conveyed or intended to be conveyed by this Indenture at the ensealing and delivery thereof.

SECOND. That said "Oregon Central Railroad Company," the party of the first part, and its successors shall and will, at any time or times hereafter, and from time to time, execute, acknowledge, and deliver under its

corporate seal, to the said parties of the second part, and the survivors or survivor of them and their or his successors or successor such other and further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing and shall and will do and perform all such further or other acts or things, as shall or may be proper or necessary, or as their or his council learned in the law shall deem necessary, proper or expedient for the better or more effectually securing the payment of said three hundred bonds, and the interest due or to grow due thereon, or for carrying into effect the true intent, design, objects and purposes of these presents, or making, preserving, continuing and keeping valid and effectual the lien and incumbrance created or intended to be created by the execution, delivery and recording of this Indenture, upon all the property real and personal, rolling stock, equipments, franchises and effects, and especially the lands referred to in and by the said Act of Congress approved May 4th 1870, now owned, possessed or acquired or which shall hereafter be owned, possessed or acquired by said party of the first part.

THIRD. And for the purpose of fully and more effectually securing the payment of the said three hundred bonds, together with interest due or to grow due thereon the said "Oregon Central Railroad Company" the party of the first part hereto for itself and its successors hath pledged, and hereby doth irrevocably pledge for the purpose and objects hereinbefore specified to and with the said parties of the second part, and the survivors and survivor of them, their and his successors and

successor, all and singular, the net proceeds of the sales of the lands granted to the party of the first part by the Act of Congress approved May 4th 1870, hereinbefore mentioned, subject however to the prior pledge of the same, in and by said mortgage hereinbefore referred to of July 15th 1871, and for the purposes therein specified, as a sinking fund, to be kept invested by the parties of the second part in the Bonds of the United States or other safe and more productive securities for the purchase, from time to time, and the redemption at maturity of the three hundred bonds of the party of the first part hereinbefore particularly described, and no part of the principal or interest of the said fund shall be applied to any other use, until all the said Bonds shall have been purchased or redeemed and cancelled.

And, in the event that the principal of said three hundred bonds is not otherwise paid at the maturity thereof, then the fund aforesaid after satisfaction of the lien, if any, of said Mortgage and pledge of July 15th 1871, which shall then have accrued from the proceeds of the sales of said lands, and interest thereon, shall be by said trustees, parties of the second part, or the survivor of them, their or his successors or successor, applied to the discharge and payment of any and all amounts, both principal and interest, then remaining due and unpaid on all such bonds, and if such bonds shall then be insufficient to discharge the whole amount then due on all such bonds, the same shall then be applied ratably thereon according to the interests respectively of all such bondholders. AND, It is further stipulated

and agreed between the parties hereto that if there remains any deficit in the payment of the principal and interest due on said three hundred bonds after the whole of the fund aforesaid shall be applied thereon, at the maturity thereof, then the trustees, parties of the second part hereto their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undisposed of which are included in the grant made by Act of Congress aforesaid and which are hereby conveyed and intended to be conveyed in whole or in part, as the said trustees may deem best for the interests of said Bondholders and as may be prescribed or limited by any act of Congress in force at the time of such sale; and if there shall be no such prescription and limitation by law, then said lands shall only be sold at public auction in the City of Portland, in the State of Oregon, to the highest bidder, and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland, State aforesaid, and the proceeds of such sale or sales, after satisfaction of the lien, if any, of said mortgage and pledge of July 15th 1871, shall be applied in like manner to the payment of any balance either principal or interest then remaining unpaid on such bonds aforesaid or any of them.

And, It is hereby expressly covenanted, agreed and understood by and between the parties to these presents, that notwithstanding the execution and delivery of these

presents and of the covenants herein contained, the said "Oregon Central Railroad Company" the party of the first part hereto shall have the right at any time after the execution of these presents to make sales of all and singular the lands granted to said Company by Act of Congress of the United States, approved May 4th 1870, aforesaid, in the manner and mode prescribed therefor by law and that the parties of the second part shall and will at any time after the delivery to them of this Indenture, upon the request of the party of the first part and upon the receipt by the parties of the second part from the party of the first part of so much of the price or consideration for said lands as shall remain after satisfaction of the lien of said mortgage and pledge of July 15th 1871 make, execute and deliver such release, discharges and assurances in respect to said lands as the party of the first part or its counsel learned in the law may require, for the purpose of making good and sufficient title to said granted lands so sold to any and all purchasers thereof, clear and free from all lien or incumbrance created by these presents, and all net proceeds received from the sales of all or any of the lands granted or intended to be granted by said Act of Congress, after satisfaction of said prior lien, shall be received and held jointly by the parties of the second part and the President of the party of the first part and shall be held subject to their control, and shall be immediately and as soon as practicable after the same are received invested by said parties of the second part by and with the consent of the President of the party

of the first part in United States Bonds, or other more productive securities, which securities shall be under the control of the said parties of the second part and the said President of the party of the first part, and shall be used solely for the purposes herein specified, and it is expressly understood and agreed that the lien created by this Indenture on said lands granted by said Act of Congress shall upon the sale of any portion of said lands as aforesaid, and the application of the purchase price thereof as herein provided cease so far as the same relates to the portions of the land so sold. The parties of the second part shall not have the right to make sales of any said lands without the consent of the party of the first part.

FOURTH. That said "Oregon Central Railroad Company" the party of the first part hereto shall and will well and truly pay the said sums of money in said three hundred bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per centum, at the times, in the manner and at the place specified therein; and further, said "Oregon Central Railroad Company" hereby covenants and agrees, that in case it shall have for the period of six months made default in the payment of the semi-annual interest due or to become due on either or any of the said three hundred bonds, or in case it shall fail to appropriate and set apart in the hands of the said parties of the second part, all and singular the net proceeds of the sales of the said lands granted to the party of the first part by the Act of Congress of the United

States as aforesaid, as and for a sinking fund for and to be applied in payment or redemption of said three hundred bonds in the manner and subject to the conditions hereinbefore and in said Act of Congress specified, then and in either of said cases after the lapse of said six months the whole principal sum mentioned in each and all of said three hundred bonds shall forthwith be and become due and payable, and the lien or incumbrance hereby created for the security and payment thereof may be at once enforced, anything in said bonds or in this Indenture to the contrary nothwithstanding, and that it shall and may be lawful and the said parties of the second part and the survivors or survivor of them and their and his successors or successor are hereby expressly authorized and empowered upon the request in writing of the holders of the at least an hundred of the said three hundred bonds, to enter into and upon and to take actual possession of all and singular the railroad premises, franchises, rights, property, real and personal, and effects hereby granted, conveyed, assigned, mortgaged, pledged transferred and set over or intended so to be as a security for the payment of said three hundred bonds, and by themselves or their agents to take, collect and receive the tolls, earnings, income and profits thereof, and every part thereof, or to be derived therefrom, and that they, said parties of the second part, and the survivors and survivor of them and their and his successors and successor, shall and may proceed and are hereby expressly authorized and empowered thereupon, but within such

reasonable time as they may deem proper, not less than sixty days, and upon and after public notice by advertisement for at least six weeks in one or more newspapers published in the Cities of New York, State of New York, and San Francisco, State of California, and Portland, State of Oregon, to proceed to sell at public auction, in said City of Portland, to the highest bidder subject to any prior lien if any there shall be under said mortgage of July 15th 1871, as well all and singular the said railroad rights and franchises as all other the property real and personal and premises hereby granted, conveyed, assigned, mortgaged, pledged, transferred and set over, or intended so to be, and all benefit and equity of redemption whatsoever of the said "Oregon Central Railroad Company," the said party of the first part hereto, of, in and to the same and every part and parcel thereof, together with the benefit of the franchises belonging thereto or connected therewith. And as the Attorney or attorneys of the said "Oregon Central Railroad Company," the said party of the first part hereto, for that purpose by these presents duly appointed and constituted, the said parties of the second part and the survivors and survivor of them, and their and his successors and successor, shall have full power and authority to make, execute and deliver to the purchaser or purchasers thereof, a good, valid and sufficient deed or deeds, conveyance or conveyances, assignment or transfer, in fee simple, or otherwise, of said Railroad, lands, tenements and real estate, and of all and singular the said personal or other prop-

erty rights and premises hereby granted, assigned, transferred or conveyed as aforesaid, which sale so to be made, as aforesaid, and which deeds, conveyances, assignments and transfers, so to be made and delivered as aforesaid, shall operate to convey, assign, transfer and vest in said purchaser or purchasers all the right, title, interest and estate whatsoever reversionary or otherwise, of the said "Oregon Central Railroad Company," the party of the first part, of, in and to the premises so sold, conveyed, assigned or transferred, and which said sales to be made shall be a complete and perpetual bar, both at law and in equity, against the said "Oregon Central Railroad Company" the party of the first part, its successors and assigns, and all persons or parties claiming by, from or under it or them in any wise or manner whatsoever, and that out of the moneys or proceeds arising either from said tolls, earnings or receipts of said Railroad or premises, or at or from said sale so to be made as aforesaid, after first deducting the expenses, disbursements, costs, charges and counsel fees incurred in and about the conducting of said sale, or running and operating said Railroad, that they the said parties of the second part, and the survivors and survivor of them, their and his successors or successor, shall pay said three hundred bonds, or so many as shall be then outstanding and unpaid, together with all arrears of interest then due or owing on the same, rendering or paying over the surplus of all such moneys, if any there shall be, to the said party of the first part hereto, its successors or assigns.

Provided Always, and this Indenture is upon the express condition, that if the existing bonds of the party of the first part secured by said mortgage or deed of trust of July 15th, 1871, shall hereafter be retired and cancelled and the said mortgage extinguished, said "Oregon Central Railroad Company" party of the first part, may create a new mortgage upon its road, lands and property, in this Indenture conveyed and intended to be conveyed to secure its bonds to be issued to an amount including said three hundred bonds, of not exceeding twenty thousand dollars a mile of its road, which bonds shall be issued only in proportion and as fast as such road is completed, and of which bonds said three hundred bonds shall form a part, and upon the execution of such mortgage securing said three hundred bonds as aforesaid, and the completion of the road of said Company to Junction City in the County of Lane in the State of Oregon, this mortgage shall thereupon be surrendered up, extinguished, and cancelled of Record and the lien thereof shall thereupon cease. And provided further, and this Indenture is upon the express condition that in case *of* an arrangement by which the said "Oregon Central Railroad" or the Oregon and California Railroad shall be sold or transferred to or combined with any other Railroad Company or corporation and upon any such sale or reorganization or combination new bonds of any kind shall be issued by such other Railroad Company or corporation and paid for, the said road so sold or transferred then and in any such case an equal number of such new bonds or an

amount the annual interest upon which shall be equal to the interest payable upon said three hundred bonds shall be offered to the owners and holders of said Three Hundred Thousand dollars of bonds to be secured by this Indenture, and in case such new bonds shall be equal in value to the bonds of Pacific Railroad Company, or shall be guaranteed by the Central Pacific Railroad Company or other corporations of equal financial standing, then the owners and holders of said bonds shall accept the same and shall by the purchase of the same to be deemed to have agreed with said Company to accept the same, at any time within six years from March 1st 1876 in lieu of said three hundred bonds secured by this Indenture, and the lien of this Indenture shall thereupon cease and the same shall be surrendered up and cancelled of Record.

This Indenture Further Witnesseth: and these presents are upon the express condition that upon payment in full of said three hundred bonds and the interest due thereon, then these presents and the estate hereby granted shall cease and be void, and The Oregon Central Railroad Company" the party of the first part, shall be immediately and fully reinvested with the said premises hereby granted in law and in fact without any entry or other act whatsoever, and that until default shall be made by said party of the first part hereto either in payment of said three hundred bonds or in payment of the interest due or to grow due thereon, as aforesaid, or in operating and setting apart in the hands of the parties of the second part, their

successors or successor, all and singular, the net proceeds of the sales of said lands granted by the Act of Congress aforesaid, as a sinking fund to be kept invested in Bonds of the United States or other safe or more productive securities for the purposes hereinbefore mentioned and described or in keeping and observing any of the covenants and agreements hereinbefore contained, the said "Oregon Central Railroad Company" the party of the first part, and its successors and assigns, shall remain in the quiet and peaceable possession and enjoyment of the said premises and property hereby granted or conveyed, or intended so to be, as aforesaid.

This Indenture Further Witnesseth: And it is hereby expressly agreed, that in case of the death, resignation, incapacity or inability of any or either of the parties of the second part, to act in the execution of any of the trusts aforesaid, then it shall and may be lawful, and the remaining acting, surviving or competent Trustee or Trustees, and the President for the time being of the party of the first part, are hereby empowered to select and appoint by an instrument in writing, under their hands and seals, which shall be recorded in the same offices where this Indenture shall be recorded, one or more competent persons to fill the vacancy or vacancies so created in the manner aforesaid, and that in case of the death, resignation, incapacity or inability of both of said parties of the second part at the same time, then and in that case it shall and may be lawful, and the President alone for the time being of said party of the first part is hereby empowered in

like manner to select and appoint competent persons to fill the vacancies thus created, and that such person or persons so appointed, trustee or trustees, shall have and possess and be invested with the same rights and power as a trustee or trustees as he or they would have had and possessed or been invested with had he or they been originally made a party or parties of the second part to this Indenture, and shall perform the same duties in all respects, and until such appointment shall be so made in the manner aforesaid, and notwithstanding any vacancy or vacancies as aforesaid, said remaining surviving, acting or competent trustee or trustees shall have full power and authority to execute each and all the trusts hereby created, and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all interests and purposes as if the same acts had been done and performed by all the parties hereto of the second part, and in case said appointment shall be made in the manner aforesaid, said party of the first part hereby covenants to make, execute and deliver all such other and further instruments, deeds, indentures or assurances as may be necessary to enable the person or persons so appointed to execute the trusts hereby created and declared, as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this Indenture.

In Witness Whereof: The said "Oregon Central Railroad Company" the party of the first part hereto, hath caused these presents to be subscribed by its Presi-

dent, and attested by its Secretary, and hath, under the express authority of the Resolutions of its Board of Directors, caused its Corporate Seal to be hereunto affixed, and the parties hereto of the second part, for the purpose of signifying their acceptance of the trusts hereby and herein created have hereunto subscribed their names and affixed their respective seals.

All Done the day and year first above written.

(Seal) (Signed) T. R. CORNELIUS,
President of the Oregon Central Railroad Company.

(Signed) H. HAMPTON,
Secretary of the Oregon Central Railroad Company.

)
) Trustees.
Sealed and delivered in presence of)
)

State of Oregon, County of Multnomah. SS. Be It Remembered, That on this .... day of .... A. D. One Thousand Eight Hundred and seventy-six, before me, the undersigned, a Notary Public in and for the said County of Multnomah and State of Oregon, duly commissioned and qualified, personally came, President of the "Oregon Central Railroad Company" and Secretary of the "Oregon Central Railroad Company" whose names are subscribed to the foregoing Mortgage or deed of trust as the parties thereto, and as the President and Secretary of said "Oregon Central Railroad Company" both personally known to me to be the individuals named and described in, and who executed the said mortgage or deed of trust, and they severally

acknowledged to me that he the said ..... as President of the said "Oregon Central Railroad Company," and he the said ..... as Secretary of the said "Oregon Central Railroad Company," executed the foregoing mortgage or deed of trust, as and for the act and deed of the said Oregon Central Railroad Company, freely and voluntarily, and for the uses and purposes therein mentioned. And he, the said ..... being by me duly sworn, did depose and say, that he is the Secretary of the said "Oregon Central Railroad Company" and resides in the City of Portland, Multnomah County, in the State of Oregon; that he is the legal custodian of, and has in his possession, and is acquainted with the Corporate Seal of the said "Oregon Central Railroad Company;" That the seal affixed to the within and foregoing Mortgage or deed of trust is such Corporate Seal; That the same was so affixed by him as Secretary of said Company on the ....day of .... A. D. One Thousand Eight Hundred and Sexenty-six, by order of the Board of Directors of said Company, and that he signed his name as Secretary thereto by the like order of the said Board of Directors.

In Witness Whereof: I have hereunto subscribed my name and affixed my Notarial Seal the day and year above written, at the City of Portland, Multnomah County, State of Oregon. .....Notary Public in and for the County of Multnomah, State of Oregon.

State of Oregon, Department of State: ss. I, S. F. Chadwick, Secretary of State of the State of Oregon,

do hereby certify that ..... whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said mortgage or deed of trust, was at the time of taking such acknowledgment, and signing such certificate, to wit: on the .... day of .... A. D. One Thousand Eight Hundred and Seventy-six, a duly commissioned, qualified and acting Notary Public in and for the County of Multnomah and State of Oregon, and that he then was by the laws of the State of Oregon duly authorized and empowered to take and certify under its Notarial Seal, acknowledgments of deeds of conveyance and mortgages and deeds of trust, and his signature to such certificate is genuine, also his Notarial Seal, and that full faith and credit are due to his official acts as such.

Witness my hand and the Great Seal of the State at my office in the City of Salem, State of Oregon, this .... day of .... A. D. One Thousand Eight Hundred and Seventy-six.

Secretary, State of Oregon.

Resolved, The President and Secretary be, and they are hereby authorized and empowered to do and perform each and every act and thing necessary or proper to be done or performed under or by virtue of the foregoing resolutions.

No. 1. On motion of Mr. Hampton duly seconded the following preamble and resolutions were adopted.

No. 2. On motion of Mr. Halsey duly seconded, the following preamble and resolutions were adopted.

Whereas it is deemed by this Board for the interests of this Company in order to secure the prompt delivery for shipment at their depots and stations at and within the City of Portland of all freight to be shipped from said City upon the road of this Company, and the prompt delivery of all freight arising at said City of Portland over the road of this Company to the consignees thereof and other advantages secured to this Company by an agreement hereinafter set forth, to enter into a contract with the Oregon Transfer Company, a corporation duly incorporated under the laws of Oregon and having its principal office and place of business at the City of Portland, Oregon, of which contract the following is a copy, to wit:

Therefore, Resolved, that the President and Secretary of this Company be and they are hereby authorized and instructed to execute said agreement in the corporate name of this Company and for and as the act of this Company under their official signature and under the Corporate Seal of this Company.

This Agreement, made and entered into, at Portland, Oregon, this 29th day of April, A. D. One Thousand Eight Hundred and Seventy-six, between the Oregon Transfer Company, a corporation duly incorporated and organized under the General corporation laws of the State of Oregon, and having its principal office and place of business at Portland, Oregon, party of the first part, and the Oregon Central Railroad Company, a corporation duly incorporated and organized under the said laws of the State of Oregon and

having its principal office and.....

On motion of Mr. Halsey duly seconded the following preamble and resolutions were adopted.

Whereas, it is deemed by this Board for the best interests of this Company in order to secure the prompt delivery for shipment at their depots and stations at and within the City of Portland of all freight to be shipped from said City upon the Road of this Company, and the prompt delivery of all freight arriving at said City of Portland over the Road of this Company to the consignees thereof and the other advantages secured to this Company by an agreement hereinafter set forth, to enter into a contract with the Oregon Transfer Company, a Corporation duly incorporated under the laws of Oregon, and having its principal office and place of business at the City of Portland, Oregon, of which contract the following is a copy, to wit:

This Agreement, made and entered into, at Portland, Oregon, this twenty-ninth day of April, A. D. One Thousand Eight Hundred and seventy-six between the Oregon Transfer Company, a corporation duly incorporated and organized under the General corporation laws of the State of Oregon, and having its principal office and place of business at Portland, Oregon, party of the first part, and the Oregon Central Railroad Company, a corporation duly incorporated and organized under the said laws of the State of Oregon, and having its principal office and place of business at the said City of Portland, party of the second part, Witnesseth: That in consideration of one dollar paid

by each to the other of the parties to this Agreement, the receipt whereof is hereby acknowledged, and of the mutual agreements of the parties hereinafter contained, and the mutual benefits resulting and to result to the parties to this agreement under this agreement, it is now covenanted and agreed by and between the said parties of the and second parts hereto as follows:

First. The said Oregon Transfer Company, party of the first part herein, for itself, its successors and assigns, does in consideration aforesaid covenant and agree to and with the said Oregon Central Rail Road Company, its successors and assigns, that it, the said Oregon Transfer Company and its successors and assigns, will for the period and term of ten years next immediately following after the date of these presents, furnish all drays, trucks, horses or mules, and drivers and other persons necessary from time to time to take, and shall and will operate the same, and take, transfer to and from the depots, stations, warehouses of the said Oregon Central Rail Road Company in the said City of Portland, all freight coming either way over the said Oregon Central Rail Road, to and from any and all points in the said City of Portland in the State of Oregon, and will during the said term of ten years, carry, transport and convey all such freight passing over said Rail Road either way, That is to say: All freight coming from the South over said Rail Road to any point within said City of Portland to which the same is consigned or at which it is to be delivered, and all freight to be shipped South over said Road from any point

within said City, to the said Depots, Stations and Warehouses as the Railroad Company may request, with promptness and dispatch, and without unreasonable delay, and so as to keep the depots, stations and warehouses clear from freight.

Second. In consideration whereof, the said Oregon Central Rail Road Company, party of the second part herein, for itself, its successors and assigns, covenants and agrees to and with the said The Oregon Transfer Company, party of the first part herein, that it, the said The Oregon Transfer Company, party of the first part herein, its successors and assigns, shall for and during the said term of ten years after the date of this agreement, have the sole and exclusive right and privilege of conveying and transporting from said Depots, Stations and Warehouses of the said The Oregon Central Rail Road Company, party of the second part, all freight of every description coming over the Rail Road of the Oregon Central Railroad Company, its successors or assigns, to such point or place within the City of Portland to which said freight may be directed or consigned, or at which it is to be delivered, and the sole and exclusive privilege and right of conveying and transporting to said Depots, Stations and Warehouses from any point or place within the said City of Portland, all freight of every description that may during said term of ten years go from said City of Portland to said Depots, Stations or warehouses, or that may during said time go or be forwarded Southward over said Rail Road, from any point within said City. And

the said Oregon Central Railroad Company, party of the second part, in further consideration of the covenants and agreements aforesaid to be by the said party of the first kept and performed for itself, its successors and assigns, covenants and agrees to and with the said party of the first part, its successors and assigns, that it, the said party of the second part, its successors and assigns, shall and will during said term of ten years next ensuing after the date of this agreement pay or cause to be paid monthly, at the end of each and every month during said period of ten years, in United States Gold Coin, so long as the business of the said party of the second part shall continue to be conducted upon a coin basis, but should at any time during said period the business of the party of the second part be conducted upon a currency basis, and freights and fares received in currency, then and in that case, in currency to said Oregon Transfer Company, party of the first part, or its successors or assigns, the following sums and rates for all freight transported over said Rail Road of the party of the second part, coming to or passing through the City of Portland, and upon all freight shipped from the said City of Portland transported South over said Road, to wit: Fifty cents per ton for all such freight except Wool, Stone and Lumber, and on all Wool One dollar per ton, and on all Lumber One dollar per thousand, and on all Stone One dollar and fifty cents per ton; Provided that nothing shall be paid to said party of the first part by the party of the second part for any such freight for which drayage or compensation for

handling or hauling has been paid, by either the Oregon and California Rail Road Company or the Oregon Steamship Company, Corporations under the laws of Oregon, to said party of the first part, where such freight requires but one haul.

It is further expressly understood, covenanted and agreed by and between the parties hereto.

First. That if the said Oregon Transfer Company, party of the first part, shall at ànỳ time during said term of ten years fail or neglect to furnish all drays, trucks, horses or mules, drivers and persons necessary to carry and transport all freight as hereinbefore specified, to and from the Stations, Depots and warehouses of said Oregon Central Rail Road Company, party of the second part, and to convey and transport the same, as fast as the business of said Company may require, so as to keep such Depots and warehouses clear of freight arriving by said Road, that then and in that case said Oregon Central Railroad Company, its successors and assigns, may have such freight for the time being, and during such neglect or failure of the party of the first part, carried, transported and delivered by any other Corporation, firm, person or persons, upon such terms and for such reasonable compensation as shall be by the party of the second part deemed necessary to pay therefor, and for all such freight so conveyed and transported, said party of the first part shall receive no compensation and whatever sum so necessarily paid to such Corporation, firm, person or persons for such services over and above the contract price herein provided, shall

be charged to said party of the first part, and deducted out of the monthly payment to said party of first part herein provided for for the month in which such payment was made.

Second. That should the said party of the first part, the said Oregon Transfer Company, at any time during said term of ten years from the date of this contract, wilfully refuse, neglect or fail for the period of thirty days to furnish the transportation hereinbefore provided, or to convey, transport and deliver all freight hereinbefore specified, and as hereinbefore provided, then and in that case the said party of the second part may at its option declare this agreement forfeited, and may, by notice to the party of the first part terminate the same, and shall thereupon be fully and absolutely relieved from all obligations thereunder, and may make other provision for the performance of the services agreed to be by the party of the first part performed under this contract.

Third. That in case of any failure on the part of said party of the first part to keep and perform any of its covenants and agreements herein, and in consequence of such failure any goods which should have been delivered by the party of the first part under this agreement to the consignees, or at any point or place within the City of Portland, or any freight delivered at the Depots or Stations of said parties of the second part within the said City of Portland for shipment which might and would have been shipped before its loss, except for such wilful neglect and failure of the party

of the first part, shall be lost by fire, explosion, flood, theft, robbery, or any other cause whatever, to the loss or damage of the said party of the second part, without any fault or negligence of the said party of the second part, its Agents or Employes, then in that case said party of the first part shall repay all such loss, damages, costs and disbursements as shall be sustained thereby, by said party of the second part, and which it shall be compelled to pay by any action, suit or proceeding, or shall pay without action, suit or legal proceeding upon compromise or otherwise by consent of the party of the first part.

In Testimony Whereof, the parties to these presents, the Oregon Transfer Company and the Oregon Central Rail Road Company, by resolutions of their respective Boards of Directors, have caused these presents to be signed by their respective Presidents and Secretaries, and their Corporate Seals to be hereto affixed at the City of Portland, Oregon, this twenty-ninth day of April, A. D. 1876.

(Seal) (Signed) Geo. V. James,
President Oregon Transfer Company.

(Signed) Ed. F. Albright,
Secty. O. T. Co.

(Signed) T. R. Cornelius,
President Oregon Central Railroad Company.

(Seal) (Signed) H. Hampton,
Secretary Oregon Central Railroad Company.

Therefore, Resolved, that the President and Secre-

tary of this Company be and they are hereby authorized and instructed to execute said agreement in the Corporate name of this Company and for and as the act of this Company under their official signatures and under their corporate seal of this Company.

On motion of Mr. Halsey, duly seconded, the meeting then adjourned.

H. Hampton, Scty. T. R. Cornelius.

Office of the Oregon Central R. R. Co.

Portland, Or., April 29th, 1876.

Pursuant to call by the President the Board met at 11 o'clock A. M. this day. Members present: T. R. Cornelius, Geo. V. James, M. Crawford, Geo. W. Weidler, H. Hampton, five (5) Absent William L. Halsey, 1.

Vacancy of Ben Holladay, resignation accepted at meeting of this board on 20th April 1876, 1.

During the reading of the minutes, Mr. Crawford moved that the further reading of the minutes of previous meeting be dispensed with. Motion seconded by Mr. Weidler and passed, and further reading thereof dispensed with.

The following letter of resignation was then read to the board :

To the President and Board of Directors of the Oregon Central Railroad Company.

I hereby tender my resignation as Director of said Company, April 29th, 1876.

(Signed) Geo. V. James.

Mr. Crawford moved that the resignation of Mr. James as Director of this Company be accepted. The motion was seconded by Mr. Weidler, and on being put to vote was passed, and the President declared the position vacant.

Mr. Crawford then moved that the Board now proceed to the election of a stockholder to fill the vacancy occasioned by the resignation of Mr. James. Motion seconded by Mr. Weidler and passed.

Mr. Henry Villard was then put in nomination for Director to fill said vacancy for the unexpired term, and on the vote being taken received all the votes cast, and was declared unanimously elected such Director.

Mr. Villard being present qualified as such Director by taking and subscribing to the following oath:

State of Oregon, County of Multnomah, ss, I , Henry Villard, being first duly sworn, say that I will honestly and faithfully discharge the duties of Director of the Oregon Central Railroad Company during my term of office. So help me God.

(Signed) HENRY VILLARD,

Sworn and subscribed to before me this 29th day of April, 1876.

(Seal) (Signed) I. R. Moores, Notary Public).

Mr. Villard then took his seat on the board.

The following letter was then read to the board:

Office of the Oregon Central Railroad Co.

Portland, Or. April 29th 1876.

To the President and Directors of the Oregon Central R. R. Co.

Gentlemen: I hereby resign as Secretary and Treasurer and Director in your Company. Your ob't sv't.

(Signed) H. Hampton.

Mr. Crawford moved that Mr. Hampton's resignation as set forth in his letter just read be accepted, seconded by Mr. Weidler, and passed. The President announced the positions vacant.

Mr. Villard moved that the board now proceed to fill said vacancies as provided by the By-Laws.

Mr. Crawford then nominated A. G. Cunningham for Secretary to fill the vacancy occasioned by the resignation of Mr. Hampton, seconded by Mr. Weidler, and upon being put to vote Mr. Cunningham received all the votes cast and was declared unanimously elected such secretary for the unexpired term.

Mr. Cunningham being present entered at once upon the duties thereof.

Mr. Crawford then nominated Mr. Richard Koehler for Director to fill the vacancy occasioned by the resignation of Mr. Hampton, seconded by Mr. Villard, was put to vote and receiving all the votes cast, was declared unanimously elected such Director for the unexpired term.

Mr. Koehler being present qualified as such Director by taking and subscribing to the following oath.

State of Oregon,)
)ss.
County of Multnomah.)

I, R. Koehler, being first duly sworn, say that I will honestly and faithfully discharge the duties of Director of the Oregon Central Railroad Company during my term of office, so help me God.

(Signed) R. Koehler.

Sworn and subscribed to before me this 29th day of April 1876.

(Signed) I. R. Moores,
(Seal) Notary Public.

Mr. Koehler then took his seat on the Board.

The President here stated for information of the board that the loan of six thousand dollars authorized by resolution of this board passed at the session held on April 7th, 1876 had been placed and the money obtained for the use of the Company as therein provided.

The President further stated that the inspection of the additional section of the road had been provided for. That Mr. C. H. Lewis had been appointed Commissioner by Secretary of the Interior Department of the United States to fill the vacancy in said Commission occasioned by the death of Thos. Savier, Esq., and that Tuesday the 2d day of May had been decided upon as the day for making the necessary examination of the road, and as the Company was without a Chief Engineer and it being necessary for that officer to accompany the Commissioners on their inspection, he would now appoint Mr. Hans Thielsen such Chief Engineer.

After some discussion in reference to outstanding Freight and Passage warrants, and the sum already paid by the Company on account of such warrants.

Mr. Villard offered the following:

Resolved, That the President and Secretary of this Company be and they are hereby authorized, if in their judgment the interests of this Company require, to pay in freight and passage in the usual course of business any outstanding freight and passage orders in excess of the four thousand dollars of such orders authorized to be paid by the resolution of Sept. 3d, 1875, but not to exceed one thousand dollars in addition to said amount authorized by said resolution,—seconded by Mr. Koehler and passed, declared unanimously adopted.

Mr. Villard then moved that the Board proceed to elect a Treasurer and nominated A. G. Cunningham for Treasurer to fill the vacancy occasioned by the resignation of Mr. Hampton.

Motion seconded by Mr. Koehler, and Mr. Cunningham having received all the votes cast was declared unanimously elected such Treasurer for the unexpired term.

The Company's attorney then read the following preamble and resolution for the consideration and action of the Board.

Whereas, in the opinion of the Board it is to the best interests of this Company that it assent to and execute as a party an agreement of which the following is a copy, to wit:

This Agreement, made and entered into this ..... day of ..... 1876, between the Oregon Steamship Company, a Corporation duly incorporated and organized under the laws of the State of Oregon, party of the first part, The Oregon and California Railroad Company, a like corporation, duly incorporated and organized under the laws of said State, party of the second part, The Oregon Central Railroad Company of Portland, Oregon, a like corporation duly incorporated and organized under the laws of said State, party of the third part, Certain creditors of the said Oregon Steam Ship Company represented by Milton S. Latham, Trustee and attorney in fact, party of the fourth part, Certain creditors of the said Oregon Central Railroad Company represented by Milton S. Latham, their Trustee and attorney in fact, party of the fifth part, and Heinrich Hohenemser of the City of Frankfort on the Main, Prussia, Director of the Deutsche Vereins Bank of the same city, Julius Schmidt, banker of the City of Frankfort on the Main, Paul Remgoman, Doctor of law and attorney at law of the City of Frankfort on the Main, Herman Koehler, merchant of the City of Frankfort on the Main, Adolph Otto, Doctor of law and attorney at law of the City of Heilbronn, Kingdom of Wurtemburg, Michael Benjamin, banker of the City of Munich, Kingdom of Bavaria, Carl Stachelin-Buckner of the City of Basle, Switzerland, partners in the house of Messrs. Iselin and Stachelin, by Henry Villard of the City of Heidelberg, Grand Duchy of Baden, their attorney in fact, and the said Henry Villard, owners or

possessors of certain first mortgage bonds of the Oregon and California Railroad Company, and known as the Frankfort Committee, as parties of the sixth part, Witnesseth:

Whereas, on the 25th day of July, A. D. 1874, the said Oregon Steamship Company, as party of the first part, the said Oregon and California Railroad Company, as party of the second part, Heinrich Hohenemser, Director of the Deutsche Vereins Bank at Frankfort on the Main, Aron Neiderhofheim, Manager of the Branch of the Bank of Commerce and Industry at Frankfort on the Main, Julius Schmidt, merchant at Frankfort on the Main, Adolph Otto, Counsel at law at Heilbronn, in the Kingdom of Wurtemburg, Michael Benjamin, Director of the Baierische Wechsler Bank at Munich, in the Kingdom of Bavaria, Carl Stachelin-Buckner, of the firm of Iselin and Stachelin of Basle in Switzerland, F. S. Van Neirop, Director of the Bank of Amsterdam, in the Kingdom of the Netherlands, and William Koester of the firm of Koster and Company at Manheim, in the Grand Duchy of Baden, by Henry Villard of Heidelberg in the Grand Duchy of Baden, their attorney in fact, and the said Henry Vilard of Heidelberg in the Grand Duchy of Baden, for themselves, their executors, administrators, successors and future holders of the Bonds of the Oregon and California Railroad Company, as parties of the third part, certain creditors of the said Oregon Steamship Company, represented by Milton S. Latham as Trustee and attorney in fact, for themselves, their heirs, executors, administrators, successors and as-

signs, as party of the fourth part, and certain creditors of the said Oregon Central Railroad Company, represented by Milton S. Latham as their Trustee and attorney in fact, for themselves, their heirs, executors, administrators, successors and assigns, as party of the fifth part, entered into a certain agreement in writing which, among other things, contained the following provisions:

"Article 1. The entire net receipts of said Oregon "Steamship Company (meaning by the term 'net re- "ceipts,' whenever it is used in this agreement, all re- "ceipts remaining after paying the operating expenses, "Taxes, and harbor dues, and keeping the property of "said Steamship Company in reasonably good repair, "all other outlay, in every case, being prohibited, except "by agreement of all the parties to these presents) shall "be first applied to the payment of the interest at the "rate of ten (10) per cent per annum, on the principal "of Eight Hundred Thousand ($800,000) Dollars "loaned by said party of the fourth part to the party of "the first part , as well as to the extinction of the said "principal. Whenever the principal and interest of "said debt of said Oregon Steamship Company shall be "paid in full, said net receipts and the securities held by "said party of the fourth part as collaterals shall be ap- "plied to the payment of the interest at the rate of ten "(10) per cent per annum and of the principal of One "Million dollars in gold, loaned by said party of the "fifth part to said Oregon Central Railroad Company, "in so far only, however, as the net receipts of the said "Oregon Central Railroad Company shall not be suf-

"ficient for the payment of said principal and interest, "or any part of it, and in so far only as the pledge by "said Oregon Central Railroad Company, namely— "Four Millions Three Hundred and Ninety-five Thou- "sand ($4,395,000) Dollars, First Mortgage Bonds, "shall not yield sufficient, if sold, to repay said loan of "One Million Dollars and interest, but in the last named "event said receipts of said Steamship Company shall be "used for the repayment of said principal and interest "only to the aggregate amount of Four Hundred Thou- "sand ($400,00) Dollars.

"Article 2. As soon as the conditions set forth in "article first shall be complied with, the entire net re- "ceipts of the Oregon Steamship Company shall be paid "to the said parties of the third part or their agent and "attorney at the end of each calendar month, and the "parties of the third part shall apply them to the cur- "rent interest of the First Mortgage Bonds of the Ore- "gon and California Railroad Company to the amount "of seven per cent per annum, and whenever in any one "year the net receipts of the Oregon and California "Railroad Company added to the receipts which may be "contributed by the Oregon Steamship Company shall "exceed the sum of seven per cent on the Bonds issued "and unredeemed of the Oregon and California Rail- "road Company, then one-half of such excess shall be "applied to the redemption of script and one-half be "applied to the stockholders of the Oregon Steamship "Company.

"Article 3. The securities of the Oregon Steamship

"Company now in the hands of the party of the fourth "part, to-wit: Two Million Dollars of the First Mort- "gage Bonds, and Twenty-nine Thousand Nine Hun- "dred and Ninety-eight (29,998) shares of the capital "stock of said Oregon Steamship Company, shall be "secondly additional security for the aforementioned "claim of said parties of the third part within the afore "described limits, and thirdly, shall be additional se- "curity to the said parties of the third part for its claim "mentioned in article 2, without prejudice, however, to "the prior rights of the parties of the fourth part and "fifth part, and said securities shall be held as a pledge "by the said party of the fourth part for its own bene- "fit and as security for the payment of its claim as well "as of the claim of the parties of the third and fifth "parts—upon the payment in full of said party of the "fourth part, possession of said securities shall be given "to said party of the fifth part, which shall hold the said "securities as a pledge for its own benefit as well as for "the benefit of said parties the third part, without prej- "udice, however, to its own claims, and upon the pay- "ment of its own claims, possession of said securities "shall be given to the parties of the third part; nothing "herein stipulated shall prevent, however, the said "parties of the fourth part from making good their "claims against said party of the first part for prin- "cipal and interest by sale, at any time they may find "it to their interest to make such sale, of the securities "of said party of the first part held by them as collat- "erals,—" All of which by reference to said agreement

of July 25th A. D. 1874, will more fully appear.

And, Whereas, on the 6th day of April, A. D. 1876, an agreement was made and entered into by and between the said Milton S. Latham, as agent of the said creditors of the said Oregon Steamship Company, and as agent of the said creditors of the said Oregon Central Railroad Company, as party of the first part, and Henry Villard as agent of and on behalf of the holders of the First Mortgage Bonds of the Oregon and California Railroad Company, represented by the Frankfort Committee, party of the second part, modifying and changing said agreement of July 25th, A. D. 1874;

And, Whereas, said Frankfort Committee and the Bondholders of said Oregon and California Railroad Company represented thereby, are the same Committee and Bondholders who executed the aforesaid agreement of July 25th, 1874, as party of the third part, with such additional and such changes of said Committee as were authorized by said agreement and the principal to which the same referred and of which the same was part;

And Whereas, said agreement of April 6th, 1876, contains, among other things, the following provisions which may or do affect said agreement of July 25th, 1874, to wit:

"First. That said party of the first part, for and "on behalf of the said creditors of the Oregon Steam- "ship Company, covenants and agrees that the shares "of the Capital Stock of said Company now stand- "ing in the name of Ben Holladay shall be trans-

"ferred to the said party of the first part and the "legal title thereof placed in him in trust and as se- "curity for the debt due the creditors of said Steamship "Company, but that the sole and exclusive right to vote "upon the stock shall be vested in the said party of the "second part, or some proxies or proxy by him selected "for that purpose, and that a collateral agreement creat- "ing and authorizing said right to vote thereon shall also "be made by by the said party of the first part, as a "separate instrument, and deposited in the office of the "said company, and that the lawful voting power, vested "in said shares, shall be exercised by the said party of "the second part, or his said proxies or proxy, Provided, "That the said party of the second part, or his said "proxies or proxy, shall always consent to and vote for "any nomination of two members of the Board of Di- "rectors of said Company which the said party of the "first part shall make, the right to make such nomina- "tions and have them thus voted for being hereby ex- "pressly conceded by said party of the second part.

"Second. The said party of the first part, for and "on behalf of the creditors of the said Oregon Steam- "ship Company, further covenants and agrees to re- "serve out of the net earnings and proceeds of the said "Steamship Company, now pledged to him in trust for "said creditors, the sum of Fifteen Thousand (15,000) "Dollars annually for a period of three (3) years, in in- "stallments of Seven thousand five hundred (7,500) "Dollars each payable every six months, from the date "of these presents, said payment to be applied to the in-

"terest on Three Hundred Thousand Dollars seven per "cent Oregon Central Railroad second Mortgage Bonds, "to be issued to the said Ben Holladay in pursuance "of an agreement between him and the party of the sec- "ond part.

"Third. The parties of the first part, and second "parts, in their representative capacities aforesaid, here- "by mutually covenant and agree that in order to pro- "vide the said Oregon Steamship Company with the "necessary means of transportation, a suitable new "steamship shall be purchased without delay, at a cost "of not exceeding Two Hundred and Fifty Thousand "($250,000) Dollars, in lawful currency of the United "States, for said Steamship Company in the following "manner (it being assumed that such purchase can be "made on the payment of One hundred thousand dollars "cash and the balance in equal payments in six, nine, "twelve and Eighteen months), to wit: To meet the "first cash payment aforesaid the party of the first part, "as such representative as aforesaid, shall contribute the "proceeds of the sale of the River Boats belonging to "said Oregon Steamship Company, such sale to be ef- "fected at the earliest possible moment, and the party of "the second part, as such representative as aforesaid "shall contribute whatever amount of money shall be "required over and above the proceeds of said sale of "the River Boats to make up the sum of One Hundred "Thousand Dollars and such further sum as may be re- "quired to equip, alter or repair the said Steamship so "as to get her for the purpose of said line, Whatever

"amount shall thus require to be and be contributed, by "said party of the second part, towards the purchase "and equipment of said new Steamer, shall bear inter- "est at the rate of six per cent per annum, said interest "to be paid out of the Net earnings and proceeds of "the said Steamship Company after the prior payment, "1st of the Fifteen Thousand dollars annually as be- "fore mentioned and 2ndly of the full amount of the "cost of the said new Steamship, whereupon, after pay- "ment of the said Fifteen thousand Dollars annually "and the full amount of the Cost of said new Steamship "and the said interest shall have been made in the or- "der aforesaid, there shall next from the said Net earn- "ings and proceeds, be paid to the Creditors of the said "Oregon Steamship Company any possible accrued back "interest and upon the completion of all the payments "aforesaid, the principal sum so advanced by the party "of the second part towards the purchase and equip- "ment of the said new steamer shall be repaid to him in "installments of not less than Six thousand dollars per "annum, but such installments shall not exceed the said "sum of six thousand dollars per annum unless and un- "til the current interest due to the creditors of the Ore- "gon Steamship Company shall have been fully paid. "Until the repayment of said principal in the manner "so specified it shall stand as a first lien upon the said "new Steamship with legal priority over the lien held "by said party of the first part, as such representative, "on the property of said Steamship Company.

"FOURTH. The said parties of the first and sec-

"ond part, in their said representative capacities also "mutually covenant and agree that if upon further con- "sideration it should be found necessary or desirable to "purchase a second new Steamship, for the said Oregon "Steamship Company, a joint agreement for such pur- "chase, similar as far as possible to the one set forth in "the foregoing articles, shall be made between the parties "hereto.

"SEVENTH. The said party of the first part in "such representative capacity, further covenants and "agrees that upon the payment of the cost of said new "Steamship or Steamships and upon the extinction of "the debt of the said Oregon Steamship Company to "said party of the first part, in such representative ca- "pacity the Net earnings and proceed of such Company "shall be equally divided, after allowing for the sub- "sidiary payment of Fifteen Thousand Dollars for the "time before mentioned, between the creditors of the "Oregon Central Railroad Company and the Oregon "and California Railroad Company in a manner to be "agreed upon hereafter. But the portion of such net "earnings or proceeds allowed and coming to said Ore- "gon and California Railroad Company shall be ap- "plied to the completion of the said Oregon Central "Railroad.

"Eighth. The said party of the first part, in said "representative capacity, further covenants and agrees "that upon the extinction of the debts of the said Steam- "ship Company and of the said Oregon Central Rail- "road Company, the Oregon and California Railroad

"Company shall enter upon the full enjoyment of the "entire net receipts of the two companies first above "mentioned.

"NOW THEREFORE, in consideration of the premises and the mutual benefits to be derived by each under said agreement of April 6th, A. D. 1876, The said parties hereto covenant and agree with each other to all the provisions and conditions of the aforesaid agreement of April 6th, A. D. 1876, whether hereinbefore expressed or otherwise, and to all the modifications and changes thereby made in said agreement of July 25, A. D. 1874, and hereby RATIFY CONFIRM AND ADOPT said agreement of April 6th. A. D. 1876, so far as the same affects the rights of the parties hereto as fully and completely as if all the parties hereto had been made parties to said agreement and had executed the same.

IN WITNESS WHEREOF, the said parties of the first, second and third parts have, by resolutions of their respective Boards of Directors caused their respective Corporate Seals to be hereunto affixed and these presents to be signed by their respective Presidents and attested by their respective Secretaries and said parties of the fourth fifth and sixth parts by their said attorney in fact have hereunto set their hands and Seals this day of A. D. (1876) One Thousand eight hundred and seventy six.

RESOLVED, that the President and Secretary of this Company be and they are hereby authorized and

directed to execute the said agreement in the name of and for and as the act of this Company under their official signatures and the Corporate Seal of this Company.

during the reading of the foregoing preamble and resolution, the Mr. Villard made such explanations as were necessary to a full understanding of the subject by the Board, at the conclusion of such reading.

Director Villard moved the adoption of the same, seconded by Mr. Koehler, and passed, and declared unanimously adopted.

On motion of Mr. Villard seconded by Mr. Crawford, the Secretary was instructed to have One hundred copies of the By-Laws printed for the use of the Company.

No further business being before the Board, Mr. Villard moved that the Board do now adjourn, seconded by Mr. Crawford and passed. the President then announced the Board adjourned, in accordance with the By-Laws.

A. G. CUNNINGHAM T. R. CORNELIUS,
President.

Office of the
Oregon Central Railroad Co.,
May 10th 1876

In accordance with the By-Laws and pursuant to notice each Director, the Board met at 11 o'clock A. M.

this day,

Members present, T. R. CORNELIUS
GEO. W. WEIDLER,
RICHARD KOEHLER
HENRY VILLARD

4 members absent, M. Crawford and W. L. Halsey, 2 members vacancies, (Ben Holladay resigned Apl. 20/76) 1 member.

The President, (T. R. Cornelius) called the Board to order, and announced that reading the minutes of last meeting was first in order.

The Minutes of last meeting were read, and there being no objections made, they stood approved.

The President announced the resignation of Director Halsey, which the Secretary read as follows.

San Francisco May 1st 1876

To the President and Directors,

Oregon Central R. R. Co.

Gentlemen: I hereby tender my resignation as a Director in your Company.

Truly yours,
(Signed) W. L. HALSEY

Mr. Weidler moved that Mr. Halsey's resignation be accepted, seconded by Mr. Koehler and passed. Resignation was accepted.

Mr. Villard then nominated Hans Thielsen for Director of this Company to fill the vacancy occasioned by

the resignation of Mr. Holladay, accepted on April 20th 1876, for the unexpired term. Seconded by Mr. Koehler and passed. Mr. Thielsen was declared unanimously elected such director.

Mr. Thielsen being present qualified by subscribing to the following oath:

"Oath"

State of Oregon)
) ss.
County of Multnomah)

I, H. Thielsen being first duly sworn say that I will honestly and faithfully discharge the duties of Director of the Oregon Central Railroad Company to which office I have been elected, during my continuance in office, So help me God.

Signed, H. THIELSEN

Subscribed and sworn to before me a Notary Public in and for the County of Multnomah, State of Oregon at Portland, May 10th 1876.

(Signed) I. R. MOORES,
(SEAL) Notary Public.

Mr. Thielsen then took his seat in the Board.

Mr. Villard nominated Mr. S. F. Chadwick for Director of this Company, to fill the vacancy occasioned by the resignation of W. L. Halsey, accepted this day. to serve for the unexpired term. Seconded by Mr. Koehler and unanimously elected such Director.

Mr. Chadwick being present qualified by taking

and subscribing to the following

"Oath"

State of Oregon)
) ss.
County of Multnomah)

I, S. F. Chadwick being first duly sworn, say, that I will honestly and faithfully discharge the duties of Director of the Oregon Central Railroad Company, to which office I have been elected, during my term of office, so help me God.

Signed, S. F. CHADWICK

Subscribed and sworn to before me a Notary Public in and for the County of Multnomah State of Oregon at Portland May 10th 1876.

Signed, I. R. MOORES,
(Seal) Notary Public

Mr. Chadwick then took his seat, as such Director, in the Board.

The Secretary here presented Trial Balance statement for month of April showing the accounts in books of Company and Statement of Operating receipts and expenses for same month for the examination of the Board.

The Company's attorney—(J. N. Dolph Esq) stated to the Board that the By-Laws of this Company fixed the second Wednesday of each month at the hour of eleven o"clock A. M. for the monthly meeting of the Directors and that the same day and hour was so

fixed by the By-Laws of the Oregon and California Railroad Company, and as the officers and Directors of each Company were, in some instances the same, Therefore a change in the time of the monthly meeting of this Company was desirable.

Mr. Koehler then offered the following amendment to the By Laws. That Section Third of the Code of By-Laws of this Company be amended by striking out the words "11 o'clock A. M." and inserting the words "1 o'clock P. M." in lieu thereof.

Seconded by Mr. Thielsen and laid over to the next monthly meeting.

The President here stated for the information of the Board that the Commissioners appointed by the Government, had been over the Road, inspected and received the additional twenty seven and one half miles of Road not heretofore inspected, and that the certificates and maps referring to such inspection had been duly forwarded to the Department of the Interior.

No further business being before the Board, Mr. Villard moved that the Board do now adjourn, seconded by Mr. Chadwick and passed. The President announced the session adjourned.

A. G. CUNNINGHAM, T. R. CORNELIUS,
Secretary. President.

ANNUAL

STOCKHOLDERS MEETING

Office of the

Oregon Central Railroad Co.

Portland, Oregon

Thursday May 25th 1876

Pursuant to notice in accordance with the By-Laws, and in accordance with the By-Laws, the Stockholders met at 11 o'clock A. M. this day.

T. R. Cornelius, President of the Company, stated to the Stockholders present, that this being the day fixed by the By-Laws for electing Seven Directors to serve for the ensuing Twelve months, and the Secretary having furnished him with the Certificate of Stockholders as shown by the Stock Ledger and Stock Certificate Books, that if there were a majority of the Stock represented, and no objection, the election would be proceeded with.

The Secretary then read the certified list of Stockholders, and the following Stockholders responded present,

T. R. Cornelius.....	5	shares
M. Crawford.....	1	share
Ben Holladay by R. Koehler proxy	20,066	shares
Richard Koehler.....	1	share
M. S. Latham, Trustee by H. Villard proxy	26,000	shares

Henry Villard	1	share
Geo. W. Weidler	492⅝	shares
Robert Walker	8	shares
Total,	46,574⅝	shares

being over a majority of all the Capital Stock of the Company, the President directed that the election proceed, and read 5th Article of the By-Laws for the information of the Stockholders present.

The President then appointed Richard Koehler and Geo. W. Weidler Tellers to count the votes cast.

The following stockholders each having received 46,574⅝ votes, which were all the votes cast, were declared unanimously elected.

T. R. Cornelius
Henry Villard
Richard Koehler
Geo. W. Weidler
Hans Thielsen
S. F. Chadwick
Medorum Crawford

The President then executed the following certificate,

State of Oregon)
) ss
County of Multnomah)

I, T. R. Cornelius, President of the Oregon and Central Railroad Company of Portland, Oregon, a corporation duly incorporated under the laws of the State

of Oregon, hereby certify that at the annual Stockholders meeting of said Company held at the office of said Company at the City of Portland in the County of Multnomah in the State of Oregon on Thursday the twenty fifth day of May A. D. 1876,

Henry Villard
Richard Koehler
H. Thielsen
S. F. Chadwick
T. R. Cornelius
Geo. W. Weidler and
Medorum Crawford

were duly elected Directors of said Company, each receiving the votes of a majority of all the Stock represented at said meeting and of a majority of all the Capital Stock of said Company.

May 25th 1876. (Signed) T. R. CORNELIUS,
President.

On motion of Mr. Koehler seconded by Mr. Weidler, the meeting adjourned.

A. G. CUNNINGHAM,
Secy.

Office of the Oregon Central R. R. Co.

Portland, Ore Tuesday May 30th 1876

Pursuant to call by the President and notice to each Director in accordance with the By-Laws the Board met at 11½ o'clock A. M. this day,

Members present, Henry Villard
H. Thielsen
R. Koehler
S. F. Chadwick
T. R. Cornelius
M. Crawford
Geo. W. Weidler

7 members responded to roll call. The President called the Board to order, when the newly elected board of Directors appeared and qualified by taking and subscribing the following oath.

State of Oregon)
) ss
County of Multnomah)

We T. R. Cornelius, Henry Villard, R. Koehler, Geo. W. Weidler, Hans Thielsen, M. Crawford and S. F. Chadwick, being each duly sworn say and each for himself says that he will faithfully and honestly discharge the duties of Director of the Oregon Central Railroad Company, to which office we have been elected during our term of office, so help us God.

(Signed) T. R. CORNELIUS
R. KOEHLER
S. F. CHADWICK
GEO. W. WEIDLER
M. CRAWFORD
H. THIELSEN
H. VILLARD

Subscribed and sworn to before me a Notary Public this

30th day of May 1876.

(Signed) I. R. MOORES,

(Seal) Notary Public

The term of office of the old board being terminated by the qualifying of the new board, the Secretary called the newly elected members to order, and announced the election of a President of the board as the first steps to be taken in organizing, and announced nominations for President as being in order.

Mr. Villard nominated T. R. Cornelius Esq for the office of President, no other nomination being made, Mr. Weidler seconded the nomination, and the election was proceeded with, Mr. Cornelius secured all the votes cast and was declared duly elected President, took the Chair and announced the election of Vice President as being next in order.

Mr. Villard nominated Mr. R. Koehler for the office of Vice President. There being no opposition, the election was proceeded with, and Mr. Koehler receiving all the votes cast was declared duly elected.

Mr. Weidler then nominated Mr. A. G. Cunningham for Secretary and Treasurer of the Company, no opposition being presented Mr. Cunningham received all the votes cast and was declared duly elected.

The President announced the board as now duly organized for the consideration of business.

The Company's attorney (J. N. Dolph, Esq.) then read for information and action of the board the following preamble and resolutions,

WHEREAS, This Company heretofore and at the date thereof executed and delivered to Ben Holladay President the two certain promissory notes of this Company for the sum of $500,000 each, copies of which notes are hereinafter and in a copy of an agreement hereinafter contained and set forth and

WHEREAS said Ben Holladay as such President endorsed said notes in blank and delivered them to Milton S. Latham as agent for certain other parties, and said Latham is now the holder thereof, and

WHEREAS, said Milton S. Latham also holds as a pledge and collateral security for the payments of said promissory notes certain bonds of this Company, and certain Stock and bonds of the Oregon Steamship Company and

WHEREAS although said promissory notes are long since due this Company is unable to meet and pay the same and

WHEREAS, the Statute of Limitations of the State of California has run or is about to run and bar an action upon said Notes in said State and whereas said Latham as Trustee aforesaid is willing to extend the time of payment of said Notes upon condition that this Company will waive the bar of said Statute of Limitation and renew, its liability and promises to pay said promissory notes so that an action or suit may be maintained upon said notes in the State of California and so that the Statute of Limitations shall commence to run only from the expiration of such extension of time of

payment.

RESOLVED That the President and Secretary of this Company be and they are hereby authorized and directed to execute and deliver in the name of and for and on behalf of this Company and under their official signatures and the Corporate Seal of this Company an agreement with said Milton S. Latham Trustee, extending the time of payment of said notes waiving the bar of the Statute of Limitations, and renewing the liability and promise of this Company to pay said promissory notes of which agreement the following is a copy to wit:

COPY OF AGREEMENT

ARTICLES OF AGREEMENT, made this day of in the year One Thousand eight hundred and seventy six, between Milton S. Latham, as trustee and on behalf of the owners of the promissory notes hereinafter mentioned, the party of the first part, and the Oregon Central Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, the party of the second part,

WITNESSETH: Whereas on the 29th day of February 1872 the said party of the second part made and delivered its promissory note to Mr. Ben Holladay, of which the following is a copy,

"$500,000 Portland, Oregon 29th February 1872

"One year after date without grace, The Oregon "Central Railroad Company promises to pay to the or- "der of Mr. Ben Holladay, President in San Francisco

"the sum of Five Hundred thousand dollars, in Gold "Coin, of the United States for value received with in- "terest from date until paid at the rate of Ten per cent "per annum payable Quarterly in like Gold Coin,

"This Note is executed in pursuance of a resolution "of the Board of Trustees of said Railroad passed 9th "February 1872, witness our hands under the seal of the "said Corporation on this the 29th day of February "A. D. 1872.

"(Seal of the)
"(Corporation) "BEN HOLLADAY

"President of the Oregon Central R. R. Co.

"C. S. DYER

"Secretary of the Oregon Central R. R. Co.

AND WHEREAS, on the 29th day of August 1872 the said party of the second part made and delivered its promissory note to Mr. Ben Holladay of which the following is a copy,

"$500,000 Portland, Oregon 29 August 1872

"One year after date without grace, The Oregon "Central Railroad Company promise to pay to the or- "der of Mr. Ben Holladay Ben Holladay President in "San Francisco the sum of Five hundred thousand Dol- "lars in Gold Coin of the United States for value re- "ceived with interest from date until paid at the rate "of Ten per cent per annum payable quarterly in like "Gold Coin,

"This note is executed in pursuance of a resolution

"of the Board of Directors of said Railroad passed 9
"February 1872,

"BEN HOLLADAY
"President Oregon Central R. R. Co.

(Seal of the Corporation) C. S. DYER
"Secretary Oregon Central R. R. Co.

AND WHEREAS the said Ben Holladay duly indorsed the said Notes in blank as such President and delivered them so indorsed at the dates aforesaid for value to the said party of the first part, as agent for certain other parties, and said party of the first part is now the lawful holder thereof,

AND WHEREAS on the 19th day of March 1873 the said Ben Holladay executed and delivered to the said party of the first part an instrument of which the following is a copy:

"For and in consideration of One Dollar to me in
"hand paid and for other valuable considerations, I do
"hereby deposit with Milton S. Latham as Collateral se-
"curity for the payment of certain promissory notes de-
"scribed below, viz:

"One note for $500,000 Gold dated 29 Feby 1872, made
"by the Oregon Central Railroad Company to the order
"of and endorsed by Mr. Ben Holladay, President due
"28th February 1873 and bearing interest from date at
"the rate of Ten per cent per annum, One Note for
"$500,000 Gold, dated 29 August 1872 made by the
"Oregon Central Railroad Company to the order of
"and indorsed by Mr Ben Holladay President due 29

"August 1873 and bearing interest from date at the "rate of Ten per cent per annum, which said notes are "now held by said Milton S. Latham for account of "owners,

"The following personal property of which I am the "sole owner the same being at my risk and expense, "to wit:

"Twenty nine thousand nine hundred and ninety "seven (29997) shares of the Capital Stock and Two "Million Dollars ($2,000,000) worth of Bonds of the "Oregon Steamship Company,

"In case of the non payment of the aforesaid promis- "sory notes or either of them or of the interest thereon "when due, I hereby appoint and constitute Milton S. "Latham his successors or assigns my attorney irrevoca- "ble with power of substitution to sell at any time after "said notes or either of them or interest is due and re- "mains unpaid with or without notice to me, the whole "or any part of said security either at public or private "sale at his discretion, the proceeds to be applied to the "payment of the aforesaid Promissory notes interest "due and Commissions on Sales, any surplus after said "payment to be held subject to my order,

"On payment of the aforesaid Promissory Notes "and interest this agreement to be void and the se- "curity mentioned to be returned to me.

"This hypothecation is made subject to all the legal "rights of a certain hypothecation executed by the Ore- "gon Steamship Company on the 1st day of August

"1872, to secure the payment of a note made by them "for $800,000, dated Portland August 1st 1872, and "due on the 1st day of October 1873 bearing interest "at the rate of ten per cent per annum,

"Witness my hands this nineteenth day of March, "1873.

"San Francisco, Cal.
"BEN HOLLIDAY

"Witness, Wm. Norris."

AND WHEREAS at the same time the said Ben Holladay delivered to the said party of the first part the securities therein mentioned in pledge as aforesaid and said party of the first part is now the lawful holder and pledger thereof, as trustee as aforesaid,

AND WHEREAS, it is the intention of the parties of the first and second parts that the time of payment of the said Notes shall be extended and the Statute of Limitations shall not commence to run against the same until the expiration of the said extended time, either as to an action to be begun in the State of Oregon or in the State of California;

NOW THEREFORE the said party of the first part as Trustee as aforesaid hereby covenants and agrees for and in consideration of the sum of One Dollar to him in hand paid and the promises and agreements of the party of the second part hereinafter mentioned that the time of payment and maturity of said notes hereinbefore recited is hereby extended for a period of six (6) months from this date, to wit:

until , until which time they will remain owing but not payable,

And the said party of the second part as well in consideration of the above extension of the time of payment of the foregoing notes and of the payment of One Dollar the receipt whereof is hereby acknowledged, as otherwise hereby promises and agrees for itself its successors and assigns that it will and the said party of the second part hereby does waive the bar, or the application, of the Statutes of Limitation to the said Notes at the time when the same would be applicable to said notes or either of them but for this agreement, and the said party of the second part hereby makes and acknowledges this as a new and continued contract by which the case of the said promissory notes and either of them is taken out of the operation of the Statute of Limitation, and hereby takes said Notes out of the operation of said Statute and it hereby renews (as of that date, to wit:) its liability to pay and said party of the second part hereby promises to pay the said notes with interest thereon at the rate of ten per cent per annum as in said notes stated, and the said party of the second part further promises and agrees that, inasmuch as under this agreement, a cause of action on said notes will not arise until said the statute of Limitation shall not commence to run against said Notes or either of them until that time and shall then commence to run, as to either of the actions aforementioned,

And the said party of the second part for the consideration hereinbefore mentioned, and other considera-

tions, hereby further promises and agrees for itself its successors and assigns that the securities heretofore hypothecated to said party of the first part as hereinbefore described or otherwise, shall continue in the possession of said party of the first part as Trustee as aforesaid under the terms and agreements of the said instrument hereinbefore recited, or any other instrument hypothecating the same, for and during the said extension herein given, and that the right of the party of the first part to hold the Title and Control thereof as in said instrument mentioned and conferred shall in no wise be affected or impaired by the agreements of extension and waiver above mentioned,

IN WITNESS WHEREOF the said party of the first part has set his hand and seal hereto and the said party of the second part has caused these presents to be signed by its President and Secretary and its Corporate Seal to be affixed hereto the day and year first above written. (SEAL)

And that a certified copy of this resolution be furnished said Latham,

After explanations from Mr. Villard and Company's attorney Mr. Thielsen moved the adoption of the resolutions as read, seconded by Mr. Crawford and passed, and declared unanimously adopted,

Company's attorney then read the following preamble and resolutions for the consideration of the board,

WHEREAS, Henry Villard Esq is one of the Directors of the Oregon Central Railroad Company; and

whereas in the judgment of this board of Directors some arrangement should be made with the Willamette Transportation and Locks Company, in reference to the ruinous competition in the Transportation of freight between this Company, and the said Willamette Transportation Company,

Now therefore be it resolved that the said Henry Villard be and he is hereby authorized to make for this Company a Contract with said Willamette Transportation and Locks Company touching the carrying of freight between corresponding points on the land and rivers now served by the two said Companies, and plenary power is hereby given our said agent to make such a contract with said other Corporation, we hereby fully empowering him to arrange the terms of such contract, the time of its duration, the disposition of the gross earnings from all freight, and generally all matters and things unto said contract appertaining.

Resolved further that whenever our said agent shall have completed his contract as aforesaid, and shall have signed the same as agent of this Company, the same shall at once become the valid and binding act of this Corporation,

RESOLVED That Henry Villard Esq, Director of this Company be and he is hereby authorized and empowered to enter into a contract between this Company and the Oregon and California Railroad Company for the division between this Company, and the said Oregon and California Railroad Company of the portion

of the gross earnings to be received by both this Company and the Oregon and California Railroad Company for the carrying of freight by river and rail under any such contract which shall be entered into between this Company said Oregon and California Railroad Company and the said Willamette Transportation and Locks Company,

RESOLVED That in the making of such Contract, the said Henry Villard Esq have full power to fix its duration and terms and that when said contract shall have been fully agreed upon and completed and our said agent shall have signed the same as agent of this Company, the same shall at once become valid and binding as the Contract of this Company.

On motion of Mr. Chadwick seconded by Mr. Crawford the preamble and resolutions were adopted as read,

The Company's attorney then read the following preamble and resolutions for consideration of the board,

WHEREAS, This Company has erected a depot building and constructed a side track at Reedville Station upon the line of its Road upon land owned by S. G. Reed Esq., and whereas said depot was erected and side track constructed upon the expectation by this Company and the assurance by the owner of said land that suitable depot grounds should be donated to this Company at said station for depot and Railroad purposes, and whereas said S. G. Reed is willing and has offered to convey to this Company the following de-

scribed lands, upon which said station is located, upon condition that said Station depot, and side track shall be maintained upon said lands to wit:

Commencing at a stake set in a point bearing westerly at a distance of 13-25-100 chains from the intersection of the center line of the Oregon Central Railroad with the east line of the Donation Land Claim notification 1385 Cl. 45 in Sec. 10, 11, 14 and 15 of T. 1 S R 2 W, measured along said Railroad center line, and northerly at a distance of Thirty feet from said center line, thence N. 8° E., three hundred and seventy six (376) feet, thence N. 82° W one thousand (1000) feet, thence S 8° W Three hundred seventy six (376) feet, thence S 82° E One thousand (1000) feet to place of beginning, said track above described containing 8-62/100 acres more or less.

RESOLVED That this Company accept said donation upon said condition, and that the President of this Company be authorized and directed to procure and accept from said Reed a good and sufficient deed for said lands to be used for Railroad purposes, and conditioned to revert to said Reed his heirs or assigns whenever they shall cease to be so used,

RESOLVED That upon the execution of such deed the delivery of the same to this Company the said Station depot and side track of this Company be perpetually established upon said lands.

The board having heard the preamble and resolutions read and the explanations in reference thereto, Mr.

Villard moved their adoption, seconded by Mr. Crawford and passed, declared adopted.

No further business being before the board, on motion of Mr. Villard seconded Mr. Weidler, the session adjourned.

A. G. CUNNINGHAM, T. R. CORNELIUS,
Secy.

Office of the Oregon Central R R Co.
Portland, Oregon Wednesday
June 14th 1876

There not being a quorum present at the hour for meeting of the board on this day in accordance with the By-Laws, no meeting was had, the board standing adjourned.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.
Portland Oregon Wednesday July 12 1876

No meeting was had this day, no quorum present at the hour for meeting.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.
Portland Oregon August 9th 1876

Regular monthly meeting of the Board of Directors of the Oregon Central R R Co. held at the office of the Company this day at 11 o'clock A M.

Present, T. R. Cornelius President in the Chair.

The following named Directors appeared and answered to their names. T R Cornelius, R Koehler, S F Chadwick and Geo. W. Weidler.

The Secretary of the Company being absent on motion Joseph Simon was duly elected secretary pro tem.

On motion of Mr. Koehler the reading of the minutes of the previous meeting was dispensed with.

On motion of Mr. Weidler seconded by Mr. Chadwick, the following preamble and resolution was unanimously adopted.

Whereas this Company has been advised by the Second Assistant Post Master General under date of July 10, 1876 that an order had that day been made authorizing the Auditor of the Treasury for the Post Office Department to pay this Company quarterly for carrying the mail between Portland and St. Joseph Oregon from April 1, 1875 to June 30, 1878 and the regulations of the Department requiring that an agent shall be duly appointed by this Company with authority to receive payment for such mail service and execute receipts to the Department for such payments, Therefore

Resolved, that A. G. Cunningham the present Secretary and Treasurer of this Company be and he is hereby appointed Special Agent of this Company with full authority to collect from the Post Office Department all moneys due or to become due to this Company for Mail Service on Route No. 44002 Portland to St

Joseph and execute receipts to the Department for such payments.

On motion of Mr. Weidler seconded by Mr. Chadwick the following preamble and resolution was unanimously adopted.

Whereas it is deemed advisable by this Board that all the lands of this Company excepting those lands donated to the Company by Act of Congress of the United States approved May 4, 1870 and those lands needed and in use by this Company for Depot and Railroad purposes, should be exempted and released from the operation of the Mortgage executed by the Company to Milton S. Latham and Faxon D. Atherton Trustees on July 15, 1871 and the Mortgage to W. D. Shipman and S. L. M. Barlow, Trustees, executed by this Company March 1, 1876, in order to facilitate the sale and disposition thereof by this Company, therefore

Resolved, That the Secretary of this Company be and he is hereby directed to request said Milton S. Latham and Faxon D. Atherton, Trustees and said W. D. Shipman and S. L. M. Barlow, Trustees to release to this Company and from the operation of the Mortgages held by them respectively, all the lands of this Company covered by said Mortgages excepting only those lands needed by the Company for Railroad and Depot purposes and those lands granted to the Company by the aforesaid Act of Congress.

There being no further business on motion the Board adjourned. T. R. CORNELIUS,

Joseph Simon, Secretary pro tem. President.

Office of the Oregon Central R R Co.

Portland Or Augt. 30th 1876

Pursuant to notice in accordance with the By-Laws, the Directors met at 11 o'clock A M.

Present, T. R. Cornelius, Geo. W. Weidler, M. Crawford, R. Koehler and S. F. Chadwick, 5 absent, Hans Thielsen and Henry Villard 2.

The President took the Chair and called the meeting to order.

The Minutes of the previous meeting was then read and there being no objection, they stood approved.

The following preamble and resolution was then offered by Mr. Koehler, seconded by Mr. Chadwick, and declared unanimously adopted.

WHEREAS, at a meeting of the Board of Directors of this Company duly called and legally held April 20th 1876, the issuing of Bonds of this Company to the number of Three hundred of the denomination of One thousand dollars each, was authorized, for the purposes in the preamble and resolutions passed at said meeting specified and in the form in said resolutions set forth and specified.

AND WHEREAS, To secure the payment of said Three hundred bonds and the interest thereon, the President and Secretary of this Company were authorized to execute and deliver in the name of this Company, and in its behalf and as and for its act and under its Corporate Seal, a mortgage or deed of Trust, on the

Railroad of this Company, constructed or to be constructed from Portland to Astoria and from a suitable point of junction at or near Forest Grove to the Yamhill River at or near McMinnville in Oregon, and all the property and franchises connected with or appertaining to the said Railroad, to W. D. Shipman and S. L. M. Barlow of the City of New York as mortgagees and Trustees for the holders of said bonds, such mortgage to be in words and figures as set forth in said Resolutions, Reference being had to said Resolutions for a more perfect description thereof.

And Whereas, the form of said bond and mortgage or deed of Trust were not satisfactory to said Trustees, and said bonds as prepared for execution have been changed by inserting in the body thereof the words "This bond shall not become obligatory until it shall "have been authenticated by a Certificate endorsed "thereon by the Trustees aforesaid," and by altering the certificate of said Trustees to be endorsed thereon so as to read as follows, to wit: "This is to certify that the within Bond is one of Three hundred Bonds, which are mentioned in the mortgage or deed of trust bearing even date herewith, made and executed by the Oregon Central Railroad Company, upon its real and personal property, rolling stock, equipment, Road, Depots, Sta- "tions, Side tracks, Wood yards, franchises and effects "acquired and to be acquired, and also upon all the lands "granted to said Oregon Central Railroad Company, "by the Act of Congress of the United States of "America, aproved May 4th 1870, and entitled "An act

"granting lands to aid in the Construction of a Rail-"road and Telegraph line from Portland to Astoria "and McMinnville in the State of Oregon," to us as "Trustees, subject as in said mortgage is stated, to a "prior mortgage of all said property, executed to Mil-"ton S. Latham, and Faxon D. Atherton as Trustees, "dated July 15th 1871, as security for the payment of "all said bonds and which mortgage or deed of trust has "been recorded,"

AND WHEREAS, certain verbal and inconsiderable changes in the form of said mortgage as in and by said Resolutions of Apr. 20th 1876, the same was authorized to be executed are desired by said Trustees and said Ben Holladay in said Resolutions mentioned.

AND WHEREAS, it is deemed advisable by this Company to consent to and authorize said changes,

RESOLVED: That this Company does hereby consent and agree to the said changes in said bond and certificate and approve the said bonds as the same have been prepared, engraved and printed, and that the President and Secretary of this Company be, and they are hereby authorized and directed to execute and deliver said Three hundred bonds, in said Resolutions authorized and directed to be issued in the name of and for and as the Act of this Company and under their official signatures and the Corporate Seal of this Company, and for the purposes in said resolutions of April 20th 1876 mentioned, in all respects as authorized and directed in said resolutions with the changes aforesaid, and that

all the Acts of said President and Secretary of this Company in that behalf heretofore done or caused to be done be, and the same are hereby expressly approved, ratified and in all respects confirmed.

RESOLVED: That the mortgage or Deed of Trust now here presented to this board and which reads as follows to wit:

THIS INDENTURE, made this first day of March, in the year of our Lord One thousand eight hundred and seventy six, between the Oregon Central Railroad Company, a body Corporate, created by and under the acts of the Legislature of the State of Oregon in that behalf made and provided, party of the first part, and William D. Shipman and Samuel L. M. Barlow, of the City and County of New York, in the State of New York, parties of the second part, WITNESSETH: Whereas, the said party of the first part is expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon, and the Acts of Congress of the United States, approved May 4th 1870, and entitled "An Act granting lands to aid in the Construction of a Railroad and Telegraph line, from Portland to Astoria and McMinnville, in the State of Oregon" to issue bonds and to secure payment of the same by a mortgage or deed of trust, as hereinafter set forth and provided.

AND WHEREAS, under and pursuant to the lawful authority conferred by said several acts of the Legislature of the State of Oregon, and of the Congress of

the United States aforesaid, the Board of Directors of the said party of the first part have unanimously resolved, in substance and legal effect, that said Oregon Central Railroad Company, make, execute, issue and deliver under its corporate seal, its corporate bonds, bearing date even herewith, severally payable to the holders thereof, at the Banking house of Messeuirs Rutten and Bonn, in the City of New York State of New York, on the first day of March, One Thousand nine hundred and six, with interest from and after the first day of March, one thousand eight hundred and seventy six at the rate of seven per centum per month, payable at the same bank, semi-annually, principal and interest payable in Gold Coin, as follows:—that is to say: That three hundred of said bonds be made or issued for the sum of One thousand dollars each amounting in the aggregate to three hundred thousand dollars and no more, and that for the purpose of a more specific identification thereof, said three hundred bonds be numbered in a consecutive series, from one to three hundred, both inclusive, and that upon the face of each bond, be printed or engraved, a certificate to be signed by the parties of the second part hereto, to the effect that such bond is one of the three hundred bonds intended to be secured by these presents:

AND WHEREAS, said Board of Directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part, by the acts aforesaid, in substance and legal effect that the President and Secretary of said party of the

first part execute and acknowledge in its name and in its behalf and under its corporate seal, and deliver to said parties of the second part hereto, a Mortgage or deed of Trust granting, conveying, assigning and transferring to them IN TRUST, all its Corporate Real and personal property, road, depots, stations, side tracks, woodyards, franchises, and effects as security for the payment of said three hundred bonds and interest to grow due therein, and that such mortgage or deed of trust should contain all and singular, the covenants provisos and conditions hereinafter and that said Mortgage or deed of trust, and the three hundred bonds thereby secured, be severally dated the first day of March One thousand eight hundred and seventy six.

And Whereas: the Congress of the United States of America did, by an Act approved May 4th in the year of our Lord, One thousand eight hundred and seventy, and entitled, "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," grant to the Oregon Central Railroad Company and to their successors and asigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands the material for constructing said road, also necessary lands for depots, stations, sidetracks and other needful uses in operating said road, not exceeding forty acres in any one place and also each alternate section of the public lands, not mineral, excepting coal and iron lands, designated by the odd

numbers nearest said road to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of, or reserved, or held by valid pre-emption or homestead right, at the time of the passage of said act, and in case the granting of ten full sections per mile could not be found on each side of said road within said limits of twenty miles, other lands could be selected under the directions of the Secretary of the Interior, on either side of said road nearest to and not more than twenty five miles from the track of said road, to make up such deficiency.

AND WHEREAS, the said Oregon Central Railroad Company, party of the first part hereto, in and by the terms of said Act of Congress of the United States of America, approved May 4th in the year One thousand eight hundred and seventy, is required to set apart, by mortgage or deed of trust, to two or more Trustees, all the net proceeds of the sale of the said granted lands as a sinking fund to be kept invested in the bonds of the United States or other safe and more productive securities for the purchase from time to time, and the redemption at maturity of the First Mortgage Construction Bonds of the Company on the road, depots, stations, sidetracks and woodyards, not exceeding thirty thousand dollars a mile of the Railroad, payable in Gold Coin not longer than thirty years from date, with interest payable semi-annually in coin, not exceeding seven per centum per annum, no part of the principal or interest of said fund to be applied to any other use, until all said bonds shall have been purchased or redeemed

or cancelled, and each of the said First Mortgage Construction Bonds, to bear the certificate of the Trustees, setting forth the manner in which the same is secured and its payments provided for.

AND WHEREAS, the said Oregon Central Railroad Company, party of the first part, has heretofore issued its bonds amounting in the aggregate to four millions three hundred thousand dollars, and as security for the payment thereof has executed a mortgage or deed of trust of all its property conveyed or intended to be conveyed by this Indenture to Milton S. Latham and Faxon D. Atherton, as Trustees, which mortgage or deed of trust is dated the fifteenth day of July One thousand eight hundred and seventy one and is duly recorded in the Records of Mortgages of Multnomah, Washington and Yamhill Counties, in the State of Oregon, all of which bonds are now pledged to Milton S. Latham of San Francisco, in the State of California, IN TRUST for certain creditors of this company, as security for a loan of One Million dollars, Gold, and accrued interest—

NOW THEREFORE, this Indenture WITNESSETH that the said Oregon Central Railroad Company the party of the first part hereto, under pursuant to and by virtue of the express power and authority conferred upon and vested in it by said several acts of the Legislature of the State of Oregon, and of the Congress of the United States of America, aforesaid and under and pursuant to Resolutions duly passed and adopted by its Board of Directors and which are duly entered upon

the official Minutes of said Board, and for and in consideration of the foregoing premises and especially for the purpose and with the intent of better and more effectually securing the payment of said three hundred bonds with the interest due and to grow due thereon, and for and in consideration of one dollar, lawful money of the United States of America, by the said parties of the second part hereto, in hand fully and truly paid to the said party of the first part hereto, before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, HATH, granted bargained sold assigned transferred and set over, enfeoffed, conveyed and confirmed, and by these presents Doth grant, bargain, sell, assign, transfer and set over, enfeoff, convey and confirm, to the said William D. Shipman and Samuel L. M. Barlow, the said parties of the second part, as Trustees, and in trust, and to the survivor of them, and to their or his successors or successor, all, and singular, the Railroad of the said party of the first part, heretofore constructed or here after to be constructed from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill River near McMinnville in the State of Oregon, in all a distance of One hundred and forty six and one half miles. TOGETHER WITH all its lands tenements and hereditaments acquired and appropriated or which shall hereafter be acquired and appropriated for the purpose of a right of way for its Railroad and all the appurtenances thereunto, belonging, And also, all its lands acquired and appropriated or which shall hereafter be acquired

and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America, approved May 4th One thousand eight hundred and seventy and entitled "An Act granting lands to aid in the Construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon,"

AND ALSO, its depots, engine houses, carhouses, station-houses, warehouses, machine shops, work shops, superstructures, erections and fixtures. And also, all and singular, the franchises, rights and privileges now owned, possessed or acquired or which shall hereafter be owned, possessed or acquired by said party of the first part, And all lands, tenements, hereditaments and real estate acquired and appropriated wheresoever and whatsoever, or now owned by said party of the first part, or which shall hereafter be owned by it, AND ALSO, all and singular, the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery, and equipments for said Railroad now owned or which shall hereafter be owned or acquired by said party of the first part, AND ALSO: all goods and chattels now owned or which shall hereafter be owned by said party of the first part, and in any way relating or pertaining or belonging to or connected with said railroad, or running or operating the same, TOGETHER WITH all rents issues, income, profits, moneys, rights, benefits and advantages derived or to be derived, had or received therefrom by said party of the first part, in any way whatsoever.

TO HAVE AND TO HOLD all and singular the premises, rights, franchises, property, real and personal hereinbefore and hereby granted, assigned, mortgaged, pledged and conveyed or intended so to be and every part and parcel thereof, with all the appurtenances unto the same belonging or in any wise appertaining unto them, the said parties of the second part hereto, and to the survivor of them, and to their and to his successors and successor and to their and his assigns forever IN TRUST—for the person or persons, firm or firms, bodies politic or corporate, who have heretofore or who shall hereafter at any time become the purchasers or holders, or owners of any or either of said three hundred bonds, amounting in the aggregate to three hundred thousand dollars, *subject* to the terms, provisoes, and stipulations in said three hundred bonds contained, And Subject also to the provisions of the Act of Congress of the United States of America, affecting or relating to or binding upon the party of the first part. *And subject also* to the prior lien of said mortgage of the fifteenth day of July, One thousand eight hundred and seventy one, executed by the party of the first part to Milton S. Latham and Faxon D. Atherton, Trustees, in favor of all persons, firms, or corporations who have acquired or may hereafter acquire an interest in or become the owners of any of the said bonds secured thereby, And Also subject to the possession and management of said Railroad and property of said party of the first part, and its successors and assigns so long as no default shall be made in the payment of either the interest or

principal of said three hundred bonds or in or to either of them, or so long as the party of the first part shall well and truly observe, keep and perform all and singular the covenants, agreements, conditions and stipulations in said three hundred bonds and in this INDENTURE contained and set forth, and which are to be observed, kept and performed by and on the part of the said party of the first part. AND the said Oregon Central Railroad Company the party of the first part, hath covenanted and agreed and by these presents doth for itself, its successors and assigns covenant and agree for itself, its successors and assigns covenant and agree vivor of them and their and his successors or successor in manner and form following, that is to say.

First, That said Oregon Central Railroad Company, the party of the first part, and its successors shall and will pay or cause to be paid, all taxes, charges, levies and assessments imposed, assessed or levied, or which may hereafter be imposed be imposed, assessed or levied upon the premises franchises and property hereby mortgaged, conveyed and assigned, or intended so to be, and shall and will, at its own proper cost, expense and charges do or cause to be done, all acts and things necessary and proper to be done or performed in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises property and franchises hereby created or intended so to be, and that except the lien of said mortgage of the fifteenth day of July, One thousand eight hundred and seventy one there is no lien upon the property conveyed

or intended to be conveyed by this Indenture at the ensealing after delivery thereof.

SECOND, That the said Oregon Central Railroad Company, the party of the first part and its successors shall and will at any time or times hereafter, and from time to time execute acknowledge and deliver under its corporate seal to the said parties of the second part and the survivor of them and their or his successors or successor, such other and further assurances deeds mortgages, obligations, transfers, indentures and instruments in writing and shall and will do and perform all such further or other acts or things as shall or may be proper or necessary or as their or his counsel learned in the law, shall deem necessary, proper or expedient for the better or more effectually securing the payment of said three hundred bonds, and the interest due or to grow due theron, or for carrying into effect the true intent design, objects and purposes of these presents, or making, preserving, continuing and keeping valid and effectual the lien and incumbrance created or intended to be created by the execution delivery and recording of this Indenture upon all the property real and personal rolling stock equipments franchises and effects and especially the lands referred to in and by the said act of Congress aproved May 4th One Thousand eight hundred and seventy, now owned possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part.

THIRD, and for the purpose of fully and more effectually securing the payment of the said three hundred

bonds together with the interest due or to grow due thereon, the said Oregon Central Railroad Company the party of the first part part hereto, for itself and its successors, hath pledged and hereby doth irrevocably pledge for the purpose and objects hereinbefore specified to and with the said parties of the second part and the survivor of them their and his successors and successor all and singular the net proceeds of the sales of the lands granted to the said party of the first part, by the Act of Congress approved May 4th One thousand eight hundred seventy, hereinbefore mentioned, SUBJECT HOWEVER to the prior pledge of the same in and by said Mortgage hereinbefore referred to, of the fifteenth day of July One thousand eight hundred and seventy one and for the purpose therein specified, as a sinking fund to be kept invested by the parties of the second part in the bonds of the United States or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the three hundred bonds of the party of the first part hereinbefore particularly described, and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled. AND IN THE EVENT, that the principal of said three hundred bonds is not otherwise paid at the maturity thereof then the fund aforesaid after satisfaction of the lien if any, of said Mortgage and pledge of the fifteenth day of July One thousand eight hundred and seventy one which shall then have accrued from the proceeds of the sales of said

lands and interest thereon shall be by said Trustees, parties of the second part, or the survivor of them, their or his successors or succesor, applied to the discharge and payment of any and all amounts, both principal and interest then remaining due and unpaid on all such bonds and if such funds shall then be insufficient to discharge the whole amount then due on all such bonds, the same shall then be applied rateably thereon, according to the interests respectively of all such bondholders.

AND it is further stipulated and agreed, between the parties hereto, that if there remain any deficit in the payment of the principal and interest due on said three hundred bonds, after the whole of the fund aforesaid shall be applied thereon; at the maturity thereof, then the Trustees parties of the second part hereto, their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undisposed of which are included in the grant made by act of Congress aforesaid, and which are hereby conveyed and intended to be conveyed in whole or in part, as the said Trustees may deem best for the interests of said bondholders, and as may be prescribed or limited by any act of Congress in force at the time of such sale, and if there shall be no such prescription and limitation by law, then said lands shall only be sold at public auction in the City of Portland, in the State of Oregon to the highest bidder and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of

Portland, State aforesaid, and the proceeds of such sale or sales after satisfaction of the lien if any, of said mortgage and pledge of the fifteenth day of July One thousand eight hundred and seventy one, and after the payment of all costs and expenses connected with such sales and a reasonable compensation to said parties of the second part for their services in connection therewith shall be applied to the payment of any balance either of principal or interest then remaining unpaid on such bonds aforesaid or any of them.

AND it is hereby expressly covenanted agreed and understood, by and between the parties to these presents that notwithstanding the execution and delivery of these presents and of the covenants herein contained the said Oregon Central Railroad Company, the party of the first part hereto, shall have the right at any time after the execution of these presents to make sales of all and singular the lands granted to said Company by Act of Congress of the United States, approved May 4th One thousand eight hundred and seventy aforesaid in the manner and mode prescribed therefor by law and that the parties of the second part shall and will at any time after the delivery to them of this Indenture upon the request of the party of the first part, and upon the receipt by the parties of the second part, from the party of the first part of such portion of the price or consideration for said lands as shall remain after satisfaction of the lien of said mortgage and pledge of the fifteenth day of July, One thousand eight hundred and seventy one (The certificate of the President for the time being of

the said party of the first part to be sufficient evidence to said parties of the second part of the amount of such remaining portion of said price or consideration) make execute and deliver at the cost and expense however, of the said party of the first part such releases discharges and assurances in respect to said lands as the party of the first part or its counsel, learned in the law may require for the purpose of making good and sufficient title to said granted lands so sold, to any and all purchasers thereof clear and free from all lien or incumbrance, created by these presents and all net proceeds received from the sales of all or any of the lands granted or intended to be granted by said Act of Congress after satisfaction of said prior lien shall be received and held jointly by the parties of the second part, and the President of the party of the first part, and shall be held subject to their control, and shall be immediately and as soon as practicable after the same are received invested by said parties of the second part, by and with the consent of the President of the party of the first part, in the United States bonds or other more productive securities, which securities shall be under the control of the said parties of the second part and the said President of the party of the first part, and shall be used solely for the purposes herein specified, AND it is expressly understood and agreed that the lien created by this Indenture on said lands granted by said Act of Congress shall upon the sale of any portion of said lands as aforesaid and the application of the purchase price thereof as herein provided, cease so far as the

same relates to the portion of the land so sold, the parties of the second part shall not have the right to make sale of any of said lands without the consent of the party of the first part, except as herein specifically provided.

FOURTH, That the said Oregon Central Railroad Company the party of the first part hereto, shall and will, well and truly pay the said sum of money in said three hundred bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per centum, at the times, in the manner, and at the place specified therein.

AND, further—Said Oregon Central Railroad Company hereby covenants and agrees that in case it shall have for the period of six months made default in the payment of the semi annual interest due or to become due on either or any of the said three hundred bonds or in case it shall fail to appropriate and set apart in the hands of the said parties of the second part, all and singular the net proceeds of the sales of the said lands granted to the party of the first part, by the Act of Congress of the United States as aforesaid, as and for a sinking fund for and to be applied in payment or redemption of said three hundred bonds in the manner and subject to the conditions hereinbefore and in said Act of Congress specified, then and in either of said cases after the lapse of said six months the whole principal sum mentioned in each and all of said three hundred bonds shall forthwith be and become due and payable and the lien or incumbrance hereby created for the se-

curity and payment thereof may be at once enforced, anything in said bonds or in this Indenture to the contrary notwithstanding, and that it shall and maybe lawful and the said parties of the second part and the survivor of them and their and his successors or successor are hereby expressly authorized and empowered upon the request in writing of the holders of at least one hundred of said three hundred bonds to enter into and upon and to take actual possession of all and singular the Railroad premises, franchise, rights, property, real and personal and effects hereby granted, conveyed, assigned, mortgaged, pledged, transferred and set over or intended so to be as a security for the payment of said three hundred bonds and by themselves or their agents to operate the said railroad and to take collect and receive the tolls earnings income and profits thereof and every part thereof or to be derived therefrom and that they said parties of the second part and the survivor of them and their or his successors and successor shall and may proceed and are hereby expressly authorized and empowered thereupon but within such reasonable time as they may deem proper, not less than sixty days, and upon and after public notice by advertisement for at least six weeks in one or more newspapers published in the cities of New York, State of New York and San Francisco, State of California and Portland, State of Oregon, to proceed to sell at public auction in said City of Portland to the highest bidder, subject to any prior lien, if any there shall be, under said mortgage of the fifteenth day of July One thousand eight hundred and

seventy one as well all and singular the said Railroad rights and franchises as all other the property real and personal and premises hereby granted conveyed assigned mortgaged pledged transferred and set over or intended so to be and all benefit and equity of redemption whatsoever of the said Oregon Central Railroad Company the said party of the first part hereto of in and to the same and every part and parcel thereof together with the benefit of the franchises belonging thereto or connected therewith, AND as the attorney or attorneys of the said Oregon Central Railroad Company the said party of the first part hereto for that purpose by these presents, duly appointed and constituted the said parties of the second part and the survivor of them and their and his successors and successor shall have full power and authority to make execute and deliver to the purchaser or purchasers thereof a good and valid and sufficient deed or deeds of conveyance or conveyances assignment or transfer in fee simple or otherwise of said Railroad lands, tenements and real estate and of all and singular the said personal or other property franchises rights and premises hereby granted assigned transferred or conveyed as aforesaid, which sale so to be made as aforesaid and which deeds, conveyances, assignments and transfers so to be made and delivered as aforesaid shall operate to convey assign transfer and vest in said purchaser or purchasers, all the right title interest and estate whatsoever reversionary or otherwise of the said Oregon Central Railroad Company the party of the first part of in and to the premises so sold

conveyed assigned transferred and which said sale so to be made shall be a complete and perpetual bar both at law and in equity against the said Oregon Central Railroad Company the party of the first part its successors and assigns and all persons or parties claiming by from or under it or them in any wise or manner whatsoever, and that out of the moneys or proceeds arising either from said tolls earnings or receipts of said Railroad or premises or at or from said sale so to be made as aforesaid, after first deducting the expenses disbursements costs charges and counsel fees incurred in and about the conducting of said sale or running and operating said Railroad as well as a reasonable compensation to themselves for their services in the premises they the said parties of the second part and the survivor of them their and his successors or successor shall pay the amount then remaining unpaid and due on said three hundred bonds and thereby secured or so many as shall then be outstanding and unpaid together with all arrears of interest then due or owing upon the same rendering or paying over the surplus of all such moneys, if any there shall be to the said party of the first part hereto its successors or assigns, PROVIDED always and this Indenture is upon the express condition that if the ensting bonds of the party of the first secured by said mortgage or deed of Trust of the fifteenth day of July One thousand eight hundred and seventy one shall hereafter be retired and cancelled and the said mortgage extinguished, said Oregon Central Railroad Company party of the first part may create a new mortgage upon its

road lands and property in this Indenture conveyed and intended to be conveyed to secure its bonds to be issued to an amount including said three hundred bonds of not exceeding twenty thousand dollars for each mile of its road, which bonds shall be issued only in proportion and as fast as such road is completed of which bonds last mentioned said three hundred bonds shall form a part and upon the execution delivery and lawful recording of such new mortgage securing said three hundred bonds as aforesaid and the completion of the road of said Company to Junction City in the county of Lane in the State of Oregon, PROVIDED always that said new mortgage shall contain clauses covenants and promisions similar so far as the same are applicable to the clauses covenants and provisions herein contained, AND PROVIDED FURTHER that said new mortgage shall first be submitted to and approved as to its form and substance by said parties of the second part of their counsel and shall be a first lien; together with the additional bonds at the rate of twenty thousand dollars per mile of completed road hereinbefore mentioned; upon the property and premises therein and thereby conveyed, this mortgage shall be surrendered up extinguished and cancelled of record and the lien thereof shall thereupon cease, AND provided further and this Indenture is upon the express conditions that in case of an arrangement by which the said Oregon Central Railroad or the Oregon & California Railroad shall be sold or transferred to or combined with any other Railroad Company or corporation and upon any such sale or re-

organization or combination, new bonds of any kind shall be issued by such other Railroad Company or corporation and paid for the said Road so sold or transferred then and in any such case an equal number of such new bonds (or in case the interest reserved on said bonds be less than seven per centum per annum an amount the annual interest upon which shall be equal to the interest payable upon said three hundred bonds shall be offered to the owners and holders of said three hundred thousand dollars of bonds to be secured by this Indenture, and in case such new bonds shall be equal in value to the bonds of the Central Pacific Railroad Company or shall be guaranteed by the Central Pacific Railroad Company or other corporations of equal financial standing whose bonds are of equal or greater market value than the first mortgage bonds of said Central Pacific Railroad Company then the owners and holders of said bonds shall accept the said new bonds and shall by purchase of the said new bonds be deemed to have agreed with said Company to accept the same at any time within six years from the first day of March One thousand eight hundred and seventy six in lieu of said three hundred bonds secured by this Indenture, and the lien of this Indenture shall thereupon cease and the same shall be surrendered up and cancelled of record.

THIS INDENTURE further WITNESSETH and these presents are upon the express condition that upon payment in full of said three hundred bonds and the interest due thereon then these presents and the es-

tate hereby granted shall cease and be void and the Oregon Central Railroad Company the party of the first part shall be immediately and fully reinvested with the said premises hereby granted in law and in fact without any entry or other act whatsoever, and that until default shall be made by said party of the first part hereto either in payment of said three hundred bonds or in payment of the interest due or to grow due thereon as aforesaid or in appropriating and setting apart in the hands of the parties of the second part their successors or successor all and singular the net proceeds of the sales of said lands granted by the Act of Congress aforesaid as a sinking fund to be kept invested in bonds of the United States or other safe and more productive securities for the purposes hereinbefore mentioned and described or in keeping and observing any of the covenants and agreements hereinbefore contained the said Oregon Central Railroad Company the party of the first part and its successors and assigns shall remain in the quiet and peaceable possession and enjoyment of the said premises and property hereby granted or conveyed or intended so to be as aforesaid.

THIS Indenture further Witnesseth that either of the said parties of the second part may resign the trust hereby imposed upon him by delivering to the President for the time being, of said party of the first part or leaving at his office in the City of Portland as aforesaid or wherever said office may for the time being be located notice in writing by said Trustee signed and acknowledged in such manner as to entitle the same to

be recorded in the offices where these presents are recorded such notice however to be so delivered at least one month before such resignation is to take effect.

THIS Indenture further WITNESSETH and it is hereby expressly agreed that in case of the death resignation incapacity or inability of either of the parties of the second part act in the execution of any of trusts aforesaid, then it shall and may be lawful for the remaining acting surviving or competent Trustee and the President for the time being of the party of the first part, and they are hereby empowered and directed to select and appoint by an instrument in writing under their hands and seals; which shall be recorded in the same offices where this Indenture shall be recorded one or more competent persons to fill the vacancy so created in the manner aforesaid, and that in case of the death resignation incapacity or inability of both of said parties of the second part at the same time then and in that case it shall and may be lawful for the President alone, for the time being of the said party of the first part and he is hereby empowered in like manner to select and appoint competent persons to fill the vacancies thus created and in case of failure on the part of said President and said remaining Trustee or either of them to fill said vacancies in the office of Trustee under this instrument for the period of three months after such vacancies occur it shall be lawful for the holders of said three hundred bonds to the amount of ten per cent thereof or upwards to apply to any Court of competent jurisdiction in any county through or into which said

Railroad runs for the appointment of a Trustee or Trustees to fill such vacancy or vacancies, and such person or persons so appointed Trustee or Trustees shall have and possess and be invested with the same estates rights and powers as Trustee or Trustees as he or they would have had and possessed or been invested with, had he or they been originally made a party or parties of the second part to this Indenture and shall perform the same duties in all respects, and until such appointment shall be so made in the manner aforesaid and notwithstanding any vacancy or vacancies as aforesaid said remaining surviving acting or competent Trustee shall have full power and authority to execute each and all of the trusts hereby created, and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes, as if the same acts had been done and performed by all the parties hereto of the second part and in case said appointment shall be made in the manner aforesaid, said party of the first part hereby covenants to make execute and deliver all such other or further instruments deeds Indentures or assurances as may be necessary to enable the person or persons so appointed to execute the Trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this Indenture And it is hereby distinctly declared that no party of the second part nor his successors shall be nor shall be held to be in any case contingency or event liable for any act neglect or default of any other of said par-

ties of the second part hereto or their successors but every party of the second part hereto shall be liable for his own several acts neglects and defaults alone.

AND ALSO that none of the said parties of the second part or their successors shall be liable for any proceeds of any sales of said lands franchises or property above mentioned and hereby conveyed or intended so to be except such as shall be actually by them or him in hand received. And also that the parties of the second part shall not be obliged to take possession of said Railroad or of any of the property connected therewith or manage control operate or conduct the same (except the proceeds of lands by said party of the first part sold as hereinabove provided for) until they the said parties of the second part shall have been reasonably indemnified against all and every expense loss cost damage or liability by them suffered made paid or incurred by reason thereof. AND ALSO that the parties of the second part by becoming parties to this instrument and accepting the Trust hereby created do not incur and shall not be held to have incurred any obligation or responsibility whatever by reason of or in respect of the various recitals hereinabove made. IN WITNESS WHEREOF, the said Oregon Central Railroad Company, the party of the first part hereto hath caused these presents to be subscribed by its President and attested by its Secretary and hath under the express authority of the Resolutions of its Board of Directors caused its corporate seal to be hereunto affixed and the parties of the second part strangers to the several re-

citals herein for the sole purpose of signifying their acceptance of the Trusts hereby and herein created have hereunto subscribed their names and affixed their respective seals the day and year first above written.
be and the same is hereby approved and adopted by this Board in lieu of the Mortgage or deed of Trust authorized by said resolutions of April 20th 1876 to be executed.

RESOLVED, That the President and Secretary of this Company be, and they are hereby authorized and directed to execute and deliver said mortgage or Deed of Trust in the name of this Company and as and for its Act and deed, under their official signatures and the Corporate seal of this Company.

The following Preamble and Resolution was then offered by Mr. Koehler seconded by Mr. Crawford and on being put to vote was unanimously passed and declared adopted.

WHEREAS, Alvan T. Smith and Jane M. Smith, his wife, of Washington County, Oregon, have proposed to convey to this Company the following described premises situate in said Washington County, bounded and described as follows, to wit: Commencing at an oak post on the south side of the Oregon Central Railroad Company's Railroad and thirty feet (30) from the center line of said Railroad, as now located and constructed, from which post the quarter section corner on the south boundary of section six (6) Township One (1) south range three (3) west Willamette Meridian Oregon bears south 33° 05′ west distant Five

hundred ninety-nine (599) feet thence north 59° 40′ east Twelve hundred eighteen and eight tenths (1218-8/10) feet to an oak post thence north 30° 20′ west Two hundred ten (210) feet to an oak post then south 59° 40′ west Ten hundred eighty seven and two tenths feet (1087-2/10) feet to an oak post thence south 1° 45′ west (247-9/10) Two hundred forty seven and nine tenths feet to place of beginning. And also the right of way over and across his lands to wit: The Donation land claim of the said Alvan T. Smith and wife Notification No. 1613 claim No. 43 in Sec. 5, 6, 7, & 8 in T. 1 S. R. 3 W. for the consideration of One Dollar and the issuance and granting to said Alvan T. Smith and Jane M. Smith his wife an annual free pass over the Railroad of this Company during their natural lives,

And Whereas it is deemed advisable by this Board and beneficial to this Company to accept said proposition: Therefore,

Resolved that this Company do accept such conveyance and the proper officer of this Company is authorized and directed to issue to said Alvan T. Smith and Smith his wife an annual pass over the Railroad of this Company for and during the term of their natural lives.

No further business being presented on motion of Mr. Crawford seconded by Mr. Chadwick, the Board adjourned.

A. G. CUNNINGHAM, Secy. T. R. CORNELIUS, President.

Office of the Oregon Central R R Co.

Portland Ore Wednesday Sept 13 1876

No business requiring action of the board at this monthly meeting, no meeting of the Directors was had.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Oct 11" 1876

No business requiring action of the board at this monthly meeting, no meeting of the Directors was had.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Nov 8" 1876

No business requiring action of the board at this date, no meeting was had this day.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Dec. 13" 1876

No business requiring action of the board at this date, no meeting had on this day as provided.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Jany. 10" 1877

Pursuant to notice to each Director in accordance

4731

with the By-Laws the board met at 11/30 o'clock A M this day. Members present,

T R Cornelius)
Geo W Weidler)
R Koehler)
Hans Thielsen) 4

Absent S F Chadwick)
M. Crawford)
Henry Villard) 3.

Mr. Cornelius took the Chair and called the meeting to order.

Minutes of previous meetings were read. No objections being offered, were declared to stand approved.

The Secretary submitted the Trial balance Statement from books of this Company for mo. of December, showing a Net gain for the month of

No further business coming before the board on motion of Mr. Thielsen, seconded by Mr. Koehler the board adjourned, to meet in accordance with the By-Laws.

A. G. CUNNINGHAM, Secy T. R. CORNELIUS, President

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Feby. 14" 1877

No business requiring action of the board at this date no meeting had this day.

A. G. CUNNINGHAM, Secy.

Office of the Oregon Central R R Co.

Portland, Ore Wednesday Mch 14" 1877

Pursuant to notice to each Director, in accordance with the By-Laws, the board met at 11 o'clock A M this day.

Members present	T. R Cornelius)	
	R. Koehler)	
	Geo W Wiedler)	
	Hans Thielsen)	
	and)	
	S F Chadwick)	5
Absent	Henry Villard)	
	and)	
	M. Crawford)	2.

Mr. Cornelius the President took the chair and called the meeting to order.

The Secretary then read the minutes of meeting had on the 10th day of January, 1877, that being the last meeting of the board. No objections being made, the proceedings stood approved.

Mr. Koehler then offered the following Preamble and Resolutions and moved the adoption thereof,

WHEREAS, the gross earnings of this Company for the next five or six months will not be sufficient to pay current operating expenses, Therefore be it Resolved, That the Company negotiate a loan of Milton S. Latham of the London and San Francisco Bank, San Francisco, State of California, not to exceed the sum of Six Thousand dollars in Gold Coin to be received in sums as the same may be needed from time to time, which

sum or sums shall be made payable to said Milton S. Latham on demand with interest at the rate of one per cent per month in like Gold Coin.

Resolved, That to secure the payment of said sums the Net earnings of the road of this Company be and they are hereby pledged and set aside monthly for the liquidation of said loan or loans, until the same shall be fully paid and discharged and the Treasurer of this Company is hereby directed to apply all such Net earnings towards the payment of such loan or loans and interest thereon,

Resolved, That the President, or the Vice President, in the absence of the former, and the Secretary of this Company be and they are hereby authorized and directed to execute in the name of this Company and under its Corporate Seal, the promissory Note or Notes of the Company for the loan aforesaid and such other instruments as shall be necessary to secure the payment of said loan and interest and the appropriation of the Net earnings of the road as herein provided.

On concluding the reading thereof, Mr. Chadwick seconded the motion to adopt and on being put to vote was unanimously adopted.

No further business being presented to the board, on motion of Mr. Koehler, seconded by Mr. Thielsen the board adjourned.

A. G. CUNNINGHAM, Secy T. R. CORNELIUS, President

Office of the Oregon Central Railroad
Co, Wednesday April 11" 1877.
Portland, Oregon

No business requiring the action of the board, no meeting was had on this day.

A. G. CUNNINGHAM, Secy

Future Proceedings contained in "Journal of Minutes" No. 3 O. C. R. R. Co. April 11" 1877.

A. G. CUNNINGHAM,
Secy.

JOURNAL OF MINUTES

OF

O. C. R. R. CO.

OF PORTLAND

VOL. IV.

OFFICE OF THE OREGON CENTRAL R. R. CO.,

Portland, Oregon, Wednesday, May 9, 1877.

Pursuant to notice in accordance with the by-laws, the directors met this day at 11 o'clock A. M.

Present R. Koehler
Ham Thielsen
G. W. Weidler
S. F. Chadwick
M. Crawford
T. R. Cornelius 6

Absent Henry Villard 1

T. R. Cornelius, President, in the chair, called the board to order.

Minutes of last meeting read and no objection being made, were declared on standing adopted.

Statement from books of Company submitted by Secretary for inspection of the board.

Mr. J. N. Dolph, Company's attorney, then read the following preamble and resolution for information of the Board.

WHEREAS, on the 26th day of May, A. D. 1876, an agreement was made and entered into between this Company, the Oregon Central Railroad Company, as party of the third part, The Oregon Steam Ship Company, as party of the first part, The Oregon and California Railroad Company as party of the second part, the European creditors of the said Oregon Steam Ship Company, as party of the fourth part, acting by Milton S. Latham, their Trustee, and Attorney in fact, the European Creditors of the Oregon Central Rail Road Company, as party of the fifth part, acting by said Milton S. Latham, their Trustee and attorney in fact, and Heinrichs Hohenemser and others, as party of the sixth part, which agreement is spread at length upon the minutes of proceedings of this Company, reference being had thereto for a more particular description; and

WHEREAS, certain modifications and changes of said agreement are desired by all parties to the same; and

WHEREAS, it is deemed by this Board for the best interests of this Company that said agreement should be modified and changed as in the contract here-

inafter set forth and contained and that a new contract should be entered into by this Company with the parties to said former agreement as substitute in all respects for said agreement of May 26, 1876, of which new and substituted contract the following is a copy, towit:

"THIS AGREEMENT, made and entered into "this 28th day of March, A. D. 1877, between the Ore- "gon Steam Ship Company, a corporation duly incorpor- "ated and organized under the laws of the state of Ore- "gon, party of the first part, the Oregon and California "Railroad Company, a like corporation duly incorpor- "ated and organized under the laws of the said state, "party of the second part; the Oregon Central Railroad "Company, of Portland, Oregon, a like corporation, "duly incorporated and organized under the laws "of said state, party of the third part; The European "creditors of the said Oregon Steam Ship Company by "Frederick Rodewald, their attorney in fact, duly made "and constituted as such for the purposes of this agree- "ment (the said creditors of said Oregon Steam Ship "Company being the creditors thereof heretofore in the "several contracts herein referred to, represented by "Milton S. Latham, Trustee and attorney in fact, and "who did on the first day of August, 1872, advance to "said Steam Ship Company the sum of Eight Hundred "Thousand dollars, United States Gold Coin, now re- "duced by payments thereon to Six Hundred and Thirty "Thousand dollars gold coin and interest thereon from "the first day of February, 1876,) party of the fourth "part; The European creditors of the Oregon Central

"Rail Road Company, by the said Frederick Rode-
"wald, their attorney in fact, duly made and constituted
"as such for the purposes of this agreement which last
"mentioned creditors of the said Oregon Central Rail-
"road Company are the creditors thereof heretofore and
"in said contracts also represented by said Milton S.
"Latham as Trustee and attorney in fact, and which
"said creditors, or their assignors, did on the 29th day
"of February and August, A. D. 1872, advance in the
"aggregate to said Oregon Central Railroad Company
"the sum of One Million dollars United States coin,
"amounting now, with accrued interest, to One Million
"three Hundred and Sixty Thousand five Hundred and
"fifty-five dollars and fifty-five cents United States
"coin, party of the fifth part; and Heinrichs Hohen-
"emser, of the City of Frankfort-on-the Main, Prussia,
"Director of the Deutsche Vereins Bank in the same
"city; Phillip B. Bonn, Banker of the City of Frank-
"fort-on-the-Main; Paul Runganum, Doctor of law
"and Attorney at Law, of the City of Frankfort-on-the-
"Main; Herman Koehler, Merchant of the City of
"Frankfort-on-the-Main; Adolph Otto, Doctor of law
"and attorney at law, of the City of Heilbroun, King-
"dom of Wurtemberg; Michael Benjamin, Banker, of
"the City of Munich, Kingdom of Bavaria; Doctor
"Gustav Krauss, of the City of Darmstadt, Grand
"Duchy of Hess, by Henry Villard, of the City of Heid-
"elberg, Grand Duchy of Baden, their attorney in fact;
"and the said Henry Villard; owners or possessors of
"certain first mortgage bonds of the said Oregon and

"California Railroad Company, party of the sixth part;

" WITNESSETH, That whereas on the 6th day of "April, A. D. 1876, an agreement was made and en- "tered into by and between said Milton S. Latham, as "agent of the party of the fourth part and as agent of "the said party of the fifth part, and Henry Villard as "agent of and on behalf of the said party of the sixth "part;

" AND WHEREAS, on the 26th day of May, A. D. "1876, an agreement was made and entered into between "said Oregon Steamship Company, as party of the first "part; said Oregon and California Railroad Company, "as party of the second part; said Oregon Central Rail- "road Company, as party of the third part; said credit- "ors of the Oregon Steam Ship Company, by said Milton "S. Latham, as their Trustee and attorney in fact, as "party of the fourth part; said creditors of the Oregon "Central Railroad Company, by said Milton S. Latham, "their Trustee and attorney in fact, as party of the fifth "part; and the said Heinrich Hohenemser and others "as party of the sixth part, in and by which agreement "the parties thereto agreed to and confirmed all the pro- "visions of said recited agreement of April 6, 1876;

" AND WHEREAS, on the 6th day of December, "A. D. 1876, a preliminary agreement was entered into "by Frederick Rodewald, as agent and on behalf of the "said parties of the fourth and fifth parts, and Herman "Koehler, as Agent and on behalf of the holders of the "majority of the first mortgage bonds of the Oregon and

"California Railroad Company, modifying and changing "said agreements of April 6th and May 26, 1876, and "providing for the execution of this agreement by the "parties hereto as a substitute in all respects for said "agreements of April 6th and May 26th, 1876, which "several agreements are hereby referred to for more par- "ticular description;

" AND WHEREAS, the said several corporations, "parties hereto, are so connected in interest and busi- "ness that prosperity of each is largely dependent upon "the prosperity of the others, and each is interested in "continuing in operation each of the others;

" AND WHEREAS, the said parties of the fourth, "fifth and sixth parts, being creditors of said corpora- "tions respectively as hereinbefore stated, are likewise "each interested in continuing in operation and in ad- "vancing the interests of each of the said corporations;

" AND WHEREAS, the expenditures heretofore "made by the party of the sixth part and the liabili- "ties incurred by the parties of the second and third "parts, in pursuance of the terms of the compromise "and settlement of February 29, 1876, with Ben Holla- "day, theretofore owner of a majority of the capital "stock of the said parties of the first, second and third "parts, by which the interests of said Holladay were pur- "chased, including the payment of the purchase price "of the Portland Ware House and Dock property and "the issuing to said Ben Holladay of Three Hundred "Thousand Dollars of second mortgage bonds of the

"Oregon Central Railroad Company, upon which the in-
"terest was guaranteed by the said Oregon and Cali-
"fornia Railroad Company, with the consent of the party
"of the sixth part, were, for the reasons aforesaid, for
"the benefit of all the parties to this agreement;

" AND WHEREAS, the advance of the sums here-
"inafter mentioned by the party of the sixth part for the
"purchase of new steamships for the party of the first
"part, the covenant and agreement of the parties of the
"fourth, fifth and sixth parts, not to foreclose or trans-
"fer their respective liens for the period of ten years
"hereinafter contained, the provision for the application
"of a portion of the earnings of the Steam Ship Com-
"pany to the construction of the Oregon Central Rail-
"road Company after payment of the claim of the said
"European creditors of the Steam Ship Company here-
"inafter contained, and other provisions of this agree-
"ment, are, for the reasons aforesaid, of great advan-
"tage to and for the material benefit of all the parties
"to this agreement and form, with the cancellation of
"said agreements of April 6th and May 26th, 1876, a
"sufficient consideration and inducement to each of said
"parties to consent to and accept the terms of the said
"preliminary agreement of December 6, 1876, and to
"enter into the final agreement therein provided for;

" AND WHEREAS, the terms and conditions of said
"preliminary agreement of December 6, 1876, as embod-
"ied in this agreement, have been accepted and agreed
"to by all the parties hereto, so far as the same affects
"their several rights under said contracts or otherwise;

" NOW, THEREFORE, in consideration of the "premises and of the mutual benefits to be derived by "each under this agreement, the said parties hereto re- "spectively covenant and agree with the other and others "of them as follows, that is to say:

" ARTICLE 1 Upon the execution of this agree- "ment, said agreements of April 6, 1876, and May 26, "1876, shall be cancelled and in all respects superseded "by this agreement, and as between the parties to said "preliminary agreement of December 6, 1876, both said "contracts of April 6, 1876, and May 26, 1876, shall be "deemed and taken to have been superseded by said pre- "liminary agreement from the date thereof, to-wit, De- "cember 6, 1876.

" ARTICLE 2, The said party of the fourth part "shall, and hereby covenants and agrees to reserve out "of the net earnings and proceeds of the said Steam "Ship Company, now pledged to said party of the fourth "part, Fifteen thousand dollars annually during the "term of three years, from the 1st day of September, "1876, in two instalments of Seven thousand five hun- "dred dollars each, payable every six months, on the last "days of February and August of each year, and which "amounts so reserved shall be applied to the payment "of the interest on Three hundred thousand dollars, seven "per cent, Oregon Central Railroad Company second "mortgage bonds, issued to Ben Holladay, in pursuance "of the before mentioned compromise settlement of Feb- "ruary 29, 1876, between him and said Henry Villard, "as agent and on behalf of the party of the sixth part.

" ARTICLE 3. In consideration of the premises and "the annual payment of Fifteen thousand dollars as stip- "ulated in Article 2, for the interest on said Three hun- "dred thousand dollars, second mortgage bonds, issued "to Ben Holladay, as aforesaid, and in pursuance of said "several agreements hereinbefore mentioned, said party "of the sixth part has advanced to the said Oregon Steam "Ship Company, party of the first part, Seventy thous- "and dollars gold coin, for the purchase and equipment "of the Steamship "Geo. W. Elder," and said party "of the sixth part has also advanced for the consideration "aforesaid, and in pursuance of the agreements afore- "said, for the purchase and equipment of the second "new steamer as in said contract provided, to-wit: the "Steam Ship "City of Chester," the further sum of "Seventy thousand dollars gold coin.

" AND IT IS AGREED that such advances, so "made by the party of the sixth part, shall be secured "by mortgage on the aforementioned new vessels on ac- "count of which the aforesaid advances were made re- "spectively, the lien under which mortgage shall be a "joint one, covering both vessels, and shall be subordi- "nate only to such lien or liens as have been given or it "may be necessary to give to the sellers of such new ves- "sels, or their assigns, to secure such portion of the cost "of the said two vessels as has not been advanced or paid "by the parties of the first and sixth parts, or either of "them.

" ARTICLE 4. The advances to the party of the

"first part by the party of the sixth part, referred to in "Article 3, shall bear interest at the rate of six (6) per "cent per annum, and shall be paid to said party of the "sixth part out of the net earnings of the said party of "the first part, if such net earnings be sufficient; and, "if not, then to the extent thereof in the order provided in "the 5th Article of this agreement, and as follows, to- "wit: the interest shall be paid semi-annually, and pay- "ments on account of the principal thus advanced shall "be made to the amount of not less than 10 per cent "annually in equal semi-annual payments; after the "first payment under this stipulation on account of the "principal, there shall be added to such subsequent pay- "ment on account of the principal an amount equal to "the interest saved by the previous payment of prin- "cipal, so that such semi-annual payments of principal "and interest, taken together shall be not less than Eleven "thousand two hundred dollars until said advances are "fully paid. The semi-annual payments of both princi- "pal and interest shall be made on the 15th days of "April and October of each year; but if said advances "of said party of the sixth part shall have been made "for less than six months at the time of the first pay- "ments on account of principal and interest herein pro- "vided for, the amount of principal and interest then "due and payable shall only be proportionate to the time "for which said advances have actually been made pre- "vious to said time of payment.

" ARTICLE 5. The parties hereto further cove- "nant and agree, any prior rights of all or any of them

"notwithstanding, to the use and application of the "earnings of the said party of the first part, the said "Oregon Steam Ship Company, to the following pur- "poses and in the following order, to-wit:

" 1st. To the payment of the cost of the new steam- "ers above referred to in accordance with the stipula- "tions and conditions of the bills of sale or building con- "tracts under which they have been bought or acquired.

" 2nd. To the payment of interest and principal on "the advances of the party of the sixth part as set forth "in Article 4.

" 3d. To the annual payment for three years of Fif- "teen thousand dollars as stipulated in Article 2.

" 4th. To the annual payment of the interest at the "rate of 10 per cent per annum, and to the principal "due to the European creditors of the Oregon Steam "Ship Company, the party of the fourth part; and "upon the payment in full of the principal and inter- "est due to the said European creditors of the said Ore- "gon Steam Ship Company, the stock of that Company "now held as security by the parties of the fourth and "fifth parts, or either of them, or their trustees, nominee "or nominees, shall be transferred to such parties or nomi- "nees as the party of the sixth part may designate, free "of all claim of said parties of the fourth and fifth parts, "and thereafter the earnings of such Steam Ship Com- "pany shall be divided equally, and one-half thereof "shall be applied to the payment of the interest (which "shall be and is reduced to 5 per cent per annum from

"April 6th, A. D. 1876) and of the principal due the "said party of the fifth part, the said European creditors "of the Oregon Central Railroad Company; and the "other half of the said Steam Ship Company's earnings "shall come to and be received by the said nominee or "nominees of the party of the sixth part as the holder "or holders of the stocks of the said Steam Ship Company "and shall be applied to the payment of whatever por- "tion of the interest and of the principal of the ad- "vances made, and liabilities incurred by the party of "the sixth part under the said compromise and settle- "ment with Ben Holladay shall remain unliquidated "and next to the completion of the said Oregon Central "Railroad to the junction of said road with the "Oregon and California Railroad at Junction "City, or elsewhere, and upon the payment in "full of the principal and interest due to the "said European creditors of the Oregon Central Rail- "road Company, the entire earnings of the Oregon "Steam Ship Company shall be received by the said "nominee or nominees of the party of the sixth part, as "holder or holders of the stock of the said Steam Ship "Company.

" ARTICLE 6. Upon full payment or satisfaction "as provided in this agreement of the principal and in- "terest of the debts due to the party of the fourth part, "the said European creditors of the said Oregon Steam "Ship Company and to the party of the fifth part, the "said European creditors of the said Oregon Central "Railroad Company all other securities held by said par-

"ties of the fourth and fifth parts or either of them in "respect to those debts shall be turned over to the nomi- "nee or nominees of the party of the sixth part, free of "all claims of said parties of the fourth and fifth parts, "to be held by the nominee or nominees of the party "of the sixth part, in accordance with the true intent of "this agreement and the rights of the several parties "hereto.

" ARTICLE 7. The said parties of the fourth and "fifth parts (the other parties to this agreement con- "senting thereto) hereby forever releases the said party "of the sixth part and the said Henry Villard and their "and his representatives and assigns from all liabilities, "claims and demands they, the said parties of the fourth "and fifth parts, or either of them, may now or here- "after have against said party of the sixth part, or the "said Henry Villard, or their or his representatives or "assigns as holder or holders, or otherwise in respect to "any amount of the stocks of the said Oregon Steam "Ship Company, or of the said Oregon Central Rail- "road Company claimed to be unpaid stock, now or at "any time heretofore held or which may hereafter be "held by the party of the sixth part, or by the said Henry "Villard, or by any nominee, agent or representative of "the party of the sixth part.

" ARTICLE 8. The old steam ships of the said "Oregon Steam Ship Company not required in the busi- "ness of said Company shall be sold, and the net pro- "ceeds applied to the payment of the cost of the said

"new steam ships or after such payment, used in like "manner as the earnings of said Company.

" ARTICLE 9. The said party of the fifth part fur- "ther covenants and agrees with the party of the sixth "part, the other parties consenting thereto, that the said "party of the sixth part shall have the right and option "to acquire and purchase the claim of the said party "of the fifth part, the said European creditors of the "Oregon Central Railroad Company at any time dur- "ing the period of three years from December 6, 1876, "for the sum of Two Hundred and Fifty Thousand Dol- "lars ($250,000) gold coin of the United States, and "the further amount of any deficiency of interest which "may have accrued between the interest actually earned "and paid by the said Railroad Company to the party "of the fifth part, added to the interest paid out of the "earnings of the said Steam Ship Company, under "Article 5 of this agreement, and the said interest of 5 "per cent per annum, from the 6th day of April, 1876, "upon the said principal sum of Two Hundred and Fifty "Thousand Dollars.

" PROVIDED, HOWEVER, that if said party of "the sixth part shall, after availing themselves of the "option to purchase said claim at the price stated, trans- "fer the road and other property of the said Oregon "Central Railroad Company, within the period of ten "years from December 6th, 1876, to any other person, "persons or corporation, the said party of the fifth part "shall receive the benefit of whatever consideration over

"and above said Two Hundred and Fifty Thousand Dol-
"lars, and such deficiency of interest, as aforesaid, and
"the necessary charges, expenditures, advances, and in-
"terest (at 6 per cent per annum) of the said party of
"the sixth part, may be obtained by said party of the
"sixth part, or those whom it now represents for said
"property.

" ARTICLE 10. Neither of the parties of the
"fourth, fifth or sixth parts shall, without the consent
"in writing of the others first had, foreclose or transfer
"the securities held by them respectively of said Corpora-
"tions, to-wit: the party of the fourth part of the Ore-
"gon Steam Ship Company; the party of the fifth part,
"of the Oregon Central Railroad Company; and the
"party of the sixth part, of the Oregon and California
"Railroad Company, for the term of Ten years from
"December 6th, 1876, if the Terms and Conditions of
"this Agreement shall during the said Term be duly and
"faithfully performed. Provided, however, that the
"party of the sixth part shall have the right of selling
"their interest in the Oregon and California Railroad
"Company within the said Term, upon paying or caus-
"ing to be paid by the said Oregon Steam Ship Com-
"pany, or otherwise in full, any indebtedness which may
"be then due by the said Oregon Steam Ship Company
"to the party of the fourth part; and upon paying or
"causing to be paid by the said Oregon Central Rail-
"road Company or otherwise, to the said party of the
"fifth part, in full for the said claim of the party of the
"fifth part (if said party of the sixth part shall not

"previously and within the time limited for that pur-
"pose have exercised the right given by Article 9, of pur-
"chasing the claim of the party of the fifth part, the
"said creditors of the Oregon Central Railroad Com-
"pany) the sum of Four Hundred Thousand Dollars,
"gold coin, of the United States, and the amount of any
"such deficiency of interest as mentioned in Article 9,
"on the said sum of Two Hundred and Fifty Thousand
"Dollars ($250,000) to the date of payment of the said
"Four Hundred Thousand Dollars ($400,000).

" ARTICLE 11. IT IS UNDERSTOOD AND
"ACKNOWLEDGED by the parties hereto that the
"party of the sixth part Contracts and Covenants in
"these presents as holder of the majority of the First
"Mortgage Bonds of the said Oregon and California
"Railroad Company, and it is further understood and
"agreed that all rights and benefits accruing to the party
"of the sixth part under these presents shall at all times
"be enjoyed by such holders of the majority of said
"Mortgage Bonds. The holding of the majority of such
"Mortgage Bonds shall be established in the man-
"ner provided in Article 12 of the agreement between
"the Oregon and California Railroad Company and the
"holders of the first Mortgage Bonds thereof of July
"25th, 1874.

"In witness whereof, the said parties of the first
"second, and third parts have by resolutions of their
"respective Boards of Directors duly passed, caused
"caused their respective corporate seals to be hereunto

"affixed, and these presents to be signed by their re-"spective Presidents and Secretaries, and the said parties "of the fourth, fifth, and sixth parts by their respective "attorneys in fact have hereunto set their hands and "seals the day and year first above mentioned."

Therefore

Contract executed by Presdt & Secy. this date. Directors all paid to date.

Resolved that this Company do enter into such Contract with said parties, and that the President and Secretary of this Company be and they are hereby authorized to execute said contract in quadruplicate in the name of and for and on behalf of this Company under their official signatures and the corporate seal of this Company.

Mr. Chadwick moved the adoption of the preamble and resolution, seconded by Mr. Koehler and passed, and declared unanimously adopted.

No further business being presented Mr. Koehler moved to adjourn, seconded by Mr. Weidler and passed, the President declared the board adjourned to meet in accordance with the By Laws.

A. G. CUNNINGHAM T. R. CORNELIUS,
Secy.

ANNUAL
STOCKHOLDERS MEETING

Office of the
Oregon Central Railroad Company
Portland, Or
Thursday, May 24th, 1877.

Pursuant to notice in accordance with the By-Laws and in accordance with the By-Laws, the Stockholders met at 11 o'clock A. M. this day.

In the absence of the President, R. Koehler, Vice President of the Company, called the meeting to order, and directed the secretary to read the minutes of the last annual Stockholders meeting. Minutes were then read, and no objection being made, the President declared the Minutes to stand approved. The President then stated that this was the day fixed by the By-Laws for electing Seven directors to serve for the ensuing Twelve Months, and directed the secretary to call the names of the stockholders as shown by the certified list furnished from the books of the Company.

The reading said list was then proceeded with and the following stockholders responded present.

M. Crawford	1	share
S. F. Chadwick	1	"
R. Koehler	1	"
R. Kohler Trustee	49055⅝	"
Hans Thielsen	1	"
Henry Villard	1	"
Total	49060⅝	shares

which being over a majority of all the Capital Stock of the Company, the President appointed Mess. Crawford and Thielsen tellers and directed that the election be proceeded with.

The Stockholders present then deposited their votes, and on the same being canvassed was found to have resulted as follows.

T. R. Cornelius	received	49060⅝	votes
S. F. Chadwick	"	49060⅝	"
Hans Thielsen	"	49060⅝	"
Richard Koehler	"	49060⅝	"
Henry Villard	"	49060⅝	"
C. H. Lewis	"	49060⅝	"
Medorum Crawford	"	49060⅝	"

The stock not all having voted, and no hour named in the ByLaws for closing the election, the President decided to hold the election open during the day, to enable any that should desire to deposit their vote.

During the afternoon the following stock was voted.

Henry Buxton by S. Blank, Proxy.		10	shares
A. C. Brown	do	10	"
Stephen Blank		8	"
	Total	28	shares

all voted for the above named directors, and by order of the President added to the votes previously counted for said directors, making a total vote for each of 49088⅝ shares.

At the close of the day the President declared the

stockholders named above as receiving all the votes cast, as unanimously elected Directors of this Company to serve for the ensuing Twelve Months and executed the following Certificate of Election.

State of Oregon)
) ss
County of Multnomah)

I, Richard Koehler, Vice President of the Oregon Central Railroad Company, a corporation duly incorporated under the laws of Oregon, and in the absence of the President, presiding at the Stockholders election for Directors of said Company, held at the office of said Company, in the City of Portland, Oregon, on this day, do hereby certify that the following Stockholders of said Company each received Forty Nine Thousand Eighty eight and five eighth votes (49088⅝) (being all the votes cast at said election).

T. R. Cornelius
S. F. Chadwick
M. Crawford
R. Koehler
C. H. Lewis
Hans Thielsen
Henry Villard

and do hereby declare said stockholders duly and unanimously elected Directors of said Company for the ensuing year.

Portland, Or.
May 24th, 1877. R. Koehler, Vice Pres't.

No other stock presented and election closed in accordance with By-Laws.

A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central Railroad Company
Portland, Or

Wednesday, June 13th, 1877

Pursuant to notice in accordance with the By-Laws the newly elected Directors met at the office of the Company this day at 11 o'clock A. M.

Present Messrs	R. Koehler	)	
	Hans Thielsen	)	
	M. Crawford	)	
	S. F. Chadwick	)	
	T. R. Cornelius	)	
	C. H. Lewis	)	6

absent H. Villard 1

Members present qualified by taking and subscribing the following oath.

State of Oregon)
) ss
County of Multnomah)

We, T. R. Cornelius, Hans Thielsen, M. Crawford, C. H. Lewis, S. F. Chadwick, and R. Koehler, being each severally and duly Sworn say, and each for himself says, that we will faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company, a corporation duly incorporated under the laws of Oregon, to the best of our ability, so help us God.

T. R. CORNELIUS
H. THIELSEN
M. CRAWFORD
C. H. LEWIS
S. F. CHADWICK
R. KOEHLER

Sworn and subscribed to)
before me this 13th day)
of June A. D. 1877)

John D. Biles,
(Seal) Notary Public.

Mr. Henry Villard filed his qualification in words and figures following.

"State of New York)
) ss
"City and County of New York)

"I Henry Villard do solemnly swear that I will well "and faithfully execute and perform the duties of a Di- "rector of the Oregon Central Railroad Company, with "strict impartiality and according to the best of my abil- "ity.

Signed
"Subscribed and sworn to HENRY VILLARD,
"before me this 25th day
"of May A D 1877

"Signed
"(Seal) Edwin F. Corey
"Commissioner for the State of Oregon in New York.

A Majority being present and all qualified as Directors, the Secretary called the Board to order, and

announced the election of a member as chairman to preside during the organization of the Board by the election of officers to serve for the ensuing year, to be in order. Mr. Cornelius moved that S. F. Chadwick act as chairman of the board untill the election of President was had, 2d by Mr. Lewis, and unanimously carried. Mr. Chadwick took the chair, and announced the election of a member of the board for President to serve for the ensuing year.

Mr. Koehler nominated T. R. Cornelius, seconded by Mr. Thielsen. There being no objection the vote was taken viva voce, and found to be unanimous.

Mr. Cornelius then took the chair and proceeded with the organization, announcing the election of a member of the Board for Vice President, to serve for the ensuing Twelve Months.

Mr. Thielsen nominated R. Koehler, seconded by Mr. Lewis, there being no objection the vote was taken viva voce, and found to be unanimous.

Mr. Koehler then nominated A. G. Cunningham for Secretary to serve for the ensuing Twelve Months, seconded by Mr. Crawford. There being no objection the vote was taken viva voce and found to be unanimous.

Mr. Koehler then nominated A. G. Cunningham for Treasurer to serve for the ensuing Twelve Months, seconded by Mr. Chadwick, and the vote taken as above, same result.

The President declared the officers of the board

duly elected and that the board was now duly organized for the transaction of business.

The Secretary here submitted the monthly Statement for Month of May and read the total of Earnings and Expenses and the total loss for the calendar year.

Reading the minutes of last Meeting dispensed with.

No other business being presented, on motion of Mr. Koehler, seconded by Mr. Thielsen, the board adjourned to meet in accordance with the By-Laws.

A. G. CUNNINGHAM T. R. CORNELIUS
Secy. President.

Office of the
Oregon Central R. R. Co.
Portland, Or. Wednesday July 11th, 1877.

No meeting had this day. No business requiring the action of the board.

A. G. CUNNINGHAM.
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday, Aug. 8th, 1877.

No business requiring the action of the board on this day. No meeting was had.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday, Sept. 12th 1877

No business requiring the action of the Board on this day, a meeting did not take place.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday, Oct. 10th 1877

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday Nov 14th 1877

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central Railroad Company
Portland, Or.
Wednesday Dec 12th 1877

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central Railroad Company
Portland, Or.
Wednesday Jany 9th 1878

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday Feby 13th 1878

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland, Or.
Wednesday Mch 13th 1878

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central R. R. Co.
Portland Oregon
Wednesday April 10th 1878

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM,
Secy.

Office of the
Oregon Central Railroad Company
Portland Oregon
April 25th 1878

Pursuant to call by the Vice President and notice to each Director within the State, in accordance with the By-Laws.

The Board met at 11 o'clock A. M. Members present

T. R. Cornelius
R. Koehler
H. Thielsen
S. F. Chadwick
C. H. Lewis
and M. Crawford. 6

Members absent.

H. Villard (not in the State. 1

The President called the Board to order and stated that this called session was for the consideration of certain agreements which would be read to the Board.

The Company's attorney (J. N. Dolph Esq.) then

read the following.

Whereas an agreement was entered into on or about February 1st, 1878 between the European creditors of this Company and the European creditors of the Oregon Steam Ship Company of Portland, Henrich Hohenemser and others known as the Frankfort Committee owners and holders of majority in number and value of the first Mortgage Bonds of the Oregon and and California Railroad Company, and Mrss. Sulzbach Bros. of Frankfort on the Main, Germany, which agreement is in words and figures as follows, to wit:

Agreement made this first day of February One Thousand Eight Hundred and Seventy eight between the European creditors of the Oregon Steam Ship Company by Frederick Rodewald their attorney in fact of the first part, the European creditors of the Oregon Central Railroad Company, by said Frederick Rodewald their attorney in fact of the second part, and Heinrich Hohenemser, Phillip B. Bonn, Paul Reingammon, Herman Kohler, Adolph Otto, Michael Benjamin, Gustav Krauss and Henry Villard hereinafter styled the Frankfort Committee of the third part and Rudolph Sulzbach and Moritz Sulzbach of the fourth part.

Whereas by an agreement made on or about the Twenty eighth March One Thousand Eight Hundred and Seventy Seven between the Oregon Steam Ship Company of the first part, the Oregon and California Railroad Company of the second part, the Oregon Central Railroad Company of the third part, the said Euro-

pean creditors of the Oregon Steam Ship Company (parties hereto) of the fourth part, the said European creditors of the Oregon Central Railroad Company (parties hereto) of the fifth part, and the said Frankfort Committee (parties hereto) of the sixth part certain arrangements were made with reference to earnings of the Oregon Steam Ship Company and certain steam ships to be provided for the said Company and otherwise in consideration of the covenants agreements and releases hereinafter contained, the parties hereto respectively contract and agree with the other and others of them as follows.

FIRST. The Frankfort Committee agree to transfer and release to said Frederick Rodewald or his Nominee or Nominees on behalf of the European creditors of said Oregon Steam Ship Company all the right title and interest of the said Frankfort Committee and their Nominee or Nominees as owners or pledgors or otherwise of all the stock of the Oregon Steam Ship Company and all right or equity of redemption of the said Committee as present equitable owners of said Stock or otherwise therein so that all the stock of the Oregon Steam Ship Company shall become the absolute property of the said European creditors of the Oregon Steam Ship Company or their Nominees, or Nominee free from any incumbrance or charge and the Frankfort Committee shall accordingly cease to be in any way interested in the Oregon Steam Ship Company and the European creditors of the Oregon Steam Ship Company and of the Oregon Central Railroad Company re-

lease and discharge the Oregon and California Railroad Company from all liability in respect of its guaranty of first Mortgage Bonds of the Oregon Steam Ship Company and that such bonds or the guarantee clause endorsed thereon shall be cancelled and the Frankfort Committee of the Oregon and California Railroad Company shall not in any way be liable for the debts and engagements of the Oregon Steam Ship Company.

SECOND. The Frankfort Committee release the Oregon Steam Ship Company from all liability under the recited agreement or otherwise to make any further payments on account of or towards the interest on the Oregon Central Railroad second mortgage Bonds beyond the sum of Seven Thousand Five Hundred dollars which became due on the first day of October last and was not paid and the further sum of Seven Thousand Five Hundred dollars which will become due on the first day of April next and for the sums the said Frankfort Committee will accept the engagement of the Oregon Steam Ship Company one for Seven Thousand five hundred dollars payable on the First day of October, One Thousand eight hundred and Seventy eight without interest, and the other for the like sum payable on the First day of April, One Thousand Eight hundred and Seventy nine without interest. But it is further agreed that the amounts already paid or to be paid as above mentioned by the Oregon Steamship Company on that account shall not be reclaimed but the liability of any therefor by the Oregon Central Railroad Company or the Oregon and California Railroad Company to the

Oregon Steam Ship Company shall be deemed satisfied and cancelled.

THIRD. Save and except as regards the two sums of Seven Thousand five hundred dollars hereinbefore mentioned all rights of the Oregon and California Railroad Company, the Frankfort Committee, the Oregon Central Railroad Company and the European creditors of the Oregon Central Railroad Company in or to the property or earnings of the Oregon Steam Ship Company are hereby determined and released and so far as regards the Oregon Steam Ship Company its property and earnings the definite agreement of March Twenty eight One Thousand eight hundred and Seventy seven is hereby annulled and cancelled.

FOURTH. In consideration of Messieurs Sulzbach releasing the Frankfort Committee from all liability for the sums represented by the contract between the Oregon Steam Ship Company and the Portland Dock and Warehouse Company and the mortgage to Richard Kohler of the Steam Ships "Geo. W. Elder" and "City of Chester" the Oregon Steamship Company shall give Messieurs Sulzbach a new and consolidated mortgage on the property of the Steam Ship Company according to the terms specified in a separate memorandum of even date herewith executed by said Rudolph Sulzbach and Moritz Sulzbach and said Frederick Rodewald.

FIFTH. Said Rudolph Sulzbach and Moritz Sulzbach hereby release and discharge the Frankfort Committee from any and all liability whatsoever for the amounts advanced by the said Sulzbachs and secured by

the assignment of the said contract between the Portland Dock and Warehouse Company and the Oregon Steam Ship Company and of the said mortgage of the steamships "George W. Elder" and "City of Chester", but not for the amount secured by the assignment of the contract between the Portland Dock and Warehouse Company and the Oregon and California Railroad Company.

SIXTH. All the parties hereto respectively covenants and agrees with the others and other of them to execute and procure to be executed by all necessary and proper parties all further deeds, Transfers of Stock and other documents proper or necessary to carry out the provisions and stipulations of this agreement.

SEVENTH. Nothing herein contained shall in any way alter the rights of the respective parties hereto in the property or earnings of the Oregon Central Railroad, except that neither the European creditors of the Oregon Steam Ship Company nor the Oregon Steam Ship Company shall have any interest in or right to such property or earnings as hereinbefore provided nor shall this agreement in any way alter or impair the option of purchase of the interest of the European creditors of the Oregon Central Railroad Company given by the Ninth article of said agreement of March twenty eight One Thousand Eight hundred and Seventy seven.

EIGHTH. This agreement is conditional upon the sanction of the General Assembly of the Bond holders of the Oregon and California Railroad Company

which sanction the parties hereto undertake to use their best efforts to obtain within fourteen days from the date of this agreement and if such sanction is not so given within said fourteen days or such further time as the parties hereto may agree this agreement and the agreement of even date herewith between said Frederick Rodewald and Messieurs Sulzbach shall be void.

IN WITNESS whereof the parties to these presents have hereunto set their hands

European Creditors of the Oregon Steam Ship Company

(Signed) by FRED'K RODEWALD

European Creditors of the Oregon Central Railroad Company

(Signed) by FRED'K RODEWALD

The Frankfort Committee

(Signed) by CHAS. E. BRETHERTON.

Sgn Gebs. Sulzbach

(Signed) H. KOHLER.

Witness to above signatures

(Signed) R. D. Peebles

and whereas in the opinion of this board it is to the best interest of this Company that said agreement should be ratified and agreed to by this Company,

RESOLVED. That said agreement be and the same is in all respects ratified and confirmed and that the President and Secretary of the Company be and

they are hereby authorized and empowered if requested by either party to said agreement to execute and deliver under their official signatures and the corporate seal of this company a proper and sufficient deed of confirmation of said agreement.

After due consideration Mr. Koehler moved its adoption, seconded by Mr. Crawford, and on the vote being taken was declared unanimously adopted.

Company's attorney then read the following, for consideration and action of the Board.

RESOLVED. That the President and Secretary of this Company be, and they are hereby authorized and directed to execute in the name of and on behalf of this Company and under their official signatures and the corporate seal of this company and for the purposes therein specified that certain indenture of which the following is a copy, to wit:

THIS INDENTURE

Made this 15th day of April, 1878, between Arthur Scrivener of San Francisco in California of the first part,

The Oregon and California Railroad Company of the second part, and the Oregon Central Railroad Company of the third part.

WHEREAS said Oregon and California Railroad Company by instruments dated the 26th day of July, 1872, and respectively endorsed upon Two Thousand Bonds of the Oregon Steam Ship Company dated July

1st, 1872, each for One Thousand Dollars and interest payable as by said Bonds and the Coupons thereto attached is more particularly specified have guaranteed the payment of the said Bonds and interest thereon.

AND WHEREAS, said Arthur Scrivener as agent for the European Creditors of said Oregon Steam Ship Company and of said Oregon Central Railroad Company is now the holder of said Two Thousand Bonds and the Coupons for the interest thereon attached thereto.

AND WHEREAS, by an agreement made the first day of February A D 187.. between the European Creditors of the said Oregon Steam Ship Company by Frederick Rodewald, their attorney in fact, of the first part, the European Creditors of said Oregon Central Railroad Company by said Frederick Rodewald, their attorney in fact, of the second part, and Heinrich Hohenemser, Phillip B. Bonn, Paul Reingammon, Herman Koehler, Adolph Otto, Michael Benjamin, Gustav Krauss and Henry Villard, thereinafter styled "The Frankfort Committee" and who control all the stock of said Oregon and California Railroad Company, of the third part, and Rudolph Sulzbach and Moritz Sulzbach, of the fourth part.

IT WAS agreed that in consideration of the transfer and release of the stock of said Steam Ship Company to a Nominee or Nominees of said European Creditors of said Oregon Steam Ship Company and for other considerations therein mentioned said guarantee should

be cancelled and discharged.

NOW THIS INDENTURE WITNESSETH: That in pursuance of said agreement and in consideration of the transfer on the date hereof of Three Million Dollars or thereabouts of the Capital Stock of said Oregon Steam Ship Company to said Arthur Scrivener or his Nominee or Nominees as aforesaid and for the considerations in said agreement mentioned, said Arthur Scrivener as holder of said Bonds and as agent as aforesaid of the European Creditors of said Oregon Steam Ship Company and said Oregon Central Railroad Company, doth hereby acquit, release, and discharge the said Oregon and California Railroad Company of and from all actions, suits, claims, demands and liabilities whatsoever and of every description, for, or in any manner in respect of the said guarantee endorsed on said Two Thousand Bonds of said Oregon Steam Ship Company hereinbefore referred to, or in respect of said Bonds or any interest accrued or hereafter to accrue due thereon and doth hereby covenant with said Oregon and California Railroad Company its successors and assigns respectively that he will forthwith on the execution of these presents cancel each of said instruments of guarantees and erase the same from said Bonds by stamping or writing across the same the form specified in the schedule hereto and duly subscribing and executing the same.

IN WITNESS WHEREOF the said Arthur Scrivener has hereunto set his hand and seal and the said Oregon and California Railroad Company and

Oregon Central Railroad Company have respectively caused these presents to be sealed with their corporate seals, signed by their Presidents and attested by their Secretaries the day and year first above written.

Schedule.

In pursuance of an agreement made this 15th day of April, A. D. 1878, between the undersigned Arthur Scrivener as holder of the within written Bond, of the first part, the Oregon and California Railroad Company of the second part and the Oregon Central Railroad Company of the third part and for the considerations therein described this guarantee is hereby discharged, erased and cancelled.

As witness my hand and seal this 15th April, 1878.

(Signed) A. Scrivener. (Seal)

After being duly considered by the Board Mr. Koehler moved its adoption, seconded by Mr. Lewis, and on the vote being taken was declared unanimously adopted.

No further business being before the Board,

Mr. Koehler moved to adjourn seconded by Mr. Lewis, and on the vote being taken the President declared the Board adjourned without day.

A. G. Cunningham Secretary. T. R. CORNELIUS President.

Office of the

Oregon Central Railroad Company

Portland Oregon Wednesday May 8th 1878

Pursuant to Call and Notice to each Director, in accordance with the By-Laws, the Board met at 11 o'clock A. M. this being the regular Monthly meeting. The following members were present.

R. Koehler
C. H. Lewis
Hans Thielsen and
T. R. Cornelius
M. Crawford
S. F. Chadwick 6

Members absent

Henry Villard. 1.

The President took the chair at 11:30 A. M. and called the Board to Order.

Mr. Koehler offered the following resolution, which he read to the Board.

RESOLVED. That the President and Secretary of this Company be and they are hereby authorized and directed to borrow of such person or persons, firms or corporations as they shall see fit and upon such terms and conditions and for such time as they shall deem advisable such sum or sums of money as in their judgment shall be necessary to meet the current expenses of this Company to pay its Taxes, to make necessary repairs and to liquidate the indebtedness of this Company now

due, accrued for the purposes aforesaid or either of them, and for such purpose to execute in the name of this Company and on its behalf and under their official signatures and the corporate seal of this Company all necessary notes or other obligations of this Company for the money so borrowed, and in like manner to give such security for the payment of such money in the name of and on behalf of this Company as shall be demanded by the lender and as this Company can lawfully give by pledge of the net earnings of this Company or otherwise.

Seconded by Mr. Crawford and passed, declared adopted unanimously.

Mr. Richard Koehler tendered his resignation as Director of this Company in words and figures following.

" Portland Or May 8th 1878

"To the Board of Directors

" Of the O Central Railroad Company

" Gentlemen

" Herewith I tender my resignation as a "director of the Oregon Central Railroad Company to "take effect as soon as my successor shall be elected and "qualified.

" Very Respectfully Yours,

" (Signed) R. KOEHLER.

which was read to the Board by the Secretary, and on motion of Mr. Lewis seconded by Mr. Crawford, put to vote and accepted

Mr. Thielsen nominated Mr. J. N. Dolph for Director to fill the vacancy occasioned by the resignation of Mr. Koehler, seconded by Mr. Chadwick and on the vote being taken Mr. J. N. Dolph was declared duly elected a Director of this Company.

The resignation of Mr. Koehler as Director causing a vacancy in the office of Vice President, the President announced the election of a Vice President as next in order.

Mr. Chadwick nominated Mr. J. N. Dolph for Vice President to fill the vacancy occasioned by Mr. Koehler's resignation as director, seconded by Mr. Lewis. No other nominations were made, and on the vote being taken Mr. J. N. Dolph was declared duly elected Vice President of this Company.

The Secretary submitted the Monthly Trial Balance from the books of the Company, for Mo. of April 1878, showing a loss on Earnings act. of $472.94 for the month and a total loss of $10,290.58 for the year 1878.

Mr. J. N. Dolph filed his qualifications as Director of this Company in words and figures following:

"State of Oregon)
" (SS
"County of Multnomah)

" I, Joseph N. Dolph, being first duly sworn say "that I will support and maintain the Constitution and "laws of the United States and the Constitution and "laws of the State of Oregon and will faithfully and

"honestly discharge the duties of Director of the Oregon "Central Railroad Company a Corporation incorporat- "ed under the laws of said State of Oregon, so help me "God. (Signed) JOSEPH N. DOLPH

"Subscribed and sworn to before me this 8th day of May "1878.

" (Signed) JNO D. BILES.

" (Seal) Notary Public.

Mr. J. N. Dolph having qualified as a Director took his seat in the Board.

No further business being before the Board Mr. Thielsen moved to adjourn, seconded by Mr. Crawford, and passed.

The President announced the Board adjourned without day.

A. G. CUNNINGHAM, T. R. CORNELIUS
Secretary.

STOCK HOLDERS ANNUAL MEETING

Office of the

Oregon Central R R Co

Portland Oregon

Thursday May 23d 1878

In pursuance of notice in accordance with the By-Laws and in accordance with the By-Laws, the Stockholders met at 11 o'clock A. M. this day.

In the absence of the president, J. N. Dolph, Vice

President, called the meeting to order, and directed the secretary to call the names of the Stockholders of the Company as shown by the certified statement submitted by the Secretary from the Stock Ledger of the Company.

The following stockholders responded present.

M. Crawford	1	share
S. F. Chadwick	1	"
R. Koehler by J. N. Dolph atty Proxy	1	"
R. Koehler, Trustee, by J. N. Dolph, atty Proxy	49054⅝	shares
J. N. Dolph	1	"
Hans Thielsen	1	"
Total	49059⅝	shares

The President announced the reading of the Minutes of the last annual Meeting of the Stockholders as next in order, when Mr. Crawford moved to dispense with the reading of, and that the minutes stand approved, which was seconded by Mr. Thielsen and unanimously adopted. The Minutes stand approved.

The Vice President then announced the election of Seven Directors to serve for the ensuing Twelve Months as next in order, and appointed Hans Thielsen as teller.

The Stockholders present then deposited their votes with the teller, who, after canvassing the votes cast, reported the following result to the Vice President.

Henry Villard	received	49059⅝	Votes
T. R. Cornelius	"	49059⅝	"
J. N. Dolph	"	49059⅝	"
C. H. Lewis	"	49059⅝	"

Hans Thielsen	"	490595/8	"
S. F. Chadwick	"	490595/8	"
Medorem Crawford	"	490595/8	"

The V. President declared said Stockholders duly elected such Directors, and executed the following certificate of election.

State of Oregon)
(SS
County of Multnomah)

" I, Joseph N. Dolph, Vice President of the Oregon "Central R. R. Co. a corporation duly incorporated un- "der the laws of Oregon, and President of the Stock- "holders meeting do hereby certify that at the annual "meeting of the Stockholders of the said Oregon Central "Railroad Company held at the office of said Company "at Portland, Oregon, on the 23d day of May A. D. "1878 (That being the time and place fixed by law and "the By-Laws of said Company for such Meeting) the "following named persons, to wit: T. R. Cornelius, J. N. "Dolph, H. Thielsen, C. H. Lewis, M. Crawford, S. F. "Chadwick and H. Villard, were each duly elected Di- "rectors of the said Oregon Central Railroad Company "for the ensuing year, each receiving a majority of the "votes of all the capital stock of said Company.

May 23d 1878 J. N. DOLPH
Vice President.

On motion of H. Thielsen, seconded by M. Crawford, the meeting adjourned without day.

A. G. Cunningham
Secy.

J. N. DOLPH
V. President

The Directors elected at the Stockholders meeting this day that were present qualified as such directors by taking and subscribing the following oath.

"State of Oregon)
) SS
"County of Multnomah.)

"We, S. F. Chadwick, Medorum Crawford, Hans "Thielsen and J. N. Dolph being each severally and "duly sworn, say, and each for himself says, that we will "faithfully and honestly discharge the duties of Direct- "tors of the Oregon Central Railroad Company a cor- "poration duly incorporated under the laws of Oregon, "to the best of our ability, so help me God.

" (Signed) S. F. CHADWICK
" M. CRAWFORD
" H. THIELSEN
" J. N. DOLPH

Subscribed and Sworn to before me this 23d day of May 1878. (signed) JNO. D. BILES

Seal Notary Public

On the 8th June 1878, Henry Villard duly elected a Director at the meeting of the Stockholders held on 23d day of May 1878, filed his qualifications as such Director in words and figures following.

"State of New York)
(SS
"City and County of New York)

" I solemnly swear to discharge the duties "of a Director of the Oregon Central Railroad Com-

"pany faithfully and to the best of my knowledge and "ability and in accordance with the By-Laws of the "Company and with the laws of the State of Oregon.

" (Signed) HENRY VILLARD.

"Sworn and subscribed to before me this 24th day of "May, A. D. 1878.

(Signed) EDWIN F. COREY

Commissioner for the State of Oregon in New York.

Office O & C R R Co.

Portland Or.

Wednesday June 12th 1878

The Secretary not being able to attend the meeting of the newly elected Board of Directors, to have been held this day for the purpose of organization. No meeting was held.

A. G. CUNNINGHAM.
Secy.

Mrss. Cornelius and Lewis, Directors elected on the 23d day of May 1878 filed their separate qualifications as such Directors in words and figures following.

"State of Oregon)
(SS
"County of Multnomah)

" I, T. R. Cornelius, being duly sworn say "that I will faithfully and honestly discharge the duties "of Director of the Oregon Central Railroad Company, "a corporation duly incorporated under the laws of Ore-"gon, to the best of my ability, so help me God.

(Signed) T. R. CORNELIUS.

"Subscribed and sworn to before me this 10th day of "July, A. D. 1878.

" (Signed) P. SCHULZER,

" (Seal) Notary Public.

"State of Oregon)
(SS
"County of Multnomah)

" I, C. H. Lewis, being duly sworn say "that I will faithfully and honestly discharge the duties "of Director of the Oregon Central Railroad Company, "a corporation duly incorporated under the laws of Ore- "gon, to the best of my ability, so help me God.

(Signed) C. H. LEWIS.

Subscribed and sworn to before me this 10th day of July, A. D. 1878. (Signed) P. SCHULZER,

(Seal) Notary Public.

Office of the
Oregon Central R. R. Co.,
Portland Or.
Wednesday, July 10th 1878

Pursuant to Notice to each Director within the State and in accordance with the By-Laws, the newly elected Board of Directors met this day at 11 o'clock A. M. Members present

T. R. Cornelius,
J. N. Dolph
C. H. Lewis

and Hans Thielsen 4

Absent

M. Crawford.
S. F. Chadwick
and Henry Villard 3.

There being a majority present and all the members having filed their qualification as such Directors as appears of record on pages 29 and 30 of this Journal.

The Secretary called the Board to order, called the roll, and announced that this was the first meeting of the newly elected Board, that a majority was present, and that the first business in order was the election of a chairman to preside untill a President should be elected, that nominations for chairman was in order.

Mr. Lewis nominated J. N. Dolph for chairman, seconded by Mr. Thielsen. No further nominations were made, the election was proceeded with and Mr. Dolph was declared elected chairman, took the chair and announced the election of a member of the Board as President, and that nominations was then in order.

Mr. Lewis nominated T. R. Cornelius for President, seconded by Mr. Thielsen, no other nominations were made, the election was proceeded with and Mr. Cornelius declared elected President, took the chair as such President and announced the election of a Vice President as the next business, and that nominations was then in order.

H. Thielsen then nominated J. N. Dolph for Vice President, seconded by C. H. Lewis. No other nomi-

nation was made. The election was proceeded with and J. N. Dolph declared elected Vice President.

The President then announced the election of Secretary as next in order. Mr. Dolph nominated A. G. Cunningham for Secretary, seconded by H. Thielsen. No other nomination was offered, the election was proceeded with and A. G. Cunningham was declared elected Secretary.

The President then announced the election of Treasurer as next in order. Mr. Dolph nominated A. G. Cunningham for Treasurer, seconded by Mr. Lewis. No other nomination was offered, the election was proceeded with and A. G. Cunningham was declared elected Treasurer.

The President announced the Board as duly organized and ready for the transaction of business.

The Secretary then submitted the Monthly trial balance Statement for Month of June, and read the totals of operating act. and Bal. Loss for the year 1878 to 30th June and answered such queries as were made by Members of the Board.

No other business being presented the President stated the fact and announced a motion to adjourn was in order.

Mr. Dolph moved to adjourn, seconded by Mr. Lewis, the vote being taken the Motion prevailed, and the President announced the Board adjourned without day.

A. G. CUNNINGHAM
Secy.

T. R. CORNELIUS
President

Office of the
O. C. R. R. Co.
Portland, Or Wednesday Aug 14th 1878

No business demanding action of the Board. Consequently no meeting was had this day.

A. G. CUNNINGHAM.
Secy.

Office of the
O. C. R. R. Co.,
Portland, Or.,
Wednesday Sept. 11th, 1878.

No business demanding action of the Board. Consequently no meeting was had this day.

A. G. CUNNINGHAM,
Sy.

Office of the
O. C. R. R. Co.
Portland, Or. Wednesday Oct. 9th 1878

No business for action of Board. No meeting had this day.

A. G. CUNNINGHAM Sy.

Office of the
Oregon Central R R Co
Portland Or Nov. 7th 1878

Pursuant to call by the President the Board met at 11 o'clock A. M. Members present

T. R. Cornelius
M. Crawford
J. N. Dolph
Hans Thielsen
S. F. Chadwick.
C. H. Lewis 6

Absent

Henry Villard 1

The President the meeting to order and announced the board ready for business. Mr. J. N. Dolph then read for the information and action of the Board the following preamble, and resolutions:—

Whereas this Company heretofore and at the date thereof, executed and delivered to Ben Holladay President, the two certain promissory notes of this Company for the sum of $500,000 each, copies of which notes are hereinafter and in a copy of an agreement hereinafter contained and set forth, and

Whereas said Ben Holladay as such President endorsed said notes in blank and delivered them to Milton S. Latham as agent for certain other parties and said Latham is now the holder thereof, and

Whereas said Milton S. Latham also holds as a pledge and collateral security for the payment of said promissory notes certain Bonds of this Company and certain bonds and stock of the Oregon Steam Ship Company, and

Whereas, although said promissory notes are long since due, this Company is unable to meet and pay the

same, and

Whereas the Statute of Limitation of the State of California has run or is about to run and bar an action upon said notes in said State, and whereas said Latham as Trustee aforesaid is willing to extend the time of payment of said notes upon condition that this Company will waive the bar of said Statute of Limitation and renew its liability and promises to pay said promissory notes so that an action or suit may be maintained upon said notes in the State of California and so that the Statute of Limitation shall commence to run only from the expiration of such extension of time of payment:—

RESOLVED, That the President and Secretary of this Company be and they are hereby authorized and directed to execute and deliver in the name of and for and on behalf of this Company and under their official signatures and the Corporate seal of this Company an agreement with said Milton S. Latham Trustee, extending the time of payment of said notes, waiving the bar of the Statute of Limitations and renewing the liability and promises of this Company to pay said promissory notes, of which agreement the following is a copy, to wit:—

Articles of agreement made this day of in the year one thousand eight hundred and seventy eight (1878) Between Milton S. Latham as Trustee and on behalf of the owners of the promissory notes hereinafter mentioned, the party of the first part and the Oregon Central Railroad Company, a Corporation, duly incor-

porated under the laws of the State of Oregon, the party of the second part, Witnesseth:

Whereas on the 29th day of February 1872 the said party of the second part made and delivered its promissory note to Mr. Ben. Holladay of which the following is a copy:—

"$500,000. Portland, Oregon, 29th February 1872

"One year after date without grace, The Oregon Cen-
"tral Railroad Company promises to pay to the order of
"Mr. Ben Holladay, President, in San Francisco, the
"sum of Five Hundred Thousand dollars in gold coin
"of the United States for value received with interest
"from date until paid, at the rate of ten per cent per an-
"num payable quarterly in like gold coin. This note is
"executed in pursuance of a Resolution of the Board of
"Trustees of said Railroad passed 9th February 1872.

" Witness our hands and the seal of said Corporation
"on this the 29th day of February 1872.

" BEN HOLLADAY

(Seal of the Corporation) President of the Oregon Central R. R. Co., C. S. DYER, Secretary of the Oregon Central R. R. Co.

and whereas on the 29th day of August 1872 the said party of the second part made and delivered its promissory note to Mr. Ben Holladay of which the following is a copy:

"$500,000 Portland, Oregon 29 August 1872
"One year after date without grace The Oregon Central "Railroad Company promise to pay to the order of Mr. "Ben Holladay President in San Francisco, the sum "of Five Hundred Thousand Dollars in gold coin of "the United States for value received with interest from "date untill paid at the rate of ten per cent per annum, "payable quarterly in like gold coin.

" This note is executed in pursuance of a Resolution "of the Board of Directors of said Railroad passed 9th "February 1872.

" Witness our hands under the seal of said Corpora- "tion on this the 29th day of August A. D. 1872.

" BEN HOLLADAY
"(Seal of the President of Oregon Central R. R. Co.
"Corporation) C. S. DYER,
Secretary Oregon Central R. R. Co."

And whereas the said Ben Holladay duly endorsed said notes in blank as such President and delivered them so endorsed at the dates aforesaid for value, to the said party of the first part as agent for certain other parties, and said party of the first part is now the lawful holder thereof; and

Whereas, on the 19th day of March, 1873, the said Ben Holladay executed and delivered to the said party of the first part an instrument of which the following is a copy:

" For and in consideration of One Dollar to me in

"hand paid and for other valuable considerations, I do "hereby deposit with Milton S. Latham as collateral se- "curity for the payment of certain promissory notes de- "scribed below, to-wit:

" One note for $500,000 gold dated 29 February, 1872, "made by the Oregon Central Railroad Company to the "order of and endorsed by Mr. Ben Holladay, President, "due 28 February, 1873, and bearing interest from date "at the rate of ten per cent per annum.

" One note for $500,000 gold, dated 29 August, 1872, "made by the Oregon Central Railroad Company to the "order of and endorsed by Mr. Ben Holladay, President, "due 29 August, 1873, and bearing interest from date "at the rate of ten per cent per annum, which said notes "are now held by said Milton S. Latham for account of "owners.

" The following personal property, of which I am the "sole owner, the same being at my risk and expense, to- "wit: Twenty-Nine Thousand Nine Hundred and "Ninety-Seven (29,997) Shares of the capital stock and "Two Million Dollars ($2,000,000) worth of Bonds of "the Oregon Steam Ship Company. In case of the "non-payment of the aforesaid promissory notes or "either of them, or of the interest thereon when due, I "hereby appoint and constitute Milton S. Latham, his "successors or assigns, my attorney irrevocable with pow- "er of substitution to sell at any time after the said notes "or either of them or interest is due and remains unpaid, "with or without notice to me, the whole or any part

"of said security either at public or private sale, at his "discretion, the proceeds to be applied to the payment of "the aforesaid promissory notes with interest due and "commission on sales, any surplus after said payment "to be held subject to my order.

" On payment of the aforesaid promissory notes and "interest, this agreement to be void and the security men- "tioned to be returned to me. This hypothecation is made "subject to all the legal rights of a certain hypothecation "executed by the Oregon Steam Ship Company on 1st "day of August, 1872, to secure the payment of a note "made by them for $800,000, dated Portland, Oregon, "August 1st, 1872, and due on the 1st day of October, "1873, bearing interest at the rate of ten per cent per "annum.

" Witness my hand this Nineteenth day of March, "1873.

" San Francisco, Cal.

BEN HOLLADAY.

" Witness: Wm. Norris."

And Whereas, at the same time the said Ben Holladay delivered to the said party of the first part the securities therein mentioned in pledge as aforesaid, and said party of the first part is now the lawful holder and pledgee thereof as Trustee as aforesaid; and

Whereas, by a certain agreement in writing duly executed and delivered by and between the parties hereto bearing date the 30th day of May, 1876, it was mutually covenanted, contracted and agreed that the

times of payments of the said notes should be extended for the period of six months from the date hereof, to-wit: until the 30th day of November, 1876, and that the Statute of Limitation should not commence to run against the said notes until the said 30th day of November, 1876, either as to an action to be brought in the State of Oregon or the State of California; and

Whereas, it is the intention of the parties of the first and second parts that the time of payment of the said notes shall be further extended and that the Statute of Limitation shall not commence to run against the same until the expiration of the further and second extended time either as to an action to be brought in the State of Oregon or the State of California;

Now, Therefore, the said party of the first part as Trustee as aforesaid hereby covenants and agrees for and in consideration of the sum of One Dollar to him in hand paid and the promises and agreements of the party of the second part hereinafter mentioned, that the time and payment of maturity of said notes hereinbefore recited is hereby extended for a period of six months from November 30th, 1878, to-wit: until May 30, 1879, until which time they will remain owing but not payable.

And the said party of the second part as well in consideration of the above second extension of the time of payment of the foregoing notes and of the payment of One Dollar the receipt whereof is hereby acknowledged as otherwise hereby promises and agrees for itself, its successors and assigns, that it will, and the said party

of the second part hereby does, waive the bar or the application of the Statute of Limitation to the said notes at the time when the same would be applicable to said notes or either of them, but for this agreement and the said agreement of May 30th, 1876, and the said party of the second part hereby makes and acknowledges this as a new and Continuing Contract by which the case of said promissory notes and either of them is taken out of and withheld from the operation of the Statute of Limitations and hereby takes and withholds said notes out of and from the operation of said Statute and it hereby renews (as of that date, to-wit: May 30th, 1879) its liability to pay, and said party of the second part hereby promises to pay the said notes with interest thereon at the rate of ten per cent per annum as in said notes stated, and the said party of the second part further promises and agrees that inasmuch as under this agreement and the said agreement of May 30th, 1876, a cause of action on said notes will not arise until said May 30th, 1879, the Statute of Limitation shall not commence to run against said notes or either of them until that time and shall then commence to run as to either of the actions aforementioned.

And the said party of the second part, for the consideration hereinbefore mentioned, and other considerations, hereby further promises and agrees for itself, its successors and assigns, that the securities hereinbefore hypothecated to said party of the first part as hereinbefore described or otherwise, shall continue in the possession of the said party of the first part as Trustee

as aforesaid under the terms and agreements of the said instrument hereinbefore recited, or any other instrument hypothecating the same for and during said extension herein given, and that the right of the party of the first part to hold the title and control thereof as in said instrument mentioned and confirmed, shall in no wise be impaired or affected by the agreements of extension and waiver above mentioned.

In witness whereof the said party of the first part has set his hand and seal hereto, and the said party of the second part has caused these presents to be signed by its President and Secretary and its corporate seal to be affixed hereto the day and year first above written.

Signed, sealed and delivered in the presence of

(SEAL)

In consideration of the extension of the time of payment of the promissory notes mentioned within and of One Dollar to it in hand paid by the Oregon Central Railroad Company and of other good and sufficient considerations, to the Oregon Steam Ship Company, a corporation duly incorporated under the laws of Oregon, hereby consents to all the terms and conditions of the within agreement and to the extension of the same by the parties thereto, and to the extension of the time of payment of said notes as in the said agreement provided, without prejudice to the continuance of all the rights of the said Milton S. Latham, Trustee, party to said agreement in the said bonds of this Company in said agreement mentioned as created by the hypothecation thereof

to said Latham, Trustee, as collateral security for the payment of said promissory notes.

In witness whereof said Oregon Steam Ship Company has by resolution of its Board of Directors duly passed has caused this instrument to be signed by its President and Secretary and its corporate seal to be affixed this .... day of ..... 1878.

In presence of)

President of Oregon Steam Ship Company.

Secretary of Oregon Steam Ship Company

For and in consideration of the covenants and promises in the foregoing agreement and in ratification thereof I hereby covenant and agree that the execution of said agreement by said Milton S. Latham shall not in any wise prejudice his right to continue to hold the security of stock and bonds which was heretofore hypothecated by me to him on the first day of August, 1872, to secure the payment of the debt mentioned in and extended by the said agreement, and that notwithstanding said extension of said debt the stock and bonds mentioned in said agreement and any stock or bonds to me now or heretofore belonging and which were by me hypothecated as security for the payment of said debt shall be and continue security as aforesaid, so far as I have or have had any interest therein for the payment of said debt until the same shall have been fully paid.

Dated.

Witness.

And that a certified copy of this resolution be furnished said Latham.

After the reading Mr. Dolph moved its adoption, seconded by Mr. Crawford, and unanimously adopted.

On motion of Mr. Lewis, seconded by Mr. Thielsen, the board adjourned.

A. G. CUNNINGHAM, Secty.
T. R. CORNELIUS, President.

Office of the
Oregon Central R. R. Co.
Portland, Oregon,
Wednesday, Nov. 13th, 1878.

No meeting of the Board of Directors held this day.

A. G. CUNNINGHAM, Secty.

Office of the
Oregon Central R. R. Co.
Portland, Oregon,
Wednesday, Dec. 11th, 1878.

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM, Secty.

Office of the
Oregon Central R. R. Co.
Portland, Oregon,
Portland, Or., Wednesday, Jany. 8th, 1879.

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM, Secty.

Office of the
Oregon Central R. R. Co.
Portland, Oregon, Wednesday, Feby. 12th, 1879.

No meeting of the Board of Directors of this Company had this day.

A. G. CUNNINGHAM, Secty.

Office of the
Oregon Central R. R. Co.
Portland, Oregon, Feby. 28, 1879.

Pursuant to call and notice to each Director within the State, the Board met at 11 o'clock A. M. this day. Members present

C. H. LEWIS
HANS THIELSEN
M. CRAWFORD
T. R. CORNELIUS
J. N. DOLPH. 5

Absent

HENRY VILLARD
S. F. CHADWICK. 2

T. R. Cornelius, President, took the chair and called the Board to order.

Mr. Dolph then offered the following resolution, and moved its adoption:

Resolved. That the President and Secretary of this Company be and they are hereby authorized and directed to borrow for this Company of the Oregon and California Railroad Company, a corporation incorporated under the laws of Oregon, for such time and upon such

terms as shall be required to pay the interest accrued and payable to September first, A. D. 1878, upon the second mortgage bonds of this Company, Three Hundred Thousand Dollars in amount, and secured by a Second mortgage upon the road and property of this Company bearing the date the 1st day of March, 1876, and executed to W. D. Shipman and S. L. M. Barlow, as Trustees, and to cause the money so to be borrowed to be so paid or applied as that the coupons for said interest shall be held by said Oregon and California Railroad Company as security for said loan or in lieu thereof to make any arrangement with said Company in their judgment proper, by which the coupons for the interest aforesaid shall be taken up and held by said Oregon and California Railroad Company to be paid by this Company at such times and in such manner and upon such terms as they shall deem advisable and that said President and Secretary are hereby authorized and directed to execute in the name of this Company under their official signatures and the corporate seal of this Company all such promissory notes and other instruments in writing as in their judgment shall be necessary or convenient in the premises.

After being read to the Board Mr. Thielsen seconded the motion, and on the vote being taken was declared unanimously adopted.

Mr. Dolph moved to adjourn, Mr. Crawford seconded the motion, and the Board voted to adjourn.

A. G. CUNNINGHAM, Sy.

T. R. CORNELIUS, President.

Office of the

Oregon Central R. R. Co.

Portland, Oregon, Wednesday, Mch. 12th, 1879.

No meeting of the Board of Directors had this day.

A. G. CUNNINGHAM, Sy.

Office of the

Oregon Central R. R. Co.

Portland, Oregon, Wednesday, April 9th, 1879.

No meeting of the Board of Directors had this day.

A. G. CUNNINGHAM, Sy.

Office of the

Oregon Central R. R. Co.

Portland, Or., Wednesday, May 14th, 1879.

No meeting of the Board of Directors had this day.

A. G. CUNNINGHAM, Sy.

ANNUAL MEETING

of the

STOCK HOLDERS

Office of the

Oregon Central R. R. Co.

Portland, Oregon, Thursday, May 22nd, 1879.

In pursuance of notice in accordance with the By-Laws, and in accordance with the By-Laws, the Stockholders met at 11 o'clock A. M.

In the absence of the President, J. N. Dolph, Vice-

President, took the chair, and and called the meeting to order. The Secretary then submitted a certificate of the Stockholders as shown by the books this day.

The V. President directed the Secretary to call the Stockholders and note the stock present. After completing the call, the Secretary reported the following stockholders present.

S. F. Chadwick	1	share
J. N. Dolph	1	do
R. Koehler	1	do
R. Koehler Trustee	49054 5-8	do
C. H. Lewis	1	do
H. Villard	1	do
Total shares represented	49059 5-8	

being over a majority of shares of the Capital Stock. The Vice President announced it in order to proceed with the election of Seven Stockholders as Directors to serve for the ensuing Twelve Months, and appointed S. F. Chadwick as teller. The election was then proceeded with by ballot, and on canvassing the vote, the following stockholders were found to have each received 49059 5-8 votes, and were declared unanimously elected such Directors. Viz.

Henry Villard S. F. Chadwick
T. R. Cornelius and Richard Koehler
J. N. Dolph
M. Crawford
C. H. Lewis

The Vice President then certified this election as follows:

State of Oregon,)
) ss.
County of Multnomah,)

I, Joseph N. Dolph, Vice President of the Oregon Central Railroad Company a corporation duly incorporated under the laws of Oregon and President of the Stockholders Meeting do hereby certify that at the annual meeting of the stockholders of the said Oregon Central Railroad Company held at the office of said Company at Portland, Oregon on the 22nd day of May A. D. 1879 (that being the time and place fixed by law and by the By-Laws of said Company for such meeting) the following persons to-wit: H. Villard, T. R. Cornelius, J. N. Dolph, M. Crawford, C. H. Lewis, S. V. Chadwick, and R. Koehler, were each duly elected Directors of the said Oregon Central Railroad Company for the ensuing year, each receiving a majority of all the capital stock of said company.

May 22d, 1879. J. N. DOLPH,
Vice President.

On motion of R. Koehler, seconded by Mr. Chadwick, meeting adjourned without day.

J. N. DOLPH Vice President.

A. G. CUNNINGHAM, Sy.

Office of the

Oregon Central R. R. Co.

Portland Oregon Wednesday June 11th 1879.

This being the regular Monthly Meeting the Board met at 11 o'clock A. M. Members present

C. H. Lewis
R. Koehler
S. F. Chadwick
J. N. Dolph
T. R. Cornelius
M. Crawford—6

Absent:

Henry Villard, not in the State—1.

The Members all having filed their qualification as Directors in words and figures following,

"State of Oregon)
) ss.
" County of Multnomah)

" We, H. Villard, J. N. Dolph, C. H. Lewis, S. F. "Chadwick, and Richard Koehler being each severally "duly sworn, say and each for himself says, That I will "faithfully and honestly discharge the duties of Director "of the Oregon Central Railroad Company, to the best "of my ability, so help me God.

(Signed) Henry Villard
C. H. Lewis
R. Koehler
S. F. Chadwick
J. N. Dolph

"Subscribed and Sworn to before me this 22nd day of May 1879.

(Seal) (Signed) P. Schulze,
Notary Public for the State of Oregon.

"State of Oregon)
) ss.
" County of Multnomah)

" We, T. R. Cornelius and Medorum Crawford, be-"ing each severally, duly sworn, say and each for him-"self says, that I will faithfully and honestly discharge "the duties of Director of the Oregon Central Railroad "Company to the best of my ability, so help me God.

" (Signed) T. R. Cornelius M. Crawford.
" Subscribed and Sworn to before me this 11th day of "June, A. D. 1879. (Signed) P. SCHULZE,
" (Seal) Notary Public."

The Secretary called the meeting to order and announced the business in order to be the election of officers of the Board, that the election of a chairman to preside until a President was elected, would be proceeded with.

Mr. Koehler nominated T. R. Cornelius for Chairman. No other nomination was made, and on the vote being taken, Mr. Cornelius was declared unanimously elected Chairman.

The chair announced the election of a President to be first in order.

Mr. Koehler nominated Mr. Cornelius for President, seconded by Mr. Chadwick. No other nomination

was made, and on the vote being taken, Mr. Cornelius was declared unanimously elected President and took the chair.

The President announced the election of Vice President as next in order. Mr. Koehler nominated J. N. Dolph for Vice President, seconded by Mr. Crawford, and no other nominations being offered, the election was proceeded with and Mr. Dolph declared unanimously elected Vice President.

The next in order being the election of Secretary and Treasurer, Mr. Koehler nominated A. G. Cunningham for Secretary and Treasurer, seconded by Mr. Lewis, and no other nominations being offered the election was proceeded with and A. G. Cunningham was declared unanimously elected Secretary and Treasurer.

The Board being now fully organized by the election of

T. R. CORNELIUS, President

J. N. DOLPH, Vice President

A. G. CUNNINGHAM, Secretary and Treasurer.

The President stated that the Board was now organized and ready for the consideration of such business as might be presented.

No business being offered, on motion of Mr. Koehler, seconded by Mr. Lewis, the Board adjourned without day.

T. R. CORNELIUS, President.

A. G. CUNNINGHAM, Secretary.

Office of the

Oregon Central Railroad Company.

Portland, Oregon Wednesday July 9th, 1879.

No meeting of the Board of Directors had this day.

A. G. CUNNINGHAM, Secretary.

Office of the

Oregon Central Railroad Co.

Portland Oregon Wednesday Aug. 13th, 1879.

No meeting of the Board of Directors had this day.

A. G. CUNNINGHAM, Scy.

Office of the Oregon Central Railroad Co.

Portland Oregon Sept. 1st 1879.

Pursuant to notice to each director in the State the Board met at 11:30 o'clock A. M. this day. Members present.

R. Koehler
S. F. Chadwick
T. R. Cornelius
J. N. Dolph
M. Crawford
C. H. Lewis—6.

Members absent: Henry Villard—1.

The President, T. R. Cornelius, took the chair and called the meeting to order. The Secretary stated that there were six members present being the full board, except Mr. Villard, absent from the State. The President then announced the board ready for business.

Mr. Dolph then read for the information of the

Board the following indenture proposed to be entered into between this Company and the Western Oregon Railroad Company.

INDENTURE

THIS INDENTURE Made this first day of September in the year of our Lord One Thousand Eight Hundred and Seventy Nine between the *Oregon Central Railroad Company* of Portland in Oregon a railroad corporation duly organized under the laws of Oregon hereinafter called the lessor of the one part and the *Western Oregon Railroad Company* of the same place a like corporation hereinafter called the *lessee* of of the other part.

WITNESSETH: That in consideration of the covenants herein contained on the part of the said lessee, the said lessor doth hereby lease, demise and let unto the said lessee all its railroad from Portland in Multnomah County to St. Joseph, in Yamhill County in Oregon being about fifty miles in length, together with all the engines, cars, rolling stock, stations, depots, depot grounds, machine shops, tools, coal supplies, and all other equipment and appurtenances thereof and all other property of every kind and description of said lessor, except its corporate accounts, records, and papers, and except the lands granted to it by the United States.

TO HOLD the same to the said lessee for the term of six months from the first day of September 1879 and so on from half year to half year subject nevertheless

to the proviso for determination of this lease by Notice in writing by either party hereinafter contained, the said lessee paying therefor the half yearly rent of Ten Thousand Five Hundred dollars in gold coin on the last day of each six months from said first day of September.

AND the said lessor for the consideration aforesaid covenants and agrees with the lessee its successors and assigns to forthwith proceed with and within a reasonable time to complete the extension of its present depot at Portland now in course of construction as the same has been already designed and is shown by a map or plan thereof now in its office at Portland and also to erect within a reasonable time a round house sufficient for four stands of engines upon the river lot at Portland belonging to said lessor situate below the Oregon Steam Navigation Company's boneyard and also to macadamize and otherwise improve that portion of Fourth Street in the City of Portland which said lessor is required by the ordinance granting to it the right of way in said Street to improve whenever required so to do by the said city and also within a like reasonable time to relay the track of its road upon said Fourth Street with steel rails all at the expense of the lessor.

AND the said lessee for itself and its successors and assigns doth hereby covenant with the said lessor its successors and assigns to pay the said rent in half yearly payments of Ten Thousand Five Hundred dollars each, the first payment thereof to be made on the first day of March next, and that it will operate said railroad and

rolling stock in a proper and prudent manner, that it will quit and deliver up the said railroad, rolling stock, equipment and premises to the said lessor its successors or assigns therein peaceably and quietly at the end of the term hereby created in as good order and condition as the same now are, natural wear and tear and acts of God and of public enemies only excepted, and it shall be lawful for the said lessor its directors, officers and agents and those having its estate in the premises at all reasonable times to enter into and upon the same to examine the conditions thereof.

AND further, that said lessee will keep said railroad, rolling stock and equipment in as good repair as the same now is, natural wear and tear, acts of God and of public enemies excepted, and will pay all taxes and assessments hereafter levied upon said premises during the continuance of this lease, and will further pay the half yearly sum of Fifty dollars as salary to the President of the lessor Company and the half yearly sum of fifty dollars as salary to the Secretary thereof, and all fees payable to the directors of said company for their meetings and all reasonable expenses for stationery, office expenses or clerical services necessary and proper for transacting the business of said Oregon Central Corporation.

PROVIDED always and these presents are upon the express conditions that if the said rent shall be in arrear for the space of thirty days or the said lessee or its successors or assigns do or shall neglect or fail to perform and observe any of the covenants on the part

of the lessee hereinbefore contained, then and in either of the said cases the said lessor its successors or assigns may immediately or at any time thereafter and while such neglect or default continues and without further notice or demand enter into and upon said premises or any part thereof in the name of the whole, and repossess the same as of its former Estate and expel the said lessee its successors or assigns or those claiming under it, and remove its officers, agents, servants, rolling stock and effects (forcibly if necessary) without being taken or deemed guilty in any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant.

PROVIDED further and these presents are upon the express condition that either of the said parties may determine this lease at the end of any calendar month by thirty days previous notice in writing to the other party or to its President, Vice President, or Secretary, and in case such determination of the term hereby created shall be made during any half yearly period as above provided a proportionate part of the rent hereby reserved and of the other payments hereby stipulated to be made by the lessee shall become payable on the last day of each calendar month.

IN WITNESS WHEREOF the said parties have by resolutions of their respective Boards of Directors passed on the first day of September 1879 caused these presents in duplicate to be respectively sealed with their Corporate seals signed by their Presidents, attested by their Secretaries on the day and year first above written.

Mr. Dolph then offered the following resolution.

RESOLVED That the President and Secretary of this Company be and they hereby are authorized and directed to execute in the name of and on behalf of this Company, and under their official signatures and the Corporate Seal of this Company a contract now submitted as read to the board and spread upon the Journal of Minutes in the proceedings had by the Directors at this Meeting, between this Company and the Western Oregon Railroad Company, seconded by Mr. Koehler and unanimously passed and declared adopted by the President.

After stating to the board the necessity for a modification of the contract between this Company and the Oregon Transfer Company for the handling of freight from and to the depots of this Company by Mr. Koehler, Mr. Chadwick offered the following resolution.

RESOLVED, That the President and Secretary of this Company be and they are hereby authorized and directed to execute in the name of and on behalf of this Company under their official signatures and the Corporate seal of this Company a contract now submitted to the board with the Oregon Transfer Company a corporation under the laws of Oregon of which contract the following is a copy, to wit:

THIS AGREEMENT Made and entered into at Portland, Oregon, this .....day of..... A. D. One Thousand Eight Hundred and Seventy Nine between the Oregon Transfer Company a corporation duly

incorporated and organized under the General Corporation laws of the State of Oregon and having its principal office and place of business at Portland, Oregon, party of the first part, and the Oregon Central Railroad Company a corporation duly incorporated and organized under the said laws of the State of Oregon and having its principal office and place of business at the said City of Portland, party of the second part.

WITNESSETH: That in consideration of one dollar paid by each to the other of the parties to this agreement the receipt whereof is hereby acknowledged and of the mutual agreements of the parties hereinafter contained, and the mutual benefits resulting and to result to the parties of this agreement under this agreement, it is now covenanted and agreed by and between the said parties of the first and second parts hereto as follows:

FIRST The said Oregon Transfer Company party of the first part herein for itself, its successors and assigns does in consideration aforesaid covenant and agree to and with the said Oregon Central Railroad Company, its successors and assigns, that it the said Oregon Transfer Company and its successors and assigns will for the period and term of ten years next immediately following after the date of these presents furnish all drays, traces, horses or mules and drivers and other persons necessary from time to time to take and shall and will operate the same and take transfer and convey to and from the depots, stations and warehouses of the said Oregon Central Railroad Company in the said City of Portland all

freight coming either way over the said Oregon Central Railroad to and from any and all points in the said City of Portland in the State of Oregon and will during the said term of ten years carry transport and convey all such freight passing over said railroad either way, that is to say: all freight coming from the south over said railroad to any point within said city of Portland to which the same is consigned or at which it is to be delivered, and all freight to be shipped south over said road from any point within said city to the said depots, stations and warehouses as the Railroad Company may request with promptness and dispatch and without unreasonable delay and so as to keep the depots, stations and warehouses clear from freight.

SECOND. In consideration whereof the said Oregon Central Railroad Company party of the second part herein for itself, its successors and assigns covenants and agrees to and with the said Oregon Transfer Company, party of the first part herein that it, the said the Oregon Transfer Company, party of the first part herein, its successors and assigns shall for and during the said term of ten years after the date of this agreement have the sole and exclusive right and privilege of conveying and transporting from said depots, stations and warehouses of the said the Oregon Central Railroad Company party of the second part all freight of every description coming over the railroad of the said Oregon Central Railroad Company its successors and assigns to such point or place within the City of Portland to which said freight may be directed or consigned or at which

it is to be delivered, and the sole and exclusive privilege and right of conveying and transporting to said depots, stations and warehouses from any point or place within said City of Portland all freight of every description that may during said term of ten years go from said City of Portland to said depots, stations or warehouses or that may during said time go or be forwarded southward over said railroad from any point within said City, and the said Oregon Central Railroad Company party of the second part in further consideration of the covenants and agreements aforesaid to be by the said party of the first part kept and performed for itself, its successors and assigns covenants and agrees to and with the said party of the first part its successors and assigns that it the said party of the second part its successors and assigns shall and will during said term of ten years next ensuing after the date of this agreement pay or cause to be paid monthly at the end of each and every month during said period of ten years in United States gold coin so long as the business of said party of the second part shall continue to be conducted upon a coin basis but should at any time during said period the business of the party of the second part be conducted upon a currency basis and freight and fares received in currency then and in that case in currency to said Oregon Transfer Company party of the first part or its successors or assigns the following sums and rates for all freight transported over said railroad of the party of the second part coming to or passing through the City of Portland and upon all freight shipped from

the said City of Portland transported south over said road, to wit: Fifty cents per ton for all such freight except wool, stone and lumber and on all wool One dollar per ton and on all lumber One dollar per thousand and on all stone One dollar per ton, and on all machinery, safes and other like heavy freight what the transfer thereof is reasonably worth for the distance transferred, taking as a basis for such compensation the prices per ton herein definitely fixed for other freight for like distances, and for all freight received at any or all of said Depots, in said City of Portland not actually hauled by the said Oregon Transfer Company the said the Oregon Central Railroad Company party of the second part shall pay to the said Oregon Transfer Company party of the first part the sum of Twenty five cents per ton as aforesaid, provided however that if the aggregate amount to be paid to the said the Oregon Transfer Company under the last provision or upon such freight not actually hauled by the said the Oregon Transfer Company during any one year of said term of ten years from the date hereof shall not amount to the sum of three thousand dollars then and in that case the said Oregon Central Railroad Company party of the second part shall pay such additional sum to the party of the first part as shall make the amount paid upon such freight not actually hauled by the said the Oregon Transfer Company the said sum of Three Thousand Dollars, but in no case shall the amount for freight not hauled exceed Fifty cents per ton nor the amount of Three Thousand Dollars, and the said the

Oregon Transfer Company party of the first part agrees to pay to the said Oregon Central Railroad Company the party of the second part the sum of six and one quarter cents per ton for handling all freight not actually handled or hauled by the said the Oregon Transfer Company but exclusively handled by the said the Oregon Central Railroad Company provided said frt has been paid for by the said Oregon Central Railroad Company at the rate of twenty five cents per ton or at a rate of from twenty five to Fifty Cents per ton to the said Oregon Transfer Company. Provided that nothing shall be paid to said party of the first part by the party of the second part for any such freight for which drayage or compensation for handling or hauling has been paid by either the Oregon and California Railroad Company or the Oregon Steam Ship Company Corporations under the laws of Oregon to said party of the first part where such freight requires but one haul.

It is further expressly understood, covenanted and agreed by and between the parties hereto

FIRST—That if the said Oregon Transfer Company party of the first part shall at any time during said term of ten years fail or neglect to furnish all drays, trucks horses or mules, drivers and persons necessary to carry and transport all freight as hereinbefore specified to and from the stations, depots and warehouses of said Oregon Central Railroad Company party of the second part and to convey and transport the same as fast as the business of said Company may require so

as to keep such depots and Warehouses clear of freight arriving by said road that then and in that case said Oregon Central Railroad Company its successors or assigns may have such freight for the time being and during such neglect or failure of the party of the first part carried, transported and delivered by any other corporation, firm, person or persons upon such terms and for such reasonable compensation as shall be by the party of the second part deemed necessary to pay therefor and for all such freight so conveyed and transported said party of the first part shall receive no compensation, and whatever sum so necessarily paid to such corporation, firm, person or persons for such services over and above the contract price herein provided shall be charged to said party of the first part and deducted out of the monthly payment to said party of the first part herein provided for for the month in which said payment was made.

SECOND That should the said party of the first part the said Oregon Transfer Company at any time during said term of ten years from the date of this contract wilfully refuse, neglect or fail for the period of thirty days to furnish the transportation hereinbefore provided, or to convey, transport and deliver all freight hereinbefore specified and as hereinbefore provided, then and in that case the said party of the second part may at its option declare this agreement forfeited and may by notice to the party of the first part terminate the same and shall thereupon be fully and absolutely relieved from all obligation thereunder, and

may make other provision for the performance of the services agreed to be by the party of the first part performed under this contract.

THIRD That in case of any failure on the part of said party of the first part to keep and perform any of its covenants and agreements herein, and in consequence of such failure any goods which should have been delivered by the party of the first part under this agreement to the consignees or at any point or place within the City of Portland, or any freight delivered at depots or stations of said parties of the second part within the said City of Portland for shipment which might and would have been shipped before its loss except for such wilful neglect and failure of the party of the first part, shall be lost by fire, explosion, flood, theft, robbery, or any other cause whatever to the loss or damage of the said party of the second part, without any fault or negligence of the said party of the second part its agents or employees then in that case said party of the first part shall repay all such loss, damages, costs and disbursements as shall be sustained thereby by said party of the second part and which it shall be compelled to pay by any action, suit or proceeding or shall pay without action, suit or legal proceeding upon compromise or otherwise by consent of the party of the first part. This contract shall take the place of all previous contracts between the parties hereto concerning the subject matter hereof.

IN TESTIMONY WHEREOF the parties of these presents the Oregon Transfer Company and the

Oregon Central Railroad Company by resolutions of their respective Boards of Directors have caused these presents to be signed by their respective Presidents and Scretaries and their corporate seals to be hereto affixed at the City of Portland, Oregon, this First day of September A. D. 1879.

Seconded by Mr. Lewis and passed and was declared unanimously adopted by the President.

On motion of Mr. Dolph, seconded by Mr. Crawford the Board adjourned.

A. G. CUNNINGHAM,
Secy.

T. R. CORNELIUS,
President.

Office of the
Oregon Central R R Co.
Portland Ogn. Wednesday, Sept. 10th 1879.
No meeting of the Directors had this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central R R Co.
Portland Oregon Wednesday Oct 8th 1879.
No meeting of the Directors had this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central R R Co.

Portland Oregon Wednesday Nov 12th 1879
No meeting of the Directors had this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central R R Co.
Portland Oregon Wednesday Dec. 10th 1879
No quorum present, and no meeting had this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central Railroad Co.
Wednesday Jany. 14th 1880
No meeting of the Board this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central Railroad Co.
Portland Ogn Wednesday Feby. 11th 1880.
No meeting of the Board of Directors this day.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central Railroad Co.
Portland Ogn Wednesday Mch 10th 1880.
No meeting of the Board of Directors had this day.
No business requiring action of the board.
A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central R R Co.
Portland Oregon Wednesday April 14th 1880.

The Board of Directors did not hold a meeting this day.

A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central R R Co.
Portland Oregon May 12th 1880.

The Board of Directors did not assemble for business this day.

A. G. CUNNINGHAM, Secy.

STOCKHOLDERS
ANNUAL MEETING 1880.

Office of the
Oregon Central R. R. Co.
Portland, Oregon, Thursday May 27th 1880.

Pursuant to notice in accordance with the By-Laws, and in accordance with the By-Laws of this Company, the Stockholders met at 11:30 o'clock A. M.

The President, T. R. Cornelius, took the chair and called the meeting to order.

The Secretary submitting a certificate of the stockholders as shown by the books of the Company on this day, and certifying that no transfers had been made within the preceding ten days.

The President directed the Secretary to read the list of stockholders, from said certificate and note the stock represented present. The call was proceeded with and the following responded present.

T. R. Cornelius.....	5	shares
Medorum Crawford.....	1	"
S. F. Chadwick.....	1	"
J. N. Dolph.....	1	"
Richard Koehler by J. N. Dolph Proxy.....	1	"
Richard Koehler Trustee by J. N. Dolph, Proxy....	49054⅝	"
Henry Villard.....	1	"
Total	49064⅝	shares

On motion of Mr. Dolph seconded by Mr. Crawford the Secretary read the proceedings of the last annual Stockholders Meeting.

Mr. Dolph moved that the record stand approved, seconded by Mr. Chadwick and passed.

There being a majority of the stock represented Mr. Dolph moved that the election for Seven Directors to serve for the ensuing Twelve Months be entered into, seconded by Mr. Crawford and passed.

The President appointed Mr. Crawford teller, and on the vote being canvassed the following stockholders was found to each have received 49064⅝ votes.

T. R. Cornelius	Henry Villard
J. N. Dolph	C. H. Lewis

S. F. Chadwick Richard Koehler
Medorum Crawford

The President declared them duly elected Directors and executed the following certificate of such election.

State of Oregon)
) ss.
County of Multnomah)

I, T. R. Cornelius, President of the Oregon Central Railroad Company, do hereby certify that at the annual stockholders meeting of said Company held at the office of the Company in Portland, Oregon at 11:30 o'clock A. M. of Thursday May 27th 1880, in pursuance of the By-Laws of the Company, and of notice duly given, the following named persons, stockholders of the Company, were duly elected Directors of said Company for the ensuing year.

Henry Villard	T. R. Cornelius
J. N. Dolph	C. H. Lewis
Richard Koehler	S. F. Chadwick

and Medorum Crawford, each having received a majority of all the votes represented and voted at said meeting, being a majority of the Capital Stock of said Company.

May 27th, 1880. (Signed) T. R. Cornelius, President.

On motion of Mr. Dolph, seconded by Mr. Chadwick, the meeting adjourned without day.

A. G. CUNNINGHAM, Sy.

Office of the

Oregon Central Railroad Co.

Portland Oregon May 27th, 1880.

Pursuant to call and notice to each Director in the State, the board met at 1 o'clock P. M. this day. Members present

Henry Villard	T. R. Cornelius	
C. H. Lewis	M. Crawford	
S. F. Chadwick	J. N. Dolph	6.
Absent	Richard Koehler	1

This is a meeting of the old board, the newly elected board not having qualified as Directors.

The following communication was read to the board by the secretary.

Portland, Oregon, May 24th 1880

To the Board of Directors of the Oregon Central Railroad Company. Gentlemen: I hereby resign my position as Trustee of the Mortgage of the road and land grant of the Oregon Central Railroad Company, dated July 15, 1871 to secure the Mortgage Bonds issued by said Company. Respectfully yours,

(Signed) H. VILLARD.

On motion of Mr. Dolph, seconded by M. Crawford, H. Villard's resignation was accepted.

Mr. Dolph offered the following preamble and Resolutions.

WHEREAS, Henry Villard Esq has filed with this Company his resignation as Trustee of a certain In-

denture of Mortgage dated 15th day of July 1871 and made between this Company of the first part and Milton S. Latham of San Francisco in California and Faxon D. Atherton formerly also of San Francisco in California, parties of the second part and recorded in the office of the County Clerk of Multnomah County in the State of Oregon, whereby the Railroad of this Company and all and singular the property of every description of this Company then owned by it or thereafter to be acquired and owned by it were granted and conveyed by this Company to said Milton S. Latham and Faxon D. Atherton upon trust therein set forth to secure the payment of an issue of negotiable bonds of said Railroad Company to the amount of $4,395,000, payable in twenty years after date with interest thereon in the meantime at Seven per centum per annum at the time and in manner therein mentioned to which position of trustee in said indenture said Henry Villard was appointed in place of said Faxon D. Atherton deceased.

AND said resignation of said Henry Villard having been accepted by the Board of Directors of the Oregon Central Railroad Company.

RESOLVED that Richard Koehler of the City of Portland in the State of Oregon be and he is hereby nominated by this Company as trustee of said Indenture in place of said Henry Villard resigned, and whereas it has been agreed and arranged between said Henrich Hohenemser sole remaining trustee of said Indenture of the first part and Richard Koehler party of the third

part that said Richard Koehler shall be appointed trustee in place of said Henry Villard resigned.

AND WHEREAS, it was in and by said indenture provided and agreed that in case of the death, resignation incapacity to act or inability of either or any or either of said parties of the second part thereto to act in the execution of any of the trusts thereof then it should be lawful and the remaining acting survivors or Competent Trustee and the President for the time being of said Oregon Central Railroad Company party of the first part thereto were thereby authorized to select and appoint by instrument in writing under their hands and seals which should be recorded in the same office in which said Indenture should be recorded one or more Competent persons to fill the vacancy or vacancies so created in the manner aforesaid.

RESOLVED, That the President of this Company be and he is hereby authorized in pursuance of the authority aforesaid to execute an instrument in conjunction with said Henrich Hohenemser sole remaining trustee of said Indenture appointing said Richard Koehler to be trustee of said Indenture in place of Henry Villard resigned, a copy of which Indenture of appointment is in words and figures, as follows, to wit:

THIS INDENTURE Made this day of ..... 1880 between Henry Villard of the City of New York of the first part Heinrich Hohenemser of Frankfort on the Main in the empire of Germany of the second part, T. R. Cornelius President of the Oregon Central Rail-

road Company, a corporation duly organized under the laws of Oregon of the third part, and Richard Koehler of the City of Portland in the State of Oregon of the fourth part.

WHEREAS, by an Indenture of Mortgage dated the 15th day of July 1871 and made between said Oregon Central Railroad Company of the first part, and Milton S. Latham and Faxon D. Atherton, then residents of the City of San Francisco in the State of California, of the second part, and recorded in the office of the County Clerk of Multnomah County at Portland, in Oregon, the rail road and land grant of said Oregon Central Railroad Company and all and singular the property of every description of said Oregon Central Railroad Company then owned by it or thereafter to be acquired and owned by it, were granted and conveyed by said Oregon Central Railroad Company to said Milton S. Latham and Faxon D. Atherton upon trusts therein set forth, to secure the payment of an issue of negotiable bonds of said Railroad Company to the amount of Four Million Three Hundred and Ninety five Thousand ($4,395,000) Dollars payable in twenty years after date with interest thereon in the meantime at seven per centum per annum at the times and in the manner therein mentioned, and it was by said Indenture further provided and agreed that in case of the death, resignation, incapacity to act, or inability of any or either of said parties of the second part thereto to act in the execution of any of the trusts thereof, then it should be lawful and the remaining acting, surviving, or Com-

petent Trustees or Trustee and the President for the time being of said Oregon Central Railroad Company, party of the first part thereto were thereby empowered to select and appoint by an instrument in writing under their hands and seals, which should be recorded in the same offices in which the said Indenture now in recital should be recorded, one or more competent persons to fill the vacancy or vacancies so created in the manner aforesaid, and that such persons so appointed trustee or trustees should have, and possess and be vested with, the same rights and powers as a Trustee or Trustees, as he or they would have had and possessed or been vested with had he or they originally been made a party or parties of the second part to the Indenture now in recital, and should perform the same duties in all respects.

AND WHEREAS, the said Faxon D. Atherton died on the 17th day of July 1877, and by an Indenture dated 20th day of March 1878 said Henry Villard was duly appointed Trustee in his stead, AND WHEREAS said Milton S. Latham did on the first day of May, A. D. 1879, resign his trusteeship, and by an Indenture dated the 2nd day of June 1879 said Heinrich Hohenemser was duly appointed trustee in his stead, AND WHEREAS said Henry Villard resigned his Trusteeship as aforesaid by an instrument in writing dated the 24th day of May A. D. 1880, and such resignation was by resolution of the Board of Directors of the said Oregon Central Railroad Company passed on the 27th day of May, A. D. 1880, duly accepted; and said Heinrich Hohenemser is the sole surviving and act-

ing trustee of said Indenture of Mortgage above recited,

AND WHEREAS, it has been arranged and agreed between the parties hereto that said Richard Koehler should be appointed Trustee of said Indenture of Mortgage of July 15th, 1871, in the place of said Henry Villard resigned,

AND WHEREAS, the execution of this Indenture by the said party of the third part has been authorized by resolution of the Board of Directors of said Oregon Central Railroad Company duly passed the 27th day of May, A. D. 1880,

NOW THIS INDENTURE WITNESSETH, That said Heinrich Hohenemser, as acting and remaining Trustee of said Indenture of Mortgage of July 15th 1871, and said T. R. Cornelius as President of said Oregon Central Railroad Company, do hereby select and appoint said Richard Koehler as Trustee of said Indenture of Mortgage of July 15th, 1871, in the place of said Henry Villard; and said Richard Koehler doth hereby accept such appointment and the trusts and duties thereof.

AND, in further pursuance of said agreement, said Henry Villard and Heinrich Hohenemser do, and each of them doth hereby, grant and convey unto said Richard Koehler and Heinrich Hohenemser, their heirs, executors, administrators and assigns, all and singular the railroad and land grants, property, and premises comprised in or conveyed, or assured by or which is now subject to the trusts and provisions of said Indenture

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of Mortgage of July 15th 1871.

TO HOLD THE SAME unto and to the use of said Richard Koehler and Heinrich Hohenemser, their heirs, executors, administrators, and assigns, as joint tenants and not as tenants in common, but upon the trusts, and with the powers, and subject to all the provisions and stipulations of said Indenture of Mortgage of July 15th, 1871.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

After the reading Mr. Chadwick moved its adoption, was seconded by Mr. Crawford, and upon the vote being taken, the President declared unanimously adopted.

No further business being before the board, on motion of Mr. Dolph seconded by Mr. Lewis, the board adjourned without day.

A. G. CUNNINGHAM,
Secy.

T. R. CORNELIUS,
President.

Office of the
Oregon Central R. R. Co.,
Portland Ogn Wednesday June 9th 1880.

No meeting of the Board of Directors was had this day.

A. G. CUNNINGHAM, Secy.

Office of the
Oregon Central Railroad Co.
Portland Oregon June 28th, 1880.

Pursuant to call and notice to each Member the New Board met at 4 o'clock P. M. Members present.

T. R. Cornelius
S. F. Chadwick
R. Koehler
M. Crawford
C. H. Lewis
J. N. Dolph 6

Mr. Villard having transferred the stock standing in his name, thereby becoming ineligible as a director, did not qualify, the other directors elected by the stockholders on 27th May 1880, qualified by taking and subscribing the following oath.

"State of Oregon)
) ss.
"County of Multnomah)

" We, T. R. Cornelius, S. F. Chadwick, Medorum "Crawford, J. N. Dolph, and C. H. Lewis, being each "severally and duly sworn, say, and each for himself "says, that he will faithfully and honestly discharge the "duties of Director of the Oregon Central Railroad "Company, a corporation duly incorporated under the "laws of Oregon, to the best of my ability, so help me "God.

" (Signed) T. R. CORNELIUS
" M. CRAWFORD

" J. N. DOLPH
" S. F. CHADWICK
" C. H. LEWIS

"Sworn and subscribed to before me this 27th day of "May A. D. 1880.

" Seal) (Signed) P. Schulze Notary Public.

The same oath sworn and subscribed to by Richard Koehler.

(Signed) R. KOEHLER.

Sworn and subscribed to before me this 28th day of June A. D. 1880.

(Seal) (Signed) I. R. Moores, Notary Public.

The Secretary called the Board to order and stated the first business for the consideration of the Meeting was the election of a chairman to preside until a President should be elected. Mr. Koehler nominated Mr. Cornelius for chairman, which was seconded by Mr. Dolph and Mr. Cornelius was unanimously elected Chairman.

The Chair then announced the election of a President to serve for the ensuing 12 months as in order.

Mr. Koehler nominated Mr. T. R. Cornelius for President, seconded by P. Schulze, and upon the vote being taken Mr. Cornelius was declared to be unanimously elected President, and

The President took the chair and announced the election of a Vice President as next in order.

Mr. Koehler nominated J. N. Dolph for Vice Presi-

dent, seconded by Mr. Chadwick and canvassing the vote Mr. Dolph was declared unanimously elected Vice President.

Mr. Koehler then nominated A. G. Cunningham for Secretary and Treasurer, seconded by Mr. Lewis and on the vote being taken was declared duly elected Secretary and Treasurer.

The Board being now organized, the Secretary read the following communication to the board.

Office of the
Oregon Central Railroad Co.,
Portland Oregon May 27th 1880.

To the President and Directors of the Oregon Central Railroad Co., Portland, Oregon. Gentlemen: I hereby tender my resignation as Director of your Company to take effect from and after the election and qualification of my successor.

(Signed) Respectfully, H. VILLARD.

On motion of Mr. Koehler seconded by Mr. Lewis the resignation of Mr. Villard was accepted.

The President announced that it would be in order for the Board to elect a Stockholder of this Company to fill the vacancy in the Board.

Mr. Koehler nominated Mr. C. A. Dolph for Director to fill said vacancy, seconded by Mr. Lewis, and on canvassing the vote Mr. Dolph was declared duly elected such Director.

Mr. Dolph then filed his qualification in words and figures following.

"State of Oregon)
) ss.
"County of Multnomah)

" We, Richard Koehler and C. A. Dolph being each "severally and duly sworn, say, and each for himself "says, that he will faithfully and honestly discharge the "duties of Director of the Oregon Central Railroad "Company, a corporation duly Incorporated under the "laws of Oregon, to the best of my ability, so help me "God.

" (Signed) R. KOEHLER, C. A. DOLPH.
Sworn and subscribed to before me this 28th day of June, A. D., 1880.

(Signed) I. R. Moores, Notary Public.

No other business being before the board, Mr. Koehler moved to adjourn, Mr. Lewis seconded the motion, on the vote being taken the President declared the meeting adjourned without day.

A. G. CUNNINGHAM, Scy.

T. R. CORNELIUS, President.

Office of the
Oregon Central R. R. Co.
Portland Oregon Wednesday July 14th 1880.
No meeting of the Board this day.

A. G. CUNNINGHAM, Scy.

Office of the
Oregon Central Railroad Co
Portland Oregon Wednesday Aug 11th 1880

No meeting of the Board had this day.

A. G. CUNNINGHAM, Scy.

Office of the
Oregon Central Railroad Company
Portland Oregon Wednesday Sept 8th 1880

In pursuance of notice and in accordance with the By-Laws, the board met at 11 o'clock A. M. Members present.

T. R. Cornelius
J. N. Dolph
C. A. Dolph
C. H. Lewis
R. Koehler
Medorum Crawford
and S. F. Chadwick. 7.

T. R. Cornelius, President, called the meeting to order.

Mr. Koehler read the following for the information of the board.

Portland, Or. Sept. 7th 1880.

To the Board of Directors of the Oregon Central Railroad Co., Portland. Gentlemen: I have the honor to lay before you the following statement in regard to certain work performed for this Company's railroad and to request your approval of my action.

In accordance with the terms of the lease of this Company's Railroad to the Western Oregon Railroad Co. we were required to complete at our own expense the extension of our depot in this City, also to erect a round house with 4 Engine stands, and suitable machinery as used for repairing rolling stock, we were also required to relay with new steel rails a certain part of main track on 4th Street in this City and to improve by macadamizing a part of said 4th Street.

In order to carry out the work as above indicated and without any available funds on hand, I had to resort to the credit of the Company and succeeded in making an agreement with the President of the Northwestern Construction Company according to the terms of which said Company undertook to perform such work and to Charge at the completion, cost price only, the O. C. R. R. Co. in return and as part consideration to furnish to said Northwestern Construction Company such motive power and rolling stock as could be spared and to allow the use of our road for the transportation of material intended for the construction of the W. O. R. R. Co; said N. W. Cons't Co to pay of course all salaries and wages of our employes engaged in running construction trains, and also all expenses for keeping motive power and rolling stock in repair, as a further consideration the N. W. C. Co. agreed to exclusively ship by our road such material used in the construction of the W. O. R. R. as might not be hauled by the construction trains, and to pay for all such hauling on our own trains the regular freight charges.

Amount of such transportation charges to be credited to us and deducted from the amount due by us for work performed for our Company by said N. W. C. Co.

Believing this agreement to be favorable for our Company I respectfully ask you to approve of and ratify the same and to grant the request now made by the N. W. C. Co. to execute our due bill, bearing interest at one per cent per month from first day of September 1880 in settlement of their claim.

For the purpose of your information, I submit herewith itemized statements to which I give the following explanations to wit:

1/ The account "O C Depot Extension" embraces

a/ The construction of 2 new side tracks on our depot grounds and east of our depot building, which tracks were mostly to be built on trestle work, the raising of the old tracks and of the depot building to a uniform and proper height, making necessary repairs on said depot building, providing new and additional doors for the same and painting the outside of the building, planking of the principal part of depot grounds and furnishing and setting up a 30 ton track scale.

b/ The Construction of a round house upon the river lot belonging to this Company immediately below the O. R. & B. Co's property called "the old bone yard," with 4 stands for engines and space for machinery, also the furnishing and setting up of the following machinery to wit: 1 axle lathe, 1 bolt cutter, 1 vertical drill, and 1 plainer selected by me.

The account presented shows an amount expended of $13,584.22

In addition the N. W. C. Co. by agreement paid Sept. 7th for work not completed and now to be completed by us the amount of.... 250.00

which will cover all expenses to be still incurred in setting up the machinery and in bringing it into working order. Total of this act. $13,834.22

2/ The account 4th Street improvement embraces the cost of material principally of steel rails and fastenings and ballast and the expense for labor for relaying the track and macadamizing the Street, showing an expenditure of 7,059.70

Total of both accounts..... $20,893.92

For freight transported by our trains on account of the N. W. C. Co. we received a credit amounting to..... .....7,887.40

Leaving a balance due by our Company..$13,006.52 for which amount a note is asked. Very respectfully yours,

(Signed) J. BRANDT, Supt.

Mr. Koehler then offered the following resolution.

RESOLVED That the contracts between this Company and the Northwestern Construction Company made on behalf of this Company by the Superintendent

of this Company as set forth in his communication this day submitted by said Superintendent to this board be and the same are hereby ratified and approved.

RESOLVED That the President and Secretary of this Company be and they are hereby authorized and directed to adjust and settle the several matters and accounts in said communication mentioned upon the basis of said contracts and to execute in the name of and on behalf of this Company under their official signatures and the corporate seal of this Company the promissory note or notes of this Company, to the said Northwestern Construction Company for the balance found due said Construction Company.

Seconded by C. A. Dolph and passed, the President declared it unanimously adopted.

The Secretary then read the folowing communication from the President of the Oregon and California Railroad Company.

" Office of the

" Oregon and California Railroad Company

" Portland Or. Sept. 8th, 1880.

"To the President and Board of Directors of the Ore-
"gon Central Railroad Company. Gentlemen I have
"the honor to submit to you on behalf of the Oregon and
"California Railroad Company, a corporation duly in-
"corporated and existing under the laws of Oregon,
"a proposition for the purchase by said Oregon and
"California Railroad Company of all the property, real,

"personal and mixed of your Company, the Oregon Cen-
"tral Railroad Company, at the price and consideration
"of the payment by the said Oregon and California Rail-
"road Company of the bonded debt of the said Oregon
"Central Railroad Company its debt to said Oregon
"and California Railroad Company not bonded and its
"floating indebtedness, understood by said Oregon and
"California Railroad Company to be in amount as fol-
"lows:

" Amount due on the promissory notes of your Com-
"pany now outstanding and unpaid, one executed Feby.
"9th, 1872 to Ben Holladay, President for $500,000,
"with interest at 10 per cent per annum, and one note
"for $500,000, executed by your Company Aug. 29th,
"1872 to Ben Holladay, President drawing ten (10)
"per cent interest, and for the payment of which all
"the first mortgage bonds of your Company are
"pledged, the interest being computed at five per cent
"only from and after the execution of the agreement
"of April 6th, 1876 between Milton S. Latham, agent
"and Henry Villard agent; amount due upon the sec-
"ond Mortgage Bonds of your Company, Principal
"$300,000, with interest;

" This Company however reserving the right to pay
"and satisfy the interest and principal of any of said
"second Mortgage Bonds only at maturity, and should
"said bonded or secured indebtedness by any different
"computation of interest be found to be greater than
"above estimated, this Company to assume pay and
"satisfy the same nevertheless, and should the same

"be found to be less in amount, this Company not to "be required to pay any greater sum for said property.

" Amount due on account with Oregon "and California Railroad Company.....$120,472.02

" Amount due on account constructions "and improvements 13,006.52

" This proposition is submitted by authority of reso- "lution passed by the Board of Directors of the Oregon "and California Railroad Company at a meeting thereof, "held this 8th day of September 1880 at the office of the "Company in Portland, Oregon, of which the following "is a copy.

" RESOLVED, That this Company propose to the "Oregon Central Railroad Company of Portland to "purchase all the property of said Oregon Central Rail- "road Company of every name and nature, real, personal "and mixed and as a consideration therefor to pay off "and satisfy the bonded debt of said Company, the debt "of said Company to this Company, and its floating in- "debtedness in amount as follows, to wit:

" Amount due on the promissory notes of said Com- "pany now outstanding and unpaid, one executed Feby. "9th, 1872 to Ben Holladay, President for $500,000 "with interest at 10 per cent per annum and one note for "$500,000 executed by said Company August 29th 1872 "to Ben Holladay, President, drawing ten (10) per cent "interest and for the payment of which all the first Mort- "gage Bonds of said Company are pledged, the interest

"being computed at five per cent only from & after the "execution of the agreement of April 6th, 1876 between "Milton S. Latham agent and Henry Villard agent. "Amount due upon the second Mortgage Bonds of said "Company, Principal $300,000, with interest.

" This Company however reserving the right to pay "and satisfy the interest and principal of any of said "Second Mortgage Bonds only at maturity and should "said bonded or secured indebtedness by any different "computation of interest be found to be greater than "above estimated, this company to assume pay and sat-"isfy the same nevertheless, and should the same be "found to be less in amount, this Company not to be "required to pay any greater sum for said property.

" Amount due on account with Oregon and Califor-"nia Railroad Company, $120,472.02.

" Amount due on account of construction and im-"provements, $13,006.52.

" RESOLVED That the President of this Company be and he is hereby authorized and directed to make in the name of and on behalf of this Company to the said Oregon Central Railroad Company a proposition for the purchase of all the property of said Oregon Central Railroad Company, real, personal and mixed and to pay therefor the indebtedness of said Oregon Central Railroad Company as aforesaid.

An early reply to the foregoing is desired.

Respectfully yours,

(Signed) R. KOEHLER,

President of the Oregon and California Railroad Co.

Mr. J. N. Dolph moved that the communication just read be spread upon the Journal, seconded by Mr. Koehler and passed.

Mr. J. N. Dolph then offered the following preamble and resolutions.

WHEREAS, the railroad of this Company has now been in operation for eight years and

WHEREAS the earnings of the road have hitherto been insufficient to enable this Company to pay anything upon the principal or interest of its indebtedness incurred for its construction and

WHEREAS this Company is unable to pay its indebtedness by the earnings of its property and the proceeds of sale of its lands, and if pressed by its creditors would have long since been compelled to discontinue operations and

WHEREAS in the judgment of this board it is for the best interests of this Company that the proposition of the Oregon and California Railroad Company to purchase the property of this Company should be accepted.

RESOLVED That the said proposition of the Oregon and California Railroad Company be and the same is hereby accepted by this board subject to ratification and approval by a Stockholders Meeting of this Company to be called for that purpose.

Seconded by Mr. Koehler and passed, and declared

by the President unanimously adopted.

Mr. J. N. Dolph moved that a Committee of three be appointed to investigate the indebtedness of this Company and report to the Stockholders Meeting to called by resolution of this board and that the Secretary of this Company shall be one of such Committee, seconded by Mr. Koehler and passed.

The President then appointed Mrss. C. H. Lewis and C. A. Dolph with the Secretary of this Company as such Committee.

Mr. J. N. Dolph then offered the following resolutions.

RESOLVED That a meeting of the Stockholders of this Company be and the same is hereby called to be held at the office of this Company in the City of Portland, Oregon, on the 6th day of October, 1880, at 11 o'clock A. M. of said day for the purpose

First, To consider a proposition of the Oregon and California Railroad Company, a corporation under the laws of Oregon to purchase all the property, real, personal and mixed of this Company.

Second. To consider the propriety of and to authorize the dissolution of this Company the Oregon Central Railroad Company of Portland and the settling of its business, and the disposing of its property and the dividing of its Capital Stock.

Third. To authorize the sale and conveyance or other disposition of the Company's property and the

liquidation of its affairs.

RESOLVED, That the Secretary of this Company be and he is hereby directed to give notice of the time, place and object of such meeting of the Stockholders of this Company by publishing a notice thereof, stating the time place and object of such meeting in the Daily Oregonian a newspaper of general circulation printed and published in the City of Portland, Oregon, daily (Sundays excepted) for at least twenty days prior to said meeting and by mailing to each Stockholder of this Company whose Postoffice address or usual place of residence is known to the Secretary of this Company, directed to his usual place of residence, a written or printed notice thereof under his official signature and the corporate seal of this Company.

Seconded by Mr. Koehler and passed and declared by the President unanimously adopted.

No further business being before the board, Mr. J. N. Dolph moved that when this board do adjourn it be to the 6th day of October 1880 at 10:30 A. M. of said day.

Seconded by C. A. Dolph and passed. Mr. J. N. Dolph then moved that the board do now adjourn, seconded by Mr. Lewis and passed.

The President declared the board adjourned to the 6th day of October 1880 at 10:30 o'clock A. M.

T. R. CORNELIUS.

A. G. CUNNINGHAM, Scy.

Office of the

Oregon Central R. R. Co.

Portland Oregon Wednesday Oct 6th 1880.

Pursuant to adjournment the Board of Directors of this Company met at the office of the Company on this 6th day of October 1880 at 10:30 o'clock A. M.

Members present:

R. Koehler
C. A. Dolph
C. H. Lewis
M. Crawford—7.
J. N. Dolph
S. F. Chadwick
T. B. Cornelius

all the members present.

T. R. Cornelius, President, called the Board to order at 10:35 A. M.

The Secretary read the proceedings of the last meeting and no objection being made, they stand approved.

Mr. J. N. Dolph moved that the Board now take a recess until 11:30 o'clock A. M. Seconded by Mr. Koehler and adopted. The President announced a recess until 11:30 o'clock A. M.

CALLED MEETING OF THE STOCKHOLDERS

Office of the
Oregon Central Railroad Company,
Portland Oregon Wednesday Oct 6th 1880.

Pursuant to resolutions Duly passed by the Board of Directors of this Company at a meeting thereof duly called and held at the office of this Company September 8th 1880, calling a special meeting of the Stockholders of this Company to be held at this time and place, and declaring the purpose thereof which resolutions are spread upon the records of the Minutes of said Meeting: and in pursuance of notice to the Stockholders of this Company duly given to each Stockholder as provided by the By-Laws of this Company by mailing to each Stockholder a printed notice thereof signed by the Secretary and under the corporate seal of the Company giving the time and place of this meeting and Specifying the object thereof, which notices were mailed and deposited in the Post Office at Portland, Oregon inclosed in a sealed envelope, and the package prepaid and properly addressed to each Stockholder at his place of residence, so as to be received by each Stockholder by usual course of mail more than Twenty days prior to this date, and which notices were also registered, and sent as registered packages, all of which will more fully appear by the affidavit of the Secretary of this Company, this day filed and exhibited to the Board which notice and affidavit are in words and figures as follows, to wit:

NOTICE OF STOCKHOLDERS MEETING

Office of the

Oregon Central Railroad Company

Portland Oregon September 8, 1880.

To.....

.....

.....

A Stockholder of the Oregon Central Railroad Company of Portland.

Please take notice that at a meeting of the Board of Directors of this Company duly called and held at the Company's office in the City of Portland in the State of Oregon, on the 8th day of September A. D. 1880, the following resolutions were unanimously adopted, to wit:

" RESOLVED that a meeting of the Stockholders "of this Company be and the same is hereby called to "be held at the office of this Company in the City of "Portland, Oregon, on the 6th day of October, 1880 "at 11 A. M. of said day for the purpose

" First: To consider a proposition of the Oregon "and California Railroad Company a corporation under "the laws of Oregon to purchase all the property real, "personal and mixed of this Company,

" Second: To consider the propriety of and to "authorize the dissolution of this Company, the Oregon "Central Railroad Company of Portland; and the set- "tling of its business; and the disposing of its property;

"and the dividing of its Capital Stock.

" Third. To authorize the sale and conveyance or "other disposition of the Company's property and liqui- "dation of its affairs.

" Resolved, That the Secretary of this Company be "and he is hereby directed to give notice of the time, "place and object of such meeting of the Stockholders "of this Company by publishing a notice thereof stating "the time, place and object of such meeting in the Daily "Oregonian, a newspaper of general circulation printed "and published in the City of Portland Oregon, daily, "Sundays excepted, for at least twenty days prior to "said meeting and by mailing to each Stockholder of "this Company whose Post Office address or usual place "of residence is known to the Secretary of this Company "directed to his usual place of residence a written or "printed notice thereof under his official signature and "the corporate seal of this company.

You are therefore hereby notified in pursuance and by authority of said resolutions and in conformity to Section 19 of Chapter 7, Title 1, of the General Laws of Oregon; that a Special Meeting of the Stockholders of this Company, the Oregon Central Railroad Company will be held at the office of the Company in Portland, Oregon, on the 6th day of October A. D. 1880 at 11 o'clock A. M. of said day.

The objects for which said meeting is called are as follows:

First: To consider a proposition of the Oregon

and California Railroad Company a corporation under the laws of Oregon to purchase all the property, real personal and mixed of this Company.

Second: To consider the propriety of and to authorize the dissolution of this Company, the Oregon Central Railroad Company of Portland; and the settling of its business; and the disposing of its property; and the dividing of its Capital Stock.

Third: To authorize the sale and conveyance or other disposition of the Company's property and the liquidation of its affairs. Yours respectfully,

A. G. CUNNINGHAM,
Secy. of the Oregon Central Railroad Company.

AFFIDAVIT OF SECRETARY, TO MAILING OF NOTICES &C.

State of Oregon)
) ss.
County of Multnomah)

I, A. G. Cunningham, being first duly sworn, say that I am the duly elected, qualified and acting Secretary of the Oregon Central Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, and that I served notices of the special meeting of the Stockholders of said Oregon Central Railroad Company, called for the hour of Eleven o'clock A. M. of the 6th day of October, A. D., 1880, which notice was under my official signature and corporate seal of said Company (and of which notice except

the name of the Stockholder, which was inserted, a copy thereof is hereto attached marked exhibit "A") upon each and all of the stockholders of this Company, that I served said notices by mailing the same at the Post Office in the City of Portland, Oregon, enclosed in a sealed envelope and the postage prepaid thereon, and the same duly addressed to each of said Stockholders at his place of residence as furnished by said Stockholder to the Secretary of this Company and ascertained by the Secretary and that I registered each of said letters and by mailing at said Post Office in like manner like notices to the agents and attorneys of said Stockholders when known to the Company or any officer thereof; that I took the receipts of the Postmaster at Portland for said registered letters which I herewith file; that said letters were mailed at Portland aforesaid to the following named Stockholders and agents at the dates and addressed as follows, to wit:

WHEN MAILED 1880	NAME	ADDRESS		NO OF REGISTERED REC'T
Sept. 11	S. C. Adams	Salem,	Ogn	1135
" "	J. C. Ainsworth	Oakland,	Cal.	1150
" "	do	Portland,	Ogn	1087
" "	C. A. Burkhardt	do	"	1088
" "	W. Baldra	Hillsboro,	Ogn	1112
" "	Stephen Blank	Forest Grove,	Ogn	1095
" "	Hy Buxton, Jr.	Do	"	
" "	C. Bills, Estate	Portland	"	1086
" "	Eliza Best	Fidalgo,	W. T.	1191
" "	Jos. R. Boyce, Estate	Hillsboro,	Ogn	1114
" "	William Ball	North Yamhill	"	1132
" "	Geo. H. Burnett	Salem	"	1134
" "	Wm. Barrett	Forest Grove	"	1110
" "	T. R. Cornelius	Cornelius	"	1093
" "	M. Crawford	Dayton	"	1128
" "	Wm. Campbell	McMinnville	"	1106
" "	Margaret Ann Conklin	Hillsboro	"	
" "	Kenyon Crandall	Cornelius	"	1092
" "	E. Constablo	Hillsboro	"	1115
" "	T. J. Carter	Baker City	"	1136
" "	S. Coffin	Dayton	"	1129
" "	Oliver Clay	Portland	"	1084
" "	Wm. Cree Estate	do	"	1083
" "	S. F. Chadwick	Salem	"	1133

WHEN MAILED 1880	NAME	ADDRESS		NO OF REGISTERED REC'T
Sept. 11	F. Dekum	Portland	"	1082
" "	J. C. Dobbins	Cornelius	"	1090
" "	J. N. Dolph	Portland	"	1081
Sept. 27	C. A. Dolph	do	"	1441
Sept. 11	Geo. W. Ebberts	Hillsboro	"	1116
" "	J. A. Fisher	East Portland	"	1089
" "	Phinemon S. Field	Forest Grove	"	
" "	John S. Griffin	Hillsboro	"	1117
" "	James H. Gaunt	McMinnville	"	1105
" "	John Green	Portland	"	1080
" "	John Harrison, Estate	Cornelius	"	1091
" "	A. B. Hallock	Portland	"	1079
" "	S. A. Halcomb	Hillsboro	"	1118
" "	Thos. Hart	do	"	1119
" "	Wm. L. Halsey, care of E. Quackenbush	Portland	"	1078
" "	Jacob Halstead	Hillsboro and New Tacoma,	" W. T.	1148
" "	J. M. Johns	Weston	Ogn	1202
" "	Hyer Jackson	Hillsboro	"	1121
" "	A. H. Johnson	Portland	"	1077
" "	Jacob Kamm	do	"	1076

WHEN MAILED 1880	NAME	ADDRESS		NO OF REGISTERED REC'T
Sept. 11	R. Koehler	Portland,	Ogn.	Personal
" "	R. Koehler, Trustee	do	"	do
" "	J. W. Ladd	do	"	1075
" "	W. S. Ladd	do	"	1075
" "	Labbo Bros.	do	"	1074
" "	Jos. Leonard	do	"	1073
" "	C. H. Lewis	do	"	1072
" "	Walter Moffat, Estate	do	"	1071
" "	J. Myrick	Baker City	"	1137
" "	D. Monastes	Portland	"	1069
" "	S. H. Marsh, Estate	Forest Grove	"	
" "	Wm. Manzy	West Union	"	1144
" "	Norman Martin	Sauve Island	"	
" "	Jesse C. Moore	Grainville	"	1107
" "	J. H. Mitchell	Portland	"	1068
" "	Chas. McKinney	Hillsboro	"	1122
" "	David McDonald, Estate care of Mrs. Miller	Dilley	"	1147
" "	McCracken Menill & Co	Portland	"	1066
" "	W. T. Newby	McMinnville	"	1104
" "	J. B. Newby	do	"	1104

WHEN MAILED 1880	NAME	ADDRESS		NO OF REGISTERED REC'T
Sept. 11	E. J. Northrup & Co.	Portland	Ogn	1066
" "	A. DeGorgier Portales care G. W. Weidler	do	"	1065
" "	L. Patterson	Hillsboro	"	1123
" "	S. G. Reed	Portland ..	"	1064
" "	C. A. Reynolds	Forest Grove	"	
" "	J. M. Ritchey	Coyote Creek	"	
" "	do	Oakland	"	
" "	Thos Standley, care W. T. Newby	McMinville	"	1104
" "	B. E. Stewart Estate	Forest Grove	"	1130
" "	D. C. Stewart	North Yamhill	"	
" "	Jos. S. Smith	Portland	"	1062
" "	Geo. H. Smith	Hillsboro	"	1125
" "	Albert Simpson	Forest Grove	"	
" "	Henry Sewell, Estate	Hillsboro	"	1125
" "	R. R. Thompson	Alameda	Cal	1149
" "	Henry B. Tucker	Beaverton	Ogn	1146
" "	L. H. Tongue	Hillsboro	"	1126
" "	Hans Thielsen	Portland	"	1059
" "	J. B. Underwood	Eugene City	"	1145

WHEN MAILED 1880	NAME	ADDRESS		NO OF REGISTERED REC'T
Sept. 11	G. W. Vaughn, Estate	Portland	Ogn	1060
" "	J. W. Watts	Oregon City	"	1188
" "	C. A. Westfall	Hillsboro	"	1127
" "	Peyton Wilkes	Greenville	"	1108
" "	Elkana Walker Estate	Forest Grove	"	1099
" "	Jermina Wheeler Estate	Santa Rosa	Cal	1148
" "	Jabez Wilkes	Greenville	Ogn	1109
" "	C. M. Wiberg	Portland	"	1057
" "	J. A. Strobridge	do	"	1058

I further swear that a notice of said Special Stockholders Meeting of which a copy hereto attached marked "B" was duly published in the "Daily Oregonian" a news paper of general circulation printed and published daily, Sundays excepted, in the City of Portland for 28 successive days, the first insertion being on the 9th day of September and the last insertion being on the 6th day of October, 1880. I further state that I have received the receipts of all said persons, stockholders and agents for said registered packages returned to me through the Post Office, except those addressed to Hy Buxton, Forest Grove, Margaret Ann Conklin, Hillsboro, Phinemon S. Field, Forest Grove,

Estate of S. H. Marsh, Forest Grove, Norman Martin, Sauve Island, C. A. Reynolds, Forest Grove, D. C. Stewart North Yamhill and, Albert Simpson, Forest Grove.

I furthermore swear that in each notice so mailed the name of the Stockholder or person to whom mailed was inserted in the blank space designed for the name.

(Corporate Seal of Company) (Signed) A. G. CUNNINGHAM

Secretary of the Oregon Central Railroad Company.

Subscribed and Sworn to before me this 6th day of October A. D. 1880.

(Signed) I. R. MOORES,

(Notarial Seal) Notary Public in and for Oregon.

The Stockholders of this Company met at the office of the Company at Portland, Oregon on the 6th day of October, at 11 o'clock A. M.

The President and Secretary present.

The Secretary of the Company presented a certified list of Stockholders of this Company as follows.

Office of the

Oregon Central Railroad Company

Portland Oregon Oct 6th 1880

I, A. G. Cunningham, Secretary, do hereby certify that the following is a true and correct statement of the Stockholders of this Company as shown by the Stock Ledger and Stock Certificate books this date.

No of Cft.		To Whom Issued	Shares	Amount Paid
		S. C. Adams	2	50.00
15		J. C. Ainsworth	6	500.00
		C. A. Burkhardt	5	500.00
86		W. Baldra	1	100.00
5	61			
—	—	Stephen Blank	8	225.00
4	4			
44		Hy Buxton, Jr.	10	250.00
36		C. Bills	5	500.00
102		Eliza Best (7¼)	5	500.00
			Remarks (725)	
98		Jos. R. Boyce	½	50.00
3		William Ball	2	50.00
			(Should	
75		Geo H. Burnett	1 share 4	25.00
			only)	
			(Remarks 1 share)	
72		William Barrett	12	
		T. R. Cornelius (1)	5	400.00
			(RemarksShould be 5500)	
19	59			
—	—	M. Crawford	2	200.00
1	1			
85		William Campbell	8	800.00
97		Margaret Ann Conklin	20	2000.00
58		Kenyon Crandall	2	175.00
96		E. Constablo	1	100.00
19		T. J. Carter	5	500.00

No of Cft.		To Whom Issued	Shares	Amount Paid
29		S. Coffin	5	500.00
		O. Clay	2	12.50
34		Wm. Cree	5	500.00
42 — 1	54 — 1	S. F. Chadwick	2	200.00
		F. Dekum	5	500.00
70		J. C. Dobbins	32	
		Remarks (94 70 Cancelled)		
49 — 1	56 — 1	J. N. Dolph	2	100.00
52 — 1	55 — 1	C. A. Dolph	2	100.00
6		Geo. W. Ebberts	21	525.00
45 — 10	46 — 5	J. A. Fisher	15	750.00
		Phinemon S. Field	5	125.00
9		John S. Griffin	1½	150.00
		James S. Gaunt	9	225.00
		John Green	5	100.00
		John Harrison	10	250.00
27		A. B. Hallock	5	500.00
59 — 5	60 — 5	S. A. Halcomb	10	250.00

No of Cft.		To Whom Issued	Shares	Amount Paid
90		Thos. Hart	5	500.00
31		Wm. L. Halsey	5	500.00
87		Jacob Halstead	1	
94		J. M. Johns	24½	2450.00
11	24			
—	—	Hyer Jackson (20)	28	500.00
20	8			
		(Remarks—Should be 20 shares only.)		
47		A. H. Johnson	5	500.00
81		Jacob Kamm	5	500.00
38	58			
—	—	R. Koehler	2	100.00
1	1			
44		)		
—		)		
46555⅝		)		
47		)		
—		)		
2499		)		
53	60	)		
—	—	)		
27	4	)		
61	62	)		
—	—	)		
100	5	)		
63		)		
—		)		
5		) R. Koehler, Trustee	49195⅝	9950.00
			(Remarks—49545¼)	
83		J. W. Ladd	5	500.00
		W. S. Ladd	5	500.00

No of Cft.	To Whom Issued	Shares	Amount Paid
	Labbe Bros.	5	500.00
	Jos. Leonard	4	25.00
48 52 — — 1 1	C. H. Lewis	2	100.00
28	Walter Moffatt	5	500.00
	J. Myrick	5	500.00
	D. Monastes	5	100.00
84	S. H. Marsh	1⅛	112.42
92	Wm. Manzey	2	250.00
73	Norman Martin	5	100.00
64	Jesse C. Moore	1	100.00
18	J. H. Mitchell	1	
101	Chas. McKinney	7½	750.00
95	David McDonald	4	900.00
	McCracken Merrill & Co	5	500.00
20 21 22 23 — — — — 3 3 3 3	W. T. Newby	12	300.00
	E. J. Northup & Co.	5	500.00
	(Remarks) (O & C R R Co.)		
	J. B. Newby	10	
21 22 — — 61 20	A. De Gorgies Portales	81	8200.00
		Remarks (8100)	
67	L. Patterson	2	200.00
79	S. G. Reed	5	500.00
4	C. A. Reynolds	4	100.00

No of Cft.	To Whom Issued	Shares	Amount Paid
9	J. M. Ritchey	15	1500.00
14	Thos. Standley	26	500.00
34	B. E. Stewart	2	50.00
35	D. C. Stewart	2	50.00
16	Jos. S. Smith	5	500.00
	Geo. H. Smith	8	200.00
	Albert Simpson	1	18.75
	Henry Sewell	1	18.75
80	E. R. Thompson	5	500.00
53	Henry B. Tucker	6	600.00
88	L. H. Tongue	1½	
41	Hans Thielsen	1	100.00
74	J. B. Underwood	1	
26	G. W. Vaughn	5	500.00
10	J. W. Watts	1	25.00
15	C. A. Westfall	16	400.00
76	Peyton Wilkes	2	37.50
7	Elkana Walker	2	50.00
	Jermina Wheeler	1	100.00
	Jabez Wilkes	1	6.25
	Wiberg and Strobridge	3	300.00
	Total	49800½	$47531.17

and that no transfers have been made on the books of this Company within the preceeding ten days.

(Corporate Seal) (Signed) A. G. CUNNINGHAM,
Secretary.

Upon the roll of Stockholders being called the fol-

lowing named Stockholders, owning and holding the number of shares of the Capital Stock of this Company hereinafter stated, were present or represented by duly authorized and constituted proxies and answered to their names as follows, to wit:

S. C. Adams, by R. Koehler, Proxy	2	shares
T. R. Cornelius	5	"
M. Crawford	2	"
Wm. Campbell	8	"
S. Coffin by J. N. Dolph, Proxy	5	"
O. Clay, by R. Koehler, Proxy	2	"
S. F. Chadwick	2	"
J. N. Dolph	2	"
C. A. Dolph	2	"
J. A. Fisher	15	"
James H. Gaunt by R. Koehler, Proxy	9	"
S. A. Holcomb	10	"
J. M. John	24½	"
R. Koehler	2	"
R. Kohler, Trustee	49195⅝	"
Wm. Manzey	2	"
W. T. Newby by R. Koehler, Proxy	12	"
J. B. Newby by R. Koehler, Proxy	10	"
Thos, Standley by R. Koehler, Proxy	26	"
Henry B. Tucker	6	"
Total	49,349⅛	shares

being all the Capital Stock of the Company excepting 655⅛ shares not represented.

The President submitted to the meeting the follow-

ing communication which upon motion was ordered spread upon the records of this Meeting and is as follows, to wit:

"Office of the

"Oregon Central Railroad Co.

"Portland Oregon Oct. 6th 1880

"To the Stockholders of the Oregon Central Railroad "Company Gentlemen Upon the 8th day of Septem- "ber last I received a proposition from the Oregon and "California Railroad Company to purchase of this Com- "pany all its property, real, personal and mixed which "proposition is herewith submitted as part hereof. Deem- "ing it important that said proposition should be laid "before the Stockholders of this Company I called a "meeting of the Board of Directors, which meeting was "held the 8th ult and the proceedings of which are here- "with submitted for your consideration.

(Signed) T. R. CORNELIUS, President,
O. C. R. R. Co.

The Committee appointed at the Director's meeting of the 8th September 1880, submitted a report which upon motion of Mr. Koehler, seconded by Mr. Chadwick, was received and adopted, and ordered spread upon the record of the proceedings of this meeting, which report is as follows, to wit:

" To the President, Directors and Stockholders of "the Oregon Central Railroad Co. Gentlemen The un- "dersigned Committee appointed in accordance with a "resolution passed at the regular monthly meeting of "your Board of Directors held on Wednesday the 8th

"day of September 1880, to examine the books of said "Company and report the result of such examination to "the Stockholders Meeting called for the 6th day of "October 1880, beg to report that in accordance with "said appointment they have made such examination and "find the Ledger accounts to correspond with the Bal-"ance Sheet hereto attached marked exhibit "A," and "the condition of the Company to be as shown by State-"ment of Liabilities and assets accompanying the same "marked exhibit "B."

" Upon a full examination of the operating accounts "we find the gross earnings to be Five Hundred and "fourteen thousand seven hundred and seventeen and "20/100 dollars ($514717.20), and gross expenses to "be Four Hundred and Seventy Six Thousand Fifty "Nine and 39/100 dollars ($476059.39) giving a gain "on the operating account from opening of the road to "the date of leasing to the Western Oregon Railroad "Company on Sept. 1st 1879, of Thirty eight Thousand "Six Hundred and fifty seven and 81/100 Dollars ($38-"657.81) and that the Company have received for rental "of its Road and equipment Twenty three thousand Two "Hundred and fifty Dollars ($23250.) which together "with the gain on operating account have been applied "to payment of interest and expenditures not taken up "in operating account and the final result to be a de-"ficit or loss of nearly One Million Dollars as shown "by exhibit "B" aforesaid.

"Respectfully submitted

"(Signed) C. A. DOLPH)
"C. H. LEWIS (Committee
"A. G. CUNNINGHAM)

Portland. Ogn Oct 1st 1880

EXHIBIT "A"

OREGON CENTRAL RAILROAD COMPANY

Ledger Balances Sept. 30th 1880

Dr.				Cr.
			Bills Payable 52	1,013.006.82
			Interest Warrant	
			2d Mortgage	
			Bonds 84	84,000.00
978	448	53	Profit and Loss 85	
			Second Mortgage	
			Bonds 91	300,000.00
			Oregon and Califor-	
			nia Railroad Co. 103	120,997.40
	899	49	Cash 105	
1	750	00	Western Oregon	
			Railroad Co. 107	
58	882	17	Government Land	
			Grant 109	

Dr.					Cr.
			U. S. Land Subsidy	111	79,116.79
			Coupon Interest, 2nd Mtg. Bonds	113	13,230.00
21	183	14	Land Department	115	
1,166,984.02			Construction and Equipment	117	
			Bills Payable, Interest act.	545	612,796.84
2,223,147.35					2,223,147.35

EXHIBIT "B"

CONDITION OF COMPANY AS SHOWN BY BAL SHEET ABOVE

LIABILITIES

Bills Payable ($4395000.00 First Mtg. Bonds pledged for 2 notes of $500,000 each of this act	$1,013,006.82	
Interest on the two notes for $1,000,000 at 10% to 6th Apl 76 then 5% to date	612,796.84	1,625,803.16
Second Mortgage Bonds...	$ 300,000.00	

Dr.				Cr.
7% Int. on Bonds to 31st Aug't 80 pr Int warrants	$94,500			
—Less—				
Paid by Company	10,500			
	$84,000			
Int on coupons from maturity to date	13,230	97,230.00		397,230.00
Oregon and California R R Co				120,997.40
				2,144,030.56

ASSETS

Construction and Equipment			1,262,450.26	
Track & Sidings 49 46/100 miles				
—Less—				
Individual subsidy		$95,466.24		
U. S. Land Subsidy 237,000 acres		$85,000.00		
—Less—				
Land office fees & exs.	5,883.21	79,116.79	174,583.03	—1087,867.23
Government Lands total value				$ 85,000.00

—Less—		
Rec'd Cash on sales	4934.69	
Maturing on sales	21183.14	26,117,83
		58,882.17
Land Department for Contract Sales		21,183.14
Cash on hand		899.49
Western Oregon R. R. Co.	1,750.00	1,170,582.03
		1,170,582.03

Balance, Deficit, Profit and Loss Bal Sheet $973,488.53
Portland Ogn Sept 30th 1880

(Signed) A. G. CUNNINGHAM, Secretary.

Upon motion of J. N. Dolph seconded by Mr. Chadwick, the following preamble and resolutions were adopted by the following vote.

In favor of adoption		Against adoption	
C. A. Dolph	2 shares	S. A. Halcomb	10 shares
Wm. Manzey	2		
J. N. Dolph	2		
J. A. Fisher	15		
S. F. Chadwick	2		
M. Crawford	2		
H. B. Tucker	6		
J. M. Johns	24½		
C. H. Lewis	2		
S. Coffin by J. N. Dolph Proxy	5		
J. H. Gaunt, by R. Koehler Proxy	9		
Walter Moffatt do	5		

In favor of adoption		Against adoption
O. Clay	do 2	
Thos. Stanley	do 26	
Wm. Campbell	do 8	
S. C. Adams by R. Koehler	Proxy 2	
J. B. Newby	do 10	
R. Koehler	2	
W. T. Newby, by R. Koehler	Proxy 12	
R. Koehler, Trustee	49195⅝	
T. R. Cornelius	5	
Total for	49339⅛ shares	Total against 10 shares

Whereupon said resolutions having received the vote of 49399⅛ Shares of the Capital Stock of this Company and that being the vote of more than (99/100) Ninety nine one hundredths of all the Capital Stock of this Company the resolutions were declared by the President of the Company to have been adopted by the meeting said resolutions are as follows, to wit:

WHEREAS for the reasons stated in the preamble of the resolutions of the Board of Directors of this Company passed at a meeting held Sept. 8th 1880 a copy of which has been submitted to this meeting by the President of this Company it is deemed by the Stockholders of this Company for the best interest of this Company to accept the proposition of the said Ore-

gon and California Railroad Company a corporation under the laws of Oregon, and having its principal office and place of business at Portland, Oregon, to purchase all the property of this Company real, personal and mixed now submitted to this meeting, and

WHEREAS, in the judgment of the STOCKHOLDERS OF THIS Company the compensation offered to be paid for the property of this Company by said Oregon and California Railroad Company is greatly in excess of the real value of said property,

RESOLVED, That all the proceedings of the Board of Directors of this Company heretofore taken in relation to the said proposition of the said Oregon and California Railroad Company to purchase the property of this Company be and the same are hereby approved and confirmed.

RESOLVED That the said proposition of the said Oregon and California Railroad Company to purchase the property of this Company be and the same is hereby accepted.

RESOLVED That the President and Secretary of this Company be and they are hereby authorized and directed for the consideration offered by said Oregon and California Railroad Company to sell all the property real, personal and mixed of this Company to said Oregon and California Railroad Company.

RESOLVED That the President and Secretary of this Company be and they are hereby authorized and directed in consideration of the covenant and agreement

of said Oregon and California Railroad Company to assume pay and discharge the indebtedness of this Company, be and they are hereby authorized and directed to execute and deliver to the said Oregon and California Railroad Company under their official signatures and the corporate seal of this Company a good and sufficient conveyance and transfer of all the railroad and road bed of this Company extending from Portland, Oregon, to St. Joseph, in Yamhill Co Oregon, a distance of 48 miles; together with all its lands, tenements and hereditaments acquired and appropriated for the purpose of a right of way for this railroad, stations depots and other possessions and all the appurtenances thereunto belonging, and also, all its lands not heretofore conveyed acquired under and pursuant to the provisions of the act of Congress of the United States of America approved May fourth 1870 and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon," and also its depots, engine houses, car houses, station houses, warehouses, machine shops work shops, superstructure, erections and fixtures, and also all and singular the franchises, rights and privileges now owned & possessed by this Company.

and all lands, tenements, hereditaments and real estate acquired or appropriated wheresoever and whatsoever or now owned by this Company.

and also all and singular the locomotives, tenders, passenger cars, freight cars and all other cars, car-

riages, tools, machinery and equipments for said railroad now owned by this Company,

and also all goods and chattels now owned, by this Company, and in any way relating or pertaining or belonging to or connected with said railroad, or running or operating the same or otherwise.

and also all bills receivable, notes, accounts, demands and choses of action of whatsoever nature belonging to this Company.

RESOLVED, That the disolution of this Company, the Oregon Central Railroad Company incorporated November 16th 1866, the settling of its business; the disposition of its property and the cancellation of its Capital Stock be and is hereby authorized and the directors of this Company be and they are hereby directed to proceed to carry into effect the disolution of this Company, the sale of its property and settlement of its business and the cancellation of its Capital Stock as herein authorized.

RESOLVED that upon such sale and transfer of the property of this Company the payment of its debts as hereinbefore provided, and the settling of its business all outstanding certificates of Stock be and they are hereby cancelled.

RESOLVED, that this Company the Oregon Central Railroad Company be and the same is hereby disolved to take effect upon the transfer of the property of this Company and the settling of its business.

On motion of J. M. Dolph seconded by S. F. Chadwick, the meeting adjourned sign die

MEETING OF DIRECTORS CONTINUED

The Directors assembled at 11:30 A. M. after recess, and at 12 o'clock noon the President called the board to order same members present as before recess.

The President presented to the meeting the procedings of the Special Meeting of the Stockholders of this Company this day held at the office of the Company and which were spread at large upon the Minutes of the proceedings of said meeting which proceedings were read to the Board.

Whereupon Mr. J. N. Dolph offered the following resolutions and moved their adoption, which motion being seconded by Mr. Crawford the resolutions were unanimously adopted, said resolutions are as follows, to wit:

RESOLVED; That all the proceedings of said meeting of the Stockholders of this Company this day held be and the same are hereby approved and confirmed by this board.

RESOLVED, That the said proposition of the Oregon and California Railroad Company for the purchase of the property of this Company for the consideration of the covenant and agreement of the said Oregon and California Railroad Company to pay and discharge the indebtedness of this Company be and the same is hereby accepted, and that the President and Secretary of this Company be and they are hereby authorized and directed in consideration of the covenant and agreement of said Oregon and California Railroad

Company to assume and pay the indebtedness of this Company to execute and deliver to the said Oregon and California Railroad Company a good and sufficient conveyance and transfer, under their official signatures and the corporate seal of this Company, all the railroad and road bed of this Company extending from Portland, Oregon, to St. Joseph, in Yamhill County, Oregon, a distance of 48 miles, together with all its lands, tenements and hereditaments acquired and appropriated for the purpose of a right of way for its railroad, stations, depots and other purposes, and all the appurtenances thereunto belonging, and also, all its lands not heretofore conveyed under and pursuant to the provisions of the Act of Congress of the United States of America approved May fourth, 1870 and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon," and also its depots, engine houses, car houses, station houses, warehouses, machine shops, work shops, superstructures, erections and fixtures, and also all and singular the franchises rights and privileges now owned & possessed by this Company.

and all lands, tenements, hereditaments and real estate acquired or appropriated wheresoever and whatsoever or now owned by this Company.

and also all and singular the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery and equipments for said Railroad now owned by this Company,

and also all goods and chattels now owned by this Company, and in any way relating or pertaining or belonging to or connected with said railroad, or running or operating the same or otherwise,

and also all bills receivable, notes, accounts, demands and choses of action of whatsoever nature belonging to this Company.

On motion of Mr. J. N. Dolph seconded by Mr. Koehler, the board adjourned without day.

A. G. CUNNINGHAM, Secy. T. R. CORNELIUS,

President O. C. C. R. R. Co.

Office of the Oregon Central Railroad Company

Portland, Oregon, May 28th, 1883.

Pursuant to call of the President the Board of Directors met at the office of this Company, this day at 11 o'clock a. m., present

President T. R. Cornelius

Directors R. Koehler, J. N. Dolph, C. A. Dolph, S. F. Chadwick, C. H. Lewis, and Medorem Crawford.

The President presented and read the following resignation of Mr. A. G. Cunningham.

"Portland, Oregon, May 25th, 1883.

"To the President and Board of Directors of the Ore-
"gon Central Railroad Company, Portland, Ogn. Gen-
"tlemen: I hereby resign the position of Secretary and
"Treasurer of the Oregon Central Railroad Company
"of Portland, Oregon, to take effect from the date of

"the appointment of my successor.

Very Respectfully

"(Signed) A. G. CUNNINGHAM.

On motion of Mr. J. N. Dolph, seconded by C. A. Dolph, the resignation of Mr. A. G. Cunningham, the Secretary and Treasurer of this Company, was unanimously accepted.

On motion of R. Koehler, seconded by J. N. Dolph, Geo. H. Andrews was unanimously elected Secretary and Treasurer of this Company, vice A. G. Cunningham, resigned.

On motion of R. Koehler, seconded by C. A. Dolph, the following resolution was unanimously adopted.

WHEREAS, at the time of the dissolution of this Company and the disposal of its property, all the property of this Company, real, personal and mixed was sold and intended to be sold to the Oregon and California Railroad Company for the considerations paid by said Company, but the property hereinafter described being in litigation and the title of this Company to the same being an equitable one, the same was not, for that reason, included in the conveyance executed by this Company to the Oregon and California Railroad Company, therefore be it

RESOLVED That the President and Secretary of this Company, be and they are hereby authorized to execute in the name of and on behalf of this Company, under their official signatures and the corporate seal

of this Company, a good and sufficient conveyance, to the Oregon and California Railroad Company, releasing and quit-claiming to said Company, all the right, title, and interest of this Company in and to the following described property. All the following described pieces, parcels, or tracts of land; situated, lying and being in Couch's addition to the City of Portland, Multnomah County, in the State of Oregon, to wit:

Blocks E, I, J, K, L, M & N, and fractional blocks A, B, C, D, F, G, and H, according to the recorded plat of said Couch's Addition.

And also the estate, right, title and interest of the said Company, of, in and to the following described parcels of real estate, situate and being in said Couch's Addition to the City of Portland, lying adjacent to the above described blocks and which have heretofore been occupied as streets but have been vacated by the municipal authorities of said City, to wit:

All that portion of what was formerly North Sixth Street from the North line of J Street to the west line of North Front Street.

All that portion of what was formerly North Fourth Street from the north line of J. Street to the west line of North Front Street.

All that portion of what was formerly North Third Street from the north line of H. Street to the West line of North Front Street.

All that portion of what was formerly North Sec-

ond Street from the North line of "G" street to the west line of North Front Street.

All that portion of what was "H" street lying east of North Third Street.

All that portion of what was formerly "I" street lying east of North Fourth Street.

All that portion of what was formerly "J" street lying east of North Sixth street.

On motion duly seconded the Board adjourned without day.

GEO. H. ANDREWS, Secretary T. R. CORNELIUS, President.

Office of the Oregon Central Railroad Company.

Portland Oregon May 23, 1895.

Pursuant to Article V of the By-Laws and of notice duly given to each Stockholder as provided in Article VI of the By-Laws, the annual meeting of the Stockholders was held at the office of the Company, Portland, Oregon, this day at 11 o'clock A. M.

President T. R. Cornelius called the meeting to order. George H. Andrews, Secretary, present.

The Secretary presented and read the following certified list of Stockholders, viz:

Oregon Central Railroad Company

Certified list of Stockholders of the Oregon Central Railroad Company, of record and entitled to vote at Stockholders Meeting to be held May 23, 1895.

Name of Stockholder	Ledger Page	No. of Shares
Phinemon S. Field	1	5
Albert Simpson	4	1
Wiberg & Strobridge	9	3
David Monastes	13	5
John Green	15	5
Jabez Wilkes	17	1
Joseph Leonard	27	4
George H. Smith	29	8
S. A. Holcomb	40	10
Labbo Bros.	44	5
R. R. Thompson	45	5
T. J. Carter	48	5
C. A. Westfall	50	16
Hyer Jackson	50	20
Geo. W. Ebberts	51	21
Eliza Best	52	7¼
Joseph R. Boyce	53	½
Charles McKinney	54	7½
William Ball	56	2
W. L. Hasley	65	5
J. H. Mitchell	66	1
J. W. Watts	68	1
Arthur dePourtales	69	81
Richard Koehler	70	2
J. N. Dolph	72	2
C. A. Dolph	73	1
Medorum Crawford	67	2
T. R. Cornelius	68	1
Richard Koehler, Trustee	74	49589¼

NAME OF STOCKHOLDER	Ledger Page	No. of Shares
Oregon and California Railroad Company	75	6
Geo. H. Andrews	"	1
L. R. Fields	"	1
W. A. Grondahl	76	1
E. P. Rogers	"	1
Total Shares		49776½

I, George H. Andrews, Secretary of the Oregon Central Railroad Company hereby certify that the foregoing is a complete and true list of the Stockholders of the Oregon Central Railroad Company of record May 13th 1895.

(Seal) GEO. H. ANDREWS, Secretary.

On the roll being called the following Stockholders were present in person or by proxy, viz:

S. A. Holcomb	10 shares
Richard Koehler, by Geo. H. Andrews, Proxy	2 "
J. N. Dolph	2 "
T. R. Cornelius	1 "
Richard Koehler, Trustee, by Geo. H. Andrews, Proxy	49539¼ "
Geo. H. Andrews	1 "
L. R. Fields	1 "
E. P. Rogers	1 "
Total Stock present	49557¼ shares

The minutes of the proceedings of the Annual Meeting of Stockholders held May 27th 1880 and of the

Special Meeting of the Stockholders held October 6th, 1880 were read and approved.

On motion duly seconded it was resolved that the meeting proceed to the election of directors.

The chairman appointed Mr. E. P. Rogers teller

The vote was by open ballot and resulted as follows:

T. R. Cornelius	Received	49547¼	votes
J. N. Dolph	"	49547¼	"
R. Koehler	"	49547¼	"
Geo. H. Andrews	"	49547¼	"
L. R. Fields	"	49547¼	"
W. A. Grondahl	"	49547¼	"
E. P. Rogers	"	49547¼	"

Each of the above Stockholders having received 49547¼ votes, being all the votes cast, and more than a majority in amount of the Capital Stock issued and outstanding, the chairman declared them duly elected directors of this Company for the ensuing year and until their successors are elected and qualified and filed with the Secretary the following certificate of election:

State of Oregon)
(ss
County of Multnomah)

I, T. R. Cornelius, President of the Oregon Central Railroad Company and chairman of the annual meeting of the Stockholders of said Company, do hereby certify that at said annual meeting of the Stockholders of said Company duly called and held at the office of the Company, Portland, Oregon, on the 23d day of May A. D.

1895, the following named persons, stockholders of said Company, were duly elected directors of the Oregon Central Railroad Company to serve for the ensuing year and until their successors are elected and qualified, to wit: T. R. Cornelius, J. N. Dolph, R. Koehler, Geo. H. Andrews, L. R. Fields, W. A. Grondahl and E. P. Rogers.

T. R. CORNELIUS,
President and Chairman of Stockholders Meeting.

No further business appearing, on motion duly seconded the meeting adjourned.

GEO. H. ANDREWS, Secretary

T. R. CORNELIUS, President and Chairman of Stockholders Meeting.

Office of the Oregon Central Railroad Company

Portland, Oregon, May 27th, 1895.

Pursuant to notice duly given the Directors elected at the annual meeting of the Stockholders held May 28, 1895, met at the office of the Company this day at 11 o'clock A. M. President T. R. Cornelius called the meeting to order. The Secretary read the certificate of election filed by the Chairman of the Stockholders Meeting and informed the Board that all the Directors had filed their oath of office as required by law.

On the roll being called the following Directors were present, viz: T. R. Cornelius, J. N. Dolph, R. Koehler, Geo. H. Andrews, L. R. Fields, W. A. Grondahl and E. P. Rogers.

On motion duly seconded Mr. T. R. Cornelius was elected Chairman pro tem.

On motion duly seconded Mr. Geo. H. Andrews was appointed Secretary pro tem.

On motion duly seconded it was resolved that the meeting proceed to the election of officers for the ensuing year.

Mr. T. R. Cornelius was on motion of Mr. Koehler, seconded by Mr. J. N. Dolph, unanimously elected President of this Company for the ensuing year and until his successor is elected and qualified.

Mr. Cornelius then took the chair as President.

Mr. J. N. Dolph was on motion of Mr. R. Koehler, seconded by Mr. L. R. Fields, unanimously elected Vice President of this Company for the ensuing year and until his successor is elected and qualified.

Mr. Geo. H. Andrews was on motion of Mr. R. Koehler, seconded by Mr. J. N. Dolph unanimously elected Secretary and Treasurer of this Company for the ensuing year and until his successor is elected and qualified.

Directors fees paid

No further business appearing on motion duly seconded the Board adjourned.

GEO. H. ANDREWS
Secretary

T. R. CORNELIUS
President.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME X

PAGES 4893-5464

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.:*
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.:*
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

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RECORD

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Salem, Oregon, April 22nd, 1867.

On the above named day the Oregon Central Rail-

road Company was incorporated by filing Articles of Incorporation as required by Law.

A meeting of the Incorporators was this day held at which on motion of I. R. Moores, Esq., the Hon. Geo. L. Woods was chairman and S. A. Clarke Secretary.

There were present in person or by Attorney the following named of the Incorporators, John H. Moores, Hon. Geo. L. Woods, I. R. Moores, S. Ellsworth by G. L. Woods, his attorney, J. S. Smith and E. N. Cooke by I. R. Moores, their attorney and S. A. Clarke.

The Secretary was instructed to furnish and prepare a suitable Stock Book, and the meeting adjourned until One o'clock p. m.

At One o'clock p. m. on reassembling, being called to order, on motion of J. H. Moores the stock was subscribed to the following amount:

Geo. L. Woods	one share	$100.00
I. R. Moores	one share	$100.00
S. A. Clarke	one share	$100.00
John H. Moores	one share	$100.00
J. S. Smith	one share	$100.00
E. N. Cooke	one share	$100.00

On motion of I. R. Moores, Esq., it was

RESOLVED

That the chairman of this meeting be and he is hereby instructed to subscribe the number of Seventy Thousand Shares (70,000 shares) of the Capital Stock of the

Oregon Central Railroad Company for the use and disposal of the Corporation; which having been done, on motion of Mr. Clarke, the meeting of stockholders proceeded to waive publication of notice and proceeded immediately to elect a Board of Directors, which motion passed unanimously, and all the stockholders being present in person or by Attorney, Gov. Woods was continued in the chair.

On motion, J. H. Moores, was authorized to cast a vote for the stock subscribed in the name of the Company, and the meeting proceeded to vote for a Board of Directors, the number on motion of J. H. Moores being fixed at Seven.

The votes cast being duly counted, it was found that J. H. Moores, Geo. L. Woods, I. R. Moores, E. N. Clarke, J. S. Smith and Sam'l. A. Clarke, were elected as such Board of Directors, by a full vote of the stock subscribed.

On motion the Directors proceeded to qualify according to the laws of Oregon in the following form and manner: C. S. Woodworth, a notary public being present.

"We whose names are hereunto subscribed, having been duly elected Directors of The Oregon Central Railroad Company, do hereby Severally Solemnly Swear that we will faithfully discharge, to the best of our ability, our duties as such Directors according to law. So help us God.

JOHN H. MOORES
(Signed) GEO. L. WOODS
R S 5 cts SAM'L A. CLARKE
I. R. MOORES

Subscribed and sworn to
before me this the 22d. day (Notarial)
of April A. D. 1867. (Seal)

(Signed) C. S. WOODWORTH,
Notary Public

The Directors being duly qualified, they agreed unanimously to meet on tomorrow morning, April 23, 1867, at Eight o'clock to elect permanent officers, and on motion adjourned.

SAM'L A. CLARKE,
Secry

Salem, Oregon, April 23, 1867.

The Board of Directors having met at 8 o'clock a. m. pursuant to agreement, Geo. L. Woods being still in the chair, the minutes of yesterday's proceedings were read and agreed to.

The Chairman announced that the election of a President was the first thing in order. Geo. L. Woods being nominated, received all the votes cast and was declared to be unanimously elected President of the Oregon Central Railroad Company.

I. R. Moores was nominated for Vice President, and upon a ballot, he received all the votes cast and was declared unanimously elected Vice President.

J. H. Moores was nominated for Treasurer and upon a ballot he received all the votes cast, and was declared unanimously elected Treasurer.

S. A. Clarke was nominated for Secretary, and upon a ballot he received all the votes cast, and was declared unanimously elected Secretary.

Thaddeus R. Brooks was nominated for Engineer and receiving all the votes cast, was unanimously elected Engineer.

The following By Laws were read and adopted:

By Laws
Of The
Oregon Central Railroad Company

Sec. 1. The fiscal and business year of the Company shall commence on the first day of January and terminate on the last day of December of each year, and shall be divided into four business periods or quarters, terminating on the thirty first day of March, June, September and December respectively.

Sec. 2. The annual meeting of the stockholders of this Company shall be held on the first Thursday of April of each year at such place as shall be appointed by Resolution of the Board of Directors at which an election of Seven Directors shall be held, to serve for the ensuing year and until their successors are elected and qualified. In case the said annual meeting for any cause shall not

be held on said day, or a majority in value of the stockholders should not be present, some other time shall be appointed within ninety days thereafter.

Sec. 3. No business shall be transacted at any annual or special meeting of the stockholders unless at least a majority in value of the stockholders shall vote in the same. Stockholders' meetings may be adjourned from time to time by the assenting vote of a majority in value of the stockholders; notice shall be published by the Secretary as to the time and place when annual or special meetings shall be held.

Sec. 4. The President or one of the Directors, with one of the Stockholders, shall act as the Judges of Election, receive, count, and canvass the votes and declare the result without delay.

The Secretary shall be the Tally Clerk and keep a regular tally list of all votes cast at such election. In the absence of any officer of election, his place shall be temporarily filled by the stockholders present.

Sec. 5. The office of the Company shall be in the City of Salem, Oregon.

Sec. 6. Four or more of the Directors shall constitute a quorum for the transaction of business, but no debt shall be contracted unless passed by at least four votes.

Special meeting may be at any time called by the President or three members of the Board.

Sec. 7. There shall be elected by the Directors, at the

first meeting after the annual election of Directors, from among their members, a President, Vice President and Treasurer, who shall hold office for the term of one year or until their successors are elected and qualified. They shall also elect a Secretary who must be a stockholder.

Sec. 8. The President of the Company shall have a general supervision—subject to the order of the Board of Directors—of the business and affairs of the Company, and shall preside at all meetings of the Board of Directors, and of the Stockholders, when present in person. The Vice President shall exercise all the duties and powers of the President, when the President is absent. In the absence of the President and Vice President, a President Protem may be appointed by the Directors. It shall be the duty of the President to sign all certificates of stock and, when so ordered by the Directors, to sign all deeds, bonds, contracts, checks or warrants on the Treasury, or all papers of whatsoever kind or nature, in which the company is a party.

Sec. 9. The Secretary of the Company shall attend all meetings of the Board, keep a fair and accurate account of all their proceedings and of the stockholders when met for the transaction of business, and prepare a quarterly and annual balance sheet, at the end of each quarter or year, showing the financial condition of the company, and lay the same before the Board. He shall keep an accurate account with each contractor, and all persons having dealings with the company, and shall also keep an accurate account with each of the stockholders relative to the amount of stock by them held; also to collect

all assessments levied, giving his receipt therefor and to receive all dues and receipts of the company from every source and pay over The same to the Treasurer immediately after the receipt, taking his receipt therefor. He shall keep a book of blank certificates of stock, fill up and countersign all certificates issued, and shall keep a proper transfer book and ledger in Dr. and Cr. form showing the number of shares issued to or transferred by any stockholder with the date thereof. He shall countersign all checks or warrants drawn on the Treasury and all other instruments in writing to which the company is a party. He shall keep all other books and perform all other duties pertaining to his office.

Sec. 10. The Treasurer of the Company shall take charge of, and safely keep and disburse under the regulations of the Board, all monies, goods, chattels, credits and evidences of debt of every kind belonging to the company coming into his hands. He shall deliver to the Secretary, daily, an abstract of all the receipts given by him on the preceding day. He shall take, keep and carefully preserve all vouchers in favor of disbursements, which he may make by order of the Board. He shall keep and appropriate a set of books, prepared for that purpose, which shall be at all times open to the inspection of the President, the Secretary, or any member of the Board. He shall also render a quarterly and annual account and statement.

Sec. 11. It shall be the duty of the Chief Engineer, to take charge of the surveys, location and construction of the road, and direct the operation of branches of the En-

gineering Service. Superintend the construction of all work under contract, and by himself or assistants, direct and control all contractors in the performance of their work. Pass upon or reject all work performed agreeably to contract and report annually and oftener, if required, the state and condition of the road, and submit estimates of future operations, as the business of the company and the progress of the work, may render proper and necessary.

Sec. 12. There may be appointed by the Board an Attorney for the company, who shall be the legal adviser of the company and perform such professional duties as may be required by the Board.

Sec. 13. All subordinate officers and agents of the company shall be appointed or employed by the Board of Directors, President or Chief Engineer in the several divisions of the service, as may be appointed by the resolutions of the Board from time to time, and the duties and compensation of all such officers and agents shall be regulated by the Board.

Sec. 14. The Board of Directors shall have power at any time by a vote of a majority of the Executive Board to fill any vacancies that may occur in their body, by death, resignation or otherwise; also by a like vote to remove any officer of its own appointment, or that may have been appointed or employed by any officer of the company, and the President or Chief Engineer may remove, at pleasure, any subordinate officer or agent in their respective departments.

Sec. 15. All elections shall be by ballot and all committees shall be appointed by the President unless otherwise ordered by the Board of Directors.

Sec. 16. The stock of the Company shall be transferred on the Books of the company, upon proper assignment and delivery of the certificates of the stock. No transfer shall be valid unless made as in this Section provided.

Sec. 17. Certificates of Stock shall be issued only for fully paid stock. In case of the alleged loss or destruction of the certificates of stock due proof of such loss or destruction shall be made, and a sufficient bond of indemnity given against any loss or damage the company may sustain, when a duplicate thereof may be issued.

Sec. 18. All disbursements shall be made by warrants drawn on the Treasury by the President or Secretary, but no such warrant shall be drawn without an order of the Board.

Sec. 19. No contract shall be binding on the Company unless previously sanctioned and ordered by the Board of Directors, and all contracts made by the Board of Directors, or any officer, agent or employe of the Company, shall be subject to and shall contain express stipulations that no stockholder of the company shall be individually or personally liable or bound for the debts of the company beyond or exceeding the actual amount of stock by him subscribed or held, and all contracts not containing and subject to such stipulations shall be void and neither the Board of Directors or any officer, agent

or employe of the company, nor any other person shall have any power or authority to bind the company or the stockholders by any contract or agreement unless the same shall contain such stipulations.

Sec. 20. The order of business before the Board shall be as follows: When Quorum appears, the President shall call the Board to order

1st. Reading of Minutes

2nd. Report of Committees

3rd. Secretary's Report

4th. Treasurer's Report

5th. Engineer's Report

6th. Written communications

7th. Unfinished business

8th. New business.

Prior to adjournment the minutes of the Meeting shall be read, amended if necessary, and approved by the Board.

Sec. 21. No alteration or amendment shall be made in these by-laws, unless presented at a regular meeting of the Board and considered at a meeting subsequent thereto, PROVIDED any By-Laws—except Section 21—may be suspended by a vote of not less than two-thirds of the Directors.

End of By-Laws.

On motion it was

RESOLVED:

That the president and Secretary are instructed on the part of the Oregon Central Roilroad Company, to execute a contract with ALBERT J. COOK, of the State of Massachusetts for the building, completing and equipping of a railroad, according to propositions now submitted and before the Board, from Portland, Oregon, Southerly, through the Willamette Valley, One Hundred and Fifty Miles in divisions as specified, and report the same back for approval when duly executed.

On motion it was further—

RESOLVED:

That the President and Secretary are hereby instructed to execute two millions of non-assessable, preferred stock of the Oregon Central Railroad Company, in favor of Albert J. Cook, the said proposed contractor, to be delivered to him on the final execution and acceptance of the contract authorized to be made, as part payment for the construction of the road, and as collateral security for monies to be advanced by said contractors as a working capital. Said stock to bear interest at the rate of 7 per cent. per annum, payable in gold, and there is hereby set apart as sufficient amount out of the first net earnings of the road to pay the same.

And it was further:

RESOLVED:

That the following form of stock be approved by the Board:

On motion it was

RESOLVED:

That we adopt the annexed impression as the official Seal of this company to be used until a permanent seal is procured.

The contract authorized to be made for the company, by the President and Secretary, with Albert J. Cook, was now presented, as duly executed according to the orders of the Board and in Duplicate, and the same having been compared and found correct, and the substance thereof approved. On motion it was:

RESOLVED:

That the said contract be entered in full upon the minutes of this Meeting of this Board; that the same is fully confirmed and said two millions of preferred stock be executed and delivered in accordance with the terms thereof, as heretofore ordered.

The terms and propositions of said contract are in words and figures as follows:

CONTRACT

Memorandum of an Agreement made this 23rd. day of April in the year of Our Lord One thousand eight hundred and sixty seven (1867) by and between The Oregon Central Railroad Company organized under and in conformity with the general laws of the State of Oregon of the first part and Albert J. Cook of the Second part—WITNESSETH:

That Whereas the party of the first part own the

right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon, South, to the California line and Whereas the party of the Second doth agree and hereby agrees with the party of the first part to build and equip One hundred and Fifty Miles of said railroad with all the necessary rolling stock from Portland, South, through the Willamette Valley, for the Sum of five millions two hundred and fifty thousand dollars ($5,250.00) reckoned at gold and specie value, that is to say, if payment from time to time be made in national currency—now so called—it shall be made in payments for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the Second part doth further agree with the party of the first part to build and equip with the rolling stock complete for the working of the same, that is to say the road shall be built upon a uniform gauge of four (4) feet and eight and a half (8½) inches, the maximum grade not to exceed (80) feet per mile and a minimum curvature of ten degrees (10), the width of the road bed to be eleven feet on the surface, the iron used to be the best quality known as "T" rail, weighing at least 45 lbs. per linear yard; the ties shall be the best wood to be obtained for strength and durability not less than six by eight inches and eight feet in length, to be laid at the rate of two thousand six hundred and forty per mile. The amount of rolling stock shall consist, for the first division of twenty five miles, extending from

Portland to French Prairie of two first class locomotives, weighing not less than sixteen tons each, two first class passenger cars, two baggage or express cars.

The next division of about twenty five miles reaching to Salem, one first class locomotive of not less than sixteen tons weight, two first class passenger cars, one baggage car, twelve box cars and two platform cars.

For the next division of about twenty five miles reaching to Albany, one first class locomotive, weighing not less than twenty-six tons, two first class passenger cars.

For the next division of about ten miles, reaching to near Corvallis, One first class locomotive, weighing not less than twenty six tons, two first class passenger cars and six box cars.

For the next division of about thirty miles, to Eugene City, one first class locomotive, weighing not less than thirty tons, three first class passenger cars, one baggage and ten each, box and platform cars.

For the last division of about thirty miles, two first class locomotives weighing not less than thirty six tons, four passenger cars, twenty box cars and six platform cars.

The contractors shall provide suitable stations and turnouts at various points to be designated by the company, at the rate of one for every ten miles; for water tanks as often as once in twenty miles, where water can conveniently be had, such locations to be designated by

the company. At the large towns, designated as the termini of the different divisions, suitable buildings shall be erected for the accommodation of passengers and freight, depots of ample size to accommodate the business of the road, shall be constructed in a substantial and durable manner; also engine houses of a sufficient capacity for the safe housing of all the engines.

The contractors shall erect and furnish suitable machinery for a repair shop at a point designated by the company.

The President of the company and the Engineer of construction, shall compose a commission, whose approval shall be necessary to the acceptance of the work.

And the party of the Second part doth agree to receive payment for the building and equipping said One hundred and fifty miles of railroad in the company's first mortgage railroad bonds, payable in twenty years from the date of the same, with interest semi-annually, PROVIDED that in case the company while the road is being constucted, is unable from its resources to pay the interest on its bonds issued to the said party of the Second part, the same shall be payable in the first mortgage bonds of the company, of regular series and character of their par value.

All said bonds to be secured by a first or bottom mortgage on said One hundred and fifty miles of railroad, and all the rolling stock thereof, and such amounts in specie as the company may provide, and the party of the first part, hereby promises, covenants and agrees with

the party of the second part to pay the sum of five millions two hundred and fifty thousand dollars, received at gold or specie value, as aforesaid, to the party of the second part, or its assigns, for constructing and equipping, with rolling stock said railroad, from Portland in the State of Oregon to the head of the Willamette Valley, or a distance of One hundred and fifty miles; and the party of the first part promises, covenants and agrees with the party of the second part, to issue or cause to be issued, the first mortgage, gold bearing, railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage on said One hundred and fifty miles thereof, and all the rolling stock of the same. Interest on said bonds to be made payable at the rate of seven per cent. per annum as aforesaid; and the said party of the first part agrees, that the said bonds shall be issued in such forms and sums, and to be endorsed, if need be, to make the same negotiable and satisfactory. And the Engineers employed are to be paid by the party of the Second part, and shall, or may be, nominated by the party of the Second part, if it see fit so to nominate the same; and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the first part, further agrees, to deposit in some safe bank in the State of New York, designated by the party of the Second part, fifteen thousand dollars per mile of the amount of said railroad bonds, to be delivered to the party of the second part in payment as aforesaid, as the bills of lading for iron and roll-

ing stock, and other materials, shall, from time to time, be accepted by such engineer, PROVIDED that the company shall not sell or dispose of their regular, first-mortgage bonds, at less than their par value, and the party of the first part further agrees to make monthly payments upon the work as approved by the Engineer, reserving twenty per cent. of the amount of work done each month, until the division is accepted by the commissioners.

And the party of the first part further agrees to use every means in their power to obtain as much cash and money aid from the people of Oregon, as is possible, for the furtherance of this enterprise.

And the party of the first part, further agrees to issue two millions of preferred stock of The Oregon Central Railroad Company, bearing interest at seven per cent. per annum, and deliver the same to the party of the second part immediately after the signing of this contract.

And it is further understood and agreed between the parties hereto, that the work shall be commenced within one year after the signing of this contract. And the whole one hundred and fifty miles be completed within five years thereafter.

And it is also understood that the common stock of the O. C. R. R. Co. shall be offered for sale to the people of Oregon, at ten cents on the dollar, and at the expiration of six months from the commencement of work on the road, subscriptions at the same rate shall be re-

ceived from any persons whomsoever, for the amounts then remaining unsold.

In Witness Whereof, we, Geo. L. Woods, President, and Sam'l A. Clarke, Secretary, on behalf of The Oregon Central Railroad Company, as authorized by the Board of Directors, have hereunto affixed our hands and the seal of said company, on the part of said company, party of the first part, to the foregoing contract this the twenty third day of April A. D. 1867, at the office of said company in the City of Salem, Marion Co., Oregon.

GEO. L. WOODS,
Pres., O. C. R. R. Company.

(Corporate)
(Seal)

S. A. CLARKE,
Secry., O. C. R. R. Company.

And for the party of the Second part

ALBERT J. COOK

Witness:
T. R. BROOKS
J. H. PARKER

By his Attorney in fact
S. C. ELLIOTT.

On motion it was

RESOLVED

That the Oregon Central Railroad Company borrow the sum of Five Million Two Hundred and Fifty Thousand Dollars ($5,250,000.) on the credit of the corporation, that sum being deemed necessary for construct-

ing and completing their railroad, and for the purpose aforesaid there shall be issued five thousand two hundred and fifty of the bonds of the said company of the denomination and in the sums of one thousand dollars each, to be numbered from one to five thousand two hundred and fifty inclusive each payable to ——— or the holder thereof all of said bonds to be of the same tenor, date and amount and payable in gold coin of the United States of America, dollar for dollar, in the City of New York, and twenty years after the date thereof on a day certain, to be therein named, and to bear interest at the rate of seven per cent. per annum, payable semi-annually at the City of New York, and in the gold coin of the United States, for which interest, there shall be attached to said bonds, interest coupons payable to bearer in said City of New York in United States gold coin, dollar for dollar, on the days and times expressed as aforesaid, and the coupons so attached, to each of such bonds shall be numbered from 1 to 40 inclusive, which bonds shall be in the following form, to wit:

A No.

THE OREGON CENTRAL RAILLROAD COMPANY

1000 1000

THE OREGON CENTRAL RAILROAD COMPANY.

(a corporation duly organized under the laws of the State of Oregon, and having its principal place of busi-

ness in the City of Salem, in the county of Marion, in said State,) hereby acknowledge themselves indebted to PITT COOKE, Esq., or to the holder thereof, in the sum of ONE THOUSAND DOLLARS, payable in GOLD COIN OF THE UNITED STATES, At the City of New York, twenty years from the date hereof, with interest thereon at the rate of SEVEN PER CENT. PER ANNUM, payable semi-annually, in like gold coin, at the City of New York, on the first day of January and July of each year, upon the surrender of the appropriate coupon hereto annexed. This bond is one of the series A of FIRST MORTGAGE BONDS, issued pursuant to a unanimous resolution of the Board of Directors, adopted April 23, 1867, authorizing the issuance and negotiation of the Bonds of said Company to the extent of FIVE MILLIONS TWO HUNDRED AND FIFTY THOUSAND DOLLARS, in six grand series, designated respectively A, B, C, D, E, and F, for the purpose of constructing, completing and equipping the Railroad belonging to the said Company.

The payment of the principal and interest of this and the other "FIRST MORTGAGE BONDS" above mentioned, is secured by a FIRST MORTGAGE executed by the said Company on the first ONE HUNDRED AND FIFTY MILES of their railroad, from the CITY OF PORTLAND, in the State of Oregon, to the head of the WILLAMETTE VALLEY, in said State, and on all the rolling stock, fixtures, and franchises thereof to A. C. GIBBS and W. S. LADD,

4915

of the said City of Portland, said State, as Trustees for the holders of such "FIRST MORTGAGE BONDS" and coupons, and is further secured by the creation of a sinking fund for the purpose of such payment.

IN TESTIMONY WHEREOF, The said Company have caused their corporate Seal to be hereunto affixed, and these presents to be signed by their President and Secretary, this twenty-third day of April, A. D. one thousand eight hundred and sixty-seven.

————Sec'y. ————Pres't

(STAMP)

ENDORSED

Series A. No.————

THE

OREGON CENTRAL RAILROAD

COMPANY

SEVEN PER CENT. "FIRST MORTGAGE BOND." PAYABLE IN GOLD COIN APRIL 23, 1887.

$1,000.

(A. Bond No.....
) The Oregon Central Railroad Co.
(Will pay to the bearer Thirty Five Dollars in
)gold coin at the City of New York on the 1st
(day of January, 1868. Sec'y.

We hereby certify that this Bond is one of the within described Series A, (said series being composed of eight

hundred and seventy-five Bonds of like tenor and date), secured by a Mortgage executed and delivered to us as within described.

) Trustees.

Said bonds shall be signed by the President and Secretary of the Company and the corporate seal of said Company affixed thereto and the coupons shall be signed by the Secretary, the President and Secretary being hereby fully authorized and empowered in the premises, so to do.

And it is further ordered and resolved that there shall be and is hereby created, a sinking fund of a sufficient amount to pay from time to time, as the same becomes due, the interest and also the principal of said bonds: That the Treasurer of said O.C.R.R.Company shall on or before the first of June and December in each year, set apart out of any money in his hands belonging to said company, a sufficient amount to pay the coupons for the interest on all such outstanding bonds, then next coming due, which shall be appropriated solely for that purpose under the order of the Board.

That unless such bonds are otherwise sooner paid or redeemed, there shall be set apart as, and for a fund to redeem the same, on the first day of September, of each of the following years: 1883, 1884, 1885, 1886 & 1887, the sum and amount of One million and fifty thousand dollars ($1,050,000.00) in gold coin, which said sum of

money shall be kept and used, or properly secured for that purpose and no other, under the order and direction of the Board of Directors, and it is further ordered and

RESOLVED

That to further secure the payment of said bonds and the interest thereon as stipulated and provided as aforesaid, a mortgage be executed by the President and Secretary with the corporate seal of the corporation affixed thereto, and to be a first lien, upon the first One Hundred and fifty miles of the Company's railroad, commencing at the City of Portland and running southerly one hundred fifty miles, together with all the depots, warehouses and superstructure upon and belonging to said One hundred and fifty miles of railroad and upon the rolling stock, personal property and franchises pertaining thereto, as provided and permitted by the laws of this State.

On motion it was further

RESOLVED—That the orders and resolutions, so passed as aforesaid, and the bonds therein ordered to be executed and issued, and the mortgage to be made as security for the payment of the same, are so made, done, performed and executed upon the express condition that the stockholders of said Company, and the individuals who may hereafter hold stock in said company, shall not, in name or form either directly or indirectly, be liable for any of the debts or liabilities of said company beyond the amount respectively and individually subscribed by them to the Capital Stock of the Company.

On motion it was

RESOLVED, That the Secretary be authorized to procure the necessary stock certificates for the use of the Company.

Albert J. Cook—the contractor aforesaid—having by his Attorney in fact, S.G.Elliott, in a written communication, designated Jay Cooke & Co. of New York as his bankers to receive the bonds to be deposited according to contract, it was

RESOLVED

That the President and Secretary are authorized and instructed to execute three hundred and seventy five bonds from 1 to 375 inclusive, Series "A" of the form heretofore provided and forward the same to said Jay Cooke & Co., Bankers, Corner of Nassau & Wall Sts., New York City, with a letter of instructions, directing them to deliver the same, from time to time, in amounts corresponding to the value of iron and material shipped by said contractor for the use of the Oregon Central Railroad.

Whereupon the meeting adjourned.

S. A. CLARK
Secretary.

At a called meeting of the Stockholders held April 26th.,1867, at the Company's office in Salem, there were present G. L. Woods—President—J. H. Moores, I. R. Moores and S. A. Clark.

This meeting being called to order, it was moved by I. R. Moores, that F. A. Chenowith, a stockholder of the Company, be nominated for a Director of the Company to fill the existing vacancy. A Ballot being taken, F. A. Chenowith received all the votes cast, representing a majority of the Stock and he was declared duly elected as a Director of the Company.

It appearing that E. N. Cooke, elected a Director of this Company, is now absent from the State, and cannot qualify or perform the duties of the office, it was, on motion of I. R. Moores—RESOLVED, That the position of Director for which E. N. Cooke was elected be declared vacant on account of his absence from the state, which motion passed, and the election of a Director to fill the vacancy being in order, T. McF. Patton was nominated by I. R. Moores and a ballot being taken, he received a vote of a majority of the stock of the Company, he was declared to be unanimously elected such Director.

The official oath was administered as follows:

State of Oregon)
)ss.
Marion Co)

I hereby solemnly swear that I will faithfully discharge the duties of Director of The Oregon Central Railroad Company to the best of my ability. So help me God.

(Signed) F. A. CHENOWITH
T. McF. PATTON

Subscribed and sworn to (Notarial)
before me this the 26th. (Seal)
day of April A. D. 1867. (R.S.5 cts)
Witness my hand and
Notarial Seal hereunto
affixed. I. R. Moores, Notary Public.

Whereupon the meeting adjourned.

S. A. CLARK,
Secretary.

At a meeting of the Board of Directors of the Oregon Central Railroad Company, held at the office of the Company in Salem, November 27th. A. D. 1867, there were present, Geo. L. Woods, J. H. Moores, I. R. Moores, T. McF. Patton and S. A. Clark.

On the part of the contractors, A. J. Cook & Co., successors in interest to A. J. Cook, who contracted on the 23rd. of April last, to build and equip One hundred and fifty miles of the Company's road, from the City of Portland, South, there appeared before the Board, N. P. Perine of San Francisco, one of the said firm of A. J. Cook & Co., who on the part of said contractors proposed that a supplimental contract should be entered into to define and in some respects modify the terms of the said contract of April 23rd., 1867.

After due consideration with J. H. Mitchell and S. Ellsworth, attorneys for the corporation, it was ordered by a unanimous vote of the members of the Board present, that the Oregon Central Railroad Company will

this day enter into a supplemental contract with A. J. Cook & Co. which shall in form and matter be as follows:

This Supplemental Agreement, hereunto attached, is made to the following described contract, a copy of which—paged and lined—is hereunto annexed.

"Memorandum of an agreement made this 23rd. day of April in the year of Our Lord One Thousand Eight Hundred and Sixty Seven (1867) by and between The Oregon Central Railroad Company, organized under and in accordance with the General Laws of the State of Oregon of the first part and Albert J. Cook of the Second part;" and is made as an amendment to certain provisions of the said above described agreement and supplementary thereto.

The above described contract is amended as follows:

Strike out line 5 page 4 and in lieu thereof insert—*In the Company's first and second mortgage railroad bonds.* Also in line 14, same page, after the words "a first" add the word *and second*: Also amend Line 1, Page 5 thus: after the word "first" insert *and second.*

Also amend said contract by striking out Lines 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 & 29. All on page 5 of said contract: Also strike out lines 21, 22, 23, 24, 25 & 26 & 27 down to the word "unsold" on page 6. & in whatever lines and places in all said contract, the words "First Mortgage" occur, the same shall be amended to read *"First & Second Mortgage."*

This supplemental agreement further Witnesseth:

That whereas the party of the Second part to the above described agreement, have expended large sums of money for materials for said road, which is now on the way by vessels to the port of San Francisco, California, and whereas the party of the first part failed to present the bonds provided for in the above described contract, before amended in a satisfactory form and manner and whereas the said amount of material already purchased is equal to three-fourths of the amount required for the first division as near as the same can be estimated, and whereas the party of the second part have arranged to use a fifty pound rail in place of the 45 lb. rail provided for in the above described contract, and to which the party of the second part agree: Therefore, the party of the first part agrees in addition to the covenants and agreements set forth in the above described contract, that the party of the second part shall have the free use of the said railroad for the transportation of all material required in said work, also as well all men, horses, mules, cattle, sheep, hogs and provisions of any and every kind required by said party, while constructing said road; also all iron, iron rails, bars, castings, spikes, chains, switches, machinery, frogs, car wheels and all timber for bridges, trestle-work, cattle guards and cross ties and timber for all depots, stations and all other materials required or used, with everything else required by said contract, in the construction of said road until said One hundred and fifty miles of said road has been completed.

And the party of the First part further agrees to execute a new mortgage of sixteen thousand dollars

per mile in place of the first one for thirty five thousand dollars per mile and deliver to the said party of the second part, three hundred thousand dollars of amount, also to execute four hundred thousand dollars of Series "B" for the second division and deliver One hundred thousand dollars of the said Series "B" at the same time that the said three hundred thousand dollars of Series "A" which shall be delivered immediately after the signing of this contract, to the party of the Second part.

And the party of the first part further agrees to deliver the remaining One hundred thousand dollars, for the first division as soon as the Engineer shall certify that all the materials are bought for the said first division; and also shall deliver the remaining three hundred thousand of the Series "B" as soon as the said Engineer shall certify that all the materials have been bought for the second division; and so it shall be with all the remaining divisions.

Said first mortgage bonds, to the amount of Sixteen thousand dollars per mile shall be delivered as soon as the Engineer of said company shall certify that the materials are purchased for such divisions until all the amounts of such first mortgage bonds are delivered to said party of the Second part.

And the party of the first part agree to execute a second mortgage on their road of the same form and style and for a like amount of the first mortgage and execute the second mortgage bonds and deliver the same as payment for work done by said contractors after all other means of said Company shall be exhausted, in

all other respects bearing the same rate of interest payable at the same time and in the same kind of money as provided for in the mortgage for thirty five thousand dollars in the attached former contract, only differing in being a first and second mortgage and in amounts of sixteen thousand dollars each in place of the one for thirty five thousand dollars.

And the party of the second part agrees to receive the said second mortgage bonds upon the terms set forth in the former contract for amounts due after the company shall have exhausted all their other means, and said bonds shall be taken upon the same terms as the first mortgage bonds.

And the party of the first part agree that they will enter upon the canvassing of the state for the purpose of having the common stock disposed of, upon the terms set forth in the preceding contract. That is to say, the stock shall be issued as full paid stock when ten per cent has been paid on the same, and all moneys received for said stock shall be paid to the contractors for work done so far as the same will go, reserving only ten per cent of the amount to meet the expenses of said Company.

And the party of the first part further agrees to advance to the party of the second part when the first section or division of the road is completed according to said contract, common stock of said company to the amount of thirty thousand dollars per mile for each mile of the two first sections of said railroad, less the amount

that may at that time have been sold as hereinbefore provided, and as each remaining section or division of said railroad is completed, the said party of the first part shall transfer to the said party of the second part, common stock of the company to the amount of thirty thousand dollars per mile, for each mile of the next succeeding division of said road, to be constructed, less such amounts as may at that time have been sold as aforesaid, and the stock so transferred shall be charged to the said party of the second part at the rate of ten cents on the dollar, and the amounts so charged to the said party of the second part, shall be considered as a coin payment made to them for the construction of said road.

And the party of the first further agrees to select a suitable location for the Company's shops and secure a title to the land for the same purpose as soon as possible, after the signing of this supplementary contract; Also they agree to assist in securing the right of way for the road as fast as possible after the engineer shall locate the line of said road also that the party of the first part will enter upon said canvassing for the taking of said stock as soon as this supplementary contract is signed and extend the same throughout the state of Oregon in a thorough manner.

And the party of the second part agrees to accept the above conditions in lieu of the former contract as an amendment to the same, reserving all the rights and covenants of the above described contract not changed or affected by this supplementary contract. And the said first contract is to remain in force in all respects wherein

the same is not changed by the present supplementary contract made in pursuance of a mutual understanding & to the mutual benefit to both parties hereto, & for the consideration above named.

In witness whereof the parties hereto have caused the same to be signed by the President and Secretary of the party of the first part, and by the party of the second part on this the 27th day of November A D 1867.

And on motion the Secretary was instructed to prepare such contract in duplicate and the President and Secretary were instructed and authorized to sign and execute the same on behalf of the company, and to deliver a copy of said contract so duly signed and executed to N. P. Perine when he should have signed and executed the said duplicate copies for and as one of the firm of A. J. Cook & Co. Successors in interest to O. J. Clarke, with whom the original contract was made on the 23" day of April 1867

And on motion the Secretary was instructed to prepare for delivery to said N. P. Perine the bonds of the Company to be delivered to said contractors, according to the terms of said contract, that the same may be ready for delivery when the terms thereof are complied with.

On motion C. N. Terry and I. L. Parrish of Salem were duly elected Trustees for the bondholders, as required in issuing bonds under the terms of the Mortgage required to be made. And the Secretary was instructed to notify them of their election as such Trustees, and ascertain if they accept the said trust.

On motion the Board adjourned.

S. A. CLARKE
Secretary

Salem, Oregon April 7th, 1868

At the annual meeting of the Stockholders of the Oregon Central RailRoad Company held this day at the Company's office in Salem there were present, representing the majority of the stock

A. J. Cooke by S. G. Elliott his attorney
Geo L Woods by I. R. Moores his attorney
S. Ellsworth by I. R. Moores his attorney
J. H. Moores
T. Mc F. Patton
S. A. Clarke
E. N. Cooke
S. B. Parrish

In the absence of the President I. R. Moores the Vice President presided.

The minutes of a meeting of Stockholders purporting to have been held on the 24th day of March, ultimo, were read and on motion of Mr. S. G. Elliott is was ordered, that all of said proceedings are hereby struck out and declared null and void, for the reason that the majority of the stock of the company was not represented.

On motion the meeting adjourned to meet at the office of the Chief Engineer of the Company at the City of Portland, on Wednesday April 15th, 1868.

S. A. CLARKE
Secretary

Office of Chief Engineer of O C R R Co

Portland Oregon, April 15 1868

At an *an* adjourned meeting of the Stockholders of the Oregon Central R R Company held this day there were present of the stockholders of the company representing a majority.

O. J. Cook by S. G. Elliott his proxy
G. L. Woods by I. R. Moores his proxy
S. Ellsworth
J. H.Moores
I. Mc F. Patton
S. A. Clarke
E. N. Cooke
S. B. Parrish
F. A. Chenoweth by I. R. Moores his proxy
J. H. D. Henderson
Phil Wasserman
S. F. Chadwick by H. Boyd his proxy
A. M. Loryea
A. L. Lovejoy
J. Conser
J. E. Ross by H. Boyd his proxy
J. H. Douthit
Hamilton Boyd
A. F. Hedges
J. H. Mitchell

I. R. Moores Vice President presiding the minutes of the meeting held April 7th were read and approved.

On motion Mitchell Ellsworth & Clarke were ap-

pointed a committee to report necessary amendments to the By-Laws of the Co.

After consultation the Committee made the following report

REPORT

Your committee appointed to review the By-Laws, would make the following report.

We recommend that Sec. 2 be amended so as to read as follows:

"Sec 2. The annual meeting of the stockholders of this company shall be held on the first Tuesday of April of each year at such place as shall be appointed by resolution of the Board of Directors at which an election for twenty Directors shall be held to serve for the ensuing year and until their successors are elected and qualified.

In case the said annual meeting, for any cause shall not be held on said day, or a majority in value of the stockholders shall not be present, some other time shall be appointed within 90 days thereafter".

And we further recommend that Section 6. of said By-Laws be so amended as to read:

"Sec 6. Seven or more Directors shall constitute a quorum for the transaction of business, but no debt shall be contracted unless passed by at least 11 votes.

Official meetings may be at any time called by the President or by five members of the Board.

(SIGNED) J. H. MITCHELL
S. ELLSWORTH
S. A. CLARKE

On motion the report was received and the Committee discharged.

Mr. Mitchell moved that the report be adopted and the By-Laws be amended as therein proposed, which motion passed by a unanimous vote.

Mr. Loryea moved that the meeting proceed to the election of twenty Directors to serve for ensuing year, which motion passed.

Mr. Ellsworth moved that the vote of the individuals present composing the meeting shall be taken, to designate such Board of Directors, and that the Secretary be instructed to then cast a vote for the amount of stock held by the Company, said vote to be given for the persons indicated by the vote previously taken.

Thereupon a ballot was taken according to law, and upon the vote being cast by the Secretary in accordance with the foregoing instructions the following result was arrived at

Geo. L. Woods	received	70019	votes
I. R. Moores	"	70019	
J. H. Moores	"	70019	
S. A. Clarke	"	70019	
E. N. Cooke	"	70019	
F. A. Chenoweth	"	70019	
T. Mc F. Patton	"	70019	

J. H. D. Henderson	"	70019
S. Ellsworth	"	70019
Philip Wasserman	"	70019
S. F. Chadwick	"	70019
A. M. Loryea	"	70019
A. L. Lovejoy	"	70019
Jacob Conser	"	70019
John F. Miller	"	70019
John E. Ross	"	70019
J. H. Douthit	"	70019
Hamilton Boyd	"	70019
S. B. Parrish	"	70019
A. F. Hedges	"	70019

and were declared elected such Board of Directors.

OATH OF DIRECTORS.

The Directors elected who were present—as follows —appeared and qualified by taking this Oath.

State of Oregon)
) SS
County of Multnomah)

We, I. R. Moores, J. H. Moores, S. A. Clarke, E. N. Cooke, T. Mc F. Patton, J. H. D. Henderson, S. Ellsworth, Phil Wasserman, A. M. Loryea, A. L. Lovejoy, J. Conser, J. H. Douthit, H. Boyd, S. B. Parrish and A. F. Hedges, Directors of the Oregon Central Railroad Company, being severally sworn do severally depose and say, that we will faithfully and honestly discharge our duties as such Directors.

I. R. Moores
J. H. Moores
S. A. Clarke
E. N. Cooke
T. Mc F. Patton
J. D. H. Henderson
S. Ellsworth
Phil Wasserman
A. M. Lovejoy
Jacob Conser
H. Boyd
J. H. Douthit
S. B. Parrish
A. F. Hedges

Subscribed and sworn to before me this fifteenth day of of April A. D. 1868.

C. W. Parrish
Notary Public
for Oregon

(SEAL)

(Inter-revenue stamp, $.05, affixed)

Certificate of President as to election

OF THE BOARD OF DIRECTORS.

Portland Oregon April 15, 1868

This is to certify, that, an election of Directors at the annual meeting of the stockholders of the Oregon Central Railroad Company this day held, the following named gentlemen were elected as the Board of Directors

of said company for the ensuing year, to-wit: J. H. Moores, S. A. Clarke, E. N. Cooke, T. Mc F. Patton, J. H. D. Henderson, S. Ellsworth, Phil Wasserman, A. M. Loryea, A. L. Lovejoy, Jacob Conser, H. Boyd, J. H. Douthit, S. B. Parrish, A. F. Hedges, I. R. Moores, I. F. Ross, Geo. L. Woods, S. F. Chadwick, F. A. Chenoweth, J. F. Miller.

I. R. Moores Vice Pres't.
acting President and ex-officio
inspector of election.

It was moved and carried that a meeting of the Board of Directors shall be held this evening at this place.

On motion the meeting adjourned.

S. A. CLARKE
Secretary

Meeting of Board of Directors.

Offiee of Chief Engineer

Portland Oregon April 15th 1868

At a called meeting of the Board of Directors authorized by the meeting of stockholders this day held there were present Messrs. J. H. Moores, I. R. Moores, Cooke, Clarke, Patton, Henderson, Ellsworth, Wasserman, Loryea, Lovejoy, Conser, Boyd, Douthit, Hedges, Parrish.

On motion Mr. I. R. Moores presiding the Board

proceeded to the election of officers for the ensuing year.

Mr. Wasserman nominated Mr. I. R. Moores for President and upon a ballot being taken according to law, Mr. Patton and Mr. Conser acting as tellers, Mr. I. R. Moores received 13 of the votes cast and was declared by the Secretary to be duly elected President of the Board. Woods received one vote and there was one blank vote.

Mr. Douthit and Mr. Loryea were nominated for Vice President and upon a ballot, Mr. Douthit received six votes, Mr. Loryea received nine votes and the President announced that A. M. Loryea having received a majority of the votes cast was duly elected Vice President.

Mr. Cooke and Mr. J. H. Moores were nominated for treasurer and upon a ballot Mr. Cooke received eight votes, Mr. Moores four votes, Mr. Boyd one vote and the President announced that Mr. E. N. Cooke having received a majority of the votes cast was duly elected Treasurer.

Mr. Clarke and Mr. Patton were nominated for Secretary and upon a ballot Mr. Patton received four votes, Mr. Clarke ten votes Blank one vote, and the President announced that Mr. Clarke having received a majority of the votes cast was duly elected Secretary.

Mr. Clarke announced that as his position as Secretary, might be considered incompatable with a voice as Director, he offered his resignation of the position of Director, which resignation on motion, was accepted.

On motion it was ordered that a committee of three be appointed to prepare an address to the people of Oregon, on the value of railroads.

Messrs. Loryea, Wasserman and Boyd were appointed as such committee.

On motion it was ordered that an executive committee of five shall be appointed.

Messrs. Parrish, Loryea, Patton, Ellsworth and Lovejoy were appointed as such committee and at suggestion of Mr. Wasserman the President was added thereto, by the general consent of the Board.

On motion it was ordered that Finance Committee, consisting of three Directors be appointed.

Messrs. Cooke, J. H. Moores & Henderson were appointed as such committee.

On motion it was ordered that a committee of Ways and Means, consisting of three members shall be appointed.

Messrs. Boyd, Douthit and Wasserman were appointed as such Directors.

On motion Messrs. Loryea Ellsworth & Patton were appointed a committee to prepare instructions to the various committees and to devise a uniform system to be pursued in securing aid for the road.

Mr. Boyd offered the following.

RESOLVED

That the Directors of this Board resident in the City of Portland be authorized and directed to com-

municate and confer with the common Council of the City of Portland and the County Commissioners, as soon as practicable, relative to a terminus and the securing of aid toward the enterprise, which was unanimously adopted.

Mr. President presented for the information of the Board a copy of the complaint made in a suit brought by State of Oregon ex rel agst J. Gaston and others, which was read by the Secretary.

Mr. Jas. P. Flint who was present by invitation addressed the Board at length on the prospects of the enterprise with many valuable suggestions as to course to be pursued to forward its successful completion. Expressing great admiration for the ability displayed by Mr. Elliott in securing aid from capitalists at the East, as contrasted with the success secured for similar enterprises in California in the like time.

Mr. Elliott was then invited to address the Board and detailed to them his proceedings at the East, the amt of material purchased and money aid secured, as well as the difficulties that had attended him. He also submitted proposition for the construction of the road through Southern Oregon which was referred on motion to a special committee of three consisting of Messrs. Patton, Hedges and Boyd.

On Motion It Was:

RESOLVED. That the Company send an Agent and representative to the East.

Which motion passed.

Mr. Lovejoy nominated A. M. Loryea as such agent and Representative, and a vote being taken, he was unanimously elected to said position.

On motion, the following preamble and resolution were adopted.

WHEREAS, It is deemed expedient as a measure to promote the interests of the Oregon Central Railroad Company and facilitate the fullfillment of the Contract existing between the said Company and A. J. Cooke & Company for the construction of the road of said company for one hundred and fifty miles from Portland South, that one of the Directors of this Company shall be sent to the Eastern States as its representative and Agent, and

WHEREAS, At a meeting of the Board of Directors of the Company A. M. Loryea has been unanimously elected to such agent & representative therefore it is hereby

RESOLVED. That A. M. Loryea as the agent and representative of the Oregon Central Railroad Co. is fully empowered to represent our interests and assist in all matters relating to negotiation of the Company's bonds, or the exchange of Securities, and he is expected to generally advocate & protect the interests of the Corporation in the Eastern States and keep the Company advised from time to time of his progress.

Upon motion the Board adjourned until tomorrow morning at ten o'clock.

S. A. CLARKE
Secretary

Portland Oregon Thursday

April 16th 10 o'clock A. M.

The Board met pursuant to adjournment. All present as of yesterday, the President in the chair.

According to arrangements made for the commencement of work upon the road at East Portland, and for an appropriate celebration of that important event, the details of which are fully given the Daily papers of the City of Portland, extracts from which are given herewith that the full voice of the press concerning the same may be preserved in the minutes of the company for convenient reference, and as a permanent record thereof.

From the Daily Evening Bulletin.

RAILROAD COMMENCEMENT.

At the appointed hour this morning the various military and civic societies of our city, assembled on First street, where the procession formed in the following order:

Grand Marshal and Aids.
Fourteenth Infantry Brass Band.

FIRST DIVISION.

Capt. C. S. Mills—Marshal.
Washington Guard.
Fenian Guard.
Mayor and Common Council of the City of Portland.

Chaplain of the Day.
Orator of the Day.
President and Directors of the O. C. R. R. Co.
Chief Engineer and Corps O. C. R. R. Co.

SECOND DIVISION.

Chief Engineer Portland Fire Department—
Marshal.
Assistant Engineers Portland Fire Department.
Aurora Brass Band.
Willamette Engine Co. No. 1.
Multnomah Engine Co. No. 2.
Columbian Engine Co. No. 3.
Protection Engine Co. No. 4.
Vigilance Hook and Ladder Co. No. 1.

THIRD DIVISION.

Marshal.
Citizens in Carriages.
Citizens on Horseback.
Citizens on Foot.

After marching and countermarching through the city, the procession crossed the river, forming on the east bank and marching to the spot selected for the commencement of exercises. The officer of the company, the members of Common Council, the orator of the day, and others, were called to the stand amid the plaudits of the multitude.

Rev. Mr. Waller advanced to the front of the Speak-

er's stand, and commenced the exercises by offering up a fervent prayer.

Hon. J. H. Mitchell then advanced, and on behalf of Samuel M. Smith, Esq., presented the President of the road with a shovel made from Oregon material, by Oregon workmen. His speech was eloquent in the extreme, and will be found in another column. President Moore responded in a neat speech, and taking the shovel he broke the first ground on the O. C. R. R. Co's. road, (east side.)

The vast number of people who left their business to attend these exercises attests the deep interest felt in the railroad enterprises now inaugurated in this State, and we sincerely hope that nothing will transpire to shake the people's confidence in either.

THE DAILY HERALD

Official Paper of the City.

CITY AND STATE NEWS.

ANOTHER GREAT DAY.—We have to chronicle another great event in the history of our young State. As announced, the formal commencement of the construction of the Oregon Central Railroad (east side) was inaugurated yesterday in East Portland, near the south line of what is known as Stephens' Land Claim. The exact locality in which transpired the interesting proceedings was decked with nature's green and presented as lovely a scene as one could wish to behold. Scarcely a stick or stone could be found to mar the beautiful sur-

face, and near by stood the proud and towering forest trees which grow so luxuriantly in Oregon, and seemed to look down with satisfaction upon the proceedings which rendered famous the day of which we write. Our object is to give but a general idea of what transpired for the information of those who were not present. We would gladly publish the speeches made by the different orators, but our space actually forbids such an undertaking. Early in the day our people (and the strangers who were in the city) began to stir and gave indications that something important was looked for. The Portland and Frush ferry boats were both engaged for the auspicious occasion, and everything that could be done by man was accomplished to consumate the celebration with a crowning success. At an early hour the Fannie Troup arrived at her wharf, bearing a large number of visitors from Vancouver, including the Fire Department of that town and the Cavalry Band from the garrison. At the wharf the firemen of our own city met and received their brother firemen in a flattering manner, and escorted them through our streets. The Washington and the Fenian Guards were out in gay uniforms, and lent enthusiasm to the occasion by their military bearing and presence. The Aurora Brass Band had arrived the day previous and gave us some of their sweetest strains. The programme, as advertised, was carried out to the letter. The Marshal (Zieber) and his Assistants (Messrs. Starr and Whiting), succeeded admirably in the parts allotted to them. When the great concourse of citizens and visitors reached the locality where

the ground was to be broken, they found great preparations had been made by the erection of stands, shades, and seats for the ladies, and in fact all that could be had been done, except to provide seats for the most of the thousands who were present, which of itself was ordinarily impossible. The stream of visitors was actually increased to the close of the proceedings, hence, to estimate the number there were out, is, to say the least, impracticable.

Everybody busied themselves talking, looking and surmising, and canvassing the great work to be commenced—the railroad stakes then stuck in Oregon soil was a wonder almost of itself, and they were gazed at with interest by all. After the crowd had become somewhat calm, Mr. Loryea called the multitude to order and stated that the first in the order of the ceremonies was the presentation of the shovel mentioned by us a day or two since as having been manufactured at the Willamette Iron Works in this city expressly for the occasion. The presentation speech was made by J. H. Mitchell, Esq., for and in behalf of Sam. M. Smith, who procured made this implement of industry. Mr. M. indulged in a few happy thoughts upon the resources of Oregon, prompted by the fact that the shovel he held in his hand was manufactured entirely of Oregon material, even to the oil upon the handle; the silver upon which the inscriptions were made was taken from the mountains of Santiam. President Moore, of the Company, received the shovel and made a neat response, after which he descended and with his own hands formally com-

menced the stupendous work of construction a railroad. Music and deafening cheers failled the air and all present seemed to be relieved, now that work had commenced. Immediately after Mr. Moore completed breaking ground, about fifty Chinese workmen began in dead earnest the grading of the road. The orator of the day, Mr. Upton, was then introduced, and for a short time indulged in the consoling thoughts suggested by the commencement of a great work, which in time would make us a great and important State. The next speaker called to the stand was J. N. Dolph, Esq., who also indulged in happy remarks suggested by the importance of the occasion. J. H. Reed, Esq., was then loudly called for; he made his appearance and excused himself with the "fallacy" that he had nothing to say. But the audience knew better, and repeated their demands for his reappearance. He couldn't dodge it, and forth he came, and made one of those happy little speeches for which Reed is so proverbial. After the conclusion of the speeches, and the sights had been seen—i. e., laborers actually at work on the railroad, the entire assemblage reformed into a column, the military and firemen in the lead, and marched to the ferry landing, when they crossed as fast as two boats could carry them. Arrived upon this side of the river the different associations were escorted with music to their various quarters, and the Common Council, the Mayor and city officers to the Council room. The Vancouver firemen and military returned apparently happy over the day's doings. The steamer Senator was hauled up below the ferry landing,

in East Portland, to accommodate those who desired to ascend the river. Our citizens seemed determined to put in a full day, and many if "not more" gave themselves up to jollity and good feeling for the fraction of a day which remained. Not a disturbance of a serious nor a semi-serious nature occurred during the whole day, and that we consider a compliment to our people at large which cannot be granted to communities outside of Oregon. It is determined, we understand, to increase the force of laborers and continue in the good work commenced—which certainly is the hope of every man who has the interest of our State at heart.

THE DAILY OREGONIAN.

Friday Morning, April 17, 1868.

CITY.

Breaking Ground—East Side.—The 16th day of April, 1868, was a gala day in this city—a day to be long remembered by, at least, all who participated in, or witnessed, the ceremonies of "Breaking ground" for the Oregon Central Railroad, east side. At an early hour, large crowds of people belonging to this city, Vancouver, Oregon City, the towns above, and the surrounding country, gathered upon the principal streets to await the forming of the procession, announced to take place at 10 A. M. Flags were flying from the several Engine houses and most of the principal buildings of the city. The piazzas of the hotels and many of the residences, supported crowds of spectators of the animated

scenes in the streets below. Everywhere were people on foot, on horseback and in carriages, hurrying hither and thither in active preparation for the coming celebration. Never, except, perhaps, on our great National Anniversaries, has Portland witnessed a more general turnout of people, or more animated spectacles than were to be seen all along Front and First streets yesterday morning.

The Procession.

At about 11 o'clock, the elements of the procession having been assembled, the Marshals began to form the column, on First street, the right resting on Stark. At a few minutes past eleven, the procession moved up First street, led by the Aurora Band, followed by the Washington Guard, the Fenian Guard, the Mayor and members of the Council of the City of Portland, the Chaplain, Orator of the Day, the President and Directors of the Oregon Central Railroad Co., the Chief Engineer and corps of employees, constituting the First Division. In this division was borne the shovel to be presented by Samuel M. Smith to the President of the Railroad Co., and to be used in breaking ground. The Second Division consisted of the First U. S. Cavalry Band, the delegations of firemen from the Vancouver Fire Department, and the Portland Fire Department. The Third Division consisted of citizens on foot, on horseback and carriages. The procession, after marching through the principal streets, proceeded to the ferry, and crossing as rapidly as the two commodious boats could carry the people, reformed on the east side of the river and

marched to the place selected for breaking ground. Long before the procession moved, vast crowds of people flocked to the boats and crossed over in advance to make sure of being present when the ceremony should begin.

The Grounds.

The place selected for breaking ground was in an open field about three-fourths of a mile from the ferry landing at East Portland, and, perhaps, five hundred yards from the east bank of the river. Just on the right of the surveyed line of the railroad, a stand had been erected for the speakers, Directors and others who were to participate in the ceremonies. Opposite this was a shed containing tiers of seats for ladies. On the west and directly across the line of the road, were several tiers of seats for spectators—the three forming a sort of court or square opening to the eastward and looking directly out upon that part of the road where the workmen were to begin the grading as soon as the signal should be given that ground was broken. Just on the right of the speaker's stand in the center of the road, stood a flag staff from whose top floated the National banner. The preparations for seating the audience proved to be far too limited, not more than one-fourth of those present being able to get seats. A little way to the eastward were piles of wheelbarrow material, ready to be put together, shovels, picks and various other implements to be used in the work of construction, and farther along on either side of the marked line of grade, stood long rows of Chinamen with shovels in hand.

The Ceremonies.

The assemblage, numbering not less than Five thousand people, of whom a very large number were ladies, having gathered about the stand, Dr. Loryea came forward and announced that the ceremonies would be opened with prayer by the chaplain of the day, Rev. A. F. Waller. The chaplain arose and addressed the throne of grace, with an impressive petition for the favor of God upon the enterprise now about to be undertaken.

Presentation of the Shovel.

After music by one of the bands, the presentation to the President of the Oregon Central Railroad Co. of an Oregon-made shovel, was announced. This shovel bears on it a beautiful silver plate attached to the front of the handle, with the following inscription:

"Presented by Sam'l. M. Smith to the Oregon Central Railroad; Portland, April 16, 1868. Ground broken with this shovel for the first railroad in the State."

Presentation address by Hon. J. H. Mitchell.

Mr. President of the Oregon Central Railroad Company, ladies and gentlemen: I have been selected upon this occasion to present, in the name and on behalf of Samuel M. Smith. Esq., one of the worthy pioneers in trade in the city of Portland, to the Oregon Central Railroad Company, this substantial and magnificent piece of workmanship which I now hold in my hand, and which is truly and emphatically in the various materials from which it is constructed, a most fitting emblem of the

invaluable and unfailing resources of the State of Oregon. The blade of this ESSENTIALLY HOME production, this substantial shovel, beaten out as it is from the virgin ore taken from the prolific mines of Oswego—the Pittsburg of Oregon—where lies imbedded this valuable metal in inexhaustible quantities and of most fabulous richness, is a true representative of this important class of our mineral wealth. The handle, made from an Oregon maple, represents that material interest which includes all the vast resources of trade and commerce that can and must eventually spring from the most magnificent forests with which our State abounds. The beautiful silver plate that adorns the handle, and which bears upon its face the inscription of the donor, was carved out of the precious metal taken from the mountains of Santiam within this State, and it serves to remind us that our mineral resources are not confined to the baser metals, but that here in Oregon, as well as elsewhere upon the golden shores of the Pacific, the honest miner finds a full recompense for his hours of patient toil. The handle, also, you will observe, has been seasoned with oil manufactured by an Oregon mill, from the raw material grown upon an Oregon farm by an Oregon farmer, while the workmanship and mechanism displayed in its construction are but a just tribute to the mechanical skill, and the commendable industry of the people of our State.

And, Mr. President, in acting upon this occasion as the medium through whom this representative of the material resources of our State is conveyed to you, and to

the corporation which you represent, as a tribute of respect and confidence from one of the citizens of Oregon, for the indomitable energy and perseverance which have enabled you to enter this day upon the practical work of the great enterprise for which you were incorporated, it may not be inappropriate in me to refer very briefly to the cause of our assembling together at this time. The occasion of our presence here today, is one of profound interest to the people of Oregon. We are here for the purpose of celebrating the commencement of a new era in the history of her people. For the purpose of witnessing the laying of one of the great corner stones of that wealth, prosperity, influence, civilization and empire, shall soon characterize our State as a bright particular star in the great family of States, for the purpose of inaugurating a work which, under your fostering care, and management, and the well known energy and business and financial ability of the contractors represented here today in part by such men as Flint, Peabody & Co., of Boston and California, calling to their aid as they have, the best among the Civil Engineer Corps of the Pacific coast and, in fact of the nation, promises fair to move directly and rapidly on to successful completion. And a work, which, when completed, will be the great life artery of our young and noble State, and along which, impelled by the irresistable and energizing power of steam, will bound and rebound the great vitalizing currents of population, wealth, trade, internal commerce, and all that tends to make up and work out a glorious destiny for the worthy pioneers of our adopted State.

We are here to celebrate the inauguration in Oregon of that system of internal public improvements, which in the Eastern, Western and Middle States has brought the vast multitudes of these extensive regions into a close communication of trade interest and sympathy, and which has bound them together as with bands of fire and ligaments of steel, and to which, more than to any other system of internal improvements, are the United States to-day indebted for their unparallelled growth in material wealth, prosperity and power. And therefore it is not strange that an event such as this should call from their homes, their firesides, their farms, their work shops, their offices, their parlors and their sitting rooms, this vast concourse of people who have come hither to approve by their presence and to witness the commencement of a work that must tell so deeply and so materially upon the future welfare not only of Oregon as a State, but also upon the individual interests of her people. And it is an occasion upon which the hardy pioneers, especially those who first braved the dangers but a few years ago, of these Western wilds, who first reared the standard of civilization along the picturesque banks of our beautiful and far-famed Willamette, and planted the first seeds of our present greatness and future glory, as a people, can rejoice with exceeding great joy as they look back over the conflicts and trials of the past, and now find all culminating in a new era of prosperity and greatness that must inevitably, and at no distant day, make Oregon as a State what her agricultural, mineral and manufacturing resources, as well as the character-

istic energy and go-aheaditiveness of her people justly entitle her to—second to none West of the Rocky Mountains.

This, to some, may seem an extravagant prediction; but it is one, the truthfulness of which, will be demonstrated during the lives of many of those I now address. The sound of "the shovel" of to-day, which is caused by the first breaking of ground by "the Oregon Central Railroad Company" is but the legitimate echo of ten thousand similar sounds that are to-day reverberating along the eastern base of the Rocky Mountains and along the eastern and western slopes, and amid the Alpine caverns of the Sierras, and which shall continue to wake up the stillness of those solitudes, until from Portland, Maine, to Portland, Oregon, shall be one unbroken line of railway, and along which shall move in one continuous phalanx the population and wealth of this mighty continent; but not only of this continent, but of the continents of the world; and the islands of the sea. The Great Union Pacific which is now gradually but surely threading its way across our land like a huge serpent with a tongue of fire mocking at every opposition, when completed, as soon it will be, and of which the road this day begun is but a legitimate extension, will be the great internal highway of nations, along which shall pour in one uninterrupted current the trade of Europe, Asia and America, as it passes on like a swift-winged messenger, according to the laws of its being, to circumtravel the civilized nations of men. And who is there, I inquire, in this vast audience, representing as it does

every department of industry and trade, after contemplating the past history of our country, the unmistakable, and truly prophetic signs of the present, can remain incredulous either as to the speedy completion of the work this day commenced, or the influence and power which when completed it will have upon the prosperity of this people in developing our resources and building up our State to something like its true character and legitimate proportions? The revolutions wrought by the age of steam and by the irresistible will and energizing power of the American people are so really fabulous in their appearance that were they not stamped indelible and enduring characters upon the pages of American history, and in still more comprehensive language of imperishable truth upon the very face, the wide savannahs, the rugged mountains and the vardant hills of our favored land, their history would be treated as a fable emanating from the brain of a visionary. In 1754, when Dr. Franklin projected a plan for the union of the colonies, he proposed the city of Philadelphia as a metropolis, giving as a reason that it was situated about half way between the two extremes, and, as he said, could be conveniently reached even from Portsmouth, New Hampshire in eighteen days. Had a child of the future risen up from the gray mists of coming time and said to Dr. Franklin yea, and two generations shall not pass away until Portsmouth and Philadelphia shall be within a few hours ride, the revelation would have been regarded even by that great philosopher and statesman, as one never to be fulfilled. Even he who never told a

falsehood, would have been disbelieved, if on the 30th day of November, A. D. 1782, when England conceded American Independence, the Father of our Country, the immortal Washington, had been enabled to lift the veil of the future that then flung its darksome folds across the coming greatness of our Republic and had been permitted to look down the great broad avenue of coming time, and gifted with the speech of prophecy had turned to Adams and Jefferson and Hamilton and Randolph and others of his great compatriots, and said to them: I see coming slowly but surely on away down yonder in the dim distance upon the broad plain of futurity, thirty-five millions of people from all over the vast continent they are coming up, and from all nations beneath the shining sun—they are bearing in their hands great white banners, upon which are inscribed "Liberty and Progress" and they are coming nearer and nearer, and very soon they will take the place of the three millions who now possess this land, and the eight hundred thousand square miles of territory which now comprises our possessions, I see expanding on the north, south, and west, into a mighty area of over three million of square miles, bounded by conterminous oceans, bearing upon its face everywhere the unmistakable impress of civilization, of greatness, of power; and yet all this, fabulous as it might then have appeared, has come to pass in the brief period of three-quarters of a century. And who can comprehend the progress that is to succeed?—with a country doubling its population every twenty-five years, and inestimably rich in all that can tend to wealth

the mind becomes disturbed and the imagination lost in contemplating the future greatness of our country.

Twenty-five years ago the place where now lie those beautiful cities which loom up to our view on the eastern and western banks of the peaceful Willamette—Portland proper and East Portland—with their teeming thousands of busy population, their happy homes and joyful hearts, their school houses, their academies, their colleges, their temples of justice, their wealth, their trade, their commerce, their influence and their power, was a barren wilderness, a pathless swamp, a dismal solitude, threaded alone by the trail of the red man, and echoing to no more inviting sound than the scream of the badger and the war-hoop of the savage. Then this whole Pacific coast, from the Golden Gate to Behring's Straits, that now flings its broad expanse of increasing greatness toward the gilded arch of our western sky, was one vast unbroken wild over which the bird of promise had never flown, and where the foot of civilization had never trod; but to-day, through the indomitable energy of our race, and by the magic power of works such as we are here to-day to inaugurate, the "Druidical silence" of that solitude has been broken, the forests have faded back into the dim distance, the verdant arches that had been entwined by the fingers of the living God in the great centres of these primitive wilds, have been displaced by temples reared by the hand of civilization and progress. Rivers and lakes are spanned, the valleys rise up from their lowly beds, at the command of the voice of enterprise, and the snow-capped mountains of

our golden coast are made to bow their everlasting heads in reverence and acknowledge the inevitable progress that is being made in all that tend to develop the resources of our heritage, and promote the general welfare of our race.

Receive then, Mr. President, this tribute of respect in the spirit of friendship and encouragement in which it is tendered, embodying and representing as it does, in the materials of which it is formed, many of the great elements of wealth that pertain to our present prosperity and greatness as a State, and which point forward along the line of coming years to a higher destiny and a more glorious exaltation. Take it, and may the important work with it this day begun go forward with all the rapidity possible consistent with the magnitude of the enterprise. May the hands that wield it in the great cause of internal improvement be as tireless as the hands upon the dial of time, and may the minds, and energies, and resources, that direct the work in which you with it this day engage, be as unfailing as the light of the sun; and may the time soon come when from the city of Portland to the SOUTHERN boundary of the State there shall be erected, through your energies and through the energies and enterprise of others, two great race tracks for the iron horse—the one upon the east and the other upon the west side of our noble river—and when the smoke from the fiery nostrils of the competing steeds shall rise up from the angry chargers, and bending over shall mingle with each other and with the hot breath that ascends as a gloomy pedestal from

the floating palaces ascending and descending our loved Willamette, forming an arch of beauty and grandeur, which in form and outline, though not in substance, shall beautifully symbolize the coming greatness and glory of our adopted State.

Mr. Mitchell's address was frequently interrupted by loud and prolonged applause.

President I. R. Moore's Reply.

Mr. Mitchell: In accepting for the Oregon Central Railroad Company the very neat and appropriate present of Mr. Smith, for whom you act upon this occasion, we regard it as not only a token of personal esteem to the members of our corporation, but as an earnest of a hearty sympathy with the purposes and objects of this enterprise, which he entertains in common with all the people of the State.

In the use of this gift, at this time, we behold not only the commencement of a great work fraught with issues of momentous import to our young and rapidly growing State, but the dawning of a new era in the history of Oregon that all here assembled will revert to in after days as the time when the garb, the habits and methods of thought of the frontiersmen were cast aside, and we commenced the race for political and commercial greatness with our sister communities in this great Nation.

And the first spadeful of soil is removed we see unearthed a germ of progress just putting forth which

shall continue to grow and expand, until the cities of this beautiful land will be busy centers of wealth and population, and teeming myriads shall occupy our valleys and mountains and develop the immense resources which as yet are scarcely appreciated. We feel that we can assure you that the work so auspiciously commenced to-day will only cease when the groaning granaries of our farmers will no longer need facilities for reaching the markets of the world and the drowsy echoes of the Umpqua and Rogue rivers will resound with the breathings of the iron horse on his rapid march in the work of founding agricultural and commercial empire.

In conclusion, and on behalf of the company, I thank you.

Breaking Ground.

President I. R. Moores then descended from the platform, with the shovel in hand, and proceeded to the centre of the square where was driven the "first stake," and amid the acclamations of the multitude, threw out the first sod in the construction of the Oregon Central Railroad. The act was followed by three rousing and hearty cheers for the road, for the Directors and the contractors, and "Hail Columbia" by the Cavalry Band.

Commencement of the Grading.

The cheers of the people had scarcely died upon the air, when the laborers, getting the signal, fell to work upon the grading of the road. This was followed by a considerable stampede of the people on that side of the crowd, to the spot, and the Chinamen were soon enclosed

between two walls of interested spectators, each of whom seemed to have a deep personal interest in the matters going forward. Many of them procured shovels and joined in the work. Among the latter were a considerable number of ladies who evidently shared in the general enthusiasm of the hour. There were hundreds who perhaps never handled a shovel before, can boast in after years that they threw out dirt at the inauguration of the Oregon Central Railroad. In a few moments, and after most of the people had returned to the stand, Judge Upton was announced and as he came forward, was greeted with cheers.

Hon. W. W. Upton's Address.

Ladies and Gentlemen: We have met to assist in ceremonies connected with events of the greatest importance to the citizens of Oregon. The ceremonies inaugurate a work of vast interest to us a people and to our State. The great line of railroad that sooner or later must connect Oregon with the Atlantic States, and pour treasures of produce from the Willamette Valley and our other rich valleys into the world's markets and return its equivalent, can not be laid down at once; it is a work of time, labor and capital. There must be a beginning, and the day that begins it is not altogether a day of ceremonies; not altogether an idle day. These ceremonies signalize the commencement of that work.

This large concourse of people is here to signify public approbation of this effort, and to signify their willingness to put their shoulders to the wheel, and to

contribute material aid to roll on this daring enterprise.

The people of Oregon are now fully alive to the great interest we have in railroad communication with the rest of the world. The recent action of the city of Portland in favor of railroad communication, shows the feeling on the subject in this city, and its almost unanimous approval by the people of Portland is but an index of the feeling that pervades the State. We no longer have any fears of too many railroads or too much railroad.

Although railroads have been in practical use about half a century, it is during only a few years that we have had any real understanding of through lines or thoroughfares—of those great lines of railroad travel and freight that roll population and labor and life and activity and wealth into a new country, and make the West a part of the East, and the East common property with the West.

It is only ten or fifteen years that this matter has been at all understood, anywhere. How has this thing been learned? Those fortunate regions where it has been tried have found commerce and business and wealth poured in upon them like the rain from heaven. Those unfortunate localities that have neglected or resisted these great arteries of trade, find themselves shut off from the marts of the world, and the rich products of a bounteous soil lie almost useless in their granaries, or are struggling in an almost hopeless effort to make produce over-pay the expenses of its own transportation to market.

One of the most astonishing facts developed in modern times, is the cheapness at which these great lines of railroads can transport freight and passengers long distances. Men not in the business are astonished when they learn that a full employed railroad can carry freight a thousand miles, cheaper than it can be put into and taken out of a merchant vessel. The lighterage, stowage and discharge of a cargo of merchandise costs more on an average than it costs a business road to transport the same cargo a thousand miles. It is the long lines of road with an immense business that can work at the rates. What was it, that in a period of ten years changed the value of improved farms in Illinois, Wisconsin and other Western States from an average of ten dollars per acre to an average of fifty to sixty dollars per acre?

Railroad men discovered within that time that they could carry flour from Chicago to New York city for twenty-five cents per barrel and other products at similar rates. The ordinary and natural completion of four great lines of railroad fixed that price, and made a grain field of Illinois bring as much freight per acre as a grain field a few miles from New York city. The grain fields of the West come up at once in price so near the value of Eastern farms. The farms enriched the railroads and the railroads enriched the farms. They developed each other and reaped mutual advantages.

The results of energy and competition in railroads on the routes from the Atlantic to the Mississippi has astonished all parties. How many miles of railroad could

be paid for with the rise on real estate within that time in one of those States? a rise of property caused principally by the construction of railroads.

This increase in the value of land in Illinois alone, is sufficient to build and equip a line of railroad reaching twice around the earth. The same addition per acre to the value of the available lands in the Willamette valley would reach the sum of $150,000,000. And yet there are some men who have not quite done with the query, "Will a railroad up the Willamette valley pay?"

In making estimates, some men leave the rise of real estate out of their figures. In the estimate just mentioned, reference is made to farming lands alone. A full estimate would add to these figures; the value of the towns that would spring up as the country improved, and the increase in value when our present villages shall be transformed into populous and wealthy cities. This increase in value will take place at some time. It is sure to come sooner or later. But if it is seen by the present generation, it will be because the present generation builds roads. Our first and most obvious want is population. We want every acre of choice lands under cultivation.

While on this subject of population, I want to say one word to you, Gentlemen Directors, on the subject of the kind of labor it is your interest to employ. It is your interest, in my opinion, to construct the road by means of the labor of good, able bodied white men. Men whose bones and sinews are made of beef and bread, and who can earn the money you pay them; and who will

form a part of the permanent population of the country to patronize the road when it is done. You will get no more labor, in my opinion, out of the rice-fed Chinamen, for the same money. He may work cheaper but will do less work. He is not able to work at hard labor with the energy of a white man, and the employment of Chinamen does nothing toward populating the country, but retards it, and I am opposed to it for every reason. Population is everything to a railroad as well as to the country, and it is a question of deep interest to the road, as well as to the country.

Oregon has the resources to support an immense population. She holds out inducements to agriculture, as soon as a way is opened to markets, such as few countries hold out. Our crops turn out as largely for the labor bestowed, and are of as good quality, as those of any large tract of land in the world. Another marked feature of the country, and an important one, is that Oregon HAS NEVER YET HAD A FAILURE OF CROPS.

None but those who have seen the impoverishing effect of repeated failures of crop, can realize the immense advantage of this feature of our soil and climate.

The 3,000,000 acres of land of the Willamette will support a larger population and pay well for a larger amount of labor than any other extensive tract of land. At most, every acre of it will justify high and thorough cultivation and will increase the profits of tillage in proportion to the labor.

But it cannot be worked until a way is opened to markets. It cannot be worked while our produce has to pass through the houses of the California merchants, and submit to the system of traffic their ingenuity has invented or while it in any manner takes the slow, circuitous and expensive route by way of the isthmus.

We are here today because the people of Oregon have begun to put their hands together and are striking a blow in the right direction.

The breaking of ground for a line of railway up the Willamette valley is the first of a series of steps that is to link Oregon with the great centers of commerce and wealth, and give impetus to our exertions.

There is no danger of too many outlets of trade. There is no danger of too many roads. It has hardly ever happened that a railroad was built that was not needed. Such a thing is next to impossible.

I hope to see the two roads now about starting from this place move on with even and rapid pace to some proper point well up the valley and then join their forces and push on in the most eligible course toward the Atlantic States.

To Oregon should belong some glory and some rewards connected with the continental roads. It was an Oregon man that first promulgated the idea of a continental road.

It was an Oregon man that first offered to build a road across the then wilderness continent for a strip of

unoccupied waste land. He vainly begged and petitioned Congress for the privilege. He was on the right track, but he was one generation in advance of the age. Like many great men, he got too far in advance of his forces. His heart was right, and his "head was level," but the world was about twenty-five years behind him and did not come up in time. The world "failed to connect."

An Oregon man was the first to project a great national railroad, and if there is anything in the signs of the times, Oregon men will not rest satisfied until the project becomes an accomplished fact.

We shall hail the first rapid puffing of the locomotive as a sign of destruction to the forests around the city of Portland. When the sound of the train reaches up the Willamette, and the ground begins to tremble under the tread of the iron horse, waste land will recede on the right and the left to give place to cultivated fields; the fern will be driven out, our timber will become merchandise, population will roll in, and the hum of industry will be heard from the Coast Range to the spurs of the Cascades, and from the Columbia to the sources of the Willamette. As the line emerges from the valley and leads on to join its iron bonds with those of the Central Pacific, or the Union Pacific, the hum of industry will still keep pace with the shriek of the whistle and the jar of the train.

Railroads give life and activity to a country, and encourage men to work. The locomotive running

through a productive country has a wonderful effect on the farms in a little while. It drives all the brush out of the corners of the fences and roots out the stumps; it builds great barns on the farms; it straightens out the lines of the fences and makes them look as if they were laid by a surveyor. It sets up stakes at the corners of the fences and puts a wire on the stakes and lays two rails on the wire. It gives the fence a good "worm" and turns all the five and six rail fences into eight rail fences.

When this great artery of trade is added to the net work of iron roads that now almost annihilates distance on the Atlantic side, won't we visit "the settlements?" Won't the old homesteads on the Atlantic side get waked up? Won't the ladies and children have a millenium? But this thing is not half as far off as the millenium. The railroad men know that it will pay, and they are not afraid of anything that will pay. They would saw up Mount Hood and sell it for whetstones if it would pay. They know that a railroad will pay if everybody makes up her mind to travel and take the children. You know we are all going across on about the first train, and then all our friends on the other side, and most all our friends' friends will start about that time to come and see us. Everybody will be bound to travel, for everybody is waiting for the wagon. Every railroad man has found out that roads pay in proportion to the quantity of business. They won't build a railroad where the farms won't rain produce, nor where the ladies and children won't travel on the cars.

They know that their money lies in low prices, heavy freights and rapid business. They know they have got to arrange it so that everybody can *afford* to travel, and then everybody *will* travel. They know that they can carry grain from here to New York for not more than three or four times what it now costs to furnish sacks for the grain, and that in time a healthy competition will compel them to do it at that rate. But if there is business enough to keep a road fully employed, they have no fear of the result.

There is nothing worth raising that will not at times be worth carrying long distances by railroad. There are persons here today who will live to see Oregon potatoes sold at handsome profits in the city of New York. There will be times when one or another of their crops fail in the East, that the East will want every particle that Oregon can spare. Nearly every year there will be some Oregon product—at times one of our staples—that will be in demand on the other side at prices that will make the freight a mere trifle in comparison. How soon there will be railroad connection from here to the other side is not for us to say; but it is plain to see that our material advancement depends very much on that question. Our active prosperity as a State will not be fairly and fully under way until that is accomplished.

To those gentlemen who have visited us with a view to railroad construction, I think I may say we are not afraid of foreign capital. We want them to put all their money in here if they will, and then come them-

selves and make themselves a home with us. We think by the time the investments are made and the business fairly under way, they will be captivated with this country and choose it as their own. We will welcome them heartily.

Judge Upton was followed by Hon. J. N. Dolph, who was frequently and warmly applauded as he proceeded.

Hon. J. N. Dolph's Address.

Mr. President, Ladies and Gentlemen: This is a great day in the history of our State. That was a great day in the history of the Territory of Oregon, when the claims of Great Britain to the sovereignty of this soil was relinquished, and the Stars and Stripes—the emblem of our nationality—floated proudly over the pioneers of this the western wilderness, and the United States extended over them the protecting Aegis of her laws.

And the day that Oregon's star was placed in the galaxy of the Union, marked an event in our history well calculated to inspire those who had struggled against the disadvantages incident to pioneer life to rear here the standard of civilization and liberty, with enthusiastic hope for the future.

And when a few years since we assembled to celebrate the completion of the telegraph line, that unites us by an electric nerve with the civilized world, and when we compared the past with the then present and realized that the great distance which had separated us

as it were from the great family of States, from home and its associations, was annihilated by enterprise and science, we congratulated each other and rejoiced and said that this is the great day in the history of our State.

But I see in the auspicious events of this day, no less cause for rejoicing. They are pregnant with the future prosperity, not alone of this city and of this valley, but of the whole State; to what extent no living man can say, but I believe far beyond what the most sanguine have predicted. Time will not permit—nor would it be appropriate on this occasion—to detail the advantages to be derived from the completion of this great work.

But looking at the advantages and surroundings of our State, and judging by the experience of the past, what a career of prosperity opens up in the future.

Glance at the history of the Empire State upon this matter of internal improvements; how has her resources been developed and her wealth increased by her wise policy in building railroads and canals.

About half a century ago, DeWitt Clinton, inspired by foresight and sagacity, conceived the idea of uniting the waters of the Atlantic ocean with the waters of the great lakes, and although men were found to scoff at the idea as visionary, New York engaged in the great work of constructing the Erie Canal. Today not only has this great work been accomplished and enlarged until it is navigated by steam vessels, but two lines of railroads running through the State from east to west,

are found insufficient for the demands of commerce. And New York holds her proud position among the States, not so much by the reason of the richness of her soil, or any natural advantages over her sister States, as by her sagacity to foresee the growth and wants of the Great West, and the enterprise of her people and by these great works made the thoroughfare over which passes its commerce. Who can look back upon the history of New York and see prosperity, wealth and power steadily keeping pace with the enterprise of her citizens and doubt the true policy of a State

If time would permit, it would be interesting to trace the history of railroads in the Great West. To the West, the railroad has been the pioneer of civilization.

Wherever its fiery coursers speed, the wilderness, as if by magic, "is made to bud and blossom as the rose." Land that before found no market at the Government price is transformed in a few months to valuable farms, and cities, and villages, like Jonah's gourd, spring up in a night.

Hitherto the time when we shall feel the inspiring energy of this great agency of prosperity has existed only in hope; today it requires no prophetic vision to behold the realization.

We are fast being bound to our common country by bands of iron and ties stronger than hooks of steel, in the Central Pacific Railroad fast hastening to a completion, and in the beautiful language of another, "before the close of 1870, the iron horse will mingle at one

run the smoke of his nostrils with the spray of both oceans."

When this great work is completed, San Francisco and New York will be nearer together than San Francisco and Portland; the commerce of the Atlantic and Pacific will be bound together, and the plains over which it stretches and the mountains it scales, will wake from natures solitude to the whirl and activity of advancing civilization, pouring over the great thoroughfare a continual stream.

A still more important enterprise to this State is the Northern Pacific railroad, uniting the great lakes with Puget Sound—destined to be the great thoroughfare across the Continent over which the great Continent of Asia, with its six hundred millions of inhabitants, will pour its commerce.

When these great enterprises are completed, a tide of immigration from all the other portions of the Union is sure to set in for the Pacific Coast. Not alone restless adventurers in search of fortune, having no interest in the country, but the hardy sons of toil bringing their means and their families to establish homes for themselves and their children.

The ever-increasing tide of foreign immigration instead of being swallowed up in the great cities of the East, or even the broad prairies of the West, will pour over the Rocky Mountains into our fertile valleys—a source of wealth and an element of growth to the State.

Between the termini of these great thoroughfares—

San Francisco and Puget Sound—lies our youthful State, containing all the elements of greatness, with a combination of advantages unsurpassed by any portion of the globe. Almost in sight in the great treasure vaults of nature, waiting the developing industry of the coming millions, is stored gold and silver sufficient to supply the most extravagant demands of the family of man. Mines rivaling in richness the wonderful grottoes of the Arabian Nights—waiting no Genii of lamp or ring to unfold their treasures, but ready to yield them up to honest enterprise and sturdy labor.

Coal and copper mines of untold richness and extent wait to supply the wants and swell the wealth of the State. And already, but a few miles above us, upon the bank of the beautiful river that rolls at our feet, the crude ore of a more useful metal is being fitted to minister in ten thousand ways to the wants of mankind.

The hum of the loom and the whir of machinery is heard in our cities and villages, and enliven the solitude of our mountains and valleys.

We have a soil unsurpassed for richness that yields surely and bounteously to the labor of the husbandman. Forest and prairie, hillside and valley, are ready to add their rewards of industry. We have a climate that challenges the world for salubrity, and situated as we are at the mouth of one of the great rivers of the continent, it requires but little forecast to predict for our own State a commercial greatness second to no part of the Pacific coast. The surplus products of our fertile

plains will yet supply the mountain regions of the Pacific slope, the markets of Europe, the teeming millions of Asia and the islands of the sea, while competing, as they now do, in the home markets of the most distant States of the Union.

Commerce shall lay at our feet the products of every clime. The winged lightning, obedient to our behest, flashes the news of the hour from the historic scenes of the Old World, under old ocean's bed, and across the continent, for our entertainment and profit.

Situated as we are at the farthest extreme of the Republic, we enjoy all the blessings of the general government, while we bear but few of its burdens. We reposed in peace, protected by the name and power of this great nation, while the clouds of war that lately hung over the land never rose above the mountain tops to scatter their horrors among us. Commercial reverses and money panics spend their force before they reach our shores, and we rest secure, undisturbed by a thousand causes that overwhelm in disaster many of our sister States. Yet the State languishes. One thing is needed to develop its resources and secure all these advantages, and that is cheap transportation—the completion of the great work—the commencement of which we now celebrate — a railroad connecting these two great transcontinental roads.

When this is completed, the immigration over both these great routes will pour into our State, a uniform market will be brought to our doors, cheap transporta-

tion will secure remunerative prices for our surplus products, and the steam whistle of the locomotive that first wakes the echoes of this valley will be a magic sound that will wake up the slumbering energies of the State and start it onward in an unexampled career of prosperity. Twenty years from this time, two lines of railroads running through the State will be insufficient for the demands of the commerce of the State.

This road will be built. The ability and known energy of the contractors give promise that the work will be pushed forward to completion without delay; and it may not be inappropriate to notice here that the first steamboat that ever plowed the waters of the Upper Columbia was the *James P. Flint,* in honor of the worthy gentleman of that name, now here representing the contractors.

May I not speak for this company, the co-operation and assistance of this whole State, the usual contributions of its citizens and the liberal aid of the State and National Government. In no other way can money be more usefully or remuneratively expended.

The money spent in war, instead of increasing the national wealth and advancing the national prosperity, leaves whole districts of country depopulated and devastated—the people in poverty, the nation in debt; but the money expended in developing the resources of a nation, in facilitating its commerce and uniting in ties of common interest its remotest territory, adds to its wealth, increases its prosperity, and provides guar-

antees for its future stability.

The money expended to rear costly capitols and other public buildings and monuments may be expensive luxuries without adequate returns for the expenditure.

While the Pyramids of Egypt stand as monuments of the astonishing power and grandeur of the Egyptian monarchy, more than two thousand years before the Christian Era, they also stand as monuments of the folly of their builders.

But the work you seek to build will stand as a monument of public spirit, sagacity and energy of its projectors and builders, dispensing its blessing to the citizens of the state and their descendants.

Fellow-Citizens, looking from this small beginning to the future of our State, when, as I confidently believe, our most ardent hopes shall be more than realized, I mingle my congratulations with yours.

Upon the conclusion of Mr. Dolph's address, brief congratulatory speeches were made by Messrs. J. H. Reed, Joel Palmer and others. At about 3 o'clock P. M. the ceremonies came to an end and the people retired, full of hope that they had witnessed the beginning of a work which should bring to Oregon all the wealth and greatness so confidently predicted by the several speakers.

Office Chief Engineer Portland Oregon

Thursday Evening April 16th 1868

The Board met again in the evening the same present

as heretofore.

Minutes of the previous meeting were read and approved.

The committee to draw up an address to the people of Oregon on the subject of Railroads made a report which was adopted and 7000 copies were ordered to be printed for distribution.

The Committee on Contracts made a report which after consideration was referred back to the committee with instructions to consult with Messrs. S. Ellsworth and J. H. Mitchell, attorneys and make a further report tomorrow evening.

On motion the Board adjourned until tomorrow morning at 10 o'clock.

Friday Morning April 17th

Committee of Ways and Means made a report which was laid on the table.

Committee on Finance reported the expenses of the celebration on yesterday at $345.50, which was accepted and the amount ordered paid.

They also reported an account of the moneys advanced by S. G. Elliott for the benefit of the Company, in amount $1,575.24, which report was adopted, and the said amount was ordered paid.

Committee to define duties of the various standing committees and suggest a uniform plan of action made the following report, which was adopted.

"Your committee to whom was referred the duty of

defining the duties of the standing committees, etc., would make the following report.

It shall be the duty of the Finance Committee to audit and endorse their allowance on all bills and claims before payment. And shall also have power to inspect the books and accounts of the company.

The Committee of Ways and Means shall have the general oversight of the progress of the work of the company and shall from time to time devise and adopt and recommend to the Board of Directors such means and modes of conducting the affairs of the company and of meeting its financial requirements and generally of promoting its best interests as they may deem advisable.

It shall be the duty of the Executive Committee to represent the Board of Directors at all times when the Board is not in session, in all matters pertaining to the business of the company requiring immediate attention; *provided,* that all its acts shall be subject to the approval and confirmation of the Board.

And we recommend

That the Board of Directors be constituted a committee for the purpose of securing material aid, each being empowered to make sales of stock and solicit donations and other aid, in such uniform mode & manner as may be prescribed, and that the resident directors of each county be especially authorized to present the claims of the company to county, city or other municipal corporations through which the road may pass in such

manner & at such times as with all convenient speed they may deem proper.

A. M. Loryea
(Signed) S. E. Ellsworth
F. McF. Patton.

On motion the Secretary, with the assent of the President was authorized to procure books, stationery and material necessary for the company, and for the use of its officers.

On motion J. H. Mitchell was nominated as attorney and counsellor for the corporation and a vote being duly taken, he was unanimously elected to such position.

On motion of Mr. Loryea it was ordered that the Secretary purchase 500 copies each of the numbers of the *Herald, Oregonian* & *Enterprise* containing the account of the late celebration.

On Motion the Secretary of the Co. was instructed to publish in the daily papers of this City the following:

Resolved

That the Oregon Central Railroad Company fully appreciates the interest taken in their enterprise by the public at large as manifested at the Celebration of breaking ground April 16th 1868; we consider this an earnest of the success that attends the undertaking, and the Secretary is instructed, in the daily press of this City to return our thanks to the efficient marshals & aides; to the Chief and Assistant Engineers and the Fire De-

partments of the Cities of Vancouver and Portland & to the Fenian and Washington Guards and all others who assisted on that occasion, as well as to the P. T. Company, to Capt. Turnbull and the Ferry Company for the reduction of fare which enabled so many from abroad to visit the city and attend the exercises.

The Committee of Contract reported thus:

"In view of the fact that the proposed contract embraces many provisions in regard to which a satisfactory conclusion cannot be now arrived at and in regard to which it is deemed advisable to have the counsels and co-operation of friends of this enterprise in Southern Oregon, Your Committee recommend that no action be taken at this time on the proposed contract, but that, in lieu thereof the company propose and offer to A. J. Cooke & Co. to enter into a contract with them at this meeting, to the effect that in letting a contract for the construction of their road from the terminus of the present contract to the California State line, the O. C. R. R. Company will give the preference & refusal, the terms and price being equal, to said A. J. Cooke & Co. before all other bidders for said contract & that such construction contract will be entered into as soon as the details of said contract can be reasonably agreed on between the said contracting parties, & that, for that purpose, a meeting of Directors shall be held within fourteen days from this date.

(Signed) T. McF Patton
H. Boyd
A. F. Hedges

On motion of Mr. Ellsworth the following was adopted.

"Resolved, That the President immediately prescribe and place in the hands of each Director a uniform plan of applying to the people of Oregon for aid.

On motion the President, Vice President and Secretary were appointed a committee to compile a statement of facts in regard to the history and organization of this company to be published for the information of the people of Oregon.

On motion Board adjourned until 2 o'clock P. M.

Friday, April 17th 2 P. M.

On reassembling the same members were present, the President in the chair.

The President reported, in answer to the requirements of the Board, recorded on the previous page, that after consultation with the Corporation Counsel, he had adopted the following forms for obtaining donations and subscriptions for stock and that stock books containing such printed forms properly inscribed therein would be furnished to each Director.

We, the undersigned, do hereby severally purchase, subscribe for, and take the number of shares set opposite our names respectively of Non-Assessable Capital Stock in the Oregon Central Railroad Company, incorporated in April, A. D. 1867, at Salem, Oregon, and we do hereby agree to and with said corporation to pay it cash in hand in United States coin, or its equiva-

lent, for such shares of Stock so by us purchased, subscribed for, and taken, as hereinafter stated, the sum of ten ($10) dollars per share, upon the delivery to us respectively of such Stock by such corporation.

We, the undersigned, in consideration of the benefits accruing to us severally from the public improvement which the Oregon Central Railroad Company, incorporated April, A. D. 1867, at Salem, Oregon, is engaged in making, in the construction in this State of the Oregon Central Railroad; and for the purpose of aiding in the construction of such Railroad, do hereby severally give and donate to said Oregon Central Railroad Company the moneys and property, real and personal, specified and described over our signatures hereinafter in this book; and we do hereby agree to pay such sums of money so by us respectively donated, and convey and deliver such property, real and personal, so by us respectively donated, to said Corporation upon the terms, at the time, and upon the conditions as specified by us severally hereinafter.

Mr. Ellsworth offered the following:

Resolved.

That the stock of the company subscribed by and in the name of the company be and the same is hereby offered for sale at ten dollars, per share, such payment of ten dollars to be in full payment therefor and thereupon certificates to be issued and upon the payment of ten dollars for each share subscribed to the stock, the same shall be deemed fully paid up and certificates issued.

Which was adopted.

Finance Committee reported that they had audited the following accounts and recommended that the same should be paid and they were so ordered to be paid.

General Bill of Celebration.....	$345.50
S. G. Elliott—Expended for Co.....	$1575.24
A. G. Walling.....	$101.50
H. L. Pittock.....	50.
Oregon Herald	25.
A. Taylor	8.

Friday April 17—7 p. m.

Committee of Ways & Means made the following report—which—with amendments herein incorporated—was adopted.

The committee on Ways & Means respectfully recommend, that

1. Ways and means be devised for the purpose of meeting the current expenses of this corporation.

2. That the President be paid for his undivided attention to the duties of his office and the advancement of the interests of this Company Forty Five Hundred Dollars ($4500.) per annum, which sum shall be in full for all services and travelling expenses within this State, and shall be payable out of a Salary fund when same is appropriated and set apart by the Board of Directors.

3. That the Vice President be paid such sums as from time to time may be allowed by the Board.

4. That the Secretary be paid the sum of Eighteen

hundred dollars ($1800.) per annum, conditioned as in Section 2.

5. That the Treasurer be paid the sum of One thousand ($1000.) dollars per annum for the performance of the duties appertaining to the duties of his office.

6. The attorney of this corporation shall be paid for his services—including compensation to other attorneys or counsel he may deem necessary to employ—the sum of five thousand dollars (5000) which shall be in full to the thirty first (31) day of December 1868.

7. Each member of the Executive Committee, other than those receiving a Salary as is herein provided, be paid the sum of eight (8) dollars per day for each day actually employed, and no further allowance for traveling or other expenses.

8. Each Director, other than those for whom provision is made therein, shall receive the sum of eight (8) dollars per day for the time necessarily devoted to the business of the company.

9. All salaries and per diem to be paid quarterly commencing from the first of April 1868, except as is provided in Section Six (6).

10. That the President, Treasurer and Secretary be required to give bond with two sureties, as hereinafter stated, for the faithful performance of their respective duties.

The President shall give bonds in the sum of Ten Thousand (10,000) Dollars.

The Treasurer shall give bonds in the sum of Fifty Thousand (50,000) Dollars.

The Secretary shall give bonds in the sum of Ten Thousand Dollars.

On motion of Mr. Cooke the following resolution

"Resolved.

That this Board ratifies the action of the President and Corporation Attorney in commencing an action

State of Oregon ex relatione

vs (see page 40)

J. Gaston and others

And they are instructed to prosecute the same to a final judgment."

Was unanimously adopted.

Mr. Ellsworth moved that when this Board adjourn it do so to meet at Salem Tuesday April 28th which was adopted.

Mr. Loryea offered the following

Resolved.

That no information of the Acts of this Board shall be divulged without the order of the Board.

Which was adopted.

On motion it was

Resolved.

That the Oregon Central Railroad Company will

carefully preserve as a memento of the commencement of its great work, the very appropriate present of S. M. Smith Esq—the shovel manufactured wholly of materials native to our State—and we tender to Mr. Smith our thanks and acknowledgments, not more for the gift so appropriately devised, than for the confidence & sympathy that prompted its bestowal. It will remain with us, a proof of the great national resources of Oregon as well as the taste, enterprise and good will of the donor.

And it was further

Resolved

That the Secretary be requested to forward to Mr. Smith a certified copy of these proceedings.

And on motion the Board adjourned to meet at Salem Tuesday April 28th.

S. A. CLARKE
Secretary.

State of Oregon)
)ss.
County of Marion)

We Geo. L. Woods, F. A. Chenoweth, John F. Miller and S. F. Chadwick, Directors elect of the Oregon Central Railroad do solemnly swear that we will faithfully and honestly discharge the duties of the office to which we have been elected: to the best of our ability. So help us God.

GEO. L. WOODS
F. A. CHENOWETH
JOHN F. MILLER
S. F. CHADWICK

Subscribed and Sworn to before me this 28th day of April A D 1868

Witness my hand and official seal the day and year above written.

(SEAL) T. Mc F. PATTON

(Inter-revenue stamp $.05 affixed)

Meeting of Board of Directors.

Salem Oregon April 28 '68

The Board met at 6½ p m pursuant to adjournment, present Mr. President, Messrs. Cooke, J. H. Moores, Ellsworth, Henderson, Douthit, Conser, Lovejoy, Patton, Hedges, Parrish Directors already duly qualified and also Messrs. Geo. L. Woods, F. A. Chenoweth, S. F. Chadwick and J. F. Miller, who were immediately sworn in as Directors by T. Mc F. Patton a Notary Public, their oath and his certificate thereto being duly recorded on page 56. of this Journal. Mr. Mitchell was also present.

Minutes of last meeting were read and approved.

The committee appointed to prepare Statement of facts for publication reported An address to the people of Oregon with a statement of facts as to organization and progress of the company which were read and on motion were referred back to the committee, Messrs. Chenoweth, Ellsworth and Chadwick being added thereto.

Reports of chief Engineer were read as to the amount of interest due contractors on the first of Janu-

ary 1868, and his report of his operations for the month past in the construction of the road, which reports were, on motion, referred to the committee on Finance.

On motion, after considerable discussion it was decided to have a railroad meeting held in this city tomorrow evening, to be addressed by prominent gentlemen.

On motion Messrs. Patton, Douthit & Woods were appointed a committee of three to prepare a programme for action on that occasion.

On motion of Mr. Ellsworth the proposal of A. J. Cook & Co. to contract for construction of road through southern Oregon to California line, was referred again to the Committee which had it under consideration, Mr. Chadwick being added thereto.

Mr. Hedges moved to add Mr. Ellsworth thereto which was carried.

Mr. Mitchell presented communication from J. Gaston, styling himself President of O. C. R. R. Co., of Portland, which was received by him from A. C. Gibbs Esq., which communication was read and referred back to Corporation Attorney, Mr. Mitchell, the same purporting to be a proposal for settlement of difficulties between the two companies.

On motion the Board Adjourned until tomorrow morning at 9 o'clock.

Wednesday Morning April 29th 1868

The Board met pursuant to adjournment present as of yesterday.

Committee on Programme made report which was received and the committee discharged.

Committee on Contract for Road through Southern Oregon made report, which was made the especial order for this afternoon at 2 o'clock.

Counsel for the Corporation, J. H. Mitchell reported on the propositions for settlement of difficulties with the Gaston Company, which was received and Mr. Mitchell was requested to draw up a communication in answer to the same.

Statement of Facts was read & referred to committee of three Messrs. Chenoweth, Ellsworth & Henderson.

Whereupon the Board adjourned until two o'clock p. m.

Wednesday Afternoon April 29

Two o'clock.

Board met pursuant to adjournment present as before.

Statement of Facts, as amended by Committee, with one sentence struck out, was adopted.

Gov. Woods offered the following

Resolved

That there be a special committee of three to enquire into and report at an early day a suitable plan of operations for Feeders or Branch Roads, with a view to contracting for the speedy construction of the same and that the same committee have power to employ, under the approval of the President, one or more additional

canvassers for aid to the company on such terms as they may deem advisable.

Which Resolution passed

Messrs. Woods, Douthit and Miller were appointed such committee.

Committee to whom was referred the proposed contract with A. J. Cook & Co. to construct road through Southern Oregon, reported in favor of same with some amendments which they reported.

Their report was received and adopted and the President and Secretary were instructed to prepare such a contract and execute the same with such amendments embodied therein, as follows.

Contract

Memorandum of an agreement made this 12th day of May in the year of Our Lord One Thousand Eight Hundred and Sixty Eight, by & between "The Oregon Central Railroad Company" organized under and in accordance with the general Laws of the State of Oregon, of the First Part & the Firm of A. J. Cook & Co. of the Second Part, Witnesseth

That whereas the party of the First Part own the right, privilege and franchise for constructing equipping and running a railroad from Portland in the State of Oregon, South to the California line, and whereas the said Company of the First Part did contract with the party of the second part to build one hundred and fifty miles of the road, commencing at Portland and extending up the Willamette valley a distance of one hundred and fifty miles, said road to be completed within five

years from the date thereof, and *whereas* the party of the first part are desirous of extending the road to the State line between Oregon & California and as a means of securing the early completion of the same, have entered into the following agreement with the said firm of A. J. Cook & Co. upon the following terms.

The party of the second part doth agree and hereby agrees with the party of the first part to build and equip two hundred and ten miles of said road, more or less, to or near the State line, with all necessary rolling stock from the head of the Willamette valley, commencing at the terminus of the first division of one hundred and fifty miles, and to continue the construction of the same to the south boundary line of Oregon, as soon as the first division shall be completed, for the sum of twelve millions, one hundred and twenty eight thousand dollars ($12,128,000.00) reckoned at gold or specie value, that is to say, if payment, from time to time be made in national currency, now so called, it shall be in payment for so much only as the same is worth in gold at the time of such payment and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the second part doth further agree with the party of the first part, to build and equip with rolling stock complete for the working of the same, that is to say, the road shall be built upon a uniform gauge of four (4) feet, eight (8) inches and one half (½) the maximum grade not to exceed 80 feet per mile except twelve miles through the canyon, which twelve

miles of grade shall not exceed 100 feet per mile; and a minimum curvature of ten (10) degrees; The width of the road bed to be eleven feet on the surface. The iron used shall be the best quality known as T Rail, weighing at least 50 lbs per linear yard. The ties shall be of the best wood to be obtained for strength and durability not less than six by eight inches, and 8 feet in length, to be laid at the rate of two thousand six hundred and forty (2640) per mile.

The amount of rolling stock shall consist of ten first class locomotives, weight not less than twenty-five tons each, to be furnished at the rate of one for every twenty miles and twenty-five first class passenger cars, furnished at the rate of one for every ten miles, four baggage cars, forty box cars and twenty platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the company, at the rate of one for every ten miles, Water Tanks as often as one in every twenty miles where water can conveniently be had. At the large towns, suitable buildings shall be erected for the accommodation of passengers and freight, also engine house of a sufficient capacity for the housing of all the engines.

The President of the Company and the Chief Engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road and the contractors shall have the right and free use of the railroad from Portland to the extreme Southern terminus for the transportation of men, horses, mules,

cattle, sheep, hogs and provisions of any and every kind required by said party, while constructing said road, also all iron, iron rails, bars, castings, spikes, chain, switches, machinery, frogs, carwheels, and all timbers for bridges, trestle work, cattle guards, cross ties, and timber for all depots stations and all other material required or to be used, with everything else required by said contractors in the construction of said road, until said two hundred and ten miles of said road, or reaching to the California line, be it more or less, has been completed, at the same rate per mile.

And the party of the second part shall be entitled to the earnings of the road until each section of twenty miles is accepted by the company.

And the party of the first part promises covenants and agrees, with the party of the second part, to issue or cause to be issued, the first mortgage, gold bearing, railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid, and the said party of the first part agrees that said form and sums—and to be endorsed if need be to make the same negotiable & satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company. And the party

of the first part further agrees to execute a mortgage of thirty two thousand dollars per mile as a first mortgage on the whole distance of two hundred and ten miles commencing at the terminus of one hundred and fifty miles at the head of the Willamette valley, extending to the State line between Oregon and California, and also to execute a second mortgage for twenty five thousand seven hundred and fifty two ($25,752.00) per mile.

The party of the first part promise and agree to execute the first mortgage bonds at the rate of twenty five thousand dollars ($25,000) per mile, and deliver one million dollars of the same to the party of the second part, as soon as the said party of the second part shall report themselves in readiness to enter upon the commencement of the construction of the road, under this contract and exhibit satisfactory evidence that they have purchased material and stock equal in value to the amount of bonds so issued, and to make advancement of bonds at the rate of twenty five thousand dollars per mile for a distance of fifty miles in advance of work on the road whenever the party of the second part may request the same & give evidence as required above as to the purchase of material, or of work performed, and to make monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said Engineer until a distance of twenty miles shall be completed, when the Company shall pay the full amount of fifty seven thousand seven hundred and fifty two dollars per mile to said party of the second part as provided in the first part of this con-

tract. It is understood that the company will exert itself to obtain aid from the State of Oregon to assist in the building of this road. It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one Hundred and fifty miles shall be completed. The Stock shall be in the following form to wit:

Capital Stock No Second Series Shares

$11,000,000 The Oregon Central Railroad Company

—Salem— Marion County

$3,000,000. State of Oregon April 1868

preferred stock (non assessable) gold interest bearing

This certifies that Albert J. Cook & Co. are entitled to shares of the Capital Stock of the Oregon Central Railroad Company, transferable on the books of the Company subject to the provisions of the by-laws by endorsement hereon and surrender of this Certificate. The holder of this second series certificate is entitled to seven per cent yearly interest in gold upon the amount of $8,000,000. advanced by the contractors as a working capital under the second contract in the construction of the Company's road. Said second series certificate of stock are issued as collateral security

(Vignette)

and $8,000,000 common or assessable stock

— shares $ each

for that amount and to be *non-assessable,* the payment of which is secured by a Resolution in the following form. *"Resolved* by the Board of Directors of the Oregon Central Railroad Company, that the President & Secretary are hereby requested to execute $13,000,000. of *non-assessable, preferred stock,* & deliver the same to the contractors as part payment for the construction of the road, and as a collateral security for moneys advanced by said contractors, and as a working capital, said stock to be *non-assessable* and to bear interest at the rate of 7 per cent per annum payable in gold coin. And there is hereby set apart as a sufficient amount out of the net earnings of the second division of the road, extending from the end of the first division to the Oregon State line, to pay the same"

(Vignette)

..... Secretary President.

The parties hereto agree that the terms of this contract shall come in force as soon as the first one hundred and fifty miles shall be completed and that it shall be completed within five years from that date.

And in relation to all the terms, stipulations, covenants and agreements of the foregoing contract, it is hereby expressly agreed, that on the completion of the present contract for 150 miles of road, it shall be optional with the O. C. R. R. Company, party of the first part, hereto, to surrender to the contractors the road herein provided for, and assign to them all the rights of the Company therein, in which case the said contractors shall accept the same in full satisfaction of all claims arising under this contract, as against the said company, or their road of 150 miles, so now being constructed, and all facilities within their power shall be extended by said O. C. R. R. Company to enable said contractors to hold over and operate said extension of said road under the laws of Oregon.

(End of contract.)

——oOo——

On motion of Mr. Woods it was

Resolved

That the O. C. R. R. Company hereby accepts any grant of land which may have been made, or may be extended to said Company, and our agent, A. M. Loryea, is hereby fully empowered to present a duly certified copy of this Resolution to the proper authorities as provided by Law to be filed.

On motion of Mr. Ellsworth it was

Resolved

That Dr. A. M. Loryea is hereby authorized to use the name of this company in bringing any action, suit or proceeding, in any of the Eastern states, against any person or persons, or for any purpose he may deem proper for the best interests of such company, provided such use of the name shall be without any cost or liability for expense to the company unless hereafter consented to.

The Finance Committee made a report that the following accounts had been examined by them and approved as correct.

American Exchange Portland	$ 54
Kelly	10
Oregon City Enterprise	25
A. J. Cook & Co. Amt. due on construction as per statement of Ch. Engineer	13,200
A. J. Cook & Co. for interest paid on bonds up to January 1, 1868	10,500

On motion the above accts were allowed & it was ordered that they should be duly paid.

On motion of Mr. J. H. Moores it was ordered that canvassers shall be authorized to receive land at a fair price in payment for stock subscriptions and that the value of such land shall be assessed by three of the Directors of the Company.

The President introduced Supplemental Contract

which it was deemed advisable to enter into with A. J. Cook & Co. to define the provisions of existing contracts which after an animated discussion was laid on the Table.

The corporation counsel remarked concerning the difficulties of securing right of way in some instances.

Mr. Miller moved that the corporation Council be authorized to commence such suits as he may deem necessary which motion carried.

Mr. Mitchell, Counsel, reported that he had prepared an answer to the proposition of the Gaston Company which was read and on motion the Secretary was instructed to forward the same, duly certified to said Company, through the medium of our said counsel & retain the original copy.

On motion of Mr. Ellsworth it was

Resolved—That until otherwise ordered regular meetings of this Board of Directors shall be held at the office of the company on the second Tuesday of each month at 7 p. m. commencing in June.

On motion Board adjourned

S. A. CLARKE Sec'y

Tuesday June 9

The Board met at office of the Company in Salem at 7 o'clock p. m.

There were present, I. R. Moores, President, Messrs. Cooke, Woods, Moores, Conser, Parrish, Ellsworth, Chenoweth, Henderson, Hedges, Lovejoy

Douthit, Miller, Patton of the Directors, J. H. Mitchell Esq counsel T. R. Brooks Esq. Ch Engineer & Mr. S. G. Elliott of the contractors.

Minutes of the last meeting were read and approved.

On motion Board adjourned until tomorrow morning at 8 o'clock.

Wednesday 8 o'clock A. M.

Board met pursuant to adjournment, present as of yesterday.

Committee on Branch roads etc. appointed at last meeting of the Board, reported by Mr. Douthitt their chairman, that they had deferred action until after this meeting.

On motion of Mr. Chenoweth by consent, order No. 7 of "unfinished business' was taken up, and the Board proceeded to discuss the routes of the road to be located through Linn & Benton Counties.

At the suggestion of Mr. Mitchell, a committee of two, consisting of Messrs. Chenoweth & Douthitt, was appointed, to consult with S. G. Elliott and report plan for action in that matter.

Pending the action of the said Committee, which retired to the Secretary's room for consultation, the Board took a recess.

After which the Committee reported that they proposed to have executed the supplemental articles of contract, with A. J. Cook & Co. proposed at the last meeting of the Board in April, and to embody the plan of

constructing two trunk roads, one on the East and one on the west side of the Willamette in Linn & Benton Counties. A draft of said supplemental articles was submitted and amended as to point of junction of said roads, south, and report as amended was adopted.

The Secretary was instructed to have duplicate copies of said supplemental articles prepared.

Report of the Chief Engineer as to his operations for the month of May was read and ordered to be placed on file.

The Secretary presented a communication from Mr. Jas. P. Flint of San Francisco, with proposition from Western Union Telegraph Company for construction of Telegraph line along the companys road which on motion was referred to a select committee consisting of Messrs. Ellsworth Miller & Hedges.

Sec'y. read communication from E. W. Haines, claiming to be Secy of O C R R Co of Portland.

Mr. Douthitt moved to refer to select com of three to report this evening. Carried.

Messrs. Douthitt Chenoweth & Lovejoy were appointed as such committee.

Board adjourned until 2 o'clock P. M.

Two O'clock P. M.

Com. on communication received from " E W Haines Sec'y O C R R Co" made a report that they "ask for further time and that the Secretary of our Board be directed to notify said Haines of this action."

Mr. Ellsworth offered to substitute the following:

Resolved: That the Secretary is authorized to notify E. W. Haines, that his communication is received, and upon receipt of information that the alleged corporation of which he is acting Secretary have appointed a committee of conference—if they desire to do so—the subject will be fully considered by our Board of Directors—of appointing a like committee on our part.

Which substitute was adopted.

On motion of Mr. Douthitt, a commitee of three, consisting of Messrs Douthit Hedges and Moores was appointed, to consider ways and means of paying July interest, to report this evening.

Committee to report on proposition to construct Telegraph on the line of our road reported by Mr. Ellsworth that they thought it necessary to correspond with Western Union Telegraph Co. as to several points in the proposal which they were authorized to do.

Mr. Conser offered the following:

Resolved that the Directors of the O. C. R. R. Co. grant permission to Jacob Conser & Son, to contract for or build a bridge in connection with the R. R. Bridge across the Santiam river, for a carriage way to be held and controlled by J. Conser & Son.

Which was adopted.

Adjourned until evening.

Wednesday Evening June 9

The Finance Committee reported on accts which they had allowed as follows:

D. C. Ireland	$ 6.
J. Henry Brown	13.25
M. N. Chapman	8.
Geo. E. Strong	50.
W. F. Wheeler	8.
John Hamilton	4.

On motion of Mr. Ellsworth, the Board proceeded to ballot for a director to fill the vacancy caused by the resignation of Mr. Clarke when elected Secretary.

J. S. Smith was put in nomination and having received 14 votes, that being the number of Directors present he was declared to be unanimously elected as such Director. The Secretary was instructed to notify him of the election.

The Committee to whom was referred devising of ways and means to pay the interest due July 1, on four hundred thousand dollars of Companys bonds reported,

"That the Oregon Central Railroad Co deliver to Messrs. A. J. Cook & Co. their endorsed note at 90 days for the sum of $14,000 payable in gold coin of the United States of America."

Mr. Ellsworth moved to amend, that the President & Secretary be instructed to draw a warrant of the Company on the Treasurer for the sum of fourteen thousand dollars gold coin, and deliver the same to Messrs.

A. J. Cook & Co. in settlement of interest on said $400,-000 of bonds, being the amount due July 1, 1868, which amendment was adopted and the Resolution as amended was carried.

On motion of Mr. Chenoweth the following was unanimously adopted

"Resolved, That A. J. Kam & W. H. Anderson be and they are hereby authorized to canvass for subscriptions to stock and for donations at any points they may select in the Willamette valley. They to receive for their services 2½ per cent on all sums so obtained by them. Such percentage to be paid out of the moneys so obtained by them when the same is paid in. Such canvassers to pay their own expenses."

Mr. Ellsworth offered the following:

Resolved.

That the O. C. R. R. Co. hereby accepts any grant of land which may have been made, or may be extended to said company by Congress. And the officers of this company are hereby directed to file a duly authenticated copy of this resolution with the Secretary of the Interior Washington D C.

Which resolution was adopted.

On motion it was ordered that the Directors as canvassers shall receive as compensation for their services the sum of 5 per cent commission *all* all grants, donations & subscriptions, at the coin value, by them received, the same to be in place of any per diem.

The Secretary reported that he had drawn up supplemental contract in duplicate as instructed, in the following manner and form.

Supplemental Contract.

Articles supplementary made this tenth (10th) day of June A. D. 1868, between The Oregon Central Railroad Company of Salem Oregon and A. J. Cook & Co. the same being for the purpose of explaining and making clear the understanding of said parties in a certain contract heretofore made by original agreement made April 28d 1867, and articles supplementary thereto made November 27th A. D. 1867, both being considered as *one* agreement between the parties hereto and for the purpose of further extending the provisions of said agreements. Therefore in consideration of the premises, and in order to make the said agreements, and in consideration of the sum of one dollar paid by each to the other, and the receipt whereof is hereby acknowledged it is agreed between the parties hereto, that the provision in such original contract, providing as follows, "and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company" was intended to mean and it is hereby construed to mean, that the party of the second part is not entitled to receive the earnings of any part of such road after such road is accepted by the Company and paid for in bonds or money as per stipulations in contract, and it is further agreed and understood that the party of the second part shall at the

completion of each ten (10) miles of said road, surrender so much of the road so completed to the company for acceptance by the commissioners as before stated: Wherever in said original Articles and articles supplementary thereto, it is stipulated that the said company shall exhaust all their other means in payment on such contracts, it is hereby agreed that such clauses were intended to mean, and are hereby construed to mean, *only* such moneys as such Company may have, on hand arising from donations or sale of stock, and shall not include any of the real estate or personal property of such company—ten per cent of the whole amount of moneys so collected by sale of stock, or by donations to be reserved by the company for expenses.

And it is in consideration of the foregoing premises and of the further agreements of the parties hereto, this day made, and for the purpose of advancing the general interests of the enterprise, and for the mutual advantage of the parties hereto, hereby agreed, by and between the parties hereto, as supplemental to the contracts & agreements aforesaid that in the event that the citizens along the line of the Trunk of road hereinafter referred to, shall raise by subscriptions and donations in coin in the manner provided for by the established rules of the Oregon Central Railroad Company, a sum equal to three thousand dollars—coin—per mile, for the whole distance of the West Trunk hereinafter described. The said A. J. Cook & Co. do hereby agree to and with the Oregon Central Railroad Company to construct and complete a railroad to be known as the

West Trunk of the Oregon Central Railroad Company from a point within Linn County connecting with the East Trunk of the road as provided for in the contracts to which this is a supplement, at such point in Linn County as may be selected as the point of divergence by the Chief Engineer (such East Trunk to extend Southward through Linn County) and crossing the Willamette river at Corvallis and extending through Corvallis and southward through Benton County, the same to connect with the east Trunk of such road at a point on the south, north of Township Sixteen South—such point to be selected by the Chief Engineer of this Company, such road to be of the same quality and constructed in all respects of the same materials and on the same gauge and on the same plan of the road as provided for in the contract to which this is supplemental & in consideration thereof the said A. J. Cook & Co. shall receive for such West Trunk the sum of fifteen Thousand dollars per mile and no more, the same to be paid, twelve thousand dollars per mile of the bonds of The Oregon Central Railroad Company, to be paid in the same manner and as the work progresses in the same proportion as to contract price, as is provided in the contract to which this is supplemental. The remaining three thousand dollars per mile to be paid in cash upon same terms as in original contract. And as soon as the citizens along the line of such West Trunk shall have raised for the same the sum equal to three thousand dollars per mile for the whole distance of the West Trunk of such road, from the points of divergence from the East Trunk

running through Linn County as herein provided to the point of uniting on the south and report thereof to the Oregon Central Railroad Company, the said contractors A. J. Cook & Co. do hereby agree with within two weeks thereafter to commence the grading of such West Trunk and shall complete the whole of the grading thereof within six months after the commencement thereof, provided such subscriptions and donations shall be paid as such grading progresses, and provided further, that such West Trunk shall be completed within the same time after the commencement of the grading thereof *the* the East Trunk is completed after the commencement of the grading of such East Trunk.

The President and Secretary were instructed and authorized to execute the aforesaid contract in the name of the Company as of this date.

On motion the Board adjourned.

S. A. CLARKE, Secretary.

Directors Meeting July 14th 1868

Board met according to adjournment for its regular monthly meeting.

There were present of the Directors Mr. President and Messrs. Moores, Cooke, Woods, Patton, Chenoweth, Henderson, Miller, Conser, Ellsworth & Lovejoy.

Minutes of June meeting were read and approved.

Engineers report was read and referred to Committee on Finance.

The Secretary notified the Board that J. S. Smith

Esq had verbally declined to qualify as a Director of the Company.

Committee on Telegraph appointed last month reported that they had corresponded with Mr. Mumford of the Western Union Telegraph Co. and submitted the correspondence with the form of contract proposed to be entered into by them with this company which were read.

Mr. Ellsworth offered the following Resolution which was adopted.

Resolved

That the officers of this Company are authorized to contract with the Western Union Telegraph Company as proposed, with such modifications as they can effect for the advantage of this company.

Mr. Ellsworth also offered the following which was adopted by a majority vote:

Resolved

That it shall be deemed a substantial compliance with existing contracts with A. J. Cook & Co. to locate the line of road not exceeding three miles East of Salem, and on *their* being subscribed along that line at least $8,000 per mile the Engineer is fully authorized to so locate the line instead of coming to Salem.

Mr. Ellsworth also offered the following which was unanimously adopted.

Resolved

That it shall be a substantial compliance with the existing contract with A. J. Cook & Co. to locate the line of the road in Linn County not exceeding four miles East from Albany, and upon there being subscribed at least $3,000 per mile along that line the Engineer is fully authorized to so locate the line instead of going to Albany.

On motion of Mr. Chenoweth the Board proceeded to ballot for a Director to fill the existing vacancy.

Mr. Chenoweth nominated Green B. Smith Esq. of Benton Co. and a ballot, being taken in accordance with the By Laws of the Company Mr. Smith received eleven votes, being the number of Directors then present, which result being ascertained by a canvass made according to by-laws was announced by the President, and the Secretary was instructed to announce to Mr. G. B. Smith his election as such Director.

Mr. Ellsworth offered the following

Resolved

That the town or point on the line of the road, as finally located, whose citizens shall raise the largest sum in addition to the ordinary subscription to aid the road, to be at least ten thousand dollars, shall be selected as the location for the machine shops for the company. And subscription books for this purpose shall be kept open until the first day of October A. D. 1868, which was laid on the table.

Board adjourned until evening.

Having reassembled the Finance Committee reported in favor of the following accounts as correct, recommending that the same be settled by warrants on the Treasury, to wit:

S. A. Clarke Secretary O. C. R. R. Co. 1 quarters salary to July 1	$ 450.00
J. H. Mitchell Atty for Co. 2 quarters salary to July 1	2500.00
W. D. Carter, Printing a/c	12.
J. K. Gill & Co. Stationery a/c	4.75

On motion the Secretary was instructed to draw warrants on the Treasurer in favor of said persons for the amounts stated.

The resolution relative to machine shops was taken from the table and after considerable discussion thereon was again tabled.

A resolution of similar effect presented by Mr. Lovejoy was laid on the table.

Mr. Chenoweth moved that all action of the board relative to salaries & commissions of the officers of the Company & members of the Board be stricken out and rescinded.

Mr. Ellsworth moved to refer the resolution to the committee on Finance with instructions to report at August meeting a suitable scale of prices.

Which motion was adopted.

On motion—the Secretary was instructed to file with

Sec'y of State & Co Clerk of Marion Co. Statements as required by law, of the number of Directors of this Company, less than a majority, constituting a quorum for the transaction of business.

On motion Board adjourned.

S. A. CLARKE,
Secretary.

State of Oregon)
) ss.
County of Marion)

I, Green B. Smith, Director elect of the Oregon Central Railroad Co., do solemnly swear that I will faithfully & honestly discharge the duties of the office to which I have been elected to the best of my ability, so help me God.

Green B. Smith

Sworn & Subscribed to before me this the 8th day of Sept A D 1868

S. A. CLARKE,
(SEAL) Notary Public.

Salem August 11 1868

At the regular monthly meeting of the Board held this day at the company's office, there were present Mr. President and Messrs. J. H. Moores, E. N. Cooke, T. McF. Patton, J. D. Henderson, S. Ellsworth, Jacob Conser, A. L. Lovejoy.

The minutes of last meeting were read and approved.

The order of business being taken up the committee on Finances reported through Mr. E. N. Cooke, Chair-

man, that having examined the reports of the Chief Engineer, the same were found to be correct, as to the months of May & June. The same committee also made report that the subject of Salaries and compensation which was referred to them at last meeting having been under their consideration they recommended that no action be taken at this time but that the same be laid upon the table.

On motion this report was adopted.

Mr. Patton moved that a committee of three be appointed to secure and fit up an office for the use of the company, which motion was carried, and Messrs. Patton Moores & Cooke were appointed such committee.

Mr. President submitted to the board his agreement, made with Mr. Williams of Lane County, relative to town site at the junction of the Linn & Benton trunks, which action was approved on Motion of Mr. Patton & the President was instructed & authorized by said motion to act for the Co when such matters should arise.

On motion of Mr. Ellsworth the President was authorized, for the purpose of raising means to settle outstanding accts to collect in money on subscription or in failure thereof to negotiate a loan for that purpose not to exceed one thousand dollars.

In relation to difficulties existing as to securing the right of way on the line of the road from persons living above Canemah on motion Mr. Hedges was requested & authorized to act for the company to secure the same

by settlement, or by tender and suit, as prescribed by law, if the same be necessary.

Mr. Henderson made suggestions relative to the projected road to connect via Eugene City with the Central Pacific at the Humboldt, advocated by persons and on motion of Mr. Ellsworth the same was referred to a select committee of three, to communicate with our members of Congress and convey to them information that will bear upon the subject.

Messrs. Henderson, Ellsworth & Patton were appointed such committee, and on motion Mr. President was added as a member thereof.

On motion Board adjourned.

S. A. CLARKE,
Secretary.

Salem Sept 8th 1868

At the regular monthly meeting of the Board this day held there were present Mr. I. R. Moores, President, Messrs. Loryea, Miller, Moores, Conser, Woods, Patton, Cooke, Chenoweth, Ellsworth, Henderson, and Green B. Smith, heretofore elected a director, who having duly qualified, as required by law, as will be seen by his official oath, properly certified, which is inscribed on page 82 of this book, appeared as a member of the Board of Directors.

Being called to order, the proceedings of last meeting were read and approved.

Mr. Loryea moved to appoint a committee whose

duty should be to meet & receive Messrs. Brinck, Welsh and Winslow, who are expected soon to arrive in Oregon and examine the resources of our State, to extend proper courtesies to these gentlemen during their stay with us.

The motion passed and Messrs. Loryea, Parrish and Chenoweth were appointed as such committee.

Mr. Ellsworth moved the appointment of a committee to properly prepare & place before the Legislative Assembly matters relating to the Oregon Central Railroad & the success of this enterprise, which motion passed and Messrs I. R. Moores, J. F. Miller & J. H. Mitchell, Atty. of the Co. were designated by the Board as such committee.

Board adjourned until tomorrow at 9 o'clock A. M.

Wednesday, Sept. 9, 9 o'clock A. M.

Board met pursuant to adjournment, present as of yesterday.

On motion Mr. Elliott was requested to act with the committee appointed to receive Mr. Brinck and others and accompany them in a tour through this valley.

On motion it was

Resolved: that the Company accept the liberal donation of land made to it for depot purposes in the City of Portland by the Oregon Iron Works & by Messrs. J. S. Smith, W. K. Smith and J. H. Hayden; also the liberal donation made for a like purpose in the City of Salem by the Willamette Woolen Manufacturing Company of that place; and we hereby express our appreciation for

these substantial manifestations of confidence in our company and the liberal disposition to aid our enterprise.

On motion Mr. Mitchell was instructed to draw up an agreement with the Peoples Transportation Company, the same to be in accordance with a diagram prepared & a statement submitted to the Board.

Board adjourned sine die.

S. A. CLARKE,
Secretary.

Tuesday Sept 15, 1868

At a meeting of the Board duly called by the order of the President there were present of the Directors, Mr. President, Messrs. Miller, Lovejoy, Loryea, Chenoweth, Hedges, Patton, Cooke, Douthit, Ellsworth and Conser.

A resolution was offered concerning the transfer of the interest of A. J. Cooke & Co. contractors, to Messrs Ben Holladay & Co. and recognizing Ben Holladay & Co. as the successors of A. J. Cooke & Co. duly accepted by this corporation.

On Mr. Loryea's motion, the subject of said transfer and resolution in relation thereto was referred to a select committee of three composed of Messrs. Loryea, Ellsworth and Chenoweth.

Board adjourned until one o'clock.

Wednesday Sept 16th 1 o'clock p. m.

Board met according to adjournment. All present

as before, but Mr. J. H. Moores.

Mr. Loryea, from select committee to whom was referred the matter of the change of contracting firm, reported the following:

Your committee to whom was referred the resolution proposing to recognize Ben Holladay & Co as the assignees of A. J. Cook & Co. in the contract with the Oregon Central Railroad Company, for the construction of the first 150 miles of this railroad & also the contract extending the same to the California line would report that we have had the same under consideration and would recommend that upon the transfer in writing signed by A. J. Cook & Co. to Ben Holladay & Co. of all their interest in such contract, and the acceptance of such transfer by Ben Holladay & Co. in writing by them signed, and the further agreement in writing of said Holladay & Co. to be executed to this Company, wherein they agree to assume all contracts and agreements entered into heretofore between A. J. Cook & Co. and this corporation, relative to the construction of said road, and relative to the sale, transfer and redemption of stock of this corporation, and upon such assignment acceptance and contract being filed in the office of this company, that a resolution, as follows, be adopted by this Company.

Proposed Resolution.

Whereas the firm of A. J. Cook & Co. contractors, for the construction of the first one hundred and fifty miles of rail road, have sold & Transferred by an assign-

ment in writing, filed in the office of this Company, all their interest in the contract for the construction of such road to Ben Holladay & Co. and Whereas:

Said Ben Holladay & Co (said firm being composed of Ben Holladay, C. Temple Emmet & S. G. Elliott) have by writing and agreement with this Company, filed in the office of this Company, accepted such transfer and have agreed with this company to assume—and have assumed all the covenants and conditions of such contract to be performed by said A. J. Cook & Co. and also all other agreements and covenants heretofore entered into by said A. J. Cook & Co. with the Oregon Central Railroad Company relative to the sale, transfer and redemption of stock, and it further appearing to this Board that said Ben Holladay & Co. are prepared and intend to prosecute the work without delay,

Therefore: Resolved,

That this company hereby recognize the said transfer from A. J. Cook & Co. to the said firm of Ben Holladay & Co. and we accept the latter as the contractors under the existing contracts for the construction of the Rail Road aforesaid.

A M Loryea
S Ellsworth
F A Chenoweth

J. H. Mitchell of counsel for Corporation.
which report on motion was adopted.

Mr. Chenoweth ofd the following

Resolved

That we have full confidence in the financial ability and good faith of the said contracting firm of Ben Holladay & Co & consider said firm entitled to the unreserved and entire confidence of this Board.
which motion was unanimously adopted.

Whereupon the Board adjourned.

S. A. CLARKE,
Secretary.

Tuesday Evening Oct. 13

At the regular meeting of this date, there were present, Mr. President & Messrs Hedges, G. B. Smith, Chenoweth, Conser. No quorum being in attendance, the Board adjourned until the next evening at 7 o'clock.

Wednesday Evening Oct. 14.

Board met pursuant to adjournment, present Mr. President & Messrs. Miller, Moores, Hedges, Conser, Douthit, Smith, Chenoweth. Mr. Mitchell the counsel for the Co. being also present.

The Secretary presented the formal written resignation of Director Hamilton Boyd, which on motion was accepted, and Mr. Boyd's official connection with the Company as a director then declared terminated.

Also the resignation in similar form of Philip Wasserman was presented and on motion accepted, and Mr. Wasserman's official connection with the Company as a Director then declared terminated.

Also a written communication from A. M. Loryea

was presented, resigning his position as a Director of the Company and as Vice Prest. which on motion was unanimously accepted and his official connection with the Company declared terminated.

The Secretary presented a written communication from Henry McKay, Esq. stating that A. M. Loryea had promised him as well as Messrs Brinck and Welsh, that the company would pay the expenses of their trip hither.

On motion the matter was referred to a select committee of three, Messrs. Conser, Hedges & Mitchell.

The following accts. were presented and referred to Finance Committee.

M. C. Parrish & Co.....$ 23.13
J. H. Mitchell ..... 1,250.

Mr. J. H. Moores inquired what was the course to be pursued relative to parties claiming damages of the company for passing through their lands. Case of Mr. Brown was cited as an example.

A resolution, prepared by the atty for the Co. J. H. Mitchell Esq. was read, relating to right of way, and referred to a special committee of three, consisting of Messrs. Chenoweth, Miller & Douthit.

Mr. Chenoweth moved that no action be had to fill the vacancies existing in the Board of Directors, which motion carried.

Mr. Conser moved that the Board immediately proceed to elect a Vice President.

Which motion carried.

Messrs. Douthit & Chenoweth being appointed tellers, the vote was taken by ballot & duly canvassed, with the following result.

Mr. G. B. Smith received 4 votes

Mr. A. F. Hedges received 2 votes

Mr. I. H. Douthit received 1 vote

Mr. Chenoweth received one vote.

Whole number of votes cast, eight.

Necessary to a choice, five.

The second ballot was duly taken and canvassed, with the following result.

Mr. G. B. Smith received five votes.

Mr. A. F. Hedges received two votes.

Mr. I. F. Miller received one vote.

Whereupon, G. B. Smith having received a majority of the votes cast was declared duly elected the Vice President of the Oregon Central Rail Road Company.

Whereupon the Board adjourned until Thursday evening Oct 15, at 7 o'clock.

Thursday Evening, Oct. 15 1868.

The Board met pursuant to adjournment.

There were present, Mr. President, Messrs. Moores, Chenoweth, Hedges, Miller, Douthit, Conser, Smith and Lovejoy.

Committee to whom was referred the communica-

tion made to the Board by Mr Henry McKay made the following report.

Whereas, a communication has been received from Henry McKay of New York City, stating in substance that as one of the conditions of his coming to Oregon Dr. Loryea distinctly stated and promised that his expenses would be defrayed by this company,—Such communication also stating that Messrs. Brinck & Welsh also concurred in such communication.

And *Whereas* Dr. Loryea had no authority from this Company, either express or implied, to make any such promise for or in behalf of this Company,

And while we exceedingly regret that any such unauthorized promise should have been made:

Therefore, The Secretary of this Board is instructed to respectfully communicate to Messrs. McKay and Brinck and Welsh that such promise on the part of Dr. Loryea was wholly without authority, either express or implied; and without any knowledge or intimation from Dr. Loryea—either before or since his return to Oregon, —that such promise had been made, and therefore this Company could not in justice to itself carry out any such unauthorized arrangement.

Jacob Conser, Chm.

Which report was unanimously adopted.

The Committee to whom was referred the subject of procuring rights of way and the necessary steps to take therefor, made the following report:

Whereas, it being the deliberate judgment of this Board that the owners of land along the route of the Rail Road now being constructed, instead of being injured by such road, will, as an almost universal rule be benefited thereby:

Therefore

Resolved That this company will, before proceeding to take possession of any persons land for the purpose of grading, use all honorable efforts to secure a Deed of right of way therefor as a gift, in consideration of the benefits to be derived by such owners in the construction of the road; and in case any such owner shall decline to give such deed, then a map of the survey of such road showing the amount of lands and location of such owner, required by the company, shall be furnished to the attorney of the corporation, and he shall proceed at once to have such lands condemned to the use of the company, by action in Court as provided by law, unless such attorney shall otherwise desire, in which case his directions in the premises shall be followed by the Company. And in case of a failure upon the part of any of the agents of this Company to secure deeds as above, he shall proceed at once to have a map made giving the exact location of the lands sought to be condemned, giving course, distances and curvatures, and shall report the same to the next regular meeting of this Board, when the same shall be submitted to the attorney for his decision, provided it shall be the duty of the Chief Engineer to furnish all such maps and diagrams within twenty days after demand made by any authorized agent of the

Company.

F. A. Chenoweth, Chmn.

Which report was unanimously adopted and on motion the Secretary was instructed to furnish members of the Board, and the Chief Engineer with a copy of the resolution.

Account of B. L. Norden, Co. Clerk of Multnomah Co., being bill of costs in action State of Oregon ex rel I. R. Moores vs. J. Gaston et al. for $57.25, was referred to Finance Committee.

On motion Board adjourned until Friday Evening.

Friday Evening Oct 16, 1868.

Board met pursuant to adjournment, present as on Thursday & there being no important business before it, adjourned sine die.

S. A. CLARKE,
Secretary etc.

Wednesday Nov 25, 1868.

There having (by common consent) been no regular meeting in this month, a called meeting was held in Portland this date, there being present, Mr. President, & Messrs. Moores, Chenoweth, Patton, Conser, Henderson, Ellsworth, Woods, Lovejoy, Parrish.

Mr. Mitchell, atty for the corporation, read a statement comprising a history of all matters connected with the company, prepared by him.

On motion of Mr. Ellsworth the foregoing state-

ment was unanimously adopted by the Board, and the President & Secretary were instructed to sign the same officially and attach the seal of the company thereto.

The secretary read to the Board a communication from Henry McKay of New York in relation to the same subject as his former communication, on the promise of Dr. Loryea that his expenses should be paid from the East, by this Company.

On motion of Mr. Henderson, the Secretary was instructed to write respectfully, informing Mr. McKay of the circumstances of Dr Loryeas powers & his unauthorized promises.

On motion of Mr Ellsworth, duly seconded, it was ordered by the Board, that the sum of one thousand dollars be set apart, for the purpose of paying five hundred dollars to each to Messrs. J. H. D. Henderson and Geo. L. Woods, towards defraying their expenses to the City of Washington, on business of the corporation, should they proceed thither, as contemplated.

Whereas, it is deemed expedient that, for the furtherance of the interests of the company several of its members shall immediately go East, & visit Congress and the departments; and for such purpose funds are needed;

On motion of Mr. Chenoweth it was ordered as follows:

That the President is authorized, to sign in his official capacity, a note of hand payable four months

after date for $5,300. from the proceeds of which note, when negotiated, the said sum of one thousand dollars shall be appropriated towards defraying the travelling expenses of Gov. Woods & Mr Henderson, and the remainder to pay the salary of J. H. Mitchell Esq. the attorney for the company.

On motion of Mr. Lovejoy the Secretary was ordered to draw his warrant on the Treasurer for the entire amount of salary due Mr. Mitchell until January 1st, 1869 $1,250.

Mr Parrish offered the following preamble and resolution, which were unanimously adopted?

Whereas, S. G. Elliott acting for the contracting firm of A. J. Cook & Co. bought four locomotives in the name of the Oregon Central Railroad Co. and has, since the arrival of said locomotives in San Francisco, California, sold the same to the Central Pacific Railroad Co; Now therefore,

Resolved that the action of the said S. G. Elliott be approved; Provided the new firm of Ben Holladay & Co. shall replace the four locomotives, so that no damage of any kind shall occur to The Oregon Central Railroad Company.

On motion of Mr Conser it was

Resolved,

That the Secretary be instructed to issue to Ben Holladay & Co. one million of the Common Stock of the Company & take the receipt of Ben Holladay & Co.

therefor, as an advanced payment, equivalent to one hundred thousand dollars coin on the contract to pay three thousand dollars per mile on the construction of the road.

Which said transfer was immediately made in the presence of the Board & the Secretary advised the Board that the said receipt was duly given therefor.

Mr. Elliott, on the part of Ben Holladay & Co. presented the certificate of said firm, releasing the company from the contract relative to payment of nine tenths of receipts from donations and subscriptions to the contractors, to the extent of five thousand dollars, as specified in said certificate, to wit: to pay salary of J. H. Mitchell $3,000, to pay expenses of other members of the Co. to Washington, one thousand dollars; to pay salary of Secretary $1,000,—

On motion of Mr. Chenoweth the following preamble and Resolution was adopted:

Whereas the Legislature of the State of Oregon, at its late session in Oct. 1868, by Joint Resolution designated "The Oregon Central Railroad Company," of Salem, Oregon, Incorporated April 22d 1867 under the laws of Oregon, as the Company to take, manage & control the Land Grant given in aid of the construction of a railroad & telegraph line from Portland, Oregon, Southerly through the Willamette, Umpqua & Rogue River Valleys, by Act of Congress of date July 25th 1866;

And Whereas such Legislature failed to designate

any company until after the expiration of one year from the date of the passage of said Act of Congress,

Therefore, *Resolved,* that this Company—The Oregon Central Railroad Company of Salem, Oregon,—Organized April 22d 1867, does hereby accept such grant, and does assent thereto, upon the terms and conditions specified in said Act of Congress of July 25th 1866, granting aid as aforesaid.

And Resolved Further

That the Secretary of this Company be & he is hereby instructed to prepare a true & certified copy of this preamble & resolution, together with a certified copy of such Joint Resolution, being known as Senate Joint Resolution No. 16, under the seal of this company, & forward the same forthwith to the office of the Secretary of the Interior, and have the same filed in such office as the assent of this Company to the grant aforesaid.

The following preamble and Resolution, being offered by Mr. Ellsworth, moved by him and duly seconded, was unanimously adopted by the Board:

Whereas

J. H. Mitchell, the attorney of this Corporation, has proposed without charge or expense to this company to go East and represent this Company before Congress and the Departments at Washington City,

Therefore

resolved,

That J. H. Mitchell be, & he is hereby authorized & empowered to represent this corporation & its interests as agent and attorney thereof, before the Congress of the United States, & the Departments at Washington, to the end that all necessary legislation by Congress & action by such Departments may be had in order to secure and promote its interests.

Whereupon the Board adjourned.

S. A. CLARKE
Secretary

Directors Meeting

Tuesday Jan 12, 1868

At a regular meeting of the Board this day held at the company's office in Salem there were present

Mr President, Messrs Moores, Conser, Patton, Douthit, Chenoweth, Cooke, Lovejoy, Hedges.

The Board was called to order by the President at 3 p. m.

The following accts. were presented and referred to the Finance Committee:

Myers & Riggs..... 6.25
C. M. Parmenter.....207.

Mr Chenoweth

Proposed the following sections as amendments and additions to the By-Laws of the Company, which amendments were received to be acted on at a future

meeting as required by the Laws of the corporation.

as follows:

"By Laws proposed at the regular monthly meeting held at Salem on the 12th day of January A. D. 1869. Sec. 22 Sec. 17 on page 9th of Journal is hereby repealed, and in lieu thereof, the following is enacted, to-wit:

No Stock shall issue, except by order of the Board of Directors, and in case of the loss, or destruction of any certificate of stock, upon due proof of such loss, and a sufficient bond of indemnity, the company may issue a duplicate thereof.

Sec. 23. That the stock subscribed by the Chairman of the meeting of corporators of this company on the 22nd day of April, 1867, to the amount of Seventy thousand shares, or such amount thereof as is not disposed of at the adoption of this By-Law, shall be issued to said Oregon Central R R Company in certificates of equal amounts as near as can be, and one of each certificates be held by each of the following named gentlemen, in trust for said company, to-wit:

(Here insert names of trustees)

And the said Trustees are instructed and authorized to represent said stock at all meetings of stockholders of the Oregon Central Rail Road Company, and to vote the same, according to their judgment, as may be for the best interest of the Company.

Sec. 24. The above named trustees shall be entitled to

cast one vote for each share of stock so held by them, at any and all elections of directors and officers of said company; and in case of the absence of any one of said trustees, the absentee may by written authority authorize any other one of said Trustees to cast the vote and represent the shares so held by him; and in case of a failure so to appoint a proxy, the Board of Directors may authorize any Director or Directors to represent said Stock and vote the same in such manner as such absentee in their judgement would and ought to vote it if present. Sec. 25. It shall be the duty of the Secretary to arrange the names of the said Trustees in alphabetical order and charge each one with the number of shares so held by him; and as part of the stock is sold or otherwise disposed of, he shall take from each in regular order and in equal amounts, crediting said Trustees and charging the purchaser therewith & shall transfer the same on the books accordingly, and for this purpose the certificate so held by said Trustee shall be taken up and cancelled when the amount or number of shares held by him is reduced by the sale or other disposition of the stock, and a new certificate shall be issued to him for the number of shares remaining in his custody. Sec. 26. Each stock holder shall be entitled to cast one vote for each share held or owned by him, or any one who shall have a written authority to act as trustee or as agent or proxy, for any absent stockholder, may vote according to such written authority by filing such authority with the Secretary.

Mr. Chenoweth offered the following preamble and

resolution.

"Whereas

At a meeting of the Board of Oregon Central Railroad Company at Salem, Oregon, on the 14th day of July, 1868, a resolution was adopted as follows

'Resolved That it shall be a substantial compliance with existing contracts with A. J. Cook & Co to locate the line of road not exceeding three miles east of Salem, and in *their* being subscribed along that line at least $3000 per mile, the Engineer is fully authorized to so locate the line instead of coming to Salem.

And Whereas: It does not appear that $3000 per mile has been subscribed on the proposed line

And Whereas:

Since that time the citizens of Salem have since that time subscribed with some degree of liberality to said road on condition said road is run to Salem, therefore be it

Resolved, By the Board of Directors of O. C. R. R. Co., that said resolution be, and the same is hereby rescinded, & declared null and void.

After debate the foregoing Resolution was unanimously adopted.

Mr. Chenoweth offered a similar resolution relative to the location of the road East of Albany, which resolution, on motion of Mr. Chenoweth, was laid over, to be considered and acted on at the regular meeting of the Board in February.

The Finance Committee reported in favor of paying the following accounts, referred to them, at different times.

A. L. Stimson		
in currency		$70.
Ben Norden		
Clerk Multnomah Co.		$57.25
in currency.		
Scott & Co.	coin	$2.
Geo W Vallum	coin	7.
C. M. Parmenter	"	207.
Myers & Riggs	"	6.25

On motion the same were ordered to be paid, and the Secretary of the Co. directed to draw warrants on the Treasurer for the respective amounts.

On motion, the Board adjourned until this evening at 7 o'clock.

7 o'clock P. M.

The Board, present as before, and also Mr. Parrish appeared.

No special business demanding the attention of Board, it adjourned sine die.

S. A. CLARKE
Secretary.

——oOo——

Tuesday February 9, 1869.

It being the day for regular monthly meeting of Board of Directors, there were present Mr. President and Messrs. J. H. Moores, Chenoweth, Smith, Parrish

and Conser, which number not constituting a quorum for business, an adjournment was had until tomorrow morning at 9 o'clock.

——oOo——

Wednesday, 9 o'clock.

Present as of yesterday and also Mr. Patton, so constituting a quorum, the Board was called to order by the President.

The minutes of January meeting were read and approved.

Mr. Chenoweth offered the following:

Whereas

At the regular meeting of the Board of Directors of this Company held in July, 1868, a resolution was passed allowing the Chief Engineer, on certain conditions, to locate the road not to exceed four (4) miles east of the City of Albany:

And Whereas:

Since then said City of Albany has raised a considerable amount of money & lands for the encouragement of said road, on conditions that said road should run within one mile of Albany, and establish the Depot at said point within one mile of the Court House of said City;

Now Therefore

Be it Resolved, That in case the people of Albany shall subscribe & secure in money and lands to said road,

the sum or value of thirty thousand dollars; then and in that case, said Resolution passed in July 1868, as aforesaid, shall be rescinded and declared void.

Which on motion was adopted.

Mr. Chenoweth moved the adoption of the Resolution offered by him at the regular meeting in January, which offered amendments & additional sections to the By-Laws of the Company.

After consideration and discussion of the motion, Mr. Chenoweth withdrew the same, and at his suggestion, by general consent, the action on this subject was passed over for the next regular meeting.

Mr. Conser offered the following as an amendment to the By Laws of the Company, being similar in character, & intended to be amendatory to the amendments now pending.

Amendments proposed by Mr. Conser

Resolved

That the By-Laws of this company be amended by the addition of two Sections, as follows:

Sec. —— The Seventy thousand shares of the capital stock of this corporation subscribed by order of the meeting of Incorporators Aprid 22nd 1867 by Geo L. Woods chairman of said meeting, and held by virtue thereof, or so much of said stock as shall at any time remain unsold, shall be jointly held and represented at any stockholders meeting by one or more trustees to be elected by the Board of Directors.

Sec. — At the time of making up the list of stockholders entitled to vote at any regular meeting of stockholders, the Secretary shall ascertain the number of shares of said stock remaining unsold, and shall make and deliver to such trustee or trustees, a certificate duly signed by the President and Secretary, sealed with the corporate seal, and stamped with sufficient U. S. Revenue stamp, setting forth the number of shares to be so held, represented and voted on, and authorizing said trustee or trustees to so represent the same.

And said trust shall be exercised according to the directions of the Board of Directors, should they take action thereon & give such instructions.

Which resolution was received and on motion of Mr. Chenoweth was ordered to be spread on the Journal.

On motion of Mr. Smith the President was authorized to see what arrangement can be made for the location of a station and depot at or near Waconda, and to report thereon at the next meeting.

On motion of Mr. Moores it was

Resolved

That the provision made by the Board April 17, 1868, requiring that a salary fund should be set apart, is hereby repealed; and salaries shall be paid from the General Fund.

S. A. CLARKE, Secretary.

——oOo——

Tuesday, Mar 9, 1869.

At the regular meeting of the Board of Directors of

the O. C. R. R. Co. this day held in Salem, there were present Mr. President, & Messrs. Cooke, Miller, Conser, Hedges, Douthit, Patton, Moores, Parrish, Ellsworth and Woods.

The minutes of last meeting were read and approved.

The President read contract made with owners of land near Waconda, for the location of a Depot, which contract, on motion of Mr. Ellsworth, was approved by the Board.

On motion of Mr. Douthit the President was authorized to take such steps as he may approve to have the Waconda town site surveyed & laid off in Blocks & lots.

Mr. Ellsworth moved that when the Board adjourn, it do so to meet at Salem on Monday April 5th ensuing, which motion was carried.

The amendments to the By-Laws heretofore presented, were considered, & on motion were laid over for future action.

On motion Board adjourned to the 5th April ensuing.

S. A. CLARKE
Secretary.

——oOo——

Monday April 5, 1869

The Board met pursuant to adjournment present Messrs Moores, Cooke, Douthit, Conser, Hedges, Parrish, Ellsworth, Lovejoy, Chenoweth, Patton and Mr.

President.

On motion of Mr. Chenoweth the By-Laws were amended as applied for by him at the meetings in January by the following added section.

"Sec. 22. Section 17 on page 9th of Journal is hereby repealed, & in lieu thereof the following is enacted, to-wit:

'No stock shall issue, except by order of the Board of Directors and in case of the loss or destruction of any certificate of stock, upon due proof of such loss, and a sufficient Bond of Indemnity, the Company may issue a duplicate thereof.'

The foregoing amendment to the By Laws was unanimously adopted.

The following By-Law, which had been submitted by Mr. Chenoweth at the January meeting, was submitted to a final vote on motion of Mr. Chenoweth.

"Sec. 23. Each stock holder shall be entitled to cast one vote for each share held or owned by him and any one who shall have a written authority to act as agent or proxy for absent stock holders or for the company, may vote according to such written authority by filing the same with the Secretary.

which being put to vote was unanimously adopted.

The By Law relating to the representation of the stock owned by the corporation, or held for it by Geo. L. Woods, Chairman of the meeting of Incorporators, being under consideration

Mr Ellsworth moved to refer to the coming meeting of stockholders, which motion was lost.

Mr Douthit moved that the same be referred to Messrs Ellsworth, Chenoweth & Lovejoy, which motion carried, & they were instructed to report tomorrow morning at 11 o'clock.

Messrs, Douthit, Conser and Parrish were appointed a committee to examine accounts of Directors & report on the same tomorrow morning.

Whereupon the Board adjourned till tomorrow morning at 11 o'clock.

——oOo——

Tuesday Apl 6th 1869

The Board met pursuant to adjournment present as of yesterday, and also Gov, Woods.

Ellsworth offered the following Resolution as to representation of the stock held by virtue of subscription, Apl. 22, 1869 of Geo. L. Woods Chm. of Incorporators meeting.

"Resolved, that until otherwise provided for, the stock subscribed for this corporation by Geo L. Woods, or so much thereof as is not disposed of, be represented and voted by Geo. L. Woods, for the benefit of the corporation at the annual meeting of Stockholders for 1869. Substantially in the manner it was done by the Secretary of the Board at last annual meeting.

Which resolution unanimously passed.

Mr Conser from the Committee to audit the accounts

of Directors made the following report.

Your committee appointed to audit and report amounts due to members of the Board for compensation, report that we have had the subject under consideration and recommend that there be allowed as follows, for services as Directors for the fiscal year 1868-9, to-wit.

T. McF. Patton	as per Bill	$216.
I. H. Moores	" " "	200.
A. L. Lovejoy	" " "	904
A. F. Hedges	" " "	800
I. H. Douthit	" " "	1207
F. A. Chenoweth	" " "	800
I. Conser	" " "	591.75
S. B. Parrish	" " "	552
I. H. D. Henderson	" " "	300
S. Ellsworth	" " "	400
G. L. Woods	" " "	96

Several members of the Board have not handed in a bill so we have no means of knowing what they should be allowed.

I. Conser, Chairman.

On motion the report was adopted, and warrants ordered to issue for the sums due the said several named persons. Mr. Douthit moved that warrants be drawn for salaries due the officers for the past year. Which motion was carried.

The Treasurer made his report, which was adopted, and ordered to be placed on file.

Committee on Revision of By-Laws made a report,

which in view of the resolution heretofore adopted, instructing Geo. L. Woods to cast the vote on the stock held by the Company, as subscribed by him for the corporators Apl. 22nd, 1867, was laid on the table on motion of Mr. Ellsworth.

The following accounts were presented and warrants ordered to issue for the several amounts.

D. C. Ireland, paid by S. A. Clarke for advertising Stockholders meeting	$3.50
A. L. Stinson printing Bill (bal)	303.62
F. A. Chenoweth for printing done for Company	15.
State Journal for printing done	5.

Mr. Ellsworth offered the following:

Resolved That for the ensuing fiscal year the affairs of the company shall be managed by an executive committee to consist of the President and four Directors to be appointed for the purpose. Said committee shall meet as often as once a month & oftener if necessary. And the Board of Directors shall hold its regular meetings once in six months, although Special meetings may be held at any time on call of the President. Said committee shall keep a record of its doings and report the same to the Board for its approval or rejection.

Which passed unanimously.

The matter of the salary of the Secretary for the

year ending Apl. 1, 1868 was under consideration and was referred to the Board of Directors of that year.

Whereupon the Board adjourned.

S. A. Clarke
Secretary.

——oOo——

In pursuance with notice, the stockholders of the Oregon Central Rail Road Company met at their office in Salem on the 6th day of April A. D. 1869, under the direction of the President and W. R. Dunbar, one of the stockholders & proceeded to the election of Directors for the ensuing year, with the following result.

The following named persons received the number of votes set opposite to their respective names.

I. R. Moores	Received	50,258	votes
J. H. Moores	"	50,817	"
F. A. Chenoweth	"	50,842	"
S. B. Parrish	"	50,253	"
A. F. Hedges	"	50,253	"
A. L. Lovejoy	"	50,253	"
J. H. Douthit	"	50,842	"
E. N. Cooke	"	50,253	"
Geo. L. Woods	"	50,842	"
S. Ellsworth	"	50,253	"
A. Bush	"	50,253	"
G. B. Smith	"	50,842	"
J. H. D. Henderson	"	50,842	"
I. C. Hawthorne	"	50,842	"

G. W. Weidler	"	46,248	"
S. M. Smith	"	50,842	"
S. F. Chadwick	"	50,842	"
J. F. Miller	"	50,842	"
J. M. Foster	"	50,842	"
Jacob Conser	"	50,253	"
T. McF. Patton	"	51,442	"
J. E. Ross	"	50,817	"
Geo. A. Edes	"	50,817	"

and said persons having received a majority of votes, of the stock were declared duly elected. I hereby certify that I acted as Inspector of said election & that said persons were duly elected Directors thereat.

I. R. Moores
President.

State of Oregon)
) ss
County of Marion)

We, Saml M. Smith and Geo W. Weidler being severally sworn depose and say that we will each faithfully and honestly discharge the duties of Directors of The Oregon Central Rail Road Company to the best of our ability. So help us God.

Saml M. Smith
Geo. W. Weidler
J. H. D. Henderson

Subscribed and sworn to before me this the 11th day of May A. D. 1869.

(Seal) S. A. Clarke
(5c Int. Rev.) Notary Public for Oregon
(Stamp)

Subscribed and sworn to before me by J. H. D. Henderson this the 9th day of June A. D. 1869.

(Seal) S. A. Clarke
(5c Int. Rev.) Notary Public for Oregon
(Stamp.)

The Directors elected, who were present appeared and qualified by taking this oath as follows.

State of Oregon)
) ss
County of Marion)

We F. A. Chenoweth, S. Ellsworth, I. R. Moores, J. H. Moores, S. B. Parrish, A. F. Hedges, A. L. Lovejoy, J. H. Douthit, E. N. Cooke, G. L. Woods, A. Bush, J. C. Hawthorne, J. H. Foster, Jacob Conser, T. McF. Patton, Geo. A. Edes, being severally sworn do severally depose & say, that we will each faithfully & honestly discharge the duties of Director of the Oregon Central R Road Company. So help me God.

F. A. Chenoweth
S. Ellsworth
I. R. Moores
E. N. Cooke
T. McF. Patton
J. H. Foster
A. L. Lovejoy
A. F. Hedges
Geo. A. Edes
A. Bush
J. H. Douthit

J. C. Hawthorne
S. B. Parrish
Jacob Conser
Geo. L. Woods
J. H. Moores

Subscribed and sworn to before me the 6th day of April A. D. 1869.

(Seal) S. A. Clarke
(5c Int. Rev.) Notary Public for Oregon
(Stamp.)

——oOo——

The annual meeting of the stock holders of The Oregon Central Rail Road Company, was held according to publication duly made in the Oregon City Enterprise weekly newspaper, at 2 o'clock P. M. Apl. 6th 1869, being the legal day for said meeting; the meeting was called to order by I. R. Moores, President.

There were present:

Geo. E. Cole representing 4000 shares as proxy for Ben Holladay & Co.

J. H. Moores	representing	589	shares
I. R. Moores	"	589	"
E. N. Cooke	"	589	"
T. McF. Patton	"	589	"
F. A. Chenoweth	"	589	"
J. H. Douthit	"	589	"
Jacob Conser	"	589	"
S. A. Clarke	"	589	"

S. Ellsworth	"	589	"
A. F. Hedges	"	589	"
S. B. Parrish	"	589	"
A. L. Lovejoy	"	589	"
W. R. Dunbar	"	5	"
Geo. L. Woods	"	589	"
and authorized to cast			
the Company vote for		39,769	"

representing more than a majority of the stock of the corporation.

The meeting proceeded to ballot for 20 directors provided in the By-Laws with the following result. A. F. Hedges and W. R. Dunbar being duly appointed tellers for the occasion. The vote being duly counted & canvassed resulted as follows:

I. R. Moores	received	50,253	votes
F. A. Chenoweth	"	50,842	"
S. B. Parrish	"	50,253	"
A. F. Hedges	"	50,253	"
A. L. Lovejoy	"	50,253	"
J. H. Douthit	"	50,842	"
E. N. Cooke	"	50,253	"
Geo. L. Woods	"	50,842	"
S. Ellsworth	"	50,253	"
A. Bush	"	50,253	"
G. B. Smith	"	50,842	"
J. H. D. Henderson	"	50,842	"
J. C. Hawthorne	"	50,842	"
G. W. Weidler	"	46,248	"

S. M. Smith	"	50,842	"
S. F. Chadwick	"	50,842	"
J. F. Miller	"	50,842	"
J. H. Foster	"	50,842	"
Jacob Conser	"	50,253	"
T. McF. Patton	"	50,442	"

These gentlemen having received a majority of the votes of the corporation were declared duly elected directors thereof.

It was moved and seconded that the By-Laws of the company be so amended that the number of the Directors be increased to twenty three as follows.

Resolved that there be elected at this meeting three additional Directors for the ensuing year, in the manner provided in Sec. 2 of the By-Laws as amended, making 23 in all. Which motion carried unanimously.

The meeting then proceeded to ballot for three directors, the same tellers officiating, when the result was as follows:

J. H. Moores	received	50,817	votes
J. E. Ross	"	50,817	"
Geo. A. Edes	"	50,817	"

and were declared elected directors of the Company for the ensuing year.

Mr. Ellsworth offered the following amendment to the By-Laws of the corporation, which upon a vote taken were unanimously adopted.

(Amendment to By-Laws)

Sec. 24

The 70,000 shares of the capital stock of this corporation subscribed at first meeting of Incorporators April 22nd 1869 by Geo L. Woods Chairman of said meeting and held by this corporation by virtue thereof, or so much of said stock as shall from time to time remain undisposed of, shall be jointly held and represented for the use and benefit of this corporation at any stockholders meeting, by three trustees who shall be chosen by the Board of Directors and hold their office during the pleasure of said Board.

Sec. 25.

At the time of making up the list of stockholders entitled to vote at any regular meeting of stockholders, the number of shares of said stock remaining unsold shall be ascertained by the Secretary, and he shall make and deliver to such trustees a certificate duly signed by the President & Secretary, and stamped with sufficient U. S. Revenue stamps setting forth therein the number of shares to be so held, voted & represented on, and authorizing said Trustees to so represent the same. And said trust shall be exercised according to the directions of the Board of Directors should they take action therein and give such instructions.

Whereupon the meeting adjourned sine die.

S. A. Clarke

Secretary.

Tuesday Evening

April 6th 1869

The Directors elected at the meeting of stockholders of The Oregon Central Rail Road Company, this day held, having qualified according to law as recorded on page 125 of this Journal, met afterwards at the office of the Company for the election of officers of the company for the ensuing year.

There were present Messrs. J. H. Moores, E. N. Cooke, F. A. Chenoweth, J. H. Douthit, J. Conser, J. H. Foster, T. McF. Patton, Asahel Bush, Geo. L. Woods, S. B. Parrish, A. L. Lovejoy, J. C. Hawthorne, Geo. A. Edes, A. F. Hedges and I. R. Moores.

The meeting was called to order by the President of the Company, I. R. Moores, and immediately proceeded to ballot for officers according to law. Messrs. Chenoweth and Parrish being appointed Tellers for the occasion.

A vote being taken for President, Mr. I. R. Moores received thirteen (13) ballots, and Mr. Woods one (1) ballot.

Whereupon the Secretary announced that Mr. Moores was elected President of the company for the ensuing year.

A vote being taken for Vice President, Mr. Green B. Smith received thirteen (13) votes and Mr. Douthit one vote and the President announced that Mr. Smith was elected Vice President.

A ballot being taken for Treasurer

Mr. E. N. Cooke received eight votes

" Asahel Bush received four votes

" Geo. L. Woods received one vote

" J. H. Moores received one vote

whereupon the President announced that Mr. Cooke having received a majority of all the votes cast was duly elected Treasurer of the Company.

The election of a Secretary being next in order, Mr. Clarke, the present Secretary, announced that he would not be a candidate for reelection.

The vote being taken

George E. Cole received eleven (11) votes.

Mr. Clarke received one (1) vote.

" Edes received two votes and

" J. H. Moores received one vote.

Whereupon the President announced that Mr. Cole, having received a majority of all the votes cast was elected Secretary.

The President announced the appointment of the following Committees.

Executive Committee

Messrs. Bush Weidler Hawthorne and S. M. Smith.

Finance Committee

Messrs Patton, Edes & Chenoweth.

Committee of Ways & Means

Messrs. Ellsworth Douthit & Hedges

On motion of Mr. Edes, Mr. Mitchell was unanimously reappointed attorney for the corporation.

Mr. Clarke moved that the matter of salaries be referred to a special committee of five.
which motion passed.

The President announced Messrs Edes Chenoweth Bush Douthit & Conser as such committee.

The committee, on motion, were instructed to retire for consultation and report immediately.

Their report, when rendered, was as follows:

"We, your committee heretofore appointed to estimate and determine as to salaries to be allowed to the officers of The O. C. R. R. Co.—beg leave to report, that the salary of the

President	shall	be	$2,500
Attorney	"	"	2,000
Treasurer	"	"	500
Secretary	"	"	1,000

The compensation of the executive committee and Directors, when on actual duty, shall be Six Dollars per day,—officers provided for by salary shall receive no compensation as per diem, for duty as executive committee or Directors.

Geo A. Edes Chairman

After a large number of motions and counter mo-

tions, to amend portions & to strike out portions of the report, the report being amended, and then as amended being voted down. Several motions to reconsider being fluently passed, the whole being accompanied by a spicy and animated debate, distinguished by good humor and an intense leaning toward economy, the report of the Committee was finally adopted without alteration or amendment.

On motion of Mr. Douthit, it was ordered that the semi-annual meeting of the Board shall be held on the second Tuesday of October 1869.

Whereupon the Board adjourned.

S. A. Clarke
Secretary.

——oOo——

A special meeting of the Oregon Central Railroad Company was held in Salem Tuesday, June 8th, 1869 a personal notice having been given to the several directors, there were present, Mr. President, Messrs. J. H. Moores, E. N. Cooke, J. H. D. Henderson, Jacob Conser, S. Ellsworth, T. McF. Patton & J. H. Foster.

On motion the minutes of the executive committee held May 11th 1869 were read as follows, to-wit:—

The Executive committee of the O. C. R. R. Co. met at Salem May 11th at 10 o'clock A. M. Present J. R. Moores, President, A. Bush, S. M. Smith and Geo. W. Weidler at which the following procedings were had:

The Bond of Geo. E. Cole for the faithful performance as secretary of the O. C. R. R. Co. was read and approved.

The bill of William Anderson for rent for office and other rooms for 8 months at $14 per month....$112. was allowed and an order made instructing the Secretary to draw warrant on the Treasurer therefor. Also bill of B. Strang & Co. for stove, &c, amounting to $23.75 was allowed and order made instructing the Secretary to draw warrant on the Treasurer therefor.

Ordered that the committee do now adjourn.

Geo. E. Cole Secretary."

On motion the acts of executive committee were approved. Mr. Ellsworth offered the following resolution:

Whereas the Congress of the United States on the 25th day of July 1866 passed an act entitled "An act to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon, and

Whereas such act provided that such company thereafter organized under the laws of Oregon and designated by the Legislature of such State should be entitled to receive and manage the said grant in Oregon, said act further requiring that the company so organized and designated should within one year from the date of its passage (towit July 25th 1866) file its assent in the Department of the Interior, and Whereas no Com-

pany was designated by such legislation within the year within which such assent was required to be filed, and

Whereas, The Legislature of the State of Oregon did at its regular session in October A D 1868 pass the following joint resolution designating this company (to-wit "The Oregon Central Railroad Company) of Salem Oregon a Company duly incorporated and organized under the laws of the State of Oregon) as the company to take and manage such grant and receive all the benefits of the same in the State of Oregon,

"Senate Joint Resolution No. 16.

Whereas The Congress of the United States by an act approved July 25th 1866 entitled "An act to aid in the construction of a Railroad and telegraph from the Central Pacific Railroad to Portland in Oregon" did grant certain lands in the State of Oregon and confer certain privileges upon such company organized under the laws of Oregon as the Legislature of such State should thereafter designate.

And Whereas, The Legislative Assembly of Oregon at its Fourth Regular Session did adopt a joint resolution known as "House Joint Resolution No. 13" designating in terms "The Oregon Central Railroad Company" as the company entitled to receive the land granted by, and all the benefits and privileges of the said Act of Congress—

And Whereas: At the time of the adoption of the said joint resolution as aforesaid no such company as The Oregon Central Railroad Company was organized

or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company—

And Whereas: The designation of the Company to receive the lands in the State of Oregon granted and the benefits and privileges conferred by the said Act of Congress yet remains to be made; Therefore

Be it Resolved by the Senate the House concurring, That the Oregon Central Rail Road Company, a corporation organized at Salem on the twenty second day of April in the year One Thousand eight hundred and sixty-seven under and pursuant to the laws of the State of Oregon, be, and the same is hereby designated as the Company entitled to receive the lands in Oregon and the benefits and privileges conferred by said Act of Congress."

And Whereas the Congress of the United States did in April A. D. 1869 pass an act amendatory of the said Act of July 25, 1866 extending the time in which the company designated might file its said assent, which act was approved by the President of the United States April 10, 1869 and is entitled "An Act to amend an act entitled An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon approved July 25, 1866"

Therefore Resolved

That this Company, The Oregon Central Railroad Company of Salem, Oregon, incorpor-

ated Salem Oregon April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said Act of July 25 A. D. 1866 entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and of all acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent, and the assent of such Company thereto, and the Secretary of this Company is hereby instructed to prepare a true copy of this resolution certified to under the seal of the corporation signed by himself as Secretary and by the President of this Company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City D. C.

Which resolution was unanimously adopted.

On motion of Mr. Ellsworth it was Resolved That the President be authorized to negotiate a loan not exceeding $4000 to pay off the outstanding notes against the Company.

Whereupon the meeting adjourned until 7 o'clock P. M. Approved. Geo. E. Cole

. Secretary.

I. R. Moores Prest.

Tuesday June 8th 1869, 7 o'clock P. M.

The meeting was called to order by the President. Present J. R. Moores Pres., J. H. Moores, A. Bush J. H. Foster, E. N. Cooke, F. A. Chenoweth & T. McF.

Patton, at which the following proceedings were had towit.

Resolved that the line of route as surveyed and platted and upon which work has been done by the contractors for this company is hereby approved as far as the same has been done from East Portland to the Santiam river, and that the President and Engineer are instructed to have the Corporate seal of the Company attached to all necessary maps designating the line of route.

The following report of committee was read—
"To the Board of Directors of the O. C. R. R. Company.

We, the members of the Board of Directors of your Company elected April 23rd 1867 appointed a committee on the account of S. A. Clarke Secretary for that year, would report that Mr. Clarke rendered efficient service devoting much of his time exclusively to the business of the corporation, its correspondence and the issuance of its bonds, that the sum of $1800 salary heretofore awarded him per annum is justly due him for that year and we recommend that it be paid.

Salem June 8 1869

E. N. Cooke)
S. Ellsworth)
T. McF. Patton) Committee
J. H. Moores)
F. A. Chenoweth)

which upon motion said report of Committee was adopted and the Secy instructed to draw order therefor.

Mr. Mitchell the attorney of the company in person appearing and stating to the Board of Directors that he could not serve in the capacity of the Company's Attorney for the salary (towit $2000) fixed as said attorneys salary at the last annual meeting (towit April 6th 1869) and would therefore decline acting as the company's attorney unless additional compensation was provided by the Company, and suggesting that he would be satisfied with the salary of $3000, and attend to all the legal business of the Company (right of way business excepted) and that for the additional compensation of $1000 would also attend to right of way suits it was therefore upon motion of Mr. Chenoweth resolved that Mr. J. H. Mitchell be allowed the sum of $3000 as salary for the year commencing April 6th 1869, and it was further ordered that said J. H. Mitchell be allowed as before agreed the sum of $5000 for his salary for the quarter ending April 1st 1869 and the Secy be instructed to draw order for such amount as will make the said amount to wit $1250. his account having been settled up till Jan. 1st 1869.

Whereupon the meeting adjourned sine die.

Approved Geo E Cole
J. R. Moores Secy
Prest

——oOo——

State of Oregon)
) ss
County of Marion)

We, John S. Ross, S. F. Chadwick and John F.

Miller, being severally sworn depose and say that we will each faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company to the best of our ability. So help us God.

S. F. Chadwick
John F. Miller
J. E. Ross

Subscribed and sworn to before me this the 7th day of Sep 1869.

(Seal) Seth R. Hammer
(5c Int. Rev.) Notary Public
(Stamp)

Tuesday Sep 7 1869 1 P. M.

A special meeting of the Directors of the Oregon Central Railroad Company was begun and held at Salem, September 7th 1869, at which the following proceedings were had. Board called to order—the following members were *present*

Hon I. R. Moores President and Directors
" Geo L. Woods
E. N. Cooke
J. H. Moores
John F. Miller
Jacob Conser
J. H. Douthit
A. L. Lovejoy
S. B. Parrish
A. F. Hedges

F. A. Chenoweth
J. H. D. Henderson
S. Ellsworth
S. F. Chadwick
John E. Ross
J. H. Foster
Geo. A. Edes
J. C. Hawthorne
Sam'l M. Smith
and Geo W. Weidler

A communication from Ben Holladay & Co. was read as follows to wit:

Mr. President and Directors of the Oregon Central Railroad Company Gentlemen:

Owing to the fact of the continued opposition made by parties interested in opposing The Oregon Central Railroad Company, and the consequent failure up to this time to negotiate any of the Bonds of the Company (which failure is also attributable greatly to the fact the stock of the company is under the control and management of a company composed of gentlemen in Oregon who are not generally known in the financial circle of the East) the contractors have concluded that it would be suicidal in the extreme upon their part to continue any further expenditure of money under their contract with the Company unless some arrangements satisfactory to *all* parties concerned could be effected whereby *all* the stock and bonds of the Company could be placed under the ownership and control of the under-

signed. And believing as we do that it would be better to lose the amounts already expended rather than incur further risk, by making *additional* expenditures, we have reluctantly come to the conclusion to abandon all work under the contract unless such arrangement can be effected. In case all the stock and bonds that have been issued by the Company, or in anywise owened by the Company can be transferred to the undersigned we are willing to pledge ourselves for the present rapid construction of the first twenty miles of the Road within the time fixed by Act of Congress for the completion of the same. We are willing also to assume all reasonable and just debts or liabilities of the company due, or owing at this date. The sum total of such debts, and the amount of each, and to whom owing to be ascertained and fixed by a committee of three of the Directors and the undersigned: provided such committee and the undersigned can agree upon the amounts thereof. And in addition to this we are willing to make execute and deliver to the present Directors and principal stockholders of the Company a penal bond in any reasonable amount that your body may designate, conditioned that we will forever save, indemnify and keep harmless each and all of such Directors and Stockholders from any and all claim, liability, or demand which we, or any other creditor of the Company may now have or at any time heretofore have had against the company, or against such company or against such Directors or Stockholders by reason of their having at any time been such Directors or Stockholders.

In the event that this proposition is accepted we shall proceed with vigor to the completion of the first twenty miles of the road the present Fall and next Summer direct on to Salem, and thereafter vigorously continue its construction to the Southern part of the State; otherwise although reluctant to do so, we are compelled to abandon the enterprise at once. It may not be improper here to state that this communication is not submitted in any spirit of arbitrary dictation, as we have from our first connection with the enterprise regarded each member of your board with respect and confidence, which feeling we hope may continue whatever may be the result of these negotiations, but on the contrary we submit this proposition as the final result of our calm deliberate judgment believing as we do that its acceptance will place the undersigned in a position that will enable them to negotiate their bonds and thus secure the speedy construction of the road, and without this the enterprise must be a failure.

(Signed) Ben Holladay & Co.

On motion of A. L. Lovejoy the communication just read was referred to a committee of three to be elected by the board to confer with Ben Holladay & Co. in relation to the proposition made by them to audit the accounts of the Company and ascertain if they can agree upon the same & report to the Board.

On motion of F. A. Chenoweth the committee were elected by ballot which resulted in the election of J. H. Moores, S. F. Chadwick and John F. Miller.

On motion of J. H. Douthit the committee were instructed to proceed at once to consult with the contractors and report as soon as practicable.

On motion the meeting do now adjourn till 4 o'clock.
Approved GEO E COLE
I. R. MOORES Prest.

———oOo———

4 P. M. Tuesday Sept. 7 1869.

Board met pursuant to adjournment. Present same Directors as at the previous meeting.

S. F. Chadwick Chairman of committee on conference with the contractors as follows towit:
To the O. C. R. R. Co. of Salem Oregon.

Your committee appointed to examine the accounts and indebtedness of the company to date report that Mr Holladay has agreed that the following accounts be paid towit:

Salary of President annually be allowed to

I. R. Moores Prest.....$1750.

Salary to Sam A Clarke Sec'y

First year ..... 1200.
Second "..... 800.

Salary of Treasurer E. N. Cooke 200 per annum

From the following accounts be deducted 33 1-3 per cent.

T. McF. Patton.....$216.
J. H. Moores..... 200.

A. L. Lovejoy..... 904.
J. H. Douthit.....1207.
F. A. Chenoweth.....$800.
J. Conser 591.75
S. B. Parrish..... 552.00
J. H. D. Henderson..... 360.00
S. Ellsworth 400.00
Geo. L. Woods..... 96.00

Accounts for stationery, rents and wood &c be paid in full.

To J. H. Mitchell in lieu of $4750, $3000. all payable in one year gold coin without interest.
One note due August 6 1870 for four thousand dollars.

The following amounts to be paid to Directors are for services to date and payable twelve months after date without interest gold coin upon the surrender of the stock accounts and subscriptions lists now in their hands.

Respectfully submitted
JOHN F. MILLER
J. H. MOORES
S. F. CHADWICK

September 7 1869

I agree to the above.

BEN HOLLADAY & CO.

On motion of Mr. Ellsworth was adopted as a basis of settlement with Ben Holladay & Co.

On motion the Company's attorney was instructed

to draw up contracts and Bond to carry out the settlement herein reported and submit the same to the Board.

Adjourned till 8 o'clock P. M.

——oOo——

Tuesday 8 P. M. Sept. 7, 1869.

Board met pursuant to adjournment. Letter from Secretary of the Interior notifying the Company that assent of the Company of Land Grant had been filed in his office was read and ordered placed on file.

Resignation of Geo. A. Eades was read and accepted by the Board.

Report of Committee on conference with contractors was again read and discussed and the words "and subscriptions lists stricken out and adopted.

The following Resolution was offered by Mr. Lovejoy and on motion adopted.

Resolved That the Secretary of this Board be and he is hereby instructed to issue forthwith to Ben Holladay the (39,930) Thirty Nine Thousand Nine Hundred and Thirty shares of the original capital stock in the corporation the same being the number of shares not heretofore issued of the 70,000 shares originally subscribed for by Geo. L. Woods on the .... day of April A. D. 1867 for the use and benefit of the company, the said Ben Holladay having this day become the purchaser of said shares from this Company by the assumption on his part of the present indebtedness of the Company at rates agreed upon.

The following contract was read and executed.

Agreement made this 7th day of Sept A. D. 1869 between Ben Holladay & Co and I. R. Moores, S. A. Clarke, E. N. Cooke, T. McF. Patton, J. H. Moores, A. L. Lovejoy, A. F. Hedges, J. H. Douthit F. A. Chenoweth, Jacob Conser, S. B. Parrish, J. H. D. Henderson, S. Ellsworth, Geo. L. Woods, John F. Miller, J. H. Mitchell as follows to wit: The said persons of the second part herein do hereby agree to surrender up and transfer to Ben Holladay each and all the shares of stock they have in the Oregon Central Railroad Co. (save and *ac*cept one share to such of said persons which they are to reserve) and in consideration thereof the said persons do hereby agree to accept the following sums each to wit. J. R. Moores the sum of $2483.00/100, S. A. Clarke $1350.00/100, E. N. Cooke $483.00/100, T. McF. Patton 144.00/100, J. H. Moores $133.33/100, A. L. Lovejoy $602.67/100, A. F. Hedges $533.33/100, J. H. Douthitt $804.67/100, F. A. Chenoweth $533.33/100, Jacob Conser $394.50/100, S. B. Parrish $308. J. H. D. Henderson $240. S. Ellsworth $266.67/100, Geo L. Woods $64. J. H. Mitchell $3000.
in gold coin in full satisfaction of all claims and demands which each of said persons have up to this date against The Oregon Central Rail Road Company. The Same to be paid in one year from this date —each of which amounts the said Ben Holladay & Co. do hereby agree to pay to said persons respectively in one year from this date in coin without interest and

each of said persons of the second part upon the execution of this agreement by him hereby agrees to transfer and deliver to said Ben Holladay & Co. the whole amount of claims whether warrants or otherwise now held by him against the Oregon Central Railroad Company. The said Ben Holladay & Co. further hereby agree to pay a certain promissory note heretofore executed by the Oregon Central R. R. Company in favor of Ladd & Bush for the sum of Four Thousand Dollars in coin, which note is due August 6th 1870—said note is endorsed by certain of the parties above named, and shall be paid when due by said Ben Holladay & Co.

Witness the hands of the parties this 7th Sept. 1869.

(5c Rev)
(Stamp)
(Cancelled)

Witness

Geo E Cole

Ben Holladay & Co.
J. R. Moores
E. N. Cooke
J. H. D. Henderson
J. H. Douthitt
A. L. Lovejoy
A. F. Hedges
John F. Miller
S. B. Parrish
Jacob Conser
J. H. Mitchell
F. A. Chenoweth
J. H. Moores

S. Ellsworth
Geo. L. Woods
S. A. Clarke

On motion the meeting adjourned till tomorrow morning at 10 o'clock.

Approved GEO. E. COLE
I. R. MOORES Prest. Secy

——oOo——

Wednesday Sept 8th 10 A. M. 1869

The Board met pursuant to adjournment. Present same as yesterday.

Mr Douthitt moved the following Resolution which was adopted.

Resolved that each director holding subscription Books for the present as agent for the Company are to make an arrangement so far as practicable with all persons heretofore subscribing for stock to release all claim for stock to the company and to change such subscriptions into Donations and each Director is hereby prohibited from taking any further subscription from any one to *to* the stock of this Company.

On motion of Mr. Ellsworth the President of this Company was and is hereby authorized to complete any arrangements necessary to perfect and carry out the foregoing agreements.

The following was handed the Secretary for record on the Journal by S. G. Elliott.

"I hereby appoint and constitute S. G. Elliott my attorney in fact in my name place and stead to make all necessary arrangements with certain parties in Oregon, for the construction of a Railroad from Portland South through the Willamette Valley—a distance of one hundred and fifty miles, and all necessary arrangements for the early commencement of the work with full power to said S. G. Elliott as my attorney to do everything I could in the premises if personally present.

Witness my hand and seal this 20th day of March 1867.

ALBERT J. COOK

Wit

J. H. PARKER

(50c)
(R Stamp)
(Cancelled)

On motion of Mr. Conser the meeting adjourned sine die.

Approved GEO E COLE

I. R. MOORES Prest. Secretary

——oOo——

At a regular meeting of the Directors of the Oregon Central Railroad Company begun and held at Salem on Tuesday the .... day of October A. D. 1869. Present I. R. Moores President. There being no quorum present adjourned sine die.

Approved GEO E. COLE

I. R. MOORES President. Secretary

A special meeting of the Oregon Central Railroad Company was on Tuesday March 8th 1870 there were present

President I. R. Moores
Geo. L. Woods
A. F. Hedges
J. C. Hawthorne
Sam'l M. Smith
A. L. Lovejoy
and Geo. W. Weidler

at which the following resolution was unanimously adopted.

Resolved that the line of route as surveyed and platted by Chief Engineer Brooks and his assistants from the Santiam River in Section 11, Township 10 South, Range 3 West to the South line of Township 27 South, Range 6 west is hereby adopted and approved, and that the President and Chief Engineer of this company be instructed to have the corporate seal of the company attached to all necessary maps designating the line of route.

On motion the meeting adjourned sine die.

March 8th 1870 GEO E COLE

Approved Secretary

I. R. MOORES
President

——oOo——

A special call meeting held at Salem on the 14th day

of March A D 1870 the following members were present. Hon. I. R. Moores, Pres. A. L. Lovejoy, Geo. W. Weidler, Sam'l M. Smith, S. Ellsworth, J. H. Foster, F. A. Chenoweth.

Monday March 14th 1870
7 o'clock P. M.

In pursuance of personal notice given in writing personally to each of the Directors of this corporation more than ten days prior to this date, and also in pursuance of the publication for ten successive days, in the Daily Oregonian, and Daily Herald, published at Portland, in Multnomah County, State of Oregon of the following notice to-wit:

"Directors Meeting

The Directors of the Oregon Central Railroad Company of Salem, Oregon, are hereby notified that there will be a meeting of the Board at the office of the Company in Salem, Oregon, on Monday the 14th day of March A D 1870 at 7 o'clock P. M. A full attendance is requested as business of importance will come before the Board.

by order of
GEO E COLE Secretary" I. R. MOORES President

The Board of Directors met at the office of the Company in Salem, Oregon, this Monday March 14th 1870 at seven (7) o'clock P. M. present I. R. Moores President, E. N. Cooke, J. H. Moores, John F. Miller, Geo.

L. Woods, Jacob Conser, F. A. Chenoweth, S. Ellsworth, Geo. W. Weidler, S. M. Smith, A. L. Lovejoy, A. Bush and J. H. Foster. Also present Geo. E. Cole Secretary, and J. H. Mitchell attorney of the company.

The Board was called to order by the President I. R. Moores and the following resolutions were offered by S. Ellsworth and on his motion the same were unanimously adopted, all the Directors as aforesaid voting in the affirmative, in favor of their adoption, towit:

Resolved, That a meeting of the stockholders of the "Oregon Central Railroad Company" of Salem, Oregon, be and the same is hereby called to be held at the office of the Company in Salem Oregon, on Monday, the 28th day of March A. D. 1870 for the purpose of considering the propriety of, and authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its capital stock.

Resolved That the Secretary of this Company be, and he is hereby authorized and directed to give notice of such meeting and of the purpose thereof by publication of the same forten days in the following newspapers to wit: The Daily Oregonian and the Daily Herald, published at Portland Oregon and the Daily Statesman published at Salem Oregon.

On motion the Board adjourned to meet at the office of the company in Salem, Oregon on Monday, March 28th, A. D. 1870 at 6 o'clock P. M.

Approved GEO. E. COLE,
I. H. Moores Secretary.
President.

Office of the Oregon Central Railroad Company at Salem Oregon March 28th A. D. 1870 6 o'clock P. M.

Pursuant to adjournment of the Board of Directors ordered March 14th 1870 and of the call of the President on notice given the Board of Directors of the Company met at their office in Salem this March 28th 1870 at 6 o'clock P. M. present I. R. Moores President John F. Miller, A. Bush, J. H. Moores, Geo. L. Woods, J. C. Hawthorne, Geo. W. Weidler, A. L. Lovejoy, E. N. Cooke, J. H. Douthitt, Jacob Conser and James H. Foster. I. R. Moores president in the Chair, Geo. E. Cole Secretary, and J. H. Mitchell. Whereupon the following communication from the contractors Ben Holladay and Company was presented and read. That is to say:

Communication.

"Office of Ben Holladay & Co

Portland Oregon

March 28th 1870.

To the President and Directors of
The "Oregon Central Rail Road Company".

Gentlemen.

Under the following existing contracts, towit, a contract or memorandum of Agreement made the 23d day of April A. D. 1867, by and between the *"Oregon Central Rail Road Company* of the first part and A. J. Cook of the second part; also a contract or Agreement supplemental thereto, and amendatory thereof, made

and entered into between the said *"Oregon Central Rail Road Company"*, of the one part, and the said A. J. Cook or A. J. Cook and Company of the other part, the 27th day of November 1867, also a certain other contract or Articles supplementary thereto or amendatory thereof, made the 10th day of June A. D. 1868, between the *"Oregon Central Rail Road Company"*, of the one part and A. J. Cook & Co. of the other part; and also a certain other Contract or Memorandum of Agreement made the 12th day of May 1868, by and between the *"Oregon Central Rail Road Company"*, of the first part, and the firm of A. J. Cook and Company of the second part. All of which contracts and agreements original and supplemental, were on the 12th day of September A. D. 1868, by the consent and with the agreement of your Company, assigned, transferred and set over to the undersigned. The undersigned Ben Holladay and Company have constructed and equipped Twenty miles of Rail Road and Telegraph line. Commencing at East Portland and running thence Southerly and have in such work, and in further work done under such contracts and agreements, expended moneys and incurred liabilities to a large amount, that is to say, to an amount not less than Eight Hundred Thousand ($800,000.) Dollars in U. S. Gold Coin, nor more than One Million ($1,000,000.00) Dollars, the exact amount of which cannot now be stated.

That owing to the fact that ever since the undersigned purchased into such contracts, one or more actions or suits have been pending in the Courts of Oregon,

wherein the right to the use of your Corporate name has been questioned by another company, the securities and stocks of your Company received under such contracts have been rendered almost valueless, and your contractors have for such reason been prevented from negotiating the same, and from proceeding with the construction of the Rail Road commenced and partly completed. Under these circumstances we respectfully submit the following propositions for your consideration and acceptance.

First: All bonds of the *"Oregon Central Rail Road Company"*, delivered under or in pursuance of any of the contracts aforesaid, shall be surrendered up to the Company.

Second: All stocks of the *"Oregon Central Rail Road* Company", standing on its books in the name of Ben Holladay and Company, shall within one month from this date be surrendered and delivered up to your Company to be cancelled.

Third. The *Oregon Central Rail Road and Telegraph line* so far as completed, together with *an* uncompleted portions of the same, including all Rolling Stock and other property belonging thereto or connected therewith shall be surrendered up and delivered to the possession of the *"Oregon Central Rail Road Company"*. And all mills, Machine Shops, Machinery, Tools, Implements, Horses, Mules, Carts, Oxen, live stock and all property of every name and description now owned by or standing in the name of Ben Holladay and Company,

in Oregon, or in their possession, and intended for use in and about the construction of such Rail Road shall be transferred, conveyed and delivered to your company.

Fourth: The *"Oregon Central Railroad Company"*, by a resolution of the Board of Directors assume and agree to pay, or cause to be paid to Ben Holladay and Company, within two years from this date the full amount in Gold Coin of the United States of the moneys expended the liabilities incurred as aforesaid by said Ben Holladay & Co. including all expenses incurred and moneys paid by said company in defending the Corporate rights of such Corporation, and in securing and establishing its franchises, the exact amount of all which is not less than Eight Hundred Thousand ($800,000.00) Dollars, nor more than One Million ($1,000,000.00) Dollars, and shall be settled and agreed upon by a committee consisting of one member of your Board of Directors and one member of the firm of Ben Holladay & Co. and if they cannot agree, they two shall select a third as umpire, whose decision shall be final, interest to be paid on such account from date at the rate of one per cent per month.

Fifth: All such contracts and agreements hereinbefore referred to shall be cancelled by both parties.

Your early consideration of these propositions is respectfully requested at an early day, and should they meet with your approval a Resolution of your Board of Directors accepting them and agreeing to the terms proposed shall be recognized by us as an execution by both parties, of a contract between the *"Oregon Central Rail*

Road Company", and ourselves on the terms and conditions herein proposed and in such event the following endorsement shall be placed across the face of the original contracts and whereby the same shall be cancelled, and signed by both parties to wit:—

In Consideration of One Dollar paid by each of the parties hereto by the one to the other, and the receipt whereof is by each of the parties hereto hereby acknowledged, and in consideration of other valuable considerations moving from each to the other, It is hereby agreed between the *"Oregon Central Rail Road Company"*, and Ben Holladay & Co. parties to the within contract, that the within contract be and the same is hereby cancelled, set aside and held for nought.

Witness the hands of Ben Holladay & Co. and the *"Oregon Central Rail Road Company"*, by the signatures of I. R. Moores, President, and Geo. E. Cole, Secretary thereof, and the seal of said corporation attached, this March — A. D. 1870." And an agreement in writing, duly executed and stamped by the parties embodying the foregoing, shall also be entered into.

Very respectfully

BEN HOLLADAY & CO.

Whereupon J. H. Moores presented the following preamble and resolutions, which upon motion of A. L. Lovejoy, were unanimously adopted.

Whereas the following communication has been received by this company, from Ben Holladay and Com-

pany, Contractors: that is to say:

Office of Ben Holladay & Co.

Portland, Oregon

March 28th 1870.

"To the "President and Directors of the *"Oregon Central Rail Road Company"*.

Gentlemen: Under the following existing contracts, to-wit: A contract, or memorandum of agreement made the 23rd day of April A. D. 1867, by and between the *"Oregon Central Rail Road Company"* of the first part, and A. J. Cook of the second part; also a contract or agreement supplemental thereunto, and amendatory thereof, made and entered into between the said *"Oregon Central Rail Road Company"* of the one part, and the said A. J. Cook or A. J. Cook and Company of the other part, the 27th day of November A. D. 1867, also a certain other contract or Articles supplementary thereto, or amendatory thereof made the 10th day of June A. D. 1868, between the *"Oregon Central Railroad Company"* of the one part and A. J. Cook & Co. of the other part, and also a certain other contract, or memorandum of writing, made the 12th day of May A. D. 1868, by and between the *"Oregon Central Rail Road Company"* of the first part, and the firm of A. J. Cook and Company of the second part, all of which contracts and agreements original and supplementary, were, on the — day of September A. D. 1868, by the consent and with the agreement of your company, assigned, transferred and set over to the undersigned. The

undersigned Ben Holladay & Company have constructed and equipped twenty miles of rail road and telegraph line, commencing at East Portland, and running thence southerly; and have in such work and in further work done under such contracts and agreements, expended money and incurred liabilities to a large amount; That is to say, to an amount not less than Eight Hundred Thousand ($800,000.00) Dollars in United States Gold Coin; nor more than One Million ($1,000,000,00) Dollars, the exact amount of which cannot be stated. That owing to the fact, that ever since the undersigned purchased into such contracts, one or more actions or suits have been pending in the Courts of Oregon, wherein the right to the use of your Corporate name has been questioned by another company, the securities and stocks of your company received under such contracts, have been rendered almost valueless; and your contractors have, for such reason, been prevented from negotiating the same; and from proceeding with the construction of the Rail Road commenced and partly completed, Under these circumstances we respectfully submit the following proposition for your consideration and acceptance—

First: All bonds of the *"Oregon Central Rail Road Company"* delivered under or in pursuance of any of the Contracts aforesaid, shall be surrendered up to the company.

Second: All stocks of the *"Oregon Central Rail Road Company"*, standing on the books, in the name of Ben Holladay and Company, shall within one month from this date be surrendered and delivered up to your

company.

Third: The Oregon Central Rail Road and Telegraph line, so far as completed, together with the incompleted portions of the same, including all rolling stock and other property, belonging thereto, or connected therewith, shall be surrendered up and delivered to the possession of the *"Oregon Central Rail Road Company"* and all mills, machine shops, machinery, tools, implements, horses, mules, carts, oxen, live stock, and all property of every name and description now owned by, or standing in the name of Ben Holladay and Company, in Oregon, or in their possession and intended for use in and about the construction of such Rail Road, shall be transferred, conveyed, and delivered to your Company.

Fourth: The *"Oregon Central Rail Road Company"*, shall, by a resolution of the Board of Directors assume and agree to pay or cause to be paid to "Ben Holladay and Company", within two years from this date the full amount in Gold Coin of the United States of the moneys expended, the liabilities incurred as aforesaid by said Ben Holladay & Co., including all expenses incurred and money paid out by said company in defending the Corporate right of such Corporation, and in securing and establishing its franchise, the exact amount of all which is not less than Eight Hundred Thousand ($800,000.00) Dollars, nor more than One Million ($1,000,000.) Dollars, and shall be settled and agreed upon by a committee consisting of one member of your Board of Directors and one member of the firm of Ben Holladay and Company and if they cannot agree, they

two shall select a third as umpire, whose decision shall be final, interest to be paid on such amount from date, at the rate of One per cent per month.

Fifth: All the contracts and agreements hereinbefore referred to shall be cancelled by both parties.

Your early consideration of these propositions is respectfully requested at an early day: And should they meet with your approval, a resolution of your Board of Directors, accepting them and agreeing to the terms proposed, shall be recognized by us, as an execution by both parties, of a contract between the *"Oregon Central Rail Road Company"*, and ourselves, on the terms and conditions herein proposed; and in such event the following endorsement shall be placed across the face of the original contracts and whereof (by) the same shall be cancelled by both parties, towit:

In Consideration of One Dollar paid by each of the parties hereto, by the one to the other and the receipt whereof is by each of the parties hereto, hereby acknowledged and in consideration of other valuable considerations moving from each to the other: It is hereby agreed between the *"Oregon Central Rail Road Company"* and Ben Holladay and Company, parties to the within contract, that the within contract be, and the same is hereby cancelled, set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the *"Oregon Central Rail Road Company"*, by the signatures of I. R. Moores, President, and Geo. E. Cole Secretary thereof; and the seal of said corporation attached,

this March A. D. 1870." And an Agreement in writing, duly executed and stamped by the parties, embodying the foregoing, shall also be entered into.

Very respectfully

(Signed) BEN HOLLADAY & CO.

And *Whereas:* the statements contained in such communication are true:

Therefore Resolved:

That this corporation do hereby accept the propositions contained in such communication of Ben Holladay and Company:

Resolved That the Company do hereby accept and receive from said Ben Holladay and Company the Rail Road and Telegraph line of the *"Oregon Central Rail Road Company"*, so far as completed, together with all uncompleted parts—including also all the property and rolling stock, owned by such Company; including also all stock in this Company, standing on its books, in the name of Ben Holladay & Co., which stock shall be transferred, at the request of this Company—including all the property standing in the name of Ben Holladay and Co. or in their possession as stated in the foregoing communication.

Resolved: That in consideration thereof, this Company agrees to pay Ben Holladay & Co., the whole cost of construction of such road, including all costs and expenses hereinbefore referred to in such communication and the said amount of all which, shall be ascertained set-

tled and agreed upon in the manner prescribed in such communication, and the same shall be paid in United States Gold Coin, within two years from this date, together with interest from this date, at one per cent per month in like coin.

Resolved:

That all said contracts referred to in the communication aforesaid, be and the same are hereby rescinded: And the President and Secretary of this Company are hereby directed to cancel each thereof, in the manner prescribed in such communication aforesaid.

Resolved:

That the President and Secretary of this Company, be, and they are hereby instructed to enter into a written contract with said Ben Holladay & Co., on behalf of this Company, and in its name, which contract shall embody the provisions and purposes contained in these resolutions."

"The following communication from the *"Oregon and California Rail Road Company"*, was presented by the attorney of this Company, which was read, and on motion of A. L. Lovejoy was ordered spread upon the record, towit:—Communication—

Office of Oregon and California

Rail Road Company

Portland, Oregon, March 28th, 1870.

To the President, Stockholders and Board of Directors of the Oregon Central Rail Road Company of Salem,

Oregon".

Gentlemen,

I respectfully beg leave to submit for your consideration the following proposition from the *"Oregon and California Rail Road Company,"* which I do in the form of the following resolution of the Board of Directors of that corporation, passed March 26th, A. D. 1870, at the office of their Company in Portland, Oregon, to wit:—

Resolved. That the President of this Company, be, and he is hereby authorized and instructed to enter into negotiations with the *"Oregon Central Rail Road Company"*, of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the rail road of such corporation, now partly completed and in progress of construction, including all the rolling stock and other property connected therewith, and including also all the property real, personal and mixed, now owned by such *"Oregon Central Rail Road Company"*, or to which it may in anywise be entitled and including also all franchises of the said corporation which it now owns, or to which it is or may be entitled by virtue of any act, or resolution of Congress or of the Legislature of the State of Oregon:—or in any way or manner:—And for such purpose the "President of this Company", is further authorized to agree in writing in the name of this corporation, and under its seal, for such purchase by and transfer to this Company of all such property, rights and franchises upon the following terms—towit: That in considera-

tion of such conveyance, transfer and delivery to this Company, it shall agree to and with the *"Oregon Central Rail Road Company"*, its Directors and stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such *"Oregon Central Rail Road Company"*, as the same mature and become due and payable of whatever name and nature and this company shall also indemnify and forever keep harmless, the said *"Oregon Central Rail Road Company"*, from any and all such payments, and from all liability whatever, of every name and nature, for which said *"Oregon Central Rail Road Company"*, may be liable at the date of the acceptance of these propositions.

To the propositions contained in the foregoing resolution an early answer is desired.

Very respectfully

BEN HOLLADAY

President of Oregon and California

Railroad Company.

Whereupon in answer to such communication A. L. Lovejoy offered the following preamble and resolutions, which upon his motion were unanimously adopted.

Whereas The following communication has this day been received by this Company from the *"Oregon and California Rail Road Company"*, a corporation incorporated and organized at Portland, Oregon, March 17th, 1870, for the purpose of constructing a rail road and telegraph line from Portland, Oregon, southerly

through the Willamette, Umpqua and Rogue (River) Valleys to the south boundary of Oregon, in accordance with an Act of Congress approved July 25th A. D. 1866, granting lands for such purpose and amendments thereto: to-wit:

Office of Oregon and California
Rail Road Company
Portland Oregon March 28th 1870

To the President and Board of Directors of the "Oregon Central Rail Road Company", of Salem, Oregon.

Gentlemen

I respectfully beg leave to submit for your consideration the following proposition from the "Oregon and *California Rail Road Company*", which I do in the form of the following resolution of the Board of Directors of that corporation—passed March 26th A. D. 1870, at the office of their company in Portland, towit:—

Resolved: That the President of this Company, be, and he is hereby authorized and instructed to enter into negotiations with the *"Oregon Central Rail Road Company"*, of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the rail road of such corporation, now partly completed and in progress of construction, including all the rolling stock and other property connected therewith, and including also all the property real, personal and mixed, now owned by such *"Oregon Central Rail Road Company"*, or to which it may in any wise be entitled, and including also all franchises of the said corporation which it now owns, or to

which it is, or may be entitled by virtue of any Act or Resolution of Congress, or of the Legislature of the State of Oregon:—or in any way or manner, and for such purpose the President of this Company is further authorized to agree in writing in the name of this Corporation and under its seal for such purchase by and transfer to this Company of all such property, rights and franchises upon the following terms, towit: That in Consideration of such conveyance, transfer and delivery to this Company, it shall agree to and with its Directors and Stockholders to assume, and shall assume and agree to pay all the debts and liabilities of such *"Oregon Central Rail Road Company"*, as the same mature and become due and payable of whatever name and nature, and this Company shall also indemnify and forever keep harmless, the said *"Oregon Central Rail Road Company"*, from any and all such payments, and from all liability whatever, of every name and nature, for which said *"Oregon Central Rail Road Company"*, may be liable at the date of the acceptance of these propositions.

To the propositions contained in the foregoing resolution an early answer is desired.

Very respectfully

(sd) BEN HOLLADAY

President of Oregon and California Rail Road Company.

"And Whereas, This Company is today indebted in a large amount towit: In a sum not less than Eight Hundred Thousand ($800,000.00) Dollars, nor more

than Dollars in Gold Coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property and franchises owned or possessed by this Company, or to which it is in anywise entitled,

And *Whereas:* there has heretofore existed divers controversies in the Courts and there is one suit still pending of a similar nature, wherein the right of this Company to use its Corporate name, has been and is questioned by another Company, and by reason whereof the securities of this Company have been weakened, and rendered comparatively valueless—and which have prevented this Company and its contractors from negotiating the same—and from proceeding with the construction of its Rail Road, and which have resulted in this Company being driven to a cancellation of its contracts for the construction thereof—

Therefore *Resolved:* That it is the judgment of this Board that it is for the best interests of this Company and all its stockholders to accept the proposition embodied in the foregoing communication:—

Resolved: That this Company do (subject however to the approval by a majority vote of the stock of this Corporation) accept the foregoing proposition of the *"Oregon and California Rail Road Company"*,

Resolved: That the President and Secretary of this Company be and they are hereby authorized and directed to enter into an agreement in writing in the name of this Company with said *"Oregon and California Rail Road*

Company", for sale of all the property and franchises of this Corporation upon the terms embodied in the foregoing propositions, which agreement shall however be subject to the approval or disapproval of a vote of a majority of the stock in this Company, at a stockholders meeting hereafter to be held.

Whereupon, the following conveyance and contracts being executed and submitted to the Board were on motion of G. L. Woods by an unanimous vote ordered to be spread upon the secord.

Conveyance:

Know all men by these presents, that we, the undersigned Ben Holladay and Company of Portland, Oregon, in consideration of the cancellation this date by the *"Oregon Central Rail Road Company"*, at Salem, Oregon, of all certain contracts in writing heretofore existing between said company and the undersigned, in relation to the construction of a rail road and telegraph line from Portland Oregon, through the Willamette, Umpqua and Rogue River Valleys to the California line, and the agreement of such company to pay the undersigned for all moneys laid out, expended, and incurred under such contracts towit: An Amount not less than Eight Hundred Thousand Dollars in U. S. Gold Coin, it being a part of the arrangement that all the property hereinafter specified should be transferred and delivered to said Company, and in Consideration of the full sum of One Dollar to us in hand paid the receipt whereof is hereby acknowledged, have sold, assigned set

over transferred, delivered and conveyed, and by these presents, we Ben Holladay and Company do sell assign set over transfer deliver and convey unto said *"Oregon Central Rail Company"* of Salem Oregon, all saw mills and machinery connected therewith, all machinery, tools, implements, apparatus of every name and description, all live stock, horses, mules, cattle, work oxen, carts, drays, wagons, gearing-tackle and all leases and all property of every name and nature now owned by &c (&) in the possession of Ben Holladay & Co. all such property being in the State of Oregon, principally in Multnomah and Clackamas Counties, the same being the mills, machinery, tools, implements, apparatus, live stock, horses, mules, cattle, carts, drays, wagons, gearing tackle, rail-road ties, iron rail spikes and other rail road materials now and heretofore used by us in the construction of the "Oregon Central Rail Road Company". It being the intention of this conveyance to transfer to said "Oregon Central Rail Road Company" all property real and personal of every name and nature now owned or possessed by the undersigned in the State of Oregon.

To have and To Hold the said property and every part thereof unto the said "Oregon Central Rail Road Company" of Salem, Oregon, its successors and assigns absolutely and forever.

In witness whereof, we have hereto set our hands and seals this 28th day of March A. D. 1870.

BEN HOLLADAY
C. TEMPLE EMMET

(Five Cent)
(U. S. R. Stamp) By Ben Holladay
(Cancelled)

Atty in Fact
BEN HOLLADAY & CO.
By Ben Holladay

Agreement:

Memorandum of agreement entered into this 28th day of March A. D. 1870, between the *"Oregon Central Rail Road Company"*, a corporation, Incoporated at Salem, Oregon, the 22nd day of April A. D. 1867— party of the first part and Ben Holladay and Company of Portland, party of the second part:—

Whereas, the parties of the second part Ben Holladay and Company, did on the 12th day of September A. D. 1868, by and with the consent and agreement of the said *"Oregon Central Rail Road* Company", party of the first part herein, take an assignment of certain contracts in writing then existing between said party of the first part herein and one A. J. Cook, and A. J. Cook & Co. which contracts related to the construction of a Rail Road and telegraph line, from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys to the California line, and for a lateral road through Benton county, in Oregon, and for the equipment of such roads; which contracts bear date as follows: One April 23rd, 1867, between the *"Oregon Central Rail Road Company"*, and Albert J. Cook. One supplemental thereto and amendatory thereof between said *"Oregon Central Rail Road Company"*, and

said A. J. Cook or A. J. Cook & Co. dated on or about the 27th day of November A. D. 1867. Also one certain other contract or articles supp*en*tary thereto or amendatory thereof made on or about the Tenth (10th) day of June A. D. 1868, between said *"Oregon Central Rail Road Company"*, and said A. J. Cook & Co. Also a certain other contract or memorandum of agreement made the 12th day of May A. D. 1868 or thereabouts between the same parties.

And *Whereas,* The parties of the second part herein have in pursuance of such contracts completed Twenty miles of such Rail Road and Telegraph running from East Portland southerly—and have equipped the same —and have done other large amounts of work in the further construction of such road under such contracts, and the said Ben Holladay & Co. have expended in all under such contracts, and incurred liabilities in constructing such road and furnishing materials therefor, and in divers other ways and manner connected with the prosecution of such work under such contracts—including large expenses paid in litigation in defending the rights of the Company party of the first part herein, and in securing and defending its franchises and establishing its rights, and in procuring right of way amounting in all to a sum total in U. S. Gold Coin, in not less than Eight Hundred thousand ($800,000.00) Dollars, nor more One Million ($1,000,000.00) Dollars, the exact amount of which cannot now be more clearly stated, and

Whereas: Owing to certain controversies that have arisen from time to time in the Courts of Oregon, one of

which is still pending and undetermined wherein the right of (the) Corporation party of the first part herein to the use of its corporate name has been, and still is questioned by another corporation, claiming the right to such corporate name. The Stocks and Securities of the corporation, party of the first part herein have been clouded and greatly weakened, and rendered almost valueless, and wholly unsaleable in the markets.

Therefore in Consideration of the premises aforesaid and of the sum of One Dollar paid to each of the parties hereto by the one to the other, and the receipt whereof is hereby acknowledged, and of the mutual agreements of the parties hereto:—It is agreed by and between the parties hereto as follows:

First: That the parties of the second part herein shall surrender and deliver up to be cancelled to the *"Oregon Central Rail Road Company,"* party of the first part herein, all bonds of such Corporation heretofore delivered under or in pursuance of any of the contracts aforesaid.

Second: All stock of the *"Oregon Central Rail Road Company"*, standing on its books in the name of Ben Holladay and Company, or owned by such firm shall within one month from this date be surrendered and delivered up to the Corporation, party of the first part, or to such person as such Company through its Directors or Stockholders may designate to be cancelled or otherwise disposed of.

Third: "The Oregon Central Rail Road and Tele-

graph line so far as completed, together with all uncompleted portions of the same, including all rolling stock and other property belonging thereto or connected therewith, shall be and is hereby surrendered up and delivered over to the possession, ownership and control of the *"Oregon Central Rail Road Company"*, party of the first part herein.

Fourth: The *"Oregon Central Rail Road Company"*, party of the first part herein, shall pay or cause to be paid to Ben Holladay and Company within two years from this date in United States Gold Coin, together with interest therein from date at one per cent per month, the full amount of all the moneys expended and liabilities incurred as aforesaid by said Ben Holladay and Co. including all expenses incurred, and moneys paid by such company in defending *its* (the) corporate rights of the party of the first part herein, and in securing and establishing its franchises the exact sum total of all which is not now definitely known, but the same is not less than Eight Hundred thousand ($800,000.00) Dollars nor more than One Million ($1,000,000.00) Dollars, and the same shall be ascertained settled and agreed upon by I. R. Moores, President and one of the Directors of the party of the first part and Ben Holladay, one of the parties of the second part, and in case they cannot agree, they two shall select an umpire, whose decision shall be final, and the said amount shall be so ascertained and agreed upon within three months from this date.

Fifth: All the said contracts and agreements hereinbefore referred to shall be, and they are each and all of

them hereby cancelled.

Sixth: Ben Holladay and Company party of the second part herein shall, of even date with these presents, and in consideration of the agreements herein contained, make execute and deliver to the "Oregon Central Rail Road Company" party of the *second* (first) part, a conveyance and transfer of all the Mills, Machinery, ties and other Rail Road material, Horses, Mules, Oxen, tools, implements, carts, Drays, wagons now owned by Ben Holladay and Company in Oregon, and heretofore and now used in about the construction of said Rail Road; together with all other property owned by or belonging to Ben Holladay & Co. in Oregon.

In testimony whereof the *"Oregon Central Rail Road Company",* party of the first part herein has caused its corporate seal to be attached and witness also the signatures of I. R. Moores its President; and Geo. E. Cole its Secretary—also witness the hands of Ben Holladay and Company—party of the second part herein.

Oregon Central Rail Road Company
By I. R. MOORES

(Ten cents) (Seal of) President
(U. S. R. R. S.) (Corporation)
(Cancelled) (attached)

Oregon Central Rail Road Company
By GEO. E. COLE
Secretary

Witness Present BEN HOLLADAY & CO.
A. G. CUNNINGHAM By BEN HOLLADAY

Agreement:

Articles of Agreement made and entered into this 28th day of March A. D. 1870, between the *"Oregon Central Rail Road Company"*, a corporation incorporated at Salem on the 22nd day of April A. D. 1867, under the General Incorporation laws of the State of Oregon, and amendments thereto, party of the first part, and the *"Oregon and California Rail Road Company"*, a corporation incorporated at Portland Oregon, on the 17th day of March A. D. 1870, under the laws of Oregon aforesaid party of the second part.

Whereas: The party of the first part herein is the owner of the Oregon Central Rail Road partly completed and in course of construction and rolling stock and other valuable property and franchises, including all the rights, privileges, benefits, franchises and immunities granted and conferred on the Oregon Company by an Act approved July 25th 1866 entitled "An Act granting lands to aid in the construction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" approved July 25th A. D. 1866 and amendments thereto:

And *Whereas:* Said *Oregon Central Rail Road Company"* party of the first part herein, is largely indebted to divers persons, but principally to Ben Holladay and Company in an amount not less than Eight Hundred $800,000.00) Dollars nor more than ..... Dollars the exact amount of which it to be hereafter ascertained.

And *Whereas:* It has been agreed as will more fully appear by the following communication and propositions presented to the *"Oregon Central Rail Road Company"*, party of the first part herein by the *"Oregon and California Rail Road Company"*, party of the second part herein, and the Resolution of the Board of Directors of the said *"Oregon Central Rail Road Company"*, party of the first part in answer thereto that the said *"Oregon Central Rail Road Company"*, party of the first part, shall sell and convey unto the said *"Oregon and California Rail Road Company"*, party of the second part, all the Rail Road and other property, both personal and real, and all the rights franchises, privileges and property whatsoever of every name, nature and character, in consideration of an Agreement upon the part of the *"Oregon and California Rail Road Company,"* to assume and pay as they may mature and become due all the debts and liabilities of every name and nature of the said *"Oregon Central Rail Road Company,"* and the further agreement to forever save indemnify and keep harmless the said *"Oregon Central Rail Road Company"*, and its stockholders and Directors from all such debts and liabilities, which communication and proposition so made as aforesaid are as follows:

Office of Oregon and California
Rail Road Company

Portland, Oregon, March 28th, 1870.

To the President and Board of Directors of the "Oregon Central Rail Road Company" of Salem, Oregon.

Gentlemen

I respectfully beg leave to submit for your consideration the following proposition from the *"Oregon and California Rail Road Company,"* which I do in the form of the following resolution of the Board of Directors of that Corporation passed March 26th A. D. 1870, at the office of their Company in Portland, Oregon towit:

Resolved. That the President of this Company be and he is hereby authorized and instructed to enter into negotiations with the *"Oregon Central Rail Road Company"*, of Salem Oregon, Incorporated April 22nd, 1867, for the purchase by this Company of the Rail Road of such Corporation now partly completed and in progress of construction, including all its Rolling Stock and other property connected therewith and including also all the property real personal and mixed, now owned by such *"Oregon Central Rail Road Company", or to which* it may in anywise be entitled, and including also all franchises of the said Corporation, which it now owns, or to which it is, or may be entitled by virtue of any Act or Resolution of Congress, or of the Legislature of the State of Oregon, or in any other way or manner, and for such purpose the President of this Company is further authorized to agree in writing in the name of this Corporation and under its seal, for the purchase by and transfer to this Company of all such property rights and franchises upon the following terms towit: That in Consideration of such conveyance, transfer and delivery

to this Company, it shall agree to and with said *"Oregon Central Rail Road Company"*, and to and with its Directors and Stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such *"Oregon Central Rail Road Company"*, as the same mature and become due and payable of whatsoever name and nature, and this company shall also indemnify, save and keep harmless the said *"Oregon Central Rail Road Company"*, from any and all such payments and from all liability whatever of every name and nature for which said *"Oregon Central Rail Road Company"* may be liable at the date of the acceptance of these propositions."

And *Whereas*. In response to the foregoing communication the said *"Oregon Central Rail Road Company"*, did on the 28th day of March A. D. 1870, by the Board of Directors adopt the following resolution, towit:

Whereas the following communication has this day been received by this company from the *"Oregon and California Rail Road Company"*, a corporation incorporated and organized at Portland, Oregon, March 17, 1870, for the purpose of constructing a Rail Road and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue (River) Valleys to the south boundary of Oregon, in accordance with an Act of Congress approved July 25th A. D. 1866, granting lands for such purpose and amendments thereto:—

Towit:

Office of Oregon and California
Rail Road Company

Portland Oregon
March 28th 1870.

To The President and Board of Directors of the "Oregon Central Rail Road Company".
Gentlemen.

I respectfully beg leave to submit for your consideration the following proposition from the *"Oregon and California Rail Road Company"*, which I do in the form of the following Resolution of the Board of Directors of that corporation, passed March 26th A. D. 1870, at the office of their company in Portland, towit:

Resolved: That the President of this Company be, and he is hereby authorized and instructed to enter into negotiations with the *"Oregon Central Rail Road Company"*, of Salem, Oregon, Incorporated April 22nd 1867, for the purchase by this Company of the Rail Road of such corporation, now partly completed and in progress of construction, including all the rolling stock and other property connected therewith, and including also all the property real, personal and mixed, now owned by such *"Oregon Central Rail Road Company"*, or to which it may in any wise be entitled and including also all franchises of said corporation, which it now owns, or to which it is or may be entitled by virtue of any (Act or) resolution of Congress or of the Legislature of the State of Oregon, or in any way or manner, and for such purpose the President of this Company is further

authorized to agree in writing, in the name of this Corporation, and under its seal for such *purpose* (Purchase) by and transfer to this company of all such property, rights and franchises, upon the following terms, towit: That in Consideration of such conveyance, transfer and delivery to this Company, it shall agree and with its Directors and Stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such *"Oregon Central Rail Road Company"*, as they mature and become due and payable of whatever name and nature, and this Company shall also indemnify and forever keep harmless the said *"Oregon Central Rail Road Company"*, from any and all such payments, and from all liability whatever of every name and nature, for which said *"Oregon Central Rail Road Company"*, may be liable at the date of the acceptance of these propositions.

To the propositions contained in the foregoing Resolution, an early answer is desired.

Very respectfully

(sd) BEN HOLLADAY

President of Oregon and California

Rail Road Company.

And *Whereas*: This Company is today indebted in a large amount, towit: In a sum not less than Eight Hundred thousand ($800,000.00) Dollars, nor more that ———— Dollars, in Gold Coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property

and franchises owned or possessed by this Company, or to which it is anywise entitled.

And *Whereas*: There has heretofore existed divers controversies in the Courts and there is one suit still pending of a similar nature, wherein the right of this company to use its corporate name has been and is questioned by another company, and by reason whereof the securities of this company have been weakened and rendered comparatively valueless, and which have prevented this company and its contractors from negotiating the same, and from proceeding with the construction of its Rail Road and which have resulted in this company being driven to a cancellation of its contracts for the construction thereof:

Therefore *Resolved*: That it is the judgment of this Board that it is for the best interests of this company and all of its stockholders to accept the proposition embodied in the foregoing communication:

Resolved:—That this Company do (subject however to approval by a majority vote of the stock of this corporation,) accept the foregoing proposition of the *Oregon and California Rail Road Company.*"

Resolved:—That the President and Secretary of this Company, be, and they are hereby authorized and directed to enter into an Agreement in writing, in the name of this Company, with said *"Oregon and California Rail Road Company,"* for a sale of all the property and franchises of this corporation, upon the terms embodied in the foregoing propositions, which agree-

ment shall however be subject to the approval, or disapproval of a vote of a majority of the stock in this Company at a stockholders meeting hereinafter to be held.

"Therefore in Consideration of the premises and of the valuable considerations moving from one to the other as hereinbefore stated,

The said *"Oregon Central RailRoad Company"*, party of the first part does hereby sell and agree to convey within one week from this date to the *"Oregon and California Rail Road Company"*, party of the second part herein.

The whole of the Oregon Central Rail Road and telegraph line, and all the rolling stock of such road, and also all the property both real and personal and mixed now owned by the *"Oregon Central Rail Road Company"*, of whatever name and nature. And all the rights of way, privileges, franchises and interests whatsoever, both legal and equitable, which the said corporation party of the first part herein, now has or owns and especially all the lands, rights, franchises, privileges, emoluments and benefits whatever, which the *"Oregon Central Rail Road Company"*, party of the first part herein now has, or owns, or to which it is or may be entitled either legally or equitably by virtue of the Acts of Congress aforesaid, or either or any of them, or of any other Act of Congress, or of any Act or Resolution of the Legislature of the State of Oregon, or of the decision of any of the Federal or State Departments or of the Federal or State Courts.

In consideration whereof, the said *Oregon and California Rail Road Company"*, party of the second part herein, hereby covenants and agrees to and with the said *"Oregon Central Rail Road Company"*, party of the first part, to assume and agrees to pay, and it does hereby assume and agree to pay to whomsoever owing, or may hereafter be due or owing, whenever the same becomes due and payable, all of the debts, obligations and liabilities whatsoever of the said *"Oregon Central Rail Road Company"*, of whatsoever name, nature or amount, and in the Gold Coin of the United States, and the *"Oregon and California Rail Road Company"*, does further hereby covenant and agree to and with the *"Oregon Central Rail Road Company"*, party of the first part, to indemnify and forever save and keep harmless the said *"Oregon Central Rail Road Company"*, against the payment at any time hereafter of any claim or claims, demand or demands that now exist, or which may at any time hereafter arise, or come against such last named corporation, and against all loss, expenses, costs, disbursements and damages whatsoever, which the party of the first part may at any time hereafter be called upon to incur or pay, by reason of any such claims or demands.

In testimony whereof, the parties hereto *"The Oregon Central Rail Road Company"*, party of the first part, by and through its President I. R. Moores and Geo E. Cole, Secretary, and the *"Oregon and California Rail Road Company"*, party of the second part by and through its President Ben Holladay and its Secretary,

A. G. Cnuningham, all of such officers being hereunto duly authorized and empowered as aforesaid, have each caused their names together with the signatures of the said officers respectively to be hereto subscribed and their corporate seals attached this 28th day of March A. D. 1870.

(Seal of)
(Corporation)
(attached)
(Twenty)
(cents)
(U. S. R. S.)
(Cancelled)
(Seal of)
(Corporation)
(attached)

Oregon Central Rail Road Company
By I. R. Moores
President.

Oregon Central Rail Road Company
By Geo. E. Cole
Secretary.

Oregon and California
Rail Road Company
By Ben Holladay
President

Oregon and California
Rail Road Company
By A. G. Cunningham
Secy.

Whereupon on motion of J. F. Miller said conveyance was accepted, and said contracts were ratified, and on motion of Geo. L. Woods a recess was taken until tomorrow afternoon 4 P. M. March 29th 1870.

GEO. E. COLE
Secretary

I. R. MOORES
President

—oOo—

Office Oregon Central Rail Road Company—Salem, Oregon,

March 28th 1870 (7) o'clock P. M.

Pursuant to an order of the Board of Directors of this Company made March 14th, 1870, calling a meeting of the stockholders of this company to meet at their office on this March 28th A. D. 1870, at seven o'clock P. M. and declaring its purpose thereof, and of notice duly given by publication in the Daily Oregonian and Daily Herald, published at Portland, Oregon, and in the Daily Statesman, Published at Salem, Oregon, for ten successive days prior to this date, as required by such order. The stockholders of this company met at the office of the Company in Salem Oregon, this March 28th 1870, at 7 o'clock P. M. The following stockholders being present towit:

Ben Holladay and Company represented by Ben Holladay and such firms owning and representing and owning as per stock books of the company Fifty thousand one Hundred and Sixty one (50,161) shares of the

common stock and 14,500 shares of Prefered interest bearing stock. Also the following named stockholders each in person and representing and owning as appears by the stock books of the company one share each of the common stock to-wit: J. H. Moores, J. H. Douthit, I. B. Moores, E. N. Cook, Jacob Conser, A. L. Lovejoy, Geo L. Woods, John F. Miller, Geo. W. Weidler, J. H. Foster, A. Bush, J. C. Hawthorne and Geo. E. Cole.

On motion of J. F. Miller it was unanimously resolved that the action of the Board of Directors of this company in cancelling all contracts existing between this company and Ben Holladay and Company for the construction of its Rail Road, be, and the same is hereby ratified and confirmed.

Geo. L. Woods presented the following Resolutions which were on his motion unanimously adopted by a vote of all the stock present, the vote being by ballot, J. H. Moores and J. F. Miller were appointed tellers, and the same resulted as follows: The Secretary also acting as teller, and the President I. R. Moores as inspector and who certified the result as follows. Ben Holladay & Co. by Ben Holladay voted in the affirmative Fifty thousand one Hundred and Sixty one votes (50,-161), being one vote for each share of the common stock held by Ben Holladay & Co.

And each of the following stockholders voted in the affirmative each casting one vote for the share so held by him as aforesaid towit: J. H. Moores, J. H. Douthitt, I. R. Moores, E. N. Cooke, Jacob Conser, A. L.

Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidler, J. H. Foster, A. Bush, J. C. Hawthorne and Geo. E. Cole. There being no votes in the negative, whereupon such resolutions having received the unanimous vote of all the stockholders present and such vote being over two thirds of the whole capital stock of this corporation, the Resolutions aforesaid were declared by the President adopted.

Said Resolution being as follows:

Whereas: the Directors of this corporation did at a meeting of their Board regularly called for such purpose, and held at the office of the Company, in Salem, Oregon, on the 14th day of March A. D. 1870, by a unanimous vote adopt the following resolutions:

"Resolved, that a meeting of the stockholders of *"The Oregon Central Rail Road Company"*, of Salem, Oregon be and the same is hereby called to be held, at the office of the Company, in Salem, Oregon, on Monday, the 28th day of March, A. D. 1870 at seven (7) o'clock P. M. for the purpose of considering the propriety of authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its Capitol stock;"

"Resolved that the Secretary of this Company, be, and he is hereby authorized and directed to give notice of such meeting, and of the purpose thereof, by publication of the same for ten days, in the following Daily Newspapers, towit: The Daily Oregonian and the Daily Herald, published at Portland, Oregon, and the

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Daily Statesman, published at Salem, Oregon:" And

Whereas, in pursuance of such order of the Board of Directors, the following notice was duly published as prescribed by such Board of Directors, by the Secretary of this corporation, for the period of ten days, in each of the following named newspapers towit: The Daily Oregonian and The Daily Herald of Portland, Oregon, and the Daily Statesman of Salem, Oregon.

"Notice to Stockholders of the *"Oregon Central Rail Road Company"*, of Salem, Oregon.

At a regular meeting of the Board of Directors of the *"Oregon Central Rail Road Company"*, of Salem, Oregon, on the 14th day of March A. D. 1870, the following resolution was unanimously adopted, towit:

"Resolved—That a meeting of the stockholders of the *"Oregon Central Rail Road Company"*, of Salem, Oregon, be, and the same is hereby called, to be held at the office of the Company, in Salem, Oregon, on Monday, the 28th day of March A. D. 1870, at seven (7) o'clock P. M. for the purpose of determining the propriety of and authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its Capital Stock."

"Therefore all Stockholders in the *"Oregon Central Rail Road Company"*, of Salem, Oregon, are hereby notified and requested to appear at the office of such company," in Salem, Oregon, on Monday, the 28th day of March A. D. 1870, at seven (7) o'clock P. M. , for the purpose of attending to the transaction of the busi-

ness specified in the foregoing Resolution.

By order of the Board of Directors,"—

(signed) I. R. Moores

"Geo. E. Cole President

Secreary." Oregon Central Railroad Company"

And whereas, in pursuance of such call of the Board of Directors, and such notice, there are now here present, the following named stockholders in this corporation, each holding, owning and representing the number of shares of stock, in this corporation, as hereinafter specified, and constituting in all, more than two thirds of the whole Capital Stock of this Corporation, towit: Ben Holladay and Company are the owners and holders of Sixty-four thousand six Hundred and Sixty-one (64,661) shares of such stock, that is to say, Fourteen thousand five hundred (14,500) shares of what is known as preferred interest bearing stock and Fifty thousand one hundred and Sixty-one (50,161) shares of the common stock, J. H. Douthit the owner of one share, and each of the following named stockholders, each of w hom owns and represents one share that is to say. J. H. Moores, I. R. Moores, E. N. Cook, A. L. Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidler, A Bush, J. C. Hawthorne, Geo. E. Cole

And Whereas: A corporation has been duly incorporated and organized, under the general incorporation law of this State and the amendments thereto, for the purpose of constructing and operating a Rail Road and Telegraph line from Portland, Oregon, Southerly

through the Willamette, Umpqua and Rogue (River) Valleys, to the California line, on the Southern boundary of Oregon; which corporation has been organized by stockholders herein, representing and controlling over two thirds of the wholecapital stock hereof; and for the *Sold* purpose of carrying out to successful completion, the enterprise for which this corporation was originally formed. The reason for the formation of such new corporation being to avoid the embarrassments and impediments, constantly being thrown in the way of this enterprise, by certain persons who claim, falsely, to be a corporation, under the laws of Oregon, under the name of the *"Oregon Central Rail Road Company"*, and who have heretofore disputed and still are disputing the right of this corporation, to the use of such name; and although such claim, upon the part of such alleged corporation, is, and ever has been, illegal, inequitable, unjust and based upon a gross fraud: and although such alleged corporation has heretofore uniformly failed, in its attempts in Courts to restrain by legal process, our use of such name; and while we believe that all future attempts will be met, by like results, yet we are conscious of the fact that such persons who claim to be such corporation, have not only the disposition, but the power by vexatious actions and suits, in divers Courts, wherein the right to the use of our Corporate name may be questioned, to annoy and harass this corporation, and embarrass its operations, impede the construction of its enterprise, weaken and cloud its securities and injure its credit.

And whereas. In Consideration of the premises, it is deemed advisable by the stockholders, hereinbefore mentioned, and all now present, to dissolve this company and settle up its business, and sell, dispose of, assign, transfer and convey unto the said *"Oregon and California Rail Road Company"*. Such being the name of the corporation, so formed as aforesaid, all theproperty, real, personal and mixed, and all the franchises, rights, credits, privileges and emoluments of whatsoever name and nature, owned by, or in any wise belonging to this corporation as per terms of a written agreement between the two corporations for such purchase, dated the..... day of March, A. D. 1870. *Therefore*

Resolved:

That the *"Oregon Central Rail Road Company"* of Salem, Oregon, incorporated April 22nd, 1867, be, and thesame is hereby dissolved, to take effect upon the settlement of its business, and the sale, transfer and co nveyance of its property and franchises as hereinafter specified;

Resolved:

That the President and Secretary of this corporation, be, and they are hereby authorized empowered and directed, to immediately and as soon as practicable, settle all the business of this corporation.

And Whereas,

This corporation has, in and for the consideration of the within covenants and agreements upon the part of the *"Oregon and California Rail Road Company"*,

to pay all the debts, demands, and liabilities of this company, of every name or nature, as the same mature and become due; and in and for the further consideration of the covenants of such corporation, to forever save, indemnify and keep harmless this company from all claims and demands whatsoever: bargained and sold to such *"Oregon and California Rail Road Company"*, all the property real and personal, rights and franchises, credits and interests, legal and equitable, determined, absolute, and contingent, of every name and nature, now owned by, or belonging to this corporation.

Therefore Resolved Further:

That the written contract heretofore entered into between this company and the said *"Oregon and California Rail Road Company"*, for the sale and transfer of all the property of this company, to such corporation, be, and the same is hereby ratified and confirmed: And that I. R. Moores, present President of this corporation, and Geo. E. Cole, present Secreary thereof, in consideration of the covenants and agreements aforesaid, on the part of said *"Oregon and California Rail Road Company"*, to pay all the debts and liabilities of this company of every name and nature, be, and they are hereby authorized and empowered and directed, for this corporation and in its corporate name and as its President and Secretary, and under its corporate seal and for the use and benefit of its stockholders, to sell, assign, transfer, set over, convey and deliver to the said *"Oregon and California Rail Road Company"*, of Portland, Oregon, all the property, real, personal and mixed of

whatsoever name and nature, both legal and equitable, absolute and contingent, and all donations, rights, credits, accounts and interests whatever, now owned by, or in any wise belonging to this corporation, and all franchises and interests whatever by it possessed or owned: And especially to sell, assign, transfer, set over and convey, in the name of this corporation, to-wit:—The *"Oregon Central Rail Road Company"* and under its corporate seal, unto the said *"Oregon and California Rail Road Company"*, of Portland, Oregon, its successors and assigns, all the lands, rights, title, franchise, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which this corporation the *"Oregon Central Rail Road Company"*, of Salem, Oregon, now has, owns or possesses, or to which it is now of right entitled, either legally or equitably, or to which it may, at any time hereafter become entitled, in and to the franchise and grant of lands made by the Congress of the United States to aid in the construction of a Railroad and Telegraph line from the Central Pacific Rail Road, in California, to Portland in Oregon, by an Act entitled *"An Act granting lands to aid in the construction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon"*, approved July 25th, 1866. And amendments thereto. This corporation havingbeen duly designated by the Legislature of Oregon, in pursuance of the requirements of such Act of Congress, with full power and authority to include in such sale, assignment, transfer and co nveyance

all right, title and interest of every name and nature, which this corporation now has, or to which it is either legally or equitably entitled, or at any time hereafter may be either in whole or in part, to the ownership, management or control of the lands, franchises, and benefits granted or conferred by such Act of Congress and amendments thereto.

And Whereas:

The present indebtedness of this Company exceeds the sum of Eight Hundred Thousand ($800,000.00) Dollars, in U. S. Gold Coin, the whole of which amount, said *"Oregon and California Rail Road Company"* have assumed and agreed to pay and to forever save, indemnify and keep harmless this company against all liability and damages by reason thereof, in consideration of this transfer and sale to said corporation of all the property and corporate franchises of this corporation.

And Whereas:

It is the judgment of this meeting that the assumption of such indebtedness is a full, complete and adequate consideration for all the property and corporate rights and franchises of this company hereby directed to be transferred and conveyed, and that the best interests of the stockholders herein, are subserved by the cancellation of the said indebtedness:

And Whereas:

Therebeing no money or property whatever to appropriate among the several stockholders of this company after the disposal of its property, and the pay-

ment of its liabilities as aforesaid: And the business of this company being about to finally suspend:

Therefore Resolved: That the whole capital stock of this corporation, both preferred interest bearing and common stock, be, and the same is hereby cancelled, and the holders thereof are hereby directed to surrender the certificates thereof to the Secretary of this corporation; and such Secretary is hereby directed to cancel each certificate, by writing in red ink across the face of each thereof, the words:—

"Surrendered and cancelled by order of a Resolution of the Stockholders"; adding thereto the date, and his name, and title of office.

And Resolved:

That from and after the date of the delivery of such deed of conveyance, assignment and transfer to the *said "Oregon and California Rail Road Co*mpany", this corporation towit: The *"Oregon Central Rail Road Company"* of Salem Oregon, shall be dissolved.

And *Whereas*:

The Two Million Dollars of what is called preferred interest bearing st ock heretofore issued by this Company and which stands upon the stock books of this Company in the following amounts, in the names of the following parties, to;wit:

A. J. Cooke 5,400 shares—representing $540,000.00—
N. P. Perrine 100 shares, represenitng $10,000.00—
Ben Holladay and Co. 14,500 shares, representing

$1,450,000.00—was issued illegally and without any authority of law, and without any consideration whatever and—

Whereas: No part of such preferred interest bearing stock has ever yet been paid in.

Therefore Resolved: That all said preferred interest bearing stock is hereby declared void and cancelled, and the holders of the certificates thereof are hereby requested to surrender the same up to the Secretary of the Board of Directors of this Company to be so mar ked cancelled, and such Secretary is hereby directed to cancel the same.

On motion of J. C. Hawthorne, the stockholders meeting took a recess until 3 o'clock P. M. tomorrow afternoon, March 29, 1870, in order that the record might be made up, and for the transaction of any other business that may come before them.

Geo. E. Cole
Secreary.

I. R. Moores
President

Office of "Oregon Central Rail Road Company", Salem, Oregon, March 29th, 1870, 3 o'clock P. M. Pursuant to adjournment of the Board of Stockholders on yesterday: The Board met at the office of the Company at Salem, Oregon, March 29th, 1870, at 3 o'clock P. M. Present the same stockholders and amount of stock represented as onyesterday: Also the same officers as on yesterday. I. R. Moores President in the Chair, and Geo. E. Cole Secretary.

Whereupon, the minutes of the stockholders meeting of yesterday being read were on motion of J. C. Hawthorne unanimously approved by a vote of all the stock present.

Whereupon, on motion of A. L. Lovejoy the stockholders meeting adjourned *sine die*.

Geo. E. Cole
Secretary.

I. R. Moores
President

Office of "Oregon Central Rail Road Company",
Salem, Oregon.

Tuesday March 29th 1870, 4 o'clock P. M.

Pursuant to recess taken by the Board of Directors on yesterday, the Board met at the office of the Company at Salem, Oregon, this March 29th 1870, at 4 o'clock P. M.

Present I. R. Moores President in the chair, and Geo. E. Cole, Secretary, also present the following Directors towit:—

I. R. Moores, John F. Miller, E. N. Cook, J. H. Moores, Asahel Bush, J. H. Foster, Jacob Conser, J. C. Hawthorne, Geo. W. Weidler, A. L. Lovejoy, J. H. Douthitt and Geo. L. Woods.

The Record of the meeting of the Board on yesterday was read by the Secretary.

Whereupon on motion of J. C. Hawthorne, such record was unanimously approved.

John F. Miller offered the following resolution

which on his motion was unanimously adopted:—

Resolved

That J. L. Parrish and C. N. Terry Trustees for the Bondholders in this company in the mortgage heret ofore issued by this company, be, and they are hereby requested to cancel of record in the several Counties of this State, the said mortgage heretofore made by this company on its rail road and rolling stock, upon the surrender to them for this company, or to this company, of all the bonds heretofore issued by this Corporation together with coupons attached: and

Resolved Further.

That upon surrender of any or all such bonds, to this company, the present Secreary of this Company, shall endorse on each thereof these words in red ink, whereby the same shall be cancelled.

Towit:

"Cancelled this ..... day of ..... A. D. 1870, by order of the Board of Directors passed March 28th, 1870" and shall sign his name and title of office thereto. And he shall file such bonds among the archives of this company.

"Whereupon on motion of Jacob Conser the following resolutions were unanimously adopted.

Whereas. At stockholders meeting of this Company legally called and held at the office of the Company in Salem, Oregon, on the twenty-eighth (28th) day of March A. D. 1870, which meeting was duly called

for such purpose as provided by law, such stockholders by a vote of over two-thirds (2/3) of the whole capital stock in this company unanimously adopted resolutions authorizing the dissolution of this corporation, the settling of its business, disposing of its property, and dividingof its capital stock, which resolutions are spread at length on the record of this company as a part of the proceedings of such stockholders meeting, reference being thereunto had will more fully appear. And *Whereas,* it is the judgment of this Board that the best interests of this company and of all the stockholders herein, will be subserved by a dissolution of this company, the settlement of its business, and disposition of its capital stock in the manner provided in any by the resolutions of the stockholders as aforesaid:—

Therefore Resolved:

That this corporation, the *"Oregon Central Rail Road Company"*, of Salem, Oregon, incorporated April 22nd, 1867, be and the same is hereby dissolved upon the terms and in the manner as prescribed in the said resolutions of the stockholders aforesaid, and the President and Secreary of this Board are hereby directed to dispose of the property of this company, and settle its business, and dispose of its stock in the manner provided for in and by said resolutions of the stockholders.

Resolved: That all the proceedings of such stockholders meeting of March 28th A. D. 1870, be and the same are hereby endorsed, ratified and confirmed, and the President and Secretary of this Board, be, and they are hereby directed to excute all the suggestions and

directions of such stockholders meeting in the nameof this company, as therein set forth.

"Whereupon on motion of Geo. W. Weidler the following resolution was unanimously adopted:"

"Resolved, that I. R. Moores President and Geo. E. Cole Secretary of this Company be, and they are hereby authorized and directed to make, execute and deliver to the *"Oregon and California Rail Road Company"*, of Portland, Oregon, in the nameof this corporation and under its corporate seal and under their signatures as such President and Secretary a good and sufficient deed of conveyance of all the property and franchises of this company of whatever name and nature, real personal and mixed, and of all its rights, credits and interests whatsoever, in accordance with the contract entered into with such corporation for such sale, assignment transfer and conveyance, and in accordance with the resolution of the stockholders of this corporation, adopted this 28th day of March A. D. 1870, affirming such sale and directing such conveyance.

J. H. Moores offered the following resolution which on his motion was unanimously adopted.

Resolved, that the President and Secretary of this Company be and they are hereby instructed to communicate to the Secreary of the Interior ", the fact that this Company has sold, assigned, transferred and conveyed to the *"Oregon and California Rail Road Company,"* of Portland, Oregon, all its right, title and interest, in and to the lands, franchises and benefits granted

to the "*Oregon* Company by the *Act of Congress of July 25th* 1866, *and amendments thereto, granting lands to aid in the construction of a rail road and telegraph line from the Central Pacific Rail Road in California to Portland in Oregon.*

Whereupon on motion of Geo. L. Woods the Directors Meeting adjourned sine die.

Geo. E. Cole
Secretary.

I. R. Moores
President

GOVERNMENT'S EXHIBIT 100-B

O. C. R. R. CO.
Salem.

STOCK BOOK

Records and Minutes of the
Oregon Central Railroad Company

STOCK BOOK

Capital Stock $7,250,000.00.
Number of Shares 72,500.
Amount of each Share $100.00

Salem, Oregon. April 22, 1867.

We the undersigned with the understanding and upon the express condition that we assume no personal liability over and above the amounts individually and respectively subscribed, above and beyond which we are

not to be held responsible, do subscribe to the Capital Stock of the Oregon Central Railroad Company the number of shares and the amounts of money for which the same call as expressed opposite to our respective signatures.

(five-five cent stamps)

Subscribers Names	No. of Shares	Amount
April 22, 1867		
Geo. L. Woods	One Share	$100.00
I. R. Moores	" "	100.00
S. A. Clarke	" "	100.00
John A. Moores	" "	100.00
J. S. Smith,pr I. R. Moores, Atty	" "	100.00
E. N. Cooke pr I. R. Moores	" "	100.00
Oregon Central Railroad Co., By Geo.L.Woods, Chairman,	Seventy Thousand Shares	$7,000,000

On the 23 of April 1867 By order of the Company the sum of two millions of dollars of the said $7,000,000 was transferred to A. J. Cook, as preferred stock paid him on account of contract. Being 20,000 shares

S. A. Clarke, Secretary
O.C.R.R.Co.

The above transfer is accepted by us. A.J.Cook & Co.

(Nine five cent stamps)

April 25th 1867

		F. A. Chenoweth	One Share	$100.00
April	26"	T. McF. Patton	One Share	100.00
Apr.	30	W. A. McPherson	One Share	100.00
May	12th	I. H. D. Henderson	One Share	$100.00
April	23	S. Ellsworth	One Share	$100.00
1868				
March	12	J. H. Mitchell	One Share	$100.00
1868				
March	24	Phil Wasserman	One Share	$100.00
1868				
March	24	S. F. Chadwick	One Share	100.00
		A. M. Loryea		100.00
		A. L. Lovejoy	One Share	100.00
		Jacob Conser		100.00
		John F. Miller	One Share	100.00
1868				
March	24th	John E. Ross	One Share	100.00
"	"	J. H. Douthit	One Share	100.00

(Five five-cent stamps)

	H.Boyd	One Share	
	S. B. Parrish	One Share	
	A. F. Hedges	One Share	100.00
	Green B. Smith	One Share	100.00

Mr. Smiths Subscription is to be deducted from the

amount heretofore subscribed from him.

(four-five cent stamps one-three and one-two cent stamp)

April 6, 1869

"	Sam M. Smith	One	Share	100.00
"	Geo. M. Weidler	"	"	100.00
"	J. C. Hawthorne	"	"	100.00
"	A. Bush	"	"	100.00
"	James H. Footes	"	"	100.00
"	Geo. E. Coles	"	"	100.00
	Geo. A. Edes	"	"	100.00

(Six-five cent stamps)

LIST OF THE PREFERRED STOCK

($2,000,000.00)

Oregon Central Railroad Company

Issued April 1867 to Albert J. Cook

Preferred Stock issued to Albert J. Cooke April 23, 1867

No.	Registered No.	No. of Shares	Amount
1	1057	1,000	100,000
5	1059	1,000	100,000
2	1060	1,000	100,000
9	1061	1,000	100,000
7	1058	1,000	100,000
8	1056	1,000	100,000
4	1055	1,000	100,000

No.	Registered No.	No. of Shares	Amount
6	1054	1,000	100,000
10	1053	1,000	100,000
8	1052	1,000	100,000
30	3732	500	50,000
23	3739	500	50,000
15	3740	500	50,000
27	3746	500	50,000
13	3748	500	50,000
29	3753	500	50,000
28	37472	500	50,000
24	3743	500	50,000
26	3741	500	50,000
12	3742	500	50,000
55	7229	100	10,000
57	7226	100	10,000
56	7228	100	10,000
54	7227	100	10,000
58	7224	100	10,000
53	7225	100	10,000
51	7221	100	10,000
52	7223	100	10,000
59	7222	100	10,000
74	7220	100	10,000
50	7219	100	10,000
75	7218	100	10,000
49	7217	100	10,000
76	7216	100	10,000
48	7215	100	10,000
77	7214	100	10,000

No.	Registered No.	No. of Shares	Amount
47	7213	100	10,000
78	7212	100	10,000
46	7211	100	10,000
43	7205	100	10,000
79	7210	100	10,000
45	7209	100	10,000
80	7208	100	10,000
44	7207	100	10,000
60	7206	100	10,000
61	7204	100	10,000
42	7203	100	10,000
62	7202	100	10,000
41	7201	100	10,000
63	7200	100	10,000
40	7199	100	10,000
64	7198	100	10,000
39	7197	100	10,000
65	7196	100	10,000
38	7195	100	10,000
66	7194	100	10,000
37	7193	100	10,000
67	7192	100	10,000
36	7191	100	10,000
68	7190	100	10,000
35	7189	100	10,000
69	7188	100	10,000
34	7187	100	10,000
70	7186	100	10,000
33	7185	100	10,000

No.	Registered No.		No. of Shares	Amount
71	7184		100	10,000
32	7183		100	10,000
72	7182		100	10,000
31	7181		100	10,000
73	7180		100	10,000
81	4133	In lieu of No. 23	300	30,000
82	4136	Mar. 3rd, 68	100	10,000
83	4137		100	10,000
84	4139	N. P. Perrine	50	5,000
85	4143		50	5,000
86	4141		50	5,000
87	4144		50	5,000
88	4142		50	5,000
89	4146	In place of	50	5,000
90	4145	No. 26	50	5,000
91	4140	Mar 3rd	50	5,000
92	4138	N. P. Perrine	40	4,000
93	4135		30	3,000
94	4134		30	3,000
		(Dec 1, 1868)		

In place of No. 1, 2, 3 & 4—4000 shares

No.	Registered No.		No. of Shares	Amount
95	3485	Henderson	320	32,000
96	3488	Ellsworth	320	32,000
97	3491	Chenoweth	470	47,000
98	3494	J. S. & G. B. Smith	320	32,000
99	3496	J. H. Moores	320	32,000
100	3483	I. R. Moores	470	47,000
101	3486	E. N. Cooke	340	34,000
102	3489	Patton	100	10,000
103	3492	Woods	420	42,000
104	3495	Clarke	420	42,000
105	3498	Mitchell	500	50,000

REGISTERED BONDS SERIES "A"

Dec. 3rd., 1867.

1011	No. 1
1012	14
1013	27
1014	40
1015	53
1016	66
1017	77
1018	88
1019	93
1020	106
1021	123
1022	139
1023	151

REGISTER BONDS SERIES "A"

Dec. 3rd, 1867

1024	No. 166
1025	179
1026	198
1027	211
1028	234
1029	251
1030	260
1031	264
1032	284
1033	286

Dec. 2nd., 1867.

2149	2
2150	15
2151	28
2152	41
2153	54
2154	67
2155	78
2156	89
2157	94
2158	107
2159	124
2160	140
2161	152
2162	167
2163	180
2164	199

REGISTER BONDS SERIES "A"

Dec. 2nd, 1867

2165	No. 212
2167	235
2168	249
2169	261
2170	265
2171	283
2172	287
3001	3
3102	16
3103	29
3104	42
3105	55
3006	68
3107	79
3108	95
3109	108
3110	125
3111	141
3112	153
3113	168
3114	181
3115	200
3116	213
3117	236
3118	250
3119	262
3120	266
3121	282

REGISTER BONDS SERIES "A"

Dec. 2nd, 1867

3122	No. 285
3123	288
3470	4
3471	17
3472	30
3473	43
3474	56
3475	69
3476	80
3477	96
2478	109
3479	126
3480	142
3481	156
3482	169
3483	182
3484	201
3485	214
3486	224
3487	237
3488	248
3490	267
3491	281
3492	289
4132	5
4133	18

REGISTER BONDS SERIES "A"

Dec. 2nd, 1867

4134	No. 31
4135	44
4136	57
4137	70
4138	81
4139	90
4140	97
4141	110
4142	127
4143	157
4144	170
4145	183
4146	202
4147	215
4148	225
4149	238
4150	252
4151	263
4152	268
4153	280
4154	290
3627	6
3628	19
3629	32
3630	45
3631	58
3632	71

REGISTER BONDS SERIES "A"

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3633	No. 91
3634	99
3635	111
3636	128
3637	138
3638	143
3639	158
3640	171
3641	184
3642	203
3643	216
3644	226
3645	239
3646	247
3647	258
3648	269
3649	291
4329	7
4330	20
4331	33
4332	46
4333	59
4334	72
4335	92
4336	98
4337	112
4338	129

REGISTER BONDS SERIES "A"

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4339	No. 137
4340	144
4341	159
4342	172
4343	185
4344	204
4345	217
4346	227
4347	240
4348	246
4349	254
4350	270
4351	292
4011	8
4012	21
4013	34
4014	47
4015	60
4016	73
4017	82
4018	100
4019	113
4020	119
4021	130
4022	145
4023	160

REGISTER BONDS SERIES "A"

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4024	No. 173
4025	186
4026	192
4027	205
4028	218
4029	228
4030	255
4031	271
4032	279
4033	293
1051	9
1052	22
1053	35
1054	48
1055	61
1056	74
1057	83
1058	101
1059	114
1060	120
1061	131
1062	146
1063	161
1064	174
1065	187
1066	193
1067	206

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1068	No. 219
1069	229
1070	256
1071	272
1072	278
1073	294
4053	10
4054	23
4055	36
4056	49
4057	62
4058	75
4059	84
4060	102
4061	115
4062	121
4063	132
4064	147
4065	162
4066	175
4067	188
4068	194
4069	207
4070	220
4071	230
4072	241
4073	257

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4074	No. 273
4075	295
1325	11
1326	24
1327	37
1328	50
1329	63
1330	76
1331	85
1332	103
1333	116
1334	122
1335	133
1336	148
1337	163
1338	176
1339	189
1340	195
1341	208
1342	221
1343	231
1344	242
1345	245
1346	274
1347	296
1263	12

REGISTER BONDS SERIES "A"

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1264	No. 25
1265	38
1266	51
1267	64
1268	86
1269	104
1270	117
1271	134
1272	136
1273	149
1274	155
1275	164
1276	177
1277	190
1278	196
1279	209
1280	222
1281	282
1282	258
1283	248
1284	276
1285	297

Series "A" $1,000

1781	18
1782	26
1783	89
1784	52

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1785	No. 65
1786	87
1787	105
1788	118
1789	135
1790	150
1791	154
1792	165
1793	178
1794	191
1795	197
1796	210
1797	223
1798	233
1799	244
1800	259
1801	275
1802	277
1803	298
2200	299
2201	311
2202	328
2203	335
2204	343
2205	353
2206	373
2207	385

REGISTER BONDS SERIES "A"

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2208	No. 397
2209	
2210	
2311	
7000	300
7001	312
7002	324
7003	336
7004	344
7005	354
7006	374
7007	386
7008	398
7009	
7010	
7011	
7012	
5432	301
5433	313
5434	325
5435	337
5436	355
5437	375
5438	387
5439	399
5440	
5441	

REGISTER BONDS SERIES "A"

Dec. 2nd, 1867

	No.
5442	
6000	302
6001	314
6002	326
6003	345
6004	356
6005	376
6006	388
6007	400
6008	
6009	
6010	
8099	303
8100	315
8101	327
8102	338
8103	357
8104	365
8105	377
8106	389
8106	
8107	
8108	
8109	
3150	304
3151	316

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3152	No. 328
3153	346
3154	358
3155	366
3156	378
3157	390
3158	
3159	
3160	
3161	
2302	305
2303	317
2304	329
2305	339
2306	347
2307	359
2308	367
2309	379
2310	391
2506	306
2507	318
2508	330
2509	340
2510	348
2511	360
2512	368
2513	380

REGISTER BONDS SERIES "A"

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2514	No. 392
2900	307
2901	319
2902	331
2903	341
2904	349
2905	360
2906	369
2907	381
2908	393
2909	
2910	
4444	308
4445	320
4446	332
4447	350
4448	362
4449	370
4450	382
4551	394
4552	
4553	
4554	
1850	309
1851	321
1852	333
1853	342

REGISTER BONDS SERIES "A"

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1854	No. 351
1855	363
1856	371
1857	383
1858	395
1859	
1860	
7500	310
7501	322
7502	334
7503	352
7504	364
7505	372
7506	384
7507	396
7508	
7509	

GOVERNMENT'S EXHIBIT 101

PREPARED BY J. GASTON

SPECIAL MESSAGE OF GOV. WOODS

TO THE

LEGISLATIVE ASSEMBLY OF THE STATE OF OREGON

Gentlemen of the Legislative Assembly:

Your attention is invited to the importance of the inauguration of a general system of internal improvements in our State. Where only biennial sessions of the Legislature are authorized by law, delay often works incalculable injury. And now that we are in rapid process of development, with a constantly increasing population, it behooves us, looking to the future good, to give all necessary aid to such enterprises as tend to the permanent development of the vast resources of the State.

Long years of experience in a country without roads, and with a water communication with the marts of trade, admitted by all to be totally inadequate to the wants of the people, has taught us the necessity for some system of intercommunication which will answer the demands of the people. With a rail-road running through the Willamette Valley, and via Oakland, Roseburg, Jacksonville and Yreka, to and connecting with the Central Pacific Rail-Road in California—thus putting ourselves in direct and speedy communication with the City of San Francisco, and the demands of our sister State, in which we have a community of interest—we should reap a benefit which cannot well be estimated. Another route, equally as important as the first, now inviting attention, is the one running from the navigable waters of the Columbia river, via Boise City, to the valley of the Great Salt Lake, connecting with the Central Pacific Railway at Salt Lake City. To this route too much importance cannot be attached. In a commercial and military point of view, it is invaluable and indispensable; and it is gratifying to know that a bill, looking to its establishment, is now pending in Congress, and will doubtless become a law early in the coming session of that body. Legislation for the purpose of carrying that great enterprise into effect will be necessary, and it is hoped that you will not adjourn without making the required enactments. In his biennial message for the year 1864, my predecessor called the attention of the Legislature to the route first above named, and forcibly enumerated the advantages to be

derived from such an enterprise; and, in accordance with the suggestions, an Act was passed, the effect of which was to aid in its construction. But the amount provided for was so meager as to offer no inducement to capitalists for investment. Had a more liberal spirit characterized our legislation at that time, we should, ere this, have been enjoying the advantages and sharing the profits of the undertaking. Let us profit by the experience of the past, and take hold of this great enterprise with that liberality and determination which shall insure its early completion. I would not encourage extravagance, but on the contrary, would bespeak a vigilant watchfulness over and a prudent and judicious expenditure of the public money; but it should be borne in mind that a niggardly parsimony is often the ruin of a people, while a prudential liberality builds up a State.

Your attention is called to an Act of Congress of July 25, 1866, donating twenty sections of the public lands for each mile of Railroad, and Telegraph to be constructed from the City of Portland, Oregon, to, and connected with the Central Pacific Railroad, in California, which lands are to be selected within thirty miles on either side of said road. This grant, though quite liberal is wholly inadequate and will not, of itself, afford sufficient security to insure investment. Capital for the completion of this great work must come from abroad, and good policy requires that we should hold out inducements for investment. I am happy to be able to communicate to you that capitalists controlling ample means for the construction of the entire road proposed,

are now ready, and have signified their willingness to invest in the great enterprise as soon as the legislation necessary for such an investment can be had.

Under the General Incorporation Act, a Corporation is about to be organized to be known as "The Oregon Central Railroad Company," composed of some of the most responsible and energetic business men of the State, whose purpose it is, if they can meet with proper encouragement, to immediately begin this great work. And I take the liberty to suggest that it would be well to make provision, by immediate enactment, by which through the above named corporation the State shall be able to reap the benefits of the liberal donations by Congress, and also to make provision for the payment of the interest on the bonds of the Company, necessary to construct and put into operation, the first section of twenty miles of the road. Whatever may be the objections urged, it must be conceded that the State, looking to the future permanent wealth and prosperity of its citizens, is in duty bound to lend immediate and efficient aid to this great enterprise; and since it is for the immediate benefit of all, it is eminently just and proper that all should contribute to its furtherance.

I deem it useless to enumerate the advantages to be derived from a railroad, since they must be apparent to all. The valleys of the Rogue River, Umpqua and Willamette are unequaled in richness of soil, and general resources for agricultural and manufacturing purposes; but can the farmers or the manufacturers afford to transport the products of their labor from these remote dis-

tricts to Portland, at present our only outlet, and realize any profit? It is often tauntingly said by those from abroad that Oregonians are indolent,—nothing can be more foreign from the truth. Experience teaches that mankind nowhere labor for the mere love of labor, per se, but for the profits to be derived therefrom. In this the citizens of Oregon are not unlike the rest of mankind. Give them easy and cheap transportation for the products of their labor, and the most rapid development of all the multiplied resources of our State will speedily follow.

A Railroad is a public necessity. The farmers need it; the mechanics need it; the merchants need it; the manufacturers need it; all classes need it. It would infuse new energy and enterprise into the people, cause our lands to be cultivated, our manufactures to be built up, increase the demand for labor, bring hither a vast population, add to our revenue, and build up our cities. Its early completion will be a priceless benefaction. You are the representatives of the people. Their interests are in your keeping. Do your duty towards them, your State, and yourselves. Help to build the railroad. It is the people's just enterprise. Your labors will be your own lasting monument.

GEO. L. WOODS.

Executive Office, Salem, Oct. 6, 1866.

GOVERNMENT'S EXHIBIT 102.

Portland, Oregon, January 1, 1868.

TO WHOM IT MAY CONCERN:—

We the undersigned officers of the Oregon Central Railroad Company, having learned that some parties at Salem in this State have incorporated (under the general laws of this State) another company, and have assumed and attempted to usurp the corporate name of the organization we represent, and that said usurping company has recently printed and signed, and sent to the Eastern States, a large lot of Bonds, purporting to be the Bonds of the Oregon Central Railroad Company, feel it to be our duty to notify the public of the following facts:

1st.—The Oregon Central Railroad Company was incorporated and organized at the session of the Legislature, held in September, 1866, and received valuable grants of U. S. land, and interest on Bonds from the State of Oregon. Since that time it has duly filed its papers in the office of the Secretary of the Interior at Washington, D. C., and is now engaged in the location and construction of its Railroad, having large subscriptions of home means. It has never issued any bonds of any description, and has no agents or contractors either at San Francisco or any of the Atlantic cities, and no one authorized to represent it there.

2nd.—This new company, now using our corporate name, was gotten up in April, 1867; and although the Governor of Oregon is President of it, we hesitate not

to state, that its organization is spurious, and its operations justly suspicious. It has no just or legal right to that name, and a suit in Equity is now pending in the Circuit Court of this State for Marion County, to enjoin the further use of the name, and also an action of *Quo Warranto* by the State of Oregon, to forfeit all its corporate rights, if it has any, for the reason that it has failed to prosecute the object named in its articles of Incorporation, for more than six months, as the General Incorporation Law requires; and for the further reason, that it has no legal organization, a Board of Directors having been elected without any subscription of the Capital Stock as the law requires.

We may further state that the character of this bogus company is such that W. S. Ladd, Banker of this city, and Ex.-Gov. Gibbs, refused to act as trustees in their mortgage, after their names had been printed on the face of the Bonds. The Company has never made any location or the least of a survey of the road they propose to construct, nor have they a dollar in the world of any kind of property. The Company is in every respect a humbug and its bonds are worthless.

Any person desiring information on the subject, are referred to A. E. & C. E. Tilton, Bankers of New York City, or Thos. M. Isett, Broker, in same City.

By order of the Board of Directors:

J. Gaston,

W. C. Whitson,
Sec. O. C. R. R. Co.

Prest. O. C. R. R. Co

GOVERNMENT'S EXHIBIT 103.

These circulars were sent everywhere.

OREGON CENTRAL RAILROAD BONDS.

Office of the O. C. R. R. Co., Portland, Oregon, May 1st, 1868.

TO WHOM IT MAY CONCERN:

The Board of Directors of the Oregon Central Railroad Company, deem it proper and right to renew the caution issued to the public in December last, in relation to the use of its corporate name by another Company; and for that purpose beg leave to submit the following statement of facts:

1st. The original "Oregon Central Railroad Company" was the only corporation in this State entitled to use this name, was incorporated under the General Incorporation Act of this state, at the session of our Legislature for the year 1866; and at that time went before the Legislature then in Salem, and procured the passage of House Joint Resolution No. 13, which designates this Company to receive all the land, and all the benefits of an Act of Congress, entitled, "An Act granting land to aid in the construction of a Railroad and Telegraph from the Central Pacific Railroad in California to Portland, Oregon," so far as the land grant is located in Oregon. (This Act of Congress gives the Company about three million acres of land). Our Company has filed the necessary papers in the Department of the Interior at Washington, and has been officially recog-

nized by the Secretary of the Interior. The Legislature of our State, at the same session named, passed an Act, pledging the State to pay interest on one million dollars of our Bonds for twenty years. After receiving these grants from the State, and the recognition of our rights to the land grant, by the Secretary of the Interior, we commenced surveying our line of road upon the west side of the Willamette River, and solicited subscriptions to the capital stock of the Company, and we now have subscriptions and donations of land, cash and other valuable property in aid of the road, amounting in value to near $300,000. In February last, the City Council of the City of Portland, upon the petition of nine-tenths of the voters of the City, passed an Ordinance, binding the City to pay interest on $250,000 of our Bonds, for twenty years, all deliverable on the first twenty miles of road. In March last, the County Commissioners of Washington County, upon the petition of four-fifths of the farmers, entered into a contract, obligating the County to pay interest on $50,000 of our Bonds. On the 15th ult., we "broke ground" in the commencement of our work, and a force is rapidly pushing the work. We submit that these facts, showing our standing at home, should give us a fair name abroad.

2d. On the 22d day of April, 1867, some six months after the incorporation of our Company, and five months after the adjournment of our Legislature, some parties at Salem, on the east side of the Willamette River, got together and incorporated another Company in the name of the "Oregon Central Railroad

Company," fully assuming and attempting to usurp our corporate name. They proceeded to elect a Board of six Directors, and that too, without subscribing the capital stock on one-half thereof, as our Incorporation law requires before the election of Directors. They let a contract to A. J. Cook & Co., to construct one hundred and fifty miles of their road; and now one year since their contract was let A. J. Cook & Co. have just commenced work with a small force. Recently this Company No. 2 has enlarged its Board of Directors, electing twenty-one gentlemen from various parts of the State, three-fourths of whom know nothing of this Company, and consider their appointment merely "honorary." In December last, M. F. Mulkey, Prosecuting Attorney of the 4th Judicial District, commenced an action of *quo warranto* against this usurping Company, to annul its existence for violation of the law in the election of Directors without subscribing stock. On this day our Company has filed a Bill in Equity, in the Circuit Court, for Marion County, (where the usurping Company has its office) against the second Company, praying for an Injunction against their further use of our corporate name. The papers are now in the hands of the Prosecuting Attorney of the 3d Judical District for another *quo warranto* action to annul the existence of the second Company for a failure to prosecute its business for a period of six months, as our law requires.

These facts are stated now, because A. M. Loryea, the Agent of the second Company, has started to the

Atlantic cities with a large amount of Bonds of this second Company, and which read as if they were the Bonds of our Company. Every one will see, that if any one of the above three actions at law are maintained against the usurping Co., their organization is destroyed, and the Bonds rendered worthless to all intents.

We beg leave to state further, that on the 12th ult., Captain J. C. Ainsworth, President of the Oregon Steam Navigation Company, and a Director of our Company, proposed to James P. Flint, of the firm of Flint, Peabody & Co., of Boston and San Francisco, and who interests himself in behalf of the second Company, that all matters in dispute between the two companies should be submitted to arbitrators; or by amicable suit to the Courts and have them settled immediately. Mr. Flint endeavored to get the second Company to accept this proposition, but they declined. Since that time, Ex-Governor A. C. Gibbs, our Attorney, met the Attorneys of the second company in the argument of a part of one of said cases, and proposed and requested that they should try the whole case on its merits, and for the best interests of all parties, and of the State, settle all questions in dispute as soon as possible; and this proposition was rejected. Our Company has used every means to secure a speedy settlement of all questions in dispute, but we have been opposed by the delays of the second Company. We may state further, that such is the character of this second Company, that W. S. Ladd, Banker, and Ex-Governor Gibbs, (before he became our attorney) refused to act as Trustees in their mort-

gage, after their names had been printed on their Bonds.

We have issued no Bonds, have no Agents in New York or elsewhere yet. We cannot give an Eastern reference; but we have no doubt that if application was made to Julius M. Keeler, of the Oregon and New York Commission Agency, No. 95 Liberty Street, New York, parties interested in knowing the truth, could learn something of the character of the parties comprising our Board, and thereby the truth of these statements, all of which we stand ready to prove by affidavits or home reference to any business man, of the city of Portland. We only desire that parties interested should investigate the matter. By order of Directors.

J. Gaston

President O. C. R. R. Company.

(SEAL)

T. R. Cornelius, W. T. Newby, J. C. Ainsworth, W. C. Whitson, J. Gaston, Directors O. C. R. R. Company.

GOVERNMENT'S EXHIBIT 104

Preserve this.

About May 1st, 1868, the "East Side Co." published this pamphlet all over the Country; and to which Gaston replied as follows this.

ADDRESS

TO THE

PEOPLE OF OREGON

BY THE

OREGON CENTRAL R. R. CO.
OF SALEM

SALEM, OREGON
A. L. STINSON, BOOK AND JOB PRINTER
1868

[5158]

ADDRESS

To

THE PEOPLE OF OREGON.

By the Oregon Central Railroad Co., of Salem.

The Directors of the Oregon Central Railroad Company, deem it proper to present the following statement:

The capital stock of the Company is $7,250,000. This being the represented cost of the first 150 miles of the road. $5,250,000 of this is common stock, which will be offered for sale at ten cents on the dollar. On payment of ten per cent. for the stock purchased, certificates will be issued as full paid stock, and the word "non-assessable" will be printed on the face of each certificate, to protect the holder from ever being called on to pay any additional amount or assessment.

The actual cost of the road will be $5,250,000, in payment for which First Mortgage Bonds will be issued

to the contractors for.....	$2,400,000
Second Mortgage Bonds will be.....	2,400,000
And we promise to raise cash	450,000
	$5,250,000

We have agreed to raise, to be applied on the work as it proceeds, the sum of $3,000 per mile, which we can do by the sale of common stock, at ten cents on the dollar. We expect the great benefits to be conferred on the country by the building of the road, to be sufficient

inducement to all property owners and business men to aid the enterprise according to their ability. The contractors, A. J. Cook & Co., volunteer to give every purchaser of stock their obligation to redeem the stock, within two years, by repayment of the sum, in coin, originally paid for the same. The question of the value of the investment, independent of their promise, can be answered by a few statistics of the cost of railroads in other states, and the income derived from their successful operation.

Seven railroads in Vermont cost $40,824 per mile. Thirty railroads in New York cost $49,963. The cost of the Oregon Central Railroad is only $35,000, being $5,824 per mile less than the cost of railroads in Vermont, and $14,963 less than the cost of the railroads in New York. The roads in both of these States pay large dividends on the amount of their cost, and it is reasonable to expect that our road will eventually pay a large income, far more than is sufficient to meet the interest, while its value, when it shall become connected with the California road, and be a great national thoroughfare, connecting the North Pacific coast with San Francisco, and the Central Pacific Railroad, will be so increased as to insure that it will be able in a few years to pay off the debt and be the property of the stockholders. Its benefits to the country will be immediate, in increasing the value of property as well as the amount of business and population. There are many reasons why the people of Oregon should own this stock. One is that the possession of the majority of the stock carries with

it the control of the Road, and the people of Oregon should not permit the controlling interest of so important a work to pass into the hands of outside capitalists, who might fix an unreasonable tariff for the transportation of freight and passengers.

As another reason—the influence exerted by a live Oregon corporation would be favorable, both at home and abroad. At home, in regulating the location of stations and depots at suitable points, employing persons favorable to the best interests of Oregon, and in electing officers from among our own people to manage the affairs of the company. It would exert a favorable influence abroad to have it appear that this great road is owned and conducted by the people of the State.

The following item, taken from the New York Tribune, shows in one sentence the importance of railroads in enhancing the value of the States which built them. "Twelve counties in Missouri through which the main-line of Railway to the West runs, have increased their valuation more than $135,000,000 since the roads were built. Ten counties without roads have fallen off since 1860."

There are 5,000,000 of acres of excellent land in the Willamette, Umpqua, and Rogue River valleys, besides the region bordering on them, whose timber and mineral wealth are to be affected by the construction of the Oregon Central Railroad. These valleys and timbered and mining lands are capable of supporting a permanent population of two millions of souls, and the

effect of the construction of the road would be, within five years, to add over $50,000,000, to the landed wealth of these three valleys, while incidentally it would introduce an era of progress that would in the same time double the value of every other material interest in this State.

The Willamette Valley alone contains 3,000,000 acres of rich agricultural land. It is larger than the State of Massachusetts, and capable of supporting a much larger population. The time will come when a million people will occupy it; when its valuable forests, coal fields, and rich mineral deposits, will be called into requisition, to add to our wealth, and make an enlarged industry profitable. Our streams will be lined with manufactories, and an enlarged commerce will make this Road a source of great wealth to Oregon in aiding to develop its resources. Favorable arrangements are made with capitalists at the East, but they demand that the people of Oregon shall themselves take an interest in the enterprise, and lend it a reasonable amount of aid; and as we have already mentioned, the contractors, A. J. Cook & Co., are willing to give every purchaser of stock a written guarantee to redeem the same in two years' time, if the holder thereof desires. The question will naturally arise in every mind: "Why do we get non-assessable stock issued to us by paying ten cents on the dollar?" that is to say, why do we receive a certificate that we have fully paid for a share of the common stock, calling on its face for one hundred dollars, by paying one-tenth of that sum? The answer

is very simple and plain. The Company has borrowed nine-tenths of the cost of the road at the East, and each share of the comomn stock, or the property of the Company which it represents, is therefore mortgaged for nine-tenths of its value. The stockholder therefore buys it subject to the mortgage, and there is only ten dollars due thereon, or in other words there is a credit of ninety dollars on each share, represented by the bonds the Company issues, and the stockholder purchases, knowing that the stock is pledged for 90 per cent. of its value, and for 7 per cent. interest per annum thereon.

STATEMENT OF FACTS.

The Directors of the Oregon Central Railroad Company of Salem, incorporated April 22d, 1867, impelled by a desire to give correct information to all interested, which is due to the public, and also as an act of simple justice to themselves, and the enterprise they represent, proceed to notice for the first time, publicly, the misrepresentations that have been industriously circulated, by certain parties, to their prejudice, and to defeat that enterprise. This explanation and vindication requires of us a statement of facts, as to the organization of this corporation, the character and progress of our negotiations, and our present prospects; and it is necessary that we present plainly and briefly a statement of those obstacles thrown in our way by certain persons who were determined the great work we have in view should not proceed, if it did not obey their interested motives, and pay tribute to their mercenary views.

The Oregon Central Railroad Company was projected by a number of the present directors in the fall of 1866. Proposals from foreign capitalists, looking to the construction of a great trunk railway that should connect the waters of the Columbia with those of the Sacramento, were received by them, and the eminent names attached thereto induced the belief that such an enterprise was practicable, and that an Oregon corporation should be formed, with a view to consider such proposals as might be offered, and secure such aid from the general and State Governments, as would be necessary, and could be legitimately granted to aid so important an enterprise. Steps were taken to complete such an organization according to our State laws, not for the purpose of acceding to the proposal already made, but of making the best terms possible with foreign capitalists for the building of the Road. The gentlemen alluded to, feeling that the enterprise, when successful, should recognize and reward those who had been its earliest advocates, invited to their counsels an individual who had no personal claims upon them, but who, they thought, had devoted much time and effort to the consideration and advocacy of such an enterprise. They allowed him to draw up papers of incorporation, with the understanding that certain persons should compose the Company; they were assured by him, and the same assurance was made to the Legislature, that the articles of incorporation were completed, and properly filed October 6th, 1866, and they labored through the session of the Legislature, then being held, to secure a

recognition from the State that this Company, organized at that date, should be entitled to the land granted by Congress for the construction of such a Road, and should also receive substantial aid from the State. Such a recognition was made, and a bill was passed to grant the desired aid. Joseph Gaston, the individual referred to, who drew up the papers, and obtained the signatures thereto;—who had given assurances that they had been properly signed, and filed with the Secretary of State and County Clerk, according to the Incorporation law, failed to so legally complete such papers, or to so put them on file on the 6th of October, or at any time previous to the passage of the Resolution of the State Legislature, recognizing such Company as entitled to the land granted by the General Government, and the Act to otherwise aid the same, by the State of Oregon. Acting in good faith, the majority of the original incorporators had, according to law, designated two of the incorporators as empowered to open stock books for the Company. A meeting of Incorporators was held, at which J. Gaston was present, and he thereat presented a copy of the pretended Articles of Incorporation, which at that time—about the 7th of November—was still incomplete, as the signatures were not acknowledged. He learned then that a majority of the names thereon had designated persons to open books, and gave his assurance, that he would, as a Notary Public, immediately complete the certificates of acknowledgment, and place the same on file, as required by law. The next information that was had of Gaston's proceedings, was through pri-

vate sources, to the effect that he was combining with certain parties in the city of Portland to secure the control of the franchise, and divert it to the use and profit of a few persons, who bound themselves, in a compact, as to the manner in which they would use and dispose of the same to their mutual advantage. For this purpose Mr. Gaston procured additional signatures to the Articles of Incorporation, of persons who had no desire or intention to maintain a permanent connection with the enterprise, but who signed as a matter of accommodation to Gaston, and at the same time signed a paper designating him as the person to open stock books. He only ceased getting such signatures when a majority of the names signed had so designated him to receive subscription, so that he, and the persons who conspired with him, could easily go through a form of subscribing the stock, and so own and control the franchise, and turn the same to their own private uses. Private information of this conspiracy induced the persons whose interests were thus being betrayed, to execute and file, on the 17th day of November, 1866, Articles of Incorporation in the name of the Oregon Central Railroad Company, by which means the efforts to subvert their interests were foiled, for these being the first Articles of that name on file, had the prior claim to the name, and to any rights and privileges pertaining thereto. Mr. Gaston filed his papers, signed by 18 persons, on the 21st, and all but the last three names on the same were acknowledged before him as Notary Public, and on that account were void and illegal, because he was not, at

the time of making the certificate, a Notary Public, his commission having expired, and therefore his certificate of acknowledgment was null and void.

In the Spring of 1867, S. G. Elliott and T. R. Brooks visited Oregon, to arrange with an Oregon corporation to construct a railroad of 150 miles, from Portland, south through the Willamette Valley. With a full knowledge of all the facts in the case, the Articles of Incorporation, filed Nov. 17, were abandoned, because they were not deemed sufficient for the purposes of the enterprise in view, and in preference to amending them, it was deemed advisable to execute and file new Articles, that should exactly express the objects the Company had in view. New Articles were filed April 22d, 1867, and *and* soon afterwards the Company entered into a contract with Mr. Elliot, as attorney for A. J. Cook, to construct 150 miles of road from Portland south, for $35,000 per mile, to be fully equipped for operation. The same name was adopted, inasmuch as we thought the title appropriate, and believed that the papers acknowledged before, and filed by Gaston, were null and void. (And it seemed to us, that being the projectors of the enterprise then already publicly known as the Oregon Central Railroad Company, we were justly entitled to it).

The origin of this enterprise dates back to the year of 1863, when S. G. Elliott, a Civil Engineer, organized an engineering corps in the interest of a California corporation, which intended to construct a road from Marysville north, to the Oregon line. After reaching

Oregon, having a good corps of engineers at work, and a full set of instruments, Elliott concluded to continue the survey into the Willamette Valley. It was owing to the energy and enterprise of Mr. Elliott that the original survey was made, and Mr. Gaston owed it entirely to him that he (Gaston) was then known in connection with it, and he also owes it to Mr. Elliott's influence that we requested him,—though with a reluctance after events justified—to take part in the incorporation and formation of the Oregon Central Railroad Company. Mr. Elliott was fully satisfied, from the information gained in his survey, that the project of constructing a railroad from the Sacramento to the Columbia could be accomplished, and from that day to this, for five years, he has directed his efforts to secure its construction. As Chief Engineer of the California and Oregon Railroad Company of San Francisco, he has been employed in negotiations at the East, where he has had several pamphlets published and circulated, giving information of the resources of our country, and of the value of the railroad enterprise in question. During that time he has spared no efforts to interest capital in this scheme. It was due mainly to his earnest efforts, that, against the determined opposition of interested parties, Congress passed the Act granting 12,800 acres per mile of public lands to aid the enterprise, and when he came to Oregon in April, 1867, he felt sanguine that he had obtained such financial aid as would secure its success, and sought to carry it on in connection with an Oregon incorporation, which

should command the confidence of Eastern capitalists, as a safe vehicle for them to operate through and with.

It was plainly understood, then, that a certain amount of aid must be derived from the people of Oregon, and the Company was urged to immediately canvass the State to secure it. But we were confident that the great advantages to result would secure a reasonable amount of help at home, and therefore have ever declined to make any appeal to the public until they could see the work commenced in earnest, and so not lay ourselves liable to any just assaults, or charges that we were either unjustifiably asking aid, or giving the people cause to entertain expectations that might not be fulfilled. Mr. Elliott returned East to complete his negotiations, having matured his plan of action with the Company here. Our transactions were soon embarrassed by a suit commenced and prosecuted by Gaston, asking an injunction against our use of the Company's name. He having in the mean time made a change of base, and induced people west of the river to believe he could insure the completion of a road from Portland south, on the west side of the valley, and that we were wrongly and feloniously using their name and franchise. This suit was decided in our favor, Judge Boise ruling that there was no conflict of name shown, as the Companies were organized in different years, and one was located at Salem, and the other at Portland; nor did they show that our Company made any claim to their franchise, or rights and privileges. These legal proceedings caused a suspension of operations at home, and

deferred the commencement of the work. In the mean time Mr. Gaston was no less busy endeavoring to injure the progress of our negotiations at the East by writing letters addressed to every prominent man he thought we could negotiate with, and finally by sending printed circulars to all the principal cities, and through the financial circles, signed by himself as President of the O. C. R. R. Company, which acts would lay him liable, as a common slanderer and defamer, to be mulct in damages, if he was in any sense personally responsible for his words and acts. We give the following extracts from a letter, written by him, to the editors of the Railroad Journal, a copy of which was returned to us by a friend, to whom it was shown. After modestly claiming that by his individual efforts he had secured legislation for the payment of interest on a million dollars of bonds, in the following language: "I, at that time went before the last session of our Legislature, and secured from the Legislature, &c.," and failing to state that the grant of land by Congress was secured by the efforts of Mr. Elliott, he says:

"This grant of course made our franchise worth something, so much so that black mailers were tempted to incorporate another Company."

After detailing the operations of our Company in making a contract with A. J. Cook & Co., (Pencil notation on margin as follows: "afterwards proved to be a fictitious concern") he made the following statement, which was entirely false:

"The operators have printed several million dollars of bonds, and actually signed and sent on about $500,-000 in their bonds to New York."

In that letter he misstated the position of leading men towards the Company, and the objects of our Company; the character of prominent members of the Company were libelled, the facts throughout were falsified, and he winds up with asking the publication of a notice warning "Bankers, brokers and investors" against any investment in the bonds of the Oregon Central Railroad Company of Salem, Oregon.

Persistent and unmitigated falsehood had the effect to delay and embarrass Mr. Elliotts' plans, until information could be had as to the character and intention of their author, for the persons to whom he (Gaston) referred the public, immediately denied any knowledge of the statements they were to corroborate.

A circular issued from Portland, January 1st, 1868, signed by J. Gaston, President, and W. C. Whitson, Secretary, O. C. R. R. Co.,—unauthorized, as we are informed, by either Mr. Whitson or the Board of Directors,—was extensively circulated, which denounced our Company as swindlers, and referred all interested to Messrs. A. E. & C. E. Tilton, N. Y., for corroboration, but these gentlemen, and Mr. W. S. Ladd, their partner in Portland, deny having any disposition to corroborate such statements, or even having authorized the use of their names in such a manner. In a private note which accompanied one of these circulars, he adds:

"No stone will be left unturned, either in the courts or in the next Legislature, to compel these arrogant, franchise stealing gentlemen, to observe the rules of common honesty and decency."

It is will enough, in this connection, to state that a large proportion of the gentlemen who were to constitute the original incorporators of the Company, in fact all those who were expected to take part in its permanent organization, with one exception,—Gen. Palmer, who expresses himself friendly to our enterprise—are now members of our Company, and harmoniously working for its success, while not a single one of those who took part in it at the time, and adopted the name Oregon Central Railroad Co., is now connected with Gaston in his enterprise and in his claim that we are usurping both the name and the franchise of their corporation. Those who are connected with him are probably unaware of the frauds that have been practiced by him on his early associates.

The charge has been extensively circulated that we are seeking to defraud the West side of the river of a valuable franchise—of State and Government aid—in answer to which we have only to say, that we recognize that the Act of Congress granting lands, and the Act of the last Legislature of Oregon, are both inoperative, from the fact that the terms and stipulations of those Acts have not been, and cannot be, complied with. Any aid to be granted railroad enterprises in Oregon must be re-enacted by both the State and General Government, and we have no hesitation in affirming that we

claim no grants, privileges, or rights for our Company, we do not desire also extended to the West side of the valley. Our Company has never entertained or expressed any hostility to the West side road, or deemed its progress an obstacle in our pathway, but on the contrary, we have often expressed to members of the West Side Company a desire to harmonize our interests, and work to mutual advantage. But this harmony would not suit Joseph Gaston, though but for his misrepresentation we believe it could easily be effected, and but for him both enterprises would now be further advanced than they are.

A committee has been appointed to consider and report upon the branch roads necessary to connect the main route with all parts of the Willamette Valley; the contractors having made proposals to construct such roads at a very reasonable sum. Some of these proposed roads are laid down and described on the map of the Company, generally circulated, and whatever road may be built on the West side we intend to construct branches to bring the Oregon Central into connection with every valuable district of the valley, and interest every county in our success.

There are at the present time two law suits pending. One commenced by Gaston last fall, to invalidate our Corporation, and the other, in self defence, lately commenced, to test the legality of the Gaston Company, which, if it goes to trial, will draw out fully the particulars of proceedings we have here briefly alluded to, and will, we have no doubt, prove the frauds we have

intimated. The possession of the name we deem of no vital consequence, save as we have already made large contracts under it, and have recently issued bonds bearing the title. Our Company is known under it in financial circlest East. It has already a standing and importance, gained by purchase and shipment of large quantities of material, and the employment of laborers in the process of its operations. Therefore, as the Courts have decided our right to use the name, we shall not resign it, and the inconvenience of its use, if any exists, will only affect the Company that comes later into the financial field and claims it, when we are already successfully operating it. Besides, we respectfully suggest that the name O. C. R. R. Co. is a misnomer for the Company of which Mr. Gaston is now president. They have ordained irrevocably in their organization that their road shall never cross to the East side of the river. How can such a road be called Central? Any suitable change in their name would occasion them little or no inconvenience, or expense; and as we have already shown, we are fully entitled to the name, on the score of priority.

The people of Oregon will, bear in mind that we have not heretofore called on them for a dollar. Every incidental expense we have borne ourselves. The people have met no portion of the preliminary expenses, and they can now see for themselves that the work progresses. We deemed this policy preferable to collecting money and levying assessments before any satisfactory proof was given that the work would be done.

We expect you to aid us to the amount we have promised to raise, for your own benefit, but it is our design—in the future as in the past—to protect your interest, and preserve our own good name, by every reasonable guarantee. If we had entered upon this work with any design of speculating upon the public credulity, and deriving a profit from the general anxiety for a railroad, we could, in imitation of others, have got subscriptions to stock, and levied assessments, and so have derived means for payment of salaries and incidental expenses, but we determined to remain clean-handed, and deserve public confidence and respect by disinterested action. We considered ourselves the custodians of a great enterprise, in which all Oregon is interested, and we are, and ever shall be, ready and willing to render an account of our doings and progress, and consult the best interests of the State and the public, while the charge of this great enterprise remains in our hands.

GOVERNMENT'S EXHIBIT 105

STATEMENT OF FACTS

RELATIVE TO THE

INCORPORATION AND ORGANIZATION

OF THE

OREGON CENTRAL RAILROAD CO.

OF

SALEM, OREGON

INCORPORATED, APRIL 22, A. D. 1867

And reasons why such company is entitled to the benefit of the land grant given by Congress in aid of a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River Valleys, to the Central Pacific Road, in California, passed July 25th, 1866, and also why no other company has any legal or equitable right thereto.

——oOo——

Portland, Oregon;
Carter & Himes, Book and Job Printers,
1868.

THE OREGON CENTRAL RAILROAD COMPANY,

of

SALEM, OREGON.

IS IT ENTITLED TO THE CONGRESSIONAL LAND GRANT OF JULY 25th, 1866.

——oOo——

The Oregon Central Railroad Company—a corporation incorporated and organized under the laws of the State of Oregon, at Salem, Oregon—claiming, as it is, to be entitled to the control and management of the land grant given in aid of a railroad and telegraph line in Oregon, by virtue of being designated as such corporation by joint resolution adopted by the Legislature of the State of Oregon, in October, 1868; and another corporation having also made claim to such land grant, we, the undersigned, Directors of such corporation, deem it but just, and proper, both to the Departments at Washington and the people of the State of Oregon, to make a statement of facts relative to the incorporation and organization of the two companies, and give the reasons why the claim of the company we represent is valid; and also why the claim of the other is without even the slightest foundation of right.

And before proceeding to such statement, and reasons why, let us have a clear and distinct understand-

ing as to the nature of the grant, and also as to the steps necessary to be taken, in order that any corporation can legitimately make claim thereto.

The grant consisted of 12,800 acres of land per mile, to aid in the construction of a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue River valleys, to connect with the Central Pacific Railroad in California; the land to be taken by alternate sections, on either side of the line of the road, within a certain distance. The evident object of the grant, therefore, was, not merely to aid in the construction of a short line, or side road, in Oregon, but the purpose clearly was to aid in the construction of a grand central road, running centrally through Oregon, and on through the whole of Northern California, to the Central Pacific; thus constituting a mighty arm in that grand system of railways now spanning the continent.

At the date of the passage of this act by Congress (July 25, 1866,) there was a corporation already in existence in the State of California, organized under the general incorporation law of that State, in anticipation of the passage of this act by Congress, and for the purpose of receiving the grant, so far as it related to that State. This was the "California and Oregon Railroad Company;" and, consequently, the name of this company was inserted in the act of Congress, and it was by the terms of such act designated as the corporation to take the grant of lands, so far as they lay in the State of California. (See sections 1st and 2d

of such acts, pages 245-6 of Session Laws of Congress, first session 39 Cong.)

In Oregon, however, there was not at the date of the passage of this act any company in existence to take the grant; consequently, the Congress, instead of designating by name a company to take and manage the grant in Oregon, provided that the grant, so far as it related to this State, should go "to such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate." (See section first of such act.)

It is very evident, therefore, from the language used, that before the Legislature could designate any company, such company must be organized, or at least in existence, by having done those acts essential to corporate, being "under the laws of Oregon," as the Legislature could not designate a company not in esse at the time of such attempted designation, or in any manner clothe with power an unborn corporation any more than a person in being could make a grant to an unborn child that would be effectual. The very most that could possibly be claimed in favor of such a proposition in the absence of any requirement in the act of Congress to the contrary, would be this, that the Legislature might possible (and we even deny this power), by using language relating to the future, grant certain rights or privileges to a company to be organized in the future, but in such case their language would necessarily relate to the future, and be conditioned upon such contemplated organization. A designation in the

present tense, as was attempted in the joint resolution of 1866, hereinafter referred to, pre-supposes that the company designated is already in existence, for a present designation of a company not in existence is a legislative impossibility and a futile act. In such a case the designation is fictitious, and it must be presumed that the Legislature was either mistaken or imposed upon by others.

Having said this much in relation to the nature of the grant, and the acts necessary to be done before the Legislature could possibly designate any company to receive it, we will ask the question:

By what authority do the two companies referred to, claim that they are entitled to the grant? Neither of them was designated or named in the act of Congress as the one that should receive it. Both admit that before either can rightfully claim it, it must be designated by the Legislature of Oregon as the one to which it shall go. And, therefore, both companies are now claiming that they have been so designated. The company we represent claim that they were legally designated by the joint resolution of the Legislature of October 20th, A. D. 1868, and that there never was any legal designation prior to that date; while the company known as the Gaston or West-Side Company, claim that they were legally designated by the Legislature of 1866, by joint resolution of that body, of date October 10th, A. D. 1866, and they claim that by virtue of that designation, they acquired vested rights which cannot be taken away by the action of any subsequent Legislature.

Now, we freely admit that if the Gaston or West-Side corporation was organized, or in being at the date of the adoption of the joint resolution of October 10th, A. D. 1866, and such resolution referred to such corporation, then in existence, that then the claim of that company, as to vested rights, might be good; provided, it was free from fraud; and, provided further, such company had adopted a route in accordance with the requirements of the act of Congress, which they did not, as we *we* shall subsequently show. But here, at this point, is a prominent, stubborn, insurmountable fact, established and confirmed by the Record, that at once deprives this West-Side Company of the benefit of any such claim; and that is this, which we assert without fear of successful contradiction:—

There was not at the date of the passage of the joint resolution of October 10th, A. D. 1866, any "Oregon Central Railroad Company" in existence, or incorporated, in the State of Oregon, much less was there any such company then organzed; nor was there any such company in existence at any time during the whole session of that Legislature.

Now, we shall insist, if we make this proposition good by proofs, that we at once dispose of every claim legal and equitable, which the West-Side Company make to the grant in question.

Before proceeding to the proof of this proposition, let us premise by a clear statement of the acts necessary to be done under the laws of Oregon, in order to create

a corporation. For this purpose we quote from the general incorporation law of Oregon, as follows:

"Sec. 1. Whenever three or more persons shall de-"sire to incorporate themselves for the purpose of engag-"ing in any lawful enterprise, business, pursuit, or occu-"pation, they may do so in the manner provided in this "act."

"Sec. 2. Such persons shall make and subscribe "written articles of incorporation in triplicate, and ac-"knowledge the same before any officer authorized to "take the acknowledgment of a deed, and file one of such "articles in the office of the Secretary of State, another "with the Clerk of the county where the enterprise, busi-"ness, pursuit or occupation is proposed to be carried on, "or the principal office or place of business is proposed "to be located, and retain the third in the possession of "the corporation."

Section 5 of the same act is in these words: "Upon "the making and filing of the articles of incorporation, "as herein provided, the persons subscribing the same "are corporators, and authorized to carry into effect the "object specified in the articles, in the manner provided "in this act; and they and their successors, associates "and assigns, by the name assumed in such articles, shall "thereafter be deemed a body corporate, with power," etc.

Now, it is clear that no corporation can, under the laws of Oregon, be created, or have a being until they have complied with the requirements of the foregoing

sections. That is, the persons wishing to incorporate must "first make and subscribe articles in triplicate." They "must acknowledge them before some officer authorized to take the acknowledgment of the deed." But even this is not enough, for they must file these articles, "one in the office of the Secretary of State, another with the Clerk of the county where the enterprise, business, pursuit or occupation is proposed to be carried on," or where "the principal office or place of business is proposed to be located," and retain the third in possession of the corporation. When all these things are done, and not before, they, in the language of section 5 of such act, "shall thereafter be deemed a body corporate, with power," etc.

What are the facts with reference to the Gaston or West-Side Company? When did they file their articles of incorporation? Was it before or after the adoption of the joint resolution of October 10th, 1866, designating the "Oregon Central Railroad Company" as the one to receive the grant? If before, and they before that date had organized by the election of a Board of Directors, then in case there had been no fraud, and they had complied with the act of Congress in establishing the line of their road, we are ready to concede their right to the grant; if not until after, then we deny their right in toto, even if there had been no fraud.

Upon this subject let the record speak for itself, showing as it does that their articles were not filed either in the office of the Secretary of State or in the office of the County Clerk of Multnomah county, until over

one month after the Legislature of 1866 had adjourned.

The following is a certified copy of the articles of incorporation of the Gaston or West-Side Company, as certified by the Secretary of State, under the great seal:

COPY.

Know all men by these presents, that we, the undersigned, citizens of the State of Oregon, do hereby associate ourselves together as a private Incorporation, under, and by virtue of the General Incorporation Law of said State.

1st. The corporation hereby created shall be known as the "Oregon Central Railroad Company," and its duration unlimited.

2d. The object and business of the corporation shall be, to construct and operate a railroad from the city of Portland through the Willamette valley to the southern boundary of the State, under the laws of Oregon, and the law of Congress recently passed, granting land and aid for such purpose.

3d. The corporation shall have its principal office in the city of Portland.

4th. The capital stock of said corporation shall be five million dollars, divided into general and preferred interest bearing stock, in such proportions as the Incorporators or Board of Directors may deem proper.

5th. The amount of each share of the capital stock shall be one hundred dollars.

6th. The termini of the railroad proposed to be constructed by said company, shall be, for the northern end, at the city of Portland, and for the southern end, at some point on or near the southern boundary of the State, as may be hereafter determined by actual survey.

In witness whereof we have set our hands and seals this .... day of September, A. D. 1866. (5 cts. Rev. Stamp.)

J. S. SMITH,	(SEAL)
I. R. MOORES,	(SEAL)
J. H. MITCHELL,	(SEAL)
E. D. SHATTUCK,	(SEAL)
F. A. CHENOWETH,	(SEAL)
JESSE APPLEGATE,	(SEAL)
JOEL PALMER,	(SEAL)
H. W. CORBETT,	(SEAL)
M. M. MELVIN,	(SEAL)
GEO. L. WOODS,	(SEAL)
R. R. THOMPSON,	(SEAL)
J. C. AINSWORTH,	(SEAL)
C. H. LEWIS,	(SEAL)
S. G. REED,	(SEAL)
JOHN McCRAKEN,	(SEAL)
B. F. BROWN,	(SEAL)
T. H. COX,	(SEAL)
J. GASTON,	(SEAL)

STATE OF OREGON,)
) ss.
MARION COUNTY.)

Be it known that the persons whose names are at-

tached to the foregoing articles of incorporation, appeared before me, a Notary Public, for and within said county and State, respectively, at the times and places herein named, to-wit: J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer and H. W. Corbett, at Salem, in said State, on or about the 29th day of September, 1866, and M. M. Melvin, at Salem, on or about October 23d, 1866, and Geo. L. Woods, at Salem, on or about November 10th, 1866, and R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCraken and C. H. Lewis, at Portland, Oregon, on the 16th day of November, 1866, and they, the said several subscribing persons to the aforesaid articles of incorporation, did then and there, at the several times set forth in this certificate, sign and seal said articles before me and in my presence, and acknowledged the said signing and sealing to be their voluntary act and deed, for the purposes set forth in said articles.

In witness whereof I have here set my signature as said Notary Public, and attached my official seal this 16th day of November, 1866. (5 cts. Rev. Stamp).

(Notarial Seal) J. GASTON,
Notary Public.

STATE OF OREGON,)
) ss.
COUNTY OF MARION,)

On this, the 20th day of November, A. D. 1866, before me, a Notary Public, in and for said county, per-

sonally came the within named B. F. Brown, Thos H. Cox and J. Gaston, who are personally known to me to be the identical persons whose names are subscribed to the within instrument, and acknowledged to me that they signed the same for the purposes therein set forth.

Witness my hand and seal of office this, the 20th day of November, A. D. 1866.

(Notarial Seal) SETH R. HAMMER,
Notary Public.

Filed in the office of the Secretary of State, this 21st day of November, A. D. 1866, at 10-½ o'clock A. M.

(Seal of State). SAMUEL E. MAY,
Secretary of State.

I certify the foregoing to be a true copy.

(Seal of State). SAMUEL E. MAY,
Secretary of State.

From this record it will be seen that these articles were filed in the office of the Secretary of State on the 21st day of November, 1866, and in the County Clerk's office of Multnomah County on the 23d day of November, 1866, as shown by the following certificate of the Clerk:

OFFICE OF COUNTY CLERK)
OF MULTNOMAH COUNTY, OREGON.)

STATE OF OREGON,)
) ss.
County of Multnomah.)

To all whom these presents may come greeting: I,

Benj. L. Norden, County Clerk of the county of Multnomah, State of Oregon, do hereby certify that the articles of Incorporation of the Oregon Central Railroad Company, of Portland, Oregon, were filed in this office on the 23d day of November, A. D. 1866.

Witness my hand and seal of office, attached this 20th day of November, A. D. 1868.

(Seal) (5 cts. Rev. Stamp) B. L. NORDEN

County Clerk Multnomah County, Oregon.

Where, then, we ask, is the right of the West-Side Company to the land grant, when they did not have an existence, either in corporate capacity or as an organized company, until over five weeks after the adoption of the joint resolution of October 10th, 1866, from which alone they make claim.

But not only so—these articles of incorporation are so infected with fraud, that it would be useless to dispute the proposition when viewed in the light of the facts in the case, and the circumstances connected with their existence.

Let us look to these facts and circumstances.

On or about the 29th day of September, A. D. 1866, the following named gentlemen, whose names appear as part of the corporators in the West-Side Company, conceived the idea of associating themselves together as a corporation under the name of the "Oregon Central Railroad Company." The purpose being to construct a railroad and telegraph line in accordance with the act

of Congress of July 25th, 1866; and with the intention also of going before the Legislature of Oregon, then in session, and receiving the designation, as in the act of Congress required. In pursuance of this agreement, the present articles of the West-Side Company were drawn up, all except the certificates of acknowledgment, and were signed in triplicate by the corporators before referred to, namely: J. S. Smith, I. R. Moores, H. W. Corbett, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, and Joel Palmer—eight in all. These articles, when so signed, were given to J. Gaston, the present President of the West-Side Company, who was then, to-wit—September 29th, 1866—a Notary Public, for the purpose of having him take the acknowledgments, and attach his certificate of acknowledgment to the same and file them as required by law, in order to create the corporation existence. All this Gaston, as such Notary Public, agreed to do, and took such articles in his possession, and soon afterwards stated to several of the before named corporators that he had filed them as required by law, and the aforesaid corporators believed they were so filed. After this, and about the 10th of October, 1866, this man Gaston went before the House Committee on Railroads of the Legislature and falsely represented that a corporation had been duly incorporated and organized under the name of the "Oregon Central Railroad Company," by the hereinbefore named gentlemen as corporators; and the said corporators, also, relying upon the statements of Gaston, that he had attached his certificate of acknowl-

edgment to, and filed the said articles, and believing, as they did, that the same had been done, represented to the said Legislature that they were so incorporated, and asked of such Legislature to be designated as the corporation to receive the land grant.

In pursuance of such representations, and relying on the same as true, the House Committe on Railroads, on the .... of October, 1866, made a lengthy report to that body on the subject of railroads generally, wherein they referred also specifically to the land grant and to a corporation, which it is evident they supposed to be in existence at the time, composed of the persons before named. In this report the committee use this language, under the head of "The Oregon Central Railroad:"

"We come now to consider a definite proposition. "Through the efforts of a few of our citizens, acting in "conjunction with some railroad capitalists of Califor- "nia, and aided by the Pacific coast delegation in Con- "gress, a grant of twenty sections of public land per "mile has been secured from Congress to aid in con- "structing a line of railroad from Portland, Oregon, "to the Central Pacific Railroad in California. It is "made the duty of this Legislature to designate the "company which shall receive and manage so much of "this land grant as lies within the State of Oregon. "In view of these facts, the following named gentlemen "have incorporated themselves under the general incor- "poration law of this State, to-wit: J. S. Smith, I. R. "Moores, J. H. Mitchell, E. D. Shattuck, Jesse Apple-

"gate, Edward R. Geary, S. Ellsworth and H. W. Cor-
"bett, under the name and style of "The Oregon Central
"Railroad Company," for the purpose of receiving the
"said grant of land and using it, so far as it may go
"towards the construction of the proposed railroad, pass-
"ing through the Willamette, Umpqua and Rogue River
"valleys."

(See House Journal of Session 1866, of Oregon Legislature, page 256).

It will be observed from this report, and a comparison of it with the articles of the West-Side Company, that by the one, the report, the company was supposed, by the committee, to consist of eight corporators, and those eight the same persons who had originally signed such articles, and who supposed they were incorporated, with the exception that the name of E. R. Geary was substituted for that of F. A. Chenoweth; and that of S. Ellsworth for the name of Joel Palmer; whereas the present articles show the same to have been incorporated by eighteen corporators, instead of eight. How then did all this occur? We answer by a most palpable and unpardonable fraud, practiced by J. Gaston and others, who afterwards, together with him, surreptitiously and without the knowledge or consent of the original corporators, save and accept, perhaps, that of one or two of them, signed said articles of incorporation, as additional corporators, and for the purpose of entering into a secret fraudulent agreement to secure the control and management of its organization, and for the purpose of directing the route of the road to the west side of

the river from the central course intended by the original corporators, and which is required by the act of Congress; and which secret and fraudulent arrangement they did enter into, and are still attempting to carry out. And the Legislature, being thus imposed upon, as herein stated, adopted the following joint resolution, under which the West-Side Company claims title to the land grant:

HOUSE JOINT RESOLUTION NO. 1.

Relating to the Railroad Land Grant from the Central Pacific Railroad in California, to Portland, Oregon.

WHEREAS, The Congress of the United States at its last session passed an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly, of the State of Oregon, to designate the company organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon; therefore,

Be it Resolved by the House, the Senate concurring, That the "Oregon Central Railroad Company"—a company organized under the general incorporation law of Oregon—be, and the same is hereby designated as the company which shall be entitled to receive the land granted, and all the benefits of an act of Congress, approved July 25th, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph, from the Central Pacific Railroad in California,

to Portland, Oregon," so far as said land grant applies to the State of Oregon.

Adopted by the House and Senate, October 10th, 1866.

I certify the foregoing to be a true copy of the resolution passed that date.

SAMUEL E. MAY,
Secretary of State.

This man Gaston, instead of attaching his certificate to said articles, as he had promised and agreed to do, and as it was his duty as such officer of Notary Public to do, and instead of filing the same in the office of Secretary of State, as he agreed to do, put said articles in his pocket, doing neither, and retained them there until three days after the adjournment of the Legislature (it adjourned October 20th, 1866), to-wit: October 23d, when, without the knowledge or consent of the original eight corporators, except, perhaps, one or two of them, he solicited and obtained the signatures of the following named persons as additional corporators to such articles, and at the date and places hereinafter stated, as shown by the certificate of Gaston's attached to such articles, to-wit: M. M. Melvin, at Salem, on the 23d of October; Geo. L. Woods, at Salem, on November 10th; R. R. Thompson, J. C. Ainsworth, S. G. Reed, John McCraken and C. H. Lewis, at Portland, on November 16th; and B. F. Brown and Thos. H. Cox, at Salem, on November 20th; and to cap the climax of base infidelity to his trust, J. Gaston, on the

same date, November 20th, attached his name as an additional corporator; and, on the 16th day of November, 1866, he attaches his certificate and seal as Notary Public, for the first time, to said articles; and, on the 21st day of November, 1866, he, for the first time, files one of the triplicates of such articles in the office of the Secretary of State; and, on the 23d day of November, 1866, files another in the office of the County Clerk of Multnomah County. (See certificate of Benj. L. Norden, Clerk, before cited.) And for the purpose of showing the manner in which Gaston obtained the names of at least two of the ten additional corporators to the articles of the West-Side Company (or rather to the articles which were intended for the company we now represent, but which he fraudulently carried off and appropriated to his fraudulent purpose), we insert the following affidavits of T. H. Cox and B. F. Brown:

COPIES OF AFFIDAVITS OF T. H. COX AND B. F. BROWN.

STATE OF OREGON,)
)ss.
MARION COUNTY.)

We, Thomas H. Cox and B. F. Brown, being duly sworn, severally depose and say, that on or about the 20th day of November, A. D. 1866, Joseph Gaston requested us to sign articles of incorporation of "The Oregon Central Railroad Company," assuring us that several names more were needed to properly complete and organize said company; that with the view of assist-

ing to complete said incorporation, we did sign the same, and also a paper appointing said Gaston general canvassing agent for the company, with a salary; that we have taken no part in the said company otherwise than as above. The foregoing statement is to the best of our knowledge and belief.

T. H. COX.
B. F. BROWN.

STATE OF OREGON,)
) ss.
MARION COUNTY.)

Subscribed and sworn to before me, by said T. H. Cox and B. F. Brown, the 12th day of November, A. D. 1868. Witness my hand and seal.

(Notarial Seal) SAML. A. CLARKE,
Notary Public.

It is well, also here, to remark that the commission of J. Gaston, as Notary Public, expired on the 10th day of October, 1866, and he then ceased to be such Notary Public; and from that date, at no time until November 20th, was he a Notary Public, or authorized to take the acknowledgment of deeds, or of articles of incorporation, or to use a Notarial seal. Upon this point, we will permit the Record to speak for itself:

CERTIFICATE OF SAMUEL E. MAY, SECRETARY OF STATE.

STATE OF OREGON,)
DEPARTMENT OF STATE,)
November 10th, 1868.)

I, Samuel E. May, Secretary of State for the State of Oregon, do hereby certify that the commission of Joseph Gaston, as a Notary Public for Marion County, State of Oregon, expired on the 10th day of October, A. D. 1866, at which time he ceased to be such Notary; and that at no time after the said 10th October, 1866, during the remainder of the month of October, 1866, and until the 20th day of November, 1866, was he, the said Joseph Gaston, in commission as a Notary Public for said State, or authorized to do business as such officer.

Witness my hand and the seal of said State, the day above written.

(SEAL OF STATE) SAMUEL E. MAY,
Secretary of State.

But the object of the refusal of Gaston to attach his certificate when he should have done it, and file the articles, will be still more clearly apparent when it is known that he—Gaston—on or about the 16th day of November, 1866, fraudulently confederated with (and they with him) five of the ten persons whose signatures he surreptitiously and fraudulently obtained to said articles after the adjournment of the Legislature, and for the purposes heerinbefore stated, entered into a written agreement with them, of which the following is a copy:

SECRET, FRAUDULENT AGREEMENT.

"We, the undersigned, part of corporators in the Oregon Central Railroad Company, of Portland, Ore-

gon, for the purpose of controlling the organization and future management of the said corporation, and to make money and business thereby, do hereby bind ourselves together, in the following contract, as equal partners:

1st. Each person here subscribing shall own, have, and be entitled to receive one-sixth of all the profits, dividends, and moneys which can be made by and out of the ownership, contract and management of the said corporation, its franchises and other property.

2d. That each of the parties hereto shall always be entitled to a place in the Board of Directors.

3d. That the managing officers and agents shall always be selected from the parties hereto.

4th. That this contract and agreement *shall not be known to the public as are other partnerships,* (the italics are ours) and in no case shall any one or more of the parties hereto have any right or power to bind the other parties to this contract in any matter of indebtedness, or pecuniary liability, without their previous consent or subsequent ratification, and any attempt to do so shall forfeit the entire interest of said party in this contract to his other partners.

5th. *No assessments, charges, or expenses of any kind, shall ever be levied or collected by the Board of Directors, upon any of the stock held by any party hereto, nor upon any of the persons or interests herein named without the unanimous consent of all the parties hereto.* (Italics are ours).

6th. It is hereby agreed that one-half of the capital stock of said company—to wit: Two million five hundred thousand dollars, shall be subscribed by one or more of the parties hereto, upon the condition of this agreement, and a Board of Directors, elected, and each person to this contract shall have an equal interest in said stock, to be by him held and owned.

7th. That, as a consideration to the other stockholders in said company, to be public, and to said corporation, the parties hereto agree to do all in their power to develop the property of said corporation, and to go forward in the matter with as much speed and energy as the circumstances will allow.

Dated Salem, November 16th, A. D. 1866."

Signed by J. Gaston and five others of the ten corporators who signed the articles of the West-Side Company, after the Legislature of 1866 had adjourned.

The foregoing agreement was read before the Senate of the State of Oregon at its late session, in September last, while the matter of the Congressional land grant was under consideration, and it was there proven to have been executed as herein stated, by the testimony of Judge F. A. Chenoweth, who testified that Gaston had admitted its execution as herein stated, when the same was read before a public meeting in Corvallis, in July last; and even Gaston himself, when the same was read before the Senate, did not attempt to deny it; besides, of the execution of this agreement, as herein stated, there is abundant other proof in existence, should the same be

disputed.

On the 17th day of November, 1866, two of the eight original corporators, residing at Salem, to-wit: J. S. Smith (Representative elect in Congress) and I. R. Moores—on discovering the fact, that the articles which they supposed had been duly filed, had never been placed upon record; and that there was no "Oregon Central Railroad Company" in existence; and that, therefore, the Legislature had been imposed upon, and their action was a nullity, immediately, in conjunction with E. N. Cooke, prepared, executed, and filed new articles of incorporation, in which articles they adopted the name of "The Oregon Central Railroad Company." Their articles were duly filed, as required by law, on the 17th day of November, 1866, which was the first railroad corporation incorporated in the State of Oregon under that name; this being four days prior to the filing of the articles of the West-Side or Gaston Company.

The following is a true copy of such articles, as certified to from the record by Samuel E. May, Secretary of State:

COPY.

ARTICLES OF INCORPORATION OF THE OREGON CENTRAL RAILROAD COMPANY.

ARTICLE 1. J. S. Smith, I. R. Moores and E. N. Cooke, and their associates, successors and assigns, do hereby incorporate themselves under and by virtue of

an act of the Legislative Assembly of the State of Oregon, entitled "An act providing for private incorporations," approved October 14th, 1862.

ART. 2. The name of the incorporation, and by which it shall be known, is, the "Oregon Central Railroad Company," and its duration shall be perpetual.

ART. 3. The object of this incorporation, and the business in which it proposes to engage, is the construction of a railroad and telegraph from Portland, Oregon, to some point on the 42d parallel of latitude, on such line of route as the Company may hereafter designate, and also to use said railroad when made for the purpose of transporting freight and passengers between the said termini; and also to keep said railroad in repair, and to collect such tolls and fare for transportation over said road as this incorporation shall deem expedient.

ART. 4. The principal office of this incorporation shall be at the city of Salem, in the State of Oregon.

ART. 5. The amount of capital stock of this incorporation shall be five hundred thousand dollars.

ART. 6. The amount of each share of such capital stock shall be one hundred dollars.

In witness whereof we have hereunto set our hands this 17th day of November, 1866. (10 cts. Rev. Stamp).

Witnesses:

J. C. CARTWRIGHT,
M. N. CHAPMAN,

J. S. SMITH, (L. S.)
I. R. MOORES, (L. S.)
E. N. COOKE, (L. S.)

STATE OF OREGON,)
) ss.
COUNTY OF MARION,)

On this 17th day of November, A. D. 1866, before the undersigned, a County Clerk, in and for the county of Marion, State of Oregon, personally appeared the above mentioned J. S. Smith, I. R. Moores and E. N. Cooke, who are personally known to me to be the identical persons described in and who executed the within instrument, and acknowledged that they executed the same freely, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and the seal of the County Court of said county, the day and year first above written.

(COUNTY COURT SEAL) GEO. A. EDES,
Clerk of Marion County.

By M. N. CHAPMAN, Deputy.

Filed in the office of the Secretary of State this 17th day of November, A. D. 1866, at 6-½ o'clock, P. M.

SAMUEL E. MAY,
Secretary of State.

I certify the foregoing to be a true copy.

SAMUEL E. MAY,
Secretary of State.

In this situation matters remained until in April,

1867, neither of said companies having up to that date, April 22d, 1867, had any stock subscribed, or organized, or attempted any organization. At that date, parties representing capitalists in California and the East, came to Oregon, being the same persons referred to in the report of the House Committee in 1866, before cited, and desired to enter into a contract for the construction of the road provided for by the act of Congress giving the land grant.

Upon examination it was found that the articles filed first, by Messrs. Smith, Moores and Cooke, did not fix the capital stock at an amount adequate to the contemplated enterprise; and, regarding the articles filed by Gaston as illegal, fraudulent and void, for the reasons hereinbefore referred to, it was thought best by corporators in said company, first incorporated, as well as by a majority of the eight persons who first signed, as hereinbefore stated, to merge said corporation in a new company, by filing new articles, that might be in all respects legal, and free from fraud, and with a capital stock adequate to the magnitude of the enterprise. Accordingly, on the 22d day of April, 1867, the following articles of incorporation were duly executed and filed, and under which the company we represent was duly organized, and under which it is now proceeding to construct its road in accordance with the act of Congress:

COPY OF ARTICLES OF INCORPORATION OF THE OREGON CENTRAL RAILROAD COMPANY, OF SALEM, OGN.

(Fifteen Cents Revenue Stamp.)

Know all men by these presents, that we, J. H. Moores, Geo. L. Woods, S. Ellsworth, by Geo. L. Woods, his attorney, I. R. Moores, E. N. Cooke and J. S. Smith, by I. R. Moores, their attorney, and Samuel A. Clarke, have this day incorporated ourselves under and in accordance with the laws of Oregon, and we adopt the following as our articles of incorporation:

ARTICLE 1. This corporation shall be known as and do business under the name of the "Oregon Central Railroad Company."

ART. 2. The enterprise, occupation and business for which this company incorporates, is to construct a railroad, with all the necessary branches, fixtures, buildings and appurtenances, from Portland, in Oregon, southerly, about three hundred miles to the California line; to maintain the said road in good condition and repair, and to employ the same in the transportation of passengers and freight.

ART. 3. The principal office for the transaction of the business of the company shall be kept at Salem, Marion county, Oregon.

ART. 4. The capital stock of the Oregon Central Railroad Company shall be fixed at seven millions, two hundred and fifty thousand dollars ($7,250,000).

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ART. 5. The number of shares of the capital stock shall be seventy-two thousand five hundred (72,500), and the amount of each share of the stock shall be one hundred dollars ($100).

ART. 6. The period of time during which the company shall remain in operation, is not limited as to duration.

In testimony of our adoption of the foregoing articles of incorporation, witness our hands and seals this, the 22d day of April, A. D. 1867.

JOHN H. MOORES, (L.S.)

J. S. SMITH, by I. R. Moores, attorney, (L.S.)
GEO. L. WOODS, (L.S.)
E. N. COOKE, by I. R. Moores, attorney, (L.S.)
S. ELLSWORTH by Geo. L. Woods, attorney (L.S.)
I. R. MOORES, (L.S.)
SAML. A. CLARKE, (L.S.)

STATE OF OREGON,)
) ss.
MARION COUNTY,)

Be it remembered that on this, the 22d day of April, A. D. 1867, personally came before me, a Notary Public in and for said county and State, the within named J. H. Moores, Geo. L. Woods, I. R. Moores, for himself and also as attorney in fact for each of the following named persons: J. S. Smith and E. N. Cooke; and S. Ellsworth, by Geo. L. Woods, attorney, and S. A. Clarke, who severally acknowledged that they signed the within

and foregoing instrument in person, and as attorney, for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and notarial seal, this the day and year above written.

(Notarial Seal) C. S. WOODWORTH,
Notary Public.

Filed in the office of the Secretary of State, this 22d day of April, A. D. 1867.

I. R. MOORES,
Acting Secretary of State.

I certify the foregoing to be a true copy.

SAMUEL E. MAY,
Secretary of State.

Under these articles the capital stock was duly subscribed and taken in April, 1867, and in the same month "The Oregon Central Railroad Company," of Salem, Oregon, was duly organized by the election of a Board of Directors, and a contract was also entered into at that date with parties representing California and Eastern capital for the construction and equipment of the first one hundred and fifty miles of the road, which contract was subsequently transferred by the original contractors to Ben. Holladay & Co., who have agreed in writing, with this company, to perform the same in every particular, including, also, a second contract, subsequently entered into with the original contractors, for the construction and equipment of the balance of the road in Oregon, running through the Umpqua and Rogue River Valleys, to the California line, which latter contract has

also been transferred to Ben. Holladay & Co., and they have agreed in writing, with the Oregon Central Railroad Company, to perform the same in every particular. After all these things had taken place and when it was supposed by every person cognizant of the fact, that the West-Side or Gaston corporation had died from the poisonous fumes of the illegality and fraud in which it was conceived, and with which it was surrounded, Gaston in May, 1867, without the ability to pay any sum whatever—notoriously so—in pursuance of the fraudulent agreement hereinbefore cited, subscribed in his own name, and took to himself the whole of the one-half of the capital stock in this West-Side Company—the whole capital stock being five million dollars. He (Gaston) taking two millions five hundred thousand dollars. He then gets a few persons, enough for Directors, to subscribe a share each, and thus organizes the West-Side Company, by the election of himself and others Directors, and himself President.

Thus it was, that the obscure Notary Public, of Salem, Oregon, who was called upon simply to take the acknowledgments of eight persons to articles of incorporation, succeeded through a most palpable and unblushing fraud, in becoming the owner of the whole corporation; and thus holding in his own pocket the votes necessary to control a corporation with a nominal capital of five millions of dollars, he disposes portions of the other half of the capital stock to the unsuspecting farmers of Oregon, and for it receives their money, to be used in the construction of the road, on which the only work

that has yet been done has been confined to a distance of five miles, and the grading for that distance is not yet completed, while his two million five hundred thousand dollars of stock remain in his hands unassessable, and upon which he has never paid a cent, and upon which no assessment has ever been levied. These facts Joseph Gaston was himself compelled to reluctantly admit, as a witness before the Senate, of the State of Oregon, in the recent investigation of this matter before that honorable body.

It will be observed, therefore, that "The Oregon Central Railroad Company" proper, which we represent, was organized by the subscription of its stock, and the election of its Board of Directors, about one month prior to the organization of the Gaston or West-Side Company. The East-Side Company being organized in April, 1867, and the West-Side in May, 1867.

And upon this point we would attract special attention to the act of Congress, of July 25th, 1866, making this land grant, The grant was to go to a company, not merely incorporated under the laws of Oregon, but to "such company organized under the laws of Oregon, as the Legislature of said State shall hereafter designate." The terms "organized" and "organization" when used in reference to corporations, and especially under the general incorporation law of Oregon, have a technical, well defined meaning, and include the subscription of stock and the election of a Board of Directors. When, therefore, the Congress of the United States passed the act of July 25th, 1866, and provided that it should be

received and managed by "such company organized under the laws of Oregon, as the Legislature might hereafter designate," they intended that there should be more than a mere naked corporate existence, without a dollar of capital stock subscribed, and without any head whatever, save mere corporators, who, until they have subscribed for, or taken stock, are not responsible for a cent. They intended just what they said, that the company should be organized; that is, that one-half, at least, of the capital stock should be subscribed, which, under the law of Oregon, must be done before an organization can take place, and a Board of Directors elected; and that this should all be done before the Legislature proceeded to designate such company, in order that the Legislature might the better determine whether or not it was a bona fide company, and one composed of men to whom should be entrusted the management and control of a Congressional grant of lands, worth over five millions of dollars.

Under the general incorporation law of Oregon, a company may be duly incorporated by three or more persons, no one of whom resides within a thousand miles of Oregon, and no one of whom is worth a cent; whereas, a company to be organized, must have at least a majority of the Directors residents of the State, and one-half of the stock bona fide subscribed.

(See General Incorporation Law of Oregon.)

Did Congress, therefore, intend to give this grant to an irresponsible company, such as the former? or,

did they not rather intend that it should go to a bona fide, responsible company, such as the latter?

Admitting, therefore, for the time being the argument, and merely for the sake of the proposition, that although no company was organized at the time of the adoption of the joint resolution of October 10th, 1866, that it would have the effect of passing the grant to the company that might thereafter be first organized. Even then, the company we represent, being the first one organized after the adoption of that resolution, would be the company in which the grant would vest.

But suppose, for the argument, that the Legislature had the power to designate a company not in esse, and that the effect of such attempt would be to vest the grant in the company that might be thereafter incorporated; then, if such a thing were at all possible, it most certainly would vest in that company that was first incorporated under the name designated by the Legislature. And in this view, the grant, in this instance, could not possibly vest in the West-Side Company, for the reason that the company composed of J. S. Smith, I. R. Moores, and E. N. Cooke, was duly incorporated under the laws of Oregon, assuming, as they did, the name designated by the Legislature—the "Oregon Central Railroad Company"—on the 17th day of November, 1866, four days prior to the incorporation of the West-Side Company. And it would be no answer to say, that such corporation lapsed for want of organization, for in that event the grant would fail with the company in which it vested, and the designation would fail.

But we deny that the action of the Legislature of 1866, had any vitality whatever; it was a mere mullity, in every sense of the word; a legislative hydatid, superinduced by imposition and fraud, that fell still-born upon the statute book.

And to this conclusion, also, did the managers of the Gaston Company come, as we will show from their own Record. When a person has a deed for the land on which he lives, from the former legal owner, he is not very likely to apply for a second one. So in this case. If the West-Side Company had the land grant by virtue of the action of the Legislature of 1866, then, why, we would inquire, did they seek to obtain a designation from the Legislature of 1868? The truth is, that Company knew full well that they had no corporate existence, much less an organization, at any time while the Legislature of 1866 were in session; and that they had no claim whatever to the Congressional grant, by virtue of any former action of the Legislature; and for proof of these statements, we refer to Joint Resolution No. 14, introduced at the late session of the Legislature, October 7th, 1868, by Doctor J. R. Bayley, Senator from Benton county, the champion of the Gaston Road in the late investigation in the Oregon Senate, which resolution had for its purpose the designation of the Gaston or West-Side Company.

See Senate Journal, Session 1868.

Herewith we give the full action of the Senate upon such resolution, as certified from such journal:

Mr. Bayley moved,

That the resolution be adopted,

Mr. Hendershott moved,

That the resolution be made the special order for Friday, at 11 o'clock.

Which motion was lost.

Mr. Cochran moved,

To refer to Committee on Railroads.

Which motion was lost.

Mr. Hendershott offered

S. R. No. 14.

Resolved, by the Senate, That the Secretary of State be requested to furnish to this body, as soon as possible, copies of all entries, filings of papers, etc., of the Oregon Central Railroad Company on file in his office.

Mr. Adams moved to amend by striking out all after the words "Secretary of State," and inserting in lieu thereof the following: "Be respectfully requested to immediately bring before this Senate the original papers purporting to be articles of incorporation of 'The Oregon Central Railroad Company,' or companies, and memoranda of filings thereof."

Mr. Hendershott accepted the amendment.

The resolution as amended was then adopted.

The Secretary of State then appeared, in compliance with the resolution, and read the papers called for

therein.

Mr. Hendershott offered the following resolution:

S. R. No. 15.

Resolved, by the Senate, That one attorney representing the East-Side, and one representing the West-Side Railroad Company, be permitted to make a statement of the merits of their respective roads; provided, they shall not occupy to exceed one hour each.

The resolution was adopted.

Mr. Stout moved.

That the rival Railroad Companies be allowed until 10 o'clock tomorrow morning to appear by attorney, in accordance with the resolution.

Carried.

And on motion of Mr. Huston, the further consideration of S. J. R. No. 14, was postponed until tomorrow morning at 10-½ o'clock.

Thursday, Oct. 8—10-½ A. M.

Mr. Cornelius offered

S. R. No. 16.

WHEREAS, The Secretary of State has read before the Senate the articles of incorporation of the Oregon Central Railroad Companies; therefore, in order to have full information of the organization of said companies,

Resolved, That said companies be invited to produce their original stock-books for the inspection of the Senate.

Carried.

Upon invitation of the President, J. K. Kelly, attorney for the West-Side Railroad Company, and J. H. Mitchell, attorney for the East-Side Railroad Company, appeared within the bar of the Senate, and proceeded, in pursuance of S. R. No. 15, to present the claims of their respective companies, and in offering evidence (which consumed the entire day).

Friday, Oct. 9th.

The President announced that the hour had arrived for consideration of S. J. R. No. 14, which, on motion of Mr. Huston, was resumed, and the remainder of the morning session was consumed by the arguments of the attorneys.

IN THE AFTERNOON.

Pending the motion to adopt the resolution,

Mr. Stout offered S. J. M. No. 2.

And thereafter Senate adjourned until to-morrow, 9 A. M.

Saturday, Oct. 10.

On motion of Mr. Cornelius, S. J. R. No. 14 was made the special order for Saturday, October 17th, at 10 o'clock A. M.

Saturday, Oct. 17th.

Mr. Ford moved that S. J. R. No. 14 be indefinitely postponed.

Mr. Cornelius moved to amend by postponing the

whole subject matter of the resolution.

Mr. Ford accepted the amendment.

Which was lost.

Mr. Bayley asked leave to withdraw the resolution.

Which was carried, and S. J. R. No. 14 was withdrawn.

From this record, therefore, showing, as it does, the whole proceedings of the attempt of the West-Side Company to obtain a designation under the false, but most transparent assumption, that they already had some kind of equitable right, it appears, that after a full and complete investigation before the Senate, when it became so apparent that even former friends of the Gaston Company would not have the courage to stand up in the Senate, and in the face of the most glaring frauds and illegality with which it was surrounded, and involved by the testimony adduced, vote to designate it as the company to receive this valuable grant, Doctor J. R. Bayley, the aforesaid champion and Senator from Benton, asks leave to withdraw the resolution, and so Senate Joint Resolution No. 14, of the session of 1868, having for its purpose the designation of the West-Side Company, expired in the arms of its friends, and returned lifeless to the Doctor, who presided over the ceremonies of its birth.

This occurred in the Senate, October 17th, 1868. On the same day Senator Miller, of Jackson county, offered Senate Joint Resolution No. 16, to designate the Ore-

gon Central Railroad Company, of Salem, Oregon, the one we represent, as the company to receive the land grant. And here we present a certified copy from the Journals of the Senate and House, giving this resolution in full, and also the action of the Senate and House thereon, and to which we call special attention:

Mr. Miller, of Jackson, offered S. J. R. No. 16.

WHEREAS, The Congress of the United States, by an act approved July 25th, 1866, entitled "An act to aid in the construction of a railroad and telegraph from the Central Pacific Railroad to Portland, in Oregon," did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon, as the Legislature of such State should thereafter designate;

AND WHEREAS, The Legislative Assembly of Oregon, at its Fourth Regular Session, did adopt a joint resolution known as "House Joint Resolution No. 13," designating in terms "The Oregon Central Railroad Company," as the company entitled to receive the land granted by, and all the benefits and privileges of the said act of Congress;

AND WHEREAS, At the time of the adoption of the said joint resolution, as aforesaid, no such company as "The Oregon Central Railroad Company" was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company;

AND WHEREAS, The designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by the said act of Congress yet remains to be made; therefore,

Be It Resolved by the Senate, the House concurring, That the Oregon Central Railroad Company, a corporation organized at Salem, on the twenty-second day of April, in the year one thousand eight hundred and sixty-seven, under and pursuant to the laws of the State of Oregon, be, and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by said act of Congress.

And moved its adoption.

Mr. Stout moved the previous question.

Mr. Trevitt moved that the Senate take a recess until 1-½ o'clock this afternoon.

Which motion was lost.

The previous question was ordered.

The vote was taken on the motion to adopt S. J. R. No. 16, with the following result:

YEAS—Messrs, Bayley, Brown, Cochran, Crawford, Cyrus, Dribblesbly, Ford, Hendershott, Miller of Marion, Miller of Jackson, Powell, Stout, Thompson and Trevitt—14.

NAYS—Messrs. Adams, Cornelius, Herman, Holsclaw, Huston, Ison, Persbaker and Mr. President—8.

So the resolution was adopted.

Before the resolution was announced, Mr. Bayley gave notice he would move a reconsideration of the same.

Mr. Trevitt moved that the Senate take a recess until 2 o'clock this afternoon.

The motion was lost.

Mr. Hendershott moved a reconsideration of the vote by which S. J. R. No. 16 was adopted.

Mr. Stout moved that the motion to reconsider be indefinitely postponed.

Which motion prevailed.

I certify the foregoing to be a correct abstract of the proceedings in Senate, relating to the adoption of S. J. R. No. 14 and 16, taken from the Journal of said Senate, now on file in my office.

SAMUEL E. MAY,
Secretary of State.

IN THE HOUSE OF REPRESENTATIVES, OF THE FIFTH REGULAR SESSION, OF THE LEGISLATIVE ASSEMBLY OF THE STATE OF OREGON.

Monday, Oct. 19, 1868.

The following message was received from the Senate:

SENATE CHAMBER, Oct. 19, 1868.

MR. SPEAKER:—I am instructed by the President to inform you that the Senate has adopted S. J. R. No. 16, designating the "Oregon Central Railroad Company," of Salem, as the company entitled to the grant of land made by Congress, to aid in the construction of a railroad through the Willamette valley. It is herewith transmitted for the concurrence of the House.

S. C. SIMPSON,
Clerk Senate.

Mr. Bellinger moved that S. J. R. No. 16 be read now.

Which carried—29 to 15.

Tuesday, Oct. 20.

S. J. R. No. 16 was made the special order for this evening, on motion of Mr. Bellinger.

Evening Session, 7 o'clock.

The Speaker stated that the special order of the evening was the consideration of S. J. R. No. 16.

Whereupon Mr. Gray moved the House concur with the Senate in the adoption of the resolution.

Mr. Chapman moved, as amendment, to refer it to a committee of five, with instructions to report H. B. No. 88 and H. J. M. No. 6, which he submitted.

Lost—yeas, 20—nays, 26.

Mr. Gazley offered an amendment that the Directors give bonds in the sum of one hundred thousand

dollars, that the road will go through Umpqua, Jacksonville and Ashland.

Which was lost—17 to 29.

Messrs. Gray and Bellinger moved the adoption of the previous question.

Carried—28 to 16.

The question being "Shall S. J. R. No. 16 be adopted?" those voting yeas were—

YEAS—Messrs. Alexander of Linn, Alexander of Benton, Bellinger, Beers, Bryant, Butler, Cox, Crooks, Davenport, Denny, Garrett, Gray, Gilfrey, Johnson, Kirk, Loudon, Litchenthaler, Minto, Powell, Rinehart, Smith, Stites, Simpson, Trullinger, Tandy, Winston, White and Mr. Speaker—28.

NAYS — Messrs. Applegate, Benson, Burnet, Brown, Chapman, Davis, Flook, Gazley, Grant, Hoxter, Jackson, Neal, Pendegast, Ryan, Scoggins, Townsend, Taylor and Waymire—18

So S. J. R. No. 16 passed.

Mr. Bellinger moved to reconsider.

Mr. Stites moved to indefinitely postpone the motion to reconsider.

Which motion prevailed.

I certify the foregoing to be a correct abstract of the proceedings in the House, relating to the adoption of S. J. R. No. 16, taken from the Journal of said House, now on file in my office.

(SEAL OF STATE) SAMUEL E. MAY,
Secretary of State.

After a full and complete investigation, of this matter, in relation to the land grant, during nearly the whole of the session, the Legislature of the State of Oregon, to whose care this important trust was committed, decided by a majority of six, in a Senate composed of twenty-two, and by a majority of ten, in a House composed of forty-six, that, too, without regard to party, which so frequently rules in similar cases, that the West-Side or Gaston Company is not entitled to the Congressional land grant; and that "The Oregon Central Railroad Company, of Salem, Oregon, is entitled to it.

Another fact, or two, in this connection, might serve to throw still more light upon the controversy relative to this land grant, and especially upon that branch of it wherein the West-Side Company claim that they were designated in October, 1866, These facts are as follows: As before stated, the West-Side Company came before the last Legislature, praying of that body to designate them as the company entitled to the grant, and so very anxious were they to succeed in this particular, that they, in order to secure certain votes in the Legislature, were willing to barter away the one-half of the Congressional grant to another company incorporated during the sitting of the Legislature, in pursuance of an understanding between the West Side Company and the three corporators of this new organization. Consequently, on the .... day of September, 1868, three persons filed articles of incorporation under the name of "The Willamette Valley Railroad Company," wherein they proposed to build a railroad

from Portland, Oregon, on the east side of the river; the same to cross the river at one of the several points named in such articles.

Upon the date of the filing of these articles, and before any organization had been effected, a meeting is held between the Directors of the West-Side Company and the three corporators of the "Willamette Valley Railroad Company," at which meeting a writing was drawn up and executed by the President of the West-Side Company, Joseph Gaston, by and with the sanction of the Directors, wherein they agreed substantially that the one-half of the Congressional land grant, so far as it related to the Wilalmette Valley, should go to and be owned by the said "Willamette Valley Railroad Company;" and wherein, also, the West-Side Company agreed to convey such lands to said irresponsible company, incorporated, as it was, unquestionably for the purpose of a private speculation, and in pursuance of a previous understanding with the President and Directors of the West-Side Company.

This attempt, however, to purchase a designation at the very great expense, and still greater impropriety, of attempting to divert the Congressional grant from the true purpose of its creation—a great public benefit—to that of a mere individual speculation, did not succeed with the Legislature of Oregon. These facts were proven before the Senate in the recent investigation, and cannot now be successfully denied by the President or Directors of the West-Side Company. Thus it was that this company, which talks of vested rights, by rea-

son of the action of the Legislature of 1866, were willing to give away the half of such grant, in order to secure a designation by the Legislature in 1868.

But say they, the Gaston or West-Side Company filed its assent to the grant in the office of the Secretary of Interior, within one year from the date of the passage of the act of Congress, as required by that act. But we would inquire this: If you have never been designated by the Legislature of the State of Oregon as the company to receive the grant, which it must be admitted by every candid person acquainted with the facts here presented, that you never have, then, how, or by what authority, could you file your assent? Can a person accept a thing that has never been even offered to him? Can a corporation file its assent to a grant that has never even been tendered it? As well might one child out of a whole family of children undertake to take possession of his father's estate, under the pretence that he has a right by devise, while his father is yet alive, and before his will is made. The claim, therefore, that the West-Side Company have rights, because they have filed their assent, is simply preposterous, and without shadow of claim even to further consideration.

But it is said, although there was no company organization during the sitting of the Legislature of 1866, yet there were certain articles of incorporation drawn up and presented to the Legislature; and although they were not fully incorporated, the Legislature supposed they were, and, therefore, an equity of some kind was raised. We deny most emphatically, as a matter of

law, that any equity could arise, as this was a transaction in relation to trust property, and the Legislature in disposing of the grant must proceed in strict accordance with its terms. But suppose an equity could arise? That equity would be in favor of the company we now represent. Suppose articles of incorporation were "presented to the Legislature" and the "grant solicited," as stated in Senate Joint Resolution No. 14, introduced by Senator Bayley at the late session, who, we would inquire, were the corporators whose names were then signed to those articles? How many were there? Were there eighteen, the number whose names now appear to such articles as corporators, or were there but eight? Gaston's certificate as Notary Public to those articles, answers all these inquiries. From that certificate it appears, as we have already shown, that there were but eight names to those papers at any time during that session, and that ten, a majority of whom have from the first owned and controlled the company, were added afterwards, without authority. If any equity could arise at all, it most certainly would be in favor of that company which is now composed principally of the men whom the Legislature supposed at that time were incorporated. Whom did they suppose formed the "Oregon Central Railroad Company" in October, 1866, when they undertook to designate that company? We answer, unquestionably, the eight men whose names were then signed to such articles, and a majority of these eight men have not only never had any interest in the West-Side Company, save to sign

the articles as corporators, which were afterwards smuggled from them by fraud, but they are now either stockholders or Directors, and some of them both, in the company we represent, while at least four of the ten added corporators to the West-Side Company, including the present Governor of the State, have, upon discovering the frauds practiced, long since refused to have further connection with it.

But suppose the Legislature intended to give the grant to a company composed of the eight names appearing in the report of the House Committee on Railroads, in 1866, how, then, would the matter stand? Not one of those eight persons ever participated in the organization of the West-Side Company, nor has any one of them ever taken any part in such company; while four of them are now active members of the company we represent, and have been from the date of its incorporation. In the light, therefore, of these recorded facts, we would invoke the candid judgment of every impartial mind to an agreement with us in the proposition that in no possible view can the West-Side Company rightfully claim the grant in question, but that the same, by every rule legal and equitable, is in the company we represent.

But there is yet another reason, and an important one, why the action of the last Legislature is right, and that is this:

The object in view by Congress in passing the act of July 25th, 1866, was to aid in the construction of a

central road, "Beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River valleys, to the southern boundary of Oregon." This is the language of the act, and no company can take this grant, whether they be designated by the Legislature or not, unless they run their road from Portland, southerly through the Willamette, Umpqua and Rogue River valleys. This is an essential, a requirement that must be met; and, in this most material matter, is the West-Side Company found wanting. Their route, as laid down on their maps, and on which they have comemnced their work, instead of starting at Portland and running thence southerly through the Willamette valley, runs some two or three miles southerly from Portland, and thence takes a northwesterly course, running near thirty miles in such direction before taking a southerly direction, as required by the act, and then running, not through the Willamette, but through the Chehalem valley. The road is emphatically what its name would indicate—a West-Side Road, flying off in a tangent from the route laid down by Congress. It courses its way along the foot of the eastern base of the coast range, missing every important town in the State, including its Capital, and leaving the broad valley of the Willamette, the finest and one of the most fertile in the world, with its millions of productive acres, with its thriving cities, and its rich farms, to be bisected, as it were, by "The Oregon Central Railroad," of Salem, Oregon, which, in accordance with the act of Congress,

starts at the city of Portland the great comemrcial emporium of the Northern Pacific Coast, and "running thence southerly through the Willamette, Umpqua and Rogue River valleys." It penetrates their very centers, and taps every city and important town in the State. Upon this road the work has, since its commencement in April last, progressed with a rapidity scarcely excelled in the construction of the Union and Central Pacific, when we take into consideration the scarcity of labor in this State. There are at this time about seventy miles in all ready for the ties. Two saw-mills of immense capacity, with planers and other machinery attached, are now running, and have been for some time past turning out ties and materials for cars and depot buildings in great quantities; while still another, a third, mill, is in progress of erection.

We have thus presented at some length the main facts, amounting, as they do, to a history made up principally from Record evidence relating to Railroad Companies in Oregon, and more particularly for the purpose of answering the question as to what company, if any, is in law and equity, entitled to the Congressional land grant. It is an old Roman maxim, as true now as in the days of that ancient empire, that "Jus et fraus nunquam cohabitant"—right and fraud never dwell together. And applying this truthful maxim to the West-Side Company, in the light of the evidence here presented, to say nothing of the gross illegality of their proceedings, we believe that every candid mind must at once concede that the claim of such company, that they

are entitled to this grant is illegal and unjust.

We do, therefore, feeling implicit confidence in the enterprise in which we are engaged, and in the justness of our claim to the Congressional land grant, most respectfully submit this statement of facts, and reasons why "The Oregon Central Railroad Company," of Salem, Oregon, is entitled to the grant referred to, to the exclusion of all others, to all persons, and to all officers and Departments of Government, that may be interested in relation to the same, in having justice and right prevail.

I. R. MOORES,
President of the Oregon Central Railroad Company.
SAML. A. CLARKE, Secretary.

(CORPORATE SEAL).
Salem, Oregon, Nov. 25, 1868.

At a regular meeting of the Directors of the Oregon Central Railroad Company, held November 25th, 1868, the following proceedings were had:

"On motion of Mr. Ellsworth, the foregoing statement of facts was unanimously adopted by the Board, and the President and Secretary were instructed to officially sign the same, and attach the seal of the company thereto."

I. R. MOORES, President.
SAML. A. CLARKE, Secretary.

GOVERNMENT'S EXHIBIT 106

THE INSIDE HISTORY OF THE OREGON CENTRAL RAILROAD COMPANIES

With the Reasons showing the Portland (or West Side Company) to be entitled to the U. S. Land Grant.

—o—

Portland, Oregon, Jan. 9th, 1869.

At a meeting of the Board of Directors of the Oregon Central Railroad Company held at their office in this City on the 28th day of December, 1868, it was unanimously Resolved that the President of the Company be authorized to prepare and publish a reply to the recent Pamphlet issued by the East Side Company.

Attest: E. W. HAINES,
Sec. O. C. R. R. Co.

For Table of Contents see next page.

Portland, Oregon:
A. G. Walling, Book & Job Printer.
1869.

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14th. Secretary S. E. May,—p. 3 and 39.

IS THE OREGON CENTRAL RAILROAD COMPANY OF PORTLAND, OREGON, ENTITLED TO THE CONGRESSIONAL LAND GRANT OF JULY 25th, 1866?

Before answering the above question, we beg leave to notice the reason for issuing this pamphlet. It is not the desire of the officers or directors of said Company to engage in any dispute before the public. Acting solely upon the defense, we have long forborne to answer false charges against our Company, from a reluctance to engage in disputes which can alone be settled in Courts of Justice. The Oregon Central Railroad Company of Salem—commonly known as the East Side, or Holladay Company, have recently issued their second pamphlet, and like the one issued by them in May, 1868, is burdened with unfair and untruthful charges against the legality of our corporation and the standing and reputation of our officers and directors. Further forbearance has ceased to be a virtue; and we

now propose to make such a statement of the inside history of both of these Corporations as will not only be interesting to several officers and directors in the Holladay Company, but make a valuable document for future reference. High places will furnish no excuse for further silence, nor will we hesitate to call things by their right names; and,

"Nothing extenuate,
Or aught set down in malice."

We most urgently ask and desire a thorough and careful investigation at the hands of the public, and promise to show to the satisfaction of every impartial man, that all the charges of fraud and illegality made against our Company are not only false and utterly groundless, but that each and all of them, have been so decided, either direct or indirectly, by courts of Justice in the State of Oregon.

As a foundation to the examination of the above question, we briefly state, what is not disputed by any one, that the Act of Congress of July 25th, 1866, granting lands to aid in the construction of a Railroad from Portland, Oregon, to the Central Pacific Road in California, required that the Oregon Legislature should, designate the Company to receive the land in Oregon, and also that the Company designated should file its "Assent" to such Act of Congress, with the Secretary of the Interior, within one year from July 25th, 1866. It is also a fact, not disputed, that the Oregon Legislature of 1866, on the 10th day of October, passed "House

Joint Resolution No. 13, which "designated" the "Oregon Central Railroad Company," to receive the benefits of said land grant.

Two Corporations, (The O. C. R. R. Co., of Portland, and the O. C. R. R. Co., of Salem) are now claiming said land; the first by virtue of the designation by the Legislature of 1866, the latter by virtue of the designation by the Legislature of 1868.

First. We claim that the first (old) Company, (the Oregon Central Railroad Co. of Portland) is legally and equitably entitled to the land, by virtue of its prior designation, and its exclusive filing of an "assent", received by the Secretary of the Interior.

The only answer which the Holladay Company can make to this, is, that "There was not at the date of the passage of the Joint Resolution of October 10th, 1866, any "Oregon Central Railroad Company" in existence or incorporated in the State of Oregon, (page 6 of their pamphlet).

This statement is untrue, and proven so by the evidence of the Secretary of the State of Oregon, and the certificate of the Clerk of Multnomah County hereinafter submitted.

But there is higher and better evidence than the statements of any officer. By House Joint Resolution No. 13, adopted by the Legislature of 1866, that Legislature then solemnly declared, by a large vote in both Houses, that the "Oregon Central Railroad Company"

was "a corporation organized under the laws of Oregon." Could anything be more explicit or emphatic; and yet the Holladay Company has the temerity to declare that the Legislature of 1866 did not know what they were about. It does not lie in the mouth of any citizen to dispute facts declared by the Legislature; nor even can the Supreme Court nor a succeeding Legislature, declare, as did the Legislature of 1868, that the former Legislature "acted under a misapprehension of the facts." If such a rule in legislation is to be countenanced, then the Legislature of 1870 may declare that the Legislature of 1868 "acted under a misapprehension of the facts," and give the land to some other Corporation, and thus the confusion and uncertainty would destroy the value of the grant entirely. But to go into details:

What does the General Incorporation Law of Oregon require to constitute a Corporation? Condensing Sections 1, 2 and 5 into one paragraph, the whole law reads as follows:

"Whenever *three* or more persons shall desire to incorporate themselves for the purpose of engaging in any lawful enterprise, such persons shall *make* and *subscribe written articles* of incorporation in *triplicate*, and *acknowledge* the same before any officer authorized to take the acknowledgement of a deed, and *file one* of such articles with the *Secretary of State, another* with the *Clerk of the County* where the enterprise is to be carried on, and *retain the third* in the possession of the corporation; and upon the making and filing of the articles of incorporation, as herein provided, the persons subscribing the

same are corporators, and authorized to carry into effect the object specified in the articles, and they and their successors, associates and assigns, shall THEREAFTER be deemed a *body corporate,* with power &c., (here the law gives all the powers of a corporation.)

By noting the words italicized in the above, the reader will discover six things, and only six, necessary to legally create the "Oregon Central Railroad Company.

1st. Three persons must make and subscribe written articles of incorporation.

2d. There must be three original copies signed and asknowledged by each subscriber.

3d. They must be acknowledged before an officer authorized to take the acknowledgement of a deed.

4th. One copy must be filed with the Secretary of State.

5th. Another copy with the County Clerk.

6th. And the third copy retained by the Corporation.

On the 29th day of September, 1866, eight persons made, subscribed and acknowledged the three original copies of the articles of Incorporation of our Company before a Notary Public. That disposes of the three first requisites. The statement of Secretary May, hereto appended, shows that the President of this Company gave him the papers for filing on the 6th day of Oct., 1866, and he then pretended to file them. If filing

in ink in a clerkly manner was not then made by the Secretary, it cannot destroy any rights this Company claims, as it was no fault of the Corporators. This disposes of the 4th requisite.

The certificate of Mr. Norden shows a pencil filing of October 6th 1866, on the copy in the County Clerk's office. This disposes of the 5th requisite.

The third copy is now, and has ever been since its making, in the possession of this Company. That disposes of the 6th requisite, and makes a perfect legal corporation of this Company on the 6th day of October 1866, four days prior to its designation by House Joint Resolution No. 13 in the Legislature of 1866.

But it will be objected that the Notary Public had not certified the acknowledgments when the articles were filed, October 6th, 1866. That is not one of the requisites to the Corporation. The Statutes of Oregon lays down one rule for a deed and a different one for Articles of Incorporation. The rule for acknowledging deeds (Sec. 10 page 648 Oregon Statutes) is as follows: "and the officer taking such acknowledgment shall endorse thereon a certificate of the acknowledgement and the true date of making the same, under his hand." But the Statute has not required such certificate in the case of Articles of Incorporation. While it is usual to attach such certificates of acknowledgement, the Statute has not required it. Even in as solemn acts as deeds, these certificates of acknowledgment are not necessary to pass the title. Chief Justice Williams (now Senator

Williams) held in the case of Moore vs. Thomas, page 201, Oregon Reports, that "A deed unacknowledged and unrecorded is good between the parties." And in this case, the parties in the East Side Company all had full notice of the prior existence and claims of the West Side Company, and were and are nothing but seceders from the West Side Company, and not entitled to claim anything. Taking the claim of Moores & Co. as set up in their last pamphlet, that they were the original members of the West Side Company's Articles of Incorporation, they show that they have left it, and in April 1867, long after the due and legal incorporation of the West Side Company, they set up a new corporation in the same name. They can claim none of the rights and franchises of the old Company.

"If any portion of the members of a corporation secede, and are even erected into a new corporation, the corporate property will not be transferred or distributed in consequence of the separation." (Angell & Ames on Corporations, Sec. 194.)

We now submit the statement of Secretary May, the certificate of the Clerk of Multnomah County.

State of Oregon, Secretary's Office, Salem,

Jan. 5, 1869.

Hon. Addison C. Gibbs, Portland, Oregon.

Dear Sir.

I have no personal knowledge of the filing of papers in this Office by Mr. Gaston, on the 6th of Octo-

ber, 1866, more than this: that about the date named (Mr. Gaston says it was the 6th) he presented me an envelope which he said contained Articles of Incorporation of the Oregon Central Rail Road Company, on which envelope I marked the date in pencil (Mr. Gaston says that I marked the document instead of the envelope, but I have not seen the paper since, hence my impressions are that I marked the envelope.) I did not examine the contents, did not formally file the paper. Mr. Gaston wished to retain it in his possession for a short while, but for Legislative purposes desired to say it had been presented for filing, to which I could see no objection.

I had forgotten the foregoing circumstances altogether, until about the middle of Nov. 1866, Hon. J. S. Smith made application to see the Articles of Incorporation of the "Oregon Central Railroad Company." I turned to the usual depository for such documents, but not until after I had made thorough search did it occur to me that the Articles referred to were not in my possession.

* * * * *

Your Obedient Servant,

SAMUEL E. MAY,

Secretary of State.

(By reference to the history of the Company hereinafter, the discrepancy between the statements of May and Gaston will be more apparent. May insists that

the papers were not filed until Nov. 21st, 1866, while he somewhat evasively admits their presentation and actual filing in pencil on Oct. 6th, 1866, and so strong was his impressions of filing at the last date, that he made thorough search for them for Mr. Smith. Salem influences and East Side locality will excuse May for good certificates in the East Side pamphlet and the reverse for the West Side.)

STATE OF OREGON,)
) ss.
Multnomah County.)

I, B. L. Norden, County Clerk of said Conuty and State, do hereby certify that upon the Instrument endorsed "Articles of Incorporation of Oregon Central Railroad Company," filed Nov. 23rd, 1866, by H. C. Coulson, Clerk, and upon the reverse side of said filing, there appears in pencil these words: Oct. 6, '66," erased with ink, as nearly as possible like unto the pencil entry and ink erasure on the 3d line above this line.

In testimony whereof I have hereunto set my hand and official seal this 9th day of January, A. D. 1869.

B. L. NORDEN, (L.S.)

(5 cts Stamp.)

County Clerk, Multnomah County, Oregon.

But if there had been no possible part of corporation then formed, if one was "designated" then we claim, if such inchoate Corporation afterwards filed its "Assent" to the Act of Congress, according to the Law, it

would take the land; and both the Act of Congress and the State Legislation of 1866, according to the desision of Justice Boise of the 3d Judicial Dictrict of Oregon would confer the grant in this way. (See following statement of Boise's decision).

Portland, Oregon, Jan. 7, 1869.

J. Gaston Esq.

President Oregon Central Railroad Company.

Dear Sir:

Your note of this morning asking me for information in regard to the suit pending in the Circuit Court for the County of Marion between the Company of which you are President, and the Company commonly known as the East side Company, is before me.

The suit was commenced in behalf of the Company of which you are President, for the purpose of restraining the use by the other Company of the name, "The Oregon Central Railroad Company," upon allegations of the prior incorporation of your Company under that name, the subsequent assumption of the name by the other Company, the right of your Company, by virtue of joint Resolution No. 18, passed by the Legislature of Oregon Oct 10, 1866, to have the benefit of the land grant proposed by the Act of Congress entitled "An Act granting lands to aid in the Construction of a Railroad and telegraph line from the Central Pacific Railroad and telegraph line from the Central Pacific Railroad in California to Portland Oregon," Approved July 25th, 1866,

and the depreciation of the Stock of your Company by reason of representation by the other Company that it, and not your Company, was the Company entitled to the benefit of said Act of Congress.

A demurrer was filed by the East side Company, defendant, and argued at the last June term of the Court, mainly upon the question whether the Resolution of the Legislature could take effect as a "designation" of the Company, plaintiff, under the Act of Congress, assuming that the plaintiff, was not duly incorporated until after the Resolution was passed.

Hon. R. P. Boise, Chief Justice, delivered the opinion of the Court, overruling the demurrer; and in that opinion he used the following language which I took down in writing at the time:

"At the time the Act of Congress was passed, neither of the rival Companies was in existence, and the objection made to the Resolution of the Legislature could be made with equal force to the Act of Congress; but I think the language of both the Act and the Resolution may as well refer to a Company yet to be incorporated as to one already organized. * * * The plaintiff says in its bill that the defendant, through its agents and officers, has represented that it, and not the plaintiff, is entitled to the benefit to be derived from a compliance with the Act of Congress, to the injury and depreciation of plaintiff's credit. The defendant must be required to answer whether these things be true."

I also transmit as requested the certificate of M. F.

Mulkey, late District Attorney in regard to the other case spoken of in your note.

Most respectfully,

Your obedient servant,

W. LAIR HILL.

But we not only claim the benefits of the land granted by Congress, upon the basis of a perfect de facto corporation to receive a grant under the Statutes of Oregon, at the date of the passage of the Joint Resolution by the Legislature of 1866; but we claim that the East Side Company is totally mistaken, when they assert that it was necessary to the reception of the grant, at that time, that the Company be perfectly organized. They misunderstand and misrepresent the plain import of the Act of Congress of July 25th, 1866. And on this point, in addition to the foregoing opinion of Judge Boise, we here submit a brief statement from the pen of W. Lair Hill, Esq., one of the best Corporation and real estate Lawyers in Oregon.

"This Land Grant act of Congress was not like the Oregon Donation Law of 1850, a grant of land to this Company. It was merely an agreement to grant to such Corporation as the Legislature should "designate," upon compliance with certain specified conditions, namely, filing an "assent" prior to July 25th, 1867, and building twenty miles of Railroad and Telegraph line; and upon certain other terms directly beneficial to the United States. Neither was it in the power of the Legislature

of this State to grant the lands to any corporation; that body could only say what Company should have the right to accept the terms, perform the conditions, and afterwards receive the grant proposed by Congress.

This is not an artificial construction of the language of the Act of Congress, but its plain import and intention —an interpretation which would always be given to it by a court—and the only interpretation of which it will admit.

There is then nothing in the wording of the law, nor in the subject matter, inconsistent with the idea that Congress intended to include and did include in the provisions of the Act, as well a Corporation not in esse, as one already organized, provided the State Legislature should "designate" such Corporation, and it should afterwards organize and perform the required conditions. If this is not the meaning of the Act of Congress, then neither of the Companies can take the benefit of the grant, for neither of them was in existence when the Act was passed.

Exactly the same thing may be predicated of the Resolution of the Legislature of Oregon passed in 1866, "designating" the West Side Company. Admit, for the argument (though we do not admit it as a fact,) that this Corporation was not in existence at the time this resolution was passed, and what follows? If the Resolution was intended, or could be construed, under the Act of Congress, as a grant, the objection that the grantee was not in being, might be at least plausible;

but this was not the intention nor within the scope of the resolution. The only power of the Legislature was to appoint a Corporation to take the grant upon performing the conditions—not in praesenti. The sole advantage of appointing a Corporation already organized would be that it would be more conveniently identified, by using its corporate name, while if the Legislature should attempt to designate a Corporation thereafter to be organized confusion might arise by reason of uncertainty in the description of the appointee. But all the questions that could arise out of such uncertainty, would necessarily be simply questions of identification, and would be settled and all difficulties removed the moment any means could be devised to ascertain with certainty what Corporation was intended by the Legislature. The question of capacity to take the grant relates solely to the time when the grant is to be made—that is, after the conditions have been complied with. No valid contract can be made with a child *in ventre sa mere,* because it can not assent to the transaction; but a devise for the benefit of such child, is valid, and the child upon coming of age can take the premises: Co. Litt. 36; 1 Williams 329, And this notwithstanding its idiocy, or incapacity; but if there be a condition precedent annexed, to be performed by the child upon coming into being, and it never acquires capacity to perform, then, and only then, the transaction fails, and the grant never takes effect; not because of any defect of parties at the time of the original transaction, but because of a failure of capacity to perform the conditions precedent to the final consummation. This

has been uniformly held from the earliest times.

Now this matter of identity never has been a question in the present case. The promoters of the Corporation of the Oregon Central Railroad Company (West Side) had already prepared its Articles, had them duly signed and acknowledged by a large number of the corporators (more than was necessary under the Statutes of the State) and filed, and in this condition they were read before the Legislature, in both Houses, and thereupon the Resolution was passed, designating the Company, by the corporate name assumed in the Articles so read, as the Corporation to perform the conditions required by the Act of Congress and take the grant afterwards. And there was no other Corporation, organized or incipient, within the State having the same, or even a similar name, till five months after this Resolution was passed. And this Corporation, went on without opposition and perfected its organization, upon the same Articles read before the Legislature, and still prosecutes its enterprise of building the road, upon these Articles, without altering a word or letter; while a minority of the Corporators, having seceded from the original Corporation, have attempted to organize a rival Corporation under the same name. But this second Company has never had the temerity to dispute or even question that the Resolution of the Legislature passed in 1866 referred to the West Side Company.

The West Side Company, and they alone, having accepted the terms proposed by the Act of Congress, as required, having been designated, identified, pointed

out, by the Legislature of 1866—having filed their "assent" within the year—having gone on in the performance, on their part, of these terms—will be entitled to the grant whenever they have performed the conditions annexed; and any attempt by Congress to confer the benefits of the Act of 1866 upon any other Company, would be, in law as well as in fact, a denial and repudiation of its own agreement."

EQUITABLE RIGHTS OF THE WEST SIDE COMPANY.

Having shown the right of the West side (or Gaston Company or the opposition term it) we will now show a just and Equitable claim to the land grant of July 25, 1866, so strong that none but a member of the East side Railroad Company, would deny. Our equities depends upon the following facts.

1st. The West side Company was identified by the Legislature of 1866.

2d. The East side Company were aware, when they incorporated, that the West side Company claimed both the land grant and the Corporate name, "The Oregon Central Railroad Company" one of their Incorporators and now one of their Directors, John H. Moores, was notified by the President of the West side Company, not to incorporate in the same name, as it would be resisted, and litigation would result from any such action.

3d. The West side Company has Uniformly and publicly claimed the land, ever since by virtue of that

designation.

4th. The East side Company uniformly and publicly denied in Oregon, any claim for themselves to the land, from the day of their incorporation until Oct. 10 1868, a period of nearly two years. They did not have the temerity to set up any claim to the Land grant in the face of their oft repeated disavowals, and they never intimated in Oregon, an intention to claim it, until compelled by the Lash of Ben Holladay, they turned around upon their own declarations and deliberately stultified themselves before the people of Oregon. So that the East side claim to the Land grant is really a claim by foreigners against the claim of our own Citizens.

5th. The West side Company filed their "Assent" within the year, with the Secretary of the Interior, as the law provides, and the East side Company made no claim, by neglecting to file papers or make any acceptance of the Grant within the year.

6th. The Sec. of Interior received the "Assent" of the West Side Company, and gave them credit by reason of this, so that the public relied upon such facts and invested money in West Side Road; while he expressly refused to file papers for East side Co. and declared to them and the public, that it was the West side Co. that was entitled to the land, as witness the following letter to the Vice President of the East side Co.

DEPARTMENT OF THE INTERIOR,

Washington, D. C. July 17, 1868.

SIR—I have received your letter of the 16th inst., and accompanying paper, purporting to be an acceptance by the Oregon Central Railroad Company of the grant made by the act of July 25th, 1866.

By law the company was required to file an "assent" to its terms and conditions, within one year. That time expired July 25th, 1867, and this paper, if sufficient for that purpose, could not now be received.

I state, for your information, that J. Gaston, President of the Oregon Central Railroad Company, within the time prescribed in that act, filed an assent, which was received.

In compliance with your request, I inclose a copy of my letter of the 8th instant, to Mr. Gaston, in regard to maps to be filed in this Department.

Very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

A. M. LORYEA, Present.

7th. The West side Company, and they alone solicited of Congress an extension of the time limited in the grant for the Construction of the road; and if it had not been for this extension (thanks to the Oregon delegation in Congress) the land would all have been forfeited. As witness Senators Williams and Corbett and Representative Mallory, of Oregon, and Representative Hubbard of West Va.

8th. With all these facts before the public, continually brought to the attention of the East Side Company, by publications in the newspapers of Oregon, of the letters of the Secretary of Interior, O. H. Browning, to the West Side Company, and in the public statements of the President of the west Side Company and other speakers at the commencement of the work April 15th, 1868, and in the published Annual Report of the West Side Company, May 25th, 1868, the East Side Company not only remained silent, making no claim to the land grant, but they even publicly disavowed any claim of any kind to the land, until long after the date when the land would have been forfeited, had it not been for the diligence of the West Side Company in filing the "Assent" required by the Act of Congress. With all these facts before the public, the East Side Company stood by until the City of Portland recognized the claim of the West side Company and pledged to them the interest for twenty years on $250,000; while Washington County recognized our claim, and pledged interest on $50,000 for same time; while Yamhill County recognized our claims and pledged interest on $75,000; and while the citizens of Oregon subscribed and paid into the West Side Company, on the faith and credit of this land grant, and the facts above stated, seventy five thousand dollars in cash and much more in land and other property. This money has been expended, and judiciously expended, in the construction of the West Side road, while this East Side Company was silent and disavowing any claim to the land grant of July 25th, 1866.

We claim to the Oregon delegation in Congress, and all other members of Congress, to all government officers, and to the people of Oregon, that these acts of the Holladay or East Side Railroad Company, is a complete estoppel of all claims of theirs, set up at this late day, to this land grant; and that these facts make a case so strong in equity and justice, in favor of the West Side Company, that any attempt to divest the land from them, would be nothing less than legalized robbery.

THE EAST SIDE COMPANY HAVE NO LEGAL OR EQUITABLE RIGHTS: WHY?

1st. The first and best reason is, that all the legal and equitable rights are in favor of the West Side Co.

2nd. The East Side never claimed any right to the grant, nor offered to file an acceptance of it within the time provided in the Act of Congress; nor did they use any efforts to get an extension of the grant in order to save it to the State.

3d. The East Side Company have no legal corporate organization or existence, and cannot therefore take any grant, or administer any trust. They have no legal corporate existence, because one half their capital stock was not subscribed before an election of Directors, and has not been yet subscribed. Their claim to a corporate existence is a fraud upon the public. In order to avoid any responsibility, the projectors of this East Side

Co. subscribed six shares in a capital stock of seventy two thousand five hundred shares—six hundred dollars in a capital of seven millions two hundred and fifty thousand dollars and then these ingenious gentlemen passed a resolution authorizing Governor George L. Woods, as Chairman of the little coterie, to subscribe seven million dollars for the Company, before the Company has a legal existence. The Statute of Oregon requires that one half the capital stock (which would be in the case $3,675,-000) shall be subscribed before an election of Directors. This East Side has a Board of Directors, and the public are therefore warranted in believing that the sum of $3,675,000 has been subscribed by a person or persons who can be sued for that amount, as stockholders. And this is the responsibility which the law attempts to provide to the creditors of the Company. Now in this case, if a creditor fails to find property of the Company, he can only find six hundred dollars of subscribed stock liable to pay his debt, instead of the sum of $3,675,000; and in this dodge of the East Side, we see a deliberate attempt to deceive the public, if not defraud it.

In proof of the above we are permitted and authorized to refer to the late Vice President of the East Side Company, Dr. A. M. Loryea, of Portland, Oregon, and to ex-Gov. Gibbs, of the same place, and to Col. James K. Kelley, of Dalles City, Oregon, all of whom have read said Company's stock book.

It may be replied that the Courts have passed upon this organization and pronounced it good, in an attempt to test the same by action of Quo Warranto. We deny

that the Court pronounced their organization good. "Leave" was asked of the Circuit Judge of the third Judicial District, to bring such an action, and the Judge having the "discretion" to grant or refuse the "Leave," refused the same, but did not pass upon the legality of the East Side Organization. He dismissed the application for "Leave," by stating "The public interest does not require the East Side Company 'to be broken up,'" very plainly intimating a defective corporate organization. This refusal for "Leave" was then taken to the Supreme Court, and that Court decided that "it was not an appealable question," and said nothing about the corporate organization of any Company.

The East Side Company have no corporate organization that will stand an examination in court, and cannot even "appropriate" the right of way through any man's land, if resisted; and hence they have passed over so much land on their line without grading their road, the right of way having in such cases been refused.

The only fact on which they can base any claim, is their designation by the Legislature of 1868. This they refer to with every trumpet. It amounts to nothing. It comes too late. It is evidence of nothing. It is well-known to the people of Oregon that that designation was purchased.

As to equitable rights, they have not a particle. Their concern is not an Oregon Institution. The people of Oregon have repudiated them, as witness the following facts:

1st. They tried to get the endorsement of the City of Portland, in the way of a pledge of interest on $250,000 of their bonds, similar to West Side Company, and the people and the City Council repudiated them.

2d. They tried a similar move at Oregon City, for interest on $50,000, and the people and City Council there repudiated that.

3d. They tried a similar move at Salem, the headquarters of their Company, for interest on $100,000, and that met with a similar death.

4th. They tried a similar move at Eugene City, for interest on $20,000, and that was killed.

5th. They tried ten cent subscriptions (ten per cent. only to be asked for on their stock) all along their route, and that was a disgraceful failure.

They have got nothing from the people of Oregon. Their whole concern has been regarded with suspicion and distrust from the first. What work that has been done, grading in spots here and there over a level country and completing nothing, has been done with the money of Ben Holladay. It is his speculation, his venture, and if it fails to-day, not a single Oregonian would lose a dollar by crediting the East Side Company themselves as no person in this State has ever been willing to trust them as a Corporation.

They parade a long list of "Honorables" as Directors. This is no badge of a business concern. They are put in only to create local and political sentiment in their

favor, and not for pecuniary aid or business services rendered. Not one of them have contributed a dollar towards the actual construction of a Railroad in Oregon, but stand off at a safe distance and hurl their pamphlets at men in the West Side Company who have paid out their money by hundreds of thousands of dollars for the development of the State.

THE ROUTE OF THE ROADS.

The East Siders take exception to the route of the West Side Road; and as usual misrepresent it. Our Road commences in the City of Portland, our first bridge being inside the City limits and costing twelve thousand dollars; thence southerly three miles, thence West about twenty-five miles, in order to turn the southwest end of the Chehalem mountains; thence nearly due South, "through the Willamette, Umpqua and Rogue River Valleys" to the State line. The East Side pamphlet asserts that our line "runs through the Chehalem and not through the Willamette Valley." This statement was intended for Eastern consumption, and presumes on great ignorance at that, and is a fair specimen of their entire pamphlet. The Chehalem valley is a little valley in Yamhill County, ten miles long and two or three wide, varying; and our road does not pass through it, but at right angles to and near the head of it, but not in it at any point. The Chehalem is a part of the great Willamette valley, just as any one of the thousand little creeks which run ino the "Father of Waters"

is part of the Mississippi valley; and this statement of the East Siders about the Chehalem valley betrays either gross ignorance of Oregon or such a weakness in the discussion, as places them in the position of drowning men grasping at straws. What would they think if we should assert that their road does not run through the Willamette valley because it runs up Mill Creek?

The East Side road does not comply with the route of the Act of Congress, because it commences at East Portland, across the Willamette river, instead of "Portland," on the West side, and which river cannot be bridged except by special license from Congress, and then create an obstruction to the navigation of a magnificent river, in the very harbor of the City of Portland, the only commercial depot in the State, a result Congress never intended to bring about by the Act of July 25th, 1866, granting the land.

The West Side road is located on the best and most practical route, southerly from the City of Portland. It might be constructed up the West side of the Willamette river, through the Chehalem mountains, but at a cost impractical at the present time; and then it would be carried as far West in forty miles as it is when it turns due South near Hillsboro. The Willamette valley bears to the West, from the City of Portland, and Salem on the East side, touched by the East Side Road, is actually twenty miles West of Portland. Both East, and West side roads bear to the West from the City of Portland, because the course of the Willamette valley compels them; but the difference is this: the West Side Road

makes its "westings" soon after leaving Portland, while the East Side Road runs West more gradually. The West Side has this advantage, that the first twenty miles take it into the heart of the rich Tualitin valley and prairies, and gives it a monopoly of the trade of a vast region of not less than one million acres, and also gives it two hundred thousand acres of land yet vacant, worth, according to the estimate of the County Surveyor of Washington County, ample enough to pay for the first twenty miles of road; while on the other hand, the first thirty miles of the East Side Roads winds along the banks and around the projecting rocks of the East bank of the Willamette river, and through a rough and unproductive region not developing a single acre of land, and in constant competition with a river always navigable, and not within available distance of any public land, and this last item may be applied to both roads the whole distance through the Willamette valley; both items showing that the West Side Road has a paying route, and offers a good and safe field for the capitalist and investor, while the East side does not.

The West side of the Willamette river contains half a million acres more surveyed agricultural lands than the East side, and the West Side Road runs through the heart of the great Willamette valley—the "Chehalem" valley to the contrary notwithstanding.

THE EAST SIDERS ADMIT OUR RIGHTS AND PRIOR ORGANIZATION, AND TRY TO CAPTURE THE SAME BY CORRUPT MEANS. TESTIMONY OF JAMES P. FLINT AND J. H. MITCHELL.

James P. Flint, Esq., of San Francisco, of the firm of Flint, Peabody & Co., of San Francisco and Boston, at one time owned a tenth interest in the East side enterprise. Being a man of business, and seeing the importance of getting control of the West Side Company, in February, 1868, he wrote the following letter to Mr. N. P. Perine, who also owned a tenth interest, and who had come up to Oregon from San Francisco, to look after their interests. The following is the letter, italics being ours:

San Francisco, February 22d, 1868.

Mr. Perine—

Dear Sir:—You have two most important points to make on your visit to Oregon, first *to get possession of the original organization of the Oregon Central Rail Road, either by disorganization, or it would be far better to have that assigned to your Company, this is most important.* Second, to harmonize all parties in the State in favor of your Company, even if you have to *buy them.* I have told Mr. Reed that I should advise an *amount of stock to be given to such parties as are most influential;* he named preferred stock, but I told him that could not be given as it was required to build the road, as much so as the Bonds. I do not think it

necessary for you to give one dollar of the preferred stock, but the *common stock you* can afford to give, and to the *right parties* I should do so *most liberally.* You can easily showthat the preferred stock must help and must be kept especially for the raising of funds to help build the Road. I think I have satisfied Reed of this. *You must hold up the idea of the value of the stock* and that it will pay in a year or two, after the Road is completed, and I think he feels that it will be so.

You ought to have the help and good feeling of the whole State to go on smoothly; you will want the assistance of the next Legislature beyond a doubt, and this must be had.

Truly I remain yours,

JAMES P. FLINT.

In obedience to this letter, we soon thereafter find the East Siders giving away their stock "most liberally;" fifty thousand dollars to a single person, for the bare "use of his name" being but a trifle to the liberal East Siders; and their modest! Board of Six Directors soon expands into the colossal proportions of a "Mississippi scheme" with twenty-one Directors, (equally divided in politics,) having subscribed each one hundred dollars, and receiving in return $50,000 stock, and not "out" a farthing. Oh! how precious are their equitable rights.

We add, that Mr. Flint and his Oregon colleagues did not "get possession of the original organization of the Oregon Central Railroad," either by "disorganiza-

tion" or "assignment," although they sought to do so with lawsuits and "common stock" "most liberally".

On this point, we will now offer the testimony of J. H. Mitchell, their Attorney, the author of their last pamphlet, and principal "spokesman." When the East Siders were about incorporating their Company, the President of the West Side Company wrote to Mitchell, as one of the original Incorporators, apprising him of the facts. The East Siders also wrote to him, pressing him to go into the Company then forming by them in April 1867. The promoters of the East Side Company had told Mitchell all their objections to Gaston, "the obscure Notary of Salem," and the West Side Company, and all the pretended frauds about which they now howl in their pamphlet. They thought it important to have Mitchell with them, and of course used all means, including offers of stock "most liberally" to secure him; and after all their letters and personal statements from Elliot and others, all the pretended frauds in the West Side having been committed, Mitchell wrote a letter to "the obscure Notary," Gaston, April 26th, 1867, of which the following is an extract:

"I have been pressed hard to gointo the new organization. I have not done so, nor do I intend to. I must confess I do not see the necessity at present for a new company, and I have so distinctly stated to those engaged in getting it up."

Now then, with all the facts of the old organization, all the charges of its enemies, the Salem clique,

before him, and after making this positive statement, how does it come that J. H. Mitchell does go into the East Side Company and become its chief advocate. That is explained by himself as follows: About the first of May, 1867, "Gaston, the obscure Notary," went to Portland to see J. H. Mitchell and others about this Railroad business. While there Mitchell repeated to Gaston the above statement in his letter of April 26th, and also stated that Elliot, Moores and Gov. Woods had all been to see him and to press him into their new Company, saying they had made him "large offers," and wound up the conversation by declaring that he "would go into the company in which he thought he could make the most money." "Inasmuch as the West Side Company had no unassessable stock to offer, (and did not consider his name or services worth any if they had,) Mitchell yielded to the "pressure" of "common stock, most liberally," and was thus enabled to "see the necessity for a new company"—and thus we track up one by one, the traitors to the old Company, and find them deserting the peace, prospects and interests of the State, consistent only in the one selfish motive of getting "common stock" "most liberally" in the East Side Company, without rendering to the country or the corporation one single valuable consideration therefor.

BAYLEY'S RESOLUTION NO. 14.

The East Siders attempt to make capital out of this Resolution, introduced into the late Oregon Senate by

Senator Bayley, of Benton County. While they pretend to give a copy of the Senate Journal in relation to this matter which is duly certified by Secretary May to be all of the Journal, they leave the Resolution itself out. The play of Hamlet, with Hamlet left out, would not be a worse specimen of unfair garbling than this. The rules of evidence will construe such suppressions against the party making the reference; and so it is in this case. When the Resolution is presented, it shows that the West Side Company asked the passage of Bayley's Resolution for the mere purpose of settling doubts in the public mind, and not for the purpose of securing thereby any legal or equitable rights. The West Side Company did not admit that the Legislature of 1868 could confer any rights in this matter at all, as the following copy of the Resolution itself shows. After reciting the Act of Congress and the subsequent Legislation in Oregon, and the progress of the Company after their designation by the Legislature of 1866, in a Preamble, the Resolution says:

"Therefore, in order to remove all doubts in the public mind, it is hereby resolved by the Senate, the House concurring that the Oregon Central Railroad Company of Portland, Oregon, is and was the Company designated and intended to be designated by said House Joint Resolution No. 13, of 1866, and that this Legislative Assembly does hereby re-affirm said designation, and does re-designate and re-affirm them, the said Oregon Central Railroad Company of Portland, Oregon, to receive all the benefits and lands granted by said Act of

Congress, so far as the same relates to the State of Oregon."

SECRETARY MAY'S LEGAL OPINION—Among the thousand and one reckless charges made by the Salem Company, is the one that Gaston was not a Notary Public, Nov. 16th, 1866: and Secretary May is swift to give his decision in the matter. Inasmuch as May is neither the dispenser of charters nor the expounder of laws, his judicial opinion will not generally unsettle corporate rights in Oregon. The East Side Company stirred up an action of Quo Warranto on this very small point, and when Judge Upton of the 4th Judicial Circuit, decided that the filing of the Notarial oath and bond, was a material part of the Notarial office, and not having been done until Jan. 1864. (facts which Sec. May forgets (?) to certify to), it was more than probable that Gaston's term of office commenced in January and not in October, and therefore the East Side, Lawyers dismised their own case at their own cost, (see Gov. Gibbs certificate hereto attached). I might here introduce the legal opinion of Judge Chenoweth, one of the Directors of the East Side Co. given in a letter to our "Dear Governor," dated Dec. 17th, 1866, in which Chenoweth asserts that all of Gaston's acts as Notary, in the organization of our Company, were perfectly good and valid, if his opinion was worth the room it would take to write it down.

GASTON'S UNASSESSABLE STOCK—The East Siders have kept up an immense howl about this

for the past two years. The statement is absolutely false, and the East Side directors know it. There is not a single dollar of unassessable stock in the West Side Company—but there is two millions of such stock in the East Side Company, without the authority of law—and the President of the East Side Company dare not deny it.

"WILD CAT BONDS"—While on the subject of East Side unassessable stock, we may here call the attention of capitalists and investors to the condition of their Bonds and Mortgage. Up until Oct. 1868, the Mortgage to secure the East Side Bonds had not been recorded in Oregon, according to law, and when asked about the matter, S. N. Terry, one of their Trustees, had no knowledge of the mortgage whatever, showing that no means whatever had been used to protect the Bondholders. But far worse that this, we are informed by Dr. Loryea, their late Vice President, that their business had got into such confusion that neither their Secretary nor President could tell how many bonds had been issued; and that there were hundreds of these Bonds scattered around, one parcel with a Banker in Portland, Oregon, another at a Bank in New York, (names will be furnished on application to Dr. Loryea,) over which the Company had lost the control, and had not a dollar to show for them, owing to their reckless manner of issuing.

Let capitalists and investors in Oregon Railroad Bonds, be careful they do not dabble in anything labeled

at Salem, Oregon.

MERGER OF NO. 2 AND 3.—The East Side pamphlet shows that they have incorporated two Companies in the same name, in addition to the West Side Company. In this last pamphlet it is claimed that No. 2 and 3 were, merged in these words: "regarding the Articles filed by Gaston as illegal, fraudulent, and void, it was thought best by the corporators in said Company (No. 2) to merge said corporation in a new Company, by filing new Articles, that might be in all respects legal and free from fraud." In their pamphlet issued in May, 1868, they refer to the same matter, and there they say, "with a full knowledge of all the facts in the case, the Articles of Incorporation filed Nov. 17" (No. 2) were abandoned, because they were not deemed sufficient for the purpose in view, and in preference to amending them, new Articles were filed April 22d, 1867, (No. 3).

Now which statement is to believed? They state one truth in each. It is true that they abandoned No. 2, as stated in their pamphlet of May 1868; and it is also true that it (No. 2) was an illegal and fraudulent filing of papers as unwittingly admitted in their pamphlet of Nov. 1868, as was also their subsequent Articles of April 22d, 1867, for the reason, that every man in the concern well knew at the time of their action, that the corporate name and franchises of the Oregon Central Railroad Company justly belonged to another and prior organization, and they were engaging in a venture, not for the public good, but for the express purpose of breaking down another corporation and appropriating its rights

and benefits to their own selfish aggrandizement.

AMOUNT OF WORK DONE,—The East Side Company boast wonderfully of the amount of work they have performed. This is immaterial in the settlement of the rights of the rival parties. But if the facts were important, we could prove by Engineer's estimates that the West Side Company has peformed the most work: but it is not spread along for fifty miles, and nothing finished. Parties in the East desiring to be informed on this point, are respectfully referred, to P. C. Brinck, Esq., Vice President of the National Iron Co., 410 Walnut St., Philadelphia, as Mr. Brinck passed over the work of both roads in Oct. 1868.

SECRET FRAUDULENT AGREEMENT, AND OTHER HORRIBLE FRAUDS, GOVERNOR WOODS ON THE STAND; WITH CERTIFICATES OF MESSRS. GIBBS AND MULKEY.

The East Side Company have for a long time kept up an incessant clamor, of the "Stop thief" style, about a certain agreement which was entered into between "This man Gaston" and five others about the time of organizing the Company. By reference to the history of the Company, hereinafter, it will be seen that none of the men connected with the East Side Company were willing to advance a dollar to promote the enterprise. Their plan of a Railroad through Oregon, from Secretary

Sam Clarke, down to Lawyer Mitchell and President Moores, was wholly and entirely a paper affair, got up on "Wild Cat" principles, which should first pay them one million dollars preferred unassessable interest bearing stock, without a farthing consideration therefor, and then "tear" into the bowels of farmers of Oregon, and such gudgeous as they might deceive with their Bonds in the Eastern States, to get funds to make their "crib" valuable. Acting on this principle, they actually printed Bonds for many hundred thousand dollars, purporting on their face to be secured by a mortgage on a Railroad through the Willamette Valley, and had the hardihood to ask ev-Gov. Gibbs and W. S. Ladd Esq to certify to this arrant falsehood; but failing in this, and finding two other men who would certify, they put their Bonds on the money markets of the East, without having their mortgage recorded or ever delivered to their trustees.

Believing that such a course of conduct was not legitimate, and that money was necessary to build a Railroad, I resolved to give any capitalist a chance to invest his money in the enterprise, if so disposed. By reference to the history of the Company, hereinafter, the reader will see the circumstances which took me to Portland about the 12th of Nov., 1866. Here I found four capitalists who were willing to invest their money in the enterprise, and put in money enough to secure the construction of twenty miles of railroad during the summer of 1867, provided they were allowed to control their investment. Glad to find men who were willing to do something more than talk about "unassessable stock,"

and believing I was doing the best thing for the enterprise and the country, I made an agreement with them, giving them the control of their investment, and obliging them to advance a large amount of money to push the work. It was deemed best to keep the matter from the knowledge of the Salem party, who were so hungry for unassessable stock, as their aim would be to defeat it, and with it the enterprise itself, and for this purpose only was the matter not made public at the time, the propriety of the course being more than justified by subsequent events.

This was the substance of this agreement, which was abandoned and destroyed before the organization of our Company. If it had not been thwarted by the malign efforts of the Salem party, twenty miles of Railroad would have been constructed in 1867, and ere this the cars would have been running to the head of the Willamette Valley. But the matter coming to the ears of the Salem party, they set to work to defeat the arrangement by getting up their first Company (O.C.R. R.Co. No. 2): "and thereby hangs a tale" which I now propose to tell.

During the progress of the Railroad legislation in 1866, one of the Incorporators of our Company, a man with a little political success, and just placed in a position of influence, had occasion to go from Portland to Salem, and by courtesy, was carried up in the private carriage of a leading capitalist of the former City. Along the way the conversation naturally fell upon legislative matters, and then upon the proposed Railroad

legislation. And during this conversation our political friend, used the following words, in substance (which I have had license to use to their author,) by the way of a proposition.

"Now I have been elected to the office of Governor and shall hold the office for four years, I have never yet had an opportunity to make any money, but my position and influence with the Legislature would enable me to do so. But I have no money myself, and will have to connect myself with men who have money, and if any public enterprise comes up, I want you (the capitalist) to understand that if there is any money in it, I can and will use my influence to make money for myself and those with whom I am connected."

Whether his traveling companion assented to this proposition to "sell out" the interests of the State to make money for this hungry politician, I do not know; but I do know that the same politician about Nov. 10th gave me letters of introduction to this capitalist in Portland. And further, this same politician agreed with me that if I secured a contract to construct the Railroad, on my visit to Portland, he should be a party and I should write him or telegraph him to come to Portland to sign any papers; and that after I secured the agreement above, I wrote to this politician to come down and sign the contract, and he took my confidential letter and showed it to I. R. Moores, and Moores immediately incorporated Co. No. 2, and after I returned to Salem, this politician, who had infamously betrayed his friends in the exhibition of their private letters, went with me

in the Counting room of Dodd's Hardware store, and after carefully reading the agreement, signed his name thereto, willing to pocket the money of the men who were relying on his honor, but whom, he was at that very time conspiring with their enemies, to rob. (I am particular to give a detailed account of this, because the gentleman has told Gov. Gibbs, Judge Hill and others, that he signed the paper in his office without reading it.) This is the "inside" history of this terrible secret agreement, secret only to the enemies of the Railroad and the author of it, the traitor to it, and the man who has shown himself devoid of all honor, willing to both rob and betray his friends, that man is George L. Woods, one of the Incorporators, the first President, and now a Director in this East Side Holladay Railroad Co. which issues a pamphlet denouncing his own acts to be the fraud of others. Such a chapter of perfidy can be scarcely found in the annals of infamy; and if I cannot, when he reads this paragraph, shame him into some remorse for his dishonorable course in this matter, I will at least."

"Put a whip in every honest hand
To lash him naked through the land."

The East Side Company have this, another traitor to the old Company, and the benefit of his treachery, and they are welcome to both. The contract they publish in their pamphlet is neither a full copy nor a truthful one, and it has never been so admitted at Corvallis, or anywhere else.

From this conduct of Woods, (bought up with the "common stock, most liberally") the public can see what kind of a party it is that has issued the last East Side pamphlet, charging frauds upon others. It would probably be too severe a compliment, and might subject the author to an action of libel to be mulct in heavy damages, to say that Woods is a fair sample of the East Side Directors who have issued their pamphlet, but really with this statement, unchallenged, and it dare not be, I should think some of them would think of following the example of Loryea and others, and resign.

All the pretended fraud and illegalities charged by the East Side Company, have been by themselves brought into Court, and they have ignominiously backed our from an investigation of their own vile slanders, and for the proof of which I refer the reader to the following official statements of Messrs. Gibbs and Mulkey:

STATE OF OREGON)
) SS
COUNTY OF MULTNOMAH)

Jan. 6th, 1869.

I hereby certify that in April, 1868, I was the District Attorney of the Fourth Judicial District of the State of Oregon, and it was my duty as such officer, to prosecute all actions against private corporations, to dissolve their corporate existence. That at that time, J. H. Mitchell, as Attorney for the so-called East Side Railroad Company, applied tome tohave an action commenced against the Oregon Central Railroad Company of Portland, (or West Side Company) and presented

as a basis for such action, a complaint subscribed and sworn to by I. R. Moores, President of the East Side Company; which complaint charged that the West Side Company was illegally acting as a corporation, and charged gross frauds, irregularities and illegalities in the incorporation of said West Side Company, among other things specifying the "Secret, Fraudulent Agreement," substantially as set forth in the pamphlet of said East Side Company, dated November 25th, 1868; and charged that J. Gaston was not a Notary Public at the time he certified the acknowledgment to the West Side Company's Articles of Incorporation; and that one-half of the capital stock of the West Side Company had been fraudulently subscribed by J. Gaston. Upon this complaint I commenced the action to dissolve the corporate existence of said West Side Company, in the Circuit Court for the County of Multnomah, as District Attorney, and the said J. H. Mitchell, Attorney for the East Side Company, appeared with me, and conducted the action for the prosecution. And that within a few days after the commencement of said action the Attorneys of the West Side Company met the said Mitchell before the Judge of said Court at Chambers in my presence and then and there proposed to investigate the said charges in said complaint immediately, or as soon as the prosecution could get ready for trial, WHICH PROPOSITION MR. MITCHELL DECLINED. That at the expiration of my term of office, July 1st, 1868, I turned said action over with the other business of the office to my successor, A. C. Gibbs.

(5 cts. Stamp) M. F. MULKEY

Portland, Oregon, Jan. 9, 1869.

TO WHOM IT MAY CONCERN:

I have been shown the above statement of M. F. Mulkey, late District Attorney, dated Jan. 6th, 1869, in relation to an action brought in the name of the State against the Oregon Central Railroad Company (West Side) and add: that I was one of the Attorneys for the "West Side" Co. before I was elected District Attorney, and that I know the above statement of M. F. Mulkey is true. That J. H. Mitchell was acting in behalf of the State, and as Attorney for the East Side Co. in said Action, and that I continued to act for the "West Side" Co. That after said action was commenced, and answer filed, a very large number of dilatory motions were filed by Mitchell, and at last he made a motion to continue the case, which motion, Defendant's Attorneys being ready for trial, opposed, and said motion was overruled, whereupon Plaintiff's Attorney, Mitchell, dismissed the action at cost of Plaintiff. Throughout the pendency of the action, the "West Side" Co. continually demanded and pressed for a speedy and thorough examination of the charges alleged; and in my opinion, the Plaintiff's Attorney Mitchell, would not have dismissed said Action if he had not been satisfied by the decision of the Court upon the demurrer to the answer, and upon the motions referred to, that the Plaintiffs had no possible chance of maintaining their action upon the final hearing.

ADDISON C. GIBBS,
District Attorney.

It was not evident from this, that the action referred to was nothing more than a "malicious prosecution," while the ignominious retreat from an examination of their oft repeated charges against the West Side Co. shows them to be utterly without foundation.

HISTORY OF THE ORGANIZATION OF THE OREGON CENTRAL RAILROAD COMPANY.

The Salem Company pretends to give a history of the organization of the West Side Company. They say that "a number of gentlemen conceived the idea of associating themselves together as a corporation under the name of the Oregon Central Railroad Company." The facts are as follows, and to be truthful and intelligible, require a degree of personal history not allowable under any other circumstances. After seeing the provisions of the Act of Congress granting lands, the undersigned resolved to organize a corporation to receive the grant.

He is the author of the name "Oregon Central Railroad Company," and drew up the Articles of Incorporation. They were presented first to J. S. Smith and I. R. Moores, on Sept. 29th, 1866, who signed them at once, as with these two gentlemen, but with no others signing, there had been some previous consultation. They were presented next to J. H. Mitchell, who at first declined to have anything to do with the matter, on the ground that he was unable to aid it with money, but

afterwards signed with the express agreement that he was not to be asked to contribute any money. Judge Shattuck then signed them, with the same agreement as to money, and with the stipulation that I would get John McCracken, Mr. Ladd in Portland to sign them. Jesse Applegate, F. A. Chenoweth and Joel Palmer then signed. I then presented them to Hon. H. W. Corbett, U. S. Senator. I had several interviews with Mr. Corbett, and he hesitated long before taking hold of the matter, on the ground that he did not want to go into matters which might fail, and he had doubts of this. He also objected to a secret agreement (explained hereafter,) which Mr. Moores and Sam. Clarke were proposing; but on my assurances that this secret agreement should be repudiated, and that W. S. Ladd, J. C. Ainsworth, R. R. Thompson, S. G. Reed and Henry Failing of Portland, should be requested to go into the Corporation, as they were capitalists interested in the country in whom he had confidence, he signed the Articles.

On the 6th day of October, 1866, four days before the passage in the Legislature of the Joint Resolution, No. 13, designating the Company to receive the Land Grant, I took the Articles of Incorporation to Samuel E. May, Secretary of State, handed them to him in his office, and requested him to file them according to law. He took one copy and wrote a filing of that date in pencil on the back of it, instead of filing it in ink. I told the Secretary I desired to have other names added. He handed me back the papers. I told persons that they had been filed; the Secretary of State told other

persons the same thing—and they were filed in fact and in law, Oct. 6th, 1866.

Mr. Melvin was requested to sign the papers because he was an active working man, and had some experience in Railroads. Gov. Woods was allowed to sign the papers because he desired to do so, and requested that privilege.

Soon after the adjournment of the Legislature, I had talk with I. R. Moores, (the present President of the East Side Company,) in relation to organizing the Company. Mr. Moores opposed any canvass among the people before electing Directors, as wholly useless and absurd. I proposed a meeting of the Incorporators, and for that purpose suggested a notice in the Oregonian, calling a public meeting of the Incorporators. Mr. Moores did not favor it, and I could not understand his motive. Soon after I learned from letters from two of the Incorporators that Mr. Sam. Clark had privately written to all the Incorporators to get their proxy to Mr. Moores to open the Stock Books. If successful, this move would have given Clark and Moores control of the Corporation. I wrote to the Incorporators in relation to the matter and General Palmer, and some others of them withdrew their proxies, leaving Clark and Moores without power to do any harm; and here was the commencement of the war waged by Moores, Clark and others in the East Side Company against myself for the past two years.

As soon as I learned (about Nov. 7th") that Moores

and Clark were engaged in this underhand game to get control—Commenced and pushed by them while they knew the exact condition of the Articles of Incorporation, as Moores was himself Assistant Sec. of State—I went to Corvallis and had a conference with F. A. Chenoweth, now a Director in the East Side Co. and Chenoweth, assisted in preparing a power of Attorney authorizing myself to open the stock books, being the first man to sign the document. Coming back to Salem, I called Mr. Moores into Gov. Wood's office and asked him to sign my authority. He declined on the ground that he was opposed to the "Barry Survey," which this document proposed to pay for with stock. Having some words at that time, it was agreed that we should meet in the Governor's office that evening Nov. 10th. We met, I. R. Moores, J. S. Smith, Sam A. Clark, Gov. Woods and myself being present. Considerable talk had. The condition of the Articles of Incorporation were referred to. Gov. Woods and myself favored taking into the Company, the Portland men named by Senator Corbett. The others did not favor it and Clark violently opposed it. But it was then and there agreed that I should go to Portland the next day and see the Portland men "and get them" "interested" in the Company. I did not go the next day, as the Agent and representative of all the persons then in the Corporation; and without instructions as to the way the "Portland men" should become "interested." Gov. Woods had prior to this, got up a scheme to interest them which has been explained under the head of "Secret Fraudu-

lent Agreement." The Governor gave me letters to a Portland Capitalist, and I made arrangements with certain of the Portland Incorporators to advance a large amount of money to start the enterprise, got their signatures to the Articles of Incorporation, returned to Salem and handed the papers to Secretary May at the Post Office on the morning of Nov. 21st, and he went to his office and unlawfully filed them of that date instead of leaving his original filing of Oct. 6th, stand.

While I was absent in Portland, Mr. Moores, Smith and E. N. Cooke (a new man) filed Articles for Company No. 2, and when I discovered it an explanation was demanded, and I was told by Mr. Moores they had filed "them" in order to preserve the rights of the Corporation, as they had been informed that I had destroyed the original Articles in Portland, and got up new ones." This they discovered to be false from the replacement of the original papers, and a meeting of all the old and new Incorporators was called to meet at Salem on Dec. 18th, 1866. At this meeting I. R. Moores, Sam Clark, J. S. Smith, E. N. Cook and myself were present. I had also proxies of the Portland Incorporators, including J. H. Mitchell, and could have "run" the meeting if so pleased—but nothing was done at all.

Mr. Smith and Cooke were then on the eve of going to Europe, and as it seemed impossible to get the Salem men to do anything, I prepared to open the Stock Books and canvass the valley for stock. Fourteen of the eighteen Incorporators authorized me in writing, about Jan. 1st, 1867, to open the Stock Books, and of these four-

teen, six were of the first ten known to the public, to wit: H. W. Corbett per W. S. Ladd, proxy, J. H. Mitchell, S. Ellsworth, Joel Palmer, F. A. Chenoweth and E. R. Geary; and of these six, three only of the first ten have been induced by unassessable stock to go into the Holladay or East Side Company.

Thus matters stood until April, 1867, when I had prepared printed posters and subscription Books, proposing to the people of both sides of the Willamette valley, to take stock generally, and the side of the river which should subscribe the most should have the road. This coming to the ears of I. R. Moores, he came to me and threatened to issue his "Protest" against the whole matter, and went all around and circulated that he believed I was trying to swindle the people. (We will show Mr. Moores presently where the "swindle" comes in).

About the same time, April 15th, 1867, Mr. S. G. Elliot and T. R. Brooks appeared at Salem, and going to Moores and Clark, they soon got up Company No. 3, now known as "The Holladay or East Side Company." Learning their intention of getting up a new company, I went to J. H. Moores of Salem, one of their Incorporators and now a director, and expostulated with him as to the propriety of such a course. I then told him that if they would wait until I could consult the Incorporators of the old Company, I would abandon it if they so advised. I also told Mr. Moores that if the other Incorporators would agree, Mr. Elliot

could use the old organization for his purposes; but not to do anything without some arrangement of the matter, as the organization of a new Company in the same name would result in all the strife, litigation and injury to the State which has since come to pass.

After this, I. R. Moores came to me and offered to take me into the new Company, give me an office in the concern and a share in "some other things," if I would throw away "the old papers." All this I declined to do, unless directed by the Incorporators of the old Company; and I therefore notified all parties of these proceedings; and Mr. Moores, instead of getting in all the old Incorporators, got up his Company with but four names, to wit: I. R. Moores, J. H. Moores, Samuel A. Clark and George L. Woods, two only being Incorporators in the old Company, and he using the names of Smith and E. N. Cooke, who were then in Europe, and S. Ellsworth who was at Eugene City, and filing no authority for using the names of these absentees.

It being necessary to legally organize our Company to enable it to protect its rights from the infringements of this third Company, I took the responsibility of subscribing one half the capital stock in a legal manner, and a Board of Directors were elected. Soon after I commneced canvassing for Stock on the West side of the river, and the Salem Company commenced their war of slander and vituperation, to prevent the people supporting my efforts, and to "crush Gaston," as they expressed it, but the crushing process has not yet

proved a success. Instead of their "conceiving the idea of forming the Corporation, and giving me the Articles to certify," it was the reverse. Not a man in the East Side Company ever had the Articles in his possession, save at the moment of attaching their signatures; and not a single man in that Company would ever agree to give me one dollar to defray even contingent expenses, saying nothing of aiding otherwise, to save this Land Grant to the State of Oregon. They wanted nothing to do with it unless they could "grab" a million dollars of unassessable Stack, to be made valuable by the labor and money of others. The entire expense of securing all the legislation of 1866, of all the printing, traveling expenses, and of getting up the Corporation, devolved upon, and was paid by the President of the West Side Company, while Moores, Mitchell & Co., would pay nothing, but now turn around and ignobly talk about "poverty" and "obscurity".

Their pamphlet shows that it was S. Ellsworth, who moved its adoption by their Board, making all these false statements, and it may be interesting to the public to see just how much interest, and at whose solicitation Mr. Ellsworth's name was connected with the enterprise, and for that purpose I submit the following letter:

Eugene City, September 26th, 1866.

J. GASTON, Esq.,

Dear Sir:—Of Course I cannot know the details of your plan of R. R. Bill; but placing confidence

in *you*, I have no objection to your making use of my name as Incorporator if you think best, in connection with such names as *your own* and those *you* designate in your letter, and to that end, I hereby authorize and empower you to use my name as if personally present and acting in that behalf.

Yours very respectfully,

S. ELLSWORTH."

(The italics are ours.) How does that compare with Mr. Ellsworth's charge that "they conceived the idea and gave me the Articles?" Mr. E. was then willing to be associated with "the obscure Notary Public of Salem," and permit him to use his name, and even designate all the other Incorporators, which last thing the "obscure Notary"did, receiving counsel from no man but Senator Corbett and Judge Shattuck; and Messrs. I. R. Moores, J. H. Mitchell, George L. Woods, S. Ellsworth and F. A. Chenoweth, who now lead in making those charges of obscurity, and claim themselves to have originated this Corporation, owe it entirely to the " obscure Notary of Salem," that they were ever named in connection with the enterprise. The origin of the enterprise dates farther back than the Articles of Incorporation of our Company. The President of the West Side Company has devoted a great deal of his time to the matter since September 1868, as Ex-Senators Harding and Nezsmith, and Senators Williams and Corbett of Oregon, and Ex-Representatives McBride, of Oregon, and Bidwell of California, and Senator Cole, of

California, are well aware. On this point, S. G. Elliot, one of the leading spirits in the East Side Company furnishes his testimony in a letter to Gaston, dated March 19th, 1866, in which Mr. Elliot says, "as you were the only reliable active man moving in the matter in Oregon, and not being able to travel abroad, our Company (the Cal. & Ogn. Co.,) concluded to take some steps &c." Gov. George L. Woods, another East Side Director, claiming the credit of originating this enterprise, and denouncing "obscurity" on others, recommended the "obscure Notary" of the West Side Company, in a letter of introduction to a capitalist of Portland, Nov. 10th, 1866, as "a gentlemen who had been engaged in pushing this enterprise for several years, and had done more than all others to secure the present prospects of success &c." The Governor having availed himself of the services of "this man Gaston" to write his Railroad Message to the Legislature of 1866, had at least one reason for bestowing an unasked for compliment, and one reason why he should not now turn upon the "obscure Notary of Salem," to cowardly denounce him with poverty that "worst of crimes."

Another Director of this East Side Company engages in this crusade against the "obscure Notary," with very little excuse—the Rev. J. H. D. Henderson. Mr. Henderson will remember that when he was a candidate for Congress in 1864, the "obscure Notary" was then Editor of the Jacksonville Sentinel; and this Railroad question, then in its incipiency, was sought to be made a question against him in Southern Oregon. I

had then committed myself to the project and desired that the candidate I favored should be my friend on this Railroad question, if elected. Mr. Henderson then pledged me his support in this matter. He afterwards furnished me the statistics for Lane County, for "Barry's Railroad Report," which was published by myself. Mr. H. knows full well that the origin of this Railroad is not with his colleagues in the East Side Company; and in addition to the cause of truth and justice, which ministers of the Gospel are supposed to serve, he had the further reason of accepting the "obscure Notary's" hospitality, his political support and seventy dollars in gold coin as a gratuity from him at Jacksonville, to have induced him at least to have withheld his voice from this East Side pamphlet. The Parson has also doubtless forgotten his letter of Jan. 24th, 1866, from Washington City, addressed to the "obscure Notary" while Editor of the Oregon Statesman, in which he recounts his many valuable services to his country, including his labors for the railroad, as an inducement why the "obscure Notary" should use his efforts to secure Henderson's renomination to Congress. Life is indeed a checkered path, and it is refreshing to see Parson Henderson pocketing Gaston's money at Jacksonville to pay his traveling expenses, from very poverty, begging his influence for a re-nomination, and then (Alas! for the weakness of human nature) turning upon his old friend charge to him with obscurity and poverty in order to get "Common Stock" in the East Side Company "most liberally".

The "obscure Notary of Salem" cares nothing for

the supposed credit of originating this enterprise, and would not refer to it or notice the contemptible flings of "poverty and obscurity," were it not that these East side gentlemen, who are entitled to no credit whatever in the matter, now seek to make their accidental connection with the Company an equity in favor of the East Side or Holladay claim to the Land Grant. This is a full history of the origin and organization of the Oregon Central Railroad Company and this is the "sum of my offending."

ORIGIN AND HISTORY OF THE HOLLADAY COMPANY.

This is O. C. R. R. Co. No. 3, now operating on the East Side of the Willamette river, and called the Holladay Co. because Ben Holladay owns the concern in toto, and directs all its affairs, locates its Railroad where he pleases, and its twenty-one Directors have no more voice in it than so many wooden men.

I have heretofore referred to the "Secret Agreement" proposed by Sam Clark and Moores and so bitterly repudiated by Senator Corbett. This was the inciting cause or moving force which produced Co. No. 3. That agreement was prepared in San Francisco by the joint labors of S. G. Elliot and the above Clark; and it provided "that a Railroad Company should be gotten up in Oregon to secure the Land Grant, State Aid and all the aid possible from the people. That this

Oregon Corporation should execute a power of Attorney to S. G. Elliot authorizing him to let a contract to build the Road, and that said Company should issue two million dollars of unassessable stock to certain Californians for their good will in the matter, and then these Californians would transfer back to the Oregonians getting up the Company one million dollars of the unassessable stock for their trouble in getting up the Company; and no man was to pay a cent," I opposed this scheme from the first, and this is the cause of the war against myself and the West Side Company.

The two millions were issued to A. J. Cooke & Co. one million transferred back to the Directors of the East Side Co. and for a long time lay in the safe of E. N. Cooke at Salem, who was told to hold it in trust for the Honorable Directors until it would become valuable. While J. H. Mitchell and I. R. Moores were perambulating the Country, with salaries of four and five thousand dollars per year beseeching the people to purchase their ten cent stock, they declare that this two millions of unassessable stock was all given to the contractors A. J. Cooke & Co. as a bonus to induce them to take the contract at $35,000 per mile over a level country; but they denied that they (the Directors and managers) hold any of this stock, when they each had $50,000 apiece in the safe of Mr. Cooke; while the people were besought for their hard earnings to *to* build the Road, make this stock valuable, they would pay nothing. Does Mr. Moores and his twenty Directors discover any fraud or deception here?

After they had incorporated their Company, they organized on the false, fraudulent and illegal subscription of stock, set forth on page 13, electing a Board of Directors and other officers when they had but six hundred dollars subscribed in a capital stock of seven million two hundred and fifty thousand. They then let a contract to build their road, to A. J. Cooke & Company. And who were A. J. Cooke & Company? Nothing more than a man of straw, a fiction, a cheat, fraud, swindle,—There never was such a firm. Mr. Elliot used that name to contract with the Salem Company, while he represented them to be Railroad Contractors in the East of immense wealth, and the Salem dupes gave out that Jay Cooke & Co., (the great Bankers,) were the men backing them, and kept up this delusion in Oregon until persons in Portland received letters from Henry D. Cooke, of the last named firm, denying any connection with the concern. While Mr. Elliot represented here, that A. J. Cooke & Co., were such wealthy men in New York and Boston, he represented there, that A. J. Cooke & Co., were wealthy contractors in San Francisco, and sohe and his Oregon dupes when pressed to give the P. O. address of the great Contractors, would always locate them, like the milk sickness, "over in the next county." After this humbug contracting firm was exposed and denounced in the Oregon newspapers, one of their Directors, F. A. Chenoweth, declared to a public meting at Corvallis, that A. J. Cooke & Co., were "an association of capitalists in the East, any one of whom was able to construct their Rail-

road" and named as members of the firm Judge Sawyer, of Sandusky, Ohio, and a member of the U. S. Senate from Ohio;" and J. H. Mitchell, at a subsequent meeting at the same place took a safer course and told the people "it was none of their business to know about A. J. Cooke & Co." Prior to that Judge Hill, of Portland, had told Mitchell that Cooke & Co. was a swindle, and that he (Mitchell) knew it, and told Mitchell to get out of it. Long prior to this, in May 1867, the East Side Company had sent their Vice President, (Dr. A. M. Loryea,) to the East to see Cooke & Co., but after searching all through New York, Boston, Baltimore and Sandusky, Ohio, could find nothing of the contractors, and Mr. Elliot could give no account of them; and finding himself grossly deceived by Elliot, he returned to Oregon to expose the whole concern and withdraw from it, which he did, and for the truth of all this we are authorized to refer all persons desiring information, to him at Portland, Oregon.

The point I make here, is this: That after the character of this A. J. Cooke & Co. had been publicly exposed, and denounced in Oregon, and brought to the knowledge of the President and Directors of the East Side Company, by letters from Dr. Loryea in the East, they went around the country, personally and by Agents, J. H. Mitchell, and others, soliciting the people to purchase the common stock of their concern, nominally worth one hundred dollars per share, at ten cents on the dollar, and offering the purchaser as an inducement the written obligation of A. J. Cooke & Co., on

the back of the stock, to refund the amount paid for it within two years, they then knowing the true character of A. J. Cooke & Co. Putting all the facts of the case together, can any fail to conclude that both the President and Directors of the East Side Company attempted to "obtain money under false pretenses," and attempted to perpetrate upon the farmers and others of Oregon one of the most disgraceful frauds and infamous swindles ever spawned upon any community? Does Moores now see where that swindle he charged on Gaston to the citizens of Spring Valley, comes in?

It may be replied, that Cooke & Co. could not have been a humbug, because they (Elliot) spent some money in Oregon. We understand all that. Elliot (Cooke & Co.) commenced grading &c., on the East side of the river with twenty thousand dollars advanced to him by three or four men in Portland, (names could be given if necessary) who he deceived and humbugged with the idea that Cooke & Co. were a reality, and that he could get iron, rolling stock, &c., to lay track. When the twenty thousand dollars run out, he was compelled to sell the Locomotives, "George L. Woods," and "I. R. Moores," named for the East Side Presidents, then at San Francisco, to the Central Pacific Railroad Company, and use the proceeds; and these locomotives he purchased in Boston with the Bonds of their Company, with the fraudulent representations that Company was entitled to the Land Grant and State aid. The concern then being in the condition of the dying man administering on his own estate, Ben Holladay swooped down

on it, and took it all in—contracts, Directors, hide and hair; and they are now his property.

Passing over the volumes of false statements with which this Company deluded the people of Oregon during the years 1867 and 1868, about the vast amounts of iron and rolling stock they had sent here, but which has never yet appeared, we now leave this history of the East Side Railroad Company, which assumes to act the censor upon the acts of others. Neither the "Unassessable Stock Swindle," nor its mate, "the A. J. Cooke & Co. cheat," can or even will be explained to the public by the parties here connected therewith, and in their last pamphlet they confess the disgrace of it by total silence on these subjects. But like Banquo's ghost, it will not down at their bidding.

The character of this East Side Company, is such that Ex-Governor Gibbs, and W. S. Ladd, the principal Banker of Oregon, refused to act as Trustees in their Mortgage Bonds, after their names had been printed in the Bonds; and in September, 1868, Dr. A. M. Loryea, their Vice President, Hon. Phillip Wasserman, and Hon. Hamilton Boyd, Mayor of the City of Portland, then acting as Directors in said Company withdrew therefrom, on account of its equivocal character.

CONCLUSION.

In concluding the unpleasant duty of making reply to the many and oft-repeated false statements of the East Side Company, we desire to call attention to

the fact that our Company has acted solely in self defense. Ours is the old, the original Oregon Central Railroad Company, the Corporation recognized and designated by the Legislature of 1866. We have not now nor never had, any feeling to oppose the construction of a Railroad upon the East side of the Willamette river, and it was even never decided that our Company would not have located their road upon that side of the river, had we not been forced away from such a choice by the course of the Salem party.

Whatever of discord, contention, litigation, strife and damage to the material interests of Oregon, which may have grown out of this contest between these rival Companies, it is all justly chargeable to Moores, Mitchell & Co. of the Holladay Company. They got up the second Company, they got up a third Company, both usurping the Corporate name of our organization, and in this first act of theirs, they betray their designs, commit the first assault, and declare war upon our prior rights and corporation—and this they did with full notice of our rights and claims, and in the face of the olive branch then tendered them.

Our Company has always been ready and willing to co-operate with any corporation, or even the East Side Company, to promote railroad interests on both sides of the river, on the sole condition that such Company should not use our corporate name; and in all candor, we claim to have offered both generosity and justice. And ever willing to heed the verdict of enlightened public opin-

ion, we are content to submit our cause to such arbiter, awaiting the decision in its "sober second thought."

Respectfully submitted,

J. GASTON,

Pres't Oregon Central Railroad Co.

Portland, Oregon, Jan. 20, 1869.

Note: Willing to do Secretary S. E. May full justice in regard to the filing of our papers, I give the following copy of a statement, made by him on the back of the Multnomah County copy since most of the foregoing matter was printed. Copy: "This is evidently the Articles of Incorporation presented by Gaston for filing on the 6th of October, 1866, as I recognize the letters and figures on the bottom to have been made by me at that date, which I have not seen from that date to this.

SAMUEL E. MAY,

January 19th, 1869. Secretary of State."

This statement clears up a vast amount of misrepresentation circulated by the East Side Company.

J. G.

OFFICERS OF THE
OREGON CENTRAL RAILROAD COMPANY.
BOARD OF DIRECTORS.

Col. Thomas R. Cornelius, (Farmer) Centerville Oregon.

Capt. J. C. Ainsworth, (Prest. Oregon Steam Nav. Co.) Portland Oregon.

J. B. Underwood Esq (Attorney at Law) Eugene City Oregon.

Hon. William T. Newby, (Farmer and Miller) McMinnville Oregon.

J. Gaston Esq. (President of the Company) Portland Oregon.

TREASURER—W. S. Ladd Esq. Portland Oregon.

SECRETARY—E. W. Haines Esq., Portland, Oregon.

Trustees in the 1st Mortgage, Charles M. Carter Esq. Portland Oregon. James B. Harker Esq. Portland Oregon.

Company's Office, No. 12 Carter's Block. Portland, Oregon.

GOVERNMENT'S EXHIBIT 107.

REMONSTRANCE

Against extending the time for filing assent to the act granting lands to the Oregon Central Railroad Company.

To the Honorable the Congress of the United States:

The undersigned respectfully represents that Congress granted lands for a railroad to such company as the Legislature of Oregon should designate. The Legislature designated the Oregon Central Railroad Company. The company filed its assent to the act, and located, and is now construcing, the road, having already expended about $100,000, and contracted for the completion of one hundred and fifty miles of road. The line of their road is located on the west side of the river which divides the Willamette Valley into about equal parts. After the act of designation. another company was organized under the same name, to build a road on the east side of the river.

The latter company had three months remaining within which to file an assent to the act of donation, but failed to do so, and until recently the men in charge of it publicly disclaimed all pretensions to the grant. But at the last session they applied to the Legislature to be designated as grantee, on the pretence that the former designation was made under a mistake of facts, and was therefore void. There being a majority of "east-siders" in the Legislature, the application was successful.

They have sought to file an assent to the act of Congress, but the Secretary of the Interior refuses to receive it, on the ground that the time has elapsed, and that the west-side company had filed in time. They now ask to have the time extended; and against such extension the undersigned, on behalf of the west-side company, which he represents, respectfully remonstrates.

The basis of the second designation is that the first was nugatory, because it proceeded on the false assumption that the company was a legal corporation. The facts were, that the articles of incorporation were signed and acknowledged before a lawful officer, and filed with the Secretary of State, as the law requires. Thereupon the Legislature resolved, "That the Oregon Central Railroad Company, a corporation organized under the laws of Oregon, be and is hereby designated," &c. Now, it is true that the Secretary did afterwards permit one of the corporators to withdraw the articles, and procure other names to them, and they were not refiled until after the designation was made, The memorandum of the first filing was replaced by another of the latter date. The undersigned claims that the withdrawal of the paper from official custody was without authority of law, and did not destroy the corporate existence of the company.

But it is not necessary that the company receiving the grant should be a corporation; it only needs to be "a company organized under the laws of Oregon." Congress could as easily have said a corporation organized, as a company organized, if it had a choice between them. It cannot be successfully maintained that company

means corporation, nor that laws of Oregon mean statute laws, nor that organized can only be predicated of corporations. A joint-stock company or co-partnership, formed or organized in accordance with common law, as it prevails in Oregon, fills all the requirements of the act of Congress; and when the Legislature describes the company as a corporation organized, it is immaterial whether those descriptive words are true or false. It is not a jurisdictional fact, necessary to make the designation lawful; nor is it, as a descriptive fact, necessary to identify the company intended. The name was sufficient to identify the company, since no other of the name existed. To strike out this surplusage does not affect the legality or certainty of the designation, but it does sweep away the pretext for attacking the rights of the company.

Even if the grant were confined by the act of Congress to a corporation, and to a corporation whose stock should be subscribed and officers elected, it still would only be necessary that the organization should be complete at the time the grant took effect, namely, when the assent was filed. It was not the designation, but the assent, which vested the franchise. The designation, or pointing out, of the company, had the necessary foundation for its support, namely, a company so far organized under the laws of Oregon as to be capable of identification as the legislative choice; and the assent had its necessary foundation, even according to the most captious claim, namely, a completely organized corporation capable of accepting the offered franchise.

But again, if the unauthorized act of the Secretary, in temporarily parting with the custody of the record, destroyed or suspended the corporation, or if any other irregularity intervened, whereby, in technical law, the organization was defective, the Legislature was in possession of all the facts, and acted upon that knowledge, and their act became public law, and as such is conclusive upon all parties. If it is true of a private act of Parliament, predicated on a fact which induced its passage, that it may be set aside, or the right reclaimed by the king, if the fact was false and fraudulently imposed upon Parliament, it is not true of a public law, even in England; and much less will such a doctrine apply where, as in this case, the facts are part of the public records of the country. No facts are alleged to be wanting to this corporation but such as the laws of Oregon require to be evidenced by official records, and concerning which the Legislature could not be ignorant or deceived; and it is is not competent for one Legislature to reclaim, or declare void, a right acquired by a public act or resolution of a former Legislature, upon the pretense that such former Legislature were ignorant or deceived respecting such facts. If the State has changed its mind, it nevertheless is chargeable with knowledge of the condition of its own records, and of any defects in those records, and it cannot deny the truth of its own assertion, that the company was a corporation duly organized, and thus destroy the rights of those who have invested their money and bound themselves by contracts on the faith of that declaration.

For another reason the Legislature had no power to make this second designation; the time for any company to file an acceptance of the grant had expired, and the grant had lapsed. To appoint a grantee after the offer of the grant had ceased, was simply void, and left the matter exactly where it was. The Legislature which designated the west-side company had jurisdiction of the subject; the one which designated the east-side company had no jurisdiction. If the former failed for want of regularity, the latter failed for want of power. Which of them should Congress aid?

The west-side road is thus far built by the contributions of citizens along the line, in the full belief that, when their sacrifices shall have completed twenty miles of road, patents will issue for the land, which will insure the continuance of the work. The east-side road is being built with foreign funds, raised on the company's bonds, with a full knowledge and open avowal that they had no land grant. Ought the former to be cheated of their just expectations, for the purpose of gratifying the covetous afterthought of the latter? If this company had not been designated, the stock would not have been taken and the contract let. To withdraw the land-grant is to devolve upon the stockholders personally a burden which will crush them. They cannot meet their engagement, and the money already expended will be wholly lost. It is no answer to say they may defend their rights at law. It was not a lawsuit they were promised, but land for a railroad. To give them the lawsuit instead of the land is to delay, if not to defeat, the bounty of Congress,

and punish innocent persons for their faith in the Government. The right is in the company deriving its title from the Legislature which had jurisdiction; and if a curative act is necessary, it ought to cure a defective exercise of power rather than a usurpation of power.

The undersigned therefore prays that, instead of the pending bill, an act may be passed confirming what the first Legislature had the right to do, and tried to do, and supposed they had done.

S. G. REED.

Proposed substitute for the pending bill.

A BILL.

Explanatory of the act of July 25, 1866, granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution of the Legislative Assembly of the State of Oregon, of October 10, 1866, designating the Oregon Central Railroad Company to construct the railroad mentioned in the said act of July 25, 1866, was a lawful execution of the power vested in the said Assembly; and that the said company, by filing their assent to the said act on the 6th day of July, 1867, acquired the rights granted by the said act.

GOVERNMENT'S EXHIBIT 108

OBJECTIONS

TO THE

PASSAGE OF SENATE BILL NO. 94

To amend the Act entitled "An Act granting Lands in aid of a Railroad and Telegraph Line from the Central Pacific Railroad in California to Portland In Oregon," approved July 25, 1866.

M'Gill & Withrow, Printers.

[5298]

SENATE BILL NO. 94.

OBJECTION

Is made to the passage of this bill, (S. 94) as an infringement of the rights of the "west-side company", first appointed to take and apply this land grant. Not that their rights can be destroyed by legislation; but a solemn act of Congress, upon full discussion, will have such weight in shaping opinions and moulding results, that, potentially, it will decide the case against them; if in no other way, by the destruction of their credit, and forced abandonment of the work.

THE BILL,

In form, is very fair. It authorizes any company heretofore designated, to file its assent to the act of Congress within a year. Apparently, both companies may avail themselves of its provisions. But the west-side company filed its assent within the original time, and not only needs not to repeat that act, but to do so would confess the first assent to be void. The bill, therefore, applies only to the east-side company, which has never filed an assent, and cannot without a new law. It offers food to the one and poison to the other. This impartiality is more apparent, when it is observed that the predicate and basis of the bill is, that the designation of the west-side company was void. If it was a good designation, no one doubts their right. That it was void and conferred no right, is the theory of the bill; and if the bill

passes that will be the decision of Congress, no matter what the members, in their minds, intend, and that as surely as if expressed in words; for only on that theory can it rightfully pass. The committee say Congress ought not to decide. But the bill decides, as much as Congress can, that the first company has no rights, and grants the land anew to the second company, which confessedly has none until conferred by this bill. The committee say it is a judicial question. It will be, if the bill passes. Without it, none but the United States can question the rights of the first company.

THE LETTER

Of Mr. Browning is the chief argument. It accords with the bill. It says the grant has lapsed, and the bill is necessary to revive it. It can only have lapsed because the west-side company has not, in contemplation of law, been designated. Therefore, to revive it to any company heretofore designated, is to revive it, or rather to grant it anew, to the east-side company; for, according to Mr. Browning, that is the only company heretofore designated.

But Mr. Browning's conversations, written or verbal, prove nothing. When the Secretary of the Interior shall perform or decline performing an official act, such act or refusal will have a legal meaning, and the party aggrieved may either submit, or may appeal to the President and obtain the opinion of the Attorney General. The company could not have appealed from that letter,

if they had known of its existence. It cuts no figure, except as the opinion of Mr. Browning, or of the railroad clerk of the Interior Department who probably prepared it. Its value is in proportion to its accuracy. Its only point, the

LOSS OF THE LAND,

As an aid to the building of the road, is proved inaccurate by the terms of the grant itself. The act declares that either the Oregon or California company, on completing its part of the road and finding the other part incomplete, shall have the right to proceed, with the consent of the State, until the whole is completed. Oregon has already given that consent by its general incorporation law, the terms of which any corporation can easily comply with. This likewise disposes of the

REPORT

Of the committee, which assigns no reason for the passage of the bill, but the groundless fear that the road will lose the land.

THE TITLE

of the company first designated depends on its being, in fact, the one intended by the Legislature, and on its having filed its assent within the time; both of which are conceded. It depends not all, as has been supposed, on its having at that time performed each and every formal act necessary to acquire the legal quality of a corporation.

The king, in 1761, granted the town of Pawlet, N. H., in sixty-eight shares, to persons and institutions named, and among them, "One share for a glebe for the Church of England, as by law established." In 1802, a society of Episcopalians was organized in the town, and the parson commenced to take the rents of the glebe. After the Revolution, the State undertook to divert the land to another use. A law-suit resulted, in which the Supreme Court of the United States held that the Church of England was not a corporation, nor was the grant made to it, but to the local church in the town of Pawlet, which did not then exist; that the grant passed the title out of the crown, but not into any grantee, because there was none; that when the town came to be sufficiently settled, and a church was organized, the title vested in the parson, a corporation sole, having been, in the mean time, forty-one years in abeyance. The court admitted the general rule that the title does not pass out of the grantor unless there be a grantee in whom it can vest; but it recognized these semi-public objects as exceptions to the rule. Pawlet vs. Clark, (9 Cranch, 292.)

The objection of want of grantee goes to the act of Congress, which contains the grant. The resolution of the legislature only selected a grantee to take a previous grant. That previous grant was void from the beginning if a grantee in being was necessary to its validity. If the grant was good until the grantee was chosen, why not until he qualified himself to take? The objection goes not to length of time, but to any time. Is not an

act of Congress which departs from the common law an alteration of the latter for that case and to that extent? And is not this likewise true of an act or resolution of the legislature? And do not such statute laws put aside, for the occasion, all common law obstructions, just so far and just so long as necessary to allow the act or resolution to effect its object? This has never before been questioned.

But here has been no departure from the common law, even if the rule were applicable to a grant like this. On the contrary, the act of Congress expressly requires that the title of this land remain in the United States until the road shall be built in sections of twenty miles. It is then to be conveyed by patent. The rule cannot be invoked until the patent issues, and it then must be applied as between the grantor and grantee of that instrument.

THE MISTAKE

Said to have been made by the Legislature, in supposing that the company had completed its corporate organization, was therefore a mistake of an immaterial fact, which, being true or false, could not affect the validity of the resolution.

But a legislature cannot be mistaken, ignorant, or corrupt. Whatever may be true of some or all of the members, no such allegation is admissible against the legislature, as such. Its acts and resolutions are the will and law of the State, as applied to the facts existing or assumed, regardless of prior laws, common and statu-

tory. Facts, declared or assumed by the law, are, for the purposes of the law, a part of the law itself. At least the State, and those claiming through the State, cannot deny such facts. McKinnon vs. Bliss, (21 N. Y. Rep. 206).

The State of Georgia authorized by law the sale of certain lands; and they were sold accordingly. A subsequent legislature declared the act void, because its passage was procured by dividing part of the property among the members, as bribes. But the Supreme Court of the United States held the law to be in no way affected by the reasons which induced the members to vote for it. Fletcher vs. Peck, (6 Cranch, 87.) That, however, was long ago. If it had occurred just now, and in Oregon, that statute would have been assailed as a violation of the common-law rule that fraud vitiates everything it touches. Still, it is likely that case will be followed whenever a law is impeached in a court for the ignorance or mistakes of members respecting facts material or immaterial. And yet such a mistake is all that has been objected against the rights of this company.

If that question were not concluded by the law, but could be tried as a question of fact, the mistake might be disproved by two kinds of evidence: First, the record. Corporations are created in Oregon by record in the office of the Secretary of State; and neither the members individually nor the Legislature as a body could be heard, nor could anybody claiming through

them be heard, to deny a knowledge of the condition of those records. The record proves not only what the facts really were, but that everybody knew them. Second, oral evidence that a designation of this company to receive the grant, and a guarantee of interest on its bonds, were asked and granted, as conditions necessary to induce a completion of the organization and subscription of the capital stock, whereby personal liability was to be created.

THE FACTS

Are, that a sufficient number of men had signed and acknowledged articles of incorporation, assuming a corporate name, and defining the object to build this road. Others were ready to sign and subscribe the stock, if only assured of this grant and a guarantee of interest on the company's bonds. Thereupon the Legislature designated the company, by its corporate name, to receive and administer this bounty, and passed an act guaranteeing the interest on a million of its bonds. Others then signed and acknowledged the articles, and they were filed, and constituted the company a corporation in law. The stock was then subscribed, the officers elected, the assent filed, and the work commenced; and up to this time the company is not in default.

THE IDENTITY

Of the company, intended by the resolution of designation, has never been disputed. The name, in the then

absence of any other of that name, was a sufficient identification. The additional words, "A company organized under the general incorporation laws," are to be understood to mean the facts as they existed; the organization so far as it had then proceeded; or, if they mean that the company was already a corporation in law, that fact is not now disputable. And if that statement in the resolution, whatever it means, could be denied and disproved, it is, at last, only surplus description of a company already identified with certainty by the preceding words, and as such would, by a court, be disregarded.

THE EAST-SIDE COMPANY

Was organized under articles filed five months after the first company had been designated and had filed its articles. They had still three months in which to file their assent, if they intended to claim the grant; but failed to do so. That they had not been designated is no excuse, for the act establishes no order of priority between the designation and assent. The designation might be made at any time, if only the assent were filed within a year. But to designate a company which had not performed that condition, after the time for its performance had expired, was idle and void, since there was no possibility for such a company to take. Therefore, as the case stands, that company has no color of right. Neither has it any equity; for it knew it had no rights under the act of Congress, and did not claim any. Its claim was, that neither company had a right to the grant.

It did not expend money believing it had rights. If it laid out another road, and, as the report says, expended money believing the other company had not been legally designated, it is in the predicament of a trespasser who has expended money in the belief that he had found a flaw in the owner's title.

THE EQUITIES

Are with the first company. They have not sought to appropriate the estate of another, by astuteness in detecting defects of title, but have applied themselves to improving their own, with full confidence in their rights. Their faith in those rights, based on a solemn act of the Legislature, passed at the instance of Congress, entitles them to other treatment than this bill proposes. The committee say that because the east-side company organized and expended money, relying on a technical defect in the title of the other, they ought to have the benefit of the law according to which they made their investment. Exactly so. Let them abide by it. It is only themselves who object to that rule. They alone ask a new law. The committee think that if the flaw in the title exists, the new company should have the land, because they expended money believing in the flaw, though the company which was prior in time expended its money believing in its title. It is for Congress to determine whether it will adopt the committee's rule of equity.

THE EXTENSION,

By the last Congress, of the time within which to complete the first twenty miles of road, overrides all questions, and decides the case. At the time of the passage of that act but one company had been designated. The second company was as much a stranger to the grant, and outside the purview of the act of extension, as was the Hudson's Bay Company. The act of extension was not addressed, as this bill is, to a company as yet outside of the case, but to the company which had been designated by the Legislature as the grantee, and had filed its acceptance of the grant; and it said to that company, "If you will construct twenty miles of road within the extended time, you shall have a patent for so much of the land."

Here was a new bargain, waiving and ignoring all vices and defects hitherto, and putting the rights of the company anew upon a single condition. Relying on that new promise, the company has since invested a large amount of money, which it before had feared to do, in performing their part of the contract. It is now proposed that Congress withdraw from the agreement, and give the land, so far as Congress can, to a stranger.

If the Legislature, as the agent of Congress, stumbled in executing the power of appointment, and Congress, instead of setting it aside before money had been expended, deals with the appointed company as its grantee, by making with it a new agreement, and thus

draws on the grantee to expend money on the faith of such new agreement, it requires but little knowledge of jurisprudence to perceive that Congress cannot afterwards set aside the appointment for defects existing prior to the ratification. But an act to do this directly would be more creditable to Congress and less injurious to the company than this bill, intended, as the committee say, to let in another company to litigate for the rights thus granted and confirmed, and that upon a technicality of older date than the confirmation. Either method of accomplishing the object in simple repudiation. And,

FINALLY,

Why should that appointment be repudiated? If the company was not then a corporate being, it became such in time to perform, and did perform, the first corporate act required—the filing of an acceptance of the grant. An earlier completion of its organization could have served no useful purpose, and was required by no law, common or statutory. The case was but a repetition of many similar ones, wherein Congress has granted lands for like objects to companies to be afterwards organized. It was not a departure from the common law, for there was no present grant requiring a grantee in being. Even if title passed by the grant out of the United States, it afterwards vested in the corporation when it came into being, according to the Pawlet case. And besides, the grant was made by act of Congress and supplemental resolution of the Legislature, both statute

laws, which, for the occasion, put aside every prior law that stood in the way, and against the validity of which nothing can be averred but constitutional limitation of power, and the truthfulness of which, respecting facts, cannot be denied by those claiming from the same source. At the worst, it was but an innocent mistake, and injured no one; and, Congress, who alone had the right to take advantage of it, declined to do so, but made a new bargain with the company for further time to earn the land, and the company is making heavy expenditures to comply, and expects to comply with this new bargain. Notwithstanding which, the bill says, that if the appointment was defective, the land shall be given to another company; and it actually gives it to that other company if it will go to law and beat the first company upon the technicality which Congress has forgiven. The second grant in the Georgia case had a better moral aspect; but Chief Justice Marshall denounced it as "a mere act of power, which must find its vindication in a train of reasoning not often heard in courts of justice."

For the company,

S. G. REED,
Agent.

APPENDIX.

S. 94

In the Senate of the United States, March 10, 1869,

Mr. Williams asked, and by unanimous consent

obtained, leave to bring in the following bill; which was read twice, referred to the Committee on Public Lands, and ordered to be printed.

A BILL

To amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, approved July twenty-five, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon," approved July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the legislature of the State of Oregon, in accordance with the first section of said act, to file its assent to such act in the Department of the Interior within one year from the date of the passage of this act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said act.

In the Senate of the United States, March 22, 1869,

Mr. Williams made the following report, (to accompany bill S. No. 94.) The Committee on Public lands, to whom was referred a bill entitled "A bill to amend an act entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad in California to Portland, in Oregon,' approved July 25, 1866," respectfully report:

That on the 25th day of July, 1866, Congress passed an act granting lands to aid in the construction of a railroad and telegraph line through the State of Oregon, in which it is provided that the lands shall go "to such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate."

On the 10th of October, 1866, the Legislature of Oregon adopted the following house joint resolution:

Whereas the Congress of the United States at its last session passed an act granting land to aid in the construction of a railroad, and telegraph from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the legislative assembly of the State of Oregon to designate the company organized under the laws of Oregon, which shall receive that part of said land grant lying within the State of Oregon: Therefore

Be it resolved by the House, (the Senate concurring,) That the Oregon Central Railroad Company, a

company organized under the general incorporation law of Oregon, be, and the same is hereby, designated as the company which shall be entitled to receive the land granted, and all the benefits of an act of Congress, approved July 25, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California to Portland, Oregon," so far as said land grant applies to the State of Oregon.

On the 20th of October, A. D. 1868, the legislature of the State adopted the following Senate joint resolution:

Whereas the Congress of the United States, by an act approved July 25, 1866, entitled "An act to aid in the construction of a railroad and telegraph from the Central Pacific Railroad to Portland, in Oregon," did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the legislature of such State should thereafter designate;

And whereas the legislative assembly of Oregon, at its fourth regular session, did adopt a joint resolution known as House joint resolution No. 13, designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of, the said act of Congress;

And whereas at the time of the adoption of the said joint resolution, as aforesaid, no such company as the Oregon Central Railroad Company was organized or in

existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company;

And whereas the designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by the said act of Congress, yet remains to be made; Therefore,

Be it resolved by the Senate, (the House concurring,) That the Oregon Central Railroad Company, a corporation organized at Salem, on the twenty-second day of April, in the year one thousand eight hundred and sixty-seven, under and pursuant to the laws of the State of Oregon, be, and the same is hereby, designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by said act of Congress.

Different railroad companies are described in these resolutions, though both are designated by the same name.

One, the company described in the first resolution, is a railroad company whose articles of incorporation were filed on the 21st of November, 1866, and whose line of road is located on the west side of the Willamette river, and may, therefore, for convenience be denominated the "West Side Company."

The company described in the second resolution is one whose articles of incorporation were filed on the 22d day of April, 1867, and whose line of road is located on

the east side of the Willamette river, and may, therefore, be denominated the "East Side Company."

Both of these companies are contending for the grant.

Section six of the said act of Congress provides that the company designated by the Legislature shall file its assent to the grant within one year from the passage of the act.

The West Side Company filed its assent within the required time; and if it was designated according to the act of Congress, there seems to be no necessity for any further legislation upon the subject.

Bearing upon this point, however, is a correspondence, of which the following is a copy:

Senate Chamber, Washington, January 19, 1869.

Sir: I respectfully invite your attention to section 1 of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon, approved July 25, 1866," providing for the disposition of the lands granted by said act in the State of Oregon.

Enclosed please find a pamphlet entitled "Stateemnt of Facts" which fully sets forth the rights and claims of a company designated by the Legislature of said State in October, A. D. 1868, commonly called the "East Side Company."

. Enclosed also please find a paper, signed by nine members of the Oregon Senate, protesting against the action of said Legislature in October, A. D. 1868, in which the rights and claims of a company designated in October, 1866, commonly called the "West Side Company," are fully stated.

I have nothing to say as to the rights or claims of either company, but in view of the fact that the articles of incorporation of the west-side company were not filed in the office of the Secretary of State until after its designation by the legislature in 1866, and in view also of the fact that the east-side company cannot file its assent as required by the sixth section of said act, I am apprehensive that the benefits of said act will be wholly lost to the State, unless something is done to prevent it. Will you be good enough to advise me if there is anything in the action of your department, or the views you entertain of this matter, making unnecessary the proposed legislation?

Yours truly,

GEO. H. WILLIAMS.

HON. O. H. BROWNING,
Secretary Interior, Washington, D. C.

Department of the Interior,

Washington, D. C., January 20, 1869.

Sir: I have received your letter of the 19th instant and the accompanying copy of Senate bill 776, to amend

"An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon approved July 25, 1866," with other papers relating to the subject.

Said act of 1866 required the Legislature of Oregon to designate a company organized under the laws of the State, to locate and construct so much of said road as was in Oregon, and that the company so designated should file its "assent" to the act of Congress within one year after its passage.

By a resolution adopted by the legislature October 10, 1866, the Oregon Central Railroad Company was designated to locate and construct said road in Oregon. Two companies called the "Oregon Central Railroad Company" claim to have been so designated. These, it appears, are locally called the "east-side company" and the "west-side company".

At the date of the adoption of said resolution by the legislature, neither company had been organized as required by the laws of Oregon. The west-side company, however, filed its assent in this department within a year.

By a resolution adopted by the legislature in October, 1868, the east-side company was designated. The purpose of the bill, as understood, is to authorize this company to file its "assent" without prejudice to the rights or interests of the other company, and you ask

for an expression of my views as to whether there is any necessity for the proposed legislation.

In reply, I have the honor to state that, as the matter now stands, the grant, so far as the portion of road in Oregon is concerned, has lapsed, while the grant for that portion of the road situate in California is still in force, and some legislation by Congress is necessary to revive the grant for the Oregon portion of the road.

The proposed bill, if it becomes a law, will in my opinion accomplish that purpose.

On the 13th instant, I declined to act upon maps filed by the west side company, "in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject." I enclose a copy of said letter.

The papers which accompanied your letter are herewith returned.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

HON. GEORGE H. WILLIAMS,

United States Senate.

Department of the Interior,

Washington, D. C., January 13, 1869.

Sir: I have received your letter of the 11th instant, asking that certain maps, filed by J. Gaston, Esq., under the act approved July 25, 1866, as showing the

location of the railroad from Portland, in Oregon, to the northern line of the State of California, may be accepted by this department.

In reply, I have to state that, as there are two companies of the same name claiming, under the laws of the State of Oregon, the benefit of the grant made by said act of 1866, I must decline, in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject, to comply with your request.

Very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

S. G. REED, ESQ.,

Care Hon. H. W. Corbett, United States Senate.

Looking at the above decision of the Secretary of the Interior, and the action of the Oregon Legislature in 1868, taken upon evidence submitted and arguments made by the respective companies, it is evident that the State of Oregon is in great danger, at least, of losing the grant altogether, without some legislation in effect reviving it.

Congress ought not to decide between the two companies, because the questions involved are judicial in their nature, and the object of the accompanying bill is to provide so that both companies may have a standing in the courts of Oregon, and there have their legal rights and equities fully examined and adjudicated.

To declare by act of Congress that the east-side company shall have the grant would be unfair, for it may turn out upon investigation before the courts that the west side company was legally designated in 1866, in which event that company, for aught that can now be seen, would be entitled to the land.

To declare by act of Congress that the west-side company shall have the grant would be equally unfair, for it appears that the east-side company was organized and made large expenditures upon the ground that the other company was never legally designated, and it ought to have the benefits and advantages of the law in accordance with which it was organized and invested its money.

It has been suggested that the proposed legislation is unfavorable to the west-side company, but the bill has been framed so as to obviate that objection as far as practicable.

If the west-side company was legally designated in 1866, and it has since done what the act of Congress requires, it has a vested right to the grant, which the bill, if it becomes a law, will not and cannot disturb; but it is unreasonable to insist that because that company has failed to secure the grant, the State ought therefore to lose it.

Both companies claim, and it may be that both have been designated by the Legislature, and if both are allowed to file their assent, as required by the sixth section of the act of Congress, it is made certain not only that

one of the companies will get the grant, but that it will be used for railroad purposes, in which the State has more interest than in the fortunes of either company.

Reciprocal charges of fraud and irregularity in the formation of the companies have been made, but your committee propose to refer these, with all questions growing out of the legal rights and equities of the parties, to the courts of Oregon; and the accompanying bill, the passage of which they recommend, is only intended to protect the interests of the State, and provide for a judicial settlement of the controversy between the two companies.

"B"

MEL

GOVERNMENT'S EXHIBIT NO. 109.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington December 5, 1911.

I hereby certify that the annexed copies of papers relating to Oregon and California Railroad Company, are true and literal exemplifications from originals and copies in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(SEAL.)
(G. L. O)

H. W. SANFORD,
Recorder of the General Land Office.

(Jacket)

Letter L No. ———

HON. GEO H WILLIAMS

Atty General U. S.

Depart of Justice

June 27th 1872

Returns certain papers relative to Oregon & Cal Rrd and asks recall of Sect'ys opinion &c

Answd July 16th 1872

R M.

Referred to Div. F.

Received (G. L. O.) July 17th 1872.

1/13

"A"

The SEVENTH meeting of the Board of Trustees of the European and Oregon Land Company, was held at the office of William Norris, No. 217 Sansome street, on the twenty-seventh day of March, 1871, pursuant to the call of the President.

Present—Messrs. JOSEPH S. WILSON,
F. D. ATHERTON,
WM. NORRIS,
W. C. RALSTON,
M. S. LATHAM,
W. F. ROELOFSON,
ALBERT GANSL.

President Wilson in the chair.

The Minutes of the last meeting were read and approved.

The President stated to the Board that the form of conveyance proposed to be executed by Messrs. Latham, Norris and Atherton, Trustees of the Congressional land grant to the Oregon and California Railway Company, has been approved as to its form by said Trustees, and by the Oregon and California Railroad Company, of which approval and the readiness of said parties to execute the same this Company has official notice, and

the same now requires the final action of this Board. Whereupon, on motion of Mr. Ralston, said proposed conveyance was read, and after all the covenants and provisions thereof had been duly considered, discussed and examined, it was on motion of Mr. Gansl unanimously

RESOLVED, That the said conveyance, and all and singular, the covenants, conditions and provisions therein be, and the same hereby are approved, adopted and ratified, and in all respects confirmed by and on the part of this Company.

And be it further

RESOLVED, That said conveyance shall be duly recorded and entered on the Minutes of this Board, by the Secretary of this Company.

The resolutions were unanimously adopted.

The same is now so recorded and entered on the Minutes of this meeting as follows, viz:

THIS INDENTURE made and entered into at the City and County of San Francisco, State of California, this ——— day of ——— in the year of our Lord one thousand eight hundred and seventy-one;

BETWEEN MILTON S. LATHAM, FAXON D. ATHERTON and WILLIAM NORRIS, Trustees, all of the City and County of San Francisco, parties of the first part; THE EUROPEAN AND OREGON LAND COMPANY, an Incorporation duly in-

corporated and organized under and pursuant to an Act of the Legislature of the State of California, approved the fourteenth day of April, one thousand eight hundred and fifty-three, entitled "An Act to provide for the formation of Corporations for certain purposes," and the Acts supplementary thereto and amendatory thereof, party of the second part; and THE OREGON AND CALIFORNIA RAILROAD COMPANY, a body corporate, organized at Portland, in the State of Oregon, on the seventeenth day of March, one thousand eight hundred and seventy, under an Act of the Legislature of the State of Oregon, approved the fourteenth day of October, one thousand eight hundred and sixty-two, entitled "An Act providing for private Incorporations and the appropriation of private property therefor," and Acts amendatory thereof and supplemental thereto, party of the third part—WITNESSETH:

WHEREAS, the said Oregon and California Railroad Company did, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy, duly make, execute and deliver unto the said Milton S. Latham, Faxon D. Atherton and William Norris its certain Indenture in writing, under seal, bearing date on the last named day, whereby the said Oregon and California Railroad Company, as party of the first part therein in consideration of certain premises in said Indenture declared and expressed, and in further consideration of one dollar, the receipt whereof was therein and thereby acknowledged, did duly grant, bargain, sell,

assign, alien, set over, enfeoff, convey and confirm unto the said Milton S. Latham, Faxon D. Atherton and William Norris, parties of the second part therein, all and singular the lands and franchises, with their appurtenances, lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress approved the twenty-fifth day of July, in the year one thousand eight hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof; and also, all the right, title, interest, claim, property, and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the said Oregon and California Railroad Company then had or owned or to which it was in anywise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid; and also all further right, title, interest, claim, property and demand, which the said Oregon and California Railroad Company might at any time thereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any county thereof, by virtue of any further compliances with the requirements of such Acts of Congress by the said Oregon and California Railroad Company, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:—To have and to hold the

said granted lands, property and franchises, and every part and parcel thereof, unto the said Milton S. Latham, Faxon D. Atherton and William Norris, and to their successors or successor and assigns forever: In trust, nevertheless, for certain uses and purposes and upon certain conditions and covenants in said Indenture contained, as by said Indenture or the record thereof in the Records of Deeds in and for the County of Multnomah, in the State of Oregon, on pp. 727 to 734 inclusive, of Book K of said records, reference thereto being had, may more fully and at large appear. AND, whereas, among other conditions, covenants and agreements in said Indenture contained and set forth, the said Milton S. Latham, Faxon D. Atherton and William Norris, or their successors or successor and assigns, by and with the consent of the said Oregon and California Railroad Company, but not otherwise, were and are duly authorized, empowered and directed at any time before the maturing of the principal of certain bonds of the said Oregon and California Railroad Company in said Indenture mentioned and described, to sell and dispose of all or any part or portion of the lands and franchises so granted as aforesaid by such Acts of Congress and in and by said Indenture conveyed to said Trustees, to such person or persons, firm or firms, associations or bodies corporate, and for such price and upon such terms as the said Oregon and California Railroad Company might, by and through its President, advise, direct, instruct or agree to.

NOW, THEREFORE, THIS INDENTURE

WITNESSETH: that the said Milton S. Latham, Faxon D. Atherton and William Norris, Trustees as aforesaid, under and pursuant to the power and authority in them vested in and by the said Indenture first hereinabove referred to, and in consideration of the premises and of the certain covenants and agreements hereinafter contained and set forth, and to be performed and kept by the said European and Oregon Land Company, and in consideration of the sum of one dollar, lawful money of the United States, to them in hand paid by the said European and Oregon Land Company, the receipt whereof is hereby acknowledged, and also in pursuance of the advice, direction, instruction and agreement in writing to that effect of the said Oregon and California Railroad Company, party of the Third part, by and through its President, have granted, bargained, sold, assigned, aliened, set over, enfeoffed, conveyed and confirmed, and by these presents DO grant, bargain, sell, assign, alien, set over, enfeoff, convey and confirm, unto the said European and Oregon Land Company, party of the second part hereto, ALL the lands and franchises, with their appurtenances, lying and being in the State of Oregon, granted or intended to be granted to the said Oregon Company by Act of Congress approved the twenty-fifth day of July, one thousand eight hundred and sixty-six, entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof; and ALSO, all the right, title,

interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the parties of the first part hereto now have or hold, or to which they may be in anywise entitled, in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the said Oregon Company by the Acts of Congress aforesaid; and ALSO, all future right, title, interest, claim, property and demand, which the parties of the first part hereto may at any time hereafter have, own, or acquire to any lands lying and being anywhere in the State of Oregon, or in any county thereof, by virtue of any further compliance with the requirements of such Acts of Congress by the party of the third part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and being the same lands, tenements, franchises, hereditaments and appurtenances granted, conveyed and assured unto the parties of the first part hereto by the Oregon and California Railroad Company, by Indenture bearing date the fifteenth day of April, one thousand eight hundred and seventy, as by said Indenture or the record thereof in the Records of Deeds in and for the County of Multnomah, in the State of Oregon, on pp. 727 to 784, inclusive, of Book K of said records, reference being thereunto had, may more fully and at large appear:—

TO HAVE AND TO HOLD the said granted lands, property and franchises, and every part and parcel thereof unto the said EUROPEAN AND ORE-

GON LAND COMPANY, party of the second part hereto, and to its successors and assigns forever; subject nevertheless to the certain provisions and conditions with reference to delivery of possession of said lands, and delivery of the surveys, plats, and patents, and other muniments of title to or affecting said lands to be hereafter issued by the United States to the said Oregon and California Rail Road Company, pursuant to law, which are hereinafter mentioned and expressed. AND the said parties of the first part, and all and every other person or persons whomsoever lawfully or equitably claiming any estate, right, title or interest of, in and to the hereinbefore granted premises, by, from or under them, and each of them, shall and will at any time or times hereafter, upon the reasonable requests, and at the proper costs and charges, in the law of the said party of the second part, or its successor or successors, or assigns, make, do and execute, or cause to be made, done and executed, all and every such further and lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said party of the second part, as by the said party of the second part, or its successor or successors, or the counsel learned in the law shall be reasonably devised, advised or required. AND also that the said parties of the first part, the above granted, bargained, sold and assigned premises, and every part and parcel thereof, with the appurtenances thereof, unto the said party of the second part or its suc-

cessor or successors and assigns, against the said parties of the first part, and their successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under them it shall and will warrant, and by these presents forever defend. AND in consideration of the premises, the said EUROPEAN AND OREGON LAND COMPANY, party of the second part hereto, hath covenanted, promised and agreeed, and doth hereby covenant, promise and agree to, and with the said Milton S. Latham, Faxon D. Atherton, and William Norris, Trustees as aforesaid, in manner following, that is to say: THE said party of the second part hereto, shall and will on or before the first day of April, in the year of our Lord one thousand eight hundred and eighty-nine, pay to said Milton S. Latham, Faxon D. Atherton and William Norris, Trustees as aforesaid, the price or sum of one and one-quarter dollars, lawful money of the United States, for each and every acre of said lands and premises hereby conveyed to the party of the second part, be the same more or less. It is further covenanted and agreed by the said parties of the first part, that they will notify, in writing, the party of the second part at San Francisco, from time to time, as they receive the same, that they are prepared to deliver to the party of the second part, the plats or surveys of the lands and premises hereby sold, or intended to be sold, as the same may be hereafter duly segregated from the public domain, and set apart to the Oregon and California Railroad Company, party of the third part hereto, pursuant

to law and for the purposes mentioned in the said Act of Congress passed as aforesaid, on the twenty-fifth day of July, one thousand eight hundred and sixty-six, and the Acts supplemental thereto and amendatory thereof, and all such papers, documents and muniments of title hereafter to come to their possession, relating to said lands and premises, as may be necessary to enable the party of the second part to select the same by good and sufficient description thereof. AND it is also further stipulated, covenanted and agreed, by and between the parties of the first and second part hereto, that the said parties of the first part having notified in writing as aforesaid, the party of the second part at San Francisco, California, that they are prepared to deliver to the party of the second part any of the said surveys, plats, patents and other evidences and muniments of title relating to or designating said lands, as the same may from time to time be issued by the United States to the said Oregon and California Rail Road Company, under the Acts of Congress already passed, or which may hereafter be passed, in aid thereof, or supplemental thereto, the said party of the second part at any time before the expiration of ten years from the day of the receipt by said party of the second part of the said notice relating to said documentary evidence of location of and title to said lands, may and shall receive actual possession of said patents, and of the lands therein described, upon paying to the parties of the first part the said price of one and one-quarter dollars per acre of such lands, but without interest on the said price of the same for the said period

of ten years. IF, however, such lands shall for any cause be not all paid for within ten years from the time the said party of the second part shall be notified by the parties of the first part as aforesaid, that said surveys, plats, patents, and other evidences and muniments of title are ready to be delivered by the said parties of the first part to the said party of the second part as aforesaid, then the parties of the first part shall charge, and the party of the second part shall pay interest at the rate of six per cent. per annum, upon said purchase price of one and one-quarter dollars per acre of said lands, for the period after said ten years, and up to and including said first day of April, one thousand eight hundred and eighty-nine, during which said lands shall not be paid for by the party of the second part, as hereinbefore provided; it being the intent of this stipulation and covenant, that the party of the second part shall have ten years within which to make payment for and take possession of or sell to others, the lands hereby conveyed, without paying interest on the said purchase price of said lands, for any portion or the whole of that time, but that after said lands or any part thereof shall have been at the disposition of the party of the second part under the covenants of this indenture for the term of ten years, it shall thereafter pay to the parties of the first part interest at the rate of six per cent per annum, on the purchase price of all the lands so at the disposition of the party of the second part which may not for any reason have been paid for by said party of the second part within such period of ten years. But the said surveys,

plats, patents, and all other evidences and muniments of title from the United States to said Oregon and California Rail Road Company relating to said lands hereinbefore conveyed, shall remain with, and the possession of the lands and premises therein described shall always remain in the said parties of the first part, anything hereinbefore contained to the contrary notwithstanding, until said party of the second part shall pay the parties of the first part for the same, or such part thereof as it may from time to time desire to obtain possession of under this conveyance, the said price of one and one-quarter dollars per acre of said lands and such rate of interest thereon as is hereinbefore provided for. IT is further expressly covenanted and agreed by and between the parties, hereto, each with the other, that in case the total amount of the indebtedness of the party of the second part created under this indenture shall at the time of the execution and delivery of these presents or at any future time exceed the amount of the capital stock of said party of the second part actually paid in, the parties of the first part in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, hereby covenant, promise and agree that they will, and they do hereby remise, release and discharge the Trustees of the party of the second part, under whose administration such excess may be or is hereby created, from all and every liability, joint or several, in their, or either of their individual and private capacities to the parties of the first and third parts, for

the amount of such excess of said indebtedness over the amount of capital stock of the party of the second part, actually paid in at the time of the execution and delivery of these presents; and said parties of the first part, for the consideration aforesaid, do hereby waive, surrender and abandon any and all claim, demand or right at law or in equity, or existing or to exist by operation of the statute creating undivided and private liabilities of Trustees of corporations, organized under the laws of California, for debts or liabilities incurred in excess of the amount of capital stock actually paid in.

AND the said party of the third part hath covenanted and agreed, and doth hereby covenant and agree to and with the parties of the first part and the party of the second part, that it has duly authorized, empowered, directed and required the said parties of the first part, as Trustees as aforesaid, to make, execute and deliver this Indenture to the said party of the second part in manner and form, and upon the terms and conditions hereinbefore expressed. AND the said party of the second part by and through its President, he being thereunto and for that purpose duly authorized and empowered, this sale and conveyance, and every part thereof, hath fully and completely ratified, approved and confirmed, and by these presents doth fully ratify, approve and confirm the same.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their respective hands and seals; and the said party of the second part hath also

caused these presents to be subscribed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, by resolution of its Board of Trustees, the day and year first above written; and the said party if the third part hath also caused the same to be subscribed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, by resolution of its Board of Trustees, the day and year first above written.

Signed, sealed and delivered) .....(SEAL)
)
being first duly stamped.) .....(SEAL)
)
) .....(SEAL)
)
)

.....
.....

Attest, ...
Secretary E. & O. L. Co.

.....
.....

Attest, ...
Secretary O. & C. R. R. Co.

On motion of Mr. Roelofson it was unanimously

RESOLVED, That the President and Secretary of this Company be, and they are hereby authorized, empowered and directed to execute, acknowledge and duly deliver in the name and behalf of this Company to Milton S. Latham, Faxon D. Atherton and William Nor-

ris, the trustees named in the foregoing conveyance, and to the Oregon and California Railroad Company, the said conveyance in the form and with the conditions, covenants and stipulations on the part of this Company therein set forth, as the same is this day approved by this Board; to affix the corporate seal of this Company thereto, and so to seal, acknowledge and deliver the same, as the act and deed of this Company, and cause the same to be duly and forthwith recorded in all the counties in the State of Oregon, in which is or may be situated the lands and premises therein described. That three originals of said conveyance be executed on behalf of this Company, one for the said trustees, one for this Company, and one for the Oregon and California Railroad Company.

The resolution having been adopted,

On motion, the meeting was duly adjourned to meet again at the call of the President.

.....

President.

Attest, ...

Secretary E. & O. L. Co.

(Endorsed as follows)

Copy of the Contract
between
1st Trustees of Land Grant
2nd The E. and O. Land Co.
and 3rd The O. & C. R. R. Co.

"A"

———oOo———

B 7128

Office of

EUROPEAN AND OREGON LAND COMPANY,

San Francisco, Cal., January 27th, 1872.

Hon. George H. Williams
U. S. Attorney General,
Washington City, D. C.

Sir:

Congress, as you are aware, by Act of July 25, 1866, (Statutes vol. 14, page 239) made a grant of land to the "Oregon and California Railroad Company"—to aid in the Construction of a Railroad and Telegraph Line from Portland, in northern Oregon, to the Southern boundary of the State; in order to connect in travel and commerce that portion of the Union, not only with the trans-continental lines, but with the whole railway system of the Republic, now over sixty thousand miles in extent.

In view of the enormous outlays, required for the construction of this great work of internal improvement, so distant from the older portions of the Republic, Congress conferred upon the Grantee, (whose landed interests, under the Grant, have enured to this Company, as shown in the Document A, herewith.)—the absolute and unqualified power of disposal of, the lands granted; leaving it for the Company to fix its own rates and terms, without any restriction whatever; so that by selling for Cash, on *on* long Credit, on easy terms, the interests of purchasers would be subserved, and proceeds realized adequate to the immense expenditures in the completion of the work.

In this Original Grant of 1866 Congress further took care, in reserving amendatory authority, to stipulate that it should be exercised "having due regard for the rights of said Oregon and California railroad companies."

Subsequently, an amendatory Act was passed, approved April 10, 1869 (Statutes 1869, page 47—extending the time one year from the passage of the Act, for filing map, &c.; reiterating the stipulation "That nothing herein shall impair any rights heretofore acquired by any railroad company under said Act of July 25th, 1866, &c." yet adding a farther proviso, directing sales "to actual settlers only"—of not more than 160 acres to one purchaser, and at $2.50 per acre.

Now this Company in fixing details for proceeding to dispose of these lands, referred the subject for an

unbiassed legal opinion, to a leading Attorney and Counsellor of this State, learned in the Law, whose opinion, Document B, is copied, and transmitted herewith.

The Board of Trustees of this Company—in accordance with that opinion, and their own clear conviction as to the principles which should govern, in order to carry into full and complete effect, the purpose of Congress, in making the Grant, have ordered:

That all persons who were actual settlers upon odd sections when the Original Grant was passed,

As also, all those who actually settled on odd sections, from that date, 25 July 1866, up to the 10th April, 1869,

And, all others who might be found actually settled on odd sections up to the time when the line of route of the railroad was established, should have the privilege of purchasing, not to exceed 160 acres, each, at $2.50 per acre.

And, that to all other persons not settled as aforesaid, the Company is not legally restricted from selling, on liberal terms of cash or credit, at reasonable rates.

Now I am directed to lay these facts before you, and the principles as enunciated above, to the end that the same may be referred by you to the Department of the Interior, with a request, that, as it is not doubted this liberal construction will be approved, a communication may be addressed to the President of this Company, ratifying and affirming the justice and correctness of

the construction of the said Act of April 10, 1869—as above set forth.

Very respectfully Your Obt Sert

JOS S WILSON Prest.

———oOo———

C 7128

Office of

EUROPEAN AND OREGON LAND COMPANY,

San Francisco, Cal., Jany. 27th, 1872.

Hon. Ben Holladay,

President.

Dear Sir: By direction of Hon. M. S. Latham, there is sent herewith, to your care,

Letter of this date, to Attorney General Williams, in reference to the Grant of lands, in aid of the construction of a Railroad and Telegraph Line, from Portland to the California line.

The original land grant, of which this Company, as shown in the papers herewith, is the present beneficiary, is in regard to terms of disposal, absolute and unrestricted, by the Act of 25 July 1866. (Statutes, vol. 14 page 239)

By the Amendatory Act of 10th April 1869 (Act 1869—page 47)—however, sales to actual settlers are required to be made, not exceeding 160 acres to one pur-

chaser, and for not exceeding $2.50 per acre.

In order to adjust details in the disposal of the lands both under the Original Grant and the Amendatory Act, the Company referred the whole matter to Counsel, learned in the law, for an impartial and just exposition and construction of the two Acts—

The Company have adopted the Opinion (transcript herewith)—which has been given by the Counsel;—regarding the principles therein enunciated as just and proper, and as realizing the purposes of the Grant.

In order however that there may be a full understanding with the Executive Department of the Government, so that proceedings in disposal of the lands, may in all respects be harmonious and concurrent, it is requested that you will bring the matter to the attention of Attorney General Williams, who is thoroughly conversant with the subject; to the end that he may request the Secretary of the Interior, to dispatch an affirmation of the principles referred to, which the company would be gratified to have in the form suggested, by the draft of a letter, which I enclose herein, addressed to myself.

Yours very respectfully

JOS S WILSON Prest.

Z.B.S. Copy D 7128 RR

DEPARTMENT OF THE INTERIOR,

Washington, D. C. 5th June, 1872

Sir:

I have considered the question presented in the papers transmitted with your letter of the 20th ultimo, as to the meaning of the last proviso of the Act approved 10th April 1869, amendatory of the Act of 25th July 1866 "granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon", and am of opinion that the proviso means just what it says, "that the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre." The legislative intention was plainly to prevent the lands from being held for speculative prices and disposed of in large quantities to other than actual settlers; and to limit the provisio's operation to those on the lands granted at or before the survey of the road, would, in my judgment, utterly defeat such intention.

The papers transmitted with your letter are herewith returned.

I am Sir

Very Respectfully Your Obt. Servant

C. DELANO

Secretary.

HON WILLIS DRUMMOND

Commr Gen. Land Office.

F. E 7128

Official Letters must be addressed to the "Commissioner of the General Land Office" and in replying to letters from the office the initial Letter on the left hand corner should be referred to.

Railroad Record.

DEPARTMENT OF THE INTERIOR
General Land Office GIB
LKL

Washington, D. C. June 14th 1872

Hon. Geo. H. Willams,
Attorney General U. S.

Sir: Referring to your letter of 20th April Ult. transmitting papers in the case of the Oregon & California Railroad Co. for a construction by the Department of the last proviso of the Act approved April 10th 1869, amendatory of the Act of July 25, 1866, granting lands &c., I have the honor to state, that the papers were duly submitted to the Hon. Secretary of the Interior, as stated in our letter to you of 20th ult., and I enclose herewith a copy of his opinion in the matter dated the 5th inst.

Returning the papers transmitted with your letter.

I am Sir
Very Respectfully
WILLIS DRUMMOND
Commissioner.

F 7128

San Francisco Apr 10 1871

Hon Jos S. Wilson

Prest E. & O. Land Co.

Dear Sir In recurring to a conversation with you of this inst in relation to the restrictions imposed by Act of *of* Apr. 10 1869 upon the Company as to the manner of disposing of its lands to "Actual settlers only in quantities of one hundred and sixty acres or less at a maximum price of two dollars and fifty cents per acre" I have to state that in the opinion of Hon J. H. Mitchell counsel for the O. & C. R. R. Co and one of the ablest Lawyers of our state, the restrictions alluded to after the title vests in the Company by United States Patent will be nugatory and of no effect. An opinion in which I understand Ex-Senator Williams, formerly Chief Justice of Oregon, fully concurs.

Very respectfully,

(Signed) I. R. MOORES
Land Agent O. & C. R. R. Co.

——oOo——

G 7128

Department of the Interior

Washington City, D. C. 18—

Hon. Jos. S. Wilson,

President E. & O. Land Co.

San Francisco, Cala.

Sir: The Department has considered the papers you referred from the European and Oregon Land Company, in right of the Oregon and California Railroad Company, under the Grant in Western Oregon, by Act of Congress approved 25th July 1866 (Statutes vol 14, page 239)—and the Amendatory Act of 10th April 1869 (Stat. 1869, page 47)—and is satisfied that the construction given by the said Company is just and proper, to the effect that all actual settlers on the odd sections from 25th July 1866, the date of the Original Grant, and all those who went on the odd sections from that date to the passage of the Act of 10th April 1869—and all others who are found on such odd sections when the line of the railroad is surveyed and established, are protected; and have the right to purchase, each one, not exceeding One hundred and sixty acres, at Two Dollars and fifty cents per acre—but that in regard to all other persons, the Original Absolute Grant, by Act of 25th July 1866, is in full force and effect, and authorizes the Company to sell on such terms as may be reasonable and just to all parties without any restriction.

(Endorsed)

Form of affirmatory letter
as desired from the Secretary
of the Interior.

Copy H

San Francisco, November 11th 1871

Hon. Jos. S. Wilson,

Prest. European and Oregon Land Company.

Dear Sir:

Your letter of October 14th last, was duly received. Pressing engagements with our local Insurance Companies, growing out of the recent great fire at Chicago, as well as the time necessarily required in the examination of the questions propounded, have prevented an earlier answer.

In order that my opinion may be more readily and immediately directed to the very point of inquiry, I make the following extract from the very clear statement of facts, contained in your letter, viz:

1st. "By the Act of Congress approved July 25th, 1866—U. S. Statutes at Large, vol. 14 page 239, chapter 242—a grant of land was made, to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, to Portland in Oregon. Under that grant, the Oregon and California Railroad Company has in charge the construction of that portion of the above mentioned line of route, within the limits of the State of Oregon, extending from Portland to the southern boundary of the state."

2nd. "Under date of March 28th, 1871, the above mentioned Oregon and California Railroad Company, sold its Land interest under the Grant, to the European

and Oregon Land Company, at the rate of One dollar and twenty-five cents per acre, for actual settlement, as you will see by the printed pamphlet herewith, entitled Minutes of the Board of Trustees, of the European and Oregon Land Company"

3rd. "By the subsequent Act of Congress, approved April 10th 1869—Pamphlet Statutes, page 47—Chapter 27—amending the Original Grant, the Railroad Company could file its assent, within one year from the passage of this second Act."

"In that amendatory Act of April 10th, 1869, there is a proviso "that nothing herein shall impair any rights heretofore acquired by any railroad company under said Act of July 25th, 1866 &c"—and *provided further,* that the lands granted by the Act aforesaid, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

"In the 12th Section of the said Act of 25th July 1866 (vol. 14, page 242) it is declared "that Congress may, at any time, having due regard to the rights of said California and Oregon Railroad Companies, add to, alter, amend or repeal this Act."

"Now the point upon which your legal opinion is desired is this—"

"Are the rights of the European and Oregon Land Company in view of their purchase of the landed interests of the Oregon and California Railroad Company,

so abridged by said Act of 10th April 1869, as to restrict them in making sales, to $2.50 per acre, or have they a right, to sell to persons applying as settlers, at such rates as may be fair and reasonable, under the terms of the Original Grant, which contained no such restriction?"

In order to get at the effect of the Act of 10th April 1869 we must read it with reference to the Act of July 25th, 1866—or rather read the two Acts, as in fact constituting one.

Looking at Section 2 of the last named Act, three things are to be noticed.

1st. That a grant of land *in presenti* is made.

2nd. That the grant is to the Companies respectively referred to, "their successors and assigns".

3rd. The grant is for the purpose of *aiding* in the construction of the railroad and telegraph, for great public purposes, that is to say, the transportation of mails, troops, munitions of war, etc.

The same Section declares that "the lands herein granted, shall be applied to the building of said road, within the States respectively, wherein they are situated" —Besides this, the benefit of the work to the Government is likewise anticipated by a clause which raises the price of the alternate sections of land, remaining in the Government, to double the minimum price of public lands when sold; and Section 5, also, secures to the Government great public rights.

Section 4 provides for the issuing of patents to the Companies, as each twenty miles of railroad and telegraph shall be completed and equipped, and Section 9 attaches to the word "Companies," the words "their associates successors, and assigns" whenever used in the Act.

By Section 8, we learn that the patented lands do not revert to the Government, even upon a failure of the Companies to perform the important duties referred to in Section 6.

Reflection upon these various Sections, gives us the whole scope and bearing of the Act. The grant of the land was, as recited in the title of the Act, "to aid in the construction of a Railroad &c." and the Act, as shown above, carried out the declaration of the title and shows how the *"aid"* is practically applied; that is, "the land hereby granted shall be applied to the building of the said road, &c."

The power of the Companies over the land is left entirely unrestricted, as it must have been to enable them to use the land for the practical purposes indicated. The Companies were put upon limited time, in the construction of their work. The first section of twenty miles was required to be finished in two years, and at least twenty miles was required each succeeding year, and the whole by the 1st July 1875. The best mode of obtaining aid, and funds out of the lands, with which to do the work, is left entirely to the good sense, sagacity and business judgment of the Companies. The entire

jus Disponendi was given to the Companies in the most unrestricted manner. In fact the disposition of these lands by the Companies was greatly facilitated by the Government, for a restraint of alienation is placed on the alternate sections remaining in the Government; the price being fixed at double the minimum price of public lands when sold; whilst the Companies might sell at any price, however low. The Government thus placed itself intentionally in a position where it could not compete with the Companies. The latter could get up great auction sales, could invite immigration by low prices, could mortgage, lease, or otherwise dispose of the land, as they might see fit.

The Act of Congress of July 1st 1862 (12 Stat. at Large, pp 489-492)—granting lands to the Overland Pacific Railroad, provides against the Railroad Companies retaining great bodies of land unsold. Sec 3. of that Act provides; that if the Companies do not sell the land granted, within three years after the Railroad shall have been completed, the lands shall be open for settlement and pre-emption, like other land, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to the Company. But the Act of 1866, as to the Oregon and California Roads, contains no such provision, and over all lands, not sold by the Company voluntarily, it retains the absolute dominion.

We have thus seen how important the Railroads and Telegraphs, contemplated by the Act of 1866, are to the Government, and how the absolute power of disposition of the lands granted, enters into the scope and

bearing of the whole Act, and is, in fact, the vital spirit of the Statute. The lands are the consideration for the great privileges and right of transportation reserved and secured to the Government; their early sale is regarded as affording a material and secure aid in the work, and therefore, and necessarily, the absolute dominion over the granted land was given to the Companies "their associates, successors and assigns."

We now come to the Act of April 10th, 1869, and must read it not only in view of the Act of 1866, but in the "light of surrounding circumstances." We must, therefore, remember that at the time of the passage of the Act of 1866, there was no Company in Oregon, selected by Congress, as the recipient of the powers and privileges conferred. *That* matter was referred to the sovereign State of Oregon. The Legislature of that State was left to designate a Company. No such designation was made until Oct. 20th 1868. The Legislature could hardly be charged with neglect. On the contrary, the delay must be attributed to a due regard to the public interests. The Company designated, could be guilty of no neglect, because it could not act until designated. Congress might withdraw its bounty, or change its policy, doubtless, but unless it very clearly indicated that intention, a waiver as to mere points of time, would be assumed, where a Company had acted with all due celerity after its designation. The Federal Government, consistently with comity and public policy, could not treat a Sovereign State with disrespect, and therefore would not inflict a penalty on the Corpor-

ation, because of delay in the action of the State itself.

The Act of 1869 gives the Company that had been designated by the Legislature of Oregon, the right to file its assent within one year after the Act of 1869, and gives to that filing the same force and effect, to all intents and purposes, as if such assent had been filed within one year after the passage of said Act of 1866.

There could have been no motive on the part of the Government, to put the Oregon Company in a less favorable position than the California Company, for the latter, on reaching the State line, could have gone on, under the Act of 1866, with the consent of the Oregon Legislature, and completed the line of road to Portland. The same inducements on the part of the Government to give its aid in 1866, still exists in 1869. The Act of 1869, was, therefore, curative in its nature, and waived the literal performance of the acts called for by the Statute of 1866.

Is it not then clear, that the Act of 1869 was not intended to create any radical change in the Act of 1866? Its primary, and it may be said, only object, was to give to the subsequent filing, of the assent of the Corporation, in the Department of the Interior, the "same force and effect, to all intents and purposes, as if such assent had been filed within one year after the passage of said Act" of 1866.

The first proviso has no particular effect. It is merely declaratory of what the law would have been without it, and was, as is often the case, in the acts of

legislative bodies, inserted out of abundance of caution.

The only difficulty which arises, is, as to the force of the second proviso. The whole force and effect of the Act of 1866, and the construction and object and motives, as deducible from the Act itself, have been reviewed at such length, and the circumstances under which the Act of 1869, was passed, presented, to enable us to get more satisfactorily at the power and meaning of the last proviso of this Act of 1869.

If it means that "actual settlers only" can become purchasers from the Company, and that all the lands, far and near, whether at stations, new towns, or important commercial points, are limited to two dollars and a half per acre, then it not only is directly contrary to the whole scope and bearing of the Act of 1866, but repeals by implication, a great part of that Act. All this is done, if at all, not by the plain language of the body of the enactment, but by the obscure words of a second proviso.

It is an elementary rule, requiring at this day no authority for its support, that repeals by implication are not favored, and especially where the results are great and the changes radical. But here we may say with greater force, that the second Act, by such construction, would be made by implication not only to repeal very important provisions of the original Act, but would so alter and change it, that its objects would be really impeded, if not defeated altogether, and yet

the second Act is merely ancillary to the first Act, and was passed for the single purpose of giving the Oregon Road, the benefit of the first Act.

The times within which each twenty miles of road and telegraph shall be built, are not changed by the Act of 1869, and the most that can be said would be, that those periods of time, by reasonable construction would run from the date of the Act of 1869. The Sections 2, 4, 6, 8, and 9 of the original Act, must be considered still in force. The object is still "to aid in the construction of the Railroad, &c". The mandate still remains that "the land hereby granted shall be applied to the building of said road," &c. The word "assigns" is still annexed to the word "Company." The great benefit the Government is to have, as secured by Sections 2 and 5, still remains intact. But if the last proviso to the Act of 1869 is to be read literally, most of those provisions of the Act of 1866 would be repealed by implication. The Company could no longer sell to the highest bidder, any of its vast acres, could have no auction sale, could not speedily realize, but must await the slow and tedious progress of immigration to an agricultural State. At least a quarter of a century would pass away, yet short and positive is the time within which the road is to be completed and equipped.

The Secretary of the Interior too, withdraws the Railroad lands from public sale and settlement, as provided in Section 2 of the Act of 1866, and thereafter no *bona fide* settlement could be made on these lands. The Company could not even Mortgage the lands, because

a mortgage always contemplates the possibility of a foreclosure, or other enforced payment, in the ordinary way of judicial sentence, with the right of purchase by the creditors. Yet if none could purchase but settlers, and they only to the extent of 160 acres, each, and that too at two dollars and fifty cents per acre, a mortgage is practically and in fact, absolutely prohibited. Such absurd results could never have been contemplated by Congress; certainly not as the effect of a mere proviso to an amendatory or supplemental Act.

Take the language of the *proviso* itself, and what can be said of it? Does it mean that no sale shall be made by the Companies, unless made to actual settlers? Is it merely a *power* to sell to actual settlers; or is it, at once, mandatory and limited? *Must* the Company sell to actual settlers against its inclination, and can it sell to no one else? If yea, how long must the "actual settler" have been such? Can he claim the pre-emption right the next day after he enters? If not, how long must he have occupied before he can claim it? What kind of occupation is required to make him an actual settler? Will the pitching of a tent do? Or must he have a house? Are enclosures necessary? Must he conform in his settlement to the Government survey, or not? Who is to determine his qualifications as an actual settler? Not the Registers, or any other Government officer, for these cease to be Government lands, and pass to the Company, and the restraint at best, is on the power of alienation, after the lands vest in the patentee. Is the question then to be tried between the "actual set-

tler" and the Company? Can the "actual settler" tender his money and claim a deed, and procure a decree, of a Court of Equity, enforcing his rights; or a mandamus? If so, the Government would no longer have any interest in the controversy, and the Courts of the land would give a complete remedy to the settler. If the land were sold by the Company before the settler entered, could he have a right for all time, still to enter, until somebody should become a settler? Can it be that these lands are to remain forever out of market unless some one settlers on them? In twenty years from now, will a title traced back through a series of persons to the patentee be conclusive; or must it appear, that the first person claiming from the patentee, was an "actual settler"?

Again, as the restraint would on such literal rendering, *be on sales* alone, the power of leasing would remain. Now a lease-hold for ninety-nine years, is a mere chattel interest, and quite distinguishable from a sale. All lands therefore could be leased for these long terms, or so long as the State laws permit, at least where there are no "actual settlers."

Grammatically considered, the word "only" would be an adjective, qualifying the noun "settlers," and the meaning would be, that sales shall be made to none others than "actual settlers"; which would leave the company at liberty to keep its lands forever out of the market, use them itself, or lease them for such terms as it pleases.

Besides, this reading, as above shown, is in conflict with the whole scope and object of the Act of 1866, and would repeal by implication, some of its most important and necessary parts.

If the words be transposed, and the word "only" be placed in proximity to the words "shall be sold," it would become an adverb, and leave the Company at liberty to do as it pleases with the lands, unless in the case of an actual settler, with whom its transactions would be limited to *sales only*. This construction, of course, is not admissible.

It would be equally absurd to suppose that no actual settler could, where the Company is willing, buy one quarter section "only"; thus attaching the world "only" to the quantity named in the proviso.

All these constructions seem to be so unreasonable, that I have been led to seek for some other meaning to this proviso. We must, if possible, give it some practical interpretation. It is a rule, that each part of a statute must be considered, as having some office to perform, and as intended by the law making power for a useful purpose.

What then is the meaning of this proviso? Before attempting to answer I may refer to certain well known rules of construction of Statutes.

The Supreme Court of California, in the important case of French vs. Teschmacher, 24 California Reports, lays down the following principles:

"The legal intendment is, that each and every clause, has been inserted for some useful purpose, and when rightly understood, may have some practical operation. For the purpose of harmonizing apparently conflicting clauses, each must be read, with direct reference to every other, which relates to the same subject, and so read, if possible, as to avoid repugnancy. And, to that end, sections, paragraphs, and sentences, may be transposed; elegance of composition may be sacrificed; and the meaning of words, and phrases, may be restricted or enlarged."

So too in Smith's Commentaries on Constitutional and Statutory Construction (page 47)—we find the rule, that Statutes in *pari materia* may be looked at, as well as the general scope of the Act to be construed; that "every part of it should be brought into action, in order to collect from the whole, one uniform and consistent sense, if that can be done. * * * The whole context must be considered, in endeavoring to collect the sense of the parties, although the immediate object of the inquiry, be, the meaning of an isolated clause. This rule applies, in all its force, in the construction of Statutes when seeking for the intention of the Legislature."

Looking then, at the Act of April 10th, 1869, and we find that although the Company designated by the Legislature of Oregon, is given one year after April 10th, 1869, within which to file its assent in the Department of the Interior, yet that Act relates back, and has

the same effect as if filed before the 25th July 1867. Being therefore retro-active, Congress was cautious to prevent a wrong being inflicted upon persons whose rights, had intervened during this time. The first proviso distinctly reserves the intervening rights of Railroad Companies under the Act of 1866, and provides (what was intended by the original Act) that only one Oregon Company should have a grant of lands under those Acts.

The second proviso carries out the same principle. During the long lapse from July 25th 1866, the date of the first Act, and April 10th 1869, the passage of the last Act—settlers had gone in upon portions of these lands, and made their homes, though they had not yet purchased, or pre-empted, or complied with the homestead laws. They were, however, "actual settlers," and might have become, in the process of time (had not the Act of 1869 been passed), entitled to pre-emption or homestead rights. Up to April 10th 1869 no Oregon Company had acquired any right under the Act of 1866; consequently the Secretary of the Interior had not withdrawn, under the Act, the land from market, or settlement. The Act of 1869 operating then retrospectively, these "actual settlers" were affected, and consequently were intended to be protected by the last proviso of that Act. Rejecting the single word "only", and the proviso becomes plain, viz: "*And provided farther,* That the lands granted by the Act aforesaid shall be sold to *actual settlers,* in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre." This

would mean "actual settlers", at the date of the Act of 1869—or possibly up to the time of the location of the road, after the passage of the Act of 1869.

The difficulty arises entirely from the use of the word "only". But the proviso may, by a slight transposition, give force even to that word; thus making it, that in the case of actual settlers, and in their cases "only", the Company would be compelled to let them have a quarter section each, at two dollars and a half per acre. This construction is rational and practical, retains all that is useful, in the original Act, aids the Railroad Company, and yet does justice to the "actual settler" who was on the land when the Act of 1869 was passed.

That we have a right to reject constructions which lead to absurd results, and to disregard the mere letter, and take a rational view of a statute, is maintained by all the great writers on Constitutional and Statutory Construction, such as Rutherford, Lieber, Vattel, Domat, Dwarris, Smith, Blackstone and Sedgwick.

It is not uncommon to find Statutes, in which the words do not express the intention of the law maker perfectly; but exceed or fall short of it, leaving the meaning to be ascertained by great rules of construction. By these rules, in the language of Lieber, we draw "conclusions respecting subjects which lie beyond the direct expressions of the text from elements known from, and given in the text—conclusions which are in the spirit, though not in the letter of the text."

In thus construing the Act of 1869, it is made to perform only a similar to that of the proviso in Section 2 of the Act of 1866. That Section after declaring that the "land which shall remain in the United States, within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of public land, when sold," goes on to protect by the proviso *"bona fide* and *actual settlers"* under the pre-emption laws of the United States, giving the right to purchase, at the price fixed at the date of their settlements, and also to protect settlers under the homestead laws, to the extent of eighty acres of the land reserved to the United States.

The manifest intention of the last proviso, to the Act of 1869 is likewise to protect the "actual settler" who is deemed to have a claim on the equity and conscience of the Government.

I am satisfied from the whole scope of both Acts of Congress, and by applying the recognized rules of construction, that the meaning of the proviso, of the Act of 1869 is what I have given above, and that the power of the Company to sell is unlimited, as to persons and price, except that actual settlers on the lands on the 10th April 1869 and possibly up to the time of the location of the line of the Railroad, have the right to purchase one quarter section each at two dollars and fifty cents per acre.

Very respectfully

(Signed) S. M. WILSON.

(Endorsed as follows)
Copy of the *Opinion* given
by Saml. M. Wilson, Esq.,
on the Acts of Congress.
July 25th, 1866, and
April 10th, 1869—
in re, Land Grant to the
Oregon & Cala. Road Co.
San Fsco. Novr. 11th 1871—
"B".

———oOo———

GOVERNMENT'S EXHIBIT
NO. 109—A

"B"

MEL

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

Washington December 5, 1911.

I hereby certify that the annexed copy of letter from Attorney General, dated April 20, 1872, is a true and literal exemplification from the original in the filed of this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to

be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD.
Recorder of the General Land Office.

(SEAL)
(GLO)

———oOo———

92,880—

DEPARTMENT OF JUSTICE

Washington April 20, 1872

Sir

I enclose some papers which have been transmitted to me by the Atty of the Oregon & California Railroad Co. to be filed I suppose in your office.

You will see that they relate to the construction of an amendment to the Act granting lands to said Co

Yours very truly
GEO. H. WILLIAMS

HON. WILLIS DRUMMOND
Com. Gen. Land Office
Washington, D. C.

(Endorsed as follows)
Letter I. No. 92,880
HON. GEO. H. WILLIAMS
Atty Genl.
Apl. 20" 1872

Papers in the case
OF OREGON & CALI. R. R. CO. &C
Ackd. May 20, 1872
papers sent to Secretary
May 20/72
Sec. to Atty. Genl.
June 14, 1872 transmitting
Copy of Secy's Opinion.
Referred to Div. F
Received (G. L. O.) Apl. 22, 1872
R
(On left hand margin)
15 139

GOVERNMENT'S EXHIBIT
NO. 109—B

"B"
MEL

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

Washington December 5, 1911.

I hereby certify that the annexed copies of office letters dated May 20, 1872 and June 14, 1872, in re Oregon and California R. R. Co., are true and literal exemplifications from the record of said letters in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office

to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
Recorder of the General Land Office.

(SEAL)
(GLO)

———oOo———

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

May 20*th* 1872

Hon. Geo. H. Williams,
Attorney General,
Washington, D. C.

Sir:

I have the honor to acknowledge the receipt through you of certain papers through you from the Attorney of the Oregon & California Rail Road Co. for the purpose of obtaining a construction by the Department, of the Act of Congress approved April 10*th* 1869, amendatory to the Act of July 25, 1866, granting lands to the Oregon & California Rail Road and to state that the papers have been this day submitted to the Hon. Secretary of the Interior for his consideration.

I am Sir,
Very Respectfully,
WILLIS DRUMMOND,
Commissioner.

"F". G. I. B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

June 14th, 1872.

Hon. Geo. H. Williams,
Attorney General U. S.

Sir:

Referring to your letter of 20th ult., transmitting papers in the case of the Oregon & California Railroad Co. for a construction by the Department of the last proviso of the Act of July 25, 1866, granting lands &c., I have the honor to state, that the papers were duly submitted to the Hon. Secretary of the Interior, as stated in our letter to you of 20th ult., and I enclose herewith a copy of his opinion in the matter dated the 5th inst.

Returning the papers transmitted with your letter I am Sir

Very respectfully,
WILLIS DRUMMOND,
Commissioner.

GOVERNMENT'S EXHIBIT NO. 109—C

UNITED STATES OF AMERICA.
DEPARTMENT OF THE INTERIOR

Washington, D. C., December 6, 1911

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true and literal exemplification of a letter dated June 5, 1872, addressed to the Commissioner of the General Land Office, as the same appears of record.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

CARNIE A. THOMPSON
Assistant Secretary of the
Interior

(SEAL)
(DOI)

DEPARTMENT OF THE INTERIOR,
WASHINGTON,

June 5, 1872

Sir:

I have considered the question presented in the papers transmitted with your letter of the 20th ultimo as to the meaning of the last proviso of the act approved 10th April, 1869, "granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,"

and I am of the opinion that the proviso means just what it says. "That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre." The legislative intention was plainly to prevent the lands from being held for speculative prices and disposed of in larger quantities to other than actual settlers; and to limit the proviso's operation to those on the lands granted at or before the survey of the road would, in my judgment utterly defeat such intention.

The papers transmitted with your letter are herewith returned.

I am, Sir,
Very respectfully,
Your Obdt Servant,
C. DELANO,
Secretary.

(SEAL)
(DOI)

HON. WILLIS DRUMMOND,
Com. General Land Office.

GOVERNMENT'S EXHIBIT NO. 109—D

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

"B"
MEL

Washington December 5, 1911.

I hereby certify that the annexed copy of office letter dated July 16, 1872, is a true and literal exemplification from the press copy of said letter in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. D. SANFORD,
Recorder of the General Land Office.

(SEAL)
(GLO)

———oOo———

F W.K.M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C. July 16th 1872.

Address only the
Commissioner of the General
Land Office.

Hon. Geo. H. Williams,
Attorney General U. S.
Dept. of Justice.

Sir:

I have the honor to acknowledge your communica-

tion of 27th ult., returning certain papers filed with you, by B. Holliday Esq., relative to the construction to be placed on the last proviso of the Act of 10th of April 1869, amendatory of the Act of 26th of July 1866, granting lands for the Oregon & California Railroad.

It is stated in your letter that the papers contain no communication to me or to the Secretary of the Interior, asking any action or decision in reference to the subject which they discussed. That they were not filed with the view of eliciting any opinion, and that you did not suppose any would be given until some questions were presented which it would be necessary for the Department to decide &c. You, therefore, ask that the papers may be filed until some question arises, or the parties bring them before me for consideration, or ask for opinion upon the question which they present, and that the opinion which the Secretary has given upon the subject may be withdrawn until some question is raised, making it necessary to pass upon the construction of the Act mentioned, or until the parties interested desire an opinion on the subject.

These papers were originally presented to this office with your letter of 20th April last. In that letter you use the following language: "I enclose some papers "which have been transmitted to me by the Attorney of "the Oregon & California Railroad Co., to be filed, I "suppose, in your office. You will see that they relate "to the construction of an amendment to the Act grant-"ing Lands to said Co."

I am aware that none of these communications are addressed to the Secretary or myself, but I would respectfully call your attention to the following quotation from the letter.

1st. Letter of Mr. Wilson to B. Holladay, in which after referring to the laws, he closes as follows:—

"In order, however, that there may be a full under-"standing with the Executive Department of the Gov-"ernment, so that proceedings in disposal of the lands, "may in all respects be harmonious and concurrent, it is "requested that you will bring the matter to the atten-"tion of Attorney General Williams, who is conversant "with the subject to the end that he may request the "Secretary of the Interior to despatch an affirmation "of the principles referred to, which the Company would "be grateful to have in the form suggested by a draft "of a letter, which I enclose herein addressed to myself." Again, in Mr. Wilson's letter to you, after requesting the same, he concludes as follows: "Now I am directed "to lay all the facts before you, and the principles as "enunciated above, to the end that the same may be re-"ferred by you, to the Department of the Interior, with "a request that as it is not doubted, this liberal construc-"tion will be approved—a communication may be ad-"dressed to the President of the Company, ratifying and "affirming the justness and correctness of the construc-"tion of the said Act of April 10, 1869, as above set "forth."

You will observe that these quotations clearly look

to an expression of opinion on the part of the Department, as to the construction of the law, asking the affirmation of the opinion of the law, as taken by the Company, when too, these papers were accompanied with the opinion of counsel for the Company as to the meaning of the law, and a form of letter as the basis for a reply. I certainly had no doubt but that the Company did desire, and asked for, the view of the Office on the matter.

It was not understood that you desired the opinion, but the letter was addressed to you because I viewed you as the medium of communication adopted by the Company.

Your request for a recall of the opinion expressed was presented to the Secretary who desires me to state that while he must respectfully decline to formally withdraw his opinion, yet, in view of your letter, he will be willing at any time, on application to reopen the case and to have all arguments the Company may desire to present upon the matter.

The papers have, as you requested, been placed on file.

I am Sir:

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
July 28, 1870,	1	July 25, 1866,	32,517.21	November 23, 1870,	1 May 9, 1871,
April 29, 1871,	2	July 25, 1866,	72,325.53		
		July 25, 1866,	47,991.93	June 26, 1871,	2 July 12, 1871,
September 21			42,729.16		
and 23, 1871,	3	July 25, 1866,	26,332.47	May 9, 1872,	3 May 29, 1872.
April 29, 1871,	4	July 25, 1866,	8,070.46		
June 21, 1876, and September 27, 1876,	5	July 25, 1866,	6,559.21	June 10, 1876,	4 June 22, 1876.
Between August 26, 1887 and March 8, 1892,	5	July 25, 1866,	86,622.71	May 17, 1877,	5 June 18, 1877.

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"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
Between March 17, 1887, and August 18, 1887,	6	July 25, 1866,	71,081.41	March 3, 1893,	7 March 3, 1893.
Between March 17, 1887, and October 6, 1887	Suppl 6	July 25, 1866,	152,409.43	May 16, 1894,	9 June 11, 1894.
Between September 27, 1876, and March 5, 1892,	7	July 25, 1866,	11,455.62	April 20, 1895,	12 April 24, 1895.
Between June 21, 1876, and March 29, 1890,	8	July 25, 1866,	97,929.67	March 3, 1893,	8 March 3, 1893.
Between June 13, 1887, and October 19, 1892,	9	July 25, 1866,	98,786.37	February 14, 1893,	6 February 20, 1893.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
Between September 21, 1871, and May 15, 1890,	10	July 25, 1866,	24,689.45	February 14, 1893,	6 February 20, 1893.
Between September 21, 1871, and May 15, 1890,	Suppl 10	July 25, 1866,	229,943.52	November 22, 1894,	10 December 3, 1894.
Between November 27, 1885, and August 20, 1894,	11	July 25, 1866,	83,889.76	April 20, 1895,	13 April 27, 1895.
Between July 8, 1887, and March 8, 1892,	Suppl 11	July 25, 1866,	52,397.39	April 13, 1895,	11 April 23, 1895.
		July 25, 1866,	11,147.91	October 2, 1895,	20 October 9, 1895.
Between June 21, 1876, and September 8, 1894,	12	July 25, 1866,	16,942.26	May 13, 1895,	14 May 14, 1895.

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"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary.	Number and date of patent
Between July 6, 1887, Suppl and September 8, 1894,	12	July 25, 1866,	26,938.51	March 12, 1896,	36 March 14, 1896.
September 3, 1888,	13	July 25, 1866,	480.00	May 13, 1895,	14 May 14, 1895.
March 5, 1888,	14	May 4, 1870,	1,630.11	September 26, 1895,	18 October 9, 1895.
March 5, 1888,	15	May 4, 1870,	40.00	October 2, 1895,	21 October 9, 1895.
Between March 31, 1877, and June 8, 1893,	16	May 4, 1870,	46,091.14	September 26, 1895,	17 October 9, 1895.
Between March 31, 1877, and July 27, 1893,	17	May 4, 1870,	12,349.64	September 26, 1895,	16 October 9, 1895.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number	Date of patent
Between May 2, 1895, and July 5, 1895,	18	July 25, 1866,	10,464.96	October 2, 1895,	19	October 9, 1895.
October 6, 1887, and July 5, 1895,	Suppl 18	July 25, 1866,	5,185.00	May 7, 1896,	46	May 8, 1896.
August 13 and 17, 1895,	19	July 25, 1866,	13,528.49	December 12, 1895,	22	December 13, 1895.
August 13, 1895,	Suppl 19	July 25, 1866,	160.00	March 11, 1896,	35	March 13, 1896.
Between July 6 and August 13, 1895,	20	July 25, 1866,	4,194.12	December 12, 1895,	23	December 13, 1895.
September 9, 1895,	21	July 25, 1866,	150,269.98	December 12, 1895,	24	December 16, 1895.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary.	Number and date of patent
September 9, 1895,	Suppl 21	July 25, 1866,	107.625.96	March 13, 1896,	38 March 17, 1896.
Between October 12 and 25, 1895,	22	July 25, 1866,	203,947.91	December 12, 1895,	25 December 17, 1895.
October 12 and 25, 1895,	Suppl 22	July 25, 1866,	59,098.60	March 13, 1896,	39 March 16, 1896.
September 3, 1895,	23	May 4, 1870,	32,968.11	December 12, 1895,	26 December 14, 1895.
September 3, 1895,	Suppl 23	May 4, 1870,	1,123.39	April 10, 1896,	40 April 11, 1896.
November 2, 1895,	24	July 25, 1866,	21,813.34	January 9, 1896,	27 January 20, 1896.
November 2 and 18, 1895,	Suppl 24	July 25, 1866,	259,351.46	April 30, 1896,	42 May 6, 1896.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
August 7, 1895,	25	July 25, 1866,	6,366.90	May 7, 1896,	47 May 7, 1896.
March 29, 1880,	26	July 25, 1866,	640.00	January 19, 1896,	29 January 21, 1896.
October 6, 1887, Suppl	26	July 25, 1866,	1,601.38	April 15, 1896,	41 April 17, 1896.
November 11, 1895,	27	May 4, 1870,	994.91	January 11, 1896,	28 January 20, 1896.
March 5, 1888,	28	May 4, 1870,	40.00	January 17, 1896,	30 January 21, 1896.
March 14, 1877,	29	July 25, 1866,	80.00	February 10, 1896,	31 February 12, 1896.
November 27, 1895,	30	July 25, 1866,	112,479.84	April 30, 1896,	43 May 4, 1896.
January 3, 1896,	31	July 25, 1866,	952.19	February 18, 1896,	32 February 21, 1896.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
January 3, 1896,	Suppl 31	July 25, 1866,	13,417.07	April 30, 1896,	44 May 2, 1896.
October 11, 1890, and July 24, 1893,	32	May 4, 1870,	13,003.26	February 18, 1896,	33 February 21, 1896.
October 11, 1890,	Suppl 32	May 4, 1870,	8,201.22	June 5, 1896,	50 June 6, 1896.
December 4, 1895,	33	July 25, 1866,	4,162.53	March 10, 1896,	34 March 12, 1896.
March 31, 1877,	34	May 4, 1870,	160.00	March 13, 1896,	37 March 16, 1896.
January 3, 1896,	35	July 25, 1866,	4,135.80	April 30, 1896,	45 May 2, 1896.
January 9, 1896,	Suppl 35	July 25, 1866	2,037.09	July 21, 1896,	53 July 23, 1896.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
June 7, 1894,	36	July 25, 1866,	638.24	May 9, 1896,	48 May 12, 1896.
January 24, 1896,	37	July 25, 1866,	242.60	May 19, 1896,	49 May 20, 1896.
January 24, 1896,	Suppl 37	July 25, 1866,	110.00	November 20, 1896,	66 November 24, 1896.
March 24, 1896,	38	July 25, 1866,	10,534.71	July 8, 1896,	51 July 10, 1896.
March 5, 1896,	39	July 25, 1866,	31.82	July 13, 1896,	52 July 15, 1896.
April 1, 1896,	40	July 25, 1866,	11,461.44	July 21, 1896,	54 July 23, 1896.
May 1, 1896,	Suppl 40	July 25, 1866,	29,156.92	October 17, 1896,	63 October 22, 1896.
April 28, 1896,	41	July 25, 1866,	5,868.14	July 21, 1896,	55 July 23, 1896.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
May 1, 1896,	42	July 25, 1866,	14,884.84	July 21, 1896,	56 July 23, 1896
January 10, 1894,	43	July 25, 1866,	402.01	August 17, 1896,	57 August 19, 1896.
April 1, 1896,	44	July 25, 1866,	156.52	August 17, 1896,	58 August 19, 1896.
June 25, 1896,	45	May 4, 1870,	1,933.78	September 26, 1896,	59 September 30, 1896.
June 6, 1896,	46	May 4, 1870,	655.80	October 10, 1896,	60 October 13, 1896.
July 7, 1896,	47	July 25, 1866,	5,938.39	October 10, 1896,	61 October 13, 1896.
August 4, 1896,	48	May 4, 1870,	5,186.92	October 15, 1896,	62 October 17, 1896.
January 24, 1896,	49	July 25, 1866,	120.00	October 21, 1896,	64 October 23, 1896.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
July 27, 1893,	50	May 4, 1870,	988.96	October 21, 1896,	65 October 23, 1896.
June 17, 1896,	51	July 25, 1866,	40.00	February 25, 1897,	77 February 26, 1897.
March 30, 1880,	52	July 25, 1866,	352.89	December 4, 1896,	69 December 7, 1896.
September 23, 1871,	53	July 25, 1866,	3,425.80	December 4, 1896,	68 December 8, 1896.
October 26, 1896,	54	July 25, 1866,	400.00	December 4, 1896,	67 December 7, 1896.
Between March 30, 1880, and December 4, 1895,	55	July 25, 1866,	190.17	January 28, 1897,	70 January 30, 1897.
August 26, 1887, and September 8, 1894,	56	July 25, 1866,	440.00	January 28, 1897,	71 January 30, 1897.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
December 6, 1893,	57	July 25, 1866,	200.51	February 1, 1897,	72 February 4, 1897.
March 31, 1877,	58	May 4, 1870,	228.00	February 13, 1897,	76 February 16, 1897,
June 21, 1876, and May 22, 1893,	59	July 25, 1866,	1,701.00	February 1, 1897,	73 February 4, 1897.
March 30, 1880,	60	July 25, 1866,	309.05	February 1, 1897,	73 February 4, 1897.
October 11, 1890, and July 24, 1893,	61	May 4, 1870,	400.00	February 13, 1897,	75 February 16, 1897.
March 30, 1880,	62	July 25, 1866,	20.00	February 13, 1897,	74 February 16, 1897.
October 25, 1895,	63	July 25, 1866,	120.00	February 25, 1897,	78 February 27, 1897.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
January 27, 1897,	64	May 4, 1870,	1,680,00	March 1, 1897,	79 March 2, 1897.
Between May 15, 1890, and November 27, 1895,	65	July 25, 1866,	1,054.16	March 2, 1897,	80 March 3, 1897.
Between September 30, 1871, and April 28, 1896,	66	July 25, 1866,	3,138.95	March 2, 1897,	81 March 3, 1897.
Between August 19, 1887, and January 24, 1896,	Suppl 66	July 25, 1866,	1,473.60	June 30, 1897,	89 July 9, 1897.
October 11, 1890,	67	May 4, 1870,	80.00	April 30, 1897,	82 May 6, 1897.
Between August 26, 1887, and August 17, 1895,	68	July 25, 1866,	1,239.53	April 30, 1897,	(83 May 6, 1897. (84 May 6, 1897.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number	Date of patent
March 17, 1888, and August 7, 1895,	69	July 25, 1866,	560.00	May 11, 1897,	(85 (86	May 17, 1897. May 17, 1897.
October 6, 1887,	70	July 25, 1866,	960.00	June 9, 1897,	87	June 15, 1897.
October 6, 1887, and March 8, 1892,	Suppl 70	July 25, 1866,	1,680.44	September 27, 1897,	91	October 5, 1897.
Between September 30, 1871, and November 27, 1895,	71	July 25, 1866,	9,207.77	June 22, 1897,	88	July 3, 1897.
Between September 27, 1876, and November 27, 1895,	Suppl 71	July 25, 1866,	5,579.59	September 27, 1897,	92	October 5, 1897.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
April 8, 1897,	72	July 25, 1866,	2,241.55	November 27, 1897,	95 December 4, 1897.
Between September 30, 1871, and May 15, 1890,	73	July 25, 1866,	1,315.28	August 26, 1897,	90 September 2, 1897.
Between September 30, 1871, and September 9, 1895,	Suppl 73	July 25, 1866,	1,529.48	November 27, 1897,	96 December 4, 1897.
November 18 and 27, 1895,	74	July 25, 1866,	120.00	December 18, 1897,	98 December 22, 1897.
Between September 30, 1871, and November 27, 1895,	75	July 25, 1866,	3,957.49	November 11, 1897,	93 November 16, 1897.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
Between May 15, 1890, and November 27, 1895,	Suppl 75	July 25, 1866,	3,306.90	February 3, 1898,	100 February 9, 1898.
November 2, 1895,	76	July 25, 1866,	73.36	November 11, 1897,	94 November 16, 1897.
September 30, 1871, and October 6, 1887,	77	July 25, 1866,	80.00	November 27, 1897,	97 December 4, 1897.
October 8, 1890,	Suppl 77	July 25, 1866,	79.83	February 24, 1898,	102 March 2, 1898.
May 15, 1890,	78	July 25, 1866,	160.00	February 25, 1898,	103 March 3, 1898.
November 10, 1897,	79	July 25, 1866,	17,019.09	January 3, 1898,	99 January 10, 1898.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
November 12, 1897,	Suppl 79	July 25, 1866,	8,893.26	May 13, 1898,	105 May 27, 1898.
December 9, 1893, and October 25, 1895,	80	July 25, 1866,	441.75	February 24, 1898,	101 March 2, 1898.
October 6, 1887, and March 17, 1898,	81	July 25, 1866,	192.00	February 24, 1898,	102 March 2, 1898.
March 31, 1877,	82	May 4, 1870,	72.75	March 2, 1898,	104 March 8, 1898.
May 15, 1890, and September 9, 1895,	83	July 25, 1866,	442.28	June 21, 1898,	106 June 29, 1898.
October 6, 1887,	84	July 25, 1866,	22.20	June 21, 1898,	107 June 29, 1898.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
March 8, 1898,	85	July 25, 1866,	14,137.74	November 1, 1898,	112 November 11, 1898.
February 15, 1898,	86	July 25, 1866,	13,012.36	December 16, 1898,	113 December 30, 1898.
December 27, 1895,	87	July 25, 1866,	440.00	August 25, 1898,	108 August 31, 1898.
May 9, 1898,	88	July 25, 1866,	5,787.48	September 21, 1898,	109 September 28, 1898.
March 28, 1898,	89	July 25, 1866,	5,898.07	October 11, 1898,	111 October 15, 1898.
May 15, 1890, and November 27, 1895,	90	July 25, 1866,	181.06	October 3, 1898,	110 October 14, 1898.
May 23, 1898,	91	July 25, 1866,	14,082.84	January 25, 1899,	114 February 2, 1899.

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"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
May 15, 1890, and November 18, 1895,	92	July 25, 1866,	309.95	February 14, 1899,	115 February 23, 1899.
Between May 15, 1890, and November 27, 1895,	Suppl 92	July 25, 1866,	9,186.07	June 21, 1899,	126 June 26, 1899.
Between March 30, 1880, and November 9, 1898,	93	July 25, 1866,	1,467.85	February 15, 1899,	116 February 25, 1899.
November 2, 1898,	94	July 25, 1866,	19,582.14	March 13, 1899,	117 March 20, 1899.
October 12, 1895, and November 2, 1898	Suppl 94	July 25, 1866,	2,428.66	August 16, 1899,	133 August 22, 1899.

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Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary.	Number and date of patent
January 12, 1899,	95	July 25, 1866,	766.33	March 24, 1899,	118 March 29, 1899.
Between September 9, 1895, and January 12, 1899,	Suppl 95	July 25, 1866,	969.58	June 27, 1899,	127 June 30, 1899.
October 25 and November 9, 1898,	96	July 25, 1866,	2,863.39	May 16, 1899,	124 May 22, 1899.
September 21, 1871, and August 16, 1886,	97	July 25, 1866,	362.89	April 13, 1899,	119 April 18, 1899.
November 8, 1898,	98	May 4, 1870,	520.00	May 6, 1899,	121 May 11, 1899.
May 15, 1890,	99	July 25, 1866,	360.00	May 6, 1899,	122 May 11, 1899.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent	
May 15, 1890, and October 15, 1898,	Suppl 99	July 25, 1866,	4,512.04	August 15, 1899,	131	August 22, 1899.
November 2, 1898,	100	July 25, 1866,	567.11	May 11, 1899,	123	May 17, 1899.
November 8, 1898,	Suppl 100	July 25, 1866,	2,676.33	August 16, 1899,	134	August 22, 1899.
December 28, 1898,	101	July 25, 1866,	7,040.40	May 31, 1899,	125	June 3, 1899.
October 6, 1887,	102	July 25, 1866,	40.00	November 27, 1899,	140	December 4, 1899.
Between September 23, 1871, and January 12, 1899,	103	July 25, 1866,	243.34	December 9, 1899,	149	December 15, 1899.

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"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary.	Number and date of patent
October 24, 1898,	104	July 25, 1866,	11,585.23	June 29, 1899,	128 July 10, 1899.
September 9, 1898,	Suppl 104	July 25, 1866,	19,022.15	January 23, 1900,	154 January 29, 1900.
Between September 23, 1871, and November 27, 1895,	105	July 25, 1866,	1,131.36	November 29, 1899,	141 December 6, 1899.
September 23, 1871,	106	July 25, 1866,	120.00	August 30, 1899,	135 September 7, 1899.
Between September 23, 1871, and August 16, 1886,	Suppl 106	July 25, 1866,	481.30	November 28, 1899,	142 December 6, 1899.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
April 28, 1896, and October 1, 1898,	107	July 25, 1866,	[illegible]23	July 17, 1899,	129 July 21, 1899.
October 12, 1895,	108	July 25, 1866,	400.00	August 5, 1899,	130 August 10, 1899.
September 9, 1895, Suppl and October 12, 1895,	108	July 25, 1866,	1,616.51	November 28, 1899,	143 December 6, 1899.
November 2, 1895, and November 18, 1895,	110	July 25,1866,	2,348.99	December 9, 1899,	150 December 18, 1899.
May 15, 1890, and September 9, 1895,	111	July 25, 1866,	751.93	September 8, 1899,	136 September 14, 1899.

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"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number	Date of patent
May 15, 1890, and November 2, 1895,	Suppl 111	July 25, 1866,	1,689.20	December 29, 1899,	153	January 5, 1900.
September 23, 1871, and November 1, 1898,	112	July 25, 1866,	365.20	August 15, 1899,	132	August 22, 1899.
September 23, 1871	Suppl 112	July 25, 1866,	200.00	November 28, 1899,	144	December 6, 1899.
June 12, 1899,	114	July 25, 1866,	2,630.10	November 24, 1899,	139	December 4, 1899.
June 12, 1899,	Suppl 114	July 25, 1866,	12,642.32	May 1, 1900,	157	May 8, 1900.
Between September 23, 1871, and September 9, 1895,	116	July 25, 1866,	632.95	November 21, 1899,	137) 138)	November 29, 1899.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
November 27, 1895,	115	July 25, 1866,	1,875.37	December 19, 1899,	152 December 26, 1899.
April 3, 1899,	117	July 25, 1866,	26,582.12	November 28, 1899,	145 December 6, 1899.
May 16, 1899,	118	July 25, 1866,	2,541.95	November 28, 1899,	146 December 6, 1899.
May 16, 1899,	119	July 25, 1866,	11,312.16	December 4, 1899,	147 December 12, 1899.
May 16, 1899,	120	July 25, 1866,	11,042.33	December 15, 1899,	151 December 20, 1899.
June 12, 1899,	121	July 25,1866,	953.65	December 4, 1899,	148 December 12, 1899.
May 15, 1899,	122	July 25,1866,	7,143.51	September 6, 1900,	163 September 13, 1900.
May 16, 1899,	123	July 25, 1866,	320.44	April 18, 1900,	156 April 27, 1900.
September 23, 1871, Suppl and May 15, 1890,	116	July 25, 1866,	883.13	March 28, 1900,	155 April 11, 1900.

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"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent	
January 24, 1896,	124	July 25, 1866,	40.00	August 10, 1900,	159	August 21, 1900.
June 12, 1899,	125	July 25, 1866,	80.00	May 1, 1900,	158	May 8, 1900.
January 29 and February					160	
13, 1900,	126	July 25, 1866,	960.58	August 9, 1900,	161	August 16, 1900.
September 23, 1871, and						
June 12, 1899,	127	July 25, 1866,	60.00	August 9, 1900,	162	August 16, 1900.
					164	
					165	
					166	
Between July 28, 1870,						
and October 27, 1890,	128	July 25, 1866,	9,146.50	August 3, 1901,	167	August 8, 1901.
					168	
					169	

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number	Date of patent
Between September 30, 1871, and June 12, 1899,	Suppl 128	July 25, 1866,	3,771.66	May 23, 1902,	179	May 28, 1902.
					170	
Between September 30, 1871, and December 5, 1900,	129	July 25, 1866,	5,325.86	August 3, 1901,	171	
					172	August 8, 1901.
					173	
					174	
May 31 and December 5, 1900,	Suppl 129	July 25, 1866,	397.09	September 24, 1902,	182	September 29, 1902.
					175	
Between June 28, 1873, and September 8, 1894,	130	July 25, 1866,	4,832.17	August 3, 1901,	176	August 8, 1901.
Between June 21, 1876, and September 28, 1894,	131	July 25, 1866,	41,162.07	August 3, 1901,	177	August 8, 1901.

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"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
September 8, 1894, Suppl	131	July 25, 1866,	8,403.44	September 24, 1902,	183 September 29, 1902.
March 14, 1877,	132	July 25, 1866,	362.63	January 18, 1902,	178 January 24, 1902.
March 14, 1877,	133	July 25, 1866,	199.11	June 16, 1902,	180 June 21, 1902.
March 8, 1898, and July 3, 1901,	135	July 25, 1866,	1,298.07	December 1, 1902,	184 December 6, 1902.
March 13, 1871,	136	July 25, 1866,	1,094.40	September 24, 1902,	181 September 29, 1902.
May 3, 1901,	137	July 25, 1866,	328.52	December 1, 1902,	185 December 6, 1902.
June 6, 1901,	138	July 25, 1866,	6,312.92	December 1, 1902,	186 December 6, 1902.
June 17, 1901,	139	July 25, 1866,	10,099.40	December 3, 1902,	188 December 6, 1902.
May 13, 1901,	140	July 25, 1866,	3,898.96	December 1, 1902,	187 December 6, 1902.

"GOVERNMENT'S EXHIBIT NO. 110"

"DATE OF LISTS OR SELECTIONS, ETC., OF LANDS PATENTED TO THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER LAND GRANTS INVOLVED IN THIS SUIT."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
September 27, 1900,	141	July 25, 1866,	40.00	February 14, 1903,	189 February 18, 1903.
April 22, 1902	142	July 25, 1866,	19,876.97	February 14, 1903,	190 February 18, 1903.
August 26, 1887, and June 16, 1902,	143	July 25, 1866,	1,121.35	March 12, 1903,	193 March 20, 1903.
Between June 30, 1880, and July 3, 1901,	144	July 25, 1866,	513.28	March 11, 1903,	191 March 16, 1903.
November 27, 1895, and October 27, 1900,	Suppl 144	July 25, 1866,	100.00	September 9, 1903,	199 September 12, 1903.
May 3, 1902,	145	July 25, 1866,	4,190.16	March 13, 1903,	194 March 20, 1903.
April 29, 1871,	146	July 25, 1866,	40.00	March 11, 1903,	192 March 16, 1903.

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"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent
March 3, 1877, and November 11, 1895,	147	May 4, 1870	200.00	March 14, 1903,	196 March 20, 1903.
April 20, 1899,	148	July 25, 1866,	240.00	March 13, 1903,	195 March 13, 1903. (20.)
July 24, 1893,	149	May 4, 1870,	70.14	March 16, 1903,	197 March 16, 1903.
Between June 21, 1876, and August 26, 1887,	150	July 25, 1866,	10,316.32	June 15, 1903,	198 June 23, 1903.
December 28, 1898,	151	July 25, 1866,	89.17	February 3, 1904,	201 February 9, 1904.
March 30, 1880, and May 3. 1892,	152	July 25, 1866,	121.20	January 8, 1904,	200 January 12, 1904.
February 9, 1903,	153	July 25, 1866,	27,283.76	June 8, 1904,	202 June 14, 1904.

"GOVERNMENT'S EXHIBIT NO. 110"

"Date of Lists or Selections, Etc., of Lands Patented to The Oregon and California Railroad Company Under Land Grants Involved in This Suit."

Date of Lists or Selections.	List or Selection No.	Act	Area Acres	Date of Approval by Secretary	Number and date of patent	
February 9, 1903,	Suppl 153	July 25, 1866,	11,744.95	October 22, 1904,	203	October 28, 1904.
March 15, 1904,	154	July 25, 1866,	20,006.55	January 28, 1905,	205	February 3, 1905.
April 6, 1903,	155	July 25, 1866,	1,922.44	January 18, 1905,	204	January 26, 1905.
June 16, 1902,	156	July 25, 1866,	160.55	April 22, 1905,	206	April 27, 1905.
Between June 13, 1887, and August 15, 1904,	157	July 25, 1866,	791.69	April 25, 1905,	207	May 5, 1905.
September 30, 1871, and March 15, 1904,	158	July 25, 1866,	2,677.40	May 26, 1905,	208	June 5, 1905.
June 30, 1880,	159	July 25, 1866,	161.22	November 2, 1905,	209	November 9, 1905.
July 28, 1870,	160	July 25, 1866,	38.82	November 2, 1905,	210	November 9, 1905.
February 9, 1903,	161	July 25, 1866,	20.00	November 28, 1906,	211	December 7, 1906.

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GOVERNMENT'S EXHIBIT NO. 111.

B DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed copy of Original List No. 1, of lands selected by the Oregon and California Railroad Co., is a true and literal exemplification from the original list in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

———o———

A—28 List 1 Pn Noted in Selection Docket Page 130

STATE OF OREGON,

U. S. Land Office, Oregon City
July 12, 1870.

The Oregon and California Railroad Company, assignee of the Oregon Central Railroad Company, under and by virtue of the Act of Congress entitled "An

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Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, Oregon," approved July 25th, 1866, and Acts amendatory thereof, approved respectively July 25th, 1868, and April 10th, 1869, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 20, 1868, designating said last-named Company to receive said grant, and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of Public Lands claimed by the Company as enuring to it, and to which it is entitled under and by virtue of the Grants and Provisions of the said Act of Congress and amendments thereto and the said Joint Resolution of the Legislative Assembly of the State of Oregon, and the location of the line of the route of the Road of said Company, being for the First Completed Section of twenty miles of the same, commencing at East Portland, Oregon, and ending at the Twenty mile stake. The selections being particularly described as follows, to-wit:

SELECTIONS BY THE OREGON AND CALIFORNIA RAILROAD COMPANY.

STATE OF OREGON)
) ss.
County of Clackamas)

I, I. R. Moores, being duly sworn, depose and say that I am the Land Agent of the OREGON AND

CALIFORNIA RAILROAD COMPANY; that the foregoing List of Lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Road Company as enuring to the said Road Company, to aid in the construction of a Railroad and Telegraph line, and for which a grant of lands was made by the Act of Congress, approved July 25th, 1866; that said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of thirty miles on each side of the line of the route for a continuous distance of Twenty miles, being for the First completed section of said road, starting from East Portland, Oregon, and ending at the Twenty Mile stake.

I. R. MOORES

Sworn and subscribed before me
this 12 day of July, 1870.

Owen Wade (L. S.)

Register of the Land Office.

U. S. LAND OFFICE,

Oregon City, Oregon, July 28th, 1870.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Oregon and California Railroad Company, under the grant, by Act of Congress, approved July 25th, 1866, and amendments thereto, and selected for said Company by I. R. Moores, the duly authorized Agent,

and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of 20 miles on each side; and that the same are not, nor is any part thereof returned and denominated as mineral land, or lands, nor claimed as swamp lands; nor is there any homestead, preemption, State or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress approved July 1, 1864, and contemplated by the Circular of Instructions dated May 30, 1866, addressed by the Commissioner of the General Land Office, addressed to Registers and Receivers of the United States Land Offices, and that the said Company have paid to the undersigned, the Receiver, the full sum of two hundred and seventy two dollars in full payment and discharge of said fees.

OWEN WADE, Register.

HENRY WARREN, Receiver.

Noted in Selection
Docket Page 130

A-28 LIST NO 1

OREGON AND CALIFORNIA RAILROAD COMPANY SELECTIONS.

Oregon City Land District.

21,858 24/100 Acres.

Filed July 28th, 1870

Approved July 28, 1870.

A. L. Stinson, Printer
Salem.

R. & R's fees $272.00
Clear List made for
Approval, Nov. 3, 1870
Cromwell
Commissioner.

Noted in Selection Docket
Page 130
Posted DTP

GOVERNMENT'S EXHIBIT NO. 111—A

B DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1911.

I hereby certify that the annexed extract copy of original List No. 8, of lands selected by the Oregon and California Railroad Company, is a true and literal exemplification from the original list in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

———o———

1876 M Examined with Tract Books and find No. 8
15310 no donation claims in conflict.
No. 8 May 9, 1877, T. C.
Oregon City Granted and Indemnity.
Noted in Selection Docket
Page 130.

STATE OF OREGON
UNITED STATES LAND OFFICE

Oregon City, June 17th, 1876.

The Oregon & California Railroad Company, of Portland, Oregon, under and by virtue of the Acts of Congress entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, Oregon" approved July 25th, 1866, and Acts amendatory thereof, approved respectively June 25th, 1868, and April 10th, 1869, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the Railroad of the said Company; being for the first five Sections (of twenty miles each) of the same, commencing at East Portland and ending at the fifth twenty miles post; the selections being particularly described as follows, to wit:

List No. 5 embracing the clear lands within the granted limits submitted for approval May 12, 1877, containing 44,484.82 acres.

STATE OF OREGON,)
) ss.
County of Clackamas)

I, Paul Schulze, being duly sworn, depose and say that I am the Land Agent of the Oregon and California Railroad Company; that the foregoing List of Lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Railroad Company as enuring to the said Railroad Company, to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, Oregon, for which a grant of lands was made by the Acts of Congress, approved July 25th, 1866, June 25th, 1868, and April 10th, 1869 respectively; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of twenty and thirty miles on each side of the line of route for a continuous distance of one hundred miles, being for the first five sections of said Railroad starting from East Portland, and ending at the fifth twenty miles post.

Paul Schulze (L. S.)

SWORN AND SUBSCRIBED before me this 17th day of June, 1876.

Owen Wade
Register of the U. S. Land Office.

U. S. LAND OFFICE,

Oregon City, Oregon, June 21, 1876.

WE HEREBY CERTIFY That we have carefully and critically examined the foregoing List of Lands claimed by the Oregon and California Railroad Company, under the grant, by Acts of Congress, approved July 25, 1866, and selected for said company by Paul Schulze, the duly authorized Agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of twenty and thirty miles on each side; and that the same are not, nor is any part thereof returned or denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress approved July 1, 1864, and contemplated by the Circular of Instructions dated October 15, 1873, addressed by the Commissioner of the General Land Office to the Registers and Receivers of the United States Land Offices, and that the said Company have paid to the undersigned, the Receiver, the full sum of eight hundred and sixty (860) dollars in full payment and discharge of said fees.

Owen Wade, Register

T. R. Harrison, Receiver

Noted in Selection Docket Page 180

M 15310 Lieu F No. 3

List No. 8

OREGON AND CALIFORNIA
R. R. COMPANY

Selections.

Oregon City, Oregon.

June 17, 1876.

68,819.44 A.

Entered on Tract Books.

Noted in Selection

Docket Page 130

Posted, Hobbs.

GOVERNMENT'S EXHIBIT NO. 111—B.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed copies of papers and extract copy of List No. 16, of lands selected by the Oregon and California Railroad Co., are true and literal exemplifications from the original papers and list in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and

caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,

(Seal) Recorder of the General Land Office.

A—28 Oregon City No. 16

STATE OF OREGON
UNITED STATES LAND OFFICE

Noted in Selection Docket Page 131

The Oregon and California Railroad Company, Successor and Assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of the Act of Congress entitled "An Act granting lands to aid in the construction of a Railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon, approved July 25th, 1866, and acts amendatory thereto, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19th and 20th, 1866, designating said Railroad Company to receive said grant and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands

claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Acts of Congress, and the location of the line of route of the railroad of the said company; being for a part of the 1st, 2nd, 3r, 4th and 5th Sections (100 miles) of the same, commencing at East Portland, and ending at the 100th mile post, the selections being particularly described as follows, to-wit:

No. 1080 THE FIRST NATIONAL BANK OF PORTLAND

Portland, Oregon, 9/8/ 1894

I certify that Oregon & California Railroad Co. has this day, deposited to the Credit of the TREASURER OF THE UNITED STATES, Fifty-four 74/100 Dollars, on account of survey fee $49.21, Office work $5.53 on 1,386.70 acres of In Place lands of O. C. R. R. Co. List 16 Or. City Dist. for which I have signed triplicate receipts.

J. W. Newkirk,

$54.74 Cashier.

(MARGIN)

DUPLICATE.

The depositor will send this, by the first mail, to the Commissioner of Patents, if the deposit is on

account of Patent Fees; to the Commissioner of Internal Revenue, if on account of Internal Revenue; to the Treasurer, U. S., if on account of Semi-Annual Duty; to the Commissioner of the General Land Office, if on account of Surveys of Public Lands.

———o———

UNITED STATES SURVEYOR GENERAL'S OFFICE)
Portland, Oregon, Sept. 8, A. D. 1894)

I W. Henry Byars, Surveyor General for the United States, in and for the State of Oregon, hereby report and certify that the Oregon & California Railroad Company has this day deposited with me at Portland, Oregon, a duplicate certificate of deposit No. 1080 dated Sept. 8, 1894, to the credit of the Treasurer of the United States, showing that the sum of $49.21 has been deposited as a cost of survey and $5.53 for office work, and that the said sums are the correct amounts of the cost of survey and office work for the lands mentioned and described as below amounting to 1,386.70 acres being the lands mentioned and described in selection list No. 16, Oregon City District, as shown in said list.

Survey $49.21
Office Work .....$ 5.53

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

W. HENRY BYARS,
Surveyor General.

No.	Description of Tract	Section	Township	Range	Acres
16	SW¼ of SE¼	7	6S	1E	40
	S½ of NE¼	33	8 "	1 "	80
	Lots 1 and 2		10	1 "	40 44
	N½ & S½ of S½	9	12 "	1 "	480
	NE¼ & NE¼ of NW¼	11	12 "	1 "	200
	S½ of NE¼; NE¼ of SE ¼ & Lots 1 and 2	3	10 "	2 "	198 97
	Lot 1	9	10 "	2 "	44 83
	Lots 1 and 2	7	6 "	3 "	66 37
	Lots 1, 2 and 3	19	6 "	3 "	100 95
	Lot 7	7	1 "	1W	17 26
	Lots 4 and 5	11	1 "	3 "	73 56
	Lot 2	7	4 "	3 "	0 42
	Lot 1	9	5 "	3 "	3 90
	NW¼ of NW¼	29	13 "	6 "	40
	TOTAL ACRES.....				1,386 70

Receipt for Survey Fees
List No. 16
Oregon City District
Oregon
O and C. R. R. Co.
Rec'd with letter of Sept. 19, 1894
99315
94 99315—1

———o———

STATE OF OREGON)
) ss.
COUNTY OF CLACKAMAS)

I, Geo. H. Andrews, being duly sworn, depose and say that I am the Acting Land Agent of the Oregon and California Railroad Company; that the foregoing List of Lands, which I hereby select, is a correct list of a portion of the lands claimed by the said Railroad Company as successor of the Oregon Central Railroad Company of Salem, Oregon, as inuring to the said Oregon and California Railroad Company, to aid in the construction of a railroad and telegraph line, and for which a grant of land was made by the Act of Congress, approved July 25th, 1866; that said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of Twenty miles on each side of the line of the route for a distance of One hundred miles, being for a part of the 1st, 2nd, 3d, 4th

and 5th Sections of said road starting from East Portland, and ending at the 100th mile post.

Geo. H. Andrews (SEAL)

Sworn and subscribed before me this
26th day of May, A. D. 1887.

W. T. Burney
Register of U. S. Land Office.

U. S. LAND OFFICE.

Oregon City, Oregon, June 13, 1887.

We hereby certify that we have carefully and critically examined the foregoing List of Lands claimed by the Oregon and California Railroad Company, under the grant, by Act of Congress, approved July 25, 1866, and the acts amendatory thereto, and selected for said Railroad Company, by Geo. H. Andrews, the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of twenty miles on each side of the located line of said road; and that the same are not, nor is any part thereof, returned or denominated as mineral land or lands, nor claimed as swamp land; nor is there any homestead, preemption, state or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress, approved

July 1, 1864, and contemplated by the Circular of Instructions dated Nov. 7, 1879 addressed by the Commissioner of the General Land Office to the Registers and Receivers of the United States Land Offices, and that said Company has paid to the undersigned, the Receiver, the full sum of Seventeen dollars in full payment and discharge of said fees.

W. T. Burney, Register.
B. F. Burch, Receiver.

Noted in Selection
Docket Page 131
A—28 1887

75435 Recd. with June returns.
Selection June 13, 1887.

List No. 16

OREGON AND CALIFORNIA RAILROAD CO LAND SELECTIONS.

Oregon City Land District
1386.70 Acres

Filed May 26, 1887.

Approved June 18, 1887.

Noted in Selection
Docket Page 131
Cromwell

Posted Sept. 12/87
J. G. B.

GOVERNMENT'S EXHIBIT NO. 111-C.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed extract copy of Original List No. 17, of lands selected by the Oregon and California Railroad Company, is a true and literal exemplification from the said list in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

A—28
(1-23) 44,705—1891, Recd. with monthly return.
List No. 17, Granted Limits.

GRANTED LIMITS LANDS,
OREGON AND CALIFORNIA RAILROAD CO.
OREGON CITY, OR., U.S.
Land District.

Noted in Selection Docket Page 131.
Noted May, 1891, M. T. B.

OFFICE OF THE OREGON AND CALIFORNIA RAILROAD COMPANY.

Portland, Oregon, 11th March, 1891.

I, GEORGE H. ANDREWS, Secretary of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, hereby certify that WILLIAM H. MILLS was appointed LAND AGENT of the said Oregon and California Railroad Company, by the Board of Directors of said Company, at a regular meeting held on the 19th November, 1888, and that since that time he has been continuously, and is now, the Land Agent of the said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of the said Company, this 11th day of March, 1891.

GEORGE H. ANDREWS (SEAL)
Secretary of the Oregon and California Railroad Company.

LIST OF LANDS

In the Oregon City Land District, Oregon, Selected by the

OREGON AND CALIFORNIA RAILROAD COMPANY,

Successor to

THE OREGON CENTRAL RAILROAD COMPANY, OF SALEM, OREGON.

The undersigned, the duly authorized Land Agent of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19 and 20, 1868, designating said Railroad Company to receive said grant; and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following List of Selections of public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the said "Oregon Central Railroad Company of Salem,

Oregon," as enuring to it, and to which it is entitled, under and by virtue of the said Act of Congress, and the Acts amendatory thereof, and in virtue of the location of the line of route of the said Railroad.

William H. Mills,
Land Agent Oregon and California Railroad Company.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

WILLIAM H. MILLS, being duly sworn, deposes and says: I am the Land Agent of the Oregon and California Railroad Company. The foregoing List of Lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of an Act of Congress entitled "An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19th and 20th, 1868, designating said Railroad Company to receive said grant. The said lands are vacant, unappropriated, are not interdicted mineral nor reserved lands, and are of the character contemplated by

the granting Act, lying within the limits of twenty miles on each side of the line of route of the said railroad.

WILLIAM H. MILLS.

Subscribed and sworn to before)
this ninth day of March, 1891.)
E. B. Ryan)
Notary Public in and for the City)
and County of San Francisco, California.)

(SEAL)

UNITED STATES LAND OFFICE,)
)
Oregon City, Oregon, 14th March, 1891)

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Oregon and California Railroad Company, and selected by William H. Mills, the duly authorized Land Agent of the said Company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify, that the lands described are surveyed, lie within the limits of twenty miles on each side of the line of route of said Railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, pre-emption, State or other valid claim on file or of record in this office.

We further certify that the said Land Agent has paid to the undersigned, the Receiver, the sum of Thirty-

four and 05/100 Dollars, in full payment and discharge of fees of Register and Receiver on said list, and that the said list has been filed and approved.

Noted in Selection Docket Page 131.

J. T. APPENIN,
Register

B. F. BURCH,
Receiver

UNITED STATES SURVEYOR-GENERAL'S OFFICE,

Portland, Oregon, 13 March, 1891.)

I, W. H. Byars, Surveyor-General for the United States, in and for the State of Oregon, hereby report and certify that the Oregon and California Railroad Company has this day deposited with me at Portland, Oregon, a duplicate Certificate of deposit No. 788, dated March 13th, 1891, to the credit of the Treasurer of the United States, showing that the sum of $110 56/100 has been deposited as a Cost of Survey, and $12 44/100 for Office Work.

I further certify that the said sums are the correct amounts of the Cost of Survey and Office Work for the lands mentioned and described in the List of Lands hereto annexed, to the extent of said list.

Survey	$110.56
Office Work	12.44
	$123.00

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

W. HENRY BYARS,
Surveyor-General

GOVERNMENT'S EXHIBIT NO. 111-D.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed copy of letter and extract copy of original List No. 104, of lands selected by the Oregon and California Railroad Company, are true and literal exemplifications from the said list and letter in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

List No. 104.

GRANTED LIMITS LANDS.

OREGON AND CALIFORNIA RAILROAD CO.

Roseburg, Or., U. S.
Land District.
U. S. Land Office
Received 10 A.M. W.W.T.
Aug. 9, 1907, Roseburg.
Posted Mar 23/08 S.W.M. "O"
M.O.F.

———o———

Transmits List No.104 —Roseburg— 54189
Selections by O.&C.R.R.Co. Received Mar 19 1908

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
March 11, 1908.

The Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir,

I have the honor to transmit herewith, for your consideraiton, List No. 104, of selections by the Ore. and Cal. Railroad Company for the whole of sec. 5, T. 33 S., R. 7 W. The records of this office show the land vacant and subject to entry and the fee is paid. The records

also show the selection is within six miles of a mineral entry and notice for publication is now issued and upon expiration of the period of publication the case will be further reported.

There is also noted upon the records a mineral protest filed by J. T. C. Nash, Nov. 7, 1895, alleging the mineral character of said land and protesting against issuance of patent for the E 1/2 of said Sec. 5. Said protest was transmitted to your office Nov. 13, 1895.

List No. 100, of selections by the said railroad company is suspended pending the final decision in the cases of Cora E. Catching and David Worley against said company and Lists Nos. 101, 102, 103, are now before the Secretary of the Interior on appeal. As all of said lists are now pending before your office we have given the list now transmitetd the next serial number, No. 104.

Very respectfully,

BENJ. L. EDDY,

WWT Register.

OFFICE OF THE OREGON AND CALIFORNIA RAILROAD COMPANY,

Portland, Oregon, July 12th, 1907.

I, W. W. COTTON, Secretary of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, hereby certify that CHARLES W. EBER-

LEIN was appointed Acting Land Agent of the said Oregon and California Railroad Company, by the Board of Directors of said Company, at a special meeting held on the 15th day of September, 1904, and that since that time he has been continuously, and is now, the Acting Land Agent of the said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Company this
(SEAL) 12th day of July, 1907.

W. W. COTTON,
Secretary of the Oregon and California Railroad Company.

———o———

LIST OF LANDS IN THE ROSEBURG LAND DISTRICT, OREGON, SELECTED BY THE OREGON AND CALIFORNIA RAILROAD COMPANY, SUCCESSOR TO THE OREGON CENTRAL RAILROAD COMPANY, of SALEM, OREGON.

The undersigned, the duly authorized Acting Land Agent of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad

Company, of Salem, Oregon, under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19 and 20, 1868, designating said Railroad Company to receive said grant; and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes the following list of selections of public lands claimed by the said Oregon and California Railroad Company as successor and assignee of the said "Oregon Central Railroad Company of Salem, Oregon," as enuring to it, and to which it is entitled, under and by virtue of the said Act of Congress, and the Acts amendatory thereof, and in virtue of the location of the line of route of the said Railroad.

Charles W. Eberlein,
Acting Land Agent Oregon and California
Railroad Company.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco)

CHARLES W. EBERLEIN, being duly sworn, deposes and says: I am the Acting Land Agent of the

Oregon and California Railroad Company. The foregoing List of Lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of an Act of Congress entitled "An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19th and 20th, 1868, designating said Railroad Company to receive said grant. The said lands are vacant, unappropriated, are not interdicted mineral nor reserved lands, and are of the character contemplated by the granting Act, lying within the limits of twenty miles on each side of the line of the route of said railroad.

Charles W. Eberlein

Subscribed and sworn to before me, this thirteenth day of June, 1907.

E. B. Ryan,

(SEAL) Notary Public in and for the City and County of San Francisco, State of California.

UNITED STATES LAND OFFICE,)
(
Roseburg, Oregon, March 11, 1908)

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Oregon and California Railroad Company, and selected by CHARLES W. EBERLEIN, the duly authorized Acting Land Agent of the said Company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify, that the lands described are surveyed, lie within the limits of twenty miles on each side of the line of route of said Railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, pre-emption, State or other valid claim on file or of record in this office.

We further certify that the said Acting Land Agent has paid to the undersigned, the Receiver, the sum of Ten and no/100 Dollars, in full payment and discharge of fees of Register and Receiver on said list, and that the said list has been filed and approved.

BENJAMIN L. EDDY,
Register.

J. M. LAWRENCE,
Receiver.

GOVERNMENT'S EXHIBIT NO. 111-E.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed extract copy of Original List No. 106, of lands selected by the Oregon and California Railroad Company, is a true and literal exemplification from the original list in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

H. W. SANFORD,
Recorder of the General Land Office.

(Seal)

———o———

Lord

U. S. Land Office
Received 11:30 A.M.

Serial No. 01542
Receipt No. 137760
Y

Sept. 28, 1908

Index Jan. 7, 1909.

Roseburg, Ore.

List No. 106.

GRANTED LIMITS LANDS
OREGON AND CALIFORNIA RAILROAD Co.

Roseburg, Or., U.S.
Land District
Posted in V. 2—245 Feb. 5, 1909
SYM O

———o———

Office of the Oregon and California Railroad Company)
)
Portland, Oregon, August 24th, 1908.)

I, W. W. Cotton, Secretary of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company, of Salem, Oregon, hereby certify that HENRY CONLIN was appointed Acting Land Agent of the said Oregon and California Railroad Company, by the Board of Directors of said Company, at a meeting held on the 15th day of June, 1908, and that since that time he has been continuously, and is now, the Acting Land Agent of the said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Company, this 24th day of
(Seal) August, 1908.

W. W. Cotton,
Secretary of the Oregon and California Railroad Company.

LIST OF LANDS IN THE ROSEBURG LAND DISTRICT, OREGON. SELECTED BY THE OREGON AND CALIFORNIA RAILROAD COMPANY, Successor to THE OREGON CENTRAL RAILROAD COMPANY, of Salem, Oregon.

The undersigned, the duly authorized Acting Land Agent of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19 and 20, 1868, designating said Railroad Company to receive said grant; and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the said "Oregon Central Railroad Company of Salem, Oregon," as enuring to it, and to which it is entitled, under and by virtue of the said Act of Congress, and the Acts amendatory thereof, and in virtue of the location of the line of route

of the said Railroad.

HENRY CONLIN
Acting Land Agent Oregon and
California Railroad Company.

———o———

STATE OF CALIFORNIA)
) ss.
City and County of San Francisco)

HENRY CONLIN, being duly sworn, deposes and says: I am the Acting Land Agent of the Oregon and California Railroad Company. The foregoing List of Lands, which I hereby select, is a correct list of a portion of the public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of an Act of Congress entitled "An Act granting land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19th and 20th, 1868, designating said Railroad Company to receive said grant. The said lands are vacant, unappropriated, are not interdicted mineral nor reserved lands, and are of the character contemplated by the granting Act, lying within the limits of twenty miles on each side of the line of route of the said railroad.

HENRY CONLIN

Subscribed and sworn to before me, this twenty-fourth day of September, 1908.

E. B. RYAN

(SEAL) Notary Public in and for the City and County of San Francisco, State of California.

———o———

UNITED STATES LAND OFFICE,
Roseburg, Oregon, September 30, 1908.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the Oregon and California Railroad Company, and selected by HENRY CONLIN, the duly authorized Acting Land Agent of the said Company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify, that the lands described are surveyed, lie within the limits of twenty miles on each side of the line of route of said Railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, pre-emption, State or other valid claim on file or of record in this office.

We further certify that the said Acting Land Agent has paid to the undersigned, the Receiver, the sum of Six and no/100 dollars, in full payment and discharge of fees of Register and Receiver on said list, and that

the said list has been filed and approved.

BENJAMIN L. EDDY
Register

J. M. LAWRENCE,
Receiver

GOVERNMENT'S EXHIBIT NO. 111—F.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed copies of papers and extract copy of original List No. 116, of lands selected by the Oregon and California Railroad Company, are true and literal exemplifications from the originals in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

U. S. Land Office
Received 9 A. M.
Feb. 14, 1910.
Roseburg, Ore.

Serial No. 05901
Receipt No. 348987

LIST NO. 116.

GRANTED LIMITS LANDS
OREGON AND CALIFORNIA RAILROAD CO.
Roseburg, Or., U. S.
Land District.

Feby. 19, 1910. Selection is suspended for conflict with various rejected Hd. applications now pending on appeal before the Commissioner.

BENJAMIN F. JONES
Register.

10/20/11 Posted to tract book Van Do

———o———

$138.00 G. W. R. Serial No. 05901
348987

4—650

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE,
Roseburg, Ore.

The annexed papers were filed by Ore.& Cal.R.R. Co. through B. A. McAllaster, agent, the day and hour *noted thereon.*

Suspended Feby. 19, 1910.

pending the disposition of various rejected Homestead applications now on appeal before the Hon. Commissioner.

NOTICE.

.....190....

I hereby acknowledge due service of notice of the decision in this case and of my right of appeal within 30 days.

.....

By registered letter Feby. 19, 1910.
(Written across the above): Released. Allowed Aug.11,1911.

Appeal filed....., 190....

Benjamin F. Jones, Register.

George W. Riddle, Receiver.

04 11782b2Om2-04

DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE,

Receipt No. 348987
05901

Roseburg, Ore., February 19, 1910.

Mr. B. A. McAllaster,

Land Commissioner, O. & C. R. R. Co.,

Flood Bldg., San Francisco, Cal.

Sir,

The selections by the O. & C. R. R. Co., List 05901 (116) for 10,968.07 acres was received on the 14th inst. and the same is now suspended for conflict with various homestead applications pending the disposition of the same, to-wit, as follows:—

Frank Williams, filed May 29, 1909, for S½SW¼ sec. 1, T. 32 S., R. 3 W.

Alpheus J. Alger, filed Oct. 11, 1909, for SE¼ sec. 1, T. 25 S., R. 9 W.

Charles D. Lash, filed Oct. 18, 1909, for SW¼ sec. 1, T. 25, S. R. 9 W.

John T. Castle, filed Oct. 11, 1909, for SW¼ Sec. 13, T. 25 S., R. 9 W.

Cyrus J. Tibbitts, filed Oct. 11, 1909, for NW¼ Sec. 13, T. 25, S., R. 9 W.

William B. Farrin, filed Nov. 30, 1909, for E½NW¼, W½NE¼, Sec. 23, T. 25, 9 W.

Edward L. C. Farrin, filed Nov. 30, 1909, for E½-SW¼, S½ SE¼, Sec. 23, T. 25 S. R 9 W.

Harry W. Skinner, filed Oct. 18, 1909, for N½SE¼, E½NE¼ Sec. 23, T. 25, S. R. 9 W.

Otto Schetter, filed Oct. 11, 1909, for NW1/4 Sec. 35 T. 25 S., R. 9 W.

Arthur N. Agnew, filed Oct. 11, 1909, for SW1/4 Sec. 35 T. 25 S., R. 9 W.

Calaway W. Garrett, filed Oct. 11, 1909, for NE1/4 Sec. 35, T. 25 S., R. 9 W.

Samuel C. Eggers, filed Nov. 13, 1909, for SE1/4 Sec. 35, T. 25 S., R. 9 W.

All of said applications were rejected and in each case an appeal was taken and these are now pending before the Hon. Commissioner of the General Land Office.

WWT

Respectfully,
BENJAMIN F. JONES, Register.

———o———

U. S. Land Office
Received 9 A. M.
February 14, 1911
Roseburg, Or.

OFFICE OF THE OREGON AND CALIFORNIA RAILROAD COMPANY,

Portland, Oregon, January 24, 1910.

I. W. W. Cotton, Secretary of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company, of Salem, Oregon, hereby certify that B. A. McALLASTER

was appointed Land Commissioner of the said Oregon and California Railroad Company, by the Board of Directors of said Company, at a meeting held on the twenty-eighth day of September, 1908, which appointment was made effective from the twenty-first day of September, 1908, and that since that time he has been continuously, and is now, the Land Commissioner of the said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the said Company, this 24th day of January, 1910.

W. W. COTTON

(SEAL) Secretary of the Oregon and California Railroad Company.

LIST OF LANDS

IN THE ROSEBURG LAND DISTRICT, OREGON SELECTED BY THE OREGON AND CALIFORNIA RAILROAD COMPANY, SUCCESSOR TO THE OREGON CENTRAL RAILROAD COMPANY, OF SALEM, OREGON.

The Undersigned, the duly authorized Land Commissioner of the Oregon and California Railroad Company, successor and assignee of the Oregon Central

Railroad Company, of Salem, Oregon, under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon", approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19 and 20, 1868, designating said Railroad Company to receive said grant; and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the said "Oregon Central Railroad Company, of Salem, Oregon", as enuring to it, and to which it is entitled, under and by virtue of the said Act of Congress, and the Acts amendatory thereof, and in virtue of the location of the line of route of the said Railroad.

B. A. McALLASTER,
Land Commissioner, Oregon and California Railroad Company.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco)

B. A. McALLASTER, being duly sworn deposes and says: I am the Land Commissioner of the Oregon and California Railroad Company. The foregoing List of Lands, which I hereby select, is a correct list of a

portion of the public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company of Salem, Oregon, under and by virtue of an Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon", approved July 25, 1866, and the Acts amendatory thereof, and the Joint Resolution of the Legislative Assembly of the State of Oregon, adopted October 19 and 20, 1868, designating said Railroad Company to receive said Grant. The said lands are vacant, unappropriated, are not interdicted mineral nor reserved lands, and are of the character contemplated by the granting Act, lying within the limits of twenty miles on each side of the line of route of the said railroad.

B. A. McALLASTER.

Subscribed and sworn to before me, this
24th day of January, 1910.

E. B. RYAN

(SEAL) Notary Public in and for the City and County of San Francisco, State of California.

———o———

UNITED STATES LAND AFFICE,

Roseburg, Oregon, August 11, 1911.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the

Oregon and California Railroad Company, and selected by B. A. McALLASTER, the duly authorized Land Commissioner of the said Company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify, that the lands described are surveyed, lie within the limits of twenty miles on each side of the line of route of said Railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, pre-emption, State or other valid claim on file or of record in this office.

We further certify that the said Land Commissioner has paid to the undersigned, the Receiver, the sum of One hundred and thirty-eight ($138.00) dollars, in full payment and discharge of fees of Register and Receiver on said list, and that the said list has been filed and approved.

BENJAMIN F. JONES,
Register.

GEO. W. RIDDLE,
Receiver.

San Francisco, California, January 24th, 1910.

The Oregon and California Railroad Company offers to pay under protest the expense of surveying the lands selected in the within list, because it claims to be exempt from such payment by provisions of the grant

of lands to it by Congress.

B. A. McALLASTER
Land Commissioner of Oregon
and California Railroad Company.

———o———

GOVERNMENT'S EXHIBIT NO. 111-G.

B. DEPARTMENT OF THE INTERIOR
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed extract copy of Original List No. 1—Indemnity—of lands selected by the Oregon and California Railroad Company, is a true and literal exemplification from the original list in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

Indem. No. 1.

List 1 Indemnity, Vancouver Dist.

(1-22) Noted in selection

Territory of Washington.

Docket Page 131.

UNITED STATES LAND OFFICE.

The Oregon and California Railroad Company, Successor and Assignee of the Oregon Central Railroad Company under and by virtue of the Act of Congress entitled "An Act granting lands to aid in the construction of a Railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon, approved May 4th, 1870, and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said Act of Congress, and the location of the line of route of the railroad of the said company; being for Forty-seven miles commencing at Portland, Oregon, and ending at the Yamhill River the selections being particularly described as follows, to-wit:

TERRITORY OF WASHINGTON,)
) ss.
COUNTY OF CLARK,)

I, Geo. H. Andrews, being duly sworn, depose and say that I am the Acting Land Agent of the Oregon and California Railroad Company; that the foregoing List of Lands, which I hereby select, is a correct list of a portion of the lands claimed by the said Railroad Company as successor and assignee of the Oregon Cen-

tral Railroad Company as inuring to the said Oregon Central Railroad Company, to aid in the construction of a railroad and telegraph line, and for which a grant of land was made by the Act of Congress, approved May 4th, 1870; that said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are within the indemnity limits as contemplated by the grant, being within the limits of twenty-five miles on each side of the line of the route for a distance of forty-seven miles, being from a point in the City of Portland, Multnomah County, Oregon, and ending at the Yamhill River in Yamhill County, Oregon, and I further say, that the specific losses for which Redemnity is claimed are truly set forth and described in the foregoing list, and that said losses have not heretofore been indemnified in any manner.

GEO. H. ANDREWS (SEAL)

Sworn and subscribed before me this 20th day of January, 1888.

W. S. AUSTIN,
Register of the U. S. Land Office.

U. S. LAND OFFICE

Vancouver, W. T., March 5, 1888.

We hereby certify that we have carefully and critically examined the foregoing List of Lands claimed by the Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company, under the grant, by Act of Congress, ap-

proved May 4, 1870 and the acts amendatory thereto, and selected for said Oregon & California R. R. Co., by Geo. H. Andrews actg. Ld. Agt. Or. & Cal. R. R. Co., the duly authorized agent, and we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of 25 miles on each side of the located line of said road; and that the same are not, nor is any part thereof, returned or denominated as mineral land or lands, nor claimed as swamp land; nor is there any homestead, pre-emption, state or other valid claim to any portion of said lands on file or record in this office. We further certify that the foregoing list shows an assessment of the fees payable to us, allowed by the Act of Congress, approved July 1, 1864, and contemplated by the Circular of Instructions dated Aug. 4, 1885 addressed by the Commisisoner of the General Land Office to the Registers and Receivers of the United States Land Offices, and that said Company has paid to the undersigned, the Receiver, the full sum of Two Dollars, in full payment and discharge of said fees.

W. S. AUSTIN, Register
JOHN O'KEANE, Receiver

Noted in Selection Docket Page 181.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XI

PAGES 5469-6026

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:

A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:

L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

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Ninth Circuit

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vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XI

PAGES 5469-6026

(1422) Indem. 1
1888—88. 428
A-28 Selection Mar. 5 '88
List No. One Indemnity

OREGON AND CALIFORNIA RAILROAD COMPANY

land selections
Successor to Oregon Central
Vancouver Land District.
40.00 acres.
Filed January 20, 1888
Approved March 5, 1888
Noted in Selection
Docket Page 131
Posted April 17 '88, M. T. B.
W-38428-3

GOVERNMENT'S EXHIBIT NO. 111-H

B. DEPARTMENT OF THE INTERIOR.
MEL GENERAL LAND OFFICE
WASHINGTON

March 11, 1912.

I hereby certify that the annexed copies of papers and extract copy of List No. 11, of lands selected by the Oregon and Central Railroad Company, are true and literal exemplifications from the original list and papers in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

H. W. SANFORD,
(Seal) Recorder of the General Land Office.

———oOo———

Clear Lands made into
Clear List 23—Min. into Suppl. 23

List No. 11.

GRANTED LIMITS LANDS,
OREGON CENTRAL RAILROAD CO.

Oregon City, Or., U. S.
Land District.
Posted Nov. 13, 1895. M. L. M.
Noted in Selection Docket
Page 185.
95 105296 1

———oOo———

General Land Office,
Mineral Division
Nov. 20, 1895

This certifies that the tracts checked in red in Selection List No. 11, Oregon Central—Oregon City dist. herewith, are in proximity to mineral lands and will

require publication.
Approved:

J. E. WRIGHT, Chief of Division. GEO. F. POLLOCK Examiner

OFFICE OF THE
OREGON AND CALIFORNIA RAILROAD COMPANY,

Portland, Oregon.

2nd September 1895.

I, George H. Andrews, Secretary of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company, hereby certify that WILLIAM H. MILLS was appointed LAND AGENT of the said Oregon and California Railroad Company, by the Board of Directors of said Company, at a regular meeting held on the 19th November, 1888, and that since that time he has been continuously, and is now, the Land Agent of the said Company,

In Testimony Whereof, I have hereunto set my hand and affixed the corporate seal of the said Company, this 2nd day of September, 1895.

GEORGE H. ANDREWS
Secretary of the Oregon and
California Railroad Company.

(SEAL)

LIST OF LANDS IN THE OREGON CITY LAND DISTRICT, OREGON, SELECTED BY THE OREGON AND CALIFORNIA RAILROAD COMPANY, SUCCESSOR TO THE OREGON CENTRAL RAILROAD COMPANY,

The undersigned, the duly authorized Land Agent of the Oregon and California Railroad Company, successor and assignee of the Oregon Central Railroad Company under and by virtue of the Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May 4, 1870, and under and in pursuance of the Rules and Regulations prescribed by the Commissioner of the General Land Office, hereby makes and files the following *list of Selections* of public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the said "Oregon Central Railroad Company of Salem, Oregon," as enuring to it, and to which it is entitled, under and by virtue of the said Act of Congress, and the Acts amendatory thereof, and in virtue of the location of the line of route of the said Railroad.

WILLIAM H. MILLS
Land Agent Oregon and
California Railroad Company.

(SEAL)

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO.)

WILLIAM H. MILLS, being duly sworn, deposes and says: I am the *Land Agent* of the Oregon and California Railroad Company. The foregoing *List of Lands,* which I hereby select, is a correct list of a portion of the public lands claimed by the said Oregon and California Railroad Company, as successor and assignee of the Oregon Central Railroad Company, under and by virtue of an Act of Congress entitled "An Act granting land to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May 4, 1870. The said lands are vacant, unappropriated, are not interdicted mineral nor reserved lands, and are of the character contemplated by the granting Act, lying within the limits of twenty miles on each side of the line of route of the said railroad.

Subscribed and sworn to before me this 29th day of August, 1895.
E. B. Ryan,
Notary Public in and for the City and County of San Francisco, California.

William H. Mills

(SEAL)

UNITED STATES LAND OFFICE,

Oregon City, Oregon, Sept. 3rd, 1895.

We hereby certify that we have carefully and critically examined the foregoing *list of lands* claimed by

the Oregon and California Railroad Company, as successor of the Oregon Central Railroad Company, and selected by *William H. Mills,* the duly authorized *Land Agent* of the said Company, and have tested the accuracy of the same by the plats and records of this office, and that we find the same to be correct.

We further certify, that the lands described are surveyed, lie within the limits of twenty miles on each side of the line of route of said Railroad, and that no part of the same is returned or denominated as mineral land, claimed as swamp land, or covered by any homestead, pre-emption, State or other valid claim on file or of record in this office.

We further certify that the said Land Agent has paid to the undersigned, the Receiver, the sum of Four Hundred and twenty-eight Dollars in full payment and discharge of fees of Register and Receiver on said list, and that the said list has been filed and approved.

ROBERT A. MILLER,
Register

Noted in Selection
Docket Page 135.

PETER PAQUET
Receiver

Noted in Div. M. (Form 1—National Banks)

J. W. C.

No. 182

THE FIRST NATIONAL BANK OF PORTLAND,

Portland, Oregon, Sept. 6th, 1895.

I certify that Oregon & California Railroad Co. has this day deposited to the credit of the TREASURER OF THE UNITED STATE, Seventeen Hundred and five 02/100 Dollars on account of Survey Fees $1568.66, Off. Wk. $136.36 on 34091.50 acres of "Lands in Place" of the Or. Central R. R. Co. Selection List #11, Or. Cy. Dist. for which I have signed triplicate receipts.

$1705 02/100 Bk. J. W. NEWKIRK,
Cashier.

(MARGIN)

DUPLICATE.

The Depositor will send this, by the first mail, to the Commissioner of Patents, if the deposit is on account of Patent Fees; to the Commissioner of Internal Revenue, if on account of Internal Revenue; to the Treasurer U. S., if on account of Semi-Annual Duty; to the Commissioner of the General Land Office, if on account of Surveys of Public Lands.

UNITED STATES SURVEYOR-GENERAL'S OFFICE

Portland, Oregon, Sept. 6, 1895.

I, J. C. Arnold, *Surveyor-General* for the United States, in and for the State of Oregon, hereby report and certify, that the Oregon and California Railroad Company has this day deposited with me at Portland, Oregon, a duplicate Certificate of deposit No. 182, dated Sept. 6, 1895, to the credit of the Treasurer of the United States, showing that the sum of $1568.66 has been deposited as a Cost of Survey, and $136.36 for Office Work.

I further certify that the said sums are the correct amounts of the Cost of Survey and office work for the lands mentioned and described in the *List of Lands* hereto annexed, to the extent of said list.

Survey	$1568.66
Office Work	136.36
	$1705.02

In Testimony Whereof, I have hereunto set my hand and official seal.

JOHN C. ARNOLD

(SEAL) Surveyor-General.

GOVERNMENT'S EXHIBIT 112.

Standard
12-11-20000.

Form 3311.

SOUTHERN PACIFIC COMPANY.
LAND DEPARTMENT.

In reply please refer to
No.

Southern Pacific Land Co.
Southern Pacific Railroad Co.
Central Pacific Railway Co.
Oregon & California Railroad Co.
Oregon & California Land Co.

B. A. McAllaster, Land Commissioner,
F. W. Houtz, Assistant Land Commissioner,
Room 801 Flood Building.

San Francisco, Cal.

GOVERNMENT'S EXHIBIT 113.

File No. 388-26.

Received
May 18, 1905

Answered
May 19, 1905.

Land Dep't O. & C. R. R. Co.

J. E. LUTZ,

Real Estate, Abstracts and Fire Insurance.
H. & T. C. R. R. Co. Land Agent.
Farming and Ranch Lands a Specialty.
The only Abstracts of Wilbarger Co.
E. L. McHugh, Abstracter,
Needham Stokes, Stenographer.
Vernon, Texas.

Charles W. Eberlein, May 13th 1905.
Act. Land Agt,
San Francisco, Cal.

Dear Sir:—

I am co-operating with the W. D. Mixter Co. at Junction City, Oregon, in regards to selling Lands and sending in Emigrants into Oregon. They have sent me literature advertising that country and I have got your address out of same. I am Immigration Agent for the Ft. Worth and Denver, Frisco and Houston and Texas Central R. R'ds, and have transportation over their lines. I am the Land Agent for this Locality for the H. & T. C. and Southern Pacific R. R. Lands. I am under C. C. Gibbs at San Antonio.

I attended the Knight Templar Conclave at San Francisco last September and I was well enough impressed with Oregon to want to live there. I intend to change my location this year, and would like to join your crowd selling your lands. I have held my own in Texas for the past twenty years, and have sold more land than any other Agent in this part of Texas. If

you have a place you can use me selling your lands, let me have your proposition.

I would like to have transportation over the Southern Pacific to California and Oregon as I have sent so far this year 25 people to California to live. I have several at this time that are going to California and Oregon prospecting with view of locating. They are mostly Farmers and have Money. If I had transportation I could come out with them over your lines. There will be out of this town this Summer at least a Car Load of People for the Portland Fair. I can route them your way. Let me hear from you at once and oblige,

Yours Respt,

J. E. LUTZ.

———oOo———

File No. 388-26.

APPLICATION TO PURCHASE.

Dictated. May 19,1905.

N.

Mr. J. E. Lutz,

Vernon, Texas.

Dear Sir:

I have your favor of the 13th instant, stating that you would like to act as agent for the sale of railroad land.

As all the land belonging to the Oregon & Cali-

fornia Railroad Company is at present off the market, and the date when sales will be resumed is uncertain, we are not at this time appointing agents.

Yours very truly,

CHARLES W. EBERLEIN—S.

BRB Acting Land Agent.

Received File No. 388-32.

June 24 1905 APPLICATION TO
Land Dep't O. & C. R. R. Co. PURCHASE.

Answered
Jun 27 1905.

H. M. Bartlett,
Attorney at Law. *Practices in all Courts.*
Office over Post Office.
Notary Public in Office.

Muscatine, Iowa. June 20, 1905.

Chas. W. Eberlein,
San Francisco, Cal.

My dear Sir:—

I note you have for sale at favorable terms, a large amount of ground granted to the Oregon & California Railroad Co. There are a number of people in this section of the country who desire to emigrate to almost any place where they can find cheap land; the prices here being too high for them ever to become land owners.

My business is acting as land agent, and I would be pleased to hear from you in reference to your proposi-

tion. Owing to the Exposition being at the coast this year, it is probable that I could get a number of parties to go and look at your land, provided you could show them without me being on the ground. I, of course, could not make the trip with every person I send, although I should try to get a bunch together whom I thought were the surest purchasers and bring them out personally, provided your terms are all O. K.

If you are interested in establishing an agency in this part of Iowa, would be pleased to hear from you.

Very respectfully yours,

H. M. BARTLETT.

——oOo——

File No. 388-32.

BRB

June 27, 1905.

Mr. H. M. Bartlett,

Muscatine, Iowa.

Dear Sir:

Replying to your letter of June 20th, I beg to inform you that the Oregon and California Railroad Company lands are at present off the market, and the date when sales will be resumed is uncertain.

In the meantime no applications to purchase are accepted or filed, and no preference rights granted.

We are appointing no land agents.

Yours very truly,

CHARLES W. EBERLEIN

S

Acting Land Agent.

File No. 388-6.

APPLICATION TO PURCHASE.

Received
Feb. 27 1905

Answered
Feb 27 1905
Circular.

Land Dept' S. P. R. R. Co.

——oOo——

HOMESEEKERS EXCURSION.

Conducted under
Supervision of Immigrant's Information Bureau.
J. Lucos, Manager.

J. Lucos, Manager

Telephone 582 Main. Telephone 1648 Main.

For Southern, Western,
Northern, Pacific Coast
and Canada.

REFERENCES

Northern Pacific Ticket
Office, 208 Clark Street.

C. & N. W. Ticket Office
212 Clark Street, Chicago.

Knight & Marshall
99 Clark Street, Chicago.

S. Crawford & Sons
Lumber Dealers
Cedar River, Michigan.

Davis Lumber Co.
Phillips, Mich.

167 Washington Street

Chicago, Ill. Feb. 20, 1905.

Sir:

Having quite a number of applicants, mostly foreigners, wishing to purchase homes in Western, Southern, Northern, Pacific Coast States, and Canada, we kindly ask you to let us know at once what sort of homes, lots, farms, timber, and mineral lands on your list, and what price for cash and time, and what opportunities there are for man and family to earn a living on the start. State annual debts due taxes on disposing properties, number of lots, section, states, county seat, P. O. address, what property is assessed to, and the leading productions, also main industries in that locality. What commission will you allow us on sales and what time you will give us to dispose of same? We prefer absolute option on all or part of properties that you will be willing to have us dispose of. Also let us know what R. R. rates or homeseekers excursion would be from Chicago to your place.

We prefer to have you send us, if possible, some samples of vegetation, fruit and minerals which will be exhibited in our large lighted room for inspection

to visitors.

We ask big land syndicates, asosciations and R. R. corporations owners of lands, timber and minerals to furnish our representatives accompanying homeseekers excursion with free round trip tickets.

Hoping to hear from you soon, we remain,

Yours respectfully,

J. LUCOS.

Also the same circular letter as above, dated "Chicago, Ill. Dec. 28, 1904." Stamped "Received Dec. 28, 1904.

Land Dep't O. & C. R. R. Co."

File No. 888-84.

Received
July 26 1905
Land Dep't O. & C. R. R. Co.

Answered
Jul 26 1905.

——oOo——

J. H. JASBERG, Pres.
H. HERMANSON, Secy.

A. H. MARKKANEN, Vice Pres.
J. E. PORTHAN, Treas.

FINNISH AMERICAN LAND COMPANY

Capital Stock $100,000.

DEALERS IN FARM LANDS AND CITY REAL ESTATE.

200 Torrey Building.

Duluth, Minn. July 22th, 1905.

Mr. Charles W. Eberlein,

San Francisco, Cal.

Dear Sir:

We are receiving whole lot inquiries about Farming lands in Oregon, and we understand that your company has large amounts of lands for sale in Western Oregon; would you let us handle same on commission, we think we could sell whole lot of your lands.

Hoping to hear from your,

We are yours truly,

FINNISH AMERICAN LAND CO.

By F. H.

File No. 388-84.

APPLICATION TO PURCHASE

Dictated

N.

July 26, 1905.

Finnish American Land Company,

#200 Torrey Building,

Duluth, Minnesota.

Dear Sirs:

I have your letter of July 22, 1905, asking for an agency to sell the lands of the Oregon and California Railroad Company, and I write to advise you that the lands of the Oregon and California Railroad Company

are all off the market.

The date when sales will be resumed is uncertain and we are appointing no agents.

Yours very truly,

CHARLES W. EBERLEIN,

BRB Acting Land Agent.

File No. 388-37.

Received Sep 5—1905
Land Dep't O. & C. R. R. Co.

Answered Sep. 6 1905.

———oOo———

Farms
Fruit Land
Wheat Land
Hop Land
Irrigated Land
Acre Homes
Timber Lands
City Property
Business Openings
Stores, Mills, Factories, Hotels, etc.

FIELD DEPARTMENT
The Gold Reserve Life Association
Mt. Pleasant, Mich.

HOBAN & TAGGART
Oregon State Managers

Any Information concerning Locations Climatic Conditions or Business Propositions Cheerfully given.

Room 12 No. 122½ Grand Avenue.

Stamped:

HOBAN & TAGGART
Room 4, 109½ 6th St.

Portland, Oregon.

Note Change of Address.

Portland, Oregon, September 2, 1905.

Mr. Chas. W. Eberlein,

San Francisco, Calif.

Dear Sir:

We have a large number of inquiries from eastern states, as well as from Oklahoma for farming lands in Oregon. We have already sent several thousand of the circular which has been published by the O. R. N. upon the resources and products of this country, and are getting some very good results from the same. We would like some information from you in regard to the price you have placed upon the railroad land belonging to said Company, terms, etc., as we believe that we can get a large number of people to take hold of railroad lands in this section upon small payments down and long time on the balance.

We would like to make some arrangement with the Company to send parties back in different localities to gather land seekers for Oregon. If we can make such arrangements with you on a commision basis or otherwise or by being appointed as emigrant agents for your lands.

The writer has been personally acquainted with Mr. A. L. Craig, General Passenger Agent for a number of years and can refer you to him.

Kindly give this your attention, giving us all the

5487

necessary information you can on recipt of this letter and oblige.

Very truly yours,
HOBAN & TAGGART.

Dist. AJH

(CARD)

Farm Lands Timber Lands

Hoban & Taggart

Room 4, 109½ Sixth Street, near Washington
Rents and Business Chances

Phone Main 1588 Portland, Oregon.

APPLICATION TO PURCHASE

File No. 388-37

Dictated
N.

Sept. 6, 1905.

Messrs. Harbon & Taggart,
Room 4—109½—6th St.,
Portland, Ore.

Gentlemen:

I have your letter of September 2nd, advising that you have inquiries from the eastern states and Oklahoma for farming lands in Oregon; also stating that you would like to make arrangements with the company to send parties back in different localities to get land seekers together to bring to Oregon, and asking what ar-

rangements can be made on a commission basis for the sale of land.

In reply, I beg to advise you that all of the Oregon and California lands are at present off the market and the date when sales will be resumed is uncertain. In the meantime, no applications to purchase are accepted or filed, and we are appointing no agents to sell lands.

Yours very truly,

CHARLES W. EBERLEIN

LA S

Acting Land Agent.

File No. 388-89.

Received Sep 14 1905
Land Dep't O. & C. R. R. Co.

Answered Sep 14 1905.

Rock Falls, Ill. Sept. 9, 1905.

Charles W. Eberlein,

San Francisco, Cal.

Dear Sir:—

Please to send me information and maps relative to the lands of the Oregon & California Railroad Co. that are being put on the market in Western Oregon.

I want full information with the view of bringing a party of land seekers out there in a week or so. I have at the present time five who are thinking of coming to Oregon to settle but we had thought to take them to eastern Oregon until we saw your notice in some printed

matter that we received from the Union Pacific Co.

What are your terms to agents and rates on transportation?

Yours truly,

R. L. LEITCH.

APPLICATION TO PURCHASE.

File No. 388-39.

Dictated
N.

September 14, 1905.

Mr. R. L. Leitch,

Rock Falls, Ill.

Dear Sir:—

I have your letter of September 9th in which you ask for maps and information relative to lands of the Oregon & California Railroad Company in western Oregon, and state that you are asking this information with the view of bringing a party of land seekers in a week or so, and request terms to agents and rates on transportation. In reply I beg to state that all of the lands of the Oregon & California Railroad Company are at present off the market and the date when sales will be resumed is uncertain. In the meantime no applications to purchase are being accepted or filed. We are appointing no agents.

Our supply of maps relative to this land is exhaust-

ed and therefore I cannot comply with your request for same.

If you would kindly write to Mr. W. G. Neimyer, General Agent, 218 Clark Street, Chicago, Ill., he will be glad to furnish you with information in regard to transportation rates.

Yours very truly,

CHARLES W. EBERLEIN

S

MO. Acting Land Agent.

File No. 388-40.

City Officers: *Mayor of Ponca City* Council:

N. M. Baskett, Mayor,	Lee Dunham
C. B. Baker, President Council	Pete Penny
J. Flem Smith, Clerk	J. J. McGraw
J. M. Hayden, Treasurer	Owen A. Panton
C. D. Brown, Marshal	W. A. Thomas
A. Cohlman, Ass't Marshal	S. H. Shaffer
A. H. Erwin, Police Judge	
Eldon J. Dick, Attorney	
E. L. Hopton, St. Com.	
C. L. Greer, Fire Chief.	

(Answered)
(Sep 19, 1905.)

G. R. Rumney
C. B. Baker

Portland, Oregon, 9/15 1905.

Received
Sep 18 1905

Land Dep't O. & C. R. R. Co.
Mr. Chas. W. Eberlein,

San Francisco, California.

Dear Sir:

I cald on Mr. W. C. Bristol, your aty here, yesterday in regard to your R. R. Lands in Oregon, and he referd me to you. I am sent here representing 50 families or more who wish to come west from Oklahoma to Oregon—while when I left home we had our minds on Government Land, but after a diligent serch through S. E. Oregon, I fail to find anything suitable for us. I think if the write kind of arangements could be made with your People, & your Prices are not to high I could land 150 families for you. Kindly inform me as to your Prices how soon they will be on sale &c &c.

Respecifuly

W. T. SMITH,
Portland O.
care Board of Trade.

File No. 388-40.

Dictated
N.

September 19, 1905.

Mr. W. T. Smith,

c/o Board of Trade,

Portland, Oregon.

Dear Sir:—

I have your letter of September 15th advising that you are sent to Portland, Oregon, in the interest of some fifty families or more, who wish to come west from Oklahoma, and inquiring in regard to the price of Railroad lands, etc. In reply I beg to advise that all of the Oregon & California Railroad Company's lands are at present off the market, and the date when sales will be resumed is uncertain. In the meantime no applications to purchase are accepted or filed and we are appointing no agents.

Yours very truly,

CHARLES W. EBERLEIN

S

MO. Acting Land Agent.

GOVERNMENT'S EXHIBIT 114.

File Bo. 385-1.

Feb. 18, 1904.

Mr. W. H. Mills, Land Agent,

San Francisco, Cal. R.R.B.

Dear Sir:

I enclose notice from Marshfield, appearing in the Oregonian of today. You will see that the law firm of

McKnight & Seabrook have raised the question of the title of the Coos Bay Wagon Road lands, upon the clause in the original grant, in which it cites that the land shall not be sold to individuals other than citizens of the United States, and in tracts not larger than 160 acres and at a price not to exceed $2.50 or less than $1.25 per acre; and in consequence they have induced a large number of persons to make application for the purchase of the lands at the General Land Office, and that they have put up $3,000.00 to try the case.

While this information may not perhaps be entirely true, yet it would seem there is no doubt but that the question may be tried out, and any decision in this case would materially affect, I think, the title to our lands, as both our grants, that is the grant of May 4th, 1870 and July 24th, 1866, contain a similar clause.

I beg to call your attention to this matted, as I deem it of considerable importance.

Very truly yours,

Acting Land Agent.

(7-3-03-2M.)

Form 3704 B.
File No. 385-1.

In applying for land, describe it by Section, Township and Range.

In all correspondence relating to contracts, always give number of contract.

Make all Drafts, Checks, Money Orders,
etc., payable to Geo. H. Andrews, Agent, Portland, Or.

OREGON AND CALIFORNIA RAILROAD
COMPANY LAND OFFICE.

Geo. H. Andrews,
Acting Land Agent.

PORTLAND, OR. Feb, 18, 1904.

Chas. W. Eberlein, Esq.,
Acting Land Rgent S. P. R. R. Co.,
San Francisco, Cal.

Dear Sir:

I beg to enclose herewith a clipping from the Oregonian of today, which may be of interest to you, as it raises the question whether lands of the Coos Bay Wagon Road grant can be sold in larger quantities than 160 acres and at a price exceeding $2.50 per acre. Both our grants have a similar clause to that of the Coos Bay Wagon Road grant, and I am sure that this matter will be of interest to you.

Very truly yours,
GEO. H. ANDREWS,
Acting Land Agent.

File No. 385-1.

TELEGRAM.

Number. Recd from. Time received. Sender. Receiver.
16. HN. M. JR.

San Francisco, Feby 19th, 1904.

George H. Andrews,

Portland, Ogn.

Telegraphic reports yesterday indicate attack on Coos Bay Wagon Road grant, based on provision said to be identical with that in Oregon & California Grant, with minimum charge to actual settlers. This emphasizes necessity of completion of work in taking up defaulted contracts. Push work vigorously and get in all contracts possible before attention is generally called to this provision.

CHARLES W. EBERLEIN.

2.50 PM Filed 2.13 PM.

———o———

2 M 15.
File No. 385.1.

TELEGRAM.

Feb. 19, 1904.

Charles W. Eberlein, 147

San Francisco, Cal.

Replying to your telegram of today. We will push the work as vigorously as possible. Sent you clippings from paper day or two ago referring to same subject.

4.30 P. M. GEORGE H. ANDREWS.

Dictated. WDC File No. 385-1.

February 19, 1904.

Subject: Provisions of Act of Congress fixing sale price granted lands Oregon & California Railroad Company $2.50 per acre to actual settlers.

Mr. Wm. F. Herrin,

Chief Counsel, Southern Pacific Railroad Company,
Building.

Dear Sir:—

I beg to call your attention to the enclosed clipping appearing in yesterday's papers.

As nearly as can be determined from this published report, the Coos Bay Wagon road grant in Oregon appears to be subject to the same limitation as we found in the amendment to the granting Act to the Oregon & California Railroad Company,—directing sales to actual settlers to not to exceed $2.50 per acre.

If I am correct in this supposition, the question is of the greatest importance to our Oregon-California grant.

Would it, in your opinion, be desirable for our company to co-operate in the defense of this attack upon the Coos Bay grant, or should we keep quiet and let them make the fight themselves?

It is a matter wholly of policy, and I realize the necessity of not calling any more attention than is absolutely necessary to the provision in our grant which is already giving us trouble.

If, however, the assault on the Coos Bay grant, for an identical provision with our own, should be successful the application of an adverse decision to our grant would work great harm and injury to us.

Yours very truly,

CHARLES W. EBERLEIN,
Acting Land Agent.

(Newspaper Clipping)

TWO HUNDRED WANT THE LAND

Defective Title to Timber Tract Held by Oregon Company May Open Up Rich Grant.

Marshfield (Or.) February 17.—The discovery by a local law firm of a defect in the title to a large tract of land known as the Coos Bay wagon road lands, held by a corporation known as the Southern Oregon Company, has caused the filing of 200 applications for quarter sections on that tract which is one of the most valuable pieces of timber lands in the Northwest.

It is claimed that this immensely valuable tract of timber is held in trust by the Southern Oregon Company for the people, the clause in the original grant to the State of Oregon from the Federal Government being operative in which it recites that the land shall not be sold to individuals other than citizens of the United States and in tracts not larger than 160 acres and at a price not to exceed $2.50 or less than $1.20. This land has always been held as a whole by the corpora-

tion and upon this point hinges the fate of the 200 applicants for the land.

Intense excitement prevails as a result of the disclosures regarding the title. This company has persistently refused to sell a foot of land to settlers at any price. The applicants have subscribed $3000 for the purpose of fighting the suit which is to be instituted by the Southern Oregon Company.

———o———

File No. 385-1.

Dictated. February 20, 1904.

Hon. W. D. Cornish,

Vice President, Union Pacific Railroad Company,

120 Broadway, New York.

Dear Sir:—

I hand you copy of letter written to Mr. Herrin on the subject of the $2.50 limitation, sales to actual settlers in the grant to the Oregon & California Railroad Company.

The matter is going to come to a head without any action on our part.

I inclose copy of the printed reports on the subject.

I have advice from Oregon that there is considerable excitement, and undoubtedly we shall be obliged to defend ourselves vigorously.

I wired Mr. Andrews, as per copy inclosed, to keep to work vigorously with his defaulted contracts, so as to save us as much trouble as possible.

I will take this matter up with you when I see you.

I leave tomorrow night.

Yours very truly,

CHARLES W. EBERLEIN.

Inc. Acting Land Agent.

Box 1 Adverse claims & title matters.

SOUTHERN PACIFIC COMPANY

Department. File No. 385-1.

Wm. F. Herrin, Chief Counsel.

2 San Francisco, Cal.

February 24th, 1904.

SUBJECT: Application to purchase Coos Bay Wagon-road lands.

(Received)

(Feb 24 1904)
(Land Dep't S. P. R. R. Co.)

Mr. Charles W. Eberlein,
Acting Land Agent S. P. R. R. Co.,
Building.

Dear Sir:

According to the newspaper clipping received with

your letter of the 19th instant, about two hundred persons have applied to purchase a quarter-section of land each from the Southern Oregon Company, owner of the Coos Bay Wagon-road grant, at (presumably) two dollars and one-half per acre; which land, according to the clipping, the Southern Oregon Company refuses to sell. Your letter suggests that the decision of the cases thus presented may have weight, as precedent in authority, in event a corresponding provision to that relied on by the applicants, in the Act of April 10th 1869 (16 Stat. 47) relative to our Oregon & California grant, is brought to court for construction.

The provision relied on in the Coos Bay Wagon-road grant (15 Stat. 340) is:

"Provided further, That the grant of lands hereby made shall be upon the condition that the lands be sold to any one person only in quantities not greater than one-quarter section, and for a price not exceeding two dollars and fifty cents per acre."

The corresponding provision in the Oregon & California Act of April 10th 1869, is:

"And provided further, That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter-section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

As the Coos Bay Wagon-road grant contains no requirement that the Company sell the lands of its grant at all, it is not clear to me how the applicants expect to

compel conveyances to themselves of lands that Company does not want to sell; and this is equally applicable to similar applications to purchase Oregon & California lands.

By letter dated the 18th instant, Mr. W. D. Fenton called my attention to the matter—inclosing copy of a letter from himself to Mr. E. B. Seabrook, attorney for the applicants, asking the course of procedure he intends to take to enforce the applications.

I have written Mr. Fenton to keep in touch with the proceedings, and to tender our aid to the Wagon-road Company.

Very truly yours,

WM. F. HERRIN.

GOVERNMENT'S EXHIBIT 115.

File No. 415.

Dictated. August 11, 1905.

Mr. D. A. Chambers,

McGill Building, 908 G. St., N. W.,

Washington, D. C.

Dear Sir:—

I found it necessary to wire you today as follows:

"Will Mr. Chambers or Mr. Bloss advise by wire whether land grants by Congress may be transferred to assignee or grantee, giving such the right to make and

file primary and indemnity selection lists in its own name and receive patent to itself. Local land office records in Oregon show California and Oregon Land Company as successor to Oregon Central Military Road Grant selected lands in Section 7, Township 20 South, Range 1 East, W. M., list No. 8, October 12, 1903, received patent therefor December 5, 1903. Did it require act of Congress to vest such Land Company with right to make selections in its own name and receive patent. If not, what does department require in such case. Has California and Oregon Land Company right to make indemnity selection in its own name."

Thinking that perhaps you had gone or were about to go on your vacation, I included Mr. Bloss' name as I think there is nothing in this telegram which he could not answer, and I did not desire that you should be delayed or annoyed by this telegram.

Mr. Harriman arrived here today and, of course, things are very busy around these parts.

I have been asked to get at once the information suggested in this telegram.

Long before you receive this letter I shall have received your reply, and I merely wish to explain that what I wish to know is what is the practice regarding transfers of grants made by Congress for railroad purposes, such as Southern Pacific, Oregon & California, etc. Particularly grants having indemnity rights.

I wish to know if a railroad company holding a grant can transfer the same, and if so will its transferee or

grantee be clothed with all the powers conferred by the original charter and be authorized to make selection lists in its own name as such assignee and to receive patents as such, both for primary and indemnity.

I wash particularly to be advised whether it requires any act of Congress to transfer such rights, and if not what it is the department requires in the premises.

Yours very truly,

CHARLES W. EBERLEIN,

JRH. Acting Land Agent.

———o———

D. A. CHAMBERS File No. 415.

Attorney,

McGill Building, 908 G. Street, N. W.

Washington, D. C. August 12, 1905.

Received (Copy
Aug 17 1905 Mail to Mr. Eberlein).
Land Dep't O. & C. R. R. Co.

TELEGRAM:

Charles W. Eberlein,

Acting Land Agent Southern Pacific R. R. Co.

San Francisco, California.

(Cipher)

Translation of cipher telegram Aug. 12, 1905, to C. W. Eberlein:

Your telegram eleventh inst. Land grants may be

transferred by filing evidence thereof in General Land Office. When such evidence is accepted as satisfactory by Land Department, transferee acquires rights of its grantor. No Act of Congress required. Such satisfactory evidence having been filed by California and Oregon Land Company it, as successor of Oregon Central Military Road Company has right to select lands and receive patents in its own name.

D. A. CHAMBERS.

———o———

File No. 415.

TELEGRAM

San Francisco, August 10, 1905.

Mr. B. A. McAllaster,
Land Commissioner,
Union Pacific Railroad Company, Omaha, Neb.

Will you please advise very briefly by wire whether Union Pacific Land Company selects land for patent, or whether same is done through Union Pacific Railroad Company. If so, how was right to select transferred? Did it take act of Congress to vest in Union Pacific Land Company all the rights granted in act of Congress making grant of lands to Union Pacific or Kansas Pacific Railroad Company. Has Union Pacific Land Company exercised any right of indemnity selection.

CHARLES W. EBERLEIN.

Received RUSH File No. 415.

Aug 11 1905

Land Dep't S. P. R. R. Co. TELEGRAM.

57. U. BT. ON. 7:45 a. m. Omaha Aug 11 '05.

C. W. Eberlein,

1035 Mer Exchange Bldg, San Francisco, Calif.

The U. P. Land Company makes direct selection of its lands for patent and not through U. P. railroad company. It did not take act of Congress to vest title in the land company. The foreclosure of the K. P. Railway Company's consolidated first and Denver Extension mortgages, under which the granted lands were purchased by the Union Pacific Land Company, was recognized by the interior department as vesting the tille in the land company and patents thereafter issued direct to the land company. The land company has not exercised the right of indemnity, but could do so if it were necessary.

B. A. M'ALLASTER.

9:25 a. m.

(Copy) File O. & C. No. 415.

Dictated *Personal* August 11, 1905.

Mr. A. B. McAllaster,

Land Commissioner, Union Pacific Railroad Company, Omaha, Nebraska.

Dear Sir:—

I wired you yesterday asking for information regarding the means by which the Union Pacific Land

Company obtained control of the old Kansas Pacific grant and whether it made selections in its own name and received patents to itself on such selection lists.

I have your very prompt telegram this morning giving me the information desired, for which I am very much obliged.

X X X X

Yours very truly,

JRH. (Signed) CHARLES W. EBERLEIN.

Box 1 Adverse claims & title matter.
File No. 415 O. & C.
Dictated. August 16, 1905.

Mr. Peter F. Dunne,
General Attorney,
Southern Pacific Company,
Building.

My dear Mr. Dunne:

I beg to hand you telegraphic correspondence regarding the transferring of railroad grants made by act of Congress. I think the telegrams explain themselves.

While the Union Pacific Land Company does not furnish a case exactly in point, I think that the transfer of the Oregon Central Military Road Grant to the California & Oregon Land Company does.

The Union Pacific Railroad Company and the allied lines, namely, the Kansas Pacific Railway Company, went into the hands of a Receiver. Mortgage was foreclosed by the United States, and the *lands in*

Kansas granted to the old Kansas Pacific Railway Company were bought in by the Union Pacific Land Company.

The substitution in this case is complete, and the Union Pacific Land Company makes its own selection of lands formerly granted to the Kansas Pacific Railroad Company and receives patents to the Union Pacific Land Company direct.

My telegram to Mr. Chambers states the facts regarding selections by and patents to the California & Oregon Land Company of lands originally granted by Congress to the Oregon Central Military Road Grant.

Mr. Chambers has undoubtedly looked this matter up. He makes no citation to department decision, but I think this matter can be brought about by conference with the officials at Washington, who are just now inclined to be friendly to us.

I think, however, that all arrangements should be made, and then the matter taken up with them,—personally, and not by letter.

If this matter once gets into the ordinary grind of the Interior Department, it may be months, or even years, before we can pull it through.

Please accept my assurance that I am at your disposal at all times in helping through this somewhat complicated, but I think altogether hopeful deal.

I go to Portland tonight, to be gone for some days;

but in case you need me I will try to hasten my return.

Yours very truly,

CHARLES W. EBERLEIN,

RCY. Acting Land Agent.

Inc.

GOVERNMENT'S EXHIBIT NO. 116

Portland, Oregon, August 23, 1907.

INFORMATION RECEIVED FROM DAVID LORING

Mr. Loring went to work for the Oregon & California Railroad Company on March 4, 1882, in the engineering department; shortly after, he went into the right-of-way department, and worked in these two departments until the fall of 1884. Mr. Schulze had resigned as land agent of the O. & C., and Mr. I. R. Moores had recently died. The Board of Directors and the Farmers Loan & Trust Company were unable to agree upon a land agent, and the Board made George H. Andrews acting land agent, in which capacity he served until 1904. Shortly after, Mr. Andrews was made acting land agent, Mr. Loring was assigned to work in the land department, commenced his duties as such in the fall of 1884 or early in 1885, and served in that capacity until Mr. Andrews retired. During this time, Mr. Loring had general charge of the office work, conducted many of the investigations for the sale

of lands personally, and in a general way had charge of the records of the office, all subject, of course, to Mr. Andrews. Mr. Loring personally wrote and prepared most of the deeds executed during the period he was so employed.

At the time Mr. Loring entered the land department, Mr. Andrews had full charge subject to General Manager Koehler and President Villard, and this condition continued until after the Southern Pacific Company secured the road; in other words, the land department matters were entirely within the control of men who represented the Oregon & California Railroad Company. Shortly after the Southern Pacific secured the road, a general land department of all Southern Pacific lines was established at San Francisco, and William H. Mills was made land commissioner. He had charge of the railroad lands of all of the companies then controlled by the Southern Pacific system. Mr. Madden had direct charge of either the old Southern Pacific or the Central Pacific, subject to Mr. Mills who gave but little personal attention to those lands.

After Mr. Mills was appointed land commissioner, the general policy concerning lands was dictated from San Francisco by Mills or frequently, by Mr. Huntington himself. Mr. Huntington did not have full control of the Southern Pacific at the time it acquired the Oregon & California. There was considerable of a struggle for the control of the road for a few years.

The land department was maintained in this general

manner until sometime in 1902, when Mr. Eberline was sent out as the representative of Mr. Harriman, or so it was generally understood. Mr. Eberline immediately began a thorough investigation of the entire records of the land department. Shortly after Mr. Eberline took charge, he ordered the sale of all timber lands to stop, and but few sales of any lands were made after that. Most all of the land in the grant had more or less timber on it at that time. There was but a few straggling sales made after Mr. Eberline stopped the sales.

At the time Mr. Loring went into the office, a considerable part of the lands were graded,—Mr. Loring now thinks a large part of the lands that had been patented were graded,—he is not certain as to the quantity —but the grading was indicated by pencil notations on the plats in the office, these notations simply consisting of prices. There had been some cruising before that time, but only of small parts of the grant. Mr. Moores had been connected with the land department from the start, and he was very well acquainted with the land generally throughout the valley, and Mr. Loring thinks that a large part of the grading was made upon his individual judgment. After Mr. Andrews and Mr. Loring went into the land department, they found frequent instances where the lands were rated too low, and as a result, Mr. Andrews and Mr. Loring began grading the lands up to actual value so far as known, and this policy continued during all of the time Mr. Loring and Mr. Andrews were in the office. Their uniform policy was to ascertain the reasonable value of lands,

and set the price accordingly.

Mr. Loring says that always during the time he was in the office, the lands were sold at as high a price as could be obtained, and to any person who applied to purchase and would pay the price, and of as large a quantity as desired. Mr. Loring does not remember that the company ever refused to make a sale because of the provisions of the act of 1869 or of the act of 1870. For that matter, Mr. Loring does not remember that any one else than the man in Washington ever contended that he had a right to purchase under that Act. This case in Washington was in 189— sometime. Mr. Arthur C. Emmons, who is now practicing law in Portland, with offices in the Chamber of Commerce Building, was attorney for the defendant in that case, and probably remembers it thoroughly.

Mr. Loring says that it is possible that the question of the rights of actual settlers was discussed in some way at the time the quadrant suit was started, and that Judge Williams, who was attorney for the settlers, might know; or perhaps Mr. Galvani knows. Mr. Galvani at that time lived at Forest Grove. He is now head draftsman for the Oregon Electric Co., the electric line now being constructed to Salem.

From the time Mr. Loring first went to work in the land department until sometime after 1890, there was very little demand for timber lands, and most of the sales were made to people who were farming the adjoining lands or to new settlers coming in, and during this time

the actual value of a large part of the grant, so far as the then market price controlled, was really not more than $2.50 an acre, and a great deal of land was sold at prices not above $2.50; but during this same time, the sales of the better known and higher priced lands in the more thickly settled part of the valley were sold by Mr. Andrews and Mr. Loring at their actual value so far as known, as above stated. The outlying lands were in the midst of Government land, still vacant, and the Government price naturally controlled the market price of the adjoining lands. In the valley lands were sold as high at 6, 8, 10, and even $15 an acre, always according to value. When a person applied to purchase there was no effort made to ascertain if he was a settler on the land, nor the use which he intended to make of the land, nor whether he had previously purchased any lands which would exceed 160 acres added to the new purchase. There never was any attempt to ascertain whether the land sought to be purchased was susceptible of settlement. The only cruising or grading done was simply to ascertain the value of the land.

The cruisers and land examiners made notes as to the general character of the land with reference to soil and sub-soil, and as to whether the land was agricultural or grazing or timber land, but this was simply to assist in fixing the value of the land, rather than in restricting sales to actual settlers. There never was any policy of restricting the sales of even the agricultural lands to actual settlers, so far as Mr. Loring knows. All lands were sold alike, so far as the general policy was con-

cerned, to any purchaser, in any quantity, and at the highest price obtainable.

Down to 1890, there was no general demand for timber lands, and they had no such value as they have today. From 1890 to 1900, the demand for these lands increased very rapidly, and the value increased accordingly, and it was during this period that nearly all of the large timber land sales were negotiated. Before these large sales began, the general indications were that there was going to be a demand for timber lands, and that eastern buyers would be making purchases of them, and the office in anticipation of this condition, had the timber lands cruised as rapidly as possible. In this way the land department endeavored to take advantage of all market conditions for the purpose of increasing the revenues from the sales of the lands. Nearly all of the large sales were negotiated after 1890, with the exception of the sales to the bondholders in 1872-3-4.

The land business in every way was more vigorously and effectively handled after the Southern Pacific acquired the road. The principal reason for this was that before that time, the Oregon & California Railroad Co. had no money to exploit the land business, but after the S. P. acquired control, cruisings were made and no efforts spared to exploit the land business and develop and obtain as high values as possible, and this policy was persistently pursued until Mr. Eberline's time, when he stopped sales altogether.

Patents to indemnity and lien lands were delayed

on account of the manner in which the work was done in the General Land Office. Mr. Loring says that many indemnity selections were pending when he went into the office, and that many more were made by him shortly after he went into the office. The lands in the place limits were not selected so rapidly because the company knew in a general way what it had there, *and it was the policy of the company to avoid selecting as long as possible, in order to keep them off the tax rolls.* But indemnity selections were made as rapidly as surveys would permit, because a great deal of land was being lost. The place limit lands were not selected until required in a general way, first, to avoid the fees, *and second, to avoid taxes.* The Oregon & California R. R. Co. was always short of funds. After the Southern Pacific secured control selections were made of everything as rapidly as possible, and it was after this time that a large part of the place limit lands were selected. The fees for selections amounted to considerable, being $2 for each quarter section, so that while the indemnity selections were made as rapidly as possible to avoid losses, place selections were, during the years of financial adversity, delayed as long as possible.

Place lands were sold before patented, and even before acceptance of selections in a few instances where there was no doubt that selections would be approved. Mr. Loring does not remember to what extent this was done during his time, but he knows that it was done with very little restraint by Messrs. Moores and Schulze, and that a great many complications arose and had to be

straightened out during the time of Mr. Andrews and Mr. Loring.

Mr. Loring has been over a large part of the land in lower Douglas and in Josephine and Jackson counties while right-of-way agent and also on outing trips. He says that there is a large amount of land which is available for grazing and for fruit and grapes; that in that general locality fruit and grapes will grow to the best advantage, even in the mining country; that grapes seem to do best on mining soil. Mr. Loring finds it difficult to make a satisfactory estimate of the quantity of land available for agricultural purposes. There are quite large tracts all of which will be available for growing fruit and grapes, and then again, large tracts wholly unfit for any such use. Then again the largest part of the land consists of quarter sections containing land of both characters. Mr. Loring thinks the best estimate he can give would be that from 60 to 75% of all of the quarter sections remaining in the land grant, and for that matter, the even numbered sections as well, south of Roseburg, contain from 6 to 12 acres or more which can be devoted to the growing of fruit and grapes, and the balance of the quarter section can be used for grazing, and in this way the land could be used by settlers. Mr. Loring calls attention to the fact that nearly all of the timber land after the timber is removed can be seeded to timothy and grow excellent crops for grazing, and that this can be done without removing the stumps. Mr. Loring says that the quantity of land available for fruit and grapes will be greatly increased if irrigation pro-

jects are installed.

Mr. Loring remembers specifically most of the large sales to Hammond, Kelly, and the Curtiss Lumber Co.

There were hundreds of contracts forfeited at various times. There used to be a book in which all of these cancellations were recorded, but Mr. Loring thinks this book was probably destroyed in the San Francisco fire.

Mr. Loring says that the Booth-Kelly people have right from the first considered their lands as possessing a substantial value, after removing of timber, for grazing purposes, and that this subject was discussed by them on various occasions with Mr. Loring himself. In these conversations, Mr. Kelly referred to the value of the lands for grazing and other purposes after timber was removed.

The sale maps published by the company were revised from time to time, generally every two years or so. Mr. Loring attended to a large part of the corrections. At the time Mr. Eberline took charge the publication of the maps was stopped, and that explains why they are so rare today. The Southern Pacific people looked after the printing of maps because they could get the work done cheaper than the O. & C. had before paid Rand & McNally. This shows to what extent the Southern Pacific dictated the policy of the O. & C., including the land department.

Mr. Loring says that the upper end of the Willamette Valley and the Umpqua and Rogue River Valleys were in a general way taken up under the donation

laws long before the railroad grant, and that the land taken up in this manner was almost as much in quantity as now appears on the railroad map. That there was more land lost in place limits than all of the indemnity lands, so that even if the company had gotten all of the lands within the indemnity limits, it would still have lost a part of the grant.

Because of the existence of minerals in Jackson and Josephine counties, the company had all indemnity lands examined before selecting, and no selections were made of lands reported to be mineral. It is a fact that nearly every odd section was selected, but they were reported to be non-mineral before they were selected. It is also a fact that afterwards where minerals were discovered, such lands were sold as mineral lands after being patented. All contracts and deeds of lands in those counties reserved minerals, unless the existence of minerals was known and conceded by the purchaser and he bought and paid for the lands as mineral lands, in which case until about the year 1900, the minerals were not reserved. (Stopped selling minerals 1902).

Mr. Elliott probably knows as much as any person about the character of the lands now remaining in the grant. He worked as a cruiser for the company for many years.

It was understood when sales were made to men like Kelly, Hammond and Wentworth, that they were buying land principally for the timber and with no intention of settling upon it or of having others settle, in fact,

the value of the lands for timber was the principal basis of negotiations as to price.

Deeds accumulated from time to time in the office which were never delivered, because the parties never called for them, and we were unable to locate them. When all of the records were sent to San Francisco, these undelivered deeds were included among the papers sent, unless perhaps they were retained by Mr. Cotton. My recollection is that there were three or four, or possibly a half a dozen of the deeds way back during the time they were executed by Latham and Atherton, and other deeds accumulating from that time on down. There were perhaps 75 of these deeds which had accumulated down to 1902. These deeds, of course, would not appear in the public records.

Ainsworth, Ralston and Rathborn were the three old bondholders who exchanged bonds for lands in the early history of the company.

The "East Side" and "West Side" lands were all handled alike, excepting that down to 1897 they were authorized in separate lists, but after that time, the lands of both grants were included in the same serial numbers.

The manner of preparing schedule of deeds to be executed was as follows:

On the 1st of each month, all contracts fully paid up were included in a schedule prepared by myself, which was furnished to Mr. Andrews, and he prepared the schedule which was adopted at the directors' meeting. When the schedule was adopted by the Board of Direc-

tors and deeds authorized, the schedule was then handed to me, and I prepared deeds pursuant to the form prescribed by the resolution and by the contract. I then handed them to Mr. Andrews, who executed them as Secretary and sent them to Mr. Koehler who executed them as Second Vice-President. If the deeds required signature of the Union Trust Co., Mr. Koehler then sent them to the Union Trust Co. with proper letter on the subject, and when they were returned by the Union Trust Co. executed, they were sent to the Land Department for delivery. The deeds which did not require execution by the Union Trust Co., were delivered to the Land Department as soon as Mr. Koehler executed them.

Mr. Loring, immediately upon receiving the deeds, finally executed and ready for delivery, notified the grantees at their residences as the same appeared in the records of the company by postal cards. It was one of the requirements of the company that the purchaser should surrender their contract or paid up certificate, if one had been delivered to them, before the deed wonld be delivered, and the postal card advised them of that fact.

The decision in the Steel case was construed by the railroad company and conceded by the Union Trust Co. to mean that any lands which were subject to pending contracts on May 12, 1887, were not covered by the Union Trust Co. mortgage; and it was further construed by both of the parties that if any contracts executed prior to May 12, 1887 were at any time after-

wards cancelled, the lands reverted to the railroad company, but did not become subject to the Union Trust Co. mortgage, and these lands were called "non-trust" lands, and the deeds for them were later given a serial number with the initials "N. T." This applied to both grants.

There was a separate book kept containing all cancellations. I am not at all certain as to the number of these cancellations, but it seems that the number exceeded 2,500 during the entire history of the railroad. The first big batch of these cancellations was in 1885 and 1886, during the receivership, when all of the affairs of the company relating to the lands were adjusted in a general way. Notice was given to all delinquent purchasers to pay up, and those who failed to pay up, were subjected to forfeiture. This accounts for the unusual number of deeds executed during 1885, because people came in and paid up their old pending contracts. Referring to the statement above that surrender of contracts was required before delivery of deeds; the company made it a practice to require an indemnity bond in case the contract had been lost and could not be surrendered.

Mr. Loring thinks that the contract with the Pokegama Company in November, 1902 was pursuant to a former contract entered into several years prior, by the terms of which it was provided that if a certain railroad should be constructed, the Pokegama Company should be entitled to select and purchase a specified quantity of land and at a specified price, and that this contract

was entered into after Eberline had really stopped sales.

In some cases lands which had been sold under contract were sold for taxes in the different counties, the company not paying the taxes on contracted lands at first. When the railroad company afterwards forfeited these same contracts, the lands reverted to the company, but subject to these tax titles, and this is the cause of the only uncertainty as to the quantity of lands held by the company at the time Eberline took charge. Redemption was made from these tax sales wherever they were discovered, and one of the first things that Eberline did was to check the entire grant, and make provision for getting rid of the tax titles standing against it.

W. W. Bretherton was tax commissioner for the company for 18 years until Eberline took charge. Bretherton is still in Portland and in the employ of the S. P. Company as colector of freight bills or some similar capacity. He is a brother of C. E. Bretherton, the English lawyer who re-organized the company for Villard in 1881.

Mr. Loring's recollection is that none of the indemnity lands were sold prior to patent during his time, but that the primary lands were sold before patent.

In the southern part of the grant, the Land Department waited until the lists were proved before placing the lands on sale, and in most cases until patent was actually issued. It is a fact that a large part of the lands in the southern part of the grant were never offered for sale as low as $2.50 per acre. A large part of them were cruised before the company's title became

assured sufficiently to be put on sale, so that when they were first put on sale, a price in excess of $2.50 an acre was asked for them.

GOVERNMENT'S EXHIBIT NO. 117

State of Oregon)
) ss.
County of Douglas)

Irvine P. Gardner, being duly sworn, deposes and says; His postoffice address is Myrtle Creek, Oregon; he is 37 years of age, occupation surveyor and cruiser. That he lives on a homestead in Sec. 18, Twp. 28S R 3 W, W.M. That he is Manager for the Neenah Oregon Land Company in Oregon. That he has lived in Oregon five years, and in Douglas county the same length of time. That at various times prior to coming to Oregon he worked for the Government in the state of Minnesota having charge of the appraisal and surveying of Indian land under G. L. Scott, Maj. 10th Cav. retired, U. S. A. and simon Michelet, U. S. Indian Agent, that this employment covered a period of about three years and was principally on the Leech Lake and White Earth Indian Reservation. That since coming to Oregon he has been engaged in estimating and buying timber.

That he is familiar with, and has been over repeatedly the South Umpqua Country, being township 28S R 4W; Twp 29S R's 1, 3 & 4 W; Twp. 30 S, R's 1, 2, 3, 4 and 5 W; Twp. 31S, R's 1, 2, 3, 4 and part of 5 W that part of twp. 32S R's 1, 2 and 3W north of the

Rogue River Divide in Douglas county. That from his knowledge of said area it is his judgment that one third of same is agricultural in character, and the balance largely grazing land. There are now thousands of cattle and sheep annually grazing on same.

That he is also familiar with and has repeatedly been over part of the North Umpqua country, being twp. 27S R 3 W; part of twp. 28S R 3 west; part of twp 28 S R 2 W; twp. 26S R 2W in part. That the above area, in affiant's judgment, would run one third agricultural land and two thirds, or the larger part of two-thirds, grazing land.

That affiant is not an intervenor in the suit of the U. S. vs. the O & C R.R.Co. and knows of no one who applied to purchase land of said company and was refused prior to Sept. 4, 1908.

That affiant believes if said areas above described were sub-divided into 160 acre tracts, the same percentages would obtain on an average per 160 acre tract.

IRVINE P. GARDNER

Subscribed and sworn to before me this 15th day of March 1912.

LEONARD UNDERWOOD

Special Agent G. L. O.

GOVERNMENT'S EXHIBIT NO. 118.

Portion of newspaper "Coos Bay Times", printed and published at Marshfield, Oregon, containing purported photographs of lands, industries etc., of Coos County, Oregon.

This exhibit is not printed, but certified up, under order of Court..

GOVERNMENT'S EXHIBIT NO. 119

State of Oregon)
)ss.
Co. of Polk)

N. V. Fuller being first duly sworn deposes and says that his residence and post office address is Dallas, Oregon where he is engaged in the Drugstore business and where he has lived for eleven years and affiant further says that for 7 years he followed cruising and land locating in Ts. 7, 8 & 9, S.-R's. 6, 7 & 8 West and is familiar with said lands and with their character. At this time, the greatest value of these lands generally speaking is for its timber although much of it would be valuable if cleared, for general farm purposes including fruit, dairying & grazing purposes.

And affiant further says that on June 11, 1907 he made an application to the Oregon & California R. R. Company to purchase the SE¼, Sec. 31, T.8 S, R.7 W. W.M., in Polk Co. Oregon, which said application was declined and said R. R. Company refused to recognize or consider the application in anyway.

W. V. FULLER

Subscribed & sworn to before me at Fuller Drug Store in Dallas Ore. this 9th day of March 1912.

E. S. FOLEY
Spl. Agent G. L. O.

GOVERNMENT'S EXHIBIT NO. 120.

State of Oregon :
:ss.
County of Jackson :

I, W. G. Grieve, a citizen of the United States, 35 years of age, residing at Jacksonville, Oregon, where I am County Assessor of Jackson County, Oregon, being duly sworn, depose and say:

I have been county assessor for about three years last past. I have lived in Jackson County, Oregon, for the last twenty-four years; and prior to becoming county assessor, I spent about seventeen years in the stock business, and about four years in locating people on government land. During my residence in Jackson County, I have lived at Central Point, Prospect, Jacksonville, on Little Butte Creek, on Big Butte Creek, and elsewhere. I have ranged cattle in almost all the out districts of said county; and through ranging cattle, locating people on lands, hunting, performing the work of county assessor, etc., have become very familiar with the lands in all parts of said county.

I have had experience in farming; and by having lived most all my life in farming communities, have be-

come familiar with agricultural conditions, particularly in said Jackson County, Oregon.

I am very familiar with the lands now owned by the railroad in the following described townships; and I estimate the number of quarter sections thereof which are suitable for settlement purposes, that is, which would support a family, at the percentages stated below:

Those which drain into Trail and Elk Creeks and the upper Rogue River, namely, Tps. 32 S. Rgs 1 W. and 1 & 2 E. W. M.; Tps 33 S. Rgs 1 W. and 1, 2 & 3 E. W. M.; Tps. 34 S. R. 1 W. & part of 1 E. & 35 S. Rgs. 1 W. & 1 E.....20%

Those which drain into Big Butte Creek, namely, T 34 S. Rgs 2 & 3 E & part of 1 E; Tps 35 S. Rgs 2 & 3 E; & parts of T 36 S. R. 3 E.....40%

Those which drain into Little Butte and Antelope Creeks, namely, Tps 36 S. Rgs 1 W & 1 & 2 E. & part of 3 E; T 37 S. Rgs 1, 2, 3 & 4 E.....20%

Those which drain into Evans & Sardine Creeks and tributaries, namely, T 33 S. Rgs 2, 3 & 4 W; T 34 S. Rgs 2, 3 & 4 W; T 35 S. Rgs 3 & 4 W; and the portions of T 36 S. Rgs 3 & 4 W which are north of Rogue River.....20%

Those drained by Sams & Beagle Creeks, namely, T 35 S. R 2 W; and part of T 36 S. R. 2 W.....50%

Those which drain into the Rogue River on the south, and into Bear Creek as far south as Ashland, namely, part of T 36 S. Rgs 2, 3 & 4 W; T 37 S. Rgs.

1, 2 & 3 W & part of 4 W; & T 38 S. Rgs 1 W and part of 2 W & 1 E.....50%

Those which drain into Jennie & Dead Indian Creeks and those south of Ashland which drain into Bear Crek, namely, T 38 S. Rgs 2, 3 & 4 E; T 39 S, Rgs 1, 2, 3, 4 & 5 E & part of 1 W; Tp. 40 S. Rgs 1, 2, 3 & 4 E; T. 41 S. Rgs. 1, 2, 3 & 4 E.....30%

Those which drain into Applegate Creek and its tributaries, namely, part of T 37 S. R. 4 W; T 38 S. Rgs. 3 & 4 W & part of 2 W; T 39 S Rgs. 2, 3 & 4 W and part of 1 W; T 40 S. Rgs 1, 2, 3 & 4 W; and T 41 S. Rgs 3 & 4 W.....15%

Taking all the quarter sections together which I have estimated above as suitable for settlement purposes, I estimate that they will average tweny acres of plow land to the quarter section; and I know that practically all of the railroad lands in the territory above mentioned is good grazing land.

I consider the above estimates as conservative; and I know that the climatic and soil conditions of the lands in Jackson County, Oregon, are favorable for agricultural purposes, and fruit growing.

W. T. GRIEVE,
County Assessor of Jackson County, Ore.

Subscribed and sworn to before this 16th day of March 1912, at the Court House in Jacksonville, Oregon, affiant having previously read the above affidavit.

HARRY E. LAUGHLIN,
Special Agent, G. L. O.

GOVERNMENT'S EXHIBIT NO. 121.

A booklet purported to have been issued under the co-operative plan of the Southern Pacific Lines in Oregon—Wm. McMurray—General Passenger Agent,—and to have been planned and executed by the Sunset Magazine, Homeseekers' Bureau, Portland, Oregon. This Booklet purports to describe the agricultural and other resources of Lincoln County, Oregon, especially tributary to Toledo, Lincoln County, Oregon.

This exhibit is not printed but certified up, under order of Court.

GOVERNMENT'S EXHIBIT NO. 122.

This exhibit is a purported statement made by F. A. Elliott to B. D. Townsend prior to the institution of this suit, and is set forth in full at pages 2742 etseq. of this printed record.

GOVERNMENT'S EXHIBIT NO. 123.

This exhibit is a purported affidavit of H. S. Maloney, executed before Harry E. Laughlin, Special Agent of the General Land Office, February 29th, 1912, and is set forth in full on page——— of this printed record.

GOVERNMENT'S EXHIBIT NO. 124.

This exhibit consists of a photograph purporting to

show improvements etc., of E. J. Mahan, a witness for complainant, on Section 17, Township 39 South, Range 1 East, Jackson County, Oregon, title to land shown having been in litigation between occupants, past and present, and the Oregon and California Railroad Company, and is within the limits of the grant to the East Side Line.

This exhibit is not printed but certified up, under stipulation of the parties and order of the Court.

GOVERNMENT'S EXHIBIT NO. 125.

This exhibit is a booklet purporting to have been issued under the co-operative plan of the Southern Pacific Lines in Oregon and to have been planned and executed by the Sunset Magazine Homeseekers' Bureau, Portland, Oregon. This booklet purports to describe agriculture and other industries in Grants Pass, Josephine County and the Rogue River Valley, all in Oregon.

This exhibit is not printed but certified up, under order of Court.

GOVERNMENT'S EXHIBIT NO. 126A.

"Deed of Trust of Congressional Land Grant,
"from the Oregon and California Railroad Com-
"pany to Milton S. Latham, Faxon D. Atherton
"and Wm. Norris.

"THIS INDENTURE, made and entered into at

"the City of Portland, Multnomah County, and State "of Oregon, this fifteenth day of April, in the year of "our Lord one thousand eight hundred and seventy, be- "tween the Oregon and California Railroad Company, "a body corporate, organized at Portland, in the State "of Oregon, on the seventeenth day of March, in the "year of our Lord one thousand eight hundred and "seventy, under an act of the Legislature of the State "of Oregon, approved October 14, A. D. one thousand "eight hundred and sixty-two, entitled 'An Act pro- "viding for private incorporations, and the appropria- "tion of private property therefor,' and acts amenda- "tory thereof and supplemental thereto, party of the "first part, and Milton S. Latham, Faxton D. Ather- "ton and William Norris, all of City and County of San "Francisco, and State of California, parties of the sec- "ond part,

"WITNESSETH:

"WHEREAS, the Congress of the United States "of America did, by an act approved July 25, in the "year of our Lord one thousand eight hundred and sixty- "six, and entitled 'An Act granting land to aid in the "construction of a railroad and telegraph line from the "Central Pacific Railroad in California to Portland in "Oregon,' and by acts supplemental thereto, and amen- "datory thereof, grant certain lands to, and confer cer- "tain benefits upon such Oregon company, as should be "designated by the Legislature of the State of Oregon;

"AND WHEREAS, in pursuance of such act of

"Congress, the Legislature of the State of Oregon, did "on the 20th day of October, in the year of our Lord one "thousand eight hundred and sixty-eight, by joint reso- "lution thereof, duly designate the Oregon Central Rail- "road Company, a corporation incorporated at Salem, "in the State of Oregon, April 22, in the year of our "Lord one thousand eight hundred and sixty-seven, as "the company to take and manage the lands and fran- "chises so granted to such Oregon company, by the "Acts of Congress aforesaid, which Oregon Central "Railroad Company did afterward, and within the time "required by such Acts of Congress, duly file its as- "sent to the said Acts and all the provisions thereof as "required by the same in the office of the Secretary of "the Interior of the United States at Washington City, "and did locate the line of its railroad, and prepare and "file its maps in strict accordance with all the provisions "of such Acts, and did further, prior to December 25, "in the year of our Lord one thousand eight hundred "and sixty-nine, complete over twenty miles of its rail- "road and telegraph line, and did fully equip the same "in all respects as required by such Acts of Congress, "and the said twenty miles of railroad and telegraph "line were accepted by the Government of the United "States, as in such Acts provided, and the lands to which "such company became entitled by virtue of a full and "complete compliance with all the provisions of such "Acts, and by the completion and equipment of such "twenty miles of railroad were by the Secretary of the "Interior withdrawn from market, and ordered segre-

"gated from the public domain for the use and benefit "of such Oregon Central Railroad Company, as in and "by such Acts of Congress provided;

"AND WHEREAS, the said Oregon Central Rail- "road Company did, on the twenty-ninth of March, A. "D. one thousand eight hundred and seventy, by a deed "of conveyance duly and legally made, executed, "acknowledged and delivered, bargain, sell, assign, set "over, enffeoff, convey, and confirm under the Oregon "and California Railroad Company, party of the first "part herein, all its right, title, interest, claim, property "and demand whatsoever, both legal and equitable, pres- "ent and prospective, absolute and contingent of, in, and "to the lands, franchises and benefits whatsoever, "granted or intended to be granted by said Acts of Con- "gress upon such Oregon company, and all right, title, "interest, claim, property and demand whatsoever of "the said Oregon Central Railroad Company in such "lands and franchises;

"AND WHEREAS, the said Oregon and Cali- "fornia Railroad Company, did, by a resolution of its "board of directors, at a meeting of such board, duly "called and legally held at the office of such company "in the City of Portland, on the thirteenth day of April, "in the year of our Lord one thousand eight hundred "and seventy, authorize the issue by such company, in "its name and under its corporate seal, of eighteen thou- "sand four hundred and fifty bonds, numbered respect- "ively from number one to number eighteen thousand

"four hundred and fifty; that is to say, seven thousand "four hundred and fifty bonds of the denomination of "one thousand dollars each, and numbered respectively "from number one to number seven thousand four hun-"dred and fifty, both inclusive; six thousand bonds of "the denomination of five hundred dollars each, and "numbered respectively from number seven thousand "four hundred and fifty-one to number thirteen thou-"sand four hundred and fifty, both inclusive, and five "thousand bonds of denomination of one hundred dol-"lars each, and numbered respectively from number "thirteen thousand four hundred and fifty-one to num-"ber eighteen thousand four hundred and fifty, both in-"clusive; such bonds amounting in sum total to ten mil-"lions nine hundred and fifty thousand dollars. That "all such bonds should bear date April 15, A. D. one "thousand eight hundred and seventy, and should be "payable in the City of New York, on the first day of "April, in the year of our Lord one thousand eight hun-"dred and ninety, in the gold coin of the United States, "and should bear interest at the rate of seven per centum "per annum, payable semi-annually in like gold coin of "the United States, at the banking-house of Messrs. "Dabney, Morgan & Company, in the City of New "York, which should be represented by half yearly in-"terest coupons attached to each bond, and should be "payable on the first days of April and October of each "year.

"AND WHEREAS, such board of directors did "at their meeting aforesaid by resolution duly passed, di-

"rect that all such bonds should be delivered to Milton "S. Latham and Faxon D. Atherton, two of the par- "ties of the second part herein, as trustees for the own- "ers and holders thereof, and of such persons as should "at any time hereafter become the owners and holders "thereof, and did further resolve, that a mortgage should "be duly executed by the party of the first part hereto, "under its corporate seal, and in its name, and deliver "to said Milton S. Latham and Faxon D. Atherton, "two of the parties of the second part hereto, as a se- "curity for the payment of all such bonds, both prin- "cipal and interest, which mortgage should cover and "include the railroad and all other corporate property, "real, personal and mixed, of the first part hereto, save "and except the lands, franchises and benefits granted "or intended to be granted by the Acts of Congress "aforesaid to the Oregon company, and which were "then owned by the party of the first part hereto, or in "which such company had any interest, and all which "lands, franchises and benefits were to be especially ex- "cepted from such mortgage.

"AND WHEREAS, The board of directors of the "party of the first part hereto, did, at their meeting "aforesaid further resolve, in substance and legal effect, "that in order to further provide for the security and "payment of the principal of the eighteen thousand four "hundred and fifty bonds aforesaid, so directed to be "issued by the party of the first part, and for the pur- "pose of creating a sinking fund for the redemption of "the principal of such bonds at their maturity, the party

"of the first part hereto, should by its president and sec-
"retary, and in its name and under its corporate seal,
"duly make, execute, acknowledge and deliver to Mil-
"ton S. Latham, Faxon D. Atherton and William Nor-
"ris, parties of the second part hereto, a deed of convey-
"ance of all the lands and franchises granted or in-
"tended to be granted to the Oregon company by the
"said act of Congress, approved July 25, in the year
"of our Lord one thousand eight hundred and sixty-six,
"and entitled 'An Act granting lands to aid in the con-
"struction of a railroad and telegraph line from the Cen-
"tral Pacific Railroad in California to Portland in Ore-
"gon,' and acts supplemntal thereto and amendatory
"thereof; which conveyance should be in trust for the
"benefit of the bondholders of the party of the first part
"hereto, as aforesaid, and for the purpose of creating
"from the proceeds thereof a sinking fund for the re-
"demption of said eighteen thousand four hundred and
"fifty bonds, as aforesaid; that such lands and franchises
"should not be sold or disposed of by such trustees with-
"out the consent of the party of the first part hereto,
"nor except in the manner and upon such terms as the
"party of the first part might direct, and that all the
"proceeds thereof should be invested by such trustees,
"party of the second part hereto, in United States se-
"curity, or such other security as the party of the first
"part hereto might consent to, and that such deed of
"trust should contain all the provisions, conditions and
"covenants hereafter contained, and all stipulations,
"agreements, covenants and conditions which the presi-

"dent and secretary of the party of the first part hereto "might deem material, necessary or proper for the mu- "tual protection of the interests of the party of the first "part hereto, and its bondholders.

"AND WHEREAS, The said mortgage so di- "rected to be issued has been duly executed and acknowl- "edged, and prepared for record in strict accordance "with all the requirements of the resolutions of the board "of directors of the party of the first part hereto, as "aforesaid; therefore,

"THIS INDENTURE WITNESSETH: In "consideration of the premises aforesaid, that the Ore- "gon and California Railroad Company, party of the "first part hereto, and the further consideration of one "dollar, the receipt whereof is acknowledged, hath "granted, bargained, sold, assigned, aliened, set over, "enfeoff, conveyed and confirmed, and by these presents "it does grant, bargain, sell, assign, alien, set over, en- "feoff, convey and confirm unto said Milton S. Latham, "Faxon D. Atherton and William Norris, parties of "the second part hereto, all the lands and franchises, "with their appurtenances lying and being in the State "of Oregon, granted or intended to be granted to the "Oregon company by act of Congress approved July "25, A. D. one thousand eight hundred and sixty-six en- "titled 'An Act granting lands to aid in the construction "of a railroad and telegraph line from the Central Pa- "cific Railroad in California to Portland in Oregon,' "and acts supplemental thereto and amendatory there- "of. And also, all the right, title, interest, claim, prop-

"erty and demand whatsoever, both legal and equitable, "present and prospective, absolute and contingent, which "the party of the first part hereto now has, or owns, or "to which it is in any wise entitled, in and to any and all "lands and franchises in the State of Oregon, granted or "intended to be granted to the Oregon company by the "Acts of Congress aforesaid, and

"Also, all future right, title, interest, claim, property "and demand, which the party of the first part hereto, "may at any time hereafter have, own or acquire to any "lands lying and being anywhere in the State of Oregon, "or in any county thereof, by virtue of any further com- "pliance with the requirements of such acts of Congress "by the party of the first part hereto. Together with "all and singular the hereditaments and appurtenances "thereunto belonging or in anywise appertaining.

"TO HAVE AND TO HOLD the said granted "lands, property and franchises, and every part and "parcel thereof unto said Milton S. Latham, Faxon D. "Atherton and William Norris, parties of the second "part hereto, and to their successors or successor and "assigns forever. In trust nevertheless, for the follow- "ing uses and purposes, and upon the following condi- "tions and covenants, and for the mutual interests of the "party of the first part hereto, and the holders of said "eighteen thousand four hundred and fifty bonds so di- "rected to be issued by the party of the first part hereto, "as aforesaid, and two thousand of the which bonds of "denomination of one thousand dollars each have already

"been issued, and other large amounts thereof are now "about to be issued.

"That is to say: The said parties of the second part "hereto, shall have and hold the whole of the lands and "franchises so granted, or intended to be granted by said "acts of Congress to said Oregon company, and herein "conveyed, and intended to be conveyed by the party of "the first part hereto, in trust, for the benefit of the "holders of said eighteen thousand four hundred and "fifty bonds, and for the sole and exclusive purpose of "creating from the proceeds thereof, when sold, as here-"inafter stated, a sinking fund for the redemption of "such bonds at their maturity; and for such purpose, the "said parties of the second part hereto, or their suc-"cessors or successor may, by and with the consent of "the party of the first part hereto, but not otherwise, "at any time before the maturing of the principal of "such bonds, sell and dispose of all or any part or por-"tion of the lands and franchises so granted as afore-"said, by such acts of Congress, and herein conveyed to "such person or persons, firm or firms, associations or "bodies corporate, and for such price, and upon such "terms as the party of the first part herein may by and "through its president, advise or agree to; and the pro-"ceeds of all such lands and franchises or right to such "lands shall, after deducting from such gross receipts "all charges, costs and expenses, legitimately or neces-"sarily incurred in making such disposition and sale, "shall from time to time as realized, be received by such "trustees, parties of the second part hereto, and shall be

"by them, their successors or successor, from time to "time, as the same are received, invested in United States "securities, unless the president of the party of the first "part hereto shall direct that such proceeds shall be in- "vested in other securities, in which event the same shall "be invested in such securities, as such president of the "party of the first part hereto may designate, which se- "curity, whether the same be United States, or other se- "curities shall create a sinking fund and as such fund "shall be held, managed and controlled by and with the "advice and under the direction of the president of the "party of the first part hereto by said trustees, parties "of the second part hereto, for the reduction and pay- "ment of the principal of the said eighteen thousand "four hundred and fifty bonds of the party of the first "part hereto at the maturity thereof, but no part of such "fund, either principal or interest, shall ever at any "time without the written consent of the party of the "first part hereto be used or applied in the payment of "any interest on such bonds, or in any other way or man- "ner diverted, but the same shall be held and husbanded "by such trustees in accordance with the directions of "the president of the party of the first part hereto, and "in such manner as shall be most likely to increase the "volume of such fund and advance the mutual interests "of the party of the first part hereto and its bondhold- "ers aforesaid;

"And in the event that the principal of such bonds "is not otherwise paid at the maturity thereof, then the "fund aforesaid, which shall have been accrued from the

"proceeds of the sales of said lands and interest thereon, "shall be, by such trustees,, parties of the second part, "their successors or successor, applied to the discharge "and payment of any and all amounts, both principal "and interest then remaining due and unpaid on all such "bonds; and in the event that such fund shall then be "insufficient to discharge the whole amount then due "on all such bonds, then the same shall be applied thereon "ratably, according to the interests respectfully of all "such bondholders.

"And it is further stipulated and agreed between "the parties hereto, that in the event that there remains "any deficiency in the payment of the principal and in- "terest due on said eighten thousand four hundred and "fifty bonds, after the whole of such fund aforesaid shall "be applied thereon at the maturity thereof, then the "trustees, parties of the second part hereto, their suc- "cessors or successors, shall have full power and author- "ity to sell and convey any and all lands then remaining "undisposed of, which are included in the grant made "by the Acts of Congress aforesaid, and which are here- "by conveyed and intended to be conveyed, which lands "may be sold in whole or in part, as the trustees afore- "said may deem for the best interest of said bondholders, "but the same shall only be sold at public auction in "the City of Portland, in the State of Oregon, to the "highest bidder, and no such sale shall be made unless "notice of the time place thereof shall first be given by "publication for at least six weeks in a weekly newspa- "per of general circulation published in the City of Port-

"land, in the State of Oregon, and the proceeds of such "sale or sales shall be applied in like manner to the pay- "ment of any balance, either principal or interest, then "remaining unpaid on such bonds aforesaid, or any of "them.

"And upon the full payment and redemption of said "eighteen thousand four hundred and fifty bonds, prin- "cipal and interest, whether before or after maturity, "the trustees aforesaid, parties of the second part hereto, "their successors or successor, shall reconvey by good "and sufficient deed of conveyance to said Oregon and "California Railroad Company, party of the first part "hereto, its successors or successor or assigns, all its "right, title, interest, property and claim whatsoever, "which the said trustees, parties of the second part here- "to, their successors or successor may then have of, in "or to any of the lands or franchises hereby granted and "conveyed to the said parties of the second part hereto, "and shall also assign, set over, transfer and deliver to "the said party hereto, its successors or assigns, any and "all moneys, bonds, notes, or other securities then re- "maining in such sinking fund, and held by such trus- "tees for the use and purposes aforesaid, all of which "reconveyances and transfers shall be made without any "other or further consideration than the redemption of "all such bonds as aforesaid by the party of the first "part hereto, its successors or assigns.

"And it is mutually agreed by and between the par- "ties hereto, that the said trustees, or either, or any of "them, or the survivor of them, or any successor or suc-

"cessors in such office may resign or discharge them-
"selves or himself of the trust created or declared by
"these presents, by notice in writing to the said com-
"pany three months before such resignation shall take
"effect, or such shorter time as they may accept as ade-
"quate.

"And it is further agreed between the parties to this
"indenture that in the meantime, until the said lands
"hereby granted and conveyed are sold by such trustees,
"as hereinbefore provided for, it shall be lawful for the
"party of the first part hereto, and its successors, peace-
"ably and quietly to have, hold, use, possess and enjoy
"the said lands, with the appurtenances, and to receive
"the incomes, rents, issues and profits thereof to its own
"use and benefit, without any hindrance or interruption,
"suit or disturbance whatsoever of or by the said parties
"of the second part, or their or his successor or successors
"in the trust, or in any other person whatever claiming,
"or to claim, the same by, from, or under them, or any
"of them.

"And the said party of the first part, its successors
"and all and every other person or persons whomsoever,
"lawfully or equitably claiming any estate, right, title,
"or interest of, in and to the hereinbefore granted prem-
"ises, by, from, or under, or in trust, for it shall and will
"at any time or times hereafter, upon the reasonable re-
"quest, and at the proper cost and charges in the law,
"of the said parties of the second part, or the survivor
"of them, or their or his successor or successors or as-
"signs, make, do and execute, or cause to be made, done

"and executed, all and every such further and lawful "and reasonable acts, conveyances and assurances in the "law, for the better and more effectively vesting and "confirming the premises, lands and franchises, hereby "intended to be granted in and to the said parties of the "second part, as by the said parties of the second part, "or the survivor of them, their or his successor, or suc- "cessor, or the counsel learned in the law, shall be rea- "sonably devised, advised or required.

"And, also, that the said party of the first part and "its successors, the above granted, bargained, sold and "assigned premises, and every part and parcel thereof, "with the appurtenances thereof, unto the said parties "of the second part or the survivor of them, their or his "successor or successors, against the said party of the "first part and its successors, and against all and every "person or persons whomsoever claiming or to claim "the same by, through or under it shall and will war- "rant, and by these presents forever defend.

"In witness whereof, the said party of the first part "has caused its corporate seal to be affixed to these pres- "ents, and the same to be signed by its president and "secretary, by resolution of the board of directors there- "of, at the City of Portland, Multnomah County, State "of Oregon, this fifteenth day of April, in the year of "our Lord one thousand eight hundred and seventy.

"BEN HOLLIDAY,
"President of the Oregon and California
Railroad Company.

(Seal) "A. G. CUNNINGHAM,
Secretary of the Oregon and California
"Railroad Company.

"In presence of J. H. Mitchell and Geo. E. Cole.
"State of Oregon, County of Multnomah.

"Be it remembered that on this eighteenth day of "April, in the year of our Lord one thousand eight hun- "dred and seventy, before me, the undersigned, a notary "public in and for the County of Multnomah, and State "of Oregon, duly commissioned, sworn and fully quali- "fied, personally appeared the said Ben Holliday, presi- "dent of the Oregon and California Railroad Company, "and A. G. Cunningham, secretary of the Oregon and "California Railroad Company, whose names are sub- "scribed to the foregoing instrument as parties hereto, "personally known to me to be the individuals described "in and who executed the said instrument, and they sev- "erally acknowledged to me that he, the said Ben Hol- "liday, as president of the said Oregon and California "Railroad Company, and he, the said A. G. Cunning- "hame, as secretary of the said Oregon and California "Railroad Company, executed the same as for the act "and deed of the said Oregon and California Railroad "Company, freely and voluntarily, and for the uses and "purposes therein mentioned; and the said A. G. Cun- "ningham, being by me duly sworn, did depose and say, "that he is the secretary of the Oregon and California "Railroad Company, and resides at the City of Port- "land, Multnomah County, in the State of Oregon; that

"he is the legal custodian of and is acquainted with the "corporate seal of the said company; that the seal af- "fixed to the within trust deed is such corporate seal; "that the same was affixed by him as secretary of said "company, on the eighteenth day of April, A. D. one "thousand eight hundred and seventy, by order of the "board of directors of said company, and that he signed "his name as secretary to said trust deed by the like "order of said board of directors.

"In witness whereof, I have hereunto subscribed my "name and affixed my notarial seal the day and year "first above written.

"(Notarial Seal) GEO. W. MURRAY,
"Notary Public.

"(United States Revenue Stamp, 5 cents, canceled.)
"State of Oregon, County of Multnomah.

"I, A. G. Cunningham, secretary of the Oregon and "California Railroad Company, do hereby certify, that "each of the eighteen thousand four hundred and fifty "bonds which this trust deed is given to secure, has "placed upon it the requisite U. S. internal revenue "stamps, as required by law; that such bonds in the "aggregate have placed thereon and all duly canceled, "U. S. internal revenue stamps to the amount of four- "teen thousand seven hundred and ninety-five dollars.

"A. G. CUNNINGHAM,
"Secretary of the Oregon and California
Railroad Company.

"(Seal. O. & C. R. R. Co.)
"(United States Revenue Stamp, 5 cents, canceled.)

"State of Oregon, Department of State.

"I, Samuel E. May, Secretary of the State of Ore-"gon, do hereby certify that George W. Murray, whose "name is subscribed to the foregoing and annexed cer-"tificate of acknowledgement to the foregoing deed of "trust, was at the time of signing the same, to wit; on "the eighteenth day of April, A. D. one thousand eight "hundred and seventy, a duly commissioned, qualified "and acting notary public in and for Multnomah Coun-"ty, in said State of Oregon, and that he was then by the "laws of the State of Oregon duly authorized and em-"powered to take and certify, under his notarial seal, "acknowledgments to deeds of conveyance and mort-"gages, and that his certificate thereto is in in due form "of law, and that full faith and credit are due to his of-"ficial acts as such.

"Witness my hand and the great seal of State at "office in the City of Salem, State of Oregon, this nine-"teenth day of April, in the year of our Lord, one thou-"sand eight hundred and seventy.

"SAMUEL E. MAY, Secretary of State.

"(Great Seal, State of Oregon.)

"(United States Revenue Stamp, 5 cents, Canceled.)

"Received for record April 18, 1870.

"State of Oregon, County of Multnomah, ss.

"I, James A. Smith, Clerk of the County Court of "the County of Multnomah, and State of Oregon, do "hereby certify that the foregoing copy of deed of trust

"has been by me compared with the original, and that "it is a correct transcript therefrom, and of the whole "of such original deed of trust as the same appears of "record at my office and in custody.

"In testimony whereof, I have hereunto set my hand "and affixed the seal of said court this twenty-eighth "day of November, A. D. 1877.

"JAMES A. SMITH, Clerk.

(Seal)

GOVERNMENT'S EXHIBIT NO. 126B.

"RAILROAD MORTGAGE, OR DEED OF "TRUST. OREGON CENTRAL RAILROAD "COMPANY TO MILTON S. LATHAM "AND FAXON D. ATHERTON.

"THIS INDENTURE, made this fifteenth day "of July, in the year of our Lord one thousand eight "hundred and seventy-one, between the Oregon Central "Railroad Company, a body corporate, created by and "under the Acts of the Legislature of the State of Ore-"gon, in that behalf made and provided, party of the "first part, and Milton S. Latham and Faxon D. Ath-"erton, of the City and County of San Francisco, State "of California, parties of the second part, witnesseth: "Whereas, the said party of the first part is expressly "authorized and empowered in and by the Acts of the "Legislature of the State of Oregon, and the Act of "Congress of the United States, approved May fourth,

"one thousand eight hundred and seventy, and entitled "'An Act granting lands to aid in the construction of "a railroad and telegraph line from Portland to As- "toria and McMinnville, in the State of Oregon,' to "borrow money for the objects and purposes in said "Acts, and each of them specified, and for such au- "thorized objects and purposes, said party of the first "part is desirous of borrowing a sum not to exceed four "millions three hundred and ninety-five thousand dol- "lars, and of securing the payment of its corporate bonds "or obligations issued or negotiated therefor, by a mort- "gage or deed of trust to said parties of the second part "as trustees, as hereinafter set forth and provided.

"AND WHEREAS, under and pursuant to the "lawful authority conferred by said several Acts of the "Legislature of the State of Oregon, and of the Con- "gress of the United States aforesaid, the board of di- "rectors of the said party of the first part have unanim- "ously resolved in substance and legal effect, that said "'Oregon Central Railroad Company,' make, execute, "issue and deliver under its corporate seal, its corporate "bonds, bearing even date herewith, severally, payable "to the holder thereof, at the banking-house of Messrs. "Dabney, Morgan & Company, in the City of New "York, State of New York, on the fifteenth day of July, "one thousand eight hundred and ninety-one, with inter- "est from and after July fifteen, one thousand eight "hundred and seventy-one, at the rate of seven per "centum per annum, payable at the same bank semi-an- "nually, principal and interest, payable in gold coin as

"follows, that is to say: That twenty-nine hundred and "thirty (2930) of said bonds to be made or issued for "the sum of one thousand dollars each, and that twenty- "nine hundred and thirty (2930) of said bonds to be "made or issued for five hundred dollars each, "in all five thousand eight hundred and sixty "(5860) bonds, in the aggregate amounting to four mil- "lions three hundred and ninety-five thousand dollars, "and no more; and that for the purpose of a more spe- "cific indentification thereof, said five thousand eight "hundred and sixty (5860) bonds be numbered in a con- "secutive series from one to five thousand eight hun- "dred and sixty, both inclusive, commencing with those "of denomination of one thousand dollars, and num- "bering them from one to two thousand nine hundred "and thirty (2930), both inclusive; and secondly with "those of the denomination of five hundred dollars each, "and numbering them respectively from number two "thousand nine hundred and thirty-one, to number five "thousand eight hundred and sixty (5860), and that "upon the face of each bond be printed or engraved, a "certificate signed by the parties of the second part "hereto, to the effect that such bond is one of the five "thousand eight hundred and sixty bonds intended to be "secured by these presents.

"AND WHEREAS, said board of directors have "further unanimously resolved, under and pursuant to "lawful authority conferred upon said party of the first "part by the acts aforesaid, in substance and legal ef- "fect, that the president and secretary of said party of

"the first part, execute and acknowledge in its name, and "in its behalf, and under its corporate seal, and deliver "to said parties of the second part hereto, a mortgage "or deed of trust, conveying, assigning and transferring "to them in trust, all its corporate real and personal "property, roads, depots, stations, side-tracks, wood-"yards, franchises and effects, as security for the pay-"ment of said five thousand eight hundred and sixty "(5860) bonds, and the interest to grow due thereon, "and that such mortgage or deed of trust should contain "all and singular the covenants, provisoes and conditions "hereinafter set forth, and that said mortgage and deed "of trust, and the five thousand eight hundred and sixty "bonds thereby secured, be severally dated the fifteenth "day of July, one thousand eight hundred and seventy-"one.

"AND WHEREAS, the Congress of the United "States of America, did by an act approved May fourth, "in the year of our Lord one thousand eight hundred "and seventy, and entitled 'An Act granting lands to "aid in the construction of a railroad and telegraph line "from Portland to Astoria and McMinnville, in the "State of Oregon,' grant to the 'Oregon Central Rail-"road Company,' and to their successors and assigns, "the right of way to the public lands of the width of one "hundred feet on each side of said road, and the right to "take from the adjacent public lands the material for "constructing said road, also necessary lands for depots, "stations, side-tracks, and other needful uses in operat-"ing the road, not exceeding forty acres in any one

"place, and also each alternate section of the public "lands, not mineral, excepting coal and iron lands, des- "ignated by the odd numbers nearest said road to the "amount of ten such alternate sections per mile on each "side thereof, not otherwise disposed of, or reserved or "held by valid pre-emption or homestead right, at the "time of the passage of said Act, and in case the quantity "of ten full sections per mile could not be found on each "side of said road, within the limits of twenty miles, "other lands could be selected under the directions of the "Secretary of the Interior, on either side of any part of "said road nearest to and not more than twenty-five "miles from the track of said road to make up such de- "ficiency.

"AND WHEREAS, the said Oregon Central "Railroad Company, party of the first part here- "to, in and by the terms of the said Act of Con- "gress of the United States of America, approved May "fourth, one thousand eight hundred and seventy, is "required to appropriate and set apart by mortgage or "deed of trust, to two or more trustees, all the net pro- "ceeds of the sale of the said granted lands, as a sink- "ing fund, to be kept invested in the bonds of the United "States, or other safe and more productive securities for "the purchase from time to time, and the redemption at "maturity of the first mortgage construction bonds of "the company of the road, depots, stations, side-tracks "and wood-yards, not exceeding thirty thousand dol- "lars a mile of the railroad, payable in gold coin, not "longer than thirty years from date, with interest pay-

"able semi-annually in coin, not exceeding the rate of "seven per centum per annum; no part of the prin- "cipal or interest of said fund to be applied to any other "use, until said bonds shall have been purchased or re- "deemed or canceled, and each of the first mortgage con- "struction bonds to bear the certificate of the trustees "setting forth the manner in which the same is secured, "and its payment provides for.

"NOW, THEREFORE, THIS INDENTURE "WITNESSETH: That the said Oregon Central "Railroad Company, the party of the first part hereto, "under, pursuant to, and by virtue of the express power "and authority conferred upon, and vested in it by said "several Acts of the Legislature of the State of Ore- "gon, and of the Congress of the United States of "America aforesaid, and under and pursuant to reso- "lutions duly passed and adopted by its board of di- "rectors, and which are duly entered upon the official "minutes of said board, and for and in consideration "of the foregoing premises, and especially for the pur- "pose, and with the intent of better and more effectually "securing the payment of said five thousand eight hun- "dred and sixty bonds, with the interest due and to grow "due thereon, and for and in consideration of one dollar "and other moneys, lawful money of the United States "of America, by the said parties of the second part hereto "in hand fully and truly paid to the said party of the first "part hereto, before ensealing and delivering of these "presents, the receipt whereof is hereby acknowledged, "hath granted, bargained, sold, assigned, transferred

"and set over, enfeoffed, conveyed and confirmed, and by "these presents, doth grant, bargain, sell, assign, trans- "fer and set over, enfeoff, convey and confirm to the "said Milton S. Latham and Faxon D. Atherton, the "said parties of the second part, as trustees and in trust, "and to the survivor of them and to their or his suc- "cessors or successor, all and singular, the railroad of "the said party of the first part heretofore constructed "or hereafter to be constructed from Portland to As- "toria, and from a suitable point of junction near Forest "Grove to the Yamhill River near McMinnville, in the "State of Oregon, in all a distance of one hundred and "forty-six and one-half miles, thirty thousand dollars of "said bonds being used to each mile thereof, together with "all its lands, tenements and hereditaments acquired "and appropriated, or which shall hereafter be acquired "and appropriated for the purpose of a right of way "for its railroad, and all the appurtenances thereunto be- "longing. And also all its lands, acquired and appropri- "ated, or which shall hereafter be acquired and appro- "priated under and pursuant to the provisions of the "Act of Congress of the United States of America, ap- "proved May fourth, 1870, and entitled 'An Act grant- "ing lands to aid in the construction of a railroad and "telegraph line from Portland to Astoria and Mc- "Minnville in the State of Oregon,' and also its de- "pots, engine houses, car-houses, station-houses, ware- "houses, machine-shops, work-shops, superstructures, "erections and fixtures, and also all and singular the "franchises, rights and privileges now owned, possessed "or acquired, or which shall hereafter be owned, pos-

"sessed or acquired by said party of the first part, and "all lands, tenements, hereditaments and real estate ac- "quired and appropriated wheresoever, and whatsoever, "or now owned by said party of the first part, or which "shall hereafter be owned by it, and also, all and singu- "lar the locomotives, tenders, passenger cars, freight "cars, and all other cars, carriages, tools, machinery and "equipments for said railroad, and now owned or which "shall hereafter be owned or acquired by said party of "the first part, and also all goods and chattels now owned "or which shall hereafter be owned by said party of the "first part, and in any way relating or appertaining or "belonging to, or connected with said railroad, or run- "ning or operating the same, together with all rents, is- "sues, income, profits, moneys, rights, benefits, and ad- "vantages derived, or to be derived, had or received there- "from by said party of the first part, in any way what- "soever.

"To have and to hold, all and singular, the premises, "rights, franchises, property, real and personal, here- "inbefore, and hereby assigned, mortgaged, pledged and "conveyed, or intended so to be, and every part and par- "cel thereof, with all the appurtenances under the same "belonging, or in anywise appertaining unto them the "said Milton S. Latham and Faxon D. Atherton, the "said parties of the second part hereto, and to the sur- "vivor of them and to their or his successors or successor, "and to their, and his assigns in trust for the person or "persons, firm or firms, bodies politic or corporate, who "have heretofore, or who shall hereafter at any time be-

"come the purchasers or holders or owners of any or "either of said five thousand eight hundred and sixty "bonds, amounting in the aggregate to four millions "three hundred and ninety-five thousand dollars, to-wit: "$30,000 per mile on said railroad, and no more, sub- "ject to the terms, provisos and stipulations in said "five thousand eight hundred and sixty bonds con- "tained and subject also to the provisions of an Act of "Congress of the United States of America, affecting or "relating to, or binding upon the party of the first part, "and also subject to the possession and management of "said railroad, and property of said party of the first "part, and its successors or assigns, so long as no de- "fault shall be made in the payment of either the inter- "est or principal of said five thousand eight hundred "and sixty bonds, or in, or to either of them, and so "long as the party of the first part shall well and truly "observe, keep and perform all and singular, the cove- "nants, agreements, conditions and stipulations in said "five thousand eight hundred and sixty bonds, and in "this indenture contained and set forth, and which are "to be observed, kept and performed, by, and on the "part of the said party of the first part.

"And the said Oregon Central Railroad Company, "the party of the first part, hath covenanted and agreed, "and by these presents doth, for itself, its successors and "assigns, covenant and agree with the parties of the "second part, hereto, and the survivor and survivors of "them and their, and his successors and assigns in man- "ner and form following, that is to say:

"First. That said Oregon Central Railroad Com-"pany, the party of the first part, and its successors, "shall and will pay or cause to be paid all taxes, charges, "rates, levies and assessments imposed, assessed, or lev-"ied, or which shall hereafter be imposed, assessed, or "levied upon the premises, franchises and property here-"by mortgaged, conveyed and assigned, or intended so "to be, and shall and will, at its own proper cost, ex-"pense and charges, do or cause to be done, all acts and "things necessary and proper to be done or performed, "in order to preserve and keep valid and intact, the lien "or incumbrance upon all and singular the aforesaid "premises, property and franchises, hereby created, or "intended so to be. And further, that the lien or in-"cumbrance created by the execution and delivery of "this indenture, constitutes, and is, in fact, the first valid "lien and incumbrance on the premises, property and "franchises therein described.

"Second. That said Oregon Central Railroad "Company, the party of the first part, and its success-"ors shall and will, at any time or times hereafter, and "from time to time, execute, acknowledge and deliver, "under its corporate seal, to the said parties of the sec-"ond part, and the survivors or survivor of them and "their and his successors or successor, such other and fur-"ther assurances, deeds, mortgages, obligations, trans-"fers, indenture and instruments in writing, and shall "and will do and perform all such further or other acts "or things, as shall or may be proper or necessary, or as "their or his counsel, learned in the law, shall deem

"necessary, proper or expedient for the better or more "effectually securing the payments of said five thous- "and eight hundred and sixty bonds, and the interest "due or to grow due thereon, or for carrying into effect "the true intent, design, objects and purposes of these "presents, or making, preserving, continuing and keep- "ing valid and effectual, the lien and incumbrance creat- "ed, or intended to be created by the execution, delivery "and recording of this indenture, upon all the property, "real and personal, rolling stock, equipments, franchis- "es and effects, and especially the lands referred to in "and by the said Act of Congress, approved May 4, "1870, now owned, possessed or acquired or which shall "hereafter be owned, possessed or acquired by said party "of the first part.

"Thirdly. And for the purpose of fully and more "effectually securing the payment of the said five thou- "sand eight hundred and sixty bonds, together with the "interest due or to grow due thereon, the said Oregon "Central Railroad Company, the party of the first part "hereto, for itself and its successors, hath pledged, and "hereby doth irrevocably pledge for the purposes and "objects hereinbefore specified, to and with the said "parties of the second part, and the survivors and sur- "vivor of them, their and his successors and successor, all "and singular, the net proceeds of the sales of the lands "granted to the party of the first part, by the Act of "Congress, approved May fourth, one thousand eight "hundred and seventy, hereinbefore mentioned, as a "sinking fund, to be kept invested by the parties of the

"second part, in the bonds of the United States, or other "safe and more productive securities for the purchase, "from time to time, and the redemption, at maturity, of "the first mortgage construction bonds, of the party of "the first part, hereinbefore particularly described, and "no part of the principal or interest of the said fund "shall be applied to any other use, until all the said bonds "shall have been purchased or redeemed and canceled.

"And in the event that the principal of said first "mortgage constructions bonds is not otherwise paid at "the maturity thereof, then the fund aforesaid, which "shall then have accrued from the proceeds of the sales "of said lands, and interest thereon, shall be by said "trustees, parties of the second part, or the survivor of "them, their or his successors, or successor, applied to "the discharge and payment of any and all amounts, "both principal and interest, then remaining due and "unpaid on all such bonds, and if such funds shall then "be insufficient to discharge the whole amount then due "on all such bonds, the same shall then be applied ratably "thereon, according to the interests, respectively, of all "such bondholders.

"And it is further stipulated and agreed between "the parties hereto, that if there remains any deficit in "the payment of the principal and interest due on said "five thousand eight hundred and sixty bonds, after the "whole of the fund aforesaid shall be applied thereon, "after maturity thereof, then the trustees, parties of the "second part hereto, their successors or successor, shall

"have full power and authority to sell and convey any "and all lands then remaining undisposed of, which are "included in the grant made by the act of Congress, "aforesaid, and which are hereby conveyed and intended "to be conveyed, in whole or on part, as the said trustees "may deem best for the interests of said bondholders, "and as may be prescribed or limited by any act of Con- "gress in force at the time of such sale; and if there shall "be no such prescription and limitation by law, then "said lands shall only be sold at public auction, in the "City of Portland, in the State of Oregon, to the high- "est bidder; and no such sale shall be made, unless notice "of the time and place thereof shall first be given, by "publication, for at least six weeks, in a weekly news- "paper, of general circulation, published in the City of "Portland, State aforesaid, and the proceeds of such "sale or sales, shall be applied in like manner to the pay- "ment of any balance, either principal or interest, then "remaining unpaid on such bonds aforesaid, or any of "them.

"And, it is hereby expressly covenanted, agreed and "understood by and between the parties to these pres- "ents: that, notwithstanding the execution and delivery "of these presents, and of the covenants herein contained, "the said Oregon Central Railroad Company, the party "of the first part hereto, shall have the right at any time "after the execution of these presents, to make sales of "all and singular, the lands granted to said company by "act of Congress of the United States, approved May "fourth, one thousand eight hundred and seventy, afore-

"said, in the manner and mode prescribed therefor by "law, and that the parties of the second part, shall, and "will at any time after the delivery to them of this in- "denture, upon the request of the party of the first part, "and upon the receipt by the parties of the second part, "from the party of the first part, of the price or con- "sideration for said lands, provided in and by said act "of Congress aforesaid, make, execute and deliver such "releases, discharges and assurances in respect to the "lands for which they shall have received the considera- "tion provided by law, as the party of the first part, or "its counsel, learned in the law, may require, for the pur- "pose of making good and sufficient title to said granted "lands so sold, to any and all purchasers thereof, clear "and free from all lien or incumbrances created by these "presents, and all net proceeds from the sales of all or "any of the lands granted or intended to be granted by "said act of Congress, shall be received and held jointly "by the parties of the second part, and the president of "the party of the first part, and shall be held subject to "their control, and shall be immediately and as soon as "practicable, after the same are received, invested by "said parties of the second part, by and with the con- "sent of the president of the party of the first part, in "United States bonds, or other more productive securi- "ties, which securities shall be under the control of the "parties of the second part, and the said president of "the party of the first part, and shall be used solely in "the purchase, from time to time, and the redemption "at maturity, of said five thousand eight hundred and

"sixty bonds; and, it is expressly understood and agreed, "that the lien created by this indenture on said lands, "granted by said act of Congress, shall, upon the sale "of any portion of said lands, as aforesaid, and the pay- "ment of the purchase price thereof to the said parties "of the second part cease, so far as the same relates to "the portion of the lands so sold. The said parties of "the second part shall not have the right to make sale "of any of said lands, without the consent of the party "of the first part.

"Fourthly. That the said Oregon Central Railroad "Company, the party of the first part hereto, shall and "will, well and truly, pay the said sums of money in said "five thousand eight hundred and sixty bonds men- "tioned, together with the semi-annual interest due, or "to become due thereon, at the rate of seven per cent per "annum, at the times, in the manner, and at the place "specified therein; and further, said Oregon Central "Railroad Company, hereby covenants and agrees, that "in case it shall have for the space of thirty days, made "default, in the payment of the semi-annual interest due, "or to become due, or either or any of the said five "thousand eight hundred and sixty bonds, or in case it "shall fail to appropriate and set apart in the hands of "the said parties of the second part, all and singular, the "net proceeds of the sales of the said lands, granted to "the party of the first part, by the Act of Congress of "the United States as aforesaid, as, and for a sinking "fund for, and to be applied in payment or redemption "of said five thousand eight hundred and sixty bonds

"in the manner hereinbefore and in said Act of Con-
"gress specified, then and in either of said cases, after
"the lapse of said thirty days, the whole principal sum
"mentioned in each and all of said five thousand eight
"hundred and sixty bonds, shall forthwith be and be-
"come due and payable, and the lien or incumbrance
"hereby created, for the security and payment thereof,
"may be at once enforced, anything in said bonds, or
"in this indenture, to the contrary, notwithstanding, and
"that it shall and may be lawful, and the said parties of
"the second part, and the survivors and survivor of them,
"and their and his successors or successor, are hereby
"expressly authorized and empowered, upon the request,
"in writing, of any two or more holders of any of said
"five thousand eight hundred and sixty bonds, to enter
"into and upon, and to take actual possession of, all
"and singular, the railroad premises, franchises, rights,
"property, real and personal, and effects hereby grant-
"ed, conveyed, assigned, mortgaged, pledged, trans-
"ferred and set over, or intended so to be, as a security
"for the payment of said five thousand eight hundred
"and sixty bonds, and by themselves, or their agents,
"to take, collect and receive, the tools, earnings, income
"and profits thereof, and every part thereof, or to be
"derived therefrom, and that they, said parties of the
"second part, and the survivors and survivor of them,
"and their and his successors and successor, shall and
"may proceed, and are hereby expressly authorized and
"empowered thereupon, but within such reasonable time
"as they may deem proper, not less than sixty days, and

"upon and after public notice by advertisement for at "least six weeks in one or more newspapers published "in the cities of New York, State of New York, and "San Francisco, State of California, and Portland, "State of Oregon, to proceed and sell at public auction "in said City of Portland, to the highest bidder, as well "all and singular, the said railroad rights and franchises, "as all other, the property, real and personal, and prem- "ises hereby granted, conveyed, assigned, mortgaged, "pledged, transferred and set over, or intended so to be, "and all benefit and equity of redemption whatsoever of "the said Oregon Central Railroad Company, the said "party of the first part hereto, of, in and to the same, "and every part and parcel thereof, together with the "benefit of the franchises belonging to, or connected "therewith. And as the attorney or attorneys of the "said Oregon Central Railroad Company, the said party "of the first part hereto, for that purpose, by these "presents, duly appointed and constituted, the said par- "ties of the second part, and the survivors and survivor "of them, and their, and his successors and successor, "shall have full power and authority to make, execute "and deliver to the purchaser or purchasers thereof, a "good, valid and sufficient deed or deeds, conveyance or "conveyances, assignment or transfer, in fee-simple or "otherwise, of said railroad, lands, tenements and real "estate, and all and singular, the said personal or other "property, rights and premises hereby granted, assigned, "transferred or conveyed as aforesaid, which sale so to "be made as aforesaid, and which deeds, conveyances, as-

"signments and transfers, so to be made and delivered as "aforesaid, shall operate to convey, assign, transfer and "vest in said purchaser or purchasers, all the right, title, "interest and estate whatsoever, reversionary or other- "wise of the said Oregon Central Railroad Company, the "party of the first part, of, in and to the premises so "sold, conveyed, assigned or transferred, and which said "sale so to be made, shall be a complete and perpetual "bar, both at law and in equity, against the said Oregon "Central Railroad Company, the party of the first part, "its successors and assigns, and all persons or parties "claiming by, from, or under it, or them in anywise or "manner whatsoever, and that out of the moneys or pro- "ceeds arising either from said tolls, earnings or receipts "of said railroad or premises, or at or from said sale so "to be made as aforesaid, after first deducting the ex- "penses, disbursements, costs, charges and counsel fees "incurred in and about the conducting of said sale, or "running and operating said railroad, that they, the said "parties of the second part, and the survivors and sur- "vivor of them, their and his successors or successor shall "pay five thousand eight hundred and sixty bonds, or so "many as shall then be outstanding and unpaid, together "with all arrears of interest then due or owing upon the "same, rendering or paying over the surplus of all such "moneys, if any there shall be, to the said party of the "first part, hereto, its successors or assigns.

"THIS INDENTURE further witnesses, that "these presents are upon the express condition, that upon "payment in full of said five thousand eight hundred and

"sixty bonds, and the interest due thereon, then these "presents and the estate hereby granted shall cease, and "be void, and the Oregon Central Railroad Company, "the party of the first part, shall be immediately and "fully reinvested with the said premises hereby granted, "in law and in fact, without any entry or other act what-"ever, and that until default shall be made by the said "party of the first part hereto, either in payment of said "five thousand eight hundred and sixty bonds, or in pay-"ment of the interest due or to grow due thereon as "aforesaid, or in appropriating and setting apart in the "hands of the parties of the second part, their succeessors "or successor, all and singular, the net proceeds of the "sales of said lands, granted by the Act of Congress "aforesaid, as a sinking fund, to be kept invested in "bonds of the United States, or other safe and more pro-"ductive securities, for the purchase from time to time, "and the redemption at maturity, of the first mortgage "constructions bonds of the company hereinbefore men-"tioned and described; or in keeping and observing any "of the covenants and agreements hereinbefore con-"tained, the said Oregon Central Railroad Company, the "party of the first part, and its successors and assigns "shall remain in the quiet and peaceable possession and "enjoyment of the said premises and property hereby "granted or conveyed, or intended so to be, as aforesaid.

"THIS INDENTURE further witnesseth, and it "is hereby expressly agreed, that in the case of the death, "resignation, incapacity or inability of any or either of "the parties of the second part to act in the execution of

"any of the trusts aforesaid, then it shall and may be law-
"ful, and the remaining acting, surviving or competent
"trustee or trustees, and the president for the time being,
"of the said party of the first part, are hereby empow-
"ered to select and appoint by an instrument in writing,
"under their hands and seals, which shall be recorded in
"the same offices where this indenture shall be recorded,
"one or more competent persons to fill the vacancy or
"vacancies so created, in the manner aforesaid, and that
"such person or persons so appointed trustee or trustees
"shall have and possess, and be vested with the same
"rights and powers as trustee or trustees as he or they
"would have had and possessed or been vested with, had
"he or they been originally made a party or parties of the
"second part to this indenture, and shall perform the
"same duties in all respects, and until such appointment
"shall be so made, in the manner aforesaid, and notwith-
"standing any vacancy or vacancies as aforesaid, said
"remaining surviving, acting or competent trustee or
"trustees shall have full power and authority to execute
"each and all the trusts hereby created, and their and
"his acts in the premises shall be as legal, valid and ef-
"fectual in all respects, and to all intents and purposes,
"as if the same acts had been done and performed by
"all the parties hereto of the second part; and in case
"said appointment shall be made in the manner afore-
"said, said party of the first part hereby covenants to
"make, execute and deliver all such other or further in-
"struments, deeds, indentures or assurances as may be
"necessary to enable the person or persons so appointed,

"to execute the trusts hereby created and declared, as "fully and perfectly, in all respects, as he or they could "have executed the same, if originally made a party or "parties of the second part to this indenture.

"In witness whereof, the said Oregon Central Rail-"road Company, the party of the first part hereto, hath "caused these presents to be subscribed by its president, "and attested by its secretary, and hath, under the ex-"press authority of the resolutions of its board of direc-"tors, caused its corporate seal to be hereunto affixed; "and the parties hereto of the second part, for the pur-"pose of signifying their acceptance of the trusts hereby "and herein created, have hereunto subscribed their "names and affixed their respective seals:

"All done the day and year first above written.

(Signed)

BEN HOLLADAY.
President of the Oregon Central Railroad Company.

"Corporate seal.)

R. H. TOWLER,
Secretary of the Oregon Central Railroad Company.

MILTON S. LATHAM, Seal.) Trustees.
F. D. ATHERTON, Seal.)

"Sealed and delivered in the presence of: A. G. "Cunningham, E. A. Cunningham.

"State of Oregon, County of Multnomah, ss.

"Be it remembered, that on this fifteenth day of "July, A. D. one thousand eight hundred and seventy- "one, before me the undersigned, a notary public in and "for the said county of Multnomah and State of Ore- "gon, duly commissioned and qualified, personally came "Ben Holladay, president of the Oregon Central Rail- "road Company, and R. H. Towler, secretary of the "Oregon Central Railroad Company, whose names are "subscribed to the forgoing mortgage or deed of trust, "as parties thereto and as the president and secretary of "said Oregon Central Railroad Company, both person- "ally known to me to be the individuals named and de- "scribed in, and who executed the said mortgage or deed "of trust, and they severally acknowledged to me that "he, the said Ben Holladay, as president of the said "Oregon Central Railroad Company, and he, the said "R. H. Towler, as secretary of the said Oregon Central "Railroad Company, executed the foregoing mortgage "or deed of trust, as and for the act and deed of the said "Oregon Central Railroad Company, freely and volun- "tarily and for the uses and purposes therein mentioned; "and he, the said R. H. Towler, being by me duly sworn, "did depose and say that he is the secretary of the said "Oregon Central Railroad Company, and resides in the "City of Portland, Multnomah County, in the State of "Oregon; that he is the legal custodian of, and has in his "possession, and is acquainted with the corporate seal of "the said Oregon Central Railroad Company; that the "seal affixed to the within and foregoing mortgage or

"deed of trust is such corporate seal; that the same was "so affixed by him, as secretary of said company, on the "fifteenth day of July, A. D. one thousand eight hun- "dred and seventy-one, by order of the board of directors "of said company, and that he sign his name as secretary "thereto by the like order of the said board of directors.

"In witness whereof, I have hereunto subscribed my "name, and affixed my notarial seal, the day and year "first above written, at the city of Portland, Multno- "mah County, State of Oregon.

(Signed) ANDREW J. MOSES,
Notary Public in and for the County of Multnomah, State of Oregon.

"(Notarial Seal.)

"(5 cent U. S. Revenue Stamp canceled.)
"State of Oregon, County of Multnomah, ss.

"I, R. H. Towler, secretary of the Oregon Central "Railroad Company, do hereby certify that each of the "five thousand eight hundred and sixty bonds which "this mortgage or trust deed is given to secure, has placed "upon it the requisite United States internal revenue "stamps as required by law: That such bonds, in the "aggregate, have placed thereon, and all duly canceled, "United States internal revenue stamps to the amount "of four thousand three hundred and ninety-five dol- "lars.

"Witness my hand and the seal of said company.

"(Corporate Seal.) (Signed) R. H. TOWLER,
Secretary of the Oregon Central Railroad Company.

"(5 cents U. S. Revenue Stamp Canceled.)
"State of Oregon, Department of State, ss.

"I, S. F. Chadwick, Secretary of State of the State "of Oregon, do hereby certify that Andrew J. Moses, "whose name is subscribed to the foregoing and annexed "certificate of acknowledgment to said mortgage or "deed of trust, was at the time of taking such acknowl-"edgment and signing such certificate, to-wit: on the "fifteenth day of July, A. D. one thousand eight hun-"dred and seventy-one, a duly commissioned, qualified "and acting notary public in and for the County of Mult-"nomah and State of Oregon, and that he then was, by "the laws of the State of Oregon, duly authorized and "empowered to take and certify under his notarial seal, "acknowledgments of deeds of conveyance and mort-"gages and deeds of trust, and his signature to such cer-"tificate is genuine, also his notarial seal, and that full "faith and credit are due to his official acts as such.

"Witness may hand and the great seal of the State, "at my office in the City of Salem, State of Oregon, this "fifteenth day of July, A. D. one thousand eight hun-"dred and seventy-one.

"Great Seal, State of Oregon.
(Signed) S. F. CHADWICK,
Secretary of State
of Oregon.

"(United States Revenue Stamp. 5 cents, canceled.)

"United States of America, State of California, City and
"County of San Francisco, ss.

"I, F. J. Thibault, a commissioner for the State of "Oregon, duly commissioned and qualified under and "by virtue of the laws thereof, residing in the City and "County of San Francisco, and State of California, do "certify that on the fifteenth day of August, A. D. one "thousand eight hundred and seventy-one, before me "personally appeared Milton S. Latham and Faxon D. "Atherton, trustees personally known to me to be the "individuals described in and who executed the foregoing "instrument. And they, the said Faxon D. Atherton "and Milton S. Latham, duly acknowledged to me that "the executed the said instrument freely and voluntarily "as such trustees for the uses and purposes therein men- "tioned, and that the same was their free act and deed.

"In witness whereof I have hereunto set my hand "and affixed my official seal as such commissioner at "my office in the City and County of San Francisco, "and State of California, this fifteenth day of August, "A. D. one thousand eight hundred and seventy-one. "(Commissioner's Seal.)

(Signed) F. J. THIBAULT,
Commissioner for Oregon
In California.

"Received for Record October 14, 1871.

"State of Oregon, County of Multnomah, ss.

"I, James A. Smith, county clerk and clerk of the "County Court of the County of Multnomah, and State "of Oregon, do hereby certify that the foregoing copy "of mortgage has been by me compared with the original, "and that it is a correct transcript therefrom, and of the "whole of such original mortgage, as the same appears "of record at my office and in my custody.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-second day "of November, A. D. 1877.

"(Seal. JAMES A. SMITH, Clerk."

GOVERNMENT'S EXHIBIT NO. 126—C

"SECOND MORTGAGE TO SECURE $300,000.
Oregon Central Railroad Company to W. D. Shipman and S. L. M. Barlow.

"THIS INDENTURE, made this first day of "March, in the year of our Lord one thousand eight "hundred and seventy-six, between the Oregon Central "Railroad Company, a body corporate, created by and "under the Acts of the Legislature of the State of Ore-"gon, in that behalf made and provided, party of the "first part, and William D. Shipman and Samuel L. M. "Barlow, of the City and County of New York, in the "State of New York, parties of the second part, wit-"nesseth: Whereas, the said party of the first part is "expressly authorized and empowered, in and by the

"Acts of the Legislature of the State of Oregon, and "the Acts of Congress of the United States, approved "May fourth, one thousand eight hundred and seventy, "and entitled 'An Act granting lands to aid in the con- "struction of a railroad and telegraph line, from Port- "land to Astoria and McMinnville, in the State of "Oregon,' to issue bonds, and to secure payment of the "same by a mortgage or deed of trust, as hereinafter set "forth and provided; and whereas, under and pursuant "to the lawful authority conferred by said several Acts "of the Legislature of the State of Oregon, and of the "Congress of the United States aforesaid, the board "of directors of the said party of the first part, have "unanimously resolved, in substance and legal effect, "that said Oregon "Central Railroad Company, make, "execute, issue and deliver, under its corporate seal, its "corporate bonds, bearing date even herewith, severally "payable to the holders thereof at the banking-house of "Messieurs Rutten & Bonn, in the City of New York, "State of New York, on the first day of March, one "thousand nine hundred and six, with interest from and "after the first day of March, one thousand eight hun- "dred and seventy-six, at the rate of seven per centum "per annum, payable at the same bank semi-annually, "principal and interest payable in gold coin as follows: "That is to say, that three hundred of said bonds be "made or issued for the sum of one thousand dollars "each, amounting in the aggregate to three hundred "thousand dollars, and no more, and that for the pur- "pose of a more specific identification thereof, said

"three hundred bonds to be numbered in a consecutive "series from one to three hundred, both inclusive, and "that upon the face of each bond be printed or engraved, "a certificate, to be signed by the parties of the second "part hereto, to the effect that such bond is one of the "three hundred bonds intended to be secured by these "presents. And whereas, said board of directors have "further unanimously resolved, under and pursuant to "lawful authority conferred upon said party of the first "part by the Acts aforesaid, in substance and legal "effect, that the president and secretary of said party "of the first part, execute and acknowledge in its name "and in its behalf, and under its corporate seal, and de-"liver to said parties of the second part hereto, a mort-"gage or deed of trust, granting, conveying, assigning "and transferring to them in trust, all its corporate, real "and personal property, road, depots, stations, side-"tracks, wood-yards, franchises, and effects, as security "for the payment of said three hundred bonds, and in-"terest to grow due thereon; and that such mortgage "or deed of trust, should contain all and singular, the "covenants, provisos, and conditions, hereinafter set "forth; and that said mortgage or deed of trust, and "the three hundred bonds thereby secured, be severally "dated the first day of March, one thousand eight hun-"dred and seventy-six.

"AND WHEREAS, the Congress of the United "States of America did, by an Act approved May "fourth, in the year of our Lord one thousand eight "hundred and seventy, and entitled 'An Act granting

"lands to aid in the construction of a railroad and tele-
"graph line from Portland to Astoria and McMinn-
"ville, in the State of Oregon,' grant to the Oregon
"Central Railroad Company, and to their successors and
"assigns, the right of way through the public lands of
"the width of one hundred feet on each side of said
"road, and the right to take from the adjacent public
"lands the material for constructing said road, also nec-
"essary lands for depots, stations, side-tracks, and other
"needful uses in operating said road, not exceeding forty
"acres in any one place, and also each alternate section
"of the public lands, not mineral, excepting coal and
"iron lands, designated by the odd numbers nearest said
"road to the amount of ten such alternate sections per
"mile on each side thereof, not otherwise disposed of, or
"reserved or held by valid pre-emption or homestead
"right at the time of the passage of said Act; and in
"case the granting of ten full sections per mile could not
"be found on each side of said road within said limits
"of twenty miles, other lands could be selected under
"the directions of the Secreary of the Interior, on either
"side of said road nearest to and not more than twenty-
"five miles from the track of said road, to make up such
"deficiency.

"AND WHEREAS, the said Oregon Central Rail-
"road Company, party of the first part hereto, in and
"by the said Act of Congress of the United States of
"America, approved May fourth, in the year one thou-
"sand eight hundred and seventy, is required to set apart,
"by mortgage or deed of trust to two or more trustees,

"all the net proceeds of the sales of the said granted "lands as a sinking fund to be kept invested in the bonds "of the United States, or other safe and more produc- "tive securities, for the purchase from time to time and "the redemption at maturity of the first mortgage con- "struction bonds of the company, on the road, depots, "stations, side-tracks, and wood-yards, not exceeding "thirty thousand dollars a mile of the railroad, payable "in gold coin, not longer than thirty years from date, "with interest payable semi-annually in coin, not ex- "ceeding seven per centum per annum, no part of the "principal or interest of said fund to be applied to any "other use, until all said bonds shall have been pur- "chased, or redeemed, or canceled, and each of the said "mortgage construction bonds to bear the certificate of "the trustees, setting forth the manner in which the same "is secured, and its payments provided for.

"AND WHEREAS, the said Oregon Central Rail- "road Company, party of the first part, has hereto- "fore issued its bonds amounting in the aggregate to "four millions three hundred thousand dollars, and as "security for the payment thereof has executed a mort- "gage or deed of trust of all the property conveyed or "intended to be conveyed by this indenture to Milton "S. Latham and Faxon D. Atherton, as trustees, which "mortgagte or deed of trust is dated the fifteenth day "of July one thousand eight hundred and seventy-one, "and is duly recorded in the record mortgages of Mult- "nomah, Washington and Yamhill counties, in the State "of Oregon, all of which bonds are now pleged to Milton

"S. Latham, of San Francisco, in the State of Califor-"nia, in trust for certain creditors of this company, as "security for a loan of one million dollars, gold, and "accrued interest.

"Now, therefore, this indenture witnesseth that the "said Oregon Central Railroad Company, the party of "the first part hereto, under, pursuant to, and by virtue "of the express power and authority conferred upon and "vested in it by said several Acts of the Legislature of "the State of Oregon, and of the Congress of the United "States of America, aforesaid, and under and pursuant "to resolutions duly passed and adopted by its board of "directors, and which are duly entered upon the official "minutes of said board, and for and in consideration of "the foregoing premises, and especially for the purpose "and with the intent of better and more effectually se-"curing the payment of said three hundred bonds, with "interest due and to grow due thereon, and for and in "consideration of one dollar, lawful money of the United "States of America, by the said parties of the second "part hereto, in hand fully and truly paid to the said "party of the first part hereto, before the sealing and "delivery of these presents, the receipt whereof is here-"by acknowledged: Hath granted, bargained, sold, as-"signed, transferred and set over, enfeoffed, conveyed, "and confirmed, and by these presents doth grant, bar-"gain, sell, assign, transfer and set over, enfeoff, convey "and confirm, to the said William D. Shipman and Sam-"uel L. M. Barlow, the said parties of the second part, as "trustees, and in trust, and to the survivor of them,

"and to their or his successors or successor, all and sin-
"gular, the railroad of the said party of the first part,
"heretofore constructed or hereafter to be constructed
"from Portland to Astoria, and from a suitable point
"of junction near Forest Grove to the Yamhill river,
"near McMinnville, in the State of Oregon, in all a dis-
"tance of one hundred and forty-six and one-half miles;
"together with all its lands, tenements and heredita-
"ments acquired and appropriated, or which shall here-
"after be acquired and appropriated for the purpose of
"a right of way for its railroad and all the appurtenances
"thereunto belonging; and, also, all its lands acquired
"and appropriated, or which shall hereafter be acquired
"and appropriated under and pursuant to the provi-
"sions of the act of Congress of the United States of
"America, approved May fourth, one thousand eight
"hundred and seventy, entitled 'An Act granting lands
"to aid in the construction of a railroad and telegraph
"line from Portland to Astoria and McMinnville, in
"the State of Oregon.' And also its depots, engine-
"houses, car-houses, station-houses, ware-houses, ma-
"chine-shops, workshops, superstructures, erections and
"fixtures. And also all and singular, the franchises,
"rights and privileges now owned, possessed or acquired,
"or which shall hereafter be owned, possessed or ac-
"quired by said party of the first part. And all lands,
"tenements, hereditaments and real estate acquired and
"appropriated wheresoever and whatsoever or now
"owned by said party of the first part, or which shall
"hereafter he owned by it. And also all and singular, the

"locomotives, tenders, passenger cars, freight cars and "all other cars, carriages, tools, machinery and equip- "ments for said railroad, now owned, or which shall here- "after be owned or acquired by said party of the first "part. And also all goods and chattels now owned, or "which shall hereafter be owned by said party of the "first part, and in any way relating or pertaining or "belonging to or connected with said railroad, or run- "ning or operating the same, together with all rents, "issues, income, profits, moneys, rights, benefits and "advantages derived or to be derived, had or received "therefrom by said party of the first part, in any way "whatever.

"To have and to hold, all and singular, the premises, "rights, franchises, property, real and personal, here- "inbefore and hereby granted, assigned, mortgaged, "pledged and conveyed, or intended so to be, and every "part and parcel thereof, with all the appurtenances "unto the same belonging on in any wise appertaining "unto them, the said parties of the second part hereto, "and to the survivor of them, and to their and to his "successors and successor, and to their and his assigns "forever in trust, for the person or persons, firm or "firms, bodies politic or corporate, who have heretofore "or who shall hereafter at any time become the pur- "chasers or holders, or owners of any or either of said "three hundred bonds, amounting in the aggregate to "three hundred thousand dollars, subject to the terms, "provisos, and stipulations in said three hundred bonds "contained. And subject also to the provisions of the

"act of Congress of the United States, of America, af-
"fecting, or relating to, or binding upon the party of
"the first part. And subject also, to the prior lien of
"said mortgage of the fifteenth day of July, one thou-
"sand eight hundred and seventy-one, executed by the
"party of the first part to Milton S. Latham and Faxon
"D. Atherton, trustees, in favor of all persons, firms,
"or corporations who have acquired, or may hereafter
"acquire, an interest in or become the owners of any
"part of the said bonds secured thereby. And also sub-
"ject to the possession and management of said railroad
"and property of said party of the first part; and its
"successors and assigns, so long as no default shall be
"made in the payment of either the interest or principal
"of said three hundred bonds, or in or to either of them,
"or so long as the party of the first part shall well and
"truly observe, keep and perform all and singular the
"covenants, agreements, conditions, and stipulations in
"said three hundred bonds and in this indenture con-
"tained and set forth, and which are to be observed,
"kept and performed by and on the part of the said
"party of the first part. And the said Oregon Central
"Railroad Company, the party of the first part, hath
"covenanted and agreed, and by these presents doth
"for itself, its successors and assigns covenant and agree
"with the parties of the second part hereto, and the sur-
"vivor of them, and their and his successors and succes-
"sor, in manner and form following, that it to say:

"First; That said Oregon Central Railroad Com-
"pany, party of the first part. and its successors, shall

"and will pay, or cause to be paid, all taxes, charges, "rates, levies and assessments imposed, assesed or levied, "or which may hereafter be imposed. assessed or levied "upon the premises, franchises and property hereby "mortgaged, conveyed and assigned, or intended so to "be, and shall and will, at its own proper cost, expense "and charges do, or cause to be done, all acts and things "necessary and proper to be done or performed, in order "to preserve and keep valid and intact the lien or in- "cumbrance upon all and singular the aforesaid prem- "ises, property and franchises hereby created, or intend- "ed so to be; and that except the lien of said mortgage "of the fifteenth day of July, one thousand eight hun- "dred and seventy-one, there is no lien upon the prop- "erty conveyed, or intended to be conveyed, by this in- "denture at the ensealing and delivery thereof.

"Second. That the said Oregon Central Railroad "Company, the party of the first part, and its succes- "sors, shall and will at any time or times hereafter, and "from time to time, execute, acknowledge, and deliver "under its corporate seal, to the said parties of the sec- "ond part, and the survivor of them. and their or his "successors or successor, such other and further assur- "ances, deeds, mortgages, obligations, transfers, inden- "tures and instruments in writing, and shall and will "do and perform all such further or other acts or things "as shall or may be proper or necessary, or as their or "his counsel, learned in the law, shall deem necessary, "proper, or expedient, for the better or more effectually "securing the payment of said three hundred bonds, and

"the interest due or to grow due thereon, or for carry-
"ing into effect the true intent, design, objects, and
"purposes of these presents, or making, preserving,
"continuing, and keeping valid and effectual the lien
"and incumbrance created, or intended to be created,
"by the execution, delivery and recording of this inden-
"ture upon all the property, real and personal, rolling
"stock, equipments, franchises, and effects, and espe-
"cially the lands referred to in and by the said Acts of
"Congress, approved may fourth, one thousand eight
"hundred and seventy, now owned, possessed, or re-
"quired, or which shall hereafter be owned, possessed,
"or required by said party of the first part.

"Third. And for the purpose of fully and more ef-
"fectually securing the payment of the said three hun-
"dred bonds, together with the interest due, or to grow
"due thereon, the said Oregon Central Railroad Com-
"pany, the party of the first part, hereto for itself and
"its successors, hath pledged and hereby doth irrevo-
"cably pledge for the purpose and objects hereinbefore
"specified to and with the said parties of the second part
"and the survivor of them, their and his successors and
"successor, all and singular, the net proceeds of the sales
"of the lands granted to the said party of the first part,
"by the Act of Congress, approved May 4, one thousand
"eight hundred and seventy, hereinbefore mentioned.

"Subject, however, to the prior pledge of the same
"in and by said mortgage hereinbefore referred to, of
"the fifteenth day of July, one thousand eight hundred
"and seventy-one, and for the purposes therein speci-

"fied, as a sinking fund to be kept invested by the parties "of the second part in the bonds of the United States, "or other safe and more productive securities, for the "purchase from time to time, and the redemption at "maturity, of the three hundred bonds of the party of "the first part, hereinbefore particularly described, and "no part of the principal or interest of the said fund shall "be applied to any other use until all the said bonds shall "have been purchased or redeemed and cancelled.

"And in the event that the principal of said three "hundred bonds is not otherwise paid at the maturity "thereof, then the fund aforesaid, after satisfaction of "the lien, if any of said mortgage and pledge of the "fifteenth day of July, one thousand eight hundred and "seventy-one, which shall then have accrued from the "proceeds of the sales of said lands and, interest there- "on shall be by said trustees, parties of the second part, "or the survivor of them, their or his successors or suc- "cessor, applied to the discharge and payment of any "and all amounts, both principal and interest then re- "maining due and unpaid on all such bonds, and if such "funds shall then be insufficient to discharge the whole "amount then due on all such bonds, the same shall then "be applied ratably thereon, according to the interests "respectively of all such bondholders.

"And it is further stipulated and agreed, between "the parties hereto, that if there remain any deficit in the "payment of the principal and interest due on said three "hundred bonds after the whole of the fund aforesaid "shall be applied thereon, at the maturity thereof, then

"the trustees, parties of the second part hereto, their suc-
"cessors or successor, shall have full power and author-
"ity to sell and convey, any and all lands then remain-
"ing undisposed of, which are included in the grant made
"by Act of Congress aforesaid, and which are hereby
"conveyed and intended to be conveyed in whole or in
"part, as the said trustees may deem best for the inter-
"ests of said bondholders, and as may be prescribed or
"limited by any Act of Congress in force at the time of
"such sale, and if there shall be no such prescription and
"limitation by law, then said lands shall only be sold at
"public auction in the City of Portland, in the State of
"Oregon, to the highest bidder, and no such sale shall
"be made unless notice of the time and place thereof shall
"first be given by publication for at least six weeks in
"a weekly newspaper of general circulation, published
"in the City of Portland, State aforesaid, and the pro-
"ceeds of such sale or sales after satisfaction of the lien
"if any, of said mortgage pledge of the fifteenth day
"of July, one thousand eight hundred and seventy-one,
"and after, the payment of all costs and expenses con-
"nected with such sales and a reasonable compensation
"to said parties of the second part for their services in
"connection therewith, shall be applied to the payment
"of any balance, either of principal or interest, then re-
"maining unpaid on such bonds aforesaid, or any of
"them.

"And it is hereby expressly covenanted, agreed and
"understood, by and between the parties to these pres-
"ents, that notwithstanding the execution and delivery

"of these presents, and of the covenants herein con-
"tained, the said Oregon Central Railroad Company, the
"party of the first part hereto, shall have the right at
"any time after the execution of these presents, to make
"sales of all and singular, the lands granted to said com-
"pany by Act of Congress of the United States, ap-
"proved May fourth, one thousand eight hundred and
"seventy aforesaid, in the manner and mode prescribed
"therefor by law, and that the parties of the second
"part, shall, and will at any time after the delivery to
"them of this indenture, upon the request of the party
"of the first part, and upon the receipt by the parties of
"the second part from the party of the first part of such
"portion of the price or consideration for said lands as
"shall remain after satisfaction of the lien of said mort-
"gage and pledge of the fifteenth day of July, one thou-
"sand eight hundred and seventy-one (the certificate of
"the president for the time being of the said party of
"the first part, to be sufficient evidence to said parties
"of the second part of the amount of such remaining
"portion of said price of consideration) make, execute,
"and deliver at the cost and expense however, of said
"party of the first part, such releases, discharges, and
"assurances in respect to said lands as the party of the
"first part or its counsel learned in the law, may require
"for the purpose of making good and sufficient title to
"said granted lands so sold, to any and all purchasers
"thereof, clear and free from all lien or incumbrance
"created by these presents, and all net proceeds re-
"ceived from the sales of all or any of the lands granted

"or intended to be granted by said Act of Congress, "after satisfaction of said prior lien, shall be received "and held jointly by the parties of the second part and "the president of the party of the first part, and shall "be held subject to their control, and shall immediately "and as soon as practicable after the same are received, "invested by said parties of the second part, by and with "the consent of the president of the party of the first "part, in United States bonds or other more productive "securities, which securities shall be under the control "of the said parties of the second part and the said presi- "dent of the party of the first part, and shall be used "solely for the purposes herein specified. And it is ex- "pressly understood and agreed that the lien created by "this indenture on said lands granted by said Act of "Congress, shall upon the sale of any portion of said "lands as aforesaid, and the application of the purchase "price thereof as herein provided, cease so far as the "same relates to the portions of the lands so sold. The "parties of the second part shall not have the right to "make sale of any of said lands without the consent of "the party of the first part, except as herein specifically "provided.

"Fourth. That the said Oregon Central Railroad "Company, the party of the first part hereto, shall and "will, well and truly pay the said sums of money in said "three hundred bonds mentioned, together with the semi- "annual interest due or to become due thereon, at the "rate of seven per centum, at the times, in the manner, "and at the place specified therein,

"And further, said Oregon Central Railroad Com-
"pany, hereby covenants and agrees, that in case it shall
"have for the period of six months made default in the
"payment of the semi-annual interest due, or to become
"due on either or any of the said three hundred bonds;
"or in case it shall fail to appropriate and set apart in
"the hands of the said parties to the second part, all and
"singular the net proceeds of the sales of the said lands,
"granted to the party of the first part by the Act of
"Congress of the United States as aforesaid, as and for
"a sinking fund for and to be applied in payment or
"redemption of said three hundred bonds in the manner
"and subject to the conditions hereinbefore and in said
"Act of Congress specified, then and in either of said
"cases, after the lapse of said six months, the whole
"principal sum mentioned in each and all of said three
"hundred bonds, shall forthwith be and become due and
"payable, and the lien or incumbrance hereby created for
"the security and payment thereof, may be at once en-
"forced, anything in said bonds or in this indenture to
"the contrary notwithstanding, and that it shall and
"may be lawful, and the said parties of the second part
"and the survivor of them and their and his successors
"or successor, are hereby expressly authorized and em-
"powered upon the request in writing of the holders of
"at least one hundred of said three hundred bonds to
"enter into and upon, and to take actual possession of all
"and singular the railroad premises, franchises, right,
"property, real and personal, and effects hereby granted,
"conveyed, assigned, mortgaged, pledged, transferred

"and set over, or intended so to be, as a security for the "payment of said three hundred bonds, and by them- "selves or their agents to operate the said railroad, and "to take, collect and receive tolls, earnings, income and "profits thereof, and every part thereof, or to be derived "therefrom; and that they, said parties of the second "part, and the survivor of them and their or his suc- "cessors and successor, shall and may proceed, and are "hereby expressly authorized and empowered thereupon, "but within such reasonable time as they may deem "proper, not less than sixty days, and upon and after "public notice by advertisement for at least six weeks "in one or more newspapers, published in the cities of "New York, State of New York, and San Francisco, "State of California, and Portland, State of Oregon, "to proceed to sell at public auction in said City of Port- "land to the highest bidder, subject to any prior lien, "if any there shall be under said mortgage of the fif- "teenth day of July, one thousand eight hundred and "seventy-one, as well all and singular the said railroad "rights and franchises as all other, the property real and "personal and premises thereby granted, conveyed, as- "signed, mortgaged, pledged, transferred and set over "or intended so to be, and all benefit and equity of re- "demption whatsoever of the said Oregon Central Rail- "road Company, the said party of the first part hereto, "of, in and to the same, and every part and parcel there- "of, together with the benefit of the franchises belong- "ing thereto or connected therewith.

"And as the attorney or attorneys of the said Oregon

"Central Railroad Company, the said party of the first "part hereto, for that purpose by these presents duly "appointed and constituted the said parties of the sec- "ond part, and the survivor of them and their and his "successors and successor shall have full power and au- "authority to make, execute, and deliver to the pur- "chaser or purchasers thereof a good and valid and suffi- "cient deed or deeds, conveyance or conveyances, as- "signment or transfer in fee simple or otherwise of said "railroad lands, tenements and real estate, and of all "and singular, the said personal or other property, fran- "chises, rights and premises hereby granted, assigned, "transferred or conveyed as aforesaid, which sale so to "be made as aforesaid, and which deeds, conveyances, "assignments and transfers so to be made and delivered "as aforesaid, shall operate to convey, assign, transfer "and vest in said purchaser or purchasers all the right, "title, interest and estate whatsoever, revisionary or "otherwise, of the said Oregon Central Railroad Com- "pany, the party of the first part, of, in and to the prem- "ises so sold, conveyed, assigned, transferred, and which "sale so to be made shall be a complete and perpetual "bar, both at law and in equity, against the said Oregon "Central Railroad Company, the party of the first part, "its successors and assigns, and all persons or parties "claiming by, from or under it, or them, in anywise or "manner whatsoever, and that out of the moneys or pro- "ceeds arising either from said tolls, earnings or re- "ceipts or said railroad or premises, or at or from said "sale so to be made as aforesaid, after first deducting the

"expenses, disbursements, costs, charges and counsel "fees incurred in and about the conducting of said sale "or running and operating said railroad, as well as a "reasonable compensation to themselves for their serv- "ices in the premises, they, the said parties of the second "part, and the survivor of them, their or his successors "or successor, shall pay the amount then remaining un- "paid and due on said three hundred bonds, and thereby "secured, or so many as shall then be outstanding and "unpaid, together with all arrears of interest then due "or owing upon the same, rendering or paying over the "surplus of all such moneys, if any there shall be, to "the said party of the first part hereto, its successors "or assigns.

"Provided always, and this indenture is upon the "express condition that if the existing bonds of the party "of the first part secured by said mortgage or deed of "trust of the fifteenth day of July, one thousand eight "hundred and seventy-one, shall hereafter be retired and "cancelled and the said mortgage extinguished, said Ore- "gon Central Railroad Company, party of the first part, "may create a new mortgage upon its road, lands and "property in this indenture conveyed and intended to "be conveyed, to secure its bonds to be issued to an "amount including said three hundred bonds of not ex- "ceeding twenty thousand dollars for each mile of its "road, which bonds shall be issued only in proportion "and as fast as such roads is completed, of which bonds "last mentioned said three hundred bonds shall form a "part and upon the execution, delivery, and lawful word-

"ing of such new mortgage securing said three hundred "bonds as aforesaid, and the completion of the road of "said company to Junction City, in the County of Lane, "in the State of Oregon. Provided, always that said "new mortgage shall contain clauses, covenants and pro- "visions similar, so far as the same are applicable to the "clauses, covenants and provisions herein contained. And, "provided further, that said new mortgage shall first be "submitted to and approved as to its form and substance "by said parties of the second part, of their counsel, and "shall be a first lien; together with the additional bonds, "at the rate of twenty thousand dollars per mile of com- "pleted road hereinbefore mentioned; upon the prop- "erty and premises therein and thereby conveyed, this "mortgage shall be surrencered up, extinguished and "canceled of record, and the lien thereof shall thereupon "cease. And provided further, and this indenture is "upon the express condition that in the case of an ar- "rangement by which the said Oregon Central Railroad, "or the Oregon and California Railroad, shall be sold "or transferred to or combined with any other railroad "company or corporation, and upon any such sale or "organization or combination new bonds of any kind "shall be issued by such other railroad company or cor- "poration and paid for the said road so sold or trans- "ferred, then and in any such case, an equal number of "such new bonds or (in case the interest reserved on "said bonds be less than seven per centum per annum) "an amount the annual interest upon which shall be "equal to the interest payable upon said three hundred

"bonds shall be offered to the owners and holders of "said three hundred thousand dollars of bonds to be "secured by this indenture, and in case such new bonds "shall be equal in value to the bonds of the Central Pa- "cific Railroad Company, or shall be guaranteed by the "Central Pacific Railroad Company or other corpora- "tion of equal financial standing, whose bonds are of "equal or greater market value then the first mortgage "bonds of said Central Pacific Railroad Comapny, then "the owners and holders of said bonds shall accept the "said new bonds, and shall by the purchase of the said "new bonds be deemed to have agreed with said com- "pany to accept the same at any time within six years "from the first day of March, one thousand eight hun- "dred and seventy-six, in lieu of said three hundred "bonds secured by this indenture, and the lien of this "indenture shall thereupon cease, and the same shall be "surrendered up and canceled of record.

"THIS INDENTURE further witnesseth, and "these presents are upon the express condition that upon "payment in full of said three hundred bonds, and the "interest due thereon, then these presents, and the es- "tate hereby granted shall cease, and be void, and the "Oregon Central Railroad Company, the party of the "first part, shall be immediately and fully re-invested "with the said premises hereby granted in law and in "fact, without any entry or other act whatsoever, and "that until default shall be made by said party of the "first part hereto, either in payment of said three hun- "dred bonds or in payment of the interest due, or to

"grow due thereon, as aforesaid, or in appropriating and "setting apart in the hands of the parties of the second "part, their successors or successor, all and singular the "net proceeds of the sales of said lands granted by the "Act of Congress aforesaid as a sinking fund, to be "kept invested in bonds of the United States, or other "safe and more productive securities, for the purposes "hereinbefore mentioned and described, or in keeping "and observing any of the covenants and agreements "hereinbefore contained, the said Oregon Central Rail-"road Company, the party of the first part, and its suc-"cessors and assigns, shall remain in the quiet and peace-"able possession and enjoyment of the said premises and "property hereby granted or conveyed, or intended so "to be, as aforesaid.

"THIS INDENTURE further witnesseth, that "either of said parties of the second part may resign the "trust hereby imposed upon him by delivery to the presi-"dent for the time being, of said party of the first part, "or leaving at his office in the City of Portland, as "aforesaid, or wherever said office may for the time "being be located, notice in writing by said trustee, "signed and acknowledged in such manner as to entitle "the same to be recorded in the offices where these pres-"ents are recorded, such notice, however, to be so deliv-"erd at least one month before such resignation is to "take effect.

"THIS INDENTURE further witnesseth, and it "is hereby expressly agreed that in case of the death,

"resignation, incapacity or inability of either of the par-
"ties of the second part to act in the execution of any
"of the trusts aforesaid, then it shall and may be lawful
"for the remaining acting surviving or competent
"trustee, and the president for the time being of the
"party of the first part, and they are hereby empow-
"ered and directed to select and appoint by an instru-
"ment in writing under their hands and seals; which
"shall be recorded in the same office where this indenture
"shall be recorded, one or more competent persons to
"fill the vacancy so created in the manner aforesaid,
"and that in the case of the death, resignation, incapa-
"city or inability of both of said parties of the second
"part at the same time, then and in that case it shall and
"may be lawful for the president alone, for the time
"being of the said party of the first part, and he is here-
"by empowered in like manner to select and appoint
"competent persons to fill the vacancies thus created,
"and in case of failure on the part of said president and
"said remaining trustee, or either of them, to fill said
"vacancies in the office of trustee under this instrument,
"for the period of three months after such vacancies
"occur, it shall be lawful for the holders of said three
"hundred bonds, to the amount of ten per cent. thereof
"or upwards, to apply to any court of competent juris-
"diction in any county through or into which said rail-
"road runs, for the appointment of a trustee or trustees
"to fill such vacancy or vacancies, and such person or
"persons so appointed trustee or trustees shall have and
"possess and be invested with the same estates, rights

"and powers as trustee or trustees as he or they would "have had and possessed or been invested with had he or "they been originally made a party or parties of the sec- "ond part to this indenture, and shall perform the same "duties in all respects and until such appointment shall "be made in the manner aforesaid, and notwithstanding "any vacancy or vacancies as aforesaid, said remain- "ing, surviving, acting, or competent trustee shall have "full power and authority to execute each and all of "the trusts hereby created, and their and his acts in the "premises shall be as legal, valid and effectual in all "respects and to all intents and purposes as if the same "acts had been done and performed by all the parties "hereto of the second part; and in case said appoint- "ment shall be made in the manner aforesaid, said party "of the first part hereby covenants to make, execute "and deliver, all such other or further instruments, "deeds, indentures or assurances as may be necessary to "enable the person or persons so appointed to execute "the trusts hereby created and declared, as fully and "perfectly in all respects as he or they could have exe- "cuted the same if originally made a party or parties of "the second part to this indenture. And it is hereby "distinctly declared that no party of the second part "nor his successors shall be nor shall be held to be, in "any case, contingency or event, liable for any act, neg- "lect or default of any other of said parties of the sec- "ond part hereto, or their successors, but every party of "the second part hereto shall be liable for his own sev- "eral acts, neglects and defaults alone.

"And also, that none of the said parties of the sec-
"ond part or their successors shall be liable for any pro-
"ceeds of any sales of said lands, franchises or property
"above mentioned and hereby conveyed or intended so
"to be, except such as shall be actually by them or him
"in hand received. And also, that the parties of the
"second part shall not be obliged to take possession of
"said railroad or any of the property connected there-
"with or manage, or control, operate or conduct the
"same (except the proceeds of lands by said party of
"the first part, sold as herein above provided for), until
"they, the said parties of the second part, shall have
"been reasonably indemnified against all and every ex-
"pense, loss, cost, damage or liability by them suffered,
"made, paid or incurred by reason thereof. And also,
"that the parties of the second part, by becoming parties
"to this instrument and accepting the trust hereby
"created, do not incur and shall not be held to have in-
"curred any obligation or responsibility whatever by
"reason of or in respect of the various recitals herein
"above made.

"IN WITNESS WHEREOF: The said Oregon
"Central Railroad Company, the party of the first part
"hereto, hath caused these presents to be subscribed by
"its president, and attested by its secretary, and hath
"under the express authority of the resolutions of its
"board of directors, caused its corporate seal to be
"hereunto affixed, and the parties of the second part,
"strangers to the several recitals herein, for the sole
"purpose of signifying their acceptance of the trusts

"hereby and herein created, have hereunto subscribed "their names and affixed their respective seals, the day "and year first above written.

T. R. CORNELIUS,
President of the Oregon Central Railroad Company.

A. G. CUNNINGHAM,
Secretary of the Oregon Central Railroad Company.

"(Seal of the Oregon
Central Railroad
Company.)

WILLIAM D. SHIPMAN. (L. S.)

SAMUEL L. M. BARLOW. (L. S.)

"Sealed and delivered in the presence of J. N. Dolph, Joseph Simon.

"State of Oregon, County of Multnomah, ss.

"Be it remembered, that on this thirtieth day of "August, A. D. one thousand eight hundred and seven- "ty-six, before me, the undersigned, a notary public in "and for the county of Multnomah, and State of Ore- "gon, duly commissioned and qualified, personally came "T. R. Cornelius, president of the Oregon Central Rail- "road Company, and A. G. Cunningham, secretary of the "Oregon Central Railroad Company, whose names are "subscribed to the foregoing mortgage or deed of trust as "the parties thereto, and as the president and secretary of "said Oregon Central Railroad Company, both person- "ally known to me to be the individuals named and de- "scribed in and who executed the said mortgage and deed

"of trust, and they severally acknowledged to me that "he, the said T. R. Cornelius, as president of the Oregon "Central Railroad Company, and he, the said A. G. "Cunningham, as secretary of the said Oregon Central "Railroad Company, executed the foregoing mortgage "or deed of trust as and for the act and deed of the said "Oregon Central Railroad Company, freely and volun- "tarily, and for the uses and purposes therein mentioned; "and he, the said A. G. Cunningham, being by me duly "sworn, did depose and say, that he is the secretary of the "said Oregon Central Railroad Company, and resides in "the City of East Portland, Multnomah county, in the "State of Oregon; that he is the legal custodian of, and "has in his possession, and is acquainted with the cor- "porate seal of the said Oregon Central Railroad Com- "pany; that the seal affixed to the within and foregoing "mortgage and deed of trust is such corporate seal; that "the same was so affixed by him as secretary of said "company on the thirtieth day of August, A. D. one "thousand eight hundred and seventy-six, by order of the "board of directors of said company; and that he signed "his name as secretary thereto by the like order of the "said board of directors.

"In witness whereof, I have hereunto subscribed my "name and affixed my notarial seal the day and year "above written, at the city of Portland, Multnomah "county, State of Oregon.

"(Notarial Seal.) JOHN D. BILES.

Notary Public in and for the County of Multnomah, State of Oregon.

"State of Oregon, Department of State, ss.

"I, S. F. Chadwick, Secretary of State of the State "of Oregon, do hereby certify that Jno. D. Biles, whose "name is subscribed to the foregoing and annexed cer- "tificate of acknowledgment to said mortgage or deed "of trust, was at the time of taking such acknoowlg- "ment and signing such certificate, to wit: on the thir- "tieth day of August, A. D. one thousand eight hundred "and seventy-six, a duly commissioned, qualified and act- "ing notary public, in and for the county of Multnomah, "and State of Oregon, and that he was by the laws of the "State of Oregon duly authorized and empowered to "take and certify under his notarial seal, acknowledg- "ments of deeds of conveyance and mortgages and deeds "of trust, and his signature to such certificate is genuine, "also his notarial seal, and that full faith and credit are "due to his official acts as such.

"Witness my hand and the great seal of the State, "at my office in the city of Salem, State of Oregon, "this thirtieth day of August, A. D. one thousand eight "hundred and seventy-six.

"(Seal of the State of Oregon.)

S. F. CHADWICK,
Secretary of State of Oregon.

"United States of America, State of New York, City and County of New York, ss.

"Be it known, that on this second day of October, "A. D. one thousand eight hundred and seventy-six,

"before me, Edwin F. Corey, junior, a notary public "of the State of New York, duly commissioned and "sworn, and dwelling in said city and county of New "York, personally appeared the within-named William "D. Shipman and Samuel L. M. Barlow, to me per- "sonally known to be the identical persons described "in and who executed the within instrument, and sev- "erally acknowledged to me that they executed the same "freely and voluntarily, for the uses and purposes therein "named.

"In witness whereof, I have hereunto set my hand "and affixed my notarial seal the day and year last "aforesaid.

"(Notarial Seal.) EDWIN F. COREY, Jr.,
Notary Public, City and State of New York.

"State of New York, City and County of New York, ss.

"I William Walsh, clerk of the city and county of "New York, and also clerk of the Supreme Court for the "said city and county, the same being a court of record, "do hereby certify that Edwin F. Corey, Jr., whose name "is subscribed to the certificate of the proof of acknowl- "edgment of the annexed instrument and thereon writ- "ten, was at the time of taking such proof or acknowledg- "ment a notary public in and for the city and county of "New York, dwelling in the said city, commissioned and "sworn, and duly authorized to take the same. And, "further that I am well acquainted with the handwriting "of such notary, and verily believe that the signature "to the said certificate of proof or acknowledgment

"is genuine. I further certify that said instrument is "executed and acknowledged according to the law of "the State of New York.

"In testimony whereof, I have hereunto set my hand "and affixed the seal of the said court and county the "second day of October, one thousand eight hundred "and seventy-six.

"(Court Seal.) WM. WALSH, Clerk.

"Received for record at ten o'clock A. M., October "fourteenth, one thousand eight hundred and seventy-"six.

"State of Oregon, County of Multnomah, ss.

"I, James A. Smith, county clerk of the County "Court of the county of Multnomah, and State of Ore-"gon; do hereby certify that the foregoing copy of "mortgage or deed of trust has been by me compared "with the original, and that it is a correct transcript "therefrom, and of the whole of such original mortgage "or deed of trust as the same appears of record at my "office, and in my custody.

"In testimony whereof, I have hereunto set my hand "and affixed the seal of said court this twenty-eighth "day of November, A. D. one thousand eight hundred "and seventy-seven.

"(Seal.) JAMES A. SMITH, Clerk."

GOVERNMENT'S EXHIBIT NO. 126D.

"CONTRACT BETWEEN BEN HOLLADAY AND THE FRANKFORT COMMITTEE.

"AGREEMENT made this twenty-ninth day of "February, in the year one thousand eight hundred and "seventy-six, between Ben Holladay of Harrison, West-"chester county, New York, party of the first part, and "Heinrich Hohenemser, of the city of Frankfort-on-the-"Main, Prussia, director of the Deutsche Vereins Bank, "in the same city; Julius Schmidt, banker of the city "of Frankfort-on-the-Main; Paul Reinganum, doctor "of law and attorney-at-law of the city of Frankfort-on-"the-Main; Hermann Koehler, merchant of the city of "Frankfort-on-the-Main; Adolph Otto, doctor of law "and attorney-at-law of the city of Heilbronn, kingdom "of Wirtemberg; Michael Benjamin, banker of the city "of Munich, kingdom of Bavaria; Carl Stachelin-Buck-"nor, of the city of Basle, Switzerland, partner in the "house of Messrs. Iselin and Stachelin, and Henry Vill-"ard, of the city of Heidelberg, grand duchy of Gaden, "being owners and possessors of ten millions two hun-"dred and fifty-five thousand one hundred dollars "($10,255,100), first mortgage bonds of the Oregon and "California Railroad Company, parties of the second "part, witnesseth: In consideration of the mutual cove-"nants and agreements hereinafter expressed, the said "parties have agreed, and do hereby mutually agree as "follows:

"First. The said Holladay sells and transfers, and "agrees to sell and transfer to said parties of the second "part, or to such persons as they may designate, nine- "teen millions of the stock of the Oregon and California "Railroad Company, being all of the lawfully issued "stock of the said company, excepting only one million "now held by Milton S. Latham.

"Second. The said Holladay in like manner sells "and transfers and agrees to sell and transfer to said "parties of the second part, or to such persons as they "may designate, a majority of the stock of the Oregon "Central Railroad Company, viz., over seventy-five "thousand shares thereof, the remainder being held by "Milton S. Latham and others.

"Third. The said Holladay in like manner sells and "trainsfers, and agrees to sell and transfer to said par- "ties of the second part, or to such persons as they may "designate, all of the stock of the Oregon Steamship "Company, the same now standing in the name of Milton "S. Latham, and at the option of said parties of the "second part, or such person as they may designate, the "said Holladay agrees to guaranty and to fulfill said "guaranty, and he hereby guarantees that the benefits "arising from the now existing contract or contracts for "the carriage of the mails between Portland and Sitka "for the remainder of the time of said contract shall "accrue to the Oregon Steamship Company, if it elects "to continue said service for the remainder of said con- "tract term.

"Fourth. The said Holladay, in like manner, sells "and transfers and agrees to sell and transfer to said par- "ties of the second part, or to such persons as they may "designate, all of the stock of the Portland Warehouse "and Dock Company, viz., five hundred thousand dol- "lars, and the said Holladay covenants that the title of "said company to its real estate is perfect and free from "liens or incumbrances, and that said company is free "from floating debt and other debts, except as to a mort- "gage on its real estate of thirty-five thousand dollars "or thereabouts, which mortgage said Holladay agrees "to pay and cancel out of the first moneys to be paid "to him by said parties of the second part, or such per- "sons as they may designate as is hereafter agreed. The "net earnings of said last-named company, up to the "date of this agreement, are not to belong to the said "parties of the second part.

"Fifth. And the said Holladay agrees that any "existing contracts between the Oregon and California "Railroad Company, the Oregon Steamship Company "and the Oregon Central Railroad Company, or either "of them, with the Oregon Transfer Company, shall be "modified, previous to the execution of this contract, by "a new agreement between the proper parties, to the "reasonable satisfaction of the parties of the second part "to these presents, or to such persons as they may desig- "nate.

"Sixth. The said Holladay agrees to furnish to said "parties of the second part, or of such persons as they "may designate on the execution hereof, a full release

"by the North Pacific Transportation Company of all "its claims both upon the Oregon and California Railroad "Company and the Oregon Central Railroad Company; "that against the last-named company being in amount "about ninety thousand dollars, and until said claims are "in some manner satisfactorily released, the parties of the "second part may retain an amount of said bonds, part "of the three hundred thousand dollars herein agreed to "be paid to said Holladay, equal to the amount of said "claims.

"Seventh. The said Holladay agrees to pay, on "the execution hereof, to the Oregon and California Rail-"road Company, the amount due to it by the Portland "Street Railroad Company, for certain iron, being five "thousand one hundred and three dollars and sixty-eight "cents. And said Holladay further agrees to pay, on "the execution hereof, all other sums for which he is liable "to any of the companies hereinbefore named, amounting "to two thousand eight hundred dollars or thereabouts, "and in some valid and effectual manner to release and "waive, previous to the execution hereof, all claims for "salary as president of the Oregon Steamship Com-"pany, and to cause the entries to his credit on this ac-"count on the books of said company to be effectually "cancelled and discharged in accordance herewith. And "said Holladay also agrees, previous to the execution "hereof, to waive and release his claim to additional com-"pensation as president of the Oregon Central Railroad "Company, made since December twenty-first, one "thousand eight hundred and seventy-five, and cause

"the entries to his credit on this account, on the books "of said company, to be effectually canceled and dis- "charged in accordance herewith. And said Holladay "likewise agrees, on the execution hereof, to pay the sum "of three hundred dollars towards the costs of investi- "gating the title of the Portland Warehouse and Dock "Company to the real property sold herein. All the "moneys, the payment of which is herein stipulated by "said Holladay, shall be deducted from the first cash "payment herein named for the properties of the Port- "land Warehouse and Dock Company.

"Eighth. And the said Holladay further covenants "and agrees with the said parties of the second part that "the books of accounts of the Oregon and California "Railroad Company and the Oregon Central Railroad "Company are to the best of his knowledge full, accur- "ate, and true, and that the trial balance and monthly "statement of January, one thousand eight hundred and "seventy-six, are as he believes full, accurate and true, "and that there are no other legal and valid claims "against either of said railroad companies, of which he "has any knowledge or notice, excepting only small "sundry claims for rights of way, and certain claims of "Hallet and Elliot which have been made known to "the parties of the second part; and that there are no "contracts with or for salaried officers, or other offi- "cers, except for the ordinary services and salaries of "the current year, and that there are no contracts which "do not expire at the end of each fiscal year, and which "have not been made known to the parties of the second

"part. And the said Holladay further covenants and "agrees with the parties of the second part that the books "of account of the Oregon Steamship Company, so "far as he knows and believes, are accurate and full, "and that there are no debts or claims due by said com- "pany, so far as he, said Holladay, knows and believes "which are not fully known to Milton S. Latham, and "the only debts which he, the said Holladay, has any "knowledge or information apart from the current "money bills, and repairs, and the debt of the European "creditors, represented by Latham, is what may be due "for current salaries, supplies and payrolls. And said "Holladay further covenants and agrees for himself, his "heirs and legal representatives, that he will on demand "either convey to the Oregon and California Railroad "Company, to the Oregon Central Railroad Company, "to the Oregon Steamship Company, and to the Port- "land Warehouse and Dock Company, or to any of "them, or else, as the case may be, will take all necessary "legal proceedings in conjunction with said companies, "or any of them, for the purpose of compelling the trans- "fer to said companies, or any of them, of any real es- "tate or other property or rights which equitably belong "to said companies, or any of them (if any such prop- "erty or rights there be), but which may now be held "by or stand in the name of said Holladay, or any other "person or persons or corporations in trust having been "purchased for said corporations or conveyed to him for "their use.

"Ninth. And the said Holladay further covenants

"that he will obtain and cause to be delivered to the "Oregon and California Railroad Company a good and "sufficient deed with covenants of warranty against the "acts of the grantors from one James G. Hughes to the "said railroad company for certain property at Junction "City and Drain stations and Oregon City, being all "the property at said places standing in the name or "under the control of said Hughes, which has heretofore "been a subject of controversy between the parties to "this agreement, or will take such proceedings as may "be necessary to secure such title. And also that he will "obtain and cause to be delivered a good and sufficient "deed, with full covenants of warranty from the Willam- "ette Real Estate Company to the said railroad com- "pany, in accordance with an existing contract for the "said conveyance. And also that he will cause to be "executed and delivered to the Oregon Central Railroad "Company a good and sufficient deed, with full cove- "nants of warranty by the Portland Warehouse and "Dock Company of the depot property sold by it to said "railroad company. And said Holladay further agrees "to execute, or cause to be executed, all further or other "instruments or assurances which may be necessary or "proper to perfect the title to any of said parcels of "real estate.

"Tenth. And said Holladay covenants that to the "best of his knowledge and belief, the company has set- "tled, confirmed and paid all claims of one Hallet "against the Oregon and California Railroad Company, "and that he has no valid claim against the said com-

"pany, and that in like manner all claims of said Elliott, "or of Elliott and one Nightingale, are invalid, and "said Holladay agrees, without charge, to furnish the "said parties of the second part for the use and benefit "of the Oregon and California Railroad Company, "when required, every assistance in his power to defend "and defeat all of said claims. And said Holladay also "agrees to furnish copies of all agreements of one Gaston "made at the time of the compromise of his claims "against the said Oregon Central Railroad Company, if "the same are not already on file in the company's "office, and further said Holladay agrees, on demand, to "give to the parties of the second part his resignation "as president of the companies herein referred to, and "also to procure the resignation of the vice-presidents "and secretaries of said companies, excepting only the "secretary of the Oregon and California Railroad Com- "pany, and the secretary of the Oregon Steamship Com- "pany, which last he will obtain if possible.

"Eleventh. And the said Holladay covenants and "agrees not to engage, directly or indirectly, whether as "part owner of a vessel or in any other way whatso- "ever, in any trade or business which can or shall be "in conflict with the business or interests of the Oregon "and California and the Oregon Central Railroad, and "the Oregon Steamship Companies, and not to erect any "docks or warehouses which might come in competition "with and affect injuriously the business of the Portland "Warehouse and Dock Company. And the said Holla- "day, at the time of the execution hereof, shall enter into

"a personal bond in the sum of one hundred thousand "dollars in gold coin for the faithful performance of this "covenant. Said covenant shall continue in full force for "the term of ten years from the date hereof. But this "covenant is not to be considered so as to affect the full "use and enjoyment of the present charter of the steam-"ship 'California,' which said parties of the second part "agree shall be confirmed in its present tenor for the full "unexpired term thereof, provided the same was made "with the knowledge and consent of Milton S. Latham, "for the European creditors of the Oregon Steamship "Company; nor shall said covenant affect the use in "any trade or business not directly in conflict for the "time being with the business of the Oregon Steamship "Company of the ship 'Idaho,' in which vessel Holladay "is a part owner. But except as aforesaid, this general "covenant shall apply to both the 'California' and "'Idaho,' so long as Ben Holladay retains any interest "therein as owner or otherwise. And the said parties of "the second part, in consideration of the premises, and "of the foregoing covenants to be kept and performed "by said Holladay, in behalf and as the agents and repre-"sentatives of bondholders of the Oregon and California "Railroad Company to the extent that they represent "the said bonds as aforesaid, covenant and agree with "the said Holladay, and with his legal representatives, "as follows:

"Twelfth. That all of said stocks referred to in "article first and second of this agreement may be forth-"with placed in the hands of the bank of the State of

"New York, of the City of New York, as a trustee, "to be held by it until the delivery of the three hundred "thousand dollars of bonds hereinafter more specifically "referred to, whereupon the same are to be duly de- "livered to said parties of the second part or to such "persons as they may designate. And until this sur- "render it is agreed between the parties to these presents "that said parties of the second part, or to such persons "as they may designate, shall have the power to vote by "proxy upon all of said stocks.

"Thirteenth. That simultaneously with such de- "posit the said parties of the second part shall pay to "said Ben Holladay the sum of two hundred thousand "dollars ($200,000), in gold coin of the United States, "less the amount due under the mortgage on the proper- "ty of the Portland Warehouse and Dock Company, "hereinbefore mentioned, and less the payments stipu- "lated in article seven of this agreement; and within one "year thereafter the said parties of the second part will "make to said Holladay or to his assigns a further pay- "ment, in like gold coin, of the sum of fifty thousand "dollars ($50,000), with interest at six per cent. per "annum, if the said Holladay shall have faithfully and "strictly complied with his covenants and agreements "hereinbefore expressed.

"Fourteenth. And further, the said parties of the "second part covenant that they will within a reasonable "time after the execution hereof cause to be created, "executed and delivered to the said Holladay or to his

"assigns, three hundred bonds of one thousand dollars "each, payable in thirty years after their date, to-wit: "first of March, one thousand eight hundred and seventy "six, bearing seven per cent. interest, payable semi- "annually, principal and interest to be payable in gold, "such bonds to be created and issued by the Oregon Cen- "tral Railroad Company, under the corporate seal of "said company, and to bear coupons as usual. The "form and manner of the original creation and issue of "said bonds to be agreed upon between the respective "counsel of the parties hereto. The said bonds shall be "secured by a mortgage of said road, and in case the "said parties of the second part shall hereafter secure the "control of the existing bonds on the Oregon Central "Railroad Company, said bonds shall be retired and "canceled, and the mortgage securing them be extin- "guished. But in case of such retirement or cancella- "tion of the present mortgage bonds of the Oregon Cen- "tral Railroad Company, said company may create a "new mortgage for a sum not exceeding twenty thousand "dollars a mile, of which the afore-mentioned three hun- "dred thousand dollars of bonds shall be part upon the "completed road to Junction City. These bonds shall "be issued only pro rata as said railroad is completed, "and the interest on the above-named three hundred "thousand dollars of bonds, shall by apt legal instru- "ments to be devised by counsel, be secured by the pledge "of the net earnings of the Oregon and California Rail- "road, so far as the said parties of the second part have "the right to receive or control the same as representa-

"tives of the bondholders as aforesaid, so that they shall "be first applied to the payment of seven per cent. in- "terest on such three hundred thousand dollars "($300,000) of bonds of the Oregon Central Railroad "Company, before any interest is paid on any of the "existing bonds of the Oregon and California Railroad "Company, owned or controlled by said parties of the "second part. But the rights of Sulzbach Brothers are "hereby expressly saved, as the same are named under "a certain assignment and pledge of the interest coming "to the bondholders, represented by the parties of the "second part, to secure the repayment of two hundred "and fifty thousand dollars, in sums not exceeding forty "thousand dollars per annum. But neither the Oregon "and California Railroad Company nor the said parties "of the second part shall in anywise be liable directly "or indirectly for the payment of the principal of said "three hundred thousand dollars of bonds, nor for the "payment of interest otherwise than as aforesaid.

"And the said porties of the second part further "covenant that in case of an arrangement by which the "railroads controlled by the stocks now purchased from "said Holladay, or either of them shall be consolidated "with any other railroad or railroads, or shall be sold "to any other railroad or corporation, and upon any "such sale or reorganization or combination, new bonds "of any kind shall be issued and paid for the road or "roads now controlling under this agreement by said "parties of the second part, that then and in any such "case an equal number of such new bonds or an amount,

"the annual interest upon which shall be equal to the "interest payable to said Holladay upon the three hun- "dred thousand dollars of bonds above referred to, shall "be offered to said Holladay or his assigns in exchange "for the three hundred thousand dollars of new bonds "herein above agreed to be created and paid to him; "and in case such new bonds shall be equal in value to "the bonds of the Central Pacific Railroad Company, "or shall be guaranteed by the Central Pacific Railroad "Company or other corporations of equal financial "standing, then said Holladay for himself and his as- "signs agrees to accept the same in exchange for the "said three hundred thousand dollars of bonds. This "covenant on said Holladay's part to expire in six years "from the date hereof. And as to the rights and pow- "ers of the parties of the second part, and those whom "they represent, over the net earnings of the Oregon and "California Railroad Company, it is now expressly stat- "ed that they represent the portion of said earnings be- "longing and coming to such of the holders of the first "mortgage bonds of the Oregon and California Rail- "road Company as are represented by the parties of "the second part.

"Fifteenth. And the said parties of the second part "further agree with said Holladay that upon the strict "fulfillment of the several covenants hereinbefore ex- "pressed, and upon the condition that the financial con- "dition of the said several companies herein named is "found to correspond with the statements and accounts "rendered up to the execution of this agreement, in so

"far as he is personally responsible for the same, he, the "said Holladay, and his associates, as officers and "agents whose shares in the several companies afore- "mentioned, are hereby sold, and also all other holders "of stock in the several companies, aforenamed whose "shares are hereby sold, and the said Holladay indi- "vidually shall be formally and legally discharged and "released by the various companies against all accounts, "agreements, guarantees and demands incurred by them "in their representative capacities to this date, as far "as such acts, accounts, agreements, guarantees and de- "mands are shown and proved by the books and public "statements of the several companies herein named, and "for which said Holladay is liable to either of said com- "panies, it being the intention of the parties hereto, by "this sale, to settle and end all previous transactions "between the parties aforesaid, and said companies re- "spectively including those which have hitherto been "disputed by said parties of the second part, or of which "they have had actual or constructive notice. And also "that said Holladay shall be protected from, and in- "demnified against, all liability under the contract made "between said Holladay and said parties of the second "part of July, one thousand eight hundred and seventy- "four, by means of a covenant not to sue, or other in- "strument, sufficient to secure him from all liability "thereunder, without in any manner releasing or dis- "charging any other party. But such instrument shall "not affect the respective rights or liabilities of said "Holladay and Messieurs Sulzbach Brothers under said

"agreement in respect of a claim made by the latter for "a payment on account of interest of fifty thousand "dollars or thereabouts.

"Sixteenth. And said Holladay agrees in case the "issue of the pending suits of one Elliott, and of said "Elliott and Nightingale, shall in any way injuriously "affect the rights of the bondholders of the Oregon and "California Railroad Company that he, the said Holla- "day, will indemnify them for any loss or damage that "they may suffer in consequence thereof. And said "Holladay further covenants that he has full right and "lawful power to make, and agree to make, all the trans- "fers, conveyances and assurances hereinabove agreed "upon; and that he will, on demand, execute and secure "to be executed, all further necessary transfers and as- "surances in order more fully to carry out the purposes "of these presents the intention of the parties hereto, "being to secure to the said parties of the second part "through the transfers of the railroad stocks, and the "other stocks above mentioned, the substantial and abso- "lute control of both of said corporations and their prop- "erties.

"In witness whereof, the said parties have hereunto "set their hands and seals, the year and day first above "written.

"In presence of W. L. Halsey and S. O. Putnam.

BEN HOLLADAY, SEAL.
HEINRICH HOHENEMSER, SEAL.
JULIUS SCHMIDT, SEAL.

PAUL REINGOMEN, SEAL.
HERMAN KOEHLER, SEAL.
ADOLPH OTTO, SEAL.
MICHAEL BENJAMIN, SEAL.
CARL STAEHELIN-BUCKNOR, SEAL.
HENRY VILLARD, SEAL.
By Henry Villard, their attorney in fact.

"United States of America, State of California,) ss.
"City and County of San Francisco.)

"I, James L. King, a notary public, in and for said "city and county, residing therein, duly commissioned "and sworn, do certify that on this thirteenth day of "September, A. D. one thousand eight hundred and sev- "enty-seven, I carefully compared the foregoing copy "of an agreement of Ben Holladay with Heinrich "Hohenemser and others, and their signatures thereto, "with the original thereof, now in the possession of the "London and San Francisco Bank" (limited), of "San Francisco, California, and that the same is a full, "true, and correct transcript therefrom, and of the whole "of said original agreement.

"In witness whereof, I have hereunto set my hand "and affixed my official seal of my office, in the city "and county of San Francisco, State of California, this "thirteenth day of September, A. D. eighteen hundred "and seventy-seven.

"(Seal.) JAMES L. KING, Notary Public."

GOVERNMENT'S EXHIBIT NO. 126 E

"MODIFICATION OF AGREEMENT BE-"TWEEN HOLLADAY AND THE "FRANKFORT COMMITTEE.

"WHEREAS an agreement was entered into the "twenty-ninth day of February, A. D. eighteen hun-"dred and seventy-six, between Ben Holladay of Harri-"son, Westchester county, New York, party of the "first part, and Heinrich Hohenemser of the city of "Frankfort-on-the-Main, Prussia, director of the "Deutsche Vereins Bank, in the same city; Julius "Schmidt of the city of Frankfort-on-the-Main; Paul "Reinganum, doctor of law and attorney-at-law of the "city of Frankfort-on-the-Main; Herman Koehler, "merchant of the city of Frankfort-on-the-Main; "Adolph Otto, doctor of law and attorney-at-law of "the city of Heilbronn; kingdom of Wirtenberg; Mi-"chael Benjamin, banker of the city of Munich, king-"dom of Bavaria; Carl Staehlin-Bucknor of the city "of Bale, Switzerland, partner of the house of Messrs. "Iselin and Staehelin, and Henry Villard of the city "of Heidelberg, grand duchy of Baden, owners of cer-"tain first mortgage bonds of the Oregon and Califor-"nia Railroad Company, the parties of the second part;

"AND WHEREAS, facts and circumstances un-"known or not contemplated by the parties, have arisen "or been developed in attempting to carry out and exe-

"cute said agreement in detail which necessitate certain "changes in said agreement in some minor particulars; "and whereas both parties to said agreement desire such "changes to be now made;

"Now, therefore, this agreement made and entered "into this nineteenth day of April, A. D. eighteen hun- "dred and seventy-six, between Ben Holladay of West- "chester county, New York, by Henry Hampton, his "attorney in fact, duly authorized and empowered as "such, residing in the city of Portland, in the State of "Oregon, party of the first part, and Heinrich Hohen- "emser of the city of Frankfort-on-the-Main, Prussia, "director of the Deutsche Vereins Bank in the same "city; Julius Schmidt of the city of Frankfort-on-the- "Main; Paul Reinganum, doctor of law and attorney-at- "law of the city of Frankfort-on-the-Main; Herman "Koehler, merchant of the city of Frankfort-on-the- "Main; Adolph Otto, doctor of law and attorney at law "of the city of Heilbronn; kingdom of Wirtenberg; "Michael Benjamin, banker of the city of Munich, "kingdom of Bavaria; Carl Staehelin-Bucknor of the "city of Basle, Switzerland, partner in the house of "Messrs. Iselin and Staehling, and Henry Villard of "the city of Heidelberg, grand duchy of Baden, the "parties of the second part—

"WITNESSETH, in consideration of the prem- "ises and the mutual covenants in said agreement of "February twenty-ninth, eighteen hundred and seventy- "six, and herein contained, the said parties have agreed "and do hereby mutually agree to the following changes

"and modifications of said agreement:

"First. That the amount of the first mortgage "bonds of the Oregon and California Railroad Com- "pany owned or held and represented by said parties of "the second part, approximate ten millions of dollars, "and the said parties of the second part shall not be "bound or held to any more particular statement of "the amount of said bonds, anything in said contract "of February twenty-ninth, eighteen hundred and sev- "enty-six, to the contrary notwithstanding.

"Second. The net earnings of the Portland Ware- "house and Dock Company, prior to the twelfth day "of April, A. D. eighteen hundred and seventy-six, "shall not belong to the said parties of the second part, "the provisions of the 'fourth article' of said agreement, "to the contrary notwithstanding.

"Three. Nothing in said agreement of February "twenty-ninth, eighteen hundred and seventy-six, shall "be so construed as to prevent the Oregon Central Rail- "road Company from at any time hereafter issuing "bonds to the amount of more than twenty thousand "dollars per mile of its road, and of mortgaging its "road, lands, and other property to secure payment "thereof, but not so as to impair the security of said "three hundred bonds mentioned in said agreement.

"Fourth. No covenant or agreement of the parties "of the second part in said contract of February twenty- "ninth, eighteen hundred and seventy-six, contained, or "herein contained, affecting in any manner the rights

"of the bondholders of the said Oregon and California "Railroad Company, shall be construed to bind said "parties of the second part to any greater extent than "that they hold and represent the holders of the said "first mortgage bonds of the said Oregon and Califor-"nia Railroad Company.

"In witness whereof, the said Ben Holladay, by his "said attorney in fact Henry Hampton, and Heinrich "Hohenemser, Julius Schmidt, Paul Reinganum, Her-"man Koehler, Adolph Otto, Michael Benjamin and "Carl Staehelin-Bucknor, by their attorney in fact Hen-"ry Villard, and the said Henry Villard for himself, "have hereunto set their hands and seals the day and "year first above writetn.

"In the presence of R. Koehler, W. J. Bodley.

BEN HOLLADAY, SEAL.
By H. HAMPTON, his attorney in fact.
HEINRICH HOHENEMSER, SEAL.
JULIUS SCHMIDT, SEAL.
PAUL REINGAMUN, SEAL.
HERMAN KOEHLER, SEAL.
HENRY VILLARD, SEAL.
ADOLPH OTTO, SEAL.
MICHAEL BENJAMIN, SEAL.
CARL STAEHELIN-BUCKNOR, SEAL.
By HENRY VILLARD, their attorney in fact.

"We, the undersigned, have this twentieth day of "August, eighteen hundred and seventy-seven, com- "pared and examined the foregoing copy of contract "with the original in the possession of Mr. R. Koehler, "and the same we find to be a full, true and correct copy "of such original and the whole thereof. We further "certify that the signatures upon such original contract "are genuine.

P. SCHULZE,
JOSEPH SIMON,
R. KOEHLER.

"Portland, Oregon, August twentieth, eighteenth "hundred and seventy-seven."

GOVERNMENT'S EXHIBIT NO. 126 F

"DEFINITE AGREEMENT BETWEEN "THE FRANKFORT COMMITTEE, THE "EUROPEAN CREDITORS, AND THE "THREE COMPANIES.

"This agreement, made and entered into this..... "day of ..... one thousand eight hundred and seventy- "seven, between the Oregon Steamship Company, a cor- "poration duly incorporated and organized under the "laws of the State of Oregon, party of the first part: "The Oregon and California Railroad Company, a like "corporation, duly incorporated and organized under "the laws of the said State, party of the second part: "The Oregon Central Railroad Company, of Portland,

"Oregon, a like corporation, duly incorporated and or-
"ganized under the laws of said State, party of the third
"part: The European creditors of the said Oregon
"Steamship Company, by Frederick Rodewald, their
"attorney in fact, duly made and constituted as such for
"the purposes of this agreement (the said creditors of
"said Oregon Steamship Company being the creditors
"thereof heretofore in the several contracts herein re-
"ferred to, represented by Milton S. Latham, trustee
"and attorney in fact, and who did, on the first day of
"August, one thousand eight hundred and seventy-two,
"advance to said steamship company the sum of eight
"hundred thousand dollars, United States gold coin,
"now reduced by payments thereon to six hundred and
"thirty thousand dollars, gold coin, and interest thereon
"from the first day of February, one thousand eight
"hundred and seventy-six), party of the fourth part:
"The European creditors of the Oregon Central Rail-
"road Company, by the said Frederick Rodewald, their
"attorney in fact, duly made and constituted as such
"for the purpose of this agreement (which last-men-
"tioned creditors of the said Oregon Central Railroad
"Company are the creditors thereof heretofore and in
"said

"Milton S. Lathom, as trustee and attorney in fact, and
"which said creditors or their assignors did, on the twen-
"ty-ninth days of February and August, A. D. one
"thousand eight hundred and seventy-two, advance in
"the aggregate to said Oregon Central Railroad Com-
"pany, the sum of one million dollars, United States

"coin, amounting now, with accrued interest, to one "million three hundred and sixty thousand five hundred "and fifty-five and fifty-five one-hundredths dollars, "United States coin), party of the fifth part; and Hein- "rich Hohenemser, of the city of Frankfort-on-the "Main, Prussia, a director of the Deutsche Vereins "Bank, in the same city; Philip B. Bonn, banker, of "the city of Frankfort-on-the-Main; Paul Reinganum, "doctor of law and attorney-at-law, of the city of Frank- "fort-on-the-Main; Herman Koehler, merchant, of the "city of Frankfort-on-the-Main; Adolph Otto, doctor "of law and attorney at law of the city of Heilbroon, "kingdom of Wirtenberg; Michael Benjamin, banker, "of the city of Munich, kingdom of Bavaria; Doctor "Gustav Kraus, of the city of Darmstadt, Grand duchy "of Hesse, by Henry Villard, of the city of Heidelberg, "Grand Duchy of Baden, their attorneys in fact, and "the said Villard, owners and possessors of certain first "mortgage bonds of the said Oregon and California "Railroad Company, of the sixth part:

"WITNESSETH, that whereas, on the sixth day "of April, A. D. one thousand eight hundred and sev- "entry-six, an agreement was made and entered into by "and between said Milton S. Latham, as agent of the "said party of the fourth part, and as agent of the said "party of the fifth part, and Henry Villard, as agent "of and in behalf of the said party of the sixth part: "And whereas, on the twenty-sixth day of May, A. D. "one thousand eight hundred and seventy six, an agree- "ment was made and entered into between said Oregon

"Steamship Company, as party of the first part; said "Oregon and California Railroad Company, as party "of the second part; said Oregon Central Railroad Com- "pany, as party of the third part; said creditors of the "Oregon Steamship Company, by said Milton S. La- "tham, as their trustee and attorney in fact, as party "of the fourth part; said creditors of the Oregon Cen- "tral Railroad Company, by Milton S. Latham, their "trustee and attorney in fact, as party of the fifth part; "and the said Heinrich Hohenemser and others, as party "of the sixth part, in and by which agreement the par- "ties thereto agreed to and confirmed all the provisions "of said recited agreement of April sixth, one thousand "eight hundred and siventy-six.

"And whereas, on the sixth day of December, A. D. "one thousand eight hundred and seventy-six, a pre- "liminary agreement was entered into by Frederick "Rodewald, as agent and on behalf of the said parties of "the fourth and fifth parts, and Hermann Koehler, as "agent and on behalf of the holders of the majority of "the first mortgage bonds of the Oregon and California "Railroad Company, modifying and changing said "agreements of April sixth and May twenty-sixth, one "thousand eight hundred and seventy-six, and providing "for the execution of this agreement by the parties here- "to, as a substitute in all respects for said agreements "of April sixth and May twenty-sixth, one thousand "eight hundred and seventy-six, which several agree- "ments are hereby referred to for more particular de- "scription;

"And whereas, the said several corporations, parties "hereto, are so connected in interest and business that "the prosperity of each is largely dependent upon the "prosperity of the others, and each is interested in con- "tinuing in operation each of the others;

"And whereas, the said parties of the fourth, fifth "and sixth parts, being creditors of said corporations "respectively, as hereinbefore stated, are likewise each "interested in continuing in operation and in advancing "the interests of each of the said corporations;

"And whereas, the expenditures heretofore made by "the party of the sixth part, and the liabilities incurred "by the parties of the second part, third parts, in pur- "suance of the terms of the compromise and settlement "of February twenty-ninth, one thousand eight hundred "and seventy-six, with Ben Holladay, theretofore owner "of a majority of the capital stock of the said parties "of the first, second and third parts, by which the inter- "ests of said Holladay were purchased, including the "payment of the purchase price of the Portland ware- "house and dock property, and the issuing to said Ben "Holladay, of three hundred thousand dollars of second "mortgage bonds of the Oregon Central Railroad Com- "pany, upon which the interest was guaranteed by the "said Oregon and California Railroad Company, with "the consent of the party of the sixth part, were, for the "reasons aforesaid, for the benefit of all the parties to "this agreement;

"And whereas, the adavnce of the sums hereinafter

"mentioned by the party of the sixth part, for the pur-
"chase of new steamships for the party of the first
"part; the covenant and agreement of the parties of the
"fourth, fifth and sixth parts not to foreclose or trans-
"fer their respective liens for the period of ten years
"hereinafter contained, the provisions for the applica-
"tion of a portion of the earnings of the steamship com-
"pany, to the construction of the Oregon Central Rail-
"road Company after payment of the claim of the said
"European creditors of the steamship company herein-
"after contained, and other provisions of this agree-
"ment, are, for the reasons aforesaid, of great advantage
"to and for the material benefit of all the parties to this
"agreement and form, with the cancellation of said
"agreements of April sixth and May twenty-sixth, one
"thousand eight hundred and seventy-six, a sufficient
"consideration and inducement to each of said parties
"to consent to and accept the terms of the said prelimi-
"nary agreement of December sixth, one thousand eight
"hundred and seventy-six, and to enter into the final
"agreement therein provided for;

"and whereas, the terms and conditions of said pre-
"liminary agreement of December sixth, one thousand
"eight hundred and seventy-six, as embodied in this
"agreement, have been accepted and agreed to by all
"the parties hereto, so far as the same affects their sev-
"eral rights under said contracts or otherwise;

"now, therefore, in consideration of the premises and
"of the mutual benefits to be derived by each under this

"agreement, the said parties hereto respectively cove-
"nant and agree with the other and others of them as
"follows, that is to say:

"ARTICLE 1. Upon the execution of this agree-
"ment, said agreements of April sixth, one thousand
"eight hundred and seventy-six, and May twenty-sixth,
"one thousand eight hundred and seventy six, shall be
"canceled, and in all respects superseded by this agree-
"ment, and as between the parties to said preliminary
"agreement of December sixth, one thousand eight hun-
"dred and seventy-six, both said contracts of April sixth,
"one thousand eight hundred and seventy-six, and May
"twenty-sixth, one thousand eight hundred and seventy-
"six, shall be deemed and taken to have been superseded
"by said preliminary agreement from the date thereof,
"to wit: December sixth, one thousand eight hundred
"and seventy-six."

"ARTICLE 2. The said party of the fourth part
"shall, and hereby covenants and agrees to reserve out
"of the net earnings and proceeds of the said steamship
"company, now pledged to said party of the fourth
"part, fifteen thousand dollars annually during the term
"of three years from the first day of September, one
"thousand eight hundred and seventy-six, in two in-
"stallments of seven thousand five hundred dollars each,
"payable every six months, on the last days of February
"and August of each year, and which amounts, so re-
"served, shall be applied to the payment of the interest
"on three hundred thousand dollars seven per cent.
"Oregon Central Railroad Company second mortgage

"bonds issued to Ben Holladay, in pursuance of the "before-mentioned compromise settlement of February "twenty-ninth, one thousand eight hundred and seventy-"six, between him and said Henry Villard, as agent, and "on behalf of the party of the sixth part.

"ARTICLE 3. In consideration of the premises "and the annual payment of fifteen thousand dollars, "as stipulated in Article 2, for the interest on said three "hundred thousand dollars second mortgage bonds is-"sued to Ben Holladay, as aforesaid, and in pursuance "of said several agreements hereinbefore mentioned, "said party of the sixth part had advanced to the said "Oregon Steamship Company, party of the first part, "seventy thousand dollars gold coin, for the purchase "and equipment of the steamship 'George W. Elder,' "and said party of the sixth part has also advanced, for "the consideration aforesaid, and in pursuance of the "agreements aforesaid, for the purchase and equipment "of a second new steamer as in said contracts provided, "to wit: 'City of Chester,' the further sum of seventy "thousand dollars gold coin. And it is agreed that such "advances, so made by the party of the sixth part, shall "be secured by mortgage on the aforementioned new "vessels, on account of which the aforesaid advances "were made respectively, the lien under which mortgage "shall be a joint one, covering both vessels, and shall "be subordinate only to such lien or liens as have been "given, or it may be necessary to give to the sellers of "such new vessels, or their assigns, to secure a portion of "the cost of the said two vessels as has not been advanced

"or paid by the parties of the first or sixth parts, or "either of them.

"ARTICLE 4. The advances to the party of the "first part by the party of the sixth part, referred to "in Article 9, shall bear interest at the rate of six per "centum per annum, and shall be repaid to said party "of the sixth part out of the earnings of the said party "of the first part, if such net earnings be sufficient, and "if not, then the extent thereof in the order provided "in the fifth article of this agreement, and as follows, "to wit: "The interest shall be paid semi-annually, and "payments on account of the principal thus advanced "shall be made to the amount of not less than ten per "centum annually in equal semi-annual payments. "After the first payment under this stipulation on "account of the principal, there shall be added to each "subsequent payment on account of the principal an "amount equal to the interest saved by the previous pay- "ment of principal, so that such semi-annual payments "of principal and interest, taken together, shall be not "less than eleven thousand and two hundred dollars until "said advances are fully paid. The semi-annual pay- "ments of both principal and interest shall be made on "the fifteenth days of April and October of each year; "but if said advances of said party of the sixth part shall "have been made for less than six months at the time of "the first payments on account of principal and inter- "est herein provided for, the amount of principal and "interest then due and payable shall only be proportion- "ate to the time for which said advances have actually

"been made previous to said time of payment.

"ARTICLE 5. The parties hereto further cove-"nant and agree, any prior rights of all or any of them "notwithstanding, to the use and application of the earn-"ings of the said party of the first part, the said Oregon "Steamship Company, to the following purposes, and "in the following order, to wit: First. To the pay-"ment of the cost of the new steamers above referred "to, in accordance with the stipulations and conditions "of the bills of sale or building contracts, under which "they have been bought or acquired; Second. To the "payment of interest and principal on the advances of "the party of the sixth part, as set forth in Article 4; "Third. To the annual payment, for three years, of "fifteen thousand dollars, as stipulated in Article 2; "Fourth. To the annual payment of the interest, at "the rate of ten per cent. per annum, and to the prin-"cipal due to the European creditors of the Oregon "Steamship Company, the party of the fourth part; "and upon the payment in full of the principal and in-"terest due to the said European creditors of the said "Oregon Steamship Company, the said stock of that "company now held as security by the parties of the "fourth and fifth parts, or either of them, or their "trustee, nominee or nominees, shall be transferred to "such parties or nominees as the party of the sixth part "may designate, free of all claim of said parties of the "fourth and fifth parts, and thereafter the earnings of "such steamship company shall be divided equally; and "one-half thereof shall be applied to the payment of

"the interest, (which shall be and is reduced to five per "cent. per annum, from April six, A. D. one thousand "eight hundred and seventy-six,) and of the principal "due to the said party of the fifth part, the said "European creditors of the Oregon Central Railroad "Company, and the other half of the said steamship com- "panys' earnings shall come to and be received by the "said nominee or nominees of the party of the sixth "part, as the holder or holders of the stocks of the said "steamship company, and shall be applied to the pay- "ment of whatever portion of the interest and of the "principal of the advances made and liabilities incurred "by the party of the sixth part, under the said com- "promise and settlement with Ben Holladay shall re- "main unliquidated, and next, to the completion of the "said Oregon Central Railroad Company, to the junc- "tion of said road with the Oregon and California Rail- "road at Junction City, or elsewhere; and upon the "payment in full of the principal and interest due to "the said European creditors of the Oregon Central "Railroad Company, the entire earnings of the Ore- "gon Steamship Company, shall be received by the "said nominee or nominees of the party of the sixth part, "as holder or holders of the stock of the said steamship "company.

"ARTICLE 6. Upon full payment or satisfac- "tion, as provided in this agreement, of the principal "and interest of the debts due to the party of the fourth "part, the said European creditors of the said Oregon "Steamship Company, and to the party of the fifth part,

"the said European creditors of the said Oregon Cen-
"tral Railroad Company, all other securities held by
"said parties of the fourth and fifth parts, or either
"of them, in respect to those debts, shall be turned over
"to the nominees of the party of the sixth part free
"of all claims of said parties of the fourth and fifth
"parts, to be held by the nominee or nominees of the
"party of the sixth part, in accordance with the true
"intent of this agreement and the rights of the several
"parties hereto.

ARTICLE 7. The said parties of the fourth and
"fifth parts (the other parties to this agreement con-
"senting thereto), hereby forever release the said party
"of the sixth part, and the said Henry Villard, and
"their and his representatives and assigns, from all lia-
"bilities, claims and demands, they, the said parties of
"the fourth and fifth parts, or either of them, may now
"or hereafter have against said party of the sixth part,
"or the said Henry Villard, or their or his representa-
"tives or assigns, as holder or holders, or otherwise,
"in respect to any amount of the stocks of the said
"Oregon Steamship Company, or of the said Oregon
"Central Railroad Company, claimed to be unpaid stock,
"now or at any time heretofore held, or which may here-
"after be held by the party of the sixth part, or by the
"said Henry Villard, or by any nominee, agent or rep-
"resentative of the party of the sixth part.

ARTICLE 8. The old steamships of the said
"Oregon Steamship Company, not required in the busi-

"ness of said company, shall be sold, and the net pro-
"ceeds applied to the payment of the cost of the said
"new steamships, or after such payment, used in like
"manner as the earnings of said company.

ARTICLE 9. The said party of the fifth part
"further covenants and agrees with the party of the
"sixth part, the other parties consenting thereto, that
"the said party of the sixth part shall have the right
"and option to acquire and purchase the claim of the
"said party of the fifth part, the said European credit-
"ors, of the Oregon Central Railroad Company at any
"time during the period of three years from December
"sixth, one thousand eight hundred and seventy-six,
"for the sum of two hundred and fifty thousand dollars
"($250,000), gold coin of the United States, and the
"further amount of any deficiency of interest which
"may have accrued between the interest actually earned
"and paid by the said railroad company to the party
"of the fifth part, added to the interest paid out of
"the earnings to the said steamship company, under
"Article 5 of this agreement, and the said interest of
"five per centum per annum, from the sixth day of
"April, one thousand eight hundred and seventy-six,
"upon the said principal sum of two hundred and fifty
"thousand dollars: Provided, however, that if the said
"party of the sixth part shall, after availing themselves
"of the option to purchase said claim at the price stated,
"transfer the road and other property of the said Ore-
"gon Central Railroad Company within the period of
"ten years from December sixth, one thousand eight

"hundred and seventy six, to any other person, persons "or corporations, the said party of the fifth part shall "receive the benefit of whatever consideration over and "above said two hundred and fifty thousand dollars, "and such deficiency of interest, as aforesaid, and the "necessary charges, expenditures, advances and inter- "est (at six per centum per annum), of the said party "of the sixth part, may be obtained by the said party "of the sixth part, or those whom it now represents for "said property.

ARTICLE 10. Neither of the parties of the "fourth, fifth or sixth parts shall, without the consent "in writing of the others first had, foreclose or transfer "the securities held by them respectively of said cor- "porations, to wit: the party of the fourth part, of the "Oregon Steamship Company; the party of the fifth "part, of the Oregon Central Railroad Company; and "the party of the sixth part, of the Oregon and Cali- "fornia Railroad Company, for the term of ten years "from December sixth, one thousand eight hundred and "seventy-six, if the terms and conditions of this agree- "ment shall, during the said term, be duly and faithfully "performed. "Provided, however, that the party of "the sixth part shall have the right of selling their inter- "est in the Oregon and California Railroad Company, "within the said term, upon the paying or causing to "be paid by the said Oregon Steamship Company, or "otherwise, in full, any indebtedness which may be then "due by the said Oregon Steamship Company to the "party of the fourth part; and upon paying or caus-

"ing to be paid by the said Oregon Central Railroad "Company, or otherwise, to the said party of the fifth "part, in full for the said claim of the party of the fifth "part (if said party of the sixth part shall not pre- "viously and within the time limited for that purpose "have exercised the right given by Article 9, of pur- "chasing the claim of the party of the fifth part, the "said creditors of the Oregon Central Railroad Com- "pany), the sum of four hundred thousand dollars, gold "coin of the United States; and the amount of any such "deficiency of interest, as mentioned in Article 9, on "the said sum of two hundred and fifty thousand dollars "($250,000), to the date of payment of the said four "hundred thousand dollars ($400,000).

"ARTICLE 11. It is understood and acknowl- "edged by the parties hereto, that the party of the sixth "part contracts and covenants in these presents, as "holder of a majority of the first mortgage bonds of "the said Oregon and California Railroad Company; "and it is further understood and agreed that all the "rights and benefits accruing to the party of the sixth "part, under these presents, shall at all times be enjoyed "by such holders of the majority of said mortgage bonds. "The holding of the majority of such mortgage bonds "shall be established in the manner provided in Article "12 of the agreement between the Oregon and California "Railroad Company and the holders of the first mort- "gage bonds thereof of July twenty-fifth, one thousand "eight hundred and seventy-four.

"In witness whereof, the said parties of the first,

"second and third parts have by resolutions of their "respective boards of directors duly passed, caused their "respective corporate seals to be hereunto affixed, and "these presents to be signed by their respective presi- "dents and secretaries; and the said parties of the fourth, "fifth and sixth parts, by their respective attorneys in "fact, have hereunto set their hands and seals, the day "and year first above mentioned.

HENRY VILLARD,

"(Seal) President of the Oregon Steamship Co.

JOHN D. BILES,

Secretary of the Oregon Steamship Co.

"(Seal) HENRY VILLARD,

President of the Oregon and Cal. Railroad Co.

A. G. CUNNINGHAM,

Secretary of the Oregon and Cal. Railroad Co.

"(Seal) T. R. CORNELIUS,

President of the Oregon Central Railroad Co.

A. G. CUNNINGHAM,

Secretary of the Oregon Central Railroad Co.

"The European creditors of the Oregon Steamship "Company, party of the fourth part, by Fred. Rode- "wald, their attorney in fact.

"The European creditors of the Oregon Central "Railroad Company, party of the fifth part, by Fred. "Rodewald, their attorney in fact.

HEINRICH HOHENEMSER, Seal.
PHILIP B. BONN, Seal.
PAUL REINGOMEN, Seal.
HERMAN KOEHLER, Seal.
ADOLPH OTTO, Seal.
MICHAEL BENJAMIN, Seal.
GUSTAVE KRAUSS, Seal.

By Henry Villard, their attorney in fact."

GOVERNMENT'S EXHIBIT NO. 126G

"COMPROMISE CONTRACTS OF 1874.

"No. 1. General Contract between the Oregon and "California Railroad and the Bondholders for "Funding Interest.

"WHEREAS, The Oregon and California Rail- "road Company has been unable to pay the coupons due "October first, one thousand eight hundred and "seventy-three; and April first, one thousand eight hun- "dred and seventy-four, on its debt of ten millions nine "hundred and fifty thousand dollars, for which its bonds "of various denominations, to the number of eighteen "thousand four hundred and fifty, have been issued se- "cured by a first mortgage running to Faxon D. "Atherton and Milton S. Latham, trustees; and, "whereas, it is probable that the receipts of said rail-

"road company will not be sufficient, for some time to "come, to pay the interest on said mortgage debt to the "stipulated amount of seven per cent. per annum; and, "whereas, the holders of said bonds are now entitled "to the full enjoyment of the security named in said "mortgage, and the same might now be enforced by "the said trustees, at their discretion, or on requirement "of the majority in interest of said bondholders; and, "whereas, it is the desire of the Oregon and California "Railroad Company, and of Ben Holladay, its presi- "dent, and the owner of the majority of its capital stock, "to enter into a satisfactory agreement with the holders "of the first mortgage bonds, so that they may not fore- "close the said mortgage and render the said stock of no "value; and whereas, Heinrich Hohenemser, director of "the Deutsche Vereins Bank at Frankfort-on-the-Main; "Aron Niederhofheim, manager of the branch of the "Bank of Commerce and Industry at Frankfort-on-the- "Main; Julius Schmidt, merchant at Frankfort-on-the- "Main; Adolph Otto, counsellor at law at Heilbronn in "the kingdom of Wirtenberg; Henry Villard, of Heidel- "berg in the Grand Duchy of Baden; Michael Benja- "maine, director of the Baierische Wechsler Bank at "Munich in the kingdom of Bavaria; Carl Staehelin- "Bucknow, of the firm of Iselin & Staehelin of Basle "in Switzerland; F. S. Van Nierop, director of the "Bank of Amsterdam in the kingdom of the Nether- "lands; and William Koester, of the firm of Koester "& Co., at Mannheim in the Grand Duchy of Baden, "are the holders of eleven thousand one hundred and

"forty-seven of said bonds of the Oregon and California "Railroad Company, to the amount, at their par value, "of six millions four hundred and sixty-eight thousand "and six hundred dollars ($6,468,600), being a majority "in interest and number thereof; and, whereas, the "above-named bondholders insist that the creditors of "said company have a claim upon the stockholders "thereof, and upon certain parties heretofore directors "thereof, in respect to the amount of alleged unpaid "stock and otherwise. Now, therefore, in consideration "of the premises, and of other valuable considerations "of the parties hereunto moving, it is hereby agreed "by and between the said Heinrich Hohenemser, Aron "Niederhofheim, Julius Schmidt, Adolph Otto, Michael "Benjamine, Carl Staehelin-Bucknow, F. S. Van "Nierop and Wilhelm Koester, by their attorney in "fact, Henry Villard; and the said Henry Villard, as "parties of the first part, the Oregon and California "Railroad Company as party of the second part, Ben "Holladay as party of the third part, and Faxon D. "Atherton and Milton S. Latham, trustees, as parties "of the fourth part, as follows, to wit:

"ARTICLE 1. The parties of the first part shall "have the right, during the continuance of this agree- "ment, and are hereby vested with whatever power and "authority shall be requisite for the purpose, to nominate "three members of the board of directors of the said "Oregon and California Railroad Company, with power "to remove them when and so far as it legally may, "and to make new nominations and appointments in

"their place in case of removal, resignation, expiration "of their term of office, or a vacancy in said office "from any cause. And the parties of the second part, "and third part, respectively covenant and agree to "incorporate and renew, or retain forever, and cause "to be so incorporated, renewed or retained, such pro- "visions in the by-laws of the party of the second part, "without any modification at any time as shall fix the "number of directors at the number of seven, not less "than five of whom shall constitute a quorum; and in case "the number of directors should at any time be required "by law to be changed, the proportionate number to be "nominated and chosen in behalf of the parties of the "first part, and the proportion necessary to constitute "a quorum, shall in no case be diminished without the "written assent of the parties of the first part; and the "parties of the second and third parts further covenant "and agree, that the persons to be designated by the "parties of the first part, from time to time, for the "board of directors, shall be legally chosen by the stock- "holders, and shall be placed in all respects upon a per- "fect equality with the other members of the board; and "that they, the parties of the second and third parts, "will, in all respects, to the extent of their power, pro- "mote the wishes and interests of the parties of the first "part, as touching their representation in said board "of directors, or any changes in such representation; "and the party of the third part covenants and agrees, "at all times, on demand, to deliver to said parties of "the first part, or their financial agent, without charge,

"such number of shares of the capital stock of said rail-
"road company as shall be requisite (under the law, or
"any rule or by-law of the company) to qualify their
"representatives as aforesaid to become lawful mem-
"bers of the board of directors; and the said party of
"the third party covenants and agrees to cause such
"shares to be registered in the books of said railroad
"company, in the names of such persons as shall be
"designated by the parties of the first part, as members
"of the board of directors as aforesaid. Said shares
"shall, on request of the parties of the first part, or
"their financial agent, be assigned in blank and de-
"posited to the order of the parties of the first part,
"with the London and San Francisco Bank, limited,
"or such other banking institution, as the parties of
"the first part may designate. And it is also covenanted
"and agreed by the parties of the second and third parts,
"that, at the time of executing this agreement, a suffi-
"cient number of vacancies shall be created in the board
"of directors, by resignation or otherwise, to reduce
"said board to the number of four, and that thereupon
"three persons, to be nominated by the parties of the
"first part as aforesaid, shall be legally elected to said
"board forthwith. And the party of the third part
"hereby covenants that none of his shares of the capital
"stock of the Oregon and California Railroad Company
"shall be transferred without notice of this to the pur-
"chaser.

ARTICLE 2. The parties of the first part shall "have, at all times, the right to be represented as to all

"matters concerning their interests in said railroad com-
"pany, or the property thereof, by a financial agent for
"the protection of the interests of the bondholders, who
"shall be selected by the parties of the first part, and
"who shall reside in such place as the said parties of
"the first part may designate. The salary of the finan-
"cial agent is hereby fixed at the sum of six thousand
"dollars per annum, in gold coin; and the additional
"sum of one thousand dollars per annum, in gold coin,
"when said agent shall act as chief of the land depart-
"ment, which salary shall be paid out of the receipts
"of the railroad company. It is further covenanted
"and agreed by and between the parties to this agree-
"ment, that the salary of the president of the Oregon
"and California Railroad Company shall not exceed
"six hundred dollars per month, in gold coin, to be paid
"out of the receipts of the company. The regular salary
"of the attorney and solicitor of the company shall not
"exceed the sum of five thousand dollars per annum, in
"gold coin, to be paid out of such receipts.

"ARTICLE 3. It is further agreed by the parties
"of the second and third part that all the receipts of
"the party of the second part, from whatever sources,
"shall be turned over to the financial agent, and all
"money needed to meet the current expenditures of
"the company shall be paid out by him, or on his order;
"and, by proper arrangement between the financial
"agent and the company, the particular terms of which
"shall be expressed in a supplementary agreement, the
"company shall be freed from embarrassment or delay

"in obtaining such portion of the earnings as shall be "required for the operation of the road. Until the ap- "pointment of the financial agent, and as long as he "shall not have entered upon the exercise of his func- "tions and during any vacancy at any time in the office "of the financial agent, the entire net receipts of the "railroad company (meaning, thereby, whenever the "term 'net receipts' is used herein, the receipts after "deducting what is needed for operating expenses, ex- "penses of the land department and necessary repairs), "shall be deposited, at the end of each month, with the "London and San Francisco Bank, limited, San Fran- "cisco, California, to the credit of the parties of the first "part, on account of the interest or coupons or certifi- "cates or unpaid interest, hereinafter named, or, on full "payment thereof, on account of the principal sum due "on the first mortgage bonds, if the same are then due "and payable. And it is further covenanted and agreed "by the parties of the second and third parts, that, "although the Board of Directors shall have the man- "agement of the company, no expenditures other than, "and over and above, the ordinary and usual repairs "of the road, depots, bridges, machinery, shops and "equipments, shall be incurred or made without the "consent of said financial agent; and at the request of "said financial agent, the Board of Directors of the "company shall be bound to cause to be made out of "the earnings of the party of the second part, whatever "repairs and improvements may be deemed necessary "by said financial agent, to keep the railroad in good

"working order, and to keep its depots and property in "good condition. The financial agent shall have the "right to pass over the road free of expense, to have "full and free access to all the books and papers of the "company at all reasonable hours; to inspect all its "work, buildings and property, and examine books, in- "ventories, cash and other assets of any description; to "control the keeping of its books and accounts, and to "make extracts from them; to point out and demand "the correction of any errors and irregularities in the "general management of the company, or in the dif- "ferent bureaus and departments of it; and whatever "information he may require regarding the management "of the company, shall at all times be furnished to him; "and all errors and irregularities shall be properly rem- "edied without delay, whenever they shall be pointed out "as aforesaid, and when the same can reasonably be "changed in accordance with his suggestion. No work "shall be done in the workshops of the company for out- "side parties, either private individuals or corporations; "and no part of the personal or real property of the com- "pany shall be sold, nor the use of it allowed, to outside "parties; and no new stock or bonds shall be issued and "no engagements and liabilities of any kind entered "into, except such as may be necessary for the operation "of the railroad, without the consent of said financial "agent in said matters respectively. The financial agent "may be designated as one of the three directors in said "railroad company, to be named by the parties of the "first part.

"ARTICLE 4. In case the net earnings of the rail-"road company, in the hands of the financial agent, in-"cluding those placed to the credit of said parties of the "first part, in the London and San Francisco Bank, "limited, during the term of five years, beginning March "first, eighteen hundred and seventy-four, shall not, for "any of the periods of six months hereinafter defined, "beginning March first, eighteen hundred and seventy-"four, be sufficient for the payment of the semi-annual "interest on all outstanding bonds, falling due for any "one of the periods of six months preceding the first of "April and the first of October, of each year, beginning "with the half-year from April to October, in the year "eighteen hundred and seventy-four, to the amount of "at least one and one-fourth per cent., the party of the "third part agrees to supplement the amount of the net "earnings, whatever it may be, during any of the periods "of six months hereinafter defined, during the said term "of five years, with whatever amounts shall be neces-"sary for the payment, semi-annually, of at least one "and one-fourth per cent. interest on all the outstanding "first mortgage bonds; provided, however, that the party "of the third part shall not be required to contribute for "this purpose more than the sum of twenty-five thou-"sand dolars during any period of six months, nor more "than fifty thousand dollars during any one year of said "period of five years; it being understood that the party "of the third part shall be liable for supplementary pay-"ments up to the total amount of fifty thousand dollars "in any year, for five years, in the proportion that the

"net earnings of said railroad company shall be insuf-
"ficient for the payment of the stipulated semi-annual
"interest aforesaid, for the respective years, but no more;
"and also, provided always, that in case the net earnings
"in either of the two periods of six months, in any one
"fiscal year of said five years, beginning March first,
"eighteen hundred and seventy-four, shall exceed the
"amount of one and a quarter per cent., aforesaid, for
"such six months then such excess, to an amount equal
"to the sum advanced, or to be advanced, by said party
"of the third part, by way of supplementing, as afore-
"said, the interest due on said bonds for the other six
"months of such fiscal year, shall be paid or allowed in
"account to said party of the third part, after any de-
"ficiencies in the stipulated interest for the other of said
"two periods of six months has first been made up to
"the parties of the first part. But in no case shall there
"be any such payment, allowance, or transfer of receipts
"in any fiscal year aforesaid, by way of increasing or
"diminishing the interest or the sums to be paid by said
"party of the third part in any other fiscal year.

"In case the net earnings of the railroad company,
"in the hands of the financial agent, including those
"placed to the credit of said parties of the first part in the
"London and San Francisco Bank, limited, during the
"term of three years, beginning March first, eighteen
"hundred and seventy-nine, shall not, for any of the
"periods of six months hereinafter defined, beginning
"March first, eighteen hundred and seventy-nine, be suf-
"ficient for the payments on all outstanding bonds of

"the semi-annual interest for anyone of the periods of "six months preceding the first day of April and the "first day of October, of each year, beginning with the "half-year, from April to October, in the year eighteen "hundred and seventy-nine, to the amount of at least one "and three-fourths per cent., the party of the third part "agrees to supplement the amount of the net earnings, "whatever it may be, during any of the said periods of "six months hereinafter defined, for the said term of "three years, with whatever amount shall be necessary "to insure the payment, semi-annually, of at least one "and three-fourths per cent. interest on all outstanding "first mortgage bonds; provided, however, that the party "of the third part shall not be required to contribute for "this purpose more than the sum of twenty-five thou- "sand dollars during any period of six months; nor more "than fifty thousand dollars during any one year of "said period of three years, it being understood that the "party of the third part shall be liable for supplementary "payments up to the total amount of fifty thousand "dollars, in any year, for said three years, in the proposi- "tion that the net earnings of said company shall be "insufficient for the payment of the stipulated semi- "annual interest, aforesaid, for the respective years, but "no more; and also, provided furthermore, that in case "the net earnings in either of the two periods of six "months, in any one fiscal year during the period afore- "said, beginning March first, eighteen hundred and "seventy-nine, shall exceed the stipulated interest of one "and three-fourths per cent. for such period, as afore-

"said, then such excess, to an amount equal to the sum "advanced or to be advanced, by said party of the third "part, my way of supplementing, as aforesaid, the in- "terest due on said bonds for the other six months of "such fiscal year, shall be paid, or allowed in account, "to said party of the third part, after any deficiencies "in the stipulated interest, for the other of said two "periods of six months, has first been made up to the "parties of the first part. But in no case shall there be "any such payment, allowance, or transfer of receipts, "in any fiscal year aforesaid, by way of increasing or "diminishing the interest, or the sums to be paid by the "said party of the third part, in any other fiscal year. "The obligation of said party of the third part to make "such supplementary payments, shall be a purely pri- "vate and personal one, and said party of the third part "shall have no claim to be indemnified for such supple- "mentary payments by the railroad company, or any "other party, except as otherwise stated herein. And "the said party of the third part further agrees, at the "time of the execution of this agreement, to assume, or "pay, or cause to be paid, the floating debt of the com- "pany, now outstanding, to the extent of seventy-five "thousand dollars, not including interest on bonds, said "amount being estimated by said party of the third part, "to be all of said floating debt; and, in consideration of "this assumption and payment of said indebtedness, the "party of the second part shall transfer, assign and "convey to the party of the third part, contemporan- "eously with such payment, and the release of the com-

"pany from said floating debt, an equal amount of its "claims against the Oregon Central Railroad Company. "And the party of the third part hereby covenants and "agrees, with the parties of the first part, that the float- "ing debt of the company does not exceed said amount "of seventy-five thousand dollars; and that the entire "liabilities of the company, and all its contracts, shall be "made known to the parties of the first part, contempor- "aneously with the execution of these presents.

"ARTICLE 5. At the expiration of the period of "eight years, beginning March first, one thousand eight "hundred and seventy-four, and for the period beginning "March first, one thousand eight hundred and eighty- "two, and ending at the maturity of the principal of the "first mortgage bonds, it is hereby agreed, by the parties "of the second and third parts, that the holders of the "said bonds shall continue to receive the entire earnings, "and to distribute the net receipts, as above defined, of "the Oregon and California Railroad Company, through "the financial agent of the parties of the first part, as "aforesaid, to the amount of seven per centum interest "per annum, in gold, payable semi-annually, on all the "outstanding bonds, but the obligation of said party, of "the third part, to make up any difference that there "may be between the net receipts, and said reduced "annual interest, out of his private means, shall cease at "the expiration of said eight years, and after the expira- "tion of said eight years, and as long as the holders of "the first mortgage bonds outstanding shall receive all "the benefits secured to them in this agreement, and the

"net receipts of the company, according to the terms "of this agreement, whether the same amount to the sum "of seven per centum interest per annum on said mort- "gage bonds or not, and as long as the terms of this "agreement are in all respects complied with by the "parties of the second, third, and fourth parts, the Ore- "gon and California Railroad Company shall not be "dispossessed of its property by the parties of the first "part, or their assigns, on account of the non-payment "of said seven per centum interest per annum; and no "proceedings to collect the same or to enforce any of "the provisions of said mortgage in respect thereto, by "reason of any such default, shall be taken by the par- "ties of the first part, or their assigns upon, or by reason "of any of the bonds held by them as aforesaid, other- "wise than, and only so far as may be necessary to "save them from losing any rights secured or reserved "to them in this agreement, by reason of any statutes "of limitation.

"ARTICLE 6. As soon as the parties of the second "and third parts shall have fulfilled their obligations "under this agreement, regarding the coupons due Octo- "ber first, one thousand eight hundred and seventy- "three, April first, one thousand eight hundred and "seventy-four, and October first, one thousand eight "hundred and seventy-four, as far as they may be held "by the parties of the first part, such coupons shall be "deposited in the London and San Francisco Bank, "limited, or in the hands of some other party to be agreed "upon, to be held in trust for the parties who may be

"ultimately entitled to receive them under the terms "of this agreement; and in case the provisions of this "agreement are fully carried out according to its terms, "and the principal of said bonds, together with all unpaid "certificates hereinafter named, and the interest falling "due at the maturity of the bonds, shall be promptly "paid as herein provided, then the said coupons shall be "delivered up to the party of the second part for can- "cellation, but otherwise, and in case the parties of the "first part shall, by reason of the failure of the parties "of the second, third and fourth parts, to fulfill their "agreement, or by reason of bankruptcy, or for any "cause beyond their own control, be deprived of the "benefits of this agreement, or be driven to resort to a "foreclosure, they shall be restored to the parties of the "first part, in exchange for certificates of equal value "(having reference to their face value, and excluding "interest), as such certificates may be presented, and all "coupons remaining, over and above the amount of the "outstanding certificates, shall be returned to the party "of the second part to be cancelled; and in the same man- "ner, all succeeding coupons belonging to the parties of "the first part, after those falling due October first, "one thousand eight hundred and seventy-four, shall be "delivered up to the depositary aforesaid, as soon as the "parties of the second and third parts shall have ful- "filled their respective obligations regarding the said "coupons; all this is, on the express condition, however, "that the parties of the second, third and fourth parts "shall also comply with all the other covenants and

"agreements of these presents.

"The party of the second part shall issue certificates "of indebtedness in a form to be agreed upon, not bear- "ing interest, for the full amount of the coupons due "October first, one thousand eight hundred and seventy- "three, and April first, one thousand eight hundred and "seventy-four, and for whatever amount of the interest "due on the following coupons, shall remain unpaid, "under the terms of this agreement, after the supple- "mentary payments aforesaid; and whenever the net "receipts of the railroad company, in any one year shall "exceed seven per centum on the nominal value of all "the outstanding bonds, then, and in that case, one-half "of the excess shall be employed in the redemption of "said certificates of indebtedness, and the other half "shall be paid to the Oregon and California Railroad "Company for distribution, as dividend on its stock, or "otherwise, as the directors may lawfully determine; "and it is further agreed by the party of the second part, "that it will have the certificates of indebtedness pre- "pared with the least possible delay, and signed by its "proper officers, at or before the time when the coupons "respectively shall fall due, to which said certificates "relate, and all such certificates of indebtedness shall, "as soon as they are prepared and executed, be delivered, "for the purpose of being exchanged for coupons, to the "financial agent of the parties of the first part. Until "the financial agent shall be appointed, or during any "vacancy in said position of financial agent, said certi- "ficates shall be delivered to the London and San Fran-

"cisco Bank, limited, or whatever banking institution "shall be designated by the parties of the first part, to "the order of the parties of the first part; and the parties "of the first part shall deliver the certificates of in- "debtedness issued in place of the coupons due "October first, one thousand eight hundred and seventy- "three, and April first, one thousand eight hundred and "seventy-four, to the holders of these coupons, on the "surrender of each coupon, to the parties of the first "part, but the certificates of indebtedness which shall "be issued for the unpaid portion of the coupons, due "October first, one thousand eight hundred and seventy- "four, shall be delivered by the parties of the first part "to the parties respectively entitled thereto, only after "payment of the coupons due April first, one thousand "eight hundred and seventy-five, to the holders of said "coupons, on the surrender of such coupons to the parties "of the first part; and in the same manner all certificates "of indebtedness subsequently issued, shall always be "delivered only after the surrender of the coupons to "which said certificates of indebtedness respectively "relate, so that the possession of each coupon shall en- "title the holder thereof to receive the certificate of in- "debtedness issued, in order to supplement the cash "payment on account of the next proceding coupons, "excepting always, however, as aforesaid, the certificates "to be issued for October first, one thousand eight hun- "dred and seventy-three, and April first, one thousand "eight hundred and seventy-four. The certificates of "indebtedness issued for any one period of six months,

"shall form a series, and the parties of the first part shall "determine whether, and what partial payment on the "certificates in any one series shall be made, in case there "shall not be sufficient means for the redemption of the "whole series; and no new series shall be redeemed in "part, or wholly, as long as a preceding series shall not "have been called in for redemption by the parties of "the first part. All moneys received for the redemption "of certificates shall be deposited by the financial agent "with the London and San Francisco Bank, limited, "or such other banking institution as the parties of the "first part may designate, to the credit of the parties of "the first part.

"ARTICLE 7. In order to insure punctual calcula- "tion and payment of the earnings to be applied for in- "terest, and of the supplementary payments to be made "by the party of the third part, the business year of the "Oregon and California Railroad Company shall, for "all purposes of this agreement, run from the first of "March of each year to the following last day of Febru- "ary, both inclusive, and accounts shall be rendered ac- "cordingly, so that the net receipts of every six months, "from March first to the last day of August, both in- "clusive, and from September first to the last day of "February, both inclusive, shall be regularly applied to "the payment of interest as hereinbefore provided.

"The obligations of the party of the third part, re- "garding supplementary payments on account of in- "terest as hereinbefore provided, shall begin on the first "day of March, eighteen hundred and seventy-four, and

"such supplementary payments shall be made by the "party of the third part on the first day of March and "the first day of September of each year, or within ten "days thereafter, during the whole term of eight years, "for which said obligations shall continue under the "terms of this agreement. The first supplementary pay- "ment shall be made by the party of the third part on "September first, eighteen hundred and seventy-four, or "within ten days thereafter. Notwithstanding these "provisions, however, it is not understood that the actual "payment of interest or coupons to the bondholders shall "be made before the first of October and the first of "April of each year. The supplementary payments of "the party of the third part shall be made to the financial "agent of the parties of the first part, or to such other "person as the parties of the first part may designate.

"ARTICLE 8. The parties of the second and third "parts also agree, that as soon as may be, after the ex- "ecution of these presents, a contract and reconveyance "of certain contracts, lands and property, named in the "deed of trust relating to the congressional land grant " of the Oregon and California Railroad Company, to "Milton S. Latham, Faxon D. Atherton, and William "Norris, trustees, dated April fifteenth, eighteen hun- "dred and seventy, by the said European and Oregon "Land Company to said trustees, a copy of which is "hereto attached, marked 'A', shall be duly executed "and delivered to the parties of the first part by, and on "behalf of, the European and Oregon Land Company, "and the other parties thereto; and that a contract be-

"tween said Ben Holladay, the Oregon and California "Railroad Company, and the said Milton S. Latham, "Faxon D. Atherton, and William Norris, trustees, and "Heinrich Hohenemser, Aron Niederhofheim, Julius "Schmidt, Adolph Otto, Michael Benjamin, Carl Stae- "helin-Bucknor, F. S. Van Nierop, and Wilhelm Koes- "ter, by which said Ben Holladay, and the Oregon and "California Railroad Company, among other things, "waive and relinquish the right to control the invest- "ment of the proceeds of the sale of the Congressional "land grant, a copy of which is hereto attached, marked " 'B', shall be duly executed and delivered by the parties "thereto. And the parties of the second and third parts "also agree, that they will do, or cause to be done and "performed, all acts and things necessary and proper, "under the law, to be done and performed, in order to "secure to all concerned the full benefit of the said land "grant, and to confirm the title to the lands already "wholly or partly acquired by or for the benefit of the "Oregon and California Railroad Company, under the "Acts of Congress, or the laws of the State of Oregon; "and that said company will build, or cause to be built, "the telegraph lines and the remainder of its railroad "to the California line, provided the money necessary "therefor shall be furnished to the said company on "reasonable terms, and upon the best security which it "may hereafter be able to give.

"Said contract, marked respectively 'A' and 'B' and "also the other contracts hereinafter provided for, when "they shall be executed and annexed hereto, shall be

"deemed to be a part of these presents, as fully and to "the same intents and purposes, as if they were expressly "and at large incorporated herein.

"ARTICLE 9. The said party of the third part "hereby agrees that he will do all that he lawfully can "do, to carry into full effect, with all practicable speed, "by the execution of the necessary agreements, the pro- "visions of article twelve, of the paper signed by William "Norris, as agent, at Frankfort, on the ninth day of Jan- "uary, one thousand eight hundred and seventy-four, "which article is in the following words, to wit:

" 'Ben Holladay herein agrees to join with the "creditors of the Oregon Steamship Company, and the "creditors of the Oregon Central Railroad Company, in "any arrangement with their consent, by which the entire "property of these two companies, after their indebted- "ness is liquidated, shall belong to the railroad com- "pany, and be a further security by mortgage to the "bondholders,' which agreements, when executed, shall "be deemed and taken to be a part of these presents. A "failure on the part of said companies to execute such "contracts within a reasonable time, shall give the par- "ties of the first part the option of treating these "presents as null and void, but shall have no other effect "whatever.

"ARTICLE 10. In the course of each month, there "shall be a settlement between the financial agent of the "parties of the first part and the party of the second "part, which settlement shall relate to and comprise the

"entire business of the railroad company during the "calendar month then last preceding; upon making "which settlement, said financial agent shall receive and "deposit the net earnings during the month for which "the said settlement is made, with the London and San "Francisco Bank, limited, or such other banking institu- "tion as the parties of the first part may designate, to "the order of said parties of the first part; or said "financial agent shall make such other disposition thereof "as said parties of the first part may direct. The de- "livery of the certificates of indebtedness and the pay- "ment of interest on said bonds, as hereinbefore pro- "vided, shall take place by and at the Deutsche Vereins "Bank at Frankfort-on-the-Main, or through such other "banking firm in that or any other place, as the parties "of the first part may designate; and the necessary re- "mittances for this purpose shall always be seasonably "made to the place and firm which the said parties of the "first part shall designate. The payments to be made "by the party of the second part, herein provided for, "and also the supplementary payments to be made under "the provisions of this agreement by the said party of the "third part, shall be made in full, and without any de- "duction, reservation, defense or protest, on any ac- "count; and, more particularly, no deduction, reserva- "tion, defense or protest shall be made on the ground "that all the holders of the bonds may not join in this "agreement.

"ARTICLE 11. In case of any failure on the part "of the party of the second, third and fourth parts to

"these presents, or on the part of either of the parties "contracting with the parties of the first part, and named "in the agreements heretofore referred to, and of which "copies are hereto annexed and to be annexed, to fulfill "the agreements made by them respectively as aforesaid, "fully and in all respects; or in any case, by reason of "the bankruptcy of either of the parties of the second "or third parts, hereto or otherwise, unless through some "act or default of the parties of the first part, it should "become impossible to carry out the provisions of this "agreement; then, and in any such case, the parties of "the first part, by the mere fact of such non-fulfillment, "or failure, or ascertained impossibility, shall become at "once reinstated to the fullest extent in all their original "rights and powers under the mortgage executed by said "party of the second part, to secure the payment of prin- "cipal and interest on the aforesaid bonds of the party "of the second part, and to all rights of action or other "rights, as against any stockholders of said company, or "other parties, in like manner as if this agreement had "never been made; but they shall, notwithstanding, be "deprived of no advantage then already gained by this "agreement, and shall lose no rights secured hereby, "and shall be liable to no claim or demand for the re- "covery of any money, rights or property secured by or "during the continuance of this agreement, except as "herein expressly provided. But otherwise than as "aforesaid, this agreement shall continue in force during "the whole period until the maturity of said bonds; pro- "vided only, that nothing herein contained shall prevent

"the parties of the first part from commencing any ac-
"tion or taking any steps or proceedings which may be
"necessary to prevent their losing any rights under the
"mortgage, or otherwise, by the operation of any
"statutes of limitation; but, in that case such action or
"proceeding shall not be prosecuted any further than
"may be necessary to prevent such loss while this agree-
"ment is in force, and the parties of the second and third
"parts respectively agree to co-operate with the said
"parties of the first part in any such action, and that
"they will take no advantage of any such statutes of
"limitation.

"ARTICLE 12. The parties of the second, third
"and fourth parts respectively, hereby admit and ac-
"knowledge that the parties of the first part are the
"lawful holders of the majority in interest, as well as in
"number, of the first mortgage bonds issued by the said
"party of the second part; and the parties of the first
"part hereby covenant and agree to, and with the parties
"of the second, third and fourth parts, that they are the
"owners and holders of the majority, both in interest
"and number, of the whole of the first mortgage bonds
"issued by the party of the second part, to wit: the num-
"ber of eleven thousand one hundred and forty-seven of
"said bonds, amounting to six millions four hundred and
"sixty-eight thousand and six hundred dollars ($6,468,-
"600) thereof, at their par value; and they further con-
"venant, that they have lawful power and authority to
"bind the amount of bonds named and the holders there-
"of, and that the numbers of bonds furnished the party

"of the second part by said parties of the first part, by "their attorney in fact, Henry Villard, for record, upon "the books of said party of the second part, are the num- "bers of the bonds held by said parties of the first part; "and they further covenant that they will cause all of "said bonds, so held by them, and all such other bonds "as shall hereafter become subject to the provisions of "this agreement, to be properly stamped with a mem- "orandum, showing that they are held subject to the "provisions of this agreement. The party of the third "part covenants that he owns and controls a majority "of the stock of the party of the second part.

"The parties of the second, third and fourth parts "admit and acknowledge that the parties of the first "part, or any three of them acting together, for and in "the name of the others, either personally or by an at- "torney at law, or fact, authorized in writing by said "parties of the first part, or any three of them (unless "an equal number should put upon record at the Regis- "try of Deeds for Multnomah county, in Oregon, their "denial of the right of any party of three to act), possess "the proper power and authority, now, and for all future "time, except only as herein otherwise expressly pro- "vided, to claim and represent, assert and defend, in or "out of courts, in all ways whatsoever, all the rights, "privileges and powers of a majority of the bondholders "under the mortgage in or relative to the railroad rolling- "stock, telegraph lines, and all other rights, privileges "and property named therein, and also to claim and rep- "resent, asert and defend, likewise, and in the manner

"and to the full extent aforesaid, all the rights, privileges, "powers and claims secured and arising to the said ma- "jority of the bondholders, under the laws, and con- "stitution of Oregon, and under the provisions of this "agreement (including therein, now and always, when "this agreement is in any manner named or referred "herein, the provisions of all the contracts hereinbefore "referred to, of which copies are, or may be hereto an- "nexed, when the same are annexed). The parties of "the first part, or any three of them acting together as "aforesaid, shall in no case, except in case of conflicting "claims on the part of two or more parties of three of "said persons, composing the parties of the first part, be "required to substantiate the existence, or continuance "of their holding of the majority in interest, as well as "in number, of the bonds issued by said party of the "second part; and the said parties of the second, third "and fourth parts, hereby expressly, and for all future "time, except as herein otherwise expressly provided, "waive all right to have, or demand proof of such hold- "ings or continuance, from the parties of the first part, "or any of them, or from any person or persons repre- "senting them, or any of them; and every power of at- "torney, and every other document signed by not less "than three of the persons constituting and representing "the said parties of the first part, except as herein pro- "vided, shall be as valid as though it were signed by all "the persons constituting and representing it. No "change in the persons composing the said parties of "the first part, either from death, resignation or any

"other cause, or from the admission or reception of other "persons by said bondholders, shall in any way affect "the rights, privileges and powers of the parties of the "first part, except as herein otherwise expressly pro- "vided; and the persons thus newly admitted and re- "ceived shall be admitted to and held to possess, in all "respects, the same rights, privileges and powers, and to "be, in all respects, subject to the same provisions as "though they had originally joined in this agreement. "And whenever three of the persons, representing and "constituting the parties of the first part, shall make "and subscribe a formal declaration before any Ameri- "can consul or other magistrate authorized to take the "acknowledgement of deeds, that any new person, or "persons have been received and admitted among the "persons composing the parties of the first part, such "person or persons shall be held and deemed in all re- "spects as belonging to the parties of the first part, and "none of the other parties to this agreement, including "always the contracts, of which copies are or are to be "annexed, when the same shall be annexed, shall have "any right to question or contest the legality of such "constitution, or to demand further proof of it. All "acts and things whatever, which might be done per- "sonally hereunder, by the parties of the first part, or "any three of the persons composing them, including "acts authorized to be done as attorney for the party of "the third part, with others, may be done by the attorney "or representative of the parties of the first part, or any "three of said persons.

"ARTICLE 13. The parties of the first part agree "to allow and to secure, to the best of their ability, a "participation in all the benefits arising under this "agreement, in the just proportion of the respective "holding, to all the bondholders who shall join them in "carrying out the purposes of this agreement, and who "shall, in witness whereof, have affixed to or impressed "on their bonds and the coupons attached thereto, by the "parties of the first part, or its agents, the stamp in- "dicating their assent to this agreement, as before in- "dicated.

"ARTICLE 14. The party of the second part "binds itself to pay to the parties of the first part, for "the benefit of the Deutsche Vereins Bank, of Frank- "fort-on-the-Main, a commission of one-half of one per "cent. on all amounts disbursed by said bank under "this agreement, said commission being the charge of "said bank for making such disbursements.

"ARTICLE 15. The parties of the first part here- "by further covenant and agree, to and with the said "parties of the second, third and fourth parts, that, on "condition of their securing to the parties of the first "part, for all the bondholders, as aforesaid, the full bene- "fit of this agreement; and when the same shall have "been fully secured and received, then this agreement "shall stand and operate as a full release forever to each "and all of the stockholders and directors of the said "Oregon and California Railroad Company, from any "and all alleged liability, by reason of any claim that "any part of such stock has not been fully paid up, or

"otherwise, or by reason of any alleged wrongful acts "whatever on the part of any person or persons, as direc- "tors of such company, while acting in the capacity of "director, this release to operate in favor of all persons "who are now, or who ever have been, stockholders or "directors of said company, upon the conditions afore- "said; and said parties of the first part further covenant "and agree, to and with the parties of the second, third "and fourth parts, on the condition aforesaid, to accept "the provisions thereof in lieu of their rights to fore- "close and enforce payment under said mortgage; and "that they will not, so long as the benefits of this con- "tract are received by them, and the terms and conditions "thereof are fully performed by said parties of the sec- "ond, third and fourth parts, except as herein otherwise "provided, commence an action at law, or other pro- "ceeding, to recover the amounts due them for principal "or interest on said bonds, nor any foreclosure of the "mortgage, except as herein otherwise stated; and that, "on a full performance of the terms of this contract, they "will absolutely release the said company from all lia- "bility on its bonds or coupons. But nothing herein "contained shall be held to held to affect or diminish the "rights of the parties of the first part, as they now exist, "in case, by reason of the bankruptcy of the party of "the second or third parts, or for any other reason be- "yond their own control, the parties of the first part "shall be deprived of the benefit of these presents; and, "otherwise than as herein provided, all the existing rights "of the parties of the first part, under the mortgage,

"shall continue unaffected by these presents.

"ARTICLE 16. The parties of the fourth part "hereby assent to this contract, and agree, so far as they "lawfully may, not to enforce a foreclosure of said "mortgage during the continuance of this agreement, "and to co-operate, in all ways in which they lawfully "may, with the other parties to these presents, to secure "the full and faithful execution of all the terms thereof.

"ARTICLE 17. This agreement may, at any time, "be modified, by assent of the parties, and the parties "hereto respectively agree to join, at any time, in any "further agreements, and to execute any papers which "may be necessary or proper for the more full and ef- "fectual carrying out of the purposes of these presents.

"ARTICLE 18. All the agreements of the parties "to these presents are made by and between the parties "and their heirs, executors, administrators, successors "and assigns.

"In witness whereof, the said Oregon and California "Railroad Company, party of the second part, has, by "resolution of its board of directors, caused these "presents to be signed by its president and secretary, "and its corporate seal affixed; and the other parties "hereto, the said parties of the first part, except the said "Henry Villard, acting by their attorney in fact, Henry "Villard, have hereunto set their hands and seals in "quadruplicate, the twenty-fifth day of July, in the year "of our Lord, one thousand eight hundred and seventy- "four.

"In presence of, etc.: (Executed and acknowledged "by all the parties.)

No. 2. AGREEMENT AS TO APPOINTMENT OF FINANCIAL AGENT.

WHEREAS, an agreement of compromise and "settlement of all disputes has been entered into by and "between the said Heinrich Hohenemser, Aron Nied-"erhofheim, Julius Schmidt, Adolph Otto, Henry Vil-"lard, Michael Benjamin, Carl Staehelin-Bucknor, F. "S. Van Nierop and Wilhelm Koester, holders of eleven "thousand one hundred and forty-seven of the bonds of "the Oregon and California Railroad Company to the "amount of their par value of six millions four hundred "and sixty-eight thousand six hundred dollars ($6,468,-"600), as party of the first part, the Oregon and Cali-"fornia Railroad Company as party of the second part, "Ben Holladay as party of the third part, and Faxon "D. Atherton and Milton S. Latham, trustees, as party "of the fourth part; and whereas it is stipulated in said "agreement as follows, to wit: The party of the first "part shall have at all times the right to be represented "as to all matters concerning its interests in said rail-"road company, or the property thereof, by a financial "agent for the protection of the interest of the bond-"holders, who shall be selected by the party of the first "part, and shall reside in such place as the said party of "the first part may designate. The salary of the finan-

"cial agent, fixed at the sum of six thousand dollars "per annum in gold coin, and also the additional salary "of one thousand dollars per annum, in gold coin, when "said agent shall act as chief of the land department, "shall be paid out of the receipts of the railroad com- "pany.

"It is further agreed by the parties of the second "and third parts, that all receipts of the party of the "second part, from whatever sources, shall be turned "over to the financial agent, and all money needed to "meet the current expenditures of the company shall "be paid out by him, or on his order; and by proper "arrangement between the financial agent and the "company, the particular terms of which shall be ex- "pressed in a supplementary agreement, the company "shall be freed from embarrassment or delay in obtain- "ing such portions of the earnings as shall be required "for the operation of the road. Until the appointment "of the financial agent, and as long as he shall not have "entered upon the exercise of his functions, and during "any vacancy at any t ime in the office of the financial "agent, the entire net receipts of the railroad company "(meaning thereby wherever the term net receipts is "used herein, the receipts after deducting what is needed "for operating expenses, expenses of the land depart- "ment, and necessary repairs), shall be deposited at the "end of each month with the London and San Fran- "cisco Bank, limited, at San Francisco, California, to "the credit of the party of the first part, on account of "the interest or coupons or certificates for unpaid in-

"terest hereinafter named, or on full payment thereof, "on account of the principal sum due on the first mort- "gage bonds, if the same are then due and payable. And "it is further covenanted and agreed by the parties of "the second and third parts that although the board of "directors shall have the management of the company "no expenditures other than and over and above the "ordinary and usual repairs of the road, depots, bridges, "machinery shops and equipments, shall be incurred or "made without the consent of said financial agent, and "at the request of said financial agent, the board of di- "rectors of the company shall be bound to cause to be "made out of the earnings of the party of the second "part, whatever repairs and improvements may be "deemed necessary by said financial agent to keep the "railroad in good working order, and to keep its depots "and property in good condition.

"The financial agent shall have the right to pass "over the road free of expense, to have full and free "access to all the books and papers of the company at all "reasonable hours, to inspect all its work, buildings and "property, and examine books, inventories, cash and "other assets of any description, to control the keeping "of its books and accounts, to make extracts from them, "to point out and demand correction of any errors and "irregularities in the general management of the com- "pany, or in the different bureaus and departments of "it, and whatever information he may require regarding "the management of the company shall at all times be "furnished to him, and all errors and irregularities shall

"be properly remedied without delay whenever they "shall be pointed out as aforesaid, and when the same "can reasonably be changed in accordance with his sug- "gestion. No work shall be done in the workshops of "the company for outside parties, either private indi- "viduals or corporations, and no part of the personal or "real property of the company shall be sold, nor the "use of it allowed to outside parties, and no new stock "or bonds shall be issued, and no engagements and lia- "bilities of any kind entered into except such as may be "necessary for the operation of the railroad, without the "consent of said financial agent in said matters respec- "tively, which principal agreement is hereby made part "hereof. And whereas, Richard Koehler has been des- "ignated as such financial agent of said bondholders:

"Now, therefore, this supplemental agreement be- "tween the said Oregon and California Railroad Com- "pany, a corporation duly incorporated under the laws "of Oregon, party of the first part, and the said Hein- "rich Hoehnemser, Aron Niederhofheim, Julius "Schmidt, Adolph Otto, Henry Villard, Michael Ben- "jamin, Carl Stachelin-Bucknor, F. S. Van Nierop, and "Wilhelm Koester, parties of the second part, witness- "eth:

"First. That the said party of the first part hereby "agrees that the by-laws of the said Oregon and Cali- "fornia Railroad Company shall be, as soon as prac- "ticable, so amended as to create and provide for the "office of auditor of said company, and providing that "the duties of such auditor shall be the approval of all

"vouchers or warrants to be paid by the treasurer of "the company, and all disbursements by said company "except upon the pay-rolls of the company by indorsing "with his signature as auditor; and in like manner to "approve all requisitions for the purchase of supplies "and materials for the use of said company. And that "said by-laws shall be further amended so as to pro- "vide that the duties of chief engineer of said company "shall embrace the charge of all repairs necessary to the "road-bed, track, bridges, etc., and in conjunction with "the superintendent of the company to decide upon all "necessary repairs, improvements, addition and changes "of the road-bed, track, bridges, rolling stock, engines, "ferry boat, etc., and the work to be done by the com- "pany's shops and, when approved by the president and "directors of the company, to assist in carrying out the "same.

"SECOND. Monthly settlements shall be had be- "tween said company and the financial agent aforesaid "on the first day of each month, or as soon thereafter "as the reports of the different departments, officers "and agents of said company are received, and the books "of the company written up for the business of the "month preceding, and thereupon the treasurer of said "company shall pay over to said financial agent and "auditor the net receipts of the preceding month, as "shown by the operating accounts for such month ap- "proved by such financial agent, for which said financial "agent shall receipt on account of the bondholders of "said company, under the provisions of said principal

"agreement.

"THIRD. The said financial agent of the party "of the second part, Richard Koehler, shall be appointed "to and retained in said office of auditor during the con- "tinuance of said principal agreement, or so long as he, "said Koehler, remains such financial agent; and no dis- "bursements shall be made by said company except upon "the pay-rolls of the said company, nor shall any sup- "plies be purchased by said company except upon the "approval of said financial agent as auditor aforesaid.

"In witness whereof said Oregon and California "Railroad Company has by resolution of its board of "directors caused these presents to be signed by its presi- "dent and secretary, and its corporate seal to be affixed, "and the said Henry Villard, one of the parties of the "second part, has hereunto set his hand and seal, and "each of the other of said parties of the second part, "by their attorney in fact, Henry Villard, their hands "and seals in duplicate, this twenty-fifth day of July, "in the year of our Lord, one thousand eight hundred "and seventy-four.

"In presence of J. N. Dolph, R. H. Fowler.

"(Seal.)

BEN HOLLADAY,
President of the Oregon and California
Railroad Company.

A. G. CUNNINGHAM,
Secretary of the Oregon and California
Railroad Company.

HENRY VILLARD.
HEINRICH HOHENEMSER, Seal.
ARON NIEDERHOFHEIM, Seal.
JULIUS SCHMIDT, Seal.
ADOLPH OTTO, Seal.
MICHAEL BENJAMIN, Seal.
CARL STAEHELIN-BUCKNOR, Seal.
F. S. VAN NIEROP, Seal.
WILHELM KOESTER, Seal.
By their attorney in fact, Henry Villard.

"State of Oregon, County of Multnomah.

"Be it remembered that on this twenty-fifth day of "July, in the year of our Lord one thousand eight hun- "dred and seventy-four, before me, the undersigned, a "notary public, in and for said county of Multnomah, "and state of Oregon, duly commissioned, sworn and "fully qualified, personally appeared the above named "Ben Holladay, president of the Oregon and California "Railroad Company, and A. G. Cunningham, secretary "of the Oregon and California Railroad Company, "whose names are subscribed to the foregoing instru- "ment as parties there to, personally known to me to "be the individuals described in, and who executed the "said instrument, and they severally acknowledged to "me that he, the said Ben Holladay, as president of the "said Oregon and California Railroad Company, and "he, the said A. G. Cunningham, as secretary of the Ore-

"gon and California Railroad Company, executed the "same as and for the act and deed of the said Oregon "and California Railroad Company, freely and volun- "tarily, and for the uses and purposes therein mentioned, "and the said A. G. Cunningham, being by me duly "sworn, did depose and say, that he is the secretary of "the Oregon and California Railroad Company, and "resides at the city of Portland, Multnomah county, in "the State of Oregon; that he is the legal custodian of, "and is acquainted with the corporate seal of said com- "pany; that the seal affixed to the foregoing instrument "is such corporate seal; that the same was so affixed by "him as secretary of said company, on the twenty-fifth "day of July, A. D. one thousand eight hundred and "seventy-four, by order of the board of directors of said "company, and that he signed his name as secretary to "said foregoing instrument by the like order of said "board of directors.

"In witness whereof, I have hereunto subscribed my "name, and affixed my notarial seal, the day and year "first above written.

"(Seal.) JOSEPH SIMON,
Notary Public, Oregon.

"State of Oregon, County of Multnomah, ss.

"Be it remembered that on this twenty-fifth day of "July, A. D. one thousand eight hundred and seventy- "four, before me, the undersigned notary public, within "and for said county of Multnomah, and State of Ore- "gon, appeared the within named Henry Villard, in

"his own proper person, and also the within named "Henry Hohenemser, by his attorney in fact, the said "Henry Villard, and also the within named Aron Neid-"erhofheim, by his attorney in fact, the said Henry Vil-"lard, and also the within named Julius Schmidt, by his "attorney in fact, the said Henry Villard, and also the "within named Adolph Otto, by his attorney in fact, the "said Henry Villard, and also the within named Carl "Staehelin-Bucknor by his attorney in fact, the said "Henry Villard, and also the within named F. S. Van "Nierop, by his attorney in fact, the said Henry Vil-"lard, and also the within named Wilhelm Koester, by "his attorney in fact, the said Henry Villard, to me per-"sonally known to be the individual described in, and "who executed the above and foregoing instrument of "writing, as well as his own right and on his own be-"half, as also for and on behalf of the said Heinrich "Hohenemser, Aron Niederhofheim, Julius Schmidt, "Adolph Otto, Michael Benjamin, Carl Staehelin-Buck-"nor, F. S. Van Nierop, and Wilhelm Koester, and "acknowledged to me that he executed the same.

"In witness whereof, I have hereunto set my hand "as such notary public, and affixed my notarial seal, on "this day and year last above written.

"(Seal.) JOSEPH SIMON,
Notary Public, Oregon.

"State of Oregon, Department of State.

"I, Stephen F. Chadwick, secretary of the State of "Oregon, do hereby certify that Joseph Simon, whose

"name is subscribed to the foregoing and annexed cer-
"tificate of acknowledgement to the foregoing instru-
"ment, was, at the time of the signing the same, to wit:
"on the twenty-fifth day of July, A. D. one thousand
"eight hundred and seventy-four, a duly commissioned,
"qualified and acting notary public in and for Mult-
"nomah county, in the State of Oregon, and he was then
"by the laws of the State of Oregon, duly authorized
"and empowered to take and certify under his notarial
"seal, acknowledgements to deeds of conveyances and
"mortgages and other instruments of writing, and that
"his certificate thereto is in due form of law, and that
"full faith and credit are due to his official acts as
"such.

"Witness my hand and the great seal of State at
"office, in the city of Salem, State of Oregon, this———
"day of July, in the year of our Lord one thousand
"eight hundred and seventy-four.

"(Seal.) S. F. CHADWICK,
Secretary of the State of Oregon.

"No. 3. CONTRACT BETWEEN MILTON S. "LATHAM, FAXTON D. ATHERTON AND "WILLIAM NORRIS, TRUSTEES, BEN "HOLLADAY, THE OREGON AND "CALIFORNIA RAILROAD COMPANY "AND THE BONDHOLDERS, AS TO THE "MANAGEMENT OF THE LAND GRANT.

"WHEREAS, the Oregon and California Railroad "Company has heretofore issued its bonds to the amount "of ten million nine hundred and fifty thousand dol- "lars ($10,950,000), secured by the first mortgage on "all its road, franchises and property (excepting its land "grant), dated April fifteenth, eighteen hundred and "seventy. And whereas, contemporaneously therewith, "the said company conveyed, by a deed of the same date, "all its land grant to Milton S. Latham, Faxon D. "Atherton and William Norris, as trustees, for the pur- "pose of establishing a sinking fund for the redemption "of said bonds. And whereas, said two instruments were "each referred to in the other, and were part of one and "the same transaction. And whereas, the said sinking "fund trustees, aforesaid, sold and conveyed said land "grant, and certain rights and interest in the land and "property included in the said grant, to the European "and Oregon Land Company (a corporation established "under the laws of California), by deed of contract dated "March twenty-eighth, A. D. eighteen hundred and "seventy-one upon certain terms and conditions named

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"in said deed. And whereas, the said railroad company "failed to pay its interest upon said bonds, falling due "in October, eighteen hundred and seventy-three (1873) "and in April, eighteen hundred and seventy-four "(1874), and will probably be unable to pay any interest "thereon for a considerable time to come, and the prop- "erty of said railroad company, named in said mortgage, "is now subject to foreclosure. And whereas, a ma- "jority, in interest and number, of the holders of said "mortgage bonds have proposed, forthwith, to fore- "close said mortgage, and to endeavor, by all suitable "means, to obtain a reconveyance for the benefit of all "the bondholders aforesaid, of the rights and property "sold to said land company, as aforesaid. And whereas, "an agreement for the settlement of all disputes be- "tween said railroad company and its bondholders has "been entered into between Heinrich Hohenemser and "others, and the said railroad company and others, of "even date herewith, of which these presents is to form "a part, and which is hereby referred to and made a "part of these presents. And whereas, the said rail- "road company, and Ben Holladay, its president, and "the owner of the majority of its capital stock, being "entitled, under the terms of said deed to the trustees "of said sinking fund, to advise and direct, in the in- "vestment of the proceeds of sales of land and other- "wise, have united with said bondholders in requesting "that said reconveyance should be made. And whereas, "the said European and Oregon Land Company, in "view of the premises, declines to carry out the terms

"and conditions of said deed of conveyance to them, and "desires that said reconveyance should be made, as afore- "said. And whereas, for these and other reasons, it is "believed to be greatly for the advantage of said rail- "road company and of all its bondholders, that said sale, "so far as may be, should be canceled, and said land "grant reconveyed upon equitable terms. And whereas, "the said European and Oregon Land Company have "spent certain sums of money causing plans, written "descriptions, and maps of the land named in said land "grant, to be made and circulated, and in advertising "the said land, and in maintaining agencies for the sale "thereof, and in other ways, which will be of great bene- "fit to all parties interested in the sale thereof. And "whereas, a contract and deed of reconveyance, by said "European and Oregon Land Company, to said Milton "S. Latham, Faxton D. Atherton, and William Norris, "trustees aforesaid, of all said land grant remaining un- "sold by said European and Oregon Land Company, "upon terms and conditions provided in said deed, has "been prepared and will be duly executed contempo- "raneously with this agreement, as supplementary to "said agreement between Heinrich Hohenemser and "others, and said railroad company and others, which "said agreement is made part hereof. And whereas, all "the parties hereto are interested in adjusting the con- "troversies that have arisen, touching the said land grant, "and the rights of the bondholders, and in securing to "the bondholders the fullest enjoyment of the benefits "intended to be given them in the deed of trust afore-

"said, which may be consistent with the rights of said "railroad company and others.

"Now, therefore, in consideration of the premises "and of the mutual agreements between the parties "hereto, it is hereby agreed by and between the parties "hereinafter named, and the heirs, executors, adminis- "trators, assigns, and successors of them, and each of "them, to wit: Milton S. Latham, Faxon D. Atherton "and William Norris, trustees, as parties of the first "part; Heinrich Hohenemser, director of the Deutsche "Vereins Bank, of Frankfort-on-the- Main; Aron Nied- "erhofheim, manager of the Branch Bank of Commerce "and Industry, at Frankfort-on-the-Main; Julius "Schmidt, of said Frankfort; Adolph Otto, of Heil- "bronn, in Wirtemberg; michael Benjamin, director of "the Baierische Wachsler Bank of Munich, in Bavaira; "Carl Staehelin-Bucknor, of Basle, in Switzerland; F. "S. Van Nierop, director of the Bank of Amsterdam, "at Amsterdam, in the kingdom of the Netherlands; "Wilhelm Koester, of Mannheim, in Banden, and "Henry Villard, by their attorney in fact, Henry Vil- "lard, and the said Henry Villard, acting together as "parties of the second part, the Oregon and California "Railroad Company as party of the third part, and Ben "Holladay, president of the said last-named company, "and the owner of the majority of its stock, as party of "the fourth part, as follows, to wit:

"First. During the continuance of the agreement "aforenamed, to which these presents are supplementary, "and as long as any part of the principal or interest on

"the bonds, secured by said mortgage, and any certifi-
"cates for interest are unpaid, the said parties of the
"third and fourth parts hereby waive all rights, given
"them under the trust deed aforesaid, to control, direct,
"or interfere in the selling of the lands and property
"which have been reconveyed by said European and
"Oregon Land Company to said parties of the first part,
"and, as to the investment, or any changes in the in-
"vestment, of the trust fund, named in said trust deed,
"and it is hereby agreed, by all the parties to these
"presents, that all said rights shall be exercised by the
"parties of the second part, but said parties of the third
"and fourth parts shall not be held responsible, in any
"respect whatever, for the management of said land de-
"partment, except as to the payments herein provided
"for. "The said fund shall be invested and managed
"with a view to keep it at all times safe and free from
"depreciation in value, as well as to increase in volume.
"No strip or waste of the said lands or property, or any
"part of it, by the said party of the third part, shall be
"practised or permitted, nor any use of timber or other
"materials, on or within said land, otherwise than as
"may be needed for the use of said party of the third
"part, in building, repairing or operating its road, with-
"out the consent of said parties of the second part. The
"said trustees, and either of them, and any of their suc-
"cessors, shall, at any time, on request in writing of said
"parties of the second part, resign their said trust, and
"the said parties of the third and fourth parts will forth-
"with accept said resignations, at any time, on request

"of said parties of the second part; and said party of "the third part hereby authorize its president or treas- "urer to waive notice, and accept such resignation at "any time, in its name; and said parties of the second "part shall have the right to nominate and appoint any "successor or successors to said trustees, or either of "them, or any successor of either of them; and all the "parties to these presents hereby, upon request of said "parties of the second part, agree to do all things, and "take all steps necessary or proper to secure the full "appointment and confirmation in office of any new "trustees so nominated and appointed by the parties of "the second part; and upon the payment in full of said "bonds, and all interest and unpaid certificates of inter- "est, and of all the proper charges, expenses and dis- "bursements of the trustees in and about said trust, any "trustees so nominated and appointed by said parties "of the second part, shall, on request of said party of "the third part, duly made and certified to them, forth- "with resign said office. The salary of the parties of "the first part, and any successors in said trust, shall "not exceed one thousand dollars ($1000) per annum for each trustee, and shall be paid out of the revenues "of the land department. The funds provided for by "the terms of said deed of trust, and arising out of the "sale of said lands and property, may be invested in said "first mortgage bonds of the Oregon and California "Railroad Company, whenever the same can be ob- "tained at not over par, and accrued interest in gold, "but they shall, in all cases, be bought at the lowest rates

"at which they can be obtained, after advertising for "proposals for not less than ten weeks, at least once a "week, in some one or more of the leading newspapers "of Portland, in the State of Oregon, San Francisco, "the City of New York, and Frankfort-on-the-Main. "Bonds of the party of the third part, so purchased, "shall not be re-issued or sold, but shall be held by said "trustees, who shall duly collect and receive the inter- "est thereon, as it may be paid under the terms of the "agreement above named, to which these presents are "supplementary; and said trustees, in their capacity as "bondholders, shall, in all respects, so far as they law- "fully may, co-operate with and assist said parties of "the second part in carrying out the terms of said agree- "ment.

"Second. All the business relating to the selling "and due advertising of said lands, or other property, "the establishing and maintaining of agencies and ap- "pointment of agent, and the entire management thereof, "shall be carried on under the direction of said parties "of the second part, as a part of the business of the Ore- "gon and California Railroad Company, and through "a bureau, to be known as the land department of said "company. The financial agent of the parties of the "second part, or other party, to be named by them, shall " be the chief officer of said land department, and the "expenses of said department, to the extent that it shall "not be self-sustaining, in each period of one year, shall "be paid out of the earnings of the party of the third "part; provided that not more than twenty thousand

"dollars in gold coin per annum shall be so applied in "each period of one year, and that, as to all outlays, over "and above the amount of ten thousand dollars "($10,000) per annum in gold, the party of the third "part shall be consulted, and unless such outlay, over "ten thousand dollars, receives the approval of the party "of the third part, not more than ten thousand dollars "shall be paid by the party of the third part as afore-"said.

"Third. All the provisions of the agreement above "named, to which these presents are supplementary, re-"lating to the powers of the parties of the second part, "to do all acts and things whatsoever, and to exercise "all their powers by their financial agent or attorney, "and relating to the full recognition of the authority "and right to act of said parties of the second part, as "being a majority in interest and number of the bond-"holders, and their ownership in bonds, and to the con-"tinuance of their authority, and the coming in of new "parties to join them, and the effect thereof, and as to "the waiver of any right to object to the authority of "said parties of the second part, or the continuance "thereof, and to the rights of said parties of the second "part, in case of any failure of other parties to keep the "agreements entered into by them, and in case of bank-"ruptcy, and otherwise, and for further conveyances "and assurances to carry out the purposes of the agree-"ment, and all other provisions of said agreement to "which this is supplementary, shall be held to be appli-"cable hereto, and incorporated herein as fully as if here-

"in written down at large, so far as they are relevant "hereto, and not inconsistent herewith, and are hereby "accepted and agreed to by the parties to these pres- "ents; and these presents shall be treated in all re- "spects as part of said agreement.

"Fourth. If the Oregon and California Railroad "Company, in any of the eight years during which the "party of the fourth part has agreed, in certain con- "tingencies, to supplement the earnings of the said rail- "road company, shall pay any sum for the expenses of "the land department, in excess of the receipts from "that department, and the said Holladay, in the same "year shall be compelled to pay any sum toward supple- "menting the interest on the bonds of the railroad com- "pany as is provided in the said agreement to which "this is annexed (and it is expressly understood that "such supplementary payments are for the purpose of "making up all deficiencies after paying all amounts "herein specified, for the land department, as well as "other expenses of the railroad company), then, and in "every such case, the amount of such supplementary pay- "ments, up to but not exceeding the amount of the pay- "ments of said company toward said expenses during "said year, shall be repaid to said Holladay out of the "future net revenues of the said department, when it "shall be self-sustaining, or out of any net earnings, of "said company applicable to the payment of interest, "which are in excess of the rate of interest guaranteed "by said Holladay, in the manner aforesaid, to be paid "on its bonds during said term of eight years.

"IN WITNESS WHEREOF, The said Oregon "and California Railroad Company, party of the third "part, has, by resolution of its board of directors, caused "these presents to be signed by its president and secre- "tary, and its corporate seal to be affixed; and the "other parties hereto have hereunto set their hands and "seals, in quadruplicate, the parties of the second part, "except the said Henry Villard, by their attorney in fact, "the said Henry Villard, this the twenty-fifth day of "July, in the year of our Lord one thousand eight hun- "dred and seventy-four.

"In presence of, etc.; (Executed and acknowledged "by all parties.)

"NO. 4. AGREEMENT BETWEEN THE "EUROPEAN AND OREGON LAND COM- "PANY AND MILTON S. LATHAM, FAXON "D. ATHERTON AND WILLIAM MORRIS, "TRUSTEES, AD OTHERS.

"AN AGREEMENT made and entered into this "twenty-fifth day of July, one thousand eight hundred "and seventy-four, by and between the European and "Oregon Land Company, a body politic and corporate "under the laws of California, party of the first part; "Milton S. Latham, Faxon D. Atherton and William "Norris, all of the State of California, trustees, parties "of the second part; Henry Villard, of the city of Heidel-

"berg, Grand Duchy of Baden, Heinrich Hohenemser, "of the city of Frankfort-on-the-Main, Prussia, director "of the Deutsche Verein Bank in the same city, Aron "Neiderhofheim, of the city of Frankfort-on-the-Main, "director of the branch office at Frankfort-on-the-Main "of the Bank feur Handel and Industrie at Darm- "stadt, Julius Schmidt, banker of the city of Frank- "fort-on-the-Main, Adolph Otto, doctor of law and at- "torney at law of the city of Heilbronn, kingdom of "Wirtemberg, Michael Benjamin, of the city of Mun- "ich, kingdom of Bavaria, director of the Baierische "Wechsler Bank, in the same city, Carl Staehelin-Buck- "nor, of the city of Basle, Switzerland, partner in the "house of Messrs. Iselin & Staehelin, in the same city, "F. S. Van Nierop, of the city of Amsterdam, king- "dom of the Netherlands, director of the Amster- "dam'she Bank of the same city; Wilhelm Koester, of "the city of Mannheim, Grand Duchy of Baden, bank- "er, partner in the house of Koester & Co., in the same "city, by the said Henry Villard, their attorney in fact, "parties of the third part; the Oregon and California "Railroad Company, a body politic and corporate under "the laws of Oregon, parties of the fourth part; and "Ben Holladay, of the State of Oregon (who is presi- "dent of the last named company and the owner of a "majority of its capital stock), party of the fifth part, "witnesseth:

"WHEREAS, The said party of the fourth part, "heretofore, to-wit: on the fifteenth day of April, one "thousand eight hundred and seventy. made its certain

"indenture of mortgage of that date, of certain of its "property therein described, to said Faxon D. Ather- "ton and Milton S. Latham, as trustees, to secure the "payment of certain of its bonds, which mortgage was "duly recorded in the office of the record of mortgages "in the county of Multnomah, State of Oregon, in book "K of mortgages, on pages seven hundred and forty- "five and following, to which mortgage and the record "thereof direct reference is made.

"AND WHEREAS, at the date last aforesaid, said "party of the fourth part, for the purpose of creating "a sinking fund for the payment of the said bonds, "conveyed by its certain deed of that date to the parties "of the second part all the lands and franchises with "their appurtenances lying and being in the State of "Oregon, granted, or intended to be granted, to the "Oregon company by Act of Congress, approved July "twenty-fifth, A. D. one thousand eight hundred and "sixty-six, entitled 'An Act granting lands to aid in the "construction of a railroad and telegraph line from the "Central Pacific Railroad in California to Portland, in "Oregon,' and acts supplemental thereto and amenda- "tory thereof, and also, all the right, title, interest, claim, "property and demand whatsoever, both legal and "equitable, present and prospective, absolute and con- "tingent, which the party of the first part hereto, now "has, or owns, or to which it is in any way entitled in "and to any and all land and franchises in the State of "Oregon granted, or intended to be granted to the Ore- "gon company by the Acts of Congress aforesaid, and

"also, all future right, title, interest, claim, property "and demand, which the party of the first part hereto "may at any time hereafter have, own or acquire to any "lands lying and being anywhere in the State of Ore- "gon, or in any county thereof, by virtue of any further "compliance with the requirements of such Acts of Con- "gress by the party of the first part hereto, together with "all and singular the hereditaments, and appurtenances "thereunto belonging or in any wise appertaining in "trust nevertheless for the uses and purposes specified "in said deed of trust, which said deed was duly record- "ed in book K of records of deeds of said last named "county, on pages seven hundred and twenty-seven and "following, to which deed and the record thereof direct "reference is made.

"AND WHEREAS, said parties of the second part "in part execution of their said trust, did on the twenty- "eighth day of March, one thousand eight hundred and "seventy-one, make a certain deed and agreement of sale "and conveyance with said party of the first part "(which was mutually executed by said parties) con- "veying to said party of the first part the lands and "property lastly above described, upon certain terms "in said agreement of sale and conveyance described, "which said deed is recorded in said county last named "in book N of records of deeds of said county to which "deed and record direct reference is here made. And "whereas, said agreement last aforesaid remains only in "part executed; and comparatively but a small portion "of said lands have been sold by said parties of the first

"part; and the parties of the third part who are the own-
"ers and possessors of a majority of said bonds re-
"ferred to in the above mentioned deeds of mortgage and
"trust, together with the said party of the fourth part
"deem it to be for the interest of the said party of the
"fourth part as well as for the whole body of said bond-
"holders, that said sale so far as may be should be can-
"celed and said land reconveyed, upon equitable terms
"as herein provided. And whereas, said party of the first
"party has spent large sums of money in causing plans,
"written descriptions and maps of the land in said land
"grant to be made and circulated, and in advertising
"the said lands and in maintaining agencies for the sale
"thereof, and in other ways which will be of great bene-
"fit to all parties interested in the sale thereof. And
"whereas, all parties hereto are interested in adjusting
"the matters aforesaid, and in securing to the bond-
"holders the fullest security to be obtained from the said
"lands so conveyed in trust to said parties of the sec-
"ond part.

"AND WHEREAS, the parties hereto have agreed
"upon such cancellation and rescission of said agree-
"ment between said parties of the first and second part
"a restoration of said parties to their respective original
"positions, so far as may be.

"Now, therefore, the party of the first part, in con-
"sideration of the premises and the sum of one dollar to
"it in hand paid by the said parties of the second part
"(the receipt whereof is hereby acknowledged) has

"remised, released, sold and assigned and by these pres-
"ents does remise, release, sell, assign, convey and con-
"firm (with certain exceptions hereinafter named) to
"said parties of the second part and their heirs, suc-
"cessors and assigns forever, all the land and franchises,
"with all rights and privileges, easements and appurte-
"nances thereunto belonging, lying and being in the
"State of Oregon, granted or intended to be granted to
"the Oregon company by Act of Congress, approved
"July twenty-fifth, eighteen hundred and sixty-six, en-
"titled 'An Act granting lands to aid in the construction
"of a railroad and telegraph line from the Central Pa-
"cific in California to Portland in Oregon, and Acts
"supplemental thereto, and amendatory thereof; and
"also (with certain exceptions hereinafter named) all
"the contracts, rights, title, interest, claim, property and
"demand, whatsoever, both legal and equitable, present
"and prospective, absolute and contingent, which the
"party of the first part heretofore had, or owned, or to
"which it became in any way entitled under and by vir-
"tue of said deed from the party of the second part,
"dated March twenty-eighth, A. D. eighteen hundred
"and seventy-one, or of any other deeds or contracts, if
"such there be, or of any acts heretobefore done by the
"party of the fourth part, in compliance with said Acts
"of Congress, to the lands and property named in said
"deed, and to all lands, rights, property and franchises
"in the State of Oregon, granted or intended to be grant-
"ed, to the Oregon company by the Acts of Congress
"aforesaid; and also (with certain exceptions hereinafter

"stated) all future right, title, interest, claim, property "and demand which the party of the first part may at "any time hereafter have, own, or acquire, in or to any "lands, rights, or property, in the State of Oregon, or "any county thereof by virtue of any further compliance "with the requirement of said Acts of Congress by the "party of the fourth part, or its grantors; and also all "maps, plans, office furniture, leases, contracts, bonds, "notes, mortgages, and other securities and property, "real and personal and all accounts, moneys, claims, "demands, rights and privileges, legal or equitable which "the said party of the first part now has or owns, or to "which it is in any way entitled, saving and excepting, "nevertheless, out of the premises all money or property "that the parties of the first part may procure, get or "receive as indemnity and reimbursements as herein pro- "vided, and also expressly saving and excepting, never- "theless, out of the premises and from the operation of "these presents, the corporate rights and franchise of the "said party of the first part, and the lands and rights "heretofore conveyed or granted by it, being the prem- "ises named in certain deeds as follows, to-wit:

"Lot number one, section eleven, township two "south, of range two west, containing 10.68 acres.

"Northwest quarter of section seventeen, and north- "west quarter of south-west quarter of section thirteen, "township two south, range four east, containing 200 "acres.

"West half of south-west quarter and north-east

"quarter of the north-east quarter of section five, town-
"ship two south, range four west, containing 119.48
"acres.

"Lots one and eight of section nine, township two
"south, range one east, containing 21.92 acres.

"Lots one and two of section nineteen, township two
"south, range four east, containing 46.36 acres.

"Lots three and eight of section twenty-seven, town-
"ship thirteen south, range five west, containing 19.91
"acres.

"South-west quarter of south-east quarter, and south-
"east quarter of south-west quarter of section eleven,
"township two south, range three west, containing 80
"acres.

"Lot number one of north-east quarter of section
"fifteen, township three south, range one east, contain-
"ing 22.24 acres.

"Lot number two of section thirty-one, township
"three south, range four east, containing 28.60 acres.

"North-east quarter of section thirteen, and south-
"east quarter of north-east quarter of section thirty-
"one, township three south, range two east, contain-
"ing 200 acres.

"North-east quarter of north-east quarter of section
"seven, township three south, range one west, containing
"40 acres.

"South-east quarter of section nineteen and north-
"west quarter of north-east quarter, and south-east

"quarter of north-west quarter of section twenty-nine, "township four south, range four east, containing 240 "acres.

"Lot one of section twenty-seven, and lot one of "section twenty-nine, township four south, range one "west, containing 5.69 acres.

"North-east quarter of north-west quarter of section "three, township four south, range three east, contain- "ing 40.20 acres.

"Lot two of section one and south-west quarter of "north-west quarter of section eleven, and lot six of "section fifteen, township four south, range five west, "containing 95.10 acres.

"South-east quarter of north-east quarter of section "nineteen, township four south, range four east, con- taining 40 acres.

"Lot one of section nine and lot one of section nine- "teen, and lot three and four of section twenty-five, town- "ship five south, range four west, containing 26.73 acres.

"Lots three and four of section one and south-west "quarter of south-east quarter of section nine, and lot "two of section twenty-nine, township five south, range "six west, containing 96.14 acres.

"Lot two of section seven, township six south, range "five west, containing 15.14 acres.

"Lot three of section twenty-nine, and lot two of "section seventeen, township thirteen south, range five "west, containing 26.20 acres.

"Lot eight and north-east quarter of the north-east "quarter of section twenty-three, township fourteen "south,range three west, containing 43.69 acres.

"Lots one and two of section twenty-nine, township "two south, range one east, containing 57.66 acres.

"South-east quarter of south-east quarter of section five, township three south, range one east, containing "40 acres.

"South-west quarter of south-west quarter, and "north-west quarter of north-west quarter of section "one, township three south, range two east, containing "78.52 acres.

"North-west quarter of south-east quarter of sec- "tion thirteen, township two south, range three east, con- "taining forty acres.

"Northeast quarter of south-east quarter of section "thirteen, township two south, range three east, con- "taining 40 acres.

"Lot five of section twenty-five, township two south, "range three east, containing 31.98 acres.

"Lot three of section five, township three south, "range three east, containing 17.25 acres.

"Lot two of section thirteen, township three south, "range three east, containing 21.56 acres.

"Lot seven of section thirteen, township three south, "range three east, containing 47.29 acres.

"Lot one of section seventeen, township three south,

"range three east, containing 38.36 acres.

"South-west quarter of north-west quarter of section "seventeen, township three south, range three east, con- "taining 40 acres.

"North-east quarter of north-east quarter of section "one, township four south, range three east, containing "40.09 acres.

"North-west quarter of north-east quarter of section "one, township four south, range three east, containing "40.08 acres.

"North half of south-west quarter of section seven, "township one south, range four east, containing 80.15 "acres.

"North half of south-west quarter of section one, "township three south, range four east, containing 80 "acres.

"North half of north-west quarter of section one, "township three south, range four east, containing "82.75 acres.

"South-west quarter of north-west quarter and "north-west quarter of south-west quarter of section "eleven, township three south, range four east, contain- "ing 80 acres.

"South half of south-east quarter of section thirty- "one, township one south, range one west, containing "80 acres.

"South half of north-east quarter of section five,

"township two south, range one west, containing 80 "acres.

"North half of south-east quarter of section thirteen, "township two south, range one west, containing 80 "acres.

"Southeast quarter of south-west quarter of section "one, township three south, range one west, containing "fifty acres.

"South-east quarter and south half of north-east "quarter of section twenty-five, township one south, "range two west, containing 240 acres.

"North-west quarter of north-east quarter, and lots "three and four, of section twenty-seven, township one "south, range two west, containing 107.07 acres.

"Lot one of section five, township two south, range "two west, containing 13 acres.

"South-west quarter of north-west quarter of sec- "tion seven, township two south, range two west, con- "taining 41.96 acres.

"South-east quarter of north-west quarter of section "seven, township two south, containing 40 acres.

"Lots three and four of section nine, township two "south, range two west, containing 19.60 acres.

"North-east quarter of north-east quarter of section "twenty-three, township two south, range two west, "containing 40 acres.

"West half of south-west quarter of section one;

"township two south, range three west, containing 80 "acres.

"North-east quarter of south-east quarter of section "three, township two south, range three west, containing "40 acres.

"North-west quarter of south-west quarter of section "11, township two south, range three west, containing "40 acres.

"Lot five of section twenty-one, township two south, "range three west, containing 30.86 acres.

"North-west quarter of south-east quarter of section "twenty-three, township two south, range three west, "containing 40 acres.

"Lot two of section eleven, township one south, range "two east, containing 37.66 acres.

"North-east quarter of north-east quarter of section "fifteen, township one south, range two east, containing "40 acres.

"South-west quarter of north-east quarter of section "five, township one south, range three east, containing "40 acres.

"North-west quarter and lot two of section five, "township one south, range three east, containing 165.92 "acres.

"North half of north-east quarter of section seven, "township one south, range three east, containing 80 "acres.

"Lot six of section thirteen, township three south, "range three east, containing 28.80 acres.

"South half of north-west quarter of section one, "township three south, range four east, containing 80 "acres.

"Lots one and two of section three, township two "south, range one west, containing 40 acres.

"North-west quarter of south-east quarter and north- "east quarter of south-west quarter of section seven, "township two south, range one west, containing 80 "acres.

"Lots six and eight of section seventeen, township "one south, range two west, containing 38.50 acres.

"Lots three and four of section thirty-three, town- "ship one south, range two west, containing 55.66 acres.

"East half of south-east quarter of section eleven, "township two south, range three west, containing 80 "acres.

"Lot one of section twenty-five, township three "south, range four west, containing 6.96 acres.

"Lot eight of section three, township five south, "range three west, containing 10.78 acres.

"But as to all these excepted parcels, the party of "the first part hereby grants and conveys all the re- "maining rights, title and interest therein, if any there "be, legal or equitable. Meaning and intending hereby, "among other things, to reconvey to the party of the

"second part, everything whatsoever, excepting as afore-
"said, heretofore conveyed or granted by said party of
"the second part to said party of the first part thereof
"and fully to reinstate the party of the second part, so
"far as may be done, and with exceptions aforesaid, in
"all the property, franchises, ownership, rights and
"privileges touching the premises which it had before
"the said deed was made by them to the party of the
"first part.

"TO HAVE AND TO HOLD the granted prem-
"ises unto the said party of the second part and their
"heirs, successors and assigns forever; but in trust
"nevertheless, for the same uses and purposes, and upon
"the same conditions and covenants named in said deed
"of trust, from the party of the fourth part to the party
"of the second part, dated April fifteenth, eighteen hun-
"dred and seventy.

"And the parties of the second part hereby accept
"said conveyance and agree to hold the said land upon
"the trusts hereinbefore referred to.

"But this conveyance is made upon the express con-
"dition that the parties of the second part agree, and do
"hereby agree to and with the parties of the first part
"to fulfill and perform all the contracts for sales or con-
"veyance of any of said lands, heretofore made by said
"party of the first part with the purchaser, and do fur-
"ther agree to reimburse the party of the first part or
"cause it to be reimbursed in full, out of the net pro-
"ceeds of lands coming into their hands for all outlays

"or disbursements in its said business; and do further "agree to release and discharge the parties of the first "part from the payment of any of the sums of money "or the performance of any of the matters and things "on its part to be made, done and performed, as set "forth in said conveyance and agreement of the said "twenty-eighth day of March, eighteen hundred and "seventy-one, and to release and indemnify the party "of the first part, or to cause it to be indemnified, when "and to the extent that said parties of the second party "may have in their hands, any net proceeds from the sale "of lands, from and against all contracts or liabilities "which it may be under relative to the granted premises, "and in all other matters for and against which said "party of the first part equitably and in good conscience "has a right to be reimbursed, indemnified and pro-"tected.

"Such indemnity and repayment shall also be re-"duced to the extent that any one or more of the stock-"holders shall waive, or has waived, his right to any "share or interest therein, in favor of the bondholders; "and all rights of parties, within the said party of the "first part, as among themselves, or in relation to the "company, shall be adjusted as they and said company "may agree.

"For the ascertaining of the payment and indemnity "to be allowed by said parties of the second part to the "party of the first part, it is agreed that, on motion of "either of the parties of the second or third parts, three

"arbitrators shall be appointed, one to be chosen by "each of said last named two parties, and the third by "the two so chosen; and in case either party or arbi- "trator, as the case may be, having been fairly notified "in writing for seven days of the choice of the other "party or arbitrator, as the case may be, shall fail to "notify the other party or arbitrator, as the case may "be, of his own choice, then the principal consular offi- "cer of the German empire, at San Francisco, shall "upon being notified of such failure be, authorized to fill "the vacancy forthwith, and immediate notice shall be "given of his action to both of said parties or arbitrators, "as the case may be.

"The decision of the said three arbitrators, or, in "case of disagreement, of a majority of them, shall be "final.

"And said arbitrators, in making their award, shall "not be bound by the strict rules of law or equity, as "administered in courts, but shall make a fair and "equitable adjustment.

"The party of the third part may, if it sees fit, and "by consent of the arbitrators, cause any part of the "personal property hereby conveyed, to be returned to "the party of the first part in lieu of, or in lieu of mak- "ing compensation.

"And the said parties of the third part do hereby "covenant and agree to, and with said parties of the "first part, in consideration of the premises and the sum

"of one dollar to them in hand paid by said party of "the first part, the receipt whereof is hereby acknowl- "edged, that they, the parties of the third part, will in- "demnify, save and keep harmless the said party of the "first part, of and from all loss and damage by reason "of the execution of these presents by the party of the "first part, and against any and all claims against said "party of the first part, for the purchase-money by them "to have been paid under and by virtue of said agree- "ment between said parties of the first and second parts, "dated the twenty-eighth day of March, one thousand "eight hundred and seventy-one.

"In witness whereof, the said parties of the second, "third and fifth parts have hereunto set their hands and "seals, the parties of the second and fifth parts, and the "said Henry Villard, in person, and others of said at- "torney in parties of the third part by their said fact, "Henry Villard; and the parties of the first and fourth "parts, corporations aforesaid, have caused these pres- "ents to be signed by their respective presidents and "secretaries, and their corporate seals respectively to be "hereunto affixed, all in quadruplicate, the day and "year above written.

"(Executed and acknowledged by all the parties.)

"NO. 5. CONTRACT AS TO THE OREGON "STEAMSHIP COMPANY.

"WHEREAS, The Oregon and California Rail- "road Company is now unable to pay the full interest on "its first mortgage bonds and has defaulted in the "payment of the coupons due October first, eighteen "hundred and seventy-three, and April first, eighteen "hundred and seventy-four; and whereas, said company "is under the necessity, in order to avoid the foreclosure "and sale of the road by the bondholders, to make a com- "promise with the latter, which compromise has been "made known to all the parties of this agreement; and "whereas, it is one of the conditions of said compromise "that the receipts of the Oregon Steamship Company "and the securities of said company now pledged as col- "laterals for the benefit of certain creditors of said com- "pany shall be an additional security to the holders of "the first mortgage bonds of the Oregon and California "Railroad Company and serve to supplement the pay- "ment of principal and interest of said lands; and where- "as, the Oregon Steamship Company has the greatest in- "terest in the conclusion of such compromise, inasmuch "as by the foreclosure and sale of said railroad, the traf- "fic, and revenues of said Oregon Steamship Company "would be very much diminished; and whereas, Messrs. "Heinrich Hohenemser, director of the Deutsche Ver- "eins Bank at Frankfort-on-the-Main, Aron Nieder- "hofheim, manager of the Branch of the Bank of Com- "merce and Industry, at Frankfort-on-the-Main, Julius

"Schmidt, merchant at Frankfort-on-the-Main, Adolph "Otto, counselor at law at Heilbronn in the kingdom of "Wirtemberg, Henry Villard, of Heidelberg in the grand "Duchy of Baden, Michael Benjamin, director of Baier- "ische Wechsler Bank at Munich in the kingdom of "Bavaria, Carl Staehelin-Bucknor, of the firm of Ise- "lin & Staehelin, of Basle, in Switzerland, F. S. Van "Nierop, director of the Bank of Amsterdam, in the "kingdom of the Netherlands, and William Koester, "of the firm of Koester & Company, at Mannheim, in "the grand duchy of Baden, have established and proved "their ownership of six millions four hundred and sixty- "eight thousand six hundred dollars of the bonds of the "Oregon and California Railroad Company; and where- "as, the parties aforementioned are admitted to be the "lawful owners of the majority in interest as well as in "number of the first mortgage bonds of the Oregon "and California Railroad Company by said Oregon "Steamship Company as well as by all the other parties "to this agreement; and whereas, the creditors of said "steamship company, to-wit: Messrs. Sulzbach Broth- "ers, of Frankfort-on-the-Main, and others represented "by Milton S. Latham, as trustee and attorney in fact, "have a claim against said company amounting to eight "hundred thousand ($800,000) dollars in gold coin, "money loaned, in cash, with interest at the rate of ten "(10) per cent. per annum; and whereas, the principal "and interest of said claim is secured by a pledge of two "millions of the first mortgage bonds of the Oregon "Steamship Company, principal and interest payable in

"gold, and of twenty-nine thousand nine hundred and "ninety-eight (29,998) shares of the capital stock of said "steamship company as collateral security; and whereas, "said creditors are equally interested with said steamship "company in the conclusion of the compromise between "the Oregon and California Railroad Company and "the holders of its first mortgage bonds; and whereas, "some of the said creditors of said Oregon Steamship "Company are creditors of the Oregon Central Railroad "Company, to the amount of one million ($1,000,000) "dollars, gold, money loaned, with interest; and where-"as, said creditors are equally interested in the preser-"vation of the Oregon and California Railroad Com-"pany and the prevention of the foreclosure, and are de-"sirous that the net receipts of the Oregon Steamship "Company shall be to a certain degree, conditional se-"curity for their said loan to the Oregon Central Rail-"road Company.

"In consideration of the premises and of other valu-"able considerations, the parties above named hereunto "moving, the Oregon Steamship Company as party of "the first part, the Oregon and California Railroad Com-"pany as party of the second part, the said Heinrich "Hohenemser, director of the Deutsche Vereins Bank "at Frankfort-on-the-Main, Aron Niederhofheim, "manager of the Branch of the Bank of Commerce and "Industry at Frankfort-on-the-Main, Julius Schmidt, "merchant at Frankfort-on-the-Main, Adolph Otto, "counselor at law at Heilbronn, in the kingdom of Wirt-"emberg, Michael Benjamin, director of the Baierische

"Wechsler Bank at Munich in the kingdom of Bavaria, "Carl Staehelin-Bucknor, of the firm of Iselin & Stae- "helin, of Basle, Switzerland, F. S. Van Nierop, director "of the Bank of Amsterdam, in the kingdom of the "Netherlands, and William Koester, of the firm of "Koester & Company, at Mannheim, in the grand duchy "of Baden, by Henry Villard, their attorney in fact, "and the said Henry Villard of Heidelberg, in the grand "duchy of Baden, for themselves, their executors, ad- "ministrators, successors and future holders of the bonds "of the Oregon and California Railroad Company, as "parties of the third part; the said creditors of the Ore- "gon Steamship Company, represented by Milton S. "Latham as trustee and attorney in fact, for themselves, "their heirs, executors, administrators, successors and "assigns, as party of the fifth part, hereby covenant and "agree as follows, to-wit:

"ARTICLE 1. The entire net receipts of said Ore- "gon Steamship Company (meaning by the term 'net "receipts' wherever it is used in this agreement, all re- "ceipts remaining after paying the operating expenses, "taxes and harbor dues, and keeping the property of said "steamship company in reasonably good repair, all other "outlay, in every case, being prohibited, except by agree- "ment of all the parties to these presents), shall be first "applied to the payment of the interest at the rate of ten "(10) per cent. per annum, on the principal of eight hun- "dred thousand ($800,000) dollars loaned by said party "of the fourth part, to the party of the first part, as well "as to the extinction of the said principal. Whenever

"the principal and interest of said debt of said Oregon "Steamship Company shall be paid in full, said net re- "ceipts and the securities held by said party of the "fourth part as collaterals shall be applied to the pay- "ment of the interest at the rate of ten (10) per cent. "per annum and the principal of one million dollars in "gold, loaned by said party of the fifth part to the Ore- "gon Central Railroad Company; in so far only, how- "ever, as the net receipts of the said Oregon Central "Railroad Company shall not be sufficient for the pay- "ment of said principal and interest, or any part of it, "and in so far only, as the pledge of said Oregon Central "Railroad Company, namely: four million three hun- "dred and ninety-five thousand ($4,395,000) dollars "first mortgage bonds shall not yield sufficient, if sold, "to repay said loan of one million dollars and interest; "but in the last named event, said receipts of said steam- "ship company shall be used for the repayment of said "principal and interest only to the aggregate amount of "four hundred thousand ($400,000) dollars.

"ARTICLE 2. As saon as the conditions set forth "in Article 1 shall be complied with, the entire net re- "ceipts of the Oregon Steamship Company shall be "paid to the said parties of the third part, or their agent "and attorney, at the end of each calendar month, and "the parties of the third part shall apply them to the "current interest of the first mortgage bonds of the "Oregon and California Railroad Company to the "amount of seven per centum per annum; and whenever "in any one year the net receipts of the Oregon and

"California Railroad Company, added to the receipts "which may be contributed by the Oregon Steamship "Company, shall exceed the sum of seven per centum per "annum on the bonds issued and unredeemed of the "Oregon and California Railroad Company, then one- "half of such excess shall be applied to the redemption "of scrip, and one-half be applied to the stockholders "of the Oregon Steamship Company.

"ARTICLE 3. The securities of the Oregon "Steamship Company now in the hands of the party of "the fourth part, to-wit: two million dollars of the first "mortgage bonds and twenty-nine thousand nine hun- "dred and ninety-eight (29,998) shares of the capital "stock of said Oregon Steamship Company, shall be sec- "ondly additional security for the aforementioned claim "of said parties of the third part within the afore-de- "scribed limits, and thirdly, shall be additional security "to the said parties of the third part for its claims men- "tioned in Article 2, without prejudice, however, to the "prior rights of the parties of the fourth part and fifth "part, and said securities shall be held as a pledge by "the said party of the fourth part for its own benefit, "and as security for the payment of its claim as well "as of the claim of the parties of the third and fifth "parts, upon the payment in full of the said party of "the fourth part, possession of said securities shall be "given to said party of the fifth part, which shall hold "the said securities as a pledge for its own benefit as "well as for the benefit of said parties of the third part, "without prejudice, however, to its own claim, and upon

"the payment of its own claims, possession of said se-
"curities shall be given to the parties of the third part;
"nothing herein stipulated shall prevent, however, the
"said parties of the fourth part from making good their
"claims against said party of the first part for the prin-
"cipal and interest by the sale, at any time they may find
"it to their interest to make such sale of the securities
"of said party of the first part held by them as collat-
"erals.

"ARTICLE 4. The party of the first part binds
"itself to provide for the delivery of said securities at
"the proper time aforesaid to said parties of the third
"part, in accordance with the foregoing provisions, if
"and whenever it may be in their power to do it.

"ARTICLE 5. In case the party of the first part
"shall not comply with any of the provisions of this
"agreement, and of the larger agreement hereinafter
"named, the parties of the third part, at any time, at
"their option, and without any delay, on a written no-
"tice to the several parties to this agreement, of seven
"days, advertised in any paper in Portland, Oregon
"(the parties hereto waiving hereby all right to any other
"or further notice or time, whether fixed by statutes
"or otherwise), shall have the right to require, and cause
"to be made a sale of said bonds and shares, or any of
"them, as a foreclosure and sale of said Oregon Steam-
"ship Company by virtue of the possession of its mort-
"gage bonds, and of the mortgage executed to secure
"them, and in these ways, or in any other lawful man-

"ner, to cause itself to be repaid (after the satisfaction "of any prior claims as aforesaid) for the principal and "interest of said mortgage bonds of said Oregon and "California Railroad Company, as far as practicable.

"ARTICLE 6. The party of the first part binds "itself to furnish to the parties of the third and fifth "parts, at the beginning of each month, a statement of "the receipts of the preceding month, and also to allow "the said parties of the second, third and fifth parts, or "their lawful representatives to examine at all times "the books, accounts, papers, and property of said Ore-"gon Steamship Company.

"ARTICLE 7. All the provisions of the larger "agreement between the parties of the third part, hereto, "and the parties of the second part and others (where-"of these presents are expressly thereby made a part, "and which is hereby made a part of these presents), re-"lating to the continuance of the agreement, the rights "of the parties of the third part hereto, in case of a viola-"tion of its terms or a failure to carry it out by any of "the parties contracting with said parties of the third "part; and as to the acknowledgment of ownership of "bonds represented by the parties of the third part and "their authority and the continuance thereof, and the "waiver and estoppel of any other party's right to ques-"tion the same, and other things therein specified, and the "right to act of any three or more of the parties of the "third part, and the right of said parties of the third "part, or any three of them, to do all acts and exercise

"all powers whatsoever by their agent or attorney, and "as to the manner and effect of admitting new persons "into said agreement as parties or so as to receive the "benefits thereof, and their rights, and as to the amount "of interest to be paid on the first mortgage bonds of "the party of the second part hereto, annually, for the "first five and the next three years respectively, and all "the other provisions of said larger agreement which se- "cure any rights or benefits to any of the parties to this "agreement, and are capable of application to the mat- "ters herein named shall be deemed to be a part of and "incorporated in these presents, and adopted by the par- "ties hereto in relation to all the terms of these presents, "as fully and to the same intents and purposes as if here- "in written out at large, and in terms so applied and "adopted.

"ARTICLE 8. This contract is assented to and "executed on behalf of the parties of the fourth and fifth "parts upon the distinct understanding that nothing "herein contained shall in any wise interfere with their "respective heretofore acquired rights in the premises; "nor shall this contract be held as between them or either "of them and the other contracting parties, or any of "them, to require any notice of any description when- "ever and wherever or in what way soever the parties of "the fourth and fifth parts, or either of them, may pro- "ceed to enforce their said respective rights and de- "mands; and if in such case any notice whatsoever be re- "quired by reason of this contract in any proceeding at "law or otherwise, notwithstanding this article, then the

"parties hereto waive any and all notice by process or "otherwise, and hereby consent that the parties of the "fourth and fifth parts may, if they so choose, appoint an "attorney to represent the remaining parties hereto, in "any proceeding, if this article shall not be deemed to "amount to a waiver of right to notice as aforesaid.

"In witness whereof, the said parties have hereunto "set their respective hands and seals in quadruplicate, "the parties of the third part, except the said Henry Vill- "ard who executed the same in person, by their attor- "ney in fact, the said Henry Villard, and the said sev- "eral corporations, have by resolutions of their respective "boards of directors caused their respective corporate "seals to be hereunto affixed, and these presents to be "signed by their respective presidents and attested by "their respective secretaries in quadruplicate this twenty- "fifth day of July, A. D. one thousand eight hundred "and seventy-four.

"In presence of, etc.; (Executed and acknowledged "by all the parties.)

"NO. 6. CONTRACT AS TO OREGON CENTRAL RAILROAD COMPANY.

"WHEREAS, the Oregon and California Railroad "Company is now unable to pay the full interest on its "first mortgage bonds, and has defaulted in the pay- "ment of the coupons due October first, eighteen hundred "and seventy-three, and April first, eighteen hundred

"and seventy-four:

"And whereas, said company is under the necessity, "in order to avoid a foreclosure and sale of the road by "the bondholders, to make a compromise with the latter, "which compromise has been made known to all the "parties to this agreement;

"And whereas, it is stipulated in said agreement of "compromise, as one of the conditions of said compro- "mise, as follows: 'Ben Holladay herein agrees to join "with the creditors of the Oregon Steamship Company, "and the creditors of the Oregon Central Railroad Com- "pany, in any arrangement, with their consent, by which "the entire property of these two companies, after their "indebtedness is liquidated, shall belong to the railroad "company, and be a further security by mortgage to the "bondholders';

"And whereas, said Oregon Central Railroad Com- "pany has the strongest interest in the conclusion of the "said compromise;

"And whereas, said Heinrich Hohenemser, director "of the Deutsche Vereins Bank of Frankfort-on-the- "Main; Aron Niederhofheim, manager of the Branch "Bank of Commerce and Industry, at Frankfort-on-the- "Main, Julius Schmidt, merchant, at Frankfort-on-the- "Main; Adolph Otto, counselor at law, at Heilbronn, "in the kingdom of Wirtemberg; Henry Villard, of "Heidelberg, in the grand duchy of Baden; Michael "Benjamin, director of the Baierische Wechsler Bank "at Munich, in the kingdom of Bavaria; Carl Staehelin-

"Bucknor, of the firm of Iselin & Staehelin, of Basle, "in Switzerland; F. S. Van Nierop, director of the Bank "of Amsterdam, in the kingdom of the Netherlands, "and William Koester, of the firm of Koester & Com- "pany, at Manneheim, in the grand duchy of Baden, "have established and proved their ownership to six mil- "lions four hundred and sixty-eight thousand six hun- "dred dollars of bonds of the Oregon and California "Railroad Company;

"And whereas, the parties aforementioned are admit- "ted to be the lawful owners of the majority, in inter- "est as well as in numbers, of the first mortgage bonds "of the Oregon and California Railroad Company, by "said Oregon Central Railroad Company, as well as "by all the other parties to this agreement.

"And whereas, the creditors of said Oregon Steam- "ship Company, to wit: Messrs. Sulzbach Brothers, of "Frankfort-on-the-Main, and others, represented by "Milton S. Latham as trustee and attorney in fact, are "creditors of the Oregon Central Railroad Company, to "the amount of one million dollars in gold, with inter- "est;

"And whereas, said creditors hold as collateral se- "curities for the principal and interest of their claim "the entire issue of the first mortgage bonds of the "Oregon Central Railroad Company, to the nominal "amount of four millions three hundred and ninety-five "thousand ($4,395,000) dollars;

"And whereas, said creditors of said Oregon Cen-

"tral Railroad Company are equally interested in the "preservation of the Oregon and California Railroad "Company and the prevention of the foreclosure;

"Now, therefore, in consideration of the premises "and other valuable considerations, the parties to these "presents thereunto moving, the said Oregon Central "Railroad Company, as party of the first part; the said "Oregon and California Railroad Company, as party "of the second part; said Heinrich Hohenemser, direc- "tor of the Deutsche Vereins Bank at Frankfort-on- "the-Main; Aron Niederhofheim, manager of the branch "of the Bank of Commerce and Industry at Frankfort- "on-the-Main; Julius Schmidt, merchant at Frankfort- "on-the-Main; Adolph Otto, counselor at law, at Heil- "bronn, in the kingdom of Wirtenberg; Michael Ben- "jamin, director of the Baierische Weshsler Bank, at "Munich, in the kingdom of Bavaria; Carl Staehelin- "Bucknor, of the firm of Iselin & Staehelin, of Basle, "in Switzerland; F. S. Van Nierop, director in the "Bank of Amsterdam, in the kingdom of the Nether- "lands, and William Koester, of the firm of Koester "& Company, at Mannheim, in the grand duchy of "Baden, by Henry Villard, of Heidelberg, in the grand "duchy of Baden, their attorney in fact, and the said "Henry Villard, as owners of six millions four hun- "dred and sixty eight thousand dollars of bonds of the "Oregon and California Railroad Company, for them- "selves, their executors, administrators, successors and "future holders of the bonds of the Oregon and Califor- "nia Railroad Company, as parties of the third part,

"and said creditors of the Oregon Central Railroad "Company, represented by Milton S. Latham as their "trustee and attorney in fact, as party of the fourth "part, have covenanted and agreed as follows:

"ARTICLE 1. The entire net receipts of the "Oregon Central Railroad Company (meaning by the "term 'net receipts' wherever it is used in this agree- "ment, all receipts remaining after paying the oper- "ating expenses and taxes, and such floating debt as "now exist against said company, and keeping the "property of said Oregon Central Railroad Company "in reasonably good repair, all outlay in every other "case being prohibited except by the agreement of all "the parties to these presents), shall be applied first "to the payment of the interest, at the rate of ten per "cent. per annum, on said principal of one million dol- "lars, gold, loaned by said party of the fourth part to "said Oregon Central Railroad Company, and next to "the payment of the principal of said loan.

"ARTICLE 2. Whenever, and as soon as said "interest and principal shall be paid, either out of the "net receipts of said Oregon Central Railroad Com- "pany or in any other manner, the entire net receipts "of said Oregon Central Railroad Company shall be "paid to the parties of the third part, or their lawful "representative at the end of each month, and the par- "ties of the third part shall apply the same in the same "manner as the net receipts of the Oregon and Califor- "nia Railroad Company are to be applied under said "agreement of compromise, to the payment of the cur-

"rent interest on the first mortgage bonds of the Oregon "and California Railroad Company, up to the amount "of seven per cent, per annum, and upon the payment "in full of said interest, and the redemption of the cer- "tificates of indebtedness to be issued for unpaid inter- "est by said Oregon and California Railroad Company, "ratably, according to the different series of said cer- "tificates of indebtedness, and finally, upon the redemp- "tion of said certificates, for the payment of the prin- "cipal of said bonds at maturity, or their purchase pre- "viously thereto.

"ARTICLE 3. The securities now in the hands "of the parties of the fourth part, to wit: four millions "three hundred and ninety-five thousand dollars ($4,395,000) first mortgage bonds of said Oregon "Central Railroad Company, shall secondly serve as "collateral security to the parties of the third part, of "their claims mentioned in Article 2, without preju- "dice, however, to the claim of said party of the fourth "part to said securities as collateral, and said party of "the fourth part shall hold said collateral security for "his own benefit as long as he is not himself paid in "full, but also for the benefit of the parties of the third "part; upon payment in full of said party of the fourth "part, said securities shall pass into the hands of the "parties of the third part. But nothing stipulated "herein shall prevent the said parties of the fourth part "from making good their claims against said Oregon "Central Railroad Company, for principal and inter- "est by the sale, at any time they may find it to their

"interest to make such sale, of the securities of said "company, held by them as collaterals.

"ARTICLE 4. The party of the first part binds "itself to deliver to the party of the third part, at the "proper time, said securities as collaterals.

"ARTICLE 5. In case said party of the second "part shall not comply with any of the provisions of this "agreement, or of the larger agreement between the "party of the second part hereto and the parties of the "third part and others (whereof these presents are ex- "pressly thereby made a part, and which is hereby made a "part of these presents), the parties of the third part, at "any time, at their option, and without delay, on a written "notice to the several parties to this agreement, of seven "days, advertised in any paper published in Portland, "Oregon (the parties hereto waiving hereby all right "to any other or further notice of time, whether fixed "by statute or otherwise), shall have the right to re- "quire and cause to be made a sale of said bonds, or "any of them, of said Oregon Central Railroad Com- "pany, so held as collateral by the said party of the "fourth part, and in this way, or any other lawful man- "ner, to cause themselves to be repaid (after the satis- "faction of any prior claims, as aforesaid), for the prin- "cipal and interest of said mortgage bonds of said Ore- "gon and California Railroad Company, as far as "practicable.

"ARTICLE 6. The party of the first part binds "itself to furnish at the beginning of each month, or as

"soon thereafter, during the succeeding month, as prac-
"ticable, to said parties of the second and third parts a
"statement of the receipts of the preceding month of
"said Oregon Central Railroad Company, and also to
"allow the said parties of the third and fourth parts,
"or their lawful representative, to examine at all times
"al the books, accounts, papers and property of the Ore-
"gon Central Railroad Company.

"ARTICLE 7. All the provisions of the larger
"agreement between the party of the second part and
"the parties of the third part and others hereto (where-
"of these presents are expressly thereby made a part,
"and which is hereby made a part of these presents)
"relating to the continuance of the agreement, the
"rights of the parties of the third part hereto in case
"of a violation of its terms or failure to carry it out by
"any of the parties contracting with said parties of the
"third part, and as to the acknowledgment of the own-
"ership of bonds represented by the parties of the third
"part; and their authority and the continuance thereof,
"and the waiver and estoppel of any other party's right
"to question the same, and other things therein specified,
"and the right of any three or more of the persons com-
"posing said parties of the third part to act, and the
"right of said parties of the third part, or any three of
"them to do all acts and exercise all powers whatsoever,
"by their agent or attorney, and as to the manner and
"effect of admitting new persons into said parties of
"the third part, and their rights, and as to the amount
"of interest to be paid on the first mortgage bonds of

"the party of the second part hereto annually, for the "first five and the next three years, respectively, and "all the other provisions of the said larger agreement "which secure any right or benefits to any of the par- "ties to this agreement, and are capable of application "to the matters herein named, shall be deemed to be a "part of and incorporated in these presents, and adopted "by the parties hereto in relation to all the terms of "these presents, as fully and to the same intents and "purposes as if herein written out at large, and in terms "so applied and adopted.

"ARTICLE 8. The securities of the Oregon "Central Railroad Company herein named; and now "in the hands of the party of the fourth part, may, "notwithstanding anything contained in this agreement, "at any time, by the consent of and on terms satisfactory "to the parties of the third and fourth parts, be applied "or used as security in order to provide the means to "complete the said Oregon Central Railroad.

"ARTICLE 9. This contract is assented to and "executed on behalf of the parties of the fourth part "upon the distinct understanding that nothing herein "contained shall in anywise interfere with their respec- "tive heretofore acquired rights, in the premises; nor "shall this contract be held, as between them, or either "of them, and the other contracting parties, or any of "them, to require any notice of any description when- "ever and wherever or in what way soever the parties "of the fourth part, or either of them, may proceed "to enforce their said respective rights and demands,

"and if in such case any notice whatever be required "by reason of this contract, in any proceeding at law, "or otherwise, notwithstanding this article, then the "parties hereto waive any and all notice, by process "or otherwise, and hereby consent that the parties of "the fourth part may, if they so choose, appoint an at- "torney to represent the remaining parties hereto in any "proceeding, if this article shall not be deemed to amount "to a waiver of right to notice as aforesaid.

"IN WITNESS WHEREOF, the said parties "have hereunto set their respective hands and seals in "quadruplicate, the said parties of the third part, ex- "cept Henry Villard, acting by their attorney in fact, "and the said several corporations have, by resolutions "of their respective boards of directors, caused their "respective corporate seals to be hereunto affixed and "these presents to be signed by their respective presi- "dents and attested by their respective secretaries, in "quadruplicate, this twenty-fifth day of July, A. D. "one thousand eight hundred and seventy-four.

(Executed and acknowledged by all the parties.)

"Note.—By award made E. Hansen, Adolph Ro- "senthal and John D. Fry, the Oregon and California "Railroad Company was adjudged to pay the Euro- "pean and Oregon Land Company the sum of $75,000, "in gold coin, with interest at 6 per cent. from January "1, 1875, out of the net proceeds of the land grant."

GOVERNMENT'S EXHIBIT NO. 126H

"AGREEMENT AS TO DISPOSITION OF "EARNINGS OF OREGON STEAMSHIP "COMPANY AND OREGON CENTRAL "RAILROAD COMPANY.

"(Referred to in last agreement.)

"ARTICLES OF AGREEMENT made this "sixth day of April, in the year one thousand eight hun- "dred and seventy-six, by and between Milton S. "Latham, as agent of the European creditors of the "Oregon Steamship Company and the Oregon Central "Railroad Company, and on their behalf, party of the "first part, and Henry Villard, as agent and on behalf "of the holders of the first mortgage bonds of the Ore- "gon and California Railroad Company, represented "by the Frankfort committee, party of the second part. "Witnessing:

"First. The said party of the first part, for and on "behalf of the said creditors of the Oregon Steamship "Company, covenants and agrees that the shares of the "capital stock of said company, now standing in the "name of Ben Holladay, shall be transferred to the said "party of the first part, and the legal title thereof "placed in him in trust, and as security for the debt due "the creditors of said steamship company, but that the "sole and exclusive right to vote upon the said stock "shall be vested in the said party of the second part, or "some proxies or proxy by him selected for that pur-

"pose, and that a collateral agreement creating and "authorizing said right to vote thereon shall also be made "by the said party of the first part, as a separate instru- "ment, and deposited in the office of the said company, "and that the lawful voting power vested in said shares "shall be exercised by the said party of the second part, "or his said proxies or proxy; provided that the said "party of the second part, or his said proxies or proxy, "shall always consent to and vote for any nominations "of two members of the board of directors of said com- "pany, which the said party of the first part shall make, "the right to make such nominations, and have them "thus voted for, being hereby expressly conceded by "said party of the second part.

"Second. The said party of the first part, for and "on behalf of the creditors of the said Oregon Steam- "ship Company, further covenants and agrees to re- "serve out of the net earnings and proceeds of the said "steamship company now pledged to him in trust for "said creditors, the sum of fifteen thousand ($15,000) "dollars annually, for a period of three years (3), in "installments of seven thousand five hundred ($7500) "dollars each, payable every six months, from the date "of these presents, said payment to be applied to the "interest on three hundred thousand dollars, seven per "centum Oregon Central Railroad second mortgage "bonds to be issued to said Ben Holladay, in pursuance "of an agreement between him and the party of the "second part.

"Third. The parties of the first and second parts,

"in their representative capacity aforesaid, hereby mu-
"tually covenant and agree that in order to provide
"the said Oregon Steamship Company with the neces-
"sary means of transportation, a suitable new steam-
"ship shall be purchased without delay, at a cost of
"not exceeding two hundred and fifty thousand ($250,-
"000) dollars in lawful currency of the United States,
"for said steamship company, in the following manner
"(it being assumed that such purchase can be made
"on the payment of one hundred thousand dollars cash,
"and the balance in equal payments in six, nine, twelve,
"and eighteen months), to wit: To meet the first cash
"payment as aforesaid, the party of the first part, as
"such representative as aforesaid, shall contribute the
"proceeds of the sale of the river boats belonging to
"said Oregon Steamship Company, such sale to be ef-
"fected at the earliest possible moment, and the party
"of the second part, as such representative as afore-
"said, shall contribute whatever amount of money shall
"be required over and above the proceeds of said sale
"of the river boats to make up the sum of one hundred
"thousand dollars, and such further sum as may be re-
"quired to equip, alter or repair the said steamship so
"as to fit her for the purpose of said line.

"Whatever amount shall thus require to be, and be
"contributed by said party of the second part, towards
"the purchase and equipment of said new steamer, shall
"bear interest at the rate of six per cent. per annum;
"said interest to be paid out of the net earnings and
"proceeds of the said steamship company after the prior

"payment: First, of the fifteen thousand dollars, an-
"nually, as before mentioned; and, Secondly, of the
"full amount of the cost of the said new steamship;
"whereupon, after payment of the said fifteen thou-
"sand dollars annually, and the full amount of the cost
"of said new steamship, and the said interest shall have
"been made in the order aforesaid, there shall next from
"the net earnings and proceeds be paid to the creditors
"of the said Oregon Steamship Company, any possi-
"ble accrued back interest, and upon the completion of
"all payments aforesaid, the principal sum so advanced
"by the party of the second part towards the purchase
"and equipment of the said new steamer, shall be repaid
"to him in installments of not less than six thousand dol-
"lars per annum, but such installments shall not exceed
"the said sum of six thousand dollars per anum, unless
"and until the current interest due to the creditors of
"the Oregon Steamship Company shall have been fully
"paid. Until the repayment of said principal in the
"manner so specified, it shall stand as a first lien upon
"the said new steamship with legal priority over the
"lien held by said party of the first part, as such repre-
"sentative on the property of said steamship company.

"Fourth. The said parties of the first and second
"parts, in their said representative capacities, also mu-
"tually covenant and agree that if upon further consider-
"ation, it should be found necessary or desirable to pur-
"chase a second new steamship for the Oregon Steamship
"Company, a joint arrangement for such purchase sim-
"ilar, as far as possible, to the one set forth in the fore-

"going article, shall be made between the parties hereto.

"Fifth. The said party of the first part, for and "on behalf of the said creditors of the Oregon Central "Railroad Company, covenants and agrees that the "shares of the capital stock of the said company now "controlled by the said Ben Holladay, shall be trans- "ferred to the said party of the first part, and the legal "title thereof placed in him in trust and as security for "the debt due the creditors of said Oregon Central "Railroad Company, but that the sole and exclusive "right to vote upon the said stock, as well as upon the "additional shares of the capital stock of said company "now standing in the name of the said party of the "first part as trustee, shall be vested in the said party "of the second part, or some proxies or proxy by him "selected for that purpose, and that a collateral agree- "ment creating and authorizing said right to vote there- "on shall also be made by the said party of the first part, "as a separate instrument, and deposited in the office "of the said company, and that the lawful voting power "vested in said shares shall be exercised by the said party "of the second part or his said proxies or proxy.

"Sixth. The said party of the first part in such "representative capacity further covenants and agrees, "that the interest now payable on the debt of the Oregon "Central Railroad Company, referred to in the forego- "ing article, shall be reduced from the date of these "presents to five per cent. per annum.

"seventh. The said party of the first part in such

"representative capacity further covenants and agrees, "that upon the payment of the cost of the said new "steamship or steamships, and upon the extinction of "the debt of the said Oregon Steamship Company to "the said party of the first part in such representative "capacity, the net earnings and proceeds of such com- "pany shall be equally divided, after allowing for the "subsidiary payment of fifteen thousand dollars for the "time before mentioned, between the creditors of the "Oregon Central Railroad Company and the Oregon "and California Railroad Company, in a manner to be "agreed upon hereafter. But the portion of such net "earnings or proceeds allowed and coming to said Ore- "gon and California Railroad Company shall be applied "to the completion of the said Oregon Central Rail- "road Company.

"Eighth. The said party of the first part, in their "representative capacity, further covenants and agrees, "that upon the extinction of the debts of the said steam- "ship company and of the said Oregon Central Railroad "Company, shall enter upon the full enjoyment of the "entire net receipts of the two companies first above "mentioned.

"Ninth. The said party of the first part, in said "representative capacity, further covenants and agrees, "that the said party of the second part shall have the "right to acquire and purchase the claim of the cred- "itors of the Oregon Central Railroad Company, at "any time during the period of three years from the "date hereof, for the sum of two hundred and fifty

"thousand (250,000) dollars, gold coin of the United "States, and the further amount of any deficiency of "interest which may have accrued between the interest "actually earned by the said company and the said in- "terest of five per cent. per annum from the date of "these presents, upon the said principal sum of two "hundred and fifty thousand dollars; provided, how- "ever, that if the said party of the second part should, "after availing himself of the option to purchase said "claim at the price stated, sell and transfer the road "and other property of the Oregon Central Railroad "Company, within a period of six years from the date "of these presents, to any other person, persons or cor- "poration, the said party of the first part, in such rep- "resentative capacity, shall receive the benefit of what- "ever consideration may be obtained by said party of "the second part, or those whom he now represents for "said railroad property.

"Tenth. The said party of the first part, in his "representative capacity, as representing the creditors "of the Oregon Steamship Company and the said party "of the second part, mutually covenant and agree, each "for himself, that he will not at any time sell, convey "or transfer the interest which he holds or represents, "the one in the Oregon Steamship Company, the other "in the Oregon and California Railroad Company, its "franchises and property during the period of three "years from the dates of these presents, except unto "the mutual consent of both parties hereto; provided, "however, that the party of the second part shall have

"the right of selling his interest in the Oregon and "California Railroad Company, upon paying full any "indebtedness which may be due by said Oregon Steam-"ship Company to its creditors.

"Eleventh; The said party of the second part fur-"ther covenants and agrees that if the bondholders of "the Oregon and California Railroad Company and "Sulzbach Brothers should consent to the application of "such portion of the amount authorized to be expended "for the purchase of a new steamship, under the resolu-"tion of the general meeting of such bondholders, held "on September sixteenth, one thousand eight hundred "and seventy-five, as shall not be required for this pur-"pose, to the extension of the line of the Oregon Cen-"tral Railroad Company, such application shall be "made as early as possible.

"IN WITNESS WHEREOF, the parties to these "presents have hereunto set their hands and seals, the "day and year first above written.

"(Seal.) MILTON S. LATHAM,
"Agent of the creditors of the Oregon Steamship Company and of the Oregon Central Railroad Company;

"(Seal.) HENRY VILLARD,
"Agent of the Oregon and California bondholders represented by the Frankfort Committee.

"Signed, sealed and delivered in presence of James L. King.

"State of California, City and County of San Francisco, ss.

"On the sixth day of April, A. D. one thousand eight "hundred and seventy-six, before me, James K. King, "a notary public in and for said city and county, resid- "ing therein, duly commissioned and sworn, personally "appeared Milton S. Latham. agent of creditors of the "Oregon Steamship Company, and of the Oregon Cen- "tral Railroad Company, and Henry Villard, agent of "the Oregon and California bondholders, represented "by the Frankfort committee, known to me to be the "persons whose names are subscribed to the annexed "instrument, and they severally duly acknowledged to "me that they executed the same.

"IN WITNESS WHEREOF, I have hereunto "set my hand and affixed my official seal, at my office "in the city and county of San Francisco, the day and "year first above written.

"(Seal.) JAMES L. KING, Notary Public.

"NOTE—In addition to last two agreements above "printed, two other agreements dated respectively May "26, 1876, and Dec. 6, 1776, were made between the "six parties to the definite agreement. These agree- "ments being merely preliminary to the definite agree- "ment, and superseded by it, are not reproduced."

GOVERNMENT'S EXHIBIT NO. 126 I

"ORIGINAL CONVEYANCE OF OREGON "AND CALIFORNIA LAND GRANT TO "EUROPEAN AND OREGON LAND COM- "PANY.

"THIS INDENTURE, made and entered into at "the city and county of San Francisco, State of Calif- "ornia, this twenty-eighth day of March, in the year of "our Lord, one thousand eight hundred and seventy- "one, between Milton S. Latham, Faxon D. Atherton "and William Norris, trustees, all of the city and county "of San Francisco, parties of the first part, the Euro- "pean and Oregon Land Company, an incorporation "duly incorporated and organized under and pursuant "to an Act of the Legislature of the State of California, "approved the fourteenth day of April, one thousand "eight hundred and fifty-three, entitled 'An Act to "provide for the formation of corporations for certain "purposes,' and the Acts supplementary thereto and "amendatory therof, party of the second part, and the "Oregon and California Railroad Company, a body "corporate, organized at Portland, in the State of Ore- "gon, on the seventeenth day of March, one thousand "eight hundred and seventy, under an Act of the Leg- "islature of the State of Oregon, approved the four- "teenth day of October, one thousand eight hundred "and sixty-two, entitled 'An Act providing for private

"corporations and the appropriation of private prop-
"erty therefor,' and Acts amendatory thereof and sup-
"plementary thereto, party of the third part, witnesseth:

"WHEREAS, the said Oregon and California
"Railroad Company did, on the fifteenth day of April,
"in the year of our Lord one thousand eight hundred
"and seventy, duly make, execute and deliver unto the
"said Milton S. Latham, Faxon D. Atherton and Wil-
"liam Norris, its certain indenture in writing, under
"seal, bearing date of the last named day, whereby the
"said Oregon and California Railroad Company, as
"party of the first part therein, in consideration of cer-
"tain premises in said indenture declared and expressed,
"and in further consideration of one dollar, the receipt
"whereof was therein and thereby acknowledged, did
"duly grant, bargain, sell, assign, alien, set over, en-
"foeff, convey and confirm unto the said Milton S.
"Latham, Faxon D. Atherton and William Norris,
"parties of the second part therein, all and singular the
"lands and franchises, with their appurtenances, lying
"and being in the State of Oregon, granted or intended
"to be granted to the Oregon company by Act of Con-
"gress approved the twenty-fifth day of July, in the
"year one thousand eight hundred and sixty-six, entitled
" 'An Act granting lands to aid in the construction of a
"railroad and telegraph line from the Central Pacific
"Railroad, in California, to Portland, in Oregon,' and
"Acts supplemental thereto and amendatory thereof;
"and also all the right, title, interest, claim, property,
"and demand whatsoever, both legal and equitable,

"present and prospective, absolute and contingent, which "the said Oregon and California Railroad Company "then had or owned, or to which it was in anywise en- "titled, in and to any and all lands and franchises in "the State of Oregon, granted or intended to be granted "to the Oregon Company by the Acts of Congress "aforesaid; and also all further right, interest, claim, "property and demand which the said Oregon and Cal- "ifornia Railroad Company might at any time there- "after have, own or acquire to any lands lying and being "anywhere in the State of Oregon, or in any county "thereof, by virtue of any further compliances with the "requirements of such Acts of Congress by the said "Oregon and California Railroad Company, together "with all and singular the hereditaments and appur- "tenances thereunto belonging or in anywise apper- "taining. To have and to hold the said granted lands, "property and franchises, and every part and parcel "thereof, unto the said Milton S. Latham, Faxon D. "Atherton and William Norris, and to their successors "or successor and assigns forever: In trust, neverthe- "less, for certain uses and purposes and upon certain "conditions and covenants in said indenture contained, "as by said indenture or record thereof in the records "of deeds in and for the county of Multnomah, in the "State of Oregon, on pp 727 to 734, inclusive, of book "K of said records, reference thereto being had, may "more fully and at large appear; and, whereas, among "other conditions, covenants and agreements in said "indenture contained and set forth, the said Milton S.

"Latham, Faxon D. Atherton and William Norris, or "their successors or successor and assigns, by and with "the consent of the said Oregon and California Rail- "road Company, but not otherwise, were and are duly "authorized, empowered and directed at any time before "the maturing of the principal of certain bonds of the "said Oregon and California Railroad Company in said "indenture mentioned and described, to sell and dispose "of all or any part or portion of the lands and fran- "chises so granted as aforesaid by such Acts of Congress "and in and by said indenture conveyed to said trustees, "to such person or persons, firm or firms, associations "or bodies corporate, and for such price and upon such "terms as the said Oregon and California Railroad Com- "pany might, by and through the president, advise, di- "rect, instruct or agree to.

"Now, THEREFORE, THIS INDENTURE "WITNESSETH: That the said Milton S. Latham, "Faxon D. Atherton and William Norris, trustees as "aforesaid, under and pursuant to the power and au- "thority in them vested in and by the said indenture "first herein above referred to, and in consideration of "the premises and of the certain covenants hereinafter "contained and set forth, and to be performed and kept "by the said European and Oregon Land Company, "and in consideration of the sum of one dollar, lawful "money of the United States, to them in hand paid by "the said European and Oregon Land Company, the "receipt whereof is hereby acknowledged, and also in "pursuance of the advice, direction, instruction and

"agreement in writing to that effect of the said Oregon "and California Railroad Company, party of the third "part, by and through its president, have granted, bar- "gained, sold, assigned, aliened, set over, enfoeffed, "conveyed and confirmed, and by these presents do "grant, bargain, sell, assign, alien, set over, enfoeff, "convey and confirm unto the said European and Ore- "gon Land Company, party of the second part, all the "lands and franchises with their appurtenances lying "and being in the State of Oregon, granted or intended "to be granted to the said Oregon company by Act of "Congress, approved the twenty-fifth day of July, one "thousand eight hundred and sixty-six, entitled 'An Act "granting lands to aid in the construction of a railroad "and telegraph line from the Central Pacific, in Cal- "ifornia, to Portland, in Oregon,' and acts supplemental "thereto and amendatory thereof; and also, all the right, "title, interest, claim, property and demand whatsoever, "both legal and equitable, present and prospective, ab- "solute and contingent, which the parties of the first "part hereto now have or hold, or to which they may "be in anywise entitled, in and to any and all lands and "franchises in the State of Oregon, granted or intended "to be granted to the said Oregon company by the Acts "of Congress aforesaid; and also, all future right, title, "interest, claim, property and demand, which the parties "of the first part hereto may at any time hereafter have, "own or acquire to any lands lying and being anywhere "in the State of Oregon, or in any county thereof, by "virtue of any further compliance with the requirements

"of such Acts of Congress by the party of the third "part hereto, together with all and singular the here- "ditaments and appurtenances thereunto belonging or "in anywise belonging, and being the same land, tene- "ments, franchises, hereditaments and appurtenances "granted, conveyed and assured unto the parties of the "first part hereto, by the Oregon and California Rail- "road Company, by indenture bearing date the fifteenth "day of April, one thousand eight hundred and seventy, "as by said indenture or the record thereof in the rec- "ords and deeds in and for the county of Multnomah, "in the State of Oregon, on pages 727 to 734 inclusive, "of book K of said records, reference being thereunto "had, may more fully and at large appear.

"To have and to hold the said granted lands, prop- "erty and franchises, and every part and parcel thereof "unto the said European and Oregon Land Company, "party of the second part hereto, and to its successors "and assigns forever; subject, nevertheless to the cer- "tain provisions and conditions in reference to delivery "of possession of said lands, and delivery of the surveys, "plats, and patents, and other muniments of title to or "affecting said lands to be hereafter issued by theUnited "States to the said Oregon and California Railroad "Company, pursuant to the law, which are hereinafter "mentioned and expressed. And the said parties of the "first part, and all and every person or persons whom- "soever, lawfully or equitably claiming any estate, right, "title or interest of, in and to the hereinbefore granted "premises by, from or under them and each of them,

"shall and will at any time or times hereafter, upon the "reasonable requests, and at the proper costs and charges "in the law of the said party of the second part, or its "successor or successors, or assigns, make, do and exe- "cute, or cause to be made, done and executed, all and "every such further, and lawful, and reasonable acts, "conveyances and assurances in the law for the better "and more effectually vesting and confirming the "premises, lands and franchises hereby intended to be "granted in and to the said party of the second part, "as by the said party of the second part or its successor "or successors, or the counsel learned in the law, shall "be reasonably devised, advised or required.

"And also that the said parties of the first part, the "above granted, bargained, sold and assigned premises, "and every part and parcel thereof, with the appurte- "nances thereof, unto the said party of the second part, "or its successor or successors and assigns, against the "said parties of the first part, and their successors, and "against all and every person and persons whomsoever "lawfully claiming , or to claim, the same by, through "or under them, it shall and will warrant, and by these "presents forever defend.

"And in consideration of the premises, the said "European and Oregon Land Company, party of the "second part hereto, have covenanted, promised and "agreed, and doth hereby covenant, promise and agree "to, and with the said Milton S. Latham, Faxon D. "Atherton, and William Norris, trustees as aforesaid, "in manner following, that is to say: The said party

"of the second part hereto shall and will, on or before the "first day of April, in the year of our Lord one thou- "sand eight hundred and eighty-nine, pay to said Mil- "ton S. Latham, Faxon D. Atherton and William "Norris, trustees aforesaid, the price or sum of one and "one quarter dollars lawful money of the United States, "for each and every acre of said lands and premises "hereby conveyed to the party of the second part, be "the same more or less.

"It is further covenanted and agreed by the said "parties of the first part, that they will notify in writ- "ing the party of the second part at San Francisco, from "time to time, as they receive the same, that they are pre- "pared to deliver to the party of the second part the "plats and surveys of the lands and premises hereby "sold, or intended to be sold, as the same may be here- "after segregated from the public domain, and set apart "to the Oregon and California Railroad Company, "party of the third part hereto, pursuant to the law, "and for the purposes mentioned in the said Act of "Congress, passed as aforesaid, on the twenty-fifth day "of July, one thousand eight hundred and sixty-six, "and the Acts supplemental thereto and amendatory "thereof, and all such papers, documents and muni- "ments of title hereafter to come to their possession, "relating to said lands and premises, as may be nec- "essary to enable the party of the second part to select "the same by good and sufficient description thereof.

"And it is also further stipulated, covenanted and "agreed by and between the parties of the first and

"second parts hereto, that the said parties of the first "part, having notified in writing, as aforesaid, the party "of the second part, at San Francisco, California, that "they are prepared to deliver to the party of the second "part any of the said surveys, plats, patents and other "evidences and muniments of title relating to or desig- "nating said lands, as the same may from time to time "be issued by the United States, to said Oregon and "California Railroad Company, under the Acts of Con- "gress already passed, or which may hereafter be passed, "in aid thereof, or supplemental thereto, the said party "of the second part, at any time before the expiration "of ten years from the day of the receipt by said party "of the second part, of the said notice relating to said "documentary evidence of location of and title to said "lands, may and shall receive actual possession of said "patents, and of the lands therein described, upon pay- "ing to the parties of the first part the said price of "one and one-quarter dollars per acre of such lands, but "without interest on the said price of the same for the "said period of ten years.

"If, however, such lands shall for any cause be not "paid for within ten years from the time the said party "of the second part shall be notified by the parties of "the first part, as aforesaid, that said surveys, plats, pat- "ents and other evidence and muniments of title are "ready to be delivered by the said parties of the first "part to the said party of the second part, as afore- "said, then the parties of the first part shall charge, "and the party of the second part shall pay, interest at

"the rate of six per cent. per annum upon said purchase "price of one and one-quarter dollars per acre of said "lands, for the period after said ten years and up to "and including said first day of April, one thousand "eight hundred and eighty-nine, during which said "lands shall not be paid for by the party of the second "part, as heretofore provided; it being the intent of this "stipulation and covenant, that the party of the second "part shall have ten years within which to make payment "for and take possession of, or sell to others, the lands "hereby conveyed without paying interest on the said "purchase price of said lands, for any portion or the "whole of that time, but after said lands or any part "thereof shall have been at the disposition of the party "of the second part under the covenants of this inden- "ture, for the term of ten years, it shall thereafter pay "to the parties of the first part interest at the rate of "six per cent. per annum, on the purchase price of all "the land so at the disposition of the party of the second "part, which may not for any reason have been paid for "by said party of the second part within such period "of ten years. But the said surveys, plats, patents, and "all other evidences and muniments of title from the "United States to said Oregon and California Railroad "Company, relating to said lands heretofore conveyed, "shall remain with, and the possession of the lands and "premises therein described shall always remain in the "said parties of the first part, anything hereinbefore "contained to the contrary notwithstanding, until said "party of the second part shall pay the parties of the

"first part for the same or such part thereof as it may "from time to time desire to obtain possession of under "this conveyance, the said price of one and one-quarter "dollars per acre of said lands, and such rates of inter- "est thereon as hereinbefore provided for.

"It is further expressly covenanted and agreed, by "and between the parties hereto, each with the other, "that in case the total amount of the indebtedness of "the party of the second part created under this inden- "ture shall, at the time of the execution and delivery "of these presents, or at any future time, exceed the "amount of the capital stock of said party of the second "part actually paid in, the parties of the first part, in "consideration of the premises, and of the sum of one "dollar to them in hand paid by the party of the second "part, the receipt whereof is hereby acknowledged, "hereby covenant, promise and agree, that they will, "and they do hereby remise, release and discharge, the "trustees of the party of the second part, under whose "administration such excess may be or is hereby cre- "ated, from all and every liability, joint or severally, in "their, or either of their individual and private capa- "cities, to the parties of the first and third parts, for "the amount of such excess of said indebtedness over "the amount of capital stock of the party of the second "part actually paid in at the time of the execution and "delivery of these presents; and said parties of the first "part, for the consideration aforesaid, do hereby waive, "surrender and abandon, any and all claim, demand "or right, at law or in equity, or existing or to exist,

"by operation of the statute creating undivided and pri-
"vate liabilities of trustees of corporations organized
"under the laws of California, for the debts or liabili-
"ties incurred in excess of the amount of capital stock
"actually paid in. And the said party of the third
"part, hath covenanted and agreed, and doth hereby
"covenant and agree, to and with the parties of the first
"part and the party of the second part, that it has duly
"authorized, empowered, directed and required, the said
"parties of the first part, as trustees aforesaid, to make,
"execute and deliver, this indenture to the said party
"of the second part in manner and form, and upon the
"terms and conditions hereinbefore expressed. And the
"said party of the second part, by and through its presi-
"dent, he being thereunto and for that purpose duly
"authorized and empowered, this sale and conveyance,
"and every part thereof, hath fully and completely rat-
"ified, approved and confirmed, and by these pres-
"ents doth fully ratify, approve and confirm the same.

"In witness whereof, the said parties of the first
"part have hereunto set their respective hands and seals;
"and the said party of the second part hath also caused
"these presents to be subscribed by its president, and
"its corporate seal hereto affixed and attested by its
"secretary, by resolution of its board of trustees the day
"and year first above written; and the said party of
"the third part hath also caused the same to be sub-
"scribed by its president, and its corporate seal to be
"hereto affixed and attested by its secretary, by reso-
"lution of its board of trustees the day and year first
"above writetn.

MILTON S. LATHAM. SEAL.
FAXON D. ATHERTON. SEAL.
WILLIAM NORRIS. SEAL.

"(Seal.) The EUROPEAN and OREGON LAND COMPANY.
By Joseph S. Wilson, President.

The EUROPEAN and OREGON LAND COMPANY.
By Francis Avery, Secretary.

"(Seal.) The OREGON and CALIFORNIA RAILROAD COMPANY,
By Ben Holladay, President.

The OREGON and CALIFORNIA RAILROAD COMPANY.
A. G. Cunningham, Secretary.

"Signed, sealed and delivered, first being duly "stamped, W. H. L. Barnes, F. J. Thibault.

"State of California, City and County of San Francisco, ss.

"I, F. J. Tribault, a commissioner for the State of "Oregon duly commissioned by the executive authority, "and qualified under and by virtue of the laws thereof, "to take the acknowledgment and proof of the execu- "tion of deeds and other instruments in writing under "seal to be used or recorded in the State of Oregon, "and to administer oaths, affirmatives, etc., residing in "the city and county of San Francisco, and State of

"California, do certify that on the twenty-eighth day "of March, A. D. one thousand eight hundred and sev- "enty-one, before me personally appeared, in the said "city and county of San Francisco, and State of Calif- "ornia, Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, whose names are subscribed to the fore- "going instrument as parties thereto of the first part, "who are to me personally known to be the individuals "described in and who executed the said instrument as "parties of the first part therein; and said Milton S. "Latham, Faxon D. Atherton and William Norris, sev- "erally, duly acknowledged to me that they executed "the said annexed instrument, freely and voluntarily, "and for the uses and purposes therein mentioned; and "also that on the day and year aforesaid, and at the "place aforesaid, and before me, a commissioner for the "State of Oregon aforesaid, personally appeared Joseph "S. Wilson, president of the European and Oregon "Land Company, and Francis Avery the secretary of "the said Company, and to me severally and personally "known as the president and secretary of said com- "pany, and as the real persons by whom and in whose "names as such president and secretary the foregoing "instrument was subscribed and executed, and they sev- "erally acknowledged before me that they severally "subscribed and executed the foregoing instrument, for "and in behalf of and as the act and deed of said Euro- "pean and Oregon Land Company, party of the second "part thereto, for the uses and purposes therein ex- "pressed, under express authority of resolutions of its

"board of directors, duly passed and adopted, and the "said joseph S. Wilson aforesaid, and said Francis "Avery, secretary as aforesaid, being by me duly and "severally sworn, severally deposed as follows: That he "knows the corporate seal of said company, and that the "seal affixed to the foregoing instrument is the cor- "porate seal of said company, and was so affixed by "the express order and direction of its board of directors, "and under authority of resolutions duly passed and "adopted by said board, and duly entered upon the min- "utes of its proceedings.

"In witness whereof, I have hereunto set my hand "and affixed my official seal as such commissioner, at "my office in the city and county of San Francisco, and "State of California, this twentieth day of March, in "the year of our Lord one thousand eight hundred and "seventy-one.

"(Seal of Commissioner.) F. J. THIBAULT,
Commissioner for Oregon, in California.

"State of Oregon, County of Multnomah, ss.

"Be it remembered that on this first day of April, "A. D. one thousand eight hundred and seventy-one, "before me, the undersigned, a notary public in and for "the State of Oregon, duly commissioned and qualified, "and duly authorized by the laws of the State of Ore- "gon to take acknowledgments and proof of the execu- "tion of deeds and other instruments in writing under "seal, and to administer oaths and affirmations, etc., "personally came Ben Holladay, president, and A. G.

"Cunningham, secretary of the Oregon and California "Railroad Company, of Portland, Oregon, a corpora- "tion duly incorporated under the laws of the State of "Oregon, to me severally and personally known to be "the president and secretary of said company, and to be "the identical persons described in and by whom and "in whose names as such president and secretary, the "foregoing instrument was subscribed and executed by "the said Oregon and California Railroad Company, "party of the third part, and they severally acknowl- "edged before me that they severally subscribed and ex- "ecuted the foregoing instrument for and on behalf of, "and as the act and deed of said Oregon and California "Railroad Company, party of the third part thereto, "for the uses and purposes therein expressed, under "express authority of resolutions of the board of di- "rectors of said company, duly passed and adopted, and "the said Ben Holladay, president, as aforesaid, and said "A. G. Cunningham, secretary, as aforesaid, being by me "duly and severally sworn, severally deposed as follows: "That he knows the corporate seal of said company, "and that the seal affixed to the foregoing instrument "is the corporate seal of said company, and was so af- "fixed by the express order and direction of the board "of directors of said company, and under authority of "resolutions duly passed and adopted by said board, and "duly entered upon the minutes of its proceedings.

"In witness whereof I have hereunto set my hand "and affixed my official seal, as such notary, at my "office, in the city of Portland, county of Multnomah

"and State of Oregon, this first day of April, in the "year of our Lord one thousand eight hundred and "seventy-one.

GEO. E. COLE, Notary Public.

"(Notarial Seal.)

"(5 Cent Revenue Stamp, Canceled.)

"State of Oregon, Department of State,

"I, S. F. Chadwick, secretary of the State of Ore-"gon, do hereby certify, that Geo. E. Cole, whose name "is subscribed to the foregoing and annexed certificate "of acknowledgment to indenture, was at the time of "signing the same, to wit: on the first day of April, "A. D. one thousand eight hundred and seventy-one, "a duly commissioned, qualified and acting notary pub-"lic in and for the county of Multnomah, in said State "of Oregon, and that he was there by the laws of the "State of Oregon, duly authorized and empowered to "take and certify, under his notarial seal, acknowledg-"ments of deeds of conveyance and indentures, and "that full faith and credit are due to his official acts "as such.

"Witness my hand and the great seal of State, at "office, in the city of Salem, State of Oregon, this "third day of April, in the year of our Lord one thou-"sand eight hundred and seventy-one.

"Seal of State.) S. F. CHADWICK,

Secretary of the State of Oregon."

GOVERNMENT'S EXHIBIT NO. 127

Central Pacific Railway Co. & :
Oregon & California Railroad Co. :
with : Agreement.
Pokegama Sugar Pine Lumber Co. :

The Central Pacific Railway Company, a corporation, and the Oregon and California Railroad Company, a corporation, first parties and the Pokegama Sugar Pine Lumber Company, a corporation, second party, have agreed as follows:

The first parties grant unto the second party an option to purchase the hereinafter mentioned lands for the price, during the term, and upon the conditions herein specified; that is to say:

The second party may, on or before June 30th 1903, purchase from the first parties, any or all the lands now owned by the first parties or either of them, or which first parties, or either of them, may acquire title to before such purchase shall have been made, in township thirty-nine (39) south ranges four (4) five (5) and six (6) east, and township forty (40) south, ranges four (4) five (5) and six (6) east, Willamette Base and Meridian, and townships forty-six (46) and forty-seven (47) and forty-eight (48) north, ranges two (2) three (3) and four (4) west Mount Diablo Base and Meridian, at the following prices; Of the lands in the Willamette Base and Meridian not less than eight thousand (8000) acres at nine ($9.00) dollars per acre, and

five thousand (5000) acres at five ($5.00) dollars per acre as hereinafter provided; and of the lands in the Mount Diablo Base and Meridian not less than fourteen thousand and eight hundred (14,800) acres at seven ($7.00) dollars per acre, as hereinafter provided. The foregoing lands to be selected by the second party and so purchased in tracts comprising and constituting half a quarter section each (but the selection of two forty acre tracts in two separate quarters of a section shall not be deemed a compliance with this provision). And in case the purchase is made as herein provided, it shall be written upon the contract forms in general use by the first parties for the sale of timber lands at the time such purchase is made and in conformity with and subject to the subsisting rules and conditions of first parties relating to such sales, with a covenant excepting and reserving all minerals in the lands, with right to mine and extract the same, unto the first parties. Provided, however, that while the foregoing option extends to any and all of the said lands, yet the second party must purchase not less than twenty-seven thousand and eight hundred (27,800) acres thereof, to be selected by the second party; of which not less than fourteen thousand and eight hundred (14,800) acres shall be in the Mount Diablo Base and Meridian and not less than thirteen thousand (13,000) acres shall be in the Willamette Base and Meridian. It is further agreed that of the lands in the Willamette Base and Meridian second party must first select not less than eight thousand acres at the agreed price of nine (9.00) dollars per acre,

and that after such selection—but not before—second party must also select an additional five thousand (5,000) acres at the agreed price of five ($5.00) dollars per acre which additional selection must not exceed nor be less than five thousand (5,000) acres.

The following is a re-capitulation of the minimum amount of acres to be selected by second party, and the price to be paid therefor:

In the Mount Diablo Base and Meridian, not less than 14,800 acres at $7.00 per acre	$108,600.00
In the Wallamette Base and Meridian, not less than 8,000 acres at $9.00 per acre....	72,000.00
Additional 5,000 acres at $5.00 per acre....	25,000.00
Total.....	$200,600.00

Otherwise, the said option to be void; and upon notice of the lands to be selected for the purchase under this option, the first parties will withdraw such lands as subject of sale under this agreement, and hold them so withdrawn pending the existence of the said option.

Provided, further that the foregoing option is subject to and depends upon, full and specific performance by the second party of the following conditions precedent; that is to say;

(1) No right whatsoever shall vest in, or be deemed conferred upon, the second party by or in virtue of this agreement, until the second party shall have completed the construction of a railroad from some point on, or in the immediate vicinity of, section five (5), in town-

ship forty one (41) south, range five (5) east. Willamette Base and Meridian, to and connecting with the main railroad (California and Oregon branch) of the Central Pacific Railway Company; nor shall any right vest in, or be deemed conferred upon the second party by or in virtue of this agreement, unless the construction of the said connecting railroad by the second party is completed and in operation on or before June 30th 1903;

(2) The second party shall, on or before June 15th 1903, file with the first parties, at their Land Agent's Office in San Francisco, a list describing the lands selected to be purchased under this agreement, and thereupon such lands, but no other lands shall be withdrawn as hereinbefore provided, and all lands not described in said list shall thereupon be free and clear of the operation and effect of this agreement; and in case the title of the first parties, or either of them, shall fail, or be found imperfect, or invalid, to any lands described in said list as filed, the second party shall purchase all the remaining lands of said list, at the time and as herein provided, and in default of such purchase all rights of the second party under this agreement shall cease.

(3) Time, whenever mentioned, is an essence of this agreement.

(4) It is mutually agreed that this agreement, nor any interest therein, cannot be assigned by the second party without the written consent of the Land Agent

of the first parties.

In consideration of the foregoing option, second party has paid to first parties the sum of one thousand ($1,000.00) dollars, which has been paid into the treasury of the Oregon and California Railroad Company, and in the event of the compliance of the second party of the terms and conditions of this option said sum is to be credited on account of the purchase price agreed to be paid for the land herein described—otherwise said sum is to be forfeited and to remain the property of the first parties.

It is further agreed that this option is to supersede that certain option of date September 25th, 1901, between the Central Pacific Railway Company and the Pokegama Sugar Pine Lumber Company, and that certain option of date October 2nd, 1901, between the Oregon and California Railroad Company and the Pokegama Sugar Pine Lumber Company; and the two last mentioned options are hereby cancelled by mutual agreement.

In Witness Whereof, the first parties have caused their names to be subscribed to this agreement in triplicate, by their Land Agent and the second party has caused its name to be subscribed and corporate seal affixed on November 11, 1902.

Central Pacific Railway Company
By Wm. H. Mills, Land Agent.
Oregon and California Railroad Company.
By Wm. H. Mills, Land Agent,

Pokegama Sugar Pine Lumber Company,
By George Mason, President.
By Jno. E. Coffin, Secretary.

(Corporate Seal.)

State of California
County of Los Angeles SS.

On this 16th day of December, in the year one thousand, nine hundred and five, A. D. before me, Frank W. Hovey a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Geo. Mason, known to me to be the President of the Pokegama Sugar Pine Lumber Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

Frank W. Hovey, Notary Public in and for
Los Angeles County, State of California.

Seal
(Corporation)

Filed and recorded on the 24th day of January, A. D. 1906, at 8 A. M.

Geo. Chastain, County Clerk.
By Oscar Shive, Deputy.

State of Oregon, :
:SS
County of Klamath :

I, Geo. Chastain, County Clerk in and for Klamath County, Oregon, do hereby certify that the foregoing copy of deed has been by me compared with the original as it appears of record in Book 19, page 368, in Deed Records of Klamath County, Oregon, in my office and custody, and that it is a true, full, complete and correct transcript of the same.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 7th day of September, A. D. 1907.

Geo. Chastain, County Clerk,
By Lyle Watson, Deputy.

(Seal.)

GOVERNMENT'S EXHIBIT NO. 128.

Deed Book 88, Page 288.
N. P. R. R. Co.,
to
City of Portland
Pacific Division Quit-claim Deed No. 6.

THIS INDENTURE, made the seventh day of August, in the year of Our Lord, One Thousand Eight Hundred and Eighty-Six, by and between the Northern Pacific Railroad Company, a corporation, created

by and existing under an act of the Congress of the United States of America, entitled "An Act, granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern Route," approved July 2, 1864, party of the first part, the Central Trust Company of New York, a corporation, existing under the laws of the State of New York, Trustee under a certain Indenture of Mortgage or Deed of Trust, made by the said party of the first part, and bearing date the first day of January, A. D., One Thousand, Eight Hundred and Eighty-one, party of the second part, and the City of Portland, in the County of Multnomah and State of Oregon, party of the third part.

WHEREAS, the said party of the first part, under and by virtue of the said act of Congress, became and is the grantee of certain lands situate in the Territory of Washington and State of Oregon, and did execute and deliver to the said party of the second part, a mortgage, inter alia, of the said lands, in trust for the purposes therein mentioned, bearing date the first day of January, A. D. One Thousand Eight Hundred and Eighty-one, and duly filed and recorded in the office of the Secretary of the Interior, in the City of Washington.

AND WHEREAS, it is provided and covenanted in said mortgage, among other things, that the said party of the first part shall at all times be at liberty to contract for the sale of any parcel or parcels of said lands,

at such price or prices as to it shall seem reasonable, not below the appraisal thereof, approved by the said party of the second part, and that upon deposit of the proceeds of such sale, or sales, with the said party of the second part, whether the same be in cash, bonds, coupons or other securities, it shall, by deed or deeds, executed by it, or its authorized Attorney or Attorneys, release the land so sold and paid for, from the lien created thereby.

AND WHEREAS, the said party of the first part, has contracted to sell and convey to the said party of the third part, the right of way over and the riparian rights inuring to the parcels of the said lands, which are hereinafter described, free from the encumbrance of the said mortgage, for the price hereinafter specified, being not less than the appraisal thereof, approved by the said party of the second part; and the said Trustee has become a party hereto, for the purpose of releasing the said land, hereby conveyed from the said encumbrance so that the party of the third part, its representatives, successors and assigns, shall take and hold the same free from any lien existing by reason of said mortgage.

Now this INDENTURE WITNESSETH: That the said parties of the first and second parts, by virtue of the said powers in said mortgage expressed, and of all others their powers and estates in the premises, and for and in consideration of the sum of Five Dollars unto the said party of the first part, and by it unto

the said party of the second part, well and truly paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, do release and quitclaim forever, unto the said party of the third part, its representatives, successors and assigns, all their right, title and interest in and to the following described parcels of land, situate in Multnomah County, in the State of Oregon, to-wit:

A strip of land, fifty feet in width being twenty-five feet in width on each side of the center line of a water pipe line, as the same is staked out and located or as it shall be hereafter finally located, according to the provisions of an Act of the Legislative Assembly of the State of Oregon, approved November 25, 1885, providing for the means to supply the City of Portland with an abundance of good, pure and wholesome water, over and across the following described tracts of land:

Sections Nineteen and Thirty-one, in Township One South of Range Six East; Sections Twenty-five, Thirty-one, Thirty-three and Thirty-five in Township One South of Range Five East; Sections Three and Five in Township Two South of Range Five East; Section One in Township Two South of Range Four East; Sections Twenty-three, Twenty-five and Thirty-five in Township One South of Range Four East of the Willamette Meridian.

Hereby giving and granting unto the said party of the third part, its representatives, successors and assigns, the full right to enter on the hereinbefore described

strips of land, over and across the above described Sections, for the purpose of constructing, maintaining or repairing the said water pipe line, without being considered a tres*p*asser, also giving and granting all riparian rights whatsoever, which inure and belong to the party of the first part, or which it may hereinafter acquire by reason of any right, title and interest or claim whatsoever in and to the above described lands lying contiguous and adjacent to the stream known and described as Bull Run, in the above named Sections.

TO HAVE AND TO HOLD the above described premises, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the third part, its representatives, successors and assigns, forever, for use as the site of said water pipe line, to be constructed and maintained for supplying the City of Portland with water and not otherwise, free and clear of the lien and encumbrance of the said Indenture of Mortgage, and of the trusts therein or thereby declared or created.

IN WITNESS WHEREOF, the said parties of the first and second parts have caused these presents to be sealed with their respective corporate seals, the day and year first above written.

NORTHERN PACIFIC RAILROAD COMPANY,

(SEAL OF N. P. R. R. CO.)

By Robert Harris,
President.

ATTEST:

Sam'l Wilkeson,
Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee,

(C. T. CO., OF NEW YORK)

By G. Sherman,
V. President.

Sealed and Delivered in the
presence of:
L. R. Kidder,
Frank E. Earl.

STATE OF NEW YORK,)
) ss.
City and County of New York.)

BE IT REMEMBERED, that on this seventh day of October, A. D. One Thousand Eight Hundred and Eighty-six, before me, personally appeared Robert Harris, with whom I am personally acquainted and who is known to me to be the President of the Northern Pacific Railroad Company, the corporation that is described in and that executed the foregoing instrument, as the party of the first part thereto, and who being by me duly sworn, said, that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument, as such, is said corporate seal; that the same was affixed to the foregoing instrument by authority of the Board of Directors of said Company,

and that he signed the said instrument by like authority and the said Robert Harris at the same time acknowledged the foregoing instrument to be the act and deed of the said Northern Pacific Railroad Company, and that said Company executed the same freely and voluntarily, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of New York, the day and year last aforesaid.

L. R. KIDDER,
Commissioner of Deeds in New York,
for State of Oregon.

(COMMISSIONER OF DEEDS
SEAL)

STATE OF NEW YORK,)
) ss.
City and County of New York.)

BE IT REMEMBERED, that on this eleventh day of October, A. D. One Thousand Eight Hundred and Eighty-six, before me personally appeared G. Sherman, with whom I am personally acquainted, and who is known to me to be the Vice President of the Central Trust Company of New York, the corporation that is described in and that executed the foregoing instrument as the party of the second part thereto, and who, being by me duly sworn, said that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument, as such, is said corporate seal, that the same

was affixed to the foregoing instrument by authority of the Board of Directors of said Company, and that he signed the said instrument by like authority. And the said G. Sherman at the same time acknowledged the foregoing instrument to be the act and deed of the said Central Trust Company of New York, and that said Company executed the same freely and voluntarily for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City of New York, the day and year last aforesaid.

L. R. KIDDER,
Commissioner of Deeds in New York,
for State of Oregon.

(COMMISSIONER OF DEEDS
SEAL)

Received for Record, Oct. 28th, 1886,
10:45 o'clock a. m.
Form M 44

STATE OF OREGON,)
)ss. No. 9527
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Northern Pacific Railroad Company to City of Portland, has been compared by me with the original, and that it is a correct transcript therefrom,

and of the whole of such original Deed as the same appears of record in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 26th day of April A. D. 1913.

JNO. B. COFFEY,
County Clerk

(Seal)

.....Deputy

GOVERNMENT'S EXHIBIT 129

This exhibit consists of the record of the minutes of all meetings of the directors and stockholders of the defendant Oregon and California Railroad Company from the date of its organization until September 4, 1908, the date of the institution of this suit. By stipulation of the parties the original exhibit was withdrawn, upon the understanding that either party might designate any portion thereof to be included in the printed record. Supplementing the former stipulation upon the subject, the parties now, as a part of the settlement of the transcript of the record, do further stipulate as follows:

A verified copy of said records shall be substituted for the original, to the end that the latter may remain in the custody of the corporation for current use. Such verified copy shall have the same force and effect as the original, and shall be considered as a part of the record in

all appellate or other proceedings in said cause. Said verified copy shall not be actually filed either in the trial court or in any appellate court, unless the government shall so request. But if the government shall so request, the same shall be filed by the defendant Oregon and California Railroad Company, and considered as a part of the record in said cause in any court in which the same may be pending, and in that event, either party may make reference to the same or any part thereof, and the same shall in all respects be treated as a part of the evidence in said cause. In consideration of the premises, it shall not be necessary to include any portion of said exhibit in the printed record in said cause.

GOVERNMENT'S EXHIBIT NO. 130

This exhibit consists of certified copies of letters on file in the office of the Secretary of the Interior and General Land office, as follows: Letter dated, "Senate Chamber, Washington, Jan'y. 19, 1869, to Hon. O. H. Browning, Secretary of the Interior, signed by Geo. H. Williams; also letter, dated, Department of the Interior, Washington, D. C. January 20, 1869, to Hon. George H. Williams, United States Senate, signed by O. H. Browning, Secretary; also letter dated, Washington, D. C., April 12th, 1869, to Hon. Jacob D. Cox, Secretary of the Interior, signed by J. H. Mitchell, Attorney for the Oregon Central Railroad Co., Salem, Oregon; also letter dated, Office of the O. C. R. R. Co. Salem, Oregon, June 9th, 1869, to Hon.

Jacob D. Cox, Secretary of Interior, Washington, D. C., signed by Geo. E. Cole, Secretary O. C. R. R. Co.; also letter dated, Office of Oregon Central Railroad Company, Salem, Sept. 19, 1870, to Hon. J. D. Cox, Secy. Dept. Interior, Washington, D. C., signed by I. R. Moores, Pres. O. C. R. R. Co. of Salem, and Geo. H. Cole, Secy. O. C. R. R. Co. of Salem; also letter dated, Portland, Oregon, Sept. 21st, 1870, to Hon. J. D. Cox, Secy. Dept. of Interior, Washington, D. C., signed by Geo. H. Williams; also letter, dated Portland, Oregon, Sept. 21st, 1870, to Hon. J. D. Cox, Secy. Dept. Interior, Washington, D. C., signed by J. Gaston, Sec. O. C. R. R.

The letters contained in this exhibit are set out in full at pages 1910, et seq. of this printed record.

DEFENDANT'S EXHIBITS

DEFENDANTS' EXHIBIT 250.

4—207r

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON

March 11, 1912.

I hereby certify that the annexed copy is a true and literal exemplification from the original letter in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and

year above written.

H. W. LAMONT,
(Seal) Recorder of the General Land Office.

Telephone House, Colum. No. 800.
" Office, Main No. 819.

1-65218

A. A. HOEHLING, JR.,
ATTORNEY AT LAW,
1416 F STREET, NORTHWEST,
WASHINGTON, D. C.

Division "F".
Oregon & California
R. R. Co. Request
for supplemental pa-
tent. June 10, 1909.

June 21/09 to party trans. Suppl.
patent, O. & C. R. R. files.

F. L.

The Honorable,
The Commissioner of the
General Land Office. *Defendants Ex.*

Sir: 250

On behalf of the Oregon & California Railroad Company, I have the honor to invite your further attention

to parts of Section 9, Township 30 South, Range 1 West, Roseburg, Oregon.

Under date May 15th ult., I addressed a letter to you in connection with this same matter, calling attention to the fact that the Railroad Company named had heretofore received patent for the SE/4, frl. SW/4, and frl. NE/4, 320 acres, of said Section 9, patent No. 3, dated May 29, 1872, (recorded in Vol. 3, p. 41,).

I also therein called attention to the fact that the local office at Roseburg, Oregon, had given notice that plats of survey of the W/2 and NE/4 of said Section 9, would be filed in that office on Saturday May 29, 1909, at 9 o'clock A. M., and that the lands would then be open to entry to *bona fide* settlers who made settlement prior to the withdrawal of the lands for the Umpqua National Forest Reserve.

I accordingly asked that appropriate instructions be issued to said local office to exclude said patented portions of Section 9, namely, the S/2 of NE/4 and the S/2 of the SW/4.

2-65218

That application was granted by you, and instructions were issued by your Office, under date May 18, 1909, (E—W.T.P.—54351—09); and in your said letter you advised the local office that the lands so patented to the Railroad Company are now described as the SE/4, S/2 of NE/4, SE/4 of SW/4, and Lot 7, of said Section 9; and you instructed the local office to so note on their records.

In view of the fact that the patent so heretofore issued to the Company describes the lands as fractional NE/4 and fractional SW/4, and which lands have now been further designated by survey as being the S/2 of the NE/4, the SE/4 of SW/4, and Lot 7, of said Section 9, I am requested by the Railroad Company to ask that a supplemental patent may issue to it, covering the descriptions just given, this to the end that the record may be made to conform with the latest official designation by legal sub-divisions.

Respectfully,

A. A. HOEHLING, JR.

Attorney for said Company.

Plat Nov. 25/08

DEFENDANTS' EXHIBIT 251.

RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE OREGON & CALIFORNIA RAILROAD COMPANY, SEPTEMBER 28, 1908.

"RESOLVED, That Mr. B. A. McAllaster be and he is hereby appointed Land Commissioner of the Oregon & California Railroad Company, to be located at San Francisco, California, for the purpose of managing and disposing of, by sale or otherwise, any and all lands heretofore granted by the United States of America

to this Company, or to its predecessors in interest, subject to the approval of the Board of Directors of this Company, to hold office during the pleasure of this Board; and the said B. A. McAllaster, as such Land Commissioner, is hereby authorized and empowered to execute contracts for the sale or other disposition of such lands, and to execute conveyances of such lands in the name of the said Company, and under its duplicate corporate seal, without further special authorization of this Board.

RESOLVED FURTHER, that said B. A. McAllaster, as such Land Commissioner of this Company, be and he is by this Board duly authorized and instructed, in all cases where in his judgment it is necessary or expedient for the best interests of the Company, to compromise, compound, settle and terminate any land contracts issued by this Company which are outstanding and in default at this date; and all proceedings taken by said Land Commissioner in accordance with and pursuant to this resolution are hereby ratified and confirmed.

RESOLVED FURTHER, that the said appointment and authorization shall take effect as of Monday, the 21st day of September, 1908.

[RESOLUTION CERTIFIED BY SECRETARY]

DEFENDANTS' EXHIBIT 252

CENTRAL PACIFIC RAILWAY COMPANY RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS, SEPT. 26TH, 1908

RESOLVED that B. A. McALLASTER be and he is hereby appointed Land Commissioner of this Company, with full power to supervise and attend to all matters pertaining to land in the States of California, Nevada, Utah and Idaho, granted by the Government of the United States to this Company or its predecessor, and the said B. A. McAllaster, as such Land Commissioner, is hereby given full power to manage, conduct and carry on the business of the Land Office of this Company, and, subject to the approval of the Board of Directors of this Company, to sell, contract to sell, demise and let, all or any of its lands, and to sign his name for this Company to all contracts, agreements, leases, and other documents as shall be necessary and requisite for the full, complete, effectual and proper management or disposal of its lands; and he is hereby fully authorized and empowered to represent this Company in the United States Land Offices, or before the officers thereof, in person or through persons employed by him for that purpose, and to represent this Company in all matters pertaining to its lands at all times and places, the said appointment to take effect as of Monday, the 21st day of September, 1908.

[RESOLUTION CERTIFIED BY SECRETARY]

DEFENDANTS' EXHIBIT 253

SOUTHERN PACIFIC RAILROAD COMPANY

RESOLUTIONS ADOPTED BY THE BOARD OF DIRECTORS, SEPT. 23, 1908

RESOLVED and ORDERED that B. A. McALLASTER be and he hereby is appointed Land Commissioner of this Company, with full power to supervise and attend to all matters pertaining to land in the State of California granted by the Government of the United States to this Company or to its predecessor the Southern Pacific Railroad Company, including the lands granted by the United States Government to the Texas & Pacific Railway Company, and assigned and transferred by said Texas & Pacific Railway Company to the Southern Pacific Railroad Company, predecessor of this Company, and said B. A. McAllister as such Land Commissioner is hereby given full power to manage, conduct and carry on the business of the land office of this Company, and, subject to the approval of the Board of Directors of this Company, to sell, contract to sell, demise and let, all or any of its said lands, and to sign his name for this Company to all contracts, agreements, leases and other documents as shall be necessary and requisite for the full, complete, effectual and proper management or disposal of its lands; and he is hereby fully authorized and empowered to represent this Company in the United States Land Offices, or before the

officers thereof, in person or through persons employed by him for that purpose, and to represent this Company in all matters pertaining to its lands at all times and places, the said appointment to take effect as of Monday, the 21st day of September, 1908.

[RESOLUTION CERTIFIED BY SECRETARY]

DEFENDANT'S EXHIBIT 254.

SOUTHERN PACIFIC COMPANY. APPOINTMENT OF B. A. MCALLASTER AS LAND COMMISSIONER.

On motion, duly seconded, the following resolution was unanimously adopted:

RESOLVED, That B. A. McAllaster be and he hereby is appointed Land Commissioner of the Southern Pacific Company, to manage, lease, sell and dispose of its lands and lots in the Townsite of Russell City, Alameda County, California; in the townsite of Mina, Esmeralda County, Nevada; and in the townsite of Imlay, Humboldt County, Nevada; and the said B. A. McAllaster is hereby granted full power to negotiate and agree to leases and sale contracts of said lands and lots for such prices and upon such terms as he may deem judicious and advisable, and to collect, receive and receipt for all moneys due or to become due under such leases and contracts, and as such Land

Commissioner to execute and deliver proper written leases and sale contracts of and for said lands and lots; hereby ratifying and confirming all lawful acts of the said B. A. McAllaster under and in pursuance of this resolution.

The appointment of F. C. Radcliffe as Land Agent of this company for like purposes by resolution of the Executive Committee of this company adopted January 23, 1908, is hereby revoked.

[RESOLUTION CERTIFIED BY SECRETARY]

DEFENDANT'S EXHIBIT 255.

"Form 3332. 10.3-06-200"

Deed No..... Issued for Contract No.....

Dated.....

This Deed, made on.....190...., by Central Pacific Railway Company, a corporation of the State of Utah, first party, and United States Trust Company of New York, a corporation of the State of New York, as Trustee under Mortgage or Deed of Trust from said Central Pacific Railway Company dated August 1st, 1899, second party, unto.....
....., third part...., Witnesseth:

The first party, in consideration of.....
.....Dollars, receipt whereof is acknowl-

5775

edged, hereby grants and conveys unto third part....., ...and assigns, all right, title and interest it now has or may hereafter acquire from the United States in or to the following described land situated in the Count.....of ....., State of.....; to wit :.....

.....

.....

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of Section....., Township..... Range ....., ...Base and Meridian, containing.....Acres, according to the United States public surveys; together with all rights, privileges and appurtenaces thereunto belonging or in anywise appertaining.

The second party, as Trustee aforesaid (said sale having been reported to it by the President or Vice-President and Treasurer of first party, with full particulars as to the price and terms of such sale), hereby releases the said land, together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining, from the lien of the said Mortgage or

Deed of Trust of August 1st, 1899.

In Witness Whereof first party and second party has each caused its name and corporate seal to be hereunto subscribed and affixed by its President or Vice-President, and Secretary or Assistant Secretary, on the date herein first written.

CENTRAL PACIFIC RAILWAY COMPANY,

By.....

Its.....President.

By.....

Its.....Secretary.

UNITED STATES TRUST COMPANY OF NEW YORK,

By.....

Its.....President.

By.....

Its.....Secretary.

State of California,)
) ss.
City and County of San Francisco.)

On this.....day of....., in the year One Thousand Nine Hundred and....., before me, ..., a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared..... .....known to me to be the

.....President .....

of .....

the Corporation described in and that executed the within instrument, and also known to me to be the person.....who executed said instrument on behalf of the Corporation therein named, and..... he.....acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of San Francisco, the day and year in this Certificate first above written.

.....

Notary Public,

in and for the City and County of San Francisco, State of California.

My Commission expires.....

FILED

MAY 10, 1913.

A. M. CANNON,

Clerk U. S. District Court.

Form 4501 Local (12-19-10-800-S 2741)

Deed No..... Issued for Contract No.....

Dated.....

This Deed, made on.....191.., by CENTRAL PACIFIC RAILWAY COMPANY, a Corporation of the State of Utah, first party, and the United States Trust Company of New York, a Corporation of the State of New York, as Trustee under Mortgage or Deed of Trust from said Central Pacific Railway Company, dated August 1st, 1899, second party, unto .....
....., third part..,

Witnesseth: That first party, for and in consideration of .....
Dollars, receipt where of is acknowledged, hereby grants and conveys unto third part.., ...and assigns, the following described land situated in the County of....., State of....., to wit:

of Section..... Township,....., Range.....,

.....Base and Meridian, containing..... Acres, according to the United States Public Surveys; together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining; subject, however, to any rights, liens or encumbrances created or permitted, by any other person than the said grantor, since.....

Excepting from the foregoing conveyance a right of way of lawful width for any and all County Roads heretofore lawfully established and now in public use upon and across the said land.

Provided, however, that first party is not, and shall never be held liable for any assessment or taxation of the said land, levied or imposed for the fiscal year beginning....., 1...., and all subsequent years; nor for any failure to pay the same.

The second party, as Trustee aforesaid (said sale having been reported to it by the President or Vice-President and Assistant Treasurer of first party, with full particulars as to the price and terms of such sale), hereby releases the said land, together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining, from the lien of the said Mortgage or Deed of Trust of August 1, 1899.

In Witness Whereof, first party and second party has each caused its name and corporate seal to be hereunto subscribed and affixed by its President or Vice-President, and Secretary or Assistant Secretary, on the

date herein first written.

CENTRAL PACIFIC RAILWAY COMPANY,

By.....

Its.....President.

By.....

Its.....Secretary.

UNITED STATES TRUST COMPANY OF NEW YORK,

As Trustee,

By.....

Its.....President.

By.....

Its.....Secretary.

Countersigned: Countersigned:

....

Land Commissioner. Auditor.

Form 4502 Local (12-19-10—200—S-2741)

Deed No..... Issued for Contract No.....

Dated.....

This Deed, made on.....191.., by CENTRAL PACIFIC RAILWAY COMPANY, a Corporation of the State of Utah, first party, and United States Trust Company of New York, a Corporation of the State of New York, as Trustee under Mortgage or Deed of Trust from said Central Pacific

Railway Company, dated August 1st, 1899, second party, unto ....., third part...,

Witnesseth: That first party, for and in consideration of ..... Dollars, receipt whereof is acknowledged, hereby grants and conveys unto third part..., ... and assigns, the following described land situated in the County of....., State of....., to wit:

of Section....., Township....., Range..... .....Base and Meridian, containing..... .....Acres, according to the United States Public Surveys; together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining; subject, however, to any rights, liens or encumbrances created or permitted, by any other person than the said grantor, since.....

Excepting and Reserving from the foregoing conveyance:

FIRST: A strip of land..... feet wide, lying equally on each side of each main-track, side-track, spur, switch, and branch-line of said Central Pacific Railway Company, as the same are now, or may within..... years hereafter be, constructed upon, across or adjacent to said land.

SECOND: A right of way of lawful width for any and all County Roads heretofore lawfully established and now in public use upon and across the said land.

THIRD: The right to use all water rising upon said land which may be neded for the operation and repair of said Railway, and the right to conduct the same, as well as water rising upon other land, across the land herein described, in pipes or aqueducts, for the purpose aforesaid; together with all necessary rights of way therefor.

Provided, however, that first party is not, and shall never be held, liable for any assessment or taxation of the said land, levied or imposed for the fiscal year beginning....., 1..., and all subsequent years; nor for any failure to pay the same; and Provided, further, that this conveyance is on and subject to condition that third part..., ... and assigns, shall erect, and forever maintain, good and sufficient fences on both sides of said strip or strips of land herein excepted and reserved for right of way for railroad tracks.

The second party, as Trustee aforesaid (said sale

having been reported to it by the President or Vice-President and Assistant Treasurer of first party, with full particulars as to the price and terms of such sale), hereby releases the said land, together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining, from the lien of the said Mortgage or Deed of Trust of August 1, 1899.

In Witness Whereof, first party and second party has each caused its name and corporate seal to be hereunto subscribed and affixed by its President or Vice-President, and Secretary or Assistant Secretary, on the date herein first written.

CENTRAL PACIFIC RAILWAY COMPANY,

By.....

Its.....President.

By.....

Its.....Secretary.

UNITED STATES TRUST COMPANY OF NEW YORK,

As Trustee,

By.....

Its.....President.

By.....

Its.....Secretary.

Countersigned:

.....

Land Commissioner.

Countersigned:

.....

Auditor.

DEFENDANT'S EXHIBIT 256

One form of deed used by Oregon and California Railroad Company and the Union Trust Company of New York.

Form 3398

Form 3398 (3-19-10—800—S-640)

Deed No..... Issued for Contract No.....

This Deed, made on.....191.., by OREGON AND CALIFORNIA RAILROAD COMPANY, a Corporation duly incorporated and existing under the laws of the State of Oregon, first party, and the UNION TRUST COMPANY OF NEW YORK, a Corporation duly incorporated and existing under the laws of the State of New York, second part, unto ....third part..., Witnesseth: That in consideration of..... .....Dollars paid to first party, and by first party paid to second party (as provided in the Trust Deed by first party to second party, dated July 1, 1887), first party hereby grants and conveys, and second party hereby releases and confirms, unto third part..., ...and assigns, all right, title and interest it (first party) now has or holds, or may hereafter obtain or acquire from the United States, in or to the folowing described land situated in

the County of....., State of Oregon, to wit:

of Section....., Township....., Range....., Willamette Meridian, containing..... acres, according to the United States Public Surveys; together with all rights, privileges and appurtenances thereunto belonging or in anywise appertaining; subject to any rights, liens or encumbrances created or permitted, by any other person than the said grantor, since .....

Provided, however, that first party is not, and shall never be held, liable for any assessment or taxation of the said land, levied or imposed for the year 1...., and all subsequent years; nor for any failure to pay the same.

To Have and to Hold said premises, with the appurtenances, unto third part..., ... and assigns forever, freed and discharged from the liens, powers and trusts of the said Trust Deed given by first party to second party on July 1, 1887, as aforesaid.

In Witness Whereof, first party has caused its name and corporate seal to be hereunto subscribed and affixed by its Vice-President and Secretary, and second party has caused its name and corporate seal to be subscribed

and affixed by its..... President and.....
Secretary, on the date herein first written.

OREGON AND CALIFORNIA RAILROAD COMPANY,

In Presence of: By.....
..... Its Vice-President.
..... By.....
Its Secretary.

UNION TRUST COMPANY OF NEW YORK,

In Presence of: By.....
..... By.....
..... Its....President.
.Its....Secretary.

Countersigned: Countersigned:
....
Land Commissioner Auditor.

FILED
MAY 10 1913
A. M. CANNON,
Clerk U. S. District Court.

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DEFENDANT'S EXHIBIT NO. 257.

COLUMBIA COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Columbia County, Oregon, prior to January 16, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Richard Cox	Ctf	2-26-83	SW¼ of SE¼	9	3N	1W	40	160.00	I	224	5-27-86
Oregon & California R. R. Co.	RRD	10-6-80	Conveys all interest in railroad lines, lands, by U. S. Grants Rolling stock all interest of every kind & nature.						G	28	12-10-80

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Martin Albrecht	RRD	28-2-91	SE¼	7	3N	2W	160	640.00	P	467	9-15-94
Henry Turesk	RRD	1-29-94	W½ of NW¼	9	3N	2W	80	320.00	P	235	3-10-94
Fountain A. Miles	RRD	21-7-85	Lot 5	13	3N	2W	3.42	17.00	I	231	6-2-86
Max Berg	RRD	21-7-85	NE¼ of SW¼	15	3N	2W	40	160.00	I	267	7-26-86
Max Berg	RRD	21-7-86	NW¼ of SE¼	15	3N	2W	40	160.00	I	271	7-26-86
Henry Kruse	RRD	21-7-85	NE¼ of NW¼	17	3N	2W	40	114.00	L	280	2-6-91
Max Smith & Louis Sechtem	RRD	28-2-91	N½ of NE¼	17	3N	2W	80	320.00	L	594	6-17-91
A. T. Creecy Assignee T. W. Grant	RRD	30-9-91	W½ of NW¼ SE¼ of NW¼	17	3N	2W	120	300.00	M	253	11-4-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Matilda Stump	RRD	16-11-91	S½ of NE ¼ NW¼ of SE¼	17	3N	2W	120	300.00	M	376	12-22-91
E. M. Peacher	RRD	21-7-85	SE¼ of SW¼ SW¼ of SE¼	15	3N	2W	80	200.00	N	224	7-13-92
John A. Watson	RRD	2-28-91	NE¼ of SE¼	23	3N	2W	40	70.00	L	601	6-19-01
Jacob C. Cline	RRD	28-2-91	SE¼ of NE¼	23	3N	2W	40	100.00	M	598	3-21-92
Frank Batter	RRD	21-7-85	SW¼ of SW¼	23	3N	2W	40	100.00	N	402	10-6-92
G. L. Watson	RRD	30-4-94	S½ of NW¼ NW¼ of SW¼	23	3N	2W	120	480.00	P	358	5-19-94
John W. Cline	RRD	30-4-94	SW¼ of NE¼	23	3N	2W	40	100.00	P	349	5-15-94
Albert Fehrenback	RRD		SW¼ of SW¼	33	3N	2W	40	80.00	I	404	2-16-87
Lucy Reynard	RRD	16-11-91	S½ of NE¼	3	3N	2W	80	240.00	Y	136	5-6-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Gowanlock	RRD	7-3-04	SW¼ of SE¼	17	3N	2W	40	80.00	4	181	5-18-04
Henry C. Lamberson	RRD	28-2-91	SE¼ of SW¼	3	3N	2W	40	120.00	8	84	7-30-06
Willamette Pulp & Paper Co.	Q C	18-2-01	Lot 4	9	4N	1W	18.03	100.00	G	124	4-5-01
P. A. Frakes	Q C	3-4-89	Lot 4	33	4N	1W	17.85	60.00	V	415	7-6-99
Leander M. Cox	RRD	28-2-91	W½ of NE¼ E½ of NW¼ SE¼ of NE¼ Lot 1	35	4N	2W	238.03	595.07	M	441	1-19-92
E. M. Shintaffer	RRD	21-9-85	N½ of SW¼	27	4N	2W	80	200.00	M	70	8-8-91
Charles H. and Dave Rafferty	RRD	28-2-91	S½ of SE¼	27	4N	2W	80	300.00	M	77	8-12-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Charles H. & Dave Rafferty	RRD	28-2-91	NW¼ of NW¼	35	4N	2W	40		M	77	8-12-91
Charles H. & Dave Rafferty	RRD	28-2-91	S½ of SW¼	27	4N	2W	80	320.00	M	80	8-12-91
Jacob Gittner	RRD	14-3-92	N½	13	4N	3W	320	960.00	N	24	4-8-92
S. Benson	RRD	19-3-00	S½	13	4N	3W	320	960.00	V	577	4-16-00
Anna M. Solgard	QCD	21-10-91	W½ of SW¼	17	3N	2W	80	360.00	Y	332	12-10-01
Edward McSweeney	RRD	28-2-91	W½ of NE¼	3	4N	4W	86	172.00	L	462	4-25-91
N. Wernimount	RRD	28-2-91	N½ of SW¼	13	4N	5W	80	160.00	P	7	8-26-93
S. G. Reed	RRD	9-14-86	E½ of SE¼ SW¼ of SE¼	3	3N	2W	120	900.00	I	380	1-10-87
Henry Turesk	RRD	1-29-94	SW¼ of NW¼ NW¼ of SW¼	9	3N	2W	80	320.00	P	235	3-10-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
P. A. Frakes	RRD	3-4-89	Lot 4	33	4N	1W	17.85	60.00	V	415	7-6-99
E. M. Shintoffer	RRD	9-21-85	N½ of SW¼	27	4N	2W	80	200.00	M	70	8-8-91
Richard Cox	RRD	7-21-95	SW¼ of SE¼	9	3N	1W	40	160.00	I	224	5-27-86
William T. White	RRD	5-1-91	Lot 4	1	3N	2W	4.20	210.50	L	578	6-11-91
S. G. Reed	RRD	9-14-86	E½ of SE¼ & SW¼ of SE¼	3	3N	2W	120	900.00	I	380	1-10-87
George Blott	RRD	12-21-91	E½ of SW¼	7	3N	2W	80	320.00	P	453	9-1-94
S. G. Reed	RRD	9-14-86	SW¼ofNE¼& S½ of NW¼ NW¼ of NW¼ N½ of SW¼	11	3N	2W	240	900.00	I	380	1-10-87
William T. White	RRD	5-1-91	E½ of NE¼	11	3N	2W	80	210.50	L	578	6-11-91
Reuben Z. Joy	RRD	10-5-87	SE¼ of SE¼	15	3N	2W	40	100.00	I	580	12-17-87

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Emanuel Frederick	RRD	9-9-87	E½ of SW¼	23	3N	2W	80	160.00	I	434	4-2-87
Andrew J. Amel	RRD	2-28-91	W½ of SE¼	23	3N	2W	80	200.00	L	433	4-14-91
G. L. Watson Assignee of L. E. Thompson	RRD	30-4-94	SE¼ of SE¼	23	3N	2W	40	160.00	P	360	5-19-94
Charles Clayson Assignee of A. C. Fenbach	RRD	7-1-95	NE¼	33	4N	2W	160	560.00	V	191	12-29-98
Josiah Fullerton	RRD	2-17-85	W½ of SE¼ E½ of SW¼	9	4N	4W	160	360.00	I	323	10-23-86
Clark L. Parker	RRD	2-17-85	NW¼	3	4N	4W	160	430.00	I	332	11-6-86
James A. Watson	QC	2-2-03	SW¼ of NE¼	27	4N	2W	40	220.00	2	315	4-27-03
John H. Edmonds	Cont	3-11-82	S½ of NW ¼ of NW¼	5	7N	5W	155	387.77	H	737	12-11-88

State of Oregon)
County of Columbia)ss.

I hereby certify that the foregoing two sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 23rd, 1912.

(Seal.)

H. E. LA BARR,

County Recorder of Columbia County, Oregon.

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WASHINGTON COUNTY OREGON.

List of deeds, contracts and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Washington County, Oregon, prior to January 16, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Martin Bridgefarmer	B&S	11-20-74	Lot 5	21	1S	4W	6.02	21.68	L	32	5-4-75
Jonathan Wells	B&S	9-9-75	E½ of NW¼	17	1S	3W	80	400.00	L	337	11-24-75
William G. Scoggin	B&S	8-17-76	Lots 1 & 2	7	1S	4W	20.24	45.60	M	30	9-28-76
Harlow McLeod	B&S	8-17-76	SW¼	15	1S	3W	160	640.00	M	76	11-10-76
T. W. Sain	B&S	11-26-74	NE¼ of NE¼	13	1S	3W	40	108.00	M	116	12-30-76
John G. Ainsworth	B&S	11-26-74	N½ & N½ of SE¼	9	2S	3W	1094.49	3084.14	M	121	1-23-77

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			SE¼ of SE¼								
			Lots 1, 2, 3, 4								
			NW¼ of NW¼	3	2S	3W					
			Lots 2 &3								
			NW¼ of SE¼	29	1S	3W					
			N½ of SW¼								
			SE¼ of SW¼								
John Held	B&S	8-17-76	NW¼ of NW¼	25	1S	5W	62.40	112.32	M	143	1-18-77
			Lot 4								
Benjamin S. Hall	B&S	1-19-78	W½ of NE¼	13	1S	5W	160	440.00	M	636	No date
			NW¼ of SE¼								
			NE¼ of NW¼								
John Butt	B&S	1-19-78	SW¼ of NW¼	7	1S	4W	37.58	84.56	M	637	2-6-78
William M. Watson	B&S	1-19-78	NW¼	15	1S	3W	160	860.00	N	8	2-14-78

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Robert H. Walker	B&S	1-19-78	Lot 5	5	1S	1W	22.50	101.25	N	14	2-16-78
Lewis Butt	B&S	9-9-75	Lot 4	7	1S	4W	26	65.00	N	81	4-3-78
John Were	B&S	1-19-78	Lot 6	21	1S	4W	40.94	102.35	N	94	4-17-78
William Sharon	B&S	1-19-78	NE¼ of NE¼	29	1S	4W					
		"	E½ of NE¼	3	2S	3W	97.45	1.00	N	102	5-29-78
		"	Lot 1 NW¼ of SE¼	13	3S	3E					
			(Clackamas County)								
George Alexander	B&S	1-19-78	Such part of Lot 3, as lies E of W line of D. C. of Wm. Beagle produced to N. line of homestead claim of Wm. H. Harell,	3	1S	4W	5.58	22.32	N	105	5-23-78
Caleb Hiatt	B&S	1-19-78	Lots 1, 2, 3,	11	1S	4W	15.86	71.37	N	458	1-27-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Thomas Roe	B&S	1-19-78	NE¼ of SW¼, Lots 2, 3, 4,	27	1S	4W	116.61	309.00	O	483	1-16-80
Heinrich Prohl	B&S	1-19-78	E½ of SW¼	7	2S	2W	80.00	261.00	P	394	12-13-80
Benjamin Talcott Flint	QC	11-27-72	Lot 1	11	2S	2W	10.68	76.72	I	422	1-23-73
Mrs. Lucinda Henry	QC	11-27-72	SW¼ of SE¼ SE¼ of SW¼	11	2S	3W	80	234.00	K	258	4-14-74
William C. Ralston	QC	7-31-74	Sundry lands in	31,	1S	1W					
			Secs. 5, 13,		2S	1W	1012.49	5132.07	K	377	8-31-74
			Secs.	1	3S	1W					
			Secs.	25	1S	2W					
			Secs.	27	1S	2W					
			Secs.	5	2S	2W					
			Secs. 7 & 9		2S	2W					
			Secs. 23		2S	2W					

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			Secs. 1 & 3		2S	3W					
			Secs. 11, 21, 23		2S	3W					
Jared L. Rathbone	QC	7-31-74	Sundry lands in								
			Secs. 11, 15		1S	2E	766.54	2138.33	K	390	9-19-74
			Secs. 5, 7, 13		1S	3E					
			Secs. 1, 3		3S	4E					
			Secs. 7,		2S	1W					
			Secs. 17, 33		1S	2W					
			Secs. 1,		2S	3W					
Henry Brice	——	3-14-92	NE¼ of NE¼	17	3N	3W	40	160.00	35	296	10-14-92
Charles Henkes	——	2-4-95	W½ of SW¼	3	2N	3W	80	400.00	49	254	4-16-97
W. T. Willis	——	5-11-96	SE¼	23	3N	3W	160	720.00	49	286	5-4-97
S. W. Brownson	——	5-11-96	Lots 3 & 4	23	1S	3W	4	50.00	49	295	5-7-97
Adolph Schneider	——	4-11-98	S½ of SW¼	15	3N	3W	80	400.00	52	121	6-1-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Adolph Schneider	——	4-11-98	W½ of SE¼	15	3N	3W	80	370.00	52	121	6-1-98
A. L. Tyler	——	11-3-98	S½ of NE¼ N½ of SE¼	9	2N	2W	160	1000.00	52	444	12-7-98
Lirnella Hutchison	——	4-11-98	SE¼ of NW¼	11	2N	3W	40	180.00	53	20	1-3-99
Fritz Birkenfeld	——	12-12-98	NE¼ of NE¼	1	2N	3W	40.32	262.08	53	68	2-2-99
Burr Frutchey	QC	8-29-98	NE¼ of SE¼	3	2N	3W	40	180.00	53	240	4-22-99
B. R. Harrington	QC	4-3-99	SE¼ of SE¼	9	2N	2W	40	180.00	53	444	9-5-99
John Kapf	QC	4-3-99	NW¼ of NE¼	27	2N	2W	40	200.00	54	175	12-2-99
Uriah K. Arnold	QC	10-9-99	S½ of SW¼ SW¼ of SE¼	9	2N	2W	120	600.00	54	210	12-26-99
Otto Hartmann	QC	10-9-99	N½ of NW¼	9	2N	2W	80	480.00	54	233	1-9-00
Geo. Krochman	QC	10-9-99	N½ of NE¼	9	2N	2W	80	520.00	54	235	1-9-00

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. P. Ford	QC	12-26-99	NW¼ of NE¼	13	2N	3W	40	200.00	54	265	1-29-00
J. W. Marsh & Charles A. McCrum	QC	2-12-00	N½ of NE¼ SW¼ of NE¼ & W½	9	1S	4W	440	1540.00	54	356	3-19-00
N. S. Nelson & P. P. Reed	QC	3-19-00	SE¼ of SW¼	23	3N	3W	40	200.00	55	76	7-13-00
H. G. Salstrom	QC	10-9-99	E½	17	2N	2W	320	1280.00	55	426	2-7-01
Hugh Finnigan	QC	12-17-00	SW¼ of SW¼	13	2S	3W	40	240.00	57	50	3-30-01
Wm. H. Wier	QC	5-1-02	SE¼ of NE¼	3	2N	3W	40	133.00	60	34	7-12-02
A. Trudell	——	12-17-00	SE¼ of SE¼	31	1S	5W	40	120.00	60	310	3-24-03
J. D. Kennedy	——	6-6-98	Lots 1, 2, 3	15	1S	2W	60.11	1202.20	60	313	3-26-03
Thomas Nelson	——	4-6-03	SE¼ of SW¼	5	1S	4W	40	200.00	60	434	6-10-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
B. H. Tupper	QC	4-23-00	SE¼ of SW¼	1	1S	5W	40	133.00	65	135	9-29-03
Alice L. Kennedy	——	4-8-01	NW¼ of NE¼	1	1S	5W	40	140.00	65	216	11-20-03
Fred S. Wilcox	QC	1-5-03	NE¼ of SE¼	7	2N	3W	40	160.00	65	297	1-4-04
William G. Moore, Joseph McHardy & Wm. McHardy	——	2-8-04	S½ of NE¼ N½ of SE¼ SW¼ of SE¼	31	1S	5W	200	600.00	66	300	12-12-04
Eliza J. Tupper	——	6-6-04	NE¼ of SW¼	1	1S	5W	40	140.00	70	102	5-19-05
Hiram R. Kay	——	5-28-00	E½ of NW¼	1	1S	5W	80	266.00	70	304	10-26-05
Thomas Seth	SWD	2-1-81	NW¼ of NW¼ Lot 1	33	1S	4W	76.30	190.00	P	524	2-8-81

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. E. F. Ruckman	SWD	2-1-81	NE¼ of SE¼	17	2S	2W	40	100.00	P	527	2-8-81
D. S. Walton	——	5-24-79	N½ of SE¼	15	1S	3W	80	396.00	O	40	6-24-79
Thomas Roe	——	5-24-79	NW ¼of SW¼ Lot 1	27	1S	4W	69.40	173.50	O	478	1-16-80
Herman & Otto Meyer	——	2-26-80	SE¼ of NE¼	17	2S	1W	40	90.00	P	183	7-26-80
Nancy I. Curry	——	2-26-80	SE¼ of SE¼	29	2S	2W	40	96.00	P	242	9-13-80
Ambrose Tapfer	——	2-26-80	NE¼ of NE¼	25	1S	2W	40	108.00	P	537	2-14-81
Andrew Benson	——	2-26-80	NW¼ of NE¼	33	1S	3W	40	80.00	Q	478	1-19-82
Oswego Iron Co.	——	8-5-85	Sundry lands in Secs. 1, 15, 17, 19, 21, 25, 27, 29, 31, 33, 35		2S	2W	1659.40	3899.59	Z	321	12-22-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James S. Miller	——	10-21-85	NW¼ of NW¼	29	2S	2W	40	120.00	Z	328	12-27-88
Anton Wintermeier & Geo. A. Liebe	——	8-12-85	S½ of NW¼ Lots 3, 4, 5	25	1S	3W	131.77	347.31	Z	633	4-9-89
John Lee	——	9-20-87	SW¼ of SW¼	19	1S	4W	38.62	96.55	26	304	7-6-89
Julius G. Hoard	——	7-21-85	NW¼ of NW¼	27	2N	2W	40	90.00	26	522	9-28-89
D. C. Duren	——	9-2-85	S½ of NW¼ NW¼ of NW¼ N½ of SW¼	13	1S	5W	200	520.00	27	95	11-27-89
C. W. Laurens	——	9-15-85	NE¼ of NE¼	7	2S	1W	40	114.00	27	361	3-3-90
C. W. Laurens	——	9-23-85	E½ of NE¼	31	1S	1W	80	228.00	27	364	3-3-90
Chas. W. Laurens	——	7-12-86	Lots 1, 2, 5	25	1N	3W	26.80	80.40	27	367	3-3-90
John S. Meserve	——	4-9-86	NW ¼of NW¼	5	2N	2W	43.14	86.28	35	12	8-10-92

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Sandeen	——	7-21-85	NE¼ of NW¼	5	2N	2W	43.03	77.45	35	15	8-10-92
William Sandeen	——	7-21-85	SE¼ of NW¼	5	2N	2W	40	72.00	35	18	8-10-92
Albert Fehrenbach	——		SW¼ of SW¼	33	3N	2W	40	80.00	37	178	5-15-93
John Baxter	——	8-18-85	NW¼ of NW¼	29	1S	4W	40	100.00	37	222	5-24-93
Alex & Wm. Baxter	——	8-18-85	NE¼ of NW¼	29	1S	4W	40	100.00	37	225	5-24-93
William Davis	——	12-11-85	E½ of NE¼	17	2S	2W	80	340.00	50	412	3-12-98
Louis P. Kerman	——	7-21-85	SW¼ of NE¼	33	2N	2W	40	90.00	53	296	5-24-99
Geo. Hutchings	——	9-15-82	E½ of SW¼ NW¼ of SE¼	35	1S	3W	120	260.00	60	3	5-19-02
Mrs. Ann Smith	——	11-15-87	NE¼ of NW¼	29	2N	2W	40	100.00	70	326	11-16-05
S. V. Francis, Sarah A. Hughes,											

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. T. Francis	——	9-23-85	SW¼ of NW¼	25	2S	1W	40	236.00	72	82	4-28-06
Andrew C. Paulsen	W&C	9-11-06	SE¼ of SW¼	29	3N	2W	40	220.00	72	403	11-15-06
J. A. Brumsey	SW	9-15-85	E½ of SE¼ SW¼ of SE¼	35	1S	3W	120	340.00	W	122	2-27-86
C. G. Monson	SW	8-18-85	NE¼ of SW¼	17	2S	2W	40	140.00	W	128	3-2-86
Joseph Beier	SW	8-18-85	NW¼ of NE¼	25	1S	2W	40	100.00	W	125	2-27-86
Donald McKay	SW	12-11-85	N½	35	1S	3W	320	700.00	W	131	3-5-86
C. Hellman	SW	7-28-85	Lots 1, 2, 3	13	2S	2W	25.50	100.00	W	166	3-27-86
Calvin H. Adams	SW	9-15-85	Lots 4 & 5	11	1S	3W	73.56	367.80	W	157	3-22-86
Henry Hoehler	SW	8-12-85	NW¼ of NE¼ NE¼ of NW¼ & Lot 1	23	2S	2W	107.82	377.00	W	205	4-23-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Daniel Gubser	SW	8-12-85	E½ of NE¼ NE¼ of SE¼	33	2S	2W	120	400.00	W	222	5-3-86
Daniel Gubser	SW	8-5-85	NW¼ of SE¼	33	2S	2W	40	200.00	W	224	5-3-86
Alexander Sutton	SW	8-12-85	N½ of SW¼	21	2S	2W	80	205.10	W	262	5-24-86
John I. Northrup	SW	7-21-85	NE¼ of NE¼	29	2N	3W	40	100.00	W	302	6-8-86
Peter Gibson	SW	9-15-85	W½ of NE¼ SE¼ of NE¼	29	1S	4W	120	300.00	W	299	6-14-86
Geo. A. Morgan	SW	5-7-86	W½ of SW¼	35	1S	3W	80	180.00	W	309	6-14-86
Drusilla Gore	SW	8-18-85	SW¼ of SE¼	27	2S	1W	40	100.00	W	334	6-29-86
W. C. Whitlock	SW	10-21-85	E½ of NE¼	29	2N	2W	80	160.00	W	339	6-30-86
Mrs. Ann Hood	SW	2-2-86	N½ of NE¼ SW¼ of NE¼	23	2N	2W	120.00	240.00	W	344	7-2-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jacob A. Messinger	SW	10-21-85	SE¼ of SE¼	7	2S	2W	40	180.00	W	350	7-6-86
S. V. Francis, Sarah A. Hughes & J. F. Francis	SW	9-23-85	SW¼ of NW¼	25	2S	1W	40	240.00	W	364	7-20-86
Joseph Delany	SW	5-7-86	SE¼S½ofNE¼ E½ of SW¼ SE¼ of NW¼	23	2S	2W	360	1720.00	W	377	7-29-86
Richard M. Kyle	SW	7-21-85	Lot 2	21	1N	1W	23	125.00	W	383	7-31-86
A. H. Vincent	SW	10-21-85	NW¼ of SW¼ SW¼ of NW¼	25	2S	2W	80	400.00	W	423	9-8-86
N. Geoghegan	SW	7-21-85	W½ of SE¼ SW¼ of NE¼ Lots 1, 2, 5, 6	1	1N	5W	158.32	402.72	X	29	10-26-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
N. Geoghegan	SW	7-21-85	SE¼ of NW¼ Lot 3	1	1N	5W	64.39	128.78	X	32	10-26-86
Adolphus Finney	SW	7-21-85	NE¼ of SE¼ Lot 3	29	2N	2W	84.60	190.35	X	47	11-2-86
Franklin P. Brady	SW	10-12-86	Lot 2	29	2N	2W	19.60	49.00	X	95	11-17-86
Friedrich Haase	SW	12-11-85	N½ of SE¼	27	1S	3W	80	320.00	X	101	11-26-86
Emone Brooks	SW	9-23-85	SW¼ of SE¼	17	2S	2W	40	100.00	X	114	11-27-86
J. L. Moffitt	SW	8-10-86	S½ of NW¼	21	2N	2W	80	200.00	X	121	11-12-86
Mrs. Emily F. Ruckman	SW	9-23-85	S½ of SW¼	21	2S	2W	80	205.10	X	125	12-8-86
Andrew N. Vibbert	SW	10-21-85	SW¼ of SE¼	7	2S	2W	40	160.00	X	150	12-27-86
Samuel Siegenthaler	SW	7-21-85	SE¼ of NW¼	1	1N	2W	40	100.00	X	239	3-9-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Jacob Wunderle	SW	9-15-85	SE¼ of NW¼	27	2S	2W	40	70.00	X	261	3-29-87
S. T. Walker	SW	1-15-87	SW¼ of NW¼ Lot 2	3	1S	4W	53.70	161.10	X	292	4-13-87
Francis Cota	SW	12-7-86	SW¼ of SW¼	11	2S	3W	40	140.00	X	313	4-22-87
Charles Hickenbottom	SW	2-9-87	N½ of NW¼	21	2N	2W	80	240.00	X	337	5-6-87
Ezra Sterling Ely	SW	10-12-86	W½ of SW¼	21	3N	3W	80	160.00	X	355	5-16-87
Bertha C. Keckley	SW	9-15-85	SW¼ of SE¼	23	1S	3W	40	180.00	X	387	6-11-87
Ezra Sterling Ely	SW	6-7-87	SE¼ of NW¼	21	3N	3W	40	240.00	Y	41	9-13-87
Minnie A. Gregg	SW	7-13-87	NW¼	33	3N	3W	160	315.00	Y	44	9-14-87
Johann Berger	SW	7-21-85	SW¼ of NW¼	1	1N	2W	40	100.00	Y	62	9-17-87
Isaac Coram	SW	7-13-87	S½ of SE¼	29	2N	2W	84.60	211.50	Y	192	11-17-87

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James G. Lee	SW	10-12-86	S½ of SW¼ SW¼ of SE¼	23	1S	5W	120	240.00	Y	299	11-28-87
J. W. Masters	SW	12-11-85	Lot 7	7	1S	1W	17.26	86.30	Y	170	11-26-87
J. H. Davis	SW	9-20-87	NW¼ of NW¼	23	2N	3W	40	120.00	Y	195	12-8-87
Joseph Hickenbottom	SW	10-5-87	NW¼	17	2N	2W	160	320.00	Y	214	12-13-87
T. R. Cornelius	SW	11-15-87	SW¼	33	3N	3W	160	240.00	Y	261	1-13-88
John C. Wastenecker	SW	7-13-87	W½ of SE¼ SE¼ of SE¼	19	2N	3W	120	240.00	Y	341	2-20-88
Harvey S. Keels	SW	12-5-87	SW¼ of SE¼	21	2S	2W	40	100.00	Y	522	5-7-88
Charles Schmitt	SW	9-2-85	NW¼ of SW¼	21	1S	3W	40	200.00	Z	43	8-10-88
Charles Schmitt	SW	9-2-85	NE¼ of SW¼	21	1S	3W	40	200.00	Z	46	8-11-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
F. R. Strong	SW	7-28-85	Sundry lands in Sec. 31		1S	1W	843.40	2557.30	Z	311	12-22-88
			Secs. 5, 27, 33, 25		2S	1W					
F. R. Strong	SW	7-28-85	NE¼ of NE¼	33	2S	1W	40	80.00	Z	315	12-22-88
Henry Bevert	SW	8-5-85	SW¼ of NW¼	33	2S	1W	40	160.00	Z	318	12-22-88
E. J. Lyons	G&C	2-28-91	NW¼ of NE¼	29	2N	2W	40	100.00	30	378	3-14-91
J. J. Fowler	G&C	2-28-91	SE¼	7	2N	2W	160	320.00	30	403	3-19-91
James Corey	G&C	2-28-91	W½ of NE¼ NE¼ of NE¼	21	2N	2W	120	200.00	30	405	3-19-91
Ulrich Kampf	G&C	2-28-91	SE ¼of NW¼	33	2N	2W	40	160.00	30	414	3-21-91
Frederick Strobel	G&C	2-28-91	SW¼ of NW¼	31	1S	1W	43.40	141.05	30	416	3-23-91
Chas. Hickenbottom	G&C	2-28-91	SE¼ of NE¼	19	2N	2W	40	100.00	30	453	3-28-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Chas. Hickenbottom	G&C	2-28-91	SW¼ of NE¼	19	2N	2W	40	100.00	30	437	3-28-91
Chas. Hickenbottom	G&C	2-28-91	S½ of SW¼	21	2N	2W	80	181.12	30	439	3-28-91
John Berger	G&C	2-28-91	NW¼ of NW¼	1	1N	2W	38.80	77.60	30	472	4-6-91
John Swanson	G&C	2-28-91	NW¼ of NW¼ Lot 1	3	1S	4W	53.98	134.95	31	9	4-9-91
Abner Herriman	G&C	2-28-91	S½ of SE¼	21	2N	2W	80	200.00	31	28	4-15-91
A. T. Creecy	G&C	2-28-91	NW¼ of SW¼	33	3N	2W	40	80.00	31	36	4-17-91
Tipton Marion	G&C	2-28-91	Lot 4	35	1S	1W	8.96	71.68	31	38	4-17-91
Rose H. Wall	G&C	2-28-91	SE¼ of SW¼	17	2N	3W	40	100.00	31	73	4-23-91
August Krause	G&C	2-28-91	W½ of NE¼	21	2S	1W	80	240.00	31	88	4-25-91
L. F. Peterson	G&C	3-13-91	S½ of NW¼	27	2N	2W	80	400.00	31	101	4-28-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Franz Elling	G&C	2-28-91	SE ¼of SE¼	25	2S	1W	40	200.00	31	120	5-4-91
James W. Ryckman	G&C	3-13-91	SW¼ of NE¼ E½ of NW¼ SW¼ of NW¼	33	3N	2W	160	320.00	31	127	5-6-91
James G. Lee	G&C	2-28-91	N½ of SW¼ NW¼ of SE¼	23	1S	5W	120	300.00	31	137	5-7-91
J. Milne	QC	2-28-91	Lots 1 & 2	25	1N	3W	17.64	63.51	31	152	5-11-91
Fr. Rufener	G&C	2-28-91	NW¼ of NE¼	33	2N	2W	40	160.00	31	164	5-13-91
Fr. Rufener	G&C	2-28-91	NE¼ of NE¼	33	1N	3W	40	160.00	31	166	5-13-91
John I. Northrup	G&C	2-28-91	W½	21	2N	3W	320	560.00	31	222	5-25-91
Albert Wachlin	G&C	2-28-91	NE¼ of SW¼ & NW¼	27	1S	3W	200	450.00	31	237	5-26-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Kyle K. Kaser	G&C	2-28-91	NW¼ of NW¼	7	1S	4W	37.22	130.27	31	242	5-27-91
John Uebel	G&C	2-28-91	N½ of NE¼	21	2N	3W	80	200.00	31	245	5-27-91
Mary Krinick	G&C	2-28-91	E½ of SW¼ W½ of SE¼	33	3N	2W	160	240.00	31	263	6-2-91
E. E. Miller	G&C	2-28-91	E½ of NW¼ SW¼ of NW¼	33	2S	2W	120	450.00	31	275	6-4-91
Daniel Gubser	G&C	2-28-91	S½ of SE¼	33	2S	2W	80	200.00	37	309	6-11-91
F. M. Erway	G&C	5-1-91	NW¼ of NE¼	5	2N	2W	42.92	85.84	31	312	6-12-91
A. H. Vincent	G&C	2-28-91	NW¼ of NW¼	25	2S	2W	40	180.00	31	387	6-29-91
S. E. Craig	G&C	2-28-91	Lot 5	31	1S	2W	8.50	51.00	31	396	7-1-91
Ephraim Dewey	G&C	2-28-91	NW¼ of SE¼ NE¼ of SW¼	29	1S	4W	80	128.40	31	449	7-15-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Ephraim Dewey	G&C	2-28-91	SW¼ of SE¼	29	1S	4W	40	100.00	31	451	7-15-91
Leonard Umphlet	G&C	2-28-91	SE¼ of SE¼	29	1S	4W	40	120.00	31	453	7-15-91
J. A. Long	G&C	2-28-91	NW¼ of SW¼ SW¼ of NW¼	23	2N	3W	80	200.00	31	472	7-21-91
Wilhelm Kunkel	G&C	2-28-91	NW¼ of SW¼	13	2N	3W	40	120.00	32	141	8-26-91
Neal Knight	G&C	2-28-91	NW¼ of NW¼	33	3N	2W	40	120.00	32	172	9-4-91
Perin G. Northrup	G&C	2-28-91	SW¼ of NE¼	29	2N	3W	40	100.00	32	210	9-14-91
Mrs. Mary Burgess	G&C	8-3-91	E½ of SE¼	9	2N	3W	80	280.00	32	239	9-22-91
Jacob Whitmore	G&C	2-28-91	W½ of NW¼	13	2S	3W	80	360.00	32	268	9-30-91
C. C. Soehren	G&C	2-28-91	SE¼ of NE¼ NE¼ of SE¼	19	2N	3W	80	160.00	32	455	11-18-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
G. W. Kelly	G&C	2-28-91	NW¼ of SE¼ SW¼ of NE¼	23	2N	3W	80	160.00	33	92	12-24-91
S. N. Poole	G&C	2-28-91	E½ of NE¼	35	2S	2W	80	220.00	33	140	1-6-92
E. H. Malitz	G&C	9-30-91	NE¼ of SW¼	29	3N	3W	40	120.00	33	340	3-3-92
E. H. Malitz	G&C	9-30-91	SE¼ of SW¼	29	3N	3W	40	120.00	33	342	3-3-92
Ander H. Christensen	G&C	2-28-91	N½ of SE¼	21	2N	2W	80	200.00	33	438	3-25-92
Stephen Reiff	G&C	2-28-91	SW¼ of SW¼ Lot 4	19	1S	1W	62.28	186.84	33	446	3-25-92
Joseph Steventon	G&C	2-28-91	W½ of NW¼	11	2S	3W	80	220.00	34	404	7-12-92
Samuel Sipp	G&C	12-5-92	SW¼ of NE¼ NW¼ of SE¼	15	2N	3W	80	200.00	36	159	1-10-93
Sarah Adele Hill	G&C	12-5-92	N½ of SE¼	3	2N	3W	84.68	253.94	36	230	2-3-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Samuel Clifford	G&C	4-18-92	NE¼ of NW¼ Lot 2	5	2S	3W	46.20	161.70	36	299	3-2-93
Albert Fehrenback	QC	5-8-93	SW¼ of SW¼	33	3N	2W		1.00	37	181	5-15-93
Simon Blumauer	G&C	2-24-93	W½ of NE¼	15	1S	5W	80	320.00	37	189	5-16-93
			S½ of NW¼	15	1S	5W	160	640.00	37	191	5-16-93
Simon Blumauer	G&C	2-24-93	N½ of SW¼								
H. A. Howard & F. M. Walker	G&C	2-28-91	N½ of NE¼	25	2N	3W	80	160.00	38	17	7-31-93
David Haynes	G&C	2-28-91	NW¼ of NW¼	1	3S	1W	40.20	201.00	38	134	9-18-93
G. H. Erway	G&C	2-28-91	NE¼ of NE¼	5	2N	2W	42.81	85.62	38	167	10-2-93
John Trumbo	G&C	2-28-91	SE¼ of NW¼ NE¼ of SW¼	19	2N	2W	80	160.00	38	191	10-6-93

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Johnson Whitman	G&C	7-3-93	Lot 4	3	2S	3W	20	90.00	39	30	1-8-94
L. C. Walker	G&C	11-14-93	NW¼ of SW¼ Part Lot 3	3	1S	4W	53.70	161.10	39	62	1-16-94
David Weaver	G&C	1-29-94	SE¼	29	3N	3W	160	480.00	39	269	3-13-94
J. J. Durst	G&C	11-16-91	SW¼ of SE¼ Lot 1	23	2N	3W	76.58	191.45	39	432	5-1-94
Lyman J. Thompson	G&C	1-29-94	SE¼ of SE¼	11	1S	5W	40	120.00	40	121	6-30-94
John C. Callahan	G&C	2-28-91	SE¼ of NW¼	29	1S	4W	40	64.20	40	182	7-23-94
Saml. B. McAlpin	G&C	6-18-94	SE¼ of NE¼	9	1S	4W	40	120.00	40	240	8-11-94
J. P. Newman	G&C	10-15-94	NW¼ of NE¼	11	2N	3W	40	140.00	42	169	1-29-95
D. J. Buckley	G&C	5-8-93	S½ of SE¼	11	2N	3W	80	240.00	42	336	3-16-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. Abbie A. Coburn	G&C	2-4-95	SE¼ of NE¼ NE¼ of SE¼	23	2N	3W	80	240.00	42	371	3-29-95
A. W. Wright	G&C	2-28-91	W½ of NE¼	35	2S	2W	80	220.00	43	103	7-20-95
Olave Johnson	G&C	2-4-95	NW¼	15	3N	3W	160	400.00	43	240	10-5-95
P. W. Severson	G&C	11-5-95	SE¼ of SE¼	3	2N	3W	40	160.00	43	411	1-8-96
Fred Meyer	G&C	12-16-95	SE¼ of SE¼	3	2S	3W	40	200.00	45	428	1-16-96
Peter Gebson	G&C	2-28-91	NE¼ of SE¼	29	1S	4W	40	100.00	46	146	4-3-96
William Wadhams	QC	5-11-96	NE¼ of SE¼	17	2S	2W	—	1.00	46	210	5-20-96
Henry Butt	G&C	7-1-95	E½ of SE¼	13	1S	5W	80	280.00	46	254	6-20-96
John Wastenecker	G&C	9-5-92	SW¼ of NE¼	19	2N	3W	40	100.00	46	275	7-6-96
J. A. Mather	G&C	2-28-91	SE¼ of NE¼	33	3N	2W	40	80.00	49	454	8-2-97

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Sterling Blum	G&C	11-5-95	NE¼ of NW¼	11	2N	3W	40	140.00	50	99	10-22-97
James S. Miller	G&C	2-28-91	SE¼ of SE¼	19	2S	2W	40	120.00	50	239	12-17-97
Henrietta Dumschat	G&C	11-8-97	SE¼ of NE¼	9	2N	3W	40	240.00	50	442	3-28-98
A. Anderson & Edith Anderson	G&C	4-12-97	NE¼ of NW¼	27	2N	2W	40	200.00	52	197	7-19-98
Geo. B. Johnson	G&C	9-30-91	S½ of NE¼	5	2N	2W	80	200.00	52	221	8-9-98
Fred Mast	QC	12-12-98	E½ of NE¼	15	2N	3W	80	400.00	52	479	12-24-98
J. C. Miller	G&C	8-3-91	N ½of NE¼	23	2N	3W	80	160.00	53	29	1-7-99
T. P. Goodin	G&C	6-6-98	SW¼ of NE¼	25	2N	3W	40	140.00	53	70	2-3-99
T. P. Goodin	G&C	6-6-98	SE¼ of NE¼	25	2N	3W	40	140.00	53	72	2-3-99
E. L. McCormick	G&C	2-6-99	W½ of NW¼	19	2S	2W	88.67	354.68	53	94	2-20-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Henrietta Dunschat	QC	11-8-97	SE¼ of NE¼	9	2N	3W	40	240.00	53	352	6-29-99
Charles W. Laurens	G&C	11-16—	Lot 6	9	1N	2W	28.10	84.30	54	185	12-5-99
Charles W. Laurens	G&C	6-20-92	N½ of NW¼ SW¼ of NW¼ Lots 2 & 3	5	2S	2W	178.45	841.00	54	187	12-5-99
Alfred Guerber	G&C	12-26-99	W½ of SW¼	27	2N	2W	80	456.00	54	226	1-6-00
Angus McLeod	G&C	7-5-99	SW¼ of NE¼	11	2N	3W	40	200.00	54	349	3-12-00
Francis Keenon	G&C	7-1-95	SW¼ of SW¼	13	2N	3W	40	120.00	57	183	6-17-01
Thomas Nelson	QC	6-10-01	SE¼	9	1S	4W	160	960.00	57	194	6-27-01
Matthias Eischen	QC	6-10-01	N½ ot NE¼	29	1S	3W	80	550.00	57	250	7-13-01
P. I. Lillegard	G&C	6-10-01	Lot 8	31	1S	2W	23.60	118.00	57	290	8-16-01
C. W. Redmond	G&C	2-18-01	E½ of SW¼	27	2N	2W	80	400.00	57	120	5-8-01

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Ritter	G&C	11-8-97	W½ of SE¼	27	2N	2W	80	400.00	59	501	10-28-02
Elizabeth A. Wilkes, Cornelius A. Sochren, Era E. Fulton, Wm. F. Sochren et al., minor heirs of C. C. Sochren, dec'd, & Mary E. Lewis	G&C	8-11-02	N½ of NE¼	19	2N	3W	80	280.00	59	522	11-5-02
J. W. Winters	G&C	10-5-03	N½ of NW¼ NW¼ of NE¼	7	3S	1W	127.18	1.00	65	221	11-20-03
C. A. Brickman	G&C	9-7-03	NE¼ of NE¼	31	3N	2W	40	200.00	66	20	5-21-04
John F. Rathkey	G&C	12-1-04	NE¼ of SE¼	33	3N	2W	40	180.00	70	137	6-13-05
William Reichel	G&C	12-1-04	SW¼ of SW¼	1	1S	5W	40	160.00	70	210	8-1-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Eliza Jane Tupper	QC	6-6-04	NW¼ of SW¼	1	1S	5W	40	140.00	70	100	5-19-05
Ludwig Holz	QC	7-5-99	S½ of NE¼	29	1S	3W	80	550.00	55	109	8-13-00
Victoria Ennis	G&C	2-28-91	Lots 3, 4, 5\	9	1N	3W	34.64	86.60	72	85	4-28-06
Andrew C. Paulsen	G&C	9-11-06	SE¼ of SW¼	29	3N	2W	40	220.00	72	403	11-15-06
Jacob Stitzel & James B. Upton	Cont	11-22-71	NE¼, N½ & SE¼ of SE¼, NE¼ of NW¼ & Lot 4	9	2S	3W					
			NW¼, N½ & SE¼ of SW¼ & SE¼ of	29	1S	3W	799.88	2229.64	H	498	No date.
F. M. Wells	Cont	12-15-79	SE¼ of SW¼	25	2N	5W	40	100.00	Q	346	10-28-81

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Sherburne Wilson	Cont	11-2-77	Lot 1	19	1N	2W	11.22	25.00	Q	27	4-6-81
J. Milne	Cont	4-5-79	Lots 1 & 2	25	1N	3W	17.64	63.37	T	605	2-2-84
Francis M. Wells	Cont	9-28-84	SW¼ of SE¼	25	2N	5W	40.00	100.00	U	476	9-30-84
Frederick Haase	Cont	11——85	N½ of SE¼	27	1S	3W	80	320.00	V	392	11-21-85
D. C. Duren	Cont	6-21-83	S½ & NW¼ of NW¼ & N½ of SW¼	13	1S	5W	200	520.00	V	426	1-19-86
Anton Pfanner	Cont	11-28-84	N½ of SW¼	19	2N	3W	76.83	153.66	28	95	5-3-90
Ephraim Dewey	Cont	8-23-83	NW¼ of SE¼ NE¼ of SW¼	29	1S	4W	80	128.40	28	282	6-26-90
Ephraim Dewey	Cont	8-23-88	SW¼ of SE¼	29	1S	4W	40	100.00	28	283	6-26-90
Wm. Sandeen	Cont	5-24—	NE¼ of NW¼	5	2N	2W	43.03	77.45	28	401	8-6-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Leonard Uemphlette	Cont	12-26-89	SE¼ of SE¼	29	1S	4W	40	120.00	28	284	6-26-90
William Sandeen	Cont	12-12-81	SE¼ of NW¼	5	2N	2W	40	72.00	28	402	8-6-90
Wm. Sandeen	Cont	3-8-86	NW¼ of NW¼	5	2N	2W	43.14	86.28	28	403	8-6-90
Jacob Whitmore	Cont	6-6-89	W½ of NW¼	13	2S	3W	80	360.00	30	40	12-19-90
L. F. Peterson	Cont	2-4-91	S½ of NW¼	27	2N	2W	80	400.00	30	236	2-6-91
John Schwab	Cont	1-11-92	SW¼ of NE¼	27	2N	2W	40	200.00	33	264	2-13-92
Thomas H. Smith	Cont	10-7-89	N½ of SE¼ SW¼ of SE¼	3	2N	2W	120	780.00	34	400	7-12-92
Jacob Stitzel	Cont	11-22-71	S½ of NW¼ Lots 1, 2 & 3	9	2S	3W	178.36	515.08 A Msc		204	11-24-71
James B. Upton	Cont	11-22-71	NW¼ of NW¼ NW¼ of NW¼ Lots 2 & 3	9 3	2S 2S	3W 3W	116.25	339.42 A Msc		206	11-24-71

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jacob Stitzel & James B. Upton	Cont	11-22-71	NE ¼, N½&SE¼ofSE¼ NE¼ of NW¼ Lot 4	9	2S	3W					
			NW¼, N½&SE¼of SW¼, SE¼	29	1S	3W	799.88	2229.64	A Msc	208	11-24-71
Benjamin F. Flint	Cont	10-18-81	Lot 1	11	2S	2W	10.68	76.90	A Msc	213	2-5-72
Charles B. Upton	Cont	9-11-71	N½ of N½	7	3S	1W	167.18	288.97	A Msc	218	3-14-72
Johannes Berger	Cont	8-17-83	SW¼ of NW¼	1	1N	2W	40	100.00	A Msc	460	5-5-85
Mary W. Holdenbeck	Cont	3-19-77	NW¼	33	3N	3W	160	315.00	A Msc	464	6-23-85
E. E. Miller	Cont	3-14-90	E½ of NW¼ SW¼ of NW¼	33	2S	2W	120	450.00	A Msc	634	3-14-90
J. J. Fowler	Cont	3-29-90	SE¼	7	2N	2W	160	320.00	A Msc	635	4-8-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Thomas J. Killeen	Cont	2-5-96	NW¼ of NE¼	15	2N	3W	40	160.00	46	174	4-25-96
H. F. Day	Cont	12-15-90	N½ of SW¼	9	2N	2W					
			N½ of SW¼ SE¼ of NE¼	21	2N	2W	200	1420.00	72	554	1-8-07

State of Oregon)
County of Washington)ss.

I hereby certify that the foregoing seven sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 14th, 1912.

(Seal.)

E. L. PERKINS,
County Recorder of Washington County, Oregon.

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MULTNOMAH COUNTY, OREGON.

List of deeds, contracts and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Multnomah County, Oregon, prior to January 2, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. I. McCormick	Ctf	4-25-78	NW¼ of NE¼	5	1S	3E	41.50	186.75	33	292	4-27-78
Henry B. Tucker	SWD	5-24-79	NE¼ of SE¼	5	1S	5E	40	100.00	51	209	1-5-82
George Breitweiser	SWD	5-24-79	NW¼ of SW¼ Lot 4	23	1S	2E	47.48	94.96	37	34	6-27-79
Albert H. Welsh	SWD	5-24-79	SE¼	13	1S	4E	160	400.00	37	295	8-20-79
H. J. McCormick	SWD	5-24-79	NW¼ of NE¼	5	1S	3E	41.50	186.75	37	389	9-9-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John A. Hurlburt	SWD	2-26-80	S½ of NE¼ SE¼	3	1S	4E	240	480.00	42	205	7-14-80
Gustav F. Cramer	SWD	2-1-81	SE¼ of SE¼	23	1S	2E	40	117.70	44	275	2-4-81
Ferdinand Fluss	SWD	2-1-81	NW¼ of SE¼ NE¼ of SW¼	5	1S	5E	80	200.00	44	279	2-4-81
Mrs. Augusta B. Leader	SWD	2-1-81	N½ of NW¼	7	1S	5E	78.54	176.00	44	282	2-4-81
C. W. Burrage	SWD	7-21-85	S½	35	3N	2W	320	640.00	87	79	5-25-86
Franz Elling	SWD	7-21-85	Lot 1	15	2N	1W	4.64	23.20	86	206	6-2-86
Henry Raithel	SWD	7-21-85	NE¼ of NE¼	11	2N	2W	40	90.00	86	261	6-9-86
Joseph S. Keller	SWD	7-21-85	NW¼ SW¼ of NE¼ SE¼	13	2N	2W	360	620.00	88	173	9-7-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. P. Kottemann	SWD	7-21-85	W½ of SW¼	33	2N	1W	80	200.00	89	79	10-22-86
Phillip Pezoldt	SWD	7-21-85	SE¼ of SE¼	9	1N	1W	40	100.00	89	82	10-23-86
Chas. S. Flanders	SWD	7-21-85	W½ of NW¼	23	2N	2W	80	200.00	92	214	4-6-87
Joseph Simon	SWD	7-21-85	Lots 5, 6, 7	13	1N	1W	54.51	100.02	94	78	6-9-87
Alex Lampert & Franz J. Frommelt	SWD	7-21-85	W½ of SE¼ Lot 2	9	1N	1W	118.79	296.97	95	425	9-12-87
Sarah J. Mason	SWD	7-21-85	Lot 1	9	1N	1W	23.18	57.95	145	67	8-13-90
George Dittman	SWD	7-21-85	NE¼ of SE¼	11	2N	2W	40	90.00	198	215	6-22-93
Hiram Rhodes	SWD	7-21-85	S½ of NW¼ N½ of SW¼	27	3N	2W	160	400.00	210	90	3-10-94
L. T. Barin	SWD	7-21-85	Lots 7, 8	33	3N	1W	28	75.00	287	440	4-3-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Thos. M. Hurlburt	SWD	7-28-85	SE¼ of NW¼ & Lot 2	18	1S	5E	79.39	178.78	153	471	5-13-91
Warren Heiney	SWD	8-5-85	SW¼ of NW¼	5	1S	5E	40	90.00	86	9	4-19-86
Edward Woolridge	SWD	8-5-85	SW¼ of SE¼	5	1S	5E	40	90.00	126	109	9-4-89
J. D. Regner	SWD	8-12-85	SE¼ of NE¼ NE¼ of SE¼	21	1S	3E	80	200.00	87	433	10-1-86
Henry Redding	SWD	8-18-85	SE¼ of SE¼ SW¼ of SE¼ SE¼ of SW¼	1	1S	4E	120	300.00	149	199	12-11-90
Stephen Barnes	SWD	9-2-85	NW¼ of SW¼	13	1S	3E	40	100.00	128	350	11-29-89
Joseph Ellis	SWD	9-2-85	NW¼ of NE¼	5	1S	5E	33.78	84.45	193	406	4-7-93
Thos. L. Evans	SWD	9-15-85	N½ of NE¼	3	1S	4E	76.96	192.40	84	243	3-16-86
Mrs. A. D. Risdon	SWD	9-23-85	NW¼	21	1S	5E	160	532.00	84	439	4-13-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Mrs. C. A. Avery	SWD	9-23-85	SE¼ of NE¼ Lot 4	29	1S	2E	74.30	185.75	113	410	5-10-89
Gustav F. Cramer	SWD	9-23-85	Lots 1, 2, 3 SW¼ of SE¼ N½ of SE¼ S½ of SW¼ NE¼ of SW¼	23	1S	2E	292.21	761.67	86	406	7-3-86
Mrs. Anne Hood	SWD	2-2-86	N½ of NE¼ SW¼ of NE¼	23	2N	2W	120	240.00	103	323	6-14-88
Wm. Butler	SWD	8-10-86	NW¼ of NE¼	23	1S	5E	40	160.00	224	205	9-6-86
S. G. Reed	SWD	9-14-86	NE¼ of SE¼	19	2N	1W	40	100.00	89	384	1-8-87
S. G. Reed	SWD	9-14-86	S½ of SE¼	19	2N	1W	80	200.00	90	150	1-8-87
Albert Fehrenback	SWD		SW¼ of SW¼	33	3N	2W	40	80.00	89	120	10-27-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Thomas J. Clark	SWD	1-15-87	Lots 1, 2, 3	19	1S	5E	119.23	298.08	94	204	6-28-87
Sylvester E. Evans	SWD	3-9-87	NE¼ of NW¼	1	1S	4E	39.06	100.00	98	179	11-5-87
James Barry	SWD	4-8-87	NE¼ of SE¼	25	2N	2W	40	100.00	125	48	8-13-89
Christian Rasmussen	SWD	4-8-87	SE¼ of NE¼	5	1S	5E	40	100.00	155	338	4-8-91
Sylvester E. Evans	SWD	3-9-87	NW¼ of NE¼	1	1S	4E	39.44	98.60	98	175	11-5-87
J. A. Mather	SWD	6-7-87	E½ of SW¼	5	1N	1W	80	200.00	98	191	11-5-87
M. Rickert	SWD	7-13-87	NE¼ of NE¼	11	1S	4E	40	140.00	95	212	8-20-87
Nels Paulsen	SWD	8-22-87	NW¼ of NE¼	9	1S	5E	40	100.00	159	329	5-15-91
Peter Paulsen	SWD	9-20-87	NE¼ of NW¼	9	1S	5E	40	100.00	98	427	12-19-87
J. Vestal Joy	SWD	10-5-87	NW¼ofNW¼	25	3N	2W	40	100.00	166	121	9-30-91
John Miller	SWD	10-5-87	NW¼ofNW¼	25	2N	2W	80	160.00	97	367	11-28-87
			SE¼ of NE¼	23	2N	2W					

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Barry	Deed	2-28-90	SW¼ of NE¼ NW¼ of SE¼	25 25	2N 2N	2W 2W	80	200.00	162	131	9-9-91
M. G. Griffin	Deed	12-20-90	S½ of NE¼ NW¼ of NE¼ NW¼ of S½; SE¼ of SW¼ SW¼ of NW¼ W½ of SW¼	29 25 	2N 3N 	1W 2W 	760	3040.00	148	457	12-23-90
John M. Roberts	Deed	2-28-91	E½ of NW¼	23	2N	2W	80	160.00	156	33	3-20-91
A. Walter Scott	Deed	2-28-91	S½ of SE¼	21	1S	3E	80	200.00	153	306	3-24-91
J. E. Morgan	Deed	2-28-91	Lot 1	19	2N	1W	39.80	100.00	155	251	3-25-91
Percy Giese	QCD	2-28-91	Lots 3, 4, 5	17	1S	3E	21.45	254.70	155	381	4-17-91
Z. B. & A. S. Nichols	Deed	2-28-91	SE¼ of SE¼	19	1S	5E	40	160.00	155	398	4-20-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Z. B. & A. S. Nichols	Deed	2-28-91	SW¼ of SE¼	19	1S	5E	40	160.00	157	205	4-20-91
G. A. Stanton & Julia A. Stanton	Deed	2-28-91	NE¼ of SE¼	29	1S	3E	40	110.00	157	254	4-25-91
Patrick Kenny	Deed	2-28-91	SW¼ of NW¼	15	1S	4E	40	140.00	157	330	5-4-91
Frederick Ohse	Deed	2-28-91	NE¼ of NE¼	21	1S	3E	40	100.00	159	230	5-4-91
Jesse Reed	Deed	2-28-91	NE¼ of NE¼	31	2N	1W	40	100.00	175	390	5-6-92
Thomas M. Hurlburt	Deed	2-28-91	SW¼	3	1S	4E	160	400.00	159	309	5-13-91
David B. Thomas	Deed	2-28-91	S½ of SW¼ NE¼ of SW¼	19	1S	5E	119.85	600.00	160	236	6-19-91
Andrew B. Gibbs	Deed	2-28-91	NW¼ of SE¼ NE¼ of SW¼ & Lot 2	21	1S	3E	102.40	267.20	156	360	6-26-91
C. C. Miller	Deed	2-28-91	E½ of SW¼	33	2N	1W	80	200.00	161	243	7-2-91

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ezekiel Beers	Deed	2-28-91	S½ of SW¼	23	1S	3E	80	240.00	161	395	8-4-91
George Rendall	Deed	2-28-91	E½ of SW¼	19	2N	1W	80	200.00	164	351	9-9-91
Nathan Pearcy	SWD	7-21-85	Lot 1 Lot 9	13 23	2N	1W	3.81	15.00	330	9	10-26-04
Martha E. Prettyman	Deed	5-1-91	S½ of NW¼	3	1S	4E	80	200.00	333	129	1-20-05
H. C. Leonard	QCD	5-2-92	Lot 5	35	1S	1E	3.87	1354.50	334	451	4-14-05
Joseph Ellis	Deed	10-15-94	Lot 3	5	1S	5E	34	136.00	297	265	10-2-02
A. E. Borthwick	Deed	8-3-91	SE¼ of NW¼	15	1S	4E	40	110.00	168	117	10-30-91
Geo. B. Johnson	Deed	9-30-91	S½ of NE¼	5	2N	2W	80	200.00	169	25	10-19-91
Georgia A. Barton	Deed	9-30-91	S½ of NE¼	7	1S	5E	80	200.00	167	366	12-5-91
Wm. H. Miller	Deed	9-30-91	NW¼ of SE¼ NE¼ of SW¼	7	1S	5E	80	200.00	170	114	12-6-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
C. J. Pederson	Deed	9-30-91	W½ of SW¼	15	2N	2W	80	240.00	171	228	1-22-92
A. Munson	Deed	2-28-91	N½ of SW¼	25	2N	2W	80	200.00	173	380	3-14-92
Thomas James	Deed	2-28-91	NW¼ of NE¼	7	1S	5E	40	100.00	174	473	3-31-92
Thomas James	Deed	2-28-91	NE¼ of NE¼	7	1S	5E	40	100.00	175	79	3-31-92
Milo C. Moore et al., Exc'rs Dorsey S. Baker	Deed	2-28-91	Lot 2 NW¼ of SE¼	19	2N	1W	79.90	200.00	184	51	8-6-92
L. F. Floss	Deed	2-28-91	SE¼ of SW¼	5	1S	5E	40	190.00	184	307	9-21-92
Louisa Walder & Hermina Walder	Deed	2-28-91	SE¼ of SE¼	9	1S	2E	40	200.00	182	352	9-26-92
Robert Carr	Deed	2-28-91	NW¼ of SW¼	19	2N	1W	41.43	103.55	193	48	2-27-93
Robert Carr	Deed	2-28-91	SW¼ of SW¼	19	2N	1W	41.60	104.00	194	46	2-27-93

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Robert Carr	Deed	8-3-91	W½ of NW¼	19	2N	1W	82.33	205.82	195	4	2-27-93
Gilbert M. Gould	Deed	2-28-91	SE¼ of SE¼	15	1S	5E	40	160.00	244	158	10-13-93
A. W. Lambert	Deed	2-28-91	SW¼ of SW¼	5	1S	5E	40	100.00	207	315	1-3-94
Andreas Plugmacher	Deed	2-28-91	Lot 3 & NE¼ of SE¼	9	1N	1W	52.40	131.00	216	299	10-4-94
Charles Bates	Deed	2-28-91	W½ of NW¼	1	1S	4E	78.69	200.00	226	394	9-23-95
Thomas London	Deed	2-28-91	NW¼ of SW¼	1	1S	4E	40	140.00	262	437	12-4-99
John P. Watson	SWD	3-14-92	SW¼ of NE¼ SE¼ of NW¼ NE¼ of SW¼ N½ of SE¼	1	1S	4E	200	900.00	178	248	5-3-92
Otto Hartman	QC	3-14-92	NW¼ of NE¼ NE¼ of NW¼	25	2N	2W	80	400.00	178	259	5-4-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
F. A. Richey	SWD	3-14-92	Lots 7, 8	19	1S	3E	8.14	60.00	175	449	5-13-92
H. F. Seip	SWD	3-14-92	NE¼ of NE¼	13	1S	4E	40	140.00	180	237	6-17-92
The City of Portland	QC	3-14-92	NW¼ of SW¼	23	1S	4E	160	760.00	179	203	7-26-92
			SW¼ of SE¼								
			N½ of SW¼	5	2S	5E					
Eliza Loller	Deed	4-18-92	Lots 4, 5	3	1N	1W	48.11	120.28	175	298	4-25-92
Margarette Pauly	Deed	4-18-92	NW¼ of NE¼	31	2N	1W	40	100.00	177	353	6-11-92
Wm. B. Murray	Deed	6-20-92	SE¼	15	1S	4E	160	300.00	181	238	7-5-92
Annie Myers	Deed	9-5-92	S½ of SE¼	25	2N	2W	80	200.00	187	476	12-3-92
Henry Weinhard	Deed	2-24-93	SW¼	13	2N	2W	160	640.00	194	286	3-21-93
Margaret C. Paget	Deed	2-24-93	SE¼ of SE¼	31	2N	1W	200	800.00	196	300	4-27-93
			S½ of NE¼								
			N½ of SE¼								

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Grantee	Instrument	Date	Description	Will S.	Mer. T.	Mer. R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
Johanna Anderson	Deed	5-8-93	NE¼ of SW¼	15	2N	2W	40	120.00	192	324	5-15-93
Jonathan Bourne, Jr.	Deed	5-8-93	W½ of NE¼	11	2N	2W	560	2240.00	197	42	5-17-93
Jonathan Bourne, Jr.	Cont		SE¼ of NE¼	11	2N	2W					
			W½ of SE¼								
			SE¼ of SE¼								
			W½								
Armin C. Wihlan	Deed	5-8-93	NE¼	17	1S	4E	160	560.00	216	335	10-9-94
The City of Portland	Deed	7-3-93	Sundry lands in Secs. 23, 27, 31				2234.70	4579.40	245	438	12-31-97
			33,		1S	5E					
			Secs. 19,		1S	6E					
			Secs. 5		2S	5E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
The City of Portland	Deed	7-3-93	S½ of NE¼	25	1S	5E	955.52	1958.82	246	468	12-31-97
			S½ N½ of NE¼ S½	35 19	1S	6E					
A. K. Burt	Deed	11-14-93	SW¼ of SW¼	23	1S	4E	40	120.00	214	8	6-12-94
Mrs. Susan C. Butler	Deed	11-14-93	N½ of SW¼ SE¼ of SW¼	15	1S	5E	120	480.00	208	249	2-3-94
W. L. Burt	Deed	11-14-93	SE¼ of SW¼	23	1S	4E	40	120.00	210	447	6-12-94
Gilbert M. Gould	Deed	11-14-93	SW¼ of SE¼	15	1S	5E	40	160.00	243	289	6-28-97
George Williams	Deed	10-15-94	SW¼ of SW¼	11	1S	4E	40	140.00	217	280	10-29-94
Mrs. L. E. Sumner Kline	QC	2-4-95	SE¼ of SW¼	21	1S	3E	40	220.00	240	477	5-6-97
Joseph Ellis	Deed	2-4-95	NW¼ of NW¼	5	1S	5E	34.22	136.88	293	389	10-2-02

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Geo. L. Parrish	QC	5-6-95	S½ of NE¼	3	2N	2W	80	640.00	240	461	5-4-97
Joshua Kauffman	Deed	11-5-95	NE¼ of NE¼	15	1S	4E	40	140.00	231	430	3-17-96
Jacob A. Reid	QC	5-11-96	SE¼ of NE¼ E½ of SE¼	17	1S	5E	120	600.00	243	91	5-26-97
James Barry	Deed	11-9-96	NW¼ of NW¼	31	2N	1W	42.06	105.15	236	112	12-8-96
Robert J. Fisher & John Bain	QC	4-11-98	NW¼	17	1S	5E	160	800.00	251	102	6-28-98
Frank Morgan	QC	6-6-98	SE¼ of NW¼	25	2N	2W	40	140.00	254	185	12-3-98
Samuel O. West	QC	6-6-98	SW¼ of NW¼	25	2N	2W	40	140.00	253	211	12-3-98
Emil G. Schonwasser	QC	8-29-98	SE¼ of NE¼	13	1S	4E	40	120.00	252	204	9-30-98
W. T. Stephens	QC	8-29-98	NW¼ of NW¼	15	1S	4E	40	200.00	254	322	12-27-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles F. Adams	Deed	4-3-99	SW¼ of NE¼	11	1S	4E	320	1010.00	268	365	8-31-00
			SE¼ of NW¼								
			W½ of SE¼								
			SE¼ of SE¼								
			NW¼ of NE¼	13							
			N½ of NW¼								
George Barnes & Orin Able	QC	5-1-99	NW¼ of NW¼	15	2N	2W	40	180.00	264	460	4-17-00
W. J. Patton	QC	11-27-99	E½ of NW¼	3	2N	2W	82.24	493.44	263	356	2-17-00
Charles F. Adams, Trustee	QC	3-19-00	N½ of NE¼	23	1S	4E	80	400.00	269	171	8-31-00
John A. Hurlburt	Deed	3-19-00	SE¼ of NE¼	11	1S	4E	40	160.00	288	476	3-24-02
Caroline Fischer	QC	9-3-00	SW¼ of SW¼	21	1S	3E	40	480.00	268	461	9-14-00
Joseph Ellis	QC	2-18-01	SW¼ of NE¼	5	1S	5E	40	200.00	297	263	10-2-02

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mollie L. Stokes	Deed	10-21-01	NE¼	21	1S	5E	160	560.00	283	377	11-6-01
Robert T. Graham	QC	12-17-00	N½ of SW¼ SW¼ of SW¼	17	1S	5E	120	600.00	274	148	2-18-01
John H. Woodward & Charles H. Woodward	Deed	2-28-91	S½ of SE¼	33	2N	1W	80	200.00	155	182	3-12-91
Joseph Ellis	QC	10-21-01	NE¼ of NE¼	5	1S	5E	33.56	167.80	296	258	10-2-02
J. G. McElroy	QC	6-3-02	W½ of NE¼ E½ of NW¼ NW¼ of NW¼	9	2S	5E	200	900.00	298	431	10-28-02
L. F. Hudson	QC	10-6-02	N½ of SW¼	3	2N	2W	80	560.00	303	360	7-29-03
L. F. Hudson	QC	10-6-02	S½ of SW¼	3	2N	2W	80	560.00	311	8	7-21-03
A. C. Wihlon	QC	3-2-03	N½ of SE¼	19	1S	5E	80	480.00	303	65	3-11-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Mary E. Squire	QC	3-2-03	SW¼ of NW¼ NW¼ of SW¼	13	1S	4E	80	240.00	303	380	8-3-03
Andrew Smith	QC	6-8-03	(N½ of SE¼ (SW¼ of SE¼	3	2N	2W	120	780.00	310	33	7-29-03
Theodor Johannsen	QC	8-3-03	E½ of NE¼	19	1S	5E	80	400.00	332	318	2-20-05
Eppie Andrews	QC	3-7-04	Lot 1	5	1S	3E	5.43	54.30	327	112	9-13-04
Security Savings & Trust Co	Deed	10-3-04	S½ of SE¼	14	1S	4E	80	320.00	334	323	2-22-05
Mrs. H. B. Johnson	QC	1-9-05	SW¼ of NW¼	11	1S	4E	40	116.75	336	412	6-3-05
Chas. J. Tidcombe	Deed	11-14-93	N½ of NE¼	27	3N	2W	80	200.00	375	409	12-4-06
Flora Fuson Cook	Deed	11-14-93	SW¼ of SW¼	15	1S	5E	40	160.00	367	214	8-9-06
Martin Albrecht	Deed	2-28-91	SE¼	7	3N	2W	160	640.00	156	127	4-18-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
T. S. Hensley	QC	12-26-99	NW¼ of NE¼	35	9S	3E	40	180.00	264	208	1-8-00
G. H. Erway	Deed	2-28-91	NE¼ of NE¼	5	2N	2W	42.81	85.62	159	36	4-8-91
The European & Oregon Land Co.	Deed	3-20-71	All property owned by Grantors						N	223	4-4-71
Jared L. Rathbone	QC	7-31-74	Sundry lands in				766.54	2138.23	Z	40	10-13-74
			Secs. 11, 15		1S	2E					
			Secs. 5, 7		1S	3E					
			Secs. 13,		3S	3E					
			Secs. 1,		3S	4E					
			Secs. 3, 7,		2S	1W					
			Secs. 17, 33,		1S	2W					
			Secs 1,		2S	3W					
William C. Ralston	QC	7-31-74	Sundry lands in				855.69	1069.69	Z	42	10-13-74
			Sec.	29	2S	1E					
			Sec.	5	3S	1E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
			Sec.	1	3S	2E					
			Secs. 13, 25		2S	3E					
			Secs. 5, 13, 17		3S	3E					
			Sec. 1		4S	3E					
			Secs. 1, 11		3S	4E					
			Sec. 7		1S	4E					
A. C. Fairchild	Deed	9-9-75	W½ of NW¼	15	1S	3E	80	140.00	28	198	11-19-75
W. H. Buchanan	Deed	2-16-76	N½ of NW¼	11	1S	4E	80	180.00	29	20	3-8-75
Olof Nilsen	Deed	2-16-76	N½ of NW¼	3	1S	4E	77.92	175.40	29	438	8-4-76
Joseph Heiny	Deed	1-19-78	Lot 1	17	1S	3E	2.95	10.00	36	31	3-29-79
B. F. Goodman	Deed	1-19-78	NE¼ of NE¼	17	1S	2E	40	160.00	33	59	2-7-78
Joseph Heiny	Deed	1-19-78	Lot 2	17	1S	3E	3.25	10.00	36	32	3-29-79
Bridal Veil Lbr. Co.	Cont	12-3-89	All	5	1S	6E	664.20	9963.00	4Mscl	52	12-13-89

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
M. G. Griffin	Cont	6-9-90	S½ & NW¼ of NE¼; NW¼ & S½ SW¼ of NW¼; W½ & SE¼ of SW¼	25	3N	2W	760	3040.00	139	213	6-10-90
Ned Paulson	Cont	7-11-87	NW¼ of NE¼	9	1S	5E	40	100.00	4Mscl	425	9-30-90
William R. Stokes	Cont	10-11-84	NE¼	21	1S	5E	160	560.00	3Mscl	321	No date
Sadie A. Mulliken & Dr. A. D. Risdon	Cont	10-11-84	NW¼	21	1S	5E	160	532.00	3Mscl	319	5-18-85
Percy Giese	Cont	9-11-89	Lots 3, 4 & 5	17	1S	3E	21.45	254.70	4Mscl	461	11-8-90
Andreas Pflugmacher	Cont	5-24-88	NE¼ of SE¼ Lot 3	9	1N	1W	52.40	131.00	4Mscl	582	3-17-91
Frank Kiernan	Cont	1-26-93	SW¼ of NW¼ NE¼ of SW¼	23	1S	4E					
			&NE¼ofNE¼	25	1S	4E	120	600.00	6Mscl	53	4-28-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Poole	Cont	2-14-93	W½ of SE¼ SE¼ of SW¼	15	2N	2W	120	360.00	4Mscl	389	8-28-90
Thos. O. Regan	Cont	6-10-91	SW¼ of SW¼	1	1S	4E	40	240.00	5Mscl	288	5-28-92
C. A. Himple	Cont	3-24-83	All	1	1S	5E					
			All	11	1S	5E					
			All 5, 7 & 9		1S	6E	3216.59	12866.36	247	72	1-12-98
A. L. Parkhurst	Cont	7-16-91	SW¼ of SE¼	15	2N	2W	40	600.00	362	375	7-21-06
A. L. Parkhurst	Cont	8-3-91	NW¼ of SE¼	15	2N	2W	40	600.00	367	170	7-21-06
A. L. Parkhurst	Cont	7-16-91	SE¼ of SE¼	15	2N	2W	40	600.00	367	167	7-21-06
A. L. Parkhurst	Cont	7-16-91	NE¼ of SE¼	15	2N	2W	40	600.00	368	60	7-21-06
James Poole	Cont	12-23-82	E½ of SE¼	15	2N	2W	80	220.00	4Mscl	385	8-28-90

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record

State of Oregon)
County of Multnomah)ss.

I hereby certify that the foregoing six sheets correctly show the Record Book and Page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 27th, 1912.

F. S. FIELDS,
County Recorder of Multnomah County, Oregon,

(Seal.)

THIS PAGE BOU

TILLAMOOK COUNTY, OREGON.

List of deeds, contracts and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Tillamook County, Oregon, prior to February 1, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Olean Land Co.	QC	9-23-01	Sundry lands in Sec. 5, 7, 9, 15, 17, 1S 7W Sec. 1, 11, 13, 15 1S 8W				2431.55	19452.50	W	352	11-13-01
Olean Land Co.	QC	9-23-01	NW¼ of SE¼ Lots 4, 13, 14 & 19 SW¼ of NW¼ S½ of SW¼	7 1 11	1S	7W	423.61	1059.00	W	356	11-13-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			E½ of NE¼ NE¼ of SE¼	15	1S	8W					
David Martiny	QC	12-2-01	N½ of SE¼	1	3S	8W	80	190.00	W	583	1-18-02
Nelson P. Wheeler	QC	7-7-02	Lots 1, 2, 3 NE¼ of SW¼	31	1S	7W	130.86	435.10	Z	183	1-31-02
David Martiny	QC	5-9-04	N½	1	3S	8W	321.99	804.97	I	406	9-27-04
James H. Woods	Ctf	4-18-02	N½ of SE¼	21	3S	8W	80	228.00	X	277	5-6-02

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Grantee	Instrument	Date	Description	Will S.	Mer. T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record

State of Oregon)
County of Tillamook)ss.

I, J. C. Holden, County Clerk and ex-officio Recorder of Conveyances of Tillamook County, Oregon, do hereby certify that the foregoing sheet correctly shows the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and official seal this the 20th day of August, A. D. 1912.

J. C. HOLDEN,

(Seal.) County Clerk and Ex-Officio Recorder of Conveyances, Tillamook County, Oregon.

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YAMHILL COUNTY, OREGON,

List of deeds, contracts and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Yamhill County, Oregon, prior to November 19, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John T. Lady	Deed	11-27-72	Lot 2	29	5S	6W	16.30	58-68	L	581	1-7-93
John J. Calhoun	Deed	12-16-72	Lot 2	1	4S	5W	24.10	60.25	L	609	2-8-73
James F. Bewley	Deed	11-27-72	SW¼ of SE¼	9	5S	6W	40	90.00	L	622	2-18-73
Erastus Downing	Deed	11-27-72	Lot 3 & 4	1	5S	6W	39.84	125.50	L	742	4-5-73
Simeon G. Reed	Deed	11-27-72	Lot 3 & 4	25	5S	4W	2.68	30.15	L	726	4-1-73
John Dowling	Deed	11-27-72	Lot 6	15	4S	5W	31	77.50	M	47	5-22-73

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Job J. Carey	Deed	11-27-72	Lot 1	25	3S	4W	6.96	52.84	M	146	7-8-73
Daniel B. Putman	Deed	11-27-72	Lot 1	9	5S	4W	12.13	109.17	M	379	11-20-73
Albert L. Alderman	Deed	11-27-72	Lot 8	3	5S	3W	10.78	33.96	M	409	12-8-73
William C. Ralston	Deed	7-31-74	W½ of SW¼	1	2S	3W	1012.49	5132.07	N	301	8-29-74
			NE¼ of SE¼	3							
			NW¼ of SW¼	11							
			Lot 5	21							
			NW¼ of SE¼	23							
			& Land in Wash. Co.								
Robert J. Lancefield	Deed	11-27-72	Lot 1	19	5S	4W	11.92	85.83	O	651	1-10-76
William Campbell	Deed	11-27-72	SW¼ of NW¼	11	4S	5W	40	90.00	P	73	3-6-76
Daniel Johnson	Deed	11-26-74	Lot 1 & 3	1	4S	4W	20.34	164.76	O	151	4-3-75
Sidney H. Marsh	Deed	11-26-74	Lot 10 & 11	29	3S	2W	14.40	38.50	O	281	7-9-75

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Job J. Carey	Deed	11-26-74	Lot 2	25	3S	4W	6.96	5.68	O	344	8-27-75
Richard C. Hull	Deed	11-26-74	SW¼ of NE¼	5	3S	2W	40	144.00	O	467	11-2-75
A. R. Burbank	Deed	2-16-76	Lot 2	7	4S	3W	0.42	5.00	P	67	3-4-76
Martin Miller	Deed	2-16-76	Lot 6	3	4S	3W	20.05	100.25	P	223	5-13-76
William Douglas	Deed	2-16-76	Lot 1	13	2S	4W	50.70	202.80	P	381	9-12-76
John D. Dudley	Deed	2-16-76	Lot 1	13	3S	5W	32.40	204.20	Q	13	11-23-76
John McMaugh	Deed	8-17-76	W½ of NW¼	23	2S	3W	80	108.00	Q	67	1-6-77
Darling Smith	Deed	11-27-72	W½ of SW¼ NE¼ of NE¼	5	2S	4W	19.48	250.60	Q	90	1-26-77
Lewis C. Forrest	Deed	8-1-76	Lots 1, 2, 5, 6, 7 & 8	15	5S	3W	125.05	437.66	Q	253	6-22-77

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
B. Hill & Andrew C. Evans	Deed	9-9-75	Lots 10 & 11	35	4S	3W	10.05	33.15	Q	489	12-17-77
John Perry	Deed	1-19-78	SW¼	11	3S	5W	160	510.00	R	82	2-26-78
J. W. Lambert	Deed	1-19-78	Lots 2 & 3	3	5S	3W	15.22	83.71	R	104	3-16-78
J. W. Lambert	Deed	1-19-78	NW¼ of SW¼ & Lot 5	1	5S	3W	74.28	241.41	R	105	3-16-78
J. L. Castle	Deed	1-19-78	Lots 1, 2, 3, 4 & 5	5	3S	4W	48.59	150.00	R	106	3-16-78
William N. Cooper	Deed	1-19-78	Lot 1	19	5S	3W	10.05	50.25	R	123	3-27-78
Mrs. Anna Maria McDonald	Deed	1-19-78	SE¼ of NE¼ & Lots 4 & 5	7	5S	5W	44	140.00	R	140	4-8-78
David L. Matheney	Deed	1-19-78	Lot 6	27	5S	3W	29.24	79.00	R	167	5-3-78

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William T. Hash	Deed	1-19-78	Lot 5	27	3S	2W	20.96	104.80	R	198	6-1-78
Lester Potter	Deed	1-19-78	Lots 5, 6, 7, 8, 9 & 10	1	5S	6W	181.46	433.77	R	220	6-17-78
			Lot 1	11							
Nathan Westfall	Deed	1-19-78	Lot 1	7	3S	2W	1.91	4.00	R	279	7-17-78
Job J. Carey	Deed	2-16-76	Lot 3	25	3S	4W	6.96	37.60	R	342	9-14-78
Mrs. Elizabeth O. Stout	Deed	1-19-78	Lot 4	3	4S	3W	25.36	63.40	R	500	12-28-78
David C. James	Deed	11-26-74	NE¼ of NE¼	11	5S	7W	40	100.00	S	242	7-8-79
Otto Johnson	Deed	5-24-79	W½ of SW¼	35	2S	5W	80	250.00	S	258	7-21-79
Timothy S. Patty	Deed	5-24-79	Lots 1, 2, 3, 4	7	5S	6W	72.40	114.87	S	261	7-21-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. Potter	Deed	5-24-79	NW¼ of NW¼ E½ of SW¼ & Lots 1 & 2	3	5S	6W	189.83	400.00	S	311	8-21-79
John Dickey	Deed	1-19-78	SE¼ of SE¼	11	5S	7W	40	120.00	S	529	1-6-80
School Dist. No. 32, Yamhill Co. Oregon	Deed	1-19-78	Lot 1 & 2	21	3S	2W	7.67	21.00	T	85	3-24-80
Joseph Williams	Deed	1-19-78	SE¼ of SW¼	9	2S	4W	40	90.00	T	217	6-16-80
Huston B. Johnson	Deed	1-19-78	Lots 3, 4 & 5	13	2S	4W	95	380.00	U	16	3-9-81
Samuel Robbins	Deed	2-26-80	NE¼ of SE¼	3	6S	4W	40	100.00	T	238	7-9-80
J. C. Hawthorn	Deed	2-26-80	Lots 3 & 4	17	5S	5W	31.12	124.48	T	270	7-29-80
John J. Ray	Deed	2-26-80	E½ of NE¼	5	4S	5W	78.71	177.10	T	355	10-15-80
James M. Holston	Deed	2-26-80	Lots 3 & 4	21	3S	2W	12.42	22.40	T	482	12-20-80

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Frank Hindle	Deed	2-26-80	Lots 1 & 2	33	5S	7W	20.80	37.44	T	512	1-5-81
A. J. Switzer	Deed	5-24-79	NW¼ of NW¼	11	5S	7W	40	80.00	U	179	7-28-81
Robert L. Booth	Deed	1-19-78	NE¼ of NW¼	1	5S	7W	41.40	82.80	V	87	7-6-82
Susan LaChance	Ctf	10-26-82	NW¼ of NW¼	13	5S	6W	40	90.00	V	216	10-31-82
S. C. Foster	B&S	9-9-75	Lot 1	3	6S	6W	2.62	11.80	V	510	6-8-83
John Anderson	Ctf	3-12-84	E½ of SE¼	15	3S	2W	80	200.00	W	290	3-28-84
A. M. Peery	LWD	2-26-80	Lot 1	5	5S	3W	3.90	19.50	W	488	12-4-84
Wm. H. Miller	Ctf	6-18-83	NW¼ of NW¼ Lots 6 & 7	31	2S	3W	69.64	243.74	X	12	5-21-85
Samuel H. Pate	LWD	7-28-85	E½ of SW¼	27	4S	6W	80	144.00	X	292	2-25-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Benjamin T. Allumbaugh	LWD	9-15-85	SE¼ of NE¼ NE¼ of SE¼	35	2S	3W	80	260.00	X	315	3-11-86
Amos Wood	LWD	8-5-85	SW¼ of NE¼	27	2S	3W	40	120.00	X	362	4-12-86
Wm. H. Miller	LWD	9-2-85	Frac.N½ofNW¼	31	2S	3W	69.60	243.74	X	390	5-6-86
O&CR. R. Co.	QCD	9-5-85	NE¼ of NW¼ NW¼ of NE¼	11	5S	7W		192.00	X	233	12-28-85
Theodore H. Gilbert	LWD	10-21-85	W½ of NE¼	3	5S	7W	401.40	802.80	X	408	6-4-86
			S½ of SE¼, E½ of SW¼, NW¼ of SW¼, SW¼ of SW¼ NW¼ of SE¼, SW¼ of NW¼								
John Harris	LWD	9-15-85	Lots 6 & 7	21	2S	3W	27.27	68.17	X	411	6-4-86
Susan La Chance	LWD	8-12-85	NW¼ of NW¼	13	5S	6W	40	90.00	X	415	6-11-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Elizabeth I. Murray	LWD	9-23-85	SW¼ of SW¼ NE¼ of NE¼	11 15	3S	6W	80	120.00	X	432	6-23-86
John Stoutenberg	LWD	2-2-86	Lot 10	15	5S	3W	38.73	232.38	X	484	9-3-86
John W. Hanville	LWD	10-21-85	N½ of NE¼ SE¼ of NE¼	25	2S	3W	120	600.00	X	491	9-8-86
Patrick Ryan	LWD	9-2-85	W½ of SW¼	33	2S	5W	80	240.00	X	496	9-14-86
R. W. Phillips	LWD	8-5-85	N½ of SW¼ NW¼ of SE¼	15	5S	4W	120	360.00	X	502	9-20-86
Thaddeus M. Grubbs	LWD	1-7-86	S½ of NE¼	9	5S	7W	80	160.00	X	508	9-24-86
George Taylor	LWD	7-28-85	SW¼ of NW¼ & Lot 2	11	2S	4W	55.20	220.80	X	604	11-30-86
J. M. Bunn & Co.	LWD	10-12-86	SE¼ of SW¼	9	3S	6W	40	133.00	X	618	12-13-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. F. Bedwell & J. M. Bunn	LWD	10-12-86	SW¼ of SW¼	9	3S	6W	40	80.00	X	620	12-13-86
William Summers	LWD	7-28-85	SE¼ of SW¼	31	2S	2W	40	50.00	X	641	12-23-86
John J. Gerrish	LWD	7-28-85	Lot 1	3	2S	4W	17.70	70.00	X	667	1-20-87
Rollin Crawford	LWD	9-14-86	Lots 1, 2, 3, 4	1	3S	5W	65.26	261.04	X	705	3-4-87
John R. Booth & Shadrock Richardson	LWD	9-14-86	NE¼,E½ofNW¼ N½ of SE¼	9	3S	6W	320	400.00	X	711	3-9-87
John Anderson	LWD	9-15-85	E½ of SE¼	15	3S	2W	80	200.00	Y	9	3-18-87
W. S. Walt	LWD	8-12-85	Lot 1	21	2S	4W	2.69	15.00	Y	22	3-29-87
John T. Anderson	LWD	11-2-86	Lot 1	27	2S	5W	21.20	53.00	Y	33	4-7-87

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. Poppleton	LWD	12-7-86	W½ of SW¼ SE¼ of SW¼	17	3S	5W	120	240.00	Y	44	4-21-87
John McNemey	LWD	9-15-85	Lot 5	29	3S	3W	13.55	54.20	Y	60	4-28-87
John H. Walker	LWD	11-2-86	N½ of SW¼ (SW¼ of SW¼	23	3S	6W	120	200.00	Y	66	4-30-87
Paris McCain	B&S	1-19-78	Lots 2, 3, 4	31	5S	5W	20.26	243.12	Y	68	5-3-87
Mrs. Sarah A. McPhillips	LWD	11-2-86	Lot 2	15	4S	5W	8.41	33.64	Y	73	5-9-87
Mrs. Sarah M. Otis	LWD	9-14-86	SW¼ of NE ¼	25	2S	3W	40	160.00	Y	79	5-13-87
Harrison Z. Foster	LWD	6-21-86	Lots 1, 2, 3, 4 5, 6, 7, 8, 9	13	5S	7W	185.45	310.20	Y	99	6-6-87
Isaac Lambright	LWD	12-7-86	SW¼ of SW¼	19	4S	5W	41.76	83.52	Y	110	6-15-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Julia S. Blood	LWD	7-13-87	SE¼ of SE¼	9	2S	4W	40	120.00	Y	179	8-31-87
Margaret Casey	LWD	1-15-87	Lot 13	1	5S	6W	32	64.00	Y	183	9-6-87
Michael Casey	LWD	1-15-87	Lots 1 & 12 SE¼ of NE¼	1	5S	6W	70.39	140.75	Y	185	9-6-87
Malt Maroney	LWD	7-21-85	SW¼ of SE¼	23	2S	6W	40	90.00	Y	191	9-8-87
M. E. Hendrick	LWD	11-2-86	Lot 3 & 4	3	6S	3W	68.59	274.36	Y	195	9-9-87
Burnes Wiltze	LWD	3-9-87	SW¼	33	3S	5W	60	320.00	Y	200	9-14-87
Darling Smith	B&S	1-19-78	SW¼ of NE¼ & Lots 1, 2, 3	5	2S	4W	145.60	327.60	Y	243	10-8-87
Darling Smith	LWD	9-15-85	S½ of SE¼ SE¼ of SW¼	5	2S	4W	120	300.00	Y	244	10-8-87
Darling Smith	LWD	9-2-85	NW¼ of SE¼ NE¼ of SW¼	5	2S	4W	80	160.00	Y	247	10-8-87

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Darling Smith	LWD	9-2-85	NE¼ of SE¼ SE¼ of NE¼	5	2S	4W	80	240.00	Y	249	10-8-87
John Eborall	LWD	5-7-86	SW¼ of SW¼	25	4S	6W	40	120.00	Y	283	11-8-87
Robert L. Booth	LWD	10-12-86	N½ of NE¼ SE¼ of NE¼	1 35	5S 4S	7W 7W	122.40	166.00	Y	287	11-9-87
Hezikiah Bailey	LWD	11-15-87	NW¼ of NE¼ N½ of NW¼ SW¼ of NW¼	5	5S	6W	161.11	362.50	Y	382	1-4-88
James B. Rowell	LWD	12-5-87	NW¼ of NW¼	27	2S	3W	40	120.00	Y	443	2-18-88
William Woods	LWD	5-24-79	NE¼ of SE¼	31	4S	5W	40	80.00	S	326	9-11-79
John N. Townsend	LWD	9-25-85	Lot 3	35	4S	6W	32.02	76.00	Z	126	10-25-88
Henry Parrott	LWD	7-28-85	N½ of SE¼	13	3S	2W	80	160.00	Z	213	12-11-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Henry Parrott	LWD	5-24-79	SW¼ of NW¼	13	3S	2W	40	72.00	Z	218	12-11-88
F. T. Keyes	LWD	7-28-85	Lots 5 & 6	23	3S	3W	13.60	45.00	Z	320	1-14-89
Horace M. Cox	Ctf	3-4-88	Lots 1 & 2	1	3S	3W	48.88	122.20	Z	371	2-9-89
H. M. Daniel	LWD	3-5-86	S½ of SE¼	29	2S	5W	80	200.00	Z	568	4-30-89
R. Cutler	LWD	7-28-85	NE¼ of SE¼	9	2S	4W	40	144.00	Z	618	5-20-89
Malt Maroney	LWD	10-21-85	N½ of SW¼	25	2S	6W	80	200.00	22	530	2-15-90
N. S. Allen	LWD	8-5-85	E½ of SE¼	35	2S	5W	80	400.00	24	395	1-26-91
Mrs. Margaret W. Gibbs	Ctf	12-1-90	Lots 1 & 2 NE¼ of SE¼	3 9	3S	2W	112.15	260.38	24	412	1-31-91
James Steel	B&S	2-28-91	Lots 1, 2, 3 W½ of SW¼	21	3S	5W	80	200.00	24	567	3-23-91

O. & C. R. R. Co., et al.

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Steel	B&S	2-28-91	SW¼ of NW¼ NW¼ of SW¼	27	3S	5W	80	200.00	24	571	3-23-91
Carrie Kirkley	B&S	2-28-91	NW¼ of NW¼	23	3S	2W	40	80.00	24	573	3-20-91
James Steel	B&S	2-28-91	W½ of NW¼ NE¼ of NW¼	17	3S	5W	120	300.00	24	577	3-23-91
S. Root	B&S	3-13-91	SE¼ of NE¼ E½ of SE¼	19	4S	5W	120	240.00	24	591	3-24-91
Edmond Sweeney	B&S	2-28-91	S½ of NE¼	21	4S	5W	80	240.00	24	633	4-4-91
W. C. Heyden	LWD	8-5-85	W½ of NW¼	33	3S	5W	80	144.00	25	3	4-14-91
C. Kiser	B&S	2-28-91	W½ of SE¼ & Lots 2 & 3	25	3S	2W	122.16	305.40	25	7	4-20-91
John Newell	B&S	2-28-91	NW¼ of SW¼	5	5S	6W	40	80.00	25	68	4-16-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Alonzo & John Newell	LWD	9-2-85	SE¼ of SW¼	5	5S	6W	40	80.00	25	71	4-16-91
Clyde G. Atkin	B&S	2-28-91	NE¼ of NE¼	27	2S	3W	40	120.00	25	113	4-29-91
Mathias Guenther	B&S	2-28-91	Lots 1, 2, 3, 4	21	2S	3W	91.50	184.65	25	119	4-29-91
Wm. Ball	B&S	3-13-91	S½ of SE¼	19	2S	5W	80	200.00	25	144	5-6-91
Rosetta H. Nash	B&S	2-28-91	S½ of NW¼	11	5S	7W	80	160.00	25	159	5-9-91
Edward Cady	B&S	2-28-91	N½ of SE¼	29	2S	5W	80	200.00	25	168	5-12-91
N. K. Sitto n	B&S	2-28-91	E½ of NE¼	21	3S	6W	80	280.00	25	187	5-15-91
Oliver S. Vanosse	B&S	2-28-91	NE¼ of NW¼	23	3S	2W	40	80.00	25	200	5-18-91
Wm. C. M. Frakes	B&S	2-28-91	NW¼ of NW¼	19	2S	3W	39.05	160.00	25	227	5-20-91
A. Cummings	B&S	2-28-91	N½ of NW¼	15	2S	4W	80	220.00	25	249	5-29-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Max J. Lebold	B&S	2-28-91	Frac. SE¼ of SE¼	31	4S	5W	29.60	88.80	25	271	6-1-91
Geo. Inglis	B&S	2-28-91	S½ of NW¼	23	3S	2W	80	160.00	25	281	6-2-91
A. L. Myers	B&S	2-28-91	Lot 1	33	2S	3W	13.18	39.54	25	379	6-23-91
Leonard C. Smith	B&S	2-28-91	NW¼ of NE¼	11	3S	5W	40	200.00	25	387	6-24-91
D. H. Nickerson	B&S	2-28-91	Lots 7, 8, 9	33	5S	7W	41.25	82.50	25	419	7-3-91
Joseph Draper	B&S	2-28-91	N½ of SE¼ E½ of SW¼	3	4S	5W	160	320.00	25	469	7-18-91
Wm. Ball	B&S	5-2-91	S½ of NE¼	31	2S	5W	80	180.00	25	535	8-10-91
John W. Green	B&S	8-3-91	N½ of NW¼	29	2S	5W	80	200.00	25	548	8-14-91
Margaret W. Gibbs	B&S	2-28-91	Lots 1 & 2 NE¼ of NE¼ Lots 1, 2, 3	3 9	3S	2W	112.15	260.38	25	573	8-27-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
C. C. Lake	B&S	2-28-91	NW¼ of NW¼	5	2S	5W	39.18	80.00	25	580	8-31-91
J. F. Byers	B&S	2-28-91	NE¼ of NE¼	5	3S	5W	38.74	193.70	25	611	9-14-91
Richard Parrott	B&S	8-18-85	S½ of NE¼	23	3S	2W	80	160.00	26	36	10-3-91
Martha S. Parrott	B&S	2-28-91	W½ of NE¼ Lot 1	25	3S	2W	101.08	252.70	26	142	11-4-91
J. C. Roberts	B&S	8-3-91	N½ of SE¼	3	2S	5W	80	160.00	26	295	12-9-91
Alfred Manock	B&S	2-28-91	Lot 8	7	5S	4W	12.60	75.60	26	308	12-12-91
S. B. Gilpin	LWD	8-22-87	NE¼	9	2S	4W	160	460.00	26	376	12-30-91
J. F. Bakeman	B&S	2-28-91	N½ of SW¼	13	3S	5W	80	360.00	26	384	12-30-91
J. J. Waite	B&S	2-28-91	SE¼ of SW¼	15	2S	6W	40	100.00	26	531	2-6-92
Horace M. Cox	B&S	2-28-91	Lots 1 & 2	1	3S	3W	48.88	122.20	26	592	2-23-92

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Parrett	B&S	2-28-91	S½ of SE¼	13	3S	2W	80	160.00	27	3	3-3-92
Amos Wood	B&S	6-8-91	SE¼ of NW¼	27	2S	3W	40	120.00	26	638	3-5-92
Charles E. Fendall	B&S	2-28-91	W½ of NE¼ SE¼ of NW¼	21	4S	7W	120	240.00	27	63	3-21-92
Edward Wood	B&S	2-28-91	Lots 5 & 8	19	5S	6W	63.56	158.90	27	128	4-1-92
Jeremiah O'Brien	B&S	2-28-91	Lots 2, 3, 7, E½ Lot 4, SW¼ of NE¼ NW¼ of SE¼ NE¼ of SW¼	35	2S	3W	169.93	399.07	27	178	4-12-92
Jeremiah O'Brien	B&S	3-13-91	NW¼ of NE¼ NE¼ of NW¼	27	2S	3W	80	240.00	27	181	4-12-92
Joseph Petch	B&S	2-28-91	E½ of NW¼ NW¼ of NW¼	25 19	2S 2S	6W 5W	120.88	342.20	27	215	4-22-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Joseph Petch	B&S	2-28-91	NW¼ of SE¼ W½ of NW¼ N½ of SW¼	23	2S	6W	200	500.00	27	218	4-22-92
Joseph Petch	B&S	2-28-91	SW¼ of SW¼	23	2S	6W	40	100.00	27	220	4-22-92
Joseph Petch	B&S	3-13-91	NW¼ of SE¼ SE¼ of NW¼	19	2S	5W	80	200.00	27	222	4-22-92
Cyrus Jones	B&S	2-28-91	Lots 3, 4, 5, 6	33	5S	7W	95.65	334.77	27	292	5-6-92
Max J. Leabold	B&S	3-14-92	Lot 1, Frac. SW¼ of SE¼	31	4S	5W	11.20	50.00	27	328	5-14-92
John Sellwood	B&S	3-14-92	Lots 4, 5, 6	35	3S	2W	35.70	339.15	27	331	5-14-92
Isaac Amy	B&S	4-18-92	E½ of NE¼	21	5S	6W	80	200.00	27	335	5-14-92
Christian Anderson	QC	3-14-92	SW¼ of NW¼	1	2S	5W	40	190.00	27	373	5-31-92

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Edward J. Stephenson	LWD	11-15-87	SE¼ of NE¼	7	3S	5W	40	100.00	27	463	6-22-92
Sarah E. Bremmer	B&S	4-18-92	NW¼ of NE¼	23	2S	4W	40	100.00	27	469	6-23-92
L. Bettman	B&S	6-20-92	W½ of NE¼	9	4S	5W	80	240.00	27	498	7-2-92
William H. Wood	B&S	2-28-91	SE¼ of SE¼	35	2S	3W	40	120.00	27	512	7-5-92
William H. Wood	B&S	2-28-91	Lot 8	35	2S	3W	17.71	53.43	27	514	7-5-92
James Fairchilds	B&S	2-28-91	SE¼ of NW¼	29	2S	5W	40	100.00	27	538	7-9-92
Claus Muller	B&S	3-14-92	E½ of NW¼	9	2S	4W	80	160.00	27	588	7-27-92
Thomas Geldard	B&S	8-3-91	S½ of NE¼ SE¼ of NW¼	3	2S	5W	120	240.00	28	2	8-11-92
E. M. Graves	B&S	3-14-92	SW¼ of NW¼	23	4S	6W	40	140.00	28	16	8-15-92
N. A. Brown	LWD	8-22-87	Lots 1, 2, 3, 4	31	5S	6W	61.41	184.23	28	96	9-17-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Scott Bremer	B&S	6-20-92	SW¼ of NW¼	23	2S	4W	35.56	106.68	28	122	10-1-92
Scott Bremer	B&S	9-5-92	NW¼ of NW¼	23	2S	4W	40	120.00	28	206	10-27-92
Riley Thomas	B&S	9-5-92	S½ of SE¼	15	2S	4W	80	270.00	28	223	11-1-92
Ahio S. Watt	B&S	9-5-92	NE¼ of SW¼	15	2S	4W	40	140.00	28	225	11-1-92
Scott Bremer	B&S	11-9-92	NE¼ of NW¼	23	2S	4W	40	100.00	28	306	11-25-92
J. W. Bewley	B&S	11-5-92	NE¼ of NW¼ & Lot 6	23	5S	7W	61.48	153.70	28	409	12-27-92
Edmund Sweeney	B&S	12-5-92	SE¼ of NW¼	21	4S	5W	40	200.00	28	411	12-27-92
Milton W. Potter	B&S	12-5-92	SW¼ of NW¼	3	5S	6W	40	100.00	29	132	4-28-93
Charles Nash	B&S	3-14-92	NW¼ of SE¼	11	5S	7W	40	80.00	29	135	4-28-93
E. F. Lamson	B&S	2-28-91	NW¼ of SE¼	3	6S	7W	40	130.00	29	187	5-23-93

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. Hanning	B&S	2-24-93	SW¼ of NE¼	25	2S	6W	40	120.00	29	199	5-29-93
William Ball	B&S	3-14-92	E½ of NW¼	23	2S	6W	80	200.00	29	212	6-3-93
Wm. Ball	B&S	2-24-93	E½ of SW¼	19	2S	5W	80	200.00	29	215	6-2-93
Henry J. Harbaugh	B&S	7-28-85	Lot 1	7	3S	3W	4.90	10.00	29	232	6-10-93
George James Champiore	B&S	5-8-93	SE¼ of NE¼	29	3S	5W	40	140.00	29	249	6-20-93
C. F. Strohm	B&S	2-24-93	Lots 1 & 2	35	5S	7W	27.03	81.09	29	269	6-27-93
J. C. Gillett	B&S	2-28-91	E½ of NE¼	9	5S	6W	80	160.00	29	309	7-17-93
Thomas Geldard	B&S	9-5-92	NW¼ of NW¼	3	2S	6W	40.08	90.18	30	48	12-26-93
John W. Thomas	LWD	9-15-85	SE¼ of SW¼	11	2S	4W	40	160.00	29	504	10-24-93
Isaac Meyer	B&S	2-28-91	SW¼ of SW¼ S½ofNW¼ofSW¼	3	2S	4W	60	150.00	29	614	11-28-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Isaac Meyer	B&S	2-28-91	SE¼ of SW¼ S½ofNE¼ofSW¼ & Lots 3 & 4	3	2S	4W	93.20	326.20	29	616	11-28-93
Emma Smith	B&S	7-3-93	N½ of NW¼	25	2S	4W	80	280.00	30	261	3-23-94
William Whalen	LWD	11-2-86	Frac. NE¼ of NE¼	5	5S	6W	39.97	79.94	30	462	6-25-94
John & James Whalen	B&S	3-14-92	SW¼ of NE¼	33	4S	6W	40	80.00	30	465	6-25-94
John Petch	LWD	8-12-85	SW¼ of NW¼	31	2S	5W	41.79	96.50	30	501	7-23-94
John Petch	LWD	8-18-85	SW¼ of SE	25	2S	6W	40	96.30	30	504	7-23-94
Joseph Petch, Bessie Phelps & Hannah Watson	B&S	11-14-93	SE¼ of NE¼	25	2S	6W	40	120.00	30	507	7-23-94

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	B&S	11-14-93	N½ of SE¼	25	2S	6W	80	200.00	30	509	7-23-94
do	B&S	11-14-93	N½ of NW¼	31	2S	5W	81.65	244.95	30	511	7-23-94
do	B&S	11-14-93	SE¼ of NE¼ & Lot 1	35	2S	5W	58.00	174.00	30	513	7-23-94
do	B&S	11-14-93	SE¼ of SE¼ Ex. 6.24 A. in SE corner	25	2S	6W	33.76	84.40	30	515	7-23-94
do	B&S	11-14-93	R/W to haul logs & timber across 6.24 A.	25	2S	6W	1.00	1.00	30	517	7-23-94
J. Burns	B&S	4-30-94	SW¼ of NW¼	27	2S	3W	40	120.00	30	521	7-23-94
Charles Nash	B&S	7-3-93	SW ¼of NE¼	11	5S	7W	40	80.00	32	32	10-16-94
Mrs. M. A. Cave	B&S	9-5-92	SE¼ of SE¼	29	4S	6W	40	100.00	32	137	11-24-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. C. Goodrich	B&S	9-2-85	NE¼ of NW¼ SW¼ of NW¼	15	3S	6W	80	160.00	32	141	11-26-94
Jeremiah O'Brien	B&S	9-2-85	Lot 5 & part of Lot 4	35	2S	3W	21.86	54.65	32	207	12-29-94
Michael McNamee	B&S	11-26-74	Lot 1	27	2S	3W	4.60	14.49	32	210	12-29-94
Leo Kosack	B&S	11-9-92	Lots 1 & 3	27	5S	6W	3.51	16.70	32	217	12-31-94
Robert L. Booth	B&S	1-29-94	S½ of SW¼	35	4S	7W	80	200.00	32	239	1-9-95
C. C. Pervine	B&S	10-15-94	SW¼ of SW¼	21	2S	5W	40	100.00	32	253	1-15-95
R. Y. Fendall	B&S	2-4-95	N½ of NW¼ SW¼ of NW¼	21	5S	7W	120	300.00	32	371	3-5-95
Mrs. Emma F. Winfield	B&S	2-4-95	SW¼ of NE¼ SW¼ of SE¼	19	4S	5W	80	200.00	32	409	3-25-95

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Dennis Gallagher	B&S	4-30-94	S½ of SW¼ Lots 4 & 5	23	5S	7W	92	322.00	32	471	5-15-95
Jens Carlson	B&S	5-6-95	SE¼ of NE¼ NE¼ of SE¼	33	3S	5W	80	200.00	32	496	5-28-95
Francis A. Fletcher	B&S	5-6-95	W½ of SE¼	1	5S	7W	80	200.00	32	543	7-6-95
Willamette Pulp & Paper Co.	B&S	7-1-95	Lot 6	1	5S	3W	32	176.00	32	552	7-20-95
William Dixon	B&S	11-14-93	S½ of SW¼	25	2S	4W	80	320.00	33	41	11-5-95
W. O. Sunderland	B&S	2-28-91	Lots 5 & 6	7	5S	6W	43	64.50	33	94	1-8-95
R. L. Stowe	B&S	9-30-91	N½	31	3S	5W	327.53	655.06	33	110	1-16-95
Frank A. Fletcher	B&S	11-6-91	N½ of NE¼	9	5S	7W	80	160.00	33	127	2-3-95
George Davis	B&S	3-13-91	NE¼ of SW¼	15	2S	6W	40	100.00	33	625	1-2-97

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Willamette Pulp & Paper Co.	QC	5-11-96	Lot 5	25	5S	3W	18.43	105.05	34	196	5-17-97
Roger D. Tompkins	B&S	11-9-96	Lot 6	25	5S	3W	58.50	146.25	34	212	5-27-97
Crosby Dickerson	LWD	10-5-87	W½ of SW¼	23	3S	2W	80	160.00	34	247	6-16-97
Fred Williams	B&S	6-20-92	N½ of NE¼	25	2S	6W	80	240.00	34	361	10-2-97
Frederick Williams	B&S	2-28-91	S½ of SW¼	25	2S	6W	80	200.00	34	363	10-2-97
Michael Aylward	B&S	7-3-93	W½ of SE¼	27	4S	6W	80	160.00	34	374	10-11-97
J. F. Byers	B&S	11-8-97	W½ of NW¼	5	3S	5W	78.98	276.43	34	443	12-8-97
Margaret Casey et al. (heirs of Patrick Casey, Dec'd.	B&S	7-26-97	Lots 2 & 3	21	4S	5W	59.60	298.00	34	482	1-15-98

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. L. Bower	B&S	2-28-91	N½ of NE¼ Lots 1 & 2	33	2S	5W	125.98	377.94	34	526	2-25-98
Alfred Wilson	B&S	2-24-93	S½ of SE¼	31	4S	6W	80	200.00	34	626	5-16-98
Henry Holtgrieve	LWD	9-2-85	SE¼ of NE¼ NE¼ of SE¼ Lots 1, 2, 3, 4	29	2S	3W	204.50	384.00	34	628	5-16-98
J. M. Agee	B&S	6-18-94	E½ of SE¼	23	4S	6W	80	200.00	36	26	6-22-98
John Kirkley	QCD	2-15-97	Lot 1	27	3S	2W	7.20	25.00	36	279	1-30-99
A. J. Loban	QCD	8-29-98	NW¼ of SW¼	29	3S	5W	40	208.12	36	343	3-23-99
C. L. Fendall	B&S	2-4-95	E½ of NE¼	21	5S	7W	80	240.00	36	346	3-27-99
Peter Hein	QC	12-12-98	NE¼ of NE¼	25	3S	2W	40	140.00	36	467	6-17-99
Wm. Ridgley	QC	4-3-99	SE¼ of NW¼	23	2S	3W	40	220.00	36	482	6-28-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Stoutenburg	QC	2-6-99	SE¼ of SE¼	15	5S	3W	40	400.00	36	496	7-6-99
A. Klosterman	QC	6-12-99	Lots 1 & 2	13	3S	4W	0.87	7.50	36	538	8-5-99
Margaret Grace	QC	6-12-99	Lot 1	15	3S	5W	30.60	153.00	36	626	11-4-99
Amanda F. Fendall	B&S	9-30-91	S½ of NW¼	9	5S	7W	80	160.00	39	79	1-19-00
Amanda F. Fendall	B&S	9-30-91	N½ of SW¼	9	5S	7W	80	160.00	39	81	1-19-00
Adam Knobel	QC	4-23-00	S½ of NE¼	3	6S	7W	80	600.00	39	298	5-28-00
Charles August Blane	B&S	2-28-91	SE¼ of SE¼	29	2S	3W	40	100.00	39	317	6-5-00
J. C. Gates & J. W. Henry	B&S	5-28-00	6.24 A. by metes & bounds in (Ex. R of W)	25	2S	6W	6.24	15.60	39	349	7-6-00
R. L. Booth	QC	5-28-00	N½ of NE¼	33	4S	7W	80	200.00	39	404	9-10-00

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
O. S. Boyles & W. B. Williams	B&S	8-21-93	SE¼ of SW¼	23	2S	6W	40	80.00	39	535	12-28-00
Sam Doney, Sr. et al. (heirs of Lydia Doney, decd.)	B&S	8-23-00	N½ of SE¼	15	2S	4W	80	240.00	39	563	1-18-01
J. W. Bewley	QC	12-17-00	Lot 4	27	5S	7W	24.75	99.00	39	604	3-4-01
Florence Gill	QC	12-17-00	SW¼ of SE¼	11	4S	6W	40	160.00	39	613	3-11-01
Geo. W. Perkins	QC	12-17-00	SW¼ of NW¼	15	2S	6W	40	100.00	41	50	4-13-01
Geo. W. Perkins	QC	12-17-00	NW¼ of SW¼	15	2S	6W	40	100.00	41	52	4-13-01
Geo. W. Perkins	QC	12-17-00	W½ of NE¼	23	2S	6W	80	200.00	41	54	4-13-01
Geo. W. Perkins	QC	12-17-00	E½ of NE¼	23	2S	6W	80	200.00	41	57	4-13-01
Sarah McPhillips	QC	2-18-01	SW¼ of SE¼	15	4S	5W	40	320.00	41	218	6-11-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John A. Andrews	B&S	2-28-91	W½ of NE¼	29	2S	5W	80	200.00	41	258	7-5-01
John A. Andrews	B&S	2-28-91	SE¼ of NE¼	29	2S	5W	40	100.00	41	260	7-5-01
W. T. Macey	TaxD	7-25-01	SW¼ of SE¼	29	4S	6W	40	5.10	41	369	8-5-01
R. L. Booth	QC	6-10-01	NE¼ of NE¼	35	4S	7W	40	114.00	41	482	8-31-01
R. R. Jones	B&S	5-8-93	SW¼ of SE¼	29	4S	6W	40	100.00	41	492	11-5-01
J. A. Young	TaxD	7-25-01	SW¼ of NW¼	3	5S	6W	40	5.10	41	504	11-7-01
J. W. Foster	QC	3-3-02	Lots 1 & 2	21	5S	6W	65.44	380.00	43	7	3-11-02
John Wortman	QC	10-29-00	N½ of N½ S½ofSW¼&SE¼	29	3S	6W	400	1140.00	43	10	3-17-02
John Wortman	QC	10-29-00	S½ of N½ N½ of SW¼	29	3S	6W	240	684.00	43	11	3-17-02
Jens Nelson	QC	4-7-02	NE¼ of SE¼	21	5S	6W	40	200.00	43	65	6-25-02

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. R. Booth	QC	7-7-02	S½ of SW¼	31	4S	6W	82.08	328.32	43	148	12-3-02
William H. Egan	B&S	12-1-02	SE¼ of NW¼	15	2S	4W	40	160.00	43	163	12-24-02
I. Z. Daugherty	TaxD	7-25-01	SW¼ of NE¼ Lots 2 & 11	1	5S	6W	62.30	6.10	43	174	1-16-03
Elizabeth, William & Mathew Geldard	QC	12-3-02	NW¼ of NW¼	3	2S	5W	40.08	90.18	43	188	2-17-03
W. F. Enos & Sumner Carr	B&S	3-14-92	S½ of NE¼ SE¼ of NW¼ NE¼ of SE¼	3	3S	6W	160	400.00	43	284	6-22-03
Francis Hanswirth	B&S	2-28-91	N½ of SW¼	11	3S	6W	80	160.00	43	308	7-25-03
Edwin B. Morse	QC	2-2-03	SW¼ of SW¼	9	5S	7W	40	100.00	43	310	7-27-03
Edwin B. Morse	QC	2-2-03	SE¼ of SW¼	9	5S	7W	40	100.00	43	314	8-3-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. C. Apperson & W. S. Link	QC	6-8-03	N½ of NE¼	3	3S	6W	82.71	413.55	43	322	8-8-03
Charles Grissen	QC	10-5-03	NW¼ of SE¼ E½ofNW¼&SW¼	11	4S	6W	280	880.00	43	385	11-19-03
Charles Grissen	QC	10-5-03	All	15	4S	6W	640	1920.00	43	386	11-19-03
Charles Grissen	QC	10-5-03	E½ of SE¼	11	4S	6W	80	300.00	43	387	11-19-03
Charles Grissen	QC	10-5-03	S½ of NE¼	11	4S	6W	80	320.00	43	388	11-19-03
Fielder Wood	LWD	9-7-03	SW¼ of NE¼	23	2S	3W	40	220.00	43	398	12-1-03
Edgar Poppleton	B&S	2-28-91	NE¼ of NE¼	19	3S	5W	40	100.00	43	467	1-29-04
William Hager	QC	3-7-04	NW¼ of NE¼ E½ of NE¼	23	5S	3W	120	720.00	43	605	5-23-04

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Matt Maroney	B&S	9-7-03	S½ of NE¼ SE¼ of NW¼ NE¼ of SE¼	27	2S	6W	160	400.00	46	43	9-27-04
Wm. G. Moore & Joseph & Wm. McHardy	QC	2-8-04	SW¼ of NW¼	5	2S	5W	40	120.00	46	105	12-10-04
Mathew Maroney	LWD	9-2-85	SE¼ of SE¼	23	2S	6W	40	90.00	46	217	6-8-05
W. A. Howe	QC	7-20-05	N½ of NE¼ W½ of NW¼ NE¼ of NW¼ NW¼ of SE¼	27	2S	6W	240	720.00	46	281	8-18-05
Geo. W. Perkins & Jno. K. Sampson	LWD	7-28-85	NE¼ of SE¼	23	2S	6W	40	90.00	46	309	11-7-05
H. T. Mills	B&S	2-24-05	Lot 2 (SEofNW	15	5S	4W	17	76.50	46	319	12-1-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
M. S. Adams	B&S	6-6-05	SW¼ of(NE¼	15	3S	6W	80	240.00	46	320	12-2-05
E. G. Lantis	QC	10-31-05	NE¼ of NE¼	21	2S	5W	40	160.00	46	409	3-26-06
Ammon Shadden	B&S	2-2-03	E½ of SE¼	21	3S	6W	80	240.00	43	189	2-17-03
John Sellwood	Cont	6-26-90	Lots 4, 5, & 6	35	3S	2W	35.70	339.15 BofCont		306	8-7-91
Christian Anderson	Cont	9-27-90	SW¼ of NW¼	1	2S	5W	40	190.00 CofBonds&C		37	4-30-92

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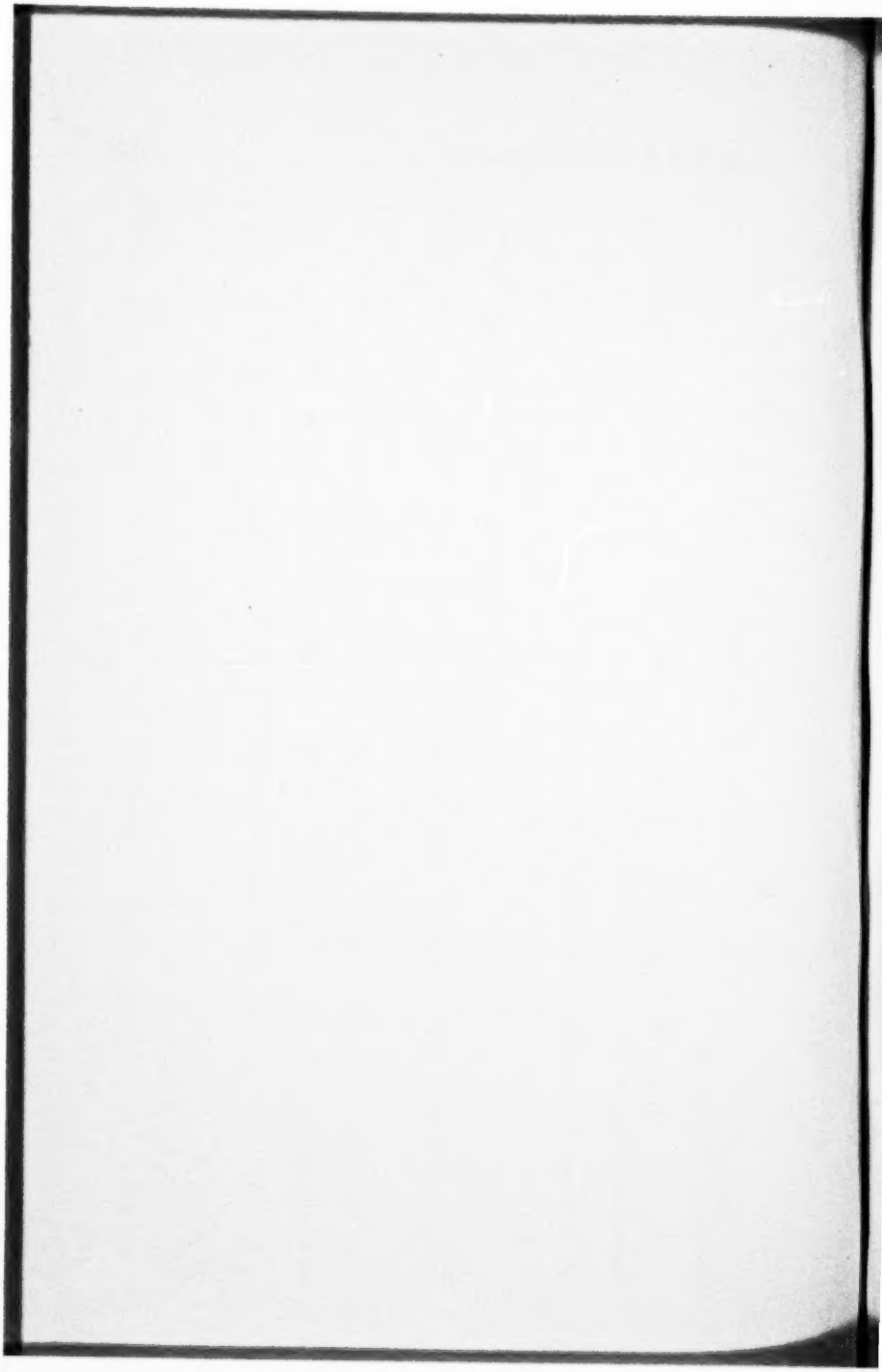
State of Oregon)
County of Yamhill)ss.

I hereby certify that the foregoing eight sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 24, 1912.

H. S. MALONEY,
County Recorder of Yamhill County, Oregon.

(Seal.)



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POLK COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Polk County, Oregon, prior to November 16, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Franklin Yocum	QCD	11-27-72	Lot 4	23	6S	7W	15.14	54.51	8	279	12-8-73
David M. Guthrie	Deed	11-26-74	Lots 2 & 7	19	8S	5W	21.24	47.79	9	301	4-5-75
Paul Ohling	Deed	1-19-78	N½ of N½	1	10S	6W	187.70	254.62	11	414	3-1-78
Smiley Carter	Deed	1-19-78	NE¼ of NE¼	3	10S	7W	47.00	105.85	11	631	9-9-78
Henry Christian	Deed	2-16-76	NW¼ of NE¼	11	9S	4W	40	180.00	12	294	3-7-79
Ezra T. Hallock	Deed	1-19-78	N½ of NE¼ N½ of NW¼	7 9	8S 8S	6W 6W	160	432.00	13	58	3-8-80

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Robt. M. Montgomery	Deed	1-19-78	Lot 2	23	9S	6W	11.90	29.75	13	79	3-29-80
Adelbert Coon	Deed	1-19-78	Lot 1	23	8S	6W	9.99	35.00	12	509	9-6-79
J. B. Syron	Deed	5-24-79	Lot 1	7	6S	5W	11.94	191.04	12	560	11-13-79
Henry Byerley	War Deed	2-26-80	Lot 3	15	6S	5W	9.60	86.40	13	212	7-9-80
Rufus A. Porter	WD	2-26-80	Lot 1 & 5.67 acres off of N. end Lot 2	9	6S	6W	18.90	141.75	13	504	1-14-81
Jas. H. Burns	WD	2-1-81	Lot 4	35	8S	6W	12.14	30.35	13	542	2-7-81
I. M. Simpson	WD	2-1-81	Lots 3 & 5	31	9S	6W	45.03	101.32	13	545	2-7-81
J. F. Eschricht	Deed	9-23-85	W½ of NE¼ & NE¼ of NW¼	25	9S	7W	120	300.00	18	13	2-26-86
J. F. Eschricht	Deed	12-11-85	W½ of NW¼	25	9S	7W	80	200.00	18	17	2-26-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. F. Eschricht	Deed	12-11-85	SE¼ of NW¼	25	9S	7W	40	100.00	18	21	2-26-86
J. F. Eschricht	Deed	12-11-85	S½ of SE¼	23	9S	7W	80	200.00	18	24	2-26-86
Geo. W. Lee	Deed	7-28-85	Lot 1	17	8S	5W	8	21.50	18	31	3-9-86
Chas. L. Alderman	Deed	8-18-85	N½ of NE¼	15	6S	4W	80	200.00	18	34	3-11-86
J. B. Lewis	Deed	8-12-85	NE¼ of SE¼	5	9S	6W	40	90.00	18	42	3-16-86
Sam'l Auguste Gross	Deed	8-12-85	SE¼ of NW¼	21	6S	7W	40	180.00	18	46	3-17-86
L. J. & W. F. Sleppy	Deed	8-12-85	W½ of NW¼	17	7S	6W	80	200.00	18	61	4-9-86
L. J. & W. F. Sleppy	Deed	8-12-85	NW¼ of SW¼	17	7S	6W	40	100.00	18	65	4-9-86
Joseph E. Brown	Deed	9-15-85	Lot 2	9	7S	6W	37.60	89.30	18	69	4-9-86
J. B. Trellinger	Deed	12-11-85	Lots 1 and 2	9	6S	7W	56.56	161.55	18	86	4-26-86
Wm. Savage	Deed	10-21-85	NE ¼of SE¼	7	6S	6W	82	410.00	18	161	8-4-86
			Lot 2	17	6S	6W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Savage	Deed	10-21-85	Lot 7	7	6S	6W	38.75	193.75	18	165	8-4-86
W. C. Brown	Deed	7-12-86	SW¼ of NW¼	19	9S	6W	46.35	153.10	18	188	9-11-86
W. C. Brown	WD	7-12-86	NW¼ of SE¼ & NE¼ of SW¼ SE¼ of NW¼	19	9S	6W	120	210.00	18	196	9-11-86
Micajah Morrison	WD	2-2-86	E½ of NE¼	17	9S	6W	80	160.00	18	239	11-18-86
C. A. Frantz	WD	10-12-86	NW¼ of NE¼	3	10S	7W	45.51	117.50	18	288	12-7-86
J. B. Lewis	WD	11-2-86	NW¼ of SE¼	5	9S	6W	40	100.00	18	358	3-25-87
D. M. Guthrie, T. G. Richmond, A. H. Whitley	WD	11-2-86	NE¼	21	7S	6W	160	200.01	18	409	5-9-87
David M. Guthrie	WD	6-7-87	Lots 5 & 6	3	7S	3W	87.25	147.31	18	446	7-16-87

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
D. R. Evans	WD	11-2-86	Lot 2 (except 5.67 acres off N end)	9	6S	6W	24.64	184.80	18	475	9-8-87
J. H. Weaver, J. L. Riggs	WD	7-13-87	Lot 2	27	8S	6W	37.62	186.80	18	487	10-12-87
United States	Deed	9-21-87	S½ of SE¼	3	9S	6W	——	1.00	18	599	1-26-88
Robert Clark	WD	8-5-85	NE¼	19	9S	6W	160.00	280.00	18	617	2-23-88
George Jackson	WD	6-7-87	Lots 4 & 5	19	7S	5W	25.46	120.22	19	2	5-7-88
B. Dove	WD	9-20-87	E½ of SE¼	35	9S	7W	80	275.00	19	38	5-14-88
E. Y. Hallock	WD	11-15-87	SW¼	33	7S	6W	160	400.00	19	360	7-31-89
E. Y. Hallock	WD	10-21-85	S½	5	8S	6W	320	800.00	19	364	7-31-89
E. M. Branson	WD	12-7-86	Lot 3	5	6S	6W	12.07	60.35	22	188	9-24-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Andrew Olsen	WD	7-28-85	SE¼ of SE¼	21	7S	6W	40	100.00	22	304	12-31-90
A. M. Miller	WD	8-5-85	Lots 6	33	6S	5W	15.14	30.28	22	345	2-3-91
James B. McTimmons	Deed	2-28-91	NE¼ of NW¼	9	9S	6W	40.00	100.00	22	472	5-20-90
Samuel A. Gross	Deed	2-28-91	NE¼ of SW¼ & Lot 1	21	6S	7W	65.50	196.50	22	478	5-22-91
George Werts	Deed	2-28-91	NE¼ of SW¼	21	9S	6W	40	100.00	22	528	5-27-91
John M. Phy, T. G. Richmond	WD	11-2-86	NW¼	21	7S	6W	160	199.98	22	531	5-29-91
Nellie Haggard	Deed	2-28-91	SE¼ of NE¼	3	10S	7W	40	100.00	22	537	6-1-91
John H. Watson	Deed	2-28-91	NW¼ of SE¼ SE¼ of SW¼	3	10S	6W	80	160.00	22	541	6-4-91 Also 50-76-3-4-09
Truman O. Bevens	Deed	2-28-91	S½ of NE¼ NW¼ of SE¼	3	10S	6W	120	240.00	22	544	6-6-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. Jay Brown	Deed	2-28-91	Lots 4, 5, 6, 7, 8	15	9S	6W	46.87	140.61	22	567	7-7-91
R. Clark	Deed	5-1-91	Lots 7, 8, 9	33	9S	6W	66.62	145.39	22	570	7-7-91
J. P. & M. M. Bevens	Deed	2-28-91	W½ of SW¼	3	10S	6W	80	160.00	22	612	8-14-91
Theodore P. Bevens	Deed	2-28-91	S½ of NW¼ NE¼ of SW¼	3	10S	6W	120	240.00	22	616	8-14-91
Dr. Victor Fink	Deed	2-28-91	Lots 4 & 5 Lots 6, 7 & 8	17 19	7S 7S	5W 5W	95.09	285.27	24	1	9-17-91
F. K. Hubbard, W. T. Shurtleff	Deed	12-21-91	E½ of NE¼	17	8S	6W	80	320.00	24	157	1-20-92
Chas. Sheythe	Deed	11-16-91	SW¼	25	9S	7W	160	400.00	24	181	2-3-92
R. Glennie	Deed	12-21-91	W½ of NW¼ W½ of SW¼ SE¼ of SW¼	21	6S	7W	200	600.00	24	256	4-7-92

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Andrew Peterson	WD	6-29-89	Lot 1	1	8S	6W	13.53	32.20	24	301	5-23-92
E. B. Doty	Deed	3-14-92	SW¼ of NW¼ 'NW¼ of SW¼	1	10S	7W	80	200.00	24	335	7-2-92
John Weinberger	Deed	2-28-91	N½ of NW¼	19	9S	6W	86.34	151.10	24	477	10-10-92
C. G. Rowell	Deed	8-3-91	N½ of SE¼	31	8S	6W	80	240.00	24	564	11-16-92
C. G. Rowell	Deed	2-28-91	SE¼ of NE¼	31	8S	6W	40	200.00	24	567	11-16-92
Martha E. Collins	Deed	2-28-91	Lots 5 & 6	29	9S	6W	68.32	170.80	24	617	12-13-92
Joseph Edwards	Deed	3-14-92	Lots 7 & 8	31	9S	6W	22.66	86.11	26	93	3-28-93
E. Y. Hallock	Deed	2-28-91	S½ of NE¼	33	7S	6W	80	200.00	26	154	5-23-93
E. Y. Hallock	WD	12-7-86	NE¼ of NW¼	7	8S	6W	40	133.00	26	157	2-23-93
John L. Illingsworth	Deed	5-8-93	E½ of NE¼ N½ of SE¼	9	8S	6W	160	400.00	26	206	7-11-93

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. C. Fischer	Deed	9-30-91	SE¼	25	9S	7W	160	400.00	26	257	8-14-93
Chas. E. Drumeller	Deed	2-24-93	SW¼ of SE¼	7	8S	6W	40	140.00	26	285	9-29-93
Thomas Holman	Deed	10-15-94	Lot 11	15	7S	3W	39.38	157.52	26	576	11-28-94
R. P. Osborn	Deed	2-28-91	SE¼ of SE¼	29	8S	5W	40	200.00	26	585	12-3-94
John Weinberger	Deed	2-28-91	N½ of NW¼	19	9S	6W	86.34	151.10	24	477	10-10-92
J. H. Weaver, L. W. Riggs	Deed	9-30-91	E½ of NW¼	33	8S	6W	120	360.00	30	61	5-2-95
			SW¼ of NE¼	33	8S	6W					
M. M. Ellis	Deed	2-24-93	N½ of NW¼ & NE¼	21	9S	6W	240	480.00	30	505	12-22-96
M. P. Jones	Deed	3-14-92	Lot 2	23	6S	5W	.37	10.00	30	547	3-11-97
Joseph R. Hubbard	WD	10-21-85	Lots 4 & 5	35	9S	5W	47.20	141.60	30	554	5-2-97

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. G. White	WD	9-5-92	Lots 1 & 2	21	8S	6W	29.96	269.30	30	579	5-20-97
E. G. White	Deed	6-20-92	Lot 1	27	8S	6W	11.93	107.71	30	582	5-20-97
Florence A. Wolfe	Deed	3-14-92	N½ of NE¼	33	8S	6W	80	240.00	30	624	7-9-97
Willamette Pulp & Paper Co.	QC	2-15-97	Lot 5	21	6S	3W	10.11	80.00	32	35	9-8-97
Mrs. S. C. Price	Deed	2-15-97	NW¼ of NW¼ Lots 2, 3 & 4	33	9S	6W	57.55	287.75	32	106	11-19-97
Luckiamute Mill Co.	Deed	12-20-97	SW¼ of SW¼	25	8S	7W	40	220.00	32	152	2-11-98
Lee Rowell	Deed	4-11-98	Lots 1 & 2	1	7S	7W	108.94	326.82	32	350	11-2-98
R. Suitor, R. J. F. Thurston	QCD	8-29-98	E½ of NE¼	1	8S	7W	80.06	190.00	32	376	11-19-98

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Robt. Suitor, R. J. F. Thurston	QCD	12-12-98	NE¼ of SE¼ SW¼ of SE¼	1	8S	7W	80	190.00	32	543	2-11-99
Alexander Couter	Deed	7-5-99	S½ of SW¼	7	8S	6W	84.18	420.90	34	187	9-6-99
J. P. Simpson	Deed	1-29-94	SE¼ of NE¼	35	9S	7W	40	200.00	34	251	10-25-99
J. P. Simpson	QCD	2-15-97	NW¼ of SE¼	35	9S	7W	40	160.00	34	254	10-25-99
J. P. Simpson	QCD	2-15-97	NE¼ of SW¼	35	9S	7W	40	160.00	34	257	10-25-99
E. C. Bump	Deed	2-28-91	Lots 8 & 9	5	10S	6W	28.50	71.25	34	337	12-26-99
J. D. Smith	QCD	10-9-99	Lots 2 & 3	5	9S	5W	18.75	112.50	34	348	12-29-99
J. W. Yost	Deed	2-12-00	SW ¼of SE¼	19	9S	5W	40	100.00	34	461	3-28-00
T. N. Ottinger	Deed	4-23-00	Lots 2, 3, 4 & SW¼ of SW¼	29	6S	6W	90.75	236.55	34	534	6-5-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. D. Gilliam	QCD	6-6-98	SW¼ of NE¼	5	9S	6W	40	140.00	34	590	7-31-00
W. D. Gilliam	QCD	6-6-98	SE¼ of NE¼	5	9S	6W	40	140.00	34	593	7-31-00
A. Prescott, J. E. Veness	QCD	5-28-00	SE ¼of NW¼	35	9S	7W	40	180.00	35	48	12-5-00
L. Lemmon	QCD	10-29-00	S½ of SW¼	19	9S	6W	86.36	302.26	35	85	1-3-01
Mary Ann Elizabeth Price	Deed	12-17-00	NE¼ of NW¼ NW¼ of NE¼	11	10S	7W	80	200.00	35	105	1-25-01
Luckiamute Mill co	QCD	10-29-00	SE¼ of NE¼	35	8S	7W	40	400.00	35	116	2-8-01
George A. Blanchard	QCD	2-18-01	NE¼ of SE¼	13	8S	7W	40	160.00	35	162	4-20-01
George A. Blanchard	QCD	2-18-01	SE¼ of NE¼	13	8S	7W	40	140.00	35	165	4-20-01

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. N. Moores	QCD	5-28-00	N½ of NW¼ E½ of SE¼ NE¼	27	9S	7W	320	1425.00	35	167	4-20-01
Capital Lumbering Co.	QCD	3-14-92	S½ of NE¼ SW¼ of NW¼	33	9S	7W	120	684.00	35	170	4-20-01
T. H. March	QCD	2-18-01	Lots 5 & 6	9	7S	6W	29.11	72.78	35	222	7-1-01
T. H. March	QCD	2-18-01	Lot 4	9	7S	6W	25.47	63.67	35	225	7-1-01
The Thurston Lumber Co.	QCD	9-3-00	SE¼	3	8S	7W	160	480.00	35	313	9-19-01
Thurston Lbr. Co.	QCD	7-29-01	S½ of NE¼ SE¼ of NW¼	9	8S	7W	120	360.00	35	316	10-19-01

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
W. E. Doty, E. B. Doty, J. P. Minch	Deed	9-3-00	NW¼ of NW¼	7	10S	6W	364.58	911.45	35	434	3-1-02
			SW¼ of NE¼	1	10S	7W					
			SE¼ of NW¼								
			W½ of SE¼								
			E½ of SW¼								
			SW¼ of SW¼								
			NE¼ of NE¼	11	10S	7W					
Oloy Loyd Guyer	Deed	12-2-01	E½ of NE¼	35	9S	6W	80	320.00	35	481	4-2-02
Thurston Lbr. Co.	QCD	12-2-01	N½ of SE¼	9	8S	7W	120	304.00	35	630	8-20-02
			NE¼ of SW¼								
Carl Peterson	WD	9-15-85	NW¼ of NE¼	31	8S	6W	80	304.00	38	32	9-26-02
			NE¼ of NW¼								

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. C. McClure	Deed	10-6-02	Lot 4 & SW¼ of NW¼	1	9S	8W	93.44	373.76	38	170	12-8-02
W. C. McClure	QCD	10-6-02	E½ of NW¼	1	9S	8W	93.51	374.04	38	171	12-8-02
F. F. Tooze	QCD	10-15-94	E½ of SE¼	19	9S	6W	80	200.00	38	231	2-24-03
E. Y. Hallock	Deed	2-28-91	S½ of NE¼	33	7S	6W	80	200.00	38	267	4-15-03
L. Gerlinger	QCD	6-8-03	S½ of SW¼	13	8S	7W	80	360.00	38	330	7-30-03
William C. McClure	QCD	6-8-03	NE¼	1	9S	8W	187.25	749.00	38	349	8-27-03
Capital Lumbering Co.	Deed	5-28-00	SE¼ of NE¼ NE¼ of SE¼ E½;E½ of SW¼; SW¼ of SW¼; W½ of SW¼; SE¼ of SW¼; N½ of N½	11 21 27 33	10S 9S	7W 7W	800	4042.00	38	377	9-25-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Franklin Yocum	——	11-27-72	Lot 4	23	6S	7W	50.14	54.51	8	279	12-8-73
William Savage	——	10-21-85	Lot 7	7	6S	6W	38.75	193.75	18	165	8-4-86
Wm. Savage	——	10-21-85	(NE¼ of SE¼	7	6S	6W	82	164.00	18	161	8-4-86
			(					246.00			
			(Lot 2	17	6S	6W					
Andrew Olsen	——	7-28-85	SE¼ of SE¼	21	7S	6W	40	100.00	22	304	12-31-90
John M. Phy & ThomasG.Richmond	——	11-2-86	NW¼	21	7S	6W	160.00	199.98	22	531	5-29-91
John H. Watson	——	2-28-91	NW¼ of SE¼	3	10S	6W	80	160.00	22	541	6-4-91
			SE¼ of SW¼					Also	50	76	3-4-09
R. Clark	——	5-1-91	Lots 7, 8 & 9	33	9S	6W	66.62	145.39	22	570	7-7-91
Lee Rowell	——	4-11-98	Lots 1 & 2	1	7S	7W	108.94	326.82	32	350	11-2-98

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. D. Smith	——	10-9-99	Lots 2 & 3	5	9S	5W	18.75	112.50	34	348	12-29-99
Oloy Loyd Guyer	——	12-2-01	E½ of NE¼	35	9S	6W	80	320.00	35	481	4-2-02
J. W. Yost	QCD	7-6-03	Lot 7	29	9S	6W	34.16	136.64	38	407	11-3-03
W. F. Gilliam	QCD	3-2-03	SE¼ of SE¼	9	9S	7W	40	100.00	38	416	11-14-03
W. J. Critchlow	QCD	7-7-02	Lots 7, 8 & 9	25	9S	6W	50.77	203.08	38	443	12-24-03
Sarah C. Ronco	QCD	9-23-01	SW¼	7	9S	6W	168.68	843.40	41	55	10-29-04
Mrs. Lila Pugh	QCD	12-1-04	SE¼ of SE¼	9	8S	6W	40	240.00	41	130	4-19-05
Security Savings & Trust Co.	QCD	3-17-05	N½ of SE¼	25	8S	7W	841.37	7489.59	41	161	6-19-05
			SW¼ of SE¼								
			NW¼ & S½	35	8S	7W					
			W½ of NW¼	1							

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
			Lots 1 & 2 & S½ of NE¼	3	9S	7W					
Bryan, Lucas Lbr. Co.	QCD	11-3-02	NE¼ of SW¼	25	8S	7W	40	160.00	41	167	6-22-05
Bryan, Lucas Lbr. Co.	QCD	11-3-02	SE¼ of SW¼	25	8S	7W	40	220.00	41	168	6-22-05
Bryan, Lucas Lbr. Co.	QCD	2-24-05	NW¼ of SW¼	25	8S	7W	40	200.00	41	170	6-22-05
Chas. H. Vick	QCD	5-3-05	All	19	7S	6W	658.40	2304.40	41	212	10-3-05
A. N. Moores	QCD	7-1-05	E½ of E½ SW¼ of SE¼	15	9S	7W	640	3500.00	41	305	4-7-06
			W½ of NE¼ NW¼ of SE¼ W½	23	9S	7W					
Henry Byerly	WD	2-26-80	Lot 3	15	6S	5W	9.60	86.40	13	212	7-19-80
C. A. Carey	Cont	3-20-75	Lot 1	7	6S	5W	11.94	191.04	9	544	10-21-75

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
R. Suitor	Cont	6-10-93	NE¼	35	9S	7W	160	1120.00	1Misc	317	4-23-94
W. C. Fisher	Ctf	9-18-91	SE¼	25	9S	7W	160	400.00	1	245	5-8-93
David Warren	Ctf	3-16-88	SE¼ of SW¼ SW¼ of SE¼	9	8S	6W	80	320.00	19	171	12-20-88
C. W. Dodenhoff	Ctf	5-25-88	(Lots 4 & 5 (Lots 6, 7 & 8	17 19	7S 7S	5W 5W	95.09	285.27	16	590	9-27-88
L. J. & W. F. Sleppy	Ctf	10-30-82	W½ of NW¼	17	7S	6W	80	200.00	16	73	10-21-83
W. T. & L. P. Sleppy	Ctf	10-30-82	NW¼ of SW¼	17	7S	6W	40	100.00	16	72	8-21-83
Robert Clark	Ctf	7-26-82	NE¼	19	9S	6W	160	280.00	15	458	7-26-82

State of Oregon)
County of Polk)ss.

I hereby certify that the foregoing five sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 23, 1912.

E. M. SMITH,
County Recorder of Polk County, Oregon.

(Seal.)

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MARION COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Marion County, Oregon, prior to December 1, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Keil	B&S	11-27-72	Lot 1	27	4S	1W	2.13	9.60	18	511	12-8-75
Alfred Havenden	B&S	11-27-72	Lot 1	29	4S	1W	3.56	16.02	23	81	12-13-77
Fabritus R. Smith	Ctf	2-28-73	Lot 1	1	8S	3W	3	27.00	15	434	4-21-73
Fred G. Ewald	Ctf	3-29-73	Lot 6	3	8S	3W	3.34	37.58	17	159	5-26-74
Franz Zimmerman	B&S	2-16-76	NE¼ of NW¼; NW¼ of NE¼	9	9S	2E	80	144.00	23	90	12-19-77

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Dewitt C. Budd	B&S	1-19-78	SE¼ of NW¼; SW¼ of NE¼	13	8S	4W	80	240.00	23	191	2-25-78
H. E. Schmidt	B&S	2-16-76	Lot 3	33	8S	1E	34.24	61.64	23	318	6-6-78
Ferdinand G. Ewald	B&S	11-26-74	Lot 6	3	8S	3W	3.34	37.58	18	151	4-8-75
Febritus R. Smith	B&S	11-26-74	Lot 1	3	8S	3W	3	27.00	18	168	4-24-75
Henry Wehrum	B&S	11-26-74	NW¼ of NW¼ SE¼ of NW¼; Lots 3, 4, 5, 6 and 9	11	5S	3W	179.24	716.96	18	224	5-21-75
Alfred M. Belt	B&S	9-9-75	Lots 1, 2, 3 & 4	31	8S	3W	28.46	71.15	18	443	10-26-75
Lewis Stout	B&S	9-9-75	Lots 4 & 5	15	9S	1E	84.75	152.52	18	448	10-30-75
Rodney W. Chase	B&S	9-9-75	NE¼ of NW¼ & Lot 1	21	5S	1W	49.39	244.50	18	596	2-10-76

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Rodney W. Chase	B&S	9-9-75	Lots 5 & 6	9	5S	1W	4.60	14.50	18	597	2-10-76
John W. Greenwood	B&S	2-16-76	Lot 1	1	7S	2W	.10	3.30	18	616	3-2-76
Peter A. Hartman	B&S	1-19-78	W½ of NW¼	35	7S	1E	80	144.80	31	147	6-4-83
Peter Gates	B&S	2-16-76	S½ of SW¼	21	8S	1E	80	144.00	21	8	5-4-76
Joshua G. Eberhard	B&S	2-16-76	Lots 6 & 9	33	3S	2W	41.45	93.25	21	98	7-10-76
Alexander Esson	B&S	8-17-76	Lot 1	5	6S	1W	5.92	16.20	21	231	11-23-76
School Dist. No. 85, Marion Co.	B&S	8-17-76	295 ft. square in SE corner of NW¼ of NW¼	23	8S	1E	2	1.00	21	243	12-2-76
Thomas Ward	B&S	11-26-74	Lot 1	25	6S	2W	3.92	15.88	21	316	2-6-77
Perry S. Kenady	SWar	5-24-79	Lot 4	7	6S	1W	9.62	25.00	24	158	7-10-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Mrs. Naomi Steen	SWar	5-24-79	Lot 4	33	6S	2W	5.53	25.00	24	161	7-10-79
S. A. D. Parker	SWar	5-24-79	Lot 3	7	6S	1W	15.67	50.87	24	256	9-29-79
William M. Case	SWar	5-24-79	Lot 1	13	4S	2W	5.89	31.80	24	516	5-3-80
Emanuel Schindler	SWar	5-24-79	S½ of NW¼ NW¼ of SW¼	3	9S	2E	120	240.00	24	581	6-18-80
Mathias Bauer	SWar	2-1-81	N½ of NW¼ of NW¼	3	6S	1W	19.45	77.80	26	269	2-9-81
Ellis G. Hughes	SWar	5-27-80	N½ of NW¼ of Sec. 21; S½ of N½ & S½	17	9S	2E	560	790.00	26	419	7-21-81
Wm. Reid	SWar	9-2-85	S½; NE¼; E½ of NW¼	35	7S	1E	560	1000.00	33	398	3-10-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. N. Gilbert	SWar	9-23-85	E½ of NW¼; NE¼ of SW¼	27	6S	2W	120	480.00	33	430	4-12-86
Henry A. Graves	SWar	9-15-85	S½ of NW¼	11	9S	3E	80	160.00	33	433	4-15-86
Chas. Uren	SWar	8-18-85	N½ of SW¼	11	9S	3E	80	160.60	33	439	4-15-86
Urban Schneider	SWar	9-23-85	NE¼ of SW¼	3	9S	2E	40	100.00	33	441	4-17-86
D. W. Craig	SWar	10-21-85	S part of S½ of SE¼ Sec. 9, south of river and NW¼ of NW¼	15	9S	2E	85	190.00	33	450	4-26-86
J. P. Williams	SWar	10-21-85	S½ of NE¼	33	8S	1E	80	160.00	33	452	4-29-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joseph Cox	SWar	12-11-85	NW¼ of NE¼ Sec. 17 & NW¼ of SW¼	9	9S	2E	80	180.00	33	463	5-5-86
Meinrod Wall	SWar	9-2-85	E½ of SW¼	27	7S	1E	80	228.00	33	468	5-7-86
Wm. Woodworth	SWar	9-2-85	N½ of NE¼	15	8S	1E	80	200.00	33	481	5-22-86
Peter Rauch	SWar	9-2-85	SW¼ of NE¼	23	7S	1E	40	95.00	33	500	6-9-86
Lester D. Leonard	SWar	9-2-85	W½ of SE¼	23	7S	1E	80	190.00	33	502	6-9-86
Levin N. English	SWar	10-21-85	SE¼ of NW¼ & SW¼ of NW¼	33	8S	1E	80	160.00	33	510	6-16-86
E. S. Brooks	SWar	7-28-85	NW¼ of NE¼	1	8S	1E	40.30	90.75	33	523	7-5-86
Lewis Stout	SWar	7-28-85	Lots 1, 2, 3 & 4	11	9S	1E	151.28	214.47	33	550	9-2-86

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jessie L. Garey	SWar	9-2-85	NW¼ of SE¼	13	8S	1E	40	114.00	33	553	9-2-86
Jacob Siegmund	SWar	4-9-86	SW¼ of SW¼	31	8S	2E	40.06	60.09	33	586	10-12-86
Rodney W. Chase	SWar	8-5-85	Lot 2	21	5S	1W	17.95	81.00	33	594	10-15-86
Ashel Bush	SWar	8-10-85	E½ of W½; NW¼ of NW¼; SW¼ of SW¼; NW¼ of NE¼ Sec. 23; SE¼ of SE¼	15	7S	1E	320	800.00	33	600	10-20-86
August Shellberg	SWar	7-12-86	S½ of NW¼	5	9S	2E	80	160.00	33	603	10-20-86
F. Hicks	SWar	8-10-86	E½ of SW¼ of NW¼	11	7S	1W	20	60.00	35	25	12-11-86
J. B. Stump	SWar	10-21-85	N½ of NE¼ and Lots 6, 7, 8 & 9	35	9S	4W	191.31	430.45	35	44	12-22-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
David Gerking	SWar	9-15-85	E½ of NE¼ & NE¼ of SE¼	23	8S	1E	120	336.00	35	114	2-28-87
F. M. Shepherd	SWar	8-12-85	SW¼ of NW¼; NW¼ of SW¼	35	6S	1E	80	180.00	35	157	3-30-87
F. M. Shepherd	SWar	8-12-85	SE¼ of NW¼	35	6S	1E	40	100.00	35	161	3-30-87
D. W. Craig	SWar	2-9-87	N½ of NE¼; NE¼ of NW¼	15	9S	2E	120	240.00	35	171	4-2-87
John S. Hawkins	SWar	9-14-86	NE¼ of NW¼	1	7S	1E	40	120.00	35	176	4-6-87
John S. Hawkins	SWar	9-14-86	E½ of NE¼ & NW¼ of NE¼	1	7S	1E	120	360.00	35	180	4-6-87
Johann Otto	SWar	2-9-87	SE¼ of SE¼	13	7S	1E	40	100.00	35	193	4-12-87
J. B. Hoffman	SWar	1-15-87	E½ of NW¼	13	7S	1E	80	200.00	35	196	4-13-87

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James A. Cox	SWar	4-8-87	NE¼ of SW¼	9	9S	2E	40	80.00	35	262	5-23-87
James A. Cox	SWar	3-9-87	SE¼ of SW¼	9	9S	2E	40	80.00	35	265	5-23-87
Marian A. McAllister	SWar	4-8-87	SW¼ of SE¼ & SE¼ of SW¼	13	8S	1E	80	240.00	35	269	5-26-87
Corodon P. Thomas Laura R. Smith; J. C. Smith;	SWar	9-2-85	SW¼ of SE¼	7	6S	1E	40	100.00	35	279	6-1-87
E. J. Rowland and L. L. Rowland	SWar	5-11-87	SE¼ of NW¼	7	7S	2E	40	133.00	35	335	7-16-87
D. W. Craig	SWar	7-13-87	SW¼ of NW¼	15	9S	2E	40	90.00	35	378	8-27-87
Richard S. Rice	SWar	9-20-87	SW¼	29	9S	3E	160	240.00	35	508	11-19-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William T. Clark	SWar	12-5-87	S½ of SW¼	23	9S	2E	80	160.00	35	572	1-25-88
William T. Clark	SWar	12-5-87	NW¼ of SW¼	23	9S	2E	40	92.60	35	576	1-25-88
Frank U. Hull	SWar	12-5-87	SW¼ of NE¼	7	9S	2E	40	100.00	35	579	1-27-88
John Heinz	SWar	12-5-87	W½ of NW¼	11	7S	1E	80	280.00	35	623	3-3-88
Silas B. Shaw	SWar	12-11-85	NW¼ of SW¼	1	9S	3E	40	100.00	37	1	3-23-88
Abraham H. Baker	SWar	11-15-87	SE¼ of NW¼	9	7S	1E	40	100.00	37	204	10-27-88
Mrs. E. A. C. Debenport	SWar	8-18-85	NW¼ of NE¼	21	7S	2E	40	90.00	37	550	6-1-89
Jos. Hutsby & Edmund Hunt	SWar	4-9-86	NW¼ of SE¼	23	9S	2E	40	100.00	37	629	7-16-89
Peter Stephens	SWar	7-28-85	NW¼ of NW¼	9	9S	2E	40	79.00	44	490	1-3-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Mathias Lilenthal	B&S	2-28-91	E½ of NE¼	27	7S	1E	80	200.00	47	71	3-18-91
Clark Barzer	B&S	2-28-91	E½ of NE¼	3	9S	3W	80.89	404.45	47	103	3-28-91
C. J. Seibel	B&S	2-28-91	SW¼ of NW¼ W½ of SW¼ & SE¼ of SE¼	23	8S	1E	160	640.00	47	111	4-1-91
Douglas Minto	B&S	2-28-91	S½ of SE¼	25	9S	3E	80	200.00	47	118	4-2-91
John W. Minto	B&S	2-28-91	S½ of SW¼	25	9S	3E	80	160.00	47	132	4-7-91
J. U. Miller, Assignee	B&S	2-28-91	Lot 3	17	7S	1W	20.20	101.00	47	164	4-14-91
Elmer Denny	B&S	2-28-91	NW¼ of NW¼	27	8S	1E	40	171.00	47	176	4-17-91
J. E. Ray, Assignee	B&S	2-28-91	SE¼ of SE¼	25	9S	2E	40	120.00	47	248	5-19-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mahala Weatherford, Assignee	B&S	2-28-91	N½ of SE¼	17	9S	3E	80	180.00	47	265	5-21-91
Julia A. Johns	B&S	2-28-91	SE¼ of SE¼	3	9S	3E	40	72.00	47	330	6-9-91
August Zallner	SpWar	12-5-87	SE¼ of NW¼ & S½ of NE¼	9	9S	2E	120	270.00	47	539	1-5-92
Joseph Hutsby	B&S	2-28-91	SE¼ of NW¼	23	9S	2E	40	80.00	47	605	2-9-92
James W. Weatherford	B&S	2-28-91	S½ of SE¼	17	9S	3E	80	160.00	49	46	5-21-91
Joseph S. Pollies, Assignee	B&S	2-28-91	SW¼ of NW¼	23	9S	2E	40	90.00	49	48	5-21-91
George I. Hendricks, Assignee	B&S	2-28-91	NW¼ of SE¼	27	9S	3E	40	100.00	49	53	5-21-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George I. Hendricks, Assignee	B&S	2-28-91	SW¼ of SE¼	27	9S	3E	40	100.00	49	56	5-25-91
John C. McCrea	B&S	2-28-91	Lot 6	31	3S	2W	51.20	345.60	49	154	9-11-91
James Connolly	B&S	1-28-91	E½ of SE¼	27	7S	1E	80	240.00	49	162	9-18-91
Mary A. Gates	B&S	2-28-91	NE¼ of SE¼	27	9S	3E	40	100.00	49	278	10-26-91
Viola Dunagan Murray	B&S	9-30-91	NE¼ of NE¼	11	7S	1E	40	100.00	49	299	11-5-91
Nancy J. Johnson	B&S	2-28-91	W½ of SE¼ & NE¼ of SW¼	21	8S	1E	120	300.00	49	329	11-20-91
John M. Howell	B&S	11-16-91	Lots 11 & 12	17	9S	1E	69.19	172.97	49	342	11-20-91
O. L. Parmelee	B&S	12-21-91	NE¼ of SW¼	27	9S	3E	40	100.00	49	448	12-30-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John J. Dabenport	B&S	2-28-91	E½ of NE¼	21	7S	2E	80	200.00	49	489	1-30-92
Madison A. Hoffman	B&S	2-28-91	W½ of SW¼	15	8S	1E	80	240.00	49	532	3-3-92
George Leslie	SpWar	10-5-87	E½ of SE¼	5	8S	1E	80	200.00	49	553	3-21-92
Santiam Lumbering Co.	QCL	3-14-92	W½ of NE¼ & E½ of NW¼	29	9S	3E	160	560.00	49	615	5-7-92
J. E. Sorbin	B&S	6-29-89	SE¼ of SE¼ Sec 27, NW¼ of NW¼	35	9S	3E	80	280.00	51	82	5-27-92
J. E. Sorbin	QCL	3-14-92	SE¼ of NE¼	27	9S	3E	40	140.00	51	85	5-27-92
J. E. Sorbin	QCL	3-14-92	NE¼ of NE¼	27	9S	3E	40	140.00	51	89	5-27-92
Charles W. McCowan	SpWar	2-9-87	N½ of NW¼	17	9S	2E	80	200.00	51	175	7-5-92

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. J. Seibel	SpWar	3-14-92	W½ of SE¼ & E½ of SW¼	23	8S	1E	160	640.00	51	288	9-5-92
Thomas M. Dunagan Jr., Ass.	B&S	9-5-92	W½ of SW¼	1	7S	1E	80	240.00	51	398	10-10-92
Colman Bennett	B&S	11-19-92	NW¼ of NW¼ "reserving a piece of land 295 feet square in the SE corner of said NW¼ of NW¼ and containing two acres which was sold and conveyed by this Company to School Dist. No. 85 Aug. 17, 1876.	23	8S	1E	38	100.00	51	566	12-5-92
Mrs. D. M. Evans	SpWar	6-29-89	Lot 1	25	7S	2W	27	135.00	53	2	
John Quinn	Q.CL	3-14-92	SW¼ of NW¼	1	9S	3E	40	120.00	53	91	8-8-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. W. McAfee, Assignee	B&S	2-28-91	N½ of NW¼	1	9S	3E	83.60	167.20	53	299	1-31-93
Mathias Johnson	SpWar	3-14-92	SW¼ of NW¼	27	7S	1E	40	114.00	53	342	2-18-93
Robert Reid	SpWar	2-26-80	N½ of NW¼	27	7S	1E	80	180.00	53	346	2-18-93
D. B. Smith	B&S	11-9-92	SE¼ of SW¼	27	9S	3E	40	100.00	53	370	2-25-93
D. A. Vangorder	B&S	2-24-93	W½ of SW¼ & SE¼ of SW¼	1	8S	1E	120	300.00	53	477	4-29-93
Thomas M. Dunagan, Jr.	B&S	2-24-93	SW¼ of NW¼ NE¼ of SW¼	1	7S	1E	80	240.00	53	480	5-4-93
Wm. Murray	B&S	2-28-91	NE¼ of NW¼ NW¼ of NE¼	35	6S	1E	80	200.00	53	596	7-17-93

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. M. Beok	B&S	3-14-92	Lots 1 & 2	27	6S	3W	30.48	550.00	55	15	3-10-93
Louis V. Allen	B&S	2-28-91	N½ of SE¼	15	8S	1E	80	200.00	55	111	3-29-93
A. H. Coleman & G. A. Coleman, Ass.	B&S	11-9-92	W½ of NE¼ SE¼ of NE¼ E½ of NW¼	11	7S	1E	200	500.00	55	147	5-4-93
W. E. M. McAfee	B&S	2-28-91	W½ of NW¼	15	9S	3E	80	160.00	55	150	5-13-93
Elmer Denny	SpWar	3-14-92	SW¼ of NW¼	27	8S	1E	40	152.00	55	195	6-19-93
E. S. Spencer, Ass.	B&S	5-8-93	NW¼ of SW¼	27	9S	3E	40	100.00	55	302	9-5-93
Frank B. Beringer	SpWar	9-23-85	SE¼ of NE¼	7	9S	2E	40	100.00	56	73	1-10-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Adelhelm Odermott	B&S	11-14-93	E ½of NE¼ &	13	7S	1E					
			NE¼ & N½ of NW¼	19	7S	2E	640.18	1602.95	56	430	10-3-94
Adelhelm Odermott	B&S	11-14-93	All Sec. &	25	7S	1E					
			All Sec. 31; SW¼ of NW¼								
			& Lots 3 & 4	19	7S	2E	1407.29	3875.55	56	427	10-3-94
W. J. Humphreys, Assignee	B&S	8-3-91	NW¼ of SE¼	3	8S	1E	40	100.00	56	472	11-21-94
Wm. J. Humphreys, Assignee	B&S	2-28-91	NE¼ of SE¼	3	8S	1E	40	100.00	56	476	11-21-94
J. W. Fidler, Ass.	B&S	6-18-94	W½ of SW¼	35	9S	3W	80	400.00	56	500	12-15-94
James Franch	SpWar	7-28-85	W½ of SE¼	27	7S	1E	80	200.00	56	594	7-25-95

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. F. Watson & A. P. Watson, Ass.	B&S	11-14-93	SE¼ of SW¼	11	8S	1E	40	120.00	58	135	5-3-94
Willis M. Dunagan	B&S	4-30-94	S½ of SE¼	35	6S	1E	80	240.00	58	276	8-22-94
Benedict Gottswald, Assignee	B&S	1-29-94	W½ of SW¼	27	7S	1E	80	240.00	58	537	2-26-95
S. B. Ormsby	B&S	7-3-93	NW¼ of NW¼	13	8S	1E	40	120.00	58	633	4-9-95
S. B. Ormsby	B&S	7-3-93	NE¼ of NW¼	13	8S	1E	40	120.00	58	636	4-9-95
G. W. Epler, Ass.	B&S	5-6-95	N½ of NE¼	31	9S	4E	80	200.00	62	225	6-13-95
Aldelhelm Odermott, Assignee	B&S	2-24-93	W½ of SE¼	13	7S	1E	80	200.00	62	426	12-4-95
John Plueard	B&S	2-24-93	SW¼ of SE¼	25	6S	1E	40	100.00	62	443	12-13-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Andrew Plueard	B&S	11-9-92	S½ of SW¼	25	6S	1E	80	200.00	62	447	12-13-95
Eugenie Gillingham	Q.CL	3-14-92	NE¼ of NE¼	13	9S	2E	40	133.00	62	617	4-27-96
Daniel H. Jory	B&S	5-11-96	Lot 3	23	8S	4W	33.34	100.00	63	376	9-5-96
C. D. Snyder, Ass.	B&S	2-24-93	S½ of SE¼ & SE¼ of SW¼	15	9S	2E	120	300.00	63	406	10-1-96
F. B. Berringer	B&S	7-1-95	NE¼ of NE¼	7	9S	2E	40	100.00	63	425	10-15-96
John Moser	B&S	3-14-92	Lots 3 & 4 & W½ of SE¼	33	6S	1E	89.40	382.20	63	576	4-14-97
John Schumacher	Q.CL	5-6-95	SE¼ of SE¼	19	9S	3E	40	160.00	63	629	5-18-97
Frank Enz	Q.CL	11-9-92	SW¼ of NE¼	31	6S	2E	40	140.00	63	632	5-21-97
Frank Enz	Q.CL	9-5-92	NW¼ of NE¼ NW¼ of SE¼	31	6S	2E	80	320.00	63	634	5-21-97

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George Thomas Moisan	Q.CL	2-15-97	Lots 6 & 7	9	10S	2W	49.05	99.50	66	172	3-8-97
George W. Morley	B&S	5-6-95	SW¼ of NE¼	35	6S	1E	40	120.00	66	444	11-30-97
S. B. Ormsby	B&S	12-20-97	NE¼ of SW¼	13	8S	1E	40	160.00	66	493	1-4-98
Thomas Kaeneka	QCL	5-11-96	W½ of NE¼ & E½ of NW¼	19	9S	3E	160	560.00	66	503	1-12-98
A. B. Kenworthy	B&S	11-8-97	SE¼ of SW¼	31	6S	2E	40	100.00	66	520	1-15-98
August Zimmerman	SpWar	2-2-86	NE¼ of NE¼ Sec. 9 & SW¼ of SW¼	3	9S	2E	80	160.00	66	526	1-22-98
G. L. Vinton	QCL	2-15-97	N½ of SE¼ of NW¼	13	6S	2W	20	200.00	66	532	1-24-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. M. Ormsby	QCL	1-18-98	S½ of NW¼	13	8S	1E	80	320.00	68	18	2-5-98
J. D. Wirth	QCL	4-11-98	NE¼ofSW¼& NW¼ of SE¼	11	8S	1E	80	320.00	68	117	5-27-98
Elisabeth A. Quimby	QCL	11-8-97	N½ of SE¼	25	9S	2E	80	280.00	68	205	7-26-98
G. W. Watt & H. A. Thomas	QCL	6-6-98	NE¼ of NE¼	35	6S	1E	40	140.00	68	212	7-27-98
G. W. Watt & H. A. Thomas	QCL	6-6-98	SE¼ of NE¼	35	6S	1E	40	140.00	68	215	7-27-98
W. H. Adair	QCL	6-6-98	NW¼ of NW¼	1	7S	1E	41.09	123-27	68	240	8-18-98
J. B. Lehman	QCL	12-12-98	W½ of SW¼	13	8S	1E	80	320.00	68	530	2-11-99
S. T. Arnold, E. F. & Hattie P. Watson	QCL	12-12-98	S½ of SE¼	11	8S	1E	80	320.00	68	583	2-25-99

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. E. J. Rowland	QCL	11-8-97	NE¼ of SE¼	35	6S	1E	40	140.00	68	626	3-18-99
Sarah Jane Taylor	QCL	12-12-98	SE¼ of SW¼	17	9S	3E	40	140.00	68	629	3-18-99
Nicholas Mills	QCL	11-8-97	E½ of NE¼ N½ of SE¼	29	9S	3E	160	560.00	70	186	5-3-99
John A. Shaw	QCL	4-3-99	SW¼ of NW¼	29	9S	3E	40	180.00	70	226	5-24-99
Harden McCallister	QCL	10-9-99	SE ¼of NE¼	23	7S	1E	40	160.00	70	417	12-12-99
Marie Benett	QCL	8-21-99	SW¼ of SW¼	7	7S	2E	39.23	137.30	70	489	1-29-00
J. W. Hobart	B&S	3-19-00	SE¼ of SW¼	35	6S	1E	40	90.00	70	558	3-31-00
John A. Shaw	QCL	4-3-99	NW¼ of NW¼	29	9S	3E	40	180.00	74	17	5-24-99
Oliver Butler	B&S	4-3-99	E½ of NE¼ NE¼ of SE¼	27	8S	1E	120	480.00	74	90	6-27-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. Y. Byron	B&S	5-1-99	N½ of SE¼ NE¼ of SW¼	15	9S	2E	120	240.00	74	259	1-8-00
Addie M. Eggleston	QCL	4-23-00	E½ of SW¼	21	7S	2E	80	200.00	74	364	6-26-00
William Henry Udy Leonie A. Udy (his wife)	QCL	5-28-00	SW¼ of NW¼	27	9S	3E	40	190.00	74	412	8-7-00
William Henry Udy & Leonie A. Udy	QCL	5-28-00	NW¼ of NW¼	27	9S	3E	40	190.00	74	410	8-7-00
Edward P. Lorigan	QCL	10-29-00	SW¼	29	7S	2E	160	480.00	74	536	12-27-00
Arnold Wink	B&S	3-14 92	N½ of SE¼	25	9S	3E	80	240.00	76	14	8-2-00
Edward S. Nicholson	QCL	5-28-00	NE¼	29	7S	2E	160	480.00	76	108	10-29-00
Charles M. Lorigan	QCL	5-28-00	NW¼	29	7S	2E	160	720.00	76	106	10-29-00

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. J. Small	QCL	2-18-01	SE¼ of SE¼	11	9S	2E	40	200.00	76	346	6-1-01
G. M. Allison	QCL	5-28-00	Lot 3	13	5S	3W	18.65	75.00	78	26	7-23-01
W. H. Brown	QCL	6-10-01	NW¼ of SE¼	11	9S	3E	40	140.00	78	62	8-13-01
William Brinkmeyer	QCL	12-17-00	Lot 3	25	7S	1W	14.90	89.40	78	110	9-28-01
Charles G. Forster	QCL	7-29-01	All Sec.	1	8S	3E	642.08	4018.00	78	132	10-17-01
O. H. Billinger	QCL	10-21-01	SW¼ of NE¼	1	7S	1E	40	140.00	78	295	1-14-02
O. H. Billinger	QCL	10-21-01	E½ of SE¼	1	7S	1E	80	280.00	78	297	1-14-01
Carl Jensen	QCL	4-8-01	NE¼ of NW¼	21	7S	2E	40	140.00	78	315	1-28-02
Willamette Paper & Pulp Co.	QCL	5-1-02	Lot 1	13	9S	1W	36.39	181.95	78	465	6-23-02

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Hildegard Bartoz	QCL	12-17-00	NW¼ of SW¼	25	9S	3E	40.00	140.00	81	143	7-7-02
John Hostetter, Ass.	B&S	12-12-98	W½ of NE¼ E½ of NW¼	23	8S	1E	160	414.00	81	197	7-28-02
David and Mary McKillop, Ass.	B&S	10-21-01	NE¼ of SW¼	35	6S	1E	40	160.00	81	274	9-3-02
Mrs. E. A. Quimby	QCL	9-8-02	NE¼ of SE¼	9	9S	3E	40	120.00	81	520	2-3-03
Clarence Brown	QCL	3-14-92	N½ of SE¼ SE¼ of NE¼	29	9S	4E	120	300.00	81	525	2-6-03
J. W. Hobart	B&S	10-6-02	NW¼ of SW¼ SW¼ of NW¼	23	7S	1E	80	200.00	81	611	3-6-03
John Greer	B&S	3-2-03	Lot 3	13	9S	1W	18.45	23.03	83	35	4-3-03

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Lee Brown & Sons	QCL	6-12-99	Lot 2	13	9S	1W	32.05	176.25	83	110	5-2-03
P. H. Brown	QCL	2-2-03	E½ of NE¼ Lots 9 & 10	9	8S	1E	98.16	343.56	83	206	6-24-03
Joseph Peters	QCL	9-8-02	SW¼ of SW¼	23	9S	3E	40	140.00	83	408	10-7-03
C. F. A. Huebner	SpWar	9-23-85	SE¼ of SE¼	3	9S	2E	40	50.00	83	609	6-28-04
C. F. A. Huebner	SpWar	9-23-85	SW¼ of SE¼ SE¼ of SW¼	3	9S	2E	80	120.00	83	612	6-28-04
George A. Spencer	QCL	4-11-98	SE¼ of NW¼	27	9S	3E	40	140.00	87	188	4-15-04
Edward S. Porter, Ass.	B&S	6-10-01	NE¼ of NW¼	9	7S	1E	40	160.00	87	290	6-1-04
Joseph M. Healy	B&S	3-7-04	N½ of SE¼ of	21	9S	2E	64	192.00	87	292	6-2-04

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Record Pg	Date of Record
and Willard P. Hawley, Ass.	B&S	3-7-04	SE¼ & NE¼ of SE¼								
Willis H. Gilbert, Trustee	QCL	1-4-04	S½; S½ of N½; NE¼ of NE¼; All Secs. 15, 21, 23, 25, 27, E½	13	8S	2E	5866.60	58666.00	87	311	6-9-04
			N½ Sec. 33; N½ of N½ Sec. 35	29							
			N½ Sec. 11; N½ of SW ¼ & N½ of SE¼		8S	3E					
			W½ of NW¼ Sec. 27; N½; N½ of SW¼	23 29							

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Willis H. Gilbert, Trustee	QCL	1-4-04	S½ Sec. 27; All Secs. 29, 31, 33,	35	7S	3E	8030.21	48181.00	87	314	6-9-04
			All Secs. 3, 5, 7, 9, 15, 17, 19, 21		8S	3E					
Willis H. Gilbert, Trustee	QCL	10-6-02	S½	11	8S	3E	320	3650.00	87	317	6-9-04
R. N. Scism	QCL	2-8-04	NE¼ of SW¼	7	7S	2E	40	120.00	87	324	6-18-04
J. L. Calvert	B&S	5-1-02	Lot 6	5	5S	1W	15.25	281.40	87	499	10-24-04
Gustav Faber	QC	2-12-00	NE¼ of NE¼	19	9S	3E	40	152.00	87	595	12-7-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. S. Mott	QC	12-14-03	N½ of SW¼ NW¼ and E½	23	9S	3E	560	2059.00	90	21	9-10-04
Herbert A. Brown	B&S	12-1-02	S½ of NE¼	15	8S	1E	80	400.00	90	27	9-16-04
Paschall Paquette	B&S	9-30-91	NE¼ of NW¼	25	6S	1E	40	100.00	90	356	4-28-05
L. J. Adams, Admr. Estate of John Lichty	QCL	9-19-05	E½ and E½ of W½; Lot 2	33	7S	1E	509.85	1274.62	92	346	4-5-06
Lee Brown & Sons	QCL	11-8-05	NE¼ofNW¼ & S½ of N½	35	8S	1E	200	800.00	92	450	5-31-06
H. Trinwith	QCL	6-6-98	SE¼ of SE¼	29	9S	4E	40	120.00	96	154	11-3-06

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. E. Sorbin	Ctf	12-10-87	SE¼ of SE¼ Sec. 27; NW¼ of NW¼	35	9S	3E	80	280.00	37	584	6-20-89
J. E. Farmer	Ctf	3-26-89	SW¼ of NE¼ SE¼ of NW¼; SW¼ of SE¼	25	9S	2E	120	420.00	40	1	7-17-89
Clarence Brown	Ctf	8-12-90	N½ of SE¼ SE¼ of NE¼	29	9S	4E	120	400.00	44	134	8-13-90
J. E. Ray	Ctf	9-22-90	SE¼ of SE¼	25	9S	2E	40	120.00	44	209	9-23-90
Elmer Denny	Ctf	10-18-90	SW¼ of NW¼	27	8S	1E	40	152.00	44	270	10-24-90
Elmer Denny	Ctf	10-18-90	NW¼ of NW¼	27	8S	1E	40	171.00	44	272	10-27-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. J. Seibel	Ctf	1-30-91	SW¼ of NW¼ W½ of SE¼ SE¼ of SE¼ & SW¼	23	8S	1E	320	1280.00	44	572	2-2-91
George Lesley	Ctf	9-1-87	E½ of SE¼	5	8S	1E	80	200.00	47	167	4-14-91
Arnold Wink	Ctf	6-23-91	N½ of SE¼	25	9S	3E	80	240.00	51	124	6-9-92
Jas. W. Fidler	Ctf	5-16-94	W½ of SW¼	35	9S	3W	80	400.00	58	335	10-5-94
E. S. Brooks	QCD	11-9-96	NW¼ of SE¼	35	34S	4W	40	100.00	32	485	
Albert C. Hopkins	QCD	12-20-97	NE¼ & S½ Sec. 25, NE¼ of NE¼	27	39S	4E	840	6300.00	34	42	
			E½	33	39S	5E					

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James Carr	QCD	12-26-99	Lot 3	29	37S	1W	5.50	220.00	38	27	
The Collie Dog Mining & Milling Co.	QCD	4-23-00	W½ of NE¼	7	33S	1E	80	200.00	38	40	
Charles R. Ray	QCD	5-28-00	Lots 1 & 4	33	36S	3W	64.62	161.55	38	42	
G. S. Butler	QCD	2-12-00	SW¼ of SW¼ N½ of NW¼	31 1	38S 39S	3E 2E	123-37	534.43	38	93	
L. A. Lewis	QCD	12-26-01	NW¼ofSW¼& E½ of NW¼	5	34S	4W	123.77	293.95	38	90	
A. L. Mills, Trustee for himself L. A. Lewis, Geo. Sorenson &											

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. D. Wilcox	QCD	3-11-02	Lots 1, 2, 3, 4 Sec. 7, Lots 1, 2, 3, 4, Sec. 19, Lots 1, 2, 3, 4 Sec. 31, Tp. 18, S R 2 E, S½ of SW¼ Sec. 15 Tp 37, S R 4 E, N½ of SE¼ of NW¼ & SW¼ of SE¼ of NW¼ & SW¼ of NW¼ & S½ & Lots 1 & 2 Sec. 27, Lot 2 & S½ of NE¼, & NW¼ & S½ Sec. 29, All Sec. 31, All Sec. 33, W½ Sec.		40S	1E	7550.37	1.00	38	100	

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
			35, Tp 39 R 1 E, NE¼ & W½ Sec. 11, All Sec. 5, All Sec. 7, All Sec. 9, All Sec. 15, All Sec. 17.								
Charles R. Ray		5-1-02	Lot 1	13	36S	3W	21.16	75.00	38	107	
George Van Tassel	QCD	2-3-02	NE¼ of NW¼	23	39S	2E	40	120.00	38	116	
Fish Lake Water Co.	QCD	1-5-03	Rt of Way 50 ft wide across Sec. 9 to Line Bet. NW¼ & SW¼ of NE¼	15	36S	1E	5.75	7.25	38	135	
H. W. Jackson & I. L. Hamilton	QCD	5-9-04	SE¼ of SW¼	35	33S	1W	40	250.00	38	177	

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
H. W. Jackson & I. L. Hamilton	QCD	5-9-04	SW¼ of SE¼	35	33S	1W	40	500.00	38	178	
Ashland Mfg. Co.	QCD	12-14-03	W½ of NW¼ SE¼ of NW¼ & SW¼ (And other lands)	7	40S	2E	262.88	657.20	38	185	
Big Bend Milling Co.	QCD	2-9-06	(NW¼ of NE¼	23	34S	1E	31610.00	5921.89	56	382	
John A. Lewman	QCD	12-14-03	NE¼ of SW¼	7	38S	4W	40.00	120.00	38	206	

Transfers on pages 7 and 8, for which no dates of record are given, are not recorded in Marion County; but the same transfers appear in the Jackson County List, with dates of record shown.

A. W. REES.

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Mathias Bauer	Special Warranty	2-1-81	N½ of NW¼ of NW¼	3	6S	1W	19.45	77.80	26	269	2-9-81
Adelhelm Odermott	Bargain Sale	11-14-93	E½ of NE¼	13	7S	1E	641.18	1602.95	56	430	10-3-94
			S½ Sec. 17;								
			NE¼;N½ofNW¼	19	7S	2E					
Dewitt C. Remington	Cont	2-22-71	S½ of NW¼								
			N½ of SW¼	3	7S	1E	160	200.00	14	242	2-7-72
Johann F. B. Jaeger	Cont	5-12-76	Lot No. 6	31	3S	2W	51.02	384.68	21	31	5-16-76
Clark Barzee	Cont	11-11-78	E½ of NE¼	3	9S	3W	80.89	404.45	24	245	9-16-79
Joseph Peters	Cont	5-15-90	SW¼ of SW¼	23	9S	3E	40	140.00	51	490	11-5-92
Jane Peters	Cont	11-6-90	SE¼ of SW¼	23	9S	3E	40	220.00	51	493	11-5-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ancil B. Kenworthy	Cont	12-2-82	SE¼ of SW¼	31	6S	2E	40	100.00	51	594	12-9-92
John Steninger	Cont	4-2-92	W½ of NW¼	33	7S	2E	80	260.00	62	147	6-18-95
Samuel Pitney	Cont	5-27-99	Lot 3	33	7S	1E	29.75	104.12	92	477	6-13-06

THIS PAGE BOU
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BOUND BOOK

State of Oregon)
County of Marion)ss.

I hereby certify that the foregoing nine sheets correctly show the Record Book and Page, and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 21, 1912.

A. EUGENE AUFRANC,

(Seal.) County Recorder of Marion County, Oregon.

By W. R. CLARKE, Deputy.

THIS PAGE BO

LINCOLN COUNTY, OREGON.

Clerk's Office
Lincoln County
R. H. Howell, Clerk
Toledo, Oregon.

August 21, 1912.

A. W. Rees, Esq.,
Land Commissioner, O. & C. R. R.
Portland, Oregon.

Dear Sir:—I enclose herewith Sheet for this County: You will notice I have made a note as to the name of "Timm" this is the proper name, and is indexed under that name; although the deed is recorded as Finn: the subsequent deeds, however, passes as Timm, and after his death all the heirs at law signs as "Timm": This matter may not be material, but prefer to mention same.

I go to Corvallis on the 1:30 train this afternoon and arrive there some time this evening.

Very truly yours,

W. J. WALL.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Lincoln County, Oregon, prior to November 15, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Z. H. Davis	B&S	11-15-87	NW¼ of NE¼	17	12S	8W	40	80.00	G	257	1-4-88
Oscar Tom	B&S	2-28-91	NE¼ of NW¼	1	14S	9W	40	80.00	M	159	5-30-91
Robert L. Feagle	B&S	2-28-91	E½ of SE¼ E½ of SE¼ SE¼ of NE¼	7 19	12S 12S	8W 8W	200	400.00	M	170	6-5-91
B. S. Hoover	SpW	7-28-85	Lot 1	1	14S	9W	39.77	59.65	M	241	8-17-91
J. Hartwell Skinner, Assignee of Lydia L. January	B&S	8-3-91	W½ of NW¼	23	12S	8W	80	200.00	M	384	11-9-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jonathan January	B&S	2-28-91	NE¼ of NW¼ & NE¼	23	12S	8W	200	400.00	N	60	3-21-92
Robert B. Trenholm	B&S	2-28-91	NE¼ of SW¼ SE¼ of NW¼	1	14S	9W	80	160.00	1	137	7-31-93
Franklin Chambers, Assignee of Connor & Crosno	B&S	2-28-91	SW¼	7	12S	8W	160.24	320.48	3	289	12-18-95
F. Chambers, Assignee of Jackson Chambers	B&S	9-30-91	W½ of SE¼	7	12S	8W	80	160.00	3	292	12-18-95
Sol King, Assignee of Lorenzo W. Mulvaney	B&S	10-15-94	SE¼	15	12S	8W	160	320.00	4	333	1-6-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Thomas Learmont	SpW	8-12-85	W½ of SW¼	9	12S	8W	80	160.00	4	438	5-13-98
James H. Claunch	QC	4-7-02	E½ of SW¼ NW¼ of SE¼	1	15S	9W	120	420.00	11	358	1-5-03
B. S. Hoover	Ctf	5-24-81	Lot 1	1	14S	9W	39.77	59.55	C	94	9-30-82
J. Hartwell Skinner	Ctf	7-13-91	W½ of NW¼	23	12S	8W	80	200.00	M	362	10-28-91
Hans Finn	Ctf	5-27-93	NW¼ of SE¼	5	12S	8W	40	100.00	3	155	5-4-95
Robert L. Feagles	Ctf	3-28-90	E½ of SE¼	7	12S	8W					
			E½ of SE¼ & SE¼ of NE¼	19	12S	8W	200	400.00	1Mcs	160	3-27-90
								For Benton Co.			

THIS PAGE

State of Oregon)
County of Lincoln)ss.

I hereby certify that the foregoing sheet correctly shows the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 21, 1912.

R. H. HOWELL,
County Recorder of Lincoln County, Oregon.

(Seal.)

BENTON COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Benton County, Oregon, prior to February 15, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
F. A. Chenoweth	Ctf	2-1-82	E½ of NE¼ Lot 1 & 2	13	10S	6W	154.78	309.56	N	628	2-2-82
J. B. Lee & Thomas Graham	Ctf	8-1-89	N½; SW¼; NE¼ of SE¼, S½ of SE¼	17	14S	8W	600	690.00	28	167	6-19-90
C. H. Hull	Ctf	5-15-88	S½ of SE¼ Lots 1 & 2	13	14S	8W	124.68	187.02	28	206	7-23-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Annie E. Laws	Ctf	4-28-88	All	11	15S	6W	640	640.00	28	319	9-17-90
J. B. Lee & Thomas Graham	Deed	2-28-91	S½ of SE¼ NE¼ of SE¼ SW¼ ; N½	17	14S	8W	600	690.00	28	618	3-27-91
Alexander Strow	Deed	2-28-91	SE¼ of NE¼ E½ of SE¼ SW¼ of SE¼	23	14S	8W	160	160.00	29	25	4-16-91
John G. Seifert	Deed	2-28-91	N½ of SW¼ S½ of NE¼ & SE¼	7	10S	6W	325.28	437.92	29	61	5-13-91
John G. Seifert	Deed	2-28-91	S½ of SW¼	7	10S	6W	85.63	256.89	29	64	5-13-91
John G. Seifert	Deed	2-28-91	NW¼ of NW¼ Lot 2	17	10S	6W	52.24	78.36	29	67	5-13-91

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Isaac Heath	Deed	2-28-91	S½ of SE¼ Lots 1 & 2	13	14S	8W	124.68	187.02	29	81	5-23-91
Arthur W. Hawley	Deed	2-28-91	Lot 2	21	14S	6W	34.75	86.87	29	148	6-18-91
Annie E. Laws	Deed	2-28-91	All	11	15S	6W	640	640.00	29	283	7-22-91
Wm. Talley	Deed	2-28-91	SW¼ of NE¼ Lot 2	33	14S	6W	55.70	167.10	30	505	6-17-92
Wm. Talley	Deed	2-28-91	NW¼ of NE¼ Lot 1	33	14S	6W	55.70	167.10	30	508	6-17-92
Wm. Talley	Deed	2-28-91	SE¼ of NW¼	33	14S	6W	40	120.00	30	511	6-17-92
George Spaght	Deed	9-30-91	NW¼ of SE¼ NE¼ of SW¼	35	13S	6W	80	200.00	32	64	10-29-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Alice C. Ryder	Deed	8-3-91	Lot 1	31	13S	7W	16.76	58.66	32	153	12-27-92
W. E. Doty	Deed	12-5-92	SW¼ of NW¼	7	10S	6W	44.93	89.86	32	224	3-2-93
Charlotte Taylor	Deed	2-28-91	Lot 5	3	14S	8W	33.25	49.88	32	494	10-13-93
W. W. Ryder	Deed	6-18-94	S½ of SW¼ NW¼ of SW¼	31	13S	7W	119.50	165.40	34	122	9-11-94
Ranson Oakes	Deed	1-29-94	SW¼	3	14S	6W	160	320.00	32	488	10-22-95
L. H. Hawley	Deed	7-3-93	SW¼ of SW¼ N½ of SE¼ Lot 1, SW¼, N½	15 21	14S	6W	624.38	1560.95	35	271	3-31-96

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Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Livima Rogers	Deed	5-11-96	S½ of NE¼ SE¼ of NW¼ NE¼ of SE¼	27	13S	6W	160	320.00	35	403	7-18-96
Mrs. Sylvia J. Nichols	Deed	5-11-96	SE¼ of SW¼	3	15S	6W	40	100.00	35	509	9-5-96
I. Durbin	Ctf	2-3-96	SW¼ of SE¼ (All right, title (and interest.	29	13S	7W	40	114.00	35	553	10-23-96
Willamette Pulp & Paper Co.	Deed	4-8-01	Lot 4	31	14S	4W	44.58	445.80	40	390	2-6-02
Daniel E. Peggs	Deed	11-16-91	SE¼ of SE¼	33	13S	6W	40	80.00	36	614	9-24-98
D. E. Peggs	Deed	11-9-92	NE¼ of SE¼	33	13S	6W	40	100.00	36	616	9-24-98

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Elizabeth J. Headrick	Deed	12-12-98	Lot 5 (All (right, title (and interest.	7	14S	7W	39.78	113-50	38	257	7-27-99
Charles W. Laurens	Deed	2-24-93	W½ of SW¼	25	10S	5W	80	240.00	38	348	12-5-99
Gustav Brock	Deed	11-5-95	SE¼ of SE¼	29	13S	6W	40	100.00	38	333	11-20-99
Wm. J. Howel	Deed	11-14-93	Lots 1 & 2	5	14S	7W	31.39	62.78	38	452	4-21-00
Willis Vidito	Deed	5-28-00	SE¼ of SW¼	1	14S	8W	40	180.00	38	495	7-5-00
J. & M. Hayden	Deed	7-29-01	E½ of NE¼ ⎫NE¼ of SE¼	31	13S	7W	120	420.00	40	267	10-11-01
M. W. Ruble	Deed	4-8-01	SE¼ of NW¼	5	14S	7W	40	140.00	40	450	3-18-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
M. W. Ruble	Deed	4-8-01	NE¼ of NW¼	5	14S	7W	39.77	139.20	40	451	3-18-01
John H. Stauturf	Deed	12-16-95	Lot 1	3	14S	6W	42	108.20	42	68	9-25-02
Lavina S. Childs	Deed	11-3-02	NE¼ of NW¼	1	14S	8W	39.75	119.25	42	218	2-4-03
Walter S. Humphrey	Deed	12-14-03	NW¼ of NW¼	27	13S	6W	40	160.00	42	631	3-11-04
J. H. Dorsey	Deed	6-6-05	NW¼ of NW¼	1	14S	8W	39.87	119.61	42	106	3-27-06
Jeremiah Cries & Stark	QCD	6-22-76	W½ of NE¼ & NW¼	3	14S	5W	243.18		M	299	1-30-78
			Note: Deed recites lands are part of grantee's D. L. C. and request of commissioner G. L. O. to deed.								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joseph Gragg	QC	3-14-92	NE¼ of NE¼	35	13S	6W	40	200.00	30	498	6-13-92
Guy A. Seeley	QC	12-5-92	N½ of NE¼	5	14S	7W	78.59	261.30	36	110	6-7-97
Willamette Pulp & Paper Co.	QC	2-15-97	Lot 1	7	12S	4W	160	16.00	36	186	9-8-97
John A. Buchanan	QC	7-26-97	Lot 1	5	13S	5W	26.58	159.48	36	219	10-6-97
Elvin Witham	QC	4-8-01	Lot 8	29	11S	5W	38.76	110.47	40	141	6-1-01
G. H. Woodbury	QC	4-8-01	NE¼	5	15S	6W	161.51	403.77	40	156	6-19-01
James Spencer	QC	12-17-00	S½ of SW¼	21	13S	7W	80	280.00	40	169	6-22-01
Ida Miller	QC	12-1-02	NW¼ of NW¼	19	14S	6W	40.58	121.74	46	362	11-20-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Daisy Starr Peterson	QC	6-8-83	NE¼ of NW¼	23	13S	6W	40	200.00	46	429	1-3-07
Geo. H. Woodbury	QC	11-8-97	NE¼	9	15S	6W	160	400.00	36	374	2-15-98
C. B. Starr	QC	10-3-98	Lots 1 & 2	29	14S	5W	4.99	9.50	38	71	2-23-99
John Smith	QC	11-27-99	Lot 4	25	12S	5W	13.37	63.51	38	379	1-30-00
Geo. Spaght	QC	2-15-97	SW¼ of NW¼	35	13S	6W	40	120.00	38	450	4-17-00
Annie Bengen	QC	12-12-98	N½ of NE¼	17	13S	6W	80	240.00	40	420	2-26-02
Samuel H. Moore	QC	3-3-02	W½ of NW¼	33	10S	5W	80	300.00	40	614	7-1-02
Samuel H. Moore	QC	3-3-02	S½ of SE¼	29	10S	5W	80	200.00	42	617	7-1-02
H. Hirshberg	QC	1-13-02	S½ofSW¼&SW¼	1	13S	7W	240	798.00	42	13	7-26-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. Hirshberg	QC	1-13-02	N½	1	13S	7W	385	1280.13	42	15	7-26-02
Ralph R. Whitehead	QC	7-7-02	SE¼ of SE¼	29	13S	7W	40	120.00	42	170	12-16-02
G. A. Peterson	QC	7-7-02	NW¼ of NW¼	23	13S	6W	40	200.00	42	181	12-20-02
Edward Ryder	QC	4-11-98	Lot 5	29	13S	7W	18	54.00	42	255	3-25-03
Isaac Durbin	QC	5-11-96	SW¼ of SE¼	29	13S	7W	40	114.00	42	258	3-26-03
John B. Erickson	QC	2-2-03	SE¼	19	10S	5W	160	480.00	42	289	4-21-03
John B. Erickson	QC	2-2-03	W½ of NE¼ SE¼ of NE¼; NW¼	29	10S	5W	280	840.00	42	291	4-21-03
Samuel H. Moore	QC	6-8-03	SE¼ of NW¼	33	10S	5W	40	120.00	42	422	8-17-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
T. C. Baker	QC	4-4-04	W½ of SW¼	33	10S	5W	80.88	242.64	44	137	8-19-04
E. M. Kimball	LWD	12-7-05	SW¼ of SE¼	35	13S	8W	40	140.00	46	125	4-28-06
Reuben C. Keyer	LWD	9-15-85	Lots 4 & 5	1	14S	6W	20	108.78	T	374	3-22-86
H. B. Nichols	LWD	4-9-86	N½ of SE¼	3	15S	6W	120	(24.00	V	75	11-9-86
			NE¼ of SW¼					(216.00			
Hiram H. Starr	LWD	9-2-85	Lot 1	9	14S	8W	31	46.50	V	79	11-11-86
H. B. Nichols	LWD	9-14-86	Lots 1, 2, 3, 4	35	14S	6W	190.01	(40.02	V	111	12-14-86
			Lot 1	25				(340.00			
James H. Russell	LWD	3-5-86	W½ of NW¼	29	13S	7W	103.89	(76.56	V	318	6-7-87
			Lot 6					(79.27			

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Richard J. Grant	LWD	8-22-87	Lot 2, 3, 4	9	10S	6W	68.39	(68.43 (68.35	V	470	10-12-87
Mrs. Agnes C. Horton	LWD	9-2-85	NW¼ of NW¼	3	15S	6W	39.81	(8.52 (71.10	V	623	1-19-88
W. R. Calloway	LWD	11-15-87	Lot 2	31	10S	4W	4.66	35.42	V	637	2-1-88
Wm. W. Ryder	LWD	12-5-87	SW¼ of SE¼	31	13S	7W	40	50.00	X	20	2-29-88
W. W. Lynch	LWD	1-15-87	Lot 5	11	10S	6W	13.92	27.85	X	303	11-8-88
Thomas Warfield	LWD	9-2-85	Lots 8 & 9	7	14S	7W	69.73	125.00	29	84	5-25-91
George Houck	LWD	10-21-85	N½ of NE¼	17	15S	5W		214.68			
			NW¼ of N½ of SW¼	7	15S	5W	328.51	214.60	42	105	10-29-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George W. Houck	LWD	10-21-85	E½ of NE¼ N½ of SE¼	7	15S	5W	160	120.00	42	108	10-29-02
William Taylor Joseph C. &	LWD	4-8-87	Lot 5	9	14S	8W	24.34	(10.89 (25.62	44	330	2-13-05
Peter Polly	LWD	5-24-79	Lots 2, 3, 4	9	14S	8W	102.56	128.20	M	547	6-16-79
Thomas J. Dennis	LWD	5-24-79	Lots 6, 7, 8	9	14S	8W	91.30	182.60	M	567	7-25-79
Charlotte Taylor	LWD	5-24-79	NE¼ of SW¼ Lot 4	3	14S	8W	63.60	130.76	M	570	7-25-79
John A. Bounds	LWD	5-24-79	SW¼ of SW¼ SW¼ of SE¼ Lot 1, 2, 3, 4, 5	1	15S	6W	163.20	90.00	M	630	10-27-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. C. Cavel	Cont	6-27-98	SE¼ of SE¼	3	15S	6W	40	120.00	1 Msc	220	8-21-06
Ole B. Reed	Cont	2-14-00	SE¼ of SE¼	29	13S	7W	40	120.00	40	33	1-24-01
Wm. S. Chastain	Cont	2-26-95	W½ of SW¼ S½ of NW¼	7	14S	8W	156.15	390.38	34	440	8-26-95

State of Oregon)
County of Benton)ss.

I hereby certify that the foregoing 3 sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 22, 1912.

S. N. WARFIELD,

(Seal.) County Recorder of Benton County, Oregon.

LINN COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Linn County, Oregon, prior to November 1, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Eli M. Michaels	B&S	11-20-74	Lots 1, 2, 3 & 4	23	14S	3W	68.55	218.56	2	26	11-16-75
James Conaway	B&S	11-26-74	Lot 1	29	14S	1W	19	47.50	P	537	10-7-75
Selden S. Warner	B&S	11-26-74	Lot 3	15	15S	3W	19.82	89.19	P	270	5-27-75
Henry Coleman	B&S	9-9-75	Lots 1, 2 & 3	7	15S	2W	72.42	50.45	P	551	10-9-75
Selden S. Warner	B&S	9-9-75	Lot 2	15	15S	3W	29.73	133.80	2	75	1-19-76

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Josephine Curl	B&S	9-9-75	SE¼ of NE¼ SW¼ of NE¼	23	11S	1W	80	99.00	2	302	3-6-76
Samuel D. Holt	B&S	9-9-75	Lots 1, 6 & 7	3	16S	3W	60.82	218.96	V	566	6-1-80
Geo. M. Clark	B&S	9-9-75	Lots 4, 5 & 6	19	11S	1E	46.18	83.13	P	574	10-18-75
Wm. McHargue	B&S	9-9-75	SW¼ of NE¼ SE¼ of NW¼ Lots 2, 3, 4, 5, 6 & 7.	31	13S	2W	162.71	366.10	P	487	11-1-75
Joseph Bilyeu	B&S	2-16-76	Lot 6	15	10S	2W	10	36.00	2	386	4-11-76
Noah Shanks	B&S	2-16-76	NW¼ of NW¼	3	15S	1W	40.91	81.82	2	518	6-7-76
John W. Conaway	B&S	2-16-76	NE¼ of NW¼	3	15S	1W	41.14	82.28	2	519	6-7-76

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Bilyeu	B&S	8-17-76	NE¼ of SW¼	17	10S	1E	40	72.00	2	601	8-30-76
H. Bryant	B&S	8-17-76	Lots 1, 2 & 3	5	10S	1E	39.40	75.42	2	808	1-1-77
Robt. Carey	WD	5-24-79	Lot 1	23	10S	2W	39.20	98.00	T	721	6-30-79
B. F. Munkers	WD	5-24-79	Lots 1 & 2	15	10S	2W	8.64	38.83	V	130	10-27-79
Thos. C. Sloper	WD	5-24-79	Lot 2	21	9S	2E	24	72.00	V	156	11-5-79
Anthony Weddle	WD	5-24-79	Lots 4 & 5	35	9S	1E	108.79	217.58	V	361	1-31-80
			Lots 1 & 6	1	10S	1E					
M. Barrigan	WD	5-24-79	N½ of NE¼	3	15S	1E	81.40	162.80	V	567	6-9-80
Wm. E. Arnold	WD	5-24-79	E½ of NW¼	23	10S	1W	80	160.00	Y	621	12-22-82

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
David & Jas. W. McDowell	WD	5-24-79	E½ of NE¼	31	14S	1E	80	200.00	27	6	1-11-83
Wm. B. Blain (Heirs of)	WD	5-24-79	Lots 4 & 5	19	14S	2W	43.15	107.87	27	613	6-11-84
Samuel Heigley	WD	5-24-79	N½ of SW¼	21	9S	1E	80	160.00	29	447	11-27-85
James C. Calloway	WD	2-26-80	N½ of NW¼ NE¼; N½ of SE¼; SE¼ of SE¼;	27	13S	2W	360	660.00	W	43	10-1-80
Wm. Fields	WD	2-26-80	NW¼ of SW¼	33	14S	1E	40	160.00	31	272	11-4-86
Selden Warner	WD	2-26-80	Lots 2 & 3	17	15S	2W	39.11	88.00	46	597	9-26-93
Washington Adams	WD	5-27-80	W½ of SW¼ & Lots 3 & 4	5	16S	1W	150.19	375.47	27	281	7-10-83

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
George S. Miller	WD	2-1-81	SE¼ of NW¼	33	14S	1W	40	81.00	W	216	2-9-81
Chas. W. Richardson	WD	2-1-81	SW¼ of SW¼	15	10S	1E	40	60.00	W	219	2-9-81
Joseph L. Miller	WD	2-1-81	N½ of NE¼	23	11S	1W	80	100.00	W	222	2-9-81
Frank Blair	B&S	1-19-78	N½ of NW¼	3	15S	1E	79.80	200.00	W	665	9-23-81
George S. Miller	B&S	1-19-78	W½ of NW¼ NE¼ of SW¼ NW¼ of SE¼	33	14S	1W	160	360.00	27	272	7-3-83
William Baker	B&S	1-19-78	Lot 5	13	9S	1W	39.50	59.25	44	172	3-15-92
John Marshall	B&S	1-19-78	N½ of SE¼	23	11S	1W	80	90.00	R	566	2-9-78
Joseph Stewart	B&S	1-19-78	N½ of NE¼	21	15S	1W	80	180.00	R	592	2-18-78

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Lyman W. Pomeroy	B&S	1-19-78	S½ of SE¼	25	10S	2W	80	200.00	R	699	3-26-78
Wm. R. Kirk	QC	12-16-72	NE ¼of NE¼	23	14S	3W	40	108.00	M	12	7-16-73
James Pearl	QC	12-16-72	Lot 8	23	14S	3W	3.69	33.61	N	36	5-6-74
United States	QC	12-15-84	NW¼ of SE¼ NE¼ of SW¼	29	14S	1E	—	1.00	29	576	4-14-86
Robt. Warner	B&S	2-28-91	W½ of NE¼	33	9S	3E	80	200.00	39	637	3-31-91
Wm. Burge	B&S	2-28-91	E½ of NE¼	31	9S	2E	80	200.00	42	16	4-3-91
Jane Jamieson	B&S	2-28-91	W½ of NE¼	31	9S	2E	80	200.00	42	13	4-3-91
Chas. E. Clark	B&S	2-28-91	SE¼ of NE¼ NE¼ of SE¼	21	11S	1E	80	160.00	42	30	4-6-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James Clark	B&S	2-28-91	SW¼ of NW¼	21	11S	1E	40	80.00	42	36	4-6-91
John A. Robnett	B&S	2-28-91	SE¼ of SW¼	33	14S	1W	40	140.00	42	42	4-7-91
John Calway Mayo	B&S	2-28-91	SW¼ of NW¼	31	9S	3E	43.51	130.53	42	45	4-8-91
William Coy	B&S	2-28-91	NE¼ of SE¼	3	10S	2E	40	1.00	42	67	4-17-91
Adam Wunder	B&S	2-28-91	Lot 1	31	9S	1E	23.35	58.37	42	83	4-24-91
Robt. Glass	B&S	2-28-91	Lots 2 & 3	13	14S	2W	65.07	130.14	42	93	4-29-91
Esther Shepherd	B&S	2-28-91	N½ of NE¼	31	9S	3E	80	200.00	42	100	5-1-91
James T. Nave	B&S	2-28-91	N½ of NW¼ Lots 1 & 2	31	11S	1E	117.19	175.78	42	130	5-13-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Henry F. Bodeker	B&S	2-28-91	S½ of SE¼	33	9S	2E	80	160.00	42	210	6-1-91
J. R. Geddes	B&S	2-28-91	SW¼ of NW¼	33	9S	3E	40	100.00	42	232	6-9-91
John S. Thomas	B&S	2-28-91	NW¼ of NW¼	7	10S	2E	43.09	64.63	42	313	7-18-91
J. M. Dorrance	B&S	2-28-91	SE¼ of SW¼	19	9S	2E	40	140.00	42	363	2-21-91
Santiam Lumbering Co.	B&S	2-28-91	NW ¼ of SE¼	31	9S	3E	40	100.00	42	408	9-23-91
Jas. Warner & Robt. Warner	B&S	2-28-91	NE¼ of SE¼	33	9S	3E	40	100.00	42	460	10-19-91
Spruce Hall & Beach Hall	B&S	2-28-91	E½ of SW¼	13	10S	1W	80	170.00	42	498	11-5-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
David Myers	B&S	2-28-91	W½ of NW¼ SE¼ of NW¼	17	10S	1E	120	240.00	42	514	11-13-91
George H. Jones	B&S	2-28-91	W½ of SE¼	19	9S	2E	80	120.00	42	539	11-24-91
Joseph L. Turnidge	B&S	2-28-91	SE¼ of NW¼ NE¼ of SW¼	33	9S	3E	80	240.00	44	150	3-9-92
Joseph L. Turnidge	B&S	2-28-91	NW¼ of SW¼	33	9S	3E	40	120.00	44	153	3-9-92
A. R. McDonald	B&S	2-28-91	S½ of NW¼	25	10S	1W	80	160.00	44	176	3-16-92
A. R. McDonald	B&S	2-28-91	N½ of NW¼	25	10S	1W	80	160.00	44	180	3-16-92
Haman T. Thomas	B&S	2-28-91	SE¼ & Lots 3 & 4	1	10S	1E	178.44	223.05	44	324	5-17-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joseph E. Turnidge	B&S	2-28-91	SE¼ of SW¼	25	11S	1W	40	60.00	44	542	9-22-92
Mary Flatman	B&S	2-28-91	NW¼ of NE¼	11	10S	1E	40	100.00	46	301	4-11-93
Mary Flatman	B&S	2-28-91	SE¼ of NE¼ NE¼ of SE¼	11	10S	1E	80	240.00	46	304	4-11-93
J. W. Drury	B&S	2-28-91	NE¼ of NW¼	31	9S	3E	40	100.00	46	331	4-22-93
L. Wallace	B&S	2-28-91	SW¼ of NE¼ NW¼ of NW¼ Lots 1, 2 & 3	19	11S	1E	135.21	202.81	49	268	1-28-95
Wm. Cyrus	B&S	2-28-91	Lot 1	31	10S	1E	33.57	83.92	50	413	2-24-96
Milton Washburn	B&S	2-28-91	SE¼ of SE¼	33	14S	1W	40	68.00	57	617	5-17-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joel Vail	B&S	2-28-91	N½ of NW¼	23	12S	1E	80	200.00	63	246	1-4-99
Wm. T. Pierce	B&S	2-28-91	SW¼ of SE¼	33	14S	2W	40	100.00	63	249	8-15-99
Joseph Leeper	B&S	2-28-91	S½ of SE¼	23	10S	1W	80	160.00	63	254	6-24-01
P. F. Madden	B&S	8-3-91	N½ of NW¼	31	9S	4E	73.36	183.40	44	57	2-4-92
Peter Chance	B&S	8-3-91	Lots 2 & 3	29	14S	1W	20.08	70.28	44	80	2-15-92
Newman Goodman, Joseph Goodman & Maurice Goodman	B&S	8-3-91	E½ of SE¼ SW¼ of SE¼	25	11S	1W	120	180.00	46	266	3-28-93
Lot S. Harris	B&S	8-3-91	NW¼ of NW¼	23	10S	1W	40	80.00	49	299	2-28-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Kate S. Robertson	B&S	9-30-91	NE¼ of NW¼	35	9S	3E	40	100.00	44	1	1-6-92
Sanford Cochran	B&S	9-30-91	Lot 4	29	14S	1W	8.58	25.74	48	300	3-17-94
Spruce Hall & Beach Hall	B&S	11-16-91	NE¼ of SE¼	13	10S	1W	40	80.00	44	24	1-15-92
J. S. Thomas	B&S	11-16-91	NE¼ of NW¼	7	10S	2E	40	60.00	44	107	2-24-92
James M. Knight	B&S	12-21-91	N½ of NW¼ NW¼ of NE¼ & Lot 1	17	15S	2W	157.52	334.42	44	87	2-18-92
W. W. Martin	B&S	3-14-92	N½ of SE¼ SE¼ of SE¼	35	9S	3E	120	270.00	44	197	3-24-92

Grantee	Instrument	Date	Description*	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Hubbard Bryant	B&S	3-14-92	N½ of NW¼ SW¼ of NW¼	25	10S	2W	120	240.00	44	216	4-2-92
L. F. Thomas	B&S	4-18-92	NE¼ of SE¼	7	10S	2E	40	60.00	44	328	5-17-92
Sarah M. Smelser	B&S	4-18-92	SW¼ of NW¼	23	10S	1W	40	80.00	44	524	9-14-92
Chas. T. Craft	B&S	4-18-92	NW¼ of NW¼	5	11S	1E	38.86	77.72	49	358	4-18-95
John Y. Crocker	B&S	9-5-92	S½ of NW¼	19	10S	1E	79.95	160.00	63	252	5-15-00
J. J. DuBruille	B&S	9-5-92	N½ of NW¼	3	10S	3E	71.51	160.00	44	570	10-7-92
Elijah Goin	B&S	9-5-92	Lot 3	7	10S	2W	23.76	118.80	46	166	2-8-93
Geo. A. Spencer	B&S	11-9-92	SE¼ of SW¼	27	9S	3E	40	100.00	63	257	8-27-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. E. Thomas	B&S	12-5-92	SE¼ of NW¼	7	10S	2E	40	60.00	49	147	11-17-94
E. D. & H. B. Moyer	B&S	5-8-93	S½ of SE¼	31	14S	1E	243.79	633.85	46	408	5-29-93
			N½ of N½	5	15S	1E					
John C. Morgan	B&S	5-8-93	E½ of SW¼	5	15S	1W	120	300.00	46	511	8-15-93
			SE¼ of NW¼								
George B. Hartmus	B&S	5-8-93	N½ of NW¼	31	9S	2E	82.57	313.77	48	114	11-29-93
G. S. & D. E. Stayton	B&S	5-8-93	S½ of SW¼	5	10S	2E	120	240.00	48	425	6-23-94
			SW¼ of SE¼								
J. Hutchins	B&S	7-3-93	NW¼ of SE¼	5	10S	2E	80	160.00	46	547	9-6-93
			NE¼ of SW¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Robt. Dixon	B&S	7-3-93	N½ of SE¼ & NE¼	33	9S	2E	240	720.00	46	567	9-13-93
L. E. Blain & S. E. Young	B&S	1-29-94	S½	9	12S	1E	320	800.00	48	256	2-10-94
Conrad Muller	B&S	1-29-94	SE¼ of SE¼	33	9S	3E	40	100.00	49	78	10-17-94
Henry Lyons	B&S	1-29-94	SE¼ of SW¼ Lots 5 & 6	13	9S	1E	111.65	334.95	57	43	4-16-96
L. E. Blain & S. E. Young	B&S	4-30-94	S½ of N½	9	12S	1E	160	400.00	48	394	5-25-94
Philipina Warner	B&S	10-15-94	SW¼ of SW¼ E½ of NE¼	27 33	9S	3E	120	300.00	49	180	11-30-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. T. Craft	B&S	10-15-94	SE¼ of SW¼	5	11S	1E	40	100.00	57	53	4-22-96
Matilda Eifert	B&S	10-15-94	Lots 1 & 2 N½ of SW¼	11	10S	1E	120.44	301.10	57	132	5-29-96
Anthony Bender	B&S	10-15-94	NW¼ of SE¼	11	10S	1E	40	100.00	57	165	6-29-96
Amanda C. Knight	B&S	2-4-95	N½ of NW¼ NW¼ of NE¼ Lot 1	17	15S	2W	157.52	1.00	49	402	6-1-95
Chas. E. Clark	B&S	2-4-95	NW¼ of SE¼	21	11S	1E	40	80.00	63	256	2-12-03
G. W. Epler	B&S	5-6-95	N½ of NE¼	31	9S	4E	80	200.00	49	456	7-2-95
J. M. Phillips	B&S	5-6-95	NW¼ of NE¼	31	15S	2W	40	80.00	57	66	4-25-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Warner	B&S	5-6-95	NE¼ of NW¼	33	9S	3E	40	100.00	57	471	1-15-97
J. P. Williams	B&S	11-5-95	Lot 6 & SE¼ of NW¼	21	9S	1E	65	162.50	57	450	12-28-96
Henry Lyons	B&S	12-16-95	SW¼ of SE¼ Lots 7 & 8	13	9S	1E	119.17	357.50	63	244	8-6-98
Mrs. S. A. Berry	B&S	5-11-96	SW¼ of NW¼	35	9S	2E	40	100.00	57	629	6-4-97
Harvey Shelton	B&S	11-9-96	NE¼ of NE¼	17	10S	2E	40	100.00	63	250	1-4-00
Rebecca Ann Doty	B&S	11-9-96	SE¼ of SE¼	31	11S	1E	40	100.00	63	243	6-27-98
T. M. Downing	B&S	2-18-97	SE¼ of NE¼	29	11S	1E	40	80.00	63	245	10-18-98
Bernice Wilson	B&S	7-26-97	S½ of SW¼	9	15S	1W	80	280.00	63	241	10-19-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
S. P. Chapman	QC	4-11-98	SW¼ of SW¼	23	9S	1E	40	140.00	59	533	6-25-98
W. H. Nicollson	B&S	8-29-98	NE¼ of NW¼	5	10S	3E	36.78	91.95	63	253	9-28-00
John C. Morgan	B&S	12-12-98	NW¼ of SW¼	5	15S	1W	40	120.00	65	501	4-4-00
H. B. Moyer	B&S	12-12-98	S½ of N½	5	15S	1E	160	480.00	63	247	5-15-99
W. W. Craft (Duplicate)	QC	5-4-99	SW¼ of NW¼	5	11S	1E	40	80.00	63	248	5-29-99
R. E. Warner & Wm. E. Warner	B&S	11-7-99	NW¼	3	15S	2W	158.69	320.00	65	382	2-8-00
W. H. Hesseman & J. Schroeder	QC	11-27-99	S½ of SW¼	29	9S	4E	80	280.00	65	427	3-5-00
T. S. Hensley	QC	12-26-99	NW¼ of NE¼	35	9S	3E	40	180.00	69	408	6-5-02

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
D. H. Pierce	QC	5-28-00	SE¼ of NE¼ N½ of SE¼ & Lot 4	17	15S	2W	148.60	311.50	67	213	12-18-00
Justin Wentworth & G. K. Wentworth	QC	6-25-00	N½ of SE¼ SE¼ of NW¼ NE¼ of SE¼	31 3	14S 15S	1E 1E	160	1200.00	67	63	8-6-00
James W. Cox	QC	10-29-00	N½ of NE¼	31	11S	1E	80	304.00	67	262	1-30-01
Justin & Geo. K. Wentworth	QC	2-3-02	S½ of NW¼	33	14S	1E	80	600.00	69	324	4-21-02
The Curtiss Lbr. Co.	B&S	8-11-02	S½ of SE¼	29	9S	3E	80	200.00	63	255	10-3-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Marshall S. Clark	QC	9-7-03	SW¼ of NE¼	21	11S	1E	40	100.00	75	166	11-11-03
Robt. S. Shaw	QC	1-4-04	SW¼ of NW¼ N½ of SW¼	3	10S	3E	120	300.00	75	303	1-22-04
Booth-Kelly Lbr. Co.	QC	2-8-04	NE¼ of SE¼ S½ of SE¼ SE¼ of SW¼	13	15S	1W	160	880.00	78	422	1-16-05
Booth-Kelly Lbr. Co.	QC	12-1-04	NE¼ of NW¼	11	15S	1W	40	280.00	78	636	6-17-05
August D. Anderson	QC	2-24-05	Lots 2 & 3 Lot 1	27 35	9S	2E	127.85	383.55	83	175	9-24-06
D. H. Pierce	QC	6-27-05	SW¼ of NE¼ SE¼ of SE¼	17	15S	2W	80	200.00	80	192	10-28-05

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. C. & Henry Lyons	WD	7-28-85	SE¼ of NW¼ NE¼ of SW¼	19	9S	2E	80	200.00	31	518	6-28-87
George Hanson	WD	8-5-85	SW¼ of SW¼	27	15S	1W	40	100.00	31	218	10-11-86
Thos. Iorns	WD	8-12-85	SE¼	21	9S	1E	160	220.00	80	561	4-18-06
Elizabeth Hermann	WD	8-12-85	NE¼	25	9S	1E	160	400.00	31	91	7-10-86
Earnest Wendt	WD	8-18-85	NW¼ of SE¼ SE¼ of SE¼	17	10S	1E	80	180.00	31	2	5-26-86
Lyman Wright	WD	8-18-85	N½ of SW¼	33	14S	2W	80	240.00	31	12	5-31-86
Isaac Banta	WD	9-2-85	NE¼ of SE¼	3	12S	1E	40	100.00	33	285	1-13-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James H. Stephens	WD	9-2-85	S½ of NE¼	29	13S	2W	80	200.00	29	563	3-30-86
Chas. W. Richardson	WD	9-2-85	SE¼ of SW¼ SW¼ of SE¼	15	10S	1E	80	110.00	31	43	6-24-86
James A. Richardson	WD	9-2-85	NE¼ of NE¼	27	10S	1W	40	80.00	31	322	12-13-86
Henry K. Arnold	WD	9-15-85	S½ of SE¼	13	10S	1W	80	90.00	29	545	3-15-86
Peter R. Bilyeu	WD	9-15-85	NW¼ of SW¼	17	10S	1W	40	100.00	31	28	6-15-86
Mitchell Wilkins	WD	9-23-85	N½ of NE¼ SE¼ of NE¼ NE ¼of SE¼	35	15S	3W	160	400.00	35	154	3-7-89
John Boyce	WD	9-23-85	NW¼	27	9S	1E	160	400.00	29	555	3-25-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. T. Beckwith	WD	9-23-85	N½ of SE¼	15	10S	1E	120	150.00	29	579	4-16-86
			(SE¼ of SE¼								
J. P. Williams	WD	9-23-85	SW¼ of NE¼ & Lot 7	21	9S	1E	58.20	138.25	33	144	10-21-87
Hiram H. Smith	WD	10-21-85	E½ of SW¼ of SE¼	35	12S	4W	20	300.00	31	32	6-18-86
John Bryant	WD	10-21-85	Lots 1, 2, 3,	3	10S	1E	92.99	146.24	31	46	6-24-86
			'4, 5 & 6;								
			NE¼ of SW¼	9	10S	1E					
George W. Phillips	WD	10-21-85	NW¼ of SW¼	18	10S	1W	43.24	129.72	31	56	6-26-86
S. D. Keeney	WD	10-21-85	S½ of SW¼	29	14S	1E	80	200.00	35	390	7-19-89

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
S. D. Keeney	WD	10-21-85	SW¼ of SE¼	29	14S	1E	40	100.00	35	394	7-19-89
Abner D. Gardner	WD	2-2-86	Lots 4 & 5	27	9S	2E	63.78	159.37	29	597	4-30-86
Marion F. C. Gaines	WD	3-5-86	NE¼ of SE¼	25	10S	2W	40	80.00	65	317	12-28-99
Ernst Wendt	WD	5-7-86	NE¼ of SE¼	17	10S	1E	40	100.00	31	144	8-31-86
William Tucker	WD	6-21-86	Lots 7 & 8 N½ of SW¼	19	11S	1E	147	220.50	31	209	10-5-86
Joel P. Williams	WD	7-12-86	Lot 5	21	9S	1E	47.24	70.86	33	147	10-21-87
J. H. Wigle	WD	7-28-86	E½ of NE¼	9	15S	2W	80	200.00	31	137	8-28-86
Mrs. Annie W. Jones	WD	9-14-86	W½ of NE¼ NE¼ of NW¼	19	9S	2E	120	180.00	31	299	12-2-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. Annie W. Jones	WD	9-14-86	E½ of NE¼	19	9S	2E	80	120.00	31	304	12-2-86
S. D. Keeney	WD	11-2-86	SW¼ of SE¼	33	14S	1E	40	120.00	35	399	7-19-89
S. D. Keeney	WD	11-2-86	E½ of SW¼ SW¼ of SW¼	33	14S	1E	120	340.00	35	404	7-19-89
W. W. Martin	WD	1-15-87	SW¼ of SE¼	35	9S	3E	40	90.00	33	482	7-14-88
L. C. Miller	WD	2-9-87	Lot 3 & SE¼ of NW¼	23	9S	1E	77.26	193.15	33	590	10-16-88
L. C. Miller	WD	2-9-87	N½ of NE¼	23	9S	1E	80	200.00	33	581	10-16-88
L. C. Miller	WD	2-9-87	N½ of SW¼	23	9S	1E	80	200.00	33	603	10-16-88
John Bryant	WD	2-9-87	N½ of NW¼	35	9S	1E	80	266.00	31	471	4-19-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
United States	B&S	5-9-87	NW¼ of NW¼ NW¼ of SE¼ NE¼ of SW¼ SE¼ of NW¼	33 29 29	18S 14S 11S	4W 1E 1E		1.00	33	64	9-8-87
Sarah L. Cooper	WD	7-13-87	Lot 1	13	14S	2W	38.70	115.00	33	75	9-9-87
Martin Gilleran	WD	8-22-87	S½ of NE¼ Lots 1 & 2	3	10S	2E	158.97	320.00	33	117	10-3-87
Lewis T. Henness	WD	9-20-87	N½ of NE¼ (being Lots) (1 & 2)	3	10S	3E	70.49	160.00	33	239	12-7-87
Judson Loofbourrow	WD	10-5-87	S½ of NW¼	19	11S	1E	84.43	126.65	35	18	12-12-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Lyman Wright	WD	10-5-87	NW¼ of SE¼	33	14S	2W	40	140.00	42	600	12-21-91
Cornelia E. Rainwater	WD	11-15-87	SW¼ of NW¼ W½ of SW¼	19	9S	2E	120	330.00	33	290	1-16-88
John Bryant	WD	11-15-87	NE¼	35	9S	1E	160	440.00	39	369	12-9-90
J. W. Drury	WD	11-15-87	NW¼ of NW¼	31	9S	3E	43.58	108.95	46	327	4-22-93
J. H. Walker	WD	6-29-89	Lots 3 & 4 SW¼ of NW¼	31	9S	3W	130.95	622.00	44	336	5-21-92
George Bender	WD	6-29-89	NE¼ of NE¼	11	10S	1E	40	133.00	44	351	6-2-92
Jos. E. Berry & Henrietta L Berry	WD	6-29-89	SW¼ of SE¼	31	11S	1E	40	95.00	44	537	9-19-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
David S. Myers	WD	6-29-89	SE¼ of SE¼	21	11S	1E	40	171.00	48	1	10-11-93
Seth Rockwell	WD	6-29-89	SW¼ of NE¼	31	10S	1E	40	114.00	59	468	5-5-98
Santiam Lumbering Co.	QC	3-14-92	S½ of SE¼	31	9S	3E	80	400.00	44	303	5-6-92
John A. Shaw	QC	3-14-92	S½ of SW¼	33	9S	3E	80	380.00	44	306	5-6-92
Christopher Silbernagel	WD	3-14-92	SW¼ of SW¼	11	10S	1E	40	140.00	44	355	6-2-92
J. R. Geddes	QC	3-14-92	S½ of NE¼	31	9S	4E	80	200.00	44	395	6-23-92
John H. Geddes	QC	3-14-92	NW¼ of SW¼	5	10S	3E	40	171.00	44	401	6-28-92
James S. Mills	WD	3-14-92	NE¼ of SE¼	29	9S	2E	40	140.00	46	34	11-22-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
C. H. Glunz	QC	3-14-92	NW¼ of SW¼	27	14S	1W	40	152.00	46	87	12-28-92
B. Frank Arnold	QC	11-9-92	S½ of SW¼	31	9S	3E	83.39	248.47	59	493	5-18-98
J. G. Barr	QC	2-24-93	S½ of SW¼	3	10S	3E	80	200.00	78	201	9-27-04
John H. Geddes	QC	10-15-94	NW¼ of SE¼	5	10S	3E	40	200.00	59	332	1-31-98
Mrs. E. Schneider	QC	2-4-95	NE¼ of SW¼	15	9S	1W	40	240.00	59	62	8-3-97
Mary Flatman	QC	5-11-96	SW¼ of NE¼	11	10S	1E	40	180.00	61	62	10-31-98
Chas. K. Spaulding	QC	2-15-97	Lots 1 & 2	13	10S	4W	29.93	150.00	59	205	10-16-97
Seth Rockwell	QC	7-26-97	SE¼ of NE¼	31	10S	1E	40	120.00	59	471	5-5-98
Louisa M. Cary	QC	7-26-97	E½ of NE¼	21	10S	1E	80	320.00	59	126	9-28-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Matilda Eifert	QC	7-26-97	S½ of SW¼ SW¼ of SE¼	23	11S	1E	120	480.00	67	140	10-5-00
Joseph Leeper	QC	7-26-97	NE¼ of SE¼	23	10S	1W	40	120.00	67	437	6-24-01
Isaiah Piatt	QC	7-26-97	SE¼ of NE¼	25	10S	1W	40	120.00	78	120	8-2-04
Henry F. Ellis	QC	11-8-97	Lot 3	31	9S	3E	43.45	152.07	59	396	3-12-98
John H. Geddes	QC	12-20-97	SE¼ of SE¼	5	10S	3E	40	200.00	59	365	2-16-98
J. B. McDonell	QC	4-11-98	SE¼ of NE¼	25	14S	2W	40	120.00	65	443	3-12-00
H. Trinwith	QC	6-6-98	SE¼ of SE¼	29	9S	4E	40	120.00	83	198	10-31-06
John C. Morgan	QC	12-12-98	SW¼ of NW¼	5	15S	1W	40	140.00	65	518	4-4-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. E. Farmer	QC	2-6-99	Lots 3 & 4	35	9S	2E	82.20	287.70	75	76	9-28-03
A. R. McDonald	QC	5-1-99	W½ of NE¼	25	10S	1W	80	280.00	67	177	11-15-00
F. Domogala	QC	6-12-99	Lot 6	29	9S	1E	20	120.00	65	226	11-7-99
W. W. Haines & Co.	QC	8-21-99	N½ of NW¼	11	10S	2E	80	360.00	67	1	5-24-00
E. C. Baker	QC	8-21-99	Lots 1 & 2	19	14S	2W	12.40	35.00	75	267	1-4-04
J. R. Geddes	QC	10-9-99	NW¼ of NW¼	33	9S	3E	40	200.00	67	225	12-27-00
Grace M. Pearse	QC	11-27-99	SW¼ of NE¼	3	10S	3E	40	140.00	67	274	2-9-01
Grace M. Pearse	QC	11-27-99	NW¼ of SE¼	3	10S	3E	40	140.00	67	276	2-9-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Justin Wentworth & Geo. K. Wentworth	QC	6-25-00	Sundry lands in Secs. 31 & 33, Secs. 3, 5, 11, 13 Secs. 1, 3, 5, 9, 11, 15 17, 21, 23, 25,	31	14S 14S 15S 15S 15S	1E 2E 1E 2E 2E	9850.33	73877.48	67	65	8-6-00
Almira Jakes	QC	9-3-00	S½ of SE¼	21	10S	1E	80	440.00	67	249	1-19-01
Fred A. Pepperling	QC	9-3-00	NE¼ of NE¼	23	10S	1E	40	200.00	73	56	10-28-02
Fred A. Pepperling	QC	9-3-00	NE¼ of NE¼	23	10S	1E	40Dup.	200.00	73	461	4-30-03
J. B. Withey	QC	10-29-00	S½ of SW¼	31	9S	4E	72.30	216.90	69	55	12-10-01
C. E. Mills	QC	12-17-00	NE¼ of SW¼	29	9S	2E	40	140.00	67	451	7-2-01

Grantee	Instrument	Date	Description	Will S.	Mer. T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Archibal B. Myers	QC	12-17-00	SW¼ of SW¼	27	11S	1E	40	140.00	73	481	5-9-03
James S. Mills	QC	2-18-01	NW¼ of SE¼	29	9S	2E	40	140.00	67	446	6-28-01
John H. Geddes	QC	4-8-01	SW¼ of SE¼	5	10S	3E	40	114.00	67	490	8-16-01
W. W. Haines & Co.	QC	6-10-01	SW¼ of NE¼	11	10S	2E	40	247.00	67	601	10-26-01
W. W. Haines & Co	QC	7-29-01	NW¼ of NE¼	11	10S	2E	40	247.00	67	599	10-26-01
Ephriam Shepherd	QC	12-2-01	SW¼ of SW¼	15	9S	1W	40	240.00	69	287	4-8-02
Justin & Geo. K Wentworth	QC	2-3-02	S½ of NW¼	33	14S	1E	80Dupl	600.00	69	324	4-21-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Justin & Geo. K. Wentworth	QC	2-3-02	Sundry lands in				2157.60	16182.00	69	326	4-21-02
			Secs. 33,		14S	1E					
			Secs. 1, 9,		15S	1E					
			Secs. 7, 13, 27,		15S	2E					
Willamette Pulp & Paper Co.	QC	4-7-02	Lot 6	11	9S	1W	7.67	75.00	69	450	6-23-02
W. C. Brown	QC	7-7-02	SE¼ of SW¼	15	9S	1W	40	300.00	73	197	1-5-03
O. M. Aplet	QC	11-3-02	SW¼ of SE¼	5	11S	1E	40	120.00	73	285	2-17-03
Curtiss Lbr. Co.	QC	11-3-02	W½ of SE¼	33	9S	3E	1050.96	10250.00	73	282	2-17-03
			N½ of NW¼ &								
			NE¼	9	10S	3E					
			NE¼	15	10S	3E					
			All	5	10S	4E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. F. Potter	QC	1-5-03	S½ of SE¼	23	9S	1E	80	260.00	73	551	6-15-03
John A. McRae	QC	7-6-03	NW¼ of SE¼	21	9S	2E	40	100.00	75	203	12-5-03
Robt. C. Pepperling	QC	11-2-03	NE¼ of NW¼	23	10S	1E	40	160.00	78	70	6-29-04
D. S. Myers	QC	1-4-04	NW¼ of NW¼	27	11S	1E	40	140.00	75	554	4-5-04
George Neibert	QC	5-9-04	Lot 4	15	9S	1W	43.06	215.30	78	140	8-17-04
The Booth-Kelly Lbr. Co.	QC	12-1-04	Sundry lands in Secs. 7, 9, 15, 17, Sec. 11,		15S 15S	1E 1W	2531.20	17718.40	78	634	6-17-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
The Booth-Kelly Lbr. Co.	QC	5-9-04	Sundry lands in				1244.71	5578.78	78	638	6-17-05
			Secs. 13,		15S	1W					
			Secs. 17, 19, 21,		15S	1E					
			Sec. 13,		16S	1W					
Not in Linn County			Secs. 15 & 21		20S	2W					
Nelson Hansen	QC	10-3-04	NE¼ of NE¼	27	10S	1E	40	240.00	83	117	8-14-06
D. H. Pierce	QC	6-27-05	SE¼ of NW¼ & Lot 5	17	15S	2W	51.96	129.90	80	190	10-28-05
W. W. Haines & Co.	QC	7-1-05	SE¼ of NW¼	11	10S	2E	40	200.00	80	398	2-19-06
S. V. Hall	QC	7-20-05	S½ of SW¼	17	10S	1E	120	540.00	80	259	12-5-05
			SW¼ of SE¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Wm. C. Skelton	QC	8-9-05	Lots 4 & 5	31	11S	1E	54	270.00	80	254	12-2-05
Lucia C. Richardson	QC	8-9-05	NW¼ of NW¼	17	11S	1E	40	120.00	80	411	2-26-06
Timothy F. Cowgill	QC	9-8-05	S½ of NW¼	15	15S	1W	80	320.00	80	547	4-13-06
Star Mill & Flume Co.	QC	3-1-06	Sundry lands in Secs. 5, 9, 11, 13		11S	1E	1720.39	21632.40	83	211	10-20-06
			Sec. 7,		11S	2E					
Thomas Iorns	Ctf	10-28-82	SE¼	21	9S	1E	160	220.00	27	372	10-13-83
James Warner & Robt. Warner	Ctf	5-31-89	NE¼ of SE¼	33	9S	3E	40	100.00	35	455	8-20-89
Joel Vail	Ctf	9-4-89	N½ of NW¼	23	12S	1E	80	200.00	35	524	9-18-89

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Robt. Warner	Ctf	2-27-90	W½ of NE¼	33	9S	3E	80	200.00	37	274	3-10-90
John H. Geddes	Ctf	7-16-90	NW¼ of SW¼	5	10S	3E	40	171.17	39	486	1-31-91
J. G. Barr	Ctf	7-12-93	S½ of SW¼	3	10S	3E	80	200.00	49	264	1-21-95
John H. Geddes	Ctf	7-16-94	NW¼ of SE¼	5	10S	3E	40	200.00	48	472	8-6-94
Oregon & California Railroad Company	QC	7-21-03	NE¼ of NE¼ E½ of SE¼	25	14S	2W	—	1.00	75	1	7-30-03
do	QC	12-30-04	S½	1	10S	2E	—	1.00	78	581	5-1-05

State of Oregon)
County of Linn)ss.

I hereby certify that the foregoing seven sheets correctly show the Record Book and Page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 20th, 1912.

GRANT FROMAN,

(Seal.) County Recorder of Linn County, Oregon.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XII

PAGES 6037-6455

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.:*
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.:*
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No._____

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Interveners and Appellants

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THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XII

PAGES 6037-6455

DOUGLAS COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Douglas County, Oregon, prior to December 5, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Butler R. Fitch	B&S	1-19-78	W½ of SW¼	33	21S	5W	80	144.00	9	761	5-25-78
Geo. W. Jones	WD	5-24-79	Lot 1	17	26S	5W	5.54	13.85	10	645	6-25-79
Franz Anlauf	WD	5-24-79	NW¼ of NE¼	25	21S	5W	40	100.00	10	674	7-9-79
M. Tipton	WD	5-24-79	All	5	26S	3W	630.54	709.36	10	703	7-26-79
M. Tipton	WD	5-24-79	SW¼ of NE¼ Lots 7 & 8	19	26S	4W	52.16	94.32	10	718	8-8-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jas P. Sutherlin	WD	5-24-79	NE¼ of NE¼	9	24S	5W	40	72.00	10	723	8-9-79
James Cole	WD	5-24-79	NE¼ of SW¼	5	25S	6W	40	72.00	10	767	9-2-79
John Emmett	WD	2-26-80	SW¼, W½ of SE¼, NE¼ of SE¼ Lots 2, 3, 4	1	26S	7W	374.70	487.35	11	359	4-21-80
Geo. D. Hansdale	WD	2-26-80	SE¼ of NE¼ W½ of SE¼	19	22S	9W	615.39	1307.69	11	404	6-2-80
			S½ of SW¼, E½, SE¼ of NW¼ NE¼ of SW¼	25	22S	10W					
A. C. Fearn	WD	2-26-80	NE¼ of NE¼	29	22S	4W	40	72.00	11	452	7-14-80
Michael Tynan	WD	2-27-80	S½ of SE¼	25	23S	6W	80	180.00	11	461	7-23-80

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. T. Thompson	WD	2-26-80	SE¼ of NE¼	33	25S	7W	40	54.00	11	467	7-24-80
Henry Conn	WD	2-26-80	SW¼ of NE¼ SE¼ of SE¼	33	26S	7W	80	90.00	11	505	8-26-80
N. W. Allen	WD	5-24-79	SE ¼of SE¼ SW¼ of NE¼ NE¼ of SW¼	13	24S	6W	120	180.00	11	529	9-13-80
A. H. Woodruff	WD	2-26-80	SE¼ of SE¼	15	26S	7W	40	72.00	11	543	9-29-80
James Cole	WD	2-26-80	W½ of NE¼	5	25S	6W	82.30	148.14	11	669	1-7-81
Henry Conn, Sr.	WD	2-2-81	SW¼ of SE¼	33	26S	7W	40	45.00	11	708	2-12-81
James Cole	WD	2-1-81	E½ of SE¼ Lots 1, 2, 3	15	24S	7W	188.54	212.12	11	711	2-12-81

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. Wimberly	WD	2-1-81	NE¼ of NW¼ NW¼ of NE¼	21	26S	3W	80	144.12	11	713	2-14-81
Ludwig Schaffer	WD	2-1-81	S½ of SE¼	21	21S	4W	80	160.00	11	716	2-14-81
R. J. Hendricks	WD	2-1-81	SW¼ of SE¼	11	23S	4W	40	54.00	11	718	2-14-81
James A. Perkins	WD	2-26-80	NE¼ of NE¼	5	23S	9W	40.06	90.00	12	182	7-28-81
J. Q. Adamson	WD	5-24-79	N½ of SW¼ NE¼ of SE¼ SE¼ of NE¼	33	25S	4W	160	288.00	14	51	4-18-83
A. M. Simpson & Bro.	WD	2-26-80	N½ of N½ SE¼ of NE¼ NE¼ SE¼ of NE¼ N½ of SE¼	11 3 33	23S 23S 23S	9W 9W 9W	720.91	1360.46	14	71	4-21-83

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			SW¼ of SE¼ SE¼ of SW¼ SE¼	31	22S	9W					
Geo. S. Hinsdale	WD	2-26-80	SE¼ of NE¼	19	22S	9W	615.39	1307.69	16	21	11-13-84
		(Dupl.)	W½ of SE¼, S½ of SW¼ E½, SE¼ of NW¼ NE¼ of SW¼	25	22S	10W					
Richard Thomas	WD	7-28-85	Lot 3	33	24S	4W	20	25.00	17	188	2-16-86
Richard Thomas	WD	8-5-85	SE¼ of NE¼	33	24S	4W	40	50.04	17	192	2-17-86
Ada Brown	WD	8-18-85	N½ of SE¼ Lots 4, 5, 6	29	25S	5W	162.22	292.00	17	206	3-1-86
P. C. Parker, Sr.	WD	9-2-85	S½ of SW¼	29	23S	5W	80	160.00	17	211	3-1-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
P. C. Parker	WD	8-18-85	NW¼ of NE¼	29	23S	5W	80	160.00	17	216	3-2-86
W. F. Colvin			NE¼ of NW¼ N½ of NE¼	25	21S	6W	80	162.00	17	236	3-9-86
Edward F. Kirwan	WD	8-5-85	N½ of NE¼	35	22S	6W	80	120.00	17	240	3-9-86
Edward F. Kirwan	WD	7-28-85	N½ of NW¼	35	22S	6W	80	126.00	17	244	3-10-86
John Barker	WD	7-28-85	SW¼ of SW¼	29	21S	5W	40	80.00	17	249	3-10-86
Geo. W. Cox	WD	8-12-85	S½ of SW¼	21	27S	4W	80	90.00	17	253	3-11-86
Gardiner Mill Co.	WD	7-28-85	E½ of SE¼	31	20S	9W	80	200.00	17	257	3-11-86
Gardiner Mill Co.	WD	7-28-85	W½ of SE¼ SE¼ of SW¼	5	21S	9W	120	135.00	17	261	3-11-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Gardiner Mill Co.	WD	7-28-85	W½ of NE¼ SE¼ of NW¼	29	20S	9W	120	230.00	17	265	3-12-86
J. R. Kendall	WD	9-2-85	NW¼ of NW¼	11	21S	4W	40	90.00	17	270	3-12-86
M. Tipton	WD	8-5-85	Lot 4	13	26S	4W	2.02	6.00	17	290	3-20-86
M. Tipton	WD	8-18-85	SW¼	3	26S	3W	160	216.00	17	294	3-22-86
M. Tipton	WD	8-12-85	Lot 1	7	26S	3W	26.72	39.60	17	298	3-22-86
Langle Hall, Sr.	WD	9-2-85	NE¼	1	25S	5W	160.52	304.52	17	304	3-23-86
Fendel Sutherlin	WD	10-21-85	S½ of NE¼	35	25S	5W	80	100.00	17	309	3-26-86
Fendel Sutherlin	WD	10-21-85	S½ of NE¼ Lots 1 & 2	21	25S	5W	137.43	206.15	17	313	3-26-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Fendel Sutherlin	WD	10-21-85	SW¼ of NW¼	31	25S	4W	40	60.00	17	318	3-27-86
Fendel Sutherlin	WD	10-21-85	E½ of NW¼ W½ of SW¼ NE¼ of SW¼ SW¼ of NW¼	35	25S	5W	240	320.00	17	322	3-27-86
Fendel Sutherlin	WD	10-21-85	SE¼, SE¼ of SW¼	35	25S	5W	200	300.00	17	326	3-27-86
John Long & R. W. Long	WD	9-23-85	S½ of SE¼	29	22S	4W	80	190.00	17	331	3-29-86
W. T. Kerley	WD	9-2-85	SW¼ of SE¼	25	23S	5W	40	114.00	17	341	3-31-86
Thomas Livingston	WD	8-12-85	SE¼ of NW¼	27	26S	7W	40	152.00	17	345	4-1-86
David Grenot	WD	7-28-85	Lots 3 & 4	13	27S	7W	14.75	26.50	17	350	4-2-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
David Grenot	WD	7-28-85	SW¼ of SW¼ Lot 5	13	27S	7W	58.28	105.25	17	354	4-2-86
Chas. A. McGee	WD	9-15-85	NW¼ of NE¼ Lots 1, 2, 3, 4, 5, 6	15	25S	6W	156.99	378.70	17	368	4-12-86
Menzo A. Olden	WD	8-12-85	NW¼ of SE¼	11	21S	4W	40	100.00	17	382	4-15-86
Philip DaMotta	WD	9-2-85	SE¼ of NE¼	31	27S	5W	40	90.00	17	386	4-15-86
Jacob Ritchey	WD	1-7-86	NE¼ of SE¼	31	21S	5W	40	100.00	17	403	4-26-86
Fleming R. Hill	WD	10-21-85	E½ of E½ SW¼ of NE¼ NE¼ of SW¼	33	25S	5W	240	300.00	17	418	4-29-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Hardin Davis	WD	10-21-85	N½ of NW¼	35	25S	6W	200	290.00	17	425	4-30-86
			SE¼ of NW¼								
			W½ of NW¼	25	25S	6W					
Robt. A. Booth	WD	9-2-85	Lots 1, 2, 3	33	22S	5W	105.76	264.40	17	450	5-10-86
			NW¼ of SE¼								
Perry Cook	WD	9-23-85	SW¼ of NW¼	3	26S	6W	80	120.00	17	454	5-10-86
			NW¼ of SW¼								
Perry Cook	WD	9-23-85	Lot 1	5	26S	6W	159.44	309.43	17	458	5-10-86
			SE¼ of NW¼								
			SW¼ of NE¼								
			NE¼ of NE¼								
Perry Cook	WD	9-23-85	NE¼ of NW¼	5	26S	6W	80.72	100.90	17	462	5-11-86
			NW¼ of NE¼								

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Perry Cook	WD	9-23-85	SE¼ of NW¼ SW¼ of NE¼ NW¼ of SE¼	3	26S	6W	120	180.00	17	467	5-11-86
Thomas K. Gardner	WD	10-21-85	NW¼ of SW¼ SW¼ of NW¼	3	22S	6W	80	160.00	17	471	5-11-86
Ralph Cockeran	WD	9-2-85	SE¼ of SW¼	33	24S	4W	40	90.00	17	509	2-28-86
Gardiner Mill Co.	WD	3-5-86	NW¼; W½ of NE¼ of NW¼ of SW¼	5	21S	9W	280	490.00	17	554	6-18-86
Wm. Thiel	WD	9-15-85	Lots 1 & 2	15	25S	5W	30.94	61.88	17	567	6-21-86
Wm. F. Boggs	WD	9-23-85	SW¼ of NW¼	31	27	5W	55.40	138.50	17	587	6-28-86
Jas. M. Burnett	WD	8-12-85	Lot 8	3	22S	8W	41.12	50.00	18	23	7-26-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. J. Ellensburgh	WD	6-21-86	NW¼ of NW¼	29	21S	5W	40	100.00	18	26	7-27-86
J. W. Conn	WD	12-11-85	NW¼ of NE¼	33	26S	7W	40	57.00	18	32	7-31-86
John T. James	WD	8-5-85	E½ of NE¼	33	23S	4W	80	108.00	18	73	9-8-86
Henry C. Gardner	WD	10-21-85	NW¼ of NW¼ NW¼ of SE¼ Lots 2 & 3	9 7	22S	6W	130.97	261.94	18	79	9-15-86
James T. R. Green	WD	9-2-85	W½ of SW¼	7	22S	6W	64.88	162.20	18	100	9-29-86
R. S. Applegate	WD	7-12-86	S½ of SW¼ SW¼ of SE¼	19	22S	5W	124.39	248.73	18	132	10-18-86
Robert S. Applegate	WD	7-12-86	SW¼ of SW¼ NW¼ of SE¼	25	22S	6W	80	160.00	18	135	10-18-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Razee	WD	12-11-85	SW¼ of SE¼ SE¼ of SW¼	7	22S	6W	80	160.00	18	151	10-21-86
Harvey Jones	WD	5-24-79	Lot 10	33	26S	6W	9.27	30.00	18	157	10-23-86
Albert Burns	WD	10-21-85	W½ of NE¼ N½ of SE¼	23	22S	6W	160	320.00	18	195	11-16-86
A. F. Brown & H. Abraham	WD	10-12-86	N½ of NE¼ Lots 6, 7, 8, 9, 10.	33	23S	7W	132.79	265.58	18	216	12-4-86
T. W. Cowan	WD	8-5-85	SW¼ of NE¼ NE¼ of NW¼	13	23S	5W	80	190.00	18	264	1-6-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. C. Marks	WD	10-21-85	NE¼ of NE¼ Lot 1	21	26S	6W	54	81.00	18	291	2-2-87
James McCahey	WD	8-12-85	SW¼ of NW¼ E½ of SW¼	17	22S	9W	120	150.00	17	277	3-15-86
Mrs. M. Chenoweth & A. F. Brown	WD	6-21-86	SE¼ of SW¼	3	25S	5W	40	80.00	18	298	2-10-87
Robert Smith	WD	9-2-85	SW¼ of NE¼	29	23S	5W	40	100.00	18	302	2-10-87
R. S. Dickerson	WD	12-15-85	E½	25	23S	10W	320	400.00	18	369	3-25-87
R. S. Dickerson	WD	8-18-85	W½ of NE¼ E½ of NW¼ Lots 1 & 2	19	23S	9W	239.35	270.00	18	372	3-25-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Laurence McLallen	WD	1-15-87	N½ of NW¼	3	22S	6W	81.03	162.06	18	385	3-31-87
Tendel Sutherlin	WD	1-15-87	S½ of S½ NE¼ of NE¼	21 29	25S	5W	200	270.00	18	397	4-2-87
Martha A. Bean	WD	2-9-87	SW¼ of SE¼ NE¼ of SE¼	11	22S	6W	80	160.00	18	402	4-6-87
James Cole	WD	1-15-87	NW¼ of SW¼	5	25S	6W	40	80.00	18	405	4-6-87
Isaac M. Gardner	WD	1-15-87	NE¼ of SW¼ W½ of SW¼ SE¼ of NW¼	11	22S	6W	160	320.00	18	424	4-20-87
L. T. Thompson	WD	1-15-87	W½ of NW¼ Lots 1, 2, 3	3	26S	7W	123.74	247.52	18	434	4-26-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. T. Thompson	WD	1-15-87	S½ of SE¼ NE¼ of SE¼	33	25S	7W	120	180.00	18	437	4-26-87
E. J. Page & Z. L. Dimmick	WD	11-2-86	SE¼ of NE¼	17	25S	5W	40	120.00	18	467	5-2-87
L. K. Cozad	WD	8-10-86	W½ of NE¼ Lot 1	7	24S	4W	100	200.00	18	470	5-3-87
L. K. Cozad	WD	8-10-86	SW¼	7	24S	4W	164.08	328.16	18	474	5-3-87
J. C. Drain	WD	3-5-86	NW¼ of SW¼	29	21S	5W	40	100.00	18	543	6-13-87
J. C. Drain	WD	3-5-86	NW¼ of SW¼	15	22S	5W	40	100.00	18	546	6-13-87
Solomon Mendall	WD	5-11-87	E½ of SE¼	5	27S	7W	80	160.00	19	5	6-23-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. H. Tipton	WD	11-2-86	SE¼ of SW¼ SW¼ of SE¼	31	25S	3W	80	228.00	19	9	6-23-87
B. J. Grubbe	WD	9-15-85	NW¼	31	25S	5W	172.71	259.06	19	79	7-21-87
Mrs. Amanda M. Lucas	WD	9-14-86	SW¼	23	26S	7W	160	320.00	19	87	7-22-87
Mrs. Amanda M. Lucas	WD	9-14-86	W½ of SE¼	23	26S	7W	80	160.00	19	91	7-22-87
A. E. Smith	WD	6-7-87	SE¼ of NE¼ E½ of SE¼	21	25S	4W	120	240.00	19	121	8-8-87
Perry Kilborn	WD	6-7-87	NW¼ of NE¼ NE¼ of NW¼	13	25S	4W	80	160.00	19	124	8-8-87
J. J. Comstock	WD	9-15-85	SE¼ of SW¼ Lot 2	25	21S	5W	63.50	127.00	19	131	8-9-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Perry Kilborn	WD	6-7-87	N½ of SE¼	1	25S	4W	80	160.00	19	135	8-9-87
Perry Kilborn	WD	6-7-87	E½ of SW¼ SW¼ of SW¼	25	24S	4W	120	300.00	19	138	8-10-87
Perry Kilborn	WD	6-7-87	NE¼ of NE¼	13	25S	4W	40	80.00	19	141	8-10-87
H. C. Mulvaney	WD	1-7-86	S½ of NE¼	33	21S	5W	80	200.00	19	247	10-12-87
R. S. Cook & J. C. Quant	WD	9-2-85	Lot 3	15	24S	4W	24.80	44.64	19	257	10-12-87
Joseph H. Walker	WD	8-12-85	SW¼	5	27S	3W	160	216.00	19	268	10-20-87
Wm. H. Stark	WD	7-13-87	E½ of NW¼ W½ of NE¼	17	22S	7W	160	320.00	19	312	11-7-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Joseph Bennett	WD	8-18-85	SW¼ of SW¼	35	22S	4W	80	180.00	19	358	12-3-87
			SE¼ of NW¼	3	23S	4W					
O. A. Mattoon	WD	9-20-87	NE¼ of NE¼	5	22S	5W	41.14	82.28	19	389	12-20-87
Robert Hinkle	WD	10-5-87	Lot 2	9	27S	4W	20.55	78.09	19	404	12-31-87
A. F. Brown & H. Abraham	WD	11-15-87	Lots 7 & 8	3	24S	7W	46.38	92.76	19	407	1-2-88
Robert Wade	WD	10-5-87	SW¼ of NW¼	29	20S	9W	240	600.00	19	504	2-2-88
			NE¼ of SW¼								
			W½ of SW¼								
			N½ of NE¼	31	20S	9W					
Matthew Hidrick	WD	8-10-86	Lots 1 & 2	17	22S	6W	125.53	251.06	19	547	3-13-88
			S½ of NW¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Thomas Brown	WD	9-20-87	Lot 4 being(the frac. NE¼ofNE¼)	3	27S	6W	21.40	101.65	19	550	3-15-88
Wm. Sagebard	WD	1-7-86	SE¼ of NW¼ SE¼ofSE¼, Lots 3,4,5,6	17	22S	9W	195.69	195.75	20	148	5-10-88
John Applegate	WD	8-12-85	Lot 1	1	23S	5W	24.10	48.20	20	159	5-14-88
John Hogan	WD	9-15-85	Lot 4	9	25S	4W	17.38	52.14	20	208	6-16-88
M. D. Thompson	WD	9-15-85	Lot 1	13	22S	9W	10.97	25.00	20	378	10-18-88
Mrs. B. I. McLallen	WD	10-12-86	Lots 1 & 2 W½ of NE¼	3	22S	6W	143.19	317.80	20	393	10-17-88
A. J. Swearinger	WD	11-2-86	Lots 3 & 4	35	21S	6W	76.06	152.12	20	413	10-20-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James T. Cooper	WD	9-22-85	W½ of SW¼	9	26S	5W	80	100.00	21	118	3-11-89
J. W. Krewson	WD	9-20-87	SE¼ of SE¼	5	22S	5W	40	100.00	21	145	3-21-89
James T. Cooper	WD	9-23-85	S½ of SW¼	27	25S	5W	120	150.00	21	253	4-26-89
			NW¼ of NE¼	33	25S	5W					
James T. Cooper	WD	9-23-85	NW¼	33	25S	5W	160	223.75	21	257	4-27-89
James T. Cooper	WD	12-11-85	W½ of SE¼	33	25S	5W	80	100.00	21	261	4-27-89
George Applegate	WD	8-12-85	Lot 1	29	22S	4W	20.52	41.04	21	370	6-5-89
Joseph Cellers	WD	8-5-85	S½ of SW¼	23	25S	5W	80	144.00	21	450	6-29-89
Francis Archambeau	WD	12-5-87	N½ of NW¼	31	26S	6W	79.26	158.52	21	500	7-25-89

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. C. Hutchinson	WD	5-24-79	Lot 10	21	24S	7W	32.80	73.80	22	211	11-29-89
Elias Sidler	WD	3-5-86	SE¼ of SW¼ SW¼ of SE¼	5	22S	5W	80	200.00	22	329	1-15-90
Robert S. Applegate	WD	12-7-86	NW¼, NW¼ of NE¼	29	22S	5W	200	500.00	23	325	8-2-90
James Hancock	WD	8-5-85	Lots 5, 6, 7, 8	21	22S	7W	115.96	156.50	23	506	9-28-90
Gottrey Rapp	WD	7-13-87	Lots 1 & 2	11	23S	7W	22.50	33.75	24	65	1-2-91
Joseph Cellers	B&S	2-28-91	N½ of SW¼	23	22S	5W	80	160.00	24	243	3-30-91
Augustus Hickethier, Assignee of Laura L. Hickethier	B&S	2-28-91	W½ of SE¼	9	22S	5W	80	200.00	24	245	3-30-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
A. Hickethier	B&S	2-28-91	(NW¼ of NE¼ (SE¼ of NW¼	9	22S	5W	80	200.00	24	247	3-30-91
A. F. Brown, Assignee of Fred Rolf	B&S	2-28-91	Lot 1	11	24S	7W	42.40	84.80	24	263	4-3-91
A. F. Brown, Assignee of Joseph Boedy	B&S	2-28-91	W½ of NE¼	19	25S	6W	80	120.00	24	265	4-3-91
A. F. Brown, Assignee of Geo. Cornell	B&S	2-28-91	(E½ of SW¼ (W½ of SE¼	25	25S	4W	160	320.00	24	268	4-3-91
A. F. Brown, Assignee of John Carlile	B&S	2-28-91	NW¼	25	25S	5W	160	320.00	24	270	4-3-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Solomon Mendell	B&S	2-28-91	N½ of N½	9	27S	7W	160	320.00	24	273	4-3-91
J. E. Payton, Assignee of John Barker	B&S	2-28-91	S½ of SE¼ SE¼ of SW¼	29	21S	5W	120	240.00	24	288	4-10-91
G. W. Benedict	B&S	2-28-91	S½ of NW¼	33	22S	7W	80	160.00	24	290	4-10-91
G. W. Benedict	B&S	2-28-91	N½ of NW¼	33	22S	7W	80	160.00	24	293	4-10-91
J. C. Aiken, Assignee of Wm. H. Offield	B&S	2-28-91	SW¼ of NW¼	35	27S	3W	40	100.00	24	296	4-10-91

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Anthony H. Woodruff	B&S	2-28-91	Lot 7	7	26S	6W	90.35	180.70	24	303	3-13-91
			NW¼ of NW¼	13	26S	7W					
			Lots 2, 3, 4								
Gordon McCawley	B&S	2-28-91	NE¼ of NW¼	29	25S	4W	80	160.00	24	334	4-24-91
			SW¼ of NW¼								
John T. Miller	B&S	2-28-91	SE¼ of SE¼	31	22S	5W	40	80.00	24	340	4-25-91
Minerva B. Smith, Assignee of Edward B. Smith	B&S	2-28-91	N½ of NE¼	3	23S	7W	82.14	164.32	24	352	5-4-91
Minerva B. Smith, Assignee of Charles L. Smith	B&S	2-28-91	S½ of NW¼	3	23S	7W	80	180.00	24	355	5-4-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Wise, Assignee of John Kelle	B&S	2-28-91	SE¼ of SW¼ SW¼ of SE¼	15	22S	5W	80	200.00	24	358	5-4-91
Catherine M. Allen	B&S	2-28-91	SE¼ of NW¼	23	22S	6W	40	80.00	24	361	5-4-91
Augusta Stevens	B&S	2-28-91	SW¼ of NW¼	17	25S	6W	40	80.00	24	364	5-5-91
Ben Butler, Assignee of Geo. H. Butler	B&S	3-13-91	SW¼ of SE¼	11	22S	9W	81.38	162.76	24	373	5-6-91
			Part of	15	22S	9W					
John Letsom	B&S	2-28-91	NE¼ of SE¼	33	22S	4W	40	100.00	24	384	5-11-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. M. Tracy, Assignee of J. M. Tracy	B&S	2-28-91	SE¼ of SE¼	13	22S	5W	40	120.00	24	436	5-20-91
Thos. H. Slavin, Assignee of J. T. Butterfield	B&S	3-13-91	SW¼	13	23S	10W	160	400.00	24	445	5-20-91
Thomas H. Slaven, Assignee of J. T. Butterfield	B&S	3-13-91	(W½ of SE¼ (E½ of NW¼	13	23S	10W	160	400.00	24	447	5-20-91
Gardiner Mill Co. Assignee of Reed & Emerson	B&S	2-28-91	NW¼ of SW¼	31	20S	9W	40	100.00	24	459	5-25-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Gardiner Mill Co. Assignee of Wm. S. Reed	B&S	2-28-91	NE¼ of NE	29	20S	9W	40	100.00	24	462	5-25-91
Gardiner Mill Co. Assignee of Alfred W. Reed	B&S	2-28-91	SW¼ of SW¼ NW¼ of NW¼	27 35	20S 20S	9W 9W	80	200.00	24	465	5-25-91
Gardiner Mill Co. Assignee of Thomas Harris	B&S	2-28-91	SW¼ of NW¼ NW¼ of SW¼	27	20S	9W	80	200.00	24	468	5-25-91
Gardiner Mill Co. Assignee of John M. Daley	B&S	2-28-91	E½ of SW¼ SE¼	27	20S	9W	240	600.00	24	471	5-25-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Gardiner Mill Co. Assignee of Lea C. Smith	B&S	2-28-91	W½ of SE¼ S½ of SW¼	31	20S	9W	160	340.00	24	474	5-25-91
Gardiner Mill Co. Assignee of John W. Wroe	B&S	2-28-91	Lots 2 & 3	5	23S	9W	80.45	201.12	24	477	5-25-91
P. W. Gossett	WD	2-2-86	SE¼ of SW¼	5	25S	6W	40	80.00	24	500	6-5-91
P. W. Gossett, Assignee of C. A. McGee	B&S	2-28-91	SW¼ of SW¼ (Lots 5, 6, 7, 8	5	25S	6W	40	80.00	24	504	6-6-91
W. H. B. Deardorff	B&S	2-28-91	(SE¼ of NW¼	19	25S	4W	87.87	175.74	24	522	6-11-91

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Warren McCauley	B&S	6-8-91	NE¼ of SW¼	1	25S	5W	40	60.00	24	569	6-24-91
Henry Smith Marsh	WD	10-21-85	SE¼ of NW¼	31	23S	5W	40	90.00	24	581	6-26-91
H. Beckley	B&S	2-28-91	Lot 1	27	22S	8W	23.56	58.90	24	587	6-27-91
Hiram C. Underwood	WD	9-15-85	NE¼ of SW¼	13	24S	5W	40	76.00	24	606	7-8-91
Geo. Clark, Assignee of E. A. Estes	B&S	2-28-91	NE¼ of NW¼	29	21S	4W	40	100.00	26	7	7-21-91
George Clark	B&S	2-28-91	NW¼ of NW¼	29	21S	4W	40	100.00	26	10	7-21-91
Geo. Clark, Assignee of Edwin A. Estes	B&S	2-28-91	SW¼ of NE¼	29	21S	4W	80	200.00	26	13	7-21-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			SE¼ of NW¼								
Robt. A. Booth, Assignee of Chas. Driscoll	B&S	2-28-91	SE¼ of SW¼	17	22S	4W	40	100.00	26	75	8-17-91
Thomas Hancock	WD	7-28-85	N½ of NW¼	13	22S	7W	120	135.00	26	123	9-9-91
			SW¼ of NW¼								
E. H. Pinkston	B&S	2-28-91	Lot 6	35	23S	7W	46.85	93.75	26	127	9-11-91
			Lot 4	33	23S	7W					
E. H. Pinkston	B&S	2-28-91	Lot 5	35	23S	7W	40.87	80.00	26	130	9-11-91
John Davisson	B&S	2-28-91	Lots 12, 13	35	23S	7W	80.36	160.00	26	133	9-11-91
Wm. R. Moore	WD	11-2-86	NE¼ of NE¼	27	22S	5W	40	60.00	26	170	10-2-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. A. Haines & E. E. Haines, Assignee of E. E. Haines	B&S	2-28-91	W½ of SE¼ SW¼	33	22S	7W	240	480.00	26	196	10-13-91
W. G. Woodward	B&S	2-28-91	Lot 10	31	27S	4W	34.65	103.95	26	204	10-14-91
A. F. Brown	B&S	11-16-91	NW¼ of SE¼ Lots 1 & 2	19	25S	6W	110.85	166.27	26	321	11-30-91
B. Hardenbrook	B&S	2-28-91	SE¼ of NE¼	17	22S	7W	40	80.00	26	340	12-7-91
Reuben Remington	B&S	11-16-91	E½ of NE¼ Lot 1	19	21S	4W	92.59	231.47	26	352	12-15-91
Reuben Remington	B&S	11-16-91	SW¼ of SW¼	17	21S	4W	40	100.00	26	355	12-15-91
James Bateman	B&S	11-16-91	SW¼ of SE ¼	27	26S	7W	40	80.00	26	364	12-17-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
H. Remington, Assigne of S. E. Covey	B&S	2-28-91	E½ of SE¼	13	21S	5W	80	160.00	26	401	1-7-92
Eliza Watkins Assigne of J. E. Curtis	B&S	2-28-91	SE¼ of SE¼	17	22S	4W	40	100.00	26	442	1-20-92
Eliza Watkins, Assignee of Jas. L. Cowan	B&S	2-28-91	SW¼ of SE¼	17	22S	4W	40	100.00	26	444	1-20-92
Marshal N. Ensley, Assignee of R. J. Delanney	B&S	2-28-91	SW¼ of SW¼	15	22S	6W	40	80.00	26	468	1-25-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Andrew J. Lee	B&S	9-30-91	SE¼ of NE¼	17	22S	4W	40	60.00	26	497	2-2-92
August Woods, Assignee of Letitia Cooper	B&S	2-28-91	Lot 10	9	23S	7W	30.50	68.62	26	638	3-22-92
August W. Woods, Assignee of Lewis Rapp	B&S	2-28-91	SW¼ of SE¼	3	23S	7W	40	80.00	27	1	3-22-92
J. P. B. Miller	B&S	2-28-91	S½ of NE¼ Lot 1	1	23S	6W	120.06	300.00	27	8	3-23-92
Geo. Cutlack, Assignee of A. F. Ambrose	B&S	3-14-92	SW¼ of NW¼	9	22S	4W	40	100.00	27	22	3-28-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Wm. J. Davis	B&S	3-14-92	N½ of NW¼	5	22S	8W	80.61	100.76	27	32	3-30-92
H. J. Ellenburg, Assignee of J. W. Ellenburg	B&S	3-14-92	SW¼ of NW¼	29	21S	5W	40	100.00	27	89	4-18-92
E. E. Emmett, Assignee of A. C. McGee	B&S	2-28-91	Lot 8	9	25S	7W	57.94	115.88	27	130	5-6-92
A. O. Mattoon & Jno. Ostertag	QC	3-14-92	SW¼ of NE¼	5	22S	5W	40	171.00	27	162	5-10-92
Carl Hoffman	QC	3-14-92	SE¼ of NW¼	19	27S	6W	40	190.00	27	176	5-14-92
A. M. Beaty	QC	3-14-92	Lot 4	25	30S	6W	30.16	100.25	27	278	6-14-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Chenoweth	QC	3-14-92	NE¼ of SE¼	15	23S	4W	40	120.00	27	283	6-15-92
Fred Hoake	QC	3-14-92	NE¼ of NE¼	35	22S	8W	40	160.00	27	310	6-29-92
Thomas Maupin	B&S	2-28-91	NE¼ of SE¼ SW¼ of NE¼ Lot 2	21	23S	7W	117.55	180.00	27	335	7-6-92
A. F. Brown	WD	3-14-92	Lot 2	11	24S	7W	20.30	50.75	27	348	7-14-92
E. W. Diller, Assignee of F. B. Hankins	B&S	6-20-92	N½ of SE¼	27	26S	7W	80	160.00	27	385	7-23-92
Mrs. E. A. Watson, Assignee of J. L. & Charles F. Watson	B&S	2-28-91	W½ of NE¼ SE¼ of NW¼ Lot 1	33	26S	3W	146.39	292.78	27	395	7-27-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Andrews, Assignee of F. M. Andrews	B&S	2-28-91	SW¼ of SE¼ SE¼ of SW¼	7	23S	5W	80	200.00	27	458	8-22-92
Z. T. Andrews	B&S	2-28-91	NW¼ of NW¼	17	23S	5W	40	100.00	27	461	8-24-92
August Hennemann	B&S	2-28-91	NE¼ of NE¼	29	21S	4W	40	100.00	27	507	9-9-92
August Hennemann	B&S	2-28-91	NW¼ of NE¼	29	21S	4W	40	100.00	27	511	9-12-92
David Fate	QC	3-14-92	NW¼ of SE¼ Lots 6, 8	5	30S	3W	78	418.28	27	533	9-20-92
William Nolta	B&S	2-28-91	Lots 1, 2	17	25S	4W	34.89	69.78	27	589	10-10-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Joel Tracy	B&S	2-28-91	(NE¼ of SW¼ ((SE¼ of NW¼	33	21S	5W	80	200.00	27	592	10-10-92
W. C. Tipton	WD	6-29-89	Lot 4	31	25S	3W	37.63	125.12	27	595	10-10-92
Myron Bidwell	WD	3-9-87	SE¼ of SE¼	11	22S	6W	40	100.00	27	598	10-10-92
S. O. Emery	B&S	2-28-91	N½ of S½	15	26S	7W	160	240.00	27	602	10-10-92
Franz Anlauf	B&S	2-28-91	W½ of W½	19	21S	4W	169.02	379.90	27	606	10-10-92
Wm. A. Cooper	B&S	11-16-91	Lot 4	1	23S	7W	58.66	80.00	27	609	10-10-92
John Long	B&S	2-28-91	SE¼ of SE¼	11	26S	7W	40	80.00	27	612	10-10-92
J. C. Cooper	B&S	2-28-91	SE¼ of SE¼	3	23S	7W	40	90.00	27	615	10-10-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Long	B&S	2-28-91	SW¼ of NW¼ NW¼ of SW¼ SW¼ of SE¼	11	26S	7W	120	210.00	27	618	10-13-92
A. Y. Barker	B&S	6-20-92	E½ of SE¼ SE¼ of NE¼ Lots 1, 2	5	27S	4W	160	200.00	27	621	10-13-92
Cyrus Powell	B&S	2-28-91	NW¼ of NE¼ NE¼ of NW¼	5	24S	7W	65.41	163.53	27	624	10-13-92
W. C. Tipton	WD	6-29-89	Lot 3	31	25S	3W	37.81	133.82	27	627	10-14-92
O. S. Emery	WD	2-26-80	S½ of SW¼ SW¼ of SE¼	15	26S	7W	120	135.00	27	630	10-14-92
S. B. Carr	WD	8-12-85	NE¼ of NW¼	31	22S	4W	40	60.00	27	634	10-15-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. B. Carr	WD	8-12-85	Lot 5	31	22S	4W	44.47		28	1	10-17-92
Anthony Bender	B&S	6-29-89	W½ of NW¼ Lot 7	13	22S	8W	92.60	277.80	28	48	10-25-92
Charles Allen Assignee of J. W. Thompson	B&S	12-21-91	SW¼ of NW¼	33	21S	4W	40	90.00	28	51	10-25-92
Joseph Ensley	WD	9-23-85	SE¼ of SW¼ SW¼ of SE¼	33	25S	6W	80	100.00	28	75	10-31-92
Harriett Griffin, Assignee of Jay Shephard	B&S	8-3-91	SE¼ of SW¼ Lot 1	15	22S	7W	55.18	110.36	28	79	10-31-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
N. H. Rone, Assignee of F. W. Madantz	B&S	2-28-91	SW¼ of NE¼	29	24S	3W	40	80.00	28	82	10-31-92
N. H. Rone, Assignee of T. H. Willin	B&S	2-28-91	SE¼ of NW¼	29	24S	3W	40	80.00	28	85	10-31-92
N. H. Rone	B&S	2-28-91	NE¼ of NW¼ NW¼ of NE¼ SE¼ of SW¼	29	24S	3W	120	240.00	28	88	10-31-92
Chas. D. Drain, Assignee of A. Morningstar	B&S	2-28-91	NW¼ of NE¼	19	22S	5W	40	80.00	28	138	10-31-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ansel Langdon	WD	5-7-86	Lot 1 & 11	9	23S	7W	28.32	42.48	28	151	10-22-92
M. J. McKinnon, Assignee of B. F. Pearson	WD	9-30-91	EW¼ of SW¼	21	21S	5W	40	120.00	28	161	11-22-92
Hardin Davis	B&S	11-9-92	SW¼	25	25S	6W	160	200.00	28	179	12-6-92
Ada Thompson, Assignee of Wm. Morris	B&S	4-18-92	E½ of NW¼ N½ of SW¼	33	21S	4W	160	360.00	28	221	12-22-91
Hugh B. Hendricks W. B. Lewis,	WD	2-26-80	NW¼ of NW¼	13	23S	4W	40	72.00	28	243	1-2-93

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Assignee of Fred Wagner	B&S	12-5-92	N½ of NW¼ SW¼ of NW¼	33	23S	4W	120	180.00	28	256	1-4-93
A. J. Chapman	B&S	11-9-92	NW¼ofSE¼ L2	11	26S	6W	66.53	83.17	28	259	1-4-93
Perry S. Steele	WD	6-29-89	SE¼ of SE¼	3	22S	7W	40	133.00	28	311	1-18-93
Gardiner Mill Co. Assignee of Jno. Johnson	B&S	6-20-92	S½ of SE¼	5	21S	7W	80	240.00	28	397	1-30-93
Gardiner Mill Co. Assignee of C. Hacker	B&S	6-20-92	SW¼ of NW¼ N½ of SW¼, SW¼ of SE¼	3	21S	9W	160	400.00	28	402	1-30-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Gardiner Mill Co. Assgn. of John Johnson	B&S	6-20-92	N½ of SW¼	5	21S	7W	80	240.00	28	405	1-30-93
Wm. T. Moon	B&S	4-18-92	Lot 6	9	23S	7W	105.77	158.66	28	430	2-9-93
			Lots 7 & 8	17	23S	7W					
Otto Schlett	B&S	3-14-92	NW¼ of NW¼	13	29S	9W	40	320.00	28	447	2-17-93
A. F. Stearns, Admr. Est. James Chenoweth, Dec'd	B&S	8-3-91	S½ of NW¼ NW¼ of SW¼	13	24S	6W	120	360.00	28	478	2-25-93
Ben Butler	B&S	6-20-92	SE¼ of SE¼	11	22S	9W	40	80.00	28	553	3-20-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. A. Mulvaney	B&S	2-24-93	SW¼ of NE¼	27	21S	5W	40	100.00	29	19	4-20-93
W. Henry Byers	QC	5-2-92	Lots 5 & 6	15	22S	10W	29.25	97.25	29	32	4-24-93
John Banks	B&S	12-5-92	NE¼ of NW¼	15	25S	4W	40	100.00	29	36	4-24-93
Thomas Grooms	QC	3-14-92	SE¼ of SW¼	19	29S	6W	40	160.00	29	131	5-24-93
W. C. Tipton, Assgn. of Jno. Livingstone	B&S	5-8-93	SE¼ of Sec. Lots 3, 4, 5, 6	11	26S	3W	322.70	480.00	29	172	6-16-93
Mary Brown, Assgn. of J. W. Krewson	B&S	2-28-91	SW¼ of SW¼	5	22S	5W	40	100.00	29	190	6-24-93

Grantee	Instrument	Date	Description	Will S.	Mer. T.	Mer. R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
Cyrus Powell, Assgn. of C. M. Winter	B&S	2-24-93	NW¼ of NW¼	5	24S	7W	32.93	82.33	29	205	6-26-93
Abraham Lamb	B&S	6-20-92	Lot 1	9	23S	5W	17.48	61.18	29	282	7-29-93
W. H. Shoemaker	B&S	2-28-91	S½ of SE¼ NE¼ of SE¼ SE¼ of NE¼	35	26S	4W	160	240.00	29	292	7-31-93
Chas. Jones, Assgn. of ——	B&S	7-3-93	NW¼ of SW¼ NW¼	1	25S	5W	201.22	301.83	29	318	8-11-93
A. F. Brown	B&S	7-3-93	W½ofE½,W½	31	23S	4W	497.40	746.10	29	329	8-12-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
E. G. Young, A. G. Young & Geo. J. Stearns, Asgn. of Tabitha J. Rice	B&S	7-3-93	SW¼ of SE¼	1	24S	6W	40	120.00	29	339	8-22-93
E. G. Young, A. G. Young & Geo. J. Stearns, Asgn. of Orlando Rice	B&S	7-3-93	SE¼ of SW¼	1	24S	6W	40	120.00	29	342	8-22-93
Thos. R. Boggess	QC	3-14-92	NE¼ of NW¼ NW¼ of NE¼	7	28S	4W	80	304.00	29	369	9-6-93
Jno. L. Watson, Asgn. of Jno. M. Durham	B&S	8-3-91	S½ of SE¼	5	27S	3W	80	120.00	29	416	9-25-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Shoemaker	WD	9-15-85	SW¼ of SW¼	35	26S	4W	40	40.00	29	487	10-30-93
J. T. Thomason, Asgn. of Philip Maven	B&S	5-8-93	Lots 1, 2,	19	26S	3W	64.23	96.35	29	534	11-22-93
A. F. Brown, Asgn. of J. D. Boone	B&S	11-14-93	SE¼ of SW¼	9	24S	4W	80	200.00	29	550	11-25-93
			NE¼ of NE¼	17	24S	4W					
A. F. Brown, Asgn. of J. D. Boone	B&S	11-14-93	SE¼ of NE¼ Lot 1	17	24S	4W	47.72	119.30	29	553	11-25-93
J. F. Chadwick, Asgn. of Jas. F. Cooper	B&S	5-8-93	S½ of SE¼ Lot 7	29	25S	5W	111.52	223.04	29	602	12-16-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
M. Lammons	B&S	1-29-94	SW¼ of NW¼ NW¼ of SW¼	29	23S	4W	80	140.00	31	176	2-27-94
Thos. P. Maupin	WD	10-21-85	SW¼ of NE¼	27	23S	7W	40	50.00	31	200	3-8-94
Austin Elliott	B&S	11-14-93	SE¼ of NE¼	11	20S	6W	40	100.00	31	276	3-27-94
John A. Fryer	WD	6-29-87	Lots 1 & 2	9	22S	9W	25.12	71.60	31	265	3-23-94
H. Beckley	B&S	1-29-94	Lots 1 & 2	35	22S	8W	54.93	137.32	31	282	3-28-94
Henry Beckley, Asgn. of Geo. Mack	B&S	1-29-94	N½ of NW¼ SE¼ of NW¼ Lots 3-9	35	22S	8W	179.75	359.50	31	284	3-28-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Andrew Hargan, Asgn. of Jas. Lord	B&S	7-3-93	Lot 5	29	22S	8W	43.12	86.24	31	287	3-28-94
Augustus Hickethier	B&S	3-14-92	SW¼ of NE¼	9	22S	5W	40	100.00	31	331	4-30-94
Peter Applegate	WD	1-15-87	NE¼ of SE¼	29	22S	5W	40	100.00	31	345	5-2-94
G. W. Alderson	B&S	3-14-92	NE¼ of NE¼	25	26S	7W	40	80.00	31	362	5-9-94
G. W. Alderson	B&S	3-14-92	NW¼ of NE¼	25	26S	7W	40	80.00	31	365	5-9-94
H. W. Alexander	B&S	4-30-94	Lots 5, 6	9	25S	7W	86.16	172.12	31	374	5-12-94
A. F. Brown, Asgn. of Geo. Crenshaw	B&S	4-30-94	S½ofNE¼ L2	33	24S	7W	124.44	311.00	31	377	5-12-94
John Mumpower	B&S	4-30-94	Lots 1, 2, 3	35	21S	5W	83.13	166.26	31	431	6-2-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. I. B. Nichols	QC	3-14-92	NE¼ of NE¼	27	30S	7W	40	123.50	31	442	6-7-94
Edward F. & John VonPessl, Asgs. of F. M. M. Quines	B&S	2-28-91	NE¼ of SE¼	23	26S	7W	40	80.00	31	513	7-16-94
Wm. Baimbridge	B&S	4-30-94	NW¼ of NE¼	17	24S	4W	40	100.00	32	36	10-15-94
Robert Wade	B&S	11-16-91	SE¼ of SW¼	29	20S	9W	40	120.00	32	89	11-3-94
A. E. Smith	B&S	10-15-94	NW¼ of NW¼	21	25S	4W	40	100.00	32	94	11-5-94
A. E. Smith, Asgn. of A. E. Smith	B&S	6-18-94	SW¼ of NW¼	21	25S	4W	40	100.00	32	97	11-5-94
C. D. Drain, Admr. Partnership Est. of Drain & Co., Asgn. of C. M. Driscoll	B&S	2-24-93	NE¼ of NE¼	31	21S	4W	40	100.00	32	113	11-12-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. D. Drain, Admr. Partnership Est. of Drain & Co. Asgn. of Francis Bolton	WD	3-4-92	S½ of NE¼	31	21S	4W	80	200.00	32	117	11-12-94
L. J. Cain	WD	3-4-92	Frac. NE¼ of NE¼	11	27S	3W	40.95	102.37	32	138	11-20-94
John Littrel	B&S	10-15	Lot 4	17	25S	4W	35.14	87.85	32	174	11-30-94
James P. Duncan Asgn of Jasper Shook	B&S	10-15-94	SW¼ of NW¼	33	24S	6W	80	200.00	32	148	11-23-94
John Cowan, Asgn of W. S. Reed	B&S	9-30-91	(SE¼ofNE¼&	29	20S	9W	200	400.00	32	370	2-7-95
			(E½ of SE¼ W½ of NW¼	33	20S	9W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James Cowan	B&S	2-28-91	W½ of SE¼	29	20S	9W	80	200.00	32	376	2-7-95
A. F. Winniford	WD	10-12-86	SE¼ of NE¼ Lot 1	33	25S	6W	74	111.00	32	405	2-18-95
Ica F. Rice, Sr. Asgn. of I. F. & Napoleon Rice	B&S	2-4-95	E½ of SW¼	23	23S	6W	80	200.00	32	417	2-18-95
H. C. Gardner	B&S	2-4-95	SW¼ of NE¼ Lot 1	7	22S	6W	79.94	200.00	32	597	5-7-95
John Reilly, Asgn. of Wesley Allen	B&S	2-28-91	NE¼ of SE¼	25	23S	6W	40	90.00	32	604	5-9-95
George B. Davidson	WD	12-5-87	S½ of NW¼	29	25S	7W	80	140.00	32	627	5-22-95
J. R. Kendall	B&S	11-14-93	S½ of NW¼	11	21S	4W	80	200.00	33	170	8-20-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Jacob Lucksinger	B&S	1-29-94	SW¼ of SW¼	13	22S	9W	138.25	207.37	33	279	10-15-95
			Lot 9	13	22S	9W					
			E½ of SE¼	23	22S	9W					
Jacob Lucksinger, Asgn. of Joel A. Kelly	B&S	2-28-91	E½ of SE¼	13	23S	10W	80	200.00	33	282	10-15-95
J. R. Dixon, Asgn. of Emil Cleviquy	B&S	11-5-95	N½ of SE¼	3	27S	2W	160	320.00	33	366	11-29-95
			SW¼ of SW¼								
			NE¼ of SW¼								
L. M. Tracy	B&S	11-5-95	Lot 4	3	22S	5W	39.86	119.58	33	436	12-17-95
J. E. Payton	B&S	12-16-95	E½ of NW¼	19	22S	5W	80	160.00	33	502	1-20-96
O. Ohlsen	B&S	2-4-95	SE¼ of NE¼	7	23S	5W	40	100.00	33	510	1-25-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. C. Tipton	B&S	12-16-95	NW¼ of SW¼	1	26S	3W	40	100.00	33	520	1-28-96
A. O. Mattoon	B&S	11-5-95	SE¼ of NE¼ NE¼ of SE¼	5	22S	5W	80	360.00	34	181	4-28-96
Anthony Binder	B&S	11-5-95	Lot 6 NE¼ of NW¼	13	22S	8W	64	160.00	34	303	6-22-96
Carrie S. Heftyt Asgn. of James Brown	B&S	2-4-95	NE¼ of NE¼	13	21S	5W	40	100.00	35	11	10-14-96
Francis A. Bolton	B&S	2-4-95	SE¼ of NW¼	31	21S	4W	40	100.00	35	56	11-9-96
Harriett Griffin	B&S	11-9-96	NW¼ of SW¼	15	22S	7W	40	80.00	35	104	12-7-96
R. Earl Bard Asgn of Jas. H. Bard	B&S	11-9-96	SW¼ of SE¼	3	25S	6W	40	120.00	35	128	12-16-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
H. S. Marsh	B&S	2-4-95	NE¼ of NW¼	31	23S	5W	40	100.00	35	173	1-9-97
Robt. Hall, Asgn. of John Banks	B&S	11-9-96	Lot 2	15	25S	4W	39.84	139.44	35	241	2-17-97
A. McKenzie	B&S	2-15-97	SE¼ of SE¼ Lots 4, 7	5	25S	4W	84.38	210.95	35	317	3-31-97
Surprise Placer Mining Co.	QC	2-15-97	NW¼ of NE¼ SE¼ of NE¼	3	33S	7W	86.87	217.17	35	368	4-16-97
Charles S. Fogg	QC	10-15-94	W½ of NW¼	29	28S	5W	80	200.00	35	391	4-21-97
C. B. Jones	WD	12-5-92	Lots 1, 2 SE¼ of NE¼	31	22S	5W	61.47	215.18	35	400	4-22-97
Jas. J. McCoy	QC	3-14-92	SW¼ of SE¼	19	27S	6W	40	190.00	35	630	8-14-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. C. Tipton, Asgn. of L. G. Williams	B&S	2-15-97	NE¼ of SW¼	1	26S	3W	40	100.00	36	1	8-17-97
Wm. C. Tipton Asgn. of Lewis G. Williams	B&S	7-26-97	SW¼ of NW¼	1	26S	3W	40	100.00	36	4	8-17-97
John L. Watson	QC	2-24-93	Lot 2	33	26S	3W	9.96	30.00	36	44	9-7-97
J. W. Hamilton	QC	2-15-97	SW¼ of NW¼	31	28S	6W	43.48	108.70	36	51	9-9-97
Mary E. Richards	QC	7-26-97	NW¼ of SW¼	33	22S	5W	40	120.00	36	63	9-13-97
W. B. Atterbury	B&S	2-15-97	SW¼ of NW¼	21	26S	3W	40	100.00	36	167	10-11-97
D. W. McKinney	B&S	5-6-95	N½ of NE¼	17	25S	6W	80	200.00	36	170	10-11-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. S. Feickert	QC	7-26-97	SW¼ of SE¼	33	30S	7W	40	100.00	36	346	12-8-97
August Woods, Asgn. of Letitia Cooper	B&S	11-9-92	S½ of SW¼	3	23S	7W	80	200.00	36	368	12-14-97
Watson W. Wilson	QC	5-6-95	SE¼ of NE¼	3	22S	5W	40	114.00	36	429	1-5-98
E. C. Wilson, Asgn. of Geo. W. Krewson	B&S	4-30-94	W½ of SW¼	3	22S	5W	80	240.00	36	432	1-5-98
Surprise Placer Mining Co.	QC	12-4-97	NE¼ of SE¼	3	33S	7W	40	100.00	36	517	2-3-98
John Jackson	QC	12-20-97	Lot 2	13	30S	5W	20.50	61.50	36	521	2-5-98
A. J. Howard,	B&S	2-28-91	NW¼ of NE¼	25	23S	8W	120	180.00	36	531	2-10-98
			E½ of NW¼	25	23S	8W					

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Grant & C. W. Parrott & E. L. Parrott, Asgns. of Geo. W. Dimmick											
A. J. Howard, Grant, C. W. & E. L. Parrott, Asgns. of Geo. W. Dimmick	B&S	2-28-91	SW¼ of NW¼	25	23S	8W	40	60.00	36	534	2-10-98
A. J. Howard, W. H., C. W. & E. L. Parrott Asgns. of G. W. Dimmick	B&S	7-1-95	SW¼ of NE¼	25	23S	8W	40	100.00	36	537	2-11-98
A. J. Howard & W. H. Parrott	B&S	11-9-96	SW¼ of NE¼	31	23S	7W	40	120.00	36	540	2-10-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
F. L. Cranfill	QC	12-20-97	Lot 3, 4, 5	5	26S	6W	118.75	475.00	36	555	2-17-98
			Lots 1, 2	7	26S	6W					
C. D. Drain, Asgn. of Chas. Ellenburg	B&S	1-18-98	SE¼ of SW¼	3	22S	5W	40	120.00	36	587	2-26-98
P. J. Jennings	QC	12-4-97	Part	5	31S	5W	40	100.00	37	19	4-4-98
James P. Duncan, Asgn. of Jasper Shook	B&S	12-29-97	NW¼ of SW¼	33	24S	6W	40	1.00	37	30	4-6-98
Richard L. Cannon	B&S	7-3-93	Lots 1, 2,	7	27S	3W	83	124.50	37	119	5-14-98
R. L. Martindale	QC	11-8-97	Lots 1, 2, 3	29	29S	8W	49.51	246.85	37	297	9-20-98
L. F. Jamison	B&S	11-8-97	SW¼ of NW¼	31	21S	4W	41.51	207.55	37	324	9-29-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Wm. Wade	B&S	7-26-97	Lots 2, 3, 4	23	22S	10W	73.25	256.37	37	370	10-28-98
E. H. Pinkston	QC	10-3-98	Lots 2, 3,	1	24S	7W	75.67	227.01	37	467	11-28-98
J. D. Moore	QC	10-3-98	SW¼ of SW¼ Lot 10	19	23S	7W	53.52	187.32	37	488	12-13-98
J. H. Sofley, Asgn. of H. C. Dorris	B&S	7-1-95	SW¼ of NW¼ Lot 1	25	21S	5W	78.68	196.70	37	473	12-5-98
J. H. Sofley, Asgn.			(Duplicate)								
of H. C. Dorris	B&S	7-1-95	SW¼ of NW¼ Lot 1	25	21S	5W	78.68	196.70	37	481	12-5-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. H. Sofley, Asgn. of H. C. Dorris	B&S	11-5-95	NW¼ of NW¼	25	21S	5W	40	100.00	37	495	12-5-98
James H. Harpham	B&S	12-5-92	SE¼ of SW¼	13	27S	4W	40	80.00	37	513	
W. R. Thompson	QC	8-29-98	,E½ of NE¼	19	24S	7W	80	190.00	37	529	6-6-99
A. Morningstar	B&S	12-16-95	Lots 3, 4, 5	13	22S	6W	84.90	212.25	37	535	1-9-99
J. P. Anderson	B&S	9-30-91	Lots 12, 13, 14	9	23S	7W	67.56	135.12	37	569	1-21-99
W. M. Ladd	QC	12-12-98	S½ of SW¼ SE¼	3	21S	4W	240	960.00	37	592	2-1-99
W. M. Ladd, Asgn. of W. T. Bodley	QC	12-12-98	W½ of NW¼	9	21S	4W	80	320.00	37	595	2-3-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
W. M. Ladd	QC	12-12-98	N½ of SE¼	9	21S	4W	960	3848.00	37	597	2-3-99
			All	15	21S	4W					
E. H. Smith	QC	11-8-97	NW¼ of NW¼	19	29S	5W	45.19	112.98	37	633	2-10-99
Wm. H. Helmick	QC	2-4-95	E½ of NE¼	15	20S	9W	120	300.00	38	26	2-25-99
			SW¼ of NE¼								
Wm. H. Helmick	QC	2-4-95	S½ of SW¼	15	20S	9W	160	400.00	38	28	2-27-99
			W½ of SE¼								
John A. Griggs	B&S	9-30-91	SE¼ of NE¼	17	21S	4W	80	180.00	38	31	3-2-99
			NE¼ of SE¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Isabell Mining Co.	QC	12-12-98	SW¼ of SW¼ NE¼ of NW¼ of SW¼ S½ of NW¼ of SW¼	27	32S	7W	70	166.25	38	35	3-2-99
Geo. W. Heath	QC	6-6-98	Lot 3	11	27S	3W	40.77	101.22	38	66	3-11-99
W. H. Byers	QC	12-12-98	NE¼ of NW¼	5	33S	6W	40.89	194.23	38	85	3-20-99
W. C. Burke	WD	8-12-85	NE¼ of NE¼	19	25S	6W	40	54.00	38	110	4-1-99
Wm. C. Burt	WD	8-18-85	NE¼ of SE¼ SE¼ of NE¼	19	25S	6W	80	128.00	38	113	4-3-99
J. E. Kyker	QC	2-6-99	NE¼ of SW¼	19	27S	6W	40	200.00	38	152	4-12-99
Mrs. Emma Porter	B&S	11-14-93	Lot 3	21	24S	7W	37.75	94.38	38	177	4-24-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. S. Heafield & P. L. Auten	QC	12-12-98	N½ of NE¼ of NE¼	33	32S	7W	20	50.00	38	239	5-19-99
John W. Wroe	QC	11-8-97	W½ of SE¼	21	20S	9W	80	240.00	38	254	5-25-99
John W. Wroe	QC	11-8-97	NW¼ of NE¼	21	20S	9W	40	100.00	38	256	5-26-99
L. F. Robinson, S. C. Flint, I. F. Rice & Geo. W. Kimball	QC	5-1-99	NE¼ of NE¼	29	32S	7W	40	100.00	38	326	6-29-99
Elizabeth J. Ryan, Asgn of Jno Dixon	B&S	6-12-99	NE¼, E½ of NW¼ NW¼ of NW¼ NE¼ of SE¼	31	25S	4W	320	1120.00	38	329	6-30-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Elizabeth J. Ryan, Asgn. of John Dixon	B&S	6-12-99	N½ of NE¼ SW¼ of NE¼ NW¼	33	25S	4W	280	980.00	38	331	6-30-99
Stephen Bean	QC	5-1-99	SW¼ of NE¼ NW¼ of SE¼	11	22S	6W	80	240.00	38	341	7-5-99
A. F. Brown, Asgn. of G. W. Rapp	B&S	4-12-97	W½ of SW¼ NW¼	35	22S	7W	240	400.00	38	396	8-5-99
A. F. Brown, Asgn. of G. W. Rapp	B&S	4-12-97	W½ of SE¼ SE¼ of SE¼	35	22S	7W	197.84	335.68	38	398	8-5-99
			Lot 3	11	23S	7W					
			NE¼ of SE¼	3	23S	7W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Dundee Mtg. & Trust Co. Ltd.	QC	6-12-99	Lots 1, 2, 3	1	25S	6W	39.46	93.72	38	417	8-19-99
Joseph E. Larkins	QC	10-3-98	SW¼ of NW¼	15	24S	6W	40	120.00	38	422	8-24-99
Siren Madison	QC	4-3-99	SE¼ of NW¼	5	24S	7W	40	140.00	38	431	9-2-99
Julia L. Wagner	WD	4-9-87	S½ of NW¼ N½ of SW¼	35	22S	6W	160	360.00	38	459	9-21-99
Plinn Cooper	QC	2-6-99	NW¼ of NW¼ SW¼ of SW¼ N½ of SW¼	25 23	28S	4W	160	600.00	38	571	11-11-99
John W. Wroe	QC	5-1-99	E½ of NE¼ SW¼ of NE¼ NE¼ of SE¼	21	20S	9W	160	400.00	38	589	11-16-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. M. J. Heydon, Asgn. of F. M. Good	B&S	2-28-91	S½ of NW¼ SW¼ of NE¼	23	26S	7W	120	206.00	39	30	12-19-99
A. W. Reed	QC	4-11-98	E½ of SW¼	1	20S	9W	80	200.00	39	322	4-3-00
John Smith	QC	2-12-00	NW¼ of NW¼	3	23S	8W	44.53	148.06	39	341	4-19-00
C. W. Huddleston	QC	12-26-99	SE¼ of SE¼	33	22	7W	40	140.00	39	347	4-20-00
C. L. Fegles	QC	4-3-99	SW¼ of NW¼	17	23S	5W	40	140.00	39	353	4-23-00
S. W. Smith	QC	4-19-00	S½ of NW¼ N½ of SW¼	19	28S	4W	161.14	604.28	39	395	5-16-00
J. T. Buchanan	QC	3-19-00	NW ¼of SW¼	35	2S	3W	40	100.00	39	408	5-18-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. S. Tower	QC	3-19-00	NW¼ of NE¼	1	33S	7W	41.14	103.85	39	480	6-13-00
Robert W. Cook	QC	6-12-99	E½ of NW¼ NE¼ of SW¼ Lots 1, 2, 3	7	23S	4W	237.60	564.30	39	498	6-15-00
Gardiner Mill Co.	QC	4-23-00	NE¼ of NE¼	21	22S	9W	803.31	3052.58	39	532	6-27-00
			W½ of NE¼, NW¼ of SW¼, NW¼ SE¼ of NW¼	25	20S	10W					
			E½ of SW¼, E½, NW¼ of NW¼	31	20S	9W					
Gardiner Mill Co.	QC	4-3-00	S½ of SE¼ SE of SW¼	11	20S	9W	120	270.00	39	536	7-5-00
W. C. C. Sagebard	QC	5-28-00	SW¼ of SW¼	17	22S	9W	40	133.00	39	625	7-31-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Chas. A. Bennett	QC	12-26-99	NW¼ of SE¼	31	21S	4W	40	140.00	41	62	8-25-00
G. W. Crews	QC	10-9-99	SE¼ of SE¼	31	29S	4W	40	100.00	41	68	8-28-00
Willis N. Bonner	B&S	5-6-95	SW¼ of NE¼	5	24S	7W	40	100.00	41	152	9-20-00
L. L. Perdue	QC	11-27-99	NW¼ of NE¼	25	30S	3W	40	100.00	41	199	10-3-00
J. W. Kingery	QC	4-23-00	NW ¼of NE¼	13	23S	5W	40	140.00	41	208	10-5-00
E. E. Emmitt	QC	5-1-99	N½ of NW¼	11	25S	7W	80	190.00	41	291	11-7-00
Philetus W. McNeil	WD	10-21-85	Lots 4, 5, 6	11	22S	8W	208.26	250.00	41	296	11-9-00
			Lots 9, 16	3	22S	8W					
L. P. Rapp, Asgn. of Mrs. Sarah E. Cooper	B&S	12-5-92	Lot 13	11	23S	7W	40.35	80.70	41	307	11-10-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
G. F. Ledgerwood	QC	9-3-00	SW¼ of NW¼	35	29S	6W	40	152.00	41	316	11-13-00
Geo. H. Emerson	B&S	2-28-91	W½ of NE¼ SE¼ of NE¼ E½ of NW¼ N½ of SE¼ SE¼ of SE¼	33	20S	9W	320	800.00	41	365	12-10-00
B. M. Armitage	QC	9-3-00	SW¼ of SE¼	31	29S	4W	40	100.00	41	373	12-12-00
John R. Daniels	B&S	5-1-99	SW¼ of NW¼	17	27S	6W	40	120.00	41	409	12-20-00
W. H. Graham	QC	10-29-00	SW¼ of NE¼ NE¼ of SE¼	23	30S	4W	79.14	316.56	41	421	12-26-00
Fendel Sutherlin	QC	2-24-93	NE¼ of SE¼	11	25S	4W	40	152.00	41	441	1-2-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Fendel Sutherlin	QC	12-12-98	S½ of NW¼	35	21S	6W	80	266.00	41	444	1-2-01
David Fate	QC	6-25-00	SW¼ of NW¼	19	30S	3W	40.40	161.60	41	480	1-10-01
W. A. Perkins & E. Bledsoe, Asgn. of Charles Allen	B&S	12-17-00	NE¼ of NE¼	21	21S	5W	40	120.00	41	482	1-11-01
B. H. Fate	QC	10-29-00	SE¼ of NW¼	19	30S	3W	40	95.00	41	468	1-9-01
A. B. Haines	QC	12-17-00	NW¼ of NW¼	23	22S	7W	40	114.00	41	502	1-16-01
F. H. Norman	QC	12-17-00	NE¼ of NE¼	5	24S	7W	32.48	97.44	41	522	1-19-01
Geo. W. Crews	QC	12-17-00	NE¼ of SE¼	31	29S	4W	40	100.00	41	560	1-30-01
R. H. Laird	QC	12-17-00	SW¼ of NW¼	13	23S	10W	40	140.00	41	572	2-4-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. H. Laird	QC	12-17-00	NW¼ of NW¼	13	23S	10W	40	95.00	41	575	2-4-01
Bridgie Ballf	QC	12-17-00	S½ of NW¼ W½ of SW¼	25	30S	8W	160	685.00	41	580	2-6-01
Geo. Applegate Assignee of Jos. McKee	B&S	5-11-96	SW¼ of SE¼	5	22S	4W	40	120.00	41	595	2-9-01
Henry Conn	WD	8-5-85	NW¼ of SE¼	33	26S	7W	40	45.00	42	12	3-1-01
S. Hamilton	——	2-18-01	SW¼ of NE¼	9	27S	7W			42	46	3-11-01
			SE¼	17	27S	7W					
B. M. Armitage & Lee Jackson	QC	2-18-01	NW¼ of SE¼	31	29S	4W	40	100 00	42	187	4-12-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Ike Winningham	QC	2-18-01	N½ of NW¼	13	30S	8W	80	266.00	42	203	4-16-01
R. A. & E. T. Woodruff	QC	2-18-01	W½ of SW¼	5	27S	7W	80	200.00	42	207	4-17-01
E. T. & R. A. Woodruff	WD	3-14-92	NE¼ of SW ¼	5	27S	7W	40	100.00	42	209	4-17-01
J. M. Dailey	B&S	10-15-94	S½ of NW¼ NW¼ of NW¼ NW¼ of SW¼	17	20S	8W	160	400.00	42	238	4-23-01
A. F. Brown	QC	10-29-00	Lot 1	31	25S	3W	38.17	108.80	42	293	5-6-01
A. F. Brown, Asgn. of T. B. Copland	B&S	7-1-95	N½ of NE¼ NE¼ of NW¼	31	25S	3W	120	300.00	42	295	5-6-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. F. Brown, Asgn. of T. B. Copland	B&S	7-1-95	SE¼ of NE¼ E½ of SE¼	31	25S	3W	120	360.00	42	297	5-6-01
W. F. Colvin	B&S	2-28-91	S½ of NE¼	25	21S	6W	80	160.00	42	378	6-3-01
A. D. Devonshire	QC	4-8-01	NW¼ of NW¼	21	24S	3W	40	140.00	42	384	6-4-01
Henry M. Copland	QC	10-29-00	NE¼ of NW¼	21	24S	6W	40	180.00	42	396	6-10-01
E. E. Emitt	QC	10-29-00	Lot 7	9	25S	7W	54.88	156.40	42	399	6-10-01
William Rader	B&S	4-11-98	NE¼ of SE¼	5	24S	7W	40	100.00	42	401	6-11-01
E. E. Redfield	QC	4-8-01	W½	17	32S	6W	320	1292.00	42	419	6-18-01

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ada Thompson, Asgn. of Wm. E. Morris	B&S	6-10-01	E½ of NW¼ N½ of SW¼	33	21S	4W	160	360.00	42	471	7-19-01
Wm. London	QC	6-10-01	S½ of NE¼	31	29S	4W	80	190.00	42	487	7-29-01
Maurice Moore	QC	6-10-01	All	3	31S	8W	625.18	2375.66	42	494	8-2-01
Walton G. Hughes	QC	6-10-01	NW¼ of SW¼	7	26S	3W	501.11	1503.33	42	498	8-3-01
			NE¼ of NW¼	1	26S	4W					
			E½ of	1	26S	4W					
			N½ of NE¼	13	26S	4W					
			Lots 10, 11	13	26S	4W					
S. K. Hunsaber	QC	6-10-01	Lot 5	19	29S	3W	39.04	156.16	42	501	8-5-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James S. Ramey	QC	6-10-01	E½ of SW¼ Lot 4	17	32S	4W	92.97	220.81	42	508	8-7-01
J. L. & J. M. Jackson	QC	6-10-01	SE¼ of NW¼	31	29S	4W	40	100.00	42	546	8-16-01
J. M. & J. L. Jackson	QC	2-18-01	NE¼ of SW¼	31	29S	4W	40	100.00	42	549	8-16-01
S. B. Crouch	QC	4-8-01	Lots 4, 7	15	25S	5W	6.20	20.00	42	602	9-18-01
Lewis Ash	QC	12-17-00	SW¼ of SE¼	25	30S	6W	40	140.00	42	608	9-20-01
J. T. McGee	QC	7-29-01	SW¼ of NE¼	25	29S	4W	40	100.00	43	6	10-3-01
Marghertita Perini	QC	4-8-01	NW¼ of NE¼	11	21S	4W	40	200.00	43	32	10——01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John McDonald	QC	7-12-01	E½ of NW¼	25	23S	10W	80	280.00	43	139	11-18-01
John McDonald	QC	7-29-01	W½ of NW¼	25	21S	4W	80	200.00	43	142	11-18-01
Otto V. Logsdon	QC	10-29-00	SW¼ of SW¼	5	31S	7W	40	152.00	43	195	12-9-01
A. F. Plantz	QC	4-8-01	NE¼ of SW¼	13	29S	8W	40	133.00	43	198	18-9-01
Isabell Mining Co.	QC	10-21-01	NW¼ of NW¼ E½ of NW¼	27	32S	7W	120	300.00	43	201	12-10-01
Wm. R. Cellers	B&S	11-5-95	NW¼ of NW¼	25	22S	5W	40	120.00	43	204	12-10-01
Wm. Cellers, Asgn. of J. Turpin	B&S	11-5-95	NW¼ of NE¼ NE¼ of NW¼	25	22S	5W	80	240.00	43	207	12-10-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Wm. Kelleher	QC	2-4-95	N½ of SE¼ NE¼ of SW¼	1	23S	6W	120	520.00	43	290	1-9-02
C. W. Kirk & Thomas Wilson	QC	2-6-99	SE¼ of SE¼ of NW¼ NE¼ of NE¼ of SW¼	5	31S	5W	20	50.00	43	325	1-31-02
Ashford Clayton	B&S	2-28-91	Lots 4, 7, 8	35	25S	7W	72.01	108.02	43	335	2-4-02
G. Gilbertson	QC	6-10-01	NE¼ of NE¼	23	32S	6W	40	100.00	43	393	2-25-02
O. G. Gilbertson	QC	6-10-01	SE¼ of NE¼	23	32S	6W	40	100.00	43	396	2-25-02
M. Woodruff	QC	6-10-01	SE¼ of NE¼	21	26S	7W	40	133.00	43	465	3-21-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
H. A. Woodruff	QC	2-3-02	SW¼ of NW¼ NW¼ of SW¼	29	32S	5W	80	266.00	43	472	3-29-02
F. M. Criteser	B&S	2-28-91	SW¼	7	27S	6W	153.03	267.80	43	502	4-7-02
H. J. Wilson	QC	3-3-02	Lot 5	21	30S	5W	25.60	64.00	43	551	4-30-02
F. L. Pickthorn	QC	7-26-97	Lots 2 & 7	11	26S	3W	81.35	203.37	43	553	5-3-02
J. S. Hildeburn	QC	6-6-98	NW¼ of NE¼	1	30S	7W	35.12	122.92	43	573	5-12-02
William Patterson	WD	2-26-80	W½ of NE¼	29	24S	6W	80	160.00	43	576	5-16-02
W. R. Moore	QC	1-3-02	Lots 3 & 4	27	22S	5W	19.24	48.10	43	622	5-19-02
George H. Baker	QC	4-7-02	SW¼ of SW¼	19	29S	6W	44.67	134.01	43	626	5-26-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Lorenzo Van Arburg, Asgn. of Wm. Wheeler	B&S	2-28-91	N½ of SW¼	1	24S	7W	80	148.00	43	631	5-28-02
Lorenzo Van Arburg, Asgn. of Wm. Wheeler	B&S	2-28-91	SE¼ of NW¼	1	24S	7W	40	80.00	43	633	5-29-02
Anna Snyder	QC	4-8-01	NW¼ of SE¼	23	32S	6W	40	95.00	45	34	6-3-02
J. L. Offutt	B&S	2-28-91	SE¼ of NE¼	31	24S	3W	40	80.00	45	82	6-18-02
John Kraft	QC	2-3-02	NE¼ of NE¼	13	24S	7W	40	114.00	45	118	7-1-02
John Kraft	QC	2-3-02	SE¼ of NE¼	13	24S	7W	40	120.00	45	121	7-1-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Kraft	QC	2-3-02	NW¼ of NE¼	13	24S	7W	40	120.00	45	124	7-1-02
J. N. Hedden	QC	3-19-00	Lot 7 & 8	5	22S	9W	62.23	155.60	45	296	8-1-02
C. Hacker	WD	7-28-85	Lots 7, 9 & 10	15	22S	10W	39.17	88.13	45	297	8-2-02
S. C. Ruble	QC	5-28-00	SE¼ of SE¼	19	32S	6W	40	95.00	45	356	9-11-02
M. E. Cranfill	QC	5-1-02	SW¼ of NW¼, SE¼	13	25S	7W	200	570.00	45	387	9-27-02
W. H. Foster	WD	8-18-85	SE¼ of NW¼ NE¼ of SE¼	25	26S	7W	80	120.00	45	392	9-30-02
W. H. Foster	WD	8-18-85	Lots 1, 2 SW¼, W½ of NW¼	1 25	27S 26S	7W 7W	295.80	471.60	45	393	9-30-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Catherine L. Johnson	B&S	4-11-98	SW¼ of SE¼	3	22S	5W	40	120.00	45	405	10-10-02
A. E. Nichols	QC	4-7-02	NE¼ of SE¼	5	31S	7W	40	152.00	45	409	10-11-02
Adam Fisher	QC	5-1-02	Lot 17	23	26S	6W	7.47	35.00	45	414	10-15-02
Gold Ridge Mining Co.	QC	12-17-00	NE¼ofNW¼& E. 20 A. of NW¼ of NW¼	31	29S	4W	60	150.00	45	417	10-17-02
Gardiner Mill Co.	QC	6-3-02	NW¼ of SE¼ NE¼ of SW¼	11	20S	9W	80	220.00	45	419	10-18-02
Gardiner Mill Co.	QC	6-3-02	W½ of NW¼	13	20S	9W	80	200.00	45	420	10-20-02
Gardiner Mill Co.	QC	6-3-02	SW¼ of SW¼	11	20S	9W	40	130.00	45	421	10-20-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. B. Drake	QC	4-7-02	Lot 2	29	29S	5W	36	108.00	45	434	10-24-02
J. L. Thornton	QC	11-27-99	SE¼ of SW¼ Lot 5	23	24S	4W	46	161.00	45	448	11-3-02
George Kohohagen	QC	12-17-00	NW¼ of NW¼	23	26S	2W	40	140.00	45	456	11-8-02
W. R. Vincent	QC	12-17-00	W½ of NW¼	15	26S	6W	80	320.00	45	457	11-8-02
Thomas Bledsoe	QC	2-15-97	SE¼ of NW¼	21	21S	5W	40	120.00	45	538	12-23-02
Thomas Bledsoe	QC	11-8-97	SW¼ of NW¼	21	21S	5W	40	120.00	45	539	12-23-02
Thomas Bledsoe	QC	11-8-95	NE¼ of NW¼	21	21S	5W	40	120.00	45	541	12-23-02
A. J. Wainscott	QC	9-8-02	Lots 1	1	23S	8W	6.40	40.00	45	563	1-7-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Angelo Perini	QC	10-6-02	S½ of SE¼	29	21S	4W	80	280.00	45	581	1-15-03
Viola Eckley	QC	10-6-02	NW¼	35	20S	7W	160	400.00	45	588	1-20-03
William Helliwell	QC	6-3-02	SW¼ of SE¼	33	22S	5W	40	120.00	45	594	1-24-03
A. H. Cox	QC	10-9-99	NE¼ of SE¼	21	28S	5W	40	120.00	47	94	4-6-03
Fred A. Kribs	QC	2-2-03	All	1	30S	9W	1277.50	6387.50	47	115	4-9-03
			All	15	30S	9W					
N. T. Day	QC	3-14-92	NW¼ of NW¼	5	26S	6W	40.54	154.05	47	117	4-9-03
Hymen & Aldred Wollenberg	QC	1-5-03	Lots 7 & 8	13	30S	4W	74.68	186.70	47	150	4-15-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
James & N. A. Ambrose	WD	7-12-86	S½ of NW¼	25	22S	6W	120.00	240.00	47	158	4-20-03
			NW¼ of SW¼	25	22S	6W					
James & N. A. Ambrose	B&S	10-15-94	NE¼ of NW¼	25	22S	6W	40	80.00	47	159	4-20-03
Lizzie Amstein	QC	5-1-02	SE¼ of NW¼	29	29S	8W	40	200.00	47	161	4-20-03
William Flock	QC	1-5-03	S½ of NE¼	33	30S	3W	80	240.00	47	164	4-21-03
Frank Fate	QC	7-7-0	N½ of NW¼	35	30S	3W	80	200.00	47	176	4-27-03
George W. Crews	QC	2-2-03	NW¼ of SW¼	9	29S	3W	41.05	200.00	47	198	5-6-03
John G. Dicks	QC	1-5-03	SW¼ of NE¼	25	29S	5W	57.20	200.00	47	201	5-6-03
			Lots 1 & 2								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Frank Beck	QC	6-10-01	W½ of NE¼	29	28S	4W	80	190.00	47	235	5-22-03
Jacob Brock	QC	1-5-03	Lot 5	11	30S	4W	22.88	57.20	47	247	6-2-03
Theodora Krostue	QC	3-2-03	SW¼ of SE¼ SE¼ of SW¼	19	32S	6W	80	200.00	47	261	6-15-03
Theodore Krostue	QC	3-2-03	SE¼ of NW¼ NE¼ of SW¼	19	32S	6W	80	360.00	47	263	6-15-03
Theodore Krostue	QC	3-2-03	NE¼ of SE¼	19	32S	6W	40	100.00	47	264	6-15-03
Theodore Krostue	QC	3-2-03	NW¼ of SE¼	19	32S	6W	40	100.00	47	265	6-16-03
Minnie E. Stewart	QC	4-6-03	NW¼ of SW¼	17	21S	4W	40	160.00	47	298	NO date

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Walter L. Tooze	QC	5-18-03	S½ of SE¼	13	27S	4W	80	240.00	47	307	7-16-03
Wm. J. Kelleher Asgn. of Jas. & N. A. Ambrose	B&S	5-18-03	NW¼ of NW¼	25	22S	6W	40	120.00	47	314	7-21-03
William J. Kelleher	QC	5-18-03	NW¼ of SW¼	1	23S	6W	40	160.00	47	315	7-21-03
E. F. Kinsel, Asgn. of George C. Woolley	B&S	10-15-94	Lots 1 & 2	33	23S	7W	37.80	94.50	47	318	7-24-03
Dominico Perrini	QC	12-1-02	N½ of SW¼	11	21S	4W	80	320.00	47	327	8-1-03
Miles Ramey	QC	6-8-03	W½ of NE¼	23	32S	6W	80	200.00	47	332	8-8-03
A. E. Smith	QC	6-8-03	Lot 6	15	25S	4W	19.18	76.72	47	334	8-10-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Thomas Bledsoe	QC	5-1-02	E½ of NE¼ NW¼ of NE¼	29	21S	5W	120	840.00	47	339	8-10-03
Bent Gilbertson	QC	12-1-02	NE¼ of SW¼	13	32S	6W	40	100.00	47	345	8-15-03
Pacific Timber Co.	QC	7-29-01	NW¼ of NE¼	27	21S	5W	40	140.00	47	346	8-15-03
Pacific Timber Co.	QC	4-6-03	NW¼ of SE¼	27	21S	5W	40	180.00	47	348	8-15-03
Pacifiic Timber Co.	QC	7-29-01	NW¼ of NW¼	33	21S	4W	40	140.00	47	349	8-17-03
Pacifiic Timber Co.	QC	9-8-02	N½ of SW¼ SE¼ of SW¼	15	21S	5W	120	480.00	47	350	8-17-03
Catherine Clarke	QC	6-8-03	SW ¼of NW¼ NW¼ of SW¼	5	33S	6W	80	480.00	47	381	9-10-03

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. A. Dabison	QC	6-8-03	SE¼ of SE¼	9	24S	6W	40	160.00	47	385	9-14-03
Jas. Powrie, Asgn. of Joseph Francis	B&S	12-16-95	E½ of NE¼	23	22S	6W	80	200.00	47	388	9-16-03
Henry Mooney	QC	1-5-03	NE¼ of SW¼	5	22S	4W	40	100.00	47	414	10-14-03
J. O. Johnson	QC	5-18-03	N½ of NE¼ NE¼ of NW¼	33	21S	5W	120	600.00	47	428	10-23-03
B. Jones	QC	11-3-02	N½ of SW¼ SE¼ of SW¼	21	31S	1W	120	285.00	47	439	10-29-03
Miles Ramey	QC	7-6-03	NE¼ of SW¼	23	32S	6W	40	100.00	47	473	11-17-03
E. H. Meyers	QC	2-2-03	SW¼ of SE¼	1	23S	6W	40	180.00	47	482	11-23-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. T. Bridges	QC	10-9-99	SW¼ of SW¼	15	21S	5W	40	171.00	47	486	11-25-03
Fred A. Rowe	QC	3-14-92	SE¼ of SW¼	35	32S	7W	40	300.00	47	494	12-1-03
Lawrence Michaels	QC	5-1-02	Lot 10	5	30S	4W	40.48	115.00	47	518	12-14-03
William A. Pearce	QC	3-14-92	SE¼ of NE¼	7	28S	4W	40	120.00	47	539	12-29-03
William A. Pearce	QC	3-14-92	SW¼ of NE¼	7	28S	4W	40	133.00	47	540	12-29-03
O. W. Fiddler	QC	7-6-03	SW¼ of NE¼	13	21S	5W	40	120.00	47	543	12-30-03
Thomas Bledsoe	QC	10-5-03	NW¼ of NE¼	21	21S	5W	40	120.00	47	554	1-7-04
Thomas Bledsoe	QC	10-5-03	SW¼ of NE¼	21	21S	5W	40	120.00	47	556	1-8-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Rufus Cranfill	QC	4-6-03	SW¼ of NE¼ SE¼ of NW¼, Lot 1	15	25	7W	111.50	334.50	47	558	1-11-04
Levens Ledge Gold Mining Co.	QC	11-2-03	Lots 1 & 2	5	31S	5W	73.36	400.00	49	16	3-5-04
W. W. Kent	QC	1-4-04	SE¼ of NW¼ NE¼ of SW¼ NW¼ of SE¼	5	22S	5W	120	500.00	49	24	3-11-04
Oluf Lund	QC	12-14-03	N½ of SE¼	29	21S	4W	80	240.00	49	34	3-21-04
George Applegate	QC	12-17-00	W½ of SE¼	35	22S	5W	80	266.00	49	72	4-9-04
Alex Esselstrom	QC	2-18-01	SW¼	25	23S	10W	160	480.00	49	134	5-20-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Fred A. Krribs	QC	2-8-04	NW¼ of NE¼	11	30S	9W	40	160.00	49	140	5-24-04
Ben J. Trowbridge	QC	2-8-04	NE¼ of NW¼	29	29S	8W	40	200.00	49	147	5-26-04
Henry Mooney	QC	10-5-03	NW¼ of SE¼	5	22S	4W	40	100.00	49	160	6-8-04
Henry Mooney	QC	10-5-03	NE¼ of SE¼	5	22S	4W	80	200.00	49	161	6-8-04
			SE¼ of SW¼	5	22S	4W					
E. E. Redfield	QC	3-7-04	NE¼	19	32S	6W	160	560.00	49	164	6-10-04
Hiland Rhinehart	QC	9-7-03	NW¼ of SW¼	27	26S	3W	40	100.00	49	104	4-27-04
J. B. Treadwell	QC	9-23-01	Lot 4,	1	33S	5W	161.54	403.85	49	197	7-1-04
			S½ of NW¼								
			NE ¼of SW¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
H. A. Rostt	QC	1-4-04	SW¼ of SW¼	27	21S	4W	40	100.00	49	204	7-6-04
Louis P. Rapp	QC	2-8-04	Lots 5, 6, 7, 8, 9, 10, 11, 12, 14, 15	11	23S	7W	376.45	712.90	49	205	7-8-04
Gottfrey Rapp	B&S	2-28-91	Lots 2, 3, 4, 5, 15, 16	9	23S	7W	154.86	232.29	49	213	7-14-04
			Lot 3	15	23S	7W					
S. J. Moore	QC	4-4-04	NW¼ of NE¼	33	29S	3W	40.90	122.70	49	222	7-19-04
C. R. Smith	QC	12-14-03	Lot 4	5	33S	6W	41.16	205.80	49	233	7-23-04
C. R. Smith	QC	12-14-03	S½ of SW¼	5	33S	6W	120	600.00	49	234	7-23-04
			NE¼ of NE¼	7	33S	6W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. R. Daniels	QC	3-7-04	NW¼ of NW¼	17	27S	6W	40	120.00	49	266	8-16-04
Lorenzo Van Arburg	QC	10-6-02	SW¼ of SE¼	19	24S	6W	40	152.00	49	287	9-6-04
Charles E. Daugherty	QC	10-5-03	SW¼ of NE¼	27	32S	6W	40	100.00	49	295	9-7-04
Mary Jane Cellers	QC	7-6-03	NW¼ of SE¼	23	22S	5W	40	120.00	49	307	9-16-04
B. H. Fate	QC	6-12-99	SW¼ of NE¼	19	30S	3W	40	95.00	49	341	10-10-04
B. H. Fate	QC	12-14-02	NW¼ of NW¼	19	30S	3W	39.78	119.34	49	342	10-10-04
W. B. Lewis	QC	4-6-03	SE¼ of NW¼	33	23S	4W	40	120.00	49	353	10-12-04
W. L. Barton	QC	5-9-04	NW¼ of NW¼	33	32S	6W	40	160.00	49	354	10-12-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Charles Jones	WD	2-9-87	SW¼ of SE¼	3	25S	5W	40	80.00	49	390	11-1-04
T. P. Maupin	WD	4-4-04	SE¼ of SE¼ NW¼ of SE¼ NE¼ of SW¼	15	23S	7W	120	420.00	49	406	11-12-04
Sam Jones & John Cluckey	QC	11-3-02	NE¼ of NE¼	7	22S	5W	40	126.00	49	411	11-18-04
Lydia Roberstoon Asgn. of Geo. D. Norris	B&S	10-3-04	NE¼ of NW¼	23	24S	4W	40	160.00	49	434	12-2-04
A. L. Eager, Asgn. of Robert L. Hunt	B&S	10-3-04	NW¼ of NW¼	23	24S	4W	40	160.00	49	436	12-2-04
John Applegate	B&S	2-28-91	NE¼ of NE¼	5	23S	4W	41.23	——	49	459	12-19-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
M. Woodruff	QC	5-9-04	NE¼ of NE¼	21	26S	7W	40	140.00	49	492	12-31-04
J. E. Perry	QC	11-3-02	S½ of SE¼	31	30S	6W	80	200.00	49	501	1-5-05
L. T. Thompson Asgn. of Wm. E. Jordan	B&S	10-5-03	NW¼	31	25S	7W	162.95	285.06	49	505	1-7-05
Albert Clark	WD	7-12-86	SE¼ of NE¼	29	21S	4W	40	100.00	49	529	1-21-05
C. J. Clark, J. N. Curtin, R. S. Barker	QC	5-9-04	Lot 4	15	29S	3W	40.56	250.00	49	597	3-2-05
Oregon Pine Lumber Co.	QC	10-3-04	NE¼ of NE¼	27	32S	6W	40	100.00	49	616	3-11-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
H. C. Bickett, Asgn. of W. S. Griffis	B&S	10-3-04	SE¼ of SW¼	35	22S	4W	40	120.00	51	9	3-27-05
W. H. Redfield	QC	12-1-04	SE¼ of SW¼ S½ of SE¼ Lot 3	27	32S	6W	133.90	434.75	51	111	5-26-05
Henry Deboy	B&S	8-12-85	NE¼ of NE¼	35	23S	5W	40	80.00	51	114	5-26-05
Charles E. Daugherty	QC	1-14-05	NE¼ of SW¼	27	32S	6W	40	100.00	51	141	6-15-05
G. W. Marvin	B&S	2-24-05	S½ of SE¼	21	32S	5W	80	200.00	51	151	6-17-05
Pacific Timber Co.	QC	7-6-04	W½ of SE¼	21	21S	5W	80	380.00	51	192	7-14-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Lucy M. Armstrong	QC	2-24-05	NE¼ of SW¼ (Lot 2)	19	29S	4W	33.60	168.00	51	201	7-20-05
E. W. Sparrow	QC	4-4-04	NE¼ of SW¼	17	20S	8W	554.15	1385.37	51	219	8-7-05
William Kroll			SW¼ of SW¼, E½ Lots 2, 3, 4, 5	19	20S	8W					
August Loding	WD	5-27-80	Lot 4	15	22S	10W	6.50	25.00	51	231	8-16-05
Conservative Gold Mining Investment Co.	QC	6-8-03	Lot 4, N½ of SE¼ of NE¼	5	31S	5W	59.88	400.00	51	234	8-30-05
G. E. Brewer	QC	4-11-05	S½ of NE¼	23	29S	5W	80	320.00	51	254	9-4-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Henry Lucksinger	QC	12-1-04	SE¼ of SW¼ Lot 7 (formerly Lot 8)	13	22S	9W	65.18	195.54	51	258	9-5-05
J. V. Bradley, Asgn. of W. D. Bradley	B&S	2-28-01	SW¼ of NW¼	13	25S	4W	40	80.00	51	274	9-19-05
J. V. Bradley, Asgn. of W. D. Bradley	B&S	2-28-01	NW¼ of SW¼	13	25S	4W	40	80.00	51	276	9-20-05
J. Frank Watson	QC	5-5-05	SW¼ of SW¼ of NE¼; W½ of SE¼ of SW¼ of NE¼; NW¼ of NW¼ of SE¼; W½ of NE¼ of NW¼ of SE¼	5	31S	5W	30	150.00	51	291	10-7-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Pacific Timber Co.	B&S	6-5-05	E½ of NE¼	9	23S	3W	1001.09	4183.55	51	296	10-11-05
			NE¼ of SE¼	11	23S	3W					
			NW¼ of SE¼								
			N½	21	21S	4W					
			SE¼, N½	15	21S	5W					
			NE¼ of SE¼	21	21S	5W					
W. F. Royer	QC	2-8-04	NE¼ of SW¼	19	29S	6W	120	540.00	51	317	10-25-05
			SW¼ of NE¼								
			NW¼ of SE¼								
Fred Assenheimer	QC	8-9-05	Lots 3, 4, 13	9	22S	8W	74.72	186.80	51	325	11-1-05
			SE¼ of SE¼								
B. L. McKee, Asgn. of Jas. B. Dawber	QC	7-6-04	SE¼ of SE¼	25	21S	5W	40	220.00	51	351	11-15-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
F. M. Andrew	QC	10-3-98	SW¼ of NE¼	5	23S	5W	40	140.00	51	366	11-24-05
Victtoria J. Smith	B&S	2-24-05	SE¼ of SE¼	7	25S	6W	40	100.00	51	454	1-15-06
David McCollum	WD	8-18-85	Lot 1	23	23S	7W	20.30	30.45	51	497	1-31-06
Elizabeth Alexander	QC	6-8-03	SE¼	29	28S	4W	160	560.00	51	508	2-5-06
J. T. Tuffs	QC	1-14-05	SE¼ of SE¼ W½ of NW¼ NE¼ of NW¼ SE¼ of SE¼	1 7	32S 32S	8W 7W	208.90	626.73	51	530	2-13-06
Adolph Duckman, Asgn. of G. R. P. Atterbury	B&S	3-28-91	NE ¼of SE¼ Lot 1	17	26S	3W	60	90.00	51	544	2-21-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Sonnemann & Klingele	QC	2-18-01	E½ of SE¼	25	32S	7W	80	190.00	51	563	3-8-06
J. B. Farnsworth & R. J. Farnsworth, Jr.	WD	5-11-87	SW¼ of NW¼ NW¼ of SE¼	9	26S	6W	80	120.00	51	583	3-21-06
George Neuner	QC	9-28-05	Lot 1	11	30S	4W	39.32	117.96	51	585	3-22-06
William McMaster	B&S	11-6-05	SE¼	17	23S	3W	160	400.00	51	587	3-23-06
J. H. Stocker	B&S	3-5-86	NW¼	13	22S	6W	160	320.00	51	589	3-24-06
A. F. Brown	QC	10-19-05	N½ of NW¼	3	25S	6W	83.24	291.34	51	591	2-26-06
G. Gilbertson	QC	12-22-01	E½ of SE¼	23	32S	6W	80	240.00	51	611	4-6-06
Uriah N. Galigher	QC	10-15-94	NE¼ of SE¼	19	24S	6W	40	160.00	51	638	5-4-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. D. Moore	QC	10-3-98	SW¼ of SW¼ & Lot 10	19	23S	7W	53.52	187.32	37	488	12-13-98
E. B. Chapman, Asgn. of Geo. N. Chapman	B&S	2-28-91	N½ of SW¼ SW¼ of NE¼, NW¼ of SE¼	21	26S	3W	160	320.00	33	305	10-26-95
Julia B. Comstock	WD	5-1-75	S½ of S½ Lots 4, 5, 6, 7	35	21S	5W	199.60	439.10	19	127	8-9-87
H. B. Hart	WD	7-28-85	W½ of NW¼	7	22S	7W	80	160.00	55	36	5-25-06
H. B. Hart	WD	8-5-85	Lots 1, 2, 5	13	22S	8W	42.80	64.20	55	37	5-25-06
J. M. Henry	B&S	11-27-99	Lots 6, 7, 8	17	29S	6W	88.25	308.87	55	91	7-5-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Isaac Watkins, Asgn. of R. A. Booth	B&S	5-1-99	NE¼ of SE¼	17	22S	4W	40	120.00	55	109	7-19-06
A. F. Brown, Asgn. of A. G. Langdon	QC	1-30-06	Lot 1 (being fracl. SW¼ of SW¼)	7	23S	7W	53.50	187.25	55	196	9-13-06
			NE¼ of NE¼	13	23S	8W					
Wesley P. Pond	QC	3-1-06	SE¼ of NW¼	17	23S	5W	40	120.00	5	207	9-17-06
James F. Youmans	B&S	11-14-93	W½ of SE¼	23	21S	5W	80	200.00	55	323	11-5-06
G. T. Coates	QC	2-12-06	SE¼ of SW¼	27	27S	3W	40	120.00	55	336	11-13-06
Robert Wade	B&S	1-19-78	W½ of NW¼	15	21S	10W	120	216.00	19	507	2-28-88
			NE ¼of SE¼	9	21S	10W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
James J. Comstock	B&S	11-20-74	SW¼	9	21S	4W	160	400.00	12	460	12-24-81
Harrison Pinkston	B&S	11-26-74	SE¼ of SE¼	17	26S	6W	40	72.00	24	198	3-11-91
Joseph Bennet	B&S	1-19-78	NE¼ of SW¼	3	23S	4W	40	100.00	19	362	12-3-87
Coe G. Derland	B&S	11-26-74	Lot 5	23	25S	6W	22.24	50.04	7	375	8-8-75
James McKahey	B&S	2-16-76	E½ of NW¼ W½ of NE¼	19	22S	9W	160	232.50	7	597	3-10-76
Jesse Clayton	B&S	2-16-76	Lot 3	29	24S	7W	12.45	25.40	7	680	5-27-76
James Cole	B&S	2-16-76	SE¼	5	25S	6W	160	288.00	7	791	9-4-76
H. C. Fearn	B&S	8-17-76	S½ of SW¼	21	22S	4W	80	140.00	7	799	9-9-76

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
T. J. Gillam	B&S	8-17-76	Lots 4, 5, 6	21	26S	6W	68.64	112.35	8	91	10-16-76
L. Chase Cline	B&S	8-17-76	S½ of SW¼	35	25S	6W	80	120.00	10	262	9-26-78
G. W. Gorrell	B&S	1-19-78	Lot 5	29	25S	6W	4.03	20.00	10	281	10-14-78
Geo. H. Emerson	B&S	1-19-78	Lots 1, 7, 9, 10	17	22S	10W	21.95	51.64	10	414	12-28-78
James McCahey	B&S	1-19-78	Lots 4, 5	13	22S	10W	45.92	80.86	9	603	3-27-78
Robert Hinkle	B&S	1-19-78	NE¼	15	2S	4W	168	144.00	9	625	4-4-78
John Allen	B&S	1-19-78	NE¼ of NW¼	23	22S	6W	40	72.00	9	484	2-9-78
Butler R. Fitch	B&S	1-19-78	W½ of SW¼	33	21S	5W	80	144.00	9	761	5-25-78
Wm. Patterson	Ctf	4-13-79	W½ of NE¼	29	24S	6W	80	160.00	10	698	7-22-79

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Edward F. Kirwan	Ctf	5-19-82	N½ of NE¼	35	22S	6W	80	120.00	13	157	7-8-82
Edward F. Kirwan	Ctf	6-9-81	N½ of NW¼	35	22S	6W	80	126.00	13	158	7-8-82
James T. Cooper	Ctf	6-26-83	W½ of SW¼	9	26S	5W	80	100.00	14	363	7-16-83
W. A. Long, Asgn. to John & R. W. Long	Ctf	11-6-84	S½ of SE¼	29	22S	4W	80	190.00	16	483	9-4-85
Hirman C. Underwood	Ctf	4-28-84	NE¼ of SW¼	13	24S	5W	40	76.00	16	578	10-15-85
James T. Cooper	Ctf	5-5-85	NW¼	33	25S	5W	160	200.00	16	591	10-26-85
James T. Cooper	Ctf	5-5-85	S½ of SW¼	27	25S	5W	120	150.00	16	592	10-28-85
			NW¼ of NE¼	33	25S	5W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Street Rice, Asgn. to Samuel Whittaker, Oct. 14, 1882	Ctf	6-14-82	NW¼ of NW¼	15	24S	6W	40	100.00	16	596	10-29-85
Chas. A. McGee	Ctf	12-7-83	NW¼ of NE¼ Lots 1, 2, 3, 4, 5, 6	15	25S	6W	156.99	378.70	17	127	1-22-86
Fendel Sutherlin	Ctf	12-31-86	S½ of S½	21	25S	5W	200	300.00	18	296	2-4-87
			NE¼ of NE¼	29	25S	5W					
Joseph H. Walker	Ctf	11-10-82	SW¼	5	27	3W	160	216.00	19	262	10-14-87
M. J. Heydon	Ctf	1-5-89	S½ of NW¼	23	26S	7W	120	256.00	20	571	1-26-89
			SW¼ of NE¼								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Samuel Marks	Ctf	4-1-90	NW¼ of NW¼	21	28S	5W	40	114.17	23	364	8-19-90
Jas. J. McCoy	Ctf	11-7-90	SW¼ of SE¼	19	27S	6W	40	190.00	24	14	12-17-90
David Fate	Ctf	1-21-91	NW¼ of SE¼ Lots 6, 8	5	30S	3W	78.07	418.28	26	268	11-5-91
P. J. Jennings	Ctf	7-6-97	Part	5	31S	5W	40	100.00	35	583	7-28-97
John W. Wroe	Ctf	4-19-99	E½ of NE¼ SW¼ of NE¼ NE¼ of SE¼	21	20S	9W	160	400.00	38	258	5-26-99
A. W. Lambert	Cont	4- -02	Lands in Twps. 23, 24 & 25 S, Rgs. 2 3 W	20			911.48	188,203.32	55	(319 (320	11-6-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Charles A. Smith	Ctf	9-12-00	Lands in Tps. 30, 31 & 32 S Rgs. 9, 10, 11, 12 W				27500.00	$5.00 for first 15,000 A. $4.00 for bal.	51	(382 (385	12-4-05
J. W. Beckley	Cont	4-11-98	N½ of NE¼ Lots 1 & 4	5	23S	7W	91.33	228.32	37	110	5-10-98
B. D. Boswell	Cont	5-5-87	W½ of SW¼ NW¼ of NE¼; NE¼ of NW¼;	23	22S	4W					
			SW¼ of NW¼	29	22S	4W	200	600.00	18	487	5-6-87
C. T. LeTourneau	Cont	7-14-02	N½ NE¼; N½ of NW¼; SW¼ of NW¼; S½ of SW¼	27	31S	6W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
			NW¼ of SW¼;								
			S½ of SE¼	29	31S	6W					
			N½	33	31S	6W	1120	5600.00	55	182	9-5-06
A. M. Stearns	Cont	5-18-01	All	29	31S	5W	650	1920.00	55	220	9-21-06
A. M. Stearns	Cont	6-25-01	N½ of SE¼;								
			SE¼ of SE¼	25	31S	6W					
			All	All	19	31S	5W	802.92	2408.76	55	222	9-21-06

State of Oregon)
County of Douglas)ss.

I hereby certify that the foregoing twenty-one sheets correctly show the Record Book and Page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 16, 1912.

E. H. LENON,
County Recorder of Douglas County, Oregon.

(Seal)

CLACKAMAS COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Clackamas County, Oregon, prior to December 1, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Hiram Fellows	B&S	11-2-72	NE¼ of NW¼	3	4S	3E	40.20	100.50	S	390	6-25-81
Lavinia Bevert	QC	12-27-72	NE¼ of NE¼	7	3S	1W	40	90.00	T	351	12-10-81
Almon M. Shibley	B&S	11-27-72	NW¼ of NE¼ & SE¼ of NW¼	29	4S	4E	80	270.00	27	526	7-8-86
Henry Dubois	BS&QC	11-27-72	Lot 2	31	3S	4E	28.60	177.32	44	153	8-6-91
David F. Reid	QC	11-27-72	SE¼ of NE¼	31	3S	2E	40	144.00	J	127	2-6-73

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Pleasant Judd	QC	12-19-70	Lots 1 & 2	19	2S	4E	46.36	104.73	J	139	2-10-73
Otto Von Scholley	QC	11-27-72	NW¼	17	2S	4E	160	504.00	J	145	2-12-73
William N. Holmes	QC	11-27-72	NE¼	13	3S	2E	160	400.00	J	201	4-19-73
A. G. Cunningham	WD	11-27-72	Lots 1 & 8	9	2S	1E	21.92	29.60	J	519	2-19-74
Lavinia Bevert	WD	11-27-72	NE¼ of NE¼	7	3S	1W	40	90.00	J	551	3-12-74
Jared L. Rathbone	QC	7-31-74	Lot 2,	11	1S	2E	766.54	2138.23	K	232	8-28-74
			& NE¼ of NE¼	15	1S	2E					
			& SW¼ of NE¼	5	1S	3E					
			& NW¼ of NW¼ & Lot 2								
			& N½ of NE¼	7	1S	3E					

O. & C. R. R. Co., et al.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
			& Lot 6	13	3S	3E					
			& S½ of NW¼	1	3S	4E					
			Also lands in other counties.								
William C. Ralston	B&S	7-31-74	Lots 1 & 2	29	2S	1E	855.69	5076.09	K	235	8-29-74
			& SE¼ of SE¼	5	3S	1E					
			& SW¼ of SW¼	1	3S	2E					
			& NW¼ of NW¼								
			& N½ of SE¼	13	2S	3E					
			& Lot 5	25	2S	3E					
			& Lot 3	5	3S	3E					
			Lots 2 & 7	13	3S	3E					
			& Lot 1 &	17	3S	3E					
			SW¼ of NW¼								
			& N½ of NE¼	1	4S	3E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
			& N½ of NW¼	1	3S	4E					
			& N½ of SW¼								
			& SW¼ of NW¼	11	3S	4E					
			& NW¼ of SW¼								
			& N½ of SW¼	7	1S	4E					
Joshua Lyon	B&S	12-16-72	SE¼ of NE¼	19	4S	4E	40	188.00	27	141	2-4-86
Joshua Lyon	B&S	11-27-72	SE¼	19	4S	4E	160	345.60	27	143	2-4-86
Almon M. Shibley	B&S	11-27-72	NW¼ of NE¼ & SE¼ of NW¼	29	4S	4E	80	270.00	27	526	7-8-86
William S. Latham, Faxon D. Atherton & Wm. Norris, Trustees	D	7-25-74	Large tracts of land in various counties						K	410	Feb.6 6-8-9 1875

O. & C. R. R. R. Co., et al.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Grimm	B&S	11-26-74	Lot 2	9	2S	3E	8.32	18.72	K	528	4-22-75
John Bitzer	B&S	11-26-74	SE¼ of NE¼	17	2S	3E	40	100.00	K	540	5-11-75
William Meek	B&S	5-3-75	All that prt. D. L. C. of H. Lewelling & wife Claim No. 51, embraced in	23	1S	1E		400.00	L	173	9-2-75
			& that prt. D. L. C. of Wm. Meek & wife embraced in	23	1S	1E					
Reinhart Neidge	B&S	9-9-75	SE¼	21	2S	5E	240	468.00	L	192	9-18-75
			also N½ of NW¼	27	2S	5E					
Wilhelm Frels	B&S	9-9-75	W½ of SW¼	23	2S	5E	80	156.60	L	235	10-8-75

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Lewis F. Caruthers	B&S	9-9-75	Lot 1	11	4S	4E	19.97	107.84	L	276	11-2-75
Larkin Ball	B&S	9-9-75	Lots 1 & 2	7	2S	1E	17	38.25	L	321	11-13-75
Michael Heeckart	B&S	9-9-75	NE¼ of NE¼	13	4S	3E	40	144.00	L	517	2-10-76
Cyrus & Calvin Jones	B&S	2-16-76	SE¼ of NE¼	31	5S	1E	40	108.00	L	578	3-3-76
Ben F. Caton	B&S	2-16-76	Lot 4	29	1S	3E	35.09	86.84	M	15	3-22-76
Henrich Meinke	B&S	2-16-76	SE¼ of SW¼ & SW¼ of SE¼	17	3S	5E	80	180.00	M	136	5-16-76
Peter Claussen	B&S	2-16-76	NE¼ of SW¼ NW¼ of SE¼	17	3S	5E	80	234.00	M	138	5-17-76

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Felix G. Evans	B&S	2-16-76	SW¼ of NE¼	17	3S	1E	40	144.00	M	181	5-27-76
H. L. Pittock & W. Stephenson	B&S	11-26-74	Lot 2	3	2S	1E	16.79	151.11	M	323	8-1-76
Barnard Fagan	B&S	2-16-76	SW¼ of NW¼	29	2S	5E	40	120.00	M	378	8-4-76
John Hart	B&S	8-17-76	NW¼ of NE¼ NE¼ of NW¼	9	4S	3E	80	180.00	M	408	9-19-76
Mrs. Cacilie Rambow	B&S	8-17-76	NW¼ of NW¼	13	2S	4E	40	127.00	M	440	10-27-76
William Keil	B&S	8-17-76	Lot 4	27	3S	1W	19.68	88.56	M	493	11-22-76
Stephen A. Coalman	B&S	9-9-75	NW¼ of NW¼ SE¼ of NE¼	17	2S	5E	80	20.00	N	11	12-21-76
Charles Cannon	B&S	2-16-76	E½ of W½	13	5S	1E	160	360.00	N	311	4-25-77

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
William Sharon	B&S	1-19-78	NW¼ of SE¼ E½ of NE¼ & Lot 1 (Wash. Co.)	13 3	3S 2S	3E 3W	40	1.00	P	80	4-30-78
Stephen D. Coalman	B&S	1-19-78	SW¼ of NE¼	17	2S	5E	40	40.00	P	89	5-7-78
Thomas Hopkins	B&S	1-19-78	NE¼ of SE¼	25	1S	3E	40	100.00	P	75	4-27-78
Lewis Barin	B&S	1-19-78	SE¼ of NE¼ & Lots 1, 2, 8, 9 & 10.	19	3S	4E	204.28	682.73	O	411	1-29-78
Horace Baker	B&S	1-19-78	Lots 4 & 7	13	2S	2E	13.16	39.48	O	430	2-2-78
Joseph Bernert	B&S	1-19-78	Lots 7, 8 & 9	15	3S	1E	74.16	81.63	O	435	2-8-78

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Ferdinand Miller	B&S	1-19-78	N½ of SE¼ & SW¼ of SE¼ & SE¼ of SW¼.	11	3S	2E	160	500.00	O	437	2-9-78
William Barlow	B&S	1-19-78	Lots 2, 3, 4 & 5	5	4S	1E	71.34	160.52	O	446	2-11-78
Henry Weber	B&S	1-19-78	E½ of SW¼ & NW¼ of SW¼	21	2S	4E	120	380.00	O	480	2-29-78
Frances Kelley	B&S	1-19-78	NE¼ of NE¼	19	2S	4E	40	108.00	O	527	3-5-78
Chas. G. Woodward	B&S	1-19-78	Lot 4	29	2S	1E	41.20	206.00	P	480	11-7-78
J. W. Palmateer	B&S	1-19-78	Lots 5, 6 & 7	23	3S	4E	63.30	200.67	P	501	11-18-78
George Welch	B&S	1-19-78	SW¼ of NE¼ SE¼ of NW¼	35	4S	3E	80	180.00	P	508	11-19-78

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George Welch	B&S	1-19-78	W½ of NW¼	11	5S	3E	80	180.00	P	509	11-19-78
School District No. 57	B&S	2-16-76	Beg. at NE Cor. of NW¼ of SE¼ thence E. 295 ft., thence S. 295 ft., thence W. 295 ft., thence N. 295 ft. to beginning.	19	3S	5E	2	1.00	P	591	11-23-79
Benjamin F. Linn	B&S	2-16-76	E½ of NW¼	13	3S	2E	80	200.00	Q	15	1-9-79
Patrick Harris	B&S	1-19-78	SW¼ of NW¼	9	2S	5E	40	100.00	Q	204	4-28-79
Jacob Hofmann	B&S	2-16-76	SW¼ of SW¼	19	2S	5E	37.27	100.63	R	283	7-31-80
J. W. & S. A. Douglas	B&S	1-19-78	S½ of SE¼	3	3S	4E	80	240.00	R	351	7-7-80

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Dan'l. H. Clough	B&S	1-19-78	W½ of NE¼	5	5S	3E	80	144.00	R	371	7-13-80
Hiram Fellows	B&S	11-26-74	SW¼ of NW¼	3	4S	3E	40	100.00	S	392	5-25-81
John C. Taylor	B&S	1-19-78	W½ of NW¼	29	4S	4E	80	280.00	33	17	2-2-89
Spexarth & Lorenson	B&S	8-17-76	NW¼ of NE¼ SW¼ of NE¼	17	2S	4E	80	250.00	38	409	7-24-90
Charles Gale	SW	5-24-79	Lot 1	23	3S	3E	4.50	17.50	Q	291	7-22-79
Philip Moore	SW	5-24-79	SW¼ of NW¼ NW¼ of SW¼	21	2S	6E	80	200.00	Q	309	7-31-79
Henry Ohrtmann	SW	5-24-79	SW¼ of NE¼	29	2S	5E	40	140.00	Q	444	11-3-79
Jas. J. & W. H. Herman	SW	5-24-79	S½ of SW¼	19	5S	2E	78.36	195.90	Q	459	11-12-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jesse Kingsbury	B&S	5-24-79	NE¼ of SE¼	17	2S	3E	40	100.00	Q	537	12-26-79
Anthony Neidermeyer	SW	5-24-79	NW¼ of SW¼ SW¼ of NW¼	19	3S	1W	95.48	238.70	R	153	3-27-80
Wm. T. Linn	SW	5-24-79	Lots 2 & 3	5	3S	4E	41.14	102.85	R	193	4-14-80
Enoch Skirvin	SW	5-24-79	NE¼ of NE¼	23	6S	1E	40	120.00	R	250	5-5-80
Fred F. Strong	SW	2-26-80	Lots 5 & 6	9	2S	1E	94.94	427.23	R	330	7-1-80
			& Lots 2	8	2S	1E					
Nicholas O. Walden	SW	2-26-80	Lots 1 & 2	35	2S	3E	11.24	33.00	R	336	7-2-80
Jacob Amberg	SW	2-27-80	E½ of SE¼	9	3S	3E	80	200.00	R	357	7-14-80
John Alched	SW	2-26-80	SW¼ of NW¼	3	2S	2E	40	108.00	R	463	9-9-80

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Peter Claussen	SW	2-21-80	SW¼ of NE¼	17	3S	5E	40	45.00	R	519	10-11-80
Francis L. Bates	SW	2-26-80	SE¼ of SW¼	7	2S	6E	40	100.00	S	48	12-20-80
G. Friedrich & Wenzel Pusch	SW	2-1-81	Lot 4	29	2S	3E	23.10	138.60	S	115	2-4-81
Mrs. Kate L. Newton	SW	2-1-81	E½ of SE¼	15	4S	4E	80	200.00	S	118	2-4-81
Franz Elling	SW	2-1-81	SE¼ of NE¼	19	2S	5E	80	250.00	S	120	2-4-81
			& NE¼ of NE¼	29	2S	5E					
Friedrich Stulcke	SW	2-1-81	SW¼ of NW¼	13	2S	4E	40	120.00	S	123	2-4-81
Ferdinand Goetsch	SW	2-1-81	NE¼ of NE¼	11	2S	4E	40	126.00	S	126	2-4-81

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Gustave Wildpred	SW	2-1-81	NW¼ of NW¼	29	2S	5E	40	64.00	S	128	2-4-81
Wm. Tyler	SW	2-1-81	N½ of SW¼	3	6S	2E	80	280.00	S	131	2-4-81
School District No. 78	SW	2-1-81	Beg. at SW cor. of SE¼ of SW¼ thence N. 295 ft.; thence E. 295 ft.; thence S. 295 ft.; thence W. 295 ft.; to beginning.	15	4S	4E	2	1.00	S	133	2-4-81
Mrs. Ellen Bell	SW	2-1-81	Lots 4 & 5	27	3S	3E	24	96.00	S	136	2-4-81
L. T. Barin	SW	2-1-81	W½ of NE¼	1	4S	4E	80	200.00	S	139	2-4-81
George Fuchs	SW	2-1-81	NW¼ of SW¼	25	4S	3E	40	100.00	S	142	2-4-81

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
B. N. Longsworth	SW	2-1-81	S½ of SE¼ & SE¼ of SW¼	3	5S	3E	120	180.00	S	144	2-4-81
Mrs. Mary Bornty	SW	2-1-81	E½ of NE¼	21	4S	4E	80	240.00	S	147	2-4-81
John H. Revenue	SW	2-1-81	W½ of SE¼	9	2S	5E	80	200.00	S	150	2-4-81
Charles Bowman	SW	2-1-81	Lot 2	23	6S	1E	39.40	70.00	S	153	2-4-81
John C. Schmidt	SW	2-1-81	SW¼ of SE¼	13	3S	4E	40	95.00	S	158	2-4-81
Roosamond L. Blackwell	SW	2-1-81	S½ of SW¼	19	4S	4E	79	217.75	S	161	2-4-81
N. O. Walden	SW	2-1-81	Lots 5, 6, 7 & 8	1	3S	3E	81	263.57	S	164	2-4-81
Emil Guenther	SW	2-1-81	E½ of NW¼	1	4S	2E	80	210.27	S	167	2-4-81

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George S. Riggs	SW	5-24-79	NE¼ of NE¼	25	2S	4E	40	100.00	S	276	3-17-81
Joseph Willig	SW	2-26-80	NE¼ of NE¼	19	2S	5E	40	120.00	S	321	4-7-81
Isaac F. Beals	QC	2-26-80	S½ of SW¼	19	2S	6E	81.57	128.50	T	403	12-27-81
J. H. Miller	QC	5-24-79	S½ of NE¼	23	6S	2E	80	198.00	T	427	1-2-82
Ludwig Dane	SW	5-24-79	S½ of SE¼ & Lots 3, 4 & 5	35	2S	3E	144.05	720.25	U	427	10-9-82
Cacilie Rambow	SW	5-24-79	E½ of SE¼	11	2S	4E	80	54.00	V	152	2-12-83
Theresa Moewald	SW	5-24-79	SE¼ of SW¼ SW¼ of SE¼	29	1S	5E	80	180.00	W	68	5-19-83
Adam Kotzmann	SW	5-24-79	SE¼ of NE¼	11	2S	4E	40	35.00	Y	160	10-20-84

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles Bowman	SW	2-26-80	Lot 1	23	6S	1E	39.40	98.50	Y	405	3-16-85
Henry Henrici	SW	2-26-80	Lot 5	15	3S	2E	24.76	49.52	Z	82	5-23-85
Frederick Zimmerman	SW	2-26-80	E½ of NW¼	9	3S	1E	80	240.00	51	437	6-9-93
Philip Willig	WD	2-26-80	NW¼ of NE¼	19	2S	5E	40	100.00	35	371	12-14-89
Henry Dubois	SW	5-24-79	Lot 3	31	3S	4E	28.60	114.40	44	156	7-6-91
Cacilie Rambow	SW	5-24-79	E½ of SE¼	11	2S	4E	80	54.00	V	152	2-12-83
Philip Willig	WD	2-2-80	NW¼ of NE¼	19	2S	5E	40	100.00	35	371	12-14-89
Herman Lins	SW	2-1-81	S½ of NW¼ & SW¼ of NE¼	19	3S	5E	117.20	240.00	S	156	2-4-81

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Edmund Guber	B&S	9-15-85	SE¼ of SE¼	13	3S	4E	40	100.00	64	399	3-29-98
Conrad Schroeder	SW	12-5-87	NE¼ of SE¼	5	3S	1E	40	160.00	74	23	2-5-00
Herman Lins	SW	2-1-81	S½ of NW¼ & SW¼ of NE¼	19	3S	5E	117.20	240.00	S	156	2-4-81
Luther Norton	SW	10-21-85	Lot 1	25	3S	1E	30.25	121.00	29	604	10-11-87
Philip M. Graves	SW	9-2-85	Lot 2	19	4S	2E	37.56	150.24	30	60	11-14-87
James M. Taylor	SW	10-5-87	Lots 1, 2, 3 & 4	35	3S	1E	35.42	177.10	30	88	11-30-87
Alonzo Sitton	SW	10-5-87	NW¼ of SE¼ E½ of SW¼	11	2S	3E	120	360.00	30	219	1-4-88
O. P. Hedge	SW	8-22-87	SW¼ of NE¼ & Lot 1	29	1S	3E	52.20	143.55	30	251	1-14-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
O. P. Hedge	SW	8-22-87	SE¼ of NE¼	29	1S	3E	40	100.00	30	247	1-14-88
Andrew Johnson	SW	4-8-87	SW¼ of SW¼	17	5S	3E	40	100.00	30	258	1-18-88
J. A. Jones	SW	4-9-86	W½ of SE¼	13	4S	3E	80	266.00	30	604	4-9-88
Jane E. White	SW	11-15-87	NE¼ of SE¼	13	4S	2E	40	140.00	31	10	4-14-88
Hirman Wilson	SW	11-15-87	Lot 3	21	3S	4E	54.51	163.53	31	16	4-16-88
G. R. Mueller	SW	8-18-85	W½ of NW¼	13	4S	2E	80	252.00	31	272	6-29-88
B. B. Scramling	SW	9-20-87	Lot 1	27	4S	1E	15.36	92.16	32	69	10-22-88
Jameson Kincaid	SW	9-15-85	W½ of NW¼	27	1S	3E	80	160.00	32	225	12-5-88
B. A. Bingston	WD	4-8-89	NE¼ of NE¼	5	3S	3E	38.58	135.03	33	279	3-21-89

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. P. Carter	WD	8-12-85	NW¼ of SE¼	3	6S	2E	40	90.00	33	132	2-27-89
Henrich Bidderbusch	SW	8-5-85	NW¼ of NW¼	19	2S	5E	36.76	73.52	33	357	4-3-89
James M. Grashong	WD	9-23-85	W½ of SE¼ & SE¼ of SE¼	17	6S	2E	120	240.00	33	415	4-17-89
James Gibson, Jr.	WD	7-28-85	SW¼ of NE¼	1	3S	4E	40	90.00	33	456	4-27-89
Ole Johnson	WD	9-2-85	SW¼ of NE¼ & SE¼ of NW¼	31	3S	5E	80	200.00	42	469	7-6-91
Stephen Kirk	WD	12-11-85	SW¼ of NW¼ & W½ of SW¼	3	7S	2E	120	300.00	44	56	7-18-91
Josiah H. Osborne	WD	11-2-86	S½ of NW¼	1	2S	3E	80	200.00	45	99	2-29-92
N. O. Walden	WD	8-18-85	NW¼ of NW¼	1	3S	3E	39.21	137.24	46	125	11-12-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Christian Anderson	SW	1-15-87	N½ of NW¼	19	3S	5E	77.31	221.93	58	176	5-23-95
M. N. Shulstad	B&S	5-6-95	NW¼ of NW¼	29	5S	3E	40	100.00	58	188	5-27-95
August J. Elsner	——	10-5-87	NE¼ of NE¼	31	1S	5E	40	100.00	62	136	3-30-97
Edmund Guber	B&S	9-15-85	SE¼ of SE¼	13	3S	4E	40	100.00	64	399	3-29-98
Robert Alexander	SW	8-18-85	NW¼	13	2S	5E	160	80.00	27	190	3-2-86
Hiram Beebe	WD	10-21-85	N½ of NE¼	25	2S	5E	80	220.00	28	2	9-4-86
W. S. Kellogg	SW	9-2-85	Lot 1	17	3S	2E	26.01	74.13	28	103	10-11-86
N. O. Walden & Geo. A. Harding	SW	4-8-87	S½ of SE¼	19	2S	6E	80	240.00	51	475	6-17-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mary Lieberman	B&S	7-3-93	NE¼ (ofNE¼& NE¼ (SW¼of	21	3S	4E	80	300.00	55	132	4-3-94
Robt. Alexander	SW	8-18-85	NW¼	13	2S	5E	160	80.00	27	190	3-2-86
Mrs. C. A. Avery	WD	9-23-85	SE¼ of NE¼ & Lot 4	29	1S	2E	74.30	185.75	34	18	6-8-89
Ole Johnson	WD	9-2-85	SW¼ of NE¼& SE¼ of NW¼	31	3S	5E	80	200.00	42	469	7-6-91
Conrad Schroeder	SW	12-5-87	NE¼ of SE¼	5	3S	1E	40	160.00	74	23	2-5-00
John T. McIntyre	B&S	9-2-85	SW¼ of SE¼ & SE¼ of SW¼	23	2S	6E	80	160.00	77	227	3-22-01
Edward Harders	WD	7-12-86	Fractional N½ of SE¼	19	3S	5E	78	179.15	78	50	7-3-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John P. Strowbridge	SW	10-12-86	NE¼ of NE¼	31	2S	5E	40	100.00	84	76	10-15-02
S. W. R. Jones	SW	9-3-84	SW¼ of NW¼ & 35; SE¼ of NE¼ & S½	35	4S	3E	2317.10		(Y	110	9-16-84
			All	15	5S	3E					
			W½ & SE¼ & S½ of NE¼ & NW¼ of NE¼	9	5S	3E					
			SW¼ & W½ of SE¼ & W½ of NW¼	21	5S	3E					
			W½ of W½	3	5S	3E					
			W½ of NW¼ & SW¼ of SW¼	10	5S	3E					
			SE¼ of SW¼	4	5S	3E					
			&NE¼ofNE¼	9	5S	3E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Frank Wilehart	SW	7-28-85	Lot 7	31	2S	3E	39.84	139.44	27	148	2-9-86
J. W. Kyler	SW	7-28-85	W½ of SE¼	11	2S	5E	80	162.00	27	160	2-16-86
John Cummings	SW	8-12-85	SW¼ of SE¼ & Lot 5	17	3S	2E	41	123.00	27	204	3-6-86
W. H. H. Wade	SW	8-18-85	Lot 2	21	3S	4E	47.40	165.90	27	211	3-9-86
Wm. Mellien	SW	8-12-85	SW¼	27	1S	3E	160	320.00	27	215	3-9-86
Henry Wehrheim	SW	8-5-85	Lots 1 & 2	9	3S	4E	82.20	138.42	27	227	3-16-86
Geo. J. Currin	SW	8-5-85	SE¼ of NE¼	1	4S	4E	40	100.00	27	231	3-16-86
F. A. Meinig	SW	9-23-85	SE¼ of SE¼	13	2S	4E	40	80.00	27	243	3-18-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
N. O. Walden	SW	8-5-85	Lots 1 & 2	29	1S	2E	62	108.50	27	266	3-26-86
Herbert Culpan	SW	9-2-85	NE¼ of NW¼	33	1S	5E	40	152.00	27	274	3-27-86
Dan'l. Moynihan	SW	9-2-85	SW¼ of NW¼	1	2S	4E	40.00	95.00	27	278	3-27-86
Alfred Ferguson	SW	9-2-85	NE¼ of NE¼	21	2S	4E	40	126.00	27	284	3-29-86
John C. Lewis	SW	9-2-85	SE¼ & E½ of SW¼	23	6S	2E	240	648.00	27	297	4-1-86
C. H. Lewis	SW	8-18-85	S½	21	6S	2E	320	864.00	27	301	4-1-86
William Barlow	SW	9-23-85	E½ of SE¼	5	4S	1E	80	200.00	27	312	4-5-86
Julius Moschberger	SW	9-23-85	Lot 4	19	4S	2E	18	54.00	27	333	4-19-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
S. J. Powers	SW	1-7-86	W½ of NW¼	3	4S	4E	82	336.50	27	338	4-19-86
D. R. Dimick	SW	9-23-86	E½ of SE¼	13	6S	2E	80	220.00	27	343	4-20-86
Richard Mann	SW	9-15-85	E½ of NW¼	27	1S	3E	80	160.00	27	347	4-21-86
Charles Holman	SW	8-12-85	Lots 1 & 2	35	4S	2E	13.63	34.00	27	357	4-26-86
Dan'l. Albright	SW	7-28-85	Lots 8 & 9	11	6S	1E	61.91	123.82	27	365	4-27-86
Mrs. M. Bargen	SW	9-23-85	SE¼ of SE¼	17	3S	2E	40	120.00	27	372	5-1-86
Johanna Wagner	SW	9-23-85	Lot 3	25	3S	1W	19.08	85.90	27	376	5-1-86
John W. Elliott	SW	8-18-85	NW¼ of SE¼ & Lot 3	29	1S	3E	52.20	117.45	27	387	5-4-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
John W. Elliott	SW	8-5-85	S½ of SE¼	29	1S	3E	80	200.00	27	391	5-4-86
August Koch	SW	8-18-85	NE¼ of SE¼	27	2S	5E	40	126.00	27	460	5-29-86
Peter Pier	SW	9-23-85	NW¼ of NW¼	7	3S	5E	40.68	96.60	27	457	5-29-86
Joseph Haynes	SW	8-18-85	Lot 1	1	3S	1W	7.94	32.00	27	436	5-20-86
W. K. Willis	SW	10-21-85	N½ of NW¼	25	2S	5E	80	220.00	27	427	5-18-86
Harry P. Engles	SW	8-12-85	NE¼ of NE¼	33	1S	3E	40	120.00	27	415	5-14-86
Casper B. Ramsby	SW	10-21-85	E½ of NE¼	5	5S	3E	79.24	160.00	27	408	5-13-86
August Koch	SW	8-18-85	S½ of NE¼	27	2S	5E	80	252.00	27	464	5-29-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. H. Drake & T. R. Hibbard	SW	4-9-86	W½ of SE¼	11	7S	2E	80	200.00	27	469	6-1-86
Mrs. Anna Nawratil	SW	8-12-85	W½ of NE¼	21	4S	4E	80	268.65	27	531	7-12-86
Francis Lubelle	SW	7-28-85	NW¼	1	5S	1E	161.12	362.80	27	559	7-26-86
Oscar W. Sturges	SW	8-12-85	Lots 1 2, & 3	7	5S	2E	57.39	143.48	27	583	8-11-86
James L. Tubbs	SW	9-23-85	N* of NW¼ & NW¼ of NE¼	13	6S	2E	120	352.00	27	611	8-27-86
Jacob Leinwander	SW	7-28-85	SE¼ of SE¼	1	4S	1E	40	140.00	27	627	8-31-86
Hiram Beebe	WD	10-21-85	N½ of NE¼	25	2S	5E	80	220.00	28	2	9-4-86
Jacob K. Miller	SW	4-9-86	NW¼ofNE¼& S½ of NE¼	25	6S	2E	120	360.00	28	19	9-11-86

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John R. Duncan	SW	7-28-85	SW¼ of SW¼	23	2S	4E	40	120.00	28	57	9-29-86
John Roberts	——	8-5-85	SE¼ of SE¼	23	4S	3E	40	100.00	28	96	10-9-86
W. S. Kellogg	SW	9-2-85	Lot 1	17	3S	2E	26.01	74.13	28	103	10-11-86
Charles Cutting	SW	9-2-85	W½ of SE¼	19	3S	3E	80	240.00	28	172	10-30-86
Charles Cutting	SW	9-23-85	NW¼ of NW¼	29	3S	3E	40	120.00	28	177	10-30-86
Charles Cutting	SW	9-23-85	NE¼ of NW¼	29	3S	3E	40	100.00	28	183	10-30-86
Charles Cutting	SW	9-23-85	Lot 3	29	3S	3E	39.48	100.00	28	188	10-30-86
Peter Held	SW	8-5-85	W½ of NW¼	21	3S	5E	80	110.00	28	238	11-16-86
J. A. Strowbridge	SW	8-10-86	Frl.NW¼ofNE¼	5	3S	3E	38.53	146.42	50	311	1-3-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles Hagedorn	SW	5-7-86	W½ of NW¼	19	6S	2E	74.72	186.80	50	381	1-23-93
Ole Mikkelson	WD	9-2-85	SW¼ of SE¼	13	2S	4E	40	130.00	35	146	10-26-89
Mary Heff	WD	12-7-86	NE¼ofSW¼ & NW¼ of SE¼	5	4S	3E	80	240.00	35	170	10-31-89
Mrs. Rebecca J. Cochran	WD	9-2-85	Lots 1 & 2	7	6S	3E	66.37	154.50	35	331	12-3-89
John Hermann Weroer	WD	7-28-85	NE¼ of NE¼	15	2S	4E	40	100.00	37	60	2-5-90
S. W. R. Jones	WD	3-5-86	NE¼ & E½ of NW¼&N½ofSE¼ &NE¼ofSW¼	3	5S	3E	353.16	882.90	37	310	4-1-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Pankey	WD	6-7-87	SE¼ of SW¼	3	3S	4E	40	100.00	37	446	4-22-90
Franklin E. Mueller	WD	8-18-85	SE¼ of SE¼	31	3S	3E	40	200.00	39	326	10-28-90
J. Kowall	WD	9-15-85	NE¼ of SE¼	13	3S	4E	40	50.00	40	46	12-4-90
Fritz Sievers	WD	9-2-85	SW¼ of SW¼	11	2S	5E	40	80.00	40	104	12-20-90
Moses H. Lewellen	WD	7-12-86	NE¼ of NW¼	25	1S	3E	40	100.00	40	111	12-20-90
J. A. Buck	WD	7-12-86	E½ of SE¼	1	4S	4E	80	200.00	40	255	1-24-91
John F. Douglas	WD	11-15-87	NW¼ of NW¼	29	2S	4E	40	100.00	40	446	2-25-91
Franklin E. Mueller	WD	9-15-85	E½ of NW¼	13	4S	2E	80	240.00	42	34	5-7-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ferdinand Rath	WD	11-2-86	SE¼ of NE¼	19	3S	5E	40	104.00	42	83	5-12-91
Charles Cutting	WD	9-2-85	SW¼ of SW¼	29	3S	3E	40	100.00	42	318	6-9-91
Peter Held	SW	9-2-85	NE¼ of NW¼	21	3S	5E	40	75.00	28	234	11-15-86
John Hagens	SW	9-14-86	E½ of NW¼	31	1S	3E	80	400.00	28	307	12-10-86
James Callaghan	SW	9-15-85	N½ of NW¼ & SW¼ of NW¼	27	4S	3E	120	342.00	28	462	2-10-87
Alfred T. Howland	SW	8-18-85	(N½ of SW¼ (NW¼ of SE¼	31	4S	4E	121.48	290.00	28	344	12-24-86
Charles H. Douchy	SW	12-11-85	NE¼ of NE¼	33	3S	4E	40	60.00	28	360	12-31-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Solomon Mayfield	SW	10-21-85	NE¼ of SE¼	27	3S	3E	40	100.00	28	388	1-10-87
Herman Frey	SW	8-18-85	NE¼ of NW¼	29	2S	5E	40	126.00	28	519	3-3-87
Samuel Atkins	SW	2-9-87	S½ of SW¼	35	3S	4E	80	160.00	28	590	3-25-87
Juns Kristenson	SW	10-21-85	S½ of SE¼	11	2S	3E	80	220.00	28	621	3-30-87
Thos. J. Holt	SW	3-9-87	NW¼ of NE¼ & NE¼ of NW¼	31	3S	2E	80	320.00	29	10	4-4-87
John Carlson	SW	12-7-86	W½ of NE¼	29	5S	3E	80	228.00	29	16	4-4-87
Geo. E. Reynolds	SW	5-7-86	Lots 2 & 3	17	3S	2E	30.91	154.55	29	33	4-7-87
W. H. Graves	SW	11-2-86	Lots 1, 2, 3 & 4	9	4S	4E	39.67	137.57	29	48	4-9-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Alfred Smith	SW	2-9-87	SW¼ of SE¼	31	3S	2E	40	160.00	29	60	4-13-87
Eleazer S. Bamhall	SW	1-15-87	Beg. at SE cor	29	1S	5E	2	1.00	29	83	4-22-87
Chillon L. Dixon & Lloyd C. Lowe, Dir. of Joint School District No. 53			of NE¼ of Sec. 29, 1S, 5E, thence N. 20 rds; thence W. 16 rds.; thence S. 20 rods., thence E. 16 rds. to beginning.								
N. W. Randall	SW	8-12-85	NW¼ of NW¼	21	4S	3E	40	90.00	29	126	5-7-87
John Wilhoit	SW	9-15-85	NE¼ of NE¼ & S½ of NE¼ & SE¼ of NW¼	21	6S	2E	160	360.00	29	140	5-11-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Griff W. Jones	SW	4-8-87	NW¼ of NE¼	11	3S	2E	40	160.00	29	147	8-13-87
Charles C. Charles	SW	8-18-85	SE¼ of SE¼	29	4S	4E	40	108.00	29	182	5-24-87
George Swygert	SW	1-15-87	W½ of NE¼ & SE¼ of NW¼	33	1S	3E	120	370.00	29	189	5-26-87
Isaac Swygert	SW	1-15-87	NE¼ & E½ of NW¼ & N½ of S½	35	1S	3E	400	1030.00	29	194	5-26-87
Jacob K. Bashor	SW	9-15-85	SW¼ of NW¼ & NE¼ of SW¼	1	6S	2E	80	160.00	29	198	5-26-87
Michael Heckart	SW	8-5-85	NW¼ of NE¼	13	4S	3E	40	120.00	29	215	5-31-87
Charles Nilbern	SW	1-7-86	SW¼ of SE¼	27	4S	3E	40	140.00	29	222	5-31-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. S. Stromgren	SW	3-9-87	SW¼ of SE¼	23	4S	3E	40	140.00	29	229	6-1-87
Jasper A. Boyles	SW	11-2-86	SE¼ of NE¼	3	6S	2E	40	100.00	29	323	7-5-87
P. M. Boyles	SW	4-8-87	W of SW¼	11	6S	2E	80	250.00	29	328	7-5-87
John Kabourek	SW	12-7-86	NE¼ of SE¼	23	4S	1E	40	200.00	29	352	7-16-87
Heinrich Hoffmeister	SW	9-2-85	NE¼ of NE¼	33	2S	4E	40	120.00	29	362	7-21-87
John Haley	SW	9-15-85	NW¼	1	2S	5E	158.11	338.00	29	401	8-4-87
Richard Gerdes	SW	7-13-87	N½ of SE¼	13	2S	4E	80	240.00	29	431	8-23-87
John Carleson	SW	7-13-87	E½ of NE¼ & NE¼ of NW¼	29	5S	3E	120	360.00	29	444	8-29-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Patrick Harris	SW	4-8-87	N½ of NE¼	17	2S	5E	80	100.00	29	458	8-31-87
David Hiderman	SW	9-2-85	SE¼ of SE¼	1	2S	3E	40	100.00	29	468	9-1-87
James C. Branham	SW	8-12-85	W½ of SW¼	1	2S	4E	80	100.00	29	571	10-3-87
Arthur Mather	SW	8-22-87	N½ of NE¼	7	3S	5E	80	160.00	29	593	10-6-87
William H. Cadwell	B&S	2-28-91	SW¼ of NE¼	13	6S	2E	80	200.00	41	301	4-13-91
Honora Davoren	B&S	2-28-91	N½ of SE¼ of SW¼	1	2S	2E	20	60.00	41	320	4-16-91
B. F. Linn	B&S	2-28-91	Lot 6	31	2S	3E	41.22	149.27	41	332	4-18-91
B. F. Linn	B&S	2-28-91	SE¼	13	3S	2E	160	320.00	41	536	4-18-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
P. H. Johnson	B&S	2-28-91	W½ of NW¼	11	2S	4E	80	280.00	41	349	4-21-91
Edward Owens	B&S	2-28-91	N½ of NE¼	29	3S	2E	80	480.00	41	353	4-21-91
Mrs. L. B. Fitch	B&S	2-28-91	SE¼ of SE¼	27	1S	2E	40	160.00	41	376	4-24-91
Wolfgang Baumann	B&S	2-28-91	W½ of NW¼	31	3S	2E	79.39	317.56	41	386	4-25-91
Thomas R. Fields	B&S	2-28-91	SW¼ of NW¼	23	2S	2E	40	120.00	41	398	4-27-91
John L. Eri	B&S	2-28-91	NE¼ of NE¼	9	2S	4E	40	120.00	41	407	4-28-91
W. C. Johnson & F. O. McCown	B&S	2-28-91	SW¼ of SW¼	29	3S	5E	40	100.00	41	416	4-29-91
James W. Roots	B&S	2-28-91	N½ of NE¼	1	2S	3E	80.50	161.00	41	455	4-30-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James M. Brown	B&S	2-28-91	W½ of SE¼	15	6S	2E	80	200.00	42	15	5-6-91
A. E. Latourette & D. Clinton Latourette	B&S	2-28-91	SW¼ of NE¼ & SE¼ of NW¼	3	2S	2E	80	240.00	42	23	5-6-91
Jonathan Wooster	B&S	2-28-91	S½ of SW¼	27	3S	4E	80	170.00	42	45	5-8-91
Michael Moehnke	B&S	2-28-91	NW¼ of SW¼	31	3S	3E	46.34	162.19	42	54	5-8-91
Ferdinand Rath	B&S	2-28-91	SW¼ of SW¼	17	3S	5E	40	120.00	42	89	5-12-91
W. T. Burney	B&S	5-1-91	E½ of SE¼ Lot 1 & 2	29	3S	3E	115.31	345.93	42	109	5-14-91
C. W. Thompson, Ex.	B&S	2-28-91	NW¼ of NE¼	9	2S	4E	40	120.00	42	158	5-18-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. W. Thompson, Ex.	B&S	2-28-91	SW¼ of NE¼	9	2S	4E	40	120.00	42	162	5-18-91
T. J. Baty	B&S	2-28-91	NE¼ of NE¼	23	2S	5E	40	120.00	42	185	5-20-91
Joachim Kowall	B&S	——	NW¼ of SE¼	13	3S	4E	40	120.00	42	200	5-22-91
Gustav J. Erickson	B&S	2-28-91	SW¼ of NW¼ & NW¼ of SW¼ & S½ of SW¼	9	2S	4E	160	440.00	42	242	6-1-91
Daniel Herlihy	B&S	2-28-91	E½ of NE¼ NE¼ of SE¼	3	2S	4E	118.21	354.63	42	299	6-6-91
Paul Dunn	B&S	2-28-91	NW¼ of NW¼	1	2S	4E	38.76	58.14	42	295	6-6-91
John M. Stormer	B&S	2-28-91	SW¼ of SE¼	29	3S	4E	40	120.00	42	303	6-6-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Emma H. Anderson	B&S	6-8-91	S½	27	6S	2E	320	800.00	42	358	6-18-91
E. F. Guenther	B&S	2-28-91	SW¼ of SW¼	31	3S	3E	46.45	162.58	42	363	6-18-91
Mrs. Ann Sollers	B&S	5-1-91	W½ of NW¼	31	1S	3E	92.90	743.20	42	401	6-25-91
Fred V. Holman	B&S	6-8-91	W½ of SW¼	23	6S	2E	80	240.00	42	405	6-25-91
Herbert Culpan	B&S	2-28-91	SE¼ of NW¼ & NE¼ of SW¼	33	1S	5E	80	320.00	42	413	6-26-91
D. L. Trullinger	B&S	2-28-91	NE¼	21	4S	2E	160	320.00	42	427	6-29-91
Aaron Preston	B&S	2-28-91	NE¼ of SE¼	11	2S	3E	40	120.00	42	437	6-30-91
John A. Backstrand	B&S	5-1-91	SE¼ of NE¼	7	2S	4E	40	140.00	44	23	7-15-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John A. Backstrand	B&S	5-1-91	NE¼ of NE¼	7	2S	4E	40	180.00	44	26	7-15-91
James Jr. Gibson	B&S	2-28-91	SE¼ of NE¼	1	3S	4E	40	100.00	44	34	7-15-91
Iquatz Frenzel	B&S	2-28-91	SW¼ of SW¼	11	3S	2E	40	120.00	44	80	7-22-91
Augusta Guenther	B&S	6-8-91	NE¼ of SW¼	1	4S	2E	40	100.00	44	85	7-22-91
John Forsythe	B&S	2-28-91	NE¼ of SW¼	23	2S	2E	40	100.00	44	132	8-5-91
A. J. Stalter	B&S	2-28-91	NE¼ of SE¼	1	2S	4E	40	140.00	44	146	8-5-91
J. Kowall	B&S	8-3-91	SW¼ of NE¼	13	3S	4E	40	100.00	44	192	8-12-91
Herman Frey	WD	2-28-91	SE¼ of NW¼ & NW¼ of SE¼	29	2S	5E	80	280.00	44	209	8-18-91

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
F. A. Meinig	B&S	8-3-91	N½ of NE¼ & NE¼ of NW¼	13	2S	4E	120.	240.00	44	296	9-7-91
Edward W. Hornshuh	B&S	2-28-91	NE¼ of SE¼	1	4S	2E	40	100.00	44	431	10-7-91
G. Otty & Chas. Otty	B&S	2-28-91	W½ of SW¼	27	1S	2E	80	320.00	44	445	10-10-91
John W. Boyer	QC	9-30-91	SE¼ of SE¼	25	4S	5E	40	100.00	44	475	10-16-91
Mark B. Blackburn	B&S	2-28-91	Lot 1	3	4S	4E	38.17	114.51	45	4	2-15-92
Thomas C. Thomas	B&S	2-28-91	NW¼	29	3S	2E	160	880.00	45	141	3-5-92
Charles McGovern	B&S	12-21-91	E½ of NW¼ & NE¼ of SW¼	21	2S	6E	120	280.00	45	156	3-7-92
Charles McGovern	B&S	2-28-91	N½ of NE¼	21	2S	6E	80	200.00	45	160	3-7-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. P. Snuffin	B&S	2-28-91	NE¼ of SW¼	15	2S	5E	40	152.00	45	218	3-15-92
Henry B. Lamb	B&S	9-30-91	Lot 1	19	5S	3E	40.27	100.68	45	253	3-19-92
Florence B. Pillster	B&S	2-28-91	SW¼ of NW¼	33	1S	3E	40	120.00	45	300	4-2-92
John H. Weaver	B&S	3-14-92	N½ of NE¼	23	2S	4E	80	220.00	45	473	4-28-92
Joseph E. Long & Ch. M. Toole	B&S	2-28-91	W½ of SE¼ & SW¼	13	2S	5E	240	456.00	46	18	10-21-91
John Gordon	B&S	2-28-91	SW¼ of SW¼	15	4S	2E	40	80.00	46	50	10-28-91
Julius Melven Ostereng	B&S	11-16-91	NW¼ of SE¼	31	3S	5E	40	130.00	46	399	12-30-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
J. L. Thomas	B&S	7-7-02	SW¼ of SE¼	1	4S	1E	40	320.00	87	84	5-5-03
Fred S. Morris	B&S	8-11-02	SE¼ of NE¼ & E½ of SE¼	33	3S	4E	120	360.00	87	186	6-23-03
Elizabeth Lovejoy	B&S	8-3-03	E½ of NE¼ & NW¼ of NE¼	27	6S	2E	120	300.00	87	297	8-8-03
The Oregon Water Power & Railway Co.	B&S	6-18-03	A Rt. of Way over and across the R. R. track and Rt. of Way of the O. & C. R. R. Co. and Southern Pacific Co. bet.					1.00	87	403	9-21-03
(Note.—The Southern Pacific joins with the O. & C. Co. in this deed.)											

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			Willsburg & Clackamas Sta., The point of intersection being 727.20 ft. South measured along the track of the O. & C. R. R. Co., from the center of the O. & C. R. R. Co.'s bridge across Johnson Creek near Willsburg.								
Charles Kyler	B&S	3-14-92	N½ of NW¼	19	2S	6E	81.42	203.55	47	438	7-8-92
Edgar Hudson	B&S	2-28-91	Lot 2	23	3S	4E	33.40	100.20	47	478	7-15-92
Edgar Hudson	B&S	2-28-91	Lot 3	23	3S	4E	33.40	100.20	48	1	7-15-92
Henry Hoffmeister	B&S	6-20-92	SE¼ of SE¼	33	2S	4E	40	100.00	48	128	8-15-92
Peter Elmer	B&S	6-20-92	NW ¼of SW¼	19	4S	3E	47.33	165.65	48	292	9-19-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. W. R. Jones	B&S	2-28-91	W½ of SW¼	11	5S	3E	80	400.00	48	334	9-30-92
Hans Jepson	B&S	9-5-92	SW¼ of NW¼	13	3S	4E	40	100.00	48	347	10-1-92
John Knaus	B&S	9-5-92	E½ of NW¼	9	2S	4E	80	240.00	48	378	10-6-92
Frederick Lehman	B&S	11-9-92	S½ of NW¼	27	2S	5E	80	240.00	50	113	11-18-92
Charles Zurfluk	B&S	11-9-92	Lot 3	11	3S	2E	37.99	132.96	50	176	12-1-92
Alfred Smith	B&S	3-14-92	SE¼ of SW¼	31	3S	2E	40	200.00	50	185	12-3-92
L. T. Barin	B&S	11-9-92	W½ of NW¼ Lots 4, 5, 6 & 7	19	3S	4E	177.13	221.42	50	200	12-5-92
J. M. Heckart, Adm.	B&S	12-5-92	S½ of NE¼	13	4S	3E	80	320.00	50	280	12-27-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Paschall Paquette	B&S	9-30-91	NE¼ of NW¼	25	6S	1E	40	100.00	50	347	1-16-93
F. J. Harkenrider	B&S	2-28-91	NW¼ of NE¼ & Lot 1	21	3S	4E	87.40	302.20	50	354	1-17-93
Willard Woodruff Austen	B&S	12-5-92	W½ of SW¼	5	6S	2E	80	200.00	51	247	4-14-93
Catherine J. Messegee	B&S	2-24-93	Lot 4	17	3S	2E	30.16	105.56	51	287	4-21-93
M. D. Brand	B&S	12-21-91	SE¼ of SE¼	25	1S	3E	40	100.00	51	314	4-28-93
Mary Wehner	B&S	2-24-93	SW¼ of NE¼	13	4S	1E	40	280.00	51	351	5-8-93
John Matthieson	B&S	5-8-93	NE¼ of SE¼	17	3S	5E	40	90.00	51	365	5-15-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Holman	B&S	2-24-93	Lots 3, 4 & 5	1	5S	2E	86.77	260.31	51	377	5-20-93
John W. Hudson	B&S	5-8-93	SE¼ of NE¼ NE¼ of SE¼	35	2S	4E	80	240.00	51	471	6-16-93
Thomas M. Hickey	B&S	2-28-91	W½ of SW¼	1	2S	3E	80	160.00	52	31	3-10-93
Johann F. Schacht	B&S	2-28-91	N½ of NW¼	33	1S	3E	80	220.00	41	70	3-17-91
Thos. Cully	B&S	2-28-91	SE¼ of SE¼	23	2S	5E	40	247.00	41	112	3-23-91
Geo. R. Califf	B&S	2-28-91	SW¼ of NW¼	1	3S	2E	40	120.00	41	126	3-24-91
Eliza Carter	B&S	3-13-91	N½ of N½	3	6S	2E	161.76	238.63	41	130	3-25-91
E. S. McCoy	B&S	2-28-91	W½ of NW¼	31	2S	3E	88.94	244.53	41	134	3-25-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
G. R. Shaw & J. A. McDonald	B&S	2-28-91	Lot 1	25	1S	3E	24.76	80.00	41	180	3-31-91
G. R. Shaw & J. A. McDonald	B&S	2-28-91	S½ of NW¼	25	1S	3E	80	200.00	41	183	3-31-91
G. R. Shaw & J. A. McDonald	B&S	2-28-91	SW¼	25	1S	3E	160	400.00	41	187	3-31-91
A. Wilson	B&S	2-28-91	SW¼ of SE¼	9	4S	3E	40	120.00	41	191	3-31-91
Frank Bode	B&S	2-28-91	SW¼ of SW¼	17	2S	6E	40	100.00	41	203	4-1-91
Frank Bode	B&S	2-28-91	NW¼ of SW¼	17	2S	6E	40	100.00	41	206	4-1-91
Sarah A. Forsythe	B&S	2-28-91	W½ of SW¼	23	2S	2E	80	260.00	41	210	4-1-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mathias Beck	B&S	2-28-91	W½ of NE¼	13	4S	2E	80	220.00	41	214	4-1-91
John M. Roach	B&S	2-28-91	W½ of NW¼ SE¼ of NW¼	11	6S	2E	120	380.00	41	221	4-3-91
J. H. Everest	B&S	2-28-91	Lots 3, 4 & 5	31	2S	3E	57.58	172.74	41	226	4-3-91
Frederick Moehnke	B&S	2-28-91	NE¼ of SE¼	31	3S	3E	40	160.00	41	240	4-4-91
Carl Hettmann	B&S	2-28-91	SW¼ of SE¼	31	3S	3E	40	120.00	41	243	4-4-91
Karl Hettman	B&S	2-28-91	SE¼ of SW¼	31	3S	3E	40	140.00	41	247	4-4-91
Minnie Inskeep	B&S	2-28-91	S½ of SW¼	1	4S	2E	80	220.00	41	253	4-6-91
Wm. Guenther	B&S	2-28-91	NW¼ of SE¼	1	4S	2E	40	72.16	41	257	4-6-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Baker	B&S	2-28-91	NW¼ of NW¼	19	3S	1W	47.56	118.80	31	291	4-13-91
James Duboise	QC	7-26-97	Lots 4, 6 & 7	31	3S	4E	61.33	214.65	64	243	1-13-98
Fred Smith	B&S	11-14-93	SE¼ of NE¼	23	2S	5E	40	140.00	64	247	1-13-98
Clara E. Eaton	SW	3-14-92	SW¼	25	4S	2E	160	560.00	64	249	1-13-98
Fred Smith	B&S	11-14-93	SE¼ of NE¼	23	2S	5E	40	140.00	64	247	1-13-98
Oscar L. Loderberg	B&S	11-9-96	NW¼ of NE¼ NE¼ of NW¼	31	5S	3E	80	240.00	66	214	3-16-98
Joseph Pinkley	B&S	2-28-91	SW¼ of SE¼	27	3S	4E	40	90.00	66	240	9-3-98
Ernest Rambow	B&S	2-28-91	SW¼ of SE¼	11	2S	4E	40	120.00	66	268	9-24-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Amanda Van H. Dryden	B&S	12-16-95	SW¼ of NE¼ & SE¼ of NW¼	23	2S	5E	80	320.00	66	326	11-1-98
William Dyer	B&S	2-6-99	Lot 1 & NW¼ of NE¼	7	3S	3E	54.14	323.63	68	172	3-18-99
W. S. Young	B&S	8-3-91	NE¼ of SW¼	17	3S	1W	40	120.00	47	107	4-36-92
John Becker	SW	11-9-92	NW¼ of SE¼	23	4S	1E	40	400.00	50	116	11-18-92
Robt. Schnebel	SW	11-9-92	NW¼ of NW¼	1	4S	2E	40.14	120.42	50	124	11-28-92
Robt. Schnebel	SW	11-9-92	SW¼ of NW¼	1	4S	2E	40	120.00	50	127	11-23-92
E. Cox	B&S	11-9-92	S½ of NW¼ & N½ of SW¼	25	2S	5E	160	320.00	50	142	11-28-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
H. H. Hoffmeister	B&S	11-9-92	SW¼ofSE¼& SE¼ of SW¼	23	2S	4E	80	240.00	50	145	11-28-92
Cyrus Jones	B&S	2-28-91	N½ of NE¼	1	6S	1E	79.52	190.00	74	430	11-23-01
Eleazer S. Bramhall	B&S	9-23-01	SW¼ofNW¼& NW¼ of SW¼	33	1S	5E	80	440.00	74	421	10-22-01
W. H. Vaughan	——	4-23-00	NE¼ of NE¼	25	6S	2E	40	100.00	75	39	5-10-00
Douglas S. Flynn	B&S	4-25-00	NW¼ of SW¼	11	4S	2E	40	120.00	75	50	5-14-00
H. H. Anders	QC	4-23-00	S½ of NE¼	25	3S	4E	80	380.00	75	59	5-16-00
Robert De Shazer	B&S	2-12-00	SE¼ of NE¼	7	3S	5E	40	120.00	75	133	6-14-00
William F. Mueller	B&S	5-28-00	SW¼ of SE¼	11	4S	2E	40	140.00	95	89	3-2-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. F. Mueller	B&S	5-6-95	SE¼ of SE¼	11	4S	2E	40	160.00	95	91	3-2-06
H. E. Noble	QC	12-1-02	SW¼ofNE¼& NW¼ of SE¼	25	2S	5E	80	220.00	95	329	4-13-06
Henry Ridderbusch	B&S	2-28-91	SW¼ of NW¼	19	2S	5E	36.93	175.42	41	270	4-9-91
C. M. Lundberg	QC	12-12-98	NE¼	7	4S	2E	160	960.00	68	350	5-15-99
William F. Mueller	B&S	5-28-00	SW¼ of SE¼	11	4S	2E	40	140.00	95	89	3-2-06
Henry Villard	D	6-2-81	All lands granted by						T	10	9-14-81
Robt. Davie, Peebles & Chas. Edward Bretherton, trustees & their legal successors as trustees.			the U. S. in aid of the construction of railways and not yet sold.								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. O. Owen	D	9-8-05	W½ of SE¼	9	5S	1E	80	560.00	97	154	10-26-06
John Ayres	SW	9-15-69	N½ of NE¼ (Land in other counties also in this deed.)	8	3S	1W			G	341	1-7-70
Andrew Olson	B&S	6-8-91	N½ of SE¼	15	2S	4E	80	240.00	46	459	1-7-92
Albert F. Jones	B&S	2-28-91	Lot 4	1	3S	3E	39.22	137.27	46	422	1-4-92
William Rehbein	B&S	12-21-91	E½ of SW¼	25	1S	4E	80	240.00	46	463	1-7-92
Henry A. Hess	B&S	2-28-91	NW¼ of SE¼	1	4S	1E	40	160.00	46	494	1-16-92
Frank Kirsner	B&S	2-28-91	E½ of SW¼	21	2S	5E	80	304.00	46	513	1-22-92
D. Minihan	B&S	1-29-94	W½ of NE¼	11	2S	4E	80	240.00	53	438	2-26-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. W. Jones	B&S	2-28-91	SW¼ of NW¼	1	5S	3E	40	100.00	46	532	1-27-92
John Benson	B&S	9-30-91	NW¼ of SE¼	35	2S	2E	40	120.00	47	21	3-28-92
Oregon Iron & Steel Co.	QC	5-9-92	Lot 2	3	2S	1E	16.79	1.00	47	180	5-12-92
Dominick McIntyre	B&S	2-28-91	SW¼ of SE¼ (NE¼ of SE¼	5	4S	3E	80	240.00	47	259	5-28-92
Scott Carter	B&S	9-5-92	S½ of NW¼	3	6S	2E	80	200.00	52	33	3-10-93
Wm. Mast & C. F. E. Voss	B&S	2-24-93	SW¼ of NW¼	21	2S	5E	40	152.00	52	44	3-13-93
S. D. Benell	B&S	2-24-93	SE¼ of NE¼	11	3S	2E	40	160.00	52	199	3-17-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
S. D. Benell	B&S	2-24-93	SW¼ of NE¼	11	3S	2E	40	120.00	52	201	3-17-93
Peter Paulsen	B&S	12-5-95	NW¼ of SW¼	21	3S	5E	40	90.00	52	244	6-19-93
Hans Paulsen	B&S	11-9-92	NW¼ of NE¼	29	3S	5E	40	94.00	52	246	6-19-93
Ole Mikkelson	B&S	2-28-91	S½ of SE¼	15	2S	4E	80	240.00	52	282	7-1-93
Ole Pederson	B&S	5-1-91	E½ of NW¼	11	2S	4E	80	220.00	52	287	7-3-93
Ole Mikkelson	B&S	2-28-91	NW¼ of SE¼	11	2S	4E	40	120.00	52	285	7-1-93
Othia B. Taylor	B&S	5-1-91	SW¼ofSW¼& Lot 5	15	4S	4E	44.76	134.28	52	381	10-5-93
Othia B. Taylor	B&S	2-24-93	N½ of SE¼	21	4S	4E	80	180.16	52	384	10-5-93

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. H. Kandle	B&S	12-5-92	Lots 5 & 6	9	4S	4E	29.59	88.77	52	423	10-17-93
Abraham Hardy	B&S	6-3-93	Lot 1	19	6S	3E	33.75	101.25	52	436	10-23-93
John L. Eri	B&S	5-8-93	SE¼ of NE¼	9	2S	4E	40	120.00	53	6	7-1-93
Ole Mikklesen	B&S	2-28-91	E½ of SW¼	11	2S	4E	80	240.00	53	8	7-1-93
Ole Johnson	B&S	9-5-92	NE¼ of SE¼	31	3S	5E	40	100.00	53	11	7-5-93
Albert Crossan	B&S	5-3-93	NW¼ofNE¼& NE¼ of NW¼	21	6S	2E	80	240.00	53	123	8-17-93
George Ball	B&S	2-24-93	SE¼ of SE¼ & Lots 6, 7 & 8	19	5S	3E	112.60	281.50	53	201	11-24-93
Mary Campbell	B&S	2-28-91	W½ of SW¼	31	3S	2E	78.63	334.13	53	267	12-19-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
William Bosch	B&S	2-28-91	E½ of NE¼	9	2S	5E	80	240.00	53	283	12-29-93
James G. DeShazer	B&S	11-14-93	NE¼ of NW¼	7	3S	5E	40	100.00	53	296	1-2-94
R. De Shazer	B&S	7-3-93	SW½ of NE¼	7	3S	5E	40	100.00	53	298	1-2-94
D. N. Trullinger	B&S	2-28-91	Lots 1, 2 & 3	3	3S	3E	32.88	98.65	53	311	1-3-94
Henry Johnson	B&S	7-3-93	NE¼ of NW¼	29	3S	5E	40	120.00	53	459	3-6-94
Alonzo P. Laverty	B&S	6-20-92	NW¼ of NW¼	27	6S	2E	40	100.00	55	7	7-22-93
Thomas D. Phelps	B&S	11-14-93	SE¼	5	2S	5E	160	440.00	55	63	3-17-94
William Johnson	B&S	1-29-94	SW¼ of NW¼	17	5S	3E	40	120.00	55	81	3-23-94
William Johnson	B&S	1-29-94	NW¼ofSW¼& E½ofSW¼&NE¼	17	5S	3E	280	840.00	55	84	3-23-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Rhys Gwynn	B&S	5-8-93	NE¼ of SE¼	19	6S	2E	40	100.00	55	86	3-23-94
Hans Klinker	B&S	5-8-93	SE¼ of NE¼	17	3S	5E	40	80.00	55	140	4-5-94
Ferdinand Rath	B&S	1-29-94	NE¼ of NE¼	19	3S	5E	40	120.00	55	147	4-7-94
John E. Carlson	B&S	1-29-94	SE¼	17	5S	3E	160	480.00	55	217	4-26-94
Irving L. Clarke	B&S	7-3-93	E½ of SE¼	23	4S	2E	80	200.00	56	38	7-12-94
Irving L. Clarke	B&S	7-3-93	W½ of SE¼	23	4S	2E	80	200.00	56	40	7-12-94
James B. Upton	QC	10-15-94	Lot 1	15	3S	1E	22.28	1.00	57	49	11-16-94
Gilbert Jonsrud	B&S	5-1-91	SW¼ of SW¼	11	2S	4E	40	120.00	57	356	8-10-95
Gilbert Jonsrud	B&S	11-14-93	NW¼ of SW¼	11	2S	4E	40	140.00	57	359	8-10-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Julius Berhendt	B&S	2-4-95	SW¼ of NW¼	5	4S	2E	40	120.00	58	48	3-19-95
Carl Burchtorf	B&S	11-14-93	N½ of SE¼	25	1S	4E	80	220.00	58	58	4-2-95
Lars Anderson	B&S	2-24-93	W½ of NW¼	7	4S	4E	76.16	228.48	59	20	11-27-95
W. T. Henderson	B&S	11-5-95	SW¼ofNE¼& S½ of NW¼	19	4S	4E	118.70	356.10	59	23	11-27-95
John J. Jones	B&S	11-.5-95	NE¼	23	4S	3E	160	440.00	59	48	12-7-95
H. J. Thomas	B&S	11-14-93	NE¼ of NE¼	19	6S	2E	40	120.00	59	407	5-22-96
C. M. C. Kirk	B&S	11-5-95	N½ of NE¼	9	7S	2E	80	200.00	61	151	7-8-96
John Johnson	B&S	4-30-94	E½ of SE¼	11	2S	5E	80	240.00	61	160	7-10-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. H. Creighton	B&S	10-15-94	SW¼ofNW¼& Lot 4	5	3S	5E	81.19	243.57	61	379	11-11-96
John A. Strowbridge	B&S	7-1-95	SW¼ of SW¼	5	3S	5E	40	120.00	62	107	3-23-97
Charles Hertz	B&S	2-24-93	NW¼ of NW¼	9	2S	4E	40	120.00	62	195	4-26-97
N. Boylan	B&S	5-11-96	N½ of SW¼	19	4S	4E	78.90	236.70	62	330	6-24-97
John Bennett	SW	9-5-92	SE¼ of NW¼	17	5S	3E	40	140.00	62	254	5-25-97
Charles Henry	QC	5-8-93	SW¼ of NW¼	29	1S	5E	40	200.00	62	297	6-10-97
B. M. Henden	QC	5-11-96	Lot 5	17	2S	3E	25.61	256.10	62	309	6-17-97
Isaac C. Karr	SW	12-5-92	SW¼ of SW¼	33	2S	5E	40	160.00	64	471	4-21-98
H. J. Hoffmeister	QC	10-15-94	SE¼ of SE¼	23	2S	4E	40	180.00	66	22	5-7-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Theo. Edward & F. Revenue	QC	9-5-92	SW¼ of NE¼	7	2S	5E	40	160.00	66	95	6-1-98
Catherine Davis	QC	5-11-96	SE¼ of NW¼	5	4S	2E	40	180.00	66	155	7-12-98
Josiah H. Glass	QC	12-12-98	SE¼ of SW¼	5	3S	5E	40	140.00	68	71	1-30-99
W. M. Stone	QC	10-3-98	Lot 2	9	3S	3E	34.37	154.66	68	151	3-9-99
J. S. Crumbly	B&S	7-26-97	Lots 3 & 4	23	2S	3E	15.03	60.12	68	234	4-10-99
Mike Jordan	QC	5-2-92	E½ of NW¼	11	4S	4E	80	300.00	50	137	11-26-92
John Buckholz	QC	1-5-03	NE¼ of NW¼	25	2S	6E	40	220.00	89	268	2-5-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mark A. Mayer	QC	5-28-00	(N½ of NW¼ (SW¼ofNW¼& (N½ of SW¼ (SW¼ of NE¼	15	2S	4E	240	1080.00	95	352	4-17-06
Rebecca C. J. Reed	SW	3-14-92	E½ of SW¼ & W½ of SE¼	23	2S	5E	160	684.00	47	361	6-23-92
Walter Strunk	SW	3-14-92	Lot 1	23	3S	4E	33.40	150.30	47	402	7-2-92
Ole Hanson	SW	3-14-92	SE¼ of NE¼	27	4S	3E	40	160.00	48	176	8-30-92
John Cully	SW	3-14-92	S½ of S½	25	2S	5E	160	684.00	48	215	9-9-92
John C. Schmidt	SW	3-14-92	SE¼ of SW¼	13	3S	4E	40	152.00	48	300	9-21-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. W. R. Jones	SW	3-14-92	E½ of SE¼	21	5S	3E	80	250.00	48	331	
O. J. Hoel	SW	3-14-92	NW¼ of SW¼	27	4S	3E	40	95.00	48	351	10-3-92
W. B. Baker	SW	6-29-89	NW¼ of SW¼	1	5S	3E	40	140.00	50	49	11-2-92
John Carlson	SW	3-14-92	SE¼ of NW¼	29	5S	3E	40	120.00	50	165	12-1-92
John Carlson	SW	3-14-92	SW¼ of NW¼	29	5S	3E	40	140.00	50	167	12-1-92
I. M. Yoder	SW	3-14-92	Lots 1, 2 & 3	7	5S	1E	11.50	54.63	51	267	4-19-93
William Kuckenberg	QC	3-14-92	E½ of SW¼	13	4S	4E	80	400.00	52	1	2-27-93
Mrs. Ann Sollers	SW	3-14-92	NW¼ of NW¼	1	2S	3E	40.86	245.16	52	54	3-14-93
W. P. Snuffin	SW	3-14-92	SE¼ of NW¼	15	2S	5E	40	152.00	52	129	4-13-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Franz Elling	SW	6-29-89	SE¼ of NE¼	29	2S	5E	40	171.00	55	60	3-19-94
Paul Wiederhold	SW	3-14-92	SE¼ of NE¼ & NE¼ of SE¼	21	3S	5E	80	304.00	55	95	3-27-94
Theodore, Edward and F. Revenue	——	3-14-92	S½ of NW¼ & Lots 1, 2 & 3	7	2S	5E	162.33	649.32	47	325	6-13-92
James Skirving	SW	9-5-92	NE¼	23	4S	2E	160	480.00	56	92	7-28-94
A. G. Quist	B&S	6-18-94	W½ of NW¼	23	2S	4E	80	260.00	47	103	8-7-94
B. F. Linn	B&S	6-18-94	W½ of NW¼	13	3S	2E	80	220.00	47	118	8-18-94
Erland Blomberg	B&S	10-15-94	SE¼ of NE¼	7	5S	3E	40	140.00	56	352	12-5-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Story J. Ware	B&S	4-30-94	NE¼ of SE¼	23	2S	5E	40	140.00	56	268	10-18-94
J. C. Schmidt, Hans Paulson, Herman Lins, & Christian Anderson	B&S	4-30-94	NE¼ of SW¼	13	3S	4E	40	120.00	56	396	1-8-95
John Bennett	SW	9-5-92	SE¼ of NW¼	17	5S	3E	40	140.00	62	254	5-25-97
James Skirving	QC	12-12-98	E½ of NW¼ & NW¼ of NW¼	23	4S	2E	120	360.00	75	18	4-30-00
Ann Sollers	SW	3-14-92	NW¼ of NE¼	29	1S	3E	40	200.00	52	52	3-14-93
Oren Cutting	QC	12-17-00	Lot 3	3	5S	2E	36.45	182.25	77	215	3-19-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
D. F. Warner	QC	1-14-05	NW¼ of NW¼	27	3S	4E	40	240.00	93	224	6-16-05
Frank Busch	D	2-12-06	SE¼ of SE¼	21	4S	4E	40	140.00	96	507	9-10-06
John Berreth	D	3-1-06	NW¼ of SW¼	3	4S	3E	40	240.00	96	624	10-1-06
Jas. M. Nicholson	QC	11-8-97	S½ of NW¼	17	6S	2E	80	280.00	72	33	7-18-99
Olof A. Setterberg	QC	10-9-99	SE¼ of NW¼	15	2S	4E	40	180.00	74	39	2-17-00
Frank Habelt	QC	2-12-00	SW¼ of SE¼	11	4S	4E	40	200.00	74	69	3-14-00
Frank Habelt	QC	2-12-00	SE¼ of SE¼	11	4S	4E	40	160.00	74	70	3-14-00
W. G. Kleinsmith	B&S	2-12-00	S½ of SW¼	21	4S	3E	80	360.00	74	82	3-21-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. A. Stefanson	QC	2-12-00	SE¼ of NE¼	15	2S	4E	40	180.00	74	89	3-28-00
Jas. Skirving	QC	12-12-98	N½ of SW¼	23	4S	2E	80	240.00	74	120	4-30-00
E. T. C. Stevens	QC	3-19-00	NE¼ of NW¼	1	2S	3E	40.62	203.10	74	123	6-8-00
C. D. Latourette	QC	3-19-00	W½ of NW¼	17	4S	3E	80	360.00	74	142	6-22-00
Jacob Meyer	QC	5-28-00	SE¼ofNE¼& NE¼ of SW¼	7	4S	3E	80	640.00	74	146	7-2-00
Fred Philippin	QC	6-25-00	NE¼ of NE¼	31	4S	3E	40	312.00	74	184	8-13-00
Victor Johnson	QC	10-3-98	NE¼ of SE¼	9	2S	4E	40	160.00	74	273	1-9-01
P. C. Miller	QC	12-17-00	W½ of SW¼	35	5S	2E	80	280.00	74	333	5-8-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. Gerlinger	QC	4-8-01	SW¼ofSE¼& NW¼ of NE¼ SE¼ of NE¼	9 19	2S 2S	4E 4E	120	660.00	74	340	5-28-01
E. R. Stone & H. E. Carrs	QC	6-10-01	N½ of SE¼	33	4S	3E	80	310.00	74	391	8-23-01
August Oschatz	QC	7-29-01	N½ of SE¼	29	3S	5E	80	280.00	74	424	11-11-01
Peter Rath	QC	7-29-01	NW¼ of SW¼	13	3S	4E	40	120.00	78	297	11-1-01
W. H. Phelps	QC	10-21-01	SE¼ of SW¼	5	2S	5E	40	180.00	78	444	12-13-01
Jalnis Paulsen	QC	2-12-00	NE¼ of NE¼	29	3S	5E	40	220.00	79	10	12-17-01
D. F. LeFevre	QC	2-15-97	E½ of NE¼ & NE¼ of SE¼	25	4S	2E	120	420.00	79	25	12-23-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Carlson	QC	9-23-01	SE¼ of NW¼	21	4S	2E	40	120.00	79	46	12-31-01
A. Wade	QC	12-2-01	SW¼ of SE¼	29	6S	2E	40	160.00	79	152	1-30-02
Oliver Wiley	QC	12-2-01	S½ of SW¼	15	2S	5E	80	320.00	79	178	2-7-02
John Graham	QC	1-13-02	SW¼ of SW¼	13	6S	1E	40	160.00	79	214	2-17-02
C. L. Gray	QC	1-13-02	Lot 1	15	4S	4E	18	81.00	79	219	2-17-02
Oren Cutting	QC	12-17-00	Lot 3	3	5S	2E	36.45	182.25	77	215	3-19-01
Victor Johnson	B&S	2-18-01	SE¼ of SE¼	9	2S	4E	40	160.00	77	249	4-1-01
F. S. Felter	B&S	2-18-01	W½ of SW¼	23	4S	4E	80	280.00	77	273	4-15-01
Catherine Riem	B&S	11-29-00	SW¼ of SE¼	29	2S	5E	40	340.00	77	300	4-29-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Paul Paulson	B&S	5-28-00	Lot 3	35	1S	2E	2.80	15.00	78	32	6-27-01
Leonard Minsch	QC	4-23-00	SE¼ofNE¼& E½ of SE¼ & SW¼ of SE¼	27	2S	4E	160	520.00	74	127	6-14-00
John H. Paine	QC	3-7-04	SW¼ of SW¼	11	4S	2E	40	140.00	90	130	5-20-04
Joseph Marchbank	QC	1-4-04	SE¼ of NW¼	3	4S	4E	40	180.00	90	81	5-13-04
John Paine	B&S	2-8-04	NW¼ of NE¼	15	4S	2E	40	200.00	90	132	5-20-04
John Paine	B&S	2-8-04	NE¼ of NE¼	15	4S	2E	40	120.00	90	134	5-20-04
C. L. Standinger	QC	2-8-04	E½ of NE¼	11	5S	2E	80	320.00	90	142	5-24-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. & O. J. Hudson	QC	12-26-99	S½ of SE¼	25	1S	4E	80	440.00	83	64	5-6-02
Catherine Riem	QC	6-3-02	SE¼ of SE¼	29	2S	5E	40	340.00	84	84	10-17-02
Charley Dougherty	QC	6-3-02	SW¼ of NE¼	3	6S	2E	40	160.00	83	100	10-20-02
L. P. Williams	B&S	11-9-92	E½ of SW¼	29	4S	3E	80	250.00	84	157	10-31-02
O. A. Palmer	QC	8-8-02	NE¼ofSE¼& S½ of NE¼	1	2S	3E	120	540.00	84	320	11-24-02
Jacob Meyer	QC	8-8-02	NW¼ of SW¼	7	4S	3E	47.11	259.10	84	325	11-25-02
A. Dowling	QC	8-8-02	W½ of NW¼	35	2S	5E	80	360.00	84	353	12-2-02
Charles C. Miller	QC	7-29-01	E½ of SE¼	3	4S	5E	80	240.00	84	419	12-22-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joseph Heller	QC	7-29-01	NW¼ of NE¼	35	2S	2E	40	240.00	84	433	1-3-03
Thomas Hodson	QC	5-6-95	NE¼ of SE¼	17	6S	2E	40	140.00	86	353	3-16-03
James Norris	QC	4-7-02	NE¼ of NE¼	11	2S	3E	40	209.00	86	269	2-25-03
Minnie McKean	QC	4-8-01	SE¼ of SW¼	23	2S	2E	40	240.00	86	396	3-27-03
Gilbert Gilbertson	QC	12-1-02	SE¼ of NW¼	1	2S	4E	40	200.00	87	10	4-17-03
B. F. Linn	QC	1-5-03	NW¼ of NW¼	19	3S	3E	45.65	251.07	87	14	4-18-03
Joshua Elmer	QC	4-8-01	NW¼ of NW¼	29	4S	3E	40	200.00	87	40	4-23-03
J. P. Dubois	QC	12-12-98	Lot 1	31	3S	4E	20	90.00	87	174	6-17-03
L. C. Unger	QC	10-6-02	NE¼ of NE¼	25	4S	3E	40	140.00	87	259	7-22-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Thos. H. Slaughter	QC	10-6-02	SE¼ of NE¼	1	6S	1E	40	160.00	87	270	7-27-03
Edward Kooper	QC	6-8-03	NE¼ of SW¼	19	2S	6E	40	300.00	87	333	8-25-03
T. G. Husbands	QC	12-2-01	NE¼ of NE¼	5	6S	2E	41.15	164.60	87	418	9-25-03
Frank Pasold	QC	3-19-00	SE¼ of NE¼	7	6S	3E	40	170.00	87	429	9-29-03
Chas. G. Forster	QC	7-29-01	All	1	8S	3E	642.08	4018.00	88	47	5-9-03
The Ore. Water Power & Ry. Co.	QC	4-6-03	Lots 1, 2, 3 & 5	29	3S	4E	76.72	383.60	88	102	6-20-03
J. G. McElroy	QC	6-3-02	W½ of NE¼ E½ of NW¼ NW¼ of NW¼	9	2S	5E	200	900.00	89	279	2-9-04

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Dan J. Moore	QC	4-4-04	Lots 2 & 3 & E½ of SW¼	33	3S	4E	238.91	896.18	90	286	7-19-04
				3	4S	4E					
			N½ of NE¼ & NW¼ of NW¼	11	4S	4E					
B. J. Helvey	B&S	3-19-00	SW¼ of SW¼	5	4S	2E	40	140.00	75	36	5-9-00
C. D. Latourette	QC	3-19-00	W½ of NW¼ N½ of SW¼	35	2S	2E	160	960.00	75	71	5-25-00
L. G. Carlson	QC	2-12-00	NW¼ of SE¼	9	2S	4E	40	140.00	75	92	6-5-00
Fredrich Kayser	QC	4-23-00	SE¼	21	4S	3E	160	720.00	75	102	6-8-00
Robert De Shazer	QC	2-12-00	N½ of NW¼	9	3S	5E	80	280.00	75	130	6-14-00
R. H. Long	QC	4-23-00	SW¼ of SE¼	15	4S	2E	40	120.00	75	190	7-7-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Jacob Meyer	QC	2-3-02	SW¼ of NE¼	7	4S	3E	40	200.00	79	358	3-31-02
Jesse Cox	SW	6-29-99	W½ of NE¼	31	4S	4E	80	304.00	79	365	4-2-02
Jesse Cox	SW	3-14-92	SE¼ or NE¼	31	4S	4E	40	180.00	79	367	4-2—
Fred S. Morris	QC	12-2-01	W½ of E½	33	3S	4E	484.66	1696.31	79	133	1-24-02
			& E½	3	4S	4E					
Chas. C. Miller	QC	7-29-01	E½ of SE¼	3	4S	5E	80	240.00	84	419	12-22-02
Joseph Heller	QC	7-29-01	NW¼ of NE¼	35	2S	2E	40	240.00	84	433	1-3-03
James Norris	QC	4-7-02	NE¼ of NE¼	11	2S	3E	—	209.00	86	269	2-25-03
Charles G. Forster	B&S	7-29-01	All	31	7S	4E	833.79	5211.19	78	268	10-22-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
F. E. Kollman	QC	5-28-00	NE¼ of NW¼	11	4S	5E	40	132.00	75	228	7-23-00
E. E. Dalton	B&S	5-28-00	SE¼	7	2S	4E	160	920.00	75	245	8-1-00
M. M. Morrill	QC	3-19-00	W½ of SE¼ & SE¼ of SE¼	25	4S	2E	120	420.00	75	307	9-15-00
Hans Jepsen	QC	5-28-00	NW¼ of NE¼	19	3S	5E	40	160.00	75	316	9-18-00
E. F. Bohlman	QC	4-23-00	NW¼ of NW¼	29	1S	5E	40	180.00	75	385	10-25-00
John Buckholz	QC	1-5-03	NE¼ of NW¼	25	2S	6E	40	220.00	89	268	2-5-04
Fred Schafer	QC	4-6-03	Lots 2, 3 & 4	11	5S	2E	38.73	225.00	92	47	10-13-04
Nicholas Rath	SW	2-14-04	SE¼ of SE¼	19	3S	5E	40	220.00	92	295	12-28-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Clark	QC	10-3-04	S½ of NW¼	7	4S	3E	86.98	521.88	92	438	2-13-05
John Heft	B&S	7-6-04	NW¼ of NW¼	5	4S	3E	40.07	220.38	92	440	2-13-05
Frank Kieman	B&S	7-6-04	SW¼ of NW¼ & NE¼ of SW¼	23	1S	4E	120	600.00	92	465	2-21-05
			NE¼ of NE¼	25	1S	4E					
R. Kaiser	QC	7-7-02	N½ of SW¼	25	2S	4E	80	360.00	92	522	8-10-05
D. F. Warner	QC	4-23-00	Lot 4	21	3S	4E	12.97	30.80	93	19	4-10-05
Frank Thomas	QC	3-19-00	E½ of NE¼	1	2S	4E	79.73	239.19	93	44	4-18-05
Rhoda Thomas	QC	2-12-00	NW¼ of SE¼	1	2S	4E	—	140.00	93	46	4-18-05
Samuel White	SW	6-29-89	Lot 1	29	1S	3E	12.20	57.95	93	173	5-29-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
D. F. Warner	QC	1-14-05	NW¼ of NW¼	27	3S	4E	40	240.00	93	224	6-16-05
V. Linglebach	QC	5-26-99	SW¼ of NW¼	27	3S	4E	40	160.00	94	176	11-27-05
Andrew J. Morrison	SW	5-9-04	NW¼ of SW¼	5	3S	5E	40	140.00	94	345	12-28-05
Thos. H. Slaughter	QC	5-1-02	SW¼ of NE¼	1	6S	1E	40	152.00	88	153	7-27-03
James Anderson	QC	2-2-03	NE¼ of SW¼	13	2S	3E	40	280.00	88	156	7-27-03
Thomas Odell	QC	2-18-01	Lots 1 & 6	25	2S	3E	6	20.00	88	276	1-23-04
James Adkins	B&S	12-14-03	SE¼ of NW¼	15	4S	2E	40	200.00	88	351	3-26-04
James Adkins	B&S	12-14-03	N½ of SW¼	15	4S	2E	80	280.00	88	356	3-26-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Albion B. Elliott	QC	6-8-03	S½ of NE¼ & E½ of SE¼	31	2S	5E	160	560.00	89	46	11-24-03
Albion B. Elliott	QC	9-3-03	NE¼ of NE¼ & NE¼ of NW¼	31	2S	5E	80	280.00	89	49	11-24-03
Christian Bittner	QC	9-3-03	SE¼ of SW¼	29	4S	4E	40	200.00	89	99	12-9-03
J. G. McElroy	——	6-3-02	W½ of NE¼ E½ of NW¼ NW¼ of NW¼	9	2S	5E	200	900.00	89	279	2-9-04
John Dolan	SW	3-14-92	NE¼ of SW¼	11	2S	5E	40	140.00	47	449	7-8-92
Harvey B. Chase	SW	3-14-92	SW¼ of SE¼	27	2S	5E	40	171.00	47	466	7-12-92
T. J. Hannigan	SW	3-14-92	N½ of SE¼	1	3S	4E	80	266.00	47	134	5-4-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
L. T. Barin	SW	6-29-89	Lot 10	13	3S	3E	39.30	130.68	47	152	5-10-92
Ira C. Wakefield	SW	3-14-92	S½ of NE¼	19	6S	2E	80	360.00	47	208	5-20-92
E. W. Hornshuh	SW	3-14-92	SW¼ of SE¼	1	4S	2E	40	160.00	47	226	5-24-92
E. W. Hornshuh	SW	3-14-92	SE¼ of SE¼	1	4S	2E	40	160.00	47	230	5-24-92
John Dolan	SW	3-14-92	N¼ of NE¼ & SW¼ of NW¼ NW¼ of SW¼	11	2S	5E	160	520.00	47	246	5-27-92
A. H. Harding	SW	3-14-92	Lot 1	9	3S	3E	14.86	66.87	47	308	6-9-92
J. J. Elsner	B&S	3-7-04	E½ of SE¼	29	1S	5E	80	480.00	90	68	5-10-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Mulvey	B&S	3-7-04	W½ of SE¼	1	4S	4E	80	480.00	90	166	6-2-04
Mike Haberlein	QC	4-7-02	N½ of NE¼	25	3S	4E	80	420.00	90	332	8-1-04
Sarah A. Hammett	B&S	2-8-04	NW¼ of NW¼	25	4S	3E	40	140.00	90	445	9-15-04
John Buckholtz	B&S	10-15-94	W½ of NW¼	25	2S	6E	80	200.00	83	292	7-19-02
Thos. Hansen	B&S	2-28-91	NE¼ of SW¼	19	3S	5E	40	120.00	83	298	7-22-02
Henry Nolta	B&S	5-6-95	SE¼ of SW¼	31	3S	5E	40	120.00	84	141	10-30-02
James Matson	QC	12-1-02	NE¼ of NE¼	31	3S	2E	40	160.00	86	24	12-16-02
C. A. Forssberg	B&S	3-3-02	E½ of NE¼	17	2S	4E	80	280.00	86	74	12-19-02
G. W. Norris	QC	2-3-02	SE¼ of NE¼	11	2S	3E	40	228.00	86	267	2-25-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Clara A. Dowell	QC	10-6-02	NW¼ of NE¼	1	5S	3E	40	180.00	86	345	3-13-03
W. T. Smith	B&S	6-20-92	Lot 2	3	4S	4E	37.77	122.71	72	18	7-11-99
S. T. Edmiston	B&S	4-3-99	NE¼ of SE¼	19	3S	1W	40	280.00	72	115	8-17-99
Geo. H. Kernes	B&S	10-15-94	SW¼ of SW¼	17	4S	4E	40	120.00	72	183	10-4-99
Arthur Mather	B&S	2-24-93	N½ of NE¼	19	2S	6E	80	190.00	74	30	2-12-00
J. G. Cummings	B&S	2-28-91	N½ of NE¼	7	4S	3E	80	320.00	74	63	3-10-00
John H. Burnes	QC	3-19-00	NE¼ of SE¼	1	4S	1E	40	200.00	74	113	4-20-00
Eleazar S. Bramhall	——	3-19-00	NW¼ of NW¼	33	1S	5E	40	160.00	74	419	10-22-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
E. Epperson	QC	5-28-00	SW¼	27	2S	4E	160	880.00	74	129	6-44-00
C. H. Johnson	QC	3-19-00	NW¼ of NE¼	15	2S	4E	40	200.00	74	144	7-2-00
R. H. Long & F. C. Shultz	B&S	11-14-93	SE¼ of SW¼	15	4S	2E	40	100.00	74	166	7-30-00
Emil Liese	B&S	3-19-00	NE¼ of NW¼	23	4S	4E	40	120.00	74	198	9-11-00
John S. Keiscker	QC	12-17-00	SE¼ of SW¼	29	2S	5E	40	200.00	74	257	1-2-01
John S. Keiscker	QC	12-17-00	NE¼ of SW¼	29	2S	5E	40	200.00	74	258	1-2-01
L. Gerlinger	QC	4-8-01	SW¼ of NE¼ NW¼ of SE¼	27	2S	4E	80	440.00	74	327	5-3-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
G. A. & Julia A. Stanton	B&S	2-28-91	NE¼ of SE¼	29	1S	3E	40	110.00	74	373	8-5-01
Robt. Henry Deshazer	B&S	6-10-01	SW¼ of NW¼	7	3S	5E	39.94	239.64	74	381	8-14-01
Eleazar S. Bramhall	B&S	9-23-01	SW¼ of NW¼ NW¼ of SW¼	33	1S	5E	80	440.00	74	421	10-22-01
C. L. Gray	QC	1-13-02	Lots 2 & 3	15	4S	4E	72.50	326.25	79	217	2-17-02
J. H. Dart	QC	11-5-95	NE¼ of SE¼	7	6S	2E	40	160.00	79	278	3-14-02
Andrew Semingsen	——	3-3-02	Lots 4 & 5 & NE¼ of SE¼	19	5S	3E	104.08	364.28	79	299	3-20-02
John Huber	——	5-28-00	NE¼ of NE¼	11	3S	2E	40	320.00	75	425	11-12-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Hans & Christina Koch	B&S	2-4-95	W½ of SW¼	25	1S	4E	80	280.00	77	294	4-25-01
Thomas Grace	B&S	11-3-98	SE¼	29	4S	3E	160	400.00	77	410	6-5-01
John Sherman	B&S	10-15-94	N½ of N½	23	6S	2E	160	480.00	86	251	2-24-03
Thomas F. Ryan	QC	9-23-01	SE¼ of NW¼ & Lots 1 & 2	11	3S	2E	90.08	540.48	78	201	10-7-01
Arthur L. Albright	B&S	2-12-00	N½ of NE¼	15	4S	4E	80	240.00	75	225	7-23-00
Emile Leise	B&S	9-3-00	NW¼ of NW¼	23	4S	4E	40	120.00	75	300	9-11-00
John A. Marshall	B&S	3-19-00	SW¼ of SW¼	13	3S	4E	40	100.00	75	404	11-5-00
John S. Reisecker	QC	9-3-00	SE¼ of SW¼	29	2S	5E	40	200.00	75	407	11-7-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John S. Reisecker	QC	9-3-00	NE¼ of SW¼	29	2S	5E	40	200.00	75	409	11-7-00
Emil Guenther	B&S	4-23-00	NW¼ of SW¼	1	4S	2E	40	100.00	75	413	11-8-00
Wenzel Borde	B&S	2-28-91	NE¼ of SW¼	9	2S	4E	40	100.00	75	418	11-10-00
H. A. LaBarre	B&S	2-8-04	NW¼ of SW¼	31	3S	5E	39.39	137.86	92	111	11-9-04
H. A. LaBarre	B&S	2-8-04	NE¼ of SW¼	31	3S	5E	40	120.00	92	109	11-9-04
James Emmott	B&S	7-1-95	NW ¼of NW¼	5	4S	2E	39.67	119.01	92	124	11-12-04
Valentine Linglebach	B&S	2-28-91	N½ of SW¼ NW¼ of SE¼	27	3S	4E	120	350.00	94	174	11-27-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. Millard Fraser	B&S	4-4-04	Lot 3 & SE¼ of NW¼ NE¼ of SW¼	5	3S	5E	121.01	342.53	94	590	2-7-06
State Land Board	QC	6-8-03	SE¼ of NE¼	19	3S	4E	—	1.00	88	115	6-23-03
Albert Wright	B&S	10-15-94	SE¼ of SW¼ & Lots 1 & 2	5	3S	3E	52.92	125.84	88	143	7-6-03
Joseph H. Keller	B&S	1-4-04	N½ of NW¼	21	4S	4E	80	280.00	88	289	1-28-04
Elizabeth Hulbert	B&S	3-7-04	NE¼ of SE¼	35	6S	2E	40	140.00	88	374	3-29-04
James Rastall	B&S	11-9-96	S½ of SE¼ & Lot 4	13	5S	2E	98.20	392.80	88	403	9-29-04
Christian Bittner	QC	8-3-03	NW¼ of SW¼	29	4S	4E	40	200.00	89	101	12-9-03

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Homer R. & Geo. E. Dubois	B&S	9-3-03	Lots 7 & 8	29	3S	4E	54.15	433.20	89	188	1-11-04
Henry M. Looney	B&S	1-4-04	Lot 3	19	3S	4E	37.84	113.52	89	229	1-19-04
James Duncan	QC	9-7-03	NE¼ of SW¼	1	4S	4E	40	200.00	89	400	3-14-04
John Bosholm	QC	5-18-03	N½ of SE¼	25	2S	4E	80	400.00	89	403	3-15-04
Jonathan Wagner	Cert	2-7-79	Lot 3	25	3S	1W	19.08	85.90	X	302	3-25-84
Johanna Wagner	Cert	10-23-84	Lot 3	25	3S	1W	19.08	80.90	Y	190	11-12-84
John M. Cummings	Cert	12- 82	SW¼ of SE¼ & Lot 5	17	3S	2E	41	123.00	Y	346	2-17-85
John Roberts	Cert	4-25-82	SE¼ of SE¼	23	4S	3E	40	100.00	27	600	8-21-86

Grantee	Instrument	Date	Description	Will S.	Mer. T.	Mer. R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
Hugh M. Hugh	Cert	5-22-89	NE¼ of SW¼	11	3S	2E	40	120.00	33	447	4-24-89
William Borch	Cert	11-4-89	E½ of NE¼ & NE¼ of SE¼	9	2S	5E	120	240.00	35	212	11-5-89
Ann Sollers	Cert	11-13-89	NW¼ of NE¼	29	1S	3E	40	200.00	37	167	3-7-90
Walter Smith	Cert	1-3-90	Lot 1	9	3S	3E	14.86	66.00	37	260	3-24-90
Charles Cordes	Cert	1-3-82	NW¼ of NW¼	21	2S	6E	40	90.00	39	287	10-22-90
Gustav J. Erickson	Cert	5-7-88	SW¼ of NW¼ NW¼ of SW¼ S½ of SW¼	9	2S	4E	160.07	440.07	40	402	2-16-91
Mrs. Ann Sollers	Cert	3-18-91	NW¼ of NW¼	1	2S	3E	40.86	245.16	41	118	3-24-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. Ann Sollers	Cert	3-18-91	W½ of NW¼	31	1S	3E	92.90	743.20	41	119	3-24-90
Clara E. Eaton	Cert	1-13-90	SW¼	25	4S	2E	160.00	560.00	44	474	10-16-91
Frank Kieman	Cert	1-26-93	SW¼ of NW¼	23	1S	4E	120	600.00	52	255	6-21-93
			NE¼ of SW¼								
			NE¼ of NE¼	25	1S	4E					
John Bennett	Cert	7-7-94	SE¼ of NW¼	17	5S	3E	40	140.00	55	150	4-7-94
N. C. Nelson	Cert	4-1-93	SW¼ of NW¼	29	1S	5E	40	200.00	55	192	4-20-94
B. M. Hendon	Cert	8-16-95	Lot 5	17	2S	3E	25.61	256.10	61	69	4-20-96
J. S. Crumbly	Cert	3-6-97	Lots 3 & 4	23	2S	3E	15.03	60.12	62	87	3-10-97

Grantee	Instrument	Date	Description	Will S.	Will T.	Will R.	Mer.	Acres	Consideration	Record Bk	Record Pg	Date of Record
Louis J. Gentner and Mrs. K.	SofC	1-13-04	(E½ of NE¼ (NE¼ of SW¼	21	4S	3E			Full consideration	92	280	12-23-04
Chas. Houghton and Eliza	AofC	2-25-04	N½ of NE¼	27	2S	5E			Full consideration	88	313	3-18—
J. W. Lundy	AofC	3-7-04	W½ of NW¼	11	4S	5E			Full consideration	88	337	3-24-04
George H. Kernes and F.	AofC	3-1-04	NW¼ of SW¼	17	4S	4E			Full consideration	88	337	3-24-04
Thos. L. Sagar and Kate	SofC	1-12-04	SE¼ of NE¼ NE¼ of SE¼	11	4S	2E			Full consideration	89	292	2-15-04
Albert Nelson	SofS	12-19-03	SW¼ of SE¼	3	15S	6W			Full consideration	89	293	2-15-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
F. C. Coles & Annie G.	SofC	1-19-04	N½ of SW¼	9	3S	5E		Full consideration	89	302	2-18-04
E. G. Fanning and M. J.	SofC	1-20-04	NW¼ of NE¼	23	4S	4E		Full consideration	89	303	2-18-04
Joseph Arquette	SofC	12-15-03	SW¼ of SW¼	13	5S	3E		Full consideration	89	384	3-8-04
O. P. Church & Carrie	SofC	1-15-04	NW¼ of NE¼	29	6S	2E		Full consideration	89	385	3-8-04
John Webb & M. E.	SofC	3-9-04	W½ of NE¼	11	4S	5E		Full consideration	90	12	4-20-04
J. H. Sexton & Stella	SofC	4-6-04	SW¼ of NE¼	1	5S	3E		Full consideration	90	13	4-20-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Caleb C. Hoops and Ellen	SofC	4-11-04	S½ of NE¼	15	4S	4E		Full consideration	90	42	5-3-04
J. C. Havely & Anna	SofC	4-29-04	E½ of NW¼ SW¼ of NE¼	19	2S	5E		Full consideration	90	111	5-16-04
Henry Holst & Maria F. J.	SofC	6-13-04	SW¼ of SE¼	3	4S	3E		Full consideration	90	351	8-4-04
Henry Russell & Nettie	SofC	6-9-04	SE¼ of NE¼	15	7S	3E		Full consideration	90	238	6-27-04
Herman Janicke and A.	SofC	6-14-04	SE¼ of NW¼	33	2S	5E		Full consideration	90	338	6-27-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
P. H. Marlay & Jessie V.	QC	1-25-02	SW¼ of NW¼	11	4S	4E	—	1.00	79	170	2-5-02
P. H. Marlay & Jessie V.	QC	10-4-02	E½ of NW¼	3	7S	2E	—	(1.00	84	217	11-7-02
			N½ of NE¼					(			
			NE¼ of SE¼	25	3S	5E	—	(			
Eastern Investment Co.	QC	4-23-06	SE¼ of NE¼	29	1S	5E	—	1.00	95	428	4-30-06
Thos. F. Ryan and Inez M.	——	11-12-06	NE¼ of NW¼	23	2S	5E	—	1.00	97	254	11-13-06
Otto J. Birkness	Cont	8-30-90	SW¼	27	2S	4E	160	880.00	55	1	7-21-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. T. Burney	Cont	3-7-90	SE¼ of NE¼ SW¼ of SE¼ & Lots 1, 2 & 3	27	3S	3E	101.95	611.70	46	209	11-30-91
John Conway	Cont	3-3-86	NE¼ of SW¼	5	5S	3E	40	100.00	32	379	1-7-89
John Conway	Cont	12-15-84	SE¼ of NW¼	5	5S	3E	40	100.00	32	375	1-7-89
W. T. Burney	Cont	3-7-90	NW¼ of SW¼ & NW¼	33	3S	3E	200	1200.00	46	196	11-30-91
W. T. Burney	Cont	3-7-90	W½ of SE¼; NW¼ & Lot 3	9	3S	3E	270.40	1757.60	46	217	11-30-91
Friedrich Riem	Cont	5-15-89	NE¼ of SE¼ S½ of SE¼	29	2S	5E	120.00	600.00	38	80	5-13-90

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Israel A. Morehead	Cont	12-23-81	W½ of NW¼	31	2S	3E	88.90	244.53	35	287	11-23-89
W. T. Burney	Cont	5-25-89	W½ of SE¼ SE¼ of SW¼	29	3S	3E	120	450.00	46	357	12-22-91
W. T. Burney	Cont	4-17-90	NE¼ of NW¼ & NE¼	21	5S	3E	200	1000.00	46	233	11-30-91
W. T. Burney	Cont	3-21-90	E½ of NW¼	21	4S	2E	80	440.00	46	222	11-30-91
Chas. Houghton	Cont	4-27-91	N½ of NE¼	27	2S	5E	80	240.00	45	356	4-13-92
John V. Deter	Cont	9-20-92	SE¼ of SW¼ SW¼ of SE¼	3	4S	5E	80	280.00	51	162	3-20-93
W. T. Burney	Cont	3-7-90	N½ of	35	3S	3E	320	1600.00	46	200	11-30-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Allen	Cont	11-27-89	NW¼ of NW¼	1	2S	3E	40.86	245.16	37	152	3-5-90
Michael Reisecker	Cont	10-29-89	SE¼ of SW¼	29	2S	5E	40	200.00	53	170	No date
Nora Simpson	Cont	4-17-90	S½ of SW¼; NW¼ of SW¼; NW¼	5	4S	3E	280.23	1601.25	46	227	11-30-91
Douglas G. Poole	Cont	7-20-89	NE¼ of NW¼	1	2S	3E	40.62	203.10	34	407	9-7-89
Douglas G. Poole	Cont	7-20-89	NE¼ of NW¼	1	2S	3E	40.62	203.10	35	192	11-2-89
W. T. Burney	Cont	3-7-90	Lots 2, 3, 6, 7 & 8	15	3S	3E	67.57	405.42	46	205	11-30-91
Michael Kiesecker	Cont	10-29-89	NE¼ of SW¼	29	2S	5E	40	200.00	53	173	11-14-93

State of Oregon)
County of Clackamas)ss.

I hereby certify that the foregoing eighteen sheets show the record book and page and filing date of the following deeds, contracts and other conveyances (including red ink corrections), now on file in the office of the County Recorder of Clackamas County, State of Oregon.

Dated this 29th day of August, A. D. 1912.

L. E. WILLIAMS,

County Recorder.

(Seal.)

By A. R. WILLIAMS, Deputy.

COOS COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Coos County, Oregon, prior to November 26, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Charles A. Smith	QCD	10-21-01	Sundry lands in and in Also recorded in Curry County.		31S	11W	12006.20	60031.00	35	255	1-3-02
					31S	12W					
Samuel Brewer	QCD	9-23-01	SE¼ of SW¼	25	29S	12W	40.00	100.00	35	231	12-23-01
Ed Carter & C. C. Carter	QCD	6-10-01	NW¼ of NE¼	25	30S	13W	40	114.00	35	180	11-25-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ed Carter & C. C. Carter	QCD	9-23-01	NE¼ of NE¼	19	30S	12W	40	120.00	35	179	11-25-01
L. E. Robbins	QCD	2-18-01	SW¼ of NW¼	9	30S	12W	40	120.00	34	546	6-28-01
M. A. Epperson	QCD	9-3-00	SE¼ of SW¼	13	29S	12W	40	140.00	34	383	4-10-01
M. A. Epperson	QCD	9-3-00	SE¼ of NW¼ NE¼ of SW¼ NW¼ of SE¼	13	29S	12W	120	300.00	34	380	4-10-01
Seldon W. Warner	QCD	3-19-00	SE¼ of SW¼ SW¼ of SE¼	27	29S	12W	80	190.00	33	191	5-7-00
Samuel Brewer	QCD	7-26-97	S½ of SE¼	25	29S	12W	80	240.00	30	327	9-6-97
G. F. Green	QCD	5-11-96	N½ of SW¼	27	29S	11W	80	190.00	30	165	6-17-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
L. B. Fetter	QCD	10-15-94	NE¼ of NE¼ NE¼ of SW¼	33	29S	10W	80	260.00	30	71	5-8-97
W. J. Furnish	QCD	7-20-05	SW¼ of NE¼ E½ of SW¼ SE¼ of NW¼ NW¼ of SE¼	25	29S	11W	208.65	1147.58	43	397	8-11-06
Ralph Winningham	QCD	1-23-05	NW¼ of NE¼	29	30S	11W	40	140.00	43	362	8-7-06
L. D. Smith	QCD	10-16-05	SE¼	35	26S	10W	160	400.00	42	383	3-22-06
L. D. Smith	QCD	10-12-05	Lots 3 & 4	1	27S	10W	81.17	202.95	42	382	3-22-06
S. S. Endicott	QCD	10-3-04	SE¼ of SE¼	19	29S	11W	40	140.00	42	350	3-15-06
E. Culver	QCD	12-1-02	SW¼ of SW¼	3	30S	11W	40	160.00	42	159	2-1-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. Taylor Dement	QCD	7-6-04	NW¼ of NE¼ NE¼ of NW¼	19	30S	12W	80	200.00	41	301	8-19-05
W. T. Dement	QCD	12-1-02	SE¼ of SW¼	31	30S	12W	40	100.00	41	299	8-19-05
W. T. Dement	QCD	12-1-02	NE¼ of NE¼	31	30S	12W	40	100.00	41	297	8-19-05
G. F. Green	QCD	12-1-04	SW¼ of NW¼	27	29S	11W	40	100.00	41	256	7-29-05
Schiller B. Herman	QCD	10-3-04	SW¼ of NW¼	13	29S	12W	40	140.00	41	64	3-27-05
Sol Brownson	QCD	4-4-04	SW¼ of NW¼	13	29S	11W	41.15	123.45	40	107	7-13-04
Samuel Brewer	QCD	7-6-03	NE¼ of SE¼	25	29S	12W	40	100.00	39	502	3-28-04

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. R. Lusbaugh & Rachael L. Gushhaber	QCD	5-18-03	N½ of NW¼	23	29S	11W	80	320.00	39	451	3-5-04
W. T. Kerr	QCD	8-3-03	NW¼ of NE¼	21	30S	11W	40	140.00	39	265	12-23-03
C. E. Houser	QCD	10-5-03	NW¼ of SE¼	11	29S	11W	40	100.00	39	249	12-10-03
Isabelle Yokam	QCD	7-6-03	Lot 2 SW¼ of NE¼ S½ of NW¼	1	27S	10W	160.29	400.72	39	236	12-5-03
T. M. Hermann	QCD	5-18-03	NE¼ of SW¼ NW¼ of NE¼	9	30S	12W	80	240.00	39	70	9-16-03
Richard L. Jeffray	QCD	5-18-03	NW¼ of NW¼	13	29S	11W	41.05	123.15	39	149	10-30-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Yoakam	QCD	12-14-03	SW¼	1	27S	10W	160.00	400.00	41	406	9-23-05
Marilla Lee	QCD	2-24-05	SE¼ of SW¼	3	29S	12W	40	120.00	41	215	7-3-05
William Jenkins	QCD	12-1-04	N½ of SE¼	11	29S	12W	80	260.00	41	179	6-9-05
John T. Hauser	QCD	3-14-92	(E½ of SE¼ (SW¼ of SE¼	11	29S	11W	120	360.00	32	492	1-4-00
Ed & C. C. Carter	QCD	11-3-02	SW¼ of SE¼	19	30S	12W	40	120.00	38	363	4-23-03
Fred A. Kribs	QCD	2-2-03	NW¼ of SW¼	35	29S	11W	40	100.00	38	339	4-10-03
Fred A. Kribs	QCD	2-2-03	Lots 2, 3 & 4 S½ of NW¼ SW¼	11	29S	11W	365.50	2193.00	38	337	4-10-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Fred A. Kribs	QCD	2-21-03	E½ of NE¼ N½ & N½ of SW¼ SW¼ of SW¼ N½ of NW¼	3 19 29	30S	11W	596.96½	2537.08	38	340	4-10-03
John W. Mullen	QCD	3-2-03	W½ of NW¼ SE¼ of NW¼ SW¼ of NE¼	3	30S	11W	160	400.00	38	528	7-18-03
M. Breuer	QCD	6-8-03	SW¼ of NE¼	35	29S	12W	40	100.00	38	583	8-8-03
John Neal	QCD	4-11-98	SE¼ of SE¼	9	30S	12W	40	120.00	38	254	5-16-03
W. N. Jones	QCD	9-8-02	S½ of	17	30S	11W	640	2720.00	38	157	1-31-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
			E½ of SW¼ S½ of NE¼ & SE¼	33	30S	11W					
Fred A. Kribs	QCD	8-11-02	NW¼ of NE¼ W½ of SW¼	33	30S	11W	120	510.00	38	89	1-5-03
J. B. Hassett	QCD	2-15-97	NE¼ of NE¼ SW¼ of NE¼	11	29S	11W	82.29	369.70	38	83	1-3-03
J. B. Hassett	QCD	11-8-97	SE¼ of NE¼	11	29S	11W	40	160.00	38	82	1-3-03
Ed Carter	QCD	10-6-02	NW¼ of SE¼	19	30S	12W	40	120.00	38	17	12-11-03
Ed Carter	QCD	10-6-02	NE¼ of SE¼ SW¼ of NE¼ SE¼ of NW¼ NE¼ of SW¼	19	30S	12W	160	460.00	38	18	12-11-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Cecil C. Carter	QCD	10-6-02	Lots 3 & 4	19	30S	12W	78.31	391.55	38	15	12-11-03
Cecil C. Carter	QCD	10-6-02	SE¼ of NE¼	19	30S	12W	40	120.00	38	14	12-11-03
Cecil C. Carter	QCD	10-6-02	Lot 1 & SE¼ of SW¼	19	30S	12W	79.52½	278.56	38	13	12-11-03
B. C. Shull	QCD	1-13-02	NW¼ of SW¼	21	29S	12W	40	100.00	35	495	5-6-02
Fred A. Kribs	QCD	6-10-01	E½ of SW¼	11	30S	12W	1040.00	4680.00	35	315	1-30-02
			S½	12							
			NW¼ of SE¼ &	23							
			NE¼								
			SE¼ of SW¼	25							

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			SW¼ of SE¼ E½ of E½ NW¼ of NE¼ & NW¼								
Charles A. Smith	QCD	10-21-01	Sundry lands in		30S	10W					
(Also recorded in Curry County)			and in		31S	11W	—	——	35	255	1-3-02
Oregon & California R. R. Co.	Deed	3-29-70	All the land of said O. C. R. R. Co.				—	——	27	486	7-20-95
Charles A. Smith	Cont	9-12-00	Lands in Twp.		30S	10W					
					31S	9, 10, 11, 12W					
					32S	10, 11W	27578.12	2 of Mscl	83		11-2-00
			$5.00 per A. for 1st 15,000 A. $4.00 per A. for next 12,500 A.								

State of Oregon)
County of Coos)ss.

I hereby certify that the foregoing two sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 20th, 1912.

JAMES WATSON,

(Seal.)

County Clerk of Coos County, Oregon.

LANE COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Lane County, Oregon, prior to December 1, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
H. C. Owen	SWD	5-24-79	NE¼ of SE¼ & Lot 4	23	18S	5W	52.36	137.08	N	76	6-20-79
William G. Purkerson	SWD	5-24-79	SW¼ of NW¼	19	17S	4W	48.59	121.48	N	82	6-30-79
Burnham S. Highland	SWD	5-24-79	E½ of NW¼	11	16S	5W	80	280.00	N	85	6-30-79
Henry S. Ward	SWD	5-24-79	SE¼ of SE¼	33	19S	1W	40	100.00	N	88	7-1-79

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Joel Ware	SWD	5-24-79	N½ of NW¼ SW¼ of NW¼	23	16S	2W	120	120.00	N	108	7-17-79
Geo. M. Kirk	SWD	5-24-79	Lots 1 & 2	27	16S	5W	38.84	97.10	N	115	7-22-79
O. F. Knox	SWD	2-26-80	Lots 4 & 5	27	20S	3W	45.76	123.56	N	323	7-3-80
O. F. Knox	SWD	2-26-80	Lot 1	27	20S	3W	4.54	22.70	N	327	7-3-80
N. A. W. Howe	SWD	5-27-80	Lots 1, 2, 3	33	19S	3W	78.78	141.00	N	336	7-27-80
Jno. Cogswell	SWD	2-26-80	SE¼ of NE¼	25	17S	2W	40	90.00	N	346	8-17-80
Geo. W. Houck	SWD	5-27-80	NE¼ of NE¼ E½ of SE¼	13	15S	6W	120	216.00	N	348	8-24-80

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. W. Washburne	SWD	2-26-80	SW¼ of SW¼ SW¼ of SW¼	9 11	16S 16S	7W 7W	80	180.00	N	386	11-13-80
James P. Chesher	SWD	2-1-81	Lot 3	27	16S	5W	23.30	52.42	N	406	2-8-81
John Green	SWD	2-1-81	Lot 2	23	17S	1W	22.80	57.00	N	409	2-8-81
Davis L. Moore	SWD	5-24-79	SW¼ of NE¼	17	17S	6W	40	100.00	P	204	11-15-82
Adam Ritchey	SWD	2-26-80	Lots 5, 6 & 7	11	17S	1E	58.60	146.50	P	382	8-14-83
Jas. S. Osment	SWD	5-24-79	Lot 1	5	20S	4W	32.56	81.40	P	466	1-2-84
Thomas H. Elder	Ctf	3-23-83	SE¼ of SE¼	25	20S	4W	40	90.00	P	475	1-9-84
John Diamond	SWD	5-24-79	Lot 5	35	16S	3W	22.84	137.04	R	132	2-3-85

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. C. Richardson	SWD	7-28-85	NW¼ of SE¼ Lot 3	23	18S	5W	52.36	94.25	R	431	2-16-86
John A. Jeans	SWD	6-28-85	Lots 6 & 7	33	17S	5W	43.71	78.68	R	435	2-17-86
Alfred Brattain	SWD	7-28-85	Lots 4 & 5	23	17S	2W	68.28	153.70	R	440	2-19-86
Jost D. Petrie	SWD	8-18-85	S½ of SE¼	27	20S	5W	80	150.00	R	449	2-23-86
J. D. Petrie	SWD	8-18-85	W½ of W½ SE¼ of NW¼	25	20S	5W	200	375.00	R	454	2-24-86
Mrs. Rebecca L. Wilcox	SWD	7-28-85	S½ of NE¼ N½ of SE¼	27	16S	6W	160	144.00	R	458	2-24-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
C. W. Young	SWD	8-18-85	Lot 1	9	17S	3W	2.18	5.50	R	462	2-24-86
Wm. R. Gilfrey	SWD	8-18-85	Lots 5, 6, 7	19	19S	2W	25.74	57.56	R	466	2-25-86
Daniel Vaughn	SWD	8-5-85	Lot 3	13	18S	2W	12.46	31.15	R	470	2-25-86
Stephen Smeed	SWD	8-18-85	SW¼ of NE¼ NE¼ of SW¼	23	17S	1W	80	180.00	R	474	2-25-86
J. E. P. Withers	SWD	8-18-85	NE¼ of SE¼ Lots 1 & 2	3	18S	2W	93.91	211.30	R	478	2-26-86
Henry S. Ward	SWD	8-18-85	SW¼ of NE¼	9	20S	1W	40	60.00	R	482	2-26-86
Nancy A. Offutt	SWD	9-2-85	E½ of	15	17S	8W	320	720.00	R	486	2-26-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Andrew J. Wood	SWD	8-12-85	NW¼ & Lots 1 & 2	11	18S	5W	205.62	411.24	R	490	2-27-86
Robert H. Ware	SWD	8-5-85	W½ of SW¼	33	18S	4W	80	200.00	R	494	2-27-86
Philip Cantrell	SWD	8-18-85	Lots 1 & 2	1	18S	5W	14.95	37.50	R	498	2-27-86
H. C. Owen	SWD	9-2-85	SW¼ of SE¼ SE¼ of SW¼	7	18S	4W	80	340.00	R	502	3-9-86
Sidney Scott	SWD	8-12-85	Lot 4	33	16S	2W	15.66	39.15	R	506	3-1-86
Mrs. Christina Burk	SWD	8-12-85	SW¼ of SE¼	13	18S	6W	40	100.00	R	510	3-2-86
J. C. Bushnell	SWD	9-15-85	Lot 1	19	17S	3W	30.75	69.19	R	514	3-5-86
J. B. Richardson	SWD	9-15-85	SE¼ of SE¼	17	18S	8W	40	95.00	R	518	3-5-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Joseph B. Richardson	SWD	9-15-85	N½ of SE¼	17	18S	8W	80	160.00	R	522	3-5-86
A. E. Whitaker	SWD	9-15-85	NE¼ of NE¼	13	18S	8W	40	90.00	R	526	3-6-86
Robert M. Veatch	SWD	9-15-85	Lot 4	5	21S	2W	17.92	40.32	R	530	3-6-86
M. D. Ritchey	SWD	9-15-85	Lots 7 & 8	13	17S	2W	9.32	22.14	R	534	3-6-86
Jesse H. Smith	SWD	9-2-85	SW¼ of NW¼ Lot 1	21	18S	1W	70.30	175.75	R	538	3-8-86
Edgar P. Hayfield	SWD	9-23-85	Lots 6 & 7	3	17S	2W	67.27	168.18	R	542	3-8-86
			Lot 1	9	17S	2W					
T. J. Forkner	SWD	9-2-85	NW¼ of SW¼	17	19S	4W	41.42	93.20	R	546	3-9-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John W. Bollman	SWD	9-2-85	SE¼ of SW¼ & Lot 2	19	19S	4W	64.36	145.25	R	550	3-9-86
John C. Anderson	SWD	8-12-85	Lots 1, 2, 3	19	17S	1E	75.29	150.58	R	554	3-10-86
Norman P. Hamitt	SWD	9-23-85	SE¼ of NW¼ & Lot 3	9	17S	2W	49.78	124.45	R	558	3-10-86
James D. Ritchey	SWD	9-2-85	NW¼ of NE¼	23	17S	2W	40	80.00	R	562	3-10-86
John A. Jeans	SWD	9-23-85	Lot 2	17	17S	5W	13.46	32.00	R	566	3-11-86
E. J. Hills	SWD	9-15-85	NE¼ of NE¼	13	17S	7W	40	100.00	R	570	3-11-86
J. F. Smith	SWD	9-15-85	Lots 4 & 5	13	18S	2W	51.04	127.60	R	582	3-15-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ira Hawley	QCD	3-5-86	E½ of SW¼	5	20S	4W	——	1.00	R	586	3-15-86
Pauline G. Risdon	SWD	9-15-85	NE¼ of SE¼	35	17S	6W	40	95.00	R	587	3-18-86
Pauline G. Risdon	SWD	9-23-85	Lots 2 & 3	35	17S	6W	26.52	63.00	R	590	3-18-86
Pauline G. Risdon	SWD	9-15-85	Lot 1	35	17S	6W	13.18	31.30	R	593	3-19-86
J. L. Atkinson	SWD	9-15-85	NE¼ of SE¼	11	18S	8W	40	114.00	R	597	3-25-86
Clark J. Brooks	SWD	10-21-85	E½ of NW¼ W½ of NE¼	23	18S	8W	160	380.00	R	621	4-12-86
John Cogswell	SWD	10-21-85	SE¼ of NW¼	1	17S	1E	40	95.00	R	628	4-13-86
Joseph Sternberg & Isaac Senders	SWD	10-21-85	NW¼ of NE¼	19	18S	4W	40	240.00	R	631	4-15-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jessie Simmons	SWD	2-2-86	Lots 1 & 2	35	17S	2W	17	42.50	R	635	4-14-86
Joseph Landreth	SWD	12-11-85	N½ of NE¼	17	20S	4W	80	160.00	R	641	4-16-86
Columbus Cole	SWD	9-23-85	Lots 1 & 2	19	16S	1W	19.48	48.70	R	645	4-16-86
G. F. Ritchie	SWD	9-23-85	Lot 4	13	17S	2W	17.62	44.05	R	649	4-17-86
J. H. Whitmore	SWD	9-23-85	N½ of SE¼	9	16S	1E	80	200.00	R	660	4-29-86
J. H. Whitmore	SWD	9-23-85	SE¼ of SE¼	9	16S	1W	40	100.00	R	664	4-29-86
William Williams	SWD	9-15-85	SE¼ of NE¼	29	17S	1W	40	100.00	R	668	4-30-86
Fred Hinson	SWD	12-11-85	SW¼ of SE¼	1	18S	2W	40	95.00	R	673	5-4-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
David Hasler	SWD	9-2-85	NE¼ of NE¼	1	16S	6W	40.40	95.00	R	678	5-5-86
C. W. Washburne	SWD	9-2-85	SE¼ of SW¼	11	16S	7W	40	95.00	R	687	5-8-86
George W. Houck	SWD	10-21-85	N½ of NE¼	17	15S	5W	328.51	429.28	R	694	5-11-86
			NW¼&N½ofSW¼	7	15S	5W					
George W. Houck	SWD	10-21-85	E½ of NE¼ N½ of SE¼	7	15S	5W	160	240.00	R	698	5-12-86
George E. Hodgkins	SWD	9-15-85	N½ of NE¼	29	16S	2W	80	190.00	R	703	5-13-86
J. H. Bolin	SWD	3-5-86	Lots 2, 3, 4, 5 and 6	7	18S	3W	58.36	145.90	R	719	5-28-86
Thomas Gossage	SWD	8-18-85	N½ of NE¼	9	20S	1W	80	108.00	R	734	6-15-86
William F. Smith	SWD	1-7-86	NW¼ of SW¼	1	18S	2W	40	95.00	R	742	6-17-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Philip Sylvester	SWD	12-11-85	SE¼ of NW¼ NE¼ of SW¼ N½ of SE¼	1	18S	2W	160	380.00	R	748	6-23-86
R. P. Allison	SWD	9-2-85	SW¼ of SW¼	17	17S	6W	40	100.00	R	768	7-15-86
Chas. A. Elliott	SWD	9-15-85	SW¼ of SW¼	1	20S	6W	40	95.00	R	777	7-29-86
Robt. R. Riley	SWD	9-2-85	NE¼ & NE¼ of SW¼	17	16S	7W	200	450.00	R	789	8-6-86
Wm. Sweet	SWD	9-23-85	NW¼ of SW¼	3	18S	1W	40	100.00	T	2	8-30-86
Lucy C. Williams	SWD	7-12-86	SE¼ of NW¼	13	16S	2W	40	100.00	T	7	9-17-86
J. P. Shields	SWD	5-7-86	N½ of NW¼	19	20S	3W	81.28	193.20	T	22	11-2-86
J. P. Shields	SWD	5-7-86	Lot 4	19	20S	3W	20	50.00	T	26	11-3-86

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. C. Goodale	SWD	11-2-86	Lots 5 & 6	19	17S	1E	21.20	50.35	T	128	4-1-87
M. C. Hoosier	SWD	12-7-86	SE¼ of SW¼	17	18S	5W	40	100.00	T	191	6-16-87
William Lane	SWD	5-11-87	W½ of NW¼	3	19S	4W	83.48	189.54	T	200	6-17-87
M. C. Hoosier	SWD	12-7-86	Lot 5	17	18S	5W	39.40	93.58	T	203	6-18-87
Christiana Burg	SWD	6-7-87	SE¼ of SE¼	13	18S	6W	40	100.00	T	224	7-14-87
J. D. Fuller	SWD	6-7-87	W½ of NE¼ NW¼ of SE¼	19	19S	3W	120	285.00	T	227	7-14-87
Oscar D. Wheeler	SWD	7-13-87	SW¼ of SW¼ Lot 4	11	20S	4W	59.80	149.56	T	249	8-27-87
Andrew J. Workman	SWD	8-12-85	W½ of SW¼	33	15S	1W	80	160.00	T	252	8-31-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Samuel Smith	SWD	8-12-85	NE¼ of NE¼	33	15S	1W	40	100.00	T	264	9-6-87
S. R. Rinier	SWD	8-22-87	Lots 5 & 6	25	17S	2W	67.43	168.58	T	283	9-26-87
S. R. Rinier	SWD	11-2-86	Lot 7	25	17S	2W	28.75	71.88	T	286	9-27-87
United States	Release	5-9-87	NW¼ of NW¼	33	18S	4W	——	1.00	T	307	10-17-87
			NW¼ of SE¼	29	14S	1E					
			NE¼ of SW¼								
			SE¼ of NW¼	29	11S	1E					
David Brooks	SWD	9-20-87	Lots 1, 2, 3, 12, 13 & 14	27	17S	1W	115.29	288.22	T	317	10-28-87
W. W. Shortridge	SWD	10-5-87	Lot 1	19	22S	3W	12.45	29.57	T	343	12-3-87
Walter Campbell	SWD	5-24-79	Lot 3	9	17S	1E	30.56	68.84	T	356	12-20-87

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. J. Crow	SWD	12-5-87	E½ of SE¼	23	18S	4W	80	200.00	T	373	6-14-88
A. J. Goddard	SWD	11-15-87	Lot 4	19	17S	1E	21.25	53.13	T	378	6-21-88
E. E. Bingham	SWD	11-15-87	SW¼	15	17S	6W	160	400.00	T	383	2-3-83
Charles McFarland	SWD	11-15-87	E½ of NE¼	33	18S	1E	80	200.00	T	387	2-10-88
D. F. Stewart	SWD	9-20-87	N½ of NW¼	27	15S	1W	80	200.00	T	412	3-26-88
Thomas Jackson	SWD	10-5-87	NE¼ of SE¼	25	18S	1W	40	100.00	T	470	7-28-88
Charles Goodchild	SWD	8-5-85	SE¼ and S½ of NE¼	1	16S	6W	240	300.00	T	511	10-1-88
Sarah J. Douglas	SWD	8-10-86	E½ of NW¼	21	20S	5W	80	200.00	T	540	11-8-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Samuel Smith	SWD	10-5-87	NE¼ of SW¼ NW¼ of SE¼ SE¼ of NW¼ SW¼ of NE¼	27	15S	1W	160	400.00	T	571	12-6-88
Miles T. Starr	SWD	9-2-85	NW¼	17	15S	5W	160	400.00	W	441	12-13-89
J. E. Davis	SWD	10-12-86	W½ of NE¼ NE¼ of NE¼, E½ of NW¼	21	17S	2W	200	580.00	25	270	11-3-90
Ernest Knoop	SWD	12-5-87	SE¼ NW¼ of SE¼	33 9	18S 19S	4W 4W	200	551.00	25	285	11-13-90
Alexander Cooley	SWD	8-5-85	NE¼ of SW¼	3	21S	3W	40	90.00	25	418	3-13-91
John Cooley	SWD	8-5-85	SW¼ of NW¼	3	21S	3W	40	90.00	25	423	3-13-91

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
T. J. Dunton	Deed	2-28-91	Lot 3	7	17S	1W	21.28	53.20	25	431	3-17-91
A. P. Churchill	Deed	2-28-91	NE¼ of SE¼ E½ of SE¼ Lot 5	3 35	17S 16S	2W 2W	153.70	307.40	25	444	3-23-91
J. H. Milliorn	Deed	2-28-91	SE¼ of SW¼	31	16S	2E	40	100.00	25	458	4-2-91
John H. Milliorn	Deed	2-28-91	Lot 5	31	16S	2E	30.88	77.20	25	461	4-2-91
S. H. Friendly	Deed	2-28-91	NW¼ of NE¼	13	18S	8W	40	100.00	25	464	4-6-91
Mary V. Kissinger	Deed	2-28-91	NE¼ of NW¼	35	18S	1W	40	100.00	25	504	5-1-91
Jere Yarnell	Deed	2-28-91	Lot 1	17	17S	2W	14.72	36.80	25	508	5-2-91
W. J. J. Scott	Deed	2-28-91	SW¼ of SE¼	17	19S	3W	40	100.00	25	527	5-14-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
George Bryant	Deed	2-28-91	NW¼ of SW¼ Lot 7	29	16S	5W	60.06	120.12	25	532	5-14-91
Adam Ritchey	Deed	2-28-91	SE¼ of NW¼	11	17S	1E	40	100.00	25	545	5-22-91
Adam Ritchey	Deed	2-28-91	NW¼ of NW¼	15	17S	1E	40	100.00	25	547	5-22-91
Mrs. Calla L. Martin	Deed	5-1-91	SE¼ of NW¼ N½ of SE¼; NE¼ of SW¼ Lots 1, 2, 3 & 4	35	16S	2E	275.95	344.95	25	555	5-23-91
W. W. Haines	Deed	2-28-91	SW¼ of SW¼	33	17S	1W	40	100.00	25	558	5-25-91
Oscar Millican	Deed	5-1-91	S½ of SE¼	15	17S	1W	80	200.00	25	611	6-27-91
Robert Millican	Deed	5-1-91	NW¼ of NW¼	23	17S	1W	40	100.00	25	613	6-27-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Frank Wilkinson	Deed	2-28-91	SE¼ of NW¼ NE¼ of SW¼	25	15S	6W	80	100.00	25	616	6-27-91
Thomas H. Watson	Deed	2-28-91	Lot 1	33	16S	2E	39.95	79.90	30	34	7-27-91
Orrin Miles	Deed	2-28-91	NE¼ of SE¼	21	20S	5W	40	100.00	30	39	8-3-91
Matilda H. Fountain	SWD	2-9-87	SE¼ of NW¼ Lots 4 & 5	23	17S	1W	90.42	203.55	30	43	8-4-91
L. W. S. Post	Deed	2-28-91	NW¼ of NW¼	15	16S	7W	40	80.00	30	49	8-6-91
Myron A. Bitgood	Deed	8-3-91	SW¼ of SE¼	3	18S	1W	40	100.00	30	114	8-24-91
P. E. Kennedy	Deed	2-28-91	NE¼ of NE¼	31	15S	5W	40	100.00	30	116	8-24-91

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
William Hamilton	Deed	2-28-91	SE¼ of SE¼	17	16S	7W	40	100.00	30	175	10-21-91
James Kennerly	Deed	2-28-91	SW¼ of NE¼	11	17S	1E	40	100.00	30	189	10-28-91
D. W. Harding	Deed	9-30-91	Lots 5 & 6	13	20S	3W	70.60	176.50	30	224	11-30-91
Henry Teeters	Deed	2-28-91	Lots 1 & 2	35	20S	3W	44.04	92.10	30	240	12-24-91
John L. Offield	Deed	8-3-91	W½ of NW¼	21	20S	5W	80	160.00	30	285	1-19-92
Henry C. Weixselfelder	Deed	2-28-91	Lots 1 & 2	1	17S	1E	72.02	216.06	30	291	1-22-92
John S. Jordan	SWD	9-2-85	SW¼ of SE¼	9	16S	1W	40	100.00	30	352	3-4-92
Job W. Spray	Deed	2-28-91	SE¼ of NW¼ NE¼ of SW¼	1	21S	4W	80	200.00	30	374	3-14-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
G. W. Handsaker	Deed	11-16-91	SW¼ of SW¼	31	16S	2E	40	260.00	30	397	3-23-92
C. W. Washburne	Deed	3-14-92	NE¼ of NW¼ NW¼ of NE¼	9	16S	7W	80	200.00	30	406	4-1-92
Sarah Miller	Deed	2-28-91	SE¼ of NW¼	29	20S	5W	40	100.00	30	453	4-23-92
Sarah Miller	Deed	2-28-91	NW¼ of SE¼	29	20S	5W	40	100.00	30	456	4-23-92
John Kelly	Deed	3-14-92	Lots 1, 7 & 8	25	16S	2W	51.47	128.68	30	460	4-25-92
A. B. Tait	Deed	2-28-91	NW¼ of SW¼ Lot 3	11	20S	4W	73.91	184.78	30	466	4-30-92
Cynthia Gray	Deed	11-16-91	W½ of NW¼	17	20S	5W	80	160.00	30	485	5-5-92

vs. The United States

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Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. E. Hale & A. H. Fisk	QCD	3-14-92	NE¼ of NW¼	1	17S	1E	40	133.00	30	489	5-9-92
George Nathan McLean	QCD	4-18-92	Lots 2 & 3	17	17S	1W	68.87	224.38	30	521	5-27-91
A. H. Gibson	SWD	3-14-92	E½ of SW¼	27	18S	1W	80	304.00	30	524	5-28-92
James P. O'Brien	QCD	3-14-92	NE¼ of NW¼	17	17S	1E	40	171.00	30	527	5-28-92
Esther A. Eaton	QCD	4-18-92	NE¼ of NW¼	19	18S	1W	40	133.00	30	531	6-1-92
John Cogswell	QCD	3-14-92	SW¼ of NW¼	1	17S	1E	40	114.00	30	542	6-9-92
Henry C. Weixselfelder	QCD	3-14-92	Lot 3	1	17S	1E	19.13	54.53	30	545	6-11-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
George Nathan McLean	QCD	5-2-92	Lots 4 & 5	17	17S	1W	50.47	163.82	30	561	6-24-92
G. W. Handsaker	QCD	3-14-92	NW¼ of SW¼	31	16S	2E	40	260.00	30	574	7-19-92
J. M. Smigley	Deed	2-28-91	NE¼ of SW¼ SW¼ of SE¼	33	17S	6W	80	200.00	30	577	7-21-92
J. H. Million & E. L. Wilson	Deed	2-28-91	NE¼ of SW¼ Lots 3 & 4	31	16S	2E	94.93	284.79	30	604	8-10-92
R. W. Veatch	SWD	6-29-89	SW¼ of NW¼	31	19S	3W	44.47	155.64	30	607	8-11-92
L. D. Herrington	Deed	2-28-91	NE¼ of NW¼ NW¼ of NE¼	3	19S	4W	85.46	213.25	30	614	8-13-92
Thomas Jackson	Deed	2-28-91	SW¼ of NE¼	25	18S	1W	40	100.00	30	622	8-23-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Thomas Jackson	Deed	2-28-91	SE¼ of NE¼	25	18S	1W	40	100.00	30	625	8-23-92
Franz Weik	QCD	5-2-92	N½ of NW¼	27	18S	5W	80	342.00	33	17	9-7-92
William Workman	QCD	3-14-92	S½ of NW¼ NW¼ of NW¼	33	15S	1W	120	342.00	33	20	9-13-92
John Shields	QCD	3-14-92	NW¼ of SW¼	5	21S	2W	40	180.00	33	30	9-20-92
John R. Campbell	Deed	5-1-91	N½ of SE¼	17	16S	7W	80	200.00	33	33	9-23-92
S. Smeed	QCD	3-14-92	NW¼ of NE¼	33	17S	1W	40	140.00	33	36	9-26-92
Wm. N. Crow	Deed	3-14-92	N½ of NW¼	17	20S	4W	80	160.00	33	42	9-29-92

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Geo. W. Osment	Deed	9-5-92	N½ of NW¼ NW¼ of NW¼ W½ of SW¼ & Lot 4	5 35	20S 19S	4W 5W	235.90	589.75	33	70	10-28-92
Levi Vinson	SWD	6-29-89	E½ of NE¼	7	20S	3W	80	266.00	33	76	11-2-92
Charles McFarland	SWD	6-29-89	SW¼ of NE¼	33	18S	1E	40	120.00	33	94	11-15-92
Adolph Sauermann & Marie Sauermann	SWD	6-29-89	N½ of NW¼ SE¼ of NW¼	35	20S	4W	120	399.00	33	115	11-21-92
Alexander Lewis	Deed	11-16-91	NE¼ of SW¼	23	15S	1W	40	100.00	33	122	11-21-92
Jeremiah Yarnell	Deed	11-9-92	S½ of SE¼	5	17S	2W	80	200.00	33	133	12-1-92

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jeremiah Yarnell	Deed	11-9-92	SE¼ of SW¼	5	17S	2W	40	100.00	33	136	12-1-92
Jeremiah Yarnell	Deed	11-9-92	Lots 4 & 5	9	17S	2W	38.92	97.30	33	138	12-1-92
James Y. Hunt	Deed	9-5-92	N½ of SW¼ SE¼ of NE¼	33	21S	1W	120	300.00	33	196	1-21-93
Newton Lindley	Deed	12-5-92	SE¼ of SE¼	1	18S	2W	40	100.00	33	214	2-3-93
Mrs. S. E. Kennerly	QCD	3-14-92	SE¼ of SE¼	3	17S	1E	40	152.00	33	263	3-28-93
Chas. E. Roberts & Louis E. Roberts	Deed	5-8-93	S½ of SE¼	5	16S	5W	80	200.00	33	355	5-27-93
Elizabeth Drugg	Deed	5-8-93	E½ of NW¼ SW¼ of NW¼	17	16S	7W	120	300.00	33	366	6-10-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Christian Y. Domeyer	Deed	2-28-91	SE¼ of NE¼	1	17S	3W	40	100.00	33	381	6-20-93
George Loehner	Deed	2-28-91	NE¼ of NE¼	13	18S	6W	40	100.00	33	383	6-23-93
N. H. Martin	Deed	2-24-93	NW¼ of NE¼	23	20S	4W	40	100.00	33	409	7-22-93
S. S. Stephens	SWD	3-14-92	NW¼ of NW¼	23	18S	6W	40	100.00	33	421	8-18-93
Louis Burg	Deed	7-3-93	NW¼ of SE¼	23	18S	6W	40	100.00	33	439	9-4-93
Joel McCormack	Deed	7-3-93	W½	15	17S	8W	320	800.00	33	449	9-11-93
R. C. Finley	Deed	2-28-91	SW¼ of NW¼ NW¼ of SW¼	27	15S	1W	80	200.00	33	460	9-30-93
Timothy B. Cowgill	Deed	2-28-91	N½ of SE¼ S½ of NE¼	21	15S	1W	160	400.00	33	465	10-3-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wm. A. Fee	Deed	7-3-93	NW¼ of NW¼	9	18S	6W	40	100.00	33	467	10-3-93
C. W. Washburne	Deed	7-3-93	Lot 2	3	16S	6W	42.42	106.05	33	504	10-24-93
Joseph Neet	Deed	2-28-91	SW¼ of SW¼	33	18S	1E	40	100.00	33	512	11-17-93
E. Anderson	Deed	11-14-93	N½ of SW¼ SW¼ of SW¼	3	18S	7W	120	300.00	33	527	12-2-93
Stephen Jenkins	Deed	2-28-91	NE¼ of NW¼	9	18S	6W	40	100.00	33	532	12-11-93
John Kolbert	Deed	11-14-93	SE¼	15	17S	6W	160	400.00	33	559	12-26-93
A. D. Reeves	Deed	11-14-93	NE¼ of SW¼ NW¼ of SE¼	5	18S	7W	80	200.00	35	33	2-12-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. J. Lewis	Deed	9-5-92	NE¼ of NE¼	27	15S	1W	40	120.00	35	120	3-23-94
C. F. Kent	QCD	5-8-93	W½ of NW¼	31	16S	5W	94.40	358.72	35	145	4-16-94
L. M. Veatch	Deed	11-9-92	NW¼ of NW¼	31	20S	3W	38.96	100.00	35	185	5-17-94
Jacob Bahr	Deed	4-30-94	Lot 1	17	16S	1W	39.80	99.50	35	192	5-29-94
Wm. E. Purkerson	Deed	4-30-94	SE¼ of SW¼	15	18S	6W	40	100.00	35	215	6-5-94
H. F. Laugenour	Deed	4-30-94	SW¼ of NW¼ NW¼ of SW¼	13	18S	6W	80	200.00	35	244	7-6-94
Enoch Ream	Deed	2-28-91	Lot 4	11	17S	1E	35.50	88.75	35	254	7-17-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Alfred Brattain	Deed	7-3-93	SW¼ of NE¼ NW¼ of SE¼ NE¼ of SW¼	31	16S	1W	120	300.00	35	257	7-18-94
Frank Woodruff	QCD	7-3-93	Lot 4 & 5	31	20S	4W	39.06	167.00	35	266	7-24-94
Mary C. Putnam	Deed	1-29-94	N½ of SW¼	33	17S	1W	80	200.00	35	271	7-30-94
Crampton H. Jones	Deed	6-18-94	NE¼ of NE¼	19	20S	2W	40	100.00	35	281	8-18-94
E. M. Beebe	Deed	6-18-94	NE¼ of SW¼ NW¼ of SE¼	3	18S	1W	80	200.00	35	288	8-27-94
L. W. S. Post	Deed	12-5-92	NE¼ of SW¼	9	16S	7W	40	100.00	35	300	9-8-94
J. C. Richardson	Deed	11-14-93	SW¼ of SE¼	23	18S	5W	40	100.00	35	309	9-18-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Sarah Jane Harper	Deed	11-14-93	NW¼ of	11	20S	1W	160	320.00	35	317	9-22-94
W. F. Mead	Deed	10-15-94	SE¼ of NE¼ Lot 2	13	20S	3W	63.86	184.65	35	408	11-5-94
Joseph L. Mendell	Deed	10-15-94	SE¼ of NW¼ Lot 8	31	20S	2W	60.60	181.80	35	472	12-13-94
Peter Finn	Deed	10-15-94	Lots 2 & 3	29	16S	2E	69	172.50	35	482	12-18-94
J. P. Holland	Deed	4-30-94	SW¼ of NW¼	25	17S	2W	40	100.00	35	525	1-17-95
J. H. Teeters	Deed	5-8-93	SW¼ of SW¼	1	21S	2W	40	100.00	35	553	2-1-95
M. J. Varney	Deed	7-3-93	SW¼ of SE¼ SE¼ of SW¼ & Lot 4	1	18S	6W	90.20	225.50	35	566	2-11-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Ellis Whattam	Deed	11-14-93	NE¼ of NE¼	23	15S	1W	40	100.00	35	588	3-4-95
L. Wilson Veatch	Deed	2-4-95	SE¼ of NW¼	31	20S	3W	40	100.00	38	3	4-24-95
L. D. Scarbrough	Deed	5-6-95	N½ of SE¼	35	19S	3W	80	400.00	38	50	6-20-95
N. B. Walden	Deed	7-3-93	NE¼ of SE¼	19	21S	2W	40	100.00	38	53	6-24-95
N. B. Walden	Deed	4-18-92	NW¼ of SE¼	19	21S	2W	40	100.00	38	55	6-24-95
N. B. Walden	Deed	10-15-94	SE¼ of NE¼	19	21S	2W	40	100.00	38	57	6-24-95
I. M. Veatch & F. H. Veatch	Deed	5-6-95	S½ of SE¼ SE¼ of SW¼	17	21S	2W	120	300.00	38	64	7-10-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Robert O. Collier	QCD	11-9-92	NE¼ of NE¼ Lot 1	17	17S	6W	58.02	275.60	38	72	7-25-95
Chas. A. Elliott	Deed	2-4-95	SE¼ of SW¼	1	20S	6W	40	100.00	38	92	8-23-95
B. L. Peterson	Deed	10-15-94	Lot 8	17	17S	1E	31.20	78.00	38	99	8-26-95
J. H. Whitmore	SWD	9-23-85	N½ of SE¼	9	16S	1W	80	200.00	38	113	9-9-95
D. H. Caswell	SWD	6-29-89	S½ of SE¼	19	20S	4W	80	266.00	38	127	9-23-95
Austin Root	Deed	11-14-93	NE¼ of SE¼	5	17S	2W	40	100.00	38	149	10-18-95
Austin Root	Deed	11-14-93	SE¼ of NE¼	5	17S	2W	40	100.00	38	151	10-18-95
Newton C. Fisher	QCD	2-4-95	SE¼ of NW¼	9	18S	6W	40	120.00	38	176	11-5-95

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
United States Release		11-5-95	Lots 7, 8 & 9 SE¼ of SE¼	7	18S	3W	—	——	38	184	11-12-95
			Lots 4 & 5	17	18S	3W					
Wm. R. Frady	Deed	10-15-94	Lot 3	31	20S	4W	19.50	50.00	38	215	12-10-95
S. T. Peterson	QCD	3-14-92	SE¼ of SE¼ Lot 9	17	17S	1E	72.92	207.77	38	218	12-11-95
Thomas Holland	Deed	2-28-91	W½ of NW¼	11	20S	6W	80	200.00	38	256	1-6-96
Thomas Holland	Deed	2-28-91	NW¼ of SW¼	11	20S	6W	40	100.00	38	258	1-6-96
S. A. Gilstrap	Deed	11-5-95	Lots 1 & 2	7	16S	5W	39.23	98.08	38	262	1-8-96
William Sutherland	Deed	2-28-91	SW¼ of SE¼	17	18S	8W	40	100.00	38	265	1-9-96

Grantee	Instrument	Data	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
M. A. Owens	Deed	2-28-91	Lot 5	19	21S	1W	14	35.00	38	276	1-28-96
Mrs. M. A. Owens	Deed	2-28-91	NE¼ of SW¼	19	21S	1W	40	100.00	38	289	2-5-96
Geo. H. Courtright	Deed	11-5-95	SW¼ of NE¼	27	17S	7W	40	100.00	38	295	2-13-96
F. M. Ashley	QCD	5-6-95	NE¼ of NW¼	33	17S	1W	40	140.00	38	311	11-4-96
J. P. Dickinson	QCD	6-8-96	Lots 1 & 2	13	15S	5W	—	1.00	38	450	6-22-96
Clara Ingham	QCD	11-9-96	NW¼ of SW¼	31	17S	1W	—	1.00	38	601	12-2-96
Austin Elliott	Deed	11-14-93	SE¼ of NE¼	11	20S	6W	40	100.00	42	1	5-5-96
C. W. Sears	Deed	11-5-95	Lots 2, 3 & 4	25	20S	3W	93.87	234.67	42	2	6-20-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Caroline E. Hawley	Deed	11-5-96	NW¼ of NE¼	31	21S	1W	40	100.00	42	3	1-28-97
James T. Hunt	Deed	9-5-92	N½ of SE¼ SE¼ of NE¼	33	21S	1W	120	300.00	42	4	6-3-97
Anna C. Hunt	Deed	11-9-96	SW¼ of NE¼ NE¼ of SW¼	33	21S	1W	80	200.00	42	5	6-3-97
Fayette Thomson	Deed	7-1-95	N½ of NW¼	33	16S	2E	80	160.00	42	6	6-15-97
Elijah Nichols	Deed	2-28-91	S½ of NE¼ N½ of SE¼	3	19S	4W	160	400.00	42	7	7-12-97
Herman H. Steinhauer	Deed	5-8-93	E½ of SE¼	3	17S	8W	80	200.00	42	8	7-16-97
Annie E. Laws	Deed	2-28-91	All	11	15S	6W	640	640.00	42	9	10-19-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
F. Peters	Deed	11-9-92	NW¼ of SW¼	5	18S	7W	40	100.00	42	10	1-21-98
Cora Lindley	Deed	4-11-98	W½ of NW¼	7	18S	1W	82.04	205.10	42	11	4-30-98
Sarah Baker	Deed	2-28-91	NE¼ of NE¼	19	17S	1W	40	100.00	42	12	5-7-98
Francis L. Gibbs	Deed	7-1-95	N½ of SW¼	5	19S	4W	80	200.00	42	13	11-14-98
A. J. Kissinger	Deed	2-4-95	N½ of NW¼	25	18S	1W	80	200.00	42	14	12-3-98
Chas. C. Holcomb	Deed	6-20-92	Lots 9 & 10	31	16S	2E	62.59	156.47	42	15	1-20-99
J. A. Burnett	Deed	10-3-98	SW¼ of NW¼	9	17S	8W	40	100.00	42	16	6-15-99
Philip Workman	Deed	2-28-91	NW¼ of NE¼ NE¼ of NE¼	33	15S	1W	80	200.00	42	17	6-28-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
G. W. Meredith	Deed	4-3-99	NW¼ of SW¼	13	18S	8W	40	100.00	42	18	12-9-99
G. W. Meredith	Deed	4-3-99	E½ of NW¼	13	18S	8W	80	200.00	42	19	12-9-99
Wm. J. Williams	Deed	6-20-92	S½ of NE¼	35	15S	6W	80	100.00	42	20	1-2-00
M. M. Ellis	Deed	5-1-91	N½ & SE¼	3	17S	6W	484.14	1210.35	42	21	1-24-00
Joseph McKee	Deed	7-26-97	SW¼ of SW¼	3	20S	6W	40	100.00	42	22	2-20-00
L. W. S. Post	Deed	11-5-95	SE¼ of SE¼	9	16S	7W	40	130.00	42	23	7-13-00
Richard McGovern	Deed	11-9-96	NE¼ of SW¼	7	20S	5W	40	100.00	42	24	8-24-00
Levi Hollenback	Deed	11-27-99	E½ of NE¼	21	16S	6W	80	200.00	42	25	12-5-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. S. Stephens	Deed	12-17-00	SW¼ of NW¼	9	18S	6W	40	100.00	42	26	1-24-01
Amos D. Hyland	Deed	2-28-91	SE¼ of SW¼	19	18S	1E	40	100.00	42	27	5-8-01
			NE¼ of NE¼	25	18S	1W	80.63	181.26	42	28	5-8-01
			SW¼ of SW¼	19	18S	1E					
Michael Kebelbeck	Deed	2-28-91	W½ of NE¼	25	20S	4W	80	200.00	42	29	12-24-01
Joseph H. Trunnel	Deed	2-28-91	NE¼ of NE¼	3	17S	2W	48.58	118.33	42	30	1-3-02
			Lot 6	35	16S	2W					
John R. Cartwright	Deed	6-8-91	S½ of NE¼	23	15S	1W	80	200.00	42	31	2-22-02
J. F. Kirk	Deed	4-30-94	SW¼ of SW¼	15	18S	6W	80	200.00	42	32	5-16-02
			SE¼ of NW¼								
J. F. Kirk	Deed	4-30-94	NE¼ of SW¼	15	18S	6W	40	100.00	42	33	5-16-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mary Ray	Deed	5-9-04	SE¼ of SE¼	29	20S	5W	40	100.00	42	34	8-17-04
James Kerr	Deed	2-28-91	W½ of SW¼	33	21S	1W	80	200.00	42	35	10-31-04
Rowland Simmons	SWD	7-28-85	NW¼ of SW¼ SW¼ of SW¼ Lots 4 & 5	1	17S	1E	152	352.00	43	52	3-2-97
Geo. E. Weber	QCD	7-1-95	SE¼ of NE¼	13	21S	3W	40	140.00	43	113	5-17-97
Thomas Howell	QCD	5-11-96	Lot 2	5	17S	5W	12.38	74.28	43	124	5-24-97
Frederick Sauermann	QCD	10-15-94	SW¼ of NW¼	35	20S	4W	40	200.00	43	127	5-25-97
C. F. Kent	QCD	5-8-93	SE¼ of NW¼	31	16S	5W	40	152.00	43	133	5-29-97
Arthur B. Tait	QCD	5-8-93	Lots 1 & 2	11	20S	4W	45.43	215.80	43	136	6-2-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
F. C. Krueger	QCD	5-8-93	SE¼ of SE¼	29	16S	6W	40	247.00	43	175	7-28-97
T. J. Gill	QCD	7-26-97	SE¼ of SW¼	33	17S	1W	40	100.00	43	191	8-28-97
Charles Leiter	QCD	2-4-95	W½ of SW¼ SW¼ of SE¼	25	20S	4W	120	360.00	43	193	9-3-97
Mrs. Mamie C. Fuller	QCD	2-15-97	N½ of SE¼	27	18S	1E	80	342.00	43	211	9-18-97
Frank B. Mason	QCD	10-15-94	Lots 1 & 2	9	17S	3E	9.22	26.28	43	215	9-21-97
J. B. Young	QCD	2-15-97	E½ of SW¼ SE¼ & Lot 2	21	18S	1W	260	650.00	43	249	10-29-97
Hugh Doolittle	QCD	5-11-96	E½ of SW¼ W½ of SE¼	21	20S	2W	160	560.00	43	314	1-19-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jacob Behrman	QCD	12-20-97	S½ of S½	9	23S	3W	200	500.00	43	335	1-29-98
			NE¼ of NE¼	17	23S	3W					
E. S. Ellis	QCD	5-11-96	W½ of SW¼	19	21S	3W	83.89	209.73	43	337	1-31-98
J. B. Lewis & C. H. Burkholder	QCD	11-8-97	Lots 5 & 6	5	22S	2W	80	440.00	43	341	2-2-98
G. C. Millett	QCD	7-1-95	Lot 5	27	15S	4W	3.04	20.00	43	352	2-12-98
George H. Woodbury	QCD	11-8-97	NE¼	9	15S	6W	160	400.00	43	418	4-12-98
J. H. Weaver & L. W. Riggs	QCD	5-11-96	SW¼ of SE¼	9	20S	2W	40	300.00	43	435	4-18-98
Henry Godard	QCD	5-11-96	SW¼ of SE¼	13	17S	1W	40	133.00	43	478	6-20-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
I. D. Driver	QCD	——97	NW¼ of NW¼ SW¼ of NW¼ & Lot 4	5	18S	3W	91.20	1.00	43	507	7-11-98
W. E. Mitchell	QCD	5-11-96	W½ of SW¼	17	18S	5W	80	280.00	43	540	9-1-98
Mrs. D'Albra Y. Hopkins	QCD	10-15-94	NW¼ of NW¼	19	21S	2W	41.52	138.05	43	556	9-13-98
J. H. Hawley	QCD	2-15-97	SW¼ of SE¼	13	21S	4W	40	171.00	43	632	11-11-98
N. Haskell Withee	Deed	12-12-98	SW¼ of SW¼	23	15S	1W	40	120.00	47	45	12-17-98
J. P. Holland	QCD	10-15-94	SE¼ of NW¼	25	17S	2W	40	100.00	47	50	12-24-98
Geo. H. Courtwright	QCD	7-26-97	SE¼ of NE¼	27	17S	7W	40	120.00	47	54	12-27-98
Geo. H. Courtwright	QCD	12-20-97	NW¼ of SW¼	27	17S	7W	40	120.00	47	56	12-27-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Harvey Simmons	QCD	2-15-97	E½ of SW¼	5	20S	3W	80	280.00	47	59	12-27-98
W. E. Brown	QCD	12-12-98	W½ of NW¼ SE¼ of NW¼, S½ of NE¼ E½ of SW¼ & SE¼	21	17S	1E	440	1881.00	47	109	2-3-99
Frank Telleson	QCD	7-26-97	S½ of SW¼	11	17S	6W	80	200.00	47	113	2-6-99
J. D. Hamlin	QCD	6-6-98	SW¼ of NE¼	9	16S	7W	40	100.00	47	121	2-15-99
United States	QCD	10-3-98	Lot 3 of NE¼ of NE¼	9	17S	3W	28.70	"Full consideration paid."	47	133	2-23-99
W. E. Brown	QCD	2-6-99	E½ of SW¼	19	17S	1E	80	228.00	47	180	3-24-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Louis C. Burg	QCD	2-6-99	NE¼ of SE¼	23	18S	6W	40	100.00	47	188	3-28-99
Wm. Duryee	QCD	11-8-97	SE¼ of SE¼	17	16S	1W	40	140.00	47	143	3-9-99
Washington Adams	SWD	1-15-87	SW¼ of NW¼ Lot 2	5	16S	1W	76.72	192.80	47	147	3-14-99
William Williams	QCD	12-12-98	NW¼ .	31	19S	2W	165.55	496.65	47	170	3-15-99
J. H. Teeters	QCD	8-29-98	N½ of NE¼	11	21S	2W	80	240.00	47	200	4-5-99
Mathias Emmerick	QCD	8-29-98	N½ of N½	35	17S	1W	160	400.00	47	243	4-28-99
H. C. Veatch	QCD	10-15-94	Lots 3, 4, 5	21	20S	3W	39.13	136.95	47	255	5-2-99
W. V. McGee	QCD	2-6-99	SW¼ of SE¼	17	20S	3W	40	160.00	47	265	5-6-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
John B. Larsen	QCD	10-3-98	Lot 7	27	16S	5W	18.84	103.62	47	292	5-18-99
John Gimpl	QCD	4-3-99	NE¼ of NE¼	17	18S	4W	40	140.00	47	294	5-19-99
A. W. Shortridge	QCD	2-6-99	SE¼ of NE¼	11	23S	3W	40	120.00	47	310	5-24-99
A. W. Shortridge	QCD	2-6-99	NE¼ of NE¼	11	23S	3W	41.50	124.50	47	312	5-24-99
Wm. D. Wallace	QCD	4-3-99	NE¼ of SE¼	7	18S	1W	40	100.00	47	315	5-26-99
Green Pitcher	QCD	12-12-98	NE¼ of NE¼	3	21S	3W	40.83	142.90	47	350	6-21-99
W. H. Small	SWD	6-29—	Lot 3	17	22S	3W	19.36	55.18	47	362	6-24-99
Frank L. Chambers	QCD	5-1-99	All of	29	17S	1E	640	3200.00	47	378	7-13-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mary J. Wooliever	QCD	12-12-98	NE¼ of SE¼	7	20S	3W	40	120.00	47	385	7-18-99
Norman Hickey	QCD	12-12-98	N½ of SE¼ SE¼ of NE¼	7	21S	2W	120	420.00	47	396	7-18-99
Adam Ritchey	SWD	3-14-92	SW¼ of NW¼	15	17S	1E	40	120.00	47	406	7-29-99
Sarah Jane Zumwalt	QCD	8-28-98	Lot 5	7	17S	5W	18.36	45.90	47	424	8-7-99
Marion Hager	QCD	6-12-99	(SW¼ of SW¼ (Lot 1 &	13	19S	4W	65.24	260.55	47	437	8-15-99
May Thompson	QCD	6-12-99	(SW¼ of NE¼ (SE¼ of SW¼	29	17S	7W	80	400.00	47	446	8-21-99
W. N. Wheeler, E. A. Wheeler & J. F. Wheeler	QCD	7-26-97	N½ of NE¼ SE¼ of NE¼	27	20S	4W	120	300.00	47	457	8-23-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. N. Wheeler, E. A. Wheeler & J. F. Wheeler	QCD	7-26-97	SW¼ of NE¼	27	20S	4W	40	140.00	47	459	8-28-99
J. H. Hawley	QCD	5-11-96	SE¼ of NW¼	13	21S	4W	40	180.00	47	591	10-10-99
Mary E. Evans	QCD	8-28-98	SW¼ of SW¼	7	17S	6W	40.90	143.15	47	592	10-11-99
James B. Young	QCD	8-21-99	Lot 1	29	18S	1W	19.40	92.15	47	593	10-11-99
Robert O. Whitbeck	Deed	12-12-98	NE¼ of SE¼	11	16S	1W	40	100.00	47	601	10-16-99
Mrs. R. Nettle	QCD	8-21-99	W½ of NW¼	7	17S	2E	80.71	363.20	47	613	10-31-99
Henry Gates	QCD	12-12-98	Lots 1 & 2	17	18S	5W	23.60	82.60	47	616	11-1-99
Henry Gates	QCD	12-12-98	Lots 6, 7, 8	17	18S	5W	34.85	121.97	47	617	11-1-99

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Herman C. Bjerke	QCD	5-1-99	SE¼ of SE¼	23	18S	5W	40	140.00	47	626	11-6-99
A. L. Mills, Trustee	QCD	7-14-99	W½ of W½ W½ of W½ W½ of W½ (Et al land in other counties)	7 19 31	18S	2E	7550.37	26426.30	49	1	11-14-99
John Hull	QCD	8-29-98	SE¼ of SE¼	23	20S	4W	40	180.00	49	16	12-5-99
Wm. H. Sallee	QCD	5-11-96	SW¼ of SE¼	35	18S	8W	40	266.00	49	50	12-29-99
Hattie E. Smith	QCD	7-26-97	SE¼ of SW¼	1	21S	4W	40	120.00	49	67	1-12-00
W. W. & J. A. Haines	QCD	6-12-99	NE¼ of NE¼	11	17S	1W	40	247.00	49	72	1-19-00
W. W. & J. A. Haines	QCD	6-12-99	SE¼ of NE¼	11	17S	1W	40	114.00	49	73	1-19-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. W. & J. A. Haines	QCD	6-12-99	NW¼ of NE¼	11	17S	1W	40	247.00	49	74	1-19-00
W. W. & J. A. Haines	QCD	6-12-99	Lot 4	31	17S	1E	43.13	163.90	49	75	1-19-00
Caroline E. Hawley	QCD	2-15-97	NE¼ of NE¼	31	21S	1W	40	100.00	49	82	1-27-00
Gustav Petzold	QCD	11-27-99	N½ of SW¼	9	18S	5W	80	360.00	49	86	1-30-00
Frank D. Nash	QCD	12-26-99	All	23	21S	1E	640	2240.00	49	88	2-3-00
W. I. Vawter	QCD	2-13-00	All	13	21S	1E	2000	7500.00	49	119	3-3-00
			All 25, 35								
			E½ of NE¼	27	21S	1E					
C. A. Cogswell	QCD	2-16-00	SW¼ of NW¼	5	21S	1E	40	160.00	49	125	3-10-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. I. Vawter	QCD	2-16-00	Lot 4	5	21S	1E	59.90	209.65	49	129	3-12-00
			Lot 2	31	21S	1E					
W. W. & J. A. Haines	QCD	2-12-00	SW¼ of SW¼	3	17S	1W	40	120.00	49	137	3-20-00
Edd Jenks	QCD	2-12-00	N½ of SW¼	1	23S	1W	80	200.00	49	150	3-29-00
John Smigley	QCD	5-1-99	N½ of SE¼	13	18S	6W	80	280.00	49	153	3-30-00
Leroy Barrett	SWD	11-15-87	SE¼ of NE¼ NE¼ of SE¼	25	20S	4W	80	200.00	49	159	4-5-00
Wm. Boggs	QCD	8-29-98	NE¼ of NE¼	7	17S	2W	40	140.00	49	162	4-6-00
Chas. H. Winecoff	Deed	2-4-95	S½ of NW¼	7	22S	3W	85.31	213.28	49	163	4-7-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Wm. G. Gosslin	QCD	3-2-00	Sundry lands in Secs. 1, 3, 5, 7, 9, 11, 15, 17, 19, 21, 27, 29, 31, 33.		21S	1E	8579.13	30026.95	49	164	4-9-00
J. W. McClure	QCD	10-3-98	SW¼ of NE¼ SE¼ of NW¼	7	21S	2W	80	280.00	49	180	4-25-00
James E. Kennerly	QCD	4-3-99	NE¼ of SE¼	11	17S	1E	40	100.00	49	212	5-24-00
Cary O. Smith	QCD	11-27-99	W½ of SE¼ of SE¼	11	16S	6W	20	80.00	49	230	6-26-00
Maude I. Bradley	QCD	10-15-94	NE¼ of NW¼	25	17S	1W	40	140.00	49	278	7-31-00
Albert White	QCD	11-27-99	Lot 5	33	19S	3W	5.24	20.00	49	318	9-28-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. W. Massey	QCD	4-23-00	NE¼ of NE¼	29	22S	3W	40	171.00	49	325	10-5-00
David Cherry	QCD	8-21-99	NE¼ of SW¼	7	20S	3W	40	140.00	49	359	11-8-00
David Smith	QCD	4-23-00	S½ of NE¼	1	18S	2W	80	228.00	49	359	11-9-00
Mary R. Trunnell	QCD	10-29-00	SW¼ of SW¼	15	21S	3W	40	120.00	49	408	1-3-01
M. M. Myers	QCD	12-26-99	SW¼ of SE¼	9	20S	3W	40	180.00	49	419	1-12-01
John W. Fountain	QCD	10-29-00	NE¼ of NW¼	23	17S	1W	40	160.00	49	435	1-28-01
J. M. Kitchen	QCD	12-17-00	NE¼ of NE¼	31	19S	3W	40	160.00	49	443	2-6-01
Frank P. Talkington	QCD	12-17-00	N½ of NE¼ NE¼ of NW¼	35	22S	1W	120	300.00	49	483	3-14-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Frank P. Talkington	QCD	12-17-00	S½ of N½	35	22S	1W	160	380.00	49	484	3-14-01
Maurice Moore	QCD	2-18-01	SE¼ of SW¼	1	18S	8W	40	304.00	49	485	3-14-01
Maurice Moore	QCD	12-17-00	SE¼	1	18S	8W	160	1216.00	49	486	3-14-01
Maurice Moore	QCD	12-17-00	Lots 1, 2, 3, 4 S½ of NW¼ S½ of S½	5	18S	7W	444.94	1918.62	49	487	3-14-01
Maurice Moore	QCD	12-17-00	NE¼ of SW¼ S½ of NE¼ & Lot 1	1	18S	8W	160.04	589.10	49	488	3-14-01
The Booth-Kelly Lbr. Co.	QCD	9-3-00	NW¼ of SW¼	11	16S	1W	40	133.00	49	504	4-3-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
The Booth-Kelly Lbr. Co.	QCD	10-29-00	N½ of NE¼ SW¼ of NE¼ NE¼ of SE¼ SE¼ of SW¼	11 23	16S 15S	1W 1W	200	1500.00	49	505	4-3-01
The Booth-Kelly Lbr. Co.	QCD	12-17-00	SW¼ of SW¼	9	20S	2W	40	190.00	49	506	4-3-01
do	QCD	3-19-00	SE¼ of NE¼	11	16S	1W	40	152.00	49	507	4-3-01
do	QCD	2-18-01	NE¼ of SW¼	7	16S	1E	40	320.00	49	508	4-3-01
do	QCD	2-18-01	Lot 3	5	22S	2W	41.62	187.29	49	509	4-3-01
Leonora Pickard	QCD	10-15-94	W½ of SW¼	1	18S	6W	80	200.00	49	523	4-18-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
H. Steinhauer	QCD	6-25-00	NW¼ of SE¼	3	17S	8W	40	240.00	49	528	4-25-01
H. Steinhauer	QCD	6-25-00	NE¼ of SW¼	3	17S	8W	40	240.00	49	529	4-25-01
J. W. Shumate	QCD	2-18-01	NW¼ of SE¼	9	17S	1E	40	160.00	49	536	5-1-01
H. R. Tice	QCD	2-18-01	Lots 7, 8, 9	23	17S	6W	60.44	302.20	49	542	5-6-01
Amos D. Hyland	QCD	12-12-98	SE¼ of NW¼	35	18S	1W	40	140.00	49	547	5-8-01
Amos D. Hyland	QCD	11-27-99	S½ of NE¼	35	18S	1W	80	280.00	49	548	5-8-01
Augustin Leiter	QCD	5-28-00	NE¼ of SW¼ NW¼ of SE¼	25	20S	4W	80	240.00	49	580	5-24-01
Sarah A. Hall	QCD	4-8-01	NE¼	9	17S	2E	160	456.00	49	596	5-29-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
I. N. Duckworth	QCD	2-4-95	Lot 6	19	17S	5W	4.08	20.00	49	622	7-1-01
W. H. Long	QCD	6-10-01	SE¼ of SE¼	13	20S	4W	40	140.00	49	635	7-12-01
W. Twilley, A. L. Parker & Charles Zohrn	QCD	6-12-99	SE¼ of NE¼ NE¼ of SE¼	29	19S	3W	80	240.00	49	637	7-15-01
J. W. West	QCD	12-17-00	E½	17	17S	2E	320	1824.00	53	9	7-31-01
Charles A. Callin	QCD	12-17-00	N½ of SW¼	17	16S	6W	80	440.00	53	16	8-5-01
Richard W. Easton & Jessie L. Easton	QCD	6-10-01	E½ of SE¼	31	17S	1W	80	228.00	53	20	8-8-01
Margaret E. Groves	QCD	10-29-00	SW¼ of NW¼	19	21S	2W	41.55	124.65	53	116	9-23-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
W. W. Haines & Co	QCD	7-29-01	NE¼ of NW¼	11	17S	1W	40	260.00	53	142	10-12-01
Amelia Hansen	QCD	6-10-01	E½ of SW¼	23	18S	5W	80	320.00	53	144	10-15-01
A. L. Lane	QCD	9-3-00	S½ of SW¼	9	17S	1E	80	400.00	53	152	10-22-01
Mrs. Seraphina Veatch	SWD	10-12-86	S½ of S½	29	20S	2W	160	400.00	53	167	11-5-01
George H. Bender	QCD	9-23-01	NW¼ of NW¼	15	15S	6W	40	114.00	53	173	11-8-01
Agnes Warner	QCD	4-23-00	Lot 1	35	18S	1W	16.44	82.20	53	189	11-19-01
Austin Coons	QCD	7-29-01	S½	7	18S	7W	314.04	895.00	53	201	11-30-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Booth-Kelly Lbr. Co.	QCD	4-8-01	SW¼	5	20S	2W	681.58	2668.70	53	205	12-2-01
			N½ of NW¼	7	20S	2W					
			SE¼ of NW¼								
			E½ofSW¼&E½								
do	QCD	4-8-01	N½ofS½&N½	9	20S	2W	480	2880.00	53	206	12-2-01
J. W. Shumate	QCD	4-8-01	SE¼ of NE¼	33	17S	1W	40	190.00	53	221	12-7-01
J. W. Shumate	QCD	10-21-01	SE¼ of NW¼	33	17S	1W	40	140.00	53	222	12-7-01
Samuel Cluer & Edward Cluer	QCD	10-21-01	SE¼ of SW¼	33	17S	6W	40	120.00	53	228	12-9-01
Alexander I. Miller	QCD	2-12-00	Lots 2, 3, 4, 5	29	17S	5W	48.42	242.10	53	243	12-14-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
M. E. Edwards	QCD	2-18-01	S½ of SE¼	27	18S	1E	80	240.00	53	246	12-16-01
John Gimpl	QCD	6-10-01	SE¼ of NE¼	17	18S	4W	40	152.00	53	274	1-4-02
George A. Yarnell	QCD	10-21-01	SE¼ of NW¼ SW¼ of NE¼	5	17S	2W	80	600.00	53	281	1-13-02
Mary J. Harlow	QCD	12-17-00	SW¼ of NW¼	19	21S	1W	40.11	140.37	53	282	1-13-02
Mary J. Harlow	QCD	12-17-00	NW¼ of NW¼	19	21S	1W	40.16	140.56	53	283	1-13-02
E. H. Craig	QCD	9-23-01	SW¼ of NE¼	25	17S	2W	40	140.00	53	285	1-14-01
David Grousbeck	QCD	12-2-01	SW¼ of NW¼	9	20S	3W	40	180.00	53	296	1-21-02
Booth-Kelly Lbr. Co.	QCD	1-13-02	NE¼ of SE¼	1	17S	1E	40	190.00	53	300	1-28-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	QCD	1-13-02	NE¼ of NW¼	15	16S	1W	40	304.00	53	301	1-28—
do	QCD	12-2-01	NE¼ of NW¼	17	16S	1E	40	114.00	53	305	1-31-02
N. W. White	QCD	12-2-01	SE¼ of SW¼	15	21S	3W	40	114.00	53	306	1-31-02
A. D. Hyland	QCD	9-23-01	SW¼	27	18S	1E	160	800.00	53	322	2-14-02
A. D. Hyland	QCD	9-23-01	SW¼	25	18S	1E	160	640.00	53	323	2-14-02
Gilmore D. Shirey	QCD	10-21-01	NW¼ of NE¼	25	17S	1W	40	190.00	53	339	2-22-02
G. D. Shirey	QCD	5-11-96	SW¼ of SW¼	11	17S	1E	40	200.00	53	340	2-22-02
G. D. Shirey	QCD	6-6-98	NW¼ of SW¼	11	17S	1E	40	190.00	53	341	2-22-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Booth-Kelly Lbr. Co.	QCD	1-13-02	N½ of NE¼	15	16S	1W	80	608.00	53	342	2-22-02
do	QCD	1-13-02	SE¼ of SE¼	1	17S	1E	80	323.00	53	343	2-22-02
			SE¼ of SW¼	7	16S	1E					
William Horn	QCD	10-29-00	NW¼ of SW¼	9	20S	3W	40	120.00	53	36	3-3-02
John T. Branton	QCD	8-21-99	Lot 3	29	17S	1W	19.50	78.00	53	352	3-1-02
A. J. Job	QCD	1-13-02	Lot 5	1	18S	6W	24.51	98.04	53	375	3-11-02
O. Erickson	QCD	1-13-02	Lot 2	23	18S	5W	34.63	138.52	53	394	3-25-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
A. L. Mills, Trustee for himself, L. A. Lewis, George Sorenson & J. D. Wilcox	QCD	3-11-02	Lots 1, 2, 3, 4 Lots 1, 2, 3, 4 Lots 1, 2, 3, 4 (Et al land in other Counties)	7 19 31	18S	2E	7550.37	1.00	53	416	4-21-02
Justin & George K. Wentworth	QCD	2-3-02	N½ of NW¼ NW¼ of NE¼ (with other land)	27	15S	2E	2157.60	16182.00	53	484	5-21-02
Wyman A. Renne	QCD	3-3-02	SW¼ of SW¼	29	19S	3W	40	152.00	53	486	5-21-02
Wm. T. Kissinger	QCD	10-9-99	NW¼ of NE¼	25	18S	1W	40	100.00	53	492	5-26-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Booth-Kelly Lbr. Co.	QCD	4-7-02	SE¼ of SE¼	13	16S	1W	40	266.00	53	499	5-29-02
Frances V. Canfield	QCD	5-1-02	Sundry lands in				5338.37	69398.00	53	520	6-13-02
			Secs. 27, 33, 35		15S	2E					
			Sec. 13		16S	1E					
			Secs. 1, 3, 5, 7, 9, 11 & 13		16S	2E					
Noah Rhodes	QCD	3-3-02	NE¼ of SE¼	3	18S	1W	40	240.00	53	521	6-13-02
Church A. Stephens	QCD	6-10-01	NE¼ of SW¼	9	18S	6W	40	152.00	53	539	6-28-02
J. H. Day	QCD	2-3-02	NW¼ of NE¼	7	16S	5W	40	140.00	53	550	7-7-02
W. W. Haines & Co.	QCD	4-7-02	SE¼ of NE¼	3	18S	1W	40	200.00	53	556	7-10-02
M. D. Lingo	QCD	6-3-02	NW¼ of SW¼	31	16S	5W	47.08	211.86	53	564	7-21-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. F. Storment	QCD	11-27-99	N½ of NE¼	23	17S	1W	80	320.00	53	581	8-6-02
Clark M. Stephens	QCD	4-3-99	Lot 5	3	18S	5W	2.69	7.00	53	592	8-9-02
D. F. Wells	QCD	6-3-02	Lot 8	25	17S	2W	13.60	125.00	56	3	8-29-02
J. M. Groves	QCD	5-1-02	SE¼ of SE¼	13	21S	3W	40	160.00	56	6	8-27-02
Adam Ritchey	SWD	8-5-85	Lots 3 & 8	11	17S	1E	59.35	148.38	56	47	10-2-02
Wilson A. Gaerte	QCD	7-26-97	SW¼ of SW¼	21	15S	1W	40	100.00	56	48	10-3-02
George E. Carpenter	QCD	5-1-02	NE¼ of NW¼ W½ofNW¼ofNE¼	27	18S	1W	60	142.50	56	74	10-25-02
Mary J. Smith	QCD	10-9-99	SE¼ of SW¼	13	17S	1W	40	120.00	56	76	10-27-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
S. S. Stephen	QCD	2-3-02	NW¼ of NE¼	7	18S	6W	40	140.00	56	104	11-14-02
J. R. Cooley	QCD	6-3-02	SE¼ of SW¼	3	21S	3W	40	228.00	56	115	12-1-02
John Cooley	QCD	6-3-02	SW¼ of SW¼	3	21S	3W	40	228.00	56	116	12-1-02
Booth-Kelly Lbr. Co.	QCD	8-11-02	NW¼ of NW¼	17	16S	1E	40	190.00	56	123	12-4-02
Booth-Kelly Lbr. Co.	QCD	8-11-02	NE¼ of SW¼ SE¼ of NE¼	9	17S	1E	80	320.00	56	124	12-4-02
Drusilla Frisbee	QCD	9-8-02	SE¼ of SW¼ & SE¼	9	17S	5W	200	1200.00	56	126	12-6-02
Archie Davenport	QCD	7-7-02	SE¼ of NE¼	1	22S	4W	40	140.00	56	139	12-15-02
Archie Davenport	QCD	7-7-02	NE¼ of NE¼	1	22S	4W	40.18	110.50	56	140	12-15-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Peter S. Brumby	QCD	10-6-02	E½ of SE¼ & NW¼	23	21S	2W	240	836.00	56	148	12-24-02
Porter J. McCumber & Bruce L. Bogart	QCD	8-11-02	All	1	17S	2W	645.40	3678.78	56	174	1-8-03
H. Eakin	QCD	10-6-02	E½ of E½	17	20S	2W	160	480.00	56	196	1-28-03
Booth-Kelly Lbr. Co.	QCD	11-3-02	SW¼ of NW¼	21	18S	1E	40	100.00	56	205	2-3-03
Rosa Nette	QCD	11-3-02	NE¼ of SE¼	3	17S	1E	40	140.00	56	207	2-5-03
Rosa Nette	QCD	11-3-02	SE¼ of NE¼	3	17S	1E	40	160.00	56	208	2-5-03
G. L. Shortridge	QCD	7-7-02	SE¼ of SE¼	29	22S	3W	40	160.00	56	216	2-12-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
Maggie Settle, Administratrix of the estate of J. C. Settle, deceased	QCD	1-5-03	NW¼ of SW¼	33	20S	4W	40	180.00	56	268	3-14-03
Calvin Bunch	SWD	6-29-89	SE¼ of SW¼	27	20S	4W	40	133.00	56	270	3-16-03
Marietta Bunch	SWD	6-29-89	SW¼ of SW¼	27	20S	4W	40	133.00	56	271	3-16-03
I. Sluyter	QCD	9-8-02	NE¼ of SE¼	9	16S	7W	40	120.00	56	273	3-16-03
A. B. Lyon	QCD	8-11-02	SW¼ of NW¼	11	23S	3W	41.64	166.56	56	275	3-16-03
H. Renninger	QCD	2-3-02	NW¼ of SW¼	13	16S	2W	40	100.00	56	277	3-16-03
Eva Wentworth	QCD	8-11-02	W½ of SW¼	17	20S	4W	80	280.00	56	287	3-24-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
John J. Simpson	QCD	3-3-02	SE¼ of NE¼	1	21S	4W	40	160.00	56	304	4-1-03
Frances V. Canfield	QCD	2-2-03	NE¼ of NE¼	17	16S	2E	40	200.00	56	328	4-16-03
Frances V. Canfield	QCD	2-2-03	NW¼ of NE¼	17	16S	2E	40	200.00	56	329	4-16-03
Frances V. Canfield	QCD	2-2-03	SE¼ of NE¼	17	16S	2E	78.80	275.80	56	330	4-16-03
			Lot 1	23	16S	2E					
Maggie E. Breeding	QCD	6-10-01	NE¼ of SE¼	15	18S	1E	40	140.00	56	334	4-18-03
I. N. Sprague	QCD	10-6-02	NE¼ of SW¼	11	16S	7W	40	200.00	56	339	4-21-03
Mary Elizabeth Job	QCD	12-1-02	SE¼ of NW¼	5	18S	5W	40	301.12	56	349	4-27-03
M. S. Barker	QCD	10-6-02	SW¼ of SE¼	29	20S	5W	40	140.00	56	366	5-9-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Paul Hadley	QCD	2-3-02	SE¼ of NW¼	19	18S	1W	40	140.00	56	370	5-13-03
A. J. Kraal	QCD	6-10-01	Lots 7 & 8	21	18S	5W	47.45	213.52	56	432	6-22-03
J. W. Shumate	QCD	4-6-03	SW¼ of NE¼	33	17S	1W	40	240.00	56	440	7-2-03
J. W. Shumate	QCD	4-6-03	SE¼	33	17S	1W	160	960.00	56	441	7-2-03
C. E. Lytle	QCD	4-6-03	NE¼	23	21S	2W	160	400.00	56	450	7-16-03
B. Lurch	QCD	12-1-02	N½ of SW¼	31	20S	3W	78.32	469.92	56	451	7-16-03
George W. Wright	QCD	2-3-02	E½ of SE¼	7	16S	6W	80	340.00	56	467	7-25-03
Mary Poston	QCD	12-1-02	NE¼ of SW¼	21	16S	6W	40	220.00	56	471	7-28-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Robert Poston	QCD	6-3-02	NW¼ of SW¼	21	16S	6W	40	209.00	56	472	7-28-03
T. G. Hendricks	QCD	6-8-03	W½ of SE¼ SE¼ of SW¼	11	19S	6W	120	540.00	56	489	8-3-03
Edward Haberland	QCD	3-2-03	SW¼ of NW¼	35	15S	7W	40	180.00	56	490	8-3-03
Edward Haberland	QCD	3-2-03	NW¼ of SW¼	35	15S	7W	40	120.00	56	491	8-3-03
Grant Sweet	QCD	5-11-96	Lot 2	5	20S	3W	1.84	10.00	56	492	8-5-03
Lucina Richardson	QCD	5-18-03	SE¼ of SE¼	5	20S	4W	40	160.00	56	555	8-24-03
S. S. Myers	QCD	7-6-03	SE¼ of SW¼	9	20S	3W	40	160.00	56	579	8-28-03
Henry Clay Combs	QCD	2-6-99	NE¼ of NE¼	5	23S	3W	39.23	93.17	56	586	8-29-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Perry W. Reed	SWD	9-15-85	S½ of SW¼ NW¼ of SW¼	9	17S	8W	120	300.00	56	605	9-4-03
Everett J. Horton	QCD	4-6-03	NW¼ of NW¼	35	15S	7W	40	120.00	56	620	9-14-03
J. R. Vertrees	QCD	7-6-03	NE¼ of NE¼	9	16S	7W	40	180.00	61	19	10-14-03
Samuel Cluer	QCD	8-3-03	SW¼ of SW¼	33	17S	6W	40	120.00	61	51	10-28-03
S. W. Brown	QCD	7-7-02	NW¼ of NW¼	9	16S	7W	40	140.00	61	57	11-2-03
Booth-Kelly Lbr. Co.	QCD	8-3-03	E½ of NW¼ & NE¼	15	17S	1E	240	960.00	61	58	11-2-03
do	QCD	7-6-03	W½ of SW¼ SE¼ of SE¼ SE¼ of SW¼	3 9	20S 20S	2W 2W	154.43	926.58	61	60	11-2-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. B. Lyon	QCD	6-8-03	SE¼ of SE¼	11	23S	3W	40	220.00	61	89	11-11-03
F. C. Walters	QCD	8-3-03	SE¼ of NW¼	31	17S	6W	40	400.00	61	65	11-9-03
Matilda M. Sroufe	QCD	7-6-03	SE¼ of SE¼	17	18S	5W	40	200.00	61	131	12-16-03
Wheeler Bros. & Owens	QCD	10-5-03	N½ of NE¼	15	20S	4W	80	320.00	61	132	12-17-03
Charles H. Chick	QCD	7-6-03	Sundry lands in Secs. 15 21, Secs. 15, 27, 21, 29, 33 & 35		16S, 17S	2E, 3E	3160.00	21140.00	61	194	1-27-04
Amos D. Hyland	QCD	10-5-03	S½ of NE¼ E½ of SW¼ & SE¼	33	15S	1W	320	3200.00	61	197	1-30-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
George F. Hull	QCD	12-14-03	NW¼ of SW¼	1	21S	4W	40	120.00	61	205	2-5-04
George H. Murch	SWD	6-29-89	Lot 1	27	16S	3W	2.12	12.10	61	226	2-23-04
Charlottie White Hunt	QCD	7-6-03	SW¼ of SE¼	33	21S	1W	40	120.00	61	255	3-18-04
do	QCD	1-4-04	SE¼ of SW¼	33	21S	1W	40	120.00	61	257	3-18-04
Pacific Timber Co.	QCD	7-6-03	SE¼ of NW¼	19	21S	1W	40	120.00	61	261	3-21-04
Geo. F. Warner	Deed	2-4-95	NE¼ of NE¼	25	18S	1W	40	100.00	61	267	3-25-04
Elmer Eugene Miller	QCD	1-4-04	S½ of NW¼	25	20S	4W	80	280.00	61	277	4-8-04
D. B. Sheridan	QCD	12-14-03	SW¼ of SW¼	31	19S	3W	43.73	109.33	61	285	4-15-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Charles Schade	QCD	1-4-04	NE¼ of SW¼	29	17S	7W	40	200.00	61	287	4-16-04
Elizabeth C. Bowerman	QCD	6-8-03	SW¼ of NE¼	21	17S	1W	40	120.00	61	322	5-10-04
E. M. Bowerman	QCD	6-8-03	NW¼ of NE¼ NE¼ of NW¼	21	17S	1W	80	240.00	61	323	5-10-04
Booth-Kelly Lbr. Co.	QCD	2-8-04	NW¼ of SW¼	23	15S	1W	40	320.00	61	329	5-16-04
do	QCD	2-8-04	SE¼ of NW¼	21	18S	1E	40	200.00	61	332	5-16-04
Pacific Timber Co.	QCD	2-8-04	NW¼ of NW¼	27	21S	3W	40	280.00	61	339	5-26-04
P. H. Jones	QCD	3-7-04	NW¼ of SE¼	3	21S	3W	40	200.00	61	348	5-31-04

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. Lurch	QCD	4-4-04	W½ of SW¼	17	20S	3W	80	360.00	61	370	6-24-04
Harry K. Joyce	QCD	6-8-03	NE¼ of SE¼	13	20S	3W	40	160.00	61	389	7-14-04
M. W. Land	QCD	3-3-02	Lot 4	3	21S	2W	22.23	100.04	61	419	8-22-04
A. C. Woodcock	QCD	10-15-94	Lot 14	23	16S	4W	.41	5.00	61	437	9-14-04
J. W. Haynes	QCD	12-2-01	SE¼ of NW¼ NE¼ of SW¼	33	16S	6W	80	400.00	61	487	11-5-04
T. M. Doyle	QCD	8-3-03	SE¼ of NE¼	31	21S	1W	40	120.00	61	494	11-15-04
R. B. Davidson	QCD	5-9-04	N½ of NW¼	3	16S	6W	84.39	295.36	61	535	1-3-05
Margaret I. Bilyen	QCD	10-3-04	E½ of SE¼	31	17S	1E	192.10	1079.45	61	601	2-20-05
			Lots 3, 4, 5, 6	5	18S	1E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
A. D. Owens	QCD	7-6-04	S½ of NW¼	11	20S	4W	80	480.00	61	614	3-4-05
Christine Svarverud	QCD	7-6-04	Lots 1, 2, 3	25	18S	5W	103.94	389.78	61	619	3-6-05
Thomas Lee	QCD	10-3-04	NW¼ of SW¼	19	21S	2W	41.59	145.55	61	625	3-7-05
J. S. Milne & D. F. Milne	QCD	7-6-04	W½ of NW¼	19	21S	3W	83.21	208.02	68	15	3-31-05
Naomi A. Bales	QCD	5-9-04	SW¼ of SE¼	27	20S	2W	40	140.00	68	20	4-5-05
R. G. Fowler	Deed	11-14-93	SW¼ of SW¼	13	18S	8W	40	100.00	68	23	4-7-05
Fred Hinson	QCD	1-12-05	NW¼ of NW¼	19	18S	1W	39.59	138.56	68	28	4-17-05
William Kuykendall & D. A. Paine	Deed	5-9-04	NE¼ of NW¼	33	16S	1W	40	120.00	68	29	4-17-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. L. Lane	QCD	6-12-99	E½ of SW¼	25	17S	1W	80	285.00	68	31	4-19-05
Adam W. Ream	QCD	6-10-01	W½ of SE¼	3	17S	3E	79.67	227.05	68	35	4-24-05
Thomas W. Harris	QCD	8-11-02	All	11	17S	2W	640	3040.00	68	36	4-24-05
Booth-Kelly Lbr. Co.	QCD	5-9-04	Sundry lands in Secs.	13	15S	1W	1244.71	5578.78	68	65	5-22-05
			Secs. 19, 17, 21		15S	1E					
			Sec. 13		16S	1W					
			Secs. 15, 21		20S	2W					
Andrew Poujade	QCD	2-24-05	Lot 2 & NW¼	31	16S	2E	181.06	559.80	68	87	6-14-05
Booth-Kelly Lbr. Co.	QCD	12-1-04	SE¼ of NE¼	27	15S	1W	40	400.00	68	88	6-14-05
do	QCD	12-1-04	NW¼ of SE¼	11	16S	1W	40	280.00	68	89	6-14-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	Deed	12-1-04	Sundry lands in Townships 15S 1E, 16S 1E, 17S 1E, 18S 1E, 15S 2E, 17S 2E, 15S 1W, 16S 1W, 17S 1W, 22S 1W, 23S 1W, 20S 2W, 21S 2W, 22S 2W, 23S 2W, 22S 3W.				41487.49	271246.55	68	90	6-14-05
Frank A. McKibben	QCD	2-24-05	NE¼ of NW¼	11	21S	3W	40	180.00	68	98	6-26-06
Coast Fork Lbr. Co.	QCD	5-9-04	N½ of SE¼ S½ of NW¼ NE¼ of SW¼	3	23S	3W	200	660.00	68	126	7-18-05
Anias Land	QCD	11-2-03	NW¼ of SW¼	3	21S	2W	40	160.00	68	150	8-4-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Luella M. Atkins	QCD	5-3-05	Lots 1, 2, 3	17	16S	7W	109.03	272.57	68	164	8-23-05
J. W. Shumate	QCD	4-11-05	NW¼ of SW¼	13	17S	1W	40	180.00	68	173	9-6-05
Harrison M. Kelly	Deed	2-28-91	SW¼ of NW¼	23	19S	2W	40	100.00	68	174	9-7-05
do	Deed	2-28-91	NW¼ of NW¼	23	19S	2W	40	100.00	68	176	9-12-05
Pacific Timber Co.	Deed	6-5-05	E½ of NE¼	9	23S	3W	1001.09	4183.85	68	194	10-2-05
Ben Pitcher	QCD	7-13-05	N½ of SW¼	35	21S	1W	80	200.00	68	307	1-22-06
Pacific Timber Co.	Cont		NE¼ of SE¼	11	23S	3W			68	194	
			NW¼ of SE¼								
			N½	21	21S	4W					
			SE¼ & N½	15	21S	5W					
			NE¼ of SE¼	21	21S	5W					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
L. W. Riggs	QCD	3-7-04	NW¼ of NW¼	11	21S	3W	40	160.00	68	201	10-16-05
S. J. Godard	QCD	3-17-05	W½ of NE¼	27	16S	2E	80	200.00	68	222	11-2-05
J. B. Rouse & Bro.	Deed	9-7-03	S½ of SW¼	3	23S	3W	80	200.00	68	257	12-4-05
J. D. Hamlin	QCD	8-9-05	NW¼ of SE¼	9	16S	7W	40	100.00	68	296	1-12-06
Mrs. Elisabeth Drugg	QCD	12-1-04	NW¼ of NW¼	17	16S	7W	40	120.00	68	304	1-22-06
George A. Yarnell	QCD	2-24-05	SW¼ of NW¼ NW¼ of SW¼	5	17S	2W	80	280.00	68	311	1-25-06
Paul Hadley	QCD	1-14-05	SW¼ of NE¼	19	18S	1W	40	140.00	68	360	2-26-06
L. G. Moxley	QCD	3-3-02	NW¼ of NE¼	31	22S	3W	40	200.00	68	375	3-5-06

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
B. Lurch	QCD	10-12-05	N½ of NW¼	3	21S	3W	81.26	609.45	68	391	3-17-06
John B. Bales	QCD	9-28-05	SE¼ of NW¼	23	20S	2W	40	120.00	68	401	3-27-06
Pacific Timber Co.	QCD	9-8-05	SW¼ of SE¼ NE¼ of SW¼	11	23S	3W	80	240.00	68	406	3-30-06
Margaret I. Bilyeu	QCD	12-7-05	SE¼ of SE¼	19	17S	1E	40	100.00	68	409	3-31-06
J. M. Andrews	QCD	1-8-06	S½ of SE¼	11	16S	7W	80	240.00	68	415	4-6-06
T. F. Siegmund	QCD	12-7-05	Lot 1	17	21S	3W	25.60	89.60	68	431	4-14-06
L. A. Noel	QCD	9-28-05	S½ of NE¼	13	17S	7W	80	240.00	68	439	4-20-06
F. A. Anderson	QCD	5-3-05	SW¼ of SE¼	7	16S	6W	40	200.00	68	441	4-21-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
U. S. Bales & C. E. Bales	QCD	1-8-06	NW¼ of SE¼	27	20S	2W	40	120.00	68	475	5-15-06
U. S. Bales & C. E. Bales	QCD	1-14-05	SE¼ of SW¼	27	20S	2W	40	120.00	68	477	5-15-06
U. S. Bales & C. E. Bales	QCD	7-6-03	SW¼ of SE¼	27	20S	2W	40	120.00	68	478	5-15-06
J. H. Day	QCD	9-19-05	SW¼ of NE¼	7	16S	5W	40	160.00	68	497	5-28-06
John Kelly	QCD	5-1-99	NW¼ of NW¼ Lots 2, 3, 4	25	16S	2W	91.83	367.32	68	525	6-18-06
John Kelly	QCD	5-1-99	Lot 1	27	18S	1W	33.95	169.75	68	527	6-18-06
Chas. M. Butler	QCD	12-7-05	NE¼ of SE¼	27	16S	2E	40	120.00	68	567	7-16-06

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. Bradford	SWD	8-5-85	Lot 1	5	16S	1W	38.64	96.60	68	571	7-17-06
James M. Carlile	QCD	7-1-05	NW¼ of NE¼	29	17S	7W	40	240.00	68	574	7-18-06
A. J. Cuppy	QCD	10-27-05	SW¼ of SE¼	21	16S	2E	40	120.00	68	594	7-27-06
Godfrey Grober	QCD	8-11-02	NW¼ of SW¼	19	21S	1W	40.06	120.18	68	599	8-1-06
Eva M. Casebeer	QCD	9-8-05	SW¼ of SW¼	13	17S	1W	40	200.00	68	637	8-31-06
James P. O'Brien	SWD	8-10-86	Lots 3 & 5	17	17S	1E	39.57	98.00	30	302	2-5-92
Ellis Whattam	SWD	6-29-89	NE¼ of NE¼	33	17S	1W	40	114.00	30	492	5-9-92
A. T. & F. Gilbert	SWD	9-2-85	S½ of NW¼ NW¼ of NW¼	25	17S	1W	120	360.00	T	504	9-28-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Walter Post	QCD	10-31-05	SE¼ of SW¼	27	16S	2E	40	100.00	73	56	10-10-06
F. L. Hockett	QCD	1-19-06	NW¼ of NE¼	1	22S	4W	40.18	140.63	73	58	10-11-06
L. B. Slagle	QCD	10-3-04	SW¼ of NW¼	15	20S	4W	40	160.00	73	82	10-25-06
P. E. Kennedy	Ctf	6-10-90	NE¼ of NE¼	31	15S	5W	40	100.00	25	101	8-7-90
Sarah Baker	Ctf	7-25-90	NE¼ of NE¼	19	17S	1W	40	100.00	25	176	8-28-90
Frank Wilkinson	Ctf	9-9-89	SE¼ of NW¼ NE¼ of SW¼	25	15S	6W	80	100.00	25	252	10-24-90
Timothy B. Cowgill	Ctf	9-17-88	N½ of SE¼ S½ of NE¼	21	15S	1W	160	400.00	T	520	10-15-88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
D'Albra Y. Hopkins	Ctf	3-19-94	NW¼ of NW¼	19	21S	2W	41.52	138.05	D	256	3-26-95
Henry Godard	Ctf	2-17-96	SW¼ of SE¼	13	17S	1W	40	133.00	MscD	421	4-3-97
Thomas H. Elder	Ctf	3-23-83	SE¼ of SE¼	25	20S	4W	40	90.00	P	475	1-9-84
C. F. Kent	Ctf	3-24-93	SE¼ of NW¼	31	16S	5W	40	152.00	35	144	4-16-94
George Lorhner	Ctf	12-16-89	NE¼ of NE¼	13	18S	6W	40	100.00	25	379	2-2-91
M. M. Ellis	Ctf	3-14-91	N½ of SE¼	3	17S	6W	484.14	1210.35	25	443	3-23-91
A. H. Gibson	Ctf	10-16-90	E½ of SW¼	27	18S	1W	80	304.00	30	306	2-5-92
John S. Jordan	Ctf	9-28-83	SW¼ of SE¼	9	16S	1W	40	100.00	30	351	3-2-92
Frederc Sauermann	Ctf	5-29-93	SW¼ of NW¼	35	20S	4W	40	200.00	33	359	6-2-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Hostettler	Ctf	1-18-99	Lot 3	13	20S	3W	33.86	118.51	49	53	1-2-00
Adam Ritchey	Ctf	8-30-89	NW¼ of NW¼	15	17S	1E	40	100.00	W	296	9-6-89
Adam Ritchey	Ctf	8-30-89	SE¼ of NW¼	11	17S	1E	40	100.00	W	296	9-6-89
James M. Spores	Deed	11-26-74	Lots 2 & 3	17	17S	2W	26.14	70.58	J	485	3-25-75
Robt. H. Ware	Deed	11-26-74	Lot 1	29	18S	4W	34.57	93.34	J	486	3-25-75
Royal V. Howard	Deed	11-26-74	Lot 1	21	16S	5W	14.91	40.26	J	487	3-29-75
Henry C. Perkins	Deed	11-26-74	Lots 1 & 2	25	17S	4W	19.18	51.79	J	489	3-29-75
Green Swinney	Deed	11-26-74	Lot 9	27	15S	4W	23.15	83.34	J	491	4-1-75

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
George H. Murch	Deed	11-26-74	NW¼ of NW¼ Lot 5	25 5	16S 17S	3W 3W	63.28	106.38	J	507	4-13-75
John Coggswell	Deed	11-23-74	NW¼ of SW¼	31	17S	1W	45.58	113.95	J	505	4-10-75
Amos D. Hyland	Deed	11-26-74	Lots 9 & 10	21	15S	4W	29.77	74.42	J	509	4-19-75
Leroy Barrett	Deed	11-26-74	SE¼ of SE¼	31	19S	4W	40	100.00	J	526	5-31-75
William Jaynes	Deed	11-26-74	Lots 1, 2, 3, 4 & 5	21	17S	5W	61.34	153.35	J	546	6-29-75
David R. Harris	Deed	11-26-74	Lot 4	13	21S	4W	14	37.80	J	574	8-9-75
George Marshal	Deed	9-9-75	Lot 3	11	16S	4W	30.12	67.77	J	634	12-18-75
James Barger	Deed	11-20-74	Lot 8	13	16S	4W	4.07	43.96	J	693	3-27-76

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
D. C. England	Deed	8-17-76	Lot 4	5	20S	3W	16.91	45.66	J	756	8-31-76
John Coggswell	Deed	8-17-76	Lot 6	29	17S	1W	38.25	68.85	J	786	11-25-76
John Shields	Deed	8-17-76	Lot 5	5	21S	2W	23.80	53.55	J	789	8-29-76
Solomon Zumwalt	Deed	1-19-78	Lots 7, 8 & 9	35	16S	2W	13.63	30.68	L	316	2-6-78
C. W. Washburn	Deed	1-19-78	NW¼ of SW¼ SE¼ of SW¼	9	16S	7W	80	180.00	L	342	2-26-78
John V. Alexander	Deed	1-19-78	Lot 5	9	20S	3W	30	90.00	L	467	7-10-78
Zimri Crabtree	Deed	11-26-74	SE¼ of NW¼	19	17S	4W	40	108.00	L	478	8-12-78

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John Coggswell	Deed	1-19-78	S½ of SE¼ SE¼ of SW¼ & Lot 7	27	17S	1W	133.88	180.74	L	553	12-4-78
John Coggswell	Deed	1-19-78	NE¼ of SE¼ Lots 8, 9, 10 & 11	27	17S	1W	115.26	259.34	L	555	12-4-78
Jacob C. Spores	Deed	1-19-78	SE¼ of SW¼ Lot 5	3	17S	3W	55.90	111.80	N	63	5-21-79
James E. Holt	Deed	11-26-74	Lots 1 & 2	9	16S	3W	25.08	62.78	N	289	5-29-80
J. H. Sharp	Deed	1-19-78	SW¼ of NW¼	5	21S	3W	40	126.00	N	547	10-28-81
Richard G. Hixon	Deed	1-19-78	Lots 6, 7, 8, 9 & 10	1	17S	1E	99.30	297.90	P	348	7-2-83

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
A. J. Crain	Deed	2-16-76	Lots 9 & 10	5	17S	3W	24.80	100.00	R	187	3-26-85
Samuel Battersby	Deed	2-16-76	SE¼ of NE¼	5	20S	4W	40	90.00	53	420	4-19-02
W. S. Hirlburt	Deed	2-16-76	Lots 1 & 2	13	15S	5W	5.66	51.00	61	621	3-6-05
Robert McVeatch	Deed	8-1-76	NE¼ of SE¼ NE¼ of SW¼	5	21S	2W	80	180.00	W	136	4-29-89
Mabel C. Barbour	QCD	1-13-02	Lot 4	3	19S	8W	43.94	104.36	73	128	11-19-06
Hale Bros.	QCD	6-27-05	SW¼ of NE¼ SE¼ of NW¼	23	17S	7W	80.	240.00	73	144	11-27-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
S. B. Eakin, Trustee	Deed	9-5-06	Sundry lands in Secs. 9, 11, 13, 15, 23, 25, 27, & 35		22S	2W	1940.75	10716.37	73	151	11-28-06
			Sec. 31		21S	2W					
B. F. Howard	Tax Sale	7-30-94	Lot 2	29	16S	5W	.....	6.76	Tax Sale	1	16
J. L. Clark	Tax Sale	2-11-03	Lot 2	29	16S	5W	7	2.32	Tax Sale		80
J. L. Clark	Tax Deed	4-10-06	Lot 4	4	18S	7W	52	7.68	68	494	5-26-06
			NE¼	4	21S	4W	160	8.77			
			Com. at Pt. 25 rds. E. of NW cor said sec 4, run W 25 rods, to sec. cor. S 104 rds. E. 25 rds. N 104 rds to beg.	3	19S	12W	16	3.66			
			Lot 2	29	16S	5W	7	2.32			

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Mrs. Nellie Hubbard	Tax Sale	1-28-01	SW¼ of SE¼	3	23S	3W	40	2.53	1	66	
Mrs. Nellie Hubbard	Tax Deed	4-18-03	SW¼ of SE¼	3	23S	3W	40	2.53	40	201	7-2-06
T. F. McGlynn	Tax Sale	2-11-03	SE¼ of SW¼	3	18S	7W	40	3.49	Tax Sale		80
T. F. McGlynn	Tax Deed	3-27-06	SE¼ of SW¼	3	18S	7W	40	3.49	68	435	4-17-06
Booth-Kelly Lbr. Co.	Tax Sale	1-16-04	NW¼ of SE¼	19	21S	1W	40	3.11	Tax Sale		88
Booth-Kelly Lbr. Co.	Tax Sale	1-16-04	NW¼ of SW¼	19	21S	1W	40	3.11	Tax Sale		88

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. P. Ness	Tax Sale	1-16-04	NE¼ of SW¼	11	16S	7W	40	3.37	Tax Sale		88
L. M. Travis	Tax Sale	1-14-05	NW¼ of SE¼ SE¼ of NW¼	3	20S	1W	80	7.74	Tax Sale		101
S. P. Ness	Tax Sale	1-3-06	W½ of NW¼	19	21S	3W	83	4.88	Tax Sale		112
Walter Frantzen, F. H. Whitney & J. H. Whitney	Cont	2-18-01	N½ of NW¼	9	20S	1W	79.57	397.85	53	481	5-19-02
John M. Rennie	Cont	6-26-02	SW¼ofNE¼& Lots 2 & 3	5	17S	3E	107.03	321.09	73	140	11-22-06

Eugene, Oregon, August 20, 1912.

State of Oregon)
County of Lane)ss.

I hereby certify that the foregoing seventeen sheets correctly show the record book, page and date of tax sales of property mentioned.

H. L. BROWN, Sheriff.
By L. M. FIELD, Deputy.

State of Oregon)
County of Lane)ss.

I, S. M. Russell, County Clerk and ex-Officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that the foregoing seventeen sheets correctly show the record book and page and the date of recording the written instruments thereon referred to, except as to tax sales recorded in the Sheriff's office.

IN WITNESS WHEREOF, I have hereunto set my hand affixed the seal of the County Court in and for Lane County, State of Oregon, this 24th day of August, 1912.

S. M. RUSSELL,

(Seal.) County Clerk and ex-Officio Recorder of Conveyances in and for Lane County, Oregon.

By J. A. FOUNTAIN, Deputy.

CURRY COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Curry County, Oregon, prior to February 18, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
J. W. Sears	QC	2-12-00	SE¼ of NE¼ W½ of SE¼	11	31S	13W	120	300.00	9	186	10-9-00
Guy R. Merriman	QC	8-29-98	Lot 4	7	35S	11W	39.40	93.57	9	316	8-15-01
Chas. A. Smith (Also recorded in Coos County)	B&S	10-21-01	Sundry lands in	30S	10W		12006.20	60031.00	9	—	
					31S	11W					
					31S	12W					
J. G. Giddings	QC	10-21-01	Lots 1 & 2	29	35S	11W	53.35	133.38	9	391	1-11-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
William J. Foister	QC	10-5-03	W½ of NE¼ E½ of SW¼ & SE¼	1	32S	13W	319.97	799.92	10	272	11-28-03
S. E. Cooley	QC	6-6-04	Lot 2 SW¼ of NE¼	17	34S	11W	78.98	197.45	11	147	3-1-05
L. L. Haines	QC	5-1-02	W½ of SE¼ SE¼ of SE¼	31	31S	12W	120	380.00	11	226	6-5-05

State of Oregon)
County of Curry)ss.

I hereby certify that the foregoing sheet correctly shows the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 19th, 1912.

GEO. W. SMITH,

(Seal.)

County Recorder of Curry County, Oregon.

JOSEPHINE COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Josephine County, Oregon, prior to January 10, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
George Henderson	QCD	12-2-01	SW¼ of NE¼	7	33S	5W	40	100.00	22	600	4-14-02
J. T. Tuffs & R. A. Booth	QCD	12-2-01	SE¼ of NE¼ NW¼ of SE¼	7	33S	5W	80	200.00	22	499	1-25-03
Wm. Cable, James G. Brower Gilbert Erie	QCD	9-2-01	SE¼ of SW¼ Lot 6	11	33S	5W	57.85	144.60	22	462	12-16-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
John Scribner & George Henderson	QCD	4-8-01	W½ of SE¼ SE¼ of SW¼	15	33S	5W	120	300.00	22	235	6-7-01
H. B. Comson O. F. E. Keroth J. B. Baker	QCD	12-12-98	NE¼ of SW¼	15	33S	5W	40	100.00	18	339	3-23-99
John Scribner & George Henderson	QCD	7-29-01	N½ of NW¼ of NW¼&SW¼ofNW¼ of NW¼	15	33S	5W	30	75.00	22	380	10-4-01
S. C. Ruble	QCD	4-3-99	Lot 6	19	33S	5W	13.80	34.50	18	428	6-16-99
S. C. Ruble	QCD	4-3-99	Lot 7	19	33S	5W	21.82	54.55	18	431	6-16-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Uriah Miller	QCD	8-21-99	NE¼ of SW¼ Lots 3, 4, 5	19	33S	5W	80.79	202.00	20	233	3-3-00
M. C. Davis	QCD	6-8-03	SW¼ of NE¼	19	33S	5W	40	100.00	24	143	12-26-03
London & San Francisco Bank	QCD	5-11-96	E½ of SE¼	21	33S	5W	80	190.00	18	62	6-10-98
S. C. Ruble	QCD	11-8-97	Lot 2	21	33S	5W	8-42	21.05	18	420	6-16-99
A. R. Brown	QCD	9-23-01	NE¼ of NE¼	21	33S	5W	40	100.00	22	414	11-14-01
S. C. Ruble	QCD	9-23-01	Lot 4	21	33S	5W	34.72	87.30	22	542	3-5-02
C. E. Bogue & J. B. Anten	QCD	6-3-02	E½ of NE¼ of SE¼	25	33S	5W	20	250.00	23	158	10-18-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
A. Wilson	QCD	3-19-00	Lot 3	29	33S	5W	43.67	109.17	20	314	4-23-00
A. L. Mills, Tr.	QCD	7-29-01	Lot 4	29	33S	5W	25.80	64.50	22	510	2-7-02
R. N. Bishop	QCD	3-17-05	S½ & Lots 5, 6, 7, 8, 9	29	33S	5W	424.30	2121.50	25	193	10-24-05
W. F. Kremer	QCD	4-11-98	NE¼ of NW¼	33	33S	5W	40	100.00	18	75	7-7-98
L. A. Lewis	QCD	6-12-99	SW¼ of SW¼	33	33S	5W	40	100.00	18	519	8-3-99
Victor Junior Gold Mining Co.	QCD	6-12-99	SW¼ of SE¼	33	33S	5W	40	95.00	18	536	8-19-99
L. A. Lewis	QCD	8-21-99	NW¼ of SW¼	33	33S	5W	40	100.00	18	590	10-2-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. A. Lewis	QCD	8-21-99	NW¼ of SE¼	33	33S	5W	40	100.00	18	597	10-2-99
L. A. Lewis	QCD	8-21-99	NE¼ of SE¼	33	33S	5W	40	100.00	18	599	10-2-99
L. A. Lewis	QCD	8-21-99	SE¼ of NE¼	33	33S	5W	40	100.00	18	601	10-2-99
L. A. Lewis	QCD	8-21-99	NW¼ of NE¼	33	33S	5W	40	100.00	18	603	10-2-99
L. A. Lewis	QCD	8-21-99	SE¼ of SW¼	33	33S	5W	40	100.00	18	605	10-2-99
L. A. Lewis	QCD	8-21-99	NW¼ of NW¼	33	33S	5W	40	100.00	18	614	10-2-99
L. A. Lewis	QCD	8-21-99	NE¼ of SW¼	33	33S	5W	40	100.00	18	617	10-2-99
L. A. Lewis	QCD	8-21-99	SE¼ of NW¼	33	33S	5W	40	100.00	18	619	10-2-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. A. Lewis	QCD	8-21-99	SW¼ of NW¼	33	33S	5W	40	100.00	18	621	10-2-99
L. A. Lewis	QCD	8-21-99	SW¼ of NE¼	33	33S	5W	40	100.00	18	623	10-2-99
L. A. Lewis	QCD	9-3-00	NE¼ of NE¼ SE¼ of SE¼	33	33S	5W	80	190.00	20	522	10-15-00
L. A. Lewis	QCD	8-21-99	Sund. Lands		34S	5W	461.17	1152.92	18	610	10-2-99
L. A. Lewis	QCD	8-21-99	NW¼ of SW¼	5	34S	5W	40	100.00	18	593	10-2-99
L. A. Lewis	QCD	8-21-99	N½ of NE¼ of SE¼	5	34S	5W	20	50.00	18	595	10-2-99
L. A. Lewis	QCD	8-21-99	S½ of SE¼ of SE¼	5	34S	5W	20	50.00	18	608	10-2-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. A. Lewis	QCD	8-21-99	NW¼ of SW¼ of SE¼ S½ofSW¼ofSE¼	5	34S	5W	30	75.00	18	612	10-2-99
L. A. Lewis	QCD	4-11-98	SE¼ of NW¼	7	34S	5W	40	100.00	18	49	6-3-98
L. A. Lewis	QCD	10-29-00	NE¼ of SE¼	7	34S	5W	40	100.00	20	610	12-11-00
J. H. Mills	QCD	4-8-01	NW¼ of SW¼	17	34S	5W	40	95.00	23	18	6-9-02
J. H. Mills	QCD	7-29-01	S½ of SW¼ of NW¼	17	34S	5W	20	50.00	23	20	6-9-02
Joseph Sharka	QCD	11-2-03	NW¼ of NE¼ W½ of NE¼ of NE¼	25	34S	5W	60	300.00	24	202	2-8-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. C. Dysert & R. F. Miller	QCD	11-9-96	SE¼ of SE ¼	29	34S	5W	40	100.00	15	615	11-27-96
Samuel B. Pettingill	QCD	2-18-01	NE¼ of SW¼ NE¼ of NW¼	29	34S	5W	80	200.00	22	148	4-11-01
H. A. Corliss	QCD	4-7-02	NE¼ of NE¼	31	34S	5W	40	114.00	23	398	3-12-03
William Frakes	QCD	9-23-01	NE¼ of SW¼	19	35S	5W	40	180.00	22	447	12-9-01
Manuel A. Cordozo	QCD	10-16-05	NE¼ of NW¼	19	35S	5W	40	160.00	25	470	4-18-06
T. S. West	QCD	10-9-99	Sund Lands	29	35S	5W	52.82	132.05	20	211	2-19-00
Millard F. Hull	QCD	6-19-96	N½ of NE¼ of SE¼	27	35S	5W	20	50.00	17	383	10-9-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. W. Mathews	QCD	12-12-98	N½ofSE¼ofSE¼ S½ of NW¼ of SE¼	27	35S	5W	40	100.00	20	71	12-11-99
Roger S. Cleveland	QCD	12-4-97	Sund. Lands	27	35S	5W	80	200.00	20	75	12-13-99
G. W. & M. J. Seeley	QCD	10-9-99	SW¼ of NW¼	27	35S	5W	60	150.00	20	217	2-21-00
			S½ of SE¼ of SE¼	21	35S	5W					
G. W. & M. J. Seeley & W. E. Gage	QCD	5-28-00	NW¼ of NW¼	27	35S	5W	40	100.00	20	584	11-26-00
R. A. & J. H. Booth	QCD	7-29-01	S½ of SE¼ of SE¼	27	35S	5W	20	50.00	22	418	11-21-01

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
T. S. West	QCD	7-5-99	NW¼ of NE¼	29	35S	5W	40	100.00	20	207	2-19-00
John Hackett	QCD	2-3-02	NE¼ of SE¼	31	35S	5W	40	140.00	24	45	10-17-03
James Orr	QCD	8-3-03	Lot 4	33	35S	5W	49.62	148.86	24	69	11-7-03
M. F. Hull W. S. Beck James Pelton Horace Pelton	QCD	2-15-97	NW¼ of NW¼	35	35S	5W	40	100.00	17	386	10-9-97
R. A. Booth	QCD	7-7-02	SW¼ of NW¼	35	35S	5W	40	250.00	23	232	11-18-02
T. E. Beard	QCD	4-23-00	SE¼ of NW¼	5	36S	5W	40	480.00	20	433	7-18-00
C. H. Sampson	QCD	12-17-00	NW¼ of NE¼	5	36S	5W	39.43	315.44	22	56	11-22-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James T. Morrison	QCD	3-19-00	NE¼ of NE¼	5	36S	5W	39.18	233.85	22	588	4-10-02
J. G. Dotson	QCD	5-18-03	S½ of SE¼	5	36S	5W	80	760.00	23	583	7-24-03
Richard Martin, Jr.	QCD	4-8-01	SW¼ of SE¼	7	36S	5W	40	1000.00	22	424	11-25-01
Geo. E. Payne	QCD	4-11-98	SW¼ of NE¼	7	36S	5W	40	480.00	23	283	12-11-02
A. H. Chessmore	QCD	1-4-04	NE¼ of NE¼	9	36S	5W	40	120.00	24	376	6-29-04
Elizabeth Matchitt	QCD	11-27-99	NE¼ of SW¼ SE¼ of NW¼	11	36S	5W	80	320.00	20	159	2-2-00
A. H. Meade	QCD	3-3-02	SW¼ of SW¼	11	36S	5W	40	500.00	22	629	5-8-02
Mrs. A. H. Meade	QCD	10-21-01	NW¼ of NW¼	11	36S	5W	40	100.00	23	40	7-7-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
F. H. Schmidt	QCD	2-12-00	NW¼ of SE¼	19	36S	5W	40	800.00	20	255	3-20-00
A. M. Heston	QCD	4-6-03	NE¼ of SW¼	29	36S	5W	40	260.00	24	36	10-3-03
John Heston	QCD	8-9-05	SE¼ of NW¼	29	36S	5W	40	260.00	25	188	10-21-05
Benjamin Healey	QCD	7-29-01	E½ of NE¼	33	36S	5W	80	400.00	23	153	9-2-05
Benjamin Healey	QCD	9-8-05	NW¼ of NE¼	33	36S	5W	40	240.00	25	401	3-19-06
Matilda M. Kinkle	QCD	5-18-03	NE¼ of NE¼	1	37S	5W	40	140.00	24	256	3-21-04
C. F. Gentner	QCD	2-12-00	SW¼ of SE¼	9	37S	5W	40	280.00	20	273	3-29-00
Wm. M. Richards	QCD	4-8-01	NW¼ of NW¼	19	37S	5W	45.22	135.66	22	252	6-27-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. W. Gilmore	QCD	9-23-01	Lots 1 & 2	19	37S	5W	23.50	67.00	22	460	12-13-01
Ed. Lister	QCD	12-17-00	SW¼ of NW¼	21	37S	5W	40	152.00	22	39	2 13-01
John S. Jensen	QCD	3-14-92	NW¼ of NE¼	25	37S	5W	40	160.00	10	514	6-11-92
Fred M. Miller	QCD	3-14-92	SE¼ of NW¼	25	37S	5W	40	200.00	12	504	2-24-94
T. B. Roberts	QCD	4-6-03	NW¼ of SE¼ Lot 1	25	37S	5W	63.10	189.30	25	90	6-12-05
J. S. McFadden	QCD	4-23-00	SW¼ of NE¼	27	37S	5W	40	100.00	22	36	2-9-01
A. H. Fenn	QCD	12-1-04	NE¼ of NW¼ NW¼ of NE¼	27	37S	5W	80	220.00	25	550	7-13-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Carter	QCD	11-8-97	SE¼ of SE¼	35	37S	5W	40	160.00	17	538	2-14-98
Amos Schrimpp	QCD	6-8-03	NW¼ of SE¼	35	37S	5W	40	140.00	23	622	8-26-03
John G. Knox	QCD	2-8-04	SE¼ of NW¼	35	37S	5W	40	160.00	25	583	8-27-06
Jonathan Wells	QCD	2-15-97	SE¼ of NW¼ NE¼ of SW¼	1	38S	5W	80	400.00	17	341	8-30-97
E. N. Provolt	QCD	10-29-00	Lots 1 & 2	1	38S	5W	27.55	68.87	22	207	5-17-01
H. Messinger	QCD	6-10-01	SE¼ of SW¼	11	38S	5W	40	120.00	22	546	3-7-02
Alex. Watts	QCD	4-23-00	SE¼ of SW¼	21	38S	5W	40	95.00	20	394	6-20-00
J. E. Farmer	Ctf	8-3-94	NW¼ of SW¼	11	33S	6W	40	160.07	13	210	10-13-94

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. T. Tuffs & R. A. Booth	QCD	2-12-00	SE¼ of SE¼	11	33S	6W	40	160.00	20	330	5-1-00
R. A. Booth	QCD	2-12-00	NE¼ of NE¼	11	33S	6W	40	140.00	20	332	5-1-00
R. A. Booth	QCD	9-3-00	SE¼ of NE¼ 11 NE¼ of SE¼	25	33S	6W	80	190.00	22	17	1-21-01
J. E. Farmer	QCD	10-15-94	NW¼ of SW¼	11	33S	6W	40	160.00	22	593	4-11-02
Henry Gross	QCD	5-28-00	SW¼ of NW¼	11	33S	6W	40	114.00	22	595	4-12-02
Henry Gross	QCD	4-6-03	SE¼ of SW¼	11	33S	6W	40	220.00	25	56	4-22-05
J. T. Tuffs & R. A. Booth	QCD	2-12-00	SE¼ of NW¼	13	33S	6W	40	100.00	20	334	5-1-00

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. A. Booth	QCD	2-12-00	NW¼ of SW¼	13	33S	6W	40	120.00	20	340	5-1-00
Henry Smith	Ctf	2-13-91	NE¼ of SE¼	15	33S	6W	40.07	152.00	10	359	1-25-92
Henry Smith	QCD	3-14-92	NE¼ of SE¼	15	33S	6W	40	152.00	10	546	7-7-92
James T. Tuffs & R. A. Booth	QCD	2-15-97	NW¼ of SE¼	15	33S	6W	40	160.00	17	462	12-20-97
R. A. Booth	QCD	2-6-99	SW¼ of SW¼	15	33S	6W	40	140.00	18	336	3-23-99
G. W. Kerns	QCD	3-14-92	NW¼ of SW¼	21	33S	6W	40	140.00	11	413	3-20-93
G. W. Kerns	Ctf	1-13-93	E½ of NW¼ SW¼ of NW¼ NE¼ of SW¼	21	33S	6W	160.07	640.00	11	419	3-20-93

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
S. C. Ruble	QCD	4-3-99	E½ of NE¼	25	33S	6W	80	200.00	18	423	6-16-99
J. T. Tuffs & R. A. Booth	QCD	11-27-99	W½ of NW¼	25	33S	6W	80	240.00	20	336	5-1-00
R. A. Booth	QCD	2-12-00	Sund. Lands				200.00	500.00	20	338	5-1-00
R. A. Booth J. T. Tuffs &	QCD	2-12-00	SE¼ of NE¼ NE¼ of SE¼	27	33S	6W	80	280.00	20	328	5-1-00
Jacob Steiner	QCD	6-10-01	NE¼ of NE¼	27	33S	6W	40.20	140.70	22	325	8-31-01
L. A. Lewis	QCD	2-15-97	Lot 4	31	33S	6W	34.98	83.08	17	336	8-23-97
John C. Lewis	QCD	3-19-00	SE¼ of SE¼	31	33S	6W	40	120.00	20	532	10-23-00

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
L. A. Lewis	QCD	9-7-03	Sund. Lands		33S	6W					
					34S	5W					
					34S	6W	742.47	1856.17	24	100	12-8-03
L. A. Lewis	QCD	1-4-04	Same as above						24	233	3-3-04
Edwin Nicodemus	Ctf	9-25-96	NE¼ of NW¼, S½ of NW¼ & NE¼	5	34S	6W	282.05	700.00	15	541	9-28-96
L. A. Lewis	QCD	11-9-96	Sund. Lands	5	34S	6W	241.63	699.70	15	613	11-27-96
Edwin Nicodemus	QCD	11-9-96	N½ofNEofNW¼, W½of SW¼ of NW¼	5	34S	6W	40.42	100.00	15	617	11-27-96
Heirs at Law Frank Oggie Dec	QCD	6-12-99	N½ of NE¼	7	34S	6W	80	400.00	20	92	12-22-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. G. Hayden	QCD	10-29-00	SE¼ of NE¼ NE of SE	13	34S	6W	80	200.00	22	25	1-31-01
Wm. M. Cox	QCD	12-2-01	NE¼ of NW¼	21	34S	6W	40	120.00	22	494	1-22-02
J. F. Mail) Geo. W. Dyche) A. M. Rowland)	QCD	8-21-99	N½ of SW¼	23	34S	6W	80	200.00	20	194	2-9-00
Clarborn W. Triplett	QCD	5-9-04	W½ of NW¼	27	34S	6W	80	240.00	24	476	10-31-04
W. C. Heway	QCD	4-4-04	SW¼ of SW¼	27	34S	6W	40	140.00	24	527	11-26-04
Peter Puerzer	QCD	2-15-97	NE¼ of SE¼	29	34S	6W	40	140.00	22	212	5-18-01
do	QCD	5-28-00	NW¼ of SE¼	29	34S	6W	40	133.00	22	216	5-18-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Sugar Pine Door & Lbr. Co.	QCD	7-29-01	SE¼ of NW¼ NW¼ of SW¼	33	34S	6W			23	403	3-14-03
			NE¼ of NE¼	5	35S	6W	125.58	313.95	23	403	3-14-03
D. W. Mitchell	QCD	11-3-02	SW¼ of NW¼	33	34S	6W	40	140.00	24	334	5-18-04
May H. Henry	QCD	3-7-04	SW¼ of NE¼	33	34S	6W	40	120.00	24	529	11-26-04
W. .E Sanders	QCD	4-6-05	NE¼ of NW¼	33	34S	6W	40	140.00	25	285	1-13-06
J. F. Van Ness	QCD	10-29-00	SW¼ of NW¼ NW¼ of SW¼	1	35S	6W	80	190.00	22	14	1-19-01
Harvey F. McFarland	QCD	8-29-98	SE¼ of SE¼	3	35S	6W	40	220.00	18	443	6-26-99
Patrick Flanagan	QCD	5-1-99	NW¼ of SE¼	3	35S	6W	40	114.00	20	490	9-6-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Robertshaw	QCD	12-17-00	NW¼of NE¼	5	35S	6W	45.68	159.88	22	113	4-1-01
Sarah C. Haseltine	QCD	5-2-92	N½ of SW¼	9	35S	6W	80	320.00	12	48	7-3-93
Pleasant Valley Cemetery Assn.	QCD	7-5-99	NW¼ of SW¼	11	35S	6W	40	140.00	18	636	10-30-99
H. C. Dauntless	QCD	10-15-94	SW¼ of NW¼	13	35S	6W	40	140.00	17	391	10-18-97
Carrie Brockman	QCD	2-3-02	SE¼ of SW¼	17	35S	6W	40	160.00	23	208	11-3-02
D. W. Mitchell	QCD	12-1-04	NW¼ of SW¼	19	35S	6W	40.11	140.39	25	84	5-31-05
Charles E. Copper	QCD	5-18-03	SE¼ of SE¼	25	35S	6W	40	160.00	24	141	10-24-03
J. R. Scovell	QCD	2-24-05	NE¼ of NW¼	25	35S	6W	40	140.00	25	87	6-6-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John L. Scovell	QCD	2-24-05	NW¼ of NE¼	25	35S	6W	40	140.00	25	99	6-26-05
D. W. Mitchell	QCD	10-21-01	SE¼ of NE¼	31	35S	6W	40	114.00	22	554	3-17-02
Geo. H. Kelly	QCD	5-1-02	Sund. Lands	31	35S	6W					
			do.	33	35S	6W					
			do.	3	36S	6W					
			do.	5	37S	6W					
			do.	13	37S	6W	802	2807.00	25	60	4-25-05
Sugar Pine Door & Lbr. Co.	QCD	3-2-03	NE¼ of SE¼	1	36S	6W	40	180.00	24	126	12-16-03
do	QCD	4-23-00	NW¼ of NW¼	5	36S	6W	41.06	117.02	20	367	6-7-00
W. H. Curtis	QCD	11-3-02	NE¼ of NW¼	7	36S	6W	40	160.00	23	435	3-28-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. S. DeArmond	QCD	7-6-04	S½ of NE¼ N½ of SE¼	7	36S	6W	160	640.00	25	119	8-2-05
Anderson Vannoy	QCD	5-11-96	Lot 1	17	36S	6W	9.08	54.48	18	164	11-5-98
Susan A. Hilles	QCD	5-9-04	Lot 3	19	36S	6W	34.78	121.73	24	435	8-14-04
M. G. Womack	QCD	9-23-01	Lot 1	21	36S	6W	9.60	50.00	22	457	10-11-01
E. W. & May I. Abraham	Ctf	12-30-92	Lot 1	23	36S	6W	6.75	81.00	6Mis	258	2-22-94
W. I. Dowell	QCD	3-14-92	W½ of NE¼ N½ of SE¼	35	36S	6W	160.00	722.00	10	484	5-11-92
E. L. Case Frank Mee	QCD	10-15-94	SW¼	35	36S	6W	160	650.00	25	63	4-27-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
G. H. & J. F. Kelly	QCD	2-4-95	Sund. Lands	1	37S	6W					
			do.	11	37S	6W		1020.00	24	139	12-23-03
Arthur S. Wells	QCD	4-6-03	NW¼ of SE¼	7	37S	6W	40	160.00	23	553	6-27-03
Robert J. Gibson	QCD	12-2-01	SE¼ of NW¼	13	37S	6W	40	152.00	22	505	1-31-02
J. B. Robinson	QCD	2-3-02	NE¼ of SE¼	17	37S	6W	40	160.00	23	191	10-30-02
Marsee D. Bousman	QCD	5-3-05	SW¼ of SE¼	17	37S	6W	40	160.00	25	269	1-1-06
G. W. Reeser	QCD	2-18-01	SE¼ of NE¼	23	37S	6W	40	152.00	22	181	5-2-01
F. P. King	QCD	8-11-02	NW¼ of NW¼	27	33S	7W	40	100.00	23	542	6-11-03
W. H. Dana (in trust)	QCD	9-8-02	W½ of SE¼ E½ of W½	33	33S	7W	240	960.00	23	291	12-15-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
J. I. C. Nash	QCD	2-6-99	S½ of SW¼ (E½ of NE¼	5	34S	7W	161.98	404.95	18	342	3-27-99
J. T. C. Nash	QCD	7-29-01	NW¼ of NE¼ (E½ of NW¼	33	33S	7W	120	300.00	22	366	9-30-01
do	QCD	7-29-01	SW¼ of NE¼	33	33S	7W	40	100.00	22	368	9-30-01
Frank P. King	QCD	7-7-02	SE¼ of NE¼	33	33S	7W	40	160.00	23	485	4-29-03
James Bartley	QCD	3-19-00	Lot 3	19	34S	7W	40.67	101.70	20	323	4-30-00
James Savage & Willis O. Schmeltzer	QCD	4-23-00	Lot 1	19	34S	7W	41.41	103.60	22	77	3-1-01
W. S. Ingals & Ed Friday	QCD	11-9-96	SE¼ of SE¼	3	35S	7W	40	100.00	17	1	12-14-96

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles Sanders	QCD	5-9-04	Lot 3	11	35S	7W	28.63	214.73	24	437	9-15-04
James Wilson	QCD	11-27-99	Lot 3	23	35S	7W	6.74	16.75	22	328	8-31-01
Alson Every	QCD	3-14-92	Lot 3	25	35S	7W	6.98	25.00	13	407	3-26-95
Henry Booth	QCD	7-26-97	Lot 5	25	35S	7W	33.97	118.90	18	196	11-21-98
Alson Every	QCD	11-27-99	NE¼ of NW¼	25	35S	7W	40	240.00	20	162	2-3-00
do	QCD	11-27-99	SE¼ of NW¼	25	35S	7W	40	160.00	20	164	2-3-00
Jacob Flesch & Andrew Caspescha	QCD	5-18-03	NE¼ of NE¼	25	35S	7W	40	140.00	23	578	7-20-03
Mrs. Charles Dora	QCD	10-3-04	Lot 6	25	35S	7W	27.44	96.04	25	78	5-20-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
F. H. Osgood	QCD	9-3-00	Lots 6 & 7	35	35S	7W	69.18	172.95	20	538	10-22-00
T. J. Hussey	QCD	2-12-00	N½ of NW¼	1	36S	7W	79.87	319.48	20	301	4-10-00
Louis Smith	QCD	12-1-04	SW¼ of NE¼	1	36S	7W	40	200.00	25	114	7-18-05
W. F. Meals	QCD	10-21-01	Lot 1	11	36S	7W	20.31	50.78	22	483	1-15-02
William G. Anderson	QCD	10-3-04	SW¼ of SW¼	11	36S	7W	40	140.00	25	500	5-10-06
M. A. Wertz	QCD	4-4-04	Sund. Lands		36S	7W	320	1120.00	24	586	1-13-05
J. E. Verdin	QCD	10-9-99	NW¼ of NW¼	15	36S	7W	40	100.00	20	101	12-23-99
M. A. Wertz	QCD	1-4-04	NW ¼of SE¼	15	36S	7W	40	100.00	24	241	3-12-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	QCD	1-4-04	SW¼ of NE¼	15	36S	7W	40	100.00	24	243	3-12-04
do	QCD	4-4-04	Sund. Lands	15	36S	7W	160	680.00	24	588	1-13-05
do	QCD	3-7-04	SW¼ of NW¼	15	36S	7W	40	160.00	24	590	1-13-05
J. A. Rush	QCD	7-1-05	NE¼ of NE¼	15	36S	7W	40	160.00	25	198	10-25-05
do	QCD	7-20-05	SE¼ of NE¼	15	36S	7W	40	160.00	25	200	10-26-05
Hattie Moore	QCD	6-2-05	SW¼ of SW¼	9	37S	7W	40	120.00	25	203	10-28-05
C. C. Taylor	QCD	3-7-04	NW¼ of NE¼	19	37S	7W	40	120.00	24	371	6-27-04
C. W. Craig	QCD	4-11-98	NW¼ of SW¼	31	37S	7W	39.81	199.05	24	355	6-14-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ellen Carter	Ctf	12-2-92	SE¼ of SW¼	21	38S	7W	40.07	100.00	11	559	5-28-93
do	QCD	12-5-92	SE¼ of SW¼	21	38S	7W	40	100.00	20	544	10-25-00
F. P. King	QCD	4-3-99	SE¼ of SE¼ of SW¼	5	40S	7W	10	25.00	20	19	11-8-99
Sugar Pine Door & Lbr. Co.	QCD	1-1-04	S½ of NW¼, S½ of SE¼ & SW¼	5	37S	8W	320	960.00	24	267	3-30-04
Charles D. Welter) Fred Pracht) Joseph, Lou &) Henry Schmitt)	QCD	3-3-02	SW¼	35	37S	8W					
			E½ of NE¼ &	3	38S	8W	400.80	1643.20	23	149	10-15-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	QCD	5-1-02	SW¼ of NW¼	11	38S	8W	40	100.00	23	70	7-31-02
do	QCD	4-7-02	NW¼ of NW¼	11	38S	8W	40	100.00	23	146	10-15-02
Robert C. Churchill	QCD	2-8-04	SE¼ of NW¼	11	38S	8W	40	100.00	24	481	11-4-04
A. V. Schmidt	QCD	9-7-03	NE¼ of NW¼	11	38S	8W	40	100.00	25	509	6-1-06
do	QCD	9-7-03	W½ of NE¼	11	38S	8W	80	200.00	25	511	6-1-06
Welter, Pracht & Schmitt Bros.	QCD	3-7-04	NW¼	23	38S	8W	160	1120.00	24	348	6-1-04
Charles D. Welter) Fred Pracht) Jasper & Son) Henry Schmitt)	QCD	4-4-04	Sund. Lands do	23 25	38S 37S	8W 8W	400	1840.00	24	400	7-27-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
W. H. Carter	QCD	12-2-01	SW¼ of SE¼	5	39S	8W	40	114.00	22	529	2-28-02
W. H. Carter	QCD	12-2-01	SE¼ of NE¼	5	39S	8W	40	120.00	22	531	2-28-02
W. H. Carter	QCD	12-2-01	SW¼ of NW¼	9	39S	8W	40	100.00	22	527	2-27-02
W. H. Carter	QCD	12-2-01	W½ of SW¼	9	39S	8W	80	200.00	22	533	2-28-02
Minnie Burroughs	QCD	8-1-01	NE¼ of NW¼	21	39S	8W	40	1.00	23	101	8-30-02
L. Sams	QCD	10-3-04	SE¼ of NW¼	21	39S	8W	40	100.00	24	633	2-17-05
T. Cameron	QCD	2-15-97	E½ of E½ of SE¼	9	40S	8W					
			Sund. Lands	15	40S	8W	70	175.00	17	136	3-25-97
Joseph W. Scranton	QCD	6-26-99	Lots 1 & 2	13	40S	8W	15.76	44.92	20	321	5-1-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
T. Cameron	QCD	5-11-96	Sund. Lands	15	40S	8W	170	425.00	17	196	3-20-97
J. T. Logan	QCD	2-3-02	SE¼ of SW¼	15	40S	8W	40	100.00	22	561	3-19-02
Geo. W. Wimer & W. J. Wimer	QCD	5-28-00	Sund. Lands	15	40S	8W	100	237.50	20	437	7-20-00
Geo. W. Wimer & W. J. Wimer	QCD	12-4-97	SE¼ of SE¼	17	40S	8W	40	100.00	20	440	7-20-00
The Deep Gravel Mining Co.	QCD	6-10-01	SW¼ of SW¼ of NW¼	21	40S	8W	10	25.00	23	91	8-22-02
F. H. Osgood	QCD	4-8-01	Lot 2	23	40S	8W	22.20	55.50	22	257	7-8-01
do	QCD	12-17-00	Lot 4	23	40S	8W	38.09	95.22	22	259	7-8-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
do	QCD	9-23-01	Lots 5 & 6	23	40S	8W	53.28	133.20	22	426	11-26-01
J. C. Elder	QCD	10-9-99	NE¼	25	40S	8W	160	400.00	20	239	3-7-00
A. C. Hough	QCD	2-12-00	S½	25	40S	8W	320	760.00	20	251	3-19-00
F. H. Osgood	QCD	10-29-00	SE¼ of NE¼	27	40S	8W	40	100.00	22	261	7-8-01
J. T. Logan	QCD	1-13-02	Lots 2, 3, 4, 5	27	40S	8W	154.49	386.22	22	520	2-24-02
Sallie L. Leonard	QCD	4-6-03	NE¼ of NE¼ Lot 1	27	40S	8W	44.40	111.00	23	624	8-26-03
U. S. America	QCD	11-5-95	Sund. Lands	11	36S	7W			15	75	11-8-95
Olive Anten	QCD	11-20-05	SW¼ of NW¼	9	34S	5W	40	100.00	25	457	4-9-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
John L. Scovill	Cont	11-30-00	W½ of NW¼	25	35S	6W	80	280.00	25	91	6-14-05
Oliver E. Wright	Cont	12-22-93	SW¼ of SE¼	33	36S	5W	40	240.00	6Msc.	239	12-29-93
J. M. Keith	Cont	9-1-96	NE¼ of SE¼	27	35S	7W	40	120.00	25	586	8-27-06
A. C. Merrill	Cont	2-21-02	NW¼ of NW¼ S½ of NW¼	21	38S	5W	120	2500.00	23	(341 (342	1-14-03

State of Oregon)
County of Josephine)ss.

I hereby certify that the foregoing six sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 19th, 1912.

S. F. CHESHIRE,

(Seal.) County Clerk of Josephine County, Oregon.

By E. S. VEATCH, Deputy.

JACKSON COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Jackson County, Oregon, prior to November 26, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Pauline A. Hines	QCL	5-2-92	SE¼ of NW¼	11	38S	4W	40	114.00	25	165	6-27-92
John Thomas Fry	QCL	3-14-92	Lot 5	11	38S	2W	16.36	93.26	25	518	4-1-93
George Crowson	QCL	3-14-92	NW¼ of SW¼	21	39S	1E	40	190.00	27	105	10-6-93
Sterling Mining Co.	QCL	11-9-96	W½ of NW¼	27	39S	2W	80	190.00	32	177	11-30-96
Pauline A. Hines	QCL	2-15-97	SW¼ of NW¼ NW¼ of SE¼	11	38S	4W	80	220.00	32	349	3-5-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
E. S. Brooks	QCL	11-9-96	NW¼ of SE¼	35	34S	4W	40	100.00	32	485	5-12-97
J. T. Layton	QCL	5-11-96	SE¼ of NE¼ Lots 1 & 2	19	38S	4W	89.88	256.16	32	543	6-17-97
Henry Griner	QCL	5-11-96	SW¼ of NE¼ NW¼ of SE¼	33	33S	2W	80	280.00	32	599	7-26-97
James McFarren	QCL	5-11-96	Lot 1	1	38S	2W	5	20.00	33	18	8-30-97
E. E. Hills	QCL	7-26-97	NE¼ of SE¼	1	40S	1E	40	100.00	33	71	9-23-97
John P. Harr	QCL	5-6-95	SE¼ of SE¼	1	37S	3W	40	95.00	33	225	11-18-97
E. S. Brooks	QCL	12-4-97	W½ of SW¼ of NW¼	35	34S	4W	20	50.00	33	434	2-2-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. S. Brooks	QCL	12-4-97	W½ of SE¼ of SE¼ SE¼ of SE¼ of SE¼	35	34S	4W	30	75.00	33	437	2-2-98
George Bienvenue	QCL	2-24-93	NW¼ of SE¼	17	37S	2W	40	140.00	33	456	2-9-98
The Ashland Mining Co.	QCL	5-8-93	SW¼ of NW¼) N½ of NW¼)	7	39S	1E	127.60	382.80	33	541	3-22-98
A. W. Sanders	QCL	11-8-97	SW¼ of NW¼	23	37S	4W	40	100.00	33	579	4-4-98
Mary N. Noonan	QCL	11-8-97	N½ of SE¼ SE¼ of SE¼	33	40S	4E	120	350.38	33	628	5-2-98
Albert C. Hopkins	B&S	12-20-97	NE¼ & S½	25	39S	4E					
			NE¼ of NE¼	27	39S	4E					
			E½	33	39S	5E	840	6300.00	34	42	6-7-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
R. D. Hume	QCL	4-14-98	NW¼ of NW¼	31	33S	1E	41.15	97.75	34	45	6-7-98
G. S. Butler	QCL	10-15-94	SW¼ of SE¼ & SW¼	25	38S	2E	200.00	750.00	34	103	7-6-98
Jacob Thompson	QCL	10-15-94	W½ of NW¼ E½ of SW¼	31	38S	3E	161.69	727.60	34	106	7-6-98
J. H. Shepherd	QCL	4-11-98	NW¼ of NE¼ NE¼ of SE¼	23	39S	2E	80	240.00	34	234	10-17-98
James Braden	QCL	3-14-92	Lot 1	1	36S	3W	1.46	10.00	34	374	1-4-99
James Braden	QCL	8-29-98	Lots 1, 2 & 5	27	36S	3W	76.05	190.12	34	377	1-4-99
Geo. W. Barron	QCL	12-12-98	SE¼ of NW¼	23	39S	2E	40	95.00	34	387	1-13-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Josephine Poley	QCL	7-26-97	NE¼ of NW¼	21	38S	2W	40	160.00	34	416	1-25-99
Sterling Mining Co.	QCL	12-12-98	SW¼ of NE¼	13	39S	3W	40	100.00	34	450	2-17-99
A. C. Hopkins	QCL	12-12-98	S½ofNE¼&SE¼	27	39S	4E					
			All	15	39S	5E	880	6600.00	34	504	3-27-99
do.	QCL	12-12-98	SE¼ of SW¼	3	40S	4E	40	260.00	34	506	3-27-99
do.	QCL	12-12-98	NW¼	25							
			SW¼ of NE¼								
			NW¼ of SE¼ & NW¼	31	39S	4E	401.58	2500.00	34	508	3-27-99
Mrs. E. H. Jones	QCL	2-6-99	E½ of NW¼	1	35S	4W	81	202.50	34	510	3-27-99
Mrs. E. H. Jones	QCL	2-6-99	W½ of NE¼	1	35S	4W	80.51	201.28	34	512	3-27-99

Grantee	Instrument	Date	Description	Will S.	Will T.	Will R	Acres	Consideration	Record Bk	Record Pg	Date of Record
Martha A. Barron	QCL	12-12-98	SW¼ of SE¼ 23								
			SE¼ of NW¼ 25	39S	2E	80		190.00	34	519	3-29-99
J. H. Stewart	QCL	2-15-97	SW¼ of SW¼ 29	38S	1W	40		200.00	34	539	4-10-99
Joseph F. Garrison	QCL	4-3-99	SW¼ of SE¼ 29	39S	2W	40		95.	38	1	8-4-99
R. S. Moore	QCL	7-5-99	W½ of E½								
			E½ of W½ 31	34S	4E						
			Lots 2, 3 & 4								
			S½ of N½ & S½ 5								
			All Secs. 7, 9,								
			15-17-19-21-23-								
			25-27 & NE¼ of NW¼								
			S½ of NW¼ Sec. 29								
			NE¼ & S½ Sec.								

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
			All Secs. 31 &	35	35S	4E					
			(S½ of NE¼								
			(NW¼ & S½	31	37S	4E					
			E½	35	39S	1E					
			All	25	39S	1W	10004.35	35015.22	38	2	8-8-99
William Marlatt	QCL	7-5-99	SW¼ of SW¼	11	35S	4E	40	140.00	38	3	8-8-99
B. A. Knotts	QCL	6-12-99	Lot 6	27	36S	3W	34.14	136.56	38	4	8-11-99
Nelson P. Wheeler	QCL	7-5-99	S½	29	37S	4E					
			All	33							
			NW¼ of NW¼	29	35S	4E	1000	3500.00	38	5	8-12-99
H. A. Smith	QCL	7-5-99	Lots 1, 2, 3 & 4								
			SE¼ of SE¼	31	34S	4E					
			All	1	40S	1W	726.76	2543.60	38	6	8-31-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Marcus Daly	QCL	6-26-99	N½ of SW¼ & SE¼-N½ 15 All Secs. 23-25, 27, 33 &	35	37S	4E	3760	13160.00	38	7	9-29-99
Ira Wakefield	QCL	8-21-99	SE¼ of SE¼	7	34S	2E	40	95.00	38	8	10-10-99
A. W. Fink	QCL	6-12-99	Lot 3	35	36S	1W	20.81	104.00	38	9	10-12-99
A. L. Mills, Trustee.	QCL	7-14-99	W½ of W½	7							
			W½ of W½	19							
			W½ of W½	31	18S	2E					
			S½ of SW¼	15	37S	4E					
			N½ of SE¼ of NW¼								
			SW¼ of SE¼ of NW¼								
			SW¼ of NW¼								
			S½ of Lots 1 & 2	27							

Grantee	Instrument	Date	Description	Will S.	Mer. T.	Mer. R.	Acres	Consideration	Record Bk	Record Pg	Date of Record
			Lot2 S½ of NE¼ NW¼ & S½ All Secs. 31 & 33 W½ & W½ All. S. 3, 5, 7 9, 15, 17	29 35 11	39S 40S	1E 1E	7550.37	26426.30	38	10	10-23-99
Sarepta E. Inlow	QCL	12-12-98	S½ of SW¼	3	34S	1W	85.70	214.25	38	11	11-1-99
Charles R. Ray	QCL	10-9-99	NW¼ of NW¼	27	36S	3W	40	100.00	38	12	12-1-99
Charles R. Ray	QCL	10-9-99	Lot 3	27	36S	3W	36.77	91.92	38	13	12-1-99
W. H. Shepherd	QCL	10-9-99	NW¼ of NW¼	25	39S	2E	40	120.00	38	14	12-30-99

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
The Galt Creek Min. & Dev. Co.	QCL	10-9-99	SW¼ of NW¼	33	36S	3W	40	100.00	38	15	1-2-00
D. B. Grant	QCL	10-9-99	S½ of SW¼	13	39S	1W	80	200.00	38	16	1-17-00
E. A. Leeston Smith	QCL	11-27-99	E½ of SE¼ of SE¼ NE¼ of SE¼	3	36S	3W	60	150.00	38	17	2-3-00
Thomas J. & Robt. B. Grieve	QCL	11-27-99	W½ of SW¼	27	40S	4E	80	266.00	38	18	2-3-00
Wallace Woods	QCL	11-27-99	NE¼	25	38S	2W	160	380.00	38	19	2-8-00
J. H. Stewart	QCL	8-21-99	NW¼ of NW¼	29	33S	2E	40	95.00	38	20	12-23-99

Grantee	Instrument	Date	Description	Will. Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
do	QCL	10-9-99	NE¼ of SE¼	19	33S	2E	40	114.00	38	21	12-23-99
H. Waldo Dikeman	QCL	10-9-99	SW¼ of SE¼	11	36S	3W	40	100.00	38	22	12-26-99
A. C. Hopkins	QCL	11-27-99	NE¼ of NE¼	9	40S	4E	40	382.64	38	23	2-15-00
Thomas J. Wright	QCL	11-27-99	SE¼ of NE¼ E½ of SE¼	7	41S	4E	120	285.00	38	24	2-20-00
Frank W. Benson	QCL	1-30-00	All	13	40S	1W	640	2240.00	38	25	2-20-00
J. J. Houck	QCL	11-27-99	E½ of NW¼ of SE¼	3	36S	3W	20	50.00	38	26	2-20-00
James Carr	QCL	12-26-99	Lot 3	29	37S	1W	5.50	220.00	38	27	3-7-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Ed. P. Geary	QCL	2-12-00	E½ of NW¼	15	38S	2W	80	320.00	38	28	3-17-00
P. H. Halley	QCL	11-27-99	NE¼ of SE¼	23	38S	2W	40	95.00	38	29	3-17-00
I. J. Phipps	QCL	2-12-00	SE¼ of SE¼	1	37S	1W	40	160.00	38	30	3-21-00
G. W. Howard & W. I. Vawter	QCL	2-12-00	NW¼ of SE¼	25	37S	1W	40	200.00	38	31	3-22-00
A. S. Furry	QCL	6-12-99	S½ of NE¼ SE¼ of NW¼	1	38S	4E	120	323.00	38	32	3-31-00
Thomas G. Reames	QCL	2-6-99	Lots 1, 2 & 3	15	37S	2W	7.60	35.00	38	33	4-5-00
Geo. C. Culy	QCL	11-27-99	SW¼ of SW¼	21	40S	4W	40	100.00	38	34	4-10-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles R. Ray	QCL	3-19-00	S½ of NE¼ & SE¼	31	32S	1E	240	600.00	38	35	4-25-00
do	QCL	3-19-00	S½ of SW¼	31	32S	1E	88.32	220.80	38	36	4-25-00
do	QCL	3-19-00	E½ of SW¼	13	36S	3W	80	200.00	38	37	4-25-00
do	QCL	3-19-00	W½ of SW¼	13	36S	3W	80	200.00	38	38	4-25-00
Sterling Min. Co.	QCL	3-19-00	E½ of W½ of SE¼	33	38S	2W	40	95.00	38	39	4-27-00
The Collie Dog Min. & Mil. Co. of S. D.	QCL	4-23-00	W½ of NE¼	7	33S	1E	80	200.00	38	40	6-20-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Charles R. Ray	QCL	5-28-00	Lot 8	11	36S	3W	19.83	49.58	38	41	7-7-00
Charles R. Ray	QCL	5-28-00	Lots 1 & 4	33	36S	3W	64.62	161.55	38	42	7-7-00
F. H. Osgood	QCL	5-28-00	NW¼ of SW¼ SE¼ of NW¼	25	37S	3W	80	200.00	38	43	7-14-00
John R. Mitchell	QCL	6-25-00	NE¼ of NE¼	11	37S	3W	40	100.00	38	44	8-11-00
Charles R. Ray	QCL	4-23-00	SW¼ of NW¼ S½ of SE¼	13	36S	3W	120	300.00	38	45	8-14-00
A. D. Helman	QCL	6-25-00	SW¼ of SW¼	21	39S	1E	40	200.00	38	46	9-6-00
G. W. & J. H. Blalock	QCL	9-3-00	SE¼ of SW¼	29	33S	4W	40	100.00	38	47	10-23-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Ormond C. Hogue	QCL	10-9-99	NE¼ of NW¼	11	39S	1W	40	200.00	38	48	11-1-00
Agnes E. Merrick	QCL	3-19-00	NE¼ of SW¼	31	36S	4W	40	120.00	38	49	11-5-00
Thomas Dungey	QCL	9-3-00	SE¼ of SE¼	29	36S	3W	40	100.00	38	50	11-5-00
W. F. Hunter	QCL	9-3-00	NW¼ of SW¼	7	33S	1E	43.31	108.21	38	51	11-14-00
A. Andrews	QCL	9-3-00	NW¼ of NW¼	21	38S	2W	40	200.00	38	52	11-17-00
Geo. H. Tice	QCL	10-9-99	SW¼ of NW¼	33	38S	4W	40	140.00	38	53	1-8-01
Wm. Owens	QCL	4-23-00	SW¼ of NW¼ SW¼ of SW¼	1	37S	1W	80	320.00	38	54	2-6-01
Daniel Reynolds	QCL	12-17-00	SW¼ of NE¼	21	33S	2W	40	140.00	38	55	2-11-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jacob Steiner	QCL	12-17-00	S½ of SW¼ SW¼ of SE¼	21	33S	4W	120	300.00	38	56	2-13-01
James U. Smith	QCL	3-19-00	S½ of NE¼	31	35S	3W	80	190.00	38	57	2-18-01
Dennis Dugan	QCL	12-17-00	NW¼ of NW¼	33	35S	2W	40	200.00	38	58	2-18-01
J. H. Stewart	QCL	6-25-00	SW¼ of NW¼	29	33S	2E	40	95.00	38	59	3-22-01
Walter Briggs	QCL	9-3-00	NE¼ of SE¼	21	33S	4W	40	100.00	38	60	4-3-01
L. A. Lewis	QCL	2-18-01	E½	29	33S	4W	320	760.00	38	61	4-9-01
R. D. Hume	QCL	2-18-01	NE¼ of NW¼	31	33S	1E	40	95.00	38	62	4-11-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Jas. R. C., Orrin & Walter Thompson et al.	QCL	2-18-01	NW¼ of NW¼	11	34S	4W	40	100.00	38	63	4-22-01
James Owens	QCL	2-18-01	Lots 6 & 7	23	36S	1W	52	247.00	38	64	4-26-01
Miss D. A. Marshall	QCL	2-18-01	NW¼ of SW¼	19	38S	3E	39.70	99.25	38	65	4-26-01
W. L. McClure	QCL	3-19-00	SW¼ of SW¼	3	36S	3W	40	100.00	38	66	4-26-01
do	QCL	11-27-99	W½ of SE¼ of SE¼	3	36S	3W	20	50.00	38	67	4-26-01
Montreal & Oregon Gold Mines Ltd	QCL	11-27-99	SE¼ of NW¼	7	39S	1E	40	133	38	68	5-16-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Frank Childers & W. K. Smith	QCL	6-10-01	Lot 3	5	37S	3W	11.76	29.40	38	69	7-24-01
H. Waldo Dikeman	QCD	6-10-01	SE¼ of SW¼	11	36S	3W	40	100.00	38	70	7-29-01
William Charley	QCD	6-10-01	SE¼ of SW¼ SW¼ of SE¼	5	38S	2E	80	190.00	38	71	8-2-01
L. A. Lewis	QCD	8-21-99	Sund. Lands		34S	4W					
			do.		34S	5W	461.17	1152.92	38	72	8-2-01
Robert Swinder	QCD	6-10-01	NW¼ of SW¼	35	36S	3W	40	100.00	38	73	8-8-01
The Jackson Co. Impr. Co.	QCD	6-10-01	W½ of NE¼	27	36S	2W	80	320.00	38	74	8-12-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
do	QCD	6-10-01	Sund Lands		36S	1E					
			do.		36S	2W	374.56	1426.33	38	75	8-12-01
G. F. Billings	QCD	11-27-99	E½ of NE¼	13	39S	1W	80	200.00	38	76	8-24-01
A. J. Daley	QCD	2-12-00	NE¼ of NE¼	11	35S	1E	40	95.00	38	77	8-30-01
Golden Standard Mining Co.	QCD	6-10-01	Lot 5	5	37S	3W	20.68	51.70	38	78	8-31-01
Henry D. Kubli	QCD	4-23-00	NW¼ of SW¼	33	36S	3W	40	100.00	38	79	8-31-01
Golden Standard Mining Co.	QCD	6-10-01	Lot 2	5	37S	3W	15.30	38.25	38	80	8-31-01
F. G. Stinson	QCD	2-12-00	SW¼ of NE¼	3	37S	1W	40	240.00	38	81	9-24-01

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. Behrman	QCD	7-29-01	W½ of SW¼	31	34S	2W	80	200.00	38	82	10-1-01
do	QCD	9-3-00	E½ of NW¼	31	34S	2W	80	200.00	38	83	10-1-01
L. A. Lewis	QCD	7-29-01	NW¼ of SW¼ E½ of NW¼	5	34S	4W	123.77	293.95	38	84	10-2-01
H. Wortman	QCD	11-8-97	NE¼ of SE	9	38S	2W	40	140.00	38	85	10-19-01
James A. Pitts	QCD	12-17-00	NW¼ of NW¼	19	33S	1W	40.71	101.77	38	86	10-31-01
John W. Miller	QCD	10-21-01	NE¼ of NW¼	33	36S	3W	40	140.00	38	87	1-2-02
E. P. Pickens	QCD	10-15-94	Lots 12 & 13	11	36S	2W	30.70	92.10	38	88	1-11-02
J. B. Coleman	QCD	3-19-00	SE¼ of SE¼	9	39S	1W	40	100.00	38	89	1-18-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
L. A. Lewis	QCD	12-26-01	NW¼ of SW¼ E½ of NW¼	5	34S	4W	123.77	293.95	38	90	1-20-02
Charles H. Chapman	QCD	6-10-01	Lot 4	31	36S	2W	25.20	124.45	38	91	1-23-02
W. E. Beckner & J. B. True	QCD	9-23-01	SW ¼of SE¼	29	36S	3W	40	100.00	38	92	1-31-02
G. S. Butler	QCD	2-12-00	SW¼ of SW¼	31	38S	3E					
			N½ of NW¼	1	39S	2E	123.37	534.43	38	93	2-5-02
J. H. Chambers	QCD	10-21-01	All of	15	39S	1W	640	2560.00	38	94	2-15-02
H. J. Hicks	QCD	6-6-98	SW¼ of NE¼	1	40S	1E	40	100.00	38	95	2-15-02
D. B. Grant	QCD	10-21-01	S½ of SE¼	13	39S	1W	80	190.00	38	96	2-15-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. J. Olsen	QCD	12-2-01	SE¼ of SE¼	25	35S	4W	40	100.00	38	97	2-24-02
Henry Peck	QCD	12-2-01	SW¼ of NE¼	21	36S	2E	40	120.00	38	98	3-29-02
Henry Zimmerman	QCD	9-3-00	NW¼ of NW¼	15	33S	4W	40	100.00	38	99	4-10-02
A. L. Mills, Tr. for himself, L. A. Lewis, Geo. Sorenson & J. D. Wilcox	QCD	3-11-02	Sund. Lands		18S 37S 39S 40S	2E 4E 1E 1E	7550.37	1.00	38	100	4-15-02
J. E. Davidson	QCD	9-23-01	N½ of NE¼	25	35S	4W	80	200.00	38	101	5-6-02
Luther Schmucker	QCD	7-29-01	SW¼ of NW¼	15	33S	4W	40	100.00	38	102	5-27-02
Charles R. Ray	QCD	4-7-02	NE¼ of NW¼	7	33S	1E	40	100.00	38	103	6-3-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Charles R. Ray	QCD	4-7-02	NW¼ of NW¼	7	33S	1E	43.74	109.35	38	104	6-3-02
C. C. Beekman	QCD	6-10-01	S½ of NE¼ N½ of NW¼	23	37S	3W	160	456.00	38	105	6-17-02
P. H. Harth & Wm. Ryan	QCD	6-10-01	NE¼ of SE¼	33	36S	4W	40	100	38	106	6-23-02
Charles R. Ray	QCD	5-1-02	Lot 1	13	36S	3W	21.16	75.00	38	107	5-24-02
Robert Boyd	QCD	11-27-99	E½ofE½ofSW¼ of SE¼	17	38S	4W	10	25.00	38	108	7-5-02
E. P. Dunlap	QCD	7-29-01	N½ of NE¼ of NW¼	19	36S	2W	20	50.00	38	109	7-18-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
The Montreal & Oregon Gold Mines Ltd.	QCD	5-1-02	Part	7	39S	1E	115.20	711.36	38	110	8-5-02
Mrs. S. A. Stephenson	QCD	6-3-02	SE¼ of SW¼	5	40S	3E	40	100.00	38	111	8-12-02
Emanuel King	QCD	6-3-02	Lot 3	13	33S	2W	42.09	105.22	38	112	8-16-02
Charles R. Ray	QCD	7-7-02	N½ of SW¼ SW¼ of SW¼	7	36S	2W	121.75	1200.00	38	113	11-15-02
Edwin H. Strohmeier	QCD	9-8-02	SE¼ of SE¼ E½ of SW¼ of SE¼	25	36S	3W	60	475	38	114	11—02
Iowa Lumber Co.	QCD	9-8-02	SE¼ of SE¼	13	37S	3W					
			NW¼ of NW¼	19	37S	2W	83.64	379.29	38	115	11-21-02

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Geo. Van Tassel	QCD	2-3-02	NE¼ of NW¼	23	39S	2E	40	120.00	38	116	12-2-02
Margaret Hillis	QCD	9-8-02	SW¼ of SE¼ SE¼ of SW¼	1	35S	4W	80	200.00	38	117	12-15-02
F. Minthorn	QCD	9-8-02	NW¼ of NW¼	21	35S	4W	40	140.00	38	118	12-26-02
Silas J. Day	QCD	11-3-02	W½ of SW¼	1	38S	3W	80	280.00	38	119	2-3-03
W. K. Smith & Frank Childers	QCD	10-6-02	SW¼ of NW¼	5	37S	3W	40.52	101.30	38	120	2-12-03
George C. Culy	QCD	11-3-02	E½ of SW¼	27	40S	4W	80	200.00	38	121	2-27-03
Mrs. C. F. Taylor	QCD	8-11-02	NW¼ of SW¼	7	35S	3W	35	116.40	38	122	3-4-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
James Owens	QCD	3-3-02	Lots 4 & 5	23	36S	1W	54.16	324.96	38	123	3-23-03
H. Griner	QCD	6-3-02	NE¼ of SW¼	33	33S	2W	40	180.00	38	124	4-3-03
The Siskiyou Elec. Power Co.	QCD	2-2-03	Right of way	3	41S	4E	7.75	600.00	38	125	5-1-03
S. H. Moore	QCD	1-5-03	NE¼ of NW¼	7	35S	3W	40	100.00	38	126	5-11-03
Margaret Hillis	QCD	12-1-02	NW¼ of SE¼	1	35S	4W	40	100.00	38	127	5-11-03
The Iowa Lumber Co.	QCD	12-1-02	N½ of NE¼	27	37S	3W	80	200.00	38	128	5-13-03
J. H. Bagley	QCD	12-1-02	NW¼ of SE¼	1	36S	4W	40	120.00	38	129	6-26-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. B. Jennings & J. H. Ray	QCD	4-6-03	NE¼	17	34S	2W	160	400.00	38	130	6-27-03
O. S. Blackford	QCD	3-2-03	Lot 1	31	36S	2W	37.08	185.40	38	131	7-3-03
John E. Yarbrough	QCD	9-3-00	SW¼ of SW¼	3	39S	1W	40	95.00	38	132	7-6-03
Wm. M. Mathes	QCD	3-14-92	NW¼ of NE¼	29	38S	1W	40	95.00	38	133	7-8-03
A. C. Hopkins	QCD	4-6-03	Sund. Lands		39S 39S	6E) 4E)	2222.40	11057.05	38	134	7-15-03
The Fish Lake Water Co.	QCD	1-5-03	Right of way	15	36S	1E	5.75	7.25	38	135	7-16-03
F. A. Rosencrans	QCD	5-18-03	S½ of SW¼	23	32S	1E	80	200.00	38	136	9-30-03

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
J. J. Holcomb	QCD	5-18-03	SW¼ of SE¼	5	35S	4W	40	120.00	38	137	10-17-03
Gus Newbury	QCD	8-3-03	N½ of S½	1	41S	3W	160	480.00	38	138	10-29-03
Charles R. Eliason	QCD	2-2-03	SW¼ of SW¼ NE¼ of SW¼	17	39S	1E	80	200.00	38	139	11-16-03
Frank Cameron	QCD	8-3-03	E½ of SE¼	17	40S	2W	80	200	38	140	11-16-03
Wm. Mendenhall	QCD	7-6-03	SE¼ of NE¼ E½ of SE¼	11	37S	3W	120	1500.00	38	141	12-28-03
C. Vroman	QCD	10-5-03	SE¼ of SW¼	15	35S	4W	40	200.00	38	142	1-7-04
William Hillis	QCD	10-5-03	SE¼ of NE¼	11	35S	4W	40	140.00	38	143	1-23-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Charles R. Ray	QCD	12-2-01	Part Lot 6	5	37S	3W	23.46	58.65	38	144	1-29-04
do	QCD	6-10-01	E½ of SE¼	21	36S	3W	80	200.00	38	145	1-29-04
G. E. Graves	QCD	11-2-03	S½ of NW¼ NW¼ of NW¼ NW¼ of SW¼	1	40S	1E	156.98	392.45	38	146	2-25-04
Darius N. Davis	QCD	7-6-03	NE¼ of SE¼	7	40S	3E	40	100.00	38	147	3-2-04
James Owens	QCD	4-6-03	NW¼ of NE¼	11	38S	1E	40	100.00	38	148	3-9-04
A. Andrews	QCD	12-14-03	NW¼ of SW¼	23	38S	2W	40	100.00	38	149	4-1-04
James Savage	QCD	7-26-97	Lot 11	21	36S	4W	20.50	48.70	38	150	4-11-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
The Bray & Choate Land Co.	QCD	11-27-99	Sund. Lands		39S	4E	1324.08	9930.60	38	151	4-26-04
Robert A. Miller	QCD	2-8-04	SE¼ of NW¼ SW¼ of NE¼ NW¼ of SE¼	35	37S	3W	120	300.00	38	152	5-18-04
J. N. Hockersmith	QCD	3-7-04	S½ of NE¼	9	38S	2W	80	200.00	38	153	6-7-04
James Davies	QCD	2-8-04	NW¼ of NE¼	17	33S	1E	40	100.00	38	154	6-30-04
James Davies	QCD	2-8-04	W½ of NW¼	9	33S	1E	80	200.00	38	155	6-30-04
A. J. Daley	QCD	3-7-04	E½ of SW¼	33	32S	1E	80	280.00	38	156	7-2-04
Hiram Tripp	QCD	4-4-04	NW¼ of SE¼	19	38S	1W	40	100.00	38	157	7-6-04

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
James Braden	QCD	9-8-02	W½ of SW¼ of SE¼	25	36S	3W	20	475.00	38	158	11-29-04
Wm. A. Childers	QCD	9-7-03	NW¼ of NE¼	5	35S	2W	39.67	99.18	38	159	12-12-04
L. J. Brannon	QCD	2-2-03	SW¼ of SW¼	23	39S	1E	40	120.00	38	160	1-3-05
Brittinnia Williams	QCD	6-6-04	NE¼ of NW¼	17	40S	3E	40	100.00	38	161	1-4-05
Sarepta Inlow	QCD	6-6-04	NW¼ of NW¼	33	33S	1W	40	100.00	38	162	1-30-05
A. B. & T. D. Chapman	QCD	6-6-04	SW¼ of SW¼	31	39S	2E	39.09	97.72	38	163	2-20-05
John M. Keith	QCD	7-6-04	Sund. Lands		40S	2E	599.08	1497.70	38	164	2-21-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
John M. Keith	QCD	7-6-04	do.		40S	2E	1460.19	3650.43	38	165	2-21-05
John M. Keith	QCD	10-3-04	Sund. Lands		40S	2E	1634.09	4085.22	38	166	2-21-05
G. H. Pease	QCD	6-6-04	SW¼ of NW¼	5	34S	4W	40	110.00	38	167	2-25-05
Kate Herriott Hyde	QCD	7-6-04	Lots 2 & 3	23	38S	4W	63.45	317.25	38	168	3——05
Thomas McAndrew	QCD	5-9-04	S½ of SW¼ SW¼ of SE¼	25	33S	1E	120	420.00	38	169	3-13-05
Davidson, Ward & Co.	QCD	5-28-00	NW¼ of SE¼	21	36S	3W	40	100.00	38	170	3-22-05
do	QCD	5-19-00	SW¼ of SE¼	21	36S	3W	40	100.00	38	171	3-22-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
Wilbur Jones	QCD	7-6-04	SW¼ of NW¼	23	38S	2W	40	100.00	38	172	4-1-05
J. H. Bagley	QCD	7-6-04	SW¼ of SE¼	1	36S	4W	40	400.00	38	173	4-3-05
Thomas Merrick	QCD	10-3-04	SW¼ of NW¼ NW¼ of SW¼	31	36S	4W	89.50	500.00	38	174	4-10-05
Charles R. Ray	QCD	10-3-04	N½ of NE¼ SE¼ of NE¼	17	36S	2W	120	1200.00	38	175	4-11-05
Big Bend Milling Co.	QCD	12-1-04	All of	11	35S	2E	640	4480.00	38	176	4-20-05
H. W. Jackson & I. L. Hamilton	QCD	5-9-04	SE¼ of SW¼	35	33S	1W	40	250.00	38	177	5-18-05
do	QCD	5-9-04	SW¼ of SE¼	35	33S	1W	40	500.00	38	178	5-18-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
do	QCD	6-6-04	NW¼ of SE¼	35	33S	1W	40	500.00	38	179	5-18-05
J. B. Dungan	QCD	1-14-05	NE¼ of SE¼	35	35S	3W	40	100.00	38	180	5-26-05
D. H. Barneburg	QCD	1-14-05	S½ of NW¼ N½ of SW¼	5	38S	4E	160	400.00	38	181	5-26-05
J. A. Graves	QCD	12-1-04	Sund. Land		40S	2E	1880.62	4701.55	38	182	8-5-05
Ashland Manufacturing Co.	QCD	12-14-03	NE¼ of NE¼	1	40S	1E	37.85	94.63	38	183	8-12-05
do	QCD	12-14-03	SE¼ of NE¼ SE¼ of SE¼ NW¼ of SE¼	1	40S	1E	120	300.00	38	184	8-12-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consider-ation	Record Bk	Pg	Date of Record
do	QCD	12-14-03	W½ of NW¼ SE¼ of NW¼ SW¼	7	40S	2E	262.88	657.20	38	185	8-12-05
do	QCD	12-14-03	SE¼ Sec. 11 N½ of NW¼ NE¼	13	40S	1E	400	1000.00	38	186	8-12-05
do	QCD	12-14-03	SW¼ of SE¼ S½ of SW¼ NE¼ of SW¼	1	40S	1E	160	400.00	38	187	8-12-05
Fred W. Bradley	QCD	2-24-05	S½ of NE¼ N½ — SE¼ SW¼ of SE¼ W½	25	35S	4W	520	2600.00	38	188	8-18-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
William Bybee	QCD	12-1-02	NW¼ of NW¼	19	34S	2W	40.96	102.40	38	189	9-6-05
do	QCD	12-1-02	NW¼ of NW¼	35	34S	3W	40	120.00	38	190	9-6-05
do	QCD	12-1-02	SE¼ of SE¼	23	34S	3W	40	100.00	38	191	9-6-05
do	QCD	10-3-04	SW¼ of SE¼	15	34S	3W	40	100.00	38	192	9-6-05
do	QCD	10-3-04	SE¼ of NW¼	23	34S	3W	40	100.00	38	193	9-6-05
do	QCD	10-3-04	NE¼ of NW¼	19	34S	2W					
			SW¼ of NW¼	25	34S	3W	80	200.00	38	194	9-6-05
do	QCD	10-3-04	NE¼ of SE¼	23	34S	3W	40	100.00	38	195	9-6-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
William A. Blanton	QCD	6-6-05	NW¼ of SW¼ SE¼ of SW¼	25	39S	2E	80	200.00	38	196	9-27-05
John Cabler	QCD	10-3-04	Lots 1 & 2	3	39S	1W	26.32	131.60	38	197	10-11-05
John Yarbrough	QCD	12-14-03	NW¼ of SW¼	3	39S	1W	40	100.00	38	198	10-11-05
Charles J. Kibbe	QCD	12-1-04	NE¼ of NW¼ NW¼ of SW¼	27	32S	1E	80	200.00	38	199	10-24-05
Joseph Cox & W. L. McClure	QCD	11-27-99	E½ of SE¼ of NE¼	3	36S	3W	20	50.00	38	200	10-26-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Edwin Fowler	QCD	6-27-05	All	19							
			All	29	37S	3W					
			E½ of E½	23							
			W½ of NW¼								
			NE¼								
			S½ of	25	37S	4W	1999.42	4998.55	38	201	10-10-05
J. C. Baird	QCD	12-4-97	Lots 1 & 2	19	36S	4W	22.87	57.17	38	202	10——05
Orrin Thompson	QCD	6-5-05	SE¼ of SE¼	3	34S	4W	40	120.00	38	203	10-24-05
Charles Hocom	QCD	9-8-02	Lot No. 2	1	40S	1E	37.56	124.89	38	204	12-4-05
Riley Kennedy	QCD	11-16-05	SW¼ of SE¼	13	40S	2E	40	100.00	38	205	3-24-06
John A. Lewman	QCD	12-14-03	NE¼ of SW¼	7	38S	4W	40	120.00	38	206	3-30-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
C. I. Hutchinson & H. U. Lumsden	QCD	12-22-05	W½ of NE¼ SE¼ of NW¼	23	32S	1E	120	300.00	38	207	3-30-06
W. A. Carter	QCD	1-8-06	SW¼ of NE¼	23	36S	3W	40	200.00	38	208	3-31-06
Isaac Householder	QCD	1-14-05	W½ of NW¼	19	38S	2W	85.41	213.52	38	209	4-24-06
Thomas G. Reames	QCD	2-15-97	S½ of SW¼	25	37S	3W	80	200.00	37	244	10-18-99
The Iowa Lumber Co.	QCD	11-3-02	E½ of NW¼	19	37S	2W	80	400.00	46	610	2-4-03
Charles R. Eliason	QCD	4-6-03	SE¼ of SW¼	17	39S	1E	40	120.00	48	411	11-16-03
Chas. Erlwein	QCD	3-17-05	SW¼	5	36S	3W	160	600.00	52	557	6-30-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
A. D. Florey	QCD	2-24-05	NE¼ of NE¼	1	38S	3W	40.04	100.00	53	3	7-26-05
Fred Thumburg	QCD	2-24-05	W½ of NW¼	5	36S	2E	80.43	201.07	53	10	7-4-05
Arthur F. Hunt	QCD	3-17-05	N½ of NE¼	31	37S	4E	80	240.00	53	36	8-2-05
C. L. Carr	QCD	2-15-97	NE¼ of NW¼ NW¼ of NE¼	35	37S	3W	80	200.00	53	611	11-22-05
U. S. of America	QCD	3-23-05	West. Ext. Last Chance Min. Cl. deeded by mistake by U. S. to O&CRR Co.	33	36S	3W	12.01		54	296	1-22-06
Elmer E. Scudder	QCD	1-19-06	NE¼ SW¼ of SW¼	33 27	32S	1E	200	500.00	56	318	9-15-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Big Bend Milling Co.	QCD	2-9-06	Sund. Lands		32S	2E					
					33S	2E	804.97	2213.66	56	380	9-15-06
do	QCD	2-9-06	do.		35S	2E					
					35S	3E					
					33S	1E					
					33S	2E					
					34S	1E					
					34S	2E	5921.89	31610.40	56	382	9-25-06
L. A. Neil	QCD	10-12-05	SE¼ of NW¼								
			SE¼ of SW¼								
			NE¼ of SE¼								
			W½ of E½	31	38S	4E	280.00	840.00	57	72	11-1-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
E. B. Jennings & J. H. Ray	Cont	8-6-98	NE¼	17	34S	2W	160	400.00	B 193	Miscl	9-6-98
George Van Tassel	Cont	1-5-95	NE¼ of NW¼	23	39S	2E	40	120.00	B 287	"	9-18-99
L. L. Goodwin	Cont	8-27-96	E½ of SW¼	27	40S	4W	80	200.00	B 49	"	1-19-97
F. E. Birge	Cont	1-28-96	SW¼ of SW¼	21	40S	4W	40	100.00	A 623	"	5-25-96
John Thomas Fry	Ctf	2-19-91	Lot 5	11	38S	2W	16.36	93.26	A 81	"	2-28-91
S. A. Carlton	Ctf	4-1-01	NW¼ of NW¼	17	36S	1E	40	95.00	B 564	"	6-2—

State of Oregon)
County of Jackson)ss.

I hereby certify that the foregoing seven sheets correctly show the record book and page and date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 17, 1912.

FRED L. COLING,

(Seal.) County Recorder of Jackson County, Oregon.

KLAMATH COUNTY, OREGON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Klamath County, Oregon, prior to January 17, 1907, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Albert C. Hopkins	B&S	12-20-97	NE¼ & S½	25	39S	4E	840	6300.00	11	143	5-27-98
			NE¼ of NE¼	27	39S	4E					
			E½	33	39S	5E					
Albert C. Hopkins	B&S	10-3-98	All	13	40S	5E	640	4160.00	11	347	12-14-98
A. C. Hopkins	QC	12-12-98	S½ of NE¼	27	39S	4E	880	6600.00	11	551	4-6-99
			SE¼								
			All	15	39S	5E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
A. C. Hopkins	QC	7-5-99	Sundry lands in				2427.42	11700.00	12	239	8-21-99
			Secs. 29 & 33		39S	5E					
			Secs. 3, 5, 25, 33		40S	6E					
The Big Blackfoot Milling Co.	QC	6-26-99	Sundry lands in				6214.06	21749.21	12	314	10-2-99
			Secs. 19, 29, 33,		36S	6E					
			Secs. 3, 11, 13, 5, 7,		37S	6E					
			9, 15, 19, 21,		37S	6E					
The A. B. Hammond Co.	QC	6-26-99	Sundry lands in				5042.96	17650.36	12	320	10-2-99
			Secs. 17, 23, 25,								
			27, 29, 31, 33 & 35		37S	6E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
John Claflin	QC	6-26-99	Sundry lands in				5013.08	17545.78	12	327	10-2-99
			Secs. 31		36S	6E					
			Secs. 11, 19, 23, 27,		37S	5E					
			29, 31, 33 & 35		37S	5E					
A. C. Hopkins	QC	12-26-99	Sundry lands in				7888.21	49500.00	12	546	2-13-00
			Secs. 23, 25, 27,								
			31, 35		39S	5E					
			Secs. 5, 7, 9, 15,		40S	6E					
			17, 19, 21, 29		40S	6E					
C. C. Miller	QC	5-28-00	Lot 3	13	38S	5E	22.92	54.45	14	119	10-12-01
A. C. Hopkins	QC	4-6-03	Sundry lands in				2222.41	11057.05	15	342	7-8-03
			Sec.	31	39S	4E					
			Secs. 3, 9, 21,		39S	6E					
			31, 33		39S	6E					

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
Bray & Chote Land Co.	QC	11-27-99	Sundry lands in Secs. 5, 7, 9, 17, 19, & 21		39S	5E	3492.32	26192.40	16	195	4-14-04
Oshkosh Land & Timber Co.	QC	3-2-03	All	29	39S	6E	644.68	4835.10	16	197	4-14-04
Albert C. Hopkins	QC	7-19-05	W½&W½ofE½	31	39S	6E	482.12	3067.15	19	71	11-13-05
John R. Cook	QC	10-15-94	All	9	41S	5E	640	1920.00	19	212	12-16-05
Pokegama Sugar Pine Lbr. Co.	QC	12-17-00	All	33	40S	5E	640	4160.00	16	293	1-10-06
The Pokegama Sugar Pine Lbr. Co.	QC	12-20-97	E½	19	40S	5E	320	2080.00	19	294	1-10-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
The Pokegama Sugar Pine Lbr. Co.	QC	5-28-00	W½	17	40S	5E	480	3120.00	19	295	1-10-06
			W½ of E½	29	40S	5E					
The Pokegama Sugar Pine Lbr. Co.	QC	10-5-03	E½ of E½	29	40S	5E	160	1040.00	19	296	1-10-06
The Pokegama Sugar Pine Lbr. Co.	QC	11-8-97	W½	29	40S	5E	640	4160.00	19	298	1-10-06
			SE¼ of NW¼	31	40S	5E					
			NE¼ of SW¼	31	40S	5E					
			N½ of SE¼	31	40S	5E					
			NE¼	31	40S	5E					
The Pokegama Sugar Pine Lbr. Co.	QC	11-27-99	E½	17	40S	5E	320	2080.00	19	299	1-10-06

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consideration	Record Bk	Pg	Date of Record
The Pokegama Sugar Pine Lbr. Co.	QC	12-2-01	All	27	40S	5E	640	4160.00	19	300	1-10-06
J. U. Miner	QC	5-9-04	W½	11	41S	5E	320	1120.00	21	578	12-6-06
Pokegama Sugar Pine Lbr. Co.	Cont	11-11-02	Lands in Tps. 39 & 40S, Rgs. 4, 5, 6E., W. M.					8000 A. @ $9.00 per A.			
								5000 A. @ 5.00 per A.			
			Lands in Tps. 46, 47, 48 N., Rgs. 2, 3, 4, W., M. D. M.					14800 A. @ 7.00 per A.			
									19	368	1-24-06

O. & C. R. R. Co., et al.

State of Oregon)
County of Klamath)ss.

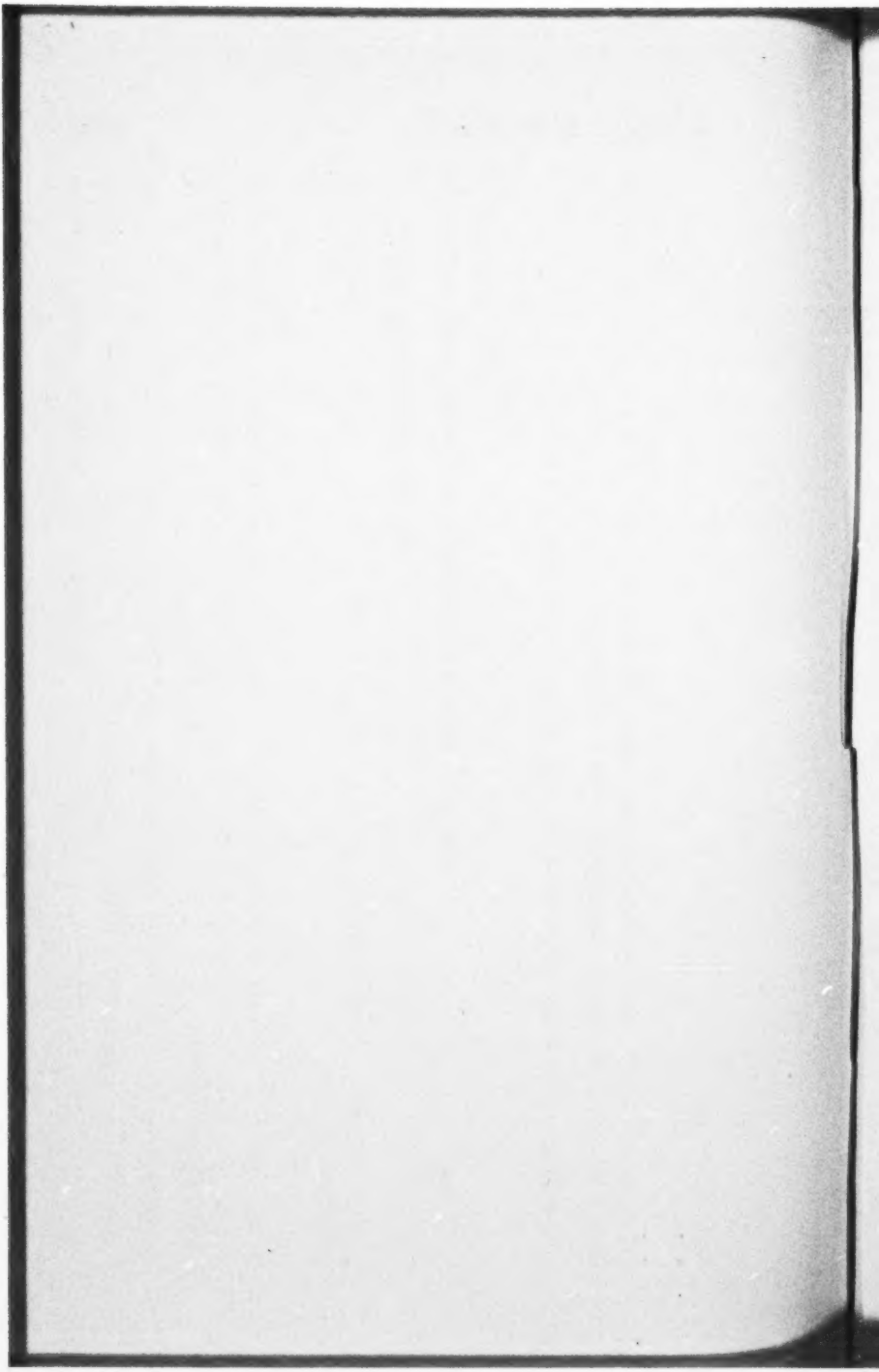
I hereby certify that the foregoing two sheets correctly show the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and official seal this 29th day of August, 1912.

C. R. DE LAP,

(Seal.) County Clerk & ex-Officio Recorder of Klamath County, Oregon.

By GEO. CHASTAIN, Deputy.



CLARKE COUNTY, WASHINGTON.

List of deeds, contracts, and other conveyances covering Oregon and California Railroad Company's granted lands, which were recorded in the County Records of Clarke County, Washington, prior to November 20, 1906, being in completion of sales made by, or in behalf of, Oregon and California Railroad Company, but not including trust deeds, blanket deeds, mortgages and leases executed by said Company.

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R	Acres	Consideration	Record Bk	Pg	Date of Record
Robert J. Taylor	QCD	3-14-92	S½ of SE¼	33	3N	1E	80	800.00	18	160	5-20-93
Peter G. Woolf	QCD	5-11-96	E½ of SW¼	33	3N	1E	80	880.00	37	311	6-5-97
S. G. Dennis	QCD	10-15-94	NE¼ of NE¼	17	3N	1E	40	280.00	38	418	12-20-97
W. W. Wandel	QCD	10-15-94	S½ of SE¼	7	3N	1E	80	600.00	42	290	10-3-98
Luella P. Miller	QCD	8-29-98	S½ of NW¼	33	3N	1E	80	800.00	40	78	12-23-98

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
M. E. McIrvin	QCD	10-3-98	Lots 4 & 5	29	3N	1E	41.31	330.48	40	225	2-15-99
Marion W. Woolf	QCD	2-15-97	NW¼ of SW¼	33	3N	1E	40	400.00	44	151	4-27-99
George Page	QCD	6-6-98	N½ of SE¼	7	3N	1E	80	560.00	44	294	6-12-99
J. E. McIrvin	QCD	8-29-98	Lot 3	29	3N	1E	16.30	97.80	45	285	3-17-00
S. D. Dennis	QCD	10-15-94	SE¼ of NE¼	17	3N	1E	40	280.00	45	289	3-19-00
George A. Larrabee	QCD	5-28-00	N½ of N½ of NW¼ of NE¼	17	3N	1E	10	95.00	45	378	7-12-00
Henry H. Kyle	QCD	10-29-00	SE¼ of SW¼	5	3N	1E	40	360.00	45	474	12-5-00

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
E. R. Goheen	QCD	9-8-02	NW¼ofNW¼of SE¼	17	3N	1E	10	142.50	53	255	11-28-02
Samuel Rhodes	QCD	9-8-02	NE¼ofNW¼of SE¼	17	3N	1E	10	142.50	53	256	11-28-02
Ida M. Eaton	QCD	10-6-02	E½ of SE¼ SW¼ of SE¼ SW¼ofNW¼ofSE¼	17	3N	1E	130	1172.50	55	94	5-2-03
Charles H. Howard	QCD	6-6-04	S½ of S½ of NW¼ of NE¼	17	3N	1E	10	100.00	58	353	3-16-05
E. R. Goheen	QCD	1-14-05	S½ of SE¼ of NW¼	17	3N	1E	20	285.00	60	4	5-27-05

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. D. Miller	QCD	12-1-04	S½ of SW¼ of NE¼	17	3N	1E	20	285.00	60	198	9-23-05
J. M. Custard	QCD	5-3-04	S½ of N½ of NW¼ of NE¼ N½ of S½ of NW¼ of NE¼	17	3N	1E	20	200.00	457		12-23-05
G. B. Woolf	Cont	6-6-88	E½ of SW¼	33	3N	1E	80	880.00	24	350	12-3-94
C. D. Hampton	Cont	2-6-00	NE¼ of NW¼ N½ of SE¼ of NW¼	17	3N	1E	60	540.00	45	286	3-17-00
Geo. Schimmelpfenny	Cont	2-26-88	NW¼ of NW¼	27	3N	1E	40	360.00	33	252	1-26-97

Grantee	Instrument	Date	Description	Will Mer. S.	T.	R.	Acres	Consider-ation	Record Bk	Pg	Date of Record
J. M. Custard	Cont	3-30-00	S½,N½,NW¼,NE¼ N½,S½ofNW¼ NE¼	17	3N	1E	20	200.00	45	400	8-18-00
Peter G. Woolf	Ctf	3-27-96	E½ of SW¼	33	3N	1E	80	880.00	30	319	3-31-96
Robt. J. Taylor	Ctf	5-17-90	S½ of SE¼	33	3N	1E	80	800.00	7	291	5-20-90
Marion W. Woolf	Ctf	6-9-96	NW¼ of SW¼	33	3N	1E	40	400.00	32	273	8-5-96

State of Washington)
County of Clarke)ss.

I hereby certify that the foregoing sheet correctly shows the record book and page and the date of recording the written instruments thereon referred to.

Witness my hand and seal of office on August 19, 1912.

WM. N. MARSHALL,

(Seal.) County Recorder of Clarke County, Washington.

By L. A. KIRCH.

TABLE OF CONTENTS

DEFENDANT'S EXHIBIT 257 Continued ____ 6037

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XIII

PAGES 6691-7249

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.:*
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.:*
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

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vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XIII

PAGES 6691-7249

DEFENDANTS' EXHIBIT 258

B. A. McA, May 11, 1912.

STATUS, AS OF DATE MAY 1, 1912, OF THAT PART OF THE GRANT SITUATED IN OREGON, MADE BY ACT OF CONGRESS APPROVED JULY 25, 1866, TO THE CALIFORNIA AND OREGON RAILROAD COMPANY, AND TO "SUCH COMPANY ORGANIZED UNDER THE LAWS OF OREGON AS THE LEGISLATURE OF SAID STATE SHALL DESIGNATE." — KNOWN IN OREGON AS THE "EAST SIDE GRANT."

—ooOoo—

Total acres in Primary Limits.....		3,823,426.71
Acres Lost for which the Company is entitled to Indemnity.		
Corvallis & Yaquina Bay Wagon Road Grant July 4, 1866.....	12,687.85	
Willamette Valley & Cascade Mountain Wagon Road Grant July 5, 1866	19,577.45	
Oregon Central Military Wagon Road Grant		

July 2, 1864.....	26,398.36	
Donation Land Claims...	1,143,925.70	
Swamp Lands	240.98	
State Selections	74,288.56	
Private Entries	407,486.27	
Mineral Entries	9,516.60	
Fort Lane Military Reservation	113.24	
	1,694,235.01	
Acres Lost for which Company is not entitled to indemnity.		
Roseburg & Coos Bay Wagon Road Grant March 3, 1869.		
These lands enured to the Railroad Grant but were erroneously patented by the U. S. to the Wagon Road Company and Railroad Company has no recourse	33,814.40	1,728,049.41
Acres which have enured to the Grant		
Patented	1,795,664.71	

Patents applied for.....	20,366.38	
Patents not yet applied for—Surveyed	51,372.21	
Patents not yet applied for — Unsurveyed....	227,974.00	2,095,377.30
Total Acres in Indemnity Limits		1,791,523.13

Acres Lost

Indian Reservation.....	845.68
Corvallis & Yakuina Bay Wagon Road Grant...	37,824.72
Willamette Valley and Cascade Mountain Wagon Road Grant...	37,833.01
Oregon Central Military Wagon Road Grant...	22,321.84
Roseburg & Coos Bay Wagon Road Grant...	26,771.59
Donation Land Claims...	55,874.26
Swamp Lands	1,672.30
State Selections	31,947.68
Private Entries	81,062.21
Private Entries Pending.	3,237.40
Mineral Entries	600.86

Oregon Central R. R. Co. (West side Co.) Primary Patents	3,409.07	
Northern Pacific R. R. Co. Lieu Selections Patented	15,538.94	
Northern Pacific R. R. Co. Lieu Selections Pending	7,915.68	
	326,855.24	
Acres Reserved by U. S. National Forests.....	490,327.88	
Klamath Irrigation project	645.95	
	490,973.83	817,829.07
Acres which have inured to Grant		
Patented	955,045.51	
Patents applied for.....	4,296.09	
Selected — not certified— may be rejected.....	5,710.46	965,052.06
Acres which are available for future selection Unsurveyed	8,640.00	8,640.00

Acres Primary Lost for which Company is entitled to Indemnity.....		1,694,235.01
Acres Indemnity Patented and Patents applied for.	965,052.06	
Acres Indemnity available for future selection..	8,640.00	973,692.06
Acres Primary Lost for which no Indemnity is available		720,542.95
Acres Primary Lost on account of Error in U. S. General Land Office whereby patent issued for Roseburg and Coos Bay Wagon Road.....		33,814.40
Total Deficit in Grant..		754,357.35
If National Forest Lands could be selected.....		490,327.88
The Deficit would be reduced to		264,029.47

STATUS, AS OF DATE MAY 1, 1912, OF GRANT MADE BY ACT OF CONGRESS APPROVED MAY 4, 1870 TO OREGON CENTRAL RAILROAD COMPANY,—KNOWN AS "WEST SIDE GRANT".

———ooOoo———

Total area in Primary Limits		501,807.38
Acres Lost for which the Company is entitled to Indemnity		
Donation Land Claims...	197,692.94	
Swamp Lands.....	997.42	
State selections.....	9,680.15	
Private Entries.....	37,238.01	
Oregon and California R. R. Co. Primary.....	14,204.31	
Oregon and California R. R. Co. Indemnity selections and patents...	41,190.76	
Acres Lost for which the Company is not entitled to Indemnity.....	301,003.59	
Quadrant	103,730.16	404,733.75

Acres which have inured to grant		
Patented	96,844.98	
Patents applied for.....	128.97	
Patents not yet applied for	99.68	97,073.63
Total acres in Indemnity Limits		123,907.97
Acres Lost		
Donation Land Claims...	7,347.18	
Swamp Lands	97.31	
State Selections	6,924.93	
Private Entries	12,842.70	
Quadrant	58,853.18	
Northern Pacific R. R. Co. Lieu Selection....	40.	86.105.30
Acres which have inured to Grant		
Patented		37,788.67
Acres which are available for future selection		
Unsurveyed		14.00
Acres Primary Lost for		

which Company is entitled to Indemnity....		301,003.59
Acres Indemnity Patented.	37,788.67	
Acres of Indemnity which are available for future Selection	14.00	37,802.67
Acres of Primary lost for which no Indemnity is available		263,200.92

DEFENDANT'S EXHIBIT 259

Is a map which has upon it a legend purporting to show in

Deep red—Twenty Miles Limit of Oregon Central R. R. Co. (East Side Grant)

Deep red—Thirty Miles Limit of Oregon Central R. R. Co. (East Side Grant)

Dark green—Twenty Miles Limit of Oregon Central R. R. Co. (West Side Grant)

Dark green—Twenty-five Miles Limit of Oregon Central R. R. Co. (West Side Grant)

Light green—Patented and Unpatented Unsold lands of both Grants not including Unselected Indemnity lands.

Carmine—Lands covered by Outstanding Contracts.

Blue—Lands deeded by Grantee Companies.

Yellow—Lands lost to both Grants by adverse entries.

Brown—Lands unavailable for Indemnity Selection because within Forest or other Reserves established subsequent to the Grant.

Green outline with white center—Unselected Indemnity including pending suspended lists and unsurveyed lands.

This map is certified up under order of Court and stipulation of parties, without being printed.

DEFENDANTS' EXHIBIT 260

is a map purporting to show Oregon and California Railroad Company's lands shaded in hatched black, and in

Green—Lands which carry timber

Yellow—Lands which are non-timber

Light green with black circle in center—Lands which are unsurveyed

Light green square with red circle in center—Lands which are unpatented

East Side Railroad marked in red

West Side Railroad marked in green

This map is certified up under order of Court and stipulation of parties, without being printed.

DEFENDANTS' EXHIBIT 261

consists of six original reports of timber cruisers, on Form 3384, three of them prepared by L. D. McLeod, and three by D. C. McLennan, as to various tracts of railroad land within the limits of this grant, one of which reports is a duplicate of the other five, excepting as to date, description of land and written matter and by whom made.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANS' EXHIBIT 262

STATEMENT SHOWING THE NUMBER OF ACRES OF LAND IN EACH COUNTY IN OREGON AND WASHINGTON INVOLVED IN SUIT 3340, UNITED STATES VS. OREGON AND CALIFORNIA RAILROAD COMPANY, AND SHOWING THE NUMBER OF ACRES WHICH HAVE BEEN COVERED BY OREGON AND CALIFORNIA R. R. CO'S FIELD EXAMINATIONS, AND THE CLASSIFICATIONS THEREOF AS DETERMINED FROM SUCH EXAMINATIONS.

COUNTY	Acres Involved in Suit 3340	Examined	Timber Land	Grazing Land	Agricultural Land
Washington E. S.....	2452.18	2452.18	2452.00	.....	.18
Multnomah E. S.....	8120.00	8120.00	6643.00	1457.00	20.00
Yamhill E. S.....	27039.90	27039.90	17963.94	8411.07	664.89
Clackamas E. S.....	89764.41	65727.94	37913.24	25613.66	2201.04
Polk E. S.....	37015.47	37015.47	36104.68	831.63	79.16

COUNTY	Acres Involved in Suit 3340	Examined	Timber Land	Grazing Land	Agricultural Land
Marion E. S.	30307.16	15161.46	6051.55	3819.75	5290.16
Lincoln E. S.	15906.00	15906.00	5795.00	9703.00	408.00
Benton E. S.	53706.99	53539.14	45964.36	6613.44	961.34
Linn E. S.	61880.20	8105.42	7000.42	1105.00	.....
Lane E. S.	299891.23	201255.05	187899.22	12006.12	1349.71
Douglas E. S.	616834.94	55475.35	49944.32	4726.41	804.62
Coos E. S.	106563.36	67121.34	62832.24	4065.02	224.08
Curry E. S.	7844.64	.....	.....	.....	.....
Josephine E. S.	167525.19	47473.46	30255.69	12219.54	4998.23
Jackson E. S.	441951.15	134989.81	90164.30	43314.07	1511.44
Klamath E. S.	43011.19	43011.19	38895.64	4115.55	.....
Tillamook E. S.	7037.00	6796.83	1400.00	5396.83	.....
Clarke (Wash) W. S.	212.50	212.50	120.00	.....	92.50
Columbia W. S.	17678.83	17518.83	16827.99	357.86	332.98
Tillamook W. S.	22704.00	22704.00	5994.73	15891.30	817.97

COUNTY	Acres Involved in Suit 3340	Examined	Timber Land	Grazing Land	Agricultural Land
Washington W. S.....	15680.00	15680.00	13319.65	1801.35	559.00
Multnomah W. S.....	927.00	927.00	927.00	.....	.....
Yamhill W. S.....	1563.11	1563.11	1123.11	440.00	.....
Totals	2075616.45	847795.98	665592.08	161888.60	20315.30
		40+% of Entire Grant	78+% of area Examined	19+% of area Examined	2+% of area Examined

San Francisco, Cal.,
July 30, 1912.

Filed May 10, 1913.
E. M. SIMMONS.

DEFENDANTS' EXHIBIT 263

is a map with the legend purporting to show in

Red—Settlement Entries

Yellow—Non-settlement Entries

Green—Patented Lands affected by Federal Suit No. 3340

Green, with small red circle in center of same—Unpatented Lands affected by Federal Suit No. 3340

Green, with black circle in center of same—Unsurveyed Lands affected by Federal Suit No. 3340

This map is certified up under order of Court and stipulation of parties, without being printed.

DEFENDANTS' EXHIBIT 264

purporting to show "SETTLEMENT ENTRIES" as follows:

Not Examined (Preemption —P
(Homestead —H
(Donation —D

Examined

Solid Green—plain—Grazing—owned by Entryman (Not Occupied)

Solid Green with T in center—Grazing—owned by Transferee (Not Occupied)

Solid Green with E in center—Grazing—occupied by Entryman

Solid Green with O in center—Grazing—occupied by Transferee

Solid Pink—plain—Timber—owned by Entryman (Not Occupied)

Solid Pink with T in center—Timber—owned by Transferee (Not Occupied)

Solid Pink with E in center—Timber—occupied by Entryman

Solid Pink with O in center—Timber—occupied by Transferee

NON SETTLEMENT ENTRIES

Not Examined

Solid Blue with E in center—Timber Entries owned by Entryman

Solid Blue—plain—Timber Entries owned by Transferees

Solid Yellow—plain—Scrip owned by Timber Companies

Solid Yellow with S in center—Scrip owned by small holdings

Solid White with C in center—Cash Entries

Solid White with M in center—Mineral Entries

Solid White with I in center—Indian Allotment

Solid White with Is. in center—Isolated Tract Patents

Solid White with Coal in center—Coal D. S.

This exhibit consists of—

12 sheets showing lands purporting to have been examined by Roy Woods

11 sheets showing lands purporting to have been examined by J. H. Ray

2 sheets showing lands purporting to have been examined by Edmondstone

10 sheets showing lands purporting to have been examined by Hawkins

14 sheets showing lands purporting to have been examined by Kendall

11 sheets showing lands purporting to have been examined by Kinser

9 sheets showing lands purporting to have been examined by Kempton

14 sheets showing lands purporting to have been examined by Cartier

30 sheets showing lands purporting to have been examined by E. & W. J. Lander

3 sheets showing lands purporting to have been examined by L. M. Stonebreaker

1 sheet showing lands purporting to have been examined by C. L. Knox

1 sheet showing lands purporting to have been examined by E. & W. J. Lander and J. H. Ray

1 sheet showing lands purporting to have been examined by E. & W. J. Lander and C. L. Knox

1 sheet showing lands purporting to have been examined by E. & W. J. Lander and Knox-Lynch

1 sheet showing lands purporting to have been examined by Stonebreaker & Kendall

11 sheets showing lands purporting to have been examined by Knox-Lynch.

5 lots showing lands purporting to have been examined by Olinger & White

12 sheets showing lands purporting to have been examined by Olinger

5 sheets showing lands purporting to have been examined by Ray-Kendall

1 sheet showing lands purporting to have been examined by Boehmer

6 sheets showing lands purporting to have been examined by Eberspacher

5 sheets showing lands purporting to have been examined by Beekman

9 sheets showing lands purporting to have been examined by J. W. White

5 sheets showing lands purporting to have been examined by Rodolf

13 sheets showing lands purporting to have been examined by Williams

5 sheets showing lands purporting to have been examined by W. R. Lake

16 sheets showing lands purporting to have been examined by R. H. Coppock

14 sheets showing lands purporting to have been examined by T. B. Landers

7 sheets showing lands purporting to have been examined by O'Shea

1 sheet showing lands purporting to have been examined by O'Shea-Lyman-Ashford

5 sheets showing lands purporting to have been examined by Lyman-Ashford

10 sheets showing lands purporting to have been examined by Look

9 sheets showing lands purporting to have been examined by Lyman

DEFENDANTS' EXHIBIT 265

consists of three packages, containing certified copies of so much of the Field Notes on file in the office of the United States Surveyor General for Oregon, at Portland, Oregon, as discloses the returns made by the United States Deputy Surveyors as to the character of the lands in the townships therein described; all of which lands so described are within the limits of the grants involved in this suit, but are not necessarily lands inuring to the Oregon and California Railroad Company under these grants, but are Field Notes of surveys which have been made from 1855 to 1908, and consist of 291

pages, omitting certificates.

This exhibit is not printed, but certified up under order of Court.

DEFENDANTS' EXHIBIT 266

is a map, showing in red the main line of railroad between Portland and Roseville Junction, and between Portland and McMinnville, via Forest Grove,—the latter line in green; also showing in red circles the elevation at each station along each line. These lines are thus located upon the standard Land Grant map of the Oregon and California Railroad Company and Central Pacific Railway Company.

This map is certified up under order of Court, and stipulation of parties, without being printed.

DEFENDANTS' EXHIBIT 267

is a photographic panorama, taken by B. A. Gifford on February 20, 1908, purporting to cover a distance of about eight miles westerly, through the central portion of township 7 south, range 7 west, and a portion of the western part of township 7 south, range 6 west; section 18, and portions of sections 7, 8, 16, 17, 21, 20, 19 and 30, in township 7 south, range 6 west; and sections 16, 17 and 24, and portions of sections 7, 8, 9, 10, 13, 14, 15, 18, 19, 20, 21, 22, 23, and 25, township 7 south, range 7 west; and the general character of the country and timber in the locality covered in township 7 south, range

7 west, and the western part of township 7 south, range 6 west; with blue print of these townships attached; and with affidavits of B. A. Gifford, F. A. Elliott and Homer D. Angell, with letter of Angell & Fisher attached explanatory of same.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 268

consists of a panoramic picture (four pictures taken in panoramic form), and two pictures taken in panoramic form, and one picture separately, with blue print and letter of transmittal from A. W. Rees to B. A. McAllaster of date April 15, 1912; purporting to show a panoramic view of township 20 south, range 1 west, taken by B. A. Gifford, from a point near the quarter post on the east line of section 12, April 3, 1912; and also purporting to be two smaller views of the northeast corner of township and a small view of Eagle Rest from the top of which the panoramic view was taken; also purporting to be a panoramic view showing sections 14 and 19, southeast quarter of section 1, sections 25, 27 and 35, township 20 south, range 1 west; blue print plat purporting to show territory embraced in photographs.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 269

purports to be photograph No. 2942, taken from the NE of SE of section 3, township 4 north, range 3 west, Columbia county, Oregon, looking south, 25° west; and photograph No. 2943, purporting to have been taken from the SW of SW of section 3, township 4 north, range 3 west, W. M., Columbia county, Oregon, looking south, 45° west; and both photographs purporting to be taken by B. A. Gifford; also blue print of premises purporting to be covered by photographs; transmitted in letter of A. W. Rees, June 28, 1912.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 270

consists of photographs purporting to show certain of the lands and improvements thereon involved in the suit, which exhibit is certified up under order of Court and stipulation of parties.

DEFENDANTS EXHIBIT 271

consists of three signed applications made to the Oregon and California Railroad Company by Justus H. Hohl, C. M. Nelson, and Henry M. Williams, respectively, as follows:

DEFENDANTS' EXHIBIT 271

To the Oregon and California Railroad Company—
Land Department.

I, Justus H. Hohl, of East St. Louis, Ill., State of Illinois, do hereby apply to purchase from the Oregon and California Railroad Company the following described premises, to wit: S. E. ¼ of section number 1 in township number 8, South of range number 2 East of Willamette Meridian, in Marion County, State of Oregon, at the price of $2.50 per acre. Said lands being 160 acres of the land now owned and held by said company under and by virtue of the grant of the Congress of the United States of America, and all acts and parts of acts of said Congress pertaining or supplemental thereto. I further state that I am a citizen and resident of the United States and State of Illinois, over the age of 21 years, and that I make this application in accordance with the act of Congress above mentioned; that I will faithfully and honestly endeavor to comply with all the requirements of said act of Congress required of purchasers of said land at said price of $2.50 per acre. That this application is made in good faith, and I desire to purchase said lands for my use and benefit, and not for the use or benefit or as agent of any other person or corporation.

I herewith tender to said Company the sum of $2.50 per acre in payment for said land, amounting in the aggregate to the sum of $400; and demand a deed of

Conveyance from said Oregon and California Railroad Company to myself for said lands.
In presence of

JUSTUS H. HOHL.

HARVEY HITGERT)
GEO. GODION)

State of Illinois)
) ss.
Co. of St. Clair)

I, Justus H. Hohl, being duly sworn, depose and say that I am the person making the above application, and who signed the same; that I know the contents thereof, and the same are true as I verily believe.

JUSTUS H. HOHL.

SUBSCRIBED AND SWORN TO before me this 12th day of June 1909. I further certify my Notarial Commission expires Jany 6, 1910.

E. J. WALLES,
Notary Public.

(Seal)

To the Oregon and California Railroad Company—
Land Department.

I, C. M. Nelsen of North Yakima, State of Washington, do hereby apply to purchase from the Oregon and California Railroad Company the following described premises, to-wit: North West quarter of section number 9, in township number 20; South of range number 7, West of Willamette Meridian, in Douglas County,

State of Oregon, at the price of $2.50 per acre. Said lands being 160 acres of the lands now owned and held by said company under and by virtue of the grant of the Congress of the United States of America, and all acts and parts of acts of said Congress pertaining or supplemental thereto. I make this application in accordance with the acts of Congress above mentioned; that I will faithfully and honestly endeavor to comply with all the requirements of said act of Congress required of purchasers of said land at said price of $2.50 per acre. That this application is made in good faith and I desire to purchase said lands.

I herewith tender to said Company the sum of $2.50 per acre in payment for said land, amounting in the aggregate to the sum of $400.00; and demand a deed of Conveyance from said Oregon and California Railroad Company to myself for said lands.

C. M. NELSEN.

In presence of
.....)
.....)

STATE OF WASHINGTON)
)ss.
County of Yakima)

I, C. M. Nelsen, being duly sworn, depose and say that I am the person making the above application, and who signed the same; that I know the contents thereof, and the same are true as I verily believe.

C. M. NELSEN.

SUBSCRIBED AND SWORN TO before me

this 4 day of Oct. 1909

BURTON S. SNYDER
Notary Public for Washington.

To the Oregon and California Railroad Company—
Land Department.

I, Henry M. Williams of Portland, State of Oregon, do hereby apply to purchase from the Oregon and California Railroad Company the following described premises, to-wit Northwest quarter (NW¼) of section number 11 in township number 24; South of range number 2 West of Willamette Meridian, in Douglas County, State of Oregon at the price of $2.50 per acre. Said lands being 160 acres of the land now owned and held by said company under and by virtue of the grant of the Congress of the United States of America, and all acts and parts of acts of said Congress pertaining or supplemental thereto. I further state that I am a Citizen and resident of the United States and State of Oregon over the age of 21 years, and that I make this application in accordance with the acts of Congress above mentioned; that I will faithfully and honestly endeavor to comply with all the requirements of said act of Congress required of purchasers of said land at said price of $2.50 per acre. That this application is made in good faith and I desire to purchase said lands for my use and benefit, and not for the use or benefit or as agent of any other person or corporation.

I herewith tender to said Company the sum of $2.50 per acre in payment for said land, amounting in the

aggregate to the sum of $400.00; and demand a deed of Conveyance from said Oregon and California Railroad Company to myself for said lands.

HENRY M. WILLIAMS.

In presence of
W. F. HALLWELL)
J. H. DEVLIN)

STATE OF OREGON)
) ss.
County of Multnomah)

I, Henry M. Williams being duly sworn, depose and say that I am the person making the above application, and who signed the same; that I know the contents thereof, and the same are true as I verily believe.

HENRY M. WILLIAMS.

SUBSCRIBED AND SWORN TO before me this 9th day of July 1909.

J. H. DEVLIN, (Seal)
Notary Public for Oregon,
Residing at Portland.

DEFENDANT'S EXHIBIT 272

consists of the following:

(a) Blank printed circular letter, containing at the top thereof—"H. W. MILLER, Acting Attorney For Applications For The Purchase Of Oregon And California Railroad Lands, Portland, Ore."

(b) Blank printed form of application to purchase particular lands of the Company within the limits of this Grant, addressed "To the Oregon and California Railroad Company, Land Department."

(c) Printed form of "Power of Attorney" in favor of H. W. Miller.

(d) Printed despatch in Oakland Tribune, California, issue of March 17, 1912, advertising Trewavas, Lee & Co. of 26 Montgomery Street. San Francisco, California, in their business in relation to locating parties upon lands within the limits of these Grants.

(e) Descriptive circular issued by Daniel McDonald, Hotel Chandler, Marshfield, Oregon, with reference to method of locating applicants for the purchase of lands within the limits of these Grants.

(f) Telegraphic despatch of Tuesday, January 27, 1908, from Seattle, Washington, appearing the San Francisco Chronicle on January 28, 1908, advising that Land Commissioner Ballinger had written a letter to the local United States Land Office at Seattle, Washington, warning persons from paying heed to newspaper advertisements of F. P. Rolfe, who was soliciting persons to file on lands of the Oregon and California Railroad Company within the limits of these Grants.

(g) Advertisement by Oregon Development Company, 1110 and 12 Call Bldg., offering to locate applicants on 160 acres of timber lands in Oregon for $150.00.

(h) Letter of Land Commissioner McAllaster of date

March 19, 1912, to Wm. F. Herrin, relative to the activity of Trewavas, Lee & Co. in soliciting applicants for the purchase of lands of the Oregon and California Railroad Company within the limits of these Grants.

(i) Printed circular entitled "RAILROAD LANDS, Statement of Facts", issued by Trewavas, Lee & Co., 26 Montgomery Street, San Francisco, California.

(j) Circular letters of John M. Kreider of St. Louis, Missouri, vouching for Mr. Kreider's integrity, bearing date July 21, 1909; circular of John M. Kreider, Suite 806-7 New Bank of Commerce Bldg., St. Louis, Mo., headed "TIMBER, Opportunity Of A Life-time"; letter of John M. Kreider to A. G. Edwards of Omaha, Nebraska; letter of Land Commissioner McAllaster, July 20, 1909, to Edwin R. Tuttle, Traveling Passenger Agent, U.P. R.R. Co., St. Louis, Mo., enclosing a clipping from an Omaha paper, being an advertisement of J. M. Kreider, headed "OREGON TIMBER". All of the foregoing relating to the activity of John M. Kreider in inducing parties to make applications to purchase lands of the Oregon & California Railroad Company within the limits of these Grants.

(k) Advertisement under the head "TIMBER CLAIMS" by P. O. Box 1206, Tacoma, Washington.

(l) Circular letter of Perkins & Honefenger, attorneys-at-law, Spokane, Washington, appearing in the Evening Telegram of Portland, Oregon, September 16, 1907, describing these lands of the Oregon and Califor-

nia Railroad Company in this suit, and advertising these lands as heavily timbered, and soliciting applications to purchase lands of the Oregon and California Railroad Company within the limits of these Grants. Also on the back of this circular the name of Coats & Horsman, 415-416 Mohawk Block, Spokane, Washington, "RAILROAD LANDS $2.50 PER ACRE, RANGING FORM 3,000,000 TO 6,000,000 FT. TO QUARTER SECTION. DIRECT PURCHASE. NO RIGHTS REQUIRED."

(m) Circular letter of M. P. Alford, Chicago Office 923, 184 LaSalle Street, quoting the Act of April 10, 1869, relating to the Grant made to the Oregon and California railroad Company; printed circular of M. P. Alford headed "EXCEPTIONAL—AN OPPORTUNITY TO FILE ON TIMBER LANDS IN OREGON."

(n) Letter of Wm. D. Fenton, August 9, 1907, to Acting Land Agent Charles W. Eberlein, enclosing advertisements of Howse & Miller, 66 Sixth Street, and of J. E. Verdin, Grants Pass, Oregon, appearing in the "Evening Journal" and "Evening Telegram" of Portland, Oregon, headed as follows: "FOR SALE—TIMBER LANDS" and "TIMBER LANDS" respectively.

(o) Advertisement of Forrest Land Company, 612-613 Shukert Bldg., and 413 Karbach block, under the heads respectively of "OREGON TIMBER LANDS" and "OREGON", appearing in the Omaha World

Herald of December 18, 1909.

There various advertisements thus described are not printed, but certified up under order of Court.

DEFENDANTS' EXHIBIT 273

consists of 87 photographs, purporting to show certain of the lands and improvements therein involved in this suit, which exhibit is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 274

consists of six photographs, purporting to show certain of the lands and improvements thereon, involved in this suit, which exhibit is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 275

is described in the testimony of B. A. McAllaster, and was not furnished, or filed.

DEFENDANTS' EXHIBIT 276

purports to be a summary of the "SELECTION LISTS" of the Oregon and California Railroad Company, West Side Grant, East Side Grant, as follows:

DEFENDANTS' EXHIBIT 276
WEST SIDE GRANT
OREGON AND CALIFORNIA RAILROAD COMPANY
SELECTION LISTS.

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
3/31/77	O.C.	1	91,694.78	17,735.27	Pat.	19,316.48	102.95
					Lost	45,245.04	9,434.80
					Resel.	27,133.26	8,189.77
					Er.Sel.		7.75
					Total	91,694.78	17,735.27
7/22/79	O.C.	2 Lieu		(160)	Er.Sel.		(160)
7/22/79	O.C.	3 Lieu		(80)	Er.Sel.		(80)
12/12/80	O.C.	3	34,368.09	17,014.32	Pat.	21,246.87	

Date Certified	Dist.	No.	Acres per plat Primary	Acres per plat Indemnity	Status	Primary	Indemnity
					Unsold	40.00	
					Cont.	40.00	
					Deeded	40.00	
					Lost	13,001.22	8,386.38
					Rear		8,627.94
					Total	34,386.09	17,014.32
	O.C.	Re. 3		8,627.94	Pat.		8,189.77
					Lost		438.17
					Total		8,627.94
11/10/86	O.C.	4	1,349.05		Pat.	1,109.05	
					Resel.	240.00	
					Total	1,349.05	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(11/20/86)	O.C.	3	61,179.54	400.00	Lost	61,179.54	400.00
(11/27/86)	O.C.	—	62,317.95				
3/5/88	Van.	1		40.00	Pat.		40.00
3/5/88	Van.	2		160.00	Lost		160.00
3/5/88	Van.	1	990.11		Pat.	950.11	
					Lost	40.00	
					Total	990.11	
3/5/88	Van.	2	723.55		Pat.	680.00	
					Lost	43.55	
					Total	723.55	
3/5/88	Van.	3	240.00		Lost	240.00	
11/10/90	O.C.	5		28,622.61	Lost		86.41
					Resel.		8,288.26

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Rear		20,247.94
					Total		28,622.61
	O.C.	1 Re) 5)		20,247.94	Rear		20,247.94
	O.C.	2 Re) 5)		20,247.94	Pat.		20,207.94
					Lost		40.00
					Total		20,247.94
(10/13/90)	O.C.	6		4,360.02	Lost		3,840.02
					Resel.		520.00
					Total		4,360.02
(10/13/90)	O.C.	7		29,789.86	Lost		27,254.66
					Ersel.		2,535.20

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Total		29,789.86
6/8/93	O.C.	8	4,858.53		Pat*	4,858.53	
	*includes 249.07 acres East Side Indemnity Lands erroneously patented as West Side Primary.						
7/24/93	O.C.	9	5,130.59		Rear.		5,130.59
	O.C.	Re)	5,130.59		Pat.		3,783.58
		9)			Lost		1,347.01
					Total		5,130.59
7/27/93	O.C.	10	3,158,74		Pat.		2,870.04
					Lost		288.70
					Total		3,158.74
9/3/95	O.C.	11	34,091.50		Pat.*	34,091.50	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
	*includes 80 acres East Side Indemnity Lands erroneously patented as West Side Primary.						
11/11/95	O.C.	12	1,154.91		Pat.	1,154.91	
6/6/96	O.C.	13		735.80	Pat.		655.80
					Lost		80.00
					Total		735.80
6/25/96	O.C.	14		1,933.78	Pat.		1,933.78
8/4/96	O.C.	15	5,186.92		Pat.*	5,186.92	
	*includes 320 acres East Side Indemnity Lands erroneously patented as West Side Primary.						
1/27/97	O.C.	16	1,680.00		Pat.*	1,680.00	
	*includes 1680 acres East Side Indemnity Lands erroneously patented as West Side Primary.						

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
11/8/98	O.C.	17		520.00	Pat.		520.00
7/10/08	Port.	71	.26		Uns.	.26	

SUMMARY.

Status	Acres Primary	Indemnity	Lieu.
Patented	90,274.37	38,303.86	
Unpatented—Unsold	40.26		
Unpatented—Contracted	40.00		
Unpatented—Deeded	40.00		
Lost	119,749.35	51,756.15	
Net Acres Selected	210,143.98	90,060.01	

EAST SIDE GRANT
OREGON AND CALIFORNIA RAILROAD COMPANY
SELECTION LISTS.

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
7/28/70	O.C.	1	21,867.40		Pat.	21,757.52	
					Lost	109.88	
					Total	21,867.40	
7/28/70	O.C.	2	11,451.09		Pat.	10,797.38	
					Lost	614.89	
					Resel.	38.82	
					Total	11,451.09	
4/29/71	O.C.	3	35,240.78		Pat.	34,868.79	
					Lost	331.99	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Er. Sel.	40.00	
					Total	35,240.78	
4/29/71	O.C.	4	25,821.96	40.00	Pat.	25,224.79	40.00
					Lost	500.75	
					Re. Sel.	80.00	
					Er. Sel.	16.42	
					Total	25,821.96	40.00
4/29/71	O.C.	5	15,683.48		Pat.	15,602.63	
					Lost	80.85	
					Total	15,683.48	
4/29/71	O.C.	6	1,045.50	47,715.31	Pat.	876.00	37,353.09

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost		40.00
					Re. Sel.	169.50	
					Dup.		5,920.22
					Rear.		4,402.00
					Total	1,045.50	47,715.31
	O.C.	Re.) 6)		4,402.00	Pat.		4,402.00
4/29/71	O.C.	7	160.00	16,096.97	Pat.	160.00	14,772.97
					Rear.		1,324.00
					Total	160.00	16,096.97
	O.C.	Re.) 7)		1,324.00	Pat.		1,324.00
9/21/71	Ros.	1	234,608.50		Pat.	214,046.56	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Unsold	80.00	
					Deeded	148.64	
					Lost	14,501.28	
					Resel.	4,120.46	
					Er. Sel.	577.89	
					Dup.	1,133.67	
					Total	234,608.50	
9/23/71	Ros.	2		26,548.26	Pat.		26,326.38
					Lost.		20.50
					Dup.		120.00
					Rear.		81.38
					Total		26,548.26
	Ros.	Re.) 2)		81.38	Pat.		81.38

Date Certified	Dist.	No.	Acres per plat Primary	Acres per plat Indemnity	Status	Primary	Indemnity
6/21/76	O.C.	8	44,466.04	23,290.36	Pat.	44,146.04	17,437.21
					Lost	320.00	
					Er. Sel.		20.00
					Rear.		5,833.15
					Total	44,466.04	23,290.36
6/21/76	O.C.	Am.) 8)		22,750.99	Pat.		17,206.43
					Rear.		5,544.56
					Total		22,750.99
6/21/76	O.C.	Re.) 8)		5,833.15	Pat.		5,673.15
					Er. Sel		160.00
					Total		5,833.15

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
9/27/76	Ros	3	58,408.85	1,867.98	Pat.	57,409.28	1,032.43
					Lost.	484.81	80.00
					Re. Sel.	480.00	40.00
					Er. Sel.		715.55
					Dup.	34.76	
					Total	58,408.85	1,867.98
3/14/77	O.C.	9		(1,161.66)	Pat.		(242.55)
		Lieu			Er. Sel.		(919.11)
					Total		(1,161.66)
6/28/78	O.C.	10	200.00	32,167.86	Pat.	160.00	22,650.78
					Lost	40.00	
					Er. Sel.		79.04
					Dup.		560.00

Date Certified	Dist.	No.	Acres per plat Primary	Acres per plat Indemnity	Status	Primary	Indemnity
					Rear.		8,878.04
					Total	200.00	32,167.86
	O.C.	Am.) 10)		18493.84	Pat.		18,493.84
	O.C.	Re.) 10)		13,034.98	Pat.		12,954.98
					Lost		80.00
7/22/79	O.C.	11 Lieu		(160.00)	Lost		(160.00)
7/22/79	O.C.	12 Lieu		(315.58)	Lost.		(315.58)
	O.C.	Am.) 12 Lieu		(275.58)	Lost		(275.58)

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
3/29/80	Ros.	4	3,070.34	39,688.82	Pat.	640.00	
					Lost		208.52
					Resel.	2,430.34	4,640.00
					Er.Sel.		159.63
					Rear.		34,680.67
					Total	3,070.34	39,688.82
	Ros.	Am.) 4)		36,463.16	Pat.		36,343.53
					Er.Sel.		119.63
					Total		36,463.16
	Ros.	Re.) 4		760.00	Pat.		760.00
3/30/80	O.C.	13	2,117.22	28,244.83	Pat.*	661.22	26,739.80
					Lost	1,438.45	120.00

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Resel.	17.55	320.00
					Rear.		1,065.03
					Total	2,117.22	28,244.83
	*includes 6,283.23 acres West Side Primary lands erroneously patented as East Side Indemnity.						
	O.C.	Re.) 13		1,075.47	Pat.		670.25
					Lost		400.00
					Dup.		5.22
					Total		1,075.47
6/30/80	Ros.	5	69,254.79		Pat.	61,720.98	
					Lost	975.59	
					Re.Sel.	6,558.22	
					Total	69,254.79	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
4/12/83	O.C.	14 Lieu		(191.34)	Lost		191.34
8/16/86	Ros.	7	11,927.01		Pat.	10.812.50	
					Deeded	4.41	
					Lost	589.55	
					Re.Sel.	520.55	
					Total	11,927.01	
8/16/86	Ros.	8	756.16	40.00	Pat.	756.16	40.00
5/20/87	O.C.	15	97.55		Pat.	97.55	
5/23/87	Ros.	9	941.20		Pat.	941.20	
5/26/87	O.C.	16	160.00		Lost	160.00	
6/13/87	O.C.	16	1,386.70		Pat.	1,346.26	
					Deeded	40.44	
					Total	1,386.70	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
6/13/87	O.C.	17		6,122.84	Pat.		3,516.59
					Rear.		2,606.25
					Total		6,122.84
	O.C.	Re) 17)		2,606.25	Pat.		2,566.25
					Resel.		40.00
					Total		2,606.25
7/15/87	Ros.	10	432.30		Pat	432.30	
8/19/87	Ros.	11		58,276.51	Pat.		51,498.41
					Resel.		640.00
					Rear.		6,138.10
					Total		58,276.51

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
	Ros.	Re) 11)			Pat.		6,138.10
8/26/87	O.C.	18	240.00	99,482.14	Pat.*	240.00	68,312.60
					Rear.		31,169.54
					Total	240.00	99,482.14
	*includes 240 acres West Side Primary lands erroneously patented as East Side Indemnity.						
	O.C.	Re.) 18)		31,172.78	Pat.		29,092.78
					Resel.		2,000.00
					Er.Sel.		80.00
					Total		31,172.78
10/1/87	O.C.	19		640.00	Pat.		640.00
10/6/87	Ros.	12	1,761.38	162,247.62	Pat.	1,721.38	152,146.12

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost	40.00	180.00
					Dup.		40.00
					Rear.		9,881.50
					Total	1,761.38	162,247.62
	Ros.	Re.) 12)		9,881.50	Pat.		9.173.87
					Lost		707.63
					Total		9,881.50
2/28/88	Ros.	13	971.88		Pat.	971.88	
3/17/88	Ros.	14		245.17	Pat.		245.17
3/17/88	Ros.	15		7,280.22	Pat.		4,484.88
					Rear.		2,795.34
					Total		7,280.22

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
	Ros.	Re.) 15)		3,274.30	Pat.		3,080.00
					Unsold		160.00
					Lost		34.30
					Total		3,274.30
8/18/88	Ros.	Re.) 16)		9,237.53	Pat.		8,797.53
					Rear.		440.00
					Total		9,237.53
	Ros.	16		440.00	Pat.		440.00
8/18/88	Ros.	17	482.72		Pat.	482.72	
9/3/88	L.V.	1	1,837.86		Pat.	1,837.86	
9/3/88	L.V.	2		39,470.22	Rear.		39,470.22

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
	L.V.	Am.) 2)		39,459.63	Pat.		38,459.63
					Rear.		1,000.00
					Total		39,459.63
	L.V.	Re.) 2)		1,720.00	Pat.		480.00
					Lost		1,200.00
					Resel.		40.00
					Total		1,720.00
12/27/88	Ros.	18	360.00		Pat.	360.00	
1/28/89	Ros.	19	240.20		Pat.	240.20	
4/15/89	O.C.	20		(160.00)	Lost		(160.00)
		Lieu					
9/16/89	Ros.	20		6,918.49	Pat.		6,918.49
5/15/90	Ros.	21	68,544.37		Pat.	64,652.62	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Unsold	80.00	
					Lost	3,181.81	
					Resel.	629.94	
					Total	68,544.37	
5/15/90	Ros.	22	2,288.42		Pat.	2,247.28	
					Resel.	41.14	
					Total	2,288.42	
5/15/90	Ros.	23	240.00		Pat.	240.00	
10/8/90	Ros.	24		769.48	Pat.		649.65
					Rear.		119.83
					Total		769.48
	Ros.	Re.)		119.83	Pat.		119.83

Date Certified	Dist.	No.	Acres per plat Primary	Acres per plat Indemnity	Status	Primary	Indemnity
		24)					
3/14/91	O.C.	17	2,724.06		Pat.	2,684.85	
					Lost	39.21	
					Total	2,724.06	
3/14/91	O.C.	20		39,322.15	Resel.		39,322 15
(8/4/91)	O.C.	21		3,220.60	Lost		760.00
					Rear.		2,460.60
					Total		3,220.60
9/24/91	O.C.	1 Re)		2,460.60	Resel.		640.00
		21)			Rear.		1,820.60
					Total		2,460.60
	O.C.	2Re)		1,820.60	Pat.		1,820.60

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
		21)					
	O.C.	22		4,554.16	Lost		325.88
					Resel.		320.00
					Er.Sel.		480.00
					Rear.		3,428.28
					Total		4,554.16
9/24/91	O.C.	1Re)		3,908.28	Rear.		3,908.28
		22)					
	O.C.	Re)		3,908.28	Pat.		3,428.28
		22)			Er. Sel.		480.00
					Total		3,908.28
3/5/92	O.C.	23		241.30	Pat.		241.30
	O.C.	24		6,395.76	Lost		6,395.76

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
3/8/92	Ros.	25		2,259.07	Pat.		1,879.06
					Lost		80.00
					Rear.		300.01
					Total		2,259.07
	Ros.	Re.) 25)		300.01	Pat.		300.01
4/12/92	Ros.	26		330.83	Pat.		330.83
(5/19/92)	O.C.	24		(Est.) 6,720.00	Rej.		Unsurveyed
(5/19/92)	O.C.	25		1,120.00	Lost		1,120.00
(5/19/92)	O.C.	32		(Est.) 11,520.00	Rej.		Unsurveyed
(5/19/92)	O.C.	33		(Est.) 7,560.00	Rej.		Unsurveyed

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(5/19/92)	O.C.	34	(Est.)	7,120.00	Rej.		Unsurveyed
(5/19/92)	O.C.	35	(Est.)	4,800.00	Rej.		Unsurveyed
(5/19/92)	O.C.	36	(Est.)	11,520.00	Rej.		Unsurveyed
(5/19/92)	O.C.	37	(Est.)	2,720.00	Rej.		Unsurveyed
(5/19/92)	O.C.	38	(Est.)	1,280.00	Rej.		Unsurveyed
(5/19/92)	O.C.	39	(Est.)	3,600.00	Rej.		Unsurveyed
(5/19/92)	O.C.	40	(Est.)	8,960.00	Rej.		Unsurveyed
(5/19/92)	O.C.	41	(Est.)	11,520.00	Rej.		Unsurveyed
(5/19/92)	O.C.	42	(Est.)	640.00	Rej.		Unsurveyed
(5/19/92)	O.C.	43	(Est.)	4,480.00	Rej.		Unsurveyed
(7/12/92)	O.C.	44	(Est.)	320.00	Rej.		Unsurveyed

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(7/12/92)	O.C.	45	(Est.)	960.00	Rej.		Unsurveyed
(7/12/92)	O.C.	46	(Est.)	720.00	Rej.		Unsurveyed
(7/12/92)	O.C.	47	(Est.)	4,480.00	Rej.		Unsurveyed
(7/12/92)	O.C.	48	(Est.)	3,760.00	Rej.		Unsurveyed
(7/12/92)	O.C.	49	(Est.)	4,800.00	Rej.		Unsurveyed
(7/12/92)	O.C.	50	(Est.)	6,160.00	Rej.		Unsurveyed
(7/12/92)	O.C.	51	(Est.)	11,520.00	Rej.		Unsurveyed
(7/12/92)	O.C.	52	(Est.)	320.00	Rej.		Unsurveyed
(8/16/92)	Ros.	27		3,714.15	Pat.		3,714.15
(10/6/92)	Ros.	30		11,502.67	Rear		11,502.67
	Ros.	Re.) 30)		11,502.67	Rear.		11,502.67

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(10/19/92)	Ros.	28		5,739.25	Pat.		5,739.25
(10/19/92)	Ros.	29		11,719.66	Pat.		11,719.66
(11/22/92)	Ros.	31		5,118.40	Rear		5,118.40
	Ros.	Re.) 31)		5,118.40	Pat.		5,118.40
(12/10/92)	Ros.	30B		1,516.89	Lost		1,116.89
					Resel.		400.00
					Total		1,516.89
12/12/92	Ros.	30A		9,985.78	Rear.		9,985.78
	Ros.	Re.) 30A)		9,985.78	Pat.		9,985.78
(12/12/92)	Ros.	32		3,629.86	Rear.		3,629.86
(12/17/92)	O.C.	50		6,275.80	Rear.		6,275.80

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
12/28/92	Ros.	32A		3,549.86	Rear.		3,549.86
	Ros.	Re.) 32A)		3,549.86	Pat.		3,549.86
(12/28/92)	Ros.	32B		80.00	Lost		80.00
(1/14/93)	O.C.	50B		360.00	Lost		360.00
1/20/93	O.C.	Am.) 49)		4,854.20	Rear.		4,854.20
	O.C.	Re.) 49)		4,854.20	Pat.		4,854.20
1/20/93	O.C.	50A		5,915.80	Rear.		5,915.80
	O.C.	Re.) 50A)		5,915.80	Pat.		5,915.80
(4/19/93)	Ros.	33		2,635.28	Rear.		2,635.28
(4/19/93)	Ros.	34		12,463.72	Rear.		12,463.72

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
5/22/93	Ros.	33A		2,550.29	Rear.		2,550.29
	Ros.	Re.) 33A)		2,550.29	Pat.		2,388.29
					Lost		162.00
					Total		2,550.29
(5/22/93)	Ros.	33B		84.99	Lost.		84.99
5/22/93	Ros.	34A		12,246.66	Rear.		12,246.66
	Ros.	Re.) 34A)		12,246.66	Pat.		11,086.66
					Lost		1,160.00
					Total		12,246.66
(5/22/93)	Ros.	34B		217.06	Lost		217.06
(6/1/93)	O.C.	27		1,760.00	Lost		1,760.00
	O.C.	28		1,600.00	Lost		1,600.00

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(6/8/93)	O.C.	29		7,721.42	Rear.		7,721.42
(6/8/93)	O.C.	30		11,505.88	Rear.		11,505.88
	O.C.	Re.) 30)		11,505.88	Lost		11,505.88
(6/8/93)	O.C.	31		(Est.) 4,120.00	Rej.		Unsurveyed
8/10/93	Ros.	35		7,495.77	Pat.		7,255.77
					Lost		240.00
					Total		7,495.77
	O.C.	Re.) 39)		3,491.22	Rear		3,491.22
8/14/93	O.C.	39A		2,050.80	Rear.		2,050.80
	O.C.	Re.) 39A)		2,050.80	Pat.		2,050.80

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(8/14/93)	O.C.	39B		1,440.42	Lost		1,440.42
12/6/93	Ros.	36	522.26		Pat.	482.26	
					Lost	40.00	
					Total	522.26	
1/10/94	Ros.	37		5,512.74	Rear.		5,512.74
	Ros.	Re.) 37)		5,512.74	Pat.		5,512.74
1/10/94	Ros.	38		5,177.46	Rear.		5,177.46
	Ros.	Re.) 38)		5,177.46	Pat.		4,280.93
					Lost		896.53
					Total		5,177.46
(2/2/94)	Ros.	39		960.00	Rear.		960.00

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(2/2/94)	Ros.	40		1,441.69	Rear.		1,441.69
3/17/94	Ros.	39A		680.00	Rear.		680.00
	Ros.	Re.) 39A)		680.00	Pat.		680.00
(3/17/94)	Ros.	39B		280.00	Lost		280.00
3/17/94	Ros.	40A		1,200.94	Rear.		1,200.94
	Ros.	Re.) 40A)		1,200.94	Pat.		1,200.94
(3/17/94)	Ros.	40B		240.75	Lost		240.75
6/7/94	Ros.	41	638.24		Pat.	638.24	
(6/21/94)	O.C.	Re.) 29)		7,721.42	Rear.		7,721.42
(7/10/94)	O.C.	32		11,963.24	Rear.		11,963.24
7/20/94	O.C.	48		3,932.52	Rear.		3,932.52

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(7/23/94)	O.C.	35		4,793.83	Rear.		4,793.83
(7/25/94)	O.C.	36		11,547.38	Rear		11,547.38
(7/30/94)	O.C.	29B		160.00	Lost.		160.00
9/8/94	O.C.	Re.) 32)		11,963.24	Pat.		11,963.24
9/8/94	O.C.	Re.) 35)		4,793.83	Pat.		4,793.83
9/8/94	O.C.	Re.) 36)		11,547.38	Pat.		11,443.67
					Lost		103.71
					Total		11,547.38
9/8/94	O.C.	Re.) 48)		3,932.52	Pat.		3,772.52
					Lost		160.00
					Total		3,932.52

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(9/18/94)	Ros.	42		8,035.81	Rear.		8,035.81
9/28/94	O.C.	29A		8,561.42	Pat.		7,561.42
(12/26/94)	O.C.	53		160.00	Lost		160.00
5/2/95	O.C.	51		160.00	Pat.		160.00
(6/14/95)	Ros.	43		3,431.30	Rear.		3,431.30
(6/18/95)	Ros.	44		11,562.04	Rear.		11,562.04
(6/21/95)	O.C.	Re.) 24)		6,635.76	Rear.		6,635.76
(6/26/95)	O.C.	43		7,244.06	Rear.		7,244.06
7/6/95	Ros.	42A		7,394.98	Pat.		7,394.98
(7/6/95)	Ros.	42B		640.83	Lost		640.83
7/6/95	Ros.	43A		3,311.30	Pat.		3,311.30
(7/6/95)	Ros.	43B		120.00	Lost		120.00

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
7/6/95	Ros.	45		6,711.09	Pat.		6,631.09
					Lost		80.00
					Total		6,711.09
7/13/95	Ros.	46		3,278.40	Pat.		3,278.40
(8/7/95)	O.C.	24		6,395.76	Lost		6,395.76
(8/7/95)	O.C.	24A		240.00	Lost		240.00
8/7/95	O.C.	Re.) 43)		6,526.90	Pat.		6,526.90
(8/7/95)	O.C.	43A		717.16	Lost		717.16
8/13/95	Ros.	44A		11,043.21	Pat.		11,043.21
(8/13/95)	Ros.	44B		518.83	Lost.		518.83
8/17/95	Ros.	47		3,399.68	Pat.		3,399.68
9/3/95	O.C.	54	7,819.64		Pat.	7,779.64	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost	40.00	
					Total	7,819.64	
9/3/95	O.C.	55	19,303.17		Pat.	19,303.17	
9/9/95	Ros.	48	46,808.17		Pat.	46,448.17	
					Lost	360.00	
					Total	46,808.17	
9/9/95	Ros.	49	217,146.62		Pat.	215,988.13	
					Lost	1,118.49	
					Resel.	40.00	
					Total	217,146.62	
10/12/95	Ros.	50	145,793.04		Pat.	145,552.79	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost	240.25	
					Total	145,793.04	
10/25/95	Ros.	51	96,781.72		Pat.	93,023.12	
					Lost	3,718.60	
					Resel.	40.00	
					Total	96,781.72	
11/2/95	Ros.	53	99,777.64		Pat.	98,908.07	
					Lost	869.57	
					Total	99,777.64	
11/18/95	Ros.	54	87,106.14		Pat.	85,489.23	
					Unsold	15.55	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost	1,601.36	
					Total	87,106.14	
11/21/95	Ros.	52	116,502.47		Pat.	114,419.25	
					Unsold	160.00	
					Lost	1,923.22	
					Total	116,502.47	
11/27/95	Ros.	55	127,183.55		Pat.	124,468.28	
					Unsold	203.40	
					Lost	2,511.87	
					Total	127,183.55	
12/4/95	Ros.	56	4,449.43		Pat.	4,217.81	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost	231.62	
					Total	4,449.43	
(12/21/95)	O. C.	47		4,455.80	Rear.		4,455.80
(12/27/95)	O.C.	47A		320.00	Lost		320.00
12/27/95	Ros.	56		520.00	Pat.		440.00
					Rear.		80.00
					Total		520.00
(12/27/95)	O.C.	56A		80.00	Lost		80.00
(12/31/95)	O.C.	57		2,237.09	Rear.		2,237.09
1/3/96	Ros.	57	14,728.37		Pat.	14,548.37	
					Lost	100.00	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Resel.	80.00	
					Total	14,728.37	
1/3/96	O.C.	Re.) 47)		4,135.80	Pat.		4,135.80
1/9/96	O.C.	Re.) 37)		2,037.09	Pat.		2,037.09
(1/9/96)	O.C.	37A		200.00	Lost		200.00
1/24/96	Ros.	58		572.60	Pat.		532.60
					Lost		20.00
					Resel.		20.00
					Total		572.60
3/5/96	O.C.	57	31.82		Pat.	31.82	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
3/5/96	Ros.	59	160.00		Pat.	160.00	
3/24/96	Ros.	60		11,355.52	Pat.		10,606.68
					Lost		748.84
					Total		11,355.52
(3/30/96)	Ros.	61A		120.00	Lost		120.00
4/1/96	Ros.	61		11,741.44	Pat.		11,581.44
					Lost		40.00
					Resel.		120.00
					Total		11,741.44
(4/8/96)	O.C.	Re.) 31)		4,196.00	Lost		4,196.00
(4/27/96)	Ros.	62A		168.99	Lost		168.99

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
4/28/96	Ros.	62		6,831.95	Pat.		6,244.85
					Lost		418.11
					Resel.		168.99
					Total		6,831.95
5/1/96	Ros.	63	44.081.76		Pat.	44,041.76	
					Lost	40.00	
					Total	44,081.76	
6/16/96	L.V.	3		80.00	Lost		80.00
7/7/96	Ros.	64		5,938.39	Pat.		5,938.39
(7/7/96)	Ros.	64 A		160.00	Lost.		160.00
(7/31/96)	O.C.	58		(Est.) 52,920.00	Rej.		Unsurveyed
(7/31/96)	O.C.	59		(Est.) 13,520.00	Rej.		Unsurveyed

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(8/15/96)	O.C.	60		4,196.00	Lost		4,196.00
10/26/96	Ros.	65		400.00	Pat.		400.00
4/8/97	Ros.	66		2,241.55	Pat.		2,241.55
11/10/97	Ros.	67	17,019.09		Pat.	17,019.09	
11/12/97	Ros.	68	8,893.26		Pat.	8,893.26	
2/15/98	Ros.	69		13,012.36	Pat.		13,012.36
3/8/98	Ros.	71	15,301.22		Pat.	15,220.77	
					Lost	80.45	
					Total	15,301.22	
3/28/98	Ros.	70		5,898.07	Pat.		5,898.07
5/9/98	Ros.	73	5,787.48		Pat.	5,787.48	
5/23/98	Ros.	72		14,082.84	Pat.		14,082.84
9/9/98	O.C.	61		21,582.99	Pat.		21,382.26

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Unsold		200.73
					Total		21,582.99
10/1/98	Ros.	74		6,828.87	Pat.		6,828.87
10/15/98	Ros.	76	4,512.04		Pat.	4,512.04	
10/24/98	O.C.	62		11,585.23	Pat		11,585.23
10/25/98	O.C.	63	2,863.08	237.09	Pat.	2,863.08	
					Resel.		237.09
11/1/98	Ros.	75	165.21		Pat.	165.21	
11/2/98	Ros.	77	22,577.91		Pat.	22,417.91	
					Lost	160.00	
					Total	22,577.91	
11/8/98	Ros.	78	2,676.33		Pat.	2,676.33	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
11/9/98	O.C.	64	1,286.26		Pat.	1,246.26	
					Lost	40.00	
					Total	1,286.26	
12/28/98	Ros.	79	9,080.33		Pat.	8,678.27	
					Lost	402.06	
					Total	9,080.33	
1/12/99	Ros.	80	1,376.41		Pat.	1,376.41	
4/3/99	Ros.	81	26,623.88		Pat.	26,623.88	
5/15/99	O.C.	65		7,143.51	Pat.		7,143.51
5/16/99	Ros.	82		3,022.96	Pat.		2,862.96

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
					Lost		160.00
					Total		3,022.96
5/16/99	Ros.	83		11,472.16	Pat.		11,472.16
5/16/99	Ros.	84		11,523.89	Pat.		11,523.89
6/12/99	Ros.	85	15,638.26		Pat.	15,292.42	
					Lost	345.84	
					Total	15,638.26	
6/12/99	Ros.	86	1,128.73		Pat.	1,069.68	
					Lost	59.05	
					Total	1,128.73	
1/29/00	Ros.	87		160.00	Pat.		160.00
2/13/00	Ros.	88		800.58	Pat.		800.58

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
4/6/00	O.C.	(66 (Lieu		(40.00)	Lost		(40.00)
4/10/00	L.V.	4		838.61	Pat.		198.61
					Lost		640.00
					Total		838.61
5/31/00	O.C.	67		237.09	Pat.		237.09
5/31/00	O.C.	68		880.00	Pat.		880.00
9/27/00	Ros.	(89 (Lieu		(40.00)	Pat		(40.00)
10/12/00	Ros.	69	1,538.14		Pat.	1,538.09	
					Lost	.05	
					Total	1,538.14	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
12/5/00	Ros.	91		1,803.46	Pat.		1,803.46
12/27/00	Ros.	90	3,947.75		Pat.	3,947.75	
5/8/01	Ros.	92		328.52	Pat.		328.52
5/13/01	Ros.	93		3,898.96	Pat.		3,898.96
(5/13/01)	Ros.	93 A		4,527.06	Lost		4,527.06
6/6/01	L.V.	5		6,312.91	Pat.		6,312.91
	L.V.	6		4,430.16	Rear		4,430.16
6/17/01	Ros.	94		10,099.40	Pat.		10,099.40
(6/17/01)	Ros.	94 A		120.00	Lost		120.00
7/3/01	Ros.	95	1,501.04		Pat.	1,497.44	
					Lost	3.60	
					Total	1,501.04	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
4/22/02	Ros.	96		19,876.97	Pat		19,876.97
5/3/02	L.V.	Re.) 6)		4,270.16	Pat.		4,270.16
(5/3/02)	L.V.	6 A		160.00	Lost		160.00
	O.C.	70		1,522.70	Rear.		1,522.70
(5/10/02)	O.C.	70A		320.80	Lost		320.80
6/16/02	O.C.	Re.) 70)		1,201.90	Pat.		1,201.90
(6/16/02)	Ros.	96 A		1,574.63	Lost		1,574.63
2/9/03	Ros.	97	40,896.16		Pat.	39,048.71	
					Unsold	865.15	
					Lost	982.30	
					Total	40,896.16	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
3/15/04	Ros.	99	27,792.87		Pat.	22,443.95	
					Unsold	5,348.95	
					Total	27,792.87	
4/6/04	Ros.	98		1,922.04	Pat.		1,922.04
8/25/04	L.V.	8	645.32		Pat.	645.32	
(9/10/06)	Ros.	101		11,299.76	Lost		11,299.76
(9/10/06)	Ros.	102		10,233.96	Lost		10,233.96
(9/10/06)	Ros.	103		2,240.00	Lost		2,240.00
(10/14/07)	Port	71	.26		Er. Sel	.26	
(2/21/08)	Port.	72		10,475.10	Lost		10,475.10
(2/21/08)	Port.	73		1,006.60	Lost		1,006.60
3/11/08	Ros.	104	670.60		Unsold	670.60	

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(6/30/08)	Ros.	107		363.77	Lost		363.77
(6/30/08)	Ros.	108		284.07	Lost		284.07
7/7/08	Ros.	105		125.00	Unsold		125.00
7/7/08	Ros.	109	1,107.88		Unsold	1,107.88	
9/30/08	Ros.	106	417.88		Unsold	417.88	
(10/23/08)	Ros.	110		160.00	Lost		160.00
(10/23/08)	Ros.	111		160.00	Lost		160.00
11/24/08	Ros.	112		601.41	Unsold		601.41
(11/24/08)	Ros.	113		281.66	Lost		281.66
(11/24/08)	Ros.	114		402.09	Lost		362.09
					Resel.		40.00
					Total		402.09

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
(10/9/09)	Ros.	115		80.00	Lost		80.00
(11/27/09)	Ros.	100		480.51	Lost		480.51
4/4/10	Ros.	117	160.00		Unsold	160.00	
(5/26/11)	Ros.	118		1,783.09	Lost		1,783.09
6/29/11	Ros.	119		2,756.50	Unsold		2,756.50
(7/26/11)	Ros.	120		1,135.96	Lost		851.75
					Rear.		284.21
					Total		1,135.96
8/4/11	Ros.	114 A		40.00	Unsold		40.00
8/11/11	Ros.	116	10,968.07		Unsold	10,968.07	
8/14/11	Ros.	121 Lieu		(120.00)	Deeded		(120.00)

Date Certified	Dist.	No.	Acres per plat Primary	Indemnity	Status	Primary	Indemnity
	Port.	74 Lieu		(30.92)	Deeded		(30.92)
	Ros.	120 A		284.21	Unsold		284.21

SUMMARY

Status	Acres. Primary	Indemnity.
Patented	1,796,599.41	1,007,336.82
Unpatented—Unsold	20,077.45	4,167.85
Unpatented—Deeded	193.49	
Lost	38,277.29	76,852.47
Net acres selected	1,855,147.64	1,088,357.14

DEFENDANTS' EXHIBIT 277

is printed in the testimony of Charles W. Eberlein, Volume 4, page 1978, of record.

DEFENDANTS' EXHIBIT 278

is a list of outstanding leases executed by the Oregon and California Railroad Company from October 5, 1910, to July 19, 1912, aggregating 240 leases, covering 24,671.02 acres, and purporting to lease parcels of lands of the Oregon and California Railroad Company within the limits of these Grants.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 279

consists of advertisements published under the direction of B. A. McAllaster, Land Commissioner, setting forth the fact that lands of the Southern Pacific Railroad Company and Southern Pacific Land Company were on the market for sale, and setting forth the natural resources of those lands situated in California, Utah and Nevada.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 280

purports to be a photographic copy of a page of the "Daily Oregonian" of August 12, 1871, and is as follows:

STATE OF OREGON,)
) ss.
COUNTY OF MULTNOMAH.)

I, A. K. Slocum, of Portland, County of Multnomah, State of Oregon, being first duly sworn, depose and say:

That I am the Circulation Manager of the Morning Oregonian, a newspaper of general circulation, published at Portland, County of Multnomah, State of Oregon;

I further depose and say that the attached photograph is an exact reproduction of a portion of the Morning Oregonian of Saturday, August 12th, 1871;

I further depose and say that the advertisement, headed "Railroad Lands," appearing in said photograph of the Morning Oregonian of August 12th, 1871, was published in said paper from August 12th, 1871, to September 11th, 1872, upon the dates listed below:

1871.

August 12th, 16th, 18th, 21st, 23rd, 25th, 28th, 30th;

September 1st, 4th, 6th, 8th, 11th, 13th, 15th, 18th, 20th, 23rd, 27th, 29th;

October 2nd, 4th, 6th, 9th, 16th, 23rd, 27th, 30th;

November 1st, 3rd, 8th, 10th, 15th, 17th, 20th, 24th, 27th, 29th;

December 11th, 13th, 15th, 18th, 20th, 22nd, 25th, 28th, 29th;

1872.

January 4th, 6th, 8th, 10th, 12th, 15th, 17th, 19th, 22nd, 24th, 26th, 29th, 30th, 31st;

February 2nd, 5th, 7th, 9th, 12th, 14th, 16th, 21st, 23rd, 26th, 28th;

March 1st, 4th, 5th, 8th, 11th, 15th, 18th, 20th, 25th, 28th;

April 1st, 3rd, 5th, 8th, 10th, 12th, 15th, 17th, 19th, 22nd, 24th, 29th;

May 1st, 2nd, 4th, 6th, 8th, 10th, 13th, 15th, 17th, 20th, 22nd, 24th, 27th, 29th, 31st;

June 1st, 5th, 6th, 10th, 12th, 14th, 17th, 19th, 20th, 21st, 24th, 26th, 28th;

July 1st, 3rd, 6th, 8th, 10th, 12th, 15th, 17th, 22nd, 24th, 26th, 30th;

August 2nd, 3rd, 5th, 7th, 9th, 12th, 14th, 16th, 19th, 21st, 23rd, 26th, 28th, 30th;

September 3rd, 4th, 5th, 6th, 9th, 11th.

Based upon personal examination of the files.

A. K. SLOCUM.

Subscribed and sworn to before me this 15th day of February, A. D. 1908.

(Seal) FORREST S. FISHER,
Notary Public for Oregon

RAILROAD LANDS.

OFFICE OF LAND DEPARTMENT,

OREGON & CALIFORNIA R. R. CO.

AND

European and Oregon Land Co.,

Portland, Oregon, August 1, 1871.

The company is now prepared to extend the pre-emption privilege of purchasing Railroad Lands in advance of the same being placed in market to all parties desirous of securing them on the following terms:

The applicant filing in this office a claim in the form prescribed, to-wit:

Pre-emption, ——— date, No. ——.

To the Land Agent of the European and Oregon Land Company:

Sir: You are hereby notified that I have settled upon and improved (description of land) in the county of —— State of Oregon, containing —— acres, and that I claim a pre-emption right to purchase said lands at the Company's valuation in accordance with the following resolution of the Directors of said Company, adopted on the twenty-sixth day of May, A. D. 1871, to the terms of which I hereby fully assent:

"Resolved, That the parties settling upon and im-

proving any of the lands of the European and Oregon Land Company, before the same are opened for market, shall be entitled to the pre-emption privilege of purchase on the same terms as the Company would sell the land for without improvement, and shall be subject to the same conditions of payment, as all other lands belonging to the Company, when brought into market; provided, such settlers shall file in the Land Office of said Company, written application, giving notice of such settlement, and shall accept the privilege upon the condition that when the price of the land shall be fixed, notice thereof shall be sent by the Company's Land Agent, through the Postoffice, or otherwise, as may be convenient, to the residence of the party claiming the pre-emption privilege, and if the land is not purchased by the said party within sixty days from the date of such notice, the Company will be at liberty to sell the land to any other person."

(Name of applicant.)

(Postoffice address.)

When the application is received, a certificate, signed by the Agent, obligating the Company to the terms, will be sent to the claimant in the following form:

PRE-EMPTION CERTIFICATE, NO. ——.

This is to certify that ————, of ———— county, State of Oregon, has this day filed in this office a pre-emption claim to (description of promises), and is hereby entitled to the first privilege of purchasing said land

at the Company's valuation, (which is to be made without reference to improvements) when the same shall be placed in market, in accordance with a resolution of the Board of Directors of said Compans, adopted May 26, A. D. 1871.

When the price of the above described land is fixed, notice thereof will be sent to the party to whom this Certificate is issued, and if the land is not purchased by the said party as the holder hereof within sixty days from the date of said notice, the Company will be at liberty to sell the land to any other person.

(Signed) _____,

Land Agent of the E. & O. Land Co.

The lands will be apprised by a competent, dieinterested party, under oath, at their actual present value—no fancy or prospective price on the basis of similar lands in the vicinity, and when appraisement is made they will be sold in quantity not exceeding one hundred and sixty acres to one person, payable in five equal annual instalments, with interest from date of contract, at ten per cent. per annum, principal and interest payable in United States Legal Tender Notes. Warranty deeds given after United States Patent issues, upon payment in full.

Blank forms of application furnished upon request.

I. R. MOORES,

au12d3taw&wtf Land Agent.

DEFENDANTS' EXHIBIT 281

purports to be Form 3311, letter-head of Oregon and California Railroad Company, Land Department, and is as follows:

Form 3311

Standard 7-08-10000

OREGON & CALIFORNIA RAILROAD COMPANY

Land Department

In reply please refer to

8th Floor, Flood Building No.

San Francisco, Cal., March 23, 1909.

FILED
MAY 10 1913
A. M. CANNON
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 282

purports to be letter-head of Oregon & California Railroad Company, Land Department, and is as follows:

(12-24-06-3M)

OREGON & CALIFORNIA RAILROAD COMPANY

Land Department

8th Floor, James Flood Building

CHARLES W. EBERLEIN,
Acting Land Agent
San Francisco, Cal.,

FILED
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A. M. CANNON
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 283

is copy of Agreement of date October 11, 1886, between the Central Pacific Railroad Company, Pacific Improvement Company, and Southern Pacific Company, for the construction, leasing and operation of the line from Delta to the California-Oregon State Line. This is copy of Exhibit #1 to the joint and several answers of defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage in this suit.

DEFENDANTS' EXHIBIT 284

is a certified copy of resolution of Board of Directors of the California & Oregon Railroad Company, adopted October 8, 1866, assenting to the Act of Congress July 25, 1866, and directing the filing thereof in the Department of the Interior, together with the letters attached thereto, and endorsements of acceptance and filing in the Interior Department; the same being certified by the Assistant Secretary of the Interior, on certificate of date April 25, 1911.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 285

is a certified copy of reports of Commissioners to the President of the United States, approving and accepting the railroad constructed under the Act of July 25, 1866, from Roseville Junction northward 77.6 miles to a point near Chico, in California, dated August 9, 1870, with indorsements of approval and acceptance thereof by the Secretary of the Interior and the President of the United States, which reports were certified by the Assistant Secretary of the Interior under date of July 22, 1912, and which exhibit, omitting said last named certificate, is as follows:

(Cal. & Oregon)

(Endorsement)

DEPT. OF THE INTERIOR.

January 3, 1871.

Columbus Delano,

Secretary.

Submits to the President Reports of Commissioners on 77 6/10 miles of the California and Oregon Railroad and Telegraph line, with recommendations on the subject.

EXECUTIVE MANSION,

January 3d, 1871.

The within recommendations are hereby approved and the Secretary of the Interior will issue the necessary orders to carry the same into effect.

U. S. GRANT.

Notified Mr. Huntington and Com. of G.L.O. of acceptance.

Jany 26, 71

L^d 9^t R. R.

DEPARTMENT OF THE INTERIOR.

Washington, D. C., January 3d, 1871.

Sir:

I have the honor to submit herewith, for your action, the reports dated August 9th, 1870 and November 28th, 1870, of Messrs. Lauren Upson, George W. Mowe, and Edgar Mills, appointed by you to examine and report on 77 6/10 miles of the road and telegraph line of the California and Oregon Railroad Company, "commencing at a point in the town of Roseville in the County of Placer in the State of California, where said railroad and telegraph line connects with the Central Pacific Railroad, and thence running northerly along the line of the said California and Oregon Railroad through the City of Marysville to the end of the 77 6/10 mile from said point of commencement, said 77 6/10 mile being at or near the Town of Chico in the County of Butte, California."

The Commissioners in their reports represent that this section of road is completed and equipped as a first class railroad, and that the telegraph line is completed for the same distance, and is first class. I, therefore, respectfully recommend the acceptance of the same and the issue to said Company of patents for the lands due on account of the construction of said 77 6/10 miles of road and telegraph line, agreeably to the provisions of the Act of Congress entitled "An Act granting lands to aid in the Construction of a Railroad and Telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, approved July 25, 1866, and the Act amendatory thereof approved June 25, 1868.

I am, sir, very respectfully, your obt. servant,

The President. C. DELANO,
Secretary.

Sacramento, California
August 9th, 1870.

To The Hon. Jacob D. Cox,
Secretary of the Interior of the
United States of America.

We, the undersigned, Commissioners of the United States appointed to examine the first, second, third and part of the fourth section of twenty miles each, of the railroad and telegraph line of the California and Oregon Railroad Company, commencing at a point in the Town

of Roseville in the County of Placer in the State of California, where said railroad and telegraph line connects with the Central Pacific Railroad, and thence running northerly along the line of the said California and Oregon Railroad through the City of Marysville to the end of the seventy seven 6/10 (77 6/10) mile from said point of commencement, said 77 6/10 mile being at or near the Town of Chico in the County of Butte California.

CERTIFY; that we have carefully examined such sections and part of section and that the alignment and grades are as represented on the accompanying map and Profile, and are such as, in view of the capabilities of the ground, the Government should accept as first class; that in this distance of seventy seven 6/10 miles there are

113.850 feet of level line.
135.052 9/10 feet of grades from 0 to 5 feet pr. mile.
40.913 feet of grades from 5 to 10 feet pr. mile.
36.586 4/10 feet of grades from 10 to 15 feet pr. mile.
17.650 feet of grades from 15 to 20 feet pr. mile.
11.491 7/10 feet of grades from 20 to 25 feet pr. mile.
15.334 feet of grades from 25 to 30 feet pr. mile.
19.700 feet of grades from 30 to 35 feet pr. mile.
6.550 feet of grades from 35 to 40 feet pr. mile.
11.200 feet of grades from 40 to 45 feet pr. mile.
1.400 feet of grades from 55 to 56 50/ pr. mile.

Total length 409.728 feet, or 77 6/10 miles.

Maximum grade 56 50/100.

That also in this distance there are,

369.546 feet of straight line.
16.341 4/10 feet of curves from 0 to 1°
6.839 feet of curves from 1°
6.609 6/10 feet of curves from 1° to 2°
2.857 feet of curves from 2°
4.490 2/10 feet of curves from 3°
1.000 feet of curves from 4°
851 2/10 feet of curves from 4° to 5°
1.193 6/10 feet of curves from 7°

Total length of straight lines & curves 409.728 feet—77 6/10 miles,

Minimum radius 819 feet.

That all the iron is of American manufacture and of the best quality; that for a distance of twenty-six and one half miles the rails weigh fifty pounds per lineal yard and the joints are made with wrought iron chairs, that the rails for the remainder of the distance weigh fifty six pounds per lineal yard and the joints are made with fish plates and that all the rails are fastened with four spikes to each tie; that there are thirteen sidings having an aggregate length of 15.248 feet connected with the main track, at each end with good switches, and one side track of 420 feet connected with the main track, by means of a similar switch at one end only; that in addition to the foregoing, there is a spur track of 300 feet running to a gravel pit; that there are 2260 ties

per mile, of pine and redwood or red cedar timber 6x8 inches by 8 feet long; that of these 77 6/10 miles of railroad, thirty one miles are ballasted with gravel to a depth of from 8 to 12 inches below the bottom of the ties, and thirty four miles are ballasted to a depth of from 8 to 12 inches below the bottom of the ties with gravel, sand, decomposed granite and such other suitable material as can be obtained from the cuttings and from the ground adjacent to the road bed, and the remaining twelve 6/10 miles (being those immediately south of the Town of Chico, before described) are not now ballasted with gravel, but are in good running order and in daily use for passenger and freight traffic. A ballast train and a force of two hundred men are now employed thereon and the ballasting with gravel will be completed within thirty or forty days from this date; that there are 118 bridges, as follows:

9	Trestle	Bridges	ea.	48	ft.	long— 432	ft.	or	27	spans	16	ft. ea.
8	Trestle	Bridges	ea.	32	ft.	long— 256	ft.	or	16	spans	16	ft. ea.
7	Trestle	Bridges	ea.	64	ft.	long— 448	ft.	or	28	spans	16	ft. ea.
8	Trestle	Bridges	ea.	16	ft.	long— 128	ft.	or	8	spans	16	ft. ea.
8	Trestle	Bridges	ea.	96	ft.	long— 768	ft.	or	48	spans	16	ft. ea.
2	Trestle	Bridges	ea.	80	ft.	long— 160	ft.	or	10	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long— 352	ft.	or	22	spans	16	ft. ea.
2	Trestle	Bridges	ea.	128	ft.	long— 256	ft.	or	16	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long— 368	ft.	or	23	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long—4304	ft.	or	269	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long—2033	ft.	or	127	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long— 496	ft.	or	31	spans	16	ft. ea.
2	Trestle	Bridges	ea.	208	ft.	long— 416	ft.	or	26	spans	16	ft. ea.
1	Trestle	Bridge	ea.	..	ft.	long— 224	ft.	or	14	spons	16	ft. ea.
52						10.641	ft.		665	spans	16	ft. ea.

3	Trestle	Bridges	ea.	48	ft.	long—	144	ft.	or	12	spans	12	ft. ea.
13	Trestle	Bridges	ea.	36	ft.	long—	468	ft.	or	39	spans	12	ft. ea.
19	Trestle	Bridges	ea.	12	ft.	long—	228	ft.	or	19	spans	12	ft. ea.
6	Trestle	Bridges	ea.	72	ft.	long—	432	ft.	or	36	spans	12	ft. ea.
15	Trestle	Bridges	ea.	24	ft.	long—	360	ft.	or	30	spans	12	ft. ea.
2	Trestle	Bridges	ea.	84	ft.	long—	168	ft.	or	14	spans	12	ft. ea.
3	Trestle	Bridges	ea.	60	ft.	long—	180	ft.	or	15	spans	12	ft. ea.
1	Trestle	Bridge	ea.	108	ft.	long—	108	ft.	or	9	spans	12	ft. ea.
1	Trestle	Bridge	ea.	96	ft.	long—	96	ft.	or	8	spans	12	ft. ea.
—				—			———			——			
63							2.184	ft.		182	spans	12	ft. ea.

Total number of feet of trestling. 16 and 12 feet spans, 12.825 feet.

One bridge across Bear River.

A Pile Bridge, 1500 feet long; the bents are ten and twelve feet from center to center, with corbels and stringers securely bolted to the bents; the timber is Oregon Pine and the bridge is in every respect a first class structure.

One bridge across Yuba River.

Consisting of thirteen spans of straining beam truss, of sixty feet each, resting on timber pile piers with pile bridge approaches and has an aggregate length of 5.084 feet, and is in every respect a first class structure.
One bridge across Feather River,

Consisting of two spans of Howe Truss, of 172 feet each, resting on timber piers with pile foundations and has pile bridge approaches, making an aggregate length of 2337 feet;

That there is of piling the following:

	1500 feet at Bear River.
19 span 16 ft ea	304 feet
25 span 16 ft ea	400 feet
6 span 16 ft ea	96 feet
7 span 16 ft ea	112 feet
	200 feet
	200 feet
	108 feet
	84 feet

Total length of piling 3004 feet;

that there are 33 culverts, as follows:

8 Box Culverts, 2 x 2 feet, of redwood or red cedar.
1 Box Culvert, 1 x 1 feet, of redwood or red cedar.
1 Box Culvert, 2 x 3 feet, of redwood or red cedar.
8 Box Culverts, 3 x 3 feet, of redwood or red cedar.
4 Box Culverts, 10 feet span, of redwood or red cedar.
1 Box Culvert, 12 feet span, of redwood or red cedar,
2 Box Culverts, 8 feet span, of redwood or red cedar.
6 Box Culverts, 6 feet span, of redwood or red cedar.
1 Box Culvert, 4 feet span, of redwood or red cedar.
1 Box Culvert, 7 feet span, of redwood or red cedar.

—

33 Culverts.

That there are 18 Water Tanks, of 63000 gallons capacity, as follows:

Lincoln, 4 tanks, 14,000 gal. supplied by gravity
Wheatland 1 tank, 3,500 gal. supplied by handpump
Yuba 1 tank, 3,500 gal. supplied by handpump
Marysville 4 tanks, 14,000 gal. supplied by Marysville

[Water Works.

Biggs 4 tanks, 14,000 gal. supplied by handpump
Chico 4 tanks, 14,000 gal. supplied by handpump

And that there will be completed at Biggs' Station, within ten days, a water tank of 50,000 gallon capacity, to be supplied by wind Mill power;

That there are no wood or coal houses. Coal not

being used for locomotive fuel, no coal houses are required. Wood houses have not yet been built, trains, at present taking wood from the places where the same is delivered along the line of the road. Suitable wood houses will be built as soon as sufficient length of road is completed to form an independent operating division, so that they can be located at proper points to accommodate through trains;

That there are three section houses of 18 x 30 feet dimensions, for accommodation of employes, south of Marysville. That section houses are not required north of Marysville, the hotels and farm houses along the line of the road, affording ample accommodations for all the workmen employed;

That there are station buildings for the accommodation of the passenger and freight business, as follows:

At Lincoln, one station house built of wood, 34 x 100 feet, sided with rough lumber and covered with shingles.

At Wheatland, a Passenger house built of wood, sided with rough lumber and covered with shingles. Also a freight house, 34 x 100 feet, built of wood, sided with rough lumber and covered with shingles.

At Yuba, a freight house, built of wood, sided with rough lumber and covered with shingles.

At Marysville, a Passenger house, built of brick, 32 x 100 feet, and covered with shingles. Also a freight house, 80 x 100 feet, built of brick and covered with shingles.

At Nelson, a freight house, 32 x 50 feet, built of wood, sided with rough lumber and covered with shin-

gles.

At Chico, a freight house, 50 x 100 feet, built of wood, sided with rough lumber and covered with shingles.

The buildings including the passenger and freight depots, section houses, etc., as heretofore described are sufficient for the present requirements and business of the road. Should its future business require an extension of the present buildings, or the erection of new ones we have the assurance of the Officers that they will be supplied in proper time and place;

That on these 77 6/10 miles there are no lomotive stalls, none being required; that this railroad is running in connection with the Central Pacific Railroad and the shops owned by the Central Pacific Railroad Company are more than sufficient for the thorough repair of the locomotives of both roads;

That there are two turntables, viz: One at Roseville and one at Chico, with 135 feet of track to each, also one Y track at Nelson;

That there are eight locomotives, five passenger cars, fifty box cars, fifty flat cars, two baggage cars and eight hand cars provided for these sections (77 6/10 miles); that all the material above described was procured for this road direct from the shops of the Central Pacific Railroad Company, in Sacramento, and from the shops of first class eastern manufacturers.

And we do certify, that these sections and part of

section of railroad were fully completed and equipped as above stated, as follows: fifty miles, running north from Roseville through Marysville to the end of the fiftieth mile therefrom, on the 17th day of December A. D., 1869, and the remainder thereof, to wit, twenty-six 6/10 miles, from the end of said fiftieth mile to the Town of Chico, aforesaid, on the 29th day of July 1870, and that the same were constructed, completed and equipped fully, as above, within the time and the manner required by law and is first class.

We also certify, that the telegraph line is constructed as follows:

Not less than thirty red wood poles to the mile, size at bottom, 8 x 8 inches; at top, 4 x 4 inches; length 26 feet; and they are set in the ground to a depth of four feet. Number 9 galvanized wire is used. The office instruments are of the very best quality of the most improved style and are furnished by the best manufacturers. And we do certify that it is first class.

L. UPSON)
)
GEO. W. MOWE) Commissioners.
)
EDGAR MILLS)

State of California,
County of Sacramento.

George W. Mowe, Edgar Mills and Lauren Upson being duly sworn, severally, each for himself, says, that he is United States Railroad Commissioner and that the

matters and things set forth in the foregoing statement, by him subscribed are true and correct.

Geo. W. Mowe
EDGAR MILLS
L. UPSON

Subscribed and sworn to before me R. T. Sprague, Justice of the Supreme Court of the State of California, the same being a Court of Record.

Witness my hand and the seal of said Court, this ninth day of August, A. D., 1870.

R. T. SPRAGUE,
Associate Justice Sup. Court
State of California.

I hereby certify that Royal T. Sprague is an acting Justice of said Court; that I am well acquainted with his handwriting and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court, this 9th day of August, A. D. 1870.

GEO. SECKEL.
(SEAL) Clerk Supreme Court.

Cacramento, California.
November 28th, 1870.

To Hon. Secretary of Interior
of the United States of America.

We, the undersigned Commissioners of the United States, appointed to examine that part of the railroad

and telegraph line of the California and Oregon Railroad Company, commencing at Roseville, California, and ending at Chico, 77 6/10 miles from said point of commencement, on the construction of which we had the honor to submit a Report to your Department, on August 9th, 1870, (which Report was accompanied with the map and profile of the line required by law), beg leave to state:

That in conformity to the instructions in your letter to us, dated Washington, October 26th, 1870, and in compliance with a request contained in a letter from Leland Stanford, President of said Railroad Company, dated November 9th, 1870, which letter was accompanied with a sworn statement of the Chief Engineer of said Railroad, such as is required in your letter, before referred to, we have carefully *re-examined* said 77 6/10 miles of railroad and telegraph line and

Certify; that our Report, dated August 9th, 1870, filed in your Department, (which we hereby re-affirm and refer to as a part of this report) contains a detailed account of all facts, data, quality of material used and manner of construction regarding said railroad and telegraph line, except in the following particulars, viz:

1st. 3980 feet of track have been added to sidings which were then unfinished, making the total number of feet of siding, at this time, 19.648 and of spur track, 300 feet.

2nd. The average number of ties to the mile (2260)

is found to have been erroneously stated. There are, on actual count, 2324 to the mile instead of 2260.

3rd. The ballasting of the 12 6/10 miles, immediately south of Chico, is now completed in the same manner and with the same material as on other parts of the road, and as described in said Report. The ballasting on the entire completed line has been brought up to and is now in the highest state of efficiency.

In connection with the statement of the Chief Engineer, we have carefully examined the road with regard to the quality and weight of the iron (50 pounds per lineal yard,) on the 26 1/2 miles the line, as also its durability and adaptability for the purpose required; the quality and durability of the wood and timber used for ties and for bridges and other structures; the number and extent of the sidings; the erection of wood houses, locomotive stalls and machine shops and the material for the foundations of bridges and for culverts and the manner in which they are constructed, and find that the facts are fully set forth in said statement.

We have taken pains to inform ourselves on these matters, as far as means within our reach would permit, and we have given serious consideration and much thought and reflection to the reasonings and deductions of the Chief Engineer. As the result of such information, thought and deliberation we state, that we have the entire conviction and belief that his conclusions, as

well as his statements, are correct; that we, from our own observation, indorse the same, and give our unhesitating opinion that the railroad and telegraph line should in view of the fact, as well as all the circumstances, be considered "first class."

Attached hereto and forming part of this report are the following papers:

1st. Copy of letter from Hon. J. D. Cox to Hon. A. A. Sargent M. C.

2nd. Letter of Leland Stanford, President of California and Oregon Railroad Company, to Railroad Comrs.

3rd. Sworn statement of S. S. Montague, Chief Engineer, California & Oregon Railroad Company, on construction of road and explanatory.

In explanation of the fact that some of the papers are signed by officers of the "Central Pacific Railroad Company" and that the bills for our services as Commissioners are made out against and paid by said company we desire to state, that on August 22d, 1870, the "California and Oregon Railroad Company" was, under the laws of the State of California, consolidated with and merged into the "Central Pacific Railroad Company" and now bears that name.

Respectfully submitted,

GEO. W. MOWE)
EDGAR MILLS) Commissioners.
LAUREN UPSON)

State of California)ss.
County of Sacramento)

George W. Mowe, Edgar Mills and Lauren Upson being duly sworn, severally each for himself, says, that he is United States Railroad Commissioner and that the matters and things set forth in the foregoing statement by him subscribed are true and correct.

GEO. W. MOWE
EDGAR MILLS
LAUREN UPSON.

Subscribed and sworn to before me, Robert C. Clark, Judge of the County Court in and for the County of Sacramento, California, the same being a court of record.

Witness my hand and the seal of said court, this 28th day of November, A. D., 1870.

ROBT. C. CLARK.

Judge of the County Court in and for the County of Sacramento, California.

I hereby certify that Robert C. Clark is the Acting Judge of said Court; that I as well acquainted with his handwriting and that the signature to the above and foregoing affidavit is his genuine signature.

Witness my hand and the seal of said Court, this 28th day of November, A. D., 1870.

W. B. C. BROWN,

(SEAL) County Clerk, in and for the County of Sacramento, State of California, and Clerk of the County Court thereof.

DEPARTMENT OF THE INTERIOR,

Washington, D. C.,
October 25th, 1870.

Sir:

I have received your letter of this date, stating that during your recent visit to California, you made a personal examination of the California and Oregon Railroad from the junction of the Central Pacific to Chico, and that the departures from the standard of construction prescribed were merely technical, and in every instance in the interest of travel and the construction of a good road, &c.

In reply, I have the honor to state that on the 24th August last, the attention of the Commissioners was called to the fact that in several particulars this portion of the road had not been constructed in conformity with the standard, and they were instructed, when duly informed of its being brought up to the standard, to re-examine it and to report the result to me.

In view of the reasons given by you for departing from the standard of construction, the Chief Engineer of the Company will be allowed to file with the Commissioners an explanation, giving in detail and with explicitness the reasons controling such departures from the standard of construction—also showing wherein the Government and the traveling community have been or are likely to be benefited by them. This explanation will be sworn to by the Chief Engineer before an officer duly authorized to administer oaths, and on being filed

with the Commissioners they will be authorized to forward it with a report on the subject.

Not desiring to finally determine this matter, it will be left for the final action of my successor.

Very respectfully, your obt. servant,

J. D. COX,
Secretary.

Hon. A. A. Sargent,
Present.

CENTRAL PACIFIC RAILROAD OF CALIFORNIA.

THE WESTERN PACIFIC

and the

CALIFORNIA AND OREGON RAIL ROADS.

President's Office.

Sacramento, Nov. 9th, 1870.

Messrs. Lauren Upson)
George W. Mowe)
Edgar Mills)

Commissioners, Ca. & O. R. R.

Gentlemen:

Herewith please find copy of a letter from the Hon. J. D. Cox, Sec. of the Interior to the Hon. A. A. Sargent, also a report from S. S. Montague, Chief Engineer of the Cal. & O. R. R. Co. now consolidated into the Central Pacific R. R. Co.

I desire to invite your attention to the letter and

report, which, with the letter of the Hon. Sec. to yourselves of Oct. 24th, 1870, (with a copy of which I have been furnished) will, I think, sufficiently explain themselves, and warrant me in requesting that you will act at as early a time as you shall find convenient, make a report in accordance with the instructions of the Hon. Secretary.

Respectfully, your obt. servant,

LELAND STANFORD,
President C. P. R. R.

Engineer's Office, C. P. R. R.,
Sacramento, Nov. 7th, 1870.

To

Messrs. Lauren Upson, George W. Mowe, and Edgar Mills.) Commissioners, Cal & O. R. R.

Gentlemen:

I am in receipt of a copy of a letter bearing date of Oct. 26th, 1870, addressed to you by the Hon. J. D. Cox, Secretary of the Interior, also of a copy of a letter from the Hon. Secretary dated Oct. 25th, 1870, addressed to the Hon. A. A. Sargent M. C., wherein the Hon. Secy. states that "on the Chief Engineer of the California and Oregon Railroad Company filing with you a statement under oath, giving in detail and with explicitness the reasons controlling the Company in departing from the standard of construction prescribed, etc.," "you will be authorized to forward said statement

with your report on the subject." I am also in receipt of a copy of your report dated August 9th, 1870, on the completed section of 77 6/10 miles of the California and Oregon Railroad from its junction with the Central Pacific Railroad to the Town of Chico in the County of Butte, together with a copy of a letter to you, from the Hon. Secretary of the Interior dated August 24th, 1870, declining to accept said report, on the grounds that the road is not constructed in a "first class" manner, and citing several items in the construction which the Hon. Secretary cliams are not in accordance with the proper standard.

I herewith present a brief review of said letter (last referred to), and the reasons why the standard of construction should be considered *"first class."*

First class road. The elements of a "first class" railroad cannot always be properly judged by an arbitrary standard.

If the wants of the traffic which is to pass over a road, and the requirements of its general business, have been fairly considered and provided for, and if the road has been built of the best materials obtainable in the vicinity, or within a reasonable distance of its line; and if moreover it is found when completed, that it is more than adequate to the transaction of the business anticipated, and fully equal in point of capacity for transportation of passenger and freight, to any similarly located road in the United States, I think it may fairly be claimed to be "first class."

That this has been done in the case under consideration, I think can be plainly demonstrated.

Though there is nothing in the Act of Congress requiring the standard of construction to conform strictly to that of the Central Pacific Railroad, and though no official notice to that effect has ever come to this office from the Department of the Interior, it has been the intention to build the road upon the standard referred to, and the only departure therefrom has been in minor details that do not affect its permanency or value as first class road.

Iron. The iron used is all of the best quality, and though a portion of it is lighter than the standard referred to by the Hon. Secy., its durability upon the light grades and straight lines of this road will greatly exceed that of a much heavier rail upon the Central Pacific R. R., where the use of the heaviest class of rolling stock is a necessary consequence of its heavy grades and sharp curves. In fact the iron weighing 66 lbs. per yard (10 lbs. heavier than required by the Scy. of the Interior) which is laid on the mountain portion of the C. P. R. R., will require to be replaced with new rails long before the lighter iron in question has become seriously impaired. If then the lighter iron in its place is better capable of performing its duty, bearing lighter trains on an easier line, than the heavier iron on the C. P. R. R., (which is first class), why may it not be fairly considered "first class" also?

Sidings. In regard to the sidings which the Hon.

Secy. correctly states are less than six per cent (6 per cent) of the completed line, I can also say that they are fully adequate to the present requirements of the Company's business. Sidings that were incomplete at the date of the Commissioners report have since been finished, adding 3980 feet to the total then reported. As future business may require the extension of present sidings, or the construction of new ones, they will be built; but to build them now, would be only to incur useless expense, and to run the risk of a future additional cost of removing stations that were not needed, to more eligible points when the development of future business may indicate their necessity.

Ties. The ties used on this road are of pine and redwood, as stated in the report of the Commissioners, and are of precisely the same size and quality as the ties used on the Central Pacific Railroad being not less than 6 x 8 inches and 8 feet in length. Hardwood for joint ties has never been used on the Central Pacific or any other road on the Pacific coast, the pine and redwood grown here being considered preferable to any of the hard woods in durability and as they are placed as near together at the joints as practicable in view of proper tamping, the joint is better supported than it could possibly be by a single tie placed directly beneath it.

In regard to the number used per mile, I find by actual count (since the receipt of the letter of the Secy. of the Interior above referred to) that the number was understated in the Commissioners report, the average

being 2324 per mile.

As I have before stated it has always been the intention to make this road equal in every respect to the Central Pacific; and with that object in view the track in particular has been looked to with the greatest care.

The argument that lighter iron and a less number of ties per mile may at the same time be safely used without impairing the value of the roads as regards its permanence and adaptability to the business to pass over it, may at first seem inconsistent; but when it is considered that the additional ties used on the heavy grades and sharp curves of the mountain divisions of the Central Pacific frequently aggregating 2650 per mile, were not altogether required for the vertical support of the rail, but to prevent its lateral displacement, it is at once apparent that with the cause, the necessity is also removed for using a like unusual number on the plains where the light grades and straight lines so much facilitate the working of the road, and diminish its wear and tear. Again, the displacement of the track by frost never occurs on the valley roads in California and track can be repaired with facility at all seasons of the year, and the necessity for an increased bearing surface in consequence of the unequal support from the road bed caused by freezing is entirely removed.

These questions were all considered in their proper bearings and relation to the construction of the different portions of the C. P. and W. P. R. R.'s, and the track upon the latter was laid in a similar manner to the track

of the Cal. and O. R. R., as regards the number and quality of ties used, and so reported by the Commissioners, viz: 2260 per mile (though they probably exceed that number) which report was not objected to. As the Western Pacific was constructed under the same General Act of Congress as the Central Pacific (and is now consolidated with it, as is also the Cal. and O. R. R.) it was considered that the standard adopted and adhered to on the one, would be deemed suitable and acceptable for the other.

Ballasting. Since the date of the Commissioners report the ballasting has been completed.

Locomotive stalls and Machine Shops. Locomotive stalls and machine shops are required only at the terminal of operating divisions. Sacramento being practically the southern terminus of the C. & O. R. R., as all trains from that road run over the C. P. R. R., from Junction to Sacramento, all necessary repairs are made at the shops of the C. P. R. R. in this city, and there are also locomotive stalls at the same place sufficient for the accommodation of all locomotives from the C. & O. R. R., that may be detained there.

The proper point for the northern terminus of the first operating division has not yet been reached with the constructed road, it being in the vicinity of Red Bluff, and consequently any expenditure for permanent buildings for shops of locomotive stalls would be useless and uncalled for, as their removal would become a necessity within a few months, or as soon as the road is completed to Red Bluff.

Coal and Woodhouses. Coal is not used, and woodhouses have not been built for the reason that in the exceedingly dry atmosphere of California it has been found unsafe to store wood in large quantities in the immediate vicinity of the track from its liability to take fire from passing trains, and the distribution of wood at considerable intervals along the line has been found a necessity, and its transportation in small quantities at a time to the "wooding" platforms at stations where it is used, the only safe and economical plan to be pursued.

Bridges. It is objected by the Hon. Secy. that "the bridges, 118 in number, and of a total length of 15829 feet, are constructed wholly of wooden trestles or piles." This is the case with the exception of the bridges across the Yuba and Feather rivers, the only streams of importance that are crossed upon the section of the road under consideration. A reference to the Commissioners report will show that the above named bridges were constructed as follows: "One bridge across the Yuba River consisting of thirteen (13) spans of straining beam truss of sixty (60) feet each, resting on timber and pile piers, with pile approaches and has an aggregate length of 5084 feet; on bridge across the Feather River consisting of two spans of Howe Truss of 172 feet each resting on timber piers with pile foundations, and has pile bridge approaches, making an aggregate length of 2337 feet." The approaches to the bridges above mentioned are constructed of piling, or of trestle bents with pile foundations, and extend across the low flats bor-

dering the streams, which are subject to overflow at times of high freshets. This is the only suitable or practicable manner of providing the necessary water way at these places. The same necessity for a large water way exists at all other places where piling has been used. The face of the country being so nearly level that the drainage is much slower, and the tendency to accumulation much greater than in a rolling or hilly country. In the few places where under ordinary circumstances culverts would have been sufficient to accommodate the drainage, no suitable material for their construction could be obtained, and the adoption of trestle work was a necessity. I may mention here that there does not exist along the line of the road between the Junction and Chico, or in its vicinity any kind of stone suitable for culverts or other structures. The same facts were true in relation to the Western Pacific R. R. between Sacramento and the Livermore hills, a distance of 70 miles, and the same class of construction was used and accepted there that is objected to on the Cal. and O. R. R. The material used in the construction of trestles and culverts is generally the black, or coast redwood or red cedar (the same that is used for ties), which according to the experience and observation of the oldest residents upon the coast, may be considered nearly if not quite indestructable by the ordinary process of decay. It can be found everywhere in the most exposed situations and is universally sought where permanency and durability are required. It is used in the foundations of the most expensive buildings in San Francisco, where

the permanency of the structure depends entirely upon its durability, and in places where the best Eastern oak or other hardwoods would decay in a very few years. It may be seen in the old Mission buildings in various parts of the State where for 75 or 100 years it has resisted decay, and is today apparently as sound as when placed there.

I think when viewed in their proper light the objections urged by the Honorable Secretary will be found untenable, and that they have arisen in consequence of an insufficient explanation in regard to the points cited by him, which it is hoped the present report will supply.

If as the Hon. Secy. states, the Central Pacific R. R. is to be taken as a standard and the difference in the physical characteristics of the two roads are fairly and impartially considered, the C. and O. R. R. must be considered as "first class" also.

Respectfully submitted,

SAM S. MONTAGUE,

Chief Engineer,

C. P. R. R.

Subscribed and sworn to before me this 9th day of November, A. D., 1870.

CHARLES J. TORBERT,

Notary Public in and for Sacramento County, California.

DEFENDANTS' EXHIBIT 286

Purports to be balance sheet of the General Ledger of the Oregon & California Railroad Company, for eleven months ending May 31, 1912, and is as follows:

File No.....

(5-19-09—300-S-6974) Form 3726

OREGON AND CALIFORNIA RAILROAD COMPANY

Balance Sheet of General Ledger for the 11 Months Ending May 31, 1912.

Ledger. Folio.	Capital Assets and Liabilities.	Assets.	Liabilities.
	10. Capital Expenditures.		
1-1	Cost of Road and Franchises,	36,791,228.12	
2-5	Additions and Betterment,	4,131,296.46	
3-9	Equipment,	95,918.00	
	Real Estate,		
5-12	Abandoned property		14,967.42
67-250	Motor Car Line Ashland, Oregon, Construction	34,252.62	
6-15	Construction, Henderson to Springfield	171,812.69	
7-375	Mortgage of July 1, 1887		4,895.00
155	Property Investment Restated		

Ledger Folio.	Capital Assets and Liabilities.	Assets	Liabilities.
159	Property Investment to June 30, 1907, Road and Equipment		
163	Property Investment since June 30, 1907, Road		
167	Property Investment since June 30, 1907, Equipment.		
171	Property Investment since June 30, 1907, General Expenditures		
	12. Land Grant Accounts.		
15-18	Land Contracts (Subsequent to May 12, 1887),	168,529.20	
	13. Land Trust Funds.		
16-75	Land Trust Fund,	677,237.20	
17-22	Trustee of Mortgage of July 1, 1887,		677,237.20

Ledger Folio.	Capital Assets and Liabilities.	Assets	Liabilities.
18-27	Union Trust Co. of New York, Trustee Mtge. 1887, 242,859.76		
	14. Capital Stock.		
19-63	Common Stock,		7,000,000.00
20-64	Preferred Stock,		12,000,000.00
	15. Funded Debt.		
21-65	First Mortgage 5% Bonds of 1887,		17,734,000.00
22-67	First Mortgage 5% Bonds of 1887 Registered,		11,000.00
	10. Capital Expenditures Continued.		
13-7	Additions and Betterments Appropriated from Income		267,889.00
14-14	Equipment Appropriated from Income		28,026.42
	Current Assets and Liabilities		
	34. Individuals and Companies.		
23-38	Deposits with Land Department,		3,043.85

Ledger Folio.	Capital Assets and Liabilities.	Assets	Liabilities.
	36. Audited Vouchers.		
24-143	Accounts Payable, Land Department,	10,307.14	
	38. Loans and Notes Receivable.		
25-46	Land Contracts prior to May 12, 1887,	16,041.57	
	Land Contracts, Miscellaneous,		
	40. Interest on Coupon Bonds.		
26-72	Coupons Unpaid,		217,625.00
	41. Interest on Registered Bonds.		
27-74	Interest on Registered First Mortgage 5% Bonds,		275.00
	42. Interest Accrued But Not Due.		
28-86	Interest Accrued on Bonds but not due,		369,687.50
68-177	Rental Accrued on Lease of Road	2,083.33	

Ledger Folio.	Capital Assets and Liabilities.	Assets	Liabilities.
69-179	Interest Accrued on Open Acc't. with S. P. Co.		
70-181	Interest accrued on open account with Ore. & Cal. Land Co.,		601.35
	44. Stocks Owned Unpledged.		
29-249	Ore. & Cal. Land Co., Capital Stock San Francisco, Cal., July, 1912.	29,282.11	
	Forward,	42,370,848.20	38,547,242.12

OREGON AND CALIFORNIA RAILROAD COMPANY,

Balance Sheet of General Ledger for the 11 Months Ending May 31, 1912.

Ledger Folio.	Deferred Assets and Liabilities	Assets.	Liabilities.
	Brought Forward,	42,370,848.20	38,547,242.12
	72. Individuals and Companies.		
30-32	Land Department Expenses (Mortgage 1887),	52,679.26	
31-36	Land Department Taxes (Mortgage 1887),	361,356.10	
32-42	Land Proceeds Reserved for Expenses and Taxes,		995,321.65
33-39	Land Dept. Exps. and Taxes due from Trustee June 30, 1911	1,010,836.84	

Ledger Folio.	Deferred Assets and Liabilities.	Assets.	Liabilities.
34-66	Union Trust Company, Trustee —Special Deposit	1,800.00	
	74. Investments.		
	Lands and Townsites,		
	Contingent Assets and Liabilities.		
	93. Unadjusted Accounts.		
51	Unadjusted Accounts,	315.42	
36-29	Union Trust Co., Trustee, Unadjusted,	8,549.54	
	Coupons Called Bonds,		
37-88	Unpaid Dividends Preferred Stock,		1,826.76
38-373	Unpaid Bond Interest,		1,110.00
39-373	Reserve for Outstanding Bonds of 1870,		2,021.62
40-375	First Mortgage 5% Bonds Called for Redemption,	1,000.00	

Ledger Folio.	Deferred Assets and Liabilities.	Assets.	Liabilities.
41-69	First Mortgage 5% Bonds Called But Not Presented,		1,000.00
	100. Proprietary Companies.		
42-62	Southern Pacific Company,	4,399,811.02	
	Southern Pacific Railroad Co.,		
44-147	Oregon and California Land Company,	10,727.99	
	106. Principal of Deferred Payments on Land Contracts (Mtge. 1887)		
45-81	Principal of Def'd Payments on Land Contracts (Non-Trust),	168,529.20	
46-88	Principal of Def'd Payments on Land Contracts (Misc.),	16,041.57	

Ledger Folio.	Deferred Assets and Liabilities.	Assets.	Liabilities.
	Total Assets and Liabilities,	43,807,385.36	44,143,631.93
	Profit and Loss.	Debit.	Credit.
	110. Income Accounts.		
47-111	Rental from Southern Pacific Company,		4,583.33
48-135	Proceeds from Sale of Unmortgaged Granted Lands,		164.00
49-108	Income from Unmortgaged Granted Lands,		342.03
	Income from Miscellaneous Lands (Non-Trust),		
	Sales, Lands and Townsites,		
	Rentals, Leased Lands and Townsites,		
50-130	Interest on Funded Debt,	813,312.50	

Ledger Folio.	Deferred Assets and Liabilities.	Assets.	Liabilities.
51-374	Interest, Discount and Exchange,	601.35	
52-118	Land Department Expenses (Non-Trust),	2,821.30	
53-121	Land Department Taxes (Non-Trust),	3,084.88	
54-126	General Expenses,	7,597.73	
55-175	Privilege to Cross Right of Way		130.75
65-247	Interest, Discount and Exchange —Special,	217,994.38	
	Total Income Accounts	1,045,412.14	5,220.11
56-98	118. Proceeds from Sales of Granted Lands,		1,470,279.61
57-246	Income from Land Trust Fund,		36,787.51

Ledger Folio.	Deferred Assets and Liabilities.	Assets.	Liabilities.
58-91	119. Profit and Loss,	803,121.66	
	Approved. Auditor.		
	Total Profit and Loss,	1,848,533.80	1,512,287.23
	Total Assets and Liabilities,	43,807,385.36	44,143.631.93
	Total,	45,655,919.16	45,655.919.16

DEFENDANTS' EXHIBIT 287.

purports to be two sheets: Standard Form 77, Unmortgaged Lands of Oregon & California Railroad Company, Land Transactions for April, 1911; Form 78, Land Transactions for April, 1911, Covered by First Mortgage to Union Trust Company, New York, Dated July 1, 1887, and is as follows:

Form 77 Standard (Old Form 3777)

OREGON AND CALIFORNIA RAILROAD COMPANY,

Land Transactions for April 1911

Unmortgaged Lands

CASH ABSTRACT

CASH RECEIPTS DURING MONTH

	Receipts	Disbursements
Cash sales		
First payments on Time Sales		
Principal of Deferred payments	20.00	
Interest on Deferred Payments	2.40	
Land Leases		
Miscellaneous Leases		
Stumpage and Depredations		

		Receipts	Disbursements
Expenses Re-collected	62		
Taxes Re-collected			
Sales not yet perfected			
		23.02	
Southern Pacific Company		726.83	

CASH DISBURSEMENTS DURING MONTH

Principal refunded, Canceled Sales		
Interest Refunded, Canceled Sales		
Land Leases Refunded		
Sales not yet perfected		
Expenses of Land Department	133.52	
Taxes	616.33	
		749.85
Total	749.85	749.85

BALANCE SHEET

DEBIT ACCOUNTS

	Debit	Credit
Land Contracts Outstanding	16,225.57	
Discount allowed on sales		
Expenses of Land Department	327,575.69	
Taxes	54,021.80	

	Debit	Credit
European and Oregon Land Company	32,074.92	
Southern Pacific Company	338,471.37	

CREDIT ACCOUNTS

Cash Sales—From April 1, 1870, to date		97,804.04
Time Sales—from April 1, 1870, to date		451,740.55
Forfeitures—Principal forfeited account Canceled Sales		39,284.96
Interest on Deferred Payments		178,296.33
Income from Lands Leased		181.99
Income from Miscellaneous Leases		
Income from Stumpage and Depredations		875.50
Sales not yet Perfected		10.00
Vouchers Payable		175.48
Total	768,368.85	768,368.85

Auditor's Office, San Francisco, Cal. May 11, 1911.

EXPENSES

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
1. Advertising			30,518.58

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
2. Agencies			
3. Commissions			
4. Law Expenses	.43	221.41	27,678.26
5 Examinations and Appraisals	56.71	580.72	6,414.45
6. Patent Fees and Contests			12,924.75
7. Salaries and Expenses—General Offices	68.52	635.85	128,202.07
8. Salaries and Expenses—Miscellaneous	1.54	242.69	116,351.01
9. Stationery and Printing	77	44.30	5,486.57
Total	127.97	1,724.97	327,575.69
10. Taxes	720.62	2,339.76	54,021.30
Total Expenses and Taxes	848.59	4,064.73	381,596.99

SALES

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Cash Sales			99,898.99

	Month of Apr 1911	July 1, 1910, to Apr 30, 1911	Total to Apr. 30, 1911
First Payments on Time Sales			83,879.37
Deferred Payments on Time Sales			670,607.03
Total Sales			854,385.39
Sales Canceled		271.82	304,840.80
Net Sales		271.82	549,544.59

*CONTRACTS

**Contracts cover the principal of deferred payments only*

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Contracts Issued			670,607.03
Contracts Paid	20.00	84.00	407,412.85
Contracts Canceled		320.00	246,968.61
Contracts Outstanding			16,225.57

CANCELLATIONS

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Number of Acres		82.25	111,441.70
Principal Refunded		48.18	18,587.23
Principal Forfeited			39,284.96
Contracts Canceled		320.00	246,968.61
Total		271.82	304,840.80

LAND SALE STATISTICS

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Acres Sold			317,061.99
Amount of Sales			$854,385.39
Average Price per Acre			$2.69
Number of Purchasers			3,960
Average Number of Acres to each Purchaser			80.07

Certified Correct: J. CARTER.

A. D. McDONALD.

Per C. D. LINCOLN, Auditor.

Form 78 Standard (Old Form 3774)

OREGON AND CALIFORNIA RAILROAD COMPANY,

Land Transactions for April 1911

Covered by First Mortgage to Union Trust Company of New York, Dated July 1, 1887

CASH ABSTRACT

CASH RECEIPTS DURING MONTH

		Receipts	Disbursements
Cash Sales			
First Payments on Time Sales			
Principal on Deferred Payments	506.00		
Interest on Deferred Payments	146.30		
Land Leases	200.00		
Miscellaneous Leases			
Stumpage and Depredations			
Expenses Re-collected	21.88		
Taxes Re-collected	13.80		
Sales not yet Perfected	1,076.23		
		1,964.21	
Southern Pacific Company		10,902.70	

CASH DISBURSEMENTS DURING MONTH

		Receipts	Disbursements
Principal Refunded, Canceled Sales			
Interest Refunded, Canceled Sales			
Land Leases Refunded			
Sales not yet perfected			
Expenses of Land Department Paid	2,542.19		
Taxes	10,324.72		
			12,866.91
Total		12,866.91	12,866.91

BALANCE SHEET

DEBIT ACCOUNTS

	Debit	Credit
Land Contracts Outstanding	214,847.04	
Discount allowed on sales		
Expenses of Land Department	856,967.15	
Taxes	1,773,212.80	
Southern Pacific Company	1,882,601.58	

CREDIT ACCOUNTS

Cash Sales—From July 1, 1887, to date	575,661.39
Time Sales—from July 1, 1887, to date	3,213,616.55
Forfeitures—Principal forfeited account Canceled Sales	48,920.10

	Debit	Credit
Interest on Deferred Payments		846,954.81
Timber Sales		18,850.25
Interest on Timber Sales		671.75
Income from lands leased		3,850.03
Income from Miscellaneous Leases		1,500.05
Income from Stumpage and Depredations		9,812.42
Sales not yet Perfected		3,905.08
Coburg Town Lots		1,846.00
Vouchers Payable		2,040.14
Total	4,727,628.57	4,727,628.57

Auditor's Office, San Francisco, Cal., May 11, 1911.

EXPENSES

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
1. Advertising			4,266.27
2. Agencies			
3. Commissions			
4. Law Expenses	6.51	4,310.50	190,736.99
5. Examinations and Appraisals	1,077.81	11,086.55	136,236.95

	Month of Apr 1911	July 1, 1910, to Apr. 30,	Total to Apr. 30,
6. Patent Fees and Contests			133,052.51
7. Salaries and Expenses—General Offices	1,309.93	12,166.68	290,419.18
8. Salaries and Expenses—Miscellaneous	1,601.34	8,948.90	89,371.93
9. Stationery and Printing	14.51	734.32	12,883.32
Total	4,010.10	37,246.95	856,967.15
10. Taxes	10,960.11	290,529.11	1,773,212.80
Total Expenses and Taxes	14,970.21	327,776.06	2,630,179.95

SALES

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Cash Sales		50.00	577,021.64
First Payments on Time Sales			275,903.48
Deferred Payments on Time Sales		87.10	3,466,174.05
Total Sales		137.10	4,319,099.17
Sales Canceled		3,500.59	529,821.23
Net Sales		3,363.49	3,789,277.94

*CONTRACTS

**Contracts cover the principal of deferred payments only*

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Contracts Issued		87.10	3,466,174.05
Contracts Paid	506.00	76,284.42	2,775,016.02
Contracts Canceled		2,965.01	476,310.99
Contracts Outstanding			214,847.04

CANCELLATIONS

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Number of acres		988.33	100,963.63
Principal Refunded		35.22	4,590.14
Principal Forfeited		500.36	48,920.10
Contracts Canceled		2,965.01	476,310.99
Total		3,500.59	529,821.23

LAND SALES STATISTICS

	Month of Apr 1911	July 1, 1910, to Apr. 30, 1911	Total to Apr. 30, 1911
Acres Sold		38.04	726,768.25
Amount of Sales		$137.10	$4,319,099.17

Average Price per Acre	$3.60	$5.94
Number of Purchasers	2	3,654
Average Number of Acres to each Purchaser	19.02	198.90

Certified Correct: J. CARTER.
A. D. McDONALD.
Per C. D. LINCOLN, Auditor.

DEFENDANTS' EXHIBIT 288

purports to be a statement of Government freight and passenger transportation over the road between Portland, Oregon, and Roseville, California, covering years 1906 to 1910 inclusive, showing proportions accruing north and south of Oregon-California State Line, and is as follows:

Below is statement of Government freight and passenger transportation over the free road between Portland, Oregon, and Roseville, California, for years 1906 to 1910 inclusive, showing proportions accruing north and south of Oregon-California State Line:

Freight

Year	Tons	Oregon	California	Total
1906	5704	$ 31,287.89	$ 25,416.83	$ 56,704.72
1907	2526	11,483.79	9,320.18	20,803.97
1908	7820	30,281.36	18,897.27	49,178.63
1909	10139	31,865.03	22,177.47	54,042.50
1910	9304	31,110.32	19,750.92	50,861.24
		136,028.39	95,562.67	231,591.06

	No. Pass.	Passenger.		
1906	7248	61,900.95	49,793.30	111,694.25
1907	2036	17,489.96	14,068.97	31,558.93
1908	4827	33,705.76	24,313.62	58,019.38
1909	3642	28,722.91	22,886.14	51,609.05
1910	5706	37,980.37	28,615.68	66,596.05
		179,799.95	139,677.71	319,477.66

In addition to the said amount, the defendant Oregon & California Railroad Company received the following amounts between April 1st, 1870, and April 30th, 1911, for which no land nor interest in land was disposed of or parted with; and in most instances such receipts were related to and arose out of the same lands accounted for above as disposed of:

Received, from forfeitures under contracts	$ 88,205.06
Received, for interest on contracts	1,025,922.89
Received, for land leases	5,532.07
Total	1,119,660.02

DEFENDANTS' EXHIBIT 289

purports to be a full and correct statement of the total amounts received by the defendant Oregon & California Railroad Company, from and in the sale and disposition of the lands of the East Side and West Side grants, from April 1, 1870, to April 30, 1911, and is as follows:

The following is a full and correct statement of the

total amounts received by the defendant Oregon & California Railroad Company, from and in the sale and disposition of the lands of the East Side and West Side grants, from April 1st, 1870, to April 30th, 1911:

Received, from the sale of lands		$4,338,822.53
Received, from the sale of timber on lands		18,850.25
Received, from timber depredation settlements		10,687.92
Disbursed, for advertising $	34,784.85	
Disbursed, for Law expenses	218,415.25	
Disbursed, for grading lands	142,651.40	
Disbursed by U. S., surveying, etc.	145,977.26	
Disbursed, salaries and office expenses	624,344.19	
Disbursed, stationery and printing	18,369.89	
Disbursed, taxes on lands	1,827,234.10	
Balance, net amount received	1,126,583.76	
Totals	4,368,360.70	4,368,360.70

DEFENDANTS' EXHIBIT 290

purports to be a statement of financial account between the Southern Pacific Company and thetOregon & California Railroad Company under the lease of July 1, 1887, and the succeeding lease of August 1, 1893, show-

ing the receipts and disbursements by fiscal years down to and including June 30, 1912, and is as follows:

DEFENDANTS' EXHIBIT 290

SOUTHERN PACIFIC COMPANY IN GENERAL ACCOUNT WITH THE OREGON AND CALIFORNIA RAILROAD COMPANY

RECEIPTS.

1905		
July 31. To Cash receipts by San Francisco Office during July 1905 a/c Land Dept.		9,443.49
Aug. 31. To Cash receipts by San Francisco Office during August 1905....		56,748.20
a/c Land Department	54,726.58	
Deutsche Vereinsbank, Frankford, Germany	2,021.62	
Sept. 30. To Coupons from Called Bonds, charged back to be collected from Trustee		9,275.00
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1905.....		12,578.99
a/c Land Department	10,181.47	
London & San Francisco Bk. London Balance of Account	2,397.52	
Oct. 31. To Sundry receipts by San Francisco Office during Oct. 1905 a/c Land Dept.		15,697.97
Oct. 31. To Surveys Mohawk Line Change overcharged		84.40

RECEIPTS

Nov. 30. To Cash receipts by San Francisco Office during Nov. 1905 a/c Land Dept.	26,702.97
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1905 a/c Land Dept.	78,390.48
Dec. 31. To Overcharge a/c Surveys Drain, west	11,867.25
Dec. 31. To Rental of Road to Oct. 31, 1905 (4 months)	1,666.67
1906	
Jany. 31. To Coupons from Called Bonds, charged back, to be collected from Trustee	75.00
Jany. 31. To Cash receipts by San Francisco Office during Jany. 1906 a/c Land Dept.	55,999.46
Jany. 31. To Rental of Road for three months ending Jany. 31, 1906.....	1,250.00
Feby. 28. To Coupons from Called Bonds, charged back to be collected from Trustee	50.00
Feby. 28. To Cash receipts by San Francisco Office during Feby. 1906 a/c Land Dept.	20,175.83
Mch. 31. To Coupons from Called Bonds, charged back to be collected from Trustee	175.00

RECEIPTS

Mch. 31. To Cash receipts by San Francisco Office during Mch. 1906 a/c Land Dept.	15,724.05
Apl. 30. To Coupons from Called Bonds, charged back to be collected from Trustee	25.00
Apl. 30. To Cash receipts by San Francisco Office during April 1906....	63,763.12
viz: Land Department.....60,081.12	
Unadjusted Accounts... 3,182.00	
Value of Narrow Gauge Locomotive P. & W. V. No. 1 sold to Ilwaco Ry. & Nav. Co. 500.00	
May 31. To Cash receipts by San Francisco Office during May 1906 a/c Land Dept.	2,393.39
June 30. To Rental of Road for 5 months ending June 30, 1906.....	2,083.33
June 30. To Cash receipts by San Francisco Office during June 1906 a/c Land Dept.	6,982.27
June 30. To Gross Receipts during fiscal year ending June 30, 1906	
Passenger including extra baggage	2,861,986.88
Mail	119,677.99
Express	134,716.48

RECEIPTS

Freight	2,710,431.54
Switching	11,696.25
Rentals	12,262.07
Other Sources	58,936.39
Carried Forward	6,271,335.33
1906. Brought Forward	6,271,335.33
June 30. Balance	6,915,862.08
	13,187,197.41

1906

July 31. To Cash receipts by San Francisco Office during July 1906 a/c Land Dept.	3,101.18
Aug. 31. To Cash receipts by San Francisco Office during Aug. 1906 a/c Land Dept.	45,043.75
Carried Forward	48,144.93
1906. Brought Forward	48,144.93
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1906 a/c Land Dept.	128,117.85
Oct. 31. To Cash receipts by San Francisco Office during Oct. 1906 a/c Land Dept.	7,507.95

RECEIPTS

Nov. 30. To Cash receipts by San Francisco Office during Oct. 1906 a/c Land Dept.		28,743.02
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1906 a/c Land Dept.		44,156.81
Dec. 31. To Rental of road for six months ending Dec. 31, 1906.....		2,500.00
1907.		
Jany. 31. To Cash receipts by San Francisco Office during Jany. 1907 a/c Land Dept.		119,910.57
Feby. 28. To Cash receipts by San Francisco Office during Feby. 1907.....		61,233.88
a/c Land Department..	59,839.47	
Services of Trustee etc. charged back	1,394.41	
March 31. To Coupons from Called Bonds charged back to be collected from Trustee		100.00
March 31. To cash receipts by San Francisco Office during Mch. 1907 a/c Land Dept.		12,992.07
April 30. To cash receipts by San Francisco Office during Apl. 1907 a/c Land Dept.		20,196.28

RECEIPTS

May 31. To Cash receipts by San Francisco Office during May 1907 a/c Land Dept.	154,206.92
June 30. To Cash receipts by San Francisco Office during June 1907 a/c Land Dept.	3,494.39
June 30. To Rental of Road for six months ending June 30, 1907	2,500.00
June 30. To Gross receipts during fiscal year ending June 30, 1907	
Freight Earnings	3,370,502.59
Passenger Earnings	2,773,374.98
Mail Earnings	142,131.36
Express Earnings	141,699.32
Switching Earnings	8,498.52
Rental Earnings	69,062.20
Misc. Earnings	50,007.36
To a/c Constn. Henderson to Springfield Overcharge in Mch. 1904	24,909.60
Interest 1906	2,366.41
Interest 1907	996.38
Carried Forward	7,079,228.99
1907. Brought Forward	7,079,228.99
June 30. Balance	7,594,736.34
Total	14,673,965.33

1907.

RECEIPTS

July 31. To Cash receipts by San Francisco Office during July 1907 a/c Land Dept.	7,456.83
Aug. 31. To Cash receipts by San Francisco Office during Aug. 1907 a/c Land Dept.	120,602.11
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1907 a/c Land Dept.	3,331.63
Oct. 31. To Coupons from Called bonds, charged back to be collected from Trustee	1,025.00
Oct. 31. To Cash receipts by San Francisco Office during October 1907 a/c Land Dept.	4,863.23
Nov. 30. To Cash receipts by San Francisco Office during November 1907 a/c Land Dept.	1,478.55
Dec. 31. To Rental of road for six months ending Dec. 31, 1907.....	2,500.00
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1907 a/c Land Dept.	2,300.06

1908.

Jany. 31. To Cash receipts by San Francisco Office during Jany. 1908 a/c	

RECEIPTS

Land Dept.	52,045.00
Feby. 29. To Cash receipts by San Francisco Office during Feby. 1908 a/c Land Dept.	3,011.57
Mch. 31. To Cash receipts by San Francisco Office during Mch. 1908 a/c Land Dept.	4,709.26
May 31. To Cash receipts by San Francisco Office during Apl. 1908 a/c Land Dept.	3,690.79
May 31. To Cash receipts by San Francisco Office during May 1908 a/c Land Dept.	3,605.76
June 30. To Rental of Road for six months ending June 30, 1908.....	2,500.00
June 30. To Cash receipts by San Francisco Office during June 1908 a/c Land Department.	5,774.46
Carried Forward	218,894.25
1908. Brought Forward	218,894.25
June 30. To Gross Receipts during fiscal year ending June 30, 1908	
Freight Revenue	3,330,819.59
Passenger Revenue	3,078,657.01
Excess Baggage Revenue.....	46,657.79

RECEIPTS

Mail Revenue	136,368.63
Express Revenue	151,313.91
Other Passenger Train Revenue	4,779.42
Switching Revenue	5,916.38
Spl. Service Train Revenue	7,027.50
Miscl. Transpn. Revenue	45.67
Operations other than Transportation	52,430.06
Outside Operations	99,398.41
Carried Forward	7,132,308.61
1908. Brought Forward	7,132,308.61
June 30. Balance	7,298,540.77
Total	14,430,849.38
1908.	
July 31. To Coupon from Called Bonds charged back, to be collected from Trustee	25.00
July 31. To Sundry receipts by San Francisco Office during July 1908 acct. Land Department	3,085.36
Aug. 31. To Cash receipts by San Francisco Office during Aug. 1908 a/c Land Dept.	43,127.85

RECEIPTS

Sept. 30. To Cash receipts by San Francisco Office during Sept. 1908 a/c Land Dept.	2,072.76
Oct. 31. To Cash receipts by San Francisco Office during Oct. 1908 a/c Land Dept.	1,603.08
Nov. 30. To Cash receipts by San Francisco Office during Nov. 1908 a/c Land Dept.	730.11
Dec. 31. To Coupons from Called Bonds charged back to be collected from Trustee	250.00
Dec. 31. To Rental of Road for six months ending Dec. 31, 1908.....	2,500.00
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1908 a/c Land Dept.	25,701.01
1909.	
Jany. 31. To Cash receipts by San Francisco Office during Jany. 1908 a/c Land Dept.	23,289.30
Feby. 28. To Collection from Farmers Loan & Trust Co (New York) in full payment and satisfaction of the balance due under the decree dated June 25, 1888.....	30,000.00

RECEIPTS

Feby. 28. To Cash receipts by San Francisco Office during Feby. 1909 a/c Land Dept.	798.86
Mch. 31. To Amount charged to Operating Expenses of the Company during year ending June 30, 1906 to provide a reserve fund for extraordinary repairs and renewals, now credited back to Profit and Loss.....	295,898.26
Mch. 31. To Cash receipts by San Francisco Office during Mar. 1909 a/c Land Dept.	2,804.66
Apl. 30. To Cash receipts by San Francisco Office during Apl. 1909 a/c Land Dept.	52,838.14
June 31. To Cash receipts by San Francisco Office during May 1909 a/c Land Dept.	3,488.08
Carried Forward	488,212.47
1908. Brought Forward	488,212.47
June 30. To Rental of Road for six months ending June 30, 1909.....	2,500.00
June 30. To Cash receipts by San Francisco Office during June 1909.....	16,758.86

a/c Land Department

RECEIPTS

Unadjusted Accounts License Fee O. & C. R. R. Co.	
June 30. To Overcharge acct. construction Henderson to Springfield.....	811.99
June 30. To Gross Receipts year ending June 30, 1909	
Passenger Revenue	3,113,239.19
Mail Revenue	145,000.72
Express Revenue	133,900.50
Freight Revenue	3,490,042.58
Other Transportation revenue...	36,190.34
Revenue from Operations other than Transportation	80,576.24
Outside Operations revenue.....	100,131.66
Carried Forward	7,607,364.55
1909. Brought Forward	7,607,364.55
June 30. Balance	5,992,438.90
Total	13,599,803.45

RECEIPTS

1909.

July 31. To Coupons from Called Bonds, charged back to be Collected from Trustee	200.00
July 31. To Sundry receipts by San Francisco Office during July 1909.. viz: Land Department	6,319.16
Aug. 31. To Cash receipts by San Francisco Office during Aug. 1909 a/c Land Dept.	38,370.96
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1909 a/c Land Dept.	3,888.36
Oct. 31. To Cash receipts by San Francisco Office during Oct. 1909 a/c Land Department	3,531.52
Nov. 30. To Cash receipts by San Francisco Office during Nov. 1909 a/c Land Dept.	2,197.45
Dec. 31. To Rental of Road for six months ending Dec. 31, 1909.....	2,500.00
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1909 a/c Land Dept.	25,264.47

RECEIPTS

1910.

Jany. 31. To Cash receipts by San Francisco Office during Jany. 1910 a/c Land Dept. 23,330.90

Feby 28. To Receipts by New York Office during Feby 1910..... 5,002.75

viz: Mortgage of July 1, 1887
Purchase price of Lot 2
Blk 2 Frush's Sq. Addn.
to East Portland Oregon,
to Cudahy Packing Co.. 5,000.00
Refund of Deposit..... 2.75

Feby 28. To Cash receipts by San Francisco Office during Feby. 1910 a/c Land Dept. 2,635.37

Mar. 31. To Cash receipts by San Francisco Office during Mar. 1910 a/c Land Dept. 17,291.00

Apr. 30. To Cash receipts by San Francisco Office during Apl. 1910 a/c Land Dept. 2,585.36

May 31. To Cash receipts by San Francisco Office during May 1910 a/c Land Dept. 14,337.92

RECEIPTS

June 30. To Cash Rental of Road for six months ending June 30, 1910..... 2,500.00

June 30. To Salvage from Property Abandoned 4,535.26

June 30. To Cash receipts by San Francisco Office during June 1910..... 3,589.21

viz: Land Department..... 3,587.21
Notarial Fees paid P. Palmer 2.00

June 30. To Locomotives—Replacement 54,900.00

June 30. To Passenger Train Cars—Replacement 9,400.00

June 30. To Freight Train Cars—Replacement 46,802.00

June 30. To Work Equipment..... 855.37
(Transferred from Southern Pacific Co. Books.)

June 30. To Gross Receipts year ending June 30, 1910

Passenger Revenue	4,156,674.39
Mail Revenue	146,622.88
Express Revenue	156,046.87
Freight Revenue	4,048,565.15

RECEIPTS

Other Transportation Revenue...	15,236.43
Revenues from Operation other than Transportation	91,513.77
Outside operations—revenue	214,989.65
Carried Forward	9,099,686.20
1910. Brought Forward	9,099,686.20
Carried Forward	9,099,686.20
1910. Brought Forward	9,099,686.20
June 30. To balance	4,503,077.45
Total	13,602,763.65

1910.

July 31. To Cash receipts by San Francisco Office during July 1910..... Viz: Land Department.	2,666.63
Aug. 31. To Cash receipts by San Francisco Office during Aug 1910 a/c Land Dept.	38,300.35
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1910 a/c Land Dept.	2,197.56
Oct. 31. To Cash receipts by San Francisco Office during Oct. 1910 a/c Land Dept.	1,506.35

RECEIPTS

Nov. 30.	To Cash receipts by San Francisco Office during Nov. 1910 a/c Land Dept.	1,432.96
viz:	Real Estate	
	Recd. from Britt Aspinwall for Lot 2 Blk. 7 Town of Brooks, Marion County, Oregon 100.00	
	Land Department 1,332.96	
Dec. 31.	To Rental for Lease of Road for six months ending Dec. 31, 1910.	2,500.00
Dec. 31.	To Cash receipts by San Francisco Office during Dec. 1910.....	24,297.95
viz:	Land Department 24,289.70	
	Central Pacific Railway Co. Refund of Expenses paid A. A. Hoehling, Jr. 8.25	
1911.		
Jany. 31.	To Refund of amount overcharged by Beaverton and Willsburg Railroad Co. for rental three months ending June 30, 1910.....	12,500.00
Jany. 31.	To Cash receipts by San Francisco Office during Jany. 1911 a/c Land Dept.	21,062.70

RECEIPTS

Feby 28. To Cash receipts by San Francisco Office during Feby. 1911 a/c Land Dept.			2,434.54
Mch. 31. To Cash receipts by San Francisco Office during Mch. 1911 a/c Land Dept.			2,467.90
Apl. 30. To Cash receipts by San Francisco Office during Apl. 1911 a/c Land Dept.			2,126.89
viz: Land Department	2,124.49		
Privilege to Cross Right of Way			
Rental of Wire Crossing at			
Goshen	1.20		
Cottage Grove	1.20	2.40	
May 31. To Cash receipts by San Francisco Office during May 1911 a/c Land Dept.			13,883.51
June 30. To Rental for Lease of Road, for six months ending June 1911...			2,500.00
June 30. To Cash receipts by San Francisco Office during June 1911 a/c Land Dept.			1,843.90

RECEIPTS

June 30. To Salvage from Abandoned Property	2,174.09
June 30. To Locomotive—Replacement	23,500.00
June 30. To Passenger Train Cars—Replacement	8,700.00
June 30. To Freight Train Cars—Replacement	30,281.22
June 30. To Work Equipment	1,825.57
June 30. To Freight Revenue	4,181,576.25
June 30. To Passenger Revenues	4,073,318.12
June 30. To Mail Revenues	169,451.66
June 30. To Express Revenue	162,642.85
June 30. To Other Transportation Revenues	31,478.63
June 30. To Revenues from Operations other than Transportation	96,458.10
June 30. To Rentals from Joint Tracks Yards and Other Facilities—Outside Companies	5,362.80
June 30. To Rentals from Lease of Road —Outside Companies	6,840.00
Carried Forward	9,133,738.88
1911. Brought Forward	9,133,738.88

RECEIPTS

Carried Forward	9,133,738.88
1911. Brought Forward	9,133,738.88
June 30. To Balance	3,327,116.84
Total	12,460,855.72

1911.

July 31. To Cash receipts by San Francisco Office during July 1911 a/c Land Dept.	2,504.87
Aug. 31. To Cash receipts by San Francisco Office during Aug. 1911 a/c Land Dept. ..... viz: Land Department	1,189.17
Sept. 30. To Cash receipts by San Francisco Office during Sept. 1911 a/c Land Dept.	540.59
Oct. 31. To Cash receipts by San Francisco Office during Oct. 1911 a/c Land Dept.	882.59
Nov. 30. To Cash receipts by San Francisco Office during Nov. 1911 a/c Land Dept.	289.77
Dec. 31. To Rental of Road for six months ending Dec. 31, 1911.....	2,500.00
Dec. 31. To Cash receipts by San Francisco Office during Dec. 1911 a/c	

RECEIPTS

Land Dept.		22,104.68
1912.		
Jany. 31. To Cash receipts by San Francisco Office during Jany 1912.....		1,704.61
viz: Land Department	1,658.91	
Privilege to cross Right of Way	45.70	
Feby 29. To Cash receipts by San Francisco Office during Feby. 1912 a/c Land Dept.		954.23
Mch. 31. To Cash receipts by San Francisco Office during Mch. 1912 a/c Land Dept.		670.01
viz: Land Department	665.51	
Privilege to Cross Right of Way	4.50	
Apl. 30. To Cash receipts by San Francisco Office during Apl. 1912.....		502.81
viz: Land Department	483.61	
Privilege to Cross Right of Way	19.20	
May 31. To Cash receipts by San Francisco Office during May 1912.....		13,441.73
viz: Land Department 13,379.18		

RECEIPTS

Privilege to Cross Right of Way Collections from Companies and Individuals for privilege of placing wires and pipes across company's Right of Way.	12.55	
Recd. from Oregon Electric Ry. Co. in full for perpetual easement for Railroad purposes over across and upon tract of Land in Linn Co., Ore.	.50	62.55
June 30. To Cash receipts by San Francisco Office during June 1912.....		3,058.86
viz: Land Department	3,033.46	
Privilege to cross Right of Way Collections from Companies and Individuals for privilege of placing wire and pipes across Company's Right of Way	25.40	
June 30. To Value of Abandoned Property		2,905.08

RECEIPTS

June 30. To Rental for Lease of Road for six months ending June 30, 1912...	2,500.00
June 30. To Gross receipts during fiscal year ending June 30, 1912	
Freight Revenue	3,864,204.05
Passenger Revenue	3,931,649.39
Mail Revenue	170,282.77
Express Revenue	151,524.80
Pullman Co. Revenue.....	11,029.20
Parlor and Chair Car Revenue...	1,135.46
Other Transportation Revenues..	41,077.02
Revenue from Operations other than Transportation	95,873.41
Outside Operations—Revenue ...	210,540.04
Rentals for Joint Tracks, Yards & Term. Fac.—Outside Cos...	7,558.90
Rentals for Lease of Road—Outside Cos.	28,125.00
Carried Forward	8,568,749.04
1912. Brought Forward	8.568,749.04
Carried Forward	8,568,749.04
1912. Brought Forward	8,568,749.04
June 30. To Balance.....	2,542,721.18
Total	11,111,470.22

San Francisco, Cal.
August 31, 1912.

DISBURSEMENTS

1905

June 30.	By Balance		6,338,936.79
July 31.	By payments by New York Office during July, 1905 for advertising Bond Call		267.64
July 31.	By Coupons and registered bonds interest paid by New York Office during July, 1905.....		422,050.00
July 31.	By Sundry disbursements by San Francisco Office during July, 1905		4,454.82
viz	Land Department	4,382.99	
	General Expenses		
	Directors fees . 65.00		
	Stationery 6.83	71.83	
		4,454.82	
July 31.	By Expenditures a/c surveys, Drain west		2,725.06
July 31.	By Coupons paid by New York Office during July, 1905....		800.00
Aug 31.	By Coupons paid by New York Office during August, 1905..		30,625.00
Aug. 31.	By Sundry disbursements by San Francisco Office during August, 1905		62,909.96

DISBURSEMENTS

viz: Land Department		62,873.55
General Expenses		
Directors fees	35.00	
Stationery ...	1.41	
	36.41	62,909.96
Aug. 31. By Expenditures a/c surveys Drain west		5,000.62
Aug. 31. By payments by New York Office during August, 1905, for advertising Bond Call		351.75
Sept. 30. By Coupons paid by New York Office during September, 1905		5,750.00
Sept. 30. By payments by New York Office during Sept., 1905, advertising Bond Call		25.40
Sept. 30 By Sundry disbursements by San Francisco Office during Sept., 1905		5,135.72
viz: Land Department.....	5,105.72	
General Expenses		
Directors fees	30.00	
Sept. 30. By Expenditures a/c surveys, Drain west		4,872.19
Oct. 31. By coupons paid by New York Office during October, 1905.....		2,525.00

DISBURSEMENTS

Oct. 31. By sundry disbursements by San Francisco Office during Oct., 1905		7,711.12
viz: Land Department	5,245.86	
General Expenses	200.00	
Southern Pacific Railroad Co	2,265.26	
Oct. 31. By Payments by New York Office during October, 1905		32.00
a/c Printing 12 Certificates O. & C. Bond destroyed	28.75	
Oct. 31. By Printing O. & C. Coupon Tally Sheets....	3.25	
Oct. 31. By Expenditures a/c surveys, Drain west		3,127.64
Nov. 30. By Coupons paid by the New York Office during November, 1905		1,025.00
Nov. 30. By Sundry Disbursements by San Francisco Office during Nov., 1905		6,524.38
Viz: Land Department.....	6,389.38	
General Expenses Directors fees .	35.00	

DISBURSEMENTS

Payments to O. R. & N. a/c services of Secy. Nov.	100.00	135.00
Nov. 30. By Expenditures a/c Surveys, Drain west		2,320.35
Dec. 31. Coupons paid by New York Office during December, 1905.....		1,550.00
Dec. 31. By Sundry disbursements by San Francisco Office during Dec., 1905		4,259.74
viz: Land Department.....	4,089.74	
General Expenses		
Directors Fees	70.00	
Services of Secty.	100.00	170.00
Dec. 31. By Payment by New York Office during Dec., 1905		.66
Account "New Yorker-Handle Zeitung" Advertising.		
1906		
Jany. 31. By Coupons and registered bonds interest paid by New York Office during January, 1906.....		417,925.00
Jany. 31. By Sundry disbursements by San Francisco Office During Jany.		

DISBURSEMENTS

1906		5,597.32
viz: Land Department....	4,301.59	
General Expenses		
Services of Secretary ...	100.00	
Filing and Recording	2.20	102.20
Union Trust Co., of New York Trustee Mtge. 1887, Amt. collected on Ida M. Eaton Note and paid to Union Trust Co. of N. Y. by the New York Office	1,193.53	
Jany. 31. By Expenditures a/c Surveys Drain West		2,428.66
Feby. 28. By Coupons paid by New York Office during Feby. 1906		27,325.00
Carried Forward		7,366,256.82
1906		
Brought Forward		7,366,256.82
Feby. 28. By Sundry Disbursements by San Francisco Office during Feby. 1906		9,406.19
viz: Land Department	7,207.86	

DISBURSEMENTS

General Expenses		
Directors fees ...	35.00	
Services of Secty.	100.00	135.00
Southern Pacific Railroad Co. Propn. of Genl. Expenses for six months ending 12/31/05		2,063.33
Mar. 31. By Expenditures a/c Surveys, Drain west		3,221.25
Mar. 31. By Payments by the New York Office during March, 1906, a/c Printing Coupon Tally Sheets		3.50
Mar. 31. By Payments by the New York Office during March. 1906 (additional)		34,657.47
Viz: Union Trust Co. of New York, Trustee Mtge. of 1887.		
Amount due from Apl. / Oct. 31 1905	9,467.29	
Amount due from Nov. 1905 .	19,415.18	
		28,882.47
Coupons paid		5,775.00

DISBURSEMENTS

Mar. 31. By Sundry disbursements by San Francisco Office during Mch. 1912		104,509.78
viz: Land Department.		
Apl. 30. By Coupons paid by the New York Office during April, 1906....		2,600.00
Apl. 30. By Payments by New York Office during April, 1905		2.60
viz: Transfer tax paid on 45 shares Common Stock @ 2c	.90	
85 shares Preferred Stock @ 2c	1.70	
Apl. 30. By Sundry disbursements by San Francisco Office during Apl. 1906		7,026.24
viz: Land Department.		
May 31. By Coupons paid by the New York Office durin g May, 1906.....		1,775.00
May 31. By Sundry disbursements by San Francisco Office during May, 1906		183.15
viz: Land Department	135.55	
General Expenses		
Directors fees .. 30.00		
Advertising 17.60	47.60	

DISBURSEMENTS

June 30. By Coupons paid by the New York Office during June, 1906.....		1,200.00
June 30. By Sundry disbursements by San Francisco Office during June, 1906		4,692.88
viz: Land Department	4,372.98	
Land Department	192.25	
General Expenses Directors fees	35.00	
Recorders fees paid account recording Consent of Stock holders and the Assent of the Trustees to Mortgage upon property and issue to bonds in Benton, Clackamas and Columbia Counties, Ore.....	92.65	127.65
June 30. By Interest on Open Acct. with Southern Pacific Co. for the year ending June 30, 1906		280,571.73
June 30. By Expenditures a/c Surveys Drain, West		4,247.97

DISBURSEMENTS

June 30. By Expenditures during year ending June 30, 1906, viz:	
By Construction, Henderson to Springfield	120,049.94
By Construction and Improvement	537,649.67
By Equipment	2,166.07
By Operating Expenses	4,574,185.33
By Taxes	109,397.18
By Rentals Other Property and facilities	5,307.33
By Rentals Leased Roads and Properties	4,832.85
By Rentals S. P. Co. and Prop. Cos.	1,076.13
June 30. By Losses in San Francisco fire of April 18, 1906	10,424.35
June 30. By Interest @ 4 per cent. per annum from date of delivery to June 30, 1906, on Equipment purchased from S. P. Co. for acct. of Oregon & Cal. R. R. Replacement Fund	1,753.98
Total	13,187,197.41

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DISBURSEMENTS

1906		
June 30.	By Balance	6,915,862.08
July 31.	By Coupons and registered Bonds interest paid by New York Office during July, 1906	419,800.00
	Carried Forward	7,335,662.08
1906	Brought Forward	7,335,662.08
July 31.	By Sundry disbursements by San Francisco Office during July, 1906	669.55
Viz: Land Department.		
Aug. 31.	By Payments by New York Office during August, 1906	50,441.13
	Union Trust Co. of New York Trustee Mtge. of 1887 a/c Receipts from Mortgaged Lands Dec 1, 1905, to Apl. 18, 1906.....	26,441.13
	Coupons paid 24,000.00	
Aug. 31.	By Sundry disbursements by San Francisco	
	Office during Aug. 1906	2,330.16
viz:	Land Department .. 2,305.16	
	General Expenses	

DISBURSEMENTS

Directors fees	25.00	
Sept. 30. By Coupons paid by New York Office during Sept. 1906		5,175.00
Sept. 30. By Sundry disbursements by San Francisco Office during Sept. 1906		7,879.85
viz: Land Department		
Oct. 31. By Coupons paid by New York Office during Oct. 1906.....		4,575.00
Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1906...		15,102.63
viz: Land Department ...	14,972.63	
General Expenses Recording Consent of Stockholders and assent of Trustees to Union Trust Company Mortgage	95.00	
Directors fees 35.00	130.00	
Dec. 31. By Coupons paid by		

DISBURSEMENTS

New York Office during November, 1906			1,150.00
Nov. 30. By Sundry disbursements by San Francisco Office during November, 1906			3,848.93
viz: Land Department.....			
New York Office during December, 1906			1,100.00
Dec. 31. By Sundry Disbursements by San Francisco Office during Dec. 1906...			4,266.77
viz: Land Department		4,149.17	
General Expenses Directors fees	25.00		
recording consent of Stockholders and assent of Trustees to Union Trust Co. Mortgage	92.60	117.60	
1907			
Jany. 31. By Coupons and registered bonds interest paid by New York Office during January, 1907.....			419,100.00
Jany. 31. By Sundry disburse-			

DISBURSEMENTS

ments by San Francisco Office during Jany. 1907 .		3,988.47
viz: Land Department	3,932.67	
General Expenses Recording Consent of Preferred Stockholders, Marion Co. Oregon	15.80	
Directors Fees..	40.00	55.80
Feb. 28. By Payments by New York Office during February, 1907, viz:.....		275,984.22
Union Trust Co. of New York, Trustee Mtge. of 1887, a/c Net Receipts from Mortgaged lands Dec. 1905 to September 1906 both incl.....	249,534.22	
Dec. 1905	97,925.01	
Jany. 1906	51,102.24	
Feby. 1906	13,175.18	
Sept. 1906	87,331.79	
Coupons paid	26,450.00	
Feby. 28. By Sundry disburse-		

DISBURSEMENTS

ments by San Francisco Office during Feby. 1907....		9,402.65
viz: Southern Pacific Railroad Co. Acct. Propn. General Expenses 6 months ending June 30, 1906	2,057.40	
General Expenses Directors Fees	60.00	
Land Department	7,285.25	
Feby. 28. By Stationery (Voucher Blanks)		8.66
March 31. Payments by New York Office during March 1907, viz:		65,437.41
Union Trust Co. of New York Trustee Mtge. of July, 1887 a/c Net Receipts from Mortgaged Lands Oct. to Dec. 1906 both incl.		
Oct. and Nov. 21,266.30		
December 38,296.11	59,562.41	
Coupons paid	5,875.00	
March 31. By Sundry disbursements by San Francisco Office during Mch, 1907..		132,558.00
viz: Southern Pacific Railroad Co. Propn. Genl. Expenses		

DISBURSEMENTS

six months ending Dec. 31 1906	2,307.66	
General Expenses	30.00	
Directors Fees Land Department	130,220.34	
Carried Forward		8,338,680.51
1907. Brought Forward		8,338,680.51
April 30. By Coupons paid by New York Office during April, 1907....		2,750.00
April 30. By Sundry disbursements by San Francisco Office during April, 1907		6,771.05
viz: Land Department	6,636.05	
General Expenses Directors Fees	85.00	
May 31. By Payments by New York Office during May, 1907.....		137,606.19
Union Trust Co. of New York Trustee Mortgage of 1887 a/c Net receipts from Mortgaged Lands viz: Jany, 1907....89,180.23		
Feby. 1907....47,325.96		
	136,506.19	
Coupons paid	1,100.00	

DISBURSEMENTS

May 31.	By Commission on Land Sales paid to Union Trust Co. of New York Trustee Mortgage of 1887...	1,394.41
May 31.	By Sundry disbursements by San Francisco Office during May, 1907	6,450.50
	viz: Land Department ...6,425.50	
	General Expenses	
	Directors Fees 25.00	
June 30.	By Payments by New York Office during June, 1907, viz:	560.00
	General Expenses	
	Notarial Fees 10.00	
	Coupons paid 550.00	
June 30.	By Sundry disbursements by San Francisco Office during June, 1907	3,728.64
	viz: General Expenses	
	Directors Fees 30.00	
	Rent of Vault..... 5.00	
	Repairing Corporate Seal 1.00	
	Publishing Notice of Anual Meetings .15.00	
	—— 51.00	
	Land Department 3,677.64	

DISBURSEMENTS

June 30.	By Interest on Open Account with Southern Pacific Co. for the year ending June 30, 1907	293,893.55
June 30.	By Payments by New York Office during June, 1907, viz: Printing Cremation Certificates	14.75
June 30.	By Expenditures a/c Construction Henderson to Springfield, viz:	39,992.32
	Principal 39,150.57	
	Interest 841.75	
June 30.	By General Expenses, Printing	3.00
June 30.	By Losses in San Francisco Fire of April, 1906	5,054.33
June 30.	By Expenditures during year ending June 30, 1907, viz: Construction and Improvement	899,206.33
	a/c Betterments 621,580.83	
	a/c Additions 277,625.50	
	899,206.33	
June 30.	By Equipment	10,549.46
June 30.	By Operating Expenses	4,766,350.22
June 30.	By Taxes	144,888.70
June 30.	By Rentals other properties and facilities	7,802.67

DISBURSEMENTS

June 30.	By Rentals Leased Roads and Properties	8,196.32
June 30.	By Rentals S. P. Co. and Proprietary Cos.	72.38
	Total	14,673,965.33

1907.

June 30.	By Balance	7,594,736.34
July 31.	By Sundry disbursements by San Francisco Office during July 1907	11,084.80
	viz: Land Department 11,029.80	
	Unadjusted Accounts	
	License Fee O. & C. R. R.	
	License Fee O. & C. Land Co.	
	General Expenses	
	Directors Fees 55.00	
July 31.	By Payments by New York Office during July 1907.....	421,848.07
	viz: General Expenses	
	Adv'tg. Bond Call... 48.07	
	Coupons paid 421,525.00	
	Int. on Regd. Bonds paid 275.00	

DISBURSEMENTS

Aug. 31. By Sundry disbursements by San Francisco Office during Aug. 1907		4,562.71
viz: Land Department	4,547.71	
General Expenses Rent of Vault May June and July	15.00	
Carried Forward		8,032,231.92
1907. Brought Forward		8,032,231.92
Aug. 31. By Payments by New York Office during August 1907.....		64,769.65
viz: Union Trust Co. of New York Trustee Mortgage of 1887 Net Receipts from Mortgaged Lands March 1907 to May 1907 incl.	53,894.65	
Coupons paid	10,875.00	
Sept. 30. By Payments by New York Office during September 1907.....		6,568.19
viz: General Expenses Advertising Bond Call.....	568.19	
Coupons paid	6,000.00	
Sept. 30. By Sundry disbursements by		

DISBURSEMENTS

San Francisco Office during Sept. 1907		5,701.34
viz: Land Department	5,666.34	
General Expenses		
Directors Fees 30.00		
Rent of Vault Aug. 5.00	35.00	
Oct. 31. By Coupons paid by New York Office during Oct. 1907.....		2,575.00
Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1907		10,223.57
viz: Land Department	8,126.94	
General Expenses		
Rent of Vault 5.00		
Directors Fees 50.00	55.00	
Southern Pacific Railroad Co. Propn. of Gen'l. Expenses for six months ending June 30, 1907	2,041.63	
Nov. 30. By Coupons paid by New York Office during November 1907.		1,575.00
Nov. 30. By Sundry disbursements by San Francisco Office during Nov.		

DISBURSEMENTS

1907		7,039.29
viz: Land Department	6,934.29	
General Expenses		
Rent of Vault		
Oct.	5.00	
Salary Secretary		
Mch. 1906 .....100.00	105.00	
Dec. 31. By Coupons paid by the New York Office during Dec. 1907.....		1,900.00
Dec. 31. By Sundry disbursements by San Francisco Office during Dec. 1907		4,196.95
viz: Land Department	4,191.95	
General Expenses		
Rent of Vault Nov. ...	5.00	
1908.		
Jany. 31. By Coupon and registered bonds interest paid by New York Office during January 1908.....		404,750.00
Jany. 31. By Sundry disbursements by San Francisco office during January, 1908		5,408.04
viz: Land Department.....	5,325.54	
Adjustment	82.50	

DISBURSEMENTS

Feby. 29. By Coupons paid by the New York Office during Feby. 1908....		29,775.00
Feby. 29. By Payment by New York Office during Dec. 1907 a/c Printing		2.00
Feby. 29. By Sundry disbursements by San Francisco Office during Feby. 1908		5,659.51
viz: Land Department	3,094.70	
Southern Pacific Railroad Co. Propn. of General Expenses for six months ending Dec. 31, 1907	2,529.81	
General Expenses Directors Fees ...25.00		
Rent of Vault Dec. 1907	5.00	
Rent of Vault Jany. 1908	5.00	35.00
March 31. By Coupons paid by New York Office during March 1908....		3,625.00
March 31. By Payment by New York Office during Feby. 1908.....		92.07
a/c Miscl. expenses, repairs to build-		

DISBURSEMENTS

ing, located at Portland, Oregon off Company's R/W		
March 31. By Sundry disbursements by San Francisco Office during March 1908		194,662.56
viz: Land Department		
April 30. By Payment by New York Office during April 1908.....		136,064.68
a/c Union Trust Co. of New York Trustee Mortgage of 1887		
Net receipts from Mortgaged Lands		
Aug. 1907..110,668.82		
Sept. 1907.. 23,045.86	133,714.68	
Coupons paid	2,350.00	
May 31. By Sundry disbursements by San Francisco Office during April 1908		8,021.97
viz: Land Department	7,936.97	
General Expenses		
Rent of Vault		
Feby and Mch..10.00		
Directors Fees..75.00	85.00	
Carried Forward		8,924,841.74

DISBURSEMENTS

1908. Brought Forward			8,924,841.74
May 31. By Payments by New York Office during May 1908 on Trust Co. of New York Trustee Mortgage of 1887 receipts from Mortgaged Lands			38,504.27
Jan. 1908..	35,727.86		
Feb. 1908..	801.41	36,529.27	
Coupons paid		1,975.00	
May 31. By Sundry disbursements by San Francisco Office during May 1908			5,824.33
viz: Land Department ...		5,795.63	
General Expenses			
Advtg, Notice			
Annual Meeting..	19.25		
Recorders Fees...	4.25		
Rent of Vault			
April	5.00	28.50	
June 30. By Coupons paid by New York Office during June 1908.....			850.00
June 30. By Interest on Open Acct. with Southern Pacific Co. for the year ending June 1908.....			320,041.96

DISBURSEMENTS

June 30. By Sundry disbursements by San Francisco Office during June 1908		4,340.35
viz: Land Department	4,305.35	
General Expenses		
Directors Fees	30.00	
Rent of Vault May 5.00	35.00	
June 30. By Disbursements acct. construction Henderson to Springfield.		4,439.16
June 30. By Payment by New York Office during June 1908 acct. Printing 25 Copies of Cremation Certificates		16.75
June 30. Expenditures during year ending June 30, 1908		
Betterments		203,331.07
Additions		176,079.45
June 30. By Equipment acct. Passenger Train Cars		2,914.32
June 30. Rental for Joint Tracks, Yards and other facilities Preparatory Cos.		7,327.44
June 30. By Rental for Joint Tracks, Yards and other facilities outside Companies		68,322.07

DISBURSEMENTS

June 30.	By Rentals for Lease of Railway and other facilities—S. P. Co...	111.48
June 30.	By Hire of equipment.....	282,090.88
June 30.	By Operating Expenses	4,131,713.80
June 30.	By Outside Operations—Expenses	72,100.31
June 30.	By Taxes	187,500.00
	Total	14,430,849.38
1908.		
June 30.	By Balance	7,298,540.77
July 31.	By Coupon and registered bonds interest paid by New York Office, during July 1908.....	412,950.00
July 31.	By Sundry disbursements by San Francisco Office during July 1908	4,832.01
	viz: Land Department 4,762.01	
	General Expenses ..30.00	
	Directors Fees ...35.00	
	Rent of Vault..... 5.00 70.00	
Aug. 31.	By Coupons paid by New York Office during Aug. 1908.....	21,525.00
Aug. 31.	By Sundry disbursements by	

DISBURSEMENTS

San Francisco Office during Aug. 1908		7,115.81
viz: Land Department	4,817.39	
General Expenses		
Directors Fees ...35.00		
Rent of Vault July 5.00	40.00	
Southern Pacific Railroad Co. Propn. of General Expenses six months ending June 30, 1908	2,250.42	
Sept. 30. By Coupons paid by New York Office during Sept. 1908.....		4,225.00
Sept. 30. By Sundry disbursements by San Francisco Office during Sept. 1908		10,778.17
viz: Land Department 10,908.17		
General Expenses		
Directors Fees ...25.00		
Rent of Vault, Aug. 5.00		
Directors Fees ...40.00	70.00	
Carried Forward		7,760,166.76

DISBURSEMENTS

1908. Brought Forward			7,760,166.76
Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1908			4,575.16
viz: Land Department	4,540.16		
General Expenses Directors Fees ...30.00			
Rent of Vault Sept.	5.00	35.00	
Oct. 31. By Coupons paid by New York Office during October 1908.....			2,450.00
Oct. 31. By Payments by New York fice during Sept. 1908 acct. Sundry Repairs to Building in Portland, Oregon			100.00
Nov. 30. By Coupons paid by New York Office during Nov. 1908.....			1,575.00
Nov. 30. By Sundry disbursements by San Francisco Office during Nov. 1908			5,068.51
viz: Land Department	5,033.51		
General Expenses Directors Fees....30.00			
Rent of Vault Oct.	5.00	35.00	

DISBURSEMENTS

Dec. 31. By Coupons paid by New York Office during Dec. 1908.....	575.00
Dec. 31. By Sundry disbursements by San Francisco Office during Dec. 1908	3,452.04
1909. viz: Land Department.	
Jany. 31. By Coupons and registered bonds interest paid by New York Office during January 1909.....	401,300.00
Jany. 31. By Payments by New York Office during January 1909 acct. Printing Coupon Tally Sheets O. & C. R. R. Co.....	3.75
Jany. 31. By Sundry disbursements by San Francisco Office Jany. 1909...	2,992.81
viz: Land Department 2,962.81	
General Expenses Directors Fees 30.00	
Feby. 28. By Coupons paid by New York Office during Feby. 1909....	30,550.00
Feby. 28. By Sundry disbursements by San Francisco Office during Feby. 1909	5,408.46
viz: Land Department 3,166.08	
Southern Pacific Rail-	

DISBURSEMENTS

road Co. Propn. of General Expenses six months ending Dec. 31, 1908	2,170.97	
General Expenses		
Rent of Vault, Nov. & Dec.	10.00	
Directors Fees	55.00	
Rent of Vault Jany.	5.00	
Propn, cost of Clock	1.41	71.41
March 31. By Coupons paid by New York Office during March, 1909...		6,575.00
March 31. By Sundry Disbursements by San Francisco during March 1909		241,298.92
viz: Land Department.....	241,263.92	
General Expenses		
Rent of Vault Feby.	5.00	
Directors Fees	30.00	35.00
April 30. By Coupons paid by New York Office during April 1909.....		2,225.00
April 30. By Sundry disbursements by San Francisco Office during April 1909		22,038.18
viz: Land Department	21,957.28	
General Expenses		

DISBURSEMENTS

Directors Fees ...60.00		
Rent of Vault 5.00		
Court Cost and Fees in case of O. & C. R. R. vs Farmers Loan & Trust Co. 15.90	80.90	
May 31. By Coupons paid by New York Office during May 1909.....		1,950.00
May 31. By Payments by New York Office during May 1909 acct. Notarial Fees		.25
June 30. By Sundry disbursements by San Francisco Office during May 1909		4,756.41
viz: Land Department	4,691.41	
General Expenses Advtg. notice of meeting of Stockholders 20.00		
Directors Fees ...30.00		
Amount paid Marion Co. for quit claim deed to certain property in town of Gervais		

DISBURSEMENTS

Oregon	15.00	65.00
June 30. By Payment by New York Office during June 1909 acct. Propn. Salary, Judge Payson—May 1909..		62.50
June 30. By Coupons paid by New York Office during June 1909.....		575.00
June 30. By Interest on Open Acct. with Southern Pacific Co. for the year ending June 30, 1909.....		295,538.44
Carried Forward		8,793,237.19
1909. Brought Forward.....		8,793,237.19
June 30. By Sundry disbursements by San Francisco Office during June 1909		4,003.89
viz: Land Department	3,958.89	
General Expenses		
Rent of Vault Apl. and May 10.00		
Directors Fees ...35.00	45.00	
June 30. By Propn. Salary Judge Payson—June 1909		62.50
June 30. By Payments by New York Office during year ending June 30, 1909		

DISBURSEMENTS

Operating Expenses	3,763,470.84
Outside Operations—Expenses ..	103,598.90
Taxes	260,617.82
Rentals for Joint Tracks, Yards and other Facilities Proprietary Companies	7,327.44
Rentals for Joint Tracks, Yards and other Facilities Outside Companies	72,335,68
Rentals for Lease of Railway and other Facilities—S. P. Co.....	111.48
Additions	72,809.17
Betterments	70,230.72
Equipment	755.09
June 30. By Hire of Equipment for year ending June 30, 1909.....	291,052.66
June 30. By Difference in rate of interest from 4 per cent to 6 per cent on Open Acct. with S. P. Co. year ending June 30, 1909	147,769.22
June 30. By Expenditures for Account of Equipment	12,420.85
Total	13,599,803.45

DISBURSEMENTS

1909.

June 30. By Balance 5,992,438.90

July 31. By Coupons paid by New York Office during July 1909..... 411,725.00

July 31. By Sundry disbursements by San Francisco Office during July 1909. ..... 2,025.85

viz: Land Department 1,975.25
General Expenses
Directors Fees ...45.00
Rent of Vault June 5.00
Fees—filing Deed. .60 50.60

Aug. 31. By Payments by New York Office during Aug 1909..... 21,329.00

viz: Account Payable Land Dept.:
Notarial Fees paid P. Palmer 29.00
Coupons paid 21,300.00

Aug. 31. By Sundry disbursements by San Francisco Office during August 1909 ..... 5,833.25

viz: Land Department 3,959.83
General Expenses

DISBURSEMENTS

Rent of Vault July 5.00		
Directors Fees....20.00		
Stationery 14.44	39.44	
Southern Pacific Railroad Co. Propn. General Expenses six months ending June 30, 1909	1,833.98	
Sept. 30. By Coupons paid by New York Office during September 1909		4,925.00
By Sundry disbursements by San Francisco office during Sept., 1909..		5,104.36
viz: Land Department	5,024.36	
General Expenses		
Rent of Vault Aug. 5.00		
Directors Fees ...75.00	80.00	
Oct. 31. By Payments by New York Office during October 1909		3,778.25
viz: Accounts Payable Land Dept.		
Expenses Land Dept. at Wash. D. C. Oct.....	3.25	
Coupons paid	3,775.00	
Oct. 31. By Payments by New York Office during July 1909.....		337.50
viz: Interest on registered bonds	275.00	

DISBURSEMENTS

Propn. Salary Judge Payson July 1909....	62.50	
Carried Forward		6,447,497.11
1909. Brought Forward		6,447,497.11
Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1909		5,054.16
viz: Land Department	5,019.16	
General Expenses		
Directors Fees 30.00		
Rent of Vault Sept. 5.00	35.00	
Nov. 30. By Payments by New York Office during November 1909.....		1,221.00
viz: Accounts Payable Land Dept.		
Notarial Fees paid P. Palmer	21.00	
Coupons paid	1,200.00	
Nov. 30. By Sundry disbursements by San Francisco Office during Nov. 1909		3,356.65
viz: Land Department	3,266.25	
General Expenses		

DISBURSEMENTS

Rent of Vault Oct. 5.00		
Directors Fees ...65.00		
Advtg. notice of annual meeting of Stockholders ...20.40	90.40	
Nov. 30. By Payment by New York Office during Aug. 1909.....		62.50
acct. Propn. Salary Judge Payson Aug.		
Dec. 31. By Payment by New York Office during Sept. 1909.....		167.94
Search and Abstract title to Lot 2 Blk. 2 Frush's Sq. Addn. to Portland, Oregon	103.00	
Propn. Salary Judge Payson Sept. 62.50		
Expenses at Washington D. C. a/c Ld. Dept.. 2.44	64.94	
Dec. 31. By Payment by New York Office during October 1909.....		193.35
Original cost of Turntable and Spur at Drain, Oregon abandoned	105.85	
Accounts Payable Land		

DISBURSEMENTS

Dept. Propn. Salary		
Judge Payson Oct.	62.50	
Coupons paid.....	25.00	
Dec. 31. By Sundry disbursements by San Francisco Office during Dec. 1909		4,457.04
viz: Land Department	4,417.04	
General Expenses		
Rent of Vault Nov.	5.00	
Directors Fees....35.00	40.00	
Dec. 31. By Coupons paid by New York Office during Dec. 1909.....		1,000.00
Dec. 31. By Acct. Spur Track at Alca, abandoned		421.97
1910.		
Jany. 31. By Coupons and registered bonds interest paid by New York Office during January 1910.....		395,475.00
Jany. 31. By Sundry disbursements by San Francisco Office during Jany. 1910		3,470.90
viz: Land Department	3,430.90	
General Expenses		
Rent of Vault Dec.	5.00	

DISBURSEMENTS

Directors Fees ...35.00	40.00	
Feby. 28. By Sundry disbursements by San Francisco Office during Jany. 1910		83.39
viz: General Expenses		
Advtg. notice Special Meeting O. & C. R. R. Co.	70.00	
Printing O. & C. Trust Fund Account Statements	13.39	
Feby. 28. By Coupons paid by New York Office during Feby. 1910.....		36,775.00
Feby. 28. By Sundry disbursements by San Francisco Office during Feby. 1910		4,414.39
viz: Land Department	2,631.44	
Southern Pacific Railroad Co. Propn. of General Expenses for six months ending Dec. 31, 1909	1,742.70	
General Expenses		
Files Boxes 5.25		
Directors Fees ...30.00		
Rent of Vault Jany. 5.00	40.25	

DISBURSEMENTS

Feby. 28. By Payment by New York Office during Dec. 1909.....		9.50
acct. Printing Cremation Certifiate No. 6.....	8.50	
Recording Release of Mtge.	1.00	
March 31. By Acct. Spur Track near Whitison, Oregon, abandoned.....		1,085.73
Carried Forward		6,904,745.63
1910. Brought Forward		6,904,745.63
March 31. By Payment by New York Office during January 1910.....		6,209.50
Accounts Payable Land Department Notarial Fees 9.00		
A. A. Hoehling Jr.. .50	9.50	
Coupons paid.....	6,200.00	
March 31. By Sundry disbursements by San Francisco Office during Mch. 1910		133,509.99
Acct. Land Department..133,366.55		
General Expenses		
Directors Fees	30.00	
4 Binders for Lists	2.86	
Copy Vol. 37 Land		

DISBURSEMENTS

Decisions	.58	3.44
Sale of Lot 2, Blk. 7 of the R. R. Addition to Town of Brooks, Marion Co. Ore.		100.00
Rental of Lot 2, Blk. 7 of the R. R. Addition to Town of Brooks Marion Co. Ore. from Nov. 1, 1908 to Oct. 31, 1909		10.00
April 30. By Payment by New York Office during Apl. 1910.....		2,365.00
viz: Accounts Payable Land Department		
Cash payment to P. Palmer	15.00	
Coupons paid	2,350.00	
April 30. By Sundry disbursements by San Francisco Office during April 1910		7,960.39
viz: Land Department	7,920.39	
General Expenses		
Rent of Vault Feby.	5.00	
Rent of Vault Mar.	5.00	
Directors Fees ...	30.00	40.00

DISBURSEMENTS

May 31. By Payments by New York Office during May 1910.....		1,095.00
viz: Accounts Payable Land Department P. Palmer..	20.00	
Coupons paid	1,075.00	
May 31. By Sundry disbursements by San Francisco Office during Apl. 1910		3.18
acct. Stationery		
May 31. By Sundry disbursements by San Francisco Office during May 1910		4,093.44
acct. Land Department.	4,047.24	
General Expenses		
Directors Fees ...30.00		
Advtg. notice annual meeting of Stock-holders 11.20		
Rent of Vault April 5.00	46.20	
June 30. By Interest on Open Account with Southern Pacific Co. for the year ending June 30, 1910.....		395,512.14
June 30. By Payments by New York Office during June 1910.....		1,000.25
viz: Accts. Payable Land Dept.		

DISBURSEMENTS

A. A. Hoehling Jr. Expenses	.25	
Coupons paid	1,000.00	
June 30. By Sundry disbursements by San Francisco Office during June 1910		5,507.86
viz: Land Department	5,467.86	
General Expenses		
Directors Fees ...35.00		
Rent of Vault, May 5.00	40.00	
June 30. By Constructing Sidewalk in front of Lot 3, Blk. 8 Homestead Addn. Portland, Oregon		258.77
June 30. By Expenditures during year ending June 30, 1910, viz:		
Equipment		118,187.66
Equipment charged to O. & C. R. R. 107,843.35		
Equipment built at Company's Shops	10,344.31	
Additions		180,177.15
Betterments		337,725.86
Equipment		8,974.82

DISBURSEMENTS

Rentals for Joint Tracks, Yards and other Facilities Prop. Cos..	7,327.44
Rentals for Joint Tracks, Yards and other Facilities Outside Cos.	64,953.20
Rental for Lease of Road—S. P. Co.	111.48
Rental for Lease of Road—Secondary Cos.	12,500.00
Rental for Lease of Road—Outside Cos.	3,801.90
Hire of Equipment	348,472.14
Operating Expenses	4,485,349.80
Outside Operations—Expenses ..	223,807.94
Taxes	354,113.11
Total	13,602,763.65

1910.

June 30. By Balance	4,503,077.45
July 31. By Coupons and registered bonds interest paid by New York Office during July 1910.....	407,250.00
July 31. By Sundry disbursements by San Francisco Office during July 1910	3,006.42

DISBURSEMENTS

viz: Land Department 2,981.42

General Expenses

Directors Fees ...20.00
Rent of Vault, June 5.00 25.00

Unadjusted Accounts

License Fee O. & C. R. R. Co....

Aug. 31. By Sundry disbursements by San Francisco Office during Aug. 1910 ..... 4,442.36

viz: Land Department 4,349.36

General Expenses

Rent of Vault July 5.00

Directors Fees ...70.00

Certified Copy of Art. of Incorporation etc. 18.00 93.00

Aug. 31. By Payments by New York Office during August 1910 ..... 29,010.00

viz: Union Trust Co. Trustee Special Deposit Property covd. by O. & C. R. R. Co. Deed No. 412 sold to

Roy W. Minkler 1,800.00

DISBURSEMENTS

P. Palmer expenses ... 10.00

Coupons paid 27,200.00

Sept. 30. By Payments by New York Office during Sept. 1910 ..... 4,000.25

viz: A. A. Hoehling Jr. .... .25

Coupons paid 4,000.00

Sept. 30. By Sundry disbursements by San Francisco Office during Sept. 1910 ..... 129,240.44

viz: Land Department .. 129,175.44

General Expenses

Rent of Vault Aug. 5.00

Directors Fees ...60.00 65.00

Oct. 31. By Payments by New York Office during October 1910..... 2,660.00

viz: Notarial Fees Peter Palmer 10.00

Coupons paid 2,650.00

Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1910 10,822.80

viz: Land Department 10,801.80

General Expenses

DISBURSEMENTS

Rent of Vault Sept.	5.00	
Directors Fees ...	15.00	20.00
Real Estate		
Notarial Fees.....	1.00	
Nov. 30. By Payments by New York Offices during Nov. 1910.....		1,918.65
viz: A. A. Hoehling Jr.....	34.65	
P. Palmer	9.00	
Coupons paid	1,875.00	
Nov. 30. By Sundry disbursements by San Francisco Office during Nov. 1910		5,151.99
viz: Land Department	3,575.87	
Southern Pacific Railroad Co. Propn. of General Expenses six months ending June 30, 1910	1,576.12	
Dec. 31. By Coupons paid by New York Office during Dec. 1910.....		1,250.00
Dec. 31. By Payment by New York Office during Nov. 1910.....		.....
viz: Notarial Fees—L. Elwell.....		1.50

DISBURSEMENTS

Dec. 31. By Sundry disbursements by San Francisco Office during Dec. 1910			5,269.97
viz: Land Department		5,194.97	
General Expenses			
Directors . Fees .	65.00		
Rent of Vault Oct. and Nov.	10.00	75.00	
1911			
Jany. 31. By Payments by New York Office during January 1911			407,628.37
viz: General Expenses			
A. A. Hoehling, Jr. Stationery	3.37		
Coupons paid	407,350.00		
Interest on Registered Bonds	275.00		
Jany. 31. By Sundry disbursements by San Francisco Office during Jany. 1911..			4,818.99
viz: Land Department		3,694.66	
General Expenses			
Rent of Vault..	5.00		
Directors Fees	35.00	40.00	

DISBURSEMENTS

Southern Pacific Railroad Co. Propn. Genl. Exp. 6 mos. ending Dec. 31, 1910	1,084.33	
Carried Forward		5,519,549.19
1911 Brought Forward		5,519,549.19
Feby. 28. By Payments by New York Office during February 1911.....		25,718.00
viz: Accts. Payable Land Department		
Notarial Fees—P. Palmer	17.00	
General Expenses		
Notarial Fees—P. Palmer	1.00	
Coupons paid	25,700.00	
Feby. 28. By Sundry disbursements by San Francisco Office during Feby. 1911		2,711.12
viz: Land Department	2,681.12	
General Expenses		
Rent of Vault Jany 5.00		
Directors Fees ...25.00	30.00	
March 31. By Coupons paid by New		

DISBURSEMENTS

York Office during March 1911....		5,150.00
March 31. By Sundry disbursements by San Francisco office during March, 1911		160,401.50
viz: Land Department ...	160,060.11	
General Expenses		
Rent of Vault Feby	5.00	
Directors Fees ...	45.00	
Ptg. 150 Copies Art. of Inc. etc	79.65	
Ptg. 150 Copies By Laws O. & C....	20.75	
5 Certified Copies Art. of Inc	165.00	315.40
Propn. Amt. paid for copy of manual of Surveys, etc ...	.58	
Propn. of Amt. paid for State Maps.....	.50	
Wells Fargo & Co. Express Chgs. on coin envelopes to pay Taxes	24.91	25.99

DISBURSEMENTS

April 30. By Payment by New York Office during April 1911.....		2,358.00
viz: Notarial Fees—P. Palmer	8.00	
Coupons paid 2,350.00		
April 30. By Sundry disbursements by San Francisco Office during Apl. 1911		13,689.51
viz: Land Department		
May 31. By Coupons paid by New York Office during May 1911....		1,975.00
May 31. By Payment by New York Office during May 1911		.50
viz: General Expenses		
Notarial Fees—L. Elwell.....		
May 31. By Sundry disbursements by San Francisco Office during May 1911		8,400.69
viz: Land Department	8,340.69	
General Expenses		
Rent of Vault Mch	5.00	
Directors Fees 55.00	60.00	
June 30. By Coupons paid by New York Office during June 1911.....		150.00

DISBURSEMENTS

June 30. By Interest on Open Account Southern Pacific Co. for year ending June 30, 1911 ..... 310,892.40

June 30. By Interest on Construction Account "Motor Car Line Ashland, Oregon," year ending June 30, 1911 ..... 1,172.40

June 30. By Payments by New York Office during June 1911 ..... 1,244.20

viz: Accounts payable Land Department

Certified Copies of Railroad Patent No. 210

O. & C. R. R. Co. .. 640.95

General Expenses

Certified Copy of petition of Citizens of Oregon, requesting Constn. of a bridge across the Des Chutes River 3.25

Coupons paid 600.00

June 30. By Sundry disbursements by San Francisco Office during June 1911 ..... 3,899.84

viz: Land Department 3,702.09

DISBURSEMENTS

General Expenses

Directors Fees ...95.00		
Rent of Vault Apl. 5.00		
Rent of Vault May 5.00		
Sundry disbursements a/c furnishing various documents requested by Mr. Maxwell Everts 92.75	197.75	

Unadjusted Accounts

License Fee—O. & C. R. R. Co.

June 30. By Payments reported by New York Office, June 1911

June 30. By Disbursements by A. A. Hoehling Jr. 12.80

June 30. By Expenditures during year ending June 30, 1911.

Motor Car Line—Ashland, Ore.

Construction	33,080.22
Additions	378,032.25
Betterments	206,011.82
Operating Expenses	4,544,158.39
Outside Operations—Expenses ..	239,515.17

DISBURSEMENTS

	Taxes	429,184.94
	Carried Forward	11,887,307.94
1911	Brought Forward	
June 30.	By Rentals for Joint Tracks Yards and other Facilities—Prop. Cos.	7,327.44
	Rentals for Joint Tracks, Yards and other Facilities—Outside Cos.	96,185.65
	Rentals for Lease of Road—Secondary Cos.	47,777.78
	Rentals for Lease of Road—Outside Cos.	6.00
	Rentals for Lease of Road—S. P. Co.	111.48
	Hire of Equipment	354,290.94
June 30.	By Equipment Purchased	61,510.64
June 30.	By Equipment built at Company's Shops	6,337.85
	Total	12,460,855.72
1911		
June 30.	By Balance	3,327,116.84
July 31.	By Sundry disbursements by San Francisco Office during July 1911	2,347.33
	viz: Land Department ... 2,312.33	

DISBURSEMENTS

General Expenses		
Rent of Vault June	5.00	
Directors Fees	30.00	35.00
June 31. By Payments by New York Office during July 1911		411,213.50
viz: Notarial Fees—P. Palmer	11.00	
General Expenses		
Services Copyist	2.50	
Coupons paid	411,200.00	
Aug. 30. By Coupons paid by New York Office during August 1911..		21,975.00
Aug. 31. By Sundry disbursements by San Francisco Office during August 1911		6,287.83
viz: Land Department ...	4,772.48	
Southern Pacific Railroad Co. Propn. of General Expenses for six months ending June 30 1911	1,515.35	
Sept. 30. By Payments by New York Office during September 1911.....		4,710.00
viz: Coupons paid	4,700.00	

DISBURSEMENTS

Notarial Fees—Peter Palmer	9.00	
General Expenses		
Notarial Fees—Peter Palmer	1.00	
Sept. 30. By Sundry disbursements by San Francisco Office during Sept. 1911		162,239.75
viz: Land Department ...	162,150.25	
General Expenses		
W. W. Cotton Sdy. Disbursements ..19.50		
Rent of Vault July	5.00	
Rent of Vault Aug	5.00	
Directors Fees ...60.00	89.50	
Oct. 31. By Registered bonds interest paid by New York Office During July 1911		275.00
Oct. 31. By Coupons paid by the New York Office during Oct. 1911.....		3,225.00
Oct. 31. By Sundry disbursements by San Francisco Office during Oct. 1911		3,272.84
viz: Land Department	3,208.18	

DISBURSEMENTS

General Expenses		
Directors Fees ...55.00		
Rent of Vault Sept 5.00		
Stationery (Cash Vouchers) 4.16		
Notarial Fees .... .50	64.66	
Nov. 30.By Payments by New York Office during November 1911.....		858.85
viz: Accts. Payable Land Department		
Printing Schedules from Reports of O. & C. R. R. Co. to Commissioners of Railroads Department of the Interior 8.00		
Adams Express Co. Chgs... .35		
Coupons paid 850.00		
Nov. 30. By Sundry disbursements by San Francisco Office during Nov. 1911		4,016.26
viz: Land Department 3,976.26		
General Expenses		
Directors Fees ...35.00		
Rent of Vault Oct. 5.00	40.00	
Dec. 31. By Sundry disbursements by San Francisco Office during Dec. 1911		5,039.20

DISBURSEMENTS

viz: Land Department	5,003.43	
General Expenses		
Rent of Vault Nov.	5.00	
Directors Fees ...	30.00	
Towel Service	.77 35.77	
1912		
Jany. 31. By Coupons paid by New York Office during January 1912..		197,175.00
Carried Forward		4,149,751.90
1912 Brought Forward		4,149,751.90
Jany. 31. By Sundry disbursements by San Francisco during Jany. 1912..		4,269.40
a/c Land Department		
Feby. 29. By Payments by New York Office during Feby. 1912		27,509.16
viz: General Expenses		
A. A. Hoehling Jr.	5.76	
J. C. Rankin Ptg.	3.40 9.16	
Coupons paid	27,500.00	
Feby. 29. By Sundry disbursements by San Francisco Office during Feby. 1912		5,507.60
viz: Land Department ...	4,159.56	

DISBURSEMENTS

General Expenses

Rent of Vault Dec 5.00

Rent of Vault Jany. 5.00

Directors Fees ..55.00

Propn. Towel Service ..... .28 65.28

Southern Pacific Railroad Co. Propn. of General Expenses for six months ending Dec. 31, 1911 ..... 1,282.76

March 31. By Payments by New York Office, during March 1912 ..... 4,108.25

viz: General Expenses

Printing Letter Heads.. 3.25

Coupons paid 4,100.00

March 31. By Sundry disbursements by San Francisco Office during March 1912 .... 208,877.03

viz: Land Department 208,842.03

General Expenses

Rent of Vault Feby. 5.00

Directors Fees ...30.00 35.00

April 30. By Payments by New York Office during April 1912 ..... 1,946.50

DISBURSEMENTS

viz: General Expenses

General Land Office Washington for Tracing Plat Tp. 30 S. R. 33 E. M. D. B. M. 6.30

General Land Office Washington, Certified Copies of Letters of Wm. D. Fenton for use in Suit 3340 U. S. vs. O. & C. 37.00

Mary M. Day—Typewriting 69.50

Copy Annual Report of Commissioner of General Land Office 1883 ..... .75

Copies of Senate Reports and House Miscl. Documents 7.85 115.20

Coupons paid 1,825.00

Apl. 30. By Sundry disbursements by San Francisco Office During April 1912 ..... 21,867.64

viz: Land Department 16,106.67

General Expenses

Rent of Vault Mch. 5.00

DISBURSEMENTS

Directors Fees ..100.00

Preparing Copies of Resolution of Directors O. & C. R. R. also for making copies of records destroyed by fire in New York 72.70

Assessment levied by City of Portland against property on S. Line of Holgate St. for extension of Sewer 5,541.40

Cost of fencing land on Cleveland St. in Woodburn, Oregon 40.67 5,759.77

Privilege to cross Right of Way Cancellation of credit on account of privilege granted to outside parties to place wire across Company's Right of Way 1.20

May 31. By Sundry disbursements by San Francisco Office during May 1912 ..... 8,097.97

viz: Land Department 7,614.77

DISBURSEMENTS

General Expenses

Directors Fees ..	35.00	
Rent of Vault April	5.00	
Notarial Fees	.50	
Stationery	.18	
Expenses preparing Copies of Resolutions of Directors also for making copies of records destroyed by fire in New York	127.10	167.78

	Carried Forward	4,431,930.45
1912	Brought Forward	4,431,930.45

May. 31. By Unadjusted Accounts

Improvement assessment levied by City of Portland against tract of land in Homestead Addn.	8.07
Cost of fencing land on Cleveland St. in Woodburn, Oregon..	102.22
Cost of fencing lots 7 and 8 blk. 66, Grants Pass, Oregon . .	36.23

DISBURSEMENTS

Assessments for improvements against NE¼ of Blk. 8 and SE¼ of Blk. 5, City of Albany, Ore.....168.90	315.42	
May 31. By Payments by New York Office during May 1912		1,786.45
viz: General Land Office for certified copies of papers etc. requested by Wm. F. Herrin .4.45		
Comparing copies of O. & C. reports for use in suit of U. S. vs. O. & C. R. R. Co. 5.00		
General Land Office for certified copies Maps of Oregon Central R. R. Co. 14.00		
Notarial Fees , Peter Palmer 13.00	36.45	
Coupons paid 1,750.00		
June 30. By Sundry Payments by San Francisco Office during June 1912		4,418.44

DISBURSEMENTS

viz: Land Department 4,327.64

General Expenses

Propn. cost of changing location of Telephone ..... .33

Rent of Vault May 5.00

Directors Fees ...35.00 40.33

Cost of fencing lots 7 and 8 Blk. 66, Grants Pass Oregon 50.47

June 30. By Payments by New York Office during June 1912 ..... 850.25

viz: Notarial fees—M. S. W. Day .25

Coupons paid 850.00

June 30. By Coupons paid by New York Office during Jany. 1912 (Additional) 37,900.00

June 30. By Interest on Open Account with Southern Pacific Co. for the year ending June 30, 1912 ..... 240,873.15

June 30. By Expenditures during year ending June 30, 1912

Operating Expenses 4,752,519.91

Outside Operations Expenses 229,391.71

DISBURSEMENTS

Taxes	573,456.18
Rentals for Joint Tracks Yards and Terminal Facilities—Proprietary Cos.	7,327.44
Rentals for Joint Tracks Yards and Terminal Facilities—Outside Cos.	86,173.69
Hire of Equipment—S. P. Co.	191,475.00
Hire of Equipment—Balance—Operating Offices	251,666.49
Rentals for Lease of Road—Secondary Companies	50,000.00
Rentals for Lease of Road—Outside Companies	1,500.00
Additions and Betterments	250,201.06
Total	11,111,470.22
June 30, 1912. By Balance	2,542,721.18

DEFENDANTS' EXHIBIT 291

purports to be a financial statement showing Trust Fund Account, Statement to Union Trust Company of New York, Trustee under Indenture dated July 1, 1887, of Trust Fund Account, month of June, 1912, and is as follows:

DEFENDANTS' EXHIBIT 291

(12-7-09-250 S-8348) Form 221 O. & C. *No. A-75*

OREGON & CALIFORNIA RAILROAD CO.

NO. 7.—TRUST FUND ACCOUNT.

Statement to Union Trust Company of New York, Trustee under Indenture dated July 1, 1887, *of Trust Fund Account, month June,* 1912.

CASH EXPENDITURES—	For the Current Month	From May 13, 1887, To Beginning of Current Month	To End of Current Month
Expenses and Taxes	$1,952.72	$3,060,412.08	$3,062,364.80
Balance due Trustee			1,540,886.02
		Total	$4,603,250.82

CASH RECEIPTS—	For the Current Month	From May 13, 1887, To Beginning of Current Month	From May 13, 1887, To End of Current Month
Principal of deferred payments	$318.00		
Interest on deferred payments	799.14		
Interest on overdue payments			
Cash payments on new sales			
Stumpage and depredations			
Land Leases	67.96		
Expenses and Taxes refunded	4.17		
Other Collections (Timber Sales)	1,820.00		
		$4,600,241.55	
		Total	$4,603,250.82

UNION TRUST COMPANY OF NEW YORK, TRUSTEE IN ACCOUNT WITH OREGON & CALIFORNIA RAILROAD COMPANY IN RESPECT OF PROCEEDS FROM SALE OF LANDS.

Cash paid over to Trustee as per previous statement	$2,497,713.01

BALANCE PAYABLE TO TRUSTEE.

Total	$2,497,713.01
Balance due Trustee as above	$1,540,886.02
Advances by O. & C. R. R. Co. for Expenses and Taxes	956,826.99
Total	$2,497,713.01

STATEMENT OF APPLICATION OF CASH RECEIPTS BY TRUSTEE TO DATE.

Cash paid over to Trustee as above	$2,497,713.01
Interest allowed by Trustee on cash deposits	51,523.87
Total	$2,549,236.88

Paid for 2255 called bonds	$2,245,075.00
Paid for accrued interest on called bonds	51,175.00
Paid John C. Spooner (retainer) 5,000. Union Trust Co. of N. Y. 1,577.58	6,577.58
Paid Miller, King, Lane and Trafford $2,536.13, Hon. John M. Gearin $300.00	2,836.13
Paid Dolph, Mallory, Simon and Gearin—Services	713.41
Cash in hands of Trustee unapplied	242,859.76
Total	$2,549,236.88

I hereby certify the foregoing to be correct.

.....

Secretary

San Francisco, Cal., July 8th, 1912.

DEFENDANTS' EXHIBIT 292

purports to be Oregon and California Railroad Company forms of statement to Union Trust Company under Indenture of July 1, 1887:

1. Contracts made for sales of land.
2. Memorandum of contract made for sale of land.
3. Land sales and collections.
4. Miscellaneous cash collections.
5. Land contracts cancelled.
6. Abstract of disbursements.
7. Trust fund account.
8. Deeds authorized for execution by board of directors.
9. Certified copy of resolution of board of directors.

This exhibit is not printed, but certified up under order of Court, and stipulation of parties.

DEFENDANTS' EXHIBIT 293

is as follows:

Total Cost of Construction of the East Side and West Side Roads

including branch lines of Oregon and California Railroad Company.

It is impossible to segregate this cost between East and West Side roads, or branches; therefore they are taken together.

Figures below have been taken from the Annual Reports of the Southern Pacific Company to the Interstate Commerce Commission, fiscal years ending December 31st, 1888 to 1895, inclusive, and June 30th, 1897 to 1911, inclusive.

It is impossible to verify the figures reported for the years prior to the fire of April 18th, 1906.

December 31st, 1888	$30,927,000.00
December 31st, 1889	31,218,750.00
December 31st, 1890	33,609,205.26
December 31st, 1891	34,549,207.72
December 31st, 1892	35,028,915.81
December 31st, 1893	36,099,532.29
December 31st, 1894	36,242,162.78
December 31st, 1895	36,375,844.26
June 30th, 1897	36,501,636.80
June 30th, 1898	36,608,220.95
June 30th, 1899	36,608,220.95
June 30th, 1900	36,565,246.77
June 30th, 1901	36,802,287.11
June 30th, 1902	36,956,868.51
June 30th, 1903	37,161,528.91
June 30th, 1904	37,359,411.44
June 30th, 1905	37,655,735.72
June 30th, 1906	38,315,101.40
June 30th, 1907	39,236,577.12
June 30th, 1908	39,623,341.12
June 30th, 1909	39,778,744.96
June 30th, 1910	40,295,360.59
June 30th, 1911	40,908,730.05
June 30th, 1912	41,147,417.58

DEFENDANTS' EXHIBIT 294

is as follows:

Statement Concerning Lands Involved in Certain Suits Pending in the Circuit Court of the United States for the District of Oregon Wherein the United States of America Is Complainant, and Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, (Individually and as Trustee), Union Trust Company, (Individually and as Trustee), and the Several Parties Hereinafter Named in Respect of Each Suit, Are Defendants.

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3416,		W. M. Ladd, Additional Defendant.			Grantee: W. M. Ladd.		
3351	12/27/89	W. T. Bodley	720.00	$ 4.00	$2,880.00	2582	12/12/98
		Not in Bill of Complaint	240.00	4.00	960.00	2582	12/12/98

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: W. M. Ladd.		
			80.00	4.00	320.00	3ONT	12/12/98
3804	4/ 7/91	W. T. Bodley	240.00	4.00	960.00	2583	12/12/98
		Total in suit	1040.00		4,160.00		
Suit No. 3417,		Albert R. Downs & Edward R. Downs, Additional Defendants.					
					Grantee: A. R. Downs.		
6434	3/14/02	A. R. Downs	2557.76	4.00	10,231.04	475E	7/28/11
6468	4/10/02	A. R. Downs	640.00	4.00	2,560.00	502E	5/15/12
6575	6/27/02	A. R. Downs and E. R. Downs	160.00	5.00	800.00		
					Contract outstanding awaiting survey.		
		Not in Bill	480.00	5.00	2,400.00		Unsurveyed
6577	6/27/02	A. R. Downs	760.38	4.00	3,041.52	510E	8/8/12
		Total in suit	4118.14		16,631.56		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3418,		Wade H. Richardson, Additional Defendant.					
6567	6/25/02	Wade H. Richardson	9759.64	11.00	107,356.00		
					Paid in full 5/23/12		
		Not in Bill	200.00	11.00	2,200.00		
		Total in suit	9759.64		107,356.00		
Suit No. 3419,		John M. Keith & Keith Oil and Land Co., Additional Defendants.					
4855	9/1/96	J. M. Keith	40.00	3.00	120.00		
		Violation in price only					
					In default since 1897.		
					Grantee: John M. Keith.		
5780	6/30/00	John M. Keith	599.08	2.50	1,479.70	3674	7/6/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: John M. Keith.		
5781	7/3/00	John M. Keith	1460.19	2.50	3,650.43	3675	7/6/04
5849	9/15/90	John M. Keith	1634.09	2.50	4,085.22	3702	10/3/04
		Total in suit	3733.36		9,353.35		
Suit No. 3420,		Ashland Manufacturing Co., Additional Defendant.					
					Grantee: Ashland Manufacturing Co.		
4930	3/10/97	E. E. Hills No violation	120.00	2.50	300.00	3543	12/14/03
4983	7/6/97	A. Adelaide Beebe No violation	37.85	2.50	94.63	3540	12/14/03
4988	7/12/97	A. Adelaide Beebe Accumulated violation under 1000 acres	160.00	2.50	400.00	3539	12/14/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Ashland Manufacturing Co.			
5143	5/4/98	H. J. Hicks	262.88	2.50	657.20	3542	12/14/03
5155	5/31/98	H. J. Hicks	400.00	2.50	1,000.00	3541	12/14/03
		Violation under 1000 acres					
6555	6/17/02	The Ashland Manufacturing Co.	1040.00	3.50	3,640.00	158E	7/22/07
		Total in suit	2020.73		6,091.83		
Suit No. 3421,		Jackson A. Graves, Additional Defendant.					
					Grantee: J. A. Graves.		
5857	9/28/00	John M. Keith	1560.00	2.50	3,900.00	8B	12/1/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: J. A. Graves.		
5884	10/18/00	John M. Keith	320.62	2.50	801.55	8B	12/1/04
		Total in suit	1880.62	2.50	4,701.55		
Suit No. 3422,		Elk Creek Lumber Co., Aditional Defendant.					
					Grantee: The Elk Creek Lumber Co.		
6016	2/16/01	G. R. Child & J. F. Barker	920.00	3.30	3,040.00	83E	3/13/07
					Grantee: The Elk Creek Lumber Co.		
6232	8/7/01	J. F. Barker & G. R. Childs	240.00	3.00	720.00	83E	3/13/07
		Total in suit	1160.00		3,760.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3423,		Hammond Lumber Co., Additional Defendant.					
					Grantee: Hammond Lumber Co.		
5963	12/31/00	The Astoria Co.	14533.74	8.00	116,269.92	110E	4/17/07
		Total in suit	14533.74		116,269.92		
Suit No. 3423,		Booth-Kelly Lumber Co., Detroit Trust Co. (individually and as Trustee), John F. Kelly (individually and as Trustee), Bernard Marvin, George W. Deans, Joseph Gillespie, James P. O'Brien, and L. A. Brown, Additional Defendants.					
					Grantee: The Booth-Kelly Lumber Co.		
4732	12/18/95	W. T. Bodley	681.58	3.91	2,668.70	3019	4/8/01
4733	12/18/95	W. T. Bodley	480.00	6.00	2,880.00	3020	4/8/01

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Booth-Kelly Lumber Co.			
4982	7/6/97	C. A. Logan No violation	40.00	2.50	100.00	3347	11/3/02
5046	11/16/97	C. H. Burkholder Violation in price only	41.62	4.50	187.29	2995	2/18/01
5144	5/10/98	G. D. Shirey Under 1000 acres	240.00	4.00	960.00	3499	8/3/03
5198	9/1/98	George W. Dean Violation in price only	40.00	5.00	200.00	3577	2/8/04
5242	10/31/98	J. I. Jones Violation in price only	154.43	6.00	926.58	3484	7/6/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Booth-Kelly Lumber Co.				
5283	12/23/98	Chas. K. Spaulding Logging Co. Violation in price and perhaps "Actual Settler"	160.00	5.00	800.00	2B	12/1/04
5314	2/21/99	The Booth-Kelly Lumber Co.	678.55	3.50	2,374.93	2B	12/1/04
5318	3/3/99	Mrs. R. Nettle Violation in price only	80.00	4.00	320.00	3288	8/11/02
			Grantee: The Booth-Kelly Lumber Co.				
5332	3/31/99	Booth - Kelly Lumber Co.	17248.70	7.00	120,739.64	1B&2B	12/1/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Booth-Kelly Lumber Co.			
			40.00	7.00	280.00	209NT	12/1/04
			40.00	7.00	280.00	210NT	12/1/04
5332A	5/31/99	Booth-Kelly Lumber Co.	720.00	7.00	5,040.00	2B	12/1/04
5369	5/13/99	Ben F. Dearing Violation in price only	39.70	4.50	178.65	2B	12/1/04
5404	7/5/99	The Booth-Kelly Lumber Co.	2044.90	5.81	12,000.00	2B	12/1/04
5433	8/29/99	The Booth-Kelly Lumber Co.	1155.20	6.91	7,986.40	2B	12/1/04
5458	10/4/99	The Booth-Kelly Lumber Co.	1036.15	4.07	4,225.98	2B	12/1/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Booth-Kelly Lumber Co.				
5495	10/31/99	The Booth-Kelly Lumber Co.	2350.43	7.00	16,450.00	2B	12/1/04
5654	3/15/00	The Booth-Kelly Lumber Co.	40.00	3.80	152.00	2836	3/19/00
5688	4/13/00	A. D. Hyland & E. E. Upmeyer	3000.00	7.50	22,500.00	2B	12/1/04
5792	7/—/00	The Booth-Kelly Lumber Co.	40.00	3.32	133.00	89NT	9/3/00
5809	7/31/00	J. J. Jones & J. W. Cook Bill reads S1/4 of SE1/4	10,004.86	5.25	52,525.50	2B	12/1/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		7-22S-2W should be S½ of SE¼ 7-22S-2W		Grantee: Booth-Kelly Lumber Co.			
5873	10/13/00	Booth-Kelly Lumber Co.	200.00	7.50	1,500.	2936	10/20/00
5897	10/31/00	Amos D. Hyland, N. G. Hyland, E. E. Upmyer & Geo. H. Woodbury	3795.18	7.50	28,463.85	2B	12/1/04
5921	11/24/00	Booth-Kelly Lumber Co.	40.00	4.75	190.00	2957	12/17/00
5970	1/9/01	Booth-Kelly Lumber Co.	1244.71	4.48	5,578.78	3642	5/9/04
5971	1/9/01	Booth-Kelly Lumber Co. Bill reads parts of Sec.	40.00	8.00	320.00	3589	2/8/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		15-15S-1W should read parts of Sec. 13-15S-1W.					
				Grantee: Booth-Kelly Lumber Co.			
5971A	1/9/01	Booth-Kelly Lumber Co.	160.00	5.50	880.00	187NT	2/8/04
5972	1/9/01	Booth-Kelly Lumber Co.	40.00	8.00	320.00	2993	2/18/01
6180	6/17/01	Lou S. Hill Violation in price only	80.00	6.00	480.00	2B	12/1/04
6256	8/26/01	The Booth-Kelly Lumber Co.	320.00	5.00	1,600.00	2B	12/1/04
6269	9/18/01	The Booth-Kelly Lumber Co.	1360.00	10.00	13,600.00	2B	12/1/04

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
6320	11/16/01	The Booth-Kelly Lumber Co.		Grantee: Booth-Kelly Lumber Co.			
			40.00	2.85	114.00	3170	12/2/01
6346	12/20/01	The Booth-Kelly Lumber Co.	40.00	4.75)			
				)			
			40.00	3.32)	323.00	3186	1/13/02
6347	12/21/01	The Booth-Kelly Lumber Co.	80.00	7.60	608.00	3187	1/13/02
6348	12/31/01	The Booth-Kelly Lumber Co.	40.00	7.60	304.00	136NT	1/13/02
6349	12/21/01	John F. Kelly, Trustee	19283.71	10.00	192,837.10	Outstanding	
6353	12/-/01	Booth-Kelly Lumber Co.	40.00	4.75	190.00	137NT	1/13/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Booth-Kelly Lumber Co.			
6436	3/20/02	Booth-Kelly Lumber Co.	40.00	6.65	266.00	3223	4/7/02
6594	7/9/02	Booth-Kelly Lumber Co.	40.00	4.75	190.00	3286	8/11/02
6648	9/-/02	Booth-Kelly Lumber Co.	40.00	10.00	400.00	211	12/1/04
6661	9/26/02	J. W. Parrish Violation in price only	160.00	3.00	480.00	101E	4/4/07
6678	10/24/02	J. W. Parrish & N. H. Martin No violation	80.00	2.50	200.00	102E	4/4/07
		Total in suit	67559.72		502,753.40		

Deeds 1B & 2B as given in Bill disagree with above figures, being 274.98 acres less, but the consideration agrees with above figures.

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3425,		L. A. Lewis, Columbia Mines Co., G. W. Blalock, John J. Blalock, Clementine F. Lewis, S. B. Pettingill, Charles H. Burton, G. W. Boynton, Eliza J. Boynton, James Eugene Lord, William P. Dunham, Greenback Gold Mining Co. & Victor Junior Gold Mining Co., Additional Defendants.					
					Grantee: L. A. Lewis.		
4453	12/16/93	L. A. Lewis	461.17	2.50	1,152.92	2673	8/21/99
			40.00	2.50	100.00	2926	10/29/00
4677	8/29/95	L. A. Lewis	40.00	2.50	100.00	2674	8/21/99

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. A. Lewis.		
4678	8/29/95	L. A. Lewis Bill shows deed 2675 as dated Aug. 24, '99.	20.00	2.50	50.00	2675	8/21/99
4679	8/29/95	L. A. Lewis	30.00	2.50	75.00	2676	8/21/99
4680	8/29/95	L. A. Lewis	20.00	2.50	50.00	2677	8/21/99
4845	8/29/96	L. A. Lewis	40.00	2.50	100.00	2678	8/21/99
4846	8/29/96	L. A. Lewis	40.00	2.50	100.00	2679	8/21/99
4847	8/29/96	L. A. Lewis	40.00	2.50	100.00	2680	8/21/99
4848	8/29/96	L. A. Lewis	40.00	2.50	100.00	2681	8/21/99
4849	8/29/96	L. A. Lewis	40.00	2.50	100.00	2682	8/21/99

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. A. Lewis.		
4850	8/29/96	L. A. Lewis	40.00	2.50	100.00	2683	8/21/99
4851	8/29/96	L. A. Lewis	40.00	2.50	100.00	2652	6/12/99
4852	8/29/96	L. A. Lewis	40.00	2.50	100.00	2684	8/21/99
					Grantee: Edwin Nicodemus.		
4862	9/25/96	Edwin Nicodemus Not in Bill	40.42		100.30	2376	8/10/97
					Grantee: L. A. Lewis.		
			241.63	2.48	599.70	2376A	8/21/99
		Bill shows deed 2376A as dated Nov. 9, '96. Violation under 1000 acres.					

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	—Deed— Date.
					Grantee: L. A. Lewis.		
4869	10/8/96	L. A. Lewis Bill shows deed as dated Feby. 15, '97.	34.98	2.37	83.08	2380	8/21/99
5099	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5100	3/30/98	L. A. Lewis	31.04	2.50	77.60	3512	9/7/03
5101	3/30/98	L. A. Lewis	31.43	2.50	78.57	3512	9/7/03
5102	3/30/98	L. A. Lewis	40.00	2.50	100.00	2508	4/11/98
5103	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5104	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5105	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. A. Lewis.		
5106	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5107	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5108	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5109	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5110	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5111	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5112	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5113	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5114	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5115	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. A. Lewis.		
5116	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5117	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
5118	3/30/98	L. A. Lewis	40.00	2.50	100.00	3512	9/7/03
		O. & C. Land Dept. records show a correction deed No. 3512A dated Jany. 4, '04, covering deed No. 3512. Bill shows such correction deed as being dated Jany. 26, '04, and does not show the original deed No. 3512.					

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. A. Lewis.		
5207	9/13/98	L. A. Lewis	40.00	2.50	100.00	2685	8/21/99
5208	9/13/98	L. A. Lewis	40.00	2.50	100.00	2686	8/21/99
5209	9/13/98	L. A. Lewis	40.00	2.50	100.00	2687	8/21/99
5210	9/13/98	L. A. Lewis	40.00	2.50	100.00	2688	8/21/99
5815	8/9/00	L. A. Lewis	80.00	2.37	190.00	2913	9/3/00
5962	12/29/00	L. A. Lewis	320.00	2.37	760.00	2990	2/18/01
6204	7/9/01	L. A. Lewis Bill of Complaint shows deed 3107A and also	123.77	2.50	293.95	3107A	12/26/01

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		shows another deed for same land dated July 29, '01.					
		Total in Suit	2674.02		6,610.82		
Suit No. 3426,		*Olean Land Co. & Wilson River Lumber Co., Additional Defendants.*					
					Grantee: Olean Land Co. of Minn.		
6221	7/30/01	Olean Land Co.	2431.55	8.00	19,452.40	3121	9/23/01
6266	9/16/01	Olean Land Co.	423.61	2.50	1,059.00	3135	9/23/01
6267	9/16/01	Olean Land Co.	156.57	8.00)	500.00	207E)	2/20/08
		R. R. Co. Patent canceled.	104.06	4.80)		) Quit Claim [Deed.	

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		The consideration originally named in Contract No. 6267 was $2085.04 but because of the cancellation of patent for part of the land the R. R. Co. accepted $500.00 as full purchase price and gave quit claim deed for all of the land. Bill shows date of deed 207E as April 20, 1908.					
		Total in suit	3115.79		21,011.40		
Suit No. 3427,		Lewis Gerlinger, Christian Burkhardt, George W. Cone, Siletz Timber Co., Charles K. Spaulding Logging Co. and East Side Mill and Timber Co., Additional Defendants.					
					Grantee: L. Gerlinger.		
3663	11/20/90	L. I. Frink Violation in price only	80.00	4.50	360.00	3455	6/8/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: L. Gerlinger.		
6019	2/19/01	L. Gerlinger Violation in price only	120.00	5.50	660.00	3014	4/8/01
6020	2/-/01	L. Gerlinger Unmortgaged	80.00	5.50	440.00	111NT	4/8/01
6198	6/29/01	H. Hirschberg	440.56	2.50	1,101.40)		
			6321.80	6.50	41,091.70)	11E	8/24/06
		Total in suit	7042.36		43,653.10		
Suit No. 3428,		*Charles K. Spaulding Logging Co., Additional Defendant.*					
					Grantee: The Chas. K. Spalding Logging Co.		
5614	2/23/00	Chas. K. Spaulding Logging Co.	4848.88	5.50	26,668.84	208E	2/25/08
		Total in suit	4848.88		26,668.84		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3429,		*J. L. Washburn, Additional Defendant.*			Grantee: J. L. Washburn.		
6142	5/18/01	A. M. Stearns Same Land (all 29-31S-5W) is involved in Suit No. 3438 wherein A. M. Stearns is Defendant.	640.00	3.00	1,920.00	271E	9/14/08
6192	6/25/01	A. M. Stearns Bill shows deed dated June 25, '08.	802.02	3.00	2,408.76	271E	9/14/08
		Total in suit	1442.92		4,328.76		
Suit No. 3430,		*Jacob Rahm, Additional Defendant.*					

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	—Deed— Date.
					Grantee: Jacob Rahm.		
5804	7/13/00	Jacob Rahm	640.00	6.00	3,840.00	262E	7/24/08
5805	7/13/00	Jacob Rahm	640.00	6.00	3,840.00	262E	7/24/08
5806	7/30/00	Jacob Rahm	640.00	7.00	4,480.00	262E	7/24/08
5864	10/6/00	Jacob Rahm Bill shows deed dated Sept. 21, '08.	640.00	7.50	4,800.00	262E	7/24/08
		Total in suit	2560.00		16,960.00		

Suit No. 3431, Chas. A. Smith, C. A. Smith Timber Co., Central Trust Co. of Illinois and A. Wilcub, Additional Defendants.

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Charles A. Smith.		
5844	9/12/00	Charles A. Smith	12006.20	5.00	60,031.00	3145	10/21/01
			2993.80	5.00	14,969.00	75E	2/16/07
			5491.62	4.00	21,966.48	75E	2/16/07
		Not in Bill—not deeded	7086.50	4.00	28,346.00		
		Total in suit	20491.62		96,966.48		
Suit No. 3432,		Charles H. Chick, Constantine Marton and Everett P. Lewis, Additional Defendants.					
					Grantee: Charles H. Chick.		
6187	6/1/01	Charles A. Chick	400.00	5.00	2,000.00	3474	7/6/03
			40.00	2.50	100.00	3474	7/6/03
			2720.00	7.00	19,040.00	3474	7/6/03
		Total in suit	3160.00		21,140.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3433,		*Fred A. Kribs and Pillsbury Lumber Co., Additional Defendants.* Grantee: Fred A. Kribbs.					
5221	10/24/98	W. R. Murray & F. W. Coffee Violation in price only	40.00	4.00	160.00	3582	2/8/04
5980	1/14/01	Alfred E. Berry No violation	40.00	2.50	100.00	3395	2/2/03
6158	/01	Fred A. Kribbs	1040.00	4.50	4,680.00	3079	6/10/01
6264	9/13/01	Donald McRae Under 1000 acres.	596.96	4.25	2,537.08	3398	2/2/03
6372	1/11/02	Donald McRae and Ellis Jennings	1277.50	5.00	6,387.50	3396	2/2/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
6441	3/24/02	Ellis Jennings and Donald McRae	365.50	6.00	2,193.00	3397	2/2/03
6615	7/29/02	Fred A. Kribs	120.00	4.25	510.00	3293	8/11/02
		Total in suit	3479.96		16,567.58		
Suit No. 3434,		*John F. Kelly and George H. Kelly, Additional Defendants.*					
					Grantees: George H. & J. F. Kelly.		
3644	11/1/90	G. H. & J. F. Kelly Bill shows date of deed 2235 Feb. 4, '95.	240.00	4.25	1,020.00	2235	
					Grantees: J. F. Kelly and Geo. H. Kelly.		
4138	5/17/92	J. F. & Geo. H. Kelly	802.00	3.50	2,807.00	3241	5/1/02
		Total in suit	1042.00		3,827.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3435,		Willis H. Gilbert (individually and as Trustee) West Coast Timber Co. and Peninsula Lumber Co., Additional Defendants. Grantee: Willis H. Gilbert, Trustee.					
5307	2/4/99	Central Lumber Co.	8030.21	6.00	48,181.00	3563	1/4/04
6263	9/12/01	M. B. Rankin Bill shows date of deed 3564 as Jany. 4, '04, which is probably correct.	5866.60	10.00	58,666.00	3564	1/4/03
6643	9/5/02	Willis H. Gilbert Under 1000 acres	320.00	12.00	3,650.00	3315	10/6/02
		Total in suit	14216.81		110,497.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3436,		Stewart B. Eakin (individually and as Trustee) Booth-Kelly Lumber Co. and Orin Robinson, Additional Defendants.					
					Grantee: S. B. Eakin.		
5344	4/17/99	B. S. Kelsay Violation in price only.	43.04	3.75	161.40	100E	4/3/07
6438	3/20/02	G. O. Walker Under 1000 acres.	480.00	5.00	2,400.00	100E	4/3/07
					Grantee: S. B. Eakin, Trustee.		
6563	6/20/02	J. E. Young	720.00	2.50	1,800.00)		
			880.00	7.00	6,200.00)	135B	1/8/06
6591	7/8/02	Orrin Robinson Bill shows deed 135B	340.75	7.97	2,716.37	135B	1/8/06

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		dated Sept. 5, '06.					
		Total in suit	2463.79		13,277.77		
Suit No. 3437,		Big Bend Milling Co., W. L. Harkness, Butte Falls Sugar Pine Lumber Co. and Edward Woodbury, Additional Defendants.					
					Grantee: Big Bend Milling Co.		
5573	1/22/00	Chas. H. Pierce	640.00	6.50)		10B	12/1/04
			3360.00	6.50)	26,000.00	142B	2/9/06
5756	5/31/00	Big Bend Milling Co.	2561.89	3.90	10,090.40	142B	2/9/06
5797	7/27/00	Big Bend Milling Co.	804.97	2.75	2,213.66	141B	2/9/06
		Total in suit	7366.86		38,304.06		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3438,		*A. M. Stearns, Additonal Defendant.*			Grantee: J. L. Washburn.		
6142	518/01	A. M. Stearns	640.00	3.00	1,920.00	271E	9/14/08
6192	6/25/01	A. M. Stearns Involves same land as that in Suit No. 3429 supra.	802.92	3.00	2,408.76	271E	9/14/08
		Total in Suit	.....		.....		
Suit No. 3439,		*Curtiss Lumber Co., Additional Defendant.*			Grantee: The Curtis Lumber Co.		
2895		The Curtiss Lumber Co. No violation except "actual settler" (?)	80.00	2.50	200.00	153NT	8/11/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
						Grantee: Curtis Lumber Co.	
5638	3/1/00	The Curtis Lumber Co.	3762.68	5.00	18,813.40	117E	5/1/07
						Grantee: The Curtiss Lumber Co.	
6360	1/3/02	The Curtiss Lumber Co.	1050.96	9.75	10,250.00	3342	11/3/02
		Total in suit	4893.64		29,263.40		
Suit No. 3440. Pokegama Sugar Pine Lumber Co. and Weyerhauser Land Co., Additional Defendants.							
						Grantee: Pokegama Sugar Pine Lumber Co.	
4948	4/19/97	Pokegama Sugar Pine Lumber Co.	640.00	6.50	4,160.00	2464	11/ 8/97
	9/ 3/97		320.00	6.50	2,080.00	2477	12/20/97
5421	7/ 1/99		320.00	6.50	2,080.00	2763	11/27/99

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Pokegama Sugar Pine Lumber Co.				
			480.00	6.50	3,120.00	2861	5/28/00
			640.00	6.50	4,160.00	2972	12/17/00
			640.00	6.50	4,160.00	3176	12/ 2/01
			160.00	6.50	1,040.00	3528	10/ 5/03
			10022.95	6.50	65,149.17	23E	9/14/06
		Total in suits	13222.95		85,949.17		

Suit No. 3441. *Edwin Fowler, Additional Defendant.*

					Grantee: Edwin Fowler.		
5874	10/18/00	W. R. Stansell	1279.42	2.50	3,198.55	73B	6/27/05

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Edwin Fowler.		
6128	5/10/01	Rogue River Mining Lumber Co.	720.00	2.50	1,800.00	73B	6/27/05
		Total in Suit	1999.42		4,998.55		
Suit No. 3442.		Justin Wentworth, George K. Wentworth, William L. Roach and Roach Timber Co., Additional Defendants.					
					Grantee: Justin and Geo. K. Wentworth.		
5775	6/ 1/00	Justin and Geo K. Wentworth.	9850.33	7.50	73,877.48	2896	6/25/00
			2157.60	7.50	16,182.00	3198	2/3/02
			160.00	7.50	1,200.00	85NT	6/25/00
			80.00	7.50	600.00	141NT	2/ 3/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Justin Wentworth and George K. Wentworth.				
			1762.44	7.50	13,218.30	109E	4/17/07
6454	3/31/02	A. W. Lambert	20911.48		188,203.32	31E	11/22/06
	Total in Suit		34921.85		293,281.10		
Suit No. 3443. Clifford Coggins, L. Y. Coggins, Mary E. Coggins and Leon Coggins, Additional Defendants.							
5454	9/28/99	C. S. Coggins, C. Coggins and L. Y. Coggins	2727.36	2.80	7,636.60	225E	4/17/08
		Grantee: Clifford Coggins, L. Y. Coggins, Mary E. Coggins and Leon Coggins					

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
5875	10/13/00	C. S., L. Y. and Clifford Coggins	3245.90	2.80	9,088.52	225E	4/17/08
	Total in Suit		5973.26		16,725.12		
Suit No. 3444, Charles G. Forester and Forester Lumber Co., Additional Defendants.							
					Grantee: Charles G. Forester.		
5750	5/28/00	Wade H. Richardson	642.88	6.25	4,018.00	3100	7/29/01
		Bill shows 642.08 acres.					
5751	5/28/00	Wade H. Richardson	833.79	6.25	5,211.19	3101	7/29/01
	Total in Suit		1476.67		9,229.19		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3445, Albert C. Hopkins, Additional Defendant.							
				Grantee: A. C. Hopkins.			
4029	12/ 7/91	Chas. H. and J. G. Pierce	810.00	7.50	6,300.00	2483	12/20/97
			880.00	7.50	6,600.00	2584	12/12/98
			7888.21	6.27	49,500.00	2765	12/26/99
			402.12	6.46	2,600.00	84B	7/19/05
4179	6/24/92	do		Grantee: A. C. Hopkins.			
			401.58	6.22	2,500.00	2586	12/12/98
		Bill shows consideration in Deed 84B as	2427.42	4.82	11,700.00	2666	7/ 5/99

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: A. C. Hopkins.			
		$3067.15	2222.41	4.97	11.057.05	3423	4/ 6/03
		O. & C. Records show 3018.00 Discrepancy 49.15	80.00	5.22	418.00	84B	7/19/05
4182	6/27/92	Chas. H. & J. G. Pierce	40.00	6.50	260.00	2585	12/12/98
5218	9/29/98	do	640.00	6.50	4,160.00	2554	10/ 3/98
5489	10/23/99	do	40.00	9.56	382.64	2737	11/27/99
		Total in Suit	15861.74		95,477.69		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3446, C. T. La Tourneau, Additional Defendant.							
					In default since 1902.		
6280	10/ 4/01	C. T. La Tourneau	320.00	3.00	960.00		
6600	7/14/02	C. T. Tourneau	1120.00	5.00	5,600.00	270E	9/14/08
					Grantee: Jed L. Washburn.		
		Suit 3429— J. L. Washburn does not include Contract 6600.					
		Total in Suit	1440.00		6,560.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3447, T. D. Collins and Everell S. Collins, Additional Defendants.							
5928	11/30/00	Truman D.	11554.25	2.50)	188,123.43		
		Everell S.	17693.09	9.00)			
		Collins.	Contract paid in full 1/30/11 Deed not yet issued.				
		Bill of Complaint includes S½ 33-6S-4E 320.00 which is patented unsold land of O. & C. R. R. Co.	No report as to value		Contract not surrendered		
		Total in Suit	29,567.34		188.123.43		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3448, D. N. Snyder, Additional Defendant.							
6064	3/23/01	D. N. Snyder	1252.42	3.25	4,070.36		
		In default since 1902	——		——		
		Total in Suit	1252.42		4,070.36		
Suit No. 3449, Andrew B. Hammond, Charles J. Winton and Winton Timber Co., Additional Defendants							
6242	8/16/01	A. B. Hammond and C. J. Winton Grantee: A. B. Hammond & Charles J. Winton	45,927.43	7.00	321,807.00	448E	1/12/11

Suits Nos. 3450 and 3451—Land Dept. has no Bills of Complaint.

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3452, Waldo A. Avery, E. Richardson Co, Charles G. Briggs (individually and as Administrator with the will annexed of the Estate of Charles H. Green Deceased) Jessie A. Green, Dorothy Green, Allen Green, Donald Green, Fred H. Green, Mary Green and Alice G. Lewis, Additional Defendants.							
6345	11/15/01	John W. Cook, P. J. and R. J. Jennings Bill shows deed 228E as dated June 8/08 and consideration as being $22611.11	15730.44	11.50	158,277.49 22,611.07	180E 228E	10/28/07 4/18/08
Grantee: Waldo A. Every and The E. Richardson Co. (7/8 interest) C. G. Brigg, Ad-							

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		ministrator with the will annexed of the Estate of Charles H. Green deceased (1/8 interest)					
		Total in Suit	15730.44		180,888.56		
Suit No. 3453 Bray & Choate Land Co and Oshkosh Land & Timber Co., Additional Defendants.							
5487	10/25/99	Bray, Choate Land Co.	3492.32	7.50	26,192.40	2735	11/27/99
5488	10/25/99	Bray Choate, Land Co.	1324.08	7.50	9,930.60	2736	11/27/99
					Grantee: The Bray & Choate Land Co.		
		Total in suit	4816.40		36,123.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3454.		Peter Nelson, Hartley McGuire, William H. White, Godfrey Von Platten, Additional Defendants.					
6550	6/16/02	Peter Nelson, Washington I. Milliken and Hartley McGuire	1925.83	10.00	19,258.30	124-E	5/9/07
		Grantees: Peter Nelson and Hartley McGuire.					
	Total in suit		1925.83		19,258.30		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3455.		Gilbert Gilbertson Glendale Lumber Co. and Viola Nail					
3711	1/14/91	G. Gilbertson Violation in price only	80.00	5.50	440.00 In default since 1894.		
3720	1/21/91	G. Gilbertson Violation in price only	40.00	5.50	220.00 In default since 1894.		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
4587	2/4/95	Gilbert Gilbertson	40.00	3.00	120.00		
					In default since 1896.		
		Violation in price only					
4675	8/22/95	G. Gilbertson	40.00	2.50	100.00		
					In default since 1896.		
5466	10/7/99	G. Gilbertson	40.00	2.50	100.00	3074	6/10/01
6430	3/11/02	G. Gilbertson	80.00	3.00	240.00	131B	12/22/05
					Grantee: G. Gilbertson		
6529	5/23/02	G. Gilbertson	684.64	3.00	2,054.22	515E	8/21/12
					Grantee: Roe G. Chace & Geo. H. Putnam		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
6570	6/23/02	G. Gilbertson	320.00	3.50	1,120.00		
					In default since 1905		
6660	9/26/02	G. Gilbertson	40.00	5.00	200.00	3364	12/1/02
					Grantee: Gilbert Gilbertson		
	Total in suit		1364.64		4,594.22		
Suit No. 3456		Gardiner Mill Co. & Mary Larson Additional Defendants,					
663		Thomas Harris No violation			Grantee: Gardiner Mill Co.		
			80.00	2.50	200.00	1160	2/28/91

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Gardiner Mill Co.		
669		Lea C. Smith No violation	160.00	2.12	340.00	1157	2/28/91
670	12/18/77	Mary Reed No violation	80.00	2.50	200.00	448	7/28/85
671		—Koepke and —Tyoritz No violation	280.00	1.75	490.00	903	3/5/86
690		Alfred W. Reed No violation	80.00	2.50	200.00	1158	2/28/91
808		Wm. S. Reed No violation	40.00	2.50	100.00	1161	2/28/91

Con-tract No.	Date.	Purchaser	Acres.	Price per Acre.	Consider-ation.	—Deed— No.	Date.
			Grantee: Gardiner Mill Co.				
938		John W. Wroe No violation	80.45	2.50	201.12	1322	2/28/91
1151		—Reed and— Emerson No violation Deed No. 1323 appears twice in Bill ExK10 and K17	40.00	2.50	100.00	1323	2/28/91
1390B	7/7/81	—Pyritz— Koepke No violation	120.00	1.12	135.00	447	7/28/85

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Gardiner Mill Co.				
1405A	8/4/81	—Reed &— Emerson No violation	120.00	1.92	230.00	452	7/28/85
2328		C. Hacker includes SW 1/4 of SE 1/4 Sec 3 Twp 21 S Rge 9 W. Unpatented Lost No violation	160.00	2.50	400.00	1874	6/20/92
2377		John Johnson Violation in price only	80.00	3.00	240.00	1869	6/20/92

Con-tract No.	Date.	Purchaser	Acres.	Price per Acre.	Consider-ation.	—Deed— No.	Date.
			Grantee: Gardiner Mill Co.				
2630		John Johnson Violation in price only	80.00	3.00	240.00	1870	6/20/92
4569	12/3/94	Wm. A. Wroe Violation in price only	40.00	3.25	130.00	3264	6/3/02
4673	8/19/95	Wm. A. Wroe Violation in price only	80.00	2.75	220.00	3265	6/3/02
4674	8/19/95	Wm. A. Wroe Violation as to 40 acres *only*	80.00	2.50	200.00	3266	6/3/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Gardiner Mill Co.		
5658	3/19/00	Gardiner Mill Co. Bill shows $3,052.58 as consideration in Deed 2849	803.31	4.00	3,213.24	2849	4/23/00
5683	4/5/00	Gardiner Mill Co.	120.00	2.25	270.00	2850	4/13/00
		Total in suit	2523.76		7109.36		
Suit No. 3457		Star Mill & Flume Co., E. S. Crossett, H. E. Crossett, and E. C. Crossett Additional Defendants					

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
6401	2/7/02	Star Mill & Flume Co.	439.31	5.50	2,416.20		
			1281.08	15.00	19,216.20	150B	3/1/06
					Grantee: Star Mill & Flume Co.		
	Total in suit		1720.39		21,632.40		
Suit No. 3458		John A. Black, Additional Defendant					
6117	5/6/01	Edgar I. Hewes and Daniel H. Bement	2360.00	2.50	5900.00		
					Paid in full 5/9/11 awaiting probate proceedings		
	Total in suit		2360.00		5900.00		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3459		Charles R. Ray, Condor Water & Power Co. Gold Ray Realty Co. and Frank H. Ray, Additional Defendants.					
					Grantee: Chas. R. Ray		
4118	4/26/92	C. P. Look Violation in in price only	21.16	3.54	75.00	3250	5/1/02
5129	4/18/98	Wm. H. Holmes No violation	40.00	2.50	100.00	3221	4/7/02
5300	1/21/99	A. J. Daley No violation	43.74	2.50	109.35	3220	4/7/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Chas. R. Ray			
5457	6/2/99	C. R. Ray No violation	36.77	2.50	91.92	2723	10/9/99
5461	10/6/99	Chas. R. Ray No violation	40.00	2.50	100.00	2727	10/9/99
5604	2/16/00	Chas. R. Ray	64.62	2.50	161.55	2810A	5/28/00
5620	2/27/00	Charles R. Ray	240.00	2.50	600.00	2819	3/19/00
5643	3/10/00	Charles R. Ray Bill shows consideration Deed 2831 to be $220.00	88.32	2.50	220.80	2831	3/19/00
5644	3/12/00	Charles R. Ray	80.00	2.50	200.00	2832	3/19/00
5650	3/3/00	Charles R. Ray	80.00	2.50	200.00	2827	3/19/00

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Chas. R. Ray		
5676	4/4/00	Charles R. Ray	120.00	2.50	300.00	2848	4/23/00
5707	4/28/00	Charles R. Ray	19.83	2.50	49.58	2863	5/28/00
6110	4/29/01	Charles R. Ray	80.00	2.50	200.00	3053	6/10/01
6300	10/25/01	Charles R. Ray	23.46	2.50	58.65	3158	12/2/01
6560	6/18/02	Charles R. Ray	121.75	9.85	1200.00	3274	7/7/02
6608	7/22/02	Charles R. Ray	120.00	10.00	1200.00	3693	10/3/04
	Total in suit		1219.65		4866.85		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suit No. 3460		Pacific Timber Co., Leona Mills Lumber Co. and Brown Lumber Co., Additional Defendants					
				Grantee: Pacific Timber Co.			
5281	12/22/98	John Thornthwaite Violation in price only	40.00	3.00	120.00	3487	7/6/03
5524	11/27/99	J. B. Rouse Violation in price only	81.09	3.25	263.55	71B	6/5/05
5888	10/19/00	—Campbell & —Alexander Under 1000 acres	320.00	5.00	1600.00	71B	6/5/05

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
			Grantee: Pacific Timber Co.				
5942	12/10/00	Frank Marketta Violation in Price only	40.00	3.50	140.00	3103	7/29/01
6051	3/14/01	Rouse Geer Lumber Co. Violation in price and perhaps "actual settler." Bill shows NE¼ of NE¼ 11-23S. 3W.	40.00	3.00	120.00	71B	6/5/05

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Pacific Timber Co.			
		should read NE¼ of SE¼ of 11-23S-3W.					
6052	3/14/01	Rouse Geer Lumber Co. Violation in price and perhaps "Actual Settler"	40.00	3.50	140.00	71B	6/5/05
6132	5/13/01	Pacific Timber Co. Violation in price and	40.00	3.50	140.00	3104	7/29/01

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
		perhaps "Actual Settler"		Grantee: Pacific Timber Co.			
6191	6/14/01	Pacific Timber Co. Violation in price and perhaps "Actual Settler"	80.00	4.75	380.00	3676	7/6/04
6206	7/12/01	Pacific Timber Co. Accumulated violation under 1000 acres	120.00	4.00	480.00	3311	9/8/02

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
				Grantee: Pacific Timber Co.			
6227	8/3/01	Pacific Timber Co. Accumulated violation under 1000 acres.	480.00	4.00	1,920.00	71B	6/5/05
6258	8/29/01	J. B. Rouse & Levi Geer Violation in price only	80.00	3.00	240.00	98B	9/8/05
6286	10/14/01	Pacific Timber Co. Accumulated violation under 1000 acres.	40.00	3.50	140.00	71B	6/5/05

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
					Grantee: Pacific Timber Co.		
6306	11/7/01	Pacific Timber Co. Accumulated violation under 1000 acres.	40.00	4.50	180.00	3416	4/6/03
6385	1/22/02	Pacific Timber Co. Accumulated violation under 1000 acres	40.00	7.00	280.00	3590	2/8/04
		Total in suit	1481.09		6,143.55		

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
Suits Nos. 3461 and 3462 Land Dept. has no Bills of Complaint							
Suit No. 3463		Drew Timber Co., Additional Defendant.		Grantee: Frances V. Canfield			
6427	3/7/02	Clarence Thomson Violation in price only	40.00	5.00	200.00	3392	2/2/03
6484	4/18/02	Theron C. Thomson Violation in price only	40.00	5.00	200.00	3393	2/2/03
6492	4/23/02	Theron C. Thomson Violation in price only	78.80	3.50	275.80	3394	2/2/03

Contract No.	Date.	Purchaser	Acres.	Price per Acre.	Consideration.	—Deed— No.	Date.
6501	4/30/02	Frances V. Canfield	5338.37	13.00	69,398.00	3251	5/1/02
					Grantee: Frances V. Canfield		
	Total in suit		5497.17		70,073.80		
Suit No. 3464		No Additional Defendants.			Grantee: Southern Pacific Co.		
2E	10/9/06	Southern Pacific Co.	840.00	55.50	46,622.00	24E	10/9/06
4E	1/3/07	Southern Pacific Co. Bill shows deed to be dated Jany. 3, '07	1280.00	40.00	51,170.50	37E	1/3/07

Con-tract No.	Date.	Purchaser	Acres.	Price per Acre.	Consider-ation.	—Deed— No.	Date.
					Grantee: Southern Pacific Co.		
1U	3/26/07	Southern Pacific Co. Bill shows deed to be dated Mch. 26, 07 and recorded May 25, 07	80.00	40.87	3,270.00	29U	4/17/08
5E	4/23/07	Southern Pacific Co.	240.00	11.91	2,860.00	111E	4/23/07
6E	5/1/07	Southern Pacific Co.	4023.72	35.83	144,204.36	116E	5/1/07
	Total in suit		6463.72		248,126.86		
TOTAL OF ALL SUITS			381395.77		2,851,092.33		

DEFENDANTS' EXHIBIT 295

is a large map purporting to show in colors the location of lands involved in so-called "Innocent Purchaser" suits, giving the number of each suit and acreage involved, as follows:

SUIT NO.	*ACRES*	*SUIT NO.*	*ACRES*
3416	1040.00	3439	4893.64
3417	4118.14	3440	13222.95
3418	9759.64	3441	1999.42
3419	3733.36	3442	34921.85
3420	2020.73	3443	5973.26
3421	1880.62	3444	1476.67
3422	1160.00	3445	15861.74
3423	14533.74	3446	1440.00
3424	67559.72	3447	29567.84
3425	2674.02	3448	1252.42
3426	3115.79	3449	45972.43
3427	7042.36		
3428	4848.88	3452	15730.44
3429	1442.92	3453	4816.40
3430	2560.00	3454	1925.83
3431	20491.62	3455	1364.64
3432	3160.00	3456	2523.76
3433	3479.96	3457	1720.39
3434	1042.00	3458	2360.00
3435	14216.81	3459	1219.65
3436	2463.79	3460	1481.09
3437	7366.86	3463	5497.17
3438	1442.92	3464	6463.72

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 296

purports to be a statement of executory contracts of the Oregon & California Railroad Company covering land sales, which were outstanding January 1, 1903, giving contract number, date, name of contract holder, description of land, acreage, price per acre, consideration amount unpaid when default occurred, date of default, payments made after default occurred, when and what amount, date of closing account in consequence of default, date of final payment or deed, character of land as shown by Field Agent's report, name of Field Agent and date of examination; and shows the totals of contracts thus outstanding to be 2110, with total acreage of 462,614.59 acres, consideration $2,746,216.35, amount unpaid when default occurred $207,614.14, and $9,530.19 paid after default occurred.

This statement consists of 70 large sheets and is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 297

purports to be a statement of sales made by the Oregon and California Railroad Company during the year 1903, giving contract number and date, name of contract holder, description of land, number of acres, price

per acre, consideration, date of final payment or deed, character of land, name of Field Agent, and covers 16 contracts.

This exhibit is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 298

purports to be a statement of contracts paid in full during 1903 which were not in default January 1, 1903, showing contract number, acreage, price per acre and consideration, and shows 212 contracts covering 22,-878.52 acres, consideration $98,500.14.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 299

purports to be a statement of defaulted contracts upon which accounts were closed during 1903, showing number of contracts, acreage, price per acre, consideration, amount unpaid when default occurred, date default occurred, date of closing account in consequence of default; also, contracts not in default January 1, 1903, upon which default occurred during 1903, but accounts not closed during 1903; also, contracts outstanding January 1, 1904. There were nine contracts which were defaulted upon which accounts were closed during 1903, involving 1355.78 acres, consideration $4789.44, amount unpaid when default occurred, $4344.56. There were

45 contracts not in default January 1, 1903, upon which default occurred during 1903, but accounts not closed during 1903, involving 4301.50 acres, consideration $15,644.48, and amount unpaid when default occurred, $13,813.17, payments made after default occurred, $6,645.78. This exhibit is not printed in full but is certified up under order of court and stipulation of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1904

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1903	2,110	462,614.59	2,746,216.35
Sales made during 1903	16	2,077.55	6,238.37
Total	2,126	464,692.14	2,752,454.72
Contracts paid in full during 1903, which were not in default	210	22,878.52	98,500.14
Contracts paid in full during 1903 which were in default	...	.....	.....

	Number of Contracts	Acres	Consideration
Contracts for which accounts were closed during 1903 because of default	9	1,355.78	4,789.44
Total of contracts terminated during 1903..	219	24,234.30	103,289.58
Balance contracts outstanding January 1, 1904	1,907	440,457.84	2,649,165.14

DEFENDANTS' EXHIBIT 300

purports to be a statement of contracts paid in full during 1904, which were not in default January 1, 1903, and covers 203 contracts, with total acreage of 73,081.84 acres, with consideration of $412,707.87; also contracts not in default January 1, 1904, upon which default occurred during 1904, there being 54 contracts, with total acreage of 7,498.28 acres, with consideration of $33,975.19, showing amount unpaid when default occurred of $28,543.07, and payments made after default occurred amounting to $19,601.16; also

defaulted contracts upon which accounts were closed during 1904, there being 338 contracts covering 25,366.08 acres, with consideration stated $104,733.31, and amount unpaid when default occurred $71,725.64.

This exhibit is not printed in full but is certified up under order of court and stipulation of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1905.

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1904	1,907	440,457.84	2,649,165.14
Sales made during 1904	...	.....	.....
Total	**1,907**	**440,457.84**	**2,649,165.14**
Contracts paid in full during 1904, which were not in default January 1, 1903	121	73,081.84	412,707.87
Contracts paid in full during 1904, which were in default January 1, 1903	...	.....	.....
Contracts for which accounts were closed during 1904 because of default	338	25,366.08	104,733.31

	Number of Contracts	Acres	Consideration
Total of contracts terminated during 1904..	459	98,447.92	517,441.18
Balance contracts outstanding January 1, 1905	1,448	342,009.92	2,131,723.96

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 301

purports to be a statement of contracts paid in full during 1905 which were not in default January 1, 1903, and covers 141 contracts, with total acreage of 19,582.01 acres, with consideration of $75,765.01; also defaulted contracts upon which accounts were closed during 1905, there being 26 contracts, covering 1977.98 acres, with consideration stated $10,161.85, and amount unpaid when default occurred—$8,910.37; also contracts not in default January 1, 1905, upon which default occurred during 1905, but accounts not closed during 1905, there being 22 contracts involving 2,169.64 acres, consideration $13,728.92, amount unpaid when default occurred $12,478.96, and payments made after default occurred $1,149.40. This exhibit is not printed in full but is certified up under order of court and stipulation of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1906

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1905...	1,448	342,009.92	2,131,723.96
Sales made during 1905	.....	.....	.....
Total	1,448	342,009.92	2,131,723.96
Contracts paid in full during 1905 which were not in default..	139	19,582.01	75,765.01
Contracts paid in full in 1905 which were in default	.....	.....	.....
Contracts for which accounts were closed during 1905 because of default	26	1,977.98	10,161.85
Total of contracts terminated during 1905	165	21,559.99	85,926.86

	Number of Contracts	Acres	Consideration
Balance contracts outstanding January 1, 1906	1,283	320,449.93	2,045,797.10

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANT'S EXHIBIT 302

Puroports to be a statement of contracts paid in full during 1906 which were not in default January 1, 1903, and covers 73 contracts, with total acreage of 51,065.49 acres, consideration of $370,797.30; also contracts paid in full during 1906 which were in default January 1, 1903, covering 10 contracts, 520 acres, consideration of $1,760.00, and payments made after default occurred of $1,502.87; also defaulted contracts upon which accounts were closed during 1906, covering 4 contracts, 1,784.16 acres, consideration of $18,222.70, and amount unpaid when default occurred $10,091.00; also contracts not in default January 1, 1906, upon which default occurred during 1906, but accounts not closed during 1906, covering 96 contracts, total acreage of 7,908.38 acres, consideration of $27,426.43, amount unpaid when default occurred $16,524.16, payments made after default occurred $14,431.61. This exhibit is not printed in full but is certified up under order of court and stipulation of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1907

	Number of Contracts	Acres	Consideration
Contracts outstanding January 1, 1906	1,283	320,449.93	2,045,797.10
Sales made during 1906	.....	.....	.....
Total	1,283	320,449.93	2,045,797.10
	.....	.....	.....
Contracts paid in full in 1906 which were not in default	71	51,065.49	370,797.30
Contracts paid in full during 1906 which were in default	10	520.00	1,760.00
Contracts for which accounts were closed during 1906 because of default	2	1,784.16	18,222.70
	.....	.....	.....
Total of contracts terminated during 1906	83	53,369.65	390,780.00

	Number of Contracts	Acres	Consideration
Balance contracts outstanding January 1, 1907	1,200	267,080.28	1,655,017.10

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 303

Purports to be a statement of contracts paid in full during 1907 which were not in default January 1, 1903, covering 163 contracts, total acreage of 63,381.42 acres, with consideration of $459,292.87; also contracts paid in full during 1907 which were in default January 1, 1903, covering 15 contracts, with total acreage of 1,088.69 acres, consideration $3,745.32, amount of payments made after default occurred $2,867.61; also defaulted contracts upon which accounts were closed during 1907, there being 32 contracts, involving 1,591.70 acres, consideration of $7,360.95, and amount unpaid when default occurred $6,313.85; also contracts not in default January 1, 1907, upon which default occurred during 1907 but accounts not closed during 1907, there being 11 contracts, 591.82 acres, consideration $2,034.60, amount unpaid when default occurred $992.18, and payments made after default occurred $920.91.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1908

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1907	1,200	267,080.28	1,655,017.10
Sales made during 1907	.....	.....	.....
		.....	
Total	1,200	267,080.28	1,655,017.10
		.....	
Contracts paid in full during 1907 which were not in default	161	63,381.42	459,292.87
Contracts paid in full during 1907 which were in default	16	1,088.69	3,745.32
Contracts for which accounts were closed during 1907 because of default	32	1,591.70	7,360.95
		.....	

	Number of Contracts	Acres	Consideration
Total of contracts terminated during 1907	209	66,061.81	470,399.14
Balance contracts outstanding January 1, 1908....	991	210,018.47	1,184,617.96

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 304

Purports to be a statement of contracts paid in full during 1908 which were not in default January 1, 1903, covering 102 contracts, total acreage of 21,494.04 acres, consideration $91,238.97; also contracts paid in full during 1908 which were in default January 1, 1903, covering 7 contracts, total acreage of 530.08 acres, consideration $1,771.58, and payments made after default $1,567.49; also defaulted contracts upon which accounts were closed during 1908, incolving 11 contracts, 688.60 acres, consideration $2,160.09, amount unpaid when default occurred $1,659.44; also contracts not in default January 1, 1908, upon which default occurred during 1908 but accounts not closed during 1908, covering 4 contracts, total acreage of 320 acres, consideration $1,240.00, amount unpaid when default occurred $896.00, payments made after default occurred $896.00.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1909

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1908	991	210,018.47	1,184,617.96
Sales made during 1908	.....	.....	.....
		.....	
Total	991	210,018.47	1,184,617.96
		.....	
Contracts paid in full during 1908, which were not in default	102	21,494.04	91,238.97
Contracts paid in full during 1908, which were in default	7	530.08	1,771.58
Contracts for which accounts were clos-			

	Number of Contracts	Acres	Consideration
ed during 1908 because of default.	11	688.60	2,160.09
.....			
Total of contracts terminated during 1908	1,200	22,712.72	95,170.64
Balance of contracts outstanding January 1, 1909.....	871	178,305.75	1,089,447.32

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 305

Purports to be a statement of contracts paid in full during 1909 which were not in default January 1, 1903, covering 77 contracts, total acreage of 5,611.07 acres, consideration $20,361.03; also contracts paid in full during 1909 which were in default January 1, 1903, covering 12 contracts, total acreage of 828.58 acres, consideration of $2,551.71, payments made after default occurred $2,250.17; also defaulted contracts upon which accounts were closed during 1909, covering 4 contracts, total acreage of 259.02 acres, consideration $1,373.14, amount unpaid when default occurred $1,016.43; also contracts not in default January 1, 1909, upon which default

occurred during 1909 but accounts not closed during 1909, covering 3 contracts, 122.26 acres, consideration $425.65, amount unpaid when default occurred $125.58, payments made after default occurred $125.58.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1910

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1909	871	178,305.75	1,089,447.32
Sales made during 1909	.....	.....	.....
	.....		
Total	871	178,305.75	1,089,447.32
	.....		
Contracts paid in full during 1909, which were not in default	77	5,611.07	20,361.03
Contracts paid in full during 1909 which were in default	12	828.58	2,551.71

Contracts for which accounts were closed during 1909 because of default..	4	259.02	1,373.14
.....			
Total of contracts terminated during 1909	93	6,698.67	24,285.88
Balance contracts outstanding January 1, 1910	778	171,607.08	1,065,161.44

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 306

Purports to be a statement of contracts paid in full during 1910 which were not in default January 1, 1903, covering 69 contracts, total acreage of 5,374.92 acres, consideration $17,927.38; also contracts paid in full during 1910 which were in default January 1, 1903, covering 2 contracts, total acreage of 73.62 acres, consideration $268.10, payments made after default occurred $234.14; also defaulted contracts upon which accounts were closed during 1910, involving 25 contracts, 1,274.75 acres, consideration $3,625.37, amount unpaid when default occurred $2,989.02; also contracts not in default January 1, 1910, upon which default occurred during

1910 but accounts not closed during 1910, covering 2 contracts, 200 acres, consideration $600.00, amount unpaid when default occurred $173.30, payments made after default occurred $144.00.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1911

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1910	778	171,607.08	1,065,161.44
Sales made during 1910	.....	.....	.....
		.....	
Total	778	171,607.08	1,065,161.44
		.....	
Contracts paid in full during 1910, which were not in default	68	5,374.92	17,927.38
Contracts paid in full during 1910, which were in default	2	73.62	268.10
Contracts for which accounts were closed during 1910 because of default.	25	1,274.75	3,625.37
		.....	

Total of contracts terminated during 1910	95	6,723.29	21,820.85
Balance contracts outstanding January 1, 1911	683	164,883.79	1,043,340.59

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 307

Purports to be a statement of contracts paid in full during 1911 which were not in default January 1, 1903, covering 47 contracts, total acreage of 84,129.20 acres, consideration $539,290.94; also contracts paid in full during 1911 which were in default January 1, 1903, number of contracts 2, acres 160, consideration $420.00, payments made after default occurred $377.20; also defaulted contracts upon which accounts were closed during 1911, covering 4 contracts, 720 acres, consideration $1880.00, amount unpaid when default occurred $1,336.00; also

contracts not in default January 1, 1911, upon which default occurred during 1911 but accounts not closed during 1911, covering 1 contract, 40 acres, consideration $200.00.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JANUARY 1, 1912

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1911	683	164,883.79	1,043,340.59
Sales made during 1911	.....	.....	.....
	.....		
Total	683	164,883.79	1,043,340.59
Contracts paid in full during 1911, which were not in default	46	84,129.20	539,290.94
Contracts paid in full during 1911, which were in default	2	160.00	420.00
Contracts for which accounts were closed during 1911 because of default..	4	720.00	1,880.00
	.....		
Total of contracts terminated during 1911	52	85,009.20	541,590.94

	Number of Contracts	Acres	Consideration
Balance contracts outstanding January 1, 1912	631	79,874.59	501,749.65

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 308

Purports to be a statement of contracts paid in full January 1, 1912, to June 30, 1912, which were not in default January 1, 1903, covering 21 contracts, total acreage of 12,559.64, consideration $119,176.00; also contracts paid in full between January 1, 1912, and June 30, 1912, which were in default January 1, 1903, there being 1 contract involving 40 acres, consideration $160.00, payments made after default occurred $128.00.

This exhibit is not printed in full but is certified up under order of court and stipulations of parties.

The last sheet of this exhibit is as follows:

CONTRACTS OUTSTANDING JUNE 30, 1912

	Number of Contracts	Acres	Consideration
Total contracts outstanding January 1, 1912	631	79,874.59	501,749.65

	Number of Contracts	Acres	Consideration
Sales made during 1912	.....	.....	.....
	.....		
Total	631	79,874.59	501,749.65
	.....		
Contracts paid in full from January 1, 1912 to June 30, 1912 which were not in default	21	12,559.64	119,176.00
Contracts paid in full January 1, 1912 to June 30, 1912, which were in default	1	40.00	160.00
Contracts for which accounts were closed from January 1, 1912 to June 30, 1912 because of default	.....	.....	.....
	.....		
Total of contracts terminated from January 1, 1912 to June 30, 1912 ...	22	12,599.64	119,336.00

	Number of Contracts	Acres	Consideration
Balance of contracts outstanding June 30, 1912	609	67,274.95	382,413.65

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 309

is as follows:

STATEMENT OF FACTS RELATING TO THE LAND GRANT OF THE OREGON & CALIFORNIA RAILROAD COMPANY, SUCCESSOR IN INTEREST TO THE OREGON CENTRAL RAILROAD COMPANY, EAST SIDE, AND THE OREGON CENTRAL RAILROAD COMPANY, WEST SIDE.

By Charles W. Eberlein, Acting Land Agent,

May 1, 1908.

The following acts of Congress, viz., Original Granting Act of July 25th, 1866, and its two amending Acts of June 25, 1868, and April 10, 1869, refer *exclusively* to the grant of lands adjacent to and co-terminous with the railroad line from Portland to the California State Line which inured to the Oregon Central Railroad

Company (East Side) and is not to be confused with the subsequent grant of lands contiguous to the line of railroad from Portland to McMinnville, on the *west side* of the Willamette River, which was earned by a corporation of the same title, "Oregon Central Railroad Company."

The only distinction made by the respective articles of incorporation is that the Oregon Central Railroad Company, popularly called the "East Side Company," was designated by its articles as "of Salem, Oregon," while the Oregon Central Railroad Company popularly known as the "West Side Company," is designated by its articles of incorporation as "of Portland, Oregon."

1. The Act of Congress of July 25, 1866, making the original grant, is as follows: (14 U. S. Stat. p. 239.)

LAND GRANT FOR CALIFORNIA AND OREGON RAILROAD. AN ACT granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland in Oregon.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED;

That the "California and Oregon Railroad Company" organized under an act of the State of California, to protect certain parties in and to a railroad

survey, "to connect Portland, in Oregon, with Marysville, in California," approved April sixth, eighteen hundred and sixty-three, and such company organized under the laws of Oregon as the legislature of said state shall hereafter designate, be, and they are hereby authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the City of Portland, in Oregon, and the Central Pacific Railroad, in California, in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the state of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly, through the Sacramento and Shasta Valleys, to the northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua, and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid, to be made by the first named company: Provided, That the company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized, to continue in

constructing the same beyond the line aforesaid, with the consent of the state in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

Sec. 2. And be it further enacted, that there be, and hereby is, granted to the said companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said companies, or either of them, shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the

limits before specified. The lands herein granted shall be applied to the building of said road within the states, respectively, wherein they are situated. And the sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of the public lands when sold. Provided, That bona fide and actual settlers under the pre-emption laws of the United States may, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date such settlement, improvement, and occupation: And Provided, also, that settlers under the provisions of the homestead act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding.

Sec. 3. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the land of said road, earth, stone, timber, water, and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary

grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road.

Sec. 4. And be it further enacted, That whenever the said companies, or either of them, shall have twenty or more consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated by this act, the President of the United States shall appoint three Commissioners whose compensation shall be paid by said company, to examine the same, and if it shall appear that twenty consecutive miles of railroad and telegraph shall have been completed and equipped in all respects as required by this act, the said commissioners shall so report under oath to the President of the United States, and thereupon patents shall issue to said companies, or either of them, as the case may be, for the lands hereinbefore granted, to the extent of and coterminus with the completed section of said railroad and telegraph line as aforesaid; and from time to time whenever twenty or more consecutive miles of the said road and telegraph shall be completed and equipped as aforesaid, patents shall in like manner issue upon the report of the said commissioners, and so on until the entire railroad and telegraph authorized by this act shall have been constructed, and the patents of the lands herein granted shall have been issued.

Sec. 5. And be it further enacted, that the grants aforesaid are made upon the condition that the said com-

panies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad and transmit dispatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States: And the same shall be transported over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States.

Sec. 6. And be it further enacted, that the said companies shall file their assent to this act in the Department of the Interior within one year after the passage hereof and shall complete the first section of twenty miles of said railroad and telegraph within two years, and at least twenty miles in each year thereafter and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and the said railroad shall be of the same gague (gauge) as the "Central Pacific Railroad" of California, and be connected therewith.

Sec. 7. And be it further enacted, that the said

companies named in this act are hereby required to operate and use the portions or parts of said railroad and telegraph mentioned in section one of this act for all purposes of transportation, travel and communication, so far as the government and public are concerned, as one connected and continuous line; and in such operation and use to afford and secure to each other equal advantages and facilities as to rates, time and transportation, without any discrimination whatever, on pain of forfeiting the full amount of damage sustained on account of such discrimination, to be sued for and recovered in any court of the United States, or of any state, of competent jurisdiction.

Sec. 8. And be it further enacted, that in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto, as provided in section six of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States. And in case the said railroad and telegraph line shall not be kept in repair and fit for use, after the same shall have been completed, Congress may pass an act to put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the United States, to repay all expenditures, caused by the default and neglect of said companies, or either of them, as the case may be, or may fix pecuniary responsibility, not exceeding

the value of the lands granted by this act.

Sec. 9. And be it further enacted, that the said "California and Oregon Railroad Company" and the said "Oregon Company" shall be governed by the provisions of the general railroad and telegraph laws of their respective states, as to the construction and management of the said railroad and telegraph line hereinbefore authorized, in all matters not provided for in this Act. Wherever the word "company" or "companies" is used in this act, it shall be construed to embrace the words "their associates, successors, and assigns," the same as if the words had been inserted, or thereto annexed.

Sec. 10. And be it further enacted, that all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, so much of the timber thereon as shall be required to construct said road over such mineral land is hereby granted to said companies; Provided, that the term mineral lands shall not include land containing coal and iron.

Sec. 11. And be it further enacted, that the said companies named in this act shall obtain the consent of the legislatures of their respective states and be governed by the statutory regulations thereof in all matters pertaining to the right of way, wherever the said road and telegraph line shall not pass over or through the public lands of the United States.

Sec. 12. And be it further enacted, that Congress may at any time, having due regards for the rights of

said California and Oregon Railroad Companies, add to, alter, amend or repeal this act.

Approved, July 25th, 1866.

2. The Act of Congress of June 25th, 1868, amending the original granting act of July 25th, 1866, *extending the time for constructing the first twenty miles, and for completing the road,* is as follows: (15 U. S. Stat. p 80)

AMENDING CALIFORNIA AND OREGON GRANT.

AN ACT to amend an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California to Portland, in Oregon."

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That section six of an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon" approved July twenty-fifth, eighteen hundred and sixty-six, be so amended as to provide that instead of the times now fixed in said section, the first section of twenty miles of said railroad and telegraph shall be completed within eighteen months from the passage of this act, and at least twenty miles in each two years there-

after, and the whole on or before the first day of July, anna Domini eighteen hundred and eighty.

Approved, June 25th, 1868.

3. The Act of April 10, 1869, amending the original granting act of July 25th, 1866, *extending the time for filing assent to the terms of the original granting act as provided in section six thereof,* is as follows: (16 U. S. Stat. p 47.)

AMENDING CALIFORNIA AND OREGON GRANT.

AN ACT to amend an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-five, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That section six of an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved, July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the legislature of the State of

Oregon, in accordance with the first section of said act, to file its assent to such act in the Department of the Interior within one year from the date of the passage of this act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said act: Provided, that nothing herein shall impair any rights heretofore acquired by any railroad company under said act, nor shall said act or this amendment be construed to entitle more than one company to a grant of land; And provided further, that the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869.

OREGON CENTRAL RAILROAD COMPANY.
WEST SIDE.

Following is reference to the Act of Congress (no amendments) granting land adjacent to and coterminous with railroad and telegraph line from Portland to McMinnville, Oregon, viz:

An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamhill river, near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, sidetracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this Act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

Sec. 2. AND BE IT FURTHER ENACTED, That the commissioner of the general land-office shall cause the lands along the line of the said railroad to be surveyed with all convenient speed. And whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with such located sections of road to be segregated from the public lands; and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands. AND PROVIDED ALSO, That settlers under the provisions of the Homestead Act who comply with the terms and requirements of said Act, shall be entitled within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this Act to the contrary notwithstanding.

Sec. 3. AND BE IT FURTHER ENACTED, That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph,

properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent and conterminous with the said completed (completed) sections.

Sec. 4. AND BE IT FURTHER ENACTED, That the said alternate sections of land granted by this Act, excepting only such as are necessary for the company to reserve for depots, stations, side-tracks, wood-yards, standing-ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices not exceeding two dollars and fifty cents per acre.

Sec. 5. AND BE IT FURTHER ENACTED, That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road, depots, stations, side-tracks, and wood-yards, not exceeding thirty thousand dollars per mile of road, payable in gold coin, not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the (rate) of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any

other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds, shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the district court of the United States, concurrently with the State Courts, shall have original jurisdiction, subject to appeal and writ of error to enforce the provisions of this section.

Sec. 6. AND BE IT FURTHER ENACTED, That the said company shall file with the Secretary of the Interior its assent to this Act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or more miles of said railroad and telegraph within two years and the entire railroad and telegraph within six years, from the same date.

Approved May 4, 1870. (16 Stat. 94.)

It must be clearly kept in mind that Oregon Central Railroad Company—*West Side* was the first corporation organized and the first company to be designated by the Oregon legislature to receive the grant of lands, *contemplated by the Act of July* 25, 1866. That by reason of opposition of rivals resulting in cancellation of its designation to receive the grant of July 25th, 1866, and by its inability to finance its undertaking the said Oregon Central Railroad Company—West Side, withdrew from the contest for the grant of July 25,

1866, and applied to Congress for an entirely new grant, viz: for lands adjacent to and coterminous with a line to be constructed from Portland to McMinnville, *West of the Willamette River.* Such grant was actually made by *Act of Congress approved* May 4, 1870. The line was built by this *West Side* company and that grant was earned by such company.

But subsequent to the years 1868 and 1869 the Oregon Central Railroad Company, *West Side,* did not claim any interest in the lands granted by the act of July 25, 1866 lying along the line of the road from Portland south on the *East Side, of the Willamette River* to the State Line which line was built by and the lands earned by the "Oregon Central Railroad Company, *East Side," organized April* 22, 1867.

The various steps by which the title to the land grant now held by the Oregon & California Railroad Company became vested in the several original companies, present a complicated state of facts, upon which the United States may base a proceeding for forfeiture on the ground that neither of the two corporations designated as the Oregon Central Railroad Company of Salem, (East Side) and Oregon Central Railroad Company of Portland, (West Side) ever complied with the granting act; viz., That neither were ever legally organized, or designated as provided by the Act of July 25, 1866, as follows:

"And such company organized under the laws of Oregon as the legislature of said State shall hereafter

designate," etc., and that therefore the grant of July 25th, 1866 was never legally acquired by either of said companies or their successor the Oregon & California Railroad Company.

The initial step to acquire the grant in pursuance of the Act of July 25th, 1866, was taken by Joseph Gaston, who prepared the following as articles of incorporation of the "Oregon Central Railroad Company," which he attempted to file with the Secretary of State of Oregon, October 6, 1866:

"United States of America, State of Oregon, Office of the Secretary of State.

"I, F. W. Benson, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify: That the annexed pages contain a full true and complete copy of the articles of incorporation of the Oregon Central Railroad Company, with the endorsements thereon, filed in the office of the Secretary of State of the State of Oregon November 21, 1866, as the law directs.

"In Testimony Whereof, I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

"Done at the Capitol at Salem, Oregon, this 18th day of December A. D. 1907.

F. W. BENSON,

(SEAL.) Secretary of State.

"Know all men by these presents, that we, the undersigned citizens of the State of Oregon, do hereby associate ourselves together as a private incorporation, under and by virtue of the General Incorporation law of said State.

1st.

"The corporation hereby created shall be known as the "Oregon Central Railroad Company," and its duration unlimited.

2nd.

"The object and business of the corporation shall be to construct and operate a railroad from the City of Portland, through the Willamette Valley to the southern boundary of the State; under the laws of Oregon, and the law of Congress recently passed granting land and aid for such purposes.

3rd.

"The corporation shall have its principal office in the City of Portland.

4th.

"The capital stock of said corporation shall be five million dollars, divided into general, and preferred interest bearing stock, in such proportions as the incorporators, or board of directors, may deem proper.

5th.

"The amount of each share of the capital stock shall be one hundred dollars.

6th.

"The termini of the railroad proposed to be constructed by said company, shall be for the northern end, at the City of Portland, and for the southern end at some point on or near the southern boundary of the state, as may be hereafter determined by actual survey.

"In Witness Whereof we have here set our hands and seals this ..... day of September, A. D., 1866.

	J. S. Smith.	Seal
	I. R. Moores.	Seal
	J. H. Mitchell.	Seal
	E. D. Shattuck.	Seal
	Jesse Applegate.	Seal
	F. A. Chenoweth.	Seal
	Joel Palmer.	Seal
(Five Cents in Revenue	H. W. Corbett	Seal
Stamps, Cancelled.)	M. M. Melvin.	Seal
	Geo. L. Woods.	Seal
	R. R. Thompson.	Seal
	J. C. Ainsworth.	Seal
	S. G. Reed.	Seal
	John M. Craken.	Seal
	C. H. Lewis.	Seal
	B. F. Brown.	Seal
	T. H. Cox.	Seal
	J. Gaston.	Seal

"State of Oregon, Marion County, ss:

"Be it known that the persons whose names are attached to the foregoing articles of incorporation, appeared before me, the undersigned, a notary public for and within said county and state respectively and at the time and places herein named, to-wit, J. S. Smith, I. R. Moores, J. H. Mitchell, E. D. Shattuck, Jesse Applegate, F. A. Chenoweth, Joel Palmer, and H. W. Corbett, at Salem in said State on or about the 29th day of September, 1866, and M. M. Melvin, at Salem, on or about October 23rd, 1866, and George L. Woods at Salem on or about November 10, 1866, and R. R. Thompson, J. C. Ainsworth, S. G. Reed, Jno. M. Cracken and C. H. Lewis at Portland, Oregon, on the 16th day of November, 1866; and they the said several subscribing persons to the aforesaid articles of incorporation did then and there, at the several times set forth in this certificate, sign and seal said articles before me and in my presence, and acknowledge the said signing and sealing to be their voluntary act and deed for the purposes set forth in said articles.

"In Witness Whereof, I have here set my signature as said Notary Public and attached my official seal this 16th day of November, 1866.

J. GASTON,

(Official seal.) Notary Public.

(Five cents in revenue stamps, cancelled.)

"State of Oregon, County of Marion, ss:

"On this the 20th day of November, A. D., 1866, before me, a notary public in and for said county, personally came the within named B. F. Brown, Thos. H. Cox and J. Gaston, who are personally known to me to be the identical persons whose names are subscribed to the within instrument, and acknowledged to me that they signed the same for the purposes therein set forth.

"Witness my hand and seal of office this 20th day of November, A. D., 1866.

SETH R. HAMMER,

(Seal.) Notary Public.

(Endorsed.)

"Filed in the office of the Secretary of State this 21st day of November, A. D., 1866, at 10½ o'clock A. M.

SAMUEL E. MAY, Secretary of State.

DISSOLVED. And these articles of incorporation revoked and repealed, in pursuance of the provisions of Chapter 172, Laws of 1905, by proclamation of the Governor, filed in the office of the Secretary of State January 20th, 1906.

F. I. DUNBAR, Secretary of State.

The following is Gaston's statement as to the acts performed by him in attempting to file these articles with the Secretary of State.

"On the 6th day of October, 1866, four days before

the passage in the legislature of the joint resolution No. 13, designating the company to receive the land grant, I took the articles of incorporation to Samuel E. May, Secretary of State, handed them to him in his office, and requested him to file them according to law. He took one copy and wrote a filing of that date in pencil on the back of it instead of filing it in ink. I told the Secretary I desired to have other names added. He handed me back the papers. I told persons they had been filed. The Secretary of State told other persons the same thing,—*and they were filed in fact and in law October* 6, 1866." (The italics are Gaston's.) . . . . . Inside history of the Oregon Railroad (Page 30), by Joseph Gaston; published in 1869.

Gaston is also authority for the statement that the following notation was made on the back of the Multnomah County copy of said articles, by Secretary May, January 9, 1869:

"This is evidently the articles of incorporation presented by Gaston for filing on the 6th day of October, 1866, as I recognize the letters and figures on the bottom to have been made by me at that date, which I have not seen from that day to this.

January 9, 1869.

SAMUEL E. MAY, Secretary of State.

(Page 39 of same pamphlet.)

The records of the Secretary of State of Oregon show no filing of these articles of incorporation on Octo-

ber 6, 1866, but show them to have been filed November 21, 1866, as hereinafter more fully explained. The following is a statement regarding such filing made by the Secretary of State, Samuel E. May, in a letter addressed by him to Addison C. Gibbs, dated January 5th, 1869:

State of Oregon.
Secretary's Office.
Salem, January 5, 1869.

Hon. Addison C. Gibbs,

Portland, Oregon.

Dear Sir:—I have no personal knowledge of the filing of papers in this office by Mr. Gaston, on the 6th of October, 1866, more than this: that about the date named, (Mr. Gaston says it was the 6th) he presented me an envelope which he said contained articles of incorporation of the Oregon Central Railroad Company, on which envelope I marked the date in pencil (Mr. Gaston says that I marked the document instead of the envelope, but I have not seen the paper since, hence my impressions are that I marked the envelope). I did not examine the contents, did not formally file the paper. Mr. Gaston wished to retain it in his possession for a short while, but for legislative purposes desired to say it had been presented for filing, to which I could see no objection.

I had forgotten the foregoing circumstances altogether, until about the middle of Nov. 1866, Hon. J. S. Smith made application to see the articles of incor-

poration of the "Oregon Central Railroad Company." I turned to the usual depository for such documents, but not until after I had made thorough search did it occur to me that the articles referred to were not in my possession.

* * * *

Your obedient servant,

SAMUEL E. MAY, Secretary of State.

Gaston's purpose in attempting to organize the company above referred to, and file its articles as above, was to anticipate the effect of a then pending resolution of the legislature of Oregon intended to designate a company of the name "Oregon Central Railroad Company," as the corporation entitled to take advantage of the terms of the Act of July 25th 1866, and earn the grant.

On October 10, 1866, the legislature of Oregon did pass the following House Joint Resolution No. 13:

WHEREAS, The congress of the United States at its late session passed an Act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California to Portland, Oregon, and made it the duty of the legislative assembly of the state of Oregon to designate the company organized under the laws of Oregon, which shall receive that part of said land grant lying within the state of Oregon; therefore be it

RESOLVED, by the House, the Senate concurr-

ing: That the "Oregon Central Railroad Company," a company organized under the general incorporation law of this state, be and the same is hereby designated as the company which shall be entitled to receive the land granted and all the benefits of an act of congress, approved July 25th, 1866, entitled "An Act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad in California to Portland, Oregon," so far as the said land grant applies to the state of Oregon.

These articles which Gaston presented to the Secretary of State for filing, October 6, 1866, he was allowed by the Secretary to take and a number of other names and acknowledgements were added thereto and they were then again presented to the Secretary of State, whose records show them to have been filed November 21, 1866.

The fact of this filing November 21, 1866, it will be noted, was subsequent to the passage of the joint resolution of the legislature of Oregon of October 10th, 1866 designating the aforesaid "West Side" company. This, together with the conflicting claims of the officers of the "West Side" company and the Secretary of State as to whether said articles were legally filed before or after the passage of the joint designating resolution of October 10, 1866 led to much litigation between the Oregon Central Railroad Company (West Side) and the Oregon Central Railroad Company (East Side) subsequently organized April 22, 1867, which litigation will

be referred to hereafter.

Following is copy of the general incorporation law of the State of Oregon as it existed at the dates when both Oregon Central Railroad Companies "West Side" and "East Side" were incorporated, viz:

Chapter VII. Sec. 1. Whenever three or more persons shall desire to incorporate themselves for the purpose of engaging in any lawful enterprise, business, pursuit or occupation, they may do so in the manner provided in this chapter.

"Sec. 2. Such persons shall make and subscribe written articles of incorporation, in triplicate, and acknowledge the same before any officer authorized to take the acknowledgement of a deed, and file one of such article in the office of the Secretary of State, another with the clerk of the county where the enterprise, business, pursuit or occupation is proposed to be carried on, or the principal office or place of business is proposed to be located, and retain the third in the possession of the corporation.

"Sec. 3. The articles of incorporation, or certified copy of the one filed with the Secretary of State or the County Clerk, is evidence of the existance of such corporation.

"Sec. 5. Upon the making and the filing of the articles of incorporation as herein provided, the person subscribing the same are corporators, and authorized to carry into effect objects specified in the articles, in

the manner provided in this chapter; and that their successors, associates, and assigns, by the name assumed in such articles, shall thereafter be deemed a body corporate with power:

1st,—To sue and be sued;

2nd,—To contract and to be contracted with,—

3rd,—To have and use corporate seal and the same to alter at pleasure;

4th,—To purchase, possess and dispose of such real and personal property as may be necessary and convenient, to carry into effect the object of the corporation.

5th,—To appoint such subordinate officers and agents as the business of the corporation may require, and describe their duties and compensation.

6th,—To make by-laws not inconsistent with any existing laws for the sale of any portion of its stock for delinquent or unpaid assessments due thereon, which sale may be made without judgment or execution; provided that no such sale shall be made without thirty days notice of time and place of sale in some newspaper in circulation in the neighborhood of such company for the transfer of its stock, for the management of its property, and for the general regulation of its affairs.

"Sec. 6. The corporators or any portion of them designated by a majority of the whole number, are

authorized to open books and receive subscriptions to the capital stock of the corporations, and as soon as such capital stock has been subscribed by them, give notice to the subscribers to meet at such time and place as they may designate for the purpose of electing not less than three directors, as stockholders present shall determine, provided that it shall be lawful in the organization of any corporation to elect a Board of Directors as soon as one-half of the capital stock has been subscribed."

Deady & Lane, General Laws of Oregon,

1843-1873, Chapter 7, page 524.

It seems that there was dissension among the original incorporators of the foregoing "West Side" company and one I. R. Moores who was one of the dissenting incorporators and who was also Assistant Secretary of State entertained the opinion that the articles presented by Gaston Oct. 6, 1866 to the Secretary of State for filing has not been legally filed and conceived the plan of organizing another company of the same name "Oregon Central Railroad Company" and filing its articles ahead of the legal filing of the Gaston Company, using said incorporation as basis of claim that said corporation having been the first to make legal filing and having the name "Oregon Central Railroad Company" would be entitled to the designation made by the legislature and also to the grant of land. He accordingly prepared and filed such articles of incorporation on November 17th, 1866.

This corporation, whose articles were filed November 17th, 1866, seems never to have contended for the land grant nor entered into the litigation arising out of the same. The corporation seems to have been abandoned within a few days, for the same incorporators together with other persons later formed a third corporation entitled "Oregon Central Railroad Company" (East Side).

In a pamphlet issued May, 1868, by this last named (third) corporation is found the following language:

"With a full knowledge of all the facts in the case the articles of incorporation filed November 17th, 1866, were abandoned because they were not deemed sufficient for the purpose in view, and in preference to amending them new articles were filed April 22, 1867."

It is therefore not necessary to take further notice of this second corporation having title "Oregon Central Railroad Company" and whose articles of incorporation were filed November 17, 1866.

All proceedings subsequently taken before the Department of the Interior and the courts refer only to the claims of the rival corporation vix: Oregon Central Railroad Company (East Side) and Oregon Central Railroad Company (West Side)

"ORGANIZATION OF THE OREGON CENTRAL RAILROAD COMPANY" (EAST SIDE.)

In the winter of 1866-67 certain citizens of the State of Oregon, proceeding apparently on the assumption that the "Oregon Central Railroad Company"—West Side—had been fraudulently designated by the resolution of the Oregon legislature of October 10, 1866, and also that said "West Side" corporation was unable to finance its enterprise to a successful conclusion, organized another corporation known afterwards as the "East Side" Company, under the name of the "Oregon Central Railroad Company" of Salem.

This is the identical title contained in designation by the Oregon legislature joint resolution of Oct. 10, 1866. The articles of this *third* corporation having the title "Oregon Central Railroad Company," were filed with the Secretary of State of Oregon April 22, 1867. Following is a copy of its Articles of Incorporation:

"United States of America, State of Oregon, Office of the Secretary of State.

"I, F. W. Benson, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify: That the annexed pages contain a full, true and complete copy of the articles of incorporation of the OREGON CENTRAL RAILROAD COMPANY, with the endorsements thereon, filed in the of-

fice of the Secretary of State of the State of Oregon April 22, 1867, as the law directs.

"In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

(SEAL) "Done at the Capitol at Salem, Oregon, this 18th day of December, A. D. 1907.

F. W. BENSON,

Secretary of State.

"Know all men by these presents, that we, J. H. Moores, Geo. L. Woods, S. Ellsworth by Geo. L. Woods, his Attorney, I. R. Moores, E. N. Cooke and J. S. Smith, by I. R. Moores, their Attorney and Samuel A. Clarke have this day incorporated ourselves under and in accordance with the laws of Oregon, and we adopt the following as our Articles of Incorporation.

ARTICLE FIRST.

"This corporation shall be known as and do business under the name of the OREGON CENTRAL RAILROAD COMPANY.

ARTICLE SECOND.

"The enterprise, occupation and business for which this company incorporates is to construct a railroad with all the necessary branches, fixtures, buildings and appurtenances from Portland, in Oregon, Southerly about

three hundred miles to the California line, to maintain the said road in good condition and repair, and to employ the same in the transportation of freight and passengers and freight.

ARTICLE THIRD.

"The principal office for the transaction of the business of the Company shall be kept at the City of Salem, Marion County, Oregon.

ARTICLE FOURTH.

"The capital stock of the OREGON CENTRAL RAILROAD COMPANY shall be fixed at Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000.00).

ARTICLE FIFTH.

"The number of shares of the capital stock shall be Seventy Two Thousand Five Hundred (72,500) and the amount of each share of the stock shall be One Hundred Dollars ($100.00).

ARTICLE SIXTH.

"The period of time during which the company shall remain in operation is not limited as to duration.

"In testimony of our adoption of the foregoing Articles of Incorporation, witness our hands and seals this the twenty second day of April, A. D. 1867.

JOHN H. MOORES (SEAL)
GEO. L. WOODS (SEAL)
(Fifteen cents in) S. ELLSWORTH (SEAL)
(revenue stamps) By GEO. WOODS, Atty. (SEAL)
(cancelled.) I. R. MOORES (SEAL)
I. N. Smith per I. R. MOORES, Atty. (SEAL)
E. N. Cooke per I. R. MOORES, Atty. (SEAL)
SAM'L A. CLARKE (SEAL)

STATE OF OREGON)
) ss.
MARION COUNTY.)

"Be it remembered that on this the twenty second day of April, A. D. 1867, personally came before me, a Notary Public in and for said County and State, the within named I. R. Moores, Geo. L. Woods, I. R. Moores, for himself and also as Attorney in Fact for each of the following named persons: J. S. Smith & E. N. Cooke and S. Ellsworth, by Geo. L. Woods, his Atty. and S. A. Clarke who severally acknowledged that they signed the within and foregoing instrument in person or as Attorney, for the uses and purposes therein named.

"In Witness Whereof, I have hereunto set my hand and Notarial Seal this the day and year above written.

C. S. WOODWORTH,
Notary Public.

(Notarial Seal)

(Five cents in revenue)
(stamps cancelled)

(ENDORSED)

"Articles of Incorporation of Oregon Central R. R. Co. Filed in the office of the Secretary of State this 22d day of April, A. D. 1867.

I. R. MOORES,
Acting Secy. of State.

DISSOLVED. And these articles of incorporation revoked and repealed in pursuance of the provisions of Chapter 172, Laws of 1905, by proclamation of the Governor, filed in the Office of the Secretary of State, January 20th, 1906.

F. I. DUNBAR,
Secretary of State."

The Oregon Central Railroad Company—"East Side," organized April 22, 1867, claiming that the "West Side" Company was not a legally organized corporation at the time it was designated by the joint resolution of the Oregon legislature of *October* 10, 1866, as entitled to earn the grant, procured the legislature to review its action in designating said "West Side" Company by said resolution, and induced the legislature to pass, on October 17, 1868, the following Senate Joint Resolution No. 16;

"Whereas, The Congress of the United States, by an act approved July 25, 1866, entitled "an act granting land to aid in the construction of a railroad and telegraph from the Central Pacific Railroad to Portland, in Oregon," did grant certain lands in the State of Oregon and confer certain benefits and privileges upon such company, organized under the laws of Oregon, as the legislature of such state should thereafter designate; and

"Whereas, the legislative assembly of Oregon, at its fourth regular session, did adopt a joint resolution, known as "House Joint Resolution No. 13," designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of, the said Act of Congress; and

"Whereas, at the time of the adoption of the said joint resolution as aforesaid, no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company; and

"Whereas, the designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by the said act of congress, yet remain to be made;

"Be it resolved by the Senate, the House concurring, That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second (22d) day of April, in the year one thousand eight hundred and

sixty-seven (1867), under and pursuant to the laws of the state of Oregon, be and the same is hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by the said act of congress." Adopted by the House, Oct. 20, 1868, by the Senate, Oct. 17, 1868.

The grounds upon which the legislative action in passage of senate joint resolution of October 17, 1868, was based are fully set forth in the majority and minority reports of the railroad committee of the senate—Oregon Legislature—given below, viz:

In the House Journal of the Legislature of the State of Oregon, for the year 1868, October 17th (page 303) is found the following report:

"Majority Report of the Railroad Committee to whom was referred House Resolution No. 24, which reads as follows:

" 'Resolved, That the Committee on railroads be instructed to inquire what action if any is necessary to make availing the grant of land made by Congress in aid of railroad from Portland through Umpqua, to Jackson County, and to the southern boundary of Oregon, and report to the House at an early day; and that the committee be instructed to inquire what company if any have availed themselves of the Act of Congress by filing their acceptance of the grant of land within the time prescribed by the said Act.'

"The Act of Congress granting lands to aid in the

construction of a railroad and telegraph from the Central Pacific Railroad in California to Portland, Oregon, became a law on the 25th day of July, 1866. The first section of the act granted twenty sections of land to each mile of railroad to be selected within 30 miles of the road, patents to the same to be issued as fast as the company constructed and put in operation 20 mile sections of the road.

"The land for that portion of the road lying in Oregon was granted to such company as the legislature of Oregon should designate. The land was not granted to the State and the State has no control of the matter. The only act the Legislature had to perform was to designate a company. The Legislature had therefore no right or power to grant the lands to any company.

"Section 2d of the act declares expressly that the land is granted to the company although at the time the act passed the company was not in existence. When the Legislative Assembly met in 1866 it adopted a joint resolution (H. J. R. No. 13) designating the Oregon Central Railroad Company to receive the grant from Congress.

"The said resolution also declared said company to be organized under the laws of Oregon.'

"Taking the record as it stands, we do not believe that this Legislature has any power or authority to contradict the findings of a former Legislature, but even if it had, there has been evidence offered before your Com-

mittee showing that it was the Articles of Incorporation of the Oregon Central Railroad Company of Portland, Oregon, commonly called the West Side Company, that was before the Last Legislature. In fact that name had never been used before or at that time except in the Articles of Incorporation of the West Side Company. It is also in evidence that these Articles were offered to the Secretary of State four days before the passage of the Joint Resolution above referred to, and by the Secretary then filed in pencil. From these facts the majority of your Committee are of the opinion that the Legislature of 1866 did designate a company.

"But whatever may have been the action of the last Legislature on this matter, we are clearly of the opinion that this Legislature has nothing to do with it and cannot properly take any action in the premises.

"Section 6 of the Act of Congress referred to provides that the company shall file their "assent" to the Act of Congress granting the lands in the Department of the Interior 'within one year from the passage of the act.' That year expired on the 25th of July, 1867, and if no company has filed their 'assent' prior to that date, the entire Act, according to section 8, became totally null and void and is now absolutely lost to all companies except such as complied with the provisions of the Act of Congress.

"On the sixth day of July, 1867, in pursuance of the law and the instructions of the Secretary of the Interior, the west Side Company duly filed their 'assent'

to the Act of Congress, together with a copy of the joint resolution of the Legislature of 1866, under the Great Seal of the State and the certificate of the Secretary of Oregon. The Secretary of the Interior accepted these papers and has continually recognized the West Side Company as entitled to the land grant. It may be thought by some that Congress extended the time for filing papers. This is a mistake. At the request of the West Side Company Congress at its last session did extend the time for building the first twenty miles of the road some eighteen months, but did not extend the time for filing papers.

"In proof of this position, we not only have the amending act itself, which was passed by Congress on June 24, 1868, but since that date on the 16th day of July, 1868, A. M. Loryea, Vice President of the East Side Company offered to file assent of his company, which was rejected by the Secretary of the Interior as fully appears from the following letter:

" 'Department of the Interior, Washington, D. C., July 17, 1868. Sir: I have received your letter of the 16th inst. and accompanying paper purporting to be an acceptance by the Oregon Central Railroad Company of the grant made by the Act of July 25th, 1868.

" 'By law, the company was required to file an "assent" to its terms and conditions within one year. That time expired July 25th, 1867, and this paper if sufficient for that purpose, could not now be received.

" 'I state for your information that J. Gaston, Presi-

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dent of the Oregon Central Railroad Company, within the time prescribed in this act, filed an assent which was received.

" 'In compliance with your request I enclose copy of my letter of the 8th inst. to Mr. Gaston in regard to maps to be filed in this Department. Very respectfully, Your obedient servant, O. H. Browning, Secretary. A. M. Loryea, Present.'

"The act of congress gives the Secretary of the Interior the entire control and administration of the matter, as in fact he has of all land grants.

"We therefore conclude that if the West Side Company has not the land, no company has, and no company can get it, and this Legislature can not enable any company to take any steps in the matter.

"We therefore recommend that no action be taken by this Legislature in the premises, and that we do not in any way make ourselves parties to any contest between rival corporations.

Jas. F. Gazley
J. L. Scoggins
D. E. Benson.

"Mr. Ballinger, Chairman of the Committee on Railroads, presented the following minority report, which was received and ordered printed:

"Minority Report. Your committee, to whom was referred the inquiry of this House as to what steps, if any, are necessary to secure to this state the lands grant-

ed by Congress to aid in the construction of railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon, find that Congress granted at its 39th session to 'such company organized under the laws of Oregon as the Legislature of said state shall hereafter designate' every alternate section of public land not mineral designated by odd numbers to the amount of twelve alternate sections per mile (ten on each side) of said railroad line, and that the said company so designated was required to file their assent to the Act of Congress making the grant, in the Department of the Interior, within one year from the passage of the Act, and to complete the first section of twenty miles of railroad and telegraph within two years, and at least twenty miles in each two years thereafter. And in conjunction with the California and Oregon Railroad Company 'to complete the whole from the Central Pacific Railroad' in California to Portland, Oregon, on or before the first day of July, one thousand eight hundred and seventy-five; that the said company so designated is required to begin the construction of said road at Portland and run thence southerly through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon. Your committee find that Congress at its last session, extended the time one and one-half years in which the company may complete the first section of twenty miles of road.

"Save in one particular, this Act may be regarded as a complete grant in itself. Amply guarded by conditions designed to attain the intent of the Act, and well calcu-

lated to secure to the State of Oregon essential and much needed aid in the development of her resources.

"The one particular wherein the Act is incomplete is in the omission to designate the company to receive the grant. The duty was imposed upon the Legislature of Oregon; and accordingly at the last session, a joint resolution was adopted on the 10th of October designating the 'Oregon Central Railroad Company,' a company organized under the incorporation laws of this state, as the grantee.

"But an examination of the records of the Secretary of State's office shows that there was no such company as the 'Oregon Central Railroad Company,' or, indeed, any company, within the purview of the Act of Congress in existence at the time of the passage of the joint resolution, or at any time during the session of the Legislature.

"The first association of that name filed its Articles of Incorporation on the 17th of November, 1866, and was composed of J. S. Smith, I. R. Moores and E. N. Cooke.

"How it happened that the Legislature of Oregon should designate the 'Oregon Central Railroad,' as the recipient of the Congressional Grant and refer to such company as 'one organized under the laws of the State'—there being no such company then in existence—is perhaps difficult to determine with certainty at this late date.

"That the Legislature had in their minds some association of persons claiming such title as the 'Oregon Centrail Railroad Company' seems to be obvious not only from the fact that the joint resolution would otherwise be a mere empty and vain act—as in fact it was—but from the additional fact that on the 12th of October, two days after the joint resolution was adopted, the select committee, to whom was referred the special message of the Governor in relation to a railroad grant, presented a voluminous report, which, after speaking of the Congressional grant, proceeds as follows:

" 'In view of these facts, the following named gentlemen have incorporated themselves under the general incorporation laws of this State, to-wit: J. S. Smith, I. R. Moores, E. D. Shattuck, Jesse Applegate, Edwin R. Geary, S. Ellsworth and H. W. Corbett, under the name and style of the 'Oregon Central Railroad Company' for the purpose of securing the said grant of lands and using it, so far as it may go, towards the construction of proposed railroad passing through the Willamette, Umpqua and Rogue River valleys.'

"When we add that as early as the 29th of September, these gentlemen had actually signed and acknowledged Articles incorporating themselves under the name of the Oregon Central Railroad Company, for the purpose of building the railroad required by the Act of Congress, the conclusion appears to be irresistible that it was to this association of persons that the joint resolution had reference.

"Yet, although signed and acknowledged at that date, these Articles of Incorporation were not filed until the 21st of November following (which was long after the adjournment of the Legislature), and when filed they were found to have been altered by the addition of ten other names as incorporators.

"But if it was to this association of persons—there being no company in existence—that this legislative act had reference, still the company filing articles on the 21st of November acquired in law no right to be considered the grantee of Congress, and, indeed, in fact, none of these persons remained in and acted with said corporation.

"Besides the two certificates of incorporation already mentioned, we find a third filed on the 22nd day of April, 1867, by I. R. Moores, George L. Woods, S. Ellsworth, J. H. Moores, E. N. Cooke, J. S. Smith and Samuel A. Clarke, incorporating themselves under the name of the Oregon Central Railroad Company for the purpose of constructing a railway in accordance with the Act of Congress.

"There is no corporation of company other than the foregoing claiming the title of the Oregon Central Railroad Company, or purporting to construct a railroad as called for by this Act.

"Your committee are therefore clearly of the opinion that no such designation by the Legislature as is required by the Act of Congress has been made, and hence

no company has yet acquired rights under the grant, and in order to secure to the state the benefits of the Act, some legislative action is still necessary.

"The resolution of this House instructs your committee to inquire whether any company has complied with the law of Congress by filing an assent with the Secretary of the Interior within the prescribed time.

"A letter was produced and read before your committee, addressed to the Vice-President of the Oregon Central Railroad (East Side) and purporting to be from the said Secretary in which it is stated that J. Gaston, Esq., President of the Oregon Central Railroad Company, has filed an assent within the prescribed time, and that no other paper could then be received for that purpose. The reason of such refusal being, as your committee understood it, that the time limited by the Act had expired.

"By the terms of the Act only such company as shall be designated by the Legislature shall file its assent, and as no designation has yet been made, there is, of course, no company in existence within the terms or intent of the Act to file assent. Your committee must, therefore, answer that no such assent as required by the Act has been filed, and the state must rely upon the generosity of Congress to grant an extension of the time for filing the assent.

"Inasmuch as the time for the completion of the first twenty miles of the road has already been enlarged, there can be no reasonable doubt but that such extension will

be made if the Legislature shall take proper steps to designate a company to receive the grant, it being evidently the desire of Congress to secure the completion of the road.

"But it must be obvious that unless some company be designated, Congress will decline further action in the premises, for if the Legislature of Oregon, with whom that duty lies, be unable to decide between rival companies, organized under her own laws, Congress can hardly be expected to undertake the duty, and the benefits of the Act may be altogether lost to Oregon.

"There are two rival companies asking the favorable action of this Legislature, and as the Act granting the lands requires the completion of the first twenty miles of road by the month of July, 1870, it is perhaps pertinent to this report to state such facts concerning the resources and prospects of said companies as have come to the knowledge of your committee, as will indicate which is most likely to comply with this requirement.

"The Oregon Central Railroad Company (East Side) exhibited to the members of your committee the written undertaking of Ben Holladay & Company, wherein said Holladay & Company undertake to construct and equip a railroad from Portland, in Oregon, to the southern boundary of the state, for the said Oregon Central Railroad Company, and to take as a security from such company certain mortgages upon the

road. These contractors, in pursuance with said contract, have graded said road, with some few interruptions, from Portland southerly for a distance of about twenty-five miles, and are vigorously engaged in prosecuting the work.

"The Oregon Central Railroad (West Side) have graded, with some interruptions and through a mountainous country, about three and one-half miles, and are likewise pushing the work forward with energy. The company propose to construct their road with means entirely their own, and have laid before your committee a statement of the resources and prospects which they represent as wholly adequate for the work. These statements consist in part of a letter read before your committee, the substance of which we respectfully beg leave to submit. This letter is signed by R. R. Thompson, S. C. Reed, L. F. Cartee, J. C. Ainsworth, Goldsmith Bros., W. S. Ladd and C. H. Carter, and represents that a proposition from a responsible party in San Francisco, who has recently been over the road, has been received to the effect that when the company shall grade and furnish ties for forty-four miles of road, he will take a contract to build and equip the road for this distance, and take in payment the company's first mortgage bonds; that they have still further assurance from wealthy and reliable parties in San Francisco that 'when ever we say that everything is all right,' they are willing to join us and help build the road. A letter was also read before your committee, from one Edwin Russell,

now in London, stating that he (Russell) had employed an agent to make certain efforts for the disposal of 500,000 of the company's bonds, and that in the event said agent succeeded in effecting a sale, he was to receive as compensation for his services 5000 Pounds, that such compensation was more than he (Russell) had been authorized to make, but that he could not induce his agent to undertake the business for any less sum.

"Upon the assurances contained in these letters, the Oregon Central Railroad Company (West Side) seemed to place great reliance.

"This company further represent that there is secured to them, to aid in the construction of a road, the interest on $250,000 at 7 per cent by the City of Portland; interest on $750,000 by Yamhill County, and interest on $50,000 by Washington County. In addition to the foregoing, it was stated before your committee by a gentleman there present, that he believed he could obtain from Yamhill County the means of grading the road and building the bridges through that county.

"But means of a more substantial, and, to your committee, satisfactory nature are represented to be in the possession of said company, to-wit: About $40,000 in land and labor subscribed in the counties of Yamhill and Washington; 3 or 4 hundred dollars cash in hand, 200 barrels of flour, and 500 bushels of oats.

"Distinguished capitalists of the City of Portland

deeply in the interests of this company, were before your committee and represented that themselves and associates were possessed of individual means sufficient to greatly prosecute the work on this road; and, on inquiry, informed your committee that they had already subscribed to this important enterprise to the extent of $500 each, with the exception of one person, the President of the company, whose subscriptions amounted to one-half of the entire capital stock, $2,500,000, in said company. It may be proper, however, to state that this officer expressed a willingness to dispose of a portion of stock when purchasers can be found therefor.

"Your committee conclude that the available assets of what is known as the West Side Company, do not extend to $40,000, and that this sum is wholly inadequate to the construction of a railroad within the requirements of the Act of Congress, and that no reasonable hope of the construction of a road by this company can be entertained.

"We therefore recommend some such action upon the part of this House as shall designate what is known as the East Side Company to receive the grant of Congress—your committee are fully convinced that such action will best subserve the interest of the people by securing to them the early construction of a railroad through the rich valleys of the Willamette, Umpqua and Rogue River—a road that shall develop in a few years to come the wonderful resources of these valleys and open them to the doors of a generous commerce.

"All of which is respectfully submitted.

C. B. Bellinger,

Chairman of Railroad Committee

J. L. Louden.

Prior to the passage of the resolution of the Oregon Legislature of October 17, 1868, the "West Side" company, and the "East Side" company had begun the work of construction of a railroad, the "West Side" company on April 15, 1867, *west* of the Willamette River, and the "East Side" company on April 16, 1868, on the *east side* of the Willamette River. (See Daily "Oregonian," April 16, 1867, for west side, and of April 17, 1868, for east side.)

Subsequent to the passage of the resolution of October 17, 1868, there was much litigation in the Oregon courts between the rival "East Side" and "West Side" companies. Suit was brought by the Oregon Central Railroad Company "West Side" against the Oregon Central Railroad Company "East Side" in the Circuit Court for Marion County, Oregon, in the latter part of 1868, to restrain the "East Side" company from using the name "Oregon Central Railroad Company." Apparently that question was not decided in this suit.

On February 9, 1869, suit was brought in the United States Circuit Court for the District of Oregon by James B. Newby against Oregon Central Railroad Company, et al, "East Side" to enjoin defendants from using said title, "Oregon Central *Railway* Company," and from

using bonds bearing said name. The court decided that a suit to enjoin the use of a corporate name the corporation whose name is alleged to be wrongfully used must be a party plaintiff or defendant. (See Deady's Reports, U. S. Cir. Ct. 1860-1870, p. 609.)

The most important litigation, however, was the suit brought November 5, 1869, by S. G. Elliott against Ben Holladay, and others, for dissolution and settlement of partnership. Appeal was taken to the Supreme Court of Oregon, but no decision was rendered by that court until July, 1879.

This suit involved the question of the legality of organization of the Oregon Central Railroad Company, "East Side." The Oregon statute required that one-half the capital sctock of corporations should be subscribed before directors could be elected and organization completed. The capital stock of the Oregon Central Railroad Company *"East Side"* was $7,250,000. Number of shares of capital stock, 72,500. Six persons subscribed one share each, and one person made subscription in behalf of the corporation in the following words:

"Oregon Central Railroad Company, by G. L. Woods, Chairman, 70,000 shares, $7,000,000."

The Supreme Court of Oregon held that subscription by G. L. Woods, on behalf of the corporation, was invalid, and that those who had subscribed six shares could not legally elect a board and organize a corporation, and that the board elected by them could not lawfully transact business. (8 Oregon Reports, page 85.)

The result of this litigation was evidently foreshadowed by the decision of the lower Court, for without waiting for a decision on appeal by the Supreme Court, the persons representing the principal interests in the Oregon Central Railroad Company "East Side," organized the *Oregon & California Railroad Company,"* which was incorporated March 17, 1870.

The *Oregon Central Railroad Company* "East Side" made conveyance of all its property, including the land grant, on *March* 29, 1870, to the *Oregon & California Railroad Company.*

The Oregon Central Railroad Company "West Side" conveyed its land grant and all other properties to the *Oregon & California Railroad Company, October* 6, 1880.

(NOTE.—No patents were ever issued by the United States for any lands in either grant to either the Oregon Central Railroad Company "East Side" or Oregon Central Railroad Company "West Side," but all patents have issued to the Oregon & California Railroad Company.)

LIST OF AUTHORITIES FOR THE FOREGOING FACTS.

1. Inside History Oregon Central Railroad Company, by Joseph Gaston. This pamphlet authorized by board of directors of said company, published in Portland, Oregon, , 1869.

2. Personal interviews with Joseph Gaston, now living in Portland, Oregon.

3. Personal interviews with George H. Himes, who is familiar with facts above given, and is Assistant Secretary of Oregon Historical Society.

4. Deposition of Simon G. Elliott in re Ben Holladay, et al vs. Simon G. Elliott, Circuit Court, Multnomah County, State of Oregon.

5. Quarterly of the Oregon Historical Society, for December, 1902, and June, 1906.

6. "History of the Willamette Valley," by Lang.

7. "Laws and Documents affecting Oregon Central Railroad Company and Oregon & California Railroad Company."

8. Issues "Daily Oregonian," Portland, Oregon, published during period under discussion.

9. Reported cases, Oregon courts.

10. Files of the Counties of Multnomah and Marion, Oregon, and records of the Secretary of State, Oregon.

ASSENT TO TERMS OF ORIGINAL GRANTING ACT OF JULY 25, 1866.

Assent of Oregon Central Railroad Company. "West Side."

By Section 6 of the Act of Congress of July 25, 1866, it is provided that the company proposing to build the

railroad and earn the grant contemplated by said Act, should file its assent within one year from the date of said Act.

By Section 8 of said Act it is provided that failure to file such assent within said time should render the whole Act null and void.

On March 22, 1867, Joseph Gaston, as Secretary of the Oregon Central Railroad Company, "West Side," transmitted to the Secretary of the Interior, (received at Department of the Interior, May 14, 1867), certified copy of joint resolution of the Oregon Legislature of October 10, 1866, designating the Oregon Central Railroad Company, "West Side," as the company entitled to earn the grant; also enclosing assent of the incorporators of said company dated January 1, 1867, to each and all of the provisions of the Act of July 25, 1866.

On May 14, 1867, the Secretary of the Interior acknowledged receipt of the above papers, and advised Joseph Gaston that the assent must be given by the board of directors of said company.

On May 30, 1867, Joseph Gaston, as president of the Oregon Central Railroad Company, "West Side" (received at the Department July 6, 1867), sent to the Secretary of the Interior, copy of resolution of the board of directors of said company, adopted at a meeting held May 28, 1867, assenting to the provisions of the Act of July 25, 1866.

On July 6, 1867, Acting Secretary of the Interior Otto acknowledged receipt of the above resolution, and also of a copy of the joint resolution of the Oregon Legislature of October 10, 1866, and states that these papers have been placed on file.

On June 12, 1867, Joseph Gaston, as president of the Oregon Central Railroad Company, "West Side," sent to the Secretary of the Interior certified copies of the joint resolution of the Oregon Legislature of October 10, 1866, designating said company as the one to receive the grant, and also of the resolution of the board of directors of said company of May 25, 1867, assenting to the provisions of the Act of July 25, 1866.

On July 23, 1867, the Secretary of the Interior, in acknowledgment of above papers, said "that under date of the 6th inst. you were advised of the receipt by this department of your letter of May 30th last, and its enclosures, included among which were certified copies of the resolutions before mentioned."

On May 25, 1868, J. Gaston, as president of the Oregon Central Railroad Company, "West Side," transmits to Secretary of Interior (received at Department July 1, 1868), map of survey and location of the first sixty miles of the Oregon Central Railroad Company, "West Side," under Act of July 25, 1866. July 8, 1868, Secretary of the Interior returned map to Gaston because not verifed as required by law, and requires various things to be done.

On August 6, 1868, J. Gaston, as president of the

Oregon Central Railroad Company, "West Side," Portland, Oregon, writes Secretary of the Interior (received at Department, September 16, 1868), acknowledging receipt of the Secretary's letter of July 8, 1868, and encloses a map designating general route through the State of Oregon, and says that other maps will be forwarded in a few days. (No action appears to have been taken on this letter of Gaston's.)

On September 4, 1868, J. Gaston, president, Oregon Central Railroad Company, "West Side," Portland, Oregon, transmits to Secretary of the Interior (received at Department September 22, 1868), map of location of first sixty miles of Oregon Central Railroad; also encloses true copy of general corporation laws of the State of Oregon. (Apparently no reply was made to this letter of Mr. Gaston's.)

On September 5, 1868, J. Gaston, President, Oregon Central Railroad Company, "West Side," writes Secretary of the Interior (received at Department September 24, 1868), transmitting copy of map of first sixty miles of said company. No reply was made to above letter, but the map was sent November 22, 1871, to the General Land Office.

On January 1, 1869, S. G. Reed, of Boston, Mass., writes the Secretary of the Interior (received at the Department January 4, 1869), asking at request of J. Gaston, President of the Oregon Central Railroad Company, "West Side," if maps of said company have been received and filed.

January 6, 1869 (V. 1, p. 224), the Secretary of the Interior replied that maps had been received, but no action taken because since their receipt the Secretary of the Interior has received certified copy of resolution of the Oregon Legislature, by which the grant of lands is transferred to a corporation organized at Salem on April 22, 1867, under the name of the "Oregon Central Railroad Company," and which is supposed to be a different company from that represented by Mr. Gaston.

In pursuance of the foregoing the Oregon Central Railroad Company, "West Side," had proceeded with construction work, and as near as we can now ascertain actually completed about three miles of road west of the Willamette River in its attempt to earn the grant under the Act of July 25, 1866; but it appears to have made no further attempt at construction to earn the grant of July 25, 1866, and the road which it subsequently built from Portland to McMinnville was in pursuance of the granting Act of May 4, 1870.

Assent by the Oregon Central Railroad Company—"East Side."

On July 16, 1868, A. M. Loryea, in behalf of the Oregon Central Railroad Company, "East Side," sent the following letter to the Secretary of the Interior:

"Washington, July 16, 1868.

Hon. O. H. Browning,
Secretary of the Interior,
Sir:—

I desire to notify you that the Oregon Central Rail-

road Company, of which Gaston represents himself as president, is an illegal organization.

The organization of the same name of which I. R. Moores is President, and myself Vice-President, was made in conformity to the laws of the State of Oregon. In connection herewith I desire to call your attention to the enclosed paper and ask that it may be filed as an acceptance of the lands granted by Congress for such purpose.

Very respectfully, Your obedient servant,

A. M. Loryea."

"Office of the Oregon Central Railroad Company.

Salem, April 30, 1868.

This is to certify that at a regular meeting of the Board of Directors of "The Oregon Central Railroad Company," held at the office of the company, Salem, April 29th, A. D., 1868, the following was passed as the unanimous action of said Board of Directors:

" 'Resolved, That *"The Oregon Central Railroad Company"* hereby accepts any grants of lands which may have been made, or may be extended to said company and our agent, A. M. Loryea, is fully empowered to present a duly certified copy of this resolution to the proper authorities as provided by law to be filed.

Witness my hand and the seal of said corporation this the day and year above written.

S. A. Clark,

Secretary, O. C. R. R. Co.' "

On July 17, 1868, the Secretary of the Interior delivered to A. M. Loryea the following letter:

"DEPARTMENT OF THE INTERIOR.

Washington, D. C., July 17, 1868.

Sir:—I have received your letter of the 16th instant, and accompanying paper, purporting to be an acceptance by the Oregon Central Railroad Company of the grant made by the Act of July 25, 1866.

By law the company was required to file an 'assent' to its terms and conditions, within one year. That time expired July 25, 1867, and this paper, if sufficient for that purpose, could not now be received.

I state for your information that J. Gaston, President of the Oregon Central Railroad Company, within the time provided in that Act, filed an assent, which was received.

In compliance with your request I enclose a copy of my letter of the 8th instant to Mr. Gaston in regard to maps to be filed in this Department.

Very respectfully,

Your obd. Servant,

O. H. Browning,

Secretary.

A. M. Loryea, Esq.,

Present."

Attention is called to the fact hereinabove referred to that the Oregon Central Railroad Company—*"East Side"*—had commenced construction of the road east of the Willamette River on April 16, 1868, and was proceeding with the work of construction in accordance with the provisions of the Act of July 25, 1866, at the time it attempted to file its assent on July 16, 1868, as shown by the foregoing correspondence.

The Secretary of the Interior having refused to accept or file the assent of the *"East Side"* company, as shown above, steps were taken to secure authority from Congress for said *"East Side"* company the right to file an assent and be relieved from its default in that behalf. The facts presented to Congress and the attitude of the Secretary of the Interior in the premises are fully set forth in the statement of Hon. George H. Williams, United States Senator, and the letter of the Secretary of the Interior, following:

Report No. 3, 41st *Congress,* 1st *Session."*

IN THE SENATE OF THE UNITED STATES,

March 22, 1869.

Mr. Williams made the following report (to accompany Bill S. No. 94).

The Committee on Public Lands, to whom was referred a bill entitled, "A bill to amend an act entitled 'An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific

Railroad, in California, to Portland, in Oregon', approved July 25, 1866," respectfully report:

That on the 25th day of July, 1866, Congress passed an act granting lands to aid in the construction of a railroad and telegraph line through the State of Oregon, in which it is provided that the lands shall go "to such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate."

On the 10th of October, 1866, the Legislature of Oregon adopted the following House joint resolution:

> "Whereas, the Congress of the United States at its last session, passed an Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, Oregon, and made it the duty of the Legislative Assembly of the State of Oregon to designate the company organized under the laws of Oregon, which shall receive that part of said grant lying within the State of Oregon; Therefore,
>
> Be it resolved by the House (the Senate concurring), That the Oregon Central Railroad Company, a company organized under the general incorporation law of Oregon, be, and the same is hereby, designated as the company which shall be entitled to receive the land granted, and all the benefits of an Act of Congress, approved July 25, 1866, entitled "An Act granting land to aid in the construction of a railroad and telegraph in from the Central Pacific Railroad, in California, to Port-

land, Oregon," so far as said land grant applies to the State of Oregon."

On the 20th of October, A. D., 1868, the Legislature of the state adopted the following Senate joint resolution:

> Whereas, The Congress of the United States, by an Act approved July 25, 1866, entitled 'An Act to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad to Portland, Oregon,' did grant certain lands in the State of Oregon, and confer certain benefits and privileges upon such company organized under the laws of Oregon as the Legislature of such state should thereafter designate; and
>
> "Whereas, the Legislative Assembly of Oregon, at its fourth regular session, did adopt a joint resolution known as House Joint Resolution No. 13, designating in terms the Oregon Central Railroad Company as the company entitled to receive the land granted by, and all the benefits and privileges of the said Act of Congress; and
>
> "Whereas, at the time of the adoption of the said joint resolution, as aforesaid, no such company as the Oregon Central Railroad Company was organized or in existence, and the said joint resolution was adopted under a misapprehension of facts as to the organization and existence of such a company; and

"Whereas, the designation of the company to receive the lands in the State of Oregon granted, and the benefits and privileges conferred by the said Act of Congress, yet remains to be made; therefore be it

"Resolved by the Senate (the House concurring), That the Oregon Central Railroad Company, a corporation organized at Salem on the twenty-second day of April, in the year one thousand eight hundred and sixty-seven, under and pursuant to the laws of the State of Oregon, be, and the same is, hereby designated as the company entitled to receive the lands in Oregon, and the benefits and privileges conferred by said Act of Congress."

Different railroad companies are described in these resolutions, though both are described by the same name.

One, the company described in the first resolution, is a railroad company whose articles of incorporation were filed on the 21st of November, 1866, and whose line of road is located on the west side of the Willamette River, and may, therefore, for convenience, be denominated the "West Side Company."

The company described in the second resolution is one whose articles of incorporation were filed on the 22d day of April, 1867, and whose line of road is located on the east side of the Willamette River, and may, therefore, be denominated the "East Side Company."

Both of these companies are contending for the

grant.

Section Six, of the said Act of Congress, provides that the company designated by the Legislature shall file its assent to the grant within one year from the passage of the Act.

The West Side Company filed its assent within the required time, and if it was designated according to the Act of Congress, there seems to be no necessity for any further legislation upon the subject.

Bearing upon this point, however, is a correspondence, of which the following is a copy:

> Senate Chamber, Washington, January 19, 1869.
>
> Sir: I respectfully invite your attention to Section 1, of an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, approved July 25, 1866," providing for the disposition of the lands granted by the said Act in the State of Oregon.
>
> Enclosed please find a pamphlet, entitled 'Statement of Facts,' which fully sets forth the rights and claims of a company designated by the Legislature of said State in October, A. D. 1868, commonly called the "East Side Company."
>
> Enclosed also please find a paper, signed by nine members of the Oregon Senate, protesting against the action of said Legislature in October, A. D. 1868, in which the rights and claims of a

company designated in October, 1866, commonly called the "West Side Company," are fully stated.

I have nothing to say as to the rights or claims of either company, but in view of the fact that the articles of incorporation of the West Side Company were not filed in the office of the Secretary of State until after its designation by the Legislature in 1866, and in view also of the fact that the East Side Company cannot file its assent as required by the Sixth Section of said Act, I am apprehensive that the benefits of said Act will be wholly lost to the State, unless something is done to prevent it. Will you be good enough to advise me if there is anything in the action of your department, or the views you entertain of this matter, making unnecessary the proposed legislation?

Geo. H. Williams,

Hon. O. H. Browning,

Secretary Interior, Washington, D. C.

Department of the Interior

Washington, D. C., January 20, 1869.

Sir: I have received your letter of the 19th instant, and the accompanying copy of Senate Bill 776, to amend "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, approved July 25, 1866," with other papers relating to the subject.

Said Act of 1866 required the Legislature of Oregon to designate a company, organized under the laws of the State, to locate and construct so much of said road as was in Oregon, and that the company so designated should file its "assent" to the Act of Congress within one year after its passage.

By a resolution adopted by the Legislature, October 10, 1866, the Oregon Central Railroad Company was designated to locate and construct said road in Oregon. Two companies, called the "Oregon Central Railroad Company," claim to have been so designated. These, it appears, are locally called the "East Side Company" and the "West Side Company."

At the date of the adoption of said resolution by the Legislature, neither company had been organized as required by the laws of Oregon. The West Side Company, however, filed its assent in this Department within the year.

By a resolution adopted by the Legislature in October, 1868, the East Side Company was designated. The purpose of the bill, as understood, is to authorize this company to file its "assent" without prejudice to the rights or interests of the other company, and you ask for an expression of my views as to whether there is any necessity for the proposed legislation.

In reply, I have the honor to state that, as the

matter now stands, *the grant, so far as the portion of road in Oregon is concerned, has lapsed,* while the grant for that portion of the road situate in California is still in force, and some legislation by Congress is necessary to revive the grant for the Oregon portion of the road.

The proposed bill, if it becomes a law, will, in my opinion, accomplish that purpose.

On the 13th instant I declined to act upon maps filed by the West Side Company, "in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject." I enclose a copy of said letter.

The papers which accompanied your letter are herewith returned.

I am, sir, very respectfully, your obedient servant, O. H. Browning, Secretary.

Hon. Geo. H. Williams,

United States Senate.

Department of the Interior,

Washington, D. C., January 13, 1869.

Sir: I have received your letter of the 11th instant, asking that certain maps, filed by J. Gaston, Esq., under the Act approved July 25, 1866, as showing the location of the railroad from Portland, in Oregon, to the northern line of the State of California, may be accepted by this department.

In reply, I have to state that, as there are two companies of the same name claiming, under the laws of the State of Oregon, the benefit of the grant made by said Act of July 25, 1866, I must decline, in the absence of a judicial decision as to the rights of the claimants, or some action by Congress upon the subject, to comply with your request.

Very respectfully, your obedient servant,

O. H. BROWNING, Secretary.

S. G. Reed, Esq.,

Care Hon. H. W. Corbett, United States Senate.

Looking at the above decision of the Secretary of the Interior, and the action of the Oregon Legislature in 1868, taken upon evidence submitted and arguments made by the respective companies, it is evident that the State of Oregon is in great danger, at least, of losing the grant altogether, without some legislation in effect reviving it.

Congress ought not to decide between the two companies, because the questions involved are judicial in their nature, and the object of the accompanying bill is to provide so that both companies may have a standing in the courts of Oregon, and there have their legal rights and equities fully examined and adjudicated.

To declare by Act of Congress that the East Side Company shall have the grant would be unfair, for it

may turn out upon investigation before the courts that the West Side Company was legally designated in 1866, in which event that company, for aught that can now be seen, would be entitled to the land.

To declare by Act of Congress that the West Side Company shall have the grant would be equally unfair, for it appears that the East Side Company was organized and made large expenditures upon the ground that the other company was never legally designated, and it ought to have the benefits and advantages of the law in accordance with which it was organized and invested its money.

It has been suggested that the proposed legislation is unfavorable to the West Side Company, but the bill has been framed so as to obviate that objection so far as practicable.

If the West Side Company was legally designated in 1866, and it has since done what the Act of Congress requires, it has a vested right to the grant, which the bill, if it becomes a law, will not and cannot disturb; but it is unreasonable to insist that because that company has failed to secure the grant, the state ought therefore to lose it.

Both companies claim, and it may be that both have been designated by the Legislature, and if both are allowed to file their assent, as required by the Sixth Section of the Act of Congress, it is made certain not only that one of the companies will get the grant, but that it

will be used for railroad purposes, in which the state has more interest than in the fortunes of either company.

Reciprocal charges of fraud and irregularity in the formation of the companies have been made, but your committee propose to refer these, with all questions growing out of the legal rights and equities of the parties, to the courts of Oregon, and the accompanying bill, the passage of which they recommend, is only intended to protect the interests of the state and provide a judicial settlement of the controversy between the two companies.

As a result of the foregoing the Act of Congress of April 10, 1869, was passed, and which contains the provision that "the lands granted by the Act aforesaid (Act of July 25, 1866) shall be sold to actual settlers only in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre."

On April 12, 1869, John H. Mitchell, attorney for the Oregon Central Railroad Company. "East Side," wrote the Secretary of the Interior (received at the Department April 12, 1869) that he wishes no action taken until the company, "East Side," can file "assent" under Act approved April 10, 1869. Also enclosing printed statement of facts relative to incorporation and organization of the Oregon Central Railroad Company of Salem, "East Side," incorporated April 22, 1867; also enclosing copy of Senate Joint Resolution No. 16, Oregon Legislature, designating the "East Side" company

as entitled to receive the grant conferred by the Act of July 25, 1866.

On June 24, 1869, Acting Secretary of the Interior Otto wrote to Geo. E. Cole, Secretary of the Oregon Central Railroad Company, "East Side," acknowledging his, Cole's, letter of June 9, 1869, accompanied by certified copy of resolution of Oregon Central Railroad Company, "East Side," incorporated at Salem, Oregon, April 22, 1867, assenting to the terms of the Act of July 25, 1866; as authorized by Act of April 10, 1869.

NOTE:—This assent cannot now be found in the files of the Department of the Interior.

The following are extracts from the corporate records of the Oregon Central Railroad Company, "East Side," with reference to filing assent last above referred to:

April 29, 1868:

> Resolved, The Oregon Central Railroad Company hereby accepts any grant of land which may have been made and may be extended to said company. (Page 67, Book I, Corporate Records.)

June 9, 1868:

> Resolved, To accept any land grant which may have been made or extended to this company and proper officers authorized to, file a copy with the Secretary of the Interior, Washington, D. C. (Page 72, Corporate Records.)

November 26, 1868:

The Corporate Records show that there was an apparent effort made to get an assent filed to the Act of July 25, 1866; for the records show that the company intended to acquaint the Secretary of the Interior with the fact that this company was designated by the Oregon Legislature October 20, 1868, as the company to receive the grant and as the Act of July 25, 1866, required the assent within one year, and it was necessary for the Legislature to designate a company, the failure to designate, as shown by the resolution of the Legislature of October 20, 1868, made it impossible for the company to comply with this provision; Therefore on the above date, it was resolved to file assent to said Act. (Page 100, Corporate Records.)

June 8, 1869:

Resolved, To accept provisions of the Act of July 25, 1866, and forward same to Secretary of Interior. (Page 137-8, Corporate Records.)

(This resolution apparently does not take into account act of April 10, 1869, which extended time for filing assent and completing first twenty miles of road.)

Sept. 7, 1869:

The Corporate Record shows a letter was read at the meeting from the Secretary of the Interior acknowledging receipt of assent and that same was filed. (Page 149, Corporate Records.)

On November 4, 1869, the Commissioner of the General Land Office transmitted to the Secretary of the Interior a map of the Oregon Central Railroad Company, "East Side," which was filed by W. L. Halsey, on October 29, 1869, pursuant to Act of July 25, 1866, and asks to be advised as to the withdrawal of the lands.

January 29, 1870, the Secretary of the Interior returned to Commissioner of the General Land Office map received with his letter of November 4, 1869, approved, and directed withdrawal of land. This map shows definite location of Oregon Central Railroad to Jefferson, on the Santiam River, 71 miles.

(Note on Record, Vol. 1, p. 282, of letters of Secretary of the Interior, appointing Commissioners to examine section of road constructed by the Oregon Central Railroad Company, Act of July 25, 1866, reads as follows:

"Note:—This company was, on the 20th October, 1868, designated by the Oregon Legislature as the company to receive the grant of lands made by Act of July 25, 1866, and its amendments."

On March 26, 1870, C. Temple Emmet, of Washington, D. C., wrote the Secretary of the Interior (received at the Department March 26, 1870), transmitting a map of survey of Oregon Central Railroad Company, "East Side," from Santiam River to the south line of Township 18 South, Range 3 West, Willamette Meridian, and from the last mentioned point to the

south line of Township 27 South, Range 6 West, W. M., under Act of July 25, 1866, and amendatory Acts.

March 29, 1870, the above described maps were acknowledged by the Secretary of the Interior and sent to the Commissioner of the General Land Office with instructions to withdraw lands.

SALE AND TRANSFER BY THE OREGON CENTRAL RAILROAD COMPANY, "EAST SIDE,"

to

OREGON & CALIFORNIA RAILROAD COMPANY.

The Oregon & California Railroad Company was incorporated under the laws of the State of Oregon March 17, 1870. The following is a copy of its articles of incorporation:

ARTICLES OF INCORPORATION

of the

OREGON AND CALIFORNIA RAILROAD COMPANY.

Know all men by these presents, That we, the undersigned corporators, Ben Holladay, of New York, and Cicero H. Lewis, I. R. Moores, J. C. Hawthorne and

Medorem Crawford, of the State of Oregon, do, by these presents, associate ourselves together as a corporation and body politic under and by virtue of the General Incorporation Law of the State of Oregon, approved October 14, A. D. 1862, and amendments thereto, and for such purpose we do jointly and severally hereby agree to and with each other to the following articles:

ARTICLE I.

The name assumed by this corporation, and by which it shall be known, is the "Oregon and California Railroad Company."

ARTICLE II.

The duration of this corporation shall be ninety-nine years.

ARTICLE III.

The enterprise, business, pursuit and occupation in which this corporation proposes to engage, is to construct a railroad and telegraph line, with all the necessary branches, side tracks, fixtures, buildings, depots, stations, and appurtenances from Portland, in the State of Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the California line on the southerly boundary of Oregon, to connect with the railroad and telegraph line now being

constructed northerly through the State of California, by the "California and Oregon Railroad Company," toward the southern boundary of Oregon, and to purchase, own, construct, hold, equip, operate and use all necessary ferries on the line of such road, over the Willamette and other rivers, and over any river or rivers on either side of the line of such Railroad, which may be necessary or proper in crossing freight and passengers to and from the said Railroad; to maintain the said Railroad and Telegraph Line in good order, condition and repair, and to operate the said Railroad and employ the same and the said Telegraph Line in the business of transporting passengers and freight and the United States mails, and for the purposes aforesaid, to purchase, take and receive of and from the "Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22, A. D., 1867, that portion of its Railroad and Telegraph Line now completed together with all the property, real, personal and mixed, and right of way of such last named corporation of whatsoever name and nature, and all its rights and franchises of every name and nature, both legal and equitable, which the said last named corporation now has or owns, or to which it is in any way or manner entitled, or hereafter may be entitled to—whether the same is absolute or contingent, and particularly and especially all the right, title, interest, franchise, claim and demand which the said "Oregon Central Railroad Company," of Salem, Oregon aforesaid, now has or is entitled to, and to which it may hereafter be entitled under and by virtue of an

Act of Congress, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Railroad, in California, to Portland, in Oregon," approved July 25, 1866, and of all amendments thereto. The purpose of this corporation being to make such portion of the Railroad and Telegraph Line of said "Oregon Central Railroad Company," which is now completed, a part of the line of Railroad and Telegraph which this corporation proposes to construct, as aforesaid, from Portland, Oregon, to the California line, and to construct and equip the whole line thereof from Portland, in Oregon, to said California line, in all respects in accordance with the Act of Congress hereinbefore referred to, and the amendments thereto, and for the purpose of receiving all the benefits of such Act of Congress and amendments thereto, intended to be conferred thereby on the Oregon Company, and for the purpose of complying with all the provisions of such Act.

ARTICLE IV.

The principal office for the transaction of the business of this corporation shall be kept in the City of Portland, Multnomah County, State of Oregon.

ARTICLE V.

The amount of the capital stock of this corporation is hereby fixed at Twenty Million Dollars ($20,000,000).

ARTICLE VI.

The amount of each share of such capital stock is hereby fixed at One Hundred Dollars.

In Testimony whereof and of our adoption of the foregoing Articles of Incorporation, we, the undersigned corporators, have hereunto set our hands and seals this sixteenth (16th) day of March, A. D. One Thousand Eight Hundred and Seventy (1870) in triplicate.

BEN HOLLADAY, (L. S.)
CICERO H. LEWIS (L. S.)
I. R. MOORES, .. (L. S.)
J. C. HAWTHORNE, (L. S.)
MEDOREM CRAWFORD. (L. S.)

State of Oregon,)
County of Multnomah,) ss

Be it remembered that on this 16th day of March, A. D. 1870, personally appeared before me, the undersigned, a Notary Public, in and for the County and State aforesaid, the above named corporators, Ben Holladay, Cicero H. Lewis, I. R. Moores, J. C. Hawthorne and Medorem Crawford, all to me personally known as being the persons named in, and who, as corporators made and subscribed the foregoing Articles of Incorportion, and severally acknowledged to me that they and each of them executed the foregoing Articles of Incorporation freely and voluntarily and for the uses and purposes therein specified.

Witness my hand and official seal, the day and year in this certificate first above written.

GEO. W. MURRAY,

(L. S.) Notary Public.

By deed, dated March 29, 1870, the Oregon Central Railroad Company, "East Side," conveyed and transferred all of its property, including its right, title and interest in and to the land grant, to the *Oregon and California Railroad Company.*

April 9, 1870, Geo. E. Cole, Secretary Oregon Central Railroad Company, "East Side," wrote Secretary of Interior (received at Department April 28, 1870), enclosing copy of resolution of Board of Directors of said company of March 29, 1870, that said company has sold and conveyed to the Oregon & California Railroad Company all its rights and interests in and to the lands, franchises and benefits granted to the Oregon Central Railroad Company, "East Side," by Act of Congress July 25, 1866, and amendments thereto; also transmitting copy of deed executed at Salem, Oregon, March 29, 1870, as aforesaid. Also copy of resolution of Board of Directors of the *Oregon & California Railroad Company* adopted April 4, 1870, accepting the grant by Act of July 25, 1866, and directing that copy thereof with deed be filed in office of Secretary of Interior.

May 7, 1870, Secretary of Interior wrote Geo. E. Cole, Secretary of the Oregon Central Railroad Company, "East Side," acknowledging receipt of Cole's letter, enclosing certified copy of resolution of Board of

Directors of Oregon Central Railroad Company, "East Side," and of the deed of assignment of all the rights, interests, etc., of said company to the Oregon and California Railroad Company.

May 7, 1870, the Secretary of the Interior wrote the Commissioner of the General Land Office that evidence has been filed in the Department of Interior by Geo. E. Cole, Secretary of the Oregon Central Railroad Company, of Salem, Oregon, "East Side," that said company has sold, and transferred all of its rights, interests, etc., to the Oregon and California Railroad Company.

On July 6, 1870, Secretary of Interior issued his certificate under seal of the Department that maps of definite location of the Oregon Central Railroad Company from Portland to near Arlington, Oregon, had been filed and accepted by his department. That the first section of twenty miles, beginning at Portland and extending south for that distance, had been constructed and accepted; that satisfactory evidence had been filed in his department showing the transfer of all the rights, interests, etc., of said Oregon Central Railroad Company, "East Side," to the Oregon and California Railroad Company, and that the latter company had been recognized by his department as vested with all such rights and interests.

October 7, 1870, received at the Department of the Interior certificate dated Salem, Oregon, September 19, 1870, of I. R. Moores, President, and George E. Cole,

Secretary, that the Oregon Central Railroad Company, of Salem, Oregon (East Side), was dissolved according to the laws of Oregon, April 7, 1870, and no longer existed as a corporation.

LAND GRANT BY ACT OF CONGRESS OF MAY 4, 1870.

Everything heretofore stated in this report refers to the grant of lands made by Act of Congress, of July 25, 1866, and earned by the Oregon Central Railroad Company "East Side," and its successor in interest the Oregon and California Railroad Company.

The following facts relate only to the grant of lands under Act of Congress of May 4, 1870.

The grant here referred to is the grant applied for by the Oregon Central Railroad Company "West Side" after it had abandoned the effort to acquire the grant under the Act of July 25, 1866.

On August 2, 1870, Secretary of Interior wrote to J. Gaston, President Oregon Central Railroad Company, "West Side" acknowledging his letter of July 8, 1870, transmitting assent of said company to the provisions of the Act of May 4, 1870. The Secretary says that such assent may be accepted as sufficient compliance with the law provided it is shown to his satisfaction that the company represented by Gaston is the Oregon Central Railroad Company for whose benefit said grant was made.

October 13, 1870, Secretary of Interior wrote J. Gaston, Secretary of Oregon Central Railroad Company acknowledging his (Gaston's) letter of September 21, 1870 in reply to Secretary's letter of August 2, 1870 and says that the evidence then furnished that the Oregon Central Railroad Company represented by Gaston is the one referred to in the Act of May 4, 1870, is satisfactory, and that the assent is received as a full compliance with the requirements of the act.

May 26, 1871, Commissioner of General Land Office wrote Secretary of Interior transmitting map of Oregon Central Railroad Company from Portland, Oregon to Astoria and branch to McMinnville, Act of May 4, 1870, and asks authority to withdraw lands.

June 21, 1871, Secretary of Interior directs withdrawal of lands.

CONSTRUCTION OF THE RAILROAD.

Following the transactions and steps taken as set forth above, the *Oregon Central Railroad Company*—"East Side"—proceeded with the work of construction begun April 16, 1868, (and which was within the time limited by Act of July 25, 1866, for construction of first twenty miles, viz., two years, or until July 25, 1868,) and completed the first section twenty miles from Portland to Parrot Creek, in Section 23, township 3 south, range 1 east, Willamette Meridian, on December 24, 1869, (within the time limited by amending act of June 25, 1868, for completion thereof) and

the same was examined and reported upon December 31, 1869, by the commissioners appointed by the President of the United States for that purpose and their report approved and the section of the road accepted by President Grant January 29, 1870.

The *Oregon and California Railroad Company*, organized March 17, 1870, as the successor in interest under deed of transfer dated March 29, 1870, of the *Oregon Central Railroad Company*,—"East Side,"—continued the work of construction begun by the latter company, and completed the different sections of twenty miles each of the road from Portland south to near the California state line (except the first section of twenty miles completed by the "East Side" company, and the same were examined and reported upon by the commissioners appointed by the President for that purpose, and their reports approved and the sections of road accepted by the President at the times and in the manner following, viz:

	Miles	
2nd Sec.	20	From last named point to ½ mile south of Waconda. Commissioner's report dated September 28, 1870. Accepted by President Grant, Feb. 28, 1871.
3rd & 4th	20 (3)	From last named point to 8 miles south of Salem. Commissioner's report Sept. 28, 1870.

	Miles	
	20 (4)	From last named point to ½ mile south of Albany. Commissioner's report dated December 10, 1870.
		Accepted by President Grant, Feb. 28, 1871.
5th Sec.	20	From last named point to Little Muddy Creek probably in T. 14 S., R 3 W. Commissioner's report August 11, 1871.
		Accepted by President Grant, March 11, 1872.
6th Sec.	20	From last named point to 2-½ miles N.W. of Eugene City—NW¼ Sec. 23, T. 17 S., R 4 W. Commissioner's report January 13, 1872.
		Accepted by President Grant, March 11, 1872.
7th, 8th, & 9th Sec.	77 456/556	From last named point to near Roseburg in SE ¼ Sec. 24, T 27 S, R. 6 W. Commissioner's report December 27, 1876.
		Accepted by President Hayes, July 11, 1878.

	Miles	
10th	Sec. 45	From Sec. 24, T 27 S, R 6 W., to Sec. 19, T 30 S., R 7 W. Commsisioner's report August 6, 1883. Accepted by President Arthur, Aug. 29, 1883.
11th	Sec.100	From Sec. 19, T 30 S, R 7 W. (5 miles south of Roseburg) to 1-1/4 miles south of Ashland (39 S., R 1 E) Commissioner's report January 3, 1887. Accepted by President Cleveland, Jan. 29, 1887.
12th	Sec. 24.135	From SW 1/4 Sec. 11, T 29 S, R 1 E California boundary. Commissioner's report April 18, 1889. Accepted by President Harrison, Nov. 8, 1889.
Total	366.691	miles

The line of railroad from Portland to McMinnville was completed by the Oregon Central Railroad Company—"West Side"—within the time required by the granting act of May 4, 1870,—six years from the date of said act,—and was approved and accepted by the United States; and, as before stated, said Company

conveyed all its property, including its title and interest in and to the land grant, by deed dated October 6, 1880 to the Oregon & California Railroad Company.

COST OF CONSTRUCTING RAILROAD TO EARN LAND GRANT.

The total cost of construction of the railroad now owned by the Oregon & California Railroad Company —Portland south to state line and Portland to McMinnville—including main line, branches and equipment to December 31, 1907, is $39,236,577.12. Owing to the loss of the general books of the company in the San Francisco fire of April 18, 1906, it is not possible at this time to segregate the cost of each.

In addition to the foregoing cost of construction and equipment, and as shown by the last annual report of the Southern Pacific Company (Lessee of the Oregon & California Railroad Company) and by the books of the Oregon & California Railroad Company, there was a *debit* balance as of that date to Profit and Loss account of $5,504,560.63, after taking into consideration a credit from sale of land grant lands of $2,275,671.13, and from interest on proceeds of sale of granted lands deposited with the Union Trust Company of New York, Trustee, amounting to $12,930.11.

In other words, the expense of operating the road and giving the public transportation service has ex-

ceeded the revenues and resulted in a loss of $7,793,-161.97; and it has cost the company altogether to furnish to the people of Oregon and the United States the lines of railroad transportation, for the building and equipping of which Congress offered as an inducement and contracted to give the land grant, $47,029,739.09.

The foregoing figures do not take into account the sums expended by the company for payment of taxes on land grant lands or expenses of administering the grant, caring for the lands and protecting the timber from fire, trespass and depredation. The following is a statement of receipts and expenditures account of land grant to December 31, 1907:

Receipts		$4,807,082.26
Expenses (exclusive of taxes)	$1,018,216.78	
Taxes paid	966,363.30	1,984,580.08

Since the foregoing statement was compiled the company has paid taxes for the year 1907 of $193,380.45, making the total expenses and taxes paid account of land grant $2,177,960.53.

The amount therefore which the company has been induced to expend in order to earn and acquire the grant is $49,853,691.72
and it has received financial benefit of... 2,822,502.18
leaving a net investment and expense above receipts for forty years of..... 47,031,119.54

Free transportation of the troops and property of the United States.

It will be noted that by section 5 of the Act of July 25, 1866, a further burden is imposed upon the grantee railroad company in providing for the free transportation forever of troops and property of the United States, thereby increasing the cost and expense to the company of earning the grant.

"Sec. 5—*And be it further enacted* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad in repair and use * * * * and that the government shall at all times have the preference in the use of said railroad and telegraph therefor, at fair and reasonable rater of compensation, not to exceed the rates paid to private parties for the same kind of service.

And said railroad shall be and remain a public highway for the use of the government of the United States free of all toll or other charges upon the transportation of the property or troops of the United States. And the same shall be transported over said road at the cost, charge and expense of the corporations or companies owning or operating the same, when so required by the government of the United States."

This provision of the Act of July 25, 1866 has from the first been insisted upon and enforced by the United States, and literally complied with by the railroad com-

pany. Unfortunately for the purpose of this statement, and by reason of the total destruction of all books of account and records in the Auditor's office, in which the free transportation account of the Oregon & California Railroad Company with the United States was kept, it is impossible at this writing to give the exact amount of free service rendered to the United States since July 25, 1866, and the value thereof. The records of the Auditor's office for the year 1906-1907, subsequent to the fire of April 18, 1906, show troops carried, i.e. (officers and enlisted men) 9284,—value $143,-253.18; and tons of freight carried 8230—value of service $77,508.69. Total value of free service rendered for the year $220,761.87. The section of the act above referred to providing for the free transportation of government troops and property extends to and covers all government stores, such as supplies for Indian Agencies, supplies and stores for for the Navy Department, supplies, etc., for other branches of the government, such as the Interior Department. The service rendered by this line of road in former years was very large, and it is now estimated that the value of the service thus rendered since the passage of the act of July 25, 1866, is fully ten million dollars.

(An effort is now being made to get the data as to such service from the records thereof kept by the different departments of the government.)

On the basis of this estimate the total actual cost and expense to the grantee railroad company, which it has

incurred as a consideration for this land grant, is, therefore, $59,853,241.27, and from which it has received benefits (receipts from sale of land) of $2,822,502.18.

Although it was undoubtedly the design both of Congress and of the recipient companies that the land grants were to be conferred as benefits and aids to the building of the railroads, the known facts relating to the history of the grants from the beginning down to within quite recent years, show it to have been of practically no avail for that purpose.

Far from being an aid to the companies in financing the construction of the roads, the grants were and continued to be down to about the year 1895, a constant source of expense and drain upon the resources of the companies. It appears that the companies resorted to every possible expedient to make the land grants available as a means of securing credit and as an aid to the building of the roads, as will be evidenced by the numerous deeds of trust and other instruments of conveyance affecting land grant lands shown upon the county records of the State of Oregon, viz:

1. September 1869, Oregon Central Railroad Company to Josiah L. Parrish and Chester N. Terry, Trustees.

2. Release, Cunningham and Dolph to Oregon Central Railroad Company.

Note. This release is recorded June 28, 1881, and purports to be a release of deed of trust of

April 15, 1870. There is nothing to show how Cunningham and Dolph got title, or what were the terms of the trust.

3. Oregon & California Railroad Company to Latham, Atherton and Norris, Trustees, deed of trust.

4. Oregon & California Railroad Company and Latham, Atherton and Norris, Trustees, March 25, 1871, to the European & Oregon Land Company (sale of land grant.)

5. European and Oregon Land Company to the Oregon & California Railroad Company, and Latham, Atherton and Norris, July 25, 1874, (reconveyance of land grant.)

6. To Klass Von Otterendorp and Phillip Lillianthall, March 1, 1881.

7. To Villard, White and Bretherton, Trustees.

8. To Villard, Peebles and Bretherton, Trustees.

9. To Farmers' Loan & Trust Company, Trustee.

10. Lawrence Harrison et al. against Oregon & California Railroad Company, Farmers' Loan & Trust Company and Oregon Transcontinental Company, January 19, 1885, application for appointment of receiver.

11. January 19, 1885, R. Koehler appointed receiver.

12. November 28, 1888, Receiver discharged. (No sale of property under receivership.)

13, To Union Trust Company of New York, Trustee, deed of trust, July 12, 1887.

14. Oregon Central Railroad Company of Portland (West Side) to The Willamette Valley Railway Company, August 15, 1870. (Sale of railroad and land grant.)

15. The Willamette Valley Railroad Company to the Oregon Central Railroad Company—West Side—, April 17, 1871. (Reconveyance of railroad and land grant.)

The availability of the land grants for the purpose designed by Congress, viz: to aid in construction, etc., of a railroad, is clearly shown by the agreement of conveyance joined in by the Oregon & California Railroad Company and Latham, Atherton and Morris, Trustees, dated March 28, 1871, which covenants to convey the entire land grant to the European and Oregon Land Company, as fast as patents may issue, at the agreed price of $1.25 per acre.

It was expected that the railroad company would thus be relieved of a useless burden. The failure of this plan and the unsalability of the lands in the grant is further emphasized by the reconveyance, July 25, 1874, by the European and Oregon Land Company of all the lands in the grant except 4,072.98 acres, which represented the entire sales made by the latter company during the three and more years it held the grant.

RAILROAD COMPANY'S RECOGNITION OF PROVISION IN ACT OF APRIL 10, 1869.

The charge has been made that up to the time when timber land began to be valuable, the Oregon & California Railroad Company recognized the provision of the amending act of April 10, 1869, and made sales only to actual settlers in tracts of 160 acres or less. The county records of Oregon are evidence of the fact that the company in making sales of its lands never recognized that provision at all.

The only basis for such statement that we have been able to find is contained in a joint advertisement of the Oregon and California Railroad Company and the European and Oregon Land Company, which appeared at frequent intervals in the Daily Oregonian of Portland between August 12, 1871 and September 11, 1872, —photographic copy of which, duly verified, is herewith transmitted for your information. This advertisement clearly shows that it was the expectation and intention of the railroad company to get as many settlers on the railroad lands as possible. It was an attempt to get settlers and as such it failed. The company invited persons to settle upon these lands in advance of patent. The only apparent recognition of the limitations of the act of April 19, 1869, which we have been able to discover anywhere is contained in this advertisement, which attempts to limit the quantity of land sold to 160 acres to one person. It is to be carefully ob-

served, however, that in this public declaration of its intention the company does not bind itself *to sell the land at a fixed price.* It agrees to sell the lands "at their actual present value," "on the basis of similar lands in the vicinity."

That these companies did not consider themselves bound by the proviso of that act, even as to the matter of quantity is shown by the fact that the second sale made by he European & Oregon Land Company was for 200 acres, and this was followed in the next three years by other sales exceeding the 160 acre limit.

There is no pretence on the part of the company that in conducting sales it ever observed, or attempted to observe, in a literal sense, the proviso in the act of April 10, 1869, with reference to the quantity of land sold to one person, or the price asked or received, or in recognition of the rights of any particular class of purchasers; and the experience of the company and its officers entrusted with the management and administration of this land grant during the forty or more years of the life of the grant has demonstrated that in its relation to the making of sales of the lands in the grant, that proviso is utterly impossible of performance. Had the company endeavored to confine sales within the restrictions and limitations of the ordinary sense and meaning of the proviso mentioned, it is a safe statement that sufficient land could not have been sold during these forty and more years to pay ten per cent of the expense of administration of the grant.

It is a fact, however, that the lands of the grant were open to sale continuously from its origin down to the year 1903—a period of about 35 years—and during all of that time the company endeavored to make sales to persons who would settle upon and cultivate the lands. As an evidence of the company's earnest effort in this behalf, attention is called to the fact that nearly all sales made were by contract, requiring payment by vendee of only ten per cent. of purchase price in cash, and balance in ten equal annual installments.

But the fact is, so small a percentage of the acreage of the grant was suitable for agriculture or capable of being reduced to cultivable conditions or settlement that no inducement the company could hold out would avail to secure purchasers of that class to any appreciable extent. The lands which, with slight expense and labor, might be cultivated, were, of course, selected first. Those lands which it was necessary to clear of timber and stumps did not attract, for the expense of clearing far exceeded the value of the land when cleared.

During all these years and down to about 1898 none of the lands in the grant were considered either by the company or by the public with reference to their value for timber. Indeed, no value was then attached to them for the timber. No one could be induced to buy 160 acres of land, for $2.50 per acre or any other price, just because of the value of the timber. The timber was remote and inaccessible for logging and too far from

market for the ordinary human vision to discern that it might at a period then near at hand have a value. So that what land was sold prior to about the year 1898, although it might have been timbered, was purchased on account of its possibilities for agriculture, or other purposes,—not timber. Of course, quite a large percentage of these purchasers of small tracts never found it practicable to clear the land or reduce it to conditions of agriculture, and many of the tracts so purchased have since passed into the hands of large timber owners and lumbering interests.

The following statement of sales made, clearly illustrates these conditions:

Total number of contracts of sale made by company, 7246, agreeing to convey 1,036,634.11 acres.

Of the total number of 7246 contracts, 1268, embracing 209,457.79 acres, were allowed by vendee to become in default and were cancelled by company, leaving total net acreage sold under contract 827,176.32.

Of the above total number of contracts, there are in addition to the 1268 already cancelled, 526, embracing 34,435.60 acres, in default at this date, for an average period of twelve years, and many of them for a period of more than twenty years, and which are subject to cancellation, vendees having abandoned the contracts and the lands covered thereby and forfeited all payments made on account thereof. Considering these contracts as abandoned, and deducting the acreage covered thereby, 34,435.60, from the net acreage sold under

contract—827,176,32—the net acreage sold is reduced to 792,478.30.

Of the net acreage of 792,478.30 thus sold, 500,000 acres were sold since the year 1898, in large quantities, in some cases as much as 40,000 acres and more being embraced in one contract of sale, so that the total sales by the company from the time it acquired the grant down to the year 1898 was only 292,478.30 acres.

These figures show that of about 3,000,000 acres which the company actually acquired or in which it had an expectancy and from which it could make sales, the net result of thirty years business (prior to 1898) shows sales of only 292,478.30.

It is a significant fact illustrating conclusively the unfitness for settlement purposes (of what remained after the government had deprived the grantee railroads of the only land within the limits of the grant suitable for agriculture) and enforcing the impossibility of compliance with the proviso of the act of April 10, 1869,—that the abandoned lands just referred to were the best obtainable lands in the grant at the times purchased, and that of the 526 abandoned contracts covering a large acreage, and which remain uncancelled, a careful examination on the ground reveals the fact that on only seventy-six one hundredths (76/100 per cent) of one per cent of the acreage covered, was any attempt ever made at settlement and cultivation.

As further illustrating the character of the lands

now remaining in the grant, and particularly their unfitness for settlement and cultivation, attention is called to the following statement of the official records of the tax assessors' offices of all the counties of Oregon in which are any part of the land grant lands. This is the official assessment for purposes of taxation for the year 1906, and shows that out of the entire grant remaining of over two million acres, but *fifteen* (15) *acres are assessed as tillable.*

STATEMENT OF LANDS IN VARIOUS COUNTIES EMBRACING OREGON AND CALIFORNIA RAILROAD COMPANY LAND GRANT ASSESSED FOR TAXATION AS SHOWN BY RECORDS OF COUNTY ASSESSORS FOR YEAR 1906, AND SHOWING ASSESSORS' CLASSIFICATION OF OFEGON AND CALIFORNIA RAILROAD COMPANY LANDS AS TILLABLE AND NON-TILLABLE.

				Acreage of Patented Unsold Lands of Oregon and California Railroad Company.	
County	Total Acreage Assessed	Assessed as Tillable	Assessed as Non-Tillable	Assessed as Tillable	Assessed as Non-Tillable
Clarke (Wash.)	334,776	43,985	290,791		292.50
Columbia, Or.	359,877	10,537	349,340		17,692
Washington	439,251	94,215	345,036		17,892.22

County	Total Acreage Assessed	Assessed as Tillable	Assessed as Non-Tillable	Acreage of Patented Unsold Lands of Oregon and California Railroad Company. Assessed as Tillable	Assessed as Non-Tillable
Multnomah	193,472.72				8,341.58
Clackamas	613,921	84,166	522,755		88,183
Tillamook	549,783.20	12,224.42	537.558.78		29,579.03
Yahmill	377,621	118,031	259,590		28,591.91
Polk	432,034	115,738	316,298		39,612.28
Marion	535,325.03	196,642.08	338,682.95		34,173.88
Lincoln	242,596	4,978	237,618		15,906
Benton	370,020	63,731	306,289		53,443
Linn	949,667	186,300	763,367		73,726
Lane	1,345,125	118,463	1,226,662	15.	302,912
Douglas	1,782,772	93,450	1,689,322		615,913

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County	Total Acreage Assessed	Assessed as Tillable	Assessed as Non-Tillable	Acreage of Patented Unsold Lands of Oregon and California Railroad Company. Assessed as Tillable	Assessed as Non-Tillable
Curry	239,215	3,628	235,215		7,960
Coos	773,722	17,826	755,896		106,413
Josephine	374,789	25,169	349,620		167,233
Jackson	1,087,304	83,968	993,336		441,488
Klamath	850,338	72,236	778,102		43,014

All of the records of examinations of the lands in the grant by particular tracts, made during all the years prior to April 18, 1906, were destroyed in the fire in San Francisco of that date. The work of restoring this lost data is enormous and will consume much time and money. Up to the present time it has been possible to restore only a small percentage of that data. However, a very careful estimate has been made by two different persons who from long association with the grant in the field and who by their judgment and experience in land and timber appraisement are best qualified to testify as to values and character of land in the grant. Their report shows 1,496,640 acres covered with timber and unsuitable for agriculture; 703,652 acres of grazing land unsuitable for agriculture and 7320 acres that might be used for agricultural purposes at the present time, but which acreage consists of small isolated tracts many of them remote from transportation and settlements, and scattered in small bodies in different places throughout the whole extent of the grant, along creek bottoms and on hill sides. They are not easily saleable because more lands may be had and demand does not equal supply. The remainder of the grant consists of 150,000 acres of steep hillsides and rocky cliffs not timbered and not fit for agriculture or grazing, but are waste land. Of the 2,200,292 acres of timber and grazing lands as above, it is estimated that about 250,000 acres might be reduced to conditions suitable to agriculture by clearing the ground of timber and stumps but the expense of clearing the land would greatly exceed the value of the land

after it was cleared. Note: At the present time in Western Oregon the cost of clearing lands of stumps, etc. and preparing it for agriculture ranges from $50 to $150 per acre.

STATEMENT OF THE CONSOLIDATED LAND GRANT OF THE OREGON AND CALIFORNIA RAILROAD COMPANY UNDER ACT OF JULY 25, 1866 AND ACT OF MAY 4, 1870.

The following is a statement showing *separately* the *"Primary"* lands included in both grants, and the *"Indemnity"* granted to make good loss in primary grant:

PRIMARY.

	Acres.
Total acreage granted	4,283,218.36
Lost	2,093,702.04
Leaving actual grant subject to still further loss by reason of unpatented condition	2,189,516.32

INDEMNITY.

Total acreage Indemnity contemplated by Acts	1,907,300.91
Acreage held unavailable for indemnity by court and departmental decisions	878,495.51

Leaving available at present time (Subject) to still further deduction) to make good loss of 2,189,516.32 acres of primary lands 1,028,805.40

Net loss at this date which may be increased and which can never be made good..... 1,160,710.92

These figures agree substantially with the official adjustment of the grant as made by the Commission of the General Land Office in letter of June 29, 1900 to the Secretary of the Interior, as follows:

"F" 13-12929

Department of the Interior

General Land Office.

Washington, D. C., June 29, 1900.

The Honorable
Secretary of the Interior

Sir:

In accordance with the directions of the department (6 L.D., 276) and the requirements of the Act of March 3, 1887 (24 Stat. 556), an examination with a view to its adjustment has been made of the grant to the Oregon and California Railroad Company in the State of Oregon by the act of July 25, 1866 (14 Stat., 239), and I hand you herewith a statement of the results of such examination for your information and such instructions or suggestions as you may deem proper.

The examinations show the whole area of the grant in the primary (20 miles) limits to be 3,821,901.80 acres, of which amount there are chargeable against the grant 2,128,979.36 acres thus leaving an apparent loss in said limits of 1,692,922.44 acres, 215,914.10 acres of which are lost by reason of falling within conflicting limits of prior grants and the remainder by entries, filings, etc.

The area of the indemnity (30 miles) limits is shown to be 1,779,352.10 acres of which 472,197.49 acres have been otherwise disposed of, leaving available in this limit (at the time of the examination) for the purpose of satisfying the grant, 1,307,154.61 or 385,767.83 acres less than the required amount, even in the improbable event of the company obtaining title to all the lands shown at the time of the examination to have been available for the grant.

In connection with the deficiency in the grant above reported, however, attention is called to the fact that there have been erroneously patented to the company 6,963.33 acres outside the limits of its grant and 1,576.67 acres within its limits, but also in the limits of prior grants. While the title to these lands, amounting to 8,540.00 acres remains in the company, they should be charged against the amount the company is entitled to, and by so doing the deficiency above reported will be reduced to 377,227.83 acres, as shown by the statement.

Attention is also called to the item "In limits but patented to other roads," under heading of "Charge-

able to the grant" in the primary limits.

This item, covering 34.43—.43 acres, is made up of 541.87 acres in the primary limits of the Oregon and California Railroad and the indemnity limits of the Oregon Central Military Road, and 33,894.56 acres in the conflicting primary limits of the grant under consideration and the Coos Bay Military Road grant.

As to the 541.87 acres in the conflicting limits of the Oregon and California Railroad and the Oregon Central Military Road, I have to say that they are in the primary limits of the former grant, opposite its definite location of March 26, 1870 and title passed by such definite location, so that when the indemnity withdrawal was ordered, March 31, 1871, on account of the latter grant, no right of selection passed thereunder and the approval of the lands for the military road was therefore erroneous, and that lands should be charged against the *railroad* as part of its grant and against the military road as "erroneously approved" to it.

Respecting the 33,894.56 acres in the conflicting limits of the Oregon and California Railroad and the Coos Bay Military Road, it appears that these lands were approved to the latter road under a decision of this office of January 8, 1874, holding that priority of right depended upon priority of definite location and not upon priority of grant.

This ruling was clearly erroneous, as was the approval of the lands to the military road, and they should therefore be made a charge against the railroad as a part

of its grant and, as in case first mentioned, charged against the military road as "erroneously approved."

In the examination other lands are charged as erroneously approved to the railroad because at the time the company's right attached by definite location or selection they had been otherwise disposed of, and as to these lands, shown by the statement to amount to 5,688.'' acres, rule has this day been laid upon the company to show cause, etc., under the act of March 3, 1887, *supra,* as to all lands not included in patented entries or demands made or suits instituted.

As to those lands falling within the limits of prior grants, it will be observed that they are all charged in the body of the statement as "Lost" to the grant, although, as hereinbefore states, 1,576.67 acres of such lands have been patented to the Oregon and California Railroad Company and are charged against the amount the company is entitled to in the recapitulation, as are also the 6,963.33 acres reported as patented to the company outside of its limits.

Rule has this day been laid upon the company to "show cause" etc., as to the lands erroneously patented outside of its limits, but as to those erroneously patented to this company in the limits of prior grants as well as those erroneously patented to other companies in the limits of this grant, as aforesaid, no rule will be laid, the companies being left to adjust the matter between themselves.

The statement of the result of the examination is

herewith marked "A".

Very respectfully,
Binger Herman,
Commissioner.

B.W.M.

STATEMENT OF ADJUSTMENT OF THE GRANT FOR THE OREGON AND CALIFORNIA RAILROAD COMPANY BY ACT OF JULY 25, 1866, (14 STAT., 239), PRIMARY (20 MILES) AND INDEMNITY (30 MILES) LIMITS.

PRIMARY (20 MILES) LIMITS.	Acres
Whole area	3,831,901.80
Chargeable to Grant	Acres
Properly Approved	1,700,450.08
Erroneously approved	2,346.33
Listed and subject to grant	21,691.10
Vacant and subject to grant	366,358.91
Entries and filings on lands otherwise subject to grant	40.00
Disposal after definite location	245.92
Pending decision	3,410.59

PRIMARY (20 MILES) LIMITS.	Acres	Acres
In limits, but patented to other roads	34,436.43	
Total chargeable to primary limits		2,128,979.36
Lost to Grant		
By entries, filings, etc.		1,476,768.69
Limits Ore. Cent. Military Road	53,013.95	
Limits Corvallis and Yaq Bay Wagon Road	57,130.16	
Limits Will. Val. Cas. Mt. Wagon Road	105,769.99	
Erroneously listed	239.65	
Total lost in primary limits		1,692,922.44
Making chargeable and lost equal area of grant		3,821,901.80
Indemnity (30 Miles) Limits.		
Total area		1,779,352.10
Chargeable as Indemnity.		
Properly approved	798,185.20	
Erroneously approved	2,342.55	
Selected and subject to grant	82,204.97	

PRIMARY (20 MILES) LIMITS.		Acres
Pending decision	2,534.67	
Total chargeable as indemnity		885,267.89
Otherwise disposed of....	472,197.49	
Vacant and subject to selection	421,887.22	
Total		894,084.71
Making chargeable, disposed of, and vacant...		1,779,352.10

RECAPITULATION

(Basis of Chargeability)

Area of primary limits.....	3,821,901.80
Chargeable in primary limits.....	2,128,979.36
Apparent loss in primary limits.....	1,692,922.44
Chargeable in indemnity limits.....	885,267.89
Apparent amount due under grant.....	807,655.05

N. B.—From the last amount should be deducted, because patented outside limits..... 6,963.33

PRIMARY (20 MILES) LIMITS.		Acres
And because patented in limits of prior grants.....	1,576.67	
Total deducted for above reasons..		8,540.00
Apparent amount due under grant.....		799,115.05
Vacant and subject to selection in indemnity limits		421,887.22
Apparent deficiency in grant.....		377,227.83

(Basis of Approval)

Area of primary limits.....		3,821,901.90
Actually approved, properly	2,498,635.28	
Actually approved erroneously	4,688.88	
Actually approved, outside limits	6,963.33	
Actually approved, other limits	1,576.67	
Total actually approved.....		2,511,864.16
Actually due under grant.....		1,310,037.64

The foregoing shows that one-half of the aid ex-

tended by the acts of Congress to secure railroad facilities for Western Oregon was withheld from the companies by adverse prior settlements and adverse court and departmental decisions. The projectors and builders of these lines were deceived by the promises of those acts, and many of them sunk private fortunes in endeavoring to build these roads. The lands of which the railroad companies were thus deprived were naturally and necessarily the most valuable and most accessible. The fact is that practically the entire agricultural area, or that could be made agricultural, tributary to the entire line from Portland to the state boundary was, because of prior settlement and entries, or upon one pretext or another, excepted from the grant. The only bodies of tillable land then or now within the limits of the grants. or in western Oregon, are situated in the valleys of the Willamette, Umpqua and Rogue Rivers, and in which the railroad companies received practically nothing. This is forcibly and clearly illustrated by the attached map, showing in black the lands of which the companies were deprived.

The remnant of the grant lies in the mountains and broken country, and is not now and never has been susceptible of settlement or cultivation to any appreciable extent.

The only value that the grant as a whole has at the present time is for timber.

Withholding Land Grant Lands from Sale.

The charge has been made that the Oregon & California Railroad Company has withdrawn and withheld the lands from sale in order to subserve some selfish purpose on the part of the company in its relation to the land grant, by promoting a land monopoly, and which has, at the same time, retarted the growth and development of Western Oregon and wrought injury to the commercial and industrial interests of the state, (See statements of B. D. Townsend, Special U. S. Attorney, before Com. on Public Lands, H.R., in "Hearings held before the Committee on Public Lands, March 5, 12 and 14, 1908, on S.J.R. No. 48" etc., pages 8, 11, 12)

The facts regarding the suspension of sales, late in 1902 or early in 1903, are these:

The ownership of the Southern Pacific Company and control of its constituent companies took place a short time before that period. An examination by the undersigned of the different land grant properties thus controlled made it imperatively necessary that sales should be interrupted for the sole purpose of ascertaining just what lands were owned, and exactly what was their condition as to title. The books and records of the Oregon & California Railroad Company, Land Department, were in such condition, and the business had been conducted in such manner as to render a thorough examination a business necessity. This examination developed the fact that the company had in a large number of instances made sales of land before United States pat-

ent had issued therefor, and in some cases before lands had been surveyed. Further, the company had in many instances sold, received consideration and delivered deeds to lands which were not then patented to the company, and which were, in fact, patented adversely to the company subsequent to delivery of deed.

In another class of cases lands were deeded and consideration accepted for patented lands, patents for which were cancelled by the United States.

The principal aim, therefore, of the supension of sales was to ascertain the liability of the company in a large number of instances of the character above described, and which complications and liabilities were not disclosed by the companies records.

It became necessary to make entirely new and complete records of company ownership and company transactions. This work was pushed with all possible speed and completed late in 1904, at which time it was thought that sales could be resumed, and they would have been resumed but for the discovery then made by attorneys for the company that the payment of taxes on land grant lands for an indefinite time had been neglected, and that a large number of tax titles and other complications had accumulated, and that in all probability the company had sustained losses of its lands for this reason, which losses could only be ascertained by an exhaustive examination of the tax records of every county in the grant as to each particular tract of land the company claimed to own. The company's attorneys advised that the com-

pany was not justified in resuming sales and incurring unknown liabilities until the examination of tax records had been completed and it was definitely ascertained what tracts of land were lost, and what titles could be cured by appropriate legal action. A large force of men was immediately set to work in all the counties under direction of competent attorneys. This work was not fully completed when the fire of April 18, 1906, entirely wiped out all Land Department records of every description.

The restoration of Land Department records was a task of large proportions and extreme difficulty. It was, however, so far completed within six months after the total destruction that the company's attorneys could report as to what lands had been lost by non-payment of taxes and as to what tracts remained subject to complications to cure which suits to quiet title have been begun and are now being prosecuted.

So far from the truth is the claim that the company withdrew lands for the purpose of speculation, that on September 1, 1906, four months after its records and all basis for land negotiation had been destroyed, it had so far restored its records that it gave general notice by circular letters, etc., that the company would entertain applications of all persons desiring to purchase Oregon & California lands for actual use for agriculture and grazing. The result of this act of good faith on the part of the company was a very small number of applications, which were immediately examined by competent field

men on the ground. Substantially none of these applications were found to have been made for agricultural or grazing land, or with any evident intention of settling upon or cultivating the land, but to secure it for its timber or mineral value, or for riparian rights or water power purposes.

Note: It has been impossible, even had it been thought desirable, for the company to resume general sales of timber land, for the reason that after the fire it had no record of cruises made during the preceding forty years. Cruising of timber is a slow process, and it is impossible to act intelligently without exact information.

It may be asserted confidently that the present movement against the Oregon & California land grant was not instituted by persons wishing to settle, nor is it a movement for the general good. It has been brought on by agitation begun by certain large timber holding interests in Oregon for the sole and express purpose of compelling the railroad company to part with its timber holdings, in order that they might be acquired by these same timber holding interests.

This fact has been well known by the land officers of the Oregon & California Railroad Company since the agitation was commenced, but it is brought to light clearly by the statement of Mr. A. C. Dixon of Oregon, an officer of the lumbering and timber holding corporation of the name of "The Booth-Kelley Company," before the Committee on Public Lands of the

House of Representatives, on March 12, 1908. (See "Hearings held before the Com. on the Pub. Lands," etc., page 76,) where he says:

"It was at a meeting of shippers, mostly lumber men, that the question of disposal of lands still in the hands of the original grantees (Oregon & California Railroad Company) was first brought out in a public way, *and the lumber interests were behind and favored every resolution on this subject adopted* in the state, and are still in hearty accord with the original purpose of the movement."

And, further: "The government, with all the agencies at its control should secure their (the peoples') rights from an offending corporation in a suit which *we and other public spirited citizens of our state have proposed and furthered continuously since it was first brought to public notice.*"

These same timber holding interests before this agitation began and since have used all the pressure at their command to force the railroad company to dispose of its timber lands to them in large quantities, in order to establish a complete monopoly of the timber lands of Oregon in their hands. Failing in such purpose, which is contrary to the interests both of the railroad company and of the public, these interests inaugurated and have promoted a movement which culminated in the action of Congress on Friday April 24, 1908, adopting a resolution authorizing the Department of Justice to institute legal proceedings against the company.

It is pertinent here to remark that no legislative provision which could be passed by Congress at the present time would be better calculated to serve the purpose of the large lumbering interests in securing a monopoly than the proviso in the act of April 10, 1869, calculated to be a restraint upon alienation. The possession of 160 acres of timber land by a single individual is of very little advantage to the individual. The timber is too valuable to be sacrificed for the sake of the land. There is not enough timber on 160 acres to warrant the outlay for expensive means of production, such as mills, railroads, etc., unless the owner can add a large acreage of adjoining lands of the same character. The inevitable conclusion is that the possession of 160 acres of land grant lands, valuable for timber only, would be of no use to the possessor unless he could dispose of them to the large timber interests, which he would immediately proceed to do as soon as he could give title.

The movement above referred to, inspired by the timber holding interests of Oregon, has resulted in causing about seven thousand persons throughout all parts of the United States to send to the Land Department of the Oregon & California Railroad Company written applications for the purchase of 160 acres of land each at $2.50 per acre, accompanied by tenders of money, and demanding the sale to them, and execution of deed for such land. So far as known not a single one of these applications has been made for land now suitable for agriculture or settlement, or which could be reduced to conditions suitable for agriculture and settlement, ex-

cept at an expense greatly in excess of the value of the land, exclusive of timber. All such applications have been for timber lands.

DEFENDANTS' EXHIBIT 310

is a map called Oregon "Riddles Quadrangle," United States Geologolical Survey, Charles D. Walcott, Director, purporting to show the topography south of Roseburg, beginning with township 30 south, ranges 3 to 7 west, and extending to the lower half of township 35 south, ranges 3 to 7 west, both inclusive, with description of the topographical map printed September, 1903.

This exhibit is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 311

is topographical map showing the topography of Oregon "Grants Pass Quadrangle," United States Geological Survey, George Otis Smith, Director, beginning with the south half of township 35 south, ranges 3 to 7 west, and extending to the boundary line between Oregon and California, township 41 south, ranges 3 to 7 west, purporting to show the topography of country, with description of the topographical map of the United States on the back thereof, published October 1, 1907, by the director of United States Geological Survey, Washington, D. C.

This exhibit is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 312

purports to be a large sectional map of Douglas and

Coos counties, Oregon, with legend as follows:

Light green	Lands of O. & C. R. R. Co.
Yellow	Lands of C. A. Smith Co.
Pink	Lands of Neenah-Oregon Land Co.
Tan	Lands of Roach Timber Co.
Blue	Lands of Kendall Bros.
Violet	Lands of Pillsbury Lumber Co.
Lavender	Lands of Lennan Land Co.
Brown	Lands of Bradford-Culver Tbr. Co.
Orange	Lands of Myrtle Lumber Co.
Olive Green	Lands of Gardiner Mill Co.
Salmon Pink	Lands of Weyerhauser Land Co.
Dark green	Lands of A. H. Hinkson
Blue green	Lands of Sparrow, Coach & Kroll

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 313

consists of four photographs taken by Ben Irwin in Douglas county, purporting to show abandoned cabins. This exhibit is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 314

purports to be a blue-print map of portions of Douglas, Coos and Curry counties, showing in red the lands of the

Simpson Lumber Company, with limits of the Oregon and California grant marked in yellow, mentioned in the testimony of Dennis McCarthy, page 3070 et seq. Volume 6.

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 315

purports to be a copy of the "American Lumberman" published at Chicago November 11, 1911, entitled "A History—A Characterization—and A Glimpse Into the Future. The C. A. Smith Interests, embracing The C. A. Smith Lumber Company, of Minneapolis, Minn., and Bay Point, Cal., The C. A. Smith Lumber & Manufacturing Company, of Marshfield, Ore., and The C. A. Smith Timber Company, of Oakland, Cal.," and purporting to set out various photogravures, illustrating the sawmill of the C. A. Smith Lumber Co. at Marshfield, Oregon, the growth of timber in Coos and Curry counties, mentioned in the testimony of Dennis McCarthy, page 3076, et seq. volume 6, and in the testimony of F. A. Kribs at page 2925 et seq. volume 6, of printed record.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 316

purports to be a standard map of the Oregon and Cali-

fornia Railroad Company, in four sections, purporting to show in red, lands of the Weyerhauser Land Company, in yellow, lands of the Pokegama Sugar Pine Lumber Company, and in green, the lands of the Pelton-Reid Sugar Pine Lumber Company.

The map is mentioned in the testimony of Jackson F. Kimball, volume 6, page 3166 et seq., and in the testimony of Milford Jacobs, volume 6, page 3178 et seq. This map is not printed but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 317

is a bulletin of the "Thirteenth Census of the United States: 1910," giving the population of Oregon by counties and minor civil divisions, prepared under the supervision of Wm. C. Hunt, Chief Statistician for Population, showing, among other things, the following:

Census Year.	Population.	Increase Over Preceding Census.		Per cent of increase for continental United States.
		Number.	Per cent.	
1910.....	672,765	259,229	62.7	21.0
1900.....	413,536	95,832	30.2	20.7
1890.....	*317,704	142,936	81.8	25.5
1880.....	174,768	83,845	92.2	30.1
1870.....	90,923	38,458	73.3	22.6
1860.....	52,465	39,171	294.7	35.6
1850.....	13,294	.....	....	....

*Includes population (3,937) of Indian reservation specially enumerated.

City and Census Year.	Population	Increase Over Preceding Census.	
		Number.	Per cent.
Ashland:			
1910	5,020	2,386	90.6
1900	2,634	850	47.6
1890	1,784	942	111.9
1880	842	....	....
Astoria:			
1910	9,599	1,218	14.5
1900	8,381	2,197	35.5
1890	6,184	3,381	120.6
1880	2,803	2,164	338.7
1870	639	....	....
Baker City:			
1910	6,742	79	1.2
1900	6,663	4,059	155.9
1890	2,604	1,346	107.0
1880	1,258	....	....
Eugene:			
1910	9,009	5,773	178.4
1900	3,236	....	....
1890	*	....	....
1880	1,117	256	29.7
1870	861	....	....

City and Census Year.	Population	Increase Over Preceding Census.	
		Number.	Per cent.
Medford:			
1910	8,840	7,049	393.6
1900	1,791	824	85.2
1890	967	....	....
Portland:			
1910	207,214	116,788	129.2
1900	90,426	44,041	94.9
1890	46,385	28,808	163.9
1880	17,577	9,284	111.9
1870	8,293	5,419	188.6
1860	2,874	....	....
Salem:			
1910	14,094	9,836	231.0
1900	4,258	....	....
1890	*	....	....
1880	2,538	....	....

*Not returned separately.

The remainder of the exhibit is not printed but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 318

consists of certified copies of so much of the assessment rolls of the counties of Washington, Multnomah, Yamhill, Clackamas, Polk, Marion, Lincoln, Benton, Linn, Lane, Douglas, Coos, Curry, Josephine, Jackson, Klamath, Columbia and Tillamook in which the unsold lands of the O. & C. involved in this suit are situated, for the year 1911. This exhibit purports to show the method of annual return of unsold Congressional lands belonging to the Oregon & California Railroad Company in the various counties in which any part of the grant is located, and for assessment purposes for the year 1911, together with the valuation placed thereon.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 319

OREGON & CALIFORNIA R. R. CO.

Comparative Statement of assessed valuation and taxes paid on

UNSOLD CONGRESSIONAL LAND,

By Counties, years 1904-1905-1906 & 1907.

ACREAGE.

County	1904	1905	1906	1907
Benton	53517	53469	53427	53627
Clackamas	88485	88685	88685	89085
Columbia	17666	17679	17679	17679
Coos	103262	106406	106406	106566
Curry	7736	7845	7845	7845
Douglas	607737	616573	616847	616836
Jackson	441420	441370	441941	441601
Josephine	164842	167180	167260	167278
Klamath	43016	43016	43016	43015
Lane	298951	296564	299221	299326
Lincoln	15906	15906	15906	15906
Linn	66926	67054	67486	61842
Marion	29142	30098	30218	30216
Multnomah ...	8302	8342	8342	9007
Polk	37505	37812	37812	37018
Tillamook	29739	29739	29739	29741
Washington ...	17612	17932	17892	17932
Yamhill	28196	28607	28603	28603
Clarke, Wn. ..	287	292	292	292
Totals or Av.	2060247	2074569	2078167	2078415
Decrease				4752

VALUATION

County	1904	1905	1906	1907
Benton	$ 134194	$ 132885	$ 132905	$ 522900
Clackamas ..	201700	201790	209425	604540
Columbia ...	62115	113935	121975	718095
Coos	180697	744849	685392	1015720
Curry	19389	47070	54915	87681
Douglas	918425	1015680	2967095	4441080
Jackson	493287	1860236	1862189	3110358
Josephine ..	234641	503025	663655	714995
Klamath	98647	133827	170394	279712
Lane	709805	700985	1197835	2393420
Lincoln	31812	31812	47712	60262
Linn	199535	202400	471895	494680
Marion	59105	63760	214225	387725
Multnomah .	29690	67970	91320	249180
Polk	105050	106050	312030	612460
Tillamook ..	35390	41150	88045	117325
Washington.	37530	90745	90545	238150
Yamhill	42608	42910	85806	187931
Clarke, Wn..	2280	2330	3980	3980
Tot. or Av.	$8595900	$6103409	$9471338	$16240194
Increase				6768856

AVERAGE VALUE PER ACRE

County	1904	1905	1906	1907
Benton	$2.51	$2.49	$2.49	$9.75
Clackamas	2.28	2.28	2.37	6.79
Columbia	3.52	6.44	6.90	40.12
Coos	1.75	7.00	6.44	9.53
Curry	2.50	6.00	7.00	11.18
Douglas	1.51	1.65	4.81	7.20
Jackson	1.12	4.21	4.22	7.04
Josephine	1.42	3.01	3.97	4.27
Klamath	2.29	3.11	3.96	6.50
Lane	2.37	2.36	4.00	8.00
Lincoln	2.00	2.00	3.00	3.79
Linn	2.98	3.02	7.00	8.00
Marion	2.03	2.12	7.09	12.83
Multnomah	3.58	8.15	10.95	27.67
Polk	2.80	2.80	8.25	16.54
Tillamook	1.19	1.38	2.96	3.94
Washington	2.13	5.06	5.06	13.28
Yamhill	1.50	1.50	3.00	6.57
Clarke, Wn.	8.00	7.98	13.62	13.62
Total or Av.	$1.75	$2.94	$4.56	$7.83
Increase				3.27

AVERAGE LEVY IN MILLS

County	1904	1905	1906	1907
Benton	16.9	18.1	21.6	22.1
Clackamas	21.2	19.6	20.6	21.9
Columbia	30.1	19.3	19.7	8.8
Coos	30.0	13.4	15.2	16.9
Curry	29.1	9.7	13.6	10.8
Douglas	25.7	23.1	10.1	8.8
Jackson	26.7	10.9	11.7	8.2
Josephine	31.5	15.8	15.8	15.5
Klamath	24.2	19.4	15.6	15.5
Lane	24.3	21.5	16.3	13.9
Lincoln	31.0	28.0	23.6	16.8
Linn	22.9	20.7	9.9	8.9
Marion	21.8	22.4	14.2	10.6
Multnomah	24.2	6.2	7.1	6.3
Polk	25.4	23.7	12.2	12.1
Tillamook	27.1	25.0	20.4	13.4
Washington	25.7	10.4	9.9	9.8
Yamhill	26.5	23.6	14.9	14.7
Clarke, Wn.	29.0	27.9	24.2	29.6
Total or Av.	25.5	16.5	13.0	11.6
Decrease				1.4

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TOTAL TAXES PAID

County	1904	1905	1906	1907
Benton	$ 2259.50	$ 2399.90	$ 2866.22	$ 11540.30
Clackamas	4284.22	3947.17	4319.73	13269.60
Columbia	1871.69	2198.67	2401.49	6301.06
Coos	5430.77	9944.18	10411.60	17171.83
Curry	564.22	456.58	745.75	943.10
Douglas	23605.63	23503.98	29948.50	38969.73
Jackson	13174.50	20306.90	21874.26	25586.03
Josephine	7398.64	7928.31	10482.34	11117.86
Klamath	2392.19	2596.25	2666.14	4341.09
Lane	17265.96	15068.37	19574.28	33247.94
Lincoln	987.46	894.90	1124.68	1014.13
Linn	4568.89	4186.66	4671.87	4418.03

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TOTAL TAXES PAID

County	1904	1905	1906	1907
Marion	1291.13	1429.61	3032.89	4117.68
Multnomah	717.66	423.02	652.68	1563.72
Polk	2665.04	2517.96	3815.98	7396.86
Tillamook	958.93	1029.18	1794.72	1567.37
Washington	363.03	942.45	894.27	2347.01
Yamhill	1128.43	1014.13	1281.88	2765.23
Clarke, Wn.	66.22	65.02	96.34	117.79
Total or Av.	$91594.11	$100853.24	$122655.62	$187796.36
Increase				65140.74

AVERAGE TAX PER ACRE

County	1904	1905	1906	1907
Benton	$.042	$.045	$.054	$.215
Clackamas	.048	.045	.049	.149
Columbia	.106	.124	.136	.356
Coos	.053	.093	.098	.161
Curry	.073	.058	.095	.120
Douglas	.039	.038	.049	.063
Jackson	.030	.046	.050	.058
Josephine	.045	.047	.063	.066
Klamath	.056	.060	.062	.101
Lane	.058	.050	.065	.111
Lincoln	.062	.056	.071	.064
Linn	.068	.062	.069	.071
Marion	.044	.047	.100	.136
Multnomah	.087	.050	.078	.174
Polk	.071	.067	.101	.200
Tillamook	.032	.035	.060	.053
Washington	.055	.053	.050	.131
Yamhill	.040	.035	.045	.097
Clarke, Wn.	.230	.223	.330	.403
Total or Av.	.045	.049	.059	.090
Increase				.031

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Years 1908-1909-1910 & 1911

ACREAGE

County	1908	1909	1910	1911
Benton	53627	53707	53749	53750.05
Clackamas	89085	89134	89358	89690.73
Columbia	17679	17679	17679	17679.
Coos	106563	106563	117140	121087.
Curry	7845	7845	11925	11885.
Douglas	616808	616200	625766	631086.
Jackson	441770	441652	444811	445096.
Josephine	167438	167691	175361	175551.
Klamath	43015	43011	43011	43011.
Lane	299486	299684	299894	300157.52
Lincoln	15906	15906	15906	15906.
Linn	61919	61919	61819	61859.48
Marion	30216	30256	30265	30323.
Multnomah	9047	9047	9047	9047.26
Polk	37017	37017	37017	37017.
Tillamook	29741	29741	29741	29741.
Washington ...	17932	17932	17872	18172.18
Yamhill	28483	28483	28546	28655.56
Clarke, Wn. ...	292	292	213	212.50
Totals or Av.	2073869	2073759	2109220	2119927.28
Increase			35461	10707.28
Decrease		110		
Rate			1.71%	.5%

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VALUATION

County	1908	1909	1910	1911
Benton	$ 326315	$ 486627	$ 912115	$ 898350.
Clackamas	1492940	1154410	1101615	1090240.
Columbia	546910	546910	549440	553900.
Coos	1081304	1148029	1288449	1822856.
Curry	93168	88600	178775	129110.
Douglas	4440265	4434665	5497480	5633075.
Jackson	3126228	3124876	3137539	3851998.
Josephine	1171375	1275345	1491865	1611865.
Klamath	248490	258006	301177	443041.
Lane	2393460	2394805	3380345	3361060.
Lincoln	96713	64410	97550	98150.
Linn	495320	619190	680015	680465.

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VALUATION

County	1908	1909	1910	1911
Marion	386910	382070	392615	393900.
Multnomah	255820	195480	198080	198080.
Polk	518860	634600	629000	621160.
Tillamook	160230	136380	141000	141000.
Washington	157245	151160	158730	159230.
Yamhill	192451	188581	189380	193167.55
Clarke, Wn.	4360	4360	2815	2815.
Totals or Av.	$17188364	$17288504	$20327985	$21882962.55
Increase		100140	3039481	1554977.55
Rate			17.58%	7.65%

AVERAGE VALUE PER ACRE

County	1908	1909	1910	1911
Benton	$ 6.08	$ 9.06	$16.97	$16.71
Clackamas	16.76	12.95	12.33	12.15
Columbia	30.94	30.94	31.08	31.33
Coos	10.14	10.77	11.00	15.05
Curry	11.88	11.29	14.99	10.86
Douglas	7.20	7.20	8.79	8.93
Jackson	7.08	7.08	7.05	8.66
Josephine	7.00	7.60	8.51	9.18
Klamath	5.65	6.00	7.00	10.30
Lane	7.99	7.99	11.27	11.20
Lincoln	6.08	4.05	6.13	6.17
Linn	8.00	10.00	11.00	11.00
Marion	12.80	12.63	12.97	12.99
Multnomah	28.28	21.61	21.89	21.90
Polk	14.02	17.14	16.99	16.78
Tillamook	5.39	4.59	4.74	4.74
Washington	8.77	8.43	8.83	8.76
Yamhill	6.76	6.62	6.63	6.74
Clarke, Wn.	14.93	14.93	13.22	13.25
Total or Av.	$ 8.29	$ 8.34	$ 9.64	$10.32
Increase		.05	1.30	.68
Rate			15.59%	7.05%

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AVERAGE LEVY IN MILLS

County	1908	1909	1910	1911
Benton	24.8	22.3	20.73	19.17
Clackamas	20.5	19.4	21.00	23.98
Columbia	10.8	11.0	14.53	16.62
Coos	23.8	26.5	26.88	25.32
Curry	10.2	12.8	12.22	12.66
Douglas	12.5	13.0	13.68	18.36
Jackson	7.1	9.7	9.67	12.58
Josephine	13.7	15.7	19.47	20.00
Klamath	18.3	17.5	15.06	19.26
Lane	19.5	18.4	15.32	18.10
Lincoln	14.3	19.7	18.58	19.07
Linn	13.1	12.4	13.09	15.46
Marion	16.6	13.5	15.68	25.24
Multnomah	8.4	7.6	9.24	11.40
Polk	17.8	12.8	14.42	19.08
Tillamook	15.6	16.7	15.85	20.10
Washington	20.4	16.3	20.32	24.01
Yamhill	17.3	17.4	19.83	21.22
Clarke, Wn.	26.2	32.7	31.02	28.77
Total or Av.	14.6	15.0	15.48	18.33
Increase		.4	.28	2.85
Rate			1.84%	18.41%

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TOTAL TAXES PAID

County	1908	1909	1910	1911
Benton	$ 8192.06	$ 10850.32	$ 18904.53	$ 17222.52
Clackamas	30556.37	22395.82	23130.17	26141.52
Columbia	5901.35	5989.07	7983.64	9208.72
Coos	25752.71	30425.85	34629.00	46145.10
Curry	948.91	1130.25	2184.49	1635.54
Douglas	55606.83	57571.14	75199.63	103469.36
Jackson	22214.15	30271.64	30347.73	47473.70
Josephine	15996.32	20003.78	28838.83	32283.04
Klamath	4546.80	4511.78	4536.09	8534.93
Lane	46707.85	43956.41	51792.41	60836.11
Lincoln	1379.58	1271.57	1812.30	1872.20
Linn	6471.03	7664.67	8898.74	10524.96

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TOTAL TAXES PAID

County	1908	1909	1910	1911
Marion	6442.10	5148.37	6157.93	9944.49
Multnomah	2147.20	1494.94	1829.70	2258.02
Polk	9241.98	8029.50	9072.35	11855.80
Tillamook	2499.56	2275.12	2234.35	2834.45
Washington	3210.53	2457.12	3225.66	3824.26
Yamhill	3338.98	3285.56	3754.83	4099.32
Clarke, Wn.	114.29	142.58	87.33	81.63
Total or Av.	$251268.60	$258875.49	$314619.71	$401245.67
Increase		7606.89	52159.49	86625.96
Rate			19.87%	27.53%

County	AVERAGE TAX PER ACRE				Assessed Ratio	
	1908	1909	1910	1911	1910	1911
Benton	$.153	$.202	$.352	.320	61%	63%
Clackamas	.343	.251	.259	.291	60%	58%
Columbia	.334	.338	.452	.520	75%	67%
Coos	.242	.286	.296	.381	58%	67%
Curry	.121	.144	.183	.137	85%	77%
Douglas	.090	.093	.120	.164	74%	70%
Jackson	.050	.069	.068	.109	84%	84%
Josephine	.096	.119	.164	.183	64%	64%
Klamath	.103	.105	.105	.198	69%	74%
Lane	.156	.147	.173	.202	78%	70%
Lincoln	.097	.080	.114	.118	96%	92%
Linn	.105	.124	.144	.170	70%	66%

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	AVERAGE TAX PER ACRE				Assessed Ratio	
Marion	.213	.170	.203	.328	70%	69%
Multnomah	.237	.165	.202	.249	71%	69%
Polk	.250	.217	.245	.320	63%	60%
Tillamook	.084	.076	.075	.095	73%	69%
Washington	.178	.137	.179	.210	60%	59%
Yamhill	.117	.115	.132	.143	60%	54%
Clarke, Wn.	.391	.488	.410	.380	33.13%	33.13%
Total or Av	.121	.125	.149	.189		
Increase		.004	.022	.040		
Rate			17.32%	26.85%		

DEFENDANTS' EXHIBIT 320

Statement No. 1

Showing by Counties the Assessment Upon

CONGRESSIONAL LANDS

of the

OREGON AND CALIFORNIA RAILROAD COMPANY

From 1891 to 1904 Inclusive

Together with the Acreage assessed, the assessed Valuation, the Average assessed Valuation per Acre, the Total Taxes paid and the Average Tax paid per acre.

San Francisco, Cal.,
September 20th, 1905.

Auditor.

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of *Acres assessed* and the *assessed Valuation* thereof, together with *Taxes paid* thereon for the *period covering the years 1891 to 1904 inclusive.*

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	676,811.84	$ 621,464.01	$	$ 20,200.15	
1892	1,307,619.97	985,094.00	.75	23,648.29	.018
1893	1,290,978.00	1,101,310.00	.85	21,266.76	.016
1894	1,652,187.22	1,220,648.00	.74	25,231.04	.015
1895	1,936,816.49	1,526,639.00	.78	32,101.50	.017
1896	2,114,643.87	2,092,746.44	.99	43,081.68	.020
1897	2,250,191.99	2,145,030.31	.95	46,840.51	.021

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1898	2,322,083.85	2,198,648.25	.95	54,123.16	.023
1899	2,366,859.08	2,017,994.89	.86	52,986.20	.022
1900	2,388,215.09	2,076,808.26	.87	53,804.46	.023
1901	2,377,869.68	2,428,079.00	1.02	65,274.18	.028
1902	2,401,998.06	3,205,228.00	1.33	80,094.81	.033
1903	2,413,911.41	4,673,436.37	1.94	121,226.51	.050
1904	2,151,854.47	3,810,910.27	1.77	97,721.87	.045
Total for Period	27,652,041.02	$30,104,036.80	$1.09	$737,601.12	.027
Yearly Average	1,975,145.78	$ 2,150,288.34	$1.09	$ 52,685.80	.027

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1904.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	55,291.26	$ 139,779.00	$2.53	$ 2,365.20	.043
Clackamas	98,488.35	229,165.00	2.33	4,971.18	.051
Coos	113,593.32	198,775.00	1.75	6,034.88	.053
Curry	7,844.45	19,639.00	2.50	659.68	.084
Columbia	18,065.98	64,215.00	3.55	1,940.69	.107
Douglas	629,775.16	957,905.00	1.52	24,645.83	.039
Jackson	448,022.82	505,670.00	1.13	13,545.10	.030

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Josephine	172,340.52	252,871.00	1.47	8,064.65	.047
Klamath	43,016.12	98,646.88	2.29	2,392.19	.056
Lane	312,502.57	750,440.00	2.40	18,346.86	.059
Lincoln	15,986.30	31,972.60	2.00	993.14	.062
Linn	70,449.52	210,350.00	2.99	4,862.12	.069
Marion	34,269.10	74,045.00	2.16	1,662.49	.049
Multnomah	9,685.39	34,790.00	3.59	848.21	.086
Polk	38,034.23	106,356.60	2.80	2,710.75	.071
Tillamook	30,202.98	36,040.00	1.19	992.07	.033
Washington	23,594.00	52,270.00	2.22	1,400.12	.059
Yamhill	30,692.40	47,780.19	1.56	1,286.71	.042
Total all Counties...	2,151,854.47	$3,810,910.27	$1.77	$97,721.87	.045

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1903.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	56,965.72	$ 146,585.00	$2.57	$ 2,640.24	.046
Clackamas	124,409.76	372,240.00	2.99	7,740.46	.062
Coos	106,836.05	160,079.00	1.50	5,153.56	.048
Curry	8,003.02	20,105.55	2.51	575.32	.072
Columbia	18,078.43	41,095.00	2.27	1,596.45	.088
Douglas	664,638.25	1,013,364.80	1.52	29,248.32	.044
Jackson	479,998.57	617,255.78	1.29	16,013.21	.033

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Josephine	181,956.40				
Klamath	43,173.83	284,820.00	1.57	10,090.14	.055
Lane	392,885.08	104,621.00	2.42	2,261.41	.052
Lincoln	16,146.30	987,520.00	2.51	22,800.31	.058
Linn	108,150.77	32,292.60	2.00	1,002.35	.062
Marion	35,155.22	324,117.00	3.00	7,219.09	.067
Multnomah	7,191.69	71,110.00	2.02	1,418.62	.041
Polk	36,892.65	44,330.00	6.16	563.83	.078
Tillamook	60,261.71	172,835.00	4.68	4,626.84	.125
Washington	36,559.45	133,160.00	2.21	4,247.75	.070
Yamhill	36,608.51	85,935.00	2.35	2,377.41	.065
		61,970.64	1.69	1,651.20	.045
Total All Counties...	2,413,911.41	$4,673,436.37	$1.94	$121,226.51	.050

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1902.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	56,989.63	$ 93,526.00	$1.64	$ 2,589.25	.045
Clackamas	120,483.84	149,950.00	1.24	5,003.35	.042
Coos	107,295.80	134,120.00	1.25	3,941.57	.037
Curry	8,883.89	12,881.00	1.45	393.58	.044
Columbia	18,119.83	36,115.00	1.99	1,203.44	.066
Douglas	631,018.64	943,750.00	1.50	22,259.04	.035
Jackson	479,004.24	419,977.00	.88	10,092.57	.021

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Josephine	170,060.94	140,510.00	.83	4,866.73	.029
Klamath	39,648.51	100,872.00	2.54	2,220.30	.056
Lane	403,066.66	532,089.00	1.32	11,971.70	.028
Lincoln	16,146.00	32,293.00	2.00	908.40	.056
Linn	109,328.52	119,770.00	1.10	2,220.23	.020
Marion	47,426.66	78,463.00	1.65	1,462.05	.031
Multnomah	7,062.48	26,800.00	5.04	645.78	.122
Polk	52,867.92	132,360.00	2.50	3,635.60	.069
Tillamook	60,261.39	148,420.00	2.50	4,044.01	.067
Washington	36,346.35	59,635.00	1.64	1,620.74	.044
Yamhill	37,986.76	43,697.00	1.15	1,016.47	.027
Total All Counties...	2,401,998.06	$3,205,228.00	$1.33	$80,094.81	.0333

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1901.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	58,379.35	$ 72,800.00	$1.25	$ 1,797.50	.031
Clackamas	82,107.96	113,106.00	1.38	3,342.65	.041
Coos	110,731.72	138,330.00	1.25	4,157.86	.038
Curry	8,934.54	13,398.00	1.50	431.28	.048
Columbia	18,117.84	34,755.00	1.92	1,163.22	.064
Douglas	635,936.95	518,530.00	.82	13,474.69	.021
Jackson	481,538.20	410,082.00	.85	10,737.34	.022

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Josephine	169,715.18	135,920.00	.80	4,687.07	.028
Klamath	43,987.44	93,000.00	2.11	1,715.05	.039
Lane	402,329.76	420,830.00	1.05	11,825.60	.029
Lincoln	15,946.30	20,893.00	1.31	587.73	.037
Linn	109,781.73	117,308.00	1.07	2,412.86	.022
Marion	48,242.93	64,997.00	1.35	1,279.96	.027
Multnomah	3,928.58	11,360.00	2.89	204.88	.052
Polk	52,935.26	69,625.00	1.32	2,036.95	.038
Tillamook	60,146.79	89,600.00	1.49	2,829.85	.047
Washington	36,707.85	59,085.00	1.61	1,598.58	.044
Yamhill	38,401.30	44,460.00	1.16	991.11	.026
Total All Counties...	2,377,869.68	$2,428,079.00	$1.02	$65,274.18	.0275

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1900.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	58,696.88	$ 73,356.00	$1.25	$ 1,677.67	.029
Clackamas	76,719.81	96,520.00	1.26	2,847.77	.037
Coos	110,867.87	138,578.00	1.25	4,083.40	.037
Curry	8,854.29	11,046.00	1.25	352.98	.040
Columbia	18,215.97	35,184.00	1.93	1,084.76	.060
Douglas	633,463.56	390,553.00	.62	8,730.18	.014
Jackson	480,415.78	310,324.00	.65	8,706.79	.018

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Josephine	171,519.34	107,052.00	.62	3,539.09	.021
Klamath	42,497.22	54,376.00	1.28	1,299.09	.031
Lane	408,375.75	430,159.00	1.05	10,716.35	.026
Lincoln	15,826.30	19,420.00	1.23	499.09	.032
Linn	117,785.99	127,411.00	1.08	2,600.83	.022
Marion	48,471.31	63,292.00	1.31	1,461.25	.030
Multnomah	4,063.76	7,290.00	1.79	148.14	.036
Polk	53,883.81	43,235.26	.80	1,284.11	.024
Tillamook	63,044.55	74,600.00	1.18	2,325.60	.037
Washington	36,587.09	50,784.00	1.39	1,513.14	.041
Yamhill	38,925.81	43,628.00	1.12	933.70	.024
Total All Counties...	2,388,215.09	$2,076,808.26	.87	$53,804.46	.0225

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1899.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	52,090.01	65,131.00	$1.25	$ 1,551.37	.030
Clackamas	81,030.01	99,094.00	1.22	2,795.21	.034
Coos	88,675.57	115,406.00	1.30	3,262.86	.037
Curry	9,243.75	11,072.00	1.20	527.97	.057
Columbia	18,233.81	35,445.00	1.94	1,054.00	.058
Douglas	608,833.27	348,448.00	.57	8,370.51	.014
Jackson	513,557.10	312,182.00	.61	8,844.48	.017

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Josephine	165,117.78	108,115.00	.65	3,263.88	.020
Klamath	62,418.35	67,584.00	1.08	1,788.05	.029
Lane	411,070.48	429,521.00	1.04	11,458.04	.028
Lincoln	10,118.00	13,503.00	1.33	382.13	.038
Linn	99,401.57	102,773.00	1.03	1,585.09	.016
Marion	48,218.16	69,625.90	1.44	1,565.87	.032
Multnomah	4,247.64	8,140.00	1.91	220.64	.052
Polk	55,058.83	49,422.00	.90	1,217.68	.022
Tillamook	62,412.16	83,600.00	1.33	2,668.40	.043
Washington	37,828.85	62,427.00	1.65	1,704.52	.045
Yamhill	39,303.74	36,505.99	.93	725.50	.018
Total All Counties...	2,366,859.08	$2,017,994.89	.86	$52,986.20	.0224

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1898.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	50,320.38	$ 62,845.00	$1.25	$ 1,558.14	.031
Clackamas	84,009.29	100,711.00	1.20	2,893.89	.034
Coos	74,165.81	92,727.00	1.25	2,377.88	.032
Curry	9,043.00	12,015.00	1.33	441.35	.049
Columbia	18,751.00	36,175.00	1.93	1,108.25	.059
Douglas	580,709.04	339,988.81	.67	8,684.66	.017
Jackson	513,005.64	395,304.00	.77	9,531.67	.019

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Josephine	166,059.82	109,892.00	.66	3,363.55	.020
Klamath	63,057.64	69,184.00	1.10	1,681.17	.027
Lane	407,014.87	530,278.00	1.30	12,150.69	.030
Lincoln	10,117.74	12,871.00	1.27	343.66	.034
Linn	96,234.32	98,596.78	1.02	1,887.94	.020
Marion	49,726.49	68,504.75	1.37	1,488.54	.030
Multnomah	3,401.81	16,166.00	4.75	260.26	.076
Polk	55,669.57	49,745.00	.89	1,174.43	.021
Tillamook	61,504.72	83,000.00	1.35	2,608.82	.042
Washington	39,542.63	85,500.00	2.16	1,911.04	.048
Yamhill	39,750.08	35,144.91	.88	657.22	.017
Total All Counties...	2,322,083.85	$2,198,648.25	.95	$54,123.16	.0233

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1897.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	50,308.95	$ 62,624.00	$1.24	$ 1,361.72	.027
Clackamas	84,746.75	95,961.00	1.13	2,568.43	.030
Coos	73,933.01	89,546.00	1.21	2,560.89	.034
Curry	8,042.00	10,052.00	1.25	338.00	.042
Columbia	18,521.92	35,959.27	1.94	1,115.11	.060
Douglas	572,579.73	316,184.17	.55	6,813.71	.012
Jackson	479,890.28	364,937.00	.76	8,148.48	.017

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Josephine	151,374.42	102,026.00	.67	3,107.26	.020
Klamath	64,058.35	70,191.00	1.10	1,600.96	.025
Lane	398,908.00	521,523.00	1.31	10,370.35	.026
Lincoln	10,117.74	14,058.00	1.39	352.86	.035
Linn	90,844.16	135,825.00	1.60	1,749.36	.019
Marion	50,186.53	68,510.00	1.36	1,072.40	.021
Multnomah	1,852.80	5,220.00	2.81	85.81	.046
Polk	56,412.28	44,809.57	.80	881.41	.016
Tillamook	61,544.72	95,155.00	1.54	2,758.39	.045
Washington	37,989.96	82,900.00	2.18	1,468.21	.039
Yamhill	38,880.39	29,549.30	.76	487.16	.013
Total All Counties...	2,250,191.99	$2,145,030.31	.95	$46,840.51	.0208

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1896.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	49,534.61	$ 42,022.00	$ .85	$ 869.92	.018
Clackamas	72,525.44	78,596.00	1.08	2,146.24	.029
Coos	73,986.79	98,914.00	1.33	2,275.33	.031
Curry	9,430.00	11,787.50	1.25	316.90	.034
Columbia	17,561.06	32,525.00	1.85	967.34	.056
Douglas	518,283.00	363,903.00	.70	7,932.19	.016
Jackson	482,258.00	388,051.00	.80	6,664.20	.013

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Josephine	145,745.76	107,704.00	.74	3,152.76	.022
Klamath	64,148.83	72,506.00	1.13	1,809.32	.026
Lane	371,044.00	490,591.00	1.32	8,728.59	.024
Lincoln	10,117.74	15,175.00	1.50	373.40	.036
Linn	87,990.08	86,493.10	.98	1,237.51	.015
Marion	33,587.24	48,336.18	1.43	925.48	.028
Multnomah	1,685.35	6,094.00	3.61	94.23	.056
Polk	52,384.52	16,580.50	.32	429.04	.008
Tillamook	49,858.81	123,690.00	2.48	3,450.74	.069
Washington	35,952.64	80,315.00	2.30	1,260.71	.035
Yamhill	38,550.00	29,463.16	.76	447.78	.012
Total All Counties...	2,114,643.87	$2,092,746.44	.99	$43,081.68	.0203

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1895.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	38,172.00	$ 20,019.00	$ .52	$ 397.61	.010
Clackamas	73,566.78	82,469.00	1.12	2,164.70	.029
Coos	81,661.00	60,010.00	.73	1,367.81	.017
Curry	9,430.00	11,826.00	1.25	316.90	.034
Columbia	9,578.00	10,775.00	1.12	309.04	.032
Douglas	465,195.00	176,218.00	.38	3,974.91	.008
Jackson	451,697.00	349,039.00	.76	7,459.29	.016

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Josephine	130,184.00	96,303.00	.74	2,802.57	.021
Klamath	61,029.00	67,453.00	1.10	1,458.06	.024
Lane	345.368.00	420,741.00	1.22	7,761.66	.022
Lincoln	9,237.00	5,076.00	.55	107.15	.012
Linn	76,858.00	58,769.00	.76	1,062.67	.014
Marion	31,146.00	51,936.00	1.66	806.34	.026
Multnomah	4,389.71	17,054.00	3.88	295.65	.067
Polk	43,953.00	21,934.00	.50	367.30	.008
Tillamook	30,056.00	14,940.00	.50	433.76	.014
Washington	36,031.00	39,152.00	1.08	550.38	.015
Yamhill	39,265.00	22,925.00	.58	465.70	.012
Total All Counties...	1,936.816.49	$1,526,639.00	.78	$32,101.50	.0165

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OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1894.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	31,841.00	20,915.00	$ .66	$ 364.21	.011
Clackamas	70,551.00	100,236.00	1.42	2,417.30	.034
Coos	18,130.00	34,206.00	1.88	673.38	.067
Curry	120.00	240.00	2.00	6.00	.050
Columbia	9,250.00	9,240.00	1.00	256.34	.028
Douglas	448,241.00	167,086.00	.37	3,933.35	.009
Jackson	364,672.00	287,415.00	.79	6,114.48	.016

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Josephine	105,704.00	88,118.00	.83	2,709.74	.026
Klamath	55,170.97	71,175.00	1.29	1,482.10	.027
Lane	316,207.00	208,874.00	.66	3,340.37	.010
Lincoln	9,236.00	5,514.00	.60	88.23	.009
Linn	56,519.00	65,141.00	1.14	933.33	.016
Marion	26,307.00	50,391.00	1.91	861.19	.033
Multnomah	3,762.25	15,658.00	4.16	279.84	.074
Polk	42,749.00	20,399.00	.48	369.79	.009
Tillamook	27,633.00	14,305.00	.52	367.11	.013
Washington	26,489.00	29,680.00	1.12	461.43	.017
Yamhill	39,605.00	32,055.00	.81	572.85	.014
Total All Counties...	1,652,187.22	$1,220,648.00	.74	$25,231.04	.0152

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1893.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	20,041.00	$ 17,051.00	$ .85	$ 272.81	.014
Clackamas	55,188.00	80,368.00	1.45	1,596.13	.028
Coos	18,237.00	18,137.00	1.00	643.12	.030
Curry	No data				
Columbia	9,211.00	8,290.00	.90	203.21	.022
Douglas	419,263.00	167,733.00	.40	3,395.60	.008
Jackson	361,211.00	269,970.00	.75	5,588.33	.015

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Josephine	105,431.00	95,320.00	.90	2,177.00	.021
Klamath	22,927.00	39,259.00	1.71	833.11	.036
Lane	147,321.00	213,507.00	1.44	3,642.75	.025
Lincoln	9,116.00	18,232.00	2.00	351.87	.038
Linn	39,955.00	50,170.00	1.25	795.09	.020
Marion	16,148.00	35,182.00	2.17	466.86	.029
Multnomah	1,320.00	3,686.00	2.79	55.30	.041
Polk	9,640.00	16,919.00	1.75	219.94	.022
Tillamook	9,685.00	5,692.00	.59	133.77	.014
Washington	29,655.00	41,461.00	1.39	627.54	.021
Yamhill	16,629.00	20,333.00	1.22	264.33	.016
Total All Counties...	1,290,978.00	$1,101,310.00	.85	$21,266.76	.0164

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1892.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	16,234.00	$ 16,382.00	$1.01	$ 360.41	.022
Clackamas	53,282.00	90,705.00	1.70	2,471.20	.046
Coos	1,040.00	3,520.00	3.38	79.74	.076
Curry	No data				
Columbia	7,760.00	8,536.00	1.10	242.12	.031
Douglas	404,420.97	167,157.00	.41	4,027.90	.010
Jackson	364,254.00	189,085.00	.52	4,469.82	.012

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Josephine	101,461.00	75,269.00	.95	1,807.30	.018
Klamath	20,248.00	31,486.00	1.55	1,055.20	.052
Lane	222,287.00	247,753.00	1.11	5,607.81	.025
Lincoln	No data				
Linn	45,904.00	65,935.00	1.43	1,320.55	.028
Marion	13,732.00	24,050.00	1.75	548.59	.040
Multnomah	600.00	1,980.00	3.30	36.63	.061
Polk	8,170.00	12,779.00	1.56	360.18	.044
Tillamook	9,685.00	6,383.00	.76	150.00	.015
Washington	22,748.00	22,915.00	.58	560.70	.025
Yamhill	15,794.00	21,159.00	1.33	550.14	.035
Total All Counties...	1,307,619.97	$ 985,094.00	$ .75	$23,648.29	.0180

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1891.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Amount of Taxes Paid	Average Tax Paid Per Acre
Benton	7,391.00	$ 9,239.00	$1.25	$ 181.10	.024
Clackamas	48,433.00	72,178.00	1.49	2,170.02	.045
Coos	1,040.00	2,600.00	2.50	54.60	.052
Curry	No data				
Columbia	No data	15,923.00		205.63	
Douglas	423,928.49	176,115.50	.42	3,874.54	.009
Jackson	Compromise			6,623.18	

Josephine	No data	22,500.00		630.76	
Klamath	24,764.79.	24,764.79	1.00	619.12	.025
Lane	103,823.38	207,646.76	2.00	3,818.89	.037
Lincoln	No data				
Linn	24,886.00	24,886.00	1.00	447.95	.018
Marion	No data			356.20	
Multnomah	1,480.00	4,360.00	2.94	74.12	.050
Polk	No data			225.00	
Tillamook		No land assessed and no Taxes Paid			
Washington	25,518.00	32,100.00	1.26	588.07	.023
Yamhill	15,547.18	29,150.96	1.87	330.97	.021
Total All Counties...	676,811.84	$ 621,464.01		$20,200.15	

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DEFENDANTS' EXHIBIT 320

Statement No. 1-A.

Showing by Counties the Assessment Upon

CONGRESSIONAL LANDS

of

OREGON AND CALIFORNIA RAILROAD COMPANY

From 1891 to 1904 Inclusive

Together with the Acreage assessed, the assessed Valuation, the Average assessed Valuation per Acre, the Total Taxes paid and the Average Tax paid per Acre.

Auditor.

San Francisco, Calif.,
January 4th, 1906.

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

County	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
Benton	602,255.79	$ 842,274.00	$1.40	$ 17,987.15	.030
Clackamas	1,125,541.99	1,761,299.00	1.56	45,128.53	.040
Coos	980,193.94	1,284,948.00	1.31	36,666.88	.037
Curry	87,828.94	134,062.05	1.52	4,359.96	.049
Columbia	199,464.84	404,232.27	2.03	12,449.60	.062
Douglas	7,636,286.06	6,046,936.28	.79	149,365.43	.020
Jackson	5,899,524.63	4,819,291.78	.82	122,538.94	.021

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Josephine	1,936,670.16	1,726,420.00	.89	54,263.02	.028
Klamath	650,146.05	965,118.67	1.48	22,215.13	.034
Lane	4,642,203.55	6,391,472.76	1,38	142,539.97	.031
Lincoln	148,111.42	221,300.20	1.49	5,990.01	.041
Linn	1,134,088.66	1,587,544.88	1.40	30,334.62	.027
Marion	482,616.64	768,442.83	1.59	15,375.84	.032
Multnomah	54,671.46	202,928.00	3.71	3,813.32	.070
Polk	558,651.07	757,199.93	1.36	19,539.02	.035
Tillamook	586,296.83	908,585.00	1.55	27,010.27	.046
Washington	461,549.82	784,159.00	1.70	17,642.59	.038
Yamhill	465,939.17	497,822.15	1.07	10,380.84	.022
Total	27,652,041.02	$30,104,036.80	$1.09	$737,601.12	.027

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

BENTON COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	7,391.00	$ 9,239.00	$1.25	$181.10	.024
1892	16,234.00	16,382.00	1.01	360.41	.022
1893	20,041.00	17,051.00	.85	272.81	.014
1894	31,841.00	20,915.00	.66	364.21	.011
1895	38,172.00	20,019.00	.52	397.61	.010

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1896	49,534.61	42,022.00	.85	869.92	.018
1897	50,308.95	62,624.00	1.24	1,361.72	.027
1898	50,320.38	62,845.00	1.25	1,558.14	.031
1899	52,090.01	65,131.00	1.25	1,551.37	.030
1900	58,696.88	73,356.00	1.25	1,677.67	.029
1901	58,379.35	72,800.00	1.25	1,797.50	.031
1902	56,989.63	93,526.00	1.64	2,589.25	.045
1903	56,965.72	146,585.00	2.57	2,640.24	.046
1904	55,291.26	139,779.00	2.53	2,365.20	.043
Total for Period	602,255.79	$842,274.00	$1.40	$17,987.15	.030
Yearly Average	43,018.28	$ 60,162.42	$1.40	$ 1,284.74	.030

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

CLACKAMAS COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	48,433.00	$ 72,178.00	$1.49	$ 2,170.02	.045
1892	53,282.00	90,705.00	1.70	2,471.20	.046
1893	55,188.00	80,368.00	1.45	1,596.13	.028
1894	70,551.00	100,236.00	1.42	2,417.30	.034
1895	73,566.78	82,469.00	1.12	2,164.70	.029

1896	72,525.44	78,596.00	1.08	2,146.24	.029
1897	84,746.75	95,961.00	1.13	2,568.43	.030
1898	84,009.29	100,711.00	1.20	2,893.89	.034
1899	81,030.01	99,094.00	1.22	2,795.21	.034
1900	76,719.81	96,520.00	1.26	2,847.77	.037
1901	82,107.96	113,106.00	1.38	3,342.65	.041
1902	120,483.84	149,950.00	1.24	5,003.35	.042
1903	124,409.76	372,240.00	2.99	7,740.46	.062
1904	98,488.35	229,165.00	2.33	4,971.18	.051
Total for Period	1,125,541.99	$1,761,299.00	$1.56	$ 45,128.53	.040
Yearly Average	80,395.85	$ 125,807.07	$1.56	$ 3,223.46	.040

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

COOS COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	1,040.00	$ 2,600.00	$2.50	$ 54.60	.052
1892	1,040.00	3,520.00	3.38	79.74	.076
1893	18,237.00	18,137.00	1.00	643.12	.030
1894	18,130.00	34,206.00	1.88	673.38	.067
1895	81,661.00	60,010.00	.73	1,367.81	.017

1896	73,986.79	98,914.00	1.33	2,275.33	.031
1897	73,933.01	89,546.00	1.21	2,560.89	.034
1898	74,165.81	92,727.00	1.25	2,377.88	.032
1899	88,675.57	115,406.00	1.30	3,262.86	.037
1900	110,867.87	138,578.00	1.25	4,083.40	.037
1901	110,731.72	138,330.00	1.25	4,157.86	.038
1902	107,295.80	134,120.00	1.25	3,941.57	.037
1903	106,836.05	160,079.00	1.50	5,153.56	.048
1904	113,593.32	198,775.00	1.75	6,034.88	.053
Total for Period	980,193.94	$1,284,948.00	$1.31	$ 36,666.88	.037
Yearly Average	70,013.84	$ 91,782.00	$1.31	$ 2,619.06	.037

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

CURRY COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891					
1892					
1893					
1894	120.00	$ 240.00	$2.00	$ 6.00	.050
1895	9,430.00	11,826.00	1.25	316.90	.034

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1896	9,430.00	11,787.50	1.25	316.90	.034
1897	8,042.00	10,052.00	1.25	338.00	.042
1898	9,043.00	12,015.00	1.33	441.35	.049
1899	9,243.75	11,072.00	1.20	527.97	.057
1900	8,854.29	11,046.00	1.25	352.98	.040
1901	8,934.54	13,398.00	1.50	431.28	.048
1902	8,883.89	12,881.00	1.45	393.58	.044
1903	8,003.02	20,105.55	2.51	575.32	.072
1904	7,844.45	19,639.00	2.50	659.68	.084
Total for Period	87,828.94	$ 134,062.05	$1.52	$ 4,359.96	.049
Yearly Average	6,278.49	$ 9,575.86	$1.52	$ 311.42	.049

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

COLUMBIA COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891		$ 15,923.00	$	$ 205.63	
1892	7,760.00	8,536.00	1.10	242.12	.031
1893	9,211.00	8,290.00	.90	203.21	.022
1894	9,250.00	9,240.00	1.00	256.34	.028
1895	9,578.00	10,775.00	1.12	309.04	.032
1896	17,561.06	32,525.00	1.85	967.34	.056

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1897	18,521.92	35,959.27	1.94	1,115.11	.060
1898	18,751.00	36,175.00	1.93	1,108.25	.059
1899	18,233.81	35,445.00	1.94	1,054.00	.058
1900	18,215.97	35,184.00	1.93	1,084.76	.060
1901	18,117.84	34,755.00	1.92	1,163.22	.064
1902	18,119.83	36,115.00	1.99	1,203.44	.066
1903	18,078.43	41,095.00	2.27	1,596.45	.088
1904	18,065.98	64,215.00	3.55	1,940.69	.107
Total for Period	199,464.84	$ 404,232.27	$2.03	$ 12,449.60	.062
Yearly Average	14,247.49	$ 28,873.73	$2.03	$ 889.25	.062

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

DOUGLAS COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	423,928.49	$ 176,115.50	$ .42	$ 3,874.54	.009
1892	404,420.97	167,157.00	.41	4,027.90	.010
1893	419,263.00	167,733.00	.40	3,395.60	.008
1894	448,241.00	167,086.00	.37	3,933.35	.009
1895	465,195.00	176,218.00	.38	3,974.91	.008
1896	518,283.00	363,903.00	.70	7,932.19	.016

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1897	572,579.73	316,184.17	.55	6,813.71	.012
1898	580,709.04	339,988.81	.67	8,684.66	.017
1899	608,833.27	348,448.00	.57	8,370.51	.014
1890	633,463.56	390,553.00	.62	8,730.18	.014
1891	635,936.95	518,530.00	.82	13,474.69	.021
1892	631,018.64	943,750.00	1.50	22,259.04	.035
1893	664,638.25	1,013,364.80	1.52	29,248.32	.044
1894	629,775.16	957,905.00	1.52	24,645.83	.039
Total for Period	7,636,286.06	$6,046,936.28	$ .79	$149,365.43	.020
Yearly Average	545,449.00	$ 431,924.20	$ .79	$ 10,668.95	.020

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

JACKSON COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891			$	$ 6,623.18	
1892	364,254.00	$ 189,085.00	.52	4,469.82	.012
1893	361,211.00	269,970.00	.75	5,588.33	.015
1894	364,672.00	287,415.00	.79	6,114.48	.016
1895	451,697.00	349,039.00	.76	7,459.29	.016
1896	482,258.00	388,051.00	.80	6,664.20	.013

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1897	479,890.28	364,937.00	.76	8,148.48	.017
1898	513,005.64	395,304.00	.77	9,531.67	.019
1899	513,557.10	312,182.00	.61	8,844.48	.017
1900	480,415.78	310,324.00	.65	8,706.79	.018
1901	481,538.20	410,082.00	.85	10,737.34	.022
1902	479,004.24	419,977.00	.88	10,092.57	.021
1903	479,998.57	617,255.78	1.29	16,013.21	.033
1904	448,022.82	505,670.00	1.13	13,545.10	.030
Total for Period	5,899,524.63	$4,819,291,78	$ .82	$122,538.94	.021
Yearly Average	421,394.61	$ 344,235.12	$ .82	$ 8,752.78	.021

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

JOSEPHINE COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891		$ 22,500.00	$	$ 630.76	
1892	101,461.00	75,269.00	.95	1,807.30	.018
1893	105,431.00	95,320.00	.90	2,177.00	.021
1894	105,704.00	88,118.00	.83	2,709.74	.026
1895	130,184.00	96,303.00	.74	2,802.57	.021

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1896	145,745.76	107,704.00	.74	3,152.76	.022
1897	151,374.42	102,026.00	.67	3,107.26	.020
1898	166,059.82	109,892.00	.66	3,363.55	.020
1899	165,117.78	108,115.00	.65	3,263.88	.020
1900	171,519.34	107,052.00	.62	3,539.61	.021
1901	169,715.18	135,920.00	.80	4,687.07	.028
1902	170,060.94	140,510.00	.83	4,866.73	.029
1903	181,956.40	284,820.00	1.57	10,090.14	.055
1904	172,340.52	252,871.00	1.47	8,064.65	.047
Total for Period	1,936,670.16	$1,726,420.00	$ .89	$ 54,263.02	.028
Yearly Average	138,333.58	$ 123,315.71	$ .89	$ 3,875.93	.028

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

KLAMATH COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	24,764.79	$ 24,764.79	$1.00	$ 619.12	.025
1892	20,248.00	31,486.00	1.55	1,055.20	.052
1893	22,927.00	39,259.00	1.71	833.11	.036
1894	55,170.97	71,175.00	1.29	1,482.10	.027
1895	61,029.00	67,453.00	1.10	1,458.06	.024

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1896	64,148.83	72,506.00	1.13	1,809.32	.026
1897	64,058.35	70,191.00	1.10	1,600.96	.025
1898	63,057.64	69,184.00	1.10	1,681.17	.027
1899	62,418.35	67,584.00	1.08	1,788.05	.029
1900	42,497.22	54,376.00	1.28	1,299.09	.031
1901	43,987.44	93,000.00	2.11	1,715.05	.039
1902	39,648.51	100,872.00	2.54	2,220.30	.056
1903	43,173.83	104,621.00	2.42	2,261.41	.052
1904	43,016.12	98,646.88	2.29	2,392.19	.056
Total for Period	650,146.05	$ 965,118.67	$1.48	$ 22,215.13	.034
Yearly Average	46,439.00	$ 68,937.05	$1.48	$ 1,586.79	.034

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with Taxes paid thereon for the year 1893.

LANE COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	103,823.38	$ 207,646.76	$2.00	$ 3,818.89	.037
1892	222,287.00	247,753.00	1.11	5,607.81	.025
1893	147,321.00	213,507.00	1.44	3,642.75	.025
1894	316,207.00	208,874.00	.66	3,340.37	.010
1895	345,368.00	420,741.00	1.22	7,761.66	.022

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1896	371,044.00	490,591.00	1.32	8,728.59	.024
1897	398,908.00	521,523.00	1.31	10,370.35	.026
1898	407,014.87	530,278.00	1.30	12,150.69	.030
1899	411,070.48	429,521.00	1.04	11,458.04	.028
1900	408,375.75	430,159.00	1.05	10,716.35	.026
1901	402,329.76	420,830.00	1.05	11,825.60	.029
1902	403,066.66	532,089.00	1.32	11,971.70	.028
1903	392,885.08	987,520.00	2.51	22,800.31	.058
1904	312,502.57	750,440.00	2.40	18,346.86	.059
Total for Period	4,642,203.55	$6,391,472.76	$1.38	$142,539.97	.031
Yearly Average	331,585.96	$ 456,533.77	$1.38	$ 10,181.42	.031

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

LINCOLN COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891					
1892					
1893	9,116.00	$ 18,232.00	$2.00	$ 351.87	.038
1894	9,236.00	5,514.00	.60	88.23	.009
1895	9,237.00	5,076.00	.55	107.15	.012

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1896	10,117.74	15,175.00	1.50	373.40	.036
1897	10,117.74	14,058.00	1.39	352.86	.035
1898	10,117.74	12,871.00	1.27	343.66	.034
1899	10,118.00	13,503.00	1.33	382.13	.038
1900	15,826.30	19,420.00	1.23	499.09	.032
1901	15,946.30	20,893.00	1.31	587.73	.037
1902	16,146.00	32,293.00	2.00	908.40	.056
1903	16,146.30	32,292.60	2.00	1,002.35	.062
1904	15,986.30	31,972.60	2.00	993.14	.062
Total for Period	148,111.42	$ 221,300.20	$1.49	$ 5,990.01	.040
Yearly Average	10,579.39	$ 15,807.15	$1.49	$ 421.85	.040

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

LINN COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	24,886.00	$ 24,886.00	$1.00	$ 447.95	.018
1892	45,904.00	65,935.00	1.43	1,320.55	.028
1893	39,955.00	50,170.00	1.25	795.09	.020
1894	56,519.00	65,141.00	1.14	933.33	.016
1895	76,858.00	58,769.00	.76	1,062.67	.014
1896	87,990.08	86,493.10	.98	1,237.51	.015
1897	90,844.16	135,825.00	1.60	1,749.36	.019

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1898	96,234.32	98,596.78	1.02	1,887.94	.020
1899	99,401.57	102,773.00	1.03	1,585.09	.016
1900	117,785.99	127,411.00	1.08	2,600.83	.022
1901	109,781.73	117,308.00	1.07	2,412.86	.022
1902	109,328.52	119,770.00	1.10	2,220.23	.020
1903	108,150.77	324,117.00	3.00	7.219.09	.067
1904	70,449.52	210,350.00	2.99	4,862.12	.069
Total for Period	1,134,088.66	$1,587,544.88	$1.40	$ 30,334.62	.027
Yearly Average	81,006.33	$ 113,396.06	$1.40	$ 2,116.75	.027

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

MARION COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891				$ 356.20	
1892	13,732.00	$ 24,050.00	$1.75	548.59	.040
1893	16,148.00	35,182.00	2.17	466.86	.020
1894	26,807.00	50,891.00	1.91	861.19	.033
1895	31,146.00	51,936.00	1.66	806.34	.026

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1896	33,587.24	48,336.18	1.43	925.48	.028
1897	50,186.53	68,510.00	1.36	1,072.40	.021
1898	49,726.49	68,504.75	1.37	1,488.54	.030
1899	48,218.16	69,625.90	1.44	1,565.87	.032
1900	48,471.31	63,292.00	1.31	1,461.25	.030
1901	48,242.93	64,997.00	1.35	1,279.96	.027
1902	47,426.66	78,463.00	1.65	1,462.05	.031
1903	35,155.22	71,110.00	2.02	1,418.62	.041
1904	34,269.10	74,045.00	2.16	1,662.49	.049
Total for Period	482,616.64	768,442.83	$1.59	$ 15,375.84	.032
Yearly Average	34,472.61	54,888.77	$1.59	$ 1,098.27	.032

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

MULTNOMAH COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	1,480.00	$ 4,360.00	$2.94	$ 74.12	.050
1892	600.00	1,980.00	3.30	36.63	.061
1893	1,320.00	3,686.00	2.79	55.30	.041
1894	3,762.25	15,658.00	4.16	279.84	.074
1895	4,389.71	17,054.00	3.88	295.65	.067

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1896	1,685.35	6,094.00	3.61	94.23	.056
1897	1,852.80	5,220.00	2.81	85.81	.046
1898	3,401.81	16,166.00	4.75	260.26	.076
1899	4,247.64	8,140.00	1.91	220.64	.052
1900	4,063.76	7,290.00	1.79	148.14	.036
1901	3,928.58	11,360.00	2.89	204.88	.052
1902	7,062.48	26,800.00	5.04	645.78	.122
1903	7,191.69	44,330.00	6.16	563.83	.078
1904	9,685.39	34,790.00	3.59	848.21	.086
Total for Period	54,671.46	$ 202,928.00	$3.71	$ 3,813.32	.070
Yearly Average	3,905.10	$ 14,494.85	$3.71	$ 272.38	.070

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

POLK COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891				$225.00	
1892	8,170.00	$ 12,779.00	$1.56	360.18	.044
1893	9,640.00	16,919.00	1.75	219.94	.022
1894	42,749.00	20,399.00	.48	369.79	.009
1895	43,958.00	21,934.00	.50	367.30	.008

1896	52,384.52	16,580.50	.32	429.04	.008
1897	56,412.28	44,809.57	.80	881.41	.016
1898	55,669.57	49,745.00	.89	1,174.48	.021
1899	55,058.88	49,422.00	.90	1,217.68	.022
1900	53,883.81	43,235.26	.80	1,284.11	.024
1901	52,935.26	69,625.00	1.32	2,036.95	.038
1902	52,867.92	182,360.00	2.50	3,635.60	.069
1903	36,892.65	172,835.00	4.68	4,626.84	.125
1904	38,034.23	106,556.60	2.80	2,710.75	.071
Total for Period	558,651.07	$757,199.93	$1.36	$19,539.02	.035
Yearly Average	39,903.65	$54,085.71	$1.36	$1,395.64	.035

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

TILLAMOOK COUNTY

1891

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891					
1892	9,685.00	$ 6,383.00	$ .76	$ 150.00	.015
1893	9,685.00	5,692.00	.59	133.77	.014
1894	27,633.00	14,305.00	.52	367.11	.013
1895	30,056.00	14,940.00	.50	433.76	.014

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1896	49,858.81	123,690.00	2.48	3,450.74	.069
1897	61,544.72	95,155.00	1.54	2,758.39	.045
1898	61,504.72	83,000.00	1.35	2,608.82	.042
1899	62,412.16	83,600.00	1.33	2,668.40	.043
1900	63,044.55	74,600.00	1.18	2,325.60	.037
1901	60,146.79	89,600.00	1.49	2,829.85	.047
1902	60,261.39	148,420.00	2.50	4,044.01	.067
1903	60,261.71	133,160.00	2.21	4,247.75	.070
1904	30,202.98	36,040.00	1.19	992.07	.033
Total for Period.....	586,296.83	$908,585.00	$1.55	$27,010.27	.046
Yearly Average	41,878.34	$ 64,898.93	$1.55	$ 1,929.30	.046

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

WASHINGTON COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per-Acre
1891	25,518.00	$ 32,100.00	$1.26	$ 588.07	.023
1892	22,748.00	22,915.00	.58	560.70	.025
1893	29,655.00	41,461.00	1.39	627.54	.021
1894	26,489.00	29,680.00	1.12	461.43	.017
1895	36,031.00	39,152.00	1.08	550.38	.015

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1896	35,952.64	80,315.00	2.30	1,260,71	.035
1897	37,989.96	82,900.00	2.18	1,468.21	.039
1898	39,542.63	85,500.00	2.16	1,911.04	.048
1899	37,828.85	62,427.00	1.65	1,704.52	.045
1900	36,587.09	50,784.00	1.39	1,513.14	.041
1901	36,707.85	59,085.00	1.61	1,598.58	.044
1902	36,346.35	59,635.00	1.64	1,620.74	.044
1903	36,559.45	85,935.00	2.35	2,377.41	.065
1904	23,594.00	52,270.00	2.22	1,400.12	.059
Total for Period	461,549.82	$784,159.00	$1.70	$17,642.59	.038
Yearly Average	32,967.84	$ 56,011.35	$1.70	$ 1,260.18	.038

OREGON AND CALIFORNIA RAILROAD COMPANY

CONGRESSIONAL LANDS IN OREGON

Statement of Acres assessed and the assessed Valuation thereof, together with the Taxes paid thereon for the years 1891 to 1904 both inclusive.

YAMHILL COUNTY

Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1891	15,547.18	$ 29,150.96	$1.87	$ 330.97	.021
1892	15,794.00	21,159.00	1.33	550.14	.035
1893	16,629.00	20,333.00	1.22	264.33	.016
1894	39,605.00	32,055.00	.81	572.85	.014
1895	39,265.00	22,925.00	.58	465.70	.012

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Year	Acres Assessed	Assessed Valuation	Average Assessed Valuation Per Acre	Total Taxes Paid	Average Tax Paid Per Acre
1896	38,550.00	29,463.16	.76	447.78	.012
1897	38,880.39	29,549.30	.76	487.16	.013
1898	39,750.08	35,144.91	.88	657.22	.017
1899	39,303.74	36,505.99	.93	725.50	.018
1900	38,925.81	43,628.00	1.12	933.70	.024
1901	38,401.30	44,460.00	1.16	991.11	.026
1902	37,986.76	43,697.00	1.15	1,016.47	.027
1903	36,608.51	61,970.64	1.69	1,651.20	.045
1904	30,692.40	47,780.19	1.56	1,286.71	.042
Total for Period	465,939.17	$497,822.15	$1.07	$10,380.84	.022
Yearly Average	33,281.37	$ 35,558.72	$1.07	$ 741.49	.022

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XIV

PAGES 7251-7810

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.

WM. D. FENTON,
Portland, Oregon.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.

DAY & BREWER,
Seattle, Wash.

A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.

CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.

B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XIV

PAGES 7251-7810

DEFENDANTS' EXHIBIT 821.

TOTAL TAXES PAID FROM 1891 TO 1911, INCLUSIVE, ON OREGON AND CALIFORNIA CONGRESSIONAL LANDS.

County	Total Taxes Paid	Average Acreage	Total Average Tax Per Acre	Tax Per Year
Benton	$ 89,963.00	46,552.94	$1.93	$.092
Clackamas	168,888.91	83,298.00	2.02	.096
Columbia	42,433.60	15,391.00	2.75	.185
Coos	211,147.15	83,377.00	2.54	.12
Curry	12.404.58	6,618.00	1.89	.09
Douglas	533,634.60	570,305.00	.935	.044
Jackson	321,613.35	428,433.00	.75	.035
Josephine	180,918.50	148,781.00	1.22	.058
Klamath	53,948.21	45,297.00	1.19	.057
Lane	413,723.34	320,787.00	1.26	.06
Lincoln (1893 to 1911)	15,359.37	8,445.00	1.82	.09
Linn	87,170.50	75,141.00	1.16	.055
Marion	51,648.91	33,057.00	1.56	.074
Mutlnomah	14,182.60	5,550.00	2.55	.12
Polk I	71,469.45	39,017.00	1.83	.09

Tillamook (1892 to 1911) ...	41,245.02	39,724.00	1.04	.05
Washington ..	34,543.89	27,967.00	1.23	.06
Yamhill	29,920.77	31,710.00	.94	.045

Filed May 10, 1913.

A. H. CANNON,
Clerk U. S. Circuit Court.

DEFENDANTS' EXHIBIT 322.

[Tables enclosed to J. B. Eddy, Tax and Right of Way Agent, in letter from E. Dana Durand, Director of Bureau of the Census, dated August 26, 1912, which is not printed but certified up under order of Court and stipulation of parties:]

STATISTICS OF POPULATION.

Table 4.—Population of States and Territories by Counties, at Each Census: 1790 to 1900.

OREGON.

[Organized as a territory August 14, 1848. Admitted as a state February 14, 1859.]

COUNTIES	1900	1890	1880	1870	1860	1850
The State	413,536	313,767	174,768	90,923	52,465	13,294
Baker	15,597	6,764	4,616	2,804	.....	.....
Benton[2]	6,706	8,650	6,403	4,584	3,074	814
Clackamas	19,658	15,233	9,260	5,993	3,466	1,859
Clarke[3]	.....	.....	.....	.....	.....	643
Clatsop	12,765	10,016	7,222	1,255	498	462
Columbia	6,237	5,191	2,042	863	532	.....
Coos	10,324	8,874	4,834	1,644	445	.....
Crook[4]	3,964	3,244	.....	.....	.....	.....
Curry	1,868	1,709	1,208	504	393	.....
Douglas[5]	14,565	11,864	9,596	6,066	3,203	.....
Gilliam[6]	3,201	3,600	.....	.....	.....	.....
Grant[7]	5,948	5,080	4,303	2,251	.....	.....

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COUNTIES	1900	1890	1880	1870	1860	1850
Harney[8]	2,598	2,559	.....	.....	.....	.....
Jackson[9]	18,698	11,455	8,154	4,778	3,786	.....
Josephine[9]	7,517	4,878	2,485	1,204	1,628	.....
Klamath[10]	3,970	2,444	.....	.....	.....	.....
Lake[10]	2,847	2,604	2,804	.....	.....	.....
Lane	19,604	15,198	9,411	6,426	4,780	.....
Lewis[3]	.....	.....	.....	.....	.....	558
Lincoln[2]	3,575	.....	.....	.....	.....	.....
Linn	18,608	16,265	12,676	8,717	6,772	994
Malheur[1]	4,203	2,601	.....	.....	.....	.....
Marion	27,713	22,934	14,576	9,965	7088	2,749
Morrow[11]	4,151	4,205	.....	.....	.....	.....
Multnomah	103,167	74,884	25,203	11,510	4,150	.....

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COUNTIES	1900	1890	1880	1870	1860	1850
Polk	9,923	7,858	6,601	4,701	3,625	1,051
Sherman[12]	3,477	1,792	.....	.....	.....	.....
Tillamook[2]	4,471	2,932	970	408	95	.....
Umatilla[13]	18,049	13,381	9,607	2,916	.....	.....
Umpqua[5]	.....	.....	.....	.....	1,250	.....
Union[14]	16,070	12,044	6,650	2,552	.....	.....
Wallowa[14]	5,538	3,661	.....	.....	.....	.....
Wasco[15]	13,199	9,183	11,120	2,509	1,689	.....
Washington	14,467	11,972	7,082	4,261	2,801	2,652
Wheeler[16]	2,443	.....	.....	.....	.....	.....
Yamhill	18,420	10,692	7,945	5,012	3,245	1,512

[1]Malheur organized from part of Baker in 1877.

[2]Lincoln organized from parts of Benton and Tillamook in 1893.

[3]Now in the state of Washington.

[4]Organized from part of Wasco in 1882 and part taken to form part of Wheeler in 1899.

[5]Umpqua annexed to Douglas in 1862.

[6]Organized from parts of Umatilla and Wasco in 1885 and part taken to form part of Wheeler in 1899.

[7]Parts taken to form Harney in 1889 and part of Wheeler in 1899.

[8]Organized from part of Grant in 1889.

[9]Part of Jackson annexed to Josephine between 1880 and 1890.

[10]Klamath organized from part of Lake in 1882.

[11]Organized from part of Umatilla in 1885.

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[12]Organized from part of Wasco in 1889; part of Wasco annexed since 1890.

[13]Parts taken to form Morrow and part of Gilliam in 1885.

[14]Wallowa organized from part of Union in 1887; part of Union annexed to Wallowa since 1890.

[15]Parts taken to form Crook in 1882, Sherman in 1889, part of Gilliam in 1885, and part annexed to Sherman since 1890.

[16]Organized from parts of Crook, Gilliam, and Grant in 1899.

OREGON

Population 1860-1880

	1880.	1870.	1860.
Albany	1,867	(a) 1,992	....
Ashland	842	(b)	327
Astoria	2,803	639	252
Brownsville	143	(a) 788	....
Central Point	....	....	....
Coquille City	176	....	....
Corvallis	1,128	(b)	531
Dallas	670	(a) 795	(a) 450
Empire City (precinct)	412	381	176
Eugene	1,117	861	1,188
Florence	68	....	....
Forest Grove	547	(a) 922	....
Gardiner	576	206	....
Grants Pass (precinct)	(b)	....	....
Harrisburg	422	(a) 1,014	....
Hillsboro	402	(a) 796	....
Independence	691	....	425
Jacksonville	839	(b)	892
Junction	428	....	....
Kerbyville	75	....	....
Klamath Falls (c)	250	....	....
Lafayette	396	(a) 655	(a) 417
Lebanon	270	(a) 515	....
Marshfield	642	(a) 402	....
McMinnville	670	388	....
Medford	....	....	....
Monroe	185	(b)	....

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	1880.	1870.	1860.
Myrtle Point	52	....	....
Newport	52	(b)	(b)
Oakland	369	.... (a)	357
Oregon City	1,263	1,382	889
Portland	17,577	8,293	2,874
Rainier (precinct)	372	116	85
Roseburg	822	.... (a)	835
St. Helens	209 (a)	144	....
Salem	2,538 (a)	1,139	....
Scottsburg	63 (a)	101	....
Springfield	160 (a)	640 (a)	398
Tillamook or Lincoln (precinct) (d)	499	623	....
Toledo (precinct)	232 (b)	(b)	

(a) Population of precinct.
(b) Not separately returned.
(c) Returned as Linkville in 1880.
(d) In Marion County.

DEFENDANTS' EXHIBIT 323.

Population of Certain Counties and Towns for Three Years.

	1910	1900	1890
Benton County	10,663	6,706	8,650
Corvallis	4,552	1,819	1,527
Philomath	505	348	
Clackamas County	29,931	19,658	15,233
Estacada	405		
Milwaukee	860		

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Oregon City.....	4,287	3,494	3,062
Douglas County.....	19,674	14,565	11,864
Oakland	467	365	339
Canyonville	149		
Roseburg	4,738	1,690	1,472
Gardiner	391	286	229
Glendale	646		
Myrtle Creek.....	429	189	
Drain	335	193	
Riddle /.....	187	131	
Yoncolla	233		
Lane County.....	33,783	19,604	15,198
Cresswell	367		
Cottage Grove.....	1,834	974	
Eugene	9,009	3,236	
Florence	311	222	
Junction City.....	759	506	
Springfield	1,838	353	371
Coburg	613		
Lincoln County.....	5,587	3,575	
Newport	721	256	121
Toledo	541	302	
Linn County.....	22,662	18,603	16,265
Albany	3,275	3,149	3,079
Halsey	337	294	270
Brownsville	919	698	580
Harrisberg	453	502	413
Lebanon	1,820	922	829
Scio	295	346	253

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Sodaville	110	178	66
Sweet Home	202		
Waterloo	83	59	
Marion County	39,780	27,713	22,934
Aurora	190	122	
Butterville	49		
Gervais	276	224	
Hubbard	283	213	117
Jefferson	415	273	307
Mt. Angel	545	537	
St. Paul	103		
Salem	14,094	4,258	
Silverton	1,588	656	511
Stayton	703	324	381
Sublimity	138		
Turner	191		
Woodburn	1,616	828	405
Polk County	13,469	9,923	7,855
Dallas	2,124	1,271	848
Falls City	969	269	
Independence	1,160	909	
Monmouth	493	606	
Grande Ronde Indian Reservation	368	402	
Washington County	21,522	14,467	11,972
Beaverton	386	249	
Cornelius	459	246	
Forest Grove	1,772	1,096	665
Hillsboro	2,016	980	
Sherwood	115	111	

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Yamhill County.....			
Amity	407	292	
McMinnville	2,400	1,420	1,368
Carlton	386	145	
Yamhill	325	254	
Dundee	196	124	
Dayton	453	293	304
Lafayette	412	359	365
Newberg	2,260	945	514
Sheridan	1,021	466	299
Willamina	376		

DEFENDANTS' EXHIBITS 324-325-326-327-328-329-330.

Purports to be statements of the summaries of the assessment rolls of the various counties of the State of Oregon as equalized by the County Boards of Equalization, compiled by the Board of State Tax Commissioners for the years 1911, 1910 and 1909, and as compiled by the Secretary of State for the years 1908, 1907, 1906, 1904, 1903, 1902, 1901 and 1900, showing, by counties, number of acres of tillable lands, value of tillable lands, number of acres of non-tillable lands, value of non-tillable lands, value of town and city lots, improvements on town and city lots, etc., and showing total value of taxable property as equalized by the County Boards of Equalization for the respective years, and as equalized by the State Tax Commissioners for the years 1911, 1910 and 1909.

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These exhibits are not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 331.

Purports to be a statement of taxes paid upon Congressional lands in same items including other property from the years 1873 to 1890, both inclusive, in the counties of Benton, Lane, Linn, Marion, Washington and Yamhill, and is as follows:

Year	Acres	Valuation	Tax	
1873	13,363		$ 300.68	
1874	13,628	$ 4,087	85.83	Paid
1875	12,889	3,206	48.03	Paid
1876	12,844	3,206	73.76	Paid
1877	Not totaled	3,029	48.46	Paid
1878	11,714	2,967	51.95	Paid
1879	10,553	3,165		Paid
1880	9,973	2,992	53.86	Paid
1881	9,538	12,000	186.00	Paid
1882	9,538	12,000	192.00	Paid
1883	7,815	9,769 Inc.	1,337.96	Paid
1884	7,797	9,700 Inc.	1,217.20	Paid
1885	Not totaled	9,295 Del.		Paid
1886	7,331	16,327 Inc.	971.42	Paid
1887	7,331	16,927 Inc.	1,331.50	Paid
1888	7,010	8,762 Inc.	1,307.86	Paid
1889	6,642	8,302	180.15	
1890	7,414	9,267	174.61	

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OREGON AND CALIFORNIA RAILROAD COMPANY CONGRESSIONAL LANDS IN OREGON

DOUGLAS COUNTY

Year	Acres	Valuation	
1878	11,434	$141,435	Agricultural
1879	11,754	141,435	Agricultural
1880	10,155	142,220	Agricultural
1881	11,680	Not valued	Agricultural
1882	11,534	Marked paid	Agricultural
1883	11,199	22,398	Called patented
1884	2,240	.....	(With other property)
1885	11,786	312,106	
1888	12,479	15,590	
1889	12,720	No valuation.	
1890	12,720	No valuation	

LANE COUNTY.

Year	Acres	Valuation	Tax	
1874	40,689	$12,207	$ 170.89	Paid
1875	39,553	11,866	177.99	Paid
1876	38,900	11,670	175.00	Paid
1777	38,152	11,445	206	Marked paid but erased

Year	Acres	Valuation	Tax	
1878	52,253	14,000	196.00	Paid
1878	29,986	11,994	167.90	Paid
1879	56,078	15,000	225.00	Paid
1880	55,949	15,106	241.30	Paid
1880	29,986	11,994	191.90	Paid
1881	55,979	15,115	256.95	Paid
1881	29,986	11,994	203.90	Paid
1882	29,986	11,994	179.91	Paid
1883	54,093	16,228	259.65	Paid
1884	51,583	15,475	247.60	Paid
1884	29,986	12,000	196.00	Paid
1885	29,986	12,000	180.00	Paid
1886	48,364	14,510	203.15	Paid
1886	29,986	12,000	.....	Paid
1887	47,483	12,245	249.30	Paid
1888	53,332	17,950	287.20	Paid
1889	....	....	1,507.63	
1890	41,806	83,616	1,873.92	Paid
The assessment for 1890 was Sheriffs.				
1890	261,212	522,415	11,754.56	No evidence that this was paid.

LINN COUNTY

Year	Acres	Total Tax	
1883	Not computed	$ 187.44	
1884	32,184	4,404.40	Included with other property
1885	30,695	2,785.57	Included with other property
1886	31,324	3,047.81	Included with other property
1887	30,089	2,486.50	Included with other property
1888	29,844	165.18	
1889	23,475	3,557.98	Included with other property
	Springfield		
1889	Br	1,515.96	
1890	23,475	3,389.03	Included with other property
	Spg. Branch	1,515.96	

MARION COUNTY

Year	Acres	Value	
1880	19,934	$5,000	Paid
1881	19,691	7,000	
1882	18,753	5,700	
1883	18,431	6,000	Paid
1884	15,596	5,500	
1885	16,094.98	8,000	
1886	15,622	8,000	
1887	15,464	15,464	

Year	Acres	Valuation
1889	15,123	15,123
1890	15,949	19,939
1878	22,434	6,730
1879	4,536	1,360

All included with road bed and station grounds.

WASHINGTON COUNTY

Year	Acres	Value	Tax
1883	5,822	8,700	156.60
1884	5,382	9,000	144
1885	5,373	9,000	126
1886	5,333	9,000	135
1887	5,253	8,900	160.20
1888	5,213	8,850	141.60
1889	5,077	8,880	161.16
1890	5,418	26,400	432

YAMHILL COUNTY

Year.	Acres.	Valuation	Tax.
1877	17,875.75	$13,406.83	$ 234.61
1878	Not computed	7,717	154.34
1879	14,600	7,300	
1881	11,677	6,000	
1882	10,842	6,000	61.18

Year.	Acres.	Valuation	Tax.	
1884	9,550.80	4,775	83.57	
1885	9,330	4,669	2,035.04	incl.
1886	9,046	4,675	2,044.39	incl.
1887	8,532	4,263	2,501.19	incl.
1888	Not computed	4,353	2,732.12	incl.
1889	Not computed	6,130	134.86	
1890	Not computed	9,524	209.52	

DEFENDANTS' EXHIBIT 332

Purports to be two sheets of standard map of the Oregon & California Railroad Company purporting to show lands of the Booth-Kelly Lumber Company colored in red, and the Wentworth lands colored in green.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 333

Is a certified copy of an Act of Congress, approved August 20, 1912, entitled "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,' and so forth," and is as follows:

[PUBLIC—No. 278.]

[H. R. 22002.]

An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

SEC. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

SEC. 3 That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen

hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: *Provided,* That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

SEC. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase

all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants or their successors or assigns, respectively: *Provided,* That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: *And provided further,* That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further,* That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

SEC. 5 That the provisions of section four of this Act shall not be construed to apply to the suit involving

approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

SEC 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

Approved, August 20, 1912.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 334

is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," as follows:

OREGON AND CALIFORNIA RAILROAD LAND GRANT.

July 16, 1912.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Robinson, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany H. R. 22002.]

The Committee on the Public Lands, having under consideration the bill (H. R. 22002) supplementing the joint resolution approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits," etc., recommend the adoption of the following amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thir-

tieth, nineteen hundred and eight, entitled "Joint Resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth. nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this act; *Provided,* That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any of the parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

Sec. 4. That the Attorney General is hereby authorized to compromise, in the manner hereinafter provid-

ed, any suit heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successor or assigns of such purchaser or purchasers, that decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; *Provided,* That the

benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: and *provided further,* That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: *And provided further,* That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any such purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this act shall not be construed to apply to the suit, involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, Southern Pacific, Stephen T. Gage, Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this act be construed to apply to any of the lands involved in said last-described suit, nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this act contained, nor action taken pursuant to the provisions of this act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other rights or remedies existing in favor of the United States.

The committee considered, in connection with H. R. 22002, the bill H. R. 23719, which is similar. Many amendments being recommended to the text of the bill, it is thought simpler to report one amendment in the nature of a substitute. This will probably save much time in the consideration of the bill by the House.

This measure is supplemental to Senate joint resolution 48 (Public Resolution No. 18), approved April 30, 1908, which is as follows:

JOINT RESOLUTION Instructing the Attorney General to institute certain suits, and so forth.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General of the United

States be, and he hereby is, authorized and directed to institute and prosecute any and all suits in equity, actions at law, and other proceedings which he may deem adequate and appropriate to enforce any and all rights and remedies of the United States of America in any manner arising or growing out of or pertaining to either or any of the following described acts of Congress, to-wit: "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the acts approved June twenty-fifth, eighteen hundred and sixty-eight, and April tenth, eighteen hundred and sixty-nine; also "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said state," approved March third, eighteen hundred and sixty-nine; also "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, including all rights and remedies in any manner relating to the lands, or any part thereof, granted by either or any of said acts; and in and by any and all such suits, actions, or proceedings the Attoroney General shall, in such manner as he shall deem appropriate, assert all rights and remedies existing in favor of the United States, relating to the subject of such suits, actions, and proceedings, including the claim on behalf of the United States that the

lands granted by each of said acts, respectively, or any part thereof, have been and are forfeited to the United States by reason of any breaches or violations of any of the terms or conditions of either or any of said acts which may be alleged and established in any such suits, actions, or proceedings; it not being intended hereby to determine the right of the United States to any such forfeiture or forfeitures, but it being intended to fully authorize the Attorney General in and by such suits, actions, or proceedings to assert on behalf of the United States and the court or courts before which such suits, actions, or proceedings may be instituted or pending to entertain, consider, and adjudicate the claim and right of the United States to such forfeiture or forfeitures, and if found to enforce the same: ***Resolved further,*** That the authority and direction hereinbefore given shall extend to any and all suits, actions, or proceedings which may be instituted or pending under the authority of the Attorney General at the time of the adoption and approval hereof.

Under authority contained in said resolution the United States instituted one suit against the Oregon & California Railroad Co. and others for the purpose of declaring a forfeiture, and for other purposes. This suit involved approximately 2,400,00 acres of land which said railroad company has not sold and claims title to by virtue of the grants hereinafter referred to.

In addition to this suit against the railroad company the Government also brought 45 suits against various

grantees of the railroad company. The lands involved in these suits aggregate approximately 400,000 acres of land. The purpose of this legislation are, first, to confirm the proceedings of forfeiture already had by the Government, and, second, to authorize a compromise of the 45 suits against the purchasers. No compromise is to be made of the main suit against the railroad company for the 2,400,000 acres of land unsold and still claimed by the railroad company. That is to be litigated to final decree.

The history of the legislation and circumstances out of which grows the necessity for this measure is interesting, extending over a period of almost half a century.

July 25, 1866, Congress granted alternate sections of land for 20 miles on either side of a line to such railroad company as might be designated by the Legislature of Oregon, to build from Portland south to the California line, and to the California & Oregon Railroad Co., which was already incorporated under the laws of California, to construct through the Sacramento Valley to the Oregon line. At that time no railroad company was organized in Oregon. The act of July 25, 1866, did not require the railroad company to sell to settlers.

One Joseph Gaston caused to be organized the Oregon Central Railroad Co. in October, 1866, for the purpose of taking the benefits of said grant. The act of 1866 prescribed that before any railroad could re-

ceive the benefits of the grant it must be designated by the Oregon Legislature as a proper company for that purpose. The Oregon Legislature designated the Oregon Central Railroad Co., organized by Gaston, but this company failed to build the 20 miles of road within two years, as prescribed by the act.

One Ben Holladay, then of Salem, Oreg., was prominent in the organization of another railroad also called the "Oregon Central Railroad Co."

A resolution extending the time for the completion of the 20 miles of work was passed, but before Gaston's company could avail itself of the grant, Holladay and his company succeeded in having the Oregon Legislature rescind its action in designating Gaston's company as the beneficiary, and also succeeded in having Holladay's company designated. Holladay was also active in securing the passage of the act of April 10, 1869 which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the Legislature of the State of Oregon, in accordance with the first section of said act, to file its assent to such act in the De-

partment of the Interior within one year from the date of the passage of this act, any such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if each assent had been filed within one year after the passage of said act: *Provided,* That nothing herein shall impair any rights heretofore acquired by any railroad company under said act, nor shall said act or this amendment be construed to entitle more than one company to a grant of land: *And provided further,* That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869.

It is out of the last proviso contained in this act that the controversies involved in this legislation have arisen.

After the passage of this act of April 10, 1869, Holladay's company began and completed, within the time authorized by the extension act, 20 miles of road, and Gaston's company abandoned work, withdrew from the field, and left Holladay's company as the only applicant for the grant.

Confusion arose out of the fact that both Gaston's and Holladay's company were named the "Oregon Central Railroad Co."

Holladay's company was reorganized in 1870, and thereafter was known as the "Oregon & California Rail-

road Co." Subsequently, Gaston secured the grant of May 4, 1870, to his Oregon Central Railroad Co., in part as follows:

Sec. 4. An be it further enacted that the said alternate sections of land granted by this act, excepting anly such as are necessary for the company to reserve for depots, stations, sidetracks, wood yards, standing ground, and other needful uses in operating the road shall be sold by the company only to actual settlers in quantities not exceeding one hundred and sixty acres, or a quarter section, to any one settler, and at prices not exceeding two dollars and fifty cents per acre.

This grant, which is known as the West Side grant, comprised only 128,000 acres of land. In 1880, after Gaston's Oregon Central Railroad Co. had completed the 47 miles of road, the Oregon & California Railroad Co. secured by conveyance all the rights, privileges, and franchises of said West Side grant. The road was finally completed in 1887 to the California line.

From that time on patents were issued to the Oregon & California Railroad Co., successor to the Oregon Central Railroad Cos., under the act of July 25, 1866, as amended by the act of April 10, 1869. About 1895 large quantities of land in both grants were patented to the Oregon & California Railroad Co.

For a long time after the passage of the acts of 1869 hereinbefore referred to the railroad sold the lands at $2.50 an acre, and sales were substantially made with-

in the provisions of the act of 1869. About 1892 or 1893 the railroad company adopted the policy of disposing of the lands in large areas. In 1901 the so-called Harriman interests obtained control, and in January, 1903, the policy was adopted of reserving from sale the remaining lands. From the center of Oregon to the eastern boundary line of the State the railroad owned nearly one-half of the land within 30 or 40 miles of the railroad. In February, 1907, the Legislature of Oregon memorialized Congress, protesting against these violations of the grant by the railroad company, and the resolution of 1908, under which the suits were instituted, was passed.

The West Side grant involving approximately 128,000 acres, and the East Side grant, embracing about 3,200,000, both passed into the ownership of the Oregon & California Railroad Co., a subsidiary corporation to the Southern Pacific. From these two grants approximately 820,000 acres were sold prior to the withdrawal of the lands by the railroad company from sale on January 1, 1903. Of this 820,000 acres, 296,000 acres were sold to 4,930 purchasers in quantities not exceeding 160 acres to a single purchaser; 524,000 acres were sold to 376 purchasers in quantities exceeding a quarter section to the purchaser; of the 524,000 acres that were sold in quantities not exceeding 160 acres to the purchaser, 400,000 acres were in quantities exceeding 1,000 acres to the purchaser.

The Government in patenting the lands to the rail-

road company did not place any limitations or conditions in the patents. The first act, to wit, that of July 25, 1866, did not limit sales to actual settlers in areas of 160 acres. That provision was contained in the act of April, 1869. Some of the lands were patented under the former act alone, while other patents were issued under both acts. The most of them as appears from the statement of the Assistant Attorney General refer only to the act of July 25, 1866, which did not contain the restrictions. Titles from the railroad company to this land acquired by said company through patents from the Government were examined and approved without question by the leading lawyers of Oregon. The Department of the Interior examined the abstracts and approved the titles in exchanges with the Oregon & California Railroad Co., receiving back said lands and giving fee to lands in other parts of the country—that is, the Interior Department to the extent of 50,000 acres of land approved the title of purchasers.

No question seems to have arisen concerning the validity of these titles either in Oregon or with the Government until quite recently. Much of the lands sold by the Government have been acquired by timber operators who have made considerable investments. The evidence also shows that the greater portion of the land is situated on steep hillsides, is rocky, and not susceptible of cultivation. It is chiefly valuable for timber. The industrial activity of a considerable portion of Oregon is grounded on these titles. It is of importance to the whole public that some adjustment be made as to the

title to the lands which have been sold by the railroad company. Passing over any legal question as to the right of the Government to forfeit lands which have been sold by the railroad under the conditions hereinbefore set forth, it is manifest that these purchasers have equities which ought not to be disregarded.

It is the purpose of this legislation to recognize these equities. The legislation is, in actual effect, rather in the nature of a confirmation of titles. The suggestion made by the Interior Department that compromises be effected only upon the joint action of the Department of Justice and the Interior Department was for the purpose of investigating each case and recognizing the varying equities of the purchasers. This course would require the employment of a numerous field force of special agents, would prolong the controversy, and probably result in failure to settle in many instances.

The committee, after carefully considering the whole subject, and this feature of it in detail, have reached the conclusion that the best course to pursue is that originally suggested by the Department of Justice, namely, treat all purchasers alike and settle with all of them on a uniform basis. Any other course would be no material improvement on proceeding through the courts to a final determination of the litigation.

A brief and partial analysis of the paragraphs is now presented.

Paragraph 1 is designed to confirm and give congressional sanction to the proceedings of forfeiture here-

tofore instituted and now pending under the resolution of 1908. The desirability of this provision is manifest when it is stated that objections have been made by the defendants to the form and proceedure adopted by the Government.

Section 2 provides that the lands when recovered shall not become subject to entry under the public land laws until further legislation is had. Your committee, after carefully considering the matter, decided that until the lands have been recovered and it has been ascertained just what lands are for disposition under the public-land laws, it will prevent confusion and many conflicts from arising to deal with that feature of the subject separately. Moreover, it is also necessary in order to enable the Government to carry out the compromise features with the purchasers.

Section 3 limits to one year the period in which other suits may be brought. The Department of Justice in the beginning doubted the advisibility of suing any purchaser from the railroad company. It may not institute other suits than those now pending. However, the committee recognizes the fact that circumstances may hereafter come to light which would make desirable the institution of new suits, and it is not thought best to now forbid that.

Section 4 is the most important provision in the bill. It deals with the method and terms of compromise to be made by the Government with purchasers from the railroad company.

Decrees based on stipulations are to be entered adjudging that the lands are forfeited to the United States. The defendants are to be permitted to purchase the lands claimed by them at $2.50 per acre. This is to operate as a compromise of all claims of the United States for waste or trespass. This provision applies only to lands patented to the railroad company and sold by it. It does not apply to lands that have not been patented or to lands that the railroads still claims.

Section 5 makes clear that section 4 as to compromise does not apply to the main suit against the Oregon & California Railroad Co. et al.

Section 6 merely seeks to preserve the right of forfeiture by declaring that nothing in this act shall be taken as a condonation or waiver of any condition in the grants or right of the United States to forfeiture.

The bill on the whole is designed to guard and strengthen the rights of the Government as against the railroad company, which in the opinion of the committee can present no equities or claims to equitable consideration. It also recognizes the equities of purchasers from the railroad company and seks to provide a fair and speedy adjustment of them. Taking into consideration the terms of the original grants, the failure to place the conditions of the act of 1869 in the patents, the acquiescence by the Government in the sales and the acceptance by it of titles from the railroad; having regard also to the character of the lands, which render the greater portion of them unfit for cultivation; and

considering local conditions in Oregon, as well as the rights and interests of the Government, it is believed that this legislation presents the fairest solution of the controversy that can be devised.

DEPARTMENT OF JUSTICE,

OFFICE OF THE ATTORNEY GENERAL,

Washington, D. C., March 22, 1912.

Hon. Joseph T. Robinson,

Chairman Committee on the Public Lands, House of Representatives.

Sir: Your letter of March 16, inclosing copy of H. R. 22002, requesting report upon the subject matter of the proposed legislation, together with such suggestions and recommendations as I may desire to make, has been received.

This bill relates to the litigation involving the land grants of the Oregon & California Railroad Co. under the act of Congress approved July 25, 1866, (as amended), and act of Congress approved May 4, 1870. The bill involves three propositions, viz:

(1) The disposition of lands reverting to the United States by reason of claims of forfeiture asserted pursuant to the joint resolution of Congress approved April 30, 1908.

(2) A limitation of the time within which further suits may be instituted involving lands that have been

sold by the Oregon & California Railroad Co.

(3) Authority for the Attorney General to compromise the suits heretofore instituted involving lands sold by the Oregon & California Railroad Co.

The provisions relating to the disposition of the lands reverting to the United States by reason of claims of forfeiture asserted as aforesaid involve no questions of law, but relate strictly to questions of legislative policy. As to this phase of the proposed legislation, I assume that no recommendation is desired from the Department of Justice.

In my judgment the provisions of the bill limiting the time within which further suits may be instituted against purchasers of these railroad lands, and vesting the Attorney General with authority to compromise suits instituted against the purchasers of these lands, are not only unobjectionable, but desirable; and I respectfully recommend that they be enacted into law.

If you desire, the attorney in charge of this litigation will appear before your committee and explain in detail the grounds upon which my recommendations are based. Respectfully,

GEO. W. WICKERSHAM, *Attorney General*

DEPARTMENT OF THE INTERIOR.

Washington, May 24, 1912.

Hon. Reed Smoot,

Chairman Committee on Public Lands, United States Senate.

Sir: I am in receipt, through reference from your committee, for information as to the law and the facts in relation thereto and such suggestions as I may see fit to offer, of Senate Bill No. 5885, being a bill supplementing the joint resolution of Congress approved April 30, 1908, entitled "Joint resolution instructing the Attorney General to institute certain suits, etc."

This bill has been the subject of repeated conferences between this department and the Attorney General, which has been the cause of delay in making report thereon, and as a result of such conferences I have no objection to offer to the provisions of the bill excepting those authorizing a compromise, which are found in section 6 of the proposed bill. Respecting this section, I have to recommend that it be amended so as to read as follows:

"Sec. 6. That the Attorney General is hereby authorized, with the written assent of the Secretary of the Interior, to compromise by written stipulation with one or more of the defendants in any suit or suits heretofore or hereafter instituted pursuant to the provisions of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands sold and con-

veyed, or agreed to be sold and conveyed, by said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight, upon such terms as may appear to be just and equitable, taking into consideration in adjusting such terms all the facts and circumstances respecting the purchase of said lands and the use, occupation, and improvement thereof. Such stipulation may provide that a decree shall be entered in said suit adjudging that the lands involved therein have been and are forfeited to the United States, and that such lands or any part thereof, or any right or interest therein or in any part thereof, may, after the entry of such decree of forfeiture, be repurchased from the United States by such defendant or defendants upon the terms and conditions agreed upon in such stipulation.

"If the defendant or defendants designated in said stipulation, his or their successors or assigns, shall within three months from the entry of said decree file with the Secretary of the Interior a certified copy thereof and duly comply with the terms and conditions of the stipulation aforesaid, the Secretary of the Interior shall forthwith cause a patent or patents to be issued conveying all of the right, title, and interest of the United States in and to such land or such part thereof or such right or interest therein as may be repurchased from the United States under such stipulation, and such patent or patents shall be in all respects in accordance with the terms of such stipulation.

"*Provided, however,* That the provisions of this sec-

tion shall not apply to any lands that have not been heretofore patented to said Oregon and California Railroad Company."

Very respectfully SAMUEL ADAMS,
First Assistant Secretary.

UNION CALENDAR NO. 330.

62d CONGRESS, 2d SESSION.

H. R. 22002

[Report No. 1008.]

IN THE HOUSE OF REPRESENTATIVES.

March 15, 1912.

Mr. Lafferty introduced the following bill; which was referred to the Committee on the Public Lands and ordered printed.

July 16, 1912.

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

[Strike out all after the enacting clause and insert the part printed in italic.]

A BILL

Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney

General to institute certain suits," and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[That all claims of forfeiture heretofore or here-]
[after asserted by the Attorney General on behalf of]
[the United States in or by any and all suits in equity,]
[actions at law, or other judicial proceedings institut-]
[ed pursuant to the joint resolution of Congress ap-]
[proved April thirtieth, nineteen hundred and eight,]
[entitled "Joint resolution instructing the Attorney]
[General to institute certain suits," and so forth, be,]
[and the same are hereby, ratified and confirmed and]
[are hereby declared to be of the same force and ef-]
[fect as declarations of forfeiture by the Congress of]
[the United States.]

[Sec. 2. That none of the lands reverting to the]
[United States by virtue of any right of forfeiture]
[thereto as aforesaid shall be or become subject to en-]
[try under any of the public-land laws of the United]
[States, or to the initiation of any right whatever under]
[any of the public-land laws of the United States ex-]
[cept as hereinafter provided.]

[Sec. 3. That none of the lands reverting to the]
[United States as aforesaid shall be or become subject]
[to State selection, railroad indemnity or lieu se-]
[lection, forest lieu selection, or any other kind of lieu]
[selection or exchange, or to Sioux half-breed scrip,]

[Wyandotte scrip, Porterfield scrip, Valentine scrip,]
[soldiers' additional homestead entry, or any other kind]
[of scrip, the intention hereof being to prohibit the dis-]
[position of any of said lands under any limited or spe-]
[cial right of selection, location, or entry, except as pro-]
[vided by section six of this act.]

[Sec. 4. That after, but not before, any judgment]
[or decree sustaining any right of forfeiture asserted]
[as aforesaid shall become final, with no right of appeal]
[therefrom, all of the lands so adjudged to have revert-]
[ed to the United States shall be disposed of under the]
[general public-land laws of the United States, and]
[shall be opened to settlement, location, and entry by]
[proclamation of the President under the drawing sys-]
[tem, which proclamation shall prescribe the manner]
[in which the lands may be settled upon, located, and]
[entered by persons entitled to make entry thereof]
[under the public-land laws of the United States; and]
[no persons who shall attempt to initiate any right to]
[enter on said lands prior to the time designated, or]
[otherwise in violation of any of the provisions of said]
[proclamation, shall be qualified to initiate, exercise,]
[or enjoy any rights whatever as to any of said lands]
[under the public-land laws of the United States; the]
[purpose hereof being that all such lands shall be]
[opened to entry at such a time and in such a manner]
[that all persons entitled to make entry thereof shall]
[have equal opportunity therefor: *Provided*, That]
[the provisions of this section shall not apply to any]

[lands that shall be disposed of under the provisions]
[of section six of this Act: *And provided further,* That]
[all lands within the exterior boundaries of any national]
[forest which shall revert to the United States as afore-]
[said shall become national forest lands, and shall be]
[disposed of only under the public-land laws appli-]
[cable to forest lands.]

[Sec. 5. That no suits in equity, actions at law,]
[or other judicial proceedings shall be instituted to]
[said joint resolution approved April thirtieth, nine-]
[teen hundred and eight, that shall involve any lands]
[sold by the Oregon and California Railroad Com-]
[pany prior to April thirtieth, nineteen hundred and]
[eight, unless the same shall be instituted within one]
[year from the date of the approval of this Act: *Pro-*]
[*vided,* That this section shall not be construed to ap-]
[ply to any suits in equity heretofore instituted, nor]
[to any of the parties thereto, nor to any of the lands]
[involved therein, nor to the institution of any further]
[suits in equity, actions at law, or other judicial pro-]
[ceedings relating to any of the lands that are involved]
[in said pending suits.]

[Sec. 6. That the Attorney General is hereby]
[authorized to compromise, in the manner hereinafter]
[provided, any suit heretofore or hereafter instituted]
[pursuant to the provisions of said joint resolution ap-]
[proved April thirtieth, nineteen hundred and eight,]
[involving lands purchased from the Oregon and Cali-]
[fornia Railroad Company. In any such suit the At-]

[torney General may, in his discretion, stipulate with]
[the defendant or defendants who purchased said lands,]
[or are the successors or assigns of such purchaser or]
[purchasers, that decree shall be entered adjudging]
[that the lands involved therein have been and are for-]
[feited to the United States; such decree shall recite]
[that the same was entered pursuant to such stipula-]
[tion. If said purchaser defendant or defendants, or]
[their successors or assigns, shall within six months]
[from the entry of said decree file with the Secretary]
[of the Interior a certified copy of said decree, togeth--]
[er with an application to purchase all of the lands ad-]
[judged by said decree to have been forfeited to the]
[United States as aforesaid, and shall pay to the]
[Treasurer of the United States the sum of two dollars]
[and fifty cents per acre for all of the lands so applied]
[for, the Secretary of the Interior shall cause patents]
[to be issued conveying to said purchaser defendant or]
[defendants, and their successors and assigns, all of the]
[right, title, and interest of the United States in and]
[to all of said lands; and such purchase shall operate]
[as a compromise of any and all claims of the United]
[States for waste or trespass upon any of said lands]
[committed by such purchaser defendants, or their suc-]
[cessors or assigns, respectively: *Provided,* That the]
[benefits of this section shall not be exercised or enjoy-]
[ed except in cases where decree shall be entered pursu-]
[ant to stipulation entered into as aforesaid: *And pro-*]
[*vided further,* That the provisions of this section shall]
[not apply to any lands that have not been patented to]

[said Oregon and California Railroad Company; *And*]
[*further provided,* That the aforesaid privilege of pur-]
[chasing said forfeited lands shall not be exercised or]
[enjoyed as to less than all of the lands involved in]
[said suits, respectively; the purpose hereof being to]
[prevent the elimination from any such purchase of]
[any lands from which timber has been removed or]
[upon which any other waste or trespass has been com-]
[mitted.]

[Sec. 7. That the provisions of section six of this]
[Act shall not be construed to apply to the suit, in-]
[volving approximately two million three hundred and]
[sixty thousand acres, now pending in the District]
[Court of the United States for the District of Ore-]
[gon, wherein the United States of America is com-]
[plainant and the Oregon and California Railroad]
[Company, Southern Pacific Company, Stephen T.]
[Gage, Union Trust Company, and others are defend-]
[ants, being designated in the records and files of said]
[court as suit numbered thirty-three hundred and forty;]
[nor shall the provisions of said section six of this Act]
[be construed to apply to any of the lands involved in]
[said last described suit, nor to create any rights or priv-]
[ileges whatever in favor of any of the defendants there-]
[in.]

[Sec. 8. That nothing in this Act contained, nor]
[action taken pursuant to the provisions of this Act,]
[shall be construed as a condonation of any of the]
[breaches of any of the conditions or provisions an-]

[nexed to any of the grants designated in said joint]
[resolution approved April thirtieth, nineteen hundred]
[and eight, nor as a waiver of any of said conditions]
[or provisions, nor as a waiver of any right of forfeiture]
[in favor of the United States on account of any breach]
[or breaches of any of said conditions, nor as a waiver]
[of any cause of action or remedy of the United States]
[on account of any breach or breaches of any of said]
[conditions or provisions, nor as a waiver of any other]
[rights or remedies existing in favor of the United]
[States.]

That all claims of forfeiture heretofore or hereafter asserted by the Attorney General on behalf of the United States in or by any and all suits in equity, actions at law, or other judicial proceedings instituted pursuant to the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled "Joint resolution instructing the Attorney General to institute certain suits," and so forth, be, and the same are hereby, ratified and confirmed and are hereby declared to be of the same force and effect as declarations of forfeiture by the Congress of the United States.

Sec. 2. That none of the lands reverting to the United States by virtue of any right of forfeiture thereto as aforesaid shall be or become subject to entry under any of the public-land laws of the United States, or to the initiation of any right whatever under any of the public-land laws of the United States.

Sec. 3. That no suits in equity, actions at law, or

other judicial proceedings shall be instituted pursuant to said joint resolution approved April thirtieth, nineteen hundred and eight, that shall involve any lands sold by the Oregon and California Railroad Company prior to April thirtieth, nineteen hundred and eight, unless the same shall be instituted within one year from the date of the approval of this Act: Provided, That this section shall not be construed to apply to any suits in equity heretofore instituted, nor to any parties thereto, nor to any of the lands involved therein, nor to the institution of any further suits in equity, actions at law, or other judicial proceedings relating to any of the lands that are involved in said pending suits.

Sec. 4. That the Attorney General is hereby authorized to compromise in the manner hereinafter provided any suit heretofore or hereafter instituted pursuant to the provision of said joint resolution approved April thirtieth, nineteen hundred and eight, involving lands purchased from the said Oregon and California Railroad Company prior to September fourth, nineteen hundred and eight. In any such suit the Attorney General may, in his discretion, stipulate with the defendant or defendants who purchased said lands, or are the successors or assigns of such purchaser or purchasers, what decree shall be entered adjudging that the lands involved therein have been and are forfeited to the United States. Such decree shall recite that the same was entered pursuant to such stipulation. If said purchaser defendant or defendants, or their successors or assigns, shall within six months from the entry of said decree file

with the Secretary of the Interior a certified copy of said decree, together with an application to purchase all of the lands adjudged by said decree to have been forfeited to the United States as aforesaid, and shall pay to the Treasurer of the United States the sum of two dollars and fifty cents per acre for all of the lands so applied for, the Secretary of the Interior shall cause patents to be issued conveying to said purchaser defendant or defendants, and their successors and assigns,, all of the right, title, and interest of the United States in and to all of said lands; and such purchase shall operate as a compromise of any and all claims of the United States for waste or trespass upon any of said lands committed by such purchaser defendant or defendants, or their successors or assigns, respectively; Provided, That the benefits of this section shall not be exercised or enjoyed except in cases where decree shall have been entered pursuant to stipulation entered into as aforesaid: And provided further, That the provisions of this section shall not apply to any lands that have not been patented to said Oregon and California Railroad Company: And provided further, That the aforesaid privilege of purchasing said forfeited lands shall not be exercised or enjoyed as to less than all of the lands involved in said suits, respectively, the purpose hereof being to prevent the elimination from any purchase of any lands from which timber has been removed or upon which any other waste or trespass has been committed, or the elimination of any part whatever of any land from such purchase.

Sec. 5. That the provisions of section four of this Act shall not be construed to apply to the suit involving approximately two million three hundred and sixty thousand acres, now pending in the District Court of the United States for the District of Oregon, wherein the United States of America is complainant and the Oregon and California Railroad Company, the Southern Pacific Company, Stephen T. Gage, the Union Trust Company, and others are defendants, being designated in the records and files of said court as suit numbered thirty-three hundred and forty; nor shall the provisions of said section four of this Act be construed to apply to any of the lands involved in said last described suit; nor to create any rights or privileges whatever in favor of any of the defendants therein.

Sec. 6. That nothing in this Act contained, nor action taken pursuant to the provisions of this Act, shall be construed as a condonation of any of the breaches of any of the conditions or provisions annexed to any of the grants designated in said joint resolution approved April thirtieth, nineteen hundred and eight, nor as a waiver of any of said conditions or provisions, nor as a waiver of any right of forfeiture in favor of the United States on account of any breach or breaches of any of said conditions, nor as a waiver of any cause of action or remedy of the United States on account of any breach or breaches of any of said conditions or provisions, nor as a waiver of any other right or remedies existing in favor of the United States.

Note: Lines in brackets are in Original Bill. Lines in italics are amendments recommended by Committee.

DEFENDANTS' EXHIBIT 335

purposes to be a map issued by Department of the Interior, General Land Office, Fred Dennett, Commissioner, State of Oregon, compiled from the official records of the General Land Office and other sources, under the direction of I. P. Berthong, Chief Drafting Division, 1910, and showing thereon in accordance with legend as marked in different colors: U. S. Surveyor General's office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries; and showing also Military Roads, Light Houses, and Townships not subdivided by special designation.

This map is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 336

is Department Circular No. 62, of date of October 29, 1907, issued by the Treasury Department, subject "Transportation of Government Employees and Property."

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANT'S EXIBIT 337

is Circular No. 16, Quartermaster General's Office,

1912, entitled: "Schedule of Land-grant and Bon-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912, Washington, Government Printing Office, 1912." At page 42 of this circular appears the following:

58.—SOUTHERN PACIFIC COMPANY.

From Roseville Junction, Cal., to East Portland Oreg.

July 25, 1866	14	239	And be it further enacted, That
June 25,,1868	15	80	the grants aforesaid are made
Apr. 10, 1869	16	47	upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit dispatches by said telegraph line for the Government of the United States, when required so to do by any department thereof, and that the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the

rates paid by private parties for the same kind of service. And said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States. —Act of July 25, 1866, Section 5.

This exhibit has also therewith a map of Land-grant and Bond-aided railroads of the United States, 1912.

Bond-aided Roads shown by heavy black lines.

Fifty per cent Land Grant Roads shown by red lines.

Free Land Grant Roads shown by green lines.

Connections shown by light black lines.

Prepared under direction of Quartermaster General, U. S. A. This map shows a Free Land Grant

road between East Portland, now City of Portland, Oregon, and Roseville Junction, in California.

This exhibit is not printed other than as above, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 338

consists of a set of forms furnished by the Quartermaster Department as Government requests for transportation, with conditions and instructions of Bills of Lading, and conditions and instructions as to use of other forms.

This exhibit is not printed but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 339

purports to be a standard map of the Oregon & California Railroad Company in the state of Oregon, and purports to show, according to the legend, in colors, the following:

In red squares	Vacant government land
In red rectangle with black circle	Lands included in Forest Reserve withdrawn from entry
In red rectangle with red circle	Lands included in Power-site Reserves withdrawn from entry

In red rectangle with smaller red circle	Lands included in Fisheries Bureau withdrawn from entry.
In red square with small black circle	Lands included in Indian Reservation withdrawn from entry

and all shown in their relations to the lands within the limits of the grants, place and indemnity.

This map is not printed, but certified up under order of Court and stipulation of parties,

DEFENDANTS' EXHIBIT 340

Estimated Acreage of Public Lands in the Portland and Roseburg, Oregon, Land Districts.

County	Acres
Multnomah	8,000
Washington	280
Tillamook	8,940
Yamhill	7,460
Polk	7,280
Clackamas	72,760
Marion	840
Lincoln	2,560
Benton	6,560
Linn	9,120
Lane	133,040
Coos	37,920
Curry	57,560
Douglas	197,840
Josephine	257,160
Jackson	189,640
Klamath	16,000
Total	1,012,960

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 341

purports to be a summary showing stockholders, directors and officers of the Oregon and California Railroad Company, as shown by the record books of the Company from October 11, 1870, down to and including April 11, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 342

is the standard map of the Oregon & California Railroad Company of the state of Oregon, purporting to show, in colors, lands examined, cruised, and reported upon by the followings persons. S. C. Bruce, S. A. Carmichael, C. A. Cavell, F. J. Cronin, F. A. Elliott, M. F. McCown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, Wm. Penoyar, and A. W. Rees; and purports to show the location of these lands thus examined, cruised and reported upon, within the limits of these grants.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 343

is a detailed statement purporting to show lands cruised by S. C. Bruce, as classified, present condition as to timber grazing and agriculture, and when denuded—

as to grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 344

is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agriculture, and when denuded—as to grazing and agriculture.

This exhibit is not printed but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 345

is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' In the National Forests" and reprinted in the Congressional Record on August 16, 1912, under the subject of "'Farms' In the National Forests," "Extension of Remarks of Honorable William Kent of California In the House of Representatives," and is as follows, as printed in the Congressional Record:

FARMS IN THE NATIONAL FORESTS.

Extension of Remarks of Hon. William Kent, of California, In the House of Representatives, Thursday, August 15, 1912.

Mr. KENT said:

MR. SPEAKER Under the leave granted to me, I include an article printed in the Saturday Evening Post, by Henry S. Graves, Chief of the Forest Service.

The article is as follows:

FARMS IN THE NATIONAL FORESTS.

(By Henry S. Graves, Chief of the Forest Service.)

The statement has been repeatedly made that the national forest policy retards development. The establishment of the national forests is persistently asserted to to have resulted in the withdrawal of vast quantities of agricultural land from settlement. Certain Members of Congress and hostile newspapers have repeatedly charged the Forest Service with locking up thousands of undeveloped farms in the national forests, and by its bureaucratic methods depriving settlers of the rights to which they are entitled by law. Statements on this subject which entirely misrepresent actual conditions have been made so often and so insistently that, although refuted over and over again, many persons unfamiliar with local conditions have come to believe them.

From its inception the national-forest policy has been vigorously opposed by certain interests in the country. The opposition first attempted to break down the whole system and abolish the national forests. This effort has failed because the people at large are convinced that the national forests must be retained, and much less of direct attack upon the national forests is heard now than

formerly. The opposition attempts to accomplish the same ends by less direct methods.

The attack on the Forest Service in its execution of the forest homestead law is part of this campaign against the whole national-forest system. Many critics of the Forest Service have been misled in regard to the agricultural resources within the national forests and the present methods of putting them to use. They unwittingly lend their support to a movement which, if successful ,will begin the disintegration of the national forests and seriously set back the entire conservation policy.

Misleading information persistently circulated regarding the agricultural lands within the national forests resulted last June in the passage by the Senate of a rider to the appropriation bill for the Department of Agriculture, which could not fail to result in turning over public property worth millions of dollars to private exploitation. Although proclaimed in the interest of agricultural settlement, this amendment would block rather than promote the actual use of agricultural resources. It plays directly into the hands of large interests which are always working to secure public property for private exploitation.

This amendment, called the Nelson amendment, was passed by the Senate, but at the present writing has not passed the House. It required the opening to settlement and entry of all lands fit and suitable for agriculture within national forests, irrespective of their value for other purposes or of the need for their retention for

public use. Existing legislation permits but does not require the Secretary of Agriculture to open agricultural lands within national forests for settlement; in other words, it leaves him discretion to hold the land when the protection of the public interest, in his judgment, requires such a course.

The purpose of this article is to place before the public the facts regarding the agricultural resources within the national forests, to show how agricultural lands are now being made available for the settler, and to indicate the results of legislation such as was incorporated in the agricultural bill by the Senate.

The national forests are situated in the mountains. They embrace the bulk of the forest-bearing lands still in Government ownership in the Rocky Mountains, the Cascade Mountains, the Sierra Nevada Mountains of California, and a part of the ranges adjoining the Pacific coast. East of the Rocky Mountains there are national forests only in isolated mountainous areas, like the Black Hills, of South Dakota; the Bigs Horns, of Wyoming; the Wichita Mountains, of Oklahoma; the Ozarks, of Arkansas; and the sand hills of Nebraska and Kansas, with the exception of small forests in Minnesota, Michigan, and Florida.

For the most part the topography of the national forests is very rugged. Their soil and climate in the main are unsuited to agriculture. In drawing the boundaries of the forests all compact bodies of agricultural

land of any extent have been excluded. In every mountain region, however, limited areas here and there along the bottoms of valleys, on benches, and at the confluence of streams are susceptible of cultivation. The forests include several valleys from one-fourth to one-half mile wide and 20 to 40 miles long, covered with dense virgin timber, where a considerable number of farms can be successfully developed after the forest is cut.

THE TRUTH ABOUT OUR TIMBER LANDS.

Under the present laws, as executed by the Forest Service, these lands are passing into the hands of bona fide settlers as rapidly as the timber is removed. Their area has been enormously exaggerated, because of the pressure of speculators to get timber for nothing under the homestead laws. The arable lands on these few river bottoms will not cover over one-half of 1 per cent of the entire national forest area. The rest of the agricultural land is in scattered parcels, in narrow strips along streams or benches, small patches where two streams unite, or semiarid mesas in the southwest.

Much land lying within the national-forest boundaries is in private ownership, having been acquired before the forests were created. Naturally the most valuable lands were the first to be taken up. The result is that one may travel for hours within a national forest, seeing land that is largely capable of agricultural development but that has not been so developed; and the impression is formed that the land is part of the na-

tional forest. Where critics of the Forest Service have designated particular tracts, investigation has often proved that the criticism concerned land already in private ownership. The supposition that such land is a part of the national forest is natural when it is found covered with heavy timber and without evidences of cultivation. Such land is not cleared because the owners are holding it for the future value of its timber.

Not over 4 per cent of the actual forest area has the combination of topography, climate, and soil that would permit the land to be tilled successfully. Fully one-fourth of this amount can not be cultivated without irrigation. At least half of it is now covered with heavy timber and has a much greater value for its timber than for farming. Over one-fourth is now available for settlement and is opened to the homesteader upon application.

These facts are not appreciated by the general public. Statements are made by some newspapers and Members of Congress that great stretches of the national forests are agricultural. The national forests have been likened to lands in Ohio or Indiana when those States were a virgin wilderness. The belief has been spread abroad that, if opened to entry, these areas would be developed in small tracts, the timber removed, and the land put at once under profitable cultivation. It is asserted that single States, like Colorado or Idaho, have been deprived of the settlement of millions of acres of valuable farms. Such statements are not in accordance with

the facts. In comparison with Eastern conditions, the national forests typically resemble the most rugged portions of the White Mountains or Southern Appalachians.

Equally misleading statements have been spread abroad about the policy of the Forest Service. It has been reiterated that the Government declines to release, under the forest homestead law, lands that are chiefly valuable for agriculture; and again, that the narrow and burdensome restrictions read into the law by the Forest Service so hinder and discourage settlement as to make the statute of no effect. It is doubtless through such misrepresentation that the recent Democratic platform refers to the alleged annulment of the will of Congress as to agricultural lands in national forests by administrative regulation. It is unbelievable that those who drew this plank knew either the actual conditions in the national forests or the real facts about what the Government is doing to make the limited agricultural resources of these forests available for use. They certainly could not have realized the consequences of a general throwing open to entry of all lands in the forests having arable soil, regardless of their value for other purposes.

When the national forests were established there was no law permitting the homesteader to obtain lands within them. In 1906 the so-called forest-homestead law was passed, upon the recommendation of the Forest Service. Under this act lands deemed by the Secretary

of Agriculture to be valuable chiefly for agriculture and not needed for public uses are opened to entry. Under this law the Forest Service has consistently encouraged settlement on lands chiefly valuable for growing farm crops. Since 1906 approximately 1,400,000 acres have been opened to entry in accordance with its terms for the benefit of upward of 12,000 settlers.

THE FIRST PRINCIPLES OF FOREST SERVICE.

The Forest Service desires bona fide settlement in the national forests. One of the fundamental principles of the national forest policy is to promote the best use of every kind of land. Settlement not only puts land of greater value for agriculture than for timber or other purposes to its highest use, but also, by bringing settlers into the mountains, makes forest administration and protection easier. The Forest Service needs the help of settlers in fire protection. It is obtaining their assistance in many localities through cooperative arrangements, and is enlisting their services largely as members of the regular protective and administrative force and in the construction of trails and other improvements. Every home builder in a national forest is an immediate asset in its present administration and future development.

Recognizing these facts, the service encourages settlement under the forest homestead act of all lands that are properly classifiable as agricultural and likely to be taken by bona fide home makers. On the other hand, it has consistently resisted efforts to throw large areas of heavily timbered land out of the national forests on

the ground of alleged agricultural value, when it was certain that agricultural development would not be apt to follow.

Frequent efforts have been made to secure such eliminations by presidential proclamation or by act of Congress. The rider recently adopted by the Senate is the result of a determined effort to require the opening to entry of all lands within the national forests which have any agricultural possibilities, regardless of their value for standing timber, water power, or other purposes besides farming, and regardless of the need of portions of such lands for public uses.

In short, though the Forest Service has done its utmost to encourage home building on lands chiefly valuable for agriculture, it has declined to open to entry under the guise of settlement lands that are worth far more for timber or water power than for any possible agricultural use, and that are not wanted for homes at all.

The Forest Service has been subjected to the greatest pressure to throw open the considerable areas that are now covered with valuable timber and will be suitable for agricultural use when cleared of forest. There has also been strong influence brought to bear to separate from the forests timberlands whose topography, soil, and climate absolutely preclude any agriculture. The timberlands now in private ownership in national-forest regions have been obtained from the Government under various public-land laws for nothing or at a very small

price. Large timber holdings have been built up very cheaply, because entrymen were glad to sell their patents for much less than the real value of the timber. Many of the largest owners thus secured their timber for a few cents a thousand feet. Today it is worth from $2 to $5. The establishment of the national forests stopped these speculative profits. Government timber can now be obtained only by paying its actual market value. It is but natural that the effort to secure these resources under the old terms, at a mere fraction of their worth, should be renewed.

THE WASHINGTON PETITION.

The Forest Service is constantly receiving applications for heavily timbered lands under the forest homestead act. The present value of the timber on such areas far exceeds the value of the land for agriculture after the trees are cut. The purpose of most of these applications is to secure the timber for speculation. In many cases applications have been received for timberlands on mountain slopes where there never will and never can be any farming. Petitions for the elimination of large blocks of land from the national forests, where not over 3 or 4 per cent of the area has any potential agricultural value, are common. A petition that had been adopted by the Legislature of the State of Washington was presented to the President, the Secretary of Agriculture, and Congress last winter, to eliminate over 100,000 acres from one national forest in Washington. The petition asserts that the land is chiefly valuable for agriculture

and does not contain heavy timber. As a matter of fact, the main crest of the Cascade Mountains, rising to a height of over 4,000 feet, runs through the middle of the area, which has growing on it not less than one and one-half billion feet of merchantable timber. Practically 90 per cent of the land has such high elevation that clime alone precludes agriculture. On account of adverse climate, rough topography, and unfit soil, not over 5 per cent of the whole tract can ever be farmed. Of this 5 per cent fully one-half is covered with timber running from forty to seventy-five thousand board feet per acre. A small portion may properly be classed as valuable for agriculture; and this is now being given to settlers under the forest homestead act as rapidly as they apply. The heavily timbered portions having arable soil will be cut over as soon as the timber can be disposed of and then opened to settlement.

Many of the areas that speculators are now seeking contain from 100,000 to 200,000 feet of timber to the acre. Single claims of 160 acres would have a value of from $50,000 to $75,000. In the Priest River Valley, in the Kaniksu Forest, Idaho, there are 25,000 acres of arable land, bearing from 60,000 to 125,000 feet of merchantable timber to the acre. Much of this timber is Idaho white pine, the most valuable forest tree of the Northwest. It is now purchased from the Government at prices ranging from $4 to $6 per 1,000 feet. An acre of timberland in this valley is worth from $100 to $500 for its stumpage. A single homestead of 160 acres would have on it timber worth on the stump from $16,000 to

$75,000. Unimproved, the value of the land for farming could not possibly exceed $1,200. Repeated efforts have been made to secure the elimination of this area under the allegation that it is agricultural land. A considerable portion of the 25,000 acres will ultimately be cultivable, but the aim of those seeking it is not farming or home building, but a virtual gift of Government timber of great value.

The Swan River Valley in the Flathead National Forest, Mont., contains upward of 30,000 acres of arable land, bearing a virgin yellow pine forest of 15,000 to 40,000 board feet to the acre. Its value under present conditions is $2.50 a thousand feet, averaging $50 an acre. The timber on an average claim in this valley would be worth $8,000.

The larger valleys of the Olympic National Forest, Wash., and in the national forests on the western slopes of the Cascade Mountains, contain in the aggregate several hundred thousand acres of arable land susceptible of tillage when cleared of its timber. Many of them bear stands ranging from 20,000 to 150,000 board feet to the acre, with individual acres running as high as 300,000 feet. The standing timber upon an average claim in such lands is worth from $10,000 to $50,000. If thrown open to entry under the general homestead laws, most of the lands of this character would be entered by timber speculators—not by bona fide homesteaders. This is shown conclusively by the character of the entries on similar lands prior to the creation of the national forests.

On the vast majority of the so-called homesteads located on heavily timbered lands there has been at best only a nominal and perfunctory compliance with the requirements of the homestead laws. Cultivation has been almost wholly lacking, and the improvements constructed indicate in their very nature the intention of the claimant to maintain but the most temporary sort of residence for the sole purpose of securing title to the standing timber. A careful analysis of the actual cultivation on all of the timbered homesteads located in the Kaniksu National Forest, Idaho, prior to its withdrawal from entry—a total of 95 claims—showed that only 1.34 per cent of the cultivable area on these entries had actually been farmed.

A similar analysis of 71 entries on the Clearwater National Forest, in the same State, showed that only 1.1 per cent of the arable land in these claims had ever been put to agricultural use. The general commutation of such entries, and their almost universal sale to lumber companies as soon as legal title can be conveyed, are further proof that they have not been entered in good faith for settlement and cultivation, but are sought for the speculative value of their timber. Wholly aside from the thousands of cases in the West—matters of court record—where such lands have been entered by employees or representatives of lumber companies in the interests of their employers, there are thousands of other cases where timber and land have been sold to corporations upon the first day when a legal title could be conveyed by

the claimant. Within the last two years white pine homesteads in the Coeur d'Alene National Forest, Idaho, entered before the forest was created, have been sold to timber corporations on the issuance of final certificate at prices ranging from $10,000 to $20,000 to the claim of 160 acres.

LANDS TURNED OVER TO TIMBER SPECULATORS.

It cannot be assumed that the heavily timbered lands that interested persons are now endeavoring to have thrown open to entry would be filed upon by a different class of claimants or would have any subsequent history other than speculative holding for their timber and final acquisition by large lumbering interests. The timber is far more valuable than before the creation of the national forests, and the competition among lumber companies to secure it is much more keen. Furthermore, every elimination of heavily timbered lands hitherto made from the national forests under local or political pressure has had the same history, namely: (1) Entry by timber speculators; (2) purchase by timber corporations.

In 1901, 705,000 acres of heavily timbered land were eliminated from the Olympic National Forest, Wash., because of the persistent claim made locally and in Congress that the land was chiefly valuable for agriculture. Ten years later not over 600 acres of the timbered portion of the 705,000 acres had been cultivated. Title to 523,720 acres has passed into the hands

of owners who are holding it purely for its timber value. Of this amount over 178,000 acres are in the hands of three companies and two individuals in holdings ranging from 15,000 to 81,000 acres. The following is a list of the principal owners of this land 10 years after its elimination:

	Acres.
Milwaukee Land Co.	81,630
James D. Lacey & Co	48,370
Edward Bradley	16,360
James W. Bradley	16,360
Weyerhauser Timber Co.	15,560
Henry & Larson Land Co.	13,840
Simpson Logging Co.	12,360
E. K. Wood Lumber Co.	10,670
Polson Logging Co.	10,040
George F. Stone	8,920
Ruddock & McCarthy	7,810
Olean Land Co.	6,040
Puget Mill & Timber Co.	5,760
W. H. White Co.	5,280
O'Neil Timber Co.	5,200
Edward and Susan Lowe	5,040
St. Paul, Minneapolis & Manitoba Railroad	4,760
H. S. Upper	4,360
Merrill & Ring Co.	4,160
Union Lumber Co.	4,120

C. C. Bloomfield et al	3,720
Goodyear Land Co.	3,640
George M. Burr	3,480
C. H. Davis	3,440
C. E. Burrows & Co.	2,780
James Campbell	2,760
Mason County Logging Co.	2,680
V. H. May	2,560
James McNealy	2,420
Lincoln Timber Co.	2,280
Carsten & Earle	2,240
Total	318,640

The same result has followed eliminations from the Cabinet National Forest, Mont., in the valley of the Kootenai River, made under local pressure on the ground of agricultural value in 1906 and 1907. The Kootenai Valley, traversed by the main line of the Great Northern Railroad, is exceptionally accessible to the settler. Its soil and climate adapt its arable lands peculiarly to intensive and profitable agriculture and horticulture. An examination of these eliminations in 1909, however, showed that a very large percentage of the land opened to entry had been acquired by various concerns that were engaged in building up timber holdings for speculation.

Heavily timbered lands opened to entry under these conditions not only are taken up by speculators and acquired by timber corporations, but their use for agri-

cultural purposes is effectively blocked for an indefinite period. Such lands, consolidated in large holdings, are held by lumber companies for the future supply of their mills. No settlement is possible until the timber is cut, which may be 25 years hence, and then only by the payment of such prices as the owner may require. If retained in the national forests, subject to the forest homestead act, these lands might be secured without charge as rapidly as it was possible for the Forest Service to dispose of the timber.

LUMBER COMPANIES ON THE LOOKOUT.

The demand for agricultural land for bona fide settlement and cultivation has probably been more intense in the Kootenai Valley, Mont., within the last three years than in any other national forest. The condition that is blocking the agricultural development of this remarkably fertile district is not the presence of the national forest; it is the presence of enormous holdings in the hands of lumber companies and of the Northern Pacific Railroad. These heavily timbered holdings are being reserved indefinitely for a rise in the price of timber or for future lumbering operations, as the business policy of the owners may dictate. In the meantime the settlers can not secure an acre of them. On the other hand, all the lands in the national forest that are chiefly valuable for agriculture are being cut off and opened to entry just as rapidly as this can be done.

This condition, which is typical of many portions of

the Northwest, led the residents of the Kootenai Valley to petition, in 1909, that these lands be not eliminated from the national forest, as had been proposed previously, but that they be retained in the forest and opened to entry under the terms of the forest-homestead act. A similar position was taken by local residents and various commercial bodies in the vicinity of the Flathead and Blackfeet National Forests, Mont., who held "that the general opening to entry of the agricultural portions of those forests would retard the substantial, permanent development of that region by inviting locations for timber speculation rather than bona fide settlers."

It is probable that 2 per cent of the net acreage of the national forests is heavily timbered land of arable soil. The standing timber on this land averages at least 10,000 feet an acre, with an average value of not less than $2 a thousand feet. The minimum value of these lands today for their timber may thus be roughly put at $67,000,000. The opening of such areas to entry in their present condition would be nothing more or less than the grant of public timber worth $67,000,000 to private corporations. Though made under the guise of homestead settlement, this action would be the most effective step the Government could take to retard the settling of these lands by people desiring homes and the actual use of the land for agriculture.

TOO BIG A BONUS.

It is repeatedly urged that the settler needs the money represented by the timber standing on his claim to

assist him in improving and developing the land. Even assuming that the individual homesteader rather than the lumber company would be the chief beneficiary of such a policy, it can not be justified as a basis for administering public property. The Government offers the settler an unimproved farm of 160 acres. The greater part of the lands entered under the forest homestead act are worth, as the settler gets them, from five to fifteen dollars an acre. Should the Government add to a farm worth from twelve hundred to three thousand dollars in its raw state a bonus of ten thousand or twenty thousand dollars' worth of timber to aid in its development? Such a bonus represents a gift of public property that is practically equivalent to hard cash taken from the Federal Treasury through loss of the receipts which the timber on such lands would otherwise yield. Twenty-five per cent of it is money that otherwise would be paid into the county school and road funds under the present law governing the disposition of revenues from the national forests.

Such a policy would carry the subsidizing of particular individuals and classes beyond the limits imposed by common sense and by proper regard for the interests of all the people who must pay these amounts out of the general funds. Furthermore, it is against the spirit and intent of our entire homestead legislation. The homestead laws are based upon the principle that the Government will furnish the raw land, while the citizen will furnish the labor required to make it productive. It is not intended that the homesteader shall receive an

endowed farm more valuable than the average farm in the Middle West today that represents the cumulative industry of two or three generations.

But—and this is the kernel of the whole question—the assumption that the timber patented to the entryman with the land will be used to develop it for agriculture is not true of the vast majority of claims. To accept it is blindly to ignore the one fact most convincingly established by the entire history of the public lands. Again, as in innumerable times in the past, the homesteader becomes under these conditions the man of straw set up by interests which seek public resources for speculation and monopoly. The forces that formerly sought to abolish the national forests outright now seek to break them up and parcel them out in the name of agricultural settlement.

The Forest Service constantly receives applications to enter lands that control valuable water powers. Such tracts are located on reservoir and dam sites at points required for the construction of power houses and on the routes of conduit lines. Some of these applications are made in good faith by persons ignorant of the value of the land for controlling the development of water power or irrigation. In the usual case, however, the value of the site is fully known to the entryman, who wants the land for speculation, not for agriculture.

The Forest Service provides for the use of national forest water-power resources by a system permits that allows development while retaining title to the Govern-

ment, but it has declined to release lands wanted for water-power use on the ground that they are of agricultural character. Such lands are not chiefly valuable for agriculture. In comparison with their commercial value for power development they have but insignificant value for farming. A statement was recently made to the Forest Service by one of the water-power companies in California that it would be glad to pay for certain lands required in developing its plant five times as much as they were worth to anybody else for any other purpose. When the power market justifies the development of these sites it is not unreasonable to anticipate that they will be worth not less than $100 for each available horsepower. Many of the sites are within the national forests control from 1,000 to 5,000 horsepower, giving a single site a prospective value of from $100,000 to $500,000.

Though many of these tracts are unquestionably suitable for agriculture, their opening to settlement could have but one result, namely, speculative entries for their future value for the development of hydro-electric power. As soon as the legal title to such entries could be transferred they would be acquired by power companies. This has been done in the past in many parts of the West through homestead and pre-emption entries and mineral locations.

A homestead claim on a certain river in one of the national forests of Idaho, patented upon questionable compliance with the homestead laws, was sold to a power company immediately upon the issuance of final certifi-

cate. This is a typical instance of the efforts made by hydro-electric companies to acquire power sites and of the methods employed when such sites are opened to entry. There is no reason to assume that any different result would follow the segregation from the national forests of agricultural lands that control valuable sites of this character.

Such claims, furthermore, are not necessarily acquired by power companies for immediate development and use. In many instances the sole purpose is to control undeveloped power and prevent its passing into the hands of possible competitors. These sites will be held until the market permits the development and sale of the electric energy which they are capable of producing without affecting the prices paid by consumers. This is the avowed policy of many of the larger companies which control the sale of electric power in particular regions. The entry of such lands, therefore, in a majority of cases would result not only in checking agricultural development, but also in checking development of any kind for an indefinite period. It would simply strengthen monopolistic control of power resources in the hands of a few corporations.

A MONOPOLY OF WATER RIGHTS.

The monopolistic tendencies of the hydro-electric power companies through interlocking directorates and associated or subsidiary companies have been made evident in recent years. This monopoly will be extended

and strengthened to the extent to which the control of additional power sites can be secured by acquiring national forest lands under the guise of homestead settlement, in many instances very small tracts of arable land along mountain streams being sufficient.

There are, roughly, 12,000,000 horsepower capable of hydro-electric development in the national forests. Probably half of this amount is now under the complete control of the United States. That half will have a minimum value when marketable of at least $600,000,000. The net result of legislation like that proposed by the Senate, as to agricultural lands which control these water powers, would be virtually an absolute grant of such powers to corporate ownershop. To the extent to which the public ownership of water powers in the national forests is impaired by such grants, private monopoly of power will be strengthened. The ability of the Government to regulate or control such monopoly by ownership of the natural resources used will be correspondingly reduced. In many instances the wholesale segregation of agricultural lands now proposed would accomplish indirectly what the House of Representatives refused by a decisive vote to permit when it rejected a bill to grant national-forest lands to the Hydro-Electric Co., of California, last winter (H. R. 12572).

Strong pressure is brought upon the Forest Service to permit the private acquisition of other areas whose ownership would result in monopolistic control of other

resources of great value. An excellent illustration is the effort to obtain control of watering holes in the semi-arid regions of the Southwest. The control of single water holes on many of the national forests carries with it the control of large adjacent areas of dry range, often 25,000 to 50,000 acres, which cannot be used unless the stock has access to the water. The practical effect would be to deprive all stock growers, except the entryman who acquires the water, of the use of the range. Many grazing monopolies have been developed in this manner on the public lands of the West by the location of homestead and pre-emption entries and even of mineral claims. This effort to monopolize range has continued since the creation of the national forests, by attempts to secure, under the forest-homestead act and by mineral locations, water holes as chiefly valuable for agriculture. A recent instance on the Kaibab National Forest, Ariz., has been brought to my attention, where mining claims were systematically located so as to control all of the stock-watering places in an enormous area of dry range. These have been patented and are now owned by a large cattle company. Little patches of land surrounding seeps and lakes in these regions are usually arable. The Nelson amendment adopted by the Senate would require them to be opened to entry. Such entries would not be made for agricultural purposes, but for the monopolistic control of grazing lands.

LAKESIDE ENTRIES.

Many areas in the national forests possess great

value to the public for summer camping grounds and recreation. They may or may not be capable of cultivation. Their special value lies in the control of the use and enjoyment of natural features of the forests.

Four hundred thousand people annually resort to these mountain regions for recreation. Many areas on the shores of lakes and large streams, in sections of exceptional scenic beauty, and in mountain meadows that afford the only pasturage for pack and saddle horses, serve their highest usefulness as camping grounds for the public. The private control of such lands, permitting the collection of fees or tolls for uses now secured free from the Government, would be of no small value to entrymen. Many efforts have been made to secure tracts of this character under the forest homestead act. Some are entirely unsuited by soil and climate for farming purposes; others are, in whole or in part, susceptible of cultivation. Powerful pressure has been used upon the Forest Service to throw open tracts on the shores of many of the principal lakes in the national forests, which include the best camping grounds in the vicinity and largely control the use of the lakes themselves.

Fortunately there is no law that permits the private acquisition of lands of this sort that are not suited for agriculture. But even if their tillage is possible, the Forest Service has declined to open them to entry, when the result would be monopoly of camping and recreation grounds and the prevention of free enjoyment of these privileges by the public. Such lands are not wanted for

agriculture. They are not chiefly valuable for agriculture, as the present law requires, because of the far greater service they are rendering to increasing numbers every year for recreation and health.

The amendment adopted by the Senate made the opening of such lands mandatory wherever cultivation is possible. The net result would be, not settlement, but the monopoly by shrewd entrymen of valuable privileges now shared by the people at large.

Small tracts here and there must be used by the Forest Service in protecting and administering the national forests. These areas consist in part of stations where the field force is housed and forage produced as far as practicable for the horses, which must be maintained by the Government for the protection of the forests and by rangers for their official duties. It is essential that the rangers be stationed on the forests directly where their work is to be done. The forests can not be protected without placing rangers on them at strategic points. Over and over again fires that would have caused enormous damage have been extinguished promptly, because of the proximity of a well-located ranger's headquarters. Pastures and facilities for storing fire-fighting supplies are equally essential.

To administer the forests, right of way for roads, trails, and telephone lines must be retained. National-forest timber can not be utilized without sites for sawmills and banking grounds. Land for all of these pur-

poses is not only needed by the Government in protecting and administering the forests, but needed by the public in using them. Nurseries where young trees are grown for reforestation must be had. Thirty-one are now maintained, aside from a number of stations for collecting, extracting, and storing forest-tree seed. Without these facilities little or nothing can be done toward the reforestation of denuded lands. The areas now set aside for all administrative purposes average but 1 to each 33,000 acres of national-forest land. There is serious danger that the more intensive administration of the forests which the future will demand will find the Government inadequately equipped with sites for these essential needs. If any error has been committed, it is the release to settlers of too many tracts that will ultimately be required for public use.

Possibly 50 per cent of the ranger stations contain some arable land. Some twenty-five hundred of them have been improved—the headquarter stations with barns, cabins, and fencing, and by clearing and cropping the land; the nurseries with water systems, intensive cultivation, fertilizing, and suitable buildings; the patrol stations with lookout towers, cabins for storing fire-fighting tools, and small pastures. Over $270,000 have been expended for this equipment, which is absolutely essential to the maintenance and usefulness of the national forests.

WHAT THE SENATE PROPOSED.

Frequent efforts have been made to force the open-

ing to entry of tracts selected and even improved by the Government for these purposes. Certain homesteaders not only want land but stipulate in the order that it shall be provided with a substantial house and barn, and that the rough work of clearing, fencing, and raising the first unremunerative crops shall be done in advance. It has remained for the Sennate to propose a law which, if enacted, would require that this entire equipment of land and improvements be given out of hand to the first applicants, wherever arable land is involved. More than this, the United States would be forever prohibited from reserving for its own use an acre of agricultural land within the national forests. Such action would paralyze the administration of the forests in practically every particular. It would be as reasonable to expect the city of New York to furnish efficient fire protection while forbidding the use of a square foot of land within its borders for housing fire-fighting apparatus.

Nothing could indicate more clearly the purposes of the forces massed behind the latest attack upon the national forests. Men who thus propose to cripple their protection and administration have but one object in view—the breaking up of the forests altogether and the end of conservation as applied to these nationaal resources.

The Forest Service is providing for the settlement of all land in the national forests that is more valuable for agriculture than for other uses and that is not required by the Government in administration. The sys-

tematic classification of such areas was begun in some of the northwestern forests two years ago. Such a classification, under the provisions of the forest homestead act, has subsequently been extended into each of the six national forest districts. It is being prosecuted at the present time as rapidly as the funds made available by Congress will permit.

Under this classification, areas that are essential for public purposes in the administration and protection of the national forests, areas that are chiefly valuable for the control of water powers, and areas that are required for the general use of the public will be reserved. All other lands having value for agriculture will be opened to the homesteader. If their present value for timber greatly exceeds their value for farming, and would invite speculation rather than bona fide settlement and cultivation, the timber will be removed under sale at the earliest possible time and the land then opened for entry. This method has been followed on a number of national forests during the past two years. It has eliminated timber speculation and promoted substantial and permanent agricultural development.

Localities where homesteads have been entered under this plan stand out today in sharp contrast to regions where heavily timbered lands were entered by speculators prior to the creation of the national forests and subsequently acquired and held by lumber interests.

This is the wisest and most logical method of segregating agricultural lands from the national forests. It

is the only method that will insure the acquisition of such lands by settlers in good faith for agricultural use and that will protect the public from monopoly of timber and power. It is my strong conviction that legislation on this subject should be in harmony with this policy and with the provisions of the forest homestead act, which authorizes the Secretary of Agriculture to deal with the question in exactly this way.

FALLACIES ABOUT FOREST LANDS.

Legislation like that adopted by the Senate, on the other hand, would require the opening to homestead entry of lands primarily more valuable for other purposes than for agriculture. Such legislation would not help agricultural settlement in the West or American citizens who are seeking homes. However disguised under the alleged interests of the home builder, it is in effect a direct attack upon the fundamental policy of reserving national resources like timber and water power under public control, to be administered for the general welfare. It would throw these resources open to private speculation and monopoly. It would aid not the homesteader, but the lumber company, the water-power company, the live-stock company, and many other large interests.

The enactment of such legislation will begin the breaking up of our remaining publicly owned national resources. The entire conservation policy is at stake. This should be thoroughly understood now by Congress and by the people.

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Such a step should be taken deliberately and with full knowledge of its consequences. It should be for the people of the United States to choose whether they wish this backward step taken in the policy hitherto followed.

There are now three distinct and well-defined lines of attack on that policy. One is the demand that all the national holdings be parceled out as gifts to the several States. Another is the charge that the national forests are largely made up of lands that do not grow and can not be made to grow a forest cover.

The third charge that they are largely agricultural. In 1911 dismemberment of the national forests was threatened by the Heyburn amendment to the agricultural appropriation bill, which would have required all land not actually bearing at the present time 4,000 feet of merchantable timber to the acre to be thrown out. In the present year, besides the agricultural lands amendment, legislation was proposed to hand over national forests to State ownership.

The net result of a long campaign of misrepresentations has been to create a belief not only that the forests are largely agricultural lands, but also that they are largely lands on which forestry can not be practiced. This belief is now sufficiently general to make sudden legislation likely at any session of Congress.

In this way an amendment of far-reaching results could easily be passed, with little discussion and no real appreciation on the part of many voting for it of its true

character and disastrous effects. The national forests are not blocking development. They are blocking speculation, shortsighted exploitation, and spoliation of the people at large.

Planks looking to the overthrow of the national forest policy have been introduced into the platform of one of the great political parties. It is time for the public to recognize the facts in the situation.

The article as printed in the Saturday Evening Post is not printed, but above articles are certified up by order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 346

is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service—Henry S. Graves, Forester. "Properties and uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir," and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 347

is Circular 150, issued January 23, 1909, by U. S. De-

partment of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," by E. H. Frothingham, Forest Assistant. Page 13 of Circular 150 purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade Range.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 348

is a circular or bulletin issued by the Department of Commerce and Labor, Bureau of the Census, E. Dana Durand, Director. Forest Products, No. 2 Lumber, Lath and Shingles—1910. Compiled in co-operation with the Department of Agriculture: Forest Service, Henry S. Graves, Forester. Issued February 20, 1912. Part of this exhibit is printed in the testimony of Homer D. Angell, volume 6, page 2795 et seq of record, being parts of pages 4, 5 and 6 of this pamphlet, diagram page 7, and 2 paragraphs following, and parts of pages 9, 10, 13 and 17.

This exhibit is not otherwise printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 349

consists of silvical leaflets, numbers 2, 4, 5, 7 and 8, all issued in 1907 by the U. S. Department of Agriculture, Forest Service,—Gifford Pinchot, Forester, and purporting to describe Port Orford Cedar, (range and oc-

currence), White Fir (range and occurrence), Lowland Fir (range and occurrence), Noble Fir (range and occurrence), Red Fir (range and occurrence).

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 350

purports to contain reports of Land Examiner W. J. Lander, of dates March 14, 1912, November 25, 1911, October 6 and 7, 1907, May 24, 1907, May 25, 1907, upon forms of Oregon & California Railroad Company, Land Department, reporting upon specific parcels of land,—and last three reports purporting to give estimates of timber, etc., on specific tracts of land.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 351

is a statement purporting to show lands examined, cruised and reported upon by D. C. McLennan, showing present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 352

purports to be a table showing unsold Congressional lands of the Oregon & California Railroad Company

as assessed and taxed, as shown by tax rolls of Multnomah county, for the years 1875 to 1890, both inclusive, and is as follows:

UNSOLD CONGRESSIONAL LANDS OF THE OREGON AND CALIFORNIA RAILROAD COMPANY AS ASSESSED AND TAXED, AS SHOWN BY TAX ROLLS OF MULTNOMAH COUNTY

Year	Acres	Valuation	Tax.
1875	1112	$1080.00	$15.66
1876	1112	1080.00	16.20
1877	984	970.00	14.55
1878	5155	2085.00	36.48
1879	4877	3575.00	62.56
1880	4643	3325.00	58.18
1881	4522	3350.00	53.60
1822	3910	3250.00	47.13
1883	3030	2450.00	38.22
1884	2766	2350.00	41.36
1885	2566	2250.00	33.07
1886	2625	2250.00	27.78
1887	2406	2625.00	43.83
1888	2486	2625.00	45.15
1889	2137	4100.00	74.62
1890	2485	16960.00	*
* Total Tax			$358.88
Deducted, act. Double Assessment.....			$243.87
			115.01

DEFENDANTS' EXHIBIT 353

purports to be a statement of lands examined, cruised and reported upon by A. W. Rees, showing acreage of, in present condition, classified as timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court, and stipulation of parties.

DEFENDANTS' EXHIBIT 354

purports to be a report of A. W. Rees as timber cruiser, consisting of three sheets, showing timber estimate and description of various parcels of lands.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 355

purports to be a statement of portion of lands examined, cruised and reported upon by F. A. Elliott, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 356

purports to be a statement showing lands examined by S. A. Carmichael, showing area in present condition,

timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 357

purports to be a statement showing lands examined, cruised and reported upon by T. J. Cronin, C. A. Cavell, M. F. McCowan, John D. McDonald, Ben Peck and William W. Penoyar, showing area in present condition, timber, grazing and agriculture, and, when denuded, grazing and agriculture.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 358

purports to be report of Land Examiner A. W. Rees of a particular tract of land.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 359

is a statement purporting to show average assessed value per acre of unsold lands of the Oregon & California Railroad Company, for each year from 1892 to 1911, inclusive, and is as follows:

Year	Average Value Per Acre
1892	$ .75
3	.85
4	.75
5	.78
6	.99
7	.95
8	.95
9	.86
1900	.87
1	1.02
2	1.33
3	1.94
4	1.77
5	2.94
6	4.56
7	7.83
8	8.29
9	8.34
1910	9.64
1	10.32
highest—Columbia	$31.33
lowest—Tillamook	4.74

DEFENDANTS' EXHIBIT 560

is the First Annual Report of the State Forester to the Governor of Oregon, 1911, F. A. Elliott, State Forester, transmitted to the Governor December 1, 1911.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 361

is a pamphlet entitled "The Forests of Oregon" by Henry Gannett, published by Department of the Interior, U. S. Geological Survey, Charles D. Walcott, Director, Washington, Government Printing Office, 1902. This exhibit also has in pocket attached a map of the state of Oregon purporting to show the classification of lands and forests prepared by Gilbert Thompson, from information obtained by A. J. Johnson, 1900, and purports to show on this map, according to legend: Timberless area, Woodland, timber ranging from

0 to 5000 ft. board measure, per acre
5000 to 10000 ft. board measure, per acre
10000 to 25000 ft. board measure, per acre
25000 to 50000 ft. board measure, per acre
50000 ft. board measure, and over, per acre;

Barren, Burnt, Cut timber—not restocking, cut timber —restocking, and northern limit of redwood.

This exhibit and map not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 362

is as follows:

STATEMENT SHOWING TOTAL AREAS EXAMINED BY THE CRUISERS NAMED AND SHOWING THE PRESENT CONDITION OF SUCH AREAS AND THE PROBABLE CONDITION AFTER SUCH AREAS MAY BE DENUDED OF THEIR PRESENT TIMBER GROWTH.

Field Agent	Present Condition				Condition When Denuded	
	Examined Acres	Timber Acres	Grazing Acres	Agri. Acres	Grazing Acres	Agri. Acres
A W Rees	16,351	7,124	6,282	2,945	10,866	5,485
A W Rees	31,907	29,492	2,295	120	30,740	1,167
D C McLennan	170,935	151,725	13,685	5,525	142,025	28,910
D C McLennan	17,104	8,479	8,192	433	15,916	1,188

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Field Agent	Examined Acres	Present Condition Timber Acres	Grazing Acres	Agri. Acres	Condition When Denuded Grazing Acres	Agri. Acres
L D McLeod	65,681	24,108	37,125	4,448	57,506	8,175
S C Bruce	170,309	134,312	27,133	8,864	132,669	37,640
S A Carmichael	89,737	56,756	30,704	2,277	84,599	5,138
C A Cavell	55,618	52,146	3,000	472	46,752	8,866
M F McCown	9,755	8,100	1,655		9,755	
T J Cronin	3,941	3,253	446	242	3,258	683
Ben Peck	13,664	12,592	1,000	72	12,544	1,120
Jno. D McDonald	10,206	10,206			10,206	
Wm. W Penoyar	4,230	3,350	685	195	3,395	835
F A Elliott	2,060	1,878	157	25	1,948	112
	661,498	503,521	132,359	25,618	562,179	99,319
		76%	20%	4%	85%	15%

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DEFENDANTS' EXHIBIT 363

is a map of the State of Oregon, published by J. K. Gill Co. of Portland, Oregon, purporting to show in red outline of Oregon & California Railroad Company, and of land grant made by Act of Congress approved July 25, 1866; and in green outline of Oregon Central Railway Company, West Side, and limits of land grant approved by Act of Congress May 4, 1870.

This map is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 364

is form used by N. H. Martin in making reports on lands, dated October 23, 1912.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 365

is Scarborough's Census Map of Washington and Oregon, purporting to show in different colors, counties, cities, villages, postoffices, steam and electric railways, with stations and distances between stations, and other features, complete index to all places on map, with population according to Census of 1910. Published by the Scarborough Company, Indianapolis, Indiana.

This map is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 366

is a map purporting to show the location of the timber lands on the public domain (approximate), June 30, 1883, to accompany "Public Domain" by Thomas Donaldson. This map purports to show in green colors the locality of the timber lands, and includes therein Oregon and Washington west of and including the Cascade Mountains.

This exhibit is not printed but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 367

is a photograph: View of Oregon City—Willamette Falls. Railroad graded under Elliott in 1868, and is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 368

purports to be memorandum of agreement made April 23, 1867, between the Oregon Central Railroad Company and Albert J. Cook, for the construction of 159 miles of railroad and is as follows:

Memorandum of an Agreement made this 23d day of April in the year of our Lord One thousand eight hundred and sixty seven (1867) by and between the Oregon Central Railroad Company organized under and in accordance with the general laws of the State of Oregon, of the first part & Albert J. Cook of the second part—

WITNESSETH

That whereas the party of the first part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon South to the California line; and whereas the party of the second part doth agree and hereby agrees with the party of the first part to build and equip one hundred and fifty miles of said railroad, with all necessary rolling stock, from Portland South through the Willamette Valley for the sum of Five Millions Two Hundred and Fifty Thousand Dollars ($5,250,000.00) reckoned at gold or specie value, that is to say if payment from time to time be made in national currency, now so called it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the second part doth further agree with the party of the first part to build and equip with rolling stock complete for the working of the same, that is to say the road shall be built upon a uniform gauge of four (4) feet eight (8) and one half (½) inches, the maximum grade not to exceed eighty feet (80 ft) per mile, and a minimum curvature of ten degrees (10 deg.) The width of the roadbed to be eleven feet on the surface. The iron used shall be the best quality known as the T rail weighing at least forty five pounds per linear yard. The ties shall be of the best wood to be obtained

for strength and durability, not less than six by eight inches, and eight feet in length, to be laid at the rate of two thousand six hundred and forty feet per mile. The amount of rolling stock shall consist, for the first division of twenty five miles, extending from Portland to the French Prairie of two first class locomotives weighing not less than sixteen tons each, two first class passenger cars, two baggage or express cars. The next division of about twenty five miles reaching to Salem, one first class locomotive of not less than sixteen tons weight, two first class passenger cars, one baggage car, twelve box cars and two platform cars. For the next division of about twenty five miles reaching to Albany, one first class locomotive, weighing not less than twenty six tons, two first class passenger cars, one baggage car, twelve each box and platform cars. For the next division of about ten (10) miles reaching to near Corvallis, one first class locomotive weighing not less than twenty six tons, two first class passenger and six box cars. For the next division of about thirty miles to Eugene City, one first class locomotive weighing not less than thirty tons, three first class passenger, one baggage and ten each box and platform cars. For the last division of about thirty five miles, two first class locomotives weighing not less than thirty six tons, four passenger cars, twenty box cars and six platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the Company at the rate of one for every ten (10) miles, water tanks as often as once in every twenty miles, where water

can conveniently be had; such locations to be designated by the company. At the large towns designated as the termini of the different divisions, suitable buildings shall be erected for the accommodation of passengers and freight. Depots of ample size to accommodate the business of the road shall be erected in a substantial and durable manner, also engine houses of a sufficient capacity for the safe housing of all the engines.

The contractors shall erect and furnish suitable machinery for a repair shop at a point designated by the company. The president of the company and the engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road.

And the party of the second part doth agree to receive payment for the building and equipping said one hundred and fifty miles of railroad, in the company's first mortgage railroad bonds, payable in twenty years from the date of the same with interest semi-annually, *Provided,* that in case the company while the road is being constructed, is unable from its resources to pay the interest on its bonds issued to the said party of the second part, the same shall be payable in the first mortgage bonds of the company of regular series and character at their par value. All said bonds to be secured by a first or bottom mortgage on said one hundred and fifty miles of railroad and on all the rolling stock thereof. And such amounts in specie as the company may provide. And the party of the first part hereby promises, covenants and agrees with the party of the second part to pay

the sum of five millions two hundred and fifty thousand dollars receivable at gold or specie value as aforesaid, to the party of the second part or to its assigns for constructing and equipping with rolling stock said railroad from Portland in the State of Oregon to the head of the Willamette Valley or a distance of one hundred and fifty miles, and the party of the first part promises, covenants and agrees with the party of the second part to issue or cause to be issued the first-mortgage, gold-bearing railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage, on said one hundred and fifty miles thereof, and on the rolling stock of the same. Interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid. And the said party of the first part agrees that said bonds shall be issued in such form and sums, and to be endorsed if need be to make the same negotiable and satisfactory; and that the engineers employed are to be paid by the party of the second part; and shall be nominated by the party of the second part if they see fit to nominate the same, and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the first part further agrees to deposit in some safe bank in the State of New York designated by the party of the second part, fifteen thousand dollars ($15,000.00) per mile of the amount of said railroad bonds to be delivered to the party of the second part, in payment aforesaid as the Bills of Lading

for iron, rolling stock & other materials shall from time to time be accepted by such engineer; *Provided*: That the company shall not sell or dispose of their regular first mortgage bonds at less than their par value. And the party of the first part further agrees to make monthly payments upon the work as approved by the engineer, reserving twenty per cent of the amount of work done each month until the division is accepted by the commissioners.

And the party of the first part further agrees to use every means in their power to obtain as much cash and money aid from the people of Oregon as is possible for the furtherance of this enterprise.

And the party of the first part further agree to issue two millions of preferred stock of the Oregon Central Railroad Company, bearing interest at seven per cent per annum and deliver the same to the party of the second part immediately after the signing of this contract.

And it is further understood and agreed between the parties hereto, that the work shall be commenced within one year after the signing of this contract and the whole one hundred and fifty miles completed within five years thereafter.

And it is also understood that the common stock of the O. C. R. R. Co. shall be offered for sale to the people of Oregon at ten cents on the dollar, and at the expiration of six months from the commencement of work on the road subscriptions at the same rate shall be received

from any parties whomsoever for the amounts then remaining unsold.

In testimony whereof we Geo. L. Woods, President and Sam'l A. Clarke, Secy., on behalf of the Oregon Central Railroad Company as authorized by the Board of Directors, have hereunto affixed our hands and the seal of said Company, on the part of said party of the first part to the foregoing contract, this the twenty third day of April A. D. 1867, at the office of said Company in the City of Salem, Marion Co., Oregon.

(35 cents in revenue stamps)

(Seal)

Sam'l A. Clarke
Secretary
O. C. R. R. Co.

Geo. L. Woods
President
O. C. R. R. Co.

Witness
T. R. Brooks

J. H. Parker

And for the party of the first part
Albert J. Cook, by
S. G. Elliott, his
Attor'y in fact

(Endorsement on back).

In consideration of the sum of one dollar to me in hand paid, by S. G. Elliott, of San Francisco, the receipt whereof is hereby acknowledged, I do hereby transfer, assign forever, all my right, title or interest in and to the within instrument.

Witness my hand and seal this second day of May, A. D. 1867.

In presence of Albert J. Cook
W. D. Litchfield
(5 cents)
(revenue stamp)

(Endorsement on back of 5th page).

For and in consideration of the sum of Three Thousand ($3000) Dollars to me paid by N. P. Perrine of the City & County of San Francisco, State of California, (the receipt of which before the execution of this assignment is by me acknowledged) I do hereby assign transfer and set over said N. P. Perine the undivided half of seven-tenths of the within & foregoing instrument being three & one-half tenths thereof, excepting the preferred stock of said O. C. R. R. Company.

In witness whereof I have hereunto set my hand & seal this 20th day of May A. D. 1867.

S. G. Elliott (Seal)

In presence of)
)
Walter Van Dyke)

(5 cent)
(revenue stamp)

(Cancellation on front page in red ink; signatures in black ink).

In consideration of one Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto hereby acknowledged and in consideration of other valuable considerations moving from each to the other, it is hereby agreed

between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled, set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Railroad Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached this 29th day of March A. D| 1870.

Witness present
J. H. Mitchell
M. N. Chapman

Ben Holladay & Co.
Oregon Central Rail Road Company
By I. R. Moores
President

(Seal) Oregon Central RailRoad Company
(Incorporated)
(Oregon Central) By Geo. E. Cole
(Railroad Co.)
(1867) Secretary

(Filing Marks on back).

Filed Nov. 24, 1875
Geo. L. Story Clerk
By R. L. Durham Deputy.

Filed June 19" 1876
D. H. Murphy
Clerk.

DEFENDANTS' EXHIBIT 369

purports to be memorandum of agreement of date May 12, 1868, between the Oregon Central Railroad Company and A. J. Cook & Company, for the construction and equipment of 210 miles of railroad, and is as follows: Memorandum of an Agreement made this 12 day of May in the year of our Lord One Thousand Eight Hundred and Sixty Eight by and between "The Oregon Central Railroad Company" organized under and in accordance with the general laws of the State of Oregon of the First Part and the firm of A. J. Cook & Co. of the Second Part:

Witnesseth,

That whereas the party of the First Part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon, South, to the California line, and, *whereas,* the said company of the First Part did contract with the party of the Second Part to build one hundred and fifty miles of the road, commencing at Portland and extending up the Willamette Valley a distance of One Hundred and Fifty miles, said road to be completed within five years from the date thereof; and *whereas,* the party of the First Part are desirous of extending the road to the State line between Oregon and California and as a means of securing the early completion of the same have entered into the following agreement with the said firm of A. J. Cook & Co. upon the following terms.

The party of the Second Part doth agree and hereby agrees with the party of the First Part to build & equip two hundred and ten miles of said railroad, more or less, to or near the State line, with all necessary rolling stock, from the head of the Willamette Valley, commencing at the terminus of the first division of one hundred and fifty miles, and to continue the construction of the same to the South boundary line of Oregon as soon as the first division shall be completed, for the sum of Twelve millions, one hundred and twenty eight thousand dollars ($12,128,000.) reckoned at gold or specie value, that is to say, if payment from time to time be made in national currency, now so called, it shall be in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the Party of the Second Part doth further agree with the Party of the First Part to build and equip with rolling stock complete for the working of the same, that is to say, the road shall be built upon a uniform gauge of four (4) feet, eight (8) inches and one half (½), the maximum grade not to exceed 80 feet per mile, except twelve (12) miles through the Canyon, which twelve (12) miles shall not exceed one hundred (100) feet per mile, and a minimum curvature of (10 deg) ten degrees; the width of the road bed to be eleven feet on the surface. The iron used shall be the best quality known as "T" rail, weighing at least fifty pounds per linear yard; the ties shall be of the best wood to be

obtained for strength and durability, not less than six by eight inches and eight feet in length, to be laid at the rate of two thousand six hundred & forty (2640) per mile.

The amount of rolling stock shall consist of ten first class locomotives, weight not less than twenty one each, —to be furnished at the rate of one for every twenty miles,—and twenty five first class passenger cars—furnished at the rate of one for every ten miles,—four baggage cars, forty box cars and twenty platform cars.

The contractors shall provide suitable stations and turn outs at various points to be designated by the company, at the rate of one for every ten miles; water tanks as often as one in every twenty miles where water can conveniently be had. At the large towns suitable buildings shall be erected for the accommodation of passengers and freight, also engine houses of a sufficient capacity for the housing of all the engines.

The President of the Company and the Chief Engineer of construction shall compose a commission whose approval shall be necessary to the acceptance of the road, and the contractors shall have the right & free use of the railroad from Portland to the extreme southern terminus for the transportation of all the material required in said work, also, as well, all men, horses, mules, cattle, sheep, hogs and provisions of any & every kind required by said party while constructing said road; also all iron, iron rails, bars, castings, spikes, chains switches, machinery, frogs, car wheels, and all timbers for bridges,

trestle work, cattle guards, cross ties and timbers for all depots, stations, and all other material required or to be used, with every thing else required by said contractors in the construction of said road, until said two hundred and ten miles of said road or reaching to the California line, be it more or less, has been completed at the same rate per mile. And the party of the second part shall be entitled to the earnings of the road until each section of twenty (20) miles is accepted by the company.

And the Party of the First Part promises, covenants and agrees with the party of the second part, to issue or cause to be issued the first mortgage gold bearing railroad bonds of The Oregon Central Railroad Co., the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid, and the said party of the first part agrees that said bonds shall be issued in such forms and sums and to be endorsed if need be to make the same negotiable and satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the First Part further agrees to execute a mortgage of thirty two thousand dollars per mile ($32,000.) as a first mortgage on the whole distance of two hundred and ten miles (210) commencing at the

terminus of one hundred and fifty miles at the head of the Willamette Valley, extending to the State line between Oregon & California, and also to execute a second mortgage for twenty five thousand seven hundred and fifty two ($25,752.) dollars per mile.

The party of the first part promise and agree to execute the first mortgage bonds at the rate of twenty five thousand (25,000) dollars per mile, and deliver one million dollars of the same to the party of the second part as soon as the said party of the second part shall report themselves in readiness to enter upon the commencement of the construction of the road under this contract, and exhibit satisfactory evidence that they have purchased materials and stock equal in value to the amount of bonds so issued and to make advancement of bonds at the rate of twenty five thousand (25,000) dollars per mile, for distance of fifty miles in advance of work on the road whenever the party of the second part may request the same & give evidence as required above as to the purchase of materials, or of work performed, and to make monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said engineer, until a distance of twenty miles shall be completed, when the company shall pay the full amount of fifty seven thousand seven hundred and fifty two dollars per mile to said party of the second part as provided in the first part of this contract.

It is understood that the company will exert itself to

obtain aid from the State of Oregon to assist in the building of this road.

It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one hundred and fifty miles shall be completed.

The stock shall be in the following form, to wit:

Capital Stock $11,000,000 $3,000,000. Preferred Stock (non-assessable) Gold Interest bearing (Vignette) & $8,000,000. Common or Assessable Stock .....Shares .....Each

No. Second Series Shares

The Oregon Central Railroad Company

Salem Marion County

State of Oregon April 1868

This Certifies that Albert J. Cook & Co. are entitled to .... shares of the Capital Stock of The Oregon Central Railroad Company, transferrable on the Books of the Company subject to the provisions of the By Laws, by endorsement hereon & surrender of this certificate. The holder of this Second Series Certificate is entitled to 7 per cent yearly interest in gold upon the amount of $3,000,000. advanced by the contractors as a working capital under Second Contract in the construction of the Company's road. Said Second Series Certificates of Stock are issued as collateral security for that amount and to be

non-assessable, the payment of which is secured by a Resolution in the following form "*Resolved,* by the Board of Directors of The Oregon Central Railroad Company, that the President and Secretary are hereby requested to execute $3,000,000. of *non-assessable Preferred Stock,* and deliver the same to the contractors as part payment for the construction of the road, and as collateral security for moneys advanced by said contractors as a working Capital. Said stock to be *non-assessable* and to bear interest at the rate of 7 per cent per annum, payable in gold coin, and there is hereby set apart as a sufficient amount out of the net earnings of the second division of the road, extending from the end of the first division to the Oregon State line, to pay the same.

(Vignette)

Secretary President

The parties hereto agree that the terms of this contract shall come in force as soon as the first One Hundred and Fifty miles shall be completed & that it shall be completed within five years from that date.

And in relation to all the terms, stipulations, covenants and agreements of the foregoing contract, it is hereby expressly agreed, that on the completion of the present contract for 150 miles of road, it shall be optional with The O. C. R. R. Company, party of the First Part hereto, to surrender to the contractors the road herein provided for and assign to them all the rights of the company therein, in which case the said contractors shall

accept the same in full satisfaction of all claims arising under the contract as against said Company, or their road of 150 miles so now being constructed, and all facilities within their power shall be extended by said O. C. R. R. Company to enable said contractors to hold, own & operate said extension of said road under the laws of Oregon.

Witnessed by		I. R. Moores President
Geo. Anderson	(Seal)	O. C. R. R. Co.
	(Oregon)	
E. D. Towl	(Central)	S. A. Clarke
	(Railroad)	Secretary O.C.R.R.
	(Co.)	Company
	(Incor-)	
	(porated)	
	(1867)	A. J. Cook & Co.

(Cancellation on front page in red ink; signatures in black ink).

In consideration of One Dollar paid by each of the parties hereto by the one to the other and the receipt whereof is by each of the parties hereto acknowledged and in consideration of other valuable considerations moving from each to the other. It is hereby agreed between the Oregon Central Railroad Company and Ben Holladay & Co. parties to the within contract that the within contract be and the same is hereby cancelled set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the Oregon Central Rail Road Company by the signatures of I. R. Moores President and George E. Cole Secretary thereof and the seal of said corporation attached

this 29th day of March A. D. 1870.

Witness present
J. H. Mitchell
M. N. Chapman

(Seal)
(Oregon Central)
(Railroad Co.)
(Incorporated)
(1867)

Ben Holladay & Co.
Oregon Central Rail Road Company
By I. R. Moores
President
Oregon Central Rail Road Company
By Geo. E. Cole
Secretary.

(Filing Marks on back).

Filed Nov. 24 1875

Geo. L. Story Clerk

By R. L. Durham
Deputy

Filed June 19" 1876

D. H. Murphy
Clerk.

(40 cents in revenue stamps)

DEFENDANTS' EXHIBIT 370

is an assignment from Albert J. Cook to S. G. Elliott of his contract of April 23, 1867, with the Oregon Central Railroad Company, and is as follows:

Know all men by these presents: That I Albert J. Cook of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, to me in hand paid by S. G. Elliott, of San Francisco, of the second part, the receipt whereof is here-

by acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said party of the second part, his executors, administrator, and assign, a certain contract with the "The Oregon Central Railroad Company," bearing date the twenty third day of April A. D. 1867 and executed at the city of Salem, Oregon.

In witness whereof I have hereunto set my hand and seal the second day of May A. D. 1867.

Albert J. Cook

Signed sealed and delivered)
)
in the presence of)
)
W. D. Litchfield)

(On margin).

Exhibit "W," attached to S. G. Elliott's deposition.

J. G. M.

DEFENDANTS' EXHIBIT 371

is a photograph, purporting to show "Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868." Used as an exhibit in the case of Holladay and Emmet vs. Elliott et al. This exhibit is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 372

is a map of the Country Club Orchard Tracts, The Rogue River Orchard Company, owners.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 373

consists of certified copies of letters: May 7, 1870, J. D. Cox Secretary, to Hon. Jos. S. Wilson, Commissioner of the General Land Office; May 23, 1870, Jos S. Wilson, Commissioner, to Hon. George H. Williams, U. S. Senate; May 23, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Oregon City, Oregon:—relating to transfer of the Oregon Central Railroad to the California and Oregon Railroad Company. Letter May 20 1872, Willis Drummond, Commissioner, to Hon. C. DeLano, Secretary of the Interior, referring to certain papers filed in his office by George H. Williams, Attorney General, for the purpose of obtaining a construction by the Department of the proviso of the Act of April 10, 1869, amendatory to the Act of July 25, 1866, namely, the 160-acre at $2.50 an acre clause. Copy of this exhibit is as follows:

"M. L. 268839.
"B"
"M. F. H.

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE"
"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of letters "dated May 7th, and 23rd, 1870, and May 20th, 1872, "respectively, are true and literal exemplifications of "the originals and press-copies of letters in this office.

"IN TESTIMONY WHEREOF I have hereun- "to subscribed my name and caused the seal of this office "to be affixed, at the city of Washington, on the day "and year above written.

(Signed) " H. W. SANFORD,
(Seal) "Recorder of the General
"Land Office."

"M. L. 268839 L. G. & R. R.

"DEPARTMENT OF THE INTERIOR

"Washington, D. C., May 7, 1870.

"Sir:

"Evidence has been filed in this Department by Geo.

"E. Cole, Esq., Secretary of the Oregon Central Rail-
"road Company, of Salem, Oregon, that said company
"have sold and transferred all their rights, interests,
"&c. to the California and Oregon Railroad Company,
"of Portland, Oregon.

"Very respectfully,
"Your ob't servant,
"J. D. Cox,
"Secretary.

"Hon. Jos. S. Wilson,
"Com'r of the
"Gen'l Land Office."

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE,

May 23d, 1870.

"Hon. G. H. Williams,
"U. S. Senate.

"Sir:

"Pursuant to your oral request of this morning, I
"have the honor to state, that evidence is on file to the
"effect that the 'Oregon Central Rail Road Company,'
"of Salem, Oregon, have sold and transferred all their
"rights interests, & c. to the California and Oregon Rail
"Road Company of Portland, Oregon, and we have this
"day dispatched such information to the Register and
"Receiver at Oregon City, Oregon, and to be governed
"accordingly in relation to the matter.

"I am sir, very respectfully,
"Jos. S. Wilson, Commissioner."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"May 23, 1870.

"Register & Receiver,

"Oregon City, Oregon.

"Gentlemen:

"I have been advised by the Secretary of the Interior "to the effect that the Oregon Central Railroad Com- "pany of Salem, Oregon, have sold and transferred all "their rights, interests, & c to the California and Oregon "Railroad Company of Portland, Oregon, and you will "be pleased to govern yourself accordingly in relation "to the matter.

"Very respectfully,
Jos. S. Wilson,
"Commissioner.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"May 20th, 1872.

"Hon. C. Delano,

"Secretary of the Interior.

"Sir:

"I have the honor to lay before you certain papers "filed in this office by the Hon. Geo. H. Williams, "Atty. General for the purpose of obtaining a con-

"struction by the Department of the proviso of the Act "of Congress approved April 10th 1869 Stat. 16, p. "47—amendatory to the Act of July 25th 1866, Stat. "Vol 14— p. 239—granting lands to aid in the construc- "tion of a Rail Road and Telegraph line from the Cen- "tral Pacific Rail Road in California to Portland in "Oregon, which reads as follows: 'That the lands grant- "ed by the Act aforesaid shall be sold to actual settlers "only in quantities not greater than one quarter Section "to one purchaser, and for a price not exceeding two dol- "lars and fifty cents per acre.

"As the Company request an expression of opinion "by the Department, the papers are hereby submitted.

"I am sir,

"Very respectfully,

"Willis Drummond,

"Commissioner.

DEFENDANTS' EXHIBIT 374

consists of certified copies of form of deed of European & Oregon Land Company, letter from I. H. Moores, Land Agent, to Hon. Willis Drummond, Commissioner of the General Land Office, of January 23, 1874, and letter of March 13, 1874, Willis Drummond to I. R. Moore, in reference to lands said to have been erroneously patented to the Oregon and California Railroad Company. Copy of this exhibit is as follows:

DEFENDANTS' EXHIBIT 374

"M. L. 268839.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR

"GENERAL LAND OFFICE

"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of papers "and letter, are true and literal exemplifications of the original papers and press-copy of letter in this office.

"IN TESTIMONY WHEREOF I have hereunto "subscribed my name and caused the "seal of this office to be affixed, at "the city of Washington, on the day (Seal) "and year above written.

(Signed) "H. W. SAWYER,
"Recorder of the General Land "Office."

"Deed No. ..... from the

"EUROPEAN AND OREGON LAND COM- "PANY,

"Incorporated at San Francisco, Cal., December 19, "1870,, under and pursuant to the Laws "of California.

"KNOW ALL MEN BY THESE PRESENTS,
"That the European and Oregon Land Company, for
"and in consideration of the sum of .....
"..... Dollars, in legal money of the United
"States, to it in hand paid by .....
"of ..... County, State of Oregon, the receipt
"whereof is hereby acknowledged, doth grant, bargain,
"sell, release and convey unto the said .....
"..... and .....legal
"representatives, the following described real estate,
"to-wit:
"containing according to the United States survey there-
"of .....100 acres, be the same more or less.

"TO HAVE AND TO HOLD, the said premises,
"with all the rights, privileges and appurtenances there-
"unto belonging, unto the said .....
"..... and ..... legal representatives forever.
"Reserving, however, and saving and excepting from
"the transfer made by these presents, any right of way,
"or reservations made by or for the Oregon and Cali-
"fornia Railroad Company.

"The said ..... for
"..... and ..... legal representatives hereby
"covenanting and agreeing that they shall and will con-
"struct and maintain along the lines of the said Oregon
"and California Railroad, or any of its branches, wher-
"ever the same may adjoin or traverse the above de-
"scribed premises, a good and substantial fence, suffi-
cient to turn cattle.

"AND WHEREAS, the Oregon and California "Railroad Company, did, on the fifteenth day of April, "A. D. one thousand eight hundred and seventy, make, "execute and deliver to Milton S. Latham, Faxon D. "Atherton and *William Norris*, of the City of San Fran- "cisco, a certain Trust Deed, of that date, which is re- "corded in the office of the County Clerk of Multnomah "County, in the State of Oregon, wherein said Company "conveyed to the said Trustees, for the uses and purposes "in said Trust Deed mentioned, among others the lands "hereinbefore described.

"AND WHEREAS, the said Trustees, Milton S. "Latham, Faxon D. Atherton and William Norris, did "on the twenty-eighth day of March, A. D. one thousand "eight hundred and seventy-one, make, execute, and de- "liver to the European and Oregon Land Company, a "certain Indenture (to which said European and Ore- "gon Land Company and the Oregon and California "Railroad Company were parties, accepting and ratify- "ing the same) which is recorded in the offices of the "County Clerks of Multnomah, Clackamas, Marion, "Linn and Douglas ..... "Counties, in the State of Oregon, whereby for the uses "and purposes in said Indenture set forth, the said "Trustees conveyed to the said Land Company, among "others, the lands hereinabove described:

"AND WHEREAS, the said European and Ore- "gon Land Company have sold and conveyed to the said ..... and ..... legal repre-

"sentatives, the above described real estate:

"NOW, THEREFORE, KNOW ALL MEN "BY THESE PRESENTS, that we, the said Milton "S. Latham, Faxon D. Atherton and William Norris, "mentioned in said Trust Deed and Indenture, above "referred to, in consideration of the sum of..... "..... Dollars, in Gold Coin of the United "States to us in hand paid by the said European and "Oregon Land Company, and the receipt whereof is "hereby acknowledged, do hereby remise, release and "forever quit-claim, unto the above mentioned grantee "of the said Land Company, and to ..... legal rep- "resentatives, the real estate hereinabove described, to be "by them held free and exempt from all liens, incum- "brances and charges of said Trust Deed and Indenture, "but subject however to the reservation and condition "as to rights of way and fencing hereinabove recited.

"IN WITNESS WHEREOF, the said European "and Oregon Land Company has caused these presents "to be subscribed by its President and its Corporate "seal to be hereto affixed and attested by its Secretary; "and the said Trustees have hereunto set their hands, "all at the City of San Francisco, in the State of Cali- "fornia, on this .... day of ..... in the year one "thousand eight hundred and ....

"In the presence of .....

..... President E. & O. Land

..... Company.

.....)
.....) Trustees
.....)

"Attest, ...

"Secretary.

"M. L. 268839—D—8.

"STATE OF CALIFORNIA))
) ss
"CITY AND COUNTY OF SAN FRANCISCO)

"Be it remembered, that on this .... day of .....
"A. D. 18...., before me a Commissioner of Deeds for
"the State of Oregon, duly commissioned and sworn, ap-
"peared the European and Oregon Land Com-
"pany, by ..... its President, and .....
"its Secretary, who were personally known to me to be
"the identical persons whose names are subscribed to the
"foregoing Instrument as President and Secretary of
"the said Land Company, and then and there acknowl-
"edged the signing and ensealing of the within Instru-
"ment, to be their voluntary act and deed, and the volun-
"tary act and deed of the said Land Company. And
"on the ..... day of ..... A. D. 18...., like-
"wise personally appeared before me, the within named
"Milton S. Latham, Faxon D. Atherton and William
"Norris, personally known to me to be the Trustees de-
"scribed in, and who executed the foregoing Instru-
"ment, and severally acknowledged before me that they
"executed the same as such Trustees freely and volun-
"tarily, and for the uses and purposes therein set forth.

"IN WITNESS WHEREOF, I have hereunto "set my hand and affixed my official seal at the City of "San Francisco, the day and year last above written.

.....

"Commissioner of Deeds for the State of Oregon

"I. R. MOORES, Land Agent.

"OREGON AND CALIFORNIA RAILROAD COMPANY.

"LAND DEPARTMENT.

"Portland, Or. Jan. 23, 1874.

"Hon. Willis Drummond,

"Com'r. Gen'l. Land Office.

"Sir:

"Your letter of the 13th ult. addressed to Mr. Hol- "laday Prest. O. and C. R. R. Co. with Copy of letter "enclosed, relating to certain tracts of land for which "Patents had been issued to the Company and which "were subsequently ascertained to be embraced in valid "claims, and requesting Mr. Holladay to execute a quit "claim Deed to the rightful owners of such lands, has "been referred to me with instructions to inform you, "that *all* the lands enuring to the Company by the terms "of the Act of July 25, 1866, have been disposed of to "the European and Oregon Land Company. a Corpora- "tion organized under the Laws of California, with its "principal office in San Francisco, subject to a mort-

"gage to three Trustees to secure the payment of the "bonded debt of the Board. To give clear title to the "lands and free it from the mortgage lien, it is neces- "sary to obtain title from the E. and O. Land Co. in "which conveyance the Trustees join. One of the Trus- "tees is now in Europe, but will return within the next "sixty days, when the deeds will be duly executed as re- "quested. "The claimants here have been notified of the "condition of facts as stated above. I enclose one of our "blanks which will fully explain the situation.

"Very respectfully,

"I. R. MOORES,

"Land Agent."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE

"Washington, D. C.

"March 13, 1874.

"I. R. Moores, Esq.,

"Land Agt. Oregon & Cal. R. R. Co.,

"Portland, Oregon.

"Sir:

"The Register & Receiver at Oregon City, have re- "cently filed James Waldrup's Donation Certificate No. "4325, covering lots 2 & 3 of sec. 13, Tp. 3 S., R. 3 E., "42.21/100 acres, settlement March 15th 1854.

"It is shown that the above lots were selected under "the act of July 25th, 1866, and inadvertantly patented "May 9th, 1871, to the 'Oregon & California' Rail Road "Company.

"I therefore respectfully request a relinquishment "of said lots on the part of said Rail Road Company, in "order that Mr. Waldrup's certificate may pass for pat- "enting.

"The receipt of your letter of 23d Jany. last is "acknowledged, stating that as soon as the return of one "of the Trustees of your Company from Europe, the "Company would execute 'quits claim' deeds for the "tract requested by my letter of 22d April last.

"I have also to add that the printed form of 'quit "claim' deed in use by the European & Oregon Land "Company, and which accompanied your letter of 23d "January, will be satisfactory to this office.

"Very respectfully,

"Willis Drummond, Commissioner."

DEFENDANTS' EXHIBIT 375

consists of certified copies of telegram, Schultze, Land Agent, to Commissioner of the General Land Office, June 20, 1876; July 14, 1876, letter J. A. Williamson, Commissioner, to P. Schulze, acknowledging receipt of letter and seven quit claim deeds; letter June 28, 1876, Schulze to Commissioner, forwarding deeds; deeds Nos. 146, 147, 148, 149, 150, 151, and 153 for certain tracts,

inadvertantly patented to O. & C. R. R. Co.; letter Schulze to Commissioner July 9, 1877; letter June 19, 1877, J. A. Williamson, Commissioner, to P. Schulze, Land Agent, requesting relinquishments to the United States of certain land; letters April 27, 1877, and April 30, 1877, of same tenor; letters August 10, 1877, and Aug. 10, 1877 same subject; letter Commissioner to Schulze, September 5, 1877, acknowledging receipt of deed; deed No. 152, Trustees to Waldrup; Sept. 6, 1877, Williamson to Register and Receiver, Oregon City, Jan. 28, 1878, Schulze to Commissioner; February 16, 1878, Williamson to Schulze, acknowledging relinquishment; relinquishment Trustees to United States; Aug. 4, 1881, N. C. McFarland, Commissioner, to Schulze, Aug. 25, 1881, Schulze to Commissioner, June 11, 1887, Geo. H. Andrews to Commissioner G. L. O. July 2 1877, Wm. A. J. Sparks, Commissioner, to Geo. H. Andrews; May 9, 1887, deeds O. & C. R. R. Co. to United States; Letter Oct. 21, 1887, A. C. Jones, Receiver at Roseburg, Oregon, to Commissioner G. L. O. October 19 1905, D. A. Chambers, Attorney O. & C. R. R. Co., to Commissioner of the General Land Office. J. H. Fimple, Acting Commissioner, to Chambers November 9, 1905. Deed Aug. 1, 1905, O. & C. R. R. Co. to United States; All in reference to lands erroneously patented.

Copy of this exhibit is as follows:

"M. L. 268839.

"B"

"M. F. H.

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE
"WASHINGTON

April 11, 1912.

"I hereby certify that the annexed copies of papers and "letters, are true and literal exemplifications of the orig- "inal papers, letters and press-copies of letters in this "office.

"IN TESTIMONY WHEREOF I have hereunto "subscribed my name and caused "the seal of this office to be (Seal) "affixed at the city of Washing- "ton, on the day and year above "written.

(Signed) H. W. Sawyer,
Recorder of the General Land Office.

"236 6:50 P. M.

"THE WESTERN UNION TELEGRAPH COMPANY.

"Dated Portland, Oregon, June 20, 1876.

"Received at N. E. cor. 14th St. and Penn Ave.,
"Washington, D. C., 6:46 P. M.

"To Hom. Com'r. Gen'l Land Office,
"Washington.

"In reply to letter of third inst. have to state that

"delay in execution of relinquishment is caused by se-
"vere illness of one of our trustees, who has thus far
"been unable to sign deed. Hope to get the deed next
"week.

"Schulzer,
"Land Agt.
"O. & C. R. R."

" 'F'. T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"Washington, D. C.

"July 14, 1876.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal. R. R. Co.,
"Portland, Oregon.

"Sir.

"I have to acknowledge the receipt of your letter
"of 28th ultimo, and seven accompanying 'quit claim'
"deeds executed the the 22nd ultimo, by the Oregon &
"California Rail Road Company in compliance with
"our letter of April 22d, 1873, for the following de-
"scribed tracts, inadvertently patented May 29th, 1872,
"to said Company.

"Lots 1, 2 & 3	Sec.	5,	T 10 S.	R. 2 W.
"SE ¼		13	18	2
"S ½ SW ¼		1	16	3

"W ½ NE ¼ & lot 4,	5	18	3
"W ½ NE ¼ & NW ¼	3	14	5
"S ½ SE ¼	Sec. 29	14 S.	R 5 W.
"NW ¼ of SE ¼	25	16	6.

"Very respectfully,

"J. A. Williamson,

"Commissioner."

"LAND DEPARTMENT

"OREGON and CALIFORNIA R. R. Co.

"Portland, Oregon, June 28th, 1876.

"To the Hon. Commissioner office

"General Land Office.

"Washington, D. C.

"Sir.

"I have the honor, herewith, to transmit to you quit "claim deeds, numbered 146, 147, 148, 149, 150, 151 & "153, for certain tracts which were inadvertently pat-"ented to this company.

"I do not send a deed for Lots 2 & 3 Sec. 13 T. 3S "R 3 East, as requested in your letter of March 13th, "1874 because we have sold one of said tracts, not know-"ing that they were covered by a Donation Entry. It "will take some time before this matter can be straight-"ened up.

"Please acknowledge the receipt of the above deeds.

"Very respectfully,

"P. Schulze,

"Land Agent O. & C. R. R."

"WHEREAS: The lands hereinafter described, were "heretofore Patented by the U. S. Government to the "Oregon and California Railroad Company and em- "braced in a certain Trust deed of said Company to us, "dated the 15th day of April, 1870 and are part of the "Donation land claim of Jeremiah Criss & Starke Dona- "tion Certificate No. 4059 and as such excepted from "the Grant to said Oregon and California Railroad "Company, and

"WHEREAS: The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Jeremiah Criss and Starke, now, therefore, we

"MILTON S. LATHAM.

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees for and in "consideration of the premises do grant, bargain, re- lease, convey and quitclaim unto the said Jeremiah Criss "& Starke and their legal representatives, the following "described real estate, to wit:—The West half of the "North East Quarter and The North West Quarter of "Section Three (3) Township Fourteen South of Range "Five (5) West, Willamette Meridian, situate in Ben- "ton County, Oregon and containing Two hundred and

"and forty-three (243) and 18/100 acres—to have and "to hold the said premises with all rights and appurten- "ances thereunto belonging, unto the said Jeremiah "Criss & Starke and their legal representatives forever."

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"IN PRESENCE OF

". G. L. MURDOCK

". S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June, "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing at San Francisco, in the "State of Californa, duly commissioned and sworn, per- "sonally appeared the within named Milton S. Latham, "Faxon D. Atherton and William Norris, personally "known to me to be the persons described in and who "executed the foregoing instrument, and severally "acknowledged before me that they executed the same "as such Trustees freely and voluntarily and for the "uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand

"and affixed my official seal the day and year last above "written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"WHEREAS; The lands hereinafter described, "were heretofore Patented by the U. S. Government "to the Oregon and California Railroad Company and "embraced in a certain Deed of Trust of said Company "to us, dated the 15th day of April 1870, and are part "of the Donation land claim of Rogers Pepiot Donation "Certificate No. 1734, and as such excepted from the "Grant to said Oregon and California Railroad Com-"pany, and Whereas; the Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Rogers Pepiot. Now, therefore we,

"MILTON S. LATHAM,

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees, for and in "consideration of the premises, do grant, bargain, re-"lease, convey and quitclaim, unto the said Rogers Pep-"iot and his legal representatives, the following described "real estate, to wit:

"The South half of the South West Quarter of Sec-"tion One (1) Township Sixteen (16) South of Range "Three (3) West, Willamette Meridian, situate in Linn "County, Oregon and containing Eighty (80) 00/100

"Acres.—to have and to hold the said premises with all "the rights and appurtenances thereunto belonging, un- "to the said Rogers Pepiot and his legal representatives "forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June, "A. D., 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing in San Francisco, in the "State of California, duly commissioned and sworn, per- "sonally appeared the within named,

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru- "ment and severally acknowledged before me that they "executed the same as such Trustees fully and voluntar- "ily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand

"and affixed my official seal, the day and year last above written.

S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

"WHEREAS; The lands herein after described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and em- "braced in a certain Trust Deed of said Company to us, "dated the 15th day of April, 1870, and are a part of "the Donation land claim of Cornelius Hackshaw Dona- "tion Certificate No. 1823, and as such excepted from "the Grant to said Oregon and California Railroad Com- "pany, and whereas: The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed to "said Cornelius Hackshaw, Now therefore we.

"MILTON S. LATHAM,

"FAXON D. ATHERTON and

"WILLIAM NORRIS, Trustees for and in "consideration of the premises, do grant, bargain, re- "lease, convey and quitclaim unto the said Cornelius "Hackshaw and his legal representatives the following "described real estate, to wit:

"The South East Quarter of Section Thirteen (13) "Township Eighteen (18) South of Range Two (2) "West. Willamette Meridian, situate in Linn County,

"Oregon and containing one hundred and sixty (100)
"00/100 Acres.

"To have and to hold the said premises with all the "rights, and appurtenances thereunto belonging, unto "the said Cornelius Hackshaw and his legal representa-"tives forever.

"In witness whereof we have hereunto set out hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of
"G. L. MURDOCK
"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing in San Francisco in the "State of California, duly commissioned and sworn, per-"sonally appeared the within named.

"Milton S. Latham Faxon D. Atherton and Wil-"liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru-"ment, and severally acknowledged before me that they

"executed the same as such Trustees freely and voluntar-
"ily and for the uses and purposes therein set forth.

"IN WITNESS WHEREOF, I have hereunto
"set my hand and affixed my official seal, the day and
"year last above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon.

"WHEREAS; The lands hereinafter designated
"were heretofore Patented by the U. S. Government to
"the Oregon and California Railroad Company and em-
"braced in a certain Trust Deed of said Company to
"us dated the 15th day of April, 1870 and are part of
"the Donation land claim of Reuben Draper Donation
"Certificate No. 2611, and as such excepted from the
"Grant to said Oregon and California Railroad Com-
"pany, and Whereas; The Commisisoner of the General
"Land Office has requested said Oregon and California
"Railroad Company to cause the same to be conveyed
"to said Reuben Draper. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in
"consideration of the premises, do grant, bargain, re-
"lease, convey and quit claim unto the said Reuben
"Draper and his legal representatives the following de-
"scribed real estate to wit:

"The North West Quarter of the South East Quar-

"ter of Section Twenty-five (25), Township Sixteen "(16) South Range Six (6) West. Willamette Meri- "dian, situate in Lane County and containing Forty "00/100 acres.....to have and to hold the said premises "with all rights and appurtenances thereunto belonging "unto the said Reuben Draper and his legal representa- "tives forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of
"G. L. MURDOCK
"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me a commissioner of Deeds for the "State of Oregon, residing in San Francisco in the State "of California, duly commissioned and sworn, personally "appeared the within named.

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally know to me to be the persons "described in and who executed the same as such "Trustees freely and voluntarily and for the uses and "purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal, the day and year last above "written.

"S. O. PUTNAM, Commissioner

"of Deeds for the State of Oregon."

"WHEREAS: The lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870, and are part of "the Donation land claim of William L. Lucky Dona- "tion certificate No. 1777, and as such excepted from "the Grant to said Oregon and California Railroad "Company, and whereas; The Commissioner of the Gen- "eral Land Office has requested said Oregon and Cali- "fornia Railroad Company to cause the same to be con- "veyed to said William L. Lucky. Now therefore we

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in

"consideration of the premises, do grant, bargain, re- "lease, convey and quit claim, unto the said William L. "Lucky and his legal representatives the following de- "scribed real estate to wit:

"The west half of the North West Quarter of Lot "number Four (4) of Section Five (5), Township

"Eighteen (18) South of Range Three (3) West Wil-
"lamette Meridian, situate in Lane County, Oregon and
"containing one hundred and five 00/100 acres.....to
"have and to hold the said premises with all rights and
"appurtenances thereunto belonging unto the said Wil-
"liam L. Lucky and his legal representatives forever.

"In witness whereof, we have hereunto set out hands
"and seals this twenty-second day of June A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
)ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June,
"1876, before me, a Commissioner of Deeds for the State
"of Oregon, residing at San Francisco, in the State of
"California, duly commissioned and sworn, personally
"appeared the within named.

"Milton S. Latham, Faxon D. Atherton and Wil-
"liam Norris, personally known to me to be the persons
"described in and who executed the foregoing instru-
"ment and severally acknowledged before me that they
"executed the same as such Trustees freely and volun-
"tarily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last "above written.

"S. O. PUTNAM, Commissioner,
of Deeds for the State of Oregon."

"WHEREAS; The lands hereinafter described "were hereinbefore Patented by the U. S. Government "to the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870 and are part of "the Donation land claim of George W. Caton, Dona-"tion Certificate No. 1856, and as such excepted from "the Grant to said Oregon and California Railroad Com-"pany, and whereas; The Commissioner of the Gen-"eral Land Office has requested said Oregon and Cali-"forna Railroad Company to cause the same to be con-"veyed to said George W. Caton. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton, and

"William Norris, Trustees for and in "consideration of the premises, do grant, bargain, re-"lease, convey and quit claim unto the said George W. "Caton and his legal representatives the following de-"scribed real estate, to wit:

"The South half of the South East Quarter of Sec-"tion Twenty-nine (29) Township Fourteen (14) "South, of Range Five (5) West. Willamette Merid-

"ian, situate in Benton County, Oregon and containing "Eighty (80) 00/100 acres.....to have and to hold the "said premises with all rights and appurtenances there- "unto belonging, unto the said George W. Caton and "and his legal representatives forever.

"In witness whereof we have hereunto set our hands "and seals this twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS. (Seal)

"In presence of

"S. O. PUTNAM,

"G. L. MURDOCK

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this twenty-second day "of June, A. D. 1876, before me, a Commissioner of "Deeds for the State of Oregon, residing in San Fran- "cisco, in the State of California, duly commissioned and "sworn, personally appeared the within:

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the persons "described in and who executed the foregoing instru- "ment, and severally acknowledged before me that they "executed the same as such Trustees freely and volun- "tarily and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal, the day and year last "above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"WHEREAS; the lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and "embraced in a certain Trust Deed of said Company "to us, dated the 15th day of April, 1870, and are part "of the Donation land claim of Henry H. King, Dona- "tion Certificate No. 3975, and as such excepted from "the Grant to said Oregon and California Railroad Com- "pany, and whereas; The Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Henry H. King. Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris, Trustees for and in "consideration of the premises do grant, bargain, re- "lease, convey and quit claim unto the said Henry K. "King, and his legal representatives, the following de- "scribed real estate, to wit:

"Lots Number One (1), Two (2) and Three (3) "of Section Five (5), Township Ten (10) South of "Range Two (2) West. Willamette Meridian, situate

"in Marion County, Oregon and containing Thirty-six "(36) and 90/100 acres.....to have and to hold the "said premises with all rights and appurtenances there- "unto belonging, unto the said Henry H. King and "his legal representatives forever.

"In witness whereof, we have hereunto set our hands "and seals this Twenty-second day of June, A. D. 1876.

"MILTON S. LATHAM (Seal)
"F. D. ATHERTON (Seal)
"WM. NORRIS. (Seal)

"In presence of,
"G. L. MURDOCK
"S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this twenty-second day "of June, A. D. 1876, before me, a Commissioner of "Deeds for the State of Oregon, residing at San Fran- "cisco, in the State of California, duly commissioned and "sworn, personally appeared the within named.

"Milton S. Latham, Faxon D. Atherton & William "Norris, personally known to me to be the persons de- "scribed in and who executed the foregoing instrument, "and severally acknowledged before me that they exe- "cuted the same as such Trustees freely and voluntarily "and for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"LAND DEPARTMENT
"OREGON AND CALIFORNIA R. R. CO.

"Portland, Oregon, July 9th, 1877.

"The Hon. Commissioner of the
"General Land Office.
"Washington, D. C.

"Sir:

"Referring to your letter of June 19th I beg to state "that this company is going to furnish a quit claim deed "for the tracts described in the said letter.

"There will, however, be some delay in the execution "of the deed, owing to the protracted illness of one of "the mortgage trustees who have to execute the deed.

"Very respectfully,

"P. SCHULZE."

"'F' T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
"June 19, 1877.

"P. Schulze, Esq.,

"Land Agt. Oregon & Cal. R. R. Co.,

"Portland, Oregon.

"Sir:

"In patent No. 1 issued May 9, 1871, to the Oregon "and California Rail Road Company, the selection of "SW ¼ sec. 7-Tp. 1 S., R. 4 E., 160.20/100 acres, is "included, and is shown to be in conflict with donation "certificate No. 4200 of Gilmer Kelly, issued June 25, 1873, alleging settlement May 14, 1854.

"Also in patent No. 2 issued July 12th, 1871, the "selection of lot 5, sec. 29-Tp. 9 S., R. 3W. 58.80 acres "is included, and is shown to be in conflict with donation "certificate No 4432 of Willis Osborn, issued June 27, "1874, alleging settlement August 1st, 1854.

"In order therefore to remove the cloud of title rest- "ing upon said donation claims, I have to request your "company to furnish a full relinquishment to the United "States.

"Very respectfully,

"J. A. WILLIAMSON,
"Commissioner."

"'F' T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
"April 27, 1877.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal. R. R. Co.,
"Portland, Oregon.

"Sir:

"In patent No. 2, issued July 12th, 1871, to the "Oregon and California Rail Road Company, the S ½ "of NW¼ of NW¼, sec. 3-Tp. 6 S., R. 1W., 19.45/100 "acres, is in conflict with the donation claim of John "W. Cleaver, certificate No. 4639, alleging settlement "25th November, 1853.

"Therefore in order to remove the cloud of title rest- "ing upon said Cleaver's entry—I have to request your "Company, to furnish a complete relinquishment of said "tract to the United States as Railroad land.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"'F' T. C.
W. D. Jr.

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
April 30, 1877.

"P. Schulze, Esq.,
"Land Agt. Oregon & Cal R. R. Co.,
"Portland, Oregon.

"Sir:

"In patent no. 2, issued July 10th, 1871, to the Ore-
"gon and California Railroad Company, lots 1, 2, 3, &
"4, sec. 31-Tp. 6 S. R 5 West, 68.44/100 acres, are
"in conflict with donation claim of Green B. Savery,
"certificate No. 4445, alleging settlement 25th Novem-
"ber, 1853.

"Therefore in order to remove the cloud to title rest-
"ing upon said Savery's entry, I have to request your
"company to furnish a complete relinquishment of said
"lots to the United States.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"LAND DEPARTMENT

"OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10th, 1877.

"The Hon. Commissioner of the

"General Land Office.

"Washington, D. C.

"Sir:

"Your letters of April 27th and April 30th were mis-"laid and therefore left unanswered, having just found "them, I beg to state that quit claim deed to the United "States for the tracts described in the said letters will "be issued as soon as a mortgage trustee will have been "appointed by the Court in place of F. D. Atherton, "deceased.

"Very respectfully,

"P. SCHULZE,

"Land Agt. O. & C. R. R. Co."

"LAND DEPARTMENT

"OREGON AND CALIFORNIA R. R. CO.

Portland, Oregon, August 10, 1877.

"The Hon. Commissioner of the

"General Land Office.

Washington, D. C.

"Sir:

"I have the honor to enclose herewith as quit claim "deed for lots 2 and 3 of Sec. 13 T. 3 S. R. 3 E. contain- "ing 40.21 acres to James Waldrup, the receipt of which please acknowledge.

"I am, sir,

"Very respectfully,

yours

"P. SCHULZE,

"Land Agent."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
"Sept. 5, 1877.

"P. Schulze, Esq.,

"Land Agent O. & Cal. R. R. Co.,
"Portland, Oregon.

"Sir:

"I have to acknowledge receipt of your letter of 10th "ulto, and accompany quit claim deed for Lots No. 2 "and 3 of Sec. 13, Tp. 3 S. R. 3 E., 42.21/100 acres, "made by the Oregon and California Rail Road Com- "pany, June 22d, 1876, in accordance with our letter "of March 13, 1873.

"Very respectfully,

"J. A. WILLIAMSON,

"Commissioner."

"WHEREAS; The lands hereinafter described, "were heretofore Patented by the U. S. Government to "the Oregon and California Railroad Company and em- "braced in a certain Trust Deed of said Company to "us, dated the 15th day of April, 1870 and are part "of a donation land claim of James Waldrup, Donation "Certificate No. 4325 and as such excepted from the "Grant to said Oregon and California Railroad Com- "pany, and whereas; the Commissioner of the General "Land Office has requested said Oregon and California "Railroad Company to cause the same to be conveyed "to said Isaac Waldrup, Now therefore we,

"Milton S. Latham,

"Faxon D. Atherton and

"William Norris,

"Trustees for and in consideration of the premises do "grant, bargain, release, convey and quit claim unto the "said James Waldrup and his legal representa- "tives, the following described real estate, to wit:

"Lots number Two (2), and Three (3) of Section "Thirteen (13), Township Three (3) South of Range "Three (3) East. Willamette Meridian, situate in "Clackamas County, Oregon and containing Forty two "(42) 21/100 acres—to have and to hold the said "premises with all rights and appurtenances thereunto "belonging unto the said James Waldrup and his legal "representatives forever.

"In witness whereof, we have hereunto set out hands "and seals this twenty-second day of June, 1876.

"MILTON S. LATHAM (Seal)

"F. D. ATHERTON (Seal)

"WM. NORRIS (Seal)

"In presence of

"G. L. MURDOCK

"S. O. PUTNAM.

"State of California,)
) ss.
"County of San Francisco.)

"Be it remembered that on this 22nd day of June "A. D. 1876, before me, a Commissioner of Deeds for "the State of Oregon, residing at San Francisco in the "State of California, duly commissioned and sworn, per- "sonally appeared before me, the within named.

"Milton S. Latham, Faxon D. Atherton and Wil- "liam Norris, personally known to me to be the per- "sons described in, and who executed the foregoing in- "strument, and severally acknowledged before me that "they executed the same as such Trustees freely and "voluntarily, and for the uses and purposes therein set "forth. In witness whereof, I have hereunto set my "hand and affixed my official seal, the day and year last "above written.

"S. O. PUTNAM, Commissioner
of Deeds for the State of Oregon."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

Washington, D. C.,
"Sept. 6, 1877.

"Register & Receiver,
"Oregon City, Oregon.

"Gentlemen:

"The selection of lots 2 & 3 of sec. 13-Tp. 3 S., R. "3E.-42.21 acres, by the Oregon and California Rail-"road Company, under the Acts of July 25, 1866, and "June 25, 1868, and same patented May 9, 1871, I have "now to state were duly relinquished by said Company, "June 22d 1876, upon the showing that said selection was "in direct conflict with the donation claim of James "Waldrup, certificate No. 4325, issued Jany. 28, 1874.

"Please note on your records said relinquishment and "refer to this as letter F.

"Very respectfully,
"J. A. WILLIAMSON,
"Commissioner."

"LAND DEPARTMENT

"OREGON & CALIFORNIA R. R. CO.

"Portland, Oregon, Jan. 28th, 1878.

"The Hon. Commissioner of the

"General Land Office.

"Washington, D C.

"Sir:

"Referring to your letters "F" dated April 27th, "April 30th and June 19th, 1877 respectively I beg to "enclose herewith our relinquishment to the following "described land, to wit:

"S. W. 4 Sec. 7 T. 1 S. R. 4 E; Lot No. 3 of Sec "29 T. 9 S. R. 3 W.; Lots 123 & 4 Sec. 31 T. 6 S. R. "5 W.; & S. 2 of N. W. 4 of N. W. 4 Sec. 3 T. 6 S. "R. 1 W.

"Please acknowledge receipt.

"Very respectfully,

"P. SCHULZE,

"Land Agt. O. & C. R. R. Co."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,
February 16, 1878.

"P. Schulze, Esq.,

"Land Agt. O & Cal. R. R. Co.

"Portland, Oregon.

"Sir:

"I have to acknowledge the receipt of your letter of "28th ultimo, and accompanying relinquishment of the "Oregon and California Railroad Company, made the "19th ulto, in accordance with my letters of April 27 "and 30th and June 19, 1877, for the following described "tracts.

"SW1/4 sec. 7—Tp. 1 S. R.—4 E, 160.20 acres.

"S1/2 of NW1/4 of NW1/4, sec. 3, Tp. 6, S. R. 1 W. 19.45 acres.

"Lots 1, 2, 3 & 4, sec. 31, Tp. 6, S. R. 5 W., 68.44 acres.

"Lot 5, sec. 29, Tp. 9, S. R. 3 W., 5080 acres.

"Very respectfully,

"J. A. WILLIAMSON,

"Commissioner."

"WHEREAS; The hereinafter described tracts and "parcels of Real Estate, are included in patents issued "by the United States to the Oregon and California "Railroad Company under Act of Congress of June "25th, 1866 and

"WHEREAS; the same are parts of the land con- "veyed by the said Oregon and California Railroad "Company to Milton S. Latham, Faxon D. Atherton "and William Norris, Trustees, by a certain Trust Deed, "dated the 15th day of April, 1870, and

"WHEREAS; it appears that the said tracts of "land are also embraced in certain Donation entries, and

"WHEREAS; The Commissioner of the General "Land Office of the United States has requested a re- "linquishment of the said tracts to the United States.

"Now therefore we, Milton S. Latham and William "Norris as only surviving and acting Trustees of the "Trust declared in the said Deed of Trust of the 15th "day of April, 1870. (The said Faxon D. Atherton "having died on the 18th day of July, 1877), in consid- "eration of the premises, do hereby release and forever "quitclaim, unto the United States and unto their suc- "cessors and assigns the following described parcels and "tracts of real estate, to wit:

"The S. W. ¼ of Sec. 7, Township 1 South of R. "4 E. and Lot number 5 of Section 29 in T. 9 S. R. 3 "W. and Lots number 1, 2, 3 and 4 of Section 31, T. "6 S. R. 5 W. and the South half of the N. W. ¼ of "N. W. ¼ of Section 3 in T. 6 S. R. 1 W. Willamette "Meridian.

"Together with all and singular the tenements, "hereditaments and appurtenances thereunto belonging "or in anywise appertaining—to have and to hold the "same to the said United States and to their successors "and assigns forever, with all appurtenances thereto be- "longing free from all claim thereon on the part of us, "the said Milton S. Latham and William Norris, Trus- "tees, or any one claiming the same by or through, or "under us in any way or manner whatsoever.

"In witness whereof, we have hereunto set our hands "and seals this day of 1876.

"In presence of

"R. T. POLK "MILTON S. LATHAM (Seal)

"S. O. PUTNAM. "WM. NORRIS (Seal)

"State of California,

"County of San Francisco.

"Be it remembered that on this 19th day of January, "1878, before me, a Commissioner of Deeds for the State "of Oregon, residing at San Francisco in the State of "California, duly commissioned and sworn, personally "appeared before me, the within named Milton S. "Latham and William Norris, personally known to me "to be the persons described in, and who executed "the foregoing instrument, and severally acknowledged "before me that they executed the same as such Trus- "tees freely and voluntarily, and for the uses and pur- "poses therein set forth.

"In witness whereof, I have hereunto set my hand "and affixed my official seal the day and year last above "written.

"San Francisco.

"S. O. PUTNAM,

Com'r. of Deeds for the State of Oregon."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Washington, D. C.,

"Aug. 4, 1881.

"P. Schulze, Esq.,

"Atty. Oregon and California R. R. Co.,

"Portland, Oregon.

"Sir:

"On May 29, 1872, there was patented (list No. 3) "to the Oregon and California Railroad Company the "NW¼ NW¼ of Section 33, T. 18 S., R. 4 W., Rose-"burg land district, Oregon, This tract was erroneously "included in the patent of that date, embracing other "lands.

"The records show that said tract, since February "1, 1853, has been covered by the donation claim. Noti-"fication No. 2624 of Hollen Bailey and Elizabeth "Bailey, his wife, made June 17, 1853, under act of Con-"gress approved Sept. 27, 1850. January 5, 1880, do-"nation certificate No. 2085, issued thereon.

"There can be no question that under said act of Con-
"gress said Bailey and wife, can claim title to said land
"as of the date of settlement, February, 1, 1853.

"The proofs show compliance with the law, and the
"land absolutely vested in said claimants prior to the
"act of July 25, 1866, granting lands to said railroad
"company (see case of Hall vs. Russell, 11 Otto, 503).

"The railroad company are requested to reconvey
"title in said land to the United states in order that when
"patent shall issue on the donation claim, there may be
"no cloud upon the title. Of course the company will
"be entitled to select other lands in lieu thereof accord-
"ing to the provisions of the second section of the act of
"July 25, 1866.

"An early reply is requested.

"Respectfully,

"N. C. M'FARLAND,

"Commissioner."

"LAND DEPARTMENT,
"OREGON & CALIFORNIA R. R. CO.,

"Portland, Oregon, August 25th, 1881.

"in applying for land,
"describe it by section,
"township and range, in
"all correspondence relating
"to contracts always give
"number of contract.

P. SCHULZE,
Land Agent.

"The Hon. Commissioner of the General Land Office.
Washington, D. C.

"Sir:

"Referring to your letter "F" of 4th inst. I have "the honor to advise you that this company will comply "with your request to give a quit claim deed to the "United States for the N. W. 4 of the N. W. 4 of Sec- "tion 33, Township 18 South Range 4 West.

"There will be, however, some delay in the issuance "of such deed as it will require some time to obtain the "signatures of the mortgage trustees of this company.

"Very respectfully,
"PAUL SCHULZE,
"Land Agent of the Oregon and California R. R. Co."

"OREGON & CALIFORNIA RAILROAD COMPANY,

"R. Koehler, Receiver.

"Portland, Or. 11th June, 1887.

"The Hon.

"The Commissioner of the General Land Office,

"Washington, D. C.

"Dear Sir:

"Herewith I beg to hand you deed of this Company "to the following pieces of land patented to the Com- "pany by error as per request of your letters dated "Jany. 12, 1885, F. 1609. January 31, 1885 and letter "to Mr. Koehler dated April 25, 1877, viz.

"N . W. ¼ of N. W. ¼ Section 33 Tp. 18, S. R. "4 West.

"N. W. ¼ of S. E. ¼ and N. E. ¼ of S. W. ¼ "Section 29, Tp. 14 S. R. 1 East.

"S. E. ¼ of N. W. ¼ Section 29 Tp. 11 S R. 1 "East.

"The two first pieces included in patent dated May "29, 1872 and the last in patent dated July 12, 1871.

"Please acknowledge receipt and oblige,

"Yours truly,

"GEO. H. ANDREWS,"

"Refer in reply to this initial. F.

S. S. M., M. P. D., CMW

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Washington, D. C.,

"July 2, 1887.

"Geo. H. Andrews, Esq.,

"Portland, Oregon.

"Sir:

"As requested I hereby acknowledge the receipt of "your letter of the 11th inst., and accompanying deed "reconveying to the United States the NW¼ NW¼ "Sec. 33, Tp. 18 S., range 4 W.; the NW¼ SE¼ and "NE¼ SW¼ sec. 29, town. 14S, range 1 E., and "SE¼ NW¼, sec. 29, town 11 s., range 1 E., Ore- "gon. Said deed was executed by the Oregon and Cali- "fornia Railroad Company for the purpose of remov- "ing the cloud from the titles of Hollen Bailey and wife, "James Huntsucker, and Cyrus Lundy under donation "certificates 2085, 1958 and 5228, respectively.

"Very respectfully,

"WM. A. J. SPARKS,

"Commissioner."

"This indenture witnesseth, that whereas patents "have been erroneously issued for the hereinafter de- "scribed parcels of land, by the United States to the "Oregon and California Railroad Company, of Port- "land, Oregon, under the Act of Congress of July 25th, "1866, granting lands to said Company to aid in the "construction of its railroad and telegraph line therein "mentioned; and whereas said Railroad Company has "been requested by the Government to reconvey to it the "said parcels of land:

"Now therefore, in consideration of the premises "and of One Dollar to it paid, the receipt whereof is "hereby acknowledged, the said Oregon and California "Railroad Company doth hereby grant and convey, and "the Farmers Loan and Trust Company, a corporation "created and existing under the laws of the State of New "York, being the Trustee or Mortgagee of said lands, "so granted to said Railroad Company by said Act of "Congress, doth hereby remise and release unto the "United States, the northwest quarter of the northwest "quarter of section thirty three, in Township eighteen "South of Range four West, of the Willamette Merid- "ian, and the northwest quarter of the southeast quar- "ter, and the northeast quarter of the southwest quarter "of section twenty-nine, in Township fourteen South of "Range one East, of the Willamette Meridian, all in- "cluded in patent issued to said Railroad Company May "29th, 1872; and the southeast quarter of the northwest "quarter of section twenty nine in Township eleven

"South of Range one East, of the Willamette Meridian, "included in patent issued to said Railroad Company "July 12th, 1871; all in the State of Oregon.

"To have and to hold the said tracts or parcels of "land above described unto the United States in fee "simple forever.

"And the said Oregon and California Railroad Com- "pany doth certify unto the United States that said lands "hereby reconveyed to the Government are free from all "encumbrance done and suffered by said Railroad Com- "pany, in any way, manner or form whatsoever.

"In witness whereof the said Oregon and California "Railroad Company, and the said Farmers' Loan and "Trust Company, have caused these presents to be "sealed with their respective seals and to be executed by "their respective Presidents and Secretaries, on this 9th "day of May A. D. 1887.

"M. S. CUNNINGHAM,)
"A. D. MARSHALL)
"Witnesses to the)
"execution hereof by)
"the O. & C. R. R. Co.)

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By GEO. H. ANDREWS,
"2nd Vice-President,

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. BRETHERTON,
Secretary.

"C. A. BOUTRELL.)
)
)
)
)
"Witnesses to the)
"execution hereof by the)
"F. L. & T. Co. (
"G. SEARLES.)

THE FARMER'S LOAN AND TRUST COMPANY.

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST COMPANY.

By WM. H. LEUPP,
Secretary.

"State of Oregon,)
)ss.
"County of Multnomah.)

"Be it remembered that on this 9th day of May A. "D. 1877, before me, the undersigned, a Notary Public "in and for the County of Multnomah and State of Ore- "gon, duly commissioned and qualified, personally came

"George H. Andrews, 2nd Vice-President of the Ore-
"gon and California Railroad Company, and Walter W.
"Bretherton, Secretary of said Company, whose names
"are subscribed to the foregoing instrument as 2nd Vice-
"President and Secretary of the said Company, both
"personally known to me to be the said individuals
"named and described in, and who executed the said in-
"strument, and they severally acknowledged to me that
"he, the said George H. Andrews, as 2nd Vice-Presi-
"dent, and he, the said Walter W. Bretherton, as Sec-
"retary of the said The Oregon and California Railroad
"Company, executed the foregoing instrument as and
"for the act and deed of said Corporation, for the uses
"and purposes therein mentioned; and he the said Wal-
"ter W. Bretherton, being by me duly sworn, did de-
"pose and say that he is the Secretary of the Oregon
"and California Railroad Company, and resides at Port-
"land, Multnomah County, Oregon; that he is the legal
"custodian of, and is acquainted with and has in his pos-
"session, the corporate seal of said Company; and that
"the seal affixed to the foregoing instrument is such cor-
"porate seal; that the same was so affixed by him as Sec-
"retary of the said Company on the 9th day of May,
"A. D. 1887, by order of the Board of Directors of said
"Company, and that he signed his name thereto by the
"like order of the Board of Directors of said Company.

"In witness whereof I have hereunto set my hand and
"affixed my official seal the date first above written.

"F. E. EWAN,

(Seal) Notary Public in and for the State of Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it remembered that on this first day of June, A. "D. 1877 before me, a Commissioner of the State of "Oregon in the State of New York, residing in said City "of New York, personally came Rosewell G. Rolston, "President of the Farmer's Loan and Trust Company, "the corporation described in the foregoing instrument, "and who is personally known to me; and he being by "me duly sworn, did depose and say that he is, and at the "time of the execution of said instrument was, the Presi- "dent, and that William H. Leupp is, and then was, "the Secretary of the said Company; and that he knows "the corporate seal of said Company, and that the seal "affixed to the foregoing instrument as such is said "corporate seal; that the said seal was so affixed by au- "thority of the Board of Directors of said Company; and "that he, Rosewell G. Rolston, as President aforesaid, "signed, and the said William H. Leupp, as secretary "aforesaid, attested the said instrument by like author- "ity. And the said Rosewell G. Rolston, President as "aforesaid, acknowledged the execution of said instru- "ment as the act and deed of the said The Farmers' Loan "and Trust Company, for the uses and purposes therein "expressed.

"IN WITNESS WHEREOF, I have hereunto "subscribed my name and affixed my official seal, at my

"office in the City of New York, the date and year afore-
"said.

(Seal) "G. SEARLS,

"Commissioner for the State of Oregon, in the State
"of New York.

"Pursuant to an order of the Circuit Court of the
"United States for the District of Oregon, bearing date
"February 9th, 1885, in the case of Lawrence Harrison
"et al. vs. the Oregon and California Railroad Company
"et al. of record in said Court and Cause; I do hereby
"approve the execution of the within deed as and upon
"the considerations and terms therein expressed.

"Witness my hand and seal this 8th, day of June,
"A. D. 1887.

R. KOEHLER,
Receiver."

"UNITED STATES LAND OFFICE,

"Roseburg, Oregon, Oct. 21, 1887.

"Hon. Commissioner,

"General Land Office,

"Washington, D. C.

"Dear Sir:

"Referring to your letter "F" dated July 2, 1887,
"I herewith return to you the deed therein referred to,
"the same having been recorded in all the counties in

"which the land is situated, (Linn and Lane), and be-
"ing returned to this office by the Register and Receiver
"of Oregon City Land Office.

"Very respectfully,

"A. C. JONES,

"Receiver."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C. June——, 1887.

"I, Wm. A. J. Sparks, Commissioner of the Gen-
"eral Land Office, hereby certify that the annexed copy
"of a deed executed by the Oregon and California Rail-
"road Company and the Farmer's Loan and Trust
"Company, a corporation existing under the laws of the
"State of New York, on the 9th day of May, 1887, and
"reconveying to the United States, the ¼ N. W. ¼
"Sec. 33, town. 18 S 1, range 4 W 1, and the N. W.
"S. E. ¼ and N. E. ¼ S. W. ¼ Sec. 29, town. 14 S
"range 1 E., Roseburg district; and the S. E. ¼ N. W.
"¼ section town 11 S. Range 1 E., Oregon City dis-
"trict, all in the State of Oregon, is a true and literal
"exemplification from the files of this office.

"IN WITNESS WHEREOF I have hereunto
(Seal) "subscribed my name, and caused the Seal of
"this Office to be affixed, at the City of Wash-
"ington, on the day and year above written.

"WM. A. J. SPARKS,

"Commissioner of General Land Office."

"THIS INDENTURE WITNESSETH, that "whereas patents have been erroneously issued for the "hereinafter described parcels of land by the United "States to the Oregon and California Railroad Com- "pany, of Portland, Oregon, under the Act of Congress "of July 25th, 1866, granting lands to said Company "to aid in the construction of its railroad and telegraph "line therein mentioned; and whereas said Railroad "Company has been requested by the Government to re- "convey to it the said parcels of land:

"Now therefore, in consideration of the premises and "of One Dollar to it paid, the receipt whereof is hereby "acknowledged, the said Oregon and California Rail- "road Company doth hereby grant and convey, and the "Farmer's Loan and Trust Company, a corporation "created and existing under the laws of the State of New "York, being the Trustee or Mortgage of said lands, so "granted to said Railroad Company, by said Act of Con- "gress, doth hereby remise and release unto the United "States, the northwest quarter of the northwest quarter "of section thirty-three, in township eighteen South of "Range Four West, of the Willamette Meridian, and "the northwest quarter of the southeast quarter, and the "northeast quarter of the southwest quarter of section "twenty-nine, in Township fourteen South of Range one "East, of the Willamette Meridian, all included in pat- "ent issued to said Railroad Company May 29th, 1872; "and the southeast quarter of the northwest quarter of "section in Township eleven South of Range one East "of the Willamette Meridian included in patent issued to

"said Railroad Company June 12, 1871; all in the State "of Oregon.

"To have and to hold the said tracts or parcels of "land above described unto the United States in fee "simple forever.

"And the said Oregon and California Railroad Com- "pany doth certify unto the United States that said lands "hereby reconveyed to the Government are free from all "encumbrance done or suffered by sad Railroad Com- "pany, in any way, manner or form whatsoever.

"In witness whereof the said Oregon and California "Railroad company, and the said Farmer's Loan and "Trust Company, have caused these presents to be sealed "with their respective seals and to be executed by their "respective Presidents and Secretaries, on this 9th day "of May A. D. 1887.

"M. T. CUNNINGHAM.)
"A. D. MARSHALL.)
"Witness to the)
"execution hereof
"by the O. & C.)
"R. R. Co.)
(Seal)

THE OREGON AND CALIFORNIA RAIL- ROAD COMPANY,

By GEO. H. ANDREWS,

2nd Vice-President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. BRETHERTON,
Secretary.

"H. A. BAUTELLER,)
"Witnesses of the)
"execution hereof by the)
"F. L. & T. Co.)
"G. A. SEARLS.)

THE FARMER'S LOAN AND TRUST COMPANY,

By R. G. ROLSTON,
President.

THE FARMER'S LOAN AND TRUST COMPANY,

By WM. H. LEUPP,
Secretary."

"State of Oregon,)
) ss.
"County of Multnomah.)

"Be it remembered that on this 9th day of May, A. "D. 1887, before me, the undersigned, a notary public "in and for the County of Multnomah, and State of "Oregon, duly commissioned and qualified, personally "came George H. Andrews, 2d Vice President of the "Oregon and California Railroad Company, and Wal- "ter W. Bretherton, Secretary of said Company, whose

"names are subscribed to the foregoing instrument as "2d Vice President and Secretary of said Company, "both personally known to me to be the said individuals "named and described in, and who executed the said "instrument, and they severally acknowledged to me that "he, the said George H. Andrews as 2nd Vice Presi- "dent, and he, the said Walter H. Bretherton, as Sec- "retary of the said Oregon and California Railroad "Company, executed the foregoing instrument as and "for the Act and deed of said Corporation, for the uses "and purposes therein mentioned, and he the said Wal- "ter H. Bretherton, being by me duly sworn, did de- "pose and say that he is the Secretary of the Oregon "and California Railroad Company, and resides at Port- "land, Multnomah County, Oregon; that he is the legal "custodian of, and is acquainted with and has in his "possession, the corporate Seal of said Company; that "the seal affixed to the foregoing instrument is such "corporate seal; that the same was so affixed by him "as Secretary of said Company on the 9th day of May "A. D. 1887, by order of the Board of Directors of said "Company, and that he signed his name thereto by the "like order of the Board of Directors of said Company.

"In witness whereof I have hereunto set my hand "and affixed my official seal the date first above writ- "ten.

(Seal) "F. G. EWAN,

"Notary Public in and for the State of Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it remembered that on this first day of June "A. D., 1887, before me, a Commissioner of the State "of Oregon in the State of New York, residing in said "City of New York, personally came Rosewell G. Rol- "ston, President of the Farmer's Loan and Trust Com- "pany, the corporation described in the foregoing in- "strument, and who is personally known to me; and he "being by me duly sworn, did depose and say that he is, "and at the time of the execution of said instrument was, "the President, and that William H. Leupp is, and then "was, the Secretary of said Company; that he knows "the corporate seal of said Company, and that the seal "affixed to the foregoing instrument as such is said cor- "porate seal; that the said seal was so affixed by au- "thority of the Board of Directors of said Company; and "that the, Rosewell G. Ralston, as President, aforesaid, "signed, and the said William H. Leupp as Secretary "aforesaid, attested the said instrument by like author- "ity.

"And the said Rosewell G. Ralston, President as "aforesaid, acknowledged the execution of said instru- "ment as the Act and deed of the said The Farmer's "Loan and Trust Company, for the uses and purposes "therein expressed.

"In witness whereof, I have hereunto subscribed my "name and affixed my official seal, at my office in the

"said City of New York, the day and year aforesaid.

(Seal) "G. A. SEARLS,

"Commissioner for the State of Oregon, in the State "of New York.

"Pursuant to an order of the Circuit Court of the "United States for the District of Oregon, bearing date "February 9th, 1885, in the case of Lawrence Harrison "et al. vs. the Oregon and California Railroad Company "et al. of record in said Court and Cause; I do hereby "approve the execution of the within deed as and upon "the consideration and terms therein expressed.

"Witness my hand and seal this 8th day of June "A. D. 1887.

"R. KOEHLER, Receiver."

"Reconveyance to the United States of the E/2 "SW/4 and NW/4 SW/4 Sec. 23, T. 20 S., R. 1. E., "Oregon.

October 19, 1905,

"The Honorable

"Commissioner of the

"General Land Office.

"Sir:

"Referring to your letter (1904-222494) to me of "February 6, 1905, I now enclose herewith Deed No. "88-B, dated Agust 1, 1905, executed by the Oregon

"& California R. R. Co., by J. P. O'Brien, Vice Presi-
"dent, and W. W. Cotton, Secretary, and by the Union
"Trust Company of New York, by A. W. Kelley, Vice
"President, and E. R. Merritt, Assistant Secretary, re-
"linquishing and reconveying the tracts named in the
"caption to the United States.

"Please acknowledge receipt of this deed.

"Very respectfully,

"D. A. CHAMBERS,

"Attorney Or. & Cal. R. R. Co."

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C.,
November 9, 1905.

"Address only the
"Commissioner of the General
"Land Office.

"Mr. D. A. Chambers,
"Atty. for O & C. R. R. Co.,
McGille Building, Washington, D. C.

"Sir:

"I have to acknowledge the receipt of your letter of
"October 19, 1905, submitting in response to the request
"of this office of February 6, 1905, a deed executed by
"the Oregon and California Railroad Company Au-

"gust 1, 1905, reconveying to the United States the E½ "SW¼ and NW¼ SW¼, Sec. 23, T. 20 S., R. 1 E., "Oregon.

"Very respectfully,

"J. H. FIMPLE,

"Acting Commissioner."

"Deed No. 88-B

"This Indenture made on August 1st, 1905, by the "Oregon and California Railroad Company, a corpora- "tion of the State of Oregon, and the Union Trust "Company of New York, a corporation of the State of "New York, first parties, and the United States of "America, second party, Witnesseth: That

"Whereas, the patent bearing date June 14th 1904, "the United States of America, through inadvertence "and mistake, conveyed unto the said Oregon and Cali- "fornia Railroad Company the apparent legal title to "the East half of South West quarter (E½ of SW¼) "and North West quarter of South West quarter "(NW¼ of SW¼) of Section Twenty-three (23), in "Township Twenty (20) South, Range one (1) East, "Willamette Meridian, County of Lane, State of Ore- "gon: And

"Whereas, the legal title to the said lands was there- "tofore granted by Act of Congress entitled "An Act "granting lands to the State of Oregon, to aid in the

"construction of a military road from Eugene City to "the eastern boundary of said State," approved July "2nd, 1864:

"Now, therefore, in consideration of the premises, "the above-named first parties hereby relinquish and re- "convey the said lands unto the above-named second "party,

"To have and to hold unto the second party, and "assigns, forever.

"In Witness Whereof, the said first parties have "caused these presents to be sealed with their respective "seals, and executed by their respective Presidents and "Scretaries, the day and year first above written.

In Presence of)
"Hortense Whittaker)
"James G. Wilson.)

THE OREGON AND CALIFORNIA RAIL-ROAD COMPANY,

as to
J. P. O'Brien
and
W. W. Cotton.

By J. P. O'Brien,
Vice-President.

7435

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By W. W. COTTON,
Secretary.

THE UNION TRUST COMPANY OF NEW YORK,

By A. W. KELLY,
Vice-President.

THE UNION TRUST COMPANY OF NEW YORK,

"J. A. Shaughnessy
"W. H. Spaulding. By E. R. MERRITT,
Asst. Secretary."

"State of Oregon,)
)ss.
"County of Multnomah.)

"Be it Remembered, That on this 15th day of Au-"gust A. D. 1905, before me, the undersigned, a Notary "Public in and for the said County of State, duly com-"missioned and qualified, personally came J. P. O'Brien, "Vice-President of the Oregon and California Railroad "Company, and W. W. Cotton, Secretary of said Com-"pany, whose names are subscribed to the foregoing in-"strument as Vice-President and Secretary of said Com-"pany, both personally known to me to be the said in-

"dividuals named and described in, and who executed "the said instrument, and they severally acknowledged "to me that he, the said

"J. P. O'Brien, as Vice-President and he, the said

"W. W. Cotton, as Secretary of the said "The Oregon and California Railroad Company, ex- "ecuted the foregoing instrument as and for the act and "deed of said Corporation, for the uses and purposes "therein mentioned; and he, the said

"W. W. Cotton, being by me duly sworn, did depose "and say that he is the Secretary of the Oregon and Cali- "fornia Railroad Company, and resides at Portland, "Multnomah County, Oregon; that he is the legal cus- "todian of, and is acquainted with, and has in his pos- "session, the corporate seal of said Company; that the "seal affixed to the foregoing instrument as the seal of "said Company is such corporate seal; and that the same "was so affixed by him as Secretary of said Company "on the 15th day of August A. D. 1905, by order of the "Board of Directors of said Company, and that he "signed his name thereto by the like order of the Board "of Directors of said Company.

"In Witness Whereof, I have hereunto set my hand "and affixed my official seal the day and year in this "certificate first above written.

"JAMES G. WILSON,

"Notary Public for Oregon.

"State of New York,)
) ss.
"City and County of New York.)

"Be it Remembered, that on this 21st day of Sep-"termer A. D. one thousand nine hundred and five, be-"fore me, a Commissioner of the State of Oregon in the "State of New York, residing in said City of New York, "personally came A. W. Kelley, Vice-President of the "Union Trust Company of New York, the corporation "described in the foregoing instrument as one of the "first parties thereto, and who is personally known to "me; and he, being by me duly sworn, did depose and "say that he is, and at the time of the execution of said "instrument was, the Vice-President, and that E. R. "Merritt is, and then was, the Assistant Secretary of "said Company; that he knows the corporate seal of "said Company and that the seal affixed to the fore-"going instrument as such is said corporate seal; that "the said seal was affixed by authority of the Board of "Directors of said Company; and that he, A. W. Kel-"ley, as Vice-President aforesaid, signed, and the said "E. R. Merritt, as Assistant Secretary aforesaid at-"tested the said instrument by like authority; and that "the said A. W. Kelley, Vice-President as aforesaid, "acknowledged the execution of said instrument as the "act and deed of said The Union Trust Company of "New York for the purposes therein expressed.

"In Witness Whereof, I have hereunto subscribed "my name and affixed my official seal, at my office in

"the said City of New York, the day and year in this "certificate first above written.

"PETER PALMER,

"Commissioner for the State of Oregon, in the State "of New York."

DEFENDANTS' EXHIBIT 376

consists of certified copies: letter, July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent; May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary expressing opinion as to validity of assignment by the Oregon Central Railroad Company to the Oregon & California Railroad Company, and that patents should be issued to the O. & C. R. R. Co.; May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler; July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal; April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.; May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

Copy of this exhibit is as follows:

DEPARTMENT OF THE INTERIOR,

"UNITED STATES OF AMERICA.

Washington, D. C. March 16, 1912.

"PURSUANT to Section 882 of the Revised Stat-"utes, I hereby certify that the annexed papers are true "copies of the originals as they appear on the records and "files of the Department.

"IN TESTIMONY WHEREOF, I have here-"unto subscribed my name and caused the seal of the "Department of the Interior to be affixed, the day and "year first above written.

(Seal) CANNIE A. THOMPSON,
"Assistant Secretary of the Interior."

"DEPARTMENT OF THE INTERIOR.

"Washington, D. C., July 17, 1868.

"Sir:

"I have received your letter of the 16th instant and "accompanying paper, purporting to be an acceptance "by the Oregon Central Railroad Company of the grant "made by the Act of July 25, 1866.

"By law the Company was required to file an 'as-"sent' to its terms and conditions, within one year. That "time expired July 25, 1867, and this paper, if suffi-"cient for that purpose, could not now be received.

"I state for your information that J. Gaston, Presi-

"dent of the Oregon Central Railroad Company, with-
"in the time prescribed in that act filed an assent which
"was received.

"In compliance with your request I inclose a copy
"of my letter of the 8th instant to Mr. Gaston in regard
"to maps to be filed in this Department.

"Very respectfully,

"Your obt. servant,

"O. H. BROWNING,

"Secretary."

"A. M. Loryea, Esq.,
"Present."

OFFICE OF ASSISTANT ATTORNEY-GENERAL.

"Washington, May 5th, 1871.

"Sir:

"I have considered the subject matter of the letter
"of W. E. Chandler, Esq. dated May 3d, 1871, upon
"which you desire my opinion.

"This letter relates to the validity of an assignment
"made by the Oregon Central Railroad Company to the
"Oregon and California Railroad Company, and re-
"quests that the question be referred to the Hon. Attor-
"ney-General for his opinion and that in the mean time
"the issuing of any patents to the said Oregon and Cali-
"fornia Railroad be suspended.

"To understand the matter properly it will be nec-
"essary to refer to the provisions of the Act of Con-
"gress granting lands in controversy, and to the action
"already had in your Department.

"Congress July 25, 1866, passed 'an Act granting
"lands to aid in the construction of a Railroad and Tele-
"graph line from the Central Pacific Railroad in Cali-
"fornia, to Portland in Oregon.'

"By the 1st section it is provided that the California
"& Oregon Railroad Company, organized under an act
"of the State of California and 'such Company organ-
"ized under the laws of Oregon as the Legislature of
"said State shall hereafter designate' should be em-
"powered to build a railroad and telegraph line be-
"tween the City of Portland in Oregon and the Central
"Pacific Railroad in California, each of said roads to
"construct that portion of the railroad and telegraph
"lying within the limits of their respective States.

"The second section 'granting to the said companies
"their *successors* and *assigns*, for the purpose of aiding
"in the construction of said railroad and telegraph line
". . . every alternate section of public land, not min-
"eral designated by odd numbers, to the amount of
"twenty alternate sections on each side per mile' of said
"road, with the usual reservations.

"Section 4, provided that whenever 'said Companies
"or either of them' should have completed twenty or
"more consecutive miles; commissioners should be ap-

"pointed by the President to examine and report to him "and if it were found the road and telegraph had been "completed and equipped in all respects as required by "said act, it directed that 'thereupon patents shall issue "to said Companies or either of them, as the case may be, "for the lands hereinafter granted to the extent of and "coterminous with the completed section of said rail-"road and telegraph line.

"Section 5, declared that the grants were 'made upon "the condition that the said Companies shall keep said "Railroad and Telegraph line in repair and use and "shall at all time transport the mails upon said railroad "and transmit dispatches by said telegraph line for the "Government of the United States, when required so "to do by any departments thereof, and that the Gov-"ernment shall at all times have the preference in the "use of said railroad and telegraph therefore at fair and "reasonable rates.

"Other Sections provided that 'said Companies' "should file their assent to the Act in the Department "of the Interior within one year, and should complete "one Section of twenty miles within two years, and "should use the said railroad and telegraph as one con-"tinuous line.

"Section nine provided that 'whenever the word 'Company or Companies' is used in this Act it shall be "construed to embrace the words their associates, suc-"cessors, and *assigns, the same as if the words had been "inserted or thereto annexed.'*

"That is to say, in construing this act, whenever the "word 'company or companies' is used, it is to be read "and construed just as it would be if the words 'as- "sociates, successors and assigns' immediately followed "said words.

"The Legislature of Oregon designated The Oregon "Central Railroad as the one authorized to construct "the Portland road.

"The Oregon Central constructed the first section "of twenty miles of its road and the President on the "29th day of January 1870, ordered the patents for that "portion to be issued.

"On the 28th of April 1870, the Secretary of the "Oregon Central, filed in the Department of the In- "terior, an assignment by that Company of all its rights "and interests to the Oregon and California Railroad "Company, and thereupon Secretary Cox recognized "the said last named Company as the one entitled to the "grant given to its assignor, and gave a certificate to "that effect upon the faith of which the road has been "able to negotiate a large amount of its bonds, secured "by a mortgage upon the lands assigned.

"The Oregon and California Company have com- "pleted three additional sections, each twenty miles, of "the road leading from the City of Portland to the Cen- "tral Pacific in California. Commissioners have re- "ported favorably thereon and the President has di- "rected the patents to issue, and the question now is, "shall the patents issue or be delayed by reason of any-

"thing alleged in the communication of Mr. Chandler.

"He argues 1st that the Congressional land grant "was a personal trust vested in this Oregon Central "Railroad Company for the public purpose of aiding in "the construction of an important railroad line and could "not legally be sold or transferred to another railroad "company without the consent of Congress.

"I agree with him in the opinions that this grant "could not be assigned to another company without the "consent of Congress, but I disagree with him upon the "question whether the consent of Congress has not al- "ready been given as I construe the Act of July 25th, "1866, Congress has given such consent. Throughout "the entire act it has shown an intent to deal with the "assignee of the Oregon Central as well as with that "road itself.

"Bearing in mind that the word 'company' signifies "by express Statutory definition 'assigns' as well as com- "pany, and this act reads there is granted to said com- "pany and *its assigns*—whenever said company and *its "assigns* have completed twenty miles—patents shall is- "sue to said company and its assigns,—this grant is upon "condition that said companies and *their assigns* shall "keep said railroad and telegraph in repair—said com- "panies and *their assigns* shall file their assent in the De- "partment of the Interior within one year and complete "one section of twenty miles within two years.

"If Congress did not intend to deal with assigns, "why was it so particular to engraft this word assigns

"into this Act in so many different places, and in fact "in every place where the company is referred to? It "is a very familiar rule in the interpretation of Statutes "that effect shall be given to every word employed un- "less it is plainly against the spirit of the act.

"In my opinion no effect can be given to the word "'*assigns*' as thus used unless it implies that there may be "a lawful assignee.

"There is no danger of loss to the Government from "such a construction. The lands cannot be claimed until "the road has been actually built. As fast as every sec- "tion of twenty miles is built, some corporation is en- "titled to the lands, what difference does it make to the "United States what Company that is? If it be said "that special confidence may be reposed in one set of "men representing a railroad corporation; then I an- "swer that such confidence may be defeated on the very "next day by a lawful and perfectly legitimate transfer "of Stock to an entirely different set of men, and the "Government cannot present it. Is there any more "danger to be apprehended from a change of roads than "there is from an entire change of the persons who own "and control them?

"A question identical in substance with the one now "under consideration, was decided by Attorney General "Stanberry as early as July 25th, 1866.

"The 15th Section of the Pacific Railroad Act of "1862 (12th Stat. 496) provided that 'whenever the "word company is used in this Act, it shall be construed

"to embrace the words their associates, successors and "*assigns,* the same as if the words had been properly "added thereto.'

"The Hannibal and St. Joseph Railroad (one of the "companies named in said act), made an assignment of "its land grant and rights to the Atchison and Pike' "Peak Railroad, and the last named road, by virtue of "the assignment asked that the U. S. Bonds should be "issued to it. The Attorney General decided that the "assignment was valid and that the bonds should be is- "sued to the Assignee, which was done.

"2d. Mr. Chandler argues that there is no essential "difference between the assignment of the Oregon and "California Railroad and the one to the Willamette Val- "ley Railroad, which latter Attorney General Akerman "in his opinion of February 20th, 1871, held to be in- "valid.

"I think there is a great difference. In that act the "words 'successors and assigns' were only once used and "that in the first section (See Act of May 4th, 1870) "which contained the grant of right of way and lands. "In all the subsequence sections which provided what "the company should do, and what liabilities it should "incur the word 'assigns' was not used—I can well un- "derstand why it was that the words were construed "simply as words of limitation.

"There was nothing else in the Act that indicated "that Congress was dealing with or intended to deal "with any other company than the one named in the "Act.

"But it is not so in this case as I have already at-
"tempted to show.

"In the assignment in that case, there was no as-
"sumption by the assignee of the liabilities of the as-
"signor. In this there is.

"3d. Mr. Chandler claims that the Secretary of the
"Interior has no power to render a void assignment valid
"by recognizing it and issuing patents under it.

"In this I agree with him fully and I have referred
"to such recognition simply as an authority, showing
"how the learned and accomplished lawyers, who have
"officially acted upon this matter have considered it.

"The only remaining subject of Mr. Chandler's
"communication relates to a suit in equity in the Su-
"preme Court of the District of Columbia wherein
"James P. Flint and others are complainants and Ben
"Holladay and the Oregon and California Railroad
"Company are respondents. The complainants allege
"that they are the owners of a large amount of stock in
"the Oregon Central Railroad Companuy—that said
"company has already built a considerable portion of the
"road and telegraph from Portland to the Southern
"boundary of Oregon and by reason thereof is entitled
"to patents from the United States for a large amount of
"land—that the respondent Holloday has entered into
"a combination to defraud the complainants and for
"that purpose has organized the Oregon and California
"Railroad Company and procured the assignment to it
"from the Oregon Central of all its right property and

"franchises and has caused a mortgage to be executed "by the Oregon and California Company upon the lands "so assigned to secure the payment of bonds which he "has negotiated and the proceeds of which he holds— "that this was in fraud of complainants rights.

"The prayer of the bill is that the organization of "the Oregon and California Company and the said trans- "fer to it may be declared to be null and void—that said "last named Company may be declared to hold said "property, so assigned, in trust for the benefit of com- "plainants—that an account may be taken and the "amount due to complainants ordered to be paid to "them—that a receiver may be appointed to take pos- "session of the property and that, *pendente lite,* the re- "spondents may be enjoined from receiving any patents "from said lands.

"This bill was filed May 2d, 1871, and on that day "one of the Judges of the Supreme Court of the District "granted an injunction upon condition that complain- "ants should give bonds in the sum of ten thousand dol- "lars. It does not appear that any bond has been given. "It does appear from the statements of Mr. Chandler's "communication that no service has been made or is like- "ly to be made upon either of the respondents. The "Oregon and California Railroad Company is a cor- "poration created by the laws of Oregon, and I do not "well see how the Supreme Court in this District is to "get jurisdiction over it.

"But suppose it should, is it the duty of a public of-

"ficer, to delay the execution of any official duty, until "one of the contending parties can be heard in the civil "courts? If so how long must he wait? Shall it be until "the case is heard in the court of original jurisdiction or "in that of last record? I think neither. In my opinion "the adoption of such a rule would be against public "policy, and would greatly impede the due prosecution "of public business.

"I advise the rejection of the request to delay. I am "decidedly of opinion that the patents should be issued "to the Oregon and California Railroad Company.

"If I were in doubt, upon this point I shall still ad- "vise as I have done, in view of the former action of "your Department sanctioned by Secretary Cox and "Attorney General Stanberry and in view of the large "pecuniary interest, that have arisen upon the faith of "that action.

"Very respectfully,

"WALTER H. SMITH,

"Asst. Atty. General.

"HON. C. DELANO,

Secretary of the Interior."

"DEPARTMENT OF THE INTERIOR.

Washington, D. C.,

May 8th, 1871.

"Dear Sir:

"After your opinion was given against the validity "of the assignment or transfer of the Oregon Central "Railroad Company of Oregon to the Willamette Val- "ley Railroad of the same State, I conferred with you in "regard to the case of the Oregon and California Rail- "road, which latter Co. claimed a land grant as assignee "of the Oregon Central Railroad.

"We then considered pretty fully the *difference* in "the acts of Congress granting lands in each three cases, "and referred particularly to the fact that, in the last "case, the right to assign is expressly or impliedly rec- "ognized throughout the entire act, and to the additional "fact that my immediate predecessor, Secretary Cox, "had received and accepted the assignment as valid, had "given a certificate under the official seal to that effect, "which certificate had been used to negotiate a large "amount (several millions) of bonds secured by mort- "gage on the road; and also this this company had com- "pleted about sixty miles of road since the assignment, "twenty miles having been previously completed.

"Under these circumstances it seemed clear to each "of us, if I remember correctly, that the assignment in "this case should be sustained, especially as Secretary "Cox had so held, and as by such action on his part, large

"investments had been made by the public in the bonds "of the Oregon and California Company, secured by "mortgage on its road and lands.

"I accordingly announced my decision to the parties "interested, and therein accrptrf certain sections of the "road which had been completed since the recognition, "by Secretary Cox, of the assignment.

"After this decision, the attorneys opposed to the as- "signment, W. E. Chandler and Hon. B. F. Butler de- "sired me to review the question, and in the meantime "to withhold the issuing of patents to the road. I did "so, and submitted the case, for advice, to Hon. W. H. "Smith, Asst. Atty. General.

"He concurred fully in the previous action of the "Department, and afterwards furnished me with his "opinion in writing.

"However, before announcing to the Counsel a sec- "ond decision, I again referred to the subject with you "while at Cabinet meeting. I informed you that the "parties desired me to refer the question to you, and "knowing the pressure upon your time, I desired to "know whether you deemed it advisable to have this case "formally referred for your consideration.

"I understood you to advise against it, and also ad- "vise that I follow the rulings of the Department made "by Secretary Cox. This being in accord with my own "deliberate judgment, I acted accordingly, and so in- "formed Counsel for the parties.

"The result has been that W. E. Chandler has sent "to the President an extraordinary letter, complaining, "among other things that I did not consult you on the "subject, and that I have overruled your opinion in a "like case.

"I have concluded, therefore, to ask you to read Mr. "Chandler's letter, herewith inclosed, and to give me "briefly (to be laid before the President) your recol- "lection in regard to the matters herein referred to. I "also submit the opinion of the Assistant Atty. General, "Mr. Smith, upon the legal questions involved in the "whole case, which opinion I wish you to examine, and "upon which I wish your opinion, that I may also sub- "mit it to the President.

"I regret to ask this favor, because I know the bur- "den you official duties impose.

"Very respectfully,

"Your Ob't. Servant,

"C. DELANO,

"Secretary.

"HON. A. T. AKERMAN,
"Attorney General,
"Washington, D. C."

"Washington, July 16th, 1869.

"Hon. O. H. Browning,

"Sec'y. of the Interior.

"Sir:

"I desire to notify you that the Oregon Central Rail-"road of which J. Gaston represents himself as Presi-"dent, is an illegal organization. The organization of "the same name of which I. R. Moores is President and "myself Vice President was made in conformity to the "laws of the State of Oregon. In connection herewith "I desire to call your attention to the enclosed paper and "ask that it may be filed as an acceptance of the lands "granted by Congress for such purpose.

"Very respectfully,

"Your Obedient Serv't,

"A. M. LORYEA,"

"Office of the

"OREGON CENTRAL RAILROAD

COMPANY,

"Salem, April 30, 1868.

"This is to certify that at a regular meeting of the "Board of Directors of the Oregon Central Railroad "Company, held at the office of the Company, Salem, "April 29th A. D. 1868, the following was passed as

"the unanimous action of said Board of Directors
" 'Resolved,

"That the Oregon Central Railroad Company "hereby accepts any grant of land which may have been "made, or may be extended to said Company, and our "Agent, A. M. Loryea, is hereby fully empowered to "present a duly certified copy of this Resolution to the "proper authorities as provided by law to be filed."

"Witness my hanr and the seal of said corpor-
(Seal) "ation this the day and year above written.

S. A. Clarke,

"Secretary O. C. R. R. Co."

"DEPARTMENT OF JUSTICE,

"Washington, May 9, 1871.

"Hon. Columbus Delano,

"Secretary of the Interior.

"Sir:

"In answer to your letter of the 8th inst, I have the "honor to state, that my recollection of what passed at "the informal conference between us, in regard to the "case of the Oregon and California Railroad, entirely "agrees with your own. I did not, it is true, examine "the case with the care and deliberation which I should "have exercised if an opinion had been formally called "for. But my impressions were, and still are (subject,

"of course, to be reversed, if they appear incorrect after "deliberate consideration), that the case of the Oregon "and California Railroad has been properly adjudicated "by Mr. Cox, your predecessor, and that a reversal of "his decision by you should not be made, unless you "should be most clearly satisfied that he was in error, "inasmuch as the embarrassment growing out of con- "trary decisions under such circumstances, would be "most serious.

"The opinion of Mr. Smith, Assistant Attorney Gen- "eral, appears to me, from cursory examination, to be a "correct exposition of the law of the case.

"My opinion against the validity of the transfer of "the rights of the Oregon Central Railroad Company "to the Willamette Valley Company, dated February "20, 1871, had relation exclusively to a case where the "act of Congress signified no intention of dealing with "any company but the one named in the act as grantee.

"The letter of the counsel for certain parties in in- "terest, Mr. Chandler, to the President, complaining of "your refusal to require the opinion of the Attorney "General in the case of the Oregon and California Rail- "road, seems to me to have been written under the "erroneous conception of the relations between the At- "torney General and the heads of other Departments. "I think that the Attorney General should be called on "for an opinion only when the head of the Department, "in which the question arises, sees a good reason for the "call, and not whenever a litigant before a Department

"desires the opinion.

"Very respectfully,

Your ob't. serv't,

"A. T. Akerman, Attorney General."

DEFENDANTS' EXHIBIT 377

consists of Senate Judiciary Committee Report No. 906. January 2, 1883: To accompany bill S. 2301, providing for the forfeiture of railroad grants in certain cases. This exhibit is as follows:

"47th Congress, SENATE. Report

"2d Session. No. 906.

"IN THE SENATE OF THE UNITED STATES.

January 2, 1883.—Ordered to be printed.

MR. GARLAND, from the Committee on the Judiciary, submitted the following

"REPORT:

"(To accompany bill S. 2301.)

"The Committee on the Judiciary have for some time "had under consideration various memorials asking for 'the forfeiture of certain railroad land grants, with sev- "eral bills and resolutions on the same subject. The "resolutions and bills differ as to the way and manner "of securing forfeitures; some asking for a direct decla-

"ration by Congress; some seeking to invest the Sec-"retary of the Interior with the power to make such dec-"larations.

"Upon full consideration of all these propositions, "in connection with the various grants to be reached in "this way, the committee found great difficulty in de-"vising any one plan that would be effectual. The "grants themselves are different and do not by any "means, in all cases, carry the same meaning as to the rel-"ative right and duties of the companies and the gov-"ernment.

"The committee is unwilling to confide this vast "power of declaring forfeitures to any one officer of the "government. In its essential elements it is a judicial "proceeding; and while it is within the power of Con-"gress in certain cases to make this declaration, it is "deemed best for the security and protection of all con-"cerned that some means of a judicial character should "be devised to accomplish this end.

"In Farnsworth vs. Minnesota and Pacific Rail-"road Company, 92 U. S. Reps. (2 Otto), 66, the Su-"preme Court say:

> A forfeiture by the state of an interest in lands and connected franchises, granted for the construction of a public work, may be declared for non-compliance with the conditions annexed to their grant, or to their possession, when the forfeiture is provided by statute, without judicial proceedings to as-

certain and determine the failure of the grantee to perform the conditions.

"This decision was preceded by the cases of Schulen-"berg vs. Harriman, 21 Wall., 44, and United States "vs. Repentinny, 5 Wall., 211, to the same effect. These "conditions, of course, are limited, and that carefully, "to the language of the grants discussed, which provide "clearly for the exercise of such power, and do not, as "they could not, embrace cases in which the grants were "upon different conditions. Without undertaking to "decide whether in all grants of land by the United "States to railroads Congress can declare this forfeiture, "the committee considered it best to adopt some meas-"ure that would avoid this question, and place the par-"ties in attitude towards each other that would insure "to each fair dealing and justice as far as can be done.

"They propose to direct the Attorney-General to "institute proper judicial proceedings against any rail-"road companies that he may have reason to believe are "in default as to the conditions of their grants, to bring "about a forfeiture, and secure the rights of the govern-"ment to the lands. This information, in the nature of "an information, will bring the supposed defaulting "company into court, to be heard in defense against a "forfeiture; and the court can enter such judgment or "decree as in its opinion will secure to the government "not merely in declaring a forfeiture, if need be, but in "declaring resumption of the lands granted. Appeal to "be allowed as in other cases in the courts.

"This proceeding, however, is not to interfere in any "manner with any right of the executive under his au- "thority to enforce and execute the laws to take posses- "sion and dispose of any such lands, without these pro- "ceedings where he could have done so if no act as con- "templated by the committee had passed.

"While the committee had no doubt at all that some "steps should be taken to declare forfeitures in many "of these cases, yet they were of opinion that in all "cases where reasonable and proper diligence and exer- "tions had been used by any of these companies, they "should have the benefit of the same in any proceedings "against them; and accordingly the committee were of "opinion it would be just to allow the companies to "show in defense that for one year previous to the pas- "sage of the act any substantial progress in good faith "in the building of the roads, limiting this period to "the first day of December, 1882. The substantial "progress is to be considered and passed upon by the "Attorney-General first before instituting proceedings, "and then, if pleaded in defense of the proceedings in- "stituted, the court is to pass upon it. Of course it is "a difficult matter to determine what is substantial prog- "ress, and no general rule touching it can be laid down. "Therefore, the Committee would leave it general in "this way, to be determined upon in each particular case. "Some provision of this kind is necessary, as certainly "the grants were made with a view of securing the build- "ing and completion of the roads; and when efforts "looking earnestly to that end are being made, the gov-

"ernment would not desire forfeitures to the grants. "And this is in no sense a waiver by the government of "any condition or requirement imposed upon any cor- "poration; and when this progress is not shown to exist, "it is made the imperative duty of the Attorney-Gen- "eral to proceed against the companies.

"It is believed by the committee such a law will en- "able the government to get rid of all these grants of "lands to railroads that are not being used for legiti- "mate purposes, or are misused, or in which no efforts "are being made to build the proposed roads, and at the "same time to have carried out all these grants in which "the companies in good faith are trying to finish their "roads. In other words, while such a law would be pro- "tective of the rights of the government it would not "be oppressive to corporations that are working and "dealing fairly with the liberality of the government "in trying to secure the objects of those grants.

"And to this end they have agreed on the bill here- "with proposed, and recommend its passage.

"A BILL providing for the forfeiture of railroad grants in certain cases.

"Be it enacted by the Senate and House of Repre- "sentatives of the United States of America in Con- "gress assembled, That in all cases where grants of lands "of Congress have been made to aid in internal im- "provements, and said lands have not been patented by

"the United States to the grantee, where the grantee was "a corporation, or where the lands were granted to the "State, and said lands have been disposed of by the "State, and said grants have become subject to for- "feiture or resumption by the United States for any "cause whatever, it shall be the duty of the Attorney- "General to cause suit or suits to be brought in the name "of the United States in the proper courts having juris- "diction, to obtain judgments declaring the forfeiture or "right of resumption by the United States of such lands, "as the case may be, which suit or suits shall be subject to "trial or hearing like other suits, with right or writ of "error or appeal by either party, as in other cases. This "section shall not be construed so as to prevent the exec- "utive authority of the United States from taking pos- "session and disposing of any such lands without judicial "proceedings in any case in which it could lawfully do "so in this act had not been passed.

"Sec. 2. That the provisions of the first section of "this act shall not apply to the case of any railroad (ex- "cept as mentioned in section three of this act) in which, "within one year preceding the passage of this act, any "substantial progress in building the same has been ac- "complished in good faith, and shall be continued in "the manner hereinafter mentioned, or in which, before "the rst day of December, eighteen hundred and eighty- "two, there shall have been made any substantial prog- "ress in the building thereof, and which progress shall "be continued in good faith, as hereinafter mentioned. "The foregoing provisions of this section, limiting the

"application of section one of this act, shall cease, de-
"termine, and be of no effect in the case of every rail-
"road affected thereby the building of which shall not
"be in good faith or continued after said first day of
"December, eighteen hundred and eighty-two, to the
"number of miles in each year required by the act or acts
"granting such lands, or act or acts amendatory thereof,
"and in the manner so required, until such railroad shall
"be entirely completed.

"Sec. 3. That nothing in this act shall be construed
"to be a waiver of any condition or requirement imposed
"upon any corporation or in respect of any such grant
"by the act or acts granting lands to or in aid of it or
"amendatory thereof.

"Sec. 4. That in every case in which any corpora-
"tion, or its lawful successor, being lawfully entitled so
"to do, shall not do the acts mentioned in section two
"of this act, it shall be the imperative duty of the Attor-
"ney-General of the United States to proceed against it
"as provided in section one of this act."

DEFENDANTS' EXHIBIT 378

consists of certified copies: letters April 20, 1871, Jos. S. Wilson, President E. & O. Land Co. to Commissioner G. L. O.; April 20, 1871, I. R. Moores to Jos. S. Wilson; May 9, 1871, W. W. Curtis, Acting Commissioner, to Jos. S. Wilson; in regard to patent lands inuring to the railroad company; correspondence between Jos.

S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant. This exhibit is as follows:

"DEPARTMENT OF THE INTERIOR
"GENERAL LAND OFFICE
"WASHINGTON

"April 11, 1912.

"I hereby certify that the annexed copies of letters "dated April 20th and May 9th, 1871, respectively, "_____ are true and literal exemplifications and "press-copy of letters in this office.

"IN TESTIMONY WHEREOF I have hereunto (Seal) "subscribed my name and caused the "seal of this office to be affixed, at the "city of Washington, on the day and year "above written.

"H. W. Sawyer,
"Recorder of the General
"Land Office.

"San Francisco, California,
"No 320 California Street,
"April 20d, 1871.

"The Honorable Commissioner of the

"General Land Office, Washington, D. C.

"Sir:

"Herewith is enclosed copy of a letter of this date "from I. R. Moores, Esq., Land Agent of the Oregon "and California Rail Road Company referring to Lists "No. 1 and 2 on file in the Department embracing "33,308 97/100 acres, selected as enuring to the Oregon "and California Railroad Company under Act of the "25th July, 1866, Vol. 14, page 237, and earnestly ask- "ing for the early issue of the patents, the selection fall- "ing within the portion of the Rail Road and telegraph "line which has been completed according to the require- "ments of the 4th section of the said Act.

"The Lists were sent to the General Land Office "nearly nine months ago, and as no step can be taken "to make the lands available until the Patents are issued "it is respectfully requested they may be forwarded as "speedily as practicable.

"Respectfully,

"Jos. S. Wilson,

"P. E. & O. Ld. Co."

"Copy. Office of the Land Department

"O & C. R. R. Co., Salem, April 20th, '71.

"Hon. Jos. S. Wilson,

"Prest. E & O. Land Co.,

"Dear Sir:

"I wish to call your attention to a very great embar-"rassment we are laboring under, in the transaction of "our business, in not receiving "Patent for the lands, "and we are prohibited from selling until title passes "to the Company by U. S. Patent.

"July 28, 1870 as agent ofthe Company I made se-"lections of lands enuring to the Company for the first "completed section of twenty miles of Road, said lands "being embraced in Lists Nos, 1 & 2 of selections in "place, amounting in area to 33,308 97/100 acres. "Those Lists were promptly sent to the General Land "Office, but as yet no Patent has been received and in "consequence the Company cannot sell the lands, al-"though in daily request. The tide of immigration now "setting into our State causes a great inquiry for land "and for the development of the county and the early "settlement of the immigrants arriving it is a matter "of great and urgent importance that the Company "should receive the Patent at the earliest possible mo-"ment, it will be seen by reference to Sec. 4 Act of July "25, 1866, That when any completed section of twenty "miles of Road should be reported upon and accepted "by the President, The Company should be entitled at

"once to Patent, the lands above referred to being within "the completed section are clearly within the class for "which Patent should issue without delay. In the hope "that this embarrassment may be soon removed by the "receipt of the Patent,

"I remain,

"Very respectfully,

"(Signed) I. R. Moores."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C.,

"May 9th, 1871.

"Hon. Jos. S. Wilson,

"Presd't. E. & O. Ld. Co.,

"320 California Street,

"San Francisco, Califa.

"Sir:

"Pursuant to your letter of the 20th ulto. I have the "honor to state, that we have this day transmitted to "I. R. Moores, Esq., Land Agent of the Oregon and "California Rail Road Company at Salem, Oregon— "Patent No. 1 as recorded Vol. 2, pages 137 and 148 in- "clusive, of lands inuring to said Company under the

"Act of Congress of July 25, 1866, embracing in the "aggregate, acres *32,517.21 100.*

"Very respectfully,

"Your Obdt. Servt.

W. W. Curtis,

"Actg. Commissioner"

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington.

April 11, 1912.

"I hereby certify that the annexed copies of papers "and letters, are true and literal exemplifications of the "original papers and letters, and press-copies of letters "in this office.

IN TESTIMONY WHEREOF I have hereunto (Seal) "subscribed my name and caused the "seal of this office to be affixed, at the "city of Washington, on the day and "year above written.

"H. W. Sawyer,

"Recorder of the General Land Office."

"San Francisco, California,
"March 25th,1871.

"The Honorable Commissioner of the
"General Land Office,
"Washington City, D. C.

"Dear Sir:

"On the 21st instant I wrote to elicit data essential "at this place in order properly to make effective the "grant to the Oregon portion of the Rail Road Con- "cession by Act of 25th July, 1866, Vol. 14 p 239. In "connection with the matter, I find it necessary further "to trouble you, the present request being restricted to "that portion of the Rail Road Grant by Act of 25th "July, 1866, which extends from Portland in the North- "ern part of Oregon to the Southern boundary of that "State.

"(1st) The 2d section of said Act of 23d July, 1866 "orders that as soon as the Company files a map of the "survey of said Railroad, or any portion not less than "sixty continuous miles from either terminus, the Sec- "retary shall withdraw from sale the railroad lands on "each side.

"I request a sketch map showing the first sixty con- "tinuous mile line according to the map of the survey, "which may have been filed, giving date of filing with "copy of the order of withdrawal and dispatched to the "District Land Officers, and showing any additional "miles of which a map may have been filed—It would

"also oblige me if the Commissioner will let me know "from time to time when such map of sixty continuous "miles is filed, with dates of orders of withdrawal ac-"knowledgement of receipt of such orders.

"(2d) The 4th section of said Act of 25th July, "1866 orders that when the Company completes and "equips for service twenty miles of the road, three com-"missioners are to be appointed by the President, and "upon report, under oath, as to the facts, patents to "issue.

"It would be gratifying to me to know from time to "time when such commissioners make report and result "as to issue of patents.

"3d. The 6th section of said Act of 25th July, 1866 "is so amended by the Act of April 10th, 1869—Stat-"utes 1869—Chap. 47, that the Company may file its "assent within one year from 10th of April, 1869, viz: "until 10th April, 1870.

"I respectfully inquire the date at which the requisite "assent was filed.

"4. The Oregon portion of the railroad grant, viz, "from Portland to the Southern boundary of that State "traverses the Willamette, Umpqua and Rogue River "Valleys.

"I request an estimate of the quantity of land fall-"ing 'in place' to the said railroad grant in the Willam-"ette Valley specially, and like information as to the "other two valleys if convenient. I would also be glad

"to know the probably quantity that may be taken as
" 'Indemnity' in the Willamette.

"I acknowledge with thanks your telegraphic reply
"of the 23d March, recognizing the right to make up
'the 'deficiency in given twenty miles' from overplus of
"the next continuous miles. Does not the principle al-
"low, in other words, the right of making selections
"along the whole length of the road from one twenty
"miles to another, and so on for the entire length of the
"road, in order to make up the full quantity enuring
"under the law of Congress?

"An early reply will oblige, truly yours

"Jos. S. Wilson.

"Please address care of Hon. Wm. Norris, 217
"Sansome Street, San Francisco."

"San Francisco, California,

"March 21, 1871.

"The Honorable Commissioner of the

"General Land Office,

"Washington City, D. C.

"Dear Sir:

I today telegraphed the Commissioner to ascertain
"the quantity enuring to the California-Oregon Land
"Company under Act of 25th July, 1866, Vol. 14, page

"239—also Statutes 1869, page 47, from Portland to "the Oregon Southern boundary, and whether the de- "ficiency in any given twenty miles may be made good "from the overplus within another twenty miles, or in "other words, whether under any recent rulings selec- "tions may be made along the whole length of the road "so as to make up the full quantity of land enuring un- "der the law of Congress.

(1st) I would be glad to have this data by letter also, "with full details giveing the quantity 'in place' and "separately that which may be awarded as 'Indemnity', "approximately, of course.

(2d) I request copies of list of such selections as may "have been already approved with,

"(3d) Copy of any list which may have been received "and is now under examination at the Department with "a view to approval.

(4) Please cause me to be officially notified of the "receipt at the Department from time to time of lists "for approval, giving quantity in each, stating the "amount 'in place' and that claimed as 'Indemnity.'

"(5th) It is important, and I therefore request to "be advised of the date of orders for withdrawal from "time to time, with lists of the townships embraced in "such withdrawals, and date of reception of each at the "District Land Office.

"(6) Also plezse send verified lists of approved se-"lections as rapidly as approved to Hon. Wm. Norris, "California-Oregon Land Company, No. 217 Sansome "Street.

"The data now requested is not only important as a "right to the grantee under the Acts of Congress, but of "great public importance in opening up to settlement "and cultivation a most interesting region of our coun-"try, among the most remote from the Capital of the "political Mossaic blocks of the Union.

"The Company hasits agents in Oregon who are "arranging with great energy in the important work "before them of pushing forward the construction of "the road and making the selections as the law requires.

"Early action in the matters mentioned in the fore-"going will oblige very respectfully and truly yours,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.

"April 7th, 1871.

"Hon. Jos. S. Wilson,
"San Francisco, California.

"Sir:

"I have the honor to acknowledge the receipt of your

"letters of 21st & 23d ulto. and say that we will fur-
"nish the requisite data, touching the Oregon and Cal-
"ifornia Rail Road, at as early a date as the pressing
"business of the office will allow.

"Very respectfully,

"Your obdt. servt.

"Willis Drummond,

Commissioner."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

'Washington, D. C. April 19, 1871.

"Hon. Jos. S. Wilson,

"Presd't. Pregon & Califa. Land Co.,

"San Francisco, California.

"Sir:

"Pursuant to your letters of 21st & 23d ulto. which
"receipt was acknowledged the 7th inst, I have the honor
"to present the following data and statement, respect-
"ing the grant by Congress of 25th July 1866, for the
"Oregon and California Rail Road Company of Oregon.

"First: *Estimated* length of road
"from Portland to the
"Southern Boundary Line of

"Oregon is 350 miles, and
"twenty *odd* sections, to the
"mile will make the area of
"the grant, *as estimated*
"4,480,000 acres. From this
"deduct the estimated quan-
"tity taken by Donation
"claims, sales and otherwise
"appropriated, 2,370,000 acres.

"Thusleaving after deduct-
"ing the foregoing, the esti-
"mated vacant *odd* sections
"falling within the granted
"limits, 2,110,000 acres.

"*Second* Estimated quantity of odd
"sections falling within the
"*indemnity* limits of ten ad-
"ditional miles set apart by
"said Act for said Company, 1,050,000 acres.

"Total amount estimated as
"available 3,160,000 acres.

"*Third*: Estimated quantity of the
"2,110,000 acres as lands 'in
"place' that fall within the
"Willamette Valley is acres
"—900.000

"*Fourth*: Estimated quantity failling
"within the indemnity limits
"of said road in the Willam-
"ette V. 450,000

"Total 1,350,000 acres.

"You will find enclosed copy of List No. 1, embrac-"ing 32,517.30 acres selected in the Oregon City Dis-"trict. The same has been carried into patent, and as "soon as recorded will be ready for transmission.

"I also enclose sketch map showing line of road ac-"cording to the maps of survey filed pursuant to the "2nd section of said Act of July 25, 1866, as well as "copies of the order of withdrawal.

"You will be advised whenever the Commissioners "make their report, as required by the 4th section of "said act.

"In regard to the 6th section of the granting Act, "as amended by the Act of April 15th, 1869, requiring "the Company to file their assent within one year, I "have the honor to state, that such assent was filed in "the office of the Secretary of the Interior, June 24th, "1869.

Very respectfully,
"Your Obdt. Servt.
"Willis Drummond,
"Commissioner."

"Proclamation No. 685 & State Map transmitted
"May 29, 1871—See letter by Mr. Robinson.

"San Francisco, California,
"April 3, 1871.

"The Commissioner of the
"General Land Office,
"Washington City, D. C.

"Sir:

"Will you please cause to be sent to me copy of the "proclamation for public sales of lands in the State of "Oregon, indicating on an accompanying sketch may in "blue color, the several townships and parts of town- "ships which have been actually offered at public sale, "pursuant to proclamation, with dates of offering.

"Enclosed is a memo. of results made up by a gen- "tleman in Oregon as to the extent and quantity enur- "ing to the grant by Act of 25th July, 1866, Vol. 14. p "239, which I request may be tested by the records of "the office. Further, I would be glad to have sent to "me a few of the general agricultural circular of 23d "August, 1870, and mineral circular of 8th August, "1870.

"Rsepectfully,
"Your ob. Servt.,
Jos. S. Wilson,

"Care of Hon. Wm. Norris, No. 217 Sansome Street"

"Special—

"Item from report dated 18th March, 1871, at Sa-
"lem, Oregon, from the agent of the Oregon and Cal-
"ifornia Land Company, in view of the grant by Act of
"25th July, 1866, the agent having been a resident of
"Oregon for 19 years, and part of the time engaged
"in practical surveying for the Government.

"(1st) By the terms of that Act—12,800 acres per
"mile are granted, to be taken within the odd alternate
"selections within 20 mile limits, each side, with the
"right to indemnity within 10 miles beyond the 20 mile
"limits.

"(2d) The road extends from Portland to the Cal-
"ifornia line, a distance of about 350 miles.

"(3d) Making amount of land enuring to the Com-
"pany upon completion of the road 4,480,000 acres.
"Four million four hundred and eighty thousand acres.)

"In consequence of the earlier and denser settlement
"of the lower part of the Willamette Valley, a much
"larger proportion of the country is surveyed and
"claimed by the settlers than is the case southward.

"(4) The Willamette Valley 150 miles from Port-
"land, the road will enter the Umpqua and thence
"through the Rouge River Valley to the California
"line.

"(5) In the Umpqua and Rogue River Valleys the
"settlements extend but few miles from the located line

"of road, but upon extension of the public surveys and "completion of the road a much fuller development of "the resources of that region is expected.

"The agent reports that he has selected by number "on lists, No. 1 to 7 inclusive, comprising the surveyed "lands within the limits of the grant from the base line "at Portland to the Southern limit.

"(6) of the Willamette (Oregon City) Land Dis- "trict at Township 14 South, 180,000 acres.

"(7th) There can be selected when the surveys are "completed within same limits 452,000.

"(8) Making in the Willamette at Oregon City "Land District a total of 632,000 acres.

"(9th) The length of the road in the Willamette "for Oregon City District is 96.66 miles.

"(10) The land to which the Company is entitled "for the same is 1,237,333 acres.

"(11) Amount as above surveyed and unsurveyed "632,000 acres, leaving a deficit of 605,000, which it is "supposed will be made good upon the extension of the "road southerly through the Umpqua and Rogue River "Valleys, where the settlements are more limited, and "so it is reported that in the agent's judgment the Com- "pany will be able to realize the amount of the entire "grant, acres 4,480,000.

"Note. Referring to the 5th head in the foregoing please

"state whether instructions have been despatched to "make the Oregon surveying approximation available, "and whether S Genl's attention has been drawn to the "necessity of completing the survey in order to make "the Congressional grant available.

"Note. Referring to the 6th head in the foregoing— "Have the 7 lists of selection there mentioned been re- "ceived by the Dept, embracing 180,000 acres, and when "will they be prepared for approval.

"Please carefully examine the data furnished in the "foregoing from the thoroughly agent of the Company "in Oregon and let me be fully advised as to the results "with answers to inquiries Note 5 and 6.

"I request half dozen of each of the circulars—the "general agricultural circular of 23d August, 1870 and "that of the minerl of 8th August 1870.

"April 3d, 1870. "Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., April 21st, 1871.

"Hon. Jos. S. Wilson,

"Presd't. Oregon & Califa. Land Co.,

"San Francisco, Califa.

"Sir:

"Pursuant to your letter of 3d inst., I have the honor

"to transmit herewith half a dozen of each of the cir-
"culars—The General Agricultural Circular of 23d
"August, 1870, and that of the Mineral of August 8th,
"1870.

"I have also to report that the Lists of selections re-
"ferred to under 6th Head, as having been made by the
"Oregon & California Railway Company in the Oregon
"City District, have not reached this office.

"The requisite data as to the available lands to go
"to said Railway Company in the Umpqua and Rogue
"River Valleys and thence to the California State line,
"will be ascertained and given in separate communica-
"tions as well as information relative to the surveys in
"Oregon.

"Very respectfully,

"Your Obdt. Servt.

"Willis Drummond,
"Commissioner."

"WESTERN UNION TELEGRAPH
"COMPANY.

"Dated San Francisco, May 17, 1871. Received at
"Washington, D. C. 8:45 A. M.

"To Hon. Commissioner Genl. Land Office.

"Please telegraph when Rail Road patent mentioned
"in commissioner's letter of nineteenth of April may be

"expected, also as to these or lists three, four, five, six "seven.

"Jos. S. Wilson.

"Care Wm. Norris."

"Telegram.

DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C. May 18, 1871.

"Rail Road patent No. 1, transmitted 9th inst., to "I. R. Moores, Salem, Oregon. Lists three to seven "inclusive just received.

"W. W. Curtis,

"Actg. Commissioner.

"Hon. Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal."

"San Francisco, California,

No. 320 California Street,

"May 12th, 1871.

"To the Hon'ble Commissioner of the General Land "Office,

"Washington, City, D. C.

"Sir:

"By letter of the 29th ulto. from the Company's

"Land Agent in Oregon, I understand that additional "Lists (No. 3, 4, 5, 6, 7) have been sent to Washing- "ton, of lands enuring to the Oregon and California "Rail Road Company under the Act of Congress ap- "proved 25th July, 1866. Those lists (with Nos. 1 & 2) "embrace the quantity of acres 174,846.73 of that "quantity the selection of a 32,517.20 has been approved, "and the receipt of the Patent expected according to ad- "vices in the Commissioner's letter of the 19th April "last. I beg leave to request that the 5 Lists above re- "ferred to may be examined and as far as correct may "be approved and carried into Patent at an early period.

"The heavy expenses incurred in realizing the pur- "pose of Congress in regard to the construction of the "railway and telegraph at so distant a point made it a "serious concern to the grantees to have the patents "so as to make the means available that are allowed by "the statute which can only be done after the issuing "of the patents.

"I should feel obliged if you will advise me at about "what time it is probable that final action may be ex- "pected in respect to the approval and transmission of "the patents in these cases.

"Very respectfully,

"Your Ob. Servt.,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., June 1, 1871

"Hon. Jos. S. Wilson,

"San Francisco, Califa.

"Sir:

"I have the honor to acknowledge the receipt of your "letter of the 12th ulto, and state that Lists Nos. 3, 4, "5, 6 & 7, of the Oregon and California Railroad selec- "tions in the Oregon City district, Oregon under the "Act of July 25th, 1866, and embracing in the aggre- "gate, 141,537.76/100 acres, were received on the 18th "ulto. They will be designated upon our records, ex- "amined and listed for approval at the earliest practi- "cable period.

"Very respectfully,

"Your obdt. servt.

"Willis Drummond,

"Commissioner."

"WESTERN UNION TELEGRAPH

"COMPANY.

"Dated San Francisco, Cal., 18 July, 1871. Re-
"ceived at 9:35 A. M.

"To Hon. Com'r. Gen. Land Of.

"Please telegraph me when Oregon & California
"R. R. patent Number two may be expected.

"Jos. S. Wilson

"Telegram.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"July 19, 1871

"Sir:

"Oregon and California Rail Road Patent number
"two ready for transmission on 22nd.

"Willis Drummond,

"Commissioner.

"Hon Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal.

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY.

"San Francisco, Cal., September 29th, 1871.

"Hon. Commissioner of the General Land Office,

"Washington City, Dist. Col.

"Very respectfully,

"Col. I. R. Moores, Portland, Oregon, has written "me under date of the 16th instant, in regard to Patent "No. 2 in favor of the 'Oregon and California Rail Road "Company', which was transmitted to him under date "July 22d, 1871, from the General Land Office, and in "which the following appears, viz:

"1st. The said Patent calls for the S. 1/2 of the "N. W. ¼ of Section 33 in Township 8 South of Range "1 E. and as containing 160 acres. The true area of the "tract is only 80 acres, but the subdivisional description "in the patent controls quantity, and only conveys the "aforesaid S. ½ of the N. W. ¼.

"The intention in the description coupled with said "quantity was doubtless to convey to the Company the "other subdivision of its land in said section, viz: The "S. ½ of the N. E. ¼ of Sec. 33, R. S. 1 E., because "the two subdivisions just make up the quantity of 160 "acres as given in said patent.

"To relieve the case from difficulty, I request you "will order a list in the usual form to be officially ap- "proved for said S. ½ of the N. E. ¼ of Sec. 33, 8 S. "1, containing 80 acres, so as to furnish evidence of the "Company's right to this tract, which lawfully enures "to it under the Act of Congress, approved 25th July, "1866, U. S. Statutes, Vol. 14, page 239.

"I ask that this matter may receive prompt atten- "tion, and in sending transcript to Col. I. R. Moores, at "Portland, Oregon, I should be glad if a copy at the "same time be sent to the undersigned.

"2d. The aforesaid Patent No. 2 embraces the fol- "lowing portions of Sec. 19, Township 5 S. R. 3 E., viz:

"The S. ½ of said Sec. 19

"The S. ½ of N. W. ¼ Sec. 19

"The N. W. ¼ of N. W. ¼ Sec. 19

"The SW ¼ of NE ¼ Sec. 19

"Containing 526.78 Acres.

"On examination of the transcript plat of said town- "ship the donation claim of Clifton R. Calaghan is "found there represented as embracing the greater por- "tion of the land embraced in said subdivision.

"3. Another inadvertance is reported as existing "in said patent which embraces Lots numbered 1, 2, 3, "and 4 of Section 31, containing 68.44 acres in Township "6 South of range 5 West, whilst it is reported that three

"of these lots, Nos. 2, 3, 4 are included in the donation "claim of G. B. Savery, leaving only lot No. 1 in that "section belonging to the Company. I have not, how- "ever the transcript plat before me, but present the mat- "ter as reported.

"The object of this is to request that a careful ex- "amination be made, and that I may be advised of the "exact status of each of the donation claims referred "to, viz: of Clifton R. Callaghan & G. B. Savery.

"I should be glad to be informed if they have been "finally recognized as valid and patented, so that a prop- "er marginal note and entry may be made in order that "the Company may not interfere in the way of disposal "of any portion of the premises taken by a prior valid "claim, where such exists.

"Early information in regard to the 2d and 3d cases, "and compliance with the application under the 14th "head is requested by Very respectfully your ob. servt.,

"Jos. S. Wilson."

"WESTERN UNION TELEGRAPH
"COMPANY.

"Dated San Francisco, Cal., 18 Nov., 1871. Re- "ceived at 8:55 A. M. 21st.

"To Com'r. General Land Office.

"Suspend action on large list Oregon selections or

"railroad lands from Roseburg to California line. Tele-
"graph acknowledgment. Grounds for rejection mailed.

"Jos. S. Wilson.

"Answer to telegram Nov. 21st. Cromwell."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Nov'r. 21st, 1871.

"Telegram of the 18th inst., received and noted.

"Willis Drummond,
"Commissioner.

"Hon. Jos. S. Wilson,
"San Francisco,
"California."

"Collect."

"Office of
"EUROPEAN AND OREGON LAND
"COMPANY,

"San Francisco, Cal., 18th November, 1871.

"Hon. Commissioner of the General Land Office,
"Washington City, Dist. of Col.

"Sir:

"I received this morning a letter dated the 13th
"inst., at Portland, Oregon, from I. R. Moores, 'Ore-

"gon & California Railroad, Land Department', re-
"ferring to the fact that a preliminary survey was made
"by the Hon. Jesse Applegate more than a year ago
"of the definite location of the said Oregon and Califor-
"nia Railroad, under Act of Congress approved 25th
"July, 1866—Statutes Vol. 14 page 239—from 'A short
"distance from Roseburg to the California line' an
"authenticated map of which will soon be sent to the
"Department as the basis for Departmental orders of
"withdrawal.

"In the meantime I send herewith a map believed to
"be approximately correct, indicating the extended line
"of route in the region above mentioned, and understand-
"ing that 'a large list of selections made by the State
"authorities to lands within the limits' (20 and 30 mile
"lateral) which are fixed under the Statutory Grant of
"25th July, 1866, by the definite location and actual sur-
"vey of the route from a short distance as aforesaid, from
"Roseburg to the California line.

"My present object is to present this,

"1st. As a Caveat against any official action on
"said State Selection List until the receipt by the De-
"partment of the verified map of the said definite loca-
"tion and survey of the aforesaid railroad south of Rose-
"burg, and

"2nd. To ask that as soon as this latter map is re-
"reived by the Department that the State selection may
"be definitely rejected of any and all tracts enuring

"under the Statutory Grant aforesaid, and the estab-
"lished decisions to the aforesaid Railroad company
"and that the undersigned may be promptly advised of
"the official action in this respect.

"Requesting an acknowledgment of the receipt of
"this, I remain,

"Respectfully,

"Jos. S. Wilson."

"DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,

"Washington, D. C.,

"Jan'y. 4th, 1872.

"Hon. Jos. S. Wilson,

"San Francisco, Califa.

"Sir:

"I have the honor to acknowledge the receipt of your
"letter of 18th Novr. last, and the accompanying pre-
"liminary map, indicating the extended surveying line
"of route of the Oregon & California Rail Road from
"a point near Roseburg, Oregon, to the California State
"line.

"In regard to the State selection List—made with-
"in the limits of said Railroad, South of Roseburg, I
"have to say has not yet reached this office, but when
"received, official action will be suspended until said

"Railroad limits are fixed according to the map to be "filed soon, duly authenticated.

"Very respectfully,

"Willis Drummond,

"Commissioner."

"Office of

"EUROPEAN AND OREGON LAND "COMPANY,

"San Francisco, Cal., January 9th, 1872.

"Honble Commissioner of the General Land Office,

"Washington City, D. C.

"Sir:

"By letter dated 26th ulto. at Portland, Oregon, "from Col. I. R. Moores, Agent of the Oregon and Cali- "fornia Railroad Company, I am advised that a map, "in good shape, has been transmitted to the Department "showing the definite location of the route of the Rail- "road from Township 30 South to the California line.

"I beg leave therefore respectfully to ask,

"1st. That immediate orders may be given to the "Register and Receiver for the withdrawal of the odd "numbered sections enuring to the Company under the "Statutory Grant by Act of Congress approved 25th "July, 1866, United States at large, Vol. 14 page 239;

"and that

"2nd. A copy of the orders of withdrawal may be "sent to the undersigned, with

"3d. A copy of the sketch map which may be sent "to the Register and Receiver, as their guide and basis "of withdrawal, such maps, involving comparatively in- "considerable labor as they are usually prepared on "printed sheets of Townships, in a scale of an inch and "a half to a township, indicating the line of route with "the 20 and 30 mile lateral limits.

"A prompt acknowledgment, and compliance will "oblige the Company, and undersigned, and be of real "service not only to said Company, but in such prompt "award of the right under the law, conflicts of title will "be avoided, whilst at the same time the interest of the "United States will be directly advanced by enabling "the Government to realise the double minimum for the "even numbered sections of public lands within the "range of the Grant.

"Respectfully,

"Jos. S. Wilson, Prest."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, Cal., October 26th, 1871.

"The Hon. Commissioner of the General Land Office,

"Washington City, Dist. Col.

"Sir:

"By letter of the 21st instant from I. R. Moores,, "Esq. Portland, Oregon, I am advised that Lists of "selections of lands in the Roseburg Land District, Ore- "gon, enuring under the Act of Congress approved 25th "July, 1866, to the Oregon and California Railroad "Company, were transmitted about the 1st instant by the "Register of the Land Office at Roseburg to the Gen- "eral Land Office.

"These Lists embrace an aggregate of

"Lands 'in place' of acres	235,441.19,
" 'Indemnity' lands	26,588.89

Acres 262,030.8/100.

"There is reason to believe that in the preparation of "these Lists every precaution was used to avoid con- "flict, secure accuracy, and make them as complete as "possible, it having been reported to me that 'the Regis- "ter thinks every tract will be patented as he was very "careful.' This preliminary painstaking will necessarily

"lessen the labor of official examination, and facilitate "the preparation of the official lists for approval, and "as it is a matter of supreme importance to the interests "of the Company to have, at an early period, the usual "lists of approval in view of the enormous outlays re- "quired in constructing this railway to span Western "Oregon from north to south, I beg leave earnestly to "request that you will cause the work to be immediately "placed in hands, and that the desired transcript Lists "of approval may be transmitted with all practicable "despatch, and if they should be sent within the ensuing "month to I. R. Moores, Land Agent of the Company "at Portland, Oregon, and the undersigned advised of "the fact, he would feel greatly obliged.

"Very respectfully,

"Your obt. servt.,

"Jos. S. Wilson, Pres."

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

"Washington, D. C., Jan. 25, 1872.

"Hon. Jos. S. Wilson,

"San Francisco, Cal.,

"Sir:

"I have the honor to advise you in regard to the "Oregon & California Railroad lists of selections in Ore-

"gon, which were the subject of your letters of 26th "October and 30th Decr. last, that the same were duly "received 7th Oct. 1871, and have been designated upon "the tract books of this office.

"I have further to state, that said lists No. "1 and 2—Roseburg district—embracing in the ag- "gregate 262,038.8/100 acres, are lands lying south, & "beyond the constructed 4th section of twenty miles of "said road, as shown by certificates on file, and accord- "ing to the terms of the 4th section of the granting act "of July 25th, 1866, the lands this embraced in said "lists will have to await the filing of advanced construct- "ed sections of road—before any steps can be taken to- "ward the patenting of said selections.

"Very respectfully,

"Willis Drummond,

"Commissioner."

"Office of

"EUROPEAN AND OREGON LAND "COMPANY,

"San Francisco, Cal., December 30th, 1871.

"The Hon. Commissioner of the General Land Office.

"Washington City, Dist. of Col.

"Sir:

"On the 26th of October last, I had the honor to

"address a communication to the Commissioner referring "to certain Lists of selections sent by the Register at "Roseburg about the 1st of that month for lands enur- "ing to the Oregon and California Railroad Company "under the Congressional Grant by Act of 25th July, "1866—Statutes Vol. 14, page 289.

"Great care was observed in preparing those lists, "so as to avoid any interference with the rights of others, "and render them as complete and accurate as possible, "in order that by lessening the labor of Departmental "examination, prompt official action might be secured, "and in inviting attention to the subject, the hope was "expressed that the work might be completed within "the month of last November.

"As I have received no intimation as to what has "been done, now acknowledgment, and as the early ap- "proval of the lists is a matter of grave and most press- "ing importance to the Company in view of very heavy "outlays, and the necessity for making immediately "available the lands which have been granted, I am con- "strained again to trouble the Commissioner by asking "that the work be pressed to completion, & the requisite "list of approval forwarded at the earliest period pos- "sible, thereby rendering legitimate service to the Com- "pany, and obliging the undersigned.

"Requesting an acknowledgment of the receipt of "this, and advice as to the time the approval may be "expected, I remain

"Very respectfully,

"Jos. S. Wilson,

"Pres."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, Cal., Jan. 17th, 1872.

"The Hon. Commissioner of the General Land Office.

"Washington City, D. C.

"Sir:

"I have received your letter of the 4th instant "acknowledging the reception of mine of the 13th No- "vember last accompanied by preliminary map of the "route of the Oregon and California Railroad from "near Roseburg to the California line.

"Since then the formal authenticated map has been "transmitted, as mentioned in my communication of the "9th inst. requesting the immediate issue of the orders "of withdrawal & that I might be furnished with a copy "of the same, and of the connected plat sent to the Dis- "trict Land Officers as the basis of withdrawal.

"I learn from your favor of the 4th inst. first above "referred to, that the State Selection List (Agricultural "College) which I had reason to suppose had been sent "to the Department, embracing odd numbered sections "belonging to the Company, had not reached the Gen- "eral Land Office. I had received information that "such selections had been made right on the track of, "and adjacent to the actually established railroad route "in townships 38, 39 & 40 South, of Range 9 & 10 East.

"Should such selections interfering with the prior vested "rights of the Company to the odd sections in lateral "limits be presented, it is earnestly requested, as a simple "act of justice to said Company, that the cancellation of "the same be immediately ordered, and then the State "authorities can select other lands extending if desired, "so the even numbered sections under the statutory lim- "itations.

"Your prompt compliance both as to the issue of the "orders of withdrawal, and cancellation of the invalid "interfering sections, will, in subserving the ends of jus- "tice, oblige the Company and

"Very respectfully,

"Jos. S. Wilson.

"Prest."

"FRANKLIN TELEGRAPH CO.

"Feby. 20, 1872.

"By telegraph from San Francisco

"To Willis Drummond,

"Commissioner G. L. O.

"Is Oregon and California Railroad map recd. & "withdrawal order given.

"Jos. S. Wilson

Prest. E. & O. L. Co.,

"420 California St."

"Telegram.

"DEPARTMENT OF THE INTERIOR,

"GENERAL LAND OFFICE,

Feby. 24th, 1872.

"Sir:

"Map of Oregon and California Railroad received "and under consideration.

"Willis Drummond,

"Commissioner.

"Hon. Jos. S. Wilson,

"320 California Street,

"San Francisco, Cal.

"Collect."

"Office of

"EUROPEAN AND OREGON LAND

"COMPANY,

"San Francisco, February 24th, 1872.

"Honble. Commissioner of the General Land Office.

"Washington City, D. Col.

"Sir:

"Your letter of the 25th ulto, retarded in its transit "by snow obstructions, has come to hand, acknowledging

"the receipt on 17th October last of Roseburg Land "District Selections in Lists Nos. 1 and 2 which are the "subject of letters to you from the undersigned of the "26th October and the 30th December last.

"The Commissioner referring to the 4th section of "the Act of Congress approved 25th July, 1866 (Vol. "14, page 239) making the Grant for the construction "of the Oregon and California Rail Road, properly "states that the lands 'embraced in the said Lists, will "have to await the filing of advanced constructed sections "of road, before any steps can be taken towards patent-"ing of said selections.

"Aware of that fact, it will be seen that in the letters "above mentioned of 26th October and 30th December "no application is made for the patent. Their issue will "necessarily have to be deferred until the preliminary re-"quirements as to further constructed sections shall have "been met. What is not wanted, however, and to which "there is no legal interdict, is that the Lists shall be tak-"en up, examined and tested and where the selections are "found perfectly regular, and correct, and free from in-"terference, that the usual List of approval may be fur-"nished at the same time it would be a gratification to "the Company to have transcript of the approved List, "so as to be certain as to the particular lands enuring "under the Grant, on which they can rely as a land "fund, and for which ultimate title as stipulated in said "4th section is to be given by patent, upon meeting the "statutory requirements aforesaid. The request is there-

"fore respectfully renewed for prompt transmission of "the issued List.

Very respectfully,

"Jos. S. Wilson.

"Prest."

DEFENDANTS' EXHIBIT 379

is a certified copy of map showing the definite location of the line of the Oregon Central Railroad under the act of May 4, 1870, under seal of the General Land Office.

This map is not printed, but is certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 380

is a statement purporting to show in a general way the financial operations of the Oregon Central Railroad Company (East Side), the Oregon Central Railroad Company (West Side), and the Oregon & California Railroad Company as gathered from records of meetings of directors and stockholders of said companies, and is as follows:

THIS PAGE BOUND VERTICAL IN BOOK

STATEMENT SHOWING IN A GENERAL WAY THE FINANCIAL OPERATIONS OF THE OREGON CENTRAL RAILROAD COMPANY (EAST SIDE), THE OREGON CENTRAL RAILROAD COMPANY (WEST SIDE) AND THE OREGON & CALIFORNIA RAILROAD COMPANY AS GATHERED FROM THE RECORDS OF MEETINGS OF DIRECTORS AND STOCKHOLDERS OF SAID COMPANIES.

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
3/17/70	O&C RR incorporated and issued Capital Stock	$20,000,000.00			
3/29/70	O&CRR Co. acquired OCRR Co. (East Side) under agreement to pay Ben Halladay & Co. amount invested			1,000,000.00	1,000,000.00
4/14/70	O&CRR Co. issued 1st Mortgage Bonds US Bill of Complaint in		10,950,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Suit 3340 alleges (P 26) this bond issue produced in cash, approximately				8,000,000.00
	it does not appear from the O&C records what amount was produced.				
About					
10/6/80	O&CRR Co. acquired OCRR Co. (West Side) subject to outstanding bonds		4,395,000.00		
	Pledged as collateral for two notes			1,000,000.00	1,000,000.00
	Outstanding 2nd Mortgage Bonds		300,000.00		300,000.00
	And with the following investment:				

THIS PAGE B

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Cash paid on Capital Stock....				47,531.17
	Net earnings from operation...				38,657.81
	Rental received from Western Oregon RR.....				23,250.00
	Note due Northwestern Construction Company.....			13,006.82	13,006.82
	Amount due O&CRR Co.....				120,997.40
	Individual Subsidies.....				95,466.24
	Cash received from sales of Granted Lands.....				4,934.69
	Rental due from WORR Co....				1,750.00
	Interest covering two notes for $1,000,000.00			612,796.34	

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Unpaid interest coupons on 2nd Mortgage			84,000.00	
	Accrued interest on last item after maturity			13,230.00	
2/1/81	O&CRR Co. Capital Stock reduced by surrender.....	18,240,800.00			
	Upon the remaining $1,759,200.00, Capital Stock, full payment was made				1,759,200.00
	New 1st Mortgage Bonds issued..		2,000,000.00		2,000,000.00
	O&CRR Co. acquired Western Oregon R. R. Co., subject to cost of construction due Northwestern Construction Co.		1,520,564.05		1,520,564.05

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Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
5/7/81	O&CRR Co. increased Common Stock by	5,240,800.00			
	O&CRR Co. issued Preferred Stock	12,000,000.00			
	O&CRR Co. issued General Mortgage Bonds		6,000,000.00		5,280,000.00
	Original O&CRR Co. 1st Mortgage Bonds and Interest Coupons surrendered for new Preferred and Common Stock (except a small amount, for which indemnity was provided) and bonds were cancelled.....		10,950,000.00		
	New O&CRR Co. 1st Mortgage Bonds were paid and cancelled..		2,000,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Reorganization Discounts and commissions on $1,414,000.00 Capital Stock sold.....				887,712.39
	Reorganization Expenses paid in Capital Stock				435,000.00
	Reorganization Expenses paid in Cash				208,439.36
8/20/81	Two West Side notes cancelled...			1,000,000.00	
	Interest thereon cancelled.....			612,796.34	
	West Side 1st Mortgage Bonds cancelled		4,395,000.00		
	West Side 2nd Mortgage Bonds cancelled		300,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	Interest on 2nd Mortgage Bonds cancelled			97,230.00	
	WORR Mortgage to Northwestern Construction Co. cancelled...		1,520,564.05		
	West Side note to Northwestern Construction Company cancelled.			13,006.82	
	The situation being.....	19,000,000.00	6,000,000.00	1,000,000.00	19,674,206.43
	US Bill of Complaint (P 28) alleges that all of the then existing indebtedness was fully paid and discharged. This is confirmed by the O&C records, except as to the amount which was to have been paid to Ben Halladay & Co.,				

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
	shown herein as Floating Debt $1,000,000.00.				
2/5/83	O&CRR Co. issued additional General Mortgage Bonds.....		1,000,000.00		1,000,000.00
	U S Bill alleges (P 30) that this issue and that of 5/7/81 produced approximately $5,000,000.00.				
6/27/84	In settlement with Oregon & Transcontinental Company, O&C RR Co. agreed to pay on account of construction, within six months			446,000.00	446,000.00
Prior to					
3/7/87	O&CRR Co. had issued bonds under the 2nd Mortgage of 5/26/83.		2,610,000.00		2,610,000.00

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
Prior to					
6/27/88	O&CRR Co. had additionally issued under the General Mortgage of 6/1/81		2,020,000.00		2,020,000.00
7/1/87	O&CRR Co. made its mortgage to the Union Trust Company and issued bonds		20,000,000.00		20,000,000.00
6/27/88	All outstanding bonds of the General Mortgage of 6/1/81 were cancelled		9,020,000.00		
	All outstanding bonds of the 2nd mortgage of 5/26/83 were cancelled		2,610,000.00		

Date	Transactions	Stocks	Bonds	Floating Debt	Net Investment
Prior to					
9/4/08	O&CRR Co. had paid through sales of Granted Lands, bonds of the 7/1/87 mortgage.....		2,500,000.00		
	Leaving outstanding as alleged in the U S Bill (P 38) $17,500,000.00				
	The situation then being.....	19,000,000.00	17,500,000.00	(x)1,446,000.00	45,750,206.43

(x) It is presumed that the items constituting this amount have been taken care of in some manner, but the O&CRR Co. records do not show how.

DEFENDANTS' EXHIBIT 381

is circular No. 208, "The Three Year Homestead Law," issued by the Department of the Interior February 18, 1913, addressed to the Commissioner of the General Land Office.

This exhibit is not printed, but certified up under order of court and stipulation of parties.

DEFENDANTS' EXHIBIT 382

SUMMARY of PATENTS

to

OREGON AND CALIFORNIA RAILROAD COMPANY.

———o———

(No patents have been issued to)
(Oregon Central Railroad Company)

First:

PATENTS under Act of July 25, 1866, and amendments thereto.

THIS PAGE E

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866 and Jun. 25, 1868	Clackamas, Multnomah, Yamhill, Washington	5/9/71	1	32,517.21		
Jul. 25, 1866 and Jun. 25, 1868	Benton, Polk, Linn, Clackamas, Marion, Multnomah, Washington Yamhill.	7/12/71	2	72,417.65	47,829.81	
				Total under acts of 1866 & 1868		152,764.67

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Benton, Coos,					
Jun. 25, 1868 and Apr. 10,1869	Lane, Linn, Douglas,	5/29/72	3	42,729.16	26,332.47	
Jul. 25, 1866						
Jun. 25, 1868 and Apr. 10,1869	Clackamas Multnomah,	6/22/76	4	8,070.46	6,559.21	
Jul. 25, 1866	Benton, Lane	6/18/77	5	86,622.71		
Jun. 25, 1868 and	Polk, Linn, Clackamas,					
Apr. 10, 1869	Multnomah,					

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Marion, Yamhill, Washington.					
	Forward,					152,764.67
Jul. 25, 1866	Benton, Coos,	2/20/93	3		123,475.82	
Jun. 25, 1868 and Apr. 10, 1869	Clackamas, Douglas, Lane Lincoln, Linn, Marion, Polk, Tillamook,			(Includes 6363.23 acres of West Side Primary Lands not within East Side grant limits)		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Washington, Yamhill,					
Jul. 25,1866	Coos, Curry	3/3/93	7		71,081.41	
Jun. 25, 1868 and Apr. 10,1869	Douglas, Lane, Josephine, Linn, Marion Polk, Yamhill, Tillamook			(Includes 240 acres of West side Primary lands not within East Side Grant limits)		
Jul. 25, 1866	Benton,	3/3/93	8		97,929.67	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jun. 25, 1868 and Apr. 10, 1869	Jackson, Lane Klamath, Douglas, Yamhill					
			Total under acts of July 25, 1866, June 25, 1868, and April 10, 1869,			462,800.91
			Total under patents reciting Acts in addition to Act of July 25, 1866			615,565.58

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Coos, Curry, Douglas, Jackson, Josephine, Klamath	6/11/94	9		152,409.43	
Jul. 25, 1866	Benton, Coos, Douglas, Lane, Jackson, Linn, Josephine, Klamath, Marion, Yamhill, Washington.	12/3/94	10	229,943.52		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Benton, Coos, Curry, Klamath, Douglas, Lane, Jackson, Linn, Lincoln Yamhill.	4/23/95	11		52,397.89	
				229,943.52	204,806.82	
	Forward,					615,565.58
	Forward,					615,565.58
Jul. 25, 1866	Josephine, Jackson.	4/24/95	12		11,455.62	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine, Jackson.	4/27/95	13	83,889.76		
Jul. 25, 1866	Klamath	5/14/95	14		480.	
Jul. 25, 1866	Benton, Polk Linn, Yamhill	5/14/95	15		16,942.26	
Jul. 25, 1866	Douglas, Jackson.	10/9/95	19		10,464.96	
Jul. 25,1866	Douglas, Josephine, Jackson.	10/9/95	20		11,147.91	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas Coos, Benton.	12/13/95	22		13,528.49	
Jul. 25, 1866	Douglas	12/13/95	23		4,194.12	
Jul. 25, 1866	Lane, Klamath, Douglas, Benton, Jackson	12/16/95	24	150,269.98		
Jul. 25, 1866	Lane, Klamath, Linn, Douglas Benton, Jackson.	12/17/95	25	203,947.91		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Coos.	1/20/96	27	21,813.34		
Jul. 25, 1866	Lane,	1/21/96	29	640.		
Jun. 22, 1874 lieu land in even section.	Marion,	2/12/96	31		(80.)	
Jul. 25, 1866	Lane, Douglas, Jackson.	2/21/96	32	952.19		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul.25, 1866	Benton, Polk Linn, Marion, Yamhill.	3/12/96	34	4,162.53		
Jul. 25, 1866	Douglas	3/13/96	35		160.	
	Forward.					615.565.58
				695,619.23	273,180.18	
	Forward.			695,619.23	273,180.18	615,565.58
Jul. 25,1866	Clackamas, Marion.	3/14/96	36		26,938.51	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson	3/17/96	38	107,585.96		
Jul. 25, 1866	Lane, Douglas, Jackson.	3/16/96	39	59,098.60		
Jul. 25, 1866	Jackson.	4/17/96	41	1,601.38		
Jul. 25, 1866	Douglas, Josephine, Jackson.	5/6/96	42	259,351.46		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson, Josephine.	5/5/96	43	112,479.84		
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson	5/2/96	44	13,417.07		
Jul. 25, 1866	Polk,	5/2/96	45		4,135.80	
Jul. 25, 1866	Lane Josephine	5/7/96	46		5,185.00	
Jul. 25, 1866	Linn	5/7/96	47		6,866.90	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Klamath	5/12/96	48	638.24		
Jul. 25, 1866	Coos, Jackson.	5/20/96	49		242.60	
Jul. 25, 1866	Lane	7/10/96	51		10,534.71	
Jul. 25, 1866	Linn,	7/15/96	52	31.82		
Jul. 25, 1866	Marion,	7/23/96	53		2,037.09	
Jul. 25, 1866	Douglas,	7/23/96	54		11,461.44	
Jul. 25, 1866	Lane,	7/23/96	55		5,868.14	
Jul. 25, 1866	Lane, Douglas,	7/23/96	56	14,884.84		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane,	8/19/96	57		402.01	
Jul. 25, 1866	Douglas,	8/19/96	58		156.52	
Jul. 25, 1866	Douglas,	10/13/96	61		5,938.39	
	Forward.			1,264,708.44	352,447.29	615,565.58
patent summary						
				1,264,708.44	352,447.29	615,565.58
Jul. 25, 1866	Douglas	10/22/96	63			
	Josephine			29,156.92		
Jul. 25, 1866	Douglas	10/23/96	64		120.	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas Josephine	11/24/96	66		110.	
Jul. 25, 1866	Lane, Linn,	12/ 7/96	67		400.	
Jul. 25, 1866	Douglas	12/ 8/96	68	3,425.80		
Jul. 25, 1866	Benton, Polk Marion, Yamhill, Washington.	12/ 7/96	69	352.89		
Jul. 25, 1866	Benton, Polk, Marion.	1/30/97	70	190.17		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Polk Tillamook	1/30/97	71		440.	
Jul. 25, 1866	Jackson	2/30/97	72	200.51		
Jul. 25, 1866	Lane, Douglas, Polk, Yamhill.	2/4/97	73		2,010.05	
Jul. 25, 1866	Polk	2/16/97	74	20.		
Jul. 25, 1866	Linn	2/26/97	77		40.	
Jul. 25, 1866	Lane, Linn, Douglas	2/27/97	78	120.		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine, Jackson	3/3/97	80	1,054.16		
Jul. 25, 1866	Lane, Douglas, Linn, Jackson, Josephine, Coos.	3/ 3/97	81		3,138.95	
Jul. 25, 1866	Yamhill	5/6/97	83		40.	
Jul. 25, 1866	Lane, Douglas, Benton, Jackson.	5/ 6/97	84		1,199.53	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Linn,	5/17:97	85		160.	
	Forward			1,299,228.89	360,105.82	615,565.58
Patent Summary						
				1,299,228.89	360,105.82	615,565.58
Jul. 25, 1866	Jackson Douglas,	5/17/97	86		400.	
Jul. 25, 1866	Coos, Curry, Jackson	6/15/97	87		960.	
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson.	7/ 3/97	88	9,207.77		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine.	7/ 9/97	89		1,473.60	
Jul. 25, 1866	Lane, Jackson, Douglas, Josephine,	9/ 2/97	90	1,315.28		
Jul. 25, 1866	Josephine	10/ 5/97	91		1,680.41	
Jul. 25, 1866	Douglas, Josephine, Jackson.	10/ 5/97	92	5,579.59		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas, Josephine, Jackson.	11/16/97	93	3,957.49		
Jul. 25, 1866	Douglas	11/16/97	94	73.36		
Jul. 25, 1866	Linn	12/ 4/97	95		2,241.55	
Jul. 25, 1866	Douglas, Josephine, Jackson,	12/ 4/97	96	1,529.48		
Jul. 25, 1866	Benton, Jackson,	12/ 4/97	97		80.	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson,	12/22/97	98	120.		
Jul. 25, 1866	Lane, Douglas,	1/10/98	99	17,019.09		
Jul. 25, 1866	Douglas, Josephine, Jackson,	2/ 9/98	100	3,306.90		
Jul. 25, 1866	Linn, Douglas, Jackson.	3/ 2/98	101	441.75		
Jul. 25, 1866	Curry, J'kson,	3/ 2/98	102		271.83	
	Forward			1,341,779.60	367,213.21	615,565.58

Patent Summary.

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Forward			1,341,779.60	367,213.21	615,565.58
Jul. 25, 1866	Josephine	3/ 3/98	103	160.		
Jul. 25, 1866	Jackson	5/27/98	105	8,893.26		
Jul. 25, 1866	Jackson	6/29/98	106	442.28		
Jul. 25, 1866	Josephine	6/29/98	107		22.20	
Jul. 25, 1866	Linn,	8/31/98	108		440.	
Jul. 25, 1866	Douglas	9/28/98	109	5,787.48		
Jul. 25, 1866	Jackson	10/14/98	100	181.06		
Jul. 25, 1866	Douglas	10/15/98	111		5,898.07	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Josephine, Jackson	11/11/98	112	14,137.74		
Jul. 25, 1866	Douglas	12/30/98	113		13,012.36	
Jul. 25, 1866	Coos,	2/ 2/99	114		14,082.84	
Jul. 25, 1866	Jackson,	2/23/99	115	309.95		
Jul. 25, 1866	Benton, Polk, Linn, Marion, Washington, Yamhill, Clackamas.	2/25/99	116	1,467.85		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas.	3/20/99	117	19,582.14		
Jul. 25, 1866	Klamath, Lane, Jackson	3/29/99	118	766.33		
Jul. 25, 1866	Lane,	4/18/99	119	362.89		
Jul. 25, 1866	Klamath	4/20/99	120		80.	
Jul. 25, 1866	Jackson	5/11/99	122	360.		
Jul. 25, 1866	Lane	5/17/99	123	567.11		
Jul. 25, 1866	Linn,	5/22/99	124	2,863.39		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Jackson,	6/ 3/99	125	7,040.40		
	Forward			1,404,701.48	460,798.68	865,505.58
Patent Summary						
	Forward			1,404,701.48	460,798.68	865,505.58
Jul. 25, 1866	Douglas, Josephine, Jackson.	6/26/99	126	9,126.07		
Jul. 25, 1866	Jackson	6/30/99	127	969.58		
Jul. 25, 1866	Lincoln	7/10/99	128		11,565.23	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Benton,	7/21/99	129		6,914.23	
Jul. 25, 1866	Jackson,	8/10/99	130	400.00		
Jul. 25, 1866	Jackson,	8/22/99	131	4,552.04		
Jul. 25, 1866	Lane, Jackson, Douglas.	8/22/99	132	365.20		
Jul. 25, 1866	Jackson, Douglas,	8/22/99	133	2,428.66		
Jul. 25, 1866	Jackson,	8/22/99	134	2,676.23		
Jul. 25, 1866	Douglas,	9/ 7/99	135	120.00		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Jackson,	9/14/99	136	751.93		
Jul. 25, 1866	Lane, Klamath, Douglas,	11/29/99	137	560.28		
Jul. 25, 1866	Benton, Polk, Clackamas.	11/29/99	138	72.67		
Jul. 25, 1866	Lane, Douglas,	12/ 4/99	139	2,630.10		
Jul. 25, 1866	Josephine	12/ 4/99	140		40.00	
Jul. 25, 1866	Douglas, Josephine, Jackson.	12/ 6/99	141	1,131.36		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas,	12/ 6/99	142	481.20		
Jul. 25, 1866	Douglas, Josephine, Jackson.	12/ 6/99	143	1,616.51		
Jul. 25, 1866	Douglas	12/ 6/99	144	200.00		
Jul. 25, 1866	Douglas	12/ 6/99	145	26,582.12		
Jul. 25, 1866	Lane	12/ 6/99	146		2,541.95	
Jul. 25, 1866	Coos	12/12/99	147		11,812.13	
	Forward			1,459,423.62	423,142.25	615,565.58

Patent Summary

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Forward			1.459,425.63	433,142.25	615,565.58
Jul. 25, 1855	Jackson	12/12/99	148	953.65		
Jul. 25, 1855	Douglas, Jackson.	12/15/99	149	243.34		
Jul. 25, 1855	Douglas Jackson Josephine.	12/18/99	150	2,348.99		
Jul. 25, 1855	Coos	12/20/99	151		11,,042.33	
Jul. 25, 1855	Josephine Jackson.	12/26/99	152	1,875.37		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Douglas, Josephine, Jackson.	1/ 5/00	153	1,689.20		
Jul. 25, 1855	Linn,	1/29/00	154		19,022.15	
Jul. 25, 1855	Douglas, Josephine, Jackson.	4/11/00	155	883.13		
Jul. 25, 1855	Lane	4/27/00	156		320.44	
Jul. 25, 1855	Douglas, Josephine, Jackson.	5/ 8/00	157	12,642.32		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Jackson	5/ 8/00	158	80.		
Jul. 25, 1855	Josephine	8/21/00	159		40.	
Jul. 25, 1855	Linn	8/16/00	160		160.	
Jul. 25, 1855	Jackson	8/16/00	161		800.58	
Jul. 25, 1855	Douglas Josephine	8/16/00	162	60.		
Jul. 25, 1855	Clackamas	9/13/00	163		7,143.51	
Jul. 25, 1855	Clackamas Multnomah	8/ 8/01	164	3,418.03		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1855	Multnomah	8/ 8/01	165	320.		
	Forward			1,483,939.66	471,671.26	615,565.58
Patent Summary.						
	Forward			1,483,939.66	471,671.26	615,565.58
Jul. 25, 1866	Polk, Marion, Linn, Yamhill	8/ 8/01	166	162.72		
Jul. 25, 1866	Washington,	8/ 8/01	167	80.		
Jul. 25, 1866	Jackson, Douglas, Lane.	8/ 8/01	168	3,117.85		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Jackson.	8/ 8/01	169	2,043.90		
Jul. 25, 1866	Klamath	8/ 8/01	170		198.61	
Jul. 25, 1866	Linn	8/ 8/01	171		2,360.11	
Jul. 25, 1866	Yamhill, Washington.	8/ 08/01	172		48.77	
Jul. 25, 1866	Washington, Yamhill, Lincoln.	8/ 8/01	173		560.00	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Jackson, Douglas, Lane, Coos, Curry.	8/ 8/01	174		2,158.37	
Jul. 25, 1866	Marion	8/ 8/01	175		536.29	
Jul. 25, 1866	Multnomah	8/ 8/01	176		4,295.88	
Jul. 25, 1866	Multnomah Clackamas	8/ 8/01	177		41,162.07	
Jun. 22, 1874 and Jul. 25, 1866 Lieu Land	Multnomah Linn Marion	1/24/02	178		(362.63)	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
	Douglas					
Jul. 25, 1866	Josephine, Jackson.	5/28/02	179	3,771.66		
Jul. 25, 1866 Jun. 22, 1874 lieu land in even sections.	Multnomah Marion	6/21/02	180		(199.11)	
Jul. 25, 1866	Clackamas	9/29/02	181	1,094.40		
Jul. 25, 1866	Linn, Jackson, Josephine	9/29/02	182		397.09	

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Clackamas	9/29/02	183		8,403.44	
	Forward			1,494,214.19	531,791.89	615,565.58
Patent Summary.						
	Forward			1,494,214.19	531,791.89	615,565.58
Jul. 25, 1866	Josephine Jackson Douglas.	12/ 6/02	184	1,298.07		
Jul. 25, 1866	Linn,	12/ 6/02	185		328.52	
Jul. 25, 1866	Klamath,	12/ 6/02	186		6,312.92	
Jul. 25, 1866	Douglas	12/ 6/02	187		3,898.96	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane, Douglas	12/ 6/02	188		10,099.40	
Jul. 25, 1866 Jun. 22, 1874 lieu land but in odd section.	Lane	2/18/03	189		(40.)	
Jul. 25, 1866	Josephine, Douglas.	2/18/03	190		19,876.97	
Jul. 25, 1866	Lane, Jackson, Coos,	3/16/03	191	513.28		
Jul. 25, 1866	Yamhill	3/16/03	192	40.		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Clackamas, Polk.	3/20/03	193		1,121.35	
Jul. 25, 1866	Klamath	3/20/03	194		4,190.16	
Jul. 25, 1866	Coos	3/20/03	195		240.	
Jul. 25, 1866	Clackamas Multnomah.	6/23/03	198		10,316.32	
Jul. 25, 1866	Jackson,	9/12/03	199	100.		
NOTE Following are without mineral restriction.						

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Klamath Yamhill	1/12/04	200		121.20	
Jul. 25, 1866	Douglas	2/ 9/04	201	89.17		
Jul. 25, 1866	Lane, Douglas, Linn, Coos, Jackson.	6/14/04	202	27,383.76		
	Forward			1,523,638.47	588,297.69	615,565.58
Patent Summary						
	Forward			1,523,638.47	588,297.69	615,565.58

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Douglas, Josephine.	10/28/04	203	11,744.95		
Jul. 25, 1866	Lane, Linn.	1/26/05	204		1,922.44	
Jul. 25, 1866	Douglas, Coos, Josephine.	2/ 3/05	205	20,006.55		
Jul. 25, 1866	Polk	4/27/05	206		160.55	
Jul. 25, 1866	Klamath, Douglas, Clackamas, Jackson.	5/ 5/05	207	791.69		
Jul. 25, 1866	Lane, Douglas,	6/ 5/05	208	2,677.40		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Jul. 25, 1866	Lane	8/15/05	Sup 3	80.		
Jul. 25, 1866	Douglas,	11/ 9/05	209	151.22		
Jul. 25,1866	Washington	11/ 9/05	210		38.82	
Jul. 25, 1866	Josephine	12/ 7/06	211	20.		
Total primary, patented under act of July 25, 1866 only				1,559,120.28		
Total indemnity patented under act of 1866 only					590,419.50	
Total under patents mentioning only act of July 25, 1866						2,149,539.78

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Total acres patented under act of July 25, 1866. and acts amendatory thereof, prior to Sept. 4, 1908.						2,765,105.36
Jul. 25, 1866 Jun. 25, 1868 and Apl. 10, 1869	Douglas	6/21/09	Sup. 3		161.75	161.75
				Total		2,765,267.11
Forward (Act of 1866)						2,765,267.11
Second: PATENTS under Act of May 4, 1870.						

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Tillamook Columbia	10/ 9/95	16		12,349.64	
May 4, 1870	Multnomah	10/ 9/95	17	46,091.14		
May 4, 1870	Yamhill Columbia (Includes 249.07 acres of East side Indemnity lands) Tillamook Washington.					
May 4, 1870	Clarke Co. (Wn.)	10/ 9/95	18	1,630.11		
May 4, 1870	Clarke Co. (Wn.)	10/ 9/95	21	40.00		

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4. 1870	Washington, Tillamook	12/14/95	26	32,968.11		
	(Pat. 26 includes 80 acres of East Side Indemnity lands)					
May 4, 1870	Washington, Columbia.	1/20/96	28	994.91		
May 4, 1870	Clarke (Wn.)	1/21/96	30	40.00		
May 4, 1870	Tillamook	2/21/96	33		13,003.26	
May 4, 1870	Columbia	3/16/96	37	160.00		

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Tillamook	4/11/96	40	1,123.39		
May 4, 1870	Tillamook	6/ 6/96	50		8,201.22	
May 4, 1870	Tillamook	9/30/96	59		1,933.78	
May 4, 1870	Tillamook	10/13/96	60		655.80	
May 4, 1870	Tillamook	10/17/96	62	5,186.92		
(Pat. 61 includes 320 acres of East side Indemnity lands)						
May 4, 1870	Tillamook	10/23/96	65		988.96	
	Forward			88,194.58	37,172.66	2,765,267.11

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Patent Summary						
	Forward			88,194.58	37,172.66	2,765,267.11
May 4, 1870	Tillamook	2/16/97	75		400.00	
May 4, 1870	Multnomah Washington.	2/16/97	76	228.00		
May 4, 1870	Yamhill,	3/ 2/97	79	1,680.00		
	Tillamook. (Pat. 79 includes 1680 acres of East side indemnity lands.)					
May 4, 1870	Tillamook	5/ 6/97	82		80.00	
May 4, 1870	Columbia	3/ 8/98	104		72.75	
May 4, 1870	Tillamook	5/11/99	121		520.00	

Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
May 4, 1870	Multnomah Columbia	3/20/03	196	200.00		
May 4, 1870	Tillamook	3/20/03	197		70.14	
	Total primary under act May 4, 1870.			90,302.58		
	Total indemnity under act May 4, 1870				38,315.55	
	Total under Act May 4, 1870.					128,618.13

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Acts recited in patent and remarks.	County where recorded	Date	Number	Acres Primary	Acres Indemnity	Acres Total
Total under Act of June 22, 1874 allowing selection of land in even sections, where base was wrongfully withheld (also reciting Act of July 25, 1866)						681.74
Total acres patented to O. & C. R. R. Co. under all grants, per records of counties of Oregon.						2,894,566.98

TMcA
L. H.

Patent summary.

DEFENDANTS' EXHIBIT 383

is certified copy of reports of Commissioners appointed to examine, and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine and report upon the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth sections of the Oregon & California Railroad from Portland to the Oregon and California state line, with the action of the President endorsed thereon.

This exhibit is not printed, but certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 384

is a certified copy of the affidavit of H. Villard, of date January 8, 1883, which, omitting certificate of Recorder of the General Land office as follows: C

M. L. 268839— 1

State of New York)
(ss.
City & County of New York)

Henry Villard, having been duly sworn says:

That he is the President of the Oregon and California Railroad Company, which Company has succeeded to and become duly invested with and is now possessed of and entitled to all the grants, rights, fran-

chises and privileges conferred upon the Oregon Company by chapter CCXLII of the Laws of Congress, 1866 (14 U. S. Stat. 239), entitled—"An Act granting Lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon"—Approved July 25, 1866, and the Acts amendatory thereof; and upon the Oregon Central Railroad Company, by Chapter LXIX, Laws of Congress, 1870 (16 U. S. Stat. 94), entitled—"An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon"—approved May 4, 1870.

That there has been already accepted and approved by the United States, as duly constructed under the provisions of the above recited Acts, those parts of said Oregon and California Railroad situated in Oregon, between East Portland and Roseburg, being 198 miles in length, and between Portland and St. Joseph and McMinnville, being about 50 miles in length.

That ever since the summer of 1881, and fully one year before the first day of December, Eighteen hundred and eighty-two, the work of duly constructing, completing and equipping the remaining parts of said railroad as defined in the above mentioned Acts, has been prosecuted by said Company continuously, actively and in perfect good faith, at an actual expenditure of large sums of money (several millions of dollars in amount), and in conformity with the will and de-

sire of Congress, as expressed in said Acts, that said lines of railroad should be speedily and thoroughly completed. And that, within the time above mentioned, substantial progress has been made towards the completion of said lines of said company, inasmuch as at least 45 miles of new road have, within that time, been constructed, completed and equipped in a thorough and first-class manner, and said new mileage is now in full operation as part of the railroad system of said Company; and at least 20 miles additional to the above are now partially constructed, and further construction still continues.

That by reason of the mountainous nature of the country through which said lines are being constructed, and on account of other natural obstructions, only overcome with the greatest difficulty and labor and at enormous expense, the above mentioned mileage is all that could be completed, with the utmost diligence, within the time above mentioned.

That said Oregon and California Railroad Company is now vigorously continuing said construction, in entire good faith; and it will continue the same without any unnecessary delay until its lines are fully completed in the manner specified in the Acts above recited.

Sworn to before me)
this 8th day of January)
1888.)

H. VILLARD.

L. R. Kidder
Notary Public (88)
New York Co.

(Seal.)

OREGON & CALIFORNIA

R. R. Co.

15 Jan'y 1883.

Asst Attny Genl
U. M. Seller

322

Henry Villard,
New York City,
8 Jan'y 1883.

Concerning the land grants to Oregon & California R. R. Co. and the Oregon Central R. R. Co.

M. L. 268837
C 4

DEFENDANTS' EXHIBIT 385

consists of the following:

H. R. Report No. 1664, 1st Session, 48th Congress, subject—"Unearned Land Grants"; recommitted to the Committee on Public Lands and ordered to be printed May 29, 1884;

Also H. R. Report No. 931, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed;

Also H. R. Report No. 930, 1st Session, 49th Congress, subject—"Forfeiture of Lands Granted To California and Oregon Railroad", March 8, 1886, referred to the House Calendar and ordered to be printed; which exhibit is as follows:

48TH CONGRESS, 1*st Session.*

HOUSE OF REPRESENTATIVES.

REPORT NO. 1664.

UNEARNED LAND GRANTS.

MAY 29, 1884.—Recommitted to the Committee on Public Lands and ordered to be printed.

MR. LEWIS, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany H. Res. 253.)

The Committee on the Public Lands, having had under consideration House resolution 253, *respectfully report as follows*:

The Commissioner of the General Land Office, in his annual report for the year 1883, after giving a tab-

ulated statement of the various land grants made to the different States, and to corporations to aid in building railroads, and in which the conditions of the granting acts had not been complied with, uses the following language:

The question of declaring a forfeiture of the foregoing grants, or any of them, is deemed an appropriate one for legislative consideration.

The time fixed in the granting acts for the completion of the roads expired, in some instances, in 1866, and, in other cases, at other periods down to 1882.

In the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed, whether within or out of the time prescribed. Your immediate predecessor suspended this practice prior to the meeting of Congress in December, 1880, but, as no legislative action was taken, you have held that under the decision of the Supreme Court of the United States you had no right to declare a forfeiture, or to further suspend the issue of patents for lands along the constructed portions of roads, even if the same had not been built within the prescribed time. The remaining lands are continued in the reservations established by law or under withdrawals made for the protection of the grants. Meanwhile settlers have entered upon some of these lands, and are anxious to know whether they must look to the railroad companies or to the United States for their titles.

The public demand for a definite settlement of the question whether a forfeiture is to be enforced in any of these cases is constantly pressed upon my attention. I consider it of very great importance that the earliest possible action should be taken either to revive the grants or to declare them forfeited. If it be the judgment of Congress that the grants should be revived, Congress may unquestionably prescribe the conditions of such revival; and if such action should be taken, I suggest that all actual settlers on the land be saved and secured in their rights and claims to land embraced in their settlements and improvements at the date of any such revival of the railroad grant.

Your committee have patiently and laboriously investigated the facts and law touching many of these land grants, and have reported many bills to this House forfeiting and restoring the lands to the public domain.

Many others remain yet to be examined, in regard to which bills have been introduced and referred to your committee, and all of which have for their object forfeiture of the grant.

So far they have failed to find one company that has complied with either the letter or spirit of the law (at least in the opinion of a majority of the committee), and considering the enormous amount of land involved we deem it of the highest importance to take any and every step possible to protect the rights of the Government, and especially of the people, in and to the pub-

lic lands which have been lavished upon different railway corporations to an alarming extent.

If it be true, as stated by the commissioner, that "in the absence of Congressional action lands have been certified or patented accordingly as roads have been constructed whether within or out of the time prescribed," this fact of itself fully justifies the passage of the resolution.

Time forms an important element in all these land grants, or it would not have been so universally inserted in the acts of Congress.

It is a grave responsibility for an administrative officer to disregard any of the conditions the lawmaker has seen proper to attach to a grant of land for public or private purposes, and the fact that it has been done to any extent, however limited, warrants the adoption of proper enactments to prevent its recurrence.

That it would be highly improper to take any further steps towards the confirmation of any land grant wherein bills for their forfeiture are now pending in either branch of Congress does not admit of question, and no good reason can be urged why the Secretary of the Interior should not be armed with an authoritative declaration from Congress upon the subject.

It will not only relieve him from the "pressure of parties in interest' 'whose persistent demands await only the adjournment of this body to be renewed in full

force, but it will protect the rights of the people and doubtless eventuate in driving these wealthy corporations into the courts of the country where these contests must ultimately be determined.

In regard to the second section it is simply an enunciation of what your committee believe to be sound principles of law.

In Rice *vs.* Railroad Company (1 Black, 380), Mr. Justice Clifford, after citing various decisions, summarizes the law thus:

Taken together, these several cases may be regarded as establishing the general doctrine that whenever privileges are granted to a corporation and the grant comes under revision in the courts such privileges are to be strictly construed against the corporation and in favor of the public, and that nothing passes but what is granted in clear and explicit terms.

The court say, in Mills *et al. vs.* St. Clair County (8 How., 581.)

That if the meaning of the words be doubtful in a grant designed to be a general benefit to the public, they shall be taken most strongly against the grantee and for the Government.

Other authorities might be cited, but it is not deemed necessary.

Your committee recommend the following amendments:

Insert the words "in Congress" after the word "bills" in line 8 of the first section, and substitute the word "shall" for "should," in line 6 of the second section, and as thus amended they recommend the passage of the resolution.

JOINT RESOLUTION prohibiting the confirmation, certification, and patenting of unearned land grants.

Whereas numerous bills have been introduced in both branches of Congress to forfeit lands granted to aid in the construction of railroads, and many of such bills have been favorably reported to this House; and

Whereas, it is important that something should be done looking to a speedy settlement of the serious and vital questions growing out of the agitation of this subject in and out of Congress: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, prohibited from taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where reports, favoring the forfeiture of such land grants, have been made to either branch of this Congress, until after final action shall be taken upon such bills *in Congress,* or until the Supreme Court of the United States, in a proper case shall decide upon the validity of such grant.

SEC. 2. That the Secretary aforesaid be, and is hereby, prohibited from certifying or patenting to any corporation any land grant except where such corporation has complied strictly with all the conditions of the granting act, and that in all cases of doubt in construing these conditions, the benefit of the doubt *shall* be given to the Government.

MR. OATES, from the Committee on the Public Lands, presented the following

VIEWS OF THE MINORITY.

We dissent from the report of the Committee on the Public Lands on joint resolutions No. 253, for the following reasons:

The first resolution, right enough in itself, prohibits the Secretary of the Interior from "taking any further steps to confirm, certify, or patent any lands granted to any corporation, State, or person by Congress in any case where *reports* favoring the forfeiture of such land grants have been made to either branch of this Congress until after final action" is had thereon. This we favor, but the report goes the full length of prohibiting the said Secretary from such action upon the mere introduction of a bill for the forfeiture of any such grant. We are opposed to placing any such construction upon the said first resolution, of which it is not fairly susceptible, and is thus construed, then we are opposed to

the resolution itself, but not otherwise, because it might be made the means of doing the grossest injustice. It would place it within the power of a single member of Congress, by the mere introduction of a bill, to give vast annoyance and suspend the issuance of patents to a railroad company which was by every principle of law entitled to them. We should, however, not be surprised at this part of the report when in a preceding part of it the statement is made that no railroad company has been found which had complied with the conditions of its land grant in either the letter or spirit of the law. A bill was introduced six months ago, at the beginning of the present session to forfeit the lands granted to the Great Southern Railroad, running from Chattanooga, Tenn., through the State of Alabama to Meridian, Miss., a distance of about 300 miles. No action has been taken thereon by the committee, and the pendency of that bill retards the company in obtaining patents and selling their lands, notwithstanding they have the necessary certificates and proofs that the road was constructed and completed as required in the granting act —a compliance with the law both in the letter and the spirit. With this case in the hands of the committee, and a statement of these facts having been made in open session two months ago, it can scarcely be said to be a fair statement that none of the railroad companies have complied with the terms of their grant. We refer to this case as an illustration.

We also dissent from that part of the report wherein

it charges "an administrative officer" (we presume the executive officer at the head of the Interior Department is meant) with issuing patents to these corporations in violation or disregard of the law, because the reflection is unjust. The quotations from the last annual report of the Commissioner of the General Land Office show that the rulings of the Department touching land grants has been in strict accord with the decisions of the Supreme Court of the United States in Shulenburg *vs.* Harryman, in 21 Wallace, which was not a legislative decision. It did not make any fresh law, but was a faithful and able application of principles as old as the common law of England to the facts presented in that case. These old principles thus applied informed the Secretary of the Interior and everybody else who took pains to read and understand that time was not such an important or essential element in these railroad land grants, nearly every one of which are estates upon condition subsequent, as to defeat them without the act of the grantor when the road was not completed within the time mentioned in the granting act. After the expiration of the prescribed time within which the road was to have been completed by the terms of the grant the title still remained in the railroad company, and they may lawfully sell (or earn) the lands by the construction of the road, which is the purpose of the grant so long as the grantor (the Government) permits the company to proceed. See 2d Blackstone's Commentaries—estates on condition subsequent.

We cannot join in the recommendation for the

adoption of the second resolution, because the same prejudges every controversy arising out of land grants, including those now pending in this House and the Senate, wherein the committee are divided in opinion, and prohibits for all time the issuance of patents or certifying any lands granted to any corporation except where there has been a strict compliance with all the conditions of the granting act, and makes the Secretary of the Interior *the judge* to ascertain and determine when all of the conditions are performed. It is proposed to make this resolution retract or apply to a case wherein a company, acting under the law but out of time, constructed a road and become entitled to the lands coterminous, so as to defeat the lawful claim of such lands. It is thus an attempt to divest vested rights without due process of law. We care nothing more for railroad companies than for other citizens. We favor just and constitutional legislation for all classes.

The hope is expressed by the committee that the adoption of the resolutions will drive these corporations into the courts where the controversies growing out of land grants will at last have to be settled. If the committee are in earnest in this declaration that the courts will ultimately have to settle these matters, why, we respectfully ask, have not the committee proposed some general measure to expedite that course? Why retain jurisdiction of each particular case and perform great labor in undergoing the mockery of a legislative-politico semi-judicial trial in a committee room with identically the same verdict in every case, instead of perfecting a

measure and endeavoring to pass it, requiring the courts, as speedily as practicable, to adjudicate and settle them, if, as the committee say, they must all at last go there for settlement?

We presume that the object of the second resolution is to prevent or prohibit the Secretary of the Interior from issuing patents in any case where the United States as grantor may legally declare the land granted forfeited, but the resolution is so constructed as to defeat the very purpose of the committee in recommending its adoption. They no doubt intended to take away from the Secretary the right to certify or patent in any and every case where there was any ground of controversy, but instead of so doing the resolution leaves him still to judge whether there has been strict compliance with the granting act. In the Senate there has been a general law proposed, and every lawyer in the United States knows, or ought to know, that not one of "these wealthy corporations," as they are called in the report, can sue the United States, because the courts of the United States have no jurisdiction until there is a statute conferring jurisdiction touching these matters. The resolutions barricade every avenue of escape from the citadel and then set fire to it to force the garrison to come out and fight fairly.

We offer as a substitute for the resolutions Senate bill No. 1445.

WM. C. OATES.
V. S. VAN EATON.

A BILL to provide for the settlement of the rights of the States and of the corporations and persons interested in any grant of lands in aid of railroads and canals which shall be declared forfeited by act of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit courts of the United States shall have jurisdiction to hear and determine all questions and controversies that may arise between the United States and any person or corporation upon the declaration hereafter made by act of Congress that any grant of the public lands of the United States in aid of the construction or equipment of a railroad or other road or canal has been forfeited, and shall also have jurisdiction to determine whether any such declaration of forfeiture by such act of Congress is so made as to abridge, impair, or destroy the rights of any State, corporation, or person having vested rights, easements, or privileges under the acts of Congress making such grants.

SEC. 2. That when Congress has by law declared that any grant of lands referred to in the first section of this act is forfeited, it shall be the duty of the Attorney-General of the United States to exhibit and file a bill in equity in a circuit court of the United States in the judicial district in which the granted lands, or some part thereof, are located, in the name and in behalf of the United States of America, and against the persons or corporations claiming the benefits of such land grant, or

its successor, for the purpose of settling, according to the true intent, purpose, and meaning of the laws of the United States relating to such grant, all the legal and equitable rights of the United States, and of such grantee, or its successors or assigns, to said lands, or any part thereof, under such grant or to any right, easement, or privilege thereto appertaining; and said circuit court shall have full and complete power and jurisdiction to adjudge, determine, and enforce, by appropriate order or decree made in such suit, the said rights of the United States, and those also of all persons or corporations claiming or having any such right, easement, or privilege against the United States under agreement with or conveyance from such grantee, or its successors, or of any person or corporation claiming or having such right, easement, or privilege adversely to such grantee, or its successors, and against the United States. Any State whose rights are affected by the forfeiture of any such grant of lands may file its petition in said cause setting forth the facts upon which its claim is based, and asking for such relief as shall be appropriate thereto, which petition shall be answered by the Attorney-General on the part of the United States; and upon the hearing of such petition, on the pleading and proofs, the court shall decide upon the merits of the claim as against the United States so asserted by such State. And so, in like manner, may any person or corporation propound its claim to any right, easement, or privilege in such forfeited lands as against the United States, which shall be answered, heard, and decided in like manner. At

any time during the progress of said case the court may order a consolidation of any of such petitions, so as to lessen the costs and facilitate the final disposition of the same.

SEC. 3. That upon the filing of such bill, and during the first term of the court thereafter, or in the vacation of such court, the court, or the judge of the circuit court in which such bill is filed, shall, upon application of the complainant, make an order, which shall be entered of record in such court, and shall be published as often as may be required for a term of sixty days from the date of such order, notifying all persons having any interest in the lands so declared forfeited to appear and propound their claims to the same, by petition, within the period of one year from the date of such order. Such order, with a brief statement of the allegations in the bill, shall be published in a newspaper, or in several newspapers, if the court or judge shall so direct, as near as may be to the said land grant in each State or Territory in which the same, or any part thereof, is situated. The publication of such order shall have the same effect upon all persons having any interest in said forfeited lands as if they were duly served with lawful process in said suit. And no claim for any interest in such lands shall be propounded in said case without special order of the court after the period of one year from the date of such order.

SEC. 4. That if any question shall arise upon the pleadings in such case as to the power of Congress to de-

clare a forfeiture of the lands covered by such grant, or as to the extent or manner of declaring such forfeiture, it shall be the duty of the circuit court to decide said question before proceeding to decide upon any other claim set up in said case, and, upon motion of any party interested therein, to certify the same, with so much of the record as shall be necessary to its proper understanding, to the Supreme Court of the United States, for its judgment thereon: *Provided,* That such motion is made during the term of the circuit court at which such decision is made. And the Supreme Court shall advance the hearing of said certified question so that the same may be decided with all convenient speed.

SEC. 5. That after a final decree is rendered in the circuit court of the United States upon any petition presented in such cause under the provisions of this act, if the amount involved in controversy in any petition, or in any class of consolidated petitions, is in excess of five thousand dollars, an appeal may be taken from such final decree to the Supreme Court of the United States, under the laws, rules, and regulations governing appeals in equity cases: *Provided,* That such appeal shall not be allowed after six months from the date of such final decree.

49TH CONGRESS, *vst Session.*

HOUSE OF REPRESENTATIVES.

REPORT No. 931.

FORFEITURE OF LANDS GRANTED TO CALIFORNIA AND OREGON RAILROAD.

MARCH 8, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. HENLEY, from the Committee on the Public Lands, submited the following

REPORT:

(To accompany bill H. R. 6659.)

The Committee on the Public Lands, to whom were referred sundry bills the forfeiture of the lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

There being no material change in the legal status or in the points presented in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Con-

gress, your committee hereby adopt and present as its own the report made by said committee in the Forty-eighth Congress.

The Committee on the Public Lands, to whom were referred sundry bills looking to the forfeiture of the railroad lands heretofore granted to the California and Oregon Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and make the following report:

Your committee have made careful examination of the facts presented them on behalf of the claimants of this land grant, the California and Oregon Railroad Company, and find substantially the facts in connection therewith to be as follows:

On the 25th day of July, 1866 (U. S. Stat., vol. 14, page 239), an act was passed by the Congress of the United States entitled "An act granting lands to aid in construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon." The grant was in the usual form, being a grant *in presenti,* with a condition subsequent annexed. Section 6 of said act required that the company should construct, within one year after the passage thereof, the first section of twenty miles of the said railroad, and at least twenty miles in each year thereafter, and the whole on or before the first day of July, one thousand eight hundred and seventy-five; and that the railroad

should be of the same gauge as the Central Pacific of California and be connected therewith. In order that the general scope and purpose of said act may be clearly understood, it is deemed best to set out the first section thereof *in extenso,* which reads as follows:

CHAPTER CCXLII.

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, organized under an act of the State of California, to protect certain parties in and to a railroad survey "to connect Portland, in Oregon, with Marysville, in California," approved April sixth, eighteen hundred and sixty-three, and such company organized under the laws of Oregon, as the legislature of said State shall hereafter designate, be, and they are hereby, authorized and empowered to lay out, locate, construct, finish, and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad in California, in the manner following, to wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph line within the State of California, beginning at some point (to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley, in the State of Califor-

nia; and running thence northerly, through the Sacramento and Shasta Valleys, to the northern boundaries of the State of California; and the said Oregon company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the city of Portland, in Oregon, and running thence southerly through the Willamette, Umpqua, and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named company: *Provided,* That the company completing its respective part of the said railroad and telegraph line from either of the termini herein named to the line between California and Oregon, before the other company shall have likewise arrived at the same line, shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon terms mentioned in this act, until the said parts shall meet and connect, and the whole line of said railroad and telegraph shall be completed.

Other provisions of the act are to the effect that the two companies mentioned therein, namely, the Oregon and California and the California and Oregon, should both be operated as one continuous line; and there are certain other provisions in the act relative to the transportation of mails of the United States, &c., which it is not material to the purposes of this report to particularly advert to. By a subsequent act, dated June 25, 1868, the time for the completion of this road, or the two roads,

was extended to 1880. The work of construction at both ends of the line of this road seems to have been begun within the time prescribed by the act or the amendment thereto, and to have been duly prosecuted within the allotted time, until the California portion, starting from the north point on the main line of the Central Pacific Railroad, not far from Sacramento, had reached Redding, a point 150½ miles northward, late in 1872. The road, up to this point, has been accepted by the Government, and patents to the company have been issued by the Government for all of the lands adjacent to the completed portions of the road and coterminous therewith, amounting in all to 1,537,919 acres. The Oregon portion had, in the mean while, been pushed southward, from the northward terminus at Portland, to Roseburg, a point 197 miles distant, leaving at the above stoppage, a gap of about 275 miles to be built, of which nearly equal parts belong to each of the undertaking companies.

It was stated to your committee, in reference to the Oregon portion of this road, that Ben. Holliday, a mail contractor, was president of the Oregon Company, and in 1872 it became hopelessly involved in debt, and that at the suit of the mortgage bondholders it was placed in the hands of a receiver. The California Company, which had, in the interval, become merged into and become a part of the Central Pacific, a corporation of abundant means, alleges that its operations were discontinued about the same time for the reason that without the prospect of a through connection, they had no motive or inducement to build to the State boundary,

the designated point of junction. The lands alone, it was alleged, were not a sufficient inducement, as they were chiefly broken and mountainous or infertile in character, and the work would be very costly and difficult, while the local traffic would be insignificant. The contention was that the principal value of the work remaining to be built lay in the formation of the through line; that one of the co-operating parties was insolvent, and the other, though financially able, would require the consent of the State of Oregon to build within that State, which consent, it was apprehended, there might be some difficulty in obtaining. In this condition of suspense the enterprise remained from 1873 to 1881, a period of eight years, not one mile of road being built, or any appropriation therefor, unless the running of several lines of survey and a rehabilitation of the finances of the Oregon Company can be called such.

It was not until the portion in Oregon had passed into the control of Mr. Henry Villard, who was also president of the Northern Pacific Railroad, that the actual extension of the contract was resumed, and the work, also, at the southern end recommenced. The gap has since been narrowed to about one-half by the construction of about 100 miles in Oregon and by the partial construction of some 20 miles in California; but it is asserted by the railroad companies that the latter is let to contract, and that the grading forces are at work at critical points, such as tunnels, rock-cuts, and fills, all along the line, with the expectation of making a

junction near the State boundary and opening the line through during 1886. It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great Northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa,* as well as open new mining fields and agricultural resources to the energies of the people.

Against the forfeiture of this act the railroad companies above named have made the following points in their argument: Their contention is, that the grant of land was made by Congress to these companies and to their assigns, for the purpose of affording a great public highway that would be available to the United States Government in time of war and for the transportation of freight and passengers, and thus develop and open up a section that now stands greatly in need of this character of communication; and they have laid great stress upon the title of the act, which is "An act grant-

ing land to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon." Against the policy of forfeiture these companies have contended that section 5 of the act prescribing the conditions of the grant is definitive of the intention of the Government to bestow the grant upon these companies as a compensation for the construction of the road. They urge, since that was the purpose of Congress in granting these lands, that nothing has occurred since then which could reasonably, or should reasonably, induce the Government to withdraw its grant, even though it were authorized to do so by the technical terms and provisions of the act.

There does not seem to be any serious pretense on the part of the California and Oregon Company that Congress has not the legal right, if it thinks proper to exercise it, to declare a forfeiture of all of the lands included in this grant not coterminus with that portion of the road that was completed within the period of time prescribed by the act. So that the question becomes one of very great simplicity, and has been presented to your committee nakedly as an appeal to the sense of justice or the indulgence of Congress in view of all the circumstances of the case. It stands as if Congress were now asked to make a new and original grant. In answer to the points most insisted upon by the company, to wit, that it should not in reason have been called upon to continue the construction of its portion of the road while financial objections existed in reference to the other end, which seemed likely to defeat the con-

struction of that portion of it, your committee have simply this to say:

In the first section of the act of July 5, 1866, we find the following language employed:

"*Provided,* That the company building its respective part of the said railroad and telegraph from either termini herein named to the line between California and Oregon before the other company shall have likewise arrived at the same line shall have the right, and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State."

In the brief filed with your committee by Mr. Tweed, counsel for the California company, he expresses a doubt as to whether the consent of the State of Oregon could have been obtained to continue the construction of the road onward to the northern terminal point; and it is contended that since there was a substantial doubt as to whether Oregon would give such consent, it would have been imprudent in a business point of view for the California company to continue its construction with no reasonable probability of being met by the sister line coming from the north.

In order to test the sincerity of the point thus presented, it is of some profit to recur to the all-pervading wish existing in Oregon and throughout the West, at that time and ever since, for the construction of a railroad. It is not credited by your committee that if the California company had continued their construction

up to the Oregon line there would have been the slightest difficulty in obtaining the consent of the legislature of Oregon to continue the building of the road on northward to the terminal point, or until the portion of the road already built was reached.

Although not clearly proven to your committee, yet facts enough were brought before us to raise the suspicion that the resumption of the building of the road may mainly be attributed to a fear on the part of the Central Pacific that the Villard combination would build a road from Portland, over another route nearer to the coast, and thereby antagonize in some way the interests of the California company; and we think out of the agitation of that scheme a composition or agreement between the two parties was effected by which the building was resumed. One of the objects that has heretofore moved Congress in making these munificent and unparalleled donations of the public domain to railroad corporations has been to secure the early completion of these roads through sparsely inhabited portions of the country in order to settle up and develop the same. It has been a recognized fact that in many instances the necessities of the Government have required the construction of railways through regions which would not, without the aid of the Government subsidy, pay a fair remuneration upon the capital invested. And hence the donations of public land have simply been a method employed by the Government to pay companies to construct railways through countries where the traffic would not

pay interest upon the capital employed in the construction thereof.

When this land grant was made in 1866, and indeed for ten years thereafter, it may be assumed that no company would have constructed a railway without Government aid; and hence the California company built the road as far as Redding, as hereinbefore stated, for which they have received patents to lands amounting to over 1,300,000 acres, much thereof being land of great value. The remaining portion of the road to be constructed is through a mountainous country, presenting, as has been stated to your committee by the railroad companies' attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense; but the company now is in such condition that to render remunerative and available the other portions of the road already constructed they must build the road to the Oregon south line. Therefore, in viewing this matter it will be seen that the California company is simply and only in possession, as above stated, to appeal to the liberality or bounty of this Government, and in the consideration of this appeal it has been impossible for your committee to disembarrass itself from a knowledge of the antecedent history of the corporation that now owns and controls the California and Oregon Railroad, viz, the Central Pacific Railway Company.

One of the great overshadowing evils of this country unquestionably is the aggregation of colossal fortunes in

the hands of a few men. We all know from the contemporaneous history of this country that the Central Pacific has been the recipient of the lavish and even prodigal bounty of this Government. According to current representation it is a corporation whose power, audacity, and strength have left unvisited by its meretricious influence no department of the Government; whose power has stood omnipotent in Congressional and legislative lobbies; has waved the baton of authority in political conventions, dictated nominations, framed platforms, and voted its army of employes at elections to defeat the party or the man who had unhappily incurred its disfavor. With its enormous wealth wielding and commanding its myriad instrumentalities, it has assumed a potency in public affairs that renders any further bestowal of public bounty upon it, to say the least, inexpedient.

However these things may be, it is certain that whenever a corporation becomes so powerful as to challenge universal recognition of the fact that it is a potential factor in politics, the point is then reached when the public weal will be best consulted by depletion of its resources rather than by the concession of additional gratuity.

No doubt many of these representations have been exaggerated, but enough is absolutely known to warrant your committee in saying with entire confidence that, as a matter of bounty or of grace from this Government, the Central Pacific has received enough! Had it been made to appear to your committee that the further completion of the line were absolutely dependent

upon the forbearance of the Government it might present a question for our serious consideration whether as a matter of policy it would not be better to extend the time for the completion of this road and not forfeit the land grant; but the work has reached, as before stated, an advanced stage, and is understood to be in the hands of contractors, and will inevitably be completed, because to finish what remains unfinished utilizes the capital already invested, and to discontinue it involves a corresponding sacrifice.

It was further claimed that it would be grossly unfair and unjust to cut off the opportunity to receive these lands now that the whole work is on the eve of completion and the ground is covered with workmen, no faster progress in the situation being practicable. They urge that cost and difficulty are of the essence of the grant and not time.

In this connection they have stated to your committee, and it is undoubtedly true, that very few railroads in this country present anything like the topographical difficulties that lie upon this route. They allege that three successive high mountain ranges are to be crossed; some twenty tunnels in the whole gap, with as many important bridges, and much inevitable delay from snows, &c. These things were urged in support of the equitable plea for indulgence. The all-sufficient answer to this plea, aside from what has been urged hereinbefore, is that the Government cannot afford at this particular time to be indulgent or waive any advantage it may pos-

sess in the letter of its contract. These grants of lands were made upon the theory above adverted to. The law was plain that the road must be completed within a certain specified time. If this has not been done, then there has been a breach of the condition subsequent of which the other party will take advantage.

Upon the question as to whether or not the land grant is legally subject to forfeiture, as I have stated before, there is no serious contention. Nor indeed under the adjudications recognized as authority could there be.

The doctrine in support of the forfeiture has been discussed by your committee in all its phases, and from its constant recurrence in the consideration of these railroad grants almost *ad nauseam.*

It is tersely stated in Sheppard's "Touchstone" (p. 154) as follows:

"It is generally true that he that doth enter for a condition broken doth make the estate void *ab initio,* and that he shall be in of his first estate in the same course and manner as it was when he departed with the possession and at the time of the making of the condition. And hence it is that, if there be any charge or incumbrance on the lands, as if the lessee of land upon condition grant a rent charge out of the land or enter into a statute of recognizance and the conusee has the land in execution and this charge is after the condition is made, in this case when the condition is broken and the party doth re-enter he shall by relation avoid the rent, statute, and recognizanc, and hold the land freed

from them all."

The same doctrine is found in other authorities. Thus in Coke, Littleton, 202*a*, it is said broadly:

"He who enters for breach of condition regularly shall have the land of his first estate."

At 201a it is said:

"In these cases if the rent be not paid at such time or before such time limited and specified within the condition comprised in the indenture, then may the feoffer or his heirs enter into such lands or tenements and them in his former estate to have and to hold and the feoffee quite to ouste thereof."

This is the language of Littleton. Coke says:

"Regularly it is true he that entereth for a condition broken shall be seized in his first estate or of that estate which he had at the time of the estate made upon condition, but yet this fayleth in many cases."

Coke goes on to specify the cases in which it "fayleth." They are placed under the two heads of "impossibility" and "necessity," and have no application here.

Butler and Hargreaves, in their note to this passage, say:

"It may be further observed: 1st. That as the entry of the feoffer on the feoffee for a condition broken defeats the estate in which the condition was annexed, so *it defeats* all rights and incidents annexed to that estate, as dower, &c., and *all mesne incumbrances of the feoffee.*"

In the now familiar case of Schulenburg *vs.* Harriman (21 Wall., p. 44) the Supreme Court say:

"The provision that all lands remaining unsold after ten years should revert to the United States if the road be not then completed is no more than a provision that the grant shall be void if a condition subsequent be not performed; * * * that it is the settled law that no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee but the grantor or his heirs, or the successors of the grantor, if the grant proceed from an artificial person, and if they do not see fit to enforce a forfeiture on that ground the title remains unimpaired in the grantee.

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate depends upon the character of the grant. If it be a private grant that right must be asserted by entry or its equivalent; if the grant be a public one it must be asserted by judicial proceedings authorized by law; * * * or there must be some legislative assertion of ownership of property for breach of the condition, such as an act directing the possession and appropriation of the property or that it be offered for sale or settlement."

The "legislative assertion" above referred to will be the bill which your committee recommends favorably.

A glance at the political history of this country during the past decade impresses upon your committee the belief that the people of this country will not countenance any overindulgent treatment of these great railroad corporations. Besides, the United States is always held to

a strict compliance with its engagements, and a sound policy requires that the co-contractors should be held to a like strict fulfillment. The era of forbearance should now be brought to a close. Your committee therefore recommend for favorable action the bill which is herewith reported.

H. Rep. 931—2.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned members of the Committee on the Public Lands dissent from the views of the majority and refer to their views in minority report on H. R. 6658, which they here adopt, the facts and the law in each case being similar. They therefore offer the accompanying bill as a substitute for the bill proposed by the committee.

H. S. VAN EATON.
H. B. STRAIT.
ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from the Central Pacific Railroad, in California, to Portland, in Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of land in aid of the construction of a railroad

from the Central Pacific Railroad, in California, to Portland, in Oregon, as applies to lands coterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be, and the same are hereby, repealed, and all such lands are hereby resumed as part of the public domain.

49TH CONGRESS,) (REPORT
1*st Session.*) (No. 930

HOUSE OF REPRESENTATIVES.

FORFEITURE OF LANDS GRANTED TO OREGON AND CALIFORNIA RAILROAD.

MARCH 8, 1886.—Referred to the House Calendar and ordered to be printed.

MR. HENLEY, from the Committee on the Public Lands, submitted the following

REPORT:

(To accompany bill H. R. 6658.)

The Committee on the Public Lands to whom were referred sundry bills for the forfeiture of the lands granted to the Oregon and California Railroad Company to aid in the construction of a railroad over the route prescribed in the granting act, have had the same under consideration, and hereby make the following report:

There being no material change in the legal status or in the points made in the arguments of counsel in behalf of this corporation from what was presented to the Public Lands Committee in the Forty-eighth Congress, your committee hereby adopt and present as their own the report made by said committee in the Forty-eighth Congress, as follows, to wit:

The Committee on the Public Lands, to whom were referred several bills for the forfeiture of the grant of public lands inuring to the Oregon and California Railroad Company, having had the same under consideration, beg leave to submit the following report:

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oreg., to the Central Pacific Railroad in California, conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was granted to the "California and Oregon Railroad Company," a corporation organized under the laws of that State. That portion within the limits of Oregon was conferred upon "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of 20 miles as fast as completed should be made by three commissioners to be appointed by the President, and that upon their report

that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous to such completed sections of 20 miles.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, including all its property and franchises.

Section 6 of the granting act required that the assent of the companies to its terms should be filed within a certain period, and, further, that the whole line of road should be completed on or before the 1st day of July, 1875. This period was subsequently extended by act of Congress of June 25, 1868 (15 Stat., 80), to the 1st day of July, 1880. Section 8 of the granting act provided:

"That in case the said companies shall fail to comply with the terms and conditions required, namely, by not filing their assent thereto, as provided in section 6 of this act, or by not completing the same as provided in said section, this act shall be null and void, and all the lands not conveyed by patent to said company or companies, as the case may be, at the date of any such failure, shall revert to the United States."

The length of the entire road in Oregon, inuring to the said Oregon and California Company, as definitely located from Portland to the State line of California, is 360 miles. Prior to the said 1st day of July, 1880, the

company had completed 197 miles of road running south from Portland. Nine sections of the road, consisting of 197 miles, had been duly examined, reported as fully equipped, and patents ordered to be issued. Patents had, however, in fact been issued for only a small portion of the lands adjacent to the line so completed and equipped. The failure to issue these patents was not chargeable to any neglect or laches on the part of the company, but as your committee is informed by the General Land Office, solely on account of the pressure of business in that branch of the executive service.

At the expiration of the time prescribed by the granting act within which the entire road should have been constructed, there remained uncompleted 163 miles. Of the original amount granted for the entire line, 2,521,600 acres were adjacent to the constructed road, and 2,086,400 acres were adjacent to the portion of the line upon which no work whatever had been done.

The work of construction seems to have stopped in the latter part of 1867. For three or four years thereafter nothing was done. It is claimed that work was resumed in 1881. August 29, 1883, an additional section of 45 miles was accepted by the President, and it is claimed that since that date the work has been still further prosecuted.

Your committee are of the opinion that the grant should be declared forfeited by Congress for all that portion of the road not completed within the period prescribed.

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands *unpatented* at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidently be considered a mere ministerial act. To make it responsible for the neglect or the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company, at that date, had a vested right to patents. They are clearly of the opinion that it would be inequitable, in any event, to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

But your committee are also clearly of opinion that the grant should be forfeited for so much thereof as was coterminous with the uncompleted line on the 1st day of July, 1880.

The legal principles involved in reaching this conclusion are in substance the same as those heretofore discussed in various reports of this committee during the present session recommending forfeiture bills. A

repetition of that discussion here is deemed entirely unnecessary and superfluous.

The power to declare the forfeiture is undoubted (United States *vs.* Repentigny, 5 Wall., 211; Schulenburger *vs.* Harrison, 21 Wall., 44; Farnsworth *vs.* Minn. R. R. Co., 92 U. S., 66).

The fact of a part performance of the condition after breach is immaterial, for time is of the essence of the contract, and neither laches nor estoppel can be invoked against the Government (7 Otto, 584; 8 *Id.*, 489; Wheat., 720; 11 *Id.*, 184; 4 McLean, 567; 5 *Id.*, 183; 1 Pet., 318; 8 Wall., 269-274; 5 Otto, 316).

Mere indulgence or silence cannot be construed into a waiver of a breach of condition (Gray *vs.* Blanchard, 8 Peters, 284-292; Washburn, R. P., sec. 19).

Nor have your committee been able to find any equitable considerations demanding relaxation of the rule properly invoked to protect the interests of the Government in what remains of the public domain. The company stopped its work two years before the expiration of the period limited. No satisfactory or plausible reason therefor, consistent with the facts, has been shown to the committee.

When work was resumed it was after breach of condition. The company assumed all risks of forfeiture, and in the judgment of your committee it cannot now complain if the United States deems it proper to assert her rights in the premises.

Your committee accordingly report the accompany-

ing bill to the House with the recommendation that it be passed, the same being a substitute for several bills before the committee upon the subject.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following

VIEWS OF THE MINORITY:

The gap of about 125 miles in length between the California and Oregon and Oregon and California roads is, in our judgment, the line of land grant road which the Government and the people of the United States are now most interested in having constructed, and it is our clear conviction that the early closing of this gap and the consequent completion of the through railway line from Portland to San Francisco is so important to the interests of the Government and the people from a military as well as a commercial point of view, that Congress should refrain from placing any obstacles in the way of the speedy completion of the work.

July 25, 1866 (14 Stat., 239), Congress, for the purpose of aiding the construction of a railroad and telegraph line from Portland, Oregon, to the Central Pacific Railroad in California, "and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the line of said railroad," conferred upon two companies a grant of lands of twenty sections, designated by odd numbers, for each mile of the contemplated road. The portion of the line comprised within the State of California was to be con-

structed by the "California and Oregon Railroad Company," a corporation of that State, while the portion within the limits of Oregon was to be constructed by "such company organized under the laws of Oregon as the legislature of said State shall hereafter designate."

Section 4 of the granting act provided that an examination of the road in sections of twenty or more miles as fast as completed should be made by three commissioners to be appointed by the President, and that, upon their report that the road was completed and equipped as required by the act, patents should issue to the companies for the lands coterminous with such completed sections of road.

Section 5 provides that the—

Said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States, and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States.

The legislative assembly of Oregon, in October, 1868, designated "the Oregon Central Railroad Company," a corporation existing under the laws of said State, as the beneficiary under the act of Congress. The "Oregon and California Railroad Company" is the legal successor in interest of the Oregon Central Company, with all its property and franchises.

The act of April 10, 1869 (16 Stat., 47), expressly provides that the lands granted "shall be sold to *actual settlers only* in quantities not greater than one-quarter section to one purchaser and for a price not exceeidng $2.50 per acre.

The purpose of the act under consideration was to secure a rail and telegraph connection between the Central Pacific Railroad in California and Portland in Oregon, a distance of more than 600 miles. Congress did not make the grant for the purpose of aiding the construction of local lines, covering only portions of this route. There was nothing in the character of the country or its situation or circumstances which would have suggested governmental aid for such a measure. The object to be secured was a through connection, or, as it is expressed in the seventh action of the act, "one connected and continuous line," from the railway system of California to the chief city of Oregon, thus securing connection between the great central and southern transcontinental systems of railway and Portland, Oreg.

This was all the more important in view of the possibility of war with a naval power, which, by its control of the seas, might cut off communication between San Francisco and Portland, and thereby prevent the dispatch of troops and munitions of war from one to the other, thus exposing the west coast to perils which might, to a great degree, be averted by direct and rapid interior rail communication between the two cities. It was for the purpose of securing this communication that the grant in question was made.

Even in the adverse report presented through Mr. Henley at the last Congress these principles are recognized in the following language:

It is claimed by both of these companies, and with some show of reason, that the construction of this railroad is of very great importance, both as respects its necessity to the military defense of our west coast and its benefits to the mining and agriculture of that great northwest region. The interchange of products, mails, and passengers between California and Oregon and the country north and east of it must continue to depend upon the ocean along a coast somewhat dangerous because of the absence of good harbors, until this road is opened, and, of course, in the matter of transportation, its completion will bring both celerity and safety to the inhabitants of that region, besides affording the opportunity to all the world to cross the continent by the Northern Pacific route, returning by Central route, or *vice versa,* as well as open new mining fields and agricultural resources to the energies of the people.

The act designated the California and Oregon Railroad Company and such corporation organized under the laws of Oregon as the legislature of that State should appoint as the instrumentalities selected for the construction of the road. Neither company could build beyond the State line of its own State unless expressly authorized to do so by the legislature of the other State.

Construction was seasonably commenced on both roads, and would have been prosecuted to completion but for the general financial difficulties which so seriously

affected the Ben Halladay party, which was constructing the Oregon portion of the line, that it was compelled to succumb and stop work.

In this situation the Government could not have reasonably asked the California company to proceed with the further construction of their road. The California company had no power to build into the State of Oregon and complete the whole line. They could not have obtained the power from the Oregon legislature, which had designated another company to do the work. The California company could only build to the State line at a vast expense, through a mountainous country as difficult as the Sierra Nevadas, and when they had built there the country would have been no better off than before, for the desired intercommunication by rail between San Francisco and Portland would still be impossible.

The Oregon company was compelled to suspend work on account of the great financial depression which paralyzed all business interests at the time.

The California company was not in fault in suspending construction until there appeared to be a reasonable prospect that the Oregon portion of the road would be built.

As soon as this appeared the California company recommenced work, and it thereafter continued to prosecute it with the utmost diligence and rapidity until the Villard failures brought the construction of the Oregon division again to a halt.

The most difficult portions of the Oregon line are near the State boundary, and still remain to be constructed, while the California company is just in the midst of the difficult portions of its line north of Redding.

In the year 1884 reports of commissioners were filed showing the completion of two 20-mile sections of this difficult portion of the road in California, and these 40 miles were duly accepted by the President in February, 1885.

When the great Villard failures startled the country in 1884 and necessitated a second stoppage of the work upon the Oregon portion, it was apprehended that the inability of the Oregon company to obtain funds for continuing its work would for a long time, if not permanently, obstruct the completion of the line.

It is now understood, however, that arrangements have been recently made by those interested in the California portion of the road by which, unless hostile legislation should intervene, the completion of the line can doubtless now be secured.

The Committee of Public Lands, through Mr. Henley (who understands very well the topographical difficulties of the country to be traversed), said at the last Congress:

It is undoubtedly true that very few railroads in this country present anything like the topographical difficulties that lie upon this route.

The remaining portion of the road to be constructed is through a mountainous country, presenting, as has

been stated to your committee by the railroad company's attorneys, tremendous natural barriers and obstructions, and its continuance will undoubtedly involve great expense.

The Auditor of Railroad Accounts, in a report made January 26, 1881, says:

The country there is of such a mountainous character as to require heavy work and great expense; so much so that it is very doubtful if the road will ever be built.

The Railroad Commissioner, in his report for 1884, says, p. 39: "The uncompleted link involves much heavy and expensive work."

But we are assured and believe that the work will be completed, and that speedily, if Congress shall now withhold its hand from the forfeiture demanded by the majority.

The suspension of work which prevented the completion of the line within the prescribed time has been satisfactorily explained. But even if this were not so, if the excuse could be considered by any one to be in anywise inadequate or insufficient, we find ourselves now in a situation where we can have the road within a couple of years if we cast no stumbling block in the way; and when we count the cost of interference it is our unhesitating judgment that the Government of the United States cannot afford, at the expense of stopping the work, to attempt to forfeit the "earned" lands of this grant, by

which we mean lands coterminous with completed portions of said road, whether completed in or out of time.

It is difficult to understand how it can be seriously claimed that lands already earned can be retained by the Government because it happens that they are not yet patented to the companies.

On this very subject the Committee on the Public Lands of the last Congress, through Mr. Henley, said:

It will be observed that the reversionary clause contained in section 8 of the granting act, literally construed, would forfeit all lands unpatented at the expiration of the period named. Indeed, the language is seemingly plain and unambiguous to that effect. But your committee can hardly suppose that any such rigorous and unequitable rule was intended to be applied. The grantee was powerless to control the issue of the patents. Having done within the time all that the law required of it, it could only wait the convenience and pleasure of the United States in the performance of what must evidenly be considered a mere ministerial act. To make it responsible for the neglect of the inability of the United States to do that act within the period would hardly conform to the manifest general intent of the enactment. Your committee are inclined to agree to the proposition that the language in question was used in the sense of lands to which the company at that date had a vested right to patent. They are clearly of the opinion that it would be inequitable in any event to enforce a forfeiture upon such a construction, even if it can be defended upon abstract principles of law.

The correctness of the views thus expressed then, can harly be doubted now.

On the other hand, if we now permit the work to [illegible] the Government will secure (*a*) the much needed [illegible]unication between Portland and the railway [illegible]alifornia ; (*b*) the development of the coun- [illegible]Delta and Ashland so far as it is capable of developing; (*c*) the enhancement of the value of the Government lands along the line of the road; (*d*) the acquisition of the benefits which accrue to the Government from the conditions of the grant as prescribed in section 5, viz: The transportation of mails, the transmittance of dispatches, the preference in the use of railroad and telegraph, the maintenance of the railroad as a highway for the use of the Government of the United States free of all tolls or other charges upon the transportation of property or troops of the United States, and the acquisition of the right to have these transported over the road "at the cost, charge, and expense of the corporations or companies owning or operating the same when so required by the Government of the United States."

All these conditions are, of course, dependent upon the receipt by company of the granted and earned lands.

If the Government sees fit to declare a forfeiture of the earned lands, it annuls the conditions as well as the grant; it cannot retain the benefit of both the grant and the conditions.

Reflection upon this subject has led us to the con-

clusion that this case is an exceptional one, in which the interest and the duty of the Congress of the United States is clear; that it would fail of its duty in the protection of the northwest frontier and the Pacific coast if it took a step which should now imperil the completion of this line.

Already a large part of the Oregon line has been constructed; but the most difficult portion of the line, near the State boundary, still remains to be completed. On the California portion it has been necessary to run expensive tunnels and make costly rock cuts and extensive fills; and during the last four years over $2,000,000 has been expended upon the California portion alone—a sum sufficient to have constructed the whole line of that portion of the road but for the vast expense of constructing a railroad through the difficult passes of the Trinity and Shasta Mountains, through which the line has to run.

Finally, we are now in a situation in which if we stay our hands the whole of this most difficult and costly work, so essential to the Government and people of this country, and to its protection and integrity in case of war with Great Britain or any other naval power, will be completed.

It appears that not only is there no public demand from any quarter for the forfeiture advocated by the committee, but that on the contrary the Board of Trade of Sacramento and the Chamber of Commerce of San Francisco have strongly protested against it. Two hun-

dred and fifty business firms of Sacramento have united in the protest. The report made at the last Congress through Mr. Henley testified expressly to the "all pervading wish existing in Oregon and throughout the West" for the construction of the road. Every business interest in California and Oregon opposes a forfeiture; the most representative press in California, without distinction of party, concur in the demand that the grant should be left unimpaired; and both houses of the legislature of California have united in a joint resolution of instruction to their representatives against immediate forfeiture, and in favor of the continuance of the grant, in order that the important benefits to accrue from the construction of the road may be secured.

Under these circumstances it is our opinion that the bill reported by the majority of the committee ought not to become a law to the extent of forfeiting the lands simply because they are conterminus with portions of said road not built in time. In all similar cases we have steadily opposed a forfeiture or a resumption of the lands granted along the line of the road completed before any act of forfeiture on the part of the Government; these lands, we contend, are "earned," whether patented or not. We therefore present the accompanying bill as a substitute for that of the committee, and ask that it be printed.

H. S. VAN EATON.

H. B. STRAIT.

ISAAC STEPHENSON.

A BILL to resume the title to a portion of the lands granted to aid in the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of all acts and parts of acts making grants of lands in aid of the construction of a railroad from Portland, in Oregon, to the Central Pacific Railroad, in California, as applies to lands conterminous with such portions of said road as were uncompleted on the 1st day of January, 1886, be and the same are hereby repealed, and all such lands are hereby resumed as part of the public domain.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. Dictrict Court.

DEFENDANTS' EXHIBIT 386

omitting certificate of County Clerk, is as follows:

9105

Deed Book 245, Page 438. Deed No. 2045.

Issued for contract No. 1705.

ORE. & CAL. R. R. CO.

TO

CITY OF PORTLAND.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California

Railroad Company, a corporation, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, WITNESSETH: That WHEREAS, the party of the first part did on the seventh day of November, A. D. 1882, by its Contract Numbered 1705, sell and agree to convey unto Almer E. Bowman the land hereinafter described, for the sum and price of Four Thousand Five Hundred and Seventy-nine 40/100 (4579-40/100) Dollars to be paid as in said contract, provided; and

WHEREAS, Said purchase price has been fully paid to the party of the first part, and said The City of Portland, as assignee of said Almer E. Bowman has thereby become entitled to a conveyance from the party of the first part of all of the right, title and interest which it, the party of the first part, has or may hereafter acquire from the United States in and to said land; and

WHEREAS, By the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July A. D. 1890, in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants, and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the

said Oregon and California Railroad Company to said Union Trust Company, on the 1st day of July A. D. 1887, which trust deed is duly recorded in the record of mortgages for said counties of Multnomah and Clackamas, in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands and that said Union Trust Company has no right, under the terms of said trust deed to, or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to the said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises, and of the payment to the party of the first part of the said sum of Four Thousand Five Hundred and Seventy-nine 40/100 (4579-40/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit:—

The South half of the South half and the Northeast quarter of the southeast quarter of section twenty-three (23) all of section twenty-seven (27) the north half of the northwest quarter, and the southeast quarter of the northwest quarter, the west half of the northeast quarter, and the southeast quarter of the northeast

quarter, the northeast quarter of the southwest quarter and the southeast quarter of section thirty-one (31) the east half of section thirty-three (33) all in Township One (1) south Range Five (5) east, also the north half of section nineteen (19) in township one (1) south range six (6) east; also the north half of section five (5) township two (2) south range five (5) east Willamette Meridian, containing according to the United States survey thereof, two thousand two hundred and thirty-four 70/100 (2234-70/100) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto, unto the said party of the second part, its successors and assigns forever, reserving however, a strip of land one hundred feet wide, to be used by the Oregon and California Railroad Company for right of way and other railroad purposes, when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the premises, and the right to take all water needed for operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof, as may be mineral lands, other than coal and iron. And the said party of the second part does hereby, for itself and its successors and assigns, covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines between said premises and such right of way, a good lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has hereunto set ——— hand and seal, the day and year first above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By R. Koehler, 2nd Vice President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By Geo. H. Andrews, Secretary.

In Presence of:

David Loring, (CORPORATE SEAL)

F. G. Ewald.

STATE OF OREGON,

County of Multnomah.

ss.

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said county and state, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company, and Geo. H. Andrews, Secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company, both personally known to me to be the same individuals named and described in, and

who executed the said instrument and they severally acknowledged to me that he the said R. Koehler, as 2nd Vice President and he, the said Geo. H. Andrews, as Secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation, for the uses and purposes therein mentioned, and the said Geo. H. Andrews, being by me duly sworn, did depose and say that he is the Secretary of the Oregon and California Railroad Company, and resides at Portland, Multnomah County, Oregon; that he is the legal custodian of and is acquainted with and has in his possession, the corporate seal of said company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,

Notary Public for Oregon.

(NOTARIAL SEAL)

Rec'd for Record
Dec. 31st, 1897, at 10:50 a. m.
(Certificate of clerk not printed)

United States v. Oregon &
California R. R. Co. et al.
Defendants' Ex. 386.

Book 246 page 468
9104
O. C. R. R. to Portland
Deed No. 2046 Issued for Contract No. 1804

THIS INDENTURE made this third day of July, A. D. 1893, between the Oregon and California Railroad Company, duly incorporated under the laws of the State of Oregon, party of the first part, and the City of Portland, party of the second part, Witnesseth:

That whereas the party of the first part did on the sixteenth day of February, A. D. 1883, by its contract numbered 1804 sell and agree to convey unto A. G. Cunningham the land herein after described for the sum and price of one thousand nine hundred and fifty-eight 82/100 (1958-82/100) Dollars to be paid as in said contract provided and whereas said purchase price has been fully paid to the party of the first part and said The City of Portland as assignee of said A. G. Cunningham has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest, which it the party of the first part, has or may hereafter acquire from the United States in and

to said land, and whereas, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah rendered on the 12th day of July, A. . 1890 in a suit in equity, in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company a corporation incorporated under the laws of the State of New York were defendants and appeared in said suit, it was found, adjudged and decreed by said court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by that certain deed of trust executed by the said Oregon and California Railroad Company to said Union Trust Company on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887, which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

Now Therefore, in consideration of the premises, and of the payment to the party of the first part of the said sum of one thousand nine hundred and fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is

hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The South half of the North East quarter and the South half of section twenty five (25) the north half of the North east quarter and the North west quarter of Section thirty five (35) all in Township one (1) South Range five (5) east; also the south half of section nineteen Township one (1) South, Range six (6) East Willamette Meridian, containing according to the United States survey thereof nine hundred and fifty five 52/-00 (955.52/100) acres be the same more or less.

To hold the said premises with the appurtenances thereto unto the said party of the second part, its successors and assigns forever reserving, however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches, is or shall be located upon the premises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the

boundary line or boundary lines between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set his hand and seal the day and year first above written. In presence of:

David Loring, The Oregon and California Railroad Company

F. G. Ewart

By R. Koehler, 2nd Vice-President.
The Oregon and California Railroad Company,

By GEO. H. ANDREWS,
Secretary.

(Corporate seal) (Seal)

STATE OF OREGON,)
) ss.
County of Multnomah.)

Be it remembered, that on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, Secretary of said Com-

pany, whose names are subscribed to the foregoing instrument as 2nd vice-president and secretary of said company, both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler, as 2nd Vice President, and he the said Geo. H. Andrews as Secretary of the said Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of said Corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon, that he is the legal custodian of and acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

DAVID LORING,

(Notarial seal) Notary Public for Oregon.

Recd. for record Dec. 31st, 1897, at 10.50 A. M.

No. 9566

7627

STATE OF OREGON)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to The City of Portland recorded in Book 246 page 468 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May, A. D. 1913.

JNO. B. COFFEY,
County Clerk.

DEFENDANTS' EXHIBIT 387

Is certified copy of stipulation in suit No. 2272, filed in the Circuit Court of the United States, Ninth Circuit, For the District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John W. Griggs, United States Attorney General, as attorney for complainant, and by Wm. F. Herrin, Wm. D. Fenton, and Wm. Singer, Jr. as attorneys for defendant, and filed October 31, 1898.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 388

is a certified copy of stipulation in case No. 2661, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt as Acting U. S. Attorney General, as attorneys for complainant, and Wm. D. Fenton and Wm. Singer, Jr., as attorneys for the defendants, filed October 6, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 389

is a certified copy of stipulation in case No. 2638, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendants, signed by John H. Hall, United States Attorney for Oregon, and H. M. Hoyt, Acting U. S. Attorney General, for complainant, and by Wm. D. Fenton and Wm. Singer, Jr., attorneys for defendant, filed December 3, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 390

is a certified copy of stipulation in case No. 2273, filed in the Circuit Court of the United States, Ninth Circuit, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by Joseph McKenna, Attorney General of the United States, by Charles J. Schnabel, Assistant U. S. Attorney for Oregon, Daniel R. Murphy, United States Attorney for Oregon, for complainant, and by Wm. D. Fenton and Wm. Singer Jr., attorneys for defendant, and Wm. F. Herrin, counsel for the defendant, filed September 1, 1897.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 391

is a certified copy of stipulation in case No. 2657, filed in the United States Circuit Court, District of Oregon, in case of United States of America, complainant, versus Oregon & California Railroad Company, defendant, signed by John H. Hall, Attorney for United States, and by Wm. D. Singer, Jr., and Wm. D. Fenton, Attorneys for Oregon and California Railroad Company, filed December 3, 1902.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 392

is a certified copy of stipulation in case No. 1936, filed in the Circuit Court of the United States, District of Oregon, in case of The United States, complainant, versus The Oregon and California Railroad Company and The Oregon Central Railroad Company, defendants, also The Oregon and California Railroad Company and The Oregon Central Railroad Company, complainants, versus The United States, defendant, signed by F. P. Mays, U. S. District Attorney for the United States, and by E. C. Bronaugh, L. L. McArthur and W. D. Fenton. Solicitors for the Railway Companies named, filed April 20, 1893.

This exhibit is not printed, but is certified up under order of Court and stipulation of parties.

DEFENDANTS' EXHIBIT 393

is a certified copy of a mortgage executed by Oregon & California Railroad Company to Faxton D. Atherton and Milton S. Latham, April 15, 1870, recorded April 16, 1870, in Book "C," page 745, Records of Mortgages of Multnomah county, Oregon, and thereafter, about the same time, in other counties in which any part of the Land Grant lands are situated, and is as follows:

This indenture made this fifteenth (15) day of April in the year of our Lord One Thousand eight hundred and Seventy between The Oregon and California Rail-

road Company a Body corporate created by and under an Act of the Legislature of the State of Oregon approved October Fourteenth A D 1862 entitled "an act providing for private incorporations and the appropriation of private property therefor" and the acts supplementary thereto and amenda-tory thereof party of the first part and Faxon D Atherton and Milton S Latham of the City and County of San Francisco State of California parties of the second part.

Witnesseth Whereas The said party of the first part is authorized and empowered in and by the several acts of the Legislature of the said State of Oregon above referred to, to borrow from time to time on the credit of the corporation and under such regulations and restrictions as the directors thereof may impose such sums of money as they may deem necessary for constructing and completing their railroad and to issue and dispose of bonds or promissory notes therefor to such an extent and in such denominations and bearing such rate of interest not exceeding twelve per cent per annum as the said Board of Directors may determine and also to issue bonds or promissory notes of such denominations as they may deem proper and at the rate of interest no exceeding twelve per cent per annum in payment of any debts or contracts for constructing and completing their railroad with its equipments and all else relative thereto and for the purpose of selling and disposing of the same in the money markets for the purpose of raising money to enable them to purchase materials for and aid them in constructing their railroad and telegraph and to secure the payments of such bonds or notes the said Com-

pany may Mortgage its Corporate Property and franchises.

And whereas for the purpose of providing the means for the construction of the said Rail Road and its equipment and completion the Board of Directors of said Oregon and California Railroad Company party of the first part herein have at a meeting of their Board of Directors duly and legally called and held at the office of their Company in the City of Portland State of Oregon on the Thirteenth (13th) day of April A. D. One Thousand eight hundred and seventy, Resolved in substance and legal effect that said Oregon and California Rail Road Company make, execute issue and deliver under its corporate seal its bonds bearing even date herewith severally payable to the holder thereof or bearer in gold coin of the United States at the banking house of Messrs. Dabney, Morgan and Company in the City of New York on the first day of April A D One thousand eight hundred and ninety-nine with interest from and after the first day of April in the year one Thousand eight hundred and seventy at the rate of seven per cent per annum payable at the same place semi-annually as follows:

Thirty thousand dollars per mile on each mile the whole line of its Rail Road constructed and to be constructed and no more. That is to say that Seven Thousand four hundred and fifty bonds of denominations of one thousand dollars each amounting to seven millions four hundred and fifty thousand dollars.

Six thousand Bonds of denomination Five Hundred dollars each amounting to three millions of Dollars and Five Thousand Bonds of the denomination of one hundred dollars each amounting to Five Hundred thousand dollars and such Bonds of the various denominations aforesaid amounting in the sum total of ten millions Nine hundred and fifty thousand dollars and no more are represented in all by eighteen Thousand four hundred and fifty bonds composed of the various denominations as aforesaid and that for the purpose of a more specific i-dentification thereof that said Eighteen Thousand four hundred and fifty bonds be numbered in a consecutive series from Number One to numbered eighteen thousand four hundred and fifty both inclusive commencing with those of denomination of one thousand dollars each and numbered respectively from number one to number seven thousand four hundred and fifty both inclusive. Secondly with those of denomination of five Hundred dollars each numbered respectively from numbered seven Thousand four hundred and fifty-one to numbered Thirteen Thousand four hundred and fifty both inclusive and lastly with those of denominations One Hundred dollars each numbered respectively from numbered Thirteen thousand four hundred and fifty one to number eighteen thousand four hundred and fifty both inclusive.

And whereas under and pursuant to lawful authority conferred by said several acts of the Legislature of the State of Oregon the said board of Directors of said Oregon and California Rail road further unanimously.

Resolved: In substance and legal effect that the President and Secretary of said Oregon and California Railroad Company executed and acknowledged in its name and on its behalf and under its corporate seal deliver to said Faxon D Atherton and Milton S Latham a Mortgage conveying assigning and transferring to him and them all its corporate, real and personal property franchises and effects, (save and except the lands and franchises granted to the Oregon Company by the Act of Congress approved July Twenty fifth A D One Thousand Eight Hundred and Sixty-six, entitled "And Acts to aid in the construction of a Railroad and telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" And acts supplemental thereto and amendatory thereof which lands and franchises are note to be included in this Mortgage but the same are to be conveyed by said Oregon and California Rail Road Company to Faxon D Atherton, Milton S Latham and Wm Norris as Trustees for the Bond Holders of the Party of the first part herein, the same to be disposed of with the consent of the party of the first part herein and proceeds thereof invested in United States Securities by such Trustees and shall constitute a sinking fund for the payment of the principal of the bonds herein before referred to, reference being had to a resolution of the Board of Directors of the party of the first part herein will more fully appear reference also being had to such deed of Trust executed contemporaneously herewith) as security for the payment of said eighteen thousand four hundred and fifty bonds as afore-

said towit: Seven thousand four hundred and fifty bonds denomination of one thousand dollars each. Six thousand bonds of denomination of Five Hundred Dollars each and five thousand bonds of denominations of one hundred dollars each, making in all ten Millions Nine Hundred and Fifty thousand Dollars as aforesaid and the interest to grow due thereon and that such mortgage should contain all the provisions covenants and conditions hereinafter set forth and that such mortgage and the whole of said Bonds thereby secured be severally dated the fifteenth (15th) day of April A D One thousand eight hundred and seventy.

Now therefore this indenture witnesseth: That the said Oregon and California Rail Road Company the party of the first part hereto under pursuant to and by virtue of the powers and authority conferred upon and vested in it by said several acts of the Legislature of the State of Oregon and under and pursuant to said resolutions duly passed and adopted by the aforesaid unanimous concurrence of its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purpose of effectually securing to the respective holders the payment of said Eighteen Thousand four hundred and fifty bonds with the interest which shall accrue thereon as aforesaid. And for and in consideration of the sum of One Dollar and other moneys lawful money of the United States of America to it in hand paid by said parties of the second part hereto at and before the ensealing and delivery of

these presents and receipt whereof is hereby acknowledged.

Hath granted bargained, sold assigned, transferred and set over and enεoffed, conveyed and confirmed and by these presents Doth grant, bargain, sell, assign, transfer and set over, enfeoff convey and confirm to the said Faxon D Atherton and Milton S Latham and the survivor of them their or his successors or assigns all and singular the Railroad of the said party of the first part hereto now constructed or hereafter to be constructed from a point at the City of Portland in the State of Oregon southerly through the willamette, Umpqua and Rogue River Valley to a point on the southern boundary of the State of Oregon on the California line and all future extensions and branches of said railroad.

Together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired or appropriated for the purpose of a right of way for a single or double track railroad and all the appurtenances thereunto belonging. It is expressly understood however that all the lands and franchises granted to the Oregon Company by an Act of Congress approved July twenty-fifth (25th) A D One Thousand eight hundred and sixty six entitled "an act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and acts supplementary thereto and amendatory thereof are expressly reserved by the party of the first part hereto and are

not included or intended to be included in this mortgage but all which lands and franchises shall be conveyed by the party of the first part hereto to Faxon D Atherton, Milton S Latham and William Norris of the City and County of San Francisco State of California in Trust for the benefi-t of the Bondholders of the Bonds aforesaid the same to be disposed of under the direction of the party of the first part hereto and the proceeds thereof invested by such Trustee in the United States Securities and shall constitute a sinking fund for the payment of the principal of the Bonds aforesaid all of which will more fully appear reference being had to such Trust Deed Executed contemporaneously herewith. With the exception aforesaid there is also included in this Mortgage in and for the Consideration aforesaid and there is hereby granted bargained sold, assigned, transferred and set over enfeoffed conveyed and confirmed by the said Oregon and California Railroad Company party of the first part hereto to the said Faxton D Atherton and Milton S Latham parties of the second part hereto all the hereinafter corporate property of the said Oregon and California Rail Road Company part of the first part hereto/ That is to say. All its lands acquired and appropriated or which hereafter shall be acquired and appropriated for Depots Engine Houses, Machine Shops. Work shops, superstructures, erections and fixtures and also all and singular the franchises rights, and privileges now owned and possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part:

And also all the rails bridges, ways, piers. depots engine houses, Car Houses, Station Houses Warehouses Machine Shops Erections, superstructures, fixtures, privileges franchises and rights of said party of the first part and all the lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party of the first part or which shall hereafter be owned by it; amd all and singular the locomotives passenger cars freight cars and all other cars, carriages, tools, machinery and equipments for said Rail road and now owned or which shall hereafter be owned or acquired by said party of the first part (save and except however the lands and franchises granted by the acts of Congress as aforesaid) And also all goods and chattels rolling stock of every kind and description now owned or which shall hereafter be owned by the said party of the first part and in any way relating to or appertaining or belonging to or connected with said Rail Road its extensions or branches or the running and operating the same together with all rents, issues income profits money rights, benefits and advantages derived or to be derived had or received therefor by said party of the first part in any way whatsoever.

To have and to hold the said premises and every part thereof unto the said parties of the second part the survivor of them their and his successor or successors forever upon the following trust nevertheless that is to say.

First. In case default shall be made in the payment of the interest in any of the said Bonds according to the tenor thereof or of the coupons or interest warrants thereto annexed or in the payment of the principal of any of the said Bonds when the same shall become due and shall be demanded and if any such default shall continue for the period of three months or in case of any default in any requirement hereof to be done or kept by the said Company and if any such default shall continue for the period of three months then and in either case the said parties of the second part the survivor of them their or his successors in the trust created or declared by this indenture either personally or by his or their attorney or agent may or upon due requisition as hereinafter provided shall enter into and upon all and singular the premises hereby conveyed or intended so to be and each and every part thereof and have hold and use the same operating by his or their superintendents managers or servants or other attorneys or agents the property of the said company and conducting the business thereof and exercising the franchises pertaining thereto and making from time to time all repairs and replacements and such useful alterations, additions and improvements thereto as may seem to him or them judicious and collecting and receiving all tolls, incomes, rents, issues and profits of the same and every part thereof and after deducting the expenses of the operating the said railroad property and all appertenances and of, conducting the business of the said railroad company and of all the said repairs and replacements alterations ad-

ditions and improvements and all payments which may be made for taxes, assessments charges or liens prior to the lien of these presents upon the said premises or any part thereof as well as just compensation for their or his own services and for the services of such attorney or counsel as may have been by him or them employed shall apply the moneys arising as aforesaid to the payment of the interest on the Bonds secured here-by in order in which such interest shall have become or shall become due rateably to the persons holding the coupons evidencing the right to such interest and after paying all interest which shall have become due to apply the said moneys to the payment of the principal of the said Bonds secured hereby rateably to the persons holding such bonds and after the payment of the principal of all the bonds secured thereby if any surplus shall remain to pay over the said surplus to the party of the first part or dispose of the same as and Court of Competent Jurisdiction may order.

Second. In case any default shall be made as hereinbefore expressed and defined and shall continue as hereinbefore specified then and in any case the said parties of the second part and the survivor of them their or his *successors* in the trust created or declared by this indenture may or upon due requisition as hereinafter provided shall personally or by his attorney or agent sell and dispose of all and singular the premises hereby conveyed or intended so to be at Public Auction in the City of New York or at such other place as the said Trustees or the survivor of them their or his successor

may designate and at such time as they or he may appoint, having first given notice of the time and place of such sale by advertisment published not less than three times a week for six week in one or more newspapers to be designated by the said Trustee the survivor of them their or his successors or successor or to adjourn the sale from time to time in their or his discretion. And if so adjournment to make the same without further notice at the time and place to which the same be adjourned and to receive the Proceeds thereof and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the same which sale made as aforesaid and whether sybject to any lien or otherwise shall be a perpetual bar both in law and equity against the parties to these presents and all other persons claiming or to claim the said premises or any part thereof by from through or under them or any or either of them and after deducting from the proceeds of such sale just allowances for all expenses thereof including attorneys and counsel fees and all other expenses advances or liabilities which may have been made or incurred by the Trustees or the survivor of them their or his successors or successor in operating or maintaining the said rail road property or in managing the business of the said company while in their or his possession and in arranging for the completing the sale hereinbefore conveyed property and all payments which may have been made by them or him for taxes or assessments or other charges for the said property as well as compensation for their or his own services apply the said

proceeds to the payment of interest on the Bonds secured hereby in the order in which such interest shall have become due rateable to the person holding the coupons evidencing the right to such interest and after paying all interest that shall become due to apply the remaining proceeds of such sale as aforesaid to the payment of the principal of the bonds secured hereby rateably to the persons holding the said Bonds and after the payment of the principal of the Bonds secured hereby if any surplus, shall remain to pay over the said surplus to the party of the first part or to dispose of the same as any Court of Competent Jurisdiction may Direct.

And it is hereby declared that the receipt or receipts of the said Trustees the survivor of them, their or his successor or successors shall be sufficient discharge to the purchaser or purchasers of said premises for his or their purchase money and such purchaser or purchasers his or their heirs executors or administrators shall not after payment thereof and having such receipts be liable to see the application of such purchase money upon or for the trusts and purposes of these presents, or in any manner whatever be answerable for any loss misapplication or non-application of such purchase money or any part thereof or be obliged to enquire into the necessity or expediency of or authority for any such sale.

Third. At any sale of the aforesaid property or any part thereof made to enforce the lien created by these presents pursuant to the power herein granted or by

judicial authority the parties of the second part hereto as Trustees or the survivors of them, their or his successors or successor may bid for and purchase or cause to be bid for and purchased the property so sold on behalf of all the holders of the hereby secured Bonds then outstanding in the proportion of the respective interest of such holders provided that if all the property hereby conveyed to be sold as aforesaid the time at which the purchase herein authorized may be made shall not exceed the whole amount of the Bonds then outstanding with the interest accrued thereon in behalf of which the said purchase shall be made and if a portion of the said property shall be sold such price as shall in the judgement of the said Trustee the survivor of them their or his successor or successors be reasonable.

Fourth. In case default be made in payment of any half yearly interest or any of the Bonds hereby secured at the time and in the manner provided in the coupon or interest warrant therewith issued the said coupon having been presented and the payment of the interest thereon specified having been demanded and if such default shall continue for the period of three months after the said coupon shall have become due and payable then and thereupon the principal of all of said Bonds shall at the option of the Trustees the survivor of them his or their successor or successors become immediately due and payable but a majority in interest of the holders of the said Bonds may nevertheless in writing or by the vote of a meeting held pursuant to notice published daily for two weeks in a newspaper printed in the Cities of

New York and Philadelphia and before the interest in arrears shall be paid instruct the Trustees the survivor of them their or his successors or successor to declare the said principal to be due or waive the right so to, declare on such terms and conditions as the majority may deem proper or may annul or reserve the determination of the Trustees the Survivor of them, their or his successor or successors provided that no action of the Trustees the survivor of them their or his successor or successors or of the Bond holders shall extend to or be taken to affect any subsequent default or to impair the rights, resulting therefrom.

Fifth. The Trustees the survivor of them their or his successor or successors shall have full power in their discreation upon the request of a Majority of the Directors of the said company to convey by way of release or otherwise to ther person or persons designated in and by such written request any of the Bonds or property hereby conveyed or intended so to be acquired or held by the said company for the purposes of stations, mills, depots shops. or other buildings and shall also have power to convey as aforesaid on like request any land or property which in the judgement of the said Trustees or the survivor or them herein named or their or his successor shall not be necessary for use in connection with the said property or which may be held by the said Company for a supply of fuel water, clay, timber or other materials and also to convey as aforesaid on like request any lands not occupied by said Company or which may become disused by reason of a change of

location of any depot shop or other buildings connected with the business or operations of the said company. And such lands occupied by the said company and adjacent to such buildings or building as the Director of the said corporation or a majority of them may deem it expedient to disuse or abondon by reason of such change and to consent to any such change and to such other changes in the locations of any and all such mills, depots, shops or other buildings as in their judgement shall have become expedient and to make and deliver the conveyance necessary or proper to carry the same into effect; But any lands which may be required for permanent use in substitution for any so released shall be conveyed to the Trustees hereinbefore named the survivor of them their or his successor or successors upon the trust expressed defined, created or declared by these presents unless the Directors of the said Company shall at the time communicating such requests as aforesaid to the Trustees of the Bond holders hereby constituted or the survivor of them their or his successor or successors or thereafter and prior to the completion of such sale present and deliver up to such last named Trustee or the survivor of them, their or his successor or successors for cancellation such a number of the Bonds hereby secured as shall be equal at the par value thereof to the price or consideration money for which such property shall be released or conveyed as aforesaid in which case the said last named Trustees or the survivor or them their or his successor or successors shall release or convey the same upon such written, request as aforesaid and shall cancel

and destroy the Bonds so delivered up and surrendered by the proceeds of all lands released as aforesaid except as last hereinbefore provided shall be paid over to the Trustees the survivor of them, their or his successor or successors to be applied by them or him to the purchase of Bonds of the said Company in open market but the said Company shall have full power to dispose of according to their discretion such portions of the equipments, machinery and implements at any time held or acquired for the use of the said Company and to facilitate its operations as may have become unfit for such use and to replace the same by new anything hereinbefore contained to the contrary notwithstanding.

Sixth: Upon a default in the payment of the interest or principal of the Bonds hereby secured or in the performance of any of the covenants herein contained upon a requisition in writing signed by a holder or holders of a majority of the said Bonds and a proper *in*dentification by the said holders to the Trustees or the survivor of them, their or his successor or successors against the cost and expense to be by them or him incurred it shall be the duty of the Trustees or the survivor of them their or his successor or successors the right of the Bondholders and these presents by entry sale or suits at law or in equity as being advised by counsel learned in the law they or he shall deem most expedient for the interest of all holders of said Bonds subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, to in-

struct the said trustees or the survivor of them their or his successor or successors to waive such default provided that no action of the said Trustees or the survivor of them or their or his successor or successors or Bondholders or both in waiving such default or otherwise shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

And it is mutually agreed by and between the parties hereto that the said Trustees or either of them or the survivor of them or any successor or successors in such office may resign or discharge themselves or himself of the trust created or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect or such shorter time as they may accept as adequate;

NOTICE

That the said Trustees or either of them or their or his successor or successors may be removed in and by a requisition declaration or instrument in writing under the hands and seals of a majority in interest of the holders of the aforesaid Bonds duly executed acknowledged and attested that a successor or successors to such trustees or Trustee shall be appointed with the consent of the holders for the time being of a majority in interest of said Bonds then outstanding and the Trustee or Trustees so appointed shall thereupon become vested with all the powers authorities and estate reserved by granted to or conferred upon the parties of the second part by these presents and all the rights and interests requisite

to enable them or him to execute the purposes of this trust without any further assurance or conveyance by or on the part of the said Company so far as such effect may be lawful and upon the death, resignation or removal of any Trustee or any appointment in his place in pursuance of these presents all his powers and authorities by virtue hereof shall cease and all the estate, right, title and interest in and to the said premises of any Trustee so dying resigning, or being removed shall wholly cease and determine.

And the said party of the first part for itself and its successors in consideration of the premises covenants and agrees to and with the parties of the second part or the survivor of them their or his successor or successors in the trust hereby created or declared that the said party of the first part and its successors shall and will at all times hereafter keep open an office or agency in the City of New York for the payment of the principal and interest of and upon the Bonds hereinbefore recited and described and hereby secured, as the same shall become payable and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and demand of payment of all and every of the Bonds and coupons aforesaid which may become payable during the continuance of such default.

And it is hereby agreed between the parties to this indenture that in the Mean time and until default shall be made in the payment of the interest or principal of

the said Bonds or of some of them or of some part thereof or in some of the covenants or agreements herein contained to be kept observed or fulfilled by the said party of the first part it shall be lawful for the said party of the first part and its successors peaceable and quietly to have hold use possess and enjoy the said premises with the appurtenances and to receive the incomes tolls rents issues and profits thereof to its own use and benefit without any hindrance or interruption suit or disturbance whatsoever of or by the said parties of the second part or their or his successor or successors in the trust or any other person whatever lawfully claiming or to claim the same by from or under them or any of them.

And the said party of the first part and its successors and all and every other person or persons whatsoever lawfully or equitably claiming any estate right, title or interest of in and to the hereinbefore granted premises by from, or under or in trust for it shall and will at any time or times hereinafter upon the reasonable request and at the proper cost and charges in the law of the said parties of the second part or the survivor of them or their or his successor or successors or assigns make do and execute or cause or procure to be made done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said parties of the second part as by the said parties of the second part or the survivor of them their or his

successor or successors or their Counsel learned in the law shall be reasonably devised advised or required.

And also that the said party of the first part and its successors the above granted, bargained, sold and assigned premises and every part and parcel thereof with the appurtenances unto the said parties of the second part or the survivor of them or their or his successors or successor against the said party of the first part and its successors against the said part of the first part and its successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by through or under it shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part has caused its Corporate seal to be affixed to these presents and the same to be signed, by its President and Secretary by resolution of the Board of Directors thereof at the City of Portland State of Oregon this fifteenth day of April in the year of our Lord One Thousand Eight Hundred and Seventy.

(Seal) BEN HOLLADAY,

In the presence of President of the Oregon and California Rail Road Company

John H. Mitchell A. G. CUNNINGHAM,

Secretary of the Oregon and California railroad Company

State of Oregon)
) ss.
County of Multnomah)

Be it remembered that on this fifteenth day of April in the year of our Lord One thousand eight hundred and seventy before me the undersigned a Notary Public in and for said County of Multnomah and State of Oregon duly commissioned sworn and fully qualified personally appeared the above named Ben Holladay President of the Oregon and California Rail Road Company whose names are subscribed to the foregoing instrument as parties thereto personally known to me to be the individuals described in and who executed the said instrument and they severally acknowledged to me that he the said Ben Holladay as President of the Oregon and California Rail Road Company and he the said A. G. Cunningham as Secretary of the said Oregon and California Railroad Company executed the same as and for the Act and Deed of the said Oregon and California Rail Road Company freely and voluntarily and for the uses and purposes therein mentioned and the said A. G. Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Rail Road Company and resides at the City of Portland Multnomah County in the State of Oregon; that he is the legal custodian of and is acquainted with the corporate seal of said Company that the seal affixed to the within Mortgage is such corporate seal: that the same was so affixed by him as Secretary of said Company on the fifteenth day of April one thousand eight hundred and

seventy by order of the Board of Directors of said Company and that he signed his name as Secretary to said Mortgage by the like order of said Board of Directors.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal the day and year first above written.

(Notarial Seal) Geo. W. Murray

(U. S. Rev Stamp 5 cents cancelled) Notary Public.

State of Oregon)
) ss
County of Multnomah)

I, A. G. Cunningham Secretary of the Oregon and California Rail road Company do hereby certify that each bond which this mortgage is given to secure has placed upon it the requisite U S Internal Revenue Stamps as required by law that all of such Bonds in the aggregate have thereon U S Revenue Stamps to the amount of Fourteen Thousand Seven Hundred and Ninety five Dollars all of which are duly cancelled.

(Seal O & C R R Co) A G Cunningham

Secretary of the Oregon and California Railroad Company

(United States Revenue Stamp 5 cents cancelled)

State of Oregon)
) ss
Department of State)

I, Samuel E. May Secretary of the State of Oregon do hereby certify that Geo W Murray whose name is

subscribed to the foregoing and annexed certificate of acknowledgment to Mortgage was at the time of signing the same "towit" on the fifteenth day of April A D One Thousand Eight Hundred and Seventy a duly commissioned qualified and acting Notary Public in and for the County of Multnomah in said State of Oregon and that he was then by the laws of the State of Oregon duly authorized and empowered to take and certify under his Notarial seal acknowledgements to Deeds of Conveyances and Mortgages and that full faith and credit are due to his official acts as such.

Witness my hand and the great seal of the State at office in the City of Salem State of Oregon this nineteenth day of April in the year of our Lord One Thousand Eight Hundred and Seventy.

(Great Seal State of Oregon) Saml E May
Secretary of State.

(United States Revenue Stamp 5 cents cancelled)
Received for Record April 16th, 1870 10 minutes before 8 o'clock P M.

STATE OF OREGON,)
) ss No. 9563
County of Multnomah)

I, JOHN B. COFFEY, County Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon & California Railroad Company to Faxon D. Atherton, et al. recorded in Book "C" page

745 Record of Mortgages has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

JNO. B. COFFEY, County Clerk.

DEFENDANTS' EXHIBIT 394

is a certified copy of a mortgage executed by The Oregon Central Railroad Company to Milton S. Latham, and Faxon D. Atherton, of date July 15, 1871, recorded October 14, 1871, at page 132 of Book "E", Records of Mortgages, and about the same time in each of the counties in which any part of the said Land Grant lands described therein was situated, which, omitting certificate of acknowledgment and certificate of Secretary of Oregon Central Railroad Company that each of the bonds secured by said mortgage had thereon the requisite United States Internal Revenue stamps, and that such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps in the amount of $4,395.00, is as follows:

This indenture made this fifteenth day of July in the year of our Lord One Thousand Eight Hundred and Seventy one between The Oregon Central Rail-Road Company a Body Corporate created by and under the Acts of The Legislature of the State of Oregon in that behalf made and provided party of the first part

and Milton S Latham and Faxon D Atherton of the City and County of San Francisco State of California parties of the second part.

Witnesseth: Whereas the said party of the first part in expressly authorized and empowered in and by the Acts of the Legislature of the State of Oregon and the Act of Congress of the United States approved May 4th, 1870 and entitled An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon "to borrow money for the objects and purposes in said Acts and each of them specified and for such authorized objects and purposes said party of the first part is desirous of borrowing a sum not to exceed Four Millions Three Hundred and Ninety-five Thousand Dollars and of securing payment of its corporate bonds or obligations issued or negotiated therefor by a mortgage or deed of trust to said parties of the second part as trustees as hereinafter set forth and provided. And whereas under and pursuant to the lawful authority conferred by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States aforesaid. the Board of Directors of the said party of the first part have unaminously resolved in substance and legal effect, that said Oregon Central Railroad Company make, execute issue and deliver under its Corporate seal its Corporate Bond bearing even date herewith severally payable to the holder thereof at the Banking House of Messrs. Dabney Morgan and Company in the City of New York State of New York on the fif-

teenth day of July 1891, with interest from and after July 15" 1871 at the rate pf seven per centum per annum payable at the same Banks semi-annually principal; and interest payable in gold coin as follows—that is to say: That twenty-nine Hundred and thirty (2930) of said bonds be made or issued for the sum of One Thousand Dollars each and that twenty nine Hundred and thirty (2930) of said bonds be made or issued for five hundred Dollars each in all five thousand eight hundred and sixty (5860) bonds in the aggregate amounting to Four Million Three hundred and Ninety-five Thousand Dollars and no more and that for the purpose of a more specific identification thereof said five thousand eight hundred and sixty (5860) bonds be numbered in a consecutive series from one to five thousand eight hundred and sixty both inclusive commencing with those of denominations of one thousand dollars and numbering them from one to two thousand nine hundred and thirty (2930) both inclusive and secondly with those of the denomination of five hundred dollars each and numbering them respectively from number two thousand nine hundred and thirty one to number five thousand eight hundred and sixty (5860) and that upon the face of each bond be printed or engraved a certificate signed by the parties of the second part thereto to the effect that such bond is one of the five thousand eight hundred and sixty bonds intended to be secured by these presents/ And whereas said Board of Directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part by the

Acts aforesaid in substance and legal effect. that the President and Secretary of said party of the first part execute and acknowledge in its name and in its behalf and under its corporate seal and deliver to said parties of the second part hereto a mortgage or deed of trust conveying assigning and transferring to them in trust all its corporate real and personal property road depots stations, side tracks, wood years, franchises and effects as security for the payment of said (5860) five thousand eight hundred and sixty bonds and the interest to grow due thereon and that such mortgage or deed of trust should contain all and singular the covenants provisos and conditions hereinafter set forth and that said mortgage and deed of trust and the five thousand eight hundred and sixty bonds thereby secured be severally dated the 15th day of July one thousand eight hundred and seventy-one.

And whereas the Congress of the United States of America did by an Act approved May 4th in the year of our Lord One Thousand eight Hundred and Seventy and entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" grant to the Oregon Central Rail Raod Company and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from the adjacent public lands the material for constructing said road also necessary lands for depots stations side tracks and the needful uses in operating the road not

exceeding forty acres in any one place and also each alternate section of the public lands not mineral excepting coal and iron lands designated by the odd numbers nearest said road to the amount of ten such alternate sections per mile on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of said Act and in case the quantity of ten full sections per mile could not be found on each side of said raod within the limits of twenty miles other lands could be selected under the directions of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such defficiency.

And whereas the said Oregon Central Rail Raod Company party of the first part hereto in and by the terms of said Act of Congress of the United States of America approved May 4th 1870 is required to appropriate and set apart by mortgage or deed of trust to two or more trustees all the net proceeds of the sale of the said granted lands as a sinking fund to be kept invested in the Bonds of the United States or other safe and more productive Securities for the Purchase from time to time and the redemption at maturity of the first mortgage construction bonds of the Company on the road depots stations side tracks and wood, yards not exceeding thirty thousand dollars a mile of the Rail road payable in gold coin not longer than thirty years from date with interest payable semi-annually in coin not exceeding the rate of seven per centum per annum—no

part of tht principal or interest of said fund to be applied to any other use, until said bonds shall have been purchased or redeemed. or cancelled and each of the said first Mortgage Construction Bonds to bear the certificate of the trustees setting forth the manner in which the same is secured and its payment provided for.

Now therefore this Indenture Witnesseth That the said Oregon Central Railroad Company the party of the first part hereto under pursuant to and by virtue of the express power and authority conferred upon, and vested in it by said several Acts of the Legislature of the State of Oregon and of the Congress of the United States of America aforesaid and under and pursuant to Resolutions duly passes and adopted by its Board of Directors and which are duly entered upon the official minutes of said Board and for and in consideration of the foregoing premises and especially for the purposes and with the intent of better and more effectually securing the payment of said five thousand and eight hundred and sixty bonds with the interest due and to grow due thereon and for and in consideration of one dollar and other moneys, lawful money of the United States of America by the said parties of the second part hereto in hand fully and truly paid to the said party of the first part hereto before the unsealing and delivering of these presents the receipt whereof is hereby acknowledged hath granted, bargained, sold assigned transferred and set over enfeoffed, conveyed and confirmed and by these presents doth grant, bargain, sell, assigns transfer and set over enfeoff convey and con-

firm to the said Milton S Latham and Faxon D Atherton the said parties of the second part, as Trustees and in trust and to the survivor of them and to their or his successors or successor. all and singular the Railroad of the said party of the first part heretofore constructed or hereafter to be constructed from Portland to Astoria and from a suitable point or junction near Forest Grove to the Yamhill river near McMinnville in the State of Oregon in all a distance of one hundred and forty-six and one-half miles. thirty thousand dollars of said bonds being issued to each mile thereof together with all its lands, tenements, and hereditaments acquired and appropriated or which shall hereafter be acquired and appropriated for the purpose of a right of way for its Railroad and all the appurtenances thereunto belonging.

And also all its lands acquired and appropriated or which shall hereafter be acquired and appropriated under and pursuant to the provisions of the Act of Congress of the United States of America approved May 4th 1870 and entitled " An Act granting lands to aid in the construction of a Railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and also its depots. engine house, car houses, station houses warehouses machine shops. work shops, superstructures, erections and fixtures and also all and singular the franchises rights and privileges now owned possessed or acquired or which shall hereafter be owned by said party of the first part and all lands, tenements hereditaments and real estate acquired and appropriated wheresoever and whatsoever or now owned by said party

of the first part or which shall hereafter be owned by it and also all and singular the locomotives tenders passenger cars freight cars and all other cars, carriages tools machinery and equipments for said Railroad and now owned or which shall hereafter be owned or acquired by said party of the first part and also all goods and chattels now owned or which shall hereafter be owned by said party of the first part and in any way relating or appertaining or belonging to or connected with said Railroad or running or operating the same together with all rents, issues income profits moneys rights benefits and advantages derived or to be derived had or received therefrom by said party of the first part in any way whatsoever.

To have and to Hold all and singular the premises rights, franchises, property real and personal hereinbefore and hereby assigned mortgaged pledged and conveyed or intended so to be and everypart and parcel thereof with all the appertenances unto the same belonging or in any wise appertaining unto them the said Milton S Latham and Faxon D Atherton the said parties of the second part hereto and to the survivor of them and to their or to his successors or successor and to their and his assigns in trust for the person or persons firm or firms, bodies politic or corporate who have heretofore or who shall hereafter at any time become the purchasersor holders or owner of any or either of said five thousand eight hundred and sixty bonds amounting in the aggregate to four million three hundred and ninety-five thousand dollars to-wit: $30,000 per mile on said Railroad and no more subject to the terms

provisos and stipulations in said Five Thousand eight hundred and Sixty bonds contained and subject also to the provisions of the Act of Congress of the United States of America affecting or relating to or binding upon the party of the first part and also subject to the possession and management of said Railroad and property of said party of the first part and its successors or assigns so long as no default shall be made in the payment of either the interest or principal of said Five Thousand Eight Hundred and Sixty bonds or in or to either of them and so long as the party of the first part shall well and truly observe keep and perform all and singular the covenants agreements conditions and stipulations in said Five Thousand Eight Hundred and Sixty bonds and in this Indenture contained and set forth and which are to be observed kept and performed by and on the part of the said party of the first part.

And the said Oregon Central Railroad Company the party of the first part hath covenanted and agreed and by these presents doth for itself and its successors and assigns covenant and agree with the parties of the second part hereto and the Survivor and survivors of them and their and his successors and successor in manner and form following that is to say;

First. That said Oregon Central Railroad Company the party of the first part and its successors shall and will pay or cause to be paid all taxes, charges rates, levies and assessments imposed assessed or levied or which may hereafter be imposed assessed or levied upon

the premises franchises and property hereby mortgaged conveyed and assigned or intended so to be and shall and will at its own proper cost expense and charges do or cause to be done all acts and things necessary and proper to be done or performed in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises hereby created or intended so to be. And further that the lien or incumbrance created by the execution and delivery of this Indenture constitute and is in fact the first valid lien and incumbrance on the premises property and franchise therein described.

Second. That said Oregon Central Railroad Company the party of the first part and its successors shall and will at any time or times hereafter and from time to time execute, acknowledge and deliver under its corporate seal to the said parties of the second part and the survivors of them and their and his successors or successor, such other and further assurances deeds mortgages, obligations transfers indenture and instruments in writing and shall and will do and perform all such further or other acts or things as shall or may be proper or necessary or as their or his counsel learned in the law shall deem necessary proper or expedient for the better or more effectually securing the payment of said Five Thousand Eight Hundred and Sixty bonds and the interest due or to grow due thereon or for carrying into effect the true intent design objects and purposes of these presents or making preserving continuing and keeping valid and effectual, the lien and incumbrance

created or intended to be created by the execution de-livery and recording of this Indenture upon all the property real and personal rolling stock equipments franchises and effects and especially the lands referred to in and by the said Act of Congress approved May 4th 1870 now owned possessed or acquired or which shall hereafter be owned possessed or acquired by said party of the first part.

Thirdly. And for the purpose of fully and more affectually securing the payment of the said Five Thousand Eight Hundred and Sixty bonds together with the interest due or to grow due thereon the said Oregon Central Railroad Company the party of the first part hereto for itself its successors hath pledged and hereby doth irrevocably pledge for the purposes and objects hereinbefore specified to and with the said parties of the second part and the survivors and survivor of them their and his successors and successor all and singular the net proceeds of the sales of the Lands granted to the party of the first part by the Act of Congree approvied May 4" 1870 hereinbefore mentioned as a sinking fund to be kept invested by the parties of the second part in the Bonds of the United State or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the party of the first part hereinbefore particulary described and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled.

And in the event that the principal of said First Mortgage Construction Bonds is not otherwise paid at the maturity thereof then the fund aforesaid which shall then have accrued from the proceeds of the sales of said lands and interest thereon shall be by said trustees parties of the second part or the survivor of them their or his successors or successor applied to the discharge and payment of any and all amounts both principal and interest then remaining due and unpaid on all such bonds and if such funds shall then be inssufficient to discharge the whole amount then due on all such bonds the same shall then be applied rateably thereon according to the interest respectively of all such bondholders.

And it is further stipulated and agreed between the parties hereto that it there remains any deficit in the payment of the principal and interest due on said Five Thousand Eight Hundred and Sixty bonds after the whole of the funds aforesaid shall be applied thereon at the maturity thereof then the trustees parties of the second part hereto their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undesposed of, which are included in the grant made by the Act of Congress aforesaid and which are hereby conveyed and intended to be conveyed in whole or in part as the said trustees may deem best for the interest of said bondholders and as may be prescribed or limited by any Act of Congress in force at the time of such sale and if there shall be no such prescription and limitation by law then said lands shall only be sold at public auction in the City of Port-

land in the State of Oregon to the highest bidder and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland State aforesaid and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance either principal or interest then remaining unpaid on such bonds aforesaid or any of them.

And it is hereby expressly covenant agreed and understood by and between the parties to these presents that notwithstanding the execution and delivery of these presents and of the covenants herein contained the said Oregon Central Railroad Company the party of the first part hereto shall have the right at any time after the execution of these presents to make sales of all and singular the lands granted to said Company by Act of Congree of the United States approved May 4, 1870 aforesaid in the manner and mode prescribed therefor by law and that the parties of the second part shall and will at any time after the delivery to them of this Indenture upon the request of the party of the first part and upon the receipt by the parties of the second part from the party of the first part of the price or consideration for said lands provided in and by said Act of Congress aforesaid make execute and deliver such releases discharges and assurances in respect to the lands for which they shall have received Consideration provided by law as the party of the first part or its counsel learned in the law may require for the purpose of making good

and sufficient title to said granted lands so sold to any and all purchasers thereof clear and free from all lien or incumbrance created by these presents and all net proceeds from the sales of all or any of the lands granted or intended to be granted by said Act of Congress shall be received and held jointly by the parties of the second part and the President of the party of the first part and shall be held subject to their control and shall be immediately and as soon as practicable after the same are received invested by said parties of the second part by and with the consent of the President of the party of the first part in United States Bonds or other more productive securities which securities shall be under the control of the parties of the second part and the said President of the party of the first part and shall be used solely in the Purchase from time to time and the redemption at maturity of said Five Thousand Eight Hundred and Sixty bonds and it is expressly understood and agreed that the lien created by this Indenture on said lands granted by said Act of Congress shall upon the sale of any portion of said lands as aforesaid and the payment of the purchase price thereof to the said parties of the second part cease so far as the same relates to the portion of the lands so sold. The said parties of the second part shall not have the right to make sale of any of said lands without the consent of the party of the first part.

Fourthly. That the said Oregon Central Railroad Company the party of the first part hereunto shall and will well and truly pay the said sums of money in said

Five Thousand Eight Hundred and Sixty bonds mentioned together with the semi-annual interest due or to become due thereon at the rate of seven per cent per annum at the times in the manner and at the place specified therein; and further said Oregon Central Railroad Company hereby covenants and agrees that in case it shall have for the space of thirty days made default in the payment of the semi-annual interest due or to become due on either or any of the said Five Thousand Eight Hundred and Sixty bonds or in case it shall fail to appropriate and set apart in the hands of the said parties of the second part all and singular the net proceeds of the sales of the said lands granted to the party of the first part by the Act of Congree of the United States as aforesaid as and for a sinking fund for and to be applied in payment or redemption of said Five Thousand Eight Hundred and Sixty bonds in the manner hereinbefore and in said Act of Congress specified then and in either of said cases after the lapse of said thirty days the whole principal sum mentioned in each and all of said Five Thousand Eight Hundred and Sixty bonds shall forthwith be and become due and payable and the lien or incumbrance hereby created for the security and payment thereof may be at once enforced anything in said bonds or in this Indenture to the contrary notwithstanding and that it shall and may be lawful and the said parties of the second part and the survivors or survivor of them and their or his successors or successor are hereby expressly authorized and empowered upon the request in writing of any two or more

holders of any of said Five Thousand Eight Hundred and Sixty bonds to enter into and upon and take actual possession of all and singular the railroad premises franchises, rights, property real and personal and effects hereby granted conveyed, assigned mortgaged pledged, transferred and set over or intended so to be as a security for the payment of said Five Thousand Eight Hundred and Sixty bonds and by themselves or their agents to take colect and receive the tools earnings income and profits thereof and every part thereof or to be derived therefrom and that they, said parties of the second part and the survivors and survivor of them and their and his successors and successor shall and may proceed and are hereby expressly authorized and empowered thereupon but within such reasonable time as they may deem proper not less than sixty days and upon and after public notice by advertisement for at least six weeks in one or more newspapers published in the cities of New York State of New York and San Francisco State of California and Portland State of Oregon. to proceed and sell at public auction in said city of Portland to the highest bider as well all and singular the said railroad rights and franchises as all other the property real and personal and premises hereby granted conveyed assigned mortgages pledged transferred and set over, or intended so to be, and all benefit and equity or redemption whatsoever of the said Oregon Central Rail Road Company the said party of the first part hereto of in and to the same and every part and parcel thereof together with the benefit of the franchise be-

longing to or connected therewith. Amd as the attorney or attorneys of the said Oregon Central Rail Road Company the said party of the first part hereto for that purpose by these presents duly appointed and constituted the said parties of the second part and the survivors and survivor of them and their and his successors and successor shall have full power and authority to make, execute and deliver to the purchasers thereof a good valid and sufficient deed or deeds conveyance or conveyances assignment or transfer in fee simple or otherwise of said Railroad lands tenements and real estate and of all and singular the said personal or other property rights and premises hereby granted assigned transferred or conveyed as aforesaid, which sale so to be made as aforesaid and which deeds, conveyances assignments and transfers so to be made and delivered as aforesaid shall operate to convey assign, transfer and vest in said purchaser or purchasers all the rights title, interest and estate whatsoever reversionary or otherwise of the said Oregon Central Rail Road Company the party of the first part of in and to the premises so sold conveyed assigned or transferred and which said sale so to be made shall be a complete and perpetual bar both at law and in equity against the said Oregon Central Rail Road Company the party of the first part its successors and assigns and all persons or parties claiming by from or under it or them in anywise or manner whatsoever. and that out of the moneys or proceeds arising either from said tolls, earnings or receipts of said Railroad or premises or at or from said sale so

to be made as aforesaid after first deducting the expenses disbursements costs, charges and counsel fees in and about the conducting of said sale or running and operating said Railroad that they the said parties of the second part and the survivors and survivor of them their and his successors or successor shall pay said five thousand eight hundred and sixty bonds or so many as shall be then outstanding and unpaid together with all arrears of interest then due or owing upon the same rendering or paying over the surplus of all such moneys if any there shall be to the said party of the first part hereto its successors or assigns.

This Indenture further witnesseth: and these presents are upon the express condition that upon payment in full of said Five Thousand Eight Hundred and Sixty bonds and the interest due thereon then these presents and the estate hereby granted shall cease and be void and the Oregon Central Rail Road Company the party of the first part shall be immediately and fully reinvested with the said premises hereby granted in law and in fact without any entry or other act whatever and that until default shall be made by said party of the first part hereto either in payment of said Five Thousand Eight Hundred and Sixty bonds or in payment of the interest due or to grow due thereon as aforesaid or in appropriating and setting apart in the hands of the parties of the second part their successors or successor all and singular the net proceeds of the sales of said lands, granted by the Act of Congree aforesaid as a sinking fund to be kept invested in Bonds of the United

States or other safe and more productive securities for the purchase from time to time and the redemption at maturity of the First Mortgage Construction Bonds of the Construction of the Company hereinbefore mentioned and described or in keeping and observing any of the covenants and agreements hereinbefore contained the said Oregon Central Railroad Company the party of the first part and its successors and assigns shall remain in the quiet and peaceful possession and enjoyment of the said premises and property hereby granted or conveyed or intended so to be as aforesaid.

This Indenture further witnesseth; and it is hereby expressly agreed that in case of the death resignation incapacity or inability of any or either of the parties of the second part to act in the execution of any of the trusts aforesaid, then it shall and may be lawful and the remaining acting surviving or competent Trustee or Trustees and the President for the time being of the said party of the first part are hereby empowered to select and appoint by an instrument in writing under their hands and seals which shall be recorded in the same office where this Indenture shall be recorded one or more competent persons to fill the vacancy or vacancies so created in the manner aforesaid and that such person or persons so appointed trustee or trustees shall have and possess and be vested with the same rights and powers as a trustee or trustees as he or they would have had and possessed or been vested with had he or they been originally made a party or parties of the second part to this Indenture and shall perform the same duties

in all respects and until such appointment shall be so made in the manner aforesaid and notwithstanding any vacancy or vacancies as aforesaid said remaining surviving acting or competent trustee shall have full power and authority to execute each and all the trusts hereby created and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same acts has been done and performed by all the parties hereto of the second part. and in case said appointment shall be made in the manner aforesaid party of the first part hereby covenants to make, execute and deliver all such other or further instruments deeds, Indenture or assurances as may be necessary to enable the person or persons so appointed to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same—if originally made a party or parties of the second part to this Indenture.

In witness whereof the said Oregon Central Railroad Company the party of the first part hereto hath caused these presents to be subscribed by its President and attested by its Secretary and hath under the express authority of the Resolution of its Board of Directors caused its corporate seal to be hereunto affixed and the parties hereto of the second part for the purposes of signifying their acceptance of the trusts herein and hereby created have hereunto subscribed their names and affixed their respective seals; All done the day and year first above written.

(Signed) Ben Holladay

President of the Oregon Central Rail Road Company
R H Towler

Secretary of the Oregon Central Rail Road Company

(Corporate Seal)

Milton S Latham (Seal)
F D Atherton (Seal)
Trustees.

Sealed and delivered in presence of
A G Cunningham
E A Cunningham

County of Multnomah)
) ss
State of Oregon)

Be it remembered that on this fifteenth day of July A D One Thousand Eight Hundred and Seventy One before me the undersigned a Notary Public in and for the said county of Multnomah and State of Oregon duly commissioned and qualified personally came Ben Holladay President of the Oregon Central Rail Road Company and R H Towler Secretary of the Oregon Central Railroad Company whose names are subscribed to the foregoing mortgage or deed of trust as parties thereto and as the President and Secretary of said Oregon Central Railroad Company both personally known to me to be the individuals named and described in and who executed the said mortgage or deed of trust and they severally acknowledged to me that he the said Ben Holladay as President of the said Oregon Central Railroad Company and he the said R H Towler as secre-

tary of the said Oregon Central Railroad Company executed the foregoing mortgage or deed of trust as and for the fact and deed of the said Oregon Central Railroad Company freely and voluntarily for the uses and purposes therein mentioned and he the said R H Towler being by me duly sworn did depose and say that he is the secretary of the said Oregon Cenral Rail Road Company and resides in the City of Portland Multnomah County in the State of Oregon that he is the legal custodian of and has in his possession and and is acquainted with the corporate seal of the said Oregon Central Rail-Road Company. That the seal affixed to the within and foregoing mortgage or deed of trust is such corporate seal That the same was affixed by him as Secretary of said Company on the fifteenth day of July A D One Thousand eight hundred and Seventy-one by order of the Board of Directors of said Company and that he signed his name as secretary thereto by the like order of the said Board of Directors.

In witness whereof I have hereunto subscribed my name and affixed my Notarial seal the day and year above first written at the City of Portland Multnomah County State of Oregon.

(Notarial Seal) (Signed) Andrew J Moses

Notary Public in and for the County of Multnomah State of Oregon.

U S Int. Rev. Stamp
05c Cancelled

State of Oregon)
) ss
County of Multnomah)

I, R H Towler Secretary of the Oregon Central Railroad Company do hereby certify that each of the Five Thousand eight hundred and Sixty bonds which this mortgage or trust deed is given to secure has placed upon it the requisite United States Internal Revenue Stamps as required by law. That such bonds in the aggregate have placed thereon and all duly cancelled United States Internal Revenue stamps to the amount of Four Thousand three hundred and Ninety-five dollars.

Witness my hand and the seal of said corporation.

(Corporate Seal) (Signed) R H Towler

U S Int. Rev. Stamp 05c cancelled

Secretary of the Oregon Central Railroad Company

State of Oregon)
) ss
Department of State)

I S F Chadwick, Secretary of the State of the State of Oregon do hereby certify that Andrew J Moses whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said mortgage or deed of trust was at the time of taking such acknowledgment and signing such certificate towit: on the fifteenth day of July A D One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah and

State of Oregon and that he then was by the laws of the State of Oregon duly authorized and empowered to take and certify under his notarial seal, acknowledgments of deeds or conveyances and mortgages and deeds of trusts and his signature to such certificate is genuine also his notarial seal and that full faith and credit are due to his official acts as such.

Witness my hand and the great seal of the State at my office in the City of Salem State of Oregon this fifteenth day of July A D One Thousand Eight Hundred and Seventy-one.

(Great Seal of State of Oregon)

U S Int Rev. Stamp (Signed) S F Chadwick

05c cancelled Secretary of State of Oregon.

United States of America)
) ss
City and County of San Francisco)

I, F J Thibault a Commissioner for the State of Oregon duly commissioned and qualified under and by virtue of the Laws thereof residing in the City and County of San Francisco and State of California do certify that on the fifteenth day of August A D One thousand eight Hundred and Seventy-one before me personally appeared Milton S Latham and Faxon D Atherton Trustees personally known to me to be the individuals described in and who executed the foregoing Instrument. And they the said Faxin D Atherton and Milton S Latham duly acknowledged to me that they

executed the said Instrument fully and voluntarily as such trustees for the uses and purposes therein mentioned and that the same was their free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal as such commissioner at my office in the City and County of San Francisco and State of California this Fifteenth day of August A D One Thousand Eight Hundred and Seventy-one.

(Commissioners Seal) (Signed) F J Thibault
Commissioner for Oregon in California.

Received for Record October 14th, 1871.

STATE OF OREGON,)
) ss No. 9553
County of Multnomah)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, Oregon Central R. R. Co. to M. S. Latham, et al., recorded in Book E page 132 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1913.

(Seal) JNO. B. COFFEY, County Clerk.

DEFENDANTS' EHXIBIT 395

is a certified copy of a mortgage, bearing date January 1, 1881, between the Oregon and California Railroad Company, party of the first part, and Richard Koehler and Heinrich Hohenemser, of the second part, and others, recorded February 28, 1881, in Book "X," page 346, in the Records of Mortgages, Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of the granted lands described therein is situated, and said exhibit is as follows:

United States v. Oregon &
California R. R. Co. et al.
Defendants' Ex. 395

Page 346, Book "X."

The Oregon and California Railroad Co with Klaas Van Oterendorp, Philip N Lilienthal and others.

This indenture Made this first day of January in the years One Thousand eight hundred and eighty-one between the Oregon and California Railroad Company a corporation organized and existing under the laws of Oregon and hereinafter called the Company of the first part. Richard Koehler of Portland in Oregon and Heinrich Hohenemser of Frankfort on the Main in Germany Trustees as hereinafter mentioned of the second part. The said Richard Koehler and Heinrich Hohenemser Trustees as hereinafter mentioned of the third part. The said Richard Koehler and Heinrich Hohen-

emser and Philip B Bonn Paul Reinganum, Herman Koehler Ludwig Gruenebaum and Carl Pollitz all of Frankfort aforesaid. Adolph Otto of Heilbron in Germany and Michael Benjamin of Munich in Germany a committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act on behalf of said bondholders by their association of the fourth part and Klaas Van Oterendorp and Philip N Lilienthal of the City and County of San Francisco in California hereinafter called the Trustees of the fifth part.

Whereas said Oregon and California Railroad Company by resolution of its Board of Directors approved by resolution of a general meeting of its Stockholders and in pursuance of its Articles of Incorporation and By-Laws and with consent of the holders of the now existing First Mortgage Bonds of said Company as hereinafter set forth has resolved to make an issue of New First Mortgage Bonds as hereinafter described to the amount of Two Million (2,000,000) Dollars in gold or the equivalent in German Money in order to provide for the payment of a portion of its present indebtedness and to raise money by the sale of such bonds for the general purpose of the Company and to secure the payment of said Bonds and the interest thereon in the manner herein provided.

And whereas by an indenture dated the 15th day of April 1870 said Oregon and California Railroad Company mortgaged to Faxon D Atherton and Milton S

Latham all its Railroad from Portland to the boundary line of the States of Oregon and California then built or thereafter to be built with its equipment and appurtenances to secure an issue of 18450 First mortgage Bonds amounting in all to the sum of ten million Nine Hundred and fifty thousand dollars ($10,950,000) and interest thereon evidenced by interest warrants or coupons thereto annexed which Bonds have been negotiated and are still due with large arrears of interest and are now represented and controlled by said Heinrich Hohenemser and others parties hereto of the fourth part except about thirty two thousand eight hundred dollars ($32,800) in amount thereof supposed to have been lost or accidentally destroyed and except thirty thousand seven hundred dollars ($30700) in amount thereof which have been acquired by the sinking fund hereinafter mentioned.

And whereas said Richard Koehler and Heinrich Hohenemser have succeeded said Latham and Atherton as trustees of said Mortgage and are now the Trustees thereof.

And whereas; by another Indenture also dated the 15th day of April 1870 said Company granted and conveyed to said Milton S Latham and Faxon D Atherton and William Norris all the lands granted by the United States to aid in the construction of its said Railroad upon Trusts for sale of such lands and for the creation with the proceeds of such sale of a sinking fund for the payment at maturity of the bonds secured by the indenture of Mortgage lastly mentioned.

And whereas Said Richard Koehler Heinrich Hohenemser and Charles Edward Bretherton have succeeded said Lathem Atherton and Norris and the said Richard Koehler and Heinrich Hohenemser are now Trustees of said Indenture of Trust and of the sinking fund thereby created the said Bretherton having resigned and delegated the said trust to the two remaining trustees to-wit: Said Richard Koehler and Heinrich Hohenemser and such resignation having been duly accepted.

And whereas. said Heinrich Hohenemser and others the said Committee parties hereto of the fourth part being desirous that the said issue of new First Mortgage Bonds of the said Oregon and California Company should be made for the purpose aforesaid have requested the said Richard Koehler and Heinrich Hohenemser as Trustees of said two Indentures dated April 15th 1870 to join in and execute these presents for the purpose of postponing the lien of said Indentures of Mortgage and Trust dated the 15th day of April 1870 to the lien or charge intended to be created by these presents which Richard Koehler and Heinrich Hohenemser have agreed to do upon said Heinrich Hohenemser and others Committees as aforesaid parties hereto of the fourth part. testifying their request and consent thereto by executing these presents and causing the bonds and coupons or interest warrants held by them to be stamped with a notice of such postponement in the form hereinafter set forth.

And whereas there has been stamped by the order of

said Heinrich Hohenemser and others Committee as aforesaid parties hereto of the fourth part, upon each of the bonds controlled and represented by them a certificate in the following form.

This is to certify that by an indenture of Mortgage and Trust made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal to secure an issue of New First Mortgage Bonds and dated the 1st day of January 1881 the liens of the mortgage and Deed of Trust securing the within bond have been by the consent and at the request of the undersigned, representatives and controllers of the said Bond postponed to the lien or charge created by said indenture of the Mortgage and Trust to said Klaas Van Oterendorp and Philip N Lilienthal dated this 1st day of January 1881.

Heinrich Hohenemser
Philipp B Bonn
Paul Reinganum
Herman Koehler
Richard Koehler
Adolph Otto
Michael Benjamin
Ludwig Gruenebaum
Carl Pollitz

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds being duly authorized thereto by the association of such bondholders.

And upon each of the coupons or interest warrants there has been stamped by the like order and direction a memorandum in the following form.

"Subject to prior lien of New First Mortgage Bonds." And whereas said Bonds intended to be secured by these presents and to be known as new First Mortgage Bonds of the Oregon and California Railroad Company together with the warrants for interest thereon and the certificate of said Trustees thereupon have been prepared and bear even date herewith and are two thousand five hundred (2500) in number whereof fifteen hundred (1500) are for one thousand dollars ($1000) or four thousand two hundred and fifty (4250) mark and are numbered one (1) to fifteen hundred (1500) inclusive and one thousand (1000) are for five hundred dollars ($500) or two thousand one hundred and twenty five (2125) mark numbered fifteen hundred and one (1501) to twenty five hundred (2500) inclusive and which bonds and interest warrants are in the following form except that in those for five hundred dollars ($500) the amounts of principal and interest are varied accordingly.

United State of America, State of Oregon.

New First Mortgage Bond Oregon and California Railroad Company of Portland Oregon.

Interest six per cent per annum Principal and interest payable in gold coin in New York or Frankfort A M. Principal repayable by a sinking fund of one per cent per annum.

$1000 No M4250

The Oregon and California Railroad Company for value received hereby promises to pay to the bearer on the 1st day of January 1919 either the sum of one thousand dollars ($1000) in American gold coin at the financial agency of the Company in New York or the sum of Four thousand two hundred and fifty (4250) mark in money of the German Empire at the financial agency of the Company in Frankfort A M in Germany at the option of the bearer and to pay in the meantime interest thereon at the rate of six per cent per annum half yearly on the first days of July and January in each year the first of said payments being for all interest accruing to the 1st day of July next from the date hereof and the remaining payments being at the option of the bearer for each half year either thirty dollars (30) in American gold coin payable at the financial agency of the Company in the city of New York or one hundred and twenty seven and fifty-one hundredths (127.50) mark payable at the financial agency of the Company in Frankfort A M free of all taxes in the United States either State or Federal but only upon presentation and surrender as they mature of the seventy six interest warrants annexed.

This bond is one of two thousand five hundred Bonds of like form and date and numbered one to twenty five hundred (2500) inclusive whereof one thousand five hundred (1500) are for one thousand dollars ($1000) or four thousand two hundred and fifty (4250) mark

and one thousand (1000) are for five hundred dollars ($500) or two thousand one hundred and twenty five (2125) mark secured by an indenture of Mortgage of even date herewith made by the Oregon and California Railroad Company to Klaas Van Oterendorp and Philip N Lilienthal and recorded in the office of the County Clerk of Multnomah County in Oregon and in all other counties in which any part of the property therein comprised is situated whereby the said Company has conveyed to said Klaas Van Oterendorp and Philip N Lilienthal all its railroads between East Portland and Roseburg and Portland and Corvallis in the State of Oregon embracing the railroads heretofore known as the Oregon and California Railroads running between East Portland and Roseburg and being in length 198 miles or thereabouts The Oregon Central Railroad running between Portland and St Joseph and being in length 47 miles or thereabouts and the Western Oregon Railroad Running between St. Joseph and Corvallis and being in length 50 miles or thereabouts being in all 295 miles long and thereabouts together with all the rollong stock right of ways, depots, warehouse and dock and other property appurtenant to said railroad and described in said Mortgage and the lands granted by the United State in aid of the construction of such railroads and not yet sold or disposed of estimated to amount to one million and a half (1,500,000) acres as a First Mortgage on said Railroad and rolling stock and a Mortgage on said warehouse and dock property and upon so much of said lands as may be unsold at the time

of any enforcement thereof to secure the payment of said two thousand five hundred (2500) Bonds and interest thereon.

And said Oregon and California Railroad Company further promises to pay forthwith upon demand the amount of this Bond as aforesaid in case said Oregon and California Railroad Company shall fail for six calendar months to pay any interest warrant or any of said two thousand five hundred (2500) bonds when the same becomes due or shall fail to pay to said Klaas Van Oterendorp and Philip N Lilienthal or the trustees for the time being of said Indenture of Mortgage on the 1st day of July 1885 and on every 1st day of July thereafter so long as any of said Bonds shall remain unpaid the sum of twenty thousand Dollars ($20,000) in American gold coin at the office of the Company in the city of New York as a sinking fund to be thereafter applied together with interest on any Bonds therefore belonging to said sinking fund for the equal benefit of all said Bonds by redemption of such therof as shall be dreawn by lot or the previous 1st day of April at the financial agency of the Company in New York by said Trustees or one of them or their duly authorized agent in the presence of a Notary Public and such default in payment of interest warrants or sinking fund payment shall not have been waived by a majority in amount of the holders of the Bonds then outstanding in manner in said indenture of Mortgage provided.

The number of the bonds so drawn shall be pub-

lished by notice posted up in the financial agencies of the Company in New York and Frankfort A M and by an advertisement in Seven Newspapers of general circulation published respectively in New York, London, Amsterdam, Frankfort Munich Berlin and Basle and on publication of such notice the principal of the Bonds so drawn shall become payable on the first day of July then next and said bonds so drawn shall bear no interest after that date unless in presentation thereof at the financial agency of the Company in New York or Frankfort A M payment of said bonds or any interest then due thereon shall be refused.

The Company reserves the right of making larger payments to such sinking fund and of paying off on any 1st day of July (notice being given as aforesaid on or before the first day of April previous) the whole of the outstanding bonds.

This bond is not valid unless authenticated by the execution by the Mortgage Trustees of the certificate endorsed hereon.

The company may but shall not be obliged to require proof of the ownership of any interest Warrant before paying the same and the payment thereof to the person presenting the same shall in any case fully discharge the Company.

In witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary the 1st day of January 1881 Each of said Bonds being duly so

signed sealed and attested.

Form of Interest Warrant.

$30. M 127 .50/100

Interest warrant No one due July 1st, 1881 on New First Mortgage Bond of the Oregon and California Railroad Company No 1 for $1,000 (unless said bond shall have been previously redeemed and being either thirty dollars ($30) in American Gold Coin payable free of all taxes in the United States or Federal at the financial agency of the Company in New York or one hundred and twenty seven mark fifty pfennings payable at the financial agency of the company in Frankfort A M in money of the German Empire.

A G CUNNINGHAM

Treasurer

Form of Trustees Certificate.

We hereby certify that the within bond is one of two thousand five hundred (2500) bonds and no more of the Oregon and California Railroad Company secured by the within mentioned Indenture of Mortgage dated January 1, 1881 and made by said Oregon and California Railroad Company to us as Trustees.

K Van Oterendorp)
)
P N Litienthal) Trustees

And whereas; by reason of the lapse of time the date of the execution of this Indenture of Mortgage and

Trust Deed is subsequent to the day of which it bears date yet nevertheless this indenture of Mortgage and Trust Deed in the Indenture of Mortgage referred to in the Bonds hereinbefore mentioned, the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the Indenture of Mortgage and trust deed securing and intended to secure said Bonds as in said Bonds is mentioned and recited.

Now this indenture witnesseth: That in pursuance of said resolutions and to secure the punctual payment of said Bonds and the interest thereon said Oregon and California Railroad Company doth hereby grant, bargain, sell, assigns transfer and convey unto said Klaas Van Oterendorp and Philip N Lilienthan their heirs, assigns and legal successors as trustees of these presents all and singular the railroad lines of said Oregon and California Railroad Company now constructed and in operation between East Portland and Roseburg and between Portland and Corvallis in the State of Oregon including the railroads heretofore known as the Oregon Central and Western Oregon Railroads in all about two hundred and ninety five (295) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas Washington Yamhill, Polk and Benton in said state together with the ferry, ferry boats and landings connecting the same at Portland and East Portland and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated

for the purpose of the right of way of said Railroad or for grounds for side tracks depots, warehouses tanks, round houses, stock y-ards or any other Railroad purposes and all lands heretofore granted by the United States in aid of the construction of the said Railroads between the termini aforesaid and not yet sold estimated to be in amount about one and a half million of acres and intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes ties timber iron switches frogs depots, warehouses round houses, machine shops bridges trestle work and all other buildings or structures belonging to or used for the Maintenance or operation of said Railroads including all the offices docks and warehouses of said Company in Portland and East Portland and all locomotives, cars and other rolling, stock railroad supplies fuel tools and machinery now used in the maintenance or operation of said railroads and which rollong stock is more particularly described and enumerated in the schedule thereof annexed hereto and all other appurtenanves of said railroad between the termini aforesaid and the franchise, to operate the same and all the income earnings and profits of said Railroads and lands and all the rights, claims estate and interest of said Oregon and California Railroad Company therein and thereto.

To have and to hold the said railroads with their respective rolling stock equipment and appurtenances and the lands and other premises as above described unto the use of said Klaas Van Oterendorp and Philip

N Lilienthal their heirs, assigns and legal successors as trustees of these presents as joint tenant in common free from all prior liens and encumbrances whatsoever save and except a balance of purchase money due upon part of the dock and warehouse property of the Company in Portland and East Portland amounting to about forty thousand, ($40,000) dollars and a sum of seventy thousand ($70,000) dollars or therabouts and interest due to the European and Oregon Land Company and payable out of the net earnings of the lands granted by the United States to aid in the construction of the railroad between East Portland and Roseburg in trust nevertheless for the equal benefit and security pro rata of every holder of any of said, two thousand five hundred (2500) Bonds intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiations and for the uses and purposes and with all the rights and powers and subject to the provisions, agreements, covenants and stipulations contained in the following articles:

Article 1.

The said Oregon and California Railroad Company hereby covenants with said Klaas Van Oterendorp and Philip N Lilienthal that it will pay all taxes assessed against said Railroads lands and premises and will keep the Railroads, rolling stock and premises herein comprised in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or dis-

placed and will pay the principal of said twenty five hundred (2500) bonds and all interest due thereon at the times and places and in the manner in said Bonds and the interest warrants annexed thereto respectively specified.

Article 2.

And further, that if any interest warrant or anyone of said Bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the said Company will pay on demand at the places and in the moneys in said Bonds specified the principal of each and all of said Bonds then remaining due.

Article 3.

And further that said Oregon and California Railroad Company will on the 1st day of July 1885 and on every first day of July thereafter pay it the financial agency of the Company in New York to said Klaas Van Oterendorp and Philip N. Lilienthal or other the trustee or trustees for the time being of these presents the sum of twenty thousand dollars ($20,000) in American gold coin.

Article 4.

And further that in case default shall be made in any such payment of twenty thousand dollars ($20000) specified in the last article or any part thereof for six calendar months and such default shall not be waived as

hereinafter provided then said Company will forthwith pay the principal of each and all of said bonds then remaining due.

Article 5.

Until default in any payment required by the previous articles said Company shall freely possess the said Railroads lands and premises and the income earnings and profits thereof and may contract to sell and dispose of the lands granted by the, United States and of all other lands owned by the Company not required for the maintenance and operation of its railroads and received the proceeds thereof but no conveyance or release of said lands or any of them shall be valid and effectual unless such conveyance or release shall be executed by said Trustees or one of them or by their attorney or attorneys in fact thereunto lawfully authorized.

Article 6.

Said Klaas Van Oterendorp and Philip N Lilienthal shall hold the said payment of twenty thousand dollars ($20000) per annum as well as all interest they may receive upon Bonds purchased by them upon previous payments of said annual sum as a sinking fund to discharge and extinguish the whole of said twenty five hundred (2500) Bonds by annual redemption in the following manner. On the 1st day of April 1885 and on the 1st day of April in every year thereafter or as soon thereafter as may be said Klaas Van Oterendorp and Philip N Lilienthal or the Trustee or Trustees for the time

being of these presents shall cause to be drawn at the financial agency of the Company in New York in the presence of a Notary Public out of the whole number of Bonds then outstanding excluding those already belonging to the sinking fund such a number of Bonds as will on the 1st day of July then next ensuing be equal at par to said annual payment of twenty thousand dollars ($20000) and such additional sum as said Trustees shall be entitled to receive on account of the interest warrants on the bonds previously acquired by them for said sinking fund a due proportion of said Bonds being drawn for each class so that on the 1st day of July 1885 fifteen bonds for one thousand dollars ($1000) and ten Bonds for five hundred dollars ($500) will be redeemed by said sinking fund and a larger number on every 1st day of January thereafter.

Article 7.

Said Trustees shall publish by notice conspicuously posted upon or before the 30th day of April then next ensuing at the financial agency of the Company in New York and at the financial agency of the Company in Frankfort A M and so remaining until the 1st day of July then next ensuing and by an advertisement in seven newspapers of general circulation published respectively in New York London, Amsterdam, Frankfort, Munich Berlin and Basle the numbers of the bonds so drawn for redemption and s all pay such bonds at the option of the holder at the financial agency of the Company in New York or the financial agency of the

Company in Frankfort A M and in American or German money respectively on the first day of July then next ensuing or so soon thereafter as said Company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8.

When any Bonds shall have been drawn as aforesaid and notice shall be duly given as aforesaid of the numbers of the Bonds so drawn for redemption then each Bond so drawn shall become payable on the first day of July then next ensuing and shall draw no interest after that day unless on presentation thereof at the financial agency of the Company in New York or the financial agency of the Company in Frankfort A M Payment of said Bond or any interest due thereon shall be refused.

Article 9.

The Bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the interest warrants shall remain in full force and shall be regularly presented by the Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10.

Said Company shall have the right to give to said Trustees on or before the 1st day of April in any one year notice in writing that they will pay to said Trustees any larger sum than the annual payment herein

before provided for and said Trustees shall then draw a proportionally larger number of Bonds which shall become payable and cease to bear interest as provided in the previous Articles and said Company may even give such notice for the payment of all then outstanding Bonds. And thereupon said Trustees shall publish by notice and advertisement as in case of Bonds drawn that all outstanding Bonds will be redeemed and they shall become payable on the first day of July then next ensuing as if drawn for the redemption by the sinking fund.

Article 11.

When all of said Two Thousand and five hundred (2500) Bonds shall be redeemed by said sinking Fund or acquired and cancelled by said Company and handed to said Trustees so cancelled they shall enter satisfaction of record of these presents.

Article 12.

In case said Company shall fail to keep the said Railroads rolling stock equipment and premises herein comprised in good order and repair or in case default shall be made in any payment of any interest warrant on any of said Bonds or of the said sum of twenty thousand dollars ($20000) to be paid for a sinking fund as aforesaid or any part thereof and such default shall continue for six calendar months or of any taxes, assessed against said Railroads land and premises it shall be lawful for said Trustees to take possession personally or

by their agent, or agents of said Railroads rolling stock and equipment and the lands and other premises hereby conveyed and to operate the said Railroads and manage the same and collect and receive the income, earnings and toll thereof and the proceeds of lands contracted to be sold. and said Company hereby covenants and agrees that it will on demands surrender such possession and permit said Trustee to use and possess said Railroad rolling stock and premises, without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight moneys ticket, balance or other earnings and the purchase moneys of all lands, sold either then due or thereafter becoming due and in case it may be necessary or may be deemed advisable by said Trustees to take legal proceedings for foreclosure of this Mortgage or to obtain possession of said premises in pursuance of the provisions of this article they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

Article 13.

Said Trustees when in possession of said Railroads lands and premises shall have the right as irrovocable attorney or Attorneys of said Company to bring or defend in the name of the said Company any actions for the collection of income freight moneys, ticket balances, or other earnings or unpaid purchase money for lands sold or for obtaining or defending the possession of any

property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said Railroads or in any manner affecting the maintenance thereof,

Article 14.

Said Trustees are hereby authorized in their discretion to accept possession of said Railroads with the rolling stock lands and appurtenances herein comprised although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 15.

It shall be the duty of said Trustee to take possession of said Railroads lands and premises after any such default as aforesaid upon written requistion made to them for such purposes by the holders of not less than one quarter in amount of said Bonds then outstanding.

Article 16.

Said trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating the managing or keeping in good order and repair the said Railroads rolling stock lands and premises to hire and employ such managers officers, clerks, agents, attorneys and assistants as they shall deem useful or necessary and

to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to their hands and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises and the earnings, income and proceeds thereof and in case said Company shall fail on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid they may enter upon and take possession of said Railroads lands and premises in the manner as if said Company had made default in payment of interest on the Bonds hereby secured and retain possession and receive the income, earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17.

After any such default as aforesaid in payment of interest or sinking fund payments or any part thereof shall have been made and such default shall have continued for on year and shall not have been waived as hereinafter provided or in case the principal of any of said Bonds shall not be paid on the 1st day of July

1920 it shall be the duty of said Trustees to forthwith proceed to enforce this security and to sell said Railroads rolling stock equipment and appurtenances and the land and premises comprised herein in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18.

Such sale or sales may be made either without suit by said Trustees or their duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the "New York Times" and Frankfurter Zeitung or in case said papers or either of them shall not be then published then in some other paper or papers of general circulation published in the same place or places and selected by said Trustees and in case said sale shall be adjourned the like four weeks notice shall be given of the adjourned sale or such sale may be made judicially by action or suit brought by said Trustees for the foreclosure of this Mortgage or enforcement of the liens hereby created or administration of the trusts of these presents as said Trustees may deem most expedient.

Article 19.

The moneys received from the net earnings of said

railroads when in possession of said Trustees shall be applied in the following order. In the first place in the payment of the cost and expenses of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation to said Trustees (in addition to the salary herein provided for) and the fees of counsel and Attorneys and in the next place in payment of all interest warrant then over due (excluding those on Bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date: and lastly in payment of the principal of any of said Bonds then outstanding. The moneys received on any such sale as hereinbefore provided or from the proceeds of land sold should be applied in the following order: In the first place in payment of costs and expenses of such sale and of the execution of the trusts of these presents and the management and operation of said Railroads and the protection and preservation of the trust premises including a reasonable compensation of said Trustee (in addition to the salary herein provided for) and the fees of counsel and attorneys and in the next place in payment of all interest, warrants overdue and of the principal of said Bonds then outstanding without discrimination or preference of interest over principal or of interest warrants of earlier date over those of later date but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest,

Article 20.

On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustee shall vest in said purchaser all the title and interest of said Company as fully and effectually as if said Company were party thereto.

Article 21.

Said Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of the Bonds intended to be secured by these presents that it will from time to time and at all times hereafter upon reasonable request made execute acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors from time to time of these presents upon the trust and for the purposes herein expressed the said Railroads rolling stock equipment lands and premises herein comprised free from all prior liens and encumbrances except as hereinbefore specified as by the said Trustees or their counsel learned in law shall be reasonably devised advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees so as to fully indentify the lands intended to be comprised in these presents.

Article 22.

On payment of all of said Bonds and the interest warrants thereto attached and all expenses incurred by the Trustees in the execution of the trustes of these presents. This indenture shall become void and all the estate and interest of the Trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23.

All rights and powers by these presents given to or covenants stipulations or agreements made with said Klaas Van Oterendorp and Philip N Lilienthal shall survive and enure to the benefit of the Trustees for the time being of these presents in the same manner as if said Trustee or Trustees had been named herein.

Article 24.

In these presents the word "Trustees" shall be held to mean the said Klaas Van Oterendorp and Philip N Lilienthal while continuing to be trustees hereof and the Trustees for the time being of these presents whether both or either be original or new.

Article 25.

No trustee shall be in any manner responsible for any act default, or misconduct of his co Trustee nor for that of any agent, bank banker, broker or other person employed by him or his co trustee, unless he shall be

chargeable with culpable negligence in their selection or in the contrivance of their employment nor otherwise except for his own wilful default misconduct or gross negligence.

Article 26.

The Trustees may pay such reasonable compensation as the shall deem proper to all agents officers attorneys and servants whom they may reasonably employ in the management of their trust, and each Trustee shall be paid by said Company or in default out of the trust moneys the sum of two thousand dollars each for their entire service in the execution of the trusts herein contained and in addition a further reasonable compensation for such additional services as he may be called upon to render in taking possession of an managing the premises or selling the same or brining suit for the foreclosure of these presents the enforcement of the liens or trusts hereby given or the collection of the moneys secured thereby.

Article 27.

In case of death, resignation or incapicity to act of any Trustee the surviving or continuing Trustee shall appoint another trustee in the place of stead of the Trustee so dying resigning or becoming incapable and in case there shall be no surviving or continuing Trustee or such surviving or continuing trustee shall fail for three calendar months after the death resignation or incapacity of his previous co, Trustees to appoint a new trustee then

said company or the holder of any Bond secured by these presents may apply to any Judge in the Circuit Court of the United State for the District of Oregon to make such appointment and any such Judge may appoint a new Trustee. by instrument under his hand and seal without suit or other legal proceedings therefor but in no case shall a resident of Oregon be appointed or be capable of acting as a Trustee of these presents.

Article 28.

A Majority in amount of the holders of the outstanding Bonds secured by these presents shall have full power at any time without suit and whether there be any vacancy or not to remove one or both the existing Trustees and to appoint another Trustee or Trustees in his or their place and to increase or diminish the number of Trustees and any such act of the majority in amount of the Bond Holders shall be deemed to be sufficiently made, executed. evidence and proved by a written instrument or instruments purporting to be signed by the Bondholders and stating the identifying numbers and the amount of the Bonds held by each signatary and the respective signatures to which and the production to a notary at the time of signature of the Bonds specified shall be acknowledged before and certified by a Notary Public of any County and his certificate attached authenticated by his Notarial seal.

Article 29.

Any appointment of a New Trustee made by the

surviving or continuing trustee or the majority of the Bond holders or a Judge as hereinbefore provided shall be effectual to vest in the new Trustee all estate, rights, trusts powers and duties as fully as if he were a Trustee party to these presents without any new deed or conveyance but nevertheless said Company hereby covenants in any and every such case to make upon request of the new Trustee all such deeds, conveyances and assurances as may be appropriate for more fully and certainly resting in and confirming to such new Trustee such estate, rights, powers trusts and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his successor.

Article 30.

A Majority in amount of the holders of the outstanding Bonds secured by these presents may by written instrument to be executed and proved as provided in Article 28 at any time before the actual sale of any part of the premises waive any default in payment of interest or of the annual payment to the sinking fund yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless said Company shall together with such instrument or instruments or Waiver hand to the Trustees a sum of money sufficient to pay all interest warrants and sinking fund payments then in arrear and said Trustee shall then prceed to pay said interest warrants and redeem the Bonds so provided for

as nearly as possible in the manner provided by these presents,

Article 31.

Said Company for itself, its successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay appraisement or redemption law or laws, requiring liens or Mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by the Trustees without suit and on any such sale said Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32.

In case of any sale of said premises whether by the Trustees or a Court any purchaser shall be entitled to deliver in part payment of the purchase money any of the outstanding interest warrants or Bonds secured by these presents and such interest warrants or Bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale afte the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previsouly by the Trustees or the Court as the case may be and announced in the advertisment of sale.

Article 33.

The trustees shall have power to release from the

lien of these presents any land rolling stock or other appurtenances become useless, for the purpose of the Railroads by *alter*ation of route changes in machinery or equipment or otherwise but only on condition that the property so sold be at the same time replaced by other similar property of equal value and subjected to the lien of these presents but until default as aforesaid in payment of interest or the sinking fund payment the Company shall have the right to sell and dispose at its discretion of all said lands owned by the Company and States and of all other lands owned by the Company and not required for the maintenance and operation of its Railroads and to receive and dispose of the proceeds thereof as of the other revenues of the Company and said Trustees shall from time to time as may be required release the lands so sold from the lien of these presents in manner hereinbefore provided.

Article 34.

On any sale whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidence and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold, on behalf and for the benefit of such Bondholders, but only on condition that due provision is made by such majority to the satisfaction of the trustees or the Court as the case may be

for payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the Bond holders not concurring in such request.

Article 35.

On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said Bondholders without any right of redemption or resale in favor of said Company or any Bondholder.

Article 36.

The Trustees shall invest all trust funds which may from time to time come to their hands until required in the purchase of United States Stocks or Bonds at their market value or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks of Bonds.

In witness whereof said Company pursuant to a Resolution of its Board of Directors duly authorizing the same has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary and the said Trustees respectively and the said parties of the fourth part, the said committee have hereunto set their hands and seals the fourth day of February 1881.

Signed, sealed and delivered in presence of
P Schulze
E P Rogers
(Corporate Seal)

Oregon and California Railroad Company.
By R KOEHLER, President

Oregon and California Railroad Company
By A. G. CUNNINGHAM, Secretary

R KOHLER

HEINRICH HOHENEMSER
By R KOEHLER his attorney.

Trustees as in foregoing instrument mentioned and parties of the second part.

R KOEHLER

HEINRICH HOHENEMSER
By R KOEHLER his attorney

Trustees as in foregoing instrument mentioned and parties of the third part.

R KOEHLER

HEINRICH HOHENEMSER
By R KOEHLER his Attorney

PHILLIP B BONN
By R KOEHLER his attorney

PAUL REIGANUM
By R KIEHLER his attorney

HERMANN KOEHLER (Seal.)
By R KOEHLER his attorney

LUDWIG GRUENEBAUM
By R KOEHLER His attorney

CARL POLLITZ
By R KOEHLER His attorney

ADOLPH OTTO
By R. KOEHLER His attorney

MICHAEL BENJAMIN
By R KOEHLER His attorney

A Committee for the protection of the holders of the seven per cent Oregon and California Railroad First Mortgage Bonds authorized to act in behalf of said Bondholders by their association and parties of the fourth part.

K VAN OTERENDORP
P N LILIENTHAL

Trustees as in foregoing instrument mentioned and parties of the fifth part.

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on the 4th day of February A D 1881 before me the undersigned a Notary Public in and for the said County of Multnomah State of Ore-

gon duly commissioned and qualified came Richard Koehler, President of the Oregon and California Railroad Company And A G Cunningham Secretary of the Oregon and California Railroad Company whose names are subscribed to the foregoing indenture as the president and Secretary of said Oregon and California Railroad Company both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said Richard Koehler as President and he the said A G Cunningham as Secretary of the Oregon and California Railroad Company executed the foregoing indenture as and for the act and deed of the said Oregon and California Railroad Company freely and voluntarily and for the uses and purposes therein mentioned. And the said A G Cunningham being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at East Portland Multnomah County, Oregon, that he is the legal custodian of an is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company that the seal affixed to the foregoing indenture is such corporate seal; that the same was so affixed by him as secretary of said Company on the 4th day of February 1881, by order of the Board of Directors of said Company and that he signed his name as Secretary thereto by the Like order of the Board of Directors of said Company.

In witness whereof I have hereunto set my hand

and affixed my official seal at the City of Portland Oregon the date first above written.

(Notarial Seal) PAUL SCHULZE,

Notary Public for Oregon.

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and are of the parties of the second part thereto and also the above named Heinrich Hohenemser as Trustees mentioned in the foregoing instrument and one of the parties of the second part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such Trustees and the said Richard Koehler in his own right as Trustee and and also for and on behalf of the said Heinrich Hohenemser as trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE

Notray Public for Oregon.

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and for said Multnomah County State of Oregon personally appeared the above named Richard Koehler in his own proper person as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto and also the above named Heinrich Hohenemser as Trustee mentioned in the foregoing instrument and one of the parties to the third part thereto by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the foregoing instrument as such trustees and the said Richard Koehler in his own right as Trustee and also for and on behalf of the said Heinrich Hohenemser as Trustee acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the City of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE

Notary Public for Oregon.

State of Oregon)
)ss.
County of Multnomah)

Be it remembered that on this 4th day of February 1881 before me the undersigned a Notary Public in and

for said County of Multnomah State of Oregon personally appeared the above named Richard Koehler in his own proper person and also the above named Heinrich Hohenemser by his attorney in fact the said Richard Koehler and also the above named Philipp B Bonn by his attorney in fact the said Richard Koehler and also the above named Paul Reinganam by his attorney in fact the said Richard Koehler and also the above named Hermann Koehler by his attorney in fact the said Richard Koehler and also the above named Ludwig Giuenebaum by his attorney in fact the said Richard Koehler and also the above named Carl Pollitz by his attorney in fact the said Richard Koehler and the above named Adolph Otto by his attorney in fact the said Richard Koehler and also the above named Michael Benjamin by his attorney in fact the said Richard Koehler to me personally known to be the individuals described in and who executed the above and foregoing instrument and the said Richard Koehler in his own right and on his own behalf as also for and on behalf of the said Heinrich Hohenemser, Phillip-p B Bonn, Paul Reingamin, Hermann Koehler, Ludwig Gruenebaum Carl Pollitz, Adolph Otto and Micheal Benjamin, acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Portland Oregon the date above written.

(Notarial Seal) PAUL SCHULZE,

Notary Public for Oregon.

State of California)
ss.
City and County of San Francisco)

Be it remembered that on this 12th day of February 1881 before me the undersigned a Commissioner of Deeds for the State of Oregon residing at San Francisco California duly commissioned sworn and fully qualified personally came Klaas Van Oterendorp and Philip N Lilienthal to me personally known to be the individuals described in and who executed the foregoing Indenture and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal at San Francisco California the date above written.

(Seal of Commissioner of Deeds)

SAMUEL S MURFEY

Commissioner of Deeds for the State of Oregon residing at San Francisco California.

S-chedule

of Rolling Stock of (consolidated) Oregon and California Railroad Company referred to in the foregoin indenture.

20 Locomotives numbered 1 to 20 inclusive

13 Passenger Coaches numbered 1 and from 3 to 14 inclusive.

5 Mail and Express Cars numbered 1, 3, 4, 5, 6.

3 Smoking and baggage cars numbered 1, 2, 3,

290 Box Cars even numbers from 2 to 394 and from 600 to 786

77 Flat Cars odd numbered from 1 to 153

12 Stock Cars numbered 500 to 511 inclusive.

Received for record Feby 28th, 1881 at 3:40 o'clock P M

No. 9567

STATE OF OREGON,)
)ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement. The Oregon and California Railroad Co. with Klaas Van Oterendorp et al, has been compared by me with the original, and that it is a correct transcript therefrom and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

(SEAL) JNO. B. COFFEY,
County Clerk.

DEFENDANTS' EXHIBIT 396

is a certified copy of a mortgage of date June 1, 1881, executed by the Oregon and California Railroad Company to Henry Villard, Horace White and Charles Edward Bretherton, recorded in Book 27, page 1, of the Records of Mortgages of Multnomah County, Oregon, and thereafter, about the same time, in the Records of Mortgages of all other counties in which any part of said granted lands was situated, which mortgage is as follows:

Mortgage Book 27 page 1.

O & C R R Co. To Villard et al

THIS INDENTURE, made the first day of June, in the year one thousand eight hundred and eighty one, between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the first part and Henry Villard, Horace White and Charles Edward Bretherton, all of the City and State of New York, hereinafter called the Trustees) of the second part.

WHEREAS, By an Act of Congress, entiled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California to Portland in Oregon," and approved July 25th, 1866, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the "California and Oregon Railroad Company' organized under an Act of the State of California, to protect certain parties in and to a railroad survey to "connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company organized under the laws of Oregon as the Legislature of said State, shall hereafter designate, be and they are hereby authorized and empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland, in Oregon, and the Central Pacific Railroad in California in the manner following, to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California, and running thence northerly through the Sacramento and Shasta Valleys, to the northern boundary of the State of California. And the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the Southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company. Provided, that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the

other Company shall have likewise arrived at the same line, shall have the right and the said company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this act, until the said parts shall meet and connect, and the whole line of the said railroad and telegraph line shall be completed."

Section 2. And be further enacted that there be and hereby is granted to the said Companies, their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad, every alternate section of public land, not mineral designated by odd numbers to the amount of twenty alternate sections per mile (ten on each side) of said railroad line, and when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers preempted, or otherwise disposed of, other lands, designated as aforesaid shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of the said first named alternate sections and as soon as the said Companies or either of them shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof not less than sixty continuous miles from

either terminus, the Secretary of the Interior shall withdraw from said public lands herein granted on each side of said railroad so far as located and within the limits before specified.

The lands herein granted shall be applied to the building of said road within the State respectively wherein they are situated. And the sections and parts of sections of land which shall remain in the United States, within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided, that bona fide and actual settlers under the pre-emtion laws of the United States may, after due proof of settlement, improvement and occupation as now provided, by law, purchase, the same at the price fixed for said lands at the date of such settlement. improvement and occupation. And provided also that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not exceeding eighty acres of the land so reserved by the United States anything in this Act to the contrary not withstanding.

"Section 3. And be it further enacted, that the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands, adjacent to the line of said road earth, stone, timber, water and other materials for the construction thereof." Said right of way is granted to

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said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operating of said road.

And Whereas, by another Act of Congress entitled "An Act granting Lands to aid in the construction of a railroad and Telegraph line from Portland to Astoria and McMinnville in the State of Oregon and approved May 4th, 1870. It was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junction near Forest Grove to the Yamhill River near McMinnville, in the State of Oregon there is hereby granted to the Oregon Central Railroad Company now engaged in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road not exceeding forty acres at any one place; and also each alternate section of the public lands, not mineral excepting coal or iron lands, designated by odd numbers nearest to the

said road to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency.

And Whereas said Oregon and California Railroad Company has succeeeded to and become invested with and is now possessed of and entitled to all the grants, right, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore recited Act of Congress and there has been already accepted and approved by the United States as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph 47 miles in length and the company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph author-

ized by and specified in said acts of Congress.

And Whereas, by a deed of Mortgage and trust dated the first day of January, 1881, the company mortgaged its railroads and other property therein described to Klass Van Oterendorp and Philip Lilienthal, to secure an issue of 2500 new first mortgage bonds, for the aggregate amount of two million dollars in American gold coin or eight millions five hundred thousand marks in German money bearing interest at the rate of six per cent per annum payable half yearly on the first day of January and July and redeemable at par at the option of the company all of which bonds have been issued and are now outstanding.

And Whereas the company in pursuance of its articles of incorporation and by laws, and of a plan of reorganization of the company approved and ratified by a special meeting of its stockholders held on the 7th day of May, 1881, has resolved to make an issue of first mortgage bonds as hereinafter described which shall be limited to the rate of twenty thousand dollars for each mile of railroad now or hereafter constructed by the Company as hereinafter specified and actually constructed at the time of issue and of which bonds six million dollars in amount shall be now issued, and to secure the payment of said bonds and the interest thereon in the manner herein provided.

And Whereas, six thousand (6000) in number, six million dollars in amount of said bonds intended to be secured by these presents together with the coupons an-

nexed thereto and the certificate of The Trustees thereon have been prepared and are numbered consecutively from 1 to 6000 both inclusive and bear even date herewith and are in the form following, that is to say.

United States of America, State of Oregon,

Oregon and California Rail Road Company.
of Portland, Oregon.

First mortgage six per cent gold bonds, Amount limited to $20,000 per mile of Constructed road, Principal redeemable at 110 by a cumulative sinking fund of one per cent per annum, commencing in 1886.

$1000 No. 0000 $1000

The Oregon and California Railroad Company, for value received, hereby bonds itself to pay to the bearer, at the office of the company in the City of New York, on the first day of July, A. D. 1921 (unless this bond shall be sooner redeemed as hereinafter mentioned) the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold coin at the rate of six per centum per annum half yearly on the first days of January and July in each year free of tax, upon presentation and surrender at such office as they respectively mature, of the eighty coupons annexed.

This bond is one of the first mortgage six per cent gold bonds of the Oregon and California Railroad Company, issued and to be issued only at the rate of $20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of

issue, all being of the same amount, form and tenor, and payable in the same manner and differing only in the identifying numbers, dates and the number of coupons, annexed, and all of which bonds issued and to be issued are equally secured by a first mortgage, dated June 1, 1881, of all the railroads of said Company, constructed and to be constructed, that is to say from Portland to Astoria in accordance with the act of Congress of May 4, 1870, and to Junction and from East Portland to California in accordance with the act of Congress of July 25, 1866, and of all its lands rolling stock and all other property present and future of said company of every description to Henry Villard, Horace White and Charles Edward Bretherton as Trustees, subject, however, to a redeemable prior lien, two million dollars in amount to be discharged as hereinafter mentioned, and which mortgage is recorded in the office of the County Clerk, in Portland, in Oregon and in all other counties in which any part of the railroads and lands of said company are situated; and the said mortgage provides that the proceeds of all bonds sold shall be received by the said trustees and shall be applied by them in discharging the said prior lien for two millions of dollars and the balance of such proceeds, after discharging said lien, shall be applied only for the construction of the road, first, to California and when such road is completed, then to Astoria and Junction; and that, for the purpose of securing such application said Trustees shall pay over the proceeds only under the advice and upon the certificate of a supervising engineer, appointed by them.

The company binds itself to the bearer to constitute a cumulative sinking fund, for redemption, at 110 per cent of the par value thereof, of all said bonds, such sinking fund including the gross proceeds of all lands now or hereafter granted by the United States to said Company, together with such an additional sum to be paid annually by said company to said Trustees on the first day of July in each year, commencing July 1, 1886, as will make up the total annual sinking fund to one per centum from July 1, 1886, upon the aggregate amount of bonds issued, together with, and in addition to the amount of the interest upon the bonds previously redeemed."

The bonds to be redeemed by said sinking fund shall be drawn by lot by said Trustees, at the office of the Company in New York on the first day of April in each year and the numbers of the bonds so drawn advertised in daily newspapers of general circulation published in New York, London and Frankfort o/M. In case this bond shall be so drawn and advertised the amount thereof shall become payable, together with the additional sum of one hundred dollars, in United States gold coin, one the first day of July, then next, at the office of the Company in New York, and it shall bear no interest after such date, unless, upon presentation, payment thereof shall be refused.

Said company further agrees to receive this bond at par in payment for any lands offered for sale by said Company.

Said company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said company shall fail, for six calendar months, to pay any coupon annexed to this bond when the same becomes due or shall fail for six calendar months to pay any sum which may be payable to the said Trustees on account of the sinking fund hereinbefore mentioned, and such default in payment of interest or of the sum payable on account of said sinking fund shall not have been waived by a majority in amount of the holders of said bonds then outstanding in the manner provided in said mortgage. Said company further binds itself to maintain and keep during the continuance of this mortgage financial agencies in London and Frankfor o/M and to cash on presentation at such agencies, all said bonds, and the coupons thereof, as the same become payable, at the fixed rate of exchange of four shillings and two pence sterling per dollar in London and four mark twenty five pfennings in Frankfort o/M. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustees.

In Witness Whereof, said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Assistant Secretary this first day of June, 1881.

(Seal)

Assistant Secretary President.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of July, 1921, thirty dol-

lars in United States gold coin free of tax, at the office of the Company in New York being six months interest on First Mortgage Bond of said Company. No... unless said Bond shall have been previously redeemed.

Treasurer.

(Trustees Certificate)

We hereby certify that the within bond is one of the First Mortgage six per cent gold bonds of the Oregon and California Railroad Company, secured by the within mentioned mortgage dated June 1st, 1881, and made by said Company to us as Trustees and that the total amount of said bonds certified by us does not exceed the rate of $20,000. for each mile of actually constructed railroad.

Trustees.

Now, this Indenture Witnesseth, that in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued, and all such bonds as shall be hereafter issued on the security of these presents, but not exceeding in all twenty thousand dollars for each mile of road actually constructed at the time of issue and the interest thereon, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg,

and between Portland and Corvallis and Albany and Lebanon in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad, in all about three hunred and six and one half (306½) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk and Benton, in said State of Oregon, together with the ferry ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company, to be hereafter constructed, that is to say, from Forest Grove to Astoria in accordance with the Act of Congress of May 4th, 1870, hereinbefore recited, and from Corvallis to Junction, and from Roseburg to California to a junction within the Central Pacific Railroad in accordance with the act of Congress of July 25th, 1866, herein before recited and all lands, rights of way, easements and premises now acquired or appropriated, or which may hereafter be acquired or appropriated, for the purpose of the right of way of said railroads or for grounds, sidetracks, depots, warehouses, tanks, round houses, stock yards, or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroads already completed between the termini aforesaid and not yet sold, estimated to be in amount about one million nine hundred thousand acres, and all lands which may be hereafter granted to said Company by the United States and which lands are intended to be

more particularly identified as the same are patented by the United States in manner hereinafter provided and together with all rails, spikes, ties, timber, iron switches, frogs, depots, warehouses, machine shops, bridges, trestel-work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices, docks and warehouses of the Company in Portland and East Portland, or elsewhere and all locomotives, cars and other rolling stock, railroad supplies, fuel, tools and machinery now used or which may hereafter be used in or provided for the maintenance of operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same, and all the income, earnings, and profits of said railroads, lands, and premises, and all other present and future property of every description of said Oregon and California Railroad Company.

To have and to hold the said railroads, lands, rolling stock, equipment, premises and property unto the use of said Henry Villard, Horace White and Charles Edward Bretherton, their heirs, assigns and legal successors, as trustees of these presents as joint tenants and not as tenants in common free from all prior liens and encumbrances whatever except the prior lien for two millions of dollars created by the said deed of mortgage and trust to Klaas Van Oterendorp and Philip Lilienthal hereinbefore referred to, and which lien is to be discharged as hereinafter mentioned in trust nevertheless for the equal benefit and security, pro rata of every

holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers, and subject to the provisions agreements, covenants and stipulations contained in the following articles that is to say:

Article I. The said Oregon and California Railroad Company hereby covenants with said Trustees that it will proceed with all reasonable dispatch to complete its said railroad to California, so that cars can run through from Portland to San Francisco, and will keep all the railroads from time to time constructed and rolling stock and other property of said company in good order and repair, and will reconstruct, replace and restore all such, or so much, and such parts thereof as may be worn out, wrecked, destroyed or displaced, and will pay all taxes assessed against said railroads, lands and premises, and will pay the principal, moneys, secured by all bonds to be issued on the security of these presents, and all interest due thereon at the times and places, and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further, that if any coupon on any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calen-

dar months and such default shall not be waived in manner hereinafter specified, then the said company will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. And further, that said Oregon and California Railroad Company will create and maintain a cumulative sinking fund for the redemption of all said bonds at the rate of 110 per cent of the par value thereof, and will for such purpose on the first day of July, 1886, and on every first day of July thereafter, pay at the office of the company in New York to said Trustees, such a sum as will in addition to the gross proceeds of all lands now or hereafter granted by the United States to said company, make up a total amount of one per cent per annum in gold coin computed from the first day of July, 1886, upon the aggregate amount of bonds issued.

Article 4. And further that in case default shall be made in any annual payment to be made for such sinking fund specified in the last article or any part thereof for six calendar months, and such default shall not be waived as hereinafter provided, then said company will forthwith pay on demand at the place and in the manner in the said bonds specified, the principal of each and all of said bonds then remaining due at the rate of 110 per cent of the par value thereof.

Article 5. Until default in any payment required by the previous articles, said company shall freely possess the said railroads, lands and premises, and the income,

earnings and profits thereof, and may contract to sell and dispose of the lands granted by the United States and of all other lands owned by the company not required for the maintenance and operation of its railroads, but no such sale nor any conveyance or release of said lands or any of them, shall be valid and effectual unless such sale be at a price approved by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees as one of them or by their attorney or attorneys in fact, thereunto lawfully authorized.

And for the purpose of facilitating such sales, said Trustees may from time to time either concur with said company in appointing an agent to make such sales, and executed such releases and conveyances as their attorney in fact or may appoint an agent of their own to supervise and join in such sales, and to execute such releases and conveyances as their attorney in fact and they may delegate to any such agent all their powers and duties in respect to the sale of lands except the custody of the proceeds thereof.

Article 6. Said Trustees shall hold the said proceeds of all lands sold and the payments to be made to them by said company as above mentioned, as well as all interest received upon bonds redeemed as a cumulative sinking fund to discharge and extinguish the whole of said bonds by annual redemption at the rate of 110 per cent of the par value thereof in the following manner; on the 1st day of April, 1886, and on the 1st day of

April, in every succeeding year, or as soon thereafter as may be said trustees shall cause to be drawn at the office of the company in New York in the presence of a Notary Public out of the whole number of bonds then outstanding such a number of bonds as said sinking fund will, on the 1st day of July then next ensuing, suffice to redeem as hereinbefore mentioned.

Article 7. Said Trustees shall publish by notice conspicuously posted up on or before the 30th day of April next ensuing after each such drawing, in the office of the company, in New York and at the financial agencies of the Company in London and Frankfort o/M and so remaining until the 1st day of July then next ensuing and by advertisement in daily newspapers of general circulation, published respectively in New York, London and Frankfort, the numbers of the bonds so drawn for redemption and shall pay and redeem such bonds so drawn for redemption and shall pay and redeem such bonds at the rate of 110 per cent of the par value thereof, at the office of the company, in New York on said first day of July, or so soon thereafter as the said company shall pay over the sums hereby stipulated to be paid for the purpose.

Article 8. When any bonds shall have been drawn as aforesaid and notice given of the numbers of the bonds so drawn for redemption then each bond so drawn shall become payable on the first day of July then next ensuing, together with the additional sum of one hundred dollars in gold coin of the United States, making in all

110 per cent of the par value thereof, payable at the office of the company in New York, and shall bear no interest after that day, unless, on presentation thereof at the office of the Company in New York, payment of said bond at the rate aforesaid or any interest due thereon shall be refused.

Article 9. The bonds redeemed out of the sinking fund by said Trustees shall be cancelled by them but the coupons shall remain in full force and shall be regularly presented by The Trustees and the amount thereof collected for the benefit of the sinking fund.

Article 10. All bonds which from any cause remain unredeemed on the first day of July, 1921, shall be then paid off at the rate of 110 per cent of the par value thereof.

Article 11. When all of said bonds shall be redeemed by said sinking fund or acquired and cancelled by said company and handed to said Trustees, so cancelled, they shall enter satisfaction of record of these presents.

Article 12. In case the said company shall fail to keep the said railroads, rolling stock equipment and premises herein comprised, or at any time hereafter subject to the lien of these presents in good order and repair, or in case default shall be made in the payment of any coupon on any of said bonds or of the said sums to be paid for the sinking fund as aforesaid or any part thereof, and such default shall continue for six calendar months, or in payment of any taxes assessed against said railroads lands and premises, it shall be lawful for said

Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed, or which may be then subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold, and said company covenants and agrees that it will, on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises without interruption or disturbance and will permit and suffer said Trustees to collect and get in all freight, moneys, ticket balances or other earnings and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary or may be deemed advisable by said Trustees, to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article, they shall be entitled to the appointment of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers, as they may think most expedient.

Articles 13. Said Trustees, when in possession of said railroads lands and premises shall have the right as irrevocable attorney or attorneys of said company, to bring or defend, in the name of the said company, any actions for the collection of income, freight, moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the

possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

Section 14. Said Trustees are hereby authorized in their discretion to accept possession of said railroads, with the rolling stock, lands, and appurtenances herein comprised, although no such default as aforesaid shall have been made if said company shall offer to give up possession to them and thereupon to manage and operate the same and collect the income and earnings thereof, as hereinbefore provided.

Article 15. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such default as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said bonds then outstanding.

Article 16. Said Trustees shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants, as they shall deem necessary or useful and to defray all expenses of such employment, and otherwise executing the trusts of these

presents, and to pay any taxes assessed upon the trust premises or any part thereof, or any other prior charges thereon out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands and shall make any payments either for such purposes, or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not) the amount so paid together with interest thereon at the rate of ten (10) per centum per annum, shall be a first charge on the trust premises and the earnings, income and proceeds thereof, and in case said company shall fail, on demand to repay said Trustees any amount paid by them as aforesaid with interest at the rate aforesaid, they may enter upon and take possession of said railroads, lands and premises in the same manner as if said Company had made default in payment of interest on the bonds hereby secured, and retain possession and receive the income earnings and proceeds thereof until they shall have recouped themselves the amount so paid with interest as aforesaid.

Article 17. After any such default as aforesaid, in payment of interest or sinking fund payments or any part thereof, and such default shall have continued for one year and shall not have been waived as hereinafter provided, or in case the principal of any of said bonds shall not be paid on the 1st day of July, 1921, together with the additional sum hereinbefore specified, it shall be the duty of said trustees to forthwith proceed to enforce this security and to sell said railroads, rolling stock, equipment and appurtenances and the lands and pre-

mises comprised herein, or then subject to the lien of these presents in one lot or in more than one lot or parcel, and at one time or at different times, and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise, upon such terms and in such manner as said Trustees may in their discretion think best.

Article 18. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent, by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be then published, then in some other daily paper of general circulation published in New York and selected by said Trustees); and in case said sale shall be adjourned, the like four weeks' notice shall be given of the adjourned sale; or, at the option of said Trustees such sale may be made judicially by action or suit, brought by said Trustees for the foreclosure of this mortgage or enforcement of the liens hereby created, or administration of the trusts of these presents, as said Trustees may deem most expedient.

Article 19. The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided or from lands sold, when in possession of said Trustees shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts

of these presents and the management and operation of said railroads, and the protection and preservation of the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of all coupons then over due (excluding those on bonds belonging to the sinking fund) in the order in which they shall have become due those of earlier date having priority over those of later date; and lastly in payment of the principal of any of said bonds then outstanding, together with the same additional sum as would have become payable, if they have been drawn for redemption as hereinbefore provided.

Article 20. On any sale by virtue of these presents the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser all the title and interest of said company as fully and effectually as if the company were party thereto.

Article 21. The company hereby covenants and agrees with the said Trustees, on behalf and for the benefit of the holders of the bonds intended to be secured by these presents, that it will from time to time, and at all times hereafter, upon reasonable request made, execute, acknowledge and deliver, all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors

from time to time as Trustees of these presents upon the trusts, and for the purposes herein expressed the said railroads, rolling stock equipment, lands and premises herein comprised free from all prior liens and encumbrances and all other present and future property of said company of every kind and description as by the said Trustees or their Counsel learned in the law shall be reasonably devised, advised or required and will from time to time as the said lands granted by the United States are patented to said Company execute proper deeds of further assurance thereof to said Trustees, so as to fully identify the lands intended to be comprised in or subject to the lien of these presents.

Article 22. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the trusts of these presents this indenture shall become void, and all the estate and interest of the trustees in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 23. All rights or powers by these presents given to or covenants, stipulations or agreements made with said Henry Villard, Horace White and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

Article 24. In these presents, the word "Trustees"

shall be held to mean the said Henry Villard, Horace White and Charles Edward Bretherton while continuing to be Trustees hereof and the Trustees for the time being of these presents whether all or any be original Trustees or new Trustees.

Article 25. No trustee shall be in any manner responsible for any act, default or misconduct of his co Trustee nor for that of any agent, bank, banker, broker, or other persons employed by him or by his co Trustee, unless he shall be chargeable with culpable negligence in their selection, or in the continuance of their employment, nor otherwise, except for his own willful default, misconduct or gross negligence. But except as herein specially authorized no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee or any other person whatever.

Article 26. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust and said Trustees shall be paid by said company, or in default, out of the trust moneys the sum of fifty cents each for each bond certified by them and one eighth per cent on all moneys passing through their hands and disbursed by them for their entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as they may be called upon to render in taking possession of and man-

aging the premises or selling the same, or bringing suit for the foreclosure of these presents the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by these presents.

Article 27. In case of the death resignation or refusal or incapacity to act of any Trustee the surviving or continuing Trustees or Trustee shall by deed appoint a suitable person as trustee in the place of stead of the trustee so dying, resiging, refusing or becoming incapable, and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee, shall fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co trustee to appoint a new trustee then said company or the holder of and bond secured by these presents may apply to any judge in the Circuit Court of the United States for the district of Oregon to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or legal proceedings therefor; but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the courts of the State.

Article 28. A majority in amount of the holders of the outstanding bonds, at any time secured by these

presents shall have full power at any time, without suit and whether there be any vacancy or not to remove all or any of the then existing Trustees, and to appoint other Trustees or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the trustees or as sole Trustee, and any such act of the majority in amount of the bondholders shall be deemed to be sufficiently made, executed, evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the identifying numbers and the amount of the bonds held by each signatary and the respective signatures to which, and the production to a notary at the time of signature of the bonds specified shall be acknowledged before and certified by a notary public, and his certificate attached, and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary, so purporting to act in the United States, the British Dominions, Holland, France or the German Empire.

Article 29. Any appointment of a new Trustee, made by the surviving or continuing trustees or trustee or the majority of the bondholders or a judge as hereinbefore provided shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee party to these presents, without any new deed or conveyance but nevertheless the company hereby covenants in any and every such case, to make upon request

of the new Trustees or Trustee, all such deeds, conveyance and assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties, and every resigning Trustee shall, on like request, make and execute such deeds conveyances and assurance to his successors or successor.

Article 30. A majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed as provided in Article 28, at any time before the actual sale of the premises waive any default in payment of interest, or of the annual payment to the sinking fund, yet so far only that the principal of the bonds shall cease to be payable forthwith, in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unless the company shall together with such instrument or instrument of waiver, hand to the trustees a sum of money sufficient to pay all coupons and sinking fund payments then in arrear, and said Trustees shall then proceed to pay said coupons and redeem the bonds so provided for as nearly as possible in the manner provided by these presents. And such a majority may, in like manner at any time, direct and authorize the funding of any coupons secured by these presents whether overdue or not into bonds secured by these presents provided, however, that the aggregate amount of all bonds secured by these presents shall never exceed the rate of twenty thousand dollars for each mile of constructed road as hereinbefore pro-

vided. Any such funding of coupons into bonds shall be binding upon the minority of said bondholders, and shall be carried out by said Trustees who shall have power to do all things necessary or proper for the purpose.

Article 31. The company for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisment or redemption laws, or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing, or hereafter passed, which, but for this provision, would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by a Trustee without suit; and on any such sale said company for itself, its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 32. In case of any sale of said premises whether by the trustee or by a court, any purchaser shall be entitled to deliver in part payment of the purchase money, any of the outstanding coupons or bonds, secured by these presents and such coupons or bonds shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses, all such bonds being reckoned at 110 per cent of their par value. The payment to be made in cash to cover such expenses, shall be fixed previously by the Trustees or the Court as the case may be, and announced in the advertisement of sale.

Article 33. The Trustees shall have power to release from the lien of these presents any land, rolling stock or other property, become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise, but only on condition that the property so sold be forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 34. On any sale, whether by the Trustees or a Court of the property hereby conveyed or any part thereof the Trustees shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right, by written instrument, evidenced and proved as hereinbefore provided by article 28 to fix a sum which it shall be the duty of the trustees to bid for the property to be sold on behalf and for the benefit of such bondholders, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the court, as the case may be, for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholders not concurring in such request.

Article 35. On any such purchase the Trustees shall hold the property so purchased upon trust for the equal benefit of the bondholders who had required the Trustees to buy in the property on their behalf as the absolute property of said bond holders without any right of redemption or resale, in favor of said Company or any

bondholders.

Article 36. The Trustees shall deposit all trust funds which may from time to time come to their hands in their joint names, in the London and San Francisco Bank, Limited, or such other respectable bank or banks, trust company or companies in London, New York, Frankfort, San Francisco or Portland, as they may from time to time agree upon and may from time to time invest the same until required in the purchase of United States stocks or bonds, at their market value, or in the Bonds secured by these presents at any price not exceeding the par value thereof or on loans secured on such stocks or bonds.

Article 37. The six thousand bonds intended to be now issued and secured by these presents and all other bonds which may at any time hereafter be created and intended to be secured by these presents shall, after the execution thereof by the company be delivered to said Trustees to be certified by them as herein provided and shall not be delivered back when certified to said company, but shall be retained and held by said Trustees, who shall only deliver them to the Company or to the purchasers of such bonds upon the payment to said Trustees of the price thereof.

Article 38. The bonds to be issued on the security of these presents (except the first issue of 6,000 bonds) shall only be sold or disposed of upon the terms and at a price approved of by said Trustees.

Article 39. The proceeds of the bonds sold or dis-

posed of shall be applied by said Trustees first in paying off and discharging the prior lien of two millions of dollars hereinbefore referred to, and the residue shall be held by them as a construction fund and shall be exclusively disbursed for the completion of the railroads of said Company, first to California in accordance with said Act of Congress of July 25, 1866, or with any amendments thereof which may be hereafter made by Congress and accepted by said Company and when the railroad to California is completed so that cars can run through from Portland to San Francisco then to Astoria and Junction, in accordance with said act of Congress of May 4th, 1870.

Article 40. For the purpose of securing the due application of the proceeds of bonds to the construction of said railroads as aforesaid the trustees shall disburse such proceeds only under the advice and upon the certificate of a competent engineer from time to time agreed upon and nominated in writing by them for the purpose, and all purchasers of rails, rolling stock, ties or other materials shall be made on account of said construction fund and in the name of said Trustees, so that such materials shall upon the purchase thereof become and continue subject to the lien of these presents.

Article 41. The payment of coupons upon bonds now or hereafter to be issued on the security of these presents not exceeding four coupons upon any one bond after its issue shall be considered as part of the expense of and chargeable to the construction of the railroad to

California until through connection is made with the system of the California Railroads so that cars can run between Portland and San Francisco and of the railroad to Astoria until the railroad is opened from Portland to tidewater at Astoria; and the construction of a railroad bridge across the Willamette at Portland so as to connect the railroads of said Company on each side of that river and any necessary or proper increases of depot and dock accommodation in or near Portland shall be considered part of the expenses of the railroad to California.

Article 42. At any time after but not before the 1st day of January, 1883, whenever said company shall have constructed any additional railroad beyond the 306½ miles hereinbefore described said company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole, including the bonds for six millions of dollars to be now issued the rate of $20,000 for each mile of constructed road, and shall deliver such bonds to said Trustees, who shall cause the constructed road to be carefully examined and measured by their supervising engineer, and if they shall receive from such engineer a certificate that the additional road is duly constructed and completed to the length of miles claimed, with all proper depots and equipment in proportion to the rest of the constructed road, they shall certify said bonds and hold the same as hereinbefore provided until sold by said company, and then deliver the same to the purchasers thereof upon receipt of the purchase money provided however that said Trus-

tees shall not be required to examine and certify bonds for less than ten miles of railroad at any time.

Article 43. All bonds to be hereafter issued as aforesaid shall be in the same form and payable in the same manner as the bonds to be now issued except that they shall bear the date when actually certified by said Trustees, and shall have all coupons of earlier date cut off, so as to bear interest only from the date when certified, and they shall all be consecutively numbered from 6,001 onwards and all such bonds when certified by said Trustees shall be in all respects equally secured by these presents with the 6000 bonds to be now issued.

Article 44. And whereas by reason of distance, lapse of time or other accident the dates of the actual execution of this indenture of mortgage and trust by the various parties thereto may be previous or subsequent to the day of which it bears date, now it is hereby expressly agreed and declared that this indenture of mortgage and trust shall be dated the first day of June, 1881, and shall be valid and effectual as if executed on the day of the date thereof, and that this indenture of mortgage and trust is the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

IN WITNESS WHEREOF, The Oregon and California Railroad Company, pursuant to a resolution

of its board of directors duly authorizing the same, has caused these presents and nineteen duplicates thereof to be sealed with its corporate seal, signed by its president and attested by its assistant secretary; and the said Trustees respectively have hereunto and unto the said nineteen duplicates thereof set their hands and seals the day and year above written.

Oregon and California Railroad Company,

By H. VILLARD, President.

(O. & C. R. R.) Attest: H. H. Tyndale,

(Corporate seal) Assistant Secretary.

(Seal) H. VILLARD,)

(Seal) HORACE WHITE,) Trustee

(Seal) C. E. BRETHERTON,)

Signed, sealed and delivered
in precence of:
Geo. A. Saxer,
C. A. Spofford,
20 Nassau St.
New York.

State of New York,)
) ss.
City and County of New York.)

Be it remembered that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a Commissioner of the State of Oregon in and for the State of New York, residing in said City of New York per-

sonally appeared Henry Villard, the President of the Oregon and California Railroad Company and Hector H. Tyndale, the Assistant Secretary of the same company to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he said Henry Villard resides in the City and State of New York; that he said Hector H. Tyndale also resides in said City of New York; that he, said Henry Villard is the president and he said Hector H. Tyndale is the Assistant Secreary of said Company; that they know the corporate seal of said company, that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the board of directors of said company, and they the said Henry Villard and Hector H. Tyndale signed their names thereto by the like order as President and Assistant Secretary of said company respectively to be their free and voluntary act and deed and as the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 27th day of July, A. D. 1881.

Charles Edgar Mills,

A Commissioner of Oregon in New York.

(Commissioners Seal)

State of New York,)
) ss.
City and County of)
New York.)

Be it remembered, that on this 27th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the state of New York, residing in said City of New York, personally appeared Henry Villard, Horace White and Charles Edward Bretherton, Trustees in the foregoing deed of trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as Trustees and they severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal this 27th day of July A. D. 1881.

Charles Edgar Mills,
A Commissioner for Oregon in New York.

(Commissioners seal)

Recd. for Record Aug. 18, 1881,

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Form M 44

STATE OF OREGON,)
) ss.
County of Multnomah,) No. 9556

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and

State of Oregon, do hereby certify that the foregoing copy of agreement, O. & C. R. R. Co. to Villard et al recorded in Book 27 page 1 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3" day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk

DEFENDANT'S EXHIBIT 397

is a certified copy of mortgage executed June 2, 1881, by the Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles, and Charles Edward Bretherton, recorded page 179, Book 27, of Records of Mortgages, Multnomah county, Oregon, and thereafter, and about the same time, recorded in the Records of Mortgages of all other counties in which any part of said granted lands are situated, which said exhibit, is as follows:

THIS INDENTURE, made the second day of June, in the year One Thousand Eight Hundred and Eighty-one, Between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company), of the first part and Henry Villard of the

City and State of New York. Robert Davie Peebles, of London, in England, and Charles Edward Bretherton, of the City and State of New York, (hereinafter called the Trustees) of the second part.

WHEREAS, by an act of Congress "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from the Central Pacific Railroad in California, to Portland in Oregon," and approved July 25th, 1866, it was amongst other things, enacted as follows: Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the California and Oregon Railroad Company, "organized, under an act of the State of California to protect certain parties in and to a railroad survey" to connect Portland, in Oregon, with Marysville in California," approved April 6th, 1863, and such Company, organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized, empowered to lay out, locate, construct, finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California, in the manner following to-wit: The said California and Oregon Railroad Company to construct that part of the said railroad and telegraph within the State of California, beginning at some point (to be selected by said Company) on the Central Pacific Railroad in the Sacramento Valley, in the State of California; and running thence northerly, through the Sacramento and Shasta Valleys, to the

northern boundary of the State of California; and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon, beginning at the City of Portland in Oregon, and running thence southerly through the Willamette, Umpqua and Rogue River Valleys to the southern boundary of Oregon, where the same shall connect with the part aforesaid to be made by the first named Company, Provided that the Company completing its respective part of the said railroad and telegraph from either of the termini herein named to the line between California and Oregon before the other Company shall likewise have arrived at the same line shall have the right, and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid, with the consent of the State in which the unfinished part may lie, upon the terms mentioned in this Act, until the said parts shall meet, and connect and the whole line of the said railroad and telegraph shall be completed.

"Section 2. And be it further enacted, that there be and hereby is granted to the said Companies, their successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mails, troops, munitions of War, and public stores over the line of said railroad, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad line; and when any of said alternate sections or parts of sections shall be found to have been

granted, sold, reserved, occupied, by homestead, settlers, pre empted or otherwise disposed of, other lands designated as aforesaid, shall be selected by said Companies in lieu thereof, under the direction of the secretary of the Interior in alternate sections, designated by odd numbers as aforesaid nearest to, and not more than ten miles beyond the limits of the said first named alternate sections; and as soon as the said Companies, or either of them shall file in the office of the Secretary of the Interior, a map of the survey of said railroad or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad, so far as located and within the limits before specified." The lands herein granted shall be applied to the building of said road within the States respectively wherein they are situated, and the Sections and parts of sections of land which shall remain in the United States within the limits of the aforesaid grant, shall not be sold for less than double the minimum price of Public lands when sold. Provided, That bona fide and actual settlers under the preemption laws of the United States May, after due proof of settlement, improvement and occupation, as now provided by law, purchase the same at the price fixed for said lands at the date of such settlement, improvement and occupation. And provided also, that settlers under the provisions of the Homestead Act, who comply with the terms and requirements of said act, shall be entitled within the limits of said grant, to patents for an amount not ex-

ceeding eighty acres of the land so reserved by the United States, anything in this act to the contrary notwithstanding."

Section 3. And be it fruther enacted, That the right of way through the public lands be and the same is hereby granted to said Companies for the construction of said railroad and telegraph line; and the right power and authority are hereby given to said Companies to take from the public lands adjacent to the line of said road, earth, stone, timber, water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turntables, water stations, or any other structures required in the construction and operation of said road."

AND WHEREAS, by an other Act of Congress, entitled "An Act granting lands to aid in the Construction of a railroad and Telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," and approved May 4, 1870, it was amongst other things enacted as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junction near Forest Grove to the Yamhill River

near McMinnville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged in contsructing the said road, and to their successors and assigns, the right of way through the public land of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands, materials for constructing said road, and also the necessary lands for depots, stations, side tracks and other needful uses in operating the road, not exceeding forty acres at any one place; and also, each alternate section of the public lands not mineral excepting coal or iron lands designated by odd numbers, nearest to the said road, to the amount of ten such alternate sections per mile on each side thereof, not otherwise disposed of or reserved or held by valid preemption or homestead right at the time of the passage of this act, and in case the quantity of ten full sections per mile cannot be found on each side of said road within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency."

AND WHEREAS, Said Oregon and California Railroad Company has succeeded to and become invested with and is now possessed of and entitled to all the grants, rights, franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore entitled Act of Congress and of the Oregon Central Railroad Company mentioned in the secondly hereinbefore

recited Act of Congress, and there has been already accepted and approved by the United States, as duly constructed under the provisions of the said firstly recited act the part of the railroad of said Oregon and California Railroad Company, situated between East Portland and Roseburg, 198 miles in length, and as duly constructed under the provisions of the said secondly recited act, the part of the railroad of said Oregon and California Railroad Company, situate between Portland and St. Joseph, 47 miles in length, and the Company has resolved to and is about to proceed with the completion of the remaining lines of railroad and telegraph authorized by and specified in said acts of Congress.

AND WHEREAS, Said Oregon and California Railroad Company, by an indenture dated the fifteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, mortgaged to Faxon D. Atherton and Milton S. Latham, all its railroad from Portland to the boundary line of the State of Oregon and California then constructed and thereafter to be constructed, with its equipments and appurtenances, and all its property except it-s Congressional land grant, upon the terms and conditions therein mentioned, to secure and issue of eighteen thousand four hundred and fifty mortgage bonds of the said Company, amounting to the sum of ten millions nine hundred and fifty thousand dollars, and interest thereon as evidenced by interest warrants or coupons thereto annexed, all which bonds were duly negotiated and issued."

AND WHEREAS, by another indenture also

ated the fifteenth day of April, in the year of our ord, One Thousand Eight Hundred and Seventy, said ompany granted and conveyed to the said Milton S. atham, Faxon D. Atherton and William Norris, all e lands granted and to be granted by the United tates to aid in the construction of said railroad upon usts as therein provided for the sale of such lands, nd for the creation with the proceeds of such sale of sinking fund for the payment at maturity of said issue ten millions nine hundred and fifty thousand dollars, amount of the first mortgage bonds of said Company.

AND WHEREAS, Said Company having made efault of the interest upon said bonds, the holders ereof formed and organized themselves into an asso- ation called the Association of Holders of the Oregon nd California Railroad Seven Per Cent First Mort- age Bonds" having its office and legal domicile at rankfort on the Main, in Germany, and such associa- on became the holder of all said bonds.

AND WHEREAS, By a plan of reorganization of id Oregon and California Railroad Company, adopted an extraordinary general meeting of said Association the 5th day of May, 1881, and adopted and ratified a special meeting of the stock holders of said Com- any on the 7th day of May, 1881, it was resolved and greed that the holders of said bonds should receive ayment thereof in a new issue of preferred stock of id Company of the amount and of the character and

and that the performance of the conditions upon which said preferred stock should be subscribed and issued should be secured by a deed of trust or security to said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, in the manner provided and effected by these presents.

AND WHEREAS, in pursuance of further provisions of said plan of reorganization by a deed of Mortgage and trust dated the first day of June, 1881, the Company mortgaged its railroads, lands, and all other property, present and future, to Henry Villard, Horace White and Charles Edward Bretherton, to secure an immediate issue of 6,000 first mortgage bonds, for the aggregate of six million dollars in gold coin, bearing interest at the rate of six per cent per annum, payable half-yearly, on the first days of January and July, and redeemable at 110 per cent of the par value thereof, in manner in said bonds and mortgage specified, all of which 6000 bonds have been issued and are now outstanding, and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of $20,000 for each mile of road now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said deed of Mortgage and trust."

AND WHEREAS, the said Company in pursuance to its articles of incorporation and by laws and of said plan of reorganization of the Company approved and ratified by the special meeting of its stockholders

held on the 7th day of May, 1881, has made an issue of preferred stock, twelve million dollars in amount of twelve thousand shares of one hundred dollars each, all of which stock has been subscribed and issued upon the following conditions namely:

I. The preferred stock is entitled to a preferential dividend, not cumulative of seven per cent per annum, payable out of the net earnings of the Company, and, after the first mortgage bonds hereinafter specified have been paid off, out of the gross proceeds of the land grants.

II. Net earnings mean the surplus of the gross earnings of the railroad after the deductions only of all operating and management expenses, repairs, necessary increase of rolling stock and equipment, taxes and the interest and sinking fund payments upon the first Mortgage bonds secured by, and now or hereafter issued under the provisions of the deed of Mortgage and trust, dated June 1st, 1881, and made by the Company to Henry Villard, Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year, after the common stock has received seven per cent in such year.

IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above

specified, shall be distributed exclusively among the preferred stockholders.

V. The dividend on the preferred stock, realized from the proceeds of the lands as above defined shall diminish, pro tanto, the preferential right of the preferred stock to dividends out of the net earnings of the road, as against the common stock, but in no case shall any part of the land-proceeds, as above defined, be distributed among the common stock.

VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st day of December and the dividend shall be declared at or before the annual meeting in the following April.

VII. On any dissolution of the Company, the preferred stock shall be refunded in full, before anything is refunded to the common stock.

VIII. No sale, disposition, incumbrance or lease of the railroad or any part of it, nor any mortgage or issue of bonds, except the first mortgage bonds at the rate of $20,000 a mile hereinbefore specified, nor any operating traffic or running contract in the nature of a lease, or which shall transfer the management or operation of the road, or any part of it, to another Company, nor any consolidation with another Company, nor, any lease of the railroad of another Company, nor any guarantee or assumption of the liabilities of any other Company for bonds, coupons, dividends, or other-

wise, nor any supplementary articles of incorporation of the Company, nor any increase of the preferred or common stock, shall be made, or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding, nor shall the Pacific Extension be undertaken without such consent.

IX. The dividends on the preferred stock for the years 1881 and 1882, not exceeding eight per cent in all may be paid in script, convertible into preferred stock instead of in cash.

AND WHEREAS, In further pursuance of said plan of reorganization, it has been resolved and agreed between the said Company and the said Trustees, that the ownership of all the shares of said preferred stock so issued and entitled to the security of these presents, shall be evidenced by certificates issued by said Company, and referring to these presents and upon which certificates the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth shall be endorsed and otherwise in such form as said Company and said Trustees shall from time to time determine but which certificates shall only be valid when countersigned by, and registered with some respectable bank or trust Company in New York, London and Frankfort-on-the-Main, from time to time agreed upon and appointed in writing by said Trustees and said Company, as Registrars of said preferred stock.

AND WHEREAS, The Farmers Loan and Trust

Company in New York, the London and San Francisco Bank, limited, in London, and the Deutsche Vereinsbank, in Frankfort-on-the-Main, have been so agreed upon and appointed as Registrars of said preferred stock.

NOW, THIS INDENTURE WITNESSETH: That in pursuance of said resolutions and agreements, and of said plan of reorganization, and to secure the performance of the conditions upon which said preferred stock has been subscribed and issued, as aforesaid, said Oregon and California Railroad Company doth hereby grant, bargain, sell, assign, transfer and convey unto said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors, as Trustees of these presents, all and singular the railroad lines of said Oregon and California Railroad Company, now constructed and in operation, between East Portland and Roseburg and between Portland and Corvallis and Albany and Lebanon, in the State of Oregon, including the railroads heretofore known as the Oregon Central Railroad, the Western Oregon Railroad and the Albany and Lebanon Railroad in all about three hundred and six and one half (306½) miles in length running through the Counties of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Oregon, together with the ferry, ferry-boats and landings connecting the said railroads at Portland and East Portland, and also all the railroads of said Oregon and California Railroad Company to be hereafter con-

structed. That is to say, the Pacific Extension thereof, from Forrest Grove to Astoria, in accordance with the Act of Congress of May 4, 1870, hereinbefore recited, and the line from Corvallis to Junction and the Southern Extension thereof from Roseburg to California, to a junction with the Central Pacific Railroad in accordance with the act of Congress of July 25, 1866, hereinbefore recited, and also all lands, rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads, or for grounds, sidetracks, depots, warehouses, tanks, round-houses, stock-yards—or any other railroad purposes, and also all lands granted by the United States in aid of the construction of the said railroad already completed between the termini aforesaid, and not yet sold estimated to be in amount of about one million nine hundred thousand acres, and all other lands now or which may be hereafter granted to said Company by the United States, and which lands are intended to be more particularly identified as the same are patented by the United States in manner hereinafter provided and also together with all rails, spikes, ties, timber, iron, switches, frogs, depots, warehouses, round-houses, machine shops, bridges, trestle work, and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively, including all the offices, docks and ware-houses of the Company in Portland and East Portland, or elsewhere, and all lomocotions, cars and other rolling stock, railroad supplies,

fuel, tools and machinery now used, or which may hereafter be used in, or provided for the maintenance or operation of said railroads and telegraph lines and other appurtenances of said railroads, and the franchises to operate same, and all the income, earnings and profits of said railroads, lands, premises and all other present and future property of every description, of said Oregon and California Railroad Company.

TO HAVE AND TO HOLD, the said railroads, lands, rolling stock equipment, premises and property unto the use of said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, their heirs, assigns and legal successors as trustees of these presents as joint tenants, and not as tenants in common, free from all prior liens and encumbrances whatever, (except the prior lien created by the said deed of mortgage and trust to Henry Villard, Horace White and Charles Edward Bretherton, in favor of the first mortgage bonds now issued or which may be hereafter issued, upon the security of said deed of Mortgage and Trust as hereinbefore specified, in trust nevertheless, for the equal benefit and security, pro rata, of every holder of the preferred stock of said Company duly registered as aforesaid, with one of the registrars of said preferred stock and now issued, or which may be hereafter issued, in pursuance of the provisions of these presents, and intended to be secured hereby, without any priority of any one holder over another, by reason of *erlier* issue, or otherwise and for the uses and purposes and with the rights and powers and subject to the provisions. agreements,

covenants and stipulations contained in the following articles, that is to say:

ARTICLE 1. The said Oregon and California Railroad Company hereby covenants with the said Trustees that it will forever duly and faithfully perform each and all the conditions upon which said preferred stock has been subscribed and issued as hereinbefore recited.

ARTICLE 2. And fruther, that if any such conditions shall be violated or broken and such breach or violation shall continue for six calendar months, then said Trustees shall by notice in writing left at the office of the Company in Portland, cancel the subscription of all the preferred stock, and thereupon the said Company shall and will forthwith pay, on demand, at the office of the Company in Portland, to every holder of preferred stock, upon presentation of his certificate, the sum of one hundred dollars for each share held by him.

ARTICLE 3. Until the breach of some condition hereby covenanted to be performed, as aforesaid, said Company shall freely possess the said railroads lands and premises and the income, earnings and profits thereof, and may contract to sell and sell and dispose of the lands granted by the United States and of all other lands owned by the Company, not required for the maintenance and operation of its railroads; but when and after all said first mortgage bonds hereinbefore referred to shall have been paid off, no such sale, nor any conveyance or release of said lands, or any of them shall be valid and effectual unless such sale be at a price approved

by said Trustees and received by them, and such conveyance or release shall be executed by said Trustees, or one of them, or by their attorney or attorneys in fact thereunto, lawfully authorized. And for the purpose of facilitating such sales, when and after all said first mortage bonds hereinbefore referred to shall have been paid off, said Trustees may from time to time, either concur with said Company in appointing an agent to make such sales and execute such releases and conveyances as their attorney in fact, or may appoint an agent of their own to supervise and join in such sales and to execute such releases and conveyances as their attorney in fact, and they may delegate to any such agent all their power and duties in respect to the sale of lands, except the custody of the proceeds thereof.

ARTICLE 4. Said Trustees shall hold the said proceeds of all lands sold, after all such first mortgage bonds hereinbefore referred to shall have been paid off, upon trust, to distribute the same as dividend upon the preferred stock in conformity with the conditions thereof.

ARTICLE 5. In case said Company shall fail to perform and keep any condition upon which said preferred stock is subscribed and issued, as hereinbefore set forth, it shall be lawful for said Trustees to take possession personally or by their agent or agents, of said railroads, rolling stock and equipment, and the lands and other premises hereby conveyed or which may be then subject to the lien of these presents and to operate the

said railroads and manage the same, and collect and receive the income, earnings and tolls thereof, and the proceeds of lands contracted to be sold; and said Company covenants and agrees that it will on demand surrender such possession and permit said Trustees to use and possess said railroads, rolling stock, lands and premises, without interruption or disturbance, and will permit and suffer said Trustees to collect and get in all freight moneys, ticket balances or other earnings, and the purchase moneys of all lands sold, either then due or thereafter becoming due, and in case it may be necessary, or may be deemed advisable by said Trustees to take legal proceedings for dissolution of said Company or for cancellation of the subscription of the preferred stock, or enforcement of the covenants, stipulations, or trusts, of these presents or to obtain possession of said premises, in pursuance of the provisions of this article, they shall be entitled to the appointment, by the Court in which such legal proceedings are instituted, of a Receiver or Receivers to be nominated by them or to be themselves nominated and appointed Receivers as they may think most expedient.

ARTICLE 6. Said Trustees, when in possession of said railroads, lands and premises shall have the right as irrevocable attorney or attorneys of said Company to bring or defend in the name of the said Company, any action for the collection of income, freight moneys, ticket balances or other earnings, or unpaid purchase money for lands sold, or for obtaining or defending the possession of any property subject to the lien or trusts

of these presents or for the condemnation of lands required for the maintenance or operation of said railroads, or in any manner affecting the maintenance thereof.

ARTICLE 7. Said Trustees are hereby authorized, in their discretion, to accept possession of said railroads, with the rolling stock, lands and appurtenances herein comprised, although no such default as aforesaid shall have been made if said Company shall offer to give up possession to them and thereupon to manage and operate the same, and collect the income and earnings thereof, as hereinafter provided.

ARTICLE 8. It shall be the duty of said Trustees to take possession of said railroads, lands and premises after any such breach as aforesaid, upon written requisition made to them for such purpose by the holders of not less than one quarter in amount of said preferred stock.

ARTICLE 9. Said Trustees shall have full power, from time to time for the purpose of enforcing and administering the trusts and powers of these presents, and for operating and managing or keeping in good order and repair the said railroads, rolling stock, lands and premises, to hire and employ such managers, officers, clerks, agents, attorneys and assistants as they shall deem necessary or useful, and to defray all expenses of such employment and of otherwise executing the trusts of these presents, and to pay any taxes assessed upon the trust premises or any part thereof or any other prior charges thereon,

out of any moneys coming to their hands, and in case said Trustees shall have no funds in their hands, and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether said Trustees shall be in possession of the same or not), the amount so paid, together with interest thereon at the rate of ten (10) per centum per annum shall be a first charge on the trust premises, and the earnings, income and proceeds thereof; and in case said Company shall fail on demand, to repay said Trustees any amount paid by them, as aforesaid, with interest at the rate aforesaid, they may enter upon and take possession of said railroads lands and premises, and retain possession and receive the income, earnings and proceeds thereof, until they shall have recouped themselves the amount so paid, with interest as aforesaid.

ARTICLE 10. In case the Company shall, after cancellation of the subscription of the preferred stock in manner provided in article 2 of these presents, make default in payment to any holder of preferred stock of the sum payable to him under the provisions of said Article, it shall be the duty of said Trustees to forthwith proceed to enforce this security, and to sell said railroads, rolling stock, equipment and appurtenances, and the land and premises comprised herein, or then subject to the lien of these presents, in one lot, or in more than one lot or parcel, and at one time, or at different times, and for cash, or on reasonable credit, payment therefor being secured on the property sold, and other-

wise upon such terms and in such manner as said Trustees may in their discretion think best.

ARTICLE 11. Such sale or sales may be made either without suit by said Trustees, or their duly authorized agent by public auction, at the door of the Court House of Multnomah County in Oregon, after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald, or in case said paper shall not be then published, then in some other daily paper of general cilculation published in New York, and selected by said Trustees; and in case said sale shall be adjourned, the like four weeks notice shall be given of the adjourned sale; or at the option of said Trustees such sale may be made judicially by action or suit brought by said Trustees for the enforcement of the lien and powers of sale hereby created and granted, or the enforcement, performance or administration of the covenants, powers, stipulations and trusts of these presents, as said Trustees may deem most expedient.

ARTICLE 12. The moneys received from the net earnings of said railroads or the purchase moneys, received on any such sale thereof, as hereinbefore provided, or the purchase moneys received for lands sold, when in possession of said Trustees, shall be applied in the following order: In the first place in the payment of the cost and expenses of the execution of the trusts of these presents, and the management and operation of said railroad, and in the protection and preservation of

the trust premises, including a reasonable compensation to said Trustees (in addition to the ordinary compensation herein provided for) and the fees of counsel and attorneys; and in the next place, in payment of debts and liabilities incurred by said Company otherwise than by or in or through the breach of any of the conditions upon which said preferred stock is subscribed and issued as hereinbefore set forth; and lastly, in payment to every holder of said preferred stock of the sum of one hundred dollars for each share of preferred stock held by him, or a proportionate part thereof in case such moneys shall be insufficient to pay the full amount; and the surplus, if any, of such moneys shall be refunded to said Company.

ARTICLE 13. On any sale by virtue of these presents, the receipt of the said Trustees shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conveyance or assignment made by said Trustees shall vest in said purchaser, all the title and interest of said Company as fully and effectually as if the Company were party thereto.

ARTICLE 14. The Company hereby covenants and agrees with the said Trustees on behalf and for the benefit of the holders of said preferred stock, that it will, from time to time, and at all times hereafter, upon reasonable request, make, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law for the better assuring unto the said Trustees and their legal successors, from time to time

as Trustees of these presents upon the trusts and for the purposes herein expressed, the said railroads, rolling stock, equipment, lands and premises herein comprised, free from all prior liens and encumbrances, except as herein specified and all other present and future property of said Company of every kind and descripiton as by the said Trustees or their counsel learned in the law shall be reasonably devised, advised or required, and will, from time to time, as the said lands, now or hereafter granted by the United States are patented to said Company, execute proper deeds of further assurance thereof to said Trustees so as to fully identify the lands intended to be comprised in or subjected to the lien of these presents.

ARTICLE 15. All rights or powers by these presents given to, or covenants, stipulations or agreements made with said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents, in the same manner as if said Trustee or Trustees had been named herein.

ARTICLE 16. In these presents, the word "Trustees" shall be held to mean the said Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, while continuing to be Trustees hereof, and the trustees for the time being of these presents, whether all or any be original Trustees or new Trustees.

ARTICLE 17. No Trustees shall be in any man-

ner responsible for any act, default or misconduct of his co-Trustees, nor for that of any Agent, Bank, Banker, Broker or other persons employed by him or by his co-Trustees, unless he shall be chargeable with culpable negligence in their selection or in the continuance of their employment, nor otherwise, except for his own wilful default, misconduct or gross negligence. But except as herein specially authorized, no Trustee shall have power to delegate his powers or authority to his co Trustees or co Trustee, or to any other person whatever.

ARTICLE 18. The Trustees may pay such reasonable compensation as they shall deem proper to all agents, land agents, engineers, officers, attorneys and servants whom they may reasonably employ in the management of their trust, and said Trustees shall be paid by said Company or, in default, out of the trust moneys, the sum of five hundred dollars per annum each, and in addition a further reasonable compensation for such services as they may be called upon to render in taking possession of and managing the premises or selling the same, or bringing suit for the enforcement of the liens or trusts hereby credited or the collection of the moneys secured or to be secured by or becoming payable by virtue of these presents.

ARTICLE 19. In case of the death, resignation or refusal or incapacity to act of any Trustee, the surviving or continuing Trustee or Trustees shall by deed appoint a suitable person as Trustee in the place or stead of the

Trustees so dying, resigning, refusing or becoming incapable; and in case there shall be no surviving or continuing Trustees or Trustee, or such surviving or continuing Trustees or Trustee shall *shall* fail for three calendar months after the death, resignation, refusal or incapacity of their or his previous co Trustee to apponit a new Trustee, then said Company, or any holder of said preferred stock may apply to any judge in the Circuit of the United States for the District of Oregon, to make such appointment and any such judge may appoint a new Trustee by instrument under his hand and seal, without suit or other legal proceedings therefor; but in no case, shall a citizen of the State of Oregon be appointed, or be capable of acting as a Trustee of these presents. And it is hereby declared to be the duty of said Trustees to bring all actions or suits in any way relating to the trusts of these presents in the Courts of the United States whenever such Courts shall have jurisdiction of such action or suit, and not in the Courts of the State.

ARTICLE 20. A majority in amount of the holders of the said preferred stock shall have full power at any time without suit, and whether there be any vacancy or not, to remove all or any of the then existing Trustees and to appoint other Trustees, or another Trustee in their or his place and to increase or diminish the number of Trustees or to appoint a corporation duly authorized to execute trusts in the State of Oregon, as one of the Trustees or as sole Trustee; and any such act of the majority in amount of the holders of preferred

stock shall be deemed to be sufficiently made, executed, evidenced and proved by a writetn instrument or instruments purporting to be signed by the actual holders of the certificates for such preferred stock, whether they shall be registered in the names of such persons on the books of the Company or not, provided that each such certificate shall be either in the name of such holder or transferrable by him as attorney of the holder named in the certificate, and stating the identifying numbers of the certificates of the shares of such stock and the amount of such shares held by each signatary, and the respective signatures to which, and the production to a notary public at the time of signature of the certificates specified, shall be acknowledged before and certified by such Notary Public and his certificate attached and authenticated by his Notarial Seal. No proof shall be necessary of the qualifications of any such Notary so purporting to act in the United States, the British Dominions, Holland, France, or the German Empire.

ARTICLE 21. Any appointment of a new Trustee made by the surviving or continuing Trustees or or Trustee, or the majority of the holders of preferred stock, or a judge, as hereinbefore provided, shall be effectual to vest in the new Trustees or new Trustee all estates, rights, trusts, powers and duties as fully as if they or he were Trustees or a Trustee, party to these presents without any new deed or conveyance, but nevertheless, the said Company hereby covenants in any and every such case to make, upon request of the new Trustees or Trustee, all such deeds, conveyances and

assurances as may be appropriate for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estates, rights, powers, trusts and duties and every resigning Trustee shall, on like request, make and execute such deeds, conveyances and assurances to his successors or successor.

ARTICLE 22. A majority in amount of the holders of the preferred stock at any time secured by these presents may, by written instrument, to be executed and proved as provided in Article 28, at any time before the cancellation of the subscription for the preferred stock, as hereinbefore provided, waive any breach of any condition upon which said preferred stock is subscribed and issued, but such waiver shall be of no effect unless such breach shall have consisted in some act or omission which a majority in amount of the holders of said preferred stock might have previously authorized, or unless such breach shall have consisted in the non-payment of any dividend, and the Company shall together with such instrument or instruments of waiver, hand to the Trustees a sum of money sufficient to pay all such dividend then in arrear, and in the case last mentioned said Trustees shall proceed to pay said dividend as nearly as possible in the manner provided by these presents.

ARTICLE 23. The said Company, for itself, its successors and assigns, doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation, stay, appraisement or redemption laws,

or laws requiring liens or deeds of trust to be foreclosed or enforced by action or suit, and of all other laws now existing or hereafter passed, which, but for this provision would prevent the absolute and unconditional sale of the premises hereby conveyed by a Court or by a Trustee without suit; and on any such sale said Company, for itself, its successors and assigns, covenants to join in and confirm the conveyance to the purchaser.

ARTICLE 24. In case of any sale of said premises whether by the Trustees of by a Court, any purchasers shall be entitled to deliver, in part payment of the purchase money any of the certificates for preferred stock secured by these presents; and such certificates shall be reckoned as equivalent to the sum which would be their proportion of the net proceeds of the sale after the deduction of all expenses. The payment to be made in cash to cover such expenses shall be fixed previously by the Trustees of the Court as the case may be, and announced in the advertisement of sale.

ARTICLE 25. The Trustees shall, whenever requested by the Company, release from the lien of these presents, any land, rolling stock, or other property become useless for the purposes of the railroads by alteration of route, changes in machinery or equipment or otherwise.

ARTICLE 26. On any sale, whether by the Trustees or a Court of the property hereby conveyed, or any part thereof, The Trustees shall have the right to buy

in the same, and a majority in amount of the holders of the preferred stock shall have the right by written instrument, evidenced and proved as hereinbefore provided by Article 28, to fix a sum which it shall be the duty of the Trustees to bid for the property to be sold on behalf and for the benefit of such holders of preferred stock, but only on condition that due provision is made by such majority to the satisfaction of the Trustees or the Court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents, and of the proportion of such sum payable to the holders of preferred stock not concurring in such request.

ARTICLE 27. On any such purchase the trustees shall hold the property so purchased upon trust for the equal benefit of the holders of preferred stock, who had required the Trustees to buy in the property on their behalf, as the absolute property of said holders of preferred stock, without any right of redemption or resale in favor of said Company or any other holders of preferred stock.

ARTICLE 28. The Trustees shall deposit all trust funds which may from time to time, come to their hands in their joint names, in the London and San Francisco Bank Limited or such other respectable bank or banks, trust Company or Trust Companies, in London, New York, Frankfort, San Francisco or Portland, as they may, from time to time agree upon, and may from time to time invest the same, until required in the pur-

chase of United States Stocks or Bonds at their market value, or in the first mortgage bonds of the Company, at any price not exceeding the par value thereof, or on loans secured on such stocks or bonds.

ARTICLE 29. In computing the majority of the amount of the holders of preferred stock hereinbefore referred to, only the stock actually issued and outstanding shall count, and not any stock belonging to the Company or reserved for the conversion of the issue of income bonds in said plan of reorganization mentioned.

ARTICLE 30. AND WHEREAS, by reason of distance, lapse of time, or other accident, the dates of the actual execution of this Indenture of Trust, by the various parties thereto, may be previous or subsequent to the day of which it bears date, Now it is hereby expressly agreed and declared that this Indenture of Trust shall be dated the second day of June, 1881, and shall be valid and effectual as if executed on the day and date thereof, and that this Indenture of Trust is the Indenture referred to in the certificates for preferred stock hereinbefore mentioned, and is made and executed by and between the parties hereto as and for the Indenture or Deed of Trust securing and intended to secure, the performance of the conditions on which said preferred stock is subscribed and issued;

IN WITNESS WHEREOF, The said Oregon and California Railroad Company pursuant to a resolution of its Board of Directors, duly authorizing the

same, has caused these presents and nineteen duplicates hereof to be sealed with its corporate seal, signed by its president, and attested by its Assistant Secretary; and the said Trustees respectively have hereunto, and unto the said nineteen duplicates hereof, set their hands and seals the day and year above written.

OREGON AND CALIFORNIA RAILROAD COMPANY,

By H. Villard,—President.

Attest: H. H. Tyndale. Assistant Secretary.

(O. & C. R. R. CORPORATE SEAL.)

H. Villard,)
R. D. Peebles,) TRUSTEES.
C. E. Bretherton.)

Signed, sealed, and
delivered in presence of
Geo A. Saxer as to (H. Villard)
Sydney Starbuck, (C. E. Bretherton).
Signed, Sealed and delivered by Robert
Davie Peebles, in presence of
James Davis,
S. Jackson,
22 Old Broad Street, London.

STATE OF NEW YORK,)
(ss.
City and County of New York.)

BE IT REMEMBERED, that on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard, the President of the Oregon and California Railroad Company, and Hector H. Tyndale, the Assistant Secretary of the same Company, to me respectively personally known to be such, who being by me severally duly sworn, did repose and say, that he, said Henry Villard resides in the City and State of New York; that he, said Hector H. Tyndale. also resides in said City of New York; that he, said Henry Villard is the president and he, said Hector H. Tyndale is the assistant secretary of said Company; that they know the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company; and that they, the said Henry Villard and Hector H. Tyndale, signed their names thereto by the like order, as President and Assistant Secretary of said Company respectively, and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(COMMISSIONERS SEAL)

STATE OF NEW YORK,)
) ss.
City and County of New York,)

BE IT REMEMBERED, That on this 29th day of July, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the State of Oregon, in and for the State of New York, residing in said City of New York, personally appeared Henry Villard and Charles Edward Bretherton, Trustees in the foregoing deed of Trust, to me personally known to be the identical persons described in and who executed the foregoing instrument as trustees, and they severally acknowledged to me that they executed the same freely and voluntarily, as their act and deed, for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL, this 29th day of July, A. D. 1881.

CHARLES EDGAR MILLS,

A Commissioner for the State of Oregon in New York.

(COMMISSIONERS SEAL)

CONSULATE GENERAL)
)
of)
)
THE UNITED STATES OF AMERICA)
)
for)
)
GREAT BRITAIN and IRELAND, LONDON.)

On this 17th day of August, 1881, before me, Adam Badeau, Consul General and ex-officio a Notary Public of the United States of America at London, England, personally appeared Robert Davie Peebles, to me known to be the person of that name described in and who has executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein contained.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official Notarial Seal, at London, aforesaid, the day and year above written.

ADAM BADEAU,

(U. S. CONSULATE SEAL) Consul General,
U. S. A., London.

STATE OF OREGON,)
)ss.
County of Multnomah,) No. 9574

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement Oregon and California Railroad

Company to Henry Villard et al, recorded in Book 27 page 179 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May A. D. 1913.

(Seal) JNO. B. COFFEY, County Clerk.
Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 398

is a certified copy of mortgage executed by the Oregon and California Railroad Company to The Farmers Loan and Trust Company, May 25, 1883, recorded page 33, Book 41, Records of Mortgages of Multnomah County, Oregon, on November 5, 1883, and recorded about the same time in the Records of mortgages of all other counties in which any part of said granted lands were situated, which said exhibit, is as follows:

This indenture made the 25th day of May in the year one thousand eight hundred and eighty three between the Oregon and California Railroad Company (a corporation organized and existing under the laws of Oregon and hereinafter called the Company) of the

first part: The Farmers Loan and Trust Company of the City and State of New York) hereinafter called the Trustee) of the second part and Robert Davie Peebles George Henry Hopkinson and Patrick Buchan of the third part.

Whereas By an Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon" and approved July 25, 1866, it was amongst other things enacted as follows 'Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That the "California and Oregon Railroad Company" Organized under an act of the State of California to protect certain parties in and to a railroad survey "to connect Portland in Oregon with Marysville in California" approved April 6, 1863. a-nd such company organized under the laws of Oregon as the Legislature of said State shall hereafter designate, be and they are hereby authorized and empowered to lay out locate, construct finish and maintain a railroad and telegraph line between the City of Portland in Oregon and the Central Pacific Railroad in California in the Manner following towit:

The said California and Oregon Railroad Company to construct that part of the said Railroad and telegraph (line) within the State of California beginning at some point(to be selected by said company) on the Central Pacific Railroad in the Sacramento Valley in

the State of California and running thence northerly through the Sacramento and Shasta Valleys to the Northern Boundary of the State of California and the said Oregon Company to construct that part of the said railroad and telegraph line within the State of Oregon beginning at the City of Portland in Oregon and running thence southerly through the Willamette Umpqua and Rogue river valleys to the southern boundary of Oregon where the same shall connect with the part aforesaid to be made by the first named Company Provided that the Company completing its respective part of the said railroad and telegraph (line) from either of the termine herein named to the line between California and Oregon before the other Company shall have likewise arrived at the same line shall have the right and the said Company is hereby authorized to continue in constructing the same beyond the line aforesaid with the consent of the State in which the unfinished part may lie upon the terms mentioned in the act until the said parts shall meet and connect and the whole line of the said railroad and telegraph (line) shall be completed"

"Section 2 And be)it) further enacted. That there be and hereby is granted to the said companies their successors and assigns for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the line of said railroad every alternate section of public land. not mineral designated by odd numbers to the

amount of twenty alternate sections per mile) ten on each side) of said Railroad line and when any of said alternate sections or parts of sections shall be found to have been granted sold reserved occupied by homestead settlers pre-empted or otherwise disposed of other lands, designated as aforesaid shall be selected by said companies in lieu thereof under the direction of the Secretary of the Interior in alternate sections designated by odd numbers as aforesaid nearest to and not more than ten miles beyond the limits of said first named alternate sections and as soon as the said companies or either of them shall file in the office of the Secretary of Interior a map of the survey of said railroad or any portion thereof not les than sixty continuous miles from either terminus the Secretary of the Interior shall withdraw from sale public lands herein granted on each side of said railroad so far as located and within the limits specified. The lands herein granted shall be applied to the building of said road within the states respectively wherein they are situated, And the sections and parts of sections of lands which shall remain in the United States within the limits of the aforesaid grant shall not be sold for less than double the minimum price of public lands when sold. Provided that bona fide actual settlers under the pre-emption laws of the United States may after due proof of settlement improvements and occupation as now provided by law purchase the same at the price fixed for said lands at the date of such settlement improvement and occupation. And provided also That settlers under the provisions of the homestead

act, who comply with the terms and requirements of said act shall be entitled within the limits of said grant to patents for an amount not exceeding eighty acres of the land so reserved by the United State anything in this act to the contrary notwithstanding."

Section 3 And be it further enacted. That the right of way through the public lands be and the same is hereby granted to said companies for the construction of said railroad and telegraph line; and the right, power and authority are hereby given to said companies to take from the public lands adjacent to the line of said road, earth stone timber water and other materials for the construction thereof. Said right of way is granted to said railroad to the extent of one hundred feet in width on each side of the said railroad where it may pass over the public lands including all necessary grounds for stations buildings workshops depots machine shops switches side tracks turn tables water stations or any other structures required in the construction and operating of said road"

And whereas By another act of Congress entitled " An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville in the State of Oregon" and approved May 4, 1870 it was amongst other things enacted as follows " Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria and from a suitable point of Junc-

tion near Forest Grove to the Yamhill river near McMinnville in the State of Oregon there is hereby granted to the Oregon Central Railroad Comapny now engaged in constructing the said road and to their successors and assigns the right of way through the public lands of the width of One Hundred feet on each side of said road and the right to take from adjacent public lands materials for constructing said road and also the necessary lands for depots. stations side tracks and other needful uses in operating the road not exceeding forty acres at any one place and also each alternate section of the public lands not mineral, excepting coal or iron lands designated by odd numbers nearest to the said road to the amount of ten such alternate sections per mile, on each side thereof not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be formed on each side of said road. Within the said limits of twenty miles other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty five miles from the track of said road to make up such deficiency."

And whereas said Oregon and California Railroad Company has succeeded to and become invested with and now is possessed of and entitled to all the grants, rights franchises and privileges conferred upon the Oregon Company referred to in the first hereinbefore recited Act of Congress and of the Oregon Central Rail-

road Company mentioned in the secondly hereinbefore recited act of Congress And whereas By a Deed of Mortgage and Trust dated the first day of June 1881 the Company mortgaged its railroads, lands and all other property present and future to Henry Villard, Horace White and Charles Edward Bretherton their heirs assigns and legal successors as trustees to secure an immediate issue of 6,000 First Mortgage Bonds for the aggregate amount of Six Million dollars in gold coin bearing interest at the rate of six per cent per annum payable half yearly on the first days of January and July and redeemable at 110 per cent of the par value thereof in manner in said bonds and mortgage specified all of which 6,000 bonds have been issued and are now outstanding and also to secure such further issues of first mortgage bonds not exceeding in the whole the rate of $20,000 for each mile of railroad now or hereafter constructed by said Company as should be thereafter made under the provisions and upon the security of said Deed of Mortgage and Trust.

And whereas The said Company has heretofore issued its preferred stock twelve million dollars in amount in one hundred and twenty thousand shares of one hundred dollars each. All of which stock is fully paid and was subscribed and issued upon the following conditions namely;

"I. The preferred stock is entitled to a preferential dividend not cumulative of seven per cent per annum payable out of the net earnings of the Company

and after the first mortgage bonds hereinafter specified have been paid off out of the gross proceeds of the land grants.

"II. Net earnings names the surplus of the gross earnings of the railroad after the deduction only of all operating and management expenses. repairs necessary increase of *raill*ing stock and equipment, taxes and the interest and sinking fund payments upon the first mortgage bonds secured by and now or hereafter issued under the provisions of the Deed of Mortgage and Trust. dated June 1, 1881. and made by the Company to Henry Villard Horace White and Charles Edward Bretherton.

III. In addition to the preferential dividend above mentioned the preferred stock shall rank equally with the common stock for additional dividends in each year after the common stock has received seven per cent in such year/

"IV. The entire gross proceeds of the lands remaining after payment of the first mortgage bonds above specified shall be distributed exclusively among the preferred stock holders.

"V. The dividend on the preferred stock realized from the proceeds of the lands as above defined shall dimish pro tanto the preferential right of the preferred stock to dividends out of the net earnings of the road as against the common stock but in no case shall any part of the land proceeds as above defined be distributed among the common stock.

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Purports to be two sheets of standard map of the Oregon and California Railroad Company, purporting to show lands of the Booth-Kelly Lumber Company colored in red, and the Wentworth lands colored in green.....7268

DEFENDANTS' EXHIBIT 333

Is a certified copy of an Act of Congress, ap-

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proved August 20, 1912, entitled "An Act Supplementing the joint resolution of Congress approved April thirtieth, nineteen hundred and eight, entitled 'Joint resolution instructing the Attorney General to institute certain suits,'" etc.....7268

DEFENDANTS' EXHIBIT 334

Is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," Oregon and California Railroad Land Grant, July 16, 1912—committed to the committee of the whole House on the state of the Union, and ordered to be printed. Mr. Robinson, from the Committee on Public Lands, submitted same to accompany H. R. 22002, supplementing the joint resolution approved April 30, 1908, etc.....7273

DEFENDANTS' EXHIBIT 335

Purports to be a map issued by Department of the Interior, General Land Office, Fred Dennett, Commissioner, State of Oregon, compiled from the official records of the General Land Office and other sources, etc., showing thereon, in accordance with legend as marked in different colors, U. S. Surveyor General's Office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National

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Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries, Military Roads, Light Houses, and Townships not subdivided by special designation 7303

DEFENDANTS' EXHIBIT 336

Is Department Circular No. 62, October 29, 1907, issued by Treasury Department, subject "Transportation of Government Employees and Property" 7303

DEFENDANTS' EXHIBIT 337

Is Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-grant and Bond-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912, Washington, Government Printing Office, 1912." At page 42 of this circular appears Section 5, Act of July 25, 1866, 14 Statutes, 239, with reference to Act of June 25, 1868, 15 Statutes, 80, and Act of Congress April 19, 1869, with reference to 16 Statutes, 47; and therewith a map of Land-grant and Bond-aided railroads of the United States, 1912, etc. 7306

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DEFENDANTS' EXHIBIT 338

Consists of a set of forms furnished by the Quartermaster Department as Government requests for transportation, etc. 7306

DEFENDANTS' EXHIBIT 339

Purports to be a standard map of the Oregon and California Railroad Company in the State of Oregon, and purports to show, according to legend, in colors, vacant government land; lands included in Forest Reserve withdrawn from entry; lands included in Powersite Reserve withdrawn from entry; lands included in Fisheries Bureau withdrawn from entry; lands included in Indian Reservation withdrawn from entry; shown in their relations to the lands within the limits of the grants, place and indemnity 7306

DEFENDANTS' EXHIBIT 340

Estimated acreage of public lands in the Portland and Roseburg, Oregon, land districts....7308

DEFENDANTS' EXHIBIT 341

Purports to be a summary showing stockholders, directors and officers of the Oregon and California Railroad Company, as shown by the

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record books of the Company from October 11, 1870, down to and including April 11, 1911 7309

DEFENDANTS' EXHIBIT 342

Is a standard map of the Oregon and California Railroad Company, purporting to show, in colors, lands examined, cruised, and reported upon by S. C. Bruce, S. A. Carmichael, C. A. Cavell, F. J. Cronin, F. A. Elliott, M. F. McCown, John McDonald, D. C. McLennan, L. D. McLeod, Ben Peck, Wm. Penoyar, and A. W. Rees; and purports to show the location of these lands within the limits of these grants. 7309

DEFENDANTS' EXHIBIT 343

Is a detailed statement purporting to show lands cruised by S. C. Bruce, as classified, present condition as to timber, grazing and agricultural, and when denuded—as to grazing and agricultural 7309

DEFENDANTS' EXHIBIT 344

Is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agricultural, and when denuded—as to grazing and agricultural 7310

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DEFENDANTS' EXHIBIT 345

Is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' in the National Forests", and reprinted in the Congressional Record on August 16, 1912, under the same heading as "Extension of Remarks of Honorable William Kent of California in the House of Representatives" 7310

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Is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service —Henry S. Graves, Forester; Subject, "Properties and Uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir", and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record..... 7341

DEFENDANTS' EXHIBIT 347

Is Circular 150, issued January 23, 1909, by U. S.

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Department of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," etc. Page 13 of circular purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade range 7342

DEFENDANTS' EXHIBIT 348

Is a circular or bulletin by the Department of Commerce and Labor, Bureau of the Census, Forest Products, No. 2, Lumber, Lath and Shingles—1910, etc., Forest Service, Henry S. Graves, Forester, issued February 20, 1912. Part of this exhibit is printed in testimony of Homer D. Angell, volume 6, page 2795 of record 7342

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Consists of silvical leaflets, numbers 2, 4, 5, 7 and 8, issued in 1907, Gifford Pinchot, Forester, describing Port Orford cedar, White Fir, Lowland Fir, Noble Fir, Red Fir (range and occurrence of each) 7343

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DEFENDANTS' EXHIBIT 350

Purports to contain reports of Land Examiner W. J. Lander of dates March 14, 1912, November 25, 1911, October 6 and 7, 1907, May 24, 1907, May 25, 1907, upon forms of Oregon and California Railroad Company, Land Department 7343

DEFENDANTS' EXHIBIT 351

Statement of lands examined, cruised and reported upon by D. C. McLennan, showing present condition, timber, grazing and agricultural and when denuded—grazing and agricultural 7343

DEFENDANTS' EXHIBIT 352

Table showing unsold Congressional lands of the Oregon and California Railroad Company as assessed and taxed, as shown by tax rolls of Multnomah County for the years 1875 to 1890, both inclusive 7343

DEFENDANTS' EXHIBIT 353

Statement of lands examined, cruised and reported upon by A. W. Rees, showing acreage of, in present condition, classified as timber, grazing

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and agricultural, and, when denuded—grazing and agricultural 7345

DEFENDANTS' EXHIBIT 354

Report of A. W. Rees, timber cruiser; 3 sheets showing timber estimate and description of various parcels of lands 7345

DEFENDANTS' EXHIBIT 355

Statement of portion of lands examined, cruised and reported upon by F. A. Elliott showing area in present condition, timber, grazing and agricultural, and, when denuded—grazing and agricultural 7345

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Statement of lands examined by S. A. Carmichael, showing area in present condition, timber, grazing and agricultural, and when denuded—grazing and agricultural 7345

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Statement showing lands examined, cruised and reported upon by T. J. Cronin, C. A. Cavell, M. F. McCown, John D. McDonald, Ben Peck and William W. Penoyar, showing area

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in present condition, timber, grazing and agricultural, and, when denuded—grazing and agricultural 7346

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Report of Land Examiner A. W. Rees of a particular tract of land.....7346

DEFENDANTS' EXHIBIT 359

Statement of average assessed value per acre of unsold lands of Oregon and California Railroad Company for each year from 1892 to 1911, inclusive 7346

DEFENDANTS' EXHIBIT 360

Is First Annual Report of the State Forester, F. A. Elliott, to the Governor of Oregon, transmitted December 1, 1911.....7347

DEFENDANTS' EXHIBIT 361

Pamphlet "The Forests of Oregon" by Henry Gannett, published by Department of the Interior, 1902, with map of State of Oregon purporting to show classification of lands and forests by Gilbert Thompson, etc.....7348

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Statement showing total areas examined by cruisers named, present condition of such areas, probable condition after areas denuded.....7349

DEFENDANTS' EXHIBIT 363

Map of the State of Oregon, published by J. K. Gill Co., of Portland, Oregon, showing in red outline of Oregon and California Railroad Company, and limits of land grant (East Side), and in green outline of Oregon Central Railroad Company (West Side) and limits of land grant 7351

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Form used by N. H. Martin in making reports on lands, October 23, 1912 7351

DEFENDANTS' EXHIBIT 365

Scarborough's Census Map of Washington and Oregon, showing in colors counties, cities, villages, postoffices, steam and electric railways, with stations and distances between stations, and other features, with population according to Census of 1910 7351

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DEFENDANTS' EXHIBIT 366

Map showing location of timber lands on public domain, June 30, 1883, to accompany "Public Domain" by Thomas Donaldson. Map purports to show in green colors the locality of the timber lands, and includes therein Oregon and Washington west of and including Cascade Mountains 7352

DEFENDANTS' EXHIBIT 367

Photograph, View of Oregon City—Willamette Falls, Railroad graded under Elliott in 1868.. 7352

DEFENDANTS' EXHIBIT 368

Agreement of April 23, 1867, between Oregon Central Railroad Company and Albert J. Cook, for construction of 159 miles of railroad. 7352

DEFENDANTS' EXHIBIT 369

Agreement of May 12, 1868, between Oregon Central Railroad Company and A. J. Cook & Company, for construction and equipment of 210 miles of railroad..... 7361

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Transfer from Albert J. Cook to S. G. Elliott of contract of April 23, 1867, with Oregon Central Railroad Company 7369

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Photograph "Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868" 7370

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Map of Country Club Orchard Tracts, The Rogue River Orchard Company, owner..... 7370

DEFENDANTS' EXHIBIT 373

Certified copies of letters: May 7, 1870, J. D. Cox, Secretary, to Hon. Jos. S. Wilson, Commissioner of the General Land Office; May 23, 1870, Jos. S. Wilson, Commissioner, to Hon. George H. Williams, U. S. Senate; May 23, 1870, Jos. S. Wilson, Commissioner, to Register and Receiver, Oregon City, Oregon, relating to evidence of sale of the Oregon Central Railroad to the California and Oregon Railroad Company. Letter May 20, 1872, Willis Drummond, Commissioner, to Hon. C. Delano, Secretary of the Interior, referring to certain papers filed in his office by George H. Williams, Attorney General, for the purpose of obtaining a construction by the Department of the proviso of the Act of April 10, 1869, amendatory to the Act of July 25, 1866, namely, the 160-acre at $2.50 an acre clause..... 7371

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Certified copies of form of deed of European & Oregon Land Company; letter from I. H. Moores, Land Agent, to Hon. Willis Drummond, Commissioner of the General Land Office, of January 23, 1874, and letter of March 13, 1874, Willis Drummond to I. R. Moores, in reference to lands said to have been erroneously patented to the Oregon and California Railroad Company 7375

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Certified copies of correspondence between Paul Schulze and George H. Andrews, Land Agents of the Oregon and California Railroad Company, and the General Land Office, between June 20, 1876, and November 9, 1905,—all in reference to lands eroneously patented..7383

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Certified copies 7439

Letter July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent.

May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary, expressing opinion as to validity of assignment by the

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Oregon Central Railroad Company to the Oregon and California Railroad Company, and that patents should be issued to the Oregon and California Railroad Company.

May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler.

July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal.

April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.

May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

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Consists of Senate Judiciary Committee Report No. 906, January 2, 1883; To accompany bill S.2301, providing for the forfeiture of railroad grants in certain cases, report by Mr. Garland, from the Committee on the Judiciary.....7457

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Letters April 20, 1871, Jos. S. Wilson, President E. & O. Land Co., to Commissioner G. L. O., April 20, 1871, I. R. Moores to Jos. S. Wilson, and May 9, 1871, W. W. Curtis, Acting Commissioner, to Jos. S. Wilson; in regard to patent to lands inuring to the railroad company.

Correspondence between Jos. S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant.

DEFENDANTS' EXHIBIT 379

Certified copy of map showing definite location of line of Oregon Central Railroad under act of May 4, 1870 7502

DEFENDANTS' EXHIBIT 380

Statement purporting to show, in a general way, financial operations of Oregon Central Railroad Company (East Side), the Oregon Central Railroad Company (West Side), and the Oregon and California Railroad Company, as gathered from the records of meetings of directors and stockholders of said companies.. 7502

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Circular No. 208, "The Three Year Homestead Law," issued by the Department of the Interior February 13, 1913, addressed to the Commissioner of the General Land Office.....7513

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Summary of patents to Oregon and California Railroad Company 7514

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Certified copy of reports of Commissioners appointed to examine and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine and report upon first to twelfth sections, both inclusive, of the Oregon and California Railroad from Portland to the Oregon and California State line, with action of President endorsed thereon 7564

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Certified copy of affidavit of H. Villard, of date January 8, 1883, as to completion of railroad to Oregon and California state line 7564

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H. R. Report No. 1664, 1st Session, 48th Congress, "Unearned Land Grants," May 29, 1884 7567

Report No. 931, Forfeiture of lands granted to the California and Oregon Railroad, March 8, 1886, to accompany bill H. R. 6659, from the Committee on Public Lands 7583

Report No. 930, 1st Session, 49th Congress, Forfeiture of lands granted to Oregon and California Railroad, March 8, 1886, to accompany bill H. R. 6658, from the Committee on Public Lands 7600

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Deed from Oregon and California Railroad Company to City of Portland, July 3, 1893, issued for contract No. 1705.....7617

Deed from Oregon and California Railroad Company to City of Portland, July 3, 1893, issued for contract No. 1804.....7623

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Certified copy of stipulation Suit No. 2272, filed in Circuit Court of United States, District of Oregon, case of United States versus Oregon

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and California Railroad Company, signed by Attorney General for complainant, and by Wm. F. Herrin, Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 31, 1898 7628

DEFENDANTS' EXHIBIT 388

Certified copy of stipulation case No. 2661, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 6, 1902 7629

DEFENDANTS' EXHIBIT 389

Certified copy of stipulation case No. 2658, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed December 3, 1902.....7629

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DEFENDANTS' EXHIBIT 390

Certified copy of stipulation case No. 2273, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by Joseph McKenna, Attorney General, by Charles J. Schnabel, Assistant United States Attorney, Daniel R. Murphy, United States States Attorney, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., and Wm. F. Herrin, for defendant, filed September 1, 1897 7630

DEFENDANTS' EXHIBIT 391

Certified copy of stipulation case No. 2657, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, for complainant, and Wm. Singer, Jr., and Wm. D. Fenton, for Defendant, filed December 3, 1902...7630

DEFENDANTS' EXHIBIT 392

Certified copy of stipulation case No. 1936, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company and Oregon Central Railroad Company, and also Oregon and Cali-

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fornia Railroad Company and Oregon Central Railroad Company versus the United States, signed by F. P. Mays, United States District Attorney, for the United States, and E. C. Bronaugh, L. L. McArthur and Wm. D. Fenton, for the Railway Companies.....7631

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Mortgage executed by Oregon and California Railroad Company to Faxon D. Atherton and Milton S. Latham, April 15, 1870.....7631

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Mortgage executed by Oregon and California Railroad Company to Henry Villard, Horace White, and Charles Edward Bretherton, June 1, 1881 7720

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DEFENDANTS' EXHIBIT 397

Mortgage (or trust deed) executed by Oregon and California Railroad Company to Henry Villard, Robert Davie Peebles and Charles Edward Bretherton, June 2, 1881.....7758

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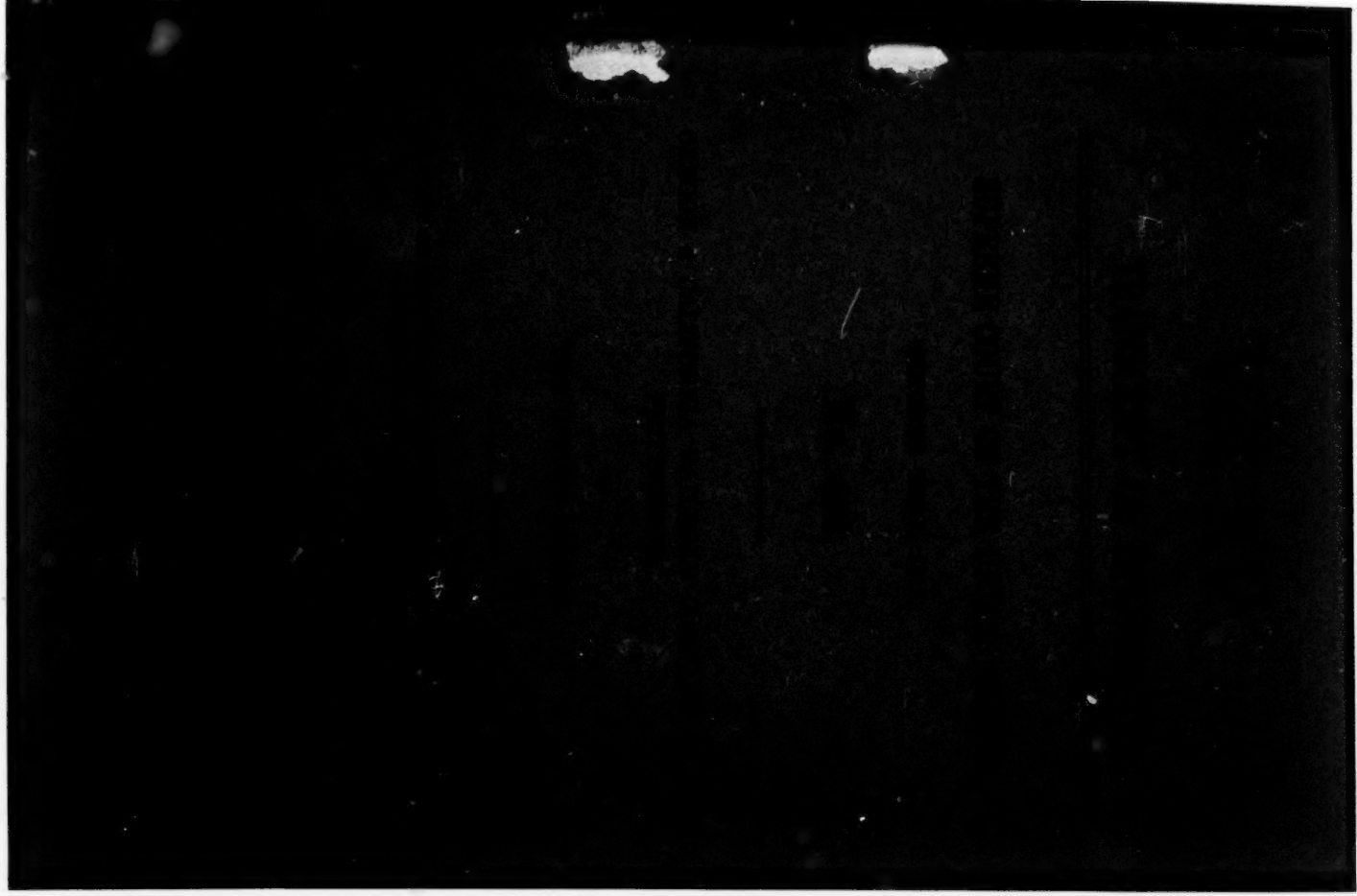
Mortgage executed by Oregon and California Railroad Company to the Farmers' Loan and Trust Company, May 25, 1883.....7792



No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XV

PAGES 7811-8395

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants

OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
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Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
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U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the
Attorney General

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—o—

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VOLUME XV

PAGES 7811-8395

"VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st of December and the dividend shall be declared at or before the annual meeting in the following April.

"VII. On any dissolution of the Company the preferred stock shall be refunded in full before anything is refunded to the common stock.

"VIII. No sale, disposition incumbrance or lease of the railroad or any part of it nor any mortgage or issue of bonds except the first mortgage bonds at the rate of $20,000 a mile hereinbefore specified nor any operating, traffic or running contract in the nature of a lease or which shall transfer the management or operation of the road or any part of it to another Company nor any consolidation with another Company nor any lease of the railroad of another Company nor any guarantee or assumption of the liabilities of any other Company for bonds coupons dividends or otherwise nor any supplemental articles of incorporation of the Company nor any increase of the preferred or common stock shall be made or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding nor shall the Pacific Extension be undertaking without such consent.

"IX. The dividends on the preferred stock for the year 1881 and 1882 not exceeding eight per cent in all may be paid in scrip convertible into preferred stock

instead of in cash." And whereas By a Deed of Trust dated the second day of June 1881 said Company did grant and convey all an singular its railroad, lands and other property present and future to Henry Villard, Robert Davis Peebles and Charles Edward Bretherton their heirs, assigns and legal successors as trustees (subject however, to the prior lien created by the said Deed of Mortgage and Trust of June First 1881) to secure the performance of the conditions upon which said preferred stock was subscribed and issued.

And whereas the said George Henry Hopkins and Patrick Buchan two of the parties of the third part hereto have been duly substituted in the place of Henry Villard and Charles Edward Bretherton and are together with said Robert Davies Peebles the present trustee under said Deed of Trust of June second 1881.

And whereas The said Company is at present engaged in the construction of the southern extension of its railroad to a junction with the Central Pacific Railroad at or near the boundary line between Oregon and California and Proposes to complete its railroad from Corvallis to Junction and from a point at or near Forest Grove to tide water at or near Astoria.

And whereas It has been ascertained from the Estimates of the Engineers engaged in the survey location and construction of the proposed extensions of the said railroad that the amount of $20,000. for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue to which the issue of

said First Mortgage Bonds is limited by the conditions of said Deed of Mortgage and Trust will not be sufficient to construct and complete said proposed extensions.

And Whereas The Holders of an absolute majority in amount of all the preferred stock actually issued outstanding have authorized and consented to the creation and execution of second Mortgage Bonds of said Company of the description and on the terms and conditions hereinafter expressed and the creation and execution of these presents and have authorized and directed the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan as Trustees of the said Deed of Trust of June second 1881 to join in and execute the said Second Mortgage for the purpose of postponing the lien of the said Deed of Trust of June second 1881 to the lien or charge created or intended to be created by these presents.

And whereas The Company in accordance therewith has resolved to make an issue of Second Mortgage Bonds as hereinafter described to be limited to the rate of $10,000. for each mile of railroad now or hereafter constructed as hereinafter specified and actually constructed at the time of issue and which bonds an amount equal to $10,000 per mile for each mile of road now constructed shall be now issued the remainder as the construction of said railroad progresses and to secure the payment of said bonds and interest thereon in the manner herein provided.

And whereas said bonds intended to be secured by these presents together with the coupons annexed thereto and the certificate of the Trustees thereon have been prepared and are numbered consecutively from number one onwards and dated the second day of April 1883 and are in form following that is to say:

United States of America, State of Oregon, Oregon and California Railroad Company of Portland Oregon.

Second Mortgage seven per Cent Gold Bond Amount limited to $10,000 per mile of constructed Road.

$1000. No0000 $1,000.

The Oregon and California Railroad Company for value received hereby binds itself to pay to the bearer at the office of the Company in the City of New York on the first day of April A D 1933 the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold, coin at the rate of seven per centum per annum half yearly on the first days of April and October in each year free of tax upon presentation and surrender at such office as they respectively mature of the one hundred coupons annexed. This bond is one of the second mortgage seven per Centum Gold Bonds of the Oregon and California Railroad Company issued and to be issued only at the rate of $10,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue all being of the

same amount form, tenor and date and payable in the same manner and differing only in the indentifying numbers the date of the Trustees certificate and and the number of coupons annexed and all of which bonds issued and to be issued are equally secured by a Mortgage dated May 26th, 1883, of all the railroads of said company constructed and to be constructed that is to say from Portland to Astoria in accordance with the act of Congress of May 4th 1870 and to Junction and from East Portland to California in accordance with the Act of Congress of July 25th 1866 and of all the rallying stock and other property present and future of said Company of every description except the lands granted by the United States to aid in the construction of the said railroads unto the Farmers Loan and Trust Company as Trustees (subject however to the redeemable prior lien of a First Mortgage dated June 1st 1881 made to secure the payment of the principal and interest of the First Mortgage Bonds of said Company issued and to be issued at the rate of only $20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue which Mortgage is recorded in the office of the County Clerk in Portland Oregon and in all other Counties in which any part of the railroads and lands of said Company are situated.

Said Company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said Company shall fail for six calendar months to pay any coupon annexed to this bond when the same becomes due and such default in payment of interest

shall not have been waived by a majority in amount of the holders of said bonds then oustanding in the manner provided in said Mortgage. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustee.

In Witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its assistant secretary this second day of April 1883.

(Seal) President

Attest Assistant Secretary.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of April 1933 thirty five Dollars in United States gold coin free of tax at the office of the Company in New York being six months interest in Second Mortgage bonds of said Company.

No..... Treasurer

(Trustee's Certificate)

The farmers Loan and Trust Company hereby certifies that the within bond is one of the second Mortgage Seven Per cent Gold Bonds of the Oregon and California Railroad Company secured by the within mentioned Mortgage dated May 26th 1883, and made by said Railroad Company to the said Trust Company as Trustee and that the total amount of said bonds certified does not exceed the rate of $10,000 for each mile of actually constructed railroad.

Trustee

Now this indenture Witnesseth That in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued and all such bonds as shall be hereafter issued on the security of these presents (but not exceeding in all ten thousand dollars for each mile of road actually constructed at the time of issue) and the interest thereon the Company doth hereby grant, bargain, sell, assign transfer and convey and the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan for the purpose of postponing the lien of said Deed of Trust of June second 1881 and of said preferred stock secured by the same to the lien of these presents and of the bonds to be secured hereby do hereby release and convey unto the said Farmers Loan and Trust Company its assigns and legal successors as Trustees of these presents all and singular the railroad lines of the Company now constructed and in operation between East Portland and the southern terminus of the East Side line (being at this date some fifty miles more or less south of Roseburg) and between Portland and Corvallis and between Albany and Lebanon in the State of Oregon including the railroads heretofore known as the Oregon Central Railroad the Western Oregon Railroad and the Albany and Lebanon Railroad being in all including sidings about three hundred and eighty miles in length running through the Counties of Multnomah Clackamas Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Ore-

gon together, with the ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company to be hereafter constructed that is to say "from a point at or near Forest Grove to Astoria in accordance with the act of Congress of May 4th 1870 hereinbefore recited and from Corvallis to Junction and from the said southern terminus to a Junction with the Central Pacific Railroad at or near the boundary line between California and Oregon in accordance with the Act of Congress of July 25th 1866 hereinbefore recited and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads or for grounds side tracks, depots warehouses tanks roundhouses stock yards, or any other railroad purposes, and together with all rails, spike ties, timber, iron switches frogs, depots, warehouses round houses machine shops bridges, trestlework and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices docks, and warehouses of the Company in Portland and East Portland or elsewhere and all locomotives, cars and other rolling stock, railroad and supplies fuel tools and machinery now used or which may hereafter be used in or provided for the maintenance or operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same and all income earnings, and

profits of said railroads lands and premises and all other present and future property of every description of the said Oregon and California Railroad Company. Saving and excepting and reserving however to the Company out of the conveyance and mortgage hereby made all lands granted by the United States in aid of the Construction of the said Railroads already completed between the termini aforesaid and not yet sold and all lands which may be hereafter granted to the Company by the United States.

To have and to hold the said railroads, lands rolling stock equipment, premises and property unto the use of said Farmers Loan and Trust Company its assigns and legal successors as trustee of these presents free from all prior liens and encumbrances whatsoever except the prior lien created by the said Deed of Mortgage and Trust to Henry Villard, Horace White and Charles Edward Bretherton securing the said First Mortgage Bonds hereinbefore referred to and subject thereto in trust nevertheless for the equal benefit and security pro rato of every holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers and subject to the provisions agreements covenants and stipulations contained in the following articles that is to say.

Article I The company hereby covenants with the Trustee that it shall and will proceed ith all reasonable dispatch to complete its said railroads to California. That cars can run through from Portland to San Francisco and will keep all the railroads from time to time constructed and rolling stock and other property of the Company in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or displayed and will pay all taxes assessed against said railroads and premises and will pay the principal moneys secured by all bonds to be issued on the security of these presents and all interest due thereon at the times and places and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further that if any coupon or any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the Company shall and will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. Until default in any payment required by the previous articles the Company shall freely possess the said railroads and premises and the income earnings and profits thereof and may contract to sell and

dispose of all lands comprised in this mortgage which shall not be required for the maintenance and operation of its railroads; and upon the request of the Company the Trustee shall release all such lands so sold by apt and, proper writings.

Article 4. In case the Company shall fail to keep the said railroads rolling stock, equipments and premises herein comprised or at any time hereafter subject to the lien of these presents in good order and repair or in case default shall be made in payment of any coupon on any of said bonds or any part thereof, and such default shall continue for six calendar months or in payment of any taxes assessed against said railroads rolling stock equipment, premises and property hereby mortgage it shall be lawful for the Trustees to take possession personally or by its agent or agents of said railroads, rolling stock and equipment and other premises hereby conveyed or which may be there subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income earnings and tolls thereof and the proceeds of lands contracted to be sold and the Company covenants and agrees that it will on demands surrender such possession and permit the Trustees to use and possess said railroads rolling stock and premises without interruption or disturbance and will permit and suffer the Trustee to collect any get in all freight moneys ticket balances or other earnings either there due or thereafter becoming due and in case it may be necessary or may be deemed advisable

by the trustee to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article it shall be entitled to the appointment of a Receiver or Receivers to be nominated by it or to be itself nominated and appointed Receiver as it may think most expedient.

Article 5. The Trustee when in possession of said railroads and premises shall have the right as irrevocable attorney of the Company to bring or defend in the name of the Company any actions for the collection of income freight moneys tickets, balance or other earnings or for obtaining or defending the possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads or in any manner effecting the maintenance thereof.

Article 6. The Trustee is hereby authorized in its discretion to accept possession of said railroads with the rolling stock and appurtenances herein comprised although no such default as aforesaid shall have been made if the Company shall offer to give up possessionto it. and thereupon tomanage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 7, It shall be the duty of the Trustee to take possession of said railroads and premises after any such default as aforesaid upon written requisition made to it fur such purpose by the holders of not le than one quarter in amount o-f said bonds then outstanding.

Article 8. The Trustee shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads rolling stock and premises to hire and employ such managers, officers clerks agents, attorneys and assistants as it shall deed necessary or useful and to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to its hands and in case the Trustee shall have no funds in his hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether the Trustee shall be in possession of the same or not) the amounts so paid together with interest thereonat the rate of ten (10) per centum per annum shall be a first charge on the trust premises (subject however to the said Deedo-f Mor-tgage and Trust of the first day of June 1881 and the first Mortgage Bonds thereby secured) and the earnings income and proceeds thereof and in case the Company shall fail on demand to repay the Trustee any amount paid by it as aforesaid with interest at the rate aforesaid it may enter upon and take possession of said railroads and premises in the same manner as if the Company had made default in payment of interest on the bonds hereby secured and retain possession and received the income earnings and proceeds thereof and until it shall have recouped itself

the amount so paid. with interest as aforesaid.

Article 9. After any such default as aforesaid in payment of interest or a-ny part thereof and such default shall have continued for one year and shall not have been waived as hereinbefore provided or in case the principal of any of said bonds shall not be paid on the first day of April 1933 it shall be the duty of the Trustee to forthwith proceed to enforce this security and to sell (subject to any prior lien) If any there shall be under said Mortgage of June first 1881 made to secure said First Mortgage Bonds said railroads rolling stock equipment and appurtenances and other the premises comprised herein or there subject to the lien of these presents. in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such termsn and in such manner as the Trustee may in its discretion think best for the parties in interest.

Article 10. Such salesor sale may be made either without suit by the Trusteeor duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be there published then in some other daily paper of general circulation published in New York and Selected by the Trustee) and in case said sale shall be adjourned the like four weeks notice

shall be given of said adjourned sale or at the option of the Trustees such sale may be made judicially by action or suit brought by the Trustee for the foreclosure of this mortgage and enforcement of the liens hereby created or administration of the tursts of these presents as the Trustee may deem most expedient.

Article 11, The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided when in possession of the Trustee shall be applied in the following order. In the first place in payment of the costs and exprenses of the execution of the trusts of these presents and the management and operation of said railroads and the protection and preservation of the trusts premises including a reasonable compensation to the Trustee(in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys and secondly in payment of all coupons then overdue in the order in which they shall have become due those of earlier date having priority over those of later date and thirdly as payment of the principal of any of said bonds and the remainder if any there be shall be paid to the Company to be divided between the preferred and common stockholders of the Company according to their respective rights.

Article 12. On any sale by virtue of these presents, the receipt of the Trustee shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conyeyance or assignment made by the Trustee

shall vest in said purchaser all the title and interest of the Company as fully and effectually as if the Company were party thereto.

Article 13. The Company hereby covenants and agrees with the Trustee on behalf and for the benefit of the holders of the bonds intended to be secured by these presents. That it will from time to time and at all times hereafter upon reasonable request made, execute, acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring into the Trustee and its legal successors from time to time as Trustee of these presents upon the trusts and for the purposes herein expressed the said railroads, rolling stock equipment and premises herein comprised free from all prior liens and encumbrances excepting the prior lien of the First Mortgage hereinbefore specified and all other present and future property of the Company of every kind and description as by the Trustee or its counsel learned in the law shall be reasonably devised advised or required.

Article 14. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the tru-sts of these presents this indenture shall become void and all the estate and interest of the trustee in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

Article 15. All rights or powers by these presents,

give to or covenants stipulations or agreements made with the said Farmers Loan and Trust Company shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents in the same manner as if the said Trustee or Trustees has been named herein and the word "Trustee" shall be held to mean the said Farmers Loan and Trust Company while continuing to the trustee hereof and the Trustee or Trustees for the time being of these presents.

Article 16. The Trustee shall bin in no manner responsible for any act default or misconduct of any agent bank banker broker or other persons employed by it unles- it shall be chargeable with culpable negligence in their selection or in the continuance of their employment nor otherwise except for its own wilfy default misconduct or gross nigligence. But except as herein specially authorized the Trustee shall have no power to delegate its power or authority to any other person whatsoever.

Article 17. The Trustee shall be paid by the Company or in default of the trust moneys the sum of one dollar per bond for its entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as it may be called upon to render in taking possession of and managing the premises or selling the same or bringing suit for the foreclosure of these presents enforcement of the liens or trusts hereby created or the collection of the moneys secured or to be secured by these presents.

Article 18. In case of the resignation of the Trustee or of the incapacity failure or refusal of the Trustee to perform any of its duties or obligations under this trust then the Company shall apply to a Judge in the Circuit Court of the United States for the District of Oregon to remove the Trustee so incapacitated failing or refusing to act and to appoint a new Trustee or Trustees. and any such judge may appointe a new Trustee of Trustees by instrument under his hand and seal without suit or other legal proceedings therefor in the plave of the Trustess so resigning incapacitated failing or refusing to act but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a trustee of these Presents? And it is hereby declared to be the duty of the Trustee to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such courts shall have jurisdiction of such action or suit and not in the Courts of the State?

Article 19. A Majority in amount of the Holders of the outstanding bonds at any time secured by these presents shall have full power at any time without suit to remove the then existing Trustee in its or their place as one of the Trustees or as sale Trustee and any such act of the Majority in amount of the bondholders shall deemed to be sufficiently made executed evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the indentifying numbers and the amount of the bonds held

by each signer and the respective signature to which and the fact of the production to a notary at the time of the signature of the bonds specified shall be acknowledged before and certified by such notary public and his certificates shall be attach-ed and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary so purporting to act in the United State. the British Dominoms Holland France or the German Empire.

Article 20. Any appointment of new Trustees or a new Trustee made by the majority of the bondholders or a judge as herein before provided shall be effectual to vest in the New Trustees or new Trustee all estates right, trusts powers and duties as fully as if they or he or it were trustees or a trustee party to these presents without any new deed or conveyance but nevertheless the Company hereby covenants in any and every such case to make upon request of the New Trustees or Trustee all such deeds conveyances and assurances as may be appropriated for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estate rights, powers trustes and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his or its successors.

Article 21. A Majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed and proved as provided in article 19 at any time before the

actual sale of the premises waive any default in payment of interest yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unles the company shall together with such instrument or instruments of waiver hand to the Trustee a sum of money sufficient to pay all interest then in arrear and the Trustee shall then proceed to pay said interest in the manner provided by these presents.

Artice 22. The company itselfs it successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisement of redemption laws or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provisions would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by the Trustees wuthout suit and on any such sale the Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 23. In case of any sale of said premises whether by the Trustee or by a court any purchaser shall be entitled to credit in part payment of the purchase money for any of the outstanding coupons or bonds secured by these presents and owned by him upon surrendering such coupons or bonds and such coupons or bonds shall be reckoned as equivalent to the sum which

would be their proportion of the net proceeds of the sale after the deduction of all expenses. The Payment to be made in cash to cover such expenses shall be fixed prviously by the Trustee or the Court as the case may be and announced in the advertisement of sale.

Article 24. The trustee shall have power to release from the lien of these presents any land rolling stock or other property become useles- for the purpose of the railroads by alteration of route changes in machinery or equipment otherwise but only on condition that the property so sold forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 25. On any sale whether by the trustee or a court of the property hereby conveyed or any part thereof the Trustee shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidenced and proved in the same manner as provided in article 19 to fix a sum which it shall be the duty of the Trustee to bid for the property to be sold on behalf and for the benefit of such bondholders but only on condition that due providions is made such majority to the satisfaction of the Trustee or the court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholers not concurring in such request.

Article 26. On any such pruchase the Trustee shall

hold the Property so purchased upon trust for the equal benefit of the hondholders who had required the trustee to buy in the property on their behalf as the absolute property of said bondholders witout any right of redemption or resale in favor of the Company or any bondholder.

-Article 27. The Trustee shall deposit all trust funds which may from time to time come to its hands in its name in such respectable bank or banks trust company or companies in London New York, Frankfort San Francisco or Portland as it may from time to time decide upon.

Article 28. Of the said issue of second Mortgage Bonds an amount equal to $10,000 for each mile of the railroad of the Company now constructed may be issued immediately and whenever the Company shall have constructed any additional section of said railroad of five consecutive miles the company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole including the bonds to be now issued the rate of $10,000 for each mile of constructed road and upon inspection of the certificate of the Supervising Engineer of the Trustee or Trustees for the time being under the said Deed of Mortgage and Trust dated June first 1881 made as provided in article 42 thereof the Trustee under these presents shall certify and deliver to the Company the said bonds of the issue hereby secured at the rate aforesaid.

Article 29. All bonds to be hereafter issued as aforesaid shall be in the same form and of the same date and payable in the same manner as the bonds to be now issued except that the Trustees Certificates thereon shall bear the date when actually certified by the Trustee and said bonds shall have all coupons of earlier date cut off so as to bear interest only from the date when certified and they shall all be consecutively numbered from the last number issud onwards and all such bonds when certified by the Trustee shall be in all respects equally secured by these presents with the bonds to be now issued.

Article 30. And whereas by reason of distance lapse of time or other accident the date and actual execution of these presents by the vaious parties hereto has been delayed and such execution may be previous or subsequent to the day of which it bears date now it is hereby expressly declared that these presents shall take effect as from the 2nd day of Apri 1883 and shall be valid and effectual as if dated and executed on that day and that these presents are the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

In witness whereof the Oregon and California Railroad Company and the Farmers Loan and Trust Com-

pany pursuant to resolution of their respective Board of Directors duly authorizing the same have caused these presents and nineteen duplicates hereof to be sealed with their respective corporate seals, signed by their respective presidents and attested by their respective secretaries or assistant secretaries and the said parties of the third part respectively have hereunto and unto the said nineteen duplicates hereof set their hands and seals the day and year above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By H Villard President

(Corporate Seal)
Attest H H Tyndale Assistant Secretary.

THE FARMERS LOAN AND TRUST COMPANY

By R G Rolston President.

(Corp. Seal) Attest Wm H Leupp Secretary.

R D Pebbles)as trustee under the said Deed of
G H Hopkinson)Trust of June second 1881
P Buchan)

Signed, sealed and delivered by said Oregon and California Railroad Company in Presence of:

Geo H Saxer

C A Stafford

Signed, sealed and delivered by said Farmers Loan and Trust Company in presence of
C R Leake
George W Romain.

Signed, sealed and delivered by George Henry Hopkinson and Patrick Buchan
In the presence of
Edward Jno Pringuer.
17 Gresham House E C

F W Myers
U S Consulate General
London

Signed, sealed and delivered by Robert Davie Peeble in the presence of
Geo A Saxer
Edwd. H Argent.

State of New York)
) ss.
City and County of New York)

Be it remembered That on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon and for the State of New York residing in said City of New York personally appeared Henry Villard the President of the Oregon and California Railroad Company and Hector H Tyndale the Assistant Secretary of the Same Company to me respectively personally known to be such who being

by me severally duly sworn did depose and say that he said Henry Villard resides in the City and State of New York that he said Hector H Tyndale also resides in said City of New York that he said Henry Villard is the President and he said Hector H. Tyndale is the Assistant Secretary of said Company; that they known the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate sealc that it was so affixed thereto by order of the Board of Directors of said Company; and that they the said Henry Villard and Hector H Tyndale signed, their names thereto by the like order as President and Assistan Secretary of said Company respectively and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

(Comms. Seal) LOUIS M FULTON

A Commissioner for Oregon in New York.

State of New York)
)ss.
City and County of New York)

Be it remembered that on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of

New York resising in said City of New York personally appeared Roswell G Rolston the President of the Farmers Loan and Trust Company and William H Leupp the Secretary of the same Company to me respectively personally known to be such who being by me severally duly sworn did depose and say that he said Roswell G Rolston resides in the city and State of New York that he, said William H Leupp also Resides in said City of New York, that he said Roswell G Rolston is the President and he said William H Leupp is the Secretary of said Company; that they know the corporate seal of said Company that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Roswell G Rolston and William H Leupp signed their names thereto by the like order as President and Secretary of said Company respectively and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

(Comm Seal) LOUIS M FULTON

A Commission for Oregon in New York.

Consulate General of the United States of America for Great Britain and Ireland. London.)

On this the sixth day of September 1883 before me Lebbons H Mitchell Vice and Deputy Consul General and ex-officio a Notary Public of the United State of America at London England personally appeared George Henry Hopkinson and Patrick Buchan to me known to be respectively the persons of those respective names described in and who have executed the foregoing deed of Mortgage and Trust and then and there respectively acknowledged the same to be their free and voluntary act and deed for the uses and purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal at Londin aforesaid the day and year above written.

(U S C G Seal) L H MITCHELL

Vice and Deputy Consul General U S A London.

State of New York)
)ss.
City and County of New York)

Be it remembered that on this twenty fifth day of October 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of New York residing in said City of New York personally appeared Robert Davie Peebles to me known to be the person of that named descriped in and who executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal in the date above written.

LOUIS M FULTON

(Com Seal) Commissioner for Oregon in New York.
Rec. for Record Nov 5th at 3 P M

No. 9554

Form M 44.

STATE OF OREGON,)
) ss.
County of Multnomah)

I. JOHN B. COFFEE, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Mortgage, The Oregon and California Railroad Company to The Framers Loan and Trust Company, recorded in Book 41 page 33 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Mortgage as the same appears of record in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1913.

(Seal) JOHN B. COFFEY, County Clerk.
Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 399

is a certified copy of a trust deed executed by the Oregon and California Railroad Company to Milton S. Latham, Faxon D. Atherton and William Norris, April 15, 1870, recorded on page 727 of Deed Book "K" of the Records of Deeds of Multnomah County, Oregon, on April 18, 1870 and about the same time thereafter recorded in the Records of Deeds of all other counties in Oregon in which any part of said granted lands were situated, which exhibit is as follows:

THIS INDENTURE, Made and entered into at the City of Portland, Multnomah County, and State of Oregon, this fifteenth day of April, in the year of our Lord One Thousand Eight Hundred and Seventy, between the Oregon and California Railroad Company, a body corporate, organized at Portland, in the State of Oregon, on the Seventeenth day of March, in the year of our Lord One Thousand Eight Hundred and Seventy under an act of the Legislature of the State of Oregon approved October Fourteenth, A. D. One Thousand Eight Hundred and Sixty-two, entitled "An Act providing for private incorporations and the appropriation of private property therefor," and Acts amendatory thereof and supplemental thereto, party of the first part and Milton S. Latham, Faxon D. Atherton, and William Norris, all of city and county of San Francisco, State of California, parties of the second part, WITNESSETH:

WHEREAS, The Congress of the United States

of America did, by an Act approved July Twenty-fifth in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Central Pacific Railroad in California, to Portland in Oregon," and by Acts supplemental thereto, and amendatory thereof, grant certain lands to, and confer certain benefits upon such Oregon Company, as should be designated by the Legislature of the State of Oregon;

And WHEREAS, in pursuance of such Act of Congress, the Legislature of the State of Oregon, did on the twentieth day of October in the year of our Lord, One Thousand Eight Hundred and Sixty-eight, by joint resolution thereof, duly designated the Oregon Central Railroad Company, a corporation, incorporated at Salem in the State of Oregon, April twenty-second in the year of our Lord, One Thousand Eight Hundred and Sixty-seven, as the Company to take and manage the lands and franchises so granted to such Oregon Company by the Acts of Congress aforesaid, which Oregon Central Railroad Company did afterwards, and within the time required by such Acts of Congress duly file its assent to the said Acts and all the provisions thereof as required by the same in the office of the Secretary of the Interior of the United States at Washington City, and did locate the line of its railroad and prepare and file its map in strict accordance with all the provisions of such Acts and did further, prior to De-

cember twenty-fifth, in the year of our Lord One Thousand Eight Hundred and Sixty-nine, complete over twenty miles of its railroad and telegraph line and did fully equip the same in all respects as required by such Acts of Congress, and the said twenty miles of railroad and telegraph line were accepted by the government of the United States as in such Acts provided and the lands to which such company became entitled by virtue of a full and complete compliance with all the provisions of such Acts, and by the completion and equipment of such twenty miles of railroad were by the Secretary of the Interior withdrawn from market and ordered segregated from the public domain for the use and benefit of such Oregon Railroad Company, as in and by such Acts of Congress provided; And

WHEREAS, The said Oregon Central Railroad Company did on the twentyninth day of March, A. D. one Thousand Eight Hundred and Seventy, by a deed of conveyance duly and legally made, executed, acknowledged and delivered, bargain, sell, assign, set-over; en*foeff*, convey and confirm unto the Oregon and California Railroad Company, party of the first part herein, all its right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent of, in and to the land, franchises and benefits whatsoever, granted or intended to be granted by said Acts of Congress upon such Oregon Company, and all right, title, interest, claim, property and demand whatsoever of the said Oregon Central

Railroad Company in such lands and franchise, and WHEREAS, The said Oregon and California Railroad Company did by a resolution of its Board of Directors at a meeting of such Board, duly called and legally held at the office of such Company in the City of Portland on the thirteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, authorize the issue by such Company, in its name and under its corporate seal of Eighteen Thousand Four Hundred and Fifty Bonds, numbered respectively from number One to number Eighteen Thousand Four Hundred and Fifty. That is to say, Seven Thousand Four Hundred and Fifty Bonds of the denomination of One Thousand Dollars each, and numbered respectively from number One to number Seven Thousand Four Hundred and Fifty, both inclusive; Six Thousand Bonds of the denomination of Five Hundred Dollars each, and numbered respectively from number Seven Thousand Four Hundred and Fifty-one to number Thirteen Thousand Four Hundred and Fifty both inclusive, and Five Thousand Bonds of denomination of One Hundred Dollars each, and numbered respectively from number Thirteen Thousand Four Hundred and Fifty-one to number Eighteen Thousand Four Hundred and Fifty, both inclusive; such Bonds amounting in sum total to Ten Million Nine Hundred and Fifty Thousand Dollars. That all such Bonds should bear date April Fifteenth, A. D. One Thousand Eight Hundred and Seventy, and should be payable in the City of New York on the first day of April, in the year

of our Lord, One Thousand Eight Hundred and Ninety, in the gold coin of the United States, and should bear interest at the rate of seven per centum per annum, payable semi-annually in like gold coin of the United States at the Banking House of Messrs. Dabney Morgan Company, in the City of New York, which should be represented by half yearly interest coupons attached to each Bond, and should be payable on the first days of April and October of each year, and

WHEREAS, such Board of Directors did at their meeting aforesaid, by resolution duly passed, direct that all such Bonds should be delivered to Milton S. Latham and Faxton D. Atherton, two of the parties of the second part herein as trustees for the owners and holders thereof, and of such persons as should at any time hereafter become the owners and holders thereof, and did further resolve, that a mortgage should be duly executed by the party of the first part hereto, under its corporate seal and in its name and delivered to said Milton S. Latham and Faxon D. Atherton, two of the parties of the second part hereto, as a security for the payment of all such Bonds, both principal and interest, which Mortgage should cover and include the railroad and all other corporate property, real personal and mixed, of the parties of the first part hereto, save and except the lands, franchises and benefits granted or intended to be granted by the Acts of Congress aforesaid to the Oregon Company, and which were then owned by the party of the first part hereto, or in which

franchises and benefits were to be especially excepted such Company had any interest, and all which lands from such mortgage, and

WHEREAS, The Board of Directors of the party of the first part hereto, did, at their meeting aforesaid further resolve, in substance and legal effect that in order to further provide for the security and payment of the principal of the Eighteen Thousand Four Hundred and Fifty Bonds aforesaid, so directed to be issued by the party of the first part, and for the purpose of creating a sinking fund for the redemption of the principal of such bond at their maturity, the party of the first part hereto, should by its president and secretary, and in its name and under its corporate seal, duly make, execute, acknowledge and deliver to Milton S. Latham, Faxon D. Atherton and *William* Norris, parties of the second part thereto, a deed of conveyance of all the lands and franchises granted or intended to be granted to the Oregon Company by the said Act of Congress, approved July Twenty-fifth, in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof; which conveyance should be in trust for the benefit of the Bondholders of the party of the first part hereto, as aforesaid; and for the purpose of creating from the proceeds thereof a sinking fund for the redemption of said Eight-

een Thousand Four Hundred and Fifty Bonds as aforesaid; that such lands and franchises should not be sold or disposed of by such trustees without the consent of the party of the first part hereto, nor except in the manner and upon such terms as the party of the first part might direct, and that all the proceeds thereof should be invested by such trustees, party of the second part hereto, in United States Securities, or such other securities as the party of the first part hereto might consent to, and that such deed of trust should contain all the provisions, conditions and covenants hereafter contained, and all stipulations, agrements, covenants and conditions which the president and secretary of the party of the first part hereto might deem material, necessary or proper, for the mutual protection of the interest of the party of the first part hereto, and its Bondholders, and

WHEREAS, the said mortgage so directed to be issued, has been duly executed and acknowledged, and prepared for record in strict accordance with all the requirements of the resolutions of the Board of Directors of the party of the first part hereto, as aforesaid:

THEREFORE, THIS INDENTURE WITNESSETH:—In consideration of the premises aforesaid, that the Oregon and California Railroad Company, party of the first part hereto, and the further consideration of One Dollar, the receipt whereof is acknowledged, hath granted, bargained, sold, assigned, aliened, set-

over, enfoeffed, conveyed and confirmed and by these presents it does grant, bargain, sell, assign, alien. set-over, enfeoff, convey and confirm unto said Milton S. Latham, Faxon D. Atherton, and *William* Norris, parties of the second part hereto, all the lands and franchises, with their appurtenances lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress approved July Twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof. And also, all the right, title, interest, claim, property and demand whatsoever both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has or owns, or to which it is in anywise entitled, in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid, and also all future right, title, interest, claim. property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the party of the first part hereto. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands, property and franchises, and every part and parcel thereof unto said Milton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part thereto, and to their successors or successor and assigns forever. In trust, nevertheless, for the following uses and purposes, and upon the following conditions and covenants, and, for the mutual interests of the party of the first part hereto, and the holders of said Eighteen Thousand Four Hundred and Fifty Bonds so directed to be issued by the party of the first part hereto, as aforesaid, and two thousand of which Bonds of denomination of One Thousand Dollars each have already been issued, and other large amounts thereof are now about to be issued, That is to say: The said parties of the second part hereto, shall have and hold the whole of the lands and franchises so granted, or intended to be granted by said Acts of Congress to said Oregon Company, and herein conveyed, and intended to be conveyed by the party of the first part hereto in trust, for the benefit of the holders of said Eighteen Thousand Four Hundred and Fifty Bonds, and for the sole and exclusive purpose of creating from the proceeds thereof, when sold as hereinafter stated, a sinking fund for the redemption of such Bonds at their maturity; and for such purpose, the said parties of the second part hereto or their successors or successor may, by and with the consent of the party of the first part hereto, but not otherwise, at any time before the maturing of the principal of such Bonds, sell and dis-

pose of all or any part or portion of the lands and franchises so granted as aforesaid, by such Acts of Congress, and herein conveyed to such person or persons, firm or firms, associations or bodies corporate, and for such price and upon such terms as the party of the first part herein may, by and through its President advise or agree to; and the proceeds of all such lands and franchises or right to such lands shall, after deducting from such gross receipts all charges, costs and expenses, legitimately or necessarily incurred in making such disposition and sale, shall from time to time as realized, be received by such trustees, parties of the second part hereto, and shall be by them, their successors or successor, from time to time, as the same are received, invested in the United States securities, unless the President of the party of the first part hereto shall direct that such proceeds shall be invested in other securities, in wihch event the same shall be invested in such securities, as such President of the party of the first part hereto may designate, which securities, whether the same be United States, or other securities shall create a sinking fund and as such fund, shall be held, managed and controlled by and with the advice and under the direction of the President of the party of the first part hereto by said trustees, parties of the second part hereto, for the reduction and payment of the principal of the said Eighteen Thousand Four Hundred and Fifty Bonds of the party of the first part hereto at the maturity thereof, but no part of such fund, either principal or interest, shall ever at any time without the written consent of

the party of the first part hereto be used or applied in the payment of any interest on such Bonds, or in any other way or manner diverted, but the same shall be held and husbanded by such Trustees in accordance with the directions of the President of the party of the first part hereto, and in such manner as shall be most likely to increase the volume of such fund and advance the mutual interests of the party of the first part hereto and its Bondholders aforesaid: And in the event that the principal of such Bonds is not otherwise paid at the maturity thereof, than the fund aforesaid, which shall have been accrued from the proceeds of the sales of said lands and interest thereon, shall be, by such Trustees, parties of the second part their successors or successor, applied to the discharge and payment of any and all amounts, both principal and interest then remaining due and unpaid on all such Bonds and in the event that such fund shall then be insufficient to discharge the whole amount then due on all such Bonds, then the same shall be applied thereon rateably according to the interest respectively of all such Bondholders, And, it is further stipulated and agreed between the parties hereto, that in the event that there remains any deficiency in the payment of the principal and interest due on said Eighteen Thousand Four Hundred and Fifty Bonds after the whole of such fund aforesaid shall be applied thereon at the maturity thereof, then the trustees, parties of the second part hereto, their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undisposed of, which are

included in the grant made by the Acts of Congress aforesaid and which are hereby conveyed and intended to be conveyed, which lands may be sold in whole or in part, as the trustees aforesaid may deem for the best interest of said Bond holders, but the same shall only be sold at Public Auction in the City of Portland, in the State of Oregon, to the highest bidder, and no such sale shall be made unless notice of the time and place thereof shall first be given b*u* publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland, in the State of Oregon, and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance, either principal or interest then remaining unpaid of such Bonds aforesaid, or any of them. And upon the full payment and redemption of said Eighteen Thousand Four Hundred and Fifty Bonds, principal and interest, whether before or after maturity the trustees aforesaid, parties of the second part hereto, their successors or successor shall re-convey by good and sufficient Deed of C-onveyance to the said Oregon and California Railroad Company, party of the first part hereto, its successors or successor or assigns, all its right, title, interest, property and claim whatsoever which the said trustees, party of the second part hereto, their successors or successor may then have of, in or to any of the lands or franchises hereby granted and conveyed to the said parties of the second part hereto, and shall also assign, set over, transfer and deliver to the said party of the first part hereto, its successors or assigns, any and all moneys,

bonds, notes, or other securities then remaining in such sinking fund and held by such Trustees for the use and purposes aforesaid, all of which re-conveyances and transfers shall be made without any other or further consideration than the redemption of all such Bonds as aforesaid, by the party of the first part hereto, its successors or assigns. And it is mutually agreed by and between the parties hereto that the said Trustees, or either, or any of them, or the survivor of them, or any successor, or successors in such office may resign or discharge themselves, or himself of the Trust created, or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect, or such shorter time as they may accept as adequate. And it is further hereby agreed between the parties to this Indenture, that in the mean time, until the said lands hereby granted and conveyed are sold by such Trustees as hereinbefore provided for, it shall be lawful for the party of the first part hereto, and its successors, peaceably and quietly to have, hold, use, possess and enjoy the said lands with the appurtenances, and to receive the incomes, rents, issues and profits thereof, to its own use and benefit, without any hindrance or interruption, suit or disturbance whatsoever of, or by, the said parties of the second part or their or his successor, or successors, in the Trust, or in any other person whatever claiming, or to claim, the same by, from, or under them, or any of them; and the said party of the first part, its successors and all and every other person or persons whomsoever lawfully or equitably claiming any

estate, right, title or interest of, in and to the hereinbefore granted premises, by, from or under, or in trust, for it shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said parties of the second part, or the survivor of them, or their or his successor or successors or assigns make, do and execute, or cause to be made, done and executed, all and every such further and lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said parties of the second part, as by the said parties of the second part, or the survivor of them, their or his successor or successors, or the Counsel learned in the law, shall be reasonably devised, advised or required, And Also, that the said party of the first part and its successors, the above granted, bargained, sold and assigned premises, and every part and parcel thereof with the appurtenances thereof unto the said parties of the second part or the survivor of them, their or his successor or successors, against the said party of the first part and its successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under it shall and will Warrant, and by these presents forever Defend.

IN WITNESS WHEREOF, the said party of the first has caused its Corporate Seal to be affixed to these presents and the same to be signed by its Presi-

dent and Secretary by resolution of the Board of Directors thereof, at the City of Portland, Multnomah County State of Oregon, this fifteenth day of April, in the year of Lord, One Thousand Eight Hundred and Seventy.

Ben Holladay,

President of the Oregon and California Railroad Company

(SEAL) A. G. Cunningham,

Secretary of the Oregon and California Railroad Company

In Presence of
J. H. Mitchell,
Geo. E. Cole.

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, that on this Eighteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, before me, the undersigned, a Notary Public in and for said County of Multnomah and State of Oregon, duly commissioned, sworn and fully qualified, personally appeared the above named Ben Holladay, President of the Oregon and California Railroad Company, (and A. G. Cunningham, Secretary of the Oregon and California Railroad Company), whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who

executed the said instrument, and the severally acknowledged to me that he, the said Ben Holladay, as President of the said Oregon and California Railroad Company, and he, the said A. G. Cunningham, as Secretary of the said Oregon and California Railroad Company, executed the same as and for the Act and Deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned, and the said A. G. Cunningham being by me duly sworn did depose and say, that he is the Secretary of the Oregon and California Railroad Company and resides at the City of Portland, Multnomah County, in the State of Oregon; that he is the legal custodian of and is acquainted with the Corporate Seal of said Company; that the seal affixed to the within Trust Deed is such corporate seal, that the same was affixed by him as Secreary of said Company, on the Eighteenth day of April, A. D. One Thousand Eight Hundred and Seventy, by order of the Board of Directors of said Company and that he signed his name as Secretary to said Trust Deed by the like order of said Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above writetn.

(NOTARIAL SEAL) Geo. W. Murray,
Notary Public.

(U. S. Rev. Stamps, 5 cents, Cancelled.)

STATE OF OREGON,)
)ss.
County of Multnomah.)

I, A. G. Cunningham, Secretary of the Oregon and California Railroad Company do hereby certify that each of the Eighteen Thousand Four Hundred and Fifty Bonds, which this Trust Deed is given to secure, has placed upon it the requisite U. S. Internal Revenue Stamps as required by law; that such Bonds in the aggregate have placed thereon and all duly cancelled, U. S. Internal Revenue Stamps to the amount of Fourteen Thousand Seven Hundred and Ninety-five Dollars.

A. G. Cunningham,
Secretary of the Oregon and California Railroad Company.

(SEAL, O.& C.R.R.Co.)
(United State Revenue Stamps, 5 cents Cancelled.)

STATE OF OREGON,)
)
Department of State.)

I, Samuel E. May, Secretary of the State of Oregon, do hereby certify that Geo. W. Murray, whose name is subscribed to the foregoing and annexed certificate of acknowledgement to the foregoing deed of trust, was, at the time of signing the same, to-wit: on the Eighteenth day of April, A. D. One Thousand Eight Hundred and Seventy a duly commissioned, qualified and acting Notary Public in and for Multnomah County,

in said State of Oregon, and that he was then by the laws of the State of Oregon, duly authorized and empowered to take and certify, under his Notarial Seal, acknowledgements to Deeds of Conveyance and Mortgages, and that his Certificate thereto is in due form of law and that full faith and credit are due to his official acts as such.

WITNESS MY HAND and the Great Seal of the State, at office in the City of Salem, State of Oregon, this nineteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy.

(GREAT SEAL STATE OF OREGON) Sam'l. E. May, Secretary of State.

(United States Revenue Stamps, 5 cents, Cancelled)

Form M 44.

Received for record April 18, 1870.

STATE OF OREGON,)
) ss. No. 9564
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to Milton S. Latham, et al, recorded in Book "K" page 727 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 400

is a certified copy of an instrument of date March 28, 1871, between Milton S. Latham, Faxon D. Atherton and William Norris, trustees, parties of the first part, and The European and Oregon Land Company, party of the second part, and the Oregon and California Railroad Company, party of the third part, recorded at page 223, Book "N", of the Records of Deeds of Multnomah county, Oregon, and thereafter, about the same time, recorded in the Records of Deeds of the various counties of the State within which any portion of the granted lands were situated, which exhibit is as follows:

Book N, Page 223.

O. & C. R. R. Co., TO

EUROPEAN AND OREGON LAND CO.

THIS INDENTURE made and entered into at the City and County of San Francisco, State of California, this twenty-eighth day of March in the year of our Lord One Thousand Eight Hundred and Seventy-one between Milton S. Latham, Faxon D. Atherton

and *William* Norris, trustees, all of the City and County of San Francisco, parties of the first part, The European and Oregon Land Company, an incorporation, duly incorporated and organized under and pursuant to an act of the Legislature of the State of California approved the fourteenth day of April, One Thousand Eight Hundred and Fifty-three, entitled "An Act to provide for the formation of Corporations for certain purposes" and the acts supplementary thereto and amendatory thereof, party of the second part and the Oregon and California Rail Road Company a body corporate, organized at Portland in the State of Oregon, on the Seventeenth day of March, One Thousand Eight Hundred and Seventy, under an act of the legislature of the State of Oregon approved the fourteenth day of October One Thousand Eight Hundred and Sixty-two, entitled "An act providing for private corporations and the appropriation of private property therefor," and acts amendatory thereof and supplemental thereto, party of the third part Witnesseth:

WHEREAS, the said Oregon and California Railroad Company did on the fifteenth day of April in the year of Our Lord, One Thousand Eight Hundred and Seventy, duly make execute and deliver unto the said Milton S. Latham, Faxon D. Atherton and *William* Norris, its certain Indenture in writing under seal, bearing date on the last named day whereby the said Oregon and California Railroad Company as party of the first part therein, in consideration of certain premises in

said Indenture declared and expressed and in further consideration of One Dollar, the receipt whereof was therein acknowledged did duly grant, bargain, sell, assign, alien, set over, enfoeff, convey and confirm unto the said Wilton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part therein, all and singular the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the Oregon Company by act of Congress approved the twenty-fifth day of July, in the year One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right, title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the said Oregon and California Railroad Company then had or owned or to which it was in anywise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the acts of Congress aforesaid, and also all further right, title, interest, claim, property and demand which the said Oregon and California Railroad Company might at any time thereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the said Oregon and

California Railroad Company. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands property and franchises and every part and parcel thereof unto the said Milton S. Latham, Faxon D. Atherton and *William* Norris and to their successors or successor and assigns forever: In trust, nevertheless for certain uses and purposes and upon certain conditions and covenants in said Indenture contained as by said Indenture or the record thereof in the Recorder of Deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said Records, reference thereto being had may more fully and at large appear. And Whereas among other conditions covenants and agreements in said Indenture contained and set forth, the said Milton S. Latham, Faxon D. Atherton and *William* Norris or their successors or successor and assigns by and with the consent of said Oregon and California Railroad Company, but not otherwise, were and are duly authorized, empowered and directed at any time before the maturing of the principal of certain bonds of the said Oregon and California Railroad Company in said Indenture mentioned and described to sell and dispose of all or any part or portion of the lands and franchises so granted as aforesaid, by such acts of Congress and in and by said Indenture conveyed to said trustees to such person or persons, firm or firms association or bodies corporate and for such price and upon such terms as the said Oregon and

California Railroad Company might by and through its President advise direct, instruct or agree to.

NOW THEREFORE, This Indenture Witnesseth: That the said Milton S. Latham Faxon D. Atherton and William Norris, Trustees, as aforesaid under and pursuant to the power and authority in them vested in and by the said Indenture first herein above referred to and in consideration of the premises and of the certain covenants and agreements hereinafter contained and set forth and to be performed and kept by the said European and Oregon Land Company and in consideration of the sum of one Dollar lawful money of the United States to them in hand paid by the said European and Oregon Land Company, the receipt whereof is hereby acknowledged and also in pursuance of the advice, direction, instruction and agreement in writing to that effect of the said Oregon and California Railroad Company, party of the third part by and through its president have granted, bargained, sold, assigned, aliened, set over, enfeoffed, conveyed and confirmed and by these presents do grant, bargain, sell, assign, alien, set over enfeoff convey and confirm unto the said European and Oregon Land Company party of the second part hereto; All the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the said Oregon Company by Act of Congress approved the twenty-fifth day of July One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Cen-

tral Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the parties of the first part hereto now have or hold or to which they may be in anywise entitled in and to any and all lands and franchises in the State of Oregon granted or intended to be granted to the said Oregon Company by the Acts of Congress aforesaid and also all future right, title, interest, claim, property and demand which the parties of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof by virtue of any further compliance with the requirements of such Acts of Congress by the party of the third part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise belonging and being the same land, tenements, franchises, hereditaments and appurtenances granted, conveyed and assured unto the parties of the first part hereto by the Oregon and California Railroad Company by Indenture bearing date the fifteenth day of April One Thousand Eight Hundred and Seventy, as by said Indenture or the record thereof in the records and deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said records, reference being thereunto had, may more fully and at large appear.

TO HAVE AND TO HOLD the said granted

lands, property and franchises and every part and parcel thereof unto the said European and Oregon Land Company party of the second part hereto and to its successors and assigns forever, subject, nevertheless, to the certain provisions and conditions in reference to delivery of possession of said lands and delivery of the surveys, plats and patents and other muniments of title to or effecting said lands to be hereafter issued by the United States to the said Oregon and California Railroad Company pursuant to law which are hereinafter mentioned and expressed And said parties of the first part and all and every person or persons whomsoever lawfully or equitably claiming any estate, right, title or interest of in and to the hereinbefore granted premises by, from or under them and each of them shall and will at any time or times hereafter upon the reasonable requests and at the proper costs and charges in the law of the said party of the second part or its successor or successors or assigns make, do and execute or cause to be made, done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said party of the second part as by the said party of the second part or its successor or successors or the counsel learned in the law shall be reasonably devised, advised or required. And also that the said parties of the first part the above granted, bargained, sold and assigned premises and every part and parcel thereof with the

appurtenances thereof unto the said party of the second part, or its successor or successors and assigns, against the said parties of the first part and their successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under them it shall and will warrant and by these presents forever defend. And in consideration of the premises, the said European and Oregon Land Company, party of the second part hereto have covenanted, promised, and agreed and doth hereby covenant, promise and agree to and with the said Milton S. Latham, Faxon D. Atherton and *William* Norris, trustees, as aforesaid, in manner following that is to say: The said party of the second part hereto shall and will on or before the first day of April in the year of Our Lord, One Thousand Eight Hundred and Eighty-nine, pay to said Milton S. Latham, Faxon D. Atherton and William Norris, trustees as aforesaid, the price or sum of one and one quarter dollars lawful money of the United States for each and every acre of said lands and premises hereby conveyed to the party of the second part be the same more or less.

It is further covenanted and agreed by the said parties of the first part that they will notify in writing the party of the second part at San Francisco from time to time as they receive the same that they are prepared to deliver to the party of the second part the plats or surveys of the lands and premises hereby sold or intended to be sold as the same may be hereafter segregated from the public domain and set apart to the Oregon

and California Railroad Company party of the third part hereto, pursuant to law and for the purposes mentioned in the said Act of Congress passed as aforesaid on the twenty-fifth day of July, One Thousand Eight Hundred and Sixty-six and the acts supplemental thereto and amendatory thereof and all such papers, documents and muniments of title hereafter to come to their possession relating to said lands and premises as may be necessary to enable the party of the second part to sell at the *the* same by good and sufficient description thereof. And it is also further stipulated, covenanted and agreed by and between the parties of the first and second parts hereto, that the said parties of the first part having notified in writing as aforesaid, the party of the second part at San Francisco, California, that they are prepared to deliver to the party of the second part any of the said surveys, plats, patents and other evidences and muniments of title relating to or designating said lands as the same may from time to time be issued by the United States to said Oregon and California Railroad Company under the acts of Congress already passed or which may hereafter be passed in aid therefor supplemental thereto, the said party of the second part at any time before the expiration of two years from the day of the receipt by said party of the second part of the said notice relating to said documentary evidence of location of and title to said lands, may and shall receive actual possession of said patents and of the lands therein described upon paying to the parties of the first part the said price of one and one quarter dollars per

acre of such lands, but without interest on the said price of the same for the said period of ten years. If, however, such lands shall for any cause be not all paid for within ten years from the time the said party of the second part shall be notified by the parties of the first part as aforesaid, that said surveys, plats, patents and other evidences and muniments of title are ready to be delivered by the said parties of the first part to the said party of the second part as aforesaid, then the parties of the first part shall charge and the party of the second part shall pay interest at the rate of six per cent per annum upon said purchase price of one and one quarter dollars per acre of said lands for the period after said ten years and up to and including said first day of April, One Thousand Eight Hundred and Eighty-nine, during which said lands shall not be paid for by the party of the second part as hereinbefore, provided it being the intent of this stipulation and covenant that the party of the second part shall have ten years within which to make payment for and take possession of or sell to others the lands hereby conveyed without paying interest on the said purchase price of said lands for any portion or the whole of that time, but that after said lands or any part thereof shall have been at the disposition of the party of the second part under the covenants of this Indenture for the term of two years it shall thereafter pay to the parties of the first part, interest at the rate of six per cent per annum on the purchase price of all the lands so at the disposition of the party of the second part which may not

for any reason have been paid for by said party of the second part within such period of two years. But the said surveys, plats, patents and all other evidences and muniments of title from the United States to said Oregon and California Railroad Company relating to said lands hereinbefore conveyed shall remain with, and the possession of the lands and premises therein described shall always remain in the said parties of the first part anything hereinafter contained to the contrary notwithstanding, until said party of the second part shall pay the parties of the first part for the same or such part thereof as it may from time to time desire to obtain possession of under this conveyance, the said price of one and one quarter dollars per acre of said lands and such rate of interest thereon as is hereinbefore provided for. It is further expressly covenanted and agreed by and between the parties hereto, each with the other, that in case the total amount of indebtedness of the party of the second part created under this Indenture shall at the time of the execution and delivery of these presents or at any further time exceed the amount of the capital stock of said party of the second part actually paid in, the parties of the first part in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged hereby covenant, promise and agree that they will and they do hereby remise release and discharge the trustee of the party of the second part under whose administration such excess may be or is hereby created, from all and every liability,

joint or several in this or either of their individual and private capacities to the parties of the first and their parts, for the amunt of such excess of said indebtedness over the amount of capital stock of the party of the second part actually paid in at the time of the execution and delivery of these presents and said parties of the first part for the consideration aroresaid, do hereby waive, surrender and abandon any and all claim, demand or right at law or in equity or existing or to exist by operation of the statute creating un*divied* and private liabilities of trustees of corporations organized under the laws of California, for debts or liabilities incurred in excess of the amount of capital stock actually paid in. And the said party of the third hath covenanted and agreed and doth hereby covenant and agree to and with the parties of the first part, and the party of the second part, that it has duly authorized, empowered, directed and required the said parties of the first part as trustees as aforesaid, to make, execute and deliver this Indenture to the said party of the second part in manner and form and upon the terms and conditions hereinbefore expressed; and the said party of the second part by and through its president, he being thereunto and for that purpose duly authorized and empowered this sale and conveyance and every part thereof hath fully and completely ratified, approved, confirmed and by these presents doth fully ratify, approve, and confirm the same.

IN WITNESS WHEREOF the said parties of

the first part have hereunto set their respective hands and seals: and the said party of the second part hath also caused these presents to be subscribed by its president and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees, the day and year first above written and the said party of the third part hath also caused the same to be subscribed by its President and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees the day and year first above written.

Milton S. Latham, (Seal)

Faxon D. Atherton, (Seal)

Wm. Norris. (Seal)

Signed, sealed and delivered

first being duly stamped.

Wm. H. S. Barnes,

F. J. Thibault.

THE EUROPEAN AND OREGON LAND COMPANY

(Seal of E and O Land Company) By Jos. S. Wilson. Pres't

(Rev Stamps 50c cancelled)

Attest: Francis Avery,
Secretary, E and O. L. Co.

THE OREGON AND CALIFORNIA
RAILROAD COMPANY

(SEAL OF O & C R. R. COMPANY) By Ben Holladay, President.

Attest: A. G. Cunningham,
Secretary, O and C. R. R. Co.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

I, F. J. Thibault, a commissioner for the State of Oregon, duly commissioned by the Executive authority and qualified under and by virtue of the laws thereof to take the acknowledgements and proof of the execution of deeds and other instruments in writing under seal to be used or recorded in the State of Oregon and to administer oaths affirmations & c, residing in the city and county of San Francisco and State of California do certify that on the twenty eighth day of March, A. D. 1871, before me personally appeared in the said city and county of San Francisco and State of California, Milton S. Latham, Faxon D. Atherton and *William* Norris whose names are subscribed to the foregoing instrument as parties thereto of the first part who are to me personally known to be the individuals described in and who executed the said instrument as parties of the first part therein and said Milton S. Latham, Faxon D. Atherton and William Norris, severally duly acknowledged to me that they executed the said annexed

instrument freely and voluntarily and for the uses and purposes therein mentioned and also that on the day and year aforesaid and at the place aforesaid, personally appeared Jos. S. Wilson, president of the European and Oregon Land Company and Francis Avery, the Secretary of the said Company, to me severally and personally known as the president and secretary of said Company and as the real persons by whom and in whose names as such president and Secretary the foregoing instrument was subscribed and executed and they severally acknowledged before me that they severally subscribed and executed the foregoing instrument for and in behalf of and as the act and deed of said European and Oreogn Land Company, party of the second part thereto for the uses and purposes therein expressed under express authority of resolutions of its Board of Directors duly passed and adopted and the said Jos. S. Wilson, president as aforesaid, and said Francis Avery, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and directions of its Board of Directors and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such commis-

sioner, at my office in the city and county of San Francisco and State of California, this twentieth day of March in the year of our Lord, One Thousand Eight Hundred and Seventy-one.

F. J. Thibault,
Commissioner for Oregon, in California.

(COMMISSIONERS OF DEEDS SEAL)

STATE OF OREGON,)
)ss.
County of Multnomah.)

BE IT REMEMBERED, that on this first day of April, A. D. 1871, before me the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and qualified and duly authorized by the laws of the State of Oregon to take the acknowledgements and proof of the execution of deeds and other instruments in writing, under seal and to administer oaths and affirmations & c, personally came Ben Holladay, president and A. G. Cunningham, Secretary of the Oregon and California Railroad Company of Portland, Oregon, a corporation duly incorporated under the laws of the State of Oregon, to me severally and personally known to be the president and secretary of said Company and to be the identical persons described in and by whom and in whose names as such president and secretary the foregoing instrument was subscribed and executed by the said Oregon and California Railroad Company party of the third part and they severally acknowledged before me that they severally sub-

scribed and executed the foregoing instrument for and on behalf of and as the act and deed of said Oregon and California Railroad Company, party of the third part thereto for the uses and purposes therein expressed under express authority of resolutions of the Board of Directors of said Company, duly passed and adopted and the said Ben Holladay, president as aforesaid, and said A. G. Cunningham, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the Corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and direction of the Board of Directors of said Company and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary at my office in the City of Portland, County of Multnomah and State of Oregon, this 1st day of April, in the year of Our Lord One Thousand Eight Hundred and Seventy-one.

(5 cent Rev stamp cancelled)

Geo. E. Cole,
Notary Public.

(NOTARIAL SEAL)

STATE OF OREGON,)
) ss.
Department of State.)

I, S. F. Chadwick, secretary of the State of Oregon, do hereby certify that Geo. E. Cole, whose name is subscribed to the foregoing and annexed certificate of acknowledgement to Indenture was at the time of signing the same, to-wit: on 1st day of April, A. D. One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah, in said State of Oregon, duly authorized and empowered to take and certify under his Notarial Seal acknowledgements of deeds of conveyance and Indentures and that full faith and credit are due to his official acts as such.

WITNESS MY HAND AND the Great Seal of *of* State at office in the City of Salem, State of Oregon, this third day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy-one.

S. E. Chadwick,

Secretary of the State of Oregon.

(GREAT SEAL OF THE
STATE OF OREGON)

Recd for Record, April 4th, 1871.

STATE OF OREGON,)
)ss. No. 9557
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, O & C R. R. Co. to European and Oregon Land Co., recorded in Book N page 223 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 401

is a certified copy of an agreement executed July 25, 1874, by and between The European and Oregon Land Company, party of the first part, and Milton S. Latham, Faxon D. Atherton, William Norris, parties of the second part, Henry Villard and others, parties of the third part, the Oregon and California Railroad Company, party of the fourth part, and Ben Holladay,

party of the fifth part, recorded at page 264, Book "Z" of the Records of Deeds for Multnomah county, Oregon, on January 4, 1875, and thereafter, about the same time, recorded in the Records of Deeds of all other counties in which any part of said granted lands were situated, and which exhibit is as follows:
Deed Book Z, 264.

AGREEMENT, BETWEEN THE EUROPEAN AND OREGON LAND COMPANY AND MILTON S. LATHAM, FAXON D. ATHERTON AND WM. NORRIS, TRUSTEES AND OTHERS.

AN AGREEMENT, made and entered into this twenty-fifth day of July, Eighteen Hundred and Seventy-four, by and between The European and Oregon Land Company, a body politic and corporate under the laws of California, party of the first part; Milton S. Latham, Faxon D. Atherton and William Norris, all of the State of California, trustees, parties of the second part; Henry Villard, of the City of Heidelberg, Grand Duchy of Baden, Heinrich, Hohenemser of the City of Frankfort-on-the-main, Prussia, director of the Deuthsche Vereins bank in the same city, Aron Niederhofheim, of the city of Frankfort-on-the-Main. Director of the branch office at Frankfort-on-the-Main of the Bank fuer Handel and Industrie at Darmstadt, Julius

Schmidt, banker of the city of Frankfort-on-the-Main, Adolph Otto, doctor of law and attorney at law of the City of Heilbronn, Kingdom of Wurtemberg, Michael Benjamin, of the City of Munich, Kingdom of Bavaria, director of the Baierische Wechsler bank in the same city, Carl Staehelin-Bucknor of the City of Basle, Switzerland, partner in the house of Messrs Iselin & Staehelin in the same city, F. S. Van Nierop of the city of Amsterdam, Kingdom of the Netherlands, director of the Amsterdam'sche Bank of the same city; Wilhelm Koester, of the city of Mannheim, Grand Duchy of Baden, banker, partner in the house of Koester & Co., in the same city by the said Henry Villard, their attorney in fact, parties of the third part; The Oregon & California Railroad Company, a body politic and corporate under the laws of Oregon, parties of the fourth part; and Ben Holladay, of the State of Oregon, (who is president of the last named Company, and the owner of a majority of its capital stock) party of the fifth part;

WITNESSETH: WHEREAS, the said party of the fourth part, heretofore, to-wit: on the fifteenth day of April, Eighteen Hundred and Seventy, made its certain Indenture of mortgage of that date of certain of its property therein described, to said Faxon D. Atherton and Milton S. Latham as trustees, to secure the payment of certain of its bonds, which mortgage was duly recorded in the office for the record of mortgages in the county of Multnomah, State of Oregon, in Book

K of Mortgages, on pages seven hundred and forty five and following, to which mortgage and the record thereof direct reference is made. And WHEREAS, at the date last aforesaid, said party of the fourth part for the purpose of creating a sinking fund for the payment of the said bonds conveyed by its certain deed of that date to the parties of the second part all the lands and franchises with their appurtenances lying and being in the State of Oregon, granted or intended to be granted, to the Oregon Company by Act of Congress, approved July twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof, and also, all the right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has, or owns or to which it is in any way entitled in and to any and all lands and franchises in the State of Oregon granted, or intended to be granted to the Oregon Company by Acts of Congress aforesaid, and also all future right, title, interest, claim, property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any county thereof, by virtue of any further compliance with the requirements of such Acts of Congress by the party of the first part hereto; together with all

and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, in trust nevertheless, for the uses and purposes specified in said deed of trust, which said deed was duly recorded in Book K of record of deeds of said last named county, on pages seven hundred and twenty seven and following, to which deed and the record thereof direct reference is made. And WHEREAS, said parties of the second part in part execution of their said trust, did on the twenty-eighth day of March, Eighteen Hundred and Seventy-one, made a certain deed and agreement of sale and conveyance with said party of the first part (which was mutually executed by said parties) conveying to said party of the first part the lands and property lastly above described, upon certain terms in said agreement of sale and conveyance described, which said deed is recorded in said county last named in Book N of Records of Deeds, Pg 223 of said county, to which deed and record, direct reference is heremade.

AND WHEREAS, said agreement last aforesaid remains only in part executed, and comparatively but a small portion of said lands have been sold by said parties of the first part; and the parties of the third part who are the owners and possessors of a majority of said bonds referred to in the above mentioned deeds of mortgage and trust, together with said party of the fourth part deem it to be for the interest of the said party of the fourth part as well as for the whole body of said bondholders, that said sale so far as may be should be cancel*e*d, and said land be reconveyed, upon equitable terms as herein provided.

AND WHEREAS, said party of the first part has spent large sums of money in causing plans written descriptions and maps of the land in said land grant to be made and circulated, and in advertising the said lands and in maintaining agencies for the sale thereof, and in other ways which will be of great benefits to all parties interested in the sale thereof. And WHEREAS, all parties hereto are interested in adjusting the matters aforesaid, and in securing to the bond-holders the fullest security to be obtained from the said lands so conveyed in trust to said parties of the second part, And WHEREAS, the parties hereto have agreed upon such cancellation and rescision of said agreement between said parties of the first and second part and a restoration of said parties to their respective original positions, so far as may be.

NOW THEREFORE, the party of the first part in consideration of the premises and the sum of one dollar to it in hand paid by said parties of the second part (the receipt whereof is hereby acknowledged) has remised, released, sold and assigned and by these presents does remise, release, sell, assign, convey and confirm (with certain exceptions hereinafter named) to said parties of the second part and their heirs, successors and assigns forever, all the land and franchises, with all rights and privileges, easements and appurtenances thereunto belonging, lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress, approved July twenty-five, Eighteen Hundred and Sixty-six, en-

titled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon, and Acts supplemental thereto, and amendatory thereof," and also (with certain exceptions hereinafter named) all the contracts, rights, title, interest, claim, property and demand, whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part heretofore had or owned, or to which it became in any way entitled under and by virtue of said deed from the party of the second part, dated March twenty-eight, A. D. Eighteen Hundred and Seventy-one, or of any other deeds or contracts; if such there be, or of any acts heretofore done by the party of the fourth part, in compliance with said acts of Congress to the lands and property named in said deed, and to all lands, rights, property and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid; and also (with certain exceptions hereinafter stated) all future right, title, interest, claim, property and demand which the party of the first part may at any time hereafter have, own or acquire in, or to any lands, rights or property in the State of Oregon or any county thereof by virtue of any further compliance with the requirements of said Acts of Congress by the party of the fourth part, or its grantors; and also all maps, plans, office furniture, leases, contracts, bonds, notes, mortgages and other securities and property, real and personal, and all acounts, moneys, claims, demands,

rights and privileges, legal or equitable which the said party of the first part now had or owns or to which it is in any way entitled, saving and excepting, nevertheless, out of the premises, all money or property that the parties of the first part may procure, get or receive as indemnity and reimbursement as herein provided, and also expressly saving and excepting, nevertheless, out of the *pe*mises and from the operation of these presents, the corporate rights and franchise of the said party of the first part, and all lands and rights heretofore conveyed or granted by it, being the premises named in certain deeds as follows, to-wit.

	Acres.
Lot number one (1) Section eleven (11) township two (2) south of range two (2) west, containing	10.68
Northwest quarter (¼) of section seventeen (17) and northwest quarter (¼) of southwest quarter (¼) of section thirteen (13) township two (2) south range four (4) east containing	200.00
West half (½) of southwest quarter (¼) and northeast quarter (¼) of the northeast quarter (¼) of section five (5) township two (2) south range four (4) west containing,	119.48
Lots one (1) and eight (8) of section nine (9) township two (2) south range one (1) east containing	21.92

Lots one (1) and (2) of section nineteen (19) township two (2) south range four east, containing 46.36

Lots three (3) and eight (8) of section twenty seven (27) township thirteen (13) south range five (5) west, containing 19.91

Southwest quarter (¼) of southeast quarter (¼) and southeast quarter (¼) of southwest quarter (¼) of section eleven (11) township two (2) south range three (3) west, containing 80.00

Lot number one (1) of northeast quarter (¼) of section fifteen (15) township three (3) south range one (1) east, containing 22.24

Lot number two (2) of section thirty one (31) township three (3) south range four (4) east, containing 28.60

Northeast quarter (¼) of section thirteen (13) and southeast quarter (¼) of northeast quarter (¼) of section thirty one (31) township three (3) South range two (2) east, containing 200.00

Northeast quarter (¼) of northeast quarter (¼) of section seven (7) township three (3) south range one (1) west, containing 40.00

Southeast quarter (¼) of section nineteen and northwest quarter (¼) of northeast quarter (¼) and southeast quarter (¼) of northwest quarter (¼) of section twenty nine (29) township four (4) south range four (4) east, containing	240.00
Lot one (1) of section twenty seven (27) and lot one (1) of section twenty nine (29) township four (4) south range one (1) west, containing	5.69
Northeast quarter (¼) of northwest quarter (¼) of section three (3) township four (4) south range three (3) east, containing	40.20
Lot two (2) of section one (1) and southwest quarter (¼) of northwest quarter (¼) of section eleven (11) and lot six (6) of section fifteen (15) township four (4) south range five (5) west, containing	95.10
Southeast quarter (¼) of northeast quarter (¼) of section nineteen (19) township four (4) south range four (4) east, containing	40.00
Lot one (1) of section nine (9) and lot one (1) of section nineteen (19) and lots three (3) and four (4) of section twenty-five (25) township five (5) south range four (4) west, containing	26.73

Lots three (3) and four (4) of section one (1) and southwest quarter 1/4) of southeast quarter (1/4) of section nine (9) and lot two (2) of section twenty nine (29) township five (5) south range six (6) west, containing	96.14
Lot two (2) of section seven (7) township six (6) south range five (5) west, containing	2.44
Lot four (4) of section twenty three (23) township six (6) south range seven (7) west, containing	15.14
Lot three (3) of section twenty nine (29) and lot two (2) of section seventeen (17) township thirteen (13) south range five (5) west, containing	26.20
Lot eight (8) and northeast quarter (1/4) of the northeast quarter (1/4) of section twenty three (23) township fourteen (14) south range three (3) west, containing	43.69
Lots one (1) and two (2) of section twenty nine (29) township two (2) south range one (1) east, containing	57.66
Southeast quarter (1/4) of southeast quarter (1/4) of section five (5) township three (3) south range one (1) east, containing	40.00

Southwest quarter (1/4) of southwest quarter and northwest quarter (1/4) of northwest quarter (1/4) of section one (1) township (3) south range two (2) east, containing 78.52

Northwest quarter (1/4) of southeast quarter (1/4) of section thirteen (13) township two (2) east, containing 40.00

Northeast quarter (1/4) of southeast quarter (1/4) of section thirteen (13) township two (2) south range three (3) east, containing 40.00

Lot five (5) of section twenty five (25) township two (2) south range three (3) east, containing 31.98

Lot three (3) of section five (5) township three (3) south range three (3) east, containing 17.25

Lot two (2) of section thirteen (13) township three (3) south range three (3) east, containing 21.56

Lot seven (7) of section thirteen (13) township three (3) south range three (3) east, containing 47.29

Lot one (1) of section seventeen (17) township three (3) south range three (3) east, containing 38.36

Southwest quarter (1/4) of northwest quarter (1/4) of section seventeen (17) township three (3) south range three (3) east, containing 40.00

Northeast quarter (1/4) of northeast quarter (1/4) of section one (1) township four . . south range three (3) east, containing 40.09

Northwest quarter (1/4) of northeast quarter (1/4) of section one (1) township four (4) south range three (3) east, containing 40.08

North half (1/2) of southwest quarter (1/4) of *of* section seven (7) township one (1) south range four (4) east, containing 80.15

North half (1/2) of the southwest quarter (1/4) of section one (1) township three (3) south range four (4) east, containing 80.00

North half (1/2) of northwest quarter (1/4) of section (1) township three (3) south range four (4) east, containing 82.75

Southwest quarter (1/4) of northwest quarter (1/4) and northwest quarter (1/4) of southwest quarter (1/2) of section eleven (11) township three (3) south range four (4) east, containing 80.00

South half (1/2) of southeast quarter (1/4) of section thirty one (31) township one (1) south range one (1) west, containing 80.00

South half (½) of northeast quarter (¼) of section five (5) township two (2) south range one (1) west, containing 80.00

North half (½) of southeast quarter (¼) of section thirteen (13) township two (2) south range one (1) west, containing 80.00

Southeast quarter (¼) of southwest quarter (¼) of section one (1) township three (3) south range one (1) west, containing 40.00

Southeast quarter (¼) and south half (½) of northeast quarter (¼) of section twenty five (25) township one (1) south range two (2) west, containing 240.00

Northwest quarter (¼) of northeast quarter (¼) and lots three (3) and four (4) of section twenty seven (27) township one (1) south range two (2) west, containing 107.07

Lot one (1) of section five (5) township two (2) south range two (2) west, containing 13.00

Southwest quarter (¼) of northwest quarter (¼) of section seven (7) township two (2) south range two (2) west, containing 41.96

Southeast quarter (¼) of northwest quarter (¼) of section seven (7) township two (2) south range two (2) west, containing 40.00

Lots three (3) and four (4) of section nine (9) township two (2) south range two (2) west, containing	19.60
Northeast quarter (1/4) of northeast quarter (1/4) of section twenty three (23) township two (2) south range two (2) west, containing	40.00
West half (1/2) of southwest (1/4) of section one (1) township two (2) south range three (3) west, containing	80.00
Northeast quarter (1/4) of southeast quarter (1/4) of section three (3) township two (2) south range three (3) west, containing	40.00
Northwest quarter (1/4) of southwest quarter (1/4) of section eleven (11) township two (2) south range three (3) west, containing	40.00
Lot five (5) of section twenty one (21) township two (2) south range three (3) west, containing	30.86
Northwest quarter (1/4) of southeast quarter (1/4) of section twenty three (23) township (2) south range three (3) west, containing	40.00
Lot two (2) of section eleven (11) township one (1) south range two (2) east, containing	37.66
Northeast quarter (1/4) of northeast quarter (1/4) of section fifteen (15) township one (1) south range two (2) east, containing	40.00

Southwest quarter (¼) of northeast quarter (¼) of section five (5) township one (1) south range three (3) east, containing	40.00
Northwest quarter (¼) and lot two (2) of section five (5) township one (1) south range three (3) east, containing	165.92
North half (½) of northeast quarter (¼) of section seven (7) township one (1) south range three (3) east, containing	80.00
Lot six (6) of section thirteen (13) township three (3) south range three (3) east, containing	28.80
South half (½) of northwest quarter (¼) of section one (1) township three (3) south range four (4) east, containing	80.00
Lots one (1) and two (2) of section three (3) township two (2) south range one (1) west, containing	40.00
Northwest quarter (¼) of southeast quarter (¼) and northeast quarter (¼) of southwest quarter (¼) of section seven (7) township two (2) south range one (1) west, containing	80.00
Lots six (6) and eight (8) of section seventeen (17) township one (1) south range two (2) west, containing	88.50

Lots three (3) and four (4) of section thirty three (33) township one (1) south range two (2) west, containing 55.66

East half (½) of southeast quarter (¼) of section eleven (11) township two (2) south range three (3) west, containing 80.00

Lot one (1) of section twenty five (25) township three (3) south range four (4) west, containing 6.96

Lot eight (8) of section three (3) township five (5) south range three (3) west, containing 10.78

But, as to all these excepted parcels, the party of the first part hereby grants and conveys all the remaining rights, title and interest therein, if any there be, legal or equitable. Meaning and intendeding hereby among other things, to reconvey to the party of the second part, everything whatsoever, excepting as aforesaid, heretofore conveyed or granted by said party of the second part to said party of the first part thereof, and fully to reinstate the party of the second part, so far as may be done, and with exceptions aforesaid in all the property, franchises, ownership, rights and privileges touching the premises which it had before the said deed was made by them to the party of the first part.

TO HAVE AND TO HOLD the granted premises unto the said party of the second part, and their

heirs, successors and assigns forever, but in trust nevertheless, for the same uses and purposes and upon the same conditions and covenants named in said deed of trust from the party of the fourth part to the party of the second part, dated April fifteenth, Eighteen Hundred and Seventy. And the parties of the second part hereby accept said conveyance and agree to hold the said land upon the trusts hereinbefore referred to. But this conveyance is made upon the express condition that the parties of the second part agree and they do hereby agree to and with the parties of the first part, to fulfil and perform all the contracts for sales or conveyancing of any of said lands heretofore made by said party of the first part with the purchaser and do further agree to reimburse the party of the first part or cause it to be reimbursed in full out of the net proceeds of lands coming into their hands for all outlays or disbursements in its said business; and do further agree to release and discharge the parties of the first part from the payment of any of the sums of money or the performance of any of the matters and things on its part to be made, done and performed as set forth in said conveyance and agreement of the said twenty-eighth day of March, Eighteen Hundred and Seventy one, and to release and indemnify the party of the first part or cause it to be indemnified when and to the extent that said parties of the second part may have in their hands any net proceeds from the sale of lands, from and against all contracts or liabilities which it may be under, relative to the granted premises, and in all

other matters for and against which said party of the first part equitably and in good conscience has a right to be reimbursed, indemnified and protected, such indemnity and repayment shall also be reduced to the extent that any one or more of the stockholders shall waive, or has waived his right to any share or interest therein, in favor of the bondholders; and all rights of parties within the said party of the first part, as among themselves, or in relation to the Company shall be adjusted as they and said Company may agree.

For the ascertaining of the payment and indemnity to be allowed by said party of the second part, to the party of the first part, it is agreed that on motion of either of the parties of the second or third parts, three arbitrators shall be appointed one to be chosen by each of said last named two parties, and the third by the two so chosen; and in case either party or arbitrator, as the case may be, having been fairly notified in writing for seven days, of the choice of the other party or arbitrator, as the case may be, shall fail to notify the other party or arbitrator, as the case may be, of his own choice, then the principal consular officer of the German Empire, at San Francisco, shall upon being notified of such failure, be authorized to fill the vacancy forthwith, and immediate notice shall be given of his action to both of said parties or arbitrators, as the case may be. The decision of the said three arbitrators, or in case of disagreement of a majority of them, shall be final; and said arbirators, in making their award, shall not be bound

by the strict rules of law or equity, as administered in Courts, but shall make a fair and equitable adjustment.

The party of the third part may, if it sees fit, and by consent of the arbitrators, cause any part of the personal property hereby conveyed, to be returned to the parties of the first part in lieu of, or in lieu of making compensation. And the said parties of the third part do hereby covenant and agree to and with said parties of the first part, in consideration of the premises and the sum of one dollar to them in hand paid by said party of the first part, the receipt whereof is hereby acknowledged, that they, the parties of the first part, will indemnify, save and keep harmless the said party of the first part of and from all loss and damage by reason of the execution of these presents by the party of the first part, and against any and all claims against said party of the first part, for the purchase money by them to have been paid unto and by virtue of said agreement between said parties of the first and second parts, dated the twenty eighth day of March, Eighteen Hundred and Seventy-one.

IN WITNESS WHEREOF, The said parties of the second, third and fifth parts have hereunto set their hands and seals, the parties of the second and fifth parts and said Henry Villard in person and the others of said attorney in parties of the third part by their said fact, Henry Villard; and the parties of the first and fourth parts, corporations as aforesaid, have caused these presents to be signed by their respective presidents

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and secretaries, and their corporate seals respectively to be hereunto affixed, all in quadruplicate, the day and year first above written.

J. W. Ames,

President of the European and Oregon Land Company

Pelham W. Ames,

Secretary of the European and Oregon Land Company,

(Seal of the European & Oregon Land Co.)

In presence of:

F. J. Thibault,

John H. Winkins.

(This agreement shall not take effect as to the parties of the first and second parts until ratified by the constituents of the said Henry Villard.

J. W. Ames,

Pres E and O Land Co.

July 25th, 1874.)

Trustees.—(Milton S. Latham, (Seal)
(F. D. Atherton, (Seal)
(Wm. Norris, (Seal)

(.....Henry Villard, (Seal)

(Heinrich Hohenemser, (Seal)
(By Henry Villard, his attorney in fact,

(Aron Neiderhofheim, (Seal)
(By Henry Villard, his attorney in fact,

(Julius Schmidt, (Seal)
(By Henry Villard, his attorney in fact,

(Adolph Otto, (Seal)
(By Henry Villard, his attorney in fact,

(Michael Benjamin, (Seal)
(By Henry Villard, his attorney in fact,

(Carl Staehlin-Bucknor, (Seal)
(By Henry Villard, his attorney in fact,

(F. S. Van Nierop, (Seal)
(By Henry Villard, his attorney in fact,

(Wilhelm Koester, (Seal)
(By Henry Villard, his attorney in fact,

(Ben Holladay,
(President of the Oregon and California
(Railroad Company.

(A. G. Cunningham,
(Secretary of the Oregon and California
(Railroad Company.

(Ben Holladay, (Seal)

.....

In Presence of
J. N. Dolph,
R. H. Fowler.

(SEAL OF THE OREGON & CALIFORNIA RAILROAD CO.)

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

BE IT REMEMBERED, that on the thirty first day of July, A. D. 1874, before me, the undersigned,

a Commissioner of deeds for the State of Oregon, residing at San Francisco, California, duly commissioned, sworn and fully qualified personally came J. W. Ames, President of the European and Oregon Land Company, and Pelham W. Ames, Secretary of the European and Oregon Land Company whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said European and Oregon Land Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me, that he, the said J. W. Ames, as president, and he, the said Pelham W. Ames, as secretary of the European and Oregon Land Company, executed the foregoing instrument as and for the act and deed of the said European and Oregon Land Company freely and voluntarily and for the uses and purposes therein mentioned, and he, the said Pelham W. Ames, being by me duly sworn did depose and say that he is the secretary of the European and Oregon Land Company and resides at San Francisco, California; that he is the legal custodian of, and is acquainted with and has in his possession, the corporate seal of the European and Oregon Land Company, that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him, as secretary of said Company, on the thirty first day of July, A. D. 1874, by order of the Board of directors of said Company and that he signed his name as secretary thereto by the like order of the Board of Directors of said company.

And be it further remembered that on this thirty first day of July, 1874, before me personally appeared Milton S. Latham, Faxon D. Atherton and Wm. Norris, all to me personally known to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as Commissioner of Deeds for the State of Oregon at my office in San Francisco, California, the date herein first above written.

F. J. Thibault,

(COMMISSIONER'S SEAL)

Commissioner for Oregon in California.

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me, the undersigned, Notary Public within and for said county of Multnomah and State of Oregon, appeared the within named Henry Villard, in his own proper person and also the within named Heinrich Hohenemser, by his attorney in fact, the said Henry Villard, and also the within named Aron Niederhofheim, by his attorney in fact the said Henry Villard, and also the within named Julius Schmidt, by his attorney in fact, the said Henry Villard, the within

named Adolph Otto, by his attorney in fact, the said Henry Villard, and also the within named Michael Benjamin, by his attorney in fact, the said Henry Villard, and also the within named Carl Staehelin-Bucknor, by his attorney in fact, the said Henry Villard, and also the within named F. S. Van Nierop, by his attorney in fact, the said Henry Villard, and also the within named Wilhelm Koester, by his attorney in fact, the said Henry Villard, to me personally known to be the individual described in and who executed the above and foregoing instrument of writing, as well in his own right and on his own behalf, as also for and on behalf of the said Heinrich Hohenemser, Aron Niederhofheim, Julius Schmidt, Adolf Otto, Michael Benjamin, Carl Staehelin-Bucknor, F. S. Van Nierop and Wilhelm Koester and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand as such Notary Public and affixed my notarial seal on this the day and year last above written.

Joseph Simon,

(NOTARIAL SEAL)

Notary Public, Oregon.

STATE OF OREGON,)
) ss.
County of Multnomah,)

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me the undersigned, a Notary Public in and for the said County of Multnomah and State of Oregon, duly commissioned and qualified,

personally came Ben Holladay, president of the Oregon and California Railroad Company, and A. G. Cunningham secretary of the Oregon and California Railroad Company, whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said Oregon and California Railroad Company, both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, said Ben Holladay, as president, and he, the said A. G. Cunningham as secretary of the Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned; and he the said A. G. Cunningham, being by me duly sworn, did depose and say that he is the secretary of the Oregon and California Railroad Company, and resides at East Portland, Multnomah County, Oregon, that he is the legal custodian of, and is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 25th day of July, A. D. 1874, by order of the Board of Directors of said Company, and that he signed his name as secretary thereto, by the like order of the Board of Directors of said Company; and the said Ben Holladay one of the parties to said instrument acknowledged to me that he individually

executed the same as a party thereto, freely and voluntarily and for the uses and purposes therein specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Portland, Oregon, the date first above written.

Joseph Simon,

(NOTARIAL SEAL)

Notary Public, Oregon.

STATE OF OREGON,)
)ss.
Department of State.)

I, STEPHEN F. CHADWICK, Secretary of the State of Oregon, do hereby certify that Joseph Simon, whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said Agreement, was at the time of taking such acknowledgment, and signing such certificate, to-wit: on the 25th day of July, A. D. 1874, a duly commissioned, qualified and acting Notary Public, in and for the County of Multnomah and State of Oregon, and that he was by the laws of the State of Oregon, duly authorized and empowered to take and certify, under his Notarial Seal, acknowledgments to deeds, mortgages and other instruments of writing and that his signature to such certificate is genuine, also his notarial seal, and that full faith and credit are due to his official acts.

And I do further certify that F. J. Thibault is a duly commissioned, sworn and fully qualified commissioner of

deeds for the State of Oregon, residing at San Francisco, in the State of California, that he is by the laws of the State of Oregon, duly authorized and empowered to take and certify under his official seal, acknowledgments to deeds, conveyances and other instruments of writing; and that full faith and credit are due to his official acts as commissioner of deeds for the state of Oregon.

WITNESS my hand and the seal of the State, at my office in the City of Salem, State of Oregon, this 25th day of July, A. D. 1874.

S. F. Chadwick,
Secretary of the State of Oregon.

(SEAL OF THE STATE
OF OREGON.)

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, parties to the above and foregoing contract and instrument of writing, entered into and executed by us and by and through our said attorney in fact, Henry Villard, do hereby ratify and fully confirm, under our hands and seals, the act and deed of our said attorney in fact, in executing said contract and writing, and in entering into and executing the several covenants and agreements therein contained, as fully and completely to all intents and purposes as if the same had been done and executed by us in person, and under our own proper hands and seals. This done in pursuance and fulfillment of the condition and restriction providing for such ratification contained in our

letters of attorney, appointing and authorizing him the said Henry Villard, as such our attorney in fact, for us and in our name, place and stead to assent and agree to enter into and execute the said instrument of writing and the covenants and agreements therein contained.

WITNESS our hands and seals this twenty-sixth day of September, A. D. 1874.

H. Hohenemser,	(Seal)
A. Niederhofheim,	(Seal)
J. Schmidt,	(Seal)
Dr. Adolf Otto	(Seal)
F. S. Van Nierop,	(Seal)
Wilh Koester,	(Seal)
M. Benjamin,	(Seal)
Carl Staehelin-Bucknor	(Seal)

Die worstchenden von mir Notar und den beiden zengen volzogenen unterschiften und Siegel des Herrn Heinrich Hohenemser Diretors der Deutschen vereins Bank dahier, des Herrn Aron Niederhofheim Von Standes der filials der Bank fur Handel und Industrie dahier, des Herrn Julius Schmidt Kaufmoouns dahier, des Herrn Dr. Frederic Salomon Nierop, Directors der Amsterdam'chen Bank zur Amsterdam, des Herrn Wilhelm Koster in Ferina Koster & Co. Zu Mannheim, des Herrn Michael Benjamin Directors der Baierischen Wechsler Bank zu Meinchsen, und des Herrn Carl Staechelin-Bucknor in Fiama Iselin & Staehelin zu Basel, werden hierdurct amtlict als aecht beglanbigt

wobei, dieselben angaben, dass tie obigen vertrag zu dem darin angegebenen Zwecke unterzeick net hatten. Frankfort Or/M der sicks und zwanzigster September achtzenn hundred vier und siebenzig.

Peter Ullman als zenge,
Joham Kattenwick als zenge,
Dr. Carl Otto Orthenberger.

(Notarial Seal) Notar.

pier obigo
einschathenez der
zwei worte "zu Basel"
Peter Ullman als zenge,
Johann Kattenwick als zenge.
Dr. Carl Otto Orthenberger,
Notar
(Notarial Seal)

No. 1040
Fees pd $2-00/100

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
FRANKFORT-ON-THE-MAIN, GERMANY.

I, A. L. Wolff, Vice Consul-General of the United States of America at Frankfort-on-the-Main, do hereby certify that Dr. Carl Orthenberger, whose name is subscribed to the paper hereunto annexed, was at the time of subscribing the same, Notary Public at Frankfort-O/M Kingdom of Prussia, duly commissioned and that full faith and confidence are due to his acts as such.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the Consulate-General at Frankfort-on-the-Main, the 11th day of November in the year 1874 and of the Independence of the United States of America, the 99th.

A. S. Wolff,

(CONSULATE SEAL) Vice Consul-General

Received for Record, Jan 4th, 1875.
9104.

Deed Book 246, Page 468.

O. C. R. R.

TO

PORTLAND.

Deed No. 2046. Issued for Contract No. 1804.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California Railroad Company duly incorporated under the laws of the State of Oregon, party of the first part and the City of Portland, party of the second part, WITNESSETH:

THAT WHEREAS, the party of the first part did on the sixteenth day of February A. D. 1883, by its contract Numbered 1804, sell and agree to convey unto A. G. Cunningham the land hereinafter described, for the sum and price of One Thousand Nine Hundred and Fifty Eight 82/100 (1958-82/100) Dollars, to be paid as in said contract provided; and

WHEREAS, said purchase price has been fully paid to the party of the first part and said The City of Portland, as assignee of said A. G. Cunningham, has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest which it, the party of the first part has or may hereafter acquire from the United States in and to said land; and

WHEREAS, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July, A.D. 1890 in a suit in equity in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by *by* that certain deed of trust executed by the said Oregon and California Railroad Company, to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of Mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887,

which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises and of the payment to the party of the first part of the said sum of One Thousand Nine Hundred and Fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The south half of the northeast quarter and the south half of section twenty-five (25), the north half of the northeast quarter and the northwest quarter of section thirty-five (35), all in township one (1) south range five (5) east; also the south half of section nineteen (19) township one (1) south range six (6) east Willamette Meridian, containing according to the United States Survey thereof, Nine Hundred and Fifty-five 52/100 (955-52/100) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto unto the said party of the second part its successors and assigns forever, reserving however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the prem-

ises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby, for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines, between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, The said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set hand and seal the day and year first above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

(Seal) By R. Koehler, 2nd Vice-President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

(Seal) By Geo. H. Andrews, Secretary.

(CORPORATE SEAL)

In presence of:
David Loring,
F. G. Ewart. (Seal)

STATE OF OREGON,)
)ss.
County of Multnomah,)

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd vice president and secretary of said Company both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler as 2nd vice president and he, the said Geo. H. Andrews, as secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon; that he is the legal custodian and is acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of

Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Rec'd for record,
Dec. 31st, 1897, at 10:50 a. m.

David Loring,
(NOTARIAL SEAL) Notary Public for Oregon.

No. 9555

STATE OF OREGON,)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, between the European and Oregon Land Company and Milton S. Latham, et al., has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1913.

JNO. B. COFFEY,
(SEAL) County Clerk.

Filed May 10, 1913.

A. M. CANNON,
Clerk of District Court.

DEFENDANTS' EXHIBIT 402

is a certified copy of a quit-claim deed executed by the Oregon and California Railroad Company and Union Trust Company to the City of Portland, dated March 14, 1892, recorded page 203, Book 179 of the Records of Deeds of Multnomah County, Oregon, July 26, 1892, and is as follows:

Book 179 Page 203

Deed No. 995

Oregon & Calif. R. R. Co. to City of Portland.

QUITCLAIM Deed No. 1719 Issued for Contract 3827

This Indenture made this 14th day of March A. D. 1892 between the Oregon and California Railroad, a Corporation duly incorporated under the laws of the State of Oregon party of the first part. The Union Trust Company of New York a corporation created and existing under and by virtue of the laws of the State of New York party of the second part and the City of Portland hereinafter called the purchaser, party of the third part.

Witnesseth: That in consideration of the sum of .....Dollars paid to the party of the first part and the sum of Seven hundred and sixty (760) dollars paid to the party of the second part by direction of the party of the first part as per terms of deed of trust by party of the first part to party of the second part of date July 1st, 1887 The Oregon and California Railroad Company doth hereby remise, release and quitclaim unto said purchaser his heirs and assigns all of the right, title and interest which it the said Oregon and California Railroad Company now has or owns or may hereafter obtain or acquire in and to the hereinafter described lands and the said Union Trust Company of New York, doth hereby release and confirm unto said purchaser his heirs and assigns the said lands which are described as follows: to-wit:

The north west quarter of the South West quarter and the South west quarter of the South East quarter of section twenty-three (23) township One (1) South range four (4) East and the north half of the South West quarter of section five (5) Township two (2) South range five (5) East Willamette Meridian containing according to the United States survey thereof one hundred and sixty (160) acres be the same more or less being understood to be part of the land granted by the United States to the said Oregon and California Railroad Company and embraced within the terms of and conveyed by a certain deed of trust executed by the party of the first part to the party of the second part,

as Trustee and bearing date July 1st, A. D. 1887.

To hold the said premises with the appurtenances thereto unto the said purchaser, his heirs and assigns, forever freed and discharged from the lien powers, and trusts of said deed of trust or mortgage of July 1st, 1887 reserving however a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises and the right to take, all water needed for the operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof as or may be mineral lands other than coal or iron. And the said purchaser does hereby for himself and his heirs and assigns covenant with the said Oregon and California Railroad Company its successors and assigns that he will erect and maintain on the boundary line or boundary lines between said premises and such right of way a good and lawful and substantial fence sufficient to turn stock.

In witness whereof the said parties of the first and second parts, have caused these presents to be sealed with their respective seals, and executed by their respective Presidents and Secretaries and the party of the third part has hereunto set his hand and seal the day and year first above written.

The Oregon and California Railroad Company

By R. Koehler, 2nd Vice President.

The Oregon and California Railroad Company
By Geo. H. Andrews, Secretary.

TheUnion Trust Company of New York.
By Jas. H. Ogilvie, V President.

TheUnion Trust Company of New York.
By A. W. Kelly, Secretary. (Seal)

In presence of:
DavidLoring
R. McMurphy
J. A. Shaughnessy
H. W. Ramsay

(Corporate Seal)

STATE OF OREGON,)
) ss.
County of Multnomah,)

Be it remembered that on this 14th day of March A D 1892 before me the undersigned a Notary Public in and for the said County and State duly commissioned and qualified personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews Secretary of said Company whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company both personally known to me to be the said individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said R. Koehler as 2nd Vice President and he the said Geo. H. Andrews as Secretary of the said Ore-

gon and California Railroad Company executed the foregoing instrument as and for the act and deed of said Corporation for the uses and purposes therein mentioned and he the said Geo. H. Andrews being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at Portland Multnomah County Oregon that he is the legal custodian of and is acquainted with and has in his possession the corporate seal of said Company, that the seal affixed to the foregoing instrument as the seal of said Company is such corporate seal; that the same was so affixed by him as Secretary of said Company on the 14th day of March A D 1892 by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of said Board of Directors of said Company.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Notarial Seal) David Loring
Notary Public for Oregon.

STATE OF NEW YORK)
) ss.
City and County of New York)

Be it remembered that on this 22nd day of April A D One thousand and eight hundred and ninety-two before me a Commissioner of the State of Oregon in the State of New York residing in said City of New York, personally came Jas. H. Ogilvie Vice President

of the Union Trust Company of New York the corporation described in the foregoing instrument as the party of the second part thereto and who is personally known to me and he being by me duly sworn did depose and say that he is and at the time of the execution of said instrument was, the Vice President and that A. W. Kelley is and then was the Secretary of the said Company that he knew the corporate seal of said Company and that the seal affixed to the foregoing instrument as such is said corporate seal; that the said seal was affixed by authority of the Board of Directors of said Company and that he Jas. H. Ogilvie as Vice President aforesaid signed and that the said A. W. Kelley as Secretary aforesaid attested the said instrument by like authority. And the said Jas. H. Ogilvie Vice President as aforesaid acknowledged the execution of said instrument as the act and deed of said The Union Trust Company of New York for the purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed my official seal at my office in the City of New York the day and year in this certificate first above written.

(Notarial Seal) William Shillaber,

Commissioner for the State of Oregon in the State of New York.

Received for record July 26th, 1892 at 2:35 P. M.

No. 9575

STATE OF OREGON,)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Company to City of Portland, recorded in Book 179 page 208 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May, A. D. 1913.

JNO. B. COFFEY,

(Seal) County Clerk.

Certified copy of Deed Oregon & California Railroad Company to City of Portland.

Filed May 10, 1913.

A. M. CANNON,
Clerk District Court.

UNNUMBERED EXHIBITS

Letter Benjamin Harris Brewster, Attorney General, to Hon. H. M. Teller, Secretary of the Interior, dated June 15, 1882, being found at pages 35 to 39, inclusive, of Executive Document No. 29, 47th Congress,

2nd Session, in answer to a letter of January 5th submitting questions arising upon an application of the New Orleans Pacific Railway Company for certain lands claimed under land grant made to the New Orleans, Baton Rouge & Vicksburg R. R. Co. by act of March 3, 1871. (See page 2512, Vol. 5, Printed Record.)

Statement from corporate records of Oregon Central Railroad Company of Salem, Oregon Central Railroad Company of Portland, and Oregon & California Railroad Company, compiled by Mr. McAllaster. (See page 2034, Vol 4, Printed Record.)

Patent issued by the United States to the Oregon & California Railroad Company, which includes the lands described in contract No. 5394, being the third item to Exhibit No. 9 to the answer. (See pages 2045 et seq., Vol. 4, Printed Record.)

Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side). (See pages 2544 et seq., Vol. 5.)

Form of Coupon to Bond above described. (See page 2548, Vol. 5.)

First Mortgage Bond of the Oregon & California R. R. Co. of date April 15, 1870. (See page 2548, Vol. 5, Printed Record.)

Whereupon, the appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union

Trust Company, individually and as trustee, now present and tender to the court their statement of the evidence prepared and to be filed herein under and pursuant to Rule 75 of Rules of Practice for the Courts of Equity of the United States, and respectfully ask the court to approve the same and to make such order in relation thereto as is required by law and said Rule.

WM. D. FENTON,
P. F. DUNNE,
WM. D. FENTON,

Attorneys for Appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

DOLPH, MALLORY SIMON & GEARIN,
JOHN M. GEARIN,

Attorneys for Appellant Union Trust Company individually and as Trustee.

Whereupon, on March 4, 1914, said court made and entered in said cause an order approving said Statement of the Evidence as follows:

(TITLE)

Now at this day this cause came on to be heard upon the application of the appellants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, for an order approving the Statement of the Evidence prepared and tendered by the appellants and now tendered to be filed herein under Rule 75, Rules of Practice for the Courts of Equity of the United States, the appellants appearing by their attorneys Wm. D. Fenton and John M. Gearin, and the complainant appearing by its attorneys B. D. Townsend and Fred C. Rabb, Special Assistants to the Attorney General of the United States, and it appearing to the Court that the parties were unable to agree as to the reduction of so much of said testimony to narrative form in the Statement of the Evidence as it set out by question and answer therein, and it appearing to the Court that the evidence in said cause has been reduced and stated in narrative form in said Statement of the Evidence other than the said evidence set out by question and answer, and it further appearing to the Court that in its judgment the testimony of the witnesses thus set out by question and answer should be reproduced in the exact words as reported and stated in said Statement of the Evidence, and it further appearing to the Court that the Statement of the Evidence as thus prepared is true, complete and properly prepared, as provided by said Rule 75 of the Rules

of Practice for the Courts of Equity of the United States, and there is no objection to the approval of said Statement of the Evidence by the Court;

IT IS ORDERED that the said Statement of the Evidence now tendered to be filed and thus prepared be and the same is hereby approved and the same is now directed to be filed in the Clerk's office of this court as of this date, and become a part of the record for the purposes of the appeal.

CHARLES E. WOLVERTON,
Judge.

(Endorsed) Filed March 4th, 1914.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to-wit: on the 29th day of August, 1913, there was duly filed in said Court the petition for appeal of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, defendants, John L. Snyder and others, defendants-crosscomplainants, and Frank Terrace and others, interveners-defendants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES

for the District of Oregon

Ninth Circuit

NO. 3340 IN EQUITY

United States of America, Complainant,

vs.

Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee, and Union Trust Company, individually and as Trustee, Defendants.

JOHN L. SNYDER, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock.

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderee, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler and Marvin Martin.

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman,

Defendants, Cross-Complainants.

WILLIAM F. SLAUGHTER, Peter Merges, Oscar Thompson, H. H. Zaff, N. Zaff, C. M. Cutbirth, G. T. Buckner, W. L. Buckner, B. O. Slagle, Mary M. Leitzel, M. E. Buckner, J. J. Utzinger, Morton Nelson, Pauline Jacobs, Peter Grime, K. M. Birkeland, Owne Alopaeus, Charles Wirkkala, J. Gribler, Sven A. Grime, Nels P. Sorenson, John Lundgren, Lowell A. Young, John Patterson, Alice Perry, Thomas J. Flippin, Samuel Sonneland, Frank E. Young, R. R. Giltner, Albert Brix, Chester D. Sewall, P. J. Brix, Russell E. Sewall, A. A. Murphy, Charles E. Hays, I. L. Randall, H. A. Munson, Henry Burboch, John H. Carlson, James Brown, Charles W. Mayger, James D. Young,

Edward F. Cooper, Anton Peterson, John F. Edwards, Edward Edwards, Alexander Opsal, Paul Anderson Bae, P. Jacobs, Julius T. Jacobs, Charles Ottason, Kate K. Spowers, George Spowers, Daniel Spowers, Abraham L. Yornall, Josie Powers, John Graber, Fred Anderson, Walter Shay, Josephine Anderson, Louis Osberg, Laronard Osberg, Eli Bangs, Duncan Scott, William H. Short, George A. Mottman, June Moltman, Leitha Galliher, Nellie Galliher, Sarah Galliher, Robert S. Moseley, John T. Ross, Harriet A. Hunter, George W. Hunter, Darwin E. Yoran, Frank Hampton, Rhoda Hampton, Mary A. Griffin, Frank N. Smith, Layton Smith, Marsh Martin, Clay Zumwalt, Green Zumwalt, Benjamin H. Dunlap, William H. Alexander, Jake F. Berger, Warren G. Thatcher, J. Edgar Furnish, Tina A. Furnish, James O. Smith, William Andrews, Mae Larimer, William F. Gilstrap, Aaron Rathmell, F. G. Blake, Mathias Gillespie, Jeter Virgin, James N. Randle, Louisa Randle, Absalom C. Woodcock, William Polders, Mary E. Cowan, Eugene Ward, Nellie Smith, Rena Ward, Aaron C. Rathmell, Sarah L. Rathmell, Walter N. McCornack, Walter W. McCornack, Edwin A. McCornack, William R. Bell, Laura Martin, Elizabeth Andrews, H. H. Hunter, Herbert Beadle, Rodney Scott, Robert P. Allison, Clemons E. Carlile, Percy H. McDonald, Hattie Spencer, Francis Schank, Elizabeth Schank, Joseph W. Kays, James R. Deal, Fred W. Carruth, J. H. Roediger, Arthur Hotchkiss, Jr., M. R. Clark, Moses N. Wagner, V. J. Warren, E. N. Moseley, Frank S. Lydick, A. A. Thome,

John Decker, George G. Gross, George Walter Griffin, Mary F. Berger, J. F. McDonald, James J. McCormack, Frank W. Osburn, Charles P. Ferguson, Eugene R. Pierce, Ray Littlefield, Frederick G. Young, A. Tirell, John B. Hiltibrand, Chancey W. Butler, Junius E. Ward, Joseph D. Butler, William J. Rhynsburger, Francis P. Young, Charles F. Littlefield, Martha Littlefield, Araminta H. Gross, Rock S. Bryson, Henry T. Withrow, Martin T. Mulkey, W. W. Branstetter, Peter Whitaker, Milton Nichols, George Nichols, Mercy S. Wheeler, Eliza L. Spencer, Jennie L. Spencer, Clara F. Spencer, Jefferson D. Spencer, Henry A. Tromp, Septimus S. Spencer, John M. Wells, James McCallum, Marceline Whittaker, T. J. Harris, L. M. Raabe, Fred J. Maly, J. D. Howell, William J. Maly, Clarence Hougen, Daniel E. Eyre, John Kloster, Carl L. Vickerman, William Dickerson, F. G. Graham, George W. Moffitt, W. S. Wickersham, W. B. Wickersham, W. R. Petrie, Sarah Wickham, P. C. Stevenson, F. J. Fahy, Edward Kammerer, John C. Moomaw, Angus McLean, D. J. Ferriter, Clarance Griffin, Joseph E. McCoy, Joseph McCoy, B. N. Harrington, W. G. Erickson, Valentin Sorensen, B. E. Cook, S. C. Cook, H. O. Bolduan, Albert O. Monson, Louis S. Perkins, Joseph Ogulin, C. Y. Lowe, B. G. Schuyler, J. D. Boobar, B. F. Seymour, G. H. Smith, Alexander Padore, H. L. Houston, John D. Burns, Thomas E. Thompson, Edward H. Hurless, Bert Folsom, S. Graham, John Yates, N. McNair, Ernest E. Snow, Otto H. Gerdes, Christian Vorland, H. Renhardt, P. N. Kulseth, R. D. Mc-

Nair, David Tozier, Edward Maag, C. F. Foncanon, Thomas H. Hanby, Carl H. Olson, Maud E. Costello, G. W. Wilson, John Sinclair, M. B. Corthell, Kate N. Harmon, Kate M. Harmon, George W. Harmon, T. H. Mehl, A. F. Caxmenon, A. F. Carmenon, E. A. Costello, Edith M. Cameron, Wilbert Shook, William M. Mitchell, A. H. Haude, Bengt Johnson, E. E. Hampton, George Belloni, Fred Slagle, A. F. Linegar, Charles Moomaw, William Schroeder, Samuel Nosler, Charles McCabe, Elmer Kilpolrick, Bessie M. Cox, M. O'Rurke, M. O'Rourke, Frank G. Scribner, C. Hoeppner, E. A. Cox, William Schroeder, J. H. Fitzgerald, Christina Hanson, John C. Strong, Louis Strong, Reuben F. Tate, C. J. Tibbitts, Conrad Tauscher, Joseph A. Tauscher, Nik Auderer, Ben Orstad, J. R. Herron, Berndt F. Bengston, Fred Gage, C. E. Edwards, Paul A. Sandberg, Z. T. Thomas, Jean A. Houston, Hiram Edwards, Alfred Rodine, A. B. Campbell, Carrie Rodine, Charles Rodine, Rudolph Tauscher, Paul E. Tauscher, Margaret Murphy, Wenzel A. Tauscher, D. George Frissendahl, L. B. Judson, Edward Joehnk, George Seelig, Ira Chapman, Albert Seelig, John W. Butler, Robert Marsden, Edwin McArthur, Guy Gould, Henry Wells, C. A. Metlin, Emil Ogren, Samuel A. Conro, James M. Conro, Otho L. Hopson, Jacob W. Williams, L. R. Robertson, Charles Schappers, August Peterson, Ida Rodine, Effie Rodine, Jesse J. Ott, B. F. Willey, Jorden Schappers, Herman Remaine, William Remaine, J. M. Upton, E. E. Straw, Sarah Edmunds, W. B. Farrin, Frank C. Farrin, Jesse G. Farrin, George

N. Farrin, E. L. C. Farrin, John McMahon, Henry Michelbrink, Albert N. Gould, Algred Tyberg, Alfred Tyberg, Luther H. Pace, John Michelbrink, John Muchelbring, Samuel Ott, Isaac N. Price, Richard J. Henry, J. J. Kibble, Joseph Schappers, W. H. Riley, Christopher Krugg, James C. Days, John Schappers, R. A. Clarke, J. B. Castle, Clarence A. Gould, R. L. Martin, Joseph Whitaker, Albert Sitzloff, W. W. Wyatt, A. A. Adams, J. C. Parker, C. L. Flynn, Louis Hatley, William Brackinreed, D. Cook, F. G. Larson, W. G. Warnick, August LaLonde, J. F. Boncutter, Alfred McIntosh, Oluf Peterson, Robert F. Estis, James B. Abrams, A. C. Blake, Edward McAlpine, Louis Barr, M. N. Hawley, A. B. Siemons, H. A. Reasoner, R. H. Siemons, George A. Siemons, Fred C. Siemons, Harry J. Siemons, Curtis E. Abrams, Emma Morrison, R. L. Barr, Thomas C. Linkin, Isaac W. Powell, T. L. Harris, John Maag, Henry G. Raimann, Henry J. Raimann, Daniel Slentz, William A. Neal, Don L. Greene, George L. Mathews, R. T. Knowlton, A. T. Morrison, George T. Moulton, C. E. Schroeder, P. G. Schroeder, Samuel C. Braden, Ralph M. Knight, George Lainger, Thomas E. Davis, Ernest A. Michel, Raymond E. Baker, Albert L. Volkmer, Solomon C. Endicott, W. J. Moon, Amos L. Nosler, Jesse W. Hall, Claude H. Nosler, S. C. Bronson, Binger E. Hermann, Robert P. Carman, Henry B. Steward, Maxwell H. Dement, August H. Bender, Charles A. Pendleton, Rebecca E. Clarke, Julius Frazer, Thomas Armstrong, D. E. Buchanan, O. E. Buchanan, E. E. Buchanan, E. M. Furman, F. W.

Pett, Reason C. Endicott, John Ruppert, John Bretz, Harry J. Winsten, H. A. Featherman, E. A. Hannah, Walter W. Kroger, Adolphus A. Rounds, George A. Wilson, Philip Angell, Max Wittman, Minnie Burns, Clara J. McCoy, Alex Hanson, A. C. Case, E. Knippenberg, Bennie Severson, William Whobrey, William McNair, David McNair, Willis Whobrey, Gustav S. Breuer, Henry G. Volkmar, Kenneth E. Hannah, B. Ranum, Jay L. Smith, John Gorwell, George W. Scott, Otto N. Draves, John C. Schliem, W. V. Laird, Herbert Foss, Vernon L. Scott, J. L. Minder, Franklin S. Reeve, A. J. Meachan, L. Wm. Foss, Verner Barker, C. O. Dryden, E. C. Barker, James Richmond, Levi Foss, Nels O. Monson, Andrew Minder, Thurm Craigo, Ernest E. Remund, S. L. Remund, F. W. Stowell, C. B. Rockney, T. A. Young, Edward A. Minder, Clayton A. Ruckel, Witalis Johnson, John Nocker, John Mocker, F. G. Trollier, Paul F. Shaw, Levi Smith, Edward J. Moores, Carl August Almquist, N. A. Miller, Louis Kipka, Theodore Weisner, Gilbert Hanson, Edward J. Reimann, August Jensen, Fred Melson, Fred Nelson, Edward A. Benson, Carl R. Hillstrom, Charles Swenston, W. H. Rees, Gustav Despiegler, John Hopp, A. P. Buchanan, Thomas Fagan, W. G. Congdon, William Virgin, Ernest L. Hulburt, Ira Flagstead, Arthur D. Tupper, L. Q. Huey, William H. Hulburt, Henry Ebinger, Amel Running, Susie E. Fickes, Albert Anderson, Albert Running, Severin Anderson, John A. Krhoun, Wm. G. Manning, Wm. F. Manning, E. Running, J. F.

Forsyth, David Ebinger, Jr., Arne Running, Christine A. Sterns, John Leake, George F. Haehnel, Jacob H. Conrad, Charles Anderson, Arthur Anderson, Christian Addison, Sven C. Johnson, Ida L. Hyatt, W. Blankenberg, Ernest Matzke, D. G. Gibson, D. W. Gibson, George B. Adams, Otto Bergman, O. L. Nosler, J. E. Slocum, Earnest Folsom, P. J. Peralta, George Folsom, R. R. Pounder, S. L. Curry, John A. Nordeen, Charles Fickes, John Feschler, F. T. Desmond, C. H. Chelson, William Thring, O. Kregnes, S. E. Block, George H. Schulenberg, Herbert W. Shaw, Per Johnsen, John W. Anderson, Albert Hutchinson, Field, C. V. Johnson, J. C. Simpson, C. W. Kenkle, S. J. Keezel, C. M. Minton, A. L. Pugsley, A. W. Pugsley, E. E. Wilson, W. E. Allen, H. W. Conger, Guy Frink, J. H. Daniel, A. J. Johnson, Willis Vidito, V. A. Vidito, A. M. Taylor, W. H. Guinn, C. E. Banton, A. H. Buckingham, W. D. Barclay, G. W. Coon, G. W. Humphrey, George R. Hall, Jr., G. E. Lilly, J. S. Oakes, E. L. Oakes, B. W. Porter, P. R. Starr, V M. Woodcock, C. L. Beach, John Beach, W. S. Linnville, Philo T. Starr, Edwin N. Starr, Wilbur F. Starr, Wade Hinton, Amy Hinton, Ivan Rickard, J. Rickard, Lida Davidson, Pearl Persinger, Claude I. Starr, William A. Schmidt, Glenn W. Large, Thomas Large, Thomas J. Large, Stephen O. Rice, Thomas H. C. Brasfield, Joseph H. Dawson, John C. Davis, Leslie B. Kent, Victor H. Kent, Harvey G. Pugh, Ernest G. Pugh, Cloud H. Davidson, E. D. Farwell, Charles A. Pugh, George W. Barcus,

M. H. Bauer, J. R. Buckingham, Walter Barton, M. C. Starr, L. J. McNair, Charles S. Williams, J. J. Kenney, Chancey I. Barclay, T. M. Coon, C. E. Dinges, A. F. Oakes, C. H. Woodcock, John A. McBride, G. G. Horning, W. K. Taylor, John Withycombe, G. A. Clark, S. A. King, Sarah M. Hawley, Arthur W. Hawley, Jessie Dale Perrin, T. L. Blackledge, J. H. Edwards, Walter Poole, O. J. Blackledge, J. P. Gragg, D. V. Gragg, Ivan Hawley, H. C. Hinton, Ivan Hinton, G. H. Hibbs, Charles Henry Perrin, F. B. Conner, Jacob Edison, John Willbanks, M. C. Miller and Arthur Persinger.

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core and Edgar C. Holladay.

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

MILO F. DENNIS and Leopold H. Dietz.

FRANK TERRACE, Andrew C. Anderson, P. J. Applegate, Mary E. Anery, George Anderson, Chas. B. Abbott, Agnes Aamodt, Chas. H. Anderson, Harry Armstrong, Emil Affeldt, Clara Abbott, Ales Aker, Knut S. Aker, Margaret S. Armstrong, Andrew G. Anderson, Augusta Anderson, Julius W. Augustine, Edith Theresa Anderson, George T. Atteberry, G. A. Actzel, Asa M. Akin, George E. Adams, Elizabeth Austin, Ralph O. Austin, H. Theodore Ahrens, James M. Adams, William Anshutz, John S. Anderson, Axel

Ahlbery, Anna Anderson, Chas. A. Anderson, Wm. Aitchison, Thomas Agar, Oscar W. Akerson, Cecil L. Adams, Carrie R. Arkins, Blanche E. Akerson, Mable W. Ashley, M. A. M. Ashley, Milla Aumiller, S. E. Aumiller, W. J. Aumiller, Anna G. Aumiller, E. J. Aumiller, B. E. Aumiller, Frank Alteneder, Alfred C. Ayars, Lucius L. Avery, Lionel R. Atkinson, Ynyr H. Atkinson, Alice Anderson, Frank A. Axtell, Rose A. Atkinson, Rose A. Atknson, Ralph Angell, Marey E. Armstrong, William A. Armstrong, Carl W. Auerswald, James W. Armstrong, Frank Ashly, J. Clarence Ackeridge, Claude E. Annis, Lena M. Armstrong, Chas. W. Armstrong, Huldah Armstrong, Fred Anderson, Bessie Anderson, Thorbjorn Anderson, Elizabeth Anderson, J. H. Abbott, J. P. Anderson, Johanna C. Armstrong, John G. Anderson, Bertha Atwood, W. G. Atwood, Dr. Mary C. Adams, Dr. T. E. Adams, Alex M. Anderson, E. T. Avison, Roy B. Anderson, Albert Aaberg, Louis Anderson, A. E. Alexander, Henry Augustine, Chas. T. Annett, John M. Anderson, Frederick Auerswald, Henry Amunsen, Henrich J. B. Asendorf, M. C. Arnoldy, Theodore Anderson, Frank O. Anderson, Chas. Noble Abbott, Martha Auerswald, Ottomar Auerswald, John B. Allyn, Peter G. Abraham, Otto C. Abraham, Marie Abel, Walter Alderson, William Abramovitz, Alfred G. Anderson, Amos J. Ager, Mrs. Mabel Allen, Earl J. Atkins, Andrew J. Ajer, A. J. Adams, Charley Anderson, William Atwell, John Altenweg, Perlina Emma Anthony, Mildred W. Anderson, Frank C. Al-

len, John Anderson, Gunder J. Anderson, C. F. Armstrong, Neils A. Anderson, Joseph Abraham, Verne Aiken, Walter Briggs, Elmos C. Bradford, Lawrence J. Barber, W. B. Butler, I. T. Bird, L. O. Barnard, Albert Burcham, N. E. Bray, Ivan C. Burk, Francis M. Burk, Ethel M. Bay, Leota Brady, Fred V. Berger, James E. Bradford, Edwin Brady, Herman Berggren, H. E. Baitinger, Maurice Binford, H. C. Barclay, Mrs. Fannie Brown, Nels E. Berggren, Nellie E. Brown, Frank Bontty, William Brown, John J. Brown, Geo. S. Bartels, William E. Bauer, James S. Brosnahaw, Carl A. Boreson, Otho Bailey, Emily C. Brown, H. A. Bennett, Williams P. Bush, Helen O'Brien, Marion A. Bolin, Frank Bolin, Annie M. Bolin, Hans M. Bolstad, Virgil A. Brown, John E. Burkheimer, Lindon Ross Bissell, Phillip Basley, Gustav A. Boehn, J. F. Boyd, Tillman Bell, Otto Brown, Raymond Bridgman, A. M. N. Berlin, Myrtle Bond, L. C. Bond, William Boundy, A. Y. Burhart, Lews A. Bronillard, William H. Bussard, J. F. Blair, Alexander R. Bottcher, Sarah V. Burnett, Albert W. Brown, James E. Burbank, John B. Behrens, John Henry Behrens, Frank Brockway, Elizabeth Bell, John P. Brost, G. W. Brener, Edna I. Brener, Ida L. Baker, Edward C. Bulkley, Charles S. Benson, Harry B. Boyce, Herman Broemmeling, Eunice B. Burton, Benjamin Bayliss, Alexander F. C. Brummer, Ole H. Bjoin, Fred Borden, Charles R. Baisinger, William P. Bany, Edward T. Bascom, Carl E. Bynildson, Mrs. Matilda Barsis, William W. Boone, M. L. Boyd, Kate J. Boyd, Frank W. Bishop, Eugene Becker, John

F. Bell, Louis O. Boucher, L. H. Brewer, Frank Bernier, B. R. Blackwell, H. A. Blackwell, John W. Brockway, Charles F. Bailey, Napoleon A. Bray, Eudor Brosseau, Fred Brosseau, Ward E. Baker, Thaddus Brant, Chas. K. Beall, John T. Beach, John Burt, Leon J. Bourque, Myrtle Bunch, Frank V. Boucher, Edmond Boucher, Julius L. Baer, Mrs. Ward E. Baker, Mary Myrtle Burnes, Edwin Hugh Burns, Garrett Baldwin, Josie B. Bradford, Peter Buda, Frederick J. Betz, Ivor J. Berg, B. E. Benson, George C. Brown, C. A. Burghardt, R. C. Bisele, Jens Benson, Mary Bowden, Minnie L. Bricker, Percy H. Brown, George E. Boomer, Earnest A. Bohren, John Boden, S. E. Burnham, A. E. Brown, Minnie Bystrom, Andrew G. Bystrom, Ida Arilla Behrendt, Carl Edward Brown, Jessie L. Bacon, Lewis O. Brown, W. A. Behrwold, John H. Bortwick, Donald Bain, Nels Borris, Hamilton F. Beall, Fritz Block, M. Bergman, Ole I. Brekke, F. L. Bayley, Mrs. Nellie Bayley, J. G. Bacon, Wm. G. Beck, Melvin Blakeley, Daniel J. Burns, William A. Bond, E. C. Becker, Elizabeth C. Burton, Martin V. Bishop, Christian Britz, John Bruschke, Nellie Blumer, Jacob Bulmer, Elva Baker, Chas. Berryman, Mamie Berryman, John Gabriel Berystrom, Wm. Black, Chas. Berry, C. R. C. Blom, Elmer V. Bowlin, C. C. Bowlen, W. C. Ball, Jesse Bean, A. O. Buringrud, Edwin H. Bjoin, Peder P. Bonkind, Peter Baumchen, Fred O. Brewster, Knute E. Boe, Alois Beyer, Jessie O. Brewster, George Brunt, Leonard Backhoff, Claude C. Bowen, T. B. Bienleau, Z. C. Boyd, Geo. A. Buck, Jos. Buettner,

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Laura Dillon, Thomas Pogroszewski, Chas. E. Arnsbary, Minnie Amsbary, Robert Shelby, F. J. Quame, Reinhold F. Weirr, Charles E. Shude, Mrs. J. Hewitt, John F. Marzen, Geo. L. Viscomte, Walter Crane, J. O. Pratt, J. L. Huntley, Horace J. Newhall, Henry E. Eckles, and Retta E. Bishard,

Interveners.

Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee and Union Trust Company of New York individually and as trustee, the defendants in the above entitled cause; and

JOHN L. SNYDER, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Frances S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, defendants, cross-complainants in the above entitled cause, and

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neil, Alexander Fauske, Francis Wiest, Cordelia Michael,

John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin, defendants, cross-complainants in the above entitled cause, and

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman, defendants, cross-complainants in the above entitled cause; and

WILLIAM F. SLAUGHTER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 24th day of September, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core, and Edgar C. Holladay, interveners in the above entitled cause; and

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman, and Charles Wiest, interveners in the above entitled cause; and

MILO F. DENNIS, and Leopold H. Dietz, interveners in the above entitled cause; and

FRANK TERRACE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

CHARLES J. VANZILE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in the intervention in this cause on the 23rd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

LUTHER E. TROWBRIDGE, intervener in the above entitled cause; and

GEO. W. WRIGHT, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright, and Joseph E. Wright, interveners in the above entitled cause; and
WILLIAM E. CARTER, Frank Carter, and William H. Prentice, interveners in the above entitled cause; and

ARTHUR L. GOLDER, George W. Trefren and Lewis J. Trefern, interveners in the above entitled cause; and

ELMER L. HANCOCK, and each and all of the persons whose names are specifically set forth in the above title to this cause; commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 8th day of February, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ROBERT AISTROP, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude, and Frank A. Durrah, interveners in the above entitled cause; and WILLIAM McLEOD, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sarjent, Fred A. Sarjent, Travis Martin, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley, interveners in the above entitled cause; and

B. W. NUNNALLY, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker, and O. N. Cranor, interveners in the above entitled cause; and

PAUL C. L'AMOREAUX, Albert E. Barkman,

Clyde M. Adair, Carrie M. Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman, and Rose L'Amoreaux, interveners in the above entitled cause; and

JOHN F. FOWLER, Fred B. Hussey, L. L. Scott, Eliza Scott, Geo. W. Scott, L. D. Beary, Glen W. Armour, W. J. Sweet, T. J. McMullen, Geo. S. Lindsey, L. F. Jones, A. Noble, H. N. Noble, H. C. Jones, A. A. Noble, Bertha V. Scott, Gertrude J. McMullen, Emeline S. Phelps, Jas. K. Phelps, Margaret B. Hallowell, C. W. Chapman, Orlando S. Phelps, Robert D. Shutt, Thos. J. Lillis, J. L. Wadsworth, Jessie P. Coffin, Vestel P. Coffin, R. W. Purdum, Lena A. Ingram, H. L. Ingram, Belle Peck, Floy McLeod, Sara Ingram, E. H. McKibbon, J. C. Perry, M. LeRoy White, Minnie M. Halliday, Margaret White, A. LaMare, J. J. Kobetich, John Alderson, Chris Knudsen, S. T. Farr, Chas. Carlyle, Clyde A. Gates, Henry Olmstead, B. Lindahl, Wm. O. Foote, Geo. Schlosser, John R. Read, A. O. Nelson, O. Erickson, T. L. Draper, Frank L. Draper, John Adamson, Leonard Anderson, A. M. Frankfurt, M. S. Langdon, John Olson, John Hedberg, Jas. DeRose, J. Frank LaRoe, Fanny M. LaRoe, Albert O. Skotterud, C. Wallgren, Emma C. Phelps, Arthur L. Dewey, H. H. Keith, C. Tuttle, H. A. Fisher, Lena M. Storla A. Johnson, Cora E. Ferrel, Van R.

Ferrel, Thos. C. Coffin, Geo. Harrison, Fred C. Smith, Walter Hatcher, O. W. Peterson, John Forsberg, Dan'l M. Smith, S. J. Morris, I. J. Edwards, Andrew Lindstrom, A. A. Johnson, I. Carpenter, T. A. McCormick, John C. Farley, John Fitzgerald, Wm. H. French, Geo. L. Scarlett, Michael Fitzgerald, Nils P. Lindgren, Hokan Lundgren, Emma E. Lundgren, Anna E. Lundgren, E. R. Redlich, Ida S. Bell, Milton S. Parrott, John Smedlund, F. E. French, Mary E. Wadsworth, Oscar Sandstrom, Frances A. Short, Albert F. Reed, Lewis E. Handley, William F. Hallowell, Beverly W. Coiner, Anna Arickson, M. H. Woolsey, Sr., E. G. Wollum, Annie Lemon, Martha J. Chapman, Robert Carlson, and Minette Johnson, interveners in the above entitled cause; and

L. C. KEYLON, E. E. Keylon, C. S. Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphs Gaunt, and Anton Carlson, interveners in the above entitled cause; and

R. E. CAMERON, Everett B. Coffin, Ansel B. Hill, Arthur D. Bird, Elizabeth Robinson, W. J. H. Best, Frank J. Clements, Peter H. Ludwig, Hugh Mair, Anna M. Chase, D. H. Smith, Sarah J. Smith, Mary E. Ludwig, W. J. Hodder, W. B. Heffron, E. E. Christman, James E. Phillips, D. J. O'Connor, Thomas R. Williams, Zula D. Bird, William E. Donohue, James S. Chase, P. T. O'Connor, J. W. Braman, Julius J. Gregat, D. D. Whitcomb, L. F. Hatter, Gertrude Mae Schneider, Marcellus L. Whitcomb, Gilbert Thorson,

Fred Schneider, Jas. W. Curtis, Virgil W. Creech, Bertha Josephine Howe, James L. Hoadley, James O'Sullivan, Essie P. Mitchell, J. Y. Mitchell, Albert F. Hopstein, R. H. Holbrook, Edgar H. Blair, R. H. Wilhermsdorfer, Wm. H. Finck, J. T. Hatter, Wm. Curtis, J. A. Schoenberger, Kity V. Hogan, W. H. Hogan, Aaron L. Beers, John C. Kech, Estella A. Beers, Libbie D. Hagler, H. W. McFate, Henry R. Hale, Vincent J. Dermott, John M. Jackson, Andrew M. Thomas, B. Calling, Robert Dudgeon, Mabell F. May, Walter May, Lewis C. Hall, H. A. French, Henry C. Hill, C. C. Cease, Felix A. Rogers, Herman Meyer, Ray McFee, Mary A. Day, Anna E. Loupman, Francis O. Whealon, Bertha May Carr, John Mogus, Chester Kirkpatrick, Chas. Skuhra, F. E. Hammond, D. C. Hall, E. M. Bronilette, M. A. Sprague, J. F. Treen, J. E. Amling, Jennie Rosencrans, Dorotha C. Kech, Preston H. Carr, and John H. Miller, interveners in the above entitled cause; and

CHARLES W. VARNUM, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Leabo, Mary E. Black, Arthur J. Plate, Flora E. King, Howard S. Robertson, W. E. Bowden, Frank B. Manzer, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson,

Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncy Thomas, and Adeline James, interveners in the above entitled cause; and

NICHOLAS HERRMAN, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketchum, G. A. Hutzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan, Hortence B. Lennan, P. G. Larson, William Hoeck, and Henry Hoeck, interveners in the above entitled cause; and

EDWIN F. ANDERSON, Emma K. Barr, Mabel A. Barr, John Boeck, Wardel Boeck, G. V. Booth, Anna B. Booth, Joseph W. Brady, William A. Boze, Eric Q. Brainard, John Charles Brodie, George Brunt, J. R. Buck, George A. Buck, Thomas Butler, F. M. Bybee, Herbert W. Calkins, Ben W. Calkins, N. W. Calkins, Nellie B. Calkins, Etta S. Clear, M. H. Coffin, Edna Coffin, Mark Coffin, Mary A. Coffin, Elza Davis, George J. Davis, Thea Falk, John C. Filer, Mary G. Filer, Frank C. Irons, Jacob H. Keefer, R. D. Leach, Lillian E. Leach, Andrew C. Leach, Amelia Lind, M. E. Longfellow, W. L. McCaslin, Ira L. Macomber, Harry J. Marcus, Elias D. Marquand, D. G. Martin,

Helen Martin, Frank J. Miller, George Miller, George W. Mills, Fred Mosely, Althea Munroe, Orr W. Noble, William S. Northrup, David R. Page, C. M. Paxton, Helen A. Payne, Alice J. Pelot, Henry Rasmussen, Elmer Rasmussen, Irene K. Rodgers, Napoleon B. Rodgers, William D. Rogers, Frank O. Schramm, A. J. Seckner, Gertrude Seckner, George E. Smith, Dallas W. Spangler, D. W. Stainbrook, Anna Steensland, Frank R. Storm, Norbert H. Storm, L. B. Taylor, Joseph Thompson, C. H. West, J. Ernest White, Daniel A. Wisecup, W. W. Calkins, Etta S. Clarr, Marg G. Filer, Guy E. Winzer, and Montello Gray, interveners in the above entitled cause; and

FRED J. GOULD, Beverly B. Deems, George Daniel, W. H. Harris, John D. Sullivan, Daniel S. Green, Adolph O. Keller, Peter Haupt, Lillian M. Hanley, Tobias S. Miller, Ezra H. Stafford, Peter T. Barrett, William A. McAtee, Joseph V. Barrett, George B. Reynolds, Massey Wilson, Henry Schurmann, Edwin B. Schurman, Adolph G. Enderly, Flora A. Branstetter, William D. Burhans, Jacob J. Koenigsmark, Florence E. Stafford, Fannie A. Stafford, Edwin M. Stafford, Justus H. Hohl, Louis J. Bechtold, John C. Greulich, A. M. Scheel, Effie Grace Sumney, Herman C. Kralemann, J. W. Vandolah, Ward D. Flinn, Joseph A. Stewart, C. W. Cooper, Hoxie Cooper, Roxie Cooper, Flora Beardsley, Raymond M. Beardley, James A. Owens, Clinton S. Braden, S. M. Braden, Sears Lehman, Garfield J. Tansing, L. G. Davis, Robert J. Hood,

Robert Rives, J. B. Leemon, Helen H. Dearborn, W. B. Dearborn, W. E. Dearborn, David O'Neal, Leonard P. Lockwood, George K. Boyd, Frank J. Smith, Estella J. Smith, John D. LaCroix, Benjamin F. Wheeler, F. A. Gooch, Mrs. M. O. Woodruff, Charles P. Howland, James Lacy, A. L. Gibbs, Paul Vinyard, William H. Lockwood, Allen W. Thomas, and E. G. Bentley, interveners in the above entitled cause; and

ABRAM B. HORNER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abraham B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of December, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

GEORGE B. BOTHWELL, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 6th day of October, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

HERVEY L. KEYES, Chester H. Thornson, Chester H. Thomson, Lynn S. Carter, Byron D. West,

George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arendonk, Ira Lubbers, Reinier Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Heunink, Bertha Moe Seaver, and Elmer H. Ruslink, interveners in the above entitled cause; and

MARVIN P. ALFORD, and each and all of the persons whose names are specifically set forth in the above title to this couse, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 14th day of February, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ALBERT BOZARTH, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court,

filed their joint complaint in intervention in this cause, on the 15th day of March, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause.

And they and each and all of the aforesaid defendants, defendants cross complainants, and interveners in the above entitled cause, conceiving themselves aggrieved by the judgment and decree made and rendered in the above entitled court in the above entitled cause, and entered herein on the first day of July, A. D. 1913, at the March, 1913, term of said court, in favor of the complainant in the above entitled cause and against each and all of the said defendants therein, and against each and all of the said defendants cross complainants therein, and against each and all of the said interveners therein, wherein and whereby, among other things, it was and is adjudged and decreed that all of those certain lands and estates in lands described in the said judgment and decree, have become and now are forfeited to, and the title to all of said lands and estates in lands has reverted to, and now is revested in, the United States of America, and all of said lands and estates in lands now are the absolute property of the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross complainants and interveners herein or either or any of them, or any party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that the title of the United States of America to all of said lands and estates in lands be, and the same hereby is quieted and confirmed, and particularly as to any and all claim or claims of right, title, interest or lien, to or upon the same or any part thereof, by or in favor of the defendants, cross complainants and interveners herein, and each and every of them, and each and every party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that each and all of the defendants, cross complainants and interveners herein, and their respective officers and agents be, and they and each of them hereby are forever enjoined and restrained from in any manner claiming all claim or claims of right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof; and from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein; and from negotiating, executing or recording any document or instrument, and from doing any other act or thing, which shall in any manner affect or encumber the title to said lands or estates in lands, or any part thereof; and from going upon said lands or any part thereof; and from cutting, removing or in any manner using or injuring any of the timber or other natural products thereof; and from

in any manner committing trespass upon said lands or any part thereof; and from in any manner using or interfering with said lands and estates in lands or any part thereof, or the title or possession thereof; and from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the said judgment and decree shall not apply and is not intended to apply to reesrvations or exceptions of right-of-way for the main track of the railroad of the Oregon & California Railroad Company as actually constructed, established and in operation at the date of the said decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the defendants Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company shall within sixty days from the date that any of said lands shall revert to said defendants, or either of them as in said decree mentioned, execute and file with the clerk the above entitled court a deed of conveyance, in due and legal form, conveying and confirming the said lands unto the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them. And in the event that said defendants, or either or any of

them, shall fail to execute and file any such deed or deeds of conveyance as aforesaid, the said judgment and decree shall operate, and shall have the same force and effect, as such deed or deeds of conveyance; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that there be excepted from the operation of said judgment and decree all right-of-way and station grounds as established and in actual use at the date of said judgment and decree in the operation of the railroad of the defendant Oregon and California Railroad Company; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that within sixty days from the date of said judgment and decree the defendants, Oregon and California Railroad Company, Stephen T. Gage, and Union Trust Company shall execute and deliver to the Clerk of the above entitled court a deed of conveyance in due and legal form, conveying and confirming unto the United States of America all of the said lands situated in the State of Washington, free and clear from any and all claim, or claims of right, title, interest or lien, in, to or upon the same, or any part thereof, in favor of the defendants herein or either or any of them, which said lands are particularly described in said judgment and decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that each and all of the cross complaints and bills and peti-

tions in intervention be and they are dismissed for want of equity with costs in favor of the prevailing parties, respectively, to be thereafter taxed; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainants' prayer for an accounting be and the same is denied; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainant, the United States of America have and recover from the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company its lawful costs and disbursements herein, and that execution issue therefor,

Do and each of them does hereby jointly and severally appeal from the said judgment and decree and from the whole and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

And the said Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company of New York, individually and as trustee, the said defendants and each and all of them in the above entitled cause, and the said defendants cross complainants and each and all of them in the above entitled cause and the said interveners and each and all of them in the above

entitled cause, file herewith their and each of their assignment of errors, asserted and intended to be urged upon this, their said appeal.

And the said Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, of New York individually and as trustee, the said defendants, and each and all of them, in the above entitled cause, and the said defendants cross complainants, and each and all of them, in the above entitled cause, and the said interveners, and each and all of them, in the above entitled cause, pray that this, their petition for said appeal, and their said appeal may be allowed, and that citation issue herein as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and decree was made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and also that an order be made fixing the amount of security which the said defendants, the said defendants cross complainants and the said interveners shall give and furnish upon this their said appeal, in order to supersede, suspend and stay the said judgment and decree and every part thereof, and that upon the giving of such security the said judgment and decree, and every part thereof, and execution thereon, be superseded, suspended and stayed until the final determination of this cause on appeal.

And your petitioner will ever pray.

PETER F. DUNNE,
WM. D. FENTON
and JAMES E. FENTON,

WM. F. HERRIN,
of Counsel.

Socilitors and Attorneys for said defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee.

MILLER, KING, LANE
and TRAFFORD, DOLPH,
MALLORY, SIMON &
GEARIN,

JOHN C. SPOONER,
JOHN M. GEARIN,
of Counsel.

Solicitors and Attorneys for said defendant, Union Trust Company of New York, individually and as trustee.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,
Successors to
SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William McLeod, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sargent, Travis Martin, Fred A. Sarjent, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COUNER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Which petition for appeal, with order therein, was duly entered by the said court on August 29, 1913, in the following words, to-wit:

The within petition for allowance of appeal is granted, and the said appeal is allowed as prayed, upon the giving of a bond in the sum of One Hundred Thousand Dollars ($100,000), to be approved by this court, which bond shall operate as a supersedeas from the date of its approval, except as to the injunctive portion of said decree.

Dated this 29th day of August, 1912.

CHAS. E. WOLVERTON,
Judge.

District of Oregon,)
) ss.
County of Multnomah.)

Due service of the within Petition for Appeal is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof duly certified to.

JAS. C. McREYNOLDS, Atty. Genl.
B. D. TOWNSEND, Spl. Asst. to Atty. Genl.
By GLENN E. HUSTED,
Spl. Asst. to Atty. Genl.,
Attorney for Complainant.
CLARENCE L. REAMES,
United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court, by V. Johnston, Deputy.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of the defendant Union Trust Company, individually and as trustee, in words and figures as follows, to-wit:

(TITLE)

DEFENDANT UNION TRUST COMPANY'S (INDIVIDUALLY AND AS TRUSTEE) ASSINGMENT OF ERRORS.

The defendant, Union Trust Company, of New York, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

2.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

3.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

4.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

5.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

6.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

7.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, individ-

ually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or any party or parties claiming under them, or either or any of them.

8.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

9.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

10.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

11.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

12.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or the officers or agents of them, or any or either of them, be, or what they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or form in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

13.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Stephen T. Gage, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

14.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America,

all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise, or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

15.—The Court erred in holding that the above mentioned defendant, Union Trust Company, has no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

16.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

17.—The Court erred in holding that this defendant,

as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

18.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, this defendant, Union Trust Company of New York, was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in said mortgage of July 1, 1887, and in holding that this defendant was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

19.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to this defendant, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against this defendant.

20.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

21.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

22.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

23.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

fornia Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

24.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

25.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

26.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grants to raise funds or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

27.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

28.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

29.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

30.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

31.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

32.—The Court erred in holding that any sale or

sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

33.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

34.—The Court erred in holding that the grantee of said West Side Grant, or its succesosrs in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy intent and legislation of Congress, in the premises.

35.—The Court erred in not holding that the proviso in the Aact of Congress of April 10, 1869, to-wit,

"That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents ($2.50) per acre," is void for uncertainty.

36.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

37.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

38.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

39.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

40.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

41.—The Court erred in holding that said provision

as to the filing of assent had not been repealed by said act of June 25, 1868.

42.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

43.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

44.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

45.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise,

because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

46.—The Court erred in holding that said provision as to the filing of assent in respect to said East Side Grant, was a condition, either precedent or subsequent.

47.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

48.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

49.—The Court erred in holding that any impostion by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing

under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

50.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

51.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

52.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first

section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

53.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land-grants.

54.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

55.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line pro-

vided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

56.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

57.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

58.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

59.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869,

being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

60.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

61.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

62.—The Court erred in not holding that after performance by the said California and Oregon Railroad

Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add, to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

63.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

64.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

65.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

66.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a conditionn precedent.

67.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

68.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

69.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

70.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grant, in any re-entry for breach of condition, or legislature equivalent thereof, or in any legislative declaration of forfeiture.

71.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

72.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

73.—The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

74.—The Court erred in holding that thecomplainant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company, and said Stephen T. Gage, individually or as trustee, or any or either of them, or any party to the cause.

75.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

76.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

77.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

78.—The Court erred in holding that at the time

of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

79.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad Company and said Southern Pacific Company and against said Stephen T. Gage, individually and as trustee.

80.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side grant or of said West Side grant.

81.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in receipt to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

82.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to the said Wast Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

83.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture, had not been acquicssced in by Congress and complainant.

84.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

85.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

86.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

87.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

88.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

89.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, of said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

90.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

91.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

92.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

93.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

94.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

95.—The Court erred in not holding that the proviso

for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

96.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866, and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

97.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

98.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

99.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said conditions does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provision amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

100.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

101.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole, or any part, of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

102.—The Court erred in not holding that under the

terms and provisions of said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

103.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

104.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

105.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

106.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

107.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

108.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

109.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

110.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

111.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

112.—The Court erred in holding that issuance of patents to said lands by the land department was not

a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

113.—The Court ered in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

114.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

115.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

116. The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trail by jury of the issue as to whether or not any of the conditions of said grants, or either of

them, had been breached.

117. The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof and complainant is estopped to claim a forfeiture of said land grant, or any part thereof.

118.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant, Oregon and California Railroad Company, to the Auditor of Railroad Accounts created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary

of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

119.—The Court erred in not holding that the complainant was estopped by the act of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

120.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any

conditions repugnant to the original grant.

121.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

122.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

123.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

124.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre.

125.—The Court erred in not holding that the evidence in said cause was insufficient to support the de-

cree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

126.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

127.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868, or April 10, 1869, or May 4, 1870.

128.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

129.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891, and March 2, 1896.

130.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

131.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

132.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

133.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a

revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

134.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforcable that it was repugnant to the grant and is void.

135.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

136.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers;" and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

137.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, and that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complainants of the defendants' cross-complainants and the complainants in intervention of the interveners-defendants, and (2) adjudges that the complaints' prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually constructed, es-

tablished, and in operation at the date of said decree, be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Stephen T. Gage, individually and as trustee, as may be proper.

MILLER, KING, LANE and TRAFFORD,

DOLPH, MALLORY, SIMON & GEARIN.

JOHN C. SPOONER,

JOHN M. GEARIN,

of Counsel.

Solicitors and Attorneys for said defendant, Union Trust Company of New York, individually and as trustee.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. WRIGHT,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

State of Oregon,)
) ss.
County of Multnomah.)

Due and legal service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913 by receiving a true copy thereof, duly certified to as such.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of the defendant, Stephen T. Gage, individually and as trustee, in words and figures as follows, to-wit:

(TITLE.)

DEFENDANT STEPHEN T. GAGE'S (INDIVIDUALLY AND AS TRUSTEE) ASSIGNMENT OF ERRORS.

The defendant, Stephen T. Gage, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint herein:

As against the said defendants and each of them, the said bill of complaint is without equity and cannot be

maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without equity, and cannot be maintained, as to the "West Side Grant," so-called, in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overuling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complaint to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called, in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred

to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands de-

scribed in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part

thereof by or in favor of this defendant, individually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from conmitting in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

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of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Union Trust Company, or any or either of them shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Union Trust Company, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of

America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date of July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that this defendant, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of this defendant, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the own-

ers and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

fornia Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant,

under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that the proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the act aforesaid shall be

sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty ($2.50) cents per acre," is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said

act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise because of the action of said East Side Com-

pany in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side Grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construc-

tion and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Initerior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that

thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land-grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed

to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of

Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Initerior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10,

1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77. The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Con-

gress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side Grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complain-

ant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grnatees, if such there were, did not have the possession of the same.

90.—The court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever

since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad, and said Southern Pacific Company, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption

of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture,had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—TheCourt erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885 andSeptember 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October 1902, was and is barred by the Acts of Congress of March 3, 1891 and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the statute of limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866 and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers,

contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111. The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settlers; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provision amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provision of the said act of Congress of

April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under sail land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during

the construction of said railroad it was impossible for the grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869 and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not

a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869 was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether

or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like an-

nual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by

the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents ($2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition sub-

sequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and that the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869 for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers"; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land de-

partment of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually con-

structed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNNE,
WM. D. FENTON,
and JAMES E. FENTON,

Solicitors and Attorneys for said defendant, Stephen T. Gage, individually and as trustee.

WM. F. HERRIN, of Counsel.

Service of the foregoing assignment of errors admitted this 29th day of August, 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades. Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,
Successors to
SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said Court the Assignment of Errors of defendant Southern Pacific Company, in words and figures as follows, to-wit:

(TITLE)

DEFENDANT SOUTHERN PACIFIC COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Southern Pacific Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court ered in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity and cannot be maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity, and cannot be maintained as to the "West Side Grant", so-called in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "East Side Grant", so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, trans-

actions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overuling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sus-

taining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Courts erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complainant herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling the complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of

said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that the said bill should be dismissed.

19.—The Court erred in holding that the lands, or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same, or any part thereof, has reverted to and now is revested in the United States of America, or that the same, or any part thereof, now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or defendant Oregon and California Railroad Company, or defendant Stephen T. Gage, individually or as trustee, or de-

fendant, Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted, or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, by or in favor of this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually, or as trustee, or

said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Oregon and California Railroad Company, or to said Stephen T. Gage, individually or as trustee, or to said

Union Trust Company, individually or as trustee, that the defendant Oregon and California Railroad Company or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall, within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, the defendant Oregon and California Railroad Company, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest, or lien in, to or upon the same, or any part thereof, in

favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company had no lien on said lands, or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent, or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act

granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof is expressed by the proviso as to sale to actual settlers contained in the act of Congress of April 10, 1869, referred to in said bill and entitled "An Act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.'"

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad, as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any

provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side grant to the construction of the

railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of Said East Side land grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any

part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or re-

funding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser

and for a price not exceeding two dollars and fifty cents (2.50) per acre," is void, for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were not and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,' "

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and

extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in apply-

ing to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of

Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire gant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California

and Oregon Railroad Company, a grant in presenti, of the odd sections of lands within the limits therein specifiled, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire, and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it re-

quires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the pasasge of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be perfermod prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and

telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

83.—The Court erred in holding that there was any

cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, to legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Oregon and California Railroad Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any

part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89. The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the said Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91. The Court erred in holding that at the time of of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company had

legal title and possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, and said Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side or of said West Side grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the asumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed

condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a

condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by said Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on an assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the asumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and

March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July

25, 1866 and May 4, 1870, in the actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions of right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and

was a single grant and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof as to a portion of the same with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of said Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers, was and is unilateral and

void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon, and the whole thereof, vested in the said Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the said Oregon and California Railroad Company to sell to actual settlers, only, land in quantities

not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July

25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Oregon and California Railroad Company, holds legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each case of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, and with the knowledge thereof, and complainant is estopped to claim a forfeiture of the said land grant, or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the

transactions of the land department of said defendant Oregon and California Railroad Company, to the Auditor of Railroad Accounts, created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such reports; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer

said grant and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers, only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purposes.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Con-

gress.

140.—The Court erred in rendering the judgment and decree herein against the said defendants, Southern Pacific Company, Oregon and California Railroad Company, Stephen T. Gage, individually or as trustee and Union Trust Company, individually or as trustee, or any or either of them, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant, Oregon and California Railroad Company, violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been

barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler" clause in each of said acts of Congress to be a condition subsequent and certain and definite, so as to be enforceable, that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted lands and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers;" and that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, in that regard, are and each of them is void and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Southern Pacific

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Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree all right of way and station grounds, as established and in actual use at the date of said decree in the operation of said Oregon and California Railroad Company's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said Oregon and California Railroad Company, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Oregon and California Railroad Company and said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

P. F. DUNNE,
WM. D. FENTON and
JAMES E. FENTON.

Wm. F. Herrin,
Of Counsel.

Solicitors and attorneys for said defendant, Southern Pacific Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of John L. Snyder, et al., Sidney Ben Smith, et al, Milo F. Dennis, et al, Wm. E. Carter, et al, Wm. McLeod, et al, Arthur L. Golder, et al defendants-cross-complainants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF OREGON.

THE UNITED STATES OF AMERICA, Complainant.)

vs.

THE OREGON & CALIFORNIA RAILROAD CO., THE SOUTHERN PACIFIC RAILROAD COMPANY, STEPHEN T. GAGE, Individually, and as trustee, and the UNION TRUST COMPANY, individually and as trustee, John L. SNYDER, et al., defendants, cross-complainants, and FRANK TERRACE, et al., interveners, defendants, Defendants.)

NO. 3340 IN EQUITY.

ASSIGNMENTS OF ERRORS.

JOHN L. SNYDER et al, and SIDNEY BEN SMITH, et al., defendants-cross-complainants, and JOHN BURBEE, et al.; MILO F. DENNIS, et al; WILLIAM E. CARTER, et al.; WILLIAM Mc-

LEOD, et al, and ARTHUR L. GOLDER, et al, intervenors, defendants, complain of errors in the proceedings in this case in the District Court of the United States, for the District of Oregon, and in the decision and decree rendered, made, and entered therein, and assign the following as the errors complained of:

1. The court erred in holding that the lands, or any thereof, described in the bill of complaint, and decree, were, or had been, forfeited to the complainant, and that a decree be entered forfeiting such lands or any thereof to the complainant.

2. The court erred in holding that the title of complainant to the said lands or any thereof should be quieted.

3. The court erred in holding that complainant was entitled to recover its costs and disbursements herein, of and from these defendants, cross-complainants, and intervenors, defendants, or any of them.

4. The court erred in sustaining the demurrers of the defendants the Oregon & California Railroad Co., the Southern Pacific Co., Stephen T. Gage, individually, and as trustee, and the Union Trust Company, individually and as trustee, to the cross complainants and bills of intervention, of all or any of these defendants, cross-complainants, and interveners defendants.

5. The court erred in sustaining the motion of complainant to dismiss all or any of the cross-complaints,

and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants.

6. The court erred in holding that all of any of the cross-complaints, petitions, and bills in intervention, of these defendants cross-complainants, and intervenors, defendants, were without equity, and did not state a cause of suit against the above named defendants, and the complainant herein.

7. The court erred in dismissing all or any of the cross-complaints, petitions, and bills of intervention of these defendants cross-complainants, and intervenors defendants.

8. The court erred in not holding that each and all of the cross-complaints, petitions, and bills in intervention, of these defendants cross complainants, and intervenors defendants, stated and showed good and sufficient causes of suit against the above named defendant, and the above named complainant, and entitled each and all of said defendants cross-complainants, and intervenors defendants, to the relief therein prayed for.

9. The court erred in not holding that each of the above named defendants, and the above named complainant should be required to answer all and singular, the cross-complaints, petitions, and bills in intervention of these defendants cross-complainants, and intervenors defendants.

10. The court erred in holding that the complain-

ant is the owner in fee simple, or is in possession of the lands described in the bill of complaint herein, or any thereof.

11. The court erred in not holding that the defendant the Oregon & California Railroad Company, is the owner in trust of the lands described in the bill of complaint herein, and particularly of those portions thereof described in the cross complaints and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of the actual settlers, and for the use and benefit of these defendants cross-complainants, and intervenors defendants.

12. The court erred in not holding that under and by virtue of the terms and conditions of the act of Congress 1869 entitled "An act to amend an act Entitled 'An act granting lands to aid in the construction of a Railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon'," and under and by virtue of the terms and conditions of the act of May 4th 1870 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland, to Astoria and McMinnville in the State of Oregon," the defendant Oregon & California Railroad Company, and all persons taking and holding any of said lands or any interest therein, by through or under it, save and except the actual settlers purchasing the same in quantities not exceeding 160 acres to any one settler and at prices not exceeding $2.50 per

acre took and held all of the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of such persons as might become actual settlers on any quantity thereof up to 160 acres, and in not holding that the terms and conditions of said trust were such, that when, and in the event any person settled upon any quantity of said lands not exceeding 160 acres, and tendered and offered to the defendant the Oregon and California Railroad Company or its representatives the sum of $2.50 an acre therefor, it became, and was, the legal duty and obligation of said defendant to accept such sum so tendered in full payment for said lands, and to execute a deed conveying the said land so settled upon and paid for in fee simple to such settler.

13. The court erred in holding that the primary and ultimate purpose of congress in granting the lands hereinbefore mentioned was to secure the settlement thereof by citizens of the United States in quantities as great as 160 acres to each settler, and no greater, and to secure to the citizens of the United States so settling thereon, the right and privilege to purchase the lands so settled upon at a price as low as $2.50 per acre, and in not holding that any person becoming a settler upon such lands in the quantities aforesaid, and tendering the aforesaid price thereof to the said defendant the Oregon & California Railroad Company became and was the owner of an equitable interest and estate in the said lands,

and became and was entitled to a decree of said court directing and requiring that said lands so settled upon be conveyed to him upon the payment aforesaid.

14. The court erred in not holding that to now decree a forfeiture of all, or any, of the lands described in the bill of complaint herein is to defeat the purpose and intent of congress in making the grants aforesaid, and is to withdraw the said lands from settlement, when it was the purpose and intent of congress that the same should be settled.

15. The court erred in holding that the grants aforesaid are in any respect lacking in the elements of a trust, or that the terms used in said grant are in any respect indefinite or uncertain as to the conditions upon which the said lands were therein required to be sold, or as to the quantities in which the same were therein to be sold, or as to the persons to whom the same were therein to be sold.

16. The court erred in not construing the term "actual settlers" in the light of congressional enactments adopted prior to the land grants aforesaid, and in the light of the land policy existing in the United States at the time of the making of such grants, to mean, and to specify any person who had chosen to settle upon a quantity of lands subject to settlement as great but not greater as 160 acres by legal subdivisions, and who resided upon such lands, and made the same his home.

17. The Court erred in not giving to the term

"actual settler" the settled judicial meaning, and construction that the same had in the country at the time of the adoption of said land grants.

18. The court erred in not holding that at the time of the adoption of said land grants the term "actual settler" had a definite and certain legislative and judicial meaning, which meaning was intended to be, and was incorporated into and a part of said land grants, and which meaning was of such a nature that whenever the said term was used in legislative action, the same meant and implied, and should now be construed to mean and imply any person occupying and making a home of as large a tract as such person desired up to 160 acres by legal subdivisions of lands subject to settlement.

19. The court erred in holding that the proviso in the act of April 10, 1869, hereinbefore mentioned was a condition subsequent, or operated otherwise than to create a trust in favor of such persons as should thereafter become actual settlers upon the lands therein granted, and in favor of these defendants cross complainants, an intervenors defendants.

20. The court erred in holding that any provision in the act of May 4th 1870 touching sales to settlers was a condition subsequent, and operated otherwise than to create a trust as hereinbefore described.

21. The court erred in holding that the consequence and penalty of forfeiture was attached by congress to a breach of the conditions of said grant, and in not hold-

ing that the proper relief in the event there should be a breach of said conditions was the enforcement by the means usually employed in such cases by courts of equity of the terms and conditions of the trust aforesaid.

22. The court erred in holding that the consequences and penalty of forfeiture was attached by congress to a breach of said conditions, should such there be, or of any provision in said act of May 4th 1870, touching sales to actual settlers, and in not holding that the appropriate remedy for such breach was the enforcement by the means usually employed by courts of equity in such cases of the terms and conditions of the trust aforesaid.

23. The court erred in holding that these defendants cross complainants, and intervenors defendants, had no right, title, or interest in or to the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross complainants, and intervenors defendants, and that the title of complaint to such lands should be quieted.

24. The court erred in holding that the complainant was in possession of all, or any, of the lands described in the cross complaints, and bills of intervention, of these defendants cross-complainants, and intervenors defendants, and in not holding that these defendants cross-complainants, and intervenors defendants were, and have been for a long time prior to the filing of the bill of complaint of the complainant herein in posses-

sion of all and singular the lands described in said cross complaints and bills of intervention.

WHEREFORE, these defendants cross complainants, and intervenors defendants, pray that the decree herein be reversed, and that this court enter a decree in accordance with the prayer of the cross complaints and bills of intervention filed herein, and for such other relief as to these defendants cross-complainants, and intervenors defendants may be proper.

A. W. LAFFERTY,

Attorneys for Defendants cross-complainants, and Intervenors Defendants.

Service of the foregoing assignments of error is hereby acknowledged this 29th day of August, 1913.

PETER F. DUNNE,
WM. D. FENTON, and
JAMES E. FENTON,

Attorneys for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

MILLER, KING, LANE and TRAFFORD,
DOLPH, MALLORY, SIMON and GEARIN,
JOHN C. SPOONER, JOHN M. GEARIN,

Attorneys for Union Trust Company of New York, individually and as Trustee.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON,)
) ss.
County of Multnomah.)

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 27th day of Aug., 1913.

J. C. McREYNOLDS, Atty. Genl., and
B. D. TOWNSEND, Spl. Asst. to Atty Genl.
By GLENN E. HUSTED,
Spl. Asst. to Attorney General,
Attorney for United States.

CLARENCE L. REAMES, United States Attorney.
By ROBERT R. RANKIN,
Asst. United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court, By V. Johnston, Deputy.

And afterwards, on August 29, 1913, there was duly filed in said Court Assignment of Errors of the defendant Oregon and California Railroad Company, as follows, to-wit:

[TITLE]

DEFENDANT OREGON AND CALIFORNIA RAILROAD COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Oregon and California Railroad Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustain-

the following grounds of the joint and several de-
rrer of the defendants, Oregon and California Rail-
d Company, Southern Pacific Company, and Stephen
Gage, individually and as trustee, to the bill of com-
int of complainant herein:

As against the said defendants and each of them the
d bill of complaint is without equity and cannot be
intained as to the "East Side Grant," so-called in
d bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sus-
ning the following grounds of the joint and several
murrer of the said defendants to the bill of complaint
complainant herein:

As against the said defendants and each of them
said bill of complaint is without equity, and cannot
maintained as to the "West Side Grant," so-called
said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sus-
ning the following grounds of the joint and several
murrer of the said defendants to the bill of complaint
complainant herein:

As against the said defendants and each of them the
d bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sus-
ning the following grounds of the said joint and sev-
al demurrer of the said defendants to the bill of com-
aint of complainant herein, and in not holding and
ciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7. The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein:

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America.

or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Southern

Pacific Company, or to said Stephen T. Gage, individually or as trustee, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of

said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decree.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act granting lands to aid in the construction of a railroad

and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Southern Pacific Company or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of

said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to,

and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated, by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused, or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents ($2.50) per acre", is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a

question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the

legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said Act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of Complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended

by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said

act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dimissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Southern Pacific Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet title to either of said grants, or any part thereof, the complainant was in possession of the

said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet title to the said grants, or either of them, or any part thereof, that the same had not been reduced to posession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant and said Southern Pacific Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso

of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the as-

sumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiesence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statutes of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the Act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainants waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeitrue act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and

of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any

clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the

grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants, and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual set-

tlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress had declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant

Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and Fifty Cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant,

and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to

the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents ($2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in

lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual

settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers"; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Oregon and California Railroad Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants—cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of this defendant's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of this defendant, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendant, Southern Pacific Company, and Stephen T. Gage, individually and as trustee filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Southern Pacific Company, said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNN,
WM. D. FENTON,
and JAMES E. FENTON,

WM. F. HERRIN,
Of Counsel.

Solicitors and Attorneys for said Defendant, Oregon and California Railroad Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

8277

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON)
) ss.
County of .....)

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913, by receiving a copy thereof, duly certified to by,

J. C. McREYNOLDS, Atty. Genl., and

B. D. TOWNSEND, Spl. Asst. to Atty Genl.

By GLENN E. HUSTED,

Spl. Asst. to Attorney General,

Attorney for Complainant.

CLARENCE L. REAMES, United States Attorney.

By ROBERT R. RANKIN,

Asst. United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. CANNON, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignments of Errors of John H. Haggett and others, defendants and cross-complainants, and William F. Slaughter and others, interveners, in words and figures as follows, to-wit:

(TITLE)

And they do and each of them does complain of errors in the proceedings in the above entitled cause, in the District Court of the United States for the District of Oregon and in the decision, judgment and decree made and rendered therein, and entered therein on the first day of July, 1913, at the March, 1913 term of said court, which said judgment and decree and the substance thereof is set forth and described in the joint and several petition for appeal of the defendants, defendants-cross-complainants and interveners herein herewith filed, and to which proceedings, decision, judgment and decree these assignments of error pertain and relate,

And these interveners and cross-complainants do say and each of them says that said proceedings were and are, and said decision, judgment and decree was and is against the just rights of these interveners and each of them and against the just rights of these complainants and each of them,

And there being many parties hereto and many others similarly situated, for the purpose of simplifying

the record and preventing a great multiplicity of and duplication of the assignments of error herein, these assignments of error are made by all and each of the parties hereto on their own behalf and on behalf of each of them, with the intent that each assignment shall be considered and taken as the assignment of each person and of all persons on behalf of whom it may apply and be pertinent,

And in that behalf and for that purpose these interveners and these cross-complainants do and each of them does, jointly and severally assign the following as errors complained of and intended to be urged by them and each of them upon said appeal, that is to say:

1

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the cross-complaint of the defendant, John H. Haggett and the other defendants with him in his said bill joined, for want of equity in said bill, and

2

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the cross-complaint of said defendants, for want of equity in said bill, and

3

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

4

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

5

The Court erred in sustaining the motion of the complainant for an order striking the cross-complaint of said defendants, and in granting and entering the order striking said bill, for want of equity in said bill, and

6

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said cross-complaint, and

7

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said cross-complaint, and

8

The Court erred in not requiring the complainant to answer said cross-complaint, and

9

The Court erred in not granting to said defendants and each of them, the relief prayed for by them and each of them respectively, in said bill, and

10

The Court erred in not granting to said defendants or any of them, any equitable relief, as

Said cross-complaint contains allegations and matters entitling said defendants and each of them to equitable relief, and

Said cross-complaint contains allegations and matters entitling said defendants and each of them to the relief prayed for by them and each of them respectively, in said bill.

11

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, William F. Slaughter and the other interveners with him in his said bill joined, for want of equity in said bill, and

12

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

13

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

14

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

15

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

16

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

17

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

18

The Court erred in not requiring the complainant to answer said bill in intervention, and

19

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

20

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

21

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Edward D. Townsend, and the other interveners with him in his said bill joined, for want of equity in said bill, and

22

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

23

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

24

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

25

The Court erred in sustaining the motion of the

complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

26

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

27

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

28

The Court erred in not requiring the complainant to answer said bill in intervention, and

29

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

30

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

31

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John Burbee, and the other interveners with him in his said bill joined, for want of equity in said bill, and

32

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

33

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

34

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

35

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

36

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

37

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

38

The Court erred in not requiring the complainant to answer said bill in intervention, and

39

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

40

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

41

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Milo F. Dennis, and the other interveners with him in his said bill joined, for want of equity in said bill, and

42

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

43

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

44

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

45

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

46

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

47

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

48

The Court erred in not requiring the complainant to answer said bill in intervention, and

49

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

50

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

51

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Frank Terrace, and the other interveners with him in his said bill joined, for want of equity in said bill, and

52

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

53

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

54

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

55

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

56

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

57

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

58

The Court erred in not requiring the complainant to answer said bill in intervention, and

59

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

60

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

61

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles J. Vanzile and the other interveners with him in his said bill joined, for want of equity in said bill, and

62

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

63

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

64

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

65

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

66

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

67

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

68

The Court erred in not requiring the complainant to answer said bill in intervention, and

69

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

70

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

71

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Luther E. Trowbridge, and the other interveners with him in his said bill joined, for want of equity in said bill, and

72

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

73

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

74

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

75

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

76

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

77

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

78

The Court erred in not requiring the complainant to answer said bill in intervention, and

79

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

80

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

81

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Geo. W. Wright, and the other interveners with him in his said bill joined, for want of equity in said bill, and

82

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

83

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

84

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

85

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

86

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

87

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

88

The Court erred in not requiring the complainant to answer said bill in intervention, and

89

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

90

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

91

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, in-

dividually and as Trustee, to the bill of intervention of the intervener, Elmer L. Hancock, and the other interveners with him in his said bill joined, for want of equity in said bill, and

92

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

93

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

94

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

95

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

96

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

97

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

98

The Court erred in not requiring the complainant to answer said bill in intervention, and

99

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

100

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them re-

spectively in said bill.

101

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Robert Aistrop, and the other interveners with him in his said bill joined, for want of equity in said bill, and

102

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

103

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

104

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

105

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

106

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

107

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

108

The Court erred in not requiring the complainant to answer said bill in intervention, and

109

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

110

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

111

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, B. W. Nunnally, and the other interveners with him in his said bill joined, for want of equity in said bill, and

112

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

113

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

114

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

115

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

116

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

117

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

118

The Court erred in not requiring the complainant to answer said bill in intervention, and

119

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

120

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

121

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Paul C. L'Amoreaux and the other interveners with him in his said bill joined, for want of equity in said bill, and

122

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners,

for want of equity in said bill, and

123

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

124

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

125

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

126

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

127

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention and

128

The Court erred in not requiring the complainant to answer said bill in intervention, and

129

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

130

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

131

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John F. Fowler, and the other inter-

veners with him in his said bill joined, for want of equity in said bill, and

132

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

133

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

134

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

135

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

136

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

137

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

138

The Court erred in not requiring the complainant to answer said bill in intervention, and

139

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

140

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them

to the relief prayed for by them and each of them respectively in said bill.

141

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervenor, L. C. Keylon, and the other interveners with him in his said bill joined, for want of equity in said bill, and

142

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individualy and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

143

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

144

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

145

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

146

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

147

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

148

The Court erred in not requiring the complainant to answer said bill in intervention, and

149

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

150

The Court erred in not granting to said interveners

or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

151

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, R. E. Cameron, and the other interveners with him in his said bill joined, for want of equity in said bill, and

152

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

153

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

154

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

155

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

156

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

157

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

158

The Court erred in not requiring the complainant to answer said bill in intervention, and

159

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

160

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respctively in said bill.

161

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles W. Varnum, and the other interveners with him in his said bill joined, for want of equity in said bill, and

162

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

163

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

164

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

165

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

166

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

167

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

168

The Court erred in not requiring the complainant to answer said bill in intervention, and

169

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

170

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

171

The Court erred in sustaining the demurrer of the

defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Nicholas Herrman, and the other interveners with him in his said bill joined, for want of equity in said bill, and

172

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

173

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

174

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

175

The Court erred in sustaining the motion of the com-

plainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

176

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

177

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

178

The Court erred in not requiring the complainant to answer said bill of intervention, and

179

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

180

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

181

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the interveners, Edwin F. Anderson, and the other interveners with him in his said bill joined, for want of equity in said bill, and

182

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

183

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

184

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

185

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

186

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

187

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

188

The Court erred in not requiring the complainant to answer said bill in intervention, and

189

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

190

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

191

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Fred J. Gould, and the other interveners with him in his said bill joined, for want of equity in sad bill, and,

192

The Court erred in sustaining the demurrer of the

defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

193

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

194

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

195

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order strking said bill, for want of equity in said bill, and

196

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

197

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

198

The Court erred in not requiring the complainant to answer said bill in intervention, and

199

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

200

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

201

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Abram B. Horner, and the other interveners with him in his said bill joined, for want of equity in said bill, and

202

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

203

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

204

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

205

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of

said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

206

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

207

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

208

The Court erred in not requiring the complainant to answer said bill in intervention, and

209

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

210

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to

equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

211

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, George B. Bothwell, and the other interveners with him in his said bill joined, for want of equity in said bill, and

212

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

213

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

214

The Court erred in sustaining the motion of the de-

fendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

215

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

216

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

217

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

218

The Court erred in not requiring the complainant to answer said bill in intervention, and

219

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each

of them, respectively in said bill, and

220

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

221

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Hervey L. Keyes, and the other interveners with him in his said bill joined, for want of equity in said bill, and

222

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

223

The Court erred in sustaining the motion of the de-

fendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

224

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

225

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

226

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

227

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

228

The Court erred in not requiring the complainant to answer said bill in intervention, and

229

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

230

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

231

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Marvin P. Alford, and the other interveners with him in his said bill joined, for want of equity in said bill, and

232

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

233

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

234

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

235

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

236

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company

and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

237

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

238

The Court erred in not requiring the complainant to answer said bill in intervention, and

239

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

240

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

241

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Albert Bozarth, and the other interveners with him in his said bill joined, for want of equity in said bill, and

242

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

243

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

244

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

245

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

246

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

247

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

248

The Court erred in not requiring the complainant to answer said bill in intervention, and

249

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

250

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

251

The Court erred in holding that these interveners and cross-complainants were not entitled to the relief prayed for by them and each of them, respectively, and

252

The Court erred in not holding that these interveners and cross-complainants were entitled to the relief prayed for by them and each of them, respectively, and

253

The Court erred in holding that none of these interveners and cross-complainants were entitled to the relief prayed for by them, and

254

The Court erred in holding that none of these interveners and cross-complainants were entitled to any relief;

As, their said bills of intervention and cross-complaint and each of them, contain allegations and mat-

ters entitling these interveners and cross-complainants and each of them, to equitable relief; and

Said bills of intervention and cross-complaint and each of them, contain allegations and matters entitling the interveners and cross-complainants and each of them, to the relief prayed for by them and each of them, respectively, in their said bills.

255

The Court erred in holding that the United States, complainant herein, was entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

256

The Court erred in not holding that the United States, complainant herein, was not entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

257

The Court erred in holding that the lands or any thereof described in this decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any threof, to the complainant.

258

The Court erred in holding that the lands sought to

be purchased by the interveners and cross-complainants herein, should be forfeited.

259

The Court erred in holding that the lands or any thereof sought to be purchased by these interveners and cross-complainants, or any of them, described in said decree, were and had been forfeited to the United States, complainant herein, and that a decree be entered forfeiting said lands or any thereof to the complainant.

260

The Court erred in holding that the proviso in the said act of April 10, 1869, was a condition subsequent.

261

The Court erred in holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

262

The Court erred in not holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding

one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not and is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said grant.

263

The Court erred in holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

264

The Court erred in not holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not nor is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said land grant.

265

The Court erred in holding that the consequence and penalty and forfeiture was attached by Congress to a breach, should such there be, of the proviso of April 10, 1869.

266

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or proviso in the act of April 10, 1869, requiring sales of land to settlers.

267

The Court erred in holding that the provision in the West Side grant, requiring sales to settlers, was a condition subsequent, and

268

The Court erred in not holding that the provision in the West Side grant, requiring sales to settlers, was not a condition subsequent, as

(a) Said provision is not coupled with and does not contain any appropriate words importing a condition subsequent, and

(b) Said provision does not contain any language importing a right to forfeiture or re-entry for condition broken.

269

The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision of said act of May 4, 1870, touching sales to actual settlers.

270

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or provision in the act of May 4, 1870, requiring sales to settlers.

271

The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent if such there was, in said proviso of said act of April 10, 1869.

272

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the East Side grant, for breach of an assumed condition subsequent in the proviso contained in the act of April 10, 1869.

273

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the East Side grant for breach of an assumed condition subsequent in the proviso in the act of April 10, 1869, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants

which had become vested, in parts of said East Side grant, under the terms of said proviso, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

274

The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

275

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the West Side grant, for breach of an assumed condition subsequent contained in the act of May 4, 1870.

276

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the West Side grant for breach of an assumed condition subsequent

contained in said grant, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants, which had become vested in parts of the West Side grant, under the terms of said grant, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

277

The Court erred in holding that by its joint resolution of April 13, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeiture by the Attorney General or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the East Side grant, for or on account of any assumed breach of conditions of the priviso of the act of April 10, 1869.

278

The Court erred in holding that by its joint resolution of April 30, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeit-

ure by the Attorney General, or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the West Side grant for or on account of any assumed breach of condition contained in said grant.

279

The Court erred in holding that there was any cause of action or foundation of jurisdiction for forfeiture in respect to either of said grants, in any re-entry for breach of condition or legislation equivalent thereof, or in any legislative declaration of forfeiture.

280

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was not sufficiently definite to be enforced as a condition subsequent.

As such proviso does not contain any words importing a right of forfeiture or re-entry for condition broken.

281

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant of all right and interest of the defendants in or to the lands embraced within the grant of 1866, for breach of the assumed condition contained in the amendment of April 10, 1869, as

(a) Assuming that said proviso was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these intervenors and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

282

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant, of all right and interest of the defendants, in or to the lands embraced within the West Side land grant, for breach of the assumed condition contained in the act of May 4, 1870, as

(a) Assuming that said provision was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and

California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these interveners and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

283

The Court erred in not holding that this suit cannot be maintained by complainant as one to enforce forfeiture nor to quiet title, as

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture had not been adjudicated by a court of law; and

(c) The defendant, railroad company, holds the legal title to and the possession of said granted lands; and

(d) Complainant having asked for forfeiture and in the alternative, for specific performance, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance; and

(e) In view of specific performance, a decree quieting title in the Government, cannot be had.

284

The Court erred in not holding that the Government was estopped to claim forfeiture of the lands embraced within each and both of said land grants, as

(a) The Government in its bill of complaint bases its right to recover, upon the refusal of the railroad company to sell said lands to the interveners and cross-complainants and others similarly situated, and

(b) The Government in its bill of complaint prayed that these interveners and cross-complainants might be permitted to enforce their rights herein, and

(c) The Government having come into a court of equity, is estopped to claim forfeiture when equitable relief by performance can be had; and

(d) The Government is estopped to claim forfeiture in lieu of performance, since the interveners and cross-complainants have come into court upon the invitation of the Government and furnished the means whereby performance may be had.

285

The Court erred in holding that the provisions in each and both of said land grants concerning sales to settlers, are negative provisions only, designed to prevent sales to others than settlers in quantities greater than one-quarter section to any one purchaser and at prices greater than $2.50 per acre, and not positive provisions requiring sales to settlers in quantities not greater than one-quarter section to any one purchaser and at a price not greater than $2.50 per acre.

286

The Court erred in not holding that the provisions of each and both of said land grants concerning sales to settlers were both positive and negative, requiring the grantee to sell to settlers, who should apply to buy, not more than one-quarter section, at a price not greater than $2.50 per acre, and requiring said grantee to refrain from selling any of the granted lands to others than settlers or in quantities greater than one-quarter section or at a price greater than $2.50 per acre.

287

The Court erred in holding that the provisions in each and both of said land grants, requiring sales to settlers, are not positive covenants which may be specifically enforced.

288

The Court erred in holding that the provisions in each and both of said land grants requiring sales to set-

tlers, is a negative covenant only, which may be enforced by the Government only, and that the only means of such enforcement are by forfeiture for breach thereof.

289

The Court erred in decreeing a forfeiture of those lands included in either or both of the grants to the railroad company or which the interveners and cross-complainants had made application to purchase from and tendered to the railroad company the sum of $2.50 per acre and offered to become actual settlers on the lands so applied for, prior to the adoption by Congress of the joint resolution of April 30, 1908, as

By so applying, tendering the purchase price and offering to become an actual settler upon the lands so applied for, each intervener and cross-complainant has acquired a vested interest in the land applied for, which cannot be divested by Congress, assuming that said provisions are conditions subsequent, and that the adoption of said joint resolution by Congress was a declaration of forfeiture for breach thereof.

290

The Court erred in holding that although the provisions in each and both of said land grants were designed to devote the lands conveyed by said grants, to settlement and tillage and to prevent the monopoly of the land and that such grants were laws as well as grants, that notwithstanding the railroad company might defeat the purpose of the provisions requiring sales to set-

tlers, by themselves monopolizing and holding the lands and refusing to sell them at all, and by refusing to sell any of them except to such persons and in such quantities as it saw fit within the price and terms provided in the grant.

291

The Court erred in not holding that the purpose of the joint resolution of Congress of April 30, 1908, was to authorize the enforcement of a forfeiture for any breach of an assumed condition subsequent in either of said land grants, as an alternative only, of the refusal of the railroad company to perform the covenants requiring sales to settlers, after such performance had been decreed by the Court.

292

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized the enforcement of forfeiture for any breach of an assumed condition subsequent in either of said land grants, only in the event that specific performance of the covenants in said grants, requirig sales to settlers, could not be enforced.

293

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized a forfeiture of the legal title of the railroad company for breach of an assumed condition subsequent in either of

said land grants, only as a means of carrying into effect the covenants in said grants requiring sales to settlers.

294

The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, did not have possession of said grants or either of them.

295

The Court erred in not holding that at the time of filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all lands of which forfeiture is sought by said bill of complaint.

296

The Court erred in holding that the United States, complainant herein, is the owner in fee simple or in possession of said lands or any part thereof or entitled to said lands or entitled to the possession of the same or any part thereof, which are sought to be purchased by these interveners and cross-complainants or any of them.

297

The Court erred in holding that, as a foundation for a suit to quiet its title to either of said grants, or any

part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company did not have the possession of the same.

298

The Court erred in holding as a foundation for a suit by complainant, to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccoupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

299

The Court erred in not holding that the United States, complainant herein, is not the owner in fee simple, nor in possession of said lands or any part thereof, nor entitled to said lands, nor entitled to the possession of the same or any part of the same, which are sought to be purchased by these interveners and cross-complainants or any of them.

300

The Court erred in holding that the complainant is the owner in fee simple, or in possession of said lands or any part thereof, or entitled to the possession of the same or any part thereof.

301

The Court erred in holding that as a foundation for

a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company did not have the legal title to such grants.

302

The Court erred in holding that the title of the United States of America, of or in said lands or estates in lands sought to be purchased by these interveners and cross-complainants or any of them, be or is by said decree, quieted and confirmed, particularly as to any claim or claims of right, title and interest in, to or upon the same, in favor of these interveners and cross-complainants or any of them.

303

The Court erred in holding that the lands and estates in lands in the said decre described, and which were sought to be purchased by the interveners and cross-complainants herein or any of them, either in whole or in part, now are forfeited to or that the title to or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof, now are the absolute property of the United States of America, or are free from any and all claim or claims of right, title or interest or lien in, to or upon the same or any part thereof, by or in favor of these interveners and cross-complainants or any of them.

304

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

305

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

306

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of May 4, 1870.

307

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of May 4, 1870.

308

The Court erred in holding that the United States, complainant herein, was entitled to any injunctive relief whatever as against these interveners and cross-complainants or any of them.

309

The Court erred in holding that the United States, complainant herein, was entitled to a decree restraining these interveners and cross-complainants, or any of them, from claiming or asserting any right, title interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

310

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree restraining these interveners and cross-complainants or

any of them, from claiming or asserting any right, title or interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

311

The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

312

The Court erred in holding that the United States, complainant herein, was entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

313

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

314

The Court erred in holding that the proviso in the amendatory act of April 10, 1869, was not a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the Oregon and California Railroad Company to accept and become vested with the title to the lands

under the grant of 1866.

315

The Court erred in holding that the word "provided," introducing the proviso contained in the amendatory act of April 10, 1869, imported a condition subsequent, as

(a) The word "provided" is as appropriate for the purpose of importing a condition precedent as a condition subsequent, and

(b) Said proviso is coupled with a clause in said act contained permitting the grantees to accept said grant one year after the passage of said amendatory act, and

(c) Said proviso is not coupled with and does not bear any relation to the granting clause in said act amended.

316

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, was and is a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the railroad company to accept and become vested with the title to the lands under the grant of 1866.

317

The Court erred in refusing to dircet and decree a

specific performance on behalf of the United States, the complainant herein, and against the defendant, Oregon and California Railroad Company and the other defendants claiming by, through and under it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by each respectively, upon payment of the purchase price therefor.

318

The Court erred in not holding that the defendant, Oregon and California Railroad Company and other defendants claiming an interest in said land, be required to convey said land to the interveners and cross-complainants applying to purchase the same.

319

The Court erred in holding that the defendant, Oregon and California Railroad Company, and each and all of the other defendants claiming an interest in said land, should not be required to convey said lands to the interveners and cross-complainants applying for the same.

320

The Court erred in holding that Congress did not intend by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

321

The Court erred in not holding that Congress intended, by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

322

The Court erred in holding that Congress did not intend by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side land grant, according to the terms of the provision in said act of May 4, 1870.

323

The Court erred in not holding that Congress intended, by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side grant, according to the terms of the provision in said act of May 4, 1870.

324

The Court erred in refusing to direct and decree a specific performance on behalf of the interveners and cross-complainants and each of them, against the defendant, Oregon and California Railroad Company, and the other defendants claiming by, through and un-

der it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by said interveners and cross-complainants, respectively, as prayed for in their several bills.

325

The Court erred in holding that the provisions in each and both of said grants did not constitute contracts entered into by and between the Government and the railroad company, for the benefit of and enforcible by the interveners and cross-complainants.

326

The Court erred in holding that the proviso in the amendatory act of April 10, 1869,, requiring sales to settlers, was not a convenant to a use and did not impress a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land, and to purchase the same in quantities and at prices provided by said amendatory act.

327

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said amendatory act.

328

The Court erred in holding that the provision in the act of May 4, 1870, relating to sale of land to actual settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said act.

329

The Court erred in not holding that the provision in the act of May 4, 1870, relating to sale of lands to actual settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided in said act.

330

The Court erred in holding that the railroad company was not constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, under the provisions requiring sales of lands to settlers, referred to, in that

(a) "The nature and quality of their interests are not specific and definite," and, in that

(b) "They are not susceptible of identification as such," and

331

The Court erred in not holding that the railroad company, by the provisions in said grants contained, was constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, as

(a) The nature and quality of said interests under said grants are sufficiently specified and definite, and

(b) Their application to purchase and offer to settle upon the lands, is a sufficient identification.

332

The Court erred in holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, did not give to the respective interveners and cross-complainants a vested interest in said lands, in default of an acceptance of such offers and conveyances of said lands by the Oregon and California Railroad Company.

333

The Court erred in not holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, gave to the respective interveners and cross-complainants, a vested interest in said lands, in default of an acceptance of such offers and conveyances, by the

Oregon and California Railroad Company.

334

The Court erred in holding that the proviso in the act of April 10, 1869, is not sufficient definite and certain to be enforced as a covenant to a use or as a trust.

335

The Court erred in not holding that the proviso in the act of April 10, 1869, is sufficient definite and certain to be enforce das a covenant to a use or as a trust.

336

The Court erred in not holding that proviso in the act of April 10, 1869, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a

337

The Court erred in not holding that proviso in the act of April 10, 1869, for the sale of lands to actual settlers was intended by Congress as and was and is a covenant to a use only, and not a condition subsequent, as

(a) Said proviso contains specific and direct commands which were assented to, and performance thereof promised, by the Oregon and California Railroad Company, and

(b) Said proviso does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

338

The Court erred in holding that the proviso in the act of April 10, 1869, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

339

The Court erred in not holding that the proviso in the act of April 10, 1869, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

340

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the East Side grant, or any part thereof, except as a settler of the trust in said lands.

341

The Court erred in holding that the provision in the act of May 4, 1870, is not sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

342

The Court erred in not holding that the provisions in the act of May 4, 1870, is sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

343

The Court erred in holding that the provisions in the act of May 4, 1870, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a trust.

344

The Court erred in not holding that the provisions in the act of May 4, 1870, requiring sales to settlers, was intended by Congress as and was and is a covenant to a use only and not a condition subsequent, as

(a) Said provision contains specific and direct commands which were assented to and agreed to and performance thereof promised by the railroad company, and

(b) Said provision does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

345

The Court erred in holding that the provisions in the act of May 4, 1870, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

346

The Court erred in not holding that the provision in the act of May 4, 1870, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

347

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the West Side grant, or any part thereof, except as a settler of the trust in said lands.

348

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the East Side land grant or any part theerof, which it could enforce in this action, except such rights as it has as a settler of the trust in said lands, to enforce the provision of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

349

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the West Side land grant or any part thereof, which it could enforce in this action, except such rights as it had or has as a settler of the trust in said lands to enforce the provisions of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

350

The Court erred in not holding that this suit can only be maintained by complainant as one to compel the specific performance of a trust covenant, or to enforce a public policy, as

(a) Neither of said land grants contains a provision importing a condition subsequent, upon the breach of which, forfeiture could be had, and

8373

(b) Congress has never declared a forfeiture of either of said land grants for breach of any condition subsequent, assuming that there is such condition in either of said land grants, and

(c) The fact of forfeiture has never been adjudicated by a court of law, and

(d) The defendant, Oregon and California Railroad Company holds the legal title to and possession of said lands, and

(e) Complainant having asked for forfeiture and in the alternative for specific performances, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance, and

(f) In view of specific performance a decree quieting title in the

351

The Court erred in not holding, on the assumption that the said proviso in the act of April 10, 1869, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit in equity, to waive forfeiture, and elected to specifically enforce said proviso as a covenant to a use only.

352

The Court erred in not holding, on the assumption that the said provision in the act of May 4, 1870, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit

in equity, to waive forfeiture, and elected to specifically enforce said provision.

353

The Court erred in holding that the interveners and cross-complainants were not such actual settlers as were contemplated by the acts of April 10, 1869, and May 4, 1870.

354

The Court erred in holding that these interveners and cross-complainants did not have vested interests in the lands sought to be purchased by them and each of them respectively, by reason of their various offers and tenders to purchase said lands upon the terms provided in the acts of April 10, 1869, and May 4, 1870.

355

The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

356

The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered.

357

The Court erred in holding that the evidence adduced in support of the complaint of the United States, complainant herein, was sufficient to entitle complainant to a forfeiture of the title to the lands sought to be

purchased by these interveners and cross-complainants or any of them.

358

The Court erred in not holding that the evidence adduced in support of the complaint of the United States, complainant herein, was not sufficient to entitle complainant to a forfeiture of the title to the lands sought to be purchased by these interveners and cross-complainants or any of them.

359

The Court erred in holding that the United States, complainant herein, was entitled to recover its costs and disbursements herein, or any costs or disbursements herein, against these interveners and cross-complainants, or any of them, and that a decree should be entered to that effect.

WHEREFORE, these interveners and cross-complainants, jointly and severally, pray that the said decision, judgment and decree and each and every part thereof, be reversed, and that the Court enter a decree on behalf of the interveners and cross-complainants as prayed for by them and each of them, respectively, in their several bills of intervention and cross-complaints heretofore filed herein,

And for such other, further or different relief as to this Court may seem just and equitable in the premises.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Due service of these, the foregoing and following Assignments of Error is admited this 29th day of August, 1918.

MILLER, KING, LANE and TRAFFORD,
DOLPH, MALLORY, SIMON and GEARIN,
JOHN M. GEARIN,
Attys. and Counsellors for Union Trust Company.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, this 29th day of August, 1918.

PETER F. DUNNE, WM. D. FENTON, and JAMES E. FENTON,
Attorneys for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, August 29, 1918.

A. W. LAFFERTY,
Solicitor for Cross-Complainants and Interveners.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1913.

J. C. M'REYNOLDS,
Attorney General.

B. D. TOWNSEND,
Spl. Asst, to Atty. General.

By GLEN E. HUSTED,
Spl. Asst. to Atty. General.

CLARENCE L. REAMES,
United States Attorney

By ROBERT R. RANKIN,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XVI

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TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XVI

PAGES 8419-8674

And afterwards, to-wit, on the 29th day of August, 1913, there was duly filed in said court a Bond on Appeal, in words and figures as follows, to-wit:

(TITLE.)

KNOW ALL MEN BY THESE PRESENTS, That we, OREGON AND CALIFORNIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, STEPHEN T. GAGE, individually and as trustee, and UNION TRUST COMPANY of New York, individually and as truste, as principals, and NATIONAL SURETY COMPANY, corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such corporation authorized to do business and doing business in the State of Oregon, as surety, are held and firmly bound unto the UNITED STATES OF AMERICA, the complainant in the above-entitled action, in the sum of One hundred thousand dollars ($100,000), to be paid to the said United States of America, complainant herein, its attorneys, officers or assigns, and for the payment of which sum, well and truly to be made, we bind ourselves and each of us, and our and each of our successors, associates, heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

SEALED with our seals and dated this 26th day of August, 1913.

WHEREAS, the said defendants, the defendants

cross-complainants, and the interveners in the above-entitled cause have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and decree rendered and entered in the above-entitled cause in favor of the United States of America, the said complainant, and against the said defendants, the said defendants cross-complainants and the said interveners in the above entitled cause, on the first day of July, 1913, which said judgment and decree is hereby referred to and adopted as a part hereof:

NOW THEREFORE, the condition of this obligation is such that if said defendants, the said defendants cross-complainants, and the said interveners in the above-entitled action shall prosecute their said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

OREGON AND CALIFORNIA RAILROAD COMPANY

(SEAL) By E. E. CALVIN
Its Vice-President.

OREGON AND CALIFORNIA RAILROAD COMPANY

By G. S. KING
Its Assistant Secretary.

OREGON AND CALIFORNIA RAILROAD COMPANY

By P. F. DUNNE

WM. D. FENTON and

JAMES E. FENTON

Its Solicitors.

(SEAL) SOUTHERN PACIFIC COMPANY

By E. E. CALVIN

Its Vice-President.

SOUTHERN PACIFIC COMPANY

By G. S. KING,

Its Assistant Secretary.

SOUTHERN PACIFIC COMPANY

By P. F. DUNNE

WM. D FENTON and

JAMES E. FENTON

Its Solicitors

UNION TRUST COMPANY OF NEW YORK

Individually and as Trustee

By JOHN M. GEARIN

Its Attorney in Fact

STEPHEN T. GAGE
Individually and as Trustee

By E. E. CALVIN
His Agent and Attorney in Fact.

(SEAL) NATIONAL SURETY COMPANY
By JAS. McI. WOOD CO.

UNION TRUST COMPANY OF NEW YORK
Individually and as Trustee

By DOLPH, MALLORY, SIMON & GEARIN,
Its Attorneys and Solicitors.

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF)
SAN FRANCISCO)

On this 26th day of August, in the year One thousand nine hundred and thirteen, before me, Hugh T. Sime, a notary public in and for the County of San Francisco, residing therein duly commissioned and sworn, personally appeared *E. E. Calvin,* known to me to be the Vice-President, and *G. S. King,* known to me to be the Assistant Secretary, respectively, of the Oregon and California Railroad Company, of the corporation subscribed in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year in this certificate first above written.

(SEAL) HUGH T. SIME

Notary Public in and for the City and County of San Francisco, State of California.

(Corporation)

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF)
SAN FRANCISCO)

On this 26th day of August, in the year One thousand nine hundred and thirteen, before me, Hugh T. Sime, a notary public in and for the County of San Francisco, residing therein, duly commissioned and sworn, personally appeared *E. E. Calvin,* known to me to be the Vice-President, and *G. S. King,* known to me to be the Assistant Secretary, respectively, of the Southern Pacific Company, of the corporation subscribed in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the

city and county of San Francisco, the day and year in this certificate first above written.

(SEAL) HUGH T. SIME

Notary Public in and for the City and County of San Francisco, State of California.

(Corporation)

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF)
SAN FRANCISCO)

On this 26th day of August, in the year One thousand nine hundred and thirteen, before me, Hugh T. Sime, a notary public in and for the city and county of San Francisco, personally appeared *E. E. Calvin,* known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Stephen T. Gage, individually and as trustee, and acknowledged to me that he subscribed the name of Stephen T. Gage, individually and as trustee thereto as principal, and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year in this certificate first above written.

(SEAL) HUGH T. SIME

Notary Public in and for the City and County of San Francisco, State of California.

Cowdery's Form No 24. (Acknowledgement—Attorney in fact)

The foregoing bond is hereby approved and the same shall operate as a supersedeas.

Done in open Court this 29th day of August, 1913.

CHARLES E. WOLVERTON
Judge of said District Court.

(Endorsed) Filed August 29, 1913, at 5:10 P. M. A. M. Cannon, Clerk United States District Court, by V. Johnston, Deputy.

And afterwards, to-wit, on August 29, 1913, there was duly filed in said court a Citation on Appeal, in words and figures as follows, to-wit:

(TITLE.)

United States of America, ss.

To United States of America.

To James C. McReynolds, Attorney General of the United States,

To B. D. Townsend, Special Assistant to the Attorney General of the United States, and

To Clarence L. Reames, United States Attorney for the District of Oregon.

GREETING.

Whereas, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, the defendants in the above entitled suit, and the defendants cross complainants in the above entitled suit, and the interveners in the above entitled suit, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree made and rendered in the above entitled court in the above entitled cause and entered therein on the first day of July, A. D., nineteen hundred and thirteen, in favor of the United States of America, complainant in the above entitled cause, and against each and all of the said defendants therein, and against each and all of the said defendants cross complainants therein, and against each and all of the said interveners therein, and the said appeal has been allowed and the security required by law has been given; you are, therefore, hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from and after the date of this citation to show cause, if any there be, why the said judgment and decree appealed from should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles E. Wolverton, Judge of the United States District Court, for the dis-

trict of Oregon, with the seal of said court hereunto affixed, this 29th day of August, A. D., nineteen hundred and thirteen.

CHARLES E. WOLVERTON,
(SEAL) United States District Judge.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within citation is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913,

JAS. C. McREYNOLDS, Attorney General U. S.,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
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(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court, by V. Johnston, Deputy.

And afterwards, to-wit, on November 11, 1913, there was duly filed in said court the petition of John L. Snyder, et al, defendants-cross-complainants, and William F. Slaughter, et al, interveners, for separate appeal, in words and figures as follows, to-wit.

(TITLE.)

And they and each and all of the aforesaid interveners, defendants and cross-complainants hereinbefore named as petitioners herein, conceiving themselves aggrieved by the judgment and decree made and rendered in the above entitled court in the above entitled cause, and entered herein on the first day of July, A. D. 1913, at the March, 1913, term of said court, in favor of the complainant in the above entitled cause and against each and all of the said defendants therein, and against each and all of the said defendants-cross-complainants therein, and against each and all of the said interveners therein, wherein and whereby, among other things, it was and is adjudged and decreed that all of those certain lands and estates in lands described in the said judgment and decree, have become and now are forfeited to and the title to all of said lands and estates in lands has reverted to, and now is revested in, the United States of America, and all of said lands and estates in lands now are the absolute property of the United States of America free from any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross-ocmplainants and interveners herein or either or any of them,

or any party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that the title of the United States of America to all of said lands and estates in lands be, and the same is hereby quieted and confirmed, and particularly as to any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross-complainants and interveners herein, and each and every one of them, and each and every party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other things, it was and is further adjudged and decreed that each and all of the defendants, cross-complainants and interveners herein, and their respective officers and agents be, and they and each of them hereby are, forever enjoined and restrained from in any manner claiming or asserting any right, title, interest or lien in, to or upon the aforesaid lands and estates in lands, or any part thereof; and from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein; and from negotiating, executing or recording any document or instrument, and from doing any other act or thing, which shall in any manner affect or encumber the title to said lands, or any part thereof; and from going upon said lands or any part thereof; and from cutting, removing or in any

manner using or injuring any of the timber or other natural products thereof; and from in any manner committing trespass upon said lands or any part thereof; and from in any manner using or interfering with said lands and estates in lands or any part thereof; or the title or possession thereof; and from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that the said judgment and decree shall not apply and is not intended to apply to reservations or exceptions of right-of-way for the main track of the railroad of the Oregon & California Railroad Company as actually constructed, established and in operation at the date of the said decree; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that the defendants Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company shall within sixty days from the date that any of said lands shall revert to said defendants or either or any of them in said decree mentioned, execute and file with the Clerk of the above entitled court, a deed of conveyance, in due and legal form, conveying and confirming the said lands unto the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same, or on any part thereof, in favor of said defendants, or either or any of them. And

in the event that said defendants, or either or any of them, shall fail to execute and file any such deed or deeds of conveyance as aforesaid, the said judgment and decree shall operate, and shall have the same force and effect, as such deed or deeds of conveyance; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that there be excepted from the operation of said judgment and decree all right-of-way and station grounds as established and in actual use at the date of said judgment and decree in the operation of the railroad of the defendant Oregon and California Railroad Company; and

WHEREIN AND WHEREBY among other things, it was and is further adjudged and decreed that within sixty days from the date of said judgment and decree the defendants, Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company, shall execute and deliver to the Clerk of the above entitled Court a deed of conveyance in due and legal form, conveying and confirming unto the United States of America all of the said lands situated in the State of Washington, free and clear from any and all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of the defendants herein or either or any of them, which said lands are particularly described in said judgment and decree; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that

each and all of the cross-complaints and bills and petitions in intervention be and they are dismissed for want of equity with costs in favor of the prevailing parties, respectively, to be thereafter taxed; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that the complainants' prayer for an accounting be and the same is denied; and

WHEREIN AND WHEREBY among other things it was and is further adjudged and decreed that the complainant, the United States of America have and recover from the defendants Oregon & California Railroad, Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company its lawful costs and disbursements herein, and that execution issue therefor,

Do and each of them does hereby jointly and severally appeal from the said judment and decree and from the whole and from each and every part thereof;

And John L. Snyder and each and all of the aforesaid defendants-cross-complainants with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913, at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the defendant-cross-complainant John L. Snyder and against each and all of the other defendant-

cross-complainants with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several cross complaint of said John L. Snyder and others with him joined, be sustained and that said cross-complaint be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Sidney Ben Smith and each and all of the aforesaid defendants-cross-complainants with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on th 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the defendant-cross-complainant Sidney Ben Smith and against each and all of the other defendant-cross-complainants with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several cross-complaint of said Sidney Ben Smith and others with him joined, be sustained and that said cross-complaint be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And John H. Haggett and each and all of the afore-

said defendants-cross-complainants with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the defendant-cross-complainant John H. Haggett and against each and all of the other defendant-cross-complainants with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several cross-complaint of said John H. Haggett and others with him joined, be sustained and that said cross-complaint be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And William F. Slaughter and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener William F. Slaughter and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the

motion of the complainant to strike the joint and several petition in intervention of said William F. Slaughter and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Edward D. Townsend and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Edward D. Townsend and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decred that the motion of the complainant to strike the joint and several petition in intervention of said Edward D. Townsend and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And John Burbee and each and all of the aforesaid interveners with him joined who are heretofore named

as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener John Burbee and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of said John Burbee and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Milo F. Dennis and another of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Milo F. Dennis and against the other intervener with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of said Milo F. Dennis and the other with him

joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Frank Terrace and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Frank Terrace and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of said Frank Terrace and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Charles J. Vanzile and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above

entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Charles J. Vanzile and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of said Charles J. Vanzile and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Luther E. Trowbridge, the aforesaid intervener who is heretofore named as petitioner herein, conceiving himself aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Luther E. Trowbridge, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the petition in intervention of the said Luther E. Trowbridge, be sustained and that said petition in intervention be stricken for want of equity therein,

Does hereby appeal from the said judgment and order and from the whole and from each and every part

thereof;

And Geo. W. Wright and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Geo. W. Wright and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Geo. W. Wright and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And William E. Carter and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against

the intervener William E. Carter and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of William E. Carter and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Arthur R. Golder and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Arthur L. Golder and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Arthur L. Golder and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and sev-

erally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Elmer L. Hancock and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Elmer L. Hancock and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Elmer L. Hancock and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Robert Aistrop and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against

the intervener Robert Aistrop and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Robert Aistrop and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And William McLeod and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener William McLeod and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of William McLeod and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and sev-

erally appeal from the said judgment and order and from the whole and from each and every part thereof;

And B. W. Nunnally and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener B. W. Nunnally and against each and all of the other interveners with him joined, wherein and whereby it was and is adjujdged and decreed that the motion of the complainant to strike the joint and several petition in intervention of B. W. Nunnally and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein;

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Paul C. L'amoreaux and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therin on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and

against the intervener Paul C. L'amoreaux and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Paul C. L'amoreaux and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And John F. Fowler and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913, at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervenor John F. Fowler and against each and all of the other intervenors with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of John F. Fowler and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and

from the whole and from each and every part thereof;

And L. C. Keylon and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener L. C. Keylon and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of L. C. Keylon and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And R. E. Cameron and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the interveners R. E. Cameron and against each and all of the other interveners with him joined, wherein

and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of R. E. Cameron and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Charles W. Varnum and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Charles W. Varnum and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Charles W. Varnum and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Nicholas Herrman and each and all of the afore-

said intervenors with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on th 1st day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Nicholas Herrman and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Nicholas Herrman and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Edwin F. Anderson and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913, at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Edwin F. Anderson and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged

and decreed that the motion of the complainant to strike the joint and several petition in intervention of Edwin F. Anderson and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Fred J. Gould and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Fred J. Gould and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Fred J. Gould and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Abram B. Horner and each and all of the afore-

said interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Abram B. Horner and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Abram B. Horner and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And George B. Bothwell and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener George B. Bothwell and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the

motion of the complainant to strike the joint and several petition in intervention of George B. Bothwell and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein.

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Hervey L. Keyes and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913, at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Hervey L. Keyes and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Hervey L. Keyes and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Marvin P. Alford and each and all of the afore-

said interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervener Marvin P. Alford and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the motion of the complainant to strike the joint and several petition in intervention of Marvin P. Alford and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole and from each and every part thereof;

And Albert Bozarth and each and all of the aforesaid interveners with him joined who are heretofore named as petitioners herein, conceiving themselves aggrieved by the judgment and order of the court, made and rendered in the above entitled court in the above entitled cause and entered therein on the 1st. day of July, 1913 at the March, 1913 term of said court in favor of the complainant in the above entitled cause and against the intervenor Albert Bozarth and against each and all of the other interveners with him joined, wherein and whereby it was and is adjudged and decreed that the

motion of the complainant to strike the joint and several petition in intervention of Albert Bozarth and others with him joined, be sustained and that said petition in intervention be stricken for want of equity therein,

Do and each of them does hereby jointly and severally appeal from the said judgment and order and from the whole thereof and from each and every part thereof and do and each of them does hereby jointly and severally further appeal from the orders and decrees and from the whole and each and every part thereof heretofore herein rendered in said cause on July 1, 1913, wherein and whereby upon motion of the Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, it was adjudged and decreed that the complaints of cross-complainants and each thereof and the petitions in intervention and each thereof, therein and theretofore filed in said cause should be and were dismissed at the costs of the said cross-complainants and said interveners, and each thereof, severally.

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT:

And all of your petitioners herein do and each of them does file herewith their and each of their assignments of error asserted and intended to be urged upon this their said appeal and all of your petitioners herein do and each of them does pray that their said petition for appeal and their said appeal may be allowed and that citation issue herein as provided by law and that a transcript of the record proceedings and papers upon which said judgment and decree was made and entered and upon which each of the said several orders was made and entered all duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And also that an order be made fixing the amount of security which your petitioners shall give and furnish upon this their said appeal.

And your petitioners will ever pray.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William McLeod, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sargent, Travis Martin, Fred A. Sarjent, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

A copy of the above and foregoing petition for appeal received and due notice thereof admitted this 8 day of November, A. D. 1913.

Clarence L. Reames,
United States Attorney.
By Robert R. Rankin,
Assistant United States Attorney.

Jas. C. McReynolds,
Attorney General U. S.
B. D. Townsend,
Special Assistant to Attorney General.
By Fred C. Rabb,
Special Assistant to Attorney General.

Solicitors and Attorneys for the Complainant, The United States of America.

Wm. D. Fenton,
P. F. Dunne,
Wm. F. Herrin,

Solicitors and Attorneys for the Defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee.

Jno. M. Gearin,

Solicitor and Attorney for the Defendant Union Trust Company of New York, individually and as Trustee.

The above and foregoing petition is granted and the appeal allowed upon giving bond for costs in the sum of Five Hundred Dollars.

Done in open Court this 11 day of October, A. D. 1913.

Chas. E. Wolverton,
Judge.

(Endorsed) Filed November 11, 1913, A. M. Cannon, Clerk United States District Court, by G. H. Marsh, Deputy.

And thereupon, by order of court, said Assignments of Errors of John L. Snyder, et al, hereinbefore set out, was re-filed in said court on November 11, 1913.

(Endorsed) Re-filed November 11, 1913, A. M. Cannon, Clerk United States District Court.

And thereafter on November 11, 1913, there was duly filed in said court the joint and several Assignments of Errors of John H. Haggett and others, defendants-cross-complainants, and William F. Slaughter and others, interveners, in separate appeal, in words and figures as follows, to-wit:

(TITLE).

And they do and each of them does complain of errors in the proceedings in the above entitled cause in the District Court of the United States for the District of Oregon and in the several judgments and orders of dismissal made and rendered therein and in the decision, judgment and decree made and rendered therein all of which were entered therein on the first day of July, 1913 at the March, 1913 term of said Court, which said several judgments and orders of dismissal and which said decision, judgment and decree and the substance thereof is and are set forth and described in the joint and several petition for appeal of the cross-complainants and interveners herein herewith filed and to which said several judgments and orders of dismissal and to which proceedings, decision, judgment and decree these assignments of error pertain and relate,

And these interveners and cross-complainants do say and each of them says that said proceedings and said several judgments and orders of dismissal were and are and said decision, judgment and decree was and is

against the just rights of these interveners and each of them and against the just rights of these cross-complainants and each of them.

And, there being many parties hereto and many others similarly situated, for the purpose of simplifying the record and preventing a great multiplicity and duplication of the assignments of error herein, these assignments of error are made by all and each of the parties hereto on their own behalf and on behalf of each of them, with the intent that each assignment shall be considered and taken as the assignment of each and all persons upon behalf of whom it may apply and be pertinent.

And in that behalf and for that purpose these interveners and these cross-complainants do and each of them does jointly and severally assign the following as errors complained of and intended to be urged by them and each of them upon said appeal, that is to say:

1

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the cross-complaint of the defendant, John H. Haggett and the other defendants with him in his said bill joined, for want of equity in said bill, and

2

The Court erred in sustaining the demurrer of the

defendant, Union Trust Company, individually and as Trustee, to the cross-complainant of said defendants, for want of equity in said bill, and

3

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

4

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

5

The Court erred in sustaining the motion of the complainant for an order striking the cross-complaint of said defendants, and in granting and entering the order striking said bill, for want of equity in said bill, and

6

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said cross-complaint, and

7

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said cross-complaint, and

8

The Court erred in not requiring the complainant to answer said cross-complaint, and

9

The Court erred in not granting to said defendants and each of them, the relief prayed for by them and each of them respectively, in said bill, and

10

The Court erred in not granting to said defendants or any of them, any equitable relief, as

Said cross-complaint contains allegations and matters entitling said defendants and each of them to equitable relief, and

Said cross-complaint contains allegations and matters entitling said defendants and each of them to the relief prayed for by them and each of them respectively, in said bill.

11

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener William F. Slaughter, and the other interveners with him in his said bill joined, for want of equity in said bill, and

12

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

13

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

14

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

15

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

16

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company

and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

17

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

18

The Court erred in not requiring the complainant to answer said bill in intervention, and

19

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

20

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

21

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the interveners, Edward D. Townsend and the other interveners with him in his said bill joined, for want of equity in said bill, and

22

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

23

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

24

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

25

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

26

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

27

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

28

The Court erred in not requiring the complainant to answer said bill in intervention, and

29

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

30

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

31

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener John Burbee, and the other interveners with him in his said bill joined, for want of equity in said bill, and

32

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

33

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

34

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

35

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

36

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

37

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

38

The Court erred in not requiring the complainant to answer said bill in intervention, and

39

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

40

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

41

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Milo F. Dennis, and the other interveners with him in his said bill joined, for want of equity in said bill, and

42

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

43

The Court erred in sustaining the motion of the de-

fendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

44

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

45

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

46

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

47

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

48

The Court erred in not requiring the complainant to answer said bill in intervention, and

49

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

50

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

51

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Frank Terrace, and the other interveners with him in his said bill joined, for want of equity in said bill, and

52

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

53

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

54

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

55

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

56

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

57

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention, and

58

The Court erred in not requiring the complainant to answer said bill in intervention, and

59

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

60

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

61

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the interveners, Charles J. Vanzile, and the other interveners with him in his said bill joined, for want of equity in said bill, and

62

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

63

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

64

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

65

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of

8485

said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

66

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

67

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

68

The Court erred in not requiring the complainant to answer said bill in intervention, and

69

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

70

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

71

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Luther E. Trowbridge, and the other interveners with him in his said bill joined, for want of equity in said bill, and

72

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

73

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, in-

dividually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

74

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

75

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

76

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

77

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

78

The Court erred in not requiring the complainant to answer said bill in intervention, and

79

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

80

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

81

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Geo. W. Wright, and the other inter-

veners with him in his said bill joined, for want of equity in said bill, and

82

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

83

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

84

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

85

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order

striking said bill, for want of equity in said bill, and

86

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

87

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

88

The Court erred in not requiring the complainant to answer said bill in intervention, and

89

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

90

The Court erred in not granting to said interveners or any of them, any equitable relief.

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

91

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Elmer L. Hancock and the other interveners with him in his said bill joined, for want of equity in said bill, and

92

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

93

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of interven-

tion of said interveners, for want of equity in said bill, and

94

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

95

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

96

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

97

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

98

The Court erred in not requiring the complainant to answer said bill in intervention, and

99

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

100

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

101

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the

intervener, Robert Aistrop, and the other interveners with him in his said bill joined, for want of equity in said bill, and

102

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

103

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

104

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

105

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the or-

der striking said bill, for want of equity in said bill, and

106

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill of intervention, and

107

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

108

The Court erred in not requiring the complainant to answer said bill in intervention, and

109

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

110

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

111

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, B. W. Nunnally, and the other interveners with him in his said bill joined, for want of equity in said bill, and

112

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

113

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

114

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

115

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

116

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

117

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

118

The Court erred in not requiring the complainant to answer said bill in intervention, and

119

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

120

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

121

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Paul C. L'Amoreaux, and the other interveners with him in his said bill joined, for want of equity in said bill, and,

122

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

123

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

124

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

125

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

126

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

127

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention, and

128

The Court erred in not requiring the complainant to answer said bill in intervention, and

129

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

130

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

131

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John F. Fowler, and the other interveners with him in his said bill joined, for want of equity in said bill, and

132

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

133

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

134

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

135

The Court erred in sustaining the motion of the

complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

136

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

137

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

138

The Court erred in not requiring the complainant to answer said bill in intervention, and

139

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

140

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

141

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, L. C. Keylon, and the other interveners with him in his said bill joined, for want of equity in said bill, and

142

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

143

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of inter-

vention of said interveners, for want of equity in said bill, and

144

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

145

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

146

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

147

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

148

The Court erred in not requiring the complainant

to answer said bill in intervention, and

149

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

150

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

151

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, R. E. Cameron, and the other interveners with him in his said bill joined, for want of equity in said bill, and

152

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

153

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

154

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

155

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

156

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

157

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

158

The Court erred in not requiring the complainant to answer said bill in intervention, and

159

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

160

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

161

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles W. Varnum, and the other interveners with him in his said bill joined, for want of equity in said bill, and

162

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

163

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

164

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

165

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

166

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

167

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

168

The Court erred in not requiring the complainant to answer said bill in intervention, and

169

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

170

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

171

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Nicholas Herrman, and the other interveners with him in his said bill joined, for want of equity in said bill, and

172

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

173

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

174

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

175

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

176

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

177

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

178

The Court erred in not requiring the complainant to answer said bill in intervention, and

179

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

180

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

181

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Edwin F. Anderson, and the other interveners with him in his said bill joined, for want of equity in said bill, and

182

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

183

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

184

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

185

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

186

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

187

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

188

The Court erred in not requiring the complainant to answer said bill in intervention, and

189

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

190

The Court erred in not granting to said interveners

or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

191

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Fred J. Gould, and the other interveners with him in his said bill joined, for want of equity in said bill, and

192

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

193

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, in-

dividually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

194

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

195

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

196

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

197

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

198

The Court erred in not requiring the complainant to answer said bill in intervention, and

199

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

200

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

201

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Abram B. Horner, and the other interveners with him in his said bill joined, for want of equity in said bill, and

202

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

203

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

204

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

205

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

206

The Court erred in not requiring the Oregon &

California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

207

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

208

The Court erred in not requiring the complainant to answer said bill in intervention, and

209

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

210

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them,

to the relief prayed for by them and each of them, respectively, in said bill.

211

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, George B. Bothwell, and the other interveners with him in his said bill joined, for want of equity in said bill, and

212

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

213

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

214

The Court erred in sustaining the motion of the

defendants, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

215

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

216

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

217

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

218

The Court erred in not requiring the complainant to answer said bill in intervention, and

219

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

220

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

221

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Hervey L. Keyes, and the other interveners with him in his said bill joined, for want of equity in said bill, and

222

The Court erred in sustaining the demurrer of the defendants, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

223

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

224

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

225

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

226

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

227

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention, and

228

The Court erred in not requiring the complainant to answer said bill in intervention, and

229

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

230

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

231

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Marvin P. Alford, and the other interveners with him in his said bill joined, for want of equity in said bill, and

282

The Court erred in sustaining the demurrer of the defendants, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

283

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

284

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

285

The Court erred in sustaining the motion of the

complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

236

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

237

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

238

The Court erred in not requiring the complainant to answer said bill in intervention, and

239

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

240

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

241

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Albert Bozarth, and the other interveners with him in his said bill joined, for want of equity in said bill, and

242

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

243

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of interven-

tion of said interveners, for want of equity in said bill, and

244

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

245

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

246

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

247

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

248

The Court erred in not requiring the complainant

to answer said bill in intervention, and

249

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively, in said bill, and

250

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners and each of them, to the relief prayed for by them and each of them, respectively, in said bill.

251

The Court erred in holding that these interveners and cross-complainants were not entitled to the relief prayed for by them and each of them, respectively, and

252

The Court erred in not holding that these interveners and cross-complainants were entitled to the relief prayed

for by them and each of them respectively, and

253

The Court erred in holding that none of these interveners and cross-complainants were entitled to the relief prayed for by them, and

254

The Court erred in holding that none of these interveners and cross-complainants were entitled to any relief;

As, their said bills of intervention and cross-complaint and each of them, contain allegations and matters entitling these interveners and cross-complainants and each of them, to equitable relief; and

Said bills of intervention and cross-complaint and each of them, contain allegations and matters entitling the interveners and cross-complainants and each of them, to the relief prayed for by them and each of them, respectively, in their said bills.

255

The Court erred in holding that the United States, complainant herein, was entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

256

The Court erred in not holding that the United States, complainant herein, was not entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

257

The Court erred in holding that the lands or any thereof described in this decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

258

The Court erred in holding that the lands sought to be purchased by the interveners and cross-complainants herein, should be forfeited.

259

The Court erred in holding that the lands or any thereof sought to be purchased by these interveners and cross-complainants, or any of them, described in said decree, were and had been forfeited to the United States, complainant herein, and that a decree be entered forfeiting said lands or any thereof to the complainant.

260

The Court erred in holding that the proviso in the said act of April 10, 1869, was a condition subsequent.

261

The Court erred in holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

262

The Court erred in not holding that the proviso in the amendment of April 10, 1869, requiring the sale of land to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not and is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said grant.

263

The Court erred in holding that the provision in the act of May 4, 1870, requiring the sale of lands to

actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

264

The Court erred in not holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not nor is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said land grant.

265

The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of the proviso of April 10, 1869.

266

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or proviso in the act of April 10, 1869, requiring sales of land to settlers.

267

The Court erred in holding that the provision in the West Side grant, requiring sales to settlers, was a condition subsequent, and

268

The Court erred in not holding that the provision in the West Side grant, requiring sales to settlers, was not a condition subsequent, as

(a) Said provision is not coupled with and does not contain any appropriate words importing a condition subsequent, and

(b) Said provision does not contain any language importing a right to forfeiture or re-entry for condition broken.

269

The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision of said act of May 4, 1870, touching sales to actual settlers.

270

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or provision in the act of May 4, 1870, requiring sales to settlers.

271

The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent if such there was, in said proviso of said act of April 10, 1869.

272

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the East Side grant, for breach of an assumed condition subsequent in the proviso contained in the act of April 10, 1869.

273

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the East Side grant for breach of an assumed condition subsequent in the proviso in the act of April 10, 1869, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants which had become vested, in parts of said East Side grant, under the terms of said proviso, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

274

The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

275

The Court erred in holding that there was jurisdiction in the Court on the equity side of decree a forfeiture of the title of the defendants to the lands embraced in and covered by the West Side grant, for breach of an assumed condition subsequent contained in the act of May 4, 1870.

276

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the West Side grant for breach of an assumed condition subsequent contained in said grant, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants,

which had become vested in parts of the West Side grant, under the terms of said grant, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

277

The Court erred in holding that by its joint resolution of April 13, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeiture by the Attorney General or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the East Side grant, for or on account of any assumed breach of conditions of the proviso of the act of April 10, 1869.

278

The Court erred in holding that by its joint resolution of April 30, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeiture by the Attorney General, or intended to authorize the forfeiture by the Attorney General, or

authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the West Side grant for or on account of any assumed breach of condition contained in said grant.

279

The Court erred in holding that there was any cause of action or foundation of jurisdiction for forfeiture in respect to either of said grants, in any re-entry for breach of condition or legislation equivalent thereof, or in any legislative declaration of forfeiture.

280

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was not sufficiently definite to be enforced as a condition subsequent.

As such proviso does not contain any words importing a right of forfeiture or re-entry for condition broken.

281

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant of all right and interest of the defendants in or to the lands embraced within the grant of 1866, for breach of the assumed condition contained in the amendment of April 10, 1869, as

(a) Assuming that said proviso was a condition

subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest the defendant, Oregon and California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these interveners and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

282

The Court, being a court of equity, erred in decreeing a forfeiture to the complaint, of all right and interest of the defendants, in or to the lands embraced within the West Side land grant, for breach of the assumed condition contained in the act of May 4, 1870, as

(a) Assuming that said provision was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and

it was inequitable for it to divest defendant, Oregon and California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui qui trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these interveners and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

288

The Court erred in not holding that this suit cannot be maintained by complainant as one to enforce forfeiture nor to quiet title, as

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture had not been adjudicated by a court of law; and

(c) The defendant, railroad company, holds legal title to and the possession of said granted lands; and

(d) Complainant having asked for forfeiture and in the alternative, for specific performance, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance; and

(e) In view of specific performance, a decree quieting title in the Government, cannot be had.

284

The Court erred in not holding that the Government was estopped to claim forfeiture of the lands embraced within each and both of said land grants, as

(a) The Government in its bill of complaint bases its right to recover, upon the refusal of the railroad company to sell said lands to the interveners and cross-complainants and others similarly situated, and

(b) The Government in its bill of complaint prayed that these interveners and cross-complainants might be permitted to enforce their rights herein, and

(c) The Government having come into a court of equity is estopped to claim forfeiture when equitable relief by performance can be had; and

(d) The Government is estopped to claim forfeiture in lieu of performance, since the interveners and cross-complainants have come into court upon the invitation of the Government and furnished the means whereby performance may be had.

285

The Court erred in holding that the provisions in each and both of said land grants concerning sales to settlers, are negative provisions only, designed to prevent sales to others than settlers in quantities greater than one-quarter section to any one purchaser and at prices greater than $2.50 per acre, and not positive provisions requiring sales to settlers in quantities not greater than one-quarter section to any one purchaser and at a price not greater than $2.50 per acre.

286

The Court erred in not holding that the provisions of each and both of said land grants concerning sales to settlers were both positive and negative, requiring the grantee to sell to settlers, who should apply to buy, not more than one-quarter section, at a price not greater than $2.50 per acre, and requiring said grantee to refrain from selling any of the granted lands to others than settlers or in quantities greater than one-quarter section or at a price greater than $2.50 per acre.

287

The Court erred in holding that the provisions in each and both of said land grants, requiring sales to settlers, are not positive covenants which may be specifically enforced.

288

The Court erred in holding that the provisions in each and both of said land grants requiring sales to settlers, is a negative covenant only, which may be enforced by the Government only, and that the only means of such enforcement are by forfeiture for breach thereof.

289

The Court erred in decreeing a forfeiture of those lands included in either or both of the grants to the railroad company or which the interveners and cross-complainants had made application to purchase from and tendered to the railroad company the sum of $2.50 per acre and offered to become actual settlers on the lands so applied for, prior to the adoption by Congress of the joint resolution of April 30, 1908, as

By so applying, tendering the purchase price and offering to become an actual settler upon the lands so applied for, each intervener and cross-complainant has acquired a vested interest in the land applied for, which cannot be divested by Congress, assuming that said provisions are conditions subsequent, and that the adoption of said joint resolution by Congress was a declaration of forfeiture for breach thereof.

290

The Court erred in holding that although the pro-

visions in each and both of said land grants were designed to devote the lands conveyed by said grants, to settlement and tillage and to prevent the monopoly of the land and that such grants were laws as well as grants, that notwithstanding the railroad company might defeat the purposes of the provisions requiring sales to settlers, by themselves monopolizing and holding the lands and refusing to sell them at all, and by refusing to sell any of them except to such persons and in such quantities as it saw fit within the price and terms provided in the grant.

291

The Court erred in not holding that the purpose of the joint resolution of Congress of April 30, 1908, was to authorize the enforcement of a forfeiture for any breach of an assumed condition subsequent in either of said land grants, as an alternative only, of the refusal of the railroad company to perform the covenants requiring sales to settlers, after such performance had been decreed by the Court.

292

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized the enforcement of forfeiture for any breach of an assumed condition subsequent in either of said land grants, only in the event that specific performance of the covenants in said grants, requiring sales to settlers, could not be enforced.

293

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized a forfeiture of the legal title of the railroad company for breach of an assumed condition subsequent in either of said land grants, only as a means of carrying into effect the covenants in said grants requiring sales to settlers.

294

The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, did not have possession of said grants or either of them.

295

The Court erred in not holding that at the time of filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all lands of which forfeiture is sought by said bill of complaint.

296

The Court erred in holding that the United States, complainant herein, is the owner in fee simple or in possession of said lands or any part thereof or entitled

to said lands or entitled to the possession of the same or any part thereof, which are sought to be purchased by these interveners and cross-complainants or any of them.

297

The Court erred in holding that, as a foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company did not have the possession of the same.

298

The Court erred in holding as a foundation for a suit by complainant, to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

299

The Court erred in not holding that the United States, complainant herein, is not the owner in fee simple, nor in possession of said lands or any part thereof, nor entitled to said lands, nor entitled to the possession of the same or any part of the same, which are sought to be purchased by these interveners and cross-complainants or any of them.

300

The Court erred in holding that the complainant is the owner in fee simple, or in possession of said lands or any part thereof, or entitled to the possession of the same or any part thereof.

301

The Court erred in holding that as a foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company did not have the legal title to such grants.

302

The Court erred in holding that the title of the United States of America, of or in said lands or estates in lands sought to be purchased by these interveners and cross-complainants or any of them, be or is by said decree, quieted and confirmed, particularly as to any claim or claims of right, title and interest in, to or upon the same, in favor of these interveners and cross-complainants or any of them.

303

The Court erred in holding that the lands and estates in lands in the said decree described, and which

were sought to be purchased by the interveners and cross-complainants herein or any of them, either in whole or in part, now are forfeited to, or that the title to or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof, now are the absolute property of the United States of America, or are free from any and all claim or claims of right, title or interest or lien in, to or upon the same or any part thereof, by or in favor of these interveners and cross-complainants or any of them.

304

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of July 25, 1866 and the act of April 10, 1869, amendatory thereof.

305

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants any of the lands sought to be purchased by them respectively, upon the terms proposed by said

interveners and cross-complainants and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

306

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of May 4, 1870.

307

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of May 4, 1870.

308

The Court erred in holding that the United States, complainant herein, was entitled to any injunctive relief whatever as against these interveners and cross-complainants or any of them.

309

The Court erred in holding that the United States, complainant herein, was entitled to a decree restraining these interveners and cross-complainants, or any of them, from claiming or asserting any right, title, interest or lien in, to or upon the lands sought to be purchased by these interventrs and cross-complainants, respectively.

310

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree restraining these interveners and cross-complainants or any of them, from claiming or asserting any right, title or interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

311

The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

312

The Court erred in holding that the United States, complainant herein, was entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

313

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

314

The Court erred in holding that the proviso in the amendatory act of April 10, 1869, was not a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the Oregon and California Railroad Company to accept and become vested with the title to the lands under the grant of 1866.

315

The Court erred in holding that the word "provided" introducing the proviso contained in the amendatory act of April 10, 1869, imported a condition subsequent, as

(a) The word "provided" is as appropriate for the purpose of importing a condition precedent as a condition subsequent, and

(b) Said proviso is coupled with a clause in said act contained permitting the grantees to accept said grant one year after the passage of said amendatory act, and

(c) Said proviso is not coupled with and does not bear any relation to the granting clause in said act amended.

316

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, was and is a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the railroad company to accept and become vested with the title to the lands under the grant of 1866.

317

The Court erred in refusing to direct and decree a specific performance on behalf of the United States, the complainant herein, and against the defendant, Oregon and California Railroad Company and the other defendants claiming by, through and under it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by each respectively, upon payment of the purchase price therefor.

318

The Court erred in not holding that the defendant, Oregon and California Railroad Company and other defendants, claiming an interest in said land, be required to convey said land to the interveners and cross-complainants applying to purchase the same.

319

The Court erred in holding that the defendant, Oregon and California Railroad Company and each and all of the other defendants claiming an interest in said land, should not be required to convey said lands to the interveners and cross-complainants applying for the same.

320

The Court erred in holding that Congress did not intend by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

321

The Court erred in not holding that Congress intended, by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

322

The Court erred in holding that Congress did not intend by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side land

grant, according to the terms of the provision in said act of May 4, 1870.

323

The Court erred in not holding that Congress intended, by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side land grant, according to the terms of the provision in said act of May 4, 1870.

324

The Court erred in refusing to direct and decree a specific performance on behalf of the interveners and cross-complainants and each of them, against the defendant, Oregon and California Railroad Company, and the other defendants claiming by, through and under it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by said interveners and cross-complainants, respectively, as prayed for in their several bills.

325

The Court erred in holding that the provisions in each and both of said grants did not constitute contracts entered into by and between the Government and the railroad company, for the benefit of and enforcible by the interveners and cross-complainants.

326

The Court erred in holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land, and to purchase the same in quantities and at prices provided by said amendatory act.

327

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said amendatory act.

328

The Court erred in holding that the provision in the act of May 4, 1870, relating to sale of land to actual settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said act.

329

The Court erred in not holding that the provision in the act of May 4, 1870, relating to sale of lands to actual settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided in said act.

330

The Court erred in holding that the railroad company was not constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, under the provisions requiring sales of lands to settlers, referred to, in that

(a) "The nature and quality of their interests are not specific and definite," and, in that

(b) "They are not susceptible of identification as such," and,

331

The Court erred in not holding that the railroad company, by the provisions in said grants contained, was constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, as

(a) The nature and quality of said interests under said grants are sufficiently specific and definite, and

(b) Their application to purchase and offer to settle upon the lands, is a sufficient identification.

332

The Court erred in holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, did not give to the respective interveners and cross-complainants a vested interest in said lands, in default of an acceptance of such offers and conveyances of said lands by the Oregon and California Railroad Company.

333

The Court erred in not holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, gave to the respective interveners and cross-complainants, a vested interest in said lands, in default of an acceptance of such offers and conveyances, by the Oregon and California Railroad Company.

334

The Court erred in holding that the proviso in the act of April 10, 1869, is not sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

335

The Court erred in not holding that the proviso in

the act of April 10, 1869, is sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

336

The Court erred in holding that the proviso in the act of April 10, 1869, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or a a covenant creating a trust.

337

The Court erred in not holding that the proviso in the act of April 10, 1869, for the sale of lands to actual settlers was intended by Congress as and was and is a covenant to a use only, and not a condition subsequent, as

(a) Said proviso contains specific and direct commands which were assented to, and performance thereof promised, by the Oregon and California Railroad Company, and

(b) Said proviso does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

338

The Court erred in holding that the proviso in the act of April 10, 1869, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

339

The Court erred in not holding that the proviso in the act of April 10, 1869, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

340

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the East Side grant, or any part thereof, except as a settler of the trust in said lands.

341

The Court erred in holding that the provision in the act of May 4, 1870, is not sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

342

The Court erred in not holding that the provisions in the act of May 4, 1870, is sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

343

The Court erred in holding that the provisions in the act of May 4, 1870, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a trust.

344

The Court erred in not holding that the provisions in the act of May 4, 1870, requiring sales to settlers, was intended by Congress as and was and is a covenant to a use only and not a condition subsequent, as

(a) Said provision contains specific and direct commands which were assented to and agreed to and performance thereof promised by the Railroad company, and

(b) Said provision does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

345

The Court erred in holding that the provisions in the act of May 4, 1870, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

346

The Court erred in not holding that the provision in the act of May 4, 1870, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

347

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the West Side grant, or any part thereof, except as a settler of the trust in said lands.

348

The Court erred in holding that the United States,

complainant herein, had any right, title or interest in and to the lands embraced within the East Side land grant or any part thereof, which it could enforce in this action, except such rights as it has as a settler of the trust in said lands, to enforce the provision of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

349

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the West Side land grant or any part thereof, which it could enforce in this action, except such rights as it had or has as a settler of the trust in said lands to enforce the provisions of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

350

The Court erred in not holding that this suit can only be maintained by complainant as one to compel the specific performance of a trust covenant, or to enforce a public policy, as

(a) Neither of said land grants contains a provision importing a condition subsequent, upon the breach of which forfeiture could be had, and

(b) Congress has never declared a forfeiture of either of said land grants for breach of any condition

subsequent, assuming that there is such condition in either of said land grants, and

(c) The fact of forfeiture has never been adjudicated by a court of law, and

(d) The defendant, Oregon and California Railroad Company holds the legal title to and possession of said lands, and

(e) Complainant having asked for forfeiture and in the alternative for specific performance, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance, and

(f) In view of specific performance a decree quieting title in the Government, cannot be had.

351

The Court erred in not holding, on the assumption that the said proviso in the act of April 10, 1869, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit in equity, to waive forfeiture, and elected to specifically enforce said proviso as a covenant to a use only.

352

The Court erred in not holding, on the assumption that the said provision in the act of May 4, 1870, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit

in equity, to waive forfeiture, and elected to specifically enforce said provision.

353

The Court erred in holding that the interveners and cross-complainants were not such actual settlers as were contemplated by the acts of April 10, 1869, and May 4, 1870.

354

The Court erred in holding that these interveners and cross-complainants did not have vested interests in the lands sought to be purchased by them and each of them respectively, by reason of their various offers and tenders to purchase said lands upon the terms provided in the acts of April 10, 1869, and May 4, 1870.

355

The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

356

The Court erred in not holding that the evidence in this cause was insufficient to support or sustain the decree rendered.

357

The Court erred in holding that the evidence adduced in support of the complaint of the United States, complainant herein, was sufficient to entitle complainant to

a forfeiture of the title to the lands sought to be purchased by these interveners and cross-complainants or any of them.

358

The Court erred in not holding that the evidence adduced in support of the complaint of the United States, complainant herein, was not sufficient to entitle complainant to a forfeiture of the title to the lands sought to be purchased by these interveners and cross-complainants or any of them.

359

The Court erred in holding that the United States, complainant herein, was entitled to recover its costs and disbursements herein, or any costs or disbursements herein, against these interveners and cross-complainants, or any of them, and that a decree should be entered to that effect.

WHEREFORE, these interveners and cross-complainants, jointly and severally, pray that the said several judgments and orders and each of them and the said decision, judgment and decree and each and every part thereof, be reversed, and that this Court enter a decree on behalf of these interveners and cross-complainants as prayed for by them and each of them, respectively, in their several bills of intervention and cross-complaints heretofore filed herein,

And for such other, further or different relief as to this Court may seem just and equitable in the premises.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,
Successors to
SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

EUGENE BLAND,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

A copy of the above and foregoing assignments of error received and due service thereof admitted this 8th day of November, A. D. 1913.

Jas. C. McReynolds,
Attorney General U. S.

B. D. Townsend,
Special Assistant to Attorney General.

By Fred Rabb,
Special Assistant to Attorney General.

Clarence L. Reames,
United States Attorney,

By Robert R. Rankin,
Assistant United States Attorney.

Solicitors and Attorneys for the Complainant, The United States of America.

Wm. D. Fenton,

P. F. Dunne

Wm. F. Herrin,

Solicitors and Attorneys for the Defendants Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, Individually and as Trustee.

Jno. M. Gearin,

Solicitor and Attorney for the Defendant Union Trust Company of New York, Individually and as Trustee

A. W. Lafferty,

Solicitor and Attorney for the Defendants-Cross-Complainants John L. Snyder and the others with him joined.

A. W. Lafferty,

Solicitor and Attorney for the Defendants-Cross-Complainants Sidney Ben Smith and the others with him joined.

A. W. Lafferty,

Solicitor and Attorney for the Interveners Arthur L. Golder, George W. Trefren and Lewis J. Trefren.

A. W. Lafferty,

Solicitor and Attorney for the Interveners William E. Carter, Frank Carter and William H. Prentice.

A. W. Lafferty,

Solicitor and Attorney for the Interveners William McLeod and the other Interveners with him joined.

(Endorsed) Filed November 11, 1913, A. M. Cannon, Clerk United States District Court, By G. H. Marsh, Deputy.

(TITLE).

And that thereafter, on November 17, 1913, there was duly filed in said court the Bond on Separate Appeal of John L. Snyder and others, defendants-cross-complainants, and William F. Slaughter and others, interveners, in words and figures as follows, to-wit:

[TITLE]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: that

JOHN L. SNYDER, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Frances S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Snryock, defendants, cross-complainants in the above entitled cause, and

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neil, Alexander Fauske, Francis Wiest, Cordelia Michael,

John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin, defendants, cross-complainants in the above entitled cause, and

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman, defendants, cross-complainants in the above entitled cause; and

WILLIAM F. SLAUGHTER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 24th day of September, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core, and Edgar C. Holladay, interveners in the above entitled cause; and

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman, and Charles Wiest, interveners in the above entitled cause; and

MILO F. DENNIS, and Leopold H. Dietz, interveners in the above entitled cause; and

FRANK TERRACE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

CHARLES J. VANZILE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in the intervention in this cause on the 23rd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

LUTHER E. TROWBRIDGE, intervener in the above entitled cause; and

GEO. W. WRIGHT, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright, and Joseph E. Wright, interveners in the above entitled cause; and WILLIAM E. CARTER, Frank Carter, and Wil-

liam H. Prentice, interveners in the above entitled cause; and

ARTHUR L. GOLDER, George W. Trefren and Lewis J. Trefern, interveners in the above entitled cause; and

ELMER L. HANCOCK, and each and all of the persons whose names are specifically set forth in the above title to this cause; commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 8th day of February, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ROBERT AISTROP, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude, and Frank A. Durrah, interveners in the above entitled cause; and

WILLIAM McLEOD, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sarjent, Fred A. Sarjent, Travis Martin, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley, interveners in the above entitled cause; and

B. W. NUNNALLY, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington,

Edward E. Stucker, and O. N. Cranor, interveners in the above entitled cause; and

PAUL C. L'AMOREAUX, Albert E. Barkman, Clyde M. Adair, Carrie M. Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman, and Rose L'Amoreaux, interveners in the above entitled cause; and

JOHN F. FOWLER, Fred B. Hussey, L. L. Scott, Eliza Scott, Geo. W. Scott, L. D. Beary, Glen W. Armour, W. J. Sweet, T. J. McMullen, Geo. S. Lindsey, L. F. Jones, A. Noble, H. N. Noble, H. C. Jones, A. A. Noble, Bertha V. Scott, Gertrude J. McMullen, Emeline S. Phelps, Jas. K. Phelps, Margaret B. Hallowell, C. W. Chapman, Orlando S. Phelps, Robert D. Shutt, Thos. J. Lillis, J. L. Wadsworth, Jessie P. Coffin, Vestel P. Coffin, R. W. Purdum, Lena A. Ingram, H. L. Ingram, Belle Peck, Floy McLeod, Sara Ingram, E. H. McKibbon, J. C. Perry, M. LeRoy White, Minnie M. Halliday, Margaret White, A. LaMare, J. J. Kobetich, John Alderson, Chris Knudsen, S. T. Farr, Chas. Carlyle, Clyde A. Gates, Henry Olmstead, B. Lindahl, Wm. O. Foote, Geo. Schlosser, John R. Read, A. O. Nelson, O. Erickson, T. L. Draper, Frank L. Draper, John Adamson, Leonard Anderson, A. M.

Frankfurt, M. S. Langdon, John Olson, John Hedberg, Jas. DeRose, J. Frank LaRoe, Fanny M. LaRoe, Albert O. Skotterud, C. Wallgren, Emma C. Phelps, Arthur L. Dewey, H. H. Keith, C. Tuttle, H. A. Fisher, Lena M. Storla A. Johnson, Cora E. Ferrel, Van R. Ferrel, Thos. C. Coffin, Geo. Harrison, Fred C. Smith, Walter Hatcher, O. W. Peterson, John Forsberg, Dan'l M. Smith, S. J. Morris, I. J. Edwards, Andrew Lindstrom, A. A. Johnson, I. Carpenter, T. A. McCormick, John C. Farley, John Fitzgerald, Wm. H. French, Geo. L. Scarlett, Michael Fitzgerald, Nils P. Lindgren, Hokan Lundgren, Emma E. Lundgren, Anna E. Lundgren, E. R. Redlich, Ida S. Bell, Milton S. Parrott, John Smedlund, F. E. French, Mary E. Wadsworth, Oscar Sandstrom, Frances A. Short, Albert F. Reed, Lewis E. Handley, William F. Hallowell, Beverly W. Coiner, Anna Arickson, M. H. Woolsey, Sr., E. G. Wollum, Annie Lemon, Martha J. Chapman, Robert Carlson, and Minette Johnson, interveners in the above entitled cause; and

L. C. KEYLON, E. E. Keylon, C. S. Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphs Gaunt, and Anton Carlson, interveners in the above entitled cause; and

R. E. CAMERON, Everett B. Coffin, Ansel B. Hill, Arthur D. Bird, Elizabeth Robinson, W. J. H. Best, Frank J. Clements, Peter H. Ludwig, Hugh Mair, Anna M. Chase, D. H. Smith, Sarah J. Smith, Mary E.

Ludwig, W. J. Hodder, W. B. Heffron, E. E. Christman, James E. Phillips, D. J. O'Connor, Thomas R. Williams, Zula D. Bird, William E. Donohue, James S. Chase, P. T. O'Connor, J. W. Braman, Julius J. Gregat, D. D. Whitcomb, L. F. Hatter, Gertrude Mae Schneider, Marcellus L. Whitcomb, Gilbert Thorson, Fred Schneider, Jas. W. Curtis, Virgil W. Creech, Bertha Josephine Howe, James L. Hoadley, James O'Sullivan, Essie P. Mitchell, J. Y. Mitchell, Albert F. Hopstein, R. H. Holbrook, Edgar H. Blair, R. H. Wilhermsdorfer, Wm. H. Finck, J. T. Hatter, Wm. Curtis, J. A. Schoenberger, Kity V. Hogan, W. H. Hogan, Aaron L. Beers, John C. Kech, Estella A. Beers, Libbie D. Hagler, H. W. McFate, Henry R. Hale, Vincent J. Dermott, John M. Jackson, Andrew M. Thomas, B. Calling, Robert Dudgeon, Mabell F. May, Walter May, Lewis C. Hall, H. A. French, Henry C. Hill, C. C. Cease, Felix A. Rogers, Herman Meyer, Ray McFee, Mary A. Day, Anna E. Loupman, Francis O. Whealon, Bertha May Carr, John Mogus, Chester Kirkpatrick, Chas. Skuhra, F. E. Hammond, D. C. Hall, E. M. Bronilette, M. A. Sprague, J. F. Treen, J. E. Amling, Jennie Rosencrans, Dorotha C. Kech, Preston H. Carr, and John H. Miller, interveners in the above entitled cause; and

CHARLES W. VARNUM, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Leabo, Mary E. Black, Arthur J. Plate, Flora E. King, Howard S. Robertson, W. E. Bowden, Frank B. Manzer,

Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, Chauncy Thomas, and Adeline James, interveners in the above entitled cause; and

NICHOLAS HERRMAN, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketchum, G. A. Hutzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan, Hortence B. Lennan, P. G. Larson, William Hoeck, and Henry Hoeck, interveners in the above entitled cause; and

EDWIN F. ANDERSON, Emma K. Barr, Mabel A. Barr, John Boeck, Wardel Boeck, G. V. Booth, Anna B. Booth, Joseph W. Brady, William A. Boze, Eric Q. Brainard, John Charles Brodie, George Brunt, J. R. Buck, George A. Buck, Thomas Butler. F. M. Bybee, Herbert W. Calkins, Ben W. Calkins, N. W. Calkins,

Nellie B. Calkins, Etta S. Clear, M. H. Coffin, Edna Coffin, Mark Coffin, Mary A. Coffin, Elza Davis, George J. Davis, Thea Falk, John C. Filer, Mary G. Filer, Frank C. Irons, Jacob H. Keefer, R. D. Leach, Lillian E. Leach, Andrew C. Leach, Amelia Lind, M. E. Longfellow, W. L. McCaslin, Ira L. Macomber, Harry J. Marcus, Elias D. Marquand, D. G. Martin, Helen Martin, Frank J. Miller, George Miller, George W. Mills, Fred Mosely, Althea Munroe, Orr W. Noble, William S. Northrup, David R. Page, C. M. Paxton, Helen A. Payne, Alice J. Pelot, Henry Rasmussen, Elmer Rasmussen, Irene K. Rodgers, Napoleon B. Rodgers, William D. Rogers, Frank O. Schramm, A. J. Seckner, Gertrude Seckner, George E. Smith, Dallas W. Spangler, D. W. Stainbrook, Anna Steensland, Frank R. Storm, Norbert H. Storm, L. B. Taylor, Joseph Thompson, C. H. West, J. Ernest White, Daniel A. Wisecup, W. W. Calkins, Etta S. Clarr, Marg G. Filer, Guy E. Winzer, and Montello Gray, interveners in the above entitled cause; and

FRED J. GOULD, Beverly B. Deems, George Daniel, W. H. Harris, John D. Sullivan, Daniel S. Green, Adolph O. Keller, Peter Haupt, Lillian M. Hanley, Tobias S. Miller, Ezra H. Stafford, Peter T. Barrett, William A. McAtee, Joseph V. Barrett, George B. Reynolds, Massey Wilson, Henry Schurmann, Edwin B. Schurman, Adolph G. Enderly, Flora A. Branstetter, William D. Burhans, Jacob J. Koenigsmark, Florence E. Stafford, Fannie A. Stafford, Edwin M. Stafford,

Justus H. Hohl, Louis J. Bechtold, John C. Greulich, A. M. Scheel, Effie Grace Sumney, Herman C. Kralemann, J. W. Vandolah, Ward D. Flinn, Joseph A. Stewart, C. W. Cooper, Hoxie Cooper, Roxie Cooper, Flora Beardsley, Raymond M. Beardley, James A. Owens, Clinton S. Braden, S. M. Braden, Sears Lehman, Garfield J. Tansing, L. G. Davis, Robert J. Hood, Robert Rives, J. B. Leemon, Helen H. Dearborn, W. B. Dearborn, W. E. Dearborn, David O'Neal, Leonard P. Lockwood, George K. Boyd, Frank J. Smith, Estella J. Smith, John D. LaCroix, Benjamin F. Wheeler, F. A. Gooch, Mrs. M. O. Woodruff, Charles P. Howland, James Lacy, A. L. Gibbs, Paul Vinyard, William H. Lockwood, Allen W. Thomas, and E. G. Bentley, interveners in the above entitled cause; and

ABRAM B. HORNER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abraham B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of December, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

GEORGE B. BOTHWELL, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of

court, filed their joint complaint in intervention in this cause, on the 6th day of October, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

HERVEY L. KEYES, Chester H. Thornson, Chester H. Thomson, Lynn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arendonk, Ira Lubbers, Reinier Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Heunink, Bertha Moe Seaver, and Elmer H. Ruslink, interveners in the above entitled cause; and

MARVIN P. ALFORD, and each and all of the persons whose names are specifically set forth in the above title to this couse, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 14th day of February, 1910, and

who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ALBERT BOZARTH, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of March, 1910, and who are too numerouse to specifically name again herein, interveners in the above entitled cause, as principals, and THE AETNA ACCIDENT AND LIABILITY COMPANY, of Hartford, Connecticut, as sureties, acknowledge themselves to be jointly indebted to the United States of America, complainant, and Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants appellees in the above cause in the sum of Five Hundred Dollars.

Dated this 15th day of November, A. D. 1913.

The condition of this obligation is such, that

WHEREAS, on the first day of July, A. D. 1913, in the above and foregoing entitled cause, in the above and foregoing entitled court, various judgments, and orders of dismissal were entered in favor of the complainant, against the various groups of cross-complain-

ants and interveners herein and on the same day a judgment and decree was rendered in favor of the complainant and against all of the above named defendants and also against all of the above named cross-complainants and interveners, and

WHEREAS, all of the above named cross-complainants and interveners who are named as principals herein, having obtained an appeal to the United States Circuit Court of Appeals and having filed a copy thereof in the office of the Clerk of the Court, to reverse said several judgments and orders of dismissal and to reverse said judgment and decree, and a citation directed to the said United States of America, complainant and to the said Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee, and Union Trust Company, individually and as trustee, defendants, citing and admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, on the ..... day of ..... A. D. 1913 next,

NOW, if the said appellants, principals herein, shall prosecute their appeal to effect and answer all costs, if any, which may be adjudged or taxed against them, if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

LEWIS C. GARRIGUS,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William McLeod, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sargent, Travis Martin, Fred A. Sarjent, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

LEWIS C. GARRIGUS,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Principals.

THE AETNA ACCIDENT AND LIABILITY COMPANY,

By KARL V. LIVELY,

Resident Vice-President.

Attest:

JOHN CHAMBERLAIN,

Resident Assistant Sec'y.

THE AETNA ACCIDENT AND LIABILITY COMPANY,

By McCARGAR, BATES & LIVELY, Sureties,

Local and General Agents.

By K. V. LIVELY,

Member of Firm.

Seal

The above bond and the sureties thereon approved this 17th day of November, 1913.

CHAS. E. WOLVERTON,

Judge.

(Endorsed) Filed November 17, 1913, A. M. Cannon, Clerk United States District Court, By G. H. Marsh, Deputy.

And that thereafter, on November 11, 1913, there was duly filed in said court the Citation on Separate Appeal of John L. Snyder and others, defendants-cross-complainants, and William F. Slaughter and others, interveners, in words and figures as follows, to-wit:

[TITLE]

United States of America, to

United States of America as Complainant, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Individually and as Trustee, and Union Trust Company of New York, Individually and as Trustee, Greeting: Whereas,

JOHN L. SNYDER, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Frances S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, defendants, cross-complainants in the above entitled cause, and

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neil, Alexander Fauske, Francis Wiest, Cordelia Michael,

John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin, defendants, cross-complainants in the above entitled cause, and

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman, defendants, cross-complainants in the above entitled cause; and

WILLIAM F. SLAUGHTER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 24th day of September, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core, and Edgar C. Holladay, interveners in the above entitled cause; and

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman, and Charles Wiest, interveners in the above entitled cause; and

MILO F. DENNIS, and Leopold H. Dietz, interveners in the above entitled cause; and

FRANK TERRACE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

CHARLES J. VANZILE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in the intervention in this cause on the 23rd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

LUTHER E. TROWBRIDGE, intervener in the above entitled cause; and

GEO. W. WRIGHT, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright, and Joseph E. Wright, interveners in the above entitled cause; and

WILLIAM E. CARTER, Frank Carter, and Wil-

liam H. Prentice, interveners in the above entitled cause; and

ARTHUR L. GOLDER, George W. Trefren and Lewis J. Trefern, interveners in the above entitled cause; and

ELMER L. HANCOCK, and each and all of the persons whose names are specifically set forth in the above title to this cause; commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 8th day of February, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ROBERT AISTROP, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude, and Frank A. Durrah, interveners in the above entitled cause; and

WILLIAM McLEOD, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sarjent, Fred A. Sarjent, Travis Martin, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley, interveners in the above entitled cause; and

B. W. NUNNALLY, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington,

Edward E. Stucker, and O. N. Cranor, interveners in the above entitled cause; and

PAUL C. L'AMOREAUX, Albert E. Barkman, Clyde M. Adair, Carrie M. Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman, and Rose L'Amoreaux, interveners in the above entitled cause; and

JOHN F. FOWLER, Fred B. Hussey, L. L. Scott, Eliza Scott, Geo. W. Scott, L. D. Beary, Glen W. Armour, W. J. Sweet, T. J. McMullen, Geo. S. Lindsey, L. F. Jones, A. Noble, H. N. Noble, H. C. Jones, A. A. Noble, Bertha V. Scott, Gertrude J. McMullen, Emeline S. Phelps, Jas. K. Phelps, Margaret B. Hallowell, C. W. Chapman, Orlando S. Phelps, Robert D. Shutt, Thos. J. Lillis, J. L. Wadsworth, Jessie P. Coffin, Vestel P. Coffin, R. W. Purdum, Lena A. Ingram, H. L. Ingram, Belle Peck, Floy McLeod, Sara Ingram, E. H. McKibbon, J. C. Perry, M. LeRoy White, Minnie M. Halliday, Margaret White, A. LaMare, J. J. Kobetich, John Alderson, Chris Knudsen, S. T. Farr, Chas. Carlyle, Clyde A. Gates, Henry Olmstead, B. Lindahl, Wm. O. Foote, Geo. Schlosser, John R. Read, A. O. Nelson, O. Erickson, T. L. Draper, Frank L. Draper, John Adamson, Leonard Anderson, A. M.

Frankfurt, M. S. Langdon, John Olson, John Hedberg, Jas. DeRose, J. Frank LaRoe, Fanny M. LaRoe, Albert O. Skotterud, C. Wallgren, Emma C. Phelps, Arthur L. Dewey, H. H. Keith, C. Tuttle, H. A. Fisher, Lena M. Storla A. Johnson, Cora E. Ferrel, Van R. Ferrel, Thos. C. Coffin, Geo. Harrison, Fred C. Smith, Walter Hatcher, O. W. Peterson, John Forsberg, Dan'l M. Smith, S. J. Morris, I. J. Edwards, Andrew Lindstrom, A. A. Johnson, I. Carpenter, T. A. McCormick, John C. Farley, John Fitzgerald, Wm. H. French, Geo. L. Scarlett, Michael Fitzgerald, Nils P. Lindgren, Hokan Lundgren, Emma E. Lundgren, Anna E. Lundgren, E. R. Redlich, Ida S. Bell, Milton S. Parrott, John Smedlund, F. E. French, Mary E. Wadsworth, Oscar Sandstrom, Frances A. Short, Albert F. Reed, Lewis E. Handley, William F. Hallowell, Beverly W. Coiner, Anna Arickson, M. H. Woolsey, Sr., E. G. Wollum, Annie Lemon, Martha J. Chapman, Robert Carlson, and Minette Johnson, interveners in the above entitled cause; and

L. C. KEYLON, E. E. Keylon, C. S. Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphs Gaunt, and Anton Carlson, interveners in the above entitled cause; and

R. E. CAMERON, Everett B. Coffin, Ansel B. Hill, Arthur D. Bird, Elizabeth Robinson, W. J. H. Best, Frank J. Clements, Peter H. Ludwig, Hugh Mair, Anna M. Chase, D. H. Smith, Sarah J. Smith, Mary E.

Ludwig, W. J. Hodder, W. B. Heffron, E. E. Christman, James E. Phillips, D. J. O'Connor, Thomas R. Williams, Zula D. Bird, William E. Donohue, James S. Chase, P. T. O'Connor, J. W. Braman, Julius J. Gregat, D. D. Whitcomb, L. F. Hatter, Gertrude Mae Schneider, Marcellus L. Whitcomb, Gilbert Thorson, Fred Schneider, Jas. W. Curtis, Virgil W. Creech, Bertha Josephine Howe, James L. Hoadley, James O'Sullivan, Essie P. Mitchell, J. Y. Mitchell, Albert F. Hopstein, R. H. Holbrook, Edgar H. Blair, R. H. Wilhermsdorfer, Wm. H. Finck, J. T. Hatter, Wm. Curtis, J. A. Schoenberger, Kity V. Hogan, W. H. Hogan, Aaron L. Beers, John C. Kech, Estella A. Beers, Libbie D. Hagler, H. W. McFate, Henry R. Hale, Vincent J. Dermott, John M. Jackson, Andrew M. Thomas, B. Calling, Robert Dudgeon, Mabell F. May, Walter May, Lewis C. Hall, H. A. French, Henry C. Hill, C. C. Cease, Felix A. Rogers, Herman Meyer, Ray McFee, Mary A. Day, Anna E. Loupman, Francis O. Whealon, Bertha May Carr, John Mogus, Chester Kirkpatrick, Chas. Skuhra, F. E. Hammond, D. C. Hall, E. M. Bronilette, M. A. Sprague, J. F. Treen, J. E. Amling, Jennie Rosencrans, Dorotha C. Kech, Preston H. Carr, and John H. Miller, interveners in the above entitled cause; and

CHARLES W. VARNUM, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Leabo, Mary E. Black, Arthur J. Plate, Flora E. King, Howard S. Robertson, W. E. Bowden, Frank B. Manzer,

Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncy Thomas, and Adeline James, interveners in the above entitled cause; and

NICHOLAS HERRMAN, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketchum, G. A. Hutzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan, Hortence B. Lennan, P. G. Larson, William Hoeck, and Henry Hoeck, interveners in the above entitled cause; and

EDWIN F. ANDERSON, Emma K. Barr, Mabel A. Barr, John Boeck, Wardel Boeck, G. V. Booth, Anna B. Booth, Joseph W. Brady, William A. Boze, Eric Q. Brainard, John Charles Brodie, George Brunt, J. R. Buck, George A. Buck, Thomas Butler, F. M. Bybee, Herbert W. Calkins, Ben W. Calkins, N. W. Calkins,

Nellie B. Calkins, Etta S. Clear, M. H. Coffin, Edna Coffin, Mark Coffin, Mary A. Coffin, Elza Davis, George J. Davis, Thea Falk, John C. Filer, Mary G. Filer, Frank C. Irons, Jacob H. Keefer, R. D. Leach, Lillian E. Leach, Andrew C. Leach, Amelia Lind, M. E. Longfellow, W. L. McCaslin, Ira L. Macomber, Harry J. Marcus, Elias D. Marquand, D. G. Martin, Helen Martin, Frank J. Miller, George Miller, George W. Mills, Fred Mosely, Althea Munroe, Orr W. Noble, William S. Northrup, David R. Page, C. M. Paxton, Helen A. Payne, Alice J. Pelot, Henry Rasmussen, Elmer Rasmussen, Irene K. Rodgers, Napoleon B. Rodgers, William D. Rogers, Frank O. Schramm, A. J. Seckner, Gertrude Seckner, George E. Smith, Dallas W. Spangler, D. W. Stainbrook, Anna Steensland, Frank R. Storm, Norbert H. Storm, L. B. Taylor, Joseph Thompson, C. H. West, J. Ernest White, Daniel A. Wisecup, W. W. Calkins, Etta S. Clarr, Marg G. Filer, Guy E. Winzer, and Montello Gray, interveners in the above entitled cause; and

FRED J. GOULD, Beverly B. Deems, George Daniel, W. H. Harris, John D. Sullivan, Daniel S. Green, Adolph O. Keller, Peter Haupt, Lillian M. Hanley, Tobias S. Miller, Ezra H. Stafford, Peter T. Barrett, William A. McAtee, Joseph V. Barrett, George B. Reynolds, Massey Wilson, Henry Schurmann, Edwin B. Schurman, Adolph G. Enderly, Flora A. Branstetter, William D. Burhans, Jacob J. Koenigsmark, Florence E. Stafford, Fannie A. Stafford, Edwin M. Stafford,

Justus H. Hohl, Louis J. Bechtold, John C. Greulich, A. M. Scheel, Effie Grace Sumney, Herman C. Kralemann, J. W. Vandolah, Ward D. Flinn, Joseph A. Stewart, C. W. Cooper, Hoxie Cooper, Roxie Cooper, Flora Beardsley, Raymond M. Beardley, James A. Owens, Clinton S. Braden, S. M. Braden, Sears Lehman, Garfield J. Tansing, L. G. Davis, Robert J. Hood, Robert Rives, J. B. Leemon, Helen H. Dearborn, W. B. Dearborn, W. E. Dearborn, David O'Neal, Leonard P. Lockwood, George K. Boyd, Frank J. Smith, Estella J. Smith, John D. LaCroix, Benjamin F. Wheeler, F. A. Gooch, Mrs. M. O. Woodruff, Charles P. Howland, James Lacy, A. L. Gibbs, Paul Vinyard, William H. Lockwood, Allen W. Thomas, and E. G. Bentley, interveners in the above entitled cause; and

ABRAM B. HORNER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abraham B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of December, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

GEORGE B. BOTHWELL, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of

court, filed their joint complaint in intervention in this cause, on the 6th day of October, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

HERVEY L. KEYES, Chester H. Thornson, Chester H. Thomson, Lynn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arendonk, Ira Lubbers, Reinier Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Heunink, Bertha Moe Seaver, and Elmer H. Ruslink, interveners in the above entitled cause; and

MARVIN P. ALFORD, and each and all of the persons whose names are specifically set forth in the above title to this couse, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 14th day of February, 1910, and

who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ALBERT BOZARTH, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of March, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause.

Have filed in the above and foregoing entitled Court and Cause, their joint and several petition for appeal, appealing from the various orders and judgments of dismissal and from the decree entered against them therein on the first day of July, 1913, to the United States Circuit Court of Appeals for the Ninth Circuit, and

Whereas, their said petition has been granted and their appeal allowed,

Now therefore you and each of you are hereby cited and admonished to be and appear in said Court at San Francisco, California, within 30 days after the date of this citation, to show cause, if any there be, why the various orders and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Whereas the Hon. Chas. E. Wolverton, Judge of the United States District Court for the District of Oregon, this 11th day of November, A. D. 1913.

CHAS. E. WOLVERTON,

Judge.

Receipt of a copy of the above and foregoing citation is acknowledged and due and legal service of the same admitted this 11 day of November, A. D. 1913.

Jas. C. McReynolds,
Attorney General of U. S.

B. D. Townsend,
Special Assistant to Attorney General.

By Fred C. Rabb,
Special Assistant to Attorney General.

Clarence L. Reames,
United States Attorney.

By Robert R. Rankin,
Assistant United States Attorney.

Solicitors and Attorneys for the Complainant, United States of America.

Wm. D. Fenton,

P. F. Dunne and

Wm. F. Herrin,

Solicitors and Attorneys for the Defendants Oregon and

California Railroad Company, Southern Pacific Company and Stephen T. Gage, Individually and as Trustee.

Jno. M. Gearin,

Solicitor and Attorney for the Defendant Union Trust Company of New York, Individually and as Trustee.

(Endorsed) Filed November 11, 1913, A. M. Cannon, Clerk United States District Court.

And thereafter, on July 1, 1913, there was duly filed an order extending and enlarging time to prepare, etc. the record of evidence, in words and figures, as follows, to-wit:

[TITLE]

Now at this time, July 1, 1913, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee and Union Trust Company, individually and as trustee, defendants above named, for an order of this court extending and enlarging the time for the said defendants and each of them, to prepare, serve, and lodge in the office of the Clerk of the above entitled court, their and each of their proposed statement and record of the evidence on appeal in the above entitled cause; and the complainant appearing by its attorney, B. D. Townsend, Assistant to the Attorney General of the United States, and it appearing to the court that good cause is shown and exists for said order and that the said defendants and each of them, as well as each and all of the cross complainants and intervenors in the above entitled cause are entitled to such order,

IT IS ORDERED That the time for the said defendants and each of them, and for the cross complainants and each of them, and for the intervenors and each of them in the above entitled cause, to prepare, serve and lodge their and each of their said proposed statement and record of the evidence, on appeal in the above

entitled cause be and the same hereby is extended and enlarged to and inclusive of the first day of September, A. D. 1913.

CHAS. E. WOLVERTON,
District Judge.

(Endorsed) Filed July 1, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on July 5, 1913, there was duly filed by complainant a cost-bill in this cause, in words and figures as follows, to-wit:

[TITLE]

Statement of disbursements claimed by the complainant in the above entitled cause, against the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, viz:

Clerks' fees	$
Marshal's fees	269.47
Attorney's fees	40.00
Deposition of 70 witnesses before Special Examiner	350.00
Examiner's fees	1,942.50
Witness fees (as appears from the records of the Marshal's office and the Clerk's office showing payment)	3,263.30

Total taxed at .....

.....

Clerk.

UNITED STATES OF AMERICA,)
) ss.
District of Oregon.)

I, B. D. Townsend, being duly sworn, on my oath say that I am one of the attorneys for the complainant in the above entitled cause; that the disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that the said complainant is entitled to recover the same from the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company, as I verily believe.

B. D. TOWNSEND,

Subscribed and sworn to before me this 5th day of July, 1913.

FREDERICK H. DRAKE,
Clerk.

(Seal) United States Commissioner,
District of Oregon.

Service of the foregoing statement of disbursements, at Portland, Oregon, this 2nd day of July, 1913, is hereby admitted.

PETER F. DUNNE,
WM. D. FENTON
and JAMES E. FENTON,
Attorneys for defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage.

JNO. M. GEARIN,

Attorneys for defendant Union Trust Company.

(Endorsed) Filed July 5, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on August 29, 1913, there was duly filed by defendants a cost-bill in this cause against Marvin P. Alford, and others (and like cost-bills against other parties in each bill of intervention), in words and figures, as follows, to-wit:

[TITLE]

STATEMENT OF COSTS AND DISBURSEMENTS

Claimed by the defendants in the above entitled cause against MARVIN P. ALFORD, and others, who filed their joint complaint in intervention herein on the 14th day of February, 1910, interveners in the above entitled cause.

Clerk's fees	$ .70
Costs upon decision, of demurrer of Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to complaint in intervention of the above named interveners, and of motion to dismiss said complaint	10.00
Total	$10.70

UNITED STATES OF AMERICA,)
) ss.
District of Oregon.)

I, JAMES E. FENTON, being duly sworn, de-

pose and say that I am one of the attorneys for the above named defendants; that the costs and disbursements set forth herein have been actually and necessarily incurred in the prosecution of this suit; and that said defendants are entitled to recover the same from said interveners, as I verily believe.

JAMES E. FENTON.

Subscribed and sworn to before me this 20th day of August, A. D., 1913.

BEN C. DEY,

Notary Public for the State of Oregon, residing at Portland, Oregon.

(Seal)

Service of the foregoing
cost bill is admitted this
28th day of August, 1913.

LEWIS C. GARRIGUS,

Attorney for said Interveners.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on August 30, 1913, there was duly filed an order extending and enlarging time to prepare, etc. the record of evidence, in words and figures as follows, to-wit:

[TITLE]

Now at this time, August 30th, 1913, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee and Union Trust Company, individually and as trustee, defendants above named, for an order of this court extending and enlarging the time for the said defendants and each of them, to prepare, serve, and lodge in the office of the Clerk of the above entitled court, their and each of their proposed statement and record of the evidence on appeal in the above entitled cause; and the complainant appearing by its attorney, B. D. Townsend, Assistant to the Attorney General of the United States, and it appearing to the court that good cause is shown and exists for said order and that the said defendants and each of them, as well as each and all of the cross complainants and interveners in the above entitled cause are entitled to such order,

IT IS ORDERED that the time for the said defendants and each of them, and for the cross complainants and each of them, and for the interveners and each of them in the above entitled cause, to prepare, serve and lodge their and each of their said proposed statement,

record and record of the evidence, on appeal in the above entitled cause be and the same hereby is extended and enlarged to and inclusive of the first day of November, A. D. 1913.

CHAS. E. WOLVERTON,

District Judge.

(Endorsed) Filed August 30, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on August 30, 1913, there was duly filed an order enlarging the time for filing record on appeal, in words and figures as follows, to-wit:

[TITLE]

Now at this time, August 30th, 1913, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, and of counsel for the said defendants cross complainants and interveners above named, for an order of this court enlarging the time for the said defendants and each of them, and for the said defendants cross complainants and each of them, and for the said interveners and each of them, to file the record on appeal in the above entitled cause, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said cause therein; and it appearing to the court that good cause is shown and exists for said order,

IT IS ORDERED that the time for the said defendants, the said defendants cross complainants and said interveners, to file the record on appeal in the above entitled cause and docket the same with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended and enlarged to and inclusive of the first day of November, A. D., 1913.

CHAS. E. WOLVERTON,
United States District Judge.

(Endorsed) Filed August 30, 1913, A. M. Cannon, Clerk U. S. District Court.

(Endorsed) Filed September 2, 1913, F. D.

And thereafter, on September 25, 1913, there was duly filed an order enlarging the time for filing record on appeal, in words and figures as follows, to-wit:

[TITLE]

Now at this time, September 25th, 1913, upon motion of counsel for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, and of counsel for the said defendants-cross complainants and interveners above named, and of all other cross complainants and interveners who are parties to the appeal taken herein on the 29th day of August, 1913, APPELLANTS in the above entitled cause, for an order of this court enlarging and extending the time for the said appellants and each of them to file the record on appeal in the above entitled cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said cause therein; and it appearing to the undersigned Judge of the United States District Court for the District of Oregon, who signed the citation on said appeal, that good cause is shown and exists for said order:

IT IS ORDERED that the time for the said appellants, to-wit, the said defendants, the said defendants-cross complainants and said interveners, and for all parties who have heretofore taken an appeal in the above entitled cause, and that the time of each of said appel-

lants to file the record on appeal in said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket the case with said clerk, be, and the same is hereby enlarged and extended up to and including the 31st day of December, A. D. 1913.

CHAS. E. WOLVERTON,
Judge.

(Endorsed) Filed September 25, 1913, A. M. Cannon, Clerk U. S. District Court.

(Endorsed) Filed October 8, 1913, F. D. Monckton, Clerk.

And thereafter, on September 25, 1913, there was duly filed an order enlarging the time to prepare, etc. record of evidence on appeal, in words and figures as follows, to-wit:

[TITLE]

Now at this time, September 25, 1913, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, for an order of this court extending and enlarging the time for the said defendants and each of them, to prepare, serve and lodge in the office of the Clerk of the above entitled court, their and each of their proposed statement and record of the evidence on appeal in the above entitled cause; and it appearing to the court that good cause is shown and exists for said order and that the said defendants and each of them, as well as each and all of the cross-complainants and interveners in the above entitled cause are entitled to such order.

IT IS ORDERED that the time for the said defendants and each of them, and for the cross-complainants and each of them, and for the interveners and each of them, in the above entitled cause, to prepare, serve and lodge their and each of their said proposed statement, record and record of the evidence, on appeal in the above entitled cause be and the same hereby is ex-

tended and enlarged to and inclusive of the 31st day of December, A. D., 1913.

CHAS. E. WOLVERTON,
District Judge.

(Endorsed) Filed September 25, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on October 18, 1913, there was duly filed by the defendants and appellants herein, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, a praecipe herein in words and figures as follows, to-wit:

(TITLE)

TO A. M. CANNON, CLERK OF THE ABOVE-ENTITLED COURT:

Comes now the defendants and appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee of defendants and appellants herein, and request that the following record be printed on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in this cause, towit:

1. Bill of Complaint.

2. Petition, answer and cross bill of B. W. Nunnally and seven other persons.

3. Order of court allowing B. W. Nunnally and seven others to intervene.

4. Cross-complaint of John L. Snyder, et al.

5. Joint and several demurrer of the defendants Oregon and California Railroad Company, Southern

Pacific Company and Stephen T. Gage to the bill of complaint.

6. Joint and several demurrer of the Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee, to the petition, answer and cross bill of B. W. Nunnally and seven other persons.

7. Joint and several demurrer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee, to the cross-complaint of John L. Snyder and others.

8. Demurrer of Union Trust Company to the cross-complaint of John L. Snyder and others.

9. Order submitting demurrers above mentioned.

10. Order of court upon the above mentioned demurrers.

11. Opinion of court upon demurrers above mentioned.

12. Order of August 22, 1911, allowing Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, et al., fifteen days from August 24, 1911 to file answer.

13. Joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage as amended.

14. Order of December 8, 1911, allowing first amendment to joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage.

15. Order of April 28, 1913, allowing second amendment to the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage.

16. Order of April 28, 1913, allowing additional amendments to the joint and several answer of the defendants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage.

17. Amended answer of Union Trust Company of New York.

18. Order of April 28, 1913 allowing amendment to amended answer of Union Trust Company.

19. Replication of the United States to the joint and several answer of the Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage as amended.

20. Replication of United States to the answer of Union Trust Company of New York as amended.

21. Order of February 8, 1912 appointing examiner to take testimony herein.

22. Orders of court extending time to take testimony.

23. Motions to dismiss the cross-complaints and bills of intervention.

24. Order dismissing cross-complaints and bills of intervention.

25. Judgment and decree.

26. Stipulation as to the Facts, filed January 31, 1913.

27. The evidence as shown by the statement and order of court hereto attached and made a part of this praecipe, marked "Exhibit A."

28. All orders extending time of the parties to prepare their statement of facts and other papers on appeal.

29. Petition of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage and others for appeal, filed August 29, 1913.

30. Order of August 29, 1913 allowing appeal.

31. Assignments of error on appeal of the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, severally, being four in number,—printing title of assignments of error in full once only.

32. Bond of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage,

individually and as trustee, and Union Trust Company, individually and as trustee, on appeal.

33. Citation on appeal.

34. Orders enlarging the time of the appellants to lodge their proposed statement and record of the evidence on appeal and order enlarging and extending time to file the record on appeal.

35. Cost bill of U. S., cost bill of Oregon and California R. R. Co., Southern Pacific Company, and Stephen T. Gage, and cost bill of Union Trust Company, the last two cost bills are each for cross-complainants, and are each for interveners.

WM. D. FENTON and
P. F. DUNNE,

Attorneys for defendants-Appellants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee.

WM. F. HERRIN,
Counsel.

DOLPH, MALLORY, SIMON & GEARIN,
JNO. M. GEARIN,

Attorneys for Defendant-Appellant Union Trust Company of New York, individually and as Trustee.

(Endorsed) Filed October 18, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on December 18, 1913, there was duly filed an order extending time to prepare, etc., record of evidence on appeal, in words and figures as follows, to-wit:

(TITLE)

Now at this time, December 18th, 1913, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, for an order of this court extending and enlarging the time for the said defendants and each of them, to prepare, serve and lodge in the office of the Clerk of the above entitled court, their and each of their proposed statement and record of the evidence on appeal in the above entitled cause; and it appearing to the court that good cause is shown and exists for said order and that the said defendants and each of them, as well as each and all of the cross-complainants and interveners in the above entitled cause are entitled to such order.

IT IS ORDERED that the time for the said defendants and each of them, and for the cross-complainants and each of them, and for the interveners and each of them, in the above entitled cause, to prepare, serve and lodge their and each of their said proposed statement, record and record of the evidence, on appeal in the above entitled cause be and the same hereby is extended and enlarged to and inclusive of the 28th day of

February A. D. 1914.

CHAS. E. WOLVERTON,

District Judge.

DISTRICT OF OREGON,)
) ss.
County of Multnomah)

Due service of notice of application for the within order is hereby accepted in Multnomah County, Oregon, this 18th day of December, 1913, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton of Attorney for Defendants.

B. D. TOWNSEND,

Attorney for Complainant and Assistant to the Attorney-General of the United States.

(Endorsed) Filed December 18, 1913, A. M. Cannon, Clerk U. S. District Court.

(Endorsed) Filed December 27, 1913, F. D. Monckton, Clerk.

And thereafter, on December 18, 1913, there was duly filed an order extending time to file record on appeal, in words and figures as follows, to-wit:

(TITLE)

Now at this time, December 18th, 1913, upon motion of counsel for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, and of counsel for the said defendants-cross complainants and interveners above named, and of all other cross-complainants and interveners who are parties to the appeal taken herein on the 29th day of August, 1913, APPELLANTS in the above entitled cause, for an order of this court enlarging and extending the time for the said appellants and each of them to file the record on appeal in the above entitled cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said cause therein; and it appearing to the undersigned Judge of the United States District Court for the District of Oregon, who signed the citation on said appeal, that good cause is shown and exists for said order:

IT IS ORDERED that the time for the said appellants, to-wit, the said defendants, the said defendants-cross complainants and said interveners, and for all parties who have heretofore taken an appeal in the above entitled cause, and that the time of each of said

appellants to file the record on appeal in said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket the case with said clerk, be, and the same is hereby enlarged and extended up to and including the 28th day of February A. D. 1914.

CHAS. E. WOLVERTON,
United States District Judge.

(Endorsed) Duplicate filed December 18, 1913, A. M. Cannon, Clerk U. S. District Court, by G. H. Marsh, Deputy.

(Endorsed) Filed December 27, 1913, F. D. Monckton, Clerk.

And thereafter, on February 23, 1914, there was duly filed an order extending time to prepare, etc., record of evidence on appeal, in words and figures as follows, to-wit:

(TITLE)

Now at this time, February 23rd, 1914, upon motion of counsel for Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, for an order of this court extending and enlarging the time for the said defendants and each of them, to prepare, serve and lodge in the office of the Clerk of the above entitled court, their and each of their proposed statement and record of the evidence on appeal in the above entitled cause; and it appearing to the court that good cause is shown and exists for said order and that the said defendants and each of them, as well as each and all of the cross-complainants and interveners in the above entitled cause are entitled to such order.

IT IS ORDERED that the time for the said defendants and each of them, and for the cross-complainants and each of them, and for the interveners and each of them, in the above entitled cause, to prepare, serve and lodge their and each of their said proposed statement, record, and record of the evidence, on appeal in the above entitled cause, be and the same hereby is extended and enlarged to and inclusive of the 31st day

of March, A. D. 1914.

CHAS. E. WOLVERTON,

District Judge.

(Endorsed) Filed February 23, 1914, A. M. Cannon, Clerk U. S. District Court.

DATE TO COME ... ...

DISTRICT OF OREGON,)
) ss.
County of Multnomah.)

Due service of the within order and notice of application therefor is hereby accepted in said County, Oregon, this 23d day of February, 1914, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton of Attorneys for Defendants named.

B. D. TOWNSEND,

Assistant to the Attorney General and Attorney for Plaintiff.

(Endorsed) Filed December 18, 1913, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on February 23, 1914, there was duly filed an order extending time to file record on appeal, in words and figures as follows, to-wit:

(TITLE)

NOW at this time, February 23rd, 1914, upon motion of counsel for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, and of counsel for the said defendants-cross complainants and interveners above named, and all other cross complainants and interveners who are parties to the appeal taken herein on the 29th day of August, 1913, APPELLANTS in the above entitled cause, for an order of this Court enlarging and extending the time for the said Appellants and each of them, to file the record on appeal in the above entitled cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said cause therein; and it appearing to the undersigned Judge of the United States District Court for the District of Oregon, who signed the citation on said appeal, that good cause is shown and exists for said order.

IT IS ORDERED, that the time for the said Appellants, to-wit, the said defendants, the said defendants-cross complainants and said interveners, and for all parties who have heretofore taken an appeal in the above entitled cause, and that the time for each of said Ap-

pellants to file the record on appeal in said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit and to docket the case with said Clerk be, and the same is, hereby enlarged and extended up to and including the 31st day of March, A. D. 1914.

(Signed) CHAS. E. WOLVERTON,
United States District Judge.

(Endorsed) Filed February 23, 1914, A. M. Cannon, Clerk U. S. District Court.

(Endorsed) Filed ....., F. D. Monckton, Clerk.

And thereafter, on March 14, 1914, there was duly filed in this cause a stipulation entered into between complainant and defendants, defendants-cross-complainants, and defendants-interveners, in words and figures as follows, to-wit:

(TITLE)

IT IS HEREBY STIPULATED by and between the United States of America, complainant above named, and the Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, all of the defendants-cross-complainants herein, and all of the interveners herein, by their respective attorneys, subscribers hereto, as follows, to-wit:

I.

The cross appeal of the defendants-cross-complainants and interveners herein taken in the above entitled suit on November 11, 1913, shall be tried, heard and determined at the same time and upon the same record as in and upon the appeal of the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee; and said cross appeal shall be so heard, tried and determined upon said record, including any properly constituted printed record of the said defendants-cross-complainants and interveners which may properly constitute the appeal papers on their appeal.

II.

WHEREAS, the proceedings with reference to all of said defendants-cross-complainants are identical, and consist of (1) the bill of complaint filed by and on behalf of the United States; (2) the several answers filed by and on behalf of the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee; (3) the several cross-complaints and answers filed by said defendants-cross-complainants; (4) the several motions to dismiss said cross-complaints filed by the United States; (5) the several demurrers to said cross-complaints and motions todismiss said cross-complaints filed and interposed by the defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage; (6) the several demurrers to said cross-complaints and motions to dismiss said cross-complaints filed and interposed by the defendant Union Trust Company; (7) the several orders of the Court sustaining the motions to dismiss and demurrers interposed as to said cross-complaints by the United States and said defendants as aforesaid; (8) the judgment and decree of the Court dismissing said several cross-complaints; (9) the several orders taxing and allowing costs against said defendants-cross-complainants respectively, in favor of the United States and in favor of said several defendants who interposed demurrers to, and motions to dismiss said cross-complaints as aforesaid; (10) the

several appeal papers filed by and on behalf of said cross-complainants, consisting of petition for appeal, order allowing appeal, citation, bond on appeal, assignment of errors, and all other papers pertaining to said appeal; and

WHEREAS, the general proceedings as to all of the interveners in said cause are likewise identical, and are also identical with the general proceedings as to said cross-complaints, with the exception that bills in intervention were filed instead of cross-complaints, and the allegations of said cross-complaints differ in some matters from the allegations of said bills in intervention; and

WHEREAS, all of said cross-complaints are identical in substance, differing only as to parties, description of land, dates and other matters of description; and all of said bills in intervention are likewise identical in substance; and

WHEREAS, because of the premises, the decision of any Appellate Court as to any one of said defendants-cross-complainants must necessarily be controlling as to all of said defendants-cross-complainants; and likewise, the decision of any Appellate Court as to any one of the interveners must necessarily be controlling as to all of said interveners; and

WHEREAS, because of the premises, it is unnecessary to include in the printed record upon the pending

appeal or any future appeal in said cause the documents and proceedings pertaining to more than one of said cross-complaints or to more than one of said bills in intervention;

NOW, THEREFORE, because of the premises, and to the end that the record in this cause may not be unnecessarily encumbered, and that the expenses of the appellate proceedings may not be unnecessarily increased, IT IS HEREBY STIPULATED by and between the complainant, the United States, the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and the Union Trust Company, individually and as trustee, each and all of said defendants-cross-complainants, and each and all of said interveners, as follows, to-wit:

There shall be printed in the record upon the pending appeal or any future appeal in said cause the papers and proceedings, including those hereinbefore mentioned, pertaining to the cross-complaint of John L. Snyder and others; and it shall not be necessary to include in said printed record any of the papers or proceedings pertaining to any of the other of said defendants-cross-complainants; and the decision of any Appellate Court as to said cross-complaint of said John L. Snyder and others, and said defendants-cross-complainants, shall be controlling as to all of said cross-complaints, and said defendants-cross-complainants, in this cause.

There shall be printed in the record upon the pending appeal or any future appeal in said cause the papers and proceedings, including those hereinbefore mentioned, pertaining to the bill in intervention of B. W. Nunally and others; and it shall not be necessary to include in said printed record any of the papers or proceedings pertaining to any of the other of said interveners; and the decision of any Appellate Court as to said bill in intervention of said B. W. Nunally and others, and said interveners, shall be controlling as to all of said bills in intervention, and said interveners, in this cause.

III.

The rights of all of said cross-complainants and of all of said interveners shall be heard, determined and disposed of, upon said pending appeal, or any future appeal in said cause, in the same manner, and with the same effect, as though the papers pertaining to all of said cross-complaints and bills in intervention were included in the printed record in said cause. The decision upon the pending appeal or any future appeal as to the defendants-cross-complainants John L. Snyder and others shall be controlling as to all other defendants-cross-complainants in this cause; and likewise, the decision upon the pending appeal or any future appeal as to the interveners B. W. Nunally and others shall be controlling as to all of the other interveners in this cause.

IV.

So far as may be convenient, the appeal papers of the said defendants-cross-complainants and of the said interveners shall be printed together and in a separate volume, but the said entire record shall be numbered Volume I, II, etc., to and including the last volume consecutively, but the entire record printed on the appeal, as well as upon said cross-appeal may be conisdered by the court in the determination of all questions involved in said cause on appeal, whether said questions are raised upon the appeal of the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, the Union Trust Company, individually and as trustee, or upon the cross-appeal of John L. Snyder and others, defendants-cross-complainants, or B. W. Nunally and others, interveners.

V.

The process in this cause was duly issued and served by the United States upon the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, as well as upon cross-complainants who were named as defendants in the bill of complaint; and the interveners and cross-complainants duly served upon complainant and upon the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T.

Gage, individually and as trustee, and Union Trust Company, individually and as trustee, copies of their said bills in intervention and cross-complaints; and thereafter the said complainant duly filed its several motions to dismiss said cross-complaints and said bills in intervention, and the said defendants duly filed their said several demurrers to each of said cross-complaints and said bills in intervention.

VI.

The foregoing stipulation is not intended to prescribe the contents of the printed record of the proceedings with reference to the pending appeal or any future appeal in this cause prosecuted by the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, or either or any of them, either jointly with said defendants-cross-complainants and said interveners, or otherwise. The appeal by all of said parties is described herein as the main appeal, to distinguish the same from the separate appeal or appeals prosecuted by the cross-complainants and interveners, the latter being described herein as the cross appeal or cross appeals.

VII.

Any part of said record so to be printed on the main appeal or upon the cross-appeal may be considered by

the court, whether the same is printed as a part of the record on the main appeal or as part of the record on the cross appeal. All questions raised by any joint Assignment of Error filed in the main appeal by the cross-complainants and the interveners therein shall be considered with and have like effect as though made and filed separately by each of the cross-complainants and interveners joining therein. In the separate or cross-appeal of the cross-complainants and interveners from the several orders of dismissal and from the judgment and decree entered herein, any questions raised by any joint Assignment of Error now filed herein by said cross-complainants and interveners, or either of them, shall be considered with and have like effect as though made and filed separately by each of the parties joining therein.

VIII.

In addition to the printed record and Statement of the Evidence with such exhibits or parts of exhibits as might be included therein, the original report, consisting of ten typewritten volumes of the evidence taken in said cause by the Special Examiner herein, together with the original exhibits referred to therein, including those described in the printed record containing the Statement of the Evidence, shall be certified to the appellate courts to be used in the trial of said cause in said courts in the event of an allegation by either party of an omission or error, subject to such objections as to the competency, relevancy or materiality of any part of said testimony and said exhibits, as may have been taken

and duly reserved in the record, by the parties or either of them, and such reports and exhibits may be used by the parties for reference for the purpose of correcting any errors or omissions, as may appear to the Court, and for such direct use in the appellate courts as may be contemplated by the Equity Rules of the Supreme Court of the United States, and as provided by the Act of February 13, 1911, United States Compiled Statutes Supplement 1911, page 275, and as contemplated by Rule 14, Subdivision 4, of the United States Circuit Court of Appeals. In either the Circuit Court of Appeals or in the Supreme Court of the United States, the appellants will, upon notice or request from the respondent, cause to be printed and included in the printed record any exhibits or parts of exhibits, or any part of the oral testimony, which may have been omitted from the printed record as prepared by the appellants, and the appellants may, after notice to complainant, print in the appellate courts, or either of them, any part of said original testimony which may have been omitted from the printed record, or any part of either of said original exhibits so omitted, and when so printed the same shall be considered and deemed to be a part of the printed record in said cause. Upon the final determination of this cause upon appeal in the Circuit Court of Appeals, or in the Supreme Court of the United States, if the case shall reach that court, the original exhibits and testimony so to be certified up, shall be returned to the Clerk of the District Court of the United States for the District of Oregon as a part of theoriginal files in said cause.

IX.

It is further stipulated that an order of this court may be made in accordance with this stipulation.

The object of this stipulation is to save the parties costs and expenses and to permit and authorize the hearing, trial, and determination of said appeals on one record and at the same time.

Dated March 4th, 1914.

JAS. C. McREYNOLDS,

Attorney General of the United States.

E. J. JUSTICE,

B. D. TOWNSEND,

F. C. RABB,

Special Assistant to the Attorney General,

Attorneys for Complainant.

WM. D. FENTON,

P. F. DUNNE,

WM. F. HERRIN,

Attorneys for Defendants Oregon & California Railroad Company, Stephen T. Gage, Company, Southern Pacific individuallly and as trustee.

DOLPH, MALLORY,

SIMON & GEARIN,

JOHN M. GEARIN,

Attorneys for Union Trust Company, individually and as trustee.

A. W. LAFFERTY,

Attorney for Defendants-Cross-Complainants John L. Snyder et al., and for all defendants-cross-complainants herein.

JNO. MILLS DAY,

LEWIS C. GARRIGUS,

Of Attorneys for B. W. Nunally et al., Interveners, and all other interveners herein.

(Endorsed) Filed March 14, 1914, A. M. Cannon, Clerk U. S. District Court.

And thereafter, on March 14, 1914, there was duly filed in said cause an order upon the stipulation herein last before set out, in words and figures as follows, to-wit:

[TITLE]

Now on this day, this cause came on for hearing upon stipulation of parties, as to printing of record on appeal and certifying up of original testimony and exhibits, and it appearing to the Court that the parties have made and filed a written stipulation, among other things, to that effect,

IT IS, THEREFORE, ORDERED: that the record on appeal be printed as provided by said stipulation, and that in addition to the printed record and Statement of the Evidence, with such exhibits or parts of exhibits as might be included therein,—the original report consisting of ten teypwritten volumes of the evidence taken in said cause by the said Examiner herein, together with the original exhibits referred to therein, including those described in the printed record containing the Statement of the Evidence, be certified to the Appellate Courts to be used in the trial of said cause in said Courts in the event of an allegation of either party of an omission or error, and for such other purposes as provided by said stipulation, subject to such objections as to the competency, relevancy or materiality of any part of said testimony and said exhibits as may have been taken and duly observed in the record by the parties, or either of them, and that such report

and exhibits may be used by the parties for reference for the purpose of correcting any errors or omissions as may appear to the Court, and for such direct use in the Appellate Courts as may be contemplated by the Equity rules of the Supreme Court of the United States, and as provided by the act of February 13, 1911, United States Compiled Statutes, Supplements 1911, page 275, and as contemplated by Rule 14, Subdivision 4, of the United States Circuit Court of Appeals.

(Sd) CHAS. E. WOLVERTON,
Judge.

Dated, March 14th, 1914.

(Endorsed) Filed March 14, 1914, A. M. Cannon, Clerk U. S. District Court.

And afterwards, to wit, on Wednesday, the 25th day of March, 1914, the same being the 21st Judicial day of the regular March term of said Court; present: the Honorable Chas. E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

No. 3340

ORDER ENLARGING TIME TO FILE TRANSCRIPT.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

OREGON AND CALIFORNIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, STEPHEN T. GAGE, individually and as trustee, and UNION TRUST COMPANY, individually and as trustee,

Defendants,

JOHN L. SNYDER and others,

Defendants-Cross-Complainants,

WILLIAM L. SLAUGHTER and others,

Interveners,

APPELLANTS,

vs.

UNITED STATES OF AMERICA,

APPELLEE.

NOW at this time, March 25th, 1914, upon motion

of counsel for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants above named, and of counsel for the said defendants-cross-complainants and interveners above named, and all other cross complainants and interveners who are parties to the appeal taken herein on the 29th day of August, 1913, APPELLANTS in the above entitled cause, for an order of this Court enlarging and extending the time for the said Appellants and each of them, to file the record on appeal in the above entitled cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to docket said cause therein; and it appearing to the undersigned Judge of the United States District Court for the District of Oregon, who signed the citation on said appeal, that good cause is shown and exists for said order,—

IT IS ORDERED, that the time for the said Appellants, to-wit, the said defendants, the said defendants-cross-complainants and said interveners, and for all parties who have heretofore taken an appeal in the above entitled cause, and that the time for each of said Appellants to file the record on appeal in said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit and to docket the case with said Clerk be, and the same is, hereby enlarged and extended up to and including the fourth day of April, A. D. 1914.

CHAS. E. WOLVERTON,
United States District Judge.

Attest: A. M. Cannon, Clerk.

(SEAL)

DISTRICT OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

Due service of the within order and notice of application therefor is hereby accepted in said County, Oregon, this 25th day of March, 1914, by receiving a copy thereof, duly certified to as such by Wm. D. Fenton of Attorneys for Defendants-Appellants.

FRED C. RABB,
Attorney for Plaintiff.

(Endorsed) Filed March 28, 1914,
Frank D. Monckton, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF OREGON.

UNITED STATES OF AMERICA,
Complainant and Appellee,

vs.

OREGON & CALIFORNIA RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, STEPHEN T. GAGE, individually and as trustee, and UNION TRUST COMPANY, individually and as trustee,
Defendants.

JOHN L. SNYDER and others,
Defendants-Cross-Complainants,

WILLIAM F. SLAUGHTER and others,
Interveners,
Appellees.

CERTIFICATE OF THE CLERK UNITED STATES DISTRICT COURT TO THE TRANSCRIPT OF RECORD, ETC.

United States of America,)
)ss.
District of Oregon;)

I, A. M. Cannon, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing printed pages numbering from 1 to 8668, inclusive, are a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above entitled suit as are, according to the praecipe of appellants and the stipulation of the parties herein, required and are necessary for the hearing of said cause on Appeal in the United States Circuit Court of Appeals for the Ninth Circuit, as the originals thereof appear on file in said Court at the City of Portland in said District; that the same, together with the original report, consisting of ten typewritten volumes of the evidence taken in said cause by the Special Examiner therein, together with the original exhibits referred to therein, including those described in the foregoing printed record and which are transmitted herewith pursuant to stipulation of the parties and order of the District Court of the United States for the District of Oregon, constitute the Transcript of Record on appeal herein from the decree of the United States District Court for the District of Oregon to the United States Circuit Court of Appeals for the Ninth Circuit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at

Portland, Oregon, this ..1.... day of April.., 1914.

al ..... R. M. Cannon,

Clerk of the United States District Court for the District of Oregon.

Estimated cost of transcript $11.30 1.25

DISTRICT OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

Due service of the Statement of the Evidence, prepared by appellants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, to be tendered by said appellants to the United States District Court for the District of Oregon, under Rule 75, Rules of Practice for the Courts in Equity of the United States, for the approval of said Court, is hereby accepted this 4th day of March, 1914, by receiving a copy thereof, with notice that on the 14th day of March, 1914, said appellants will apply for an order before said court approving said Statement of the Evidence.

J. C. McREYNOLDS,
Attorney General.

E. J. JUSTICE,
B. D. TOWNSEND
and F. C. RABB,
Special Assistants to the Attorney General.

A. W. LAFFERTY,

LEWIS C. GARRIGUS,

Of Attorneys for Defendants-Cross-Complainants John L. Snyder et al., and for all defendants-cross-complainants herein.

LEWIS C. GARRIGUS,

Of Attorneys for B. W. Nunally et al., interveners, and all other interveners herein.

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No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XVII

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TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the

No._____

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

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Is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," Oregon and California Railroad Land Grant, July 16, 1912—committed to the committee of the whole House on the state of the Union, and ordered to be printed. Mr. Robinson, from the Committee on Public Lands, submitted same to accompany H. R. 22002, supplementing the joint resolution approved April 30, 1908, etc.....7273

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Office and other sources, etc., showing thereon, in accordance with legend as marked in different colors, U. S. Surveyor General's Office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries, Military Roads, Light Houses, and Townships not subdivided by special designation 7303

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Is Department Circular No. 62, October 29, 1907, issued by Treasury Department, subject "Transportation of Government Employees and Property" 7303

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Is Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-grant and Bond-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912,

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Washington, Government Printing Office, 1912." At page 42 of this circular appears Section 5, Act of July 25, 1866, 14 Statutes, 239, with reference to Act of June 25, 1868, 15 Statutes, 80, and Act of Congress April 19, 1869, with reference to 16 Statutes, 47; and therewith a map of Land-grant and Bond-aided railroads of the United States, 1912, etc. 7306

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Is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' in the National Forests", and reprinted in the Congressional Record on August 16, 1912, under the same heading as "Extension of Remarks of Honorable William Kent of California in the House of Representatives" 7810

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Is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service —Henry S. Graves, Forester; Subject, "Properties and Uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir", and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.....7341

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May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary, expressing opinion as to validity of assignment by the

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Oregon Central Railroad Company to the Oregon and California Railroad Company, and that patents should be issued to the Oregon and California Railroad Company.

May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler.

July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal.

April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.

May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

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Correspondence between Jos. S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant.

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Certified copy of reports of Commissioners appointed to examine and report upon the first and second sections of the Oregon Central Railroad Company (West Side), with the action of the President endorsed thereon, and reports of Commissioners appointed to examine

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and report upon first to twelfth sections, both inclusive, of the Oregon and California Railroad from Portland to the Oregon and California State line, with action of President endorsed thereon 7564

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Certified copy of affidavit of H. Villard, of date January 8, 1883, as to completion of railroad to Oregon and California state line 7564

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H. R. Report No. 1664, 1st Session, 48th Congress, "Unearned Land Grants," May 29, 1884 7567

Report No. 931, Forfeiture of lands granted to the California and Oregon Railroad, March 8, 1886, to accompany bill H. R. 6659, from the Committee on Public Lands 7583

Report No. 930, 1st Session, 49th Congress, Forfeiture of lands granted to Oregon and California Railroad, March 8, 1886, to accompany bill H. R. 6658, from the Committee on Public Lands 7600

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Certified copy of stipulation Suit No. 2272, filed in Circuit Court of United States, District of Oregon, case of United States versus Oregon and California Railroad Company, signed by Attorney General for complainant, and by Wm. F. Herrin, Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 31, 1898 7628

DEFENDANTS' EXHIBIT 388

Certified copy of stipulation case No. 2661, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney Gen-

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eral, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 6, 1902 7629

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Certified copy of stipulation case No. 2658, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed December 3, 1902 7629

DEFENDANTS' EXHIBIT 390

Certified copy of stipulation case No. 2273, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by Joseph McKenna, Attorney General, by Charles J. Schnabel, Assistant United States Attorney, Daniel R. Murphy, United States Attorney, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., and Wm. F. Herrin, for defendant, filed September 1, 1897 7680

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Certified copy of stipulation case No. 2657, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, for complainant, and Wm. Singer, Jr., and Wm. D. Fenton, for defendant, filed December 3, 1902...7630

DEFENDANTS' EXHIBIT 392

Certified copy of stipulation case No. 1936, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company and Oregon Central Railroad Company, and also Oregon and California Railroad Company and Oregon Central Railroad Company versus the United States, signed by F. P. Mays, United States District Attorney, for the United States, and E. C. Bronaugh, L. L. McArthur and Wm. D. Fenton, for the Railway Companies.....7631

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Mortgage executed by Oregon and California Railroad Company to Henry Villard, Horace White, and Charles Edward Bretherton, June 1, 1881 7720

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(Deed of Trust Oregon & California Railroad Company to Latham, Atherton and Norris, Trustees, dated April 15, 1870).

DEFENDANT'S EXHIBIT 401.....7876
(Deed European & Oregon Land Company to Latham, Atherton and Norris, dated July 25, 1874).

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(Patent issued by the United States to Oregon & California Railroad Company, being third item to Exhibit No. 9 to the answer).

(Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side).

(Form of Coupon to Bond above described).

(First Mortgage Bond of the Oregon & California Railroad Company of date April 15, 1870).

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ERRATA

Volumes II to XIV, both inclusive, in the inside page of the cover, under the heading "Title, Names and Addresses of Solicitors Upon this Appeal", should appear these words: "For Appellant Union Trust Company, Dolph, Mallory, Simon & Gearin, Portland, Oregon, Miller, King, Lane & Trafford, and John C. Spooner, New York."

Volume IV, last page of Index

Testimony for defendants..page *1820* should be *1920*
B. A. McAllaster.....page *1820* should be *1920*

Volume X, Page 5028

13th line, Jan. 12, *1868* should be Jan. 12, *1869*.

Volume XI, Page 5529

Government's Exhibit 123, in blank space should be printed words: "Page 4047, Volume 8."

Volume XIII. Page 6704.

Defendants' Exhibit 264 "purporting" should be "purports."

Volume XIII, Page 6838

The eleven lines immediately preceding Defendant's Exhibit 289 are a part of Exhibit 289 and should follow said exhibit.

ERRATA—Continued

Volume XIV, Page 7263

Defendants' Exhibit 331. At head of first table should be the words "Benton County."

Page 7304—1st line—add letter *d* to Bon .

Page 7351—3rd line, before "of" put in "limits."

Page 7351—5th line, "rail*way*" should be "rail*road.*"

Page 7360—5th line from bottom—"Wm. D. Singer" The "D" should be omitted.

Page 7383—Defendants' Exhibit 375, first line is left out, insert "Certified copies of telegram Schulze, Land"

Page 7583—1st line, 49th Congress *Vst* session should be *1st.*

ERRATA—Continued

Volume XIV, Page 7791

Before certificate of John B. Coffey, insert "Rec'd for record Sept. 13th, 1881, at 2:30 o'clock P. M."

Volume XV. Page 7839—

10th line—"John B. Coff*ee*" should be "John B. Coff*ey.*"

Volume XV. Page 7920—

10th line—"Wm. D. Fenton" should be "Wm. F. Herrin."

Volume XV, page 8395, Index—

Assignment of Errors of Southern Pacific Company, should be page.....8138

Volume XVI. Page 8651—

11th line—"February 26th, 1914" should follow word "Filed."

No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A Corporation, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

—o—

TRANSCRIPT OF RECORD

VOLUME XVIII

PAGES 8820-9045

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:
JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

No. 2400

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Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
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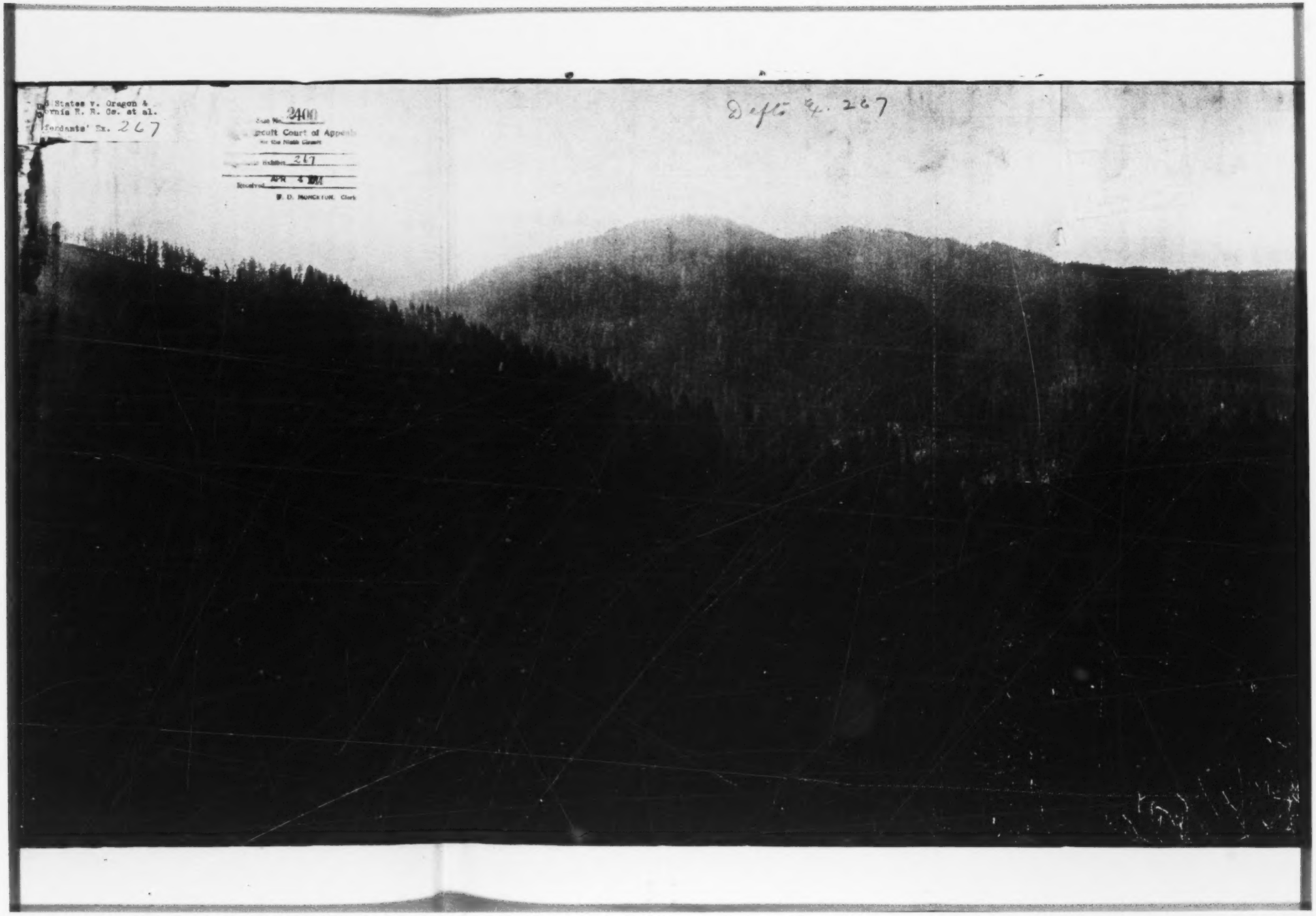
—o—

TRANSCRIPT OF RECORD

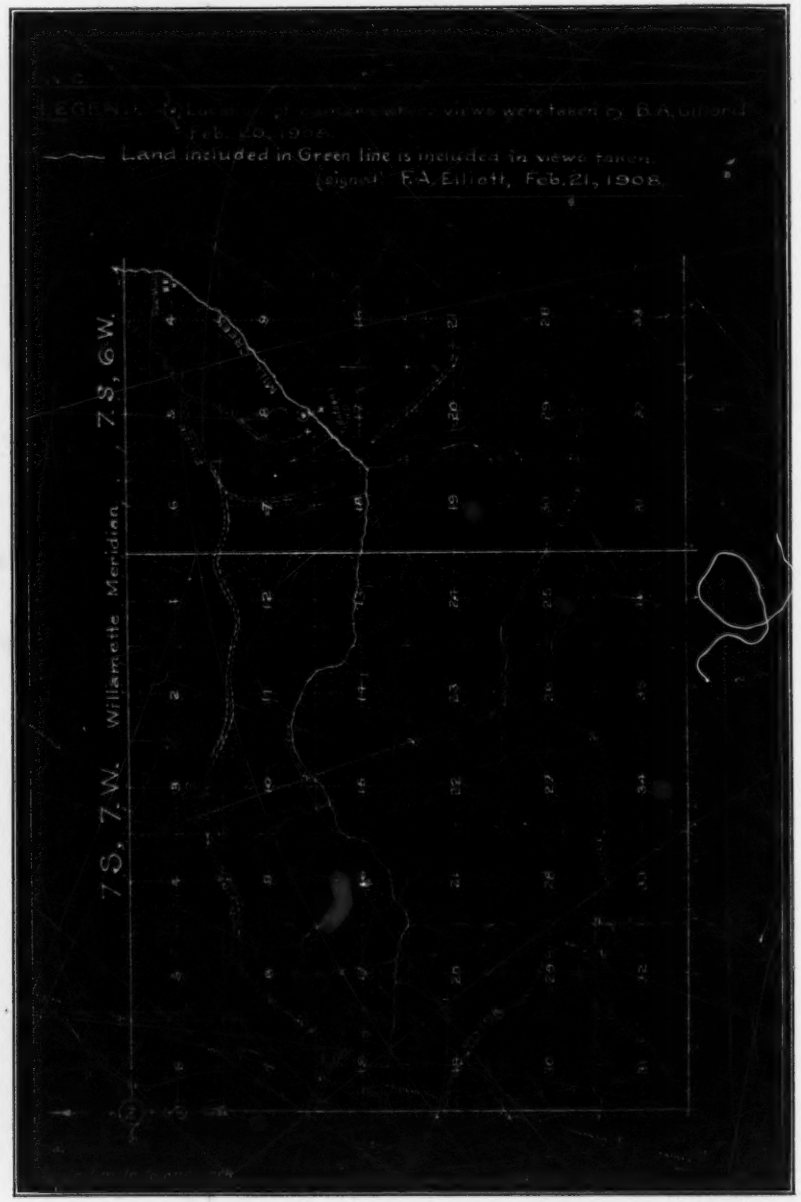
VOLUME XVIII

PAGES 8820-9045


United States v. Oregon &
Defendants' Ex. 267
2400
Exhibit 267
APR 4
W. D. MONCKTON, Clerk
Defs' Ex. 267

DEFENDANTS' EXHIBIT 267

[Endorsed:] United States v. Oregon & California R. R. Co. et al. Defendants' Ex. 267. Filed May 10, 1913, A. M. Cannon, Clerk U. S. District Court. Case No. 2400. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit No. 267. Received Apr. 4, 1914. F. D. Monckton, Clerk.


Land included in Green line is included in views taken
(signed) E.A. Elliott, Feb. 21, 1908.
7S., 6W.
7S., 7W.
Willamette Meridian

DEFENDANTS' EXHIBIT 267 (Copy)

Portland, Oregon, February 22, 1908.

Mr. Charles W. Eberlein,
Acting Land Agent, O. & C. R. R. Company,
San Francisco, California.

Dear Sir:

We are sending you today, from The Dalles, Oregon, where the same have been completed by Mr. B. A. Gifford, photographer, two prints each of two views taken by Mr. Gifford, on February 20th, 1908, from a point in the South half of Section 8, Township 7 South, Range 6 West, showing, in so far as possible, view of Township 7 South, Range 7 West and western portion of Township 7 South, Range 6 West. These views show in a general way the character of the central portion of Township 7 South, Range 7 West, and include that part thereof covered in the affidavit of Mr. Homer D. Angell and Mr. B. A. Gifford, and tracing accompanying the same.

The tracing sent you herewith shows the point in the South Half of Section 8, Township 7 South, Range 6 West, on which the camera stood at the time the views were taken. The two views cover the same territory, the only difference being the land immediately adjacent to the point from which the views were taken, the hatched line on tracing showing land included in view No. 2 that was not included in view No. 1. The camera, in View No. 1, was so placed as to expose the negative pointing southeast and was gradually moved until it reached the direction of North 75° West, thus taking in an angle of 150 degrees. In view No. 2 the negative

was first exposed with the camera point southeast, and gradually moved westerly until it pointed northwest, taking in an angle of 180°.

You will understand from examination of the tracing that the irregular tract included in the view is due to the fact that high divides and mountain ranges cut off the view along the lines shown by the green on the tracing.

To said tracing and said views we have attached affidavits of Mr. Angell, Mr. Elliott and Mr. Gifford, stating when said views were taken, from what point and what territory was covered; and further that the character of the land and timber shown in said views is practically the same as the balance of the township and also of the western part of 7 South, 6 West.

We also enclose two prints of photograph of improvements on homestead embracing the E½ of NW¼ and the W½ of NE¼ of Section 17, Township 7 South, Range 6 West. The improvements shown in this photograph are the only improvements on the homestead, which was taken up by homestead entry of H. D. Tillotson, a good many years ago, and is now owned by Wessley Atchinson and William McHardy. No land on this homestead has been cleared, about two acres surrounding the house having been slashed. This perhaps is the best "improved" tract of land taken as a homestead in any of the territory covered by the two panoramic views. We give you this view for the purpose of showing the nature of the so-called improvements on homesteads taken in this vicinity.

We also hand you herewith small township plats showing the amount of standing timber on each

section in Township 7 South, Range 7 West, and Township 7 South, Range 6 West, as shown by cruises made by Polk County during the summer of 1907 for the purposes of assessment. You will note from the figures shown on the sections that the township is timbered evenly throughout, with the exception of some of the eastern portion of Township 7 South, Range 6 West. These figures are authentic, in so far as the County cruise went. From these cruises you will see that Township 7 South, Range 7 West, is a solid body of timber throughout and as shown by the panoramic views is very rough in character and not susceptible of settlement and cultivation.

In accordance with your telegram of February 15th, we rushed this work through in order to get the photographs to you by the 24th inst., which is ten days from the date of your telegram, and in so doing we were unable to take views of individual claims in the township or take any more views than those we send today. If you desire individual views of the various claims in the township, as outlined in our conversation when you were in Portland, if you will so advise we shall make arrangements to have the same taken; also in Township 27 South, Range 9 West.

Very respectfully,

ANGELL & FISHER

(Signed) Per Homer D. Angell

STATE OF OREGON }
COUNTY OF MULTNOMAH } SS.

We, F. A. Elliott, of Newberg, Yamhill County, State of Oregon, by occupation timber estimator and land examiner, and Homer D. Angell, of Portland, Multnomah County, State of Oregon, being first duly sworn, depose and say:

That we are well acquainted with the character of the land in Township 7 South, Range 6 West, and Township 7 South, Range 7 West, and that Mr. F. A. Elliott, for himself, deposes and says that he has frequently been thereon and that he had charge of the cruising of these two townships during the summer of 1907;

And we further depose and say, that the attached tracing within the limits of the green lines, shows the scope of country included within the two views taken by Mr. B. A. Gifford, from a point within the South Half of Section 8, Township 7 South, Range 6 West, on the 20th day of February, 1908; that we were present when said views were taken, and that we are familiar with the territory covered by said views; that the said views cover in general the following lands in said townships:

In Township 7 South, Range 6 West: Section 18, and portions of Sections 7, 8, 16, 17, 21, 20, 19 and 30, and

In Township 7 South, Range 7 West: Sections 24, 16 and 17, and portions of Sections 13, 14, 15, 10, 9, 8, 7, 18, 19, 20, 21, 22, 23 and 25.

We further depose and say that the scope of territory described above as covered by said views and by tracing herewith, shows the general character of the township in regard to the timber there-

on; that the same is timbered in about the same proportion throughout the entire township of 7 South, Range 7 West; and that the scope covered in Township 7 South, Range 6 West, is the general average of the timber throughout the western portion of said Township 7 South, Range 6 West.

(Signed) F. A. ELLIOTT
(Seal). (Signed) HOMER D. ANGELL

Subscribed and sworn to before me this 21 day of February, A. D. 1908.

(Signed) FOREST S. FISHER
Notary Public for Oregon.

State of Oregon }
County of Wasco } ss.

I, B. A. Gifford, of The Dalles, Wasco County, State of Oregon, being first duly sworn depose and say that I am by occupation a photographer; that on the 20th day of February, 1908, accompanied by Mr. F. A. Elliott, Mr. Homer D. Angell and Mr. L. D. McLeod, I went to a point in the South Half of Section 8, Township 7 South, Range 6 West, W.M., and from said point took two panoramic views of the surrounding country, copies of which said views are attached hereto; and that said views cover a distance of about eight miles westerly through the central portion of Township 7 South, Range 7 West, and also a portion of the western part of Township 7 South, Range 6 West; and I further depose and say upon observation of the ground and from information and belief, that the

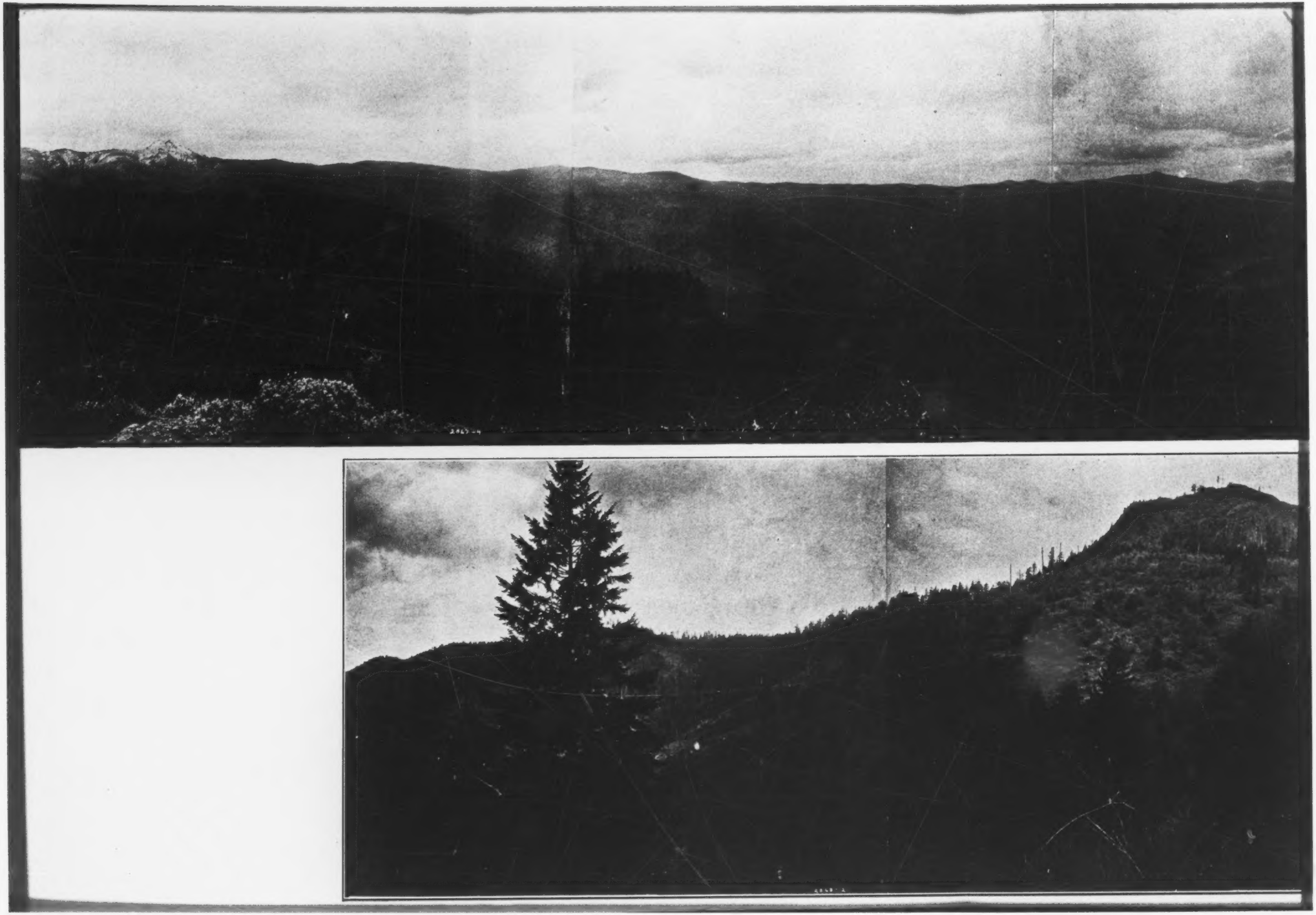
attached views cover the following portions of Township 7 South, Range 6 West: Section 18, and portions of Sections 7, 8, 16, 17, 21, 20, 19 and 30; and on Township 7 South, Range 7 West: Sections 24, 16 and 17, and portions of Sections 13, 14, 15, 10, 9, 8, 7, 18, 19, 20, 21, 22, 23 and 25; and that the views show the general character of the country and timber in the entire locality covered in Township 7 South, Range 7 West, and the western part of Township 7 South, Range 6 West.

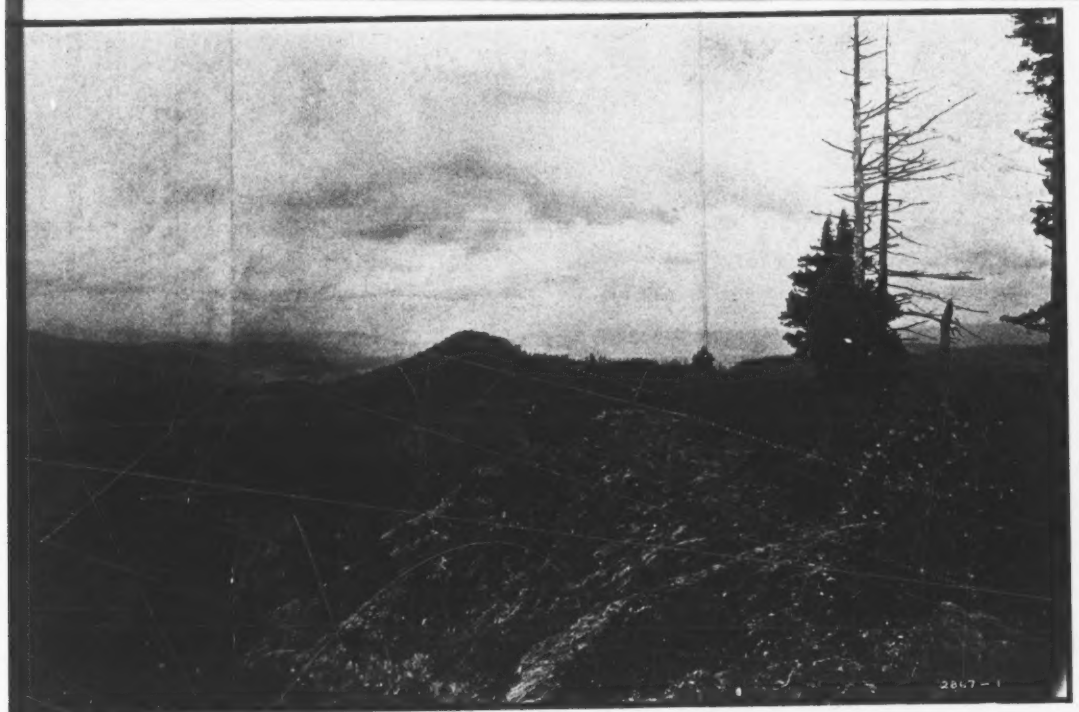
(Signed) B. A. GIFFORD

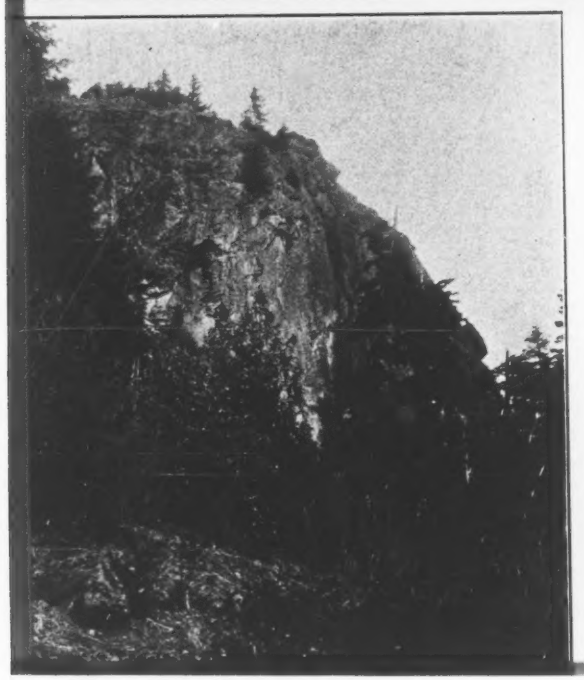
Subscribed and sworn to before me this 2nd day of February, A. D. 1908.

(Signed) HOMER D. ANGELL
(Seal) Notary Public for Oregon.

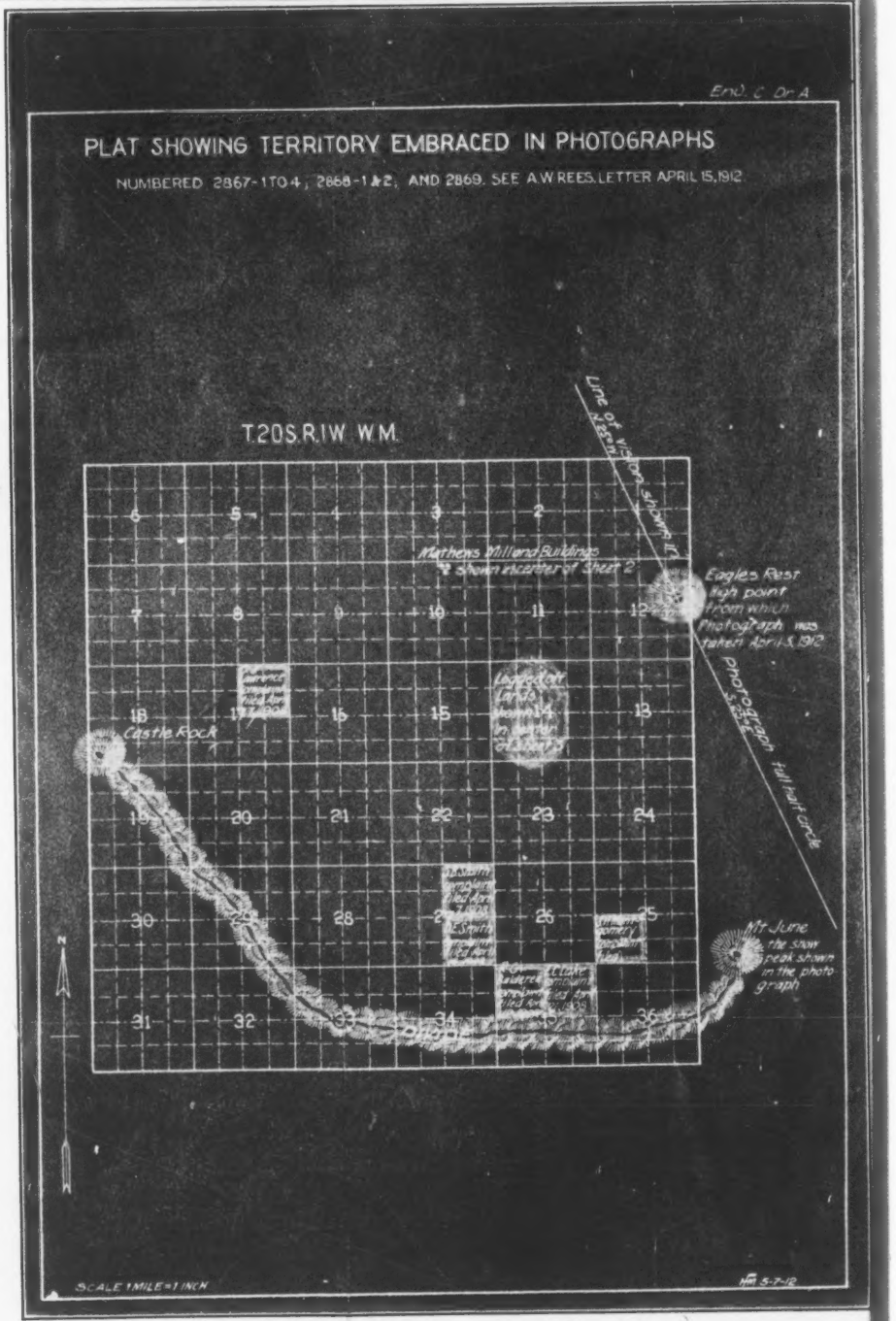
[Endorsed] Defts. Ex. 267. Filed May 10, 1913, A. M. Cannon, Clerk U. S. District Court.







[Endorsed] United States v. Oregon & California R. R. Co. et al. Defts. Ex. 268. Filed May 10, 1913, A. M. Cannon, Clerk U. S. District Court. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 268. Received April 4, 1914. F. D. Monckton, Clerk.



Portland, Ore.,
April 15, 1912.

Mr. B. A. McAllaster,
Land Commissioner,
San Francisco, Cal.

Dear Sir:

I am sending you under separate cover two copies of panoramic view of Township 20 S Range 1 W, taken by Mr. Gifford from a point near the quarter post on E line of Sec. 12, April 3rd 1912. Also two copies of a smaller view (two prints) of the NE corner of Township and two copies of a small view of "Eagle Rest" from the top of which the panoramic view was taken. I also enclose plat upon which I have shown the point from which the photograph was taken, location of Matthews' Mill, the logged off area, Mt. June and the various tracts connected with the Lafferty suits.

The panoramic view shows a full half circle and takes in the greater part of Township as far south and west as the divide. Print One (to the right) shows a view looking north into the Willamette Valley. Print Two shows Matthews' Sawmill and buildings in the center of the print. The top of "Castle Rock" located in Section 19, can be seen above and to the left of the second fir tree. The SE¼ of Section 17 lies on the first ridge below the summit and near the left-hand side of print Two. The logged-off lands in center of print Three are in Section 14. Sections 25, 27 and 35 are well up on the summit of the mountain, and as nearly as I can tell, would be shown in print Four; possibly Section 27 is on print Three. The snow-covered peak at the left is Mount June. The East line

of the township is very near the foot of Mount June on the right-hand side.

There are no settlements in this township, except a few small ranches and a sawmill in the northern part of the township, and these are confined to the bottom lands along the creeks. One or two of the settlements are shown in the second section of the photograph.

This picture was taken upon a very cloudy day and the atmosphere was not clear; consequently it is not as good a view of the township as I had hoped to obtain. It would probably have been better to have taken the picture from some point farther south, so that a closer view of the southern part of the township could have been had; although it is difficult to get a view point on account of the density of the timber, in which there are no open points from which a view can be taken.

Mr. Gifford says he could not have gotten a better picture with the large camera, under same conditions, in fact, he does not think it would have shown up at a distance as distinctly as the smaller camera with which this picture was taken.

I have had three sets of these pictures printed, but am sending you only two sets at the present time. Will forward the others later if you desire them. Mr. Gifford's charge for the three sets of pictures are as follows:—

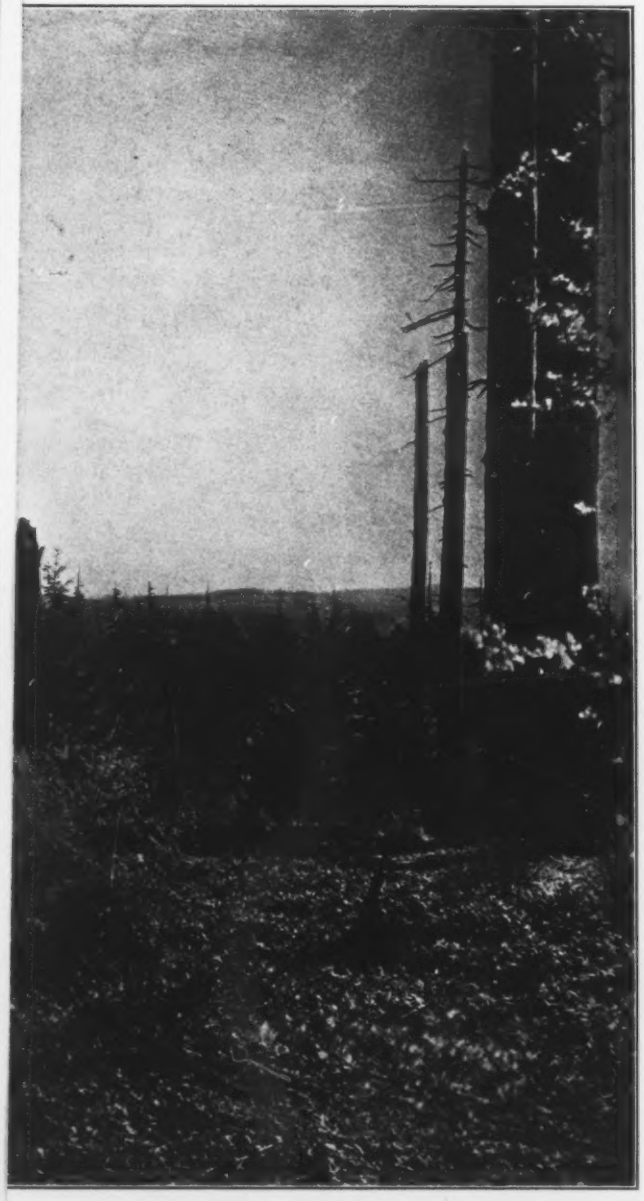
3 days' time at $5.00 per day.....	$15.00
7 negatives at 50c each	3.50
3 sets pictures (21 prints) at 50c each	10.50
Express charges on camera	.50
	$29.50

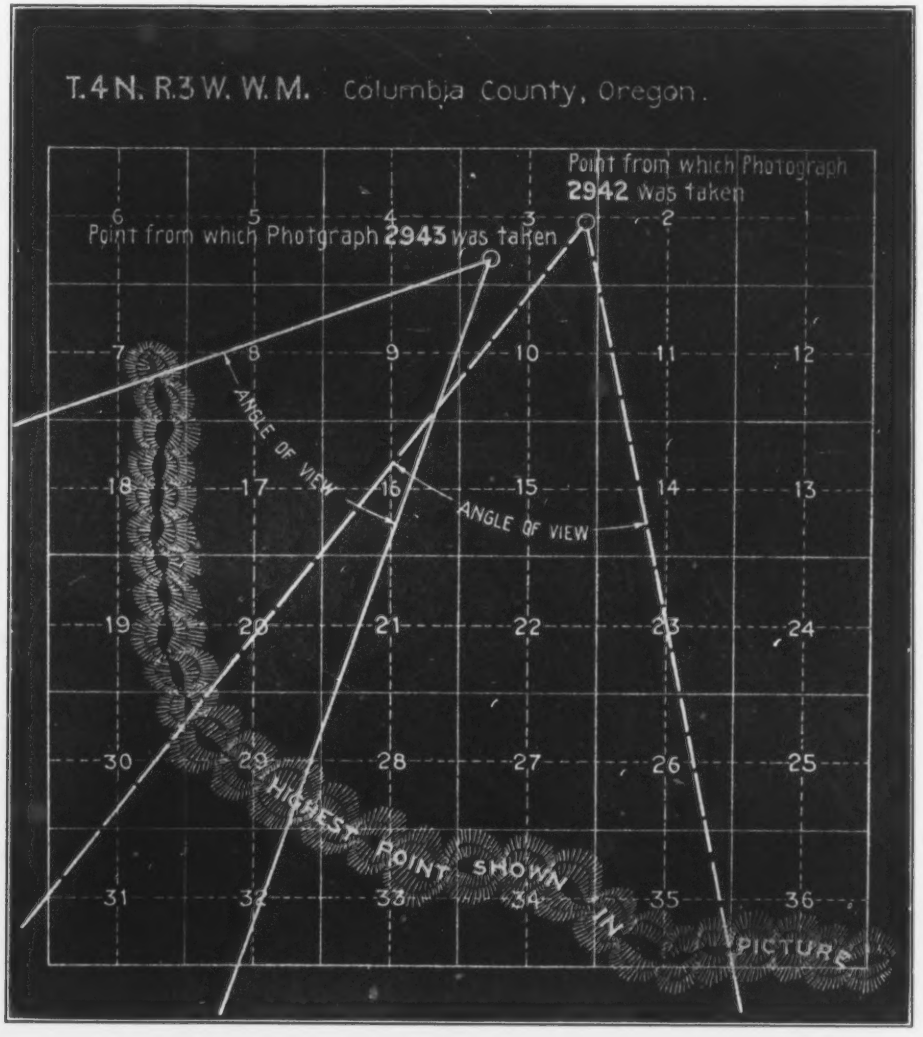
Will you please advise me whether such photographs will be satisfactory, or whether I shall have pictures in future taken with the large camera, which of course would cost a great deal more; not only for negatives and prints, but in field work as well, as the large camera weighs about 300 pounds, making it more difficult and expensive to handle in the mountains.

Yours truly,

(Signed) A. W. Rees

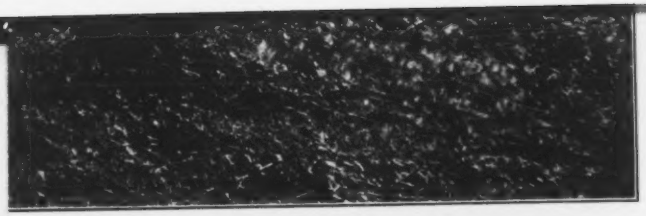
AWR/T Manager





The following is noted on the photograph:

Photograph No. 2942 was taken from the NE of SE, looking south, 25° west; and photograph No. 2943 from the SW of SW, looking south 45° west. These were taken on an 8 x 10 plate, and enlarged to 16 x 20. Mr. Gifford was unable to get a photograph from either place taking in a wider territory on account of the standing timber. Weather conditions were not at all favorable to panoramic work. (See letter A. W. Rees, June 28, 1912—File 464)



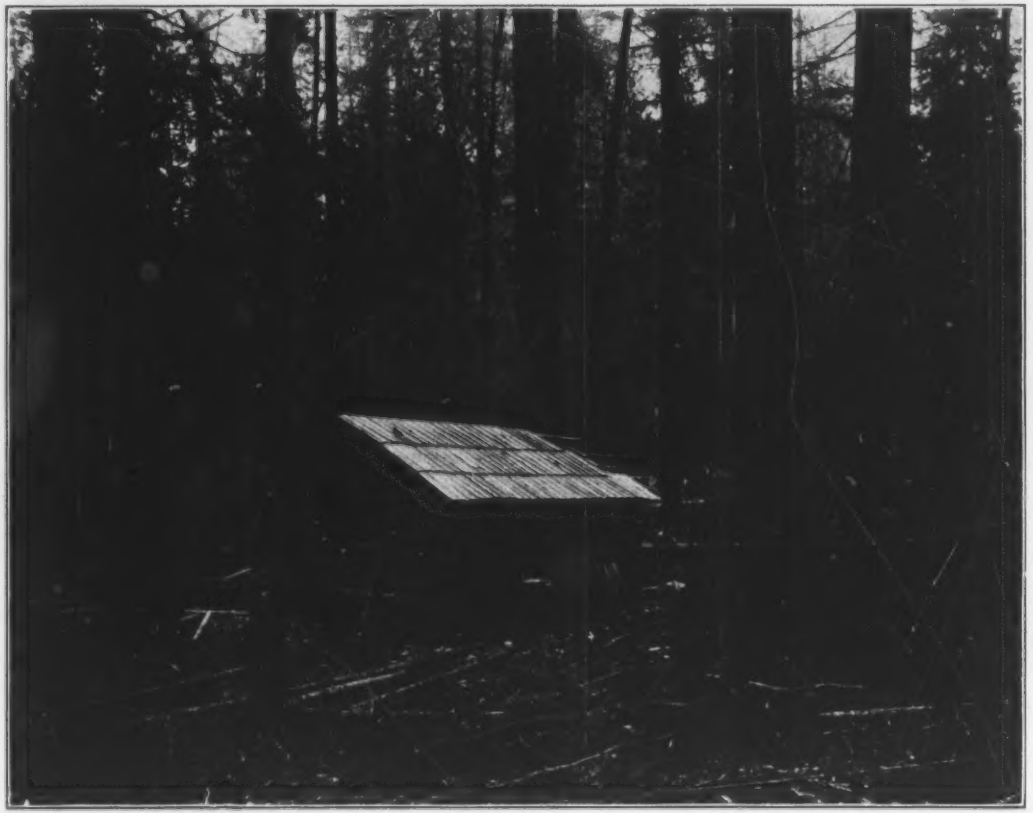
The following is noted on the photograph:

Photograph No. 2942 was taken from the NE of SE, looking south, 25° west; and photograph No. 2943 from the SW of SW, looking south 45° west. These were taken on an 8 x 10 plate, and enlarged to 16 x 20. Mr. Gifford was unable to get a photograph from either place taking in a wider territory on account of the standing timber. Weather conditions were not at all favorable to panoramic work. (See letter A. W. Rees, June 28, 1912—File 464)

[Endorsed] United States v. Oregon and California R. R. Co. et al. Defts'. Ex. 269. Filed May 10, 1913, A. M. Cannon, Clerk U. S. District Court. Case No. 2400—U. S. Circuit Court of Appeals. Ninth Circuit. Defts. Ex. 269. Received Apr. 4, 1914. F. D. Monckton, Clerk.

DEFENDANTS' EXHIBIT 270

CONSISTS
OF 93 PHOTOGRAPHS
AS FOLLOWS:



1. View looking SE, of the cabin of Julius F. Prahl, on SW¼, Sec. 17, T. 4 N., R. 3 W., W.M., about 20 rods N. and 10 rods W. of location of Qr. corner on S line of Sec. 17.

Photograph by Fred H. McClure, Dec. 5, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 1. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-1. Received March 28, 1914. F. D. Monckton, Clerk.

2. View, looking SW., of cabin of Julius F. Prahl, on SW¼, Sec. 17, T. 4 N., R. 3 W., W.M., about 20 rods N. and 10 rods W. of location of Qr. corner on S. line of Sec. 17.

Photograph by Fred H. McClure, Dec. 5, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 2. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2. Received March 28, 1914. F. D. Monckton, Clerk.

3. View, looking N., of cabin of Julius F. Prahl, on SW¼, Sec. 17, T. 4 N., R. 3 W., W.M., about 20 rods N and 10 rods W. of location of Qr. corner on S line of Sec. 17.

Photograph by Fred H. McClure, Dec. 5, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 3. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-3. Received March 28, 1914. F. D. Monckton, Clerk.

5. View, looking SE., of cabin of Jas. Barr, intended to be placed on E½ of NE¼ and E½ of SE¼, Sec. 9, T. 4 N., R. 3 W., W.M.

This cabin, according to line as paced by A. W. Rees and by Ben Irwin, is probably situated about 6 rods North and 5 rods West of the NW cor. of NE¼ of NE¼, said Sec., being on Sec. 8.

Photograph by Fred H. McClure, Dec. 6, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 5. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-5. Received March 28, 1914. F. D. Monckton, Clerk.

8. View, looking west, of the cabin of James Barr, intended to be placed on E½ of NE¼ and E½ of SE¼, Sec. 9, T. 4 N., R. 3 W., W.M., but probably on Sec. 8, per lines paced by Rees and by Irwin, 6 rods N. and 5 rods W. of NW. cor. of NE¼ of NE¼, Sec. 9.

Photograph by Fred H. McClure, Dec. 6, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 8. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-8. Received March 28, 1914. F. D. Monckton, Clerk.

10. View, looking SW., of cabin of Joseph A. Maxwell, intended to be and probably situated on the NE¼, Sec. 27, T. 4 N., R. 3 W., W.M., about 3 rods N. and 2 rods E. of center of Sec. 27

Photograph by Fred H. McClure, Dec. 10, 1907. (Signed) Ben Irwin.

[Endorsed] No. 10. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-10. Received March 28, 1914. F. D. Monckton, Clerk.

16. View, looking SE., of cabin of F. S. Wiser, intended to be and probably located upon the NW¼, Sec. 27, T. 4 N., R. 3 W., W.M., about 10 rods N. and 1 rod W. of center of Sec. 27.

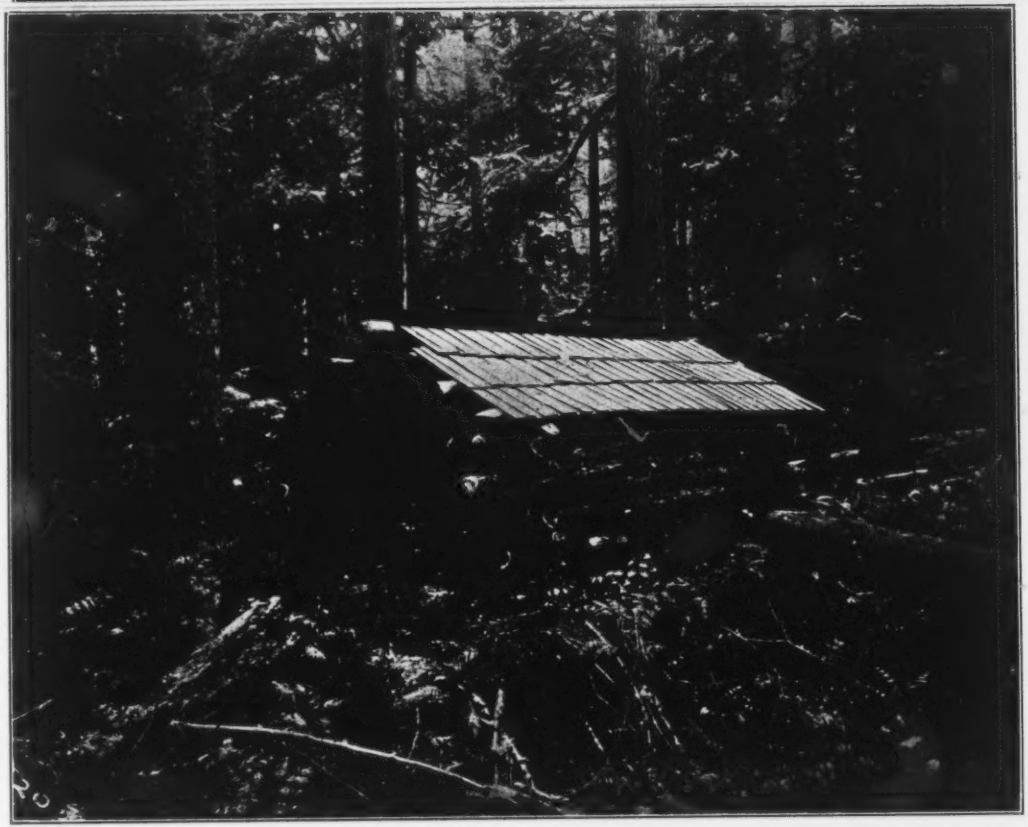
Photograph by Fred H. McClure, Dec. 10, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 16. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-16. Received March 28, 1914. F. D. Monckton, Clerk.

19. View, looking N., of cabin of Fred Witte, on SW¼, Sec. 25, T. 4 N., R. 3 W., about 10 rods NE. of the SW. cor. of Sec. 25. This is a view of the front of said cabin.

Photograph by Fred H. McClure, Dec. 11, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 19. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-19. Received March 28, 1914. F. D. Monckton, Clerk.



20. View, looking S., of the cabin of Fred Witte, on SW¼, Sec. 25, T. 4 N., R. 3 W., W.M., about 10 rods NE. of the SW. corner of said Sec.

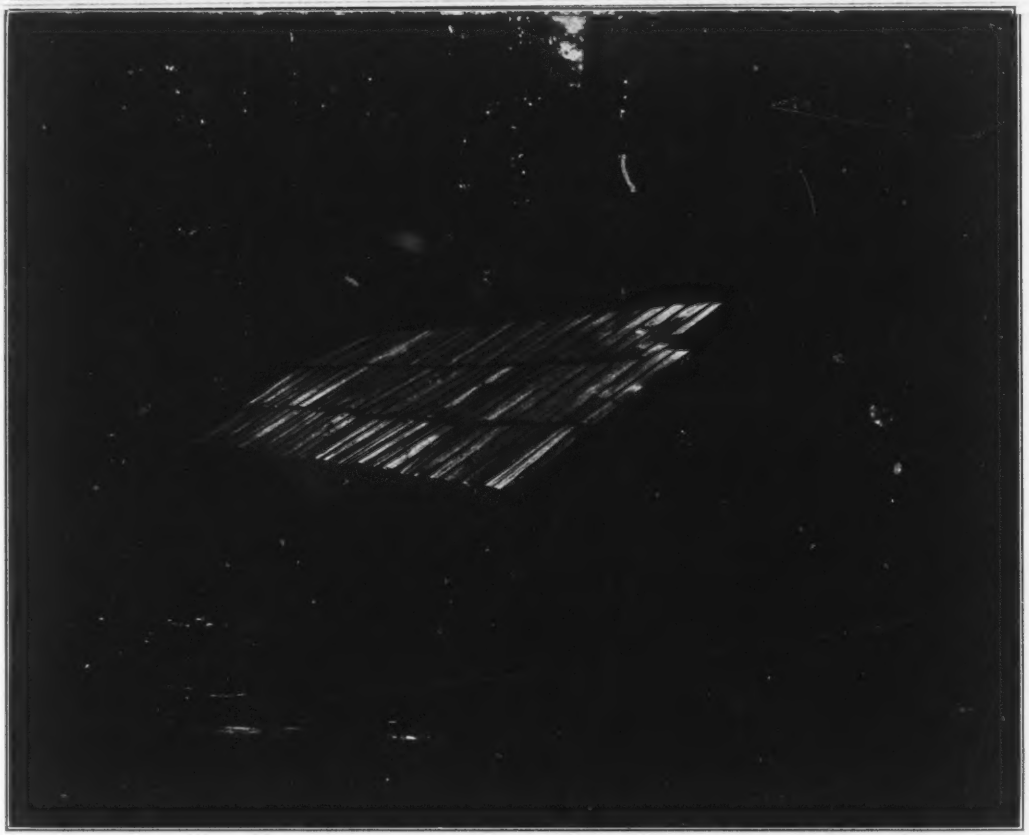
Photograph by Fred H. McClure, Dec. 11, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 20. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-20. Received March 28, 1914. F. D. Monckton, Clerk.

23. View, looking S., of front of cabin of Albert Arms, on NE¼, Sec. 35, T. 4 N., R. 3 W., W. M., about 30 rods S. and 5 rods W. of NE. cor. of said Section.

Photograph by Fred H. McClure, Dec. 11, 1907.
(Signed) Ben Irwin.

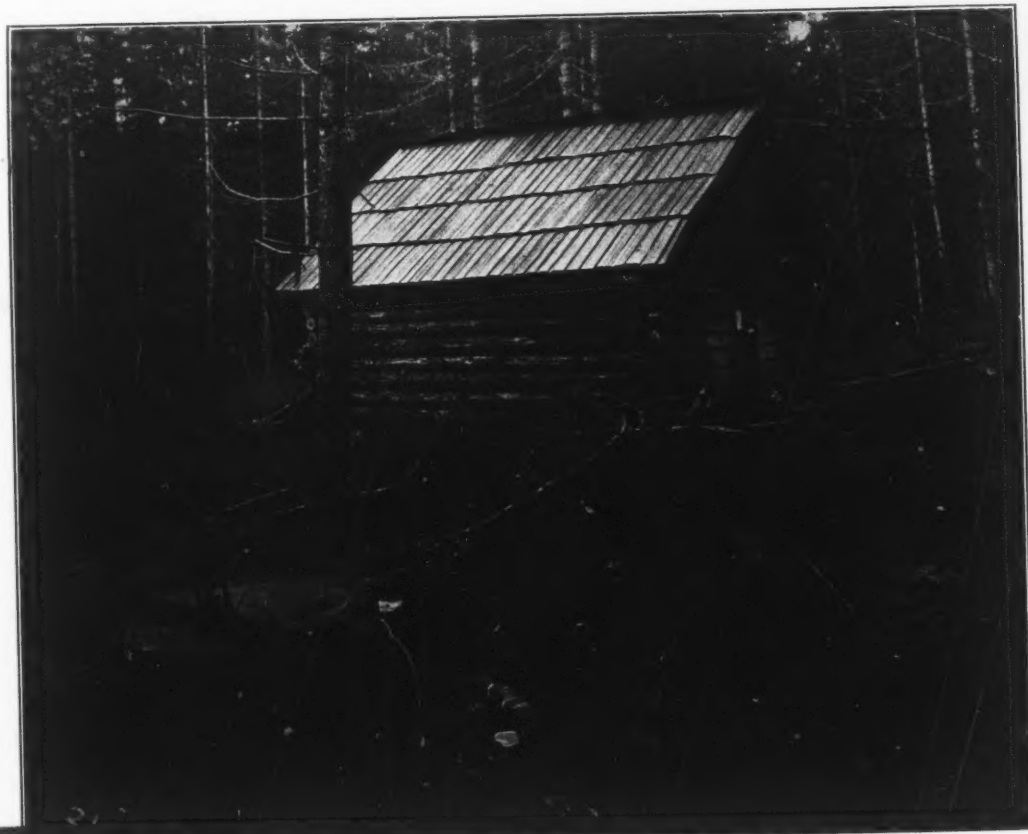
[Endorsed] No. 23. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-23. Received March 28, 1914. F. D. Monckton, Clerk.



24. View, looking N., of rear of cabin of Albert Arms, on NE¼ Sec. 35, T. 4 N., R. 3 W., W. M., about 30 rods S. and 5 rods W. of NE. cor. of said Sec. 35.

Photograph by Fred H. McClure, Dec. 11, 1907.
(Signed) Ben Irwin.

[Endorsed] No. 24. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-24. Received March 28, 1914. F. D. Monckton, Clerk.



26. View, looking SW., of cabin of W. A. Anderson, on SW¼, Sec. 5, T. 4 N., R. 3 W., W.M., about 15 chs. N. of Qr. cor. on S. line Sec. 5, and nearly on line through middle of section.

Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 26. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-26. Received March 28, 1914. F. D. Monckton, Clerk.

27. View, looking N., of cabin of W. A. Anderson, on SW¼, Sec. 5, T. 4 N., R. 3 W., W.M., about 15 chs. N. of Qr. cor. on S. line of, and nearly on line through middle of Sec. 5.

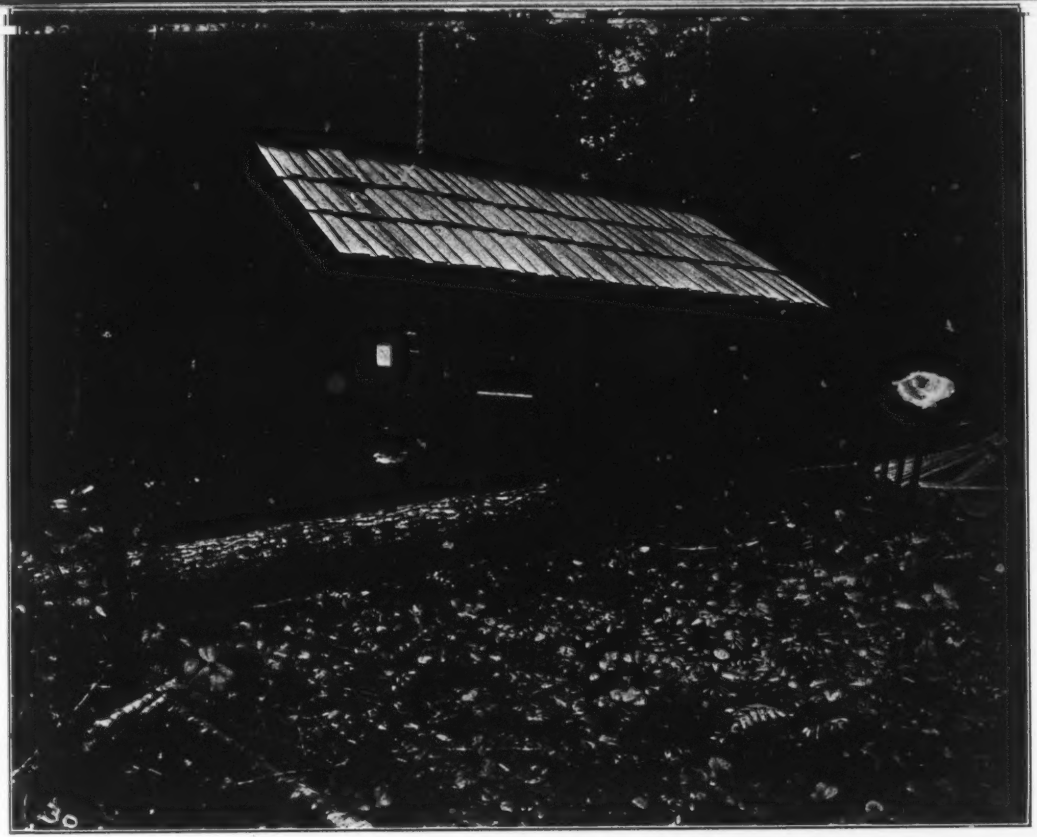
Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 27. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-27. Received March 28, 1914. F. D. Monckton, Clerk.

29. View, looking S., of front of cabin of W. A. Anderson, on SW¼ Sec. 5, T. 4 N., R. 3 W., W.M., about 15 chs N. of Qr. Cor., and nearly on line through middle of Sec. 5.

Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 29. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-29. Received March 28, 1914. F. D. Monckton, Clerk.



30. View, looking NW., of cabin of W. H. Anderson, on NE¼, Sec. 5, T. 4 N., R. 3 W., W.M., about 5 chs. W., and 15 chs. S. of NE. cor. said Sec.

Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 30. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-30. Received March 28, 1914. F. D. Monckton, Clerk.

31. View, looking SW., of cabin of W. H. Anderson, on NE¼, Sec. 5, T. 4 N., R. 3 W., about 15 chs. S. and 5 chs. W. of NE. cor. said Sec.

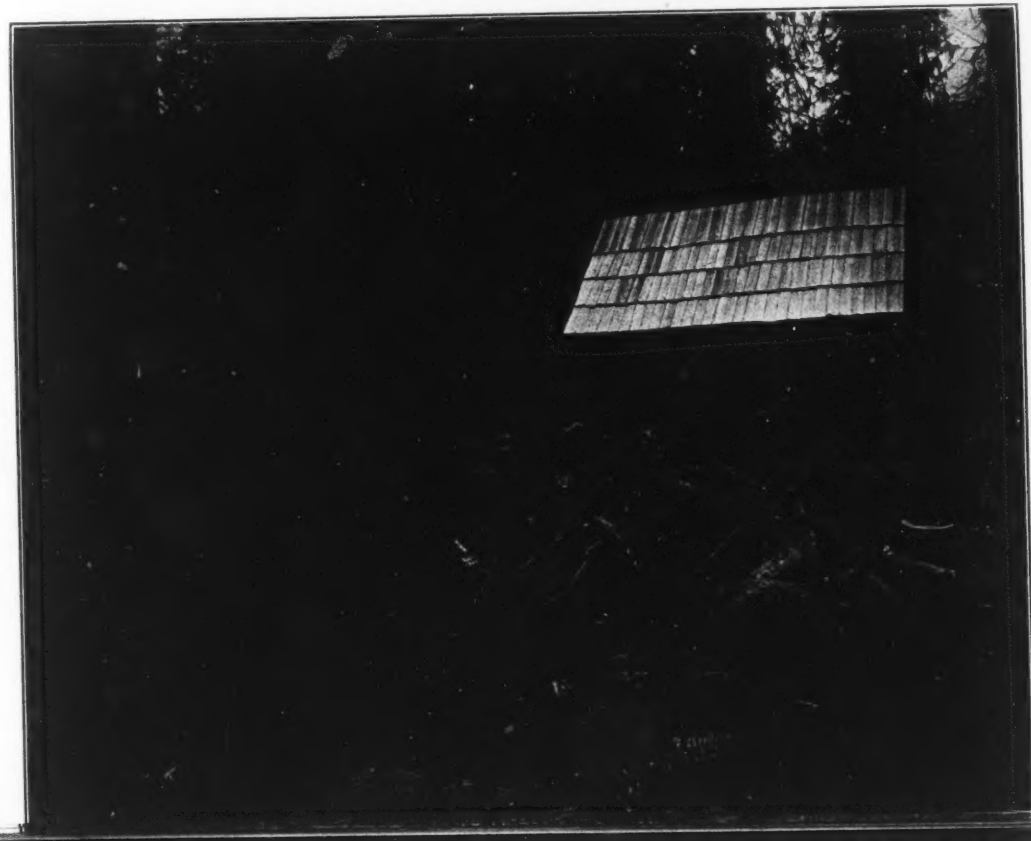
Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 31. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-31. Received March 28, 1914. F. D. Monckton, Clerk.

33. View, looking S., of front of cabin of O. M. Anderson, on NW¼, Sec. 5, T. 4 N., R. 3 W., W.M., about 15 chs. E. and 15 S. of NW. cor. Sec. 5.

Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 33. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-33. Received March 28, 1914. F. D. Monckton, Clerk.



34. View, looking E., of cabin of O. M. Anderson, on NW¼, Sec. 5, T. 4 N., R. 3 W., W.M., about 15 chs. E., and 15 feet S. of NW. cor. Sec. 5.

Photograph by Fred H. McClure, Jan. 29, 1908.

[Endorsed] No. 34. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-34. Received March 28, 1914. F. D. Monckton, Clerk.

38. Frank Williams, NW¼-21-4 N., 3 W., looking S.

Photograph by Fred H. McClure, Feb. 15, 1908.

[Endorsed] No. 38. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-38. Received March 28, 1914. F. D. Monckton, Clerk.

39. Frank Williams, NW¼-21-4 N., 3 W., looking NW.

Photograph by Fred H. McClure, Feb. 15, 1908.

[Endorsed] No. 39. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-39. Received March 28, 1914. F. D. Monckton, Clerk.

41. Paul Birkenfield, SE¼-15-4 N., 3 W., looking N.

Photograph by Fred H. McClure, Feb. 15, 1907.

[Endorsed] No. 41. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-41. Received March 28, 1914. F. D. Monckton, Clerk.

42. Paul Birkenfield, SE¼-15-4 N., 3 W., looking W.

Photograph by Fred H. McClure, Feb. 15, 1907.

[Endorsed] No. 42. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-42. Received March 28, 1914. F. D. Monckton, Clerk.

44. Jess Lewis, W½ of E½-9-4 N., 3 W., looking N. 30° E.

Photograph by Fred H. McClure, Feb. 14, 1908.

[Endorsed] No. 44. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-44. Received March 28, 1914. F. D. Monckton, Clerk.

45. Jess Lewis, W½ of E½-9-4 N., 3 W., looking N. 10° W.

Photograph by Fred H. McClure, Feb. 14-16, 1908.

[Endorsed] No. 45. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-45. Received March 28, 1914. F. D. Monckton, Clerk.

47. E. C. Lake, NE¼ Sec. 35-T. 20 S., R. 1 W., Look. S. W.

Photograph by Fred H. McClure, May 13, 1908.

[Endorsed] No. 47. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-47. Received March 28, 1914. F. D. Monckton, Clerk.

49. R. G. Balderree, NW¼ Sec. 35, T. 20 S., R. 1 W., Look. S. W.

Photograph by Fred H. McClure, May 13, 1908.

[Endorsed] No. 49. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-49. Received March 28, 1914. F. D. Monckton, Clerk.

50. Sidney Ben Smith, NE¼ Sec. 27-T. 20 S., R. 1 W., Look. N. W.

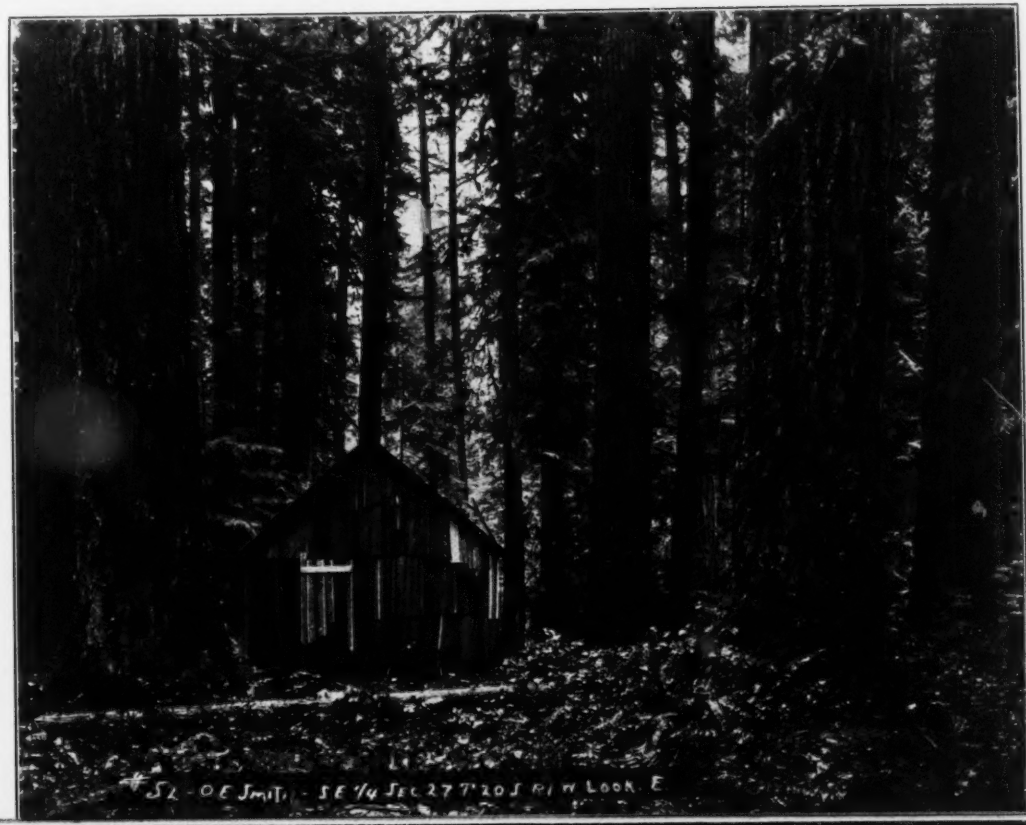
Photograph by Fred H. McClure, May 14, 1907.

[Endorsed] No. 50. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-50. Received March 28, 1914. F. D. Monckton, Clerk.

52. O. E. Smith, SE¼ Sec. 27, T. 20 S., R. 1 W., Look. E.

Photograph by Fred H. McClure, May 14, 1908.

[Endorsed] No. 52. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-52. Received March 28, 1914. F. D. Monckton, Clerk.



54. O. J. Lawrence, NE¼ Sec. 17, T. 20 S., R. 1 W. Look. N.

Photograph by Fred H. McClure, May 15, 1908.

[Endorsed] No. 54. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-54. Received March 28, 1914. F. D. Monckton, Clerk.

55. O. J. Lawrence, NE¼ Sec. 17, T. 20 S., R. 1 W. Looking NE.

Photograph by Fred H. McClure, May 15, 1908.

[Endorsed] No. 55. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-55. Received March 28, 1914. F. D. Monckton, Clerk.

62. Enos Fluhrer, SE¼ Sec. 31-5 N. 2 W., Look. S. W.

Photograph by Fred H. McClure, Sept. 28, 1908.

[Endorsed] No. 62. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-62. Received March 28, 1914. F. D. Monckton, Clerk.

DEFENDANTS EXHIBIT No. 270 DEMURRED

63. Enos Fluhrer, SE¼ Sec. 31-5 N., 2 W., Look. S. E.

Photograph by Fred H. McClure, Sept. 28, 1908.

[Endorsed] No. 63. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-63. Received March 28, 1914. F. D. Monckton, Clerk.

65. S. Shryock, SW¼ Sec. 21-4 N., 3 W., Look. W.

Photograph by Fred H. McClure, Sept 29, 1908.

[Endorsed] No. 65. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-65. Received March 28, 1914. F. D. Monckton, Clerk.

66. S. Shryock, SW¼ Sec. 21-4 N., 3 W., Look. S.

Photograph by Fred H. McClure, Sept. 29, 1908.

[Endorsed] No. 66. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-66. Received March 28, 1914. F. D. Monckton, Clerk.

69. I. McKay, SE¼ Sec. 21-4 N., 3 W., Look. NW.

Photograph by Fred H. McClure, Sept. 29, 1908.

[Endorsed] No. 69. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-69. Received March 28, 1914. F. D. Monckton, Clerk.

70. I. McKay, SE¼, Sec. 21-4 N., 3 W., Look. S. 10° E.

Photograph by Fred H. McClure, Sept. 29, 1908.

[Endorsed] No. 70. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-70. Received March 28, 1914. F. D. Monckton, Clerk.

72. J. R. Peterson, NE¼ Sec. 21-4 N., 3 W., Look. SE.

Photograph by Fred H. McClure, Sept. 29, 1908.

[Endorsed] No. 72. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-72. Received March 28, 1914. F. D. Monckton, Clerk.

73. J. R. Peterson, NE¼ Sec. 21-4 N., 3 W., Look. S.

Photograph by Fred H. McClure, Sept. 29, 1908.

[Endorsed] No. 73. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-73. Received March 28, 1914. F. D. Monckton, Clerk.

74. Fred Floeter, NE¼-19-4 N., 3 W., Look. N.

Photograph by Fred H. McClure, Sept. 30, 1908.

[Endorsed] No. 74. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court. of Appeals, Ninth Circuit. Defts. Ex. 270-74. Received March 28, 1914. F. D. Monckton, Clerk.

75. Fred Floeter, NE¼ Sec. 19, 4 N., 3 W., Look. S.

Photograph by Fred H. McClure, Sept. 30, 1908.

[Endorsed] No. 75. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-75. Received March 28, 1914. F. D. Monckton, Clerk.

77. V. V. MacAboy, NE¼ Sec. 7-4 N., 3 W., Look. S. E.

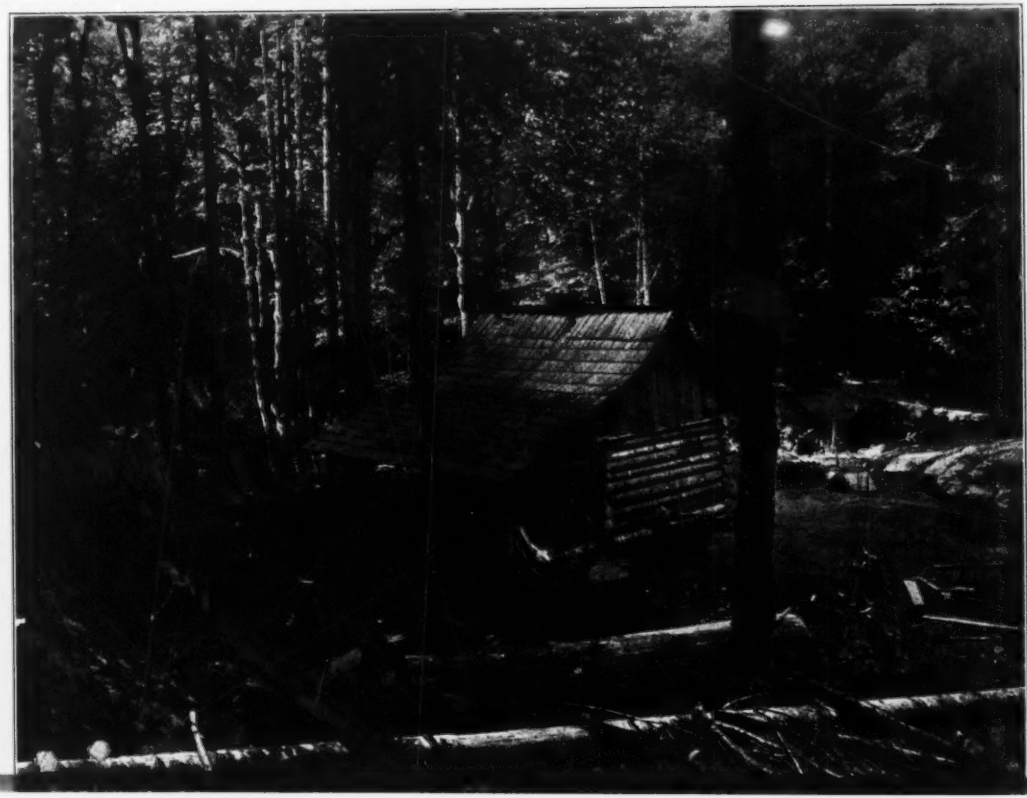
Photograph by Fred H. McClure, Oct. 1, 1908.

[Endorsed] No. 77. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-77. Received March 28, 1914. F. D. Monckton, Clerk.

78. V. V. MacAboy, NE¼ Sec. 7-4 N., 3 W., Look. S. W.

Photograph by Fred H. McClure, Oct. 1, 1908.

[Endorsed] No. 78. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-78. Received March 28, 1914. F. D. Monckton, Clerk.



80. E. L. MacLafferty, NE¼ Sec. 1-3 N., 3 W., Look. N. E.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 80. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-80. Received March 28, 1914. F. D. Monckton, Clerk.

81. E. L. MacLafferty, NE¼ Sec. 1-3 N., 3 W., Look. E.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 81. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-81. Received March 28, 1914. F. D. Monckton, Clerk.

82. Geo. E. MacLafferty, NE¼ Sec. 1-3 N., 3 W., Look. W.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 82. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-82. Received March 28, 1914. F. D. Monckton, Clerk.

83. Geo. E. MacLafferty, NE¼ Sec. 1-3 N., 3 W., Look. E.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 83. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-83. Received March 28, 1914. F. D. Monckton, Clerk.

85. B. N. MacLafferty, SE¼ Sec. 1, 3 N., 3 W., Look. N. W.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 85. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-85. Received March 28, 1914. F. D. Monckton, Clerk.

86. B. N. MacLafferty, SE¼ Sec. 1-3 N., 3 W., Look. N. E.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 86. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-86. Received March 28, 1914. F. D. Monckton, Clerk.

88. NE¼ Sec. 2-3 N., 3 W., Looking N. W.

[Endorsed] No. 88. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-88. Received March 28, 1914. F. D. Monckton, Clerk.

89. Edgar MacLaffer-ty, SE¼ Sec. 25-4 N., 3 W., Look. S. 55° E.

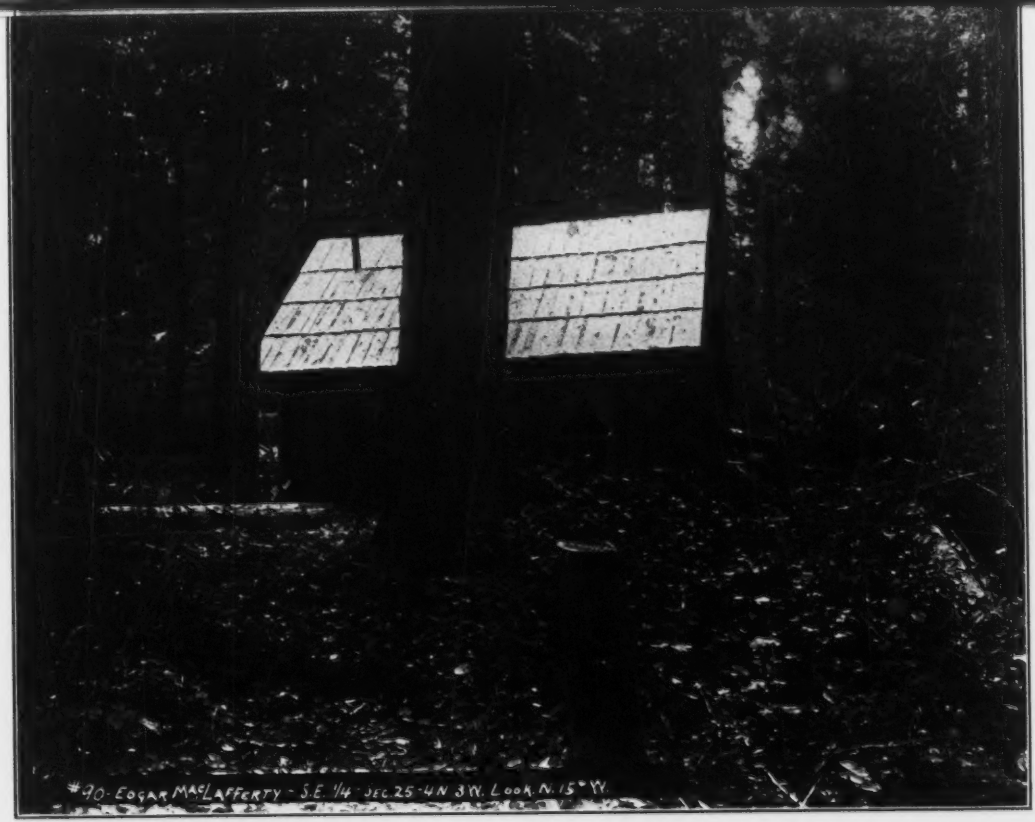
Photograph by Fred H. McClure, Oct. 4, 1908.

[Endorsed] No. 89. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-89. Received March 28, 1914. F. D. Monckton, Clerk.

90. Edgar MacLaffer-ty, SE¼ Sec. 25—4 N., 3 W., Look. N. 15° W.

Photograph by Fred H. McClure, Oct. 4, 1908.

[Endorsed] No. 90. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-90. Received March 28, 1914. F. D. Monckton, Clerk.



91. D. MacLafferty, NE¼ Sec. 25-4 N., 3 W., Look. East.

Photograph by Fred H. McClure, Oct. 4, 1908.

[Endorsed] No. 91. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-91. Received March 28, 1914. F. D. Monckton, Clerk.

92. D. MacLafferty, NE¼ Sec. 25-4 N., 3 W., Looking N. E.

Photograph by Fred H. McClure, Oct. 4, 1908.

[Endorsed] No. 92. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-92. Received March 28, 1914. F. D. Monckton, Clerk.

93. Geo. C. MacLafferty, NW¼ D 25-4 N., 3 W., Looking SW.

Photograph by Fred H. McClure, Oct. 31, 1908.

[Endorsed] No. 93. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-93. Received March 28, 1914. F. D. Monckton, Clerk.

94. Geo. C. MacLafferty, NW¼ Sec. 25-4 N., 3 W., Looking W.

Photograph by Fred H. McClure, Oct. 3, 1908.

[Endorsed] No. 94. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-94. Received March 28, 1914. F. D. Monckton, Clerk.

No. 96. NE¼ Sec. 10-3 N., 3 W., Look. W.

[Endorsed] No. 96. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-96 Received March 28, 1914. F. D. Monckton, Clerk.

97. C. W. Mead, SE¼-3-1 S. 5 E., Looking N. W.

Photograph by Fred H. McClure, Nov. 10, 1908.

[Endorsed] No. 97. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-97. Received March 28, 1914. F. D. Monckton, Clerk.

98. C. W. Mead, SE¼-3-1 S., 5 E., Looking N. E.

Photograph by Fred H. McClure, Nov. 10, 1908.

[Endorsed] No. 98. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-98. Received March 28, 1914. F. D. Monckton, Clerk.

100. Jno. H. Haggett, NW¼-11-1 S. 5 E., Look. S. 60° E.

Photograph by Fred H. McClure, Nov. 10, 1908.

[Endorsed] No. 100. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-100. Received March 28, 1914. F. D. Monckton, Clerk.

101. Jno. H. Haggett, NW¼-11-1 S., 5 E., Look. N.

Photograph by Fred H. McClure, No. 10, 1908.

[Endorsed] No. 101. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-101. Received March 28, 1914. F. D. Monckton, Clerk.

103. Wm. Otterstrom, SW¼-11-1 S. 5 E., Look. E.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 103. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-103. Received March 28, 1914. F. D. Monckton, Clerk.

104. Wm. Otterstrom, SW¼-11-1 S., 5 E., Look. N.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 104. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-104. Received March 28, 1914. F. D. Monckton, Clerk.

106. Jno. F. Moan, NW¼-15-1 S., 5 E., Look. S. W.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 106. Defts. Ex 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-106. Received March 28, 1914. F. D. Monckton, Clerk.

108. Angus MacDonald, NE¼-15-1 S., 5 E., Look. S. E.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 108. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-108. Received March 28, 1914. F. D. Monckton, Clerk.

109. Angus MacDonald, NE¼-15-1 S., 5 E., Look. N. 10° W.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 109. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-109. Received March 28, 1914. F. D. Monckton, Clerk.

111. R. T. Aldrich, NE¼-13-1 S., 5 E., Look. S. E.

Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 111. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-111. Received March 28, 1914. F. D. Monckton, Clerk.

112. R. T. Aldrich, NE¼-13-1 S., 5 E., Look. N. W.

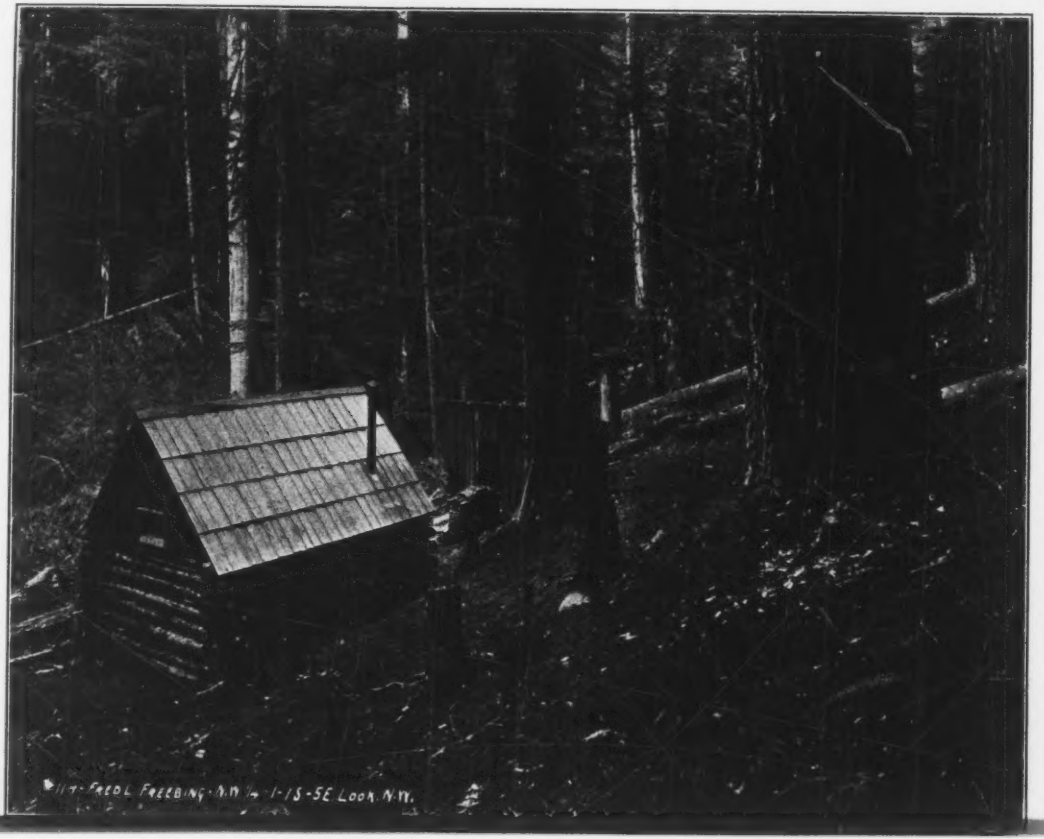
Photograph by Fred H. McClure, Nov. 11, 1908.

[Endorsed] No. 112. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-112. Received March 28, 1914. F. D. Monckton, Clerk.

114. Fred L. Freebing, NW¼-1-1 S., 5 E., Look. N. W.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 114. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-114. Received March 28, 1914. F. D. Monckton, Clerk.



115. Fred L. Freebing, NW¼-1-1 S., 5 E., Look. E.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 115. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-115. Received March 28, 1914. F. D. Monckton, Clerk.

117. Wm. Cain, NE¼-1-1 S., 5 E., Look. S. 50° W.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 117. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-117. Received March 28, 1914. F. D. Monckton, Clerk.

118. Wm. Cain, NE¼-1-1 S., 5 E., Look. N. E.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 118. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-118. Received March 28, 1914. F. D. Monckton, Clerk.

120. Henry C. Ott, NW¼-7-1 S., 6 E., Look. E.

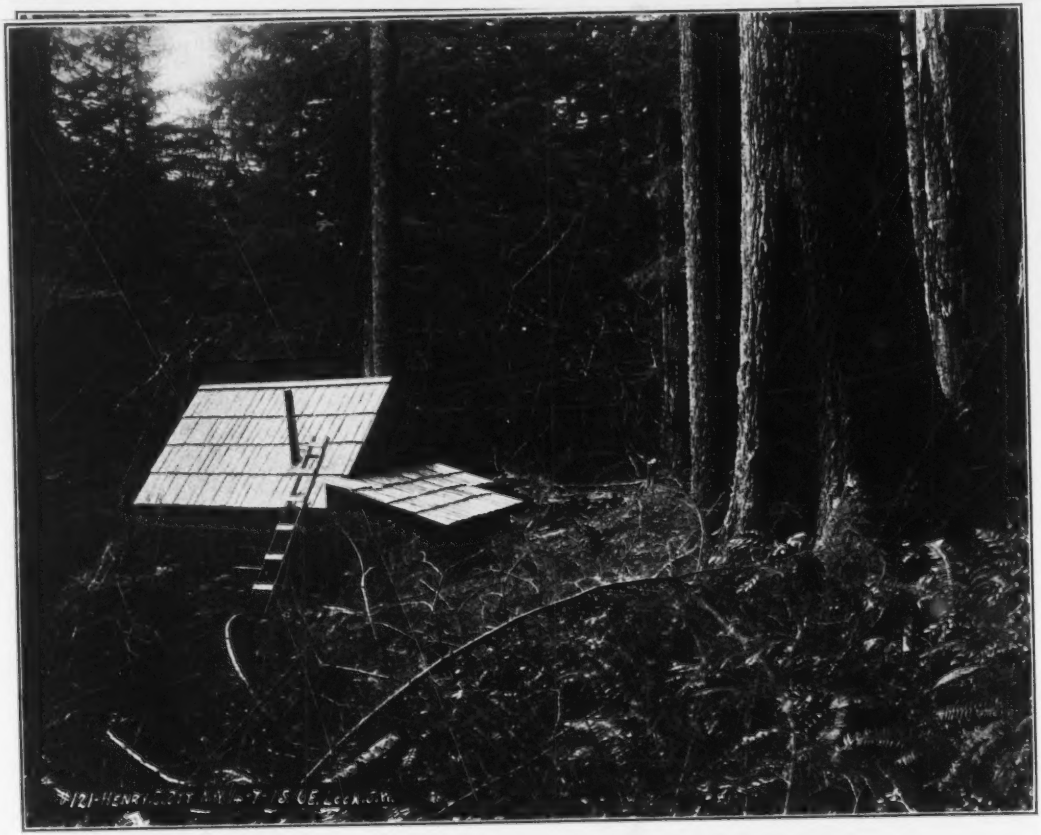
Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 120. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-120. Received March 28, 1914. F. D. Monckton, Clerk.

121. Henry C. Ott, NW¼-7-1 S., 6 E., Look. S. W.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 121. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-121. Received March 28, 1914. F. D. Monckton, Clerk.



123. J. D. Hadley, NE¼-7-1 S., 6 E., Look. S. 10° W.

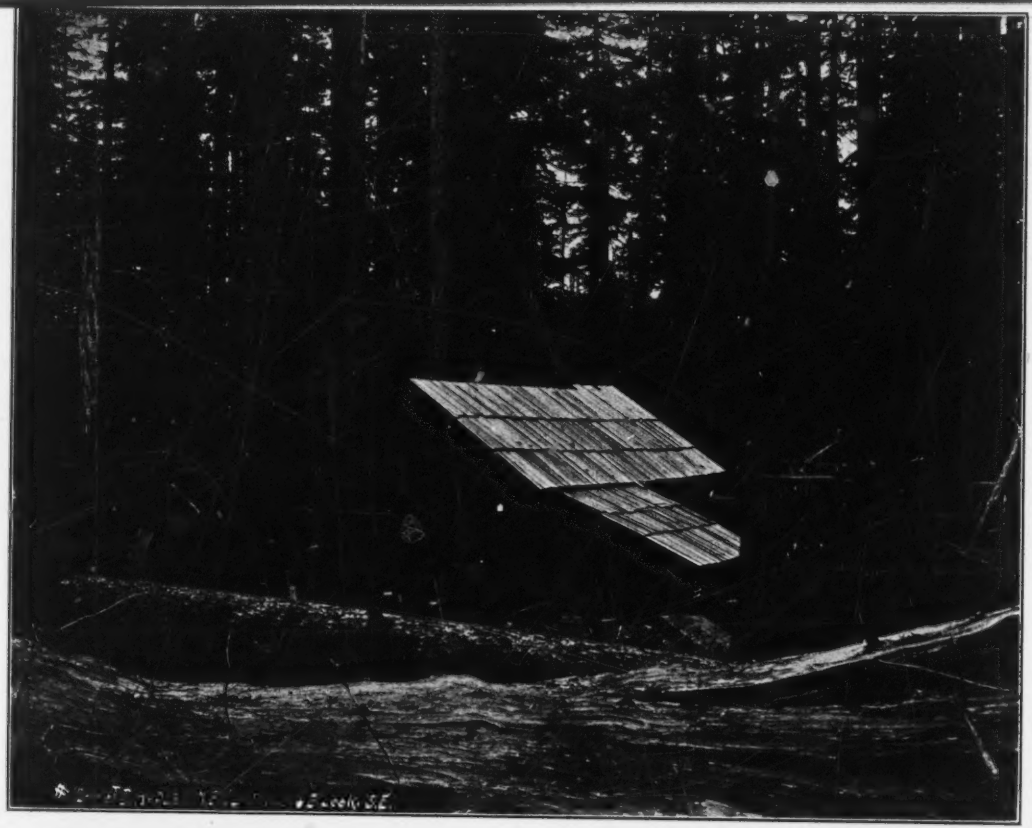
Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 123. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-123. Received March 28, 1914. F. D. Monckton, Clerk.

124. J. D. Hadley, NE¼-7-1 S., 6 E., Look. S. E.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 124. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-124. Received March 28, 1914. F. D. Monckton, Clerk.



126 Jas. C. O'Neill, SE¼-5-1 S., 6 E., Look. S. 10° E.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 126. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-126. Received March 28, 1914. F. D. Monckton, Clerk.

127. Jas. C. O'Neill, SE¼-5-1 S., 6 E., Look. N. 60° E.

Photograph by Fred H. McClure, Nov. 12, 1908.

[Endorsed] No. 127. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-127. Received March 28, 1914. F. D. Monckton, Clerk.

2944. J. H. Lewis cabin on W½ of E½ Section 9, T. 4 N., R. 3 W. (patented Oct. 9, 1895) Settlers' suit filed Feb. 6, 1908. This picture shows that some additional buildings have been erected since the former photograph was taken by McClure on Feb. 14, 1908. No clearing has been made and the premises are not occupied.

(See letter A. W. Rees, June 28, 1912. File 464)

[Endorsed] No. 2944. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2944. Received March 28, 1914. F. D. Monckton, Clerk.

2945. James Barr cabin on E½ of E½ Section 9, T. 4 N., R. 3 W. (patented Oct. 9, 1895). This is O & C Co. land upon which Barr filed settlers' suit November 27, 1908. The cabin has never been occupied permanently.

(See letter A. W. Rees, June 28, 1912. File 464)

[Endorsed] No. 2945. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2945. Received March 28, 1914. F. D. Monckton, Clerk.

2946. Timber view in NW¼ Section 9, T. 4 N., R. 3 W. (Patented Oct. 9, 1895)

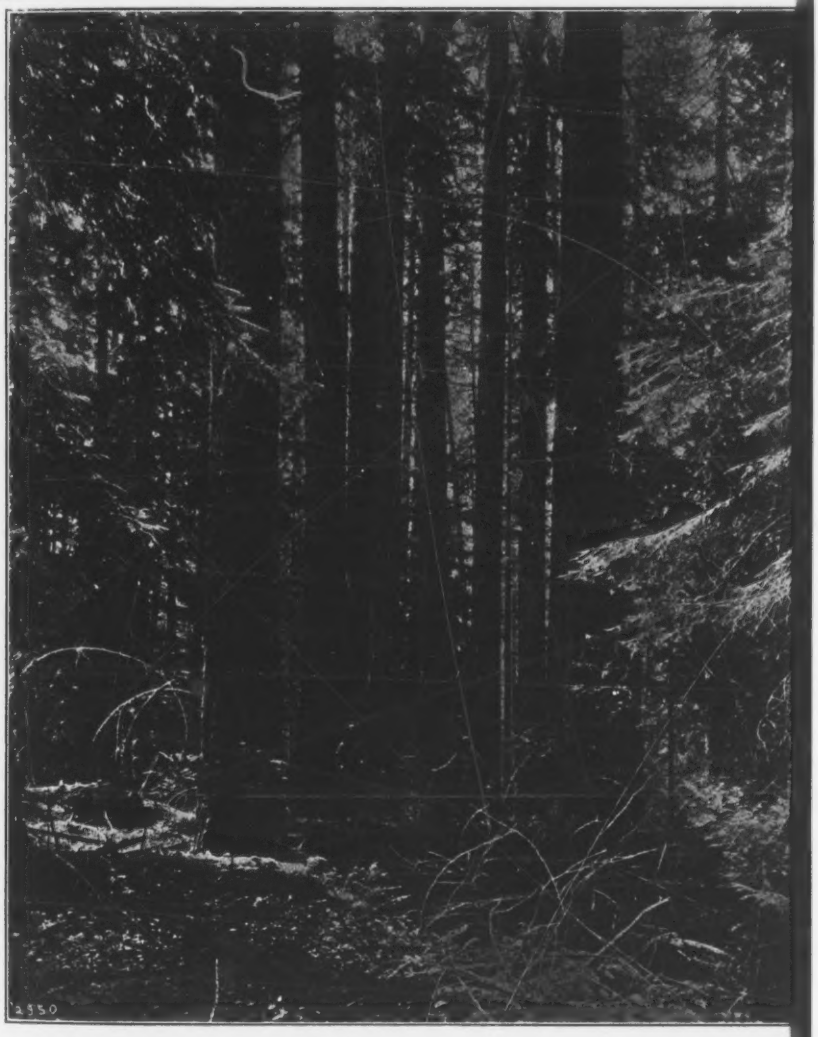
(See letter A. W. Rees, June 28, 1912—File 464)

[Endorsed] No. 2946. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2946. Received March 28, 1914. F. D. Monckton, Clerk.

2948. Cabin built on the SW¼ of Section 9, T 4 N., R. 3 W., by M. F. Dennis in 1907 (Patented Oct. 9, 1895). The cabin is not occupied. Carter and Dennis built cabins on this land about the time the so-called Lafferty Suits were being filed, but have never occupied the premises permanently, and I do not know their present whereabouts.

(See letter A. W. Rees, June 28, 1912—File 464)

[Endorsed] No. 2948. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2948. Received March 28, 1914. F. D. Monckton, Clerk.



2950. Timber view of NW¼ Section 9, T. 4 N., R. 3 W. (Patented Oct. 9, 1895)

(See letter A. W. Rees, June 28, 1912—File 464)

[Endorsed] No. 2950. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ni Circuit. Defts. Ex. 270-2950. Received March 28, 1914. F. D. Monckton, Clerk.

2951. Timber view of NW¼ NE¼ Section 9, T. 4 N., R. 3 W. (Patented Oct. 9, 1895) showing exceptionally heavy stand of timber.

(See letter A. W. Rees June 28, 1912—File 464.)

[Endorsed] No. 2951. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2951. Received March 28, 1914. F. D. Monckton, Clerk.

2952. Cabin built by Frank Carter in 1907 upon the NW¼ of Section 9, T. 4 N., R. 3 W. (Patented Oct. 9, 1895). Carter claimed to be an actual settler, but never occupied the premises as a permanent home.

(See letter A. W. Rees June 28, 1912—File 464.)

[Endorsed] No. 2952. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2952. Received March 28, 1914. F. D. Monckton, Clerk.

1. This is a picture of the front view of John L. Snyder's cabin, on SE¼ of Section 17, Township 4 North, Range 3 West. The view is taken looking northwest.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 1. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-1. Received March 28, 1914. F. D. Monckton, Clerk.

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PHOTOGRAPH NOT BOUND IN BOOK

2. This is a picture of John L. Snyder's cabin on the Southeast Quarter of Section 17, Township 4 North, Range 3 West. The notice of Snyder's entry may be seen tacked on the side of cabin. The view is taken looking northeast. This picture, taken together with No. 3, shows all four sides and all the roof of Snyder's cabin, and shows that there is no window or other means of admitting light into the cabin.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 2. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-2. Received March 28, 1914. F. D. Monckton, Clerk.

3. This is a view of the rear of John L. Snyder's cabin on the SE¼ of Section 17, Township 4 North, Range 3 West. It also shows the depredations committed by Snyder and shows also the only clearing that has been done by him. It also shows a very heavy stand of timber upon the land. View is taken looking southwest.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 3. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-3. Received March 28, 1914. F. D. Monckton, Clerk.

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4. This is a view of the timber upon the southeast corner of the SE¼ of Section 17, Township 4 North, Range 3 West. The man appearing in the picture is standing at the southeast corner of Section 17. The cabin appearing through the timber in the distance is that of John L. Snyder. The view is taken looking northwest.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 4. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-4. Received March 28, 1914. F. D. Monckton, Clerk.

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6. This picture was taken on the southeast corner of the SE¼ of Section 17, Township 4 North, Range 3 West. The view was taken looking northeasterly. The size of the timber may be judged by comparison with the man standing near the large tree in the center.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 6. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-6. Received March 28, 1914. F. D. Monckton, Clerk.

7. This is a view taken on the northeast corner of the SE¼ of Sectio 17, Township 4 North, Range 3 West. The land in this vicinity is ver rough but the picture has failed to bring out this feature of the topography The view was taken looking northwest.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

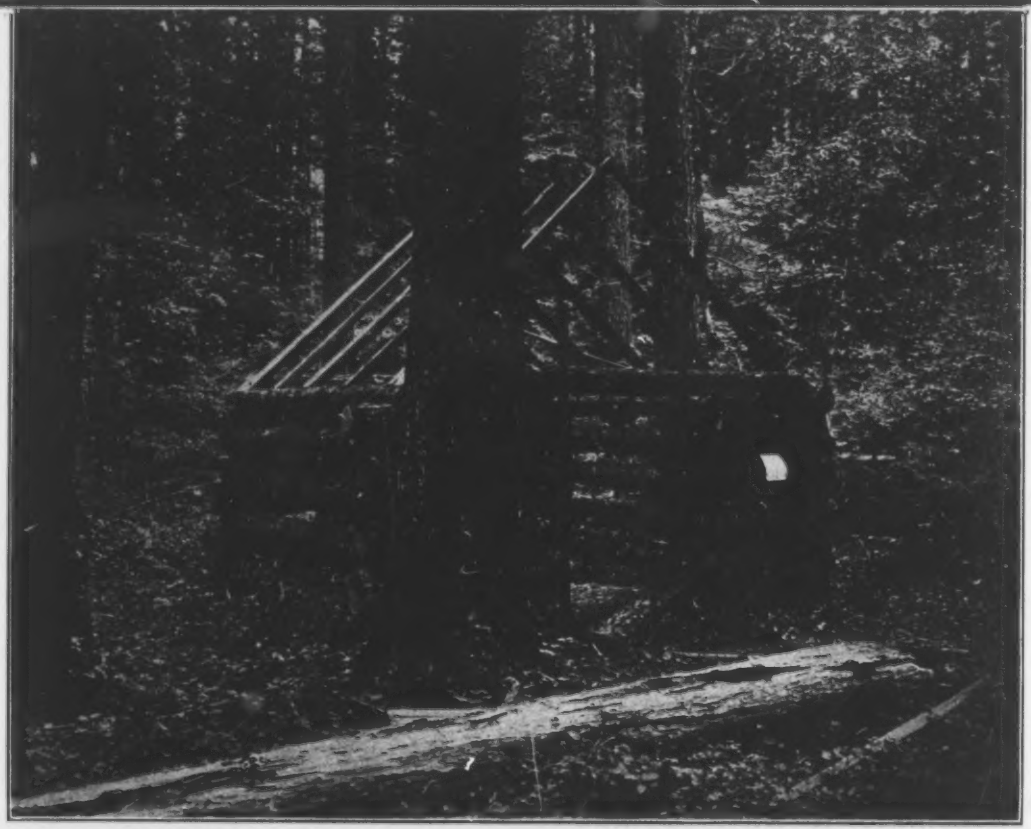
[Endorsed] No. 7. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circui Defts. Ex. 270-7. Received March 28, 1914. F. D. Monckton, Clerk.

8. This is a picture of cabin erected by J. W. Barker on the NW¼ of NE¼, Section 9, Township 4 North, Range 3 West. Barker has notice posted upon the cabin that he is an "actual settler" and is taking the tract of land under the Act of Congress of April 10, 1869. The cabin is situated 5 chains East of the one-fourth section corner between Sections 8 and 9, the view looking south.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 8. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-8. Received March 28, 1914. F. D. Monckton, Clerk.



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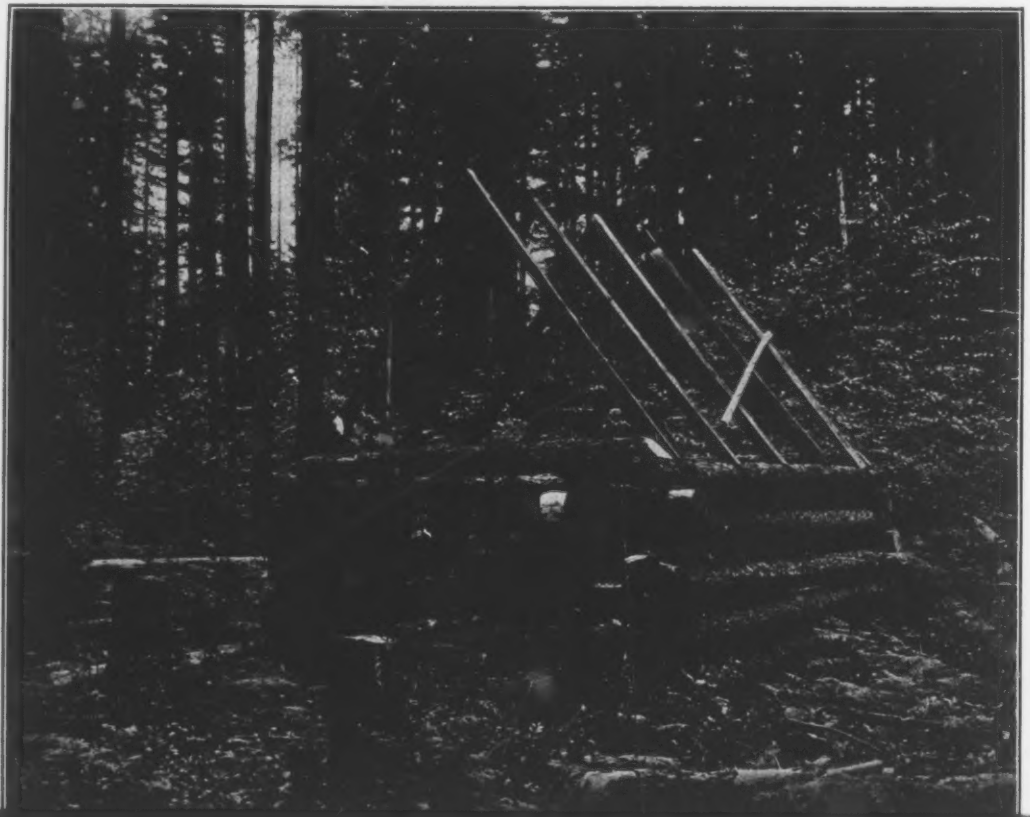
9. This is a picture of cabin erected by W. M. Ross on the SW¼ of Section 9, Township 4 North, Range 3 West. Ross has notice posted upon the cabin that he is an "actual settler" and is taking the tract of land under the Act of Congress of April 10, 1869. The cabin is situated 3 chains south of one-fourth post, the view looking southeast.

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 9. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-9. Received March 28, 1914. F. D. Monckton, Clerk.



10. This is a picture of cabin erected by Ezra Booth on the NW¼ of Section 21, Township 4 North, Range 3 West. Booth has notice posted upon the cabin that he is an "actual settler" and is taking the tract of land under Act of Congress of April 10, 1869. The cabin is 14x16 ft., inside measurement, 7 ft. eaves and 10 ft. gable. It is built of split cedar and is not battened nor chinked. There is no shutter to door opening. The floor is of dirt. There is nothing in the cabin and it has not been occupied. The cabin is situated 50 feet east and 20 feet south of corner, the view looking southeast.

The following trees have been cut and the material used in construction of cabin:

1 cedar	7 in.	20	linear ft..	$	.50
2 "	9 "	60	" " ..		1.50
1 "	11 "	30	" " ..		.75
1 "	14 "	50	" " ..		1.25
2 "	18 "	480	B. M. ft..		7.20
1 "	24 "	700	B. M. ft..		10.50
					$21.70

This picture was taken by Fred H. McClure, September 25, 1907.

(Signed) Homer D. Angell.

[Endorsed] No. 10. Defts. Ex. 270. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 270-10. Received March 28, 1914. F. D. Monckton, Clerk.

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DEFENDANTS' EXHIBIT 273

CONSISTS
OF 84 PHOTOGRAPHS
NUMBERED FOR CONVENIENCE
AS FOLLOWS:

AGE BOUND
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1. On the back of this picture appears the following: SW¼ of Sec. 24, T. 10 S., R. 1 E. Showing abandoned cabin and field grown up to weeds and brush.

[Endorsed] No. 1. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-1. Received March 28, 1914. F. D. Monckton, Clerk.

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2. On the back of this picture appears the following: NE¼ Sec. 14. T. 11 S., R. 1 E. Looking north ¼ mile west of quarter post on east line.

[Endorsed] No. 2. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-2. Received March 28, 1914. F. D. Monckton, Clerk.

3. On the back of this picture appears the following: NE¼ Sec. 14, T. 11 S., R. 1 E. Looking NW. Showing location of improvements—cabin tumbled down. NE ¼ Sec. 14—11 S R 1 E Taken from ¼ corner Btw. 13-14 Looking North. Showing improvements. (2) Views—one showing timber.

[Endorsed] No. 3. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-3. Received March 28, 1914. F. D. Monckton, Clerk.

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4. On the back of this picture appears the following: Cabin on SW corner of Sec. 25, T. 4 N., R. 3 W. Built by Fred Witte, 1907. Suit filed 12/2/07. Not occupied May 1912.

[Endorsed] No. 4. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-4. Received March 28, 1914. F. D. Monckton, Clerk.

5. On the back of this pitcure appears the following: Taken at Secs. corners 25, 26, 35, & 36, T. 4 N., R. 3 W., look from the West to N.E.

[Endorsed] No. 5. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-5. Received March 28, 1914. F. D. Monckton, Clerk.

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6. On the back of this picture appears the following: NW¼ Sec. 8, 4 N. 3 W., look. N & NW, Homestead cabin.

[Endorsed] No. 6. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-6. Received March 28, 1914. F. D. Monckton, Clerk.

7. On the back of this picture appears the following: Timber view NW¼ Sec. 21. T. 4 N., R. 3 W.

[Endorsed] No. 7. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-7. Received March 28, 1914. F. D. Monckton, Clerk.

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8. On the back of this picture appears the following: SE¼ Sec. 24. T. 4 N., R. 3 W., all logged off. Showing homesteader's cabin.

[Endorsed] No. 8. Defts. Ex. 273. Case No. 2409—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-8. Received March 28, 1914. F. D.

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9. On the back of this picture appears the following: Sec. 4, NW¼, 4 N., 3 W. Taken from SW¼ looking N & NW. Homestead cabin.

[Endorsed] No. 9. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-9. Received March 28, 1914. F. D. Monckton, Clerk.

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10. On the back of this picture appears the following. Center of Northwest quarter Sec. 20, T. 4 North, R. 3 W. Looking North.

[Endorsed] No. 10. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-10. Received March 28, 1914. F. D. Monckton, Clerk.

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11. On the back of this picture appears the following: NW¼ Sec. 18, T. 10 S., R. 4 E. Looking Northwest. Showing remains of improvements.

[Endorsed] No. 11. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-11. Received March 28, 1914. F. D. Monckton, Clerk.

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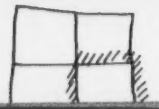
12. On the back of this picture appears the following: "C" SE¼ Sec. 20, 7 S. 7 W. Hd. of Robt. B. Hansen. Filed 7/3/00. Pat. 1/23/02. Taken Mch. 29, 1912, by C. W. Kempton. Looking North. Kempton's Report: Not occupied—no improvements (burnt down)—no cultivation—no clearing—entry made for timber values.



13. On the back of this picture appears the following: SE¼ Sec. 12, 11 S. 1 E.

[Endorsed] No. 13. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-13. Received March 28, 1914. F. D. Monckton, Clerk.

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14. On the back of this picture appears the following: SE¼ Sec. 30, 10 S., R. 1 E. (2) views, one of clearing, one in timber.

[Endorsed] No. 14. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-14. Received March 28, 1914. F. D. Monckton, Clerk.

15. On the back of this picture appears the following: NW¼ Sec. 4. T. 11 S., R. 1 E. Looking NW. Showing abandoned cabin and field.

[Endorsed] No. 15. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-15. Received March 28, 1914. F. D. Monckton, Clerk.

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16. On the back of this picture appears the following: High ridge. Looking North bet. Sees. 20 and 21. View taken March 29, 1912, by C. W. Kempton field examiner O&C RR. Co. Showing char- neter of 7 S. 7 W. Note the Robt. B. Hansen homestead will cover the lands marked on photo. (Approximate)

20 | 21
29 | 28

[Endorsed] No. 16. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-16. Received March 28, 1914. F. D. Monckton, Clerk.

17. On the back of this picture appears the following: Photo by C. W. Kempton 5/7/12. SE1/4 Sec. 26, 4 S. R. 5 E. Looking Southeast. No improvements except pile of stones which appear to have been used as temporary fire place.

[Endorsed] No. 17. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-17. Received March 28, 1914. F. D. Monckton, Clerk.

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18. On the back of this picture appears the following: W½ of E½ Sec. 9, T. 4 N., R. 3 W. Lewis claim O&C lands. Not occupied.

[Endorsed] No. 18. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-18. Received March 28, 1914. F. D. Monckton, Clerk.

19. On the back of this picture appears the following: East Line Sec. 20, T. 4 North, Range 3 W. Looking North.

[Endorsed] No. 19. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-19. Received March 28, 1914. F. D. Monckton, Clerk.

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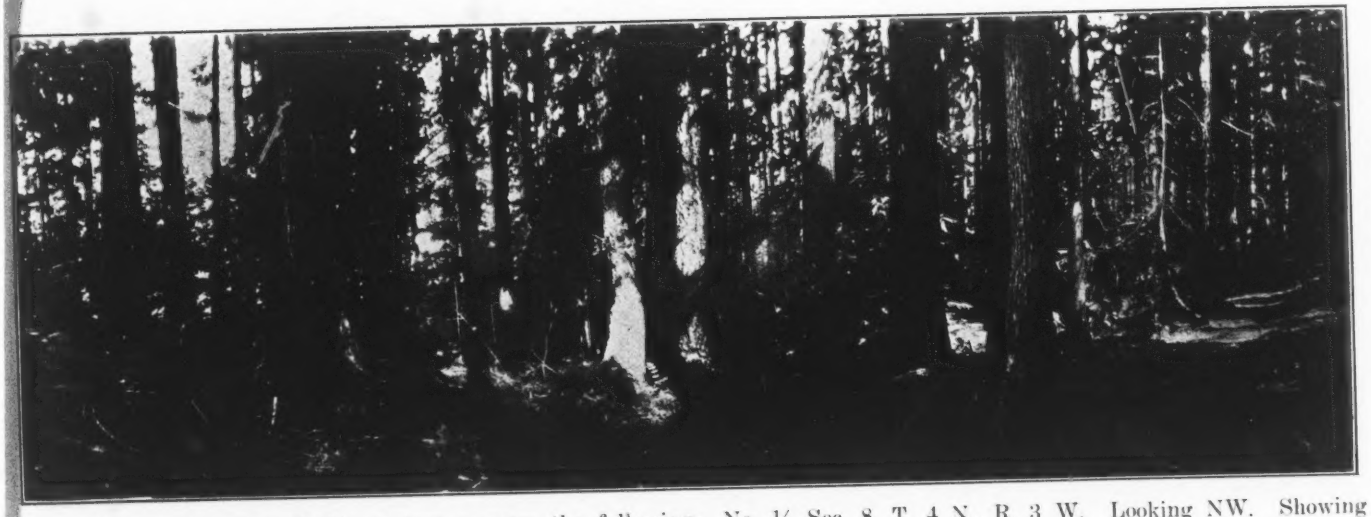

20. On the back of this picture appears the following: No. ¼ Sec. 8, T. 4 N., R. 3 W. Looking NW. Showing timber.

[Endorsed] No. 20. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-20. Received March 28, 1914. F. D. Monckton, Clerk.

21. On the back of this picture appears the following: Taken from W½ of NW¼ Sec. 9, T. 4 N., R. 3 W. Lewis claim.

[Endorsed] No. 21. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-21. Received March 28, 1914. F. D. Monckton, Clerk.

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22. On the back of this picture appears the following: NE¼ Sec. 22, T. 4 N., R. 3 W. Hd. Jacob T. Schlicht.

[Endorsed] No. 22. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-22. Received March 28, 1914. F. D. Monckton, Clerk.

23. On the back of this picture appears the following. Cabin of F. W. Floater, NE¼ Sec. 19, T. 4 N., R. 3 W. Suit filed—1908.

[Endorsed] No. 23. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-23. Received March 28, 1914. F. D. Monckton, Clerk.

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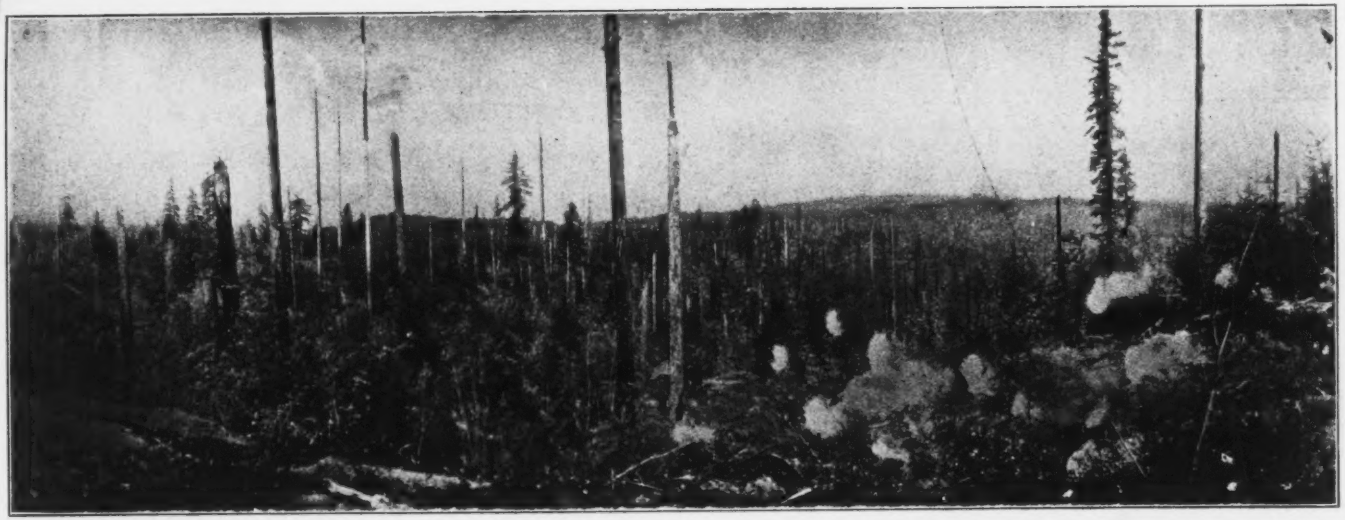

24. On the back of this picture appears the following: Taken from south line Sec. 24, T. 4 N., R. 3 W. Looking N & E. Lands have been logged off.

[Endorsed] No. 24. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-24. Received March 28, 1914. F. D. Monckton, Clerk.

25. On the back of this picture appears the following: Taken from SW¼ Sec. 14-4 N-3 W—Looking N and NE. Logged off.

[Endorsed] No. 25. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-25. Received March 28, 1914. F. D Monckton, Clerk.

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26. On the back of this picture appears the following: $\frac{20 \mid 21}{29 \mid 28}$ Looking North bet. Secs. 20 and 21-7 S. 7 W.

[Endorsed] No. 26. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-26. Received March 28, 1914. F. D. Monckton, Clerk.

27. On the back of this picture appears the following: View taken from near center of Section 2, T. 10 S., R. 3 E., looking NE. Taken from S. W. Corner of NE¼ looking N & E.

[Endorsed] No. 27. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-27. Received March 28, 1914. F. D. Monckton, Clerk.

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28. On the back of this picture appears the following. Timber picture of Barclay's claim. NE¼ Sec. 30, 10 S., R. 1 E.

[Endorsed] No. 28. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-28. Received March 28, 1914. F. D. Monckton, Clerk.

29. On the back of this picture appears the following: NE¼ Sec. 30, T. 10 S., R. 1 E. Showing abandoned improvements on the W. L. Barclay claim.

[Endorsed] No. 29. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-29. Received March 28, 1914. F. D. Monckton, Clerk.

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30. On the back of this picture appears the following: Timber picture taken near center of S½ of S½ Sec 4, T. 12 S., R. 1 E. Looking SW.

[Endorsed] No. 30. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-30. Received March 28, 1914. F. D. Monckton, Clerk.

31. SE¼ Sec. 12-11 S., 1 E.

[Endorsed] No. 31. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-31. Received March 28, 1914. F. D. Monckton, Clerk.

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32. On the back of this picture appears the following: NE¼ Sec. 28, T. 10 S., R. 1 E. Showing buildings and field abandoned.

[Endorsed] No. 32. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-32. Received March 28, 1914. F. D. Monckton, Clerk.

33. On the back of this picture appears the following: Looking SE from the corner of 10-11-14 and 15, T. 14 S., R. 3 E.

[Endorsed] No. 33. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-33. Received March 28, 1914. F. D. Monckton, Clerk.

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34. On the back of this picture appears the following: NE¼ Sec. 18, 10 S., R. 4 E. Showing remains of cabin and heavily timbered character of land.

[Indorsed] No. 34. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-34. Received March 28, 1914. F. D. Monckton, Clerk.

35. On the back of this picture appears the following: S½ NE¼ and N½ SE¼ Sec. 6, T. 10 S., R. 4 E. Showing lands logged off. Looking North and West.

[Endorsed] No. 35. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-35. Received March 28, 1914. F. D. Monckton, Clerk.

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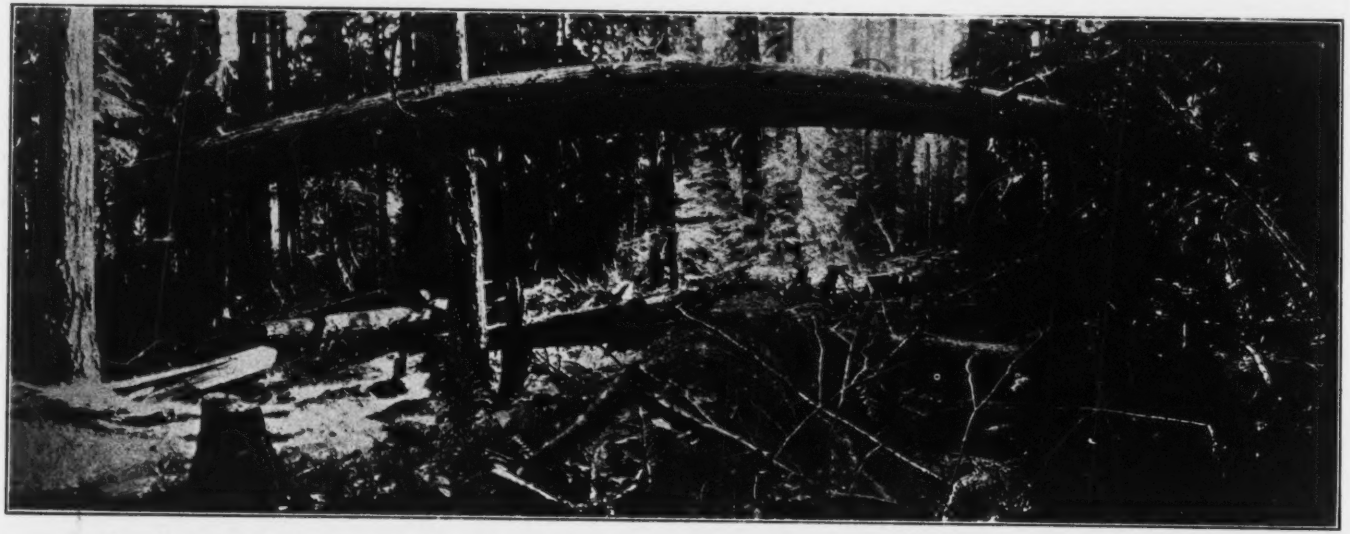
36. On the back of this picture appears the following: 2 tallies north of corner 25, 26, 35 and 36. Looking northeast, showing right of way of the Chapman logging road, partly cleared.

[Endorsed] No. 36. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-36. Received March 28, 1914. F. D. Monckton, Clerk.



37. On the back of this picture appears the following: Taken from the east line of Sec. 26, T. 4 N., R. 3 W., looking east and south. 2 tallies north of cor. 25, 26, 35, 36.

[Endorsed] No. 37. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-37. Received March 28, 1914. F. D. Monckton, Clerk.

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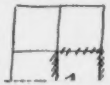
38. On the back of this picture appears the following: "A" SE¼ Sec. 34-3 S., 2 E. Homestead of Otto Herrling. Filed Aprl 4, 1905. Pat. Mch. 17/08. Photo taken Apr. 27th, 1912, by C. W. Kempton, Field Examiner. Report of J. Akinser, Field Examiner 2/28/1912. "No land in cultivation—not occupied—2 log houses 12 x 14—barn—value $10. About 12 acres slashed—a great deal of fine timber on  this claim—Valuable for timber only."

39. On the back of this picture appears the following: SE¼ Sec. 34, 8 S. 2 E. See picture "A" (No. 38) for details. Hd. of Otto Herrling.

[Endorsed] No. 39. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-39. Received March 28, 1914. F. D. Monckton, Clerk.

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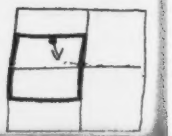
40. On the back of this picture appears the following: See Picture "A" (No. 38). SE¼ Sec. 34-8 S. 2 E.

[Endorsed] No. 40. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-40. Received March 28, 1914. F. D. Monckton, Clerk.

41. On the back of this picture appears the following: Enlarged view of S½ NW¼, N½ SW¼ Sec 2. Tp. 8 S., 8 W. Looking S. E. Homestead of Frank P. Farrington. Filed 3/28/00. Patent 4/6/03. Commuted entry. Taken April 9, 1912, by C. W. Kempton, Field Examiner. Synopsis of report of C. W. Kempton, Field Examiner O&C RR. Co. Feb. 29, 1912. "Land not occupied—not cultivated or cleared. No improvements except old house destroyed by a tree having fallen on it. Timber will run from 8 to 10 million bd. ft. on this claim." (Stuart)



[Endorsed] No. 41. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-41. Received March 28, 1914. F. D. Monckton, Clerk.

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42. On the back of this picture appears the following: SW¼ Sec. 2, T. 12 S., R. 1 E. Showing where cabin and other improvements were located. Cabin burned down.

43. On the back of this picture appears the following: Sec. 8, 8 S. 7 W. NE¼ NW¼ of Sec. 8. Looking towards H. W. Jones homestead. Filed 1/24/10, unpatented. View looking SE. Showing character of land in Sec. 8. Taken 4/10/12, by C. W. Kempton, Field Examiner O&C RR. Co.

[Endorsed] No. 43. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-43. Received March 28, 1914. F. D. Monckton, Clerk.

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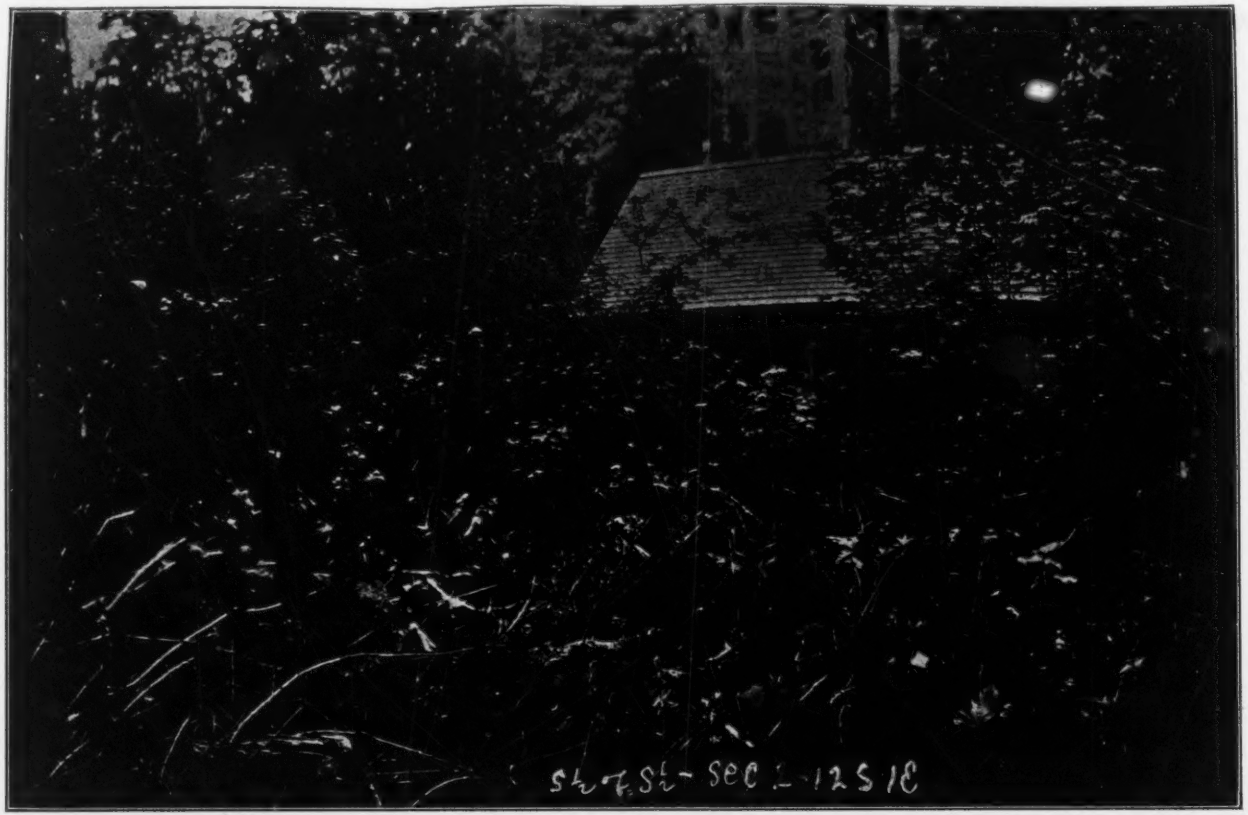
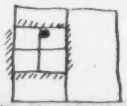


44. On the back of this picture appears the following: S½ of S½ Sec. 4, T. 12 S., R. 1 E. Looking NE. Show-

45. On the back of this picture appears the following: S½ NW. N½ S W. Sec. 2, 8 S., 8 W. Hd. of Frank P. Farrington. Filed 3/28/00. Pat. 4/6/03. Looking SE. Taken Apr. 9/1912. C. W. Kempton. Report by C. W. Kempton, Field Examiner, 2/29/12, O&C RR. Co. Not occupied—no improvements except old house destroyed by tree falling on it. No cultivation—no clearing. Timber will scale 2 to 3 million ft. to the 40 acres or 8 to 10 million to the ¼ sec. or entry.



[Endorsed] No. 45. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-45. Received March 28, 1914. F. D.

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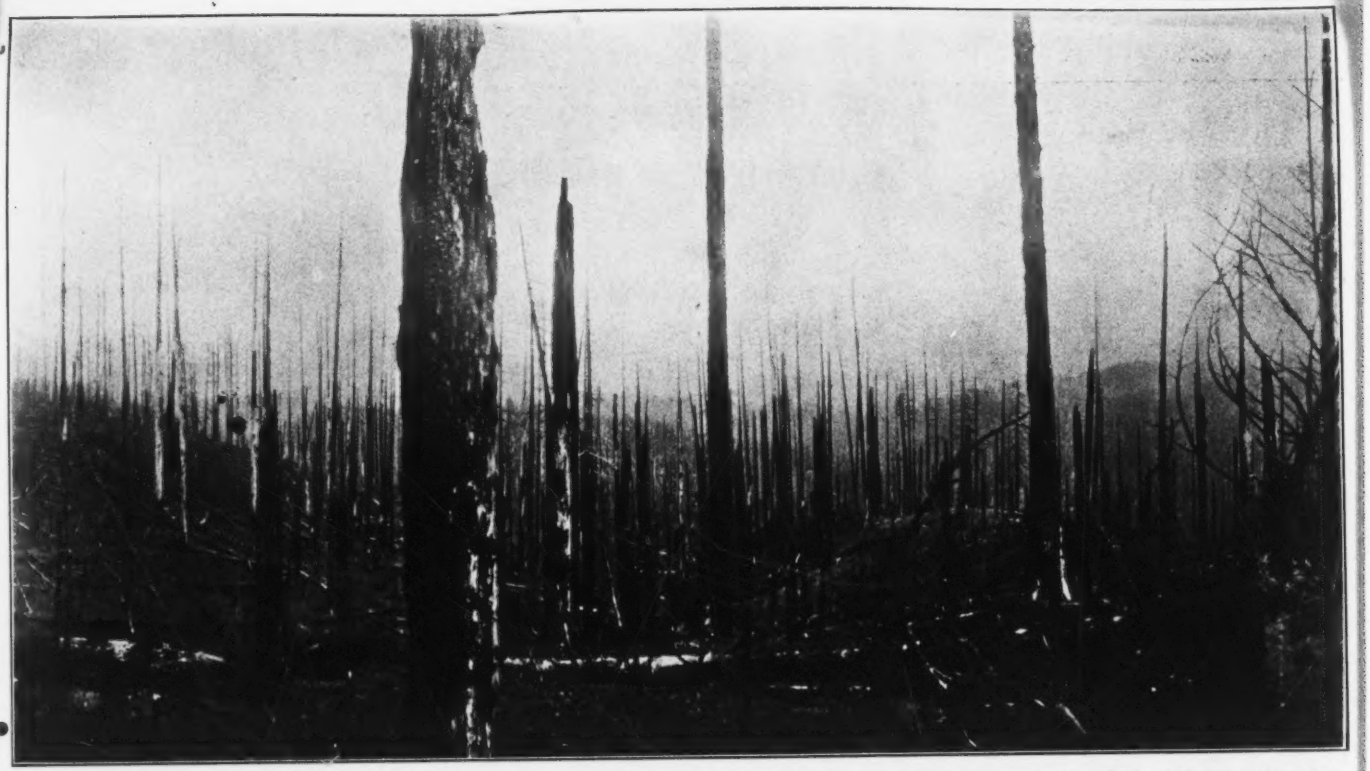

46. On the back of this picture appears the following: View of Sec. 8, 8 S. 7 W. Taken from NE¼ of NW¼ looking towards H. W. Jones homestead. View taken Apr. 10, 1912, by C. W. Kempton, field examiner O&C RR. Co. Looking SE. Showing "burn" and character of land in Sec. 8.

47. SE¼ Sec. 30, 10 S., 1 E.

[Endorsed] No. 47. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-47. Received March 28, 1914. F. D. Monckton, Clerk.

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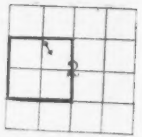
49. On the back of this picture appears the following: S½ of NW¼, N½ of SW¼, 8 S., 8 W. Homestead of Frank P. Farrington. Filed Mch 28, 1900. Patented April 6, 1903. Sold in Mch. 1904 for $1600. Photo taken Apr. 9, 1912, by C. W. Kempton. View looking SE. Report of C. W. Kempton, field examiner, O&C RR. Co. 2/29/12. "Not occupied—no improvements except old house destroyed by tree falling on it—no cultivation—no clearing. Timber will run 8 to 10 million feet on this claim."



[Endorsed] No. 49. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-49. Received March 28, 1914.

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Received March 28, 1914.

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51. On the back of this picture appears the following: W½ of NE. and E½ of NW Sec. 24, T. 10 S., R. 1. E. Looking S. W. W. H. Small. Showing improvements abandoned Sec. 24-10S-1E. W. H. Small Sec. 24-10S-1 E. E½ of NW. & W½ of NE.

[Endorsed] No. 51. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-51. Received March 28, 1914. F. D. Monckton, Clerk.

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52. SE¼ Sec. 12, 10 S., 3 E.

[Endorsed] No. 52. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-52. Received March 28, 1914. F. D. Monckton, Clerk.

53. On the back of this picture appears the following: SE¼ Sec. 20, T 11 S., R. 2 E. Showing improvements of J. A. Weaver, entryman. Photo by C. W. Kempton July, 1912.

[Endorsed] No. 53. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-53. Received March 28, 1914. F. D.

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54. On the back of this picture appears the following: SW¼ Sec. 18, T. 10 S., R. 4 E. Looking Southwest and showing remains of improvements.

[Endorsed] No. 54. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-54. Received March 28, 1914. F. D. Monckton, Clerk.

55. On the back of this picture appears the following: SW¼ Sec. 28, 11 S., R. 2 E., W. M. Showing homestead improvements of Jas. H. Scott. Photograph by C. W. Kempton, July, 1912.

Filed, Clerk. U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-H

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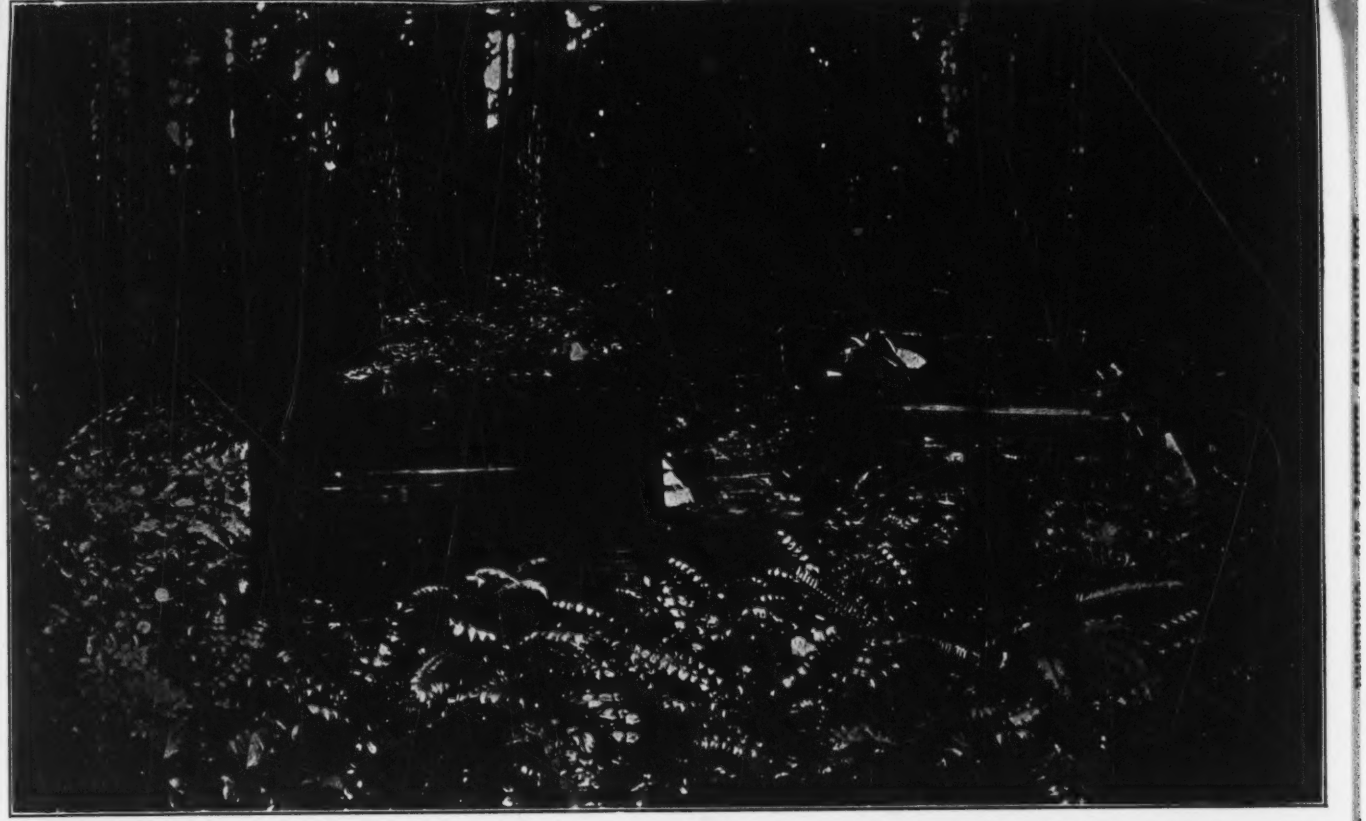

56. On the back of this picture appears the following: SE-Sec. 28, T. 11 S. R. 2 E., W. M. Showing homestead improvements of Jas. C. Boyle. Photo by C. W. Kempton, July, 1913.

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57. On the back of this picture appears the following: SW-26-11 S. R. 2 E., W. M. Showing improvements of James Darcy. Photo by C. W. Kempton, July, 1912.

No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-57. Received March 28, 1914. F. D.

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58. On the back of this picture appears the following: S½ of SW ... Sec 29 ... S. 1 E. ...

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59. On the back of this picture appears the following: NW¼ Sec. 12, 11 S.-1 E. Taken at ¼ corner looking N & East. Cabin just over the line on SW¼.

[Endorsed] No. 59. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-59. Received March 28, 1914. F. D. Monckton, Clerk.

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60. Timber NW¼ Sec. 20, 10 S., 1 E.

[Endorsed] No. 60. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-60. Received March 28, 1914. F. D. Monckton, Clerk.

61. Northwest ¼ Sec. 20-10 S-1 E.

[Endorsed] No. 61. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-61. Received March 28, 1914. F. D. Monckton, Clerk.

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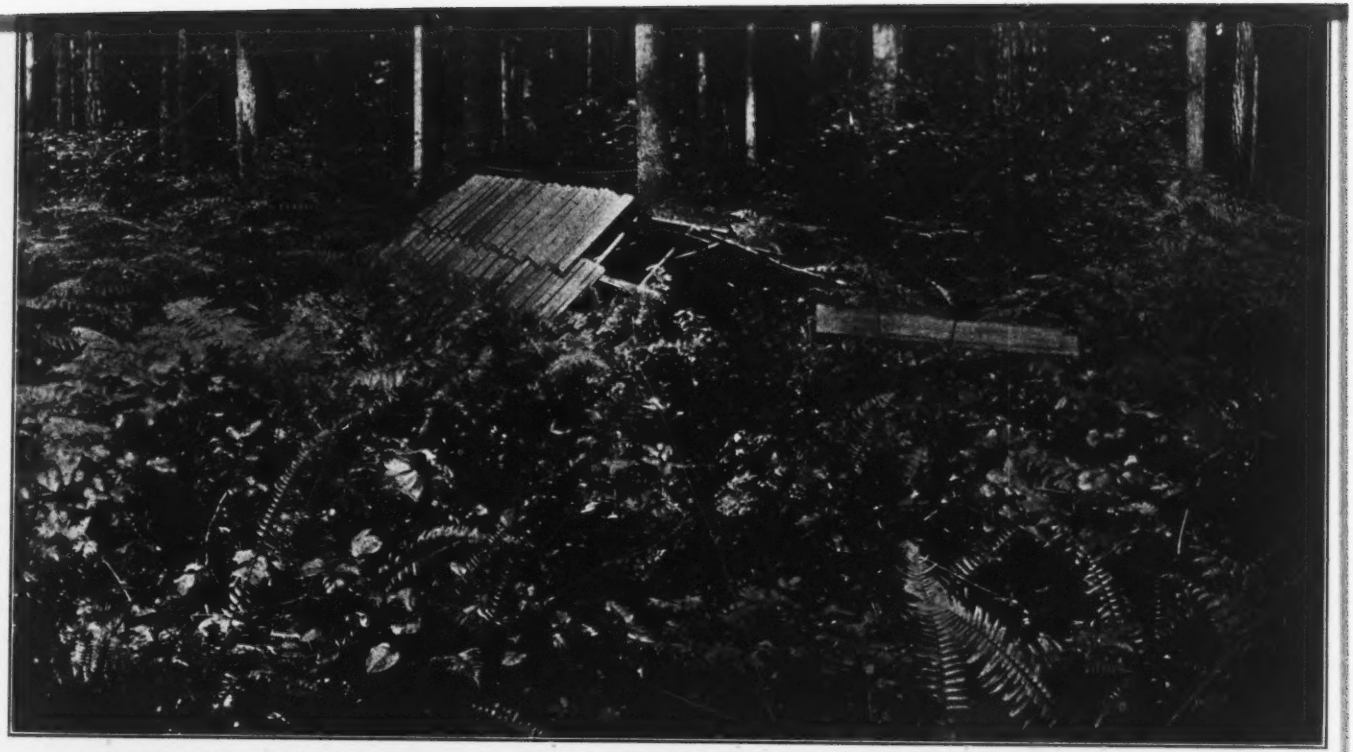
62. On the back of this picture appears the following: NE¼ Sec. 32-11 S. R. 2 E. Showing improvements of Fred W. Schultz, entryman. July, 1912. Photograph by C. W. Kempton.



63. On the back of this picture appears the following: SW¼ of Sec. 20, T. 11 S. R. 2 E., W. M. Showing homesteader's improvements. C. C. Parker, entryman. Taken July, 1912.

[Endorsed] No. 63. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-63. Received March 28, 1914. F. D. Monckton, Clerk.

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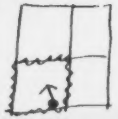
64. On the back of this picture appears the following: NE-34-11 S., R. 2 E., W. M. Showing improvements of

65. On the back of this picture appears the following: SW¼ Sec. 34, 8 S., 2 E. Leon D. Hedges homestead. View looking north. Taken by C. W. Kempton, Apr. 27, 1912. J. Akinser's report of Feb. 28, 1912: "Not occupied—vacant last 7 years. Log house 14 x 16, value $5.00. None in cultivation—1 acre partly slashed. Timber will run about 100 good saw trees of average size to the acre—valuable only for timber.



[Endorsed] No. 65. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-65. Received March 28, 1914. F. D. Monckton, Clerk.

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66. On the back of this picture appears the following: Character of improvements made on homestead claim of Alfred Haldeman, S½ SE¼, and S½ SW¼ Sec. 18, Tp. 7 S., R. 6 W., W. M. Filed Nov. 20, 1900. Patented May 13, 1904. Sold in April 19, 1904—before patent issued for $895.21. Taken Apr. 2, 1912. C. W. Kempton.

Report by C. W. Kempton, Field Examiner, 4/2/12, O&C RR. Co.: House 12 x 12, barn 12 x 14. Not occupied—no clearing—no cultivation. All good timber—most value for timber.

[Endorsed] No. 66. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-66. Received March 28, 1914. F. D. Monckton, Clerk.

67. On the back of this picture appears the following: SE-10, T. 10 S., R. 3 E., W. M. Showing homestead improvements. Taken by C. W. Kempton, May 30, 1912.

[Endorsed] No. 67. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-67. Received March 28, 1913. F. D.

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68. On the back of this picture appears the following: NW¼ Sec. 10, T. 10 S., R. 3 E. Showing improvements fallen down and overgrown with fern and brush. W. J. Wiggs claim. Cabin Sec. 10-10S-3 E. W. J. Wiggs claim. NW¼

[Endorsed] No. 68. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-68. Received March 28, 1914. F. D. Monckton, Clerk.

69. On the back of this picture appears the following: NE¼ Sec. 10, 8 S., 7 W. Louis Pfandhoefer Hd. Filed 5/14/00. Patent. 4/6/03.

Taken Apr. 10, 1912. Sold 5/15/03 for $1800. Looking S. E. Report of C. W. Kempton, Field Examiner O&C RR. Co. 2/6/12: Not occupied—no improvements — land rough — cut by several ravines—very steep and rough. Timber on place suitable for piling. Entry made for timber. (Note. On Apr. 10, 1912, Kempton, after diligent search, found this old broken down house on NW of NE—no other impvts. found). Stuart.

[Endorsed] No. 69. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-69. Received March 28, 1914. F. D. Monckton, Clerk.

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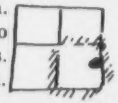
70. On the back of this picture appears the following: SE¼ Sec. 10, 8 S., 7 W. Patented 2/23/92. Taken April 10, 1912, by C. W. Kempton, field examiner O&C RR. Kempton, 2/6/12: "Not occupied—no improvements except old log house, badly

Homestead of Ole Nielsen. Filed 3/4/90. Co. Looking NW. Report of C. W. decayed and broken down. Pole fence

71. On the back of this picture appears the following: SE¼ Sec. 10, 8 S 7 W. Hd. of Ole Neilsen. Filed 3/4/90. Pat. 2/23/92. Sold 10/11/02 $800. Taken Apr. 10, 1912. C. W. Kempton. C. W. Kempton, Field Examiner, 2/6/12: Not occupied—no broken down. Pole fence around a fern opening of about 2 acres. will run about 30 thousand to the acre. (5 million to the claim.



Looking N. 2 acres natural clearing. Report of improvements except old log house, badly decayed and Land very rough—no clearing—no cultivation. Timber Entry made for timber only.

[Endorsed] No. 71. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-71. Received March 28, 1914. F. D. Monckton, Clerk.

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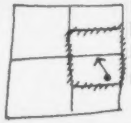
72. On the back of this picture appears the following: Enlarged view of S½ NE¼, N½ SE¼, Sec. 2, T. 8 S., R. 8 W. Homestead of John F. Johnson. Filed Feb. 15, 1900—Patented June 23, 1902. Commuted. Sold Dec. 6, 1905, for $2000. Taken 4/9/12 by C. W. Kempton, Field Examiner O & C RR. Co. Looking N. W. Report of C. W. Kempton, examination made 2/29/12. "Not occupied—no improvements except old log house. Land on high ridge—general slope north. No cultivation or clearing. Timber on claim will run from 70000 to 80000 ft. per acre. (2,800,000 Bd. ft. to the 40 acres, or 10 to 11 millions to the claim). Timber clean and of nice size. Entry made for timber. (Stuart)



(Endorsed) No. 72. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-72. Received March 28, 1914. F. D.

73. No. 2949 — Wilson homestead. SE¼ Sec. 8, from a point 5 chains west and 3 chains south of the quarter post between sections 8 and 9, looking west. Shows where house and outbuildings used to stand, with heavy timber in the background. (See letter A. W. Rees, June 28, 1912. File 464).

[Endorsed] No. 73. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-73. Received March 28, 1914. F. D. Monckton, Clerk.

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74. No. 2947—Anderson homestead; NE¼ Sec. 8, T. 4 N., R. 3 W.; from a point 5 chains west and 2 chains north of the ¼ post between sections 8 and 9. View looking NW. Shows stable and something of the character of the land, but does not show the house, which stands just to the right of the stable. (See letter A. W. Rees, June 28, 1912. File 464). Anderson Claim NE¼ Sec. 8, T 4 N R. 3 W.

[Endorsed] No. 74. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-74. Received March 28, 1914. F. D. Monckton, Clerk.

75. On the back of this picture appears the following: "A" S½ NE, N½ SE, 8 S., 8 W. Homestead of John F. Johnson. Filed Feb. 15, 1900—Patent. June 23, 1902. Sold 12/6/05 for $2000. View taken Apr. 9, 1912, by C. W. Kempton, field examiner, O&C RR. Co. Looking NW. Report of C. W. Kempton, field examination 2/29/12. "Not occupied—no improvements except old log house—land on high ridge—slope north—no cultivation—no clearing. Timber on claim will run from 70 to 80 M. Bd. Ft. per acre, or 11 million feet to claim. Timber clear and of nice size—entry made for timber only."

[Endorsed] No. 75. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-75. Received March 28, 1914. F. D. Monckton, Clerk.

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76. On the back of this picture appears the following: S½ NE, N½ SE, Sec. 2, 8 S., 8. W. See picture "A" (No. 75) for details. Hd. of John F. Johnson.

[Endorsed] No. 76. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-76. Received March 28, 1914. F. D. Monckton, Clerk.

77. On the back of this picture appears the following: S½ NE, N½ SE, Sec. 2, 8 S., 8 W.

Homestead of John F. Johnson. See report on picture "A" (No. 75).

[Endorsed] No. 77. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-77. Received March 28, 1914. F. D. Monckton, Clerk.

78. On the back of this picture appears the following: S½ NE, N½ SE, Sec. 2, 8 S., 8 W. John F. Johnson. Filed 2/15/00. Pat. 6/23/02. Sold in 1905 for $2000. Taken Apr. 9, 1912. C. W. Kempton. Looking N. For report see picture "A" (No. 75).

[Endorsed] No. 78. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-78. Received March 28, 1914. F. D. Monckton, Clerk.

this picture appears the following: "B". SE¼ Sec. 1, 8 S., 8 W.

Railroad land. Claimed by S. R. Skeels (Lives in Falls City). Not occupied — partly furnished. View taken Apr. 9, 1912, by C. W. Kempton, field examiner O&C RR. Co. Taken looking NE. Showing house, barn and timber. The notice posted on tree states that he has filed an application to purchase this tract from the O&C RR. Co. @ $2.50 per acre under the Revised Statutes U. S.

[Endorsed] No. 79. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-79. Received March 28, 1914. F. D. Monckton, Clerk.

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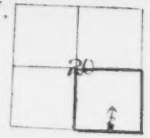
80. On the back of this picture appears the following: View of SE¼ Sec. 1, 8 S. 8 W. See explanation picture "B" (No. 79).

[Endorsed] No. 80. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-80. Received March 28, 1914. F. D. Monckton, Clerk.

81. On the back of this picture appears the following: "C" SE¼ Sec. 20, 7 S., 7 W. Homestead of Robt. B. Hansen. Filed July 3, 1900. Patent. Jan 23, 1902. View taken Mch. 29, 1912, by C. W. Kempton, Field Examiner O&C RR Co. Looking North. "Not occupied—improvements burnt down. No cultivation—no clearing—entry made for timber."



[Endorsed] No. 81. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-81. Received March 28, 1914. F. D. Monckton, Clerk.

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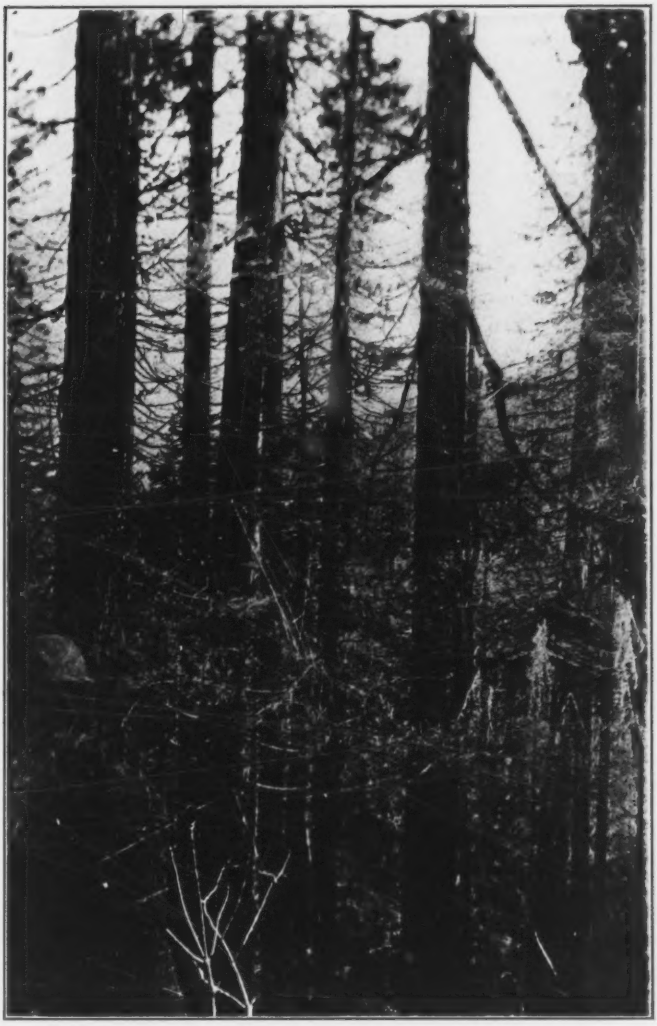

82. On the back of this picture appears the following View of SE¼ Sec. 20, 7 S., 7 W. Robt. B. Hansen Hd. See picture "C" (No. 81).

[Endorsed] No. 82. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-82. Received March 28, 1914. F. D. Monckton, Clerk.

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83. S½ of NE¼, N½ SE¼, Sec. 24-10 S., 2 E.

[Endorsed] No. 83. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-83. Received March 28, 1914. F. D. Monckton, Clerk.

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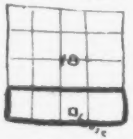
84. On the back of this picture appears the following: S½ SE¼, S½ SW¼. Sec. 18, 7 S. 6 W.



Homestead of Alfred Haldeman. Filed 11/20/00. Patent 5/13/04. View taken Apr. 2, 1912, by C. W. Kempton, field examiner O&C RR. Co. Report of C. W. Kempton: Not occupied, no clearing, no cultivation. All good timber—most valuable for timber.

[Endorsed] No. 84. Defts. Ex. 273. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 273-84. Received March 28, 1914. F. D. Monckton, Clerk.

DEFENDANTS' EXHIBIT 274

CONSISTS
OF SIX PHOTOGRAPHS
NUMBERED FOR CONVENIENCE
AS FOLLOWS:

1. On the back of this picture appears the following: Looking East from Northwest corner Sec 7 T 4 S R 5 E—up North Fork of Clackamas River.

[Endorsed] No. 1. Defts. Ex. 274. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-1. Received March 28, 1914. F. D. Monckton, Clerk.

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2. On the back of this picture appears the following: Photograph taken by Kempton 5/7/12 Looking West from Southeast corner Sec. 18 T 4 S R 5 E. W M

[Endorsed] No. 2. Defts. Ex. 274. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-2. Received March 28, 1914. F. D. Monckton, Clerk.

3. On the back of this picture appears the following: Taken from Snow Peak, SE of SE, Sec. 5, T. 11 S., R. 2 E. Looking Southwest.

[Endorsed] No. 3. Defts. Ex. 274. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-3. Received March 28, 1914. F. D. Monckton, Clerk.

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4. On the back of this picture appears the following: Taken from Snow Peak in SE of SE, Sec. 5, T. 11 S., R. 2 E. Looking East.

[Endorsed] No. 4. Defts. Ex. 274. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-4. Received March 28, 1914. F. D. Monckton, Clerk.

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5. On the back of this picture appears the following: Taken from Snow Peak, SE. Sec. 5-11 S., R. 2 E.

[Endorsed] No. 5. Defts. Ex. 274. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-5. Received March 28, 1914. F. D. Monckton, Clerk.

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6. On the back of this picture appears the following: Looking Northwest from Southeast corner Sec. 18, T. 4 S., R. 5 E., W. M., Strait cabin can be seen in SE of NW¼. Taken by Kempton 5/7/12.

[Endorsed] United States v. Oregon & California R. R. Co., Defendants' Ex. 274. Filed May 10, 1913, A. M. Cannon, Clerk U. S. District Court. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 274-6. Received March 28, 1914. F. D. Monckton, Clerk.

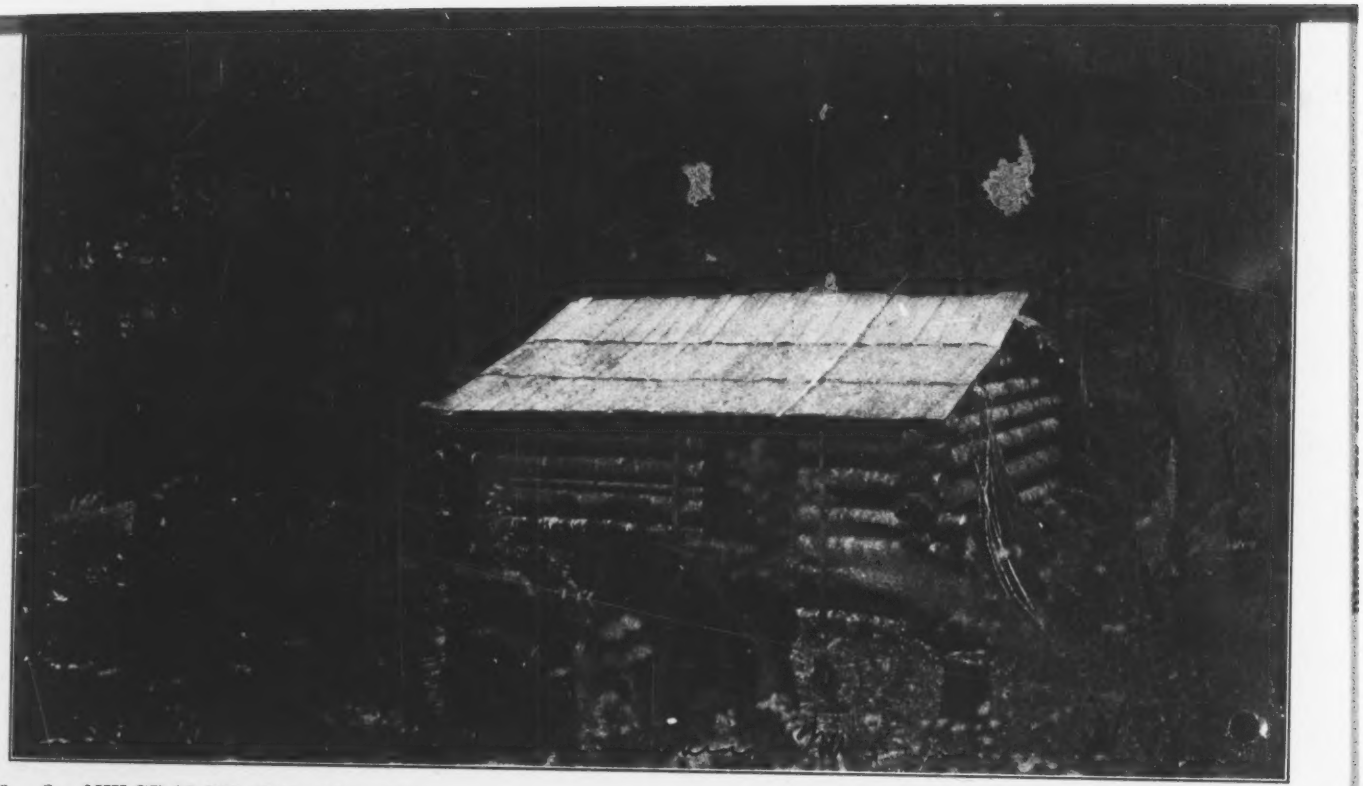
DEFENDANTS' EXHIBIT 313

CONSISTS
OF 4 PHOTOGRAPHS
TAKEN BY BEN IRWIN, IN DOUGLAS COUNTY, SHOWING
ABANDONED CABINS (NUMBERED FOR CONVENIENCE)
AS FOLLOWS:

1. On SE'SE-27-22S-6W-looking SW.

2. On SE'SE-27-22S-6W-looking E.

[Endorsed] No. 2. Defts. Ex. 313. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 313-2. Received March 28, 1914. F. D. Monckton, Clerk.



3. On NW-SE-27-22S-6W-looking NW.

[Endorsed] No. 3. Defts. Ex. 313. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 313-3. Received March 28, 1914. F. D. Monckton, Clerk.

DEFENDANTS' EXHIBIT 367

CONSISTS
OF A PHOTOGRAPH
AS FOLLOWS:

View of Oregon City-Willamette Falls. Railroad graded under Elliott in 1868.

[Endorsed] United States v. Oregon & California R. R. Co. et al. Defendants' Ex. 367. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 367. Received March 28, 1914. F. D. Monckton, Clerk.

DEFENDANTS' EXHIBIT 371

CONSISTS
OF A PHOTOGRAPH
AS FOLLOWS:

Retaining walls of dry rubble masonry at Oregon City. Put in by Elliott in 1868.

[Endorsed] United States v. Oregon & California R. R. Co. et al. Defendants' Ex. 371. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Defts. Ex. 371. Received March 28, 1914. F. D. Monckton, Clerk.

DEFENDANTS EXHIBIT 371

GOVERNMENT'S EXHIBIT 124

CONSISTS
OF A PHOTOGRAPH
AS FOLLOWS:

E. J. Mahan's place, being the west half of the northwest quarter and the northwest quarter of the southwest quarter of section 17, township 39, range 1 east.

[Endorsed] United States v. Oregon & California R. R. Co. et al. Government's Ex. 124. Case No. 2400—U. S. Circuit Court of Appeals, Ninth Circuit. Govts. Ex. 124. Received March 28, 1914. F. D. Monckton, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
NINTH CIRCUIT

OREGON & CALIFORNIA RAILROAD COMPANY, a corporation, et al.,
Defendants and Appellants.

JOHN L. SNYDER, et al.,
Cross-Complainants and Appellants.

WILLIAM F. SLAUGHTER, et al.,
Interveners and Appellants.

vs.

THE UNITED STATES OF AMERICA,
Appellee.

No. 2400

ORDER AUTHORIZING PRINTING BY CLERK OF PHOTOGRAPHIC EXHIBITS.

Based upon stipulation of parties, set out in paragraph VIII, pages 8659-8660, Volume XVI, Transcript of Record, and pursuant to due notice to attorneys for the United States, and on application of Wm. F. Herrin, P. F. Dunne and Wm. D. Fenton, Solicitors for the Defendants and Appellants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee:

IT IS HEREBY ORDERED that photographic exhibits known as "Defendants' Exhibits 267 to 270, both inclusive, 273, 274, 313, 367, 371", and "Government's Exhibit 124", now certified up from

the Court below and filed in this Court as a part of the transcript of record in said cause, may be printed by and under the direction of Frank D. Monckton, Clerk of this Court; and that 210 copies thereof may be so printed, and that when so printed there shall be filed in this Court 51 copies thereof as a part of the transcript of record for the use of this Court and of the Supreme Court of the United States, in case of an appeal to that Court from the decision to be rendered in this Court, and the remainder of said volume shall be delivered to the solicitors of record of the appellants Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage.

IT IS FURTHER ORDERED that said exhibits may be withdrawn by the appellants from the files for said purpose, and delivered to the solicitors for the aforesaid appellants, they to assume all risk of loss and mutilation and damages resulting from delays.

Dated: April 7th 1914.

WM. W. MORROW,
Circuit Judge.

Filed Apr. 7th 1914
F. D. Monckton,
Clerk.

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No. 1[redacted]492

United States

Circuit Court of Appeals

For the Ninth Circuit.

OREGON AND CALIFORNIA RAILROAD COMPANY, a Corporation, et al.,

Defendants and Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon, from the Decree Entered December 9, 1915.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, Certifying Certain Questions or Propositions of Law to the Supreme Court of the United States, Under Section 239 of the Judicial Code (36 Stat. 1157).

MAY 2 6 1916

No. 2754

United States
Circuit Court of Appeals
For the Ninth Circuit.

OREGON AND CALIFORNIA RAILROAD COMPANY, a Corporation, et al.,

Defendants and Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon, from the Decree Entered December 9, 1915.

Names and Addresses of Solicitors upon This Appeal.

For Appellants, Oregon and California Railroad Company, et al.:

WM. F. HERRIN, San Francisco, Cal.

P. F. DUNNE, San Francisco, Cal.

WM. D. FENTON, Portland, Oregon.

For Appellant, Union Trust Company:

DOLPH, MALLORY, SIMON & GEARIN, Portland, Oregon.

MILLER, KING, LANE & TRAFFORD and JOHN C. SPOONER, New York.

For Appellee:

THOMAS W. GREGORY, Attorney-General,

JOHN W. DAVIS, Solicitor-General.

CONSTANTINE J. SMYTH, Special Assistant to Attorney-General.

CLARENCE L. REAMES, United States District Attorney for Oregon.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit Certifying Certain Questions or Propositions of Law to the Supreme Court of the United States, Under Section 239 of the Judicial Code (36 Stat., 1157).

In this case, this Court heretofore, under Section 239 of the Judicial Code, certified to the Supreme Court of the United States certain questions or propositions of law concerning which it desired the instruction of that court for its proper decision; and thereupon the Supreme Court required that the whole record and cause be sent up to it for its consideration, and the same having been done, the Supreme Court decided the whole matter in controversy as appears from the decision of the court reported in 238 U. S. at pages 393–439.

On December 8th, 1915, the mandate of the Supreme Court was filed in the District Court, as follows:

"MANDATE OF UNITED STATES SUPREME COURT.

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the District of Oregon, Greeting:

(Seal, United States Supreme Court)

WHEREAS, lately in the District Court of the United States, for the District of Oregon, before you, or some of you, in a cause between The United States of America, complainant, and Oregon & Cali-

fornia Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, John L. Snyder et al., defendants; John L. Snyder, Julius F. Prahl, Albert E. Thompson et al., complainants, and Oregon & California Railroad Company, Union Trust Company, and S. T. Gage, defendants, in cross-complaint, and William F. Slaughter et al., interveners, in Equity, No. 3340, wherein the decree of the said District Court entered in said cause on the 1st day of July, A. D. 1913, is in the following words, viz.:

> (Here follows copy of said decree of said District Court, as the same is contained in Volume III, pages 1296–1550 of printed transcript of the record on the former appeals taken in this case from said decree of July 1, 1913, and which said transcript of the record is on file in the clerk's office of the Circuit Court of Appeals for the Ninth Circuit, the case being numbered therein 2400, and in the clerk's office of the Supreme Court of the United States, the case in the latter court being numbered 679, October Term, 1914.)

as by the inspection of the transcript of record of the United States Circuit Court of Appeals for the Ninth Circuit, which was brought into the Supreme Court of the United States by virtue of a writ of certiorari agreeably to the act of Congress in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hun-

dred and fourteen, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged, and decreed by this Court that the decree of the District Court of the United States for the District of Oregon in this cause be, and the same is hereby, reversed.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

June 21, 1915.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 7th day of August in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States."

Thereupon, and on December 8th, 1915, the following proceedings were had, and the same were embodied in a statement of the case, approved by the Judge of the District Court—such statement and the order approving the same, being as follows:

"STATEMENT OF THE CASE.

Be it remembered that on the 8th day of December, 1915, the above cause, No. 3340, in Equity, came on for hearing before the above-named court upon the form of the decree to be entered therein under and in pursuance of the mandate theretofore issued from the Supreme Court of the United States on the opinion and decree of said Supreme Court reversing the decree made and entered by the above-entitled court, in said cause, on the first day of July, 1913, and remanding the cause for further proceedings in accordance with said opinion. Mr. Constantine J. Smyth, special assistant to the Attorney-General, and Mr. Clarence L. Reames, United States District Attorney for the District of Oregon, represented the complainant. Mr. Peter F. Dunne and Mr. Wm. D. Fenton represented the defendants, Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee, and Mr. John M. Gearin, represented the defendant, Union Trust Company of New York, individually and as trustee, and the cross-complainants and interveners in said cause were represented by their respective counsel, Mr. A. W. Lafferty and Mr. L. C. Garrigus.

On motion of counsel for the complainant, the Court ordered that said mandate of the Supreme Court be filed and the same was thereupon filed with the clerk of this court.

The complainant, through its counsel, then submitted to the Court the following form of decree as

being in conformity with said opinion and mandate of the Supreme Court of the United States, viz.:

'*In the District Court of the United States, for the District of Oregon.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

OREGON AND CALIFORNIA RAILROAD COMPANY et al.,
Defendants,

JOHN L. SNYDER et al.,
Defendants and Cross-Complainants,
WILLIAM F. SLAUGHTER et al.,
Interveners.

DECREE.

In pursuance of the mandate of the Supreme Court of the United States filed in this court on the —— day of ———— in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause so far as it affects the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called "the defendants," be, and the same is hereby, set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the "cross-

complainants," and the interveners.

2. That the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.

3. That the defendants and their respective officers and agents be, and each is hereby, enjoined from making or agreeing to make, either directly or indirectly, any disposition whatsoever of said lands or of any part thereof, or of the timber thereon or any part thereof, or of any mineral or other deposits therein; from cutting, removing, or authorizing the cutting or removal of the timber thereon or any part thereof; and from removing or authorizing the re-

moval of mineral or other deposits therein; from disposing of, receiving or exerting any control over any money which arose, or may hereafter arise, from said lands, either through sales thereof or of timber thereon, or through condemnation proceedings or otherwise, and now on deposit, or which may hereafter be placed on deposit, with any bank, clerk of court, or other institution or person, to await the final decision of the Supreme Court of the United States in this case, until Congress shall have a reasonable opportunity to make provision by legislation for the disposition of said lands, timber, money, mineral or other deposits, in accordance with such policy as Congress may deem fitting, under the circumstances, and at the same time secure to the defendant all the value that the said granting acts conferred upon the grantees.

4. That if Congress does not make provision for the disposition as aforesaid of said lands, money, timber, mineral or other deposits, the defendants may apply to the Court within a reasonable time, but not less than six months from the entry of this decree, for a modification of so much of the injunction herein ordered as forbids any disposition of the said lands, timber, money, mineral or other deposits, or any part thereof, until Congress shall act, and the Court hereby reserves the right to modify this decree in that regard if, in its opinion, good cause shall then exist for doing so.

5. That this decree shall apply not only to all said grant lands unsold at the time this action was instituted, but also to all such grant lands sold prior to

the institution of the action which have since reverted or shall hereafter revert to the defendants or any one of them.

6. That the complainant shall have the right to apply to the Court at any time hereafter for an accounting as to all moneys received by the defendant from or on account of the lands covered by said granting acts, and the Court retains jurisdiction over the action for the purpose of granting such application if good cause therefor appears.

7. That this decree shall be without prejudice to any other suits, rights or remedies which the government may have by law or under the Joint Resolution of Congress passed April 30, 1908, or under the Act of Congress passed August 20, 1912.

8. That the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, Union Trust Company, the cross-complainants and interveners, and each of them, its lawful costs and disbursements herein, taxed at $——, and that execution issue therefor.

Done in open court this —— day of December, 1915.

BY THE COURT,

_____,

Judge.'

And the counsel for the complainants asked the Court to adopt the aforesaid form of decree submitted by them as the form of decree to be entered upon said mandate.

The defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and the defendant, Union Trust Company of New York, individually and as trustee, then submitted to the Court the following form of decree as being in conformity with said opinion and mandate of the Supreme Court of the United States, viz.:

'[Title of Court and Cause as contained in foregoing Form of Decree submitted by the Complainant.]

In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the —— day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed, as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the "defendants," be, and the same is hereby set aside, and held for naught, but adhered to in all respects as to the defendant, and cross-complainants, hereinafter called the "cross-complainants," and the "interveners."

2. That the said defendants and their respective officers and agents be and each is hereby enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25,

1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby enjoined from any disposition of the said lands, or any part thereof, or of the timber thereon, and from cutting, or authorizing the cutting, or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands, in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants, all the value the granting acts conferred upon the grantees; but of Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act.

Done in open court this —— day of ————, 1915,

BY THE COURT,

————————,

Judge.'

And the counsel for said defendants asked the Court to sign and to order the entry of a decree in the form submitted by them as being the proper form of decree to be entered upon said mandate.

After arguments had by the respective counsel, the Court took under advisement the matter of the form of the decree to be entered upon said mandate; and on the 9th day of December, 1915, the Honorable Charles E. Wolverton, Judge of this Court, presiding on the aforesaid hearing, signed the following form of decree, viz.:

'[Title of Court and Cause as contained in foregoing Form of Decree submitted by the Complainant.]

In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the 8th day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed, as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called "the defendants," be, and the same is hereby set aside, and held for naught, but adhered to in all respects as to the defendant, and cross-complainants, hereinafter called the "cross-complainants," and the interveners.

2. That the defendants and their respective officers and agents be, and each is hereby, enjoined

from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre: and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.

3. That the defendants and their respective officers and agents be, and each is hereby, enjoined from making or agreeing to make, either directly or indirectly, any disposition whatsoever of said lands or of any part thereof, or of the timber thereon or any part thereof, or of any mineral or other deposits therein; from cutting, removing, or authorizing the cutting or removal of the timber thereon or any part thereof; from removing or authorizing the removal of mineral or other deposits therein; and from disposing of, receiving or exerting any control over any money which arose, or may hereafter arise, from

said lands, either through sales thereof or of timber thereon, or through condemnation proceedings or otherwise, and now on deposit, or which may hereafter be placed on deposit, with any bank, clerk of court, or other institution or person, to await the final decision of the Supreme Court of the United States in this case, until Congress shall have a reasonable opportunity to make provision by legislation for the disposition of said lands, timber, money, mineral or other deposits, in accordance with such policy as Congress may deem fitting, under the circumstances, and at the same time secure to the defendant all the value that the said granting acts conferred upon the grantees.

4. That if Congress does not make provision for the disposition as aforesaid of said lands, money, timber, mineral or other deposits, the defendants may apply to the Court within a reasonable time, but not less than six months from the entry of this decree, for a modification of so much of the injunction herein ordered as forbids any disposition of the said lands, timber, money, mineral or other deposits, or any part thereof, until Congress shall act, and the court hereby reserves the right to modify this decree in that regard if, in its opinion, good cause shall then exist for doing so.

5. That this decree shall apply not only to all said grant lands unsold at the time this action was instituted, but also to all such grant lands sold prior to the institution of the action which have since reverted or shall hereafter revert to the defendants or any one of them.

6. That this decree shall be without prejudice to any other suits, rights or remedies which the Government may have by law or under the Joint Resolution of Congress passed April 30, 1908, or under the Act of Congress passed August 30, 1912, against the defendants or any of them.

7. That the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, its lawful costs and disbursements herein, taxed at $6,249.02, and that execution issue therefor.

Done in open court this 9th day of December, 1915.

BY THE COURT,
(Signed) CHARLES E. WOLVERTON,
Judge.'

And said decree was thereupon on said 9th day of December, 1915, entered as the judgment and decree of this Court.

The defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company of New York, individually and as trustee, duly excepted to the entry of said form of decree last mentioned, and also to the failure of said Judge to sign a decree in the aforesaid form submitted by them.

Said defendants now present to the Court this their Statement of the Case, and ask the Court to approve of the same and to direct that it be filed in the clerk's

office of this court and that it become a part of the record for the purposes of the appeal, taken by said defendants on January 8th, 1916, from said judgment and decree of this Court entered December 9, 1915, as aforesaid. This statement is not intended to be and is not a statement of the case or agreed statement under federal equity rule seventy-seven but is submitted as a statement analogous to the statement of the evidence provided for in federal equity rule seventy-five.

WM. F. HERRIN,
P. F. DUNNE and
WM. D. FENTON,

Attorneys for Appellants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee.

MILLER, KING, LANE & TRAFFORD,
DOLPH, MALLORY, SIMON & GEARIN,

Attorneys for Appellant, Union Trust Company of New York, individually and as trustee.

District of Oregon,
County of Multnomah,—ss.

Due service of the within statement of the case is admitted this 1st day of February, 1916.

CLARENCE L. REAMES,
Of Solicitors for Complainant.

Filed February 1, 1916. G. H. Marsh, Clerk."

And afterwards, to wit, on Tuesday, the 1st day of February, 1916, the same being the 80th judicial day of the regular November, 1915, term of said Court;

present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER APPROVING STATEMENT OF THE CASE.

This cause came on to be heard this day upon the application of the appellants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, for an order approving the statement of the case prepared and presented by the appellants, and now tendered to be filed herein, the appellants appearing by their attorneys Wm. D. Fenton and John M. Gearin, and the complainant appearing by Clarence L. Reames, United States District Attorney for the District of Oregon, representing himself and Thomas W. Gregory, Attorney-General of the United States, and C. J. Smyth, special assistant to the Attorney-General of the United States, attorneys for said complainant; and it appearing to the Court that said statement is correct and that there is no objection to the approval thereof by this Court,

It is ordered that said Statement of the Case now tendered to be filed is hereby approved and the same is now directed to be filed in the clerk's office of this court as of this date and to become a part of the record, for the purposes of the appeal heretofore taken by said defendants from the judgment and decree of this Court entered December 9, 1915.

Dated: February 1st, 1916.

CHAS. E. WOLVERTON,
Judge of said District Court.

District of Oregon,
County of Multnomah,—ss.

Due service of the within order approving statement of the case is admitted this 1st day of February, 1916.

CLARENCE L. REAMES,
Of Solicitors for Complainant.

Filed February 1, 1916. G. H. Marsh, Clerk.

From the decree of the District Court, of December 9th, 1915, set out in the above statement the appellants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company of New York, individually and as trustee, duly took and perfected their appeals to this court and accompanied the same with their assignments of error, duly filed on January 8th, 1916, as follows:

DEFENDANT OREGON AND CALIFORNIA RAILROAD COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Oregon and California Railroad Company, complains of errors in the proceedings in this case in the District Court of the United States for the District of Oregon, in the above cause, No. 3340 in Equity, and in the decision, judgment and decree rendered, made and entered therein on the 9th day of December, 1915, under and in alleged pursuance of the mandate of the Supreme Court of the

United States theretofore filed in said cause on December 8th, 1915, and assigns the following as the errors complained of:

1. The Court erred in making and entering the said decree of December 9th, 1915.

2. The Court erred in not pursuing the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915.

3. The said decree of December 9th, 1915, is not in pursuance of the said mandate, and the Court accordingly erred in making and entering such decree.

4. The Court erred in making and entering the said decree of December 9th, 1915, and each and every paragraph thereof.

5. The Court erred in adjudging and decreeing, as in paragraph 2 of its decree set forth, "that the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or

authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

6. The Court erred in adding to the term "actual settler," in said paragraph 2, the qualifying phrase "on land sold to him."

7. The Court erred in adjudging and decreeing that the defendants and their respective officers and agents be and are by said decree enjoined from selling any of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; also from cutting or removing, or authorizing the cutting or removal of any timber thereon, except in connection with the sale of the land bearing the timber; also from selling any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; also from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land containing the mineral or other deposits.

8. The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal of any of the timber thereon, except in connection with the sale of

the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removing or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing such mineral or other deposits.

9. The Court erred in not holding and decreeing that there was a complete and absolute grant in this case to the railroad company, with power to sell, limited only as prescribed by the Granting Act and Acts.

10. The Court erred in not holding and decreeing that the language of the grants herein and of the limitations upon them is general, and that it was not competent to the said Court to attach exceptions thereto in its decree.

11. The Court erred in not holding and decreeing that the terms of the settlers' proviso or clause in the Granting Act and Acts are prohibitive and not compulsory; and in not holding and decreeing that the observance of such terms would consist in refraining from making sales to other than actual settlers in quantities exceeding 160 acres to any one purchaser, for a price exceeding $2.50 an acre.

12. The Court erred in not holding that the company, under a complete and absolute grant to it, with power to sell, limited only as prescribed, might choose the actual settler, might sell for any price not exceeding $2.50 an acre, and might sell in quantities

of 40, 60, or 100 acres, or any amount not exceeding 160 acres.

13. The Court erred in not holding and decreeing that there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed in the Granting Act and Acts; and erred in not holding and decreeing that there was no obligation imposed upon the railroad company to sell.

14. The Court erred in not holding and decreeing that the Granting Act and Acts did not impose an affirmative obligation on the railroad company to sell the lands, and in not holding and decreeing that the so-called settlers' proviso or clause in the Granting Act and Acts had application only as and when the railroad company made sales of the land.

15. The Court erred in not holding and decreeing that the railroad company, so long as the granted lands were not sold by it but remained unalienated, had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said lands—subject to such qualifications as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court.

16. The Court erred in not holding and decreeing that the language of the so-called settlers' clause or proviso in the Granting Act and Acts is not direc-

tive, but restrictive only, and that with this exception, so far as the said timber or mineral deposits or other products are concerned, or any or either of them, the grant of the said lands was unqualified.

17. The Court erred in not holding and decreeing that under the said Granting Act and Acts the railroad company had a discretion of sale and the choice of time and settlers; and further erred in not holding and decreeing that, pending the exercise of such discretion by a sale in accordance with the requirements of the Granting Act and Acts, the said railroad company had a complete and absolute grant of the lands; and was entitled, as of right, to the timber thereon and to the mineral or other deposits therein, and to the products of the soil thereof; and was entitled, as of right, to sell, cut, and remove such timber, or to authorize the cutting or removal of the same, and to remove, sell or otherwise enjoy mineral or other deposits therein, or any products of the soil thereof—subject to any qualifications arising out of the limited injunction referable to the six months' period above mentioned.

18. The Court erred in not holding and decreeing that the railroad company, so long as it occupied the status of an owner of unalienated lands within the limits of the grant and grants, had all the rights therein of a grantee in fee simple, including the rights of such grantee to the timber thereon or to the mineral or other deposits therein, or to the products of the soil thereof—subject to any qualification as aforesaid, arising out of said limited injunction.

19. The Court erred in not holding and decreeing that the provisions of the so-called settlers' proviso and clause in the Granting Act and Acts were not directive, but restrictive only; and erred in not holding and decreeing that, subject to the restriction, the railroad company took the grant and grants with the right to cut timber thereon, or open and work mines therein, or cultivate the soil thereof, and own, sell, use and enjoy such timber, or the products of such mines, or the cultivation of such soil—subject to any qualification as aforesaid arising out of said limited injunction.

20. The Court erred in not holding and decreeing that timber cut upon the granted lands, while the same remained unalienated in the railroad company, belonged to said railroad company; and likewise as to any minerals extracted therefrom, or any products of the soil cultivated thereon—subject to any qualification arising out of said limited injunction, referable to the aforesaid period of six months.

21. The Court erred in not holding and decreeing that the railroad company took the lands in question in fee and was accordingly entitled to make any use thereof not in violation of the restrictive covenants found in the so-called settlers' proviso and clause in the Granting Act and Acts, and not in violation of the limited injunction as aforesaid.

22. The Court erred in making and entering a decree herein in modification and enlargement of the terms of the mandate from the Supreme Court of the United States.

23. The Court erred in not making and entering

a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself.

24. The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein; and in adjudging and decreeing that execution issue against the said defendants, or any or either of them, for any costs or disbursements herein.

25. The Court erred in not holding and decreeing that no costs or disbursements should be recovered herein from the Oregon and California Railroad Company, or the Southern Pacific Company, or Stephen T. Gage, individually and as trustee, or Union Trust Company, individually and as trustee, or any or either of them.

26. The Court erred in not holding and decreeing that the main contention of the Government, and the one insisted upon in its bill of complaint and at the trial of the cause, was the contention that the so-called settlers' clause and proviso in the Granting Act and Acts was a condition subsequent; and in not holding and decreeing that the said defendants last named, and each and every of them, were justified and acted of right in resisting such contention, both

below and on appeal; and in not holding and decreeing that inasmuch as the said defendants had prevailed in resisting such contention, it was not equitable to tax them, or either of them, with costs and disbursements herein in favor of the complainant.

27. The Court erred in not holding and decreeing that it was inequitable to impose costs herein in favor of complainant on the said defendants; and in not holding and decreeing that the case here should be disposed of without adjudging costs in favor either of said defendants or of the complainant, leaving each to bear the costs of his or its own side of the litigation.

28. The Court erred in not making and entering as and for its decree in this cause, and in place and stead of the decree made and entered by it as aforesaid, the decree in the form tendered to it by the said last-named defendants and each and every of them —that is to say, in not making and entering as its decree in said cause, the following decree:

"In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the 8th day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the 'defendants' be, and

the same is hereby, set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants' and 'interveners.'

2. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from any disposition of the said lands or any part thereof, or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein or-

dered as enjoins any disposition of the lands and timber until Congress shall act."

WHEREFORE, this defendant, Oregon and California Railroad Company, prays that the aforesaid judgment and decree which was made, rendered and entered herein by the above-entitled Court in said cause No. 3340 in Equity, on the 9th day of December, 1915, and that each of said paragraphs of said judgment and decree be reversed, excepting paragraph 1 thereof, wherein it is provided:

> "That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the 'defendants,' be, and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants,' and the interveners,"

and particularly that paragraph 2 and that paragraph 7 of said judgment and decree be reversed, and for such other relief to this defendant, said Southern Pacific Company, said Stephen T. Gage, individually and as Trustee, and said Union Trust Company, individually and as Trustee, as may be proper.

WM. F. HERRIN,
P. F. DUNNE,
WM. D. FENTON,

Solicitors and Attorneys for said Oregon and California Railroad Company.

Service of the foregoing Assignments of Errors admitted this 8th day of January, 1916.

JOHN W. DAVIS,
Solicitor General of the United States.
C. J. SMYTH,
Special Assistant to the Attorney General.
Solicitors and Attorneys for Appellee.
CLARENCE L. REAMES,
United States Attorney.

Filed January 8, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 8th day of January, 1916, there was duly filed in said court and cause, an Assignment of Errors, by the defendant, the Southern Pacific Company, in words and figures as follows, to wit:

DEFENDANT SOUTHERN PACIFIC COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Southern Pacific Company, complains of errors in the proceedings in this case in the District Court of the United States for the District of Oregon, in the above cause, No. 3340 in Equity, and in the decision, judgment and decree rendered, made and entered therein on the 9th day of December, 1915, under and in alleged pursuance of the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915, and assigns the following as the errors complained of:

1. The Court erred in making and entering the said decree of December 9th, 1915.

2. The Court erred in not pursuing the mandate of the Supreme Court of the United States thereto-

fore filed in said cause on December 8th, 1915.

3. The said decree of December 9th, 1915, is not in pursuance of the said mandate, and the Court accordingly erred in making and entering such decree.

4. The Court erred in making and entering the said decree of December 9th, 1915, and each and every paragraph thereof.

5. The Court erred in adjudging and decreeing, as in paragraph 2 of its decree set forth, "that the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removing of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

6. The Court erred in adding to the term "actual settler," in said paragraph 2, the qualifying phrase

"on the land sold to him."

7. The Court erred in adjudging and decreeing that the defendants and their respective officers and agents be and are by said decree enjoined from selling any of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; also from cutting or removing, or authorizing the cutting or removal of any timber thereon, except in connection with the sale of the land bearing the timber; also from selling any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; also from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land containing the mineral or other deposits.

8. The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal of any of the timber thereon, except in connection with the sale of the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removing or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing

such mineral or other deposits.

9. The Court erred in not holding and decreeing that there was a complete and absolute grant in this case to the railroad company, with power to sell, limited only a prescribed by the Granting Act and Acts.

10. The Court erred in not holding and decreeing that the language of the grants herein and of the limitations upon them is general, and that it was not competent to the said Court to attach exceptions thereto in its decree.

11. The Court erred in not holding and decreeing that the terms of the settlers' proviso or clause in the Granting Act and Acts are prohibitive and not compulsory; and in not holding and decreeing that the observance of such terms would consist in refraining from making sales to other than actual settlers in quantities exceeding 160 acres to any one purchaser, for a price exceeding $2.50 an acre.

12. The Court erred in not holding that the company, under a complete and absolute grant to it, with power to sell, limited only as prescribed, might choose the actual settler, might sell for any price not exceeding $2.50 an acre, and might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.

13. The Court erred in not holding and decreeing that there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed in the Granting Act and Acts; and erred in not holding and decreeing that there was no obligation imposed upon the railroad company to sell.

14. The Court erred in not holding and decreeing that the Granting Act and Acts did not impose an affirmative obligation on the railroad company to sell the lands, and in not holding and decreeing that the so-called settlers' proviso or clause in the Granting Act and Acts had application only as when the railroad company made sales of the land.

15. The Court erred in not holding and decreeing that the railroad company, so long as the granted lands were not sold by it but remained unalienated, had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said land—subject to such qualification as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court.

16. The Court erred in not holding and decreeing that the language of the so-called settler's clause or proviso in the Granting Act and Acts is not directive, but restrictive only, and that with this exception, so far as the said timber or mineral deposits or other products are concerned, or any or either of them, the grant of the said lands was unqualified.

17. The Court erred in not holding and decreeing that under the said Granting Act and Acts the railroad company had a discretion of sale and the choice of time and settlers; and further erred in not holding and decreeing that, pending the exercise of such dis-

cretion by a sale in accordance with the requirements of the Granting Act and Acts, the said railroad company had a complete and absolute grant of the lands; and was entitled, as of right, to the timber thereon and to the mineral or other deposits therein, and to the products of the soil thereof; and was entitled, as of right, to sell, cut, and remove such timber, or to authorize the cutting or removal of the same, and to remove, sell or otherwise enjoy mineral or other deposits therein, or any products of the soil thereof—subject to any qualification arising out of the limited injunction referable to the six months' period above mentioned.

18. The Court erred in not holding and decreeing that the railroad company, so long as it occupied the status of an owner of unalienated lands within the limits of the grant and grants, had all the rights therein of a grantee in fee simple, including the rights of such grantee to the timber thereon or to the mineral or other deposits therein, or to the products of the soil thereof—subject to any qualification as aforesaid, arising out of said limited injunction.

19. The Court erred in not holding and decreeing that the provision of the so-called settlers' proviso and clause in the Granting Act and Acts were not directive, but restrictive only; and erred in not holding and decreeing that, subject to the restriction, the railroad company took the grant and grants with the right to cut timber thereon, or open and work mines therein, or cultivate the soil thereof, and own, sell, use and enjoy such timber, or the products of such mines, or the cultivation of such soil—subject to any

qualification as aforesaid arising out of said limited injunction.

20. The Court erred in not holding and decreeing that timber cut upon the granted lands, while the the same remained unalienated in the railroad company, belonged to said railroad company; and likewise as to any minerals extracted therefrom, or any products of the soil cultivated thereon—subject to any qualification arising out of said limited injunction, referable to the aforesaid period of six months.

21. The Court erred in not holding and decreeing that the railroad company took the lands in question in fee and was accordingly entitled to make any use thereof not in violation of the restrictive covenants found in the so-called settlers' proviso and clause in the Granting Act and Acts, and not in violation of the limited injunction as aforesaid.

22. The Court erred in making and entering a decree herein in modification and enlargement of the terms of the mandate from the Supreme Court of the United States.

23. The Court erred in not making and entering a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself.

24. The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company,

individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein; and in adjudging and decreeing that execution issue against the said defendants, or any or either of them, for any costs or disbursements herein.

25. The Court erred in not holding and decreeing that no costs or disbursements should be recovered herein from the Oregon and California Railroad Company, or the Southern Pacific Company, or Stephen T. Gage, individually and as trustee, or Union Trust Company, individually and as trustee, or any or either of them.

26. The Court erred in not holding and decreeing that the main contention of the Government, and the one insisted upon in its bill of complaint and at the trial of the cause, was the contention that the so-called settlers' clause and proviso in the Granting Act and Acts was a condition subsequent; and in not holding and decreeing that the said defendants last named, and each and every of them, were justified and acted of right in resisting such contention, both below and on appeal; and in not holding and decreeing that inasmuch as the said defendants had prevailed in resisting such contention, it was not equitable to tax them, or either of them, with costs and disbursements herein in favor of the complainant.

27. The Court erred in not holding and decreeing that it was inequitable to impose costs herein in favor of complainant on the said defendants; and in not holding and decreeing that the case here should be disposed of without adjudging costs in favor either of said defendants or of the complainant, leaving each

to bear the costs of his or its own side of the litigation.

28. The Court erred in not making and entering as and for its decree in this cause, and in place and stead of the decree made and entered by it as aforesaid, the decree in the form tendered to it by the said last-namd defendants and each and every of them—that is to say, in not making and entering as its decree in said cause, the following decree:

"In pursuance of the mandate of the Supreme Court of the United States, filed in this Court on the 8th day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the 'defendants' be, and the same is hereby, set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants' and 'interveners.'

2. That said defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place

or indemnity limits of the grants thereby made to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from any disposition of the said lands or any part thereof, or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act."

WHEREFORE, this defendant, Southern Pacific Company, prays that the aforesaid judgment and decree which was made, rendered and entered herein by the above-entitled Court in said No. 3340 in Equity, on the 9th day of December, 1915, and that each of said paragraphs of said judgment and decree be reversed, excepting paragraph 1 thereof, wherein it is provided:

"That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called 'the defendants,' be, and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross complainants, hereinafter called the 'cross-complainants,' and the interveners,"

and particularly that paragraph 2 and that paragraph 7 of said judgment and decree be reversed, and for such other relief to this defendant, said Oregon and California Railroad Company, said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as Trustee, as may be proper.

WM. F. HERRIN,
P. F. DUNNE,
WM. D. FENTON,
Solicitors and Attorneys for said Southern Pacific Company.

Service of the foregoing Assignments of Errors admitted this 8th day of January, 1916.

JOHN W. DAVIS,
Solicitor General of the United States.
C. J. SMYTH,
Special Assistant to the Attorney General,
Solicitors and Attorneys for Appellee.
CLARENCE L. REAMES,
United States Attorney.

Filed January 8, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 8th day of January, 1916, there was duly filed in said court and cause, an Assignment of Errors by Stephen T. Gage (individually and as trustee), in words and figures as follows, to wit:

DEFENDANT STEPHEN T. GAGE'S (Individually and as Trustee) ASSIGNMENT OF ERRORS.

The defendant, Stephen T. Gage, individually and as trustee, complains of errors in the proceedings in this case in the District Court of the United States for the District of Oregon, in the above cause, No. 3340 in Equity, and in the decision, judgment and decree rendered, made and entered therein on the 9th day of December, 1915, under and in alleged pursuance of the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915, and assigns the following as the errors complained of:

1. The Court erred in making and entering the said decree of December 9th, 1915.

2. The Court erred in not pursuing the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915.

3. The said decree of December 9th, 1915, is not in pursuance of the said mandate, and the Court accordingly erred in making and entering such decree.

4. The Court erred in making and entering the said decree of December 9th, 1915, and each and every paragrah thereof.

5. The Court erred in adjudging and decreeing,

as in paragraph 2 of its decree set forth, "that the defendants and their respective officers and agents be, and each is hereby enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands, or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

6. The Court erred in adding to the term "actual settler," in said paragraph 2, the qualifying phrase "on the land sold to him."

7. The Court erred in adjudging and decreeing that the defendants and their respective officers and agents be and are by said decree enjoined from selling any of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; also from cutting or removing, or authorizing the cutting or removal of any timber

thereon, except in connection with the sale of the land bearing the timber; also from selling any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; also from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land containing the mineral or other deposits.

8. The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal of any of the timber thereon, except in connection with the sale of the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removing or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing such mineral or other deposits.

9. The Court erred in not holding and decreeing that there was a complete and absolute grant in this case to the railroad company, with power to sell, limited only as prescribed by the Granting Act and Acts.

10. The Court erred in not holding and decreeing that the language of the grants herein and of the limitations upon them is general, and that it was not

competent to the said Court to attach exceptions thereto in its decree.

11. The Court erred in not holding and decreeing that the terms of the settlers' proviso or clause in the Granting Act and Acts are prohibitive and not compulsory; and in not holding and decreeing that the observance of such terms would consist in refraining from making sales to other than actual settlers in quantities exceeding 160 acres to any one purchaser, for a price exceeding $2.50 an acre.

12. That the Court erred in not holding that the company, under a complete and absolute grant to it, with power to sell, limited only as prescribed, might choose the actual settler, might sell for any price not exceeding $2.50 an acre, and might sell in quantities of 40, 60 or 100 acres, or any amount not exceeding 160 acres.

13. The Court erred in not holding and decreeing that there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed in the Granting Act and Acts; and erred in not holding and decreeing that there was no obligation imposed upon the railroad company to sell.

14. The Court erred in not holding and decreeing that the Granting Act and Acts did not impose an affirmative obligation on the railroad company to sell the lands, and in not holding and decreeing that the so-called settlers' proviso or clause in the Granting Act and Acts had application only as and when the railroad company made sales of the land.

15. The Court erred in not holding and decree-

ing that the railroad company, so long as the granted lands were not sold by it but remained unalienated, had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said land—subject to such qualification as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court.

16. The Court erred in not holding and decreeing that the language of the so-called settlers' clause or proviso in the Granting Act and Acts is not directive, but restrictive only, and that with this exception, so far as the said timber or mineral deposits or other products are concerned, or any or either of them, the grant of the said lands was unqualified.

17. The Court erred in not holding and decreeing that under the said Granting Act and Acts the railroad company had a discretion of sale and the choice of time and settlers; and further erred in not holding and decreeing that, pending the exercise of such discretion by a sale in accordance with the requirements of the Granting Act and Acts, the said railroad company had a complete and absolute grant of the lands; and was entitled, as of right, to the timber thereon and to the mineral or other deposits therein, and to the products of the soil thereof; and was entitled, as of right, to sell, cut, and

remove such timber, or to authorize the cutting or removal of the same, and to remove, sell or otherwise enjoy mineral or other deposits therein, or any products of the soil thereof—subject to any qualification arising out of the limited injunction referable to the six months' period above mentioned.

18. The Court erred in not holding and decreeing that the railroad company, so long as it occupied the status of an owner of unalienated lands within the limits of the grant and grants, had all the rights therein of a grantee in fee simple, including the rights of such grantee to the timber thereon, or to the mineral or other deposits therein, or to the products of the soil thereof—subject to any qualification as aforesaid, arising out of said limited injunction.

19. The Court erred in not holding and decreeing that the provisions of the so-called settler's proviso and clause in the Granting Act and Acts were not directive, but restrictive only; and erred in not holding and decreeing that, subject to the restriction, the railroad company took the grant and grants with the right to cut timber thereon, or open and work mines therein, or cultivate the soil thereof, and own, sell, use and enjoy such timber, or the products of such mines, or the cultivation of such soil—subject to any qualification as aforesaid arising out of said limited injunction.

20. The Court erred in not holding and decreeing that timber cut upon the granted lands, while the same remained unalienated in the railroad company, belonged to said railroad company; and like-

wise as to any minerals extracted therefrom, or any products of the soil cultivated thereon—subject to any qualification arising out of said limited injunction, referable to the aforesaid period of six months.

21. The Court erred in not holding and decreeing that the railroad company took the lands in question in fee and was accordingly entitled to make any use thereof not in violation of the restrictive covenants found in the so-called settlers' proviso and clause in the Granting Act and Acts, and not in violation of the limited injunction as aforesaid.

22. The Court erred in making and entering a decree herein in modification and enlargement of the terms of the mandate from the Supreme Court of the United States.

23. The Court erred in not making and entering a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself.

24. The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein; and in adjudging and decreeing that execution issue against the said defendants, or any or either of them, for any costs or disbursements herein.

25. The Court erred in not holding and decreeing that no costs or disbursements should be recovered herein from the Oregon and California Railroad Company, or the Southern Pacific Company, or Stephen T. Gage, individually and as trustee, or Union Trust Company, individually and as trustee, or any or either of them.

26. The Court erred in not holding and decreeing that the main contention of the Government, and the one insisted upon in its bill of complaint and at the trial of the cause, was the contention that the so-called settlers' clause and proviso in the Granting Act and Acts was a condition subsequent; and in not holding and decreeing that the said defendants last named, and each and every of them, were justified and acted of right in resisting such contention, both below and on appeal; and in not holding and decreeing that inasmuch as the said defendants had prevailed in resisting such contention, it was not equitable to tax them, or either of them, with costs and disbursements herein in favor of the complainant.

27. The Court erred in not holding and decreeing that it was inequitable to impose costs herein in favor of complainant on the said defendants; and in not holding and decreeing that the case here should be disposed of without adjudging costs in favor either of said defendants or of the complainant, leaving each to bear the costs of his or its own side of the litigation.

28. The Court erred in not making and entering as and for its decree in this cause, and in place and

stead of the decree made and entered by it as aforesaid, the decree in the form tendered to it by the said last-named defendants and each and every of them—that is to say, in not making and entering as its decree in said cause, the following decree:

"In pursuance of the mandate of the Supreme Court of the United States, filed in this Court on the 8th day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the 'defendants' be, and the same is hereby, set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants' and 'interveners.'

2. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made to any person not an actual settler, or in quantities greater than one-quarter section to one pur-

chaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from any disposition of the said lands or any part thereof, or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act."

WHEREFORE, this defendant, Stephen T. Gage, individually and as trustee, prays that the aforesaid judgment and decree which was made, rendered and entered herein by the above-entitled Court in said cause No. 3340 in Equity, on the 9th day of December, 1915, and that each of said paragraphs of said judgment and decree be reversed, excepting paragraph 1 thereof, wherein it is provided:

> "That the decree heretofore entered in said cause, so far as it affects the defendants, Oregon & California Railroad Company, Southern

Pacific Company, Stephen T. Gage, individually and as Trustee, Union Trust Company, individually and as trustee, hereinafter called 'the defendants,' be, and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants,' and the interveners,"

and particularly that paragraph 2 and that paragraph 7 of said judgment and decree be reversed, and for such other relief to this defendant, said Oregon and California Railroad Company, said Southern Pacific Company, and said Union Trust Company, individually and as Trustee, as may be proper.

WM. F. HERRIN,
P. F. DUNNE,
WM. D. FENTON,

Solicitors and Attorneys for said Stephen T. Gage, individually and as Trustee.

Service of the foregoing Assignments of Errors admitted this 8th day of January, 1916.

JOHN W. DAVIS,
Solicitor General of the United States.
C. J. SMYTH,
Special Assistant to the Attorney General,
Solicitors and Attorneys for Appellee.
CLARENCE L. REAMES,
United States Attorney.

Filed Jan. 8, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 8th day of January, 1916, there was duly filed in said Court, and cause, an Assignment of Errors by the Union Trust Com-

pany (individually and as trustee), in words and figures as follows, to wit:

DEFENDANT UNION TRUST COMPANY'S (Individually and as Trustee) ASSIGNMENT OF ERRORS.

The defendant, Union Trust Company, individually and as trustee, complains of errors in the proceedings in this case in the District Court of the United States for the District of Oregon, in the above cause, No. 3340 in Equity, and in the decision, judgment and decree rendered, made and entered therein on the 9th day of December, 1915, under and in alleged pursuance of the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915, and assigns the following as the errors complained of:

1. The Court erred in making and entering the said decree of December 9th, 1915.

2. The Court erred in not pursuing the mandate of the Supreme Court of the United States theretofore filed in said cause on December 8th, 1915.

3. The said decree of December 9th, 1915, is not in pursuance of the said mandate, and the Court accordingly erred in making and entering such decree.

4. The Court erred in making and entering the said decree of December 9th, 1915, and each and every paragraph thereof.

5. The Court erred in adjudging and decreeing, as in paragraph 2 of its decree set forth, "that the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the

lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

6. The Court erred in adding to the term "actual settler," in said paragraph 2, the qualifying phrase "on the land sold to him."

7. The Court erred in adjudging and decreeing that the defendants and their respective officers and agents be and are by said decree enjoined from selling any of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; also from cutting or removing, or authorizing the cutting or removal, of any timber thereon, except in connection with the sale of the land bearing the timber; also from selling any mineral or any other deposits in said lands, except as a

part of and in conjunction with the land in which the mineral or other deposits are found; also from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land containing the mineral or other deposits.

8. The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber of said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal, of any of the timber thereon, except in connection with the sale of the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removal or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing such mineral or other deposits.

9. The Court erred in not holding and decreeing that there was a complete and absolute grant in this case to the railroad company, with power to sell, limited only as prescribed by the Granting Act and Acts.

10. The Court erred in not holding and decreeing that the language of the grants herein and of the limitations upon them is general, and that it was not competent to the said Court to attach exceptions thereto in its decree.

11. The Court erred in not holding and decreeing that the terms of the Settlers' Proviso or clause in the Granting Act and Acts are prohibitive and not compulsory; and in not holding and decreeing that the observance of such terms would consist in refraining from making sales to other than actual settlers in quantities exceeding 160 acres to any one purchaser, for a price exceeding $2.50 an acre.

12. The Court erred in not holding that the company, under a complete and absolute grant to it, with power to sell, limited only as prescribed, might choose the actual settler, might sell for any price not exceeding $2.50 an acre, and might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.

13. The Court erred in not holding and decreeing that there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed in the Granting Act and Acts; and erred in not holding and decreeing that there was no obligation imposed upon the railroad company to sell.

14. The Court erred in not holding and decreeing that the Granting Act and Acts did not impose an affirmative obligation on the railroad company to sell the lands, and in not holding and decreeing that the so-called Settlers Proviso or clause in the Granting Act and Acts had application only as and when the railroad company made sales of the land.

15. The Court erred in not holding and decreeing that the railroad company, so long as the granted lands were not sold by it but remained unalienated,

had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said lands—subject to such qualification as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court.

16. The Court erred in not holding and decreeing that the language of the so-called Settlers Clause or proviso in the Granting Act and Acts is not directive, but restrictive only, and that with this exception, so far as the said timber or mineral deposits or other products are concerned, or any or either of them, the grant of the said lands were unqualified.

17. The Court erred in not holding and decreeing that under the said Granting Act and Acts the railroad company had a discretion of sale and the choice of time and settlers; and further erred in not holding and decreeing that, pending the exercise of such discretion by a sale in accordance with the requirements of the Granting Act and Acts, the said railroad company had a complete and absolute grant of the lands; and was entitled as of right, to the timber thereon and to the mineral or other deposits therein, and to the products of the soil thereof; and was entitled, as of right, to sell, cut and remove such timber, or to authorize the cutting or removal of the same, and to remove, sell or otherwise enjoy mineral or other deposits therein, or any products of

the soil thereof—subject to any qualification arising out of the limited injunction referable to the six months' period above mentioned.

18. The Court erred in not holding and decreeing that the railroad company, so long as it occupied the status of an owner of unalienated lands within the limits of the grant and grants, had all the rights therein of a grantee in fee simple, including the rights of such grantee to the timber thereon, or to the mineral or other deposits therein, or to the products of the soil thereof—subject to any qualification as aforesaid, arising out of said limited injunction.

19. The Court erred in not holding and decreeing that the provisions of the so-called Settlers Proviso and clause in the Granting Act and Acts were not directive, but restrictive only; and erred in not holding and decreeing that, subject to the restriction, the railroad company took the grant and grants with the right to cut timber thereon, or open and work mines therein, or cultivate the soil thereof, and own, sell, use and enjoy such timber, or the products of such mines, or the cultivation of such soil—subject to any qualification as aforesaid arising out of said limited injunction.

20. The Court erred in not holding and decreeing that timber cut upon the granted lands, while the same remained unalienated in the railroad company, belonged to said railroad company; and likewise as to any minerals extracted therefrom, or any products of the soil cultivated thereon—subject to any qualification arising out of said limited injunction,

referable to the aforesaid period of six months.

21. The Court erred in not holding and decreeing that the railroad company took the lands in question in fee and was accordingly entitled to make any use thereof not in violation of the restrictive covenants found in the so-called Settlers Proviso and clause in the Granting Act and Acts, and not in violation of the limited injunction as aforesaid.

22. The Court erred in making and entering a decree herein in modification and enlargement of the terms of the mandate from the Supreme Court of the United States.

23. The Court erred in not making and entering a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself.

24. The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein, and in adjudging and decreeing that execution issue against the said defendants or any or either of them, for any costs or disbursements herein.

25. The Court erred in not holding and decreeing that no costs or disbursements should be recovered herein from the Oregon and California Railroad

Company, or the Southern Pacific Company, or Stephen T. Gage, individually and as trustee, or Union Trust Company, individually and as trustee, or any or either of them.

26. The Court erred in not holding and decreeing that the main contention of the Government, and the one insisted upon in its bill of complaint and at the trial of the cause, was the contention that the so-called Settlers Clause and proviso in the Granting Act and Acts was a condition subsequent; and in not holding and decreeing that the said defendants last named, and each and every of them, were justified and acted of right in resisting such contention, both below and on appeal; and in not holding and decreeing that inasmuch as the said defendants had prevailed in resisting such contention, it was not equitable to tax them or either of them with costs and disbursements herein in favor of the complainant.

27. The Court erred in not holding and decreeing that it was inequitable to impose costs herein in favor of complainant on the said defendants; and in not holding and decreeing that the case here should be disposed of without adjudging costs in favor either of said defendants or of the complainant, leaving each to bear the costs of his or its own side of the litigation.

28. The Court erred in not making and entering as and for its decree in this cause, and in place and stead of the decree made and entered by it as aforesaid, the decree in the form tendered to it by said last-named defendants and each and every of them: —that is to say, in not making and entering as its de-

cree in said cause the following decree:

"In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the 8th day of December, 1915, in the above-entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause, so far as it affect the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the 'defendants,' be and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants' and 'interveners.'

2. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby, enjoined from any disposition of the said lands or any part

thereof, or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act."

WHEREFORE, this defendant, Union Trust Company, individually and as trustee, prays that the aforesaid judgment and decree which was made, rendered and entered herein by the above-entitled court in said cause No. 3340 in Equity, on the 9th day of December, 1915, and that each of said paragraphs of said judgment and decree be reversed, excepting paragraph 1 thereof, wherein it is provided:

> "That the decree heretofore entered in said cause so far as it affects the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called 'the defendants,' be, and the same is hereby, set aside and held for naught, but is adhered to in all respects as to the defendants and crosscom-

plainants, hereinafter called the 'cross-complaiants' and the interveners,"

and particularly that paragraph 2 and that paragraph 7 of said judgment and decree be reversed, and for such other relief to this defendant, said Oregon & California Railroad Company, said Southern Pacific Company, and said Stephen T. Gage, individually and as trustee, as may be proper.

MILLER, KING, LANE & TRAFFORD,
DOLPH, MALLORY, SIMON & GEARIN,
JOHN C. SPOONER, JOHN M. GEARIN,
Solicitors for said Union Trust Company, Individually and as Trustee.

Service of the foregoing Assignments of Errors admitted this 8th day of January, 1916.

JOHN W. DAVIS,
Solicitor-General of the United States.
C. J. SMYTH,
Special Assistant to the Attorney-General,
Solicitors and Attorneys for Appellee.
CLARENCE L. REAMES,
United States Attorney.

Filed January 8, 1916. G. H. Marsh, Clerk.

The following stipulation, relative to the record on appeal was made and the following order entered:

STIPULATION RELATIVE TO RECORD ON APPEAL.

IT IS HEREBY STIPULATED by and between the complainant, United States of America, and the defendants above named, and each of them, as follows:

1. That on the appeal taken by the above-named

defendants on the 8th day of January, 1916, to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree made and entered in the United States District Court for the District of Oregon in said cause No. 3340 in Equity, on December 9, 1915, said United States Circuit Court of Appeals may, in so far as the same may be relevant or material, consider the printed transcript of the record filed in said Circuit Court of Appeals on the former appeals taken in said cause No. 3340 from the decree of said United States District Court, entered July 1, 1913, and may consider any part or portions of said transcript, including the pleadings in the cause, the statement of the evidence and the exhibits or any of them contained in said printed transcript of record.

2. That in the even that said United States Circuit Court of Appeals should certify to the Supreme Court of the United States any questions or question or propositions or proposition of law upon which it desires the instruction of that court for its proper decision in passing upon the aforesaid appeal or that said Supreme Court should require that the whole record and cause be sent up to it for its consideration, or in the event that an appeal should be prosecuted to said Supreme Court from any judgment rendered on the aforesaid appeal of said cause taken on said 8th day of January, 1916, to said United States Circuit Court of Appeals or that said appeal taken on January 8, 1916, should in any other manner be hereafter

brought on for hearing in said Supreme Court, said Supreme Court of the United States may, in so far as the same may be relevant or material, consider the printed transcript of the record on the aforesaid former appeals in said cause, which is now on file in said Supreme Court, including the pleadings, the statement of the evidence and the exhibits or any of them contained in said printed transcript of record.

3. Such printed transcript of the record on said former appeals, as now on file in said Circuit Court of Appeals and also on file in said Supreme Court, shall be deemed a part of the record on the aforesaid appeal taken on January 8, 1916, to said Circuit Court of Appeals, and on any appeal which may be taken to said Supreme Court from the judgment of said Circuit Court of Appeals rendered on said last-mentioned appeal or in any other hearing growing out of said appeal which may be had before said Supreme Court as in last above paragraph hereof mentioned; and, as such, it may, in so far as the same may be deemed relevant or material, be referred to by counsel of any of the parties hereto, either in said Circuit Court of Appeals or in said Supreme Court.

4. There shall not be included or printed in the transcript of record on the aforesaid appeal taken by defendants on January 8, 1916, to said United States Circuit Court of Appeals, any of the pleadings, papers or documents filed, or proceedings had, in said United States District Court in said cause prior to December 8, 1915, and the clerk of the court, in making, and directing the printing of, said tran-

script of record, shall omit therefrom any of said pleadings, papers, documents or proceedings filed or had in said court and cause prior to December 8, 1915—provided, however, that it may be stated or shown in said transcript on what date the mandate issued by said Supreme Court upon its opinion rendered June 21, 1915, on the former appeals in the cause (No. 679—October term, 1914) was received by the clerk of said United States District Court. Said clerk shall include, among the other papers, documents, files and proceedings to be incorporated in said transcript, a copy of said opinion of the Supreme Court and also a copy of the aforesaid mandate of said Supreme Court filed in said cause in said District Court on December 8, 1915, omitting, however, from the latter, any copy of the copy of the former decree of said United States District Court made and entered July 1, 1913, which is embodied in and forms a part of said mandate. A copy of said former decree shall not be printed in said transcript of record as a part of said mandate, but in the copy of the mandate as printed in said transcript, said former decree may be referred to by reference to the volume and pages of the record on the former appeals taken in said cause wherein a copy of said former decree is set out.

5. If any statement of the record or statement on appeal which may be prepared by the appellants or any of them they may wish to insert a copy of said mandate in and as a part of said statement, they need not incorporate in said statement of the record

or statement on appeal or in any statement of the record or statement on appeal which may be filed by any of them in said cause, a copy of said former decree in said District Court entered July 1, 1913, but they may in said copy of the mandate simply refer to said former decree by reference to the volume and pages of the record on said former appeals wherein a copy of said former decree is set out.

6. It is further stipulated that an order of this court may be made upon this stipulation containing the provisions and substantially in the language as above set forth in paragraphs 4 and 5 hereof.

7. It is further understood and agreed that the complainant denies the right of the defendants to appeal to the Circuit Court of Appeals from the decree entered by said United States District Court on December 9, 1915, denies the jurisdiction of said Circuit Court of Appeals to hear and determine said appeal and reserves its right to object to the defendants prosecuting said appeal and to the jurisdiction of the Circuit Court of Appeals in the matter and this stipulation shall not in any wise prejudice said rights or any of them, or the right of the complainant to insist upon them, but in the event that said Circuit Court of Appeals takes jurisdiction the complainant does not waive but reserves any right it may have to confine the inquiry of the court on the appeal to a consideration of said mandate of the Supreme Court of the United States and the decree of said District Court entered December 9, 1915.

8. It is further stipulated and agreed in this regard that the sole purpose of this stipulation is to

save expense in the printing of the record and to avoid any duplication of the record on the present appeal.

Dated February 1st, 1916.

CLARENCE L. REAMES,

United States Attorney for Oregon for and by direction of the Attorney-General of the United States, of Solicitors and Attorneys for Complainant.

WM. F. HERRIN,
P. F. DUNNE and
WM. D. FENTON,

Solicitors for Oregon and California R. R. Co., Southern Pacific Co. and Stephen T. Gage, individually and as trustee,

MILLER, KING, LANE & TRAFFORD,
DOLPH, MALLORY, SIMON & GEARIN,

Solicitors for Union Trust Company Individually and as Trustee.

Filed February 1, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on Tuesday, the 1st day of February, 1916 the same being the 80th judicial day of the regular November, 1915, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER REGARDING PRINTING OF RECORD.

This cause came on for hearing this day upon stipulation of the respective parties, dated January —, 1916, as to the printing of the record on the ap-

peal of the defendants, taken to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree of this court entered December 9, 1915, and as to the use in said Circuit Court of Appeals and in the Supreme Court of the United States, as a part of the record on appeal, of the printed transcript of record of the former appeals taken in above cause No. 3340 from the decree of said District Court for the District of Oregon entered July 1, 1913, and it appearing to the Court that the parties have made and filed a written stipulation wherein it is provided, among other things, that an order substantially to the following effect may be made by this Court:

It is now therefore ordered that:

1. There shall not be included or printed in the transcript of record on the aforesaid appeal taken by defendants on January 8, 1916, to said United States Circuit Court of Appeals any of the pleadings, papers or documents filed, or proceedings had, in said United States District Court in said cause prior to December 8, 1915, and the clerk of the court, in making, and directing the printing of, said transcript of record, shall omit therefrom any of said pleadings, papers, documents or proceedings filed or had in said court and cause prior to December 8, 1915—provided, however, that it may be stated or shown in said transcript on what date the mandate issued by said Supreme Court upon its opinion rendered June 21, 1915, on the former appeal of the cause (No. 679—October term, 1914) was received by the clerk of said United States District Court. Said clerk shall include, among the other papers, documents, files and

proceedings to be incorporated in said transcript, a copy of said opinion of the Supreme Court and also a copy of the aforesaid mandate of said Supreme Court filed in said cause in said District Court on December 8, 1915, omitting, however, from the latter, any copy of the copy of the former decree of said United States District Court made and entered July 1, 1913, which is embodied in and forms a part of said mandate. A copy of said former decree shall not be printed in said transcript of record as a part of said mandate, but in the copy of the mandate as printed in said transcript, said former decree may be referred to by reference to the volume and pages of the record on the former appeals taken in said cause wherein a copy of said former decree is set out.

2. If in any statement of the record or statement on appeal which may be prepared by the appellants or any of them they may wish to insert a copy of said mandate in and as a part of said statement, they need not incorporate in said statement of the record or statement on appeal or in any statement of the record or statement on appeal which may be filed by any of them in said cause, a copy of said former decree in said District Court entered July 1, 1913, but they may in said copy of the mandate simply refer to said former decree by reference to the volume and pages of the record on said former appeals wherein a copy of said former decree is set out.

3. This order is without prejudice to the right of the complainant to object to the right of the defendants to take said appeal and to the power of the court of appeals to hear and determine it and is not to be

construed as a waiver of any right the complainant has to object to the defendants taking said appeal or to the Circuit Court of Appeals hearing and determining it or as a waiver of its right to have the court of appeals confine its inquiry on the appeal to the mandate of said Supreme Court and the decree of this court, entered December 9, 1915.

Dated February 1st, 1916.

CHAS. E. WOLVERTON,
Judge of said District Court.

Filed February 1, 1916. G. H. Marsh, Clerk.

The costs which the decree of the District Court provides for were fixed at $6,249.02, by order of the District Court, as follows:

ORDER TAXING COSTS.

Heretofore and on the 16th day of December, 1915, the complainant, the United States of America, filed herein its duly verified cost bill claiming costs against the defendants Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, in the sum of $6,249.02 and thereafter and on the 18th day of December, 1915, the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and the Union Trust Company, individually and as trustee, filed herein their duly verified objections to said cost bill, by which said objections the said defendants objected to the allowance of $350.00 for the depositions of seventy witnesses:

Thereafter, and on the 27th day of December, 1915, the matter came on regularly to be heard, the objecting defendants being present and represented by William D. Fenton and John M. Gearin of their attorneys, and the complainant being represented by Clarence L. Reames, United States Attorney for the District of Oregon, and the Court having sat and heard the statements and arguments of counsel and having taken the matter under advisement to be passed upon at a later date,

Now, the Court being fully advised in the premises, it is ordered and adjudged that said objections be and the same hereby are overruled and the clerk is directed to tax as costs and disbursements against the said defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and the Union Trust Company, individually and as trustee, the following items, to wit:

Clerk's fees	$ 383.75
Marshal's fees	269.47
Attorney's fees	40.00
Depositions of 70 witnesses before special examiner	350.00
Examiner's fees	1,942.50
Witness fees (as appears from the records or the marshal's office and the clerk's office showing payment)	3,263.30
Total taxed at	$6,249.02

Done in open court this the 3d day of January, 1916.

CHAS. E. WOLVERTON, Judge.

Filed January 3, 1916. G. H. Marsh, Clerk.

On May 8th, 1916, the appeals from the decree of December 9th, 1915, came on before this court for hearing.

The appellants contended in substance:

I.

The Court erred in adjudging and decreeing, as in paragraph 2 of its decree set forth, "that the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

II.

And more particularly, that the Court erred, in said paragraph two of its decree, in enjoining the defendants "from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands, or in which the mineral or other deposits are found, and from cutting or removing, or authorizing the cutting or removal of any of the timber thereon, or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

The Court erred in adding to the term "actual settler," in said paragraph 2, the qualifying phrase "on the land sold to him."

The Court erred in adjudging and decreeing that the defendants and their respective officers and agents be and are by said decree enjoined from selling any of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; also from cutting or removing, or authorizing the cutting or removal of any timber thereon, except in connection with the sale of the land bearing the timber; also from selling any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; also from removing or authorizing the removal of mineral or other deposits therein, except in connection with the

sale of the land containing the mineral or other deposits.

The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal of any of the timber thereon, except in connection with the sale of the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as a part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removing or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing such mineral or other deposits.

The Court erred in not holding and decreeing that there was a complete and absolute grant in this case to the railroad company, with power to sell, limited only as prescribed by the Granting Act and Acts.

The Court erred in not holding and decreeing that the language of the grants herein and of the limitations upon them is general, and that it was not competent to the said Court to attach exceptions thereto in its decree.

The Court erred in not holding and decreeing that the terms of the settlers' proviso or clause in the Granting Act and Acts are prohibitive and not compulsory; and in not holding and decreeing that the observance of such terms would consist in refrain-

ing from making sales to other than actual settlers in quantities exceeding 160 acres to any one purchaser, for a price exceeding $2.50 an acre.

The Court erred in not holding that the company, under a complete and absolute grant to it, with power to sell, limited only as prescribed, might choose the actual settler, might sell for any price not exceeding $2.50 an acre, and might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.

The Court erred in not holding and decreeing that there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed in the Granting Act and Acts; and erred in not holding and decreeing that there was no obligation imposed upon the railroad company to sell.

The Court erred in not holding and decreeing that the Granting Act and Acts did not impose an affirmative obligation on the railroad company to sell the lands, and in not holding and decreeing that the so-called settlers' proviso or clause in the Granting Act and Acts had application only as and when the railroad company made sales of the land.

The Court erred in not holding and decreeing that the railroad company, so long as the granted lands were not sold by it but remained unalienated, had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said lands—subject to such qualifi-

cations as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court.

The Court erred in not holding and decreeing that the language of the so-called settlers' clause or proviso in the Granting Act and Acts is not directive, but restrictive only, and that with this exception, so far as the said timber or mineral deposits or other products are concerned, or any or either of them, the grant of the said lands was unqualified.

The Court erred in not holding and decreeing that under the said Granting Act and Acts the railroad company had a discretion of sale and the choice of time and settlers; and further erred in not holding and decreeing that, pending the exercise of such discretion by a sale in accordance with the requirements of the Granting Act and Acts, the said railroad company had a complete and absolute grant of the lands; and was entitled, as of right, to the timber thereon and to the mineral or other deposits therein, and to the products of the soil thereof; and was entitled, as of right, to sell, cut, and remove such timber, or to authorize the cutting or removal of the same, and to remove, sell or otherwise enjoy mineral or other deposits therein, or any products of the soil thereof—subject to any qualifications arising out of the limited injunction referable to the six months' period above mentioned.

The Court erred in not holding and decreeing that the railroad company, so long as it occupied the status of an owner of unalienated lands within the limits of the grant and grants, had all the rights

therein of a grantee in fee simple, including the rights of such grantee to the timber thereon or to the mineral or other deposits therein, or to the products of the soil thereof—subject to any qualification as aforesaid, arising out of said limited injunction.

The Court erred in not holding and decreeing that the provisions of the so-called settlers' proviso and clause in the Granting Act and Acts were not directive, but restrictive only; and erred in not holding and decreeing that, subject to the restriction, the railroad company took the grant and grants with the right to cut timber thereon, or open and work mines therein, or cultivate the soil thereof, and own, sell, use and enjoy such timber, or the products of such mines, or the cultivation of such soil—subject to any qualification as aforesaid arising out of said limited injunction.

The Court erred in not holding and decreeing that timber cut upon the granted lands, while the same remained unalienated in the railroad company, belonged to said railroad company; and likewise as to any minerals extracted therefrom, or any products of the soil cultivated thereon—subject to any qualification arising out of said limited injunction, referable to the aforesaid period of six months.

The Court erred in not holding and decreeing that the railroad company took the lands in question in fee and was accordingly entitled to make any use thereof not in violation of the restrictive covenants found in the so-called settlers' proviso and clause in the Granting Act and Acts, and not in violation of the limited injunction as aforesaid.

The Court erred in making and entering a decree herein in modification and enlargement of the terms of the mandate from the Supreme Court of the United States.

The Court erred in not making and entering a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself.

The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein; and in adjudging and decreeing that execution issue against the said defendants, or any or either of them, for any costs or disbursements herein.

The Court erred in not holding and decreeing that no costs or disbursements should be recovered herein from the Oregon and California Railroad Company, or the Southern Pacific Company, or Stephen T. Gage, individually and as trustee, or Union Trust Company, individually and as trustee, or any or either of them.

The Court erred in not holding and decreeing that the main contention of the Government, and the one insisted upon in its bill of complaint and at the trial of the cause, was the contention that the so-called

settlers' clause and proviso in the Granting Act and Acts was a condition subsequent; and in not holding and decreeing that the said defendants last named, and each and every of them, were justified and acted of right in resisting such contention, both below and on appeal; and in not holding and decreeing that inasmuch as the said defendants had prevailed in resisting such contention, it was not equitable to tax them, or either of them, with costs and disbursements herein in favor of the complainant.

The Court erred in not holding and decreeing that it was inequitable to impose costs herein in favor of complainant on the said defendants; and in not holding and decreeing that the case here should be disposed of without adjudging costs in favor either of said defendants or of the complainant, leaving each to bear the costs of his or its own side of the litigation.

The Court erred in not making and entering as and for its decree in this cause, and in place and stead of the decree made and entered by it as aforesaid, the decree in the form tendered to it by the said last-named defendants and each and every of them—that is to say, in not making and entering as its decree in said cause, the decree submitted by these appellants to the District Court and set forth in the aforesaid approved statement of the case.

The appellee in substance contended:

1.

That the decree as entered by the lower court is in all particulars in harmony with the mandate of the Supreme Court.

2.

And in this connection that the word "land" or "lands" as used in the granting acts of 1866 and 1870, in the amendatory act of 1869, and in the opinion of the Supreme Court has the same significance, and that if it embraces the timber and minerals as well as the surface in the one case it must in all the others; and further, that it does comprehend not only the surface, but also the timber and minerals in each instance.

QUESTIONS OF LAW CONCERNING WHICH THE CIRCUIT COURT OF APPEALS DESIRES THE INSTRUCTION OF THE SUPREME COURT FOR ITS PROPER DECISION.

1. Was the decree of the District Court of December 9th, 1915, in accordance with the opinion of the Supreme Court?

2. If not, should the District Court have made and entered its decree in manner and form as proposed to it by the defendants in the decree submitted by them and set forth in the approved statement of facts?

3. During the continuance of the estate granted by the acts of Congress mentioned in the opinion of the Supreme Court and while the grantees thereof and their successors in interest retain the same, have such grantees or their successors in interest, within the decision of the Supreme Court, the right to cut or remove or to authorize the cutting or removal of the timber thereon, or to remove or authorize the

removal of mineral or other deposits therein or to sell the timber thereon or the mineral or other deposits therein, apart from the sale of the land bearing the timber or containing the mineral or other deposits—except as such right is suspended pending the Congressional action referred to in the decision?

4. Is the expression, "all the value the granting acts conferred upon the grantees," or anything else in the decision of the Supreme Court contained, to be taken as meaning that said grantees and their successors in interest have only an equity in the proceeds of the sales of the lands in question to the extent of the statutory selling price thereof.

5. Does the decree of the District Court conform to the mandate of the Supreme Court in the insertion in the second paragraph of such decree of the following:

> "And from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found, and from cutting or removing or authorizing the cutting or removal of any of the timber thereon, or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits?"

6. Does the decree of the District Court conform to the mandate of the Supreme Court in failing to

make provision for the termination of the injunction contained in the decree in the event that Congress shall make provision as therein provided?

7. Were costs properly taxed in this case against the defendants or any or either of them?

WM. B. GILBERT,
ERSKINE M. ROSS,
WM. H. HUNT,

Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, California, this 12th day of May, A. D. 1916.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

OREGON & CALIFORNIA RAILROAD CO. ET AL.,
v.
UNITED STATES.
No. 492.

UPON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION FOR CERTIORARI AND TO ADVANCE HEARING.

Comes now the Solicitor General and moves:

1. That a writ of certiorari issue to the Circuit Court of Appeals for the Ninth Circuit to bring the case in its entirety before this court.

2. That the certificate of the said Circuit Court of Appeals on file herein, dated May 12, 1916, together with the record upon which the cause was formerly considered and decided by this court, be taken as a sufficient return to such writ of certiorari.

3. That thereupon the cause be advanced for early hearing.

65657—16

STATEMENT.

This suit was brought pursuant to a joint resolution of Congress for the purpose of determining the respective rights of the United States and the Oregon & California Railroad Co. and others in and to large and valuable bodies of land in Oregon and Washington, which, subject to certain restrictions, had been granted by Congress in aid of railroad construction and settlement. From a final decree of forfeiture entered against them by the District Court, the Oregon & California Railroad Co. and the other appellants whose claims are involved in these present proceedings, as well as numerous other parties whose claims have now been fully disposed of, appealed to the Circuit Court of Appeals for the Ninth Circuit. By certificate and certiorari the whole cause came to this court, and after full consideration was decided in June, 1915.

Oregon & California Railroad Co. v. *United States,* 238 U. S. 393.

In disposing of the matter this court held that the grants were not subject to forfeiture, and that the decree of the District Court was therefore erroneous, but that the restrictions set forth in the granting acts, namely, that the grantee must sell the land to actual settlers only in quantities not greater than one-quarter section to one purchaser, and at a price not exceeding $2.50 per acre, were

obligatory and enforcible as covenants. Furthermore, it declared in its opinion (p. 438):

> This, then, being the situation resulting from conditions now existing, incident, it may be, to the prolonged disregard of the covenants by the railroad company, the lands invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever or of the timber thereon and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroads.
>
> If Congress does not make such provision the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act, and the court in its discretion may modify the decree accordingly.

Thereupon it ordered that the decree of the District Court be reversed and the cause remanded for further proceedings in accordance with the

opinion. The mandate was issued accordingly, and on December 9, 1915, a decree was entered by the District Court (R. 13) which purports to follow it. The injunctive provisions of this decree, like the mandate, aim at two distinct objects; first, to forbid further violations of the covenants, and, second, to preserve the property wholly intact for a reasonable time in order to afford opportunity for further legislation by Congress. In carrying out the first of these objects the decree (par. 2), in substance, forbids sales of the land to persons other than actual settlers, or in quantities greater than one-quarter section to one purchaser, or for prices exceeding $2.50 per acre; and also forbids the sale or cutting or removal of any timber, and the sale or removal of any mineral or other deposits except in conjunction with legitimate sales of the lands upon which such timber or deposits shall be found.

For attaining the second object—preserving the status of the property until Congress might act—the decree (par. 3) forbids any direct or indirect disposition of lands, timber, or mineral, or other deposits, the cutting of timber, the removal of it or of mineral or other deposits, and all interference and intermeddling with any moneys which arose or may arise from the lands and which are or may be on deposit awaiting the final decision of this court in this case—

> until Congress shall have a reasonable opportunity to make provision by legislation

> for the disposition of said lands, timber, money, mineral or other deposits, in accordance with such policy as Congress may deem fitting, under the circumstances, and at the same time secure to the defendant all the value that the said granting acts conferred upon the grantees.

The decree of the District Court also provides that if Congress fails to make provision for the disposition of the said lands, money, timber, mineral and other deposits, the defendants may apply to that court within a reasonable time, not less than six months from the entry of the decree, for a modification of so much of the injunction as forbids any disposition of the said lands, timber, etc., until Congress shall act, and the court reserves the right to modify the decree in that regard and upon such application if, in its opinion, good cause should then exist for so doing.

The decree also taxed costs and disbursements against appellants and in favor of the complainant in the sum of $6,249.42.

From this decree the defendants and appellants, on January 8, 1916, took an appeal to the Circuit Court of Appeals.

The errors assigned and argued in the briefs filed in the Circuit Court of Appeals include the following questions, viz:

1. Whether the decree erroneously exceeds the directions contained in the mandate.

2. Whether in that portion of the decree which forbids further violations of the covenants, it was erroneous to forbid selling, cutting and removing of timber and selling and removing of mineral or other deposits, apart from the sale of the land bearing or containing the same.

Here appellants argue that the timber (which constitutes the chief value of the remaining lands) is the absolute property of the railroad company and may be used or disposed of at its discretion, with no limit or restriction whatsoever, save possibly such as might be inferred to avoid diminishing the availability of the land for cultivation by settlers. They make a similar argument regarding possible deposits of mineral.

3. Whether that portion of the decree (par. 3) which, following the mandate, aims to afford reasonable opportunity for legislation by Congress, improperly included with the lands the timber and minerals, etc., and such moneys as have been or may be deposited to await the final decision of this case by this court.

4. Whether, without regard to the scope of the mandate, the District Court, or this court, had jurisdiction to forbid disposition of timber for any period of time to await legislation by Congress.

This question is raised in one of the briefs but not specifically by the assignments of error.

5. Whether it was erroneous to impose costs on the appellants.

All of the foregoing questions, except the fourth, reappear, in various forms of statement, in the list of questions certified by the Circuit Court of Appeals (R. 80).

That court also asks (question 6) whether under the mandate the District Court should have made provisions " for the termination of the injunction contained in the decree in the event that Congress shall make provision as therein provided."

On June 9, 1916, six months from the entry of the District Court's decree, the President approved an act of Congress (Public, No. 86, 64th Congress) entitled "An act to alter and amend [the granting and amendatory acts, naming them], and for other purposes," of which act it is assumed the court will take judicial notice.

This was the result of elaborate hearings before the Committees of the House and Senate on Public Lands, and full report made by those two bodies to the two Houses respectively. In a series of recitals, it refers to the restrictions in the granting acts, the wilful violation thereof by the railroad company, the decree of this court, the provisions in the granting act of July 25, 1866, allowing alteration, amendment or repeal, and the fact that the railroad company and its predecessors in interest " received a large sum of money from sales of said land for prices in excess of $2.50 per acre, and from leases, interest on contracts, and so forth "; although " the aforesaid granting acts conferred

upon the said railroad company the right to receive not more than $2.50 per acre for each acre of land so granted." It thereupon provides, comprehensively and specifically:

1. For the immediate revesting in the United States of the title to all the lands for which patents had been issued or earned under the granting acts, except those which had been sold by the railroad company prior to July 1, 1913 (the date of the District Court's original decree of forfeiture), and except those constituting the railroad right of way and those in actual use by the company prior to December 9, 1915 (date of the District Court's last decree), for depots and other specified railroad uses.

2. For the classification of the lands into power site lands, timberlands, and agricultural lands, by the Departments of Interior and Agriculture.

3. For the use and disposition of power site and mineral lands in accordance with the general laws concerning public lands of like character; for the sale of the timber on the lands classified as timberlands through competitive bidding, "as rapidly as reasonable prices can be obtained therefor in a normal market;" for the settlement, cultivation, and purchase at $2.50 per acre of the lands classified as agricultural, under the homestead laws as modified by this act; and for a similar disposition, omitting the money charge, of the lands classified as timberlands after the timber shall have been removed from them.

Certain of the lands affected by the act are declared to be withheld from entry or other disposition for a period of 2 years after its approval (sec. 5, bottom). These lands, we understand, consist of sections necessary to protect the water supply of certain cities, and the withdrawal was intended to afford them an opportunity to acquire the lands.

4. For vesting in the United States forthwith of " the title to all money arising out of said grant lands and now on deposit to await the final outcome " of this suit.

5. For the deposit of all moneys received from or on account of the lands and timber under the act in a special fund to be designated " the Oregon and California land-grant fund."

6. For the payment " as soon as may be after the approval of this act " by the Treasurer, upon the order of the Secretary of the Interior, of " the taxes accrued and now unpaid on the lands revested in the United States," for which purpose the act appropriates the necessary money.

7. For the ascertainment and determination, through judicial proceedings to be instituted by the Attorney General, of " the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of said granted lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the ' full value ' secured to the grantees

under said granting acts as heretofore interpreted by the Supreme Court," in the ascertainment of which amount the court " shall take into consideration and give due and proper legal effect to all receipts for money from sales of land or timber, forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors," and shall also determine " the amount of the taxes on said lands paid by the United States, as provided in this act, and which should in law have been paid by the said Oregon & California Railroad Co., and the amount thus determined shall be treated as money received by said railroad company."

8. For the ascertainment by the Secretary of the Interior, as soon as may be, of the acreage of the lands, whether sold or unsold, which the beneficiaries have received or are entitled to receive under the grants, and the value of such acreage at $2.50 per acre, and for the payment of that value, less the amount chargeable to the railroad company and its predecessors as found and determined in the judicial proceedings, to the railroad company, its successors or assigns, and to lienors as their respective interest may appear, the payment to be made in instalments from time to time, out of the special fund as it accumulates, by the Treasurer of the United States upon the order of the Secretary

of the Interior; and it being further provided: "That if, upon the expiration of ten years from the approval of this act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor."

9. For depositing the further proceeds from the sales of land and timber, after so satisfying the railroad company and the lienors, partly in the State and county funds for schools, roads, etc., and appropriating the remainder for the United States.

The above résumé is general in character, aiming only to explain the important features of the legislation which bear relation to the issues involved in this litigation.

On or about June 30, 1916, the appellants served upon the Congress, through its presiding officers, and upon the President, the Secretary of the Interior, the Secretary of Agriculture, the Attorney General, and the Treasurer of the United States, a notice in writing claiming and asserting that this act is unconstitutional, null and void, declaring that the appellants do not assent to or acquiesce in any of its provisions, and protesting against the assertion by the United States of any claim to the lands or to any moneys derived therefrom, and the taking by the United States of any action or pro-

ceeding for the purpose of carrying out the act in any of its provisions; and further protesting against the making by the Secretary of the Interior of any order for the payment of taxes on the lands, and against the payment of any such taxes by the Treasurer, as provided by said act, etc.

Since the passage of the act the work of classifying the lands as thereby required has been proceeding rapidly. The Land Department reports that thousands of acres have already been classified, and that numerous applications for sales of timber are already on file and subject to be acted upon as soon as the work of ascertaining the amounts of accrued taxes (now well advanced) can be concluded, and the taxes paid. The taxes claimed by the States exceed a million dollars.

REASONS FOR THE MOTION.

1. The act of June 9, 1916, assuming it valid, has rendered moot every specific question presented by the certificate save the question of costs. By its operation the Government has now taken over the title to the land, with all its timber and other resources, and also the moneys on deposit which are mentioned in the District Court's decree. The interest of the railroad company is no longer an interest in these things, but an interest in obtaining prompt adjudication, settlement and payment of its monetary claim, through the methods, including,

if necessary, the money appropriation, for which the act provides.

2. The general questions certified, viz, whether the decree of the District Court accords with the mandate, and whether a decree should have been entered in manner and form as proposed by the appellants (R. 80, 11), though they amount to a submission of the entire case as it was before the act was passed, seem not to empower this court to deal fully and finally with the existing situation. Should those questions be answered without regard to the act, new controversies concerning its validity and meaning would be precipitated in the lower courts which must finally come here after much expensive and embarrassing delay. On the other hand, should this court consider the validity and effect of the act, but merely in connection with a disposition of the questions certified, the ensuing decree of the Circuit Court of Appeals would doubtless be appealed from and the act and its meaning would again become involved before this tribunal.

3. If, as the Government insists, the act is valid, probably a modified decree should now be directed, so that the injunction may be made absolute and the moneys on deposit be delivered to the proper governmental depository. If it be in any regard invalid, the nature and extent of such invalidity, and the time during which the property may be held intact pending further legislation, should be

conclusively determined by this court without the intervention of useless proceedings in the lower courts.

4. The Government and the States and local communities where the lands are situated are deeply concerned in the prompt and conclusive dissipation of any possible doubt concerning the validity of the act of Congress. If the act be invalid, that fact should be known before further important steps are taken in its administration, before sales are made or settlements allowed and the money of purchasers and settlers is accepted, before large additional expenditures of public money are incurred, in the payment of taxes, or in work of investigation, and before the institution of the new legal proceedings which the act directs.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1916.

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No. 492

In the Supreme Court of the United States

OCTOBER TERM, 1916.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

OREGON AND CALIFORNIA RAILROAD COMPANY, a Corporation, et al.,
Defendants and Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Brief for Defendants and Appellants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee.

STATEMENT.

This case, the Oregon Land Grant Case, is now here for the second time. It came here the first time from the Circuit Court of Appeals for the

Ninth Circuit on certificate and certiorari; the cause was heard in its entirety; and the opinion of this court, announced by Mr. Justice McKenna, is reported in 238 U. S., pages 393-439.

The decree below was, by this court, "reversed and cause remanded to the District Court for further proceedings in accordance with this opinion".

On return of the cause to the District Court of Oregon, a decree was therein entered on December 9, 1915, as a sequel and in assumed pursuance of the mandate of this court. This decree, as appellants saw it, was not in accordance with the mandate. In their view, it went beyond the mandate of this court; it decided and assumed to conclude matters in excess of the mandate; more specifically, it undertook to impose a construction upon the rights of these appellants in respect to the timber and the mineral content of the land grant in question, not warranted, it is believed, by the opinion and mandate of this court. Appellants accordingly took the case by appeal to the Circuit Court of Appeals for the Ninth Circuit; and from that court, by certificate and certiorari, the cause is brought here for the second time.

A land grant was made in 1862 to the Union Pacific and Central Pacific Railroads, in aid of the construction of a transcontinental railroad from the Missouri River to San Francisco Bay on the Pacific Ocean. The extension of that trans-continental railroad from some point in California, fixed at

Roseville, near Sacramento, northward through California and Oregon to the City of Portland, was in the mind of Congress in 1866; and in that year a land grant was made in aid of the construction of such a railroad. So much of the land as lay within the State of Oregon, was granted to such company as should be designated by the Oregon Legislature, and upon that company was laid the burden of building the road from Portland south to the interstate line between Oregon and California. The Act of 1866 was amended in 1869, and in 1870 an additional act was passed granting land in aid of the construction of a railroad from Portland by way of Forest Grove to tidewater at Astoria on the Oregon Coast, and in a southerly direction to McMinnville, an Oregon point. The land embraced in the Act of 1866, as amended in 1869, and in the Act of 1870, is the Oregon land grant.

The act of 1866, as it was amended in 1869, provided,—and much the same provision, in terms, was in the act of 1870,—"that the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser and for a price not exceeding $2.50 per acre." But the Acts of 1866 and 1869 and of 1870 were relatively slow in arriving. The Pre-emption Law of September 4, 1841, the Oregon Donation Act of September 27, 1850, and the Homestead Law of May 20, 1862, had gone before.

The valley lands, adaptable for settlement and falling within the primary limits of the railroad grant, had been taken up under these earlier statutes. The railroad company was put to it to find its lands within the indemnity limits of the grant,—not valley lands these, but in great part mountain forests. Some land there was, susceptible of cultivation, not a great deal of it, and this the railroad company, in the earlier years of the grant, disposed of for settlement, as contemplated by the settlers' clause of the granting act. Later, and when the timber began to take on value, the company made sales of the timbered land—for lumber was soon to become, as it did, the principal industry of the state,— and those sales, naturally, were in larger quantities than the small parcels of the settlers' clause, and at somewhat higher prices, and not to farmers but to lumbermen. These transactions, in departure from the literal requirements of the settlers' clause, were open and above board. They were the only practicable way of making the grant responsive to what this court has held to be the primary purpose of the act, namely, to aid in the construction of a railroad; they were matters of common knowledge; they were matters of public record; they were known to the people of the state, to the courts of the state and of the nation, to the Land Department and the executive government and to both houses of Congress. They were reported with the utmost particularity of transaction, in

respect to the location and quantity of the lands sold and the prices paid, to a bureau of the Land Department specially constituted for the purpose of receiving and acting on such information, and this information, in all its particularity, was transmitted to the Secretary of the Interior, and by him to the President, and by the President to both houses of Congress, and was there referred to the appropriate committees and perpetuated as executive documents; and this information was so communicated and transmitted yearly and half-yearly during a period of twenty-five years, and in pursuance of the act of Congress of 1879 precisely calling for the information. Everything that was done by the railroad company in dealing with these lands, was in the light of day, and went on for over a generation, indeed for nearly forty years, without objection from the State of Oregon, without objection from the Land Department or the Executive government or Congress. If a railroad company was ever justified, or the stockholder who put his money into it, or the bondholder who loaned his money to it, in believing that a course of conduct had been ratified by general acquiescence, and a departure from the literal and exact language of a statute had been waived and assented to, the case at bar is a revealing instance.

Indeed, Congress, at no time, of its own initiative, called into question the course of dealing with these lands by the company. It was a memorial of the

Legislature of Oregon, procured by interested parties to be adopted in the year 1907, and complaining of the temporary withdrawal by the railroad company of these granted lands from sale,—upon the ground, as stated in the bill, "of the great injury inflicted upon *commercial* and *industrial* conditions,"—that moved Congress to take action. The Attorney-General was authorized by joint resolution, to proceed against the company, and the suit in equity, now pending, and of which this appeal is a phase, then followed.

It will be recalled that the first appeal was taken from the decree of the District Court of Oregon, forfeiting the title of the company to the granted lands, as for a breach of the settlers' clause, construed in that court to be a condition subsequent. Upon a certificate of questions from the Circuit Court of Appeals to this court, the whole record was ordered up and the case was considered and decided at large. It was held here that the settlers' clause was not a condition subsequent, that it was a covenant only, enforceable by injunction. The decree of the District Court of Oregon was reversed, and the cause was remanded to that court for further proceedings in accordance with the opinion of the Supreme Court. It is the decree entered by the District Court in such further proceedings, that the pending appeal now brings in question, and for the reason, as it is submitted, that the decree is not in accordance with the opinion of the Supreme Court.

This court has ruled that "there was a complete and absolute grant to the railroad company, with power to sell, limited only as prescribed" by the settlers' provisos. (238 U. S., pp. 434-5) And as to these provisos, it was said by this Court: "Their language is not directive, it is restrictive only; and with this exception the grant is unqualified." (238 U. S. p. 432)

Upon the fullest consideration, it was determined here that the settlers' proviso was not a condition subsequent, that it was a covenant, and the forfeiture of the railroad company's estate was reversed. Injunctive relief, as being appropriate to the provisos, in their character of covenant, was awarded—"an injunction against further violations of the covenants". (238 U. S., p. 436) A temporary restraining order was also made—six months being the period indicated—with the object, as the Government's motion for certiorari puts it, of "preserving the status of the property until Congress might act". The language of the opinion (238 U. S., p. 438) is as follows:

> "The lands invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever, or of the timber thereof, and from cutting or authorizing the cutting or removal of any of the timber thereon, *until*

> Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the railroads."
>
> "If Congress does not make such provision the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein for a *modification* of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act, and the Court in its discretion may modify the decree accordingly."

The decree of the District Court enjoins the railroad company from sales of the granted lands in violation of the covenants—a general and permanent injunction, so far forth in pursuance of the mandate, but as to the timber and minerals of the granted lands, the decree is not limited to the scope of a temporary restraining order as required by the opinion of this court. It goes farther, it forbids the exercise by the grantee at any time of any right of ownership in respect to the timber or minerals of its land. It denies to the owner of the land any use or benefit of the timber or the minerals; it accords a bare permission to transfer the timber and the minerals along with the land, when a sale is made of that land to a settler pursuant to the

proviso. But such a transfer of timber and minerals would not need a decree; it goes without saying; the unsevered timber as such, the unextracted mineral, is part of the realty. In effect, therefore, and not temporarily but for good and all, this decree obliterates all rights of the owner of a "complete and absolute grant", in the timber and minerals of the granted land.

The decree, however, is not the last word. On June 9, 1916, Congress passed the Ferris Act, forfeiting the railroad's title to the granted lands. It is true, the harsh word, "forfeited," is not employed; "revested" is the term used; "the title" is declared to be "revested in the United States". (Sec. 1) Even "a mere naked trust or power to dispose of the lands in the manner specified (in the granting act) and to apply the same to the use and purpose therein described", (Rice against Railroad Company, 1 Black 358, 381) is denied the railroad.

The revested grantor attends to all that, and in its own way. It sells the timber as such; (Sec. 4) it disposes of the minerals as such; (Sec. 3) and to the extent that the land, cleared of its timber or exploited of its minerals, has become susceptible of agricultural treatment, it proposes to sell it to settlers. (Sec. 5) For the grantee who built the road and earned the land and received the patents for it, and upon whom the granting act imposes the perpetual burden of transporting the grantor's troops and property, free of toll, a shadowy provi-

sion is reserved. It is to receive from its grantor a sum of money for its divested title, figured at $2.50 per acre of the granted lands, patented and unpatented, but after deductions and on time. (Secs. 7-10) The deductions include "all receipts of money from sales of land or timber, forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands, also the value of timber taken from said lands and used by said grantees, or their successor or successors"; also "the amount of the taxes on said lands paid by the United States, as provided in this act, and which should in law have been paid by the said Oregon and California Railroad Company." (Sec. 7) The balance, if any, surviving this process, is payable on time, out of such moneys as may be "received from or on account of said lands and timber under the provisions of this act". (Sec. 10) This legislative decree does not contemplate a present payment for the enforced resumption of title. The railroad company must bide its time and for years. "Payments shall be made from time to time", it is declared, "as the fund accumulates, by the Treasurer of the United States, upon the order of the Secretary of the Interior: provided, however, that if, upon the expiration of ten years from the approval of this act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which said railroad company, its successors or assigns, are entitled to receive, the

balance due shall be paid from the general funds in the Treasury of the United States". (Sec. 10.)

The six months period, fixed by the temporary restraining order of this court, has now only an academic interest. It expired long since. The stress of the second decree of the District Court of Oregon is on the timber rights and mineral rights of the grantee. It extinguishes them. But whether it went beyond the mandate of this court and the right of the matter in so doing, becomes a mere moot question, an abstract proposition, if it was competent to Congress by the Ferris Act, to resume the title to the land without the consent of its owner.

"The duty of this court", it was said in Mills against Green, 159 U. S., 651-653, "as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence. Lord v. Veazie, 8

How. 251; California v. San Pablo & Tulare Railroad, 149 U. S., 308". (See also Campbell v. California, 200 U. S., 87, 90-93; United States v. Hamburg American Company, 239 U. S., 466, 475-6.)

This court will now determine, it is believed, "whether the enactment of the subsequent statute",—(Campbell v. California, supra.) of the Ferris Act, in the case at bar, was a constitutional exercise of the power of Congress. "If the act be invalid", said the Government in its application for certiorari in this case, "that fact should be known before further important steps are taken in its administration, before sales are made or settlements allowed and the money of purchasers and settlers is accepted, before large additional expenditures of public money are incurred in the payment of taxes or in work of investigation, and before the institution of the new legal proceedings which the act directs".

ASSIGNMENT OF ERRORS.

Errors have been assigned to the decree below on the part of the Oregon and California Railroad Company, on the part of the Southern Pacific Company, on the part of Stephen T. Gage, individually and as trustee, and on the part of the Union Trust Company, individually and as trustee.

The assignments of error for these four appellants are, it will be readily understood, substantially identical. It would serve no useful purpose to repeat these assignments at this point, in view of the

argument which follows, and in which they are gathered up. It will only be necessary to say, we venture to think, that they all turn, with more or less particularity and variation of form and expression, on the fundamental contention that the District Court erred in exceeding the mandate of this court. The further contention now comes in, that the action of the District Court does not raise a mere moot question, and this for the reason that the Ferris Act is invalid. The District Court, it may be added, adjudged costs in the sum of $6,249.-02 against these appellants, and to its action in that regard error is assigned.

I.

THE DISTRICT COURT ERRED IN EXCEEDING THE MANDATE OF THIS COURT.

Decree of the District Court—its terms and scope examined in the light of the opinion of this court.

The contention of the government that the settlers' clause is a condition subsequent, entailing a forfeiture for its breach, was rejected by this court. The cross-complainants, alleging themselves to be "actual" settlers upon the land, and the interveners, alleging themselves to be "constructive" settlers upon the land, made the contention that they had rights in the land as beneficiaries of a trust which the railroad company, as trustee, should be constrained to execute—that contention was rejected. The settlers' provisos were held to be covenants,

enforceable by an injunction against future violations of the same. We give the words of the opinion, 238 U. S., at page 436: "Rejecting, then, the contention of the government, and the contentions of the cross-complainants and interveners, and regarding the settlers' clauses as enforceable covenants, what shall be the judgment? A reversal of the decree of the District Court, of course; and clearly an *injunction* against *further* violations of the covenants."

That the injunction contemplated was in the nature of a restriction upon the *future* conduct of the railroad company, is again brought out at the same page of the opinion. The court is referring to the disregard of the covenants, to the gains received by the company in excess of the legal or statutory price as fixed by the settlers' clause, and it goes on to say: "In view of such disregard of the covenants and gain of illegal emolument, and in view of the government's interest in the exact observance of them, it might seem that *restriction* upon the *future* conduct of the railroad company and its various agencies is imperfect relief; but the government has not asked for more."

And again, at page 437 of the opinion, the court says: "However, an injunction simply against *future* violations of the covenants, or to put it another way, simply mandatory of *their requirements*, will not afford the measure of relief to which the facts of the case entitle the government."

It is not to be assumed, however, for a moment, that the court, in holding the provisos to be covenants, enforceable by injunction and that an injunction should go against future violations of them, decided, or meant to decide, that these covenants were directive to the grantee or imposed any obligation upon it to make sales of the lands, or were other than restrictive in character—restrictive, in the sense that if the railroad company exercised its option to make sales of the granted land, it was restricted in such sales, so far as purchasers were concerned, to actual settlers; so far as quantities were concerned, to a maximum of 160 acres to each purchaser; and so far as price was concerned, to a maximum of $2.50 an acre. An injunction, enforcing the covenants to the extent and by the measure of these restrictions, was the injunction which the court had in mind.

To illustrate: The court, at pages 417-418 of the opinion, is meeting the argument of the government that the railroad company had made a breach of the provisos and was amenable to a forfeiture. "In its argument at bar," says the court, "the government insisted that it was the duty of the railroad company to have provided the machinery for settlement, and, by *optional* sales, guarded by probational occupation of the lands, to demonstrate not only initial, but the continued, good faith of settlers; and that the omission to do so was of itself a breach of the provisos, and incurred a forfeiture

of the grants. "But when", the court continues, "did such obligation attach? Before or after the construction of the road—construction in sections, or completely? The contention encounters *the government's admission that there was no obligation imposed upon the railroad to sell.* And we have the curious situation—which is made something of by cross-complainants and interveners in opposition to the government's contention,—of the right of settlers to buy, *but no obligation on the railroad to sell,* and yet a duty of providing for sales under an extreme and drastic penalty. We may repeat the question, Might not such consequences have ended the enterprise, making it and its great purpose subordinate to local settlement? Indeed, might not both have been defeated by the inversion of their purposes."

The court rejects, as well, an argument made for the grantee that the covenants, expressed by the provisos, were not enforceable because of their lack of certainty, repugnancy to the grant, and impossibility of performance. The court saw, in the sales made in earlier years to settlers of some hundred and sixty-three thousand acres of the granted land, a demonstration so far forth of the certainty and practicability of the provisos; and it went on to show that, while these provisos imposed no affirmative duty upon the railroad company to make sales, yet when sales were in point of fact made, it was the duty of the railroad company to make those

sales within the limitations and prohibitions of the covenant. After referring to the example of these early sales to settlers, the court says, at pages 421-2 of the opinion, "The demonstration of the example would seem to need no addition. But passing the example, *as it may be contended to have some explanation in the character of the lands so disposed of*, the deduction from the asserted uncertainties is met and overcome by the provisos and their explicit direction. They are, it is true, cast *in language of limitation and prohibition;* the sales are to be made *only* to certain persons and *not exceeding* a specified maximum in quantities and prices. If the language may be said not to impose 'an affirmative obligation to people the country' it certainly imposes an obligation not to violate the limitations and prohibitions *when sales were made;* and it is the concession of one of the briefs that the obligation is enforceable, and that, even regarding the covenant *as restrictive*, the 'jurisdiction of a court of equity upon a breach or threatened breach of the covenant, to enforce performance by enjoining a violation of the covenant cannot be doubted.' Apposite cases are cited to sustain the admission, and in answer to the *contention of the government that it could recover no damages for the breach* and hence had no enforceable remedy but forfeiture, it is said: 'But the jurisdiction of a court of equity in such cases does not depend upon the showing of damage. Indeed, the very fact that injury is of

public character and such that no damage could be calculated is an added reason for the intervention of equity.' And cases are adduced."

The opinion now proceeds: *"We concur in the reasoning, and give it greater breadth in the case at bar than counsel do.* They would confine it, or seem to do so, to the compulsion of sales of land *susceptible of actual settlement*, and assert that the evidence established that not all of the lands, nor indeed the greater part of them, have such susceptibility. But neither the provisos nor the other parts of the granting acts make a distinction between the lands, and we are unable to do so. The language of the grants and of the limitations upon them is general. We cannot attach exceptions to it. The evil of an attempt is manifest. The grants must be taken *as they were given.* Assent to them was required and made, and we cannot import a *different measure* of the requirement and the assent *than the language of the act expresses.* It is to be remembered that the acts are laws as well as grants and must be given the exactness of laws."

Again, at page 428, the court says: "The character of the lands furnished no excuse. *It might have justified non-action*, but it did not justify antagonistic action."

Again, at page 432, the court can see no merit in the claim of the interveners, who were mere constructive or potential settlers, under a statute dealing with actual settlers. "The word 'actual,' " the

court says, "expresses a settlement completed, not simply contemplated or possible. Upon the express words of the provisos, it would seem that interveners' claims to be beneficiaries of the trust, if there is a trust, must be refuted." But as to the cross-complainants, alleging themselves to be actual settlers, the argument, under a statute dealing with actual settlers *eo nomine*, is more difficult, and the considerations are more appealing; and this leads the court to re-affirm its interpretation that these provisos are restrictive merely, not directive.

Said the court (p. 432): "The cross-complainants present arguments of more difficulty, supported by appealing considerations. 'Actual settlers' are the words of the provisos, and we may assume actual settlers were contemplated, and sales of the lands were *restricted* to them; but how were actual settlers to be ascertained and by whom? And was there a *compulsion or option* as to sales? There could not be an absolute right to settle or purchase *unless there was an absolute compulsion to sell.* The acts of Congress omit regulation. *Their language is not directive; it is restrictive only.* With this exception, *the grant is unqualified.*" But the court says further (pp. 432-3): "There is plausibility in the argument which represents that if the provisos be held to give to the railroad a *discretion of sale, the choice of time and settlers*, their requirement is impotent, and instead of securing settlement would prevent it; instead of devoting

the lands to development, retain them in monopoly and a kind of mortmain."

"We feel the strength of the argument *but cannot yield to it.* There are countervailing ones. We have already indicated that *nothing can be deduced from the imperfections of the granting acts.* Indeed, the argument of cross-complainants, like a great many other contentions in the case, get their plausibility from the abuses of the granting acts, not their uses. We have seen that in the early days of the grants, settlements were normally made and the railroad, *in the exercise of its discretion,* responded to such settlement by sales to settlers."

Again, pointing to the withdrawal of the granted lands from the operation of the public land laws and to the resulting differentiations, the court says (p. 434): "The public land laws had tests of the qualification of settlers under them; they had also the machinery of proof and precaution. When the granted lands were *withdrawn from those laws* and primarily devoted to another purpose, they were *committed to another power,* to be administered for such purpose; *and a discretion in the exercise of the power,* within *the restriction* imposed, was necessarily conferred."

And finally, at pages 434-5 of the opinion, the court says: "There was *a complete and absolute grant* to the railroad with power to sell, *limited only as prescribed,* and we agree with the government that the company 'might choose the actual

settler; might sell for any price not exceeding $2.50 an acre; might sell in quantities of 40, 60 or 100 acres, or any amount not exceeding 160 acres.' And we add, it might choose the time for selling, or its use of the grants as a means of credit, subject *ultimately* to the *restrictions* imposed".

It is abundantly clear from the decision of this court, that the language of these provisos "is not directive, it is restrictive only;" and that the obligation imposed upon the company is "an obligation not to violate the limitations and prohibitions *when sales were made.*" The absolute grant to the railroad company carried the "power to sell, *limited only as prescribed.*" The company, as the government itself argued, and as the court agreed, "might choose the actual settler, might sell for any price not exceeding $2.50 an acre, might sell in quantities of 40, 60 or 100 acres, or any amount not exceeding 160 acres;" and more than that, as the court explicitly held, "it might choose the time for selling."

There can be no misunderstanding of the position of the court as to whether there was "a compulsion or option as to the sales." The same thought was expressed in Nichols v. Southern Oregon Co., 135 Fed., 233, where the Court said, speaking of a similar provision:

> "The grant was not a law for the sale of the granted lands. It did not offer them for sale. That was left to the state, (the grant being

> to the state directly) subject to restrictions as to the price at which they should be sold and the quantity that should be sold to any one person. These restrictions were mere incidents of the grant, mere regulations that the state was required to observe in selling the granted lands, at such time after they were earned *as the state should conclude to sell them.*"

And in the Government's brief on demurrer to the bill, in the case at bar, it was said, at page 154:

> "The terms of this proviso are prohibitive and not compulsory; that is, it prohibits sales except within the maximum limits imposed. Each of the limitations is in the negative form —'actual settlers', quantities 'not greater', prices 'not exceeding'."

And at page 226 of the same brief the Government says:

> "In the case at bar observance of the condition would consist in refraining from making sales to others than actual settlers, in quantities exceeding 160 acres to any one purchaser for a price exceeding $2.50 an acre. The thing prohibited was specifically stated in language which is not susceptible of any doubt or uncertainty."

An injunction, therefore, "against *future* violations of the covenants," as decreed by the court, once the covenants, as construed by the court, are understood, is not difficult to appreciate. It does not

import or imply a direction to the company to make sales, for the covenants were not directive. It does import a restriction upon the company, for the covenants were restrictive. It subjects the grantee to a restriction, "when sales were made," made not under "compulsion" but at the "option" and in the "discretion" of the grantee, that such sales should not violate the limitations and prohibitions of the provisos—that they should not be made except to actual settlers, that they should not be made in quantities to exceed 160 acres, and that they should not be made at prices in excess of $2.50 an acre. A decree for such an injunction, would be a decree in accordance with the opinion of the court.

One thing, however, was quite clear to the court—that the settlers' clause was a settlement clause; that it was not passed for the benefit of timber speculators. The restriction on the railroad company, in making sales of forest land insusceptible of settlement, and chiefly valuable for timber, at a maximum price of $2.50 an acre, would be virtually an invitation to the timber speculator, under the guise of a settler; the railroad company would be limited to that constituency for its purchasers; and the Congressional policy and intent would be defeated. Some measure of relief the government—and as well the grantee—was entitled to, appropriate to that situation.

The decree of this court vindicates the title of the grantee in explicit and emphatic terms. But

it seems to have been conceived by the court, on a view of the whole case, that the temporary restraining order, keeping the subject matter *in statu quo*, was an equitable condition to annex to its decree, in aid of such amendatory legislation, competent to Congress, as, consistently with the rights of the grantee, might afford relief from unworkable requirements.

"The Court" said Chief Justice Marshall, in Polk v. Wendall, 9 Cranch, 87, 99, "may, on a view of the whole case, annex equitable conditions to its decree, or order what may be reasonable, without absolutely avoiding a whole grant".

The court makes no suggestion as to the character of this amendatory legislation, except that it is careful to say that any action by Congress in the premises must "secure to the defendants *all the value* the *granting acts* conferred upon the railroads." It will be convenient and aidful to quote the language of the opinion at pages 437-9:

> "The Government alleged in its bill that more than 1000 persons had made application to purchase from the railroad company in conformity to the covenants. In answering, the defendants averred that such applications were made by persons who desired to obtain title *on account of the timber* and not otherwise, and *for the purpose of speculation only* and not in good faith as actual settlers. And it was averred that the lands were chiefly and in most instances solely of value because of the

timber thereon and were not fit for actual settlement. And, further, that the lands capable of actual settlement and the establishment of homes thereon at no time 'exceeded (approximately) 300,000 acres, consisting of small and widely separated tracts, all of which were sold to actual settlers or persons claiming to be such during construction and prior to completion, respectively, of said railroads, in quantities of 160 acres or less to a single purchaser, at prices not exceeding $2.50 per acre.'

"A great deal of testimony was introduced, consisting not only of that of witnesses but of maps, photographs, reports and publications, which tended to establish the asserted character of the lands. And there was evidence in rebuttal. We cannot pause to determine the relative probative force of the opposing testimonies. It is, however, clear, *even from the Government's summary of the evidence*, that lands which may be fit for cultivation have a greater value on account of the timber which is upon them. Besides, *for our present purpose* we may accept the assertion of defendants; and we have seen that Congress extended the *Timber and Stone Act to the reserved lands*, and by the act of August 20, 1912, supra, it has withdrawn *from entry or the initiation of any right whatever* under *any of the public land laws* of the United States the lands which might revert to the United States by reason of this suit.

"This, then, being the situation resulting from conditions now existing, incident, it may

be, to the prolonged disregard of the covenants by the railroad company, *the lands invite now more to speculation than to settlement*, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from *any disposition* of them whatever or of the timber thereon and from cutting or authorizing the cutting or removal of any of the timber thereon, *until Congress* shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances *and at the same time secure to the defendants all the value the granting acts conferred upon the railroads.*

"If Congress does not make such provision the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein, for *a modification of so much* of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act, and the court in its discretion may modify the decree accordingly.

"*Decree reversed and cause remanded to the District Court for further proceedings in accordance with this opinion.*"

It will be seen, therefore, that the opinion of the Court contemplates as well a secondary and temporary injunction as a general and permanent injunction. The general and permanent injunction is against future violations of the covenants as we now

know those covenants to be, in their scope and effect, as understood by the court. The secondary and temporary injunction it is, and that only, which has reference to the timber. Its obvious purpose is to maintain the *status quo*, so far as these lands and the timber upon them are concerned, for a limited period, until some adjustment, remediable of the anomaly that valuable timber lands should be salable at $2.50 an acre, can be accomplished. Whatever adjustment may be made, it must be consistent with the vested rights of the railroad company. No legislation by Congress providing for the disposition of these lands, and that by their owner, the railroad company, is within the mind of the court, except such as is consistent with the vested rights of the railroad company—such as shall "secure to the defendants all the value the granting acts conferred upon the railroads." It is not contemplated, it could not have been, that Congress should provide for a disposition of those lands by Congress itself, or by anybody else who did not own the lands. The effort of the government in this litigation to disestablish the ownership of the railroad company, to enforce a forfeiture, to revest the title in the United States, had failed. That contention had been definitely rejected. The railroad ownership had been vindicated and confirmed over and over again, but the owner of those lands, the railroad company, in essaying to make sales of the lands, was hedged in by the terms of a re-

strictive covenant, enforceable by injunction—was limited, in the disposition of these lands, to sales to actual settlers, in small parcels, at a price of $2.50 an acre. The condition of the subject matter of the covenant—its physical and its economic condition—was inconsistent with such a covenant, the land was timber land, it was not settlement land, it was insusceptible of settlement, and its value was in excess of $2.50 an acre. Some relief from this impracticable covenant—some feasible and equitable relaxation of its strictness in the way of an amendment and expansion of the power of disposition conferred upon the railroad company—this was the problem as the court saw it, and this is made apparent if we turn again to the opinion itself.

If these covenants were unworkable, the course of the railroad company, as the court viewed it, was not to ignore or disregard them—they were a contract and a law. The true course was to go to Congress for some amendatory legislation in the way of relief from their requirements. The judgment of the court on the grant and on these covenants, it was said, was not to be determined by suggestions *ab inconvenienti;* "It is determined," we give the language of the opinion "by the simple words of the acts of Congress, not only regarded as grants but as laws, and accepted as both; granting rights but imposing obligations—rights quite definite, obligations as much so. The first had the means of acquisition; the second, of performance;

and, as we have pointed out, *whatever the difficulties of performance, relief could have been applied for*, and, it might be, *have been secured through an appeal to Congress.* Certainly, evasion of the laws or the defiance of them should not be resorted to." And taking these covenants as it found them, the court was not willing to enlarge their obligation by the wisdom that comes after the event. "Nor can their obligation," said the court, "be magnified by looking backwards, by the results achieved rather than when they were only hoped for—by conditions of which there was not even prophecy." (Opinion p. 435).

Again, the court had said, at page 428: "The character of the lands furnished no excuse; *it might have justified non-action*, but it did not justify *antagonistic action.*" And more at large, and instructively, the court says, (pp. 422-3): "If the provisos were ignorantly adopted as they are asserted to have been; if the actual conditions were unknown as is asserted; if but little of the land was arable, most of it covered with timber and valuable only for timber and not fit for the acquisition of homes; if a great deal of it was nothing but a wilderness of mountain and rock and forest; if its character was given evidence by the application of the Timber & Stone Act to the reserved lands; if settlers neither crowded before nor crowded after the railroad, nor could do so; if the grants were not as valuable for sale or credit as they were supposed

to have been, and difficulties beset both uses, *the remedy was obvious.* Granting the obstacles and infirmities, *they were but promptings and reasons for an appeal to Congress to relax the law;* they were neither cause nor justification for violating it."

A decree, then, in accordance with the opinion of this court would be injunctive in character, and of a two-fold aspect. It would, in the first place, enjoin the railroad company, generally and permanently, from future violations of these restrictive covenants. It would, in the second place, and as a suspensive measure, hold the lands *in statu quo*, for a limited period, until some relief from the strictness of disposition required by covenants, when seen to be inapposite to the subject matter, should be afforded by Congress. This secondary and suspensive injunction puts the sales of the land, although made in full conformity with the provisos, and as well the use of the timber by the company, in the same category. Notwithstanding that the railroad company might seek to dispose of 160 acres of this land, during the period of the suspensive injunction, to an actual settler, at $2.50 an acre—pursuing literally the terms of the proviso—it is enjoined *ad interim* from doing so; and it is likewise enjoined, during the interim, from using the timber. The company's clear right to sell these lands, if it so elects, in conformity with the provisos, was a thing conceded of everybody. But

that clear right is put in abeyance by the temporary injunction; and similarly, the equally clear right of the owner of the land to the timber growing upon it, is put in abeyance for the same period and in the same way. No question has been made in this case, whether in printed briefs or in oral discussion at bar, as to the right of an owner by absolute grant to the use of the timber on his land. No such question was decided in the opinion of the court; no such question was stated or considered or discussed in that opinion. What the lower court was directed to do, was to enter an injunctive decree, restraining the railroad company from future violations of the covenants, as those covenants had been construed by the Supreme Court, and, further, by secondary and temporary injunction, to preserve the *status quo* in respect to the lands and the timber until Congress could interpose with some relief by amendatory legislation, consistent with the vested rights of the owner of the grant.

The District Court, it is to be said with great deference, was not content to pursue the mandate of the Supreme Court. Its decree was in excess of that mandate. It was what this court has termed an "intermeddling" with matters outside the scope of the mandate. It proceeded to determine that the railroad company had no right to use the timber upon its own lands while they were still unsold and in its possession and occupancy; it determined that the railroad company could not even make a clear-

ing in anticipation of a sale to some settler, or dig out a ton of coal; and it adjudged that the owner of the land had no right in the timber or the coal except to pass it, as part of the realty, when it sold the land to a settler at $2.50 an acre. Two decrees were presented to the District Court—the one, by the government, imposing these new and added features upon the mandate of this court, and this proposed decree, with an omission not material here, was adopted by the District Court; the other, by these appellants, pursuing the very terms of the mandate. These decrees are set forth in the transcript of the record, and are printed as appendices to this brief.

We should now look at these decrees. The first paragraph is the same in both decrees. It provides that the original decree of the District Court, being the decree of forfeiture, "so far as it affects the defendants," naming the appellants, "be, and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the 'cross-complainants,' and the 'interveners'." The second paragraph of the decree proposed by these appellants, expresses the general injunction, ordered by the Supreme Court, against future violations by the railroad company of the covenants. It is in these words: "that the said defendants and their respective officers and agents be, and each is hereby enjoined, *from selling the lands*,

or any part thereof, granted either by the act of Congress, approved July 25, 1866, as amended by the act of Congress of April 10, 1869, or by the act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, *to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two and 50/100 dollars ($2.50) per acre.*"

The second paragraph of the decree, as signed by the District Judge, so far forth as its first clause, is—barring the fact that the words "on the land sold to him" have been inserted therein after the words "actual settler"—the same, word for word, as the paragraph of our proposed decree which has just been quoted. But the government added, and the District Court adopted, a second and further clause, touching the timber on the granted lands—likewise any mineral found therein—and this, as part, not of any temporary injunction, but of the general and permanent injunction,—enjoining the owner of the land from any disposition of the timber, and, as well, of any mineral deposits therein, except as that timber or those deposits went along with the land when it was sold within the limitations of the covenants, as indicated in the first clause. We quote this second, interpolated clause: "and from selling any of the timber on said lands, or any mineral or other deposits therein, *except as a part of and in conjunction with the*

lands on which the timber stands or in which the mineral or other deposits are found, and from cutting or removing or authorizing the cutting or removal of any of the timber thereon, or from removing or authorizing the removal of mineral or other deposits therein, *except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.*" This decree, it will be seen, imports bodily into the general injunction, a provision more or less reflective of the temporary restraint which the mandate imposes in aid of the maintenance of the *status quo* pending Congressional interposition. It is a gratuitous enlargement and exceeding of the terms of the mandate.

Paragraph 3 of our proposed decree, pursues in terms the mandate of the Supreme Court, touching the temporary injunction. We quote paragraph 3:

> "That the said defendants and their respective officers and agents be, and each is hereby, enjoined from any disposition of the said lands, or any part thereof, or of the timber thereon, and from cutting, or authorizing the cutting, or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands, in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the de-

fendants may apply to this court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act."

This parapraph of our proposed decree will bear comparison, word for word, with the language of the opinion of the Supreme Court.

Paragraph 3 of the decree as signed by the District Court, like our paragraph 3, is addressed to the temporary injunction. We understand it to go to the same thing as our proposed paragraph 3, and we note these differences: that the decree as signed takes in, as well mineral or other deposits in the lands, as timber thereon—and includes, also, moneys which have arisen, or may hereafter arise from sales of the lands or of the timber, through condemnation proceedings or otherwise, when impounded, or which may hereafter be impounded, *in custodia legis* to await the final decision of the Supreme Court. No reference to such moneys was made in our proposed decree for the reason that such impounded moneys were covered by appropriate orders in the particular litigation.

Paragraph 4 of the decree as signed is a mere continuation of the subject matter of paragraph 3, and deals with the right of defendants to apply for a modification of the injunction in the event that Congress should fail to act.

Paragraph 5 of the decree as signed includes, as part of the lands covered by the decree, such lands as have reverted or may hereafter revert to the defendants—looking more to such lands as may be embraced by executory contracts of sale on which the purchaser has suffered or may suffer default.

And paragraph 6 makes the decree to be without prejudice to any rights of the government under the joint resolution of Congress, of April 30, 1908, being the resolution authorizing the Attorney-General to proceed against the granted lands; or under the Act of Congress of August 20, 1912, being the statute authorizing the compromise of suits against purchasers from the railroad company. This need not detain us.

The seventh paragraph of the decree as signed awards costs against the appellants and in favor of the complainant to the amount of $6,249.02; and we shall consider these costs later.

So far, then, as the timber and the minerals are concerned, the difference between the two decrees—between the one as proposed by us and the one signed—will be found in the new and added features in excess of the language of the mandate, imported by the decree into the second clause of the second paragraph—by which the defendants are enjoined not only from selling the lands, not only from future violations of the covenants, but also—and for convenience we quote again:

> "from selling any of the timber on said lands, or any mineral or other deposits therein *except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found;* and from cutting or removing or authorizing the cutting or removal of any of the timber thereon, or from removing or authorizing the removal of mineral or other deposits therein, *except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.*"

Mr. Justice Lurton of the Supreme Court of the United States, was a member of the Circuit Court of Appeals which decided the case of *Bissell v. Goshen*, 72 Fed. 545. Judge Lurton, himself, wrote the opinion in that case, and the court, speaking through him, said (at p. 548):

> "Whatever was before it (speaking of the Appellate Court) by virtue of that appeal, and was disposed of, has been finally done, and must be regarded as settled. The Circuit Court is bound by such decree *as the law of the case*, and must carry it into execution *according to the mandate.* The decree of this court upon any matter within its jurisdiction *can neither be modified, reversed, enlarged, nor suspended* by the Circuit Court nor can any other or less or greater relief be accorded *than that prescribed by its decree and mandate.*

Judge Lurton goes on to quote "the very pertinent summary of the doctrine by Justice Gray" in

the case of *Sanford Fork & Tool Company, Petitioner*, 160 U. S. p. 247, as follows:

> "When a case has once been decided by this court on appeal, and remanded to the Circuit Court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The Circuit Court is bound by the decree *as the law of the case*, and must carry it into execution, *according* to the mandate. That court cannot vary it, or examine it for any other purpose *than execution*, or give any other or further relief, or review it, even for apparent error, upon any matter decided on appeal, or intermeddle with it, further than to settle so much as has been remanded. *Sibbald v. U. S.*, 12 Pet. 488, 492; *Railway Co. v. Anderson*, 149 U. S. 237, 13 Sup. Ct. 843. If the Circuit Court mistakes or misconstrues the decrees of this court, and does not give full effect to the mandate, its action may be controlled, either upon a new appeal (if involving a sufficient amount), or by writ of mandamus to execute the mandate of this court."

And further, at page 552, Judge Lurton says:

> "It seems to us that the opinions and decrees of this, as a court of appellate jurisdiction, are final and conclusive upon every point actually decided, and that *it is the clear duty* of the lower court to give effect to the decree *without modification or enlargement, in the very terms of the decree here rendered.*"

No question of the right of the grantee of these lands, by an absolute grant qualified only by the provisos, to use the timber upon its granted land, or to take the coal from it or the iron that might be found below the surface, was, as we have already ventured to insist, involved or raised or argued or considered or decided. That issue was not before the court, and it is not determinable as an academic thesis, or otherwise than in some concrete case properly calling for its determination. (Windsor v. McVeigh, 93 U. S., 282-3). Nevertheless, gratuitously, and in excess of the mandate of the Supreme Court, the decree, as proposed by the government and adopted by the District Court, assumes or attempts to foreclose these appellants in the premises. If there is anything in the opinion of the Supreme Court, bearing at all on the question, it is to be found in the direction for a temporary injunction, where our right to make sales of these lands to settlers in statutory quantities and at statutory prices, and our right to make use of the timber, are dealt with concurrently, and are suspended alike. Both rights are associated in immediate juxtaposition, and both rights are suspended pending the interval of contemplated Congressional action, and both rights are assumed to be open to revival in the event of inaction by Congress.

It is true that the Supreme Court refused to forfeit this grant. It is true that the Supreme Court retained the title to these lands where the grant

had put it—in the railroad company—but the thought seems to be, that the failure of the government to achieve a forfeiture may be repaired by the action of Congress, and that, in some mysterious way, an appellate jurisdiction may be exercised by the legislature to review the judgment of the Supreme Court and to declare a forfeiture where the court had decided there could be no forfeiture. In other words, it is the idea, as put forth by complainant in the argument at the bar of the District Court, and sought to be realized in the decree as signed, that Congress, by legislation, may revest itself with the title which it had granted to the railroad company, and that, after all, the railroad company has a mere expectancy in a fund measured by $2.50 an acre in the total acreage concerned, subject, again, to deduction by reason of any excess over $2.50 an acre, which the railroad company may have received for some of these lands, and quite regardless of the administration expenses, including taxes upon a full, assessed value of $11 an acre, incurred by the railroad company in handling the grant, and regardless as well of the uncompensated services rendered and to be rendered by the railroad company through all the years in transporting government troops and materials, and regardless also of the fact that the railroad company kept its contract with the government, and, by the construction of this road, earned the grant and received its patents accordingly. We are no longer, it would seem,

the owners of this land by absolute grant, or at all; but by a novel species of equitable or inequitable conversion the land is now, by amendatory legislation, to be revested in the grantor, and we are to be transformed into beneficiaries of a depleted and vanishing fund.

The Grantee's Estate.

We venture to think, however, that we are the owners of this land, by right, and as of absolute grant, qualified only by these provisos and by nothing else, and that, as such owners, we are entitled to the timber upon our granted land, and entitled as well to take the coal or the iron, for example, that we may find below the surface.

This grant was not a gift; it passed to the railroad company upon full and ample consideration. "The adventurers, who obtained the charter and who accepted it," to use the language of this court, in *Platt v. U. P. R. R. Co.*, 99 U. S., 48, "undertook to construct and maintain the public work. Their undertaking is the consideration of the grant, and without legislative consent, they cannot throw off the obligation they have assumed". Nor, we will add, can the grantor, without consent of the railroad company, repudiate the grant which it made.

The granting act in question here, includes special considerations and onerous obligations as against the railroad company. It requires the grantee to transport the mails and to transmit the dispatches

of the government, preferentially in point of service, and at reasonable rates, not to exceed those paid by private parties; and it obligates the grantee, for all time, to the transportation, free of charge, of the troops and property of the United States. The government holds to the railroad company "a very important relation, namely, that of contract". (United States v. U. P. R. R. Co., 98 U. S., 569, 613). The grantees "cannot throw off the obligation they have assumed". (Platt v. U. P. R. R. Co., 99 U. S., 48).

The language of this court, in the recent case of *Burke* v. *Southern Pacific R. R. Co.*, 234 U. S., at pages 679-680, is wholesome reading at this point:

> "We first notice a contention advanced on the part of the mineral claimants, to the effect that the grant to the railroad company *was merely a gift* from the United States, and should be construed and applied accordingly. *The granting act not only does not support the contention but refutes it.* The act did not follow the building of the road but preceded it. Instead of giving a *gratuitous* reward for something *already* done, the act made *a proposal* to the company to the effect that if the latter would locate, construct and put into operation a designated line of railroad, *patents* would be issued to the company *confirming in it the right and title to the public lands* falling within the descriptive terms of the grant. The purpose was *to bring about the construction* of the road, with *the resulting advantages to the gov-*

ernment and the public, and to that end, provision was made *for compensating* the company if it should do the work, *by patenting to it the lands indicated.* The company *was at liberty* to *accept or reject* the proposal. It *accepted* in the mode contemplated by the act, and *thereby* the parties were brought *into such contractual relations* that the terms of the proposal *became obligatory on both. Menotti v. Dillon*, 167 U. S. 703, 721. And when, by *constructing* the road and *putting it into operation*, the company *performed its part* of the contract, it *became entitled to the performance by the government.* In other words, *it earned the right to the lands described.* Of course, any ambiguity or uncertainty in the terms employed should be resolved in favor of the government, but the grant *should not be treated as a mere gift.*"

This very act of 1866 was before the Court in *Bybee against Oregon & California Railroad Company*, 139 U. S. 663, 674. The court had no difficulty at that time in perceiving that this grant was like any other railroad land grant; that it was a grant of real estate, not a contingent assignment of personalty by way of an expectancy in some fund, and that it was a grant *in praesenti.* The court said:

> "The act making the grant in aid of this road does not, in its words of conveyance, differ materially from a large number of similar acts passed by Congress in aid of the construction of roads in different parts of the

> West, which have been considered by this court as taking effect *in praesenti*, although the particlular lands to which the grant is applicable remain to be selected and identified when the road is located, and the map is filed with the Secretary of the Interior. *The act then operates as a grant* of all odd numbered sections within the limits, except so far as they may have been in the meantime, 'granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of.' "

And what this Court decided in the case at bar, and its decision is now "the law of the case" (*Bissell v. Goshen*, 72 Fed. 545; *Sanford Fork & Tool Company, Petitioner*, 160 U. S. 247; *Roberts v. Cooper*, 20 How. 467), was this:

At pages 434-5 of the opinion in the case at bar, it is said:

> "*There was a complete and absolute grant to the railroad company* with power to sell, *limited only as prescribed*, and we agree with the Government that the company 'might choose the actual settler; might sell for any price not exceeding $2.50 an acre; might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.' *And we add*, it might choose the time for selling or its use of the *grants as a means of credit*, subject ultimately to the restrictions imposed; and we say 'restrictions imposed' to reject the contention of the railroad company that an implication of the power to mortgage the lands carried a

right to sell on foreclosure divested of the obligations of the provisos."

And again, at page 422: "The language of the grants and of the limitations upon them is general. *We cannot attach exceptions to it.* The evil of an attempt is manifest. The grants must be taken *as they were given.* Assent to them was required and made, and we cannot import a *different measure* of the requirement and the assent *than the language of the act expresses.* It is to be remembered, the acts are laws as well as grants, and must be given the exactness of laws."

Again, at page 436: "We can only enforce the provisos *as written,* not relieve from them."

At page 432, recalling now the language just quoted, that "there was a complete and absolute grant to the railroad company, with power to sell, *limited only as prescribed,*"—we quote from what the court says of these prescribed limitations or provisos: "Their language is not directive; it is restrictive only. *With this exception the grant is unqualified.*"

The provisos, therefore, and such is now the law of this case, and of this second appeal (Roberts v. Cooper, 20 How., 467), must be taken as they are written; they are not directive, they are restrictive only; the statute must be administered with the exactness of a law; *the grant is unqualified,* except as limited by the terms of the provisos. The

limitations there found extend only to a restraint upon the alienation of the land by the grantee; they do not affect the use and enjoyment of the estate, held in "complete, absolute and unqualified grant." It cannot be questioned, we venture to think, that the grantee, would be within its rights in making leases of the land, and applying the rents upon the construction account. Nor, we submit, can it be questioned that the grantee would be authorized to take stone from the land and use it to build a railroad bridge or a station house, or for the matter of that, to turn the stone into money and place the avails against construction debt. Nor do we think it could be questioned that the grantee could take iron from the granted land for use upon its railroad fixtures or structures, or could take coal from the land—if such minerals were found there—to burn in the furnaces of its locomotives or of its machine shops. If the grantee should farm a patch of arable area, and turn the farm products into money and use that money to help pay coupon interest on the bonded debt, it would be within its rights and within the measure of its estate—for that estate is "a complete and absolute grant to the railroad company with power to sell, limited only as prescribed." If all this be true, there is no reason apparent to us upon the face and terms of the grant why the right of the grantee in like manner to make use of the timber upon the land, should be differentiated or disparaged.

It would be passing strange if the government should now maintain that the company has no right to the timber upon these lands because and although, for many years before coal was used as fuel, it burned this timber in its engines without question; and the right to use that timber, whether to burn it as fuel, or to use it in the upkeep and maintenance of the railroad, is in the forefront of the act of Congress itself, for that act granted the lands "to secure safe and speedy transportation of mails, troops, munitions of war and public stores over the line of said railroad." There could be no such transportation begun or kept up without a railroad, a railroad constructed not only but also maintained, and without fuel for motive power. Would the use of that timber to help pay the construction debt be in contravention of the railroad policy of the act? Would the removal of that timber go in defeat of the settlement policy of the act? Would it not be primarily and directly in aid of such policy?—For it is obvious enough that without a clearing most of the land is unfit for settlement.

Ferens ligna in silva—but we beg to quote the apt language from *Reeves on Real Property*, Section 423, where, in speaking of the grantee of the fee simple estate, the author says:

> "*Subject to any restrictions* under which he may have taken it, and subject also to the mandate of the maxim *sic utere tuo ut alienum non laedas, its owner when in possession may use*

it for any purpose and in any manner that he may choose; he may cut timber, open and work mines, cultivate the soil even to exhaustion, build or pull down houses, commit waste, or injure or destroy any part of it as he may please. Not only does he have the right to sell or otherwise dispose of it as a whole, but he may grant or convey out of it any inferior interests, such as estates for years, for life or in tail."

Schulenberg against Harriman, 21 Wall., 44, is a leading and classical case in this court, and is very much to the point here. It was a railroad land grant case, as the case at bar is; it was a grant conditioned upon construction of the railroad, like the case at bar; it was a timber case, as in part the case at bar is.

The grant in the Schulenberg case was made, not in the first instance to the railroad company, but directly to the State of Wisconsin. The fee simple title of the state was qualified by a restraint on the grantee's power to alienate. "The State", to quote the language of this court, (21 Wall., at page 59) "by the terms of the grants from Congress, possessed *no authority to dispose* of the lands beyond one hundred and twenty sections, *except* as the road, in aid of which the grants were made, was constructed." Conveyances were to be made by the state of the granted lands, from time to time, as sections of the road should be constructed, no constructed section

to be less than twenty consecutive miles. In the event that the road should not be completed within ten years, "no further sales shall be made, and the lands *unsold* shall *revert* to the United States". (21 Wall., pp. 59, 60) Said this court:

> "The power of disposal, and the provision for the lands reverting, both imply what the first section in terms declares, that a grant is made, that is, *that the title is transferred to the State.* It is true that the route of the railroad, for the construction of which the grant was made, was yet to be designated, and until such designation the title did not attach to any specific tracts of land. The title passed to the sections, to be afterwards located;—when the route was fixed their location became certain, and the title, which was previously imperfect, acquired precision and became attached to the land." (p. 60)

It was further held that the rule of the common law, requiring the possibility of present identification of property to the validity of its transfer, and treating a grant of lands to be afterwards designated, not as an actual conveyance, but as a mere contract to convey, had no application to the legislative grant in question. And this, for the reason so often repeated since—"A legislative grant operates as a law as well as a transfer of the property, and has such force as the intent of the legislature requires". (p. 62)

The provision in the granting act "that all lands remaining unsold after ten years shall revert to the United States, if the road be not then completed, is no more than a provision that the grant shall be void, if a condition subsequent be not performed." (p. 62)

Touching the restraint upon the power of the state to alienate the granted lands, this court said:

> "The prohibition against further sales, if the road be not completed within the period prescribed, adds nothing to the force of the provision. A cessation of sales in that event is implied in the condition that the lands shall then revert; if the condition *be not enforced the power to sell* continues *as before its breach, limited* only by the objects of the grant, and *the manner of sale* prescribed in the act." (p. 63)

No action had been taken by the United States, as the opinion points out, "either by legislation or judicial proceedings to enforce a forfeiture of the estate granted by the acts of 1856 and 1864. The title remains, therefore, in the State"—this court continues—"as completely as it existed on the day when the title by location of the route of the railroad acquired precision and became attached to the adjoining alternate sections".

Schulenberg, a stranger to the State's title, not in privity with the grantee of the land, had gone upon the granted land, and cut the standing timber

into logs. While he was in the quiet and peaceable possession of those logs, the defendant, Harriman, as the agent of the state and acting upon its direction, seized the logs, some sixteen hundred thousand feet of pine saw-logs. All this happened long after the expiration of the ten years fixed by the granting act for the completion of the road—no road had ever been built.

Schulenberg brought replevin against Harriman for the unlawful seizure and detention of personal property, to-wit, the severed logs. This court upheld the seizure of the logs by the State's agent, and upon the simple ground that the logs belonged to the grantee of the land. We quote from page 64 of the opinion:

> "The title to the land *remaining* in the State, the lumber cut upon the land *belonged* to the State. Whilst the timber was *standing*, it constituted a *part of the realty;* being *severed* from the soil, its character was changed; it became personalty, but its title was not affected, it continued as previously, *the property of the owner of the land*, and could be pursued wherever it was carried. *All the remedies* were open to the owner, which the law affords in other cases of the wrongful removal or conversion of personal property".

If the severed timber, in *Schulenberg against Harriman, supra*, belonged to the state, if the state could pursue the physical logs, as so much personal

property, and re-capture them in replevin, or if it could avail itself of the remedy in trover, and recover and appropriate their value; and all this years after the time had expired for the construction of the railroad, and when no railroad had been built or begun—it must be clearer yet that, in the case at bar, where there was no forfeiture, no ground for forfeiture, no room for forfeiture, and where the grant was earned and the patents were issued for a constructed railroad, the severed timber belongs to the grantee by every right and in full title, and the minerals as well.

Schulenberg against Harriman was decided by this court in October, 1874. Nearly twenty-five years after, on December 12, 1898, the case of *United States against Loughrey*, 172 U. S., 206, was decided by this court. Like the Schulenberg case, it was a timber case, under a railroad land grant, a case of severed timber. The action was not in replevin, for the physical logs, as in the Schulenberg case; it was in trover, for the money value of the cut timber. Unlike *Schulenberg against Harriman*, the title litigated to the cut timber in the *Loughrey* case was not the title of the grantee of the land grant—the State of Michigan—but it was the alleged title of the grantor, namely, the United States. The land, in the first instance, had been public land, the property of the United States.

By an act of Congress of June 3, 1856, substantially identical in the granting clause with the

granting acts in the case at bar, the land in question was granted to the State of Michigan, to aid in the construction of a railroad. It was provided:

> "That the lands hereby granted shall be exclusively applied in the construction of that road, for and on account of which said lands are hereby granted, and shall be disposed of only *as the work progresses*, and the same shall be applied to no other purpose whatsoever".

This restraint on the power of the state to transfer the granted lands was emphasized by the further provision "that the said lands hereby granted to the said state, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other".

The granting act provided for a sale of the lands for the benefit of the proposed railroads, as they were constructed. And a condition subsequent was imposed, that, "if any of said roads is not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States".

And of the title and estate enuring thereunder, this court said: (*United States against Loughrey*, 172 U. S., p. 209) "Under this act the State of Michigan took the fee of the lands to be thereafter identified, subject to a condition subsequent that if the roads were not completed within ten years the lands unsold should revert to the United States". The opinion of the court goes on:

"With respect to this class of estates, Professor Washburn says that 'so long as the estate in fee remains, *the owner in possession* has all the rights in respect to it, which he would have if tenant in fee simple, unless it be so limited that there is properly a reversionary right in another—something *more than a possibility of reverter* belonging to a third person, when, perhaps, chancery might interpose to prevent waste of the premises'. 1 Wash. Real Prop. 5th ed. 95."

This court then makes reference to the leading and ruling case of *De Peyster against Michael*, 6 N. Y., 467, 506, in which Judge Ruggles, a great judge, speaking for his court, pronounced one of the most learned and interesting judgments in the New York Reports. The reference to the De Peyster case, by this court, is in these words:

"The right of re-entry * * * * 'is not a reversion, nor is it the possibility of reversion, *nor is it any estate in the land;* (Italicized by this court) It is a mere right or chose in action, and if enforced, the grantor would be in, by the forfeiture of a condition, and not by a reverter. * * * It is only by statute, that the assignee of the lessor can re-enter for condition broken. But the statute only authorized the transfer of the right, and did not convert it into a reversionary interest, nor into any other *estate.* (Italicized by this court) * * * When property is held on condition, all the *attributes and incidents of absolute property belong to it, until*

the condition be broken'." (Italicized by this court)

If, now, the State of Michigan, in fulfillment of its covenant, that the lands should be held for railroad purposes only, had transferred such lands in aid of railroad construction, it would follow, obviously enough, as to the property so transferred, in the hands of the grantee, that "all the attributes and incidents of absolute property belong to it until the condition be broken". But no such situation, in respect to any grantee of the State of Michigan arose; for the reason, as found by the trial court, "that said railroad was never built, and said grant of lands was never earned by the construction of any railroad". (172 U. S., p. 208)

In 1887, some twelve years after the period of ten years, fixed by the granting act for the construction of the railroad had expired, Joseph E. Sauve cut some six hundred thousand feet of timber on the granted lands, removed eighty thousand feet of the timber so cut, and left the balance skidded upon the lands. The defendant, Loughrey, was charged as a purchaser of the cut timber from Sauve, and the United States sued him in trover to recover its value.

Under the decision in *Schulenberg against Harriman, supra*, if no act had been passed by Congress, forfeiting the land grant, for breach of the condition subsequent, in respect to the construction of the

railroad, at the time when Sauve cut this timber in 1887, it would seem that the title to the timber was still in the grantee, the State of Michigan, and that the United States was without estate, right, title or interest, to maintain trover for its value. It was held by this court, quoting from Mr. Justice Field in the *Schulenberg case*, as follows:

> "The title to the land remaining in the State, the lumber cut upon the land belonged to the State. Whilst the timber was standing it constituted a part of the realty; being severed from the soil its character was changed; it became personalty, but its title was not affected; it continued as previously the property of the owner of the land, and could be pursued wherever it was carried. All the remedies were open to the owner which the law affords in other cases of the wrongful removal or conversion of personal property". (172 U. S., p. 211)

And the court, in the *Loughrey case*, goes on to say:

> "It follows that the United States, having no title to the lands at the time of the trespass and no right to the possession of the timber, are in no position to maintain this suit". (p. 211)

But the *Loughrey case* contained a differential element. In the *Schulenberg case*, while no railroad had ever been built, yet forfeiture had not been asserted by the United States for breach of

the condition. In the Loughrey case, however, a year or more after Sauve had cut the timber, Congress passed the act of March 2, 1889, forfeiting the land grant; and it was argued for the United States that this forfeiture "operated by relation to revest in the United States title to the timber, which had been cut during the winter of 1887 and 1888, and prior to the act of forfeiture". This court replied:

> "The position of the plaintiffs must necessarily be that this act of forfeiture not only revested in the United States the title to the lands as of a date prior to the cutting of the timber in question, but also revested them with the property in the timber which had been cut while the lands belonged to the State of Michigan. Had this act of forfeiture not been passed, there could be no question that, under the case of *Schulenberg v. Harriman*, 21 Wall. 44, this timber would have belonged to the State of Michigan, and no action therefor could have been brought by the United States."

The court goes on:

> "But conceding all that is contended for the plaintiffs with respect to the revestiture of the title to the lands by this act, it does not follow that the title to the timber which had been cut in the meantime was also revested in the United States. As was said in *Schulenberg v. Harriman*, the title to the timber remained in the State after it had been severed. But it re-

> mained in the State *as a separate and independent piece of property*, and if the State *had elected to sell it*, a good title would have thereby passed to the purchaser, notwithstanding the subsequent act of forfeiture".

The court now proceeds to use language of interest here, as bearing upon a somewhat transparent fallacy, argued by the government, when the case here was at the bar of the court below. It was said that inasmuch as there was a restraint upon our power to alienate lands, except to specified persons, we had no right to make use of the timber, or of the coal, or of the iron, or of other product or deposit of the soil, because it was all a part of the land. Said the court, in speaking of the cut timber, in the *Loughrey* case:

> "It did not remain the property of the State as a *part of the lands*, but as a *distinct piece of property*, although the State took its title thereto through and in consequence of its title to the lands. *From the moment it was cut, the State was at liberty to deal with it as with any other piece of personal property*". (172 U. S., pp. 217-18)

And finally, this court concludes:

> "Counsel are mistaken in supposing that the plaintiffs (United States) had an immediate right to the possession of this timber. They had no right to the possession of the land until Congress passed the act of March 2, 1889, for-

> feiting the grant. Up to that time the title was in the State, and until then the United States had no more right to enter and take possession *than they would have had to take possession of the property of a private individual*". (172 U. S., p. 219)

There was a dissenting opinion in the *Loughrey* case. It went upon the view, that, under the terms of the granting act, "the State of Michigan was not the beneficial owner of the land, from which the timber in question was severed". (p. 231)

The state of Michigan was regarded, not as the grantee of a "complete, absolute and unqualified" title, but as a mere trustee—the trustee of an express trust, to hold the granted lands, in the first instance, for the benefit of the owners of a line of railroad, if such railroad should be constructed; and secondarily, for the benefit of the United States, in the event that a forfeiture should be declared for breach of the condition subsequent. (p. 221)

The forfeiture having been declared in 1889, no execution of the trust having been effected, in favor of the primary *cestui*, namely, the owner of the contemplated line of railroad, no such railroad having been brought into existence, the trust having, therefore, ceased,—it was argued that the title by forfeiture, revested by statute of 1889, in the United States, operated by relation to put the title, as of the date of the trespass, in the United States,

to the timber which had been severed by Sauve in 1887. (p. 230)

It was insisted that the state, whose status, as a mere trustee, had been extinguished by the forfeiture, "did not stand in the attitude of a grantee of land, upon a condition subsequent, to whom an absolute conveyance had been made for its sole use and benefit. Authorities, therefore, to the point that in the case of such a conveyance, the only right of the grantor is to receive back, upon re-entry, the granted land, in the condition in which it might then exist, have no pertinency in a case like the present, where the grant was to the State, not as absolute owner, but as a mere trustee." (p. 230)

But, we inquire, suppose the State had executed the trust, by conveyance, to the primary beneficiary, the railroad company; and suppose, as in the case at bar, the railroad company had earned the grant by construction of the road, what would have been the view of the dissenting judges, if the United States had challenged the right of the railroad company, in an action against Sauve, or the purchaser from Sauve, to recover the value of the severed timber?

The Loughrey case was followed and approved by this court, in *United States against Tennessee and Coosa Railroad Co.*, 176 U. S., 242, decided February 5, 1900.

This, again, was a railroad land grant case. The grant was made directly to the State of Alabama, and the State, pursuant to the terms of the granting

act, conveyed to the Coosa Railroad. The grant was made on June 3, 1856; some ten miles of road were constructed, only that and nothing more; and the suit was brought by the United States, under the General Forfeiture Act of September 29, 1890, against the railroad company, to forfeit the land grant.

The Government's bill set up the failure of the company to build the road, averred the execution by the railroad company in 1887, of the conveyances to one Carlisle, of some forty thousand acres of granted land, alleged that there was valuable timber on the lands, which the company and other persons were cutting and carrying away, also valuable mines which they were working; and asked for a receiver and injunction, a cancellation of the conveyances, and a forfeiture of the lands, and for general relief.

It was held by this court, that under the special terms of the granting act, the sale of one hundred and twenty sections of the grant, "in advance of the commencement of the construction of the road," was authorized; and that the title of Carlisle, to so much of the conveyed land as fell within this tract of one hundred and twenty sections, must be sustained.

It was further held that the conveyance by the company of so much of the grant, as was coterminous with the ten miles of constructed line, must likewise be sustained, inasmuch as the act of Congress forfeited those lands only, which were not

opposite the completed road on September 29, 1890.

Schulenberg against Harriman was considered and fully approved; also the decision of this court, in *Railroad Company against Courtright*, 21 Wall., 310. And the *Loughrey* case is cited as an application of the same principles. Speaking of these prior decisions, the court, by Mr. Justice McKenna, said: (p. 253)

> "The title passed to the State, it was decided, continued in the State with all its *attributes and power, except as expressly limited*, until it should be resumed by the grantor by appropriate proceedings for breach of conditions. Hence the logs in that case, though *cut upon land to aid a railroad which had not been constructed*, and *after* the time designated for its construction, and after which all unsold lands should revert to the State (Government) was held to belong to the State (the grantee). And in the *Courtright case* upon the same principles it was held that lands sold by the railroad without constructing the road carried title to the vendee. There was a reassertion and an application of the same principles in *United States v. Loughrey*, 172 U. S. 206.
>
> It follows that by the act of June 3, 1856, the State of Alabama took the title to the lands in controversy upon conditions subsequent, and conveyed such title upon the same conditions to the Coosa Railroad; and that it continued in the railroad until determined by proceedings, legislative or judicial, for such forfeiture, and

> until such determination all the rights and powers conferred by the act continued and could be exercised".

The *Loughrey case* is again cited as authority by this court, in *United States against Anderson*, 194 U. S., 394, decided May 16, 1904. The opinion is by Mr. Justice White, who wrote the dissenting opinion in the Loughrey case.

The Anderson case is, again, the case of a railroad land grant. Congress had made a grant to the State of Alabama in aid of railroad construction. The State accepted the grant, and, in turn, granted the lands to the Northeast and Southwestern Railroad, an Alabama company, to be used and applied by said company "upon the terms and conditions in said act of Congress contained". The act of Congress contained an indemnity provision, as follows: "But in case it shall appear that the United States have—when the lines or routes of said roads are definitely fixed—sold any sections or any parts thereof, granted as aforesaid; or that the right of pre-emption has attached to the same:—then it shall be lawful for any *agent* or *agents, to be appointed by the governor of said State*, to select, subject to the approval of the Secretary of the Interior", a corresponding quantity of indemnity land from the adjacent alternate sections, within the maximum limit of fifteen miles. An order of withdrawal was made by the Land Department of such lands as were assumed to be included within the

place and indemnity limits of the grant, and among these withdrawn lands was the land in suit. The railroad was constructed, and the grant was earned.

In December 1887, and pursuant to the act of Congress, an agent was appointed by the Governor of Alabama to select indemnity lands, in lieu of lands within the primary limits of the grant, which had been lost to the railroad company by sale or pre-emption. The agent made the selections and tendered the legal fees and charges, but the local land officers rejected the selections, and an appeal was taken to the Commissioner of the General Land Office. "In April 1896, (some eight or nine years after the selections had been made) the appeal was decided in favor of the selections, which were approved, and the title consequently passed from the United States to the State of Alabama, in trust for its grantees, under the act of Congress". By mesne conveyance the railroad title passed to the plaintiffs in the action below, namely, Anderson and others; and it was between these plaintiffs and the United States that the action was litigated.

It was not a timber case this time, but a mineral case, and it arose in this way, as stated by Mr. Justice White:

> "During the period, however, which intervened between the selections of land made by the agent of the State of Alabama and the approval of the selections by the Secretary of the Interior, certain persons went upon the

lands selected and *removed* therefrom valuable *iron ore and lime rock. After* the *approval* of the selections the United States brought a suit to recover from the persons who had thus trespassed upon the lands, the *value of the product* by them removed. *The owners of the* land, in pursuance of the selections, (Anderson and others) asserted a claim to the *benefit* of the *recovery* which might be made, but assented to a compromise *made by the United States* with the trespassers, by which *fifteen thousand dollars was paid to the United States*, as *the value of the material taken from the land.* The owners of the land at the time of the compromise protested that they alone were entitled to receive the sum paid to the United States, and reserved their right to recover the same from the United States".

As a sequel, Anderson and the other owners, sued the United States for the fifteen thousand dollars, in the Court of Claims. Judgment went against the United States, and the case was brought here by the government on appeal from the judgment.

"The sole contention of the Government", says Mr. Justice White, "is that the plaintiffs, *after* application for selections and *before* approval of the selections, had no such title to the land as would have justified a recovery from the trespassers, and, *a fortiori*, therefore, had no such title as would warrant their recovering from the United States the sum of money which *it* collected from the trespassers

for the elements removed from the land during the period between the date of the application for selections and the approval of the same by the Secretary of the Interior".

The Government, it is pointed out, conceded the act of Congress to be a grant *in praesenti* of the land within the primary limits, but denied that any right to the indemnity lands vested in the grantee "until aproval of the selections by the proper officers of the government; and hence the legal title was in the United States, as to such lands, *pending action on the application for selections*, and, therefore, *at the time of the trespass*, the United States was alone authorized to recover for the depredations committed".

Mr. Justice White readily yields to the general doctrine of indemnity selection, that the legal title to the indemnity land remains in the United States until divested by the approval of the selections, but he does not conceive that the doctrine rules the case before him. "On this record," he says, "the rights of third parties are not involved, since the controversy concerns only the right of the United States to retain, as against *its grantees*, the proceeds recovered by it, as the result of a trespass upon land, *after* an application for the selection of such *land* and *pending* action thereon by the proper officers of the Government. Under these circumstances, the case is one for the application of the fiction of relation, by which, in the interest of justice, a legal

title is held to relate back to the initiatory step for the acquisition of the land."

The case, to his mind, was "one coming peculiarly within the principle of relation, as the approval of the selections manifestly imported that, at the time of the application for selections, the land in question was rightfully claimed by the applicant."

"Nor is the assertion well founded", he says, "that this case is not a proper one for the application of the doctrine of relation because coming within the rule announced in *United States v. Loughrey*, 172 U. S. 206. At the time of the trespass complained of in that case, the United States had taken no step to assert its reversionary rights in and to the land trespassed upon, the legal title to which was in the State of Michigan at the time the trespass was committed. Here as we have seen the grantee had exercised his right to apply for selections within the indemnity limits, and had in legal form requested the approval of the same by the Government. Everything, therefore, which the grantee was required by law to do, to obtain the legal title had been performed. These facts bring this case within the principle decided in *Heath v. Ross*, 12 Johns, 140, and *Musser v. McRae*, 44 Minnesota, 343, referred to in the opinion of the court in the *Loughrey* case, (p. 218) as not being inconsistent with the principle there applied. *Heath v. Ross* was an action of trover for timber cut between the application for and date of a patent from the

State, and its ensealing and delivery by the Secretary of State. The title was held to relate back to the first act, so as to entitle the plaintiff to maintain an action against a mere wrongdoer, for the value of the timber cut and carried away in the meantime. *Musser v. McRae* was an action brought to recover the value of timber cut by trespassers from indemnity lands selected by the agent of certain railroad companies, intermediate the application for selection and the patenting of the lands. To permit a recovery, it was held that the title evidenced by the patent related back at least to the date of the application for selection".

"Concluding, as we do", Mr. Justice White goes on, "that the *money in question belongs to the appellee as the successor in interest of the party for whose benefit the application for selections was made*, it results that the judgment of the Court of Claims must be affirmed."

Howe v. Lowell, decided by the Supreme Court of Massachusetts, August 30, 1898, (171 Mass., 576) is an interesting and pertinent case. Howe had granted certain land to the City of Lowell, but "on the express condition that the grantee shall, within three years from the date hereof, lay out and construct, and thereafter forever maintain, a public highway over the within described premises at least fifty feet in width, having the northerly line of the within described premises as the northerly line of such highway, and also on the express con-

dition that that part of said premises not taken or used for said highway shall be improved, dedicated, and forever used by the said grantee as and for a common, park, or boulevard, and for no other purpose;" and it was added for good measure that in the event of a breach of the conditions, the deed should be absolutely null and void, and the premises should revert to and revest in the grantor, his heirs and assigns, as fully, completely and effectually, as if these presents had not been executed."

It may be glanced at, by the way, that the grantor intended to keep to himself a certain product of the granted premises, not timber or minerals—it was ice, in this case,—and he took care to say so: "The right to take ice on the Merrimack River where it flows over the premises herein conveyed is hereby expressly reserved to the grantors, their heirs and assigns, or other person or persons who now have that right".

The grantee built the highway, also a boulevard —so far, so good, but it went farther. In 1891, 1892 and 1895, the City, for the purpose of obtaining a supply of water by means of artesian wells, drove a number of iron pipes, two and a half inches in diameter, into the granted land. The experiments of 1891 and 1892 were not productive of water, and one or two of these pipes were left in the ground. Indeed, in 1892, the ground was dug up and left in a rough condition, one or two pipes were left projecting above the surface, and in a

number of cases where the pipes were removed, the holes were not filled in, so that it was hardly safe to walk over it; some trees originally on the land at the time of the conveyance were destroyed, and a sluiceway was dug to carry off waste water, and refuse coal was left upon the ground. In 1895, the grantee had better luck with its borings, and a permanent source of water supply was developed on the land. One hundred and forty pipes in all were driven into the ground. So much, as to the explorations for water, and so much as to the pipes driven into the land.

On one of the granted lots, for there were several, the lot known as lot A, the city put up an engine house, and connected the engine therein by a large pipe with the other pipes, 140 in number. This large pipe carried the water by gravity into the conduit of the city. The opinion of the court deals first and separately with the sunken, sub-surface pipes; and next with the upstanding engine house and plant on lot A. This engine house or pumping station—a pumping station for supplying the inhabitants of the city of Lowell with water—the court had no difficulty in resolving as a breach of the condition on which the land had been granted, and we dismiss the pumping plant from further consideration. Now, for the pipes. Said the court:

> "As the highway has been constructed, the question is whether there has been a breach of

> the conditions that the parts of the premises not taken for a highway 'shall be improved, dedicated, and forever used by the grantee as and for a common, park, or boulevard, and for no other purpose.' The title in fee to all the parcels vested in the city of Lowell, subject to conditions subsequent by the breach of which its title would be divested, and would revest in the grantors and their heirs".

The court then refers to a product of the granted land—in this case, the subterranean water—in language that would be just as apposite, if it had been spoken of timber, or of coal, or of iron.

"The subterranean waters in the parcels", said the court, "were a part of the parcels, and the *grantors in the deeds have not reserved to themselves the property in these waters*, while the deeds are in force".

Reference is made to the *Wellington case*, 16 Pick., 87, 99, concerned with a grant of certain land to the town of Cambridge, whereby "the same is hereby granted to the town of Cambridge, to be used as a training field, to lie undivided, and to remain for that use forever, provided, nevertheless, that if the said town should dispose of, grant, or appropriate the same, or any part thereof, at any time hereafter, to or for any other use than that aforementioned, then, and in such case, the whole of the premises hereby granted to the said town shall revert to the proprietors granting the same".

The language of the Supreme Court of Massachusetts, in deciding the *Wellington case*, is now quoted:

> "By the grant the town became owners of the soil with full power, as such owners, *to make any use of the property which owners of land can make,* subject only to the restraint and limitation expressed in the condition. All such limitations and restrictions, especially those which go to create a forfeiture, are to be construed strictly, and not to be extended beyond the plain terms of the clauses in which they are expressed, and the obvious purposes for which they are introduced".

But the trial court, in *Howe against Lowell*, had found "that the use of the land for the *purpose of driving wells and drawing water therefrom*, and the erection of engines and boiler houses, were uses and purposes not in the minds of the grantors or even of the grantee, when the deeds were given". Of this, the Supreme Court said:

> "As the grantee took the lands in fee, it is entitled to make any use of the lands not in violation of the conditions in the deeds, whether the *parties thought of it or not.* It is not a new use to lay water pipes in lands taken and used as a highway. Water pipes are sometimes laid in and through commons and lands taken or purchased for a public park, but we are aware of no case in which it has been held that it requires a new taking to do this, or that such a laying of pipes is not within the terms of the

> deeds granting lands for these purposes. On the theory of the demandants, the *subterranean waters* of the lands cannot be used by the city without forfeiting the lands, and cannot be used by themselves *because they have not reserved the waters or excepted them from the grant.*"

It was accordingly held "that the construction and maintenance of the system of pipes did not constitute a breach of the conditions in the deeds.

Upon this question of timber and the rights of the owner of a fee therein or, more largely speaking, upon the question of waste, to use the old common law term—the case of *Landers v. Landers*, 151 Ky., at pages 215-217, gives an instructive summary of the law, and with special reference, in that case, to a defeasible fee. We think it may be convenient at this place to make the quotation:

> "The next question to be determined is whether or not plaintiffs may recover damages from the estate of Bryant Landers for the timber cut and removed by him from the 170 acres of land devised to him by John Landers, and in which he owned only a defeasible fee. Our statute on the subject does not cover a defeasible fee, so recourse must be had to the common law. In 2 Blackstone, page 282, we find the following:
>
> 'Let us next see who are liable to be punished for committing waste. And by the feudal law, feuds being originally granted for life

only, we find that the rule was general for all vassals or feudatories: "*si vassalus feudum dissipaverit, aut insigni detrimento deterius fecerit, privabitur.*" But in our ancient common law the rule was by no means large; for not only he that was seized of an estate of inheritance might do as he pleased with it, but also waste was not punishable in any tenant save only in three persons: guardian in chivalry, tenant in dower, and tenant by the curtesy; and not in tenant for life or years; and the reason of the diversity was, that the estate of the three former was created by the act of the law itself, which therefore gave remedy against them; but tenant for life, or for years, came in by the demise and lease of the owner of the fee, and therefore he might have provided against the committing of waste by his lessee; and, if he did not, it was his own default. But, in favor of the owners or the inheritance, the statutes of Marlbridge, 52 Hen. III, c. 23, and of Gloucester, 6 Edw. I, c. 5, provided that the writ of waste shall not only lie against tenants by the law of England (or curtesy), and those in dower, but against any farmer or other that holds in any manner for life or years. So that for above five hundred years past, all tenants merely for life, or for any less estate, have been punishable or liable to be impeached for waste both voluntary and permissive; unless their leases be made, as sometimes they are, without impeachment for waste, *absque impetitione vasti;* that is, with a

provision or protection that no man shall *impetere*, or sue him for waste, committed. But tenant in tail after possibility of issue extinct is not impeachable for waste; because his estate was at its creation an estate of inheritance, and so not within the statutes. Neither does an action of waste lie for the debtor against tenant by statute, recognizance, or *elegit;* because against them the debtor may set off the damages in account; but it seems reasonable that it should lie for the reversioner, expectant on the determination of the debtor's own estate, or of those estates derived from the debtor.'

"The proprietor of a qualified or base fee has the same rights and privileges over his estate, till the contingency upon which it is limited occurs, as if he were tenant in fee simple. Walsingham's case, Plowd.,—Chitty."

"In *Weed v. Woods*, 71 N. H. 581, it was held that where a deed reserves to a grantor a certain portion of the premises so long as a religious association may want it, the estate retained is a qualified or determinable fee; and during its continuance the grantor and his successors in title, while they retain possession, have all the rights of tenants in fee simple.

"Mr. Washburn, in his treatise on real property, 4th edition, volume 1, page 89, section 86, in speaking of the incidents of a determinable fee, says:

'So long as the estate in fee remains the owner in possession has all the rights in respect to it which he would have if tenant in fee simple, unless it be so limited that there is

properly a reversionary right in another—something more than a possibility or reverter belonging to a third person, when, perhaps, chancery might interpose to prevent waste of the premises.'

"In Gannon v. Peterson, 55 L. R. A. 701, 193 Ill. 372, it was held that the opening of mines, and the mining of coal by the owner of a determinable fee in property of which the coal constituted the chief value, was not such waste as could be enjoined by the owners of the expectancy, who claimed under an executory devise—at least where it is not made to appear that the contingency which would determine the fee was reasonably certain to happen. In discussing the question the court said:

'The authorities are uniform as to the definition, duration, and extent of a base or determinable fee. They are agreed that it is a fee simple estate; not absolute, but qualified. Upon the death of the donee, his widow has dower, although the contingency may have happened that defeats the estate, and that within the general acceptation and meaning of the term the person seized of such an estate is not chargeable with waste.'

"The only exception to this rule is that equity will sometimes restrain equitable waste. Equitable waste is defined by Mr. Justice Story to consist of 'such acts as at law would not be esteemed to be waste under the circumstances of the case, but which, in the view of a court of equity, are so esteemed from their manifest injury to the inheritance, although they are not

inconsistent with the legal rights of the party committing them.' 2 Story Eq. Jur., sec. 915. The same author further says: 'In all such cases the party is deemed guilty of a wanton and unconscientious abuse of his rights, ruinous to the interests of other parties.' Lord Chancellor Campbell, in Turner v. Wright, 6 Jur. N. S., 809, 29 L. J. Ch. N. S., 598, defines equitable waste to be 'that which a prudent man would not do with his own property.'

"Even if an action for damages would lie for equitable waste, a question not decided, there is nothing in the record before us to show that Bryant Landers was guilty of such waste.

It does not appear that he was guilty of a wanton and unconscientious abuse of his rights, or that he did that which a prudent man would not do with his own property. We, therefore, conclude that the action for waste was properly dismissed."

The historical and interesting case of *Attorney General against Duke of Marlborough*, 3 Madd., 498, turned on the right of a tenant in tail to cut timber on the granted estate. Blenheim House and the Manor of Woodstock had been granted in fee tail to the great Duke—a nation's reward to the victor of Blenheim. Tenancy in tail, like the tenure of a railroad land grant, is of statutory origin. It originated, as will be recalled, in the Statute *De Donis Conditionalibus*, designed to restrain the alienation of conditional fees—limited, for example, to the ten-

ant and heirs of his body—alienations which tenants had been practicing freely to the alleged prejudice of their issue and of the lord in reversion. The statute restrained the power of alienation except, as by amendment was afterwards permitted, to the extent of certain leases; it entailed the estate strictly. But like some other celebrated statutes,—the Statute of Uses, for instance the Statute *De Donis Conditionalibus* was, in time, over-reached —by the process of fine and recovery, and the tenant was enabled to bar the entail and clothe himself with a fee absolutely. It was well settled that a tenant in tail—even a tenant in tail after the possibility of issue extinct, was dispunishable for waste. But the Blenheim granting act went beyond the Statute De Donis, and industriously and in very clear terms forbade the barring of the entail.

The defendant, Duke of Marlborough, in the case now cited, was in by a fee simple title, but it was a fee tail in the strictest sense, a fee simple to which a restraint upon alienation was attached beyond circumvention. Did he have the right to cut the timber on the entailed estate and apply its proceeds to his own use?—that was the question before Sir John Leach. We quote from the opinion:

> "That an ordinary tenant in tail may, at his pleasure, cut down all timber for whatever purposes planted, admits of no question, and it is hardly necessary to advert to the origin of that particular species of tenure. It grew out of

the ancient conveyances to a man, and to the heirs of his body. Under such a conveyance, it was held at common law, that until issue born, he had not the absolute property in the estate, it being limited by the grant, not to his general heir, but to the heirs of his body; but that the moment issue was born, the condition being performed, the estate became absolutely his property, and he could dispose of it in the same manner as if he had held it in fee simple. The legislature, however, thought fit to interfere, and by the Statute of Westminster, the Second (commonly called the *Statute De Donis*, 13 *Edward* I c. 1.) it was declared, that the Will of the Donor or Grantor should be observed, and that an estate so granted to a man and the heirs of his body, should descend to the issue, and that he should not have power to alienate the estate. In the construction of that Act of Parliament, it was held, that a tenant in tail remained with the same unqualified and absolute ownership of his estate, as he had before that statute, with the *single exception of the restraint on alienation*. In that restraint of alienation was included, alienation by lease; leases being considered, according to the construction of that statute, as partial alienations; but by subsequent statute of the 32 Hen. VIII c. 28, a tenant in tail is permitted to make certain leases mentioned in that statute. With the exception, therefore, of alienation including leases, unless according to the Statute, a tenant in tail is at this day to be considered as much

> the absolute owner of the estate as a tenant in fee simple, and as such, may do what he pleases with the buildings and timber on the estate."

Sir John Leach now takes up the provision of the granting act, by which the barring of the entail was forbidden. "In the first place," he says, "it is to be observed that this is an express admission by the legislature that the estate conferred upon the issue of the Duke of Marlborough, by the previous limitations, was an estate capable of being barred by fine or recovery, or in other words, was an estate tail, to which alone the bar by fine or recovery is applicable; and this provision is, therefore, nothing more than a declaration on the part of the legislature, that the estate tail, given to the issue of the Duke of Marlborough, should, in this respect, lose one of the incidents which belong to it, by the principles of law, namely, the power of barring the entail by fine or recovery; and necessarily, therefore, leaving every tenant in tail in possession with every other legal incident, which belongs to the nature of his estate, and consequently, *leaving him as much the absolute owner of the timber and buildings on the estate, as if he were tenant in fee simple.*"

The court notices, by way of contrast, the case of tenant for life, as to which "it is to be observed that the ownership of the timber is not a legal incident to the estate of tenant for life"; and as to a tenant in tail, after possibility of issue extinct, it is said that

he is, "in effect a tenant for life, *without* impeachment of waste."

Sir John Leach finally calls attention to a statute of the 5th Anne, c. 4, not noticed in the pleadings or argument, and making a settlement of five thousand pounds a year on the Duke's posterity, "for the more honorable support of their dignities in like manner as his honors and the honor and manor of Woodstock and the House of Blenheim were already limited and settled."

"I cannot read these several acts," says Sir John Leach, "and attend to the circumstances of this property and observe the manner and purpose of building this house of Blenheim, and the special annexation of it to the honors and dignities of this family, as was particularly recited in the last act, without stating that there appears to me to be clear and necessary implication that it was the intention of the legislature that the House of Blenheim should, in all times, as a distinct subject, descend and be enjoyed with the honors and dignities of this family, and that it was not the intention of the legislature that the successive possessors of these honors and dignities, should have the rights of property over it, which, *with respect to the rest of the estate*, were legally incident to their character of tenant in tail. I think the legislature thus imposed upon every possessor of these honors and dignities the obligation to maintain the House of Blenheim for the future residence of those to whom the succession

was limited; and that this court is bound to interfere to prevent its destruction. I am clearly of opinion that the Duke of Marlborough, having no power of destruction over the house *has no power of destruction over the timber which is essential to the shelter or ornament of the house.*"

Intrinsic and Corroborative Evidence of the Granting Acts Themselves.

We have had occasion, in citing *Howe against Lowell*, 171 Mass. pp. 582-3, to quote, *inter alia*, this language:

> "As the grantee took the lands in fee, it is entitled to make any use of the lands not in violation of the conditions in the deeds, *whether the parties thought of it or not.*"

Something, now, as to the granting acts in the case at bar, and as to the timber and the minerals—and whether the parties thought of these things or not.

"As a rule of construction," this court has held (*Blair against Chicago*, 201 U. S. p. 475), "a statute amended is to be understood in the same sense exactly, as if it had read from the beginning as it does amended."

The Act of July 25, 1866, is, therefore, to be read as if it had contained the settlers' clause from the beginning; the act of May 4, 1870 had the settlers' clause in it when originally passed.

Congress, when it attached to the otherwise unqualified estate of the grantee the covenant found in

the settlers' clause, and when it made the grant itself, did think of some things—of some limitations or of some limitation upon the estate, but that limitation did not include the timber upon the lands granted. There was something in the lands granted —a product or component of the soil—which Congress did think of and which Congress expressly and pointedly excepted out of the estate, and that was the mineral therein.

The original act of July 25, 1866, in Section 10 thereof, reads as follows:

> "And be it further enacted, That all *mineral lands* shall be excepted from the operation of this act; but when the *same* shall contain *timber*, so much of the *timber* thereon as shall be required to construct said road *over such mineral land* is hereby granted to said companies: Provided, that the term 'mineral lands' *shall not include lands containing coal and iron.*"

The act of May 4, 1870, Section 1, grants

> "each alternate section of the public lands, *not mineral*, excepting *coal or iron* lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof."

It is thus seen that Congress expressly dealt with the mineral contents of the lands granted by the act of 1866, and indeed, in an express but partial way, with the timber thereon; but the Congressional exception conspicuously includes in its limitation of the grant only such timber as there shall be, not on

the granted lands, but on the excluded mineral lands, and even as to such excepted timber the company is accorded the right to use so much as shall be necessary "to construct said road over such mineral land." Again, in the act of 1870, the minerals, in distinction from the timber, are expressly excluded from the operation of the grant. And more than that, and in both acts, even in the exception of the minerals, it is provided that such exception *shall not include coal and iron*—a plain recognition of the grantee's right to the coal and to the iron existing in the granted lands; and yet, in the decree as signed by the District Court, it seems not to have been enough to exclude our right to the timber of the non-mineral, unexcepted and granted sections, but all mineral deposits, including, therefore, the coal and iron, are excluded by the terms of the decree.

The settlers' proviso, under the familiar rule of construction, amendment though it was, must be read with the rest of the grant, as if it had been there from the first beginning. It must be read consistently and harmoniously with the rest of the act; and it must be read in the light of the time and the environment in which it was passed, not by the wisdom that comes after the event; (U. S. v. U. P. RR., 91 U. S., 72, 81) not with a perverted purpose to turn a settlement act into a timber and stone act. It never entered the head of the man who wrote these granting acts, or of the men who voted for them,

that the railroad company had no right in, or use for all this timber, or coal, or iron, except to sell it to settlers—as if the settlers wanted it. The grotesque incongruity of the thing is not to be imputed to the legislature. It was settlement land that was contemplated by the provisos—arable land, tillable by settlers.

The timber, cleared off and out of the way, to make place for the settler, the coal, the iron,—that went with the grant, to the owner of the land. (*United States against Losekamp*, 127 Fed. 959) The grantor itself, in 1878, as the opinion of this court notices, took its own lands, lying within the circumscription of the grant, its even numbered sections, out of the settlement laws and put them under the timber and stone act. And the Ferris Act is an object lesson; it first clears and sells the timber and then offers the land for settlement.

It is not of moment, as said in the Massachusetts case of *Howe v. Lowell, supra*, whether the parties thought of the timber or not. But Congress did think of the timber, and it thought of the minerals, and it dealt with the timber and with the minerals in a way to make it convincingly evident that so far as the granted lands were concerned, no limitation upon the estate of the grantee in respect to the timber, or in respect to the coal or iron, was contemplated or imposed. And now, as to the patented lands, all minerals therein found—not coal and iron only—are, by force of the patent, the property and

estate of the patentee. (Burke v. S. P. R. R., 234 U. S., 669). The case at bar is a revealing instance of that canon of construction—the rule of *expressio unius*—which this court invoked and applied in passing upon the question of a condition subsequent. For it will be remembered that the opinion of the court contrasts the expressed penalties of reverter and forfeiture, attached by Congress to failure on the part of the grantee to construct the railroad within the prescribed time, or to file its assent within the prescribed time, over against the absence of such penalties or of any penalty from the provisos in which the settlers' clause is contained.

So much for the rights of the grantee to the lands, which it contracted for, earned and paid for, and to the timber, the coal, the iron, or other mineral content.

It appeared from the record which this court had before it on the first appeal, (Vol. 13, pp. 6836-7) that the company had been under an expense, in administering the grant from April 1, 1870 to April 30, 1911, of $1,184,542.84; that it had paid the taxes on the granted lands to 1910 inclusive, that taxes had been levied on the lands for the year 1911, and that during the more recent years of the above period, taxes had been levied upon an assessed valuation in excess of $2.50 per acre—ranging from $2.96 per acre up to $10.32 per acre—the taxes so paid and levied amounting to $2,434,843.33 (Vol. 5, pp. 2567 et seq.); making a total administration

expense, including taxes, of $3,619,386.17. The total cash receipts from all sources, April 1, 1870 to April 30, 1911, including sales of land (Vol. 13, pp. 6836-7) are stated to be $5,488,020.72. This leaves the company a net revenue from past transactions up to April 30, 1911, over and above expenses paid and taxes levied, of $1,868,634.55. The average net revenue per acre for the lands sold, aggregating some 820,000 acres (Vol. 4, p. 1578) figured up to April 30, 1911, on the basis of the above items, was $2.27.

The grant obligated the company to carry free for the United States government its property and troops, without limit as to time. The value of this free transportation, at the regular rates and computed for the service over the company's line in Oregon between 1882 and 1911 inclusive, is $1,894,-970.09 (Vol. 13, pp. 6835-6, and computation based thereon). This amount is in excess of the receipts of the company, hereinabove mentioned by $26,-335.54. And if these figures could be carried down to date, the deficit would be largely increased, and further the average net revenue, above indicated, of $2.27 per acre for the land sold, would be expressed by a much diminished figure.

II.

THE FERRIS ACT IS INVALID.

In the statement with which this brief opens (pp. 1-12 ante) the salient and pertinent provisions of

the Ferris Act were given succinctly. We print the act in full as an appendix to this brief.

The protection of vested property rights has been a constitutional guaranty and bulwark from the beginning.

Said Chief Justice Marshall, speaking of a legislative grant, which the legislature, by a subsequent statute sought to resume,—(*Fletcher v. Peck*, 6 *Cranch*, p. 135):

> "Is the power of the legislature competent to the annihilation of such title, and to a resumption of the property thus held? The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estates, and, if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact. When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community."

The same great judge, in *Terrett v. Taylor*, 9 Cranch, p. 50, is again speaking of a legislative grant and its attempted repeal: "If the legislature," he says, "possessed the authority to make such a grant and confirmation, it is very clear to our minds, that it vested an indefeasible and irrevocable title. We have no knowledge of any authority or principle which could support the doctrine, that a legislative grant is revocable in its own nature, and held only *durante bene placito*. Such a doctrine could uproot the very foundations of almost all the land-titles in Virginia, and is utterly inconsistent with a great and fundamental principle of a republican government, the right of the citizens to the free enjoyment of their property legally acquired."

In *Wilkinson against Leland*, 2 Peters, 627, 657-8, Mr. Justice Storey refers to *Terrett v. Taylor*, *supra*, in language which has become one of the traditions of this court: "In Terrett v. Taylor, 9 Cranch 43," he says, "it was held by this court, that a grant or title to lands, once made by the legislature, to any person or corporation, is irrevocable, and cannot be re-assumed by any subsequent legislative act; and that a different doctrine is utterly inconsistent with the great and fundamental principle of a republican government, and with the right of the citizens to the free enjoyment of their property lawfully acquired. We know of no case, in which a legislative act to transfer the property of A. to B., without his consent, has ever been held a constitu-

tional exercise of legislative power, in any state in the Union. On the contrary, it has been constantly resisted, as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."

"It seems to us," said Mr. Justice Miller, carrying on the tradition, (*Davidson v. New Orleans*, 96 U. S., 97, 102) "that a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A., shall be and is hereby vested in B., would, if effectual, deprive A. of his property without due process of law, within the meaning of the constitutional provision."

In this fundamental matter, the opinions, prevailing and dissenting, in the Sinking Fund Cases (99 U. S., 700) are at one. In the prevailing opinion by Mr. Chief Justice Waite, it is said: (p. 718)

> "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation com-

pel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, *without the consent of the corporation.* All this is indisputable."

To the same effect is the dissenting opinion of Mr. Justice Strong: (p. 731)

"As was said by Mr. Hamilton in his celebrated communication to the Senate of Jan. 20, 1795, 'when a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority, and exchanges the character of legislator for that of a moral agent, with the same rights and obligations as an individual. Its promises may be justly considered as excepted out of its power to legislate, unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with a power to make a law which can vary the effect of it.' 3 Hamilton's Works, 518, 519. Opinions similar to this have often found expression in judicial decisions, even in those of this court. If

> this be sound doctrine, it is as much beyond the power of a legislature, under any pretence, to alter a contract into which the government has entered with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contract, the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors."

And, again, renewing the tradition, he says: (p. 738)

> "A statute undertaking to take the property of A. and transfer it to B. is not legislation. It would not be a law. It would be a decree or sentence, the right to declare which, if it exists at all, is in the Judicial Department of the government."

"A power of Congress," said Mr. Justice Bradley, in his dissent, (p. 744) "even over those subjects upon which it has the right to legislate, is not despotic, but is subject to certain constitutional limitations. One of these is, that no person shall be deprived of life, liberty, or property without due process of law; another is, that private property shall not be taken for public use without just compensation; and a third is, that the judicial power of the United States is vested in the supreme and inferior courts, and not in Congress."

He says further, in language that hits the Ferris Act like a prophecy: "Under the English Constitu-

tion, notwithstanding the theoretical omnipotence of Parliament, such a law as the one in question would not be tolerated for a moment. The famous denunciation that 'it would cut every Englishman to the bone,' would be promptly reiterated." (p. 746)

In the dissenting opinion of Mr. Justice Field (p. 757), it is said:

> "When the road was completed in the manner prescribed and accepted, the company became entitled as of right to the land and subsidy bonds stipulated. The title to the land was perfect on the issue of the patents; the title to the bonds vested on their delivery. Any alteration of the acts under the reservation clauses, or their repeal, could not revoke the title to the land or recall the bonds or change the right of the company to either. So far as these are concerned, the contract was, long before the act of 1878, an executed and closed transaction, and they were as much beyond the reach of the government as any other property vested in private proprietorship."

The government, he adds, "*could not release itself* and *hold the other party to the contract.* It could not change its *obligations* and hold its rights unchanged. It cannot bind itself as a civil corporation, and loose itself by its sovereign legislative power." (p. 759, Italicized by Mr. Justice Field.)

And further, and finally, of the government: (p. 760)

> "If it had cause of complaint against the company, it could not undertake itself, by legislative decree, to redress the grievance, but was compelled to seek redress as all other civil corporations are compelled, through the judicial tribunals."

In *Chicago and Burlington Railroad against Chicago*, 166 U. S., 226, 235, the court said:

> "In *Davidson v. New Orleans*, above cited, it was said that a statute declaring in terms, without more, that the full and exclusive title to a described piece of land belonging to one person should be and is hereby vested in another person, would, if effectual, deprive the former of his property without due process of law, within the meaning of the Fourteenth Amendment. See also *Missouri Pacific Railway v. Nebraska*, 164 U. S. 403, 417. Such an enactment would not receive judicial sanction in any country having a written constitution distributing the powers of government among three co-ordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such constitution. It would be treated not as an exertion of legislative power, but as a sentence—an act of spoliation."

Authorities might be multiplied indefinitely; it would be pedantry to cite them further. The reservation clause of the Granting Act of July 25, 1866, itself recognized the principle, for it reads (Sec. 12):

> "And be it further enacted that Congress may at any time, *having due regard for the rights of said California and Oregon Railroad Companies* add to, alter, amend, or repeal this act."

The consent of the railroad company was essential to a valid resumption or alteration of its vested rights; its consent should have been had and obtained, as the consent of the Northern Pacific Railroad Company was had and obtained, in the instance of the Relinquishment Act of July 1, 1898, (30 Stat., 597, 620, c. 546), relating to the land grant to that company.

"If any rights had become vested in the Northern Pacific Railroad Company", said this court, "which could not, against or without its consent, be effected by an enactment like that of 1898, then the objection to legislation, on the ground that it interfered with vested rights, was waived by the acceptance of the act by its successor in interest; for it was entirely competent for the latter company, if it succeeded to all the rights of the railroad grantee, to agree to such a settlement as that devised by Congress". *Humbird v. Avery*, 195 U. S., 480, 501; see also *United States v. Inman-Paulson Lumber Co.*, 233 Fed., 942.

All this was in the mind of Mr. Justice McKenna, when he wrote into the concluding paragraph of his opinion on the first appeal, that any legislation in

the premises by Congress, should "secure to the defendants all the value the granting acts conferred upon the railroads".

It was not in the mind of the learned author of this opinion, we submit, with deference, nor was it in the mind of the court, that Congress would or could revest itself with the title to lands earned and held by the grantee in complete and absolute ownership, and would or could, as it would now assume to do, dispose of those lands in its own way, at its own time, to its own purchasers, upon its own terms. The opinion of this court should not be strained and warped to mean that a legislative provision, for the disposition of these lands in accordance with some fitting policy, was intended to be a disposition of them by the grantor, or by any one else except the owner of the fee simple title. We have already adverted to this matter of congressional policy and interposition.

The opinion of Mr. Justice McKenna, fairly read, makes this plain enough. He recognizes, as we have pointed out, the relative impracticability of the policy expressed by the covenants, a policy of settlement addressed to lands that were largely insusceptible of settlement. But if those covenants were unworkable, if that policy was not feasible, the remedy did not lie in a disregard of the contract and the law; the railroad company should have gone to Congress for some new disposition, where, alone, the law and policy could be changed, and the sales' re-

quirement made adaptable to the exigency. There would then have been a meeting of minds between grantor and grantee.

"Whatever the difficulties of performance", says Mr. Justice McKenna, in language we have already quoted, "relief could have been applied for and, it might be, have been secured through an appeal to Congress".

And again, the learned Justice observes, in language we beg to repeat:

> "The character of the lands furnished no excuse. It might have justified non-action, but it did not justify antagonistic action."

And further:

> "If the provisos were ignorantly adopted as they are asserted to have been; if the actual conditions were unknown, as is asserted; if but little of the land was arable, most of it covered with timber and valuable only for timber and not fit for the acquisition of homes; if a great deal of it was nothing but a wilderness of mountain and rock and forest; if its character was given evidence by the application of the Timber and Stone Act to the reserved lands; if settlers neither crowded before nor crowded after the railroad, nor could do so; if the grants were not as valuable for sale or credit as they were supposed to have been and difficulties beset both uses,—the *remedy was obvious.* Granting the *obstacles and infirmities, they were but promptings and reasons for an appeal to Congress to relax the law; they were neither cause nor justification for violating it.*"

But no relaxation of the law, no change in the statutory policy, was competent to Congress, that went in impairment of vested rights; nor could any remedy be administered by Congress that did not "at the same time secure to the defendants all the value the granting acts conferred upon the railroads." But what was it that the granting acts conferred upon the railroads?—"there was a *complete and absolute grant* to the railroad company with power to sell, *limited only as prescribed*" by the settlers' provisos. And what of those provisos?—"their language is not directive; it is restrictive only. With this exception the grant is unqualified".

Naked Power of Sale in Contradistinction from Estate in Fee.

The Ferris Act, it would seem, goes upon the theory, not of a grant to the railroad company at all, but of a mere naked trust or power to dispose of the lands in the manner specified in the acts and to apply the proceeds to the use and purpose therein described.

It is instructive and interesting at this point to contrast the facts, and the judgments of this court on the facts, in the cases, respectively, of *Rice v. Railroad Company*, 1 Black, 358, and *Schulenberg v. Harriman*, 21 Wall., 44.

In the Rice case, Edmond Rice, claiming as an entryman under the United States, brought an action of trespass against the Minnesota and North-

western Railroad Company, for cutting timber on the land in question. The railroad company justified the cutting of the timber by pleading title to the premises under a railroad land grant.

This land grant, of date June 29, 1854, was made by Congress, in the first instance, to the Territory of Minnesota, in aid of railroad construction. The railroad company succeeded to the right, title and interest of the Territory, afterwards the State, such as it was, by grant from the State, through the act of incorporation. The incorporation act provided, among other things, that "for the purpose of aiding the said company in the construction and maintaining the said railroad, it is further enacted, that any lands that may be granted to the said Territory, to aid in the construction of the said railroad, shall be, and the same are hereby, granted in fee simple absolute, without any further act or deed; and the Governor of this Territory or future State of Minnesota, is hereby authorized and directed, in the name and on behalf of said Territory or State, after the said grant shall have been made by the United States to said Territory, to execute and deliver to said company, such further deed or assurance of the transfer of the said property, as said company may require, to vest in them a perfect title to the same: provided, however, that such lands shall be taken upon such terms and conditions as may be prescribed by the act of Congress granting the same".

Section 1, of the Act of Congress, of June 29, 1854, making the grant, recited:

> "That there is hereby granted to the Territory of Minnesota, for the purpose of aiding in the construction of a railroad * * * every alternate section of land, designated by odd numbers, for six sections in width, on each side of said road within said Territory."

It further provided that the land "shall be held by the Territory of Minnesota, for the uses and purposes, aforesaid." This is made very explicit by section 3, which provides that the lands granted to the Territory "shall be subject to the disposition of any legislature thereof, for the purpose aforesaid and no other; nor shall it inure to the benefit of any company heretofore constituted and organized."

It also provided in section 4—and the language here is important to notice—"that the lands hereby granted to said territory shall be disposed of by said territory only in the manner following, that is to say: *no title shall vest* in said *Territory of Minnesota,* nor shall any patent issue for any part of the lands hereinbefore mentioned, *until* a continuous line of twenty miles of said road, shall be completed through the lands hereby granted"; and further, in the same section, "if said road is not completed within ten years, no further sales *shall be made,* and the land unsold shall revert to the United States".

Such was the granting act of Congress; and such as it was, on the 24th day of August, 1854, Congress passed an act, repealing the act by which the grant had been made on the preceding 29th day of June. It was after the passage of the repealing act that the railroad company did the cutting of the timber, which the entryman imputed as a trespass.

The first question taken up by this court, is whether the railroad company acquired any title or interest in the lands by virtue of its act of incorporation.

"If the defendants", said this court, "acquired such a right, title or interest in the lands, under their original charter, then it is clear that it became a vested interest as soon as the act of Congress went into effect, and on that state of the case, it would be true, as contended by the defendants, that the repealing act set up in the replication of the plaintiff is void and of no effect", citing *Terrett v. Taylor*, 9 Cranch, 43; *Pawlett v. Clark*, 9 Cranch, 292.

But even if the act of incorporation, for any reason, did not vest in the railroad company an interest in the lands, the plaintiff, suing as an entryman under the United States, would still be confronted with a second question in the case, namely, the effect of the act of Congress, making the grant *to the Territory itself*.

"If the legal effect", said the court, "of the act of Congress, set up in the answer, was to grant to the Territory a beneficial interest in the lands, then it is equally clear that it was not competent for Congress to pass the repealing act and divest the title; and the defendants, on the facts exhibited in the pleadings, although they did not acquire any title under their original charter, are, nevertheless, the rightful owners of the land, by virtue of the first amendment to the same, passed by the Territorial Legislature". It is not material to dwell on this amendment.

"Unless", continues the court, "both of the questions, therefore, are determined in the negative, the judgment of the court below must be affirmed", citing *Fletcher against Peck*, 6 Cranch, 135.

Upon the first question, as to the right of the railroad company to the land, not under the amendment to its charter, but under the original charter itself, it was the conclusion of the court, "that the defendants acquired no right, title or interest in the lands in controversy by virtue of their original charter"; and this, upon the ground that the thing granted was not in the grantor, that is to say, the Territory, at the time the Act of Incorporation was passed, March 4, 1854.

The court then goes to the second question, whether any beneficial interest in the lands, passed to the Territory under the act of Congress set up

in the answer. It is conceded that the familiar clause of the first section pointed to a grant *in praesenti.*

"Standing alone", says the court, "the clause furnishes strong evidence to refute the proposition of the defendants, that a beneficial interest passed *in praesenti* to the Territory; because it is distinctly provided that the lands granted shall be held by the territory for a declared use and purpose, evidently referring to the contemplated railroad, which, when constructed, would be a public improvement of general interest".

The court then notices the third section, providing "that the said lands hereby granted shall be subject to the disposal of any Legislature thereof for the purpose aforesaid, and no other; nor shall they inure to the benefit of any company heretofore constituted or organized".

Much reason exists, it was believed by the court, to conclude that the railroad company fell within the prohibition of this section, as being a company "heretofore constituted and organized". And in any event, it was the view of the court that, under the first and third sections, it was the intent of Congress to restrict the authorities of the Territory, so far as their control of the lands was concerned, to the strict and special purpose expressed in the act.

"But, restricted as the authorities of the Territory were, by those limitations and provisions",

the court continues, "their hands were still more closely tied by the provisions of the fourth section, which remained to be considered". And it is in the discussion of the fourth section, that the conception of a naked power of sale, in contradistinction from an estate in fee, emerges".

"By the fourth section," says the court, "it is provided, 'that the lands hereby granted to the said Territory shall be disposed of by said Territory only in the manner following—that is to say, *no title shall vest* in said territory of Minnesota, nor shall any patent issue for any part of the lands hereinbefore mentioned, *until* a continuous length of twenty miles of said road shall be completed through the lands hereby granted' ".

The court goes on:

> "Certain lands are granted to the Territory by the first section, to be held by it for a specified use and purpose, for the construction of a specific public improvement, and to be exclusively applied to that purpose, without any other restriction, except that the lands could be disposed of only as the work progressed. To carry out that purpose, the lands were declared by the third section, to be subject to the future disposal of the Territorial Legislature, but that in no event should they inure to the benefit of any company previously constituted and organized. Neither of those sections contained any words which necessarily and absolutely vested in the territory

any beneficial interest in the thing granted. Undoubtedly, the words employed are sufficient to have that effect; and if not limited or restricted by the context or other parts of the act, they would properly receive that construction; but the word, grant, is not a technical word like the word, enfeoff; and although, if used broadly, without limitation or restriction, it would carry an estate or interest in the thing granted, still it may be used in a more restricted sense, and be so limited that the *grantee will take but a mere naked trust or power to dispose of the thing granted, and to apply the proceeds arising out of it to the use and benefit of the grantor*". (1 Black, p. 378)

The court proceeds:

"It is expressly provided by the fourth section of the Act that *no title shall vest* in the Territory of Minnesota, nor shall any patent issue for any part of the lands, until a continuous length of twenty miles of the road shall be completed. Unless that whole provision, therefore, be rejected as without meaning, or is repugnant to the residue of the act, it is not possible, we think, to hold that the territory acquired a *vested* interest in the lands *at the date of the act:* and yet the fourth section contains the same words of grant as are to be found in the first and third, and no reason is perceived for holding they are not used in the same sense. It is insisted by the defendants that the provision does not divest

the grant of a present interest; that it only so qualifies the power of disposal that the Territory cannot place the title beyond the operation of the condition specified in the grant. But they do not attempt to meet the difficulty that, by the express words of the act, the *absolute title remained* in the grantor, at least until twenty miles of the road were completed: nor do they even suggest by what process of reasoning the four words, 'no title shall vest', can be shorn of their usual and ordinary signification, except to say that it would be doing great injustice to Congress to hold, notwithstanding the words of the first section, that no title passed to the grantee. Whether the provision be just or unjust, the words mentioned are a part of the act, and it is not competent for this court to reject or disregard a material part of an act of Congress, unless it be so clearly repugnant to the residue of the act that the whole cannot stand together. On the other hand, if it be assumed that the Territory acquired but a *mere naked trust or power* to dispose of the lands, and carry out the contemplated public improvements therein described, then the whole act is consistent and harmonious". (p. 379)

In fine, as the court sums it up, "it is clear that the Territory acquired nothing under the act of Congress set up in the answer, but a *mere naked trust or power to dispose of the lands in the manner therein specified, and to apply the same to the use and purpose therein described*". (p. 381)

In such event, the court holds "Congress could at any time repeal the act, creating the trust, *if not executed*, and withdraw the power". (p. 381)

It was suggested to the court that this doctrine of a mere naked trust or power to dispose of the lands and to apply the proceeds, would be applicable to all the railroad grants made by Congress to the states and territories. And the court answered:

> "Of course, the suggestion is correct, if such other grants are made in the same terms, and are subject to the same limitations, restrictions and prohibitions; but we have looked into that subject, and think it proper to say, that we see no foundation whatever for the suggestion. One of these grants came under the revision of the court, in the case of *Lessieur against Price*, (12 How., 76) and this court held, and we have no doubt, correctly, that there was a present grant, and that the legislature was vested with full power to select and locate the land, but the case is so *unlike the present*, that we do not think it necessary to waste words in pointing out the distinction". (p. 381-2)

The *Rice case* was decided by this court at the December term, 1861. *Schulenberg against Harriman*, 21 Wall, 44, was decided at the October term, 1874. The Schulenberg case, like the Rice case, turned on the right to severed timber; to some sixteen hundred thousand feet of pine saw-logs, which had been cut on the land in question—land which had been

granted by Congress to the State of Wisconsin, in aid of railroad construction. We have been over this case. The defendant, Harriman, who had seized the logs, stood upon the title of the State of Wisconsin, as the congressional grantee of the land, but the railroad had never been constructed; the time for the construction had long since passed; and the construction of the road within a specified time was a condition subsequent. No forfeiture, however, had been declared by Congress, and this court held that until Congress should resume the title by declaration of forfeiture, as for breach of the condition subsequent, the title to the land was still in the grantee and Harriman, as agent of the grantee, was entitled to the cut timber. Counsel for Schulenberg put the strain of his case on the decision in *Rice against Railroad Company, supra.* He argued that the interest of the grantee, the State of Wisconsin, was "a mere naked trust or power". (21 Wall, p. 53)

This court declined to yield to the argument, distinguished the Rice case, and held the act of Congress to be a present grant to the State of Wisconsin.

"That the Act of Congress of June 3, 1856", said Mr. Justice Field, "passed a present interest in the lands designated, there can be no doubt. The language used imports a present grant and admits of no other meaning. The language of the first section is, *'that there be, and is hereby, granted to the State of Wisconsin'* the lands specified. The third section

declares 'that the lands *hereby granted to* said state shall be subject to the disposal of the legislature thereof'; and the fourth section provides *in what manner sales shall be made*, and enacts that if the road be not completed within ten years, 'no further sale shall be made, and the lands unsold shall *revert* to the United States'. The power of disposal and the provision for the lands reverting both imply, what the first section in terms declares, that a grant is made, that is, that the *title is transferred to the State*". (p. 60)

"The case of *Rice against Railroad Company*, reported in the first of Black", Mr. Justice Field continues, "does not conflict with these views. The words of present grant in the first section of the act, there under consideration, were restrained by a provision in a subsequent section declaring that the *title should* not vest in the Territory of Minnesota until the road or portions of it were built". (p. 62)

Indeed, if it be necessary, we can vouch the Government into court, as a warrantor of the grants in question here, as falling under the rule and distinction of the *Schulenberg case.*

In the report of the Commissioner of the General Land Office for 1906, at pages 21 and 22, the Oregon and California Land Grant is dealt with.

"The grant of the Oregon and California Railroad Company", says the Commissioner, "under the Act of July 25, 1866, embraced 3,821,901.80 acres. The

prescribed conditions of the grant not having been met by the company, the time for performance was extended by the Act of April 10, 1869. Although the company failed to comply with the terms within the time specified, it complied with them substantially before a forfeiture, and *title* to all the lands consequently *vested* in the company (see *Schulenberg against Harriman*, 21 Wall., 44), subject only to the covenant expressed in the proviso of the Act of 1869, which declares that the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding $2.50 per acre".

And on March 19, 1907, the Commissioner of the General Land Office, soon to become Secretary of the Interior, wrote to Hon. W. C. Hawley, representative in Congress, from Oregon, the following letter:

"Department of the Interior.

"General Land Office, Washington, D. C.

"March 19, 1907.

"Honorable W. C. Hawley, House of Representatives—

"Sir: In reply to your letter of the 7th inst. addressed to the Secretary of the Interior, and handed to me for attention, you are advised that the Act of 1866 made a grant of lands to the California and Oregon Railroad Companies conditioned upon the performance of certain acts by the company within a specified

> time. The prescribed conditions not having been met by the company, the time of performance was extended by the Act of 1869 and, although the company failed to comply with the terms of the grant before the time specified they were subsequently complied with before a forfeiture, and title to all the land within the grant consequently vested in the company (See Schulenberg v. Harriman, 21 Wall., 44), subject only to the covenant expressed in the proviso contained in the Act of 1869, which declares that the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter-section to one purchaser, and for a price not exceeding $2.50 per acre. As soon as *the title vested* in the company, the *jurisdiction* over the lands *passed from the executive branch* of the Government, and the enforcement of the provision *rests with the courts*, through appropriate action by either the settlers entitled to purchase or by the government acting through the Department of Justice."

The Commissioner goes on to say that in his judgment the power of Congress to prescribe the proviso cannot be questioned, and he puts it on the ground that the proviso "was made in consideration of the extension of time granted to the company."

"The company," he adds, "is therefore without authority to sell the lands to any other person, in

any other amount, or for a greater price than prescribed in the proviso; and any conveyance which the company has attempted to make on a sale made in violation of the statute would not be sustained by the courts. Since title passed from the Government, subject only to the covenants created by the proviso, it is doubtful if Congress has power to enact any law to compel a compliance with the terms of the provision, and the covenant can only be enforced in the courts".

The joint resolution, authorizing the Attorney General to bring the pending suit, was approved April 30, 1908, (35 Stat., 571). The bill of complaint in the pending suit was filed September 4, 1908. This makes the report of the Commissioner of the General Land Office for 1906, and the Commissioner's letter of March 19, 1907, of special interest. They were not declarations *post litem motam.*

Reservation Clause in the Act of July 25, 1866.

The Act of May 4, 1870, making the west side grant, has no reservation clause. Section 12 of the Act of July 25, 1866—the Act making the east side grant—is as follows:

> "And it be further enacted, that Congress may, at any time, having *due regard for the rights of said California and Oregon Railroad Companies* add to, alter, amend, or repeal this Act".

These reservation clauses are familiar; they have often been before the courts—many times before this court. Nothing is better settled, than that the power of the Legislature, under such a clause, is not unlimited; vested rights, already acquired under the operation of the unaltered or unrepealed statute, are beyond the power of the Legislature, are protected by the constitutional guaranty of due process of law. Chief Justice Shaw blazed the way in *Commonwealth against Essex Company*, 13 Gray, 239, 253:

"It seems to us", he says, "that this power must have some limit, though it is difficult to define it. Suppose an authority has been given by law to a railroad corporation to purchase a lot of land, for purposes connected with its business; and they purchased such lot from a third party; could the Legislature prohibit the company from holding it? If so, in whom should it vest; or could the Legislature direct it to revest in the grantor or escheat to the public; or how otherwise? * * * Perhaps from these extreme cases—for extreme cases are allowable to test a legal principle—the rule to be extracted is this: that where, under power in a charter, *rights have been acquired* and *become vested*, no amendment or alteration of the charter can take away the property or rights, which become vested under a legitimate exercise of the powers granted."

This was taken as a postulate in the Sinking-Fund cases, as well in the prevailing, as in the dissenting opinions.

"That this power", said Mr. Chief Justice Waite, "has a limit, no one can doubt. All agree that it cannot be used to take *property already acquired*, under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made".

The legislature exercising this reserved power, the Chief Justice went on to say, "cannot undo what has already been done, and it cannot unmake contracts that have already been made". (99 U. S. pp. 720-721).

Mr. Justice Strong, in dissenting, said: "All the cases agree that such a reserved power is not without limits. I think its limits may be stated generally thus:

> "It must be exercised when exerted at all, so as to do no injustice to those to whom the franchise has been granted. Certainly the reservation cannot mean a right to take away the franchise, in whole or in part, and yet hold *the grantee to the performance of the duties assumed*—the *consideration*, given for the grant". (p. 741)

He quotes the language of Mr. Chief Justice Shaw, excerpted above, and turns to the opinion of this court, in *Miller against the State*, 15 Wall. 478, where it was said by Mr. Justice Clifford:

> "Power to legislate, founded upon such a reservation in a charter of a private corporation, is certainly not without limitations, and it may well be admitted that it cannot be exercised to take away or destroy rights *acquired* by such a charter, and which, by a legitimate use of the powers granted, have become vested in the corporation". (p. 742)

Mr. Justice Bradley, also dissenting, speaks of the reservation clause: (p. 749)

> "It certainly cannot be interpreted as reserving a right to violate a contract at will. No Legislature ever reserved such a right in any contract. Legislatures often reserve the right to terminate a continuous contract at will; but never to violate a contract, or to change its terms *without the consent of the other party.*"

"The reserved power in question," he continues, "is simply that of legislation—to alter, amend, or repeal a charter. This is very different from the power to violate or to alter the terms of a contract at will. A reservation of power to violate a contract, or alter it, or impair its obligation, would be repugnant to the contract itself and void. A proviso repugnant to the granting part of a deed, or to the enacting part of a statute is void. Interpreted as a reservation of the right to legislate, the reserved power is sustainable on sound principles; but interpreted as the reservation of a right to violate an executed contract, it is not sustainable".

And by Mr. Justice Field, in the same case, it was said of the reserved power:

> "It cannot be exerted to effect the contract so far as it has been executed, or the rights vested under it. When the road was completed in the manner prescribed and accepted, the company became entitled as of right to the land and subsidy bonds stipulated. The title to the land was perfect on the issue of the patents; the title to the bonds vested on their delivery. Any alteration of the acts, under the reservation clauses or their repeal could not revoke the title to the land or recall the bonds, or change the right of the company to either. (p. 757)"

In *Stearns against Minnesota*, 179 U. S. 223, 259, it was held that the reserved right to amend a corporation charter "does not confer mere arbitrary power, and cannot be so exercised as to violate fundamental principles of justice, by taking of property without due process of law". And it was said of the guaranty of "due process", in *Ochoa against Hernandez*, 230 U. S. 140, 161:

> "Without the guaranty of 'due process', the right of private property cannot be said to exist, in the sense in which it is known to our laws. The principle, known to the common law before the Magna Charta, was embodied in that charter (Coke. 2. Inst., 45, 50); and has been recognized since the Revolution as among the safest foundations of our institutions.

> Whatever else may be uncertain about the definition of the term 'due process of law', all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing".

"The courts have often held", it was said in *Bienville Water Supply Company against Mobile*, 186 U. S., 212, 222, "that it was not within the power of the Legislature, under the guise of an act amending or repealing a charter, to take away the property of the corporation". (See also *Chicago, M. & St. P. RR. v. Wisconsin*, 238 U. S., 491, 501-2); *Houston and Texas Central Railway v. Texas*, 170 U. S., 243, 254-5; *United States v. U. P. Ry.*, 160 U. S. 1, 32-3; *Detroit v. Detroit P. R. Co.*, 43 Mich., 140, 146-148, opinion by Cooley, J.

It is to be said, with propriety, of the effect of the Ferris Act, as Judge Cooley said of a Michigan Statute, in the case last cited:

> "A statute which could have this effect, would not be a statute to amend franchises, but a statute to confiscate property; it would not be a statute of regulation but of spoliation",

In the very recent case in this court of *Long Sault Development Company v. Call*, opinion by Mr. Justice Clarke, decided December 11, 1916, it was said:

> "The grants of the Acts of 1907 are such that, if it was a valid law, upon their being accepted, they constituted property or contract rights, of which the plaintiff could not be deprived, and which could not be impaired, by subsequent legislation; and, therefore, the denial by the defendant in error of the jurisdiction of this court renders it necessary for us to determine whether the Court of Appeals in its decision, gave any effect to the repealing act."

On looking into the opinion of the Court of Appeals, for its consideration of the repealing act in question,—an Act of the Legislature of New York of 1913—Mr. Justice Clarke finds, "not only did it not give to it an effect which would impair any contract relation springing from the Act of 1907, but * * on the contrary, it concluded that the repeal 'could not operate to confiscate any valid franchise or property right, which the Long Sault Development Company had previously acquired under the act repealed'".

The Question of Condemnation.

We can scarcely believe that the Ferris Act will be defended, as a taking of property for public use with just compensation. It was a taking of property—this is clear enough—a down-right forfeiture, but it was not a taking for a public use. It was a resumption by the grantor of property that had been contracted for, earned and conveyed; and the

grantee, to whom the grant has been, as we have shown, a source of expense and loss, is relegated to a dwindling and vanishing expectancy, contingent on the grantor's administration of the forfeited grant for a period of ten years. Such is this extraordinary statute. But we need not labor the point. As this Court said, in *Monongahela Navigation Co. v. United States*, 148 U. S., 312, 327:

> "By this legislation, Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial and not a legislative question. The Legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property, through Congress or the Legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The constitution has declared that a just compensation shall be paid, and the ascertainment of that is a judicial inquiry".

III.

COSTS WERE IMPROPERLY TAXED AGAINST THESE APPELLANTS.

The great question in the case, upon which the decision of the District Court in the first instance, and afterwards of the Supreme Court, turned, was the question of forfeiture—whether the settlers'

clause was a condition subsequent or a covenant. Upon that question these appellants prevailed. It may be suggested that we put testimony into the record, going to the questions of estoppel, assent and waiver, as against the right of the government to urge a violation on our part of the covenants, and it is true that the case did not go off upon the question of waiver or estoppel. But this same testimony, so put by us into the record, had its bearing upon the point on which the case was made to turn—that is to say, the question whether the settlers' clause was a condition subsequent, for it went to the question of practical and contemporaneous exposition of the statute—and more particularly of its exposition at the hands of the executive Department, charged with the administration of the law. It went to show by such exposition that the settlers' clause had been expounded and construed, in practice, as a covenant. This was recognized in the opinion of the Supreme Court, 238 U. S., at pages 424-5, where it is said:

> "It is contended that if sales were made under the limitations of the provisos the breaches were acquiesced in, and for this the action and knowledge of the officers of the government are adduced—indeed the knowledge of Congress itself; and reciting what was done under the grants, counsel say: 'It is a story of mortgages and sales, executory contracts and conveyances, and a stream of government patents flowing in between. These things were known of all; they were matters of common knowledge, notoriety,

> of public record; the railroad knew them; the people knew them, the government knew them.' And cases are cited which, it is contended, establish that such circumstances might work an estoppel even against the government, which, when it appears in court, it is contended, is bound like other suitors, and certainly establish that for more than forty years in the view of the executive officers the *provisos were not conditions subsequent. Granting their strength in that regard,* granting they have some strength in every regard, they have not controlling force, considering the provisos as *simple covenants.* And they cannot be asserted as an estoppel."

And if it be suggested, as it was suggested by the District Judge, that the United States "was required to bring this suit in order to determine as to the violations of this proviso, and the government has prevailed in the end and the court has declared that the railroad company has violated the provisos —I think for that reason the government should recover costs," the answer is not difficult. The government, in the first place never brought suit to determine as to the violations of the proviso on its own initiative. It was memorialized to do so, as we pointed out, by the Legislature of Oregon: and that memorial did not come into being until the year 1908, some forty years after the passage of the granting act, and more than thirty years after the administration of this grant, as it was administered by the railroad company had become a "matter of common knowledge, of notoriety, of public record."

The transactions of the railroad company in respect to the sales of these lands, as we have already noticed, were communicated in a detailed and itemized way to the bureau of the Interior Department, specially constituted to have such matters in charge, the transactions were communicated by the bureau to the Secretary of the Interior, by him to the President and by the President to Congress. It is, we submit with deference, not equitable upon the grounds suggested and in view of the long and known history of the transactions, to tax costs against the railroad company, after it has prevailed in the substantive contention, upon a suggestion that the government was required, by the fault of the railroad company, to bring this suit "to determine as to the violations of this proviso". The temporary injunction, which the government now seeks to import by this decree into the general injunction against future violations of the covenants, itself rested upon the very testimony which we put into this record as to the non-settlement character of the lands. The Supreme Court in its opinion, as we have quoted it, sums up that testimony and makes it the basis and explanation of the reference of the subject matter to Congress. It is, we think, a most unusual assessment of costs, under the circumstances of this case, to penalize these appellants, as this decree does, with costs taxed at $6,249.02.

In the case of Northern Trust Company vs. Snyder, 77 Fed. 818, the court said:

> "Without undertaking to go further than the case before us requires, we are of the opinion that the appellant is entitled to the costs of this appeal. The appellant has succeeded in reversing the decre in the most important part, so far as the amount of money is concerned. It is true the appeal was from the entire decree, and that the appellant contested the right of the appellee to the recovery of any amount. We think, however, it would be a harsh rule that would deprive an appellant of the statutory costs of appeal unless success attended the whole contention. Where the appeal has substantially prevailed we perceive no reason to deny to appellant the statutory costs which have been incurred in the successful attempt to assert a right."

While this language was used of costs on an appeal, it expresses the spirit and principle by which a court should be moved, a court of equity especially, in determining the assessment of costs.

In Street on Federal Equity Practice (Section 2022) it is said:

> "Situations frequently arise where it is deemed inequitable for all the costs to be imposed on either party exclusively, and where this appears to be the case, the case may be disposed of without adjudging costs in favor of either, but leaving each to bear the costs of his own side of the litigation".

Of course, we are not authorized to ask for costs against the United States; but it must excite some

special wonder that an application should have been made here by the government for costs, in view of the principal question at issue, on which the government argued and staked its case, and of the final adjudication of that question in the Supreme Court of the United States. It will excite some surprise that the government, defeated in its contention, should come to the court of first instance, and ask that these appellants be penalized in costs because they prevailed on the turning point of the case.

It is now respectfully submitted that the decree of the District Court, herein appealed from, is not in accordance with the opinion of the Supreme Court, and that it should be reversed, with directions to enter a decree, pursuant to the mandate of the Supreme Court of the United States, and without costs on the appellants; and such a decree, it is respectfully submitted, is the decree which the appellants proposed to the District Court and which is set forth in the transcript of this record.

It is further respectfully submitted that the invalidity of the Ferris Act should be pronounced.

WM. F. HERRIN,
P. F. DUNNE,
WM. D. FENTON,

Solicitors for Defendants and Appellants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, Individually and as Trustee.

FRANK C. CLEARY,
Of Counsel.

APPENDIX A.

DECREE ON MANDATE OF UNITED STATES SUPREME COURT.

In the District Court of the United States for the District of Oregon.

No. 3340.

DECREE.

The United States of America,
Complainant,

vs.

Oregon & California Railroad Company, et al,
Defendants,

John L. Snyder, et al,
Defendants and Cross-Complainants,

William F. Slaughter, et al,
Interveners.

In pursuance of the mandate of the Supreme Court of the United States filed in this court on the 8th day of December, 1915, in the above entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed as follows:

1. That the decree heretofore entered in said cause so far as it affects the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called "the defendants," be, and the same is hereby set aside and held for naught, but is adhered to in all respects as to the defendants and cross-complainants, hereinafter called the "cross-complainants," and the interveners.

2. That the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre; and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.

3. That the defendants and their respective officers and agents be, and each is hereby, enjoined from making or agreeing to make, either directly or indirectly, any disposition whatsoever of said lands or of any part thereof, or of the timber thereon or any part thereof, or of any mineral or other deposits therein; from cutting, removing, or authorizing the cutting or removal of the timber thereon or any part thereof; from removing or authorizing the removal of mineral or other deposits therein; and from disposing of, receiving or exerting any control over any money which arose, or may hereafter arise, from

said lands, either through sales thereof or of timber thereon, or through condemnation proceedings or otherwise, and now on deposit, or which may hereafter be placed on deposit, with any bank, clerk of court, or other institution or person, to await the final decision of the Supreme Court of the United States in this case, until Congress shall have a reasonable opportunity to make provision by legislation for the disposition of said lands, timber, money, mineral, or other deposits, in accordance with such policy as Congress may deem fitting, under the circumstances, and at the same time secure to the defendants all the value that the said granting acts conferred upon the grantees.

4. That if Congress does not make provision for the disposition as aforesaid of said lands, money, timber, mineral or other deposits, the defendants may apply to the court within a reasonable time, but not less than six months from the entry of this decree, for a modification of so much of the injunction herein ordered as forbids any disposition of the said lands, timber, money, mineral or other deposits, or any part thereof, until Congress shall act, and the court hereby reserves the right to modify this decree in that regard if, in its opinion, good cause shall then exist for doing so.

5. That this decree shall apply not only to all said grant lands unsold at the time this action was instituted, but also to all such grant lands *sold prior* to the institution of the action which have *since reverted* or shall hereafter revert to the defendants or any one of them.

6. That this decree shall be without prejudice to any other suits, rights or remedies which the government may have by law or under the Joint Resolution of Congress passed April 30, 1908, or under the Act of Congress passed August 20, 1912, against the defendants or any of them.

7. That the complainant have and recover from the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company individually and as trustee, and each of them, its lawful costs and disbursements herein, taxed at $6,249.02, and that execution issue therefor.

Done in open court this 9th day of December, 1915.

BY THE COURT.
Chas. E. Wolverton, Judge.

APPENDIX B.

(TITLE OF COURT AND CAUSE, AS CONTAINED IN FOREGOING DECREE, APPENDIX A.)

In pursuance of the mandate of the Supreme Court of the United States, filed in this Court on the —— day of December, 1915, in the above entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed, as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the "defendants," be, and the same is, hereby set aside, and held for naught, but adhered to in all respects as to the defendants and cross-complainants, hereinafter called the "cross-complainants," and the "interveners."

2. That the said defendants and their respective officers and agents be and each is hereby enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

3. That the said defendants and their respective officers and agents be, and each is hereby enjoined from any disposition of said lands, or any part thereof, or of the timber thereon, and from cutting, or authorizing the cutting, or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands, in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants, all the value the granting acts conferred upon the grantees; but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act.

Done in open court this——day of——, 1915.

BY THE COURT,

_____

Judge."

APPENDIX C.

THE FERRIS ACT.

[PUBLIC—NO. 86—64TH CONGRESS.]
[H. R. 14864.]

An Act To alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and to alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, and for other purposes.

Whereas by the Acts of Congress approved April tenth, eighteen hundred and sixty-nine (Fourteenth Statutes at Large, page two hundred and thirty-nine), and May fourth, eighteen hundred and seventy (Sixteenth Statutes at Large, page ninety-four), it was provided that the lands granted to aid in the construction of certain railroads from Portland, in the State of Oregon, to the northern boundary of the State of California, and from Portland to Astoria and McMinnville, in the State of Oregon, should be sold to actual settlers only, in quantities not exceeding one hundred and sixty acres to each person and at prices not greater than $2.50 per acre; and

Whereas the Oregon and California Railroad Company, beneficiary of said acts, has violated the terms under which the said lands were granted by

selling certain of said lands to persons other than actual settlers, by selling in quantities of more than one-quarter section to each person, by selling at prices in excess of $2.50 per acre, and by refusing to sell any further portions of such lands to actual settlers at any price, and in so doing has willfully violated the terms of the statutes by which the said lands were granted; and

Whereas in the suit instituted by the Attorney General of the United States, pursuant to the authority and direction contained in the joint resolution of April thirtieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page five hundred and seventy-one), the Supreme Court of the United States, in its decision rendered June twenty-first, nineteen hundred and fifteen (Two hundred and thirty-eighth United States, page three hundred and ninety-three), ordered that the Oregon and California Railroad Company be enjoined from making further sales of lands in violation of the law, and that the said railroad company be further enjoined from making any sales whatever of either the land or the timber thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands in accordance with such policy as Congress might deem fitting under the circumstances and at the same time secure to the railroad company all the value conferred by the granting Acts; and

Whereas it was expressly provided by section twelve of the Act of July twenty-fifth, eighteen hundred

and sixty-six (Fourteenth Statutes at Large, page two hundred and thirty-nine), that Congress might at any time, having due regard for the rights of the grantee railroad company, add to, alter, amend, or repeal the Act making the grant; and

Whereas the Oregon and California Railroad Company and its predecessors in interest received a large sum of money from sales of said land for prices in excess of $2.50 per acre, and from leases, interest on contracts, and so forth; and

Whereas the aforesaid granting Acts conferred upon the said railroad company the right to receive not more than $2.50 per acre for each acre of land so granted: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to so much of the lands granted by the Act of July twenty-fifth, eighteen hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, and to so much of the lands granted by the Act of May fourth, eighteen hundred and seventy, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," for which

patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, as had not been sold by the Oregon and California Railroad Company prior to July first, nineteen hundred and thirteen, be, and the same is hereby, revested in the United States: *Provided*, That the provisions of this Act shall not apply to the right of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said railroad company on December ninth, nineteen hundred and fifteen, for depots, sidetracks, wood yards, and standing grounds.

SEC. 2. That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character.

Class two. Timberlands, which shall include lands bearing a growth of timber not less than three hundred thousand feet board measure on each forty-acre subdivision.

Class three. Agricultural lands, which shall include all lands not falling within either of the two other classes:

Provided, That any of said lands, however classified, may be reclassified, if, because of a change of

conditions or other reasons, such action is required to denote properly the true character and class of such lands: *Provided further*, That all the general laws of the United States now existing or hereafter enacted relating to the granting of rights of way over or permits for the use of public lands shall be applicable to all lands title to which is revested in the United States under the provisions of this Act. All lands disposed of under the provisions of this Act shall be subject to all rights of way which the Secretary of the Interior shall at any time deem necessary for the removal of the timber from any lands of class two.

SEC. 3. That the classification provided for by the preceding section shall not operate to exclude from exploration, entry, and disposition, under the mineral-land laws of the United States, any of said lands, except power sites, which are chiefly valuable for the mineral deposits contained therein, and the general mineral laws are hereby extended to all of said lands, except power sites: *Provided*, That any person entering mineral lands of class two shall not acquire title to the timber thereon, which shall be sold as hereinafter provided in section four, but he shall have the right to use so much of the timber thereon as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States.

SEC. 4. That nonmineral lands of class two shall not be disposed of until the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed, and thereupon said lands shall fall into class three and

be disposed of in the manner hereinafter provided for the disposal of lands of that class.

The timber on lands of class two shall be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to citizens of the United States, associations of such citizens, and corporations organized under the laws of the United States, or any State, Territory, or District thereof, at such times, in such quantities, and under such plan of public competitive bidding as in the judgment of the Secretary of the Interior may produce the best results: *Provided*, That said Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate, and may reoffer the timber until a satisfactory bid is received: *Provided further*, That upon application of a qualified purchaser that any legal subdivision shall be separately offered for sale such subdivision shall be separately offered before being included in any offer of a larger unit, if such application be filed within ninety days prior to such offer: *And provided further*, That said timber shall be sold as rapidly as reasonable prices can be secured therefor in a normal market.

The Secretary of the Interior shall as soon as the purchase price is fully paid by any person purchasing under the provisions of this section issue to such purchaser a patent conveying the timber and expressly reserving the land to the United States. The timber thus purchased may be cut and removed by the purchaser, his heirs or assigns, within such period as may be fixed by the Secretary of the In-

terior, which period shall be designated in the patent; all rights under said patent shall cease and terminate at the expiration of said period: *Provided*, That in the event the timber is removed prior to the expiration of said period the Secretary of the Interior shall make due announcement thereof, whereupon all rights under the patent shall cease.

No timber shall be removed until the issuance of patent therefor. All timber sold under this Act shall be subject to the taxing power of the States apart from the land as soon as patents are issued as provided for herein.

SEC. 5. That nonmineral lands of class three shall be subject to entry under the general provisions of the homestead laws of the United States, except as modified herein, and opened to entry in accordance with the provisions of the Act of September thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page one hundred and thirteen). Fifty cents per acre shall be paid at the time the original entry is allowed and $2 per acre when final proof is made. The provisions of section twenty-three hundred and one, Revised Statutes, shall not apply to any entry hereunder and no patent shall issue until the entryman has resided upon and cultivated the land for a period of three years, proof of which shall be made at any time within five years from date of entry. The area cultivated shall be such as to satisfy the Secretary of the Interior that the entry is made in good faith for the purpose of settlement and not for speculation: *Provided*, That the payment of $2.50 per acre

shall not be required from homestead entrymen upon lands of class two when the same shall become subject to entry as agricultural lands in class three: *Provided further*, That during the period fixed for the submission of applications to make entry under this section any person duly qualified to enter such lands who has resided thereon to the same extent and in the same manner as is required under the homestead laws, since the first day of December, nineteen hundred and thirteen, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the quarter section upon which he was so residing whether such lands shall be of class two or class three and where such quarter section does not contain more than one million two hundred thousand feet board measure of timber, and where the quarter section contains more than the said quantity of timber such person may enter the forty-acre tract, or lot or lots containing approximately forty acres, upon which his improvements, or the greater part thereof, are situated: *Provided further*, That a prior exercise of the homestead right by any such person shall not be a bar to the exercise of such preference rights: *And provided further*, That all of the following described lands which may become revested in the United States by operation of this Act, to-wit: Township one south, range five east, sections twenty-three and thirty-five township one south, range six east, sections three, five, seven, nine, seventeen, nineteen, twenty-nine, thirty-one,

and thirty-three; township two south, range five east, sections one and three; township two south, range six east, sections one, three, five, seven, nine, and eleven; township two south, range seven east, section seven; township three south, range three east, section fifteen; township four south, range four east, sections eleven and thirteen; township four south, range five east, sections nineteen and twenty-nine; and township twelve south, range seven west, sections fifteen, twenty-one, twenty-three, twenty-seven, thirty-three, and thirty-five, Willamette meridian and base, State of Oregon, shall be withheld from entry or other disposition for a period of two years after the approval hereof.

SEC. 6. That persons who purchase timber on lands of class two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the register and receiver, within the maximum compensation allowed them by law; and the register and receiver shall receive no other compensation whatever for services rendered in connection with the sales of timber under the provisions of section four of this Act.

SEC. 7. That the Attorney General of the United States be, and he is hereby, authorized and directed to institute and prosecute any and all suits in equity and actions at law against the Oregon and California Railroad Company, and any other proper party which he may deem appropriate, to have determined the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of said granted

lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the "full value" secured to the grantees under said granting Acts as heretofore interpreted by the Supreme Court. In making this determination the court shall take into consideration and give due and proper legal effect to all receipts of money from sales of land or timber, forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors. In making this determination in the aforementioned suit or suits the court shall also determine on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this Act, and which should in law have been paid by the said Oregon and California Railroad Company, and the amount thus determined shall be treated as money received by said railroad company.

SEC. 8. That the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit commenced by the United States in pursuance of said joint resolution of nineteen hundred and eight is hereby vested in the United States, and the United States is subrogated to all the rights and remedies of the obligee or obligees, and especially of Louis L. Sharp as commissioner, under any contract for the purchase of timber on the grant lands.

SEC. 9. That the taxes accrued and now unpaid on the lands revested in the United States, whether

situate in the State of Oregon or State of Washington, shall be paid by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the approval of this Act, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

SEC. 10. That all moneys received from or on account of said lands and timber under the provisions of this Act shall be deposited in the Treasury of the United States in a special fund, to be designated "The Oregon and California land-grant fund," which fund shall be disposed of in the following manner: The Secretary of the Interior shall ascertain as soon as may be the exact number of acres of said lands, sold or unsold, patented to the Oregon and California Railroad Company, or its predecessors, and the number of acres of unpatented lands which said railroad company is entitled to receive under the terms of said grants and the value of said lands at $2.50 per acre. From the sum thus ascertained he shall deduct the amount already received by the said railroad company and its predecessors in interest on account of said lands and which should be charged against it as determined under section seven of this Act; and a sum equal to the balance thus resulting shall be paid, as herein provided, to the said railroad company, its successors or assigns, and to those having liens on the land, as their respective interests may appear. The amount due lien holders shall be evidenced either by the consent, in writing, of the railroad company or by a judgment of a court of competent jurisdiction in a suit

to which the railroad company and the lien holders are parties. Payments shall be made from time to time, as the fund accumulates, by the Treasurer of the United States upon the order of the Secretary of the Interior: *Provided, however*, That if, upon the expiration of ten years from the approval of this Act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor. After the said railroad company, its successors or assigns, and the lien holders shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section nine hereof, shall be deposited in the Treasury to the credit of the United States, thereafter all other moneys received from the sales of land and timber shall be distributed as follows:

A separate account shall be kept in the General Land Office of the sales of land and timber within each county in which any of said lands are situated, and, after deducting from the amount of the proceeds arising from such sales in each county a sum equal to that applied to pay the accrued taxes in that county and a sum equal to $2.50 per acre for each acre of such land therein title to which is revested in the United States under this Act, twenty-five per centum of the remainder shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible

school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; forty per centum shall be paid into, reserved, and appropriated as a part of the fund created by the Act of Congress approved June sevententh, nineteen hundred and two, known as the reclamation Act; ten per centum shall become a part of the general fund in the Treasury of the United States; and of the balance remaining in said Oregon and California land grant fund from whatsoever source derived twenty-five per centum shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; and the remainder shall become a part of the general fund in the Treasury of the United States. The payments herein authorized shall be made to the treasurers of the States and counties, respectively, by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the close of each fiscal year during which the moneys were received: *Provided*, That none of the payments to the States and counties and to the reclamation fund in this section provided for shall be made until the amount due the Oregon and California Railroad Company, its successors or assigns, has been fully paid, and the Treasury re-

imbursed for all taxes paid pursuant to the provisions of section nine of this Act.

SEC. 11. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect; and any person, applicant, purchaser, entryman, or witness who shall swear falsely in any affidavit or proceeding required hereunder or under the regulations issued by the Secretary of the Interior shall be guilty of perjury and liable to the penalties prescribed therefor.

SEC. 12. That the sum of $100,000 be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to complete the classification of the lands as herein provided, which amount shall be immediately available and shall remain available until such classification shall have been completed.

Approved, June 9, 1916.

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In the Supreme Court of the United States

OCTOBER TERM, 1916.

OREGON & CALIFORNIA RAILROAD COMPANY, ET AL., APPELLANTS,
vs.
THE UNITED STATES.
No. 492.

ON A CERTIFICATE FROM AND CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF—AMICUS CURIA.

CHAMBERLAIN-FERRIS ACT INVALID.

The Chamberlain-Ferris Act is invalid because it is an attempt to take private property without just compensation and for private use, and also without due process of law.

On the former appeal in this case it was held by this Court that the Oregon & California Railroad Company has a "complete and absolute grant" of the lands involved in the Chamberlain-Ferris Act, and that its power to sell such land is "limited only as prescribed" in the granting acts; or, in other words, that the Railroad Company is vested with a complete and absolute title to the lands. It further held that the provisos in the grant are not conditions subsequent; and that, consequently, it is not subject to forfeiture by reason of

any act or omission on the part of the Railroad Company in respect thereto.

In other words, this Court held that an indefeasible and irrevocable title to the land is vested in the Railroad Company.

The Government attempted to secure a forfeiture of the grant through judicial proceedings, and this Court reversed the judgment of the trial court decreeing such forfeiture, and held that under the terms of the acts of Congress by which the grant was made, the Government could not secure a mandatory injunction compelling the Railroad Company to permit settlers to go upon the land or to make sales thereof to them.

This Court held that the only judgment to which the Government was entitled under its pleadings was "a reversal of the decree of the District Court, and "an injunction against further violations of the covenants."

This Court recognized the fact that an injunction against further violations of the covenants would be "imperfect relief", but, it said "We can only enforce the provisos as written, not relieve from them." It also said, the language of the proviso "is not directive; it is restrictive only."

Moreover, this Court said:

> "We agree with the Government that the Company might choose the actual settler; might sell for any price not exceeding $2.50 an acre; might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres. And we add, it might choose the time for selling or its use of the grants as a means of credit, subject ultimately to the restrictions imposed;" etc.

Obviously it was for these reasons that this Court did not give the relief which was prayed for by the Government in its complaint, as follows:

> "(3) That a mandatory injunction shall issue out of and under the seal of this Court, *command-*

ing and requiring the said defendant Oregon and California Railroad Company *to offer for sale, and sell and convey,* said unsold lands to any bona fide actual settler who may apply to purchase the same in good faith, in quantities not exceeding one hundred and sixty acres, or one quarter section, for the price of two dollars and fifty cents per acre, under such restrictions, in such manner and by such methods as the Court shall deem adequate and expedient; and providing that any and all persons who may be in any way aggrieved by the refusal or neglect of said defendant Oregon and California Railroad Company to sell or convey said lands to him or them in conformity with the terms hereof, or who may be in any other manner aggrieved in the premises, and hereafter apply to the Court, at the foot of said judgment and decree, for the enforcement thereof in his or their behalf."

It is well settled that a judgment or decree must be interpreted in the light of the matters that were before the Court, and that the record on a former appeal may be looked into for this purpose.

It seems perfectly plain, therefore, that this Court did decide upon the former appeal that, unless and until the granting acts (in so far as they are laws) are added to, altered, or amended, the courts possess *no power to compel* the Railroad Company to permit settlers to go upon its lands or to sell the same to settlers or otherwise or at all. The Railroad Company may continue to choose the actual settler and the time for selling, and the Courts cannot interfere with its discretion in these particulars.

It seems equally plain that Congress has no power, *without the consent of the Railroad Company,* to add to, alter, or amend the granting acts so as to change in any substantial respect the contractural relations which have thereby been established between the Government and the Railroad Company, or so as to impair in any substantial degree the rights of ownership and

the indefeasible and irrevocable "complete and absolute" title which has vested in the Railroad Company under said granting acts.

It appears, however, that it was contended by the Government that more than 1,000 persons had made application to purchase from the Railroad Company *in conformity to the covenants* in the grant, and that ever since 1903 the Railroad Company had been refusing to make any such sales of its said lands. It further appears that it was contended by the Railroad Company that such applications were made by persons who desired to obtain title on account of the timber, and not otherwise, and for the purpose of speculation only, and not in good faith as actual settlers, and that the lands were chiefly, and in most instances solely, of value because of the timber thereon, and were not fit for actual settlement.

This Court was of the opinion that it was clear that such lands as were fit for cultivation were more valuable for the timber which was upon them.

For these reasons evidently, this Court concluded that an injunction merely *against future violations of the covenants* would not afford the measure of relief to which the facts of the case entitled the Government, and that under the circumstances just described, Congress might desire to relax the restrictions of the granting acts and to permit the Railroad Company to sell to persons other than actual settlers, and, perhaps, to sell the timber lands in larger quantities than one hundred and sixty acres to one person.

Consequently this Court said:

> "We think therefore that the Railroad Company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legis-

> lation for their disposition in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the railroads."

The obvious meaning of the foregoing language seems to be that the Railroad Company should be enjoined from any disposition" of the grant lands "whatever" as well as "from any disposition * * * of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for their disposition" *by the Railroad Company* "in accordance with such policy as" Congress "may deem fitting under the circumstances," and at the same time secure to the *Railroad Company* "all the value the granting acts conferred upon the railroad."

The Government makes the astounding contention, however, that by said language, this Court intended to authorize Congress to provide by legislation for the "disposition" by the United States, instead of by the Railroad Company, of the aforesaid lands to which the Railroad Company has "a complete and absolute grant" * * * "with power to sell, limited only as prescribed," as well as with power to "choose the actual settler," and to "sell for any price not exceeding $2.50 an acre," and to "sell in quantities of 40, 60, or 100, or any amount not exceeding 160 acres," and to "choose the time for selling or its use of the grants as a means of credit."

The mere statement of this contention would seem to furnish its own refutation.

As some of the grant lands are fit for settlement and cultivation and as other parts thereof are so heavily covered with valuable timber that they are unfit for cultivation, and as still other parts thereof are less heavily covered with timber, and, while fit for cultivation, are more valuable for the timber thereon, and as the Railroad Company is required to pay local

County and State taxes upon all of the patented lands, and as it is the undoubted policy of the Government to have these enormous holdings of lands and the timber and minerals thereon, put to the highest use possible by as large a number of its citizens as practicable, at as early a time as practicable, it might well have been expected by this Court that Congress would desire to add to, alter, or amend the granting acts in so far as relates to the disposition of these lands by the Railroad Company, and particularly to relax the restrictions of the grant in regard to the sale of the heavily timbered land to actual settlers only or in tracts of not to exceed 160 acres, as well as in regard to the maximum price of $2.50 per acre. Obviously, it would be to the advantage of both the public and the Railroad Company to have certain changes made in the terms of the restrictions in the granting acts. Some changes might be desired which could only be made with the consent of the Railroad Company.

As a matter of public policy Congress might desire to alter or amend the granting acts by removing or relaxing some of the restrictions upon the sale of the lands by the Railroad Company. This could undoubtedly be done without any formal consent by the latter.

Perhaps Congress possesses power to alter or amend the granting acts so as *to require or compel* the Railroad Company to permit settlers to go upon such lands as are fit for cultivation, and to sell not more than 160 acres to any such settler, and to fix the period of settlement which shall entitle such settler to purchase such lands. Perhaps such amendatory legislation could give such settler the right to maintain suit in the proper Federal Court to enforce the right of purchase thus acquired by him.

It is entirely clear that Congress does have power to add to, alter, or amend the granting acts in any way that does not impair the substantial vested rights of the Railroad Company in the granted lands, as defined by

this Court in its opinion and judgment on the former appeal. It seems equally clear that by its aforesaid language this Court intended to have the *status quo* of the grant lands preserved for a reasonable length of time to afford Congress an opportunity to enact such legislation only.

In the case of *Union Pacific R. R. Co.* v. *United States* (9 Otto, 700) this Court said:

> "No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable."

In the same case this Court, in referring to the power of Congress reserved in a granting act to add to, alter, amend, or repeal the same, said:

> "That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this Court, through Mr. Justice Clifford, in Miller *v.* The State (15 Wall. 498):
>
> > 'It may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets; and, again, in Holyoke *v.* Lyman (15 Wall. 519), To protect the rights of the public and of the corporators or to promote the due administration of the affairs of the corporation.' "

In *Shields* v. *Ohio* (95 U. S. 324), the Court said:

> "The power of alteration and amendment is not without limit. The alterations must be reasonable;

> they must be made in good faith; they must be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of reserved powers, the *vested rights of property* of corporations, in such cases, are surrounded by the same restriction, and are as inviolable as in other cases.

In the leading case of *The Commonwealth* v. *The Essex Company* (13 Gray, 239), Chief Justice Shaw expresses the rule in apt language as follows:

> "The rule to be extracted is this, that when under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted."

The same principle is expressed in many different forms in an innumerable number of cases.

In the case at bar the Government brought suit to secure a forfeiture of the grant of lands which was acquired by the Oregon & California Railroad Company, and also to recover the excess amount of money which had been received by said Railroad Company from the sale of some of its grant lands contrary to the restrictive covenants of the grant. The trial court decreed the forfeiture but denied the right of the Government to recover from the Railroad Company such excess money. This Court reversed the judgment of the trial court, but it expressed no opinion and gave no direction to the trial court in regard to its denial of the right of the Government to recover such excess money.

The Chamberlain-Ferris act proceeds upon the theory that "all the value the granting acts conferred upon the Railroad" was the right to receive the gross sum of $2.50 per acre for the total number of acres of land contained in the grants, and that it had no vested

rights in the grant which could not be ignored, repudiated, or taken away from it by the Government through legislative action, provided only that it was secured in its right to receive that total and gross amount of money at some time in the future, which the Government might consider reasonable; and that no allowance need be made for the expense of administering the grant or for taxes paid to the counties and State by the Railroad Company.

The right to exercise dominion over the land, and to choose the settlers, and to sell for less than $2.50 per acre, and in any quantities less than 160 acres, and to choose the time for selling, and to use the grant as a means of credit, are all discarded as of no value, or as being fully compensated for by the maximum price of $2.50 per acre to be paid in the manner specified in the act.

POWER OF EMINENT DOMAIN.

It is contended by the Government that the Chamberlain-Ferris Act is sustainable upon the theory that in so far as it takes the land and property of the Railroad Company it is an exercise by the Government of the power of eminent domain. This contention will hardly stand analysis. The argument that the land is taken for a public use because the original purpose of the grant was to secure the settlement of that part of the country, and because the proceeds of the sales of the land "are to go to purposes undoubtedly public", is rather attenuated, to say the least.

The avowed purpose of the Government is to *resell* the land *to private parties.* It is difficult to understand by what process of reasoning the conclusion can be reached that the *land* is thus to be devoted to a *public use,* merely because the proceeds from its sale are to be applied to public purposes. The fact that a part of the

proceeds is to be put in an "irreducible school fund", and that another part of it is to be expended for common schools, roads, highways, bridges, and port districts, and that another part of it is to be expended for reclamation purposes, and that only ten per cent. of it is to be put in the "general fund of the Treasury", *may serve to make the law popular;* but it can hardly be said to relate back and make *the sale of the lands to private parties* a public use. If *all of the proceeds* were to be put in the "general fund of the Treasury", it could just as well be argued that the exercise of the power of eminent domain by the Government was justifiable, upon the same theory.

The argument that the land is to be devoted to a public use, because it is to be resold by the Government in many parcels to many private persons, and because the policy of the Government to secure the settlement of the country will thus be advanced, is equally unsound. In the first place, it is admitted by the Government that a large part of the land is covered with timber and will be unfit for cultivation or settlement for many years to come. The Chamberlain-Ferris Act recognizes this fact and provides *for the sale of the timber exclusive of the land.* Indeed, the terms of the act are calculated, and seem intended to enable the Government, to sell all the timber that is on the lands at the best prices obtainable; and it was contended by the Government on the former appeal of this case that the value of these lands is about twenty-five million dollars in excess of the amount of $2.50 per acre which the railroad company is entitled to receive, and that this enormous excess value arises largely and almost entirely from the timber thereon.

It is axiomatic that if the Government desires to take this land under its power of eminent domain it can do so only for a public use and only by paying just compensation for the same.

This Court has frequently decided what constitutes a public use in this sense. It is contended by the Government that the case at bar falls within the principles laid down by this Court in the case of the *United States* v. *Gettysburg Electric Railway Co.* (160 U. S. 668), because in that case this Court said:

> "When the legislature has declared the use or purpose to be a public one, its judgment will be respected by the Courts, unless the use be palpably without reasonable foundation."

Referring to the case at bar counsel for the Government say:

> "There was no formal declaration here that the purpose was public, but that, we apprehend, is not necessary when its character is evident, as in this case."

In this particular it is conceded that counsel for the Government are correct. The Chamberlain-Ferris Act contains no declaration that the purpose is public. Moreover, "its character is evident." It seeks to take the land of the Railroad Company for the purpose of permitting the Government to sell the timber from it *to private parties* at an enormous profit, as well as to resell the land *to private parties for private use.*

FIXING OF JUST COMPENSATION IS A JUDICIAL AND NOT A LEGISLATIVE FUNCTION.

In the Chamberlain-Ferris Act Congress has assumed to fix the amount of compensation which ought to be paid to the Railroad Company for its lands. In the case of *Monongahela Navigation Co.* v. *United States,* (148 U. S. 312), this Court said:

"The question presented is not whether the United States has the power to condemn and appropriate this property of the Monongahela Company, for that is conceded, but how much it must pay as compensation therefor. Obviously this question, as all others which run along the line of the extent of the protection the individual has under the Constitution against the demands of the Government, is of importance, for in any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the Government. * * *

"By this legislation Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a *judicial* and *not* a legislative, question. The legislature may determine what private property is needed for public purposes; that is a question of a political and legislative character. But when the taking has been ordered, *then the question of compensation is judicial.* It does not rest with the public, taking the property, through Congress or the legislature, its representative, to say what compensation shall be paid, *or even what shall be the rule of compensation.* The constitution has declared that just compensation shall be paid, and *the ascertainment of that is a judicial inquiry.*

RULE FOR MEASURING JUST COMPENSATION.

In the case at bar Congress has undertaken to determine not only "what compensation shall be paid" to the Railroad Company, but also, "what shall be the rule of compensation." It has undertaken to apply as the proper rule of compensation the provisos in the granting acts that the lands should not be sold by the Railroad Company at a price in excess of the sum of $2.50 per acre. But, obviously, this is not the proper rule of compensation to be applied, if the Chamberlain-

Ferris Act can be sustained only upon the theory that it constitutes an exercise of the power of eminent domain on the part of the Government, because in that event the maximum selling price fixed by the granting acts is certainly not conclusive on the question.

In the case of *Mississippi and Rum River Boom Co.* v. *Patterson* (98 U. S. 206), this Court held:

> "That in determining the value of land appropriated for public purposes, the inquiry must be: What is the property worth in the market, from its availability for valuable uses, both now and in the future?"

In that case this Court said:

> "In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property as between private parties. The inquiry in such cases must be, What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with references to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated."

And in the same case this Court quoted with approval the statement of the Supreme Court of New York:

> "That neither the purpose to which the property was applied, nor the intention of the owner in relation to its future enjoyment, was a matter of much importance in determining the compensation to be made to him; but that the proper inquiry

was, what is the value of the property for the most advantageous uses to which it may be applied?''

In this connection it is important to observe that in the case of the *Monongahela Navigation Company* v. *United States* (*supra*), this Court said:

> "The language used in the fifth amendment in respect to this matter is happily chosen. The entire amendment is a series of negations, denials of right of power in the Government; the last (the one in point here) being: 'Nor shall private property be taken for public use without just compensation.' The noun 'compensation', standing by itself, carries the idea of an equivalent. Thus we speak of damages by way of compensation of compensatory damages, as distinguished from punitive or exemplary damages; the former being the equivalent for the injury done, and the latter imposed by way of punishment. So that, if the adjective 'just' had been omitted and the provision was simply that property should not be taken without compensation, a natural import of the language would be that the compensation should be the equivalent of the property. And this is made emphatic by the adjective 'just.' There can, in view of the combination of those two words, be no doubt that the compensation must be a full and perfect equivalent for the property taken; and this just compensation, it will be noticed, is *for the property*, and *not to the owner*. Every other clause in this fifth amendment is personal. 'No person shall be held to answer for a capital or otherwise infamous crime' etc. Instead of continuing that form of statement, and saying that no person shall be deprived of his property without just compensation, the personal element is left out, and the 'just compensation' is to be a full equivalent for the property taken. This excludes the taking into account as an element in the compensation any supposed benefit that the owner may receive in common with all from the public uses to which his private property is appropriated, and leaves it

> to stand as a declaration that no private property shall be appropriated for public uses *unless a full and exact equivalent for it be returned to the owner.*"

In the case at bar it is admitted by the Government that the value of the property which is taken from the Oregon & California Railroad Company by the Government under the Chamberlain-Ferris Act is approximately $30,000,000, and that the amount to be paid or credited to the Railroad Company is substantially less than $6,000,000. Hence it can hardly be said that under this act, "a full and exact equivalent" for the land taken is "to be returned to the owner."

Even if it is conceded, however, for the purpose of the argument that the Oregon & California Railroad Company will receive a full and exact equivalent, or, in other words, just compensation, under the Chamberlain-Ferris Act for the lands taken from it, then, nevertheless, it is true that the act in question is invalid and constitutes a dangerous precedent as an insidious invasion of the rights of private property which are guaranteed by the Constitution, by substituting legislative for judicial action, and thus depriving the party of the right to a hearing before the judgment is pronounced. Speaking for this Court, in *Boyd* v. *United States* (116 U. S. 616), Mr. Justice Bradley appropriately said:

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it con-

sisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obesta principiis.*"

Respectfully submitted,

FRANCIS J. HENEY,
Amicus Curia.

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No. 482

IN THE

Supreme Court of the United States

October Term, 1918

OREGON & CALIFORNIA RAILROAD COMPANY, a corporation, et al.,

Defendants and Appellants,

against

UNITED STATES OF AMERICA,

Plaintiff and Appellee.

BRIEF FOR UNION TRUST COMPANY OF NEW YORK, TRUSTEE

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No. 492.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1916.

OREGON & CALIFORNIA RAILROAD COMPANY, a corporation, *et al.*,
Defendants and Appellants,

against

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR THE UNION TRUST COMPANY OF NEW YORK, DEFENDANT AND APPELLANT.

STATEMENT.

From the decree of the District Court of the United States for the District of Oregon, entered upon the mandate of this Court which issued after the decision of this suit (reported 238 U. S. 393-

439), an appeal was taken by the defendants to the United States Circuit Court of Appeals for the Ninth Circuit, which, under Section 239 of the Judicial Code, has certified seven questions or propositions of law to this Court. This Court has ordered that the whole record and cause be sent up to it for its consideration, and the whole matter therefore is now here for decision in the same manner as if it had been brought up for review by writ of error or appeal.

Since the decree was entered an Act of Congress, commonly known as the Ferris Act, has been passed (approved June 9, 1916), which the Attorney General contends (and we concede) will, if held valid, render "moot every specific question presented by the certificate save the question of costs". (See Motion to advance the cause, p. 12).

We shall therefore urge not only that the decree is not according to the decision of this Court or the law, but also that the said Act of Congress is invalid.

Land Grant.

To aid in the construction of a railroad the Congress, by Acts of July 25, 1866 (14 Statutes at Large, p. 239), and May 4, 1870 (16 Statutes at Large, p. 94), made grants of public lands in the State of Oregon. By a clause in an Act approved April 10, 1869 (16 Statutes at Large, p. 47), which amended the said Act of 1866 by enlarging the time for beginning the work of construction, it was provided: "That the lands granted by the act aforesaid shall be sold to actual settlers only in quantities not greater than one-quarter section to one purchaser and for a

price not exceeding two dollars and fifty cents per acre." A clause in the Act of 1870 provided that the granted lands "shall be sold by the Company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices not exceeding two dollars and fifty cents per acre." The predecessor of the defendant Oregon & California Railroad Company accepted the grants, built a railroad in accordance with its terms, and obtained patents to most of the lands thus granted.

Mortgage to Defendant Union Trust Company.

Very little of the granted lands were sold in the early days (238 U. S. at p. 408) and the Railroad got into financial difficulties (238 U. S. at pp. 407, 435; Stipulation, Record Vol. 4, p. 1564). In 1887 it mortgaged all the lands covered by the grants (together with its railroad, etc.) to the defendant Union Trust Company, as Trustee for bondholders (Ex. H, Record, Vol. 1, p. 197), the money thus obtained being used to continue the construction of the railroad and to redeem bonds which had theretofore been issued to raise funds for construction purposes. (Stipulation, Record, Vol. 4, p. 1575.) Many of these bonds were negotiated and are now held abroad, especially in Holland and Germany (Stipulation, Record Vol. 4, pp. 1574-5).

Sale of Lands.

After a while some of the granted lands were sold in larger quantities and for higher prices than were specified in the granting acts (238 U. S. at p.

408). This was done with the knowledge of, and without any objection by, the Government of the United States (238 U. S. at p. 410). The timber on these lands finally became valuable, and, as a result, many persons sought to obtain the lands not for settlement but for the profits to be derived from the sale of the timber. (238 U. S. at p. 438, Record Vol. IV, pp. 2014-5; Vol. VI, 2774.)

SUIT BY THE UNITED STATES FOR A FORFEITURE.

The attempts of individuals to get possession of the valuable timber for a nominal price were insignificant compared with the attempt of the Government to obtain the lands without paying anything whatever. The suit which it brought was based upon the claim that, because of the sale of some of the lands contrary to the provisos above referred to, the lands had become forfeited to it. It prayed, therefore, that the court would declare that these lands belonged to it or, if that relief were denied, that a receiver should be appointed to sell the lands in accordance with the provisos or that the Railroad should be directed to make the sales, etc., etc. (Record, Vol. I, p. 78-80). This court decided (we submit) that the grant to the railroads could not be forfeited, that the provisos were covenants, not conditions, and that they should be construed literally; and (since the provisos as thus interpreted were harsh in their operation), it enjoined any disposition of the lands or timber until Congress should have a reasonable time in which to pass appropriate legislation.

Decree Upon the Mandate.

It having been thus decided that the lands belonged to the Railroad and were not forfeited to the Government, the Government proposed the decree which was entered by the District Court (Certificate of U. S. Cir. Ct. of Appeals, pp. 13-16), which decree, in effect, prevents the Railroad *forever* from using the lands and deprives it *forever* of the right to cut the timber growing upon the lands.

Legislation by Congress.

Although the Government had thus obtained the entry of a decree which, if valid, destroyed much of the value of the lands in the hands of the Railroad and, although an appeal was pending from this decree, the Congress proceeded to enact legislation, intended to transfer to itself the title and all control of the lands and to enable the Government to sell, *first* the *timber* and *afterwards* the *lands*. The Ferris Act, which was approved June 9, 1916, stated, among other recitals, that this court had in this suit ordered that the Railroad be enjoined "from making further sales of *lands* in violation of the law" and further enjoined from "making any sales whatever of either the *lands or the timber* thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands, etc.," and enacted that the title of all the lands be "revested in the United States" (Sec. 1); that they be divided into three classes: power sites, timber lands, and agricultural lands (Sec. 2); that the timber should be sold by the Secretary of the Interior at such

times and in such manner as might seem best, and that the lands from which it was removed should thereafter be classed as agricultural lands (Sec. 4); that the lands classed as agricultural should be subject to entry under the homestead laws but that patents should not issue until the lands had been cultivated for three years (Sec. 5); that the proceeds of the timber and the lands should be deposited in the Treasury of the United States and be paid to the Railroad or the lien holders as the fund accumulated, and, that *at the end of ten years,* an *appropriation* should be made from the general funds of the Treasury of the United States to pay any balance which might be due to the Railroad (Sec. 10); that the profits derived from the transaction should be paid one-quarter to the State of Oregon, and one-quarter to the counties where the lands were situated, while one-half should be retained by the Government (Sec. 10).

[The Act referred to is quoted in full in Exhibit "A", annexed to this brief at pp. 75-88.]

ASSIGNMENTS OF ERROR.

The assignments of error of the Union Trust Company, twenty-eight in number, are printed in full in the Certificate of the United States Circuit Court of Appeals to this court at pages 52 to 62. It seems unnecessary to set forth all of these assignments in this place, but we print below certain of the assignments with a reference by number to other assignments which present substantially the same points.

(As we have said above, the decree entered in the District Court does not raise moot questions, since the Act of June 9, 1916, is invalid.)

"23. The Court erred in not making and entering a decree herein responsive to the mandate of the Supreme Court of the United States, without modification or enlargement, and in the terms of the opinion to which the said mandate referred, and which was expressive of the mandate itself."

(See also assignments numbered 1 to 4 and 22).

"8. The Court erred in its said decree in incorporating into and making part of the general injunction therein injunctive matter touching the sale of the timber on said lands, except as a part of and in conjunction with the land on which the timber stands; and touching the cutting or removal, or the authorizing of the cutting or removal, of any of the timber thereon, except in connection with the sale of the land bearing such timber; likewise touching the sale of any mineral or other deposits in said lands, except as part of and in conjunction with the land in which the mineral or other deposits are found; and also touching the removal or the authorizing of the removal of mineral or other deposits in said land, except in connection with the sale of the land containing such mineral or other deposits."

(See also assignments numbered 5 to 7).

"15. The Court erred in not holding and decreeing that the railroad company, so long as the granted lands were not sold by it but remained unalienated, had a complete and absolute title thereto, and under such circumstances, and as the owner of such a title, had the right to sell, cut, remove, or authorize the

cutting or removal of the timber thereon; and the Court erred similarly in not so holding and decreeing with reference to any mineral or other deposits in or products out of said lands—subject to such qualification as may arise from the limited injunction referable to the period of six months, as expressed in the opinion of the Supreme Court."

(See also assignments numbered 16 to 21).

"24. The Court erred in adjudging and decreeing that the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, or from any or either of them, any costs or disbursements herein, and in adjudging and decreeing that execution issue against the said defendants or any or either of them, for any costs or disbursements herein."

(See also assignments numbered 26 and 27).

ARGUMENT.

Position of the Defendant Union Trust Company, as Trustee of the Mortgage.

It is at least probable that the Railroad could not have been built if the land grant had not been mortgaged. At any rate, it has been settled in this case that the use of the lands to obtain credit was contemplated and that the mortgage to the Union Trust Company (instead of being a cause for forfeiture as claimed by the Government) was

within the powers of the Railroad and valid, although the interest of the mortgagee was subject, like that of the Railroad itself, to the "restrictions imposed" upon sales by the provision on that subject contained in the granting acts. Thus the Union Trust Company, as Trustee of the mortgage, has a prior claim or first lien upon the lands and their proceeds and it acts under a valid mortgage in a trust capacity for the bondholders who partly upon the security of these lands contributed their money to build the railroad.

To these bondholders, many of whom live in Holland and Germany, the Union Trust Company is accountable. Its position is in very large part the same as that of the defendant railroad, for any decision establishing that the railroad has valuable rights in these lands will be directly for its benefit; but it contends, *in addition* and *especially,* that even if it is possible for the Government now to take away rights once conveyed to the railroad, *it cannot take them except subject to the lien of the mortgage.*

A list of the points urged by the mortgagee is set forth in the "Subject Index", prefixed to this Brief.

POINT I.

The Act of Congress of June 9, 1916, is invalid.

A.

The act of June 9, 1916, is not within the powers given to the Congress by the Constitution.

1. The relation between the Government and the Railroad in reference to these lands is contractual.

As this Court said in *Davis* v. *Gray*, 83 U. S. 203, at p. 232:

> "That the act of incorporation and the *land grant* here in question were *contracts* is too well settled in this court to require discussion." (Italics ours.)

See also *Fletcher* v. *Peck*, 6 Cranch. 87, at p. 137.
New Jersey v. *Wilson*, 7 Cranch. 164, at p. 166.
Dartmouth College v. *Woodward*, 4 Wheat. 518 at p. 627.
State Bank v. *Knoop*, 16 Howard 369, at p. 380.
U. S. v. *Central Pac. Ry.*, 118 U. S., 235, at p. 238.

In the case last cited (*U. S.* v. *Central Pac. Ry.*) this Court said (p. 238), referring to certain sections quoted from several land grant acts, that they "taken together constitute the contract between the United States and the appellee" (*i. e.*, Railroad) and cited *U. S.* v. *Union Pacific R. R.*, 91 U. S. 72, *Sinking Fund Cases*, 99 U. S. 700, 718, *Union Pacific R. R. Co.* v. *U. S.*, 104 U. S. 662.

2. Moreover the contract is no longer executory, it is executed (*Fletcher* v. *Peck*, 6 Cranch. 87, at p. 137). What the Railroad agreed to do to earn the grant has been done; what the Government sought to obtain, it has obtained; and the price agreed upon has been paid. The conveyance of the lands to the Railroad—for there can be no question that the title is in the Railroad—was not a gift but a sale;

> *Burke* v. *Southern Pacific R. R. Co.*, 234 U. S. 669, 679-80,

and the terms of the granting acts which remain to be carried out should therefore be construed according to their fair meaning.

> *U. S.* v. *Minnesota & Northwestern R. R. Co.*, 1 Minn. 127, at p. 132.
> *Charles River Bridge* v. *Warren Bridge*, 11 Peters 420, 589-90.

3. It is at least doubtful if Congress has the power to enact laws directly impairing the obligations of contracts made between citizens or between a citizen and a State. Certainly "it was never intended that Congress should exercise that tyrannical power" of impairing the obligation of contracts.

> *Cooley*: *Constitutional Law*, p. 345.
> *Hepburn* v. *Griswold*, 8 Wall. 603, at p. 623.
> *Sinking Fund Cases*, 99 U. S. 700, 718.
> *U. S.* v. *Union Pacific Ry. Co.*, 160 U. S. 1, at pp. 33-34.

4. However this may be, where the effect of legislation by a government would be to *repudiate*

its *own* contractual obligation, or to take back property which it has conveyed for a valid consideration, such legislation would be—*on general principles*—beyond its power, unless it were an absolute despotism.

(Of course the indirect lessening of the value of a contract by general legislation is an entirely different matter—as has been pointed out by this court. *Legal Tender Cases,* 12 Wall. 457.)

Fletcher v. *Peck,* 6 Cranch. 87, at p. 135.
Terrett v. *Taylor,* 9 Cranch. 43, 50-51.
U. S. v. *Minnesota & N. W. R. R. Co.,* 1 Minn. 127, 132-3.
Sinking Fund Cases, 99 U. S. 700, 718.
Charles River Bridge v. *Warren Bridge,* 11 Peters, 420, 574.
U. S. v. *Central Pacific Ry. Co.,* 118 U. S. 235.

In the case last cited (*U. S.* v. *Central Pacific Railway Company*) this court, after stating (as pointed out above) that sections in certain land grant acts taken together constituted a contract between the United States and the railroad, declared (p. 238):

> "This contract is binding on the United States and they cannot, without the consent of the company, change its terms by any subsequent legislation."

In *Fletcher* v. *Peck,* 6 Cranch. 87, the State of Georgia granted certain lands and one year later passed an act revoking the grant. Marshall, C. J., said (p. 135):

> "Is the power of the legislature competent to the annihilation of such title and to a re-

> sumption of the property thus held? The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. * * * When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.
>
> It may well be doubted, whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? * * *"

In *Terrett* v. *Taylor*, 9 Cranch. 43, Story, J. said (pp. 50-51, 52):

> "If the legislature possessed the authority to make such a grant and confirmation, it is very clear to our minds that it vested an indefeasible and irrevocable title. We have no knowledge of any authority or principal which could support the doctrine that a legislative grant is revocable in its own nature, and held only *durante bene placito*. Such a doctrine would uproot the very foundations of almost all the land titles in Virginia, and is utterly inconsistent with a great and fundamental principle of a republican government, the right of the citizens to the free enjoyment of their

property legally acquired. * * * But that the legislature can repeal statutes creating private corporations, or confirming to their property already acquired under the faith of previous laws, and by such appeal can vest the property of such corporations exclusively in the state, or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the constitution of the United States, and upon the decisions of most respectable judicial tribunals, in resisting such a doctrine."

In *U. S.* v. *Minnesota & N. W. R. R. Co.*, 1 Minn. 127, the court said (pp. 131, 132):

"An interest in or right to lands, franchises, etc. once vested cannot be divested by any act of the grantor, unless by agreement of the parties to the grant.

Every grant of a franchise (says Judge Story) is necessarily exclusive, so far as the grant extends, and cannot be resumed or interferred with. The Legislature cannot recall its grant nor destroy it. In this respect, the grant of a franchise does not differ from the grant of lands. In each case the particular franchise or particular land is withdrawn from legislative operation, and the subject matter has passed from the hands of the government."

* * * * * * * * *

"But, independent of the Constitutional provision referred to, the Repealing Act is invalid. There is a principle inherent in the nature of society, as old as civil government itself, which sets bounds to the powers of legislation. It is the principle which protects the life, liberty and property of the citizen

from violation in the unjust exercise of legislative powers."

In the *Sinking Fund Cases*, 99 U. S. 700, it was said (p. 719):

> "The United States are as much bound by their contracts as individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. *No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation.* All this is indisputable." (Italics ours.)

The above extract was quoted with approval in *U. S.* v. *Union Pac. Ry. Co.*, 160 U. S. 1, 34.

In *Charles River Bridge* v. *Warren Bridge*, 11 Peters 420, it was said (p. 575):

> "The principle is admitted that the grantor can do nothing that shall destroy his deed; and this rule applies as well to the state as to an individual. And the same principle operates with equal force on all grants, whether made by the state or individuals."

5. In this country all governmental power is not vested in Congress. Our plan of government is based upon the conception that Congress shall make laws of a general character and also may make contracts, while to the courts is entrusted the duty of passing upon the rights of parties under the laws thus passed and the contracts thus made. It has never been contemplated that Congress might decide its own rights under a contract by passing such an act as should properly

be embodied in the decree of a court; and certainly it cannot be tolerated that Congress, after referring to the court the question of its rights under the contract in question and after obtaining a decision, should pass an act in effect overruling that decision.

The rule is stated by an eminent authority as follows:

> "The legislature makes the laws, but cannot pass judgments or decrees or make a law that is such in substance."
>
> *Cooley: Constitutional Law*, p. 350.

Yet that is precisely what has happened in this case. This Court has rendered its decision declining to forfeit the granted land because, as there had been no violation of a condition subsequent, the lands could not legally be forfeited; and thereupon, the Congress has nevertheless passed an Act declaring that he lands are forfeited!

If the course adopted in reference to these lands is available in this case, it can be followed in all controversies to which the Government is a party. If a decree of this Court should be satisfactory, it may be allowed to stand; but if not, it will only remain for the Congress to pass an act reversing the decision of this Court and in effect directing such judgment as it has desired.

In *Chicago, B. & Q. R. R.* v. *Chicago,* 166 U. S. 226, referring to a statute which would transfer certain property from one person to another, this Court said (pp. 235-6):

> "Such an enactment would not receive judicial sanction in any country having a written constitution distributing the powers

> of government among three coordinate departments, and committing to the judiciary, expressly or by implication, authority to enforce the provisions of such constitution. It would be treated not as an exertion of legislative power, but as a sentence—*an act of spoliation.* Due protection of the rights of property has been regarded as a vital principle of republican institutions." (Italics ours.)

6. The power of the Congress to pass laws is limited. Its action is confined to the express powers given it by the Constitution and to such incidental powers as may be implied from those expressly given. The Act of June 9, 1916, cannot be brought within the scope of any of the express or implied powers of Congress. Certainly this legislation cannot be upheld under Article IV, Sec. 3, clause 2 of the Constitution giving Congress power to make "regulations respecting the territory or other property of the United States." To be sure these lands were *once* a part of the public domain, but long ago they were conveyed to the Railroad for a valuable consideration and title to these lands in the Railroad is now absolute as this Court has held (238 U. S. 393, 434). It follows that Congress has no more power to legislate concerning these lands, or to confiscate them, than it would have in the case of any other lands whereever situated.

Wilcox v. *Jackson*, 13 Peters, 498, 517.

In *U. S.* v. *Minnesota & N. W. R. R. Co.* (1 Minn. 127), the court said (p. 133):

> "The government of the United States is one of limited powers. It is only sovereign

in a qualified sense. Congress can do what the Constitution authorizes it to do, and no more. Certain powers undoubtedly arise by implication, but no power can be implied authorizing the Legislative department to take a man's property without compensation and without due course of law. This power is not included in any general grant of legislative powers. A power to do an act which has been regarded as dishonest among individuals from time immemorial in all civilized countries, cannot be implied from any of the powers granted by the Constitution; and, as such a power is not expressly given, it cannot be exercised."

B.

The Act of June 9, 1916, is in violation of the Fifth Amendment of the Constitution.

1. Except perhaps for the sake of emphasis it is unnecessary to argue (as in "A" above), that the Act in question is beyond the powers conferred upon the Congress; for the Congress is expressly *prohibited* from passing such an Act by the Fifth Amendment to the Constitution which provides that "no person * * * shall be deprived of life, liberty, or property without due process of law."

Under this point we plan to discuss the effect of this prohibition upon the attempt of the Government to take back to itself the *lands* which have been paid for by, and conveyed to, the Railroad, and *which have been mortgaged to the Union Trust Company.* In the following point (Point III, *infra*), we shall refer to the effect of this prohibition on the attempt to take from the Union Trust

Company its *vested rights under the said mortgage.*

2. That the lands in question belong to the Railroad cannot be disputed, and that the Government is seeking to take them away, by legislative enactment, appears expressly from the terms of the Act itself. Certainly the lands are property, and there is no distinction in principle between the taking back of lands once owned by the United States and the taking of lands derived from some other source—except that the former seems the greater offense. While the citation of authorities is, therefore, unnecessary, we point to a few decisions against the power of Congress to seize property the title to which has vested in its grantees.

Sinking Fund Cases, 99 U. S. 700.
Davidson v. *New Orleans,* 96 U. S. 97, 102.
United States v. *Central Pacific Ry.,* 118 U. S. 235.
United States v. *Minnesota & N. W. R. R. Co.,* 1 Minn., 127.

In the *Sinking Fund Cases* (99 U. S. 700), where the question arose as to the power of the Congress to direct the deposit of certain funds which were to become due from the Union Pacific Railroad Company in the Treasury of the United States to secure the payment of subsidy bonds issued by the United States in aid of the railroad, this Court said (pp. 718-9):

> "The United States cannot, any more than a State, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional pro-

> hibition which prevents States from passing laws impairing the obligation of contracts, but, equally with the States, they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection."

In *Davidson* v. *New Orleans,* above cited (96 U. S. 97,), it was said (at p. 102) that

> "a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A., shall be and is hereby vested in B., would, if effectual, deprive A. of his property without due process of law, within the meaning of the constitutional provision."

3. By the strict and harsh terms of the granting acts the railroad could not sell the lands to any one other than actual settler, nor could it sell in quantities exceeding 160 acres nor for a price greater than $2.50 an acre. But its title was *absolute* and, except for the above qualifications, *it had every incident of ownership.* This court in its opinion in this case referred to "the Government's admission that there was no obligation imposed upon the railroad to sell" (238 U. S. at p. 418), and later (pp. 434-5), defined the rights of the railroad as follows:

> "There was a complete and absolute grant to the railroad company with power to sell,

> *limited only as prescribed*, and we agree with the Government that the company 'might choose the actual settler; might sell for any price not exceeding $2.50 an acre, might sell in quantities of 40, 60 or 100 acres, or any amount not exceeding 160 acres.' And we add, it might choose the time for selling or its use of the grants as a means of credit, subject ultimately to the restrictions imposed."

4. Under the Act of June 9, 1916, if valid, not only is the title to the lands taken away from the Railroad; but it is deprived of the right to choose the actual settlers, the right to decide what quantity it will sell, and the right to decide the price for which it will sell. Moreover, it is deprived of the right to choose the time for selling, and *is cut off from all opportunity to use the lands as a basis of credit.*

The effect of the Act in question might therefore be summarized as follows:

WHEREAS, in a suit to which the United States was a party it has been adjudged that the title of the Railroad to these lands is absolute, that it may use them as a basis of credit, that the only restriction upon the Railroad is contained in the covenant relating to sales, that, limited only by the terms of that covenant, the Railroad may choose the actual settlers to whom it will sell, the amounts of land which it will sell, the price it will ask, and the times for selling;

Be it enacted (*i. e.*, adjudged and decreed?) that the title of the Railroad is not absolute and is hereby transferred to the United States; that it cannot, therefore, be used as a basis of credit; that the covenant as to sales shall not be carried out; that such sales as shall be made shall be to

settlers chosen by the government, at prices fixed by it and at such times as it shall select.

5. The loss of the ability of the Railroad to use these lands as a basis of credit in consequence of this seizure by the Government is a point of importance. The right to mortgage the lands was passed upon by this court which said (238 U. S. pp. 434-5) as stated above: "It might choose the time for selling or *its use of the grants as a means of credit.* * * * To use the grant for credit might become, indeed did become, a necessity." It may become necessary or at least expedient for the Railroad to raise further funds, or to raise funds for the retirement of the mortgage now in force, by mortgaging these granted lands—a course from which it is cut off by the Act in question.

6. It would seem to be the theory of the Act in question—so far as it is based on any theory—that the Railroad has only the bare legal title to these lands, that the restrictive covenant is the only clause of the granting act which confers anything at all upon the Railroad, and that the said covenant gives the Railroad only a power of sale without beneficial interest.

We have tried to point out above that since the title is vested in the railroad it cannot be taken away by *legislative act;* and further, that from the plain meaning of the granting acts, as well as the decision of this court, it appears that there is vested in the railroad not only ownership of the lands (for which it has paid a full price) but every incident of ownership—save as modified by the covenant as to sales.

7. It is not to be supposed that the granting act contemplated an immediate sale of the granted lands. As soon as the title to the lands passed to the railroad they became subject to taxation by the State and Local authorities (*U. S.* v. *Minn. & N. W. R. R.*, 1 Minn. 127); and they became a cause of other expenses and a source of care and responsibility to the railroad. Having thus all the *burdens* of complete ownership, the railroad is, of course, entitled to all the *benefits* of such ownership—except as these may be expressly and clearly cut down by the covenant as to sales. What these benefits may be, need not be defined, for that there are benefits of ownership may be assumed. Without referring now to the right to cut the timber (which will be taken up below—see Point II) the railroad would have the right so long as the lands remained unsold to take ice in winter and fish and game in summer, to use the lands for pasturage and to raise crops, to take such timber and stone as might be needed for the construction or maintenance of the railroad, to build buildings upon the land, to lease the land as well as buildings, etc. Certainly there is a vast difference and a vital distinction between the ownership of the land with the rights incident to such ownership and a bare power to receive the proceeds of the sales of the lands when disposed of by another in his discretion.

8. Moreover, while by the terms of the granting acts the railroad did not receive any mineral lands, it did receive such lands as contained *coal* and *iron*. Deposits of coal and iron were not intended for the use of "actual settlers" (*i. e.*, agriculturists) and the paramount purpose of these

grants was to aid the railroad. The deposits of coal and iron, therefore, belong to the railroad and cannot be taken from it by the Act in question—which provides for the entry of mineral lands not under the homestead laws but under the mineral laws of the United States.

9. The claim should not be made that an Act of Congress declaring that property which has belonged to a citizen shall thereafter belong to the United States is "due process of law" as used in the Constitution. This provision has come down to us from Magna Charta and has always been construed to mean the *law of the land* as determined by a *court* of competent jurisdiction.

> *Murray* v. *Hoboken Land Co.,* 18 Howard 272;
> *Davidson* v. *New Orleans,* 96 U. S. 97, 101;
> Mr. Webster in *Dartmouth College Case,* 4 Wheat. 518 at p. 581.

A clear statement of the law is contained in the dissenting opinion of Mr. Justice Strong in the *Sinking Fund Cases* (99 U. S. at p. 737), as follows:

> "What is due process of law is well understood. It is law in regular course of administration through courts of justice. Coke, 2 Inst. 272; *Murray's Lessee* v. *The Hoboken Land and Improvement Co.,* 18 How. 272. 'The terms "the law of the land", said Chief Justice Ruffin (Hoke *v.* Harderson, 4 Dev. (N. C.) 1), do not mean merely an act of the General Assembly. If they did, every restriction upon legislative authority would be at once abrogated, and private property would be at the mercy of the legislature.' p. 15."

Here, of course, there has been no semblance of a "due process of law" under which the title to these lands has been taken away from the railroad and the mortgagee. In fact the most striking feature of this case is that although there has been "due process of law", yet under that "process" it has been determined by this Court that the government is *not* entitled to seize these lands.

C.

The Act of June 9, 1916, is unconstitutional because it cancels the lien of the mortgage to the Union Trust Company, as trustee for bondholders, and takes away its vested rights as trustee under said mortgage.

1. We have urged in the preceding point that, because of the Fifth Amendment to the Constitution, the *railroad* cannot be divested of ownership in the granted lands. But whatever theory may be advanced in support of a claim by the Government that the lands may be taken *from the railroad,* it cannot meet our contention that the railroad, having the unquestioned power to do so, has, *by its mortgage,* for a valuable consideration, conveyed to the Union Trust Company, *as trustee for bondholders,* certain *vested rights* which are now sought to be, but which cannot be, divested by the Act in question.

Surely it will not be claimed that the lands conveyed by the railroad many years ago to "actual settlers", in *strict compliance with the provisions of the granting acts,* can now be seized by the Government. The rights conveyed to the mortgagee

by the mortgage which the railroad had power to make are just as inviolable.

2. The principal purpose of the Government in making the land grants was to obtain the construction of a railroad and an essential part of that purpose was the giving of aid to the railroad. It has been decided accordingly, in this very case, that the railroad had power to mortgage these lands. Moreover this court has pointed out that the use of the grant for credit became actually necessary. It said (238 U. S. at pp. 434-435):—

> "It (*i. e.* the railroad) might choose the time for selling or its use of the grants as a means of credit, subject ultimately to the restrictions imposed; and we say 'restrictions imposed' to reject the contention of the railroad company that an implication of the power to mortgage the lands carried a right to sell on foreclosure divested of the obligations of the provisos."
>
> "To use the grant for credit might become, indeed did become, a necessity. The construction of the road halted for funds. They were raised by trust deeds, as we have seen."

3. The mortgage to the Union Trust Company dated July 1, 1887, (Exhibit H, I Transcript of Record 197) is unquestionably valid. (Stipulation as to Facts, IV Transcript of Record Items 16-18, pp. 1573-4). The bonds issued under it were used in large part to retire the bonds issued under earlier mortgages for the construction of the railroad and to provide additional funds for the completion of the railroad. There are $17,745,000 in amount of these bonds still outstanding. Most of the bonds were negotiated abroad and are now owned abroad, especially in Holland and Germany.

(Stipulation as to Facts IV Transcript of Record, Items 19, 20, 21).

4. It may be claimed that, even if the security of the lands is taken away, the bondholders will eventually be paid in full because of the value of the other property of the Oregon & California Railroad Company or because of the guarantee of the Southern Pacific Company. However plausible this conjecture may seem, the fact remains that the Congress has no power to deprive the bondholders of the security for which they bargained, and to substitute another security which may be, in its judgment, equally good.

Certainly if the business of railroads generally, or that of these defendant railroads in particular, should become unprofitable, the bondholders would not be able to collect their indebtedness without resorting to the land grants.

5. The fact that the railroad owned the lands would not, of course, be sufficient to enable it to raise money on its mere promise to pay. To raise funds for such an enterprise, it was necessary to pledge the lands themselves—to substitute, so to speak, the *obligation of the lands* to make repayment (in addition to the promise of the railroad), in place of the *obligation of the Railroad Company.* But mortgages invariably contain, and must necessarily contain, the grant of power to the mortgagee to make the security available in case of default in the payment of principal or interest. Moreover in the mortgage of large tracts of land like these there must be provisions preventing the sale of the lands except at prices satisfactory to the mortgagee, and insuring the deposit of the funds thus

realized with the mortgagee as a preliminary to the release of its lien. Except with such terms a mortgage could not be made.

6. The mortgage to the Union Trust Company, therefore, conferred upon it the usual rights as follows:

(a) A lien upon the lands.

(b) The Right upon default etc. to take possession of the security.

(c) The right upon default to sell the security at public auction.

(d) The right upon default to foreclose, and (incidentally) to obtain a Receiver and to buy in the property for the bondholders.

(e) The right to prevent private sales of lands at a sacrifice.

(f) The right to receive the proceeds of sales before releasing its lien.

These rights then were conveyed to the mortgagee in trust for bondholders by the railroad which had power to convey them. Of course, as this Court has intimated, no right was conferred to sell on foreclosure "divested of the obligations of the provisos"; (238 U. S. at p. 435) but we urge that, subject only to the limitations contained in the provisos, the trustee has a vested right upon default to sell the mortgaged property.

7. Having noticed some of the rights secured to the bondholders by the terms of the mortgage, the effect of the Act of June 9, 1916, upon these rights should be examined.

In the first place, the *lien upon the lands* (i. e. the *obligation of the property itself* to pay in case of default) without which these bondholders would never have advanced their money to be applied to the construction of the road—although such construction was sought by the Government of the United States—is taken away.

The right of the mortgagee upon default of the Railroad, to sell the lands to a purchaser *with all the powers conferred upon the railroad* and thus to obtain *promptly* the *full value of its lien,* is destroyed.

Moreover the right of the mortgagee in case of foreclosure to buy in the lands itself and to raise funds for that purpose by a *new mortgage* upon the lands—*the ordinary practice in cases of reorganization*—is taken away. It may be suggested that this right to continue to use the lands as a basis of credit is not of very great value, in view of the present attitude of the Government; but that is not the question. The ability to mortgage these lands might determine the success or failure of a plan of reorganization favorable to the bondholders. Moreover, as a guide to the value of these lands as a basis of credit, it should be noted that in all probability the present mortgage could not have been obtained without the pledge of these lands.

8. Since the Congress cannot lawfully destroy the lien and the vested rights of the mortgagee, it is of comparatively small importance to inquire what the Act provides as a substitute for the rights which it seeks to destroy. This substitute, however, amounts only to an undertaking by the Government (of course, unenforcible),

if there should be any proceeds of the sales of these lands by it during ten years, to turn over such proceeds to the mortgagee ("lien-holder"), *provided the Railroad consents,* but otherwise in accordance with the judgment of a court after litigation between the railroad and lien-holders; while the balance which, according to the computation of the Government, may be due *at the end of ten years* is to be paid from *an appropriation by Congress* which this Act declares "shall be made therefor".

It should be noted in this connection that there is good reason to assume that very little of these lands are agricultural in character (238 U. S. at pp. 437-438). Moreover, this Act of 1916 provides that no patent is to issue to purchasers of these lands until from three to five years after entry; that some lands, whose character is undefined, shall be withdrawn from entry altogether for two years; that *only such of these lands as can be sold for $2.50 an acre shall be thus disposed of*—thus destroying the right of the railroad (pledged to the mortgagee) to sell such lands at less prices; that the timber lands (the great bulk of the lands) are not to be disposed of until the timber has been removed, whereupon they are to be *given away;* that the Secretary of the Interior (in co-operation with the Secretary of Agriculture etc.) is to sell the timber "at such times" as in his judgment will "produce the best results", and further that the time of the timber speculator to remove the timber is not limited, but is to be fixed by the Secretary of the Interior.

Thus it will be seen that these lands are not to be sold in accordance with the contract between the Government and the railroad—a contract in

which the mortgagee has vested rights. Lands which the railroad might wish to have peopled by actual settlers at once, the Government may never open for settlement; lands which the railroad might be willing to sell for $1.00 an acre to settlers of its own choosing, the Government will sell *only* for $2.50 an acre; timber lands, which the railroad might wish to sell for $2.50 an acre the Government proposes to give away. Above all the proceeds of sales which, *under the mortgage* have to pass into the hands of the mortgagee before the lien of the mortgagee is required to be released, are to go under this Act into the Treasury of the United States *free from any lien whatever.*

Still further, there can be little doubt but that the right of the mortgagee to receive anything of importance in satisfaction of its lien upon these lands is likely to amount only to the privilege of urging upon *the Congress of ten years hence,* its moral obligation to make some sort of an appropriation for the mortgagee's benefit upon the lines suggested in the Act in question.

But if the Congress may *now* take from the trustee the property and vested rights which were pledged to it as security, and substitute something else, it may *ten years hence* take away all rights under the Act of 1916, and substitute still other alleged rights instead. At any rate against mere non-action of the Congress, the mortgagee will have no remedy. Under this Act of 1916 the Government is not required to turn over to the mortgagee *the full proceeds* which may have been received *from the sale of lands now subject to the lien of the mortgage.* The Act provides only for the payment of such proceeds *lessened by large*

sums claimed to have been received *by the railroad* and which the Government claims it has a right to offset *against the railroad!*

9. The provisions of Section 8 of the Act of 1916, after all, go only one step further. This section declares that "the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit" (*i. e.* this suit) is "hereby vested in the United States". But this suit was brought to decide whether the lands belonged to the United States or the railroad and it has been decided that they belong to the railroad; and it would seem, therefore, that the railroad is now entitled to receive such money, or at least, to have the matter decided by the Court. *Certainly such moneys, whether proceeds of sales of the granted lands or of the timber growing thereon (presumably sold with the consent of the Government), are subject to lien of the mortgage of the Union Trust Company.*

10. The rights of the Union Trust Company as trustee for bondholders under the mortgage made to it by the railroad are *vested rights.* We have said above that if there is anything which can be considered "property" under the Constitution it is *land* granted by the Government and for a valid consideration. Certainly if anything less tangible than land is to be considered "property" it is the vested rights of the trustee of this mortgage. To it the legal title to the lands has been conveyed, with (in substance) all the rights which the railroad enjoyed and powers to take possession, sell, etc. Moreover, for these rights the bondholders have paid $20,000,000 which has been applied to the construction of the railroad.

If any citation of authorities should be necessary to establish that such rights are "property" the Court is referred to:

Cooley: Constitutional Law, p. 351.
Fletcher v. *Peck*, 6 Cranch. 87, 135.
People v. *O'Brien*, 111 N. Y. 1, 51.
Pearsall v. *Great Northern Ry.*, 161 U. S. 646, 673.
Chicago B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226, 247-248, 251.

> "The test of unlawful interference with property is that vested rights are abridged or taken away. Rights are vested, in contradistinction to being expectant or contingent. They are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest."
>
> *Cooley: Constitutional Law*, p. 351.

In Fletcher *v.* Peck, 6 Cranch, 87, this Court said (p. 135):—

> "But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made; those conveyances have vested legal estates, and, if those estates may be siezed by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact.
>
> When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.

In *People* v. *O'Brien*, 111 N. Y. 1, the court said (p. 51):

> "If it is possible to conceive the idea of a repealable grant, certainly such a grant, accompanied with power to convey or pledge the interest granted, must, on the execution of the power, necessarily preclude a resumption by the grantor of the subject of the grant, or any right of property acquired under it. An express reservation by the legislature of power to take away or destroy property lawfully acquired or created would necessarily violate the fundamental law, and it is equally clear that any legislation which authorizes such a result to be accomplished indirectly, would be equally ineffectual and void."

In *Pearsall* v. *Great Northern Ry. Co.*, 161 U. S. 646, this Court—speaking of vested rights—said (p. 673):

> "As applied to railroad corporations, it may reasonably be contended that the term extends to all rights of property acquired by executed contracts, as well as to all such rights as are necessary to the full and complete enjoyment of the original grant, or of property legally acquired subsequent to such grant."

11. By way of a summary, we urge that the mortgage is unquestionably a valid contract between the railroad and the bondholders; that this contract was one which the railroad had power to make and which did not contravene the terms of the land grants; that for the obligations of the mortgage contract the bondholders gave valuable consideration; and that the property rights which they thus acquired are as inviolable as it is possible for any rights in property to be.

D.

The taking of the lands by the Government and the cancellation of the lien and other rights secured to the Union Trust Company by the mortgage cannot be supported under the reservation contained in the Act of July 25, 1866, to alter, amend, etc.

1. The twelfth section of the land grant Act of July 25, 1866, reads as follows: "That Congress may at any time, having due regard for the rights of the said Oregon & California Railroad Companies, add to, alter, amend or repeal this act."

This section is stated in one of the several recitals of the Act of June 9, 1916; but that it was not put forward seriously as authorizing such legislation appears sufficiently from the fact that that Act seeks to take back the lands received under the Act of May 4, 1870 (the West Side Grant) *although the latter act contained no such clause!* The lands received under this West Side Grant which remained unsold at the time this suit was brought amounted to 68,682 acres (Record, Vol. I, pp. 273, 508).

2. Since the Act of July 25, 1866 *expressly provided* that the power to alter, amend, etc., should be exercised only with "due regard for the rights of the Oregon & California Railroad Companies," it is hardly necessary to point out the limitations upon the exercise of such powers which are necessarily *implied.* These rights of the railroad have been conveyed to the mortgagee (See "C" above) and these rights by the very terms of the granting act cannot be taken away.

3. Most of the cases relating to the *implied* limitations upon the reserved power of a legislature to "alter, amend," etc., relate to the amendments of *charters* of *corporations.* In such cases the question is only as to the right of a legislature to alter the privileges which it has conferred upon, and the rules which it has made for the control of, one of its *own creatures.* Yet, *even in such cases,* it is well settled that the legislature cannot, under the guise of amending a charter, pass an act which will deprive the corporation of its property without due process of law, or take away vested rights.

4. Here we are not concerned with an amendment of a charter; for the charter of the Oregon and California Railroad was granted by the State of Oregon.

The power reserved is contained in the Act of July 25, 1866 by which the United States conveyed lands to the Railroad for a good consideration. Some of these lands have been sold strictly within the terms of the provisos of the granting act, and all the lands now owned by the Railroad have been mortgaged to the Union Trust Company as trustee for the bondholders.

Whatever may be the rule as to the amendment of *charters,* it is perfectly well settled that the power reserved in a *granting* act to "alter, amend," etc., is subject to certain well settled restrictions. Assuredly Congress cannot, in the form of an amendment, deprive its *grantee* of his property without due process of law, nor can it take vested rights away from its *grantee,* nor—above all—can it take away the *vested rights of third persons* who have dealt in good

faith with the grantee and have parted with a valuable consideration to acquire such rights.

Such power, at least if applied to the rights acquired by *third parties* before the amendment, would amount to a power to nullify the constitutional guarantees which protect property rights.

Sinking Fund Cases, 99 U. S. 700, 718-19, 720-1.

U. S. v. *Union Pacific Ry. Co.,* 160 U. S. 1, 33.

Bienville Water Co. v. *Mobile,* 186 U. S. 212.

Chicago, M. & St. P. R. R. Co. v. *Wisconsin,* 238 U. S. 491.

People v. *O'Brien,* 111 N. Y. 1 (and cases cited).

1 Kent's Commentaries, star. p. 414.

Miller v. *The State,* 15 Wall. 478.

In the *Sinking Fund Cases,* 99 U. S. 700 (cited above) the Act incorporating the Union Pacific Railway Company and granting lands to it to aid in the construction of its road, contained a reservation of power to "alter, amend", etc., substantially as in the Act of 1866 granting lands to the Oregon & California Railroad Company. Speaking of the power of Congress under that reservation, this Court said (p. 720):

> "That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the Corporation of the fruits actually reduced to possession of contracts lawfully made; . . ."

Again the Court said (p. 721):

> "In so doing it cannot undo what has already been done, and it cannot unmake contracts that have already been made, but it may provide for what shall be done in the future, and may direct what preparation shall be made for the due performance of contracts already entered into. It might originally have prohibited the borrowing of money on mortgage, or it might have said that no bonded debt should be created without ample provision by sinking fund to meet it at maturity. Not having done so at first, *it cannot now by direct legislation vacate mortgages already made under the powers originally granted,* nor release debts already contracted. A prohibition now against contracting debts will not avoid debts already incurred. An amendment making it unlawful to issue bonds payable at a distant day, without at the same time establishing a fund for their ultimate redemption, will not invalidate a bond already out. All such legislation will be confined in its operation to the future." (Italics ours.)

In *United States* v. *Union Pacific Railway Co.*, 160 U. S. 1 (cited above) a case involving the amendment of a *charter* contained in a statute granting lands to the Railroad by the United States, Mr. Justice Harlan, delivering the opinion of this Court said (p. 33):

> "It would not be competent for Congress, under the guise of altering and amending the act in question, to impose upon the railroad company duties wholly foreign to the objects for which it was created or for which the governmental aid was given. Neither could it, by such alteration or amendment, destroy rights actually vested, nor disturb transactions fully consummated. We may here, not

> inappropriately, repeat what was said in the *Sinking Fund Cases*, 99 U. S. 700, 718, 719, 720",

continuing with quotations from the *Sinking Fund Cases*, set forth above (pp. 19-20 of this brief.)

In writing the opinion of this court in *Bienville Water Co.* v. *Mobile*, 186 U. S. 212 (cited above), Mr. Justice Brewer said (p. 222):

> "It has been held that the right of revocation or amendment carries with it no right to appropriate the tangible property belonging to the corporation."

In the recent case of *Chicago M. & St. P. R. R. Co.* v. *Wisconsin*, 238 U. S. 491 (cited above), Mr. Justice Lamar, writing the opinion of this court, referred (p. 501) to two decisions of the Wisconson court where it was held that "the right to amend a charter does not authorize the taking of the company's property without just compensation", and added: "The same view has been repeatedly expressed in the decisions of this court."

In *Miller* v. *The State*, 15 Wall. 478 (cited above), it was said by Mr. Justice Clifford (p. 498):

> "Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such a charter, and which by a legitimate use of the powers granted have become vested in the corporation . . ."

5. The point, however, upon which the defendant Union Trust Company, as trustee for bond-

holders, wishes to lay the very greatest stress is that, whatever may be done by the Congress in the direction of altering or amending the granting acts, it cannot, by amendment, take away from purchasers the lands conveyed to them by the railroad in compliance with the provisos in the grants; nor can Congress, for exactly the same reasons, by an amendment take away the lien of the mortgagee or the rights conferred upon it by the mortgage.

[See quotation from the *Sinking Fund Cases* on page 38 above.]

E.

The Act of Congress of 1916 is not a valid exercise of the power of eminent domain.

1. The Act in question is entitled "An Act to alter and amend" the granting acts and does not purport to be, and therefore should not be construed as, an attempted exercise of the power of eminent domain.

2. Moreover, the lands sought to be seized are the property of a corporation organized under the laws of the State of Oregon and are a part of the territory of Oregon, and the power to legislate concerning them is vested in that state.

Wilcox v. *Jackson,* 13 Peters, 498, 517.

3. At any rate the Government of the United States can only take them "for such objects as are germane to the execution of powers granted to it" (*Cherokee Nation* v. *Kansas Railway Co.,* 135 U. S. 641, 657; *Kohl* v. *United States,* 91 U. S.

367, 372). To seize and sell the timber for its own profit and the division of the lands among farmers of its own choosing is not within any of the powers of Congress; for these are no longer public lands.

4. The most decisive answer to any claim that the Act of 1916 can be considered as an exercise of the power of eminent domain, lies in the provisions of the Constitution, and in the fact that the seizure of these lands is not for a *public* use.

The Fifth Amendment to the Constitution after providing that no person shall be deprived of his property without due process of law (that is to say in accordance with the law of the land as defined by the *Courts*) goes on to state the only case where private property may be seized by the State as follows: "Nor shall private property be taken for public use without just compensation."

Although not stated expressly, this clause has always been held to mean that private property shall not be taken for any purpose which is not a *public* purpose.

> *Charles River Bridge* v. *Warren Bridge,* 11 Peters 420, 642.
> *Cleveland C. C. & St. L. Ry.* v. *Drainage Dist.,* 213 Ill. 83.
> *Washburn Real Property,* 6th Ed. Sec. 2050.

In *Charles River Bridge* v. *Warren Bridge,* 11 Peters 420, McLean, J., made the statement frequently quoted (p. 642):

> "Although the sovereign power in free governments may appropriate all the property public as well as private for public purposes making compensation therefor, yet it

> has never been understood, at least, never in our republic, that the sovereign power can take the private property of A and give it to B by the right of 'eminent domain' or, that it can take it at all except for public purposes, or that it can take it for public purposes without the duty and responsibility of making compensation for the sacrifice of the private property of one, for the good of the whole."

In *Cleveland, C. C. & St. L. Ry.* v. *Drainage Dist.*, 213 Ill. 83, cited above, it was said (p. 85):

> "Private property cannot be condemned by a person or corporation on the ground that general prosperity of the state or community would be promoted thereby, if the title to the property so taken is to be vested in such person or corporation as private property, to be used and controlled as other property."

Washburn, in his book on *Real Property* (Sec. 2050 cited above), speaking of the right of eminent domain, says:

> "But this power does not imply any right on the part of the State to take the property of one citizen and give it to another, whether with or without compensation."

Here plainly the lands are not taken for a public purpose, and we believe that no case can be found in the books which would justify a claim that the proposed taking is for a public use.

An important purpose of the Act is obviously to enable the Government to raise a large sum from the sale of timber, keeping half for its own use and dividing the other half between the State and several of the Counties of Oregon. This, in a sense, might be said to be for the public or at least

for local benefit, for the money will be used to pay expenses of government. But, regarded in this light, the Act of 1916 amounts plainly to illegal taxation.

The lands themselves will come eventually into the ownership of private individuals; but that is exactly what the Constitution prohibits. It is the taking of the private property of A for the purpose of turning it over (to be used as private property) to B. To be sure, *all* of the property of the Oregon & California R. R. Co. is not to be given to one individual—probably it will be distributed to many private persons—but the cutting up of the property makes no difference in principle.

5. To justify the seizure of lands under the tremendous power of eminent domain, there must be a public *necessity* or expediency for such a course. Otherwise the seizure is invalid.

> *Nichols: The Power of Eminent Domain,* Sec. 291.
> *Story on the Constitution,* Sec. 1956.
> *Cooley: Constitution Limitations,* p. 756.

Here there is no necessity whatever for the seizure of the lands except to enable the Government to sell the timber *for its own profit.* As for the division of the land among actual settlers—perhaps a duty imposed by the granting acts, but certainly the *right* of the railroad—that object, in so far as it can be carried out at all, may be effected by the railroad, the owner of the lands, possibly under the direction of the Court, possibly even subject to the directions of the Congress. *Seizure of the lands by the Government can only*

be desired therefore in order to enable the Government to dispose of the lands contrary to the terms of its contract with the railroad!

6. It is perhaps only as a corollary to the rule just referred to—that private property cannot be seized even for a public purpose unless such a course is necessary—that the courts have held that private property cannot be taken by condemnation to be used for a purpose *to which it has been dedicated already.* It amounts merely to the transfer of property from one party to another.

Cary Library v. *Bliss,* 151 Mass. 364.
Lake Shore etc. Ry. v. *Chicago etc. Ry.,* 97 Ill. 506, 512.

The Act in question attempts to take lands from the Railroad for the purpose (among others) of enabling the Government to sell it to actual settlers—in other words, what the Railroad might otherwise do itself.

7. That the Act in question was not intended as an exercise of the power of eminent domain appears further from the fact that no provision is made for the ascertainment of the "just compensation" required by the Constitution. It is not a function of the legislative branch of the Government to fix the amount of compensation due to the owner of property taken for governmental purposes.

Monongahela Nav. Co. v. *U. S.,* 148 U. S. 312, 327.
Story: The Constitution, Sec. 1956.

This question must be determined by an impartial tribunal which will give the owner of the property taken a chance to be heard.

Cooley: Constitutional Law, p. 375.
Monongahela Nav. Co. v. *U. S., supra.*
Charles River Bridge v. *Warren Bridge*, 11 Peters, 420, 571.

"Just compensation" means of course the fair value of the property taken; and that the mortgagee does not accept the opinion of the Congress respecting the value of these lands appears sufficiently in the earlier parts of this brief.

8. By the terms of the Act in question, the title to the lands is vested at once in the United States, although the assumed value may not be paid for many years. It has been held that compensation must be made within a reasonable time, and that "the United States are not entitled to possession of the land until the damages have been assessed and actually paid."

Bauman v. Ross, 167 U. S. 548, 598.
Cherokee Nation v. *Southern Kansas Ry. Co.*, 135 U. S. 641, 659.

F.

The language of this Court in reference to this case (238 U. S. 393, 411-439) does not furnish any justification for the seizure of the lands by the Government or for the destruction or impairment of the mortgage.

1. The question presented to this Court when this case was argued before was whether the

provisos in the granting acts were conditions subsequent, for the breach of which the grants could be forfeited, or only covenants. This court decided that the provisos were restrictive covenants and stated that they applied to all the lands whether capable of settlement or not. That was as far as this court could go; but from its examination of the case it must have become apparent that here was a situation of great hardship, affecting not only the railroad but the United States as well, and that the way it should be remedied, and perhaps the only way it could be remedied, was by the action of Congress. It therefore enjoined (temporarily) any changes in the property and commended the situation to Congress. It seems needless to add that, under the circumstances (which will be referred to below) there was every reason to suppose that Congress, while perhaps accomplishing certain purposes for the benefit of the nation, would relieve the situation of the railroad and the mortgagee. Certainly there was no reason to expect that the Congress would, by way of remedial legislation, confiscate the lands and destroy the lien of the mortgage and the rights which had vested thereunder.

2. In making the land grant the Government (1) intended to give very substantial aid to the railroad in order that it might (2) obtain a railroad which would benefit the nation and carry its mails, supplies, troops, etc., and (3) that it might, incidentally, get the lands settled and cultivated. The railroad on the other hand expected (1) to receive very substantial aid from the lands and (2) with that aid to build its road and (3) get the lands in

the neighborhood of its road settled and cultivated.

3. As a matter of fact when the railroad came to patent its lands all the good lands in the valleys had been taken up already (Defendant's Ex. 258, Record, Vol. 13, 6691; Ex. 259, Record, Vol. 13, p. 6698); and the lands which it obtained were in the main covered with timber and unfit for settlement. (Record, Vol. IV, 2010, 1946, 1947; Ex. 260, Vol. XIII, 6696). Some lands were sold prior to 1887, but they were small in amount (238 U. S. at p. 408). However, by mortgages covering these lands and especially by the mortgage to the Union Trust Company in 1887, funds were obtained for the completion of the road (238 U. S. at p. 435; Stipulation Item 21, Record, Vol. IV, p. 1575).

Thus the great end desired by the Government was obtained; but the anticipated "aid" to the railroad had not been given. In later years some of the timber lands were sold in rather large tracts (238 U. S. at p. 408)—the only possible way—but the expenses of taking care of the lands and the taxes have been great (Ex. 320, Record, Vol. 13, p. 7167), while the railroads have been carrying, and must continue to carry, the troops, etc., of the United States without compensation (Record, Vol. 5, p. 2405-11, 2146).

The *"aid" expected from the government* has not been received and the mortgage upon the lands, representing the *loan made by foreign investors* remains unpaid!

4. Although the government has thus obtained its main purpose, its *incidental* purpose has not been accomplished. Why?

Because most of the lands are covered with timber and are incapable of cultivation and settlement, at least before the timber is removed; and therefore the lands cannot be sold to "actual settlers." Thus the ill considered provisos in the grants are preventing the government from obtaining its purpose and depriving the railroad of the "aid" to which it is entitled.

5. Since the "provisos" of the land grant which this court was asked to construe were, if read literally and strictly, entirely inapplicable to a grant of timber lands, and because the literal reading of them would lead to a result more or less unsatisfactory to all the parties, this Court was urged to add to their terms qualifications and limitations which as a practical matter would make them workable. The *railroad* claimed that the restriction of sales of "lands" to "actual settlers" upon the terms defined should be construed as referring to "lands susceptible of settlement"—that it should not be supposed that Congress in an act to "aid" the railroad would insert a clause preventing the railroad from disposing of a large part of its lands at all; *the Government* of the United States argued for an addition to the terms of these provisos in effect that upon a breach of the covenant the United States might re-enter and forfeit the lands; the *interveners and cross complainants* asked for an amplification of the terms of the provisos which would constitute the railroad not the *absolute owner* of the lands but a *trustee* thereof.

All of these contentions the court rejected and it construed the provisos strictly and literally saying (238 U. S. at p. 422):

> "The grants must be taken as they were given. Assent to them, was required and

> made and we can not import a different measure of the requirement and the assent than the language of the act expresses."

This Court referred to the more or less obvious hardships which this construction might impose upon the railroad but said (238 U. S. at p. 423):

> "Granting the obstacles and infirmities, they were but promptings and reasons for an appeal to Congress to relax the law";

and again (at p. 435):

> "Whatever the difficulties of performance, relief could have been applied for and, it might be, have been secured through an appeal to Congress."

This Court referred to its own inability to grant relief, saying (238 U. S. at p. 436):

> "We can only enforce the provisos as written, not relieve from them."

and adding (p. 436):

> "For the same reason we cannot at the instance of the Government give a greater sanction to them than Congress intended, nor give to cross complainants and intervenors a right which the granting acts did not confer upon them."

6. This Court, being thus constrained to give an interpretation to the provisos which was unsatisfactory to all the parties (and which in effect might prevent the settlement of the lands—the *incidental* purpose of the Government—and prevent the railroad from receiving the "aid" from the Government upon the promise of which the railroad was built) very naturally referred the

questions presented to Congress—having first pointed out that the railroad should have appealed to Congress "to relax the law" long before. The object of this Court was, we believe, to afford the Congress an opportunity to relax the law and to provide a method by which the granted lands could be administered for the greater advantage of all concerned.

7. The scope of legislation which the Congress might have been expected to enact would of course depend largely upon the disposition of that powerful body. It would be supposed, however, that the Congress would either (1) change the contract of the Government with the railroad and take away the vested rights of the railroad and the mortgagee but *only upon condition that the Act be consented to by the railroad and the mortgagee,* or (2) attempt to change the terms of the covenants, but only in such a way as not to effect the purpose of the grant or take away vested rights.

Such legislation would naturally provide for a classification of the lands, determining what lands if any are now ready to be sold to "actual settlers" and what lands can be sold thus only after the timber is removed; defining who should be considered to be "actual settlers"; providing for the removal of the timber by the railroad (the owner) from such lands as would thus be rendered capable of actual settlement, and the subsequent sale of the lands to "actual settlers"; and further providing for the disposition of those lands owned by the railroad which can never, because of their character, be sold to actual settlers.

8. Instead of proceeding on any such lines, the Congress has passed an Act one of the main purposes of which (if not the main purpose) is to secure large sums of money for itself, and which disposes of the problems presented to it in almost complete disregard not only of the moral rights, but of the indefeasible property rights of the railroad and *the mortgagee*, trustee for bondholders.

9. Perhaps the claim will be made by the Government that this court in suggesting legislation which would "secure to the railroad company all the value conferred by the granting acts" has adjudged that "all the value" does not exceed $2.50 an acre. This Court decided nothing of the sort. It did not hold that the railroad had *nothing* but a power of sale, but on the contrary that it had the *full ownership* of the lands *without any implied limitations* and *including the power of sale* although with certain restrictions upon that power. This Court said (238 U. S. at p. 434):

> "There was a complete and absolute grant to the railroad company with power to sell, limited only as prescribed, and we agree with the Government that the company 'might choose the actual settler; might sell for any price not exceeding $2.50 an acre; might sell in quanties of 40, 60 or 100 acres, or any amount not exceeding 160 acres."

And again (238 U. S. at p. 432):

> "The Acts of Congress omit regulation. Their language is not directive; it is restrictive only. *With this exception the grant is unqualified.*" (Italics ours.)

POINT II.

THE OWNER OF THESE LANDS HAS THE UNQUALIFIED RIGHT TO THEIR USE, INCLUDING THE RIGHT TO THE TIMBER THEREON, AT LEAST SO FAR AS SUCH USE WILL NOT PREVENT THE SALE OF THE LANDS TO ACTUAL SETTLERS.

1. Practically all of the granted lands which remain unsold are covered with timber, and it is the purpose of the Government under the act of June 9, 1916, first to strip these lands of the timber and subsequently to offer them for settlement. The evidence shows (1) that a large part of these lands would not be fit for cultivation even if cleared of the timber, and (2) that another large part of these lands, although susceptible of cultivation after the timber is removed, cannot be settled upon and cultivated until after such removal.

(See brief for Union Trust Company upon the first argument in this Court, pages 31-77).

As to just how much of the land can never be cultivated and how much cannot be settled until the timber has been removed, there is room for dispute, but that there is a considerable quantity of lands of both kinds must be conceded.

2. That these lands were chiefly valuable for timber was clearly recognized by this Court upon the former appeal, for it wrote:

> "It is however clear even from the Government's summary of the evidence that lands which may be fit for cultivation have a greater value on account of the timber which is upon

them. Besides for our present purposes we may accept the assertion of the defendants." (238 U. S. at p. 438.)

The "assertion of the defendants" thus referred to appears just before (pp. 437-8) in the opinion, as follows:

> "In answering, the defendants averred * * * that the lands were chiefly and in most instances solely of value because of the timber thereon and are not fit for actual settlement. And, further, that the lands capable of actual settlement and the establishment of homes thereon at no time 'exceeded (approximately) 300,000 acres, consisting of small and widely separated tracts, all of which were sold to actual settlers,' etc."

It was with a full understanding, therefore, that a large part of the lands could not be sold to actual settlers, that this Court decided that the restrictive covenants must be held to apply to all the lands—in other words that some of these lands could not be sold for a very long time, and others not at all.

3. The question now presented is whether the Railroad can use the timber upon these lands until such times as they may be sold.

This question is of the greatest importance to the Union Trust Company as trustee for bondholders, for all the rights of the railroad in the lands have been mortgaged to it, and, if the timber can be used by the present owner or by a purchaser upon foreclosure sale, then the bonds which it represents will surely be paid—without dependence upon the financial situation or prosperity of the railroads. These bondholders who

advanced their money to construct this road upon the security of these lands, are, we respectfully urge, entitled to every bit of value which belongs to the security.

This question—the right of the owner to use the timber—received very little consideration at the time of the decision of the first appeal in this case. It seems to have been taken for granted that the right to use the *timber* was an incident of ownership, and the question argued at length was as to which party was entitled to own the *land,* the railroad or the United States.

Now however the question is sharply presented in two ways:

(a) By the decree of the District Court upon the mandate of this Court, which *permanently* enjoins the cutting of timber, and

(b) By Act of Congress of June 9, 1916, by which the Government has attempted to seize the lands and sell the timber for its own profit.

If the owner of the lands has the right to cut the timber, it follows, not only that the decree entered in the District Court is erroneous, but also that the Act of Congress is invalid.

We shall proceed therefore to discuss the question as to whether the owner of the lands or the Government has the right to use the timber, as it is of vital importance upon both points.

A.

This court certainly did not decide that the owner could not use the timber, but, on the contrary, intimated that it could do so.

1. To establish that the Decree of the District Court did not follow the decision of this Court, but on the contrary contained very important provisions in no way sanctioned by this Court, needs no argument whatever. It is only necessary to arrange side by side (1) the carefully framed conclusions of this Court as stated in the opinion and (2) the provisions of the decree as entered.

[We omit from the comparison, Sections 1, 5, 6 and 7 of the decree.]

Opinion of Supreme Court	Decree as Entered
(238 U. S. 393, 438)	
"That the railroad company	"2. That the defendants and their respective officers and agents
"should not only be	"be and each is hereby
"enjoined from sales (referring to "lands")	"enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within

	the place or indemnity limits of the grants thereby made,
"in violation of the covenants,	"to any person not an actual settler on the land sold to him, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre;
	"and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."
"but" the Railroad Company	"3. That the defendants and their respective officers and agents
should be	"be, and each is hereby

"enjoined from any disposition of them whatever" (referring to the lands)	"enjoined from making or agreeing to make, either directly or indirectly, any disposition whatsoever of said lands or of any part thereof
"or of the timber thereon	"or of the timber thereon
	"or any part thereof
	"or of any mineral or other deposits therein;
"and from cutting or authorizing the cutting or removal of any of the timber thereon.	"from cutting, removing or authorizing the cutting or removal of the timber thereon
	"or any part thereof
	"from removing or authorizing the removal of mineral or other deposits therein; and from disposing of, receiving or exerting any control over any money which arose, or may hereafter arise, from said lands, either through sales thereof or of timber thereon, or through condemnation proceedings or otherwise, and now on deposit, or which may hereafter be placed on deposit, with any bank, clerk of court, or other institution or person, to

	wait the final decision of the Supreme Court of the United States in this case
"until congress shall have a reasonable opportunity to provide by legislation	"until Congress shall have a reasonable opportunity to make provision by legislation
"for their disposition	"for the disposition of said lands, timber, "money, mineral or deposits
"in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroad.	"in accordance with such policy as Congress may deem fitting, under the circumstances, and at the same time secure to the defendants all the value that the said granting acts conferred upon the grantees.
"If Congress does not make such provision	"4. That if Congress does not make provision for the disposition as aforesaid of said lands timber, "money, timber, mineral or other deposits
"the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein, for a modification of	"the defendants may apply to the court within a reasonable time, but not less than six months from the entry of this decree, for a modification of so much of the

so much of the injunction herein ordered as enjoins any disposition	injunction herein ordered as forbids any disposition
"of the lands and timber	"of the said lands, timber
	"money, mineral or other deposits, or any part thereof
"until Congress shall act.	"until Congress shall act
"and the court in its discretion may modify the decree accordingly"	"and the court hereby reserves the right to modify this decree in that regard if, in its opinion, good cause shall then exist for doing so."

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2. From the comparison above, it is obvious that to the *permanent* injunction against *sales* of the lands, contrary to the terms of the covenant, as directed by this Court, there has been added a *permanent* injunction against the *use* of said lands at least so far as relates to the taking of timber and minerals; *also* that to the *temporary* injunction against any sales of the lands (whether contrary to the covenant or not) or the timber thereon, as directed by this Court, there has been added an injunction against the removal of *any mineral* or other deposits in the land, and *further* an injunction against disposing of, receiving or exerting any control over *any moneys* received

from sales of land or timber (although not in violation of any covenant).

3. It is not necessary to refer to the briefs submitted or to the *earlier* parts of the opinion of this Court to show that this Court was fully aware of the fact that the timber on these lands is valuable and that it understood perfectly that it would be quite possible, if the lands were not sold, to use and cut timber and remove minerals and other deposits therefrom; it is sufficient to refer to its *conclusions* as stated *at the end of the opinion.* It there appears that in order to preserve the lands exactly as they were pending legislation, this Court directed that not only should the Railroad permanently "be enjoined from *sales*" (*i. e.*, of the lands, which had been the subject under consideration) "in violation of the covenants, but enjoined from *any disposition* of *them*" (*i. e., the lands* just referred to) "whatever, *or of the timber thereon,* and *from the cutting* or authorizing the cutting or removal of any *of the timber* thereon, until, etc."

Thus so far as the *permanent* injunction was concerned—the determination of the rights of the parties as limited by the covenants—this Court, *having immediately in mind the possibility of removing timber,* enjoined sales of the *lands only,* making no limitation except temporarily upon the right to use the *timber.*

This followed naturally from the keynote of the opinion: that the covenant must be given *its literal meaning,* harsh as the effect might be upon the railroad, and unsatisfactorily as such a construction might be to the Government and also to the cross-complainants and intervenors all of whom wished to have its terms added to or enlarged;

that although Congress might relax the severity of the covenant this Court could not; that the railroad could not sell any lands except in accordance with the terms of this restrictive covenant, but that "there was a complete and absolute grant to the Railroad Company with power to sell, limited *only* as prescribed" (italics ours) and that "with this exception the grant is unqualified" (238 U. S. at pp. 434, 432, Record, Vol. I, pp. 154, 151).

If Congress should not legislate on the subject, it was contemplated, we submit, that the temporary injunction against "any disposition" of lands or timber would be vacated. There would then remain as the final judgment (if the decree of the District Court had been entered in compliance with the opinion of this court) a permanent injunction against a sale of the *lands* except in accordance with the covenant, but with no restraint upon the use of the lands, or the preparation of the lands for sale.

If this Court had intended in its carefully framed conclusions to decide that the railroad should be permanently enjoined from any sales of the lands *and also* from any use of the timber or minerals (*i. e.*, as has now been adjudged in the decree) *how simple it would have been to say so!* Instead, in very sharp contrast, and in the very next clause, this Court has pointed out that the *temporary* injunction should be against *any disposition* of land or *timber*. The conclusion seems irresistable that this Court has decided, in effect, that the covenant which restricts the sale of the *lands* does not affect the rights of the owner to use the *timber*.

B.

The right of an owner to use his property should not be destroyed in any way or even restricted except for a most compelling reason.

1. If it can be said that the right of the owner to cut timber has not been decided already by this Court, we believe there can be little doubt as to its decision now in view of the construction which it has given already to the covenant, and in view of the law defining a person's right to the use of his property.

2. The Railroad paid the price for these lands and became the absolute owner thereof. The provisos were a restriction upon the power of sale, but, except as its power to dispose of the lands was thus limited, its rights in the lands became the same as those of other owners of real property. As often as has been necessary, courts have declared that the rights of an owner in his property are unlimited—except by the maxim which requires that one must not use his own property in such a way as to injure another. (*Reeves' Law of Real Property,* Sec. 423.) Here the Railroad is bound, in addition, to use its lands in such a way as not to violate the proviso, but, except as the proviso may require that the timber shall not be cut, its rights as an owner are unlimited. It follows that if the covenant was restrictive, as we believe this court has determined, then the Railroad may use the lands in any way and cut the timber therefrom until such times as the lands shall be sold. If, on the other hand, it could be

said that the covenants are not "restrictive only" but impose an affirmative obligation on the Railroad to sell, then, at the least the Railroad may use the timber unless such use would prevent its compliance with the covenant.

The situation is somewhat similar to that of a tenant for life or for a term of years who holds under an implied covenant to surrender the land at the end of the term in as good condition as when he received it. Except as limited by the implied covenant, the tenant may use the land as he pleases and remove timber therefrom.

3. Unquestionably the grant of lands by the Government vested in the grantee all the rights of complete ownership. Among such rights are included, of course, the right to cut the timber.

Certainly the *United States* has not retained any rights in the timber. It has parted with the lands by an absolute grant and for a valuable consideration. (*Burke* v. *Southern Pacific R. R. Co.*, 234 U. S., at p. 679). If it can be argued that the timber belongs to any one other than the Railroad Company, the argument must relate to the claims of prospective settlers, but this court has expressly decided that the prospective settlers (intervenors and cross-complainants in this case) have no rights in the timber.

4. The granting acts are clear enough in their terms so far as timber is concerned. They grant lands to the Railroad (which, of course, includes the timber); and whereas, if it had been intended to cut down the grant by taking away its possible use, the acts might have excepted from the operation of the grants the timber upon the lands,

yet it is noticeable that there is no sign whatever of any such exception of the timber from the grant. It should be noticed, further, in this connection, that the Acts which it passed show that the Congress had clearly in mind (1) the possibility of making exceptions from the grant and (2) the value of timber; for it *expressly excepted mineral lands* from the grants and conveyed to the Railroad the right to use for the construction of the road *timber* taken from such mineral lands.

If the Congress had intended to except the *timber* from the grant, it could only have been accomplished by an exception similar to that applied to the *mineral lands.*

It should be noticed in this connection that although mineral lands were excepted from the land grants, it was expressly provided that "the term mineral lands shall not include lands containing coal and iron". That such lands could not be sold to actual settlers—tillers of the soil—but might be very valuable in the construction and subsequent operation of the Railroad is obvious, and the only possible conclusion is that the Congress in accomplishing the primary purpose of the grants to aid the construction of the Railroad, intended and expected that the Railroad should have the use of all valuable things in or upon the land excepting only the minerals (precious metals) which were especially excepted.

A sidelight on how an Act should be framed, which is intended to deprive the owner of land of the use of timber upon it, is found in Section 3 of the Act of Congress of June 9, 1916, relating to this very land, which provides that any person entering mineral lands "*shall not acquire title to timber.*"

5. We have said above that the only term of the land grant (the contract between the Government and the Railroad) which can be claimed to cut down the right to use the lands is the covenant which has been construed already by this Court; and that no construction of the covenant warrants the reading into it of a clause depriving the owner of the right to use or sell the timber. In addition, we should point out that this Court has already in construing this covenant held firmly that it would not permit any qualification or addition to its terms, (although a literal construction might and probably would, involve great hardship.) This Court has said (238 U. S. at pp. 434, 432) that the grants constitute "a complete and absolute grant to the Railroad Company with power to sell *limited only* as prescribed", and (referring to the restrictive language of the provisos) that "with this exception *the grant is unqualified.* (Italics ours.) Yet the Government would now have this Court *insert* in the covenant contained in the granting acts, another *restriction* of great importance. In brief, to the proviso which reads:

> "And provided further that the lands granted by the act aforesaid shall be sold to actual settlers only in quantities not greater than one-quarter section to one purchaser and for a price not exceeding $2.50 per acre;"

the Government seeks to have *added* something like the following:

> And *provided further that until such times as the lands are sold by the Railroad, even if they are never sold, the Railroad shall not use the lands in any way or the timber, coal, iron and stone thereon!*

6. An examination of the authorities will disclose cases illustrating the limitation upon the rights of a tenant for life, etc., to use timber; and there are well considered cases in this Court establishing the rights to the timber of those to whose estate a condition subsequent is annexed.

Schulenberg v. *Harriman,* 21 Wall, 44.
Railroad Land Co. v. *Courtright,* 21 Wall, 310.
United States v. *Loughrey,* 172 U. S. 206.
United States v. *Tennessee & Coosa R. R.,* 176 U. S. 242.

There are also cases in the State courts holding that the owner of a determinable fee is entitled to use the products of the lands.

Gannon v. *Peterson,* 193 Ill. 372.
Faraton v. *Green,* 108 N. C. 339.

The books, however, will be searched in vain, we believe, for any case which will justify the claim now made by the Government that the owner of a "complete and absolute grant" can be deprived of the right to use the timber growing upon his lands.

C.

The owner, having all the burdens and obligations, should have all the rights and privileges of proprietorship.

1. An "actual settler" is one who actually resides upon the land and for agricultural purposes.

(*Peterson* v. *First Division, St. Paul, etc., R. R. Co.*, 27 Minn. 218; *Stroud* v. *Missouri River, etc., R. R. Co.*, 4 Dillon 396, 403).

There is a large amount of these lands which can never be used for agricultural purposes and which, therefore, can never be sold under the terms of the provisos. There are, moreover, other lands which are very heavily timbered, from which the timber cannot be removed except at great cost, and which cannot be sold, therefore, to actual settlers under the terms of the provisos until the timber has first been removed. (Under the Act of June 9, 1916, the Government proposes to sell this timber and have it removed as a preliminary to disposing of the lands.) Moreover, it is no small matter to remove this timber; for

> "No man would be willing to subjugate this piece of forest for the mere sake of cultivating it"; (See United States *v.* Budd, 144 U. S., 154, at pp. 167, 168).

and these lands can be cleared from timber only when the lands or timber thereon are sold in large quantities.

It follows from the above that the railroad having constructed its line at the instance and for the benefit of the United States, will be prevented from selling these lands in compliance with the provisos; and, in so far as it may receive any benefit whatever from their ownership, it must be only such incidental advantages as are derived from the occupation of the lands and the use of the timber, coal, iron, etc.

2. During the forty years or more that the Railroad has owned them, these lands have been sub-

jected to heavy taxation in the State of Oregon. Had the lands been owned by the United States there could have been no taxation by the State, and if the timber thereon (the only value) had belonged to the United States, the Railroad would have been spared most of these expenses. Moreover, during all these years the Railroad has had the duty of watching over these lands and protecting them from fire and trespass. If the Railroad had not thus defended its lands against depredations and destruction, much of the timber would have been destroyed already. The cost of such protection for a small tract may not be considerable; for this great tract of land it has amounted to great sums. Yet it is now claimed that this timber which was conveyed by the Government for a valuable consideration to the Railroad and over which the Railroad has ever since performed all the duties of ownership, including the payment of taxes, is now of no value whatever to the railroad as it cannot be permitted in any way to use its own property!

3. Without regard to the provisos of the land grants, it would seem only a matter of simple justice to permit the one who must bear the burdens of ownership of real property to receive the advantages therefrom. To the mortgagee a contrary ruling seems especially harsh because the taxes, based upon the value of the lands with timber thereon, have been accumulating for some time and they are a lien prior to that of the mortgage; so that it follows that, if the Railroad, being prevented from selling the lands by the provisos, cannot make any use of them, the security, upon which in large part the bondholders advanced their

money for the construction of the Railroad, will be lost.

D.

The main purpose of the grant would be defeated if the railroad should be deprived of the right to use the timber while it remains the owner of the lands.

1. As this Court has already determined, the paramount purpose of the land grants was to obtain the construction of the Railroad, and it should follow that (since the Railroad could hardly have been constructed without the land grants) a most important part of that purpose was to furnish aid to the Railroad. A small amount of lands only have been sold in accordance with the provisos, and, although some lands have been sold in greater quantities and for greater prices than required by the provisos, it is apparent, from the terms of the Act of 1916, that the Government intends to claim against the Railroad all amounts received for the lands in excess of $2.50 an acre. Meanwhile, the cost of taking care of the lands and preserving the timber, together with the taxes which have been paid, have amounted to very great sums. The lands now remaining, because covered by timber or otherwise, cannot be sold in compliance with the covenant. It follows necessarily that, unless the timber on these lands can be cut by the Railroad, it can derive no substantial profit from the lands, although obliged to continue payment of taxes to the State

and to transport munitions, troops, etc., for the Government without charge.

2. If this result is reached, the Government will have obtained what it sought to purchase; but the railroad will never receive the price which the Government undertook to pay (to wit, "aid" through the granted lands), but will be saddled instead with a permanent burden.

E.

The covenant relating to the sale of lands is restrictive only; the railroad is not compelled to sell the lands.

1. This Court has decided already, we understand, that the terms of the proviso limiting the exercise of the power of sale are *restrictive*. It has said (238 U. S. at p. 432; italics ours):

> "The acts of Congress omit regulation. The language is not directive; it is *restrictive* only. With this exception, the grant is unqualified."

and (at p. 416):

> "There was also the purpose to *restrict* the sale of the granted lands to actual settlers."

and (at p. 418):

> "The contention encounters the Government's admission that there was no obligation imposed upon the Railroad to sell."

and (at p. 434):

> "When the granted lands were withdrawn from those laws (public land laws) and primarily devoted to another purpose they were committed to another power to be administered for such purpose, and a discretion in the exercise of the power, within the *restriction imposed*, was necessarily conferred."

and (at p. 434):

> "There was a complete and absolute grant to the Railroad Company with power to sell *limited only* as prescribed and we agree with the Government that the Company 'might choose the actual settler and sell for any price not exceeding $2.50 an acre; might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.'"

That a covenant to sell to "actual settlers only,"—like a deed to use land for a certain purpose only—does not imply an affirmative obligation to sell the lands or use the property, seems too plain for argument.

See *Madore's Appeal*, 129 Penn St., 15, 25.

2. We urge therefore that since the covenants are restrictive and there is no obligation upon the railroad to sell the lands, it may use them, until they are sold, in any way for its advantage. It is important however to notice that, even if there is an affirmative obligation upon the railroad to sell the lands, it should be within its power, not only to do whatever will be of assistance in selling the lands (as for instance the clearing of the timber from the lands), but also to exercise every right of ownership over the

lands which will not prevent sales thereof in accordance with the provisos. If the removal of any of the timber would prevent compliance with the terms of the covenant, the burden should be upon the Government to establish that fact. This, it would seem, they are estopped from doing by the very terms of the Act of June 9, 1916, which provides for the cutting of the timber in order to prepare the lands for sale—thus confirming the evidence, which is to be found in the record of this case, as to the desirability of removing the timber.

POINT III.

The decree should not have awarded costs against the Union Trust Company individually and as Trustee.

At the time this suit was brought the Government would not have been satisfied with strict compliance with the provisos in the grants; the purpose of the suit was to have the lands forfeited and *the lien of the mortgage cancelled.* Except for this purpose, it was unnecessary to make the Union Trust Company a party at all. The Trust Company was, of course, bound to resist this claim and did so successfully, the decree of the District Court being reversed by this Court.

The decree entered upon the mandate of this Court, to be sure, enjoins *all the defendants* from selling the lands, but in this respect it departs from the opinion of this Court, which directed

only an injunction against the defendant *railroad company.* Upon such a record there was no justification for the imposition of costs upon the defendant Union Trust Company.

CONCLUSION.

For the reasons stated above, the Act of June 9, 1916, should be adjudged invalid; and the decree appealed from should be modified so as to conform to the mandate of this Court, and especially so as to enjoin only sales of the lands contrary to the terms of the covenants, without prejudice to the rights of the railroad and the mortgagee to use the lands and the timber thereon and the coal and iron therein.

DOLPH, MALLORY, SIMON & GEARIN,
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PERRY D. TRAFFORD,
Of Counsel.

Appendix A.

ACT OF CONGRESS OF JUNE 9, 1916, COMMONLY KNOWN AS THE FERRIS ACT.

[PUBLIC—No. 86—64TH CONGRESS.]
[H. R. 14864.]

An Act To alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-fifth, eighteen hundred and sixty-six, as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, and to alter and amend an Act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May fourth, eighteen hundred and seventy, and for other purposes.

Whereas by the Acts of Congress approved April tenth, eighteen hundred and sixty-nine (Fourteenth Statutes at Large, page two hundred and thirty-nine), and May fourth, eighteen hundred and seventy (Sixteen Statutes at Large, page ninety-four), it was provided that the lands granted to aid in the construction of certain railroads from Portland, in the State of Oregon, to the northern boundary of the State of California, and from Portland to Astoria and McMinnville, in the State of Oregon, should be sold to actual settlers only, in quantities not exceeding one hundred and sixty acres to each person and at prices not greater than $2.50 per acre; and

Whereas the Oregon and California Railroad Company, beneficiary of said acts, has violated the terms under which the said lands were granted by selling certain of said lands to persons other than actual settlers, by selling in quantities of more than one-quarter section to each person, by selling at prices in excess of $2.50 per acre, and by refusing to sell any further portions of such lands to actual settlers at any price, and in so doing has willfully violated the terms of the statutes by which the said lands were granted; and

Whereas in the suit instituted by the Attorney-General of the United States, pursuant to the authority and direction contained in the joint resolution of April thirtieth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page five hundred and seventy-one), the Supreme Court of the United States, in its decision rendered June twenty-first, nineteen hundred and fifteen (Two hundred and thirty-eighth United States, page three hundred and ninety-three), ordered that the Oregon and California Railroad Company be enjoined from making further sales of lands in violation of the law, and that the said railroad company be further enjoined from making any sales whatever of either the land or the timber thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands in accordance with such policy as Congress might deem fitting under the circumstances and at the same time secure to the railroad company all the value conferred by the granting Acts; and

Whereas it was expressly provided by section twelve of the Act of July twenty-fifth, eighteen hundred and sixty-six (Fourteenth Statutes at

Large, page two hundred and thirty-nine), that Congress might at any time, having due regard for the rights of the grantee railroad company, add to, alter, amend, or repeal the Act making the grant; and

Whereas the Oregon and California Railroad Company and its predecessors in interest received a large sum of money from sales of said land for prices in excess of $2.50 per acre, and from leases, interest on contracts, and so forth; and

Whereas the aforesaid granting Acts conferred upon the said railroad company the right to receive not more than $2.50 per acre for each acre of land so granted: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to so much of the lands granted by the Act of July twenty-fifth, eighteen hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," as amended by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, and to so much of the lands granted by the Act of May fourth, eighteen hundred and seventy, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," for which patents have been issued by

the United States, or for for which the grantee is entitled to receive patents under said grant, as had not been sold by the Oregon and California Railroad Company prior to July first, nineteen hundred and thirteen, be, and the same is hereby, revested in the United States: *Provided,* That the provisions of this Act shall not apply to the right of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said railroad company on December ninth, nineteen hundred and fifteen, for depots, sidetracks, wood yards, and standing grounds.

SEC. 2. That the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, is hereby authorized and directed, after due examination in the field, to classify said lands by the smallest legal subdivisions thereof into three classes, as follows:

Class one. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public lands of like character.

Class two. Timberlands, which shall include lands bearing a growth of timber not less than three hundred thousand feet board measure on each forty-acre subdivision.

Class three. Agricultural lands, which shall inclde all lands not falling within either of the two other classes:

Provided, That any of said lands, however classified, may be reclassified, if, because of a change of conditions or other reasons, such ac-

tion is required to denote properly the true character and class of such lands: *Provided further,* That all the general laws of the United States now existing or hereafter enacted relating to the granting of rights of way over or permits for the use of public lands shall be applicable to all lands title to which is revested in the United States under the provisions of this Act. All lands disposed of under the provisions of this Act shall be subject to all rights of way which the Secretary of the Interior shall at any time deem necessary for the removal of the timber from any lands of class two.

SEC. 3. That the classification provided for by the preceding section shall not operate to exclude from exploration, entry and disposition, under the mineral-land laws of the United States, any of said lands, except power sites, which are chiefly valuable for the mineral deposits contained therein, and the general mineral laws are hereby extended to all of said lands, except power sites: *Provided,* That any person entering mineral lands of class two shall not acquire title to the timber thereon, which shall be sold as hereinafter provided in section four, but he shall have the right to use so much of the timber thereon as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States.

SEC. 4. That nonmineral lands of class two shall not be disposed of until the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed, and thereupon said lands shall fall into class three

and be disposed of in the manner hereinafter provided for the disposal of lands of that class.

The timber on lands of class two shall be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to citizens of the United States, associates of such citizens, and corporations organized under the laws of the United States, or any State, Territory, or District thereof, at such times, in such quantities, and under such plan of public competitive bidding as in the judgment of the Secretary of the Interior may produce the best results: *Provided,* That said Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate, and may reoffer the timber until a satisfactory bid is received: *Provided further,* That upon application of a qualified purchaser that any legal subdivision shall be separately offered for sale such subdivision shall be separately offered before being included in any offer of a larger unit, if such application be filed within ninety days prior to such offer: *And provided further,* That said timber shall be sold as rapidly as reasonable prices can be secured therefor in a normal market.

The Secretary of the Interior shall as soon as the purchase price is fully paid by any person purchasing under the provisions of this section issue to such a purchaser a patent conveying the timber and expressly reserving the land to the United States. The timber thus purchased may be cut and removed by the purchaser, his heirs or assigns, within such period as may be fixed by the Secretary of the Interior, which period shall be designated in the patent; all rights under said patent shall cease and terminate at the expira-

tion of said period: *Provided,* That in the event the timber is removed prior to the expiration of said period the Secretary of the Interior shall make due announcement thereof, whereupon all rights under the patent shall cease.

No timber shall be removed until the issuance of patent therefor. All timber sold under this Act shall be subject to the taxing power of the States apart from the land as soon as patents are issued as provided for herein.

SEC. 5. That nonmineral lands of class three shall be subject to entry under the general provisions of the homestead laws of the United States, except as modified herein, and opened to entry in accordance with the provisions of the Act of September thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page one hundred and thirteen). Fifty cents per acre shall be paid at the time the original entry is allowed and $2 per acre when final proof is made. The provisions of section twenty-three hundred and one, Revised Statutes, shall not apply to any entry hereunder and no patent shall issue until the entryman has resided upon and cultivated the land for a period of three years, proof of which shall be made at any time within five years from date of entry. The area cultivated shall be such as to satisfy the Secretary of the Interior that the entry is made in good faith for the purpose of settlement and not for speculation: *Provided,* That the payment of $2.50 per acre shall not be required from homestead entrymen upon lands of class two when the same shall become subject to entry as agricultural lands in class three: *Provided further,* That during the period fixed for the

submission of applications to make entry under this section any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the first day of December, nineteen hundred and thirteen, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the quarter section upon which he was so residing whether such lands shall be of class two or class three and where such quarter section does not contain more than one million two hundred thousand feet board measure of timber, and where the quarter section contains more than the said quantity of timber such person may enter the forty-acre tract, or lot or lots containing approximately forty acres, upon which his improvements, or the greater part thereof, are situated: *Provided further,* That a prior exercise of the homestead right by any such person shall not be a bar to the exercise of such preference rights: *And provided further,* That all of the following described lands which may become revested in the United States by operation of this Act, to-wit: Township one south, range five east, sections twenty-three and thirty-five; township one south, range six east, sections three, five, seven, nine seventeen, nineteen, twenty-nine, thirty-one, and thirty-three; township two south, range five east, sections one and three; township two south, range six east, sections one, three, five, seven, nine, and eleven; township two south, range seven east, section seven; township three south, range three east, section fifteen; township four south, range four

east, sections eleven and thirteen; township four south, range five east, sections nineteen and twenty-nine; and township twelve south, range seven west, sections fifteen, twenty-one, twenty-three, twenty-seven, thirty three, and thirty-five, Willamette meridian and base, State of Oregon, shall be withheld from entry or other disposition for a period of two years after the approval hereof.

SEC. 6. That persons who purchase timber on lands of class two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the register and receiver, within the maximum compensation allowed them by law; and the register and receiver shall receive no other compensation whatever for services rendered in connection with the sales of timber under the provisions of section four of this Act.

SEC. 7. That the Attorney General of the United States be, and he is hereby, authorized and directed to institute and prosecute any and all suits in equity and actions at law against the Oregon and California Railroad Company, and any other proper party which he may deem appropriate, to have determined the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of said granted lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the "full value" secured to the grantees under said granting Acts as heretofore interpreted by the Supreme Court. In making this determination the court shall take into consideration and give due and proper legal

effect to all receipts of money from sales of land or timber, forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors. In making this determination in the aforementioned suit or suits the court shall also determine, on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this Act, and which should in law have been paid by the said Oregon and California Railroad Company, and the amount thus determined shall be treated as money received by said railroad company.

SEC. 8. That the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit commenced by the United States in pursuance of said joint resolution of nineteen hundred and eight is hereby vested in the United States, and the United States is subrogated to all the rights and remedies of the obligee or obligees, and especially of Louis L. Sharp, as commissioner, under any contract for the purchase of timber on the grant lands.

SEC. 9. That the taxes accrued, and now unpaid on the lands revested in the United States, whether situate in the State of Oregon or State of Washington, shall be paid by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the approval of this Act, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

SEC. 10. That all moneys received from or on account of said lands and timber under the provisions of this Act shall be deposited in the Treasury of the United States in a special fund, to be designated "The Oregon and California land-grant fund," which fund shall be disposed of in the following manner: The Secretary of the Interior shall ascertain as soon as may be the exact number of acres of said lands, sold or unsold, patented to the Oregon and California Railroad Company, or its predecessors, and the number of acres of unpatented lands which said railroad company is entitled to receive under the terms of said grants and the value of said lands at $2.50 per acre. From the sum thus ascertained he shall deduct the amount already received by the said railroad company and its predecessors in interest on account of said lands and which should be charged against it as determined under section seven of this Act; and a sum equal to the balance thus resulting shall be paid, as herein provided, to the said railroad company, its successors or assigns, and to those having liens on the land, as their respective interests may appear. The amount due lien holders shall be evidenced either by the consent, in writing, of the railroad company or by a judgment of a court of competent jurisdiction in a suit to which the railroad company and the lien holders are parties. Payments shall be made from time to time, as the fund accumulates, by the Treasurer of the United States upon the order of the Secretary of the Interior: *Provided, however,* That if, upon the expiration of ten years from the approval of this Act, the proceeds derived from the sale of lands and timber are not sufficient to pay

the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor. After the said railroad company, its successors or assigns, and the lien holders shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section nine hereof, shall be deposited in the Treasury to the credit of the United States, thereafter all other moneys received from the sales of land and timber shall be distributed as follows:

A separate account shall be kept in the General Land Office of the sales of land and timber within each county in which any of said lands are situated, and, after deducting from the amount of the proceeds arising from such sales in each county a sum equal to that applied to pay the accrued taxes in that county and a sum equal to $2.50 per acre for each acre of such land therein title to which is revested in the United States under this Act, twenty-five per centum of the remainder shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; forty per centum shall be paid into, reserved, and appropriated as a part of the fund created by the Act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation Act; ten per centum

shall become a part of the general fund in the Treasury of the United States; and of the balance remaining in said Oregon and California land grant fund from whatsoever source derived twenty-five per centum shall be paid to the State treasurer of the State in which the land is located, to be and become a part of the irreducible school fund of the State; twenty-five per centum shall be paid to the treasurer of the county for common schools, roads, highways, bridges, and port districts, to be apportioned by the county courts for the several purposes above named; and the remainder shall become a part of the general fund in the Treasury of the United States. The payments herein authorized shall be made to the treasurers of the States and counties, respectively, by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the close of each fiscal year during which the moneys were received: *Provided*, That none of the payments to the States and counties and to the reclamation fund in this section provided for shall be made until the amount due the Oregon and California Railroad Compny, its successors or assigns, has been fully paid, and the Treasury reimbursed for all taxes paid pursuant to the provisions of section nine of this Act.

SEC. 11. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect; and any person, applicant, purchaser, entryman, or witness who shall swear falsely in any affidavit or proceeding required hereunder or under the

regulations issued by the Secretary of the Interior shall be guilty of perjury and liable to the penalties prescribed therefor.

SEC. 12. That the sum of $100,000 be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to complete the classification of the lands as herein provided, which amount shall be immediately available and shall remain available until such classification shall have been completed.

Approved, June 9, 1916.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

OREGON & CALIFORNIA RAILROAD COMPANY ET AL., appellants,
v.
THE UNITED STATES.
No. 492.

ON A CERTIFICATE FROM AND CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This court reversed the above entitled case and sent it back to the lower court with instructions to enter a decree in accordance with the court's opinion, which was embodied in the mandate. It also by necessary implication referred to Congress the disposition within stated limits of the land involved. For the purpose of this statement the pertinent parts of the opinion are:

> This, then, being the situation resulting from conditions now existing, incident, it may be, to the prolonged disregard of the covenants

by the railroad company, the lands invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever or of the timber thereon, and from cutting or authorizing the cutting or removal of any of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroads.

If Congress does not make such provision the defendants may apply to the District Court within a reasonable time, not less than six months, from the entry of the decree herein, for a modification of so much of the injunction herein ordered as enjoins any disposition of the lands and timber until Congress shall act, and the court in its discretion may modify the decree accordingly.

Decree reversed and cause remanded to the District Court for further proceedings in accordance with this opinion. (238 U. S. pp. 438–439.)

The decree entered by the trial court and the one proposed by the defendants are given below in parallel columns. What appears in the one but not in the other is italicized; thus is marked the difference between the two.

(Decree of the Court, title, attestation clause, and name of judge, omitted.)

In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the 8th day of December, 1915, in the above entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed, as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called "the defendants," be, and the same is hereby set aside, and held for naught, but *is* adhered to in all repects as to the defendants and cross-complainants, hereinafter called the "cross-complainants," and the interveners.

2. That the defendants and their respective officers and agents be, and each is hereby, enjoined from selling the lands or any part thereof granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler *on the land sold to him*, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding $2.50 per acre: *and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of*

(Decree requested by appellants, title and attestation clause omitted.)

In pursuance of the mandate of the Supreme Court of the United States, filed in this court on the .... day of December, 1915, in the above entitled cause, counsel for the respective parties being present, it is by the Court ordered, adjudged and decreed, as follows:

1. That the decree heretofore entered in said cause, so far as it affects the defendants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, hereinafter called the "defendants," be, and the same is hereby set aside, and held for naught, but adhered to in all respects as to the defendants, and cross-complainants, hereinafter called the "cross-complainants," and the "interveners."

2. That the *said* defendants and their respective officers and agents be and each is hereby enjoined from selling the lands, or any part thereof, granted either by the Act of Congress approved July 25, 1866, as amended by the Act of Congress of April 10, 1869, or by the Act of Congress approved May 4, 1870, whether the said lands be situated within the place or indemnity limits of the grants thereby made, to any person not an actual settler, or in quantities greater than one-quarter section to one purchaser, or for a price exceeding two dollars and a half ($2.50) per acre.

any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits.

3. That the defendants and their respective officers and agents be, and each is hereby, enjoined from *making or agreeing to make, either directly or indirectly,* any disposition whatsoever of said lands or *of* any part thereof, or of the timber thereon *or any part thereof, or of any mineral or other deposits therein;* from cutting, *removing, or* authorizing the cutting or removal of the timber thereon *or any part thereof; from removing or authorizing the removal of mineral or other deposits therein; and from disposing of, receiving or exerting any control over any money which arose, or may hereafter arise, from said lands, either through sales thereof or of timber thereon, or through condemnation proceedings or otherwise, and now on deposit, or which may hereafter be placed on deposit, with any bank, clerk of of court, or other institution or person, to await the final decision of the Supreme Court of the United States in this case,* until Congress shall have a reasonable opportunity to make provision by legislation for the disposition of said lands, *timber, money, mineral or other deposits,* in accordance with such policy as *Congress* may deem fitting, under the circumstances, and at the same time secure to the defendant all the value *that* the *said* granting acts conferred upon the grantees.

4. *That* if Congress does not make provision *for the disposition as aforesaid of said lands, money, timber, mineral or other deposits,* the defendants may apply to the Court within

3. That the *said* defendants and their respective officers and agents be, and each is hereby enjoined from any disposition of *the* said lands, or any part thereof, or of the timber thereon, *and* from cutting, or authorizing the cutting, or removal *of any* of the timber thereon, until Congress shall have a reasonable opportunity to provide by legislation for the disposition of said lands, in accordance with such policy as *it* may deem fitting under the circumstances, and at the same time secure to the defendants, all the value the granting acts conferred upon the grantees;

but if Congress does not make such provision, the defendants may apply to this Court, within a reasonable time, not less than six (6) months from the entry of *the* decree

a reasonable time, *but* not less than six months from the entry of *this* decree, for a modification of so much of the injunction herein ordered *as forbids* any disposition of the *said* lands, timber, *money, mineral or other deposits, or any part thereof,* until Congress shall act, *and the Court hereby reserves the right to modify this decree in that regard if, in its opinion, good cause shall then exist for doing so.*

5. *That this decree shall apply not only to all said grant lands unsold at the time this action was instituted, but also to all such grant lands sold prior to the institution of the action which have since reverted or shall hereafter revert to the defendants or any one of them.*

6. *That this decree shall be without prejudice to any other suits, rights, or remedies which the Government may have by law or under the Joint Resolution of Congress passed April 30, 1908, or under the Act of Congress passed August 30, 1912, against the defendants or any of them.*

7. *That the complainant have and recover from the defendants, Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, and each of them, its lawful costs and disbursements herein, taxed at $6,249.02, and that execution issue therefor.*

herein, for a modification of so much of the injunction herein ordered as *enjoins* any disposition of the lands *and* timber until Congress shall act.

Assignments of error were filed by the defendants in which they complained of the decree generally, although it contains much that was requested by them. Many of the assignments relate to questions that had been decided by this court adversely to the defendants. In due time defendants appealed to the Circuit Court of Appeals, which certified cer-

tain questions to this court. Afterwards, upon the application of the Government, the appellants consenting, this court ordered up the entire case for final disposition.

Congress, pursuing what it believed to be its duty under the opinion of reversal, passed the act approved June 9, 1916 (Chamberlain-Ferris Act, 39 Stat. 218, ch. 137), for the purpose of providing for the disposition of the land involved in the action "and at the same time secure[ing] to the defendants all the value the granting acts conferred upon the railroads" (238 U. S. 439).

Two general questions are presented for decision.

First, is the decree of the lower court in harmony with the mandate, and,

Second, is the Chamberlain-Ferris Act a proper exercise of power by Congress?

ARGUMENT.

I.

THE DECREE OF THE LOWER COURT IS IN EXACT HARMONY WITH THE MANDATE.

A. SECTION 1 IS VALID.

The first paragraph of the decree differs from the corresponding paragraph of the one proposed by the defendants only in the use of the italicized word "is," but the meaning of both is the same.

B. SECTION 2 IS VALID.

(1) AN ACTUAL SETTLER IS ONE WHO HAS ESTABLISHED AN HABITATION ON THE LAND PURCHASED.

In paragraph two of the decree the italicized words "on the lands sold him" are objected to. Clearly the actual settler referred to in the restrictive provisos of the granting acts (16 Stat. 47, 94) declaring that the lands shall be sold only "to actual settlers" is an actual settler on the identical land sold, not on some other lands. Any other interpretation is utterly untenable. The trial judge said that "There could be no actual settler until an actual habitation was established upon some specific parcel of this land," and this court approved his view. (238 U. S. 434.)

(2) THE WORD "LANDS" HAS THE SAME MEANING IN THE RESTRICTIVE PROVISOS AS IT HAS IN THE GRANTING CLAUSES OF THE GRANTING ACTS.

The next objection to the same paragraph is predicated upon the conception that the word "land" or "lands," as employed in the granting acts (14 Stat. 239; 16 Stat. 47; 16 Stat. 94) and the opinion of this court interpreting them (238 U. S. 393) does not comprehend within its meaning timber growing on the lands or minerals therein. In other words, that the provisos in the granting acts forbidding the sale of the "lands" except "to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre" (16 Stat. 47), apply to the surface alone, and that appellants are free to sell the timber and mineral apart from the surface

for any price they choose and to any person in any quantity they may select, irrespective of whether the purchaser is an actual settler or not.

This position is revealed in the 15th assignment of errors, as well as in other places, where it is stated, "the court erred in not holding * * * that the railroad company * * * had the right to sell, cut, remove, or authorize the cutting or removal of the timber thereon, and the court erred similarly in not so holding * * * with reference to any mineral or other deposits in or products out of said lands" (Record this appeal, p. 32). The same contention is given much importance in their briefs.

Is it correct? The granting clause of the act of 1866 says, "That there be, and hereby is, granted to the said companies * * * every alternate section of public *land*." (Sec. 2.) In the restrictive proviso of the act of 1869, which is amendatory of the act of 1866, we read, "that the *lands* granted by the act aforesaid (meaning the act of 1866) shall be sold to actual settlers," etc. Section 1 of the act of 1870 conveys "each alternate section of the public *lands*," while in section 4 it is said "That the said alternate sections of *land* granted by this act [with some exceptions immaterial here] shall be sold by the company only to actual settlers." (14 and 16 Stat. *supra*, 7.) [Italics ours.]

Obviously the word is used in exactly the same sense in the provisos as in the granting clauses. This being so, unless it is broad enough in the former to embrace the minerals and timber, it was not broad enough in the latter to convey to appellants title

to the timber or minerals. Consequently they must either concede that the word "lands" in the provisos embraces the timber and minerals or else that they have no title to them. If they have no title, they have of course no ground for complaint as to the disposition made of them in the decree.

Appellants' position as we apprehend it is that if A is granted a piece of land under the condition that he shall sell it at a price not to exceed $2.50 an acre, he can separate its elements into three parts, the timber, the minerals, and the surface, and sell the timber for as much as he can get, the minerals for as high a price as he can obtain, and the surface for a price not to exceed $2.50 per acre, and thus comply with his contract. In other words, that he satisfies his obligation by observing the restriction as to one part of the property and disregarding as to two other parts. This will not do. (*Infra* p. 40.)

(3) "LAND" ORDINARILY COMPREHENDS NOT ONLY THE SURFACE, BUT ALSO THE TIMBER GROWING ON IT AND MINERALS BENEATH IT.

Washburn says:

> Land is always regarded as real property, and, ordinarily, whatever is erected or growing upon it, as well as whatever is contained within it or beneath its surface, such as minerals and the like, upon the principle that *cujus est solum, ejus est usque ad coelum* in one direction, and *usque ad Orcum* in the other (vol. 1, p. 3).

In *Higgins Oil & Fuel Co. et al.* v. *Snow et al.* (113 Fed. 433, Circuit Court of Appeals for the Fifth Circuit) it was contended that a life tenant of land was not entitled to any interest in the oil produced

therefrom, "her estate being limited to the surface." Answering this, the court said:

> The life estate is given, not in surface of the land, but in the land as land, and it is elementary that the land itself in legal contemplation extends from the sky to the depths (p. 438).

"Land" includes earth, waters, and every natural condition, including minerals and growing trees. (Coke Litt. 4a; 2 Bl. Comm. 16–18; *Philadelphia Trust, etc. Co.* v. *Merchantville*, 74 N. J. Eq. 330; *State* v. *Jones*, 143 Ia. 398; *Green Bay & M. Canal Co.* v. *Telulah Paper Co.*, 140 Wis. 417; *Kinsley* v. *Holbrook*, 45 N. H. 313.)

The restrictive provisos therefore apply with equal force to the timber and minerals as to the surface of the ground.

(4) TO EXCLUDE BY CONSTRUCTION THE TIMBER AND MINERALS FROM THE OPERATION OF THE RESTRICTIVE CONDITIONS WOULD DEFEAT THE LATTER.

That Congress intended the lands should be sold to actual settlers only in quantities not to exceed 160 acres to one person and for a price not exceeding $2.50 per acre, is definitely settled by the decision of this court. We take the following excerpts from its opinion:

"The sales are to be made only to certain persons and *not exceeding* a specified maximum in quantities and *prices*." The language of the provisos "certainly imposes an obligation not to violate the limitations and prohibitions when sales were made" (238 U. S. 421). "But neither the provisos nor the other parts of the granting acts make a distinction between the

lands, and *we* are *unable* to do so. The language of the grants and of the limitations upon them is general. We *can not* attach *exceptions* to it. The evil of an attempt is manifest. The grants must be taken as they were given. Assent to them was required and made, and we can not import a different measure of the requirement and the assent than the language of the act expresses. It is to be remembered that the acts are *laws* as well as grants and *must be* given the exactness of laws." (Id. 422.) "We agree with the Government that the company '* * * might sell for any price *not exceeding $2.50 an acre.*'" (Id. 434.) "Judgment is independent of them. It is determined by the simple words of the acts of Congress, not only regarded as grants but as laws and accepted as both; granting rights but imposing obligations—rights quite definite, obligations as much so." (Id. 435.) "We can only enforce the provisos *as written*, not relieve from them." (Id. 436.) [Italics ours.]

Undoubtedly the provisions just quoted make it very clear that according to this court's opinion the maximum amount which Congress intended the railroad to receive out of the grants is $2.50 per acre. In no place is there warrant for any other conclusion. "The sales are to be made * * * not exceeding a specified maximum in quantities and prices," "we can not attach exceptions to it" (the language of the proviso), the company can sell for any price "not exceeding $2.50 an acre," embody thoughts iterated and reiterated throughout the

opinion. If, however, the position of the defendants that the timber and minerals may be sold by the railroad company apart from the lands and without any regard to the restrictive provisos be correct, the railroad would receive a great deal more than $2.50 per acre as the following discloses:

The record on the former hearing shows a stipulation by the parties that the value of the 2,300,000 acres involved in this suit "exceeds the sum of $30,000,000." (Statement case for Govt. former hearing, p. 83.) That number of acres at $2.50 an acre would amount to $5,750,000, leaving a balance of $24,250,000. Assuming that this balance represents the value of the timber and minerals, and it is not far from it, the railroad company would receive upon their theory $24,250,000 in addition to $2.50 an acre. No ingenuity can torture from the grants as construed by this court any warrant for a result so extraordinary.

(5) ACCORDING TO THE DECISION OF THIS COURT THE TIMBER AND MINERALS ARE A PART OF THE LANDS.

In the opinion this court said :

> The lands invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever *or of the timber thereon* and from cutting or authorizing the cutting or removal of any of the timber thereon, etc. (238 U. S., 438). [Italics ours.]

This means that the timber is subject to the restrictive provisos. If not, why forbid its disposition? There is no authority for doing so unless the provisos are applicable. Yet the word "timber" does not occur in either of them. The prohibition, then, must rest on the theory that the term "land" is to be taken in its usual sense, and since the restrictions relate to it, they must of necessity bear on all its component parts, including timber and minerals.

A similar view of this court's opinion was taken by the United States Circuit Court of Appeals for the Ninth Circuit in *Southern Oregon Company* v. *United States*, decided February 13, 1917, but not yet published. That case involved the construction of a grant made March 3, 1869 (15 Stat. 340) to the State of Oregon which provided among other things that the lands "shall be sold to any one person only in quantities not greater than one quarter section and for a price not exceeding $2.50 per acre." The grant was subsequently conveyed to the Coos Bay Wagon Road Company subject to all the conditions embodied in the granting act. This was in accordance with section 2 of the act. The Wagon Road Company disposed of the land in violation of the restrictive proviso, the title passing through many grantees until it found lodgment in the appellant, Southern Oregon Company. Suit was brought by the Government asking for similar relief to that for which it prayed in this case. The decree of the lower court was, so far

as applicable, in substantially the same terms as the decree in this case. The court of appeals, consisting of Gilbert, Ross, and Hunt, circuit judges, filed two opinions, one by Judge Gilbert and a concurring opinion by Judges Ross and Hunt. Both opinions are based upon the decision of this court in the case at bar, and unite in affirming the decree of the lower court. In the concurring opinion it is recited that the lower court refused a decree of forfeiture of the land—

> but enjoined the defendant, its officers and agents, from selling or making any disposition thereof, or of the *timber, materials,* or other deposits thereon or therein "until Congress shall have a reasonable opportunity to make provision by legislation for the disposition of said lands, timber, mineral, or other deposits in accordance with such policy as Congress may deem fitting under the circumstances, and at the same time secure to the defendant all the value that the granting act conferred upon the state of Oregon or the Wagon Road Company," with a provision to the effect that should Congress fail to act in the premises within a stated period the defendant might apply to the court for a modification of the decree, the court reserving jurisdiction for that purpose. The main basis of the court's ruling, as appears from its opinion, was the decision of the Supreme Court in the case of *Oregon & California R. R.* v. *United States,* 238 U. S. 393. A careful examination of the *opinion* in that case satisfied us that its doctrine, applied to the facts of the present case,

> *authorized* and *required* the decree that was entered by the court below, which was permissible under the prayer for general relief. (Italics ours.)

(6) THIS COURT HAVING DECIDED THAT THE RESTRICTIVE PROVISOS RELATE TO THE TIMBER AND MINERALS AS WELL AS THE SURFACE, THE QUESTION IS RES JUDICATA.

Assuming, without conceding, that the applicability of the covenants to the timber and minerals was not presented by defendants on the former hearing, may they do so now?

In *Nesbit* v. *Riverside Independent District*, 144 U. S. 610, it was said that (618):

> When the second suit is upon the same cause of action, and between the same parties as the first, the judgment in the former is conclusive in the latter as to every question which was *or might* have been presented and determined in the first action.

In *Dowell* v. *Applegate*, 152 U. S. 327, speaking of the effect of a former decree, it was said (343):

> And that decree, never having been modified by the court that rendered it nor by this court upon appeal, necessarily concludes *every matter* that Daniel W. Applegate *was entitled*, under the pleadings, to bring forward in order to prevent the sale of the lands claimed by him, by whatever title.

In *Northern Pacific R. Co.* v. *Slaght*, 205 U. S. 122, 130–131, we read:

> The general rule of the extent of the bar is not only what was pleaded or litigated, but what *could* have been pleaded or *litigated* (Italics in each case ours.)

(To the same effect are *Cromwell* v. *County of Sac*, 4 Otto 351, and *Virginia-Carolina Chemical Co.* v. *Kirven*, 215 U. S. 252.)

The case when here before turned chiefly on the meaning of the restrictive covenants. Union Trust Company sought to limit them "to lands susceptible of cultivation," and to exclude from their scope "timberlands" (its brief, p. 103); while the railroad company and Gage urged that because (as they alleged) the lands were unfit for settlement the covenants did not apply (their brief point 21, p. IV). There were, of course, other contentions touching the same subject. But the foregoing is sufficient to illustrate the point we make, which is that since the scope of the covenants was properly under discussion at that time, if defendants failed to advance all that might have been said on the subject, they can not supplement their argument now. The matter is irrevocably decided. (*In re Sanford Fork & Tool Co.*, 160 U. S. 247, 255.)

C. SECTION 3 IS VALID.

The objection to this section, so far as it forbids the removal of mineral, is unsound for the same reason, as a like objection to a similar prohibition in section two, just considered.

The only difference between the section proposed by defendants and this section, except some immaterial verbal ones, consists of the circumstance that, in addition to restraining the disposition of the lands, it forbids the withdrawal of certain moneys on deposit

in Portland banks. This money was derived from the land after the first decree had been entered, and by direction of the trial court was placed on deposit to await the final outcome of the suit. A large part of it represents the proceeds of a sale of timber ordered by the court and takes the place of the timber. It is subject, we say, to the same disposition by Congress as the timber would be if the latter had not been removed.

D. SECTION 4 IS VALID.

The last 11 lines of section 3 of the decree proposed by the defendants does not differ materially from section 4 of the decree entered by the court, save that the latter recognizes the right of Congress to dispose of the money, timber, minerals, or other deposits, and reserves to the court the right to modify for good cause the temporary injunction granted. We have sufficiently discussed the power of the court to restrain the disposition of the timber and minerals as well as the other part of the lands. The part reserving to the court the power to modify the temporary injunction for good cause is in clear accord with the opinion, but what was proposed by the defendants is not. The opinion says: "And the court in its discretion may modify the decree accordingly." (238 U. S., 439.) The decree provides: "The court reserves the right to modify the decree if in its opinion good cause shall then exist for doing so." There is no substantial difference between the opinion and the decree.

E. SECTION 5 IS VALID.

Clearly the purpose of the opinion was to authorize and require the application of both the permanent and temporary injunctions provided for to all the unsold lands. It says the defendants shall "be enjoined from sales in violation of the covenants" (238 U. S., 438). No warrant anywhere for the thought that the railroad company could in the future legally violate the covenants with respect to any of the grant lands whether they were included in the suit or not. The relief sought and granted are permanent as to all such land.

The only part of the grants excluded from the suit was that which the railroad company had sold (238 U. S., pp. 436–437), and all lands covered by executory contracts of sale were treated as sold. (Statement, case for Govt., former hearing, p. 28.) It was the purpose of the bill to reach all lands in which third parties had or claimed *no* interest by way of contract with the railroad company. The bill was so construed by the lower court and all the parties, for the first decree includes, as this one does, all lands which had reverted at the date of the decree or which might thereafter revert to the company. (Old Record VIII, p. 1301, sec. 3, sub. d.) To this no objection was made in any of the briefs or oral arguments. Even if reverted lands are not covered, no prejudice can result to defendants, because the judgment in this suit as to the meaning of the covenants would be binding on them in any suit hereafter brought by the Government to affect

those lands. The subject and the parties would be the same, and defendants would not be heard to say in such a suit that this judgment is wrong in any respect. (*Cromwell* v. *Sac County, supra; Nesbit* v. *Riverside Independent District, supra; Dowell* v. *Applegate, supra; Northern Pacific R. Co.* v. *Slaght, supra; Virginia-Carolina Chemical Co.* v. *Kirven, supra.*)

F. SECTION 6 IS VALID.

This provision is authorized by that part of the opinion which says, in effect, that the decree shall be without prejudice to any other suits which the Government may have with respect to the granted lands (Id., 437).

G. WHY THE LOWER COURT DEEMED IT NECESSARY TO SPECIFICALLY MENTION TIMBER AND MINERALS AND TO PROHIBIT THEIR DISPOSITION EXCEPT AS A PART OF AND IN CONJUNCTION WITH THE AREA CONTAINING THEM.

The railroad companies and Gage, after the opinion had been handed down, but before the decree of the lower court was entered, served upon the Government a paper entitled a "Petition * * * for modification of opinion rendered." In this they argued that under the grants they were "authorized to remove stone from the lands and use it to build a railroad bridge or a station house, or * * * farm a patch of arable area and turn the farm products into money" and then said:

> If all this be true there is no reason apparent to us upon the face and terms of the statute why the right of the grantee in a like way to

> make use of the timber upon the lands should be differentiated (p. 8):

Again:

> But the removal of the timber upon this land would not go in defeat of the settlement policy of the act, but would be directly in aid of such policy (p. 9).

The Government believed that the defendants, holding these views, might attempt to remove the timber from the lands without regard to the restrictive clauses even after Congress had acted. If they did, the Government undoubtedly would feel constrained to commence proceedings to enjoin them. To save the necessity of this, as well as the costs and delays attendant upon it, the Government asked the lower court to make the decree so specific that there could be no doubt in the minds of the defendants or anybody else concerning its meaning.

H. WHEN THE TRIAL COURT ASSESSED COSTS AGAINST THE DEFENDANTS IT WAS ACTING WITHIN ITS POWER UNDER THE MANDATE.

The mandate directs a general reversal of the lower court's decree. This put the case where it was before the decree had been entered. Thereupon the lower court, in obedience to the mandate, entered a new decree in favor of the complainant and against the defendants upon the record as it had been made.

Suppose the trial court in the first instance, instead of entering a decree declaring a forfeiture, had entered such a decree as the mandate required, would there be any doubt about the complainant's right to costs?

Surely not. It had prevailed, and the prevailing party is always entitled to recover his costs unless there be some special reason appealing to the sound discretion of the court for not allowing them.

In *Tyler Min. Co.* v. *Sweeney*, 79 Fed. 277, the court said (281):

> In equity cases and in other cases where there are no statutory provisions or rules of practice, the award of costs, as well as the taxation thereof, rests in the sound discretion of the trial court, and will not be reviewed in the appellate court, except in cases of a manifest abuse of such discretion.

This discretion, of course, is judicial, not arbitrary. Is there any reason in this case why the appellants should not be compelled to pay the complainant its costs? The illegal action of the defendants forced the complainant to go into court for relief. It plead the granting acts—the law—and showed that they had been violated by the defendants. This the latter denied. In consequence of the denial much testimony was taken. The court found that the granting acts had been violated, that the railroad company was guilty of a "prolonged disregard of the covenants." Where, then, is there any equitable cause for relieving the lawbreaker from the consequence of its acts?

Appellants place themselves on the proposition that this court did not order them to pay costs. Neither did it make *any* order with respect to them. Yet it was necessary for the lower court to pass some

order relative to the payment of the costs. A vast amount of testimony had been taken before a stenographer—examiner—appointed by the court. His fees had to be paid. Equity rule 50 provides that such fees shall be taxed "ultimately as costs;" but to which party? That of course is for the court. Without some order with respect to the costs the record would be incomplete. Therefore we say that when this court directed the lower court to enter a decree in accordance with the opinion it impliedly directed that the court award costs in accordance with the usual rules of equity. Hence the court was within its rights in directing that the losing parties should pay the costs.

Were the defendants the losing parties? It is true the Government was defeated in its contention that the restrictive provisos constituted conditions subsequent, but so were the defendants defeated in their position that these provisos were only "unenforceable covenants" (238 U. S., 412). That the Government was successful in the main is made evident by these facts: The value of the land "exceeds thirty millions," according to our stipulation. The Government claimed all. So did the railroad companies. By the judgment of the court the railroad is entitled to a maximum of $2.50 per acre only, or $5,750,000 for the 2,300,000 acres involved. Deduct this sum from the total value of thirty millions and there results a remainder of $24,250,000 which, by the judgment of the court, goes to the Government. To

that extent the Government was successful, and hence, as we have just observed, is entitled to its costs.

II.

THE CHAMBERLAIN-FERRIS ACT IS A PROPER EXERCISE OF POWER BY CONGRESS.

A. CONGRESS HAD POWER TO REVEST THE TITLE.

In the opinion and mandate the court directed that the defendants be—

> enjoined from any disposition of them (the lands) whatever or of the timber thereon and from cutting or authorizing the cutting or removal of any of the timber thereon, *until Congress* shall have a reasonable opportunity to *provide* by legislation for *their disposition* in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroads." (238 U. S. *supra*, 438–439.) [Italics ours.]

Congress understood this to mean that in the judgment of the court it had power to dispose of the lands in question in any way that it might see fit, subject only to the one condition, namely, that it secure to the defendants "all the value that the granting acts conferred upon the railroads."

To be sure, the court did not say specifically that Congress had power to make disposition of the lands, but this is necessarily implied in what it did say. The court's action is open to no other meaning. Surely the court did not refer to Congress the *disposi-*

tion of the lands without holding at the same time that Congress had the power to make the disposition.

Webster's Dictionary says that "to dispose of" means "to part with; to relinquish; to get rid of; as, to dispose of a house."

In *Phelps* v. *Harris*, 101 U. S. 370, 380–381, we read:

> The expression "to dispose of" is very broad, and signifies more than "*to sell.*" Selling is but one mode of disposing of property. * * * Taking the words in their ordinary sense, a general power to dispose of land or real estate and to take in return therefor such proceeds as one thinks best will include the power of disposing of them in exchange for other lands. It would be a disposal of the lands parted with, and the lands received would be the proceeds.

(See also *Hill* v. *Sumner*, 132 U. S. 118; *United States* v. *Gratiot*, 14 Pet. 526; *King* v. *Ackerman*, 2 Black 408; *Woodbridge* v. *Jones*, 103 Mass. 549; *Beard* v. *Knox*, 5 Cal. 252; *Williams, lessee*, v. *Veatch*, 17 Ohio 171; *Pearre & Co.* v. *Hawkins*, 62 Tex. 434.)

The power to dispose of the lands implies the power to do all things necessary to the full exercise of that power. (*McCulloch* v. *Maryland*, 4 Wheat. 315, 409.) This is axiomatic.

Therefore, Congress must have had the power to revest title in the Government, for without the title the Government could not make "disposition" of the lands.

An additional reason for this is found in the fact that what is to be secured to the railroad company under the opinion is the "value"—not the rights—conferred by the grants. In other words, Congress had authority according to the opinion to take the rights and pay their "value." Congress so interpreted the court's opinion, and in consequence passed the Ferris Act.

It is not, of course, for us to attempt to defend the decision of this court to the effect that Congress had power to revest the title. To do so would be an impertinence. Besides, it needs no defense. It is the law of the case and binding irrevocably upon all—the Government and appellants alike.

1. POWER RESERVED IN THE ACT OF 1866.

But if defense were necessary it is at hand. The act of 1866 reserved to Congress the power to amend it at any time "having due regard for the rights" of the railroad companies. (Sec. 12.)

This is sufficient authority for the passage of the Chamberlain-Ferris Act so far as it affects the lands granted by the act of 1866, and most of those here involved—all but 53,000 of the 2,300,000 acres—were granted by that act. Congress had that power in mind when it passed the Chamberlain-Ferris Act. (Preamble to act, 39 Stat., par. 4, p. 218.)

Appellants take issue with this proposition and say that the power reserved was not broad enough to warrant a revestment of the title. In support of this position several authorities are brought forward;

none of them sustain it. Take, for instance, the opinion in the Sinking Fund Cases (99 U. S. 700). The court, speaking of such a reservation as we have here, said (720):

> Congress not only retains, but has given special notice of its intention to retain, full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power.

And quotes with approval from other decisions of this court the following:

> It may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the *original purposes* of the grant; or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets.

Again, the power to amend may be exercised to

> protect the rights of the *public* and of the corporators, or to promote the due administration of the affairs of the corporation.

But (721)

> the alterations must be reasonable; they must be made in good faith, and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong can not be inflicted under the guise of amendment or alteration. (Italics ours.)

The power has been used in this case "to carry into effect the original purposes of the grant" and "to protect the rights of the public."

There is nothing to the contrary in the other cases cited by appellants. Therefore, we pass them without further notice.

2. POWER OF EMINENT DOMAIN.

The Chamberlain-Ferris Act may also be justified as a legitimate exercise of the power of eminent domain (*U. S.* v. *Jones*, 109 U. S., 513, 518). In taking the lands Congress was bent upon serving one of the public purposes for which the grants were made, namely, the settlement of the country (238 U. S. 417). The railroad company had unlawfully refused for almost 40 years to advance that purpose, and in consequence Congress recalled the title to the end that it might achieve what the railroad company had refused to do.

In addition, the proceeds of the sales of the lands are to go to purposes undoubtedly public—25 per cent for irreducible school fund; 25 per cent for common schools, roads, highways, bridges, and post districts; 40 per cent for reclamation purposes, and 10 per cent for general fund of the Treasury (Chamberlain-Ferris Act, 39 Stat., sec. 10, p. 222).

This court has decided (*United States* v. *Gettysburg Electric Railway*, 160 U. S. 668) that (681)—

> When the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation.

There was no formal declaration here that the purpose was public, but that, we apprehend, is not necessary when its character is evident, as in this case.

The value of the land to the railroad company under the granting acts was appraised by this court when the case was here before—an action to which appellants were parties—and compensation according to the value thus fixed is *secured* by the Chamberlain-Ferris Act. No more is needed. (*Sweet* v. *Rechel*, 159 U. S. 380, 401; *Cherokee Nation* v. *Kansas Railway Co.*, 135 U. S. 641, 658.)

3. EQUITY ALWAYS HAS POWER TO GRANT ADEQUATE RELIEF.

But apart from and entirely independent of this, the Chamberlain-Ferris Act is sustainable upon the ground that it is a part of the remedy given to the Government by the judgment of this court. It is rudimentary law that a court of equity always has the right to create any remedy it may think necessary for the purpose of affording proper relief in any case.

The case of *Sharon* v. *Tucker*, 144 U. S. 533, quotes with approval the following (544–545):

> It is absolutely impossible to enumerate all the special kinds of relief which may be granted or to place any bounds to the power of the courts in shaping the relief in accordance with the circumstances of particular cases. As the nature and incidents of proprietary rights and interests and of the circumstances attending them, and of the relations arising from them, are practically unlimited, so are the kinds and forms of specific relief applicable to these circumstances and relations. (1 Pom. Eq. Jur., sec. 170.)

Bispham observes that:

> This capacity of moulding a decree to suit the exact exigencies of a particular case is

> indeed one of the most striking advantages which procedure in chancery enjoys over that at common law. (Bispham's Principles of Equity, sec. 7.)

In *Brewster* v. *Lanyon Zinc Co.*, 140 Fed. 801, Judge Van Devanter, speaking for the eighth circuit, quoted the following with approval (818):

> The flexibility of decrees of a court of equity will enable it to meet every emergency.

(See also *Payne* v. *Hook*, 7 Wall. 425, 432, and *Missouri, K. & T. Trust Co.* v. *Krumseig*, 172 U. S. 351, 361.)

In *Sage* v. *Central Railroad Co.*, 9 Otto 334, it was said (342):

> The specific relief sought was a strict foreclosure; but under the prayer for general relief it is not questioned that the decree for a sale was appropriate.

One of the prayers of the bill in the case at bar was for general relief. There was also a prayer for the sale of the lands. (Statement case for Govt., former hearing, p. 34–35.)

The adaptability of decrees in equity to the particular facts of a case is touched upon in the opinion herein (238 U. S. 422).

The railroad company had violated with impunity its contracts—the grants—with the Government. From the very beginning it paid no attention to the restrictive provisos thereof. (Statement case for Govt., former hearing, p. 88.) The court found that

it had been guilty of "prolonged disregard of the covenants" (238 U. S. 438) and that an injunction against violations of them in the future would not be enough. What then? Having power to fit the relief to the situation, did it not have power to refer the disposition of the lands to Congress, with the admonition that if the latter made disposition of them it must secure to the defendants "all the value the granting acts conferred upon the railroads."

It seems to be the argument of the appellants that although the railroad company was guilty of a "prolonged disregard of the covenants," and that restraint from future violations would not be enough (238 U. S. 438), still there was no power anywhere to do more than restrain the company from such violations; that neither the title nor the possession of the company could be disturbed; that if it was good in the future, its past delinquencies with all their baneful consequences must be forgotten, or at least that there was no power in the courts to grant the Government any other relief. Why should this be so? Are not other corporations amenable to the law for their breaches of contract? Then, why not this one? "Upon what meat doth this" corporation feed that it "has grown so great" as to be free from the consequences of its illegal conduct? Is the court impotent to grant any relief except that which harmonizes with the company's will? May it not coerce the company into law obedience by any means which it adjudges proper?

The contract breached in this case is different from those which appear in most other cases, be-

cause it is not only a contract, but also a law. (238 U. S. 432.) Adequate relief, in the judgment of the court, required a change in that law. For instance, it would not do to sell 160 acres at $2.50 an acre—$400—which are worth, because of the timber on them, $18,000. To do this, said the court, would invite "more to speculation than to settlement" (238 U. S. 438), but none the less it would have to be done unless the law could be altered. Consequently the matter was referred to Congress, the only body having power to make the change, and through whose assistance alone the secondary and only remaining purpose of the grants—settlement—could be carried out at this time. If this puts the appellants in a situation they do not like, it is because the railroad company failed to keep its contract and obey the law.

But, however all that may be, the decision of this court, as we have heretofore observed, that Congress had the power to dispose of the lands and hence to revest the title in the Government, is not open for examination here—it is conclusive.

B. APPELLANTS HAVE NO CAUSE FOR COMPLAINT AGAINST THE ACT.

For nearly forty years prior to the commencement of this action, the railroad company had ignored its contracts with the Government (238 U. S. pp. 425, 438). It is not in a position to insist that those contracts shall not now be disturbed even though its violation of them renders their disturbance necessary in order that the rights of the other contracting

party—the Government—be protected. Especially is this so since all the railroad company's interest under the contracts—the grants—as found by this court, are adequately preserved in the Chamberlain-Ferris Act, as we shall presently show.

C. THE CHAMBERLAIN-FERRIS ACT SECURES TO THE APPELLANTS "ALL THE VALUE" CONFERRED BY THE GRANTING ACTS UPON THE RAILROADS.

It consists of a preamble and 12 sections. In the former, reference is made to the Granting Acts; the restrictive covenants and the violations of them; the decision of this court referring the disposition of the lands to Congress; the power of amendment reserved in the granting act of 1866 (sec. 12); the receipt by the railroad of large sums of money from sales of the land, leases, interest, contracts, etc., in excess of $2.50 per acre; and the terms of the grants fixing the maximum price at $2.50 per acre. Only sections 1, 7, 8, 9, and part of 10 relate to the interest of the railroad company. The others deal with the handling of the lands after the title thereto has been revested in the Government, and are immaterial here.

The first-mentioned sections read:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the title to so much of the lands granted by the Act of July twenty-fifth, eighteen hundred and sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon," as amended

by the Acts of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, and to so much of the lands granted by the Act of May fourth, eighteen hundred and seventy, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," for which patents have been issued by the United States, or for which the grantee is entitled to receive patents under said grant, as had not been sold by the Oregon and California Railroad Company prior to July first, nineteen hundred and thirteen, be, and the same is hereby, revested in the United States: *Provided*, That the provisions of this Act shall not apply to the right of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said railroad company on December ninth, nin teen hundred and fifteen, for depots, side tracks, wood yards, and standing grounds.

SEC. 7. That the Attorney General of the United States be, and he is hereby, authorized and directed to institute and prosecute any and all suits in equity and actions at law against the Oregon and California Railroad Company, and any other proper party which he may deem appropriate, to have determined the amount of moneys which have been received by the said railroad company or its predecessors from or on account of any of

said granted lands, whether sold or unsold, patented or unpatented, and which should be charged against it as a part of the "full value" secured to the grantees under said granting Acts as heretofore interpreted by the Supreme Court. In making this determination the court shall take into consideration and give due and proper legal effect to all receipts of money from sales of land or timber, forfeited contracts, rent, timber depredations, and interest on contracts, or from any other source relating to said lands; also to the value of timber taken from said lands and used by said grantees or their successor or successors. In making this determination in the aforementioned suit or suits the court shall also determine, on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this Act, and which should in law have been paid by the said Oregon and California Railroad Company, and the amount thus determined shall be treated as money received by said railroad company.

SEC. 8. That the title to all money arising out of said grant lands and now on deposit to await the final outcome of said suit commenced by the United States in pursuance of said joint resolution of nineteen hundred and eight is hereby vested in the United States, and the United States is subrogated to all the rights and remedies of the obligee or obligees, and especially of Louis L. Sharp as commissioner, under any contract for the purchase of timber on the grant lands.

SEC. 9. That the taxes accrued and now unpaid on the lands revested in the United States, whether situate in the State of Oregon or State of Washington, shall be paid by the Treasurer of the United States, upon the order of the Secretary of the Interior, as soon as may be after the approval of this Act, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

SEC. 10. That all moneys received from or on account of said lands and timber under the provisions of this Act shall be deposited in the Treasury of the United States in a special fund, to be designated "The Oregon and California land-grant fund," which fund shall be disposed of in the following manner: The Secretary of the Interior shall ascertain as soon as may be the exact number of acres of said lands, sold or unsold, patented to the Oregon and California Railroad Company, or its predecessors, and the number of acres of unpatented lands which said railroad company is entitled to receive under the terms of said grants, and the value of said lands at $2.50 per acre. From the sum thus ascertained he shall deduct the amount already received by the said railroad company and its predecessors in interest on account of said lands, and which should be charged against it as determined under section seven of this Act; and a sum equal to the balance thus resulting shall be paid, as herein provided, to the said railroad company, its successors or assigns, and to those having liens on the land, as their re-

spective interests may appear. The amount due lien holders shall be evidenced either by the consent, in writing, of the railroad company or by a judgment of a court of competent jurisdiction in a suit to which the railroad company and the lien holders are parties. Payments shall be made from time to time, as the fund accumulates, by the Treasurer of the United States upon the order of the Secretary of the Interior: *Provided, however,* That if, upon the expiration of ten years from the approval of this Act, the proceeds derived from the sale of lands and timber are not sufficient to pay the full amount which the said railroad company, its successors or assigns, are entitled to receive, the balance due shall be paid from the general funds in the Treasury of the United States, and an appropriation shall be made therefor. After the said railroad company, its successors or assigns, and the lien holders, shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section nine hereof, shall be deposited in the Treasury to the credit of the United States; thereafter all other moneys received from the sales of land and timber shall be distributed as follows: (Remainder of section not material here.) (39 Stat., 218.)

A word of explanation with regard to these sections, except the first and tenth which need none.

The railroad company has sold about 800,000 acres, the proceeds of which, together with moneys derived from other sources connected with the

grants, reach about $5,506,870.97, or $3,506,870.97 more than the company would be entitled to at $2.50 an acre (statement, case for Govt. former hearing, p. 83).

Under section 9 the Government is to pay to Oregon and Washington the taxes due on the lands, totaling about $1,300,000. Whether the excess over $2.50 an acre received by the railroad company, as just stated, constitutes, in the words of the opinion, an "illegal emolument" (238 U. S. p. 436) and should be deducted, together with the taxes paid, from what would otherwise be coming to the railroad company in the Government's settlement with it, are questions referred to the courts by section 7.

The money mentioned in section 8 is the same as that mentioned in section 3 of the decree. Its relation to the granted lands is shown in the discussion with respect to that part of the decree. (*Supra*, p. 16.)

Stated otherwise, the act revests the title in the United States to all the unsold lands and provides for the payment to the railroad company within ten years of the balance that may be coming to it on a basis of $2.50 an acre for the total acreage covered by the two grants after making all proper deductions. Thus the railroad company is assured the *maximum* amount—$2.50 per acre—which under any circumstances, no matter how favorable, it would be entitled to receive under the grants as construed by this court. This is far more than it could possibly receive if it sold the lands under the terms of the restrictive

provisos. In such case it could receive no more, as we have just said, than $2.50 an acre; but in many cases it would not obtain that sum or even a fair share of it. This is so because considerable of the land is without merchantable timber and is also uncultivable. The appellants urged in effect at the former hearing that a great deal of it "was nothing but a wilderness of mountain and rock" (238 U. S. p. 422). While we do not admit this contention to its full extent, we must concede that it is true in part. In providing, therefore, that the railroad company shall receive $2.50 per acre for all the land, whether good or bad, Congress has been more than just—it has been very generous.

Payment of the amount due the railroad company is amply secured. Section ten says that payments shall be made from time to time as the funds accumulate and if after the expiration of ten years the proceeds from the sales are not sufficient to discharge the full amount due, the balance shall be paid out of the general funds in the Treasury. The railroad company has no ground for complaint here. In a little more than ten years, it is assured of all the money rightfully coming to it, and in the meantime it is free from any obligation to pay taxes. It is safe to say that in this way it will receive not only more money by far, but will receive it much sooner, than if the Chamberlain-Ferris Act had not been enacted.

Did the granting acts confer upon the railroads any other "value" than that flowing from the right to sell the land for a sum not to exceed $2.50 an acre, and if

so, is it secured to the appellants by the Chamberlain-Ferris Act? The granting act of 1866 gave to the railroad the right "to take from the public lands adjacent to the line of said road, earth, stone, timber, water, and other materials for the construction thereof," also a right of way through the public lands "to the extent of one hundred feet in width on each side of said railroad * * * including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, sidetracks, turntables, water stations, or any other structures required in the construction and operating of said road" (Sec. 3, 14 Stat. 239, 240).

Like rights were conferred by the grant of 1870 upon the grantee (sec. 1, 16 Stat. 94).

The right to take materials from the public lands for constructing the road has, of course, been exhausted because the line of road contemplated by section 1 of each act has been built long since. Besides, the Chamberlain-Ferris Act does not disturb it. The rights of way, station grounds, etc., appropriated by the defendants from the granted lands are saved to them by the proviso to section 1 of the Chamberlain-Ferris Act, which reads:

> That the provisions of this Act shall not apply to the rights of way to the extent of one hundred feet in width on each side of the railroad and all lands in actual use by said railroad company on December ninth, nineteen hundred and fifteen, for depots, sidetracks, wood yards, and standing grounds.

[December 9 was taken because it is the date of the decree now before the court for review.]

1. CERTAIN RIGHTS CLAIMED BY APPELLANTS.

There is, as we have noticed (*supra*, p. 8), a contention on the part of appellants that the railroad company had the right under the granting acts to cut the timber, or mine the coal, if there be any, and sell it irrespective of the provisos, or use it as fuel in its locomotives; that it also had the right to farm the land, sell the crops, and apply the proceeds on its debt; and that the Chamberlain-Ferris Act does not provide for the value of any of those rights. There are several answers at hand:

(*a*) The questions thus raised have become *res judicata* (*supra*, p. 15).

(*b*) The railroad company's charter does not authorize it to engage in farming, mining, or logging (R. Vol. I, p. 89, former hearing) and besides, there is no warrant in the granting acts, or the debates at the time they were enacted, for saying that Congress intended that the railroad company could put the lands to any such purpose.

(*c*) Even if the granting acts conferred those rights, they are, when judged by the conduct of the railroad company, of practically no value. During the long period of the company's ownership of the lands it had never mined a ton of coal, cultivated an acre of land, or used a piece of timber taken from the lands save only to the value of $18,850.25. (Statement, Case, Govt., former hearing, p. 83.) And this small value

is more than compensated for in the $2.50 an acre allowed by the Chamberlain-Ferris Act, for, as we have shown and the record amply discloses, there are thousands of acres for which the company could not receive any thing if their right to sell had not been disturbed by the Chamberlain-Ferris Act (*supra*, p. 37), because they are mountain sides, barren rocks, without timber, and uncultivable. For each such acre the Chamberlain-Ferris Act allows the company $2.50. In this connection, let us repeat, that under the opinion of the court, Congress is not to secure rights, but "the value" of the rights, to the railroad company (238 U. S. 429).

(*d*) The purposes of the granting acts according to the interpretation of this court were two, namely (1) the building of the railroad, and (2) the settlement of the country. And "the secondary purpose," says the court "was regarded and provided for in the provisos under review. Both purposes must be considered. It may be that it was not expected that actual settlers would crowd into 'the vast unpeopled territory' but the existence of such settlers at some time must have been actually contemplated. Both purposes, we repeat, were to be subserved, and how to subserve them is the problem of the case." (238 U. S. *supra*, 417.) Again, referring to the granting acts, the court mentions "the accomplishment of their purposes—either of the construction of the road, or sale to actual settlers" (420). The secondary purpose, it is clear, would be defeated if the railroad company had the right to farm the land. Such a use would be

inconsistent with the idea of small tracts—160 acres—dotted with homes belonging to the occupants—"A bold peasantry their country's pride." This was the character of settlement which Congress contemplated, not an immense area owned by an absentee landlord and cultivated by a poor tenantry—the curse of older countries. It was to prevent just such a condition as that, that the restrictive provisos were adopted. This was shown in the former argument (brief, p. 42 et seq), which is noticed in the opinion of the court (414).

(*e*) According to appellants' witnesses, it would cost from $50 to $500 to clear the stumps from an acre of land. (Reduced summary of testimony attached to Government's statement of case, former hearing.) Uncleared land of that character would have no attractions for settlers—it would on the contrary repel settlement and thus defeat the secondary purpose of the grants. If, on the other hand, the land had not been denuded of its timber, the settler could sell the timber, and thus realize enough to clear the land and otherwise improve it.

But we deny that the railroad company had any right to farm, log, or mine the lands; it had no right to take anything from them save perhaps a right of way and depot grounds—which are preserved by the Chamberlain-Ferris Act. This view is not inconsistent with the finding of the court that "there was a complete and absolute grant to the railroad company with power to sell, limited only as prescribed" (434)—

"limited only as prescribed," but "there's the rub." Nothing was contemplated which would collide with the limitations—the settlement provisos—and the claims we are now discussing would do so. Therefore, they must be rejected.

Finally, as we have before remarked, there is no authority in the railroad company to divide the lands into three parts—soil, mineral, and timber—and then free two from the burden of the limitations imposed by the restrictive provisos.

2. CASES CITED BY APPELLANTS.

Appellants, railroad company and Gage, cite a number of cases and argue at some length to the effect that a grantee of lands from the Government may dispose of them as he pleases, subject to such restrictions as the granting act imposes. These cases illustrate no point of controversy in the case at bar. *Schulenberg* v. *Harriman* (21 Wall. 44) and *Fletcher* v. *Peck* (6 Cranch, 87) may be taken as types of all the others. In the first case the grant was upon a condition subsequent. The condition was broken. After this had happened, and before any action was taken by the grantor to reenter and reclaim the title, Schulenberg, a stranger to the title, went upon the lands and cut therefrom some timber. The grantee through its agent, Harriman, seized the logs that Schulenberg had cut, and thereupon the latter sued to recover them through a replevin action. Thus was presented the question as to whether he or the grantee had title. The decision was, of course, that, since the grantor

had never taken any action to enforce the condition subsequent, the title to the land remained in the grantee, and, consequently, it had a title to the logs. "The title to the land remaining in the State" (the grantee), said this court, "the lumber cut upon the land belonged to the State." This is elementary law with respect to conditions subsequent. But what has it to do with the case at bar? Is it cited for the purpose of showing that title to the timber as well as to the surface of the land was, by virtue of the granting act, conveyed to the grantee? If so, we admit it. Of course, in such circumstances, the title to the timber passed to the grantee with the surface of the land, because it was a *part* of the land.

What we are here dealing with, however, is the remedy which the court has given the Government because the grantee railroad company had for nearly forty years violated its contracts—the granting acts—with the Government. "The play's the thing." And so here the remedy is the point of controlling interest. Where an execution has been issued upon a judgment rendered against a man for a breach of contract for the purchase of a tract of land, it is too late for him when opposing the execution of the writ to ask the court to reexamine the contract for the purpose of determining whether or not it had been breached. The same is true here. We have passed the stage when it was proper to consider whether the railroad company had violated its contract with the Government. This court has

adjudged that it had, and now we are dealing, as just observed, with the remedy awarded by the court.

Nor is there any question here, as in *Fletcher* v. *Peck* (*supra*, p. 43), of the right of Congress to recall a grant where there has been *no* breach of the contract upon which it was made. Here, as we have said, there was a breach and a grave one long persisted in. None of the cases cited is authority for the proposition that property may not be taken in satisfaction of a judgment rendered by a court of competent jurisdiction. Whether the taking is done through an act of Congress, or a sale by a master, or in any other way, can make no difference. The court, as we have shown (*supra*, p. 28), has a right to select the means most appropriate to the end in view—compensation for the breach.

3. THE UNION TRUST COMPANY.

In its brief this company seems to proceed upon the hypothesis that the contract between the Government and the railroad was faithfully kept by the latter. No account whatever is taken of the important fact that for nearly forty years that contract was in large part utterly ignored. A stranger to the record reading the brief would be led to conclude that the malefactor in the case was the Government, not the railroad company. Of course, starting from such a premise the conclusion must be erroneous. The rights of the Trust Company are measured by those of the railroad company. They can be no greater. This court said in the

opinion under review that the railroad company might choose the grants as a means of credit—

> subject ultimately to the restrictions imposed; we say "restrictions imposed" to *reject* the contention of the railroad company that an implication of the power to mortgage the lands carries a *right* to sell on foreclosure *divested* of the *obligations* of the *provisos*. (238 U. S. *supra*, 435.) (Italics ours.)

The Trust Company, and also the railroad company, seem to overlook this statement. After enumerating certain pertinent facts, the court said (438):

> This, then, being the situation resulting from conditions now existing incident, it may be, to the prolonged disregard of the covenants by the railroad company the lands invite now more to speculation than to settlement.

In other words, the railroad company, by its many breaches of the contract between it and the Government, had brought about a condition of things which tended to prevent the accomplishment of the second purpose of the grants, namely, settlement of the country. This being so, an adequate remedy required the interposition of Congress, and so the court decreed. Neither the railroad company, therefore, nor the trust company, is in a position to complain of the consequence which the conduct of the former has brought upon both.

Moreover, the trust company fails to attach any significance, apparently, to that all-important part of the judgment of this court, in which it says, in effect, that defendants shall be restrained—

> until Congress shall have a reasonable opportunity to provide by legislation for their (the lands) disposition in accordance with such policy as it *may deem fitting* under the circumstances (238 U. S., *supra*, 438). (Italics ours.)

These words have weighty meaning and can not be ignored. It is largely upon their import the case must turn.

(NOTE.—The trust company has ample security outside of the lands in question. Government's Brief, former hearing, p. 183.)

4. "UNCOMPENSATED SERVICES."

Again and again appellants speak of the "uncompensated services rendered and to be rendered by the railroad company through all the years in transporting Government troops and materials." While this, like many other statements in appellants' brief, is not now open for discussion, it may not be deemed inappropriate to invite attention to the grave misconception of the contract with the Government which it discloses. It is in no sense correct to say that the services mentioned are "uncompensated." They are already paid for in advance by the grants. The railroad company agreed, by accepting the grants, to render those services as a part of the consideration of the grants. The maximum value of the grants was $2.50 per acre. That, as we have seen, was the highest amount the railroad companies were permitted to receive out of the sale of the lands. The Chamberlain-Ferris Act secures that sum to them. In return

for it, they agreed to render the service mentioned and to do other things. How utterly out of accord with the facts, then, is it to say that such services are "uncompensated." Is the contract between the Government and the railroad company regarded by the latter as nothing more than a mere "scrap of paper"?

We see, therefore, that every existing right given to the railroads by the two granting acts is amply taken care of in the Chamberlain-Ferris Act. Consequently Congress has secured to the defendants "all the value conferred upon the railroads by the granting acts."

III.

THE COURT HAS POWER TO DETERMINE THE VALIDITY OF THE CHAMBERLAIN-FERRIS ACT IN CONNECTION WITH THIS APPEAL.

The mandate, as we have seen, directed the lower court to enter a decree and referred the disposition of the lands to Congress. Although Congress was not, of course, commanded to act, it was not only invited to do so, but its duty to act was made very clear. The preamble to the Chamberlain-Ferris Act in effect declares that Congress accepted the invitation and admitted the duty. The act is as much a part of the execution of the judgment of this court as the decree. Both are necessary to give it full effect. If Congress had failed to act, much of the potency of the judgment would be wasted. Appellants deny that the Chamberlain-Ferris Act is in consonance with the judgment, and predicate the same thing of the decree. Thus is presented the question as to whether, by the congressional act and court decree, the judgment

has been carried out in harmony with its terms. Why, then, is it not proper, as indeed it is *very desirable*, that the validity of the act should be decided in conjunction with that of the decree? True the validity of the former is not here on appeal. But is that material?

In *Clark Distilling Company* v. *Western Maryland Railway Company* et al., decided Jan. 8, 1917, this court considered and gave effect to a statute of West Virginia passed after the case had reached the court on appeal, saying:

> As the relief sought is the permanent right to ship in the future, the meaning of the statute now, that is, as amended, is the test by which we must consider the questions requiring solution.

United States v. *Mormon Church* (150 U. S. 145) was a case in which this court held that Congress had the power to "dispose" of the property of a defunct corporation (145). And the mandate directed the lower court to enter a judgment in conformity with the opinion of this court "unless in the meantime Congress should otherwise order." (147.) A decree was entered and from it an appeal taken to this court. Pending the appeal, Congress, as in the case at bar, took action resulting in a disposition of the property. This was brought to the attention of the court, which was asked to consider it in connection with the appeal. It did so, saying:

> It will be perceived that judicial action is not sought to be controlled by the resolution

> [of Congress], but that this court *having indicated* the mode to be pursued to ascertain and define the particular charitable uses, lawful in their character, to which the property should be devoted, in the absence of legislation upon the subject, and this appeal from the decree of the court below to that end having been taken, Congress has now declared such uses. (149.)

In the present case this court also indicated the course to be taken by the lower court "in the absence of legislation upon the subject." (238, U. S. 439, *supra*.)

Since it was proper to consider and give effect to the action of Congress in the *Mormon Church* case, it is equally proper, we submit, to consider and give effect to it here.

Besides, the power of the court to determine whether its mandate was obeyed is not appellate only. It could be invoked by a direct application for a mandamus. (*In re Potts*, 166 U. S. 263.) The power is an incident of the jurisdiction which the court exercised in deciding the original case. In asking the court to judge the validity of the Chamberlain-Ferris Act we call for an exercise of the same jurisdiction.

The only question then left is one of procedure, and as the Government and appellants unite in asking the court to decide the validity of the act in connection with this appeal, that question is waived.

Assuming the existence of the power, we trust the court will not decline to exercise it, for it is of great

importance to the public interest in Washington and Oregon that the validity of the act should be determined soon. Until it is, the appellants will resist any attempt on the part of the Government to deal with the lands, and the appellants are restrained from meddling with them. The lands constitute the greater part of the taxable property in many of the counties. For several years, as we have already stated, none of the taxes levied upon them have been paid and in consequence counties affected have been pushed to the verge of bankruptcy. The Government is ready to pay those taxes as soon as the validity of the act is adjudged.

In conclusion, permit us to urge that the decree of the lower court and the Chamberlain-Ferris Act are in strict accordance with the opinion and decision of this court and are therefore valid.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.
CONSTANTINE J. SMYTH,
Special Assistant to the Attorney General.

MARCH 3, 1917.

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OREGON & CALIFORNIA RAILROAD COMPANY ET AL. *v.* UNITED STATES.

ON CERTIFICATE FROM AND CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 492. Argued March 8, 9, 1917.—Decided April 23, 1917.

The Oregon-California Railroad Grants (Acts of July 25, 1866, as amended, and May 4, 1870) made no distinction between land covered with timber and other land, nor between the timber or other incidents and the land itself; title to all was vested in the railroad company for transmission to actual settlers upon the terms prescribed by the acts. The substantial interest granted the company was the right to exact not more than $2.50 per acre in so disposing of the lands. *Oregon & California R. R. Co.* v. *United States*, 238 U. S. 393, discussed and followed.

While the railroad company could use the lands as a basis of credit, it could not by trust deed convey an interest in either land or timber exempt from the obligations imposed by the granting acts or the power of the Government to compel their performance.

The granting acts being not mere instruments of conveyance but laws reserving the right of alteration or repeal, Congress, to overcome a situation largely due to breaches of obligation by the railroad company which made the original scheme impracticable, had power without the company's consent to resume the title and provide for disposition of the land by the Government under conditions assuring the company the equivalent of its interest in the grants—not more than $2.50 per acre.

The "Chamberlain-Ferris Act" of June 9, 1916, c. 137, 39 Stat. 218, examined and found to accord with the power of Congress and the principles laid down by this court in *Oregon & California R. R. Co.* v. *United States*, 238 U. S. 393.

The former decision of this court having directed an injunction to hold the land and timber intact until Congress should have reasonable opportunity to make new provisions for disposing of them consistently with the interest of the railroad company, and an act having been passed accordingly after entry of the decree in the District Court, this court, upon a review of the decree based on an alleged

departure from its former mandate, may properly determine the validity of the act as a matter involved in the decree's execution.

Under Rule 24, costs in this court are not allowable in cases where the United States is a party.

Where the United States obtained a decree declaring railroad land grants forfeited for breaches of obligation by the railroad company and upon appeal the decree was reversed because the obligations broken were not conditions subsequent but statutory covenants and relief against the company by injunction was decreed accordingly, costs of the litigation in the District Court were properly awarded by that court to the United States.

THE case is stated in the opinion.

Mr. P. F. Dunne, with whom *Mr. Wm. F. Herrin*, *Mr. Wm. D. Fenton* and *Mr. Frank C. Cleary* were on the brief, for the Oregon & California Railroad Company *et al.*

Mr. Perry D. Trafford for the Union Trust Company of New York.

Mr. Constantine J. Smyth, Special Assistant to the Attorney General, with whom *The Solicitor General* was on the brief, for the United States.

Mr. Francis J. Heney, by leave of court, filed a brief as *amicus curiæ*.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This is the second appearance of the case in this court. It is on certificate from and certiorari to the Circuit Court of Appeals for the Ninth Circuit, to which court it was taken by appeal to review a decree of the District Court for the District of Oregon entered in fulfillment of the mandate of this court.

The decree of the District Court was reversed and the

present controversy is as to what our mandate required. As expressing their different views of it the Government and the railroad company—we shall so refer to the defendants, except where a distinction is necessary—submitted forms of decrees to the District Court. The court adopted the decree submitted by the Government, and that action is assigned as error.

The case as made in this court on its first appearance is reported in 238 U. S. 393–438, and contains all of the elements for the decision of the questions now presented. Before detailing those elements we may say preliminarily that the difference between the decree entered and that proposed by the railroad company was in the extent of the restraint upon the company in the disposition of lands granted in aid of the construction of certain railroads and telegraph lines. The acts making the grants contained the provision that the lands granted should be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents an acre.

The decree restrained the railroad company from selling "to any person not an actual settler on *the land* sold to him," with limitation of quantity and price stated, "and from selling any of the timber on said lands, or any mineral or other deposits therein, except as a part of and in conjunction with the land on which the timber stands or in which the mineral or other deposits are found; and from cutting or removing or authorizing the cutting or removal of any of the timber thereon; or from removing or authorizing the removal of mineral or other deposits therein, except in connection with the sale of the land bearing the timber or containing the mineral or other deposits."

The decree as proposed by the railroad company omitted the injunction against selling the timber and mineral deposits.

Upon these differences in the proposed and entered decree the railroad company bases its contention that the latter is not in accordance with the mandate of this court, and in support of it it has presented elaborate arguments to establish a distinction between *lands* and the timber on them and the mineral deposits in them, and that the command of the acts of Congress to sell the lands did not include the timber or deposits. In other words, it is contended that the acts of Congress gave the railroad company "the right of an owner by absolute grant to the use of the timber on his land" and to avail himself of the minerals therein; and that, therefore, the restraint that the District Court put upon the railroad company was in excess of the mandate. "It was what this court has termed an 'intermeddling' with matters outside of the scope of the mandate. It proceeded to determine that the railroad had no right to use the timber upon its own lands while they were still unsold and in its possession and occupancy; it determined that the railroad company could not even make a clearing in anticipation of a sale to some settler, or dig out a ton of coal; and it adjudged that the owner of the land had no right in the timber or the coal except to pass it, as part of the realty, when it sold the land to a settler at $2.50 an acre."

The complaint is graphic. Its attempted justification is the assertion of a grant in absolute ownership. Such ownership is the foundation of the railroad company's contention and on this foundation it builds its argument and upon the insistence that the lands having been granted, necessarily as incidents to them the timber and minerals on and within them were granted. An immediate and sufficient answer to the contention would seem to be that the grant was not absolute but was qualified by a condition in favor of settlers and that if the "lands" granted had such incidents the "lands" directed to be sold to actual settlers were intended to have such incidents. That is,

if the "lands" granted carried by necessary implication all that was above the surface and all below the surface to the railroad company, they carried such implication to the actual settler. In other words, what "lands" meant to the railroad company they meant to the settler, embraced within his right to purchase and acquire. We are not disposed, however, to rest upon this summary answer but will consider with more particularity our mandate.

It is not necessary to trace the title of the lands to the railroad company. It is sufficient to say that the source of the title was an Act of Congress approved July 25, 1866, c. 242, 14 Stat. 239, as amended by the Acts approved June 25, 1868, c. 80, 15 Stat. 80; April 10, 1869, c. 27, 16 Stat. 47; and May 4, 1870, c. 69, 16 Stat. 94, which acts granted lands to aid in the construction of certain railroads and telegraph lines. The Act of 1869 contained this proviso: "*And provided further*, That the lands granted by the act aforesaid [Act of 1866] shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre." There was a like provision in the Act of 1870.

The Government brought suit against the railroad company, alleging that these provisos constituted conditions subsequent, charging breaches of the conditions by the company and praying for a forfeiture of the unsold lands.

The railroad company denied that the provisos were to be so construed and alleged that they constituted restrictive and unenforceable covenants and set up other defenses.

The District Court adopted the view of the Government as to the provisos and entered a decree forfeiting the lands and the case came here for review.

The contentions of the Government and the railroad company were repeated in this court, and it was, besides,

contended that the provisos only applied to lands susceptible of actual settlement and cultivation and did not include timber lands.[1]

We rejected the contention of the Government; we rejected in part the contention of the railroad company, saying: "Our conclusions, then, on the contentions of the Government and the railroad company are that the provisos are not conditions subsequent; that they are covenants, and enforceable."

But how enforceable? And what was the remedy for breaches?—and breaches there were, many, gross and determined. It was certainly not intended to be decided that these breaches, with all of their consequences, were to be put out of view and the railroad company only enjoined against future breaches. Yet this, in effect, is the contention, and it is attempted to be supported by certain language in the opinion. Before quoting it we may say in general that much that is cited from it must be considered in reference to the controversies which were presented, and that the granting acts and their provisos were necessarily construed as of the time of their passage. Action under them and the breaches of them came afterwards, and a consideration of the remedies to which the Government was entitled. Keeping this comment in mind we can more easily understand the language of the opinion in description of the grant and in regard to the relief that was awarded the Government.

As to the grant this was said—and it is much insisted on—"There was a complete and absolute grant to the railroad company with power to sell, limited only as pre-

[1] There were cross-complainants and interveners, the first asserting that the provisos created trusts in favor of actual settlers, and the second that the trust had the scope of including all persons who desired to make actual settlements upon the lands. The decree of the District Court and the decision here were adverse to both contentions and this case has no further concern with them or with those who made them.

scribed, and we agree with the Government that the company 'might choose the actual settler; might sell for any price not exceeding $2.50 an acre; might sell in quantities of 40, 60, or 100 acres, or any amount not exceeding 160 acres.'" And we added, "it might choose the time for selling or its use of the grants as a means of credit, subject ultimately to the restrictions imposed; and we say 'restrictions imposed' to reject the contention of the railroad company that an implication of the power to mortgage the lands carried a right to sell on foreclosure divested of the obligations of the provisos."

This declares the meaning of the words of the acts taken by themselves. It points out the power of the railroad company and that it was "limited only as prescribed." It does not point out the remedy of the Government if the limit prescribed was transcended. For that we must look to other parts of the opinion. We took pains to declare that the principles of the case were "not in great compass," that circumstances had given "perplexity and prolixity to discussion," but had not confused the simple words of the acts of Congress regarded either as grants or as laws, and that they were both, and, as both, they conferred rights quite definite and imposed obligations as much so—the first having the means of acquisition; the second, of performance. And we gave emphasis to them as laws and the necessity of obedience to them as such, the remission of their obligation to be obtained "through appeal to Congress" and not by an evasion of them or a defiance of them.

The evasions and defiance we showed, and the extent to which they transcended the policy and purpose of the Government expressed in the covenants. We contrasted the requirement of the grants of a sale to an actual settler of 160 acres (maximum amount) with sales of 1,000, 2,000, 20,000 and 45,000 acres to single purchasers, and the use of the lands for homes with their use for immediate

or speculative enterprises. The relief the Government was entitled to, we said, was not satisfied by preserving its rights to the lands sold and we further said that "an injunction simply against future violations of the covenants, or, to put it another way, simply mandatory of their requirements, will not afford the measure of relief to which the facts of the case entitle the Government."

The reason was expressed. The Government alleged, to show a disregard of the covenants, that more than 1,000 persons had applied to purchase lands from the railroad company in conformity with the covenants. The company, replying, said the applications were not made in good faith for settlement, but for speculation, the lands being valuable only for their timber and not being fit for settlement, and further alleged that at no time had the lands fit for actual settlement exceeded 300,000 acres, in widely separated tracts, and had been sold during the construction of the road and prior to its completion to actual settlers in the prescribed quantities and at the prescribed price.

We have seen that other sales were made in quantities in excess of that prescribed by the statute, and not for settlement, at prices from $5.00 to $40.00 an acre, and that at the time the answer was filed there remained unsold over two million acres, the reasonable value of which was $30,000,000. There was no intimation that the lands did not include the timber and it was not only recognized but asserted that the lands were more valuable for the timber than for settlement.

Our judgment took care of the situation. It preserved the remedies of the Government for past violations of the granting acts and recognized that new dispositions were necessary to secure the rights that had accrued to the Government. We said that owing to the "conditions now existing, incident, it may be, to the prolonged disregard of the covenants by the railroad company, the lands

invite now more to speculation than to settlement, and we think, therefore, that the railroad company should not only be enjoined from sales in violation of the covenants, but enjoined from any disposition of them whatever *or of the timber thereon and from cutting or authorizing the cutting or removal of any of the timber thereon*, until Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances and at the same time secure to the defendants all the value the granting acts conferred upon the railroads."

The design of this and its adequacy would seem to need no comment. It was intended to be a guide to the District Court—indeed, a direction of the decree of the court. The decree complied with the direction. See *Southern Oregon Co.* v. *United States* (Circuit Court of Appeals, Ninth Circuit, decided February 13, 1917).

Congress, in the execution of the policy it deemed fitting under the circumstances, as expressed in our opinion, enacted what is called the Chamberlain-Ferris Act of June 9, 1916, c. 137, 39 Stat. 218.[1] The validity of the

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[1] The provisions of the act, so far as they affect the railroad, may be summarized as follows:

It recites, among other things, that this court had ordered that the railroad company be enjoined from "making further sales of lands in violation of the law," and further enjoined from "making any sales whatever of either the lands or the timber thereon until Congress should have a reasonable opportunity to provide for the disposition of said lands," etc., and enacts that the title to so much of the lands as had not been sold by the railroad prior to July 1, 1913, be and the same is hereby revested in the United States, excepting right of way and lands in actual use by the railroad for depots, side-tracks, etc. (§ 1). The lands shall be divided into three classes: power sites, timber lands, and agricultural lands (§ 2). The timber shall be sold by the Secretary of the Interior at such times and in such manner as may seem best, and the lands from which it is removed shall thereafter be classed as agricultural lands (§ 4). The lands classed as agricultural shall be sub-

act is challenged and both sides invite a determination of the challenge. The validity of the law may be said not to be involved. The appeal is from the decree, and, that being determined to be right, the appeal, it may be urged, is satisfied, the questions it presents decided. It, however, may be considered important in the execution of the decree, for we have seen that the granting acts were laws as well as grants, had the strength and operation of laws,

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ject to entry under the homestead laws but patents shall not issue until the lands have been cultivated for three years (§ 5). The Attorney General is authorized to institute proceedings against the railroad company and others to have determined the amount of moneys already received by the railroad company or its predecessors on account of sales, etc., of the granted lands and which should be charged against it as part of the "full value" secured to the grantees under the granting acts as heretofore interpreted by this court. In making such determination the court shall take into consideration all moneys received from sales of lands or timber, forfeited contracts, rent, timber depredations and interest on contracts, or from any source relating to the lands, and also the value of the timber from the lands and used by the grantees or their successors. In such suits the court shall also determine the amount of taxes on the lands paid by the United States as provided in § 9 of the act and which should have been paid by the railroad, and the amounts thus determined shall be treated as money received by the railroad company (§ 7). The title to all moneys arising out of the granted lands and now on deposit to await the final outcome of the suit commenced by the United States in pursuance of the joint resolution of April 30, 1908, is hereby vested in the United States and the United States is subrogated to all the rights and remedies of the obligee or obligees under any contract for the purchase of timber on the grant lands (§ 8). Provision is made for the payment by the United States of accrued taxes on the lands revested by the act (§ 9). The proceeds of the timber and the lands shall be deposited in the Treasury of the United States and be paid to the railroad or the lien holders as the fund accumulates, and at the end of ten years an appropriation shall be made from the general funds of the Treasury of the United States to pay any balance which may be due to the railroad (§ 10). The profits derived from the transaction shall be paid one-quarter to the State of Oregon and one-quarter to the counties where the lands are situated, while one-half shall be retained by the Government (§ 10).

subject to amendment if the right of amendment existed or accrued. There was a reservation in them of the right of alteration or repeal and if it could not be exerted to take back what had been granted and had vested, it could be exerted to accomplish the remedy which the court adjudged to the Government for the violation by the railroad company of the provisions of the grants. It is no answer to the exertion of the power and remedy to say that the acts of Congress were initially complete and absolute grants. It is to be borne in mind that they carried with them covenants to be performed and necessarily an obligation to perform them, with remedies for breaches of performance. Such was our judgment, as we have seen, and the judgment was adapted to the conditions created by the breaches, and for this legislation was deemed necessary.

But the railroad company says that the legislation directed was to have its consent and that such consent "was essential to a valid resumption or alteration of its vested rights," and that this was what this court meant when it said "that any legislation in the premises by Congress should 'secure to the defendants all the value the granting acts conferred upon the railroads.'"

We have already answered the contentions. The railroad company, by pushing into view the rights conferred by the granting acts and putting out of view the wrongs committed by it, can easily build an argument upon and invoke the inviolability of vested rights; and to say that its consent was necessary to legislation is to say that it could dictate the remedy for its wrongs, preclude or embarrass the policy of the Government.

The interest that the granting acts conferred upon the railroad company was $2.50 an acre. That secured to it, "all the value the granting acts conferred" upon it was secured. It is true it had the right of sale, selection of time and settler. If these were rights, they were also aids

to the duty of transmitting the lands to settlers; and, the duty having been violated, they became unsuitable to the conditions resulting and obstructions to the relief which had accrued to the Government. In other words, by the conduct of the railroad company the policy of the granting acts had become impracticable of performance and the new conditions—the lands inviting more to speculation than to settlement—demanded other provision than that prescribed by the granting acts. This was the declaration and direction of our judgment, and the Chamberlain-Ferris Act is the execution of it.

The Union Trust Company was one of the defendants in the suit and is one of the parties here. It was heard by its own counsel at the bar and through brief. In the main its argument is the same as that of the railroad company, varied somewhat in detail, and asserts that it has not only the rights of the railroad but, "in *addition* and *especially*, that even if it is possible for the Government now to take away rights once conveyed to the railroad, *it cannot take them except subject to the lien of the mortgage.*"

So far as the rights of the trust company coincide with those of the railroad company we have considered them, and they cannot be greater than those of that company. The railroad company, it is true, could use the lands as a basis of credit, but only to the extent of its interest in them, subject to the performance of its obligations and the power of the Government to exact their performance.

We were careful to observe this subordination. We expressed the extent of the interest that the railroad company received and that "it might choose the time for selling or its use of the grants as a means of credit," but, we also said, "subject ultimately to the restrictions imposed." And, further, we said "'restrictions imposed' to reject the contention that an implication of the power to mortgage the lands carried a right to sell on foreclosure divested of the obligations of the provisos."

The case was responded to as it was presented and no phase of it was omitted in presentation or response that could influence its judgment. Of what was in the minds of counsel, determining and urging their contentions, of what was in the mind of the court in response to the contentions, the opinion leaves no doubt, and that after the fullest consideration of all that was involved of rights and remedies the judgment was pronounced.

A distinction is now attempted to be made between a sale of the lands and the use of the lands, including in the use of them the right to cut the timber upon them and extract minerals (coal and iron) from them. Such use, it is asserted, is a necessary incident of ownership and that such use was not intended to be taken away nor could it have been taken away by our judgment.

To answer the contentions would be mere repetition of what we have said. The distinction now made between the lands and their use is but the contention urged on the first appeal and rejected—that the provisos only applied to lands susceptible of actual settlement and not to timber lands. The distinction then was between the lands, now between their constituting elements, and for the same reason: to give to the railroad company and the trust company what the granting acts did not give, or, rather, gave for the purpose of transmission to actual settlers. This transmission becoming impracticable, other disposition of the lands, including all that is signified by the word, was adjudged.

The trust company also attacks the Chamberlain-Ferris Act and is assisted in the attack by a "friend of the court." The attacks have the same basis as that which we have noticed—that is, the rights of the railroad company are asserted to be vested and inviolable. The contention gets a semblance of strength from the ability of counsel. To yield to it would be in effect to declare that covenants violated are the same as covenants performed—

wrongs done the same as rights exercised—and, by confounding these essential distinctions, give to the transgression of the law what its observance is alone entitled to.

The decree of the District Court taxed costs against the railroad company, and this is assigned as error. The amount is stated to be $6,249.02. So far as this sum includes costs on the former appeal we think there was error. The railroad company was compelled to appeal from the decree against it. The decree was reversed and no costs were awarded for or against it, and could not have been under Rule 24 of this court. The rule gives costs to the prevailing party in certain cases. The provision, however, does not "apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States." Our mandate was in accordance with the rule and the decree should not have awarded costs to the United States. To that extent it is erroneous and should be modified by deducting the costs which were incurred in this court; and, so modified, it is

Affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.